Mobilizing *for* Human Rights

INTERNATIONAL LAW IN DOMESTIC POLITICS

Beth A. Simmons

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Mobilizing for Human Rights

This volume argues that international human rights law has made a positive contribution to the realization of human rights in much of the world. Although governments sometimes ratify human rights treaties, gambling that they will experience little pressure to comply with them, this is not typically the case. Focusing on rights stakeholders rather than the United Nations or state pressure, Beth A. Simmons demonstrates through a combination of statistical analyses and case studies that the ratification of treaties leads to better rights practices on average. By several measures, civil and political rights, women's rights, the right not to be tortured in government detention, and children's rights improve, especially in the very large, heterogeneous set of countries that are neither stable autocracies nor stable democracies. Simmons argues that international human rights law should get more practical and rhetorical support from the international community as a supplement to broader efforts to address conflict, development, and democratization.

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Dedicated to Robert O. Keohane – scholar, mentor, friend

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Theories of Commitment

> Why do states give us these whips to flagellate themselves with?
>
> Nigel Rodley, former legal adviser of Amnesty International and [at the time of writing] UN Special Rapporteur on Torture, 1993[1]

The international legal regime negotiated after World War II was the most ambitious effort in history to adopt new international legal standards for human rights. Historical circumstances – flowing from the war and from Nazi and other atrocities – were of such a nature and magnitude that for the first time governments joined in a cooperative effort under United Nations auspices to draft legal agreements to reduce the possibility of such tragedies in the future. Leaders in many parts of the developing world found that the rights framework resonated with self-determination in the project of decolonization. The Cold War encouraged leaders in both the United States and the Soviet Union to champion rights of differing kinds as a way to seize the moral high ground in their global competition for allies and adherents.

But as we have seen, the development of a successful legal regime was hardly a foregone conclusion. Chapter 2 discussed the domestic resistance within the United States to an enforceable rights regime internationally. The Soviet Union had withheld its support from the UDHR in 1948. The British took a decade to ratify the ICCPR, doing so the year it entered into force. The articulation and broad acceptance of a legal approach to international human rights was hardly assured in these years. But by the mid-1960s, governments around the world had to decide how they would engage the new internationalization of legal rights for the individual. They faced the decision of whether to participate in the growing system of treaties and, if so, which agreements they should ratify and with what

1 Clark 2001:4.

kinds of reservations. The legal regime gave each the opportunity to express support for specific rights clusters but also posed the potential risk of raising hopes by making commitments that under future circumstances might be difficult to honor.

This chapter shifts the focus from the historical context that gave rise to the development of the legal regime to each government's decision to ratify a particular treaty text. It raises a question the answer to which is not obvious: Why should a sovereign government explicitly agree to subject its domestic rights practices to the standards and, increasingly, the scrutiny of the rest of the world? Why do governments voluntarily hand over the figurative "whips," to use Nigel Rodley's colorful term, that then might be used by individuals, groups, courts, and peers to criticize their own policies and practices?

While the decision to ratify each of these agreements may be complex, the problem can be usefully simplified by thinking about three categories of governments. First are the *sincere ratifiers*: those that value the content of the treaty and anticipate compliance. Some may want to ratify in order to encourage others to do the same. Second are the group of governments that constitute *false negatives*: those that may be committed in principle but nonetheless fail to ratify. The United States seems rather consistently to provide a conspicuous example. For decades the United States refused to ratify the ICCPR, despite the strong resemblance of the covenant to its own Bill of Rights. The United States still has not ratified the CEDAW or the CRC, despite reasonably good protections for women and children's rights in domestic law. Governments may very well support the values a treaty represents but face daunting political and institutional challenges at home that make it difficult to secure ratification. Such barriers can influence the ratification decision by raising the political costs of ratifying, even for governments generally supportive of a treaty's purposes.

Finally, a number of governments are *strategic ratifiers*. They ratify because other countries are doing so, and they would prefer to avoid criticism. These governments trade off the short-term certainty of positive ratification benefits against the long-run and uncertain risk that they may face compliance costs in the future. They may ratify for relatively immediate diplomatic rewards, to avoid criticism, or to ingratiate themselves with domestic groups or international audiences. This strategy involves risks, since governments have only limited information about the future consequences of ratification and are likely to discount costs realized in the future. Moreover, assuming for a moment that any of these audiences cares more about rights than ratifications, strategic ratification makes sense only in contexts in which the likelihood that a government's commitment will be exposed as strategic is low. When the strategic nature of a commitment is exposed, it is likely to undermine any possibility for producing benefits. Governments with low time horizons may at times exploit the delay involved in exposing their strategic behavior in order to enjoy immediate benefits of ratification; they may also miscalculate the probability

that their insincerity will be exposed or that their commitments will be enforced. When information is poor, for example, we should expect many more *false positives* – meaningless commitments – than when information about behavior and likely consequences is more abundant. As we will see, "emulation" of ratification behavior is in fact most likely to be strongest in regions where actual rights convergence is low and information is thin, suggesting a strategic decision to follow the decisions of peer governments. However, one consequence of the accountability revolution discussed in Chapter 2 is that strategic ratifications should be on the decline.

This chapter explains variance in the embrace of human rights treaties – across countries and over time – as a function of government preferences, domestic governing institutions, and varying incentives for some governments to ratify strategically. Like others, I argue that for democratic governments, human rights conventions are hardly problematic. But how can we advance and test propositions about the outliers, the false negatives and false positives? It is essential to theorize the domestic institutions in which these commitments are to be embedded, as well as identifying the conditions under which governments might expect few compliance pressures or miscalculate or discount the future compliance pressures they are likely to encounter. In short, ratification decisions reveal governments' best guess about the political and legal costs and consequences of explicit commitment to the international human rights regime.

WHY COMMIT? THE COMMON WISDOM

There are many ways to think about the influences on governments' commitments to international human rights treaties. One is to think of a treaty commitment as a low-cost opportunity to express support for a cooperative international endeavor. In this view, international legal arrangements are weak, enforcement is unlikely, and costs of noncompliance are low. Why *not* ratify and gain some praise from the international community for doing so? Oona Hathaway has proposed that governments ratify treaties because this allows a costless expression of support for the principles they contain. Those that ratify reap "expressive" benefits, that is, "rewards 'for positions rather than for effects'."[2] Because human rights agreements are not effectively monitored, the expressive benefits that countries gain from the act of joining the treaty will be enjoyed to some extent by all those who join, "regardless of whether they actually comply with the treaty's requirements."[3] The act of ratification, in this view, is driven by the potential benefits of signing an agreement that contains lofty principles but goes unmonitored. Proponents of this view expect

2 Hathaway 2002:2007.
3 Hathaway 2002:2006.

widespread ratification of these treaties, but with little impact on subsequent human rights behavior.[4]

Are such "expressive" benefits substantial? Are there really "rewards" for mere ratification? The logic of this position raises some questions. It is difficult to see how governments can enjoy much benefit from making obviously disingenuous expressions through treaty ratification. Such rewards might be a plausible explanation for ratification if no one cares about follow-up, but they are a poor fit for a world in which citizens, other governments, and assorted transnational advocacy groups value actual practices over mere ratification and have reasonably good information on the former. Moreover, expressive support does not occur in a political vacuum. It triggers political consequences by raising the consciousness of potential stakeholders and giving them a salient moral and legal claim on the realization of that right. In the absence of any intention of following through, the risks of such position-taking – the demands and expectations it is likely to stimulate – are likely to equal or perhaps even to exceed what can only be short-term benefits. It is possible that governments miscalculate the extent to which they will end up being held accountable (a possibility discussed later), but they run the risk of a political backlash in response to blatant inconsistency.[5]

Were treaty ratification universally costless (or even profitable?), the ratification of human rights accords would be immediate and universal. But this is patently not the case.[6] Figure 3.1 shows that ratification of these treaties has been quite gradual.

It took 10 years for the requisite 35 countries to ratify the ICCPR to bring it into force, and 35 years later, accession is still not universal. Support for the CERD was initially swift but then tapered off drastically toward the end of the decolonization period. The CAT has gleaned the fewest adherents of the treaties considered in this study. Slightly over half of the countries in the world have ratified it over the past 20 years.[7] With the possible exception of the CRC (which has weak enforcement provisions and many aspirational obligations), not all governments are in a rush to express even symbolic support for the six core human rights treaties.

Moreover, while these six core conventions are universal in principle, there are clearly important regional differences in governments' willingness to ratify

4 Some versions of this argument even claim that the ratification of human rights treaties worsens behavior. For example, Emilie Hafner-Burton and Kiyoteru Tsutsui have argued that "governments, armed with growing information that commitment to the regime would not lead to serious enforcement but would grant them legitimacy in the eyes of other states, were now free to hide domestic human rights practices behind the veil of international law" (2005:1384).

5 For a clear critique of this theoretical approach, see Goodman and Jinks 2003.

6 The United States, for example, is strongly criticized by NGOs as a laggard with respect to international human rights treaty ratification (Roth 2000).

7 For a detailed look at the Kaplan–Meier survival functions for ratification of each treaty, see Appendix 3.1 on the author's Web site.

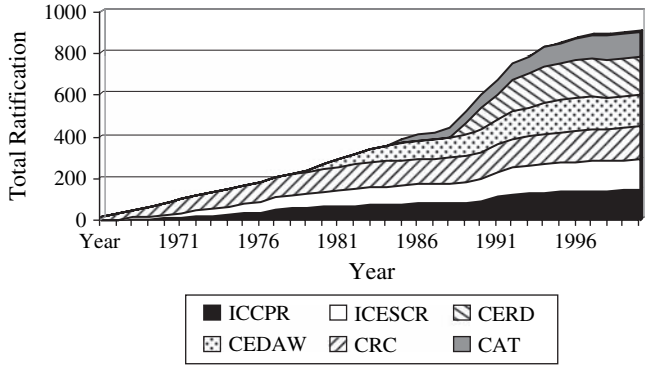


Figure 3.1. Cumulative Human Rights Treaty Ratifications.

them. Figure 3.2 shows that the European countries were, as of 2000, by far the most likely to commit to all six of these treaties. Figure 3.3 shows, additionally, that in the case of the ICCPR, for example, Europe (Eastern and Western) is the region most profoundly committed to this treaty, as indicated by a much greater tendency to accept optional obligations that give the treaty more potential enforceability. Governments in East Asia and the Pacific region are least enthusiastic about signing human rights treaties.[8] By 2000, states in that region were committed, on average, to only three of the six conventions. They have been especially reluctant to ratify the ICCPR and the CAT. Nor are optional ICCPR obligations typically taken on by eastern and southern African, Central Asian, or Middle Eastern governments. If treaty ratification is basically costless, what explains the variation in ratification across treaties, over time, and across regions of the world?

Treaties carry normative significance that it would seem should be an important part of the explanation of this variance. Treaty ratification may well reflect varied and changing notions of appropriate governmental behavior that may find its strongest expression among European states but that has had strong influences on much – though not all – of the world. Ratification patterns may be explained not by the calculating logic of rewards, but the normative logic of appropriateness. Sociologists have developed the concept of "world culture" to capture the idea that values, norms, and ideas of what constitutes proper behavior of a modern state diffuse in varying degrees globally. One way to interpret patterns of treaty ratification is to situate states in a global macrosociological context and view ratification as one instantiation of a diffusing logic of appropriateness that leads states to

8 Asia is the only region in the world that does not have a regional intergovernmental human rights regime (Muntarbhorn 1998:413).

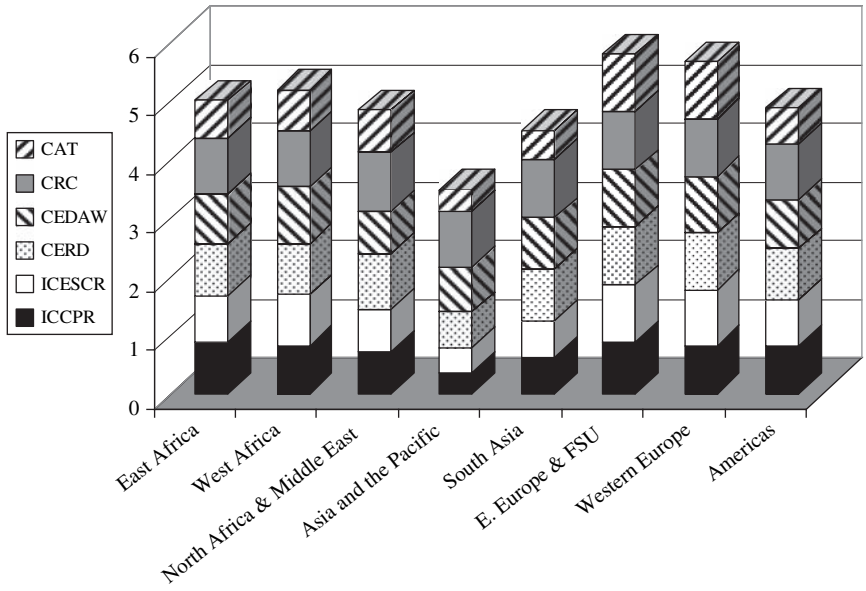


Figure 3.2. Average Ratification Rates (2004) by Region.

want to present themselves to the broader international community and to their own citizens as entities that affirm the basic rights of individuals. Ratification in this context can be thought of as an act of emulation in which states "enact" the values of a broader Western progressive culture in an effort to identify themselves formally as members in good standing of the modern society of states.[9] In the case of human rights treaty ratification, these standards of good standing are transmitted via international conferences, organizations, and the signals sent by the ratifications of peers.[10] Treaty ratification is one way to enact the "script" of modernity in this view.[11] The ratification of international human rights agreements may be a function of various socialization opportunities that in turn depend on the extent to which the nation-state is embedded in the structures of international society. This could explain why Europe is more staunchly committed to these treaties than are other regions of the world.

But if the diffusion of world culture explains ratification, we are faced with further ambiguities. What do we make of the ratification itself? Is it anything

9 On the idea that nation-states are influenced by world models of progress and justice set forth as universalistic scripts for authentic nation-statehood, see Anderson 1991; Meyer et al. 1997.
10 Berkovitch 1999; Boli and Thomas 1999.
11 Wotipka and Ramirez 2008.

