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Treaty Compliance and Violation
Beth Simmons

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A treaty is a formal agreement between sovereign states, usually documented in writing. Such formal agreements are central to the conduct of international relations. It would be hard to write an international history of the western world without some reference to the Treaties of Westphalia (1648), which some credit with the foundations of the modern state system, the Treaty of Paris (1814), which defined the end of the Napoleonic era, or the Versailles Treaty (1919), which informed generations of leaders how *not* to secure post-war peace. It would similarly be difficult to understand the modern system of world trade without some reference to the 1948 General Agreement on Tariffs and Trade or the more recent 1995 Marrakesh agreement that created the World Trade Organization, or to understand post World War II security arrangements without reference to the 1949 North Atlantic Treaty or the 1955 Warsaw Pact. Beginning in the 1960s, a series of human rights treaties have supported the "rights revolution" characteristic of the latter twentieth century. International treaties are one of the oldest forms of communication among sovereigns and some 3,000 multilateral and 27,000 bilateral treaties are in effect today.[1] While treaties hardly reflect the totality of state-to-state relationships even in the West, they are certainly crucial documents for conducting international relations.

Ask any legal scholar why treaties are important, and she will very likely mention their "legally binding" nature. Treaties generally create legal obligations among states

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[1] John Gamble, based on Wiktor's Calendars, Rohn's indices, and *Treaties in Force*.

that are parties to them. Treaties are not the only source of international legal obligation; international law scholars will also point to customary international law as a legitimate source of legal obligation among states as well. Political scientists have scarcely studied customary international law at all. For many empirical researchers, custom derived from practice has the feel of circularity if the research motivation is to understand international law's influence on behavior. Custom is also substantively harder to grasp: its rules are often hard to establish because it is not written down, and unlike in the domestic context, the resort to legal clarifications by international courts is rare. Because political science research has largely focused on treaties (synonyms include accords, agreements, conventions and covenants), these will be the focus of this article.

While all treaties are obligation-creating legal instruments, not all are equally "binding." The legal literature distinguishes "hard law" and "soft law" (Shelton 1997) and treaties while always obligatory can contain both. The key is in the language chosen to describe the obligation. "Must" is the language of hard law; "should" is that of soft law. Hence, obligations – even those contained in treaties – can have shades of stringency. Duncan Snidal and Kenneth Abbott argue that states choose hard law language when they want to avoid high transaction costs associated with future interactions, but prefer soft law when negotiation costs are high (Abbott & Snidal 2000). This is an example of a broader set of issues that is certainly relevant to treaty violation: how the agreement was written in the first place (Koremenos 2005; Koremenos et al 2001; Rosendorff & Milner 2001; Smith 2000). "Details" about membership, escape clauses, and dispute settlement can influence violation and compliance, and while this

article does not treat the question of institutional design as a distinct subsection, it is central to some of the literature discussed below.

Finally, it is worth noting that states are only bound by international treaties if they have ratified them, and ratification itself is not obligatory; it is based on consent. Ratification rules vary by state, and some of the approaches discussed below specifically take the mode of ratification into account, theorizing that higher ratification "hurdles" imply real dedication to the purposes of the agreement and hence augur well for compliance. Many research designs designate ratification itself as the "treatment" that is theorized to influence the behavioral outcome of interest (Hathaway 2002; Simmons 2009). The approach potentially underestimates broader treaty effects, since norms contained in treaties could be internalized and practiced by non-ratifiers as well. Another research design is to explain the variance in compliance among treaty parties only (Bernhagen 2008; Dai 2007) which facilitates modeling pressures to violate or to comply, but cannot address the treaty's impact relative to non-state parties. Alost all studies of the influence of treaties on state behavior encounter serious issues of endogeneity and selection, both with respect to the provisions of the treaty and with respect to ratification. Since treaties exist and are written for specific purposes, it is hard to know how much causal weight to attribute to the treaty or the underlying purpose. Ratification is quite obviously not random either. Methods exist to address endogeneity and selection, but they involve trade-offs and are highly imperfect (Simmons & Hopkins 2005; von Stein 2005).

Political science research on treaty violation and compliance has been a tremendously productive area of research over the past decade. The growth has been

mainly on the empirical side; the debate about meta-theoretical orientations has subsided (compare Simmons 1998). Scholars are less concerned to affix a label their approach (realist, Kantian liberalist, liberal institutionalist, constructivist, democratic process school, legal process school, enforcement school managerial school, transformationalist school to name a few from the1990s), than they are to make a coherent argument and to test specific mechanisms. Research has become decided more quantitative than it was a decade ago, especially in the area of human rights. Thanks to the systematic efforts of governmental and non-governmental international organizations, government agencies and teams of scholars, the data now available to assess compliance is far more extensive and informative than it was only a few years ago. Controversies and lacunae obviously still remain, but international and comparative politics scholars, sometimes in co-authorship with legal scholars, have significantly advanced the study of the politics of treaty compliance in recent years.

II. Theoretical Approaches to Treaty Violation and Compliance

One of the most gratifying aspects about the research on international law and international relations is that debates over meta-theoretical orientations have become muted in the interest of going after genuine puzzles. Long standing theoretical traditions continue to inform research, and to some extent realism inspires the null hypothesis of choice. But today's realists are more likely to stress international law's epiphenomenalism rather than its utterly irrelevance to international politics (Downs et al 1996; Goldsmith & Posner 2005). Moreover, some realists at least acknowledge the possibility that international law might influence state behavior – even in wartime – by

theorizing and testing for its possible influence in their research (Valentino et al 2006). The "irrelevance" of international law to international politics no longer has the status of a self-evident truth among realist theorists.

The dominant view in international relations – shared by a broad range of scholars working in a rationalist tradition – recognizes that agreements that cannot be enforced by a third party must in some sense be "self-enforcing." A self-enforcing agreement is one in which two or more parties adhere to the agreement as long as each gains more from continuing the agreement than from abrogating it. The agreement is "enforced" by the parties themselves by shutting down or reducing that future flow of benefits, not by third party sanctions. Reciprocity and reputation are the key enforcement mechanisms. Robert Keohane's early theories of compliance with international regimes followed this logic. Governments complied with their agreements for "reasons of reputation, as well as fear of retaliation and concern about the effects of precedents" (Keohane 1984). As long as the parties expect the treaty to provide benefits that extend long enough into the future (the rate of future discount is low) self-interest can result in a high degree of compliance.

There are limits of course to the possibilities for fashioning self-enforcing agreements among states. There may also be limits to the ability of reputational considerations to support self-enforcing agreements across unrelated issue areas, where behavior is difficult to observe, and within communities in which future interactions are sparse or not very highly valued (Downs & Jones 2002). Moreover, the ability of actors to regulate the exact message they want others to infer from their behavior may be limited, as governments often cultivate multiple reputations (Keohane 1997). In trade, for example, a government may want to cultivate a domestic reputation for

responsiveness to constituency interests but an international reputation for cooperativeness. Finally, "reputational sanctions", like any other kind of sanction, may be sub-optimal if the community does not find a way to overcome collective action problems in its supply (Guzmán 2008). Since "enforcement" depends largely on reciprocity, this framework is useful for explaining stable trade agreements (Goldstein et al 2007) and some aspects of the laws of war, where militaries risk retaliation in kind (Morrow 2007). It is also suitable for analyzing obligations whose violation might provoke negative market reactions, as is plausible in the area of monetary affairs and investment (Simmons 2000).

Theories of self-enforcing agreements are related conceptually to theories of international law as an effort to bolster the credibility of a commitment. The assumption of credible commitment theory is that many states are unable to enjoy the "joint gains" implied by international agreements precisely because their potential partners do not know if they will carry them out. Incentives to misrepresent true intentions aggravate the contracting problem. Almost all theories of credible commitments rest on the assumption of time-inconsistent preferences: it may be rational in time t to promise to behave according to an agreement, but in time $t+1$ it is likely that one or both parties will face incentives to renege. International treaties are sometimes analyzed as a device for enhancing credibility in order to enjoy the very real gains from cooperation that motivate contracting in the first place.

