Dear workshop participants,


I am looking forward to our discussion at the workshop.

Best,

Ryan
Prospectus

SOCIALIZING STATES: PROMOTING HUMAN RIGHTS THROUGH INTERNATIONAL LAW
(forthcoming Oxford University Press)
Ryan Goodman & Derek Jinks

Introduction

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INTRODUCTION

How, if at all, does international law influence state behavior? Of course, there are good reasons to think that like-minded states, at times, coordinate their response to common problems through international law. But, is there any good reason to contemplate a more ambitious role for international law in global politics? Might international law, under certain conditions, encourage meaningful changes in state behavior or even state preferences? Might law help promote a global cultural commitment to humane, effective governance? These are central questions for students and practitioners of international politics because the design of effective international legal regimes requires an understanding of how law influences states (and other relevant actors). That is, regime design choices in international law turn on empirical claims about how states behave and under what conditions their behavior changes. Addressing them requires nothing short of understanding the social forces that shape the behavior of states—whether rewards and penalties, reasoned arguments, or concerns about status might influence recalcitrant states.

In this book, we identify three specific mechanisms for influencing state practice: coercion, persuasion, and acculturation. We also describe the distinct, and sometimes competing, logic of each mechanism. Our approach helps produce a more complete explanation of the emergence of human rights regimes. It also helps to build effective global institutions and to prescribe strategies for various actors to exploit those institutions to promote human rights.

Optimal regime design, we contend, is impossible without identifying and analytically foregrounding the mechanisms of influence and their discrete characteristics. We consider in detail how these mechanisms of social influence might occasion a rethinking of fundamental regime design issues in international human rights law. We apply these insights to formal and informal aspects of the contemporary human rights regime including the structure of multilateral treaties, the role of transnational advocacy groups; and the domestic incorporation of global norms. Through a systematic evaluation of three formal design problems—conditional membership, precision of obligations, and enforcement methods—we elaborate an alternative way to conceive of regime design. We also consider some of the ways in which a richer theory of social influence might inform debates about how nongovernmental organizations might best promote international human rights norms, and how best to conceive the relationship between international and domestic law.

We maintain that acculturation is an overlooked, conceptually distinct social process through which state behavior is influenced; and the regime design recommendations issuing from this approach defy conventional wisdom in international human rights scholarship. Our analysis not only recommends reexamination of policy debates in human rights law; it also provides a conceptual framework within which the costs and benefits of various design principles and advocacy strategies might be assessed. Our aim is to improve the understanding of how norms operate in international society with a view to improving the capacity of legal institutions to promote respect for human rights.

The increasing exchange between international relations theory and international law illuminates some difficulties involved in regime design and offers some useful insights to resolve them. Inspired by the theoretical frameworks and empirical findings of international relations research, legal scholars have begun to develop empirically-oriented
legal analyses of international human rights regimes. This groundbreaking “first generation” of empirical international legal studies demonstrates that international law “matters.” Nevertheless, the existing literature does not adequately account for the regime design implications of this line of research. Regime design debates often turn on unexamined or undefended empirical assumptions about foundational matters such as the conditions under which external pressure can influence state behavior, which social or political forces are potentially effective, and the relationship between state preferences and material and ideational structure at the global level. Moreover, prevailing approaches to these problems are predicated on a thin and underspecified conception of the mechanisms for influencing state practice. What is needed is a “second generation” of empirical international legal studies aimed at clarifying the processes of law’s influence. This second generation, in our view, should generate concrete, empirically falsifiable propositions about the role of law in state preference formation and transformation.

First-generation scholarship in international human rights law, in our view, provides an indispensable but plainly incomplete framework. Prevailing approaches suggest that law changes human rights practices either by coercing states (and individuals) or by persuading states (and individuals) of the validity and legitimacy of human rights law. In our view, the former approach fails to grasp the complexity of the social environment within which states act, and the latter fails to account for many ways in which the diffusion of social and legal norms occurs. Indeed, a rich cluster of empirical studies in interdisciplinary scholarship documents particular processes that socialize states in the absence of coercion or persuasion. These studies conclude that the power of social influence can be harnessed even if: (1) collective action problems and political constraints that inhibit effective coercion are not overcome and (2) the complete internalization sought through persuasion is not achieved. We contend that this scholarship now requires a reexamination of the empirical foundations of human rights regimes.

Our aim is to provide a more complete conceptual framework by identifying a third mechanism by which international law might change state behavior—what we call acculturation. By acculturation, we mean the general process by which actors adopt the beliefs and behavioral patterns of the surrounding culture. More specifically, this mechanism induces behavioral changes through pressures to assimilate—some imposed by other actors and some imposed by the self. Acculturation encompasses a number of micro-processes including mimicry, identification, and status maximization. The touchstone of this mechanism is that identification with a reference group generates varying degrees of cognitive and social pressures—real or imagined—to conform. We do not suggest that international legal scholarship has completely failed to identify aspects of this process. Rather, we maintain that the mechanism is underemphasized and poorly understood, and that it is often conflated (or even confused) with other constructivist mechanisms such as persuasion. Differentiating the mechanism of acculturation and specifying the micro-processes through which it operates are profoundly important, however, for addressing questions pertaining to the adoption of international legal norms. Indeed, each of the three mechanisms—coercion, persuasion, and acculturation—is likely to have distinct implications along a number of dimensions including the durability of norms, the rates and patterns of adoption, and the depth of compliance.

Additionally, we demonstrate how a close analysis of the characteristics and function of each mechanism matters for regime design. We link each of the three mechanisms of social influence to specific regime characteristics—identifying several ways in which identifying acculturation as distinct from the better-understood mechanisms of coercion
and persuasion may occasion a rethinking of fundamental design problems in human rights law. In short, we reverse engineer structural regime design principles from the salient characteristics of underlying social processes. We maintain that the regime design recommendations issuing from understanding the distinct role of acculturation defy conventional wisdom in international human rights scholarship. Without this understanding, several characteristics of international society will persistently frustrate regime design models that seek compliance with human rights law solely by coercing and persuading non-complying states.

Careful readers may argue that the best approach to regime design should incorporate elements of all three mechanisms. This argument reflects the view that the identified mechanisms reinforce each other through a dynamic relationship that is sacrificed when a regime emphasizes one mechanism to the exclusion of others. This is an important point, and it is almost certainly correct. However, the kind of analysis contemplated by this line of criticism (i.e., the development of an integrated theory of regime design accounting for each mechanism) first requires, in our view, identification and clear differentiation of these mechanisms. This conceptual clarification is a first step, which enables subsequent work aimed at identifying the conditions under which each of the mechanisms would predominate, potentially reinforcing or frustrating the operation of the others. Moreover, we think it useful to link specific mechanisms to concrete regime design problems. Doing so illustrates the design features suggested by each and further clarifies the conceptual commitments of each mechanism. Our analysis of regime design problems yields three models of human rights regimes—one built on each of the mechanisms. But we do not suggest that any regime does or should exhibit all of the features of a single mechanism.

PART I. A THEORY OF LAW’S INFLUENCE

Chapter 1
The Case for a Mechanism-based Theory

In this chapter, we explain the central question addressed in the book: By what mechanism does international law influence actors? The goal of understanding better how international law influences states requires developing models that explain the processes that produce outcomes. We explain the distinctiveness and advantages of this mechanism-based approach compared, for instance, against prevailing forms of correlation-based analysis. Correlation-based approaches emphasize the co-variation of various observed phenomena (e.g., democracies are less likely to violate human rights). In contrast, mechanism-based approaches emphasize the causal processes that account for observed phenomenon (e.g., elected officials’ accountability reduces rights violations; participatory political processes develop an ethic of respect for other citizen’s rights). Given certain specified inputs, the mechanism produces some specified observable outcome.

