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## INTERNATIONAL REGIMES FOR HUMAN RIGHTS

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## **About the Laboratory on International Law and Regulation**

### **(ILAR)**

The Laboratory on International Law and Regulation (ILAR) is an international, interdisciplinary laboratory that explores when and why international laws actually work. Among scholars, this question has triggered a lively debate that ILAR is engaging with better theories and evidence. ILAR research examines a wide array of issues from environment and energy to human rights, trade and security issues. The ILAR team looks at these issues from the international perspective and also through comparisons across countries.

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“International Regimes for Human Rights.”<sup>1</sup>

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On December 10th, 1948, the General Assembly of the United Nations (UN) proclaimed the Universal Declaration of Human Rights (United Nations 1948). It endorsed this statement, which at the time was widely seen as radical: “All human beings are born free and equal in dignity and rights.” It vowed to protect the “equal and inalienable rights of all members of the human family” by entitling every person “to all the rights and freedoms set forth in this Declaration, without distinction of any kind.”

In the six decades since that day, the international community has built a vast network of legal instruments designed to turn these goals into practice. The result has been an ever-expanding array of international legal regimes that are widely seen as the keystone for protecting human rights and thus vital to peace, progress and prosperity. That is a major accomplishment in rulemaking. The Universal Declaration and the many laws it has inspired rest on the belief that the values and boundaries they enshrine should apply to all people, no matter who they are or where they live.

Dozens of treaties convert the many rights identified in the Universal Declaration into legally binding responsibilities on governments. The 1948 Genocide Convention, for example, criminalizes genocide under international law and requires states that ratify the treaty to punish people who commit the heinous crime. Other treaties establish other norms, criminalizing acts of torture or protecting economic, social and cultural rights and the rights of certain groups of

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people such as women, migrants and the disabled. States that voluntarily accept these laws commit to obey their obligations.

The system has come a long way since 1948. There is now compelling law (or *jus cogens*), a body of fundamental principles of international law, which apply universally to all states and are non-derogable (meaning there is no lawful deviation); they include genocide, slavery and torture.

The rise of this global legal system is often seen as evidence that values associated with the promotion of universal human rights are spreading. And indeed, most governments have made promises to uphold at least some aspects of the system. Yet one problem has been enforcement – there is no global police force or criminal justice system for human rights. Advocates for international legal strategies are now trying to fill in that hole as well. In a few jurisdictions, notably in Africa, Europe and Latin America, there are special international human rights courts. Since 2002, the International Criminal Court (ICC) - a permanent tribunal - can prosecute genocide, war crimes, and crimes against humanity committed not only by nationals of the treaty's signatories but also by nationals of other governments, like Sudan, that have never agreed to participate. Among the many radical elements of the ICC is that a state need not agree to the court's authority for its nationals to be bound by it.

Beyond these courts (and others like them)<sup>2</sup> are two other developments – the responsibility to protect and universal jurisdiction – designed to further expand the enforcement

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<sup>2</sup> The list of international human rights tribunals – with ad hoc and permanent jurisdiction – has grown. Those include the: International Criminal Court, European Court of Human Rights, Inter-American Court of Human Rights, Court of Justice of the Andean Community, Caribbean Court of Justice, African Court on Human and Peoples' Rights, International Criminal Tribunal for the former Yugoslavia, International Criminal Tribunal for Rwanda, the Special Tribunal for Lebanon, Special Court for Sierra Leone and Extraordinary Chambers in the Court of Cambodia, Crimes Panels of the District Court of Dili (East Timor Tribunal).

and legitimacy of international human rights, even when these new norms arise at the expense of traditional, bedrock principles of international law such as state sovereignty.

As international legal regimes for human rights have grown and evolved, so too has systematic empirical scholarship to explain their popularity, process and influence. A few decades ago, little was known about how these regimes have a tendency to operate, why states participate in them, or whether their participation has any consistent relationship to human rights behavior; the heart of the human rights enterprise in political science was to prove that norms and norm entrepreneurs could shape relations between states and between states and individuals. Today, scholars employing a wide variety of empirical strategies are quickly developing research that is producing insights around three central questions: (1) Why do governments participate in international legal regimes such as courts and treaties to protect human rights, (2) how do those regimes operate and (3) are they influential? Underlying these three questions are profound uncertainties about whether these regimes are the most effective way to expend resources to protect human rights, and whether they realistically can be made more effective.

From this critical mass of new scholarship both consensus and debate have emerged. This article provides a roadmap for understanding the points of agreement and contention that characterize contemporary empirical – especially statistical – scholarship on international human rights legal regimes. Part I explores what the statistical research teaches us about why states participate in these regimes. Part II explores knowledge of how these regimes operate. Part III explores their relationship to actual human rights behavior. Part IV describes the central shortcomings of this research tradition. Part V concludes by presenting a few areas especially promising for future research.

## **PART I: PARTICIPATION**

The number of international human rights legal regimes and the number of countries participating in them has risen dramatically. All 193 members of the UN have, by virtue of their membership, already accepted the UN Charter, which enshrines fundamental human rights and the dignity of every person (United Nations 1945). Not all of them have promised to obey every single UN human rights treaty, though over time, the vast majority has been ratifying more of them.

The global human rights legal system has grown rapidly and is attracting more states parties to a growing number of treaties and subjects more governments, organizations and individuals than ever before to the jurisdiction of international courts. Essentially every state in the world now participates in the human rights legal regime through membership in at least one core UN treaty. As of June 2011, more than one hundred countries had agreed to submit to the authority of the ICC (International Criminal Court 2011). Meanwhile, in Africa, the Americas and Europe, a growing number of governments have become states parties to their regional human rights convention. By now, all members of the Council of Europe have promised to put the Convention for the Protection of Human Rights and Fundamental Freedoms into practice, and all are subject to the authority of the European Court of Human Rights (ECHR) (European Court of Human Rights 2010). In the Americas, over two-dozen governments are states parties to the American Convention on Human Rights (although not all allow the Inter-American Commission on Human Rights to receive and examine complaints) (Inter-American Commission on Human Rights 1969). Meanwhile, the African Union's members, from Algeria to Zimbabwe, have ratified the African Charter on Human and Peoples' Rights (African Union 2009). 25 countries, including Kenya and Mauritania, have ratified the protocol that created the African

Court on Human and Peoples' Rights. In 2008, a protocol was adopted that merged the African Court on Human and People's Rights with the African Court of Justice, to form the African Court of Justice and Human Rights (African Union 2008). The new Court is not yet active.