The essential feature of credible commitments theory is that states must be willing to pay a non-trivial cost in order to participate in the agreement. It is precisely the willingness to bear these costs that makes the agreement more credible than it would

otherwise be. Two kinds of costs are distinguished in the literature: *ex ante* (or "sunk")

costs that have the effect of credibly distinguishing a sincere government from an

opportunistic one; and *ex post* costs that are paid if a violation takes place (Fearon 1997).

High *ex ante* costs send a credible signal of intentions: no rational government would pay

a high "down-payment" on a cooperative enterprise if they did not intend to carry it out.

When a government pays high *ex ante* costs, other parties reasonably conclude that this

type of government will follow through with its agreement. High *ex ante* costs in effect

screen governments by type, revealing their true nature.

Signaling models of international treaty making are becoming quite common in

the literature of the politics of international law. One difference between treaties and

other kinds of agreements is that they have to be formally ratified, and in most countries

these formal procedures require legislative majorities (sometimes super-majorities)

(Martin 2000). Lisa Martin demonstrates theoretically and empirically the significance of

the signaling power of treaties by showing that that United States presidents typically

choose treaties rather than executive agreements for "high-value" international

agreements. She argues that higher cost treaty ratification is useful to assure other

countries that the United States intends to comply (Martin 2005). Similarly, in their

research on alliance agreements, Andrew Long and co-authors argue that because of the

up-front cost of negotiating and ratifying formal alliance agreements (compared,

presumably to mere political agreements), these constitute credible commitments about a

state's intent to maintain peaceful relationships among the contracting parties (Long et al

2007).

Signaling models *predict* treaty compliance, but they do not *explain* it. Committed "types" are likely to pay the price for ratification, while uncommitted types are not. When it is politically costly, treaty ratification functions as a separating equilibrium, in which only the committed types are likely to pay the steep political costs of ratification. Successful signaling can enhance stable reciprocity (Morrow 2007), but signaling models per se do not explain why certain states are more "committed types" in the first place.

Costs paid *ex post* work in a different way, and more closely resemble the logic of self-enforcing agreements discussed above. If ex ante costs can screen, then ex post costs can (theoretically) *constrain*. Ex post costs are simply the consequences of non-compliance, which can range from trivial to monumental. When ex post costs are high enough, they can effectively *change* a government's interest in compliance. High ex ost costs encourage other parties to reduce their assessment of the likelihood of defection, increasing the range of agreements with which the parties have an incentive to comply. Several scholars have argued that agreements that contain arbitration, prosecution or dispute settlement mechanisms are efforts to make commitments more credible by ramping up *ex post* costs. Examples include the International Criminal Court (Simmons & Danner 2010), bilateral investment treaties (Elkins et al 2006) and the more institutionalized provisions of some alliance pacts (Long et al 2007).

Most treaties do not of course have strong external enforcement mechanisms. In that case, why are treaties especially useful tools for credible commitment-making? Some scholars insist that there is something about a *legal* commitment that inherently raises ex post costs in the event of rule violation. Andrew Guzman for example writes that treaties "represent the complete pledge of a nation's reputational capital" (Guzman

2002; see also Schachter 1991). This special quality of treaties may be due to the fact that they are embedded in a broader system of socially constructed interstate rule-making, normatively linked by the principle of *pacta sunt servanda* – the idea that agreements of a legally obligatory nature must be observed. Violating a legal agreement, in this view, provides information on both the government's attitude toward the contents of the treaty (the specific rule) and respect for law itself (the broader set of principles in which the rule is embedded). Note however, that for these reputational mechanisms to work, there must be *widespread social agreement* that law creates more serious obligations than other kinds of agreements, a point stressed by constructivist scholars. Arguably, treaties also allow for a more complete reputational commitment because of their capacity for clarity. Precision reduces the scope for plausible deniability of violation by narrowing the range of reasonable interpretation. In James Morrow's rationalist interpretation of the laws of war, the relative precision of treaty arrangements supports reciprocity between warring states by clarifying prescribed and proscribed behaviors and limiting the permitted range of response to violation (Morrow 2007). For these reasons, violating a treaty is often asserted to have more serious reputational consequences than reneging on a political commitment, *ceteris paribus*.

These are reasonable arguments, but they rest on a very important assumption about the elevated social status of law. While some international legal scholars may take this as an article of faith, hard-headed political scientists are now trying to assemble evidence that this is plausible. Michael Tomz uses surveys laced with experiments that are designed to cue respondents that a particular act violates an international legal obligation, and attempts to assess the effect of this "cue" on respondents' attitudes about

that country and the actions it has taken. His survey evidence suggests that respondents are much more likely to oppose policies when they are told they violates international law. The evidence also suggests that international legal agreements raise expectations about compliance (Tomz 2008). We should be cautious about jumping to conclusions based on such survey evidence; surveys about mass preferences do not translate easily into electoral pressures, and even elite surveys can be attacked for problems with eternal validity. But Tomz's evidence does suggest that a legal commitment enhances the reputational mechanism and may trigger audience costs that have rested for the most part on assertion.

The notion that international legal commitments engage domestic audiences has reoriented some of the theoretical literature toward domestic and comparative politics. Xinyuan Dai has developed a domestic theory of compliance that depends on new policy information generated by the often toothless international institutions legal agreements sometimes create. Dai theorizes that compliance with international agreements is enhanced through new information, generated by treaty bodies and monitoring systems, that inform and empower domestic voters to punish governments for actions of which they disapprove (Dai 2007). When a potential pro-compliance constituency is large (which is not always the case, even in democratic polities), and when an international agreement sheds significant new information on the government's record of compliance, a government will have strong electoral reasons not to violate international agreements. Dai's theory sheds light on why it is that *liberal* democracies are often better treaty compliers: they are populated by large numbers and dense networks of citizens with extensive interests in predictable and harmonious transnational relationships (Gaubatz

1996; Slaughter 1995). But to the extent that the electoral mechanism is blunted or anti-compliance groups dominate electoral politics the pressure on states to comply will diminish.

The above theories flow largely from rational models of the pursuit of material interests or office seeking, as posited by the analyst. Another branch of theorizing treaty behavior emphasizes a more subjectivist logic and involves not merely changing *incentives*, but changing *minds*. As alluded to in our discussion of the special status of law, constructivists tend to view treaties as more than contracts; they embody norms which reflect the social meanings and purposes of their propagators. Rules and norms are important because they "condition actors' self-understandings, references, and behavior..." (Reus-Smit 2004).. As such, they become a key focal point for discursive struggles over legitimate political agency and action and critical resources in the international politics of legitimacy.

International law has a special place in the array of social norms, some constructivists argue, because it shapes the justificatory politics that ultimate inform official actions. International law comprises a particular kind of discourse based o the language of state sovereignty, justification, and obligation rather than power alone as reasons for taking certain actions and not others. In this perspective, the nature of discourse has a tremendous influence on behavior. Christian Reus-Smit goes so far as to suggest that, "...legal right is as much a power resource as guns and money, and juridical sovereignty, grounded in the legal norms of international society, is becoming a key determinant of state power" (Reus-Smit 2004). International politics is a struggle to

define symbols of meaning; controversies surrounding international law are a manifestation of those struggles.

If discourse and ideas inform politics, then much of the compliance is explicable in terms of what actors come to believe and value. Compliance with rules can be enhanced through efforts at socialization, or what Kathryn Sikkink and Thomas Risse define as the process by which principled ideas become broadly accepted norms. Once they are internalized, these norms can lead to changes in interests, values and even identities, which in turn ultimately shape state behavior (Risse-Kappen et al 1999).

