INTRODUCTION

Social network analysis is a social science methodology which is exercising a growing influence on legal scholarship. This methodology uses sociograms – formal depictions of connections between people and organizations – to raise testable hypotheses about social behaviour. The empirical literature in this field has already made several findings that help in understanding social phenomena, such as reputation and the way social shaming works. This chapter demonstrates how the tools of social network analysis can explain how reputational sanctions affect the behaviour of states in the international arena.

The focus of this chapter is on findings related to the shaming of states in the Council of Europe for non-compliance with judgments of the European Court of Human Rights (ECtHR). In 2011, the department charged with monitoring compliance with the ECtHR at the Committee of Ministers of the Council of Europe (CM) launched a new website. It functions as a virtual wall of shame: it publishes reports by non-governmental organizations (NGOs) accusing states of non-compliance with ECtHR judgments. The chapter is based on findings from an analysis of all the reports posted in the first four years of the website’s existence. The findings suggest that NGOs focus their attention on severe violations and legally significant issues.

The upshot of these findings is that opening the arena of reputational sanctions to diverse NGOs – NGOs which are only loosely connected to each other and often have a separate set of clearly defined goals – may help to make states’ reputations more accurate and useful. Loosely connected actors are less likely to follow each other without personal reflection, a problem which could lead to so-called ‘cascades’ of views.

An analysis of the reports, together with interviews with some of the NGO activists who submitted them, also suggests that high-reputation states – states that usually comply with international law – have more to lose from reputational sanctions than low-reputation states. High-reputation states are therefore likely to change their behaviour when publicly shamed – giving NGOs an incentive to focus their attention on those states. This finding lends empirical support to a key assumption underlying many studies about reputation;

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namely, that the higher a state’s reputation, the more it has to lose from criticism of its practices. While many of these studies do not apply the formal tools of social network analysis, they explain a similar phenomenon with a slightly different methodology.

Part I introduces the methodology of social network analysis. Part II explains the case-study reviewed in this chapter – the website used by the CM. Part III presents the main findings of the empirical research conducted on that website. Part IV provides a theory, grounded in social network analysis, to explain the advantages of NGOs in transmitting information on state non-compliance. Part V examines the insights that the findings may lead to regarding the nature of state reputation. Part VI concludes.

I SOCIAL NETWORK ANALYSIS

How many degrees of separation are there between two randomly selected people in the United States?1 Which one of your friends is most likely to help you get your next job?2 Who are the most innovative people in an organization?3 These questions, and many more, are explored by social network analysis. This social science methodology shows that systematically examining the social connections of individuals can lead to interesting predictions about their behaviour.4

The workhorse of social network analysis is the sociogram – a formal depiction of the connections between individuals or organizations. The agents forming the network are often referred to as ‘nodes’ and the connections between them as ‘ties’. Ties may include any form of relationship between the nodes that can lead to the transmission of material goods or information. The advantages of this framework for investigating relations between institutions and political entities are evident. The sociogram can help determine how easy it is to transmit information from one node to another, and help raise hypotheses about the way agents within the network are likely to act.5 The ability to control the flow of information is a powerful asset and can determine the social power an individual can exert over others.

The ties between individuals can be weak – people we rarely talk to and know little about – or they can be strong. Ties can be symmetrical; namely, each agent is connected to the other with the same type of tie, or they can be asymmetrical – situations in which one agent forms a link to another that is not connected to it in a similar way. Some individuals

are not connected directly, but they are connected indirectly, through their ties to mutual acquaintances.

The literature on social network analysis raises some counter-intuitive claims about the nature of ties. For example, weak ties are sometimes incredibly important for revealing information and changing human behaviour. The reason is that people we do not know well usually know a lot of other people we do not know, whereas our close acquaintances mostly know people we are already familiar with. Weak ties can form the sole connection between groups that are otherwise separate from each other. These groups are divided by so-called ‘structural holes’ – a term used in the literature to describe the scarcity of social ties between groups that are densely connected within themselves. The individuals who form the rare bridges between these distinct groups are known as ‘brokers’. Because their unique institutional position allows them to transfer ideas and important information across the groups, brokers are usually especially innovative and successful.

