The Population and the Individual: the Human Rights Audit as the Governmentalization of Global Human Rights Governance

The existence of international human rights standards drives States and non-State actors alike to monitor the behaviour of others – and also themselves. This has led to observations that the human rights movement in the transnational and global sphere is becoming an “audit culture”, dominated by evaluations of performance and internal control which in turn produce self-auditing and ultimately self-regulating actors.[[1]](#footnote-1) This concept is drawn from work by scholars in other fields, who have written of a growing trend towards systems of inspection, performance assessment, and review, which now characterises both global and domestic fields of regulation.[[2]](#footnote-2) This ultimately builds upon a wealth of literature on audit and performance monitoring stemming from Michael Power’s seminal work on the subject in the 1990s.[[3]](#footnote-3)

This article demonstrates in the first instance that this phenomenon is, if anything, more widespread in the field of human rights than even is currently acknowledged. A complex institutional bricolage of formal and informal procedures of observation, verification and checking has developed in the global sphere, cutting cleanly across the public/private divide. The appearance of audit as a technology of agency and performance[[4]](#footnote-4) in so many diverse contexts indicates that its usage is an almost inevitable consequence of human rights governance in the global sphere.

Given that audit is not merely widely used but will likely continue to grow as long as ineluctable systemic conditions prevail, the consequences for human rights become particularly urgent. It would be sensible to suggest, as others have explicitly or implicitly done, that if there is a concern to be expressed about an incipient human rights “audit culture”, it is that it has the potential like all audit cultures to cloak political choice, and political power, in an apparently neutral, technical-seeming exercise.[[5]](#footnote-5) This in turn, it could well be argued, causes a focus on strengthening processes at the expense of considering their actual distributive consequences.[[6]](#footnote-6)

Such arguments are persuasive, but this article demonstrates that the proliferation of audit has other specific and more fundamental consequences which must be addressed. It suggests that it is useful, as has sometimes been argued, to think of the transnational or global governance of human rights – in common with other fields of global governance - as providing conditions in which a governmental rationality, as described by Foucault in his later work, is produced.[[7]](#footnote-7) This governmental rationality, or “governmentality”, results from the proliferation of different techniques, such as human rights auditing, for the indirect “conducting of conduct” of autonomous actors.[[8]](#footnote-8) The existing system of human rights treaties and soft-law standards produces conditions in which different actors govern each other “at a distance”,[[9]](#footnote-9) which often (consciously or otherwise) ultimately has the aim of causing them to become self-monitoring and finally self-regulating. The technology of audit – the requirement that actors give account of their performance both to themselves and to external observers – is absolutely central to the operationalisation of this process. This explains its growing prevalence; indeed, it can be thought of as the main driver of what might be described as the “governmentalization of global human rights governance”.[[10]](#footnote-10)

There is a scholarly interest in governmentality and human rights which has – naturally enough - largely described human rights as providing a framework for producing neoliberal agency. Human rights, it has been argued, help to construct a *homo juridicus*, who like *homo oeconomicus* – free, self-governing, self-interested - provides the necessary subject for neoliberal government.[[11]](#footnote-11) Human rights, in this vision, allow international experts in organizations like the EU to govern rights discourse, and are used as a “technology of freedom” to create emancipated subjects who govern their own behaviour in the marketplace in the name of their own aspirations.[[12]](#footnote-12) Human rights, in other words, are themselves a “technology of government” which create the stuff of neoliberal rule.

This article argues that this is a mischaracterisation. If anything, the governmentalization of global human rights governance, driven and exemplified by the growth in human rights auditing, has a diametrically opposite effect: the transformation of human rights law from a radical source of legal claims into a “pacifying ideology” in which power and control are situated anywhere other than with the rights-holders. As Foucault himself put it:

“[T]he end of government is internal to the things it directs; it is to be sought in the perfection, maximization, or intensification of the processes it directs, and the instruments of government will become diverse tactics rather than laws. Consequently, law recedes; or, rather, law is certainly not the major instrument in the perspective of what government should be.”[[13]](#footnote-13)

In other words, as the global governance of human rights becomes governmentalized, it loses its legal character and becomes instead something which one might describe as managerial: focused on the achievement of desired outcomes and the processes which make that possible. This in turn means that human rights law’s potential as a source of resistance and protection becomes drained, and the decentralisation of power which it represents reversed. Far from producing individuals as self-governing subjects, in the context of human rights it tends instead to produce populations that are managed for their own good.

I. Human Rights Auditing: A Description and Taxonomy

It is important to describe exactly what is meant by “audit” – as the word is variously used in the human rights literature to describe anything from performance monitoring to public reporting to on-site inspection and document review. Power identified three key areas for auditing knowledge as a framework for understanding the manner in which audit operates,[[14]](#footnote-14) and these are as useful for understanding human rights auditing as they are in the field of accounting. These are: sampling or risk analysis, reliance on external expertise, and the assessment of internal control systems.

Sampling simply refers to the obvious characteristic of audit that it is based not on a comprehensive and forensic analysis of every aspect of the audit subject; rather, it is a matter of examining a small selection from the matter at hand and drawing general conclusions from it. In the case of a financial audit, this means, for example, taking a random sample of transactions and establishing whether they were authorized, correctly recorded, and so on. From this can be extrapolated a general opinion on the overall character of all transactions carried out by the organisation. This is more desirable than examining every transaction, which would be extremely time-consuming and hence not cost-effective – unless done in a cursory and superficial manner that is lacking in value. More recently, this has given audit the nature of a risk analysis: an attempt to derive, from certain characteristics of an organization and from samples of its behaviour, a conclusion about the risk that it may be non-compliant with expected standards. This is then coupled with recommendations about the management of those risks.

The second key area for auditing knowledge is reliance on external expertise. Audit is itself a specialist skill or craft, and auditors cannot be expected to have knowledge in other specialist fields. This means that financial auditors will, for instance, find themselves relying on valuations performed by chartered surveyors when it comes to land and property, by actuaries when it comes to pension funds, and so on.[[15]](#footnote-15) Similarly, in an age where auditing also encompasses concerns such as brand value,[[16]](#footnote-16) environmental impacts and protection,[[17]](#footnote-17) food hygiene and so on,[[18]](#footnote-18) auditors will have to draw upon a wide range of expertise from many sources. This means that auditing can be as much a question of “auditing the specialists” as it is of the audit subject: the auditor must form a view on whether specialist knowledge is needed and also on the competence and objectivity of the specialists concerned (usually by examining qualifications, membership of professional bodies, experience and reputation, and so on).[[19]](#footnote-19) This results in a model of auditing that resembles a network of trusted specialists[[20]](#footnote-20): a community (with the external auditor, by implication, as the gatekeeper).

The third key area is assessment of internal control systems. Audit is often a matter of second-order observation, based on the reasonable proposition that if one has confidence that adequate systems exist within the auditee to control transactions, there is no need to examine the transactions themselves. Rather, external audit can become more efficient by simply examining the internal control systems.[[21]](#footnote-21) Thus, first order control exists within the organisation itself (what Power refers to as “structured self-observation”[[22]](#footnote-22)) wherein internal audit takes place; the manner in which this is done and its structures are then externally audited. In effect, then, the internal control system becomes an audited subject in its own right.[[23]](#footnote-23)

To this we can add an additional important overarching fourth condition. This is the existence of, and reference to, external standards or norms of some kind. In the case of a financial audit, the external standard is relatively simple and amorphous: “Generally Accepted Accounting Principles”. In other contexts, such as environmental sustainability, product safety, and so on, those standards may be more complicated and detailed, as in the various ISO families of standards. Regardless, audit must generally be understood as an assessment, investigation or review, based on sampling or risk analysis, which draws on a network of expertise and is carried out in a recursive fashion – internal control reflecting external oversight - with regard to and operationalised by some form of external norm.

Human rights auditing has typically been identified in the form of the state reporting procedures under the various major human rights treaties, which can be persuasively conceptualised as auditory in their core functions. The state reporting procedure is an assessment in light of external standards (the provisions of the treaties themselves, and the quasi-binding interpretive work of the treaty bodies in the form of general comments and recommendations and elsewhere). It relies heavily on sampling, particularly in the form of statistical snapshots and quantitative proxies – measuring performance in the form of a restricted number of certain purportedly objective human rights indicators rather than a forensic examination of the underlying phenomena.[[24]](#footnote-24) It draws primarily on external expertise in the form of accredited human rights NGOs and the National Human Rights Institutions, which are likewise accredited – creating an audit network which draws on a community of experts and validating their views.[[25]](#footnote-25) And above all, of course, the state reporting procedure is largely an exercise in assessing the extent to which the State Parties self-regulate and *self-audit*: whether the State giving the report takes account of human rights when legislating or drawing up the budget; whether it has policies to protect, respect and fulfil human rights, and what the effects of those policies are; whether the State Party has taken into account previous concluding observations; and, increasingly, simply whether or not data is being produced against various metrics and what it is being used for.[[26]](#footnote-26)

But as well as being used vis-à-vis states’ human rights records in the traditional model of state responsibility for human rights obligations, the phenomenon of human rights auditing is becoming steadily more pervasive and diffuse – while also subverting or dissolving some of the traditional distinctions between public and private authority in the international sphere. This is because human rights auditing – in common with auditing in a wide range of fields - appears in, and cuts across, several different layers of what might be called “governance”. These layers are described below.

*Business Self-Regulation*

Business actors have, at least since the mid-1990s, been participating in their own self-regulation through either internal or external human rights audits and the use of Codes of Conduct, frequently in cooperation with or in response to the actions of NGOs, States, or international organizations. This is generally performed under the auspices of Corporate Social Responsibility and due diligence.