Although scholarly and policy analysis of human rights law has necessarily relied on various causal mechanisms, the features and implications of these mechanisms have not been subject to direct and rigorous examination. More sustained analysis of causal mechanisms would illuminate untested (and often unexamined) assumptions in leading empirical studies of the effectiveness of human rights law. It also reveals untested (and, again, often unexamined) assumptions in prescriptions for reforming global institutions.
and for structuring national commitments to international law. Finally, in a more fundamental sense, mechanism-based analysis helps transcend the increasingly tired debates in international relations between realist and constructivist approaches. Indeed, we maintain that an integrated model of law’s influence must account for the important empirical insights of both realist and constructivist approaches to global politics. An emphasis on mechanism-based analysis can help accomplish that goal.

Chapter 2
Three Mechanisms of Social Influence

We identify three distinct mechanisms of social influence that drive state behavior: coercion, persuasion, and acculturation. With respect to each mechanism, we detail its conceptual core, the social processes that propel it, and some of the evidence suggesting its presence.

Coercion refers to the process whereby target actors are influenced to change their behavior by the imposition of material costs or the conferral of material benefits. Coercion need not involve any change in the target actor’s underlying preferences. Persuasion refers to the process whereby target actors are convinced of the truth, validity, or appropriateness of a norm, belief, or practice. That is, persuasion occurs when actors actively assess the content of a particular message—a norm, practice, or belief—and “change their minds.” Persuaded actors “internalize” new norms and rules of appropriate behavior and redefine their interests and identities accordingly. Acculturation is the process by which actors adopt the beliefs and behavioral patterns of the surrounding culture, without actively assessing either the merits of those beliefs and behaviors or the material costs and benefits of conforming to them. Cognitive and social pressures drive acculturation. These pressures induce change because actors are motivated to minimize cognitive discomfort (such as dissonance); and social pressures induce change because actors are motivated to minimize social costs. This is not to say that actors calculate these cognitive and social costs in any precise way. Indeed, we suggest that actors hoard cognitive comfort and social legitimacy under certain conditions.

In describing these discrete modes of social influence, we draw on research in political science, economics, psychology and sociology. We also explain how our typology relates to and differs from similar typologies. The heart of this Chapter is the theoretical proposition that law potentially influences actors through acculturation—and that this influence differs importantly from the coercive or persuasive capacity of the law. In the existing human rights literature, acculturation has been largely overlooked, conflated with persuasion, or simply misunderstood. In this Chapter, we point out with some precision how acculturation differs from coercion and persuasion—as a conceptual and an empirical matter. We turn specifically to the study of these mechanisms at the individual and collective level. In the following chapters, we extend these lessons to the organization of states.

Coercion

The first and most obvious social mechanism is coercion—whereby states and institutions influence the behavior of other states by escalating the benefits of conformity
or the costs of nonconformity through material rewards and punishments. Of course, coercion does not necessarily involve any change in the target actor’s underlying preferences. For example, even if state A would prefer to continue practice X, it may discontinue the practice to avoid the sanctions threatened by states B, C, and D. Note that the coercive gesture of states B, C, and D would prove ineffective if state A perceived that the expected benefit of practice X exceeded the expected cost of the threatened sanctions. Take a more concrete example. The United States, under the Foreign Assistance Act, denies foreign assistance to states “engag[ing] in a consistent pattern of gross violations of internationally recognized human rights.” Any state refused assistance on this basis is thereby coerced to alter its behavior. Under the logic of coercion, states and institutions change the behavior of other states not by reorienting their preferences but by changing the cost-benefit calculations of the target state. Also, although international institutions do not reconfigure state interests and preferences, they may, under certain conditions, constrain strategic choices by stabilizing mutual expectations about state behavior. Thus, even if international institutions do not further the coercive enterprise directly, they might define more clearly what counts as a cooperative move. Coercion might then be deployed to target defections. Put simply, under a coercive approach, states change their behavior because they perceive it to be in their material interest to do so.

Theories suggesting the predominance of coercion build on more general theories about the character of international politics. Proponents of this school often contend that the material distribution of power among states essentially determines state behavior. Normative and institutional developments thus reflect the interests of powerful states, and compliance with these norms is largely a function of powerful states’ willingness to enforce them. Consistent with this view, international institutions facilitate state cooperation and coordination by reducing transaction costs and overcoming other collective action problems. This perspective is typically, though not exclusively, associated with “rationalist” or rational choice approaches to international relations. As we explain earlier, however, coercion plays an important role in constructivist models of state behavior as well.

**Persuasion**

What is persuasion and how might it apply in a transnational context? Persuasion is a mechanism of social influence documented principally by psychologists and sociologists, and applied by others to the spread of norms across states. Persuasion theory suggests

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5. See Chapter 1.
that the practices of actors are influenced through processes of social “learning” and other forms of information conveyance that occur in exchanges with transnational networks.

Persuasion “requires argument and deliberation in an effort to change the minds of others.” Persuaded actors “internalize” new norms and rules of appropriate behavior and redefine their interests and identities accordingly. Professor of social psychology Herbert Kelman describes a process of internalization that occurs with persuasion:

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\text{[A]n individual accepts influence because [of] the content of the induced behavior—the ideas and actions of which it is composed. . . . He adopts the induced behavior because it is congruent with his value system. He may consider it useful for the solution of a problem or find it congenial to his needs. Behavior adopted in this fashion tends to be integrated with the individual’s existing values. Thus the satisfaction derived from internalization is due to the content of the new behavior.}
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The touchstone of the overall process is that actors are consciously convinced of the truth, validity, or appropriateness of a norm, belief, or practice. That is, persuasion occurs when actors actively assess the content of a particular message—a norm, practice, or belief—and “change their minds.”

Consider two microprocesses through which the content of a message may succeed in changing a target actor’s views: “framing” and “cuing.” In terms of the former, the persuasive appeal of a counterattitudinal message increases if the issue is structured to resonate with already accepted norms. This microprocess is especially important because it can help explain variation—when actors are likely to be persuaded and when not. Three factors appear to have a significant impact on frame resonance: centrality, experiential commensurability, and narrative fidelity. Centrality concerns how essential
the beliefs, values, or ideas associated with a message are to the target. Experiential commensurability concerns the extent to which the message is congruent with the life and experiences of the target (or whether the message, instead, is too abstract and distant). Narrative fidelity concerns the extent to which the message accords with fundamental assumptions and ideologies already embedded in the target’s social context. Importantly, variation along each of these three axes can affect whether a proposed norm, belief, or practice is accepted or rejected.

In addition to successful framing, persuasion may occur as a result of “cuing” target actors to “think harder” about the merits of a counter-attitudinal message. Cuing is based on the idea that the introduction of new information can prompt actors to “engage in a high intensity process of cognition, reflection, and argument.” Substantial empirical evidence suggests that actors often change their beliefs when, faced with new information, they systematically examine and defend their positions. Systematic assessment and “careful consideration of the merits of the arguments” are associated with changes in opinion that are more resistant to counter-persuasion and that are more likely to remain persistent over time.

**Acculturation**

An important mechanism of social influence is acculturation. In using the term acculturation, we intend to group together a set of related social processes identified by a growing interdisciplinary literature. Whereas persuasion emphasizes the content of a norm, acculturation emphasizes the relationship of the actor to a reference group or wider cultural environment. Professor Kelman usefully describes some of the processes that characterize this mechanism:

Identification can be said to occur when an individual accepts influence because he wants to establish or maintain a satisfying self-defining relationship to another person or a group. . . . The individual actually believes in the responses which he adopts through identification, but their specific content is more or less irrelevant. He adopts the induced behavior because it is associated with the desired relationship.