The social network may have a profound effect on human behaviour. It is now common knowledge that people do not make all their decisions rationally. Rather, they act based on a variety of biases and heuristics that have been investigated in the growing field of behavioural economics. When individuals interact, they may be biased by other individuals. This may result in a cascade – a situation in which people follow each other without making a fully independent decision. Reputational cascades are situations in which individuals decide a certain way because they fear the social repercussions of going against the group. Informational cascades are situations in which people try to learn from each other’s behaviour in order to improve their own decisions.

The institutional framework in which people act may determine their behaviour in combination with their personal cognitive biases. Institutional structures matter because they shape the way biased individuals interact and collectively navigate the organization as a whole. Yet one of the key findings of social network analysis is that the social network in which people are embedded may determine their behaviour even more than formal institutional boundaries such as, for example, firm structures.

Decades before the rigorous tools of social network analysis were used in legal scholarship, the legal literature already had a keen interest in how social relationships affect human behaviour. Scholars investigated the way ‘close-knit communities’ of farmers

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10 See James March and Herbert Simon, Organizations (Wiley 1958) ch. 6.
settle disputes, and how communities of merchants regulate their behaviour. There are other accurate tools for studying the way relationships affect conduct. One of these tools is game theory, which helped to elucidate the behaviour of medieval traders, for example. But social network analysis developed methods to analyse large amounts of sociological facts, which made it a favoured methodology for current legal research and recently also for research on international law.

In fact, social network analysis is particularly promising for international law, because the literature in the field has been immensely preoccupied with social networks, even if it did not analyse them by using sociograms. Scholars have highlighted, for example, the importance of ties between public officials operating in different countries for the development of international law, and studied the influence of networks of legal experts. The application of social network analysis to international law has a bright future ahead of it.

II THE CASE-STUDY: A NEW SHAMING WEBSITE FOR THE ECtHR

The ECtHR is the most prolific international court in history. It has issued thousands of important judgments and continues to do so at a rapidly accelerating pace. The court’s judgments cover violations of the Convention for the Protection of Human Rights and Fundamental Freedoms (Convention). These include severe violations such as infringements of the right to life or of the right not to be subjected to torture, as well as violations of many other human rights such as the rights to privacy, freedom of religion, and a fair trial.

Although data on the exact rate of compliance with the ECtHR is hard to come by, most scholars agree that the ECtHR’s judgments are regularly complied with.\textsuperscript{21} Nevertheless, the ECtHR lacks an effective system for enforcing its judgments on recalcitrant states.

The body charged with enforcing ECtHR judgments is the CM, not the court itself.\textsuperscript{22} The CM monitors compliance using the Department of Execution of Judgments (DEJ). These organizations review compliance with all aspects of the ECtHR judgments. Usually ECtHR judgments give states the freedom to choose the means of amending their violations. These means regularly include both specific measures necessary to amend the violation and general measures – such as statutory changes – that would prevent future violations from occurring.\textsuperscript{23} In addition, ECtHR judgments often require states to pay compensation, known as ‘just satisfaction’, for damages not covered by the state’s domestic laws.\textsuperscript{24}

In theory, the CM can expel a state from the Council of Europe if it fails to comply with the ECtHR’s judgments.\textsuperscript{25} But this extreme measure has never been used\textsuperscript{26} and is politically unthinkable in most situations. The CM has to limit itself to reputational sanctions against non-complying states. It can use its resources to shame states into compliance.

