INTERNALIZATION
THROUGH SOCIALIZATION

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Professors Ryan Goodman and Derek Jinks have authored an important paper and have begun an important project: how the process of internalization of international law into national behavior transpires through the process of "socialization." That project continues their important joint work on the Institutional Theory of Sovereignty[1] by sketching an ambitious outline of an integrated model of social mechanisms that influence state behavior. In this comment, let me explain first, why the project and this paper are important; and second, how their project could be strengthened in the years ahead.

Until quite recently, the enterprise of International Legal Scholarship had long been viewed as a complex oxymoron: like the "Holy Roman Empire," which, of course, was neither Holy, Roman, nor an Empire, or the "New York Giants," who are neither New, from New York, or Giants. Similarly, many domestic lawyers had assumed that if the subject was "international," there could be no law involved, and if the subject was "international law," there could be no scholarship involved.

All that changed less than two decades ago, when international law finally met international relations theory.[2] Unlike many other areas of legal scholarship, international law was a relative latecomer to interdisciplinarity; the field only became interdisciplinary about fifteen years ago, not coincidentally about the time that the collapse of the Berlin Wall signaled the new functionality of international law

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    1. *See* Ryan Goodman & Derek Jinks, *Toward an Institutional Theory of Sovereignty*, 55 STAN. L. REV. 1749, 1750 (2003) (proposing "a sociological model of sovereignty" stemming from their "systematic reexamination" of the "questionable empirical assumptions about the nature of the state and its relation to the international order").

    2. For a review of the evolution of this collaboration, see generally FOUNDATIONS OF INTERNATIONAL LAW AND POLITICS (Oona A. Hathaway & Harold Hongju Koh eds., 2004).

rules. As Goodman and Jinks's article recognizes, the first generation of interdisciplinary international law/international relations work predictably adopted political science as the "other discipline," invoking rational choice theory as the exemplar of what constitutes political science. But over time, that interdisciplinary dialogue shifted. A whole range of international relations theories, drawn primarily from the schools of political science and political economy, were imported into the essentially doctrinal, "old legal process" approach of international legal scholarship.[3] The main challenge to rationalist thought during this period came from the constructivist, "ideational" school of international relations theory, typified by the work of such constructivist political science scholars as Professors John Gerard Ruggie, Alexander Wendt, Kathryn Sikkink, and Martha Finnemore.[4] The lead dialectic arose between "interest-based theories"—those theories that take state interests as givens—and "idea-based" theories—those theories that take state interests as constructed socially through the influence of ideas. This dialectic led to the now-familiar, but increasingly tired, dichotomy between realists and constructivists, with the former group tending to believe that international law promotes compliance primarily by relying on techniques of coercion and the latter group suggesting that compliance grows more fundamentally from techniques of persuasion resting on the power of norms.[5]

Goodman and Jinks's paper takes this first-generation scholarship as a given, and moves deeper, thus constituting a leading example of what may now be fairly called "Second-Generation" International Law/International Relations scholarship. Goodman and Jinks's

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3. For a compressed intellectual history, see Harold Hongju Koh, *Transnational Legal Process*, 75 NEB. L. REV. 181, 186–94 (1996) (comparing the history of domestic legal process scholarship with international legal process scholarship).

4. *See generally* MARTHA FINNEMORE, NATIONAL INTERESTS IN INTERNATIONAL SOCIETY (1996); MARGARET E. KECK & KATHRYN SIKKINK, ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS (1998); ALEXANDER E. WENDT, SOCIAL THEORY OF INTERNATIONAL POLITICS (1999); Martha Finnemore & Kathryn Sikkink, *International Norm Dynamics and Political Change*, 52 INT'L ORG. 887 (1998); Martha Finnemore & Kathryn Sikkink, *Taking Stock: The Constructivist Research Program in International Relations and Comparative Politics*, 4 ANN. REV. POL. SCI. 391 (2001); John Gerard Ruggie, *What Makes the World Hang Together? Neo-utilitarianism and the Social Constructivist Challenge*, 52 INT'L ORG. 855 (1998); Alexander Wendt, *Anarchy is What States Make of It: The Social Construction of Power Politics*, 46 INT'L ORG. 391 (1992).

