INTERNATIONAL LAW AND STATE SOCIALIZATION: CONCEPTUAL, EMPIRICAL, AND NORMATIVE CHALLENGES

RYAN GOODMAN†

DEREK JINKS††

Debates about how best to design international legal regimes inadequately attend to the ways in which law influences state behavior. As a consequence of this deficiency, much of international law is founded upon the flawed, and often unexamined, assumption that effective legal regimes must either coerce or persuade target actors to comply with their requirements. In *How to Influence States: Socialization and International Human Rights Law*, we argue that (1) acculturation is a conceptually distinct social process through which law might influence state behavior; and (2) the elements of the acculturation process suggest several regime design characteristics unorthodox to human rights law.[1] More generally, we maintain that the behavioral assumptions of international legal regimes must be more systematically theorized and investigated.[2] Proper specification of the social mechanisms of law's influence, we argue, would facilitate the development of an integrated theory of regime design—one that accounts for the various social mechanisms, specifies the conditions under which they predominate, and identifies the regime design features that best harness these forces.[3]

In thoughtful and probing reply essays, Dean Harold Hongju Koh and Professor José Alvarez raise several important questions

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† J. Sinclair Armstrong Assistant Professor of Foreign, International, and Comparative Law, Harvard Law School.

†† Assistant Professor of Law, University of Texas School of Law.

1. Ryan Goodman & Derek Jinks, *How to Influence States: Socialization and International Human Rights Law*, 54 DUKE L.J. 621 (2004).

2. *See id.* at 624 (suggesting that the emphasis on whether law matters, characteristic of the "first generation" of empirical international legal studies, has given way to a sustained inquiry into the specific ways in which law matters, the "second generation" of empirical international legal studies).

3. *Id.* at 627–28.

about our argument.[4] Broadly sympathetic to our view, Dean Koh and Professor Alvarez direct much of their commentary to ways in which the project might be refined and ways in which the descriptive claims might be tested empirically. In this brief response, we do not offer a comprehensive rebuttal to their essays. Instead, we seek to clarify our project in a few theoretically crucial respects through a focused consideration of three important themes that recur in the replies. Specifically, we discuss (1) the need for case studies documenting in detail the processes whereby, and the actors through which, global norms diffuse; (2) potential deficiencies in our model resulting from a failure to account for important variables; and (3) features of acculturation that question its conceptual coherence and its normative appeal.

I. CAUSAL PATHWAYS

Dean Koh and Professor Alvarez suggest that more fine-grained empirical work is required to document the specific causal pathways by which law influences states. We agree. Further empirical research is required to illustrate more concretely how states are acculturated. In our view, sufficient evidence supports the proposition that states respond to global cultural forces, but this evidence says little about how this process works. Our conceptual analysis of the mechanisms of social influence, for expositional clarity, is pitched at a fairly high level of abstraction. Although useful theoretically, some important questions remain unanswered. States, as such, are not socialized— they are not coerced, persuaded, or acculturated.[5] Rather, state practice ultimately reflects the socialization of relevant individuals.[6]

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4.   José E. Alvarez, *Do States Socialize?*, 54 DUKE L.J. 961 (2005); Harold Hongju Koh, *Internalization Through Socialization*, 54 DUKE L.J. 975 (2005).

5.   *See* Alvarez, *supra* note 4, at 969 ("In common parlance, states (or 'organizations' in the abstract) do not 'socialize'; people do."); Goodman & Jinks, *supra* note 1, at 654–55 (noting that government representatives, special interest groups, or domestic audiences may be the causal pathway to state acculturation).

6.   This is not to say that state-level analysis is ill conceived or unimportant. Indeed, states, like many complex organizations, are purposive actors embedded in a wider institutional environment. Moreover, states are highly legitimated actors imbued with legal rights and obligations. As such, the study of "state behavior" is coherent and important. *See, e.g.*, José E. Alvarez, *Do Liberal States Behave Better? A Critique of Slaughter's Liberal Theory*, 12 EUR. J. INT'L L. 183, 243–45 (2001) (critiquing liberal theories for their failure to recognize that "states may continue to operate as unitary units"); Alexander Wendt, *The State as Person in International Theory*, 30 REV. INT'L STUD. 289, 289 (2004) ("But all of this discussion assumes that the idea of state personhood is meaningful and at some fundamental level makes sense. In a

The remaining questions concern which individuals are socialized, in what ways, and under what conditions.

