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Incomplete Internalization and Compliance with Human Rights Law

Ryan Goodman* and Derek Jinks**

Abstract

In earlier work, we argue that acculturation is a distinct social process by which international law influences states and that human rights law might harness this mechanism in designing effective global regimes. In this article, we consider an important objection to our work. The concern is whether acculturation institutionalizes non-compliance. The growing body of empirical evidence for global-level acculturation, in part, documents persistent forms of decoupling – suggesting that formal commitments to global culture often fail to change concrete practices of local actors. In the human rights context, this is particularly troubling, given the prevalence of seemingly disingenuous acceptance of human rights instruments by states with poor human rights records. Many critics suggest, and understandably so, that acculturation should not guide the design of international human rights regimes since any such regime would promote only shallow reforms – further entrenching the gap between formal commitments and actual practices. The problem with human rights law, on this view, is that it is under-enforced – not that it is insufficiently acculturative. In reply, we argue that acculturation generally does not impede progress toward deeper reform and, indeed, will often facilitate it.

How are states influenced, if at all, to improve their human rights practices? How might international human rights law better account for, and thus better harness, the mechanisms of state influence? Prevailing approaches in human rights scholarship rely – at times explicitly, at times implicitly – on coercion-based or persuasion-based theories of social influence.[1] That is, prevailing approaches maintain that international law exerts discrete, meaningful influence on recalcitrant states,

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*   Rita E. Hauser Professor of Human Rights and Humanitarian Law, Harvard Law School.
[1]   See Goodman and Jinks, 'How to Influence States: Socialization and Human Rights Law', 54 *Duke LJ* (2004) 621.

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either by coercing relevant actors to comply with human rights norms or by persuading relevant actors of the validity and propriety of these norms.[2] Human rights regimes, therefore, should be designed either to compel relevant actors to follow international law or to convince relevant actors of the appropriateness of international law.

In previous work, we argue that international law influences states through a third mechanism which we call acculturation.[3] By acculturation, we mean the general process by which actors adopt the beliefs and behavioural patterns of the surrounding culture. This complex social process is driven, at bottom, by identification with a reference group which generates varying degrees of cognitive and social pressures to conform with the behavioural expectations of the wider culture. At the highest level of generality, we argue (1) that acculturation is a conceptually distinct social mechanism that influences state behaviour and (2) that regime elements designed to harness acculturation would differ importantly from those designed to facilitate coercion or persuasion.[4] Our approach builds on important developments in the behavioural sciences which have documented the descriptive inadequacy of coercion-based and persuasion-based accounts of social influence.[5] Substantial empirical evidence suggests that not only individual actors, but also organizations, including states, are influenced through acculturation.

As a descriptive matter, the case for state-level acculturation is founded on a pair of empirical findings. On the one hand, states exhibit a striking degree of structural isomorphism. That is, the structure and formal commitments of states, across remarkably many issue areas, are increasingly similar.[6] The pattern of this isomorphism strongly suggests that the structural attributes of states substantially derive from institutionalized models promulgated at the global level. On the other hand, states are not 'tightly coupled' to their institutional environment even though they exhibit significant structural isomorphism.[7] Because global cultural models are not sensitive to context and because the social benefit of conformity is often captured by taking modest, largely symbolic steps, isomorphism is often accompanied by 'decoupling of general values from practical action'.[8] Many states adopt the abstract forms of world culture without closely linking these forms to actual practice. Public conformity with global norms often has little to do with private acceptance of those norms. The ultimate point on the empirical question is that neither coercion-based nor persuasion-based accounts of social influ-

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[2]   *Ibid.*, at 630–637.

[3]   *Ibid.*, at 638–656; see also Goodman and Jinks, 'International Law and State Socialization: Conceptual, Empirical, and Normative Challenges', 54 *Duke LJ* (2005) 983; Goodman and Jinks, 'Toward an Institutional Theory of Sovereignty', 55 *Stanford L Rev* (2003) 1749 (outlining a general theoretical model founded on acculturation mechanisms).

[4]   Goodman and Jinks, *supra* note 1, at 627.

[5]   W.W. Powell and P.J. DiMaggio (eds), *The New Institutionalism in Organizational Analysis* (1991); Meyer and Rowan, 'Institutionalized Organizations: Formal Structure as Myth and Ceremony', 83 *Am J Sociology* (1977) 340; A.R. Pratkanis (ed.), *The Science of Social Influence: Advances and Future Prospects* (2007); A.I. Johnston, *Social States: China in International Institutions, 1980–2000* (2007).

[6]   Goodman and Jinks, *supra* note 1, at 648–651 (collecting examples).

[7]   See *ibid.* at 651–655; Goodman and Jinks, 'Toward an Institutional Theory of Sovereignty', *supra* note 3, at 1760–1761; see also Meyer, Boli, Thomas, and Ramirez, 'World Society and the Nation-State', 103 *Am J Sociology* (1997) 144.

[8]   Meyer, *et al.*, *supra* note 7, at 155.

ence explain the observed patterns of structural isomorphism and decoupling. Structural similarity exceeds that which might be explained by reference to the material incentives of target states, and yet persistent decoupling strongly suggests an 'incomplete internalization' inconsistent with persuasion-based explanations.[9] The upshot is that coercion- and persuasion-based accounts, however indispensable for a comprehensive theory of global social influence, require supplementation. The resultant, more comprehensive theory of global social influence further suggests several regime design principles that might guide the fashioning of more effective human rights law and institutions.[10]

In this article, we consider a potential weakness in our theory of acculturation-based compliance. A major concern is whether acculturation processes leave a gap between formal commitments by states and actual practices on the ground. As discussed above, acculturation studies often document persistent forms of decoupling – suggesting that formal commitment to the organizational features of global culture often fails to change the concrete practices of local actors. In the human rights context, this is particularly troubling, given the familiar problem of the seemingly 'shallow' or disingenuous embrace of international human rights law by many states. The central concern is simple: Acculturation should not guide the design of international human rights regimes since any such regime would promote only shallow reforms – further entrenching the gap between formal commitments and actual practices.[11] The balance of this article addresses this concern.

First, this concern is predicated in part on a conceptual mistake – one in which the empirical footprint of acculturation is confused with the necessary result of acculturation. Acculturation-driven changes are not necessarily characterized by decoupling; many instances of acculturation include complete internalization of global scripts. Secondly, acculturation may also be accompanied by decoupling – but not of the variety that raises compliance concerns. Thirdly, persistent decoupling – even when it occurs along a more troubling axis – does not preclude deep reform regardless of whether the gap between global norms and actual state practice remains fixed. Because global standards, and the demands of global civil society, evolve over time, acculturation will impel relevant actors to adopt increasingly ambitious human rights norms. Human rights outcomes, therefore, might improve over time even if the gap between world-cultural expectations and actual state practice never closes. Fourthly, even when acculturation

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[9]   Goodman and Jinks, *supra* note 1, at 700.

[10]   *Ibid.*, at 656–700. We do not argue that acculturation is the ideal or preferable social mechanism around which to design international human rights regimes. Our argument is that acculturation is a neglected, poorly understood mechanism of social influence and that a fuller understanding of the ways in which international law influences states is necessary to fashion effective international human rights regimes. Accordingly, our 'defence' of acculturation-based approaches seeks only to show that these approaches are plausible and normatively defensible – that is, they should be part of the larger conversation about the optimal design of human rights regimes.

[11]   See, e.g., Alvarez, 'Do States Socialize?', 54 *Duke LJ* (2005) 961; Koh, 'Internalization Through Socialization', 4 *Duke LJ* (2005) 975 (arguing that acculturation might be understood as incomplete persuasion); J.L. Goldsmith and E.A. Posner, *The Limits of International Law* (2005), at 127; Hathaway, 'Do Human Rights Treaties Make a Difference?', 111 *Yale LJ* (2002) 1935; Schmitz and Sikkink, 'International Human Rights', in W. Carlsnaes, T. Risse, and B.A. Simmons (eds.), *Handbook of International Relations* (2002), at 517, 523.

results in forms of decoupling which hinder compliance, acculturation-driven social change can set in motion other domestic- and international-level processes which reduce gaps between human rights commitments and local practices. In other words, domestic systems may undergo a two-step process in which decoupling is simply the first stage that helps lead to the progression of more meaningful change over time. Fifthly, to the extent that troubling patterns of decoupling persist, several reform strategies could facilitate effective management, and gradual elimination, of these gaps between formal commitments and actual practice. We address each of these points in turn.

