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The Cost of Commitment

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The Cost of Commitment

Oona A. Hathaway*

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INTRODUCTION

Over the last half-century, the number of treaties that address issues of human rights has grown from a handful to hundreds. The majority of nations now belongs to a panoply of international agreements—some regional, some universal—that address human rights issues ranging from labor standards to the treatment of prisoners to gender equality. The last decade in particular has witnessed a concerted push from the United Nations to bring nations into the human rights fold through ratification of the six core United Nations human rights treaties.[1] Yet despite the proliferation of treaties and the growing

* Associate Professor of Law, Yale Law School. J.D. Yale Law School. I am grateful to the participants in the Boalt Hall International Law Workshop, Andrew Guzman, Jacob S. Hacker, and the participants in the Stanford Symposium on Treaties, Enforcement, and U.S. Sovereignty for their helpful comments on an earlier draft of this Article. I also wish to thank Craig Estes, Galit Sarfaty, and Alexandra Miltner for their excellent research assistance.

1. The policy has been adopted by the United Nations and advocated prominently by Philip Alston, acting as an independent expert appointed by the Secretary General. *See*

attention to countries' decisions to join them,[2] little attention has been paid to what influences countries' decisions to join these treaties.

Perhaps this inattention is due in part to the perception that the explanation for countries' decisions to ratify is quite obvious. Ratification of treaties is entirely voluntary; hence, one might argue, only those countries that share the goals of the treaties will ratify. In this view, it is obvious that those that abhor torture will ratify the Convention Against Torture, those that favor women's political equality will ratify the Convention on the Political Rights of Women, and those that are committed to civil and political rights will ratify the International Covenant on Civil and Political Rights, while those that do not will not.

But this simple explanation, while it of course tells part of the story of treaty membership, undoubtedly does not tell it all. It does not tell us why, for example, Afghanistan, Colombia, Mexico, and other countries known to have regularly engaged in state-sponsored torture ratified the Convention Against Torture in 1987, while Belgium, Iceland, and the United States—which have markedly better practices—did not join the treaty until the latter half of the 1990s. It does not tell us why the human rights ratings[3] of countries that join treaties are not all that much better, on the whole, than those that have not.[4] And it certainly cannot help us explain why countries with the worst human rights ratings often ratify human rights treaties at rates approaching or matching that of countries with the best ratings.[5]

In the area of human rights, which is the focus of this Article, the puzzle of treaty membership is all the more striking because the very existence of human rights treaties poses a puzzle. In some areas of law, it may seem quite obvious why countries create and then join treaties. Arms control agreements, trade agreements, and mutual nonaggression agreements, for example, offer member

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Philip Alston, Final Report on Enhancing the Long-Term Effectiveness of the United Nations Human Rights Treaty System, U.N. ESCOR, 53d Sess., Agenda Item 15, 14-36, U.N. Doc. E/CN.4/1997/74 (1996) ("Universal ratification of the six core United Nations human rights treaties would establish the best possible foundation for international endeavors to promote respect for human rights."); Millennium Summit Multilateral Treaty Framework: An Invitation to Universal Participation, UN Doc. DPI/2130 (2000) (a 222-page booklet reproducing the text of 25 so-called core treaties, including 6 core human rights treaties).

2. When I refer to a country's decision to "join" a treaty, I mean to refer to its decision to sign and/or ratify the treaty.

3. In this article, I refer to human rights "ratings" rather than "practices" when discussing my empirical results to reflect the fact that the data referenced herein reflect the best available information on practices but nonetheless may not perfectly reflect actual practices. *See* Oona A. Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 YALE L.J. 1935, 1977, 1980 (2002).

4. *Id.* at 1963-76 (discussing the challenges of measuring compliance and effectiveness of human rights treaties).

5. Hathaway, *supra* note 3, at 1982-87 (showing that, for example, 47% of countries where the most recorded acts of genocide are recorded had ratified the Genocide Convention at the time, whereas 50% of countries for which no acts of genocide are recorded had ratified the Genocide Convention at the time; similarly, approximately 40% of countries where the most recorded acts of torture are recorded had ratified the Convention Against Torture at the time, roughly the same ratification percentage for countries where no acts of torture are recorded).

states obvious reciprocal benefits in exchange for their respective pledges to act or to refrain from acting in particular ways.[6] But human rights treaties do not, at least on their face, promise such benefits. Assent to a human rights treaty invites intrusion of the international community into the domestic arena and in particular into the relationship between the state and its citizens—a sphere of influence usually jealously guarded. And what do member nations receive in return? Only promises from other nations to refrain from harming their own citizens. From a strictly rationalist point of view, which sees state behavior as largely motivated by an assessment of costs and benefits,[7] this is not the sort of thing that states should care much about. After all, how does the use of torture by the government of Zimbabwe against its own citizens affect the national interests of Demark? Hence, from the rationalist perspective—a perspective that is currently dominant in the field of political science—human rights treaty membership appears especially difficult to explain.

In this Article, I focus on only a small part of this broader puzzle. Putting to one side, for the moment, the ways in which countries benefit from joining human rights treaties, I seek insight into how the cost of committing to human rights treaties influences countries' decisions to join. I begin by proposing a new way of conceiving of the cost of consenting to be bound by a treaty. I then investigate whether countries appear to be influenced by this cost of membership when they decide whether or not to join particular treaties.

In presenting this argument, I do not purport to provide a complete explanation for countries' decisions to join human rights treaties. This Article is but a small part of a much broader project in which I investigate the broader puzzle that I have described.[8] Here, my goal is more modest. I seek simply to examine whether my conception of the cost of commitment is correlated in predicted ways with treaty membership. That is, does the cost of commitment appear to affect country decisions to join human rights treaties?

To begin to answer this question, I examine empirical evidence drawn from

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6. Of course, that is not to say that this explanation is correct or complete. Beth Simmons and James Vreeland have questioned these assumptions in the area of trade. *See* Beth A. Simmons, *International Law and State Behavior: Commitment and Compliance in International Monetary Affairs*, 94 AM. POL. SCI. REV. 819 (2000); Beth A. Simmons, *Money and the Law: Why Comply with the Public International Law of Money?*, 25 YALE J. INT'L L. 323, 326 (2000) (arguing that "competitive market forces" in the form of "[t]he risk of deterring international business [are] what give[] international monetary law its constraining influence"); James Raymond Vreeland, Institutional Determinants of IMF Agreements (unpublished manuscript), available at http://pantheon.yale.edu/~jrv9/IMFVeto.html (arguing that governments may enter into IMF agreements to push through unpopular policies of economic reform); James Raymond Vreeland, Why do governments and the IMF enter into agreements?, International Political Science Review (forthcoming 2003), available at http://pantheon.yale.edu/~jrv9/case.html (providing case studies to support the claim that governments want IMF conditions to be imposed to help push through unpopular economic reforms). Andrew Moravcsik has questioned this assumption in the area of human rights. *See* Andrew Moravcsik, *The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe*, 54 INT'L ORG. 217 (2000).

7. For more on the rationalist perspective on state behavior, see Hathaway, *supra* note 3, at 1944-55.

8. *See* Oona A. Hathaway, Why Do Countries Commit to Human Rights Treaties? (2003) (unpublished manuscript, on file with author).

a database that covers 166 nations over a time span of forty years. I use this data to shed some light on the decisions of nations to join human rights treaties. Do countries with better human rights practices ratify more readily than those with worse human rights practices? Is the propensity of nations to ratify treaties affected by the enforcement mechanisms used in the treaties? Do democratic nations ratify more readily than nondemocratic nations? Is there a difference in the willingness of democratic and nondemocratic nations to commit to a treaty when their practices are out of step with the treaty's requirements? These are a few of the questions that I ask in this Article. The empirical evidence, while far from conclusive, provides some preliminary answers that I hope will serve as a roadmap to future, more detailed investigation.

Part I of this Article reviews the existing theories of state behavior and the answers they suggest to the question of whether and how the cost of committing to a human rights treaty affects countries' decisions to join. I sketch out three broad views of the cost of commitment that can be gleaned from the existing literature, which I term the Sovereignty view, the Rationalist view, and the Normative view. These three approaches, though entirely different in their foundations and reasoning, suggest two possible relationships between the cost of commitment and treaty ratification. They predict that either there will be little or no predictable relationship between the cost of commitment and a country's ratification decisions or that, as the further a country's ratings diverge from the standard of behavior required in a human rights treaty, the less likely it will be to join.

In Part II, I put forward my own theory of the cost of commitment. I argue that for treaties with minimal enforcement provisions—which includes most human rights treaties—understanding the cost of commitment requires taking into account not only the cost that would be entailed in bringing the country's practices into compliance with the treaty but also the likelihood that those costs will be realized.

In Part III, I put the theories to the test. I compare the predictions of the existing accounts of state behavior and of my own account against the empirical evidence. I find that states often fail to behave as proponents of existing accounts would expect and that the evidence is instead more consistent with the predictions that arise out of my own account. I conclude by reviewing the insights into the cost of commitment and its influence on country decisions to join human rights treaties gleaned from the empirical evidence and by outlining future avenues of research indicated by the findings.

I. EXISTING WORK ON THE COST OF COMMITTING TO HUMAN RIGHTS TREATIES

With a few important exceptions, political scientists and legal scholars have largely ignored the questions of when and why countries join international treaties. Legal scholars in particular have tended to take it as a given that international treaties exist and that countries choose to join them.[9] They have

9. For a description of the international law and international relations literature on

focused their attention instead on whether and when countries comply with those treaties and on whether the sovereignty costs of treaties outweigh their benefits.[10] In doing so, they have almost entirely ignored the questions of why treaties come into being and what motivates nations to join them.[11]

Until recently, political scientists largely ignored international law and hence made little effort to explain its existence. Yet they have long been interested in the broader question of international cooperation, of which international treaties are a formalized subset, if one that is often left unacknowledged. In recent years, as political scientists have turned more attention to international law, there have even been some direct efforts to explain the existence of particular treaties. Among these is the only prior empirical study of the formation of human rights treaties—Andrew Moravcsik's examination of the origins of the European Convention for the Protection of Human Rights and Fundamental Freedoms.[12]

If only a few scholars have addressed the questions of when and why countries join human rights treaties, even fewer have considered the narrower issue that is the focus of this Article: What is the cost to a country of committing to a treaty and how does that affect its decision to join? Below, I sketch out three broad views of the cost of commitment that can be gleaned from the existing literature: the Sovereignty view, the Rationalist view, and the Normative view. Perhaps the most prominent view in this context is one that sees human rights treaties as imposing substantial sovereignty costs on all ratifiers. In the most often articulated version of this view, which I will call the Sovereignty view, human rights treaties impose a cost that is either uniform or

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compliance, see Hathaway, *supra* note 3. The legal scholarship on compliance is made up of three primary strands: (1) managerial theory, *see, e.g.*, ABRAM CHAYES & ANTONIA HANDLER CHAYES, THE NEW SOVEREIGNTY: COMPLIANCE WITH INTERNATIONAL REGULATORY AGREEMENTS (1995) [hereinafter CHAYES & CHAYES, NEW SOVEREIGNTY]; Abram Chayes & Antonia Handler Chayes, *On Compliance*, 47 INT'L ORG. 175 (1993) [hereinafter Chayes & Chayes, *Compliance*], (2) fairness theory, *see, e.g.*, THOMAS M. FRANCK, FAIRNESS IN INTERNATIONAL LAW AND INSTITUTIONS (1995) [hereinafter FRANCK, FAIRNESS]; Thomas M. Franck, *Legitimacy in the International System*, 82 AM. J. INT'L L. 705 (1988) [hereinafter Franck, *Legitimacy*], and (3) transnational legal process, *see, e.g.*, Harold Hongju Koh, *Why Do Nations Obey International Law?*, 106 YALE L.J. 2599 (1997) [hereinafter Koh, *Why Do Nations Obey?*] (review essay); Harold Hongju Koh, *The 1998 Frankel Lecture: Bringing International Law Home*, 35 HOUS. L. REV. 623 (1998) [hereinafter Koh, *Bringing International Law Home*]; Harold Hongju Koh, *How Is International Human Rights Law Enforced?*, 74 IND. L.J. 1397 (1998) [hereinafter Koh, *How Is International Human Rights Law Enforced?*].

10. Franck points out:

> The questions to which the international lawyer must now be prepared to respond, in this post-ontological era, are different from the traditional inquiry: whether international law is law. Instead, we are now asked: Is international law effective? Is it enforceable? Is it understood? And, the most important question: Is international law fair?

