

Compliance with International Law

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1. Introduction

Compliance with international law (IL) has long puzzled scholars and policymakers. Many early debates centered around the question of whether IL was even law at all, given its lack of a overarching enforcer (Austin 1832; Morgenthau 1948; Hart 1961). Later, IR scholars showed that international *cooperation* is not only possible and sustainable, but also common (Axelrod 1984; Axelrod and Keohane 1986). Around the same time, Henkin (1979: 47) famously stated, “it is probably the case that *almost all nations observe almost all principles of [IL] and almost all of their obligations almost all of the time*” (italics are original; see also Fisher 1981). But by and large, most scholars agreed that it was puzzling – even surprising – that states abided by these obligations (Keohane 1984: 99; Franck 1990).

If there exists no authority higher than the state, why do governments ever abide by the pacts they make with each other? How, if at all, are these pacts enforced? If states *do* comply, what does this tell us about law’s utility as a tool for bringing about real changes in how governments treat their citizens, how they apply antidumping measures, whether they curb pollution, and whether they defend their allies when war breaks out?

This article engages these and related questions, drawing chiefly from the political science and IL literature. It starts by laying out some definitions, on core concepts like IL, compliance, and enforcement. It then provides a brief overview of foundational works that have helped define key legal doctrines that have helped to structure IR throughout the years. The remainder of the article explores the literature’s three main approaches to the compliance question.

First, some scholars view noncompliance as chiefly a problem of enforcement. The lack of an overarching authority to punish rule-breakers poses challenges, but it does not render IL impotent. Rather, international inducements, reciprocity, reputation, and domestic politics/institutions can help to ensure that countries keep their promises – under the right conditions – by driving up the costs of noncompliance. A second group of scholars perceives most noncompliance not as a willful or calculated act, but rather as the result of capacity problems or poor management. From this viewpoint, the best path to compliance lies in writing transparent treaties, ensuring robust dispute resolution, and providing technical/financial assistance. Finally, a third group of scholars approaches compliance through the lens of identity, social context, and legitimacy. Governments keep their international promises when doing so is consistent with their identity, when they care how other actors – domestic and/or international – perceive them, and/or when they perceive the agreement as valid and fair.

Throughout, I pay particular attention to what we have learned over the past 15 years. I draw examples from the qualitative and the quantitative literatures, although the emphasis lies more heavily on the latter. Previous reviews provide good overviews of earlier, predominantly qualitative, literatures (Kingsbury 1998; Simmons 1998, 2010; Raustiala and Slaughter 2002).

2. Compliance: Defining the Terms of the Debate

Understanding debates about compliance is in part an exercise in definitions. (Public) *IL* is generally defined as rules that govern relations between states, and – in some cases – between other legally recognized international actors. This includes written international agreements like treaties, memoranda of understanding, etc. But are norms and customs also part of *IL*, when not codified in written form? Many view customary *IL* as a crucial part of the international legal architecture. Indeed, these unwritten standards of conduct sometimes form the basis of court decisions (see for instance *Paquete Habana* 1900). Yet the bulk of the political science literature on compliance is concerned with written agreements. As a result, although I use the more expansive definition of *IL* throughout, most of the discussion focuses on written agreements. Later, I consider why norms and customs have gained limited attention in the IR literature, and what benefits an expansion of scope might bring.

I define *compliance* as the degree to which state behavior conforms to what an agreement prescribes or proscribes (Young 1979: 104). Importantly, (non)compliance is a spectrum, not a dichotomy. I focus on first-order compliance (adherence to rules), and set aside second-order compliance (adherence to rulings). This is straightforward enough, but it is important to differentiate compliance from effectiveness – the degree to which an agreement has an impact on behavior, thereby improving or solving the problem that led to the agreement’s formation (Young 1997; Shelton 2000; and Martin 2013).

The difference between compliance and effectiveness is well illustrated in the environmental arena. Suppose that governments ratify a treaty, agreeing to halve their emissions of some pollutant by 2015. State *A* might hit its target because an economic downturn drives down pollutant-related production, or because a technological innovation reduces demand for the pollutive substance. This is compliance without effectiveness because the improvements have nothing (directly) to do with the treaty itself. Conversely, in 2015, state *B*’s emissions might remain well above the target. But it may nonetheless have made significant emissions reductions in anticipation of the 2015 deadline. This is effectiveness without (full) compliance. In many cases, of course, compliance and effectiveness work together. In 2020, perhaps state *B* will be much closer to its target (and therefore much closer to compliance) because of the agreement’s continued impact on its environmental practice.

International legal scholars sometimes equate *enforcement* with punishment by a court (e.g., the ICC or a domestic court) or other international authority (e.g., the United Nations [UN] Security Council). Like most IR scholars, I use a broader definition: enforcement is the (threat of) application of sanctions or some material consequence if a party does not comply with an agreement.

3. The Politics of Compliance and Enforcement: Foundations

Practitioners and thinkers as far back as Machiavelli have asked whether/why leaders should comply with their international commitments. “A prudent Prince,” Machiavelli argues (1532: ch. XVIII), “neither can nor ought to keep his word when to keep it is hurtful to him and the causes which led him to pledge it are removed.” These principles – that governments should not comply when it is no longer in their interest or when conditions change – have carried forward to more recent writings. Indeed, they form the modern legal principle of *rebus sic stantibus* (‘things thus standing’), whereby treaties may become inapplicable if there is a fundamental change of circumstances (Desierto 2012). If humans were honest and kept their promises, then the Prince should do the same. But they do not, and therefore the Prince would be foolish to abide by his commitments – indeed, he would receive the sucker’s payoff. Ultimately, this is an argument about *reciprocity*. For Machiavelli, human nature precludes reciprocity from providing a successful mechanism for ensuring that promises are kept. As we will see later, more recent scholarship also looks at reciprocity, but sees it as a reliable mode of enforcement that can, in the right circumstances, push governments to keep their promises. Additionally, *clausula rebus sic stantibus* has evolved over the years. These days, most courts only take the doctrine seriously in a limited set of circumstances. Article 62 of the Vienna Convention on the Law of Treaties provides a good roadmap.

Grotius (1625) expresses a very different perception as compared to Machiavelli. The pacts that leaders sign with one another, he argues, are to be respected and fulfilled in good faith. This tenet forms the fundamental modern-day international legal principle of *pacta sunt servanda* (‘agreements are to be observed’). Grotius outlines at least three reasons why international pacts should be obeyed. First, they are legally and morally binding. This principle is firmly rooted in his belief (Prologue 15) that “It is a rule of the law of nature to abide by pacts” (see also Book II.16.1). Second, international agreements are established by mutual consent. Their voluntary nature makes them legitimate and binding. Third, and perhaps most interesting for subsequent IR theories that emphasize the “shadow of the future” (e.g., Axelrod and Keohane 1986), compliance is generally in states’ long-term interest. Indeed, “the state which transgresses the law of nature and of nations cuts away also the bulwarks which safeguard its own future practice” (Prologue 18). However, Grotius does attach certain exceptions to the good faith principle, for instance when the contract is concluded under illegitimate circumstances or when the other party engages in large-scale noncompliance.