1 Acculturation without Decoupling

Although gaps between structural commitments and concrete practices constitute important evidence of acculturation, the process of acculturation may, in other circumstances, foster complete internalization of a norm. In earlier work we analyse studies which also demonstrate just this sort of internalization.[12] Importantly, our argument turns on the distinction between the *concept* of acculturation and *evidence* used to document its existence. We employ a conception of acculturation as a causal process; acculturation is not an outcome.[13] This process, as a conceptual matter, need not result in incomplete or shallow internalization. All socially-legitimated actors routinely internalize, via acculturative processes, the cognitive frames and behavioural expectations of socially relevant others. Accordingly, state actors often embrace common beliefs and practices because they reflect taken-for-granted scripts of how 'liberal' or 'modern' states behave. For instance, state actors consider particular organizational structures and practices to be inherent features of the modern state. Such actors accept, for example, that states engage in instrumentalist modes of planning, follow the dictates of science, and promote the general public welfare.[14] Such commitments are deeply held self-understandings of the purpose and character of modern statehood. That acculturation-driven processes also generate some rigidly decoupled outcomes does not mean that such outcomes are inevitable or even common.

Although we focus heavily on patterns of decoupling in detailing acculturation in international society, we do so only because of the specific evidentiary value of these patterns. Coercion, persuasion, and acculturation can all result in behavioural change. Hence, behavioural change itself does not indicate which of these mechanisms is at work. The question then is what evidence suggests the presence or absence of any of the mechanisms. Evidence of incomplete internalization tends to support acculturation-based explanations and discredit persuasion-based explanations. In

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[12] See, e.g., Goodman and Jinks, 'Toward an Institutional Theory of Sovereignty', *supra* note 3, at 1765–1780 (discussing national security examples).

[13] See generally Berry, 'Conceptual Approaches to Acculturation', in K.M. Chun *et al.* (eds.), *Acculturation: Advances in Theory, Measurement, and Applied Research* (2003) (describing process- and outcome-based conceptions of acculturation).

[14] See, e.g., Boli, 'World Polity Sources of Expanding State Authority and Organization, 1870–1970', in G. Thomas *et al.* (eds.), *Institutional Structure: Constituting State, Society, and the Individual* (1987), at 71; Meyer *et al.*, *supra* note 7, at 145; G.J. Kasza, *One World of Welfare: Japan in Comparative Perspective* (2006). See generally G.S. Drori *et al.*, *Science in the Modern World Polity: Institutionalization and Globalization* (2003).

other words, such evidence can help arbitrate between competing theoretical accounts of why a particular norm diffuses. Furthermore, patterns of decoupling can provide useful information about micro-processes and conditions that propel acculturation. We explore the patterns of decoupling for those descriptive purposes as well. Decoupling is indicative of acculturation, acculturation is not indicative of decoupling. In sum, even if incomplete internalization is best understood in certain circumstances as acculturation's empirical footprint, it is ultimately an empirical, rather than conceptual, question whether acculturation is often or typically associated with decoupling.

2 Acculturation with 'Benign' or 'Facilitative' Decoupling

Notwithstanding these points, acculturation does often generate decoupling. Even where this occurs, however, the decoupling need not be of the sort that raises vexing compliance concerns. In fact, as the sociological institutionalism literature itself recognizes, 'the functional consequences of decoupling range from problematic to benign and even adaptive'.[15] Understanding why this is so requires differentiation of the

Table 1. Types of Decoupling

1. Form (of global script)	v.	Functional task demands
Examples: supersonic aircraft purchases absent external security threats;[16] scientific research approaches not configured to national technical and economic needs[17]		
2. Public conformity (to global script)	v.	Private acceptance
Examples: treaty ratification by illiberal states;[18] educational curricula disassociated from local elite preferences[19]		
3. Material/technical demands (of global script)	v.	Resource/technical capacity
Examples: child rights regimes absent capacity to monitor or regulate;[20] environmental impact assessments absent capacity to conduct reviews[21]		

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[15] Hironaka and Schofer, 'Decoupling in the Environmental Arena: The Case of Environmental Impact Assessments', in A. Hoffman and M. Ventresca (eds), *Organizations, Policy, and the Natural Environment* (2002), at 214, 215.

[16] Eyre and Suchman, 'Status, Norms, and the Proliferation of Conventional Weapons: An Institutional Theory Approach', in P.J. Katzenstein (ed.), *The Culture of National Security: Norms and Identity in World Politics* (1996), at 78.

[17] Shenhav and Kamens, 'The "Cost" of Institutional Isomorphism: Science in Non-Western Countries', 21 *Social Studies of Science* (1991) 527.

[18] Hafner-Burton, Tsutsui, and Meyer, 'International Human Rights Law and the Politics of Legitimation: Repressive States and Human Rights Treaties', 23 *Int'l Sociology* (2008) 115.

[19] Benavot, Cha, Kamens, Meyer, and Wong, 'Knowledge for the Masses: World Models and National Curricula, 1920–1986', 56 *Am Sociological Rev* (1991) 85.

[20] Boli-Bennett and Meyer, 'The Ideology of Childhood and the State: Rules Distinguishing Children in National Constitutions, 1870–1970', 43 *Am Sociological Rev* (1978) 797.

[21] Hironaka and Schofer, *supra* note 15, at 214.

varieties of decoupling. Acculturation results in at least three different types of decoupling. Table 1 displays the varieties of decoupling.

Categories 1 and 2 constitute the principal forms of decoupling identified in empirical research. In such situations, the degree of isomorphic change across countries will be, in part, a function of the depth of commitments required to attain legitimacy in the community of states (social pressure) or to fit prevailing conceptions of the modern state (cognitive pressure). Indeed, much of the research that we reference in our earlier work traces its origins to an earlier body of scholarship which attempted to explain 'the expansion of the state'.[22] Borrowing from that line of research, we contend that models of domestic governance institutionalized at the international level task states with agendas for action. In many important respects, states are enactors and enactments of models that are substantially organized and legitimated through global culture.[23] States are assigned significant responsibility in such domains as education, welfare, and the environment. The scope of responsibility within these domains has been extensive, and the scripts for particular policy programmes are often onerous. Empirical studies have also documented changes with respect to worldwide adoption of specific policies and laws, including environmental impact assessments and ecological set-aside programmes,[24] rape laws,[25] child labour protections,[26] health policy, and employment discrimination law[27] When discussing forms of decoupling which hinder compliance, we should not lose sight of the fact that the gap is relative, and that the initial commitment may on its own be substantial.

One of the prevalent types of decoupling – decoupling between form and functional task demands (category 1) – does not impede compliance. Indeed, this type of decoupling may very well facilitate it. The human rights script that governments adopt can have substantial effects, which need not serve the material task demands of the state. This is obviously true as a conceptual matter. As an empirical matter, existing research strongly suggests that such decoupling has fostered major restructuring of states, including bureaucratic organizational changes and legal reforms. That these transformations override material interests of the state indicates the potential power of the acculturation mechanism to achieve great change. Moreover, these examples illustrate that some forms of decoupling evidence a strong commitment to the global model.

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[22] See, e.g., Thomas and Meyer, 'The Expansion of the State', 10 *Annual Rev Sociology* (1984) 461; see generally Goodman and Jinks, *supra* note 1, at 646–656 (summarizing research); Goodman and Jinks, 'Toward an Institutional Theory', *supra* note 3, at 1757–1787 (same).

[23] See, e.g., Meyer *et al.*, *supra* note 7.

[24] Frank, Hironaka, and Schofer, 'Environmentalism as a Global Institution', 65 *Am Sociological Rev* (2000) 122; Frank, Hironaka, and Schofer, 'The Nation-State and the Natural Environment over the Twentieth Century', 65 *Am Sociological Rev* (2000) 96.

