

COMPLIANCE WITH INTERNATIONAL AGREEMENTS

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ABSTRACT

The study of compliance with international agreements has gained momentum over the past few years. Since the conclusion of World War II, this research agenda had been marginalized by the predominance of realist approaches to the study of international relations. However, alternative perspectives have developed that suggest that international law and institutions are important influences on the conduct of international politics. This review examines four perspectives and assesses their contribution to understanding the conditions under which states comply with international agreements. Despite severe conceptual and methodological problems, this research has contributed significantly to our understanding of the relationship between international politics and international law and institutions.

A central theme in much recent international relations scholarship is the growing role of formal international agreements and supranational authority in the ordering of relations among sovereign states. The growing range of authoritative commitments is evidenced by the movement since World War II to codify customary practices into explicit international legal instruments. The range of international agreements has grown rapidly over the past 40 years with the development of rules that regulate economic, social, communications, environmental, and human rights behavior. Evidence of the growth in supranational authority includes not only the number of international organizations that have mushroomed in the postwar years, but also, most strikingly, the growth and de-

velopment of legally binding forms of third-party dispute settlement: The evolution of the dispute-settlement procedures of the General Agreement on Tariffs and Trade (GATT) into the more formal and less discretionary structure of the World Trade Organization (WTO), the 1996 inauguration of the International Maritime Court in Hamburg to handle disputes arising from the United Nations' Law of the Seas, the growing activism of the European Court of Justice, and the recent flurry of contentious case activity at the International Court of Justice¹ are all examples of states agreeing voluntarily to give up a portion of the most basic aspect of their sovereignty—the authority to act as the final judge of one's own actions—to authoritative international institutions.

These developments are a puzzle for the study of international relations, the traditional assumption of which has been that national governments generally desire to preserve their legal sovereignty, particularly the sole authority to judge the acceptability of their policies in the international sphere. According to much mainline theorizing, states make commitments—especially formal legal commitments—either cautiously or cynically, and are reluctant to delegate decision making to supranational bodies. Over the past two decades, a good deal of theoretical and empirical work has been devoted to explaining why states have entered into this vast web of agreements voluntarily. Much of this work has examined issues relating to international economic and social interactions among states (the primary focus of this essay). Explanations have focused on the functional need for agreements due to the rising level of interdependence (Keohane 1984), the desire for greater regularity and predictability in actors' mutual relations (Brierly 1963), and growing state responsibility in the economic and social realm (Röling 1960, Friedmann 1964). Dominant international-relations paradigms generally hold that governments agree to sacrifice a degree of their legal freedom of action in order to secure policy changes from others or to gain influence over other states' policies (Keohane 1993).

Until recently, far less attention has been devoted to understanding why governments actually comply with such agreements, given that they can be costly in the short term and are not likely to be centrally enforced. Four broad approaches to this question are reviewed here: realist theory, rational functionalism, domestic regime-based explanations, and normative approaches. These perspectives are not mutually exclusive, and the less one is willing to straw-man the arguments of the major proponents, the clearer become the numerous points of overlap. For example, although realist theory has rarely been articulated in such a way as to take international legal constraints seriously, some of its major proponents would admit that international law compliance is fairly

¹During the Cold War, the Court decided only one contentious case on average per year; in 1995, however, the Court had a record number of 13 cases before it.

widespread (Morgenthau 1985). Similarly, scholars who focus on normative convergence as a source of compliance hardly rule out coercive processes to encourage such convergence (Bull 1977). Approaches that link domestic regime type with international rule compliance often tap into a deeper set of factors relating to the role of liberal principles and beliefs in securing international behavior consistent with the rule of law (Dixon 1993). Some functionalist arguments point to domestic regime characteristics as a source of “market failure” that make international agreements all the more necessary. Nonetheless, these four broad approaches diverge in important respects and provide a useful way to arrange the growing literature on compliance with international agreements.

Despite the recent interest in issues surrounding compliance, and more generally the effects of rules on international politics, the effort to link theory with evidence is still in its infancy. This is partly due to conceptual difficulties in identifying compliance itself. Another obstacle has been methodological: Difficulties in demonstrating causation remain, along with problems of selection bias in the use of cases and the analysis of data. Because the endeavor to understand compliance has been interdisciplinary, involving legal scholars and sociologists as well as political scientists, differing methods of analysis, reasoning, and standards of proof pervade the literature. Although these differences are enriching and have narrowed through scholarly cooperation, they do help account for the disparate nature of much of the relevant literature.