After an ECtHR judgment is issued and becomes final, the DEJ starts to negotiate with the state over how to remedy the violation. No more than six months after the judgment becomes final, the state is required to submit an ‘action report’ – a document that describes the measures that the state already took to comply with the judgment, and a timeline for taking further necessary measures. If a state fails to comply in a timely manner, the CM will hold discussions about its behaviour and request it to improve its conduct. If the state continues to drag its feet, the CM may issue a public condemnation of the state, known as an ‘interim resolution’, which criticizes the state for non-compliance and calls on it to amend its ways.\textsuperscript{27}

To facilitate the shaming efforts of states, the CM divides the cases that await compliance into two separate tracks: standard procedure and enhanced procedure. Cases of persistent non-compliance are directed to the enhanced procedure, and they are regularly discussed at the CM meetings.\textsuperscript{28} Another institutional tool used by the CM is to group together cases resulting from the same general widespread problem behind one ‘leading case’ and supervise compliance of that leading case together with all the other cases that raise the same violation.

In 2011, the DEJ launched a new website that publishes all the action reports issued by the states and the interim resolutions issued against them. This makes all the vital

\textsuperscript{22} Convention, Art. 46(2).
\textsuperscript{24} See Convention, Art. 41.
\textsuperscript{25} See Statute of the Council of Europe, Art. 8.
\textsuperscript{26} Although no state was formally expelled, Greece did in fact withdraw from the Council of Europe in 1969 under threats of expulsion; see Shai Dothan, ‘Judicial Tactics in the European Court of Human Rights’ (2011) 12 Chi J Int’l L 115, 119, 139.
\textsuperscript{28} See ibid, at 532.
information about the states’ compliance status publicly available. In addition, according to Rule 9.2 of the CM Rules, the CM can consider communications from NGOs and national human rights institutions. The CM receives these reports and sends them to the state, which has five days to respond to them if it so chooses. After five days, the report and any response the state chooses to give are published on the DEJ’s website.

From the creation of the website until December 2014, 266 NGO reports were published. They concerned 137 different ECtHR judgments. The reports were filed by over 200 NGOs; many of them were small and specialized organizations. Frequently, several NGOs participated in filing the same report, or in filing separate reports about the same judgment.

III THE HYPOTHESES AND THE EMPIRICAL FINDINGS

The debate over the effects of reputation in international law rages on in academic discussions, but also between diplomats, in newspapers, and in water-cooler conversations. Some seem to think that the agents of shaming that create reputational sanctions in the international arena, such as NGOs, focus on trivial violations, while others argue that shaming efforts focus on severe human rights infringements and important issues. Some adhere to the view that states that usually break the law are exposed to the majority of shaming efforts because every accusation against them is believed, repeated, and exaggerated. In contrast, others believe that states with high reputations consider their good name crucial and are willing to make great sacrifices to preserve it; agents of shaming recognize this vulnerability of high-reputation states and disproportionately focus their shaming efforts on them.

Those who think that reputational sanctions are unjustified and focus on low-reputation countries often accuse the West of neo-colonialist policies in the guise of human rights protection.29 In contrast, those who argue that developed high-reputation countries are usually the target of reputational sanctions, which are often unjustified, view the international system of reputation with cynicism; they see it as a useless source of annoyance for well-behaving countries.30 Those who believe that reputational sanctions target meaningful violations and cause embarrassment and damage to bad actors, view

29 Russian politicians often claim that NGOs receive funding and support from Western powers so they can undermine Russia’s interests; see Timothy Heritage, ‘Putin Says West may use NGOs to Stir Unrest in Russia’ Reuters (London 7 April 2014) <http://www.reuters.com/article/us-russia-putin-security-idUSBREA3619X20140407> accessed 4 July 2017.

30 Former Israeli Foreign Minister Avigdor Liberman insinuated that the international community is focused on trivial violations, while atrocities go unnoticed: ‘Luckily, the European Union knows how to recognize critical problems in the world and to deal with them quickly and decisively. While the world struggles to solve the crisis in Ukraine, while innocent people are slaughtered in Syria, while suicide bombings continue in Iraq, the EU’s foreign policy chief Catherine Ashton has issued a statement about the real danger to world peace and has called on Israel to reverse its actions against the Palestinians.’ See Tovah Lazaroff, ‘Liberman Slams Remarks by EU’s Ashton against Construction in Settlements’ Jerusalem Post (Jerusalem, 18 April 2014) <http://www.jpost.com/Diplomacy-and-Politics/Liberman-slams-EUs-Ashton-for-remarks-on-Israeli-measures-against-Palestinians-349880> accessed 4 July 2017.
the system of reputation as an enlightened way to support the hegemony of law-abiding countries.31 Finally, those who believe that reputational sanctions focus on severe violations and that it is high-reputation countries that are usually the subject of shaming, are optimists. They believe that the system of reputational sanctions actually focuses on states that care about their reputation enough to improve their behaviour.32

These four points of view are summarized in Table 16.1.

