doi:10.1017/aju.2021.25

SYMPOSIUM ON ANNE VAN AAKEN & BETÜL SIMSEK, "REWARDING IN INTERNATIONAL LAW"

REPUTATION, SELF-ESTEEM, AND COMPETITIVE REWARDS

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In *Rewarding in International Law*, Anna van Aaken and Betül Simsek organize and refocus much of the existing literature on international cooperation and compliance highlighting the set of positive and negative tools available.[1] In this essay, I extend the *Rewarding* framework, making some additional distinctions between the concepts, which both highlight the possibility of rewarding in international law and sketch the limits for such analysis. The first part differentiates rationalistic conceptions of reputation, on the one hand, and behavioral notions of self-esteem, on the other, as analytically distinct mechanisms for rewarding. By pulling these concepts apart, this essay emphasizes the different causal paths for influencing government actors and makes the case for an independent place for self-esteem in the *Rewarding* framework. In the second part, this essay questions whether rewards are always positive (and thus Pareto efficient) in light of third-party effects. Some rewards are competitive; a reward to one party is a *relative punishment* to third parties who are competitively disadvantaged by an exclusion from the reward. The incorporation of third-party analysis underscores the political limits of rewarding stemming from third-party resistance to rewarding or, alternatively, demands for additional rewards from third parties that can create capacity concerns for rewarding states.

Separating Reputation and Self-Esteem Rewards

One of the most novel and important aspects of the *Rewarding* framework is the emphasis on psychology in understanding a state's cognitive evaluation of gains and losses. The article highlights how organizations process choices on a behavioral level and why this may make rewards more effective than penalties.[2] One refinement of the article's framework would be to separate out rationalistic conceptions of *reputation* from behavioral conceptions of *self-esteem*.

The *Rewarding* framework currently blends these two conceptions together under the heading of positive reputational effects that are external rewards for entering into a treaty regime or complying with the regime. The article highlights how naming and praising can add to a good reputation[3] as well as "stimulating feelings of pride and positive self-image," which produces feelings of happiness and satisfaction.[4] This is in addition to the article's discussion of more established understandings of reputation, which involve demonstrating traits of reliability

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[1] Anna van Aaken & Betül Simsek, *Rewarding in International Law*, 115 AJIL 195 (2021).

[2] *Id.* at Part V.

[3] *Id.* at 205.

[4] *Id.* at 213–14.

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https://doi.org/10.1017/aju.2021.25 Published online by Cambridge University Press

(through treaty compliance) or cooperativeness (through treaty entry) based on past actions. Here, reputations can produce positive benefits such as attracting more treaty partners or obtaining greater concessions in treaty negotiations.[5] Yet these two mechanisms work quite differently; reputation is based on the audience's external view of the state while self-esteem is based on the state's internal view of itself. In addition, the intention of the "rewarding" country is different: a reputational change is not intended to be a reward (it is an informational assessment) while praise to boost self-esteem is most likely intended to be a reward. The next sections try to disentangle the two concepts to demonstrate the independent value of the self-esteem reward.

Rationalist Approaches to Reputation

Rationalist reputational analysis posits that states want to cultivate a reputation for particular characteristics. For instance, states might want to develop a reputation for paying sovereign debt on time,[6] consistently complying with treaties,[7] or possessing resolve in military engagements.[8] These characteristics can bring the state benefits, such as more credibility when making demands or lower interest rates on debt. The audience establishes the state's reputation based on its observation of the state's actions, although the state can work to influence the audience's views. Who the audience is may differ by issue area, and the audience does not necessarily hold homogenous views. For instance, private lenders may be the primary audience for a reputation for paying debt on time, while other government leaders and international organizations may be the primary audience for a reputation for compliance with treaty obligations.

Reputational analysis can get complicated along a number of dimensions: whether the reputation is unique to an issue area (for instance, can a state maintain a good reputation as a reliable military ally while developing a bad one as an unreliable trading partner?), who the reputation attaches to (the leader, the administration, or the state), and how it influences state decision-making (does a leader value the state's reputation less as her term in office comes to a close?).[9] But putting these complications aside, the standard rationalist analysis revolves around the audience's analysis of the state's character based on its actions. Not all information will lead the audience to update its reputational analysis. Praising a state's record of compliance with a human rights agreement when the level of compliance matched the audience's expectations will not lead to reputational benefits.

Behavioral Approaches to Self-Esteem

While the rationalist account focuses on external evaluations of the state, the *Rewarding* framework highlights a separate internal evaluation process—building self-esteem, which might also lead to psychological benefits to state leaders. Particularly given the article's focus on the behavioral aspects of promoting cooperation and compliance, the focus on how self-esteem can influence policy-making is useful and currently underappreciated in the literature.

Praise and public acknowledgement from the international community can boost government leaders' self-esteem by changing internal assessments of value or worth. Self-esteem is derived from how an audience perceives

[5] *Id.* at 205, 213–14.

[6] Michael Tomz, Reputation and International Cooperation (2006).

[7] Andrew T. Guzman, How International Law Works: A Rational Choice Theory (2008).

[8] Thomas C. Schelling, Arms and Influence (1967).

