Why the Study of International Law Needs Experiments

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Scholarship on international law has undergone an empirical revolution. Throughout the revolution, however, shortcomings of the observational data that studies have used have posed serious barriers to reliable causal inference. During the same period, political scientists and legal scholars studying domestic law have increasingly employed experimental methods because they make it easier to make credible causal claims. Despite the simultaneous emergence of those trends, there have been relatively few attempts to use experimental methods to study international law. This should change. In this paper we present the first argument that the study of international law could uniquely benefit from the use of experimental research methods. To make this argument, we present data we have collected that illustrates why observational studies will often be unable to provide answers to many of the most important questions of legal scholars. After doing so, we provide guidance on how laboratory, survey, and field experiments can be used by legal scholars to research international law.

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INTRODUCTION

Over the last decade, there has been an empirical revolution in the study of international law. During that time, the focus of international legal scholarship has moved away from debating whether international law matters and toward trying to explain when—and why—states commit to and comply with international legal agreements. This “empirical turn” has produced important new scholarship on a range of substantive areas of international law, including international human rights law, the laws of war, and international economic law.

Throughout this empirical turn, however, scholars have struggled to provide convincing evidence that international law has a causal impact on state behavior. Although prominent commentators

1. See generally Gregory Shaffer & Tom Ginsburg, The Empirical Turn In International Legal Scholarship, 106 AM. J. INT’L L. 1 (2012) (documenting the growth of empirical research of international law); see also Emilie M. Hafner-Burton, David G. Victor, & Yonatan Lupu, Political Science Research on International Law: The State of the Field, 106 AM. J. INT’L L. 47 (2012) (proving a review of political science research that is relevant to the study of international law); Beth Simmons, Treaty Compliance and Violation, 13 ANN. REV. POL. SCI. 273 (2010) (reviewing empirical research on treaty commitment and compliance). Of course, it is important to note that during this time there has also been a rise in the use of empirical legal research more generally. See generally Shari Seidman Diamond & Pam Mueller, Empirical Legal Scholarship in Law Reviews, 6 ANN. REV. L. SOC. SCI. 581, 589 (2010).

2. See Shaffer & Ginsburg, supra note 1, at 1 (“What matters now [in research on international law] is the study of the conditions under which international law is formed and has effects.”).

3. See id. at 19–42 (documenting empirical legal scholarship on five substantive areas of international law).


7. For a general discussion of this issue, see Shima Baradaran, Michael Findley,
initially simply proclaimed that rates of compliance with international law were high as evidence of international law’s importance, the debate has shifted to whether international law actually has a causal impact on changing state behavior. This shift has been made in part because of the recognition that—perhaps best expressed in Downs, Rocke, and Barsoom’s seminal article on the topic—states may simply select only into international agreements that codify policies that would have been adopted even in the absence of an international agreement. Although researchers quickly began to respond to that skeptical claim by producing scholarship that tried to demonstrate that international law does in fact change state behavior, the empirical methods used by a number of early prominent studies were criticized for their inability to satisfactorily demonstrate that international law has a causal influence on state behavior. Although researchers


8. The most famous statement of this view was Louis Henkin’s claim that “almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time.” LOUIS HENKIN, HOW NATIONS BEHAVE 47 (1979). In addition to Henkin’s claim, another prominent expression of this view can be found in Chayes & Chayes theory that has become known as the “managerial school” of international law. See Abram Chayes & Antonia Handler Chayes, On Compliance, 47 INT’L ORG. 175 (1993) (discussing explanations for why nations comply with their international legal commitments).


11. See, e.g., Beth A. Simmons, International Law and State Behavior: Commitment and Compliance in International Monetary Affairs, 94 AM. POL. SCI. REV. 819 (2000); Hathaway, supra note 4.

12. For a critical response to Simmons, supra note 11, see Jana Von Stein, Do Treaties Constrain or Screen? Selection Bias and Treaty Compliance, 99 AM. POL. SCI. REV. 611 (2005) (arguing that Simmons did not adequately deal with selection effects that influence which states agree to bind themselves with international agreements); but see Beth Simmons & Daniel Hopkins, The Constraining Power of International Treaties: Theory and Methods, 99 AM. POL. SCI. REV. 623 (2005) (responding to Von Stein’s criticisms); Shaffer & Ginsburg, supra note 1, at 15 (noting that despite Von Stein’s arguments, “we believe that
have begun to use more complicated empirical methods—like instrumental variable regression\(^\text{13}\) and matching\(^\text{14}\)—to demonstrate causality, these approaches have not entirely silenced critics that are skeptical of states’ willingness to change their preferences and actions as a consequence of international law.\(^\text{15}\) As a result, improving the empirical methods used to conduct causal analysis is a project that is of great importance for scholars of international law.

While international law scholars have debated how to demonstrate causation, political scientists have embraced experimental research methods,\(^\text{16}\) as have, increasingly, legal scholars studying other areas of law.\(^\text{17}\) In the last two decades, experimental methods have become a common research strategy used to study a range of topics: from what strategies are most likely to turn people out to vote during elections,\(^\text{18}\) to whether legislatures are biased against their constitu-

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\(^{13}\) See, e.g., SIMMONS, supra note 4; Morrow, supra note 5.


\(^{15}\) See Posner, supra note 9 (expressing skepticism at the empirical approach used by Simmons to argue that human rights treaties can change state policies through their potential to alter domestic political calculations).

\(^{16}\) See generally James N. Druckman, Donald P. Green, James H. Kuklinski & Arthur Lupia, The Growth and Development of Experimental Research in Political Science, 100 AM. POL. SCI. REV. 627 (2006). For a longer discussion of the growing use of experimental methods in political science, see infra PART I.A.

\(^{17}\) See Seidman Diamond, & Mueller, supra note 1, at 589 (providing evidence of research using experimental methods published in law reviews). For a longer discussion of the growing use of experimental methods in legal scholarship, see infra PART I.B.

\(^{18}\) See generally DONALD P. GREEN & ALAN S. GERBER, GET OUT THE VOTE! HOW TO INCREASE VOTER TURNOUT (2008) (explaining experimental research on how political campaigns can increase voter turnout). For a recent example of this line of research, see Daron R. Shaw, Donald P. Green, James G. Gimpel & Alan S. Gerber, Do Robotic Calls from Credible Sources Influence Voter Turnout or Vote Choice? Evidence from a Randomized Field Experiment, 11 J. POL. MARKETING 231 (2012).
ents,19 to the “democratic peace” theory,20 to questions in constitutional law.21 This growth in experiments has been fueled by the increasing ease of experimental research,22 and the growing recognition that experimental methods greatly facilitate credible causal claims.23 Simply put, by using experimental methods, researchers are able to control the data-generation process. That is, they can estimate the influence of a specific intervention on an outcome by randomly assigning treatments.

Yet, despite the fact that empirical research on international law has struggled to demonstrate causal claims, there have been few efforts to use experimental methods to study international law. In fact, we are aware of only a handful of international law experiments24—one field experiment,25 two laboratory experiments,26 and

19. See Daniel M. Butler & David E. Broockman, Do Politicians Racially Discriminate against Constituents? A Field Experiment on State Legislators, 55 AM. J. POL. SCI. 463 (2011) (providing evidence that legislators are less likely to help putatively black constituents with requests for help voting).


21. For a recent example of legal research that used experimental methods, see Dan M. Kahan, David A. Hoffman, Donald Braman, Danieli Evans & Jeffrey J. Rachlinski, “They Saw a Protest”: Cognitive Illiberalism and the Speech-Conduct Distinction, 64 STAN. L. REV. 851 (2012) (conducting a laboratory experiment to show that cultural outlooks effect opinions on speech activities that are relevant to the speech-conduct distinction).

22. See, e.g., Druckman et al., supra note 16, at 629.

23. See, e.g., James N. Druckman, Donald P. Green, James H. Kuklinski & Arthur Lupia, Experimentation in Political Science, in CAMBRIDGE HANDBOOK OF EXPERIMENTAL POLITICAL SCIENCE 3, 3 (Druckman, Green, Kuklinski & Lupia, eds., 2011) (“The growing interest in experimentation reflects the increasing value that the discipline places on causal inference and empirically-guided theoretical refinement.”); see also D. James Greiner, Causal Inference in Civil Rights Litigation, 11 HARV. L. REV. 533, 558 (2008) (“[I]n causal inference, a randomized experiment is the gold standard.”). Cf. Richard A. Berk, An Introduction to Sample Selection Bias in Sociological Data, 48 AM. SOC. REV. 386, 392 n.8 (1983) (arguing that randomized experiments are the best way to eliminate measurement and specification errors). For a longer discussion of the benefits and drawbacks of different methods of experimental research, see infra PART III.

24. It is important to note that we are referring specifically to papers that explicitly conduct an experiment to test the effect of international laws—that is either treaty or customary international law. There are also a number of papers that use experimental methods to analyze the impact that international institutions have on public opinion. See, e.g., Dustin Tingley & Michael Tomz, How Does the UN Security Council Influence Public Opinion (2012) (working paper) (on file with author) (conducting an experiment to test the mechanisms for how the United Nations Security Council may impact public opinion); TERRANCE L. CHAPMAN, SECURING APPROVAL: DOMESTIC POLITICS AND MULTILATERAL
eight survey experiments. Moreover, political scientists, and not


27. See Dustin Tingley & Mike Tomz, Conditional Cooperation and Climate Change, COMP. POL. STUD. (forthcoming 2014) (conducting a survey experiment that tests whether respondents are more supportive of retaliatory measures being taken against countries that have promised to reduce fossil fuel emissions compared to countries that said it would do so); Stephen Chaudoin, Promises or Policies? An Experimental Analysis of International Agreements and Audience Reactions, INT’L ORG. (forthcoming 2014) (conducting an experiment to illustrate how respondents with expressed preferences have muted reactions when they learn that leaders have broken international agreements on trade policy); Adam Chilton, The Influence of International Human Rights Agreements on Public Opinion: An Experimental Study, 15 CHI. J. INT’L L. (forthcoming 2014) (conducting a survey experiment examining the influence of information on international human right agreements on public opinion); Geoffrey P.R. Wallace, International Law and Public Attitudes Towards Torture: An Experimental Study, 67 INT’L ORG. 105 (2013) (conducting a survey experiment to determine if the degree of legalization of international law affects public opinion on torture); Adam Chilton, Public Opinion, the Laws of War, & Saving Civilians: An Experimental Study (2013) (working paper) (on file with author) (conducting a survey experiment to analyze whether information on the status of international law changes public opinion on the acceptability of targeting civilians during war); Emilie Marie Hafner-Burton, Brad L. LeVeck & David G. Victor, Strategic Enforcement: Results from an Elite Survey Experiment on International Trade Agreements (ILAR Working Paper No. 16 2012), available at http://papers.ssm.com/sol3/papers.cfm?abstract_id=2132948 (conducting a survey experiment on elites to show that strategic qualities of individuals explain preferences for the designs of the enforcement provision of trade agreements); Tonya L. Putnam & Jacob N. Shapiro, International Law and Voter Preferences: The Case of Foreign Human Rights Violations (2013) (working paper) (on file with author) (conducting a survey experiment to
legal scholars, conducted all of these experiments.\textsuperscript{28}

This trend should change. In this paper, we argue that international law is a field that could uniquely benefit from experimental research. This is not only because international law is a field that is particularly concerned with causal analysis, but also because there are a number of limitations of observational data on international law that severely restrict the ability of observational studies to produce credible causal inferences on many of the topic’s most important questions. To make this argument, we articulate a set of general points about observational data in international law and supplement these points with data on international legal agreements. As we will illustrate, using this data and a range of prominent examples from the literature, experimental methods provide a promising way forward to study international law, either in concert with other methods or in places where other methods may be unable to do so.

At the outset, we should note that experimental methods are not a panacea. Our argument is not that observational studies are never valuable, or that experimental methods are always preferable: there are limitations to experimental methods\textsuperscript{29} and designing valid experiments can be a difficult task requiring careful research on experimental methods and procedures. Our argument is, however, that experimental methods are frequently the most credible way to test causal relationships and that many limitations with the observational

\textsuperscript{28} The one exception that we are currently aware of is Shima Baradaran, Associate Professor of Law, BYU Law School. Baradaran was a coauthor with political scientists on an article using a field experiment examining compliance with international law. \textit{See} Baradaran et al., \textit{supra} note 7. Another exception worth mentioning is Katerina Linos, Assistant Professor of Law, UC Berkley School of Law. Linos teaches and writes in international law and has a book and a number of articles using experimental methods. To our knowledge, however, Linos’ research using experimental methods has focused on policy diffusion across the OECD. \textit{See}, e.g., \textit{KATERINA LINOS, THE DEMOCRATIC FOUNDATIONS OF POLICY DIFFUSION: HOW HEALTH, FAMILY, AND EMPLOYMENT LAWS SPREAD ACROSS COUNTRIES} (2013).

\textsuperscript{29} For example, one difficulty with experimental research is designing an experiment that will produce externally valid results. For more on this point, see \textit{infra} notes 242–44 and accompanying text.
data available to study questions important in international law would benefit greatly from their use.

To make the argument that experiments should be used to study international law, we begin in Part I by offering important background on the use of experimental methods in both political science and legal scholarship. We first explore the recent growth in experimental research in political science, including its increasing use to study international relations. We next document the increasing acceptance and use of experimental methods by legal scholars in a range of fields, and then discuss how this trend has not extended to international law.

In Part II, we use examples and data to show that there are aspects of international law that make experimental methods a particularly well-suited approach to studying many important questions in the field. First, we argue that in many cases, the widespread adoption of treaties and universal applicability of customary international law mean that there is often insufficient variance in the “treatment” of international law for observational studies to be appropriate. Experimental methods can address these problems by employing research designs that randomize the information on the applicability of international law. Second, we argue that there is often a short window during which there is sufficient variation in the adoption of international agreements to allow for observational studies, but that experimental research allows for studying phenomena outside of such a narrow time frame. Third, we argue that observational studies are frequently unable to deal with the fact that many states have overlapping legal constraints created by the presence of domestic laws and international treaties covering the same issue areas. This collinearity poses serious inference problems for observational studies, but can easily be overcome by using designs that randomize the laws discussed in experimental vignettes. Fourth, we argue that observational studies have had difficulty finding appropriate dependent variables to measure whether states comply with international agreements. Experimental research can overcome this obstacle by using research designs that directly measure theories of why international law might change a state’s policies and actions. Finally, we conclude this part by arguing that experimental research can help overcome the most widely discussed inferential barrier to the study of international law—selection bias.

