

RESPONSE

Disaggregating the Human Rights Treaty Regime

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In their essay, 'The Influence of History on States' Compliance with Human Rights Obligations,' Adam Chilton and Eric Posner draw on development economics to note that modern human rights practices are partially a function of phenomena from distant history: colonization patterns, geography, and old institutions. They contrast the predictive power of these factors with that of participation in the modern international human rights legal regime. They conclude that ratified human rights instruments in the aggregate have had little effect on governments' rights practices and that researchers should therefore turn to factors other than treaties for robust explanations (if not solutions) for the wide variation in human rights practices across states. In this response essay, we disaggregate several aspects of the human rights regime that much of the existing scholarship—including 'The Influence of History'—has largely aggregated. In doing so, we show that Chilton and Posner's aggregation obscures nuances of treaty engagement and effects that might meaningfully implicate the normative role of the human rights regime. We argue that the "treatment" of a human rights institution is not synonymous with the point of ratification. As others have noted, ratification commonly works through international and domestic processes and institutions and operates over a long time-horizon, extending well before and after the moment of legal obligation. We conclude that, to understand the process by which treaty engagement might influence rights conditions, scholars should build on those studies that recognize and take advantage of this insight.

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I. INTRODUCTION

Social scientists, historians, and legal scholars have long sought to explain the immense global variation in how governments treat their citizens. While some governments guarantee and deliver ample levels of basic human goods like food, shelter, and health care, others fail to do so. Some governments afford citizens civil liberties, like freedom from arbitrary punishment and the power to choose their government, while others work aggressively to deny those rights. In their essay, *The Influence of History on States' Compliance with Human Rights Obligations* (hereinafter "*The Influence of History?*"), Adam Chilton and Eric Posner adapt the approaches of development economics to bring new insights to the sources of these divergences.¹ They conclude that modern human rights practices are partially a function of phenomena from distant history: colonization patterns, geography, and old institutions.

A large and burgeoning body of scholarship considers how contemporary institutional and developmental factors influence current human rights practices.² Yet the notion that events from the distant past shape human rights today is underexplored in the legal and political literature. *The Influence of History* thus deserves credit for continuing the

1. Adam Chilton & Eric Posner, *The Influence of History on States' Compliance with Human Rights Obligations*, 56 VA. J. INT'L L. 211, 233 (2016).

2. See, e.g., James M. McCormick & Neil Mitchell, *Is U.S. Aid Really Linked to Human Rights in Latin America?*, 32 AM J. POL. SCI. 231 (1988); Steven C. Poe & C. Neal Tate, *Repression of Human Rights to Personal Integrity in the 1980s: A Global Analysis*, 88 AM. POL. SCI. REV. 853 (1994); Kathleen Pritchard, *Human Rights and Development: Theory and Data*, in HUMAN RIGHTS AND DEVELOPMENT: INTERNATIONAL VIEWS 329 (David P. Forsythe ed., 1989).

important insights of development economics and its effects on democracy.³ A robust literature on the political, economic, and institutional causes of government repression does take seriously some—though certainly not all—of the historical phenomena that Chilton and Posner emphasize.⁴ Legal scholars interested in the impact of human rights treaties are only just beginning to incorporate insights drawn from the state repression literature, and rarely do they account for factors such as climate, region, and legal system.⁵ *The Influence of History* provides an important reminder that these two bodies of research must speak to and learn from one another. We hope, as Chilton and Posner do, that their article spurs a broader conversation about the historic causes of state human rights abuses. If for no other reason, we want modern-day decisions about settlement, migration, and institutional design to foster better conditions centuries from now.

To frame and justify their focus on temporally distant causes, Chilton and Posner first contrast the predictive power of these factors with that of participation in the modern international human rights legal regime. After surveying some of the empirical literature, they conclude that ratified human rights instruments in the aggregate have had little effect on governments' rights practices.⁶ In their view, “the evidence [did not find] that commitments to international agreements improved respect for human rights in all cases.”⁷ The treaty system's “disappointing results,” they reason, should therefore “lead to a search” for an alternate explanation: “the *long-term* influences on human-rights performance.”⁸ “[I]f the human rights performance of states is tied to conditions hundreds of years ago,” they argue, “then threatening human-rights violators with sanctions will have limited effect on their behavior.”⁹ In other words, researchers must turn to

3. In his response essay published in this volume, Yonatan Lupu implies that Chilton and Posner's empirical and statistical methods do not tell the whole story, and he develops additional models to test their conjectures about distant-past causes. See generally Yonatan Lupu, *Explaining Human Rights Abuses: Comparing Contemporary Factors and Historical Factors*, 56 VA. J. INT'L L. 481 (2016).

4. See *supra* note 2; *infra* notes 66–83.

5. But see Sara McLaughlin Mitchell, Jonathan J. Ring & Mary K. Spellman, *Domestic Legal Traditions and States' Human Rights Practices*, 50 J. PEACE RES. 189 (2013) (examining the influence of domestic legal culture and traditions on repression).

6. Chilton & Posner, *supra* note 1, at 213 (“The evidence suggests that human rights treaties have either a modest effect or no effect on the behavior of governments.”).

7. *Id.* at 221 (discussing research conducted by Beth Simmons).

8. *Id.* at 218 (emphasis added).

9. As an initial aside, we note the fallacy that partly leads them to discount modern interventions. Merely because a phenomenon is caused by something in the distant past does not imply that it cannot be changed by some treatment in the present. Consider how their logic would apply to some disease known to be linked to environmental effects from long ago: “If the [presence of lung cancer in people] is tied to [toxic chemical exposure] conditions [from many] years ago, then [attempting to treat the disease] with [chemotherapy] will have limited effect on [the disease].”

factors other than treaties for robust explanations (if not solutions) for the wide variation in human rights practices across states.¹⁰

In this essay, we also consider the question of treaty efficacy, but we do so by disaggregating several aspects of the human rights regime that much of the existing scholarship—including *The Influence of History*—has largely aggregated. In doing so, we show that aggregation obscures nuances of treaty engagement and effects that might meaningfully implicate the normative role of the human rights regime. In Section II, a thorough review of the pertinent literature demonstrates that while some treaty provisions are largely ineffectual, others might not be. Treaty effects vary in magnitude and often depend on certain types of domestic actors and institutions, but they nonetheless have meaningful influence in many environments. In Section III, we argue that the “treatment” of a human rights regime is not synonymous with the point of ratification: it is far more complex. As others have noted, ratification often does not produce immediate reform per se. Rather, it commonly works through international and domestic processes and institutions, and it operates over a long time-horizon, extending well before and after the moment of legal obligation. To understand the process by which treaty engagement might influence rights conditions, we conclude, scholars should build on those studies that recognize and take advantage of this insight.

