

The Conflicting Effects of International Law

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Executive Summary

Our book proposes a new theory that brings together two divergent approaches to explaining human rights violations—one emphasizing conflict with dissidents regardless of institutional influences and the other examining constraints on executive decision-making without considering their consequences for interactions with the opposition. We present a theory of conflict under potential international and domestic institutional constraint, deriving the novel implication that international treaties can constrain human rights violations but can also increase mobilized dissent that threatens authorities' hold on power.

Prominent scholarship has found that while international human rights treaties (IHRTs) may not lead to rights protection directly,¹ they do have effects on domestic political outcomes; committing to international legal obligations increases the probability of costly domestic litigation, making repression less appealing as an option of state control.² Drawing on this scholarship, our theory examines how the domestic legal effects of IHRT commitment impact the strategic decision to repress in a conflict with potential dissidents. This conflict, along with institutions that constrain executive decisions and thereby affect mobilized dissent, influences the likelihood that a leader can hold onto power. The effects of IHRTs on domestic political processes therefore pull leaders in conflicting directions: mobilization undermines leaders' position in power, increasing incentives to repress, while effective courts raise the probability of litigation, decreasing incentives to repress.

We present our simple strategic theory informally and show empirical support for its implications in a series of chapters, each with their own novel insights. The effects of commitment to international law are contingent on how securely a leader holds power. Interestingly, a leader who is vulnerable to losing power is unaffected by legal constraints, while a secure leader not only represses more severely to counter higher levels of dissent but also is constrained by the threat of increased legal repercussions. The expectation of this constraint opens opportunities for citizens to dissent more than they would otherwise, endangering the leader's position in power. We also introduce a second model, in which we hold these expectations fixed and consider the role of a court that can choose its cases carefully in light of the dangerous domestic conflict in which the leader is engaged. Finally, we present the conditions under which a state will commit to an IHRT in light of its potentially conflicting effects.

This book fills a critical gap in human rights scholarship, introducing strategic considerations to a largely state-centric literature. Contributing to political, sociological, and legal scholarship in a manner accessible to graduate and advanced undergraduate students, the book presents insights on a variety of key topics, including the constraining effects of human rights treaties, domestic conflict processes, social mobilization, domestic implementation of international law, strategic domestic judicial behavior, and the ratification of theoretically "toothless" international treaties.

¹See, for instance, Hathaway 2002, Hafner-Burton 2005, Neumayer 2005, Vreeland 2008, and Hill 2010.

²Powell and Staton 2009, Simmons 2009.

1: Introduction.

2: The Role of Treaties in Human Rights Protection. Scholarship is conflicted as to the effects of IHRTs on human rights practices, but the general consensus in the literature does not look good for treaties. Treaties are argued to largely have a screening effect, only receiving support from states that protect rights anyway, and they have even been found in some cases to make human rights practices worse. However, Simmons (2009) and others have begun to find that treaties can potentially have a positive impact on human rights via their effect on domestic politics. *(Motivate central puzzle.)*

3: Institutions and Domestic Conflict. Most human rights scholars examine how international and domestic institutions impact repression directly, arguing that they impose costs on violating authorities. However, these studies ignore the central motive for human rights violations: to control mobilized challenges. In other words, institutions that constrain leaders actually impact a dynamic interaction between the state and its citizens. In order to study institutional constraints on repression, then, we need a model that includes the constraint *and* the strategic conflict between the two players. *(Motivate theoretical approach.)*

4: The Model. We informally present a game theoretic model (formal model and proofs in the Appendix) that does precisely that. We describe and explain equilibrium behavior, and we introduce a numerical simulation in order to present predicted behavior in a general sense. *(Theory. This theory has been specified and solved, presented formally in an article accepted for publication in the Journal of Politics.)*

5: Predicting Repression. We derive implications from both versions of the theory for repression. We test these implications on the state's propensity to torture, given commitment to the UN Convention Against Torture. *(Empirical Analysis. Analysis completed and presented in the article accepted for publication in the Journal of Politics.)*

6: Predicting Mobilization. We derive implications from the theory for mobilized challenges. We test these implications on the state's propensity to experience mobilized challenges, given commitment to the International Covenant on Civil and Political Rights as well as the Convention for the Elimination of Discrimination Against Women. *(Empirical Analysis. Analysis completed and presented in an article under review at International Organization.)*

7: Predicting Judicial Effects. We respecify the theory to hold mobilization exogenous and allow the judiciary to act as a strategic actor, given the state's incentives to constrain it. We derive predictions for the effect of IHRT commitment on judicial behavior and test these predictions. *(Theory and Empirical Analysis.)*

8: Predicting Commitment. We derive implications of both versions of the theory to predict the conditions under which a state will commit to an IHRT, given the above effects. We test these implications on the propensity to commit to the above-mentioned international treaties. *(Empirical Analysis.)*

9: Conclusion.