The growth of the international human rights legal regime has sparked a productive debate over why states choose to enter legal regimes designed to establish and monitor compliance with human rights standards. One view is that “[*m*]ost governments ratify treaties because they support them and anticipate that they will be able and willing to comply with them under most circumstances” (Simmons 2009, p. 65). Simmons drew this conclusion from statistical evidence that countries with a deep historic commitment to democracy, newly democratized systems, and societies closely linked to Western cultural mores and practices, such as Christianity, have ratified some human rights treaties more readily, presumably, according to Simmons, because they believed in the treaties' values and in their own capacity to fulfill the treaty obligations. In his studies of ratification practices, Cole (2005, 2009) also found evidence that democracies have been more likely to ratify the UN treaties protecting civil and political rights and economic, social and cultural rights.

According to Simmons, the states that have joined human rights legal regimes with no intention of complying are in the minority. They ratify – if at all – late in governments' tenure in office. She bases this claim in part on her evidence that nondemocratic governments took longer to ratify the two treaties that make up the international bill of rights, although they ratified the treaties that prohibit racial discrimination and torture just about as quickly as democratic governments ratified. However, evidence that non-democratic governments take longer to ratify some human rights treaties does not support the conclusion that the dominant motivation for participation in human rights regimes is genuine commitment. Dictators like Kim Jong-Il of

North Korea or Muammar Kadafi of Libya may take longer to join some treaties, but they join some nonetheless. Today, 99% of the group of nondemocratic states in the world is a party to at least one of the main UN treaties protecting human rights.<sup>3</sup>

A lot of evidence suggests that imitation is a powerful motivation for participation in treaties. Simmons (2009) showed that governments were more likely to ratify treaties that protect children and civil and political rights and that outlaw torture if their neighbors did so – her interpretation was social camouflage. She found no imitation effect, however, for treaties that protect economic, social, and cultural rights or that outlaw discrimination against racial minorities or women, though Wotipka and Ramirez (2008) did for women’s rights and Cole (2005) did for economic, social and cultural rights. Several other studies also found evidence that states are more likely to participate in some treaties when their neighbors participate, but there is disagreement over which treaties have been subject to imitation and how to interpret the finding (Goodliffe and Hawkins 2006, Neumayer 2008, Wotipka and Tstusui 2007, von Stein 2010). Social camouflage intended to hide duplicitous behavior is one possible interpretation; social pressure to conform to worldwide norms of treaty participation is another.

Some efforts to explain participation have looked at variation in the sovereignty costs associated with participation. Hafner-Burton, Mansfield and Pevehouse (2011) argued that entering a human rights regime can yield substantial benefits for democratizing states that lead them to participate in multiple regimes with the genuine intention of complying – a variety of studies, including Moravscik (2000), Landmann (2005), Cole (2005) and von Stein (2010), have made a similar argument based on evidence that democratizing states are the most likely to join

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<sup>3</sup> Author’s computation based on the standard calculation of nondemocratic states as any state falling below a score of 7 on the Polity IV scale. An alternative calculation as any state that falls below a score of 1 on the Polity IV scale produces a value of 98%.

human rights treaties. Emerging democracies may use the sovereignty costs associated with membership to lock in human rights policies and signal their intent to consolidate democratic institutions. Most fully-fledged democracies do not need these external costs to ensure protection for human rights and autocracies actively seek to avoid such costs. Because the magnitude of sovereignty costs varies across different regimes, it is possible to test systematically the implications from this argument. In keeping with the theory, Hafner-Burton, Mansfield and Pevehouse's (2011) showed that democratizing states have joined human rights regimes (including dozens of treaties and organizations) that impose greater constraints on their sovereignty at a faster rate than consolidated democracies or dictatorships that tend to resist joining these higher cost regimes. Using less sophisticated data, Cole (2009) found similar evidence.

Evidence from studies on treaty reservations also is consistent with the argument that certain types of democracies have been more likely than others to ratify human rights treaties with higher sovereignty costs. Notably, Landman (2005) found that, historically, democracy has been a very strong predictor for whether or not a state ratified the UN treaties protecting civil and political rights (ICCPR), economic, social and cultural rights (ICESCR) and outlawing discrimination against women (CEDAW). Among them, certain types of democracies – the newer ones that have recently democratized, such as Albania, Chile and Niger – have been especially inclined to ratify more human rights treaties with fewer reservations, thus accepting greater sovereignty costs associated with membership. Landman interpreted this as evidence that these governments were seeking to make credible commitments to the law. Neumayer (2007) also showed that democracies were less likely for some treaties to reduce their commitments through reservations, understandings or declarations (RUDs) that diminish the sovereignty costs

of participation, though rights protecting governments were actually more likely to do so. He interpreted the use of RUDs as “a legitimate means to account for diversity” (p. 397).

In one of the handful of empirical studies of why states participate in the ICC, Danner and Simmons (2010) also drew attention to ways that sovereignty costs can elicit (or deter) participation. The states – democracies not at civil war – that have most eagerly ratified the treaty establishing the ICC have been countries where participation in the court comes with few costs because human rights are largely protected and nationals are unlikely to face prosecution for war crimes. (See also Kelley (2007), who found that democracy and human rights both predicted membership in the ICC; Chapman and Chaudoin (2010), who found that peaceful countries with strong rule of law and domestic judicial institutions have been the most likely participants; and Neumayer (2009), who found that countries willing to intervene in foreign civil wars and those that have contributed to multinational peacekeeping missions were more likely to have joined the court early on.) Because the court imposes few sovereignty costs on these countries, they participate for reasons other than to tie hands domestically or send a costly signal to domestic or foreign audiences – perhaps they seek to support the global spread of legal norms or to please pressure groups that support the court. However, some autocratic governments, namely those that have a recent past of civil violence, also participate in the court. They have joined more readily than autocracies with no recent violent past or democracies at civil war. Danner and Simmons (2010) argued that these violent autocratic states use the ICC to make credible commitments to end the cycle of violence; they turn to the ICC because the court can impose sovereignty costs and they have no other way to convince their domestic opposition or public of their intentions to settle the conflict.

Goodliffe and Hawkins (2009) took a different view on why states participate in the ICC. They argued that the decision to participate or not depends on what they call a country's "dependence network". During negotiations, they found that governments assumed the policy positions of their closest international partners on which they most depended for trade. Leaders watched how their trade partners behaved and accordingly changed their own positions on the ICC. The authors interpreted this as a strategy to get approval from their network. In their statistical study, Goodliffe et al. (2011) also found that the dependence network predicted whether or not a state acceded to the court. Governments with trade, security or organizational ties to other countries that have acceded were more likely to have joined the court, while those with ties to other countries that were hold outs were less likely to have joined. The authors were not entirely sure why, but argued that states may have been concerned with the reactions of their network partners.