II. DIVERSE PROBLEMS, DIFFERENT TREATIES, DISPARATE RESULTS

International legal agreements represent a diverse set of distinct institutions, yet performance evaluations of the human rights regime often treat it as a singularity. To be sure, the goals and substance of some early treaties partly inspired and influenced later treaties, but different actors drafted the instruments, and decades separate the earliest agreements from the most recent ones.¹¹ Like treaties generally, human rights conventions vary meaningfully in their scope and the difficulty of the challenges they address. They also reflect different institutional designs and strategies—in terms of interpretation, monitoring, and enforcement mechanisms—to

10. As with some of Posner's previous writings in this area, e.g., ERIC A. POSNER, *THE TWILIGHT OF HUMAN RIGHTS LAW* (2014), many human rights lawyers and international law scholars will bristle at this argument. For some, their professional experience and own research have convinced them that treaties are—and should be—an important tool in improving global human rights practices. Though we empathize with this sentiment, we applaud Chilton and Posner's willingness to challenge what some have come to consider orthodoxy.

11. The earliest is the International Convention on the Elimination of Racial Discrimination, which entered into force on January 4, 1969; the most recent is the International Convention for the Protection of All Persons from Enforced Disappearance, which entered into force on December 23, 2010.

tackle these issues.¹² So it is not surprising that their effectiveness also varies. Some treaties appear to have made progress toward their goals, while others have been largely ineffective or even counterproductive. Moreover, there is variation even within agreements; treaties typically have multiple objectives, and a given convention usually realizes some of those goals more successfully than others.

Before reviewing the literature, we note that (as with the empirical study of the causes of repression generally) the study of international legal institutions' effect on human rights practices presents several methodological and evidentiary challenges. First, scholars are still struggling to develop and collect comprehensive, unbiased, and valid measures for human rights practices. As a number of recent studies have demonstrated, we should be wary of the inferences that can be drawn from off-the-shelf measures employed to date, both those used to proxy human rights and those used to proxy standard controls such as democracy and economic development.¹³ Another significant methodological challenge relates to so-called "selection effects." That is, many of the same country-level characteristics that predict rights abuses independently affect governments' likelihood of making treaty commitments. These country-specific characteristics can be fixed historical factors (such as geography) or more proximate, time-varying characteristics (such as GDP per capita, degree of democratic governance, and strength of the judiciary).

Despite these challenges, over roughly the past fifteen years, numerous studies have attempted to measure the effect of treaties on human rights practices. These studies use different approaches, including selection models, instrumental variables,¹⁴ and matching techniques,¹⁵ to attempt to overcome the lack of "random assignment" in treaty ratification behavior. Although

12. On the rational design of treaties across different issue areas and cooperation problems, see generally BARBARA KOREMENOS, *THE CONTINENT OF INTERNATIONAL LAW: EXPLAINING AGREEMENT DESIGN* (2016).

13. See generally Christopher J. Fariss, *Respect for Human Rights Has Improved Over Time: Modeling the Changing Standard of Accountability*, 108 AM. POL. SCI. REV. 297 (2014) [hereinafter *Respect for Human Rights*]; Daniel W. Hill & Zachary M. Jones, *An Empirical Evaluation of Explanations of State Repression*, 108 AM. POL. SCI. REV. 661 (2014); MORTEN JERVEN, *POOR NUMBERS: HOW WE ARE MISLED BY AFRICAN DEVELOPMENT STATISTICS AND WHAT TO DO ABOUT IT* (2013).

14. An *instrumental variable* approach is a statistical technique in which the researcher identifies some feature of the analyzed unit (the instrument) that is theoretically related to the predictor variable but not to the outcome variable. She then draws inferences about causation from the relationship between the instrument and the outcome. See, e.g., BETH A. SIMMONS, *MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS* (2009).

15. *Matching* is a statistical technique in which the researcher pairs numerous units of observation (country-years, for instance) that have several similar features, except that one member of the pair received the "treatment" in question (here, treaty ratification) and the other did not. The researcher then observes the difference in relevant outcomes (here, human rights performance) between the two and infers that the treatment caused that difference. See Stefano M. Iacus et al., *Causal Inference Without Balance Checking: Coarsened Exact Matching*, 20 POL. ANALYSIS 1 (2012).

these approaches represent improvements on early studies, each has its weaknesses, and researchers are still far from reaching a consensus on how to best address this issue.¹⁶

To further develop our argument that human rights treaties should not be treated as a singularity, we carefully review this existing quantitative literature,¹⁷ organized by agreement.¹⁸

A. *International Covenant on Civil and Political Rights*

The International Covenant on Civil and Political Rights (ICCPR) was one of the earliest major human rights conventions. It covers a wide array of negative rights, meaning those rights that limit government action. Not surprisingly, the ICCPR has been the most frequent subject of quantitative research on the impact of treaty ratification, and these studies have yielded mixed findings. In one of the first studies, Linda Camp Keith finds no relationship between ICCPR ratification and human rights practices when using multivariate analyses that control for domestic factors associated with civil and political rights guarantees.¹⁹ Somewhat alarmingly, Eric Neumayer finds support for the conclusion that ICCPR ratification is associated with worse personal integrity rights in autocracies and has no or a similarly conditional negative impact on civil rights in these regimes.²⁰ However, he also finds that ratification is followed by improved rights practices in more democratic countries and in countries with stronger civil societies.

In a study of six of the major human rights conventions, including the ICCPR and International Covenant on Economic, Social, and Cultural

16. See, e.g., Christopher Winship & Stephen L. Morgan, *The Estimation of Causal Effects from Observational Data*, 25 ANN. REV. SOC. 659, 674, 683 (1999) (describing the strengths and weaknesses of several methods for estimating causal effects from observational data).

17. We recognize that considerable qualitative research on the influence of human rights law examines the long-term processes underlying treaty implementation and compliance. See, e.g., THOMAS RISSE, STEPHEN C. ROPP & KATHRYN SIKKINK, *THE POWER OF HUMAN RIGHTS: INTERNATIONAL NORMS AND DOMESTIC CHANGE* (1999). These case studies are particularly insightful for generating ideas for institutional design improvements. We limit ourselves to the existing quantitative literature to better engage with the cross-national points that Chilton and Posner make.