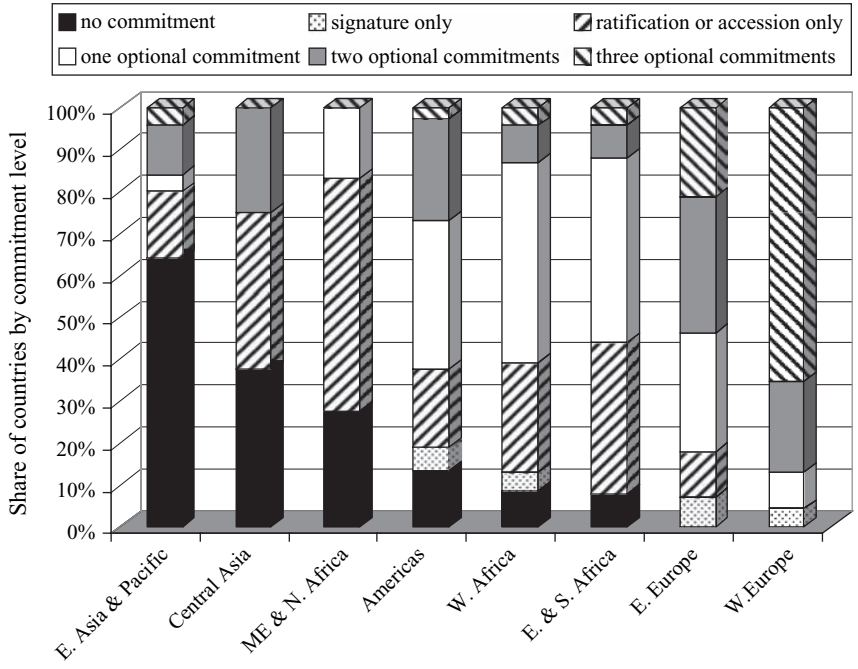


Figure 3.3. Depth of Commitment to the ICCPR (2004) by Region. United Nations General Assembly Resolution 2200A [XXI], 16 December 1966.
Optional commitments include:

- ratification of OP I, recognizing "the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a party to the present Protocol. . . ."
- ratification of OP II to the ICCPR, aiming at the abolition of the death penalty. (Adopted by General Assembly resolution 44/128 of 15 December 1989.)
- Article 41 declaration recognizing "the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. . . ."

more than "isomorphism" – the adoption of superficially similar formal policies or structures among states? Alternatively, does it signal norm internalization that can be expected to influence more deeply ingrained behaviors and actual practices? Framing ratification with the concept of world culture implies formal

convergence but a gradual unhinging of local practices from outward emulative displays. The risk is that we lose sight of how the global idea of rights interacts with very specific domestic political and social contexts to create expectations and demands with which leaders will eventually have to contend. No doubt brushing up against international society has some influence on governments' decision to ratify human rights treaties (treaty ratification is, after all, an aspect of a country's *foreign* affairs), but this approach privileges the global in ways that may not be fully justified. The mere availability of externally validated scripts does not provide much guidance as to why some governments find world culture alluring while others simply do not. Local cultures have in some cases resisted global trends fairly vigorously, yet this approach emphasizes the homogenizing influence, over time, of displays informed by dominant Western values.

A THEORY OF RATIONALLY EXPRESSIVE RATIFICATION

Building on these insights, one way to think about the ratification of human rights treaties is that such behavior is *rationally expressive*. Governments are more likely to ratify rights treaties they believe in and with which they can comply at a reasonable cost than those they oppose or find threatening. But ratification does not in practice always match a government's true devotion to rights. Some governments commit even if they are ambivalent to the treaty contents if they believe that the risk of facing compliance pressures is low enough. A few delay or withhold ratification of treaties they support in principle because domestic institutions create ratification costs. In most cases, though, governments sign treaties that they are willing to implement and ultimately comply with.[12] In short, treaty ratification is rationally expressive: It reflects a government's preferences and practices, subject to the potential net costs that ratification is expected to involve.

Government Preferences and Practices

One of the primary reasons governments commit themselves and their state institutions to international human rights treaties is that they genuinely support the content of those treaties. After all, governments are the principals that participate in the treaty-making process itself. Despite the influence of NGOs documented in Chapter 2, governments are likely to create legal institutions that

12 Of course, this preference-based selection process in the treaty regime will make it more difficult to infer a *causal* influence on compliance to the treaty commitment itself: It leaves our model potentially open to the criticism that parties to the treaty already tend to be good compliers, making it difficult to show what the treaty commitment adds on the margin. These methodological issues will be discussed in greater detail in the empirical chapters.

they can, in the end, accept.[13] A single text is open for signature, despite any remaining differences over its contents, and governments have to decide whether to put their political capital on the line by seeking national ratification.

The willingness to do so will largely reflect the values and practices of each individual government.[14] Treaty content will be quite close to the preferences of some governments (and the polities they govern), and highly threatening to others. It therefore should not be surprising that many states ratify fairly readily: They participated in the negotiation process and on the whole favor the treaty's contents. It makes sense, then, to assume that treaty commitments are not completely disingenuous: *Most* governments ratify treaties because they support them and anticipate that they will be able and willing to comply with them under most circumstances. To use the language of spatial models, *the nearer the treaty is to a government's ideal point, the more likely that government is to commit*. The reason is simple: The closer the contents of the treaty are to a government's ideal point, the smaller the required policy adjustments are likely to be.

Some straightforward expectations follow. Other factors being equal, we would expect governments with a deep historic commitment to democratic governance to be among the earliest ratifiers of human rights agreements. After all, these treaties to a great extent reflect the values of civil and political liberties, equality of opportunity, and individual rights upon which these systems are largely based. We might also expect that governments heading newly democratized systems would have a strong preference for international human rights treaties as a possible way to complement the domestic rule of law and "lock in" democratic gains, individual rights, and limited government. Andrew Moravcsik has noted that for the case of Europe, current governments may use rights treaties to constrain future governments.[15] Ratification will be resisted by authoritarian regimes that oppose the contents of the treaties.

Some of the strongest influences on a government's ideal conception of human rights and their place in modern society are cultural. The willingness to use law as a means to empower the individual vis-à-vis the government or society has roots in the Western European Enlightenment[16] and, we can

13 Chayes and Chayes (1993, 1995) stress the role that persuasion plays in the treaty-negotiating process, arguing that "jawboning" in the early phases of treaty development can have a positive impact on creating a consensus on the contents of the accord.

14 Cortell and Davis (1996) refer to the "domestic salience" of a particular norm as explaining its acceptance.

15 Moravcsik 2000.

16 Obviously, the linking of human rights to "European Enlightenment" is a gross simplification that has been exposed in several recent studies, including that of Muthu (2003), who notes that some ideas, such as opposition to European imperialism, for example, were absent from pre–eighteenth-century political thinking, bloomed during the eighteenth century among such philosophical giants as Diderot, Kant, and Herder, and then died out again in the nineteenth century. Muthu's work warns against the simplicity of linking the development of theories of human rights in a linear fashion to European Enlightenment thinking.

hypothesize, resonates most clearly and deeply within that cultural context. Modern international law itself has its roots in regulating rulers united by Christendom; moreover, according to Kung and Moltman, while the values contained in human rights treaties "are not exclusively Christian or European . . . it was during the era of the Western Enlightenment that the formulations of human rights made their way into North American and European Constitutions, and it is through these constitutions that human rights have acquired world-wide recognition today."[17] If any governments find international human rights treaties palatable restrictions on their sovereignty, one would expect it to be those closely characterized by or linked to Western cultural mores and practices. This is not to suggest, of course, that Western Christendom has a lock on wisdom and moral insight into human rights issues. After all, as Leonard Swidler notes, it took Christians 1,800 years to come to the conclusion that slavery was not a natural situation for some humans.[18] It must be acknowledged that most of the major world religions have an understanding of the value of the individual as an expression of the Divine.[19]

The point about cultural proximity can perhaps best be made in its complementary form. From a range of non-Western perspectives, human rights may have different meanings and international law as a regulatory form is presumptively hegemonic.[20] One of the central debates in the philosophical literature on rights problematizes their content[21] and offers alternative cultural conceptions on the relative balance of rights and responsibilities, public and private spheres, and social versus individual perspectives. The critique of human rights treaties has come from many cultural quarters.[22] Most broadly, some scholars argue that

17 Küng and Moltmann 1990:120.

18 Swidler 1990.

19 "Most of the world's major religions – Judaism, Christianity, Islam, Hinduism, Buddhism, etc. – support in some form the idea that each human person, as the creation of some Divinity, has worth and value, and accordingly should be treated with a measure of dignity and respect" (Orend 2002:191); also see Robertson and Merrills 1993. Similarly, "There are traditions, including religious ones, in all nations which can be supportive of the acceptance of human rights ideas" (Mullerson 1997:77).

20 Brian Orend (2002:192) notes that Judeo-Christian traditions inscribe religious duties in a written, lawlike form, possibly making these religious traditions more acceptant of highly legalized forms of specifying appropriate human conduct.

21 There is a huge literature centered on the universality versus the cultural specificity of human rights. For arguments sympathetic to universality, see Booth and Trood 1999; Weston 1999. For arguments sympathetic to cultural sensitivity, see Ibhawoh 2000; Renteln 1990. For a moderate view, see the discussion in Donnelly 1998.

22 Individual rights have never resonated in many Asian cultures as they have in the West (Cook 1993). Scholars of Confucianism emphasize equitable social relations over individual rights. See the essays by Rosemont, DeBary, and Ames in Rouner 1988. Hindu scholars emphasize that rights exist in a context of duty that structures daily social interchanges; see the essay by Carmen in Rouner 1988. Buddhist scholars describe a philosophy of egoless "self-emptying" that is at odds in some ways with Western rights conceptions. See the essay by Unno in Rouner 1988. There is a large literature devoted to the distinctiveness of Islamic conceptions of human rights based on religious law (Shari'a) (Tibi 1994; Yamani 2000).

international human rights law reflects Western biases that are rightfully resisted in much of the non-Western world.[23] My point is not to stake a position on the general status of international human rights as "universal"[24] but simply to note that cultural propinquity to the values expressed in these treaties is one reason for their ready acceptance. The closer the contents of the treaty are to the ideals of the country in question, the easier it is for a political coalition to form and to persuade the government to ratify.

Finally, no matter a nation's history or its culture, preferences over rights can fluctuate over time. The long history of civil, political, and economic rights is reflected in the decades of struggle among the privileged few, the emerging bourgeoisie, and the working class. In recent times, preferences over rights have been reflected in changing political coalitions that differentially balance order versus dissent, property rights versus consumption rights, or ethnic/social privileges versus nondiscrimination and equality. When a country's governing coalition leans toward the rights that a specific treaty contains, it is much more likely to ratify. Ratification may well reflect a window of opportunity when a rights-based coalition comes to power and chooses to ratify in order to appeal to its broad coalitional base.

FALSE NEGATIVES AND FALSE POSITIVES

That liberal Western democracies support international human rights treaties is hardly news. The real puzzle is why some governments protect rights but eschew treaties, while others sign on with apparently little intention of complying. It is easy to think of cases in which governments that are generally sympathetic delay or even avoid ratifying a treaty. The United States, for example, has not ratified the CEDAW, despite having a fairly strong record of protecting the rights of women in domestic law. It is even easier to think of cases in which governments have committed their states to treaties that they show no signs of valuing. Burundi, Uzbekistan, and Cambodia have signed and ratified all six of the core treaties featured in this study, but we do not think of them as paragons of respect for human dignity. Why these anomalies?

Why Do Rights-Respecting Governments Refrain from Ratification?

The main domestic reason for making a treaty commitment is the expectation that it will be possible to comply at a reasonable cost. But broad value orientations are not the entire story. Governments face potential political costs whenever they attempt to integrate an external treaty arrangement – especially one

23 Mutua 2000.
24 See chapters 1 and 2 in Ishay 2004.

that potentially empowers their citizens against the state – into the domestic legal system. Ratification has implications for the *national* system of rules, customs, judicial decisions, and statutes. Unlike nonbinding political agreements, treaties may eventually be relevant to judicial outcomes in the countries that formally accept them. Admittedly, this is likely to be true only in countries in which the rule of law is generally taken seriously; nonetheless, for a large number of countries, it is essential to think through the implications of an international legal obligation for domestic law. In this section, I consider three kinds of legal integration costs: those stemming from executive–legislative relations, those stemming from the nature of the legal system, and those resulting from power-sharing in federal systems.

1. *Ratification Hurdles: Legislative Veto Players*

The first cost a government faces is the political one of domestic ratification. Treaties are not binding internationally,[25] nor are they a justiciable part of domestic law until they are ratified through whatever processes are locally legal and legitimate. These processes are a part of national law or custom,[26] and they vary in their stringency across countries. Ratification hurdles can be thought of as lying along a spectrum from least to most onerous. Governments face the fewest political costs when they closely control the ratification process. At the extreme, for example, ratification may be an executive prerogative in which the government or head of state has the sole right to negotiate *and to ratify* any treaty arrangement. Such a procedure provides practically no check on the executive; ratification follows virtually automatically from the signing of the text. Somewhat more constraining on the executive are rules (sometimes customs) that provide for parliamentary debate but no formal vote on the part of the legislative body. More constraining, and by far the most typical arrangement, is the need for a simple majority vote in a unicameral legislature. Bicameral approval and supermajorities are higher hurdles still.

The nature of the domestic ratification rules should impact the celerity, the intensity, and even the possibility of a treaty commitment. Higher hurdles pose the problem of more legislative veto players, which in turn raises the possibility that the government's externally negotiated agreement runs into domestic opposition. More significant legislative veto players may draw out the process of

25 However, according to the Vienna Convention on treaties, "A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when: (a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty . . ." (Article 18(a). http://fletcher.tufts.edu/multi/texts/BH538.txt) (accessed 11 August 2008).

26 Ratification processes are usually spelled out in a country's constitution. In some cases, customs surrounding the ratification processes have developed outside of the constitutional context. The "Ponsonby Rules" practiced in several Westminster systems are an example. See Appendix 3.2 on my Web site. Note also that ratification is not a sufficient condition for domestic enforceability, as the subsequent discussion of monist and dualist systems indicates.

domestic persuasion; their anticipated opposition can deter a government from submitting a treaty to ratification at all. Multiple veto players, as in the case of supermajorities or bicameral majority approval, can narrow the set of proposals that can be domestically ratified. Divided governments in presidential systems may have the same effect. In a bilateral negotiation, high domestic hurdles might strengthen the more constrained negotiator's hand in bargaining,[27] but in a multilateral setting, even the largest players will have difficulty wielding the threat of a ratification veto to much effect. Thus, we would expect that the higher the ratification hurdle, the less likely a government will be to ratify an international human rights agreement, even if it is sympathetic to its contents.

2. *Federal Political Systems: Subnational Players*

A federation is "a compound polity combining constituent units and a general government, each possessing powers delegated to it by the people through a constitution, each empowered to deal directly with the citizens in the exercise of a significant portion of its legislative, administrative, and taxing powers, and each directly elected by its citizens."[28] Highly federal governing structures tend to delay and sometimes to prevent international human rights treaty commitments because of the political costs associated with satisfying a larger number of quasi-veto players. Whether or not state or provincial representatives get a direct vote, as they do in the U.S. Senate, powerful local governments can create resistance that most central governments will have to take into account.

Treaty ratification raises political controversies in many federal polities. Political friction is likely to arise when treaties signed and negotiated by the national government encroach on the authority of the subnational unit. Many international regimes raise such concerns,[29] but none quite as intensely as do human rights agreements, which deal with the relationship of the individual to local political authority, the administration of justice, and discriminatory practices. Subnational governments can be expected to resist the encroachment on their prerogatives that a treaty implies. The death penalty, explicitly banned in the first optional protocol of the ICCPR,[30] has traditionally been left to the individual states of the United States.[31] Many subnational units have authority over

27 See, for example, the discussion in Milner 1997.

28 Watts 1998:121.

29 See, for example, the *Tasmanian Dam* case, involving federal intervention in traditionally local environmental and land use regulation in Australia. In 1983 the Australian High Court ruled that the federal government could intervene in this area because of its commitment to protect "World Heritge Sites" under international law; see Bzdera 1993.

30 On the "ban" of the death penalty in international law generally, see Schabas 2002.

31 The important U.S. Supreme Court ruling that invalidated the death penalty *as administered* in 40 states was *Furman v. Georgia*, 408 U.S. 238. This was really a series of cases challenging the death penalty in Georgia and Texas. For a brief history, see Zimring 2003.

educational and cultural issues, which are also central to obligations contained in the CERD and the CEDAW.[32] Switzerland, for example, made three reservations to the ICCPR, deferring to cantonal law.[33] Almost by definition, international human rights agreements that rest on universalistic principles are likely to come into tension with cultural specificities that federal systems are often designed to protect.[34] International human rights treaties can contain a range of proscriptions and prescriptions that are often within the competence of subnational governments in highly federal systems.

