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# Response to Finnemore and Toope

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Mark Twain has been quoted as saying, “It is admirable to do good. It is also admirable to tell others to do good—and a lot less trouble.” Twain’s perhaps apocryphal aphorism could be adapted to contemporary social science scholarship: It is admirable to articulate and seek to apply new concepts. It is also admirable to tell others what is wrong with their concepts—and a lot less trouble.

Martha Finnemore and Stephen Toope, in their comment on our summer 2000 special issue of *IO*, “Legalization and World Politics,” seem to be following this adaptation of Twain’s advice.<sup>1</sup> They think that our definition of legalization focuses too much on formalized constraints, that it does not relate closely to broader concepts of law, that we are too committed to a rational-strategic approach to politics, and that we do not have a theory of what generates obligation. They do not attempt, in their critique, to produce an alternative conceptualization that attains the breadth they seek without sacrificing conceptual and theoretical coherence. We thought that our own argument was both “dynamic” and “process-oriented,” so we look forward with interest to their attempt to improve on our work. We particularly look forward to a carefully designed research program that will evaluate fairly the many empirical claims that they advance.

We do not think it would be productive to engage in a point-by-point rebuttal. We think that a fair reading of “Legalization and World Politics” will reveal that we sought to avoid formalism and tried to relate legalization to various conceptions of law. Of course, we may not have succeeded, and in the interest of analytic clarity and focus, we did not give all approaches equal billing. Hence it is quite legitimate for Finnemore and Toope to put forward their suggestions for alternatives. More questionable, however, are Finnemore and Toope’s omissions or misinterpretations. In the interests of brevity, we mention only the two most egregious of these.

One of their major arguments is that we overaggregate our concepts of obligation, precision, and delegation into an overarching concept of legalization. But Table 1 of the central conceptual article of the volume is precisely designed to disaggregate the “forms

1. See Finnemore and Toope 2001; and *International Organization* 54 (3).

of international legalization” into eight ideal types.<sup>2</sup> This table, the original version of which Andrew Moravcsik created, also shows that each ideal type roughly corresponds to actual empirical examples in contemporary world politics. Indeed, Table 1 is at the center of our conceptualization of legalization, so it is particularly ironic that our critics overlook it. In our introduction we called special attention to this typology, as well as to Kenneth Abbott and Duncan Snidal’s important elaboration in their article on soft and hard law.<sup>3</sup>

Finnemore and Toope also characterize our interest in legalization as essentially descriptive, implying that we are not concerned about its impact on compliance. On the contrary, the issue of compliance is central to our concerns in the volume. In bold print in the introduction we state as one of our major hypotheses that “a key consequence of legalization for international cooperation lies in its effects on compliance with international obligations.”<sup>4</sup> We do not, however, associate legalization with consistently higher levels of compliance. In the conclusion Miles Kahler engages in an extensive discussion of the apparently complex relationships between legalization and compliance. Far from dismissing the article by Ellen Lutz and Kathryn Sikkink, he integrates their findings into his own argument about compliance constituencies, suggesting that “the separation of access and enforcement in the legal regime prevented the development of powerful compliance constituencies within states.”<sup>5</sup>

We are gratified by the attention Finnemore and Toope give to our work and that of our collaborators. We look forward to productive discussions about how to understand the causes and effects of legalization. We hope that the participants in this discourse will fully appreciate, and articulate for their own readers, the arguments made by others who are also engaged in the search for more perceptive interpretation and better-grounded descriptive and causal inferences.

## References

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2. Abbott et al. 2000, 406, tab. 1.
3. *Ibid.*, 388.
4. Goldstein et al. 2000, 397.
5. Kahler 2000, 678.