Another view on participation in human rights regimes is that "...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" (Hathaway 2002, p. 2005). That function has prompted a significant number of states to join human rights regimes for reasons other than genuine commitment to treaty norms. According to Hathaway, many states have joined human rights regimes to relieve pressure for real change. Hafner-Burton and Tsutsui (2005) and Smith (2011) made similar claims but argued that such disingenuous participation is likely to backfire where civil society organizations are able to hold governments locally accountable for their treaty violations. (See also, Risse (2000) on the process of 'argumentative self-entrapment'.) Because treaty monitoring and enforcement structures are "woefully inadequate" (Hathaway 2002, p. 2008), countries with bad human rights

ratings have joined some treaties at high rates because they believed they could enjoy the benefits of participation without living up to their legal commitments to actually protect human rights. Hathaway drew this conclusion from her own statistical evidence that repressive countries have ratified some treaties at equal or higher (though not necessarily faster) rates than those with better rankings. (For a critique, see Goodman and Jinks (2002).)

The evidence behind Hathaway's claim that repressive countries participate more often in some human rights regimes has received a great deal of recent attention, and scholars have drawn different conclusions in its regard. Hafner-Burton and Tsutsui's (2007) research suggested that repressive states that murder, torture, kidnap, and keep political prisoners belong to the main international legal treaties outlawing these behaviors just as commonly as governments that protect human rights reasonably well. Thirty years ago, there was about a twenty percent chance that either a protective or repressive state had made a commitment to participate in one of these treaties. Now, this chance is well over ninety percent. This fits with Goodliffe and Hawkins' (2006) evidence that engaging in torture has not altered a country's likelihood of participating in the convention prohibiting torture, although violating civil liberties has decreased the likelihood that a country will participate. In Cole's (2005) study, human rights practices also had no statistically identifiable relationship to whether a state ratified treaties, except when those treaties created additional monitoring procedures. In that case, repressors tended to avoid participation – another indication that sovereignty costs seem to play some role in states' participation decisions. Hathaway (2007), however, identified a different contingency: only states with strong democratic institutions were less likely to participate in treaties if they had poor human rights ratings, arguably because they were seeking to avoid the negative consequences of treaty

violation. She concluded that the decisions by autocratic states whether to participate in treaties has not depended much on their human rights behavior.

In a study of state participation in the UN Human Rights Commission (now the Human Rights Council), Edwards et al. (2008) discovered that states with worse human rights conditions were more likely to be elected to serve on the Commission, probably, the authors argued, to inhibit the organization's work. However, as democratic norms have taken hold in a region, motivations for participation appear to have changed. In more democratic regions, states with worse human rights records were less likely to be selected for service on the Commission, perhaps because they genuinely supported the organization's mission.

This line of debate has recently led to a productive focus on the behavior of dictatorships, the very types of governments most often responsible for the worst types of human rights violations. Vreeland's (2008) study indicated that some types of autocratic states have not been deterred from participating in human rights regimes – specifically, the UN treaty prohibiting torture – because they have poor human rights behavior. In fact, dictatorships that practice torture have been more likely to participate in this treaty than dictatorships that do not torture. He reasoned that such disingenuous participation has occurred where power is contested, people defect against the government, the dictator responds with torture and the opposition pressures for remediation. The government then joins an international human rights regime as a small concession to the opposition.

Hollyer and Rosendorff (2011) made a different argument. They argued “that authoritarian states sign human rights treaties explicitly because they do not intend to comply. And it is important to those signatories that all observers understand that they have no intention of complying at the time of signing” (Hollyer & Rosendorff 2011, p. 3). Dictators facing

domestic opposition use torture to reduce their challenger's strength. And they use treaties like the CAT to signal their resolve. Because state participation in a human rights treaty followed by violation of its obligations poses some additional cost on the leader, the act of participation signals the government's resolve to stay in power and so reduces the opposition's determination to engage in anti-regime activities. The authors' conclusion is that more repressive governments will participate in the torture treaty more often than less repressive governments. This conclusion, however, was never explicitly tested. Instead, Hollyer and Rosendorff's evidence concerned whether signing the treaty diminished the opposition's resistance and also the government's effort to suppress them – they found support for both propositions.

New research by Conrad (2011) showed that the judicial system also has played an important role in whether or not dictators participate in the CAT. She argued that dictators have faced conflicting incentives. Consistent with Vreeland (2008), she found that dictators that allowed multiple opposition parties were more likely to join the CAT (and to torture) than dictators that faced no real political opposition. She interpreted this behavior as “cheap talk”. However, effective judicial constraints at the local level also inhibited participation (and torture), probably, she reasoned, because dictators were afraid of being prosecuted. In that case, participation would no longer be cheap talk and, knowing this, dictators were more inclined to avoid participation in the CAT.

Altogether, the statistical research on state participation in international human rights regimes is full of debate but converging around a few core insights. First, these regimes serve different, sometimes incompatible functions for members. For some, they simply reflect an existing commitment to human rights and offer a means to spread or signal obligation to values. Others participate to solve problems of time inconsistency and lock in reform in the sometimes-

turbulent process of political transition. But some participate to reduce pressure for real change, by making expressive commitments that appease pressure groups and remove the spotlight but that are never fully realized. While there is no consensus as to which motivation dominates or how to identify which motivation is present there is growing consensus that these different motivations for participation shape how human regimes operate and whether they are effective.

Second, there is a great deal of variation in how states participate, in terms of which legal regimes they join and how deeply they commit. That variation, especially on the sovereignty costs of participation, has not yet been fully explored and holds the potential to provide important clues about underlying state motivations for participation, as well as about the suitability of legal flexibility mechanisms.

Third, much of what explains participation in, and level of commitment to, international human rights regimes is domestic politics. The strength of the executive and legislative branches of government, local judicial institutions, and civil society all influence government decisions to participate in international human rights regimes; as we shall see in Part III, they also influence government decisions whether or not to comply with those commitments.

## **PART II: PROCESS**

As participation in human rights regimes has grown, institutional processes and decision makers have become new subjects for research. A newly developing body of statistical research explores how international human rights regimes make and craft decisions. That body of research is driven by an underlying suspicion that human rights institutions may work to protect the governments that delegate them their authority, even when those governments perpetrate violations.

Recently, scholars have turned their attention to the UN human rights system. Lebovic and Voeten (2006) studied the shaming activities of the UN Commission on Human Rights (now the Council), an inter-governmental body within the UN system responsible for strengthening the promotion and protection of human rights. They evaluated the commission's decisions to confidentially investigate alleged violations of human rights by countries, issue statements of consensus expressing concern about alleged violations and pass formal resolutions publicly condemning abuse. Their evidence pointed to a complex process of decision-making and bias inside the commission and to an evolution of that process since the end of the Cold War. Countries in the post Cold War period were more likely to be the target of commission opprobrium and to be punished more severely by the commission if they were also engaged in severe human rights violations. Not so during the Cold War, when the extent of human rights violations did not correlate with the commission's shaming activities. Whether or not a country had ratified the ICCPR did not relate to the commission's decisions whether to shame a country, but it did associate with increased punishment against a country once targeted. The commission less often shamed countries that have participated in UN peacekeeping operations, or that were sitting members of the commission. By contrast, powerful states were more often the targets of shaming (only in the post Cold War period) but, once targeted, were punished by the commission in less severe ways than weak states.