In some countries, federal political structures operate as a de facto ratification hurdle. The U.S. Senate, as a chamber representing states' interests, has functioned this way, as the effort to ratify the Genocide Convention illustrates (Chapter 2). Some central governments in federal systems have adopted customs or formal procedures to consult with provincial or state governments prior to submitting the treaty for ratification.[35] In 1996, in the face of local concerns that the federal government's treaty-making power would encroach on the authority of the provinces, Australia instituted new preratification procedures designed specifically to increase provincial input into the commitment decision.[36] Local governments have strong motives to insist on input at the preratification stage, for they tend to be much less successful at clawing back their authority in post-ratification litigation. The *Toonen* case,[37] in which the UN Human Rights Committee held that a local Tasmanian law outlawing consensual sexual relations between men was a violation of the ICCPR, was a wakeup call to the Australian provinces of the implications of international treaties. Nor is litigation in national courts sure to protect the rights of subnational governments when international treaties intrude into their areas of competency.[38] Studies suggest that federal courts tend to be nationalist rather than

32 Rights to maternity benefits, for example, vary across Australian provinces. See Australia's reservation to the CEDAW: http://www.unhchr.ch/tbs/doc.nsf/Statusfrset?OpenFrameSet (accessed 11 August 2008).

33 See http://www.unhchr.ch/html/menu3/b/treaty5_asp.htm (accessed 11 August 2008).

34 Carozza 2003.

35 For a comparative discussion of how the United States, Canada, Australia, and Switzerland have dealt with federal problems involved in international agreements, see Hendry 1955.

36 Emery 2005; Gelber 2001.

37 *Toonen v. Australia* (1994) was only the second homosexual rights case ever taken by an individual to the Human Rights Committee (a case from Finland was the first), and the first to be successful. Toonen argued that the ban on same-sex male acts in the Tasmanian Criminal Code violated his right to privacy and equality under the ICCPR (Articles 17 and 26). See Gelber 1999. It is notable that in this case the Australian government attached a brief on the side of the petitioner, with the attached Tasmanian government brief on the other side.

38 Francisco Martin (2001:249) notes in the conclusion of his exhaustive study of legal cases involving treaties in the United States that "State officials have no authority to ignore the U.S.'s treaty and customary international law obligations. . . . Unless they carefully follow international law developments, state authorities may well be facing enormous liabilities for violations of international law."

neutral in federal–provincial disputes,[39] which increases the motive for state and provincial political leaders to resist international treaties unless they are accompanied by clear understandings about the way they will affect subnational autonomy.

The result of these federal–state/federal–provincial struggles is to slow and sometimes even to deter ratification of human rights accords, even by central governments that in principle support the purposes of the treaty. By the mid-1990s, for example, only five countries had not ratified the CRC; of these, two were Western industrialized countries, and both were highly federal (the United States and Switzerland[40]). In many federal countries, the legal issues are getting sorted out[41] but the political issues remain and are reflected in an inordinate number of false negatives among the more highly federal political systems.

3. *Ex Post Legal Integration Costs: Judicial Institutions*

Finally, the incentives to ratify an international human rights treaty can vary across countries due to the nature of the local legal system. Treaty commitments have the status of law in most countries. So, it is important to understand what costs the legal system itself may generate for a government putting forward an international accord for domestic ratification. To the extent that ratification creates political resistance from the bar or the bench, or to the extent that governments cannot easily predict (or reverse) the outcome of judicial decisions involving a treaty commitment, governments should be very conservative in ratifying international agreements, even if they are generally sympathetic to their contents.

In this section, I argue that common law systems provide incentives for governments to go slow when it comes to treaty ratification, especially in the human rights area. Most of these costs flow from two features of common law systems: the emphasis they place on judge-made law through precedents and the power and independence from government of the judiciary. The existence of these costs is one reason why common law systems tend toward legal dualism: Not only is there a preference for involving the legislative branch in laws that affect citizens (through implementing legislation); there is also a preference to

39 Subnational governments can expect to be disadvantaged by what Bzdera refers to as the "nationalist" orientation of federal courts that are likely to rule on such issues. One reason this is true, he argues, is the way federal judges are appointed. See his study of eight federal systems: those of the United States, Canada, Germany, Belgium, Italy, Australia, Switzerland, and the EU (Bzdera 1993). For the U.S. case, see also ". . . the decisive interests of national uniformity which arise in the context of formal treaty obligations . . . mandate a different, and ultimately more accommodating, calculus for the interstitial lawmaking powers of federal courts within the scope of self-executing treaties" (Van Alstine 2004:Abstract).

40 Switzerland ratified in 1997. See http://www2.ohchr.org/english/bodies/ratification/11.htm (accessed 11 August 2008).

41 Swaine 2003.

shield local law from externally negotiated political agreements that are not likely to be a good match with organically grown precedent.

ADJUSTMENT COSTS. The first reason common law systems tend to take a cautious approach to international legal obligations is that treaties involve greater adjustment costs than is the case in civil law systems. Treaties are external political "deals" that challenge the very concept of organic, bottom-up local law designed to solve specific social problems as they present themselves. They are the philosophical and cultural antithesis of judge-made, socially adaptive, locally appropriate *precedent*.[42] The core quality of common law reasoning is its essentially evolutionary rather than revolutionary nature.[43] Treaties are more of a foreign substance in a common law system that values rules that evolve gradually from local problems and local judge-made solutions. Civil law systems are built on the civil code, a natural national analogy to the international "code," or treaty. Due to the legal culture these systems imply, treaties should meet with much greater resistance in common law than civil law systems.

The adjustments that treaty ratification implies in a common law setting are of two kinds. The first is merely perceptual. It involves the cognitive and emotional recognition that a code of largely external genesis has a rightful place among the legal concepts in a system that is largely local, organic, and experiential. To put it bluntly, integrating a treaty into a common law system requires more attitude adjustment than it does in the code-based civil law setting. Integrating a treaty into a common law system also requires greater adjustment to the prevailing mode of legal reasoning. Common law legal reasoning is *inductive*; it moves from the specific case to the general rule. Civil law legal reasoning is *deductive*; it involves the application of abstract principles to specific cases. Treaties – statements of general principles – are obviously much more in accordance with the prevailing form of legal reasoning in civil law settings than common law settings. An attachment to inductive legal reasoning can contribute to resistance in common law settings to the ratification of abstract treaty principles.

The second type of adjustment cost is tangible, and it is paid largely by the common law bar and bench. Common law judges and lawyers, relative to their civil law counterparts, have developed very specific assets in the interpretation

42 On the importance of precedent in a common law system, see Cappalli 1997; Darbyshire et al. 2001; Opolot 1981. Every primer in comparative law highlights this distinction between civil and common law systems, though there is disagreement over its significance. Glendon, Osakwe, and Gordon (1982), for example, note that civil law countries use precedent, too; it is more a matter of emphasis. See also Bogdan 1994. In an empirical study, La Porta et al. (2000:15) found that "... case law is a source of law in all [English legal origin] countries but . . . [French legal origin] countries occupy an intermediate position: case law is a source of law in 28.1% of th[ose] countries (many of them are Latin American countries which modeled their constitutions after the U.S. one." Some scholars trace the distinction to differences in the two systems between the role of the judge and of the legislature; in civil law systems, they argue, there is a strong assumption that the legislative body makes the law and the judges apply it (Tetley 1999/2000).

43 Zweigert and Kötz 1987.

of their common law precedents.[44] The civil law, on the other hand, tends to be more transparent, easier to research, easier to change, and more accessible than the more complicated system of precedents built up under a common law system; for this reason, practitioners in civil law systems tend to be generalists rather than specialists.[45] Actors with highly specific legal skills grounded in extant precedent are likely to resist the imposition of externally formulated rules on the local system of rules. The investment of legal actors in common law systems is likely to make them much more conservative with respect to treaty ratification than their civil law counterparts. Without their active support, and quite possibly because of their opposition, governments may decide that ratification is not worthwhile.

UNCERTAINTY COSTS. From a government's point of view, incorporating an international human rights treaty into a common law legal system creates more uncertainty than is the case in a civil law system. The greater certainty in the civil law system flows from the more constrained role of the judiciary in rule interpretation.[46] The strong presumption in a civil law setting is that judges are constrained to interpret rules narrowly and are barred from basing their decisions on expansive interpretations that border on legislation.[47] Moreover, judges in civil law systems tend to be educated in government civil service institutions, reinforcing their narrow legal discretion and reducing their independence from executive influence.[48] In the civil law system, the judge is a (relatively) low-status civil servant without independent authority to create legal rules.[49] This narrow conception of the judge's role is especially strong in France, but it is broadly characteristic of a civil law approach to judicial power.[50]

The relative independence and power of judges in the common law setting are accompanied by a much broader interpretive role.[51] As a result, the government in a common law setting faces a wider range of possible treaty effects; a

44 Cappalli 1998.

45 Adriaansen 1998; David and Brierley 1978. Glendon, Osakwe, and Gordon (1982:32) claim that "The *Code civil des francais* was meant to be read and understood by the citizen."

46 Mirow (2000) argues, for example, that civil law has historically been used to centralize in Latin America, creating greater governmental judicial dependence.

47 In the civil law tradition, the legislated code controls judicial action, which was initially conceived as mechanistic application of law to fact (Tunc 1976). The French Civil Code is explicit that judges are forbidden to lay down general and regulatory rules, and with only a few exceptions it has its equivalent in all the law of the Romano–Germanic family (David and Brierley 1978). Continental civil law systems hold in common the underlying principle that the judge should not play the role of legislator.

48 This tradition of a judiciary narrowly focused on law application is reinforced by the way judges are trained and appointed in most civil law systems (David and Brierley 1978).

49 Mahoney 2001.

50 See, respectively, Glendon et al. 1982; David and Brierley 1978.

51 Some scholars have argued that the presence of interest groups that attempt to influence judicial decision making is an endogenous consequence of such judicial independence (Landes and Posner 1975).

greater range of interpretative possibilities from a highly independent judiciary makes it more difficult to know ex ante how any particular treaty will be interpreted. True, common law judges are bound by precedent, but importing an external obligation raises questions of interpretation that a government can less easily predict in a common law setting.[52] Add to this the greater independence and prestige of the judiciary in a common law system, and it is clearly possible that governments may balk at committing to new rights obligations the consequences of which are less predictable. The fact that governments in common law settings are much more likely to require extensive compatibility studies to ascertain the degree of concordance between the treaty obligation and the local body of (largely case-based) law[53] is a manifestation of this much greater preratification uncertainty.

A concrete example straight from the pen of a government official in a common law country helps to illustrate these points, particularly the problem of ex ante uncertainty regarding treaty interpretation. In 1992, Michael Duffy, Australia's attorney general, tried to explain to a (generally) pro-rights national audience why the Australian government had taken such a long time to ratify the ICCPR. One of the government's key concerns reflects the uncertainty costs discussed previously. Referring to the broad interpretive power of Australian courts, Duffy noted that "Some of their decisions have appeared to give very broad and generous meaning to some of the expressions and to adopt interpretations which the government itself may not consider appropriate. Faced with this position, the government has recently announced that it will legislate to provide guidance as to the meaning of certain of the convention terms [referring in this case to refugee conventions] such as 'well founded fear' and 'persecution.'" Betraying the government's uncertainty over how Australian courts might interpret such treaties, he noted that "The government considers it important that it retain some control of the meaning that is to be given to its international obligations in this area."[54] Referring to the problem of treaty interpretation in Australia courts, Duffy declared, "... it is important that governments assume burdens that are known."[55] "[G]overnments will feel increasing disenchantment with International Law," the Australian attorney general concluded, "if they feel their

52 Because the consequences of legislative change are less easy to predict, David and Brierly view common law systems as inherently more conservative: "In [common law] countries where the law is judicially created, there is sometimes hesitation about abolishing or changing a rule because the consequences in relation to the whole of the law are not clear. In countries of the Romano–Germanic system, such reforms are more easily accepted because it is more evident which rules will be affected and which unchanged" (1978:93).

53 Heyns and Viljoen 2001:497.

54 Duffy 1992:18.

55 Duffy 1992:21.

consent to particular obligations is then being used by . . . courts . . . to seek to impose different unforeseen burdens.''[56]

In short, governments in common law legal systems face a much greater ex ante dispersion of possible treaty interpretations than is the case in a civil law system; by comparison, the dispersion of possible interpretations will be more ''spiked,'' or closely clustered, in a civil law system, as illustrated in Figure 3.4. The power of the judiciary to interpret the nature of the rights obligation generates uncertainty for governments in common law systems and may create incentives to resist or delay and add reservations at the time of treaty ratification.

IRREVERSIBILITY COSTS. Finally, civil and common law systems differ systematically with respect to rule irreversibility and enforceability. Several structural features of the common law system tend to make it more difficult than in a civil law system for the government to escape the obligations in domestic law that the treaty envisions. First is the greater structural independence of the judiciary in most common law systems, where judges tend to be independent policymakers occupying high-status offices. Second is the competence of courts to review administrative actions and to hold governments accountable for their infractions of constitutional or treaty-based human rights, making it harder to go back on a commitment. Third is the role of precedent, which creates a way for treaties to make a deeper footprint in local jurisprudence than is the case in code-based legal systems.

Compared to common law systems, courts in civil law systems are much less able systematically to check government actions and policies. Mahoney writes, ''The fundamental structural distinction between the common law and civil law lies in the judiciary's greater power to act as a check on executive and legislative action in a common-law system.''[57] In some civil law systems, ordinary courts typically have no power to review government action. France's administrative courts do have this power, but these courts are closely supervised by the executive branch of government.[58] The courts in civil law systems tend to display a much weaker tendency to review the constitutionality of government policies and to intrude in the administration's ''pursuit of the public interest.''[59]

56 Duffy 1992:21.

57 Mahoney 2001:507.

58 Mahoney notes that administrative court judges ''are trained at the administrative schools alongside the future civil servants whose decisions they will oversee'' (2001:512).

59 Mahoney 2001:512. Other scholars note the relatively weak ability of courts in civil law systems to review the constitutionality of policies taken by their governments (Glendon et al. 1982:59): ''. . . in France . . . courts are not competent to sanction violations of individual constitutional rights. . . .'' [which is not true in Germany]. ''Despite the independence and prestige of the Council of State, some French observers have expressed concern that a court which is, at least theoretically, part of the executive branch has the exclusive power to review the legality or constitutionality of the acts of the executive'' (ibid.:62).

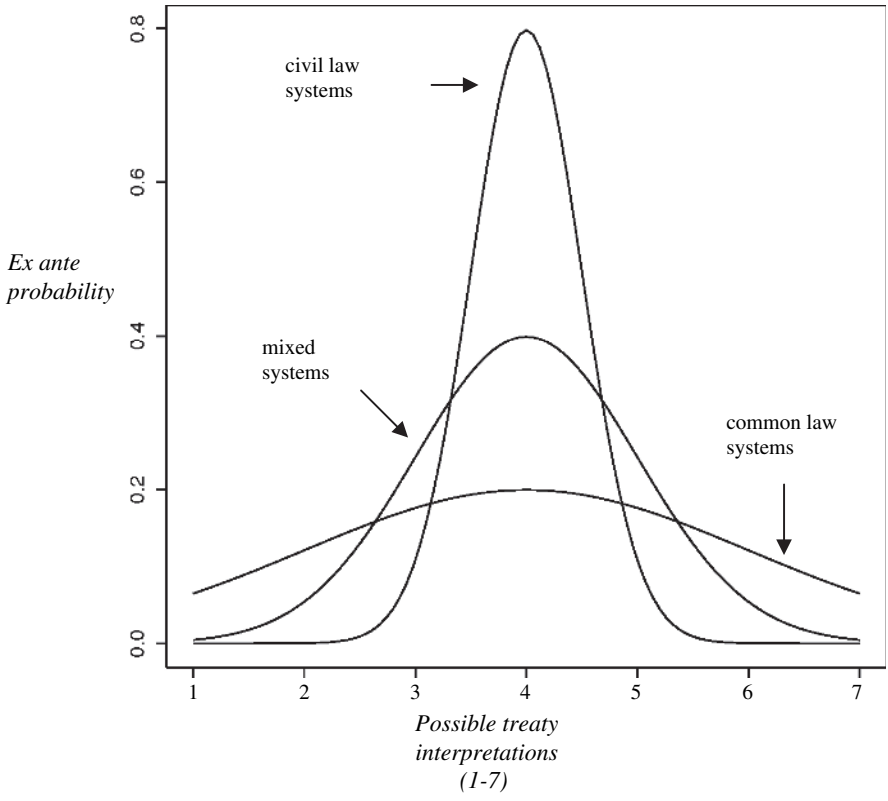


Figure 3.4. Ex Ante Probability of Possible Treaty Interpretations: Civil Compared to Common Law Systems.