As Dean Koh and Professor Alvarez point out, case studies are an important means of addressing these questions. Case studies would help identify, with some precision, how each of the mechanisms operates and the axes along which states vary in their amenability to coercion, persuasion, and acculturation. The need for case studies, though, does not diminish the importance of the theoretical claims at the heart of our Article. Theoretical models based exclusively on coercion or persuasion fail to explain some important aspects of the processes by which international law is received into domestic legal systems.[7] Case studies will provide findings that are both more satisfactory and more useful if they develop mechanism-based explanations of observed outcomes and if in doing so they account for all three mechanisms of social influence. Finally, case studies, although indispensable, must not displace world-level studies that illuminate important global patterns discernable only in the aggregate. If we were to conduct in-depth case studies of recent constitution-making processes in, say, one hundred states, we would likely discern a bewildering diversity of national cultures, institutional structures, important players, driving personalities, and the like. No two processes would look exactly the same. Yet, global patterns of state practice convincingly demonstrate that national constitutions are strikingly (and increasingly) similar. Overemphasis on the idiosyncratic would obscure potentially significant regularities. The lesson is clear: case studies should supplement, but not displace, the broader theoretical project of explaining how and why these global patterns emerge.

Consider Professor Brian Simpson's excellent article about Britain and the Genocide Convention—discussed at length by Professor Alvarez.[8] Professor Simpson's article clearly exhibits some of the strengths and weaknesses of the case study approach. It also demonstrates the importance of mechanism-based theorizing

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field in which almost everything is contested, this seems to be one thing on which almost all of us agree.").

7. *See* Goodman & Jinks, *supra* note 1, at 625 (noting that models based on coercion "fail[] to grasp the complexity of the social environment within which states act" and models based on persuasion "fail[] to account for many ways in which the diffusion of social and legal norms occurs").

8. A.W. Brian Simpson, *Britain and the Genocide Convention*, 2002 BRIT. Y.B. INT'L L. 5, *discussed in* Alvarez, *supra* note 4, at 962–967.

generally and the inadequacy of approaches based exclusively on coercion and persuasion. We discuss each of these points briefly. We should, however, make clear that our claims here are not critical of Professor Simpson's study. Professor Simpson meticulously documents the complex events surrounding Britain's decision to ratify the Genocide Convention, describing these events in narrative fashion. He does not purport to demonstrate or test specific theoretical claims.[9] The work is not devised to demonstrate that any particular factor—such as bureaucratic politics—has a causal influence on the inculcation of a norm. Deriving general lessons from this particular study thus requires a theoretical model to explain what is significant and why. Our aim here is to explicate, by reference to Professor Simpson's study, the strengths and weaknesses of case studies for this larger endeavor.

First, several salient features of Professor Simpson's study illustrate the hazards of generalizing from a single case. Britain occupied a fairly anomalous position in the world. It was an economically and militarily powerful state and a stable democracy with a deep cultural and institutional commitment to the rule of law. These factors would likely implicate Britain's amenability to socialization in various respects. More fundamentally, it is unclear whether Britain was a characteristically recalcitrant state. Britain obviously accepted the genocide prohibition espoused by the Convention throughout the period under study—the ratification controversy centered on procedural aspects of the treaty. The study documents Britain's encounter with the global norm prohibiting genocide only with respect to the specific decisions to codify and ratify the Genocide Convention—only a thin slice of Britain's relationship with the norm. The inquiry into whether, when, and to what degree state socialization occurs extends well beyond identifying the determinants of treaty drafting and ratification. Some states may, for example, resist ratification even as they embrace the underlying substantive commitments of a treaty. In sum, the focus on one state and its relationship to a human rights norm at a single point in time complicates any attempt to draw conclusions that generalize to other cases. Like all good case studies, however, the specific details can help generate hypothetical theoretical propositions that might then be tested in the aggregate.

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9. Indeed, Professor Simpson expressly disclaims any attempt to do so. *Id.*

Second, Professor Simpson's study demonstrates that much is missed by conceptual models relying solely on coercion and persuasion—suggesting an important explanatory role for acculturation. The study is, indeed, replete with allusions to social and cognitive pressures emanating from the global normative environment (notably bearing down on a major world power). In general, various calculations were made to "avoid embarrassment, always a powerful motive in British diplomacy."[10] The Home Office was nervous that "diplomats, driven by different motives, and always anxious to maintain British international prestige, might fail to give enough weight to their concerns."[11]

Consider the application of these general statements to the stages of codification. Initial British resistance to creating a treaty reflected the embedded nature of the norm. At that stage, many considered a treaty unnecessary[12] and a risk to established proscriptions against genocide.[13] British resistance apparently yielded due to the consensus of states expressing an opposing view. Professor Simpson states: "No other State was so dismissive; as time passed it became increasingly clear that the negative line adopted was becoming embarrassing, and could be viewed as showing indifference to genocide."[14] According to an internal British memorandum, the government's position was becoming "dangerously near unsupportable."[15] Similarly, during the drafting process, internal communications indicate various decisions were made to avoid "leav[ing] the U.K. open to the charge that we alone of members of the United Nations were not prepared to do anything to discourage

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10. *Id.* at 13; *see also id.* at 28 (noting that Sir Gladwyn Jebb, a British diplomat and member of the British delegation participating in the drafting of the treaty, "was concerned primarily with British reputation as it was affected by the negotiations in Paris").