Hobbes’s (1651) premises on sovereignty, the state of nature, and mutual contracts have important implications for how we understand compliance and enforcement. On the one hand, the advent of the sovereign nation-state should be good news for interstate relations. In addition to escaping a “solitary, poore, nasty, brutish and short” life and directing activities toward the common benefit, citizens also receive protection from other states when they turn over power to a Sovereign (Hobbes 1651 XIII). This leads directly to important principles that underpin the modern state-system, such as sovereignty and non-intervention, which Hobbes views as critical to ensuring peace with other states. On the other hand, some of Hobbes’s premises are deeply troubling for IL. “Covenants, without the sword,” he claims, “are but words and of no strength” (ch. 17). “Where there is no common power, there is no law” (ch. 13). In this view, the lack of an ‘international Leviathan’ means not only that IL is ineffectual; it also implies that IL is not really law at all.

The question of whether IL is really law remained a topic of debate for centuries. If we use an Austinian definition of law (Austin 1832) – a command given by a Sovereign, backed by the threat of sanctions – then it is clear that IL is not law. Most now agree that such a definition is too restrictive. For instance, Hart (1961) argues that it is not the existence of a central enforcer that distinguishes a legal system, but rather the union of primary rules (defining what is and is not allowed) and secondary rules (rules about rules). Ultimately, in his view, IL is “sufficiently analogous to law” to be considered as such (Hart 1961:231). Bull (1977) concurs, but for slightly different reasons: international law has the status of law because those who use it – national and international courts, diplomats, and politicians – believe these rules have the status of law. Morgenthau (1948:255), too, accepts that IL is law, stating, “to deny that IL exists at all as a system of binding legal rules flies in the face of all the evidence.”

Most scholars and practitioners now agree that IL *exists as law*. But that is not the same as saying it is *effective*. Mearsheimer (1994-95) argues that most agreements simply articulate identical or complementary interests, and those that do not are unlikely to last. From this perspective, states abide by treaties because it is in their immediate interest to do so. Morgenthau (1948) maintains that in the absence of an overarching authority, sanctions are decentralized and based on self-help. This is a primitive legal system – and one that differs radically from domestic law – for it places the right to enforce the law in the victim’s hands (Morgenthau 1948:266). Consequently, enforcement is uneven in two main respects: (1) grave transgressions may attract no response whereas minor noncompliance may solicit severe sanctions; and (2) the strong are much more likely to escape reprisals. Enforcement, then, is not a matter of IL but of national interest and the distribution of power.

Many disagree with this perception that IL is ineffective. If states would do the same anyhow, why bother writing agreements down? If states have identical interests, the desired outcome can be achieved with no communication whatsoever. If they have complementary interests, they can simply agree informally (Keohane 1984). In neither case is a formal arrangement needed. Surely international agreements do more than simply spell out identical or complementary interests; otherwise it is hard to understand why they exist. Moreover, many argue, skeptics of IL overstate the gap between municipal and IL (Staton and Moore 2011). In reality, domestic contracts often rely on non-governmental mechanisms for their enforcement, whereas a number of international rules are interpreted if not enforced by international bodies.

For instance, reputational concerns, rather than the threat of punishment from on high, are no doubt the driving force behind many business contracts. To take another domestic example: if murder were legalized, would most people begin murdering each other? It seems unlikely. Most refrain from murdering because they have no desire to do so, believe it unethical, and/or fear reciprocation. A more accurate portrayal of IL, then, would think of law as a spectrum of centralization rather than a dichotomy (Bull 1977). Finally, others maintain that skeptics of IL rely on a far-too-narrow understanding of enforcement (Henkin 1979; Fisher 1981). Rather than resting in the hands of a central organizing body, the sources of enforcement reside elsewhere. The next section considers these sources of enforcement. The specific mechanisms are various, but they are united by a focus on the costs a government pays for not abiding by its international legal promises.

4. Compliance as a Problem of Enforcement

A. International Inducements

Adherence may be important enough to a state that it is willing to pay the cost of inducing others to comply. Why? In some cases, it is strictly a matter of public interest. In the famous *Bananas* dispute, for instance, the United States (US) and several Latin American countries had a material interest in inducing the European Union (EU) to comply with General Agreement on Tariffs and Trade (GATT) and World Trade Organization (WTO) provisions (Alter and Meunier 2006). In other cases, leaders – or at least the individuals/groups to whom they are responding – are motivated by more normative considerations.

The anti-apartheid economic sanctions regime, for example, came about because citizens and individual legislators had a moral/ethical problem with that system of racial segregation and oppression (Black 1999). While governments' motivations in using international inducements are diverse, the inducements themselves rely on a cost-benefit logic. (I discuss compliance mechanisms that do not rely on rewards or punishments, such as 'naming and shaming,' later). These inducements might be positive – trade concessions, increased foreign aid, and/or cooperation in other issue-areas. Alternatively, they might include punishments such as development assistance cuts, economic sanctions, and – rarely – military intervention.

Linkage is a common means of inducing compliance. Some issues are linkable because they are substantively related and affect each other. But this need not be the case: sanctions linkage, in particular, is a way to apply the engines of compliance from one issue-area to another, presumably more intractable, area (Leebron 2002). Hafner-Burton (2005, 2009) argues that Western states can compel abusive governments to respect human rights by explicitly tying these to trade concessions in preferential trade agreements. Even governments that are perfectly happy to abuse their citizens can be "forced to be good" when the continuation of trade concessions depends on their respect for human rights.

Issue linkage is also about expanding the set of possible inducements that can sustain compliance, which ties directly into ideas of 'issue barter' (Leebron 2002: 12-13). (For some, this takes us into the territory of reciprocity, where governments make concessions on one front in exchange for concessions on another front. I keep these distinct, such that reciprocity is truly about meeting one behavior with the same behavior). For example, Poast (2012) notes that many military alliances, almost all of them asymmetric, include trade provisions. These enhance compliance by increasing the costs of renegeing: if the stronger state decides not to defend its ally, it will lose the trade concessions. He finds not only that trade provisions make states more willing to respect their alliance commitments, but also that alliances with trade provisions are more credible. In the environmental arena, Tingley and Tomz's (2014) survey experiment finds that respondents support issue-linkage: if another country increases its consumption of greenhouse gases, respondents strongly condone publicly shaming and/or cutting of trade with the country – particularly if it had breached international law. Interestingly, respondents did not support direct reciprocity (i.e., raising consumption in response to another country's increased consumption), even when the other country had ratified a relevant treaty.

International inducements are typically decentralized and based on self-help, placing the right to punish/reward in the hands of the (potential) victim and/or the powerful. As a consequence, application can be uneven. Grave transgressions may attract no response, whereas minor noncompliance may be met with severe sanctions. Additionally, the strong are more likely to escape reprisals – and to administer them. International inducements, then, may have much more to do with national interests and the distribution of power than anything else (Morgenthau 1948; Goldsmith and Posner 2005). (However, see Ohlin 2015, who argues that international law can serve the interests of the weak and the powerful alike.)

Yet, smaller states and non-state actors can and have punished noncompliers. Lebovic and Voeten (2009) find that the World Bank reduces aid to countries when the (now defunct) UN Human Rights Commission explicitly criticizes their human rights standards. Schimmelfennig et al. (2003) combine both mechanisms (a focus on rewards and involvement of non-state actors), examining EU democratic conditionality and how it works as ‘reinforcement by reward.’ Coordination of multilateral efforts can be difficult, however (Martin 2000). Key actors sometimes disagree on whether it is worthwhile to punish noncompliance. Alternatively, punishment or rewards might be in the collective interest of all, but each member faces incentives to free-ride. This often results in an undersupply of multilateral inducements to comply (Barrett 2007).