[25] Frank, Hardinge, and Wosick-Correa, 'The Global Dimensions of Rape-Law Reform: A Cross-National Study of Policy Outcomes', paper presented at Human Rights and Sociological Institutionalism Colloquium, Human Rights Program, Harvard Law School, 6 June 2007 (on file with authors).

[26] Boli-Bennett and Meyer, *supra* note 20; Boli-Bennett and Meyer, 'Constitutions as Ideology', 45 *Am Sociological Rev* (1980) 525.

[27] K. Linos, *Social Policy Diffusion Across OECD Countries* (Nov. 2007) (Ph.D. dissertation, Harvard University, UMI No. AAT 3285506).

Category 3 decoupling – gaps between policy and outcomes resulting from the lack of material resources or technical capacity at the national level – clearly does impede compliance, but not in any way which discredits acculturation-based regime elements. The compliance problems associated with category 3 are not unique to acculturation schemes. Both coercion- and persuasion-driven social influence would also confront the impediments to implementation that lead to category 3 compliance gaps. Indeed, the compliance problems generated by this variety of decoupling have nothing to do with preference change and formation – and are, therefore, beyond the scope of any discussion of social influence and regime design. Nevertheless, category 3 decoupling presents many important challenges for human rights law and policy. These challenges are best addressed through 'managerial' strategies which should supplement coercion-, persuasion-, and acculturation-based regimes.[28]

More generally, decoupling itself often *facilitates* compliance. Decoupling helps avoid the substantial disruption and conflict that often accompany the wholesale adoption of global models ill-suited for many local contexts.[29] Decoupling, in all its varieties, enables states 'to maintain standardized, legitimating, formal structures while their activities vary in response to practical considerations'.[30] This structural characteristic of the world polity facilitates deeper penetration of global norms into local culture and practice.[31]

In sum, decoupling occurs in different forms and, although some are problematic, some are benign and some facilitative.

3 Decoupling and 'Deep' Reform

The potentially troubling result of acculturation is category 2 decoupling – public conformity disconnected from private, local practices. Yet, pessimism about such decoupling may be based on a logical fallacy. The size of the gap – between official human rights commitments and local practices – can remain the same within a state, without precluding absolute improvements in human rights. The question is whether the standards/commitments strengthen over time. Consider a stylized example in which (a) a state constantly lags behind its commitments by a certain amount (e.g., lags by 50 per cent) (b) while those commitments progressively increase over time (requiring 100, 105, 110 units of effort). The state appears to be perpetually trailing behind on one account. Nevertheless, the absolute conditions on the ground are improving. India, for example, may be as far below its commitments to fair trial rights

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[28]   A. Chayes and A. Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements* (1998).

[29]   Meyer and Rowan, *supra* note 5, at 357.

[30]   *Ibid.*

[31]   Meyer, 'Globalization: Sources and Effects on National States and Societies', 15 *Int'l Sociology* (2000) 233, at 244–245; see also Alkoby, 'Theories of Compliance with International Law and the Challenge of Cultural Difference', 4 *J Int'l L & Int'l Rel* (2008) 151, at 176 (pointing out that decoupling 'actually helps to smooth over the transition to world culture by absorbing possible shocks to local institutions').

now as it was 30 years ago. The conception and expectation of what it means to provide a fair trial, however, may have substantially evolved over that period. Moreover, decoupling may even *expand* (a state lags behind by 50, 55, 60 per cent over time), and absolute human rights conditions will still improve if the standards evolve sufficiently (e.g., requiring 100, 115, 130 units of effort). In short, a persistent gap between formal positions and actual performance within states may obscure absolute gains in performance.[32]

Notably, these distinctions between absolute and relative gains are important to general discussions of compliance. An observer, for example, may erroneously evaluate India's trial procedures in the 1970s by interpreting those practices through 21st century conceptions of the relevant rights. This lens would potentially miss the country's slip in compliance – increased decoupling over time – despite absolute gains. Similarly, World War II military commissions may have been more tightly coupled with global standards at the time than current international war crimes tribunals are with current standards. The former were far less rights protective than the latter, but only if measured by modern international law standards. The WWII trials were arguably more 'rights protective' when measured by contemporaneous international standards. These cases also illustrate that decoupling – whether persistent, expanding, or contracting over time – does not sufficiently determine whether (absolute) human rights performance within states is improving.

A recent study of global institutional pressures on states to enact environmental protection provides good evidence of these effects.[33] The researchers are, in particular, concerned with decoupling between national environmental policies and outcomes. They present statistical evidence that the persistence of international institutions over time pressures states to enact increasingly serious changes that result in lower levels of environmental degradation.

> The process of implementation cannot keep up with the new laws that nations are pressured to adopt, particularly in the developing world. Higher standards of environmental protection, combined with many newly discovered sources of degradation, mean that many nations will continue to lag behind desired standards. In sum, successful movements generate decoupling as a primary byproduct and therefore are continually viewed as 'failing.' Yet, it is important to recognize that some social change has taken place. Pro-environmental demands are being placed squarely on national agendas; and this leads to real improvements in outcomes, despite significant decoupling.[34]

In discussing category 2 decoupling and compliance, two transnational effects also deserve mention. First, we have just described how absolute human rights conditions can increase if the standards/commitments increase over time. It is important to note

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[32] Cf. Frank, Hardinge, and Wosick-Correa, *supra* note 25, at 11 (finding, among late adopters with weak domestic infrastructures, that absolute rape 'reporting rates still rose during the period, but the results clearly indicate a loosening of the coupling between rape-law reforms and police reporting with global institutionalization over time').

[33] Schofer and Hironaka, 'The Effects of World Society on Environmental Protection Outcomes', 84 *Social Forces* (2005) 27.

[34] *Ibid.,* at 39.

that if the evolution of standards results from progressive institutionalization at the global level, the mean performance of all states can increase – despite constant or expanding decoupling. In other words, acculturation, even with internal decoupling in states, can produce powerful system-wide improvements.[35] Secondly, law reform in one set of countries can affect legal *outcomes* in other states by helping to institutionalize the norm globally. This social effect of public action may hold true even if the initial law reforms are shallow (decoupled from practice in the troubling sense). The social effect of China signing the ICCPR, for instance, may have greater impacts on Malaysia, Singapore, and South Korea's human rights practices than those nations signing or ratifying themselves. Indeed, the global institutionalization of a norm may produce the inverse form of category 2 decoupling: positive outcomes in local practices in states that never adopt the structural reform. In other words, the global institutionalization of a norm prohibiting torture can lead to the reduction in torture even in states that have not ratified the Torture Convention or adopted anti-torture laws. A recent statistical study of the global diffusion of rape laws (structural reform) and police reporting (a measure of outcomes) finds such patterns.[36] Describing this pattern as 'loose coupling at the nation-state level (outcomes without reform)', the researchers explain at the outset that they 'expect the forces of global institutionalization to encourage heightened police reporting even absent national statutory changes – as individualized conceptions of rape grow institutionalized over time. … As rape was reinterpreted under emerging global-institutional conditions, local peoples (and officials) everywhere were individualized – by education and mass media, for example – and their conceptions of rape altered accordingly. We expect increased police reporting as a result, independent of local reforms.'[37]

In short, these various studies – of environmental protection and rape laws – illustrate that global-level scripts often effectuate meaningful outcomes on the ground even in the event of both forms of category 2 decoupling.

4 Moving beyond Decoupling: The Progression of Acculturation

In cases in which acculturation yields an implementation gap between human rights commitments and local practices (category 2 decoupling), the question is whether this gap may narrow over time. There is substantial evidence suggesting that it would in many cases. In this section, we detail several processes by which formal, even if shallow, commitments to global legal norms might be translated into more meaningful change over time. Of course these processes do not render change inevitable. Spurred

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[35] Notably, as a methodological aside, cross-country comparisons of relative performance between nations might overlook such aggregate outcomes. It is also questionable whether country case studies could detect these systemic effects.