11. *Id.* at 16 (citation omitted); *see also id.* at 19 (discussing the concern of a Home Office representative that "the Foreign Office, anxious to enhance British prestige, and to score points off the Soviets and the anti-colonial group . . . would pay inadequate attention to the problems for the Home Office").

12. *See id.* at 10 (describing "scepticism as to whether the adoption of a Genocide Convention would serve any useful purpose" including the fact that "[g]enocide was already a crime against international law").

13. *See id.* ("On 10 February 1948 Lord Chancellor Jowitt . . . made a statement which thereafter ranked as defining the Labour government's policy. A Convention was probably not necessary, and a Convention to which few States acceded might weaken the condemnation of genocide.").

14. *Id.* at 11.

15. *Id*. (quoting Home Office Minute, June 22, 1948, British National Archives, Home Office [hereinafter HO] 45/25308).

genocide."[16] Whether to vote for adoption of the Convention was another contentious issue between the Foreign Office and the Home Office. The government ultimately voted in favor after the British representative told the Foreign Secretary that by failing to do so "we shall find ourselves in a minority consisting of the Slav States and South Africa and we shall lay ourselves open to severe and, I think myself, justified criticism both in the Assembly and at home."[17] He continued that the stance of the Slavic States "provide[s] an excellent argument in support of our thesis that the Slav system is a backward one, rather than providing an occasion for us to line up with Slav states against every progressive and right thinking country in the world."[18]

On the ultimate question of whether to ratify the treaty, proponents again cited global trends as a reason to join.[19] Such arguments were weaker than they had been earlier in the treaty codification process. Unlike the consensus of states supporting adoption of the text, ratification patterns were mixed (for example, the United States was not a party).[20] Global pressures also influenced the opposition to ratification. Significantly, the principal argument against accession was based on commitments undertaken by Britain in its extradition agreements.[21] Also, a clear solution—ratifying the

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16. *Id.* at 17 (quoting Home Office Minute, July 9, 1948, British National Archives, HO 45/25308/95025/10); *cf. id.* at 22 (discussing pressure to adhere to the Convention if its adopted text closely resembled that proposed by the British).

17. *Id.* at 33 (quoting Telegram 675 from Sir Hartley Shawcross, attorney general, to Ernest Bevin, foreign secretary (Dec. 4, 1948), copy in British National Archives, HO 45/25308 & Foreign Office [hereinafter FO] 371/72693/UN 3305).

18. *Id.* at 34 (quoting Telegram 675 from Sir Hartley Shawcross, attorney general, to Ernest Bevin, foreign secretary (Dec. 4, 1948), copy British National Archives, HO 45/25308 & FO 371/72693/UN 3305). These examples help illustrate the lack of cost-benefit calculations that characterize acculturation. That is, actors compelled by reputation- and status-based concerns were not, according to Simpson's evidence, actively assessing the relative merits of the substantive norm prohibiting genocide. The British decision to conform had more to do with Britain's place in the world and its aversion to occupying an outlier position.

19. *See id.* at 44, 50 (discussing the position of the Foreign Office); *id.* at 48 (discussing a joint memorandum by the Home Office and the Foreign Office supporting accession and warning of "useful propaganda to the Communists if we failed to support a measure which had on the face of it such laudable intentions and had already been accepted, for all its limitations, by 38 States") (quoting Joint Memorandum of the Home and Foreign Offices, July 29, 1952, British National Archives, Cabinet Office 129/54 C.(52) 271).

20. *See id.* at 52 (discussing the failure of the United States to ratify as a reason for delay); *id.* at 49 ("By [1952] Australia, Canada and Sri Lanka had acceded, so the UK was becoming out of step with the Commonwealth.").

21. *Id.* at 45–47, 58.

Convention with a reservation[22]—was firmly rejected by influential Foreign Office Legal Adviser Gerald Fitzmaurice as an affront to global values inherent in treaty law.[23] The entire episode perhaps best illustrates that considerable resistance was required to withstand the normative pressure favoring ratification.[24]

The upshot of all this is that models based exclusively on coercion or persuasion fail to account for crucial aspects of the case. An integrated theory of social mechanisms that combines case studies with global-level analysis would provide a more satisfactory understanding of how coercion, persuasion, and acculturation influence states.

