

## Sophisticated Constructivism in Human Rights Compliance Theory

Elizabeth Stubbins Bates\*

Ryan Goodman and Derek Jinks, *Socializing States: Promoting Human Rights Through International Law*. New York: Oxford University Press USA, 2013. Pp. 256. \$99.00 (hardback). \$29.95 (paperback). ISBN: 9780199301003.

Courtney Hillebrecht, *Domestic Politics and International Human Rights Tribunals: The Problem of Compliance*. New York: Cambridge University Press, 2014. Pp. 205. \$90.00 (hardback). ISBN: 9781107040229.

Thomas Risse, Stephen C. Ropp and Kathryn Sikkink (eds), *The Persistent Power of Human Rights: From Commitment to Compliance*. Cambridge: Cambridge University Press, 2013. Pp. 372. \$95.00 (hardback). \$34.99 (paperback). ISBN: 9781107609365.

### 1. Introduction

In recent decades, there has been an increase in the volume and sophistication of works on compliance theory in international law in general,<sup>1</sup> and in human rights in particular.<sup>2</sup> This body of work is interdisciplinary, influenced by political science and international relations in substance and method.<sup>3</sup> The typology of compliance theories, once formed of several separate strands,<sup>4</sup> coalesced into two duelling perspectives. These were broadly characterised by rational choice approaches, focused on hegemony, sanctions, incentives and material self-interest, with Andrew T. Guzman's addition of reputational concerns;<sup>5</sup> and constructivist approaches, which argue that repeated interactions,

---

\* BA (Oxon.), LL.M. (Harv.), PhD Candidate, SOAS, University of London. I am indebted to Iain Scobbie and Lutz Oette for their comments on an earlier draft of this review.

<sup>1</sup> L. Henkin, *How Nations Behave* (2<sup>nd</sup> ed, 1979); T. Franck, *The Power of Legitimacy Among Nations* (1990) A. Chayes and A. H. Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements* (1995) Koh, 'Review Essay: Why Do Nations Obey International Law?' 106 *Yale Law Journal* (1997) 2599; Finnemore and Sikkink, 'International Norm Dynamics and Political Change' 52 *International Organization* (1998) 887-917; J. Goldsmith and E. A. Posner, *The Limits of International Law* (2005); A. T. Guzman, *How International Law Works: A Rational Choice Theory* (2010) J. Brunée and S.J. Toope, *Legitimacy and Legality in International Law: An Interactional Account*, (2010).

<sup>2</sup> Hathaway, 'Do Human Rights Treaties Make a Difference?' 111 *Yale Law Journal* (2002) 1935; B. A. Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics*, (2009) Hafner-Burton, 'A Social Science of Human Rights', 51 *Journal of Peace Research* (2014) 273-86.

<sup>3</sup> Shaffer and Ginsburg, 'The Empirical Turn in International Legal Scholarship' 106 *AJIL* (2012) 1-46; Hafner-Burton, Victor, and Lupu, 'Political Science Research on International Law: The State of the Field' 106 *AJIL* 47-98.

<sup>4</sup> The typology includes Goldsmith and Posner's neorealism and Guzman's rational choice approaches; Slaughter's liberal internationalism and transborder elite networks (Slaughter, 'International Law in a World of Liberal States' 6 *EJIL* (1995) 503; A-M. Slaughter, *A New World Order* (2004)); Chayes and Chayes' managerialism, Koh's transnational legal process, Finnemore and Sikkink's notion of norm entrepreneurs and internalised, 'taken-for-granted' norms; and Brunée and Toope's interactional theory of legal obligation.

<sup>5</sup> J. Goldsmith and E.A. Posner, *supra*, note 1.

argumentation and exposure to norms characterise and construct state practice.<sup>6</sup> Each of the three works reviewed in this essay critically engages with constructivist research and incorporates some analysis of material incentives, suggesting that constructivism is eclectic and rigorous, willing to debate its own assumptions. Taken together, their contributions are evidence of modern constructivism's sophistication and methodological breadth.

