

## Justice Lost! The Failure of International Human Rights Law To Matter Where Needed Most\*

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International human rights treaties have been ratified by many nation-states, including those ruled by repressive governments, raising hopes for better practices in many corners of the world. Evidence increasingly suggests, however, that human rights laws are most effective in stable or consolidating democracies or in states with strong civil society activism. If so, treaties may be failing to make a difference in those states most in need of reform – the world’s worst abusers – even though they have been the targets of the human rights regime from the very beginning. The authors address this question of compliance by focusing on the behavior of repressive states in particular. Through a series of cross-national analyses on the impact of two key human rights treaties, the article demonstrates that (1) governments, including repressive ones, frequently make legal commitments to human rights treaties, subscribing to recognized norms of protection and creating opportunities for socialization and capacity-building necessary for lasting reforms; (2) these commitments mostly have no effects on the world’s most terrible repressors even long into the future; (3) recent findings that treaty effectiveness is conditional on democracy and civil society do not explain the behavior of the world’s most abusive governments; and (4) realistic institutional reforms will probably not help to solve this problem.

### Introduction

By almost any measure, nearly half of the world’s governments today are repressive,

systematically abusing human beings living within their borders.<sup>1</sup> Many scholars and policymakers have been working to bring these governments to justice as they attempt to identify which human rights policies hold repressors accountable for their actions and stop future abuses (Koh, 2002). Among their tools are international human rights laws, designed in the aftermath of severe atrocities during World War II to prevent future repression. Human rights scholars and advocates have long been hopeful about the

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<sup>1</sup> In 2003, 81 of 168 states in the Amnesty International report, 88 of 176 states in the US State Department report, and 81 of 188 states in the Freedom House report were observed to commit significant acts of repression.

prospects for reform. While a few quantitative scholars have culled new evidence suggesting that laws often do not work very well (Hathaway, 2002; Hafner-Burton, 2005), others show hope for reforms on the margins, in democratizing (Simmons, 2006) or already democratic states (Neumayer, 2005). Our concern in this article is with the efficacy of these laws to reform those actors most in need of improvement: repressive states whose governments violate or allow violation of human rights within their borders. Are human rights laws really hopeless to bring about reforms, even marginal, among the worst abusers?

Despite recent skepticism, scholars of international relations, law, and sociology have long argued that laws can make a difference, and hope for improvement is common (Landman, 2005; see Hafner-Burton & Ron, 2006). Many politicians and nongovernmental activists also believe that human rights laws initiate processes and dialogues that involve learning over time and, through learning, the eventual change in belief about rational or appropriate actions (Abbott & Snidal, 2000). They provide rules and organizational structures that constrain national sovereignty, serving as justification and a forum for action that can shape governments' political interests and belief about appropriate actions (Chayes & Chayes, 1998; Franck, 1988; Lutz & Sikkink, 2000). And persuasive accounts argue that governments ratify human rights treaties, not always as symbolic acts, but also as expressions of preference for reform (Simmons, 2006). By almost all such accounts, if human rights laws matter for political reform, they will take time to be of importance, as belief change and capacity-building for implementation are unlikely to be easy or immediate and may well happen in fits and starts (Chayes & Chayes, 1993).

Theories of compliance, however, are to some extent divorced from research. Current

findings largely emphasize that treaties work in some cases – democracies. But these studies largely ignore the dynamics of compliance. This is troubling because the human rights regime was created precisely to stop outbreaks of extreme violence among the world's worst abusers, and its founders knew this process would take time. Perhaps researchers are finding that treaties matter most on the margins because studies are not taking the dynamics of compliance seriously. Maybe repressive autocrats simply need more time to come under the sway of international laws and build capacity than other, more democratic, states.

Consider first what we know about effectiveness. In the face of widespread confidence that laws matter, Hathaway's (2002) path-breaking article shook scholarly faith in human rights treaties, arguing that they do little to ensure better behaviors. Since this provocative study, other scholars have been notably more optimistic. Simmons (2006) argues that international legal commitments do matter; they have their most important consequences for states that have experienced democratic accountability and refuse to allow their governments to turn back. Hafner-Burton & Tsutsui (2005) demonstrate that linkage to international civil society often encourages reform in cases where international law alone is unsuccessful. Neumayer (2005) extends both arguments to show that commitment to international law often does improve respect for human rights, primarily for states with democratically accountable governments or strong civil society. The optimism, however, is narrow in scope, as current scholarship implies that human rights laws matter least among governments that were the primary targets of the legal regime – terribly repressive, autocratic states without internal advocates for reform.

Consider next what we know about the dynamics of treaty compliance. Conformity

with international law is a domestic political process. Implementing human rights laws requires not only the political will at home, but also the political capacity. Both probably will be hardest to build in repressive non-democracies, and conformity with international human rights laws will almost certainly take longer to stick in these cases. The burgeoning empirical literature on human rights compliance has yet to effectively consider whether treaty effectiveness fluctuates over time. For instance, Neumayer (2005) and Keith (1999) consider whether several global and regional human rights treaties make a difference in human rights behaviors *the very same year* as ratification. Not surprisingly, they find no direct empirical relationship. Hafner-Burton (2005) examines whether any of the core UN human rights laws encourage protection of people from political terror *one year after* ratification and also finds no significant association. All unreservedly overlook basic theoretical arguments suggesting that soft laws generally take time to be successfully implemented, and that human rights laws in particular are likely to be effective only after substantial learning and capacity-building have taken place – features of international human rights law that ‘may be seen as an extreme case of the time lag between undertaking and performance’ (Chayes & Chayes, 1998: 16).