A few examples are instructive. Sometimes firms employ external auditors in the form of accountancy firms or consultancies. For example, Nevsun Resources Inc., a Canadian mining company which together with the Eritrean National Mining Corporation (ENAMCO) owns the Bisha mine for copper and zinc in Eritrea, commissions periodic external human rights audits of the mine, most recently in 2015.[[27]](#footnote-27) This, in effect, is an ongoing performance review of how the various recommendations under an ongoing Human Rights Impact Assessment are being fulfilled at the mine, and are carried out by an independent external auditor, LKL International Consulting. Sometimes firms use a mixture of internal control and continuous external auditing. For example, Nestle describes various ways in which it audits its own human rights performance in its 2015 report, *Nestle in Society*,[[28]](#footnote-28) by integrating human rights indicators into its CARE audit programme (CARE is an acronym for Compliance Assessment of Human Resources, Occupational Health & Safety, Environment and Business Integrity [*sic*]), which is performed externally by SGS, Bureau Veritas and Intertrek, three independent auditors.[[29]](#footnote-29) Nestle also works with, for instance, the Fair Labour Association, which carries out external audits annually to ensure that Nestle meets its Code of Conduct as well as Nestle’s own action plan.[[30]](#footnote-30) In common with Nestle, other firms essentially use NGOs, whether local or global, to perform a quasi-auditory function. For example, in 2013 GAP Inc. requested that Shift, the NGO that was chiefly involved in developing the UN Guiding Principles on Business and Human Rights (the UNGPs), review its human rights policy in light of those Principles by examining documents and interviewing staff.[[31]](#footnote-31) GAP also allows an NGO in El Salvador, the Independent Monitoring Group of El Salvador (GMIES), to oversee compliance with GAP’s own Code of Conduct and so on at its local contractor. And sometimes, firms engage in ad hoc human rights audits in cooperation with, and at the behest of, NGOs interested in human rights. For example, Thai Union Group promised to undertake a full human rights audit of its facilities together with the NGO Migrant Workers Rights Network in 2016 after a campaign over labour rights.[[32]](#footnote-32) A glance at the nonfinancial reports, Corporate Social Responsibility webpages, and disclosures of many large international firms will reveal a similar range of activities based on commitments to respecting human rights or social responsibility and their own codes of conduct and other policies.[[33]](#footnote-33) Indeed, there now exist human rights auditing standards akin to the ISO family of quality assessment standards,[[34]](#footnote-34) and large accountancy and audit firms are known to have developed their own bespoke suites of human rights indicators for use in human rights auditing.[[35]](#footnote-35)

Whether these exercises are useful or not, either from an economic or human rights perspective, is of course debatable and in a sense beside the point. Rather, it suffices to observe that, thanks undoubtedly in part to the UNGPs, which require corporations to assess the human rights impacts of their activities (although it would be a mistake to attribute these developments to the UNGPs alone[[36]](#footnote-36)), it is becoming commonplace for international business actors in particular to enact human rights policies and open their performance with respect to those policies to both internal and external review.

*Business Auditing of Supply Chains*

Business actors also increasingly audit their own suppliers with reference to human rights standards, acting with quasi-regulatory authority in their own right. A forerunner in this field was Levi Strauss, whose model has been in effect since the early 1990s and which is nowadays typical. The company has had a set of Global Sourcing and Operating Guidelines in place since 1991, Part II of which are called the Business Partner Terms of Engagement. All of Levi Strauss’s contractors (“every factory, subcontractor, licensee, agent, or affiliate that manufactures or finishes product”[[37]](#footnote-37)) are inspected and audited with respect to these terms of engagement, and over the past 25 years a fairly systematic and complex structure has developed. A set of requirements are set out with respect to certain standards (for example Child Labour, Discrimination, or Ethical Standards) and each business partner is rated against those requirements on a regular basis. Some of the requirements are listed as being Zero Tolerance Violations (for instance, if a factory is found to employ a worker under the age of 15[[38]](#footnote-38)), others as Immediate Action (for instance, where workers are hired and fired each year to avoid legal requirements for annual leave[[39]](#footnote-39)) and others as Continuous Improvement (such as where a factory does not keep records for dismissed employees[[40]](#footnote-40)). Where there is a finding of non-compliance, corrective actions are listed alongside recommended timelines, and these are to be subsequently verified by different methods such as visual observation, reviews of records, or gathering information from workers. In the case of a Zero Tolerance Violation immediate action is almost universally required; in the case of Continuous Improvement there is somewhat more leeway given. So, for instance, if a factory is found to be employing a child under the age of 15, the corrective action is to remove the child from the workplace and ensure that he or she receives schooling while the family’s income level is sustained, with the child having the option to work in the factory once he or she is of a legal age. This is to happen immediately, and is to be verified through gathering information from workers, interviews with factory managers, records review, and visual observation. This entire process is formalised, in common with all of the many requirements in the Guidelines.[[41]](#footnote-41)

Starbucks, similarly, audits its suppliers through third parties to verify compliance with a Code of Conduct which stipulates adherence to international human rights standards.[[42]](#footnote-42) This process is as complex and wide-ranging as that used by Levi Strauss, with suppliers being audited in accordance with a set of Coffee And Farmer Equity (CAFÉ) Practices by the third-party auditor SCS Global Services, using a lengthy set of scorecards.[[43]](#footnote-43)

This kind of supply-chain auditing can also take more structured, industry-wide forms. For example, the International Council of Toy Industries (ICTI) is an international industry association for national toy associations. In the unified Code of Business Practice for its member associations,[[44]](#footnote-44) the ICTI requires member companies to audit their contractors as well as their own facilities, and provide annual statements of compliance; there are four Appendices to the Code, which provide methods for evaluating compliance (varying from checking local laws, conducting on-site visits, and interviewing workers), an audit checklist (containing many questions on different topics, such as “Does the facility have a written policy against discrimination?”[[45]](#footnote-45)), and a pro-forma for corrective action plans, providing for follow-up audits and a code for specifying priorities for corrective action.[[46]](#footnote-46)

In some cases we see an inversion of what might be thought of as the ordinary or expected mode of governance, with multinational firms making assessments of countries as places to do business and performing monitoring and review, or referring to that conducted by third parties, accordingly. Perhaps the most striking example of this is the manner in which countries are assessed by multinational firms on the basis of their human rights performance as places to do business. Levi Strauss, for instance, uses a set of Country Assessment Guidelines to “help…assess any issues that might present concern in light of the ethical principles we have set for ourselves.”[[47]](#footnote-47) Some of those guidelines refer specifically to the Human Rights Environment. Johnson & Johnson, meanwhile, refers to assessments by NGOs such as Transparency International in order to determine which countries are “high risk” for human rights violations (ranging from Afghanistan to Panama).[[48]](#footnote-48) In such countries, suppliers are expected to confirm awareness of, and compliance with, all human rights provisions in Johnson & Johnson’s policies.

*Transnational Civil Society*

The above assessments typically draw on the audits and reviews carried out by a wide range of international organizations, NGOs, and other global actors, which leads us to our next taxon of global auditing: monitoring and reporting carried out on States by transnational civil society actors. A vast range of such assessments take place, many of which implicitly or explicitly relate to human rights performance. Transparency International, with its assessments of corruption risks and National Integrity System Assessments, is a prominent example. These assessments are carried out by examining 15 pillars (ranging from Legislature to Business), attempting to gain an overview of each through measuring a common set of indicators, rather than an in-depth evaluation. Each indicator is scored on the basis of primarily qualitative information that is generated through examining legislation and secondary reports, interviewing key experts, and distributing questionnaires.[[49]](#footnote-49) This allows Transparency International to produce an opinion on the robustness of a given State’s “National Integrity System”.

Another interesting illustration of this phenomenon is the Progress out of Poverty Index (PPI) developed by Grameen Foundation, which is a measurement tool for assessing the likelihood that a household is living below the poverty line. A “PPI Scorecard” is developed by Grameen for a given State (there are currently 45 for 45 different countries) using national expenditure and income surveys; from this 10 questions are derived which are designed to allow assessment of poverty in a given household. (These vary from State to State but illustrations given are “Does the household own a motorbike or car?” and “Of what material is the roof of the residence made?”) The end user then carries out a field survey, asking these 10 questions to households in a given area. The answers to these questions are then assigned values, and this produces a PPI Score, which is then referred to a “look-up table” to determine the likelihood of whether a household is living below the poverty line. This allows the user to determine how many households, and what proportion of the total, are living at or below the poverty line in a given area, region, or State, which will allow them to decide where best to make social impact investments, carry out interventions, and so forth – and then to measure their own performance through subsequent surveys.[[50]](#footnote-50) Use cases include measuring “poverty outreach” to assess how many poor households are reached by microfinance,[[51]](#footnote-51) tracking changes in poverty over time,[[52]](#footnote-52) and “segmenting” clients to assess differences in uptake and to conduct market research for specific groups.[[53]](#footnote-53) The PPI, then, as well as providing a tool for NGOs, businesses, or other actors interested in the social impact of their work to audit their own performance and that of affiliates with respect to that goal, also acts as a mechanism for auditing the performance of the State in which they operate – explicitly, through the development and updating of PPI Scorecards, and implicitly through the ongoing process of measuring and reviewing PPI scores for households.

*Mutual Auditing by States*

Finally, there is the phenomenon of States auditing each other’s performance in the form of the Universal Periodic Review (UPR). This, as the name suggests, is a periodic review of all UN member states’ human rights records, conducted by other member states. A State under Review (SuR) produces a National Report on its human rights performance, and this is bundled together with reports from UN bodies, and a “Stakeholder Summary” based on civil society submissions. These are circulated among other UN member states, and then a 3 hour review session is held, in which the SuR makes a 30 minute presentation which is then followed by a 2 hour period for representatives from other member states to make comments and recommendations. All UN members go through this process. The aim is generally presented as being to move away from naming and shaming towards cooperation and learning – so that states can help each other improve their human rights performance without accusation or criticism.[[54]](#footnote-54)

The UPR has been described as a “public audit ritual”, in which states give accounts to external reviewers of their performance under agreed expectations or standards.[[55]](#footnote-55) What is perhaps most interesting about it is the way in which it produces systems of audit both internally and externally: as with the state reporting procedure, in a sense the UPR can be thought of as an external audit, with an independent body (namely the other UN member states) performing verification and review – yet at the same time the UPR also requires the state to give an account of itself *to* itself by preparing its own report. In this way, the UPR becomes as much a verification or validation of internal control systems and what is produced by them as it is of the human rights performance of the state; the other member states do not so much inspect or review the human rights record of the SuR directly – they rather perform second-order auditing of what is performed internally by the government in question or domestic civil society stakeholders.