[36] Frank, Hardinge, and Wosick-Correa, *supra* note 25, at 11–12.

[37] *Ibid.,* at 7 and n. 12 (referencing similar findings in cross-national studies of mass education) (citing Meyer, Ramirez, and Soysal, 'World Expansion of Mass Education, 1870–1980', 65 *Soc Educ* (1992) 128).

by the official adoption of a global human rights model, they make change in the direction of the model much more likely. These processes include: shifts in domestic political opportunity structure, the 'civilizing force of hypocrisy', escalating demands of global civil society, and state learning.

A *Domestic Political Opportunity Structure*

'Shallow' structural reform – such as the ratification of a human rights treaty or the enactment of a constitutional rights provision – often involves a considerable shift in the domestic political opportunity structure (POS) of the reforming state. Such shifts can be an important catalyst for the emergence and mobilization of social movements toward greater policy reform. Indeed, according to this model of social action, 'the timing and fate of social movements [are] largely dependent upon the opportunities afforded … by the shifting institutional structure and ideological disposition of those in power … [and] this central assumption and the concept of "political opportunities" has become a staple in social movements inquiry.'[38] Notably, leading expositions of POS recognize that a government's efforts to defuse international pressures and to secure its standing in the international community may provide sufficient changes to mobilize social movements.[39] In other words, it is not essential that a government be intrinsically motivated to create political opportunities; governmental actions taken to relieve global pressure can produce the kinds of openings that cue domestic social actors to mobilize.

The POS is composed of multiple elements. According to the canonical account, there are four principal elements: (1) the relative openness of the institutionalized political system; (2) the stability of elite alignments supporting the polity; (3) the presence of elite allies for a given movement or issue, and (4) the state's capacity and propensity for repression.[40] A change in any one element can independently inspire social groups to mobilize.[41] The formal adoption of a global human rights script can

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[38] McAdam, 'Conceptual Origins, Current Problems, Future Directions', in D. McAdam, J.D. McCarthy, and M.N. Zald (eds), *Comparative Perspectives on Social Movements: Political Opportunities, Mobilizing Structures and Cultural Framing* (1996), at 21; S. Tarrow, *Power in Movement: Social Movements and Contentious Politics* (2nd edn, 1998), at 7 ('changes in political opportunities and constraints create the most important incentives for initiating new phases of contention.'); *ibid.*, at 71 ('outbreaks of contention cannot be derived from the deprivation people suffer or the disorganization of their societies. For these preconditions are far more enduring than the movements they support. … [C]ontention is more closely related to opportunities for – and limited by constraints upon – collective action than by the persistent social or economic factors that people experience'.).

[39] A.S. Layton, *International Politics and Civil Rights Policies in the United States, 1941–1960* (2000); McAdam, 'On the International Origins of Domestic Political Opportunities', in A. Costain and A. McFarland (eds), *Social Movements and American Political Institutions* (1998), at 251; D. McAdam, *Political Process and the Development of Black Insurgency, 1930–1970* (2nd edn, 1982), at 82–83; cf. M.L. Dudziak, *Cold War Civil Rights: Race and the Image of American Democracy* (2000).

[40] McAdam, 'Conceptual Origins, Current Problems, Future Directions', in D. McAdam, J.D. McCarthy, and M.N. Zald (eds), *Comparative Perspectives on Social Movements: Political Opportunities, Mobilizing Structures, and Cultural Framings* (1996), at 23, 27; see also Tarrow, *supra* note 38, at 76–80. The emphasis here is on more volatile rather than relatively constant dimensions of opportunity. Gamson and Meyer, 'Framing Political Opportunity', in *Comparative Perspectives on Social Movements, supra*, at 274, 278.

[41] McAdam, McCarthy, and Zald, 'Introduction', in *ibid.,* at 1, 10 ('a change in any of the four dimensions may encourage mobilization….').

implicate one or more of these elements, albeit to different degrees depending on the content of the particular norm.

In terms of the first element, the formal commitment to a rights-based norm, or its rhetorical endorsement by governmental leaders, can create the perceived political opening that mobilizes social movements.[42] Such governmental actions galvanize collective social action by signalling the legitimacy of particular grievances or potential state receptivity and willingness to address related claims. The legitimating effect may result from the 'expressive function' of law – an effect which is operative notwithstanding a lack of enforcement of the law and even when the law reflects the legislative success of only a narrow interest group.[43] The formal adoption of a new human rights commitment often disproportionately empowers groups and individuals dedicated to the cause of human rights by imbuing them and their causes with social legitimacy and by emboldening private citizens to seek formal redress and human rights reforms. Indeed, based on empirical analysis, Beth Simmons posits that a government's decision to ratify a human rights treaty creates openings in the POS by operating on two levels – increasing the value that individuals place on the associated right (by legitimating the right) and increasing the perceived likelihood for successfully protecting the right. According to Simmons, these effects lead to political change because they increase the 'expected value of mobilizing'.[44]

Other empirical studies, within the school of sociological institutionalism, indirectly suggest the same effect. In an article entitled 'International Human Rights Law and the Politics of Legitimation', Emilie Hafner-Burton, Kiyoteru Tsutsui, and John Meyer provide evidence that the most repressive states are reluctant to join human rights treaties (even if they never intend to comply) when their leaders perceive long-term legitimating effects – effects nearly identical to those described by Simmons.[45] That is, Hafner-Burton, Tsutsui, and Meyer find repressive regimes that are able to maintain significant decoupling through greater control of the political sphere are as likely to ratify human rights treaties as non-repressive regimes. Repressive regimes that are more integrated with civil society and thus not able to rely on substantial decoupling are less likely to ratify. In short, the latter regimes 'are more apprehensive for fear of inciting a process of resistance by domestic opposition and interest groups' through the process of legitimation which attends acceptance of international human rights commitments.[46]

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[42]   See, e.g., Tarrow, *supra* note 38, at 71–90; Tarrow, 'States and Opportunities: The Political Restructuring of Social Movements', in *Comparative Perspectives on Social Movements: Political Opportunities, supra* note 40, at 41, 42; McAdam, McCarthy, and Zald, *supra* note 41, at 6; Meyer, 'Protest and Political Opportunities', 30 *Ann Rev Sociology* (2004) 125, at 129–130; Meyer and Minkoff, 'Conceptualizing Political Opportunity', 82 *Social Forces* (2004) 1457.

[43]   Gusfield, 'Moral Passage: The Symbolic Process in Public Designations of Deviance', 15 *Social Problems* (1967) 175; J.R. Gusfield, *Symbolic Crusade: Status Politics and the American Temperance Movement* (1963).

[44]   B. Simmons, *International Human Rights: Law, Politics and Accountability* (forthcoming), at 28, also available at: www.iilj.org/courses/documents/2008 Colloquium.Session 3.Simmons,pdf.

[45]   Hafner-Burton, Tsutsui and Meyer, *supra* note 18, at 123–126.

[46]   *Ibid.*, at 126.

The global emergence and national adoption of a human rights script can also create or enlarge openings in the POS through agenda-setting effects. Simmons studies such effects with respect to human rights treaty ratification. She theorizes that even if a human rights treaty matches a national government's preferences, it can be difficult to get those preferences reflected in national policy and as a high priority. The existence of a new treaty available for ratification raises the salience of the issue and also establishes a focal point to minimize problems of legislative cycling.[47] The presentation of the policy question and ensuing process of ratification can shift the policy agenda toward rights-regarding reforms.

Moreover, empirical studies of the global diffusion of norms suggest that these agenda-setting functions will occur even for states that do not initially share the same kind or intensity of preference for the rights policy in question. To a significant degree, state identity and preference formation are endogenous to interactions with global society. One of the most striking examples of the diffusion of innovations through transnational mimicry involves the adoption of policy solutions disconnected from problems, and solutions chasing problems. Governments embrace these 'solutions' or legitimated models of behaviour in the course of interacting with the global cultural environment. Consider Martha Finnemore's study of the worldwide diffusion of national scientific bureaucracies promulgated by UNESCO. States adopted the global model not because they already accepted the validity of the agenda, but because that agenda was associated with what it means to be a modern state. Relatedly, studies by David John Frank, Anna Hironaka, and Evan Schofer show that states enacted global scripts on environmental policy without a pre-existing domestic need or interest in making such transformations. That research team also finds that the greater degree to which a state is embedded in the international community the more likely it is that it will implement the global model: 'More sociocultural ties to world society means greater likelihood of national implementation for every kind of environmental protection on which we have data.'[48] In short, without the global-level influences, these state actions might never have acquired a position or a priority in the legislative or general policy process.

