Chapter 1:
Introduction

Human rights have undergone a widespread revolution internationally over the course of the twentieth century. The most striking change is the fact that it is no longer acceptable for a government to make sovereignty claims in defense of egregious rights abuses. The legitimacy of a broad range of rights of individuals vis-à-vis their own government stands in contrast to a long-standing presumption of internal sovereignty: the right of each state to determine its own domestic social, legal, and political arrangements free from outside interference. And yet, the construction of a new approach has taken place largely at governments' own hands. It has taken place partially through the development of international legal institutions to which governments themselves have, often in quite explicit terms, consented.

How and why the turn toward the international legalization of human rights has taken place, and what this means for crucial aspects of the human condition, is at the core of this study. From the 1950s to the new millennium, governments have committed themselves to a set of explicit legal obligations that lay bare the old claim of state sovereignty when it comes to protecting the basic rights of individual human beings. There was nothing inevitable about this turn of normative and legal events. Indeed, the idea that sovereign governments are not accountable to outsiders for their domestic policies and practices had a good long run. But from its apogee in the nineteenth century, the idea of exclusive internal sovereignty has been challenged by domestic democratic movements, international and transnational private actors, and even by sovereigns themselves. As the twenty-first century commences, the result is an increasingly dense and potentially more potent set of international rules, institutions, and expectations regarding the protection of individual rights than at any point in human history.[1]

So much is well-known. What is less well-understood is, why would individual governments – only a short time ago considered internally supreme – choose to further this project of international accountability? What disturbed the conspiracy of mutual state silence that prevailed until the second half of the twentieth century? And why would an individual government choose to commit itself internationally to limit its freedom of action domestically? The former question is related to broader processes of democratization, transnational social movements, and the creation of intergovernmental organizations that have pushed governments to take these rights more seriously. The latter question requires us to explore the choice a

[1] See for example Power and Allison 2000..

government faces to tie its hands – however loosely – with international human rights treaties. The choice to commit to, or to remain aloof from, international normative structures governing individual human rights is itself a decision that needs to be explained.

Less apparent still is whether treaty law has done much to improve rights practices around the world. Has the growing set of legal agreements that governments have negotiated and acceded to over the last half century improved the "rights chances" of those whom such rules were designed to protect? Attempts to answer this question have – in the absence of much systematic evidence – been based on naïve faith or cynical skepticism. Basic divisions exist over who has the burden of proof – those who believe international law compliance is pervasive and therefore conclude it falls to the skeptics to prove otherwise,[2] versus those who view international law as inherently weak and epiphenomenal, and require firm, causal evidence of its impact.[3] Supporters of each approach can adduce a set of anecdotes to lend credence to their claims. Yet broader patterns and causally persuasive evidence remain illusive.

This book addresses this gap in our knowledge of the linkages between the international human rights treaty regime and domestic practices. I argue that once made, formal commitments to treaties can have noticeably positive consequences. Depending on the domestic context into which they are inserted, treaties can affect domestic politics in ways that tend to exert important influences over how governments behave toward their own citizens. They are the clearest statements available about the content of globally-sanctioned decent rights practices. Certainly, it is possible for governments to differ over what a particular treaty requires – this is so with domestic laws as well – but it is less plausible to argue that the right to be free from torture, for example, is not something people have a right to demand and into which the international community has no right to inquire; less plausible to contend that children should be drafted to carry AK-47s; less plausible to justify educating boys over girls on the basis of limited resources when governments have explicitly and voluntarily agreed to the contrary. Treaties serve notice that governments are *accountable* – domestically and externally – for refraining from the abuses proscribed by their own mutual agreements. Treaties signal a seriousness of intent that is difficult to replicate in other ways. They reflect politics, but they also shape political behavior, setting the stage for new political alliances, empowering new political actors, and heightening public scrutiny.

When treaties alter politics in these ways, they have the potential to change government behaviors and public policies. It is precisely because of their potential power to constrain that

[2] Chayes and Chayes, 1993, , Henkin 1979, Henkin 1995..
[3] Downs, Rocke, and Barsoom, 1996, , Goldsmith and Posner 2005.

treaty commitments are contentious in domestic and international politics. Were they but scraps of paper, one might expect every universal treaty to be ratified swiftly by every government on earth, which has simply not happened. Rather, human rights treaties are pushed by passionate advocates – domestically and transnationally – and are opposed just as strenuously by those who feel the most threatened by their acceptance. This study deals with both the politics of treaty commitment and the politics of compliance. It is the latter of course, that has the potential for changing the prospects for human dignity around the world.

If it can be shown that government practices with respect to human dignity can be improved through the international legal structure, then this will have important consequences both for our theories of politics, and more importantly, for public policy and local and transnational advocacy. Respect for international legal obligations is one of the few policy tools that public and private members of the international community have to bring to bear on recalcitrant governmental rights abusers. It is certainly not the case that such obligations can always influence behavior; certain governments will be very difficult to persuade in any fashion and some will never significantly alter their practices. These are the unfortunate facts of life. But the evidence presented in this study suggests that under some conditions, international legal commitments have generally been beneficial to the kinds of outcomes they have been designed to influence. This argues for a continued commitment to the international rule of law as a possible lever, in conjunction with monitoring and advocacy, in persuading governments they have little to gain by systematically violating their explicit rights promises.

