

Ryan Goodman, Derek Jinks, *Socializing States: Promoting Human Rights through International Law*, Oxford University Press, New York: 2013, pp. 240 (incl. bibliography and index)

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Understanding how international law influences state behaviour and the modes of this influence in the area of human rights is a particularly challenging exercise. It is even more challenging when attempted at a high level of abstraction and with the ambition of improving “our understanding of how exactly the international legal regime can help to promote the adoption of fairer, more human forms of government” (p. 1).¹ International legal scholarship does not seem to be overly preoccupied with examining the social patterns of influence discernible within the international community with the same attention it attaches to issues of (non)compliance with international law and its legal consequences. Of course, analyzing how and why states might be induced and encouraged to comply with international human rights obligations might be considered an issue of primary interest to international relations theorists, but arguably it should also be of concern to international lawyers. Why do states follow (or not) norms of international human rights law, and what are the relevant social factors in this context? These are issues of general importance for every international law scholar or practitioner, especially since we hear all too often that international human rights law is far from being effective, or even that it has totally failed to meet its objectives.² Although the reviewed book does not offer any easy solutions to the problem of efficiency of human rights law, it does provide a vision of how states might feel encouraged to act in better compliance with their international legal obligations concerning human rights.

R. Goodman and D. Jinks distinguish three mechanisms that influence states to comply (or not) with their commitments: material inducement, persuasion, and acculturation. The authors pay particular attention to the latter, though they do not claim it is the most effective or important mechanism of influence. They assert that acculturation has been in fact neglected, often equated or confused with persuasion. According to the authors, acculturation should be perceived as “a general process by which actors adopt the beliefs and behavioral patterns of the surrounding culture” and as such “induces behavioral changes through pressures to assimilate – some imposed by other actors and some imposed by self” (p. 4). The other two mechanisms of influence, i.e. material inducement and persuasion, are supposedly better analyzed and understood than acculturation, which thus remains the main focus of the authors’ book. Having said that, the authors aim at presenting a full picture of how states’ behaviour is influenced by international society. They endeavour to explain the mechanisms of social

¹ Unless provided otherwise, all quotations and page numbers refer to the book under review.

² Cf. E. Posner, *The Twilight of Human Rights Law*, Oxford University Press, Oxford: 2014.

influence one by one, and engage in detailed research in order to offer conclusions on an integrated model of human rights design.

The book is divided into three parts. The first develops “A theory of influence” based on the above-mentioned three mechanisms. The authors observe that material inducement constitutes the most obvious mechanism of social influence by “increasing the benefits of conformity or the costs of nonconformity through material rewards and punishments” (p. 23). Indeed, economic incentives instantly come to mind when we identify motives behind states’ behaviour, and in particular economic sanctions for noncompliance are an obvious example of this kind of influence. However, material inducement may have little to do with the real preferences and objectives of the “influenced” state. It is only when the latter are modified due to external influences that we may identify another mode of social influence, i.e. persuasion. This happens when “actors actively assess the content of a particular message and change their minds on the basis of the congruence of that information with their existing beliefs and values” (p. 24). However, most of the first part of the reviewed book discusses the third mechanism of social influence, i.e. acculturation. The authors strive to provide readers with a thoroughly elaborated model of acculturation, starting with an explanation of how the former is to be distinguished from persuasion. While both mechanisms are aimed at inducing a change in the states’ “thinking” and behavioural patterns as a result of external social pressures, the difference lies in the motives that might lead the concerned state to comply. Goodman and Jinks explain that in case of persuasion it is the content of a norm that matters most, because the persuaded state has already accepted its validity or legitimacy. In the case of acculturation, it is not the relation of a state to the norm that shapes the influence, but rather the relation of a state to a reference group of other states. The authors claim that “acculturation occurs not as a result of the content of the relevant rule or norm but rather as a function of social structure” (p. 29). As such, acculturation may work tacitly when the relations between the state concerned and its international environment sufficiently encourage the former to be more like the others in the same group. No wonder then that the authors refer in this context to mimicry – a term present in social sciences but evidently derived from biology.

What is worth underlining is that the authors do not take for granted that the above-mentioned methods of social influence apply to states in the same way that they work on an individual level. In other words, the socialization of states is not to be assumed without blinking an eye. Instead of attempting to attest that a state may feel, believe or have preferences, the authors choose a more empirical approach and argue that evidence of state practice and macro-level phenomena do reflect influences on domestic policies and allow one to claim that states socialize. This sounds convincing, especially in that, according to Goodman and Jinks, state socialization is “a process grounded in the beliefs, conduct, and social relations of individuals” (p. 41). The authors expressly prefer not to dwell on the ontological status of the state and its personhood. This might be understandable in the context of their project, although it may also leave the reader with the impression that the status of states and their legal personality is somewhat

vague or ambiguous, whereas in fact these issues are relatively well known and hardly controversial, at least within the sphere of public international law.