The volume under review edited by Thomas Risse, Stephen C. Ropp and Kathryn Sikkink re-evaluates and broadens the five-stage 'spiral model' of human rights change they proposed in their 1999 work, *The Power of Human Rights*.<sup>7</sup> Whereas their earlier work assumed that violations of human rights could be explained by institutionally capable states' unwillingness to comply, *The Persistent Power of Human Rights* considers human rights implementation in 'areas of limited statehood',<sup>8</sup> by non-state armed groups,<sup>9</sup> and transnational corporations;<sup>10</sup> and the potential for retrogressive state practice where a security or culturally-based 'counter-discourse' dominates.<sup>11</sup> In *Socializing States*, Ryan Goodman and Derek Jinks argue that compliance theorists to date have focused on material inducement and persuasion while neglecting a third mechanism of 'acculturation': cognitive and social pressures to conform to an in-group (at 25-32).<sup>12</sup> Acculturation explains states' 'isomorphism' (convergence) and 'decoupling' (divergence) in regimes as diverse as economic privatisation and state management of childhood. The book's three-part theory is the beginning of a research programme (detailed at 191-194) to test the resonance of acculturation. Courtney Hillebrecht defines 'compliance' for the purpose of her research as states' implementation of judgments of international human rights courts, focusing in particular on the European Court of Human Rights and the Inter-American Commission and Court of Human Rights.<sup>13</sup> Hillebrecht's 'compliance' equates to the implementation of remedies following a finding of noncompliance: a narrower approach than that adopted by most works on compliance theory. Hillebrecht's quantitative dataset and seven country case studies consider the domestic interaction between branches of government and civil society actors, as influenced by international courts, placing Hillebrecht's monograph in the same subfield as Karen Alter's recent work on international courts.<sup>14</sup> While Goodman and Jinks theorise the state in international organizations, Risse, Ropp and Sikkink and their co-authors reflect on state and non-state actors, Hillebrecht examines institutions and politics within the state.

The substance and method of each work are detailed in section 2 below. Section 3 explains first how the three works' cumulative contributions present a sophisticated constructivism (integrating rational

---

<sup>6</sup> J. Brunée and S.J. Toope, *supra* note 1; Brunée and Toope, 'Constructivism and International Law' in J.L. Dunoff and M.A. Pollack (eds), *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art* (2012), at 119-145. On argumentation, see Risse, 'Let's Argue!: Communicative Action in World Politics.' 54 *International Organization* (2000) 1 and on deliberation and interpretive communities: I. Johnstone, *The Power of Deliberation: International Law, Politics and Organizations* (2011).

<sup>7</sup> T. Risse, S.C. Ropp and K. Sikkink (eds), *The Power of Human Rights: International Norms and Domestic Change* (1999). The 'spiral model' is explained in section 2A. below.

<sup>8</sup> Börzel and Risse, 'Human Rights in Areas of Limited Statehood: The New Agenda' in T. Risse, S.C. Ropp and K. Sikkink (eds), *The Persistent Power of Human Rights: From Commitment to Compliance* (2013) 63-84

<sup>9</sup> Jo and Bryant, 'Taming of the Warlords: Commitment and Compliance by Armed Opposition Groups in Civil Wars' in T. Risse *et al* (eds), *supra* note 8, at 239-258.

<sup>10</sup> Mwangi, Reith and Schmitz, 'Encouraging Greater Compliance: Local Networks and the United Nations Global Compact' in T. Risse *et al* (eds), *supra* note 8, at 203-221.

<sup>11</sup> Sikkink, 'The United States and Torture: Does the Spiral Model Work?' in T. Risse *et al* (eds), *supra* note 8, at 145-163; Kinzelbach, 'Resisting the Power of Human Rights: the People's Republic of China' in T. Risse *et al* (eds), *supra*, note 8, at 164-181.

<sup>12</sup> R. Goodman and D. Jinks, *Socializing States: Promoting Human Rights Through International Law* (2013).

<sup>13</sup> C. Hillebrecht, *Domestic Politics and International Human Rights Tribunals: The Problem of Compliance* (2014).

<sup>14</sup> K.J. Alter, *The New Terrain of International Law: Courts, Politics, Rights* (2014).

choice approaches where the data suggest but anchoring their analysis in the interaction between norms, institutions and political actors); and second how the three books diverge. Section 4 concludes.