The first section of this review discusses the concept of compliance and presents strategies for its measurement. The second section reviews four strands of international relations theory (inserting legal scholarship where arguments are compatible, even if the authors are not self-consciously writing within the tradition under examination) and culls from them a range of explanations and empirical findings regarding international legal commitments and compliance. The third section of this essay draws some conclusions about our knowledge of compliance with international agreements and suggests directions for future research.

THE MEANING AND MEASUREMENT OF COMPLIANCE

In his groundbreaking study on compliance with international public authority, Oran Young (1979) suggested: “Compliance can be said to occur when the actual behavior of a given subject conforms to prescribed behavior, and non-compliance or violation occurs when actual behavior departs significantly from prescribed behavior.” This definition distinguishes compliance behavior from treaty implementation (the adoption of domestic rules or regulations that are meant to facilitate, but do not in themselves constitute, compliance with in-

ternational agreements). It also distinguishes compliance from effectiveness; a poorly designed agreement could achieve high levels of compliance without much impact on the phenomenon of concern (pollution levels for example). While compliance may be necessary for effectiveness, there is no reason to consider it sufficient. The literature reviewed here is almost exclusively concerned with the conformity of behavior to rules, rather than the ultimate outcome of such conformity (Jacobson & Brown Weiss 1995, 1997).

Furthermore, most of the literature reviewed discusses compliance with explicit rules or agreements, often of a legal character or of normative import, and not “compliance” with the demands of an adversary or the requests of an ally. The concern is typically with obligations that flow from authoritative agreements, widely held normative prescriptions, or authoritative interpretations of proper behavior, rather than acquiescence to unilateral political demands based on the exercise of power alone. In practice, of course, agreements among asymmetrically endowed actors are rarely perfectly voluntary, and the decision to “conform to prescribed behavior” might rest on an amalgam of obligation and felt coercion.

Fisher (1981) has drawn an important distinction between “first order” and “second order” compliance. The former refers to compliance with standing, substantive rules often embodied in treaty arrangements (Downs & Rocke 1995, Chayes & Chayes 1995). Second-order compliance is compliance with the authoritative decision of a third party, such as a panel of the World Trade Organization, the United Nations Human Rights Committee, or the International Court of Justice (Bulterman & Kuijer 1996, Fisher 1981). The study of first-order compliance encounters difficulties in establishing an underlying “rate” of compliance, as it is far from clear how one could conceptualize a denominator for such a rate. As a result, researchers looking at the same set of behaviors can disagree vehemently over whether “most” foreign policy actions are effectively governed by law, rules, and agreements, or whether such considerations have little effect on state behavior (Henkin 1979). Studies of second-order compliance can often more convincingly establish such a rate and can narrow the range of behavior that would constitute compliance by focusing on a particular, often precisely rendered, decision (Fisher 1981). Unfortunately, rulings represent only the tip of the iceberg of the larger compliance problem, and are likely to represent a biased set of observations, especially since only governments willing to make concessions are likely to submit to authoritative decision-making processes (Coplin 1968).

Finally, most researchers admit it is difficult to judge whether a particular policy constitutes compliance at all (Jacobson & Brown Weiss 1997). Often international agreements are written so as to permit a range of interpretations regarding the parties’ obligations. Furthermore, compliance is rarely a transparent, binary choice. Actors’ behavior is often intentionally ambiguous, dila-

tory, or confusing, and frequently takes place under conditions in which verification of compliance is difficult (Young 1979). In other contexts, actors may make good faith efforts to comply that nonetheless fall short of an agreement's prescribed behavior. Some researchers have dealt with these ambiguities by making such assessments in the context of generally prevailing expectations (Chayes & Chayes 1995). Going further, constructivist approaches assume that standards of compliance are socially constructed and must not be imposed by the analyst, making each assessment highly context-specific.

INTERNATIONAL RELATIONS THEORY AND THE PROBLEM OF COMPLIANCE

Compliance and the Realist Tradition

For realists, power, rather than law, has traditionally been the primary determinant of the course of interstate relations. Most realists—theoreticians and practitioners—tend to be highly skeptical that treaties or formal agreements significantly influence state actions (Boyle 1980, Bork 1989–90). Although Hans Morgenthau (1985) admitted that “during the four hundred years of its existence international law ha[d] in most instances been scrupulously observed,” he thought that this could be attributed either to convergent interests or prevailing power relations. Governments make legal commitments cynically and “are always anxious to shake off the restraining influence that international law might have upon their foreign policies, to use international law instead for the promotion of their national interests” (Morgenthau 1985). Similarly, Hoffmann (1956) described the nation state as “a legally sovereign unit in a tenuous net of breakable obligations.” In this formulation, what governments are legally bound to do or refrain from doing has little bearing on their actual behavior, except as provided by a coincidence of law and national interest. Aron (1981) put it succinctly: “International law can merely ratify the fate of arms and the arbitration of force.”

