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Incomplete Internalization and Compliance with Human Rights Law: A Rejoinder to Roda Mushkat

Ryan Goodman* and Derek Jinks**

In previous work, we have urged elaboration of theoretical models of how and when international human rights law influences state practice. More specifically, we have argued that acculturation is a distinct mechanism by which international human rights law influences states and that the distinctive features of acculturation might inform legal regime design in a variety of ways. In this brief essay, we have the pleasure of responding to Professor Roda Mushkat's thoughtful reflections on our work.[1] Her critical remarks, in our view, provide a valuable springboard for explicitly clarifying some important aspects of our theoretical position. And, more importantly, her remarks illustrate the importance of developing an integrated theory of human right regime design – one that accounts for the full range of mechanisms by which international law influences states. More specifically, her remarks prompt us to underscore three important points.

● **Acculturation is not forwarded as the ideal or even favoured mode of global social influence**

Our point is not that acculturation is either the most appropriate or most effective influence mechanism. Rather, our claim is that a proper theoretical account of acculturation would improve our understanding of how and when international law matters – and thus improve our understanding of how best to design human rights regimes. The problem, as we see it, is that prevailing empirical approaches to human rights law often fail to specify adequately the mechanisms by which global norms impact national and local actors. Our descriptive work at times emphasizes acculturation, but only because

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[1]   Mushkat, 'Incomplete Internalization and Compliance with Human Rights Law: A Reply to Ryan Goodman and Derek Jinks', 20 *EJIL* (2009) 437.

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we think it relatively under-appreciated and, when appreciated, poorly or incompletely described. Our normative work at times defends the viability of acculturation-based strategies, but only to rebut claims that dismiss acculturation as irrelevant because normatively unattractive. The ambition of our project, though, is to contribute to the development of an integrated theory of human rights regime design – one that, by definition, accounts for all mechanisms of social influence, the conditions under which they are likely to succeed, and how international legal regimes might best harness them. In this respect, we agree completely with the spirit of Professor Mushkat's claim that the understanding of complex, global-level phenomena (she references 'globalization') almost certainly requires a sort of theoretical eclecticism.[2]

● **Acculturative forces do not inevitably increase respect for international human rights norms**

As our earlier work suggests, acculturation does not necessarily produce virtuous or desirable outcomes. Acculturation often produces negative results such as dangerous national security practices, dysfunctional environmental laws, exorbitant administrative bureaucracies, and rights-based policies that are poorly suited to local needs.[3] The point is not that acculturation inevitably improves compliance with global human rights norms. Rather, the point is that state practices are influenced – for good and ill – by acculturation. If this is so, then a better understanding of this mode of social influence – when and why it operates effectively and how it interacts with other mechanisms of social influence – would assist regime architects who wish to harness acculturation to spread desirable models of human rights law. This sort of understanding would, of course, also assist those who wish to interfere with acculturation-driven processes that are responsible for spreading normatively undesirable policies. More fundamentally, global-level acculturation does not render policy adoption across states a foregone conclusion – irrespective of whether the policy in question is normatively attractive or not. Simply put, acculturation, like material incentivization and persuasion, does not always work. As our earlier work suggests, we expect to see substantial variation across states (and across state officials) depending, for example, on their linkages to international society, their structural position within other overlapping social and cultural environments, and the strength of institutionalization of the relevant norm on the international stage.

● **National- and local-level case studies – which are crucial for understanding the specific causal pathways by which states are influenced – would be greatly enriched by a more fulsome theoretical account of global social influence**

We agree that it is important to obtain as exacting a description as possible of the pathways and individual actors/institutions through which acculturation works. Greater

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[2]   *Ibid.,* at 7–8.

[3]   Goodman and Jinks, 'How to Influence States: Socialization and International Human Rights Law', 54 *Duke Law Journal* (2004) 621; Goodman and Jinks, 'Toward an Institutional Theory of Sovereignty', 55 *Stanford Law Review* (2003) 1749.

levels of specificity would, among other benefits, help inform the project of institutional design to promote human rights. In our most recent article, which appeared in this Journal, we provided a thicker description of the actors and institutions that can take up global human rights scripts to press for compliance within domestic political and legal systems.[4] Moreover, we take the more general challenge to heart. In our ongoing research, we make more explicit that the process of 'state socialization' is, at bottom, grounded in the beliefs, conduct, and social relations of individuals.[5] We aim to describe how specific state practices are ultimately the product of socialization of relevant individuals who in turn alter, or effect an alteration of, state policy.

At bottom, we agree with Professor Mushkat that national-level case studies are not only valuable, but also indispensable, if we are to understand adequately how global norms influence actors on the ground. The importance of case studies, however, does not diminish the importance of our theoretical account of acculturation. One central proposition in our work is that theoretical models based only on coercion or persuasion cannot adequately explain some important ways in which international law is received into domestic legal systems. Case studies informed by a more fully developed account of global social influence would provide findings that are more descriptively refined and hence more useful. Finally, and without prejudice toward the importance of national-level case studies, world-level studies are also valuable because they illuminate important global patterns discernable only in the aggregate. These global patterns, as we argue at great length in our earlier work, make clear the causal significance of global culture in the diffusion of general social norms and concrete state practices. 'Black-box modelling', in other words, is both limited and necessary. If relied upon exclusively, this sort of modelling renders invisible much of what is unique in various national contexts, thus frustrating any attempt to understand specific causal pathways by which global-level influence strategies impact specific actors. The absence of global-level inquiry, on the other hand, renders invisible important patterns across cases.

Professor Mushkat's analysis of China and Taiwan is instructive.[6] Her account documents much that is unique and no doubt important in the orientation of China and Taiwan to the international legal order. Several aspects of Mushkat's fascinating account nevertheless suggest that coercion- and persuasion-based explanations of social influence are incomplete. At important moments in her brief narrative, the causal story is driven by abstract references to the role of social and cognitive pressures motivating important actors. For example, she suggests that the 'dignity' of a certain 'status' partially explains variations between the ideological climate in China and Taiwan. She also underscores the causal importance of Mao's 'charisma' and the 'rhetorical [] vulnerability' of Sunism. Our point here is not that every, or even most,

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[4] Goodman and Jinks, 'Incomplete Internalization and Compliance with Human Rights Law', 19 EJIL (2008) 725.

[5] R. Goodman and D. Jinks, *Socializing States: Promoting Human Rights through International Law* (forthcoming 2010).

[6] Mushkat, *supra* note 1, at 4–7.

of these ideological features were determined by global social forces. They almost certainly were not. The point here is that theoretical accounts of the orientation of these states, cultures, and peoples to the larger international order might profit from a more fully elaborated theory of the mechanisms by which the global influences the local. If China has proven more resistant to global-level acculturation and Taiwan less so,[7] it would be important to understand why. This kind of inquiry – crucial for the development of an adequate theory of how and why international law matters – requires the sort of approach we have sought to develop in our work.

[7]   Some more extended case studies suggest that China too is amenable to global-level acculturative forces. The important recent work of Alastair Iain Johnston provides powerful evidence that 'social influence' and 'mimicry' best account for some of the important changes in Chinese foreign policy. A. I. Johnston, *Social States: China in International Institutions, 1980–2000* (2008).