The structural ability of judges to provide a stronger check on government power is manifest in other ways as well. Studies have demonstrated that in civil law countries, supreme court judge tenure is significantly shorter than in common law countries. One study found that all countries of English legal origin had lifelong tenure for supreme court judges, while fewer than three-quarters of those of French legal origin had this practice.[60] The importance of precedent in the common law system is also a way for judges to guard their independence from government interference.[61] Indeed, were a common law

60 La Porta et al. 2002:14.

61 "Because the power of precedent restricts the ability of the government to influence judges, it too serves as a useful measure of judicial independence" (La Porta et al. 2002:9). However, judges in civil law countries do pay attention to precedent (Damaska 1986:33; Glendon et al. 1982:132–4; La Porta et al. 2002:9).

government to want to void its obligations under a particular interpretation of a human rights treaty simply by terminating its adherence, to the extent that the treaty has left its footprint in domestic legal precedent, it may be difficult to do so.

The upshot of these structural differences in the ability of courts to check central government actions is that the contents of a human rights treaty are much more likely to be enforced vis-à-vis the government in a common law than in a civil law country. Independent and powerful judiciaries are important players in the domestic realization of human rights. To the extent that governments can neither predict nor easily avoid enforcement of judicial determinations of their obligations under treaty law, they will be especially hesitant to ratify an international human rights treaty.[62]

Why Do Rights-Abusing Governments Sometimes Ratify?

In the previous section, I argued that some domestic institutions could help create false negatives – countries that seem to value the contents of the treaty but that have not ratified. In this section, I argue that we also need a theory of false positives – a reasonable explanation for why a government might decide to ratify without having a strong normative commitment to the contents of the treaty. The answer must be that, given their circumstances, they believe ratification is worth it. The expected value of ratifying must exceed the costs the government expects to incur. Insincere ratifiers gamble that the consequences will not overwhelm the benefits of ratification, at least within the time frame relevant to the decision maker.

Motives for Insincere Ratification: Expected Benefits

There may be a number of reasons governments ratify human rights treaties without fully expecting to comply. One is that they are enticed to ratify by the promise of some benefit offered by promoters of the human rights regime. While there is no reason to believe that ratification alone produces significant tangible benefits for a government, it can produce good press or an improved image with audiences both at home and abroad. That governments enjoy the positive publicity associated with treaty ratification is indicated by their tendency to publicize their actions, often on Web sites oriented toward

62 Some scholars have argued that the distinction between common and civil law systems has eroded over time, but this argument may apply more to Britain and France than to their former colonies and other "legal transplants." Tetley (1999–2000:20) notes that "Since most legal systems duplicated the law administered in another jurisdiction (e.g., former British colonies duplicated British law), major legal traditions tend to be associated with the original legal system as it then existed rather than as it exists today." Any convergence that has taken place is likely to have been primarily in Europe, where intensive interactions and a deliberate program of legal integration may have caused a degree of convergence.

international audiences.[63] The Web sites of nongovernmental human rights organizations add positive reinforcement by mentioning in a positive light governments that have ratified the treaties they support.[64]

Insincere ratification may be further encouraged if governments are offered tangible benefits for ratification. Some intergovernmental organizations may expect human rights treaty ratification as a condition for membership. Some states may hold out the possibility of improved access to trade or aid for countries that ratify these agreements. Governments may think that investors will be impressed by their willingness to ratify human rights treaties, believing ratification will convince investors of the strength of domestic rule of law or the government's long time horizons.[65] Less tangibly, one of the primary reasons governments may ratify even if they do not have sweeping plans to comply is the desire to glean praise and to avoid criticism, often from external audiences of peers or activists organized transnationally. The thinner the information environment, the harder it is for peers and NGOs to expose inconsistency; given poor information, it might be possible for a government to enjoy positive buzz from ratification for a longer period of time.

Uncertainty over Consequences

Ratifying a human rights treaty is a gamble because governments cannot be certain about the broader social and political consequences. I assume that governments are fairly sophisticated in assessing these risks. But it is possible that there are some circumstances under which governments actually miscalculate (or fail fully to appreciate) the consequences of their actions at the time of ratification. They may ratify human rights treaties to enjoy whatever immediate social and political benefits may flow from formally supporting the treaty regime, but they find that (contrary to their initial expectation) the costs are greater and they are incurred sooner than the government had anticipated. In short, governments may ratify insincerely because they underestimate the probability that they will be pressured to live up to their international treaty commitments in the years to come.

63 Turkey, for example, has publicized its recent flurry of treaty ratifications on its embassy Web sites around the world. See, for example, the posting on the Web site of its embassy in Ottawa at http://www.turkishembassy.com/II/O/InternationalHumanRightsUpdate.htm (accessed 11 August 2008).

64 To provide but a few examples, Amnesty International's Web site advocates the need to ratify the Protocol on the Rights of Women in Africa and announces approvingly those governments that have ratified; see Public Statement, AI Index: AFR 01/002/2005 (Public) News Service No.: 204, 29 July 2005 at http://web.amnesty.org/library/Index/ENGAFR010022005?open&;of=ENG-375 (accessed 11 August 2008). Countries have been praised by Human Rights Watch for their ratification of the statutes of the International Criminal Court; see http://www.hrw.org/english/docs/2000/12/11/german645.htm (accessed 11 August 2008).

65 Farber 2002.

A good example of such miscalculation is found in Thomas Risse's and Kathryn Sikkink's notion of "tactical concessions" that governments make to domestic pressure groups demanding adherence to particular norms. "When they make these minor concessions," Risse and Sikkink write, "states almost uniformly underestimate the impact of these changes, and overestimate their own support among their population. They think the changes are less costly than they are, and they anticipate that they have greater control over international and domestic processes."[66] They note that governments can get trapped in their own rhetoric and are often surprised by the impact of an apparently small concession to human rights norms, such as ratifying a treaty. Risse and Sikkink argue that when entering the "tactical concession phase," governments "cannot be expected to know the extent of pressures" they would face substantially to improve rights practices.[67]

But why is it that governments sometimes make faulty forecasts when they have every incentive to "get it right"? The main reason is that conditions change in ways that governments simply do not expect at the time of ratification. Unanticipated political or social shocks occur in ways that governments cannot anticipate years in advance. Few could have anticipated the end of the Cold War a decade prior, but that development had a momentous impact on demands for rights protections in many parts of the world, from Eastern Europe to Latin America. Few could have predicted the growing political support for the legal doctrine of universal jurisdiction for those accused of torture. Certainly Pinochet did not fully appreciate the consequences when in 1988 his government ratified the CAT, the very convention under which he was extradited and prosecuted a decade later.[68] Miscalculation is possible – even likely – when political conditions rearrange the stakes in ways that run against prevailing assumptions and past practice. Some governments are willing to gamble on ratification for tangible or intangible benefits if they (sometimes incorrectly) believe they will never be held to account.

Short Time Horizons

Finally, insincere ratification may be rational if a government has especially short time horizons. Governments that discount the future highly are likely to be tempted by whatever short-term benefits result from ratification, and they are likely to discount the compliance demands they may have to face in the future. Since benefits are likely to dissipate as soon as a government is revealed

66 Risse and Sikkink 1999.
67 Risse and Sikkink 1999:27.
68 Phillippe Sands has quoted Pinochet's human rights adviser at the time as saying, "It never occurred to us that the torture convention would be used to detain the senator." *San Francisco Chronicle*, 13 November 2005. The article can be viewed at http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2005/11/13/INGUPFLGKJ1.DTL (accessed 11 August 2008).

as strategic, only governments that place a premium on immediate gratification are likely to ratify insincerely. Moreover, uncertainty over future compliance demands increases over time. Governments are typically much better able to gauge net treaty costs in the short term than they are in the long run. Uncertainty over the outcomes of ratification increases over time, while the benefits of insincere ratification fall as other actors discover that ratification was strategic.

Why might a government ratify a human rights treaty even if it does not expect to comply? The answer I have suggested here is the desire for some short-term benefit, whether tangible or intangible, for which the government is willing to take the gamble of ratification. Ratification appears to be a good bet where the expected benefits are highly valued, where potential benefactors cannot confirm actual behavior, where a government anticipates (although with uncertainty) little future demand for compliance, and where a government seeks immediate rewards while discounting future costs. In these circumstances, it makes sense to gamble on ratification. Support for this theory of commitment to human rights treaties is tested empirically in the following section.

THE EVIDENCE: EMPIRICAL PATTERNS OF TREATY COMMITMENT

To what extent is this theory of rationally expressive ratification borne out in actual governmental behavior? This section examines the evidence that treaty commitment reflects preferences, can be hampered by domestic institutions, and can be encouraged under some circumstances by strategic moves to benefit in the short run. I examine three areas of treaty engagement: treaty ratification, reservation making, and the making of optional commitments that deepen the obligations in the main text of the treaty, often through quasi-enforcement mechanisms. Data have been gathered for every country possible. For ratification and optional commitment-making, observations are yearly and extend back to the date at which the treaty was open for signature wherever data availability makes this possible.

For ratification and optional commitments, I use event history models, which focus on the spell of time until the event of interest occurs (in this case, the making of a human rights treaty commitment). Event history models (also known as "hazard models") are appropriate in this case because they capture the accumulation of "risks" over time that affect the decision to commit.[69] Specifically, I employ a Cox proportional hazard model to examine the effects

69 In this respect, the hazard model is more general than a panel probit in that it allows for the underlying probability of committing to a given treaty to change each year. In addition, the structure of the data (all os and a single switch to 1 at the point of each country's commitment) is analogous to "death" in the epidemiological studies in which such models are frequently employed.

of both constant and varying conditions on the decision to ratify. The Cox model estimates a "hazard rate"[70] for a treaty commitment event (such as ratification or an optional commitment) at a particular point in time. This hazard rate is modeled as a function of the baseline hazard (h_o) at time t – which is simply the hazard for an observation with all explanatory variables set to zero.[71] The idea is to analyze the factors expected to affect the probability over time that an uncommitted government will decide to ratify. The influence of each factor is reflected in the hazard ratio: A ratio greater than 1 increases and a ratio of less than 1 reduces the likelihood of a commitment in any given year for which a commitment has not already been made. Once a country ratifies, it is dropped from the analysis. While post-ratification behavior is central to understanding treaty effects (see Chapters 4–6), it is of no practical interest here because in fact no government has ever formally reversed or voided its treaty commitment. Since reservations are entered at the time of ratification, I use a simple probit model that estimates the likelihood that a particular factor is associated with reservation-making. In general, the simplest and most robust results are reported in the tables.[72]

Ratification

1. *Preferences and Ratification*

Suppose we begin with the least controversial of the claims made previously: Governments with preferences closest to the contents of the treaties are most likely to ratify. If this is true, we should expect democracies to be among the first and strongest supporters of the six core treaties. Furthermore, we might expect governments of the left – most often associated with equality and civil and political protections for the less advantaged – to be among the most enthusiastic supporters. Finally, we might expect Western nations to throw their support early and often to legal agreements to protect human rights. I use the dominant religion as an indicator of Western civilization. These indicators are decent proxies for preferences, reflecting as they do each government's political history, its current political complexion, and its cultural context. (For exact data measures and sources, see the data appendix at the end of the book.)

70 The hazard rate is defined as: $h(t)$ = probability of committing between times t and $t + 1$ (probability of committing after time t).

71 In this case, we have set all variables to their minimum value in order to avoid interpretations based on deviations from unobserved values of the explanatory variables.

72 More extensive tests involving a wider range of controls can be found in Appendix 3.3 on my Web site. A detailed data appendix, which describes the definition and source for each variable, can be found at the end of this book.

Democracy certainly increases the probability that a government will commit itself to a human rights treaty, an unsurprising result that reflects its preferences over rights. The positive and highly significant hazard ratio – the proportion by which the explanatory variable is estimated to raise or lower the probability of ratification – reported in Table 3.1 shows with a high degree of certainty that democratic governance has facilitated international human rights treaty ratification.[73] The hazard ratios are straightforward to interpret: For the ICCPR, for example, a one-point increase along the polity scale (a measure of democratic governance emphasizing free and fair elections, political competition, and constraints on executive authority, ranging from –10 to 10) increases the probability of ratifying the ICCPR by a little over 11 percent (the hazard ratio is 1.11). Democracy has mattered least to ratification of the CRC, but it is estimated to have increased the chances of ratification by almost 4 percent each year in which the treaty had not yet been ratified. There is little question that if we use the continuous polity scale as our metric for democracy, there is a strong linear relationship between regime characteristics and ratification.

Another way to capture the effects of regime type is to define categories rather than use the continuous scale. If we look at the influence of various *categories* of democratic governments, we can see a similar pattern. Rather than replicate the models contained in Table 3.1, Table 3.2 compares the effect of mature, young, and emergent democracies on ratification behavior (using a similar battery of controls, which are not reported).

The evidence is strong that the long-term, stable democracies – those that have been consistently democratic since World War I – have been swiftest to ratify the two documents often referred to as the "International Bill of Rights" (the ICCPR and the ICESCR). For the ICCPR and the ICESCR, the proportional hazard ratios indicate that democracies stable since World War II were two to three times more likely to ratify than were countries that have never been democratic. Newly transitioned but currently stable democratic governments were over two times more likely to ratify than were all other governments. For these two treaties, the results are almost certainly linear (the more mature and more stable the democracy, the more likely the government is to commit).[74] The results in Tables 3.1 and 3.2 point to a positive relationship between the quality and durability of a country's democratic institutions and the propensity to ratify.

The straightforward relationship between democracy and ratification does not hold up as well for the three later treaties – the CAT, CEDAW, and CRC. In fact,

73 Note that this is a reduced form version of a model with far more extensive controls. See Appendix 3.3 on the author's Web site. Controls that were never significant are omitted from the analyses presented in Table 3.1.

