How Activists Perceive the Utility of International Law

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Scholars agree that international law works in part by empowering activists and have elaborated activist-focused theories particularly in the domains of environment and human rights. Some theories emphasize accountability—that law helps activists coerce, punish, and deter offenders. Others emphasize that law helps to foster dialogue that leads to the acceptance of norms, trust, and capacity to foster compliance. Possibly, law does both. We assess these views with a pair of survey experiments applied to 243 highly experienced NGO professionals who have firsthand experience in either environment or human rights. Activists believe that NGOs would be less effective at reducing emissions of greenhouse gases or violations of core human rights in the absence of international law. They see the chief value of law arising through accountability politics rather than by fostering dialogue or capacity. However, the two communities have different views about whether binding or nonbinding agreements work best in their domain.

Scholars have long agreed that international law works in part by empowering activists to promote change within national political systems (e.g., Haas, Keohane, and Levy 1993; Karns and Mingst 2004; Neumayer 2005; Raustiala 1997; Simmons 2009). Yet there are differing views about how law achieves those outcomes. From one perspective, a central role of international law is coercion and accountability. Law helps advocates detect, punish, and deter by setting standards and providing the means to discipline violators (e.g., Hillebrecht 2014). For example, activists can reprimand states that fail to comply with international legal commitments—such as through public shaming or even litigation in court. From another perspective, international law is seldom directly enforceable or applied. Its impact stems less from coercive enforcement than from fostering dialogue, building legitimacy around norms, and socializing (or acculturating) behavior around those norms (Goodman and Jinks 2013; Koh 1997; Tsutsui, Whitlinger, and Lim 2012). According to this second view, international institutions help activists advance their goals by providing information, shaping expectations within countries, and building the capacity and willpower to implement legal norms. These two perspectives, while not mutually exclusive, generate different predictions about how international law bolsters the work of activists—whether they on balance help punish governments for deviations from legal norms or operate, instead, primarily as instruments of persuasion or capacity building. Perhaps law equally accomplishes both forms of influence.

Scholars have viewed these two perspectives most centrally through a debate over whether commitments must be legally binding to have greatest impact on behavior. If law works mainly through punitive means then legally binding rules are a linchpin. The threat or act of punishment for breaking a legal commitment can induce compliance in actors that would otherwise prefer to violate law; it may even produce deterrence. For example, in many countries binding

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commitments allow jurisdiction for enforcement through national and international courts. In turn, such litigation can help establish and defend a jurisprudence that can foster state compliance and individual accountability (Sikkink 2011; Simmons 2009). The benefits of binding commitments can also work across legal domains. For example, some trade agreements can remove benefits that are conditional on adhering to binding environmental or human rights standards (e.g., Barrett 1997; Charnovitz 1993; Hafner-Burton 2005, 2009; Parson 2003; Steinberg 1997).

Yet a literature has also emerged showing that nonbinding instruments may be just as effective and even preferable in some circumstances (Abbott and Snidal 2000; Raustiala 2005). Agreements that are not directly legally binding may be flexible instruments for facilitating compromise with lower contracting and sovereignty costs. Where such agreements create widely accepted norms they offer a mechanism for deliberation that can "pull" actors into compliance (e.g., Chayes and Chayes 1998; Finnemore and Toope 2001; Franck 1990; Koh 1997; Tyler 2006). Such flexible accords may also be well suited to building programs to generate the national capacity that governments need to actually honor international norms (e.g., Keohane and Levy 1996; Parson 2003).

While legal institutions may work through many avenues, including by directly affecting the interests of governments, a central argument is that law has an impact by mobilizing procompliance interest groups (Chaudoin 2015; Hafner-Burton and Tsutsui 2005; Mansfield, Milner, and Rosendorff 2000, 2002; Simmons 2009; Tomz 2008). In this paper, we provide a novel approach to assessing the different ways that international law may bolster the work of activists. We conducted two survey experiments with a sample of 243 NGO professional activists from around the world who have on average 12 years of advocacy experience.[1] The sample, by design, comprises people who are on the front lines and most able to observe where and how international law helps NGOs promote procompliance changes in behavior.

We focused on two domains—environment and human rights—where the literature linking international law to the empowerment of activists has been most robust. While environmental and human rights agreements may have direct impact on governments, scholars in both domains have found that a substantial part of what legal commitments do is facilitate activism. In the theoretical literature, activist strategies in these two domains are often linked, but empirically these two domains are quite different. The underlying nature of the problems that law is designed to mitigate is different, with reciprocity and club goods playing a much larger role for the environment whereas in human rights often no physical harm actually moves across borders. Historical experience with legal mechanisms also differs, as human rights legal doctrines were quickly developed in the aftermath of World War II (and some were in place earlier); most international agreements on the environment, by contrast, have been signed since the early 1970s. Climate change, the particular environmental topic we examine here, was not on the international policy agenda until the 1990s. Thus this study looks at a common set of theoretical questions—how international law influences activism—across most different systems. Roughly half the sample consists of human rights professionals and half are steeped in environmental practice.

We focus on activist beliefs for several reasons. First, experience with a particular set of institutions can lead individuals to hold informed beliefs about how international institutions work—experienced professionals synthesize complex information and intuition that may not otherwise be observable by scholars. Second, and perhaps more importantly, while the beliefs of these activists may not provide a perfectly accurate assessment of how international law actually works, our sample consists of professionals who have allocated substantial resources within their organizations based on those same beliefs. Their perceptions about the utility of international law—which we measure—link directly to real organizational behavior and costly strategic decisions in exactly the same domain. Unlike many small *n* case studies, which often reflect the idiosyncrasies of a particular set of historical events (King, Keohane, and Verba 1994), the beliefs we measure reflect a large number of individual experiences, which increases the chance that any features distinctive to one event or NGO campaign will be averaged out of our measure.