18. In addition to being organized by treaty, our literature review differs from Chilton and Posner's in that we include eleven recent studies—those by Powell & Staton (2009), Simmons & Danner (2010), Cole (2012), Hill & Jones (2012), Smith-Cannoy (2012), Htun & Weldon (2013), Conrad and Ritter (2013), von Stein (2015), Cole (2015), Fariss (2015), and Jo & Simmons (2016)—as well as the eight which they review.

19. However, comparison of practices two years before joining the treaty with periods up to six years after joining shows a statistically significant but very modest decrease in abuses. Linda Camp Keith, *The United Nations International Covenant on Civil and Political Rights: Does It Make a Difference in Human Rights Behavior?*, 36 J. PEACE RES. 95 (1999).

20. Eric Neumayer, *Do International Human Rights Treaties Improve Respect for Human Rights?*, 49 J. CONFLICT RES. 925 (2005).

Rights (ICESCR),²¹ Emilie Hafner-Burton and Kyoteru Tsutsui control for a country's engagement with international NGOs when evaluating treaty effects and find that ratification is significantly associated with more state repression.²² By controlling for INGO engagement, this model design conceptualizes the "treaty effect" narrowly; it excludes the downstream effects of civil society using ratification to promote reform, a phenomenon for which other studies find evidence.²³ Yet despite finding a negative association with ratification per se, Hafner-Burton and Tsutsui conclude that treaties may still contribute to improved practices indirectly, as "the norms codified in these treaties are spread through INGOs that strategically leverage the human rights legal regime to pressure governments to change their human rights behavior."²⁴

In more recent studies, Daniel Hill finds that ICCPR ratification is associated with a small but significant decrease in physical integrity protections,²⁵ Heather Smith-Cannoy similarly finds a negative relationship between ratification and rights performance,²⁶ while Yonatan Lupu finds no significant impact—negative or positive—on physical integrity rights guarantees.²⁷ As mentioned previously, existing measures of human rights practices tend to exhibit increasing bias toward more violations.²⁸ When using a new latent measure that adjusts for these changes in rights accountability standards, Christopher Fariss finds a positive relationship between ICCPR ratification and physical integrity rights.²⁹

Few of these studies theorize when or how ICCPR ratification should impact civil and political guarantees, and most focus on the relationship between ratification and the most severe political rights violations—physical integrity rights, which include freedom from torture, arbitrary imprisonment,

21. Hafner-Burton and Tsutsui's study is the only quantitative study of the ICESCR, and their negative findings are similar to those for the ICCPR. Emilie Hafner-Burton & Kiyoteru Tsutsui, *Human Rights in a Globalizing World: The Paradox of Empty Promises*, 110 AM. J. SOC. 1373 (2005).

22. *Id.*

23. See, e.g., *infra* notes 40–41 and accompanying text.

24. Hafner-Burton & Tsutsui, *supra* note 21, at 1399.

25. Hill employs matching techniques to estimate the sample average treatment effect of ICCPR ratification. Daniel W. Hill, *Estimating the Effects of Human Rights Treaties on State Behavior*, 72 J. POL. 1161 (2010).

26. Smith-Cannoy employs a matching approach to estimate the relationship between ICCPR ratification and rights performance. HEATHER SMITH-CANNOY, *INSINCERE COMMITMENTS: HUMAN RIGHTS TREATIES, ABUSIVE STATES, AND CITIZEN ACTIVISM* (2012).

27. Lupu uses a propensity matching technique that better accounts for the selection effects arising from a country's treaty commitment preferences. Yonatan Lupu, *The Informative Power of Treaty Commitment: Using the Spatial Model to Address Selection Effects*, 57 AM. J. POL. SCI. 912 (2013) [hereinafter *The Informative Power*].

28. Fariss, *Respect for Human Rights*, *supra* note 13.

29. Christopher J. Fariss, *The Changing Standard of Accountability and the Positive Relationship between Human Rights Treaty Ratification and Compliance* (June 3, 2015) BRIT. J. POL. SCI. (forthcoming), available at <http://ssrn.com/abstract=2517457> [hereinafter *The Changing Standard*].

and other government action. Yet because the range of civil and political rights covered within the ICCPR is quite broad, we might not necessarily expect treaty ratification to impact all types of rights guarantees equally. Studies that emphasize treaty ratification's effect on physical integrity rights may thus be producing findings that do not generalize to the full array of ICCPR rights, as some mechanisms through which ratification could impact government behavior might be less effective in protecting physical integrity than in other domains.

Along these lines, Lupu argues that the ICCPR affects civil and political rights differently. Specifically, the treaty will most impact those rights for which domestic legal remedies involve lower standards of proof and evidence-production costs.³⁰ Consistent with this theory, he finds that ICCPR ratification significantly and substantially improves government respect for freedoms of speech, association, and religion, areas where domestic courts are likely to have relatively greater information on violations.³¹ Yet treaty commitment has no impact on incidents of killings, torture, or imprisonment, and may slightly increase disappearances. In line with Lupu's argument, the prohibitions against torture, killing, arbitrary detention, and disappearances are all issues for which legally admissible evidence and information is the most difficult to obtain.³² Likewise, in a well-known and comprehensive study, Beth Simmons theorizes that treaties have the greatest influence in countries where civil society actors have both the motivation and the means to mobilize for treaty compliance. In examining the influence of ICCPR ratification using an instrumental variable approach, she finds a weak but positive association with greater religious freedoms for all regime types, with the relationship most pronounced for partially democratic and transitioning countries.³³ She similarly finds that in the short-term, ICCPR ratification has a discernable positive influence on fair trials, but only within transitioning and partially democratic countries.³⁴

In line with many of the ICCPR studies, Wade Cole finds no statistically significant aggregate relationship between ICCPR ratification and physical integrity or empowerment rights. However, as with a few of the studies discussed above, he does find positive effects conditional on a government's

30. Yonatan Lupu, *Best Evidence: The Role of Information in Domestic Judicial Enforcement of International Human Rights Agreements*, 67 INT'L ORG. 469 (2013) [hereinafter *Best Evidence*].

31. Lupu uses the same propensity matching technique he uses in *The Informative Power*, *supra* note 27.

32. *Id.*

33. Simmons uses a two-stage regression model with ratification in the region, common-law legal system, and ratification procedures as instruments for ICCPR ratification. SIMMONS, *supra* note 14, at 172, 174–78.

34. *Id.* at 183–87.

bureaucratic capacity, in that “highly capable bureaucracies” can improve outcomes in the areas of civil, political, and physical integrity rights.³⁵

In sum, these studies suggest that ICCPR ratification alone—that is, without the assistance of downstream domestic effects—yields little if any noticeable improvements in civil and political rights guarantees (though it depends partly on the measure of political repression or rights practices used). However, existing research also provides some conditional hope that ICCPR ratification opens up space for certain types of domestic actors, namely, independent courts, civil society actors, and strong government bureaucracies, to push successfully for stronger guarantees for some civil and political rights.