## 2. Substantive and Methodological Contributions

### *A. Re-evaluating the Spiral Model – Risse, Ropp and Sikkink (eds)*

Risse, Ropp and Sikkink's previous joint work *The Power of Human Rights* proposed a five-stage 'spiral model' to explain states' progress from 'repression', to 'rule-consistent behaviour', via 'denial' of human rights violations, 'tactical concessions', and 'prescriptive status' (including the ratification of international human rights treaties and their incorporation into domestic law and institutions).<sup>15</sup> In this earlier work the authors employed constructivist approaches and the qualitative comparative case-study method; it was published prior to the growth of quantitative scholarship on human rights compliance. In their introduction to the 2013 book, Thomas Risse and Stephen C. Ropp note that subsequent events and scholarship have revealed lacunae in their earlier approach, in relation to i) the processes and mechanisms involved, and any contradictions between them, ii) the continuum of institutional control and 'areas of limited statehood', and iii) the compliance practices of powerful states (at 4-9). Quantitative research has revealed the tension between treaty ratification and subsequent state practice, with large *n* studies disputing the premise of Risse, Ropp and Sikkink's constructivist 'spiral model' and arguing that in the absence of rigorous enforcement, treaty ratification can lead to a decline in states' compliance with human rights norms.<sup>16</sup> Risse and Ropp respond by integrating rational choice and constructivist perspectives, or aligning the 'logic of consequences' with the 'logic of appropriateness' in which constructivism is 'embedded' (at 13). To Risse and Ropp, constructivism is the context which integrates coercion, incentives, persuasion/discourse, and capacity building: the four mechanisms which they now see as significant in their re-evaluated spiral model (at 15-20), even though these mechanisms may clash, or produce what Goodman and Jinks refer to as 'crowding-out' effects, impairing compliance.<sup>17</sup> Risse and Ropp explicitly acknowledge that pitting rational choice hypotheses against those from constructivism 'no longer makes sense' in this integrated, sophisticated modelling (at 12).<sup>18</sup>

The book's diverse contributions reveal first, a wider range of agents relevant to human rights compliance, second, increased differentiation with regard to institutional capacity to comply with human rights norms, and third, nuance on the temporal and inter-mechanism effects of the 'spiral model'. As to the first of these, Hyeran Jo and Katherine Bryant test the spiral model in relation to non-state armed groups, expanding the normative reach of the book from human rights into the international humanitarian law of non-international armed conflict, which binds armed groups directly. They find that constructivist factors such as concerns for legitimacy and social pressures influence armed groups' incentives to comply with civilian protection norms, while their relative centralisation into a hierarchical structure facilitates compliance.<sup>19</sup> Wagaki Mwangi, Lothar Reith and Hans Peter Schmitz find a combination of constructivist-socialization processes and institutional convergence of practice in businesses which form part of the UN Global Compact: companies which

---

<sup>15</sup> T. Risse *et al* (eds), *The Power of Human Rights*, *supra*, note 7, cited in T. Risse *et al* (eds), *The Persistent Power of Human Rights*, *supra*, note 8, at 5-7.

<sup>16</sup> Hathaway, *supra*, note 2, cited in , T. Risse *et al* (eds), *supra*, note 8, at 48.

<sup>17</sup> Goodman and Jinks, 'Social Mechanisms to Promote International Human Rights: Complementary or Contradictory?' in T. Risse *et al* (eds), *supra*, note 8, 103-122.

<sup>18</sup> T. Risse *et al* (eds), *The Persistent Power of Human Rights*; see also Dai, 'The "Compliance Gap" and the Efficacy of International Human Rights Institutions', in T. Risse *et al* (eds), *supra*, note 8, 85-102 for the argument that quantitative research exaggerates the disconnect between 'commitment' and 'compliance'.

<sup>19</sup> Jo and Bryant, *supra*, note 9.

participate in regional networks converge in their compliance practices, as do those which internalise the twelve principles of the Global Compact into their day-to-day management.<sup>20</sup>

Second, unlike the original ‘spiral model’, the authors recognise that institutional (in)capacity may influence states’ compliance with human rights norms, not only in failed or failing states, but also in ‘areas of limited statehood’. This observation is supported by Katrin Kinzelbach’s finding of decentralised local noncompliance with human rights norms in China,<sup>21</sup> and in Tanja A. Börzel and Thomas Risse’s chapter on ‘limited statehood’, encompassing both central governments with limited control of sub-state actors, and states where warlords, transnational corporations or organised crime operate.<sup>22</sup> Börzel and Risse argue that ‘limited statehood’ ‘significantly mitigates the well-known positive effect of democracy on human rights’ (at 64), and reveals the limits of the original spiral model, which assumed that human rights violations occurred because institutionally capable states were unwilling to comply. This finding shows the limits of traditional ‘naming-and-shaming’ institutional mechanisms, which work better with institutionally capable states than in ‘areas of limited statehood’.<sup>23</sup>

Third, the book refines the spiral model as regards the temporal and inter-mechanism effects. Kathryn Sikkink considers the ‘backlash’ against the USA’s prior commitment to the prohibition of torture in the context of security ‘counter-discourse’ and the ‘war on terror’.<sup>24</sup> She argues that awareness of the prohibition continued to shape state practice even when Department of Justice ‘torture memos’ shrank the definition of torture (in an attempt to avoid prosecution) and facilitated violations of the law. Persuasion and discourse thus continued to be relevant, but commitment and compliance was followed by violation, in a reversal of the original spiral model. Goodman and Jinks’ chapter in *The Persistent Power of Human Rights* introduces the detailed interaction of the three mechanisms of material inducement, persuasion and acculturation on which they expand in *Socializing States*. Goodman and Jinks argue that a larger number of strategies for human rights compliance does not necessarily create better state practice. ‘Crowding-out effects’ mean that these tools are not additive, and may be counterproductive when combined (at 104).<sup>25</sup>

While the re-evaluation and thorough testing of the ‘spiral model’ adds much to contemporary compliance theory in international human rights, further research could add new studies on state practice where international humanitarian law and international human rights law are co-applicable; where the state is disaggregated into traditional sub-state actors (e.g. soldiers and officers, or law enforcement officials) and private military and security companies; and where secrecy undermines compliance and accountability mechanisms (in extrajudicial executions by unmanned drones, or secret detention and rendition).