Table 16.1 Four hypotheses about the nature of reputational sanctions

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<th>Low-reputation states are vulnerable</th>
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To determine which hypothesis is better reflected in the actual behaviour of NGOs, the study I made into the subject used both quantitative and qualitative methods.33 The study employed a series of empirical proxies to conduct a quantitative investigation of the issues NGOs tend to focus on. This analysis compared cases that were the subject of a NGO report with other cases from approximately the same period that did not lead to a NGO report. Later, the analysis compared cases that led to special NGO attention (two reports or more, filed by two NGOs or more, and totalling 11 pages or more) to cases that led to only minimal NGO attention (one report, filed by one NGO, and holding no more than 10 pages). If NGOs tend to file more reports on cases of a certain type on the DEJ’s website, there is reason to believe that they focus their limited resources on cases of this type in other potential fora as well.

By coding the Convention articles which the court determined were violated, as well as the amount of just satisfaction granted, the study reveals a focus by NGOs on severe violations. By employing proxies such as the HUDOC categorization of the legal importance of cases and the tendency to use the Grand Chamber – reserved for cases of special legal significance – the study shows that NGOs focus on cases that are legally important.

31 Some authors portray civil society organizations as a good means for changing the behavior of rogue states. They argue that these organizations, precisely because they pose no direct threat to the power of criminal regimes, can lead to peaceful and stable solutions. See Peter T. Coleman ‘Communicating with Rogue States: The Power of the Weak – The UN Needs Bottom-Up Civil Society Actors to Help Break Deadlocks’ The Five Percent (New York, 15 April 2013) <http://www.psychologytoday.com/blog/the-five-percent/201304/communicating-rogue-states-the-power-the-weak> accessed 4 July 2017.

32 For theories that adhere to the view that reputational sanctions effectively shape the behavior of states and are especially potent when used against high-reputation states see Andrew Guzman, How International Law Works – A Rational Choice Theory (Oxford University Press 2008); Dothan, supra n 21.

Investigating the type of states that NGOs focus on is slightly more difficult, particularly because people can reasonably disagree about which are the ‘high-reputation’ states and which are the ‘low-reputation’ states in Europe. The study used data provided by the ECtHR and the CM on the number of pending cases against states, the number of judgments that found the state in violation, and the number of cases awaiting compliance, among others, to classify states according to their compliance behaviour. The findings indicate that for every judgment issued against a high-reputation state, such as the UK or France, there are proportionally more cases that attracted NGO reports than for a case against a low-reputation state, such as Russia or Turkey.

After excluding several other potential explanations, and following a series of interviews with NGO activists and lawyers, the conclusion that emerges is that there is a strategic reason behind the focus of NGOs on high-reputation states. NGOs are trying to change the world, at least within their limited realm of interest. They believe that state officials in high-reputation states care more about the international reputation of their country than their counterparts in low-reputation states. Focusing on high-reputation states is a rational response to that difference. NGOs invest their resources in criticizing high-reputation states because these states are more likely to improve their behaviour as a result of shaming, while low-reputation states are less likely to do so. The empirical findings of this research confirm the optimist hypothesis described above.

IV CRAFTING A ‘BANDWIDTH’ WORLD

The reputation of states is a belief about their future behaviour, based on observations of their past behaviour.34 When states are accused of failing to comply with ECtHR judgments, their reputation is damaged. The presumption is that states which failed to comply with the ECtHR in the past will do the same in future as well.