B. Convention on the Elimination of All Forms of Discrimination Against Women

Of the human rights instruments evaluated quantitatively, research suggests that the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) has perhaps the most impressive achievement record. This research implies that the treaty’s ratification has produced some positive effects for at least some types of women’s rights, either across all countries in the aggregate or conditional on domestic institutional features.

In terms of aggregate impact, some studies find a general association between CEDAW commitment and both greater female life expectancy and higher levels of female literacy.³⁶ In estimating the average treatment effect of CEDAW ratification on three different outcomes—women’s social rights, women’s economic rights, and women’s political rights—Hill finds improvement across all three rights categories, although the relationship is only significant for political rights and is substantively small.³⁷ On average, ratification of CEDAW leads to a two percent lower probability of falling within the worst category of rights protection (few political rights are provided in law) and a five percent higher probability of providing the fullest political rights guarantees for women in law *and* practice.³⁸

When accounting for governments’ treaty commitment preferences in addition to the fact of treaty ratification, Lupu similarly finds that CEDAW ratification improves respect for women’s political rights.³⁹ In contrast to

35. Wade Cole, *Mind the Gap: State Capacity and the Implementation of Human Rights Treaties*, 69 INT’L ORG. 405, 435 (2015).

36. *See, e.g.*, Mark M. Gray, Miki Caul Kittilson, & Wayne Sandholtz, *Women and Globalization: A Study of 180 Countries, 1975–2000*, 60 INT’L ORG. 293 (2006).

37. Hill attempts to address the selection issues plaguing this research by employing matching techniques. Hill, *supra* note 25.

38. *Id.*

39. Lupu, *Informative Power*, *supra* note 27.

the much weaker findings of Hill, he finds that ratification is associated with improved respect for economic and social rights at traditional levels of statistical significance. Moreover, the marginal effects of CEDAW commitment on respect for women's rights are substantively large across the board.

As for conditional effects, Simmons finds that CEDAW commitment meaningfully influences girls' access to education in select domestic circumstances.⁴⁰ As mentioned above, many theorize that treaties are most effective when they mobilize domestic civil society and similar organizations. These groups are neither uniformly present nor similarly positioned to push for reform across countries. In that vein, Simmons hypothesizes that CEDAW's effect is conditional on a country's level of democracy, and finds that treaty impact is most limited in stable democracies, dictatorships, and non-secular states. In secular, transitional democracies, however, CEDAW appears to promote increased educational opportunities for girls. She finds similar positive conditional effects on access to contraception and public sector employment opportunities for women. Likewise, using a cross-sectional time-series model, Mala Htun and S. Laurel Weldon find that CEDAW ratification alone has no effect on violence against women. But similar to the conditional arguments discussed above, treaty commitment conditional on the presence of strong, autonomous feminist groups is associated with a moderate improvement in the violence-against-women index.⁴¹

C. *Convention Against Torture*

In contrast to CEDAW, studies on the Convention Against Torture (CAT) produce findings that are mixed but more disappointing.⁴² For example, Hill finds that the probability of frequent torture occurring is fifteen percent higher within countries that have ratified the CAT than in non-ratifiers;⁴³ Smith-Cannoy also finds that CAT ratification is associated with worse human rights performance over time.⁴⁴ However, when accounting for governments' treaty commitment preferences, Lupu finds no

40. Simmons uses an instrumental variable approach to try to address selection issues. SIMMONS, *supra* note 14.

41. The violence-against-women effect on the index is roughly 0.25 standard deviations. Mala Htun & S. Laurel Weldon, *The Civic Origins of Progressive Policy Change: Combating Violence Against Women in Global Perspective, 1975–2005*, 106 AM. POL. SCI. REV. 548 (2012). The standard deviation figure was calculated by this essay's authors from Htun and Weldon's supplementary materials.

42. For one of the first studies to emphasize the limits of CAT ratification in reducing torture, see Oona A. Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 YALE L.J. 1935 (2002).

43. Hill, *supra* note 25.

44. SMITH-CANNOY, *supra* note 26.

significant relationship—positive or negative—between CAT ratification and torture.⁴⁵

In a recent study, Fariss concludes that increasing rights accountability standards have masked improvements in state human rights performance, including with regard to physical integrity practices and the CAT. He develops a measurement approach to compensate for this shift, and, using new measures of rights practices, he finds that CAT ratification is, on average, associated with improved human rights.⁴⁶ It is thus not surprising that Hill and Zachary Jones, in evaluating the predictive power of various measures often identified as important causes of state repression,⁴⁷ find that both CAT and ICCPR ratification have a small positive association when using Fariss's recent latent rights measure, but a small negative relationship when using more traditional measures of state repression.⁴⁸

In terms of conditional effects, several studies have found that CAT ratification is associated with improved rights practices under enabling domestic institutional characteristics, relating to degree of democracy, strength of civil society, leader tenure, and judicial independence. For example, Simmons finds that CAT ratification reduces torture in transitioning and partially democratic regimes but makes no difference within stable democracies or stable autocracies.⁴⁹ Similarly, Neumayer finds that CAT ratification in pure autocracies with no civil society is associated with a worsening of human rights, but is followed by improved rights in more democratic countries and those with stronger civil society.⁵⁰ In testing one of the more nuanced conditional models to date, Courtney Conrad and Emily Ritter find that the impact of CAT commitment on decisions to repress mobilizing populations depends on leaders' security in their tenure.⁵¹ Emilia Powell and Jeffrey Staton consider the joint probability of CAT ratification and engaging in subsequent torture at different levels of judicial effectiveness. Across a broad swathe of measures and model specifications, they find that states with high levels of judicial effectiveness are less likely

45. Lupu, *Informative Power*, *supra* note 27.

46. *Id.*; Fariss, *Respect for Human Rights*, *supra* note 13.

47. Daniel W. Hill, Jr. & Zachary M. Jones, *An Empirical Evaluation of Explanations for State Repression*, 108 AM. POL. SCI. REV. 661 (2014).

48. These include measures from the CIRI Human Rights Data Project and the Political Terror Scale. David L. Cingranelli & David L. Richards, *The Cingranelli and Richards (CIRI) Human Rights Data Project*, 32 HUM. RTS. Q. 395, 401 (2010); Mark Gibney, Linda Cornett, Reed Wood, Peter Haschke & Daniel Arnon, *The Political Terror Scale 1976–2015* (2015), available at: <http://www.politicalterror scale.org>.