[9] George W. Downs & Michael A. Jones, *Reputation, Compliance, and International Law*, 31 J. Leg. Stud. S95 (2002); Rachel Brewster, *Unpacking the State's Reputation*, 50 Harv. Int'l L.J. 231 (2009); Barbara F. Walter, Reputation and Civil War: Why Separatist Conflicts Are So Violent (2009).

https://doi.org/10.1017/aju.2021.25 Published online by Cambridge University Press

the state, but its payoff comes in its psychic benefit to individuals because they view themselves more positively. As the article states, reputational rewarding is a type of social approval, which "makes individuals happy and proud while disapproval causes embarrassment, shame and makes people unhappy."[10]

Importantly, praise and self-esteem need not be instrumental; they may not *get the state anything in international negotiations*. For instance, praise in an international human rights report for obligations that the state has successfully met (in addition to identifying areas in need of improvement) may not lead to any change in the audience's external view of the state's character. The praise may not identify any information that leads the audience to update its assessment of the state's reliability or other relevant characteristics. As a result, it might not translate into any advantages in international bargaining.

But this is not to say that it could not be a very important motivator for state action. The more we learn about how individuals make decisions, the more convincing it is that self-esteem is a significant factor in a state's decision-making calculus. The belief that you have others' social approval after receiving praise may very well be a powerful motivation to continue compliance. However, this is a distinct causal path from the rationalist reputational analysis that focuses on information about states' characteristics rather than models of self-worth.

One of the key contributions of this article may well be the emphasis on self-esteem as a stand-alone concept, differentiated from reputation, which fits into the rewarding framework. To go further down this path, however, may require a more complicated model of the state that incorporates the idea of individuals within a government structure. Once we are in the realm of internal assessments of self-value, maintaining the "state" as the relevant point of analysis becomes more fraught.

While a "state" might be able to have a reputation in the sense that the ongoing governmental entity can be perceived as having certain characteristics that are relatively constant over time, it is a longer leap to say that the state has complex internal psychological processes that inherently value self-worth. Certainly, individuals who are part of the government of the state do, but such a model requires us to recognize the people in the state.

Shifting the model from the level of the state to the level of individuals or groups can have an advantage in that it allows for a richer analysis of how praise might work in achieving compliance and what the limits might be. There are multiple models available here, which could be complementary to each other depending on the issue area. For instance, within a bureaucracy, a self-esteem approach could demonstrate how praise motivates government employees who have policy discretion. Similarly, a focus on national leaders could explore how these actors seek social approval and use praise for the state to boost their own domestic popularity. Understanding the domestic context for self-esteem analysis would also provide some contours for the limits of such a mechanism. For instance, in an age of backlash against international norms and institutions, international criticism might actually lead to greater self-esteem for some government officials. Government leaders may experience pride, not embarrassment, from actively disrupting international norms. For such leaders or governments, international condemnation could be channeled into domestic praise for rejecting a "globalist" framework.

Reputation and Self-Esteem Applied

Revisiting the article's example of the United States's exit from and subsequent return to the World Health Organization (WHO) can sharpen the differences between the two mechanisms further. The article notes that the United States's failure to pay its WHO dues may hurt its reputation as a reliable partner and that exiting the treaty in a time of crisis damages the American reputation even more, but these losses could be reversed by readmission, and the prospect of regaining foregone benefits can motivate a return to cooperative action.[11]

[10] Van Aaken & Simsek, *supra* note 1, at 214.

[11] *Id.* at 207.

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The Biden administration's decision to rejoin the WHO is most likely based primarily on the benefits of influencing WHO policy, but it can be useful to explore this decision from the reputational or self-esteem viewpoints as well.

From the rationalist perspective, it is not clear that rejoining the WHO would be able to restore the American reputation for reliability. It might be a moderately useful informational signal but the larger issue could be that the United States is building a structural reputation for dramatic swings in behavior between administrations. American domestic politics is such that presidential elections lead to huge shifts in policy rather than incremental changes. As a result, the reputation of the United States may be hard to alter in the short term, because partners do not view any set of actions as signaling a change in type. The United States's structural reputation may be "erratic," and a wide range of behaviors can be consistent with this reputation. As a result, the Biden administration's decision to rejoin the organization will not necessarily lead to an improvement in the United States's reputation as a reliable partner.

However, members of the Biden administration may nonetheless be influenced by the self-esteem reward that the article's behavioral approach underscores. For instance, they may be motivated by personal or professional recognition from the international community (and domestic audiences) for their attempts to re-engage in cooperative international endeavors from human rights to public health and climate change. Thus, we may see "rewarding" going on in foreign audiences' praise for recent Biden administration actions but these rewards relate to self-esteem rather than the state's reputation.

Competitive Rewarding: Rewards as Relational Punishments for Third Parties

The idea of rewarding, as compared to punishment, implies a positive inducement and the article highlights the Pareto-efficient characteristic of rewards.[12] Whether rewarding is Pareto efficient may well depend on the scope of the analysis though. Here, it is useful to draw a distinction between rewards that are *competitive* and those that are *non-competitive*. Competitive rewards are benefits that the donor state offers to the recipient state, but that also put third-party states at a competitive disadvantage. Non-competitive rewards are benefits that do not affect the relative position of other states, at least on a material basis.