74 See the arguments made by Moravcsik 2000.

Table 3.1. Influences on the Rate of Treaty Ratification

Cox proportionate hazard model (reduced-form models; see Appendix 3.3 on the author's Web site for robustness results)
Hazard ratios, probabilities

Explanatory Variable	ICCPR	ICESCR	CERD	CAT	CEDAW	CRC
Indicators of preferences						
Democracy	1.11***	1.17***	1.06***	1.04**	1.13***	1.039***
	($p = .000$)	($p = .000$)	($p = .001$)	($p = .035$)	($p = .001$)	($p = .000$)
Democracy^2	—	—	—	.990***	.994**	—
				($p = .007$)	($p = .034$)	
Protestant	4.51***	2.65**	—	1.93*	—	—
	($p = .000$)	($p = .030$)		($p = .059$)		
Catholic	3.02***	2.56***	—	—	—	—
	($p = .000$)	(.001)				
Islam	—	—	—	—	.463***	—
					($p = .000$)	
Left executive	—	1.75**	1.77*	—	—	—
		($p = .030$)	($p = .053$)			
Domestic Institutions producing false negatives						
Common law legal tradition	.326**	.338***	—	.395***	.510***	.507***
	($p = .049$)	($p = .000$)		($p = .000$)	($p = .001$)	($p = .003$)
Presidential system	—	—	.648***	—	—	—
			($p = .010$)			
Ratification process	1.01	.776	—	—	1.03	.847
	($p = .940$)	($p = .140$)			($p = .879$)	($p = .191$)
Ratification barriers in democracies	.970	.959**	—	—	.947***	—
	($p = .130$)	($p = .037$)			($p = .010$)	
Federalism	—	.868*	—	1.11**	—	.955
		($p = .098$)		($p = .049$)		($p = .250$)

(*continued*)

Table 3.1 (*continued*)

Explanatory Variable	ICCPR	ICESCR	CERD	CAT	CEDAW	CRC
Strategic behavior potentially producing false positives						
Regional ratifications	1.01*	1.00	.996	1.01**	1.01	1.01**
	($p = .073$)	($p = .710$)	($p = .578$)	($p = .025$)	($p = .120$)	($p = .029$)
Alternative explanations: World culture						
Embeddedness	—	1.23***	—	1.12**	1.20***	—
		($p = .002$)		($p = .033$)	($p = .001$)	
Average regional political rights	1.43***	—	—	—	—	—
	($p = .008$)					
Regional norm for government role in market	—	.482***	—	—	—	—
		($p = .001$)				
Alternative explanations: Coercion						
Log of GDP/capita (wealth)	.733***	—	—	—	—	.847***
	($p = .008$)					($p = .003$)
Log of GDP (size)	1.11	—	—	—	.916*	—
	($p = .130$)				($p = .086$)	
Overseas development assistance/GDP	—	—	—	.008***	—	—
				($p = .005$)		
Use of IMF credits	.440**	.478***	—	—	.690	—
	($p = .013$)	($p = .003$)			($p = .123$)	
# of countries	117	113	73	138	129	131
# of ratifications	93	83	54	97	118	129
# of observations	1,653	1,438	858	1,430	1,206	450
Prob $>\chi^2$	0.000	0.000	0.000	0.000	0.000	0.000

* Significant at the .10 level; ** significant at the .05 level; *** significant at the .01 level.

Table 3.2. Influences on the Ratification Rate

Cox proportionate hazard model
Hazard ratios, probabilities

Explanatory Variable	ICCPR	ICESCR	CERD	CAT	CEDAW	CRC
Democratic since World War I	2.97* ($p = .070$)	3.14** ($p = .028$)	2.83** ($p = .048$)	.542 ($p = .143$)	.650 ($p = .223$)	1.21 ($p = .490$)
Democratic since World War II	3.14*** ($p = .009$)	2.83** ($p = .015$)	3.19*** ($p = .004$)	.911 ($p = .798$)	.914 ($p = .700$)	1.05 ($p = .840$)
Newly transitioned democracy	2.63** ($p = .020$)	2.66*** ($p = .001$)	2.57*** ($p = .001$)	1.32 ($p = .209$)	1.58** ($p = .035$)	1.49** ($p = .048$)

Note: Analyses include but do not report the same covariates included in Table 3.1, substituting democratic categories for polity and polity.[2]
* Significant at the .10 level; ** significant at the .05 level; *** significant at the .01 level.

the hazard rate decreases and falls below 1 (indicative of a negative effect) for the mature democracies in two of these cases. For the CAT, CEDAW, and CRC, newly transitioned democratic polities are most likely to ratify sooner (see the statistically significant negative result for the nonlinear term "democracy^2" in Table 3.1).[75] These treaties were largely ratified once the third wave of democratic transitions was underway. Table 3.2 also indicates the more ready acceptance of the CEDAW and the CRC among newer democracies.

Dominant religion[76] is an imperfect indicator of cultural orientation, but the results of its inclusion also fit expectations reasonably well. Christian countries have tended to ratify these arrangements relatively quickly, although the effect declines for the CAT and disappears for the CERD, CRC, and CEDAW. Results for Catholic countries were in every case in the expected direction (see the complete report of results in Appendix 3.2 on my Web site) but were only statistically significant for the ICCPR and the ICESCR. Protestant countries were two to three times more likely to ratify the ICCPR compared to all other non-Catholic and non-Islamic countries. Muslim countries apparently do not differ much from other cultures, with the almost certain exception of women's rights, which they are significantly slower to support.

Government preferences are also reflected to a limited extent in the ideological orientation of the government actually responsible for ratification. Left governments in each case produced positive hazard ratios, and in two cases, reported in Table 3.1, the ICESCR and the CERD, left governments were consistently statistically significantly more likely to do so.[77] In the case of both the CERD and the ICESCR, left governments were approximately 75 percent more likely than other governments to preside over treaty ratification (hazard ratio of 1.75) and nearly 80 percent more likely to ratify the CERD (hazard ratio of 1.77).[78] Arguably, these results support the notion that governments willing to address nondiscrimination and economic rights – programs often associated with left-wing parties – are in fact most likely to support these treaties.

2. *The Legal System, Institutions, and Ratification*

What is the evidence that domestic institutions might make it difficult or costly for a government to ratify, thus increasing the chances of a false

75 Squaring the democracy term tests the hypothesis that the *middle* of the distribution behaves differently than either extreme; the negative relationship in this case means that countries at the extremes of the distribution have a proportionately reduced risk for ratifying.

76 I use the religion practiced by the largest sector of the society.

77 It was necessary in the case of the CERD to use a coding for socialist system rather than the left party measure used in the other specifications. This is because CERD ratification accelerated quite early and the data for the party of the chief executive do not begin until the mid-1970s.

78 In Table 3.2 I eliminated left government from the CERD model even though it is highly statistically significant because data limitations reduce the observations to about half.

negative – a rights-respecting country that delays or refuses to ratify? The most consistent result with respect to domestic institutions' impact on the propensity to ratify human rights treaties is without doubt the nature of the legal system into which the instrument is potentially to be integrated. For five of the six core treaties under consideration here, there is strong evidence that common law countries ratify at a much lower rate than do civil law countries and other legal systems. In the cases of the ICCPR, ICESCR, CAT, CEDAW, and CRC, the effect is highly statistically significant.[79] The effects of the nature of the legal system are substantively significant as well. In the case of the ICESCR, common law countries were about 66 percent less likely to ratify than were countries with other legal systems (the hazard ratio is .338). In the case of the CRC, common law countries were about half as likely to ratify as were civil law countries, according to Table 3.1. These are notable effects, which survive the inclusion of other governmental institutions typically associated with British political culture (parliamentary government and the ratification process, colonial heritage, for example; see Appendix 3.3 on my Web site).[80] The evidence points fairly convincingly to an independent negative effect of common law systems on the likelihood of early treaty ratification.

There is also fairly good evidence that ratification procedures make it much harder for a government that might support a treaty in principle actually to ratify. The requirement of a supermajority or a majority in two chambers apparently has slowed ratification considerably in the cases of the ICESCR and the CEDAW. The interaction term indicates that constitutional hurdles become more constraining where legislatures actually have meaningful input into policymaking in general. This may reflect the fact that legislative advice and consent exact a much higher political cost for a chief executive in countries where that input is most meaningful. Other domestic institutions that might have been expected to reduce the likelihood of ratification – federalism and presidentialism, which introduce subnational veto players and the possibility of divided government – performed far less consistently. Governments in federal systems have been much less likely to ratify the ICESCR, although, surprisingly, they have apparently been more likely to ratify the CAT. One might speculate that the ICESCR's obligations tend to impinge much more on subnational prerogatives (often precisely in the social, economic, and cultural areas) than do the focused prohibitions of the CAT. In one case, the CERD, presidentialism is convincingly associated with a reduced likelihood of ratification. This is consistent with the assumption that parliamentary governments generally face weaker legislative veto players.

79 The one exception is the *positive*, though statistically insignificant, effect of the British common law heritage in the case of the CERD.

80 See also Appendix 3.4 on my Web site, which indicates the correlation and degree of overlap between common law and other British-like institutions and associations, including status as a British colony since World War I, parliamentarism, and the nature of ratification hurdles.

3. *Strategic Ratification*

Finally, consider the evidence of strategic ratification. I have argued that one observable implication of strategic behavior is that governments may tend to ratify these rights agreements late in their terms. It turns out that there is little unconditional evidence of legacy ratifications, and the number of years in a government's term is omitted from Table 3.1. However, a closer look at the data is warranted. There is no reason for legacy ratification to be especially attractive for governments in general, but rather only for those that do not intend to make a significant effort to comply. This suggests that we should see legacy ratifications primarily among governments at the apex of nondemocratic regimes, which are least likely to be willing to make significant institutional and policy changes to implement rights treaties, especially those that empower potential political opponents. To see if this is the case, I examined the effect of the length of time in office with a dummy variable for countries that had never experienced democracy during the entire post–World War II period. The hazard ratios are graphed in Figure 3.5. With the exception of the CERD, which runs in the opposite direction, most of the treaties ratified by nondemocratic countries were more likely to be ratified later in the government's tenure in office. The front bars indicate the hazard rate for a nondemocratic country whose leader is in his or her first year of power. The bars behind indicate the estimated influence on ratification of each additional year in power. With the exception of the CERD and the CAT (for which additional years in power apparently make no difference), autocratic governments are more likely to ratify as their term progresses. This suggests a pattern among nondemocracies of legacy ratification, falling time horizons, and a desire to gain short-term praise while leaving the political consequences to the next government. No such pattern is detectable among democracies.

Regional emulation may also provide a possible explanation for false positives (insincere ratifiers). I have argued that one way to avoid criticism is to practice "social camouflage": Select policies that do not differ significantly from those of surrounding neighbors. Local ratification trends are important because the fewer the holdouts, the more nonratification is interpreted as resistance to the substance of the treaty in question. Local ratification density is also important because the fewer the holdouts, the more focused the pressure campaign to ratify is on the remaining few. On the other hand, nonratification by a large number of countries creates only very diffuse pressure to ratify. Indeed, the expectation of public adherence may be so diffuse as to constitute no social or political pressure at all.

Social camouflage is a rational response to perceived social pressure in a normatively charged situation. It is rational because, for governments that are nearly indifferent with respect to treaty ratification, it can lower the expected costs associated with social criticism. This is not because the signing fools

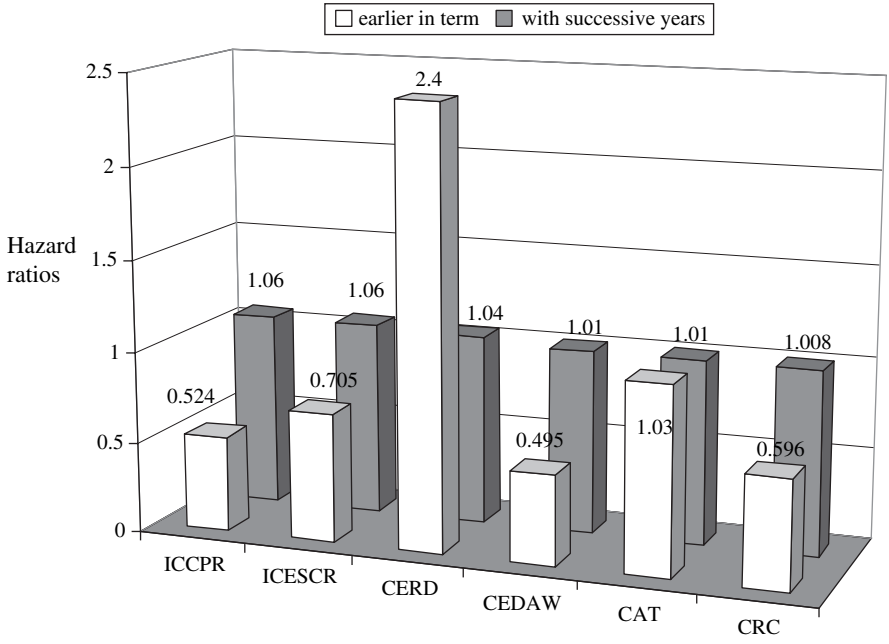


Figure 3.5. The Probability of Nondemocratic Ratification.

anyone about behavior. Rather, it is because moving with the crowd reduces the increment of criticism that can be directed at any particular country.[81] If NGOs have fixed resources and if peer governments are willing to expend a fixed amount of diplomatic effort to influence rights commitments, it is much better to be 1 of 50 countries that have not ratified a treaty rather than 1 of 5. In most cases, the benefits of socially motivated ratification will not be great enough to overcome domestically generated preferences, but at the margins it could produce false positives. The more some crucial reference group ratifies a particular treaty, the greater the pressure for any individual government to do so.[82]

81 One possible analogy in the natural world is the phenomenon of fish traveling in schools. This is a highly successful strategy for protection from predators. Swimming in schools makes it difficult for a predator to concentrate on catching any particular fish; the predator's effort is dissipated and the schooling fish have improved their chances of survival.

82 Research in sociology suggests that conformity-seeking behavior is strongest among middle-status actors. For example, concerning the practices of Silicon Valley firms, see Phillips and Zuckerman 2001.

Exactly what constitutes a "crucial reference group" is open to much debate.[83] In the human rights area, I would argue that the region in which a country is situated is theoretically most relevant to the decision to make a treaty commitment. For one thing, conditions at the regional level foster the kind of cooperation that helps to keep group members in step with one another. Regional organizations – the European Union (EU) and the Organization of American States (OAS), for example – create the structures in which governments have repeat transactions over economic issues, security issues, and social issues. In some regions, dense and long-term interactions are encouraged through a multiplicity of overlapping regional associations of various kinds. These structures facilitate intensely shared common knowledge, which further improves the ability of states in the region to coordinate. In addition, the majority of NGOs are either regionally focused[84] or, if they are global, have regional "desks" or "watches."[85] If the social pressure is regionally organized, as it tends to be in the human rights area, regional camouflage is rational governmental behavior.

The ratio of countries within one's own region that have ratified the treaty in question is therefore a reasonable proxy for pressures governments may feel to coordinate their ratification behavior with that of nearby governments. By this measure, there is some evidence of regional pressures to ratify. Ratification of the ICCPR, CAT, and CRC (and possibly the CEDAW as well) clusters in a significant way by region. The ratio of regional ratifications in these cases is positively signed and statistically significant. I have theorized these patterns as strategic in nature – that is, as resulting from a logic of consequences rather than a logic of appropriateness – but the unconditional proportionate hazard rates for the density of regional ratifications alone cannot easily distinguish strategic from more normative behavior. A cautious norms scholar might look at these regional clustering results and warn of premature theoretical closure: After all, the correlation is consistent with models of normative cascades and socialization within regions as well.

4. *Regional Clustering: Strategic Behavior or Localized Socialization?*

By taking the context of this regional clustering into account, we can draw some inferences about whether regional clustering is driven primarily by normative or

83 See, for example, the discussion in Simmons and Elkins 2004.

84 Skjelsbaek 1971.

85 Human Rights Watch is a quintessential example. See http://www.hrw.org/. The examples, of course, extend beyond the human rights area. For example, the International Campaign to Ban Landmines (ICBL) targets particular regions in their campaign for ratification of the Landmine Treaty of 1997. In 2000, the focus was on Africa. See "Ratification Campaign: Urge African Countries to Ratify the Landmines Treaty by 1 March 2000!!!!" http://www.icbl.org/action/africa1m2000.html (accessed 23 December 2003). The Persian Gulf states as a group were targeted by their campaign for ratification in 2003. See "Gulf States Urged to Do More to Eradicate Landmines," Sharjah, 8 December 2003, ICBL Web site, http://www.icbl.org/ (accessed 23 December 2003).

strategic behavior. One way to do so is to ask whether reasonable prerequisites are in place for regional socialization to take place. With relatively little evidence, we want to infer what is driving the regional ratification influences discussed earlier. Context matters here: If you hear animal hooves in Wyoming, you should guess their source is horses; in the Serengeti, if you hear similar sounds, you should guess zebras. Our exercise here is similar: There are some contexts in which regional ratification clustering is more likely to indicate strategic behavior, and there are others where it is more likely to indicate genuine social convergence. Where the conditions that support socialization are strong, these correlations are likely to represent true normative behavior, the result of regional interactions that foster learning, persuasion, and internalization. But if positive regional correlations are strong under conditions that socialization theory suggests *are not* conducive to socialization, the same positive correlation should be interpreted as something else: strategic behavior.