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16 *Id.* at 621-22.

17 *Id.* at 622 (citing WR Fisher, *Narration as a Human Communication Paradigm: The Case of Public Moral Argument*, 51 COMMUN. MONOGR. I (1984)).

18 Johnston, at 496.


20 Booth-Butterfield & Jennifer Welbourne, at 157; *Id.* at 167-68.


22 Kelman, at 53.
Accordingly, acculturation encompasses processes such as mimicry and status maximization. The general mechanism induces behavioral changes through pressures to conform. Individual behavior (and community-level behavioral regularity) is in part a function of social structure—the relations between individual actors and some reference group. Actors are impelled to adopt the behavioral practices and attitudes of similar actors in their surrounding social environment.

The touchstone of acculturation is that varying degrees of identification with a reference group generate varying degrees of cognitive and social pressures—real or imagined—to conform. The operation of this mechanism is best understood by reference to well-documented individual-level phenomena. One of the central insights of social psychology is that individual behavior and cognition reflect substantial social influence. Actors, in an important sense, are influenced by their environment; indeed, this generalized influence is one important way that “culture” is transmitted and reproduced. Although culture is typically understood as “learned behavior,” much of what actors absorb from their social environment is not simply “informational social influence.” Social influence is a rich process—one that also includes “normative social influence” whereby actors are impelled to adopt appropriate attitudes and behaviors. We explain here the cognitive and social aspects of normative social influence. We also identify evidence suggesting their presence and form. We do not intend to dwell on points that will strike many readers as obviously true. Our objective here is only to identify, with some conceptual precision, the salient general characteristics of the acculturation process.

First, acculturation is propelled by cognitive pressures. Actors in several respects are driven to conform. These internal pressures include (1) social-psychological costs of nonconformity (such as dissonance associated with conduct that is inconsistent with an actor’s identity or social roles), and (2) social-psychological benefits of conforming to group norms and expectations (such as the “cognitive comfort” associated with both high social status and membership in a perceived “in-group”). “Cognitive dissonance”—defined broadly as the discomfort caused by holding two or more inconsistent cognitions—is a useful example. This phenomenon is part of a family of cognitive processes related to the basic human need to justify one’s actions to oneself and others. Substantial empirical evidence demonstrates that individuals experience discomfort—including anxiety, regret, and guilt—whenever they confront cognitions about some aspect of their behavior inconsistent with their self-concept (including any social roles


28 See Aronson et al., supra note 55, at 173-212.
central to their identity). Individuals are highly motivated to minimize this dissonance by either changing their behavior or finding ways to justify their past behavior. Therefore, there are internal pressures driving actors to act and think in ways consistent with the social roles and expectations internalized by such actors. An implication of this pressure is that, once actors internalize some role (or any other identity formation), they are impelled to act and think in ways consistent with the highly legitimated purposes and attributes of that role. As a consequence, orthodoxy and social legitimacy are internalized as authoritative guides for human action.

Second, acculturation is also propelled by social pressures—real or imagined pressures applied by a group. These pressures—which are no doubt more familiar to many readers—include (1) the imposition of social-psychological costs through shaming or shunning and (2) the conferral of social-psychological benefits through “back-patting” and other displays of public approval. In short, actors hoard social legitimacy and social status, and they minimize social disapproval. Consider, for example, social-psychological studies of conformity. Substantial empirical evidence demonstrates that, in the face of real or perceived social pressure from a reference group, actors often change their behavior to conform to the behavioral patterns of the group. Moreover, actors systematically conform (under the right conditions) even if the group is clearly wrong and even if there are strong incentives to be accurate. Because this variant of acculturation results from external pressure, it often leads to public compliance with, but not private acceptance of, social norms.

Importantly, actors obviously do not always bow to social pressure. The well respected “social impact theory” provides one useful way to condense the empirical record into a small cluster of factors that determine the likelihood of success for social pressure. Social impact theory suggests that the likelihood of conformity turns on the strength, immediacy, and size of the group. Each of these variables is positively correlated with effective social influence: (1) conformity with group norms becomes more likely as the importance of the group to the target actor increases (and as the importance of the issue to the group increases); (2) conformity increases as the target

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29 See id. at 174-76.
33 E.g., Cialdini, supra note 61, at 23-27; Richard E. Petty et al., Attitudes and Attitude Change, 48 Ann. Rev. Psych. 609, 612-20 (1997). These microprocesses are well represented in the international law literature—though they are typically embedded in a coercion model of social influence. E.g., Risse & Sikkink, supra note 24, at 11-35.
34 E.g., Aronson et al., supra note 55, at 250-97.
36 E.g., Aronson et al., supra note 55, at 264.
actor’s exposure to the group increases; and (3) conformity increases—up to a point—as the size of the reference group increases.  

### Three Mechanisms of Social Influence

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### Chapter 3

**State Socialization?**

In this Chapter, we address the question whether socialization occurs in any meaningful sense on a global level—and whether there is any evidence suggesting that state policies and practices reflect global social influence. Because the evidence supporting global-level coercion and persuasion is well known and substantial, this Chapter emphasizes the evidence of acculturation on the global plane. In general, evidence of acculturation—much of it drawn from social psychology and cultural sociology—concerns the relationship between individuals and their immediate social setting. Does the acculturation process also apply to large-scale organizations—such as states—situated within a surrounding cultural environment? We argue that it does. Indeed, substantial interdisciplinary research documents that institutional environments influence, via acculturation processes, the goals and structure of formal organizations such as corporations, universities, and public hospitals. Such macro-level processes also shape the goals and structure of states and other globally legitimated organizational

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38 This last point requires some clarification. The empirical record suggests that group size is positively correlated with social influence/conformity up to a certain point (typically from three to eight or so), but then the effect diminishes rapidly. In other words, going from two to three group members matters far more than going from twenty-two to twenty-three or ninety-two to ninety-three. See Aronson et al., supra note 55, at 275-77.
actors. We describe this burgeoning body of evidence highlighting the empirical findings that suggest acculturation—as opposed to persuasion or coercion—best accounts for the observed world-level patterns. In doing so, we synthesize dozens of empirical studies demonstrating the significance of acculturation in the diffusion of global norms, especially including international human rights norms.

We also supplement the existing research by exploring cases that can further illuminate surprising and significant effects of acculturation. First, we examine domains in which, according to conventional perspectives, acculturation is unlikely to operate: (1) the formulation of national security agendas and strategies (where leading theories suggest coercion predominates) and (2) the reliance on foreign law by judges in adjudicating constitutional cases (where leading theories suggest persuasion predominates). Second, we examine particular national institutions that governments establish, sometimes to accept and other times to resist, international pressure to confirm to global norms. In particular, we study the advent of national human rights commissions and ombudsmen. We show how these institutions—in their structural forms and practices—are often the product of global processes of acculturation.