Moreover, international inducements are not always renegotiation-proof. If a punishment (or a reward) is too costly to dispense, and the agreement is not self-enforcing, parties cannot credibly commit to imposing it (Barrett 2007). This is particularly acute in multilateral contexts (Guzman 2008: 66-68). The *political* costs of punishing noncompliance can also make sanctioning particularly costly: coercive sanctions can lead nontargeted states to feel threatened and to question the sanctioner’s motives. International organizations can help make punishment less costly by clarifying ambiguous rules, providing transparency and monitoring, and supplying information about powerful states’ intentions (Thompson 2009, 2013).

B. Reciprocity

Scholars and practitioners have long understood reciprocity to be an engine of *cooperation* (Schachter 1991). Axelrod (1984) shows that, even when parties have an immediate incentive to defect, tit-for-tat strategies can effectively promote cooperation by directly linking an actor’s current behavior to its expected future payoffs. Applying this logic to compliance specifically, the mechanism is as follows: if both parties gain from mutual compliance and will match noncompliance with noncompliance, the threat of reversion to the no-agreement status quo prevents each party from renegeing in the first place (Guzman 2008; Ohlin 2015).

Many conditions must hold for reciprocity to ensure compliance. Most obviously, reciprocal noncompliance must harm the party that is tempted to renege. This is rarely the case for human rights agreements (HRAs), which typically do not create cross-national externalities (Moravcsik 1999; Hafner-Burton 2005). For instance, the Swedish government may be outraged by the treatment of women in Saudi Arabia, but threatening to mistreat Swedish women will not induce Saudi Arabia to abide by the

Convention on the Elimination of Discrimination Against Women (CEDAW). In contrast, reciprocity often suffices for agreements addressing war conduct or trade, since bad behavior creates cross-national externalities, and retaliation can be targeted. Morrow (2007) finds that mutual ratification of war conduct treaties produces fewer violations through joint deterrence (see also Chilton 2015). Tit-for-tat can be a double-edged sword, however: if one party reneges, compliance breaks down quickly because reciprocity is more effective when both parties have ratified (Morrow 2007, 2014).

The shadow of the future also must be sufficiently long that the long-term benefits of mutual compliance outweigh the short-term benefits of mutual renegeing. If they do not, a feud of reciprocal noncompliance begins and the shadow of the future 'burns up' (Axelrod 1984). Axelrod and Keohane (1986) argue that whereas actors have reason to anticipate that economic relations will continue for an indefinite period of time, the possibility of preemptive war can make the shadow of the future less certain in security affairs.

A final challenge for reciprocity as an enforcement mechanism is that it is not always possible to limit the 'punishment' to the violator. This is a common problem in environmental affairs, particularly when multilateral in nature (Barrett 2007). Consider greenhouse gas emissions. The punishment of reciprocal noncompliance cannot be targeted only at states that are breaking their commitments. Consequently, the threat of increased emissions is not harmful enough to convince the tempted party to respect its obligations (Barrett 2007; Guzman 2008). In most cases, even a series of bilateral accords would not do the job.

C. Reputation

Henkin (1979: 52) noted decades ago that "[e]very nation's foreign policy depends substantially [...] on maintaining the expectation that it will live up to international mores and obligations." Why might a reputation for honoring legal commitments matter? For some, the answer is that states inherently value a reputation for respecting IL – a perspective that I discuss later in this article. For others, the answer is that reputation has real material consequences. A reputation for keeping promises can make it easier for governments to secure cooperation more broadly. In contrast, a reputation for unreliability might hinder cooperation because promises appear non-credible (Keohane 1984; Guzman 2008; Stiles 2015). Reputation is important for predicting future behavior, not for punishing past actions (Brewster 2009).

Scholars have focused chiefly on how a poor reputation endangers cooperation in the future or in other issue-areas. Gibler (2008) argues that if reputation matters, it should be easier for governments that abide by their promises to conclude agreements down the line. In support of this idea, he finds that states that honor alliance commitments are more likely to create alliances in the future. Simmons (2000) maintains that governments comply with Article VIII of the International Monetary Fund Treaty because they want *market actors* to view them as trustworthy in their commitments to protect property rights in the future (see also Nelson 2010). Hence a reputation for law-governed behavior can be useful for reassuring market actors about willingness to maintain the same policies down the road.

Whether a state's reputation in one issue-area affects its reputation in other issue-areas seems to be a subject of greater debate. The Swedish government may not infer from Saudi Arabia's failure to respect CEDAW principles that it is an unreliable World Trade Organization partner. The reason, Downs and Jones (2002) argue, is that the sources of compliance costs are unrelated. To the extent that governments are able to 'compartmentalize' their reputations (Fisher 1981: 130), reputation may not travel well across issue-areas. Guzman (2008: 100-06) disagrees, arguing that although states no doubt have multiple reputations, the latter are often interrelated (Chayes and Chayes 1995). Noncompliance in one area might tell a state's partners something about its attitudes toward the law more generally. It also conveys information about a government's underlying willingness to sacrifice long-term for short-term gains (see also Ohlin 2015).

An example of issue-area reputational linkage can be found in Moore (2003), who argues that when a state breaks its HRA promises, investors become more wary of investing because they conclude that the state is unwilling to restrain the present use of power in the interest of long-term benefits. The act of breaking a promise is key, and involves actors making inferences about trustworthiness in one area from behavior in another. Tomz's (2008) survey offers a novel approach to gauging cross-issue reputational spillovers. If presented with a state that always complied with its international economic commitments, respondents were significantly more willing to believe that ratification of the Nuclear Non-Proliferation Treaty 'matters' (i.e., that a ratifier would be significantly less likely than a non-ratifier to pursue nuclear weapons). This lends credence to the idea that individuals do draw connections between commitments in seemingly unrelated issue-areas.

Concerns about reputation, however, might not always weigh in favor of obeying treaty the law. Governments might instead want a reputation for being tough or protecting their interests (Keohane 1997; Hirose and Park 2013). If these conflict, governments might decide not to comply. In the late 1990s, for instance, the US seemed to have gained additional leverage from refusing to fulfill its financial obligations to the UN, rather than losing influence as a result of a damaged reputation (Keohane 1997). Additionally, leadership turnover calls into question the idea, or at least narrows the scope of the argument, that concerns about reputation drive compliance. States usually continue into the future; governments change. As Brewster (2009, 2013) notes, governments do not bear the full brunt of a bad reputation because their tenure is limited. Particularly when the party at the helm changes, reputations may or may not carry over. In the case of the treatment of detainees under the Bush administration, many international and domestic audiences expected the Obama administration to behave differently. Consequently, the reputational costs to the US as a whole may have been relatively limited (Brewster 2009, 2013).

Testing reputational theories is challenging. Much of the evidence has been anecdotal and/or limited by endogeneity problems. The measures that scholars have used often pick up on so many other mechanisms that it difficult to say with much certainty that reputation is the core causal variable (Gibler 2008; Tomz 2008). Recent survey experiments overcome those drawbacks. For instance, in a recent study, Tomz and Weeks (2015) parse out the two reputational mechanisms. Concerns about reputational spillover into other issue-areas played a significant role in motivating respondents to support military intervention, but the desire to maintain a good military reputation in

future interactions had an even stronger effect. Interestingly, this research also uncovers some of the limits of reputation. Indeed, the survey found that a sense of moral obligation had an even larger impact on respondents' decision to support intervention. I return to this finding later. Furthermore, if the material case (dollars, troops) for non-intervention is sufficiently compelling, respondents supported violating treaty obligations fairly readily (Tomz 2008; Tomz and Weeks 2015). The challenge for survey-based research, of course, is external validity. Citizens and leaders seem to care about a reputation for compliance. But how do these preferences translate into policy and practice?

