guarantee of sorts that governments will not renege on their commitments.[3] Democracies are able to make "self-binding" promises, whereby the commitments they make are difficult to reverse because of public debate, electoral accountability, formal and informal domestic institutions, and the efforts of civil society.[4] In other words, when democracies make international commitments, they do so with the knowledge that those commitments are made in the public view and are enforceable at home. The implication is that leaders of democracies should not make promises that they are not willing or able to keep.

Domestic politics intersect with international law in other ways, as well. Governments can use the formality and obligatory nature of international law as a way to lock-in and advance preferred policy preferences.[5] Because international law is technically binding, it binds states' hands. Thus, at least in theory, states should not be able to deviate from international legal mandates. One recent analysis of international tribunals suggests that states prefer international adjudication for settling disputes, as domestic audiences more readily accept changes to the status quo as a result of internationally mandated law.[6] By binding their hands through

James Vreeland, "Political Institutions and Human Rights: Why Dictatorships Enter into the United Nations Convention Against Torture," *International Organization* 62, no. 1 (2008): 65–101; Tom Barkhuysen and Michel L. van Emmerik, "A Comparative View on the Execution of Judgments of the European Court of Human Rights," in *European Court of Human Rights: Remedies and Execution of Judgments*, ed. Theodora Christou and Juan Pablo Raymond (London: British Institute of International and Comparative Law, 2005), 1–24; Oona Hathaway, "Why Do Countries Commit to Human Rights Treaties?," *Journal of Conflict Resolution* 51, no. 4 (August 1, 2007): 588–621, doi:10.1177/0022002707303046. Neumayer, "Do International Human Rights Treaties Improve Respect for Human Rights?"; Vreeland, "Political Institutions and Human Rights: Why Dictatorships Enter into the United Nations Convention Against Torture"; Oona Hathaway, "Do Human Rights Treaties Make a Difference," *Yale Law Journal* 111, no. 8 (2002): 1935–2041; Emilie Hafner-Burton and Kiyoteru Tsutsui, "Human Rights in a Globalizing World: The Paradox of Empty Promises," *American Journal of Sociology* 110, no. 5 (2004): 1373–1411.

3 Beth Simmons, "Compliance with International Agreements," *Annual Review of Political Science* no. 1 (1998): 75–93; David Andrew Singer, "Capital Rules: The Domestic Politics of International Regulatory Harmonization," *International Organization* 58, no. 3 (2004): 531–565, doi:10.1017/S0020818304583042.

4 Charles Lipson, *Reliable Partners: How Democracies Have Made a Separate Peace* (Princeton University Press, 2003); Xinyuan Dai, "Why Comply? The Domestic Constituency Mechanism," *International Organization* 59, no. 2 (2005): 363–398; Beth A. Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (New York: Cambridge University Press, 2009).

5 Andrew Cortell and James Davis, "How Do International Institutions Matter? The Domestic Impact of International Rules and Norms," *International Studies Quarterly* 40, no. 4 (1996): 451–78; Judith Goldstein, "International Institutions and Domestic Politics: GATT, WTO and the Liberalization of International Trade," in *The WTO as an International Organization*, ed. Anne Krueger (Chicago: University of Chicago Press, 1998); Jon C. Pevehouse, "Democracy from the Outside-In? International Organizations and Democratization," *International Organization* 56, no. 3 (2002): 515–550; Jon C. Pevehouse, *Democracy from Above: Regional Organizations and Democratizations* (New York: Cambridge University Press, 2005).

6 Todd Allee Paul Huth, "Legitimizing Dispute Settlement: International Legal Rulings as Domestic Political Cover," *American Political Science Review* 100, no. 2 (2006): 219–234.

international law, leaders are able to make credible commitments while also removing other policy alternatives from the negotiating table.[7]

This chapter draws on current theories in international law and international relations to outline three causal mechanisms of compliance that are tested in Chapters 3 through 7. These mechanisms are: (1) signaling a commitment to human rights, (2) setting and advancing domestic human rights agendas, and (3) begrudging compliance through long-standing democratic preferences. These three causal mechanisms are not mutually exclusive, and many governments juggle multiple incentives and constraints with respect to compliance, as the case studies in the subsequent chapters suggest. The chapter begins by identifying the agents and actors of compliance.

II. THE AGENTS AND ACTORS OF COMPLIANCE

To better grasp the role that domestic actors and institutions play in facilitating compliance with international human rights tribunals' rulings, it is crucial to understand, first, that the tribunals' rulings are not self-executing. Although the rulings are technically binding and carry with them the legal and moral force of international human rights law, the actual process of compliance falls to the states, and particularly to the executive branch.[8] As explained in Chapter 1, the tribunals themselves have little ability to enforce their rulings. Although they have a great deal of power to name and shame, neither the Inter-American nor the European human rights tribunals can force compliance on a state. Even their ultimate threat, expulsion from the tribunals, is nearly an empty one. The tribunals' reputations suffer as much as those of member states when discussions about expelling states or states' withdrawal from the institutions come to the fore because it appears as if the tribunals are weak and unable to discipline their members. Furthermore, these threats very rarely, if ever, come to fruition (see the case of Russia and the European Court of Human Rights in Chapter 7). Beyond the practicalities of the tribunals' weak enforcement and punishment capacities, the tribunals and their respective conventions embrace the principle of *subsidiarity*. Subsidiarity refers to states' rights and responsibilities to implement the norms in the conventions and the tribunals'

7 William Bernhard and David Leblang, "Democratic Institutions and Exchange-Rate Commitments," *International Organization* 53, no. 1 (1999): 71–97, doi:10.1162/002081899550814; Edward Mansfield, Helen Milner, and B. Peter Rosendorf, "Why Democracies Cooperate More: Electoral Control and International Trade Agreements," *International Organization* 56, no. 3 (2002): 477–514; Lisa Martin, *Democratic Commitments* (Princeton: Princeton University Press, 1999); Helen Milner, *Interests, Institutions, and Information Politics* (Princeton: Princeton University Press, 1997); Singer, "Capital Rules."

8 Luzius Wildhaber, "The Execution of Judgments of the European Court of Human Rights: Recent Developments," in *Völkrrecht Als Wertordnung: Common Values in International Law. Essays in Honour of Christian Tomuschat*, ed. Pierre-Marie Dupuy, et al. (Kehl: Engel, 2006), 671–680; Elisabeth Lambert Abdelgawad, *The Execution of Judgments of the European Court of Human Rights*, 2nd ed., Human Rights Files No. 19 (Strasbourg, France: Council of Europe, 2008).

rulings in a domestically appropriate way. Subsidiarity gives states some leeway in implementing international human rights law, but this latitude should not be mistaken for a free pass for noncompliance.[9] In practice, this means that the onus of complying with the tribunals' rulings falls to the state.