When we expand the scope of the efficiency analysis beyond the bilateral bargain to include third-party states, it becomes clearer that some states excluded from the reward can be made worse off by reward. While some rewards, such as praise for human rights compliance, may have few competitive effects, other rewards, such as greater trade preferences, may have significant competitive effects. This section details how rewards can be costly to third parties and has three implications for the rewarding framework: (1) it complicates the picture of whether rewards are Pareto efficient, (2) it highlights how rewards can be viewed as discriminatory to third parties, and (3) it raises new capacity questions for rewards if there is political blowback from other states.

The clearest example of a competitive reward is the Generalized System of Preferences (GSP), where developed countries offer developing countries preferential access to the developed country's market via the World Trade Organization's (WTO) Enabling Clause. The article identifies GSP as an external reward. GSP benefits are not based on compliance with WTO agreements (and thus non-reciprocal to compliance within the WTO regime) but can be dependent on joining and cooperating with other treaty arrangements (thus a reward external to the WTO agreement that rewards cooperation with other treaty regimes).[13] The article further identifies these arrangements as ones that make both parties better off.[14]

[12] *See id.* at Part IV(C).

[13] *Id.* at 213.

[14] *Id.*

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Yet states excluded from the offer of GSP are often materially hurt by the offer of such an external reward to other states. A country's exports (and the related industries) are hurt when a competing state's exports are given preferential access to a developed country's market. The grant of an external reward to one state acts as a *relational punishment* to other states, which puts them in a competitive disadvantage that harms them economically through decreased exports. Under a prospect theory model that the article advances, these losses will be valued more than possible gains because the states excluded from the reward are losing ground that they previously held.[15]

We have seen such complaints against the GSP program within the context of the WTO. In its WTO challenge to the European Union's Drug Arrangements GSP program (a program designed to be an external reward for states taking actions to combat the production and distribution of narcotics), India argued that the GSP program was discriminatory towards developing states that the European Union had not selected as eligible for the external reward.[16] After losing the dispute at the WTO, the European Union moved to a program that has a more open application process but a number of developing states are still excluded based on criteria that the EU selects.[17] In GSP programs, the donor gets to determine what type of activity is eligible for rewards and, thereby, can indirectly exclude states from eligibility based on national characteristics.

Even outside of the trade arena, competitive rewards can benefit some states at a cost to others. Providing subsidies or "headroom" for carbon emissions to some states can lower the costs of complying with international obligations for industries in those countries, while not alleviating the costs of compliance to similarly situated states. Non-economic realms can be competitive as well. For instance, if moving up in international rankings qualifies as a reward,[18] then this reward is inherently relative and comes at the cost of relationally punishing third parties.

This is an important distinction to draw out, because it goes to the claim that rewarding is Pareto efficient. If rewards are competitive, then they impose costs on third-party states and make them worse off to the status quo ante. Beyond the technical point, the issue of competitive rewarding highlights the political blowback that rewarding behavior may produce. On the most basic level, rewarding governments may not engender feelings of goodwill from much of the international community. Excluded governments may instead experience endowment losses as wealthy nations pass out competitive rewards selectively. As a result, excluded governments may demand similar rewards to maintain their cooperation—either in the relevant issue area or in a different issue area. Thus, rewards in one area may prompt a demand for rewards across additional issue areas to maintain the status quo.

The demand for more rewards may also create capacity concerns in donor states. While there may be sufficient political support to fund rewards for new cooperative activity, donor states may balk at providing a wider array of rewards to sustain existing cooperative agreements. The competitive nature of some rewarding certainly does not diminish the possible benefits of positive inducements, but it requires a broader scope for examining material and psychological effects of rewarding throughout the international system.

[15] *Id.* at 207.

[16] The WTO Appellate Body agreed with India that the EU program was not consistent with the Enabling Clause. Appellate Body Report, European Communities—Conditions for the Granting of Tariff Preferences to Developing Countries, WT/DS246/AB/R (adopted Apr. 20, 2004).

[17] *See* Lorand Bartels, *The WTO Legality of the EU's GSP+ Arrangement*, 10 J. INT'L ECON. L. 869 (2007) (discussing the case and arguing that the European Union's modified GSP program continues to breach WTO obligations).

[18] Van Aaken & Simsek, *supra* note 1, at 214.

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Conclusion

Rewarding in International Law is an important contribution and provides a compelling argument that international lawyers have undervalued the potential of rewards in securing international cooperation, particularly in the provision of public goods. The article begins a new and needed conversation concerning how states can best achieve cooperative outcomes. It demands that international law scholars consider a broader array of tools (both in terms of positive inducements and behavioral approaches) to achieve sustainable agreements. This essay answers that call by engaging and sharpening the *Rewarding* framework: distinguishing between the causal paths of reputation and self-esteem as well as interrogating when rewards are beneficial for all members of the international community. In doing so, it embraces the effort to focus more on rewards as the international system faces increasingly complex cooperative challenges.

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