After making the case for why experimental research is needed, in Part III of the paper, we turn to specifically discussing how international legal scholars can conduct experimental research. To do so, we discuss each of three experimental methods in turn: la-
boratory experiments, survey experiments, and field experiments. For each, we provide an explanation of the virtues and vices of the method, provide examples of cutting edge research using the approach, and discuss how it might be applied to research on important topics in international law.

I. THE GROWTH OF EXPERIMENTAL RESEARCH

The use of experimental methods in political and legal research has increased dramatically in the last two decades. Today, improvements in technology mean that researchers can easily, cheaply, and quickly design and administer experiments to thousands of subjects. Researchers can now design their experiments in ways that directly test hypothetical theoretical causal mechanisms in ways that were previously difficult, if not impossible, with observational studies alone. We argue scholars of international law should use experimental methods not only because these developments can make possible directly testing the plausibility of their theories, but also because observational methods are often particularly poor ways to study international law. We will begin, in this part, by providing general background on the growth of experimental methods.

This part will proceed in two sections. We will first document the growth of experimental research in political science, as well as its recent popularity as a method of studying international relations. We will then discuss how legal scholars have begun to embrace experimental research, but that this embrace has not extended

30. A fourth category of research that can also be considered experimental is natural experiments. Although we will not consider natural experiments in depth, they are a growing research strategy used by legal scholars and political scientists that present a promising research method in many cases. For more information, see infra notes 238–40 and accompanying text.

31. See generally Druckman et al., supra note 16. See infra notes 34–48, 67–80 and accompanying text.

32. See, e.g., Adam J. Berinsky, Gregory A. Huber & Gabriel S. Lenz, Evaluating Online Labor Markets for Experimental Research: Amazon.com’s Mechanical Turk, 20 POL. ANAL. 351 (2012). We will provide guidance on how to conduct experiments—including online experiments—in PART III.

to international law. As we will discuss, legal scholars studying international law generally do not use experimental methods. This discussion will help lay the foundation for our argument in Part II that international law could benefit from experimental research.

A. The Growth of Experiments in Political Science

Research on the value of randomization for causal inference, and thus the theoretical underpinnings of modern experimental research, first began to emerge in the 1920s.34 Despite this early research on the value of experiments, social scientists generally were slow to adopt experimental methods.35 In fact, economics and political science were both disciplines where very little experimental research was published in the fifty years after the first work on the importance of randomization.36 The first experiment was not published in the American Political Science Review (APSR)—the leading political science journal—until 1956.37 This was not a watershed moment: it took over a decade for the next experiment to appear in the APSR.38 Moreover, commentators have suggested that the use of experimental methods was poorly regarded by the discipline until recently.39

34. Ho & Rubin, supra note 7, at 18 (citing R.A. Fisher, Statistical Methods for Research Workers (1925); R.A. Fisher, The Design of Experiments (1935)). See also Druckman et al., supra note 23, at 4 (“While scientists have conducted experiments for hundreds of years, modern experimentation made its debut in the 1920s and 1930s.”).

35. See Armin Falk & James J. Heckman, Lab Experiments Are a Major Source of Knowledge in the Social Sciences, 326 Science 535, 535 (2009) (“The social sciences have generally been less willing to use laboratory experiments than the natural sciences, and empirical social science has traditionally been considered as largely non-experimental, that is, based on observations collected in naturally occurring situations.”).

36. For evidence on the limited use of experiments by economists before the 1970s, see id. at 535 (“Fewer than 10 experimental papers [in economics] per year were published before 1965, which grew to about 30 per year by 1975.”). For a discussion on the growth of the use of experimental methods in political science, see Rebecca B. Morton & Kenneth C. Williams, Experimental Political Science and the Study of Causality: From Nature to the Lab 3–10 (2010); Kathleen McGraw & Valerie Hoekstra, Experimentation in Political Science: Historical Trends and Future Directions, in Research in Micropolitics 3 (1994); Druckman et al., supra note 16, at 628–30.


38. See Druckman et al., supra note 16, at 629.

39. See Morton & Williams, supra note 36, at 3 (“Until the last decade,
In recent years, however, experimental methods have become widely used in political science. Although there is a debate on the exact number of published articles using experimental research methods, there is agreement that the number has grown exponentially in the last two decades. In fact, there were over fifty experimental articles published in just three political science journals between 2000 and 2007. Although perhaps the most prominent experiments published in the last decade have focused on voter turnout, experimental methods have been used to study a range of topics: from how individual attitudes towards immigration policy are formed, to the circumstances under which incorporating private firms comply with international disclosure requirement laws. Additionally, political scientists have held conferences dedicated solely to experimental research, formed a section of the American Political Science Association, and issued a report on the status of experimental research within the discipline.

experimentation seemed to have a low standing within the discipline.”). See also Druckman et al., supra note 16, at 627 (“[P]olitical scientists have long expressed skepticism about the prospects for experimental science.”).

40. See MORTON & WILLIAMS, supra note 36, at 3 (citing Rose McDermott, Experimental Methods in Political Science, 5 ANN. REV. POL. SCI. 32 (2002) (discussing a disagreement over how to correctly classify which articles should be counted as experimental political science)).

41. See id. at 4–5. See also Druckman et al., supra note 16, at 628.

42. See MORTON & WILLIAMS, supra note 36, at 4.

43. See, e.g., Alan S. Gerber, Donald P. Green & Christopher W. Larimer, Social Pressure and Voter Turnout: Evidence From a Large-Scale Field Experiment, 102 AM. POL. SCI. REV. 33 (2008) (conducting a large field experiment to show that voters are more likely to vote after receiving letters that apply social pressure encouraging them to vote). See also GREEN & GERBER, supra note 18; Shaw et al., supra note 18.

44. See, e.g., Dustin Tingley, Public Finance and Immigration Preferences: A Lost Connection? 45 POLITY 4 (2013) (using experimental evidence to produce evidence that individual immigration preferences are not driven by states’ public finances environments). See also Jens Hainmueller & Michael J. Hiscox, Attitudes Toward Highly Skilled and Low-Skilled Immigration: Evidence from a Survey Experiment, 104 AM. POL. SCI. REV. 61 (2010) (conducting an experiment to produce evidence that nonmaterial factors explain individual immigration preferences).

45. See Findley et al., supra note 25 (conducting a field experiment to test whether information on the status of international law changes private firms’ likelihood to comply with international disclosure requirements in response to requests to incorporate). See also Baradaran et al., supra note 7 (reporting the results of the same experiments).

46. For example, the New York University Center for Experimental Social Science (NYU – CESS) held its fifth annual conference in March 2012. For more information, see http://cess.nyu.edu/policon2012/ (last visited Jan. 17, 2013). Additionally, Brigham Young University held a “Field Experiments in International Relations” Conference in September 2012. See https://pedl.byu.edu/Pages/Conference.aspx (last visited Jan. 24, 2013), for more information.
Science Association dedicated to experimental research,⁴⁷ and even established a regular newsletter on experimental political science.⁴⁸

What should be of interest to scholars of international law, however, is that experimental methods have not only been used to study American politics,⁴⁹ but also have increasingly been used to study international relations.⁵⁰ For example, laboratory experiments have been used to study how personality traits and incentives affect policy on topics ranging from the distribution of foreign aid to the conduct of war,⁵¹ survey experiments have been used to understand how audience costs change political decision making,⁵² and field experiments have helped illuminate how international organizations should improve resource allocation.⁵³ Although experimental research is admittedly far from being the primary method used to study

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⁴⁸. Established in 2010, the “Experimental Political Scientist” is the American Political Science Association’s bi-annual newsletter. It is edited by Dustin Tingley and contains advice on new methods for conducting experimental research and surveys of recent research. For the complete archive, see http://scholar.harvard.edu/dtingley/pages/exppolisci (last visited Jan. 18, 2013).

⁴⁹. Rose McDermott, New Directions for Experimental Work in International Relations, 55 INT’L STUD. Q. 503, 503 (2011) (“Experimentation has infiltrated some aspects of political science, most notably in the realms of public opinion and voting behavior and economic gains in comparative perspective . . .”) (citations omitted).

⁵⁰. For articles reviewing the use of experimental methods to study international relations, see Alex Mintz, Yi Yang & Rose McDermott, Experimental Approaches to International Relations, 55 INT’L STUD. Q. 493 (2011); McDermott, supra note 49; Natalie Florea Hudson & Michael J. Butler, The State of Experimental Research in IR: An Analytic Study, 12 INT’L STUD. REV. 165 (2010).


international affairs,\textsuperscript{54} this growing body of research shows that conducting experiments is an incredibly valuable way to gain insight into international relations.\textsuperscript{55} Experiments do not just compliment observational research methods; they also provide insight into important questions that have been at a standstill because of inferential problems with observational data.\textsuperscript{56}

The increase in the use of experimental methods in both political science generally and international relations specifically has been driven by several factors.\textsuperscript{57} First, as previously noted,\textsuperscript{58} experimental methods make it possible to make credible causal claims when it is frequently difficult to do so with observational data:\textsuperscript{59} by randomly assigning when a specific intervention is given without varying any other factors, it is possible to reliably estimate the influence of that intervention on a given outcome. For example, to test whether a particular drug helps treat a disease, medical researchers randomly assign a group of patients to receive the drug while other patients receive a placebo or no treatment at all. If the group that received the drug sees its condition change relative to the group that did not, researchers can assume that the drug caused the difference. Similarly, political scientists are able to analyze whether international election monitors influence voting results by randomly selecting polling sta-

\begin{itemize}
\item \textsuperscript{54} See McDermott, \textit{supra} note 49, at 503.
\item \textsuperscript{56} See, e.g., Tomz & Weeks, \textit{supra} note 20 (discussing why a number of problems with observational data have made it impossible to provide a satisfactory test of the democratic peace hypothesis).
\item \textsuperscript{57} See generally Morton & Williams, \textit{supra} note 36, at 12–16.
\item \textsuperscript{58} See \textit{supra} note 23.
\item \textsuperscript{59} See generally Morton & Williams, \textit{supra} note 36, at 12–14. See also Druckman et al., \textit{supra} note 16, at 627.
\end{itemize}
tions with monitors present during an election. 60

Secondly, technological improvements have made it easier to conduct experimental research. 61 For example, prominent commentators have in part attributed the rise in political scientists’ experimental research to the development of computer-assisted telephone interviews in the 1990s. 62 The Internet has made it possible to conduct experiments cheaply, 63 also giving rise to a new wave of experimental research. 64 The result of these and other 65 technological developments means that, as political scientists are increasingly recognizing the value of experiments, it is becoming easier than ever to incorporate them into their research.

B. The Growth of Experiments in Legal Research

The same factors that have led political scientists to increasingly conduct experimental research have also begun to influence legal scholars. 66 Unsurprisingly, however, legal researchers have been slower to fully adopt experimental research methods. 67 The first wave of empirical legal studies took shape in the 1920s and 1930s, 68 which was roughly the same time when the theoretical foundations for modern experimental research were developed. 69 Despite these early roots, empirical legal research was still rare for much of the

60. See Hyde, supra note 53.

61. See also Druckman et al., supra note 16, at 629–30. But see Morton & Williams, supra note 36, at 12 (arguing that although technological advances have made it easier to conduct experimental research, “technology cannot be the primary answer for why experiments have increased in standing”).


63. Cf. Berinsky et al., supra note 32 (demonstrating how Amazon’s “Mechanical Turk” service can be used to conduct reliable social scientific experiments).

64. See, e.g., Tingley & Tomz, supra note 27.

65. For example, easy to use computer software that can help analyze survey results.

66. Cf., e.g., Griener, supra note 23, at 558.

67. For an excellent primer on the use and misuse of empirical methods by legal scholars generally, see Epstein & King, supra note 7.

68. For a fascinating discussion of early legal empirical research, see Ho & Rubin, supra note 7, at 18–19 (citing John Henry Schlegel, American Legal Realism and Empirical Social Science (1995)); see also Herbert M. Kritzer, The (nearly) Forgotten Early Empirical Legal Research, in Oxford Handbook of Empirical Legal Research 875 (P. Cane & H.M. Kritzer eds., 2010).

69. See supra text accompanying note 34.
twentieth century, and the use of experimental methods was even rarer still. Perhaps the earliest appreciation for experimental methods came from the law and economics movement. That said, the particular recognition of the value of experiments focused on explaining the insights legal scholars could gain from laboratory experiments conducted by economists; the actual examples of legal researchers conducting experiments on their own were few and far between.

In the last twenty years, however, this trend has begun to change. Leading law journals have published articles involving laboratory experiments, survey experiments, field experiments,

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72. Cf. Hoffman & Spitzer, supra note 71, at 1024 n.110 (documenting the exceptions to their observation that “[m]uch of the research discussed [in their article] was neither done by legal scholars nor designed specifically to test or investigate theories of law and economics”).

73. See McAdams & Ulen, supra note 70, at 791–92 (discussing the rise of legal scholars using empirical methods generally); cf. Ho & Rubin, supra note 7, at 20 (documenting experimental studies relevant to law, with the earliest published in 1990); Seidman, Diamond & Mueller, supra note 1, at 590–92 (documenting the use of empirical research in law reviews, including experimental methods).