Our sample of NGO activists shows that these professionals agree with the wisdom that international law has a positive effect on activism. Activists believe that the presence of law makes it easier to advance the goals of environmental and human rights protection. This offers novel confirmatory evidence from the perspective of the activists, themselves, that international law empowers them to make a difference—at least in certain democratic settings that

1. Among the growing number of studies within international relations that use elite samples are Milner and Tingley (2013), Mintz, Redd, and Vedlitz (2006), Tetlock (2005), and Tomz (2009). For a review of elite experiments and differences from nonelite populations, see Hafner-Burton, Hughes, and Victor (2013), Hafner-Burton, LeVeck, Hughes, Fowler, and Victor (2014), and Hafner-Burton, LeVeck, Victor, and Fowler (2014). For a review of experiments in international relations, see Mintz, Yang, and McDermott (2011).

were the subject of our survey (and which we describe in detail below).

While activists in both domains think that international law is important, our central findings concern the pathways by which law influences behavior as well as how legal form influences efficacy. Our sample of NGO professionals perceives that the biggest utility of international law for advocates comes through punitive strategies that seek accountability. Notably, when NGOs litigate through courts in an effort to force changes in behavior, they believe that the presence of international law—especially binding law—is helpful. Similarly, though to a lesser extent, they believe that international legal norms aid efforts to "name and shame" governments and hold them accountable. This finding holds across both domains—environment and human rights—and stands in contrast with the shift in thinking among some scholars to emphasize soft norm-setting, acculturation, and focused deliberation as primary means by which law operates. Strikingly, these same activists believe that international law has little impact on their ability to gather information about behavior, communicate the importance of environmental or human rights goals, set agendas, or build capacity within countries to address these problems. Activists on the front lines believe the law matters most by improving their ability to hold governments accountable for their commitments, notably by meting out punishment.

Using an experimental treatment, we also examine causally whether activists think binding or nonbinding instruments differ in their effectiveness. Both communities believe that binding international law is more influential for litigation when compared with agreements that have no compulsory legal force. Strikingly, however, for every pathway by which law might influence behavior—other than litigation—the two communities hold very different views about how international law works in their domain. While there has been an increasing focus on the use of binding international law in both of these domains, human rights activists see equal value in nonbinding declarations. With the exception of litigation, they believe that the nonbinding Universal Declaration of Human Rights is just as effective an activist tool for promoting human rights as a binding treaty that requires protection of civil and political rights backed by strict reporting and review procedures. In the minds of the environmental activists, by contrast, nonbinding law has not yet achieved the same status—they believe that the nonbinding Rio Declaration on Environment and Development is substantially less effective in supporting their range of activist strategies than is a related, binding treaty on climate change. That view holds despite the fact that the Rio Declaration is designed to serve a function broadly similar to the Universal Declaration of Human Rights—it codifies big, bold principles of international cooperation and stewardship that many governments have also enshrined in national law and in other international agreements.

The paper proceeds, first, by briefly exploring the key discussions over how international law might be used as a tool of influence by social activists. We then describe our survey methodology, present our results, and consider possible explanations for why the environmental and human rights communities of professional activists think differently about the value of nonbinding commitments. We conclude with broader implications for theories of international law.

THE DEBATE OVER INTERNATIONAL LAW

In many areas of politics, social activists play central roles (Carpenter 2011; Haas et al. 1993; Risse, Ropp, and Sikkink 1999; Smith 2008; Stroup and Murdie 2012). They coalesce and operate within and across national borders. They mobilize and focus resources such as public opinion on topics of broad social interest—a big agenda on which the scholarship surrounding environment and human rights is particularly rich. And while scholars have found social activists at work in many types of countries—including autocracies (e.g., Darst 2001; Economy 2010)—the vast majority of this literature has focused on activism within the many shades of democracy.

Among the many tools activists have to assist them is international law (Charnovitz 2006; Hafner-Burton, Victor, and Lupu 2012). This body of law, according to some, has little independent impact on state interests (e.g., Downs, Rocke, and Barsoom 1996; Hathaway 2005; Keith 1999). According to others, however, many of their most important effects come through political mobilization (e.g., Levy 1993; Neumayer 2005). For example, Simmons (2009) argues that binding human rights law has changed the domestic politics of democratizing countries, in large part by empowering advocates and mobilizing procompliance stakeholders to both shame and also educate governments. Legal commitments increase both the value that people place on human rights and also the eventual likelihood that mobilized advocacy will improve protection of rights. Similarly, international legal institutions can help to focus and mobilize concern around particular environmental problems and solutions (Haas et al. 1993). De Sombre (2000) has argued that international environmental policy works centrally through the mobilization of supporting interest groups—an argument she has applied to the United States but which others

have also examined in other countries (Darst 2001). The presence of environmental commitments is thought to make it easier for NGOs to shame governments into changing behavior. Most major international environmental agreements also include positive inducements—such as capacity-building programs that scholars think lead to improved ability of governments to administer their international commitments while also building a larger community of supportive activists (Parson 2003).

This perspective generates a clear, testable prediction. If the law actually works by empowering NGOs and other activist networks, these advocates should believe that international law helps them to advance their goals. Inversely, these advocates should also believe that the absence of international legal instruments would reduce their capacity to advocate for environmental and human rights goals.