Compliance is enhanced in this view when actors become socialized to comply. Socialization can mean three kinds of processes in this literature. In a crude sense, actors (state elites) can be "socialized" through a system of rewards and punishments (Schimmelfennig 2005). Some people prefer to call this coercion, or maybe conditioning. This form of socialization shades into incentive-based inducements discussed above. More subtly, actors can be encouraged through various cues indicative of social acceptance or approbation to bring their practices in line with international standards. Ryan Goodman and Derek Jinks refer to this as a process of *acculturation* by which they mean the "general process by which actors adopt the beliefs and behavioral patterns of the surrounding culture" (Goodman & Jinks 2004). Acculturation includes a number of micro-processes such as mimicry, status maximization, and identification that are often at the heart of world institutionalist theories common in sociology (Finnemore 1996). This is compliance through conformity: social group tend to generate varying degrees of cognitive and social pressures, real or imagined, to bring behavior in alignment with that of peers. Acculturation involves "social costs" such as shaming or

shunning as distinct from the more material costs associated with overt coercion. These pressures may lead to superficial compliance with international norms as reflected in treaty obligations, not necessarily the internationalization of norms as deeply held values (Strang & Chang 1993).

Acculturation can be contrasted with a more fundamental form of socialization, often referred to in the literature as normative *persuasion*. Persuasion depends on the power of argumentation and deliberation as distinct modes of social interaction which when successful changes what an actor values and sometimes even his or her very identity (Johnston 2001; Risse 2000). Jeffrey Checkel defines persuasion as "a social process of interaction that involves changing attitudes about cause and effect in the absence of overt coercion" (Checkel 2001). He argues that persuasion is more likely to play an important role in explaining compliance behavior when elites do not have deeply held priors, and they are therefore open to new ways of thinking about issues.

The socialization literature theorizes the diffusion of norms over time and space, but it is still puzzling as to why some norms seem to be internalized and complied with more than others. Some scholars argue that the quality of the norm itself matters. Margaret Keck and Kathryn Sikkink propose that human rights norms that are the most universal in nature – those protecting innocent women and children – are the most widely held and have a special compliance pull (see also Hawkins 2004; Keck & Sikkink 1998). In his examination of arms control treaties during the interwar years, Jeffry Legro builds on the earlier insights of legal scholars Thomas Franck and Louis Henkin (Franck 1990; Henkin 1995) when he argues that qualities such as norm specificity, durability, and concordance improve prospects for compliance (Legro 1997). Others argue that norms

will be more or less influential depending on how they mesh with domestic norms and institutions (Checkel 2001). The idea that mass publics might play a role in the socialization of governments to comply with their international agreements is central to Frank Schimmelfennig's research on the compliance of Eastern Europe with the governing standards of the West (Schimmelfennig 2005).

Whether because of their persuasive function or their information providing function (or both) constructivists often agree with rational theorist that pressures applied by (often transnational) civil society tend to pressure or persuade governments to comply with international legal standards and obligation. Sally Merry's transnational ethnography of the role of transnational actors provides a rich description of how the process of persuasion and communication operates transnationally (Merry 2006). Transnational human rights ideas become part of local social movements and local legal consciousness through the work of individuals who have one authentic foot in the local culture and the other in the transnational world of United Nations conferences, meetings and workshops. These individuals play a crucial role Merry's felicitous phrase in "translating global principles into the local vernacular" (Merry 2006). This is a two-way form of communication, often supporting new ideas and identities at the local levels but also educating the global community about the local realities on the ground.

Ideational theories have also been advanced linking democratic forms of domestic governance to better international law compliance. The normative argument for better treaty performance from more democratic governments has been framed in terms of "universal democratic norms for reconciling competing values and interests" (Dixon 1994) which draws from the broader literature in international relations on normative

explanations for the democratic peace. Democracies rest on a robust form of constitutionalism, which puts law at the heart of public legitimacy, and subjects all forms of public authority to principled limitations on the exercise of power. Compliance with international treaty obligations in this view is consonant with compliance with domestic constitutional obligations; governments who are willing to recognize the latter are generally more willing to comply with the former (Gaubatz 1996). In this view, a shared identity as a democratic state based on the rule of law renders compliance with international legal obligations the more appropriate policy choice.

Despite the temptation to contrast so-called "ideational" theories with "rationalist" ones, the complementarities are striking. Like rationalists, constructivists recognize that reputation surely matters to governments and their constituencies, but reputational concerns themselves are hardly exogenously given constructs; they are the result of intense socialization among state elites within a particular region(Lutz & Sikkink 2000). Game theorists posit such concepts as "common conjectures" that facilitate reciprocation, but what are common conjectures but commonly shared assumptions about certain basic principles or beliefs about how the "game" should be played (Morrow 2007)? Habermasian theories of communicative action have a sophisticated continental appeal (Risse 2000), but they often lead to analyses that bear a strong resemblance to what the Chayes in their more "managerial" style know colloquially as "jawboning" (Chayes & Chayes 1993). Theorists of law compliance have been borrowing from one another's conceptual toolkits for years. That few any longer feel obliged to declare an exclusive theoretical affiliation has largely promoted theoretical rigor, not undercut it.

II. Treaty Compliance - Empirical Studies by Issue Area

The recent growth in research on international law violation and compliance has been largely in the area of empirical research. Scholars, non-governmental organizations and governmental agencies are beginning systematically to collect and publish information that can help test hypotheses about the conditions under which governments comply with or violate their international treaty obligations. I have selected four quite different issue to review these developments: war fighting, peace and security (traditionally dominated by realist theories); trade and commercial relationships (traditionally the domain of theories of reciprocity and self-enforcing agreements); environment protection (typically framed in terms of capacity issues and information availability) and international human rights agreement (an issue in which constructivist theories have traditionally had the strongest influence). Most but not all of these studies are quantitative, reflecting the flow of recently published research

Warfighting, Peace and Security

International legal agreements have played a huge role in relationships between states involving war, peace and security. Alliances, peace agreements and terrotiral boundaries are all typically governed by treaties, as are the laws of war-fighting themselves. The theoretical shift from a realist lens to that of credible commitments suggests why law pervades issues of national security: these are critical problems that are hard to solve unless costly commitments to comply are made. Most of the literature in this area reflects the idea that treaties help states signal a serious intent to comply with

agreements, marking a shift in security studies in the past decade to finally take these agreements seriously.

The recent alliance literature exemplifies this approach. Formal alliances have generally been theorized as signals of a state's intent to intervene militarily under certain conditions should war erupt (Morrow 1994). As such, they are generally signed with the expectation that they will be complied with in case of war. Research by Ashley Leeds and Burcu Savun based on data they collected for the Alliance Treaty Obligations and Provisions (ATOP) project suggests that most alliances are honored most of the time; but about 34% of alliance treaties for the past two centuries have ended in opportunistic violation (Leeds & Savun 2007) It is hard to know whether this is a "high" non-compliance or not (compared to what?) but given the importance of alliances to vital national security interests, one might suppose this figure represents a fairly good rate of non-abrogation. Some research suggests that states honor their alliance commitments as a way to preserve their reputation as a good ally into the future. Douglas Gibler produces evidence that governments (note: not "states") that abrogate their alliances are much less likely to be able to negotiate alliance relationships for the rest of their terms, making it much harder to deter potential aggressors (Gibler 2008). Alliance treaties tend to be "self-enforcing agreements" in that the *ex post* consequences of abrogation entail very real risks to national security into the future. Consistent with this view, Leeds and Savun found that the major condition under which states abrogate alliance treaties is when they experience a drastic change in circumstances from those prevailing when the treaty was ratified. They found that violation was more than twice as likely when there was a significant change in relative international power of one or both of the parties, a

significant change in domestic political institutions or the formation of a new outside

alliance since the original alliance was formed. While most alliance treaties are in fact

honored, they do not create legal straightjackets that interfere with new definitions of

what is in a state's security interest. (Leeds & Savun 2007).