II. MISSING VARIABLES

Dean Koh and Professor Alvarez also identify several important variables that affect the probability of state socialization. Our model of acculturation, they suggest, is arguably incomplete (or underspecified) in that it fails to account for these important variables. These arguments, which comprise much of the replies, are useful and, up to a point, unquestionably correct. That is, we too expect that the presence and strength of all three mechanisms of social influence will co-vary with features of the sort they identify. For example, we agree with Dean Koh that the structural social position of a state affects the probability that the state would respond to social pressure.[25] We also agree with Professor Alvarez that state practice will vary according to the explanatory factors he distills from the case of Britain's ratification of the Genocide Convention—personal leadership, bureaucracy, and preexisting legal doctrine (and, more

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22. Simpson suggests that the whole debate could have been avoided if the Foreign Office had conceded this point, because the Home Office supported ratification subject to a reservation. *See id.* at 48 ("The Home Office suggested accession subject to a reservation over political asylum; this the Foreign Office, and in particular Fitzmaurice, strongly opposed.").

23. *See id.* at 54 ("[W]e have always maintained the view that it is both morally wrong and legally invalid to make reservations on articles of substance which go to the root of a Convention.") (quoting Foreign Office Minute, Aug. 19, 1960, British National Archives, FO 371/153555/UN 1643/2).

24. *Cf. id.* at 53 ("Left to themselves the [Foreign Office] would have recommended accession long ago, but we have met with solid obstruction of the kind that only the Home Office can produce.") (quoting Foreign Office Minute, Feb. 20, 1955, British National Archives, FO 371/117436/UN 16453/4).

25. *See* Koh, *supra* note 4, at 980 (discussing the examples of the United States, China, and North Korea). Dean Koh also rightly notes that the mechanics of law's influence will vary for states that have recently experienced fundamental political transition. *Id.* at 981.

generally, commitment to the rule of law).[26] And, of course, we could add several others such as regime type, national wealth, rich-poor gap, and the existence of a recent civil war.

The sort of variable-based empirical work contemplated by Dean Koh and Professor Alvarez is crucial to the development of a satisfactory theory of law's role in international politics. Our claim here is only that an integrated, mechanism-based theory of law's influence is an important, although currently neglected, step toward developing a richer, more useful, empirical understanding of international law.[27] Two considerations help explain our position. First, variable-based theorizing, though an important complement to the approach we advocate, offers no good reason to question our mechanism-based model. The aim of our project is to identify the mechanisms by which law influences state behavior—and to demonstrate the extent and significance of inconsistent regime design recommendations issuing from these various mechanisms. Whether a factor affects the presence or strength of any particular mechanism is a secondary consideration. This important conceptual distinction between the methodological orientations of mechanism- and variable-based theorizing is well understood in the social and natural sciences.[28]

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26. *See* Alvarez, *supra* note 4, at 965 ("Yet bureaucratic politics, personal leadership (or lack thereof), and positive law would all appear to be part of the necessary description of how and why Britain hesitated but ultimately joined [the Genocide Convention].").

27. By "mechanism-based theorizing," we mean simply an approach that "systematically seeks to explicate the social mechanisms that generate and explain observed associations . . . ." Peter Hedström & Richard Swedberg, *Social Mechanisms: An Introductory Essay*, *in* SOCIAL MECHANISMS: AN ANALYTICAL APPROACH TO SOCIAL THEORY 1 (Peter Hedström & Richard Swedberg eds., 1998); *see also id.* at 7 ("[A] mechanism can be seen as a systematic set of statements that provide a plausible account of how [two observed phenomena] are linked to one another."). In short, mechanism-based theorizing emphasizes causal processes rather than patterns of statistical co-variation. *See, e.g.*, James Mahoney, *Tentative Answers to Questions About Causal Mechanisms*, paper presented at the annual meeting of the American Political Science Association (Aug. 28, 2003), *available at* http://www.asu.edu/clas/polisci/cqrm/APSA2003/Mahoney_APSA_2003.pdf ("Whereas correlational analysis involves identifying antecedents regularly conjoined with outcomes, causal analysis consists of specifying the 'mechanism' that underlies and generates empirical regularities and outcomes.").

28. *See, e.g.*, JON ELSTER, ALCHEMIES OF THE MIND: RATIONALITY AND THE EMOTIONS 1–10, 36–47 (1999) (contrasting the mechanism approach with the statistical (i.e., variable) approach); Hedström & Swedberg, *supra* note 27, at 7–10, 15–17 (describing the need for mechanism-based theories and how such theories differ from variable-based analyses); Peter Machamer et al., *Thinking About Mechanisms*, 67 PHIL. SCI. 1, 2–4 (2000) (noting that mechanisms attempt "to explain how a phenomenon comes about or how some significant process works").