The strategies that can help activists use international law to influence behavior

In addition to revealing whether they believe international law matters, advocates also have insights that they can reveal about how they believe international law affects behavior. And those answers can provide a new window into a long-standing debate about whether law works mainly through punishment and deterrence of deviant behavior, or if the most effective strategies that activists utilize are rooted, instead, in the processes of deliberation, persuasion, and capacity building. Possibly, law works through both means of engagement. Social scientists have developed lists of activist strategies—the canonical list on which we base our analysis is summarized by Keck and Sikkink (1998). But to date scholars have done little to evaluate systematically how the presence or absence of legal commitments might influence these different strategies.

Among the most punitive strategies by which activists can seek to promote their goals is litigation. For example, NGOs might initiate or fund lawsuits within key countries with the aim of using the courts to force government or other key actors to change policy, compensate victims, or pay some cost for their actions. They may also rely upon material leverage strategies, for example, by mobilizing powerful allies who are willing to link the promotion of social policy to foreign aid, trade, or some other beneficial good where directly affected parties have less influence. Another common punitive strategy relies on moral accountability politics, where activists try to pressure powerful actors to comply with their previously stated policies or principles or to change their position on an issue. For example, NGOs might "name and shame" a person, corporation, or government responsible for environmental harm or human rights abuse (Hafner-Burton 2008; Murdie and Peksen 2014; Murdie and Urpelainen 2014). According to a range of scholars, these punitive strategies can be quite effective in some circumstances (e.g., Charnovitz 1994; Franklin 2015; Lebovic and Voeten 2009; Sikkink 2011; Simmons 2009; Vogel 2009).

Of course, not all activist strategies are equally or centrally punitive. Another way that activists seek to gain influence is through the creation of alternative sources of information about a problem. By establishing themselves as objective experts, NGOs can draw upon legal norms to generate and share usable information through research and reporting (Ron, Ramos, and Rodgers 2005). For example, NGOs might write reports and compile data sets about the causes of environmental degradation and publicize them through the media. Keck and Sikkink (1998) suggest that they may also engage in symbolic politics, by calling upon salient symbols, actions, or stories to frame the issue or persuade publics or governments. For example, NGOs might identify particularly salient human rights abuses and frame them as symbols of outcomes to be avoided. Perhaps the least punitive strategy available to activists is capacity building. Rather than seek to call out a bad behavior or punish its source, activists may seek recourse to help improve the capacity of key actors in a country to implement relevant actions. For example, NGOs might work with local actors to adopt particular policies or initiatives to reduce violations of labor rights or the use of police brutality or to encourage energy efficiency. NGOs might also design and implement technical assistance programs working with local governments and firms. Some scholars believe that these communicative strategies are the essence of what makes international law work—they are more obtainable and also more effective than punishment in part because the sources of noncompliance are often unintentional and the international legal system is weakly enforceable (Brunnée and Toope 2010; Chayes and Chayes 1998; Franck 1990; Koh 1997).

While the debate over how international law works is long-standing, and the literature on activist strategies is now quite extensive, presently, there is no consensus or evidence to explain which of these strategies are actually most salient for activists. If international law works because it empowers NGOs, what exactly does it empower them to do? Do activists believe the law helps them to litigate or create some form of material leverage? Do they believe it operates by enabling information sharing or capacity building? Does it do both at the same time? This paper is the first (to our knowledge) to examine this question of how activists in two domains believe the law works in a systematic

way at the level of the individual activists charged with spreading legal norms.

Legal form: Binding law

Legal form—in particular whether a law is binding or nonbinding—might influence how activists view the effectiveness of international law. There are at least two reasons to pay close attention to legal form. First, legal form likely interacts with most of the strategies activists use to implement international legal norms within societies. For example, litigation strategies usually require that an international commitment be recognized as binding within a national legal system.[2] Naming and shaming, to a lesser degree, may hinge on commitments that are widely seen as a full expression of what governments are willing to implement and not merely aspirations. Many capacity-building programs are connected to international funding mechanisms that are linked to binding treaties, and provision of the funds under those agreements is conditional upon membership in good standing.[3] By contrast, the strategies that involve gathering information as well as leverage and symbolic strategies may depend less on the exact legal form. The literature on how international law works through focused deliberation—which is a blend of information, leverage, and symbolic strategies—has emphasized that nonbinding agreements may have a particularly large impact through these kinds of processes (Finnemore and Toope 2001).

Second, legal form can influence both the substance of an international agreement and the extent to which governments actually implement inconvenient commitments (Hafner-Burton 2012). Various scholars have emphasized that binding commitments are usually more credible and enforceable than declaratory norms, although there are often trade-offs between legal form and other attributes of an agreement such as its precision (Abbot and Snidal 2000; Chayes and Chayes 1998). Binding law can enable treaty-sanctioned systems, such as formal dispute resolution or review mechanisms, as well as a variety of extra-treaty mechanisms such as unilateral sanctions (e.g., Andresen 1998; Barrett 2003; DeSombre 1995; Martin and Brennan 1989). Indeed, one of the central results from the larger research on the operation of the World Trade Organization is that the binding dispute resolution system has made commitments more enforceable and often more effective.[4] Binding law can also enable litigation in national courts (Brooks 1993; Staton and Moore 2011).[5] From this perspective, activists might believe that binding international law is more valuable in helping them to promote their organizational goals through accountability strategies such as litigation and naming and shaming.