In many different contexts, then, and in many different layers of international human rights governance, we see audit functions operating. Mechanisms whereby States and non-State actors are monitored, inspected, and encouraged to give accounts of themselves with respect to human rights standards are proliferating. And all of these mechanisms draw upon the key areas for auditing knowledge which Power identified: sampling, reliance on external expertise, and the assessment of internal control systems. Many of them are characterised by inspections, questionnaires and scorecards, gaining snapshot views from which general conclusions can be drawn (one thinks, for example, of the PPI surveys, or the ICTI’s questionnaires for inspections). They typically rely on external expertise, whether in the form of external consultants, such as in the case of the Bisha mine, or simply by reference to the work of NGOs or external standard-setters, as in the case of Johnson & Johnson drawing on the work of Transparency International in performing its country risk-assessments. And they universally express a concern with *internal* procedure: what systems are in place to ensure good conduct both in the organization itself and amongst its affiliates (very often in the form of Codes of Conduct and similar).

It bears special emphasis that techniques of audit are deployed so widely and by such a range of actors. Whether it is States auditing other States, multinational firms auditing their suppliers, or NGOs auditing firms, or otherwise, we see networks of inspection, monitoring and review extending across transnational and global spaces, in a way that transcends any distinction between public and private spheres. And it is taking place in an ad hoc and fragmentary fashion, disunited and decentralised. Wherever there is a need for an actor to be subject to “governance”, it very frequently results in a response which can be described and conceptualised as an audit – a technology of performance and agency which operationalises self-control within ostensibly autonomous agents. The implications of this are examined in the next section.

*II. The Self-Auditing Subject of International Human Rights Law*

Why should techniques of audit be so common? Audit is useful because, as well as providing reassurance to external interested parties that the audited subject is behaving in the desired fashion, it also allows four things to take place.

First, audit links performance to political objectives by implicitly or explicitly making known what is, and is not, desirable. Audit sets objectives, by making clear what the auditor will be checking, and as a result those objectives tend to take on a kind of totemic presence in the behaviour of the audited subject.[[56]](#footnote-56) This can be quite explicit: any supplier working with Levi Strauss will be aware of its guidelines, and will, therefore, know precisely what it needs to do as an audit subject – for instance, not employing anybody who is below the legal age. However, it can also be implicit simply in the act of measurement itself. A performance indicator communicates an objective as well as providing a measurement. A straightforward example is the potential indicator, “Proportion of births attended by skilled health personnel”, developed by the UN OHCHR as a proxy for measuring performance under the right to health.[[57]](#footnote-57) While the indicator is a measurement it also contains a goal: to increase that proportion.

Second, audit by necessity protects and enshrines, but regulates, autonomy – and acts through it. The audited subject is, by definition, independent of any external auditor: the relationship in itself constructs the auditor as an independent monitor and the audited subject as autonomous to it. Yet it also provides a sense of control. In a system in which agents are free, audit provides the promise that regulation is still possible.[[58]](#footnote-58) In the absence of direct control, independent actors remain accountable. Starbucks cannot, and does not wish to, directly manage its suppliers. But through auditing them, it reassures itself that they will not act in an entirely self-interested and potentially damaging fashion.

And third, as a result of all of this, audit produces self-regulation or self-government. The audited subject, in full awareness of the fact that audit will or is taking place, begins to concern itself with the production of auditable performance and hence begins to observe, assess, and ultimately to regulate its own behaviour in light of external standards or expectation. Auditing reifies the agent as an autonomous actor which monitors, controls and regulates its own conduct. In this way, internal control systems develop, so that in effect the agent becomes a self-auditor, making reference to external standards, and assessing its own performance as a result. The aim of the UN treaty body system, for instance, is not for the treaty bodies to audit the performance of State Parties to the relevant treaties in detail. It is to transform them into self-auditors and self-regulators who monitor their own performance through the use of human rights indicators and guide their own policy with reference to human rights standards. The aim of Levi Strauss’s system of supply chain audit is not to forensically examine every aspect of the management of its suppliers, but to transform them into self-auditors who govern their own conduct with reference to its guidelines.

Fourth and finally, audit is capillary: it produces concatenations of inspection and review, creating subjects who do not merely self-audit and self-regulate, but also begin to audit others. This creates chains of audit in which different actors audit each other, which in turn constructs those actors as self-auditors and self-regulators who go on to audit others in turn.

*The Bisha Mine*

The case of the Bisha mine, referred to earlier, is instructive in illustrating all of the above. Nevsun, the part owner of the mine, is a Canadian company, and the Canadian government’s Enhanced Corporate Social Responsibility Strategy to Strengthen Canada’s Extractive Sector Abroad contains an “expectation” that Canadian companies operating mines abroad will align their practices with the UNGPs, the OECD Guidelines for Multinational Enterprises, and so on.[[59]](#footnote-59) Canada also has an Office of the Extractive Sector CSR Counsellor, which performs inspections and assessments of mining, oil and gas companies on request.[[60]](#footnote-60) Nevsun’s 2015 Audit Report explicitly makes reference to the OECD Guidelines and the UNGPs,[[61]](#footnote-61) and it is repeatedly emphasised that recommendations arising from its ongoing human rights audits should be done in reference to the UNGPs with particular respect to due diligence obligations.[[62]](#footnote-62) Nevsun also has a Human Rights Policy which incorporates the UNGPs, and has a section in its Code of Ethics which specifically refers to them.[[63]](#footnote-63) As well as the UNGPs, the human rights audit also takes into consideration another set of standards in the form of the International Finance Corporation’s (IFC) Performance Standards on Environmental and Social Sustainability. What follows, then, is a process wherein the external auditor makes reference to certain sets of external standards and specifically compares the performance of Nevsun at the Bisha mine to those standards, making recommendations accordingly. Nevsun in turn audits its own performance with respect to those recommendations alongside the work of the external consultant (the report notably contains a “self-assessment figure” ranging from 0-100% attached to each recommendation arising from an initial Human Rights Impact Assessment conducted by the auditor). And it is clear that, whether or not all of this is actually successful or not with respect to the protection of human rights, Nevsun’s activities and behaviour change in response to the audit, with recommendations widely implemented, or planned to be implemented: to take just one example, with reference to the IFC Performance Standards, 16 separate planned activities are listed together with explanations regarding why they are relevant to human rights performance, and a status on progress for each.[[64]](#footnote-64)

Particularly of note is the way in which knowledge is also generated about human rights law and human rights protections within Eritrea as a result of the work of the external auditor. The 2015 audit report contains numerous references to the Eritrean Constitution and Eritrean legislation, and also makes it apparent that, as a result of the human rights impact assessment and subsequent audits, Nevsun engages with community groups, the National Confederation of Eritrean Workers, the Canadian ambassador, various UN Special Procedures and Commissions of Inquiry, and Eritrean contractors and subcontractors, at many stages during the planning and implementation of its activities. In this way we see Nevsun’s responses to both its own internal audits and external audits themselves acting as an audit of the human rights record of the Eritrean state, generating knowledge about, and assessments of, Eritrean law, labour relationships, community needs, and so forth as they do so. This can then only be expected to have some influence on those domestic actors within Eritrea in consequence.

What we see in the Nevsun example, in other words, is how the creation of an external standard (in the form of the UNGPs and other similar soft law instruments), deployed by the Canadian government in the form of its Enhanced Corporate Social Responsibility Strategy, and itself supported by an audit body in the form of the Office of the CSR Counsellor, operationalises self-audit within an organisation. This self-audit is literal in the sense that Nevsun performs self-assessments, but also, of course, it relies to an extent on an external consultancy. This process enshrines Nevsun’s autonomy as a private firm, but provides the conditions in which Nevsun self-audits and ultimately self-regulates, changing its behaviour into that which is desired by the standard-setter. At the same time, Nevsun also then begins to audit other actors – namely, of course, the Eritrean state and its Eritrean partners, which can be expected to have some effect on those other actors in turn.

*The State Reporting Procedures*

A second example is that of the state reporting procedure and its effects on the States Parties to the major international human rights treaties. This process involves the treaty body in essence examining a sample in the form of a kind of (often statistical) snapshot representing overall performance, for which the increasing preference is for it to be presented in the form of human rights indicators.[[65]](#footnote-65) This procedure, carried out with reference to the treaty provisions themselves and more detailed standards which the treaty bodies themselves have developed over time, has the effect of producing rather extensive self-auditing within the States Parties.

This begins primarily with the network of NHRIs, which in many cases developed from national ombudsmen and similar institutions[[66]](#footnote-66) but which have since the adoption of the Paris Principles of 1991 become formally incorporated into the structure of the United Nations human rights system.[[67]](#footnote-67) These are reviewed and accredited by the Sub-Committee on Accreditation for the International Coordinating Committee (ICC), which also awards them a status (ranked A-C) based on their compliance with the Paris Principles. Once an NHRI is accredited, it can participate in the state reporting process by submitting additional written information at the time the relevant state party makes its report; contributing to the List of Issues; in some cases taking part in the “constructive dialogue”; and so on.[[68]](#footnote-68) A core requirement of the NHRIs is that they are independent: they function as local specialists providing an alternative judgement on the human rights performance of the state concerned to that of the state itself.