Second, mechanism-based theories help overcome several limitations of variable-based, correlational analysis. Mechanism-based theorizing facilitates integration of diverse correlational findings by identifying why and how factors are related.[29] Mechanism-based approaches also facilitate systematic evaluation of whether an observed relation reflects true causation—helping sort out spurious correlations and minimizing the problems of selectivity and omitted variable bias.[30]

III. NORMATIVE CONCERNS

Finally, Dean Koh and Professor Alvarez raise several questions about the normative appeal of acculturation as regime strategy. Before considering two of these questions more closely, we should emphasize that we do not maintain that acculturation is the most effective, or even the most important, mechanism of social influence in international society. Like coercion and persuasion, acculturation is more likely to succeed under certain conditions—and more likely to fail under others. Our point is that states respond to global culture just as other complex organizations respond to cultural forces in their broader institutional environments. As we document in great detail, much state practice—in areas such as education, human rights, environmental protection, and the military—is not adequately explained by coercion or persuasion models.[31] Put simply, acculturation is one social process by which states are influenced, irrespective of the relative merits of designing global regulatory regimes based on it. That said, we offer some provisional reflections on two of the normative issues raised in the replies. Our aim here is to demonstrate that acculturation-based strategies are no more

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29. *See, e.g.*, James Mahoney, *Beyond Correlational Analysis: Recent Innovations in Theory and Method*, 16 SOC. F. 575, 577 (2001). Indeed, we suspect that the correlational character of much sociological research has limited its influence in legal studies. Contrast the relevance of sociology with that of economics, which is substantially organized around the mechanisms of the market and individual wealth maximization. Mechanism-based social theories, we submit, would intersect more directly with debates about institutional design and consequently would facilitate greater reliance on sociological insights in legal research programs.

30. *See, e.g.*, Hedström & Swedberg, *supra* note 27, at 15–17; Mahoney, *supra* note 29, at 575.

31. Goodman & Jinks, *supra* note 1, at 646–56; *see also* Ryan Goodman & Derek Jinks, *Toward an Institutional Theory of Sovereignty*, 55 STAN. L. REV. 1749, 1757–65 (2003) (noting that "conventional theories of the state cannot easily explain the depth and breadth" of developments in areas such as environmental and education reform).

normatively suspect than coercion- or persuasion-based strategies (and are perhaps less so in some respects).

The first question is whether acculturation, as we describe it, would advance international regime objectives—such as the promotion of fundamental human rights—in any meaningful way. This concern is generated in large part by our own conceptual analysis of acculturation and the empirical evidence we adduce to support this analysis. On the conceptual level, Dean Koh points out that acculturation, as we describe it, constitutes incomplete persuasion—a form of partial internalization of a norm or rule. In this sense, acculturation might be understood as a second-best socialization strategy; as such, persuasion should be understood as the ultimate objective of any regime.[32] On the empirical level, Professor Alvarez questions whether the persistent decoupling of form and function documented in our Article suggests that acculturation produces, at best, shallow, cosmetic reforms in state practice.[33] Both the conceptual and empirical variations of this claim have substantial merit, but neither should be pushed too far.

As a conceptual matter, acculturation does not necessarily constitute a second-best alternative to persuasion—nor does it invariably serve as a potential bridge between coercion and persuasion in the progressive reception of a norm.[34] Indeed, the acculturation mechanism can generate complete internalization (unconditional acceptance) of a norm. And, again as a conceptual matter, this point is consistent with our claim that acculturation is often characterized by public conformity without private acceptance.

Our argument turns on the distinction between the *concept* of acculturation and the *evidence* used to document its existence. In our argument, we employ a conception of acculturation as a causal process, rather than a conception of acculturation as an outcome.[35] As we outline in the Article, acculturation is the process by which actors adopt the beliefs and behavioral patterns of the surrounding culture,

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32. Koh, *supra* note 4, at 980–81.

33. Alvarez, *supra* note 4, at 970–72.

34. *See* Koh, *supra* note 4, at 980 ("What Goodman and Jinks should clarify is that, at base, their third way—acculturation—is really an intermediate way *between* coercion and persuasion . . . ." (emphasis in original)).