Lebovic and Voeten (2006) also evaluated the decisions of individual commission members on public resolutions. Sitting members from countries with better human rights records were more likely to vote to shame another country (excluding Israel as the target of resolution). During the Cold War, they were actually more likely to target countries with fewer human rights violations, but after the wall fell they began to more frequently target countries with worse

violations. Whether or not an accused country was a member of the core UN treaty protecting civil and political rights – the ICCPR – appears not to have factored much into commissioners’ decisions; membership in the treaty only correlated with shaming if both the home country of the voting commissioner and the target country were members. And regardless, commissioners were less likely to shame another commission member’s country or a powerful country with strong capabilities.

Cole (2011) examined decision-making in the Human Rights Committee – the treaty body that is responsible for reviewing claims filed against states (under the first optional protocol to the ICCPR) for violations of civil or political rights. Victims file claims to this committee seeking redress, but not all types of victims have been equally likely to get a favorable ruling or compensation. Claims that a government has violated a person’s due process rights, civil liberties or political freedoms have been the most likely of all claims to lead to a ruling in the victim’s favor. Claims pertaining to suffrage or the rights of women or children have been much less successful – for some reason, the committee has tended not to rule in these victims’ favor. Meanwhile, the committee has found democratizing countries to be in violation much more often than other countries – including those where abuses were much worse. And it also has exonerated them of wrongdoing at much lower rates. In short, the UN human rights process is extremely political, based not solely or even mainly on violations of human rights but also on other factors, including national and interstate politics as well as the personal relationships among commissioners.

These statistical studies of UN treaty bodies and agencies are unusual. Most systematic research on institutional process has been on courts and judges, much of it focused on Europe. Voeten (2007) examined the politics of judicial appointments to the European court of human

rights by looking at public minority opinions. Judges have had diverse preferences about the reach of the court, with some being more activist than others. By estimating the ideal points of the sitting judges, Voeten showed that judicial ideology has been linked to the political ideology of the appointing government. Left wing governments, for example, have been more likely to appoint activist judges than right wing governments. Aspiring EU members also have appointed more activist judges, perhaps to signal their commitment to human rights. Likewise, governments that favor European integration have put more activist judges on the ECHR bench.

Evidence that judicial appointments to international human rights courts correspond in part to political considerations by appointing states has led to another strand of inquiry about whether these judges can be trusted to resolve disputes impartially or whether they favor certain interests or actors. Looking again at public minority opinions by judges of the ECHR, Voeten (2008) determined that there is a national bias among judges – they have been more likely to vote against finding a violation when the respondent government is their national government – though the bias has rarely has been pivotal. (See also Carrubba et al. (2008), who found that preferences of member state governments, whose interests are central to threats of noncompliance, have had important impact on European Court of Justice (ECJ) decisions; and Posner and de Figueiredo (2004), who found that judges on the International Court of Justice (ICJ) have favored states that appoint them and those whose wealth, political system and culture is similar to a judge's country.) Judges have not, for example, always ruled in favor of their own country. As the proportion of judges on a panel who find in favor of the government increases, the likelihood that a national judge finds in favor increases – in other words, judges rarely have been lone dissenters in favor of their own government when it was accused of human rights violations. Nor have judges been more likely to favor their own government when their vote was

decisive, meaning that they have been willing to render judgments against their own government. However, judges close to retirement have tended to favor their own government more often, as have judges with diplomatic background. Judges have also been more inclined to favor their own government when they were ruling on issues that concerned the security of their country. Moreover, judges from former socialist countries have been more likely to vote against other former socialist countries. Clearly, ideology and political maneuverings rather than strictly legal considerations play a role in how judges make decision about human rights.

Other research analyzes court precedent and claims that the ECHR has used precedent in part to convince lower courts of the legitimacy of their judgments. Lupu and Voeten (2011) conducted a network analysis of citations on more than 2000 cases, including cases on torture and national security. They discovered that the court has tended to cite precedent based on legal issues in the case rather than the country of origin. Moreover, judges justified more fully with reference to past case law judgments on issues that were especially sensitive politically, such as personal integrity cases (for example, torture). They also have been more inclined to embed judgments in existing case law when the value of persuading domestic judges was highest, perhaps because they expected pushback from the executive branch, and also in common law countries where domestic courts rely more heavily on precedent. The authors' interpretation was that the court cites precedent strategically in order to coax domestic courts to implement their decisions.

Scholars are also focusing their statistical tools on the Inter-American human rights system and its processes. Staton and Romero (2011) examined the precision of all final decisions to contentious cases resolved by the Inter-American Court of Human Rights – an autonomous judicial institution to enforce and interpret the provisions of the American Convention on Human

Rights. They found that the precision of the court's decisions has depended on perceived uncertainty about the relationship between the policy instrument and policy outcome. When the court has confronted a policy challenge that involved a high degree of uncertainty about whether or not a reasonable person could carry out the task without error in the absence of policy making expertise, it has published vague decisions. Vague decisions, in turn, have had a host of implications, many undesirable, for compliance, although compliance was not the focus of this particular study.

While legal process has long been a subject of discussion and vast efforts at description and analysis by the legal community, political scientists have only recently begun to collect cross-national, historical data to analyze how international human rights legal regimes actually function when states delegate decision making authority. The core insight that is emerging from this body of research is that international human rights regimes are quite political, and sometimes personal, in the ways they operate and the decisions they make. That is, they are not perfect agents of the governments that delegate authority to them. They render decisions that exhibit a variety of biases that reflect the values and positions of the individuals making decisions as well as some of the ideologies and political interests of the states that appoint them. The legal process is also a strategic process whereby key decision makers act deliberately to increase the influence, relevance and legitimacy of their own institutions.

This research is in its infancy and holds high promise for new empirical research into human rights law. While interesting in its own right, the impact of this budding research will depend on the extent to which scholars begin to show the influence of legal process on human rights outcomes.

### **PART III: INFLUENCE**

Least understood, and most controversial, is whether and how international human rights regimes influence the behavior of those responsible for abuse or of their victims. One group of studies suggests that, by themselves, treaties have little positive association to human rights. In an early statistical study of the ICCPR, Keith (1999) found no relationship between ratification of the treaty and actual protections for human rights – governments that were members of this treaty curbed political freedoms just as often as governments that never agreed to participate. In her vastly more comprehensive study of a battery of UN and regional treaties and a host of human rights violations, Hathaway (2002) confirmed Keith's finding. She concluded that "... treaty ratification often appears to be associated with worse human rights practices than otherwise expected" and that "... ratification of regional treaties appears more likely to worsen human rights practices than to improve them" (p. 2004). Her statistical evidence showed, for example, that countries that have ratified the genocide convention have more violations than countries that do not participate, as do members of the American torture convention. For other treaties, she found no statistical relationship between treaty membership and human rights. This is to be expected, according to Hathaway, when states participate in treaties without strong monitoring and enforcement for reasons other than genuine commitment to treaty norms. Of course, these studies do not prove that treaties have had no influence, only that their influence (if any) has not been strong enough to turn a human rights crisis around – perhaps the human rights performance of a treaty participant would have been even worse without the treaty.