Partially, of course, the matter of accrediting and certifying NHRIs can be conceptualised as in effect the auditing of internal control. The position of the NHRI – established by statute or constitution and hence in some sense an organ of the state itself, yet at the same time independent of it and tasked with impartial assessment of performance – is somewhat akin to an internal auditor at least in some of its functions. And in much the same way that internal control systems connect to the external regulatory environment, aligning their goals with those of the regulator and hence making internal audit “quasi-public”[[69]](#footnote-69) in nature, so the work of NHRIs provides a bridge between the domestic sphere and the international – making them agents of international regulation within the domestic structure of the state.[[70]](#footnote-70)

At the same time, however, the auditing of internal control takes place in a less structured and concrete form – primarily through the manner in which states are encouraged to go about the business of observing and recording their own performance in the periods between state reports. The great majority of the work done in this respect is a performance of self-auditing by the state party itself. In the first place, the production of the state report and the common core document (a lengthy statistical catalogue that goes alongside it) is in large part, and increasingly, a matter of cataloguing and reporting a great number of statistical measurements which purport to evidence performance. While legislation, policy and practice and, occasionally, case law is discussed in state reports, reporting is in the main carried out at the level of statistics and data across populations. Moreover, the trend is increasingly to encourage state parties to produce the necessary samples, packaged in the form of human rights indicators, to allow the treaty body to efficiently and economically audit the state’s internal procedures. These are discrete “piece[s] of information used in measuring the extent to which a...right is being fulfilled or enjoyed in a given situation”[[71]](#footnote-71) – or, put more succinctly, proxies for determining whether human rights obligations are being fulfilled.[[72]](#footnote-72) Since 2005 there have been considerable efforts made to build a coherent guiding framework for their uses, culminating in the OHCHR’s official *Guide* in 2012.[[73]](#footnote-73) Some illustrative examples among the many suggested in the *Guide* are “Share of annual household expenditure on education per child enrolled in public secondary school or higher education” (as a proxy for the right to education), or “Proportion of the targeted population covered under public nutrition supplement programmes” (as a proxy for the right to food).[[74]](#footnote-74) Here, the focus of the treaty body is less on the underlying phenomenon and more on the internal systems of statistical production and monitoring.

At times this focus on internal systems is quite explicit and takes the language of obligation. For example, in 1999, the Committee on Economic, Social and Cultural Rights (CESCR) issued its General Comment No. 13 on the Right to Education, in which it suggested that there was a minimum obligation under the Covenant for state parties to create a national education strategy allowing monitoring through the use of indicators and benchmarks.[[75]](#footnote-75) In other words, the production of internal control was in itself a duty arising from the treaty. In the main, though, the emphasis is on voluntary compliance with the production of disaggregated statistical measurements as a “best practice” when carrying out state reports.

Part of the drive towards auditing the internal production of statistics comes at the behest of the treaty bodies themselves – in the form of General Comments, such as that outlined above, and during the course of examining state reports. So, for example, the treaty body will frequently encourage the state party to provide up-to-date and “disaggregated” data on various metrics and what this means regarding policy and its outcomes - reinforcing the sense that there is an interest not merely in data itself, but the manner in which it is being collected, and what it indicates about whether the state is monitoring itself in the accepted fashion. In the List of Issues for the UK’s sixth report, for example, the CESCR requests the UK provide updated data on the extent of homelessness in the country, disaggregated by sex, religion and ethnic group, and also “to what extent the measures adopted by the State Party have contributed to reducing homelessness...”[[76]](#footnote-76) In this way, the auditor is satisfied and reassured that the UK is monitoring its own homeless rate in the correct way (i.e., that it is disaggregated), enacting measures designed to reduce it, and is aware of the results.

And part of the drive comes from the OHCHR, which has taken a much more formalised approach to the monitoring of internal control systems (although, of course, it does not use this terminology). Its *Guide* to the use of human rights indicators is, in effect, to be understood best as a means by which the treaty bodies can take on the role of second-order auditing. In its ideal form, the OHCHR’s proposed structure would be for the States Parties to the relevant treaty to develop their own suites of human rights indicators, in cooperation with the relevant NHRI, NGOs and the treaty body, and use these as the basis not just of their state reports, but also as benchmarks and standards for internal human rights monitoring, human rights budgeting, human rights policy, human rights impact assessments, and so forth.[[77]](#footnote-77) What is conceptualised, in effect, is robust systems of internal control within states parties – allowing the states to monitor their own performance against internationally-agreed standards, to assess their own impacts and outcomes, and so on – which the treaty body then monitors externally through the mechanism of the state reporting procedure. This would allow the treaty body to take on the role of second-order audit; if verification of internal control systems reveals that they are robust (i.e., that the state is effectively monitoring its own human rights performance) then there is no need for the treaty body to delve in to the minutiae.

Just as in the Nevsun example, we see here how audit functions not only to merely verify what is taking place within the States Parties, but also to enlist them in their own audit and hence in their own self-control. Monitoring carried out by the treaty body, in reference to certain external norms or standards, transforms States Parties into self-observers and self-regulators, carefully generating statistics about their own performance and even setting up what are, in effect, internal auditors in the form of NHRIs. This happens in such a way that the behaviour of the autonomous sovereign becomes aligned with political objectives – for instance, increasing the proportion of births attended by skilled health personnel, or spreading the coverage of public nutrition supplement programmes – and, in effect, the subject begins to govern itself and its own behaviour in view of those goals.

III. The “Thick Natural Phenomenon” of the Global Governance of Human Rights

This function of human rights auditing – the production of audited subjects as self-regulating and self-monitoring agents – makes it especially ripe for conceptualising as a governmental technique, deriving from Foucault’s late work.[[78]](#footnote-78) Examining the relationship between the sovereign and the population in the early modern era, Foucault described the population as a “thick natural phenomenon” in opposition to the sovereign’s “legalistic voluntarism”[[79]](#footnote-79) – put bluntly, because the population is recognised to be complex, changing, and irreducible to its individual parts, it cannot be ruled simply by decree. “If one says to a population ‘do this’, there is not only no guarantee that it *will* do it, but also there is quite simply no guarantee that it *can* do it [emphasis added].”[[80]](#footnote-80) The problem for a sovereign ruling a population, in other words, is much greater than simply the possibility that it will refuse to obey the sovereign’s commands. It is that it is an unknowable and complex mass of processes that are immune to command: one cannot change it by edict unless, perhaps, one is willing to apply brute authoritarianism in limited circumstances and sacrifice liberty and economy as a result (one thinks, for example, of military conscription).

Since the 18th century at least, then, the aim of government or rule has been to resolve this problem: how does one govern given that, in essence, direct rule is impossible and undesirable? Foucault’s analysis begins with the understanding that, in the recognition that direct rule is impossible, indirect rule becomes the prevailing rationality. Acting on the population means not ruling it by decree but by acting on factors remote from it: “not getting subjects to obey the sovereign’s will, but having a hold on things that seem far removed from the population, but which, through calculation, analysis and reflection, one knows can really have an effect on it.”[[81]](#footnote-81)

This is, in effect, the seed of perhaps the most succinct description of what Foucault came to refer to as “governmentality”: it is an understanding “that reality is, in some way or other, programmable”.[[82]](#footnote-82) In other words, it is a manner of governing on the basis that reality can be reformed, remodelled, changed, and improved through a programmatic manipulation of conditions. One does not need to command directly if one can arrange things in such a way that the population behaves in the fashion which one desires it to. One does not need to directly control or command the population if one can “conduct its conduct” through manipulation of conditions which affect it, however remotely.

It follows that it is an ideal of governmentality that it is unseen or that power is never directly deployed. An example is offered by Foucault in the writing of de La Perrière, who noted that the bumblebee, although “the king of the hive”, has no sting.[[83]](#footnote-83) The sovereign therefore ought to most closely resemble the bumblebee, who supposedly rules his hive not by the sword but through wisdom and diligence: “the knowledge of things, of the objectives that can and must be attained, and the ‘disposition’ one must employ in order to attain them.”[[84]](#footnote-84) In this we see the birth of what Foucault referred to as “the governmentalization of the state” – meaning the construction of a state which regulates the conduct of its citizens through “tactics” involving the manipulation of economic, sociological, and other processes rather than through edict or direct control. These “tactics” are tools for the “conduct of conduct” – for guiding the conduct of the bees in the beehive so that they govern themselves in the way the bumblebee king desires, rather than requiring the use of a sting.

It is an axiom of governmentality, then, that government is achieved *through* the freedom of the subjects. Individual actors are free. But their field of action, and thus their freedom, is itself shaped.[[85]](#footnote-85) Thus, where governmental rationalities prevail, we see the development of techniques which involve governing the governed through their freedom “at a distance”[[86]](#footnote-86) –that is, by enlisting them in their own self-government.[[87]](#footnote-87) In other words, governmentality may be conceptualised as a range of techniques which produce actors who monitor, regulate and govern their own conduct and that of others, in a manner which is desirable, with reference to certain pre-determined standards or political objectives.

It is plausible, then, to describe audit as a governmental technology – one which both constructs the audited subject as a self-governing agent, and subjects it to external standards of performance which manipulate its conditions – and it is no accident therefore that auditing has become so prevalent in modern societies. In almost any sphere of modern public and private life one sees mechanisms of audit, monitoring and review: a programmatic regulation of autonomous public and public-private actors through performance review, accountability mechanisms, benchmarks and rankings.[[88]](#footnote-88) Through the multi-layered use of audit the state became constructed as a monitor which encourages actors (both private and public) to police one another and themselves.[[89]](#footnote-89) The state is then able to remove itself from the “murky plain of overwhelming detail” which it cannot hope to rule.[[90]](#footnote-90) This in turn means it can fulfil the twin and apparently contradictory needs to govern and yet not to govern (one might say, like the bumblebee, ruling the hive while never using its sting): to respect the complexity and freedom of the market and society while producing within the population behaviours which would result in economic growth.