When human rights tribunals hand down their rulings, they address the government of the state in question, particularly the executive. Most states send members of the executive branch, usually from the foreign ministry, as envoys to deal with the tribunals. In that way, the executive is the first point of contact for the tribunals, and conversely, the actor ultimately responsible for compliance. In recent years, the human rights tribunals have flatly rejected states' using interbranch and federalist tensions as excuses for noncompliance.[10] Once the ruling has been issued, the executive usually distributes the work for compliance among the various elements of the state. This entails the judiciary, including various forms of supreme and constitutional courts; the penal system; human rights ombudsperson offices; the legislature; and political parties. In addition, once the ruling enters the public sphere, nongovernmental organizations (NGOs) and the media can act as conduits for compliance by introducing transparency into the compliance process, bringing legislative debates into the public sphere and nudging state actors and political parties toward compliance. These domestic actors, particularly when they act in concert, are critical for compliance, and this holds true across presidential and parliamentary systems, as well as across federalist and unitary systems. The functions they fulfill are diverse, ranging from increasing transparency to changing a country's legislative landscape.[11]

Independent judiciaries can facilitate the implementation of international law, including international human rights tribunals' rulings, into domestic jurisprudence through investigations, litigation, and precedent setting. An independent judiciary capable of administering reparations, launching investigations, and handing down rulings is arguably the most valuable asset for compliance with international human rights law. By accelerating the compliance process and providing a safeguard against the political manipulation of the tribunals' rulings, judiciaries provide the legal channels and expertise to interpret and implement the rulings, as

[9] Carozza, "Subsidiarity as a Structural Principle of International Human Rights Law"; Lambert Abdelgawad, *The Execution of Judgments of the European Court of Human Rights*; Murray Hunt, "State Obligations Following from a Judgment of the European Court of Human Rights," in *European Court of Human Rights: Remedies and Execution of Judgments*, ed. Theodora Christou and Juan Pablo Raymond (London: British Institute of International and Comparative Law, 2005), 26–47; Bates, "Supervising the Execution of Judgments Delivered by the European Court of Human Rights: The Challenges Facing the Committee of Ministers."

[10] *Maria da Penha Maia Fernandes v. Brazil* (Inter-American Commission on Human Rights 2001); Wildhaber, "The Execution of Judgments of the European Court of Human Rights: Recent Developments"; Lambert Abdelgawad, *The Execution of Judgments of the European Court of Human Rights*.

[11] Hillebrecht, "The Domestic Mechanisms of Compliance with International Law: Case Studies from the Inter-American Human Rights System."

well as providing a venue for discussing human rights provisions outside of the legislative and executive realms. They also spearhead investigations, reopen cases, and change or establish legal precedent. In practice, this means that these judiciaries can raise the costs of noncompliance with human rights tribunals in the long run and limit the government's ability to control compliance outcomes. By facilitating investigations, for example, independent judiciaries unearth unsavory histories of human rights abuses and open the door for related and subsequent investigations. By setting precedent, independent judiciaries change the status quo of human rights policies and expose political elites to new standards and the possibility of more litigation. Furthermore, they can help to clarify the obligations handed down by the tribunals, thus eliminating ambiguity about governments' compliance responsibilities.[12]

Much like independent judiciaries, political parties and political competition can raise the stakes with respect to compliance.[13] Although the prospect of reaping electoral and political gains is, in part, what drives states to comply with the human rights tribunals' rulings and signal a commitment to human rights, competitive elections also can increase the potential costs of compliance. First, linking human rights reform to electoral outcomes can increase expectations about human rights policies and encourage constituents to vote based on human rights practices. Compliance with one human rights case can cast a harsh light on other human rights violations and become easy fodder for opposition groups looking for inroads to electoral victory. Similarly, legislative debates can turn minor human rights issues into much larger political concerns. Above all, political competition can serve to either introduce new legislative measures that threaten to change the state's human rights policies or, alternatively, thwart the executive's attempts at passing legislative reform that would comply with the tribunals' rulings. In both cases, political competition means that the executive branch of government cannot control the compliance outcome and is often forced to deal with policy changes that run counter to its human rights preferences.

In addition to independent judiciaries and political competition, NGOs and a free and independent media are particularly important actors in states' dealings with human rights tribunals. International NGOs, or INGOs, such as the Center for Justice and International Law (CEJIL) in Latin America, play a critical role in bringing cases to the tribunals. Because victims and local groups frequently lack the funding and resources required to navigate the bureaucratic and legal nature of the tribunals, they rely on INGOs that have developed a particular skill set with respect

[12] See Abram Chayes and Antonia Handler Chayes, "On Compliance," *International Organization* 47, no. 2 (1993): 175–205.

[13] Kurt Taylor Guabatz, *Elections and War: The Electoral Incentive in the Democratic Politics of War and Peace* (Stanford: Stanford University Press, 1999); Jana Von Stein, "Do Treaties Constrain or Screen? Selection Bias and Treaty Compliance," *American Political Science Review* 99, no. 4 (2005): 611–622; Alastair Smith, "International Crises and Domestic Politics," *American Political Science Review* 92, no. 3 (1998): 623–38.

to the tribunals. By partnering with local NGOs and domestic advocates, these INGOs and the transnational activist networks they form can be important for both feeding cases to the tribunals and pressuring governments to comply with the rulings after they have been handed down.[14] Although the direct influence of these activist organizations tends to dissipate once a ruling has been handed down, the role that NGOs play in the compliance process is nevertheless an important one: they act as a conduit for information around compliance and help to put compliance on the domestic political agenda.

Nongovernmental organizations and other civil society groups can set the discourse and mobilize voters, other activists, and policy makers.[15] Thus, in many ways, these groups help to facilitate compliance. By holding executives accountable, they exert pressure and name and shame governments that do not live up to their international commitments. Nongovernmental organizations also can hold the government to account for new/higher human rights standards, expose any transgressions related to the human rights tribunals, and criticize governments for dragging their feet in the compliance process.[16] The media also can act as a conduit for compliance by exposing states' international obligations and increasing the transparency of the compliance process. In its more aggressive forms, the media can mock, shame, and accuse states of failing to live up to their international and domestic human rights responsibilities and expose underlying problems in the state's human rights policies.[17] States that are truly dedicated to complying with human rights should be able to leverage coverage in the press to promote their human rights reforms, whereas those that are not suffer the added costs of losing control over the public dialogue around human rights.[18]

[14] Keck and Sikkink, *Activists Beyond Borders*; Ceçelia MacDowell Santos, "Transnational Legal Activism and the State: Reflections on Cases Against Brazil in the Inter-American Commission on Human Rights," *Sur–International Journal on Human Rights* 4, no. 4 (2007): 28–59; Ellen L. Lutz and Kathryn Sikkink, "International Human Rights Law and Practice in Latin America," *International Organization* 54, no. 3 (2000): 633–659, doi:10.1162/002081800551235; Keck and Sikkink, *Activists Beyond Borders*; Risse, Ropp, and Sikkink, eds., *The Power of Human Rights*.

[15] New research on national human rights institutions (NHRIs) suggests that these institutions can also be a mobilizing force for human rights. See, for example, Ryan Goodman and Thomas Pegram, eds., *Human Rights, State Compliance, and Social Change* (Cambridge University Press, 2011).

[16] Keck and Sikkink, *Activists Beyond Borders*; Emilie Hafner-Burton, "Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem," *International Organization* 62, no. 4 (2008): 689–716.

[17] Matthew Baum, *Soft News Goes to War: Public Opinion and American Foreign Policy in the New Media Age* (Princeton: Princeton University Press, 2003); Peter Van Tuijl, "NGOs and Human Rights: Sources of Justice and Democracy," *Journal of International Affairs* 52, no. 2 (1999): 493–512; William G. Howell and Jon C. Pevehouse, *While Dangers Gather: Congressional Checks on Presidential War Powers* (Princeton: Princeton University Press, 2007).