* * *

According to an array of sociological studies, acculturation processes can explain significant aspects of the structures and practices of complex organizations (such as civil service reforms and corporate management techniques). Under certain conditions, such organizations conform to expected behaviors that are legitimated in the wider institutional environment. In organizational sociology, theories of acculturation predict that socialization processes will press organizations toward increasing “isomorphism”—that is, structural similarity across organizations. As recent scholarship in this field explains, “[o]ne mechanism leading to institutional isomorphism is mimesis by organizations that purposively model themselves on other similar organizations (especially those regarded as superior or more successful) by adopting similar or identical decisions and structures.”39 These theoretical models also predict that increasing homogenization will not reflect the functional task demands of organizations. Rather than correlating with local tasks, the structural attributes and goals of an organization will correlate with contemporaneous attributes and goals of other organizations. When institutional conditions are favorable for acculturation, the evidence suggests that the types of cognitive and social pressures identified in Chapter 2 will encourage compliance with social norms.

Drawing on existing empirical research, one can begin to specify empirical patterns suggesting that acculturation (rather than persuasion or coercion) explains the diffusion of a particular norm. The following list presents the type of empirical findings that indicate the influence of acculturation on the global plane. That is, the list points to evidence that can arbitrate between acculturation and alternative theories of change. We subsequently turn to empirical cases of transnational diffusion that correspond with these factors. In other words, we use the list to argue, as a descriptive matter, for the significance of acculturation on state human rights policy and practices. Presenting a list

serves prescriptive purposes as well. That is, this exercise sheds further light on how acculturation works. It accordingly identifies conditions and processes that efforts at institutional design might exploit to promote socialization.

1. Isomorphism across states

Institutionalization presses organizations toward increasing isomorphism, that is, structural similarity. On the global level, the worldwide isomorphism of state organizational structures and formal policies could suggest the presence of world cultural processes and provide some evidence of how these processes work. Isomorphism, however, is not a sufficient indicator of acculturation. It may suffice when accompanied by particular forms of internal decoupling.

2. Decoupling within states

Decoupling involves the adoption by a state of organizational structures and formal policies that are disconnected from internal functional demands and implementation. A worldwide configuration indicating acculturation is (i) extensive structural isomorphism across states alongside (ii) variations in national resources, social histories, and economic development within states. In other words, an important factor is whether states adopt similar policies or organizational structures despite enormous differences in functional needs and national interests.

Such empirical patterns undermine alternative accounts of state practice including persuasion-based accounts of transnational influence and more general social construction theories that posit “bottom-up” social change. For instance, the twin finding—structural isomorphism and internal decoupling—discredits theories that expect the timing and rate of adoption of a norm to be nationally patterned. According to a persuasion account, adoption of a governmental policy or structural design choice should correlate with local (economic, social, political) conditions. That is, actors should pursue a course of action if it is congruent with prevailing local values and functional interests. Additionally, the persuasion theory would expect tight coupling, at least over the course of time. That is, a close correlation with national conditions is expected because the adopted practice presumably serves and will be integrated with existing values and functional needs. Hence, nations should tailor an available model to meet their particular or idiosyncratic interests (including the interests of locally dominant political and social groups). Patterns of significant decoupling defy those theoretical expectations.

An alternative explanation to acculturation might also postulate that isomorphism reflects parallel but independent developments within different states. On this view, isomorphism in legal institutions might result from “the fact that in resolving a pervasive or perhaps universal problem several legal systems, independently of each other, have reacted in similar fashion and have given legal recognition to the same human needs and aspirations.”

41 Schlesinger, et al. at 37.
cross-national adoption of a similar form in a generally contemporaneous or compressed time period (ii) despite the lack of a shared, universal, or pervasive problem. That pattern would mean states have en masse extended “legal recognition to the same human needs and aspirations” despite diverse internal conditions, i.e., in the face of different social, economic, and cultural concerns. Put another way, the alternative explanation to acculturation suggests that as states proceed through a particular stage (e.g., economic development or urbanization) their formal structures will change accordingly. After different states pass a similar stage, their formal systems should be expected to resemble one another. Such an explanation is accordingly undermined if it can be shown that states adopt the same formal structures around the same time in world history while at vastly different stages of internal development.

In a similar vein, it is important to underscore the significance of **persistent decoupling**: the endurance of an adopted practice despite its inefficiency in meeting local needs.\(^42\) It is fair to assume that state actors engage in dynamic learning over time. On that assumption, states should modify or jettison inefficient practices. The maintenance of such practices, however, can be explained if it serves goals other than internal efficiency. What might those goals be? According to sociological institutionalism, one objective of organizations is “social fitness,” which is measured in comparison with similar organizations in the wider institutional environment (in this case, other states). In other words, the persistence of an internally inefficient practice is consistent with the theory that “organizations are evaluated in terms of their ‘social fitness’ as well as their performance: legitimacy and accountability are as important as, if not more so than, reliability and efficiency.”\(^43\) Evidence of isomorphism and persistent decoupling is accordingly consistent with the theory that state actors seek to attain legitimacy and, more generally, social fitness by doing what their peers (other states) do.\(^44\)

Patterns of persistent decoupling can also help sort between acculturation- and coercion-based explanations. In a situation regulated by coercion, international audiences are presumably interested in the satisfactory implementation of a norm. It is fair to assume that these actors also engage in dynamic learning over time. Accordingly, there is no convincing theory to explain why formal policy convergence without effective implementation on the ground would appease powerful states and institutions. In an environment characterized by decoupling at least the credibility of mimicking a global model would substantially degrade over time. In other words, external audiences should learn that formal mimicry is often disconnected from concrete change on the ground. Persistent decoupling thus suggests that isomorphic change is not driven by external coercion.

We discuss below other empirical patterns that can help distinguish between coercion and acculturation.

3. Integration correlation

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\(^43\) Doug McAdam & W. Richard Scott, Organizations and Movements in Social Movements and Organization Theory 8 (Gerald F. Davis, et al. eds., 2005).

\(^44\) See Meyer et al., World Society and the Nation State, at 163.
The twin findings of isomorphism and decoupling are the primary, but not the only, evidence that supports inferences that acculturation drives transnational diffusion of a norm. Another consideration is whether the extent of linkages that a state establishes with world society covaries with the state’s adoption of a norm.\textsuperscript{45} Such an association can be quite important. It suggests that the global institutional environment exerts greater influence on a state the more the state is integrated into world culture. This correlation is also consistent with the understanding that connection to a reference group (as opposed to the substantive content of a norm) determines conformity to a social norm. Accordingly, this relationship (linkage to word society) also helps to explain variation: it predicts when an individual state is more likely to emulate or resist a global model. States that have fewer linkages to world society (e.g., North Korea) will be less likely to enact global cultural forms. This theoretical understanding does not assume that all domestic actors will embrace global cultural scripts as links develop. Greater linkages with world cultural order, however, can produce dynamic effects within countries by propelling some domestic actors to align with global norms in opposition to other actors or institutions. Such shifts can, as we discuss later, ultimately produce important political outcomes—even if initially only at the level of formal conformity to global standards.

4. Institutionalization correlation

To be consistent with an acculturation account, institutionalization of a norm at the international level should be associated with the worldwide spread of governmental policies and structures associated with the norm. Institutionalization involves the process by which rules and shared meanings move from abstractions to specific expectations and, in turn, to “taken for granted” frames and relatively uncontested scripts. In the international context, such expectations become global “institutional logics”—“the belief systems and associated practices that predominate in an organizational field.”\textsuperscript{46}

A specific example from available research can illustrate the point. In the environmental realm, a leading study analyzes the institutionalization of “national environmental protection” in world society.\textsuperscript{47} The study measures the following activities as indicators of institutionalization: the expansion of intergovernmental bureaucracy dedicated to national environmental protection, the proliferation of relevant multilateral treaty regimes, and the growth of professional and nongovernmental organizations promoting environmentalism.\textsuperscript{48} These indicators, the study finds, are associated with widespread adoption of similar environmental practices across the world. Institutionalization of a norm, therefore, helps to explain another form of variation: under what conditions a particular practice will spread more widely across a population of states.