FRANCK, FAIRNESS, *supra* note 9, at 6. Harold Koh poses a related question: "If transnational actors do generally obey international law, why do they obey it, and why do they sometimes disobey it?" Koh, *Why Do Nations Obey?*, *supra* note 9, at 2600. One question not asked or answered by either Franck or Koh is that posed by this Article: Why do nations join?

11. Harold Koh comes the closest. *See infra* text accompanying note 42.

12. Moravcsik, *supra* note 6.

randomly distributed across all nations because they require ratifying nations to surrender power to inspect the relationship between the state and its citizens. A second view, which I term the Rationalist view, suggests that the cost of commitment varies according to the degree to which countries' ratings diverge from the treaty's requirements. In this view, all things being equal, the further their practices diverge from the requirements of the treaty, the less likely countries will be to join. Finally, under the Normative view, countries join human rights treaties not because a cost-benefit analysis leads them to do so but because of genuine commitment to the ideas such treaties embody. Assuming that countries' practices are somewhat indicative of their normative commitments, scholars espousing the Normative view would also expect countries with poor practices to be less likely to ratify human rights treaties.

A. *The Sovereignty View: The Cost of Commitment Is the Cost to National Sovereignty*

Under this view, human rights treaties are seen as costly to all those who join.[13] The Sovereignty model cuts across analytic approaches to state behavior and has been adopted by rationalist and normative scholars alike.[14] Under this model, the existence of sovereign states relies on two basic principles: exclusive territorial authority and the noninterference of external actors in domestic life.[15] Human rights law, which seeks to place limits on how states can treat their citizens and legitimates the interference of other states or international organizations in domestic affairs, is revolutionary in this view, because it conflicts with national sovereignty, i.e., "the political independence of a state."[16] This direct tension between sovereignty and human rights means,

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13. This is based on the "Westphalian" view of sovereignty, named as such because it is believed to have emerged from the Treaty of Westphalia. *See* STEPHEN D. KRASNER, SOVEREIGNTY 20-25 (1999) (describing Westphalian sovereignty). For a contrary view of the origins of modern notions of sovereignty, see Andreas Osiander, *Sovereignty, International Relations, and the Westphalian Myth*, 55 INT'L ORG. 251 (2001) (arguing that "the accepted IR narrative about Westphalia is a myth").

14. For more on the rationalist and normative approaches, see Hathaway, *supra* note 3, at 1944-62.

15. This is one of many possible definitions of sovereignty, and is arguably not the most useful one. *See, e.g.*, KRASNER, *supra* note 13, at 25 (labeling this variant of sovereignty "Westphalian sovereignty," and noting that "[t]he tensions between the conventional rule and actual practice have been more severe" for this conception of sovereignty than for others); F.H. HINSLEY, SOVEREIGNTY 26 (2d ed. 1986) (contending that sovereignty is "the idea that there is a final and absolute political authority in the political community . . . 'and no final and absolute authority exists elsewhere'"). I use it here simply because it is the one most often adopted in this context. *See infra* note 16.

16. Lori Fisler Damrosch, *Changing Conceptions of Intervention in International Law*, *in* EMERGING NORMS OF JUSTIFIED INTERVENTION: A COLLECTION OF ESSAYS FROM A PROJECT OF THE AMERICAN ACADEMY OF ARTS AND SCIENCES 91, 93 (Laura W. Reed & Carl Kaysen eds., 1993); *see also* DAVID P. FORSYTHE, THE INTERNATIONALIZATION OF HUMAN RIGHTS 17 (1991) ("International relations underwent a fundamental change from 1945 to 1970 in the sense that human rights ceased to be generally considered a matter fully protected by state sovereignty."); Kathryn Sikkink, *Human Rights, Principled Issue-Networks, and Sovereignty in Latin America*, 47 INT'L ORG. 411 (1993) (arguing that the "doctrine of internationally protected human rights offer[s] one of the most powerful critiques of sovereignty as currently constituted, and the practices of human rights law and human rights and foreign

as Hedley Bull argues, that the exchange of recognition of sovereign jurisdictions between states "implies a conspiracy of silence entered into by governments about the rights and duties of their respective citizens."[17] That shared belief has, in turn, led to arguments that sovereignty must be made "conditional upon the protection of at least basic human rights."[18] Thus sovereignty and human rights stand in a zero-sum posture—strengthening one necessarily weakens the other.

Under the Sovereignty view, the costs of membership in a human rights treaty are generally seen as uniform across states. Andrew Moravcsik, who aptly labels the surrender of national discretion required by human rights treaties "sovereignty costs," works from the assumption that "the inconvenience governments face is constant (or randomly distributed)."[19] All states are jealous of their sovereignty; hence, membership in human rights treaties is costly to all nations. In this view, variation in treaty membership comes not from variation in the cost of commitment across nations, but from variation in the benefits of treaty membership. Political scientists that offer different explanations for the existence of human rights treaties make similar assumptions regarding the costs of membership. Kenneth Waltz, for example, argues that states join human rights treaties because they are induced into doing so by more powerful nations—those that receive the largest inducements will be those most likely to join.[20] Under the classical realist view, human rights treaties offer little or no tangible benefits, and hence states will join as a form of cheap talk (if membership in the treaty is costless or nearly so) or not at all.[21] In the "republican liberal" view of Andrew Moravcsik, countries' "willingness to tolerate sovereignty costs increases insofar as the costs are outweighed by the benefits of reducing domestic political uncertainty."[22] For these scholars, as well as those of many others whose work varies dramatically in their analytical

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policies provide concrete examples of shifting understandings of the scope of sovereignty"). Relatedly, Kenneth Abbott and Duncan Snidal argue that the costs of accepting a binding legal obligation, which they too label "sovereignty costs" are low when states "simply make international commitments that limit their behavior in particular circumstances," but that the costs are higher when "states accept external authority over significant decisions." *See* Kenneth W. Abbot & Duncan Snidal, *Hard and Soft Law in International Governance*, 54 INT'L ORG. 421, 437 (2000). For a contrary view, see Christian Reus-Smit, *Human Rights and the Social Construction of Sovereignty*, 27 REV. INT'L STUD. 519 (2001) (arguing that sovereignty and human rights should be treated as two elements of a single, inherently contradictory modern discourse about legitimate statehood and rightful state action).

17. HEDLEY BULL, THE ANARCHICAL SOCIETY 80 (2d ed. 1995).

18. HENRY SHUE, BASIC RIGHTS 174 (2d ed. 1996).

19. Moravcsik, *supra* note 6, at 228. Moravcsik is not alone in his use of the term "sovereignty costs" to describe this set of costs. *See, e.g.*, Abbot & Snidal, *supra* note 16, at 436. Notably, Moravcsik's simplifying assumption of a uniform cost of commitment is likely more accurate in the European context he examined than it is among the group of nations as a whole. It may be unfair, therefore, to assume that he would make a similar assumption in a context—such as that examined in this Article—in which there is substantially more variation across states.

20. KENNETH N. WALTZ, THEORY OF INTERNATIONAL POLITICS 200 (1979).

21. *See* EDWARD HALLETT CARR, THE TWENTY YEARS' CRISIS 1919-1939 (Harper & Row 1946) (1939); HANS J. MORGENTHAU, POLITICS AMONG NATIONS (3d ed. 1966); Hans J. Morgenthau, *Positivism, Functionalism, and International Law*, 34 AM. J. INT'L L. 260 (1940).

22. Moravcsik, *supra* note 6, at 228.

approach to state behavior, the costs of human rights treaties are constant, or at best randomly distributed.[23] In this view, then, examining the cost of committing to treaties should provide no additional insight into cross-national variation in treaty membership.

A somewhat more nuanced prediction can also be drawn out of the sovereignty-centered view. Arguably, the further a country's practices diverge from the requirements of a treaty and the more the country would therefore be required to change its practices as a consequence of joining the treaty, the greater the "sovereignty costs" the treaty threatens to impose. In this version of the sovereignty view, then, the further a country's practices diverge from the requirements of a treaty, the higher the sovereignty costs and the lower the likelihood the country will join.

B. *The Rationalist View: The Cost of Commitment Depends on the Cost of Compliance*

Legal scholars have until now largely ignored the question of why states ratify international treaties. Treaty ratification is instead usually taken as the starting point. To the extent that legal scholars do address it, they generally note simply that states do not consider themselves bound by treaties unless they commit thereto. Once they do ratify, however, they act, as Thomas Franck puts it, "in professed compliance with, and reliance on, the notion that when a state signs and ratifies an accord with one or more other states, then it has an obligation, superior to its sovereign will."[24] They then appear to infer from this that states only join treaties when it is in their interest to do so.[25]

Abram and Antonia Chayes make the connection between the belief that treaty commitments are binding and state decisions to make them—a relationship implied by other legal scholars but rarely made explicit. In their managerial model of state behavior, the norm of "*pacta sunt servanda*"—treaties are to be obeyed—is so universally accepted that nations, which can choose to join or not, do not join agreements with which they do not intend to comply.[26] As the Chayeses put it, although nations "may know they can violate their treaty obligations if circumstances or their calculations go radically awry, they do not negotiate agreements with the idea that they can break them

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23. *Id*.

24. Franck, *Legitimacy*, *supra* note 9, at 756.

25. A notable exception to the traditional legal view of treaty formation is Harold Koh's theory of transnational legal process. Under this view, treaty ratification can occur at a variety of points in the process of internalization of the international legal norms it embodies. If ratification comes early in the process, it may simply be the result of an "interaction" between international actors and may not reflect a genuine commitment. The ratification can be used, however, to lead to deeper internalization of the norm. If ratification comes later in the process of internalization, it can be understood to reflect genuine commitment to the principles the treaty embodies. Hence, the transnational legal process theory does not appear to have a particular view of the relationship between the cost of commitment and treaty ratification. *See* Koh, *Why Do Nations Obey?*, *supra* note 9; Koh, *Bringing International Law Home*, *supra* note 9; Koh, *How Is International Human Rights Law Enforced?*, *supra* note 9; *infra* text accompanying note 42.

26. CHAYES & CHAYES, NEW SOVEREIGNTY, *supra* note 9, at 8.

whenever the commitment becomes 'inconvenient.'"[27] Instead, nations enter into agreements "based on considered and well-developed conceptions of national interest that have themselves been informed and shaped to some extent by the preparatory and negotiating process."[28] Hence, in this view, states only join treaties that they believe serve their interests—interests that are in turn defined through an interplay of domestic players and international actors.[29]

Neither the Chayeses nor other legal scholars are explicit about how "divergent interests" are accommodated in the treatymaking process or about what motivates domestic and state actors—ideas, material incentives, or something else.[30] Political scientists offer two possible views of the question, one more rationalist and one more normative in nature. Rationalist scholars who have considered this question argue that material interests are likely to predominate. As Helen Milner puts it, "[i]n any international negotiation the groups who stand to gain or lose economically from the policies are the ones who will become politically involved. Those who stand to lose should block or try to alter any international agreement, whereas those who may profit from it should push for its ratification."[31] In this view, where costs of compliance with the treaty are high, there would be more domestic interest groups arrayed against ratification, and hence ratification would be expected to be less likely, all things held equal.

George Downs, David Rocke, and Peter Barsoom assume this rationalist view of interest formation in their piercing critique of the Chayeses' managerial theory. They argue that the Chayeses' argument regarding state compliance (and, by extension, that of other legal scholars that share their normative view of treaty compliance) is hollow because states will only make and join treaties with which they can easily comply.[32] As they put it, "[j]ust as orchestras will usually avoid music that they cannot play fairly well, states will rarely spend a great deal of time and effort negotiating agreements that will continually be violated."[33] The reason we see such widespread compliance with existing treaties, in this view, is that states rarely create or join treaties that entail "deep cooperation"—that is, cooperation that "requires states to depart from what they would have done in its absence."[34] In order to obtain this type of deep

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27. *Id*. at 7.

28. *Id.* at 6.

29. The Chayeses argue that "like domestic legislation, the international treaty-making process leaves a good deal of room for accommodating divergent interests." *Id.* at 7.

30. *Id.* at 7.

31. HELEN V. MILNER, INTERESTS INSTITUTIONS, AND INFORMATION: DOMESTIC POLITICS AND INTERNATIONAL RELATIONS 63 (1997).

32. George W. Downs, David Rocke & Peter Barsoom, *Is the Good News About Compliance Good News About Cooperation?*, 50 INT'L ORG. 379 (1996); *see also* James C. Murdoch & Todd Sandler, *The Voluntary Provision of a Pure Public Good: The Case of Reduced CFC Emissions and the Montreal Protocol*, 63 J. PUB. ECON. 331 (1997) (arguing that the Montreal Protocol was largely symbolic because nations' CFC reductions for the most part preceded the treaty taking effect). *But see* Beth A. Simmons, *International Law and State Behavior: Commitment and Compliance in International Monetary Affairs*, 94 AM. POL. SCI. REV. 819 (2000) (arguing, contrary to Downs, Rocke and Barsoom, that "international legal rules do alter governments' interests in compliant behavior").