I. Why International Law?

Human rights practices are never the result of a single force or factor. The first years of the twenty-first century may not provide the most convincing portrait of the importance of international law for ordering international relations or shaping governmental practices. Doubts abound regarding the ability of international law to constrain hegemonic powers from acting unilaterally at their pleasure, or to alter the calculations of ruthless governments who would entrench and enrich themselves at the price of their people's dignity. Advances in human rights are due to multiple social, cultural, political, and transnational influences. Why are legal rules worth attention in this context?

My reasons are simple. The development of international legal rules has been the central *collective* project to address human rights this century. Whenever the community of nations as a whole has attempted to address these issues, they have groped toward the development of a legal

framework by which certain rights might become understood as "fundamental." As I will discuss in chapter two, the progress of this collective project – its growing scope, sophistication, and enforceability – has been impressive, especially over the last twenty years. The international legal structure, and especially those parts to which governments have explicitly and voluntarily committed via treaty ratification, provides the central "hook" by which the oppressed and their allies can legitimately call for behavioral change.

This is not of course a view that is universally held. International law is viewed as little more than a shill for power relations by its critics. Maxwell Chibundu cautions that "...human rights claims are not less susceptible to capture by self-interested groups and institutions, and because when transposed from their lofty ideal to practical implementation they serve multifaceted goals that are rarely, if ever, altruistic..."[4] David Kennedy is scathing in his critique of "law's own tendency to over-promise."[5] Susan Engle draws attention to the appeal to international law to justify particular policy interventions favored by the politically powerful while drawing attention away from the more critical problems facing oppressed groups.[6] To many taking a non-western perspective, the dominant discourse that informs the global human rights movement no less than the legal structure that supports it is little more than a front for western imperialist values.[7] Critical feminist legal scholars point to the essentially patriarchic nature and obsessively "public" nature of the international legal system.[8]

Even mainstream scholars increasingly warn of the dangers of too much legalization at the international level. A common theme is that international adjudication is a step too far for most governments and a problematic development for the human rights regime generally. Lawrence Helfer, for example, argues that supranational adjudication to challenge rights violations encourages some countries to opt out of treaty agreements.[9] Jack Snyder and Leslie Vinjamuri make the compelling case that zealous rights prosecutions – in the context of unstable political institutions – worsen rather than improve the chances for peace, stability, and ultimately justice.[10] In the context of the International Criminal Court, Jack Goldsmith and Steven Krasner have argued that this legal tribunal might actual increase rights impunity by discouraging the use of force where necessary to halt and punish egregious violations.[11] These accounts reflect a

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[4] Chibundu, 1999, 1073.
[5] 10Kennedy 2004, 22.
[6] Engle, 2005, .
[7] Anghie 2005, Mutua, 2001,
[8] Olsen 1992.
[9] Helfer, 2002, .
[10] Snyder and Vinjamuri, 2003/04, .
[11] Goldsmith and Krasner, 2003, .

growing skepticism that the world's idealists have thrown *too much* law at the problems of human rights, to the neglect of underlying political conditions essential for rights to flourish.

These views are not without merit, but they hardly deny the need to ask what effects human rights treaties have had on outcomes which many can agree are important aspects of individual well-being. Mutua's critique is helpful in this respect: we should harbor no naïve expectations that a dose of treaty law will cure all ills. Political context matters. Once we understand the law's possibilities and its limits, we will be in a much better position to appreciate *the conditions* under which treaty commitments can be expected to have important effects on rights practices, and the channels through which this is likely to happen. The theory I advance in fact does much to undermine what Mutua refers to as the "dominant discourse" which views oppressed groups as helpless "victims" and western institutions and NGOs as "saviors".[12] *Treaty commitments are directly available to groups and individuals whom I view as active agents as part of a political strategy of mobilizing to formulate and demand their own liberation*. Rather than viewing international law as reinforcing patriarchal and other power structures, the evidence suggests that it works against these structures in sometimes surprising ways.

But why focus on law, some may ask, rather than the power of norms themselves to affect change in rights practices? Norms are too broad a concept for the mechanisms I have in mind in this study. The key here is commitment: the making of an explicit, public and law-like promise by public authorities to act within particular boundaries in their relationships with individual persons. Governments can make such commitments without treaties, but for reasons discussed in the following pages treaties are understood by domestic and international audiences as an especially clear statement of intended behavior. I am not referring here primarily to broad and continuous processes of socialization, acculturation, or persuasion that have pervaded the literature on the spread of international norms. The mechanisms discussed in these pages depend on the explicit public nature of making what might be referred to as a "law-like" commitment. When such commitments are broadly accepted as obligatory, we call them *legal*. My central contention is that commitments with this quality raise expectations of political actors in new ways. True, some agreements that are not strictly legally binding may also raise expectations in an analogous way (the much vaunted "Helsinki effect"). But legal commitments have a further unique advantage: in some polities they are in fact legally enforceable.