In the field of global human rights governance similar considerations – the need to govern and yet *not* to govern – are also the clear driving force for the proliferation of regimes of audit. The global governance of human rights is complex in its structure, with many different categories of actor seeking to in some way regulate or “govern” others – as has already been established in this article. These range from the UN treaty bodies and their position as monitors with respect to States Parties to the core human rights treaties, through large multinational firms monitoring smaller firms in their supply chains, to UN members reviewing each other’s human rights records through the UPR. These different actors do this for a range of different reasons and as a result of different legal, political, and financial considerations and pressures. Yet ultimately their goals are broadly similar in that they seek to ensure that certain other actors abide by or comply with certain human rights standards in the absence of direct rule.

One should not seek to simplify this very complex web of regulatory spheres. However, there are certain conditions which prevail, almost irrespective of whichever actor is seeking to govern another – be it a State, a human rights treaty body, a business or an NGO: such actors are faced with the problem of autonomy and freedom of the “governed”, and also with the impossibility of directly regulating “the murky plain of overwhelming detail” which confronts them.

In the first place, in the international sphere, any form of direct rule by command-and-control is simply not possible given the principles on which the system is based. States may consent to binding obligations – and may even, in rare cases such as the Council of Europe system, consent to be bound by judicial decisions – but their behaviour is not and cannot be ruled by decree. A State cannot be commanded to respect, protect and fulfil human rights obligations by those seeking to regulate its conduct – whether other States, UN treaty bodies, and much less by civil society actors. As a sovereign State, those seeking to control it must achieve that control through more indirect means.

Similarly, non-state actors may be subject in principle to soft law standards such as the UNGPs. They may also be made subject to domestic legislation, such as the UK’s Equality Act 2010, to abide by certain requirements that ultimately stem from international human rights law (for example, the requirement not to discriminate on the basis of race or sex when hiring employees). They may even, at some point, become bound by a set of binding standards through some form of treaty. Yet in general their conduct cannot be brought under direct control by any State, international organization, or civil society actor: the behaviour of a business, for instance, cannot be managed in detail from outside by decree. A business may be sanctioned for breach of obligations, but in its day-to-day affairs it must operate autonomously. As well as it being impossible for an outside agent to know the inner workings of a business organisation in sufficient detail for it to govern it through direct command, it is also simply undesirable for it to attempt to do so for reasons of cost – in both money and time. This is, of course, the reason why even in nationalised industries in command-and-control economies, businesses are not minutely managed in every detail by politicians but controlled through less direct means. And finally, of course, multinational firms may desire smaller firms in their supply chains to behave in certain ways – to avoid the embarrassment of human rights scandals – but the nature of their relationships and the undesirability of direct day-to-day management ensure that it is only possible to achieve this indirectly.

Governors are distant from the governed, then, in the field of the global governance of human rights: the blunt instrument of legal prohibition does not result in a prospective human rights “governor” having the capacity to ensure that autonomous agents simply abide by legal requirements through edict alone.

So much goes without saying: an actor seeking to ensure that another actor protects, respects and fulfils human rights cannot do so simply through issuing edicts. It must attempt instead to regulate and steer that other respective actor through indirect methods, so that it acts in the desired way. This is commonly observed, although usually couched in different terms: there is a vast literature on how to generate compliance with human rights standards and obligations in the absence of centralised control – which is itself a subset of an even vaster literature on compliance in transnational law in general.[[91]](#footnote-91)

Naturally, then, just as regimes of audit proliferate in the domestic sphere in response to the need to govern and yet not to govern the “thick natural phenomenon” of the population which confronts the sovereign, so we see similar such techniques spreading wherever actors seek to govern each other with respect to human rights standards. The States Parties to human rights treaties, multinational firms, and local suppliers are themselves “thick natural phenomena” whose governance requires a similar approach. In precisely the same way that the existence of a population which cannot be directly controlled by the sovereign results in the “governmentalization of the state”, so the existence of autonomous actors in conditions preventing direct control results in a “governmentalization of global human rights governance” in which indirect “tactics” – like the human rights audit – are deployed to conduct conduct.

Much of the literature on governmentality has, perhaps inevitably, taken “advanced liberalism” or neoliberalism as its subject.[[92]](#footnote-92) This is partly as a result of highly influential work done by Miller and Rose and other scholars in the late 1980s and early 1990s. These theorists saw in Foucault’s work on governmentality a sharp and useful tool for analysing changes then taking place in the British state in particular. During that era a programme of “New Public Management” – the transfer of management concepts from the private sector into a rapidly de-regulating public sphere – was reinventing governance to give public sector actors autonomy in free or quasi-free markets.[[93]](#footnote-93) This has resulted in a certain preoccupation with neoliberalism amongst scholars of governmentality – even those interested in global governance[[94]](#footnote-94) - which has led to a concern with governmentality in the international sphere as chiefly producing neoliberal rule.[[95]](#footnote-95) This description is persuasive and insightful in some contexts but by definition has to bring much variation and nuance under the umbrella dictated by the use of that label.[[96]](#footnote-96) The temptation is to conclude that “neoliberalism is everywhere” – a not particularly useful observation.[[97]](#footnote-97)

In a recent book Cerny provides us with a set of conceptual tools for analysing “global governmentality”, which are more useful for understanding the phenomenon of transnational or global human rights auditing.[[98]](#footnote-98) Beginning with the observation that governmentality originates not in institutions but in *practices*, he goes on to argue that governmentality must be understood as emerging from experience: actors must manage the “contradictions and tensions inherent in governing”, and impart those practices to others; individuals and groups must learn to internalize “self-limiting and self-regulatory behaviours”. [[99]](#footnote-99) They do this through trial-and-error and on-the-job experience, rather than through any sort of rational or managed process; governmentalization emerges from practices which are “pragmatically arrived at for the most part”.[[100]](#footnote-100) In other words, it is not as though an overarching governmental rationality produces governmental techniques. It is rather that certain techniques develop as a practical set of responses to what might be thought of as the “felt needs” of governing: that is, bringing about control over autonomous actors. From these practical responses comes governmentality.

The financial audit can be thought of as an example *par excellence* of this. While auditing has taken place since the Middle Ages at least, it was arguably the creation of the joint-stock company which resulted in the modern financial audit. It was the existence of corporate entities in which ownership and control were separate that generated the need to perform formal audits: such an entity is autonomous from its owners and the owners must therefore come up with a practical method for conducting its conduct despite, and because of, its freedom.[[101]](#footnote-101) Financial audit, that is, was a response to a need that emerged from systemic conditions.

In exactly the same way, human rights auditing emerges as a set of practices, “pragmatically arrived at for the most part”, which respond to needs that emerge from ineluctable characteristics of the international human rights system – namely, the autonomous nature of the actors involved and the non-binding or non-enforceable nature of many of the relevant norms. Many international human rights standards are not binding, and those which are, are poorly enforced if at all; meanwhile non-state actors such as private firms or NGOs have no authority of command over other actors. So while the UN treaty bodies must attempt to conduct the conduct of States Parties to the respective treaties, firms must exercise control over their suppliers, and civil society actors seek to change the behaviour of firms and States alike, this must largely take place within a framework which recognises and enshrines the autonomy of the relevant subjects. Human rights auditing thus emerges in a dispersed, ad hoc, fragmentary fashion as these different actors grapple with the “contradictions and tensions” inherent in trying to control autonomous agents – all of it operationalised by the human rights standards and treaty provisions which have proliferated in recent decades.

The apparently “neoliberal” character of audit as a governmental technique, then, must be thought of as an oversimplification. As Cerny puts it, the governmentalization of global governance (what he describes as “world politics”) can be better conceptualised, in fact, as “the transfer of practices…pragmatically arrived at for the most part, instituted through the trial-and-error, issue-area-specific process of bricolage, analogous in principle at least to that which has enabled liberal states to be so successful domestically – to the international and transnational levels.”[[102]](#footnote-102) That is, governmental techniques such as auditing are being spread from the domestic sphere into the transnational and global arena in an untidy and fragmentary fashion in a variety of different fields – because they are perceived as useful. Transnationalized or globalized forms of the tools of financial regulation and other forms of governance from the domestic sphere become transplanted into the international realm simply as practical tools for resolving problems posed by the autonomy of agents across borders. The result of this is that global governance is not developing into a kind of “global state” or neoliberal global marketplace, but rather something much more complex and difficult to define: “a multi-layered, fungible, and increasingly hegemonic set of simultaneously globalizing and governmentalizing political practices”.[[103]](#footnote-103)

The spread of human rights auditing in the transnational or global sphere, then, is best conceptualised as a pragmatic transplant: a practice which is perceived to be useful in the domestic context – for public and private actors alike – and becomes transnationalized as a result. Its existence in global governance has not come about through grand design, but through different actors deploying it to achieve certain effects. The global governance of human rights is becoming governmentalized through that process, because audit is so quintessentially a governmental technology, but it comes about through the practices of the range of different actors involved – and neither its causes nor its effects can be distilled to merely the production of a neoliberal ideology. The consequences, indeed, are much more specific than that.

IV. “The multiplicity of individuals, who will not be pertinent…”

A recurrent theme in Foucault’s lectures of 1977-78 was what he called the “fundamental caesura” between “the population” and the individual. While the population as an entity in itself was pertinent for government, the multiplicity of individuals were not – or, at least, only insofar as they constituted the population.[[104]](#footnote-104) Whereas the population was the final object of government, individuals were simply the “instrument, relay or condition for obtaining something at the level of the population.”[[105]](#footnote-105)

Put another way, governmentality is concerned with the aggregate, not the individual case. Its interest is in outcomes for the abstracted mass, measured and delineated statistically; as a consequence the individual’s role is in essence a data point (or set of data points). While Foucault did not discuss the specificities of this phenomenon, examples are readily apparent, not least in the realm of human rights; one only need consider the growth in quantitative methods for assessing performance and their tendency to subsume the individual case within metrics such as the rate of homelessness or “percentage of births attended by skilled health personnel”.