More recent and statistically sophisticated research confirms this line of argument that treaties do not seem to associate with improved human rights behavior, in part by considering how the motivations for participation shape the influence of a treaty. In her study of the

Minimum Age Convention, von Stein (2010) concluded that this particular treaty has had no independent effect on behavior. Because democracies mainly participate in the treaty only if they already comply with the norms, the treaty correlates with positive protections for human rights in their case, but has not caused those protections. In autocracies, there is no relationship between treaties and human rights protections. Using matching techniques that are becoming increasingly popular, Hill (2011) showed that both the ICCPR and especially the CAT are actually associated with worse human rights behaviors over time within countries.

Other studies have argued that human rights regimes do have some positive influence. In a book-length effort, Landman (2005) provided his own evidence that human rights treaties have had some limited association with protections for human rights, although he warned that the effect was small and largely a function of other processes in the world that affect human rights, such as democracy, development and interdependence. Meanwhile, a new batch of research is showing that courts especially can exert influence. Gilligan (2006) described how the ICC can be effective even though it has no enforcement mechanism, in part through deterrence at the margin, though he did not test his theory. Kelly (2007) did, and showed that states with a stronger affinity to the court (i.e. democracies) or that respect the rule of law have been less likely to sign agreements with the U.S. government not to surrender U.S citizens to the ICC. Her interpretation was that these states expressed an ideological affinity for the court through their participation and that the act of commitment to the court constrained these states' behavior because of the strong domestic pressure that might be imposed on democratic leaders that take contradictory actions, even though the court itself has taken no action on these non-surrender agreements. However, Nooruddin and Payton (2010) offered a different interpretation. Their study showed that certain countries were indeed responsive to pressure by the U.S. government to sign the non-surrender

agreements. In particular, poor countries and those with a defense pact with the U.S. government were especially willing to sign these side agreements that would effectively weaken the court's authority.

Another effort to demonstrate the ICC's influence was Danner and Simmons' (2010) study of the court. Among the 28 non-democratic countries in their sample, they discovered that membership in the court has been associated with a short term civil war hiatus or termination for those that faced violence but could not make credible commitments at home to scale down hostility. Membership was also associated with longer-term peace accords, even for autocracies. Chapman and Chaudoin (2010), however, called their interpretation of these results into question and argued that patterns of participation (or selection) bias in the court indicate that its influence has likely been overstated and at best is inconclusive. In general, research on the influence of the ICC is sparse, in part because the court is relative new, very few warrants have actually been issued and even fewer cases have been tried.

Quite apart from the ICC, Helfer and Voeten (2011) examined the impact of the ECHR's judgments on lesbian, gay, bisexual and transgender (LGBT) issues. Their study provided evidence that the court's rulings have been followed by an improvement in government policy, increasing the probability that countries, including defendants and also other countries in the Council of Europe, have adopted legal reforms to expand human rights. Still, implementation of the court's rulings has been partial and imperfect long after a legal principle has been established – in their study, a ruling lead to only an 8% increase in the probability of a better policy and about a 25% increase if the country was the defendant. In other words, the court has had an influence on lesbian, gay, bisexual and transgender issues in some instances but not in many others. (For an analysis of the European court's influence on human rights more generally, see

Hillebrecht (2010), who concludes that compliance with the court's rulings has been politically divisive and often unpopular.)

Most of the research on influence has now converged on the view that compliance is not an all-or-nothing affair and that the effects of human rights regimes, when and where they exist, are conditional on other institutions and actors. The evidence that different types of countries participate in human rights regimes for different reasons (reviewed in Part I) has led to worthwhile research into how the influence of these regimes depends on domestic politics. Despite her main conclusion that treaties often have had little relationship to protections for human rights, Hathaway (2002) found evidence that participation in some treaties has positively associated with good human rights practices in fully democratic countries, followed by the decrease, for example, of genocide and the increase of civil liberties. Oddly, democracies in her study that ratified the torture convention were more likely to torture than democracies that did not ratify. Neumayer's (2005) study of the UN and regional human rights treaties also suggested that treaties have been associated with protections for human rights in some contexts but not others. They have been more likely to correspond, for example, to protections for personal integrity rights in democratic countries with strong civil society, although the relationship depended in this study on the treaty and the type of human right. In autocratic regimes, with weak civil society, participation in treaties has not corresponded to human rights protections and has sometimes even been associated with worse human rights. Hafner-Burton and Tsutsui (2005) also found similar evidence. So did Hill (2011) and Neumayer (2005). For Cardenas (2007), international human rights pressures can lead directly to more commitments or indirectly to fewer violations, but only if certain conditions are met. "The greater any apparent threats to national security, the stronger the pro-violations constituencies, and the more deeply entrenched

the rules of exception, the less likely that any actor can transform readily a state's interest in breaking international norms" (p. 31).

One of the most elaborate explorations of domestic politics to date is by Simmons (2009). She argued that treaties have influence, despite their generally weak enforcement provisions, by changing domestic politics. The first way that human rights treaties change domestic politics is by influencing elite agendas and rearranging a country's priorities. In highly democratic parliamentary or presidential systems especially, they can create a focal point around which to focus the legislative process and help set agendas for national lawmaking. Treaties can also provoke litigation in national courts and thereby create jurisprudence that favors protection of human rights. This dynamic can be seen especially in legal systems where treaties have direct effects. Treaties can also change domestic politics by sparking mass political mobilization (see also Hafner-Burton and Tstustui (2005), Neumayer (2005), Hill (2011)). In addition to influencing how individuals perceive and value human rights, they raise consciousness and create new identities and coalitions that will push for protecting such rights. Simmons expected these effects to play out in the "middle ground" (p. 153)—partially democratic, transitional countries—where individuals have both the motive and the means to pressure their governments.

Simmons demonstrated that the fifty-odd partially democratic, transitional states in her study that ratified the ICCPR treaty were more likely to improve religious freedom and fair trial practices after ratification. She also found that the rest of the world—including strongly democratic states as well as those that were never democratic—was not so compelled. Some of the stable democracies that ratified even saw a surprising decline in the protection of these rights. The Convention on the Elimination of All Forms of Discrimination Against Women has had its biggest effect, according to Simmons, on educational opportunities for girls in partially

democratic, transitional countries and in those with a strong tradition of the rule of law and secularism. The treaty has not corresponded to positive changes for girls in the stable democracies, where women's groups may be largely satisfied with their opportunities, and it also has not spurred much improvement in the world's many dictatorships or where rule of law is weak or the state sponsors religion. The Convention is associated with a higher likelihood that ratifying governments will support access to modern methods of contraception, but only in secular states. And it is associated with a higher likelihood that governments will employ women in the public sector, but only in countries where the rule of law is well established—where litigation might have played an important role. Simmons' findings were similar regarding the CAT. The treaty has not been associated with fewer torture practices in either stable dictatorships or democracies in her study. However, it has been associated in her study with improvements in the group of partially democratic, transitional countries, where the rule of law is reasonably well developed and courts are fairly independent of government control.