In some respects, my focus on international law is fully consistent with the broader norms literature. International human rights law does after all reflect such norms to a significant extent. Norms scholars in fact often appeal to international law to discover the exact content of many of

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[12] Mutua, .

the norms they study.[13] But here I am interested in the effect of explicit commitment making. For this reason, not every legally binding norm is relevant to this study. Customary international law governs the practice of torture, but cannot, I argue, as effectively create behavioral expectations as a precise, voluntary, sovereign commitment.[14] Treaty ratification is an observable commitment with potentially important consequences for both law and politics. That ratification improves behavior is verifiable by dogged political agents and falsifiable in social science tests. That norms play a role is undeniable, but the point developed here is that under some circumstances the commitment itself sets processes in train that constraint and shape governments' future behavior, often for the better.

As will become clear, a case for the power of legal commitment in improving rights chances is not the same as making a case for an apolitical model of supranational *prosecution*. Those who see international law as part of the problem are worried about the consequences of *over-judicialization*, not the consequences of the kinds of treaty commitments examined here. In this study, legal commitments potentially stimulate political changes that fuel social and other forms of mobilization. Any model in which law *replaces* politics is not likely to bear much of a relationship to reality and is likely to give rise to misguided policy advice, as several of the above critiques claim.

I offer one final justification for the focus on international law. In my view, alternative levers to influencing official rights practices have proved in many cases to be unacceptable, sometimes spectacularly so. Sanctions and force often cruelly mock the plight of the most oppressed.[15] Yet social and political pressures alone sometimes lack a legitimizing anchor away from which governments find it difficult to drift. The publicness and the explicitness of international law can potentially provide that anchor. In a world of inappropriate or ineffectual alternatives, the role of international law in improving human rights conditions deserves scholarly attention.

II. International Law and International Relations: the State of Knowledge

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[13] See for example Legro, 1997,

[14] On the weakness of customary international law's effect on helping states make binding commitments see Estreicher, 2003,

[15] Michael Ignatieff has written persuasively that, "We are intervening in the name of human rights as never before, but our interventions are sometimes making matters worse. Our interventions instead of reinforcing human rights, may be consuming their legitimacy as a universalistic basis for foreign policy (Ignatieff 2001, 47.)." Our own inconsistency with respect to humanitarian intervention "has led to an intellectual and cultural challenge to the universality of the norms themselves (Ignatieff, 48.)."

At no time in history has there been more information available to governments and the public about the state of human rights conditions around the world. The dedicated work of governmental and non-governmental organizations, of journalists and scholars has produced a clearer picture than ever in the past of the abuses and violations of human rights in countries around the world. The possibility now exists to make an important theoretical as well as empirical contribution to understanding the role that international law has played in influencing human rights practices around the world. Only within the past decade or two has it been possible to address this relationship in a wide-ranging and systematic fashion.

Theoretical obstacles to such inquiry are also on the decline. State-centered realist theories of international relations dominated the Cold War years, and discouraged the study of norms, non-state actors, and the interaction between international and domestic politics. Certainly, realism in international politics reinforced the idea that international law is not an especially gripping subject of inquiry. With some important exceptions,[16] realists have ignored international law, typically assuming that legal commitments are hardly relevant to the ways in which governments actually behave. One lesson some scholars drew from the interwar years and the humanitarian abominations of the second World War was that the international arena was governed largely by power politics, and that the role of law in such a system was at best a reflection of basic power relations.[17] International law's weakness, its decentralized character, and the remote possibility of its enforcement (outside of the normal course of power relations) demoted it as an area of scholarly concern. In policy circles, some viewed international law as a dangerous diversion from crucial matters of state.[18] The turn to the study of system "structure" reinforced by Waltz's theory of international politics further denied the relevance of legal constraints as an important influence on governmental actions.[19] In this theoretical tradition, international law was viewed as epiphenomenal: a reflection of, rather than a constraint on state power. And in the absence of a willingness to use state power to enforce the rules, adherence could be expected to be minimal.[20]

The past decade has seen some interesting new ways to think about international law's effects on government actions and policies. Rational theorists have emphasized the role that law

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[16] Krasner 1999..
[17] Bull 1977, Carr 1964, Hoffmann, 1956, , Morgenthau 1985.. These Realists tend to agree with Raymond Aron that while "the domain of legalized interstate relations is increasingly large…one does not judge international law by peaceful periods and secondary problems" (Aron 1981.). This perspective is tantamount to the claim that if international law cannot solve all problems, that it cannot address any, which Philip Jessup referred to this as the fallacy of the "great issues test" (Jessup 1959.).
[18] Kennan 1951..
[19] Waltz 1979..
[20] Krasner 1993..

can play in creating institutions that provide information to domestic audiences in ways that help them hold their governments accountable.[21] Liberal theorists have argued that international legal commitments supplement domestic legal structures, and view international human rights agreements as attempts to solidify democratic gains at home.[22] Constructivist theorists have come to view "...international law and international organizations [as]...the primary vehicle for stating community norms and for collective legitimation,"[23] and some prominent legal scholars have explicitly incorporated such concepts as discourse, socialization, and persuasion into an account of transnational legal processes through which international law eventually puts down roots in domestic institutions and practice.[24]

The availability of new theoretical perspectives and new sources of information on rights practices has stimulated a range of new research that was not possible only a decade or so ago. New empirical work has begun to illuminate and test theories generated by looking intensively at specific cases. Oona Hathaway's "expressive" theory of treaty ratification, Emily Hafner-Burton and Kiyoteru Tsutsui's theory of ratification as an empty promise created by institutional isomorphism, Eric Neumayer's theory of civil society participation are all important efforts to put systematic evidence of treaty effects on the table.[25] These and other works illustrate it is possible to test with quantitative evidence the proposition that the international legal regime for human rights has influenced outcomes we should care about.