D. Domestic Institutions and Politics

Important sources of enforcement lie inside the state. Scholars generally focus on the roles of courts, elections, legislatures, and non-state actors (and their interplay). Slaughter (1995) laid much of the groundwork for a dialogue between IL and IR scholars on domestic judicial institutions and compliance with IL. Independent domestic judiciaries are thought to aid in the enforcement of IL because they (1) empower citizens to challenge government (in)action legally; (2) have the authority to evaluate whether government (in)action adheres to existing law; and (3) base their rulings on legal principles rather than on government preference, popularity, citizens' desires/indifference, etc. Adverse rulings rarely lead to full/automatic compliance, but they make it more difficult for governments to continue renegeing (von Stein 2015). In the human rights arena, Simmons (2009) also points out that even if litigation is unsuccessful, it can empower people to think, talk, and struggle over rights that become part of the national dialogue and political change in the future.

Others take insight from the literature on leader punishment and international cooperation/conflict (McGillivray and Smith 2000), arguing that democratic leaders have stronger incentives to comply with their international legal obligations because competitive elections make it relatively easy for citizens to 'punish' leaders who renege on their promises (see also Schachter 1991). There are at least two reasons why political accountability might compel leaders to be vigilant. First, it forces a tighter alignment of citizen preferences and policy (Stiles 2015). Setting aside for the moment the question of what citizens *want*, political accountability compels leaders to be more concerned about whether noncompliance will cost them the support of citizens who benefit from the particular agreement or from the state's adherence to IL more broadly (Trachtman 2008). Second, breaking rules can reflect poorly from a valence standpoint, motivating even citizens who have no interest in IL but are concerned about competence more generally (Leeds 2003).

Putnam's (1988) now-canonical 'logic of two-level games' ignited a vast literature on how legislative constraints affect states' ability to conclude international agreements and to sustain cooperation (Milner 1977; Mansfield, Milner, and Rosendorff 2000; Martin 2000; Davis 2012). Legislatures can frustrate compliance – by delaying or refusing to pass implementing legislation, by refusing to shift budgetary resources, and so on (Pollack 2003). These *ex post* mechanisms of legislative control compel executives to take legislators' preferences into account at the negotiation stage, particularly for accords that require formal legislative ratification. Legislative involvement makes negotiations more complex, but it is also an asset, making the agreements reached

through this fractious bargaining process more credible and more likely to stick (Martin 2000).

The domestic enforcement of IL via courts, elections, and/or legislatures relies on government actors. But private ('non-state') actors play a role in IL's domestic enforcement as well. I focus here on social movements and firms, setting aside – due to space constraints – the numerous other non-state actors involved in domestic enforcement. There is a vast literature on how social movements and firms affect compliance with international law (c.f., Sikkink 1999; Stiglitz 2007; Tsutsui et al. 2012; and Muchlinski 2014). While these groups regularly exist and operate transnationally, I focus here on how they help (and, later, hinder) to enforce IL domestically. Social movements can play a crucial role in providing information about governments' legal obligations, in monitoring compliance, and in bringing violations to the attention of citizens and other interested domestic actors (Keck and Sikkink 1999; Sikkink 1999). These actions are not enforcement *per se*, but they aid with enforcement, particularly in combination with the other domestic mechanisms discussed in this section.

Social movements also involve themselves directly in enforcement, for instance by providing legal aid to victims and by bringing witnesses to court; or by launching campaigns that can become politically costly for leaders (Tsutsui et al. 2012). The Guantánamo Bay Detentions provide an interesting example. Domestic US activists, hand-in-hand with Democratic politicians, made this a politically salient issue in the 2006 midterm elections. Their criticisms included the US's international legal obligations. Social movements sometimes also engage domestic enforcement by bringing international actors into the picture, which might open up a political space to push for compliance through domestic channels (Keck and Sikkink 1999; Risse and Sikkink 1999).

At a very general level, we can say that firms involve themselves in the enforcement of IL when it is in their interest to do so, and when they have the necessary knowledge and resources (c.f., Davis 2012; Muchlinski 2014). Some of the most common mechanisms are lobbying and filing complaints and/or lawsuits. Returning to the *Bananas* dispute, the US firm Chiquita – which had massive operations in Latin America and was losing millions of dollars to the EU's restrictive regime – lobbied US politicians intensely and ultimately filed a section 301 petition to the US Trade Representative, which in turn led to a WTO dispute. Across the Atlantic, banana importers challenged the EU's banana regime in domestic courts. The most successful of these were in Germany, where German judges considered whether the regime violated the German constitution and whether these importers deserved compensation (Alter and Meunier 2006).

What does the empirical record tell us about domestic politics/institutions and compliance? There is certainly evidence that democracies abide by their international legal commitments more than non-democracies: they are more reliable alliance partners (Leeds 2003); they are, with some exceptions, more likely to comply with the civil rights treaties they have ratified (Hathaway 2002; Neumayer 2005); and they take their obligations under the laws of war more seriously (Morrow 2007, 2014). But there are many null or negative findings as well. Democracies are no more likely to abide by their obligations under Article VIII of the IMF Treaty (Simmons 2000); they are less likely to intervene to protect their allies in time of war (Gartzke and Gleditsch 2004);

and they are no more likely to respect their commitments under the International Covenant on Economic, Social, and Cultural Rights (ICESCR) (Cole 2015b).

These mixed findings can be attributed to two main factors. First, until recently, quantitatively-oriented scholars often relied on one measure – Polity score – to test arguments about the impact of courts, elections, legislative constraints, and even social movements. This measure was overly blunt and an inadequate operationalization of the specific causal mechanisms (Powell and Staton 2009). Scholars are now using more nuanced measures, with interesting findings. This improvement is particularly evident in the literature on HRAs. Initially, the general consensus was that these agreements had little discernable impact on human rights outcomes. Now, we know that their effects are conditional. I discuss some relevant findings on the next page.

A second reason why the empirical record has been so mixed is that with further scrutiny, it is evident that for each mechanism, there are many contingencies and even countervailing pressures. Domestic courts have complex doctrine detailing when treaties can be invoked (Dunoff et al. 2010). Hence they may choose, or be obligated, not to order other domestic actors to follow international rules. This may help explain some of the mixed findings. The relationship between elections and compliance depends crucially on what voters want and on who carries political leverage and informational advantages (Dai 2006). Indeed, democratic leaders may find it *more* difficult to stick by international promises if those promises are domestically unpopular (Gartzke and Gleditsch 2004). Rickard (2010) also offers interesting insight, looking at democracies and finding that those with majoritarian electoral rules are more likely to violate GATT/WTO restrictions on narrow transfers. Although legislative-executive relations can enhance the credibility of promises, they can also frustrate compliance by making policy change more onerous (Setear 2002). This is why compliance with negative WTO rulings is hard for the US when the matter requires Congressional involvement, but much easier when the President can make changes unilaterally (Davey 2006). This is also why EU member-states with more domestic veto-players take much longer to bring domestic legislation into compliance with EU law (Börzel, et al. 2012).