33. Downs et al., *supra* note 32, at 383.

34. *Id*. at 383.

cooperation, they argue, treaties must contain strong enforcement mechanisms. The rarity of such mechanisms in treaties demonstrates, they claim, that states are for the most part loath to join treaties that require them to act differently than they otherwise would.[35]

Because the Chayeses have not offered an effective response to this critique,[36] it would be reasonable to assume there is none. But that would be wrong. The flaw in Downs, Rocke, and Barsoom's critique lies in their assumption that the Chayeses share their and other rationalists' belief that states are motivated primarily by material interests. Under such a view, states that join treaties that serve their interests would be expected to join only treaties that require them to do very little. A country considering whether to join a treaty compares its current practices with those required of it under the treaty. If the country's practices are already consistent with the requirements of the treaty, committing to the treaty entails only de minimis administrative costs. If, however, the country's practices are far out of line with the requirements of the treaty, the cost of consenting to be bound by the treaty is likely to be relatively large. The less a country's practices diverge from the requirements of the treaty, the lower the cost of compliance with the terms of the treaty and hence the greater the likelihood that a country will join.

But, as I will detail in the section that follows, if one believes instead that norms and ideas are as important in explaining state action as material interests, the Chayeses' argument cannot be reduced to a simple claim that states will commit only to treaties that require costless compliance. States will join treaties that they (or, more accurately, their constituent parts) believe in, even if such treaties may require costly compliance. In this alternative view, then, ideas are at least as important as interests in explaining treaty creation and membership.

C. *A Normative View: The Cost of Commitment Is Less Important than Norms*

In a normative approach to state behavior, states may join treaties that they believe to be "in their interests."[37] But states' notions of what is in their interests are not determined solely by objective material facts. At least as important are states' normative commitments. A normative approach to state behavior thus suggests that countries will ratify human rights treaties if they are committed to the ideas and goals that the treaties embody, even if doing so apparently goes against the state's material interests.

Martha Finnemore, who offers a normative view of state behavior often labeled "constructivist,"[38] argues that "principled concerns, morality, and

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35. *Id*. at 388-92.

36. Their response is encapsulated in their statement that

> [d]espite these theoretical debates, the teaching of experience, reviewed at length in the next three chapters, is quite uniform as to the limits and potential of sanctions in international law. As noted, except for the UN and OAS Charters, the international system is very leery of treaty-based military and economic sanctions.

CHAYES & CHAYES, NEW SOVEREIGNTY, *supra* note 9, at 32.

37. *Id.*

38. Finnemore explains, "[m]ethodologically," the theory presented in her book "is

individual action" are as important, if not more important, to understanding the motivation of domestic actors and hence of states.[39] States do not come to the table with fully formed and immutable preferences, Finnemore argues. Instead, "[t]he international system can change what states *want*." Thus, international institutions change state action, "not by constraining states with a given set of preferences from acting, but by changing their preferences."[40] A necessary concomitant of this argument is that material interests are not the sole source of state preferences. Indeed, in this view, what a state perceives to be in its material interest is itself constructed through the process of interaction. As Finnemore puts it, "[m]aterial facts do not speak for themselves, and attempts to make them do so have limited utility."[41]

Harold Koh and Kathryn Sikkink offer a related vision of state behavior. Koh argues that state behavior can be explained as a result of "transnational legal process." In this view, the process of norm internalization proceeds through three phases: Transnational actors provoke an interaction with one another, which forces an interpretation or enunciation of the norm applicable to the situation. This generates a legal rule that can then guide future interactions. Over time, repeated interactions of this form can lead to internalization of the enunciated norms through reconstitution of the interests and identities of the participants.[42] Under this model, ratification of a treaty may come about as the result of an interaction between international actors. But the ratification may not, at the time it occurs, reflect the normative position of the ratifying state. Over time, however, the fact of the ratification may be used to press for further internalization of the norms it embodies.

Sikkink, writing with Finnemore about "norm emergence," likewise argues that treaty ratification can solidify or encourage the emergence of norms that guide state behavior.[43] The creation and adoption of international law can aid in the "institutionalization" of a norm.[44] As Sikkink puts it elsewhere, treaty ratification can serve as a norm-affirming event that "restates social values and norms."[45] Once a substantial number of the states adopt the norm—either through adhering to a treaty or declaration affirming the norm or through more informal means—the process "tips" and a "norm" cascade will likely follow, leading to widespread adoption and, eventually, internalization of the norm.[46]

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most closely related to what is coming to be called 'constructivism' in political science in that it focuses on the socially constructed nature of international politics. Rather than taking actors and interests as given, constructivist approaches problematize them, treating them as the objects of analysis." MARTHA FINNEMORE, NATIONAL INTERESTS IN INTERNATIONAL SOCIETY 3-4 (1996).

39. *Id.* at 87.

40. *Id*. at 5-6.

41. *Id*. at 6.

42. Koh, *Why Do Nations Obey?*, *supra* note 9; Koh, *Bringing International Law Home*, *supra* note 9; Koh, *How Is International Human Rights Law Enforced?*, *supra* note 9.

43. Martha Finnemore & Kathryn Sikkink, *International Norm Dynamics and Political Change*, 52 INT'L ORG. 889 (1998).

44. *Id*. at 900.

45. Ellen L. Lutz & Kathryn Sikkink, *International Human Rights Law and Practice in Latin America*, 54 INT'L ORG. 633, 656-57 (2000).

46. Finnemore & Sikkink, *supra* note 43, at 900-04; Lutz & Sikkink, *supra* note 45, at 656-57.

As with Koh's transnational legal process model, in this view, ratification of a treaty does not necessarily indicate that the ratifying nation has internalized the norm it embodies. Rather, legalization can come earlier or later in the process. If it comes earlier, it provides additional fora and mechanisms for bringing human rights pressures to bear.[47] If later, it merely solidifies and signifies the internalization of the norm.

The diverse scholars I have grouped under the "normative" label share a conviction that states will join not only treaties with which their actions already conform. States do not simply calculate the cost of complying with a treaty when deciding whether to join. They are guided primarily by their normative commitments, which are in turn shaped by transnational nongovernmental and governmental actors. As a result, prior practices (which determine the cost of compliance) help predict state ratification decisions only insofar as they reflect the country's normative commitments. A country with excellent practices prior to entry into force of a treaty may be regarded as likely to have internalized norms that are consistent with the treaty. And a country with poor practices prior to entry into force of a treaty is unlikely to have fully internalized the norms it embodies. Hence, in this view, it is not the cost of commitment that predicts state ratification decisions but rather countries' normative commitments as reflected to an imperfect degree in their practices.

The views outlined here provide specific empirical predictions regarding the relationship between the cost of committing to a human rights treaty and the likelihood that a state will join. In the most prevalent variant of the Sovereignty view, the sovereignty costs of treaty ratification are generally viewed as uniform or, at the least, randomly distributed, and hence any variation in ratification practices must be traced to differences across states in the anticipated benefits of membership. In a second variant of the sovereignty-centered view, the greater the change in practices required by the treaty, the greater the sovereignty concerns and hence the less likely a country will be to commit. In the Rationalist view, the higher the costs of compliance with the terms of a treaty, the less likely states will be to join. Hence, those states with practices that do not conform to the requirements of human rights treaties should be less likely to join than those with practices that do conform to the treaty. Finally, in the Normative view, state decisions to ratify cannot be explained simply as the result of a cost-benefit calculation. Rather, the normative commitments of state actors are often more important than material interests in explaining state decisions to consent to be bound by a treaty. This view predicts that a country's cost of conforming to a treaty is unlikely to be a strong predictor of state decisions to join. Nonetheless, because a country's human rights practices can be expected to reflect—at least to some degree—its normative commitments, a normativist would expect a country that has better practices to more readily join a human rights treaty.

Hence, the three approaches, different as they are, suggest only two possible relationships between the cost of commitment and treaty ratification. They predict that either there will be no predictable relationship between the cost of commitment and a country's ratification decision, or that a country will

47. Lutz & Sikkink, *supra* note 45, at 658.

be less likely to join a treaty the further its practices diverge from the standard of behavior required by it. Before testing these claims, I turn in the next Part to outlining my own view of the cost of human rights treaty commitment.

II. THE COST OF COMMITMENT

While each of the existing theories outlined above provides important insights into the motives of nations that chose whether or not to commit to human rights treaties, each is missing a crucial piece of the puzzle. In the area of human rights, where external enforcement tends to be minimal or nonexistent, it is necessary to take into account the process by which treaty commitments are internally enforced. Whether one approaches the issue of treaty commitment from a perspective that focuses on sovereignty costs, the costs and benefits of treaty membership, or the process of norm internalization, the internal enforcement process is an important factor that should not be overlooked.

In this Part, I argue that the cost of treaty membership varies across nations in a predictable pattern that can account in part for observed patterns of membership. For each country, there are at least two important determinants of the cost of committing. When deciding whether to ratify a treaty, a country will take into account the expected compliance costs—that is, how much the country will change its behavior as a result of the ratification. Yet because not all countries (perhaps even a minority in some cases) expect when they commit to a treaty that they will fully comply with its terms, the expected compliance costs are a function of both the extent to which a country's practices diverge from the requirements of the treaty and of the country's expectations regarding the likelihood that the costs will be realized.

As already outlined, several of the existing accounts of treaty creation and membership are consistent with the expectation that countries with worse human rights practices are less likely to join human rights treaties. The rationalist view makes this argument in terms of expected costs; it assumes that a nation will take into account how costly it would be to bring itself into compliance with a treaty when deciding whether to join, and, hence, nations with good practices will join treaties and those with poor practices will not. Normativists come to a similar conclusion, though for quite different reasons. If practices can be seen as reflective, to some extent, of normative commitments, then the less a country's practices and a treaty's requirements diverge, the more likely it is that the country has already internalized the normative commitments represented by the treaty. Hence, because normativists expect countries to be more likely to join treaties if the treaties reflect their prior normative commitments, countries with better human rights practices (i.e., normative commitments consistent with those of the treaty) may be expected to be more likely to join treaties. Finally, a sovereignty-centered argument can also be made for this prediction: The better a nation's practices prior to ratification, the less significant will be the changes required of it, and, hence, the smaller the invasion of sovereignty entailed by treaty membership.

But these accounts do not help explain why countries with poor human rights practices ratify human rights treaties, in some cases as readily as

countries with substantially better practices.[48] That is because these accounts miss half of the picture. Countries do not simply consider the divergence between their practices and the standards set by the treaty when deciding whether to join. They also take into account the likelihood that they will actually observe the treaty commitments they have made, discounting the divergence between their practices and treaty requirements accordingly. In other words, countries considering signing or ratifying a treaty consider the total costs entailed in membership—not only the cost of complying with the treaty but the probability that the costs of complying will actually be realized.

If this portrayal is accurate, it is possible to predict specific expected patterns in countries' decisions to sign and ratify treaties. To begin with, one would expect that treaties with stronger enforcement and monitoring provisions would exhibit a pattern of ratification close to what rationalists and normativists would predict. Treaties with strong enforcement measures are ones for which the probability that the costs of membership will be realized is high for all countries. As a consequence, countries with poor human rights practices (and therefore higher costs of membership) will be less likely to join, and countries with good human rights practices (and therefore lower costs of membership) will be more likely to join.[49] There is some tentative empirical evidence for this proposition. A study by Beth Simmons of country decisions to commit to Article VIII of the International Monetary Fund's Articles of Agreement—which is not enforced but violations of which are difficult to hide—indicates that those for whom compliance is likely to be easier appear to be somewhat more likely to commit.[50]

For treaties with weak or nearly nonexistent enforcement provisions, however, the predictions that arise out of this approach are somewhat more complex. Even when there are few if any external incentives for a country to abide by treaty commitments, there may be internal incentives for it to do so. Many governments abide by treaty commitments not because they face sanctions from the international community if they fail to do so, but because they face likely sanctions from the domestic community. In such countries,

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48. *See* Hathaway, *supra* note 3, at 1982-87.