Nonetheless, the study of international law and human rights is a minefield of controversy in several important respects. Here we are dealing with sensitive political, social and even personal issues, in which the essentially human nature of our subject is central. People suffer, directly and often tragically, because of the practices examined in this book. Many readers will find it an effrontery to apply the strictures of social science to such suffering.[26] Others may have concluded that cultural relativism and the hegemony implied by the international legal order itself render uselessly tendentious any inquiry into international "law and order."[27] As alluded to

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[21] Dai, 2005,

[22] Moravcsik, 2000,

[23] 8Risse, Ropp, and Sikkink 1999, 8..

[24] Harold Koh's work is an important exception. Koh argues that transnational interactions generate a legal rule that can be used to guide future transnational interactions (Koh, 1999,). In his view, transnational interactions create norms that are internalized into domestic structures through judicial decisions, executive or legislative action, etc. The norms become enmeshed in domestic structures; repeated participation in this process leads nations to obey international law.

[25] Hafner-Burton and Tsutsui, 2005, , Hathaway, 2002, , Neumayer, 2005,

[26] Some believe that the social sciences cannot be usefully integrated with legal studies generally. See for example Barkun 1968, 2-3, Koskenniemi 2000, Stone 1966..

[27] See for example Evans 1998..

above, human rights issues are often highly "perspectived" in ways that are more obvious, diverse, and deeply felt than many other areas of social research.

There is no getting around the sensitive and subjective nature of the issues dealt with in this book. Yet the question of international law's impact on state behavior and outcomes call for a well-documented and consistent evidentiary approach. The research strategy which has dominated the literature in both international law and human rights studies has been the use of intensive case studies on individual countries.[28] These have been invaluable in generating insights into specific crucial episodes but leave open the question about the influence of international legal commitments on practices more broadly. I take a different tack, one that complements the rich collection of case studies in this area: I look for broad evidence of general relationships across time and space. To do this it is necessary to categorize and quantify rights practices governed by the major treaties. To quantify is hardly to trivialize; rather it is an effort to document the pervasiveness and seriousness of practices under examination.[29] It is fairly straightforward to quantify aspects of formal legal commitment. Data on which countries have signed and ratified the core human rights conventions, and when, are easily assembled. By further documenting the making of optional commitments (individual rights of complaint, the recognition of various forms of international oversight), reservations and declaration (which may be evidence of resistance to these treaties), and the willingness to report, we can get a good idea of the conditions under which governments sign on to a treaty regime.

Quantification of meaningful institutional and behavioral change is far more difficult.[30] It requires a systematic comparison across time and space and a willingness to compress many details into a few indicators. This is obviously not the only way to investigate human rights practices. This is just one way to view a complex and multifaceted set of problems. Clearly there are limits to what this kind of approach can reveal. At the same time, the data do show some patterns that, to date, more detailed case studies have not brought squarely to our attention. My hope is that by being as transparent as possible about how the quantitative data are gathered and deployed I will persuade at least some readers to add these findings to their store of impressions of how states engage – and are ultimately constrained by – the international legal system.

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[28] Among the best are Audie Klotz's study of apartheid in South Africa (Klotz 1995.); Daniel Thomas's study of the effect of the Helsinki Accord on the rights movement in Eastern Europe (5Thomas 2001.); and Kathryn Sikkink's research on human rights coalitions in Latin America (Sikkink, 1993,).

[29] On the difficulty of quantification in the human rights area, see Claude and Jabine, 1986, .

[30] Scholars who point out how difficult it is to measure human rights practices/violations include Donnelly and Howard, 1988, , Goldstein, 1986, , Gupta, Longman, and Schmid, 1994, , McCormick and Mitchell, 1997, , Robertson, 1994, , Spirer, 1990, . In some quantitative studies of human rights, little attention has been given as to whether or not "rights" are adequately conceptualized and measured (Haas 1994.).

It is also important to be clear about the precise focus of this study. The primary theoretical and empirical contribution relates to the conditions under which international human rights treaties can influence the behavior of governmental and other actors in ways that accord with the contents of international agreements. Many studies take up the more primordial issue of what range of phenomena comprise human rights, how they can be justified philosophically, who has a claim to such a right, and who has a duty to recognize and protect such rights. These are important issues, but have been ably discussed in a large number of existing studies.[31]

Finally, I want to dispel any impression of an inevitable teleology underlying my generally positive message of progress. Chapter Two places the current human rights regimes in the broader context of a century of growing state accountability that has proved fecund for the development and observance of the rights under discussion. But within the general trend dwell pockets of resistance. There was nothing at all inevitable about the development of international human rights law. Were it solely up to the major powers (The United States, United Kingdom, Soviet Union) after World War II, the regime might have been limited to the non-binding Universal Declaration on Human Rights (1948). While there has been general progress in the development of international human rights law and institutions, the flaws remain obvious and the gains have almost always been hard-fought.