A growing number of scholars are focused on the especially important role domestic courts play in enforcing human rights agreements. Powell and Staton (2007) considered how domestic judiciaries influence states' decisions whether to comply with their commitments to the CAT. They concluded from their statistical evidence that states only feel obligated to comply if their own domestic legal enforcement is strong and independent. Unfortunately, when that is the case, states are hesitant to join the treaty because leaders do not want to put themselves at risk of prosecution. Thus, the very process through which international law has an influence on human rights behavior – through strong domestic courts – deters states from making commitments to international law in the first place. Their work is consistent with Conrad (2011), who found that dictatorships with ineffective judicial institutions have readily joined the CAT and then

continued to (and sometimes even increased) torture, whereas effective judicial institutions deterred many from joining the treaty.

Conrad and Ritter (forthcoming) argued that the effect of the CAT on human rights behavior also has depended on leader vulnerability and the tensions that can arise from civil society mobilization and domestic litigation. For leaders that were at all vulnerable to turnover, the CAT had no probable relationship to their decisions to repress and neither did domestic courts – their need to stay in power outweighed all else. However, leaders that were secure in office were more likely to have decreased torture if their government participated in the CAT *and* the domestic judiciary was effective, perhaps in an effort to deter potential litigation.

Lupu (2011) also argued that domestic courts have played an important role in enforcing international human rights agreements. The judiciary's ability to affect government practice is constrained, according to Lupu, not only by their independence, but also by the availability of the specific type of information needed to prosecute abuses. Both the ability of victims and other actors to bring forward legally admissible evidence of abuses and the legal standards of proof for the applicable offenses vary among offenses. With respect to personal integrity rights violations such as murder and torture, evidence is especially difficult to obtain and standards of proof are particularly stringent and may not be admissible as evidence in court, meaning that domestic courts will not be able as readily to render decisions that could change government practices. By contrast, with respect to other civil and political rights, including the freedoms of speech, association and religion, court admissible evidence is more readily available and standards of proof are lower. Consistent with the theory, Lupu found that commitments to the ICCPR have been followed by some improvements to governments' respect for the freedoms of speech, association and religion. However, Lupu's evidence also showed that the treaty had no

relationship to personal integrity rights behaviors, including murder, torture, political imprisonment and disappearance, of its participants.

Different statistical models and data may in part explain the conflicting views about how domestic politics inside democratic and democratizing countries shape the influence of human rights regimes. However, there has been little debate about whether these legal regimes influence autocracies. Studies show that treaties either have little independent relationship to human rights behaviors in autocratic regimes (especially if courts are corrupt or weak) or correlate with worse abuses. In a study focused on countries with pronounced human rights problems, Hafner-Burton and Tstusui (2007) found that participation in treaties does not correlate with better human rights, even long into the future after ratification. They concluded that, even when treaties have influence, they often continue to associate with terrible human rights behaviors where they are most needed, namely where abuses are the worst.

One pernicious consequence of the findings that treaties do not correspond to actual protections for human rights in autocratic regimes and countries with deeply embedded machineries of abuse is that scholars have increasingly turned their attention to the easy cases – democracies and newly transitioning states – where treaties more readily correspond to human rights. Systematic empirical research on human rights regimes is now disproportionately focused away from the places where human rights abuses are most severe and institutionalized. A few exceptions are Vreeland's (2008) and Conrad's (2011) studies of the CAT. Another is Danner and Simmons' (2010) study of the ICC. By and large, however, if human rights regimes positively influence autocratic governments or those countries with severe and embedded problems of abuse, the scholarship has yet to show any clear, convincing or systematic evidence. As a result, these countries are peripheral to much of the current statistical research on the

influence of the law because scholars have shown most interest in cases where treaties correlate with improvements in actual human rights.

Most of the statistical research on participation, process and influence has been focused on the core UN treaties. Probably, that is because these treaties are longstanding, global and easy to observe and measure. However, new research has suggested that international customary law – albeit not treaties directly – could have an influence. In particular, the non-binding UN Universal Declaration of Human Rights could shape U.S. foreign policy by shaping voters' preferences for government intervention in dictatorships. Putnam and Shapiro (2011) conducted a survey experiment of several thousand U.S. residents to determine whether international human rights law influenced their decisions to support additional U.S. government action to protect human rights in Myanmar. They found that Americans were more willing to support such actions intended to punish Myanmar's military junta when they were aware that a government had violated international law in general, but that this willingness did not increase, and in some cases decreased, when respondents were informed that the government's conduct also violates a specific treaty commitment. The marginal effect of the law was most evident not in areas of severe human rights crimes, where the willingness to punish is largely over-determined, but for lesser crimes, such as forced labor with compensation, where the permissibility of Myanmar's actions is more ambiguous. However, respondents were unwilling to support any punishment if they believed that it might undermine other U.S. interests. The authors interpreted these findings to mean that international customary law (not treaties) may influence public support for human rights enforcement outside specific treaty commitments. The plausibility of their interpretation depends in part on whether the public is able to distinguish between international customary law and the treaty regime.

Another fruitful avenue of research is developing the view that the effects of human rights regimes also depend on the design and operation of the regimes themselves. Several studies focus on the variation in costs from different institutional designs. Hafner-Burton (2005) argued that a growing number of preferential trade agreements (PTAs) have come to play a significant role in governing state compliance with human rights. When they supply hard standards that tie material benefits of integration to compliance with human rights principles, PTAs can be more effective than many human rights treaties in changing repressive behaviors. They improve members' human rights through carrots and sticks, by supplying the instruments and resources to change actors' incentives to promote reforms that would not otherwise be implemented. Commitments to PTAs supplying soft human rights standards (not tied to market benefits) do not systematically produce the same level of improvement in human rights behaviors. Similarly, Cole (2011) found that membership in more institutionalized human rights regimes, such as those that allow for enhanced monitoring and complaints, correspond to better human rights than membership in less institutionalized regimes.

Other studies are exploring the role that flexibility and commitment play in the process of influence. Landman (2005) showed the drawbacks to treaty reservations at the time states choose to participate in a regime. In his estimation, when states made reservations to human rights treaties, the treaties lost almost all influence on human rights, meaning that, in his study, the positive association between treaty participation and actual human rights shrinks to about zero. Cole (2011) found similar results. By contrast, Hafner-Burton, Helfer and Fariss (2011) analyzed flexibility after commitment to a regime: derogations from treaty commitments that allow states to suspend certain civil and political liberties in response to crises. Their evidence suggested that this type of flexibility might strengthen rather than undermine international human rights regimes.