[18] Hafner-Burton, "Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem"; Ray Pawson, "Evidence and Policy and Naming and Shaming," *Policy Studies* 23, no. 3–4 (2002): 211–230, doi:10.1080/0144287022000045993.

The ways in which international law empowers domestic actors depend largely on their relative power within domestic politics. Sonia Cardenas (2007) suggests, "which actor wins a domestic battle over state compliance may in the end have more to do with who has the greatest institutional power than who is committed most firmly to an international norm."[19] International law, and particularly the tribunals' rulings, can provide an impetus for action for individual actors or coalitions of actors, but their ability to act on that impetus will be limited – or enhanced – by their domestic political power.[20]

In all of the cases that I examine in the chapters that follow, domestic political actors play an important role in compliance with the human rights tribunals' rulings. In some cases, such as the strong executive system in Argentina, executives might play more of a leading role than other actors, but that is not to suggest that they can facilitate compliance without the support and initiative of other domestic players. Similarly, in the parliamentary system of the United Kingdom, despite the reluctance of Downing Street to comply, Parliament's human rights body forced the government to comply with the European Court of Human Rights' (ECtHR) rulings regarding prisoners' rights and national security policy. Indeed, it is striking to note that, across all of the cases, from Brazil to Russia, Colombia to Italy, domestic compliance coalitions are the key factor for compliance – and for good reason. No single domestic actor, not even the strongest executive, can satisfy all of the tribunals' mandates, legally or logistically. Changing the country's laws and policies, developing new programs, and striking down existing legislation require a coalition of domestic actors willing and able to comply with the tribunals' rulings.[21]

III. EXPLAINING COMPLIANCE WITH HUMAN RIGHTS TRIBUNALS

Demonstrating a Commitment to Human Rights

In contemporary politics, domestic constituents and international partners make increasing demands about the protection of human rights. These demands create an incentive for most states to declare a commitment to human rights norms and laws. The regular coverage of the Inter-American and European human rights tribunals' jurisprudence in local newspapers and the engagement of domestic civil society groups with the tribunals suggest that audiences at home are paying

[19] Sonia Cardenas, *Conflict and Compliance: State Responses to International Human Rights Pressure* (Philadelphia: University of Pennsylvania Press, 2007).

[20] Ibid.; Hillebrecht, "The Domestic Mechanisms of Compliance with International Law: Case Studies from the Inter-American Human Rights System."

[21] Xinyuan Dai, *International Institutions and National Policies* (New York: Cambridge University Press, 2007). Dai suggests that compliance is contingent on the formation of a core group of constituents (compliance constituencies) who are willing and able to lobby for compliance and hold political elites accountable for their compliance obligations.

attention to how their elected officials respond to the tribunals' rulings. Constituents expect that political elites will uphold basic human rights, and they are willing to express their expectations in the media and in the voting booth.[22] Executives can use a reputation for respecting human rights and the rule of law as important sources of political capital, both at home and abroad, today or in the future.[23]

Domestic audiences are increasingly vocal and demand that governments respect their constituents' human rights, and they are willing to punish and reward governments for their human rights practices in the voting booth.[24] For instance, in a 2005 Gallup poll in Argentina, nearly two-thirds of respondents claimed that governments' protection of civil rights was an essential part of democracy and identified the government as the primary protector of human rights.[25] More recently, Hungarians took to the streets to protest Hungary's new, restrictive media laws, and Muslim French women protested France's "burka ban."[26] In Europe, in the Americas, and across the globe, domestic audiences are willing to express their human rights preferences and expect their governments to uphold their human rights promises.

Although political scientists often talk about a democratic deficit among recently democratized states, the young democracies of Latin America and Central and Eastern Europe face a related but potentially more difficult problem: a crisis of confidence and legitimacy. International successes, including compliance with international human rights law, can be a way for governments to demonstrate their legitimacy and competence. Moreover, as constituents become more attuned to what their governments are doing, they should be more likely to demand legitimacy and, by extension, hold their governments accountable for their human rights commitments.

[22] *World Values Survey Online Data Analysis Tool*, Fifth Wave World Values Survey, 2005, http://www.wvsevsdb.com/wvs/WVSAnalizeStudy.jsp. Consider the following: more than 66 percent of respondents in Argentina said that the protection of civil rights was an essential characteristic of democratic governance. Meanwhile, 63 percent of Brazilians and 73 percent of Argentines say that dealing with poverty and need is the most pressing problem their governments face. Argentines and Brazilians alike name national governments as being responsible for human rights policies, with the United Nations coming in a close second.

[23] Harold Hongju Koh, "International Law as Part of Our Law," *The American Journal of International Law* 98, no. 1 (January 1, 2004): 43–57, doi:10.2307/3139255.

[24] James D. Ingram, "'What Is a "Right to Have Rights"'? Three Images of the Politics of Human Rights," *American Political Science Review* 102, no. 4 (2008): 401–415; Buergenthal, "The Evolving International Human Rights System"; Harry Vanden and Gary Prevost, *Politics of Latin America: The Power Game*, Second (Oxford: Oxford University Press, 2006); Ignacio Sanchez-Cuenca, "Power Rules and Compliance," in *Democracy and the Rule of Law* (Cambridge: Cambridge University Press, n.d.); Van Tuijl, "NGOs and Human Rights: Sources of Justice and Democracy."

[25] *World Values Survey Online Data Analysis Tool.*

[26] Pablo Gorondi, "Thousands Protest Hungary's Media Law," *The Boston Globe*, March 15, 2011, http://www.boston.com/news/world/europe/articles/2011/03/15/thousands_protest_hungarys_media_law/; "Muslim Women Protest on First Day of France's Face Veil Ban | World News | The Guardian," April 11, 2011, http://www.guardian.co.uk/world/2011/apr/11/france-bans-burqa-and-niqab.

In addition to responding to public opinion and domestic political pressure, governments are vulnerable to the demands of their international partners and often have an incentive to signal to international audiences that they are, indeed, committed to human rights. The politics of human rights has become an important part of statehood and governance. International audiences, from bilateral trading partners to international financial institutions and the United Nations (UN), increasingly use human rights provisions as conditions on trade, aid, and a seat at the international negotiating table.[27] At the most basic level, governments face international pressure to be good global citizens and uphold their international commitments. By showing the international community that they are committed to human rights, states also can signal that they are able and willing to uphold their international obligations on other issue areas such as trade, security, and environmental protection; are part of modern or civilized international society; and respect the rule of law in an increasingly legalized international environment. For those states that are regional and global leaders, the stakes are even higher: they are considered precedent setters and are expected by their regional and international partners to set a good example for other member states. Meanwhile, for unconsolidated democracies, demonstrating a commitment to human rights is one way to signal to other states a capacity to be regarded as an equal partner in international politics.[28]

On a more material level, donors, aid agencies, and trade partners pay increasingly more attention to states' human rights practices.[29] Of course, changing international norms about the importance of respecting basic human rights also have affected international organizations themselves. This suggests that those states that continue to receive substantial amounts of overseas development assistance and/or foreign direct investment have a particular incentive to signal a commitment to human rights in order to maintain or develop their international economic partnerships. Even for states that are donors, their embeddedness in the international financial system can lead them to comply with human rights tribunals' rulings as they face pressure to set an example for others.