\textsuperscript{46} McAdam & Scott, at 15.
\textsuperscript{47} David John Frank, Ann Hironaka & Evan Schofer, The Nation-State and the Natural Environment over the Twentieth Century, 65 AM. SOC. REV. 96 (2000).
5. Interactive effects — adoption by other states is a predictor of subsequent adoption

If acculturation exerts influence on state behavior, one might expect to observe “neighborhood effects”: the likelihood that a state will adopt a practice depends on whether the practice has been adopted by other states in its region or reference group. These patterns may also occur on the global scale (sometimes referred to more generally as “contagion effects”). That is, the aggregate number of states adopting a practice around the world is associated with a greater likelihood of subsequent adoption by other states.

Although these patterns might support aspects of an acculturation account, they do not provide proof of acculturation per se. They suggest that global influence is important to the practice spreading. That pattern of diffusion, however, could result from interstate competition or conveyance of information and rational learning across a regional or global social network. That said, one can infer acculturation if each state’s adoption is associated with rates of adoption by culturally similar states (and not by states that share similar economic and political characteristics). Additionally, in a statistical analysis of state practice, acculturation may be indicated if (i) states are more likely to embrace a practice adopted by states with which they share dense social interactions and (ii) the statistical analysis controls for economic competition between states.

Finally, while the existence of neighborhood and contagion effects may not provide affirmative proof of acculturation, the absence of such correlations could be significant. It could suggest that other states’ practices do not significantly influence a state’s adoption of a norm and that national, instead of global, factors have greater explanatory power.

6. Absence of correlations with geopolitical vulnerability or with powerful states’ interests

One can incorporate other variables or particular subject areas to determine whether and to what extent material coercion or social-cognitive pressure drives the diffusion of a norm. Specifically, a coercion explanation predicts that mimicry (and, hence, isomorphism) varies depending on the presence, power, and influence of relevant audiences. In contrast, some forms of acculturation, predict isomorphism will occur irrespective of whether there is political pressure to conform. Hence, evidence of acculturation (and how it operates) can be gleaned from domains in which powerful actors and institutions express trivial or no interest in adoption of a norm and situations in which the diffusion of a norm serves to counter hegemonic power. Furthermore, a coercion explanation would also anticipate that weaker countries would be more susceptible to coercive efforts to promote a norm. Accordingly, the lack of a correlation between such national-level characteristics and adoption of a norm can help demonstrate

the absence of coercive influence. Finally, statistically controlling for such characteristics can reveal the significance, if any, of other forms of social influence.\textsuperscript{52}

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In the remaining part of this Chapter, we discuss findings across numerous empirical studies suggesting that the global institutional environment shapes state behavior through processes of acculturation. States are highly legitimated actors in world society, and their formal structures and agendas (e.g., governmental ministries, policy commitments) derive substantially from institutionalized models promulgated at the global level.\textsuperscript{53} Many of these studies generally proceed by collecting quantitative data for all available states over several decades and employing analytic techniques—including events history analysis, regression analysis, and process tracing—to test predictions of acculturation. The studies demonstrate that states imitate standardized models of structural organization in areas such as education,\textsuperscript{54} market liberalization,\textsuperscript{55} the environment,\textsuperscript{56} arms control,\textsuperscript{57} the laws of war,\textsuperscript{58} science policy,\textsuperscript{59} and human rights.\textsuperscript{60} The extent of contemporaneous convergence in these issue areas is remarkable given the vast differences in technological, economic, and social conditions across states.\textsuperscript{61} Indeed, the studies do not suggest that this structural isomorphism necessarily reflect actual practices or effects on the ground. The convergence (across states) is accompanied by substantial and persistent decoupling (within states): official purposes and formal structure are disconnected from functional demands. Rather than correlating with local task demands, structural attributes and official goals of the state correlate in important ways with attributes and goals of other states in the world.

With respect to human rights, extensive research identifies these patterns of diffusion

\begin{itemize}
\item \textsuperscript{52} E.g., Witold J. Henisz, Mauro F. Guillén & Bennet A. Zelner, The Worldwide Diffusion of Market-Oriented Infrastructure Reform, 70 American Sociological Review 871 (2005).
\item \textsuperscript{53} E.g., Meyer et al.
\item \textsuperscript{55} Witold J. Henisz, Mauro F. Guillén & Bennet A. Zelner, The Worldwide Diffusion of Market-Oriented Infrastructure Reform, 70 American Sociological Review 871, 886-88 (2005).
\item \textsuperscript{56} David John Frank et al., Environmentalism as a Global Institution, 65 Am. Soc. Rev. 122, 122-26 (2000); David John Frank et al., The Nation-State and the Natural Environment over the Twentieth Century, 65 Am. Soc. Rev. 96, 100-03 (2000).
\item \textsuperscript{57} E.g., Dana P. Eyre & Mark C. Suchman, Status, Norms, and the Proliferation of Conventional Weapons: An Institutional Theory Approach, in The Culture of National Security: Norms and Identity in World Politics 79, 86-87 (Peter J. Katzenstein ed., 1996); Strang __.
\item \textsuperscript{58} E.g., Martha Finnemore, Rules of War and Wars of Rules: The International Red Cross and the Restraint of State Violence, in Constructing World Culture: International Nongovernmental Organizations Since 1875, at 149 (John Boli & George M. Thomas eds., 1999).
\item \textsuperscript{61} Meyer et al., at 144-45; David John Frank et al., What Counts As History: A Cross-National and Longitudinal Study of University Curricula, 44 Comp. Educ. Rev. 29, 31-32 (2000); Martha Finnemore, Norms, Culture, and World Politics: Insights from Sociology’s Institutionalism, 50 Int'l Org. 325, 338 (1996).
\end{itemize}
in fundamental areas of governance including welfare and labor policy, civil rights guarantees, and public order maintenance. For example, the number of constitutions that include provisions committed to the state management of childhood and the right to education has increased dramatically. A study of every national constitution in effect during 1870-1970 shows that the adoption of such constitutional provisions over time does not correlate with local forms of social organization (such as urbanization and national wealth) or with technical capacities of the relevant states. Moreover, each group of newly established states shows a significantly higher probability of adopting such constitutional provisions than the preceding group of entrants. According to these researchers, the overall findings suggest that “[n]ational constitutions do not simply reflect processes of internal development,” but rather “reflect legitimating ideas dominant in the world system at the time of their creation.”

Consider, also, state convergence with respect to women’s rights. A leading study uses sophisticated analytic techniques to examine state definitions of political citizenship over a hundred-year period. According to the study, once universal suffrage became a legitimating principle associated with the modern nation-state, adoption of women’s suffrage followed a pattern anticipated by theories of acculturation. After an initial stage of early adopters, the number of states providing women the right to vote increased steeply and included most states before the rate of adoption tapered off; the likelihood that a state would adopt women’s suffrage correlated with world trend lines; and adoption correlated far less with domestic political conditions once significant isomorphism took hold. Additionally, an important finding indicates a contagion effect: once the norm was institutionalized, a strong predictor for whether an individual state would enact women’s suffrage was whether other states in its region had done so in the past five years. The overall findings suggest that, compared with local conditions such as the strength of domestic women’s rights groups, “[c]ountries apparently are affected much less strongly by internal factors and much more strongly by shifts in the international logic of political citizenship.”