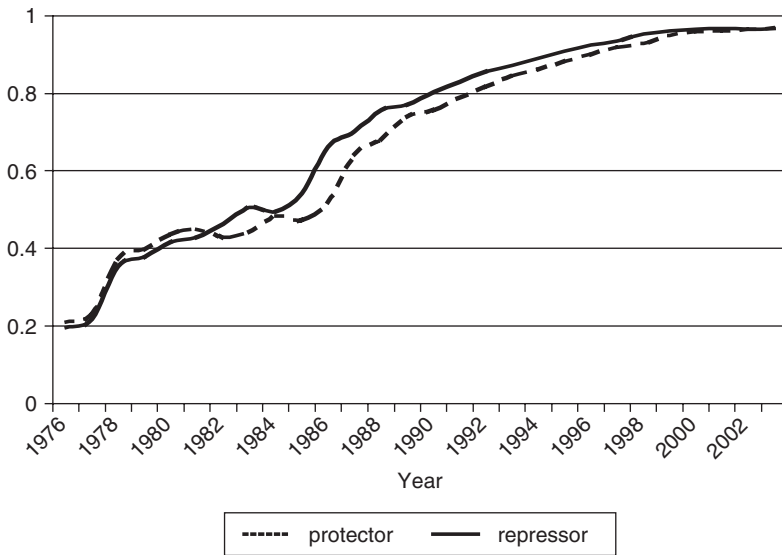
Other empirical research acknowledges that ‘human rights treaties, if they have effects on country practices, do so relatively slowly’ (Hathaway, 2002: 1990). To consider these dynamics, both Hathaway (2002) and Hafner-Burton & Tsutsui (2005) analyze the relationship between the *duration in years* since ratification of the core UN human rights laws and compliance behavior. In so doing, they test the proposition that, as the years go on, human rights laws should be more and more effective in producing results. They find no evidence. Yet neither study is a good test of dynamic theories of international law. Treaties may certainly take time to influence

behaviors, but, in the realm of human rights, it is unlikely that learning or capacity-building takes place at a steady or uniform pace over time. Compliance with international human rights laws, if it takes place at all, may well happen sporadically and in fits and starts. If so, these duration variables are a weak test of important theories on the matter.

Does this methodological problem explain the discouraging results about compliance? Maybe human rights laws do protect the people most in danger of violations, but only in fits and starts and only long after ratification, when leaders’ minds can be swayed and national capacities for reform built. Perhaps democracy is not the only answer.

In the following pages, we advance four propositions about repressive governments’ compliance with international human rights law. First, advocates are correct: an impressive cascade of norms has taken place in the realm of international justice. Governments, *including repressive ones*, easily and frequently make legal commitments to international human rights treaties, subscribing to recognized norms of protection and creating opportunities for socialization, learning, and capacity-building processes necessary for lasting reforms. Second, the problem is not only methodological; treaty commitments to the pursuit of justice have no clear or independent effects on most very repressive states’ behaviors, either immediately or, more importantly, long into the future. Either most repressive governments have failed to learn that the protection of human rights is essential or they lack the capacity necessary to implement policies of protection. As a result, recent statistical confidence about the treaty regime implies a broader problem – that the regime is actually failing in countries where reform is most urgently needed and that more time for learning and capacity-building is unlikely alone to solve the problem. Third, recent findings that treaty effectiveness is conditional on democracy and civil society do not explain the behavior of the world’s serious

Figure 1. The Predicted Probability of Treaty Commitment, 1976–2003: Repressors Versus Protectors



repressors. Fourth, most realistic institutional reforms are unlikely to help much; so far, deeper delegation of legal authority to the international regime does not make reforms much more likely, even over time.

### The Good News About Treaty Commitment

Significant thought has been given to explaining why governments commonly belong to the international human rights legal regime (Cole, 2005; Goodliffe & Hawkins, 2005; Vreeland, 2007; Wotipka & Tsutsui, 2001). We build on these insights with a focused attention to the behaviors of those states arguably most in need of reform, where repression is severe and individuals experience considerable brutality.

Human rights laws are abundant. Among them, the International Covenant on Civil and Political Rights (CCPR) and the International Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) are commonly distinguished among treaties as the

most successful and important, outlawing the most severe kinds of violations (Hathaway, 2002). They are certainly among the most studied. Each treaty articulates an impressive array of obligations for governments to follow, including precise details as to what behaviors are and are not appropriate. Authority to monitor implementation is modestly delegated to two independent committees: the Human Rights Committee for the CCPR and the Committee against Torture for the CAT; governments can choose to recognize or reject the jurisdiction of both committees and to implement or ignore their recommendations.<sup>2</sup>

In the following section, we aim to demonstrate a remarkable fact. No matter how we measure repression of personal integrity rights, repressive states that allow murder, torture, kidnapping, and other cruel, inhuman, or degrading treatment or punishment of people just as commonly belong to the CCPR and the CAT outlawing these behaviors as govern-

<sup>2</sup> Complete details of the treaties' provisions are available from [http://www.unhchr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhchr.ch/html/menu3/b/a_ccpr.htm) and [http://www.unhchr.ch/html/menu3/b/h\\_cat39.htm](http://www.unhchr.ch/html/menu3/b/h_cat39.htm) (accessed 10 December 2005).

ments that protect human rights reasonably well. Figure 1 presents evidence that has been systematically culled from our data from 1976, the year the CCPR came into force, to the last year of observation, 2003.

We begin by defining what we mean by a repressive state, *repressor<sub>i</sub>*, and how we identify them. Because we are concerned with two particular treaties, the CCPR and the CAT, we consider repression of the human rights enshrined in both: the rights to personal integrity. We examine annual data published by Amnesty International (AI), although we have run all analyses in this article on an alternative measure collected by the Bureau of Democracy, Human Rights, and Labor at the US State Department (SD) as a robustness check; any discrepancies are reported in the footnotes. We combine data collected across three samples by Poe & Tate (1994), Gibney & Dalton (1996), and Hafner-Burton (2005) to create a single measure with observations on 182 states from 1976 to 2003.<sup>3</sup> Following Gastil (1980), we define repression, *repression<sub>it</sub>*, as an ordinal variable ranging across five levels of behavior:

- (1) countries are under secure rule of law, political imprisonment and torture are rare, and political murders are extremely rare;
- (2) imprisonment for nonviolent political activities is limited, torture and beating are exceptional, and political murder is rare;
- (3) political imprisonment is extensive, execution and political murders may be common, and detention for political views is acceptable;
- (4) the practices of level 3 are expanded to a larger segment of the population, murders and disappearances are common, but terror affects primarily those who interest themselves in political practice or ideas;
- (5) levels of terror are population-wide and decisionmakers do not limit the means by which they pursue private or ideological goals.

<sup>3</sup> For details of the data, see Appendix (<http://www.prio.no/jpr/datasets>).