Compliance with the tribunals' rulings provides a particularly novel signal for states for a number of reasons. First, the rulings give a name and face to otherwise abstract human rights issues. Perhaps one of the best examples is the case of *Maria*

[27] David Richards and David Gelleny, "Money with a Mean Streak? Foreign Economic Penetration and Government Respect for Human Rights in Developing Countries," *International Studies Quarterly* 45, no. 2 (2001): 219–239; Emilie Hafner-Burton, *Forced to Be Good: Why Trade Agreements Boost Human Rights* (Ithaca, NY: Cornell University Press, 2009).

[28] Risse, Ropp, and Sikkink, *The Power of Human Rights*; Andrew Guzman, *How International Law Works* (Oxford: Oxford University Press, 2008); Hafner-Burton, *Forced to Be Good: Why Trade Agreements Boost Human Rights.*

[29] Richards and Gelleny, "Money with a Mean Streak? Foreign Economic Penetration and Government Respect for Human Rights in Developing Countries"; Hafner-Burton, *Forced to Be Good: Why Trade Agreements Boost Human Rights.*

da Penha v. Brazil, discussed in Chapter 1. Ms. da Penha quite literally became the spokesperson for activism against domestic violence, and her story became one of the triumphs of human rights over impunity in Brazil.[30] That said, the rulings are discrete in scope and pertain to one case, one family, or one issue area. Compared to joining a new human rights agreement, for example, this compact mechanism is relatively self-contained.

Second, the rulings are externally mandated. For those constituencies most ardently pushing for compliance, the universal and international nature of the norms embodied by the rulings makes compliance all the more important. For the state, the external mandate both strengthens the signal that it can send by compliance (for the same reasons that the constituents and other actors view it as legitimate) and pushes the issue to the top of the agenda.[31] Furthermore, the tribunal itself can add pressure on the state to follow through with its international commitments and human rights obligations. Finally, the fact that the tribunals' mandates contain so many different elements, including relatively easily accomplished mandates, such as paying reparations, means that governments can deploy – or try to deploy – a practice of partial compliance in order to satisfy (partially) constituent and international observer demands as a signal of their commitment to human rights.

Domestic institutions can make compliance with the human rights tribunals' rulings a particularly valuable way for executives to demonstrate a commitment to human rights. This takes two forms. First, domestic checks on the executive further legitimate the executive's human rights policies and the compliance process. Imagine a situation in which an authoritarian leader issues an executive decree announcing compliance with the Inter-American Court's rulings. Perhaps this executive decree establishes a new human rights law or sets the legal foundations for trying suspected perpetrators. International and domestic audiences alike are bound to meet such compliance with skepticism. The rewards for compliance – fulfilling a personal commitment to human rights, legitimizing ongoing rights reforms, and garnering material and reputational benefits from international and domestic audiences – are about perceptions just as much as they are about reality.

At a basic level, domestic audiences, international partners, and the tribunals acknowledge the qualitative differences between enacting measures of nonrepetition and financial reparations and the differences between launching a full-scale investigation into a massacre and the publication of a ruling in a local newspaper.[32]

[30] *Maria da Penha Maia Fernandes v. Brazil* (Inter-American Commission on Human Rights 2001).

[31] Guzman, *How International Law Works*; Andrew Guzman, "The Cost of Credibility: Explaining Resistance to Interstate Dispute Resolution Mechanisms," *The Journal of Legal Studies* 31, no. 2 (2002): 303–326; Huth, "Legitimizing Dispute Settlement: International Legal Rulings as Domestic Political Cover."

[32] That said, there is also the ambiguous question of the impact of the rulings, which may happen in more diffuse ways than this typology of compliance processes suggests. See also: Carozza, "Subsidiarity as a Structural Principle of International Human Rights Law"; Hunt, "State Obligations Following from a Judgment of the European Court of Human Rights"; Lambert Abdelgawad, *The Execution of Judgments of the European Court of Human Rights*; Andreas von Staden, "Assessing the Impact of the Judgments of the European Court of Human Rights on Domestic Human Rights Policies" (presented at the 2007 Annual Meeting of the American Political Science Association, Chicago, IL, 2007).

By being willing to pay the *ex post* costs of compliance, governments can signal a credible commitment to human rights, but only if robust domestic institutions, such as judiciaries and legislatures, are able and willing to fully implement the tribunals' rulings and recommendations on the domestic level. The irony, of course, is that those states most in need of demonstrating a commitment to human rights to domestic and international audiences often lack the domestic institutions necessary to fully comply with the tribunals' rulings. The challenge for these states is leveraging compliance in order to signal a (credible) commitment to human rights without sacrificing too much of their policy-making authority.

Setting and Advancing Domestic Human Rights Agendas

In addition to providing governments with an opportunity to demonstrate a commitment to international human rights, compliance with the tribunals' rulings supplies governments, and particularly executives, with the chance to promote particular human rights agendas at home. International law invests executives with significant agenda-setting powers, and this is true for the tribunals' rulings as well. The tribunals issue their rulings directly to the executive branch, which, in turn, delegates authority for compliance to a variety of domestic political actors. Executives can capitalize on this opportunity by pushing for compliance with human rights tribunals' rulings when those rulings advance their preferred human rights policy agenda and when the tribunals' rulings provide political cover for difficult or divisive policy reforms.

In her recent work, Simmons proposes a domestic theory of compliance and suggests that international law has an impact on domestic politics insofar as it endows domestic actors with particular powers.[33] Among these functions, Simmons indicates that international law enables executives to set the national agenda on human rights policies.[34] In the case of the Inter-American and European human rights tribunals, the executive enjoys significant power as a gatekeeper. The executive branch staffs the country's offices in San José and Strasbourg (respectively), receives the rulings and recommendations from the tribunals, and engages in an ongoing dialogue with them. Moreover, as Simmons says, international law "gives the executive a fairly clear proposal to discuss as an alternative to the status quo."[35] Once a ruling has been handed down, executives are able to influence the rate and degree to which international human rights tribunals' cases enter the domestic sphere by either withholding

[33] See also Goldsmith and Levinson for a discussion of how international law serves much the same purposes as constitutional law: Jack Goldsmith and Daryl Levinson, "Law for States: International Law, Constitutional Law, Public Law," *Harvard Law Review* 122, no. 1791 (2009).

[34] Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics*.

[35] Ibid., 129.

support for compliance or by pushing the question of compliance onto the legislature's agenda and the judiciary's docket. The tribunals' rulings serve as a legal mandate and political focal point for compliance and carry with them the normative power of international law. Because of these characteristics, executives – and other domestic actors – can use the tribunals' rulings to advance their own policy objectives.[36]

The tribunals' rulings can add legitimacy and urgency to domestic policy reforms through the normative and binding powers of international law. The normative power of international law may be diffuse, but recent research suggests that it does alter constituents' preferences. In his experimental study, Tomz (2007) finds that constituents are more likely to support policies they believe to be backed by international law.[37] International law can lend legitimacy to domestic policy reform through its language of expertise and through the idea of representing an international consensus on particular human rights standards.[38] This is not to suggest that the policies that executives pursue under the mantle of compliance with the tribunals' rulings are necessarily *legitimate* but rather that executives can use compliance *to legitimate* and advance their own policies. That is, when an executive's human rights agenda aligns with a tribunal's rulings, we should expect the executive

[36] Jeffrey Checkel, "Why Comply? Social Learning and European Identity Change," *International Organization* 55, no. 3 (2001): 553–88; Martha Finnemore, "International Organizations as Teachers of Norms: The United Nations Educational, Scientific, and Cultural Organization and Science Policy," *International Organization* 47, no. 4 (1993): 565–597; Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," in *Exploration and Contestation in World Politics*, ed. Keohane Katzenstein and Krasner (Cambridge: MIT Press, 1999), 247–278; Michael Tomz, "Domestic Audience Costs in International Relations: An Experimental Approach," *International Organization* 61, no. 4 (2007): 821–840; Hathaway, "The Promise and Limits of the International Law of Torture"; Hillebrecht, "The Domestic Mechanisms of Compliance with International Law: Case Studies from the Inter-American Human Rights System."