## ***B. Considering Acculturation alongside Material Inducement and Persuasion –Goodman and Jinks***

---

<sup>20</sup> Mwangi, Reith and Schmitz, *supra*, note 10.

<sup>21</sup> Kinzelbach, *supra*, note 11

<sup>22</sup> Börzel and Risse, *supra*, note 8.

<sup>23</sup> See *contra*, Clark, ‘The Normative Context of Human Rights Criticism: Treaty Ratification and UN Mechanisms’ in T. Risse *et al* (eds), *supra*, note 8, 125-144, which uses pre-UN Human Rights Council data to reveal constructive post-ratification effects of UN critique of state practice, especially on the Convention against Torture.

<sup>24</sup> Sikkink, *supra*, note 11.

<sup>25</sup> Goodman and Jinks, *supra*, note 17.

*Socializing States* builds on Goodman and Jinks' earlier work on state socialization,<sup>26</sup> and argues that rational choice and constructivist compliance theories have failed to account for 'acculturation' – 'the process by which actors adopt the beliefs and behavioural patterns of the surrounding culture' (at 22) – and to distinguish it from the more established processes of material inducement and persuasion. Acculturation involves 'cognitive and social pressures' (at 4). It neither follows a calculation of material benefits and costs (as in material inducement), nor a substantive assessment of the norm (as in persuasion) (at 22). Acculturation might overlap with the constructivist interest in internalised or 'taken-for-granted' norms,<sup>27</sup> which is also the focus of persuasion approaches; but it does not have to coincide with internalization, and can lead instead to 'superficial levels of conformity' (at 22). Goodman and Jinks' work builds more on sociological (and social psychological) approaches than on constructivist international relations scholarship.<sup>28</sup> The authors believe that sociological institutionalism is less circular than constructivism, which can, according to Goodman and Jinks, imply that causes and their results are 'mutually constitutive' (at 16), yet their work still shows a sophisticated, critical constructivism. Like Hillebrecht, Goodman and Jinks' acculturation theory points out the 'signaling' benefit of conformity with human rights norms, but while Hillebrecht considers that states might comply with human rights judgments in order to 'signal' to domestic audiences their commitment to human rights (at 12), Goodman and Jinks suggest that widespread state practice in compliance with human rights norms will 'signal' the value of conformity to other states through cognitive and social pressures (at 173). Goodman and Jinks recognise the relationship between 'international level acculturation and domestic political struggles' (at 187-8), where a convergence in human rights practice between states can create opportunities for domestic human rights actors to demand change (at 188). This is consistent with a mechanism identified by Hillebrecht according to which human rights tribunals' judgments provide 'impetus and political legitimacy' for domestic human rights reform (at 14).

The strengths of *Socializing States* lie i) in its balanced account of acculturation's risks and benefits; ii) the counter-intuitive inference from acculturation that the precision of treaty norms does not necessarily lead to greater compliance (at 116-119); iii) the awareness of negative interaction effects (at 172); and iv) its sophisticated integration of rational choice and constructivist approaches.

i) Goodman and Jinks acknowledge the normative limits of their theory: acculturation can lead to a 'race to the middle' (at 188) where state practice in international organisations converges towards mediocre compliance with international human rights law; and to 'the diffusion of undesirable policies' or 'deleterious norms' (at 7, 42). Acculturation is a neutral mechanism of inter-state convergence and local variance: states mimic good and bad practice alike, and acculturation would produce only 'shallow reform' if it were the sole basis for a human rights regime (at 18). Understanding acculturation is not a panacea but an act of taxonomy.

ii) While material inducement suggests that vague or ambiguous treaty norms might undermine agreement on treaty provisions during negotiation but create strong reputational incentives for subsequent compliance (at 112-113); and persuasion suggests that precise treaty norms might risk agreement on a text, but assist internalization and compliance once a treaty is in force (at 113-116), Goodman and Jinks' concept of acculturation leads them to infer that precise treaty norms might favour agreement on a treaty text, but might not lead to increased compliance once a treaty is in force (at 116-119). This is a counter-intuitive inference, as compliance theorists are accustomed to

---

<sup>26</sup> Goodman and Jinks, 'International Law and State Socialization: Conceptual, Empirical, and Normative Challenges' 54 *Duke Law Journal* (2005) 983.