First, regionalization is more likely where regional human rights standards are clearest. Socialization theory suggests that governments are more likely to become socialized if the normative standard in question is relatively clear. Where actual human rights practices are highly divergent, it is difficult to know what the standard is, let alone to feel the persuasive pull of that standard. This suggests that we look directly at the degree of normative convergence in the region over time. I use the Political Rights indicator created by Freedom House and take the *variance* (standard deviation) on this measure by region, by year. For ease of interpretation, I invert the measure (so that higher numbers indicate normative convergence within the region) and normalize the lowest value to zero. This measure is then multiplied by the density of regional ratifications. This interaction captures the influence of regional ratifications on the decision to ratify as actual practices converge. The socialization hypothesis predicts a *positive* coefficient, because socialization behavior should increase as values within the region converge. Strategic behavior, on the other hand, should not be especially sensitive to the degree of normative convergence within the region. The interaction of regional normative convergence and regional ratification behavior should be zero.

Second, regional socialization is more likely where socialization opportunities are high. We should expect regional clustering to reflect socialization where governments have frequent persuasive opportunities to convince other governments to take seriously a particular moral position. Such opportunities create interactions that can be important in the process of norm internalization. *If we observe regional effects in a highly socialized milieu, the observed effects can reasonably be interpreted as normative rather than strategic in nature.* As the world culture literature emphasizes, every conference on human rights can be thought of as a socialization opportunity. One indicator of an environment rich in socialization opportunities is the number of human rights treaties that already exist in the region. By most accounts, the process of treaty drafting, negotiation,

and bargaining creates persuasive opportunities that play an important role in eventual norm internalization.[86] If we observe strong and positive regional effects in such contexts, a case can be made that ratification behavior reflects the normative consensus that tends to emerge from such processes.

For each region, I created a count of the number of resolutions, treaties, statutes, and other legally relevant instruments relating to human rights under regional designations listed by the University of Minnesota Human Rights Library Web site.[87] This count variable (representing the density of normative opportunities within the region) is interacted with the regional ratification density for each treaty. As such, it captures the effect of regional ratifications as socialization becomes more intensive within the region. A positive coefficient – greater influence at the regional level as persuasive opportunities increase – would be more indicative of socialization than strategic behavior.

A third way to pry apart strategic from normative behavior is to look at regional effects over time. Socialization takes time. Strategic behavior can be practically instantaneous. Therefore, the passage of time should produce two very distinct consequences for normative versus strategic behavior. On the one hand, we should expect regional ratification behavior that reflects socialization to intensify over time as values within the region begin to converge. The opposite should be true of strategic behavior, which should diminish over time. The reason is that better information about governments' true intentions is more likely to be revealed over time, reducing the typically ephemeral payoff to strategic ratification to virtually nothing. As time passes, the information environment about human rights practices within a region more closely resembles complete information, reducing any benefit a government might expect from insincere ratification. The intuition is that socialization takes time, whereas strategic ratification loses its value over time, as it is revealed for what it is. This idea can be tested by grouping the yearly data into separate observation periods. These periods can then be interacted with regional ratification behavior. *If positive regional effects are stronger in the earlier period, they should be interpreted as strategic.* If they are stronger in the later period, they are much more likely to be the result of normative convergence.

Finally, we can assess the hypothesis that regional mimicry is strategic by examining the information environment directly. Normative socialization should thrive where information flows most freely. Strategic ratification makes sense only when it is hard to detect. Where information is thin and it is difficult to distinguish the sincerity of the commitment, it may be possible to gain short-term benefits from strategic ratification. If regional effects are strongest in countries with a press that is free from government control, socialization

86 See, for example, the discussion in Chayes and Chayes 1993.

87 The treaties were downloaded from http://www1.umn.edu/humanrts/instree/ainstls1.htm (accessed 11 August 2008). The Americas and Africa are self-evident descriptions, but Europe is not obvious. I take the region "Europe" to include all the members of the Council of Europe.

may indeed be the explanation. But where the press is muzzled, the government may have incentives to follow the region and ratify strategically. By interacting an average measure of press freedom for each region with the density of regional ratification, we can measure the effects of ratification by others in the region as the information environment improves. If regional emulation is strongest where information is better, the emulation itself is more likely to reflect socialization than strategic ratification. Therefore, strategic behavior is more consistent with positive regional clustering in regions where press freedom tends to be low.

The results of these tests are shown in Figure 3.6. Here I compare graphically the hazard ratios for regional influences by context (based on models developed in Table 3.1). The evidence that regional ratification effects reflect normative socialization is weak at best. The strongest evidence against the socialization hypothesis is depicted in Figure 3.6a. Surely socialization theory should expect regional mimicry to be stronger when there is actually more convergence on values within the region. Genuine regional socialization should be much more difficult when governments in the region have widely divergent practices. But that is almost certainly not the implication for ratification of the ICCPR and the CAT, at least. When regional norms (measured as actual political rights practices) are most *dispersed* (rear bars), the hazard ratio for regional ratifications of these two treaties is strong and positive, which is much more consistent with a strategic than a normative explanation for ratification. The interaction term suggests that regional ratifications have a negative effect when norms are converging (front bars) – a finding not predicted by socialization theory.

More doubt is cast on the socialization hypothesis by Figure 3.6b. Socialization should be highest in regions that have more conferences and reach more agreements about human rights. The evidence for all six treaties is fairly clearly to the contrary. Regional effects are much stronger where socialization opportunities as measured by regional human rights agreements are zero (the rear bars). As regional socialization opportunities become more intense, regional emulation tends to be nonexistent or even negative (the front bars). These findings should encourage us to interpret regional effects as largely strategic in nature rather than the result of processes of socialization.

Throwing the socialization account into further doubt are the findings with respect to the passage of time. The socialization hypothesis predicts stronger positive results in later periods. Strategic theory predicts the opposite: As information improves, insincere ratifiers are revealed, and incentives to ratify strategically decline. The results graphed in Figure 3.6c suggest just the opposite. Regional effects are positive and strong before 1989 (hazard ratios represented by the rear bars) and strong and negative thereafter (front bars), with the exception of the CRC. This temporal pattern of early regional similarities followed by a reversal in regional effects is much more likely to be a reflection of the

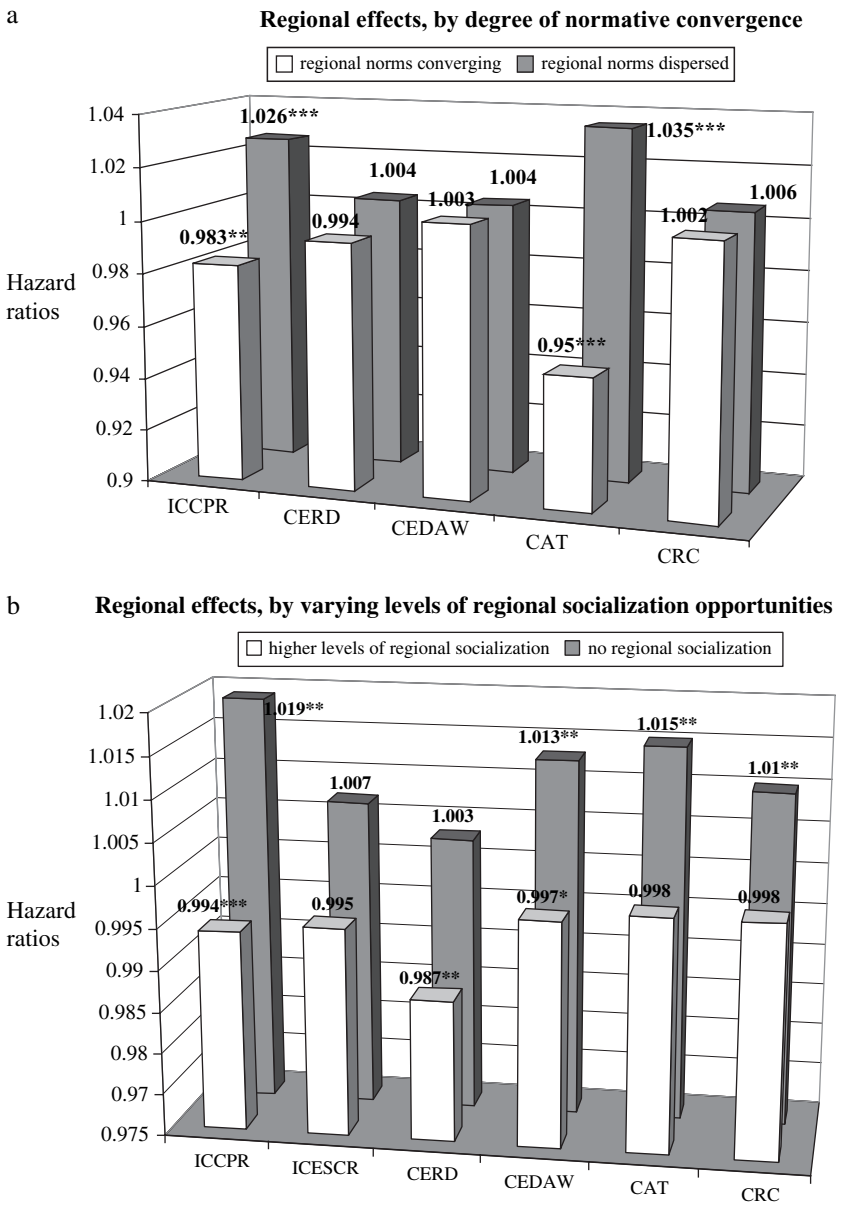
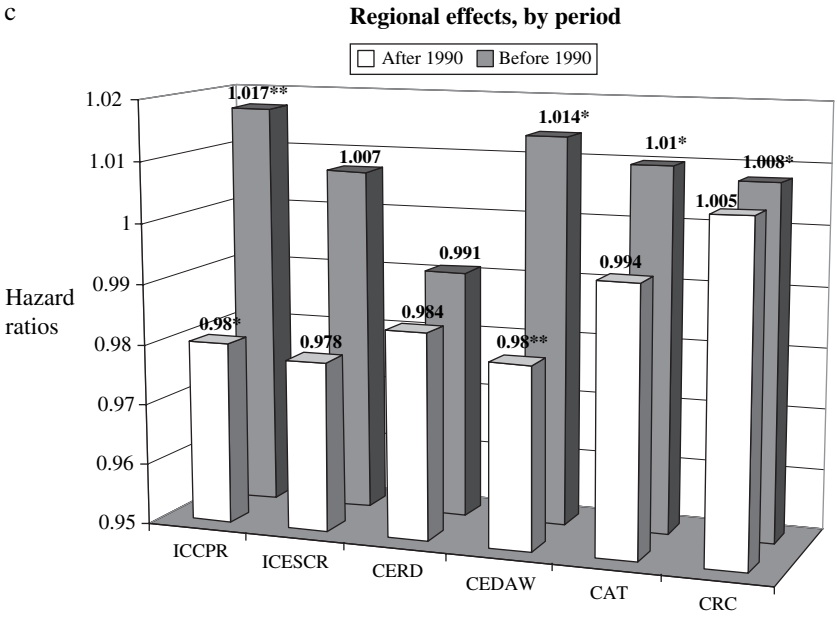


Figure 3.6 a–d. Regional Effects: Socialization or Strategic Behavior? * Significant at the .10 level; ** significant at the .05 level; *** significant at the .01 level. *Note*: analyses include but do not report the same covariates for each treaty included in Table 3.1.

c



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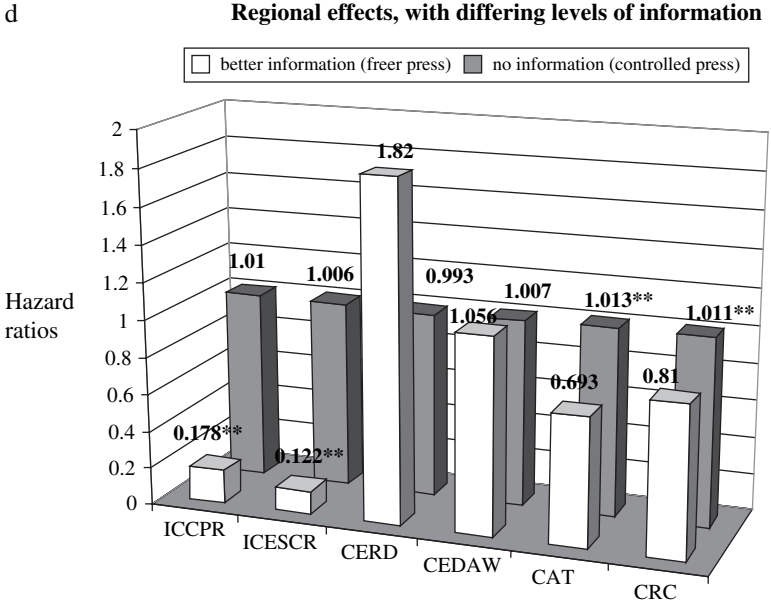

Figure 3.6 a–d. (*continued*)

breakdown of strategic behavior as accountability mechanisms improved rather than a reflection of regional socialization.

Information seems to play a fairly systematic role in the strategic ratification behavior of governments as well. Figure 3.6d shows that with the stark exceptions of the CERD and the CEDAW, governments that control the press (rear bars) are much more likely to follow regional ratification trends than are those that allow press freedom (front bars). In the case of the ICCPR and the ICESCR, regional effects are strongly negative when information flows the most freely. The cases of the CRC and CEDAW fit expectations best: Strategic ratification is apparent when information is thin but it dwindles as information improves.

To conclude this section: A close look at the context suggests that regional ratification "emulation" is much more likely to be strategic than normatively driven. Like the sound of hooves, the indicator is crude, but the context is quite revealing. It is far more likely that the regional effects displayed in Table 3.1 reflect the strategic calculations of states rather than their genuine conversion to higher human rights standards. This point should be placed in its broader perspective, however. Governments ratify human rights treaties primarily because they value their contents and plan to abide by their provisions, as indicated by the strong positive findings on democracy, some cultural indicators (religion), and government ideological orientation (left-leaning governments). However, this analysis has also successfully identified reasons for false negatives (domestic institutions) and false positives (strategic behavior). The fact that treaty ratification is not a perfect reflection of preferences is a crucial point: It provides an opportunity to identify compliance models (Chapters 5–8) that allow for the theoretical possibility that treaties constrain behavior as well as screen out parties that are not interested in trying to comply.[88]

5. *How Robust? Alternative Explanations for Ratification*

Many other conditions could have an influence over the ratification decision, but the basic findings discussed here are robust to a wide range of alternatives. Rather than discussing one possible confounding factor after another, it is useful to think in terms of theoretically coherent clusters of conditions that could potentially influence governments' ratification decisions. One possibility is suggested by sociology: the idea of the spread of world culture, which leads governments to make similar institutional choices as they worship at the feet of a globally appealing concept of modernity. In the human rights area, scholars with a world culture perspective have claimed that dominant Western ideals can be transmitted through international meetings, normative discussions of

88 Simmons and Hopkins 2005.

the kind alluded to previously, and other forms of unchanneled global influences. To address these possibilities, I test for the independent impact of the density of global ratifications, the timing of meetings of UN-sponsored meetings of particular import (e.g., the Women's Conference in Beijing, 1995; for a list of conferences see Appendix 3.6 on my Web site), and a measure of treaty "embeddedness." The last measure is meant to absorb a "culture of legalization" that may be perceived to be an important part of modern Western culture. It is the sum of each country's ratification status on preferential trade agreements and memberships, three multilateral environmental treaties, and status as a party to the Vienna Convention on Treaties. After all, it is possible that some governments ratify human rights treaties because they have bought nto the "script" that holds up the legalization of agreements in treaty form as the most modern form of international interaction. The findings on these variables are in Appendix 3.3 on my Web site[89] and the most important influences are recorded in Table 3.1. Only the legal embeddedness measure performs as world culture theory suggests it should; none of these variables disturbs the basic findings about government preferences, institutions, and strategic behavior. While these tests are barely more than lip service, they do serve to increase confidence that the basic findings are quite stable across specifications.