[37] Tomz "Domestic Audience Costs in International Relations: An Experimental Approach"; Michael Barnett and Raymond Duvall, "Power in Global Governance," in *Power in Global Governance*, ed. Michael Barnett and Raymond Duvall (Cambridge: Cambridge University Press, 2005); Michael Barnett and Martha Finnemore, "The Politics, Power and Pathologies of International Organizations," *International Organization* 53, no. 4 (1999): 699–32; Barnett and Finnemore, *Rules for the World: International Organizations and Global Politics*; John Boli and George Thomas, "World Culture in World Polity: A Century of International Non-Governmental Organization," *American Sociological Review* 62, no. 2 (1997): 171–190; Jeffrey Checkel, ed., *International Institutions and Socialization in Europe* (Cambridge University Press, 2007); Ryan Goodman and Derek Jinks, "Incomplete Internalization and Compliance with Human Rights Law," *European Journal of International Law* 19, no. 4 (2008): 725–748, doi:10.1093/ejil/chn039; Ryan Goodman and Derek Jinks, "How to Influence States: Socialization and International Human Rights Law," *Duke Law Journal* 54, no. 3 (2004): 621–703; Ian Hurd, "Legitimacy and Authority in International Politics," *International Organization* 53, no. 2 (1999): 379–408.

[38] Barnett and Duvall, "Power in Global Governance"; Barnett and Finnemore, "The Politics, Power and Pathologies of International Organizations"; Barnett and Finnemore, *Rules for the World: International Organizations and Global Politics*; Boli and Thomas, "World Culture in World Polity: A Century of International Non-Governmental Organization"; Checkel, *International Institutions and Socialization in Europe*; Goodman and Jinks, "Incomplete Internalization and Compliance with Human Rights Law"; Goodman and Jinks, "How to Influence States: Socialization and International Human Rights Law"; Hurd, "Legitimacy and Authority in International Politics."

to pursue compliance much more readily and to use the normative power of international law to help build compliance coalitions. In turn, complying with the tribunal's rulings makes the government appear legitimate in its own right, harkening back to the first causal mechanism and the idea that compliance can be used to bolster a government's reputation as a rights-respecting state.

Executives or other domestic actors interested in facilitating compliance can also leverage the binding nature of international law to promote domestic policy change. For example, in their analyses of new democracies' decision to join human rights tribunals and international organizations, respectively, Moravscik (2000) and Pevehouse (2005) find that governments in newly democratized states join these institutions to lock in pro-human rights and pro-democratic reforms. The underlying logic is that international law and international organizations protect fragile domestic institutions by providing legitimacy/credibility and changing the political calculations of domestic political elites.[39] In a similar way, compliance with the human rights tribunals' rulings can help governments to lock in human rights reforms by abdicating power to international human rights tribunals. By surrendering power to the tribunals' rulings, executives and others interested in human rights reform have a built-in safeguard and scapegoat for their domestic human rights reforms.

If executives did not face institutional checks from legislatures and judiciaries, they would have little policy incentive to use compliance with the tribunals' rulings to advance their own policy preferences. Simmons argues, "treaties should have their greatest impact where governments are otherwise constrained in their ability to initiate legislative reforms to protect human rights."[40] If the executive had easy access to the legislature's agenda or the court's docket, then compliance with the tribunals' rulings would not hold much strategic value. It is when the executive is constrained that the tribunals' rulings are at their most effective.

Absent strong executive leadership, other domestic actors also can use the tribunals' rulings as a way to advance policy change. Judges and legislators, for example, can use the tribunals' rulings to change precedent or instigate a new political debate about human rights. As the case of Portugal in Chapter 5 shows, by adhering to the ECtHR's rulings on the freedom of speech, Portuguese judges have slowly started to change the politico-judicial conversation about free speech rights.

Democratic Preferences and Begrudging Compliance

Strong, well-established democracies with robust human rights protections might have little incentive to signal a commitment to human rights or to leverage the

[39] Andrew Moravscik, "The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe," *International Organization* 54, no. 2 (2000): 217–252; Pevehouse, "Democracy from the Outside-In? International Organizations and Democratization"; Pevehouse, *Democracy from Above: Regional Organizations and Democratizations*.

[40] Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics*, p. 129.

normative power of international law to facilitate domestic human rights policy change. In some instances, this means that strong, rights-respecting democracies comply readily with the tribunals' rulings. Yet, this does not mean that compliance is rote or automatic. Instead, these governments often begrudge the tribunals and their rulings but comply anyway, arguing that their hands are tied by the government's long-standing commitments to international law, human rights, and democracy.

A large body of literature suggests that democracies tend to have a deep-rooted preference for human rights, as well as better human rights practices than do nondemocracies.[41] This preference, whether derived from the common philosophical underpinnings that the normative constructs of democracy and human rights share or from continued socialization into communities of rights-respecting democracies, should also extend to democracies' relationship with human rights tribunals' rulings. This is not to suggest that democracies never violate human rights norms and laws and that they are not subject to human rights tribunals' criticisms and adverse judgments. In fact, the prevalence of human rights lawyers and a culture of litigation often make these countries some of the most frequent defendants at the ECtHR. Furthermore, democracies' preference for human rights does not imply that they will always agree with or welcome the tribunals' rulings. Rather, the connection between democracy and human rights implies that democratic governments can justify compliance with the tribunals' rulings as reflective of a long-standing commitment to human rights and the rule of law. Thus, for governments like the United Kingdom, when pressed to choose between short-term goals (e.g., extraditing a terrorist suspect to the United States) and long-term objectives (e.g., upholding a traditional respect for human rights), they must often chose between what the public says it wants (e.g., extradition) and what the government believes the public wants and needs (e.g., a government that upholds the country's tradition and fulfills its international legal obligations). The tribunals' rulings and the formal nature of international law provide governments with a

[41] Barnett and Duvall, "Power in Global Governance"; Barnett and Finnemore, "The Politics, Power and Pathologies of International Organizations"; Barnett and Finnemore, *Rules for the World: International Organizations and Global Politics*; Boli and Thomas, "World Culture in World Polity: A Century of International Non-Governmental Organization"; Checkel, *International Institutions and Socialization in Europe*; Goodman and Jinks, "Incomplete Internalization and Compliance with Human Rights Law"; Goodman and Jinks, "How to Influence States: Socialization and International Human Rights Law"; Hurd, "Legitimacy and Authority in International Politics"; Zehra F. Arat, "Human Rights and Democracy: Expanding or Contracting?," *Polity* 32, no. 1 (October 1, 1999): 119–144, doi:10.2307/3235336; Jürgen Habermas, "Three Normative Models of Democracy," *Constellations* 1, no. 1 (December 1, 1994): 1–10, doi:10.1111/j.1467-8675.1994.tb00001.x; Harold Hongju Koh and Ronald Slye, *Deliberative Democracy and Human Rights* (Yale University Press, 1999); Jonas Linde and Joakim Ekman, "Satisfaction with Democracy: A Note on a Frequently Used Indicator in Comparative Politics," *European Journal of Political Research* 42, no. 3 (May 1, 2003): 391–408, doi:10.1111/1475-6765.00089; Demetrios James Marantis, "Human Rights, Democracy, and Development: The European Community Model," *Harvard Human Rights Journal* 7 (1994): 1; Andrew Moravcsik, "Taking Preferences Seriously: A Liberal Theory of International Politics," *International Organization* 51, no. 4 (1997): 513–554.

modicum of political cover when they are forced to make unpopular human rights choices.