II. The argument in brief

Treaties reflect politics. Their negotiation and ratification reflect the power, organization, and aspirations of the governments who negotiate and sign them, the legislatures that ratify them, and the groups that lobby on their behalf. But treaties also *alter politics*, especially in fluid domestic political settings. Treaties set visible goals for public policy and practice that alter political coalitions and the strength, clarity, and legitimacy of their demands. Human rights treaties matter most where they have domestic political and legal traction. This book is largely about the conditions under which such traction is possible.

Why should a government commit itself to an international legal agreement to respect the rights of its own people? The primary reason is that the government anticipates its ability and willingness to comply. Government participate in negotiations, sign drafts and expend political capital on ratification in most cases because they support the treaty goals and generally want to implement them. Polities participate most readily and enthusiastically in treaty regimes that

[31] See for example 10Føllesdal and Pogge 2005, Donnelly 1998, Ch. 2, Orend 2002, Reidy and Sellers 2005..

reflect values consonant with their own. In this sense, the treaty-making and ratifying process "screens" the participants themselves, leaving a pool of adherents that *generally* are likely to support their goals. Were this not the case, treaty ratification would be empirically random and theoretically uninteresting – a meaningless gesture to which it would be impossible to attach political, social or legal significance. If we expect treaties to have effects, we should expect them to be something other than random noise on the international political landscape.[32]

Treaties are not perfect screens, however; far from it. Motives other than anticipated compliance influence some governments to ratify, even if their commitment to the social purposes of the agreement are weak. The single strongest motive for ratification in the absence of a strong value commitment is the preference that nearly all governments have to avoid the social and political pressures of remaining aloof from a multilateral agreement to which most of their peers have already committed themselves. As more countries – especially regional peers – ratify human rights accords, it becomes more difficult to justify non-adherence and to deflect criticism for remaining a non-party. Figuratively, a treaty's mesh widens as more and more governments pass through the ratification stage.

Treaties are also imperfect screens because countries vary widely in their treaty-relevant national institutions. Legal traditions, ratification procedures, and the degree of decentralization impact the politics of the treaty-acceptance process. Because governments sometimes anticipate that ratification will impose political costs they are not ready to bear, they sometimes self-screen. Despite general support for the goals of a human rights accord, opposition may form in powerful political subunits (states or provinces) that have traditionally had jurisdiction in a particular area (e.g., the death penalty in the United States). Sympathetic governments may self-screen if the costs of legal incorporation are viewed as too high or too uncertain. They may also self-screen if the ratification hurdle is high relative to the value they place on joining a particular treaty regime. The point is this: two governments with similar values may appear on opposite sides of the ratification divide because of their domestic institutions rather than their preferences for the content of the treaty itself. Treaties may act as screens, but domestic institutions can do so as well.

The most significant claim this book makes is that, regardless of their acknowledged role in generally separating the committed human rights defenders from the worst offenders, treaties also play a crucial constraining role. As in the case of their screening function, they constrain imperfectly but perceptibly. The political world differs in important ways on each side of the ratification act. The main reason is one institutionalists have recognized since Robert Keohane's

[32] Simmons and Hopkins, 2005, .

seminal work: regimes focus actors' expectations. To be sure, the focus can begin to shift during the treaty negotiations.[33] Expectations can begin to solidify further as more governments express commitment to an emerging standard – the process of legitimation emphasized by scholars of international norms and their spread.[34] But expectations regarding a particular government's behavior change qualitatively when that government publicly expresses its commitment to be legally bound to a specific set of rules. Treaties are perhaps the best instrument available to sovereign states to sharpen the focus on particular accepted and proscribed behaviors. Indeed, they are valued by sovereign states as well as non-governmental actors for precisely this reason.[35] Treaties constrain governments because they help define the size of the *expectations gap* when governments fail to live up to their provisions. This expectations gap has the power to alter political demands for compliance, primarily from domestic constituencies, but sometimes by the international community as well.

The three domestic mechanisms I explore in the following pages are the ability of a treaty to effect elite initiated compliance, to support litigation, and to spark political mobilization. I think of these mechanisms as ranging from the most to the least elite of processes. In the simplest case, treaties can change the national agenda simply because they raise questions of ratification and hence implementation. International law raises the question: do we move to ratify and to implement? In many cases, treaties insert issues into national politics that would not have been there in the absence of international politics. Governing elites can initiate compliance, with practically no public participation, if they value international cooperation on the issue the treaty addresses. Treaties are important in these cases, because the national agenda would have been different in the absence of international negotiations.

International treaties also provide a resource in litigation, should the government be less than eager to comply. The availability of this mechanism depends on the nature of the domestic legal system and the quality of the courts. Litigation is a possibility where treaties have the status of law in the domestic legal system (or where they have been implemented through enforceable domestic statutes) and where the courts have a degree of political independence. Even in these cases, litigation cannot force compliance. It can only raise the political costs of government resistence by legitimating through indigenous legal institutions the demand to comply. In

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[33] Chayes and Chayes, .
[34] Finnemore and Sikkink, 1998, .
[35] See chapter 3 for evidence that non-governmental organizations have spent scarce resources on codification and ratification campaigns because they believe commitments support the campaign for better rights practices.

countries with a strong rule of law tradition, an adverse court ruling can add weight to the pressures a government will experience to comply.