<sup>27</sup> Finnemore and Sikkink, *supra*, note 1.

<sup>28</sup> Brunée and Toope, 'Constructivism and International Law', *supra*, note 6, 133 (citing Goodman and Jinks (2005), *supra*, note 26).

identifying indeterminacy as a threat to state practice which conforms to human rights norms (see Goodman and Jinks' discussion of Thomas Franck's 'determinacy' at 118).

iii) Material inducement, persuasion and acculturation each suggest different approaches to institutional membership and monitoring by International Organizations of human rights practice. Goodman and Jinks argue, as they did in their contribution to Risse, Ropp and Sikkink's edited collection,<sup>29</sup> that a larger number of strategies for human rights compliance does not necessarily create better state practice. There may be 'crowding-out effects' or negative interactions between mechanisms: material incentives have been proven to reduce individuals' altruistic motivation (at 172), while persuasion's focus on settling 'substantive disagreements' might 'countermand' acculturation's emphasis on the 'commonalities' between states' practice (at 172).

iv) Finally, Goodman and Jinks integrate rational choice and constructivist approaches by insisting on an integrated three-part theory to explain the role of material inducement, persuasion and acculturation in human rights compliance. This is a critical integration: they note that the 'assumptions of material self-interest' in rational choice and realist theories of compliance are rarely proven (at 135), while constructivism might fail to distinguish between 'explanatory and outcome variables', or leave various mechanisms of persuasion undifferentiated (at 13-16). Their research intends to add 'precise, testable propositions' to the constructivist research agenda (at 16); to increase its methodological positivism. The outcomes of this research might ultimately assist 'regime design' and human rights advocacy (at 189-194).

Goodman and Jinks' theory of social mechanisms needs to be evaluated through the research programme they propose, while Risse, Ropp and Sikkink have had their initial model tested and re-evaluated through almost fifteen years of research. This empirical research programme has four strands: one, to investigate whether a state's membership in treaty regimes has a linear relationship with human rights compliance; two, to compare the reasons for states to ratify human rights treaties, and the effect, if any, of those reasons on subsequent compliance; three, to study potential 'crowding-out' or 'negative interaction effects' between mechanisms; and four, to investigate whether acculturation leads to 'polarization' or the convergence of state practice around 'prototypes' instead of the 'average' practice within networks and International Organizations (at 191-194).

One shortcoming in Goodman and Jinks' work may lie in the inference from research in individual and social psychology on the cognitive and social pressures for conformity to explain the practice of states in international human rights law (at 192). Although Goodman and Jinks predict and explore this objection (at 38-41), they do not consider work by Michael Scharf,<sup>30</sup> Peter Spiro,<sup>31</sup> and Laura Dickinson,<sup>32</sup> on the 'disaggregation' of the state in compliance theory leading to a focus on sub-state actors. As Goodman and Jinks suggest in their programme for qualitative as well as quantitative research, acculturation may have a more solid evidence base if individuals and groups of state officials are interviewed about the cognitive and social pressures to conform to international law, than if states are assumed to be subject to these individual and group processes.

A question left open by *Socializing States* is how 'acculturation' relates to Jutta Brunée and Stephen J. Toope's interactional approach, which is based on an 'embedded practice of legality'.<sup>33</sup> While Brunée and Toope criticise Goodman and Jinks' earlier work for its formalism and treatment of legal

---

<sup>29</sup> Goodman & Jinks, *supra*, note 17.

<sup>30</sup> Scharf, 'International Law in Crisis: A Qualitative Empirical Contribution to the Compliance Debate' 31 *Cardozo Law Review* (2009) 45.

<sup>31</sup> Spiro, 'A Negative Proof of International Law' 32 *Georgia Journal of International Law* (2006) 445

<sup>32</sup> Dickinson, 'Military Lawyers on the Battlefield: An Empirical Account of International Law Compliance' 104 *AJIL* (2010) 1-29.

<sup>33</sup> J. Brunée and S. J. Toope, *supra*, note 1.

obligation as a given,<sup>34</sup> *Socializing States* does not engage in detail with Brunée and Toope's 2010 model. A debate between the authors on the relationship between 'acculturation' and Brunée and Toope's theory of interactional obligation would be a welcome next step.

