Yale Law Journal
June, 2002

Articles

*1935 DO HUMAN RIGHTS TREATIES MAKE A DIFFERENCE?

Oona A. Hathaway [FNd1]

CONTENTS

*1937 International lawyers for the most part assume that, as Louis Henkin memorably put it, "almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time." [FN1] This assumption undergirds the work of many legal scholars and practitioners, who endeavor to explicate and form the law presumably because they believe that it has real impact. Indeed, the claim that international law matters was until recently so widely accepted among international lawyers that there have been relatively few efforts to examine its accuracy. [FN2] Yet this view long coexisted with a much more skeptical conception of international law among international relations scholars--a conception that holds that, in the immortal words of Thucydides, "[t]he *1938 strong do what they can

and the weak suffer what they must," [FN3] with little regard for international law. [FN4]
The disinclination of international lawyers to confront the efficacy of international law is nowhere more evident--or more problematic--than in the field of human rights law. After all, the major engines of compliance that exist in other areas of international law are for the most part absent in the area of human rights. Unlike the public international law of money, there are no "competitive market forces" that press for compliance. [FN5] And, unlike in the case of trade agreements, the costs of retaliatory noncompliance are low to nonexistent, because a nation's actions against its own citizens do not directly threaten or harm other states. Human rights law thus stands out as an area of international law in which countries have little incentive to police noncompliance with treaties or norms. As Henkin remarked, "The forces that induce compliance with other law . . . do not pertain equally to the law of human rights." [FN6]
Are human rights treaties complied with? Are they effective in changing states' behavior for the better? These are critical questions not only for our assessment of human rights treaties, but also for our understanding of the effects of international law more generally. If states act primarily in pursuit of their self-interest, as dominant theories of international relations generally assume, a finding that human rights law frequently alters state behavior would be deeply puzzling, for human rights treaties impinge on core areas of national sovereignty without promising obvious material or strategic benefits. Indeed, a finding that human rights treaties play an important constraining role would provide powerful evidence for the view, embraced by many scholars and practitioners of international law, that state action is critically shaped by the persuasive power of legitimate legal obligations. Examining the effects of human *1939 rights treaties thus offers a rare opportunity to put dominant views of international law to the test. [FN7]
This Article undertakes that test with a large-scale quantitative analysis of the relationship between human rights treaties and countries' human rights practices. The analysis relies on a database encompassing the experiences of 166 nations over a nearly forty-year period in five areas of human rights law: genocide, torture, fair and public trials, civil liberties, and political representation of women. This data set is the empirical window through which I examine two separate but intimately related questions. First, do countries comply with or adhere to the requirements of the human rights treaties they have joined? Second, do these human rights treaties appear to be effective in improving countries' human rights practices--that is, are countries more likely to comply with a treaty's requirements if they have joined the treaty than would otherwise be expected? [FN8]
A quantitative approach to these questions makes it possible to trace relationships between treaty ratification and country practices that would be difficult, if not impossible, to detect in qualitative case-by-case analyses. [FN9] In an analysis of individual cases, there is virtually no way to know whether better or worse human rights practices are due to treaty ratification or instead to any number of other changes in country conditions, such as a change in regime, involvement in civil war, or a change in economic context. Designed correctly, therefore, comprehensive statistical analysis can isolate more effectively the particular effects of treaty ratification on country practices. And such an analysis can achieve a breadth of coverage that would be infeasible in a qualitative case-by-case analysis.
To be sure, the quantitative approach is not without drawbacks. Although a quantitative analysis can have a scope that is impractical in a qualitative analysis, it necessarily brushes over the nuances of historical context that can only be garnered from a case-study approach. This is, of course, an argument not for abandoning quantitative analysis but instead for supplementing it with qualitative evidence. [FN10] A second obvious drawback of *1940 statistical inquiry is that the accuracy of the analysis necessarily depends on the accuracy of the data on which it rests. To address this problem, I draw on several different data sources

and cross-check all my results against more than one source. Nonetheless, to the extent that the data on which my study rests are imperfect, there remains a risk that the conclusions I draw are similarly imperfect. The questions that this Article addresses are worth considering even if the answers fall short of certainty and even if much room remains for additional quantitative and qualitative research.

From the standpoint of leading perspectives on international law, the results of my research are counterintuitive. Although the ratings of human rights practices of countries that have ratified international human rights treaties are generally better than those of countries that have not, noncompliance with treaty obligations appears to be common. More paradoxically, when I take into account the influence of a range of other factors that affect countries' practices, I find that treaty ratification is not infrequently associated with worse human rights ratings than otherwise expected. I do, however, find evidence suggesting that ratification of human rights treaties by fully democratic nations is associated with better human rights practices. These findings are not fully consistent with either the classic interest-based or the norm-based views of international law. If treaties are simply window-dressing for the self-interested pursuit of national goals, then there should be no consistent relationship between ratification and state behavior, positive or negative. If, by contrast, they have a powerful normative hold, then ratification of human rights treaties should be associated with better practices--not only by fully democratic nations--and should never be associated with worse practices.

My findings do not necessarily tell us that treaties lead to worse human rights practices. Countries with worse practices may be more inclined to ratify treaties, or we may simply know more about violations committed by countries that sign human rights treaties, making countries that ratify look worse than they are. Yet given that I find not a single treaty for which ratification seems to be reliably associated with better human rights practices and several for which it appears to be associated with worse practices, it would be premature to dismiss the possibility that human rights treaties may sometimes lead to poorer human rights practices within the countries that ratify them.

This suggestion is not as outrageous as it might at first appear. The counterintuitive results may be explained at least in part, I argue, by a conception of international treaties that takes account of their dual nature as both instrumental and expressive instruments. Treaties are instrumental in *1941 that they create law that binds ratifying countries, with the goal of modifying nations' practices in particular ways. But treaties also declare or express to the international community the position of countries that have ratified. The position taken by countries in such instances can be sincere, but it need not be. When countries are rewarded for positions rather than effects-- as they are when monitoring and enforcement of treaties are minimal and external pressure to conform to treaty norms is high--governments can take positions that they do not honor, and benefit from doing so. [FN11] In this respect, human rights treaties lie in contrast to Article VIII of the IMF's Articles of Agreement, for which compliance information is readily available and which Beth Simmons has found to have a significant positive influence on state behavior. [FN12]

This perspective helps explain why treaty ratification might sometimes be associated with worse human rights practices than otherwise expected. Countries that take the relatively costless step of treaty ratification may thereby offset pressure for costly changes in policies. Because monitoring and enforcement are usually minimal, the expression by a country of commitment to the treaty's goals need not be consistent with the country's actual course of action.

Although ratification of human rights treaties appears to have little favorable impact on individual countries' practices, this finding does not preclude the possibility that treaties have favorable effects on human rights across the board. And human rights treaties may have

positive effects on ratifying countries over the long term, creating public commitments to which human rights activists can point as they push nations to make gradual, if grudging, improvements down the road. Indeed, these dynamics are not mutually exclusive. Treaty ratification may set in play both positive and negative forces, which together often lead to little or no net effect on state practices.

This Article proceeds in four stages. Part I discusses the existing international relations and legal literature on compliance with international law, dividing contending schools into two broad camps: rational actor *1942 models and normative theory. By developing an inclusive framework for understanding the international-relations and international-law literature on compliance, I aim to clarify the basic fault lines in the debate and further existing efforts to conceive of these two previously divided disciplines as a unified whole. Part II discusses the design of the empirical analysis and reviews the results. The analysis uses a wide range of evidence to evaluate a central question of international law: Do human rights treaties make a difference in state behavior? I begin by comparing the practices of treaty ratifiers with those of nonratifiers to show that the extent of compliance is not only lower than might be expected, but also varies within the universe of nations in revealing ways. I then turn to the crucial quantitative tests, examining the relationship between treaty ratification and country practices in the context of a range of other factors expected to influence country practices, including economic development, civil and external wars, and levels of democratization.

Part III returns to the theory in light of the evidence, pitting contending explanations against the empirical findings and developing my own argument for the paradoxical results that I find. Drawing upon and amending existing theories of international law, I argue that treaties must be understood as dual instruments, in which both expressive functions and instrumental ends sometimes uneasily coexist. The results of the empirical analyses indicate that state expressions of commitment to human rights through treaty ratification may sometimes relieve pressure on states to pursue real changes in their policies and thereby undermine the instrumental aims of those very same treaties. The concluding Part IV discusses possible favorable effects of human rights treaties that may be overlooked by the quantitative analysis and considers the ways in which the expressive and instrumental roles of treaties might be better aligned to ensure that international human rights laws will more effectively lead to improvements in the lives of those they are meant to help.

I. Existing Literature on Treaty Compliance and Effectiveness

Until fairly recently, the question of international law compliance fell by the wayside of both international law and international relations scholarship. Legal scholars examined and explicated the rules of state international behavior, generally taking as a given that the rules would have impact. International relations scholars, for their part, had little interest in international law. The centrality in international relations of realist thinking, which accepted the view that nation-states operated "in a tenuous net of *1943 breakable obligations," discouraged careful examination of the role of transnational institutions and hence of international law. [FN13]

At the same time, the few advances that each discipline made in examining international compliance were largely ignored by the other. Writings on international law were largely concerned with the formation, promulgation, and codification of international laws. Although scholars of international law obviously understood that these rules are not self-executing and that nations vary in the degree to which they adhere to them, relatively little attention was given to the broader economic and political environment that conditions the making of international law and nations' responses to it. This environment was, by contrast, the very focus of much of the international relations literature, yet international relations scholars did not explore whether and how international law fits into it. Perhaps most indicative of the

mutual isolation of the two disciplines was the general failure of international law scholars to use quantitative techniques and rational choice theory, which had emerged as important tools of analysis in political economy but had generally taken a back seat to more traditional modes of legal argumentation and analysis in writing on international law. In turn, international relations scholars often ignored international law scholarship altogether.

In recent years, the chasm between the disciplines has narrowed as international law and international relations theorists have begun to share insights. [FN14] Yet compliance with and effectiveness of international human rights law remains a dark corner into which few have bothered to peer. Here, I sketch out the primary existing theories of international law compliance and effectiveness in both international law and international relations scholarship, taking special note of the few instances where human rights law is specifically considered. In light of the growing harmony and discourse between international law and international relations scholarship, *1944 I opt to blend the two scholarships in defining two broad approaches, which I group under the labels "rational actor models" and "normative theory." [FN15]

Before I begin a review of the literature in more detail, two caveats are in order. First, as any brief review of a rich literature must, the following discussion skims only the surface of deeply complex theories in order to draw out their implications for human rights treaty compliance. Second, by delineating the distinctions among the theories, I do not intend to suggest that they are mutually exclusive. Each approach provides useful and often complementary insights into the puzzle of treaty compliance. Indeed, the goal of this Article is not to supplant, but to supplement, these theories so that they are individually and collectively better equipped to explain treaty compliance.

A. Rational Actor Models

The theories I term "rational actor models" have at their heart a shared belief that states and the individuals that guide them are rational self-interested actors that calculate the costs and benefits of alternative courses of action in the international realm and act accordingly. In this view, international law does not hold a privileged position. It is one of a series of tools available to the relevant actors in their ongoing battle to achieve their self-interested ends. Compliance does not occur unless it furthers the self-interest of the parties by, for example, improving their reputation, enhancing their geopolitical power, furthering their ideological ends, avoiding conflict, or avoiding sanction by a more powerful state. The three variants of this model outlined below differ primarily in the types and sources of interests that they claim motivate country decisions.

1. Realism: Compliance as Coincidence

In what was once the most widely accepted theory of state action among international relations scholars (and is now of growing influence in international law), international treaties and institutions exist only because powerful states benefit from their presence. The most traditional version of this approach, labeled "classical realism," was dominant in academic and policy circles in the years following World War II. In this view, states are *1945 motivated exclusively by their geopolitical interests. [FN16] International law exists and is complied with only when it is in the interests of a hegemon or a few powerful states, which coerce less powerful states into accepting the regime and complying with it. International law is therefore in this view largely epiphenomenal. [FN17]

The strong version of this view no longer holds sway, [FN18] in large part because its dismissal of international regimes ran into difficulty in the 1970s and 1980s when its predictions rapidly diverged from empirical reality. [FN19] Instead, classical realism has given way in the last two decades to a more nuanced approach, termed by its proponents

"neorealism" or "structural realism," that shares with classical realism a conception of states as unitary actors and a focus on the international system as the relevant level of analysis. Neorealists abandoned classical realism's exclusive focus on international power arrangements and instead use concepts drawn from game theory and economics--known under the broad rubric of rational choice theory-- to understand and explain international cooperation and discord. Like classical realism, however, neorealism, as conceived of in Kenneth Waltz's foundational Theory of International Politics [FN20] and its progeny, leaves little room for international institutions. Rather, international politics take place in an international environment defined by anarchy and filled with states that are "unitary actors who, at a minimum, seek their own preservation and, at a maximum, drive for universal domination." [FN21] In this view, therefore, if compliance with international law occurs, it is not because the law is effective, but merely *1946 because compliance is coincident with the path dictated by self-interest in a world governed by anarchy and relative state power.