Yet binding law is not necessarily more effective or desirable in all cases. For some scholars, the driving force behind compliance with legal commitments is a sense of obligation (*opinio juris*) rather than a fear of enforceability by a court (Rosenne 1984). That sense of obligation to the law comes from a belief that a legal doctrine is inherently legitimate—that it is generally applicable, clear, coherent with other rules, constant over time, and known and understood—rather than strictly enforceable (Finnemore and Toope 2001). Moreover, less binding commitments offer some advantages over binding law. For example, it may be easier to negotiate nonbinding norms because, unlike treaty law, nonbinding agreements need not pass through conservative domestic ratification procedures. More ambitious norms, in turn, can be stronger focal points for action (Skjaerseth 1998; Wettestad 1998). It also raises the prospect that countries will sign on to the norms because the nonbinding agreement allows them flexibility to maintain national sovereignty. And these forms of agreements often operate as tools for compromise among heterogeneous actors and interests (Abbott and Snidal 2000; Raustiala 2005). From this perspective, all of these features of nonbinding law can in principle advantage activists, perhaps especially as they seek to promote an issue through the use of communication and less combative forms of engagement rather than through punitive strategies alone.

While the debate over how international law works has gone on for decades, there is little resolution empirically or theoretically as to whether or how legal form affects the ability of activists to influence behavior. Theory tells us that law works in part through social activism and that different types of law should empower different activist strategies. But do real activists perceive some types of law as more effective for their advocacy purposes than others? The re-

2. This process happens automatically in some countries while requiring formal recognition, such as through ratification, in others. See Lauterpacht (1982). The exact line between commitments that are self-executing and those that require ratification or recognition remains highly contested. See, e.g., US Supreme Court, *Medellin v. Texas* (2008).

3. On the experience with the environment, see Keohane and Levy (1996); for a particular focus on the largest capacity-building program, on the ozone layer, see Parson (2003).

4. For this argument, with important caveats such as on the impact of binding dispute resolution on the incentives to settle cases early, see Busch and Reinhardt (2003).

5. And on the use of international environmental standards being used as basis for litigation, generally, in varied courts and tribunals, see Philippe Sands (2008).

mainder of this paper seeks to answer these questions using two parallel survey experiments on highly experienced NGO activists.

EXPERIMENTAL DESIGN

Starting in the summer of 2013 we recruited professionals from two different NGO communities. Our population consisted of professional activists working at NGOs that focused on environmental policy (111 respondents) as well as on the promotion of human rights (132 respondents). We recruited selectively by e-mail invitation or direct contact, and sought people who had direct experience with the development and implementation of NGO strategy. Table 1 shows a basic set of demographics for each population.

Within each sample, we investigated three questions. First, do these activists believe that international law helps NGOs to better achieve their environmental or human rights goals? Second, through which types of strategies do they think the law affects their capacity to advocate for their cause? Third, does the perceived impact of international law on these different strategies vary with whether the agreement is legally binding?

To answer these questions, we posed scenarios that included information about two pairs of international agreements (table 2)—one pair, each, for environment and for human rights. One element of the pair was binding, the other nonbinding. We chose agreements that were broadly comparable across the two issue areas, and we performed a manipulation check to verify this perception (which we discuss in detail below). We selected agreements that are highly visible with the aim of ensuring that activists would be familiar with each agreement. For the environment survey we focused on two agreements that implicate global climate change, the most widely known environmental topic among NGO activists. In human rights we focused on the 1948 Universal Declaration of Human Rights (UDHR) and the 1966 International Covenant on Civil and Political Rights (ICCPR)—two widely known agreements.

Within each issue area (environment or human rights) the agreements are quite similar in terms of their membership and policy scope. The primary difference between each agreement is whether the agreement is legally binding on member states.

The pair of nonbinding agreements includes, for the environment, the Rio Declaration on Environment and Development, signed in 1992 at the United Nations Conference on Environment and Development in Rio. Like many soft law agreements, the Rio Declaration articulates broad and bold goals. These goals are not merely aspirational but also reflect hard-fought language about the role of sovereignty, the role of public participation, and the special status of developing countries. We chose the Rio Declaration for our survey because it was widely known and also highly focused—unlike the more extensive Agenda 21 whose expansive content did not reflect such careful political tradeoffs (Haas, Levy, and Parson 1992). In the area of human rights, the nonbinding agreement in our survey is the UDHR, signed in 1948. Like the Rio Declaration, this agreement is an expression of collective will by states to broad aspirations—in this case, a recognition of the goal of human rights protection. Both of these nonbinding agreements are universal and articulate rights and principles that apply to all people and responsibilities for all governments. Although essentially all governments signed the UDHR and the Rio Declaration, the agreements have no direct legally binding effect on governments. However, many of the principles embodied in each of these agreements have since been elaborated in subsequent binding international treaties.

Table 1. Demographics

	Environment	Human Rights
Mean age	43	41
Mean years experience	14	11
% economics background	25	9
% legal degree	7	6
% female	32	48
Median income	US$100,000–US$149,000	US$55,000–US$69,000
Median left-right[a]	3	3
Median operating budget	US$5 million–US$10 million	US$1 million–US$5 million
% international[b]	55	65

[a] Ideology (1 = most liberal, 10 = most conservative).

[b] % working for international NGO, headquartered outside the United States.