The second and third elements of POS are the presence of allies and cleavages among those elites which help sustain the general polity. Both elements are likely to be affected by the adoption of human rights scripts institutionalized at the global level. First, general accounts of POS consider the presence of *international* allies a significant spur to social mobilization for greater policy reform.[49] This insight accords with empirical research on human rights. The leading qualitative studies of successful human rights campaigns highlight complementary ties and interactions between international and domestic groups – what those researchers call a 'boomerang'

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[47] Simmons, *supra* note 44, at 17–18.

[48] Frank *et al.*, 'The Nation-State and the Natural Environment', *supra* note 24, at 106.

[49] See, e.g., McAdam, 'On the International Origins of Domestic Political Opportunities', *supra* note 39, at 257 and 263–264; McAdam, 'Conceptual Origins, Current Problems, Future Directions', *supra* note 40, at 34–35.

pattern – in progressively producing effective domestic policy change.[50] And recent research by scholars from the sociological institutionalist school provides additional statistical support. Specifically, Emilie Hafner-Burton and Kiyoteru Tsutsui conclude, first, that national-level linkages with international non-governmental organizations is correlated with the introduction of human rights reforms and, secondly, that these alliances have helped push states to reduce violations over time.[51] The authors' explanation of the success of these linkages accords with the effect of international allies detailed in POS scholarship. Hafner-Burton and Tsutsui explain:

> Government ratification of international law does not improve human rights practices alone, but a country's linkage to international civil society (through INGO memberships) can and does influence governments to change their human rights practices for the better. If a state has a tight link to global civil society, international nongovernmental actors are more likely to recognize and report on violations in the state. Domestic actors in tightly linked states tend to have greater awareness of the rights they are entitled to and are more likely to find ways to publicize their problems and pressure the government to address them. Thus, states that are more embedded in international civil society (i.e., that have a greater number of memberships in INGOs) are more likely to respect the human rights of their people.[52]

Finally, the adoption of a global model with decoupling will presumably often disrupt the alignment of elites. This area, however, needs more direct research. That said, category 2 decoupling often involves private deviance on the part of the state because not all institutions or elites favour the global script. If the issue is sufficiently salient, the realignment of those governing institutions and individuals may create a disruption between globally and parochially oriented elites as well as between those who stand to gain and lose from adoption of the particular script.

The fourth principal element of POS anticipates that a reduction in the propensity of the state to resort to repressive measures will often encourage social movements to mobilize. This element is probably least directly affected by the adoption of a global human rights script, although that may turn on the content of the specific norm. That said, openings in the POS which are inspired by international linkages may indirectly reduce the exposure of local advocates to state violence. As a leading scholar of POS explains, 'The international facilitation of domestic social movements may involve the diminution of the established regime's repressive capacity. The emergence of "new allies" and the collapse of previously stable elite alliances often have significant effects on the will or ability of the target regime to repress opposition movements.'[53]

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[50]   Risse and Sikkink, 'The Socialization of International Human Rights Norms in Domestic Practices: Introduction', in T. Risse, S.C. Ropp, and K. Sikkink (eds), *Power of Human Rights: International Norms and Domestic Change* (1999), at 1, 18; M.E. Keck and K. Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (1998), at 12–13.

[51]   Hafner-Burton and Tsutsui, 'Human Rights in a Globalizing World: The Paradox of Empty Promises', 110 *Am J Sociology* (2005) 1373, at 1398 ('states whose citizens belong to a greater number of INGOs are more likely to protect the rights of their citizens').

[52]   *Ibid.*

[53]   McAdam, On the International Origins of Domestic Political Opportunities, *supra* note 39, at 258–259.

B *The 'Civilizing Force of Hypocrisy'*

Shallow commitments to human rights norms will often evolve into deeper commitments via the process Jon Elster calls the 'civilizing force of hypocrisy'.[54] One aspect of this idea is that public preference falsification is difficult to sustain over time because of external audience effects and internal 'audience' effects. Elster develops these theories in contexts relevant to the conditions in which acculturation shapes national level political practices.[55]

1 *External Audience Effects*

An important external audience effect involves the public demand for consistency in state commitments. Governmental representatives are not supposed to diverge, without exceptional justification, from principled positions to which they have publicly committed themselves. As Elster explains, 'public speaking is subject to a consistency constraint. Once a speaker has adopted an impartial argument because it corresponds to his interest or prejudice, he will be seen as opportunistic if he deviates from it when it ceases to serve his needs.'[57] Various constituencies provide incentives for public actors to live up to their 'hypocritical' endorsement of a norm. The publicity of their acts creates expectations among those constituents, and these expectations generate political and social costs when officials contravene or deviate from the norm.[56]

Two recent studies have examined aspects of this external audience effect. Employing a rationalist model of state behaviour, Xinyuan Dai contends that commitments to global norms might be translated into meaningful change over time due to two national-level factors: political leverage and the 'information endowment' of citizens who favour compliance with the norm.[58] In terms of the former, the confidence and support of constituents is important to the survival of political leaders across democratic and non-democratic regimes, and 'political leverage' is the power these constituents hold over their leaders.[59] With respect to the latter, governmental commitments

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[54]   Elster, 'Deliberation and Constitution Making', in J. Elster (ed.), *Deliberative Democracy* (1998), at 97, 111; see also Goodman, 'Humanitarian Intervention and Pretexts for War', 99 *AJIL* (2006) 107 (describing 'blowback effects' by which the justificatory practices of states ultimately constrain state action irrespective of whether the justifications are pretextual).

[55]   First, Elster develops his model in the context of external pressure exerted on political actors to support a public position. Acculturation often involves external pressure on actors to adopt a public action. Secondly, Elster considers how public actors express or commit to principled, pro-social norms. Acculturation generally involves the pressure to adopt a global script which is generally a principled idea, articulated in pro-social terms. Thirdly, Elster studies particular institutional settings – public deliberative or policy-making arenas in which political actors are focused on the (constitutional) design of government institutions. Our analysis of acculturation generally concerns the same domain.

[56]   A separate external audience effect is that public commitment to a norm signals to other recalcitrant actors that social opposition to the norm in question is declining (or 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.

[57]   Elster, *supra* note 54, at 104.

[58]   X. Dai, *International Institutions and National Policies* (2007), at 70–71, 102.

[59]   *Ibid.*, at 104.

to global norms empower concerned citizens with better information about official behaviour and whether and how official action directly affects them. Importantly, Dai develops her theory in the context of 'weak' or shallow international institutions, including the human rights principles of the Helsinki Final Act. State commitment to these principles substantially augmented the information base of concerned citizens – by increasing the relevance and legitimacy of monitoring state action, by spurring actors to disseminate information widely, and by providing a shared global benchmark for evaluation.[60] Notably, these initiatives were legitimated more broadly by the state's solemn commitment and, as Dai puts it, 'state autonomy or sovereignty, an extension of which means that the government's words should count. … Indeed, the Helsinki Accords and particularly the Communist regimes' commitment to them on paper were frequently referred to in the subsequent struggle.'[61] The upshot is that, as Dai's case studies show, political leaders are significantly more likely to live up to the expectations of concerned citizens after formally committing to a global human rights standard due to the greater leverage – through information – that these citizens acquire.