49. Charles Lipson argues that informal agreements (agreements that are made by lower-level bureaucracies and that are created through more informal means of communication such as oral bargains or tacit bargains) are more flexible than treaties and hence more easily abandoned. *See* Charles Lipson, *Why Are Some International Agreements Informal?*, 45 INT'L ORG. 495, 498-501 (1991). Lipson's argument can be extended to the treaty context. Just as countries choose more or less informal agreements in particular contexts, they also choose stronger or weaker formal agreements depending on the context. The weaker agreements tend to entail greater flexibility and weaker informational requirements and are hence, like more informal agreements, easier to "break." Weaker agreements would tend to arise in areas in which countries receive little tangible gains from coordinated action or where the benefits of agreements are not exclusive to the parties. These include areas like human rights, in which the beneficiaries of agreements (those who are subject to or may be subject to human rights abuses) are third parties to the agreements, and the environment, in which there are significant free rider problems.

50. Beth Simmons, *International Law and State Behavior: Commitment and Compliance in International Monetary Affairs*, 94 AM. POL. SCI. REV. 819, 825 (2000) (finding that "a commitment to external liberalization is more likely under good and improving economic conditions," though the economic controls used in the analysis fell somewhat short of the traditional standards of statistical significance).

treaty commitments are treated as law from which little or no derogation is permissible absent formal withdrawal from the treaty regime. Even small possible deviations from the treaty (or from a reasonable interpretation of the treaty) are reason for concern, as they will in all likelihood have to be addressed and remedied.[51] Countries with good human rights practices (low costs of compliance) and strong internal enforcement (high probability of realizing those costs) may therefore be *less likely* to sign or ratify a treaty than one might expect if one focused only on the practices themselves. By contrast, countries with poor human rights practices (high costs of compliance) and weak internal enforcement (low probability of realizing those costs) may be *more likely* to commit to a treaty than otherwise expected.

Moreover, if countries with stronger internal enforcement are both more likely to abide by their treaty commitments and more likely to have better human rights practices ex ante, this could serve a leveling function, leading those with good human rights practices to be less likely to commit and those with poor human rights practices to be more likely to commit. In other words, if the country-to-country variation in the strength of internal enforcement is not random but instead moves in tandem with countries' human rights practices, then the hypothesized interaction between human rights practices and probability of internal enforcement leads to an otherwise surprising prediction: *Countries with better human rights practices should be more reluctant to commit to human rights treaties than otherwise expected, and countries with poor human rights practices should be less reluctant to do so than otherwise expected.*

The analysis also suggests a more specific prediction about the different propensity of democratic and nondemocratic nations to commit to human rights treaties. Democratic nations are more likely than nondemocratic nations to face internal pressure to abide by their treaty commitments. This is true in part because democratic nations tend to enjoy stronger rule of law than do nondemocratic nations.[52] This rule of law tradition leads democratic nations to

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51. For an example of how this internal enforcement process can work, see, for example, Karen J. Alter, *The European Union's Legal System and Domestic Policy: Spillover or Backlash?*, 54 INT'L ORG. 489 (2000) (arguing that by combining victories in front of the European Court of Justice with political mobilization and pressure, private litigants in national courts and other groups have used the European legal system to force their governments to change national policies).

52. The association between democracy and rule of law has long been noted. *See, e.g.*, THE CAMBRIDGE DICTIONARY OF PHILOSOPHY 699 (Robert Audi gen. ed., 1995) (defining "rule of law" as "the largely formal or procedural properties of a well-ordered legal system [including] . . . : a prohibition of arbitrary power (the lawgiver is also subject to the laws); laws that are general, prospective, clear, and consistent (capable of guiding conduct); and tribunals (courts) that are reasonably accessible and fairly structured to hear and determine legal claims"); THEODORE J. LOWI, THE END OF LIBERALISM 128-57 (1969) (advocating "juridical democracy," which he defines as "the rule of law" operating in institutions); Mancur Olson, *Dictatorship, Democracy, and Development*, 87 AM. POL. SCI. REV. 567, 572 (1993) (asserting that rule of law is necessary for democracy); Eric Stein, *International Integration and Democracy: No Love at First Sight*, 95 AM. J. INT'L L. 489, 493 (2001) ("A modern liberal democratic state, however, requires not only free elections and majority rule but also constitutionalism (including the rule of law . . .)."). It may be fair to say that rule of law is a necessary but not sufficient condition for robust democracy. However, it must be acknowledged that the absence of political democracy does not necessarily entail the absence

regard legal commitments—including treaties—as binding. Failure to treat them as such is likely to be viewed by many as a threat to the principles upon which the government depends for its legitimacy. Moreover, in democratic nations, there are ways for those who object to government action or inaction to publicize their views—through the free press, exercise of the right to freedom of association, and exercise of the right to freedom of speech—and to pressure the government to change its position—both by seeking the support of members of government and by bringing lawsuits against those responsible.[53] And democratic nations tend to be less likely to penalize those espousing views unfavorable to the government. As a consequence, human rights nongovernmental organizations (NGOs) are likely to be more active in democratic nations than they often can be in less democratic nations. Hence, while the measure of democracy used herein is certainly not a perfect measure of internal enforcement of human rights treaties, it is likely to be correlated (albeit imperfectly) with the presence of mechanisms that permit internal enforcement.

If, as I have argued, democracies are likely to engage in stronger internal enforcement of treaty commitments than nondemocracies, then there are predictable differences in the cost of commitment across identifiable groups of nations. Democracies, with their relatively strong internal enforcement, face a higher overall cost of commitment if their human rights practices are worse. This is because, while there is little external enforcement of the treaty commitments, there may be substantial internal enforcement—litigation, lobbying, media exposure—that makes noncompliance difficult.[54] Moreover,

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of rule of law.

53. Of course, this discussion begs the question of how best to define and measure democracy—a topic of endless debate in academic circles. *See, e.g.*, JOHN D. MAY, OF THE CONDITIONS AND MEASURES OF DEMOCRACY (1973) (cataloguing and critiquing several prior efforts at measuring democracy); ON MEASURING DEMOCRACY (Alex Inkeles ed., 1991) (providing a comprehensive analysis of the challenges inherent in measuring democracy); Kenneth A. Bollen, *Issues in the Comparative Measurement of Political Democracy*, 45 AM. SOC. REV. 370, 371-77 (1980) (discussing the controversial aspects and limitations of the then-commonly-used indices of democracy and proposing a revised index of democracy); Kenneth Bollen, *Liberal Democracy: Validity and Method Factors in Cross-National Measures*, 37 AM. J. POL. SCI. 1207, 1208-10 (1993) (examining the definition and measurement of liberal democracy). In this Article and elsewhere, I use the best available comprehensive data on democracy, which defines democracy as "general openness of political institutions," which in turn is defined as an amalgam of competitiveness of executive recruitment, openness of executive recruitment, regulation of executive recruitment, constraints on the chief executive, regulation of political participation, and competitiveness of political participation. *See* Monty G. Marshall & Keith Jaggers, Polity IV Project: Political Regime Characteristics and Transitions, 1800-2000, *at* http://www.bsos.umd.edu/cidcm/inscr/polity/index.htm (last visited Feb. 14, 2003) (including a description of variables and a link to the data set). The Polity Project defines democracy on a scale of 0 (low) to 10 (high). The scale is constructed additively using coded data on six separate variables: competitiveness of executive recruitment, openness of executive recruitment, regulation of executive recruitment, constraints on the chief executive, regulation of political participation, and competitiveness of political participation. Polity IV Dataset Variables List, *at* http://www.bsos.umd.edu/cidcm/inscr/polity/index.htm (last visited Mar. 12, 2002).

54. For a description of how such pressures have been brought to bear in the United States in a very different context (trade), see Oona A. Hathaway, *Positive Feedback: The Impact of Trade Liberalization on Industry Demands for Protection*, 52 INTL ORG. 575

human rights NGOs can operate relatively freely in democracies and therefore are able to focus attention on practices that are the subject of treaty commitments.[55] Indeed, there is clear evidence that human rights treaty commitments are more effective (and hence more costly) in democracies than in other nations.[56]

Nondemocracies, on the other hand, with their comparatively meager internal enforcement of treaty commitments, are likely to face relatively small costs of commitment even if their human rights practices are poor. For such nations, not only is there relatively little external enforcement of the human rights treaty commitments, there also tends to be relatively little internal enforcement. The activities of human rights NGOs tend to be more restricted in nondemocratic nations, where freedom of association and the generation and dissemination of information that is unflattering to the government tends to be less well protected. And there are likely to be fewer avenues available for bringing political or legal pressure to bear on the government to comply with treaties. Hence, noncompliance (and treaty membership) can be relatively cost-free. The evidence supports this supposition: in my study of the effects of human rights treaties on countries' human rights practices, I found no evidence that countries that ratify human rights treaties have better practices than otherwise expected (with the exception, of course, of fully democratic nations).[57]

Indeed, in some cases, nations might even benefit from ratifying a treaty that entails little or no external enforcement. If, as I suggested in an earlier article,[58] countries that ratify treaties sometimes experience a diminution in the pressure for real improvements in human rights practices, then commitment to a treaty can offer a tangible benefit: the external appearance of improvement without the costs associated with actually improving human rights practices. In nations in which there tends to be little or no *internal* pressure for enforcement of the treaty commitments—such as nondemocratic nations—this benefit is unaccompanied by any substantial costs. This makes it possible for the nation to engage in disingenuous expression of commitment to the norms embodied in the treaty by ratifying the treaty with no intention of complying. This is of

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(1998).

55. *See, e.g.*, Thomas Risse & Kathryn Sikkink, *The Socialization of International Human Rights Norms Into Domestic Practices: Introduction*, *in* THE POWER OF HUMAN RIGHTS 33 (Thomas Risse, et al eds. 2001) (proposing a "spiral model" of human rights change in which domestic and international NGOs both play a leading role in the process by which internationally established norms affect domestic policy); Koh, *Bringing International Law Home*, *supra* note 9, at 649 (arguing that "transnational issue networks," which include both domestic and international NGOs, are important to the process of norm internalization). Of course, the presence of human rights NGOs may lead not only to greater internal enforcement but also to greater pressure to ratify human rights treaties—pressure to which democratic governments are more likely to be susceptible than nondemocratic governments. Hence, the greater presence of human rights NGOs in democratic nations may create pressure both for and against ratification: for ratification because of the NGOs' pressure on democratic institutions to ratify and against ratification because their strong presence means that ratification will be followed by internal pressure for enforcement.

56. *See* Hathaway, *supra* note 3, at 1997-2000.

57. *See id.* at 1989-2002.

58. *See id.* at 2006-09.

course not to say that ratification of human rights treaties by nondemocracies—even those with poor human rights practices—is always disingenuous and is never followed by improvements in practices. It simply means that this is more likely than in democratic nations, where ratification without action is more difficult. Hence, nondemocratic nations with worse human rights practices may not only be no less likely to commit to a human rights treaty than nondemocratic nations with better practices, they may even be *more* likely to do so. The same is unlikely to be true of democratic nations.

This does not mean, of course, that democratic nations as a whole will be less likely to join human rights treaties than nondemocratic nations. To the contrary, there are many reasons to believe that democratic nations will be more likely to join human rights treaties than will nondemocratic nations.[59] To begin with, democratic nations are more likely to have better human rights practices.[60] Hence, to the extent that those with better human rights practices are more likely to join human rights treaties,[61] democracies should be more likely to join than nondemocracies, all else being equal.

Even holding practices constant, there are reasons to expect that democracies will be more likely to join human rights treaties than nondemocracies. First, human rights NGOs are likely to be more plentiful and more active in democratic nations, where political conditions are more conducive to their activities. Such NGOs can be expected to incite pressure for the country to commit to human rights treaties. Moreover, the democratic form of government is built upon a foundation that is wholly consistent with and, indeed, based upon the principle that forms the basis for the majority of human rights treaties: that individuals have rights that must be protected against incursion by the state.[62] Democracies are also more likely to exhibit a commitment to rule of law, which is a cornerstone of both the democratic form of government and much of human rights law.[63] This normative consistency between democracy and human rights provides further reason to expect that

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59. Laurence Helfer and Anne-Marie Slaughter make the related argument that "[p]olitical regimes in which the rule of law is a paper promise will be less likely to produce institutions or individuals willing to privilege supranational legal rules over claims of national interest." Laurence R. Helfer & Anne-Marie Slaughter, *Toward a Theory of Effective Supranational Adjudication*, 107 YALE L.J. 273, 334 (1997).

60. *Compare* Hathaway, *supra* note 3, at 1977 (showing human rights practice levels of the group of all nations), *with id*. at 1980 (showing human rights practice levels of democratic nations).

61. *See infra* Tables 2-5.