Table 2. Binding versus Nonbinding Agreements

	Environment	Human Rights
Binding	**The Framework Convention on Climate Change** is a legally binding treaty. It sets an overall framework for intergovernmental efforts to tackle the particular challenges posed by climate change. It also creates a framework that led to the Kyoto Protocol. Nearly all countries have signed and ratified the Framework Convention.	**The International Covenant on Civil and Political Rights** is a legally binding treaty. It sets an overall framework for intergovernmental efforts to address the particular goals of protecting civil and political rights. Nearly all countries have signed and ratified the International Covenant on Civil and Political Rights.
Nonbinding	**The Rio Declaration on Environment and Development** has no legally binding effect on governments. It is an expression of collective will by states to protect the environment while also advancing other social goals. This declaration applies to all states and all people, and it covers a wide array of environmental protection goals, including climate change. Nearly all governments have signed the Rio Declaration.	**The Universal Declaration of Human Rights** has no legally binding effect on governments. It is an expression of collective will by states to protect human rights. This declaration was proclaimed by the United Nations General Assembly as a common standard of achievements for all peoples and all nations, and it covers a wide array of human rights goals.

The binding agreements include the United Nations Framework Convention on Climate Change (UNFCCC), signed at the same conference where governments adopted the Rio Declaration. The UNFCCC sets an overall framework for intergovernmental efforts to tackle the particular challenges posed by climate change. It also creates a framework for other legally binding treaties, such as the later Kyoto Protocol. The Convention enjoys near universal membership and is legally binding on states that ratify it. In human rights the binding agreement is the 1976 ICCPR, which sets an overall framework for intergovernmental efforts to address the particular goals of protecting civil and political rights. This treaty enjoys near universal membership and is legally binding on states that ratify it.

Of course, there are important differences between the agreements in the two issue areas. The structure of the cooperation problem differs—climate change requires collective action to manage a common resource whereas there is no such strategic interaction in human rights. Thus while the two binding agreements—UNFCCC and ICCPR—are widely known within the NGO communities, the functioning of the two agreements differ. And while UDHR has achieved iconic status the Rio Declaration has been less of a legal watershed, in part because there are other sets of overlapping, nonbinding principles that also guide action in this area—such as the 1972 Stockholm principles. We consider these differences below when interpreting our results. Nonetheless, in legal form, familiarity, and importance these two pairs of agreements are as closely matched as is feasible for a survey such as this that requires real world agreements that activists can assess.

For each agreement, we asked subjects from the relevant policy community to consider what would happen if one of the agreements (binding or nonbinding) did not exist. In our scenario, we focused the activists on the impact of international law in a country with a newly democratic government, which is developing (although has not fully achieved) an independent judiciary and is rapidly growing and middle income (a per capita GDP in the range of $5,000–$15,000) with an economy based on industrial manufacturing. These properties of the country were specified to make sure that any differences in activists' responses were not driven by the fact that NGOs often operate in a wide array of countries. The specific parameters were chosen to reflect the set of countries for which the literature suggests international norms and NGOs have a particularly important role in holding governments accountable—as such, it is the most likely case where we should find evidence that law promotes advocacy (Haas et al. 1993; Raustiala 1997; Simmons 2009). While international law might have an impact in other kinds of countries, scholars believe that there is a special role for international law as newly democratic countries become consolidated.

Subjects responded to each question by moving a slider along a scale of −50 to +50 based on whether their NGO would become more or less influential when trying to promote its policy goals in the absence of international law. Here, −50 was defined as "a lot less influential" and +50 was defined as "a lot more influential."[6] Using this continuous scale allowed us to potentially detect differences

6. The full text of questions can be found in the appendix.

that are more fine grained than is possible with a more limited Likert scale. Because our experimental design is within subject, we also avoid many of the potential pitfalls that are common to continuous "thermometer" type rating scales. Most notably, we do not have to worry about whether ratings on our scale are perfectly comparable between subjects or that all subjects have the same interpretation of the endpoints. Even if this was not the case, we could still detect meaningful differences in the direction of subjects' responses between our control and treatment conditions.

Subjects were then asked to perform a thought experiment. Suppose, we asked them, that one of the agreements did not exist? Then, we ran the thought experiment in reverse—asking the subject to imagine that the other agreement, instead, had been removed from the cannon of international law. We asked about this removal in random order, allowing us to eliminate spurious findings from sequencing. This thought exercise offers, within each policy community, a within-subject experiment that holds constant the properties of the individual decision maker, country under consideration, and policy scope of an agreement while varying the legal status. It allows us to determine whether subjects think legal status matters and, as well, to examine how these NGO activists think legal status affects the different strategies by which they use international law to advance their goals. We emphasize that this experimental treatment isolates whether activists believe that legal form matters and whether it matters more for certain advocacy strategies—to the extent that we get leverage from the experiment, it only applies to the comparison across types of treaties. Other conclusions from this article—such as the claim that activists perceive the law to be useful—rely on the assumption that our sample is not terribly different from the general population of NGO activists in each field.

In beta testing of the instrument we focused heavily on whether the thought experiment would be plausible and comprehensible to subjects. We also note that in the real world the removal of binding agreements, in particular, is not an uncommon event. The United States, for example, signed the Kyoto Protocol during the Clinton administration—an act that signaled intent to be bound by legal force. And in the 2000s the Bush administration, in effect, abandoned that treaty. And Canada—which signed and ratified the treaty—announced in 2011 that it would withdraw from the binding agreement.

To assess how legal form affects strategy, we presented subjects with six different strategies commonly used by NGOs—and derived from the existing scholarly literature (e.g., Chayes and Chayes 1998; Davies 2014; Gilbert 2008; Hadden 2015; Keck and Sikkink 1998)—to influence outcomes within a country. We then asked them to rate on a similar scale (−50 to +50) how much less (or more) influential each strategy would be if a particular agreement did not exist. The strategies, roughly from most to least punitive, are litigation, leverage, accountability, information, symbolic, and capacity building. The definitions of these strategies were presented to subjects and can be found in the appendix, available online.