In order to identify repressor states, we consider any state that achieves a score of 3 or higher *at the time of treaty ratification* to be unquestionably repressive, employing political torture and terror. We call this state a repressor, *repressor<sub>i</sub>*, and code them dichotomously for efficiency.<sup>4</sup> We consider states that achieve a score of 1 or 2 to be reasonably protective by contrast, because acts of repression, if they are observed, are extremely rare.<sup>5</sup>

Using this common definition for *repressor<sub>i</sub>* to identify our population of violating states, we consider the extent to which these states belong to the human rights legal regime, ratifying the CCPR or the CAT into national law. We accordingly estimate Model 1:

$$\begin{aligned} \text{treaty commitment}_{it} = & a + \beta_1 \text{repressor}_{it} + \beta_2 \\ & \text{polity}_{it} + \beta_3 \text{regime durability}_{it} + \beta_4 \text{GDPpc}_{it} + \beta_5 \\ & \text{trade}_{it} + \beta_6 \text{civil war}_{it} + \beta_7 \text{war}_{it} + \beta_8 \text{population}_{it} \\ & + \beta_9 \text{North America}_{it} + \beta_{10} \text{Europe}_{it} + \beta_{11} \text{Africa}_{it} \\ & + \beta_{12} \text{Middle East}_{it} + \beta_{13} \text{Asia}_{it} + \delta_i + \mu_{it} \quad (1) \end{aligned}$$

Our dependent variable, *treaty commitment<sub>it</sub>*, is a binary variable coded 0 if a state *i* in year *t* has made no formal commitment to either the CCPR or the CAT by ratifying, acceding, or succeeding to the treaties, and 1 if that state has committed to either or both treaties. Our aim in Model 1 is to determine whether states that are observably repressive at the time of ratification are any more or less likely to belong to human rights laws than those that are reasonably protective, having already institutionalized the norms to which they make commitments. To pursue this aim systematically, we control for a variety of other motivations considered relevant in state decisions on treaty membership (Cole, 2005;

<sup>4</sup> We have run sensitivity analyses to ensure that our dichotomous coding is appropriate. In these analyses, we coded states that received a score of 3 in a given year as a *moderate repressor<sub>i</sub>*, 4 a *severe repressor<sub>i</sub>*, and 5 an *extreme repressor<sub>i</sub>*. Analyses using *moderate*, *severe*, or *extreme repressor<sub>i</sub>* in the place of *repressor<sub>i</sub>* produce consistent results.

<sup>5</sup> A complete list of repressor states is available in the replication file.

Goodliffe & Hawkins, 2005; Hathaway, 2002; Moravcsik, 1995).<sup>6</sup>

*Polity<sub>it</sub>* measures domestic regime characteristics. The well-known variable, which takes on values ranging from 10 (most democratic) to -10 (most autocratic), is measured as an index of five primary institutional features: the competitiveness of chief executive selection, the openness of that process to social groups, the level of institutional constraints placed on the chief executive's decisionmaking authority, the competitiveness of political participation, and the degree to which binding rules govern political participation.<sup>7</sup> *Regime durability<sub>it</sub>* counts the number of years since a state has undergone a structural regime transition. This variable is commonplace in the literature, and we control for it accordingly. A transition is defined as a movement on the Polity IV scale of three points or more.

To control for economic factors that scholars believe may influence treaty commitment, we employ several standard variables. Gross domestic product per capita in constant US dollars, *pcGDP<sub>it</sub>*, controls for the effect of economic development. *Trade<sub>it</sub>* controls for the sum of a state's total exports and imports of goods and services measured as a share of gross domestic product. Both measures are collected by the World Bank and logged to reduce the skew of their distributions.

To control for political conditions where violence is openly sanctioned by the state, we control for *civil war<sub>it</sub>* and *war<sub>it</sub>*. Both are dichotomous variables equaling 1 if a country is at war and 0 otherwise.<sup>8</sup> Finally, we control for regional effects by including dummy variables indicating whether a state is a part of America, Europe, Africa, the Middle East, or Asia, and for a state's total *population<sub>it</sub>*, logged.  $\delta_i$  are fixed effects for time that

de-trend correlations within states across time (although not within time across states, which is equal to zero by assumption), and  $\mu_{it}$  is a stochastic term.

Figure 1 plots predicted probabilities that repressors (*repressor<sub>i</sub>* = 1) and protectors (*repressor<sub>i</sub>* = 0) will make commitments to either treaty (Long, 1997).<sup>9</sup> The y-axis reports probabilities calculated at the mean of all variables in the model. In order to explore ratification propensity over time, the x-axis reports the year in which the prediction was calculated – for example, in 1976, a repressive state had a 0.2 probability of joining the regime, and so forth.<sup>10</sup> The figure indicates two systematic features of the commitment process. First, there is nothing about using torture or otherwise repressing rights to personal integrity that prevents a government from making commitments to international laws to abolish repression. Repressors are just as likely to commit to the human rights legal regime as protectors; this information includes consideration of all political behaviors controlled for in Equation (1). Second, ratification has become nearly ubiquitous over time; the probability that either a protector or repressor had made a commitment to the human rights regime in 1976 – the year the CCPR went into force – was about 0.02; by 2003, this probability was almost 1.<sup>11</sup>

Evidence clearly shows that governments that torture and terrorize their people commonly pledge commitment to human rights laws, obligating themselves and their future leaders to implement norms protecting all

<sup>6</sup> For detailed justifications of each control variable, see the sources cited.

<sup>7</sup> See online Appendix for details on the data.

<sup>8</sup> For a detailed explanation of the data, see online Appendix.

<sup>9</sup> All other results, including the coefficients and standard errors from which these probabilities are calculated, are available in the replication file.

<sup>10</sup> Confidence intervals are not reported around the predictions for visual clarity. However, they are available in the data replication file and indicate that there is no statistical difference between repressors and protectors in their likelihood of treaty ratification, regardless of the year in which we compute the prediction.

<sup>11</sup> Although there are some slight variations in samples and reports between AI and SD, results are generally consistent across both human rights-reporting sources.

human beings.<sup>12</sup> For pundits expecting that human rights regimes make a difference, this observation should be good news. Such commitments may initiate learning, socialization, and persuasive compliance dynamics that, over time, can encourage reform. But do these acts of commitment actually help to protect the people most in need of protection? We consider this question in the following section.