62. This is the so-called "negative rights" view of human rights, as opposed to the "positive rights" view. Traditional "negative rights" include civil and political rights such as freedom of the press or, more generally, freedom from interference with life, liberty, and property, whereas traditional "positive rights" are economic and social rights, such as rights to a minimum standard of living, education, housing, health care, and the like. *See, e.g.*, Bowers v. DeVito, 686 F.2d 616, 618 (7th Cir. 1982) (Posner, J.) ("The Constitution is a charter of negative liberties; it tells the state to let people alone; it does not require the federal government or the state to provide services, even so elementary a service as maintaining law and order."); Philip Alston, *A Third Generation of Solidarity Rights: Progressive Development or Obfuscation of International Human Rights Law*, 29 NETHERLANDS INT'L L. REV. 307 (1982) (discussing "third generation" rights, which seek to secure the welfare of communities or peoples rather than individuals).

63. *See supra* note 52; *see also* Helfer & Slaughter, *supra* note 59.

democracies will ratify treaties at higher rates than nondemocracies, even if their human rights practices are no better.[64]

I also do not mean to suggest that democratic nations with poor human rights practices will never ratify human rights treaties. Democratic nations with poor human rights practices will undoubtedly have high costs of commitment. And this will dampen their willingness to join treaties considerably. But there may be other reasons that such nations will nonetheless join. For instance, such democratic nations may be willing—indeed eager—to improve their human rights practices. Particularly if the regimes are newly democratic (measured below as regimes in place fewer than ten years), they may seek to bind themselves and their successors to abide by human rights norms.[65] They might therefore ratify human rights treaties even though their practices are out of step with the treaties' requirements.

This analysis thus yields a set of predictions regarding country decisions to commit to human rights treaties: *Although democratic nations as a whole will be more likely to commit to human rights treaties than nondemocratic nations, democratic nations with poor human rights practices will be less likely than democratic nations with good human rights practices to join human rights treaties. By contrast, nondemocratic nations with worse human rights practices will be not much less likely—and perhaps even more likely—to commit than nondemocratic nations with better human rights practices.*

My analysis suggests a relationship between the cost of committing to human rights treaties and countries' decisions to commit that varies substantially from the predictions of existing accounts of state behavior. The existing accounts suggest that either there will be little or no relationship between the cost of commitment and a country's ratification decisions or that the further a country's human rights practices diverge from the standard of behavior required in a human rights treaty, the less likely it will be to join. My account, by contrast, suggests, first, that while countries with good human rights practices may be more likely to join human rights treaties than those with worse human rights practices, this difference will not be as large as the existing accounts would lead us to expect. My account also gives rise to different claims regarding democratic and nondemocratic nations' propensities to join human rights treaties. Although I predict that democratic nations as a whole will be more likely to commit to human rights treaties than nondemocratic nations—a claim few scholars would dispute—I also predict that the further a democratic nation's human rights practices diverge from the standards set by a treaty, the less likely it will be to join. The opposite is true, I claim, of nondemocratic nations: Nondemocratic nations whose human rights practices diverge further from a treaty's standards will be no less likely—and may even be more likely—to commit than those whose human rights practices diverge less.

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64. Andrew Moravcsik makes a somewhat different claim regarding democracies' propensity to join human rights treaties. He argues that established democracies can be expected to ally with dictatorships and transitional regimes in opposition to reciprocally binding human rights enforcement, *see* Moravcsik, *supra* note 6, at 219-220, and that newly established democracies will be the strongest advocates for such regimes, *id*. at 220.

65. *See id.*

Before proceeding to the evidence, I pause to once again to note what this article does and does not do. This article provides insight into the cost of committing to human rights treaties and how those costs affect countries' decisions to sign or ratify the treaties. By focusing entirely on the cost of committing to human rights treaties, I certainly do not mean to suggest that this is the only factor in countries' decisions to join or not join human rights treaties. There are a variety of factors that likely influence countries' decisions that I do not address in this article, including government stability, level of democracy, duration of the regime, openness of the economy, aid dependency, type of government, rule of law, and the regional rate of ratification.[66] Perhaps most important among those issues not discussed herein are the beneficial reputational effects of decisions to join a treaty regime and the likely negative reputational effects of being exposed as a non-complying ratifier.[67] This article puts all these issues to one side to focus on a small set of factors relating only to the cost of committing to a human rights treaty. The purpose of the evidentiary assessment below, therefore, is not to suggest that the issues discussed in this article can provide a complete explanation of countries' decisions to join human rights treaties. It is instead intended only to help us assess the plausibility of the theory of the cost of commitment offered herein: If it is consistent with the evidence while existing theories are not, then this, I argue, lends it some credence.

III. THE EVIDENCE: A PRELIMINARY ASSESSMENT

The true test of each of the above theoretical claims regarding when and how the costs of commitment will affect state decisions to commit to treaties is the ability of each to explain what actually happens in the world. Which of the above theoretical approaches to the cost of commitment best helps us predict and explain state behavior? Although the evidence I present here is far from conclusive, it provides a window into the complex relationship between treaty commitment and state characteristics and behavior. This glimpse, however incomplete, allows us to begin the project of assessing the relative strength of the competing explanations outlined in the preceding sections.

What this evidence suggests will strike many as surprising. States often fail to act as proponents of existing accounts of state behavior would expect. The sovereignty- and norm-focused claims that the costs of commitment provide no insight into state decisions to commit to treaties appear to be refuted by findings of a set of consistent relationships between the cost of commitment and countries' ratification decisions. Moreover, although at the aggregate level there is a weak negative relationship between countries' human rights ratings and their propensity to commit to treaties, it is not nearly as strong as several of the existing theoretical accounts suggest it ought to be. Hence, the two predictions of the existing approaches appear to be at best very weakly supported by the empirical evidence. By contrast, predictions that take into account the propensity of nations to engage in internal enforcement of their

66. All of these factors are discussed and assessed in Hathaway, *supra* note 8.

67. *See id.*

human rights treaty commitments appear more successful at explaining and predicting nations' decisions to commit.

A. *Aggregate Evidence*

I begin my empirical analysis at the aggregate level. Do countries with better human rights ratings ratify at higher levels than those with poorer ratings?[68] (In this Part, I refer to human rights "ratings" when discussing my empirical results to reflect the fact that the data used in this article to measure countries' fair trial, genocide, civil liberty, political representation of women, and torture practices reflect the best available information on countries' human rights practices but nonetheless may not perfectly reflect countries' actual practices.[69]) The evidence suggests they sometimes do, but at only marginally higher levels. Table 1 compares the ratification rate of country-years (hereinafter referred to with the shorthand "countries") that have better ratings with countries that have poorer ratings for four universal treaties and two optional treaty provisions that require a separate commitment decision. The first column lists the treaty under examination, the second and third show the comparative rates of ratification of that treaty among countries with better ratings and among those with worse ratings, and the third and fourth columns note the difference of means, with the standard error in parentheses, and the area of human rights on which the practice measures are based.

TABLE 1: COMPARATIVE COMMITMENT

Treaty	Ratification Rate of Country-Years with Better Ratings	Ratification Rate of Country-Years with Worse Ratings	Difference of Means	Human Rights Metric[70]
Convention Against Torture	41%	47%	.06 (.023)**	Torture
Article 22	22%	6%	-.16 (.014)**	Torture
Genocide Convention	48%	38%	-.10 (.06)	Genocide
Convenant	71%	64%	-.07 (.02)**	Fair Trial

68. In this Article, I look only at whether a country has signed or ratified a treaty or has agreed to be bound by additional enforcement mechanisms attached to the treaty. I do not take into account any reservations, understandings, or declarations the country may have made in the course of ratifying the treaty. I do this both because quantifying reservations in a consistent way would be extremely difficult and because a reservation to a treaty is only valid if it does not defeat the object and purpose of the treaty. Vienna Convention on the Law of Treaties, opened for signature May 23, 1969, art. 19, S. EXEC. DOC. L, 92-1, at 16 (1971), 1155 U.N.T.S. 331, 336-37. A reservation that falls within this limitation ought not significantly affect the reserving country's human rights practices covered by the treaty.

69. *See* Hathaway, *supra* note 3, at 1963-76.

70. For more detailed information on each human rights metric, see Appendix B.

on Civil and Political Rights				
Optional Protocol	43%	35%	-.09 (.021)**	Fair Trial
Convention on Political Rights of Women	65%	55%	-.10 (.02)**	Men in Parliament

* Significant at 95% level.

** Significant at 99% level.

This aggregate data demonstrates that the average ratification rate for countries that have better ratings is usually higher than among those in which ratings are poorer, but less often and by less than predicted by traditional accounts.[71] In only two of the four treaties (ignoring for the moment the Optional Protocol to the International Covenant on Civil and Political Rights and Article 22 to the Convention Against Torture) is the average ratification rate of countries with better ratings higher than for those with lower ratings. In the remaining two treaties, countries with worse ratings are more likely to join or the difference between the ratification rate of those with better and worse ratings is not statistically significant. Forty-one percent of countries in which there were no more than some or occasional allegations or incidents of torture had ratified the Convention Against Torture, whereas 47% of those where torture is common or prevalent had ratified.[72] Similarly, 48% of countries with better fair trial ratings had ratified the Genocide Convention at the time, whereas 38% of those with worse ratings had ratified the Covenant—again a difference that is small and statistically insignificant.

When the ratification rates of countries with better ratings are higher than those of countries with poorer ratings by a statistically significant amount, the absolute differences are smaller than traditional accounts would suggest. Sixty-five percent of countries with relatively large numbers of women in parliament ratified the Convention on the Political Rights of Women, whereas 55% of those with relatively few women in parliament ratified the same convention—a difference that is statistically significant but reflects a difference of only ten percentage points. Put another way, those countries with at least 2.4% of parliament composed of women (placing them in the top 50% of states for women's political representation) are only about one-fifth more likely to have ratified the Convention on the Political Rights of Women than are those with fewer than 2.4% of parliament composed of women. Similarly, for the

71. The database I use in this Article includes cross-national and time series data. Hence, a single observation provides information only about a single country during a single year—a "country-year." When discussing empirical results in this Article, I often refer to such "country-years" with the shorthand "country."

72. For more on the method used to construct the ratings discussed herein, see *supra* Appendix B; Hathaway, *supra* note 3, at 1968-76. The database used in this Article includes one more year of data on torture—2000—than that used in the earlier article. The same classification system was used in producing the additional year of data, which are included in Appendix B.

Covenant on Civil and Political Rights, 71% if nations with better ratings ratified, compared to 64% of those with worse ratings—a statistically significant but not particularly large difference.

The ratification rates of countries with better ratings is higher than for those with worse ratings for both the Optional Protocol to the International Covenant on Civil and Political Rights and Article 22 to the Convention Against Torture, both of which allow for individual complaints to be filed against those that accept the provisions—a stronger external enforcement mechanism than exists under any of the main treaties. Twenty-four percent of countries that have better torture ratings have ratified Article 22, whereas only 6% of those that have worse torture ratings have ratified the Article—a four-fold difference that is statistically significant. The difference is also statistically significant for the Optional Protocol, though smaller in size—44% for those with better fair trial ratings compared to 38% for those with worse fair trial ratings.

These results call into doubt the claim of those existing theoretical accounts of state behavior that predict that a state will be much less likely to join a human rights treaty if its behavior is out of step with the treaty's requirements than it will be if its behavior is consistent with the treaty's requirements. Although countries with better practices are sometimes more likely to join than are those with worse practices, this is not uniformly the case. Even where the differences are statistically significant, they are smaller than several of the existing theories predict. The evidence thus provides provisional support for the prediction outlined above that countries with poor ratings and those with good ratings will be more evenly likely to join human rights treaties than several of the existing approaches would lead us to expect.[73] Looking behind these aggregate numbers, I also find some support for my hypothesized explanation for the failure of countries with better ratings to ratify at higher rates than those with poorer ratings. Democratic countries exhibit almost universally better human rights ratings. For example, among the countries that torture the least, the average democracy rating is 7.59, compared to 2.42 among those that torture the most.[74] The same is true of genocide and fair trial.[75]

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73. *See supra* text accompanying notes 50-52.

74. These averages and those that follow were determined by computing the average levels of democracy among the country-years for which there was a torture rating of 1, 2, 3, 4, or 5 across the entire dataset. In countries with a torture rating of 1 (very little or no reported torture), the average democracy rating is 7.67. The democracy score gradually falls off as the recorded torture increases: For those with a torture rating of 2, the democracy score was 5.22; for those with a 3, it is 3.00; for those with a 4, it is 2.95; and for those with a 5, it was 2.52.