Armed with better data that gauge different mechanisms, researchers are beginning to understand better under what conditions domestic politics/institutions can aid in compliance. Some scholars take a ‘more is better’ stance – i.e., that ratification matters when domestic institutions are sufficiently robust. For instance, von Stein (2015) finds that adherence to a child labor treaty leads to notable child labor reductions when courts are sufficiently independent, in countries with competitive elections, and when civil society protections are sufficiently strong. Lupu (2015) looks to the International Covenant on Civil and Political Rights (ICCPR), and argues that ratification generates palpable civil rights improvements when there are sufficient domestic veto players to place constraints on what executives can do. Other scholars argue that ratification matters ‘in the middle’ – when domestic institutions are robust enough that citizens can use treaties to defend themselves, but not so robust that ratification is redundant (Simmons 2009).

Still others argue that domestic institutions/politics tug governments in different directions. Independent judiciaries, charged with upholding constitutions and protecting minority rights, can enhance compliance with the Convention Against Torture (CAT) by making it costlier for leaders to allow/engage in torture (Conrad and

Hencken Ritter 2013; Conrad 2014; Conrad et al. 2015). But another ‘democratic institution’ – contested elections – can have the opposite impact, incentivizing leaders to abuse weakly enfranchised individuals who are viewed as threats to ‘order’ (Conrad et al. 2015). These conflicting incentives affect government decisions at various stages: when/whether to ratify, when/whether to torture, and what type of torture to engage in.

5. Compliance as a Problem of Capacity/Management

States are under no legal obligation to join treaties; hence they are bound only to treaties to which they consent. This is one of the most fundamental principles of IL. The implication is that governments typically only take on international legal obligations that are in their interest (Chayes and Chayes 1995). This idea resonates well with the ‘enforcement’ line of thinking, discussed above. Here, however, is where the divergences begin, first about the ‘baseline’ of state incentives. Scholars who see noncompliance as a problem of enforcement typically assume that, in the absence of constraints, governments will cheat. The starting point for scholars like Chayes and Chayes – sometimes called ‘managerialists’ – is quite the opposite: governments have a general propensity to keep their international promises. Indeed, the care states take when negotiating and entering into agreements is evidence that they have a strong underlying sense of obligation to comply. In a context of limited resources, it is often more efficient to follow an established rule rather than constantly recalculating the costs and benefits of (non)compliance.

From this perspective, breaches of treaty obligations are rarely willful and calculated acts (Raustiala and Victor 1998). Instead, they are largely inadvertent (Cole 2015a), resulting from inadequate planning, agreement ambiguities, capacity limitations, and/or significant changes over time. In this context, it is not difficult to understand why scholars in this tradition are skeptical of mechanisms that drive up the costs of noncompliance. Punitive sanctions are difficult to mobilize and therefore only practically available in special circumstances (Young 1994; Chayes and Chayes 1995). In support of this idea, Chayes and Chayes (1995) note that even when violations are unambiguous, retaliation is rare. Even when sanctions are mobilized, they are often inefficient and sometimes make matters worse (Young 1994; Chayes and Chayes 1995). Reprisal can be particularly problematic when violations result from capacity problems, for they simply exacerbate the conditions that led to noncompliance.

From this viewpoint, the better path to compliance lies in more transparent agreement design, dispute resolution, and technical and financial assistance (Chayes and Chayes 1991, 1995; Young 1994; Brown Weiss and Jacobson 1998). In support of this conclusion, Chayes and Chayes (1991) find that agreements rarely provide for formal punitive sanctions. Moreover, when agreements do include dispute resolution provisions, these focus more on negotiation than on what to do when cooperation breaks down entirely. The treaties they examine emphasize technology transfer and technical assistance (the Montreal Protocol is a good example) and typically do not condition these on compliance.

Mitchell’s (1994) study of intentional oil pollution at sea offers an interesting comparison of two very different compliance systems. One required tanker owners to install expensive equipment. The other established pollution limits. The first system

made violations more transparent in a variety of ways, which ultimately led to much higher compliance rates than did the second regime. Although managerialists have often been critical of efforts to punish noncompliance, Mitchell (1994) emphasizes that equipment standards, by improving transparency, can make monitoring and sanctioning more efficient. This resonates with enforcement-based approaches (Abbott and Snidal 2000).

Of the authors discussed here, Haas (1989) relies perhaps most heavily on managerial and norm-driven arguments. Epistemic communities of ecologists and marine scientists involved in the Mediterranean Action Plan provided crucial technical expertise, but they were far more concerned with enabling parties to follow the rules than they were with designing stringent punishment mechanisms. In addition, these groups contributed to the regime's success by helping to define the terms of the debate and by articulating a persuasive argument about the need to take action.

Few would question whether capacity matters for compliance. That said, it is probably no coincidence that this approach gets the most traction in areas where scientific and/or technical expertise are crucial, such as the environment. In other realms, it is less evident that capacity/management give us as much purchase. It is not hard to find examples where governments willfully decide to flout their international legal obligations, having carefully considered the costs and benefits. (And – perhaps more difficult because these are the ‘dogs that didn’t bark’ – countries regularly debate the pros and cons of following rules, and comply.) In trade affairs, the US’s 2002 steel tariffs are but one example. In the human rights arena, examples abound: governments in many parts of the world operate expensive, intricate, repressive apparatuses in contravention of their international human rights obligations. Management or expertise cannot solve willful noncompliance. Changing the leader’s cost–benefit calculus – whether with carrots or sticks – has been found to work in some cases (Hafner-Burton 2005; Simmons 2009; Conrad and Ritter 2013).

Treaty compliance debates initially tended to view enforcement and capacity-based explanations as competing, and even conflicting, mechanisms (Chayes and Chayes 1995; Downs et al. 1996). More recently, scholars have taken a more pragmatic approach, emphasizing that enforcement and capacity can affect compliance simultaneously; they may in fact be mutually reinforcing (Tallberg 2002; Urpelainen 2010; Thompson 2012). The EU’s compliance system, for instance, relies on mechanisms that improve capacity *and* on mechanisms that detect and, when necessary, ‘punish’ violations (Montoya 2008; Börzel et al. 2012). Even in the human rights arena – a realm in which noncompliance often results from willful disobedience by actors who choose to break international rules (Hafner-Burton 2005) – several recent studies show that compliance failures also result from basic structural challenges such as limited bureaucratic/financial capacity to translate treaty commitments into practice (Sanchez 2009; Cole 2015a, 2015b; von Stein 2015). Cole (2015a), for instance, finds that bureaucratically strong states are significantly better able to implement their civil and political rights duties as delineated in the ICCPR. In other work on the ICESCR (2015b), he finds that ratification has its strongest impacts in developed countries, which he argues have the strongest capacity to implement those treaty obligations.

Another critique of the capacity/management approach to treaty compliance comes from Downs et al. (1996), who argue that there are serious inference problems.

Capacity/management-focused scholars view the relatively good compliance and the rarity of penalizing institutions as good news for cooperation. Downs et al. (1996) argue that these observations instead indicate that states are avoiding deep cooperation because they cannot develop the punishment mechanisms necessary to sustain it. The managerial school's findings may simply tell us that states are only committing to agreements that require minor departures from what they would have done in the absence of an agreement. I return to this question later in the chapter.

6. Compliance as a Function of Identity, Social Context, and Legitimacy

Scholars who emphasize enforcement or capacity/management as drivers of (non)compliance rely chiefly on instrumentalist, cost-benefit, logics. This is not the only way to approach compliance. Other scholars argue that this provides a myopic view of government decision-making. Leaders are also affected by their identity(ies) and social context, as well as their perceptions of agreements' legitimacy. These affect compliance in complex ways, often overlooked by strict cost-benefit approaches.