The concept of audience costs has also been useful for understanding how formal

agreements can influence the duration of peace. After years of war and mistrust,

agreements to make peace are difficult to make credible. Treaties here again play an

important role by raising ex post international audience costs as well as by signaling

intentions ex ante. They can also reduce uncertainty about actions and intentions; thus

helping to reduce belligerents' incentives to rekindle their conflict. Virginia Page

Fortna's research suggests there is some empirical basis for viewing peace agreements in

this way. She finds that "stronger" peace agreements – by which she means ones that

raise the costs of reneging by creating clear demilitarized zones, joint monitoring

commissions, and third party guarantees – lead to more a durable peace (Fortna 2003).

Similarly, Michaela Mattes examines the role of "conciliatory" agreements in the

resolution of territorial disputes, and finds that those that reduce uncertainty and raise

costs *ex post* are likely to reduce the risk that disputing parties will resort to militarized

conflicts (Mattes 2008) But these cases raise the problem of the endogeneity of treaties.

It is highly likely that governments design "strong" and/or "conciliatory" agreements

when they are especially motivated to try and settle the dispute. If so, is it the agreement

or the underlying motivation to settle that drives the findings?

Agreements that constrain military operations in the heat of battle present the

most significant challenges for international treaties. When independent state survival

may be at stake, we have the most stringent test possible for the power of treaty agreements to constrain state behavior. The laws of war fighting are a good example. They embody norms to protected civilians and cultural property, to require decent treatment of prisoners, to medically treat wounded enemies, and so forth. Not only are there severe temptations to defect if banned practices might mean a military advantage; there is also the problem that atrocities of various kinds can be committed by individual soldiers even when it is against the policy of their government.

The protection of civilians may be the most difficult problem of all. Benjamin Valentino and his co-authors test the proposition that international treaties on the laws of war during the twentieth century (1900-2003) has had a significant impact on the rates at which the militaries of warring state parties "intentionally" kill civilians (Valentino et al 2006). For each of 148 international conflicts of the past century, Valentino et al coded whether the parties had ratified the 1899 Hague Convention, the 1907 Hague Convention, the 1949 Geneva Convention, and the Geneva Convention Protocols of 1977. They found that the intentional killing of civilians was correlated with the strategy chosen to prosecute the war, but not influenced at all by ratification of the relevant treaty for the time period under question. They conclude that "international law provides little protection for civilian populations in times of war. Whatever pressures toward restraint these treaties may exert on their signatories appear to be overwhelmed by the strategic incentives that combatants face to prevail and limit the costs of war to their own citizens" (Valentino et al 2006). However, much more could be done to understand the indirect influence of these treaties on war fighting, including their possible influence on the choice of a strategy itself. If ratifiers are much less willing to lay siege to an enemy

causing the starvation of its population, there is some risk that the effect of the legal norm is being masked by the choice of strategy.

An even more ambitious effort to understand the dynamics of the laws of war is James Morrow's study of eight different sub-issue areas, including aerial bombardment, armistice/ceasefire, chemical and biological weapons, treatment of civilians, protection of cultural property, conduct on the high seas, treatment of prisoners of war, and treatment of the wounded (Morrow 2007). Using different data and methods, Morrow does to some extent corroborate the findings of Valentino et al, in that he finds the treatment of civilian populations to be especially problematic in war time. This is hardly the end of the story however. Morrow draws on signaling theory to argue that "Treaties are a public signal that a state accepts a standard by ratifying it, and so will live up to the standard of that treaty if it goes to war…Ratification by both sides is necessary for them to understand that they intend to honor that standard to the best of their ability" (Morrow 2007). Morrow is not explicit about why such a signal would be credible to an adversary, although he does suggest that in a democratic setting, audience costs help to hold governments to their international commitments. The model he proposes allows for an indirect role for treaty ratification: treaties clarify what is, and what is not acceptable behavior, which allows adversaries in war more precisely to respond to violations in kind. This reciprocity, in turn, is associated with higher levels of compliance with the laws of war. Morrow's key finding is that a state is more likely to violate the laws of war reciprocally when it is clear the adversary has done so; when both have ratified the relevant treaty, and when both of these conditions hold (a triple interaction term). Merely to have ratified does not produce better compliance, but by facilitating reciprocity, he

argues the treaties have made important if indirect contributions to the somewhat more humane conduct of war.

Arguments for treaty compliance based on legal principles are by nature rare in the security area. As we have seen, theories of compliance or violation of international agreements in the security area tend to be based on arguments about reciprocity, the ability to send credible signals, or the ex post costs associated with reneging. It is therefore quite refreshing to consider the results of a study by Judith Kelley on states' (un)willingness to renege on their formal legal commitments to the International Criminal Court (Kelley 2007). Kelley asks, why do states live up to their legal obligations to cooperate with the ICC, especially in the face pressures any realist might assume would cause them to violate? Between 2002 and 2006, the United States applied very tangible forms of pressure – from diplomatic up to and including the threat of withdrawing military aid – to countries that refused to sign a mutual non-surrender agreement with the US. These agreements created bilateral obligations not to surrender one another's nationals to the ICC. The problem, however, is that such agreements conflict with the legal obligation any ratifier of the ICC statutes would have to cooperate with that institution. It is a difficult dilemma: should a state party live up to its ICC obligations and risk US sanctions, or should they stand up to the US, and stand by the ICC?

Kelley argues that despite the threats of the United States, some states resisted for very principled reasons. Some states had a strong affinity for the purposes of the ICC. She presents evidence from a cross sectional probit that democracies, the "like-minded countries" (the hard-core IC supporters during the negotiations) and states with sterling human rights records tended to ratify the ICC statutes. But even more revealing, states

with a strong commitment to the rule of law refused to go back on their ICC commitments. The *interaction* of a strong commitment to the rule of law and a previous ratification was a strong predictor (again, in a cross-sectional probit model) that a state would refuse to ratify a mutual non-surrender agreement with the United States. Four case studies – Botswana, Costa Rica, Estonia and Australia – provide the context for these findings. While Botswana reneged, all of the other three rebuffed the US, stuck with the ICC, and cited the importance of consistency with their prior legal obligations as the primary reason. Kelley concludes that "...international agreements can be effective across a broad spectrum of issue areas, not just in cases with clearly identified material payoffs of iterated cooperation" (Kelley 2007). She argues that a strong commitment to the rule of law highly conditions any general claims about the overall "compliance pull" of treaties generally. Consistent with normative theories of behavior, the "tug" is strongest for those polities that place the highest value on the rule of law.

While all of the above studies center on the question of *first order compliance* – or compliance with the substantive provisions of a treaty arrangement – growing attention has been given recently to the question of *second order compliance* – or compliance with the authoritative ruling of a third party when the substantive rules are under dispute. Why comply with the decisions of international tribunals, especially when a crucial national security issue is at stake? The answer that some scholars have advanced is an interesting mix of rational decisionmaking under normative constraints. Tribunals are theorized as an authoritative embodiment of the will of the international community. To comply with their decisions is often a rational strategy because of how it will be interpreted by other states. Drawing on theories of reputation and the interpretation of

signals, and assuming there are important gains to be had from settlement, complying

with the decisions of international tribunals is a chance for a "losing" disputant to make a

territorial concession to an adversary that it would be difficult to make politically in the

absence of the third party authoritative decision .(Allee & Huth 2006; Simmons 2002).

Sara Mitchell and Paul Hensel use a selection model to demonstrate empirically that

governments are more likely to comply with the decisions of an authoritative third party

than they are with an agreement reached on their own (Mitchell & Hensel 2007). These

findings illuminate how the legal context potentially shapes the meaning of actions:

deferring to legal authority signals a law abiding character, while deferring to an

adversary signals nothing but weakness. This is a powerful demonstration of the need to

marry rational accounts with subjective understandings of behavior.