75. Computing the averages in a similar manner to those computed in note 74, I find that in countries with a genocide rating of 0 (no genocide), the democracy rating is 3.73; for those with a genocide rating of 0.5, it is 2.09; for those with a 1, it is 3.13; for those with a 1.5, it is 0.91; for those with a 2, it is 1.36; for those with a 2.5, it is 0.67; for those with a 3, it is 1.04; for those with a 3.5, it is 1.03; for those with a 4, it is 0.38; and for those with a 4.5 or 5, it is 0. In countries with fair trial ratings of 1, the average democracy rating is 7.87; for those with a 2, it is 3.38; for those with a 3, it is 2.50; and for those with a 4, it is 1.94. In the quartile of countries with the smallest percentage of women in parliament, the average democracy rating is 2.42; in the quartile with the next fewest percentage of women in parliament, it is 2.96; in the next quartile, it is 4.14; and in the quartile with the largest percentage of women in parliament, it is 4.32.

Hence, if more strongly democratic countries are, as my earlier work suggests,[76] more likely to abide by their treaty commitments, and if, as the above data suggests, they are also more likely to have better ratings, then the hypothesized interaction between ratings and probability of enforcement leads to the otherwise surprising result that nations with better ratings are less likely to ratify human rights treaties than otherwise expected, and nations with worse ratings are more likely to ratify human rights treaties than otherwise expected.

In addition, the variations in the results summarized in Table 1 are consistent with the prediction, also made above, that countries will behave differently in their decisions to commit to treaties containing stronger enforcement provisions or where noncompliance is easily detected than they will when the enforcement provisions are weaker and noncompliance more difficult to detect.[77] Those treaty provisions with stronger enforcement procedures are expected, under my model, to exhibit a closer relationship between countries' human rights records and their willingness to commit. Those with weaker enforcement procedures, by contrast, are expected to rely more heavily on internal enforcement and hence create a weaker relationship between human rights ratings and ratification.

These expectations seem to be at least in part borne out by the evidence. The treaties for which the ratification rates are most similar across countries with better and poorer ratings are precisely those with the weakest enforcement mechanisms—the Convention Against Torture and the Genocide Convention. In the case of the Convention Against Torture, the only external enforcement procedure is a requirement to submit reports to international bodies created by the treaties[78]—and failure to abide by even this minimal commitment is generally not punished.[79] The only external enforcement provision under the Genocide Convention is found in Article 1 of the Convention, under which member states agree that "genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish."[80] There is, however, no provision detailing when or how states

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76. Hathaway, *supra* note 3, at 1997-99.

77. *See supra* text accompanying note 50.

78. International Covenant on Civil and Political Rights, *adopted* Dec. 19, 1966, art. 40, S. EXEC. DOC. E, 95-2, at 23 (1978), 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) ("The States Parties to the present Covenant undertake to submit reports on measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights . . . ."); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *opened for signature* Dec. 10, 1984, art. 19, S. TREATY DOC. NO. 100-20, at 27-28 (1988), 1465 U.N.T.S. 85, 120 (entered into force June 26, 1987) ("The States Parties shall submit to the Committee . . . reports on the measures they have taken to give effect to their undertakings under this Convention . . . .").

79. For clear descriptions and assessments of the intergovernmental human rights enforcement system, see INTERNATIONAL HUMAN RIGHTS IN CONTEXT 592-704 (Henry J. Steiner & Philip Alston eds., 2d ed. 2000); THE UNITED NATIONS AND HUMAN RIGHTS (Philip Alston ed., 1992). As of 2000, 71% of all state parties to human rights treaties had overdue reports, and 110 states had five or more overdue reports. ANNE F. BAYEFSKY, THE UN HUMAN RIGHTS TREATY SYSTEM: UNIVERSALITY AT THE CROSSROADS 8 (2000), *available at* http://www.yorku.ca/hrights/Report/finalreport.pdf; *see* Philip Alston, Final Report on Enhancing the Long-Term Effectiveness of the United Nations Human Rights Treaty System, U.N. ESCOR, 53d Sess., Agenda Item 15, at 37, U.N. Doc. E/CN.4/1997/74 (1996).

80. Convention on the Prevention and Punishment of the Crime of Genocide, *adopted*

are to "undertake to prevent and to punish" this crime, nor is the duty to prevent genocide limited to genocide committed by member nations. Because such treaties have weaker enforcement procedures, they rely almost entirely on internal enforcement and hence, for reasons elaborated above, create a weaker relationship between human rights ratings and ratification.

Where the enforcement procedures are stronger or the noncompliance easier to detect, however, I find that ratification rates among countries with better ratings are statistically significantly higher than those for countries with poorer ratings. The Optional Protocol and Article 22 create individual complaint mechanisms that permit individuals in countries that accept the provisions to file complaints with a specified international body. Though they do not always live up to their promise—the individual complaint procedure in the Optional Protocol in particular is slow-moving and underutilized[81]—these enforcement provisions are among the strongest found in universal human rights treaties.[82] Similarly, the Convention on the Political Rights of Women and the Covenant on Civil and Political Rights, while they do not include any stringent external enforcement mechanisms, govern behavior that is difficult to hide. Transparency and, hence, monitoring of violations, while certainly not perfect, are better than in the areas covered by the other treaties studied herein. The failure of a country to grant women the right to vote, to provide equal access to public office, or to provide fair trials is, by its very nature, a public act. The public nature of violations of the treaty provisions creates incentives for nations to avoid joining unless they intend to comply with its provisions. Moreover, unlike the Genocide Convention and the Convention Against Torture, the Convention on the Political Rights of Women and the Covenant on Civil and Political Rights put in place requirements not already covered by customary law.[83] Hence, membership in those treaty regimes entails a commitment above and beyond that already required by the law of nations. The evidence presented in Table 1 thus provides provisional support to several of my predictions. Although the average ratification rate for countries with better ratings is usually higher than that for countries with worse ratings, the

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Dec. 9, 1948, art. 1, S. EXEC. DOC. O, 81-1 (1949), 78 U.N.T.S. 277 (entered into force Jan. 12, 1951).

81. In its 1999 Annual Report, the Human Rights Committee reported that since 1977, it had received 873 communications (despite the fact that the Optional Protocol that governs the individual complaint system under the treaty covers over one billion people around the world). Of those, the Committee had concluded 328 by issuing its views, declared 267 inadmissible, discontinued 129, and not yet concluded 149. *See* INTERNATIONAL HUMAN RIGHTS IN CONTEXT, *supra* note 79, at 740. By contrast, by the end of its 17th session, the Committee on Torture had concluded consideration of the 35 cases submitted to it. Office of the High Commissioner for Human Rights, Overview of Procedure, *available at* http://www.unhchr.ch/html/menu2/8/overcat.htm (last visited Jan. 14, 2003).

82. Some regional treaties have more stringent enforcement mechanisms. *See, e.g.*, Convention for the Protection of Human Rights and Fundamental Freedoms, opened for signature Nov. 4, 1950, 213 U.N.T.S. 221 (entered into force Sept. 3, 1953), as amended by Protocol 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby (adopted 11 May 1994) (creating a permanent Court of Human Rights); American Convention on Human Rights, *opened for signature* Nov. 22, 1969, 1144 U.N.T.S. 123, ch. VII (entered into force July 18, 1978) (creating an Inter-American Court of Human Rights).

83. Hathaway, *supra* note 3, at 1965-66.

difference is in the expected direction and statistically significant for only two of the four treaties. Even when the ratification rates of countries with better ratings are higher than those of countries with poorer ratings by a statistically significant amount, the absolute differences tend to be smaller than most would expect. Moreover, the greatest differences between ratification rates of countries with better and worse ratings are found, as predicted in my account, for treaties with stronger enforcement provisions or for which noncompliance is easily detected. Together, this evidence suggests that traditional accounts of state behavior provide an incomplete guide to state decisions to commit to human rights treaties and that an account that focuses attention upon the internal enforcement procedures of nations, as well as on country ratings, provides a more complete and accurate picture.

B. *Commitment Patterns of Democratic and Nondemocratic Nations*

Although the aggregate evidence presented in Table 1 suggests that the account offered in this Article provides a better description of state decisions to commit to human rights treaties than existing accounts, it can only take us a small part of the way toward understanding why nations accept or reject treaty commitments. To discover whether there are indeed differences between democratic and nondemocratic nations in their propensity to commit to human rights treaties, as I claim, it is necessary to examine the evidence in more detail. Tables 2 through 5 permit us to take a step in that direction by presenting four separate categories of nations and their relative propensities to commit to four separate human rights treaties. Again, as cautioned above, this evidence has serious limitations in that it does not control for variation in other country characteristics that may affect countries' willingness to join treaties. Yet—viewed with the appropriate caution—the summary categorical data can and does provide valuable insight into what motivates countries to commit.

The first and most obvious conclusion that jumps out from each of the four tables is that, as predicted,[84] democratic nations are more likely to join human rights treaties than nondemocratic nations. This is true in the aggregate—democratic nations as a whole are clearly more likely to join than nondemocratic nations as a whole. It is also true within categories. With only one exception,[85] among countries with better human rights ratings, democratic nations are more likely to ratify than nondemocratic nations. The same is true among nations with worse ratings, though the gap between the two is generally smaller. For example, while 24% of nondemocracies with better average torture ratings ratified the Convention Against Torture, 57% of democracies with better average torture ratings ratified the Convention. Among nations with

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84. *See supra* text accompanying notes 60-63.

85. No democracies with worse genocide practices had ratified the Genocide Convention, whereas 41% of nondemocracies with worse genocide practices had ratified the Genocide Convention. *See infra* Table 5. There are, however, so few observations of democracies committing acts of genocide that this can hardly be viewed as conclusive. Indeed, the four observations in this category are all accounted for by a single country—the Sudan from 1966 to 1968 and in 1988. *See* Ted Robert Gurr et al., Internal Wars and Failures of Governance, 1954-1996 (May 19, 1997), available at http://www.cidcm.umd.edu/inscr/stfail/sfdata.htm (last visited Feb. 27, 2003).

worse average torture ratings, democracies again ratified more readily than nondemocracies, though the distance between the two is smaller—40% of nondemocracies ratified, whereas 62% of democracies ratified. The evidence thus bears out the expectation that democratic nations are more likely to commit to human rights treaties than nondemocratic nations.[86]

TABLE 2: CONVENTION AGAINST TORTURE

	Better Torture Ratings	Worse Torture Ratings	Difference of Means (Standard error in parentheses)
Undemocratic	Ratified: 24% Signed: 35% Joined Article 22: 4% Number of observations: 776	Ratified: 40% Signed: 50% Joined Article 22: 6% Number of observations: 383	Ratified: -.15 (.03)** Signed: -.16 (.03)** Joined Article 22: -.02 (.01)
Democratic	Ratified: 57% Signed: 76% Joined Article 22: 40% Number of observations: 790	Ratified: 62% Signed: 74% Joined Article 22: 6% Number of observations: 201	Ratified: -.04 (.04) Signed: .02 (.03) Joined Article 22: .33 (.04)**

*Statistically significant at 95% level.
**Statistically significant at 99% level.

TABLE 3: GENOCIDE CONVENTION

	Better Genocide Ratings	Worse Genocide Ratings	Difference of Means (Standard error in parentheses)
Undemocratic	Ratified: 51% Signed: 55% Number of observations: 3537	Ratified: 41% Signed: 58% Number of observations: 64	Ratified: .11 (.06) Signed: -.03 (.06)
Democratic	Ratified: 71% Signed: 77% Number of observations: 1999	Ratified: 0% Signed: 0% Number of observations: 4	Ratified: .71 (.23)** Signed: .77 (.21)**

*Statistically significant at 95% level.
**Statistically significant at 99% level.

86. *See supra* notes 60-63 and accompanying text.

TABLE 4: INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

	Better Fair Trial Ratings	Worse Fair Trial Ratings	Difference of Means (Standard error in parentheses)
Undemocratic	Ratified: 54% Signed: 55% Joined Optional Prot.: 17 % Number of observations: 449	Ratified: 56% Signed: 61% Joined Optional Prot.: 23% Number of observations: 747	Ratified: -.03 (.03) Signed: -.06 (.03)* Joined Optional Prot.: -.06 (.02)**
Democratic	Ratified: 84% Signed: 85% Joined Optional Prot.: 61% Number of observations: 721	Ratified: 82% Signed: 86% Joined Optional Prot.: 65% Number of observations: 293	Ratified: .02 (.03) Signed: -.01 (.02) Joined Optional Prot.: -.04 (.03)

*Statistically significant at 95% level.
**Statistically significant at 99% level.