Finally, a public treaty commitment can be important to popular mobilization to demand compliance. Treaties provide political, legal and mobile resources to individuals and groups to hold governments to their promises. In these pages, I will argue that explicit legal commitments raise the expected value of social mobilization by providing a crucial tangible resource for nascent groups and increasing the size of the coalition with stakes in compliance. What is more, this effect is greatest in countries that are neither stable democracies (where most rights are already protected and the motive to mobilize is relatively low) nor stable autocracies (where the likelihood of successful mobilization is low if the rights the treaty addresses are seen in any way as challenging status quo governing arrangements). Key here is the legitimating function of an explicit commitment to a global standard. That commitment is used strategically by demandeurs to improve the rights in which they have an interest.

The central point is this: the political environment most (though not all) governments face differs on each side of the ratification divide. These changes are subtle and they are often conditional. They involve changes that give relatively weak political actors important tangible and intangible resources that raise the political costs governments pay for foot-dragging or for non-compliance. These changes are not drastic but they may be enough to encourage women's groups in Japan, supported by a few Diet members who otherwise might not have been seized of the cause, to press for legislation to address the most egregious forms of employment discrimination in that country. These changes are sometimes just enough to give a small rights interest group in Israel enough legal ammunition to argue before the Supreme Court that "moderate physical pressure" is not allowed under the Convention Against Torture, and to turn the political tables by requiring the Israeli legislature to explicitly (and one can assume, embarrassingly), to pass legislation to the contrary. No one, this author in particular, believes signing a treaty will render a demonic government angelic. But under some circumstances a public international legal commitment can alter the political costs in ways that make improvements to the human condition more likely.

The argument developed in this book is also conditional. Treaties vary by virtue of the rights practices they are attempting to influence. Some can directly impact the perceived ability of the government to maintain political control. The International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture and other Cruel and Inhumane Punishments (CAT) are two examples that potentially have serious governing consequences for a ruling government. Broad political rights can empower political opposition; the use of torture can be

strategically employed to retain political control or to glean information from various enemies of the state. Governments are much more likely to disregard an international commitment if doing so is perceived in any way to endanger their grip on power or "stability" of the broader polity. Other accords are less likely to threaten a government's political or security goals. The Convention on the Elimination of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC) are much more important for their social impact than their direct political implications. Most governments – with the possible exception of theocracies whose doctrines embrace the political and social subordination of women – are far less likely to have a crucial political stake in assuring or withholding rights for women and children than they are to have the uninhibited freedom to oppress political opposition. The more a treaty addresses issues clearly related to the ability of the government to achieve its central political goals, the weaker we should expect the treaty's effect to be.

Finally, quintessentially political treaties, such as the CAT and the ICCPR, are likely to have their greatest mobilization effects precisely where the conditions exist to gain significant domestic political traction. Treaties alter politics; they do not cause miracles. They supplement and interact with domestic political and legal institutions; they do not replace them. Extremely stable domestic political institutions will not be much affected by a political human rights treaty commitment. On the one hand, in stable autocracies, they are largely irrelevant. Potential political actors simply do not have the resources to effectively demand change. Treaties may have effects if transnational coalitions are thereby empowered,[36] but the chain of demands is attenuated and likely to be weak. This obvious fact is what causes some scholars to conclude that human rights treaties do not have positive effects.[37] On the other hand, in stable democracies, treaties may be readily accepted, but they are often redundant. Because political rights are largely protected – and have been in living memory – treaty ratification adds very little political activity to that already established around domestically guaranteed protections. The point is that treaties have significant effects, but they do not have the same effects everywhere.

I argue that even the most politically sensitive human rights treaties have significant positive effects in those countries where political institutions have been unstable. Treaties alter politics through the channel of social mobilization where domestic actors have the motive and the means to form and to demand their effective implementation. In stable autocracies, citizens have the motive to mobilize but not the means. In stable democracies, they have the means, but generally lack a motive. Where institutions are most fluid, however, the expected value of

[36] Keck and Sikkink 1998..
[37] Hathaway, .

importing external political rights agreements is quite high.[38] Rights beneficiaries have a clear incentive to reach for a legal instrument the content and status of which is unlikely to change regardless of the liberality of the current government. They also have a basic capacity to organize and to press for treaty compliance. In many cases, these more volatile polities have experienced at least a degree of political participation and enjoyed some modicum of democratic governance. It is precisely in these polities that we should expect ratification of the more political human rights treaties to influence political coalitions, demands, and ultimately government practices. One of the most significant findings of this book is that even the most politically sensitive human rights treaties have positive effects on torture and repression for the significant number of countries that have a history of highly volatile political regimes. International law matters most where domestic institutions raise the expected value of mobilization, that is, where domestic groups have the motive and the means to demand the protection of their rights as reflected in ratified treaties.