Trade Liberalization

A surprisingly small amount of research has been done on compliance with

international trade treaties. Indeed, the literature does not focus so much on compliance

or violation as on the *effectiveness* of the international trade regime to stimulate trade

between nations. This may speak to the consequences of international law, but not

specifically to the conditions under which state parties comply with or violate their treaty

obligations. It is likely that effectiveness is related to compliance – one reason states

have been willing to liberalize their trade policies is likely due to the reciprocal

compliance of other states – but it is not a direct test of the behavioral proposition that

governments comply with their agreements in this area. After all, governments could be

in complete compliance with their agreements, but if the agreements require them to do very little, the effect on trade volumes and directions could be expected to be modest.

In contrast to the security area, political and legal analysts have tended to assume that there is a very high degree of compliance with most international commercial law. In the area of trade, the role of reciprocity is thought to be so strong that there is no realistic option to cooperation; no state would want to risk withdrawal from the network of liberalizing treaties that (presumably) have done so much to further market integration in goods and services over the past several decades. Some have cited the tremendous reductions in tariff rates over the past few decades, and concluded that "in the case of tariff cuts, implementation *is* compliance" (McNamara 2004). Others have looked to the operation of the World Trade Organization's Dispute Settlement Mechanism, and are satisfied that panel decisions are complied with some 90 per cent of the time (Wilson 2007). But the truth of the matter is that political scientists have spent much more time researching trade bargaining within WTO institutions than compliance per se (Busch & Reinhardt 2003; Guzman & Simmons 2002). We know surprisingly little about actual compliance with international trade law.

Systematic research on compliance with international trade law is much more difficult than one would expect. A convincing dataset on compliance with treaty law in this area would be a mind-boggling endeavor, even if one were to focus only on the WTO and set aside the large number of regional agreements governing trade relationships. Unlike the study of international humanitarian law, there is no obvious unit of analysis such as "warring dyad" on which to focus research. Trade policies are implemented on thousands of products, and in the absence of authoritative rulings, it is hard to know

which policies are consistent with treaty obligations and which are not. It might be possible to piece together a picture of *allegations* of non-compliance from national sources, as Christina Davis has done in her forthcoming study of trade between the United States, Japan, and Europe, but Davis – appropriately – uses such data as an indicator of "potential disputes" and not treaty violations (Davis forthcoming). It might also be possible to create a "compliance" database based on reports by the secretariat pursuant to the periodic Trade Policy Review Mechanism (TPRM). But the WTO is pretty clear that these reports are not determinations of legal compliance with treaty obligations (see Annex III of the Marrakesh Agreement of 1994).

The easiest way to think about compliance with international trade law is to take Kathleen McNamara's suggestion and accept the assertion that effectiveness is a good approximation of compliance. If states are complying with their obligations under the GATT/WTO, we might expect the reduction of trade barriers and growth in trade *among GATT/WTO members*. Using a standard gravity model as his baseline, Andrew Rose found however that countries that had joined the GATT or WTO had trade patterns that were largely indistinguishable from those that had not (Rose 2004). This finding was immediately criticized by researchers using more fine-grained data and who used a less formalistic definition of "membership." Judith Goldstein and her co-authors argued that it was important to look at *effective participation* in the regime in order to determine its effects (Goldstein et al 2007). When territories, dependencies, and newly independent countries are included, they argue, there is in fact a significant and positive effect of "joining", especially among the advanced industrialized economies, but also between these and the developing countries. They argue that the rules of the regime have served

to support clear expectations of reciprocity, limit tit-for-tat protectionist behaviors, and to lock-in liberal policies on future governments of participating states. The implication of this research is that there was "enough" compliance with the various treaty obligations to make a marked positive impact on bilateral trade. Despite the sophistication of the data and the quantitative model, neither Rose nor Goldstein et al account for the endogeneity of joining these trade agreements in the first place. There is a significant literature which discusses the impact of alliances and security arrangements on trade (Gowa 1994). If these non-economic factors explain both the likelihood of a trade agreement and also has an independent effect on trade itself, any relationship between participation in trade agreements and trade outcomes could be spurious.

A second stream of research attempts to leverage information on the different ways in which states implement their "protectionist" trade policies. Chad Bown distinguishes instances in which countries have implemented "legal" protection under the safeguards provisions (found in their notifications under the GATT's Articles XIX and XXVIII) from instances in which they went ahead with illegal measures that in fact eventually were referred to the GATT/WTO dispute settlement process (Bown 2004). Bown finds that the ability to retaliate and especially the ability to alter the terms of trade in one's own favor has a significant impact on the willingness simply to violate the agreement – and let the trade partners complain. Governments are much more likely to appeal to "legal" protection under the safeguards clause if they are unable to influence the terms of trade in their favor through protection. Thus the "bilateral imbalance of power" is one of the main factors behind bald violations. These results coincide with Keisuke's description of trade disputes between the United States in Japan. He argues Japan has

been quite reluctant to retaliate – even *legally* – when the United States institutes trade

policies that violate GATT/WTO rules (Iida 2006).

Despite the fact that trade agreements are generally highly likely to be "self-

enforcing" as discussed above, a good deal of research has focused on the dispute

settlement mechanism of the GATT/WTO. The odd fact on which there seems to be a

good deal of consensus is that 90 of all adopted decisions of WTO involve a finding of a

violation, and in practically every case the violator complies with the decision of the

panel (Wilson 2007). Why such a high compliance rate, especially given that many of

these cases that escalate to a formal panel decision are politically "hard" cases to solve

(Davis forthcoming; Guzman & Simmons 2002)?

Two answers can be found in the literature. One emphasizes that defiance of

authoritative decisions of third parties have an even stronger negative impact on a

country's reputation than non-compliance with the original agreement. As discussed

above in the context of territorial concessions, third party decisions represent in some

sense the will of the international community; they clarify the nature of the violation and

what steps are necessary to correct it. In a world of constructed reputations, continuing to

violate a rule in the face of an authoritative decision sends a strong signal that that

particular state (or perhaps government) is not a trustworthy trade partner. Daniel Kono's

study of how trade dispute settlement mechanisms facilitate reciprocity provides a good

empirical example of this claim (Kono 2007). He argues that defiance of WTO decisions

inflicts too heavy a reputational toll. Christina Davis's model further suggests that

governments may be willing to comply with the WTO panel decisions because with an

unfavorable decision in hand, they can tell their domestic producers they did their best to

defend their interests (Davis forthcoming). Once again, researchers are finding that it is much more palatable and strategically sensible to concede to legal authority than to the demands of a trade partner.

Finally, there is a lively debate in the trade compliance literature about the role that institutional design plays in eliciting deeper levels of cooperation. On the one hand, some scholars appeal to the logic of hands tying and argue that tight rules that credibly impose costs elicit better compliance Jide Nzelibe argues in the context of WTO enforcement that the credible threat of inflicting serious political costs on a violating state through retaliation is a way to mobilize "powerful export groups in the scofflaw state against protectionist policies" (Nzelibe 2005). By contrast, some scholars argue that flexibility is the key to deeper cooperation (Rosendorff 2005). The idea here is that states will agree to deeper commitments in the first place if they know there are some conditions under which these commitments can be relaxed. Jeffrey Kucik and Eric Reinhardt produce some evidence for the flexibility proposition by looking at the prevalence of *domestic* anti-dumping mechanisms (which provide the "flexibility") and the likelihood that a country will join the WTO and lower its tariff rates once it does (Kucik & Reinhardt 2008). Kucik and Reinhardt have a clever way to control for the endogeneity of domestic anti-dumping mechanisms: by looking at whether a country has been a target of others' anti-dumping rules, and by looking at the regional density of anti-dumping rules, which, they argue, is likely to elicit the use of such rules by other countries in the region. They find that flexibility defined this way does indeed improve trade cooperation: states with domestic anti-dumping mechanisms were more likely to join and more likely to make deeper concessions on tariffs. In this case anyway, it

appears that safeguards encourage deeper cooperation. It may be that flexible treaties elicit better compliance, precisely because they encourage states to make deeper commitments in the first place.