RESULTS

Figure 1 shows subjects' average response to the removal of the binding agreement (left panel), and the removal of the nonbinding agreement (right panel): −50 meant that an NGO would become "a lot less influential," 0 meant that

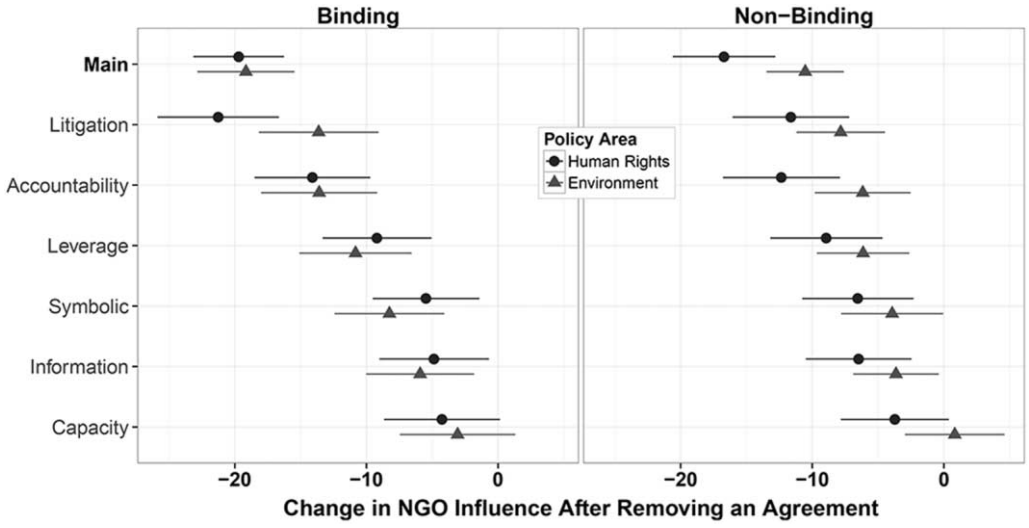

Figure 1. The effect of removing a particular agreement

there would be no change, and + 50 meant an NGO would become "a lot more influential." Horizontal lines on either side of each dot represent 95% confidence intervals.

The top row (labeled "main") shows what respondents think would happen to NGOs' general ability to influence behavior. Subsequent rows show how various strategies would be affected. Figure 1 demonstrates two main findings. First, both groups clearly think that international agreements are an important tool for advancing their goals. This is especially true in the case of binding agreements, where activists from both policy areas agree that the absence of a binding agreement would substantially harm their NGO's overall level of influence. Activists believe (on average) that international law helps them advocate for social justice in newly consolidated democracies—in those places, where the conditions are most amenable, the law empowers advocacy.

Figure 1 also shows that NGO activists think international agreements more readily help them operate through punitive strategies. Across the board, activists think that the absence of an international agreement would harm their ability to influence outcomes via litigation and accountability, and to a lesser extent via leverage strategies. This impact on punitive strategies is evident even for soft law, despite the fact that scholars typically assume that soft law has no direct punitive action within countries but operates instead by setting agendas and focusing attention (Goldsmith and Posner 2005). By contrast, activists think that the absence of either form of international legal agreement would have a smaller effect on the viability of communicative strategies—symbolic, information, and capacity-building strategies. For both the environmental and human rights professionals, soft law agreements have no statistically significant effect on capacity-building strategies.[7] For environmental professionals, this null effect extends as well to information and symbolic strategies. In short, from the perspective of the activists the law amplifies their ability to engage in punishment more so than by fostering symbols, providing new information, or creating capacity.

While we can conclude that our sample of activists believe international law predominantly aids their efforts to punish actors for noncompliance, we cannot conclude that punishment is all the law has to offer. It may be the case that international law has some degree of specialization within a broader marketplace of institutions working toward international cooperation. And NGOs may see themselves as the organizations most effectively able to collect and spread information and build capacity, with or without the aid of law. Moreover, litigation can have the downstream consequence of leading to the production of further information that can support activism.[8]

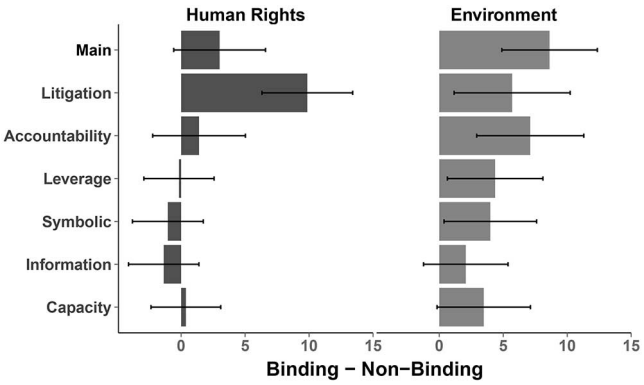

Figure 2. Differences in the effect of legal form. Lines represent 95% CIs

The third main finding is that NGO activists disagree to some extent on the utility of nonbinding law. Figure 2 shows the differences between the binding law and nonbinding law treatment for each of the policy areas and strategies.[9] In the area of human rights, activists think that removing either binding or nonbinding law would have a comparable effect on their overall ability to influence the reduction of human rights violations. For these activists there is no general statistically distinguishable difference between the main effect of binding and nonbinding law. Furthermore, they think the absence of either form of law would have a similar

7. Figure 1 also shows that environmentalists think removing the nonbinding agreement has a slightly positive effect for capacity strategies, but this is not statistically distinguishable from 0. A likely cause of positive values is our interface. For all questions the slider was initially centered at 0, and subjects were required to move the slider for each question so that we knew they had not simply skipped the question. Many subjects moved the slider back onto zero, but many others moved it just to the left or right. So, in many cases a small positive response really reflects an intended response of 0.