74. See, e.g., Michael D. Guttentag, Christine L. Porath & Samuel N. Fraidin, Brandeis’ Policeman: Results From a Laboratory Experiment on How to Prevent Corporate Fraud, 5 J. EMPIRICAL LEGAL STUD. 239 (2008); see also Jeremy A. Blumenthal, Group Deliberation and the Endowment Effect: An Experimental Study, 50 HOU. L. REV. 41 (2012).


and even natural experiments. In these articles, experimental methods have helped to answer important questions from a range of legal fields, including criminal law, constitutional law, and corporate law, among others. It appears that experimental methods are gaining mainstream acceptance as a credible research method for legal scholars.

While experimental methods have begun to permeate law generally, largely because of their superiority over observational methods in evaluating causality, this has not yet occurred in the field of international law. In fact, as far as we can tell, legal scholars studying international law have essentially not used experimental methods at all. For example, in Shaffer and Ginsburg’s recent extensive review of empirical scholarship on international law, they do not discuss a single experiment. Moreover, we have been unable to find any original experimental research published in an international law journal. As far as we can tell, the experimental work on international law that has been conducted has been done entirely by professors in political science departments that are interested in international relations and international legal issues. Given the growing use of experimental methods in other fields, this gap in legal scholarship is surprising. It may be that international law scholars have not yet recognized the potential of experimental methods to shed light on important legal questions.
empirical methods to study international law and the problems of inference that have led many to criticize observational studies in the field, it is time that this changes.

II. WHY EXPERIMENTS ARE NEEDED FOR INTERNATIONAL LAW

As the previous section demonstrated, experimental methods are an increasingly common way for scholars to conduct research on political and legal issues, and the ability of experiments to provide reliable causal estimates is a considerable advantage to using these methods when studying international events. That said, we are unaware of any attempts to argue that experimental methods are uniquely appropriate for the study of international law. In fact, the justifications for using experimental methods in international law run deeper than those for using experimental methods in international relations more generally. The ratification patterns and complexity of international agreements mean that international law is particularly well suited to experimental methods. Accordingly, although there have been considerable advances in the understanding of the effects of international law using observational research designs, this discussion will demonstrate further why these approaches should be augmented by experimental research.

In this Part, we present five arguments for why experimental methods are particularly appropriate for studying international law. First, we argue that there is frequently insufficient variation in the countries that are bound by sources of international law—specifically multinational treaties and customary law—to assess whether those laws change country behavior. This makes experimental methods an appropriate and cost-efficient way to create that variation by randomizing input information on whether states are bound by international law. Second, we present evidence that there are frequently short windows of time when there is variance in treaty adoption, meaning there may be too few events that occur during that time frame to allow for a reliable study. Given these realities, we explain how exper-

84. See, e.g., Findley, supra note 25; Hafner-Burton, supra note 26; Putnam & Shapiro, supra note 27; Tomz, supra note 27; Wallace, supra note 27.
85. See supra text accompanying notes 1–6.
86. See supra text accompanying notes 7–15.
87. For the most extensive effort to use sophisticated statistical methods to test international law, see Simmons, supra note 4. For a summary of empirical findings from using empirical efforts to study international law, see Shaffer & Ginsburg, supra note 1; Hafner-Burton et al., supra note 1; Simmons, supra note 1.
mental methods present a way to explore hypothetical events outside of the narrow windows available to observational studies. Third, we explain how observational studies frequently do not account for overlapping legal constraints and thus cannot isolate the causal effects of individual agreements on states. We suggest that experimental methods can help address this by testing whether international agreements may have an “additive,” rather than a purely “substitutive,” effect over other sources of law. Fourth, we discuss how observational studies often have difficulty finding appropriate dependent variables to test state compliance. We argue that experiments can be designed in ways to directly test whether state and non-state actors comply, thus overcoming the problems of using large datasets that are poor direct measures of non-compliant behavior. Fifth, we argue that although observational studies have problems accounting for the fact that states do not randomly commit to international treaties or decide to bring international litigation, experimental research can help overcome the selection bias in these situations.

A. Lack of Variance in Sources of International Law

A fundamental requirement of causal analysis is that any explanatory variable must actually vary to assess its causal impact. If an explanatory variable does not take on multiple values, it is impossible to isolate the effect of that variable when compared to other factors that could influence a particular outcome. This requirement often poses difficulties for qualitative and quantitative researchers who would like to study any fixed feature of an environment. Experimental research, however, allows researchers to artificially create the variance required to study a given topic.

The need for explanatory variables to vary presents a particular challenge for any observational study analyzing the influence of

88. GARY KING, ROBERT O. KEOHANE & SIDNEY VERBA, DESIGNING SOCIAL INQUIRY 146 (1994) (“[T]he causal effect of an explanatory variable that does not vary cannot be assessed.”).

89. See, e.g., KENNETH N. WALTZ, MAN, THE STATE, AND WAR: A THEORETICAL ANALYSIS 16–41 (1959) (arguing that it is difficult, if not impossible, to assess the influence of human nature on war because if human nature is fixed, it is not possible to use it as a variable to explain instances of war and peace); see also KING, KEOHANE & VERBA, supra note 88, at 147 (citing DAVID D. LAITIN, HEGEMONY AND CULTURE: POLITICS AND RELIGIOUS CHANGE AMONG THE YORUBA (1986)) (noting Laitin’s difficulty in studying the influence of religion on politics in Somalia because of the religious homogeneity among the population).

90. For example, this can be done by varying information on whether particular countries have ratified a given treaty. See, e.g., Tomz, supra note 27.
international law on state behavior: the two primary sources of international law, treaties and customary international law, often do not have sufficient variance to allow for a satisfactory analysis of their causal impact. It is possible, however, to overcome these problems using experimental methods.

1. Widespread Ratification of Multinational Treaties

It is increasingly difficult to assess the influence of many of the most important multinational treaties because they have become so widely adopted. As we will discuss, experimental methods, by varying the information provided to research subjects on whether or not a given country has ratified a treaty, can help with this roadblock in international law study.

One of the most prominent lines of empirical research in international law has been examining whether the ratification of treaties influences the behavior of states. This line of research has used treaty ratification as the key explanatory variable in a wide range of substantive issue areas in international law. This includes research on compliance with international monetary rules, environmental standards, human rights, and the laws of war, among others. The difficulty, however, is that many of the most important treaties have become so ubiquitous that there is very little variance in their

91. See Curtis A. Bradley & Mitu Gulati, Withdrawing from International Custom, 120 YALE L.J. 202, 204 (2010) (“There are two basic types of international law—treaties and customary international law (CIL).”).

92. See, e.g., Simmons, supra note 1, at 274; see also Hafner-Burton et al., supra note 1, at 89 (“Research on whether an international legal agreement has had an effect on state behavior often probes whether states parties comply with the terms of agreements more often than nonparties.”).

93. See generally Simmons, supra note 1, at 280–92 (reviewing empirical research on treaty compliance by issue area).

94. See Simmons, supra note 11; see also von Stein, supra note 12; Simmons & Hopkins, supra note 12.

95. See, e.g., Oran A. Young & Michael Züm, The International Regimes Database: Designing and Using a Sophisticated Tool for Institutional Analysis, 6 GLOBAL ENVTL. POL. 121 (2006).

96. See, e.g., SIMMONS, supra note 4; Hathaway, supra note 4.

97. See, e.g., Morrow, supra note 5; Valentino et al., supra note 5.

98. For example, there is a growing literature on the effect of ratification of Bilateral Investment Treaties. See, e.g., Zachary Elkins, Andrew Guzman & Beth Simmons, Competing for Capital: The Diffusion of Bilateral Investment Treaties, 1960-2000, 60 INT’L ORG. 811 (2006).
ratification. Moreover, since many studies have argued that treaties likely have the largest influence on certain types of countries, there may be even less variance among this subset. Given the insufficient variance in states that have ratified major agreements, using observational studies is a less viable option for studying the influence of treaty ratification on state behavior.

To help illustrate this point, Figure 1 and Figure 2 present data on the number of states party to two categories of multilateral treaties. Figure 1 presents the number of states party to the six “core” human rights treaties: the International Covenant on Civil and Political Rights (CCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Convention on the Prevention and Punishment of the Crime of Genocide (GC)

99. See, e.g., SIMMONS, supra note 4, at 150–54 (arguing that human rights treaties have the largest impact on “Transnational/Partly Democratic Countries”); Morrow, supra note 5, at 561 (arguing that democracies are more likely to comply with treaties on the laws of war).

100. To be clear, there are sources of variation that can be exploited for observational studies, such as the examination of the time period before treaties have been widely ratified and the comparison of individual countries’ behaviors before and after ratification. Our broader point, however, is that experimental methods can introduce variation that is otherwise not present in observational data.

101. The source for the data presented in Figure 1 is from the United Nations Treaty Collection, available at http://treaties.un.org/Pages/ParticipationStatus.aspx (last visited Nov. 17, 2012). Figure 2 additionally contains data from the International Committee of the Red Cross, available at http://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/index.jsp (last visited Nov. 17, 2012). The data presented in Figures 1 & 2 are based on the number of state parties to these agreements as of Nov. 16, 2012.

102. See SIMMONS, supra note 4, at 59–64 (discussing the six “core” human rights agreements).
litical Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Convention on the Elimination of All Forms of Racial Discrimination (CERD); the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); and the Convention on the Rights of the Child (CRC). Figure 2 presents the number of states party to the major multinational conventions that have sought to regulate crimes against humanity and armed conflicts post WWII: the Convention on the Prevention and Punishment of the Crime of Genocide; the Geneva Conventions of 1949 (Geneva Conventions I–IV); Additional Pro-


Protocol I to the Geneva Conventions of 1949 (AP I); and Additional Protocol II to the Geneva Conventions of 1949 (AP II). As Figures 1 & 2 show, the number of parties to these agreements ranges from 154 to 195 states. To put this in perspective, with the addition of South Sudan in 2011, there were 193 members of the United Nations. Thus, an overwhelming number of states are party to the most important treaties regulating human rights and armed conflicts. This leaves little variance in ratification for scholars seeking to assess the impact of these agreements using traditional observational studies.

Although the lack of variance in the ratification of major multilateral treaties poses a serious obstacle for observational studies,


114. Of course it is still possible to gain some leverage by studying the effects of these treaties during windows before ratification was so prevalent. For a discussion of this approach, see infra Part II.B.1.
experimental research is able to help solve this problem. It is possible to employ an experimental design that randomizes whether countries are subject to a given treaty to try to estimate the impact that agreement might have on individual preferences or predictions. For example, Michael Tomz of Stanford University has conducted an experiment on members of the British House of Commons to determine “the impact of treaties on expectations.”115 During interviews with these policy makers, Tomz asked for their opinions on whether a country in a hypothetical scenario was pursuing the development of nuclear weapons. Half of the respondents were presented with a series of facts that included that the country in question had signed the Nuclear Non-Proliferation Treaty (NPT). The other respondents received an identical set of facts, but were told that the country had not signed the NPT. 35% of the NPT-signed respondents thought it was likely that the country was pursuing a nuclear weapon, but of those told the country had not signed the NPT, 61% thought this pursuit was likely.116 Although this is not proof that the NPT is having an impact, it is at least evidence that high-level policy makers believe it is an important signal. Moreover, since there are 190 countries currently party to the NPT,117 it is nearly impossible to try and estimate whether the NPT has any influence without taking this kind of creative approach, made possible by experimental research design.

2. Universal Applicability of Customary International Law

Experimental methods also provide a way to deal with a related and perhaps more difficult to account for problem: there is essentially no variance in the applicability of Customary International Law (CIL) because it applies to (almost) every country. Experiments help deal with this by comparing reactions to specific treaty obligations to the reactions to similar obligations simply grounded in general principles of international law.

CIL is universally applicable international law, regardless of whether a country has signed a formal treaty.118 The only way for a country to not be bound by CIL is to be a persistent objector while a

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115. Tomz, supra note 27.
116. Id. at 24–28.
118. See generally Bradley & Gulati, supra note 91. See also JACK L. GOLDSMITH & ERIC A. POSNER, THE LIMIT OF INTERNATIONAL LAW (2005).
norm of CIL is being formed. In practice, there are very few ex-
amples of countries being successful objectors. Even when a state
has persistently objected, CIL is often considered a “peremptory
norm” where objections are not valid. Moreover, these perempto-
ry norms include many of the strongest norms of international law.

For our purposes, the relevant takeaway is that CIL is a nearly
universal source of international law prohibiting actions on a range of
topics. Although treaties may arguably be more important than CIL
in modern international affairs, CIL is still the subject of a great
deal of international legal scholarship. Qualitative or quantitative
observational studies are, however, largely powerless in assessing the
influence of CIL on state behavior, due to lack of variance in its ap-
plicability. In other words, since this source of law applies to every
country, traditional research designs cannot determine whether CIL
has played a role in many important changes in state behavior.

Although observational studies are generally unable to ade-
quately deal with the lack of variance of CIL, experimental research

119. See Bradley & Gulati, supra note 91, at 205 (discussing Int’l Law Ass’n, Comm.
on the Formation of Customary (Gen.) Int’l Law, Statement of Principles Applicable to the
Formation of General Customary International Law 27 (2000)). There was a symposium on

120. See Bradley & Gulati, supra note 91, at 211 (“Persistent objection must involve
affirmative international communications, not mere silence or adherence to contrary laws or
practices, and there are few examples of agreed-upon successful persistent objection.”). For
a discussion of the theory behind the persistent objector doctrine, see Joel P. Trachtman,
Persistent Objectors, Cooperation, and the Utility of Customary International Law, 21 DUKE

121. See Bradley & Gulati, supra note 91, at 212–13 (discussing the “modern” view
that there are a small subset of norms with special status); id. at 212–13, n.37 (quoting
(“For the purposes of the present Convention, a peremptory norm of general international
law is a norm accepted and recognized by the international community of States as a whole
as a norm from which no derogation is permitted and which can be modified only by a
subsequent norm of general international law having the same character.”).

122. See Bradley & Gulati, supra note 91, at 212–13 (listing genocide, torture, and
slavery as practices banned by CIL) (citing RESTATEMENT (THIRD) OF THE FOREIGN
RELATIONS LAW OF THE UNITED STATES § 702 cml. n (1987)).