International Environmental Regulation

The study of compliance with international environmental treaties got its start in the 1990s with a rich case study literature. Ronald Mitchell was one of the first political scientists to explore the impact of the design of international environmental institutions on the incentives actors have to pollute the natural environment, with his often cited study of intentional oil pollution at sea (Mitchell 1994). His research – which showed that transparency played a crucial role in compliance with anti-pollution rules – sparked interest among international relations scholars in the possibility that and institutions could indeed provide the tools to encourage states to comply with their international obligations and private actors to refrain from environmental degradation. A series of very important case study collections appeared within years. Some of the most influential were focused on the question of treaty *effectiveness* and only incidentally on the issue of compliance and violation (Victor et al 1998). Others were focused quite squarely on the compliance issue, including a collection by Edith Brown Weiss and Harold K Jacobson. Their volume put a number of issues on the table – including the crucial role of state capacity to implement often complex regulatory agreements; the difficulties of constraining private actors; the state of knowledge and science; and the use of positive and negative inducements to encourage compliance (Weiss & Jacobson 1998). The theoretical

orientation of the literature has not changed much in the long decade since these books were published.

In contrast to the other issues areas discussed in this review, compliance with international environmental law involves regulations that attempt to chance the behaviors of private actors, in particular commercial entities. More than the other issue areas, competitive factors can push toward treaty violation, as firms want to reduce costs and the states in which they are domiciled often are prevailed on to aid and abet competitive strategies. Compliance with certain international environmental agreements can be expensive for industry, at least initially. Where violators can be excluded from certain international "club goods", however, compliance rates can be improved. Elizabeth Desombre's study of compliance in the international shipping industry provides a good example (DeSombre 2006). She notes that despite the economic pressure to cut corners and violate agreements, the ability of port states, international labor unions, intergovernmental fishery organizations, and high-standard industry actors to exclude violators associated with particular flags of convenience has helped to nudge some of the worst polluters toward at least partial compliance.

Since environmental protection is a regulatory policy that involves a broad array of non-governmental actors, it is not surprising that models stressing the civil society and interest aggregation abound. Patrick Bernhagen proposes a model in which business organization, structural strength and information asymmetries predict low compliance with multilateral environmental agreements (MEAs) in general, and the 1992 UN Framework Convention on Climate Change in particular (Bernhagen 2008). Bernhagen measures compliance in two ways: first, by a scale of elite perceptions of regime

compliance are taken from the World Economic Forum's 2000 Global Competitiveness Report; and second by actual reductions in greenhouse gasses. With only 35 advanced industrialized countries in the sample and a cross-sectional design (for the year 2000), it is not surprising that the actual results of these tests are quite thin, especially since the measures on the explanatory variables are very poor proxies. But Bernhagen does find that greater participation by NGOs and corporatist forms of interest mediation contribute to higher compliance, suggesting that participation by non-business civil society groups can have a strong positive influence on compliance with MEAs (Bernhagen 2008; see also Gulbrandsen & Andresen 2004).

Xinuan Dai's work, discussed in the theoretical section above, is a sophisticated example of the role that information provision plays in a domestic political context (Dai 2007). She has shown – logically and with empirical case study evidence – that when international regimes generate new information about government compliance efforts, groups with an interest in compliance stand a much better chance of holding their government accountable. The key in Dai's work is that new information allows for the triggering of *domestic accountability mechanisms*, in contrast to the centralized enforcement mechanisms discussed elsewhere. Empirically, Dai demonstrates that compliance is greatest in countries that have very active domestic groups in the area covered by the treaty. Specifically, Dai shows there is a clear correlation in the rankings of the countries that are party to the 1985 Sulphur Protocol according to Eurobarometer data on the level of domestic environmental activism mobilized around the acid rain issue and subsequent compliance behavior. Information generated by the international

institution provides the possibility for enhanced domestic accountability in her account (Dai 2007).

As in other areas of compliance research, there has been a recent trend toward quantitative work on compliance with environmental accords. One of the most notable efforts to build a database containing a broad range of environmental "regimes" (clusters of treaties in a specific issue area) is the recently available International Regimes Database project directed by Oran Young and Michael Zürn (Young & Zürn 2006). This was an ambitious project, some 15 years in the making, to get a thorough understanding of how legal regimes are created, managed, change, and are complied with in the environmental area. The investigators asked experts to answer specific (but highly subjective) questions about particular regimes, or regime components, including compliance The unit of analysis in this database is the regime or regime component itself, rather than countries or country-years common in much of the quantitative compliance literature. Some thirty environmental regimes – from the Antarctic Treaty to the Tropical Timber Trade regime – were coded on a 5-point scale from "behavior exceeds requirements" to "behavior does not confirm at all" (Breitmeier et al 2006). This format facilitates comparison across a number of treaty obligations for the international community as a whole. The disadvantage is that the data cannot be used to analyze the compliance patterns of particular countries – with the exception of a few of the "most important" (which are selected on an ad hoc basis by the expert doing the coding). Moreover, the data are not arranged as a time series, making it challenging to explore change over time. While "watershed" years are used to mark important changes within regimes, the database is not designed for serious dynamic analyses. Finally, there is the

problem of knowing what the experts are coding. They were given very clear instructions on the criteria for making their judgments, but it is not clear what data the expert coders based their judgments on. While the IRD is a good effort to collect theoretical relevant information – of the kind for example that would address the claims of constructivists as well as liberal institutionalists – it is difficult for outsiders to evaluate what behaviors constitute compliance in this database.

Two books have come out of the IRD, written by the project directors (Breitmeier 2008; Breitmeier et al 2006). One of the main findings is that compliance with these regimes is quite high generally, and especially among the "most important" states. Furthermore, compliance has tended to increase after major watersheds, despite the fact that the obligations in many of these regimes have deepened – evidence considered to run contra to the ideas of George Downs and co-authors. Some effort is made to correlate compliance with certain regime provisions, such as differentiable obligations, which the researchers claim lowers rather than improves compliance, contra the expectations of those who stress capacity limitations as a major cause of non-compliance with environmental agreements. The problem, however, is that unless there is some way to control for why these regime provisions were chosen in the first place, it is hard to attribute a causal story to them.

Human Rights

The literature on violation of and compliance with international human rights treaties has burgeoned and changed considerably over the past decade. Qualitative work dominated the scene until relatively recently. Quantitative work now rivals traditional

qualitative approaches in terms of sheer numbers of studies. In this respect, the human rights research has now – for better or worse – joined the mainstream of quantitative social science, especially in the major political science journals. There is still room to deploy mixed methods in book length studies, monographs and law reviews, but the constraints on page numbers and the development of widely used datasets relating to human rights practices has served to boost significantly the number of quantitative studies in political science research.

Human rights as an issue area is quite different from all the areas reviewed above in several critical respects. It is perhaps the least likely area to engage the interests or attention of other states, who typically see the treatment of foreign citizens as peripheral to their interests. It does not engage reciprocity in any significant way, weakening the possibilities for mutually beneficial self-enforcing agreements. A number of scholars have noted that functionalist theories based on joint gains and reciprocity are a very poor fit for understanding compliance and violation in the human rights area (Simmons 2009). It is certainly an area in which non-material issues, including human respect and dignity, are at the forefront. Lacking the theoretical tools for understanding nuanced patterns of violation and compliance in this area, traditional realists simply assert that "Most human rights practices are explained by coercion or coincidence of interest" (Goldsmith & Posner 2005).