Both strands of realist theory face a difficult task when called upon to explain the existence of and compliance with human rights regimes. The observation by a state of the human rights of its citizens provides little or no direct benefits to other states. It is therefore difficult for realists to explain why states would be willing to incur the costs of setting up a regime to protect human rights, surrender to that regime the power to control and monitor some aspects of their interactions with their own citizens, commit to bring themselves into line with treaty requirements, and agree to engage where necessary in sanctioning activity to bring others into compliance.

Perhaps the most widely shared view of such laws among realist scholars is that efforts to secure human rights are, in essence, "cheap talk"--an example of governments using liberal ideological arguments to justify actions that they take in pursuit of wealth and power. [FN22] In this view, state behavior that is consistent with the requirements of human rights treaties can only be explained as mere coincidence because no state would actually change its behavior in response to a human rights treaty absent some independent motivation.

Some neorealist scholars, by contrast, accept that a state's commitment to human rights can be genuine and can indeed be no less important in explaining the motivations of countries than material interests. [FN23] Kenneth Waltz, for instance, accepts the possibility that some countries are genuinely committed to human rights and explains human rights regimes as simply a result of powerful nations seeking to impose their commitment to human rights on other nations. [FN24] In this view, states comply with human rights norms because they are coerced into doing so by more powerful nations. This neorealist explanation, however, is not entirely consistent with observed reality. In practice, the most powerful nations are often not among *1947 those pressing for human rights treaties. [FN25] Indeed, the United States, which has been indisputably the strongest world power since World War II, has shown some antipathy toward human rights law, having ratified as of 1999 only seven of nineteen non-International Labour Organization universal human rights treaties with binding legal effect, compared with a median of ten for the 165 other countries included in my database. [FN26] Thus realist and neorealist approaches suggest that if state action is consistent with the requirements of international human rights law, it is most likely the result of coincidence rather than the force of the law. Consequently, they would likely predict no significant relationship between human rights treaty ratification and government behavior.

2. Institutionalism: Compliance as Strategy

In contrast with realist models, institutionalism takes system-wide institutions seriously. Institutionalists, including most notably Robert Keohane, [FN27] seek to explain why international institutions exist and how they influence state action. [FN28] Like neorealism, institutionalism for the most part *1948 views states as unified principal actors that behave on

the basis of self-interest. [FN29] It also shares neorealist assumptions that anarchy and the distribution of power among states are the underlying principles of world politics. [FN30] Indeed, an early variant of this approach--dubbed "modified structural realism" [FN31]--differs from realism primarily in that it takes institutions, often referred to as "regimes," [FN32] seriously. [FN33] In this view--which has been variously recast as "intergovernmental institutionalism," [FN34] "neoliberal institutionalism," [FN35] and "new institutionalism," [FN36]--regimes exist in order to facilitate agreements and are complied with largely because of the rational utility-maximizing activity of states pursuing their self-interest. Regimes thus allow countries to engage in cooperative activity that might not otherwise be possible by restraining short-term power maximization in pursuit of long-term goals. [FN37] When it occurs, therefore, *1949 compliance with international legal rules can be explained as a winning long-term strategy to obtain self-interested ends.

As Duncan Snidal has pointed out, the increased attention to international regimes by international relations scholars did not, at least initially, signal a new focus on international law. The definition of "regimes" adopted early on by most theorists required neither formal institutions nor enforcement powers, and much of the ensuing literature on regimes focused on informal cooperation and largely ignored traditional international organizations and international law. [FN38] Yet the most recent work in this vein has adopted a broader view of institutions [FN39] that encompasses law as well as international legal institutions. [FN40] In this view, legal institutions, like other institutions, are seen as "rational, negotiated responses to the problems international actors face." [FN41]

This reconceptualization of institutionalism among international relations scholars to include international law is one of many signs of the increasing convergence of international law and international relations. Until recently, however, it was left largely to international legal scholars to bring international law into the institutionalist framework. In part in response to the challenge that realism has posed to international law, legal scholars began to reconceptualize the role of law and politics in the international realm. [FN42] In the last decade, a few legal scholars adopted the interests-based approach of institutionalism, but, unlike most international relations scholars, they placed law at the center of the analysis. [FN43] Yet despite institutionalism's increasing acceptance, it has been applied only recently in any comprehensive way to international legal compliance. Jack Goldsmith and Eric Posner use an institutionalist approach that views compliance with international law as the result of interactions between *1950 rational, self-interested states to critique customary international law. [FN44] And in a recent paper, Andrew T. Guzman puts forward a comprehensive institutionalist view of state action in the international realm as a function of interests and power rather than legitimacy or ideology. [FN45] In Guzman's framework, countries take into account both direct sanctions and more indirect sanctions in the form of reputational costs, which he operationalizes through a game-theoretic model of repeated interaction, in deciding whether to comply with international legal rules. [FN46] They weigh these costs against the benefits they will obtain from compliance, and, based on this calculus, decide how to act.

This institutionalist view of international law can be seen as a necessary and overdue counterpart to the longstanding consent-based approach to international law. International lawyers have long pointed to state consent as the central basis for the binding nature of international law. [FN47] The consent-based approach is centered, as its name suggests, on the notion that states can bear no obligation to which they have not consented. [FN48] Proponents of this view of international law see international treaties as simply a means for states to consent to abide by certain well-specified obligations. Once a state has accepted such an obligation, the argument continues, the obligation becomes binding and a nation must comply with it. [FN49] The institutionalist approach outlined above helps fill a gap in consent theory by offering a possible explanation for why, if international law binds only countries

that consent to it, international law exists and has any force at all. International law exists and has force, the institutionalist would say, because it provides a means of achieving outcomes possible only through coordinated behavior. States consent to commit themselves because doing so is the only way to achieve certain goals. They then comply with *1951 obligations already made as long as the reputational costs and direct sanctions that would result from noncompliance outweigh the costs of continued compliance. [FN50] In this view, then, law provides a real constraint, but only insofar as violating it entails real costs. Law carries no weight divorced from the quantifiable sanctions and costs imposed in the case of its violation. Explaining compliance with human rights law is almost as daunting a task for institutionalist theory as it is for realist theory. In the institutionalist view, compliance with international human rights treaties must be explained as the result of rational self-interested behavior on the part of states, the result of a reasoned weighing of the costs and benefits of alternative modes of action. But on the whole, the benefits of human rights treaty compliance appear minimal while the costs often are not. In cases where the treaty requires actions that are consistent with a country's practices at the time the treaty is adopted, the costs of compliance are obviously negligible. Treaties can, however, require fairly extensive changes in domestic institutions and practices. One of the treaties examined here, for example, requires a ratifying country to put in place "legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction." [FN51] Countries that are parties may thus be required to make potentially costly system-wide changes in order to bring themselves into compliance. Why might countries be willing to do this? In the institutional model, they do so because of the threat of direct sanctions or harm to reputation. [FN52] Direct sanctions in the form of economic or military reprisal for human rights treaty violations are so rare, however, that states are unlikely to conform their actions to a treaty solely on that basis. [FN53] And the threat of retaliatory noncompliance with the treaty does not have the power that it does in other contexts, such as trade or arms agreements, as a threat that a treaty party will violate the treaty in retaliation for violations by another party is untenable. The institutional model is left, then, with reputation as the primary anchor of compliance for all but those countries for which compliance is costless: States comply with human rights treaties *1952 to obtain or maintain a reputation for compliance and hence good international citizenship. In the institutional model, therefore, if countries change their behavior in response to human rights treaties, it is largely because of concern for their reputation.

3. Liberalism: Compliance as By-Product of Domestic Politics

A third rational actor model of international law compliance discards the assumption, which undergirds realism and institutionalism, that states are properly viewed as unitary rational agents. Termed "institutional liberalism" (or sometimes "liberal institutionalism"), this approach disaggregates the state and places the focus on domestic political processes. The approach finds its intellectual antecedents in the work of Immanuel Kant, in particular his essay Perpetual Peace. [FN54] In the essay, Kant argues that the first condition of perpetual peace is that "the civil construction of every nation should be republican," [FN55] because republican governments (i.e., representative democracies) rely on the consent of the citizens to engage in war and must therefore "consider all its calamities before committing themselves to so risky a game." [FN56] Kant's claim was later taken up by international relations scholars who claimed that although "liberal" states engage in war, they do not engage in war with one another. [FN57] In its modern iteration, liberal international relations theory has come to stand for the straightforward proposition that domestic politics matter. [FN58]

The liberal approach holds that interstate politics are much more complex than realists and institutionalists acknowledge. States are not unitary, but rather are the sum of many different parts. Understanding those parts--the political institutions, interest groups, and state actors--is

essential to fully understanding state action on the world stage. As Andrew Moravcsik puts it: "Societal ideas, interests, and institutions influence state behavior by shaping state preferences, that is, the fundamental social purposes underlying the strategic calculations of governments." [FN59] In other *1953 words, one cannot fully understand state decisions in the international realm without understanding the domestic politics that underlie them. [FN60] Anne-Marie Slaughter has taken the lead in bringing the liberalist view to the attention of legal scholars. She argues in an early piece in this vein that just as liberal states act differently toward one another in waging war, they act differently toward one another in the legal realm. [FN61] From this insight, she constructs what she terms a "liberal internationalist model" of transnational legal relations that seeks to explain why and how relations among liberal states differ from those between liberal and nonliberal states. In short, she argues that because of their political structure, liberal states are more likely to resolve disputes with one another peacefully in the "zone of law" than they are when the disputes are with nonliberal states. [FN62] In a more recent article, Slaughter and her coauthor Laurence Helfer make a similar argument with regard to the effectiveness of international or "supranational" adjudication, which, although distinct from treaty law, bears some important similarities. [FN63] They argue that liberal democratic governments will be more likely to comply with supranational legal judgments than are other states because international legal obligations mobilize domestic interest groups that in turn pressure the government to comply. [FN64] More specifically, they claim that "government institutions committed to both the rule of law and separation of powers . . . in systems where the individuals themselves are ultimately sovereign[] are primed to be the most receptive to the tools that a supranational tribunal has at its disposal." [FN65] Thus compliance with international law comes, in the liberalist view, from the favorable effect of international law and legal institutions on domestic interests--a phenomenon not limited to, but more likely to be found in, liberal states.

Liberal theory is susceptible to the charge that although it can provide explanations for government actions after the fact, it has difficulty generating predictions ex ante. Indeed, at an extreme, the theory can be reduced to the unenlightening truism that if a country acts in a particular *1954 way, it must be because domestic politics made it do so. Yet it is arguably better suited to explaining compliance with human rights treaties than are either of the other two rational actor models. In the liberalist view, human rights treaties, like other sources of international law, must affect state action by affecting domestic interests. A state's ratification of a human rights treaty creates an international legal obligation that domestic interest groups can use to mobilize pressure on domestic political institutions to take action in conformance with that obligation. This process is particularly strong in liberal states, which are structured to translate domestic interests into state action. Moreover, according to this view, such states are more likely to abide by human rights treaties because they are more likely to be receptive to the claim that once a treaty is consented to, it creates an obligation that must be obeyed. [FN66] Liberalism thus generates a testable hypothesis: Liberal nations are more likely to comply than others, and treaties are more likely to lead to favorable changes in the practices of liberal nations than in the practices of others.

Andrew Moravcsik's recent work on human rights treaty ratification from the perspective of a variant of the liberal approach--termed "republican liberalism"--gives reason to suspect that the story regarding human rights treaty compliance may be more complicated than the above analysis suggests. Examining the formation of the European Convention on Human Rights, [FN67] Moravcsik argues that newly established and potentially unstable democracies are more likely to be supporters of binding human rights regimes than are either established democracies or nondemocracies. [FN68] They do so, he explains, in order to "lock in" democratic rule through the enforcement of human rights. [FN69] If Moravcsik is correct and if, as one might reasonably hypothesize, new democracies tend to have worse human rights

practices than do more established democracies, [FN70] then it is possible that *1955 there is an unexpected selection effect that would lead to lower apparent rates of compliance with human rights treaties. Of course, Moravcsik's argument regarding countries' reasons for joining treaties does not suggest that human rights treaties worsen the practices of newly established democracies. Indeed, the argument appears to rest on the assumption, shared by others in the liberal camp, that democracies will be likely to exhibit better human rights practices if they have signed a treaty than if they have not. If this were not the case, it is not clear why domestic actors would see treaty ratification as a means of "locking in" democratic rule. [FN71] Thus, while Moravcsik's republican liberal theory suggests a more nuanced story regarding expected patterns of compliance, it too appears to predict that human rights treaties will be more effective in changing behavior in liberal nations than in others.

B. Normative Models

The theories of international law compliance that I group under the label "normative models" share the conviction that the interest-based rationalist models miss something fundamental about the international legal framework: the persuasive power of legitimate legal obligations. Scholars adopting this approach argue that state decisions cannot be explained simply by calculations of geopolitical or economic interests or even the relative power of domestic political groups. A complete description of state action in the international realm, they argue, requires an understanding of the influence and importance of ideas. How and why ideas matter, however, remains a source of disagreement. I describe below three separate models that seek to explain the influence of ideas on international law compliance: the managerial model, the fairness model, and the transnational legal process model.