123. Cf. Andrew T. Guzman, Saving Customary International Law, 27 MICH. J. INT’L
L. 115, 119 (2005) (“modern international relations have made the treaty a more important
tool, relative to CIL, than it has been in the past”). But cf. John J. Chung, Customary
International Law as Explained by Status Instead of Contract, 37 N.C. J. INT’L L. & COM.
REG. 609, 609 (2012) (“[CIL] forms the foundation of international law.”).

124. See Shaffer & Ginsburg, supra note 1, at 11–15 (discussing lines of research in
CIL while arguing that there should be more empirical research on the topic).
can help establish whether it is at least plausible that customary international law is having an impact on state behavior. A number of experiments have sought to assess the impact of international law without references to specific treaties. For example, Tonya Putnam and Jacob Shapiro conducted an experiment to evaluate whether individuals are more likely to support actions being taken against a state that violates human rights when they are informed those harms are violating international law. As part of their experiment, they told some respondents nothing about international law, others that a country was violating a treaty, and still another group just that they were violating international law generally. The results indicate that although information about international law changes public opinion, general references to international law have roughly the same effect on public opinion as references to signed treaties. The result is particularly interesting, because it suggests that international law without a treaty—customary international law—may still have an influence on policy preferences and outcomes. Thus, experimental research can estimate whether CIL may matter, while observational studies cannot, given a lack of variance in the applicability of customary norms.

B. Narrow Ranges of Time for Analysis

To draw reliable inferences from the data in a large-n empirical study, it is necessary to analyze a sufficiently long time period to have a big enough sample of observations. This can pose a problem for observational studies of international events because often only relatively short time frames can be analyzed. By giving the researcher greater control, for example by allowing the generation of new data, experimental methods can help overcome this obstacle.

Narrow time frames of analysis have posed a considerable problem for observational studies. Mindful of this concern, scholars of international phenomena (wars, alliances, trading patterns, etc.) of-

125. See, e.g., Putnam & Shapiro, supra note 27; Wallace, supra note 27.
126. See Putnam & Shapiro, supra note 27.
127. Id. at 15. It is worth noting that a fourth treatment group was told that there was a relevant treaty, but that the country had not signed it. Id.
128. Id. at 19.
129. Obviously there is great variation in the time frame that should be analyzed depending on the question being studied. There are excellent studies that are able to focus on a relatively few number of years and others that examine hundreds of years.
ten construct datasets that cover the entire post-war period, the entire twentieth century, or even over 200 years. The approach of historically extending datasets, however, is often simply not available to scholars of international law. There are often very short windows when there is variation in the number of countries that have signed treaties. A related problem results if an insufficient number of events to study occurs during these windows. Experimental methods can help overcome both of these problems by exploring hypothetical scenarios or interning in the field to generate new data.

1. Short Windows Before Widespread Ratification

When researching the effect of international law, scholars are typically only able to analyze the period during which the relevant treaty, court, or institution was in effect. However, although it has ancient roots, the corpus of international law has mostly formed relatively recently. As a consequence, even in the best cases, scholars of international law are left studying the short time periods


131. See, e.g., Alexander B. Downes, Restraint or Propellant? Democracy and Civilian Fatalities in Interstate Wars, 51 J. CONFLICT RESOL. 872 (2007) (analyzing a dataset of interstate wars between 1900 and 2003 to assess whether democracies are more likely to kill civilians during wars).


133. See, e.g., Gabriella Blum, The Laws of War and the “Lesser Evil”, 35 YALE J. INT’L L. 1, 8 (2010) (“International Humanitarian Law’ is a term of the past century alone even though the notion of regulating and limiting warfare is almost as ancient as wars themselves”).

134. For example, much of human rights law emerged after World War II. See Jacob Katz Cogan, The Regulatory Turn in International Law, 52 HARV. INT’L L.J. 321, 322–23 (2011) (“While strands of such international human rights law date back hundreds of years in the protection of certain foreign nationals, such as diplomats, from state action or inaction deemed unlawful, its flowering would only begin to occur in the mid-twentieth century when, in the wake of World War II, international law’s shelter extended fundamentally beyond that limited population to encompass a state’s control of its own people.”) (citations omitted). For documentation of the growth of international courts and tribunals during this period, see Cesare P.R. Romano, A Taxonomy of International Rule of Law Institutions, 2 J. INT’L DISP. SETTLEMENT 241 (2011).
during which international law has gone into effect. This problem is exacerbated by the fact that it is often not prudent, or possible, to study the entire time that an international treaty or institution has been in effect. As was explained in PART III.A., analyzing causation requires the presence of variation, and many international treaties have been so widely adopted that there is not sufficient variation in their treatment.

A window during which there was sufficient variation in the adoption of the treaty could ameliorate this causation problem. For example, if there were several decades during which only half the world had ratified the CEDAW, it might be possible to compare the treatment of women during that period to understand whether the presence of the treaty changed behavior. However, many recent international agreements are being quickly ratified by many states. To illustrate this point, we have collected data on when states ratified the human rights agreements and armed conflict treaties discussed in PART II.B. This information is presented in Figure 3 & Figure 4.

135. See, e.g., Rachel Brewster & Adam Chilton, Supplying Compliance: Domestic Sources of Trade Law & Policy (Nov. 4, 2012) (working paper) (on file with authors) (analyzing United States compliance with WTO decisions from 1996 to 2010). But see Morrow, supra note 5 (looking at compliance with the laws of war for the entire twentieth century by using a series of different treaties as the “treatment”).

136. See supra text accompanying notes 88–128.

137. See supra Figure 1 & Figure 2.

138. This is the approach implicitly taken by Beth Simmons in her book analyzing the success of human rights agreements. See Simmons, supra note 4.

139. See supra notes 103–12.

140. For information on the sources used to collect data for these Figures, see supra note 101.
As the figures show, not only do these major agreements have many signatories, but several of the more recent treaties reached these signatory numbers in just a few decades. In the most extreme case, there were 150 countries that were parties to the Convention on the Rights of the Child within three years of when it went into effect in 1990. Similarly, there were 150 parties to Additional Protocol I to the Geneva Conventions twenty years after it opened for signature, and 142 parties to Additional Protocol II during that same time. This same trend emerged with a number of other major international agreements. For example, the Kyoto Protocol went into force on February 16, 2005.\footnote{See Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 11, 1997, 37 I.L.M. 22.} \footnote{Id.} Today, there are 192 parties to the agreement.\footnote{Id.} Similarly, the Rome Statute for the International Criminal Court (establishing the ICC) went into force on July 1, 2002.\footnote{See Rome Statute of the International Criminal Court, July 17, 1998, U.N. Doc. A/CONF.183/9.} \footnote{Id.} Today, there are 122 members to the agreement.\footnote{Id.}
Although these issues present serious hurdles to research designs based on observational data, experimental methods can provide one way to overcome them. First, because experiments can use hypothetical vignettes that vary relevant facts about countries, researchers are not restricted to analyzing events that occurred in the time frame before widespread adoption of treaties. For example, as discussed in PART II.A., Mike Tomz conducted an experiment on the impact that ratification of the NPT has on threat perception, even though he did not conduct the experiment when there was still variance in which countries had signed the NPT.\footnote{See Tomz, supra note 27; see also supra text accompanying notes 115–17.} Even if the amount of time before treaties are widely adopted grows shorter in the future, it can still be possible to see if the treaty regime can theoretically alter policy preferences and beliefs.

2. Laws Regulating Infrequent Events

The problem created by the short time frames between when treaties are negotiated and when they are widely adopted is exacerbated if the treaty regulates events that happen infrequently. An example is the Additional Protocol I to the Geneva Conventions of 1949, which went into effect in 1978.\footnote{Protocol I, supra note 111.} This treaty is the most com-
prehensive attempt to regulate armed interstate conflicts.\textsuperscript{147} By at least one count, there were only fourteen interstate wars before the treaty had over 160 signatures in 2003.\textsuperscript{148} It thus is incredibly difficult to conduct large-\textit{n} observational research on whether the treaty has helped change the behavior of states engaged in armed conflicts.

An advantage of experimental designs is that they can explore topics that have occurred relatively infrequently. For example, the aforementioned wide adoption of Additional Protocol I of the Geneva Conventions has certainly made it difficult to conclusively determine whether the law has influenced state behavior during conflict.\textsuperscript{149} As a way to address this problem, author Chilton presented respondents with a hypothetical future conflict in which violations of the laws of war were occurring.\textsuperscript{150} This experiment produced evidence that information on the status of the laws of war changes public opinion\textsuperscript{151} but suggested that the information does not have an additive effect over other similar arguments.\textsuperscript{152} Although the experiment does not conclude the debate on whether states change their behavior as a consequence of ratifying treaties on the laws of war, it does bring to the discussion new evidence simply unavailable through reexamining the observational data on the same set of conflicts. As these examples illustrate, experimental designs can help avoid the problems created by the short windows of time between when a treaty is ratified and when it is widely adopted.

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\textsuperscript{147} See George H. Aldrich, Prospects for United States Ratification of Additional Protocol I to the 1949 Geneva Conventions, 85 Am. J. Int’l L. 1, 1 (1991) ("[Additional Protocol I] is the most important treaty codifying and developing international humanitarian law since the adoption of the four [Geneva] Conventions themselves; and it is the first such treaty since 1907 to deal with methods and means of warfare and the protection of the civilian population from the effects of warfare.").

\textsuperscript{148} See Alexander B. Downes, Web Appendix for How Smart and Tough Are Democracies? Reassessing Theories of Democratic Victory in War, 33 Int’l Security 9 (on file with author) (providing documentation for the wars used in his large empirical project to analyze the number of civilians killed during interstate wars).

\textsuperscript{149} Compare Morrow, supra note 5 (finding that democracies are likely to follow the laws of war when reciprocation is likely), with Valentino et al., supra note 5, (finding no evidence that states, including democracies, change their behavior as a result of the laws of war).

\textsuperscript{150} See Chilton, supra note 27.

\textsuperscript{151} Id. at 16–21.

\textsuperscript{152} Id. at 21–24. For an explanation of how experiments can be designed to test causal mechanisms, see Imai, Tingley & Yamamoto, supra note 33; Imai, Keele, Tingley & Yamamoto, supra note 33. For other examples of research using related approaches to test causal mechanisms, see Tingley & Tomz, supra note 24, and Tomz & Weeks, supra note 20.
C. Overlapping Legal Constraints

To conduct reliable causal analysis, researchers must also isolate the effects of competing causal claims. This requirement, however basic, is often very difficult to satisfy. For example, the difficulty may arise because two or more factors hypothesized to cause a given phenomenon may occur simultaneously: democracies may be less likely to fight each other because they have more transparent governments or because they are more likely to have intertwined economic relationships.153 Since both of these factors are observed in the real world, it is difficult to know which (if either) makes democracies less likely to fight. Experimental methods overcome this problem by isolating which causal claims are tested.

Qualitative or quantitative observational studies assessing the impact of international law on state behavior often have difficulty untangling the effects of overlapping legal constraints. As the study of international law moves from analyzing whether states comply with the treaties and agreements they sign toward assessing whether those agreements make a causal impact on state behavior,154 it is increasingly important for scholars to perform credible causal analysis by isolating effects of specific agreements.155 To do so, scholars have focused on analyzing the impact of the ratification of an individual treaty156—or participation in an international institution157—on changes in policy.

1. Overlapping International Treaties

Isolating the causal effect of any individual treaty or institution, however, is complicated because countries are often bound by several international legal agreements with overlapping legal obligations and constraints. Given the rapid growth of international law in the last sixty years, most states are subject to overlapping international treaty objections in many areas. For example, there were over 50,000 treaties on file with the UN Treaty System as of 2005.158

155. Cf. Ho & Rubin, supra note 7, at 21–22 (explaining the importance of focusing on a single “treatment” when performing causal analysis).
156. See, e.g., Hathaway, supra note 4.
157. See, e.g., Simmons, supra note 11.
result of this massive proliferation in international legal agreements has been that these agreements increasingly create conflicting and overlapping obligations.\textsuperscript{159} As a result, it can be difficult to know whether any specific international law is having an effect; states may be complying with it because of a different international agreement, or failing to comply or remain compliant because of other conflicting international legal agreements.

To illustrate, we present Figures 5 & Figure 6, showing how many of the treaties discussed in \textsc{Part II.A.1} & \textsc{Part II.B.1} states are party to. As Figure 5 shows, 123 states are party to all six major human rights treaties. Figure 6 shows that 125 states are party to the four treaties governing armed conflict. Significantly, these treaties contain common elements, and efforts that states take in response to one agreement may fall under the scope of another agreement.\textsuperscript{160}

\begin{figure}
\begin{center}
\includegraphics[width=\textwidth]{figure5}
\end{center}
\caption{Number of Major Human Rights Agreements that Countries Have Signed}
\end{figure}

\begin{itemize}
\item \textsuperscript{160} For example, Article I of both the ICCPR and the ICESCR protect the “right of self-determination.” See ICCPR, \textit{supra} note 103, at art. I; ICESCR, \textit{supra} note 104, at art. I.
\end{itemize}
These constraints are often collinear, making it particularly difficult for observational studies to isolate the effect of a single treaty. Collinearity occurs when a variable of interest strongly correlates with another variable (or set of variables) that offer a potential explanation for a phenomenon. When this occurs, it is difficult—if not impossible—to tease out the causal effects of these strongly related factors. For example, when there are multiple treaties that seek to protect minority rights with similar ratification patterns, it might be impossible to tell which, if any, treaty is doing anything to protect minority rights. That is to say, if the set of countries that have signed agreement X is the same as that of countries that have signed agreement Y, the ratification of those two agreements is collinear, making it impossible to know the causal effect of either treaty on an outcome of interest.

Using experimental research designs can help researchers directly address the problems posed by the presence of overlapping legal constraints that confound observational studies. For one, experimental designs vary information that would be collinear in

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161. As an informal definition, two variables can be said to be collinear when one variable can perfectly predict the other. See King, Keohane & Verba, supra note 88, at 122–24, 213–15, for a discussion on this problem.