49. Simmons uses a two-stage regression model, with: (1) the nature of the legal system (common law), and (2) treaty ratification by other states within the region, as instruments for CAT ratification. SIMMONS, *supra* note 14, at 269, 273–76.

50. Neumayer, *supra* note 20.

51. Courtenay R. Conrad & Emily Hencken Ritter, *Treaties, Tenure, and Torture: The Conflicting Domestic Effects of International Law*, 75 J. POL. 397 (2013).

to ratify the CAT (because they anticipate strong legal enforcement), but those that do ratify are less likely to engage in torture.⁵² These CAT studies are therefore consistent with the rights literature's broad intuition that treaties do not always constrain violations uniformly and directly, but that under certain domestic institutional and political conditions, conventions can alter domestic politics and incentives to facilitate enhanced rights protection.⁵³

D. Convention on the Rights of the Child and the Minimum Age Convention

Social scientists have studied two of the major children's rights-oriented conventions, finding some generally hopeful results for both. Simmons examines the influence of the Convention on the Rights of the Child (CRC). She finds that ratification reduces the prevalence of child labor across all types of countries, but that this relationship is strongest for middle-income economies.⁵⁴ In contrast, CRC ratification has a negligible or very weak general association with improvements in immunization rates, but again has its greatest impact in middle-income countries.⁵⁵

Jana von Stein's study of the Minimum Age Convention (MAC), a child-labor agreement concluded under the auspices of the International Labour Organization, finds that many states with poor child labor practices do not ratify the convention at all.⁵⁶ Yet she also finds that where democratic or liberal institutions exist, MAC ratification is associated with noticeably lower levels of prohibited child labor.⁵⁷ Specifically, the incidence of child labor decreases by between 1.3 and 1.8 percent, an effect she views as "substantively meaningful, but not radical."⁵⁸ She too concludes that international human rights treaties can be effective conditional on the appropriate domestic institutions. "[W]hen rights practices do not conform

52. Emilia Justyna Powell & Jeffrey K. Staton, *Domestic Judicial Institutions and Human Rights Treaty Violation*, 53 INT'L STUD. Q. 149 (2009).

53. Studies that suggest that CAT ratification can have positive effects conditional on domestic institutions are particularly important given a relatively recent reform within the CAT regime—the entering into force of its Optional Protocol (OPCAT)—which seeks to intervene in and strengthen domestic institutions. OPCAT requires states parties to create independent domestic institutions with the authority to monitor, train, and sanction relevant officials.

54. SIMMONS, *supra* note 14, at 321–28.

55. *Id.* at 328–35.

56. Jana von Stein, *Making Promises, Keeping Promises: Democracy, Ratification and Compliance in International Human Rights Law*, 46 BRIT. J. POL. SCI. 1, 12 (2015) ("For countries with robust civil liberties and/or democratic elections, increases in child labor significantly reduce MAC ratification.").

57. *Id.* at 20 ("In the MAC case, the evidence shows that ratification leads to significantly lower child labor among democracies.").

58. *Id.* at 16.

to treaty rules but strong domestic accountability mechanisms exist,” von Stein argues, human rights agreements “can have real bite.”⁵⁹

E. *Rome Statute of the ICC*

Though the Rome Statute establishing the International Criminal Court (ICC) is not always counted among the major human rights treaties, some believe that it represents “the final culmination of [the] normative proliferation in the field of human rights.”⁶⁰ There have been few studies of the Statute’s effectiveness, but one by Beth Simmons and Allison Danner gauges the effect of ratification on cessation of violent conflict. It finds that, among systems with the weakest democratic accountability, state ratification makes a lull in hostilities roughly seven to nine times more likely. This finding suggests that even countries with weak domestic institutions have experienced a positive impact following ratification.⁶¹ Another recent study by Hyeran Jo and Beth Simmons investigates the ICC’s deterrent effect in states subject to its jurisdiction.⁶² Probing the mechanisms of the treaty’s potential impact, they conceptualize deterrence as operating via two pathways: *prosecutorial* deterrence (resulting from fear of prosecution) and *social* deterrence (resulting from informal social costs on law-breaking imposed by the ICC regime). Using measures of intentional civilian killings over the period 1989–2011, Jo and Simmons find that states parties to the Rome Statute that have enacted implementing criminal legislation experience a meaningful reduction in killings by governments. They attribute this effect to the risk of direct ICC prosecution and to social deterrent pressures.⁶³

Table 1 summarizes the findings of the studies undertaken to date, most of which are reviewed above.⁶⁴ The record is far from a universal success,

59. *Id.* at 20.

60. Todd Landman, *The Political Science of Human Rights*, 35 BRIT. J. POL. SCI. 549, 550 (2005) (citing RICHARD FALK, HUMAN RIGHTS HORIZONS: THE PURSUIT OF JUSTICE IN A GLOBALIZING WORLD 4 (2000)).

61. Beth A. Simmons & Allison Danner, *Credible Commitments and the International Criminal Court*, 64 INT’L ORG. 225, 247 (2010) (“In all specifications, the governments with the weakest domestic accountability mechanisms that have ratified the Rome Statute are more likely to experience at least a lull in violent hostilities following ratification compared to the least accountable governments that have not ratified.”). Chapman and Chaudoin question these findings, claiming that non-democracies with a history of civil conflict are less likely than democracies to ratify the Rome Statute, thereby diminishing Simmons and Danner’s findings and the ICC’s influence generally. Terrence L. Chapman & Stephen Chaudoin, *Ratification Patterns and the International Criminal Court*, 57 INT’L STUD. Q. 400, 405–09 (2013).

62. Hyeran Jo & Beth A. Simmons, *Can the International Criminal Court Deter Atrocity? An Analysis of Violence against Civilians in Civil Wars*, 70 INT’L ORG. 443 (2016).

63. *Id.* at 37.

64. The reader will note that it bears a resemblance to Table 1 in Chilton and Posner’s essay. Chilton & Posner, *supra* note 1, at 220. Of course, in light of the additional studies included and the discussion above, its characterizations differ somewhat.

but it is also hardly one of universal failure. As Xinyuan Dai has recently argued, the unspoken consensus within the literature is that these treaties can and do influence human rights in some countries, at some points in time, and under certain conditions.⁶⁵ No one expects or argues that treaties can or should have a uniform effect across countries and conditions. Rather, as our review of existing studies has made clear, some treaties produce noticeably positive effects under certain circumstances.