### ***C. Compliance is Domestic and Implementation is Political - Hillebrecht***

Whereas Goodman and Jinks see 'important relationships ... between international-level acculturation and domestic political struggles' (at 187), Courtney Hillebrecht's monograph gives attention to processes within and between domestic political institutions and to civil society actors in their implementation of remedies mandated by regional human rights courts., Hillebrecht argues that 'domestic institutions are critical for compliance' (at 15), 'compliance ... is an inherently domestic affair', with '[p]ro-compliance partnerships' of political actors (executive, legislature, judiciary) and human rights reformers interacting to implement the judgments of human rights courts (at 3).

This interaction of institutions, norms and political processes recalls constructivist approaches, but Hillebrecht's work is at the midpoint in a spectrum of incentive-based and interactional/political analysis. As constructivism derives from international relations, it is an influence on rather than a term of art in Hillebrecht's political science analysis. She classifies the discussion of socialization and compliance as one of two 'normative approaches' and 'an important alternative hypothesis' to her intra-state political analysis (at 38). While the constructivist notions of norms, legitimacy and social processes in international relations accounts are usually applied to inter-state processes, Hillebrecht's focus is on political processes within the state. Yet, Hillebrecht's work is still part of the integrated and sophisticated constructivist mainstream: her analysis combines legitimacy and social process analysis with notions of incentives and reputation.

Hillebrecht suggests three causal mechanisms for compliance with human rights judgments: i) governments can use judgments to 'signal a commitment to human rights'; ii) domestic human rights actors find in them 'impetus and political legitimacy' for reform; and iii) some 'strong democracies' might comply with human rights rulings with an air of 'begrudging compliance', citing the constraints imposed on them by politically inconvenient international law (at 14). This three-part typology synthesises a quantitative coding of qualitative reports in Hillebrecht's Compliance with Human Rights Tribunals (CHRT) Dataset, which aggregates 585 judgments from the European Court of Human Rights (ECtHR) and the Inter-American Court of Human Rights (IACtHR) and categorises them by the type of remedy required, the violations at issue, and whether or not states implemented the judgments (at 15). Hillebrecht employs process tracing (qualitative tools which attempt to identify causal mechanisms by distinguishing necessary and sufficient conditions) to test the data from the CHRT Dataset in relation to country case studies. Hillebrecht relies on 'smoking gun' process tracing tests, which 'can lend support for hypotheses, [but] cannot necessarily cause researchers to reject hypotheses' (at 15). The CHRT Dataset's most frequently occurring cases are selected for qualitative case study analysis by process tracing, to avoid testing the three causal mechanisms with reference to outliers (at 16). The combination of quantitative and qualitative approaches adds richness and persuasiveness to Hillebrecht's thesis. A marginal critique, relevant only because of this work's interdisciplinary significance, is the gap between the definition of process tracing in the introduction and the apparent absence of methodological explanation in the qualitative case studies. It is not clear to a reader trained in international law how the theories emerge from the case studies as a result of process tracing, rather than as a result of the clear and coherent analysis in each of the case study chapters.

The CHRT Dataset reveals important differences in the European and Inter-American approaches to remedies and reparation (at 45-48). The ECtHR usually requires monetary compensation, costs and

---

<sup>34</sup> *Ibid*, 106-107.

expenses, or may consider the finding of a violation to be sufficient ‘just satisfaction’ under Article 41 of the European Convention on Human Rights. Hillebrecht’s dataset also considers ECtHR cases where either the Court or the Committee of Ministers in its enforcement capacity require the state to remit the case to domestic criminal or civil courts. With respect to the Inter-American system the CHRT Dataset captures the broader range of reparations provided for by the Inter-American system, which include symbolic measures (e.g. apologies) and guarantees of non-repetition (such as human rights education or training for the armed forces or law enforcement officials). Hillebrecht finds that states might be more willing to incur financial or symbolic costs than to reform legislation or conduct new trials (at 50, Table 3.2, 58).

Controlling for four competing explanations of human rights compliance (where international law is perceived as epiphenomenal, dependent on coercion or enforcement, sanctions or domestic politics, at 33-39, 56-57), Hillebrecht finds that ‘the stronger the domestic institutional constraints, the more likely governments are to comply with the rulings’ (at 58), but that some remedies might be more politically costly than others to implement. States which are asked to implement remedies of non-repetition or to conduct retrials will face higher political stakes than those required merely to provide compensation, and cover costs and expenses (at 60). A two-stage Heckman model (a political science tool to test for selection bias in samples) is employed to predict the proportion of cases in which a particular state might be required to implement guarantees of non-repetition, or to address procedural ‘due process’ aspects (at 60). Hillebrecht controls for states’ possible cost-benefit analysis where some judgments might be more difficult to comply with than others. Even with these tools, Hillebrecht finds that ‘executive constraints’ (where domestic institutions constrain the executive, and/or argue for human rights compliance ) are positively correlated to ‘the implementation of judgments (at 61). This emphasis on political factors constraining the executive branch corroborates and adds specificity to Beth Simmons’ and others’ work on the significance of regime design in human rights compliance theory. Her quantitative analysis also shows that states with ‘strong domestic institutions’ might engage in ‘à la carte compliance’, and (counterintuitively) are less likely to comply with ‘reparations and symbolic measures’ (at 64).