Accurately assessing a state’s reputation is a difficult task. The difficulties begin with the assessment of the specific state’s actions. The actual actions that states take in order to comply with the judgment are often unknown. Without this information, it is impossible to know whether or not the state complied. But even if information about the state’s conduct is publicly available, problems may occur in interpreting this information. Reasonable people may disagree about how to interpret cases of partial compliance – namely, compliance with only some of the dictates of the court. Another problem is how to treat delayed compliance. If a state only complies long after the judgment was issued, should this reflect positively on its reputation? And what if conditions have materially changed since the judgment was issued, rendering compliance either easier or simply meaningless: should the state still be portrayed as law-abiding?

Another difficulty in assessing the reputational effect of compliance relates to the cost of compliance for the states. Costly compliance is a much stronger signal of a state’s commitment to the international community than costless compliance. Yet the real costs of compliance for the state are difficult to calculate. Some judgments may entail long-term

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political repercussions that are either hard to predict or known only to a few of the state’s public officials. External observers can rarely know for sure the magnitude of the sacrifice a state would make by compliance.

Nevertheless, observers of states’ actions usually possess some information about the price states are paying by their compliance behaviour, even if this information is imperfect. If independent assessments of the state’s past behaviour multiply, provided they are not systematically biased in a certain direction, mistakes would naturally balance themselves out. The international community will be left with an accurate perception of the state’s willingness to comply with international law.

The problem with this story is that states and other organizations do not assess states’ reputation independently. When someone hears an accusation of a state for non-compliance, that person may repeat the accusation to others. The person repeating the accusation may possess a prior belief about the state’s conduct, which could potentially bias the story she will tell. The people hearing the retold story may not accept it at face value either. They may question some of the details and build their own new assessment of the state’s reputation conditioned on their own prior biases.

Drawing on existing theories in social network analysis, people’s tendency to exaggerate on the one hand and to doubt the information they receive on the other, brings to mind two competing hypotheses. The first hypothesis suggests that a dense network of people who know each other well would result in augmenting the biases held by people within the network, and in wildly inaccurate assessments. This is known as the Echo Hypothesis. It results from the reputational pressure exerted on people in a close-knit community to conform to the rest of the group, as well as from an unwarranted willingness to believe accusations heard in communities of this kind. The second hypothesis suggests that a densely connected network will minimize the biases of people within the group and lead to increasingly accurate assessments. This is known as the Bandwidth Hypothesis. It results from the fact that every member of the network knows enough about the others to treat their statements with the right level of trust or suspicion mandated by their biases.

Social scientists use complex tests to verify which of these hypotheses better explains behaviour within specific societies. The international community is far too complex to conduct such scientific tests on states’ reputation for compliance with international law. But insights from existing research can be fruitfully applied to understand the findings from the case-study discussed in this chapter.

In a nutshell, the case-study suggests that the community of NGOs participating in the new website of the CM forms a ‘bandwidth’ world. Their network is one in which information flows well and prior biases do not taint the assessments collectively held by the group. NGO reports focus on the most severe violations and on legally important

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35 See Maxwell L. Stearns, ‘The Condorcet Jury Theorem and Judicial Decisionmaking: A Reply to Saul Levmore’ (2002) 3 Theo Inq L 125, 130–1 (demonstrating how the Condorcet Jury Theorem works by leading to the choice of the right decision by the majority when mistakes are spread randomly and therefore balance each other out). See Shai Dothan, ‘The Optimal Use of Comparative Law’ (2014) 43 Denv J Int’l L and Pol’y 21, 23 (explaining the essence of the Jury Theorem, according to which the majority decision in a group of independent decision makers is likely to be correct).

36 See Burt, supra n 3, at 167–8.
cases. As well they should. The NGOs in the database invest most of their energy on the issues that matter most.

What explains the bandwidth effect observed in the NGO community? The first quality that allows NGOs to process information correctly without cascading after other NGOs is their relative independence. While NGOs do collaborate with and learn from each other, they are not committed to following each other in every case. Every NGO has its own agenda, and it is not obliged to succumb to external pressures.