More than any other issue area, human rights practices are difficult to understand without a theory of normative acceptance. A large literature has developed that eschews a strictly rational approach in favor of more normative drivers and subjectivist influences on human rights behaviors. The foundational work related to norm adoption and

compliance was that of Thomas Risse, Steven Ropp, and Kathryn Sikkink, who advanced a "spiral model" for the adoption of international human rights norms. Their theory posited repression, followed by the activation of domestic and transnational groups, "tactical concessions" by governments to assuage complaints about repressive practices, and eventually rule-compliant behavior. While they were not theorizing compliance with international treaties specifically, this research had alerted political scientists to the possibility that in some cases treaty ratification may be a tactical concession governments make to assuage critics that a government is "committed" to decent human rights practices (Risse-Kappen et al 1999). But once such tactical concessions have been made, actors begin regularly to refer to human rights norms (e.g., treaties) to refer to or comment on their own behavior. These theorists draw on theories of discourse, that emphasize the power of persuasion, discussion and language to change ideas of what constitutes appropriate behavior (Hawkins 2004). Having gained salience as a rule, human rights norms may eventually come to be internalized, resulting ultimately in "rule-consistent behavior." In this view, treaty ratification may ultimately (though obviously not necessarily) contribute to the internalization of higher human rights standards, as governments begin to defend and define their actions – with ongoing persuasive efforts by international, transnational, and domestic actors - on the basis of their provisions.

One of the earliest efforts to test for the effects of human rights treaties on state behavior was Linda Camp-Keith's study of the International Covenant on Civil and Political Rights (ICCPR). Extending a model initially developed by Poe and Tate to explain civil and political rights (Freedom House measures) and Gibney and Stohl's "personal integrity index," Keith added ratification to the right hand side of the pooled

time series to see if ratification had any independent effects on these outcomes. She found none that withstood her multivariate analysis. Some states, evidently, were continuing to violate norms such that it was not possible to detect an influence to the ICCPR ratification on average. She speculated that her results were due to weak external enforcement as well as "a serious domestic situation, such as civil war or domestic unrest, that interferes with [governments'] ability to keep their commitment or that lessens their willingness to keep their commitment" (Keith 1999).

More quantitative tests followed, covering a larger number of treaties, and sparking debates not only among political scientists but among legal scholars as well. One puzzle was why obviously repressive governments ratified human rights treaties at all. James Vreeland argues that in the case of torture, governments are sometimes making a tactical concession to their domestic political opponents, which explains why ratification of the CAT is more common in repressive regimes that allow some degree of political competition than in those that do not (Vreeland 2008). The fact that external enforcement has been quite weak some scholars to view ratification as an expressive act that does not signal any intent to comply with the contents of the treaty. Early work by Oona Hathaway broke ranks with the assumptions of many legal scholars when she found, using quantitative evidence, that countries that ratified the Convention Against Torture, for example, were just as (perhaps more) likely to torture they citizens as countries that had not ratified (Hathaway 2002).

Hathaway's work was path-breaking for a number of reasons. It was one of the first studies to do a careful job to research the exact nature of the behavior the treaty addressed, and developed careful indicators for these behaviors based on the actual

provisions in the treaties. She devised a "torture scale" and a "fair trials scale" both of which are more appropriate for testing treaty compliance with the ICCPR and the CAT than broad indicators such as Freedom House's "Civil and Political Rights" that were devised for completely different purposes. In a few cases, however, she confuses the concepts of treaty compliance and violation with the concept of treaty effectiveness; for example, the use of the number of women in parliament is more a measure of effectiveness of rather than compliance with the Convention on the Political Rights of Women. In one case there is a serious treaty obligation-data mismatch: the use of politicide data to test for the impact of the Genocide Convention. But overall all, no empirical paper has done more to begin a conversation about the empirical consequences of ratification of human rights treaties than did Hathaway's 2002 study.

Scholars inspired by theories originating in institutional sociology come to similar conclusions as Hathaway's through different mechanisms. Institutional sociology touts the power of "world society" to generate and diffuse norms of behavior that mimic accepted scripts of modernity – encouraging countries on the periphery to display outward forms in conformity with the institutions and forms of leading states of the western world – without internalizing the values behind these forms. The theory predicts a "radical decoupling" of treaty commitments, which are said to be "expected" of all modern states, from actual rights behaviors (Cole 2005; Wotipka & Ramirez 2008). Emily Hafner-Burton and Kiyoteru Tsutsui consequently argue that ratification of human rights treaties is not associated with better rights performance. The key explanatory variable in their study is the number of human rights treaties a country has ratified among the "core six" they select. There is little evidence that ratification of more treaties

reduces political repression when modeled in this fashion, causing these authors to conclude that ratification is little more than a "paradox of empty promises" (Hafner-Burton & Tsutsui 2005).

This early quantitative work – which has been cited frequently in the political science literature – suffers from a few weaknesses. First, there is the problem of matching treaty obligations with indicators of compliance outcomes. Hathaway's work in this respect, as discussed above, was both pathbreaking and problematic. Certainly, lumping the number of treaty ratifications together and expecting the more the merrier is highly suspect. Studies that look at the number of treaties ratified as the key dependent variable are likely to be picking up the ease of ratification in particular institutional contexts, rather than a specific international legal commitment. Second, in common with several studies in other issue areas, all of the early quantitative studies discussed above treated treaty ratification as exogenous. But it can hardly be the case that states randomly sort into ratifiers and non-ratifiers. Third, the early studies were designed only to detect homogenous effects across all states alike. Despite acknowledging a complex social and political world, the treaties are modeled as unmediated and their effects unconditional. Practically no one who has done qualitative work in this area imagines such a determinative or direct mechanism. Rather, they see treaties as tools for strategic or normatively driven actors to change the politics of human rights compliance in specific institutional contexts.

These issues became central to the next generation of quantitative human rights research, which took off right around 2005. Todd Landman was one of the first researchers to hypothesize that we could expect very different levels of compliance with

human rights treaties based on the nature of the governing regime. He noticed that democracies ratify these agreements more readily than do autocracies, and third- and fourth-wave democracies ratify more readily with fewer reservations than do the established democracies. The third and fourth waves' actual rights practices tend to be far worse. Like all the quantitative human rights studies discussed above, Landman's general strategy is to use time-series cross-sectional analyses, but he endogenizes the treaty commitment itself. He examines first the ratification decision and then the rights indicators as dependent variables, followed by a two-stage estimation that endogenizes treaty ratification with "instrumental" variables to explain rights practices. His key result: the more committed a country is to a key rights treaty (taking reservations and optional protocols into account), the stronger the improvement in rights practices. Unfortunately, the key instruments in this study are not likely to be very valid. Ratification is modeled as a function of democracy, wealth, and membership in IGOs and the presence (not well-defined) of NGOs, none of these can remotely be thought of as affecting human rights practices *only* through their relationship with ratification. Even so, Landman did move research forward by attempting to explain commitment and compliance simultaneously, and by attempting to sort out the consequences of ratification in different political contexts. He was also one of the first to demonstrate quantitatively any positive consequences to the ratification of human rights treaties.

Nearly contemporaneously, similar studies were published of a very similar nature. Taking an agnostic position toward theory, Erik Neumayer ran a similar regression, this time interacting ratification with the continuous polity scale and with the number of international non-governmental organizations per capita (Neumayer 2005).

Like the studies above, Neumayer focused on two dependent variables: the Political

Terror Scale and the Freedom House measure of civil rights, and looked for effects of a

battery of treaties, including the ICCPR, the torture convention, these agreements'

optional protocols, and various regional agreements of a comparable nature. He found no

improvement or even worsening personal integrity rights among ratifiers who scored zero

on the polity scale, as well as among states with zero INGOs per capita (although one

should wonder whether the latter category is meaningful) Neumayer checks for the

robustness of these results with a Heckman selection model, with a curious justification

for instruments: he holds that 'newly independent countries receive greater attention with

respect to their human rights record as do former colonies" (Neumayer 2005) but the

likelihood of scrutiny seems to be precisely the mechanism that drives his results for the

importance of INGOs and democracies.