A second insightful study is Kevin O'Brien and Lianjiang Li's work on 'rightful resistance'.[62] O'Brien originally coined the term, which applies to forms of popular contention that operate at the boundary of authorized channels to challenge officials to live up to state rhetoric and commitments.[63] Notably, this understanding of rightful resistance also fits well with theories of POS, and O'Brien and Li analyse it through that theoretical lens as well.[64] By expressly acting in pursuit of officially professed values, rightful resisters are able to reduce the risk of repressive responses by the state.[65] The resort to officially endorsed values also means that these individuals are likelier to find allies in government and to divide political elites who would otherwise more uniformly oppose their claims.[66] The important point here, however, is that rightful resistance puts special pressure on authorities to move toward consistency in governmental commitments. Leaders of rightful resistance may, due to mistaken perceptions or strategic calculations, exaggerate the state's professed human rights commitments in the process of mobilizing fellow citizens.[67] Thus pressure can arise even in cases in which official proclamations or policy lack strength or conviction. Nevertheless, citizens 'launch attacks that are legitimate by definition in a rhetoric that even unresponsive authorities must recognize, lest they risk being charged with hypocrisy'.[68] As

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[60]   *Ibid.*, at 130–132.

[61]   *Ibid.*, at 20.

[62]   K.J. O'Brien and L. Li, *Rightful Resistance in Rural China* (2006), at 15–24 (focusing primarily on contemporary China, but also finding comparative examples in East Germany, South Africa, and the United States).

[63]   O'Brien, 'Rightful Resistance', 49 *World Politics* (1996) 31, at 33; O'Brien and Li, *supra* note 62, at 3.

[64]   *Ibid.*, at 25–49.

[65]   *Ibid.*, at 17; O'Brien, *supra* note 63, at 34.

[66]   O'Brien and Li, *supra* note 63, at 16 and 52.

[67]   *Ibid.*, at 47.

[68]   O'Brien, *supra* note 63, at 35; O'Brien and Li, *supra* note 63, at 17.

O'Brien and Li suggest more broadly, rightful resistance grows out of the space that category 2 decoupling creates: '[s]o long as a gap exists between rights promised and rights delivered, there is always room for rightful resistance to emerge'.[69]

Finally, the pressure on authorities to be consistent may crowd out otherwise persuasive attempts to deviate from the initial commitment. Indeed, Elster considers this consequence categorically undesirable: 'the greater difficulty of backing down from a position one has stated in public has several undesirable effects. It makes it less likely that speakers will change their mind as a result of reasoned objections …'.[70] This crowding out effect, however, may be desirable in some situations – it depends on what counts as 'reasoned' and persuasive argument in local cultural schemas. One might be less concerned, for example, in the context of an illiberal regime in which 'well-reasoned' arguments appeal to reactionary or repugnant ideologies to repudiate public commitments to fundamental rights.

2 Internal 'Audience' Effects

Finally, acculturation narrows the gap between public acts and private preferences through internal cognitive processes: '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'.[71] At the individual level, officials come to believe their own public rhetoric and positions. And there is no reason to assume that these processes fail to occur at the group or organizational level. Indeed, international relations scholarship has long studied the effect of such cognitive processes, including cognitive dissonance in particular, on leaders, groups of decision-makers, and executive agencies.[72] And the effects of dissonance may be accentuated by some organizational structures for implementation. Especially in bureaucratic institutions, when authorities pronounce agendas for action – even if initially promulgated as a pretext to serve other interests – administrative agents tend to accept these new commitments and filter out incompatible beliefs or ideas.[73] It is difficult to expect these agents to keep distinct that these new organizing principles are for public consumption and not for internalization. In international relations,

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[69]   *Ibid.,* at 64. In the context of human rights treaties, Simmons notes as well: '[p]re-commitment makes it harder for a government that has secured domestic ratification to plausibly deny the importance of rights protection in the local context. Even ratification that could be mere lip service has an important influence on domestic politics. … Disingenuous governments will face inconsistency costs and thus risk a degree of legitimacy to the extent that their populations expect commitments to correspond at least in a very broad way to policies and practices'. Simmons, *supra* note 44, at 35–36.

[70]   Elster, *supra* note 54, at 111.

[71]   Elster, 'Timur Kuran: Private Truths, Public Lies: The Social Consequences of Preference Falsification', 39 *Acta Sociologica* (1996) 112, at 115 (book review); see also L. Festinger, *A Theory of Cognitive Dissonance* (1957).

[72]   See, e.g., O.R. Holsti, *Crisis Management, in Psychological Dimensions of War* (ed. Betty Glad, 1990), at 116; Snyder, 'Rationality at the Brink: The Role of Cognitive Processes in Failures of Deterrence', 30 *World Politics* (1978) 345; R Jervis, *Perception and Misperception in International Politics* (1976), at 382–406.

[73]   Goodman, *supra* note 54, at 126.

many of the studies of such cognitive processes and organizational behaviour involve the mismanagement of crises, self-defeating territorial expansion, and war. If these cognitive forces can lead nations to such ruin, their strength should not be underestimated.

C *Escalating Demands by Global Civil Society*

Social movement theory also suggests that shallow commitments often translate into deeper commitments over time because shallow reforms prompt global human rights groups to increase pressure on the reforming state. Shallow commitments by states often represent partial victories for pro-rights social movements. These victories, rather than placating or relieving pressure from civil society, will often strengthen pro-rights social movements[74] and embolden them to escalate their demands.[75] Indeed, a 'synergistic spiral' can develop in which reforms mobilize the movement to demand further action which leads to subsequent reforms.[76]

There is strong evidence of this 'ratcheting up effect' in the human rights context. A recent statistical analysis of the rights of women to political participation finds that as states altered their practices in response to global normative pressure, those

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[74] Victories – the successful exercises of political leverage – are important to the survival and development of a movement: McAdam, *Political Process*, *supra* note 39, at 52 ('[o]ver time the survival of a social movement requires that insurgents be able to maintain and successfully utilize their newly acquired leverage to advance collective interests. … In short, the ongoing exercise of significant political leverage remains the key to the successful development of the movement.'); Gamson and Meyer, *supra* note 40, at 286 ('[a]ctivists overcome the futility argument by asserting the openness of the moment. … Action now will open the window wider and keep it open longer, allowing more room for future victories. Organizing manuals tell activists to pick some modest and winnable objectives early in a campaign as demonstrations that action can have an impact.'). A sense of collective efficacy is important to the maintenance of a movement, such that members tend to exaggerate modest or ambiguous successes in order to sustain their motivation for action: Einwohner, 'Motivational Framing and Efficacy Maintenance: Animal Rights Activists' Use of Four Fortifying Strategies', 43 *Sociological Quarterly* (2002) 509, at 510–512 (surveying literature); cf. Suh, 'How Do Political Opportunities Matter for Social Movements?: Political Opportunity, Misframing, Pseudosuccess, and Pseudofailure', 42 *Sociological Quarterly* (2001) 437. Notably, victories also create a demonstration effect that encourages individuals with similar demands to engage in collective action against the state. Tarrow, *supra* note 38, at 87; Tarrow, *supra* note 42, at 58–59.

[75] Tarrow, *supra* note 38, at 149 ('[g]overnments that give in rapidly to insurgents' demands may find themselves replaced, as these demands escalate with every sign of the regime's weakness. This was the case in eastern Europe in 1989, as the revealed weakness of the regimes led challengers to broaden their demands from reforms within state socialism to its liquidation.'); *ibid.*, at 74 (as Tocqueville wrote, because people act on opportunities, 'the most perilous moment for a bad government is one when it seeks to mend its ways') (citation omitted).