162. See Tomz & Weeks, supra note 20, at 4–5, for an excellent discussion of the problem that collinearity poses for testing whether there is a democratic peace.
observational data. That is, even if nearly all countries that have ratified treaty X have also ratified treaty Y—making observational studies futile—that information can be varied during experimental research. For example, there has been a great deal of debate among scholars of international relations on whether there is a “democratic peace” (that is, are democracies less likely to fight wars with each other). However, the presence of democracy is often collinear with other variables that might explain peace (i.e. shared political interests), hindering scholars using observational data. To solve this problem, Mike Tomz and Jessica Weeks recently conducted a survey experiment that varied the information provided to respondents on a number of variables that had been hypothesized to both cause peace and be collinear by democracy. This way, Tomz and Weeks provided new evidence that individuals are less supportive of war with countries that are democratic, even compared to autocracies similar in all relevant respects. Importantly, this example illustrates how it would be possible to use an experimental design that varies whether a state is party to different treaties, even if this distribution of ratification is not common in the actual world.

2. Overlapping Domestic Laws

A related problem is that states that have signed international legal agreements on a given topic may also have domestic laws on the same subjects. Although there has been a continual academic debate on degrees of difference between international and domestic law, scholars have long recognized that countries often have inter-


165. See Tomz & Weeks, supra note 20.

166. If the research design used hypothetical countries, then this would be possible to do without deceiving subjects. If, however, the researcher hopes to ask questions about specific countries, it might only be possible to utilize this approach if subjects are deceived about whether a country has ratified a specific treaty (or set of treaties). This introduces an ethical question that is central to experimental research. For a discussion on the issue of deceiving subjects, see infra text accompanying notes 266–68.

167. There has obviously been an incredible amount of scholarship over the years analyzing the relationship between international law and domestic law. For just a few recent examples, see, Oona Hathaway & Scott J. Shapiro, Outcasting: Enforcement in Domestic and International Law, 121 Yale L.J. 252 (2011) (arguing that international law is enforced
national laws and domestic laws that cover the same subjects. This could either be because countries select into international legal agreements that do not impose onerous new requirements, or because countries quickly change their domestic laws to mirror the international legal agreements they have signed. In either scenario, the presence of two laws covering the same topic makes it difficult to causally assess the degree to which the international law is responsible for changes in state behavior. This phenomenon will increase if international law continues regulating more areas previously solely in the sphere of national regulation.


169. *See supra* Part II.E; *see generally* Downs, Rocke & Barsoom, supra note 10, at 382–87 (arguing that countries may only sign international legal agreements when they do not constitute a major change from what the country would have done in the absence of the agreement).

170. For a number of excellent case studies documenting countries that have changed their laws to incorporate international legal agreements they have signed, see Simmons, supra note 4. For example, Simmons documents how Japan passed a number of laws to expand the rights of women in the workplace following the country becoming a party to the CEDAW. *Id.* at 237–45.

171. Of course, if signing an international legal agreement were to result in changes in domestic law it would still be evidence of the causal effect of international law. *Cf.* Shaffer & Ginsburg, supra note 1, at 15 (reviewing a previous debate between Simmons and Von Stein and concluding that anticipatory changes to currency regimes to join the IMF still can be viewed as evidence of the effect of the IMF’s legal rules on state policy). The difficulty, however, is that with large n-observational studies, it can be difficult to be confident of this causal link without more in depth research.

In addition to the problem that exists when these agreements are collinear—as discussed in the last section—observational studies have difficulty accounting for all of a state’s legal obligations. This requires a huge amount of country-level research, or expertise, that is impracticable for most large-\textit{n} studies. Although it may be possible to account for all of a country’s treaty commitments in a statistical model in some cases,\footnote{See Yonatan Lupu, \textit{The Informative Power of Treaty Commitments: Using the Spatial Model to Address Selection Effects}, \textit{Am. J. Pol. Sci.} (forthcoming 2013), available at http://dss.ucsd.edu/~ylupu/Informative\%20Power.pdf (last visited Jan. 13, 2013) (using countries’ history of ratifying treaties to perform statistical matching as a means of controlling for selection effects).} or even for a country’s constitutional laws,\footnote{See \textit{Zachary Elkins, Tom Ginsburg, \& James Melton, The Endurance of National Constitutions} (2009) (exploring a huge amount of data collected on countries’ current and historical national constitutions). \textit{See also} David S. Law \& Mila Versteeg, \textit{The Declining Influence of the United States Constitution}, 87 N.Y.U. L. Rev. 762 (2012) (analyzing data on the world’s constitutions to assess the influence of the United States Constitution on elements of constitutions adopted by other countries).} having a model that incorporates data on countries’ domestic laws on specific topics may be an all but impossible task. Instead, scholars have included variables that account for characteristics of countries’ legal regimes—like the degree to which a country is democratic—without including terms to account for all relevant legal obligations.\footnote{For example, in perhaps the most careful empirical analysis of the effect that human rights agreements have on domestic laws, Simmons analyzed whether countries that had ratified specific treaties were more likely to respect the human rights covered by those agreements. \textit{See Simmons, supra} note 4. Although her models include a huge number of variables, they do not include terms of other related treaties or the presence of other relevant domestic laws.}

Experimental designs can also help test whether international law has an effect beyond domestic law without needing huge amounts of country-specific data. This is because experiments can test whether international law has an “additive” effect—as opposed to a “substitute” effect—on mass or elite opinion beyond the presence of domestic law or other international agreements.\footnote{For a discussion of the difference between “additive” and “substitute” effects as it relates to international law, see Tomz, \textit{supra} note 27, at 19–21. \textit{See also} Chilton, \textit{supra} note 27 (using an experimental research design that tests if the laws of war have an additive effect beyond moral arguments against targeting civilians).} Imagine, for instance, a survey measuring public support for the war on terror, with one group of respondents told that torture violates domestic laws, a second one told that torture violates a signed international treaty, and a third told that torture violates both. If public opinion on
torture were to be the same in all groups (Group 1 = Group 2 =
Group 3), then international law would here have a “substitute” ef-
fect.\textsuperscript{177} However, if information on international law changed opinion
beyond information on domestic law alone (Group 3 > Group 1), then
international law could have an “additive” effect.\textsuperscript{178} This kind of
experimental design makes it possible to test whether international
law might influence policy outcomes, even when domestic law al-
ready exists on a given topic.\textsuperscript{179}

D. Inadequate Dependent Variables

Being able to accurately measure a dependent variable, or
outcome, is a basic requirement of efficient causal analysis.\textsuperscript{180} For
example, a scholar studying whether states comply with the laws of
war might use civilian deaths during a given conflict as a dependent
variable.\textsuperscript{181} This often poses problems for observational studies, be-
cause relevant dependent variables may be difficult, if not impossible,
to measure. Experimental methods, on the other hand, often
have the advantage of generating the dependent variable of interest
itself.

As we have discussed, as scholarship on international law has
become more empirical,\textsuperscript{182} scholars have shifted their attention to try-
ing to understand whether international law causes states to change
their behavior.\textsuperscript{183} To quantitatively analyze whether states change
their behavior to become compliant with a given treaty as a con-
sequence of committing to that agreement, however, researchers must
have a dependent variable that measures compliance.\textsuperscript{184} This founda-

\textsuperscript{177} That is to say that the information on international law merely substituted the
effect that was created by simply being told about domestic law.

\textsuperscript{178} That is to say that the information on international law added to the change in
public opinion beyond the change in public opinion created by domestic law alone.

\textsuperscript{179} It is worth noting that the same approach can be used to test whether two
international legal agreements might have a larger effect than a single international legal
agreement.

\textsuperscript{180} See Chilton, supra note 27, at 77. For a longer discussion of dependent variables,
see id. at 107–09.

\textsuperscript{181} See, e.g., Valentino et al., supra note 5.

\textsuperscript{182} See generally Shaffer & Ginsburg, supra note 1.

\textsuperscript{183} See Posner, supra note 9; see also Shaffer & Ginsburg, supra note 1, at 1.

\textsuperscript{184} Cf. KING, KEOHANE & VERBA, supra note 88, at 109 (“[I]n social science, we must
be careful to ensure that we are really interested in understanding our dependent variable,
rather than the background factors that our research design holds constant”).
tional requirement poses two significant problems for researchers studying international law compliance: first, existing data sources might not be directly interpretable as a measure of compliance; and second, in many cases, observational data of compliance might not exist, or even be possible to collect.

1. Existing Data Sources Do Not Accurately Measure Compliance

In some cases, scholars have been able to identify research questions where it is possible to directly observe and measure non-compliance. For example, in a groundbreaking article on compliance with international law, Beth Simmons analyzed whether states comply with commitments they have made under the IMF Articles of Agreement by leaving their current accounts free from restriction.185 In this case, Simmons was able to use a dependent variable that was a direct and clear measure of non-compliance.186

Things are not always so straightforward. Instead, available sources of data may not provide easily interpretable measures of compliance or non-compliance. One criticism that has been raised along these lines is that scholars have often used dependent variables that may not perfectly map to whether a state is compliant with an international legal obligation. For example, in her book on compliance with human rights, Beth Simmons uses a binary variable for states that have free practice of religion.187 Eric Posner has criticized this measure, however, for not necessarily measuring compliance with the ICCPR.188

A related problem occurs when the dependent variables that are used are not binary—as in the two examples just discussed from Simmons’ research—but instead are on some kind of scale.189 The difficulty in these cases is that even if a state changes its behavior after ratifying an international treaty, and there is movement on the dependent variable, it is unclear when “compliance” has occurred. As

185. Simmons, supra note 11.
186. Id. at 833.
187. See SIMMONS, supra note 4, at 386.
188. Posner, supra note 9, at 6–7.
a result, existing empirical studies of compliance with international law may open themselves to criticism for using dependent variables that fail to fully capture compliance.190

A third problem is that the best available dependent variables for use might not measure compliance directly at all, but instead be proxies for consequences of compliance. For example, when analyzing whether states change their policies after ratifying the Convention on Political Rights of Women, Oona Hathaway uses the percentage of men in a country’s legislature as the dependent variable.191 As Hathaway admits, however, equal representation is not required by the convention. The dependent variable is thus a proxy for compliance, making it debatable whether it adequately captures compliance.192

Experimental methods offer a way to directly solve all three of these problems. That is, experiments can directly generate evidence of whether a state complies with international law. For example, Baradaran et al. recently conducted possibly the first such field experiment on compliance with international law.193 The researchers sent requests for information on incorporating a shell company to 1,015 firms offering incorporation services in 182 countries.194 As the experimental treatment, they randomized whether firms were given any facts on the status of international law.195 To comply with international financial transparency laws, firms must demand proof of identity before providing incorporation services.196 By carefully wording the requests, the researchers were able to directly measure whether firms were willing to violate international law in their responses.197 This experimental approach bypassed complaints of existing data sources inadequately measuring international law compliance, because the responses to the experiment itself were evidence of

190. See, e.g., Goodman & Jinks, supra note 12, at 173–78 (criticizing Hathaway, supra note 4, for using dependent variables that do not fully capture compliance with human rights agreements).

191. Hathaway, supra note 4, at 1975–76.

192. For other criticisms about Hathaway’s selection of dependent variables, see Goodman & Jinks, supra note 12, at 174 for an argument that Hathaway’s selection of dependent variables do not “account for strategies governments often adopt in response to improved enforcement of a norm.”

193. Baradaran et al., supra note 7, at 7–8.

194. Id. at 37.

195. Id. at 38–39.

196. Id. at 43.

197. Id. at 42–44.
non-compliance. In other words, the dependent variable was a good measure of compliance, because it was itself the original, direct measure.

2. Data on Compliance Is Not Available

In addition to existing data sources not being ideal measures of non-compliance, sometimes data on whether compliance is occurring is altogether unavailable. When dependent variables do not exist, scholars must collect original data on state treaty compliance. Notably, despite the effort it involves, original data collection is an incredibly valuable service. It is a worthwhile step; the data should be made public more often.198

That said, original data collection on compliance with international law is not always possible. First, it may require extensive research into the practices of many countries. For example, if field research is required to determine whether a state complies with an international agreement, it is challenging for a researcher to visit enough countries to conduct a large- study. Second, data on compliance with a particular international agreement may not be publicly available. For example, it may be impossible to collect accurate data on whether states comply with the Convention Against Torture.199 Moreover, even if it is possible to find some national-level data, there might be considerable unaccounted-for subnational variation.

In addition to these obstacles, scholars using empirical methods to research compliance with international law overlook the fact that international treaties often guarantee the protection of a large number of rights.200 As a result, even if a dependent variable is available to measure one commitment contained within the treaty, it might not be plausible to find observational data that measures all of the steps required for a country to be compliant.

To illustrate, Figure 7 presents the number of individual rights

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198. See Gary King, Ensuring the Data-Rich Future of the Social Sciences, 331 SCi. Mag. 719, 720 (2011) (discussing the value of posting and sharing data). For an example of a recent international law article that engaged in original data collection for the project’s dependent variable, see Brewster & Chilton, supra note 135, where the authors collect data on the dates on which the United States took steps to comply with adverse rulings in the WTO.

199. See CAT, supra note 107.

200. See Posner, supra note 9, at 7 for a criticism of the use of dependent variables in Simmons, supra note 4, because human rights treaties “collectively contain dozens or maybe even hundreds of provisions.”
protected in the six major human rights treaties. As it shows, the average number of rights protected in the agreements is 35. The ICCPR protects 60 different rights, ranging from the right to not be imprisoned due to debt to the right to marry and found a family. As a result, when dependent variable data is only available for a few of the rights within such a treaty, it may be difficult to reliably test whether states comply.