1. The Managerial Model: Compliance Is Due to a Norm of Compliance and Fostered by Persuasive Discourse

Perhaps the most prominent normative approach, called the "managerial model" by its progenitors Abram and Antonia Chayes, places the spotlight on the process of international discourse. This view, which is informed by and draws together Chayes and Chayes's extensive practical international law experience, teaching, and writing, adopts a "cooperative, problem-solving approach" to international law compliance, as against *1956 what they term the "enforcement model" of compliance. [FN72] The common belief that it is necessary for a treaty to incorporate coercive enforcement measures in order to achieve a high rate of compliance reflects, they claim, "an easy but incorrect analogy to domestic legal systems." [FN73] Coercive economic or military sanctions for treaty violations cannot be the primary mechanism of obtaining compliance with treaties. Such sanctions are too politically and economically costly and often ineffective at changing behavior. [FN74] Moreover, because they are so costly, they are rarely administered and tend to be intermittent and ad hoc, and hence unlikely to serve as legitimate, effective deterrents. [FN75]

Instead of assuming that international legal obligations must be backed up with threats in order to be effective, Chayes and Chayes begin with the expectation that states have a propensity to comply with their international treaty obligations. This propensity to comply comes about in large part, they claim, because treaties generate legal norms, which necessarily carry a widely accepted obligation of obedience. [FN76] Norms are obeyed not simply because of the penalties a violation carries; rather, the obligation to obey legal norms exists even in the absence of a threat of reprisal. [FN77] Although it is difficult to explain why countries respond to this sense of obligation, Chayes and Chayes argue that it is no more difficult than explaining why they would respond to self-interest. [FN78] In short, then, states obey treaties largely because their prior agreement to do so has created a normative obligation they cannot ignore--states accept and abide by the notion of pacta sunt servanda. [FN79]

When noncompliance occurs, in this view, it is usually not because of a calculated weighing of costs and benefits of treaty adherence but instead because of insufficient information or capacity on the part of the state. [FN80] To *1957 combat noncompliance, Chayes and Chayes therefore advocate a strategy based not on coercion but on "managing" compliance. This multifaceted approach focuses on ensuring transparency regarding the requirements of the regime and the parties' performance under it, creating a dispute settlement mechanism, and building capacity for compliance. These elements merge into a broader effort to persuade noncomplying countries to act in accordance with the law. It is this persuasion, they argue, that is central to treaty compliance. As they put it, "[T]he fundamental instrument for maintaining compliance with treaties at an acceptable level is an iterative process of discourse among the parties, the treaty organization, and the wider public." [FN81] This process is effective not because of the threat of direct penal sanctions but rather because of the threat of alienation from the "complex web of international arrangements" that have become central to most nations' security and economic well-being. [FN82] In this view, therefore, persuasive discourse in a system where there is a norm of treaty compliance is the key to obtaining and maintaining international law compliance.

All of the normative theories--and the managerial model is no exception-- share the fundamental claim that it is the transformative power of normative discourse and repeated interactions between transnational actors, rather than the calculation of political, military, or financial advantage, that is responsible for the formation and continuation of human rights regimes. Norms, in other words, have a causal influence on human rights regimes. International cooperation regarding human rights occurs, it is claimed, because of the persuasive power of normative beliefs regarding human rights. This process of norm proliferation and socialization is aided by the human rights activism of nongovernmental organizations, which motivate international discourse on human rights, establish international networks of people and institutions to monitor human rights violations, and rally public opinion in support of efforts to convince governments to create human rights regimes and press other states to join them. [FN83] Normative theorists thus reject the notion that governments abide by human rights treaties for instrumental reasons. The fundamental motive behind these *1958 treaties is not rational adaptation, they claim, but transnational socialization. [FN84]

The managerial model provides some specific arguments regarding compliance that can be used to deduce predictions regarding state compliance with human rights regimes. In particular, it predicts that countries have a propensity to comply with treaties and that noncompliance will be limited to situations in which there are ambiguities, limitations on capacity, or temporal issues. The sources of noncompliance identified by Chayes and Chayes are indisputably correct--countries cannot immediately comply with legal obligations they do not understand, with which they do not have the capacity to comply, or that take time to implement. What is more debatable--and hence tested in this Article--is the assertion that compliance with human rights treaties will generally exist where these sources of noncompliance are absent.

2. The Fairness Model: Compliance Occurs when Rules Are Legitimate and Just

A prominent strand of the normative explanatory framework finds the source of support for international regimes in the legitimacy of the norms and rules that compose them. [FN85] Phillip Trimble, for example, argues that international law is a form of "rhetoric" whose persuasiveness depends on its legitimacy, which in turn depends on the process whereby it arises, its consistency with accepted norms, and its perceived fairness and transparency. [FN86]

In the most recent comprehensive statement of this approach, Thomas Franck claims that the

key element explaining treaty adherence and compliance is fairness. [FN87] The question Franck poses is not, "Do nations comply?," but rather "[I]s international law fair?" [FN88] This is the central question, he claims, because rules that are not fair exert little "compliance pull." [FN89] In order to be legitimate or fair, rules must be both substantively and procedurally fair--their ends must lead to distributive justice and they "must be arrived at discursively in accordance with what is accepted by the parties as right process." [FN90] *1959 The fairness model, like the managerial model, thus points not to state calculations of self-interest as the source of state decisions to act consistently with international legal obligations, but instead to the perceived fairness of the legal obligations. Compliance with international law, in this view, is traced to the widespread normative acceptance of international rules, which in turn reflects the consistency of the rules with widely held values and the legitimacy of the rulemaking process. [FN91] Specifically, Franck claims that four primary factors determine the legitimacy of a rule and thus state compliance with it. [FN92] First, there must be "determinacy" so that the rule's requirements are transparent and its fairness thereby "made manifest" (this is an obvious counterpart to Chayes and Chayes's claim that "ambiguity" is a major source of noncompliance). [FN93] Second, the rule must have attributes that signal that it is an important part of a system of social order, a characteristic Franck labels "symbolic validation." [FN94] Third, the rule must exhibit "coherence"--it must treat like cases alike and "relate [] in a principled fashion to other rules of the same system." [FN95] Finally, the rule must be closely connected to (i.e., "adhere to") the secondary rules of process used to interpret and apply rules of international obligation. [FN96]

In this framework, the greatest strength of human rights regimes is arguably their symbolic validation. As Franck notes, the violation of any aspect of human rights has assumed the "greater gravity of a trespass against a major public policy of the community." [FN97] Human rights rules also appear to be supported by the procedural and institutional framework of the international community (thereby meeting Franck's "adherence" condition). Human rights treaties vary, however, in their determinacy and coherence. Franck argues that the process put into place by the International Covenant on Civil and Political Rights [FN98] has caused "[a] perception of fairness" to begin to displace the "opprobrium of expedient politics in human rights discourse" [FN99] because its provision for case-by-case review of alleged violations by the quasi-judicial Human Rights Committee of independent experts means that the rules are more impartially applied. This impartial application, in turn, creates greater coherence and determinacy in *1960 the requirements of the treaty. [FN100] But Franck's analysis may be too sanguine regarding the effectiveness of the provisions of the Covenant on Civil and Political Rights and other similar human rights treaties. [FN101] While the human rights system may be legitimate in form, it appears less so in practice, and hence its compliance pull must be less strong under the fairness framework than Franck estimates. Nonetheless, the fairness theory appears to argue, as does Franck himself, that human rights treaties are largely fair and therefore likely to foster compliance.

3. The Transnational Legal Process Model: Compliance Occurs Because Norms Are Internalized

The most recent addition to the normative theoretical framework is Harold Koh's theory of transnational legal process. [FN102] Koh shares with Franck and Chayes and Chayes a conviction that the secret to better enforcement of international law is not coerced compliance, but voluntary obedience. He fills a logical gap left by these theorists by providing an explanatory framework for understanding how and why the process of norm-internalization that he considers the key to compliance, or obedience, occurs. Koh claims that the process of norm-internalization has three phases. It begins when one or more transnational actors provoke an interaction with another, thereby requiring enunciation of the norm applicable to

the interaction. The interaction generates a legal rule that can be used to guide future transnational interactions. Over time, a series of such interactions causes the norms to become internalized, and eventually, this iterative process leads to the reconstitution of the interests and identities of the participants. [FN103]

*1961 Transnational legal process, in contrast with the two other models of normative theory discussed above, opens the black box of the state. The process of norm-internalization on which the theory rests occurs via transnational actors--usually foreign policy personnel of the governments involved, private norm entrepreneurs, and nongovernmental organizations, which form an "epistemic community" to address a legal issue. [FN104] As transnational actors interact, Koh argues, they generate patterns of activity that lead to norms of conduct, which are in turn internalized into domestic structures through executive, legislative, and judicial action. Domestic institutions thereby enmesh international legal norms, generating self-reinforcing patterns of compliance. In this way, repeated participation in the transnational legal process leads nations to obey international law. Obedience to international law thus comes about not simply because of external enforcement of legal rules, but because repeated interaction leads nations gradually to internalize legal rules. Indeed, in Koh's view, "True compliance is not so much the result of externally imposed sanctions . . . as internally felt norms." [FN105]

The transnational legal process framework presents a coherent explanation for compliance with human rights regimes. Noting that in the area of human rights, national governments are often unwilling to enforce treaties against one another, Koh argues that the transnational legal process approach offers a means of combating this apathy. To encourage interaction, more actors, including intergovernmental and nongovernmental organizations and private parties, ought to be encouraged to participate in the process. [FN106] And to produce interpretations of human rights norms, fora dedicated to this purpose should be created or adapted from existing institutions. [FN107] Finally, domestic internalization of the norms can occur through a variety of means, including incorporation into the legal system through judicial interpretation, acceptance by political elites, and the like. [FN108] Indeed, Koh exhorts those seeking to encourage countries to abide by international human rights law to use all the tools at their disposal--not simply external power and coercion, not simply self-interest of states, not simply encouragement of liberal legal identity, not simply promotion of shared values, and not simply facilitation of legal process, but all of these at once. [FN109]

The approach of transnational legal process helps explain why human rights norms are obeyed even in the face of contrary self-interest on the part *1962 of participating states. It fosters better understanding of the process by which international legal norms can be generated and internalized into domestic legal systems and thereby provides a guide for those seeking to bring about changes in country practices on an international scale. [FN110] However, in providing a very detailed explanation for compliance, the transnational legal process model loses some predictive power. Once a norm has been internalized and obeyed, the transnational legal process model provides a means of tracing the players and process that led the country to obey. Yet it is difficult to predict in advance which norms will become internalized through the three-step process of interaction, interpretation, and internalization. In its current form, which awaits book-length treatment, the theory does not tell us what characteristics of a norm or country lead to compliance. Nor does it explain why norms in favor of compliance, rather than against it, are internalized. While this tradeoff of predictive value for explanatory value is undoubtedly intentional, it does cabin the uses to which the theory can be put. [FN111]

The rationalist and normative strands of international law and international relations scholarship recounted here provide coherent contrasting accounts of international legal compliance. The next Part tests the claims of the two approaches and their variants in the area of human rights using a comprehensive analysis of countries' human rights practices and their

relationship to human rights treaty ratification. The results, while necessarily limited to the area of human rights treaties, carry implications for theories of treaty compliance more generally.

II. Testing Compliance

The analysis presented in this Part confronts the question: Do human rights treaties make a difference in countries' human rights practices? Normative theory suggests that they should unless specified sources of noncompliance, such as insufficient information or incapacity on the part of the state, are present. [FN112] Rationalist theory is more equivocal, with each variant making slightly different predictions regarding the expected relationship between treaty ratification and human rights practices. Realist *1963 theory, which views such treaties largely as cheap talk, would predict little or no relationship between ratification and practice. Institutionalists, on the other hand, would expect treaty ratification to be associated with better human rights practices. If the reputational benefits of treaty compliance are the primary source of country compliance, as Andrew Guzman's model suggests, one would expect countries that ratify human rights treaties to comply with their requirements but not if doing so requires changes in practices. Indeed, in this view, it appears likely that only countries for whom compliance is costless or nearly costless will ratify. Finally, liberalists would predict that for democracies at least, treaty ratification will be associated with better human rights practices. The question this Part examines thus provides a good starting point for testing the relative strengths of the theories against the empirical evidence.

The analysis in this Part explores two related issues--compliance and effectiveness. I begin by discussing the challenges inherent in a project that seeks to address these two issues and the ways in which I have attempted to meet these challenges. I then turn to the quantitative analyses. I first examine whether countries comply with or adhere to the requirements of the human rights treaties they have joined. [FN113] I then address the more difficult question of whether treaties are effective in improving countries' human rights practices.