To realists, the decentralized nature of the international legal system is its prime defect. International agreements lack restraining power, especially since governments generally retain the right to interpret and apply the provisions of international agreements selectively (Morgenthau 1985). Realists view the activities of major powers and the pursuit of important interests as highly unlikely to be constrained by legal authority or prior agreement.

In short, realists typically assume that international law is merely an epiphenomenon of interests or is only made effective through the balance of power (Oppenheim 1912). Aron and other realists have admitted that “the domain of legalized interstate relations is increasingly large” but argued that “one does not judge international law by peaceful periods and secondary prob-

lems” (Aron 1981). In the realm of high politics, realists have been especially skeptical about the rule of law and legal processes in international relations (see for example Diehl 1996; Fisher 1981, 1982; Bulterman & Kuijer 1996). For the most part, realist perspectives focus on the fundamental variables of power and interest, rarely inquiring further into states’ compliance with international agreements.

Compliance and Rational Functionalism

A different set of expectations is suggested by a rational functional approach to the study of international institutions. Functionalist approaches view international agreements as a way to address a perceived need: International legal agreements are made because states want to solve common problems that they have difficulties solving any other way, e.g. unilaterally or through political means alone (Bilder 1989). Rational functionalism shares realists’ concern with states’ incentives to comply with or disregard international agreements, but is less likely to denigrate the cooperative problems that pervaded the realm of so-called low politics. By the mid-1980s it was increasingly difficult to relegate economic, social, and environmental issues to the status of “secondary problems,” given the robustness of the postwar peace among developed countries. Unlike realist theorists, those taking a functional approach did not assume that these issues posed trivial problems for compliance. The initial assumption of rational functionalism is not that states cynically manipulate their legal environment, but that they “engineer” it in what are taken to be sincere efforts to affect an otherwise suboptimal outcome.

Both realism and rational functionalism are interest-driven approaches in which incentives play a crucial role.² The latter, however, views the particular agreements and even the international legal system in toto as a collective good, from which states collectively can benefit, but to which none wants to contribute disproportionately and by which none wants to be disadvantaged consistently. Rational functionalist analysis focuses on the perceived benefits of a system of rule-based behavior and on the individual incentives for states to contribute to, or detract from, such a system. Because they are often crucial to

²The two approaches differ significantly regarding the role of sanctions versus the use of incentives to “manage” the process of compliance. Chayes & Chayes (1995) emphasize the persuasive function of international law. To enhance compliance, scholars and practitioners should move from an enforcement model that focuses on sanctions and punishments to a management model that focuses on positive incentives and negotiation. Critics respond that such a “managerial approach” to compliance will only go so far, arguing that deep cooperation—compliance with agreements proscribing behavior that is truly difficult to forswear or prescribing behavior that is costly in the short term—will require some form of enforcement (Downs et al 1996). The distinction between enforcement and management approaches is often made in the context of domestic law enforcement (Hawkins & Thomas 1984, Snively 1990).

solutions, agreements are taken seriously. Therefore, in the absence of severe, unresolved collective-action problems or overwhelming, unaddressed incentives to defect, obligations are likely to be carried out.

Though functionalist theories concentrate on why states obligate themselves rather than why they comply with their obligations, theorists in this vein have suggested a number of mechanisms that potentially influence compliance behavior. The central mechanism for securing compliance is related to reputation: States anticipate paying a higher cost in the long run for breaking agreements in an effort to achieve immediate gain (Keohane 1984, Schachter 1991). Indeed, one function of international agreements is to enhance the reputational consequences of noncompliant behavior by providing mechanisms that increase transparency and therefore improve information regarding other states' behavior (Keohane 1984, Milgrom et al 1990, Mitchell 1994). Some authors have argued that reputational explanations for compliance are especially relevant for new and developing countries, which have an interest in developing a reputation as "rule of law" countries (Shihata 1965). Greater transparency and opportunities for reciprocity also enhance compliance where there is repeated play within a small group, for example in the European Union (EU) or among the large countries in the WTO. Functionalist accounts often emphasize the crucial role of international institutions in providing a focal point for acceptable behavior (Garrett & Weingast 1993). These institutions facilitate the convergence of expectations and reduce uncertainty about other states' future behavior.