Experiments provide an appealing alternative to observational studies when it is not possible to collect data on compliance. In addition to using the above-discussed approach of Baradaran et al. to collect direct evidence of non-compliance, experimental methods can also test the theoretical mechanisms presented for how a specific treaty might influence behavior. For example, in a recent study, Geoffrey Wallace set out to examine whether the Convention Against Torture might have an influence on America’s use of torture in the war on terror. Wallace studied whether international law exerts an independent influence on state behavior by directly examining one theoretical mechanism by which this might occur: altering domestic

Figure 7: Number of Rights Protected by Major Human Rights Agreements

<table>
<thead>
<tr>
<th></th>
<th>CERD</th>
<th>ICCPR</th>
<th>ICESCR</th>
<th>CEDAW</th>
<th>CAT</th>
<th>CRC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rights</td>
<td>0</td>
<td>60</td>
<td>20</td>
<td>40</td>
<td>1</td>
<td>70</td>
</tr>
</tbody>
</table>

201. See sources cited supra notes 103–08.
202. See ICCPR, supra note 103, at art. 11.
203. Id. at art. 23.
204. See supra text accompanying notes 193–97.
205. CAT, supra note 107.
206. Wallace, supra note 27.
mass political views. Wallace conducted two survey experiments on national samples of American adults, and the experimental treatment was that he varied the information about international law before gauging respondent views on the acceptability of torture. Wallace’s experiment showed that international law changes support for the use of torture by roughly six percentage points, meaning international law might change policies on torture without having to have a dependent variable that directly measures torture itself.

E. Selection Bias

Another barrier to reliable causal inference—and one that has received the most attention in the international law context—is selection bias. Selection bias occurs when the observations that have received a particular treatment are systematically related to a potential outcome. For example, if a researcher were attempting to estimate the effect of taking a test preparation course on LSAT scores, producing a reliable causal estimate may be complicated by the fact that the students who elect to take such a course (receive the treatment) may be more conscientious students, who were likely to score higher (the potential outcome) than other students, regardless of enrollment. Experimental research helps solve this problem because subjects are randomly assigned to treatments, instead of self-selecting into them.

Although at least one other scholar has explained how experiments can help overcome the problems caused by selection bias in international law, we will also explain briefly. In the study of international law, producing reliable causal estimates of international agreements and institutions has been frustrated, because countries

207. \textit{Id.} at 106–07.
208. \textit{Id.} at 117–19.
209. \textit{Id.} at 119.
210. See generally Hafner-Burton et al., \textit{supra} note 1, at 89–90 (summarizing research on the influence of selection effects on compliance with international law). For an early and prominent example of scholarship on international law drawing attention to selection effects, see Downs, Rocke & Barsoom, \textit{supra} note 10, which argues that previous claims that international law is generally complied with ignore a variety of barriers to inference, including selection effects.
211. For a clear statement of the definition of selection bias, see ALAN S. GERBER & DONALD P. GREEN, \textsc{Field Experiments: Design, Analysis, and Interpretation} 37–39 (2012). \textit{See also} King, Keohane & Verba, \textit{supra} note 88, at 135–37.
212. See Tomz, \textit{supra} note 27, at 11.
choosing to participate in international legal regimes may be systematically different than those that are not. 213 This reality is a major problem for observational studies on international law 214 that experimental research can help solve.

1. Selection Bias & International Treaties

The issue that has received perhaps the most attention from scholars of international law is whether states comply with international treaties that they have consented to. 215 Although scholars were initially primarily concerned with examining whether states comply with agreements, in recent years research has evolved to focus more on whether states alter their behavior as a consequence of committing to international legal agreements. 216 The difficulty, however, is that whether a given state chooses to commit to an international treaty is not random. 217 Instead, there are a number of strategic calculations that determine whether states choose to agree to international treaties. 218 As a result, it is reasonable to think that the states that select into international treaties are systematically different from those states that do not. This selection bias thus presents an inferential problem making it difficult for international law scholars to study the effects of international agreements. 219

213. See, e.g., von Stein, supra note 12 (discussing how selection bias called the causal effects of previous research into question). But see Simmons & Hopkins, supra note 12 (responding to many of von Stein’s criticisms).

214. But cf. Hafner-Burton et al., supra note 1, at 89 n.231 (citing studies that have used “sophisticated methods” like instrumental regression and matching to obtain valid inferences on the effects of international law).

215. Cf., e.g., Simmons, supra note 1.

216. See Posner, supra note 9, at 5 (distinguishing between “compliance” and “causation” approaches). Compare Chayes & Chayes, supra note 8 (discussing how states have generally high levels of compliance with the international agreements they consent to), with Simmons, supra note 4 (empirically testing whether committing to international human rights agreements alters those states’ human rights practices).

217. For a discussion of this issue, i.e., the inferential problem caused by the fact that states do not randomly choose to sign treaties, see Tomz, supra note 27, at 7–8.


219. See, e.g., von Stein, supra note 12 (discussing the problems posed by selection
Experimental methods can help to solve this problem because they allow researchers to randomize whether participants are told that a country has ratified a particular treaty. For example, political scientists Tingley & Tomz recently tested Americans’ willingness to take retaliatory actions against a country that has increased its consumption of fossil fuels. Half of the respondents were told that the country had said it would not increase its use of fossil fuels; the other half were told that the country had signed a treaty promising that it would not do so. The respondents that were told that the country had signed a treaty were 14% more likely to support economic sanctions against the country than those that were simply told the country said it would not do so (51% compared to 37%). Since the assignment of the experimental treatment (being told a treaty had been signed) was randomized, the survey experiment suggests that leaders may have incentives to treat countries that have signed international agreements differently than those that have not. If the authors had instead simply observed US responses to polluting countries that had signed treaties, it would be difficult to draw reliable inferences on the influence of the treaty because countries that signed it may have been systematically different from those that did not. These differences could be directly related to the dependent variable—for example, the states that ratified the treaty may be the same states that US citizens are more willing to take actions against in general—and thus induce bias. Experimental methods thus help to overcome selection bias problems and directly measure the causal inference of treatments.

2. Selection Bias & International Litigation

Relatedly, litigation in international courts suffers from selection bias. Simply put, disputes that parties choose to litigate until a bias for Simmons, supra note 11). It is important to note that scholars have begun to try to address these problems using a number of sophisticated statistical methods. See supra text accompanying notes 13–14; see also Hafner-Burton et al., supra note 1, at 89 n.231.

220. See, e.g., Tomz, supra note 27 (using this approach in what we believe to be the first experimental test of whether information on the status of international law changes policy views).

221. Tingley & Tomz, supra note 27.

222. Id. at 26–27.

223. Id. at 28.

224. See, e.g., Eric A. Posner & Miguel F. P. de Figueiredo, Is the International Court of Justice Biased?, 34 J. LEGAL STUD. 599, 614 (2005) (discussing how selection bias causes a problem for studying litigation in the ICJ because the cases that make it to the ICJ may not be representative of all possible disputes); see also Geoffrey Garrett, R. Daniel Kelemen &
judicial decision is reached are likely to be systematically different from other cases. This is not just true of international law, but of litigation generally.225 For example, disputes that reach a judgment may be systematically different from the universe of cases because easy cases are settled and hard cases are not, or because it may not be economically feasible to pursue cases when small amounts of money are at stake. Regardless of the reason, the implication is that it is difficult to draw inferences about the effects of litigation on the settlement of disputes.

Once again, experimental research can help overcome these selection biases. For example, even if observational research of scholars interested in whether countries change their policies after WTO disputes226 showed that countries changed their policies as a result of adverse WTO decisions, this would not necessarily be a result of any adverse WTO decision. Instead, states may only bring complaints in situations when they believed a country would be responsive to an adverse ruling, as when the issue is not too politically sensitive. Experimental methods could be used to test this by, for instance, presenting a hypothetical trade dispute and randomizing whether respondents are told a foreign country has strongly alleged violations of international trade law, or whether the WTO has issued a decision supporting those allegations. This would allow a researcher to directly test whether the litigation itself could influence opinions—and in turn policy responses by democratically accountable officials—or whether the nature of the dispute and allegation itself has the same effect. As a result, experimental methods also present one way to overcome the inferential problem posed by selection bias in international litigation.

3. Selection Bias & Institutional Design

An additional selection problem common in the study of international law, along with treaty ratification and international litiga-


225. *Cf.* Anna Harvey & Barry Friedman, *Ducking Trouble: Congressionally Induced Selection Bias in the Supreme Court’s Agenda*, 71 J. Pol. 574 (2009) (empirically testing how the selection bias introduced by the fact that the Supreme Court has discretionary jurisdiction influences the Court’s Agenda).

226. *See*, e.g., Brewster & Chilton, *supra* note 135 (analyzing United States’ compliance with adverse WTO decisions).
tion, is institutional design. The influence that the designs of international institutions have on compliance rates and policy outcomes has been a major line of inquiry for international law and international relations scholars. These design features, however, are not necessarily exogenous to joining international institutions. For example, the dispute settlement mechanism in a particular institution may be designed to encourage or discourage participation based on ex-ante compliance rates. In other words, features of international institutions are not randomly selected, making it difficult to study their efficacy using observational data. Still, many international relations and law scholars are interested in the consequences of institutional design choices.

This is yet another problem that experimental methods can help to address. Experiments can be designed in a way that makes the particular features of international institutions exogenous. For example, in the same way that Tomz tested whether being told that a country had ratified the NPT changed the views of British MPs, it would be possible to design an experiment where the willingness of decision makers to utilize a particular international institution is influenced by being randomly told information on a relevant feature of the design of that institution.

III. CONDUCTING EXPERIMENTAL RESEARCH

As we have argued, scholars of international law should begin to embrace experimental methods. Although experimental research methods are not appropriate ways to study every question, they are underutilized. Increasing their use, however, requires that international legal scholars and political scientists interested in international law understand in concrete terms how to design, field, and interpret experiments.

227. For a selection of research on this topic, see DELEGATION AND AGENCY IN INTERNATIONAL ORGANIZATIONS (Darren G. Hawkins, et al. eds., 2006). For a prominent article on the institutional design of international organizations, see Barbara Koremenos, Charles Lipton & Duncan Snidal, The Rational Design of International Institutions, 55 Int’l Org. 761 (2001).

228. See infra text accompanying notes 282–83.

229. As a hypothetical example, a scholar may be interested to know whether the presence of amicus briefs in a given dispute settlement mechanism affects the likelihood that countries will pursue litigation through that process. To answer this question, this feature of an institution could be randomly manipulated in a survey given to government officials that forced them to consider whether they should pursue litigation in a particular case.
Although formal training in experimental methods may be the best way to gain the knowledge and skills required to conduct experimental research, it may not always be possible. Given this reality, we provide here a brief overview of some issues that researchers hoping to conduct experimental research should consider. Importantly, researchers interested in conducting experimental research should first consult one of the many excellent textbooks on experimental methodology.\textsuperscript{230} Second, it might be fruitful for legal scholars to collaborate with researchers trained in experimental methodology.\textsuperscript{231} Third, any scholar considering conducting experimental research should make sure to obtain the required research permits from their university’s Institutional Review Board (IRB).\textsuperscript{232} Finally, researchers should carefully consider what type of experimental design would be most appropriate for the question that they are hoping to study.

A common schema of experiment types breaks experiments into three categories: laboratory, survey, and field.\textsuperscript{233} Laboratory experiments range considerably in what they entail, but share a focus on experimentation in highly controlled laboratory settings.\textsuperscript{234} Survey experiments embed manipulations and randomized frames into standard public opinion surveys.\textsuperscript{235} Field experiments turn to naturally occurring behavior, but manipulate features of the environment in order to make inferences.\textsuperscript{236} A fourth category of experiments is natural experiments. Natural experiments take advantage of naturally occurring randomizations to make inferences,\textsuperscript{237} such as arbitrarily

\textsuperscript{230} For good textbook introductions to experimental methods, see MORTON & WILLIAMS, supra note 36 (providing an overview on how to conduct experimental research); GERBER & GREEN, supra note 211 (providing an overview specifically on field experiments).

\textsuperscript{231} For one example of collaboration between political scientists and a legal scholar, see Baradaran et al., supra note 7.

\textsuperscript{232} Like many types of research, experimental research requires approval by University Institutional Review Boards (IRB). IRBs protect both subjects and researchers. Typically this process entails submitting an application describing the research and identifying any potential harms. Specific procedures vary somewhat across institutions and so we direct researchers to their own IRB for more information.

\textsuperscript{233} See James N. Druckman, Donald P. Green, James H. Kuklinski & Arthur Lupia, Experimentation in Political Science, in CAMBRIDGE HANDBOOK OF EXPERIMENTAL POLITICAL SCIENCE 3, 6 (James N. Druckman et al. eds., 2011) (“[M]ost experiments have been implemented in one of three contexts: laboratories, surveys, and the field.”).

\textsuperscript{234} Id. at 6-7.

\textsuperscript{235} Id. at 7.

\textsuperscript{236} Id.

\textsuperscript{237} For guidance on finding natural experiment, see Gregory Robinson, John E. McNulty & Jonathan S. Krasno, Observing the Counterfactual? The Search for Political
drawn legal borders,\textsuperscript{238} or the distribution of international election monitors during elections.\textsuperscript{239} Although natural experiments can be used in legal research,\textsuperscript{240} we will not consider them in depth in this article, focusing instead on experimental methods where the researcher controls the randomization and other experimental processes. We suspect that survey and field experiments will be used more likely in studies of international law than laboratory experiments,\textsuperscript{241} but we discuss all for completeness. We also discuss how issues of randomization, as well as challenges to internal,\textsuperscript{242} external,\textsuperscript{243} and construct validity\textsuperscript{244} affect each type of experimentation.

In this part, we provide a minimal foundation in experimental methods and point scholars to further resources. We specifically discuss the virtues and vices of different experimental techniques with respect to international law. Depending on the research questions or


\textsuperscript{239} See Susan D. Hyde, \textit{The Observer Effect in International Politics: Evidence from a Natural Experiment}, 60 World Pol. 37 (2007) (exploiting a natural experiment created during the 2003 Armenian presidential election to show that election monitors can help reduce fraud at the polling stations they visit).