A nontrivial portion of these findings demonstrates positive effects in some types of environments but no significant effects in others. In Table 1 of *The Influence of History*, Chilton and Posner characterize these types of findings simply as “mixed.” We prefer the term “conditionally positive” to describe essentially the same result, trading conciseness for precision. As our literature review illustrates, these studies do not generally find a “mixed” effect, as in partially helpful and partially harmful; rather, as most theory would predict, the effect is positive in some types of domestic environments and not statistically significant in others.

In this sense, the “treatment” of a human rights treaty is akin to a drug associated with measurable benefits in men but not women. For the set of patients it helps, the benefit is meaningful; for the others, it is harmless. Few would suggest that the existence of a treatment group that is neither helped nor harmed counsels for abandoning research into the treatment’s development; quite the opposite. These conditional relationships should prompt further research into the mechanisms through which the treatment *is effective*, with the goal of bolstering and broadening its beneficial impact. In this sense, these conditional associations are perhaps more important than substantively larger associations with non-proximate factors.

65. Xinyuan Dai, *The Conditional Effects of International Human Rights Institutions*, 36 HUM. RTS. Q. 569, 572 (2014).

Table 1 - Summary of Key Empirical Literature on Human Rights Treaty Influence

| Author(s) | Agreement Studied | | | | | | | |
|--|-------------------|-------|-------|-----|--------|------|-----|-----|
| | CAT | ICCPR | CEDAW | CRC | ICESCR | CERD | ICC | MAC |
| Keith (1999) ⁶⁶ | | + | | | | | | |
| Hathaway (2002) ⁶⁷ | - | | | | | | | |
| Hafner-Burton & Tsutsui (2005) ⁶⁸ | - | - | - | - | - | - | | |
| Neumayer (2005) ⁶⁹ | - | - | | | | | | |
| Simmons (2009) ⁷⁰ | (+) | (+) | (+) | (+) | | | | |
| Powell & Staton (2009) ⁷¹ | (+) | | | | | | | |
| Hill (2010) ⁷² | - | - | (+) | | | | | |
| Simmons & Danner (2010) ⁷³ | | | | | | | (+) | |
| Cole (2012) ⁷⁴ | ? | ? | ? | | | + | | |
| Hill & Jones (2012) | ? | ? | | | | | | |
| Smith-Cannoy (2012) ⁷⁵ | - | - | | | | | | |
| Htun & Weldon (2013) ⁷⁶ | | | (+) | | | | | |
| Lupu (2013a) ⁷⁷ | ? | ? | + | | | | | |
| Lupu (2013b) ⁷⁸ | | +/? | | | | | | |
| Conrad & Ritter (2013) ⁷⁹ | (+) | | | | | | | |
| Von Stein (2015) ⁸⁰ | | | | | | | | (+) |
| Cole (2015) ⁸¹ | | (+) | | | | | | |
| Fariss (2016) ⁸² | + | | | | | | | |
| Jo & Simmons (2016) ⁸³ | | | | | | | (+) | |

“+”: Positive effect on rights – generally; “(+): Positive effect on rights—conditional on one or more aspects of the domestic system; “?”: Statistically insignificant effect on rights; “-”: Negative effect on rights

Our review of the literature also suggests that the successful treaty provisions vary both in the conditions under which they make an impact and in the magnitude of their effect on rights practices. For some types of rights, treaty ratification is associated with substantively large improvements

66. Keith, *supra* note 19.

67. Hathaway, *supra* note 42.

68. Hafner-Burton & Tsutsui, *supra* note 21.

69. Neumayer, *supra* note 20.

70. SIMMONS, *supra* note 14.

71. Powell & Staton, *supra* note 52.

72. Hill, *supra* note 25.

73. Simmons & Danner, *supra* note 61.

74. Wade M. Cole, *Human Rights as Myth and Ceremony? Reevaluating the Effectiveness of Human Rights Treaties, 1981–2007*, 117 AM. J. SOCIOLOGY 1131 (2012).

75. SMITH-CANNOY, *supra* note 26.

76. Htun & Weldon, *supra* note 41.

77. Lupu, *Best Evidence*, *supra* note 30.

78. Lupu, *Informative Power*, *supra* note 27.

79. Conrad & Ritter, *supra* note 51.

80. Von Stein, *supra* note 56.

81. Cole, *supra* note 35.

82. Fariss, *The Changing Standard*, *supra* note 29.

83. Jo & Simmons, *supra* note 62.

in practices; for others, these effects are very small yet still significant.⁸⁴ In the abstract, a few-percentage-point increase in some quantity of rights protection may not seem impressive. Yet given the many factors—historical and proximate—that influence rights protections, the fact that treaty ratification is associated with even small increases in the probability of better rights practices *in the short term* is worth emphasizing and examining further.

As stated, modeling repression involves myriad methodological issues, and we must use caution in drawing inferences from limited data. It therefore behooves us to elaborate the causal mechanisms and conditions underlying human rights treaty impact. Doing so will not only provide more nuanced theories and informed empirical findings, but will also help us identify ways to design interventions that could matter over time. These types of interventions ultimately deserve close attention—from lawyers, policy makers, and just as important, from scholars.

III. BEYOND RATIFICATION: UNPACKING TREATY ENGAGEMENT

As the previous section has made clear, existing studies typically assess the general relationship between human rights treaties and practices. They do so by examining statistical correlations between the act of formal treaty commitment (ratification) and rights protections. Notably, most studies treat the act of commitment as a singular event, a one-shot treatment. In *The Influence of History*, Chilton and Posner similarly consider the relevant human rights indexes for the period from five years before to five years after ratification of the ICCPR, CEDAW, and CAT. As seen in that article's Figure 1, we observe little, no, or negative improvement in rights scores in the five years following ratification of these agreements.

This approach begs two questions: When a government initiates the treaty ratification process, what exactly do we expect that experience to do? And what happens, as a result of this process, at the domestic and international levels that might subsequently impact human rights practices or outcomes? The approach to evaluating impact quantitatively adopted in Chilton and Posner's Figure 1—using reduced-form empirical tests—makes sense only if we answer these questions simply: that is, if we consider the act of ratification (or what it proxies) as the only theoretically meaningful treatment. Yet qualitative social science and legal scholars are well aware that governments develop, join, and implement treaties in a process that is complex, multi-staged, and often quite lengthy. Every stage of that

84. Chilton and Posner's characterization of the literature notes, but ultimately glosses over, this nuance. Chilton & Posner, *supra* note 1, at 219 (“[T]he evidence [did not find] that commitments to international agreements improved respect for human rights in all cases.”); *id.* at 213 (concluding that “human rights treaties have either a modest effect or no effect on the behavior of governments”).

process—both before and following ratification—may affect governments’ preferences and rights protections. Under this narrative, the treaty effect is decidedly not an immediate product of ratification, or even a proximate five-year lagged effect. Rather, it is a drawn-out process that could take longer than a decade and may feature both incremental advances⁸⁵ and backsliding.