IV. COMPETING EXPLANATIONS FOR COMPLIANCE

A long intellectual history in international relations and international law provides a number of competing explanations for states' compliance – or noncompliance – with international law. These explanations generally fall into four categories: (1) explanations that focus on the endogenous or epiphenomenal nature of international law, (2) theories that understand compliance as the result of coercion or enforcement from the top down, (3) those that point to the importance of international law in shaping new norms and socializing states into these norms, and (4) explanations that point to domestic politics.[42]

Tackling Endogeneity

One of the prevailing arguments about compliance with international law suggests that states' compliance has little to do with international law itself. Compliance, realist scholars suggest, is the result of states' *ex ante* expectations about enforcement and their projected compliance performance. This literature suggests that states join international agreements under two circumstances: when they expect to be compliant with the provisions of the agreement and/or when they are confident that their international obligations will not be enforced.[43]

One of the major puzzles in human rights law is the pattern of states' membership in human rights agreements. Consistent with the notion that states only join treaties if they expect to comply with them and/or they do not expect them to be enforced, states with the best and the worst human rights practices have ratified the major UN human rights treaties, such as the Convention against Torture or the International Covenant on Civil and Political Rights. States with strong human rights practices have little to lose from joining. Expectations about international enforcement are low, and they have good human rights practices from the start. Similarly, states with poor human rights practices have little to lose but much to gain. Knowing that international human rights agreements are rarely enforced and that joining these agreements can be accompanied by foreign aid, a reduction in international meddling in domestic affairs, a safeguard against domestic opposition, and increased

[42] Simmons, "Compliance with International Agreements."

[43] George W. Downs, David M. Rocke, and Peter N. Barsoom, "Is the Good News About Compliance Good News About Cooperation?," *International Organization* 50, no. 3 (1996): 379–406; George Downs, "Enforcement and the Evolution of Cooperation," *Michigan Journal of International Law* (1998): 319–344; James Fearon, "Bargaining, Enforcement and International Cooperation," *International Organization* 52, no. 2 (1998): 296–305.

domestic and international legitimacy, even the worst human rights abusers have significant incentives to join human rights agreements.[44]

The most obvious implication of this argument for compliance with the tribunals' rulings would be that better human rights practices should lead to better compliance rates. That is, states that are *ex ante* compliant with international human rights norms and standards will be more likely to comply with the tribunals' rulings than will states with weaker human rights practices. Yet, as the statistical results in Chapter 3 suggest, this is not always the case, and human rights standards at the time of compliance are not a statistically significant driver of compliance with the tribunals' rulings. A second implication of the endogeneity argument would be that states should change their human rights practices regardless of the human rights tribunals' rulings. That is, a state would initiate human rights reforms absent the external impetus of the tribunals' rulings. This poses an interesting counterfactual argument, one that the following case studies only briefly examine. As discussed in Chapter 1, the case studies that follow look for smoking guns: they seek to verify the existence of a casual mechanism, not to rule out counterfactuals or other explanations. That said, I think it is reasonable to expect that the tribunals' rulings affect the timing and speed of human rights reform, even if they would have happened, eventually, without the tribunals' work. Moreover, the tribunals' rulings add value, particularly external legitimacy and a domestic focal point, that helps to explain why states change their human rights practices.

Coercion

The essence of the endogeneity argument is that states' compliance with international law has very little to do with the constraining powers of international law. A similar argument also suggests that compliance with international law is not because of the constraining properties of international law, per se, but rather is the result of coercion or compulsion on the part of a regional or global hegemon.[45] Although this hypothesis points to a potentially interesting dynamic – the involvement of states in the internal human rights policies of other states – its application to the case of compliance with the human rights tribunals, particularly in the Latin American context, is debatable. For coercion to be the driving factor behind

[44] Neumayer, "Do International Human Rights Treaties Improve Respect for Human Rights?"; Vreeland, "Political Institutions and Human Rights: Why Dictatorships Enter into the United Nations Convention Against Torture"; Hathaway, "Do Human Rights Treaties Make a Difference"; Hathaway, "Why Do Countries Commit to Human Rights Treaties?"; Hafner-Burton and Tsutsui, "Human Rights in a Globalizing World: The Paradox of Empty Promises."

[45] Ronald Krebs, "Perverse Institutionalism: NATO and the Greco-Turkish Conflict," *International Organization* 53, no. 2 (1999): 343–378; Lloyd Gruber, *Ruling the World: Power Politics and the Rise of the Supranational Institutions* (Chicago: University of Chicago Press, 2000); G. John Ikenberry, *After Victory: Institutions, Strategic Restraint, and the Rebuilding of Order After Major Wars* (Princeton: Princeton University Press, 2001).

compliance, it is important to identify *who* would be providing the muscle to coerce other states into complying with human rights tribunals. In the Inter-Americas, the United States' refusal to participate in the Inter-American Court hamstrings its capacity to use coercion to make other states in the region submit to the Court's decisions. Latin America's second biggest trading partner, China, is also an unlikely source of coercion regarding compliance with the tribunals' rulings. Although in Europe the European Union (EU) and its member states occasionally exercise a great deal of power over the other member states, this power is most often of the naming-and-shaming variety. Ultimately, the member states of the Council of Europe (COE) and the EU are not equipped to provide any "bite" to their naming and shaming within the context of the Court.[46] Although recent research does suggest that foreign audiences are increasingly interested in the human rights performances of their trading partners, it seems that this interest has not yet translated into coercive compliance.[47]

Enforcement

A somewhat different approach that also focuses on a top-down model of compliance points not to great powers or hegemonic states but rather to international institutions' role in enforcing international law. Traditional explanations of enforcement have focused on the negative implications of noncompliance, whereas a more recent wave of scholarship on international political economy suggests that institutional design affects enforcement, or rather, expectations of enforcement.[48] Other scholars suggest that strict enforcement (in the case of peace agreements) or preemptive enforcement (in the case of outfitting oil tankers to prevent spillage, for example) can help to facilitate compliance.[49] Meanwhile, the international law literatures posits three main variables about international institutions and, particularly, international tribunals' enforcement capacity: (1) the institutions'

[46] Hafner-Burton, "Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem"; Michael R. Hutchinson, "The Margin of Appreciation Doctrine in the European Court of Human Rights," *International & Comparative Law Quarterly* 48, no. 3 (1999): 638–650, doi:10.1017/S0020589300063478; Lambert Abdelgawad, *The Execution of Judgments of the European Court of Human Rights*.