III. Organization of the Book

This book is organized as follows. Chapter 2 provides some historical context in which to understand the issues of treaty commitment and compliance that governments have faced in the last third of the twentieth century. The idea of limiting state sovereignty in certain issue areas has taken root over the course of the twentieth century, setting the stage for the legalization of the human rights regime post-World War II. This chapter explores the question: Why rights? Why a legal regime? And why in mid-twentieth century? The answers involve a mix of shock and horror in the wake of the Second World War, as well as a moral commitment to address the atrocities of the Holocaust. Cold War politics and decolonization played crucial roles as well. The former gave rise to the strategic deployment of rights discourse as a way to gain allies and the moral high ground in competition between the super powers. The latter exposed the abuses of colonialism and tapped earlier Wilsonian ideas of self-determination of peoples in order to rid most of Africa of formal European rule. A coalition of non-governmental actors and some of the smaller democracies have pushed along the project of legalization. As general trends in accountability have improved, these legal commitments have become plausible constraints on states' rights practices.

Chapter 3 is about the decisions of individual state governments to engage this growing body of law. How are we to understand the fundamental decisions each states faces about

[38] Moravcsik, .

whether to participate voluntarily in the regime? The focuses in this Chapter is on the commitment issue. Treaties are theorized as consciously chosen, publicly deliberated, and legally ratified modes of communicating an official state intent to behave in ways consistent with the content of the agreement. The theoretical point of departure – the prime theoretical assumption – is that governments ratify treaties largely because they believe they can and should comply with them. Any other starting point is highly unsatisfactory both theoretically and empirically. But we know that there is not a perfect correspondence between ratification and compliance, so it is essential to theorize this discrepancy as well. Polities differ in their preferences over treaty content. Some governments are ambivalent but ratify to avoid criticism associated with remaining outside of the regime. I refer to these cases as "false positives," and I argue they tend to occur for externally motivated strategic reasons. Criticism is less concentrated when a small number of countries have ratified; it becomes more focused on laggards when greater numbers and especially regional peers have already ratified. Social and political pressure is a key explanation for ratification when governments are only weakly committed to the treaty's goal. Moreover, domestic institutions – constitutionally specified ratification procedures, decentralized public authority, legal traditions and structures – create incentives for a government to delay or withhold ratification even if the values reflected in the treaty are in fact closely held. I refer to these cases as "false negatives." Holding preferences constant, domestic institutions can raise the cost of ratification for some governments. The United States, for example, is often criticized for its egregious exceptionalism with respect to its human rights treaty ratification record. Arguably, its federal structure, supermajority ratification procedures, and highly independent and accessible courts go a long way toward raising the ex ante political costs of ratification.

These ideas are then tested on six of the most important multilateral treaties of the past fifty years.[39] The evidence suggests that treaty commitments clearly reflect underlying state and societal preferences. Democratic institutions, some cultural characteristics, and in some cases the political orientation of the government of the day raise affect the propensity to ratify. Domestic institutions (primarily the nature of the legal system, but also the height of the ratification hurdle) significantly reduce the probability of ratifying, producing some cases of false negatives. This chapter also shows that governments are greatly influenced by the commitments of other countries, most especially of those countries in their region. I argue this reflects a desire to avoid criticism by taking ratification action typical of the region. A close look at the timing and

[39] The International Covenant of Civil and Political Rights (ICCPR), International Covenant on Economic Social and Cultural Rights (ICESCR), Convention on the Elimination of all forms of Racial Discrimination (CERD), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention Against Torture (CAT) and the Convention of the Rights of the Child (CRC).

incidence of regional clustering suggests a strategic logic rather than ratification behavior that reflects normative socialization. These findings are echoed in the patterns associated with reservation-making and the recognition of international authority as well. These dynamics account for at least some of the false positives – insincere ratifiers – upon which other quantitative studies have focused.[40]

Part II assesses the effect of treaties on state and state-sponsored behavior. Although I often use the language of compliance, this section is about behavioral or institutional changes that comport with the obligations contained in formal treaty commitments, whether or not that behavior constitutes full legal compliance with every aspect of the treaty. I am more concerned to measure improvements in the direction stipulated by the treaty than coding whether a given country has "fully" complied. There are several reasons for this approach. First, improvements in practices and outcomes are of greater substantive interest than technical legal compliance. Even if it were possible to determine and to agree upon precise legal criteria for full compliance – which is not possible in the absence of a court-like determination – we should be interested in evidence of substantive improvements in rights conditions rather than formal criteria. Furthermore, in many of the treaties examined here, there is room for what in the European context is referred to as a "margin of appreciation" that allows states to implement the treaty's purposes in a number of ways. Finally, many of the provisions in the treaties examined here contain clauses of permissible derogations, which try to balance different interests. The International Covenant on Civil and Political Rights, for examples, allows for the derogation of certain of its provisions in the interest of national security, public safety, and public order.[41]

Chapter 4 discusses how treaties can be used to improve human rights practices. I argue that treaties influence outcomes by altering the political calculations of domestic actors. This chapter identifies three channels. The most "top down" mechanism involves the effect an international treaty can have on the political agenda of governing elites. Individual governments simply cannot control the international agenda; for many governments, treaties are an exogenous shock to their national priorities, which many (but certainly not all) are willing to accommodate. Second, treaty commitments can inspire and facilitate litigation. A few citizens can leverage law in legal proceedings, and when they are successful, these actions can change the calculus of important political actors, including, potentially, the government itself. Third, treaties can provide resources and galvanize social mobilization. Unless a government is so firmly ensconced that it can ignore social movements, or so democratic that such movements barely have a motive

[40] Hathaway, .
[41] See for example Article 4 of the ICCPR.

to form in the first place, international human rights treaties can give rights-movements a unique form of political ammunition that can help legitimate group demands.