Like proponents of the normative research agenda discussed below, some functionalists point out that the standards or "focal points" created by international agreements or institutions can gain a high degree of legitimacy both internationally and domestically (Franck 1990, Peck 1996, Tacsan 1992). This legitimacy in turn can have important political consequences (Claude 1966). In this view, the search for a legitimate rule is a rational response to the need for a stable solution to an otherwise costly, intractable problem or dispute.

The starting point for functionalist explanations of international agreements and compliance is the inability of states to solve a problem without the institutional device. Like realist approaches, most functionalist approaches to international politics begin with the premise that states delegate sovereignty begrudgingly. Despite states' strong preference for solving international controversies through political means, even unilaterally if necessary, functional theories recognize that this may not be possible. Most functional theorizing has been systemic, focusing on international market failure and problems of collective action (Keohane 1984). Relatively little attention has been given to the domestic political reasons why international agreement may be impossible without an international institution, but in principle, the source of the "suboptimality" in functional theory could be either domestic or systemic.

One important exception to the systemic focus of most functional accounts of compliance is a theoretical study of the GATT rules by Downs & Rocke (1995). This work indicates that uncertainty regarding domestic politics and interest-group demands has a tremendous influence on the nature of international agreements undertaken, the severity of sanctions required, and hence the degree of compliance to be expected from participants in the GATT regime. Downs & Rocke argue that GATT's weak enforcement norm is a result of uncertainty about the future demands of interest groups: Most states do not want aggressive enforcement of the GATT because domestic conditions may arise under which they themselves will be compelled to violate GATT obligations (Downs & Rocke 1995). This uncertainty tilts preferences toward shorter and less stringent punishments, reducing the cooperative demands of the treaty agreement (as the costs of defection rise, a highly cooperative treaty becomes too risky to be practical). In this model, reached deductively through a game-theoretical representation, domestic uncertainty makes rule violation harder to punish, which makes compliance harder to secure. The expectation of these difficulties endogenizes the treaty commitment itself by contributing to a watering down of the initial agreement.

Other studies that locate the source of suboptimality at the domestic level have focused less on the implications for sanctioning and more on the role of international agreements or authoritative interpretations of obligations in creating constraints that resonate in domestic politics. This approach begins with the observation that domestic institutions can obstruct the realization of benefits for society as a whole: Preference outliers can capture domestic institutions and thus hold policies hostage to their demands; well-organized interests can exert particularistic influences on policy, decreasing overall welfare; decision makers can have time-inconsistent preferences that cause them to pursue short-term interests at the expense of longer-term gains; political polarization can lead to suboptimal outcomes or decisional paralysis at the domestic level. Under these circumstances, actors may have incentives not only to make international agreements (e.g. to freer trade, fixed exchange rates, convergent macroeconomic policies), but also to comply with them in order to solve an intractable domestic problem. In this view, international agreements place a desired constraint on policy where domestic politics alone has proved socially suboptimal. Furthermore, authoritative external decisions may reduce the domestic political costs of particular courses of action—an argument regularly invoked to explain compliance with the European Monetary Union (EMU) and the International Monetary Fund (IMF), for example. Those who have examined bargaining in the context of legal-dispute settlement have argued that concessions tend to be easier to make, from a domestic political point of view, when legally required by an authoritative third party (Fischer 1982, Merrills 1969). Thus the value of compliance flows as much or more from its domestic politi-

cal benefits as from the benefits of securing changes in the behavior of other states in the system.

Finally, a large and growing literature has focused on one of the most tangible sources of suboptimal social behavior: domestic administrative or technical incapacities. A host of studies, many relating to compliance with environmental accords, point to the inability (as distinct from unwillingness) of governments to comply with their international obligations. A consortium of scholars headed by Jacobson & Brown Weiss (1995, 1997), comparing the compliance performance of nine countries across five environmental accords in the past ten years, concludes that administrative capacity has been a crucial variable. A country's administrative capacity includes the knowledge and training of personnel responsible for environmental policy, adequate financial resources, the appropriate domestic legal mandate/authority to accomplish program implementation, and access to relevant information. Lacking such administrative or technical capacities, rule-consistent behavior may simply not be within a signatory's choice set. Outside agencies can help countries develop such capacities; the function of international agreements, in this case, is not only to specify obligations but to facilitate their attainment for certain classes of signatories deemed unable, without external resources, to meet particular standards of behavior (Haas et al 1993).