Scholars addressed the problem of surrendering to peer-pressure by the use of so-called ‘threshold models’. A threshold can be described as the number of accusations by others that any NGO has to hear before it will inevitably issue a similar accusation itself. The closer the connection between NGOs, the lower this threshold will be – fewer accusations will be necessary to force the NGO to conform.\(^{37}\) Low thresholds are the perfect breeding grounds for false rumours. Because NGOs are not connected to one another by powerful social ties, they do not easily follow every accusation by another NGO. They have high thresholds. This allows a group of NGOs to produce good information.

Experimental evidence about the results of group deliberation can help throw further light on the mechanisms that lead to NGOs’ success in processing information. Cohesive groups are subject to powerful social pressures to conform.\(^{38}\) They may easily fall prey to reputational cascades: members would follow each other because non-conformist behaviour can lead to severe reputational costs. This results in groups that adopt extreme views after deliberation; the interaction between highly connected individuals pushes them away from the truth. NGOs are resistant to these failures exactly because they are not a cohesive group. The price of going against the current is not so high for them. This protects them from adopting extreme and inaccurate views.

There is another mechanism that may corrupt the information processed by certain groups. If members of the group are similar to each other, they are likely to view the world in a similar way. The result is a limited number of potential arguments that are available within the group. When group members are only exposed to a limited and skewed pool of arguments, they are likely to be pushed towards more extreme views that sit well with this pool.\(^{39}\) NGOs are resistant to this dynamic because they are so different from each other. Some are big and some are small. Their personnel is drawn from different countries and different cultures. They have widely divergent agendas. The NGO community has room for a variety of views. This protects it from going to extremes.

NGOs have another quality that was proven advantageous by the experimental literature: they have narrowly defined roles. The Lithuanian Gay League fights for equality of people of all sexual identities in Lithuania. It has a specific role to play in the world, and the reports it files are likely to reflect that specific role. Experiments have shown that specific roles which are known to the rest of the group help prevent the corruption of information in group deliberation.\(^{40}\)


\(^{38}\) See Sunstein, supra n 9, at 90–2.

\(^{39}\) See ibid, at 89–90.

\(^{40}\) See Sunstein and Hastie, supra n 9, at 111–12.
The qualities mentioned above make the investigated community of human rights NGOs good at collectively processing information about states’ human rights behaviour. One can contrast this community with the group of states in the Council of Europe itself, a group originally envisioned as the paramount protector of human rights in Europe. The Convention allows European states to bring cases against any other state in Europe, even if they were not a victim of the violation in any way. The framers of this provision imagined that states would act against human rights breaches in other states. Yet the reliance on states to discipline other states resulted in complete failure. Throughout the court’s history, states brought only a few cases and many of them were clearly political pay-backs.

What is wrong with the community of states? Pretty much everything that is right about the group of NGOs in the database. States are connected to each other in a dense network of alliances and loyalties. When the allies of a state make an accusation, the state may be motivated to follow suit. Far more commonly, states may try to avoid criticizing other states in order not to make unnecessary enemies and to avoid potential countermeasures. States do not have a specific agenda that they are committed to. Instead, they are trying to serve the multiple interests of their citizens and their leaders.

Human rights violations in one country are unlikely to elicit a potent reaction from other countries in the region. In contrast, states may also use unmerited accusations of other countries as a method of reprisal. False accusations may be repeated by other countries because of reputational pressures. This is a dynamic that produces inaccurate information. It is an ‘echo’ world.

States, however, have one advantage over NGOs: they are politically accountable for their actions. Because NGOs are so cheap to operate, interest groups may use them to accusation others with relative impunity. NGOs can function as marionettes of states and form so-called GONGOs – governmental NGOs. Despite this potential danger, the transparency of the DEJ’s website – the fact that it allows any NGO to post its own reports and to criticize the information provided by others – probably accounts for its success in providing an accurate picture of the violations committed by states in the Council of Europe.