The next three chapters are the empirical climax of the study. Does a treaty commitment affect government behavior in ways that are required by the treaty? This is a crucial question, for it addresses the issue with which we all should be most concerned with: the ability of legal conventions to improve the human condition. To demonstrate such a proposition is difficult for a number of reasons. First, there are obviously many explanations for the behaviors that are ostensibly governed by international treaty arrangements. It is important to do as much as possible to show that the legal arrangements themselves are likely influences on behavior. Compliance research has long been plagued by the difficult-to-disprove claim that the government would have behaved as we have observed *anyway*, whether or not they had committed themselves to a particular treaty arrangement.[42] Chapters 5, 6, and 7 show that there are reasons to believe that commitment does improve human rights behavior, in ways that the treaties require. The empirical models leverage the findings about false negatives and false positives to develop instruments that can be used simultaneously to predict rights outcomes while holding the conditions associated with ratification itself constant. The idea is to "net out" the factors that explain both ratification and compliance, the better to draw inferences about the effect of treaty commitment itself on these outcomes. The inclusion of country fixed effects in these models (which control for many of the country characteristics that we cannot observe but that are likely to affect rights behaviors) raises confidence in the contention that the government in question was not simply a "natural" candidate for rights improvements.

These chapters demonstrate in a quantitative empirical study that human rights treaties have positive effects. Chapter 5 shows that a government that has committed itself to the Convention on the Elimination of Discrimination Against Women (CEDAW) is much more likely to improve educational opportunities for girls and reproductive autonomy for women, though the commitment so far has not led to significant improvements in women's access to often coveted public employment. Chapter 6 shows that child labor has been reduced and that governments have changed their military recruitment policies in an effort to comply with the Convention on the Rights of the Child (CRC) and its Optional Protocol on Children in Armed Conflict. These effects tend to be stronger for compulsory than for voluntary conscription, a practice on which the treaty in fact takes a stronger stand. Chapter 7 shows that a commitment to the Convention Against Torture (CAT) lowers the probability that citizens living in all but the most stable democratic or autocratic regimes will be brutally tortured or abused by their own government

[42] Downs, Rocke, and Barsoom, .

while in its custody. These findings are robust to many alternative explanations, which are discussed in detail in these chapters. The statistical findings represent correlations (not strictly causation) between treaty ratification and outcomes. But to the extent that other explanations for observed improvements are controlled in the statistical design, the case for causation becomes stronger.

The emphasis in this book is on broad trends, but it is fair to wonder how treaty commitments work their way into policy change on the ground. As we should fully expect in a heterogeneous set of countries with varying political institutions and cultures, pathways to compliance vary. Each of the empirical chapters on compliance provides an illustration. Austria's change in its military services law illustrates the power of an international treaty to exogenously change a government's policy agenda. The CEDAW has influenced Japanese employment policies, largely through its value in mobilizing women's groups to lobby the legislative branch for more equal treatment. The Convention Against Torture has influenced Israeli interrogation practices because it was in the litigation leading to the famous Supreme Court ruling on interrogation practices. Details obviously differ in each case, but in each the international legal commitment stimulated and or strengthened domestic change in policy and/or practice.

Conclusions are drawn in Chapter 8. It is here that I conclude that international legal arrangements have an important role to play in creating an atmosphere in which human rights are increasingly respected. My conclusions are cautiously optimistic. They are cautious because treaties do not guarantee better rights; rather, they contribute to a political and social milieu in which these rights are more likely, on the whole, to be respected. The theory is probabilistic, not deterministic. Many of the countries examined here obviously have ignored their obligations in a most flagrant manner and will continue to do so regardless of their obligations under international law.

The conclusions are also cautiously optimistic because while this study has considered many alternative explanations, these apparently do not overwhelm the influence of a public promise to one's citizens as well as the international community to abide by specific human rights standards. The rigor of these tests suggests to me a causal relationship, but it is crucial to reiterate that the statistical evidence is, strictly speaking, no more than correlative. At a minimum, with very high confidence we can conclude that the ratification of human rights treaties is associated with improvements in outcomes that many of us care deeply about. It is not true of course that treaties are the most important explanation for rights improvements. Nonetheless, marginal gains in a very tough-to-influence arena under circumstances in which the international community's

arsenal of tools is quite limited are important gains indeed. The study certainly suggests that the development and nurturing of the international legal system is wholly worthwhile for those who want to see improvements in official practices that affect basic human dignity. It suggests as well that private as well as official actors should continue to hold governments accountable for their international legal commitments. The international human rights regime deserves respect as an important way to improve basic human rights globally. What this finding may suggest for policy is discussed more fully in the concluding chapter.

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