Compliance and the Nature of the Domestic Regime

Another approach receiving attention in the study of interstate disputes, and more recently in legal circles, may be termed democratic legalism. (This appellation is not used by proponents of this approach but is convenient for the purposes of this article.) In this formulation, regime type is crucial to understanding the role of law in interstate relations (Slaughter 1995). While the domestically formulated functionalist literature focuses on the range of domestic conditions that can contribute to or detract from compliance, democratic legalism looks at the distinctive features of democratic regimes that tend to bind them into a "zone of law" in the conduct of their foreign relations.

The thrust of this literature is that democracies are more likely to comply with international legal obligations. One line of reasoning advanced to sustain this argument suggests that because liberal democratic regimes share an affinity with prevalent international legal processes and institutions, they tend to be more willing to depend on the rule of law for their external affairs as well. This argument depends on the notion that norms regarding limited government, respect for judicial processes, and regard for constitutional constraints carry over into the realm of international politics (Dixon 1993). Thus, countries with independent judiciaries are more likely to trust and respect international judicial processes than those lacking domestic experience with such institutions. Po-

litical leaders accustomed to constitutional constraints on their power in a domestic context are more likely to accept principled legal limits on their international behavior; therefore, governments with strong constitutional traditions, particularly those in which intragovernmental relations are rule governed, are more likely to accept rule-based constraints on their international behavior. This reasoning dovetails with a growing argument that liberal democracies are more likely than are other regime types to revere law, promote compromise, and respect processes of adjudication (Doyle 1986, Dixon 1993, Raymond 1994).

A specific mechanism that might tighten the link between the domestic rule of law and international behavior is the absorption of the latter into the corpus of domestic regulation itself. Assuming a close correlation between regime type and meaningful domestic legal restraints on the public exercise of authority, “[O]ne of the best ways of causing respect for international law is to make it indistinguishable from domestic law” (Fisher 1981). This parallels Keohane’s (1992) notion of the “enmeshment” of international commitments into domestic politics and political institutions. One example of such absorption can be found in military manuals: Both Britain and the United States have imported international law concerning war fighting into their military handbooks. The idea is to make the two sets of law incentive compatible, such that “[p]atriotism and national loyalty will be aligned on the side of compliance” (Fisher 1981, p. 147). However, replication of international rules at the domestic level is no guarantee of their potency. Where international law is easily absorbed into the domestic system of rules one can wonder if behavior would have been much different in its absence; where international rules do not comport well with indigenous legal culture, expectations for compliance should not be high.

A second, distinct mechanism also supports the importance of democracy for law compliance. It rests on the observation that the leader of a liberal democracy may be constrained by the influence of international legal obligations on domestic groups, who are likely to cite such rules or rulings to influence their own government’s policy. In one version of this argument, the mechanism of the compliance pull is domestic interest groups, who may have an interest in or preference for compliant behavior (Young 1979, Schachter 1991). Studies of compliance with environmental accords, for example, found that democracies provide more freedom for nongovernmental organizations (NGOs) to operate, allowing the formation and strengthening of transnational coalitions to influence government compliance efforts (Jacobson & Brown Weiss 1997). NGOs have been similarly crucial in the human rights area, and countries that have embarked on a transition to democracy have been influenced by their presence (Sikkink 1993). The weight of an international obligation or an authoritative legal forum may be vital in convincing domestic audi-

ences actively to oppose a government policy, raising the political costs of noncompliance. Fisher (1981) has argued that these costs are likely to be especially heavy in the case of second-order compliance involving violation of an international authority's specific decision against a government, rather than a standing rule about which the government is likely to argue.

There is an affinity between this strand of democratic legalism and various kinds of functional reasoning that view international institutions as essential in influencing the domestic political debate surrounding a controversial foreign policy choice. The distinctive contribution of democratic legalism is its expectation of systematic differences between liberal democracies and nondemocracies: Domestic political constraints encouraging law-abiding behavior are assumed to be much stronger in democracies. Therefore, democratic countries are expected to be more willing to use legal institutions to regulate international behavior and settle disputes, and to comply more readily with these agreements once they are made.

Normative Approaches to Compliance

Normative considerations are present to some degree in the observation that democratic norms relating to the rule of law may influence governments' attitudes toward international law compliance. But a growing school of research places normative considerations at the center of its analysis of state behavior. This approach accepts that normative concerns are capable of driving perceptions of interest, and that the best way to understand normative influences is through a subjective—rather than an analytically imposed—framework of meaning. In this view, normative standards of appropriate conduct are socially constructed reference points against which state behavior can be gauged.