Another concern could arise from that mainstay of international relations, coercion. It is difficult to think of a good reason that one state would want to coerce another into a human rights treaty. As I will argue, these agreements gain their political legitimacy largely because they are thought to be commitments freely made. Moreover, coercion is not costless, and forcing a state to enter into a treaty encounters the same kinds of collective action problems (to be discussed in Chapter 4) as treaty enforcement itself. Nonetheless, the asymmetries inherent in international relations make it prudent to examine at least some plausible channels of coercive influence. Smaller, poor states, especially those dependent on the favors of wealthier patrons, may be most vulnerable to such pressures. Former colonies may in theory be vulnerable to the suggestions of their erstwhile colonizers or may be (unduly?) influenced by the commitment of the mother country itself, but the data never bore this out. Indicators meant to capture such vulnerabilities performed poorly. Where they do produce results, the direction tends to be counterintuitive from a coercion perspective. The finding that larger countries may ($p = .15$) have tended to ratify the ICCPR more readily than smaller ones, as well as the finding that governments that take aid from the IMF or other donors tend to delay or eschew ratification, does not fit a theory that postulates a coercive regime into which the most vulnerable are corraled by the powerful.

89 http://scholar.iq.harvard.edu/bsimmons/mobilizing-for-human-rights.

Customized Commitments: Reservations

Treaty ratification is not the end of the commitment story. Governments have options to "customize" their commitments through the use of reservations and declarations. The nature of the reservations they make can have a significant impact on the precise nature of the legal obligation each government commits to undertake.[90] Reservations are an important way to reconcile an international obligation with domestic law. They also allow a government to join in a multilateral endeavor while registering a set of preferences or constraints that may differ somewhat from those elaborated in a treaty obligation, subject to the limitation of remaining consistent with the basic purposes of the agreement as a whole.[91]

Reservations, understandings, and declarations (or "RUDs," as they are sometimes referred to in the legal literature) are typically made at the time of ratification. Reservations are usually not accepted after ratification has taken place, and only occasionally are they removed. Parties to each agreement have an opportunity to protest a state's reservations, though, in effect, a very small number of countries take on this policing role.[92] Reservations are important because they have a bearing on a country's legal commitment and because, in some cases, they are a clue to the politics of commitment.

Since sovereign governments have the option to enter reservations to these six treaties, one might suspect that the practice is rampant.[93] However, most governments that ratify treaties do not enter reservations of any kind. The countries listed in Section a of Table 3.3 have signed all six treaties and have not registered any objections to *any* of the 226 separate articles to which they have committed their polity. The countries in Section b of the table have ratified four or five of the six core treaties and similarly have not entered reservations in an attempt to sculpt their obligations. Nonreservers are concentrated in Africa and Latin America. Among wealthy Western countries (for example, those that are members of the Organization for Economic Co-operation and Development [OECD]), only Portugal has signed a majority of the treaties without reserving any of its rights.

Reservation making can provide further information about the nature of treaty commitment behavior.[94] Granted, it looks as though the making of reservations has

90 Reservations have been studied extensively in the legal literature, largely in order to explicate and clarify the rules of treaty law and, in some cases, to make recommendations about how it is to be applied. Studies exist on the reservations made to each of the treaties examined here. For example, on the CEDAW, see Arat 2002.

91 Vienna Convention on the Law of Treaties, Section 2, Article 19(c).

92 The Nordic countries are consistently active in protesting reservations they believe to be contrary to the meaning and purpose of the treaty. See Klabbers 2000.

93 Many scholars of reservations are worried that they will weaken the treaty commitment as a whole. See, for example, Lijnzaad 1995.

94 The literature on why states enter reservations is sparse and quite speculative. See Coccia 1985:18–22; Shelton 1983.

Table 3.3. Nonreservers

a. Countries that have signed all six core human rights treaties but have never entered reservations or made declarations

Africa	Central Asia	East Asia	Europe	Latin America/ Caribbean
Benin	Armenia	Cambodia	Albania	Bolivia
Burkina Faso	Azerbaijan	Philippines	Estonia	Colombia
Burundi	Kyrgyz Republic		Georgia	Costa Rica
Cameroon	Tajikistan		Latvia	Honduras
Cape Verde	Turkmenistan		Lithuania	Peru
Chad	Uzbekistan		Moldova	St. Vincent
Cote d'Ivoire			Portugal	Uruguay
Gabon			Yugoslavia	
Malawi			Macedonia	
Namibia				
Nigeria				
Senegal				
Seychelles				
Sierra Leone				
Togo				

b. Countries that have signed four or five core human rights treaties but have never entered reservations or made declarations

Africa	Central Asia	East Asia	Europe	Latin America/ Caribbean
Angola	Kazakhstan	Solomon	San Marino	Dominican Republic
Central African Republic		Islands		Dominica
Congo (Zaire)				Grenada
Eritrea				Haiti
Guinea-Bissau				Nicaragua
Somalia				Paraguay
Sudan				Surinam
Tanzania				
Zimbabwe				

a good deal to do with state capacity. But controlling for basic developmental conditions, we should expect reservations largely to support the theoretical claims about preferences, domestic institutions, and regionally conditioned behavior. That is, in most cases, reservations should reflect values and culture. They might also

reflect the difficulties associated with domestic legal integration: Common law systems should be expected to display evidence in their reservation-making of the struggle to make the treaty compatible with local law, for example. If states continue their strategic behavior to shape social meanings, we might also expect a high degree of regional similarity in the kinds of reservations made.

Consider first the threshold question of what influences the probability that a state will enter one or more reservations when it ratifies one of these six treaties.[95] Pooling the information across all six treaties, Table 3.4a reports the factors associated with reservation-making (conditional on ratifying the treaty). The unit of analysis here is a "country ratification episode." In Model 1, ordinary least squares regression is used, and the dependent variable is the log of the total number of articles against which a country has reserved. In Model 2, logistical regression is used, and the dependent variable is whether or not a ratifying country has entered at least one reservation or reservation-like understanding or declaration. Note that in contrast to the hazard models used previously, the coefficients reported here take on positive as well as negative values.

The results of these tests are striking. First, while treaty ratification could never be shown to be consistently linked to a country's developmental status, reservation-making much more clearly is. The higher a country's per capita gross domestic product (GDP), the more likely it is to enter a reservation upon ratification. This most likely reflects the fact that combing through a treaty to search for conflicts with domestic law requires both resources and expertise that many of the poorer countries do not have or cannot spare. It is possible to conclude from this that reservations are, in practical rather than legal terms, the prerogative of the rich. Poor countries are far less likely to exercise their sovereign right to reserve than are their wealthier counterparts.

95 Of course, the six human rights treaties under examination here differ with respect to governments' reservation patterns. More than half of the 147 governments that have ratified have made at least one reservation to the ICCPR, while about a third of the much larger number that have ratified the CEDAW, CERD, and CRC have entered reservations. There is also evidence, however, that normative convergence differs across these treaties. Where specific articles are mentioned, it is possible to calculate just how much agreement there is among governments that obligations under these articles should be accepted or conditioned. For example, conditional upon making any reservation at all, the chances that any two governments will make reservations concerning the same article are about 68% for the ICCPR. Appendix 3.5 on my Web site shows that most of these reservations have to do with Art. 14, which relates to fair trials. At first blush, the concentration of reservations looks higher for both the CAT (.71) and the CEDAW (.95), but reservation concentration falls drastically if one disregards a single lightning rod for disagreement in each of these (dispute settlement to be handled by the International Court of Justice). When such a dispute settlement clause is excluded from the calculations (along with the governments for which it was their sole reservation), the ICCPR emerges as the treaty with the highest concentration of reservations, while the reservations made in the case of the CERD and the CRC demonstrate the highest degree of heterogeneity. The fact that reservations for these two treaties tend to be "all over the map" may be taken as an indicator of a higher degree of normative divergence with respect to these treaties' obligations.

Table 3.4a. Reservations

Ordinary least squares and logistical regression, probabilities based on robust standard errors

Explanatory Variable	Model 1: OLS Regression. Dependent Variable: Log of the Number of Articles Specifically Affected by Reservations		Model 2: Logistical Regression. Dependent Variable: Whether or Not a Government Made a Reservation at All	
Constant	−.298 ($p = .197$)	−.329** ($p = .032$)	−4.61*** ($p = .000$)	−4.73*** ($p = .000$)
GDP per capita, logged	.079** ($p = .023$)	.083*** ($p = .000$)	.229* ($p = .090$)	.431*** ($p = .000$)
Density of regional reservations	.807*** ($p = .005$)	.762*** ($p = .000$)	4.42*** ($p = .000$)	4.00*** ($p = .000$)
Common law legal tradition	.172*** ($p = .006$)	.164*** ($p = .001$)	.654** ($p = .022$)	.448* ($p = .052$)
Islam	.123* ($p = .080$)	.076** ($p = .041$)	.959*** ($p = .008$)	.231 ($p = .357$)
Democratic	−.025*** ($p = .001$)	−.011** ($p = .022$)	−.072 ($p = .127$)	−.082** ($p = .013$)
Rule of law	.064*** ($p = .001$)	—	.378*** ($p = .001$)	—
# of observations	413	694	413	694
R^2	.28	.21	.25	.17

Note: All models include but do not report treaty fixed effects. All models are conditional on having ratified the treaty.
* Significant at the .10 level; ** significant at the .05 level; *** significant at the .01 level.

Second, we see continued evidence that treaty behavior reflects state preferences. In most models, the more democratic the ratifying country, the less likely it was to enter a reservation. Moreover, the evidence in Table 3.4a suggests that this is because democracies tend to prefer the contents of the treaty, not simply that they are more law-oriented. Having a reputation as a rule-of-law state independently *increases* the probability of adding reservations upon ratification. This is not very surprising: After all, polities that place a very high value on the rule of law are likely to be especially careful about the precise nature of the legal obligations into which they enter.[96] But this renders the net effect of democratic governance especially telling: Once we have controlled for the cautiousness flowing from the likelihood that the law will in fact be enforced, democracies still are less likely to customize their treaty commitments. This provides further evidence that democracies tend to favor the *contents* of these treaties, and their reservation behavior reflects this preference.

Muslim countries also have an especially high tendency to add reservations to their ratifications. Once again, this supports a preference-oriented explanation of treaty behavior. In important ways, respect for Shari'a has made these agreements more difficult to ratify without fairly widespread reservations, as has been noted by a number of scholars, especially with respect to women's rights (see Chapter 5). But the results in Table 3.4a suggest that even when we control for the nature of the treaty (systematic differences between treaties are controlled for in these models with a series of treaty dummies; not reported here), predominantly Muslim countries are more likely to enter reservations to human rights treaties than are countries that are not predominantly Muslim. This reflects the fact that these governments are not simply posturing for international kudos, but are to some degree trying to make their international commitments fit their cultural conceptions of justice.

Finally, there is very strong evidence of the influence of common law systems on treaty behavior. Previously, we saw that common law countries were much slower than others to ratify these treaties. I argued that this is because of the costs that actors in common law countries associate with importing an externally negotiated political agreement into the local precedent-based system. Table 3.4a displays evidence consistent with this mechanism. Common law countries spend a great deal of time and effort customizing their treaty commitment to fit their local largely case-based law. The results of that effort show up in their reservations, which tend to far outnumber those of other legal systems. That the common law result remains once we have controlled for regime type, developmental level, rule

96 This is a point made by, among others, Arthur Rovine during his tenure as legal adviser to the U.S. Department of State. See Rovine 1981:fn. 57.

of law, and regional practices makes it far more believable that it is the nature of the legal system itself that produces both tardy and highly conditioned treaty commitments.

Of course, not all reservations are of the same nature, and it is important to know whether these results are an artifact of a simple count of the affected articles. Accordingly, each country's reservations were read and coded for *breadth*, effect on *enforceability*, and claims relating to *capacity* to comply. The basic story holds up in very convincing ways when analyzing specific *kinds* of reservations (Table 3.4b).

Cultural preferences show up in the strong tendency for Muslim-dominated countries to make reservations of every kind (especially with respect to the CEDAW) *except* those based on capacity. Reservations by these governments tend to be principled rather than expedient. We can see the effort by more highly developed countries to carefully compare treaty commitments with various aspects of their national law: Wealth was associated with the most specific form of reservation-making, both in the form of specific exceptions and with specific references to national codes. The common law effect shows up across all reservation types, but because common law countries are more concerned with how treaties fit into their body of case law, there is practically no relationship to reservations referencing specific national codes.

Finally, the regional effects persist to a remarkable extent. The results reported in Table 3.4b indicate that one of the most important influences on the type of reservation a country makes is the *density of that specific type of reservation in the region*. This is likely true of specific reservations and likely ($p = .148$) true of broad reservations as well. It is almost certainly true of reservations that attempt to reduce the ability to enforce the treaty or certain of its provisions. Governments have the clearest incentive to follow prevailing cultural norms in this regard if they are less than enthusiastic about the overall contents of the treaty. The more other countries in the region have opted for reduced enforceability, the more likely a particular country is to do so as well. This kind of behavior is precisely in line with the social camouflage that I have argued could lead to false positive commitments to a treaty regime in the first place.