The negative consequences of a shift in human rights discourse towards the abstracted aggregate have been noted. As Backer convincingly argues, where ostensibly individual rights are transposed into the aggregate, “[T]he individual no longer speaks for herself to any appreciable extent...; she speaks only through institutionalised individuals – the State, the nongovernmental organisation, the institutional voices of religion, or the multinational enterprise.”[[106]](#footnote-106) In other words, governmentality causes human rights concerns to be represented and expressed not by the individuals affected, but rather by statistical measurements of those concerns at the level of populations and sub-populations within it. In turn this means that the relevant actors are not those individuals, but the sources of power and authority over those populations and sub-populations. Backer argues that as a result norms and principles are discussed, elaborated and fixed among States where affected individuals are only at best indirectly represented;[[107]](#footnote-107) in light of the analysis carried out in this article, one might add that it is not only States but also frequently nongovernmental organizations and multinational firms (where the representation of affected individuals may be even less direct) who engage in that process of elaboration. The final consequence is that “people, as individuals or citizens, now abstracted and denatured, are effectively removed from a human-rights enhancing project undertaken on their behalf but without their participation.”[[108]](#footnote-108) The capacity of human rights auditing to contribute to that consequence is obvious: it results in a vision of powerful actors monitoring each other, and ultimately themselves, to ensure that outcomes for relevant populations and sub-populations are what is desired. It does not suggest the actual rights-holders have a role beyond being beneficiaries. Indeed, as was demonstrated in the first section of this article, the individual data point of the rights-holder is almost of practical irrelevance in the schema of audit, taking place as it does at the level of risk management and oversight of internal control.

The governmentalization of the governance of human rights in the form of audit, then, results in an almost pastoral approach where performance is monitored in the abstract for the good of the population, and this risks in turn bringing about the taming of the radical potential that human rights possess. As Marks puts it, “progressive concepts can become pacifying ideologies”.[[109]](#footnote-109) The notion that States and powerful private actors such as multinational firms can become transformed into instruments for the protection of human rights through the power of standard-setting, and its operationalisation of human rights auditing, is superficially attractive. But it raises the question, as others have asked: can a tool used to administer human rights through powerful actors such as the State or businesses “somehow stand apart from the tools that were used to deny human rights in the first place”[[110]](#footnote-110)? One of the dangers posed by human rights auditing is that it will come to constitute human rights work practised *as of right* on subject populations, who in essence become managed – measured, monitored, and assessed[[111]](#footnote-111) - using exactly the same sort of processes which typically result in expressions of power which deny individuals their rights. The “techniques of rule”, that is, are not shifted by the development of human rights auditing.[[112]](#footnote-112) They are in fact reinforced.

These need not have sinister overtones: it would be crudely wrong to suggest that human rights auditing is merely a cloak for authoritarian control. And, indeed, it would also be an oversimplification to suggest that individual people have no role *per se* in the audit process; Nevsun, for instance, makes clear that community groups are at least consulted, and Levi Strauss’s supply chain auditing does, at least ostensibly, function at the level of individual observations. More prosaically, it is to suggest that through governmentalization, human rights become distanced from the rights-holders by the fundamental *caesura* between individual and aggregate, and as a consequence become transformed primarily into the framework within which the powerful demonstrate to each other their compliance with agreed standards. The radical potential for human rights is the capacity they provide individuals to hold the powerful to account and seek redress where they have been denied their fundamental needs. This can only be achieved primarily through a robust conceptualization of human rights as the sources of legal claims, and will be denuded where rights become the stuff of management. Even in the examples of Nevsun and Levi, the role for the individual is not that of an assertive rights claimant; rather, it is that of a passive beneficiary of the audit process – or, put another way, a potential victim waiting to be identified in the course of human rights auditing. Put bluntly: in the prevailing framework no Eritrean labourer at the Bisha mine is envisaged as having the capacity to bring a legal claim against either Nevsun or the Eritrean state if he or she believes that his or her rights have been violated. Quite the contrary: the labourer is merely the passive object of the benevolence of the pastoral firm. Far from producing self-governing, autonomous agents for neoliberalism, then, the governmentalization of global human rights governance is rather a process which achieves precisely the opposite: it is the human rights of management and control – a mechanism for operationalising rule rather than realising individual freedom.

Concerns are sometimes expressed that, through the application of technical approaches to the measurement and management of human rights such as “indicatorization”, the radical potential of human rights to serve as a means of political contestation will become “reined in” or co-opted.[[113]](#footnote-113) The foregoing analysis suggests that the process of “reining in” is in fact rooted in something deeper and more fundamental: the act of monitoring and review – audit – itself. This is because, through the proliferation of human rights audit and the consequent governmentalization of global human rights governance, powerful actors themselves, inevitably, become constructed as self-regulating agents whose interests and goals are bound up in performance towards the external standards or norms which are set for them. When this consequence manifests itself it can only be the case that, as Backer puts it, “individual autonomy becomes a residual rather than a primary value”[[114]](#footnote-114); the governmentalization of global human rights governance inexorably shifts attention from law to “diverse tactics”, and the *caesura* between individual and population is the inevitable outcome.

While, then, there are legitimate concerns about human rights “audit culture” that focus on its capacity to dampen discourse and political choice, a more foundational critique must also be made: by shifting attention to the duty-bearer (be it the State or otherwise), audit culture re-aligns human rights performance as a concern of the powerful rather than the powerless. The danger is that the end result will be their transformation into a mere “pacifying ideology” with benign motives but taming consequences.

V. Conclusion: Global Governance of Human Rights as Pacifying Ideology

The connections between the phenomena observed in this article and what Koskenniemi has described as “managerialism”[[115]](#footnote-115) and Kennedy as “expert rule”[[116]](#footnote-116) are obvious. There has been a strongly identifiable “regulatory turn” in international law since the end of the cold war, which has had a particular and notable impact on human rights. Human rights in the international sphere were at one time (and sometimes still are) presented as the means by which the law would become humanized – by which human dignity would become a central concern of international order. Yet they are increasingly also becoming the means by which regulatory authorities – of both the public and private kind – are buttressed and strengthened.[[117]](#footnote-117) Cogan, writing in 2011, noted how a new international legal framework had begun to emerge, “in which government’s regulatory authority, once conceptualised mostly as a hazard to individual freedom that had to be tamed, instead is primarily viewed as a means for the protection of individuals that should be harnessed.”[[118]](#footnote-118) In this new “constitutive realignment”, he argued, a new set of processes, institutions, networks and agreements were “facilitat[ing] and enchanc[ing] the regulatory authorities of government…in relation to the individual.”[[119]](#footnote-119) To this, we clearly need to add that it is not merely the regulatory authorities of government (in the sense of the state) which are facilitated and enhanced in the new framework; it is also the authority of private actors, similarly harnessed for the protection of individuals and operationalised through regimes of monitoring, checking, and standard-setting. It is not merely state control which is enhanced in the new framework, in other words; it is “governmental” control in the Foucauldian sense.

At the centre of the “regulatory turn” is the ongoing managerialism of the international public realm: its colonisation by a class of technical experts who apply techniques of governance developed in the domestic sphere – performance targets, KPIs, rankings and league tables, and audit – in order to achieve measured improvements. Koskenniemi describes that process as, in effect, the denuding of law itself from international law – “conceived as a professional technique for the management of values, purposes, ideals”.[[120]](#footnote-120) International law itself, that is, ceases to be a matter of law *per se* and is increasingly instead constituted by a series of technical methods designed to achieve certain agreed and accepted outcomes. Describing that phenomenon as a consequence of governmentalization is persuasive, and this is nowhere more aptly demonstrated in the field of human rights. The governmentalization of global human rights governance, taking place as it does through the deployment of technologies of performance and agency like the human rights audit, results in law receding, to be replaced by Foucault’s “diverse tactics” – the “perfection, maximization or intensification [of] processes” which have as their aim the improvement of the well-being of the population across measured metrics. The ultimate consequence of that, this article suggests, is human rights turned on their head: they become the instrument by which populations are governed rather than the legal weapon of the dispossessed or wronged. Rather than being strictly speaking a source of legal claims, in other words, they become rather the regulatory tool by which powerful agents – the State, the multinational firm - are induced to act upon the population in certain ways through “diverse tactics”. The aims are benign. Yet the result is a taming of human rights as the legal weapon of the dispossessed.

In 2002 David Kennedy warned of the “perils of representation” – the way that human rights work had a tendency to result in professionals speaking “for” others. This reduces the human individual to the status of either a victim or a “subaltern”, who “recedes…before the interpretive and representational practices of the movement.”[[121]](#footnote-121) This remove between the human rights professional and the rights-holder, in Kennedy’s view, would have the tendency to reinforce global divides of wealth, access, and so forth; the human rights protector on the one hand, and the rights-holder-as-victim on the other. It is not difficult to see those trends exemplified in the governmentalization of global human rights governance and its deployment of the human rights audit, which seems to present above all the sense that improving human rights performance for populations is the function of the powerful, and that the powerful monitoring and holding each other to account is sufficient to achieve this. The role for the individual as claimant, using the law and the courts for just recourse when his or her rights are violated, consequently diminishes – and with that diminishment the radical potential of human rights to overturn excessive control is tamed.