Hillebrecht’s qualitative case studies show the divergence in states’ approaches to the implementation of human rights rulings. Colombia is the first example of ‘à la carte compliance’ or ‘window dressing for the administration’s human rights records’ (at 67), which Hillebrecht attributes to President Uribe’s centralised discretion to comply or not with human rights judgments, and a paucity of ‘compliance partners’ (at 69). Argentina’s strong and inclusive civil society led to the implementation of judgments because of political competition and judicial oversight of the executive. Portugal’s ‘notably quiet’ judiciary has recently become willing to scrutinise freedom of expression in Portugal (at 82-97).

The United Kingdom, in contrast, exemplifies Hillebrecht’s third mechanism of ‘begrudging compliance’, in relation to national security and prisoner voting cases. While the United Kingdom has a 71% compliance record with ECtHR judgments against it (at 101), the Court in Strasbourg is widely misunderstood and a target for political and media statements against ‘European’ intrusion. Hillebrecht argues that the UK’s eventual compliance with most ECtHR rulings occurs in spite of the political discourse against the court, and is facilitated by the UK’s strong civil society sector, the incorporation of the European Convention on Human Rights into domestic law under the Human Rights Act 1998, and the ‘scapegoat[ing]’ of the parliamentary Joint Committee on Human Rights (JCHR), one of the UK’s institutional compliance partners, and of the ECtHR itself (at 102). These factors allow the executive to frame the implementation of ECtHR judgments as a necessity required by the rule of law, thus escaping some of the political costs of eventual compliance with the remedies required (at 98-112). Time will tell whether the decision by the UK Conservative Party to pledge to repeal the Human Rights Act if it attains a majority in the 2015 general election will affect compliance in reality, or whether this too is political ‘window-dressing’.

Hillebrecht’s examples of ‘partial compliance’ leading to largely ‘persistent noncompliance’ are Russia, Italy, and Brazil. In Russia, repeat cases have led to an abundance of judgments not yet

implemented, and ‘overarching hostility’ between the ECtHR and the Kremlin (at 121). Italy, in contrast, has not implemented reforms to the justice system, and there are over 2500 cases whose implementation is being monitored by the Committee of Ministers (at 122). Brazil is an example of delayed and ‘reluctant compliance’, where reforms to address impunity for domestic violence crimes were implemented only after sustained pressure from politicians, NGOs and eventually judges (at 129).

As noted above, Hillebrecht’s definition of ‘compliance’ refers to implementation following judicial findings of noncompliance. Her work is therefore narrower in scope than much of the earlier work on human rights compliance. Hillebrecht acknowledges that the greater but unmeasurable impact of human rights tribunals might be in ‘the cases that human rights tribunals have deterred’ (at 156). While Hillebrecht’s work has a stronger emphasis on incentives and political costs than on socialization mechanisms, it too combines rational choice and constructivist approaches. Her account of political actors’ implementation with human rights judgments is an important contribution to compliance scholarship.

### **3. Synthesis and Divergence**

#### **A. *Sophisticated Constructivism***

The three books reviewed in this essay were published nearly contemporaneously.. As a result, they do not cross-reference each other, with the exception of a few footnotes to the then-forthcoming *Socializing States* in Goodman and Jinks’ chapter in *The Persistent Power of Human Rights*. Yet the books’ cumulative contribution suggests a sophisticated constructivism, which integrates rational choice perspectives in particular case studies, but nonetheless prioritises mechanisms of political and institutional interaction to explain human rights compliance.

Risse, Ropp and Sikkink’s integration of rational choice and constructivist approaches suggests that the contest between the two schools of compliance theory is no longer productive (at 13): they synthesise datasets and processes from each approach. Their five ‘scope conditions’ show this synthesis: regime design (from democracy to authoritarianism), ‘consolidated versus limited statehood’, centralisation and decentralisation, material vulnerability (where economic sanctions and aid incentives may be relevant), and social vulnerability (the constructivist emphasis on a state’s identity in the international sphere) (at 16-20).