A. The Challenges of Measuring Compliance and Effectiveness

Any study seeking to evaluate compliance with and effectiveness of human rights treaties faces a serious measurement problem. This problem has two aspects. First, compliance and effectiveness are imprecise terms that can be open to multiple interpretations. It is therefore important to be clear about what it is that the study seeks to measure. Second, measuring state human rights practices is complicated by the relative dearth of comprehensive information. Indeed, a central difficulty that all quantitative studies of human rights practices face--and the present one is unfortunately no exception--is the relative scarcity of accurate information on state practices. [FN114]

*1964 I begin with the more tractable challenge of specifying the relationship between treaties and state behavior. I explore two facets of what traditionally has been referred to collectively as "compliance"--compliance and effectiveness. [FN115] The notion of compliance also has several different dimensions: compliance with procedural obligations, such as the requirement to report; compliance with substantive obligations outlined in the treaty; and compliance with the spirit of the treaty. [FN116] This study focuses attention on the last two of these forms of compliance. Because I aim to measure compliance with a treaty's letter and spirit, I focus on countries' actual treatment of their inhabitants, rather than their cooperation with procedural requirements or with the legislative implementation requirements of the treaty. [FN117] In principle, therefore, determining whether a country complies with a treaty merely requires comparing the relevant activity with the treaty's requirements. Yet this is not as simple as it at first seems. To begin with, compliance is not an on-off switch; it is an elastic concept that allows for different gradations. [FN118] Laws often incorporate a *1965 zone within which

behavior is considered to "conform" even if it is not consistent with the letter of the legal obligation. And there are different levels of nonconformance: Just as traveling at forty miles per hour over the speed limit is different in kind from traveling ten miles per hour over the speed limit, so too is rampant corruption in a court system different in kind from occasional failure to bring accused persons to trial quickly. Compliance with human rights treaties must therefore be defined on a continuum based on the degree to which behavior deviates from the legal requirements of the treaties.

Effectiveness is directly related to, but distinct from, compliance. A country may comply with a treaty--its actions comport with the requirements of a treaty--but the treaty may nonetheless be ineffective in changing its practices. In evaluating effectiveness, I therefore seek to determine whether there is any evidence indicating that countries' practices are different when they have ratified a given treaty than they would have been expected to be absent ratification.

The second and more difficult challenge encountered in a study of compliance and effectiveness of human rights treaties is posed by the task of measuring countries' practices. I choose in this study to examine five subject areas-- genocide, torture, civil liberty, fair and public trials, and political representation of women--that cover a broad spectrum of human rights and draw their measures from a variety of sources. Genocide and torture are the most widely prohibited human rights violations. Both are the subject of international treaty instruments and are among the few human rights that are virtually universally acknowledged to be a violation of customary international law. [FN119] Indeed, the norms against torture and genocide are widely regarded as jus cogens and therefore nonderogable. [FN120] The norms against torture and genocide are also relatively clear and precisely specified. [FN121] Next on the spectrum are civil liberty (encompassing freedom of expression, freedom of association, the independence of the judiciary, rule of law, and personal autonomy) and the right to a fair and *1966 public trial, both of which are covered by decades-old international treaty instruments, but neither of which is regarded as a norm of customary law. [FN122] Finally, I examine the influence of treaties on one of the least entrenched international human rights--women's political equality. [FN123]

I choose to examine these five areas of human rights in part because they permit me to minimize two of the three factors contributing to noncompliance outlined by Chayes and Chayes--ambiguity and lack of capacity. I seek to address ambiguity by focusing my analysis on treaties for which the interpretation of the broad requirements of the treaty is widely shared (though particular applications of those requirements may be contested), and I resolve any significant differences of legal opinion on the requirements of the treaty in favor of the countries under study. [FN124] With the exception of women's political equality, the areas on which I focus are ones in which the treaty governs only activity by the state or its agents, thus enhancing state capacity to effect the required changes. [FN125] Of course, simply because an activity is carried out by state actors does not necessarily mean that it is within the capacity of the state to change it, but it does suggest that the state's capacity will be greater than where the state must affect the activity of private actors in order to comply. I address the third source of noncompliance--the time lag between undertaking and performance--by tracking countries over a nearly forty-year period. I likewise seek to eliminate the related sources of noncompliance identified by Franck by selecting cases in part because they largely satisfy the determinacy condition (the obligations of the treaty are clearly specified) and the *1967 coherence condition (like cases are treated alike) for legitimacy. By minimizing these obvious and widely accepted sources of noncompliance in the study, I can better focus attention on the central area of disagreement between normativists and rationalists, namely, whether and why nations comply (or do not comply) with clear, determinant, and coherent treaties to which they have some capacity to conform their actions.

I draw the measures of state practices in the five areas examined from four different sources:

the Center for International Development and Conflict Management at the University of Maryland, College Park, the United States Department of State Country Reports on Human Rights, Freedom House's Annual Survey of Political Rights and Civil Liberties, and the Inter-Parliamentary Union. The database consists of 166 countries from 1960 to 1999, for a total of 6474 separate observations. [FN126] Because the database covers multiple countries over multiple years, I sometimes refer to a single observation as a "country-year," though for ease of reference I usually employ the less precise term "country."

None of the sources I use provides a perfect measure of countries' compliance with the requirements of a given treaty. Some of the measures are better than others, but each has its flaws. Indeed, an examination of the four sources demonstrates a tradeoff between the objectivity of the data sources and the level of tailoring of the sources to the relevant treaties. For example, I draw the data on torture and fair trials from the State Department reports. [FN127] The strength of these data is the close tailoring of the data to the requirements of the treaties, which was possible because I coded the data in the State Department's narrative accounts with direct reference to the requirements of the relevant treaties. The primary weakness is the susceptibility of the State Department reports to charges of political bias. [FN128] The data on genocide are drawn from an independent organization not known for particular biases. [FN129] Yet the fit between the definition of genocide used in constructing the data and the very narrow definition of genocide in the Genocide Convention is imperfect. Similarly, the data on the percentage of men in parliament have the advantage of being entirely objective, yet again the fit between the data and the requirements of the treaty is imperfect.

While the problems of objectivity and fit ought not be ignored, they also ought not be overstated. Studies of the State Department Country *1968 Reports on Human Rights have shown that their assessments of the human rights practices of countries differ only marginally from the assessments of Amnesty International, particularly after 1985, the period for which I use the State Department data. [FN130] And where the fit between measures of country practices and treaty requirements is imperfect, the measures chosen are nonetheless strongly indicative of the success of countries in putting in place practices and institutions designed to achieve the requirements of the treaties. Moreover, it is imperative to note that I base each broad analytical conclusion on data drawn from at least two different data sources and do not rely on any empirical result that cannot be cross-validated. This approach mirrors that of the only other extant quantitative study of the relationship between human rights treaty ratification and country human rights practices. [FN131]

To give a more precise picture of the sources and definitions of the five areas under study, I discuss each in turn below.

1. Genocide

I obtained the data on genocide from the Center for International Development and Conflict Management at the University of Maryland, College Park. [FN132] The Center defines "geno/politicide" as

> the promotion, execution, and/or implied consent of sustained policies by governing elites or their agents--or in the case of civil war, either of the contending authorities--that result in the deaths of a substantial portion of a communal group or politicized *1969 noncommunal group. In genocides the victimized groups are defined primarily in terms of their communal (ethnolinguistic, religious) characteristics. In politicides, by contrast, groups are defined primarily in terms of their political opposition to the regime and dominant groups. . . . In the case of geno/politicide authorities physically exterminate enough (not necessarily all) members of a target group so that it can no longer pose any conceivable threat to their rule or interests. [FN133] In operationalizing the criteria, the Center provides: "(1) Authorities'

complicity in mass murder must be established. . . . (2) The physical destruction of a people requires time to accomplish: it implies a persistent, coherent pattern of action. . . . (3) The victims to be counted are unarmed civilians, not combatants." [FN134] The Center records the magnitude of each genocidal episode based on the annual number of deaths, placed on a scale that ranges from 0 to 5. [FN135] With the exception of its inclusion of politicides (admittedly a substantial difference), the definition reasonably closely matches the definition of genocide offered in the Genocide Convention:

[G]enocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily harm or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group. [FN136]

2. Torture

I generated the data on torture by coding the sections on torture in the United States Department of State Country Reports on Human Rights. The Torture index, which I constructed by referring directly to the requirements of the relevant treaties, [FN137] ranges from 1 to 5. In arraying countries' *1970 practices on this scale, I considered "beatings," which were frequently mentioned separately from "torture," to be a subcategory of torture when they constituted affirmative acts of physical or mental abuse in prison or by police or other governmental officials. In this subcategory, I included maltreatment used to extract confessions or in initial interrogations. I disregarded punishments carried out pursuant to a country's legal system, even if that system may be considered by some to sanction torture. Hence, I did not consider punishment carried out pursuant to the Sharia to constitute torture. When possible, I coded a country's practices using key words identified in the reports to indicate the frequency of the use of torture. I did not code widespread poor prison conditions (e.g., overcrowding, inadequate food, lengthy detentions prior to trial) as torture unless the conditions of detention were so severe as to constitute mistreatment or abuse aimed at intimidating, penalizing, or obtaining a confession from detainees. I gave weight to all information reported unless it was specifically noted to be likely untrue. In assigning a rating to a country, I gave the highest category to which it corresponded. Hence, if there were reports of "widespread torture" but no "beatings," the country-year would nonetheless be assigned a 5. I rated country practices as described below:

1: There are no allegations or instances of torture in this year. There are no allegations or instances of beatings in this year; or there are only isolated reports of beatings by individual police officers or guards all of whom were disciplined when caught.

*1971 2: At least one of the following is true: There are only unsubstantiated and likely untrue allegations of torture; there are "isolated" instances of torture for which the government has provided redress; there are allegations or indications of beatings, mistreatment or harsh/rough treatment; there are some incidents of abuse of prisoners or detainees; or abuse or rough treatment occurs "sometimes" or "occasionally." Any reported beatings put a country into at least this category regardless of government systems in place to provide redress (except in the limited circumstances noted above).

3: At least one of the following is true: There are "some" or "occasional" allegations or incidents of torture (even "isolated" incidents unless they have been redressed or are unsubstantiated (see above)); there are "reports," "allegations," or "cases" of torture without reference to frequency; beatings are "common" (or "not uncommon"); there are "isolated" incidents of beatings to death or summary executions (this includes unexplained deaths suspected to be attributed to brutality) or there are beatings to death or summary executions

without reference to frequency; there is severe maltreatment of prisoners; there are "numerous" reports of beatings; persons are "often" subjected to beatings; there is "regular" brutality; or psychological punishment is used.
4: At least one of the following is true: Torture is "common"; there are "several" reports of torture; there are "many" or "numerous" allegations of torture; torture is "practiced" (without reference to frequency); there is government apathy or ineffective prevention of torture; psychological punishment is "frequently" or "often" used; there are "frequent" beatings or rough handling; mistreatment or beating is "routine"; there are "some" or "occasional" incidents of beatings to death; or there are "several" reports of beatings to death.
5: At least one of the following is true: Torture is "prevalent" or "widespread"; there is "repeated" and "methodical" torture; there are "many" incidents of torture; torture is "routine" or standard practice; torture is "frequent"; there are "common," "frequent," or "many" beatings to death or summary executions; or there are "widespread" beatings to death.
A researcher working under my guidance performed the initial coding. A second researcher then coded a random sample of 20% of the data to test reproducibility reliability. [FN138] Intercoder reliability, which I assessed using *1972 Cohen's Kappa statistic, [FN139] was 80%. Because the information in the reports is scarce prior to 1985, I deemed it insufficiently reliable and therefore included only data obtained from the reports from 1985 to 1998 in the data set, even though earlier reports are available. As with all of the human rights measures, where the data source does not cover a country or provides insufficient information on a country in a particular year to allow for coding, that entry is left blank in the database. As the United States is never covered by the State Department Country Reports on Human Rights, all the entries for the United States's torture practices are blank in the database. Because the United States is only one of 166 countries in the database, this omission ought not have a significant impact on the results. A complete copy of the data appears in Table 6. [FN140]

3. Fair Trial

I created the Fair Trial index by coding, with the help of two research assistants, the sections in the State Department Country Reports on Human Rights that addressed issues relating to fair trials. To code these sections, I identified ten elements of a paradigmatic fair trial by reference to the Covenant on Civil and Political Rights, the American Convention on Human Rights, the European Convention on Human Rights, and the African Charter on Human Rights. The identified elements of a fair trial include the following: an independent and impartial judiciary, [FN141] the right to counsel, [FN142] the right to present a defense, [FN143] a presumption of innocence, [FN144] *1973 the right to appeal, [FN145] the right to an interpreter, [FN146] protection from ex post facto laws, [FN147] a public trial, [FN148] the right to have charges presented, [FN149] and *1974 timeliness. [FN150] We then coded each element by country and year for compliance, partial compliance, or noncompliance. After coding each element, we aggregated the individual results to obtain a final code on a four-point scale, with a lower index indicating better practices. Due to the volume of work and time involved in coding trial practices in this manner, I limited the scope of inquiry to every third year, beginning in 1985 and ending in 1997. While State Department reports covering fair trial practices are available in years prior to 1985, they are of insufficient detail to compare reliably to reports in later years. Intercoder reliability across the entire Fair Trial index was 82%. The data used to measure fair trials appear in Table 7. [FN151]