These results are consistent with studies concerning other areas of women’s rights. For example, a separate study of states in the western hemisphere examines how these governments made roughly contemporaneous commitments to eradicate violence against women. Within a relatively short time span, “[n]early all American states . . . created

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64 Connie L. Mcneely, Constructing the Nation-State: International Organization and Prescriptive Action 55-57 (1995); Meyer et al., supra note 78, at 158.
66 Id. at 505.
68 Ramirez et al., at 742.
national women’s councils that include[d] domestic violence problems among their priorities, . . . approved legal changes that define[d] domestic violence as a crime, . . . launched educational campaigns to combat the problem, and . . . created social services for victims.”

States also made these advances uniformly; no state substantially exceeded, or distinguished itself from, the average set of commitments. The extent of this isomorphism despite wide variations in national-level political, cultural, and social conditions is remarkable. Specifically, once the obligation to address domestic violence was institutionalized at the regional level, states joined the bandwagon despite dramatic differences in women’s political power or access to economic resources at the national level. Indeed, the study concludes that, at this stage of institutionalization, “international socialization is more important than domestic politics” in getting “nonconformist states to change their policies to meet the standards of new international norms.”

Additionally, national constitutions exhibit remarkable isomorphism across a number of more general rights-related dimensions. First, virtually every state has its own written, single-document constitution. Second, all existing constitutions focus on a similar set of purposes: “[n]ot only are [existing constitutions] all packaged in a single written document, they all specify in one way or another the organization of political power, the division of governmental labor, the major principles and goals for governance, and so on.” The second dimension—having a common set of purposes—is also increasingly characterized by a common set of responses. That is, decisions about how to organize political power are increasingly identical. So too are choices involving the designation of judicial authority and the emphasis and general content of constitutionally protected rights. And, nearly every constitution adopted since the Universal Declaration of Human Rights (1948) has contained some set of rights provisions. By 1991, 97 percent of all states had a national constitution with substantial human rights provisions.

The processes by which ideas and practices diffuse have the potential to spread deleterious as well as salutary constitutional norms. We, therefore, also consider how acculturation may, for example, foster the transnational emulation of excessive national security laws (pre and post 9/11), and how these developments correspond with the adoption of other rights-restrictive practices. We consider the degree of convergence (and decoupling) within each of these domains. …

In general, the adoption of structural commitments or official policy goals in human rights does not necessarily entail concrete implementation. On the contrary, when states copy an internationally legitimated model that does not fit their local needs, one should expect a continued disjuncture between structural isomorphism (across states) and technical demands and results (within states). For example, the authors of the study of state management of childhood “d[o] not argue that constitutional rules in particular countries are likely to be 'implemented,' but, rather, that prevailing world ideologies are
likely to be incorporated both ideologically and organizationally.\textsuperscript{76} The fact that local social and economic drivers do not explain when states adopt the observed constitutional provisions, and the fact that adoption of such constitutional guarantees does not correlate with technical capacities to implement the provisions, suggest that decoupling might persist. Similarly, the study of domestic violence finds that many of the official commitments remain “woefully underfunded”\textsuperscript{77} and that subsequent implementation of these programs “is still unclear.”\textsuperscript{78} Indeed, as explained above with respect to the sociology of organizations in general, the theory of acculturation predicts cross-national isomorphism irrespective of local circumstances.\textsuperscript{79} Because these models have developed universal authority and legitimacy, states follow the global scripts as members of world society despite the ineffectiveness (or even dysfunctionality) of resultant organizational forms.

Critics might accept that the empirical evidence indicates an external source of state organizational formation but argue that the external source could be powerful actors compelling states through material incentives to adopt particular practices. This view, however, does not provide an adequate account of the evidence. First, although one would assume that poorer countries are more susceptible to such external coercion, the empirical studies discussed above also show that norm adoption does not correlate with the economic wealth or development of countries. Notably, recent research directly examines coercive versus cultural influences on the diffusion of norms though not in the specific context of human rights. Consider a study of liberalization and privatization in electricity and telecommunication sectors.\textsuperscript{80} The researchers use measures of a state’s exposure to multilateral lenders (susceptibility to “international coercion”) and a state’s ties with other states that have adopted the same practice (susceptibility to “normative emulation”). They find that, controlling for external coercion, normative emulation provides a strong, independent mechanism influencing the adoption of similar practices. Their results are replicated by studies using similar research designs in other domains.\textsuperscript{81}

Second, as we explain above, an explanation based on international coercion should predict that mimicry (and, hence, isomorphism) would vary depending on the presence, power, and influence of relevant audiences. Substantial evidence, however, shows that isomorphism will frequently occur regardless of whether there is external political pressure to conform. For example, governments follow global scripts concerning state management of children—even though powerful states do not exhibit a strong interest in monitoring or forcing others to adopt such an ideology. Third, powerful states are often late adopters in some issue areas, including women’s suffrage for example.\textsuperscript{82} Fourth, counterhegemonic norms exhibit the same pattern of diffusion as prohegemonic norms, suggesting that conventional conceptions of global power politics provide an inadequate descriptive account. One important example is the norm of self-determination.

\textsuperscript{76} John Boli-Bennett & John W. Meyer, Constitutions as Ideology, 45 Am. Soc. Rev. 525, 526 (1980); cf. Boli-Bennett & Meyer, supra note 105, at 809.
\textsuperscript{77} Hawkins & Humes, supra note 114, at 236.
\textsuperscript{78} Id. at 257.
\textsuperscript{79} See supra text accompanying notes 89-92.
\textsuperscript{82} E.g., Finnemore & Sikkink, at 895-96; see also Ramirez et al., at 737- 38.
(understood as a fundamental human right), which supported decolonization and motivated many indigenous rights campaigns. Finally, the coercion explanation cannot account for persistent decoupling. As mentioned above, there is no convincing theory to explain why formal policy convergence without effective implementation on the ground would appease powerful states or powerful institutions interested in satisfactory change.

Chapter 4
State Socialization?

Even if socialization, including acculturation, occurs on the global level—and even if evidence of this is found in the organizational characteristics of states—it is unclear whether states socialize in any meaningful sense. Is it states that are socialized? Does the state in our analysis constitute simply a conceptual device or an empirically meaningful agent of action? We argue that (1) states are purposive actors susceptible to empirical analysis as such; and (2) specific state practices are ultimately the product of socialization of relevant actors who in turn alter, or effect an alteration of, state policy. Thus, we distinguish our argument from schools of thought that call for completely disaggregating the state as an empirical subject of analysis. Nevertheless, we acknowledge that “state socialization” is a process grounded in the beliefs, conduct, and social relations of relevant individuals. We, therefore, identify various “causal pathways” through which global norms are internalized by states—providing specific examples of each.

Chapter 5
Socialization and the Puzzle of Formal Human Rights Regimes

In this Chapter, we discuss several reasons why international human rights regimes are a particularly important and instructive domain in which to examine state socialization. Several common features of international legal regimes are not found in human rights regimes. Most regimes, for instance, generally seek to facilitate cooperation or coordination among states. The global promotion of human rights, however, is importantly different from those types of regimes. The prevalence of human rights violations is not reducible to a simple collective action problem. Furthermore, structural characteristics of international society undercut the potential effectiveness of enforcement strategies that predominate in other regimes. For example, international human rights norms are not self-enforcing. Thus states have no clear, direct interest in securing human rights protection in other states. Additionally, good faith participants in such regimes are generally unwilling or unable to shoulder the enforcement costs necessary to coerce recalcitrant states to comply with human rights norms. This “enforcement deficit”—exacerbated by high enforcement costs and negligible direct returns—is a political reality of the current international order.