Normative influences have a long tradition in the study of international law compliance. At the turn of the century, for instance, Root (1908) cited “moral force” as a reason for compliance with the decisions of arbitration panels. The predominance of realist theory in the study of international relations after World War II edged aside such arguments as naive, until a more subtle understanding of the relationship between international power and international society was articulated. Bull (1977) provided an early antecedent to what loosely can be termed a more constructivist approach to the problem of international law compliance. Although he believed in the ultimate importance of the balance of power in international politics, Bull's work emphasized the critical importance of international society (shared norms and beliefs) to the effective functioning of international law. Parting with such realist skeptics as Aron, Bull thought international law existed because actors in international relations assume that the rules under which they act are legal rules. This did not, however, justify “our treating them as a substantial factor at work in international

politics” (1977, p. 137). Bull did not cite behavioral evidence, but drew on the discourse with which diplomats described, justified, and excused their actions: “What is a clearer sign of the inefficacy of a set of rules is the case where there is not merely a lack of conformity as between actual and prescribed behavior, but a failure to accept the validity or binding quality of the obligations themselves—as indicated by a reasoned appeal to different and conflicting principles, or by an unreasoned disregard of the rules.”

Bull’s work opened the way for a more interpretive, contextual approach to the understanding of compliance than that of his realist predecessors, with whom he shared a healthy respect for the balance of power. He believed that the primary function of international law is to help mobilize compliance with the rules of what he termed international society, but he remained skeptical that law could impose serious restraints on international behavior. Law could influence compliance only in the presence of a social system marked by shared norms and beliefs (Bull 1977).

Bull’s central insight was that actor behavior alone was inadequate to convey intersubjective meaning and hence was an insufficient indicator of the role of rules, norms and agreements in international politics. This insight was explicated by international regimes³ theorists working in the constructivist mode in the 1980s, most brilliantly by Kratochwil & Ruggie (1986). Rather than look to the violation of norms as the entire rule-compliance story, these scholars argued that analysts needed to understand state behavior as interpreted by other states and as intended by the actors themselves. Agreeing with Bull, they noted it was important to research how states justified their actions, and whether the international community responded to proffered rationales. “Indeed, such communicative dynamics may tell us far more about how robust a regime is than overt behavior alone” (Kratochwil & Ruggie 1986). In this view, even divergent practices of actors could express principled reasoning and shared understanding. What constitutes a breach of obligation is therefore not simply an objective description of a fact but an intersubjective appraisal. These observations comport well with the distinguishing features of social constructivism: its concern with the nature, origins, and functioning of social facts, the understanding of which is limited by more utilitarian approaches.

The implications for theory and research are profound. Kratochwil & Ruggie suggested that the emphasis on “rational institutional design”—a primary interest of the functionalist approaches discussed above—was fundamentally misplaced. Whereas such scholars as Downs & Rocke argued that relative in-

³“International regimes” were not conceived as isomorphic with international law, but the overlap is significant. International regimes were defined by Stephen Krasner (1983) as “principles, norms, rules, and decisionmaking procedures around which actor expectations converge in a given issue area.”

centives, rather than such concepts as fairness, drove the compliance decision, the more subjective, normative approach suggested that “rational institutions” can be undermined if their legitimacy is questioned (Kratochwil & Ruggie 1986). This assertion dovetailed with legal and sociological attempts to understand voluntary law compliance for individuals, groups, and organizations as a function of the perceived legitimacy of the law and legal processes themselves. (At the individual level, see Tyler 1990. With reference to collective organizations, see Knoke & Wood 1982.) The thrust of this literature is that perceived legitimacy of a legal rule or authority heightens the sense of obligation to bring behavior into compliance with the rule.

But if legitimacy is central to voluntary compliance, how can one explore this relationship in a non-tautological way? One approach is to locate the compliance pull of international norms in the nature of the norm itself. Franck (1990) has argued that the legitimacy of a rule—its ability to exert a pull toward voluntary compliance—should be examined in light of its ability to communicate, which in turn is influenced by the rule’s determinacy and its degree of coherence. Similarly, Legro (1997) has proposed rule attributes such as specificity, durability, and concordance as one way to consider the effect of norms on outcomes. In his view, the clearer, more durable, and more widely endorsed a prescription, the greater will be its impact on compliance behavior.