35. *See generally* John W. Berry, *Conceptual Approaches to Acculturation*, *in* ACCULTURATION: ADVANCES IN THEORY, MEASUREMENT, AND APPLIED RESEARCH (Kevin M. Chun et al. eds., 2003) (describing process- and outcome-based conceptions of acculturation).

without actively assessing either the merits of those beliefs and behaviors or the material costs and benefits of conforming to them.[36] Clearly, this process, as a conceptual matter, need not result in incomplete or shallow internalization. Indeed, state actors often embrace norms because they reflect (taken-for-granted) global scripts of what "liberal" or "modern" states do.[37]

Although we rely heavily on patterns of "public conformity without private acceptance" (decoupling) to document the presence of acculturation in international society, we do so only because of the evidentiary value of these behavioral patterns. Because coercion, persuasion, and acculturation all result in behavioral change, the presence or absence of these mechanisms must be inferred from some evidence other than the simple fact of behavioral change. The question is what type of evidence suggests the presence or absence of any of these mechanisms. As we develop more fully in the Article, evidence of incomplete internalization is useful because it tends to support acculturation-based explanations and discredit persuasion-

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36. The details of the formulation offered in the text are, for many reasons outlined in our Article, of great theoretical and practical importance. *See* Goodman & Jinks, *supra* note 1, at 644–68. The acculturation process, properly understood, is not driven by "unthinking" individuals. Rather, it is *what* target actors consider (and fail to consider) that characterizes acculturation. Under acculturation, actors are motivated by neither material costs and benefits nor the inherent validity or propriety of a practice or belief. Actors, however, are *motivated* to change their behavior. As we discuss more fully in the Article, cognitive and social pressures drive acculturation. *See id.* at 639–42. These pressures motivate actors precisely because they are understood as "costs" and "benefits." Cognitive pressures induce change because actors are motivated to minimize cognitive discomfort (such as dissonance); and social pressures induce change because actors are motivated to minimize social/reputational costs. *See id.* This is not to say that actors calculate these cognitive and social costs in any precise way. Indeed, we suggest that actors hoard cognitive comfort and social legitimacy under certain conditions. *See id.* at 640–42, 645–46; *see also id.* at 642 (suggesting that the probability of conformity increases as the importance of, exposure to, and size of the reference group increases).

37. *See, e.g.*, John Boli, *World Polity Sources of Expanding State Authority and Organization, 1870–1970*, *in* INSTITUTIONAL STRUCTURE: CONSTITUTING STATE, SOCIETY, AND THE INDIVIDUAL 71, 75–80 (George Thomas et al. eds., 1987) (asserting that expansion of state authority and organization can be partly attributed to belief that such expansion is what "modern" states do); John W. Meyer et al., *World Society and the Nation-State*, 103 AM. J. SOC. 144, 145 (1997) ("Worldwide models define and legitimate agendas for local action, shaping the structures and policies of nation-states and other national and local actors in virtually all of the domains of rationalized social life . . . ."). *See generally* GILI S. DRORI ET AL., SCIENCE IN THE MODERN WORLD POLITY: INSTITUTIONALIZATION AND GLOBALIZATION (2003) (documenting the global diffusion of scientific discourse and state-level science policy by processes of emulation and mimicry).

based explanations.[38] In other words, such evidence can help arbitrate between competing, but otherwise equally plausible, accounts of why a particular norm diffuses. Even if incomplete internalization is best understood as acculturation's footprint, it is ultimately an empirical, rather than conceptual, question whether acculturation is often (or even typically) associated with public conformity without private acceptance.

As Professor Alvarez points out, the empirical record we describe suggests that incomplete internalization is common in international society. The potentially troublesome empirical finding is that structural isomorphism across states is often decoupled from functional task demands. Put differently, states often emulate global models on the organizational or formal level without effecting substantial change on the ground. In human rights law, for example, states ratify international human rights treaties and enact liberal, rights-based constitutions, but these formal changes often do not alter substantially their commitment to human rights standards in day-to-day governance.[39] In short, this pattern of state behavior exhibits public conformity without private acceptance. The theory is that states conform their formal structure to the perceived commitments of world society while acting in accordance with their idiosyncratic preferences on the ground, where state practice is perceived to be relatively insulated from global scrutiny. Given this backdrop, Professor Alvarez understandably questions whether acculturation is a normatively attractive organizing principle for international human rights regimes.

This line of reasoning, however, requires substantial qualification. The fundamental problem with this normative critique is that it is predicated on a static conception of acculturation. Acculturation sets in motion multiple dynamics that, under proper conditions, prompt meaningful change in state behavior. Although it is beyond the scope of this short response to consider these dynamics in any systematic way, we note a few important examples to illustrate

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38. Goodman & Jinks, *supra* note 1, at 643 ("Because the acculturation process does not involve actually agreeing with the merits of a group's position, it may result in outward conformity with a social convention without private acceptance or corresponding changes in private practices.").