TABLE 5: CONVENTION ON THE POLITICAL RIGHTS OF WOMEN

	Better Representation of Women in Parliament	Worse Representation of Women in Parliament	Difference of Means (Standard error in parentheses)
Undemocratic	Ratified: 54% Signed: 61% Number of observations: 908	Ratified: 51% Signed: 54% Number of observations: 1563	Ratified: .03 (.02) Signed: .07 (.02)**
Democratic	Ratified: 77% Signed: 83% Number of Observations: 1160	Ratified: 69% Signed: 72% Number of Observations: 549	Ratified: .08 (.02)** Signed: .11 (.02)**

*Statistically significant at 95% level.
**Statistically significant at 99% level.

The evidence presented in Tables 2 through 5 also allows for a preliminary assessment of my claims regarding the impact of internal enforcement procedures on countries' propensity to join human rights treaties. Before turning to these results, however, it is worth noting that an examination of the number of NGOs operating within each of the categories of nations indicates that human rights NGOs are substantially more prevalent in democratic nations,

as expected.[87] For example, in nondemocratic nations with better torture ratings, there is an average of ten NGOs located inside the country, whereas in democratic nations with better torture ratings, there is an average of forty NGOs located within them. The discrepancy is even higher for nations with poor torture ratings. In nondemocratic nations with worse torture ratings, there is an average of eleven NGOs operating within them, while in democratic nations with worse torture ratings, there is an average of fifty-nine NGOs operating within them. The same is true of each of the areas examined herein.[88] Hence, this lends support to the claim made above that both pressure to ratify and internal enforcement are likely to be higher in democratic nations in part due to the greater presence of human rights NGOs.[89]

I hypothesized above that democracies and nondemocracies will evidence notably different commitment patterns for treaties with weak enforcement mechanisms. I argued that such treaties will be most likely to be enforced in countries with strong internal enforcement mechanisms, which I claimed are more prevalent in democratic nations than in nondemocratic ones. Moreover, I claimed that where treaties are more likely to be enforced, countries with poor ratings are less likely to join. I therefore predicted that democratic nations with poor human rights ratings would be less likely than democratic nations with good ratings to join human rights regimes. Where democratic nations with worse ratings joined human rights treaties, I suggested, it would be frequently due to a recent change in regime. I further argued that in contrast to democratic nations, nondemocratic nations with worse ratings would be not much less likely, and perhaps even more likely, to commit than nondemocratic nations with better ratings.[90] As I detail below, these predictions find support in the evidence presented in Tables 2 through 5.

1. *Nondemocratic nations.*

Beginning with nondemocratic nations, I find that in each of the four areas examined, nondemocratic nations with worse ratings are either equally likely to commit or *more* likely to commit than nondemocratic nations with better ratings. Table 2 shows that 40% of nondemocratic nations with worse ratings ratified the Convention Against Torture, while only 24% of nondemocratic nations with better ratings ratified. The ratification rate among nondemocratic countries with worse torture ratings is therefore more than half again as high as that for nondemocratic countries with better torture ratings. Nondemocratic nations are also more likely to join Article 22 (which provides for stronger

87. *See* Appendix B for more on the source of the data regarding human rights NGOs.

88. In nondemocratic nations with better genocide, fair trial, and women's political representation ratings, there is an average of 10, 9, and 13 NGOs located inside the country, respectively, whereas in democratic nations with better ratings, there is an average of 53, 43, and 75 NGOs located within them. In nondemocratic nations with worse genocide, fair trial, and women's political representation ratings, there is an average of 3, 12, and 11 NGOs operating within them, respectively, while in democratic nations with worse ratings, there is in the case of genocide insufficient information, and in the case of fair trial and women's political representation, 45 and 38 NGOs operating within them, respectively.

89. *See supra* note 55 & accompanying text.

90. *See supra* Part II.

external enforcement than does the Convention itself) if their torture ratings are worse than if they are better, though the difference is small and statistically insignificant. Thus, not only are nondemocratic nations with worse torture ratings not less likely to join the Convention Against Torture, they are more likely to do so. This may indicate not only that the cost of commitment is minimal due to the low internal enforcement, but also that countries with worse ratings anticipate obtaining a benefit from ratification, including reduced pressure to evince real improvements in their human rights practices.[91]

Tables 3 and 4, which examine countries' propensity to commit to the Genocide Convention and the International Covenant on Civil and Political Rights, likewise provide support for the hypothesis. In both cases, the differences in ratification and signature rates between nondemocratic nations with better ratings and those with worse ratings are statistically insignificant. The only exception is for the Optional Protocol, which indicates that nondemocratic nations with worse ratings are statistically significantly more likely than those with better ratings to ratify the Optional Protocol, though the difference is small. This may be the result of nondemocratic nations with worse ratings anticipating a reputational benefit, coupled with an expectation that the individual complaint mechanism will not actually be utilized in a nondemocratic context.

Table 5, which examines countries' propensity to commit to the Convention on the Political Rights of Women, shows less willingness to commit among countries with worse ratings than among those with better ratings. Fifty-four percent of nondemocratic nations with better representation of women in parliament ratified the Convention on the Political Rights of Women, whereas 51% of nondemocratic nations with worse representation of women in parliament ratified the Convention. The difference is both small (3%) and statistically insignificant. The spread between those with better and worse ratings is smaller than that among democratic nations, which is nearly three times as large at 8%.

The evidence in all four tables is consistent with the claim that democratic nations are more likely to join human rights treaties than are nondemocratic nations. In addition, each of the of four areas examined are consistent with the prediction that nondemocratic nations with worse human rights ratings will commit at the same or higher rate than nondemocratic nations with better human rights ratings.

2. *Democratic nations.*

The evidence regarding democratic nations' propensity to commit to human rights treaties also appears to provide support for my analysis and the predictions it generates. Table 2 summarizes nations' propensity to commit to the Convention Against Torture and Article 22. The Table indicates that democratic nations' propensity to join Article 22 fits expectations perfectly: Democratic nations with better torture ratings are more than six times more

91. *See infra* text accompanying note 58; Hathaway, *supra* note 3, at 2002-20 (putting forward and describing expressive theory); *supra* text accompanying notes 55-61.

likely to accept the Article than democratic nations with worse torture ratings. The evidence regarding the Convention Against Torture is more equivocal: Democratic nations appear no more likely to ratify the Convention Against Torture if they have better torture ratings than if they have worse ratings.

A glance at the characteristics of democratic nations with worse ratings suggests a possible explanation for this shortcoming. Thirty-one percent of democratic nations with better ratings are governed by regimes that have been in place for fewer than ten years, and 78% of the group of democratic nations with worse ratings are governed by similarly young regimes. By contrast, 39% of nondemocratic nations with better ratings are governed by new regimes, and 49% of nondemocratic nations with worse ratings are governed by new regimes. If newer regimes are more likely to commit to treaties—because, for example, they are attempting to distance themselves from a prior regime or, as Andrew Moravcsik argues,[92] because they fear backtracking and wish to bind future regimes to the mast—then this may help explain why the level of commitment among democratic nations with worse ratings exceeds expectations.[93]

Table 4, which summarizes nations' propensity to commit to the International Covenant on Civil and Political Rights, shows similar results. Democratic nations with better ratings are statistically no more or less likely than those with worse ratings to join the Covenant or the Optional Protocol. The small differences that exist between the categories are statistically insignificant.[94] Again, the frequency of new regimes among the democratic nations with worse ratings—72%—far exceeds that among democratic nations with better ratings—27%. This lies in contrast to nondemocratic nations: 38% of nondemocracies with worse ratings are new regimes, and 44% of nondemocracies with better ratings are new regimes. This may again provide a partial explanation for the higher than expected ratification rate among democratic nations with worse ratings.

The evidence summarized in Table 3, which examines the Genocide Convention, and Table 5, which examines the Convention on the Political Rights of Women, also provide support for my claims. Among democratic nations, 69% of countries with better genocide ratings ratified the Genocide Convention, whereas none of those with worse genocide ratings ratified the Convention. Although this difference is both large and statistically significant, the evidence is of questionable value, as there are only four observations of

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92. S*ee* Moravcsik, *supra* note 12 (arguing that unstable democracies—defined as those with regimes that had been in power for fewer than 30 years (as opposed to 10 years, as measured herein)—are likely to be the strongest advocates for binding human rights regimes).

93. I explore this aspect of countries' treaty commitment decisions in greater depth in Hathaway, *supra* note 8.

94. Given the result for Article 22, the result for the Optional Protocol may appear incongruous. This difference in results between these two provisions may be due in part to the relative infrequency with which the Optional Protocol is utilized. Although it creates a right of individual complaint—a right that might appear particularly threatening in a nondemocratic nation—that right is rarely exercised, and when it is, resolution takes several years. *See supra* note 81. Article 22, by contrast, is used relatively infrequently, but all the cases that have been brought to the Committee have been resolved. *Id*.

democratic countries with poor genocide ratings (and these observations all come from one country over the course of four separate years). Looking at Table 5, however, I find more robust support for similar findings. While 77% of democratic nations with better representation of women ratified the Convention on the Political Rights of Women, 69% of those with worse representation ratified the Convention—a statistically significant, though not especially large, difference. Again, the frequency of new regimes in the two categories may help explain the somewhat lackluster results. Among democratic nations with better ratings, 19% are new regimes, whereas among democratic nations with worse ratings, 56% are new regimes. Among nondemocratic regimes, 40% of those with worse ratings are new regimes, and 55% of those with better ratings are new regimes.

Taken together, the evidence presented in Tables 2 through 5 provides good support for the hypotheses outlined in Part III. As noted above, the evidence strongly supports the prediction that nondemocratic nations with worse human rights ratings will commit at the same or higher rate than nondemocratic nations with better human rights ratings. The evidence in the tables regarding democratic nations' patterns of commitment to human rights treaties is also consistent with my analysis. In contrast to nondemocratic nations, democratic nations with worse ratings are never more likely to ratify a given human rights treaty than democratic nations with better ratings. Indeed, in two of the four areas I examine, I find evidence that democratic nations with better ratings are statistically significantly more likely than democratic nations with worse ratings to commit to human rights treaties. In the remaining areas, the rates of ratification for democratic nations with better human rights ratings are statistically indistinguishable from those of democratic nations with worse human rights ratings—a result that may be partially explained by the higher incidence of new regimes among democratic nations with worse human rights ratings.

CONCLUSION

What is the cost to a country of membership in a human rights treaty regime and how does it affect a country's decision to sign and ratify the treaty? Is it simply the case, as some current scholars of international law and politics would have it, that the cost of commitment is uniform or perhaps random? Or is it true, as others have suggested, that countries only join human rights treaties with which they already are in compliance, avoiding those that would be costly to implement?

The empirical evidence outlined above suggests some perhaps surprising answers to these questions. The cost of commitment is not uniform or random. Nor do countries join only those treaties that would seem to impose the least compliance costs. Rather, the evidence appears to confirm the core assertion of my own account: The higher the cost of commitment—a cost defined by the interaction of a country's divergence from the human rights standards outlined in the treaty and the likelihood that the country will actually put those standards into place if it joins—the less likely a nation is to join a human rights treaty.

From this broad prediction flows a series of more specific claims, all of

which find preliminary support in the evidence presented here. Because variation in the strength of internal enforcement is not random but instead moves in tandem with countries' human rights ratings, countries with better human rights ratings are apparently more reluctant to commit to human rights treaties than otherwise expected and countries with poor ratings are less reluctant to do so than otherwise expected. Moreover, because democratic nations generally have stronger internal enforcement mechanisms than nondemocratic nations, democratic and nondemocratic nations likely have entirely different commitment patterns. Although democratic nations as a whole are more likely to commit to human rights treaties than nondemocratic nations, democratic nations with poor human rights ratings are less likely than democratic nations with good ratings to join human rights treaties. The opposite is true of nondemocratic nations; nondemocratic nations with worse human rights ratings are not much less likely—and are even occasionally *more* likely—to commit than nondemocratic nations with better ratings.

Of course, the evidence and conclusions presented here are only preliminary. Additional investigation will be necessary to confirm or disprove these claims. To begin with, a multivariate quantitative empirical investigation of the relationships asserted here should be conducted to test whether the relationships hold when other relevant characteristics are controlled. Indeed, that is the subject of a paper that is part of the same project as this Article. In addition, qualitative case studies examining the link between democracy, internal enforcement, human rights practices, and treaty membership are essential to a complete understanding of countries' decisions to join human rights treaties.[95]

Assuming for the moment that the empirical claims made herein find additional support upon deeper inspection, how might advocates of human rights use this information to improve the lives of those the treaties are meant to protect? One might come away from this study uncertain as to how to proceed. If we strengthen human rights treaties by putting in place stronger enforcement mechanisms, this study seems to suggest, those countries with the worst practices may be driven away by the high cost of commitment. Yet if we instead settle for toothless treaties, nations with poor human rights records—especially nondemocratic nations—may join them to gain an expressive benefit with no intention of actually complying. The human rights advocate would thus seem to be caught in an inescapable dilemma.