It can enable democratic governments facing serious threats to buy time and legal breathing space from voters, courts, and interest groups to confront crises while signaling to these audiences that rights deviations are temporary and lawful. This corresponds with Keith, Tate and Poe (2009) who found that adopting constitutional provisions protecting individual rights and freedoms, promoting judicial independence, and guarding against states of emergency have all been associated with decreases in political terror. However, Neumayer (2011) found that when autocracies do derogate they tend to step up violations of human rights, including violations that are never under any circumstance permissible under international law. His conclusion was that international human rights regimes matter the least where a constraining effect is most needed, namely autocracies.

Only recently has research begun to show how variation in the content of legal rulings shapes the influence that treaties can have on human rights. Hawkins and Jacoby (2010) compared the European and Inter-American courts for human rights. They found evidence of partial compliance in a large number of cases. However, states were more likely to take some action in response to a court's orders when it was easy to do so, such as by paying small sums of money or covering court costs. They were less willing to react when the court ordered them to amend, repeal or adopt new laws, punish perpetrators or restore rights to victims. When the court's orders were costly, countries rarely implemented the court's rulings. Basch et al. (2010) found similar evidence for the Inter-American court. And Staton and Romero (2011) showed how judges on the Inter-American court exercised control over the implementation process in how clearly they crafted their decisions. When the court more clearly defined the remedies, states more often complied with the court's orders than when their orders were vague. However, states with serious human rights problems were less likely to comply no matter the clarity of the orders.

Overall, the quickly developing body of empirical research on the influence of international human rights regimes is converging around a few core insights and debates.

First, treaties do not universally or broadly correlate with actual human rights protections. There are a wide variety of scope conditions for this correlation. The list of conditions grows but there is no agreement on which conditions are most important, and thus no agreement on where these regimes actually have influence.

Second, institutional design of law, including the degree of delegation and flexibility, determines in part whether these regimes correspond to respectable human rights behaviors. However, there are tensions and tradeoffs not yet well understood, as different forms of flexibility appear to correlate with respectable human rights behaviors while delegation can decrease a legal regime's authority by deterring participation.

Third, domestic politics, especially courts and the state's relations with civil society, determines in part these regimes' association with human rights protections. Though both institutional variation in human rights regimes and domestic politics seem to relate to human rights, there is not a clear understanding of the relationships between them. The scholarship tends to focus on one to the exclusion of the other, which helps to explain why debates continue unresolved about the causal mechanisms through which regimes influence human rights: coercion, persuasion, learning, etc.

Fourth, dictators and serial human rights violators are, with a few exceptions, outside the mainstream sphere of influence of most international human rights legal regimes and thus, increasingly outside the core debates and theories about the reach of international law. The result is a growing number of theories focused on improving human rights in democracies and

democratizing states when many of the greatest improvements are actually needed in the autocratic world, where they are hardest to achieve or recognize.

Fifth, the reasons motivating states to participate in international human rights regimes help to explain the relationship between these regimes and state behavior. The scholarly community now understands that the study of participation and influence must go hand in hand, and new models and methods are taking both into consideration. Unfortunately, many of the underlying forces that allow international law to gain traction locally discourage governments from participating.

Sixth, there is a nagging and reoccurring finding that participation in some treaties correlates with worse human rights behavior. The interpretation of that finding is contested. But the finding does not appear to be an artifact of naïve statistical methods – the correlation has not always disappeared as statistical models have become increasingly sophisticated. There is no agreed upon explanation.

### **PART III: SHORTCOMINGS**

The statistical methods being applied to research on international human rights regimes provide helpful tools to summarize global, historical trends, describe important associations within the data, and draw inferences from those data, including the ability to account for randomness and unobserved processes and even to make predictions. However, as with any body of empirical research, the insights that have emerged from this literature must be understood in the context of its limitations. The statistical research on international human rights regimes today suffers from two central shortcomings.

The first shortcoming is the quality of the existing data on actual human rights practices. The quality is affected by the difficulties associated with obtaining accurate information about human rights violations, which perpetrators often attempt to keep clandestine. Those difficulties are compounded by the problems (and limited resources) associated with the main data collecting organizations that produce reports on abuse and the process of coding those reports into numerical values. Most data allow only a broad look at the general trends by year and by country; they do not allow for a close examination of specific instances of mistreatment, specific perpetrators, or specific locations. They do not allow for a careful look at all the types of abuses committed — water boarding versus sleep deprivation — which means the evidence cannot always reveal when and how governments substitute one method for another. Nor can the data reveal when, as with the practice of rendition, abuses are ordered by one government but carried out by another or by paramilitaries elsewhere. Some data are missing, especially from small and seemingly insignificant countries — say, Vanuatu. Moreover, most of the information comes from a limited number of sources, generally in the West — NGOs like Amnesty International and government agencies like the U.S. Department of State — and could reflect a Western view of the world. The data also compress important differences. In studies based on one popular dataset (See Gibney, Cornett and Wood, 2008), Algeria, Cambodia, Indonesia and Rwanda were ranked as being some of the world's worst abusers in 2003, 1976, 2004 and 1994, respectively. This suggests that the violence was statistically comparable in all these countries, but Cambodia and Rwanda experienced widespread genocide, while Indonesia and Algeria were plagued by far less deadly political violence. Moreover, Canada in 2005 was ranked as being one of the world's strongest human rights protectors, along with El Salvador in 2002, Poland in 1992 and Bahrain in 2004, suggesting that human rights protections were equally well established in all of these

places. (For a fuller review of the benefits and problems associated with human rights statistical data, see Hafner-Burton and Ron (2009).)

The second shortcoming is research design, which remains for the most part correlational, based on designs that, for example, compare the trajectory of actual human rights practices before and after treaty ratification within countries to the average trajectory in countries that have not ratified. Though scholars often draw causal inferences from these studies, many of the important associations produced by this research do not prove actual causation – they show that one process, such as participation in a treaty, relates systematically to another process, such as respect (or lack of respect) for human rights in some circumstances, but they do not conclusively show that one process has brought about the other. That partly explains why research on the influence of international human rights treaties has been especially controversial, generating much debate and disagreement. Consider, for example, the reoccurring finding that participation in some treaties correlates with worse human rights behavior. Treaties may have caused more violations; they may have had no influence on human rights; or, the human rights performance of participants may have been even worse without treaties – the existing research has not provided a satisfactory answer.

In short, the current body of literature has mainly identified, with varying sophistication, a series of important and reoccurring associations between different processes and institutions. From those associations, scholars have drawn a variety of conclusions about international human rights regimes that may or may not accurately reflect cause and effect. In all likelihood, this is a shortcoming that will soon change, as scholars increasingly rely on research designs, such as the use of matching followed by statistical regression (Ho, Imai, King, and Stuart 2007) and

experiments (Imai, King and Stuart 2008), to make causal inference about international human rights regimes.