39. *See id.* at 651 ("In general, the adoption of structural commitments or official policy goals in human rights does not necessarily entail concrete implementation."); *see also* Meyer et al., *supra* note 37, at 154–56 (describing decoupling as the adoption of structural forms without actual implementation of practices that the structural form is intended to foster and require).

the nuts and bolts of our point. Consider three: shifts in political opportunity structure, the "civilizing force of hypocrisy," and state learning.

First, "shallow" structural reform—such as the ratification of a human rights treaty or the enactment of a constitutional rights provision—often constitutes an important shift in the domestic political opportunity structure of the reforming state. These shifts often disproportionately empower groups and individuals committed to the cause of human rights—perhaps by imbuing human rights nongovernmental organizations with social legitimacy or by emboldening private citizens to seek formal redress for human rights violations.[40] In more extreme cases, these shifts may enable such groups to secure more meaningful policy reforms through the political process.[41] In other words, formal changes create opportunities for private actors to promote the observance of human rights norms irrespective of whether the reforming government has any interest in doing so. Although these changes typically do not cause dramatic, immediate reductions in human rights violations, formal organizational changes do produce tangible effects on the ground.

Second, acculturation triggers what Professor Jon Elster calls the "civilizing force of hypocrisy."[42] One aspect of this idea is that public preference falsification is difficult to sustain over time because of two important audience effects. First, various constituencies will provide incentives for public actors to live up to their "hypocritical" endorsement of a norm. The publicity of their acts creates expectations in relevant audiences, and the failure to meet these expectations will generate various forms of political and social pressure to do so. Second, public conformity signals to other

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40. Thomas Risse & Kathryn Sikkink, *The Socialization of International Human Rights Norms into Domestic Practices: Introduction*, *in* THE POWER OF HUMAN RIGHTS: INTERNATIONAL NORMS AND DOMESTIC CHANGE 1, 11–35 (Thomas Risse et al. eds., 1999).

41. *See, e.g.*, Darren Hawkins & Melissa Humes, *Human Rights and Domestic Violence*, 117 POL. SCI. Q. 231, 242 (2002) ("During crises or political shifts, . . . officials are more willing to engage in broad-ranging debates about the nature of state–society relations in a variety of issue areas and to attempt restructuring processes. These moments of political debate provide the best opportunities for activist groups to influence state action.").

42. Jon Elster, *Deliberation and Constitution Making*, *in* DELIBERATIVE DEMOCRACY 97, 111 (Jon Elster ed., 1998); *see also* Ryan Goodman, *Humanitarian Intervention and Pretexts for War*, 99 AMER. J. INT'L L. (forthcoming 2005) (describing "blowback effects" by which the justificatory practices of states ultimately constrain state action irrespective of whether the justifications are pretextual).

recalcitrant actors that social opposition to the norm in question is declining (or, put differently, that social support for the norm is rising). In other words, public conformity, even without private acceptance, exerts collateral influence on other actors in the social system. Cognitively, acculturation narrows the gap between public acts and private preferences: "under certain conditions people change their beliefs to avoid the unpleasant state of cognitive dissonance between what they profess in public and what they believe in private."[43]

Third, acculturation, when coupled with the dynamics of state learning, encourages states to make increasingly meaningful change. Although shallow acts of public conformity might yield some short-term social benefit to the conforming state, other states will learn over time that these acts do not necessarily signal genuine acceptance of the norm in question. As a consequence, conforming states will be required to enact increasingly meaningful reforms to capture the same social benefit.[44] For example, the simple act of ratifying a human rights treaty might initially generate some social and political capital for the ratifying state, but failure to improve human rights conditions on the ground will erode, over time, the importance of this signal (both for the ratifying state itself and for all future would-be ratifying states). To capture the same social and political capital in the future, states might have to enact domestic legislation implementing treaty obligations. This learning dynamic, therefore, triggers an iterative process in which states may be eventually required to embrace remarkably robust institutional commitments. Indeed, the day may come when only a demonstrably strong human rights record on the ground will capture the same social and political benefit generated initially by superficial reforms. Recent empirical work strongly suggests that shallow ratifications trigger a range of social dynamics that ultimately improve states' actual human rights practices.[45]

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43. Jon Elster, *Timur Kuran: Private Truths, Public Lies: The Social Consequences of Preference Falsification*, 39 ACTA SOCIOLOGICA 112, 115 (1996) (book review); *see also* LEON FESTINGER, A THEORY OF COGNITIVE DISSONANCE (1957).

44. *See, e.g.*, Derek Jinks, *The Limits of Rational Choice Theories of International Law*, 94 GEO. L.J. (forthcoming 2006) (applying this line of argument to rational choice theories of international human rights law).