5. For elaboration of the history of this debate, see Harold Hongju Koh, *Why Do Nations Obey International Law?*, 106 YALE L.J. 2599, 2615–34 (1997).

approach gets past the question usually asked by first-generation international law and international relations scholars—namely, "Does international law matter?"—and instead brings the microscope into sharper focus, asking, "Given that international law matters, what are the social mechanisms that help *make* international law matter?" Goodman and Jinks then recognize that the mechanics of social influence have so far been grossly underspecified in the literature. In their view, we must start studying not just the macroprocesses, but also the social mechanisms that actually govern the social influence of law, i.e., the microprocesses of social influence that affect what I have elsewhere called "norm-internalization."[6] In short, their piece is a case study in internalization through socialization.

By refocusing the inquiry, Goodman and Jinks bring a new dimension to the study of the anatomy of social influence: identification of "patterns of acculturation."[7] Their article usefully makes clear that chosen social mechanisms are distinct from methodological orientations. Some constructivists emphasize coercion; some rationalists emphasize persuasion. Thus, the traditional coercion-persuasion dichotomy invoked by both realists and constructivists really masks a trichotomy that includes a third way—patterns of acculturation, or societal pressures upon a state to assimilate with a higher normative standard.

By focusing on acculturation over coercion and persuasion, Goodman and Jinks place themselves squarely in the constructivist camp, talking about how preferences form and change through a complex interaction between process and ideas. As significantly, their study of social mechanisms requires the importation of a new discipline—not political science and international relations, which have traditionally been the social sciences applied to international legal studies—but Law and Sociology, a field in which both of these scholars have advanced degrees. Their work thus imports into interdisciplinary work in international relations a new literature that has not previously been much read or invoked by international law scholars, namely the New Institutional Theory of organizations, pioneered by such sociology scholars as Professors Paul DiMaggio, Woody Powell, John Meyer, and Lynne Zucker.[8]

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6. *Id.* at 2646.

7. Ryan Goodman & Derek Jinks, *How to Influence States: Socialization and International Human Rights Law*, 54 DUKE L.J. 621, 638 (2004).

8. See generally sources cited in Goodman & Jinks, *id.* at 626–27 n.9.

Goodman and Jinks's law-and-sociology approach leads them to the broader notion of world policy institutionalism described in their *Stanford Law Review* paper, a theory rooted in the sociology of organizations. That theory asks why nation-states end up identifying with a referent group and trying to keep up with a community standard in global affairs.[9] Their sustained examination of this question leads them toward an as-yet underdeveloped, but potentially promising, sociological model of state sovereignty, which sees the state not as a monolith, but as an institutionalized organizational form embedded in global cultural order. Thus, the approach sees the globalization of human rights as an aspect of the broader globalization of culture and language, which, as much as particular ideas, has the potential to define and redefine the legitimate purposes of the nation-state.

In one sense, Goodman and Jinks's approach is not new. Their broader world polity model has close familial ties to the English "international society" school of Grotian heritage.[10] Like the American constructivists, the British "international society" scholars see the norms, values, and social structure of international society as helping to form the identity of, and then to acculturate the national actors who operate within, that international society. Nations thus obey international rules not just because of sophisticated calculations about how compliance or noncompliance will affect their interests, but because a repeated habit of obedience within a societal setting socializes them and remakes their interests so that they come to value

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9. Goodman & Jinks, *supra* n. 1.

10. HEDLEY BULL, THE ANARCHICAL SOCIETY 13, 28–33 (1977):

> [I]f states today form an international society . . . this is because, recognising certain common interests and perhaps common values, they regard themselves as bound by certain rules in their dealings with one another . . . . [and] co-operate in the working of institutions such as the forms of procedures of international law, the machinery of diplomacy and general international organisation, and the customs and conventions of war.