Beyond Ratification: Recognizing International Authority

When governments decide to commit themselves to an international treaty regime, ratification of the basic treaty is the primary concern. However, four of the conventions under examination – the ICCPR, CERD, CEDAW, and CAT – have optional protocols by which governments precommit to recognize the authority of an international implementing authority to hear complaints brought by individuals and to express official views on whether the state party's

Table 3.4b. Types of Reservations

Dependent variable: whether or not each country has entered at least one reservation of the following type
Logistical regression, probabilities based on robust standard errors

Explanatory Variable	Model 1: Broad	Model 2: Specific	Model 3: National Code	Model 4: Capacity	Model 5: Reduce Enforcement
Constant	−8.31*** ($p = .000$)	−9.60*** ($p = .000$)	−6.59*** ($p = .000$)	−5.09*** ($p = .006$)	−6.81*** ($p = .000$)
GDP per capita, logged	.437* ($p = .060$)	.765*** ($p = .000$)	.544** ($p = .013$)	−.223 ($p = .465$)	.249 ($p = .184$)
Density of regional reservations	2.03 ($p = .148$)	2.78* ($p = .079$)	−.086 ($p = .967$)	−.686 ($p = .741$)	4.32*** ($p = .000$)
Islam	2.78*** ($p = .000$)	1.06* ($p = .074$)	1.08** ($p = .038$)	−.200 ($p = .824$)	1.47*** ($p = .007$)
Common law legal tradition	1.002** ($p = .023$)	.919** ($p = .014$)	−.091 ($p = .806$)	2.74*** ($p = .000$)	.806** ($p = .050$)
Democracy	−.014 ($p = .830$)	−.031 ($p = .590$)	−.022 ($p = .702$)	.082 ($p = .389$)	−.035 ($p = .548$)
Rule of law	.099 ($p = .583$)	.350** ($p = .030$)	.305** ($p = .033$)	.543** ($p = .049$)	.160 ($p = .272$)
# of observations	413	413	413	341	350
Pseudo R^2	.29	.37	.23	.25	.28

Note: All models include but do not report treaty fixed effects. All models are conditional on having ratified the treaty.
Types of reservations are defined as follows:
1. *Broad reservations*. These include such things as broad references to religious law or national constitutions. They also include broad statements about the domestic status of the treaty (e.g., that it is not self-executing).
2. *Specific reservations.* These make reference to specific obligations under the treaty, usually mentioning an article or a subclause. They carve out a specific arena in which a national practice, should it be interpreted by others to conflict with a specific clause of the treaty, would be construed as consistent with or excepted from the article or clause in question.
3. *National code reservations*. These refer to specific sections of the national code or specific elements of the constitution. These kinds of reservations are similar to specific reservations in that they make a clear effort to name and delimit the excepted practices. In this case, however, they do so with very specific references to elements of the national code or constitution.
4. *Capacity reservations*. In some cases, governments justify reservations based on a claimed inability to implement the obligation in question. Often these reservations are based on resource limitations. Sometimes capacity reservations make general references to the "impracticality" of implementing a particular reservation under "current circumstances."
5. *Enforcement reducing reservations*. These reservations are designed to reduce the possibility that the obligation will be enforced in a domestic court of law or by an international tribunal or other authority.
* Significant at the .10 level; ** significant at the .05 level; *** significant at the .01 level.

practices in fact constitute treaty violations.[97] Only the ICCPR contains the further option of committing to allow other *states* to lodge violation complaints with the UN Human Rights Committee (though it has never been exercised).[98] By examining governments' willingness to take on commitments that progressively expose them to greater authoritative external scrutiny, we can get a clearer picture of what factors contribute to high commitment levels.

The first column of Table 3.5 shows that it is very hard to get empirical traction on why states agree to give their peers a right of complaint. But the evidence suggests that, as has been the case whenever civil and political rights are involved, mature democracies may be more likely to make commitments (p = .11). They are more than two times more likely to commit to the ICCPR state complaint system than are autocracies, and are probably much more willing to allow foreign sovereign complaints than are newer democracies. Religious culture weakly follows the basic patterns we have seen elsewhere, in this case with the strongest impact associated with Protestant countries, which are more than

97 OP I of the ICCPR, for example, specifies that "A State Party to the Covenant that becomes a party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a party to the present Protocol. . . ." Optional Protocol to the International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 59, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 302, *entered into force* 23 March 1976. For a discussion of how this mechanism works, see De Zayas et al. 1985. The OP of the CEDAW provides that "A State Party to the present Protocol . . . recognizes the competence of the Committee on the Elimination of Discrimination against Women . . . to receive and consider communications . . . submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the rights set forth in the Convention by that State Party." Articles 1 and 2, Optional Protocol to the Convention on the Elimination of Discrimination against Women, G.A. res. 54/4, annex, 54 U.N. GAOR Supp. (No. 49) at 5, U.N. Doc. A/54/49 (Vol. I) (2000), *entered into force* 22 December 2000. In the case of the CERD, a similar option is spelled out in Article 14, which reads: "A State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention. . . ." Article 14, International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195, *entered into force* 4 January 1969. Similarly, the CAT contains a provision for optionally establishing such an obligation. According to Article 22: "A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention." G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), *entered into force* 26 June 1987.

98 This option is contained in Article 41: "A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. . . ." G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* 23 March 1976.

Table 3.5. Recognition of International Authority to Rule on Complaints

Dependent Variable: declaration or ratification accepting optional obligations under the following articles or protocols
Cox proportionate hazard model
Hazard ratios probabilities

	State-to-State Right of Complaint	Individual Right of Complaint			
Explanatory Variable	ICCPR Art 41.	ICCPR OP I	CERD Art. 14	CAT Art. 22	CEDAW OP
Democratic since World War I	2.55 ($p = .110$)	3.58** ($p = .026$)	6.34** ($p = .032$)	2.95 ($p = .170$)	3.00 ($p = .107$)
Democratic since World War II	.976 ($p = .973$)	2.28** ($p = .089$)	4.45** ($p = .04$)	1.51 ($p = .550$)	3.06 ($p = .054$)
Newly transitioned democracy	1.58 ($p = .482$)	3.28*** ($p = .000$)	1.90 ($p = .353$)	4.88*** ($p = .005$)	2.28* ($p = .046$)
Common law legal tradition	.529 ($p = .181$)	.509* ($p = .065$)	.119*** ($p = .001$)	.458* ($p = .081$)	.617 ($p = .302$)
Left executive	—	2.03*** ($p = .007$)	—	1.72 ($p = .170$)	—
Log GDP	1.16 ($p = .147$)	.806*** ($p = .004$)	1.07 ($p = .613$)	1.21* ($p = .062$)	1.01 ($p = .830$)
GDP/capita	1.00 ($p = .920$)	1.00 ($p = .260$)	.999 ($p = .168$)	1.0001* ($p = .056$)	.999 ($p = .111$)
Protestant	3.31** ($p = .038$)	1.44 ($p = .473$)	3.42* ($p = .067$)	1.15 ($p = .830$)	2.20 ($p = .157$)
Catholic	1.15 ($p = .782$)	1.90** ($p = .041$)	1.83 ($p = .258$)	.850 ($p = .756$)	2.45** ($p = .015$)
Islam	.488 ($p = .346$)	.602 ($p = .182$)	.802 ($p = .791$)	1.14 ($p = .847$)	1.67 ($p = .262$)
Regional ratifications	1.02* ($p = .095$)	1.018*** ($p = .002$)	1.34** ($p = .016$)	1.04* ($p = .09$)	1.04*** ($p = .000$)
# of countries	149	134	144	149	154
# of ratifications	37	70	29	35	45
# of observations	3,677	2,097	3,465	1,854	569
Prob $>\chi^2$	0.000	0.000	0.000	0.000	0.000

* Significant at the .10 level; ** significant at the .05 level; *** significant at the .01 level.

three times more likely to ratify Article 41 (signifying their willingness to accept the authority of the UN Human Rights Committee to hear state complaints) than are governments of other non-Christian and non-Muslim societies. The power of regional practices once again is noticeable: Ratifications of Article 41 in a region almost certainly have a strong positive effect on a given country's ratification. A 1 percentage point increase in the proportion of countries ratifying in the region raises the probability that another country in that region will do so by perhaps 2 percent (hazard ratio 1.02). Several indicators that could reflect other external influences, such as relative size, a high degree of dependence on foreign aid, and a high-visibility UN conference on a related topic had no effect.[99]

When governments accept optional obligations to allow individuals to complain about violations before an authoritative body of the international community, they expose themselves to even further scrutiny. Individual standing is potentially an important mechanism for helping to hold a state accountable for its treaty compliance.[100] Four of the treaties under examination have such optional mechanisms, though a minority of parties to each treaty have actually agreed to be thus bound. Unlike the state complaint mechanism discussed previously, individuals have been far less reticent to complain about the practices of their own governments.

The final four columns of Table 3.5 document a now familiar pattern. With the very interesting exception of the CAT, stable democracies have been the most willing to ratify these optional agreements to give individuals a right to complain to international authorities about their own state's violations. Democracies of every description – mature and newly transitioned – were much more likely to do so than were nondemocracies (with varying degrees of certainty). This is true despite the fact that a significant proportion of mature democracies, the European countries in particular, have an individual right of complaint within their regional grouping.[101] The CAT is a very interesting exception. For this convention, there are traces of evidence that potentially support a nonlinear relationship consistent with democratic lock-in arguments.[102] Newly transitioned democracies were by far the most eager to commit to external scrutiny when it came to the problem of torture. They were almost five times more likely to do so than nondemocracies

99 The latter two are not reported here, but in robustness checks, foreign aid scaled to GDP had zero impact and a UN conference, if anything, seemed to have a negative impact on Article 41 ratification. See Appendix 3.6 on my Web site for a list of conferences relating to each treaty.

100 Legal scholars have identified an individual right of complaint as a key ingredient in rendering any quasi-adjudicative institution more "courtlike." See Helfer and Slaughter 1997.

101 Hefferman notes that European countries were slightly slow to commit to the ICCPR's first OP because of the regional alternative. She also shows that individuals are much more likely to petition the European Court of Human Rights than the UN Human Rights Committee, despite the fact that findings of inadmissibility are staggeringly high in the regional institution (Heffernan 1997:81).

102 Moravcsik 2000. But compare Goodliffe and Hawkins (2006), who find no such effects with a different specification.

and approximately half again as likely as were mature democracies. These strong systematic differences are fairly clear indications that governments tend to commit at much higher levels to agreements that reflect their preferences as well as their specific historical contexts.

The effect of the nature of the legal system on accepting international authority to hear individual complaints was always in the anticipated direction, with common law countries tending to be reluctant to give individuals access to external courts. In the case of the ICCPR, CERD, and CAT, the effect was strong and significant. The government of a common law country is estimated with a high degree of certainty to be about 90 percent less likely to declare itself bound by the CERD's Article 14 (hazard ratio .119). With somewhat less certainty, such a government is also likely to be much less willing to ratify the ICCPR's first OP. This accords with all of our earlier findings regarding the incentives governments face in common law systems. One issue that likely discourages some governments from ratification is that of how the views of external authorities such as the UN Human Rights Committee fit into the structure of local case-based jurisprudence.

Once again, there is overwhelming evidence of the influence of regional practices on the decision to allow authoritative review of individual complaints. For individual complaint procedures in all cases, the rate of regional ratifications is highly significant and in the positive direction.

CONCLUSIONS

Why do state actors commit themselves to international human rights treaties? After World War II, a consensus had seemed to form – at least as expressed in the UDHR – that the rights of individuals were a proper concern of international society. Chapter 2 discussed the range of actors, especially small democracies sometimes joined by newly independent countries and urged on by private individuals and groups, that took the lead in drafting legal agreements in treaty form. The strong presumption was that states should sign these instruments, and as we have seen, many did. For some governments, commitment to these agreements was hardly problematic. Some governments enthusiastically joined, secure in the knowledge that for the most part they were willing and able to comply. This is not to say that these agreements would not require policy adjustments – improving legal procedures to ensure fairer trials, improving access of racial minorities to jobs and education, raising the minimum age for military service – but these were changes some governments were in principle not opposed to implementing.

That governments ratify because they intend to comply is one of the most robust findings of this chapter. The evidence presented here shows that governments ratify when their preferences line up with the contents of the treaty. Democratic governments were the most likely to ratify treaties that replicate

the kinds of rights they already tend to have in place, namely, strong civil and political rights. Democracies were also less likely to enter reservations to such treaties and to commit to higher levels of external scrutiny through optional protocols that give individuals the right to complain about treaty violations to the various oversight committees. The converse of these findings is quite telling: Nondemocratic governments – polities that never experienced much democratic participation and accountability at any point in their histories – have been systematically reluctant to commit themselves to the contents of legal arrangements that declare the importance of civil and political rights for the individual. Similarly, governments of polities that hold social values that fit quite uneasily with the values reflected in these treaties are also systematically unlikely to commit, as is especially clear in the case of predominantly Muslim societies' reluctance fully to embrace the CEDAW. These are not patterns that fit easily with a theory of costless commitment-making. Were there something to gain from costless ratification – and were there no attendant risks – even the most stable autocracies might have jumped on the human rights treaty bandwagon, washing out the main findings of this chapter.

But it is equally clear that prevailing values alone are not the entire explanation for the pattern of treaty commitment we observe. Some governments may value the contents of the treaty in principle but delay or fail to ratify because domestic institutions raise barriers or otherwise create disincentives to do so. Federal political structures and ratification procedures could in theory produce false negatives, but there is only weak systematic evidence of their effect in this chapter. What is clearer, however, is that the nature of the legal system has a significant and highly consistent effect on governments' commitment patterns. Governments in common law settings are systematically more reluctant to ratify most of these treaties. They enter far more reservations of every kind, which provides striking evidence of the care with which they think through the adjustment, uncertainty, and irreversibility costs their commitments imply. Governments in common law countries are also less likely to go the extra mile with optional commitments giving individuals the right to lodge complaints with the appropriate international authorities, though this result is statistically significant only in the case of the CERD. One of the most important findings of this chapter is that the nature of the legal system itself can create resistance against the ready acceptance of the international human rights regime. Though this has rarely been noted in the literature, it is an understandable consequence of the uncertainties associated with trying to import externally negotiated political agreements into a locally and organically grown system of precedent, where judges wield broad powers of interpretation, with consequences that will be difficult to reverse. My argument is that the nature of the legal system can account for some of the false negatives – supportive but uncommitted states – we have witnessed over the past few decades.

The most profound puzzle is why governments sign international human rights agreements even though they have no intention of implementing them. The evidence presented in this chapter suggests an explanation. Under some circumstances, governments have incentives to ratify strategically. In order to understand why this might be, it is useful to recall the conditions discussed in Chapter 2. The UDHR had placed all governments at the time (except the seven abstainers) on record for supporting a broad set of individual rights. The Cold War placed rights at the center of an ideological struggle that paid lip service to their protection but at the same time discouraged enforcement, especially against a political ally. Information on actual rights practices was fairly thin, as few organized groups had much capacity to collect information systematically. Many states had an interest in keeping the UN enforcement regime weak as they pursued other aims on the plane of high politics.

With this in mind, it is clear that some governments have had incentives to engage in opportunistic ratification. But the evidence certainly implies that governments are savvy about when to make an insincere commitment. I have argued that there may be some short-term benefits to ratification: A sense of joining the world's law-abiding states, the desire to avoid criticism as a nonratifying outlier, a bit of international praise, a stronger claim to a right to participate in future international rights discussions, and the support of some domestic constituency are possible positive benefits. But it is important to realize that these benefits are likely to materialize only in the short run. Patently insincere ratification is likely to be revealed, making it risky as a long-run strategy.

One of the striking findings of this chapter has been evidence that identifies strategic ratification with particular conditions. The finding that governments in countries that have never been democratic tend to ratify international human rights treaties later in their terms in office suggests a legacy motive consistent with short time horizons. The later a dictator ratifies, the more immediate the gratification and the more limited the likely repercussions. No such behavior could be detected for governments in democracies, which are much more likely to be among the sincere ratifiers in the first place.

Perhaps the most interesting finding of this chapter is the extent to which governments apparently take cues from the decisions of other governments in their region. This is a central and increasingly important dynamic of the international human rights legal regime. It is startling to see the extent to which regional effects surface in practically every measure of commitment – from ratification to reservation-making to the acceptance of OPs. Even some *types* of reservations made have strong regional counterparts. This is very likely to reflect the self-conscious coordination of human rights activities on the part of many countries for the reasons discussed in this chapter. Governments appear to time their ratifications – even coordinate their reservations – largely to keep in step with their regional peers. Especially telling are the conditions under which regional emulation is likely to take place. With only a few exceptions, regional

emulation was strongest before 1989, in regions with few regional rights commitments, and in countries with government-controlled presses. These are precisely the conditions under which it might make sense to ratify a universal agreement strategically simply to avoid the criticism of being an outlier: When information on true intentions is thinnest and enforcement is least likely to be forthcoming. These strategic opportunities are likely to produce at least some false positives as rights-oriented countries pull their less enamored neighbors along in their wakes.

This chapter has provided evidence that governments ratify human rights treaties for both sincere and strategic reasons. They calculate the costs versus the benefits in the context of their values, region, national institutions, and time horizons. The next four chapters turn to the question of compliance with treaty obligations. As we will see, treaties are more than scraps of paper: They can become powerful instruments in the hands of rights claimants to hold governments to their promised behavior.