Others have focused on the substance of the rule as underpinning its moral force and legitimacy. For example, Fisher (1981) asserted that rules will be better complied with when they follow commonly held notions of fairness and morality; for example, proscribing killing rather than informing on friends, or prescribing reciprocal rather than uni-obligational behavior. He holds that the more “elemental” the rule—the more it reflects *malum in se* rather than *malum in prohibitum*—the more first-order compliance should be expected. Similar arguments have been advanced in the area of human rights compliance. Keck & Sikkink (1998) argue that among the wide array of human rights standards embodied in international agreements, two kinds of prohibitions are most likely to be accepted as legitimate transnationally and cross-culturally: norms involving bodily integrity and the prevention of bodily harm for vulnerable or innocent groups, and norms involving legal equality of opportunity. These norms, they argue, transcend culturally specific belief systems and resonate with basic ideas of human dignity common to most cultures, enhancing their legitimacy as behavioral prescriptions.

International, transnational, and nongovernmental organizations play a significant role in normative processes described in some of this literature. While the rational functionalist literature acknowledges that such entities can provide focal points that narrow the range of equilibrium outcomes, scholars in the normative vein would go much further: International institutions and organizations legitimate particular rules, enhancing their effectiveness through a

heightened sense of obligation rather than through their mere instrumental value as a convenient point of convergence (Claude 1966, Peck 1996). Tacsan (1992), for example, has written that the International Court of Justice (ICJ), as a producer and disseminator of new and consensual knowledge, can establish a point where normative expectations converge through an interactive bargaining process. He argued that the ICJ's redefinition of self-determination, non-intervention, collective self-defense, and regional use of force determined the normative expectations that ultimately prevailed in Central America's peace settlement. The normative approach values authoritative institutions that review states' policies for consistency with their international agreements, not because they have the formal power of sanction, but because such procedures legitimate the attempt to find a gap between governments' commitments (formal stances) and their actions. Some have argued that this is why NGOs favored creating a Sustainable Development Commission at the 1992 UNCED in Rio de Janeiro—not because it would have the formal power of sanction, which realist and some functionalist perspectives would point out as a major weakness, but because it would legitimate the process of holding governments accountable for their behavior and its relationship to their stated positions.

In short, normative approaches to the problem of compliance focus on the force of ideas, beliefs, and standards of appropriate behavior as major influences on governments' willingness to comply with international agreements. The hallmarks of this research are its departure from the radically individualized methodology of some variants of realist and functionalist approaches and its embrace of international obligations as social constructs that must be understood and analyzed in an intersubjective framework of meaning. Scholars have attempted to marshal positive methodologies in the study of normative influences; Kacowicz (1994) looked at normative convergence as reflected in substantive treaty provisions and its effect on the prospects for peaceful territorial change, and Kegley & Raymond (1981) used "quasi-authoritative treatises" to draw correlations between prevailing legal norms and states' use of force. However, the intersubjective formulation of the problem has largely resisted such approaches. Scholars who have studied the social ideational influences on international politics submit that such factors as aspirations, legitimacy, and the notion of rights are reasons for actions, which are not the same as causes of actions (Ruggie, 1998). Moreover, its explicitly inductive and high-contextual methodology distinguishes this approach from the (neo)realist and functionalist literature.

CONCLUSIONS

Research on compliance with international agreements encompasses a wide range of approaches to the study of international relations and crosses over into

the disciplines of law and sociology. Yet despite an apparently sprawling literature, the empirical work that might link theory with observed behavior (or subjective understandings of such behavior, as constructivists would have it) has only begun to accumulate in recent years.

Part of the difficulty in the empirical study of compliance has been methodological. If the central analytical issue is to understand the conditions under which states behave in accordance with rules to which they have committed themselves or, more broadly, in accordance with prevailing norms of international behavior, then it is important to isolate the impact of those rules and norms. Several studies have tried to demonstrate a correlation between legal standards and state behavior, sometimes employing large databases and statistical techniques, but most are unconvincing in demonstrating causation, or even in providing an explanatory link between actions taken and the existence of agreements or normative considerations. It has been shown that much international behavior is consistent with international law, even in the conduct of hostilities between states (see for example Kegley & Raymond 1981, Tillema & Van Wingen 1982); it has been far more difficult, however, to show any causal link between legal commitments and behavior.