*1975 4. Civil Liberty

I draw the Civil Liberty variable from Freedom House's Comparative Survey of Freedom. [FN152] It is reported on a 1 to 7 scale, with 1 being the best and 7 the worst. The scale is constructed from answers to a "Civil Liberties Checklist" that includes freedom of expression and belief, association and organizational rights, rule of law and human rights, and personal

autonomy and economic rights. [FN153] As broad as the civil liberties checklist is, it overlaps quite well with the equally broad treaties for which I use it as a measure of compliance. The Covenant on Civil and Political Rights protects freedom of expression and belief in Articles 18, 19, and 27; association and organizational rights in Articles 1, 18, 21, and 22; rule of law and human rights in Articles 6, 7, 9, 14, 15, 16, 17, 25, and 26; and personal autonomy and economic rights in Articles 1, 3, 8, 12, 22, 23, and 25. [FN154] The African Charter protects freedom of expression and belief in Articles 8 and 9; association and organizational rights in Articles 10, 11, and 20; rule of law and human rights in Articles 3, 5, 6, 7, 23, and 26; and personal autonomy and economic rights in Articles 12, 14, 18, 19, and 21. [FN155] The American Convention on Human Rights protects freedom of expression and belief in Articles 12 and 13; association and organizational rights in Articles 15 and 16; rule of law and human rights in Articles 3, 5, 7, 8, 24, and 25; and personal autonomy and economic rights in Articles 1, 17, 21, and 22. [FN156] Finally, the European Convention on Human Rights protects freedom of expression and belief in Articles 9 and 10; association and organizational rights in Article 11; rule of law and human rights in Articles 3, 5, and 6; and personal autonomy and economic rights in Articles 8, 12, and 14. [FN157]

5. Women's Political Equality

I measured women's political equality using the percentage of men in each country's legislature. [FN158] The data are derived from data published by the Inter-Parliamentary Union. [FN159] Although the Convention on the Political *1976 Rights of Women of course does not require equal numbers of women and men to serve in a country's legislature, the preamble does provide:

> The Contracting Parties . . . [r]ecogniz[e] that everyone has the right to take part in the government of his country, directly or indirectly through freely chosen representatives, and has the right to equal access to public service in his country, and desir[e] to equalize the status of men and women in the enjoyment and exercise of political rights, in accordance with the provisions of the Charter of the United Nations and the Universal Declaration of Human Rights . . . . [FN160]

Moreover, two of the three substantive articles in the treaty directly address women's participation in government. Articles II and III provide that "[w]omen shall be eligible for election to all publicly elected bodies, established by national law, on equal terms with men, without any discrimination," and that "[w]omen shall be entitled to hold public office and to exercise all public functions, established by national law, on equal terms with men, without any discrimination." [FN161] Consequently, a measure of women's direct political participation--which of course depends on women's access to direct participation in government--appears likely to be strongly correlated with country compliance with the treaty's goals.

B. Do Countries Comply?

This first portion of the quantitative analysis examines whether countries that ratify human rights treaties tend to conform their activity to the requirements of the treaties. I do not aim here to demonstrate any causal relationship between treaty ratification and country practices. Rather, my purpose in this portion of the analysis is simply to determine whether countries that have ratified human rights treaties are more likely to conform their conduct to the treaties than are countries that have not ratified the same treaties, regardless of the reasons for conformance. In short, I seek here only insight into whether countries that ratify these treaties have better human rights practices than those that do not.

An initial analysis of the relationship between treaty ratification and country ratings (as shown in Tables 1 and 2) indicates that, for the most part, countries that have ratified human rights

treaties have better human rights ratings than those that have not. On this first test, therefore, the *1978 record appears to validate the contention of normative theory that countries are likely to comply with their international legal commitments. Probing slightly deeper, however, I find reason to question these optimistic results. Although countries that have ratified treaties have better human rights ratings on average, I find that not only does noncompliance seem to be rampant--a finding that would be consistent with some of the rational actor models identified above--but countries with poor human rights ratings are sometimes more likely to have ratified the relevant treaties than are countries with better ratings, a finding that is largely unexplained by either the normative or the rationalist theories.

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

As Table 1 shows, a comparison of the human rights ratings for country-years (referred to below for ease of reference as "countries") in which human rights treaties have been ratified with those in which they have not reveals that ratifiers generally have better average human rights ratings than nonratifiers (the better averages are in bold). This is true for all the universal human rights treaties examined. Countries that have ratified the Covenant on Civil and Political Rights [FN162] appear to have better average civil liberties and fairer trials, with average ratings of roughly a full point and a third of a point lower than for nonratifiers, respectively. The same is true of those that have ratified the Optional Protocol to that Covenant; [FN163] indeed the difference between ratings of ratifiers and nonratifiers is greater. Countries that have ratified the Convention on the Political Rights of Women [FN164] have an average of 91% of their legislature made up of men, compared to an average of 93% for nonratifying countries.

For the Torture Convention, the differences in average level of human rights ratings for ratifiers versus nonratifiers are small. Countries that have ratified the Convention have an average Torture index of 2.70, compared to 2.76 for nonratifiers; countries that have ratified Article 21 [FN165] to that Convention (which provides for state-to-state complaints) have an average Torture index of 2.06 compared to 2.85 for nonratifiers. (The results for this analysis and all others of Article 21 described in this Article are nearly identical to those for Article 22 [FN166] to that Convention, which provides for individual complaints, because forty-two of the forty-five countries that have accepted Article 21 accepted Article 22 in the same year.) The Genocide Convention likewise exhibits a small difference between means: 0.074 for ratifying countries, which is marginally better than the 0.093 for nonratifying countries.

*1979 The finding that countries that ratify human rights treaties have better ratings than those that do not is not universal. Indeed, the regional treaties that outlaw torture [FN167] show the opposite result: The countries that have ratified the treaties appear to have worse torture practices than the countries that are members of the sponsoring regional organization but have not ratified the treaties, [FN168] and the differences are particularly striking for the American Torture Convention and for the African Charter. The same is true of the American and African regional treaties requiring fair and public trials: Countries that have ratified the treaties have worse ratings on average than countries that are members of the sponsoring regional organization but have not ratified the treaties. [FN169] I arrive at similar results using an independent measure of repression. [FN170] Moreover, even where the ratings of ratifiers are better than those of nonratifiers, the differences are not as large as one might expect.

Table 2 shows the results of a similar analysis performed on fully democratic countries (defined as those with democracy ratings of 10 on a scale of 1 to 10). [FN171] The data indicate that fully democratic countries exhibit similar patterns of compliance to the group of nations as a whole, perhaps calling into question some liberals' predictions that democratic countries will be more likely to comply with their international legal commitments than

nondemocracies. [FN172] Although the human rights ratings of full *1980 democracies are usually better, the relationship between treaty ratification and human rights ratings is very similar. Fully democratic countries that have ratified the universal human rights treaties usually have better human rights ratings, on average, than those that have not. As with the group of nations as a whole, however, this pattern does not hold for regional treaties. In six out of nine cases, ratification of regional treaties is associated with *1981 worse, rather than better, ratings. [FN173] Similarly and somewhat more surprisingly, expanding the group of democratic countries examined to include those with democracy ratings of 6 or above suggests that democratic countries that ratify the Genocide Convention and the Optional Protocol (with regard to Civil Liberty) have worse practices than those that do not. [FN174] Thus, democratic countries appear to be no more likely to have better human rights practices when they have ratified treaties than the group of countries as a whole.

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

When we look at human rights treaty compliance from a slightly different perspective, however, a somewhat more pessimistic picture emerges. Figures 1 through 5 map treaty ratification rates for each human rights measure. For each treaty, I calculated and plotted the mean level of ratification of the group of countries at each level of the relevant human rights measure. [FN175] The graphical picture that emerges indicates that the countries with the worst human rights ratings are sometimes as likely as those with the best ratings to have joined the relevant human rights treaties. Many countries that ratify human rights treaties, it appears, regularly and predictably violate their voluntarily assumed human rights treaty obligations.

Although the figures show a consistently high level of noncompliance, their patterns vary. Figure 1 shows that approximately 50% of countries where no acts of genocide are recorded have ratified the Genocide *1982 Convention, rising to 85% of countries reported to have committed an average of 1000 to 2000 acts of genocide (a 1 on the Internal Wars and Failures of Governance scale), falling to a low of less than 10% of countries reported to have committed 16,000 to 32,000 acts of genocide (a 3 on the scale), and rising again to a high of 47% of countries reported to have committed an average of 64,000 to 128,000 acts of genocide (a 4 on the scale). [FN176] In other words, countries with the worst Genocide ratings are just about as likely as those with the best to have ratified the Genocide Convention. For this Convention, it is impossible to test the liberalist prediction that full democracies are more likely to comply with human rights treaty requirements than others, as no country classified as a full democracy was found to have committed any genocide. [FN177]

Figure 1. Genocide

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

The relationship between country Torture ratings and ratification of the various treaties outlawing torture exhibits a similar pattern to that found *1983 between treaty ratification and human rights ratings in the area of genocide. Figure 2 shows that the level of ratification of the universal Torture Convention has a relatively flat relationship to recorded levels of torture, with a gradual decline in the ratification rate as recorded torture levels rise and a small rise in the ratification rate as recorded torture levels reach their highest point. The results for the regional treaties are more interesting. As a whole, they exhibit a pattern that is inconsistent with normative and institutional theories, with ratification rates rising or remaining almost flat as Torture ratings worsen. On the other hand, Article 21 of the Torture Convention, which authorizes state parties to file complaints against states that have opted into the provision, exhibits a gradual and consistent downward trend--that is, countries with worse ratings are

less likely to ratify. [FN178]
Plotting the relationship between human rights ratings and ratification of the Torture Convention by full democracies, I again find an upward slope at the start of the curve. Countries that appear the least likely to torture have a ratification rate of 51%. This rises initially to 73% for countries that register as a 2 on the 5-point Torture scale, and then falls back to 51% for countries with a Torture rating of 3. No full democracy warranted a Torture rating of 4 or 5. [FN179] I find a similar pattern for Article 21.

*1984 Figure 2. Torture
TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

In some contrast with the results summarized in the figures above, ratification rates for treaties requiring fair and public trials are largely flat across the spectrum of fair trial levels, as Figure 3 shows. In some cases--the Covenant on Civil and Political Rights, the Optional Protocol, and the European Convention on Human Rights--ratification rates fall very gradually, varying by less than thirty percentage points across the full spectrum of Fair Trial ratings. The ratification rates for the American Convention on Human Rights and the African Charter on Human Rights rise by an equally small amount, again varying less than twenty-five percentage points across the entire graph. The ratification rates for the fully democratic countries fall somewhat more steeply than the others between the Fair Trial codes of 1 and 2, the only two data points for which there were sufficient observations to warrant inclusion on the graph. Ratification rates of full democracies are usually higher than, or nearly the same as, those of the group of nations as a whole. [FN180]

*1985 Figure 3. Fair Trials
TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

Figure 4, which shows the relationship between Civil Liberty ratings and treaty ratification, displays two sets of patterns. On the one hand, the Covenant on Civil and Political Rights, the Optional Protocol, and the European Convention on Human Rights all have downward sloping curves, with ratification rates falling as Civil Liberty ratings worsen. On the other hand, the American Convention on Human Rights, the African Charter on Human Rights, the Covenant on Civil and Political Rights (limited to full democracies), and the Optional Protocol (limited to full democracies) exhibit a parabolic shape: In each case, the ratification rates for countries with Civil Liberty ratings of 2 or 3 are notably higher than for countries with both better and worse ratings. [FN181]

*1986 Figure 4. Civil Liberty
TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

Finally, Figure 5 shows the relationship between the percent of legislators that are male and ratification of the Convention on the Political Rights of Women. To produce the graph, I broke the data into quartiles based on the percent of the legislature made up by men. The result is a gradual downward sloping curve, falling from a high of a 60% ratification rate for the quarter of countries with the lowest percentage of men in parliament to a low of 37% for the quarter of countries with the highest percentage of men in parliament. For democracies, the pattern is similar, though the ratification rates are higher across the board and fall off somewhat more quickly between the first and the second quartiles. [FN182]

*1987 Figure 5. Percentage of Men in Parliament

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

The evidence shown in these figures gives reason to question both the normative and the rationalist accounts. Normative theory suggests that the curves will be downward sloping, with higher rates of ratification associated with better human rights practices. Yet as the above figures show, this pattern is only sometimes observed. Moreover, even where the shape of the curve is downward sloping, the ratification levels of the worst human rights offenders remain consistently over 30%, contradicting the suggestion of normative theory that compliance with treaty requirements is the norm. The evidence indicates that noncompliance not only occurs, but is quite common.