Consider that a country’s first engagement with a human rights treaty regime often occurs years before ratification, during the negotiation process. This process itself, which often takes years, may attract the attention of media and stakeholder organizations, thereby potentially stimulating a pro-reform public consciousness. Following conclusion and signature of the treaty text, ratification in many legal systems requires legislative approval of the instrument. This process can also drag on for months and often years. During this period, discussion of ratification may prompt renewed domestic debate over the treaty, which may call attention to ways in which the state currently falls short of the treaty’s terms. After legislative approval and ratification, policymakers must decide how, if at all, the government should amend its domestic laws or enact new policy programs to meet these new international obligations. If adopted, these new regulations may then take additional years to permeate the state bureaucracy. It typically takes even longer for these regulations to diffuse into provincial and local law and custom, the sites where many human rights are often realized or violated. Of course, these steps are hyper-generalized; significant variation in states’ domestic legal and political machinery no doubt gives rise to different cross-national and cross-temporal pathways and timelines for human rights norms to take shape.

One generalizable consequence of this process is that the period from a treaty’s ratification to its complete incorporation into a domestic system can and often does span many years. For example, the Convention Against Torture was concluded in 1984 and entered into force in 1987. The United States signed the treaty in 1988 and ratified it in 1994. Yet Congress did not enact legislation implementing its requirements until four years later, in 1998.⁸⁶ Following CAT’s statutory implementation in the United States, federal agencies such as the Department of Justice⁸⁷ began to promulgate regulations. The earliest of these regulations did not take effect until 1999, nearly five years after ratification. Would we expect to observe a robust

85. See Mila Versteeg, *History, Geography, and Rights: A Response to Chilton and Posner*, 56 VA. J. INT’L L. 501, 505 (2016) (emphasizing the importance of studying “critical junctures” to “gain insight into how nations can overcome their histories”).

86. Foreign Affairs Reform and Restructuring Act of 1998, H.R. 1757, 105th Cong. § 1242 (1998).

87. Under CAT, the U.S. Department of Justice’s Immigration and Naturalization Service (INS) bore obligations not to deport aliens who were likely to be tortured upon return. The INS was disbanded in 2003, and its responsibilities were transferred to agencies within the newly formed Department of Homeland Security.

policy impact on U.S. torture-related performance indexes five years after ratification, before the treaty was fully part of domestic law?

This timeline is not unique to treaty implementation in the United States, a government with a relatively well-functioning bureaucracy. For countries that suffer from inefficient bureaucracies, poorly funded agencies, or widespread unaccountability for subnational officials, the timeline may be even longer. This narrative is at odds with approaches to evaluating treaty impact—and implicitly, the effectiveness of the human rights regime—that view ratification as a unitary treatment, or which consider only short-term outcomes. Those approaches may be creating unrealistic expectations for the process and timeline of treaty effects. In sum, viewing ratification as a singular event over-simplifies a complex process and does not facilitate systematic articulation of what we expect to happen either before or after ratification.

Recognizing that the relationship between treaty ratification and domestic practices is neither straightforward nor direct, a growing number of scholars have begun to unpack post-ratification engagement with treaty regimes in order to isolate the impact of proximate effects of treaty commitment on rights practices. For example, Wade Cole notes that countries can submit themselves to different levels of treaty commitment, each of which gives rise to different types of engagement during the post-ratification period.⁸⁸ In a study that covered the CAT, CEDAW, ICCPR, and CERD, Cole analyzes whether human rights practices vary with a country's decision to sign a treaty as compared with ratification, with a country's decision to make ratification condition upon certain reservations, understandings, or declarations (RUDs), and with its decision to accede to a treaty's individual and inter-state complaints procedures.⁸⁹

Cole finds that acceptance of the individual complaints mechanism under the CAT is significantly associated with better rights practices as compared to non-signatories, signatories, *and* ratifiers who have not accepted this additional and ongoing form of oversight. Ratification of the First Optional Protocol of the ICCPR is similarly associated with better

88. Cole, *supra* note 74, at 1137–42. Cole's study does control for the historical factor of legal tradition and includes a Western-country indicator.

89. Under the CAT, governments must make an explicit declaration accepting the jurisdiction of the Committee to hear inter-state complaints (Article 21) or individual complaints of CAT violations (Article 22). The ICCPR provides for an individual complaints procedure through its First Optional Protocol, which requires a separate ratification process; parties must make an explicit declaration accepting the jurisdiction of the Committee to hear inter-state complaints under ICCPR Article 41. CEDAW's Optional Protocol provides for an individual complaints procedure, but because it only entered into force in 2000, Cole did not include it in his analysis. Under CERD, governments must make an explicit declaration accepting the jurisdiction of the Committee to hear individual complaints of treaty violations (Article 14). Cole suggests that CERD Article 11 and CEDAW Article 29, which do not require separate acceptance, represent a type of inter-state complaints mechanism, although these provisions are distinct in that they are more about resolving disagreements over treaty interpretation rather than the lodging of a complaint about violation.

protection of empowerment rights (speech, assembly, religion and the right to vote), whereas RUDs attached to ICCPR ratification are associated with lower levels of respect. In contrast to a number of the studies discussed previously, Cole finds no significantly positive effect on women's rights of CEDAW signature, ratification, or acceptance of its individual complaints mechanism. CERD signature and ratification are both associated with less political discrimination against minorities. However, acceptance of the individual complaints provision is associated with *increased* levels of discrimination, which he suggests is due to the relatively infrequent use of this mechanism under CERD. This finding suggests first that a country's level of commitment matters for the extent of that treaty's effect on rights practices, a common endogeneity argument; states with a strong commitment to human rights are already more likely both to ratify a treaty and to provide better rights guarantees. Importantly, it also suggests that the extent to which a country's level of treaty commitment and engagement impacts rights practices varies *across* treaties. For some, it matters; for others, not at all.⁹⁰

Similarly, Cosette Creamer and Beth Simmons examine the effects of a country's *history* of engagement with a treaty's periodic review process on rights practices.⁹¹ They argue that state self-reporting to the human rights treaty bodies can contribute to improved implementation of and compliance with international obligations via three mechanisms: the creation of bureaucratic routines that enhance the capacity to self-regulate; elite socialization; and the use of self-reported information by domestic audiences. Adopting a dynamic causal inference approach, Creamer and Simmons find that governments that promptly submit reports on treaty obligations and that engage in more and more *responsive* dialogue with the CAT Committee are more likely to subsequently engage in less torture over