[76] Meyer, *supra* note 42, at 137 (discussing A.N. Costain, *Inviting Women's Rebellion: A Political Process Interpretation of the Women's Movement* (1992) and McAdam, *supra* note 74); *ibid.*, at 130 ('[d]emobilization followed political defeats and government neglect. In such cases, opportunities for social mobilization are also opportunities for policy reforms, which encourage each other in a synergistic spiral'); McAdam, *supra* note 74, at 110 ('[p]olitical efforts by blacks now produced concrete results, thereby generating increased pressure for further remedial action. The result, throughout this period, was an accelerating cycle of black action and federal response, with a growing sense of political efficacy as the important by-product of the process'); but cf. Meyer, 'Peace Protest and Policy: Explaining the Rise and Decline of Antinuclear Movements in Postwar America', 21 *Policy Studies J* (1993) 35.

exerting pressure through international organizations gradually increased their normative demands, and states correspondingly improved their practices.[77] For example, in calling for female suffrage, the normative discourse moved from female suffrage being 'acceptable', to 'encouraged', to 'unequivocally required'. And, in this respect, '[a]s the women's movement worked to institutionalize women's inclusion in politics in the world polity, nations responded by increasing women's representation over time'.[78] More broadly, as states conformed to demands for formal equality in voting, normative pressure moved to commitments concerning representation, and eventually demanding specific outcomes in representation. The authors describe the effectiveness of this escalatory approach:

> The effectiveness of this approach is evidenced by the increasingly demanding discourse of the women's movement and the corresponding increases in women's political participation. … [T]he international women's movement also changed its discourse over time, and this changed the nature of the pressure experienced by states. Early transnational pressure centered simply on the provision of political citizenship to women (the right to vote). But the women's movement eventually turned to more ambitious demands. In the 1970s, the second wave of the women's movement emphasized that representation, rather than formal equality, was important. In recent periods, international pressure has encouraged particular targets such as 30 percent women in the legislature as appropriate levels of representation. Pressure on states to incorporate women was therefore 'ratcheted up' over time as gains in initial political representation for women were solidified.[79]

Importantly, as the authors specifically note, the successive normative demands provided states with less opportunity for decoupling.[80]

D *Evolutionary State Learning*

Finally, acculturation, when coupled with the dynamics of state learning, encourages governments 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. For example, the simple act of ratifying a human rights treaty may 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

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[77] Paxton, Hughes, and Green, 'The International Women's Movement and Women's Political Representation, 1893–2003', 71 *Am Sociological Rev* (2006) 898.

[78] *Ibid.*, at 916.

[79] *Ibid.*

[80] *Ibid.*, at 899–900, 914, 916.

institutional commitments.[81] 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.

5 Managing Decoupling: Designing Institutions to Reduce the Gap

Where the social processes described in Section 4 fail to narrow the gap between formal commitment and actual practice, policy interventions and legal structures can be designed to reduce or close it. Indeed, institutional design could harness other mechanisms such as persuasion (e.g., through local social movements) and coercion (e.g., through international agencies) after global-level acculturation has inspired governmental commitments to human rights. Our approach to regime design problems facilitates more effective management of persistent decoupling in two ways. First, it makes possible an integrated theory of regime design by providing an account of all three mechanisms of social influence. As we develop more fully elsewhere,[82] acculturation must play a central role in any such theory. The crucial point for now is that regimes need not be designed around only acculturation-based strategies. That is, our approach need not rely on acculturation throughout; other mechanisms can be used at different points to manage decoupling. Secondly, our approach makes possible a richer understanding of the varieties of decoupling – an understanding which facilitates targeted interventions organized around one or more of the mechanisms of social influence. In the following section, we discuss a range of possible interventions.

In fashioning such interventions, it is important to keep in mind the varieties of decoupling. The three types of decoupling have different implications for designing strategies to effectuate compliance with international human rights norms. Understanding these differences, for example, can help to identify the relevance and extent of actors' motivations in failing to fulfil promises to protect human rights. In particular, these different forms of decoupling reveal the hazards of inferring particular motivations with limited data or limited theorization. In other words, one needs more information than the general existence of 'decoupling' to ascertain the reason for compliance failures. For example, torture is widely employed by government agents despite its formal prohibition. This discrepancy may reflect a lack of normative support for the prohibition (category 2), a lack of state capacity to control the practice (category 3), or a combination of both. Of course more information may permit one to determine which type of decoupling predominates in a given situation and what ideational or material forces motivate local actors and institutions. The important

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[81]   H. Gintis, *Game Theory Evolving: A Problem-Centered Introduction to Modeling Strategic Interaction* (2000), at 188–219 (summarizing the theoretical models and empirical evidence of social interactions characterized by evolutionary signalling and learning).

[82]   R. Goodman and D. Jinks, *Socializing States: Promoting Human Rights through International Law* (forthcoming 2009).

point is that obtaining such information is necessary to building effective human rights institutions.

Some of the implications for institutional design are obvious; others are less so. First, reform strategies should be attuned to different forms of decoupling in deciding which material or social resources to bring to bear on a situation. Gaps in implementation due to material resource constraints (category 3), for example, might require financial assistance or technical and advisory support from international organizations. Gaps due to normative dissension (category 2) may require strategies for exposing multiple levels of society to global models of 'appropriate' human rights behaviour. As an example of the latter, a study by Evan Schofer and Ann Hironaka suggests that exposure of multiple layers of actors and institutions within a country to a global model reduces the gap between globally inspired environmental policies and environmental degradation.[83]

Secondly, understanding the different types of decoupling can help assess the nature of global support for a norm – a determination that may prove vital to regime architects in promoting compliance. For instance, widespread acceptance of a human rights standard despite particular types of decoupling (such as category 1 decoupling) can indicate the symbolic appeal of a global script. Eyre and Suchman's study of purchases of technologically advanced aircraft (category 1 decoupling), for example, indicates the existence and strength of global social expectations for particular national security practices.

Such insights may be important for regimes requiring the pre-existence (or prospect) of a favourable cultural environment at the international level. For example, worldwide or regional support for a human rights (or a national security) norm may determine the durability of institutions that attempt to regulate those practices. Also, culturally inspired adherence to a norm may negatively interact with the use of material incentives to promote the same behaviour (due to 'motivation crowding out' effects).[84] In short, ascertaining whether, and to what extent, decoupling is driven by such social influences would be important for institutional designs which employ material rewards and punishments. Indeed, contrary to predominant views in international law, limiting the use of material sanctions may be highly conducive to closing some implementation gaps.

Of course, as discussed earlier, category 1 decoupling is essentially 'benign'. However, it may be accompanied by other forms of implementation gaps if the script does not impose deep enough reform, needs updating at the local level, or is spread unevenly across states. Indeed, some states may not have adopted the script. The question becomes what interventions to pursue in these contexts. The important point

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[83]   Schofer and Hironaka, 'The Effects of World Society on Environmental Protection Outcomes', 84 *Social Forces* (2005) 27.

[84]   Ostrom, 'Policies that Crowd out Reciprocity and Collection Action', in H. Gintis, S. Bowles, R.T. Boyd, and E. Fehr (eds), *Moral Sentiments and Material Interests: The Foundations of Cooperation in Economic Life* (2005), at 253; Fehr and Falk, 'Psychological Foundations of Incentives', 46 *European Econ Rev* (2002) 687; Frey and Jegen, 'Motivation Crowding Theory', 15 *J Econ Survey* (2001) 589.

is that category 1 decoupling helps regime architects assess the nature of global support for the norm. That assessment can inform decisions concerning how to build on gains made through benign decoupling and whether to employ material incentives that might very well crowd out those gains.

Thirdly, understanding the different types of decoupling can help determine whether a norm has achieved the status of customary international law. Customary international law is conventionally defined as a general and consistent practice of states followed out of a sense of international legal obligation. How might sociological insights inform the identification of such a norm? The spread of worldwide isomorphism with category 2 decoupling may indicate that a common state practice is the product of a script enacted out of a sense of global normative expectations. In the human rights arena, those expectations generally involve notions of state duties and responsibilities. Thus these particular patterns of state conformity support the existence of a customary international law norm. Indeed, our model of global culture would predict that customary international law norms often emerge through top-down pressure and that such pressure would be manifested by states' exhibiting outward conformity despite internal disagreement with the norm. The striking pattern of system-wide isomorphism and internal decoupling is indeed a configuration that reflects how societal norms emerge and regulate actors within a community.