The focus in this Article on the cost of treaty commitments, however, does point toward some possible answers to this conundrum. To begin with, the study suggests that although countries may be less likely to join treaties that have stronger enforcement mechanisms, many countries—even those with poor human rights practices—do still join. Widespread membership in the Optional Protocol, even among nations that do not meet its terms, suggests that stronger enforcement mechanisms are not a bar to membership. And widespread membership in the Convention on the Political Rights of Women—which contains no enforcement mechanism but for which noncompliance is difficult if not impossible to conceal—suggests that efforts to make noncompliance with

95. The only existing such study of which I am aware is Moravcsik, *supra* note 6.

treaty provisions more transparent may provide a means to retain widespread membership while discouraging ratification where it is less likely to have a positive effect.

Despite these hopeful signs, it is important that any efforts to strengthen treaty enforcement and monitoring mechanisms be made cautiously. In particular, care must be taken not to make conditions so stringent that treaties are no longer able to serve as a stepping stone to better practices. Indeed, the findings of this article can provide some insights into the ongoing debate on the wisdom of strengthening the monitoring and enforcement of human rights treaties.[96] Nondemocratic nations appear to be as likely or more likely to join human rights treaties if their human rights practices are worse[97] and appear not to improve their human rights practices after membership.[98] For these countries, the claim for maintaining room for them to engage in "hollow" ratification does not appear convincing. The same is not true, however, for democratic nations. While democratic nations with poorer practices appear to be sometimes as likely as those with better practices to join human rights treaties,[99] democratic nations do often appear to have better practices if they have ratified than if they have not.[100] This suggests that the process of norm internalization is furthered by ratification in such nations.[101] Hence such countries should not be discouraged from ratifying human rights treaties with which they are not yet in compliance, as the ratification may help set in motion internal processes that can lead to better compliance over time. These findings thus suggest that if stronger enforcement and monitoring measures are considered, they should allow for a transition period during which nations may demonstrate their commitment to bringing their practices in line with the requirements of the treaties.

By focusing the attention here on the costs of treaty membership, I hope also to encourage policymakers to consider ways in which those costs may be offset. It is no coincidence that the most effective and hence costly human rights regime—that found in Europe—is embedded in a set of political and economic institutions that bring significant benefits to its members.[102] These

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96. *See, e.g.*, Ryan Goodman and Derek Jinks, *Measuring the Effects of Human Rights Treaties*, 14 E.J.I.L. (forthcoming 2003) (arguing against strengthening the monitoring and enforcement of human rights treaties); Oona A. Hathaway, *Testing Conventional Wisdom*, 14 E.J.I.L. (forthcoming 2003) (arguing that strengthening the monitoring and enforcement of human rights treaties may make the treaties more effective).

97. *See supra* Tables 2-5.

98. *See* Hathaway, *supra* note 3, at 1989-2002 (showing that among the group of countries as a whole, ratification of the treaties examined is never associated with better practices than would otherwise be expected; by contrast, among democratic nations, ratification is sometimes associated with better practices than otherwise expected).

99. *See supra* Tables 2-5.

100. Hathaway, *supra* note 3, at 1997-2000.

101. *Cf.* Koh, *Bringing International Law Home*, *supra* note 9 ("While the structural attributes of liberal systems undeniably make them more open to some of the kinds of internalization discussed above, illiberal states may also internalize through a variety of means.")

102. The Statute of the Council of Europe effectively requires states to ratify the European Convention on Human Rights as a condition of membership in the Council. The Statute of the Council of Europe provides that "[e]very Member of the Council of Europe

benefits far outweigh any costs member states must bear to bring their human rights policies into line with comparatively stringent European human rights treaties.

Finally, this study suggests that international bodies might encourage ratification by reducing the cost of compliance. Democratic nations with poor human rights practices might be persuaded to join a human rights treaty that they might otherwise avoid if membership were accompanied by resources and other assistance to aid them in carrying out the treaty's mandate. At the same time, human rights advocates might seek to increase the costs of membership in nondemocratic nations by redoubling their efforts to foster domestic constituencies for human rights. Using ratification of a treaty as an opportunity to create connections to domestic organizations and to provide them protection and support, international nongovernmental organizations can help foster stronger internal human rights watchdogs. In doing so, the international community can better ensure that ratification will represent a meaningful commitment.

APPENDIX A: LIST OF TREATIES

Short Name of Treaty	Full Name and Citation of Treaty
Convention on the Political Rights of Women	Convention on the Political Rights of Women, *opened for signature* Mar. 31, 1953, 27 U.S.T. 1909, 193 U.N.T.S. 135 (entered into force July 7, 1954).
Convention Against Torture	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *opened for signature* Dec. 10, 1984, S. TREATY DOC. NO. 100-20 (1988), 1465 U.N.T.S. 85 (entered into force June 26, 1987).
Article 21	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *opened for signature* Dec. 10, 1984, art. 21, S. TREATY DOC. NO. 100-20, at 26-27 (1988), 1465 U.N.T.S. 85, 118-20 (entered into force June 26, 1987).
Article 22	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *opened for signature* Dec. 10, 1984, art. 22, S. TREATY DOC. NO. 100-20, at 27-28 (1988), 1465 U.N.T.S. 85, 120 (entered into force June 26, 1987).
Covenant on Civil and Political Rights	International Covenant on Civil and Political Rights, *adopted* Dec. 19, 1966, S. EXEC. DOC. E, 95-2, at 23 (1978), 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).
Optional Protocol	Optional Protocol to the International Covenant on Civil and Political Rights, *adopted* Dec. 19, 1966, 999 U.N.T.S. 302.

must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms." Statute of the Council of Europe, May 5, 1949, art. 3, 87 U.N.T.S. 103, 106. Hence, before a nation may accede to the Council, it may be required to enact legislative changes (for example, abolish the death penalty) and satisfy Council experts that the country meets minimum human rights standards. (I think an additional citation could be used here to explain this interpretation of the Statute). (I found this statute on the Web so I am not sure about the citation using the abbreviation of U.N.T.S., I could not locate this anywhere else.)

Genocide Convention	Convention on the Prevention and Punishment of the Crime of Genocide, *adopted* Dec. 9, 1948, S. EXEC. DOC. O, 81-1 (1949), 78 U.N.T.S 277 (entered into force Jan. 12, 1951).

APPENDIX B: DATA SOURCES AND DESCRIPTIONS

Better Ratings/Worse Ratings

Torture. I generated the data on torture by coding the sections on torture in the United States Department of State Country Reports on Human Rights.[103] The Torture index ranges from 1 to 5. In Tables 1-5, a country is designated as having a "better torture rating" if, in the years 1985 to 1987, its average torture rating was 3 or lower. It is designated as having a "worse torture rating if, in those years, its average torture rating was higher than 3.

Genocide. I obtained the data on genocide from the Center for International Development and Conflict Management at the University of Maryland, College Park.[104] The Center defines "geno/politicide" as

> the promotion, execution, and/or implied consent of sustained policies by governing elites or their agents—or in the case of civil war, either of the contending authorities—that result in the deaths of a substantial portion of a communal group or politicized non-communal group. In genocides the victimized groups are defined primarily in terms of their communal (ethnolinguistic, religious) characteristics. In politicides, by contrast, groups are defined primarily in terms of their political opposition to the regime and dominant groups. . . . In the case of genocide and politicide authorities physically exterminate enough (not necessarily all) members of a target group so that it can no longer pose any conceivable threat to their rule or interests.[105]

The data record the magnitude of each genocidal episode based on the annual number of deaths, placed on a scale that ranges from 0 to 5.[106] I designate a rating of 3 or lower as "better" whereas I designated ratings of greater than 3 as "worse."

Fair Trial. I created the Fair Trial index by coding, with the help of two research assistants, the sections in the U.S. Department of State's *Country Reports on Human Rights* that addressed issues relating to fair trials. I identified ten elements of a paradigmatic fair trial by reference to the relevant treaties. The elements include the following: an independent and impartial judiciary, the right to counsel, the right to present a defense, a presumption of innocence, the right to appeal, the right to an interpreter, protection from ex post facto laws, a public trial, the right to have charges presented, and timeliness.[107] I use these ten elements to construct a rating scale of 1 to 4, with

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103. For more on how I constructed the index, see Hathaway, *supra* note 3, at 1969-72.

104. Gurr et al., *supra* note 85.

105. *Id.* at 15. The Codebook further specifies that in order to code murder as genocidal, "(1) Authorities' complicity in mass murder must be established. . . . (2) The physical destruction of a people requires time to accomplish: it implies a persistent, coherent pattern of action. . . . (3) The victims to be counted are unarmed civilians, not combatants." *Id.* at 15-16.

106. For more on the genocide rating, see Hathaway, *supra* note 3, at 1968-69.

107. For more on how I constructed the index, see *id.* at 1972-74.

1 indicating the strongest fair trial protections and 4 the weakest. I designate ratings of below 2 as "better," and 2 and above as "worse."

Women's Political Representation (Percentage of Men in Parliament). I measured women's political representation using the percentage of men in each country's legislature.[108] The data are derived from data published by the Inter-Parliamentary Union.[109] I designate countries with percentages of men in parliament 97.6% or below (placing them in the top 50% of states for women's political representation) as "better," and those with percentages of men in parliament above 97.6% (placing them in the bottom 50% of states for women's political representation) as "worse."

Democratic Regime. The definition and measurement of democracy has been the source of a great deal of debate among scholars.[110] I use here what is widely recognized to be the best available comprehensive data on democracy—the measure of democracy (DEMOC) in the Polity IV data set.[111] The scale is constructed additively using coded data on six separate variables: competitiveness of executive recruitment, openness of executive recruitment, regulation of executive recruitment, constraints on the chief executive, regulation of political participation, and competitiveness of political participation.[112] I transform this 11-point scale into a 0/1 variable, with a "1" indicating a "democratic regime" (6 to 10 on the polity scale), and "0" indicating a semi- or nondemocratic regime (0-5 on the polity scale).[113]

New Regime. I define new regimes as those that have been in place for ten or fewer years. I generate the indicator for new regimes from the "Durable" variable in the Polity IV database, which is defined as "[t]he number of years since the most recent regime change (defined by a three-point change in the Polity score over a period of three years or less), the end of a transition period defined by the lack of stable political institutions (denoted by a standardized authority score), or the year 1900, whichever came last."[114]

Human Rights NGOs. This measure of human rights NGOs provides a separate measure of the number of NGOs actively working in each individual country in each year. The information from which this variable is constructed is drawn from the Human Rights Internet's List (formerly the WorldList). I

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108. Where a country's legislature is divided into two houses, I added the two houses together before calculating the percentage of men in the legislature.

109. INTER-PARLIAMENTARY UNION, WOMEN IN PARLIAMENTS 1945-1995: A WORLD STATISTICAL SURVEY (1995). For more on this measure, see Hathaway, *supra* note 3, at 1975-76.

110. *See* Hathaway, *supra* note 3, at 2028-29 & n.311.

111. *See* Marshall & Jaggers, *supra* note 53, at 12-13 (including a description of variables and a link to the data set). The Polity Project defines democracy, which ranges from 0 (low) to 10 (high), as "general openness of political institutions."

112. *Id.*

113. In addition, I convert codes of -66 and -77 to "0," and treat -88 as missing, prorating the missing data using surrounding entries, where possible. This is in accordance with the recommendation of the authors of the database.

114. *See* Polity IV Project Manual, *supra* note 53, at 15. I made minor alterations to the data. For the five years in my data set prior to the start of the "Durable" indicator (1945 to 1949), I filled in missing data where possible by using later years to infer earlier years' duration values and by coding any instances where the Polity variable was coded with a "standardized authority code" as having a duration of "0."

generated the data by recording the number of organizations operating within each country in 1989, 1994, and 2000.[115] For the years between the three observations, I created a rolling average using the two closest observations.

115. For the first report, this required tallying the organizations operating within each country based on the addresses appearing in an alphabetical list of all human rights NGOs. *See* Human Rights Internet Reporter: Master List of Human Rights Organizations & Serial Publications 3-58 (1991). For the 1994 report, I simply tallied the number of organizations listed under each country in the geographical index. *See* Human Rights Internet Reporter Master List 143-195 (1986). For 2001, I based the count of human rights NGOs on the Human Rights Index on-line database. *See* http://www.hri.org. For the years between the three observations, I created a rolling average of the two closest observations.