### The Bad News About Compliance

Many scholars are hopeful that, when states make commitments to international legal norms, governments will act accordingly (Chayes & Chayes, 1998; Finnemore, 1996; Goodman & Jinks, 2003; Henkin, 1979; Koh, 1996–97; Mitchell, 1993). Some believe that repressive leaders commonly adopt human rights laws instrumentally as a means to gain related benefits, but that instrumental adaptation can, over time, lead to processes of moral consciousness-raising, argumentation, persuasion, institutionalization, and even habituation (Risse, Ropp & Sikkink, 1999). These processes can, in turn, create the conditions for behavioral change, as governments stop committing or supporting acts of repression and build capacity both to protect human rights and to punish those who violate them.

Others argue that governments join human rights laws when they are committed to their fundamental goals in the first place, even when belonging is costly (Hathaway, 2003, 2005; Simmons, 2006). Indeed, states are regularly observed to comply with international law without any enforcement, a likely artifact

of state selection into legal regimes that require only modest changes in behavior (Downs, Rocke & Barsoom, 1996).<sup>13</sup> Still others suggest that international human rights laws reform repressive states through acculturation – a general process by which actors adopt the beliefs and behavioral patterns of surrounding cultures through mimicry or assimilation (Goodman & Jinks, 2003; Powell & DiMaggio, 1991; Scott, Meyer & Boli, 1994). All of these theories are plausible; however, they suggest that any observable compliance behavior will likely take time, as beliefs do not change overnight, and building physical and legal infrastructures to support human rights can be costly and time consuming. Maybe human rights treaties do matter for the world's repressive autocrats, but they simply require more time to have an effect.

We are skeptical that international human rights laws in general, and the CCPR and the CAT in particular, directly or regularly encourage most repressive states to substantially reform, to value or protect human beings' fundamental rights to life, liberty, and justice, even over time. To a handful of skeptics who see international laws generally as cheap talk, this is not news; to many scholars of international law, international relations, and sociology, as well as to the founders of the human rights regime and the nongovernmental organizations who support their cause, this claim is worrisome. Our concerns are manifold, but we emphasize four in particular (Hafner-Burton, 2005).

First, we share the view that governments are strategic actors that make commitments to human rights treaties for deliberate and self-interested reasons. Understanding compliance dynamics accordingly obliges us to know something about the process of commitment – whether and why repressive states join treaties in the first place which almost certainly helps to

<sup>12</sup> The data replication file provides further information about spatial and institutional variation in ratification behaviors. We consider six major world regions and discover (using predictions) that repressive states that make legal commitments to the human rights treaty regime are distributed around the world fairly equally, coming from every major region except Asia. Surprisingly, repressors ruled by democratic and autocratic governments are equally likely to have ratified one treaty, although democracies are slightly more likely to have ratified both.

<sup>13</sup> This finding is nicely articulated in the case of human rights by Moravcsik (1995), who shows that European human rights regimes are likely to have little effect on those states that are not already disposed toward transformation, namely newly developing states.

explain whether treaties themselves make a difference. Violators, we believe, by and large do not join human rights laws in such great numbers because they are committed to reforms or because treaties require only modest changes in behavior. On the contrary, the CCPR and the CAT require major reforms and oblige governments with no interest or capacity to comply with these laws to regularly commit anyway, knowing that neither treaty can successfully enforce the norms they are designed to protect. It is our belief that repressive states commonly belong to the human rights regime because they gain certain political advantages from membership but all the while can get away with murder. Most governments joining the international human rights legal regime accordingly are not open to new ways of behaving, thus making learning, socialization, and persuasion improbable.

Second, we are skeptical that repressive states, once they join the treaty regime, will come to internalize the legal norms to which they subscribe over time, through active processes of socialization or learning. We do not believe that socialization and learning are impossible or undesirable. Rather, we believe there are strong reasons to be skeptical that either method of belief change is likely to take place or provide strong incentives to change most repressive actors' behaviors most of the time, no matter how much time passes after ratification. Socialization and learning require changing actors' preferences for repression, and these preferences are likely to be highly valued by repressive states, whose leaders accumulate power and wealth through terror. Socialization and learning are also likely to be slow-acting forms of influence, taking place over a very long time horizon, but confronting resistance to beliefs that are often sticky and resistant to change (Anderson, 1989; Slusher & Anderson, 1996). In those rare instances when socialization and learning do take place, newly persuaded leaders may not be consistent across time, as new rulers may come to power and new opponent groups may form with

preferences for repression. Moreover, socialization and learning require repeated access to target repressors and many of these actors are likely to be marginalized from participation in human rights institutions, remaining isolated from active processes of norm inculcation (Hafner-Burton & Tsutsui, 2005).<sup>14</sup>

Third, we are most skeptical that repressive states, facing degrees of cognitive and social pressures to conform, adopt human rights reforms through processes of acculturation alone.<sup>15</sup> We do not argue that acculturation processes, like socialization and learning, are irrelevant to all political choices. They may certainly inform states' identities, preferences, and interests in important ways (Meyer et al., 1997). However, we emphasize that repressive states are characterized by leaders that employ or condone repression purposively and strategically; acts of terror are accordingly seldom accidental or random, and they often bring high rewards for those that use them. Reforms are usually deliberate and costly, often requiring leaders in power to give up certain authorities and privileges they have become accustomed to enjoying. Improvements in protection of human rights do not, as a result, happen tacitly or through simple processes of mimicry without some convincing motivation. Repressive leaders can certainly reform, but they are unlikely by any stretch of the imagination to give up repression simply because their neighbors have.

Finally, even when leaders decide to reform their human rights practices, they may not succeed in changing the government's or non-state actors' actual practices quickly. Building the

<sup>14</sup> Owing to the lack of substantive penalties in the CCPR and the CAT, repressive governments can choose to ignore deadlines for their country reports or submit falsified reports, hence avoiding good-faith participation in the treaty mechanisms, which could trigger some form of socialization.

<sup>15</sup> We distinguish between socialization and acculturation in terms of the degree of agency at work. Socialization takes place with purposive actors making decisions to change policies, while acculturation is guided more by imitation in the face of uncertainty.



legal and physical infrastructure to protect human rights and to punish violations is a costly process that requires not only conviction on behalf of a government's leaders, but also substantial resources and expertise that are often lacking in violating states suffering from legacies of repression. Leaders seeking reform commonly face serious resistance from other elites who have vested interests in continuing repression, or from lower-level officials who have grown accustomed to the organizational culture of repression, which can delay or paralyze leaders' efforts to improve the practices (Ron, 2000).

