

Abstract

This dissertation uses a subaltern perspective to examine how international law – namely, international disaster law (IDL) and international human rights law (IHRL) – may be used by marginalised people to address disaster-related vulnerability. A consideration of international law’s utility for marginalised people is required because empirical evidence shows that there is a correlation between marginalisation and disaster: marginalised people are most vulnerable to disaster, as well as being the most vulnerable in post-disaster recovery situations. The concept of the subaltern refers to classes in society that, owing to various forms of prejudice, are unable to employ the modes of communication of the powerful – such as law – to bring attention to their concerns, and are thereby rendered invisible in dominant society. In legal analysis, the concept of the subaltern is used to identify how the powerless are prevented from using law, as well as to identify how such obstructions may be overcome. The subaltern concept is deployed in this dissertation by using the concept of marginalisation as an analytical lens to examine international law applicable to disaster. To conduct the review of the international legal response, Part I discusses the legal framework and literature review on international law and disaster. It establishes that the bulk of the literature and international rules applicable to disaster are preoccupied with establishing and identifying the content of intra-state obligations, although IHRL is used to “humanise” the law. On this basis, Part II considers the utility of state-centric IDL for marginalised people by examining the historical evolution of the concept of disaster in order to excavate the presence of marginalised people from these rules. It then examines how the issue of marginalisation and disaster has been obscured by discussing the historical background of prominent international disaster instruments. Part II concludes that there is a small and ambiguous legal space that recognises the agency of marginalised people exists, but that the utility of this space is questionable because of the ways in which marginalisation has been obscured in laws in the past. Part III considers how IHRL, and non-legal methods may be used by marginalised people to overcome the limitations of IDL. Part III surveys the practice and theory of IHRL with regard to disaster. It finds that it is of limited use to marginalised people because, among other things, its conceptual scope is limited so that development-related disasters are not given the same treatment as natural disaster. IHRL alone is insufficient to address IDL’s flaws with regard to marginalisation and disaster, and so non-legal means of addressing the correlation between marginalisation and disaster are discussed. It is concluded that a counter-hegemonic strategy that encourages 1) academic discourse to create new understandings of marginalisation and disaster, 2) the politicisation of marginalisation and disaster issues in international relations, and 3) the use of legal mechanisms, is the best way forward for marginalised people. The dissertation concludes by discussing models of disaster and marginalisation so that the

conceptual scope of IDL and IHRL may be expanded.