Most of the rationalist theories do not fare much better. If treaty ratification is simply cheap talk, as realists would have it, why do we witness patterns in state ratings that show consistent relationships to treaty ratification? If, however, only countries for which compliance is easy--so-called least-cost compliers--sign treaties, as institutionalist theory suggests, then why do we see countries with the worst ratings ratifying treaties at high rates, sometimes even higher than those of the countries with the best ratings? And why are countries with poor ratings much less likely to have ratified the Optional Protocol and Article 21? Liberals seem to have part of the story correct--democracies with worse ratings do have lower rates of ratification. Moreover, full democracies that exhibit the worst human rights *1988 ratings generally have not ratified treaties at high rates. Nonetheless, liberal theory is unable to explain why full democracies with the best ratings not infrequently have lower ratification rates than those with slightly worse ratings. [FN183]

Finally, although each theory can account for some of the results, none either individually or collectively can explain why the Torture and Genocide Conventions appear to have the smallest impact on human rights practices of all the universal treaties or why regional treaties seem more likely than universal treaties to exhibit a frequent association between increasing rates of ratification and worsening human rights ratings. And with the possible exception of republican liberal theory, they would be hard-pressed to explain why we often find countries with worse human rights ratings ratifying at higher rates than those with better ratings. [FN184] As the discussion below demonstrates, the puzzle only deepens when we examine whether treaty ratification is associated with better or worse human rights ratings than would otherwise be expected.

*1989 C. Are Treaties Effective?

Although the preceding examination of the relationship between treaty ratification and human rights ratings yields interesting insights into country compliance behavior, it has one notable shortcoming: It cannot tell us whether the patterns that we observe are due to the impact of treaties or instead to factors that are associated both with ratification and with countries' human rights ratings. The observation that countries that ratify treaties generally have better human rights ratings on the whole than those that do not does not mean that ratifying countries have better ratings as a result of ratifying the treaties. Rather, it is possible that this observation arises because the same factors that lead to good human rights ratings also lead countries to ratify human rights treaties. For this reason, a demonstration that countries' conduct usually conforms to their voluntarily accepted treaty obligations does not provide an answer to those who are skeptical of international law, as law that has no effect on behavior cannot really be said to be law at all.

In the analyses summarized below, I examine whether countries that have ratified treaties are more likely than they otherwise would be to conform their actions to the requirements of the treaty. In other words, do the treaty requirements appear to be effective in changing countries' practices? The results suggest that not only is treaty ratification not associated with better

human rights practices than otherwise expected, but it is often associated with worse practices. Countries that ratify human rights treaties often appear less likely, rather than more likely, to conform to the requirements of the treaties than countries that do not ratify these treaties.

Determining whether countries that have ratified human rights treaties are more likely than we would otherwise expect to act in ways consistent with the requirements of the treaties is not a simple matter. It requires, to begin with, a theory of what factors, other than treaties, affect countries' human rights practices. Fortunately, there is a fairly extensive strain of political science literature that seeks to explain cross-national variation in respect for human rights. [FN185] This Article draws on and builds upon these *1990 earlier studies, using them as a guide to selection of the control variables. Based in part on these studies, the control variables that I expect to be associated with poorer human rights records include international war, civil war, population size, population growth, and whether the regime in power is relatively new. The variables that I expect to be associated with better human rights records include democracy, [FN186] gross national product per capita, global economic interdependence, and dependence on foreign aid. I expect economic growth to have both positive and negative effects on human rights practices. [FN187] Descriptions of the data sources for these control variables are set out in Appendix B.

Unless otherwise indicated, I also include in the analyses a control variable to capture otherwise unaccounted-for country-to-country variation in the data (a "country dummy" variable), as well as a time-trend variable intended to capture otherwise unaccounted-for variation in the data across time. [FN188] The final control variable that I use in the analyses is the prior year's measure of the human rights practice (a "lagged dependent variable"), which I expect to be a strong predictor of a given country's human rights record in any given year. The use of this variable addresses a significant statistical problem that is encountered in analyzing pooled cross-sectional data. [FN189] With all these controls in place, the crucial variable of interest is whether a nation has signed the relevant human rights treaty. To account for the fact that the effect of treaties may be cumulative and long-term, I measure this variable as a sum of the number of years since the treaty was ratified. [FN190]

*1991 I obtained the results for all the analyses except that involving the Convention on the Political Rights of Women using ordered probit analysis with robust standard errors. [FN191] For the Convention on the Political Rights of Women, I used an ordinary least squares analysis with robust standard errors, because I measure compliance using the percentage of men in the legislature--a continuous variable, as opposed to the ordinal indices I use to measure compliance with the other treaties. [FN192] Tables 3 through 5 summarize the direction of the relationship these analyses suggest between the ratification of each identified human rights treaty and relevant country practices. More details regarding the variables and the design of the analyses, as well as the complete results of the analyses, can be found in Appendices B and C.

This approach aims to determine whether country-years in which the analyzed treaty is ratified exhibit better or worse human rights ratings than would otherwise be expected. [FN193] Because the analyses use both time series and cross-national data, the results capture both across-country and across-time variation in country ratings. In other words, the analyses show whether, controlling for other factors, there are either systematic differences between the measures of human rights practices of countries that have *1992 ratified treaties and those that have not, or systematic differences between the period before they have ratified treaties and the period after they have done so. If treaty ratification is associated with better ratings (fewer detected violations) than otherwise expected, that should be indicated by a statistically significant and negative coefficient for the treaty variable. If treaty ratification is associated with worse ratings (more violations) than otherwise expected, that should be indicated by a

statistically significant and positive coefficient for the treaty variable. Hence, in the following tables, a positive sign indicates that a country's human rights ratings tend to be worse if a country has ratified, whereas a negative sign indicates that they tend to be better.

Before reviewing the results produced by this approach, it is worth once again noting that multivariate quantitative analysis, no matter how carefully done, is a useful but imperfect tool for examining complex questions of human action. [FN194] The results of the analyses below therefore do not provide a definitive answer to the question posed by this Article. The findings do, however, provide some important insights into the effect of treaties on country practices and, in turn, suggest promising avenues for future research.

Table 3 summarizes the results for five universal human rights treaties and the optional provisions of the Torture Convention and the Covenant on Civil and Political Rights, provisions that must be separately ratified in order to be binding. This summary shows that, when the treaty ratification variable is statistically significant, it is associated with worse human rights ratings than would otherwise be expected (as noted earlier, a positive sign indicates more observed violations). Consider, for example, the Genocide Convention. The positive and statistically significant coefficient for the treaty variable in the analysis indicates that countries that have ratified the Genocide Convention have more violations, on average, than those that do not, controlling for a range of country characteristics, otherwise unaccounted-for change over time, and country-to-country variation. The *1993 statistical significance does not hold, however, when I omit controls for country-specific effects. In both the analysis in which country dummies are used and in the analysis in which they are omitted, all the other substantive variables that are statistically significant are significant in the expected direction, with a single exception. [FN196] Together, the variables account for 42% of the variation in the measure of genocide when country dummies are included and 51% of the variation when they are not (indicated by a pseudo R-squared of 0.42 and 0.51, respectively).

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

Note: Except where otherwise indicated, these results control for country characteristics through the use of country dummy variables. All results appearing in parentheses are not statistically significant at the 95% level. [FN195]

*1994 The results for the Torture Convention are similar. Although the treaty variable is not statistically significant when dummy variables for each country are included, it is statistically significant and positive without them. In both cases, the results for the other substantive variables that are statistically significant have the expected signs. The analyses account for 39% of the difference in Torture ratings when dummy variables for countries are included in the analysis and 31% of the difference in Torture ratings when dummy variables for countries are not included.

The results for the remaining treaties consistently show no statistically significant relationship between treaty ratification and human rights ratings. Countries that ratify Article 21 of the Torture Convention do not show a statistically significant difference in measured torture levels from what would otherwise be expected; those that ratify the Covenant on Civil and Political Rights or the Optional Protocol do not show a statistically significant difference in the measures of fair trial practices and civil liberties; and those that ratify the Convention on the Political Rights of Women do not show a statistically significant difference in the percentage of men in parliament. In every case, virtually all the other substantive variables that are significant have the expected sign. [FN197] The null result for the treaties appears to be relatively robust: Except where otherwise indicated, the treaty variables remain statistically insignificant when I drop country dummies from the analyses and when I rerun the analyses using only the statistically significant variables and the treaty variables (the results of these

analyses are not included in the table unless their results differ importantly). Taken together, the results for the group of universal treaties indicate that treaty ratification is usually not associated with statistically significantly different human rights ratings from what would otherwise be expected. More surprisingly, however, when ratification is associated with statistically significantly different human rights ratings, it is associated with worse, rather than better, human rights ratings than would otherwise be expected.

The results for similar analyses of regional human rights treaties lend credence to these findings. Table 4 summarizes the results for the five regional treaties, the impact of some of which is assessed using two or three *1995 different measures of human rights practices addressed by the treaties. As with the assessment of compliance, I test the effectiveness of regional treaties for ratifying countries only against nonratifying countries that are members of the regional organization sponsoring the relevant treaty (which therefore could have joined the treaty at issue). [FN198]

Table 4. Relationship Between Treaty Ratification and Human Rights Ratings (Regional Treaties)

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

The results of these analyses suggest that ratification of regional human rights treaties is not infrequently associated with worse than expected human rights practices. Of the three regional treaties on torture, one (the European Torture Convention) shows no statistically significant relationship between treaty ratification and torture; one (the African Charter on Human Rights) shows a statistically significant positive relationship *1996 between ratification and Torture ratings (meaning that ratification is associated with more recorded torture), but only when country dummies are omitted from the analysis; [FN199] and one (the American Torture Convention) shows a statistically significant positive relationship between ratification and Torture ratings both when country dummies are included and when they are not (only the results for the former analysis are presented). Except where otherwise indicated, the results for the treaty variables are the same when I omit country dummies and when I drop nonsignificant variables.

I obtain similar results in my analyses of the relationship between countries' Fair Trial ratings and ratification of regional human rights treaties requiring fair trial practices. Of the three relevant regional treaties, two have statistically significant relationships to countries' reported fair trial practices. I find a statistically significant and negative relationship between ratification of the American Convention on Human Rights and the Fair Trial measure. If accurate, this result would be the first instance thus far in which ratification of a human rights treaty is associated with better ratings. Unfortunately, there is reason to doubt the results: Unlike the others, they are not stable across alternative specifications. In contrast to the American Convention, the African Charter on Human Rights appears to have no statistically significant relationship to the Fair Trial measure. And I find a positive and statistically significant relationship between ratification of the European Convention on Human Rights and the Fair Trial measure, suggesting that ratification of the European Convention on Human Rights is associated with more unfair trials. Because of the small number of observations for this analysis, it is impossible to include both country dummies and all of the substantive control variables. When I run the analysis with country dummies but omit all other control variables except the lag variable, I find a statistically significant and positive relationship. I find similar results when I run the analysis with all of the control variables but without country dummies. The analyses explain between 25% and 57% of the variation in the Fair Trial index, but the results for a few of the variables are not as expected. [FN200]

*1997 The relationship between ratification of regional human rights treaties and civil

liberties is also mixed. On the one hand, ratification of the American Convention on Human Rights is associated with worse Civil Liberty ratings than expected. On the other hand, ratification of the African Charter on Human Rights is associated with better Civil Liberty ratings than expected. Once again, however, this encouraging finding for the efficacy of international human rights law does not hold: The latter result is not stable across alternative specifications. The European Convention on Human Rights splits the difference, showing no statistically significant relationship between treaty ratification and Civil Liberty ratings. (I was unable to obtain any results using country dummies, probably because of insufficient variation in the dependent variable in many European countries.) The analyses predict a large percentage of the variation in the Civil Liberty ratings--between 54% and 70%--but the results for some of the control variables are not as expected. [FN201]

In order to test the prediction of liberal theory that democratic countries will be more likely to change their behavior in response to their international legal commitments, I reran the analyses of the universal treaties including an additional variable that tests the impact of treaty ratification on measures of human rights for countries with democracy ratings of 10. [FN202] As summarized in Table 5, the results suggest that fully democratic countries may sometimes be more likely to have better human rights practices if they ratify a human rights treaty than would otherwise be expected. Most notably, when the data set is limited to countries with some variation in their Genocide levels, fully democratic countries that ratify the Genocide Convention have statistically significantly better Genocide ratings than expected. This lies in direct contrast to the results for the group of nations as a whole, as summarized in Table 3. And whereas ratification of the Optional Protocol and Convention on the Political Rights of Women bears no apparent relationship to the practices of the group of nations as a whole, fully democratic countries that ratify the Optional Protocol have statistically significantly better Civil Liberty ratings and those that ratify the Convention on the Political Rights of Women have a statistically *1998 significantly lower percentage of men in parliament. The Torture Convention, however, appears to have the same effect on full democracies that it does on the group of countries as a whole: The results for this treaty variable are statistically significant and positive, indicating that fully democratic nations that ratify the treaty appear to engage in more violations than would otherwise be expected (this contrasts with positive but insignificant results for the group of nations as a whole that ratify the treaty, except when the impact of the Torture Convention is measured without country dummies). [FN203] Article 21 has a similar effect on full democracies (this contrasts with positive but insignificant results for the group of nations as a whole). Finally, ratification of the Optional Protocol has no statistically significant relationship to Fair Trial ratings of full democracies, and ratification of the Covenant on Civil and Political Rights has no statistically significant relationship to either the Fair Trial or the Civil Liberty ratings of *1999 full democracies (the results are the same for the group of nations as a whole). For the most part, these largely encouraging results do not hold when the universe of democratic nations is expanded to include countries with democracy ratings of 6 to 10. [FN204]