Do terribly repressive states reform when they belong to human rights treaties over a long period of time? How much time does it take to internalize the human rights norms to which they make commitments? We are encouraged that many common and important responses suggest that legal commitments matter; that repressive states can and do reform; and that reform, if it does not happen right away, can take place over time, as norms become more and more internalized and as civil society actors use international laws as a recourse for lobbying. Our arguments, however, have led us to mainly expect the contrary. We advance three hypotheses: (1) that repressive states' legal commitments to the human rights regime do not typically promote reforms; (2) that this gap between commitment and practice will often persist over time, as norms of justice rarely become institutionalized through processes of international law alone; and (3) that most feasible reforms to the legal regime will probably not solve this problem. The following section explores the merits of our conjectures.

## Evidence

We begin with a general replication of previous studies by estimating Model 2 predicting  $repression_{it}$  behavior (from 1 to 5 on our ordinal scale) to evaluate the impact of treaty

ratification after one year. We use Hafner-Burton (2005) as our base model.<sup>16</sup>

$$repression_{it} = a + \beta_1 CAT_{it-1} + \beta_2 CCPR_{it-1} + \beta_3 GDPpc_{it-1} + \beta_4 trade_{it-1} + \beta_5 population_{it-1} + \beta_6 polity_{it-1} + \beta_7 regime\ durability_{it-1} + \beta_8 civil\ war_{it-1} + \beta_9 war_{it-1} + \delta_i + \mu_{it} (2)$$

We first consider all states in our sample<sup>17</sup> in order to replicate existing studies and control for standard economic and political factors thought to influence repression. Column 1 of Table I summarizes our ordered logit estimates appropriate to the structure of the dependent variable and reports Huber–White standard errors appropriate to the nature of our data. We include  $\delta_i$  in order to de-trend correlations within states across time, as the data by nature suffer from autocorrelation.<sup>18</sup> Our findings confirm that state commitment to either treaty does not increase the likelihood of reform. Governments more often than not commit to protect norms of human rights but do not follow through on those commitments.

Columns 2 and 3 of Table I summarize our replication of previous findings that treaty effects are conditional on democracy and civil society; we accordingly introduce interaction terms between treaties and  $polity_{it-1}$  and  $civil\ society_{it-1}$ , which we measure as

<sup>16</sup> The model and control variables are very similar to those employed by other major studies of repression, including Poe & Tate (1994), Keith (1999), Hathaway (2002), Hafner-Burton & Tsutsui (2005), and Neumayer (2005). See these studies for detailed discussions and justifications of these variables.

<sup>17</sup> Please see online Appendix for a discussion of the impact of missing data on our analyses.

<sup>18</sup> An alternative procedure for addressing autocorrelation is to include a lagged dependent variable. However, there is substantial debate as to whether this practice is appropriate or necessary, as the method risks bias in the estimations. Fixed time effects are a suitable alternative, and we include them here on this basis. However, we estimate a model with a lagged dependent variable as a robust check and find no substantive difference in the estimates; the lag is positive and significant, but all other variables remain consistent with the results reported in Table I. Results are reported in the replication file. We therefore do not include the lagged variable in the remainder of our analyses.

Table I. Ordered Logit Estimates of State Repression, 1976–2003

Variables	All states			States repressive at the time of ratification		
	(1) Base model	(2) Democracy	(3) Civil society	(1) Base model	(2) Democracy	(3) Civil society
CAT <sub><i>it-1</i></sub>	-0.008 (0.211)	0.064 (0.207)	0.100 (0.284)	-0.019 (0.238)	0.007 (0.232)*	0.508 (0.449)
CCPR <sub><i>it-1</i></sub>	0.019 (0.227)	-0.048 (0.221)	0.909** (0.302)	0.181 (0.250)	0.023 (0.268)	0.565 (0.396)
CAT <sub><i>it-1</i></sub> x polity <sub><i>it-1</i></sub>		-0.002 (0.023)			-0.005 (0.031)	
CCPR <sub><i>it-1</i></sub> x polity <sub><i>it-1</i></sub>		-0.073* (0.028)			-0.046 (0.029)	
CAT <sub><i>it-1</i></sub> x civil society <sub><i>it-1</i></sub>			2.00E-04 (3.00E-04)			-7.37E-04 (6.47E-04)
CCPR <sub><i>it-1</i></sub> x civil society <sub><i>it-1</i></sub>			-0.002*** (4.55E-04)			-1.16E-03+ (6.11E-04)
Civil society <sub><i>it-1</i></sub>			8.83E-04 (6.46E-04)			0.002* (8.82E-04)
GDPpc <sub><i>it-1</i></sub>	-0.217* (0.092)	-0.202* (0.092)	-0.115 (0.119)	0.119 (0.118)	0.122 (0.118)	0.091 (0.137)
Trade <sub><i>it-1</i></sub>	-0.632** (0.208)	-0.670** (0.206)	-0.731** (0.213)	-0.941*** (0.242)	-0.941*** (0.245)	-1.038*** (0.262)
Population <sub><i>it-1</i></sub>	0.403*** (0.069)	0.386*** (0.071)	0.384*** (0.102)	0.278** (0.085)	0.266 (0.086)**	0.115 (0.130)
Polity <sub><i>it-1</i></sub>	-0.089*** (0.017)	-0.047* (0.023)	-0.091*** (0.020)	-0.028 (0.023)	0.008 (0.025)	-0.030 (0.027)
Regime durability <sub><i>it-1</i></sub>	-0.021*** (0.005)	-0.021*** (0.005)	-0.022*** (0.005)	0.002 (0.011)	0.003 (0.010)	0.004 (0.011)
Civil war <sub><i>it-1</i></sub>	1.717*** (0.348)	1.699*** (0.334)	1.714*** (0.324)	1.636*** (0.312)	1.649*** (0.320)	1.726*** (0.326)
War <sub><i>it-1</i></sub>	1.185* (0.528)	1.108* (0.436)	1.322*** (0.330)	0.169 (0.573)	0.003 (0.669)	-0.231 (0.855)

(continued)

Table I. (continued)