A. Identity and Social Context

Constructivists emphasize the complex ways in which norms and identity reshape and/or carry greater weight than do cost-benefit considerations (Jepperson et al. 1996; Koh 1997). A key concept here is internalization: the point at which a norm is so deeply ingrained that it has a 'taken for granted' character (Finnemore and Sikkink 1998). This is the end stage of many accounts, but the mechanisms that motivate this process are many. Some are dubious of this causal way of looking at things (Kratochwil and Ruggie 1966). I return to this question later.

Koh (1997, 1998) emphasizes transnational legal processes. This typically starts with an international actor, *A*, inciting an interaction with another actor, *B*, in an international legal forum. This forces an interpretation of the global norm (which may or may not be codified in an international agreement) that structures the situation. Importantly, the transaction creates (or activates, if the rule already exists) a legal rule that guides subsequent relations between *A* and *B*. Over time, this process reshapes *B*'s interest and identities, leading it to internalize the norms in domestic law, policy, and social practice. At this point, *B* 'obeys' the law – an act that carries greater significance than compliance because it results from *B*'s sense of *obligation* (Koh 1997, 1998).

Constructivist IR scholars often focus on socialization, a process by which beliefs about right and wrong become norms (Finnemore and Sikkink 1998), which in turn reshape interests, identities, and behavior (Risse and Sikkink 1999). (I set aside the question of how principled beliefs become norms, as it does not pertain directly to compliance and internalization). The culmination is internalization of the norm, but how do states get there? Scholars focus on three core mechanisms: material inducement, persuasion, and socialization (Koh 2005). I discussed the first of these earlier. I explore the latter two processes below.

Persuasion is about changing minds and attitudes in the absence of overt coercion (Johnston 2001: 496). Pro-compliance groups enhance their persuasive appeal by framing issues so they resonate with accepted norms and/or arouse strong feelings (Keck and Sikkink 1998). Argumentation is important. For instance, Finnemore and

Sikkink (1998) and Risse and Sikkink (1999, 2013) note that governments often ratify HRAs even when they do not genuinely intend to comply. But once tactical concessions such as these are in place, the 'logic of arguing' takes over. Governments make argumentative concessions and offer justifications. Domestic opposition groups and other advocacy networks take these seriously and attempt an earnest dialogue about how to curtail abuses. Continued dialogue and institutional reform often lead to compliance and, eventually, norm internalization. Thomas (2001), for instance, argues that Eastern bloc countries ratified the Helsinki Final Act because they wanted to gain legitimacy, expecting that they would never have to make good on those promises. But ratification had unintended consequences. The repeated appeals to, and mobilization around, these norms are credited with helping to undermine Soviet rule, thereby paving the path for democratic transition.

Successful persuasion results in compliance and internalization. Successful social influence, in contrast, often results in compliance without internalization (Johnston 2001). Why might governments conform to rules publicly even though they do not (necessarily) accept their desirability privately? Governments care (to varying degrees) about the perceptions of their citizens, advocacy networks, and other states. Here, Finnemore and Sikkink (1998) emphasize three motivations. First, governments want to look legitimate in the eyes of peers, which also affects their domestic legitimacy. Second, governments typically want to 'belong' to some desirable reference group. Finally, leaders want to maximize national (and personal) esteem; they want others to like them, and they want to feel good about themselves. The threat of social punishments – exclusion, shaming, dissonance from taking actions inconsistent with a particular identity – also looms (Johnston 2001). International conferences play a role in these processes by imparting new information and diffusing new norms.

'Acculturation' – adopting the behaviors of a reference group – is one mechanism of social influence (Goodman and Jinks 2004, 2008, 2013). As compared to the literature in the previous paragraph, acculturation places somewhat greater emphasis on the disconnect that can emerge between practices and beliefs. In an acculturation model, the mimicking state may not view the reference group's rule as legitimate. Rather, it simply needs to (1) care how it is perceived; and (2) understand that the reference group values the rule. Hence, it is the social structure – rather than rule content – that drives compliance. This resonates with the World Society literature on 'decoupling,' which notes that the act of treaty ratification is often divorced from the relevant practice (Hafner-Burton and Tsutsui 2005, 2007). However, Goodman and Jinks (2013) emphasize that decoupling is not always a bad thing; in fact, they argue, it can sometimes *facilitate* compliance, by opening up domestic political opportunities, exposing hypocrisy more clearly to foreign and domestic audiences, and creating opportunities for states to learn (Goodman and Jinks 2005, 2013).

Critics of the literature on identity and social pressure raise several objections. Some of the literature discussed above maps attributes of individuals – discomfort, esteem, a desire to conform – onto governments, which is an uncomfortable fit. States do not have feelings. Leaders do, but this begs more questions. How can we know what leaders feel? How do leaders' feelings translate into policy? Moreover, much of this literature focuses on 'successful' cases. We know less about partially successful or unsuccessful outcomes, although this is changing (C.f. Carpenter 2007; and several chapters in Risse et al. 2013). Finally, although much of this research has made greater efforts to specify under what

conditions norms and identity matter, it is still challenging to validate empirically (Keohane 1997). The move toward individual-level analysis in recent quantitative assessments of treaty compliance, discussed later in this article, has given us some traction on some of these questions, while leaving others unanswered.

B. Legitimacy and Fairness

Others argue that legitimacy and fairness are key to understanding compliance. For Franck (1990), a rule is legitimate when the individuals it addresses believe it has come into existence and is applied with right process. This comprises four elements. First, the law clearly communicates which behaviors are permitted and which are not. Second, the rule communicates authority via symbolic rituals or other formalities. Third, the law relates to other rules in the system in a principled manner; like cases receive the same treatment. Fourth, the rule is not made in an *ad hoc* fashion, but rather through procedures that an organized community accepts (Franck 1990). When a law fulfills these criteria, it exerts a ‘compliance pull’ independent of the material conditions that affect state practice.

Critics charge that in holding legitimacy, rather than justice, as the chief goal, Franck (1990) favors procedural regularity and adherence to rules even if they are immoral or unjust (Tesón 1992). Franck’s (1995) subsequent work is in part an effort to address this question (Koh 1997). A rule’s fairness, he argues, depends on two elements. First, the substantive component: a rule is fair if it meets parties’ expectations of justifiable costs and benefits. Second, the procedural component: legitimacy (as defined above) is an important element of fairness, although it alone is insufficient. These elements are often in tension, but “fairness is the rubric under which this tension is discursively managed” (Franck 1995: 7). Here, Franck emphasizes discourse, reasoning, and renegotiation – practices that are reminiscent of those in the constructivist research discussed earlier. However, Franck places greater emphasis on process than on persuasion: the back-and-forth involved in discussion and debate leads us to fairer rules and decisions, which in turn elicit better compliance.

These arguments about legitimacy and fairness, and their relation to compliance, leave several questions open. Legitimacy is difficult to gauge independently of the compliance it is meant to explain (Bodansky 2013). A rule’s ‘compliance pull’ is its index of legitimacy (Franck 1990), but legitimacy also explains ‘compliance pull,’ making the reasoning circular (Keohane 1997). Moreover, there are questions about *why* and *how* the discursive process that underlies the fairness mechanism makes rules more obligatory (Koh 1997). Moreover, Franck’s arguments beg the question: if legitimacy and fairness lead to compliance, why do governments not always create ‘legitimate’ and ‘fair’ agreements?