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

Taken as a whole, the empirical evidence regarding the patterns of human rights treaty compliance appears largely inconsistent with existing theories. First and foremost, although countries that ratify treaties usually have better ratings than those that do not, [FN205] noncompliance appears common. [FN206] Indeed, those with the worst ratings sometimes have higher rates of treaty ratification than those with substantially better ratings. Second and relatedly, treaty ratification is not infrequently associated with worse, rather than better, human rights ratings than would otherwise be expected. [FN207] Unexpectedly, treaty ratification is more often associated with worse human rights ratings in areas where rights are

deeply entrenched in international law than in areas that are of more recent provenance. [FN208] Third, noncompliance appears less common and less pronounced among countries that have ratified the Optional Protocol to the Covenant on Civil and Political Rights and Article 21 of the Torture Convention, and countries that have ratified these provisions generally have substantially better human rights ratings than those that have not. [FN209] However, it is possible that this is due largely to a greater proclivity among those with better practices to sign *2000 the provisions rather than to the effect of the provisions on state behavior. [FN210] Fourth, ratification of regional treaties appears to be more likely than ratification of universal treaties to be associated with high rates of noncompliance and with worse human rights practices than would otherwise be expected. [FN211] Finally, full democracies appear to be more likely to comply with their human rights treaty obligations than the group of nations as a whole and more likely when they ratify treaties to have better practices than otherwise expected. [FN212]

There are two possible nonsubstantive explanations for these results. First, it is possible, though not likely, that the results are due in part or whole to systematic measurement error. Such measurement error may account in part for the correlation between ratification of treaties and worse human rights ratings than otherwise expected if it is, for instance, more difficult to get information about the human rights practices of countries that have not ratified treaties than it is to get information about those that have. There are good reasons to believe that such measurement error does not account for the results of the analyses, [FN213] but the possibility cannot be entirely ruled out.

*2001 Second, the results might be affected by reciprocal causation. It could be, after all, that the relationship between treaties and practices runs the other direction. We have already seen that countries with poorer human rights ratings are sometimes more likely to sign human rights treaties than those with somewhat better ratings. It might be supposed, as a result, that the finding of an apparent negative association between treaties and practices is due to this tendency (practices causing ratification) rather than to any actual effects that treaties have on practices. Recall, however, that the analysis controls for a wide array of factors expected to shape the human rights practices of countries. Reciprocal causation would bias the results only to the extent that countries with worse practices are more likely to ratify than those with better practices, controlling for the influence of these factors. [FN214] Yet I cannot at this point rule out the possibility that counterintuitive results of the analysis are due to a perverse selection effect.

Bearing these reasons for caution in mind, it is nonetheless the case that much of the evidence regarding the apparent relationship between human rights treaty ratification and human rights practices is perplexing for advocates of idealism and rationalism alike. Contrary to the predictions of normative theory, treaty ratification appears to be frequently associated with worse, rather than better, human rights practices. Even more confoundingly, this adverse relationship between treaty ratification and country human rights ratings appears more pronounced in the most established areas of human rights-- torture and genocide--and for regional treaties. Rationalist theories also face anomalies. Contrary to realists' expectations, ratification is not simply (or at least not always) epiphenomenal. Rather, ratification appears sometimes to have an effect on practices, simply not the effect one would anticipate. Institutionalists, like normative scholars, expect treaty ratification to be associated with better human rights practices, at a minimum because they expect the least-cost compliers to be more likely to ratify the treaties than countries for which compliance would be more costly. Of the existing theories, liberal theory appears the most promising, as it correctly predicts that democracies will be more likely than others to have better human rights ratings when they ratify treaties. But liberals are for the most part unable to explain why ratification of treaties on the whole, and of regional treaties in particular, often appears to be associated with worse

human rights practices than would otherwise be expected. [FN215] Nor can they explain why fully democratic nations have worse *2002 Torture ratings when they ratify the Torture Convention than would otherwise be expected. In the next Part, I consider a possible explanation for the empirical findings and seek to place the insights of liberal theory into a broader context.

III. The Dual Roles of Human Rights Treaties

Previous analyses of treaty compliance have focused primarily on the direct effect of the binding commitment of ratification on country practices. Rationalists for the most part claim that countries will comply with treaties only when doing so enhances their interests, whether those interests are defined in terms of geopolitical power, reputation, or domestic impact. Normative scholars, on the other hand, claim that strict self-interest is less important to understanding international law compliance than is the persuasive power of legitimate legal obligations. Neither considers the possibility that countries comply (or fail to comply) with treaties not only because they are committed to or benefit from the treaties, but also because they benefit from what ratification says to others. In contrast to these approaches, my argument is that we cannot fully understand the relationship between human rights treaty ratification and human rights practices unless we understand that treaties operate on more than one level simultaneously. They create binding law that is intended to have particular effects, and they express the position of those countries that join them. Like other political instruments, in short, treaties play both instrumental and expressive roles. [FN216] This theory of the dual roles of human rights treaties draws upon and throws new light on both the normative and rationalist models of international law compliance--and, I argue, may provide a missing key to explaining the paradoxical patterns of interaction between human rights treaty ratification and human rights practices.

Before turning to this explanation, however, it is important to consider why human rights treaties so often appear to have no statistically significant effect on practices. Although treaty ratification does often appear to be associated with worse human rights treaty practices--a result that is counterintuitive and therefore demands explanation--there are more instances in which treaty ratification has no apparent impact. Although we should be wary of reading too much into a null result, we also cannot ignore *2003 it. It is striking, after all, that treaties, even though they do not consistently make practices worse, seem so consistently not to make them better.

There are any number of possible explanations for these findings. Much of the strength of international human rights law comes from NGOs and Western liberal states' critical attention to nations with poor human rights practices. However, neither NGOs nor Western states tend to limit their focus to treaty ratifiers. Indeed, as discussed below, the opposite may be true. The increasingly pervasive culture of human rights and processes of norm internalization tend to affect states regardless of whether they have ratified particular treaties. Perhaps this is due in part to the fact that UN Charter-based mechanisms may act against ratifiers and nonratifiers alike. In the regional context, we might also expect few differences between ratifying and nonratifying states because regional bodies--particularly the Council of Europe (COE) and the Organization of American States (OAS)--place requirements on members that make ratification of an individual treaty either mandatory or superfluous--in either case, the treaty might reasonably be expected to have little independent effect on practices. [FN217]

It is also possible that these findings are due at least in part to the heavy resistance of nations' human rights practices to change. [FN218] With few exceptions, the lagged dependent variable in the model summarized in Tables 3-5 is statistically significant and positive, indicating that one of the best predictors of a country's rating in a given year is its rating the previous year. [FN219] This consistency in ratings over time is probably due at least in part to

the central role that bureaucratic inertia plays in government abuses of human rights. Individuals and institutions become habituated to the use of repressive means of retaining control. As a result, repressive behavior lingers long after the initial impetus for it disappears. The more government employees use repressive tactics, the more accepted such tactics become. At the same time, governments build up institutions around the use of these practices, and the institutions and individuals needed to manage conflict using nonrepressive means disappear or perhaps are never part of government in the first place. In short, governments and the individuals who make decisions within them become habituated to engaging in human rights violations, and this behavior takes time and continued conscious effort to change. Major shocks to the system--such as a change in government--provide limited windows of opportunity for effecting large *2004 changes in the system. Indeed, when major changes in human rights practices occur, it is often because of such an event. [FN220] But even then, change is not inevitable; to the extent that low-level government officials remain in place during shifts in the top levels of government, government oppressive practices often remain as well. [FN221] The same is of course true of countries that observe human rights. Once norms favoring human rights are entrenched, they can be difficult to dislodge. But this does not tell the entire story, for human rights practices do change and are often responsive to human rights treaty ratification as well as other factors. The major task of this Part, then, is to suggest how we might begin to explain the unexpected patterns that emerge from the quantitative analysis--why, that is, countries with worse human rights practices sometimes appear to ratify treaties at higher rates than those with better practices, why treaty ratification often appears to be associated with worse human rights practices than otherwise expected, why noncompliance is apparently less pronounced among countries that have ratified the Optional Protocol and Article 21, why ratification of regional treaties appears more likely to worsen human rights practices than to improve them, and why, finally, full democracies appear more likely when they ratify treaties to have better practices than otherwise expected. The dual nature of treaties--as instrumental and expressive tools--provides a starting point for explaining these results.

The instrumental role of treaties is well understood. I therefore focus here primarily on outlining the expressive role of treaties. The notion that the law has an "expressive" function is not new, though earlier work on the expressive function of the law has focused almost exclusively on the domestic context. [FN222] Situated in opposition to the dominant focus on law's *2005 sanctioning function, much of this work is aimed at demonstrating that law influences behavior not only by threatening to sanction undesirable actions, but also by what it says. [FN223] Broadly speaking, it argues that the social meanings of state action are little recognized but in some cases as important as the action's material impact. [FN224] The most widely discussed form of legal expressive theory thus tells actors (particularly state actors) to act in ways that "express appropriate attitudes toward various substantive values." [FN225] Although the work of these scholars forms part of the backdrop for this Article, the conception here of the expressive function of the law is distinct, largely because this Article focuses on the international rather than domestic context. Unlike in the domestic context, in the international realm only the parties who voluntarily accede to the laws are bound to abide by them (with the notable exception, of course, of customary law, which is not the focus of this Article). As a consequence, the expressive role of the law takes on political dimensions not at issue in the domestic legal context.

The expressive role of treaties described in this Article has two aspects, the first arising from treaties' legal nature and the second from their political nature. Treaties, like domestic laws, work by expressing the position of the community of nations as to what conduct is and is not acceptable; they tell the international community what are the norms and code of conduct of civilized nations. [FN226] Yet treaties also have an expressive function that arises from what

membership in a treaty regime says about the parties to the treaties. When a country joins a human rights treaty, it engages in what might be called "position taking," defined here as the public enunciation of a statement on anything likely to be of interest to domestic or international actors. [FN227] In this sense, the ratification of a treaty functions much as a roll-call vote in the U.S. Congress or a speech in favor of the temperance movement, as a pleasing statement not necessarily intended to have any real effect on outcomes. [FN228] It declares to the world that *2006 the principles outlined in the treaty are consistent with the ratifying government's commitment to human rights.

I focus primarily in this Article on the second aspect of the expressive function because I believe it best helps to explain the empirical findings of my analyses. I do not mean in focusing on the second expressive aspect of treaties to suggest that the first is unimportant; indeed, as I discuss in more detail in the Conclusion, the first expressive function of treaties may change discourse about and expectations regarding country practices and thereby change practices of countries regardless of whether they ratify the treaties.

If the first step to explaining patterns of country treaty compliance is to recognize the expressive role of treaties, the second is to note that this expressive function can work either in unison with or in opposition to the instrumental role of the treaty. When a country is genuinely committed to the goals of the treaty and wishes to see them put into place, the country's expression in joining and remaining a party to a treaty is entirely consistent with its intended course of action: The country both signals support for the treaty's requirements and actually intends to act in ways consistent with those requirements. Treaties that include substantial monitoring or enforcement mechanisms embody some guarantees that the expressive and instrumental roles of the treaty will operate in tandem. For example, a country is unlikely to ratify a free trade agreement and then fail to abide by the terms of that agreement, because failure to abide by the terms of the agreement would likely be detected and lead to retaliatory action. For similar reasons, a country is unlikely to ratify a security pact or a treaty governing the use of airspace or the sea and then fail to abide by its terms. To the extent that monitoring and enforcement are effective, the expression of the commitment to the goals of such treaties is largely indivisible from the act of complying with the terms of the treaties.

But the expressive and instrumental roles of treaties do not always operate this seamlessly. When monitoring and enforcement of treaties is minimal, the expressive and instrumental roles may cease to cohere, and the expressive aspect of the treaty may become divorced from the instrumental aspect. Under such circumstances, a country may express a commitment to the goals of the treaty by joining it, yet fail to meet its requirements. Where there is little monitoring, noncompliance is not likely to be exposed. Therefore, the countries that join the treaty will enjoy the expressive benefits of joining the treaty, regardless of whether they actually comply with the treaty's requirements. [FN229] And where there is little enforcement, the costs of membership are also small, as countries with policies that do not adhere to the requirements of the treaty are unlikely to be penalized.