90. For CAT, Cole finds that signature and ratification (whether conditional on RUDs or not) are not associated with better or worse physical integrity rights practices, but acceptance of individual and inter-state complaints mechanisms were associated with improved rights guarantees. For the ICCPR, he finds that signature mattered more than ratification *per se*, that unconditional ratification contributed to greater empowerment rights guarantees than ratification conditional on RUDs, that unconditional ratification of the First Optional Protocol establishing an individual complaints mechanism was associated with improved empowerment rights outcomes, and that acceptance of the inter-state complaints mechanism was associated with better rights guarantees. CEDAW signature and ratification alone are not associated with better women's rights protections. Counter-intuitively, he finds that ratification conditioned by RUDs is associated with greater rights protections as compared to unconditional ratification, but that this positive relationship only holds for non-Muslim countries. CERD signature and ratification are both associated with less discrimination against minorities, while acceptance of the individual complaints mechanism is associated with greater discrimination. Cole, *supra* note 74, at 1137–42.

91. Cosette D. Creamer & Beth A. Simmons, *Do Self-Reporting Regimes Matter? The Impact of Dynamic Regulatory Processes in International Human Rights Law* (Mar. 27, 2016) (unpublished manuscript) (on file with authors).

time.⁹² While the shift in the probability of torture due to self-reporting and dialogue is not massive, it is all the more believable for its modest size. Moreover, local media attention in reporting states spikes during the review process, consistent with a domestic mobilization mechanism.⁹³

These studies suggest that post-ratification processes matter, since the availability of and engagement with reporting and complaint mechanisms moderates the ability of treaties to impact conditions on the ground. These studies also imply that we should concentrate on isolating the effect of and improving those mechanisms, rather than dismissing the entire regime when we find no single-shot effects in the aggregate.

Finally, it is worth emphasizing that few, if any, studies on the impact of human rights treaties theorize or explicitly model time in the compliance process. How soon post-ratification should we expect to see effects? We have surprisingly little insight into and no clear expectations regarding the timeline of change in human rights laws, policies, and practices.⁹⁴ The most we can say is that it would be disingenuous to expect full implementation, institutionalization, and internalization immediately or even proximately following ratification. To improve our expectations regarding timing, it may be more appropriate to model the impact of ratification not in terms of its association with a given *level* of rights protection but in terms of its association with the *amount of time* it takes for a country to reach a different level of rights protection (whether improved or deteriorating).⁹⁵ This question is an important counter to critics of the international human rights regime. In order to demonstrate that these treaties ‘matter,’ we first need to generate expectations about how long it *should* take for ratification to improve practices. This requires us to specify each step of the various paths through which ratification may impact practices. It also calls for further

92. *Id.*

93. *Id.* at 19–29. As discussed at length in Section II, some other research—notably studies by Beth Simmons and Harold Koh—further highlights the role of mobilization and activation of domestic groups and institutions. See generally Harold Hongju Koh, *Transnational Legal Process*, 75 NEB. L. REV. 181 (1996); Harold Hongju Koh, *Filartiga v. Pena-Irala: Judicial Internationalization into Domestic Law of the Customary International Law Norm Against Torture*, in INTERNATIONAL LAW STORIES (John E. Noyes, Laura A. Dickinson & Mark W. Janis eds., 2007); SIMMONS, *supra* note 14. Domestic actors strategically leverage government commitments to international treaty law as a supplement or complement to domestic laws and resources in order to shape local norms and attitudes.

94. *But see* THE PERSISTENT POWER OF HUMAN RIGHTS: FROM COMMITMENT TO COMPLIANCE (Thomas Risse et al. eds, 2013). On implementation timing in the economic realm, see Leonardo Baccini & Johannes Urpelainen, *Before Ratification: Understanding the Timing of International Treaty Effects on Domestic Policies*, 58 INT’L STUD. Q. 29 (2014).

95. For example, instead of standard regression, researchers might use a hazards model with time-to-given-level of rights protection as the outcome variable of interest. Courtney Conrad and Will Moore adopt a similar approach in estimating the impact of liberal democratic institutions on a state’s probability of terminating its use of torture. See Courtenay Ryals Conrad & Will H. Moore, *What Stops the Torture?*, 54 AM. J. POL. SCI. 459 (2010).

qualitative case studies to ascertain how long it takes countries to amend relevant laws, create institutions, enact policies and implement programs to support enforcement of those laws, and ultimately observe behavioral change in outcomes on the ground.⁹⁶

IV. CONCLUSION

The push to develop a global human rights treaty regime began soon after World War II, but systematic efforts to evaluate its efficacy began just over fifteen years ago. While there is still much we do not know about how and to what extent human rights treaties work, we have also learned several valuable things in that time. For instance, in many cases to date, treaties have apparently fallen well short of their goals, and in some cases, they have shown promising results. The latter conclusion is true particularly if our notion of success allows for dependence on other institutional features and accounts for effects stemming from events other than ratification.

Trying to force this set of nuanced and varied effects into one simple, success-or-failure story, as many—including Chilton and Posner—have done, creates misleading results. Returning to the medical metaphor, if we were to group together and summarize the results of studies on different types of medical treatments for a diverse set of physical diseases over several decades, we would get a noisy, confusing, and perhaps disappointing understanding of their effectiveness. We might well conclude that the treatments generally are not worth pursuing. Applying that logic to the human rights regime produces a similar result. If, however, we pay careful attention to the differences in treaties and problems addressed, the separate mechanisms by which treaties work, and various commitment levels, we observe some disparate but meaningful effects: we should not ignore the story these findings are telling.

Lastly, even if modern rights practices are more closely associated with distant-past phenomena than with present treaty engagement, it accomplishes little to frame the issue as a competition between the two. We cannot design interventions to alter, for instance, the latitude of a country, decrease the genetic distance of a population from the United States, or bolster a country's use of agricultural plows in the distant past. But we can intervene in the present to design more effective institutions, encourage greater commitment, and promote more impactful domestic engagement with treaty regimes. Lawyers, legal scholars, and social scientists should therefore continue to probe carefully the determinants of treaty effects and

96 . See, e.g., THANIA SANCHEZ, AFTER RATIFICATION: THE POLITICS OF TREATY IMPLEMENTATION (working manuscript) (providing case studies of states' implementation of the Convention Against Torture).

effectiveness. They should aim to learn from treaties' failures, while building on those aspects of the regime that show genuine promise.