8. We thank a reviewer for raising this point.

9. Here, a score of −10 means that respondents (on average) thought that removing the binding agreement would be 10 points more harmful than removing the nonbinding agreement. We can evaluate this movement relative to our scale's end points. For instance, a 10-point difference means that, compared to a nonbinding agreement, removing a binding agreement would push an NGO's efforts 20% closer to being "a lot less influential." We can also evaluate this movement relative to the baseline effect of removing a nonbinding agreement. For example, figure 1 shows that professionals from environmental NGOs thought that NGOs would be 10.1 points less effective if the nonbinding Rio Declaration did not exist. Meanwhile, figure 2 shows that these same individuals thought their NGO's effectiveness would drop by an additional 8.6 points if the binding Framework Convention was removed, suggesting that these activists (on average) believe this binding agreement has nearly twice the impact on environmental NGOs' overall effectiveness.

effect on every strategy except litigation, where they do see binding law as more important. In other words, in the view of these activists, the Universal Declaration is just as powerful a tool for activists as the binding treaty protecting civil and political rights. By contrast, the nonbinding Rio Declaration has not yet achieved the same status in the environmental community. These activists think that the absence of the nonbinding agreement would have a smaller effect on every strategy except information. In the appendix to this article, we further investigate whether these differences remain when we account for a number of demographic variables. We find that the magnitude of the difference in how each community perceives the effect of legal form remains largely the same, although the difference becomes statistically insignificant for some strategies when a full array of demographic variables is included.

We note that while the two communities of activists differ in their overall opinion of whether binding law is more effective for advocacy, that difference is small relative to each community's ranking of the relative importance of different strategies. On average, environmental strategists think that removing a binding treaty harms an NGO's effectiveness (4.5 points) more than removing a nonbinding law. Meanwhile, on average, both communities believe that removing a binding international law reduces the impact of the most effective strategy, litigation (7.9 points) more than the least effective strategy (capacity building). Overall, the variation in impact as a function of legal form is roughly double when we compare strategies than when we focus on the average impact. This finding suggests that debate over whether legal form is important should not focus on general effects but, instead, should concentrate on the particular strategic pathways by which legal agreements influence behavior.

Manipulation check

In our survey, activists working in the domain of the environment think very differently about legal form than activists working in human rights. Specifically, the key nonbinding environmental declaration has not achieved the same status among activists as the key declaration in human rights. The natural question is why? One possible explanation is that these findings can be attributed to how activists in each domain perceive the "bindingness" of the agreements or to some other attributes of the agreements. Perhaps these two communities interpret variations in legal form in fundamentally different ways.

To evaluate this explanation, we ran a manipulation check. Using the same slider (scale of −50 to +50), we asked the activists to evaluate each agreement on five dimensions:[10] (1) legal force under international law, (2) precision of obligations, (3) extent to which international organizations are charged with following up on the agreement's obligations, (4) scope (number of issues covered), and (5) difficulty of achieving obligations. This was to make sure that subjects perceived the agreements as differing on dimensions related to legalization (legal force, precision, and obligation)—concepts that are widely used in the literature and which are particularly relevant to the study of trade-offs in the design of binding versus nonbinding law (Abbott and Snidal 2000). This manipulation check allows us to examine whether participants saw the agreements as differing on other dimensions (scope and difficulty) that are not central to whether an agreement is binding or nonbinding.

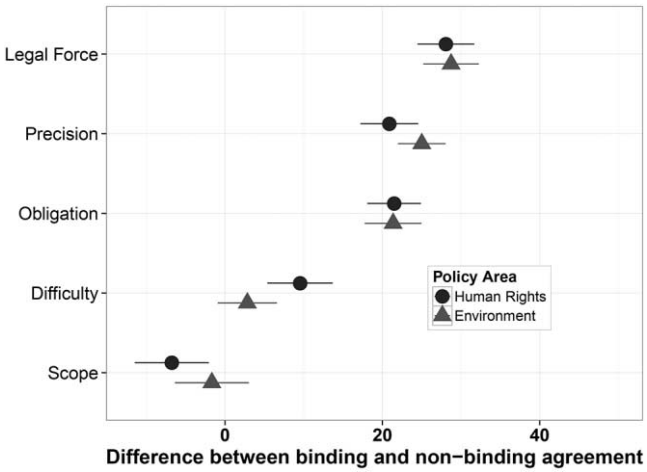

Figure 3. Perceived differences between forms of law

Figure 3 shows the mean response of activists in both policy communities, along with the 95% confidence interval. The ratings demonstrate that the binding and nonbinding agreement differed primarily in terms of their legal force, precision, and obligation—attributes that are highly correlated with whether an agreement is binding or not (Abbott and Snidal 2000). Figure 3 also shows that members of both communities saw very little difference in terms of scope or difficulty, dimensions that are less related to legalization. Taken together, these ratings suggest that disagreements between NGO activists in each issue area stem from different beliefs about the effect of legalization in their domain rather than about the meaning of legalization. That is, on average, respondents see the binding and nonbinding treaty in their policy area as differing in similar ways from one another, at least when it comes to the dimensions