[47] Hafner-Burton, *Forced to Be Good: Why Trade Agreements Boost Human Rights*.

[48] Downs, "Enforcement and the Evolution of Cooperation"; Peter Rosendorff and Helen V. Milner, "Stability and Rigidity: Politics and Design of the WTO's Dispute Settlement Procedure," *American Political Science Review* 99, no. 3 (2005): 389–400; Peter Rosendorff and Helen V. Milner, "The Optimal Design of International Trade Institutions: Uncertainty and Escape," *International Organization* 55, no. 4 (2001): 829–857; Goldstein et al., "Introduction: Legalization and World Politics"; Martha Finnemore and Stephen J. Toope, "Alternative Views to 'Legalization': Richer Views of Law and Politics," *International Organization* 55, no. 3 (2001): 743–758; Miles Kahler, "Conclusion: The Causes and Consequences of Legalization," *International Organization* 54, no. 3 (2000): 549–571.

[49] Page Fortna, "Scraps of Paper? Agreements and the Durability of Peace," *International Organization* 57, no. 2 (2003): 337–372; Ronald B. Mitchell, "Regime Design Matters: Intentional Oil Pollution and Treaty Compliance," *International Organization* 48, no. 3 (1994): 425–458.

independence, (2) the punishment tools at the tribunals' disposal, and (3) the degree to which member states participate in and provide accountability for the tribunals' work.[50]

All of these models of enforcement, however, depend on the coercive and retributive aspects of enforcement rather than on the benefits of compliance or the socialization process that some scholars suggest facilitates compliance, which I discuss in the section on international law as instructive and constitutive, later in this chapter.[51] Analyses of the ECtHR have stressed the comparatively strong enforcement powers of the European Court, including the COE's political oversight of the Court's judgments and the peer pressure and naming and shaming that take place within the COE's Committee of Ministers.[52] The most aggressive and retributive type of enforcement available to punish noncompliance at the COE is suspension from the Council. Yet, although the COE has threatened to expel the Ukraine and Russia from the Council for their noncompliance, and, in the early days of the Court, Greece willingly withdrew from the organization, the threat of suspending a state's COE membership is generally an empty one.[53] It would be foolhardy for the COE to expel the very Western European states that fund the organization. Similarly, if one of the objectives of membership in the COE is socialization into democratic and European institutions, the COE has few incentives to expel the states of Central and Eastern Europe. Thus, although the COE and the ECtHR do have a unique enforcement mechanism on paper, they would have great difficulty if they ever attempted to use it. It is unlikely that the formal toolbox of punishments makes enforcement effective and fosters compliance. Moreover, the enforcement capacities of the human rights tribunals are not always as profound in practice as they seem on paper.[54] The ability of the ECtHR or the Committee of

50 Karen Alter, "Who Are the Masters of the Treaty? European Governments and the European Court of Justice," *International Organization* 52, no. 1 (1998): 121–149; Mark Pollack, "Learning from the Americanists (Again): Theory and Method in the Study of Delegation," *West European Politics* 25, no. 1 (2002): 200–219; Laurence R. Helfer and Anne-Marie Slaughter, "Toward a Theory of Effective Supranational Adjudication," *SSRN eLibrary* (2005), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=131409; Eric A. Posner and John Yoo, "A Theory of International Adjudication," *University of Chicago Law and Economics, Online Working Paper No. 206, UC Berkeley Public Law Research Paper* No. 146 (2004).

51 Erik Voeten, "The Impartiality of International Judges: Evidence from the European Court of Human Rights," *American Political Science Review* 102, no. 04 (2008): 417–433, doi:10.1017/S0003055408080398; Joost Pauwelyn, "Enforcement and Countermeasures in the WTO: Rules Are Rules – Toward a More Collective Approach," *The American Journal of International Law* 94, no. 2 (2000): 335–347; Jonas Talberg, "Paths to Compliance: Enforcement, Management, and the European Union," *International Organization* 56, no. 3 (2002): 609–643.

52 Bates, "Supervising the Execution of Judgments Delivered by the European Court of Human Rights: The Challenges Facing the Committee of Ministers."

53 Ibrahim Özden Kaboglu and Stylianos-Ioannis Koutnatzis, "The Reception Process in Greece and Turkey," in *A Europe of Rights: The Impact of the ECHR on National Legal Systems*, ed. Alec Stone Sweet and Helen Keller (Oxford: Oxford University Press, 2008), 451–522.

54 Barkhuysen and van Emmerik, "A Comparative View on the Execution of Judgments of the European Court of Human Rights"; Viviana Krsticevic, "Implementación De Las Decisiones Del Sistema Interamerico De Derechos Humanos: Jurisprudencia, Normativa y Experiencias Nacionales"; Farer, "The Rise of the Inter-American Human Rights Regime: No Longer a Unicorn, Not Yet an Ox"; Pasqualucci, *The Practice and Procedure of the Inter-American Court of Human Rights*; Alex Stone Sweet and Helen Keller, "The Reception of the ECHR in National Legal Orders"; in *A Europe of Rights: The Impact of the ECHR on National Legal Systems* (Oxford: Oxford University Press, 2008), 3–26; Martha Finnemore, *National Interests in International Society* (Ithaca, NY: Cornell University Press, 1996); Frank Schimmelfennig, "The Community Trap: Liberal Norms, Rhetorical Action, and the Eastern Enlargement of the European Union," *International Organization* 55, no. 1 (2001): 47–80; Harold Jacobson, "Strengthening Compliance with International Environmental Accords," *Global Governance* 1, no. 2 (1995): 119–148; Harold Jacobson, "International Institutions and System Transformation," *Annual Review of Political Science* 3 (2000): 149–166.

Ministers to strike down domestic legislation, overturn domestic court decisions, or otherwise forcibly coerce states into policy change is limited.[55] The Inter-American human rights institutions are in an even weaker position: although the Inter-American Court of Human Rights (IACtHR) can dictate specific policy changes, neither the Court, the Commission, nor the Organization of American States provides any enforcement mechanism aside from sporadic reviews based largely on the information provided to them by the victims and the state. International human rights tribunals can provide for oversight, make states' compliance records public, and engage in naming and shaming, but their ability to enforce the rulings is, in reality, quite limited. The limitation of the tribunals' enforcement power is both structural (in the sense that the principle of subsidiarity, or deference to the states, is a cornerstone of international adjudication) as well as logistical. Despite the increased adjudication of human rights concerns on the international stage, compliance is, and will likely remain, a domestic concern.[56] Moreover, the different levels of enforcement capacity between the Inter-American and European human rights tribunals do not provide much leverage in explaining variations of compliance *within* the two institutions.