#### **PART IV: FUTURE RESEARCH**

The new empirical scholarship on international human rights regimes is breathing fresh life into the studies of international institutions and human rights. It has quickly become a productive and popular industry within political science (as well as other disciplines) and is now producing a range of new and important insights. It is so lively in part because the research agenda increasingly attracts scholars from very diverse backgrounds – development, economics, law, sociology – that import different questions, tools and frameworks from these backgrounds. No review article can survey every study published on a subject. This article has sought not a fully comprehensive review but rather has focused on the most exciting, innovative and important works on the big questions associated with participation, process and influence. There is still much to learn about all three. This final part concludes with a few ideas for especially promising research on international human rights regimes.

#### *PEOPLE*

Most of the new empirical research on international human rights regimes is focused on states: whether or not they participate, which judges they appoint, which human rights they violate. The unit of analysis is usually the state (usually, the state-year). This makes sense because, after all, once the decision has been made to join a treaty, it is the state that is obligated. Some types of human rights violations – such as legal restrictions on free movement – are executed by the state. And most human rights data measure violations in a whole country's

territory, so the research has understandably focused on the state. This explains why, with a few exceptions, actual people are nearly absent from this research agenda. The exceptions mainly are focused on the judges or commissioners and their decisions or voters.

Yet institutions by themselves don't abuse human rights; people run state institutions and people abuse human rights. People are important both in terms of how they craft and use human rights legal regimes and in terms of how they reason through choices whether or not to engage in acts that these regimes prohibit. Neither facet is well understood or currently central to the research agenda in political science, despite the fact that people play an important role for all three core areas of research: participation, process and influence. The near-absence of people is especially problematical when it comes to understanding the influence of regimes because specific people making choices in their specific environment, not an entire state or state institution, commit most types of human rights violations. To the extent that the current research takes into consideration the causes of abuse – and not all of it does – most studies focus on the large scale structural problems that create incentives and opportunities for abuse: war, autocracy, poverty. These problems have come to define the statistical scope conditions for the legal regime's influence and thus also inferences about the causal mechanisms that induce participation and influence. Thus our conjectures presently hover in a fair degree of abstraction, where human rights regimes are thought to influence states and their agencies, courts and civil society groups and aggregate repression levels in a country go up or down in reaction. This level of abstraction fits squarely with political science research on other international legal regimes such as trade, but it seems odd when seen from the perspective of disciplines such as psychology and criminology that are focused on the incentives and motivations of the individual people committing, catching or punishing violations.

There is tremendous room for research connecting people – especially the people making decisions about whether to engage in human rights abuse – to the incentives and processes playing out in and through international human rights regimes. This research, which could draw heavily upon the many disciplines where individual psychology are central, could help untangle and clarify debates over the causal mechanisms through which international institutions shape behavior. One set of questions, which map directly onto the big questions surrounding influence, concerns how regimes affect the way perpetrators think. How do international regimes factor into the decision calculus of individual perpetrators (as opposed to entire branches of government)? Are perpetrators aware of these regimes? How does the level and type of awareness of state participation in a regime change an individual person’s decision about whether to engage in behavior prohibited by a regime? Are these regimes convincing perpetrators to think differently, to respect human rights because that is what is appropriate? Are they scaring perpetrators who fear they themselves will be punished? Another set of questions concerns how regimes shape the way pressure groups think. A lot, in particular, has been made of the importance of social mobilization and pressure by the people on governments to protect human rights. But little is actually known about how this process works. Do human rights ideas and regimes actually factor into voting decisions? Do these regimes shape whether and how social groups mobilize, organize and behave in response to human rights violations? Still another set of questions concerns how regimes shape the knowledge and behavior of victims that might use the international legal system for compensation.

*INFORMATION*

A related subject concerns the information individual human rights perpetrators, victims and advocates receive and process. Information (or lack of it) is a central part of explanations for war and various bargaining failures and strategic behavior in international relations. And it is a central part of the reason that states build international institutions, to reduce transaction costs in part by increasing and centralizing the flow of information. For human rights too, information is central. Yet, for human rights, information has played its most pivotal role through theories about NGOs, which are seen as collectors and carriers of knowledge about human rights abuse.

Implicit in all the new research on human rights has been the assumption that international regimes diffuse information. This diffusion is central to all of the reasons why states might choose to participate in regimes and also to all of the mechanisms through which regimes might influence human rights behavior. For an international human rights regime to mobilize domestic civil society groups, there must be some transfer of information from the legal regime to the group and then some activation process inside the group – legal regimes can increase civil society's bargaining leverage, but only if groups on both sides of the bargain are aware of the law and have some expectation about the consequences for violation of a legal commitment. In order for regimes to socialize or persuade people into upholding human rights, they must convey some new information that changes people's beliefs about the value and appropriateness of their actions. In order for them to coerce people, deterring violations through fear of punishment, regimes must also convey the right information to the right institution or person at the right time.

States use international institutions to publicly convey information about their preferences and international institutions provide information that may change people's preferences or beliefs, coercing or socializing them. Given that the diffusion of information is so

central to most theories about international institutions, we know surprisingly little about what information international human rights regimes actually convey and to which audiences or how it affects individual decision making on human rights. Who knows about the existence and workings of international human rights regimes? Does information differ across legal regimes or domestic settings? Who are the central nodes in the information network of human rights advocates in the position to distribute information most efficiently? What kind of information is most important to diffuse? What does it take to activate the possession of that knowledge into a change in behavior? These questions are central to participation in human rights regimes, but also their process and influence.

## **CONCLUSION**

A few decades ago, international institutions came to assume a central place in the canon of political science (Keohane 1984), but the study of human rights was peripheral. Today, the political science of human rights blends with the science of institutions and an extremely productive and creative body of empirical research on international human rights regimes has emerged. That research reflects the dynamism of the scholars that participate, many of which are graduate students and young professors at the beginning of their careers. It also reflects the discipline's gravitation towards statistics and large-scale data spanning broad swaths of place and time. That puts the study of human rights in general, and perhaps especially international human rights legal regimes, at an important cross road. There is now a foundation in place for systematic empirical research that is global and historical. That foundation has already produced big picture insights on participation, process and influence on which to build an entire infrastructure of knowledge about human rights regimes. It has also produced as many new

debates as it has clarified. The challenge now is to build something valuable on this foundation so that the study of human rights regimes going forward amounts to more than a cottage statistical industry where researchers produce papers based on the recoding of a single variable or the inclusion of fixed effects in a model, but instead continue to struggle with the fundamental issues, such as whether cultivating these regimes continues to be worth the immense efforts compared to other options for protecting human rights, and what, if anything, can make these regimes more effective.

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