Empirical testing of arguments about legitimacy and fairness has proven difficult in the past. However, scholars have made some progress on this question in recent years, thanks to recent developments involving survey experiments. In a recent survey, Bechtel and Scheve (2013) find that respondents are significantly more supportive of a ‘polluter pays’ agreement as compared to one in which only rich countries pay for emissions reductions. Their interpretation is that the former arrangement is fairer. If future research, it would be interesting to explore this question further, focusing more

specifically on compliance (rather than institutional design, Bechtel and Scheve's emphasis), perhaps across various issue-areas.

7. Additional Questions: Some Old, Some New

A. Definitions of Compliance

Following much of the literature, I have used a particular definition of compliance: conformity to rules. This approach faces at least two criticisms. One comes from Kingsbury (1998), who argues that the concept of compliance depends on one's theory of law. My definition is appropriate if we perceive law as rules intended to regulate behavior. But if we have a process-based theory, which sees law as something that creates and shapes identities and social relations, this definition does not work. *Attitudinal* alignment becomes a core concern. From this perspective, we cannot comprehend how IL works without understanding how it molds identities (Brunée and Toope 2010). Instead, we should be exploring what really makes IL 'matter': intent and internal motivation (Howse and Teitel 2010). Because rules are both regulative *and* constitutive, it is impossible to separate them from behavior or to make causal statements about the two (Kratochwil and Ruggie 1986). See also Agon 2016 for a discussion of how institutional goals, including compliance objectives, shift over time and depend on the discursive practices of involved actors.

A second critique suggests that a focus on compliance is itself misguided. In fixating their attention on conformity to rules, scholars have mistakenly ascribed state behavior to institutional participation. They have also underestimated the impact of institutions on states that, despite making improvements, are not compliant. Instead, we should be interested in effectiveness (the extent to which a treaty solves the problem that led to its formation) and implementation (efforts to administer policy directives) (Young 1994; Brown Weiss and Jacobson 1998; Martin 2013). This critique has two main implications. First, we need to think in a more considered fashion about counterfactuals, which also involves careful investigation of what the treaty is intended to accomplish. Second, scholars relying on quantitative methods need to think more thoroughly about their dependent variable.

These are important points, but the problem may not be as grave as Martin (2013) suggests. On the theoretical side, much of the literature, while using the language of compliance, is interested in effects. This is largely a problem of vocabulary rather than theory. On the empirical side, we should certainly consider alternate ways of measuring the outcome of interest. Consider a hypothetical treaty requiring equal representation of women in legislatures. A standard approach would simply measure the percentage of parliamentarians who are women. But that is not the only way to evaluate treaty effects. One might argue that such an approach misses important improvements in countries with historically low women's representation. Accordingly, one might instead measure change, in relation to some base year or the previous year. Alternatively, one might focus on legislation intended to improve women's representation in parliament. All of the above are viable measurements. Importantly, they all come back to the basic question of conformity to rules. Compliance, far from being orthogonal to understanding causal effects, is an important component of measures we might develop.

B. Endogeneity and Selection

As discussed above, scholars like Downs et al. (1996) argue that compliance does not, by itself, demonstrate that IL imposes meaningful restraints on government practice. States may simply be creating and joining agreements that require minor departures from what they would have done in the absence of an agreement. This has important implications for how we study IL's impact on state behavior. Any theory of compliance must recognize that institutional design, and/or the decision to ratify, is at least in part endogenous: states are only likely to invest time and resources in agreements with which they have *some* interest in complying. Answering the 'why do states comply?' question requires that we also understand why states join in the first place (Downs et al 1996; von Stein 2005).

Most scholars now agree with the above points and recognize the need for more sophisticated statistical modeling that controls for endogeneity/selection effects. Here, however, there is significant disagreement. Some studies rely on Heckman-style approaches (von Stein 2005; Mitchell and Hensel 2007; Conrad and Ritter 2013). Others employ instrumental variable(s) (Simmons 2009; Cole 2015a, 2015b; von Stein 2015) or bivariate probit modeling (Powell and Staton 2009; Conrad 2014). Still others use matching techniques (Simmons and Hopkins 2005; Hill 2010; Spilke and Böhmelt 2013), sometimes combined with other methods (Lupu 2013, 2015; Fariss 2015). Ideally, theory would tell us which statistical approach is most appropriate, analysis of the data would provide clues, and results would not vary substantially depending on the technique employed. This seems to be the exception rather than the rule.

There are many critiques and questions to raise here. One important question for scholars like Downs et al. (1996) is this: if treaties simply embody outcomes in which states were already going to engage, why even bother to create or ratify treaties? Imagining for a moment that this extreme version is true for all states all the time, treaties still fulfill important purposes. Simply having a clear definition of what constitutes (non)compliance can be useful (Morrow 2002; 2014). This is particularly true in highly technical areas, where much of the battle lies in articulating a common standard and ensuring that all parties understand it (Urpelainen 2010). Moreover, treaties can serve an important 'screening' function, separating states that are willing to uphold the standard from those that are not (Morrow 2002). As game theorists have long understood, screening can rely on *ex ante* and/or *ex post* costs. The idea behind screening via *ex ante* costs is straightforward. If the process of being a party is onerous, or if membership is only available to states that have convincingly demonstrated their ability to meet the agreement's terms, then ratification is useful because it conveys information about 'type' to other actors (domestic groups, markets, other states...). The EU's stringent accession process relies in part on such a mechanism, combined with managerial-type mechanisms such as pre-accession assistance (Tallberg 2002).

Of course, to argue that the endogenous nature of treaty ratification is a problem for inference is not the same as saying that treaties never matter. Governments typically face multiple incentives when they consider joining an international agreement: on the one hand they might be concerned about their ability to comply, but on the other hand they might face strong domestic or peer pressure to ratify (Wotipka and Tsutsui 2008). Hence, even under complete information, governments might find themselves parties to treaties that are challenging to comply with (von Stein 2015). Nor does the complete information scenario always hold. Indeed, governments are, to at least some degree, behind a veil of ignorance when they negotiate and ratify treaties (Keohane 1997).

Governments can hedge against these uncertainties via escape clauses and other flexibility provisions (Kucik and Reinhardt 2008; Helfer 2012), but not all treaties contain these provisions.

If governments ratify and conditions then change, making compliance more difficult, how do they behave? (Of course, *clausula rebus sic stantibus* was designed for situations in which conditions change and make compliance difficult. As discussed earlier, this clause can only be reasonably invoked in limited circumstances). Surprisingly, there has been little systematic inquiry specifically into this question. One exception is Grieco et al. (2009), who explore what happens when a political party with anti-compliance preferences ‘inherits’ a treaty ratified by a pro-compliance government. They find that partisan shifts to the left lead to more current account restrictions and hence noncompliance with Article VIII of the IMF Treaty. Nonetheless, being legally committed does appear to impose some constraint: faced with a shift to the left, signatories engage in fewer restrictions than do nonsignatories. Similarly, von Stein (2015) posits that certain HRAs can be expected to have their strongest effects in countries that ratify as non-democracies but later transition to democracy.

Baccini and Urpelainen (2014) make an interesting corollary point, which is that treaties may still ‘matter’ even if we observe no difference between pre- and post-ratification behavior. The reason is simple: governments often begin bringing policies into conformity with rules in the post-negotiation phase, in the lead-up to ratification. ‘Phase-ins’ are useful for reassuring cooperation partners, and it is often easier to adjust policies incrementally rather than all at once on the day of ratification. In support of this argument, they find that developing countries bring their environmental practices into compliance in the lead-up to ratification of preferential trade agreements. This is an important finding, but it is unclear how broadly it applies. For agreements that do not involve explicit issue-linkage or the need to reassure cooperation partners, the outcomes might look different.