Goodman and Jinks also analyse both rational choice and constructivist approaches, although their work is more critical of an apparent circularity, or conflation of cause and effect (at 13-16) in the constructivist mainstream than Risse, Ropp and Sikkink. According to Goodman and Jinks, material inducement has its origins in both rational choice and constructivist approaches, as material inducements occur in a context of socialization (at 23). They believe that persuasion, the quintessential constructivist mechanism, is insufficiently defined in existing scholarship (at 13-16). The third mechanism of acculturation, ‘behavioral change through pressures to conform’ to an in-group, considers cognitive dissonance or discomfort at nonconformity, and ‘cognitive comfort’ or the perceived benefits of conformity (at 25-28). These social and relational mechanisms are consistent with constructivism even though they are derived to a large extent from sociological institutionalism, and may overlap with Guzman’s reputational school of rational choice theory.

Hillebrecht’s *Domestic Politics and Human Rights Tribunals* is on the midpoint of a spectrum between rational choice and constructivist approaches, integrating but not strongly critiquing the former. Like Goodman and Jinks, Hillebrecht notes the challenges in identifying precise mechanisms of socialization. She notes that Council of Europe member states have numerous interactional opportunities with the European Court of Human Rights and the Council of Ministers, but that scholars should avoid ‘dummy socialization’: the assumption that institutional membership leads to socialization (at 38). Hillebrecht’s case studies consider the interactions between sub-state institutions: courts and the executive, the executive, legislature and judiciary, and between the executive and civil society.

## ***B. Potential Disagreements***

While each of the books synthesise rational choice and constructivist approaches, there are four points of divergence: i) on the extent to which constructivism dominates the model, ii) on ‘crowding-out’ effects, iii) on the relevance of limited statehood, and finally iv) on the authors’ chosen focus.

i) On the relative dominance of constructivism: Risse, Ropp and Sikkink’s integration of rational choice and constructivist approaches place the former within the context of the latter, while Goodman and Jinks integrate rational choice and constructivist elements in each of their three distinct social mechanisms. Hillebrecht seems to emphasise incentives to a greater extent than the other authors.

ii) While Hillebrecht predicts improved compliance with the judgments of human rights tribunals where there are ‘clear incentives... material and ideational rewards’ (at 157), Goodman and Jinks would be concerned with the potential negative interaction of multiple mechanisms, and would seek to add their mechanism of acculturation to any account of compliance.

iii) Risse, Ropp and Sikkink might counter that an account based primarily on states’ ‘signalling’ their commitment to human rights, as in Hillebrecht’s first causal mechanism, or state practice converging through acculturation, as in Goodman and Jinks’ third mechanism, fails to take sufficient account of state incapacity as opposed to unwillingness in relation to human rights compliance. However, Hillebrecht’s qualitative case studies compare stronger and weaker state infrastructure for human rights compliance, implicitly creating a spectrum of capacity to implement the judgments of human rights tribunals her dataset does not focus on ‘areas of limited statehood.’

iv) On the authors’ respective focus: Hillebrecht’s lens is mostly intra-state, also considering the interaction between domestic political entities and regional human rights courts, while Goodman and Jinks focus on acculturation between states. The authors in Risse, Ropp and Sikkink’s edited volume have the broadest perspective looking at state actors, non-state actors and areas of ‘limited statehood’.

Despite these differences, the theoretical disagreements between the three works are slight, and more fundamental debate takes place within each of the three works, particularly in Risse, Ropp and Sikkink’s re-evaluation of their earlier ‘spiral model’ and Goodman and Jinks’ critique of earlier rational choice and constructivist approaches. Together, these works provide a rich synthesis of constructivist and rational choice approaches in compliance theory.

## **4. Conclusion**

The three works reviewed in this essay suggest that constructivist approaches to human rights compliance theory now have a greater sophistication and evidence base than their rational choice competitors. This modern constructivism is varied and comprehensive: it integrates rational choice perspectives where the data are persuasive, and interrogates constructivism’s own assumptions. Risse, Ropp and Sikkink’s rich synthesis of rational choice theory within constructivism indicates that the duelling of the two schools of compliance theory is no longer productive. While critical of both rational choice and constructivist approaches, Goodman and Jinks combine insights from both schools. Their new concept of acculturation leads them to counterintuitive findings in relation to regime design and the precision of treaty norms from their new concept of acculturation. Hillebrecht’s work is located midway between incentive-based and interactional/political (implicitly constructivist) approaches, but her work too suggests that a synthesis of constructivism and rational choice insights is the new mainstream for interdisciplinary human rights compliance theory.

While mixed methods research and interdisciplinary scholarship on human rights compliance have reached an impressive level of sophistication, further research might test these theories where international human rights law and international humanitarian law are co-applicable; where the functions of the state are delegated or contracted out to private military and security companies; and where secrecy undermines legal argument and accountability mechanisms, in targeted killings and

extraordinary rendition. Such research will add value to the theoretical scholarship, and increase its resonance with human rights professionals outside the academy.