This sociological understanding should correct an error of under-inclusiveness in identifying customary law. A common assertion is that decoupling provides negative evidence of an existing or emergent customary international law norm. The US Supreme Court, for example, relied on such reasoning in *Sosa v. Alvarez-Machain*. The Court held that the prohibition on arbitrary detention does not constitute customary international law. According to the Court, 'that a rule as stated is as far from full realization as [arbitrary detention] is evidence against its status as binding law'. Following *Sosa*, leading scholars have observed that 'courts will be less likely to recognize the rule or cause of action when there is a large gap between it and actual state practice'.[85] Yet a large gap between a *universally endorsed* human rights rule and state practice may very well suggest the globally legitimated status and normative power of the rule. Such a gap is at least consistent with – if not affirmative evidence of – the existence of a customary international legal norm.

An accurate assessment of the social acceptance of a norm in the international community and the existence of its legal pedigree has additional relevance for designing institutions to effectuate compliance. The global legitimacy or legality of a state practice – and the process for gaining such status – may affect the beliefs and attitudes of officials who monitor and enforce the norm. Effective institutional design often relies on international and local monitors and enforcers, and the willingness of those actors to perform their roles may turn on their perception of the legitimacy or legal authority of a norm. Indeed, coercion-based theories of international relations generally depend on such actors to exercise the levers of control. Powerful states and intergovernmental

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[85] Bradley, Goldsmith, and Moore, 'Sosa, Customary International Law, and the Continuing Relevance of Erie', 120 *Harvard L Rev* (2007) 869, 900.

bodies may sanction states; members of civil society may employ consumer boycotts against foreign countries; companies and financial organizations may disinvest from particular projects; professionals (including workplace superiors, peers, and whistle-blowers) may penalize violators within their institutional settings. The costs of both monitoring and sanctioning human rights violations may be considerable. What motivational forces, therefore, inspire actors to monitor and sanction? How might the global status of the relevant (human rights) norm affect those motivations?

Note the relationship of these questions to the problem of implementation deficits due to decoupling. First, a coercion-based approach to reducing compliance gaps is incomplete without answers to these questions. And, as we describe below, acculturation helps provide the answers. Secondly, coercive mechanisms may be needed to close decoupling gaps that result from acculturation. Nevertheless, the creation of preferences for monitoring and sanctioning must be formed through mechanisms of social influence other than coercion itself (else an infinite regress problem). Thirdly, based on the following analysis, a stronger claim can be made that acculturation is often a prerequisite for motivating actors to administer coercive interventions that do not serve their direct material interests.

A rich research programme in experimental economics examines sanctioning behaviours and social norms. This research demonstrates that particular members of social groups – 'strong reciprocators' or 'cooperators' – are motivated to sanction others based on the perceived legitimacy or collective endorsement of a social norm. They are willing to incur costs to themselves to punish violators when adherence to the norm is an expectation for how all actors in the group ought to behave.[86] These social dynamics work well in settings in which violators deviate from the social norm due to privately held interests. That is, this form of social enforcement operates effectively when actors breach a social convention because they have not fully internalized the norm due to category 2 decoupling. Strong reciprocators may pay the costs of monitoring and sanctioning even when they are not directly affected by the violation.[87] They are willing to expend their own resources to penalize actors who violate a norm of fairness or justice in interactions with others. The social legitimacy of the norm may also be important in determining whether sanctioned actors either retaliate or realign their behaviour in response to being punished.[88] Those responses – realign-

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[86] Fehr and Gintis, 'Human Motivation and Social Cooperation: Experimental and Analytical Foundations', 33 *Annual Rev Sociology* (2007) 43; Fehr and Fischbacher, 'The Economics of Strong Reciprocity', in Gintis *et al.*, *supra* note 84, at 151, 172, 176.

[87] Henrich *et al.*, 'Costly Punishment Across Human Societies', 312 *Science* (2006) 1767; Fehr and Fischbacher, 'Third-party Punishment and Social Norms', 25 *Evolution of Human Behaviour* (2004) 63. Notably, the micro-processes of acculturation turn on identification between similar actors. Identification between actors can also influence how likely and how heavily penalties will be initiated by strong reciprocators to promote social norms. Acting as third parties, strong reciprocators are generally biased toward members of their own group: see, e.g., Bernhard, Fischbacher, and Fehr, 'Parochial Altruism in Humans', 442 *Nature* (2006) 912. It is thus important whether the strong reciprocator identifies with perpetrators, victims, or both. Those factors should also inform institutional design strategies.

[88] Herrmann, Thöni, and Gaechter, 'Antisocial Punishment Across Societies', 319 *Science* (2008) 1362; Gintis, 'Punishment and Cooperation', 319 *Science* (2008) 1345.

ment or retaliation – can affect the long-term viability of the system. Accordingly, if mechanisms of coercion are employed to close the compliance gap, it is important to consider (i) the prior sequencing of mechanisms of social influence and (ii) the forms of decoupling in which such coercive devices can operate effectively.

Human rights norms generated through acculturation and its universalizing principles may produce the conditions upon which strong reciprocators are prepared to act. In other words, (rationalist) models of state behaviour which rely on coercive mechanisms for altering state practices take actors' beliefs and preferences as a given. But which actors have the interest in levying sanctions and the willingness to pay the costs for such monitoring and enforcement? (If they already had a material self-interest in monitoring and levying sanctions, they would have done so.) Acculturation-driven processes may constitute a precondition for forming the background beliefs and preferences of actors who would then be willing to penalize others' failures to comply with globally prescribed human rights norms.

Finally, regime architects can reduce gaps created through decoupling by resorting to persuasion-based mechanisms. And, once again, acculturation may serve as a cultural predicate for these acts of persuasion to succeed.[89] Indeed, some of the most interesting diffusion studies demonstrate that states that are late adopters of a global norm (e.g., in women's rights) join the international community without local social movements pressing for such changes. Once the global model has been adopted, however, it may be most useful to foster social movements to ensure the government's consistency in commitments.[90] These actors can persuade others by framing their cause as congruent with human rights principles which are now part of the existing value system.[91] The act of adoption of the global model can also help human rights advocates to cue target audiences, within the government and civil society, to think harder about the merits of the advocates' message. These devices notably work well in conjunction with the civilizing force of hypocrisy and political opportunity windows, which can accordingly help empower persuasion-based campaigns to succeed.

6 Conclusion

In our earlier work, we maintain that international human rights law may influence states without coercing or persuading relevant actors to embrace it. We argue that

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[89]   McCammon, Muse, Newman, and Terrell, 'Movement Framing and Discursive Opportunity Structures: The Political Successes of the U.S. Women's Jury Movements', 72 *Am Sociological Rev* (2007) 725; Gamson and Meyer, 'Framing Political Opportunity', *supra* note 40, at 275; McAdam, 'Culture and Social Movements', in E. Laraña, H. Johnston, and J.R. Gusfield (eds), *New Social Movements: From Ideology to Identity* (1994), at 36.

[90]   McCammon et al., *supra* note 89, at 732 (explaining that overarching cultural models, upon which framing is based, may be newly emergent and impermanent).

[91]   Cf. Frank and McEneaney, 'The Individualization of Society and the Liberalization of State Policies on Same-sex Sexual Relations, 1984–1995', 77 *Social Forces* (1999) 911 (describing shifts in 'cultural opportunity structure' due to global institutionalization of human rights norms; and local social movements successfully framing their agendas in accordance with those shifts).

acculturation is a distinct social process by which international law influences states and that the distinctive features of this influence mechanism recommend a counter-intuitive approach to many regime design issues. The empirical case for acculturation is built upon numerous studies documenting structural isomorphism across states and persistent decoupling of policies and outcomes within states. The latter finding is troubling because it suggests that acculturation often generates shallow, formal reforms that exert little influence on actual state practice. States, in other words, publicly conform to global norms without privately accepting them. Critics question whether human rights regimes ought ever to be designed so as to generate such shallow reforms. In this article, we address this line of criticism. We argue that: (1) acculturation will often occur without decoupling; (2) even if some decoupling occurs, much of it is either benign or facilitative of compliance; (3) even if more troubling forms of decoupling occur and persist, the overall level of human rights protection may increase; (4) shallow commitments often trigger social processes that generate deeper reform – closing the gap between formal commitment and actual practice; and (5) our theoretical approach promises to improve the capacity of human rights regimes to manage troubling forms of decoupling even where they persist over time.