Establishing causation has been complicated by problems of selection bias and endogeneity. As realists have noted, selection bias proliferates rules in issue areas with minimal problems of strategic cooperation. From Aron's (1981) complaint that it is no test of international law merely to look at "secondary" problems, to Downs et al's (1996) observation that compliance is not very interesting if international agreements are mere "flight control" agreements from which no one has much interest in defecting, there are good reasons to expect that the problem of compliance with treaties will be easier to resolve than the problem of international cooperation in general. This difference is due to the fact that treaty negotiation is endogenous: Governments are more prone to make agreements that comport with the kinds of activities they were willing to engage in anyway, and from which they foresee little incentive to defect. The endogeneity of treaty agreements also weakens the standards of behavior within agreements, which might be expected to improve compliance, but only because the rules are lax.

As a result, it is difficult to show that a rule, commitment, or norm per se influenced governments to take particular positions that represent compliance. In his account of compliance with the partial test ban treaty, Young (1979) gives away the reasons for compliance in the absence of enforcement mechanisms by admitting that the states involved had only extremely weak incentives to go against the agreement. It has been difficult to construct research around crucial case studies showing that agreements have created new and powerful incentives or have altered actors' perceptions of their interests.

The problem of selection bias creates inferential obstacles for the study of second-order compliance as well. Where significant national interests are involved, governments are arguably likely to resist or ignore international jurisdiction (Fischer 1982). As a result, cases in which third parties render authoritative rulings with which the parties are legally bound to comply are likely to be “easy” cases involving parties eager to settle their dispute and therefore willing to make concessions anyway (Coplin 1968, Schwartzenberger 1945), cases involving countries that tend to be law-abiding, or perhaps cases involving small countries whose weak negotiating position gives them little to lose by going through legal processes. However, the nature of the selection bias may differ across issue areas depending on the nature of the dispute-settlement mechanism in place. In the human rights area, the requirement of the “exhaustion of domestic remedies” might have the opposite effect on the pool of litigated cases: States with good domestic rules are not likely to produce many internationally reviewed cases. With respect to trade disputes under the GATT and now the WTO, incentives exist to sue the largest traders, as such suits offer much greater payoffs than going after small markets. In some issue areas, third parties themselves may act strategically, altering the nature of cases brought before them; for example, they may avoid taking jurisdiction for cases in which they anticipate a lack of compliance. The point is that in any given issue area the “litigation pool” is unlikely to be typical of the international community of states. The impact of these biases will influence our ability to draw inferences regarding compliance with authoritative third-party decisions. In some cases, adjudication or arbitration may complement what states would have done anyway; in other issue areas, its impact may vary.

Little has been done to determine whether selection bias is truly pervasive. For example, it should be possible to produce evidence that countries or country pairs that agree voluntarily to third-party arbitration or other judicial processes for settling their disputes are systematically different from a random sample of countries. Endogeneity of substantive agreements poses more difficulty and may require another strategy. One is to select cases in which there is evidence of a shift in state interests over time, rendering a previous commitment inconvenient or even costly to maintain, at least in the short run. The endogeneity problem would be minimized to the extent that compliance with earlier agreements is delinked from obvious explanations of strong, narrow, and immediate “interest-based” reasons to comply.

There are other ways to address the endogeneity of treaties themselves. One is to view the negotiation phase as an integral aspect of the compliance process. Scholars emphasizing the persuasive functions of legal agreements and discourse have also been interested in the contribution of participatory negotiation to eventual compliance. Taking a more constructivist approach to compliance, rather than worry about controlling for endogenous effects of treaty

negotiation, one might incorporate its discursive elements into a fuller story of the compliance process. Governments persuade and become convinced of the value or appropriateness of particular standards of behavior over the months, years, and even decades they spend in their formulation. This research agenda might even call for an examination of the discourse used by participants as such negotiations unfold; attitudes toward compliance are shaped by and reflected in this discourse. This strategy uses the negotiation process as data on attitudes toward compliance, rather than viewing it as a source of bias in making inferences.

Despite the conceptual and methodological difficulties, research into the question of compliance with international agreements represents a substantial advance in the study of international law and institutions as important influences on international politics. Realism's assumption that such effects were marginal discouraged empirical investigation and broader theoretical innovations that might have addressed the variations that patently existed across issue areas, among nations, and over time. The current emphasis on the effects of rules on behavior has gone well beyond the functionalist studies of the 1980s, which were primarily concerned with the phenomena of rule creation and evolution rather than their behavioral effects. Nonetheless, we are a long way theoretically and empirically from an understanding of the conditions under which governments comply with international agreements. Pockets of progress mark particular issue areas, such as the environment and human rights, but more effort is needed to subject these findings to the broader concerns of international politics.

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