Aware of the problems of selection and endogeneity that often plague observational data, several scholars are now using survey experiments to gauge the impact of international law (Chilton and Tingley 2013). While this area of research is still budding, we can still make a few observations about it. First, these studies are virtually unanimous in finding that international law ‘matters.’ Respondents are significantly more willing to oppose a behavior if it violates international law, be it torturing citizens (Wallace 2013), emitting greenhouse gases (Tomz and Tingley 2014), erecting trade barriers (Tomz 2008; Chaudoin 2014), engaging in deadly bombing campaigns (Chilton 2015), or intervening in military conflicts (Tomz and Weeks 2015). Second, the effect of political ideology is mixed. For instance, Wallace (2013) examines support for the use of torture, and finds that IL has its strongest impact on moderates and liberals, and possibly no effect on heavy conservatives. In contrast, Chilton (2015) explores support for bombing campaigns that cause excessive civilian casualties, and finds that IL has much larger impacts on Republicans than on Democrats. Tomz (2008) looks at support for severing trade with Burma/Myanmar, and finds that Democrats and Republicans alike are sensitive to international legal arguments.

Third, institutional design has mixed impacts on compliance preferences. A core debate in the literature is whether binding law (e.g., a ratified agreement) is more powerful than non-binding law (e.g., a declaration). Hafner-Burton et al. (2016) survey NGO

professionals in the environmental and human rights arenas. Across the board, these groups believe that international agreements are useful for inducing governments to comply. However, the two groups diverge on the question of legal form. Human rights activists view binding and non-binding law as equally useful. In contrast, environmentalists prefer binding accords. Wallace (2013) surveys a sample of the general population and finds no evidence that respondents' willingness to condone the use of torture depends on the anti-torture convention's degree of bindingness. Interestingly, respondents are much less supportive of the use of torture if the agreement was very precise and/or delegated authority to an international institution.

Finally, international law competes with other factors that drive compliance. The most obvious of these is interests. Tomz's (2008) respondents, for example, were much more willing to break international law by severing trade with if told that such an action would help the US economy. Similarly, Tomz and Weeks's (2015) respondents were substantially less supportive of intervention on behalf of an ally in high-cost situations. Interestingly, morality is also an important engine of compliance in IR/IL survey experiments. Tomz and Weeks (2015: 12) report that respondents' sense of moral obligation has the strongest impact on willingness to abide by alliance commitments – even stronger than reputation. Hafner-Burton et al.'s (2015) finding that elites are wary of making false promises even if they are unenforceable opens up the possibility that leaders are concerned about the moral implications of reneging, although a 'shadow of the future' explanation is also possible.

C. Quantification

Empirically, we know a great deal more about compliance than we did just a decade or so ago. Throughout this process, researchers have made choices about which questions and research tools to privilege. One example of this is the 'quantification' of the study of IL, a trend that is evident throughout this article. This move has been beneficial in a variety of ways. The ability to compare countries over time has made it possible to move beyond the idiosyncrasies of a particular country or time-period to make generalizable assessments of how IL works. In some cases, data have allowed comparisons across agreements and issue areas, a task that is difficult in a case study. Cutting-edge statistical techniques have made it possible to grapple with challenging questions of endogeneity. The recent injection of survey experiments into our toolkit has enabled scholars to sidestep the endogeneity problem, bringing fresh insight into how international law works.

At the same time, the quantification of the study of IL has its perils. We gain the ability to make general statements, but lose the richness of understanding one gets from honing in on one country or a few cases. Existing measures are often unable to distinguish between different mechanisms. A final drawback of quantitative research is that debate sometimes comes to focus on method rather than substance. To some extent, this is understandable: mastery of the method sometimes requires sophisticated technical debate. Nonetheless, it becomes problematic if the result is a decoupling of methodological and substantive discussions, or if scholars who use different methodologies stop talking to each other – and/or to the policy community.

Insight from qualitative research breathes life into regression tables; it also helps us to (better) nail down causal mechanisms. Quantitatively-oriented scholars do not

necessarily need to conduct in-depth case studies or field research of their own, although they might find that such an approach gives them a richer and more realistic understanding of how international works in practice. Conversely, scholars who employ case studies and similar approaches do not necessarily need to start collecting large datasets, but they do need to consider how the cases and/or outcomes on which they focus affect their inferences (Geddes 1990). Dialog across fields (political science, IL, sociology, and so on) and methodological approaches can only help to improve the quality of treaty compliance research.

8. Conclusion

IL is rarely enforced through international courts, backed by the threat of intervention by a standing police or army. This does not mean that states constantly break their international legal promises. Indeed, this article has shown that various mechanisms – the proverbial carrots and sticks; technical and financial assistance; tying good behavior to a particular identity – can, depending on one’s perspective, help to ensure that states keep their international promises much of the time. This does not mean that states *always* abide by the treaties they sign/ratify. Indeed, a key finding to emerge from this overview is that it is *not* the case that almost all states respect their obligations almost all the time (Henkin 1979: 47).

Recent research has taken us a long way toward understanding better *under what conditions* governments keep these promises, but there are many outstanding questions. One pertains to the use of survey experiments, which have breathed new life into treaty compliance debates. Surveys, it is well known, have external validity problems (Hyde 2015). How much can we infer from them about international legal practice in the ‘real world?’ Researchers using this tool need to do as much as they can to replicate that ‘real world,’ in which leaders, activists, and ordinary citizens grapple with tradeoffs, uncertainty, limitations on cognitive capacity, and emotions.

Another question regards the compliance literature’s heavy focus on written agreements. Less formal institutions, especially customary international law, have received limited attention in the IR literature. For many IR scholars, unwritten law derived through practice feels slippery. But customary international law *matters* to legal practitioners and scholars. Are we missing important elements of the compliance puzzle by focusing on written agreements? The answers to these and other questions will help shape theoretical and empirical approaches to compliance well into the future.

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Abstract:

If there is authority higher than the state, why do governments ever abide by the pacts they make with each other? For some, the answer is simple: states only respect agreements that fulfill their immediate interests. Others are more nuanced. One group of scholars views compliance as a problem of enforcement, arguing that international inducements, reciprocity, reputational concerns, and/or domestic politics/institutions regularly help sustain compliance. Others draw our attention to capacity or management problems as drivers of noncompliance. From this perspective, governments abide by their commitments through the provision of transparent agreements, technical and financial assistance, and solid dispute resolution. Seen from this angle, mechanisms that 'punish' noncompliance, for instance by suspending international inducements like foreign aid, in fact tend to make matters worse. Finally, some scholars perceive compliance through the lens of social context, identity, and/or legitimacy. Governments keep their promises because they care how others perceive them, internalize norms, and/or view agreements as valid and fair. This article provides an overview of these arguments, with a strong emphasis on recent developments in international law and international relations.

SEE ALSO: Foreign Policy Analysis and Rational Choice Models; Formal International Institutions and the Regulation of Flows of Goods and Services; Human Rights: Effectiveness of International and Regional Mechanisms; Identity in International Relations; The Interaction of Theory and Data; Internalization of International Law; International Environmental Law; International Relations and Comparative Politics; Treaty Law: New Trends; Transnational Human Rights Networks: Significance and Challenges