*2007 Where there is a disjuncture between expressive benefits and instrumental goals, it is possible that the expressive aspect of treaties will serve to relieve pressure for real change in performance in countries that ratify the treaty. Because such treaties offer rewards "for positions rather than for effects," [FN230] countries can and will take positions to which they do not subsequently conform and benefit from doing so. This is particularly true of treaties enacted for the direct benefit neither of the joining parties nor of those pushing for enactment, but rather of uninvolved third parties. In this sense, human rights treaties can take on the character of "charitable" enactments that are "designed to benefit people other than the ones whose gratification is the payment for passage," and which, as a result, often suffer from indifferent enforcement and have little impact. [FN231]

There is arguably no area of international law in which the disjuncture between the expressive and instrumental aspects of a treaty is more evident than human rights. Monitoring and enforcement of human rights treaty obligations are often minimal, thereby making it difficult to give the lie to a country's expression of commitment to the goals of a treaty. The strongest means of treaty enforcement--military intervention and economic sanctions--are used relatively infrequently to enforce human rights norms, [FN232] in no small part because there is little incentive for individual states to take on the burden of engaging in such enforcement activity. [FN233] Because of the infrequency with which the international community resorts to such means of enforcement, the threat of their use does not contribute meaningfully to day-to-day compliance with the multitude of human rights treaties. [FN234] Moreover, as Louis Henkin puts it, "the principal element of horizontal deterrence is missing" in the area of human rights: "[T]he threat that 'if you violate the human rights of your inhabitants, we will violate the human rights of our inhabitants' hardly serves as a deterrent." [FN235] *2008 Consequently, most human rights treaties rely not on sanctions to encourage compliance but instead on treaty-based and charter-based organs dedicated to monitoring compliance with particular treaties or particular sets of treaties, often through a system of self-reporting. [FN236] Were these monitoring systems effective, it is possible that the threat to reputation that they could pose to noncomplying countries would be sufficient to keep noncompliance at low levels. Yet most of these systems have proven woefully inadequate, with countries regularly and repeatedly failing to meet minimal procedural requirements with no repercussions. [FN237] Indeed, although treaties often require countries that join them to submit to semi-regular scrutiny by a treaty body, there is no real penalty for failure to participate in this process or for obeying the letter but not the spirit of the treaty requirements. [FN238] As a consequence, the failure of a country to comply with its treaty obligations is, in most cases, unlikely to be revealed and examined except by already overtaxed NGOs. [FN239]

At the same time, at least since World War II, there has been a great deal of pressure on countries to exhibit a commitment to human rights norms. Indeed, human rights treaties are a paradigmatic example of a charitable enactment in the international context. The audience of the decision to ratify human rights treaties is usually not the beneficiary of the agreement--the abused, oppressed, and suppressed of the world--but instead the political and economic actors located for the most part in wealthy liberal nations. Some of these actors, including various NGOs and *2009 other domestic and international organizations, are genuinely committed to the ends of the treaties but have restricted access to information regarding the real impact of the treaties in individual countries. Others, including potential investors and perhaps nations wishing to provide aid assistance or to deepen economic or political ties, may be less genuinely committed to the ends of the treaties. They may instead be seeking evidence of commitment to the norms embedded in the human rights treaties that they can in turn use to placate more genuinely interested parties to which they must answer (including stockholders and customers of companies wishing to invest in the country and constituents of governments that wish to provide aid to or engage in deeper political or economic ties with the ratifying countries). [FN240] Countries that are parties to the treaties can therefore enjoy the benefits of ratification without actually supplying the human rights protections to which they have committed. [FN241] Consequently, treaty ratification may become a substitute for, rather than a spur to, real improvement in human rights practices. [FN242]

In arguing that the expressive and instrumental aspects of human rights treaties are divorced, I am not claiming that countries that ratify human rights treaties necessarily do not conform their actions to the requirements of the treaties. Although actions need not match expressions, this does not mean that they always do not. Moral norms are surely an important force for state and individual action, and human rights scholars are right to focus much of their

attention on understanding the source of the ideological appeal of human rights. [FN243] Sincere commitment to a human rights treaty *2010 may also arise out of somewhat less idealistic motives. Governments may see a treaty as a relatively costless means of spreading their ideals and principles to other nations. They may hope that the addition of another party to the treaty will build momentum for the formation of new customary law. They might even join the treaty with an eye to constraining their successors, who may or may not share their commitment to human rights, accepting constraints on their powers in the present in order to gain protection from oppressive behavior if they lose power in the future. [FN244] More generally, they may seek to use international commitments, including treaty ratifications, to gain political advantage at the domestic level in what may be termed a "reverse two-level game." [FN245]

Even when a country ratifies a treaty and subsequently fails to comply with its terms, it is not necessarily the case that the ratification was disingenuous. Countries may choose to ratify treaties with which they are not already in compliance because they genuinely aspire to improve their practices and they wish to invite international scrutiny of their progress. The practices of such countries may fail to improve for any number of reasons. Those at higher levels of government who are responsible for the ratification may find it difficult to effect change in the actions and decisions of those who actually engage in the violations, including police officers, members of the military, and other low-level state actors. [FN246] Indeed, this may help explain the often perverse results for my analyses of countries' torture practices--governments may simply find themselves unable to persuade police officers and members of the military to abandon the use of torture. It is also possible that the ratification may take place in the context of a divided government, with one arm of government joining the treaty *2011 with a true desire to meet its terms but the other refusing to implement the changes required to follow through on the commitment.

The argument presented here therefore does not hinge on the assumption that countries will not comply, or do not intend to comply, with a treaty's requirements; rather, it relies on the fact that, for whatever reason, they may fail to do so and are not only unlikely to be sanctioned as a result but are likely to receive an expressive benefit regardless of their actual practices. Indeed, human rights treaties offer countries an expressive benefit precisely because at least some countries that ratify the treaties actually meet their terms. If every country that ratified a human rights treaty thereafter failed to comply with it, ratification of the treaty would likely cease to offer countries any expressive benefit. Because large numbers of countries do actually comply with the terms of the human rights treaties they ratify (as we have seen, countries that ratify human rights treaties do generally have better ratings on average than those that do not), and because it is difficult to determine which countries have met their treaty obligations and which have not, every country that ratifies receives an expressive benefit from the act of ratification, albeit one that is discounted to take into account the possibility that the country will fail to meet the treaty obligations it has accepted. [FN247]

This argument throws new light on institutional theories of treaty compliance. As noted in Subsection I.A.2, institutional theorists must rely on the indirect sanction of reputational effects of treaties as the primary anchor for human rights treaty compliance for all countries but those for which compliance is costless. [FN248] Yet, thus far, institutional scholars have not considered the indirect benefits of treaty ratification--the position-taking and signaling effects discussed above. If countries may obtain reputational benefits from ratifying some treaties while suffering little reputational cost from failing to observe the obligations assumed, countries may be substantially more likely to fail to comply with their treaty obligations. Indeed, it is possible that the expressive benefit of a treaty is at its greatest for precisely those countries not already in compliance with the treaty--those countries may have more to gain,

and perhaps less to lose, than those with good practices and hence good reputations. [FN249] In assuming that *2012 noncompliance will be detected, institutionalists have overestimated the indirect costs of noncompliance in treaties for which monitoring is minimal. As a result, institutional scholars' cost-benefit calculus for treaties that exhibit these characteristics overpredicts compliance. Where joining treaties might be expected to bring reputational benefits and where monitoring of the compliance with those treaties is minimal, institutional theorists ought to adjust their expectations regarding indirect sanctions and benefits accordingly.

Relatedly, the perspective on human rights treaties presented here provides an interesting twist on the claim by Daniel Farber that human rights protection acts as a "signal" that encourages investment in the country. [FN250] Farber argues that contrary to Richard Posner's claim that poor countries can ill afford to protect human rights because costly and ambitious legal reforms divert resources from projects more directly linked to economic growth, human rights protection can encourage economic growth. [FN251] Human rights protection, Farber explains, requires prioritizing long-term over short-term benefits. [FN252] A decision by a government to protect human rights thus indicates to investors that the government has a low discount rate and is therefore less likely to engage in expropriation. [FN253] Countries that make this signal of human rights protection encourage investment and thereby spur economic growth. But Farber's "rights as signals" argument assumes that the only way in which countries can signal to investors a commitment to human rights is actually to protect and enforce those rights. This does not take into account the problem of imperfect information about country practices, which is especially strong in the area of human rights. Because it is difficult to obtain information about human rights practices, investors are likely to look to obvious and readily discoverable indications of a country's human rights record in considering where to invest. One of these indicators is, as Farber points out, the existence of a constitution. [FN254] Another such indicator is membership in the major international and regional human rights treaty regimes, because the fact of ratification is highly public and easy to interpret. Actual protection or enforcement of rights--about which it can be difficult to obtain information--may therefore be less likely to be rewarded than the *2013 expression of a commitment to human rights, an expression that can be effectively made through the simple act of joining a treaty. [FN255]

The recognition of the dual roles of treaties helps explain the paradoxical findings of my analyses. If the expressive and instrumental roles of human rights treaties are divorced from one another (so that a country can express its willingness to be bound by a treaty by ratifying it and then fail to abide by its requirements) and if there is substantial external pressure on countries to conform to human rights norms, one would expect treaty ratification to be associated with regular noncompliance, which is of course what the evidence suggests. Indeed, because human rights treaties offer countries rewards for positions rather than effects, ratification of treaties can serve to offset pressure for real change in practices. This might help explain why we see evidence of a less linear relationship between human rights practices and treaty ratification than we would expect if the instrumental function of treaties held sway. Countries with worse human rights practices face greater potential costs of joining a treaty to the extent that they expect it to be monitored and enforced. But they also stand to gain more from the expression of adherence to the treaty, particularly where they are under external pressure to exhibit their commitment to human rights norms. At the same time, they may have less reputational capital to lose. If countries with worse human rights practices also have worse reputations for law-abidingness than those with better practices, they may be more willing to join treaties with which they are not certain they will be able to comply. [FN256] These cross-cutting pressures may well help account for the results of my analyses: Countries with worse human rights ratings often ratify treaties at higher rates than those with better

ratings, and human *2014 rights treaty ratification is often associated with worse ratings than otherwise expected.

In this light, it is also understandable that a perverse relationship between human rights treaties and countries' human rights ratings is sometimes found in more entrenched areas of human rights. The treaties prohibiting genocide and torture, which are nonderogable norms of international law, [FN257] impose little additional legal obligation on countries that are parties, because all countries are already bound under customary international law to respect the rights covered in the treaty. Joining these treaties thus entails only acceptance of relatively minimal additional reporting requirements. At the same time, the benefits of making a strong expression of adherence to the treaty norms can be substantial; the government of a country that is under pressure to adhere to international norms can use membership in the relevant treaty regime as evidence of its commitment to abide by the norms the treaty embodies. Because monitoring is imperfect and enforcement often minimal, any gap between expression and action is unlikely to be made public. For these reasons, we expect and indeed find evidence that in entrenched areas of human rights, treaty ratification by individual countries is more likely than in less entrenched areas of human rights to serve as a substitute for actual improvements in human rights practices. [FN258]

This same dynamic may provide at least a partial explanation for the empirical findings regarding the Optional Protocol to the Covenant of Civil and Political Rights and Article 21 to the Torture Convention. Both of these provisions provide for additional enforcement provisions that are binding only on treaty parties that opt in. The Optional Protocol provides that state parties that accept the Protocol must recognize the competence of the Human Rights Committee to receive and consider communications from other state parties alleging a violation by the state party of any rights set forth in the Convention. [FN259] Article 21 to the Torture Convention provides that an acceding state party must recognize the competence of the Committee Against Torture to receive and consider communications from other state parties indicating that it is not fulfilling its obligations under the *2015 Convention. [FN260] It exhibits nearly identical ratification patterns to Article 22 of the same Convention, which provides for an individual complaint mechanism similar in form to that put into effect in the Optional Protocol. [FN261] Although in principle these provisions establish much stronger enforcement mechanisms than the treaties as a whole, in practice they tend not to be particularly effective. Although the Protocol covers over one billion people, current estimates are that the Human Rights Committee can hear only about thirty complaints a year--clearly an insufficient number to establish a meaningful deterrent--and does not have the resources or mandate to follow up reliably and effectively on its recommendations. [FN262] Similarly, in the first thirteen years the Torture Convention was in force, the Committee Against Torture received 154 individual complaints, which resulted in thirty-three final views, of which sixteen found violations. [FN263] The state-to-state complaint procedure established under Article 21 has yet to be used. [FN264]

Because the Optional Protocol and Article 21 include somewhat stronger enforcement mechanisms, the expressive and instrumental roles of the provisions are less easily segregated. As a consequence, we would expect less frequent use of the expressive aspect of these provisions by countries that have little intention of complying with their requirements. The empirical evidence seems to bear out this expectation. Although the Optional Protocol and Article 21 are not associated with better ratings for the group of countries as a whole than otherwise expected (the results for these treaty variables are insignificant), they are also not associated with worse ratings. [FN265] This result is particularly noteworthy for Article 21, as ratification of the Torture Convention itself is associated with worse ratings. [FN266] Moreover, the comparison of ratification rates at various levels of human rights ratings demonstrates that noncompliance is lower for these *2016 provisions than for the treaties of

which they are a part: Ratification rates among countries with the worst ratings are at or nearly at their lowest levels. [FN267]
The dual roles of treaties might also help explain what is perhaps the most puzzling of the empirical findings: Ratification of regional human rights treaties is relatively frequently associated with worse human rights ratings