In any case, the authors undertake a detailed and impressive analysis of the empirical record to justify their claim for the significance of acculturation as a social mechanism in the international community. They provide ample examples, both from outside and inside of the human rights domain, such as environmental policy, public education, constitutional design and substantive rights protection. One of the thought-provoking issues raised by the authors in the “empirical part” of their book is whether acculturation may be convincingly proven by reference to regional or neighbouring state structures. Goodman and Jinks refer to a recent study of human rights compliance by Beth Simmons³ to argue that the phenomenon of acculturation does exist in a regional context and should not be considered in global terms only (pp. 70-74). This regional dimension of acculturation could be a fascinating field of further study, especially when we consider how human rights protection has developed in regional systems and inter-governmental organizations. A notorious example from the European continent would be the last twenty five years of the functioning of the Council of Europe (CoE), which doubled its membership since 1989 and in which the acculturation-driven phenomena in the context of human rights are self-evident. Discussing this example in more detail would exceed the limits of this review, but let me just note that tracing acculturation linked with Council of Europe membership and the accompanying CoE human rights treaties could be a fascinating research objective. It would undoubtedly identify both shining examples of compliance based on acculturation, as well as regretful instances of paying lip service to human rights commitments by some member states.

As a matter of fact, the whole process of the enlargement of the Council of Europe after 1989 has been based on the assumption that the newly established, or re-established, democracies in Central and Eastern Europe (CEE) would benefit from the Western-oriented culture of human rights, democracy and the rule of law. Material inducement or persuasion was not decisive in this process. The CEE states were eager to accede to the CoE as they wanted to be “in the same club” and share the culture, values and human rights standards of that organization. Goodman and Jinks refer to the Council of Europe in their book, but only *en passant* while discussing the inclusiveness and restrictiveness of intergovernmental organizations (p. 91). By the way, I do not share the authors’ view as to the restrictive rule adopted by the Council of Europe with respect to the admittance of new members or observers. While indeed some preconditions on CoE membership did exist and were even expanded in the 1990s and 2000s, the candidates for membership did not undergo any thorough scrutiny of their human rights performance. Free and democratic elections were always considered the most important requirement, with some further conditions added later (like ratification of the 1950 European Convention on the Protection of Human Rights and Fundamental

³ Cf. B. Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics*, Cambridge University Press, Cambridge: 2009.

Freedoms), but at least the first wave of the CoE enlargement after 1989 may hardly be considered as based on any restrictive rule. Some even claimed the organization had been too inclusive and many debates were held in late 1990s as to whether the accession of, e.g., the Russian Federation to the CoE in 1996 had not been premature. This perspective of twenty-five years since the first states from CEE joined the CoE provides a good background for studying the regional dimension of acculturation and allows for a tentative conclusion that most new CoE members did improve their human rights records because of the influences and pressures they experienced as members of the organization.

In Part II of the book the authors discuss the application of the influence mechanisms on the design of the international human rights regime. The problems raised in this part also include the afore-mentioned membership in international organizations, with particular focus on their inclusiveness or restrictiveness, the level of precision in defining state obligations, as well as methods of monitoring and enforcing compliance with substantive human rights norms. With respect to the latter issue the authors argue, for instance, that whereas publishing best practices proves negligible for the material inducement mechanism and only moderately effective in terms of persuasion, it is highly effective when taking into account the acculturation mechanism. More or less similar conclusions are drawn when criticizing “bad actors” for their human rights performance under review. More nuanced answers were offered when it comes to binding decisions and sanctions: they are claimed to be highly effective and essential for material inducement, but potentially counterproductive for other methods of social influence. The basic conclusion is that monitoring and reporting as mechanisms of human rights enforcement are considered effective for material inducement, but even more effective and important when examined as factors stimulating persuasion and acculturation.

The last part of the reviewed book deals with problems and prospects of state socialization. The authors go back to the question of how international human rights law might better harness the mechanisms of social influence to achieve its goals. Before addressing this question, a potential weakness in the theory of acculturation-based compliance is examined, notably whether acculturation may leave a gap between what states commit to and what they undertake in practice. The authors answer this concern by arguing that acculturation does not necessarily result in a split between what states declare and what they do. More often than not, acculturation does induce some form of internalization of international norms and commitments. And even if the gap between the states’ declarations and practices persist, this does not lead to the conclusion that the acculturation process has been a total failure. The authors argue that acculturation sometimes assumes a long-term evolution and that improvement of domestic implementation requires patience. Managing the gap between commitments and practice is discussed in Chapter 8, whereas in Chapter 9 the authors aim at presenting the basic features of their integrated model of state socialization. They insist that the integrated model should “take acculturation seriously” and include positive and negative interactions between the various mechanisms of social influence, as well as identify conditions

for their success. The model of state socialization set out by R. Goodman and D. Jinks could well serve as a valuable theoretical background in discussions about re-designing systems of protection of human rights with a view toward better state compliance.

In the last chapter of the book the authors take stock of their major empirical findings, sum up the normative applications (membership in international organizations, defining substantive obligations, juxtaposing implementation mechanisms with modes of social influence), and highlight the directions for future normative and empirical research related with their project. Without doubt the sophisticated model of social influence elaborated by the authors is inspiring and provokes further studies on a more operational level. For instance, it would be interesting to explore how the model corresponds with phenomena related to the execution of judgments of international courts in domestic legal orders. More specifically, with respect to the binding force of the judgments of the European Court of Human Rights a question arises: What kind of social pressures occur and acculturation-driven changes arise within the members states following the ECHR judgments?

Quite obviously the authors of the reviewed book had a more holistic and far-reaching concept in mind when they shared with readers their model of state socialization and modes of influence. Whatever their intentions, it appears that their remarkable study might trigger further research into the existing normative systems of human rights protection. This concerns both the UN and regional systems, since the phenomenon of acculturation seems to be ubiquitous.

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