Variables	All states			States repressive at the time of ratification		
	(1) Base model	(2) Democracy	(3) Civil society	(1) Base model	(2) Democracy	(3) Civil society
N	3,345	3,345	2,764	1,998	1,998	1,642
Chi2	249.22***	266.87***	310.55***	187.38***	218.6***	165.14***
Log likelihood	-4,033.17	-4,006.65	-3,259.92	-2,561.64	-2,556.75	-2,095.47

+  $p \leq 0.1$ ; \*  $p \leq 0.05$ ; \*\*  $p \leq 0.01$ ; \*\*\*  $p \leq 0.001$ . Numbers in parentheses are Huber-White standard errors.

the number of nongovernmental organizations registered in each state according to the Union of International Associations.<sup>19</sup> Consistent with Hafner-Burton & Tsutsui (2005), Neumayer (2005), and Simmons (2006), we find that human rights treaties, specifically the CCPR, are most effective when ratified by states with democratic systems of government or strong civil society advocates. We now use these replications as our base for hypothesis testing.

In order to test our first hypothesis, we consider whether states that were repressive *at the time they ratified* the CAT or the CCPR have reformed one year after commitment (*repressor*), improving their human rights practices.<sup>20</sup> We accordingly re-estimate Equation (2), observing only states that were repressive at the time of treaty ratification. Column 4 of Table I reports our findings. Repressors that accept legal norms to protect human beings, ratifying either the CAT or the CCPR, are not likely, with any degree of confidence, to reform their practices after their commitments (Hafner-Burton & Tsutsui, 2005). Moreover, when we test whether this hypothesis is conditional on democracy and civil society, as previous research assumes, we find that neither treaty is effective even when they are ratified by repressive states on the more democratic end of the spectrum or by repressive states with strong civil society; previous research, it seems, has located a set of conditional effects that matter least for those states that need reform the most.<sup>21</sup> Moreover, we see some evidence to suggest that, among repressors, the more democratic states that ratify the CAT are actually likely to have worse practices. Estimates also suggest to us that states that have higher per capita incomes

<sup>19</sup> We do not include *civil society*<sub>*it-1*</sub> into the base model, because several hundred observations are missing; we later include the variable as a robustness check on our results.

<sup>20</sup> Consistent with our earlier analyses, we again define this population as any state for which *repression*<sub>*i*</sub> = 1 at the time of ratification.

<sup>21</sup> Of the states observed in this sample, 20% are repressors with democratic systems of government; 47% are repressors with above average links to civil society.

and trade, are free from civil war, and are governed by democratic institutions are more likely to respect human rights – findings consistent with many studies before ours (Henderson, 1991; Poe, Tate & Keith, 1999; Richards, Gelleny & Sacko, 2001).<sup>22</sup> Repressor states, it seems, are keen to join the treaty regime but not equally enthusiastic to implement those commitments, at least not right away, although the regime could be working to keep them from worse brutality. Yet, as we have mentioned, core theories of compliance suggest that implementation is likely to happen only over some unknown but potentially considerable period of time, and the path to reform may be a bumpy (rather than an upward trending) one.

Our next concern, correspondingly, is to test our second hypothesis to determine whether repressive states that have ratified either treaty put reforms into practice over time. Socialization toward internalization of these norms, as well as the capacity to implement reforms, may simply take time for many governments not accustomed to protecting human rights or without the proper resources. Moreover, this dynamic process may not be steadily increasing. In order to test our second hypothesis, we run the same base model (Column 4 of Table I) 14 more times, now replacing  $CAT_{it-1}$  and  $CCPR_{it-1}$  with lags from 2 to 15 years.<sup>23</sup> For the pur-

<sup>22</sup> Although our primary concern is not to explain variation in effect of human rights treaties on protectors versus repressors, it is worth noting that comparing results for repressors and protectors shows interesting variations. For instance, protectors with higher GDP per capita and greater regime stability are more likely to improve their human rights practices, while these effects disappear among repressors. Also, ratification of the CCPR has a modest positive impact on practice, as does Polity. Conversely, trade can improve practice among repressors, but the effect does not stand among protectors. Equally interesting is the finding that population pressure and civil war have worsening effects on practice in both repressors and protectors.

<sup>23</sup> We have chosen a period of 15 years in order to cover the period of time observed in our sample between the entry into force of the CAT (1987) and the last year of our data observation (2003). Lags allow us to observe new information about compliance to assess the ‘bumpiness’ of the path, although they have costs and are not an ideal form of dynamic modeling.

Figure 2. Point Estimates of the Effects over Time of CAT Ratification on Human Rights Reform: For Governments Repressive at the Time of Ratification, 15-Year Duration

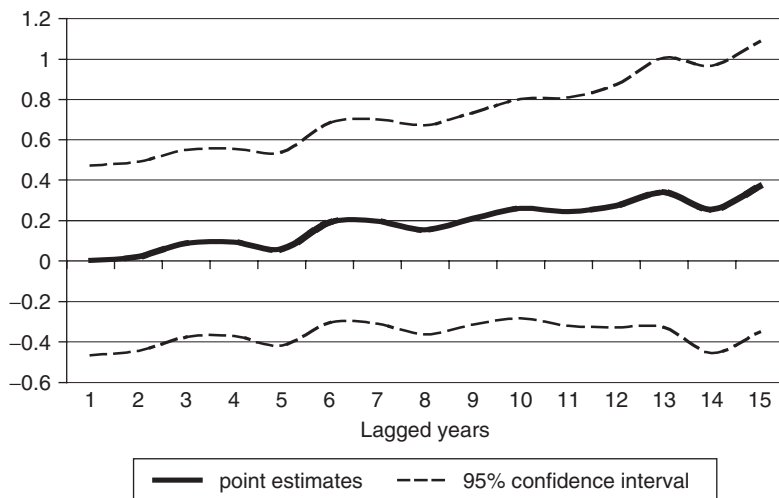
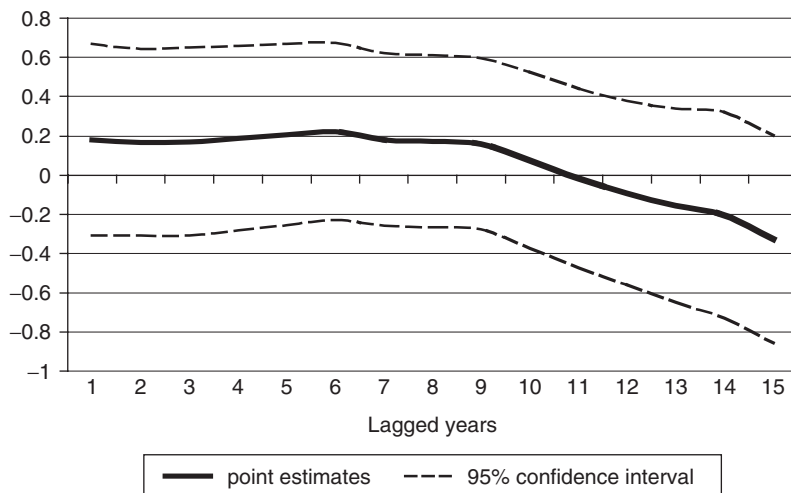