45. Emilie M. Hafner-Burton & Kiyoteru Tsutsui, *Human Rights in a Globalizing World: The Paradox of Empty Promises*, 110 AM. J. SOC. 1373, 1378 (2005) (arguing that the global institutionalization of human rights occasioned by disingenuous treaty ratifications improves human rights conditions on the ground). We should note that we have reservations about the

Professor Alvarez also suggests that social dynamics of the sort we describe here will often take time. This point, in our view, is almost certainly correct, but the significance of the "time lag" factor should not be overstated. Of course, we should not expect to build a durable global human rights culture quickly (though substantial progress has been made in a remarkably brief period of time). Perhaps a time line of an additional twenty, thirty, or forty years for the accomplishment of this goal is not altogether unreasonable or unacceptable. Moreover, substantial global acculturation has occurred rapidly at times—for example, the global diffusion of self-determination/decolonization and women's suffrage documented in our Article. And, finally, the processual (hence, time-consuming) character of acculturation is, in some important respects, a strength rather than a weakness. Although coercion and persuasion may be more efficient, under certain conditions, at generating meaningful behavioral change quickly, these mechanisms have greater difficulty sustaining change over time without some measure of acculturation. Acculturation, on its own, may be poorly suited to generate change quickly, but it is likely to produce durable behavioral regularities.[46]

One final normative issue, raised by Professor Alvarez, is whether acculturation-based international institutions might serve as "vehicles for neocolonialism"—or, put differently, whether acculturation-based strategies provide for the "imposition" of hegemonic power.[47] Acculturation, however, should generally involve less "imposition" than coercion or persuasion—recall that the former involves the use of material rewards and punishments and the latter involves the strategic (and some would say pernicious) manipulation of rhetorical frames to secure acceptance. The empirical record

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methods used in the Hafner-Burton/Tsutsui study to estimate aggregate levels of human rights abuses. *See generally* Ryan Goodman & Derek Jinks, *Measuring the Effects of Human Rights Treaties*, 14 EUR. J. INT'L L. 171 (2003). Nevertheless, we think it important to note that the findings of this important new study are broadly consistent with the internalization dynamics we have outlined. Other recent studies document similar patterns in the diffusion of other global models of legitimate statehood. *See, e.g.*, Gili S. Drori, *Governed by Governance: The Institutionalization of Governance as Prism for Organizational Change*, *in* WORLD SOCIETY AND THE EXPANSION OF FORMAL ORGANIZATION *1, *34 (Gili S. Drori et al. eds., forthcoming 2006); Gili S. Drori et al., *Sources of Rationalized Governance: Cross-National Longitudinal Analyses, 1985–2002*, 50 ADMIN. SCI. Q. (forthcoming 2005).

46. *See* Lynne G. Zucker, *The Role of Institutionalization in Cultural Persistence*, 42 AM. SOC. REV. 726, 726 (1977) (noting that "social knowledge once institutionalized exists as a fact, as part of objective reality," and thus ensures "cultural persistence").

47. Alvarez, *supra* note 4, at 974.

described in the Article also suggests that the concern is misplaced. Global acculturation processes have often facilitated the diffusion of counterhegemonic norms such as decolonization; economic, social, and cultural rights; and women's suffrage.[48] Counterhegemonic norms exhibit the same general diffusion pattern as prohegemonic norms, which suggests that the mechanics of acculturation do not turn on the relative material power of the relevant actors. Powerful states are often late adopters in some areas, including human rights law—suggesting that acculturation provides a vehicle for weak states to influence powerful states.[49] Finally, the nature of acculturation renders it highly resistant to abuse. Because the strength and direction of acculturation require identifying target actors with the agents of socialization, abuse of these processes would undermine the trust and social legitimacy that makes acculturation possible in the first place. More fundamentally, the effective employment of acculturation would facilitate the diffusion and institutionalization of the international human rights regime, which includes substantive commitments to self-determination, political dissent, and open political processes. All this, in short, suggests that acculturation does not necessarily play into the hands of power, and may indeed provide a framework within which weaker actors might challenge powerful ones.

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We owe a great debt to Dean Koh and Professor Alvarez for their constructively critical evaluation of our theory of social influence. The exchange has provided us the opportunity to refine our conceptual model, scrutinize its normative assumptions, and begin to chart future lines of empirical research. The larger project, to develop an empirically rigorous theory of international law, and the ultimate objective, to improve the performance of international institutions such as human rights regimes, are the benefactors of their efforts.

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48. *See* Goodman & Jinks, *supra* note 1, at 653 (noting that acculturation plays a role in the diffusion of counterhegemonic norms because such diffusion cannot be explained by "conventional conceptions of global power politics").

49. *Id.*