\textsuperscript{240} See, e.g., Huang, \textit{supra} note 77 (using a natural experiment to study the impact of increased workload on reversal rates in the federal judiciary); Berry & Gersen, \textit{supra} note 77 (using a natural experiment to study the impact of election timing on public policy outcomes); see also Benjamin A. Lindy, \textit{Note, The Impact of Teacher Collective Bargaining Laws of Student Achievement: Evidence from a New Mexico Natural Experiment}, 120 Yale L.J. 1130 (2011); Bebchuk et al., \textit{supra} note 80.

\textsuperscript{241} See, e.g., Hafner-Burton et al., \textit{supra} note 26 (conducting an experiment in a laboratory setting to test the behavioral influences of international cooperation).

\textsuperscript{242} Internal validity is defined as: “[t]he approximate truth of the inference or knowledge claim within a target population studied.” MORTON & WILLIAMS, \textit{supra} note 36, at 188.

\textsuperscript{243} External validity is defined as: “[t]he approximate truth of the inference or knowledge claim for observations beyond the target population studied.” \textit{Id}.

\textsuperscript{244} Construct validity is defined as: “[w]hether the inferences from the data are valid for the theory (or constructs) the researcher is evaluating in a theory testing experiment.” \textit{Id} at 189.
context, some types of experiments will be more applicable or easier to apply. For example, it may be easier to use survey experiments to study how international law affects public opinion,245 but it may be more appropriate to use a field experiment to study how private firms and public officials respond to information on the status of international law.246 We also update scholars of international law on new developments within the experimental social sciences. One exciting area of growth, not surprisingly, is conducting experiments via the Internet.247 We also discuss pertinent methodological innovations in the design and analysis of experiments, and how these relate to the study of international law.

A. Laboratory Experiments

Laboratory experiments use a physical space where experimental subjects respond to carefully controlled stimuli and/or interact with other subjects.248 In the social sciences, psychology uses laboratory experiments the most.249 In recent years, laboratory experiments have become more common in economics and political science. Most laboratory experiments use subjects from either a pre-existing pool or by targeted recruiting of subjects with specific characteristics (like gender or work experience).250 Many psychology departments have laboratories with subject pools, and some universities have broader social science laboratories.251 Experimental ses-

245. See e.g., Wallace, supra note 27 (conducting a survey experiment to evaluate how information on the legalization of international law affects public opinion on the use of torture in the war on terror).

246. See e.g., Findley et al., supra note 25 (conducting a field experiment to evaluate whether private firms violate international law when responding to requests to incorporate shell companies).

247. See infra text accompanying notes 278–79.


249. Cf. Falk & Heckman, supra note 35, at 535 (“With the exception of psychology, the adoption of laboratory experiments has been much slower in the social sciences, although during the past two decades use of lab experiments has accelerated.”).

250. For an extended discussion on subject recruitment, focusing on the use of students as subjects, see MORTON & WILLIAMS, supra note 36, at 237–58.

251. For example, Harvard University runs the Harvard Decision Science Laboratory (HDSL) (http://decisionlab.harvard.edu/), Princeton University runs the Princeton
sions begin with a consent and instructional process, record data through computer interfaces, paper and pencil, or experimenter observation, and end with some form of compensation and debriefing. Compensation often takes the form of monetary compensation or class credit.252

Laboratory experiments are useful for a number of reasons.253 The ability to precisely control the experimental environment means that effects are most likely due to the experimental intervention.254 Confounding variables or uncontrolled sources of stimuli are minimized. For example, let us imagine one were interested in whether international law had any impact on perceptions by members of the public about the legality of their own government’s policies. A laboratory experiment could randomly expose individuals to scripts or videos about either the entailed international law or some neutral control condition, and then ask questions about views on domestic policies. Were this intervention not randomized, and we just correlated awareness of international law with preferences, then any number of variables might commonly cause both.

The controls afforded in laboratory experiments let researchers create more variation than what would exist naturally in the real world. This is helpful for precisely some of the reasons discussed in PART II.A (i.e., observational studies have difficulty accounting for certain treaties being essentially universally adopted).255 In the real world of international law, we believe that X has an impact on Y. But the variation in X is quite small, making it difficult, perhaps impossible, to detect such a relationship. By manipulating X in a hypothetical scenario, we can begin to explore this relationship.

Laboratory experiments also enable clear and direct measurement of subject decision-making or responses to stimuli. Ambi-
guity about what is being measured is minimized. Part of this comes from the sterility of laboratory environments. We can remove as many potential confounding stimuli as possible. Some experimenters in American politics have even sought to replicate the consumption environments their subjects are used to. For example, Ansolabhere and Iyengar, who were interested in the effects of television on political attitudes, recreated a prototypical living room replete with couch.256 In some social science experiments, researchers have begun to draw on measurement techniques used in the medical sciences such as galvanic skin response and functional magnetic resonance imaging, or measuring subject-specific physical attributes, like genetic profiles.260 Such physiological recordings would be difficult outside of the laboratory.

The decision to use a laboratory experiment depends on the type of stimulus/situation under investigation. As a general rule, when greater control is necessary, laboratory experiments are necessary. These needs can arise in different ways. Some studies require extremely fine-grained measurement, both in terms of content and timing. For example, the implicit association test (IAT) measures prejudices and biases by comparing reaction times to different stimuli at the millisecond level.261 Greater control is also required when re-


257. For an early justification of this approach, see Albert F. Ax, Goals and Methods of Psychophysiology, 1 PSYCHOPHYSIOLOGY 8 (1964).


259. See, e.g., Dustin Tingley, Neurological Imaging as Evidence in Political Science: A Review, Critique, and Guiding Assessment, 45 SOC. SCI. INFO. 5 (2006) (reviewing the use of neurological imaging in political science research).


searchers want to make sure that subjects are focused on their task and not distracted by other events that could compromise the manipulation. Decreases in focus on the experimental task can lead to decreases in experimental effects, and even bias estimates, if the level of focus differs across experimental conditions.

Laboratory experiments also let researchers to allow for interactions between subjects. For example, nearly all experiments testing game theoretic models are implemented in the laboratory, though this is changing with the advent of web-based platforms. In these experiments, the crucial quantities that are controlled by the experimenter correspond to components of game theoretic models, including the roles/positions of subjects, the information subjects have, the strategies available to subjects, and the payoffs for reaching different outcomes. By carefully manipulating one or more of these parameters, experimenters can compare predictions from formal game theoretic models to actual human behavior. Experiments of this nature could be important in testing views on international law emphasizing strategic interaction between decision-makers.

While experiments with deception remain common in psychology, most economic labs eschew or formally prohibit deception on the grounds that it could contaminate future experiments that rely on subjects not suspecting any deception. There exists considerable debate on this subject. In his classes on experimental political science, the author Tingley suggests avoiding deception if possible,

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265. See, e.g., Engel, supra note 26 (using a laboratory experiment to show how expectations help shape how customary international law develops).

266. See DAVIS & HOLT, supra note 262, at 24 n.28.

but not letting it get in the way of interesting research questions if one can identify a laboratory that will allow its use.268

Laboratory experiments face a series of challenges.269 Perhaps the biggest are construct and external validity, since most laboratory experiments involve convenience samples of college students in highly artificial settings (though this is changing).270 Simply put, a laboratory setting may not aptly capture the relevant real world situation. Another challenge is that experimenters may induce bias by creating demand effects.271 Given the highly controlled setting, experimenters may inadvertently encourage subjects to make choices that conform to the hypotheses under investigation: not because the subjects actually want to make such a choice, but because they want to conform to what the experimenter wants. Ultimately, these limitations are the flip side of advantages.272 Careful control of the experimental setting helps establish causal relationships and explore relationships impossible to examine in the real world, but which are important.

Although laboratory experiments certainly could be a viable method of studying questions of international law, the validity challenges that laboratory experiments present may make them less popular compared to other methods. In the international law context, much of the appeal of experimental methods is that they present a way to rigorously test existing theories of how individuals and organizations respond to international legal requirements. The further removed that tests are from the actual operation of international law, however, the less likely they are to produce evidence convincing skeptical scholars or policymakers. Of course, such concerns should always be balanced against the advantages of laboratory-based experiments, including their often superior ability in controlling the data generating process.

B. Survey Experiments

A survey experiment involves administering surveys to indi-

268. For an extended discussion on the ethical implications of conducting experiments that involve deception, see Morton & Williams, supra note 36, at 500–21. See also McDermott, supra note 40, at 41.

269. See McDermott, supra note 40, at 40–41 (summarizing the challenges and disadvantages of experimental research).

270. Id.

271. Id. at 33–34.

272. Id. at 38–39.
viduals, with various types of randomizations. These can include randomized textual prompts/frames, question wordings, response options, or other stimuli like video feeds or audio clips. These manipulations let researchers explore how survey responses differ across different settings. Additional, non-experimental, questions allow researchers to have additional subject-specific covariates. Survey experiments can be delivered via professional polling firms or researcher-created surveys using online platforms. Survey experiments can utilize nationally representative samples via the use of probability weighting or other techniques, or convenience samples using subject recruitment platforms like Amazon’s Mechanical Turk. Survey experiments are an efficient means for researchers to


274. For an example of using video clips as an experimental treatment, see Jonathan Renshon, Jooa Julia Lee, & Dustin Tingley, Physiological Arousal and Political Beliefs, POLITICAL PSYCHOLOGY (forthcoming 2014).

275. For example, researchers are able to ask all respondents basic biographical questions about themselves. This may include: age, gender, ethnic background, educational level, political ideology, partisan political affiliations, or income level. This information can then later be used to either subset the sample to examine differences between groups, or it can alternatively be used as covariates in a multivariate regression to control for any remaining imbalance that might exist within the control and treated experimental groups.

276. Two examples of professional polling firms that are popular with social scientists are Knowledge Networks (http://www.knowledgenetworks.com/) and Polimetrix/YouGov (http://research.yougov.com/). Both of these firms can provide help in creating surveys, and then fielding them to respondents through a variety of means for a fee.

277. One example of an easy to use online platform that researchers can use to create survey experiments is Qualtrics (https://www.qualtrics.com/). Researchers are able to use Qualtrics to write their own survey experiments. The platform allows users to select from a range of question types when developing their experiments. Moreover, the platform allows for a range of randomization options that are essential for experimental research. This includes randomizing elements of individual questions, which questions respondents receive, or the order in which questions are presented. After experiments have been drafted, researchers are provided with a link that they can use to direct respondents to take the experiments through various means of subject recruitment (e.g. Amazon’s Mechanical Turk).

278. For information on conducting experiments using Amazon’s Mechanical Turk service, see generally Winter Mason & Siddharth Suri, Conducting Behavioral Research on Amazon’s Mechanical Turk, 44 BEHAV. RES. METHODS 1 (2012); Gabriele Paolacci, Jesse Chandler & Panagiotis G. Ipeirotis, Running Experiments on Amazon Mechanical Turk, 5
understand how individuals respond to information and stimuli, often with relatively larger sample sizes than laboratory experiments. Many experiments conducted in a laboratory can also be surveys, though their success or feasibility will depend on the experiment’s relative level of complication as well as whether interactivity between subjects, or dynamic responses from the experimenter, are required.

An example of a survey experiment on international law comes from the discussed research by Tomz, which we briefly review here. In the experiment, respondents took a survey that asked a question about support for a foreign policy of prohibiting trade with Burma. All respondents were randomly assigned various pro and con arguments about the policy. One of these randomly assigned pieces of information stated that the United States had signed an international treaty prohibiting it from breaking off trade with Burma under international law. Tomz found that individuals receiving information about international law were 17% more likely to oppose...
restricting trade with Burma. Tomz also reports a follow-up study using British members of Parliament. MP’s were provided with information about a country that may or may not be pursuing nuclear weapons. The various bits of information were all akin to what one would see in a standard intelligence report. In the treatment group, the country was listed as having signed the Nuclear Non-Proliferation Treaty (NPT) while in the control group the country had not signed the NPT. The MP’s were asked whether they thought the country was pursuing nuclear weapons. The key finding was that MP’s in the treatment condition reported lower expectations that the country was building weapons than those in the control group. Hence the effect of international law on its own—not factors that might change the propensity of signing on to international law—had an effect on elite decision-maker expectations. These expectations could, in principle, drive subsequent behavior.

Beyond the content of what is being manipulated, survey experiments come in a variety of different forms. A common form is a framing experiment. Here, a particular issue is described in several different ways and a respondent answers questions about the issue. Another form of survey experiment is a “conjoint” survey, popular in marketing research. In this type of survey, subjects are asked to evaluate a product, or some other quantity like an international agreement, but attributes of the product are randomized with the subject evaluating the same quantity but under multiple different profiles of attributes. Reactions to different attribute profiles enable collecting much more information than when individuals only evaluate one attribute profile. Finally, survey experiments can test the mechanisms hypothetically linking the experimental treatment/frame with a respondent’s stated preferences. Here, researchers ask additional questions that measure changes in these intermediate variables.

282. Id. at 18.
283. Id. at 24–28.
284. Id. at 27.
288. For guidance on how to design experiments in a way that allows mediation analysis to be conducted, see generally Kosuke Imai, Luke Keele, Dustin Tingley & Teppei Yamamoto, Unpacking the Black Box of Causality: Learning About Causal Mechanisms
For example, Tomz and Weeks use a survey experiment to explore the connection between political regime type and willingness to go to war. After providing information about the potential adversary’s regime type, they also ask questions about the perceived costs of the conflict, its morality, and other mediating variables, which are hypothesized to then have an impact on support for military intervention.

As discussed before, survey experiments provide a cost-effective way to collect a substantial amount of data. Such experiments, though, face many of the same problems that standard surveys face: creating representative samples can be costly, creating panels to track individuals over time is difficult, and subjects might give socially desirable answers rather than their true opinions.

In addition to these general problems, survey experiments face some specific problems. If there are multiple experimental manipulations in a survey, then there can be spillover effects when...

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289. Tomz & Weeks, supra note 20.