International Law as Instructive and Constitutive

Normative approaches to compliance understand states and international organizations as social environments.[57] The community's standards and norms are prescriptive, meaning that they encourage states to change their underlying preferences and, consequently, their behavior to be consistent with the community's standards. Normative work on human rights agreements suggests that through pressure from

55 Barkhuysen and van Emmerik, "A Comparative View on the Execution of Judgments of the European Court of Human Rights."

56 Carozza, "Subsidiarity as a Structural Principle of International Human Rights Law."

57 Barnett and Finnemore, *Rules for the World: International Organizations and Global Politics*; Checkel, "Why Comply? Social Learning and European Identity Change"; Checkel, *International Institutions and Socialization in Europe*; Martha Finnemore, *National Interests in International Society* (Ithaca, NY: Cornell University Press, 1996); Frank Schimmelfennig, "The Community Trap: Liberal Norms, Rhetorical Action, and the Eastern Enlargement of the European Union," *International Organization* 55, no. 1 (2001): 47–80; Harold Jacobson, "Strengthening Compliance with International Environmental Accords," *Global Governance* 1, no. 2 (1995): 119–148.

the international community, domestic and international NGOs and other states, state actors begin to change their discourse, their behavior, and, subsequently, their preferences regarding human rights.[58] Following this logic, states would comply with the rulings when they become socialized into a community and begin to understand the tribunals' rulings and the human rights norms as prescriptive.

The normative approach, particularly regarding socialization, is an important alternative hypothesis to consider, especially in the context of the ECtHR, where states often are enmeshed in a complicated web of interaction and have many opportunities for socialization and for the adoption of the norms of the community. Naming and shaming can be an important way for the international community to cajole noncompliant states into compliance, and, indeed, the tribunals' enforcement *is* the ability to name and shame noncompliant states. One of the limitations of this line of inquiry, however, is the challenge of identifying the specific mechanisms of socialization. In other words, we need to be cautious of "dummy socialization," whereby we assume that, simply by virtue of being members of the same institution, states automatically become socialized into the community's norms.[59] Similarly, it would be a mistake to assume that these same states are equally susceptible to naming-and-shaming methods just because they are members of the tribunals.

A second normative explanation for compliance comes from the managerialist school. Managerialists suggest that states understand their obligations in international law as guided by the principle of *pacta sunt servanda* (the treaty must be obeyed) and that noncompliance is the result of ambiguous treaty provisions, ignorance of the rules, or a lack of state capacity.[60] Underlying this logic is the idea that states will comply with the tribunals' rulings when they are capable and when there is little uncertainty surrounding the rulings. To put it differently, noncompliance is usually the result of either a lack of state capacity or ambiguity about the legal obligations created by the rulings. This implies that states' compliance hinges almost entirely on their capacity and the clarity of the rulings.

Although the empirical research does not suggest that states comply whenever the rulings are clear and/or states have the capacity to follow through with their obligations, the managerialists' focus on capacity and uncertainty is important. State capacity is a necessary prerequisite for compliance, and, at times, the tribunals will issue compliance orders that are impossible – or nearly impossible – to complete. The Inter-American Court of Human Rights, for example, often will ask the state to recover and return the remains of victims to their families. This can be an exceedingly difficult task, and when dismembered bodies and mass graves are

[58] Keck and Sikkink, *Activists Beyond Borders*; Risse, Ropp, and Sikkink, *The Power of Human Rights*.
[59] Jeffrey Checkel, "International Institutions and Socialization in Europe: Introduction and Framework," *International Organization* 59, no. 4 (2005): 801–826, doi:10.1017/S0020818305050289.
[60] Chayes and Handler Chayes, "On Compliance."

involved, the state often is simply unable to fulfill this requirement.[61] That said, such lack of capacity is the exception, not the rule, and both of the tribunals have dismissed states' claims that a professed lack of capacity is a legitimate excuse for noncompliance.[62]

V. CONCLUSION

This chapter takes the question of compliance with international human rights tribunals' rulings and situates it within international relations and international legal theory. In particular, this chapter sets out two main ideas. First, compliance with the tribunals is an inherently domestic affair and depends on the participation of multiple domestic actors, including executives, judiciaries, legislatures, civil society, and media organizations. Although the human rights tribunals do provide more oversight than almost any other international adjudicative body, the process hinges on the political will of domestic actors.

Whence does this political will come? The second part of this chapter outlined three main causal process mechanisms that can help to explain compliance. First, complying with the tribunals' rulings is a way for governments to signal a commitment to human rights. That is, by agreeing to the tribunals' ruling and recommendations, states are able to make a larger statement about their human rights commitments. This is particularly the case for states like Colombia that have a lot to gain, materially and reputationally, by complying with the tribunals' rulings. Governments cannot control the timing or the substance of the tribunals' rulings, and, in that way, compliance with the rulings demonstrates a broader commitment to upholding human rights. The challenge, as Chapters 3 and 4 will explore in more depth, is that states often only comply with the tribunals' rulings in part and tend to comply with the low-hanging fruit of the tribunals' rulings. Paying reparations to victims is qualitatively different from changing human rights laws and practices, and this tendency to comply with the low-hanging fruit often means that audiences can be skeptical of compliance as evidence of a commitment to human rights.

The second causal mechanism outlined suggests that governments can use compliance as a way to advance their own domestic agendas. The tribunals' rulings provide political cover and legitimacy, which is sometimes sufficient to galvanize a compliance coalition and push through unpopular human rights reforms at home. The third causal mechanism examines the opposite side of this coin. That is, even for countries with long histories of protecting human rights, international human rights tribunals can be unwelcome intruders. In these instances, executives rely on

[61] Darren Hawkins and Wade Jacoby, "Partial Compliance: A Comparison of the European and Inter-American Courts for Human Rights," *Journal of International Law and International Relations* 6, no. 1 (2010): 35–85.
[62] *Burdov v. Russia*, Application No. 59498/00 (European Court of Human Rights 2002); *Maria da Penha Maia Fernandes v. Brazil*.

the countries' long-standing commitment to human rights to foster enough domestic political support for compliance, often crying that their hands are tied by their preexisting human rights obligations. The chapters that follow will examine these causal processes and pay particular attention to the role that domestic actors and coalitions of these actors play in the compliance process. The empirical analyses in Chapters 3 through 7 will also evaluate competing explanations for compliance with the tribunals' rulings and provide a larger empirical and theoretical picture of compliance with human rights tribunals.

3

Domestic Institutions and Patterns of Compliance

I. CHALLENGES OF MEASURING COMPLIANCE WITH HUMAN RIGHTS TRIBUNALS

Measuring compliance is one of the fundamental challenges to understanding states' compliance with international human rights tribunals' rulings. Although both the Council of Europe (COE) and the Organization of American States (OAS) try to keep track of states' compliance, inconsistent data collection, measurement, and evaluation procedures, not to mention the sheer number of cases, make assessing compliance nearly intractable. I interviewed a number of international bureaucrats who work at the tribunals, and most indicated that they were not able to pinpoint the compliance rate for any given country or case. Nevertheless, nearly all agreed that such information would greatly facilitate their work, and, in recent years, both the European and Inter-American tribunals have taken steps to improve their assessment processes.

It is quite possible to measure compliance, although doing so requires rethinking the unit of analysis. Rather than beginning with states' overall compliance performance or even case-level compliance, we need to begin with the microfoundations of the tribunals' rulings: the discrete obligations or mandates nested within each case. This chapter begins with a discussion of how I measure compliance with international human rights tribunals and then presents a new dataset on compliance, the Compliance with Human Rights Tribunals (CHRT) Dataset. After introducing the dataset, this chapter uses statistical analyses to demonstrate some broad patterns of compliance.

As I discuss in Chapter 1, human rights tribunals ask states to fulfill many discrete obligations following an adverse judgment. Any given case can contain two, three,