1. See, for example, Jane Cowan, “Before Audit Culture: A Genealogy of International Oversight of Rights” in Muller (ed.), *The Gloss of Harmony: The Politics of Policy Making in Multilateral Organisations* (Pluto Press, 2013), p. 103-133, and Sally Engle Merry, “Measuring the World: Indicators, Human Rights and Global Governance” 52 (3) Current Anthropology (2011) 83. [↑](#footnote-ref-1)
2. See, for example, the recent special edition of Social Anthropology 23 (1) (2015). [↑](#footnote-ref-2)
3. In *The Audit Explosion* (Demos, 1994) and *The Audit Society* (OUP, 1997). [↑](#footnote-ref-3)
4. See Mitchell Dean, *Governmentality*, 2nd edition (Sage, 2010), p. 197-198. [↑](#footnote-ref-4)
5. See for instance AnnJanette Rosga and Margaret Satterthwaite, “The Trust in Indicators: Measuring Human Rights” 27 (2) Berkeley Journal of International Law (2009) 253. [↑](#footnote-ref-5)
6. Susan Marks has made this point in the wider context in Marks, “Naming Global Administrative Law” 37 NYU Journal of International Law & Politics (2004-2005) 995. [↑](#footnote-ref-6)
7. On “global governmentality” generally, see Larner and Walters (eds.) *Global Governmentality: Governing International Spaces* (Routledge, 2004). [↑](#footnote-ref-7)
8. These concepts are drawn largely from Foucault’s 1977-1978 lectures at the Collège de France, collected in *Security, Territory, Population: Lectures at the Collège de France 1977-1978* (Palgrave Macmillan, 2007). [↑](#footnote-ref-8)
9. See Peter Miller and Nikolas Rose, “Governing Economic Life” 19 (1) Economy and Society 1 (1990). [↑](#footnote-ref-9)
10. Foucault called his own coining, “governmentalization”, an “ugly word”; I follow in that vein with this ugly expression of my own. [↑](#footnote-ref-10)
11. Louiza Odysseos, “Human Rights, Liberal Ontogenesis and Freedom” 38 (3) Millennium 747 (2010). [↑](#footnote-ref-11)
12. Bal Sokhi-Bulley, “Government(ality) by Experts: Human Rights as Governance” 22 Law Critique 251 (2011). [↑](#footnote-ref-12)
13. Foucault, *supra* note 8, p. 99. [↑](#footnote-ref-13)
14. See Power, *The Audit Society*, *supra* note 3, p. 12. [↑](#footnote-ref-14)
15. See Power, *The Audit Society*, *supra* note 3, p. 78-79. [↑](#footnote-ref-15)
16. See e.g. Gil McWilliam and Leslie de Chernatony, “Accounting and Auditing for Brands: What Exactly Are We Valuing?” 6 (1) Managerial Auditing Journal 21 (1996). [↑](#footnote-ref-16)
17. The ISO 14000 family of standards is used for evaluating performance in environmental protection. [↑](#footnote-ref-17)
18. The ISO 9000 family of standards is used for evaluating product standards. [↑](#footnote-ref-18)
19. Power, *The Audit Society*, *supra* note 3, p. 78. [↑](#footnote-ref-19)
20. *Ibid*., p. 82. [↑](#footnote-ref-20)
21. *Ibid*. [↑](#footnote-ref-21)
22. *Ibid*. [↑](#footnote-ref-22)
23. *Ibid*., p. 83. [↑](#footnote-ref-23)
24. See e.g. Rosga and Satterthwaite, *supra* note 5. [↑](#footnote-ref-24)
25. See e.g. Richard Carver, “A New Answer to an Old Question: National Human Rights Institutions and the Domestication of International Law” 10 Human Rights Law Review 1 (2010). [↑](#footnote-ref-25)
26. See, for example, Sally Engle Merry, *The Seductions of Quantification: Measuring Human Rights, Gender Violence and Sex Trafficking* (Univ. of Chicago Press, 2016). [↑](#footnote-ref-26)
27. LKL International Consulting Ltd., *Human Rights Impact Assessment of the Bisha Mine in Eritrea: 2015 Audit*, available at <http://nevsuncsr.com/wp-content/uploads/2015/07/Bisha-HRIA-Audit-2015.pdf> (accessed 3rd November 2016). [↑](#footnote-ref-27)
28. Nestle, *Nestle in Society: Creating Shared Value and Meeting Our Commitments 2015*, available at <http://www.nestle.com/asset-library/documents/library/documents/corporate_social_responsibility/nestle-csv-full-report-2015-en.pdf> (accessed 3rd November 2016). [↑](#footnote-ref-28)
29. *Ibid*., p. 246. [↑](#footnote-ref-29)
30. *Ibid*., p. 240. [↑](#footnote-ref-30)
31. See Shift, “Respecting Human Rights in Gap Inc.’s Global Supply Chain” 2013, available at <http://www.gapinc.com//content/attachments/sersite/Shift-UNGP.pdf> (accessed 3rd November 2016). [↑](#footnote-ref-31)
32. Thai Union Group, “Fair Labor Goals and Roadmap”, available at <http://www.thaiunion-sustainability.com/safe-and-legal-labour.php> (accessed 3rd November 2016); the audit was promised after a scandal over labour rights at Thai Union Groups processing plants (see “Seafood Giant Thai Union Group Snared in Labour Scandal”, The Straits Times, December 28th, 2015). [↑](#footnote-ref-32)
33. One useful overview is provided in Kenneth McPhail & Carol Adams, “Corporate Respect for Human Rights: Meaning, Scope and the Shifting Order of Discourse” 29 (4) Accounting, Auditing and Accountability Journal 650 (2016). [↑](#footnote-ref-33)
34. This is known as the SA8000 and is formulated by the NGO Social Accountability International. See <http://www.sa-intl.org/index.cfm?fuseaction=Page.ViewPage&pageId=1689> (accessed 6th December 2016). [↑](#footnote-ref-34)
35. One prominent example is Mazars. See <http://www.mazars.co.uk/Home/Our-Services/Publications/Consulting-publications/Human-Rights-publications/Sustainability-and-Human-Rights-Services> (accessed 6th December 2016). [↑](#footnote-ref-35)
36. The practice of human rights reporting is much older than the UNGPs and was taking place under the auspices of the ILO and other international organizations before they were ever put in place. See e.g. Azizul Islam & Kenneth McPhail, “Regulating for Corporate Human Rights Abuses: the Emergence of Corporate Reporting on the ILO’s Human Rights Standards Within the Global Garment Manufacturing and Retail Industry” 22 (6) Critical Perspectives on Accounting 790 (2011). [↑](#footnote-ref-36)
37. Levi Strauss & Co. *Sustainability Guidebook* (2013), available at <http://lsco.s3.amazonaws.com/wp-content/uploads/2014/01/LSCO-Sustainability-Guidebook-2013-_-December.pdf> (accessed 4th November 2016), Introduction: p. 1. [↑](#footnote-ref-37)
38. *Ibid*., Child Labour: p. 1. [↑](#footnote-ref-38)
39. *Ibid*., Ethical Standards: p. 2. [↑](#footnote-ref-39)
40. *Ibid*., General Labour Practices & Freedom of Association: p. 3. [↑](#footnote-ref-40)
41. *Ibid*., Child Labour: p. 2. [↑](#footnote-ref-41)
42. Starbucks Supplier Code of Conduct, available at <http://globalassets.starbucks.com/assets/ada1f37e34954eb1883a6b32d3e8a430.pdf> (accessed 4th November 2016). [↑](#footnote-ref-42)
43. The generic scorecard is available at <https://www.scsglobalservices.com/files/program_documents/cafe_scr_genericv3.4_011516.pdf> (accessed 4th November 2016). [↑](#footnote-ref-43)
44. See ICTI, Code of Business Practices, available at <http://www.toy-icti.org/info/codeofbusinesspractices.html> (accessed 4th November 2016). [↑](#footnote-ref-44)
45. *Ibid*., Appendix II: Audit Checklist, available at <http://www.toy-icti.org/info/appendixIIchecklist.html> (accessed 4th November 2016). [↑](#footnote-ref-45)
46. *Ibid*., Appendix III: Corrective Action Plan, available at <http://www.toy-icti.org/info/appendixIII.html> (accessed 4th November 2016). [↑](#footnote-ref-46)
47. Levi Strauss & Co. Global Sourcing and Operating Guidelines, available at <http://lsco.s3.amazonaws.com/wp-content/uploads/2014/01/Global-Sourcing-and-Operating-Guidelines.pdf> (accessed 4th November 2016). [↑](#footnote-ref-47)
48. The list is available at Johnson & Johnson, 2015 Citizenship and Sustainability Report, available at <http://www.jnj.com/sites/default/files/pdf/cs/2015-JNJ-Citizenship-Sustainability-Report.pdf> (accessed 4th November 2016), p. 68. [↑](#footnote-ref-48)
49. A description of the methodology is provided in each Assessment. See e.g. Transparency International, *National Integrity Assessment Turkey* (2016), available at <file:///C:/Users/Dave/Downloads/2016_NIS_Turkey_EN%20(1).pdf> (accessed 4th November 2016), pp. 6-9. [↑](#footnote-ref-49)
50. An overview of the process is available on the FAQ page on Progress out of Poverty’s website. See <http://www.progressoutofpoverty.org/faq-page#n491> (accessed 5th November 2016). [↑](#footnote-ref-50)
51. Grameen Foundation, *Poverty Outreach of Selected Microfinance Institutions in the Philippines* (2012), available at <http://www.progressoutofpoverty.org/sites/default/files/Poverty%20Outreach%20of%20Selected%20MFIs%20in%20the%20Philippines%202012.pdf> (accessed 5th November 2016). [↑](#footnote-ref-51)