290. Id. at 19–28.

291. It is worth noting that there is an area of research concerned with survey experiments on sensitive subjects. This line of research is specifically focused on developing ways to survey respondents so that they are willing to reveal preferences that they may be unwilling to share with researchers when directly asked (i.e., when there is a stigma associated with the view). See generally Adam N. Glynn, What Can We Learn with Statistical Truth Serum? Design and Analysis of the List Experiment, 77 PUB. OPINION Q. 159 (2013), for advice on constructing surveys that use list experiments to allow for the research of sensitive topics. See also Graeme Blair & Kosuke Imai, Statistical Analysis of List Experiments, 20 POL. ANALYSIS 47 (2012). For an example of research using these methods, see Jason Lyall, Graeme Blair, & Kosuke Imai, Explaining Support for Combatants During Wartime: A Survey Experiment in Afghanistan, AM. POL. SCI. REV. (forthcoming). For resources and more information on conducting survey experiments on sensitive topics, see Graeme Blair, Methods and Software for Sensitive Survey Questions, http://www.princeton.edu/~gblair/sensitive.html (last visited Jan. 24, 2013).

treatment status in one part of the survey impacts responses to a different experiment.\textsuperscript{293} Construct validity concerns can also be an issue. Online surveys that ask questions about politics can only approximately simulate considerations about politics that interest the researcher. Here, use of imbedded media, such as video clips, can be of great help. Finally, there is the question of external validity. We might detect relationships in our survey experiments that, were the same things to happen in the real world, there would be no change in behavior.\textsuperscript{294} This might be the case for a variety of reasons, including the fact that, in a survey experiment, the respondent’s attention is (ideally) exclusively on the survey. The complexities of the real world might not allow this, or there might be competing considerations in the real world that the survey experiment has abstracted away.\textsuperscript{295}

Survey experiments are proving to be a promising way to study international law.\textsuperscript{296} Many scholars have previously theorized that states may comply with international legal commitments when there are no threats of external enforcement (like in the human rights context) because the ratification of international legal agreements gives domestic political actors a new tool.\textsuperscript{297} One of those tools is that public opinion may change as a result of prior legal commitments. Thus, using survey experiments to test whether information on the status of international law changes public opinion provides a direct way to test the plausibility of important theories of international law.

\section*{C. Field Experiments}

Laboratory and survey experiments typically investigate causal relationships in environments where the participants are not actively engaged in behavior that represents what the researcher is studying. This can pose problems for the types of inferences that are

\begin{itemize}
  \item[294.] See generally Jason Barabas & Jennifer Jerit, \textit{Are Survey Experiments Externally Valid?}, 104 AM. POL. SCI. REV. 226 (2010).
  \item[296.] See, e.g., Wallace, supra note 27.
  \item[297.] See, e.g., Simmons, supra note 4.
\end{itemize}
drawn from them. Field experiments minimize some of these concerns by examining behavior in the setting in which it would naturally take place.\textsuperscript{298} We suspect that most scholars of international law will gravitate towards field experiments because of the realism they afford and connectedness to behavior directly relevant to international law.\textsuperscript{299}

While field experiments are done “in the field,” they nevertheless attempt to retain many of the redeeming qualities of other forms of experiments. The assignment of treatment conditions is randomized and dependent variables are clearly defined using previously identified behavior. What can be more difficult is what is known as compliance:\textsuperscript{300} while one can randomize the treatment conditions, it is sometimes difficult to ensure that the condition an individual is placed in is the one in which they actually participate. This might arise from conscious subterfusion or something more innocuous. In these settings, researchers can leverage econometric techniques like instrumental variable estimation\textsuperscript{301} or report alternative quantities of interest, such as the intention to treat (ITT).\textsuperscript{302}

Field experiments have been remarkably successful in the study of American politics, especially the study of voter turnout.\textsuperscript{303} In recent years there also have been field experiments that directly speak to topics of interest to international law scholars.\textsuperscript{304} One prom-

\textsuperscript{298} For a comprehensive guide on how to conduct field experiments, see Gerber & Green, supra note 211.

\textsuperscript{299} As we have previously noted, to date there has only been one field experiment conducted that has directly studied international law. See Findley et al., supra note 25. That said, field experiments are becoming increasingly popular in international relations generally, and the study of political economy and development specifically, for exactly this reason. For a survey of how field experiments are being used to research the political economy of development, see Macartan Humphreys & Jeremy M. Weinstein, Field Experiments and the Political Economy of Development, 12 Ann. Rev. Pol. Sci. 367 (2009); see also Hyde, supra note 53.

\textsuperscript{300} See generally Gerber & Green, supra note 211, at 131–210. See also Morton & Williams, supra note 36, at 116.

\textsuperscript{301} See Morton & Williams, supra note 36, at 106–08.

\textsuperscript{302} For more information on using ITT as an alternative quantity of interest, see Gerber & Green, supra note 211, at 141–43.

\textsuperscript{303} See generally Gerber & Green, supra note 18, for a summary of experimental research on voter turnout. For what is perhaps the most prominent individual example of a field experiment on voter turnout, see Gerber et al., supra note 43, which conducts a large-scale field experiment on voters in Michigan to show that social pressure can increase voter turnout.

\textsuperscript{304} For a general overview of how field experiments can be used to study international
inent example is the influence of international observers on election fraud. In the first field experiment on democracy promotion, political scientist Susan Hyde conducted a large-scale experiment to determine how international observers influenced voting during the 2004 Indonesian presidential election. Hyde worked with the Carter Center to gain permission to randomly assign to which villages their teams of election monitors would be sent. These teams then monitored the voting conduct at 147 individual polling stations. After the election, Hyde compared the results of randomly monitored polling places with the overall election results, and counterintuitively showed that the incumbent candidate actually did better at polling stations that received election monitoring. Hyde’s experiment provides concrete evidence that election monitors can change voting patterns; that large international organizations may be willing to work with researchers to introduce scientific experimentation into their work; and that well reasoned hypotheses (like the belief that monitors would help the challenger) may not bear out after being tested in the field.

Another example clearly engaging with international law issues is the forthcoming work by Findley et al. As previously mentioned, the researchers conducted a field experiment by sending emails to 1,264 firms providing incorporation services, expressing an interest in anonymously incorporating a shell corporation. The experiment randomly varied whether information on the status of international law was included. Firms that responded but failed to request information on the senders’ identity were in violation of international law. The experiment thus not only directly measured relations, see Susan D. Hyde, The Future of Field Experiments in International Relations, 628 ANNALS AM. ACAD. POL. & SOC. SCI. 72 (2010).


306. See Hyde, supra note 53.
307. Id. at 516–17.
308. Id. at 517.
309. Id. at 517–20.
310. See supra text accompanying notes 193–97.
311. Baradaran et al., supra note 7, at 7.
compliance, but also was a rare example of studying compliance with international law by private actors.

From a practical standpoint, the work by Findley et al. showcases how to study the reaction of commercial entities via a simple intervention: email. Similar designs that solicit a response from “real” decision makers, using email or mail, offer a practical means

312. See, e.g., David E. Broockman, Black Politicians Are More Intrinsically Motivated to Advance Blacks’ Interests: A Field Experiment Manipulating Political Incentives, 57 Am. J. Pol. Sci. 521 (2013), for a finding that black state legislators were more likely to respond to a request for assistance from a putatively black citizen that did not reside in their district than white state legislators; see also Daniel M. Butler, Christopher F. Karpowitz, & Jeremy C. Pope, A Field Experiment on Legislators’ Home Styles: Service Versus Policy, 74 J. Pol. 474 (2012), for a finding that legislatures are more likely to respond to letters with service concerns than policy concerns; Gwyenth McClendon, Co-ethnicity and Democratic Governance: A Field Experiment with South African Politicians, (2012) (working paper) (on file with authors), for a finding that South African politicians were more likely to respond to requests from a fictional constituent that shares their ethnic background; Daniel M. Butler & David E. Broockman, Do Politicians Racially Discriminate Against Constituents? A Field Experiment on State Legislators, 55 Am. J. Pol. Sci. 463 (2011), for evidence that legislators are less likely to respond to putatively black constituents’ letters with requests for help voting; Daniel M. Butler & David W. Nickerson, Can Learning Constituency Opinion Affect How Legislators Vote? Results from a Field Experiment, 6 Q. J. Pol. Sci. 55 (2011) (for a finding that sending letters providing state legislators with information from a public opinion survey on their constituents’ opinions affected their voting); Daniel Butler, Monitoring Bureaucratic Compliance: Using Field Experiments to Improve Governance, Public Sector Digest 41 (2010) (for a finding that high school principals that were sent letters informing them of their obligation to provide students with information on voter registration were more likely to do so. Sending letters or emails can also be an effective strategy for performing experiments on actors that are not officials, but still may influence policy.); see, e.g., Daniel M. Butler & Emily Schofield, Were Newspapers More Interested in Pro-Obama Letters to the Editor in 2008? Evidence from a Field Experiment, 38 Am. Pol. Res. 356 (2010) (for a finding that letter submissions to the editor at 100 newspapers yielded a determination that pro-McCain letters received more interest. It is worth noting that it is possible to conduct field experiments on decision makers without using mail or email); see, e.g., Edmund Malesky, Paul Schuler, & Anh Tran, The Adverse Effects of Sunshine: A Field Experiment on Legislative Transparency in an Authoritarian Assembly, 106 Am. Pol. Sci. Rev. 762 (2012) (for a finding of no evidence that increased transparency impacts delegate performance in authoritarian Vietnam after working with a newspaper to randomly create websites devoted to the activities of a randomly selected group of delegates). For an example of non-experimental international law research that used email to gather data by conducting human rights monitoring groups from around the world, see Cosette Creamer & Beth Simmons, Transparency at Home: How Well Do Governments Share Human Rights Information with Citizens?, in Transparency in International Law (Andrea Bianchi & Anne Peters eds., 2013). It is also worth mentioning that experimenting on public officials raises additional ethical considerations beyond those already present in experimental research. For a thorough treatment of this issue, see Gwyenth H. McClendon, Ethics of Using Public Officials as Field Experiment Subjects, 3 Experimental Pol. Scientist 13 (2012).
of engagement without the high expenses of direct face-to-face contact necessary in other field experiment designs. Of course, one must be careful in interpreting any results because in many settings there might be no response. People might not write back, either because an email is intercepted in a spam box or because they are alienated by the content of the correspondence. However, even a non-response might be thought of as a quantity of interest.313 Needless to say, practical considerations of this sort loom large in the design, conduct, and analysis of field experiments. No experimental methodology is a perfect solution.

These examples show that field experiments are a promising but under-utilized method of studying international law. Well-designed field experiments directly test existing theories in a way that has the potential to generate evidence convincing to both scholars and policymakers. This is not to say that designing and conducting field experiments on international law is not a difficult task, but instead that the potential payoff for doing so may be quite high.

With that fact in mind, when deciding between experimental methods, researchers must consider whether they are interested in studying mass or elite opinion and decision-making. Obviously, survey experiments present a particularly easy way to gauge mass opinion.314 Researchers of international law might be particularly interested in measuring mass opinion: First, there are strong theoretical reasons to believe that compliance with international law may be driven by changes in domestic political opinions that result from making international commitments.315 Second, there is research suggesting that elite opinions mirror mass opinions on questions of international affairs, and thus that mass surveys can be an excellent

313. See, e.g., Baradaran et al., supra note 7, at 45–48, for an analysis of the response rate for emails sent to incorporation firms with request to create shell corporations as a quantity of interest. Of course, non-response issues can also arise during survey research. For a discussion of this issue, see Adam J. Berinsky, Survey Non-Response, in HANDBOOK OF PUBLIC OPINION RESEARCH 309 (Wolfgang Donsbach & Michael W. Traugott eds., 2008).

314. For more information on how to cheaply conduct survey experiments, see supra notes 278–79.

way to predict elite views.\textsuperscript{316} If scholars wish to directly study elite behavior, they will likely either have to conduct a survey of a sample of elites,\textsuperscript{317} or conduct further field experiments. As we have mentioned, field experiments have recently been used in exciting ways to directly test the views and responses of elites, including public officials,\textsuperscript{318} and may be a promising way forward for scholars of international law.

\textbf{CONCLUSION}

Scholars of international law often devote their time to studying some of the world’s most important problems: How can we reduce indiscriminate violence against civilians? How can we promote economic development? How should we try to combat global climate change? Despite the fact that international legal scholars ask these important questions, they frequently use research methods that are incapable of answering them. Observational research methods are frequently unable to tell us if, and how, international law changes the behavior of states and non-state actors.

During the same period that scholars of international law have grappled with the limitations of observational research methods, social scientists and legal researchers have increasingly conducted experiments. Experiments are allowing these researchers to directly test existing theories in ways that produce reliable causal estimates while avoiding barriers to inference posed by the use of observational data. International law shares many of the same issues that have forced other disciplines to turn to experimental research methods. But, international law faces many of these same issues to the extreme, as well as problems that are unique to the field.


\textsuperscript{317.} See, e.g., Tomz, supra note 27, for a survey experiment on members of the British Parliament; see also, Hafner-Burton et al., supra note 27, for a survey on elites over trade preferences.

\textsuperscript{318.} See supra note 312.
In this paper, we have identified five problems that are extremely salient to the study of international law and indicate the field could particularly benefit from experimental methods. First, there is frequently insufficient variance in the sources of international law—treaties and customs—for observational studies. Second, the window of time that scholars of international law can study may not have produced enough relevant observations for large-\(n\) empirical analysis. Third, it is difficult, if not impossible, to disentangle the causal influence of different sources of international law using observational methods. Fourth, data on international law outcomes is often either incomplete or impossible to collect. Finally, international law is rife with sources of selection bias.

Experimental research presents a solution to all of these problems, and scholars of international law should thus begin to incorporate experimental methods into their research agendas. This may require international law scholars to either seek additional methodological training, undertake significant self-study, or partner with social scientists. Although all of these experimental based methods pose their own difficulties, difficulties that are not easily dismissed, it is our hope that the importance of the topics international law scholars study will lead them to be willing to find a way to engage in experimental-based research. With the increasing array of experimental techniques and research strategies already available, we are optimistic. After all, although the empirical revolution in international law has been a welcome development, if we truly hope to work towards answers to many of the most important questions facing the world, it is time that international law undergoes an experimental revolution as well.