Understanding the structural features—and impediments—of human rights regimes carries two important lessons. First, these insights underscore the importance of investigating diverse modes of social influence for promoting human rights norms. In

particular, we contend that the combined characteristics of international society and human rights regimes will frustrate efforts to obtain compliance with human rights law solely by coercing and persuading non-complying states.

Second, a richer understanding of the mechanism of social influence would help explain the puzzling origins of regional and global human rights regimes. Other scholars have provided sophisticated descriptive accounts of various efforts to establish formal human rights systems. Leading accounts tacitly rely on shared background interests and identities among state actors. For example, one account emphasizes the role of domestic actors in creating supranational human rights institutions to “lock in” liberal policy gains. Such an account, however, presupposes existing conditions of thick cosmopolitanism, shared understandings of core human rights norms, and legitimated models for entrenching those norms. Similarly, other accounts suggest the importance of transnational governmental networks in building the foundation for new global regimes. Those accounts also rely implicitly on antecedent conditions that shape common agendas that help construct the very identity of similar actors in the network. In this regard, our approach provides a more complete and nuanced explanation of the global social processes behind the emergence of collective efforts to create these institutions.

PART II. APPLICATIONS: HUMAN RIGHTS REGIME DESIGN

Chapter 6
Fashioning Multilateral Institutions

We demonstrate how a close analysis of the characteristics and function of each mechanism matter for designing multilateral institutions such as human rights treaties. We link each of the three mechanisms to specific design choices—identifying several ways in which identifying acculturation as distinct from the better-understood mechanisms of coercion and persuasion may occasion a rethinking of fundamental design problems in human rights law. In short, we reverse engineer structural design principles from the salient characteristics of underlying social processes. We consider three foundational problems in designing global human rights institutions. First, we address the problem of membership—how best to define the preferred community and articulate organizational boundaries. Second, we consider the ways in which each mechanism would approach the problem of defining the substantive obligations around which a legal community is built. As an important instance of this broad problem, we analyze the value of rule precision in defining prescribed and proscribed conduct. Finally, we discuss how each mechanism would approach the problem of compliance and effectiveness—specifically how multilateral institutions might directly discourage undesirable behavior and encourage desirable behavior. In short, we assess the implications of each mechanism for common design problems in human rights law by analyzing the ways in which design recommendations issue from the underlying theory of social influence.

We consider specific examples in a sustained fashion, including recent efforts to reform international human rights machinery. For instance, we discuss membership requirements for the newly minted U.N. Human Rights Council and we analyze the inclusion of national human rights commissions in the monitoring and enforcement apparatus for a treaty on the rights of people with disabilities. We also analyze
distributional consequences of such regime designs. That is, we identify which states might be more susceptible to various mechanisms of social influence and which states might be disproportionately affected by different institutional devices.

The first global human rights institution of the twenty-first century—the U.N. Human Rights Council—provides an especially good case for illustrating the significance of our project. The Council’s architects rejected proposals to create a human rights body granting full admission to all UN member states. The Council instead limits admission to 47 states; no state may serve on the Council for more than six consecutive years; and a government’s commitments to human rights are included as criteria for the selection and retention of members. UN officials, several states, and virtually all major international human rights NGOs are now trying to ensure that the human rights criteria are employed and strengthened over time. These efforts are inspired partly by the belief that membership bestows legitimacy on governments (a reason to exclude the Libyas and Sudans of the world), that states will improve their records to attain the status of membership, and that states will similarly make changes to avoid stigma associated with ostracism from the Council. These views are predicated on assumptions about how states behave and the power of particular forms of social influence to affect that behavior.

Our project clarifies those assumptions and illuminates the costs and benefits of such a regime design. For example, although substantial empirical evidence now suggests that the forms of influence envisioned by the Council’s architects are socially meaningful, countervailing effects which operate according to the same social logic have not received adequate consideration. That is, the same body of empirical work provides strong reasons for bringing recalcitrant states into the fold. Specifically, processes of assimilation suggest that illiberal states will begin to imitate the group in which they are included. This “identification” with a group—not banishment from the group—is perhaps more likely to propel the legal and political systems of illiberal states toward conformity with prevailing norms.

Additionally, the acculturation approach differs from the other approaches in how it evaluates “defections” by states inside such an organization. An acculturation approach predicts certain patterns of defection not envisioned by the other approaches, and it thus evaluates the cost of defection for regime maintenance very differently. The coercion approach, for example, raises the concern that including states with lower commitments to regime objectives will prove unworkable due to frequent defection within the forum. The persuasion approach predicts that few meaningful defections will occur and considers defection in unequivocally unfavorable terms. An acculturation approach, in contrast, predicts that defections will occur and may have salutary aspects. Specifically, it predicts that pressure to conform will produce a particular form of defection: decoupling, in which structural adherence to globally institutionalized models does not correspond to actual state practices on the ground. As we explain in Chapter 2, this disconnect between local circumstances and universal models is not an impediment to the diffusion of global norms, as other theories would suggest. Rather, this form of decoupling, in important respects, makes possible the diffusion of global models and the resultant convergence of policies and organizational structures. The important points here are that the acculturation mechanism predicts a peculiar form of defection and that this form of defection assists the diffusion of norms.
Chapter 7
Transnational Rights Promotion Strategies

Much of human rights advocacy does not take place within treaty-based multilateral institutions. Other important tools for promoting human rights include governmental foreign policy and transnational civil society initiatives. According to conventional wisdom, these efforts are most effective when they employ coercive force. Measures such as the European Union’s use of economic sanctions or NGO threats to the electoral survival of a government are considered among the most effective means of advancing human rights. Similarly, the value of civil and criminal liability for foreign human rights violations—such as the Alien Tort Statute in the United States and the Pinochet extradition case in Britain—is conventionally assessed by the severity and certainty of judicially imposed sanctions. In this Chapter, we assess these efforts specifically, as well as other similar measures, through the lens of all three mechanisms. We identify the potential for transnational governmental and civil society initiatives to harness persuasion- and acculturation-based processes in building a human rights culture. We also suggest how coercive measures may undermine these other forms of social influence on directly targeted states and third party states. Indeed, in certain circumstances, coercive measures may substantially reduce aggregate levels of desirable behavior among the overall population of relevant states. Finally, we discuss strategies that governmental and nongovernmental actors may adopt to harness different mechanisms at different stages of norm formation.

Chapter 8
Relationships between International, Foreign and Domestic Human Rights Law

The incorporation of international and foreign law into domestic legal systems remains one of the most controversial and important areas of human rights law. We discuss domestic regime design strategies that might facilitate the principled introduction of human rights norms into domestic law. For example, studies of global acculturation suggest that particular domestic arrangements can accelerate diffusion by providing “domestic receptor sites” for international norms. An important set of studies, for instance, shows that domestic receptor sites such as natural science associations and environmental institutes facilitate the local transmission of global models of environmentalism. We discuss setting up analogous institutions—such as national human rights commissions and ombudsmen—in the human rights context.

Our mechanism-based analysis not only provides lessons for how national human rights commissions and ombudsmen might accelerate the diffusion of human rights norms but also provides some cautionary notes for promoting such institutions. International efforts to encourage states to set up and strengthen these institutions could employ various mechanisms of influence to do so. We discuss potential pitfalls in spreading national human rights commissions and ombudsmen through processes of acculturation. In particular, one of the perverse effects of acculturation is a “race to the middle.” That is, under certain conditions states that would otherwise aspire to advanced levels of human rights protection may gravitate to lower expectations or standards of “success.” Recent research suggests such effects in cases of national arrangements for
higher education and for women’s rights.\textsuperscript{84} Admittedly, different theories might explain the appearance of a “regression to the mean” across states. It is, therefore, crucial to identify the mechanisms behind such phenomena. If one can identify acculturation as the reason for a race to the middle in the composition of national human rights commissions, for example, strategies can be designed accordingly to manage relevant actors’ behavior.\textsuperscript{85}

Also, in Chapter 7, we analyze civil and criminal actions for foreign human rights violations as a form of norm promotion abroad. In Chapter 8, we analyze how these same efforts might indirectly foster norm internalization within the countries in which the cases are brought (e.g., Belgium, Spain, the United Kingdom, the United States).