Figure 3. Point Estimates of the Effects over Time of CCPR Ratification on Human Rights Reform: For Governments Repressive at the Time of Ratification, 15-Year Duration

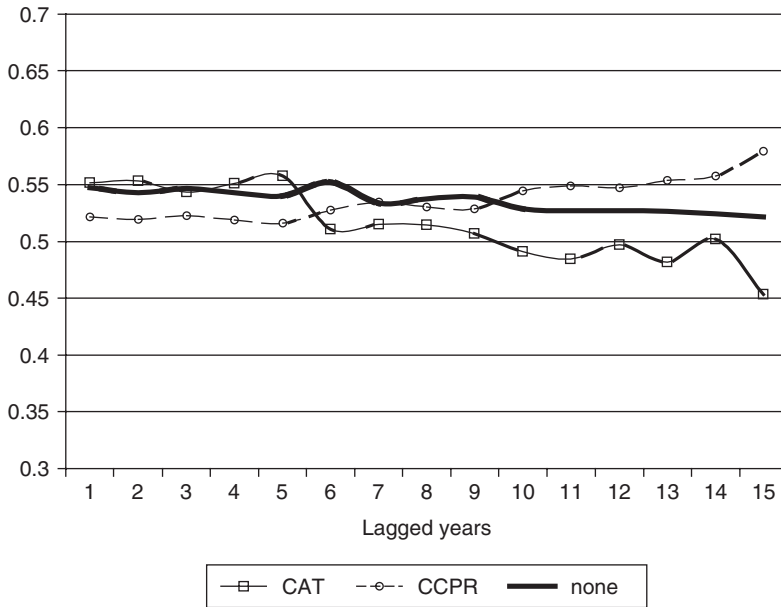


poses of efficiency, we have chosen to illustrate our tests graphically by plotting our coefficients of substantive interest and their confidence intervals at 95%; all results are available in the replication file.

The solid black lines in Figures 2 and 3 plot the coefficients on  $CAT_{it-1}$  and  $CCPR_{it-1}$

across each lag model, controlling for all the variables in Equation (2) and considering only states repressive at the time of treaty ratification. The dotted lines represent their confidence intervals at 95%. Both figures unquestionably show that point estimates may fall anywhere within the confidence

Figure 4. Predicted Probabilities that the World's Most Repressive States Will Reform Human Rights over 15 Years



intervals which contain zero. Simply put, neither treaty has a systematic effect on repressive states' behaviors even a decade and a half after commitment.

We investigate our findings further in Figure 4 by offering predicted probabilities to better clarify what these coefficients mean substantively. In particular, we are concerned with understanding whether a state guilty of the most radical forms of violations ( $repression_{it} = 5$ ) at the time it ratified the CAT or the CCPR is more likely to reform as the years go by. This figure provides insight on two questions: what is the probability that an average violent repressor<sup>24</sup> will reform human rights after joining various human rights treaties and after various years of commitment?<sup>25</sup>

<sup>24</sup> We define average by custom as the mean of all variables in Equation (2), excluding the dependent variable,  $repression_{it-1}$  and our variables of substantive interest,  $CAT_{it-1..N}$  and  $CCPR_{it-1..N}$ .

<sup>25</sup> Figures 4B and 4C, available in the data replication file, plot the same findings for less extreme forms of violations,  $repression_{it} = 4$  and  $repression_{it} = 3$ . Findings are relatively consistent and so not reported here.

In our previous graphs, the black lines represented point estimates. In Figure 4, the lines represent predicted probabilities calculated from the point estimates (Column 4 in Table I) that an extreme repressor has undertaken *any* notable human rights reforms at the time of our observation. We consider any movement toward categories 4, 3, 2, or 1 on  $repression_{it}$  to indicate reform, a very liberal interpretation of improvement. Our predictions indicate that, without any global legal commitments to protect human rights norms, the world's most violent repressors are likely to undertake reforms about 50% of the time; this is about the same chance that they will reform after they have ratified either human rights treaty.<sup>26</sup> International law, it seems, does not increase the chance of reform at all in most

<sup>26</sup> Although the probabilities for reform after 15 years of CAT and CCPR ratification are slightly lower and higher, respectively, than for no commitment to treaties, these estimates fall within 95% confidence intervals and are accordingly indistinguishable from each other. Confidence intervals for all predications are not shown here for sake of visual clarity but are available in our replication data.

terribly repressive states, although it may prevent slippage into worse violations.

All told, this information suggests that human rights treaties are least effective in making improvements in precisely those states that need them the most and for which they were originally designed – the world's worst abusers. It is not clear whether the results are due to a selection effect or the weak achievements of the treaties themselves, and it is possible that treaties are actually working a little by preventing represents from abusing even more. Yet, if repressive governments are being socialized by or learning from the human rights legal regime to believe something new about human rights norms, either they are mostly learning the wrong message, that repression in the face of commitment to international law is acceptable behavior, or socialization to new beliefs is weak in the face of leaders' political incapacity to reform. And these roadblocks to better human rights practices appear persistent over time.