10. Here, +50 meant that the binding agreement had "a lot more" of a particular property, −50 meant it had a lot less, and 0 meant there was no difference. For example, a score of +50 on legal force would mean that the binding treaty had a lot more legal force than the nonbinding treaty.

measured by our manipulation check. While we cannot fully exclude other dimensions that distinguish the binding and nonbinding law in each policy domain, we are confident that our experimental manipulation is triggering large differences on dimensions that are expected by the literature (and not triggering large differences on two dimensions that are known to distinguish treaties but are not considered important to legalization). We should also note that the results here do not allow us to tell if any one dimension (legal force, precision, or obligation) is driving the effect of binding versus nonbinding law. To tackle this, scholars will have to find experimental manipulations that change one of these aspects, while leaving the others unchanged—an experiment that would have been impractical within the context of the current study as it would have led to a survey that would have been intolerably long for elite subjects.

Discussion

Our manipulation check suggests that environmental and human rights activists understand the definition of legal form in similar ways, yet they think differently about the relative value of nonbinding law. Here, we speculate as to what might explain this variation. Our survey was not originally designed to produce a definitive answer in large part because we did not anticipate this outcome, and thus a conclusive answer is beyond the scope of this paper.

One possible explanation is that this variation in perceptions may reflect differences in the historical experience of these two groups of activists. Specifically, in the domain of human rights, there has been substantial and longstanding use of nonbinding law to set important norms, especially through the Universal Declaration of Human Rights. That nonbinding declaration is widely seen as inspiration for many other legal norms that came later—including many binding legal agreements. This historical familiarity with nonbinding law—as well as its status as the first major global human rights doctrine—may explain why the only strategies that human rights activists think would be much diminished in the absence of binding law is litigation—all the other strategies through which law might affect NGO missions are seen as just as (if not more) effective in a nonbinding legal framework compared with binding law.

In the environmental field, however, successful use of nonbinding law is much more rare and is in substantive areas that are largely unknown outside a narrow group of specialists. For environmentalists, nonbinding agreements often are the result when governments cannot agree on their first best goal of a binding treaty. In the area of forests, for example, high profile efforts to create a binding forest treaty (which would have been signed alongside the UNFCCC in 1992) failed, leaving governments just to agree on nonbinding "forest principles" that have not inspired much further action. In the area of climate change, the binding UNFCCC and the nonbinding Rio Declaration were signed at the same time—and most of the climate-related political effort has subsequently focused within the binding framework. One might examine this conjecture by conducting a similar survey with NGO professionals in other policy domains that have historical trajectories similar to either human rights or the environment.

Another possible explanation is that this variation in beliefs reflects the different types of cooperation problems in the two domains. For human rights, the central purpose of law is to help spread and cement behavioral norms into place. If one country defects then it harms the larger moral order of the planet but does not cause direct tangible harm to other countries that would cause them to reconsider implementing their human rights commitments. In this sense, human rights cooperation is rarely a strategic problem (Goldsmith and Posner 2005). By contrast, cooperation on climate change requires adopting possibly costly policies that affect a nation's economic competitiveness. If one country defects while others bear these costs then the collective benefits decline and the costs concentrate on the cooperating party. In the extreme, climate change may have a prisoners' dilemma strategic structure—creating strong incentives to defect and perhaps explaining why environmental activists prefer binding law that is less prone to tolerate defection. Future experiments might examine this conjecture by experimentally manipulating whether NGO professionals within a given field are asked about policy issues with or without strong intrastate externalities.

CONCLUSION

Methodologically, this work is part of a larger trend toward using experimental surveys to examine political processes (e.g., Chilton and Tingley 2013; Hafner-Burton, LeVeck, Victor, and Fowler 2014; Kertzer 2013; Kertzer and McGraw 2012; McDermott 2011; Tingley and Walter 2011a, 2011b). Some work in this vein has looked at voter attitudes around trade agreements and, notably also climate change (e.g., Bechtel and Scheve 2013; Bernauer 2014; Mansfield and Mutz 2009; Tomz and Rho 2011). One challenge has been that many international phenomena are dominated by actors that are difficult to survey and yet which may behave in some important respects differently from nonelite or inexperienced survey respondents (Hafner-Burton et al. 2013). Our work represents a unique snapshot of the perceptions of a sample of seasoned activists, who alone know what they observe on the front lines.

Substantively, this paper contributes to the long-standing discussion over how international law works using two survey experiments on professional NGO activists working in the domains of environment and human rights. It provides novel survey evidence to demonstrate that—from the perspective of the professional norm entrepreneurs in our sample—activists believe that international law empowers their ability to advocate for environmental and human rights protections. More importantly, these seasoned activists believe that the value added of international law for their purposes is largely punitive rather than through communication or persuasion. International law—the activists believe—helps them to litigate and to a lesser extent name and shame. It does much less to bolster symbolic, informational, or capacity-building strategies. In short, activists believe that the law does not much strengthen the softer side of advocacy.

This finding contrasts with the view, ascendant among many lawyers and some political scientists, that international law works more through communitarian interaction and communicative processes than punishment (Koh 1997). This view emphasizes transnational legal processes as a central means of embedding legal norms into behavior and practices (Slaughter 2005). It sees transparency, discursive debate, and legitimacy as prime movers for legal impact (Finnemore and Toope 2001). Such communicative and persuasive process may accurately describe how international law affects states, including interactions among diplomats. The NGO activists on the front lines, however, believe that the big impacts of law for advocacy come more from traditional, punitive strategies.

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