For other writings in this vein, see generally ADAM WATSON, THE EVOLUTION OF INTERNATIONAL SOCIETY (1992); MARTIN WIGHT, *Collected Lectures of Martin Wight on International Theory at the London School of Economics*, *in* INTERNATIONAL THEORY: THE THREE TRADITIONS (Gabriele Wight & Brian Porter eds., 1992); Barry Buzan, *From International System to International Society: Structural Realism and Regime Theory Meet the English School*, 47 INT'L ORG. 327 (1993); Andrew Hurrell, *International Society and the Study of Regimes: A Reflective Approach*, *in* REGIME THEORY AND INTERNATIONAL RELATIONS 49 (Volker Rittberger ed., 1993); James Mayall, *International Society and International Theory*, *in* THE REASON OF STATES: A STUDY IN INTERNATIONAL POLITICAL THEORY 122 (Michael Donelan ed., 1978).

rule compliance. In Andrew Hurrell's words, "[A] good deal of the compliance pull of international rules derives from the relationship between individual rules and the broader pattern of international relations: states follow specific rules, even when inconvenient, because they have a longer-term interest in the maintenance of law-impregnated international community."[11]

Nevertheless, the Goodman and Jinks approach charts several new directions beyond their distinctive choice of a sociological methodology. First, although this particular paper is not empirical, their argument can be tested as part of an emerging wave of empirical scholarship in international law and international relations.[12] Second, they focus not on the traditional subject matter of international law/international relations—international trade—but, rather, on the more thorny topic of human rights. Human rights has traditionally been the toughest case study for interdisciplinary theory because compliance with international human rights rules cannot easily be explained as reciprocity or by reference to a larger cooperation or coordination game. Moreover, human rights is the subject matter area in international affairs where the largest enforcement deficit exists, inasmuch as the costs of enforcement appear high and the benefits seem low by traditional state interest calculations. Third and finally, Goodman and Jinks start an important process of looking not just at channels of influence, but at broader questions of regime design[13]—membership, rule precision, and enforcement and monitoring mechanisms. They suggest that if acculturation and not coercion is the main approach to social influence, then "hard" mechanisms of social influence are not necessarily more effective in securing compliance than softer norms.

If these are the virtues of the emerging Goodman-Jinks project, in what ways can their project be strengthened? First, they need to test their approach against many more contemporary concrete examples, not just historical examples of the kind usefully suggested by José

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11.   Hurrell, *supra* note 10, at 59.

12.   *See generally* Ryan Goodman & Derek Jinks, *Measuring the Effects of Human Rights Treaties*, 14 EUR. J. INT'L L. 171 (2003) (critiquing Hathaway, *Do Human Rights Treaties Make a Difference?*, *infra*); Oona A. Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 YALE L.J. 1935 (2002) (presenting the results of empirical research on the effectiveness of human rights treaties); Oona A. Hathaway, *Testing Conventional Wisdom*, 13 EUR. J. INT'L L. 185 (2003).

13.   Such scholars as Oona Hathaway, Andrew Guzman, and Kal Raustiala have begun looking into regime design questions as well.

Alvarez.[14] For example, they could study the success of their theory of state socialization along a spectrum of states: from North Korea, to Libya, to China, to Turkey, to the post-September 11 United States. Each of these countries presents a differing level of community participation and a differing degree of issue linkage, in some cases contractual, in other cases community-based. Instead of treating all nation-states as standing at a comparable stage of national evolution, the Goodman-Jinks model should distinguish among different national agendas for global legitimation through human rights compliance. North Korea is a prime example of an extraordinarily isolated country that barely participates in the international community. To the extent that it can be socialized, this socialization must begin through quid-pro-quo contractual issue linkages—for example, the trading of food and energy for reduction of nuclear production and specific human rights improvements. A country such as Libya presents a developing example of a previously isolated country that the United States is now seeking to socialize into international norms through a broad array of emerging issue linkages.