### Delegation of Authority

If commitments to the CAT and the CCPR provide little in the way of motivations for most repressive governments to reform their human rights behaviors in accordance with lawful norms, many of our critics, especially in the legal and policy communities, believe laws providing for greater delegation can help. Indeed, the Protocol was explicitly designed to improve on and add to existing enforcement mechanisms. One such law is already available, the first Optional Protocol to the International Covenant on Civil and Political Rights (CCPR OP). By itself, the CCPR's monitoring capacity is very limited. Governments that belong to the

CCPR pledge only to submit reports to the Human Rights Committee (commonly referred to as the Committee) evaluating the measures they have adopted in support of treaty norms.<sup>27</sup> Without further consent from governments, however, the Committee only has the authority to study the reports, submitted by governments under scrutiny for violations, ask questions of government representatives, and respond with general comments. A law with moderately greater delegation, however, is available.

When a state adopts the CCPR OP, that government makes an additional commitment to recognize the competence of the Committee. Authority has been delegated to the Committee to entertain complaints made against a state by individual victims of a violation of any of the rights protected by the treaty.<sup>28</sup> The Optional Protocol is certainly not hard law, but it does delegate greater external competences for oversight and intervention and, therefore, places more substantial constraints on governments' authority to violate the norms to which they commit. Are repressive states that commit to the CCPR OP, a harder form of international law, any more likely to reform?

We again seek to economize and present our results graphically rather than in table format. Figure 5 plots coefficients to interpret our findings. We calculate these coefficients from our core model, Equation (2), on the sample of repressor states with the addition of a new variable,  $CCPROP_{it-1..N}$ , where  $N$  equals 1–15 lagged years.<sup>29</sup> As before, we run 15 separate models, one for each lag year, and we plot the results only of our variable of substantive interest.<sup>30</sup> We find that the likelihood of reform after deeper commitment to

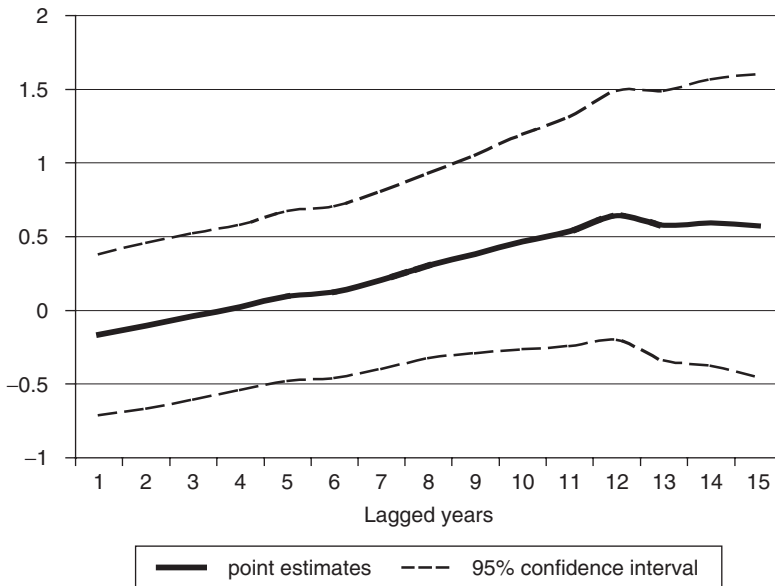
<sup>28</sup> Article 2 of the Optional Protocol stipulates that individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.

<sup>29</sup> Over 50% of states that have ratified the CCPR Optional Protocol were repressors.

<sup>30</sup> For example, in our first model, we rerun Equation (2) results, presented in Column 2 of Table I; however, we add one new variable,  $CCPROP_{it-1}$ . In our second model, we rerun the same equation, now adding  $CCPROP_{it-2}$ , and so on.

<sup>27</sup> Participating governments must submit these reports within one year of the entry into force of the CCPR or whenever the Committee makes a request. The Secretary-General of the United Nations, after consultation with the Committee, may circulate the reports to specialized UN agencies. Article 40 of the CCPR and subsequent Committee resolutions describe this procedure in greater detail.

Figure 5. Point Estimates of the Effects over Time of CCPR OP Ratification on Human Rights Reform for Governments Repressive at the Time of Ratification, 15-Year Duration



human rights treaty law, ratifying the CCPR Optional Protocol, is indistinguishable from zero. Simply put, delegating more authority for monitoring the implementation of human rights by providing victims with an official forum to articulate the injustices they have suffered does not seem to matter for implementation – a result that may also be explained by the selection process. Repressive states that join simply are not listening, or, if they are, they lack the resources or political will to take action.

## Conclusion

Much human rights research is dedicated to showing the ways in which international institutions, including human rights treaties, can make a difference, even inside horribly repressive regimes. Recent statistical studies qualify this belief, showing the ways that treaties matter but only under some circumstances. They raise an important question: can human rights laws help in the most

severe cases of abuse? Is the problem that the world's worst repressors might need more time to come under the sway of international law, to build capacity to implement reforms, and to change the minds of their perpetrators?

Our findings add to recent statistical findings, which discover some hope for effect among a small group of states. We identify systematic limitations to the human rights legal regime for precisely those states that need the most oversight – there in severe crisis. Is it enough that the human rights regime can help only a small number of states and a small percentage of the world's population, leaving behind those who are worst abused? How can we build and support a better international regime that, after decades of binding commitments and various institutional reforms to boost compliance, is still not making a noticeable difference in so many cases?

Evidence shows that international laws are working in some democratic states with an



active civil society. But we are confronted with overwhelming evidence that these cases of influence are not applicable to the world's most repressive states; that, more often than not, repressive governments that formally commit to international treaties protecting our most basic human rights never come close to reform; that socialization, persuasion, and learning, if they are taking place over time, are not teaching the right messages to the governments that need the most help or are weak in the face of incapacity to implement; and that, in the few instances where new ways of acting are indeed being learned, leaders are not effectively implementing those ideas to better protect people. Moreover, the democratic scope conditions are even narrower than previously thought.

These findings raise important questions. If commitment to international law appears to have no direct effect on reform for the world's worst abusers, either because the treaties are too weak to do much good or the abusive states most open to reform are selecting not to join them, why are so many governments, organizations, and human rights advocates concerned with ratification? Why do the United States and the European Union make commitments to human rights laws a core principle of foreign policy, trade, and aid? Why do human rights organizations spend so many resources mobilizing campaigns for membership? Why does the UN do the same? What is driving the selection process? If treaties do not matter where they need to, why do states and advocates push them so fiercely? What other purposes and interests are treaties serving? And what other tools can help the worst abusers reform?

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