V THE MAKING OF STATE REPUTATION

The willingness of states to comply with past ECtHR judgments is a useful proxy for the states’ future willingness to comply with the ECtHR. This willingness can be called the state’s ‘compliance reputation’. If reputational signals are not systematically biased, then the beliefs about states’ compliance behaviour will become increasingly accurate over time. Each new signal will improve the assessments held by the community about the states’ reputation.

Why do states care so much about projecting a high compliance reputation? True, states may care about signalling good human rights practices to their neighbour states, but this
is only a small part of the story. When a state complies with a judgment, it accepts an immediate cost to its national interests. States may be willing to accept this cost because it can lead to future benefits from the international community. The cost is immediate and the benefit is delayed. States that care enough about the future to sacrifice the present are signalling what is known as a ‘low discount rate’ – the tendency to view future gains as important.43 This signal is what states are willing to pay for.

States with a low discount rate are considered reliable treaty partners because they will not be tempted to renge on their commitments for quick gains. Such states are likely to get better deals in international negotiations. This forms their future gains. The circle is now closed: states that willingly sacrificed their present interest and credibly signalled to the international community their low discount rate are compensated for their efforts.44

A variety of political and social behaviours have been explained by scholars as attempts to signal a low discount rate. Scholars have suggested that states signal their low discount rate by protecting human rights,45 and by complying with international human rights obligations.46 Some even argue that simple social behaviours such as displaying a national flag can help people signal their low discount rate to their acquaintances.47 The reputation of states for compliance with international law has also been explained by the efforts of states to signal their discount rate.48 The willingness of states to comply with ECtHR judgments is another indication of their discount rate.49 Because this signal is connected to the general assessment of future as compared to present gains, it has implications that far exceed the concerns of the human rights community in Europe.50

The empirical research described above suggests that officials in high-reputation states care more about the reputation of their states than do officials in low-reputation states. This implies that a high-reputation state stands to lose more from the same accusation of

43 See Guzman, supra n 32, at 34.
44 A signal is only credible if it is costly. The cost of sending the signal helps separate groups according to their true types and prevents actors from trying to signal false information. See Michael Spence, ‘Job Market Signaling’ (1973) 87 Q J Econ 355; Michael Spence, Market Signaling: Informational Transfer in Hiring and Related Screening Processes (Harvard University Press 1974) 16–20 (developing a theory of signalling as a solution to problems of asymmetric information). See Amotz Zahavi and Avishag Zahavi, The Handicap Principle – A Missing Piece of Darwin’s Puzzle (Oxford University Press 1997), page XIV (developing a similar theory of signalling to explain traits acquired by evolution. For example, the long tail of the male peacock is a costly signal because it makes it harder for the peacock to escape from predators. Such a tail can signal to the females that the male is strong and fast enough to survive despite the long tail).
48 See Guzman, supra n 32, at 35.
49 See Dothan, supra n 21, at 15–16.
50 Cf. George W. Downs and Michael A. Jones, ‘Reputation, Compliance and Development’ in Eyal Benvenisti and Moshe Hirsch (eds), The Impact of International Law on International Cooperation – Theoretical Perspectives (Cambridge University Press 2004) 117, 118 (arguing that reputational signals generated by compliance can predict future behavior only with regard to agreements with similar compliance costs which are valued by the state the same or less).
human rights violations than would a low-reputation state. That finding confirms one of the key assumptions underlying the literature on reputation.

Scholars regularly assume that high-reputation states lose more from reputational sanctions than low-reputation states because of the intuition that misbehaviour by high-reputation states goes against strong prior expectations of the international community. An act that goes against prior expectations requires a greater shift of the international community’s beliefs than an act that is naturally expected, such as non-compliance by a low-reputation state.\footnote{See Oona A. Hathaway, ‘Between Power and Principle: An Integrated Theory of International Law’ (2005) 72 U Chi L R 469, 510; Guzman, supra n 32, at 83; Dothan, supra n 21, at 13.} While this intuition is compelling, it is good to see that it concurs with the facts.