By contrast, countries such as China and Turkey, each of which exhibit serious human rights abuses, also display increasing degrees of community participation. Turkey, for example, must comply with European human rights norms as a condition of joining the regional economic community, and China is entering the global economic community—symbolized by membership in the World Trade Organization—without yet having acceded fully to the global human rights agenda. Thus, these different states seek socialization and legitimation for different reasons: North Korea, in an effort to eliminate its pariah status; Turkey and China, in an effort to promote community acceptance; and the United States, out of a desire to promote a broader global leadership agenda.[15]

What Goodman and Jinks should clarify is that, at base, their third way—acculturation—is really an intermediate way *between* coercion and persuasion—a form of incomplete internalization that results from incomplete persuasion. Anyone who parents a teenage child quickly learns that between norm acceptance and norm

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14. José E. Alvarez, *Do States Socialize?*, 54 DUKE L.J. 961 (2005).

15. For a discussion of the different incentives of North Korea, Iraq, and the United States within the global human rights system, see generally Harold Hongju Koh, *Jefferson Memorial Lecture: Transnational Legal Process After September 11th*, 22 BERKELEY J. INT'L L. 337 (2004); Harold Hongju Koh, *On American Exceptionalism*, 55 STAN. L. REV. 1479 (2003).

compliance is a large zone that can be thought of a zone of "norm conformity." In any close-knit community there are intense, internally felt pressures to conform and thereby to reduce a community member's discomfort level at being a visible outlier. In this zone, the motives for conformity are complex. A form of "human rights covering" occurs, in which countries and leaders accede to the pressures to acculturate out of a combination of norm acceptance, conformity, and self-interest. For example, the recent debacle of U.S. torture at Abu Ghraib triggered a range of American responses that combined to create a national incentive to conform. But those responses were themselves varied, ranging from those who were morally offended by the acts, to those who were disturbed by the harm to America's international reputation, to those who were more outraged by the outrage against Abu Ghraib than by Abu Ghraib itself. In moving toward an integrated, mutually reinforcing model of social mechanisms, Goodman and Jinks would do well to introduce more dynamic elements, tracking the evolution of a state's norm-internalization from coercion to persuasion to internal acceptance. These are not distinct alternatives, but rather, stages in an evolutionary process, whereby persuasion often occurs in the shadow of coercion, and acculturation often occurs in the shadow of persuasion.

In this evolutionary process, moments of political transition are important in ways that Goodman and Jinks do not fully address. Countries that have converted to human rights acceptance tend to be "more Catholic than the pope," as illustrated, for example, by the role of Nelson Mandela in South Africa, Vaclav Havel in the Czech Republic, and Kim Dae Jung in South Korea.

Goodman and Jinks also have yet to develop the details of their discussion of *domestic* channels of influence, explaining, for example, how a society can move from a textual internalization of international norms (for example, in the U.S.-occupation-influenced Iraqi constitution) to "internalization on the ground," in the sense of genuine social acceptance of human rights norms (what I call elsewhere the process of "social internalization").[16] Their model also unduly emphasizes positive treaty law over unwritten customary law and makes insufficient use of the notion of an "interpretive

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16. *See generally* Harold Hongju Koh, *The 1998 Frankel Lecture: Bringing International Law Home*, 35 HOUS. L. REV. 623 (1998) (describing the difference between legal, social, and political internalization).

community," in which the meaning of global norms can be debated and refined through the interaction of external and internal interpreters.[17]

Still, their paper is important and their long-term project is only beginning. In a brief time, the collaboration between these two energetic and talented young scholars has been both productive and stimulating. This promising start bodes well for their contribution together in the years to come.[18]

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17. *Id.* at 649–51 (discussing the concept of interpretive community).

18. *See generally* Goodman & Jinks, *supra* notes 1, 7, & 12; Ryan Goodman & Derek P. Jinks, Filartiga*'s Firm Footing: International Human Rights and Federal Common Law*, 66 FORDHAM L. REV. 463 (1997).