More research effort has gone recently into the mechanisms through which human

rights treaties might be enforced. Emilie Hafner-Burton argues that human rights don't

just improve on their own accord; improvements are instead associated with hard-nosed

efforts by the international community to link preferential trade agreements to

improvements (Hafner-Burton 2005). More recently, James Lebovic and Erik Voeten

have shown that the World Bank tends to reduce its aid to countries that have been named

as severe rights abusers by resolutions of the United Nations Human Rights Commission

(now Council) (Lebovic & Voeten 2009). But what no one has shown is that there is any

significant external enforcement behind the provisions of international human rights

treaties, of a kind that might plausibly account for the patterns of compliance observed

across a number of rights areas.

Human rights treaties seem to elicit extraordinarily weak external enforcement (the realists have a point here), appealing norms (highlighted by constructivists) and yet the real stakeholders – almost unique among areas regulated by international treaties – are overwhelmingly domestic groups and individuals. This has led to a new focus on ways in which international treaties influence domestic politics. Beth Simmons argues that international treaties can influence domestic politics in (at least) three ways. First, they change national agendas; that is they put new issues on the legislative table that may not be that controversial, but were most definitely exogenous to the national processes that generate legislation. Dealing with what comes from the international community can alter practices – as long as they are not too controversial. Second, Simmons argues that treaties are important resources in many legal systems around the world. They can be used in litigation directly (cited as an authoritative legal source) or they can give rise to domestic implementing legislation which itself becomes a tool in local court cases. This can only influence compliance of course when national courts are competent and independent from national governments (Powell & Staton 2009). Third, treaties can be useful to encourage local groups to mobilize to demand attention to rights compliance. Ratified treaties encourage domestic stakeholders to begin to see themselves as such (an "identity" mechanism, in constructivist terms). They are also a tool that can be used to gain legitimacy, allies, and media attention. In effect, the ratification of international human rights treaties change the political opportunity structure in ways that increase the likelihood that governments will edge toward compliance with their obligations.

This book-length study has the luxury of scale to explore these ideas in detail, including quantitative and qualitative analyses of four different human rights treaty regimes: civil and political rights, women rights, the torture convention, and children's rights. The primary finding is that treaties have their most consistent impacts where a theory based on domestic politics would indeed expect them: in polities in which domestic stakeholders have both the motive and the means to organize to demand compliance. Simmons argues that in stable autocracies, citizens do not have a way to mobilize without being crushed. In stable democracies, where rights are well-protected, they have no real motive to mobilize. But treaties become useful tools precisely in those cases in which locals have a reason to use them strategically to press their claims: in partial and transitioning democracies. The results show that certain rights, such as practices that reduce torture, are correlated with treaty ratification in this middle category of countries, but not in stable democracies or autocracies. The women's treaty has improved girls' and women's access to jobs and education in secular countries and where courts are independent enough to enforce the treaties' implementing legislation. Overall, there is a reasonable fit between Simmons' theory of domestic mobilization and patterns of treaty compliance across time and space.

If it were ever the case that findings about compliance with human rights treaties are dependent on the use of qualitative versus quantitative methods (Hafner-Burton & Ron 2009), the new research shows that such a claim in no longer tenable. Simmons' largely quantitative study is generally positive about the possibilities for compliance with international human rights treaties. On the other hand, another excellent study that is largely qualitative is more skeptical. Sonia Cardenas's study of compliance with human

rights treaties utilizes both quantitative and qualitative methods, and finds that the more national security seems to be at stake, and the stronger "pro-violation constituencies" within a country, the more states are likely to violate human rights treaties and try disingenuously to appear to comply with their obligations (Cardenas 2007). These claims are not incompatible, neither do they rest on the peculiarities of quantitative versus qualitative methods. The best research moves away from unqualified claims, and develops a nuanced picture of how strategic as well as principled agents use treaties as tools – sometimes successfully, sometime not – to achieve their rights objectives.

III. Conclusions

Research on compliance with and violation of international treaties has been a growth industry within international relations subfield within the past decade. Space for considering the relationship between rules and behavior opened up as structural realism receded and a more strategic realism that could accommodate theories of self-enforcing agreements, signaling, and hands-tying came to take its place. Far from idealist, this literature developed under the assumption that much if not most treaty compliance could be understood in terms of self-interested behavior, properly understood. In the absence of third party enforcement, reciprocity was often the only hope for sustained cooperation in some issue areas, such as the laws of war. But what is become clearer is that treaties have made an important contribution to the ability of states to contract with one another: to make deals that are credible and follow rules that are relatively clear.

Perhaps the best way to characterize the contribution of treaties to the broader problem of cooperation is to emphasize their deeper social meaning. They heighten

reputational costs precisely because the international community and domestic audiences understand them as serious obligations that signal a commitment to behave according to a specified set of rules. They legitimate certain claims and de-legitimate others. The great intellectual leap forward has been to develop a wider peripheral vision about what constitutes a fully specified rational model of treaty compliance. Without a theory of social constructed norms to gird a claim about the reputation consequences of non-compliance, we have understood only half of the problem and still cannot grasp what it it about treaties that seems to "put it all on the line" for states reputationally. Without a theory of socially constructed norms, we can do little better than to gesture towards crucial yet hollow constructs such as "common knowledge" essential to the establishment of focal points and stable expectations about behavior. The partial collapse of distinct and mutually exclusive schools of thought has hastened a clearer understanding of compliance with what on the surface appear to be no more than scraps of paper.

That is all to the good, but hurdles in this research program remain. I have mentioned at various points in this review the problem of endogeneity and selection effects; these are rampant and mar to some extent many if not most of the studies in this review. A few of these studies are fortunate that a fairly exogenous process has stimulated the compliance problem – such as the United States effort to get states not to cooperate with the ICC in Judith Kelley's study. Other studies such those of Sarah Mitchell and Paul Hensel, Beth Simmons, and Todd Landman, evince an awareness of the problem and try to employ statistical methods to address it, with varying degrees of success. At this point, there are no perfect solutions or easy fixes. But it is important to

think about the prelude to the compliance question: why a particular agreement was designed as it was, and what may have motivated states to ratify in the first place.

Several new directions might prove useful and necessary in the study of treaty behavior. One would be to move away from a state centric model of compliance and take more seriously the role of non-state actors as either facilitating or hindering treaty compliance or effectiveness. James Morrow's consideration of the complications that *individuals* often commit war crimes – counter to the policies or desires of their state is a welcome wrinkle to an account of compliance with the laws of war. Elizabeth DeSombre's discussion of the agency problems involving states and shipping interests reminds us that compliance cannot always be commanded from the top down. John Ruggie's recent writing (Ruggie 2007) on the problem of corporate responsibility and compliance with respect to international human rights standards should inspire us to supplement our focus on country-years with data on the policies and actions of firms themselves. It would also be interesting to do more research across levels of analysis to compare treaty compliance with the response to similar regulations on the national or regional level. When Michael Zürn and colleagues compared compliance national compliance with compliance patterns at the regional and international level, they were surprised to find that "In none of our sets of comparisons is compliance systematically better in the national context than in settings beyond the nation-state" (Zürn & Joerges 2005). Innovative research designs of a comparative nature will help to deepen our knowledge about what makes international law compliance especially problematic (or not).

Most of the political science literature on treaties is focused, appropriately, on a behavioral definition of compliance as policies that converge toward those required by the legal obligation in question. As the field begins to mature, we would do well to think about the policy implications of the behaviors we are documenting and modeling. Is treaty compliance always good, and violation always bad? Certainly avoiding the intentional killing of civilians as a matter of strategy is by almost any standard a good outcome, but legal rules can also be used to justify certain war-fighting techniques that continue to devastate human settlements (Smith 2002). Critical legal theorists – whose lack of a forward looking research agenda has contributed to their waning influence – do (repeatedly) make at least one good point: law is not an end in itself. For now the challenge has been to demonstrate international law's effects on state behavior. Once our research matures, we would do well to reflect more broadly on the normative consequences that violation and compliance entail.

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