The fact that states become increasingly vulnerable to reputational sanctions when their reputation rises plays a key role in making state reputation a valuable tool in international politics. States change from one government to the other, and the conditions under which states operate also change rapidly.\footnote{See Rachel Brewster, ‘Unpacking the State’s Reputation’ (2009) 50 Harv Int’l L J 231, 249; Rachel Brewster, The Limits of Reputation on Compliance (2009) 1 Int Theor 323, 326, 328 (arguing that because governments are usually short lived, they will not consider the long-term reputational effects of their actions on the state).} To ensure that the reputation of states as perceived by the international community will concur with the states' current willingness to comply with international law, states must face different penalties for non-compliance. A high-reputation state is expected to comply with its international obligations. If it fails to comply, its reputation must be severely decreased so that the expectations of the international community will be adjusted to the actual current practices of the state. If a low-reputation state is caught in exactly the same act, it should lose less reputation because the international community already expects it to flout its legal obligations.

VI CONCLUSION

Social network analysis is proving increasingly useful to legal scholarship. It gives scholars a way to empirically test the way social ties affect the behaviour and the practice of institutions. Constructing an accurate sociogram is often difficult or impossible, but existing literature from social network analysis has already produced theories that can be fruitfully applied to design and test hypotheses using other empirical methods. This chapter demonstrated such an empirical investigation, with findings that can be interpreted and generalized using the tools of social network analysis.

Empirical findings from the analysis of reports uploaded to the DEJ’s website support the hypothesis that NGOs focus on severe and legally important violations and invest more in criticizing high-reputation states. Interviews with NGO lawyers suggest that the focus on high-reputation states stems from the higher value these states put on their reputation compared to low-reputation states. The greater value that high-reputation states put on their reputation increases the chances that they will amend their ways in response to criticism.

The first implication of these findings is that involving multiple independent and
diverse NGOs in the shaming of states improves the quality of shaming efforts. In some situations, a community engaged in shaming may become systematically biased because each member of the group is influenced by other members. This problem seems not to plague the organizations using the website. They focus their attention on the issues that matter the most. Operating a platform like the DEJ’s website that allows NGOs to be effectively involved may therefore be the key to improving the accuracy of state reputations. According to the terms used in social network analysis, it may sustain a ‘bandwidth’ world.

Provided that the information flowing between NGOs is indeed accurate, their focus on high-reputation states gives empirical support to the claim that reputational sanctions are more painful for those who already possess a high reputation. States who wish to improve their reputation must consequently experience increasing costs over time. States are expected to comply with their obligations when the cost of doing so is lower than the reputational costs of non-compliance. Because these reputational costs are higher for high-reputation states than for low-reputation states, high-reputation states are expected to comply even with demanding judgments. If they choose not to do so, they would quickly lose their reputation as a result.53

The CM is not only an arena for shaping and updating state reputation. It also gives states a way to improve their reputation by complying with the ECtHR judgments against them. Without a centralized system to assess the compliance of states with their international obligations, accusations against states can persist regardless of the states’ future actions. In contrast, the ECtHR turns accusations about state misconduct into a clear description of Convention violations. The CM, in turn, monitors the compliance efforts of states and gives the international community an updated picture about the price states are willing to pay to adhere to their obligations under the Convention.54 The price states are willing to pay credibly signals their reputation.

53 Because the exact cost of compliance is unknown to the international community, every act of compliance will add to the state’s reputation and every act of non-compliance will damage it. Nevertheless, the higher the state’s reputation and the lower the costs of compliance estimated by the international community, the higher will be the reputational damage caused to the state. See Dothan, supra n 21, at 14. Guzman uses a slightly different model according to which states whose actions concur with the expectations from them do not increase their reputation, but their reputation becomes more stable and entrenched. See Guzman, supra n 32, at 83–4.

54 See Lisa Bernstein, ‘Opting Out of The Legal System’ supra n 13, at 126 (explaining that a penalty accepted by the relevant community may be vital to repair the reputational damage caused by a violation).