In addition, we discuss judge-made law regulating the incorporation of international law into domestic law. Some doctrinal developments are predicated on empirical assumptions about the ways in which human rights norms are diffused globally. Consider, for example, judicial doctrines permitting treaties to override federalism constraints (Missouri v. Holland in the U.S. context). That doctrine may not extend to human rights treaties because of the empirical assumption that human rights norms in one country do not materially affect the development of human rights norms in another. Acculturation studies, however, suggest that such interactions across states do exist and that treaties can serve to regulate them. We accordingly argue for reconsidering this and several other rules in light of the empirical evidence.

**PART III. THE PROMISE AND PROBLEMS OF STATE SOCIALIZATION**

**Chapter 9**

**State Socialization and Power**

In this Chapter, we discuss several issues relating to the role of geopolitical power in state socialization. As a descriptive matter, we maintain that the evidence of acculturation discredits theories that explain state behavior solely in terms of global power politics. To clarify why this is so, we consider an important alternative explanation. Specifically, skeptics might accept that the empirical evidence indicates an external source of state organizational formation but might argue that the external source could be powerful actors compelling states through material penalties or rewards to adopt particular practices. We contend this account is unpersuasive. Available data indicate, albeit indirectly, that acculturation provides a more compelling explanation of the relevant historical patterns of state practice.

As a normative matter, we reject the view that all forms of socialization exploit power disparities and reproduce forms of hegemonic power. We first compare the exercise of power associated with acculturation with the more severe and manipulative forms of power accompanying coercion and persuasion. We also explain how global processes of acculturation (and at times persuasion) facilitate the diffusion of counter-hegemonic norms such as decolonization; economic, social, and cultural rights; and women’s


suffrage. Finally, we discuss the opportunities for dissent and contestation that inhere in the substance of prevailing international human rights regimes. We also discuss strategies of institutional design for promoting these more beneficent outcomes.

Chapter 10
State Socialization and Compliance

In this Chapter, we discuss how our project challenges and supplements specific theories of compliance. A cluster of competing theories maintains that law has little or no effect on state behavior. These theories undervalue or disregard evidence of global social processes that propel states to adopt norms that do not serve, or even contradict, their material self-interest. Our analysis of mechanisms helps explain such empirical patterns and suggests how international law can harness such social processes. We also criticize specific policy prescriptions that assume global politics lacks sufficient social mechanisms to generate legal compliance.

Our approach also serves as a corrective to certain theories maintaining, without sufficient qualification, that international law is effective. Some theories, for example, emphasize reputation costs or civil society mobilization to explain legal compliance. We show how assumptions of material self-interest often underpin those explanations and we analyze empirical evidence of social change that demands a more nuanced account. Leading theories often do not adequately address, for example, the ways in which promoting change through material interest might undermine other social processes propelling actors toward the same ends. Our approach, in short, reconsiders how existing research programs approach the problem of compliance—calling into question a range of policy prescriptions predicated on these approaches.

After identifying inadequacies in other theories of compliance, we consider potential weaknesses in our own 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. Although such gaps constitute important evidence of acculturation, the process of acculturation may, in other circumstances, foster complete internalization of a norm. We analyze studies that document just this sort of internalization. The remaining question is whether meaningful change might occur in circumstances in which acculturation does produce gaps between form and practice. On this question, we detail processes by which formal, even if shallow, commitments to global legal norms might be translated into meaningful change over time. These processes include: shifts in domestic political opportunity structure, the “civilizing force of hypocrisy,” and state learning.

Chapter 11
Toward an Integrated Theory of Law’s Influence

The ultimate objective of this project is to develop an empirically grounded approach that would integrate all three mechanisms in fashioning a human rights regime. Such an approach—which would appreciate the distinct qualities of, and interactions among, the processes of coercion, persuasion, and acculturation—is in our view essential to building an effective human rights regime. In this Chapter, we outline the general features of an integrated theory of law’s influence.
First, an integrated model should take seriously the processes of acculturation. Indeed, acculturation has been systematically undervalued (and, at times, misunderstood) in debates about human rights regimes. In short, it should be expected that the prevailing approaches—coercion and persuasion—will prove ineffective in the human rights area. Furthermore, as the analysis of membership rules demonstrates, acculturation strategies greatly value the social effects generated by intergovernmental organizations. In contrast, both coercion and persuasion operate quite effectively outside formal organizational settings.

Second, an integrated model should account for negative interactions among the three mechanisms. Simply put, deploying one mechanism might undermine the ability to deploy another. For example, overt coercion can interfere with persuasion strategies by polarizing group deliberations. Coercion may also undercut acculturation by suggesting that the target behavior is not self-evidently appropriate—a “deinstitutionalization” or “crowding out” effect. Regime architects might mitigate such deleterious effects by using positive rather than negative material inducements, or by abandoning the use of coercion in specified circumstances.

Third, an integrated model should endeavor to identify the conditions under which the various mechanisms operate successfully. For example, it is important to assess the structural capacities of states and multilateral institutions to monitor human rights practices and sanction human rights violations. The likelihood, feasibility, and costs of these measures will often determine which strategy (or strategies) should predominate. Another important variable is the character of the extant structural relations at the global or regional level. For example, the effectiveness of various mechanisms should turn on considerations such as the density of international interactions, the axes along which relevant states share important cultural characteristics (including religion, ethnicity, and language), and the distribution of military and economic power.

Finally, an integrated model should consider various “sequencing” effects. That is, an integrated model might emphasize different mechanisms at different stages of the institutionalization of a norm. For example, there may be reason to coerce states into formal organizations in which they are later subject to measures that rely on persuasion or acculturation. We provide a framework for synthesizing these various factors. This framework would improve positive theories of state practice in the human rights arena. It would also better guide the design of global institutions, advocacy strategies, and domestic modes of incorporating human rights law.

In discussing potential avenues for future research, we briefly explore how our argument applies beyond the human rights context—including the promise and perils of extending the analysis to other domains. We discuss these ideas as an illustration of general lessons and potential further applications of the project. Indeed, the structural attributes of the human rights arena are especially useful for isolating, documenting, and understanding the mechanics of acculturation. That is, the empirical footprint of acculturation is discernable in the human rights context because of the obvious deficiencies of coercion- and persuasion-based explanations of the relevant patterns of state practice. We do not, however, posit that acculturation is limited to human rights. By addressing how acculturation works in the human rights context, the project ultimately aims to generate a general typology of the mechanisms of influence and an account of how they interact. Indeed, we note in earlier chapter existing research that also suggests

the significance of acculturation processes in such diverse areas as arms control, science, and environmental protection. Our identification of the conditions under which acculturation operates and our analysis of how acculturation may be integrated with other (materially and ideationally based) mechanisms provide lessons that could be applied to other international legal regimes. The integrated model also allows us to consider how the extension of institutional design principles to other domains would need to contemplate factors such as direct material interests of states in the practices of other governments and the different symbolic effects associated with legal domains outside of human rights.

Conclusion