52. Grameen Foundation, *Drawing Insights on Poverty Movement with Multi-Year PPI Data* (2014), available at <http://www.progressoutofpoverty.org/sites/default/files/Drawing%20Insights%20on%20Poverty%20Movement%20with%20Multi-Year%20PPI%20Data.pdf> (accessed 5th November 2016). [↑](#footnote-ref-52)
53. Friendship Bridge, *Making a Difference: 2013 Impact Report* (2014), available at <http://www.friendshipbridge.org/wp-content/uploads/2013/03/fb-impact-report-2013-final.pdf> (accessed 5th November 2016). [↑](#footnote-ref-53)
54. See e.g. Elvira Dominguez-Redondo, “The Universal Periodic Review: Is there Life Beyond Naming and Shaming in Human Rights Implementation?” 4 New Zealand Law Review 673 (2012). [↑](#footnote-ref-54)
55. Jane Cowan,“The Universal Periodic Review as a Public Audit Ritual” (forthcoming; on file with author) p. 50. [↑](#footnote-ref-55)
56. See e.g. Wendy Espeland & Michael Sauder, “Rankings and Reactivity: How Public Measures Recreate Social Worlds”, 113(1) American Journal of Sociology 1 (2007); Haridimos Tsoukas, “The Tyranny of Light”, 29(9) Futures 827 (1997); Marilyn Strathern, “The Tyranny of Transparency”, 26(3) British Educational Research Journal 309 (2000). [↑](#footnote-ref-56)
57. Office of the High Commissioner for Human Rights, *Human Rights Indicators: A Guide to Measurement and Implementation* (OHCHR, 2012), p. 90. [↑](#footnote-ref-57)
58. Power, *The Audit Society*, *supra* note 3, p. 54. [↑](#footnote-ref-58)
59. Global Affairs Canada, "Doing Business the Canadian Way: A Strategy to Advance Corporate Social Responsibility in Canada’s Extractive Sector Abroad" available at <http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/csr-strat-rse.aspx?lang=eng> (accessed 11th November 2016). [↑](#footnote-ref-59)
60. See Global Affairs Canada, CSR Counsellor Review Process, available at <http://www.international.gc.ca/csr_counsellor-conseiller_rse/review_process-processus_examen.aspx?lang=eng#howdoes> (accessed 29th November 2016). [↑](#footnote-ref-60)
61. See LKL Consulting, *supra* note 27, p. 5. [↑](#footnote-ref-61)
62. See e.g. *ibid*., Step 6 of the Key Actions p. 9. [↑](#footnote-ref-62)
63. See the Nevsun website, <http://www.nevsun.com/corporate/governance/> (accessed 11th November 2016). [↑](#footnote-ref-63)
64. See LKL Consulting, *supra* note 27, p. 27. [↑](#footnote-ref-64)
65. See, for instance, the Office of the High Commissioner for Human Rights’ *Guide*, *supra* note 57. [↑](#footnote-ref-65)
66. For an overview of some of this history, see e.g. Reif, *The Ombudsman, Good Governance and the International Human Rights System* (Martinus Nijhoff, 2004). [↑](#footnote-ref-66)
67. Principles Relating to the Status of National Institutions (The Paris Principles), adopted by the UN GA in Resolution 48/134, 20 December 1993. [↑](#footnote-ref-67)
68. See e.g. Amrei Muller and Frauke Seidensticker, *The Role of National Human Rights Institutions in the United Nations Treaty Body Process* (German Institute for Human Rights, 2007), available at <http://nhri.ohchr.org/EN/IHRS/TreatyBodies/Page%20Documents/The%20Role%20of%20National%20Human%20Rights%20Institutions%20in%20the%20UN%20Treat%20Body%20Process.pdf> (accessed 20th October 2016). [↑](#footnote-ref-68)
69. See Power, *The Audit Society*, *supra* note 3, Chapter 3. [↑](#footnote-ref-69)
70. See Sonia Cardenas, “Emerging Global Actors: The United Nations and National Human Rights Institutions” 9 Global Governance, p. 23 (2003), and Richard Carver, “A New Answer to an Old Question: National Human Rights Institutions and the Domestication of International Law 10 Human Rights Law Review, p. 1 (2010) [↑](#footnote-ref-70)
71. Maria Green, “What We Talk About When We Talk About Indicators” 23 Human Rights Quarterly 1062, p. 1065 (2001). [↑](#footnote-ref-71)
72. Sital Kalantry et al, “Enhancing Enforcement of Economic, Social and Cultural Rights Using Indicators: A Focus on the Right to Education in the ICESCR” 32 Human Rights Quarterly 253, p. 257 (2010). [↑](#footnote-ref-72)
73. Office of the High Commissioner for Human Rights, *supra* note 57. [↑](#footnote-ref-73)
74. *Ibid*., p. 90, 89, respectively. [↑](#footnote-ref-74)
75. Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13, UN Doc. E/C.12/1999/10 (1999), para. 52. [↑](#footnote-ref-75)
76. CESCR, List of Issues in relation to the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland, UN Doc. E/C.12/GBR/Q/6 (3rd November 2015), para. 24. [↑](#footnote-ref-76)
77. OHCHR, *supra* note 57, pp. 116-126. [↑](#footnote-ref-77)
78. STP. [↑](#footnote-ref-78)
79. Foucault, *supra* note 8, p. 71. [↑](#footnote-ref-79)
80. *Ibid*. [↑](#footnote-ref-80)
81. *Ibid*., p. 72. [↑](#footnote-ref-81)
82. Miller and Rose, *supra* note 9, p. 4. [↑](#footnote-ref-82)
83. Of course, none of this is biologically accurate! [↑](#footnote-ref-83)
84. *Ibid*., p. 100. [↑](#footnote-ref-84)
85. See e.g. Dean, *supra* note 4, p. 21. [↑](#footnote-ref-85)
86. Miller and Rose, *supra* note 9. [↑](#footnote-ref-86)
87. See e.g. Dean, *supra* note 4, pp. 175-204. [↑](#footnote-ref-87)
88. See Miller and Rose, *supra* note 9. [↑](#footnote-ref-88)
89. Power, *The Audit Society*, *supra* note 3, p. 53. [↑](#footnote-ref-89)
90. Guy Neave, “On the Cultivation of Quality, Efficiency and Enterprise: An Overview of Recent Trends in Higher Education in Western Europe, 1986-1988” 23 (1) European Journal of Education 7, p. 12 (1988). [↑](#footnote-ref-90)
91. See e.g. Harold Koh, "Why Do Nations Obey International Law?", 106 Yale Law Journal (1997) 2599. [↑](#footnote-ref-91)
92. See e.g. Dean, *supra* note 4, pp. 175-204. [↑](#footnote-ref-92)
93. See e.g. Nikolas Rose, “The Death of the Social? Refiguring the Territory of Government” 25 (3) Economy and Society (1996) 327. [↑](#footnote-ref-93)
94. See e.g. Tore Fougner, “Neoliberal Governance of States: The Role of Competitiveness Indexing and Country Benchmarking” 37 (2) Millennium: Journal of International Studies (2008) 303; Hans-Martin Jaeger, “UN Reform, Biopolitics, and Global Governmentality” 2 (1) International Theory (2010) 50. [↑](#footnote-ref-94)
95. See e.g. Barry Hindess, “Liberalism – What’s in a Name?” in Larner and Walters (eds.) *supra* note 77, pp. 23-40. [↑](#footnote-ref-95)
96. Hindess, *ibid*., for instance, ends up bringing together laissez-faire liberalism, social and welfarist liberalism, and both imperial *and* anti-imperialist “liberalism” as a group. [↑](#footnote-ref-96)
97. Jamie Peck and Adam Tickell, “Neoliberalizing Space” 34 (3) Antipode 381 (2002). [↑](#footnote-ref-97)
98. Philip Cerny, *Rethinking World Politics: A Theory of Transnational Neopluralism* (OUP, 2010). [↑](#footnote-ref-98)
99. *Ibid*., p. 178. [↑](#footnote-ref-99)
100. *Ibid*. [↑](#footnote-ref-100)
101. See Power, *The Audit Society*, *supra* note 3, p. 16-17. [↑](#footnote-ref-101)
102. Cerny, *supra* note 98, p. 178. [↑](#footnote-ref-102)
103. *Ibid*., p. 191. [↑](#footnote-ref-103)
104. Foucault, *supra* note 8, p. 42. [↑](#footnote-ref-104)
105. *Ibid*. [↑](#footnote-ref-105)
106. Larry Backer, “Fractured Territories and Abstracted Terrains: Human Rights Governance Regimes Within and Beyond the State” 23 Indiana Journal of Global Legal Studies (2016) 61, p. 70. [↑](#footnote-ref-106)
107. *Ibid*., p. 71. [↑](#footnote-ref-107)
108. *Ibid*. [↑](#footnote-ref-108)
109. Marks, *supra* note 6. [↑](#footnote-ref-109)
110. Nickel, “Public Sociology for Human Rights as Rites of Rule”, 58 (3) Current Sociology (2010) 420, p. 434. [↑](#footnote-ref-110)
111. *Ibid*., p. 432. [↑](#footnote-ref-111)
112. *Ibid*., p. 438. [↑](#footnote-ref-112)
113. See Siobhan Airey, “The Taming of the Shrill: From Indicators to Indicatorization” 12 International Organizations Law Review (2015) 81, p. 101. [↑](#footnote-ref-113)
114. Backer, *supra* note 106, p. 72. [↑](#footnote-ref-114)
115. See e.g. Martti Koskenniemi, “The Fate of Public International Law: Between Technique and Politics” 70 Modern Law Review 1 (2007), 18. [↑](#footnote-ref-115)
116. See e.g. David Kennedy, “Challenging Expert Rule: The Politics of Global Governance” 27 Sydney Law Review (2005) 5. [↑](#footnote-ref-116)
117. Jacob Cogan,“The Regulatory Turn in International Law”, 52 Harvard International Law Journal (2011) 321. [↑](#footnote-ref-117)
118. *Ibid*., p. 330. [↑](#footnote-ref-118)
119. *Ibid*., p. 325-326. [↑](#footnote-ref-119)
120. Martti Koskenniemi, “Constitutionalism, Managerialism and Legal Education” 1 European Journal of Legal Studies 8 (2007-2008), p. 16. [↑](#footnote-ref-120)
121. Kennedy, “The International Human Rights Movement: Part of the Problem?” 15 Harvard Human Rights Journal (2002) 101, p. 121. [↑](#footnote-ref-121)