Do International Courts Enhance Compliance with International Law?

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Abstract

One of the main hopes of proponents of international courts is that international courts will in some way encourage greater respect for international law. In truth, we know surprisingly little about the relationship between international courts and compliance with international law. The academic literature yields few direct hypotheses, because it has focused on broader questions of why states follow international law, or contextual factors shaping state compliance with international obligations. Indeed a read of this literature could well lead to the conclusion that courts will contribute very little to enhancing state respect for international law. On the other side of the debate is a literature that asserts that courts will enhance the likelihood that states comply with international law, with little development of when, how, or why courts will enhance compliance with international law.

This paper reviews a broad variety of American literature on international law and state behavior, pulling from this literature insights about the potential relationship between international courts and compliance with international law. The goal is to both make American literature more accessible to international audiences, and to move beyond broad claims about whether or not enforcement works as an approach to facilitate compliance. Parts I and II summarize the academic debates regarding enforcement versus management approaches to increasing compliance with international law, and why states turn to international courts. The analysis aims to pull out how international courts in particular may be contributing to compliance with international law. Part III takes from the preceding analysis insights that might explain variation in where international courts do or do not facilitate compliance with international law. I generate a list of fourteen propositions, not all of which are compatible with each other. This list offers a beginning way to think about explaining variation in the influence of international courts on state behavior, and to think how specific examples may or may not generalize to larger claims about the relationship between international courts and compliance with international law.

Enhancing compliance is not the only influence international courts may have in international politics. Part IV considers unintended consequences of using international courts to enhance compliance, and urges us to think more holistically about how international courts may be influencing international relations.

I. Introduction

The 1990s witnessed the creation of more international courts than any other decade (Romano 1999, 729). There are now twenty different international legal bodies, and these bodies are increasingly used. Sixty-three percent of the total international judicial activity (5598 out of 8895 cases) occurred in the last 12 years alone (Alter 2002, 4). These developments have led to a growing interest in how international courts are influencing international politics. This paper focuses on one way international courts may be changing international politics—by enhancing state compliance with international law.

One of the main hopes of proponents of international courts is that international courts will in some way encourage greater respect for international law. But do international courts actually enhance compliance with international law? What factors influence whether or not international courts enhance compliance with international law? In truth, we know surprisingly little about the relationship between international courts and state compliance with international law. This article surveys American political science and law literature with an eye to discerning the state of our understanding about international courts as they influence compliance with international law. The objective is both to make the American literature more accessible to international audiences, and to draw from the literature a set of propositions that might explain the factors shaping when international courts enhance state compliance with international law.

The analysis has four parts. Part I addresses the debate regarding whether international courts contribute at all to enhancing compliance with international law. Using international courts to encourage compliance is basically an enforcement approach to compliance, where the threat of a negative consequence encourages compliance with the law. The idea that threatening violators with punishment enhances compliance has been rejected by some authors who insist that for international law especially, a strategy of "managing compliance" is far more likely to increase compliance with international law. Reconciling the management and enforcement sides of the debate, I argue that there is no trade-off. I then show that international courts can enhance *both* "management" and "enforcement" strategies of encouraging state compliance with international law.

Part II focuses on the literature on why states delegate interpretive authority to international courts. This literature uses a rational choice approach, conceptualizing reasons states may find having and using an international court useful. While the arguments offered are not only about courts enhancing compliance, the primary claim in the rational choice literature is that delegating authority to international courts increases the credibility of a commitment and facilitates governments in their efforts to keep international covenants. Yet scholars who have studied the factors influencing state compliance with international agreements do not expect international courts to enhance compliance. Putting the rational choice arguments

about delegation alongside the arguments about the factors influencing compliance with international agreements thus reveals a disjuncture. There are three possible explanations for this disjuncture. Perhaps much of the rational choice literature is misdirected in its emphasis on credible commitments, and international courts are created and used for reasons other than making commitments more credible. Perhaps both literatures are right, courts do not per se enhance compliance with international law, but are nonetheless useful at times in facilitating state compliance with international rules. Or, perhaps the two literatures are looking at different issues, or different contexts and perhaps international courts only enhance compliance in some contexts and not others.

Pursuing the second and third explanations, Part III draws on the preceding analysis to develop propositions about where international courts are more or less likely to facilitate compliance with international law. The section develops eight propositions focusing on sources of variation that come primarily from the nature of the international political issue being addressed. I then develop six more propositions from the literature on how international courts are actually used, focusing on sources of variation emerging from features within states and due to the differential use of legal systems by litigants. The last six propositions highlight that there are distributional consequences in using international courts to address compliance.

Increasing compliance is not the only way international courts may influence international politics. Lest one get too exuberant about the possibility that international courts are improving compliance with international law, Part IV concludes by noting that international courts can have unintended affects as well, and can even provoke a backlash that may undermine respect for international law.

II. Do International Courts Contribute at All to Compliance with International Law?

At the end of World War II, realist writers like Hans Morgenthau and E.H. Carr forcefully made the case that international law is largely irrelevant in international politics—most states follows their national interests without giving a thought to what international law requires (Carr 1940; Morgenthau and Thompson 1960). In response to this critique, American international law literature argued that states in fact largely do follow international law because following the law is in their interest. This view was epitomized by Louis Henkin's famous phrase: "almost all nations observe almost all principles of international law almost all of the time." (Henkin 1961, 47) Scholars also showed that governments do in fact take international legal concerns into account, because governments know that 'legal' policies are most easily justified as being legitimate[1]. None of these debates involved

[1] For example, Francis Boyle and Abraham Chayes showed that even in key moments were national

international courts, per se. Indeed one could well conclude from the international law scholarship that international courts have little to do with whether or not international law influences state behavior.

By 1990s, most scholars had come around to the position that international law is not wholly irrelevant, but they still disagreed about when and how it mattered. The latest rendition of the realist/legal debate centered on the best approach to encourage compliance with international rules. Whether or not international courts can enhance compliance was directly at stake in this debate.

The advocates of the "enforcement approach" were George Downs, David Rocke and Peter Barsoom who argued—like realist scholars before them—that what international lawyers tout as generally high compliance with international rules is not what it seems. High compliance rates are largely explained, they claim, by the fact that states select among potential international rules those they are already complying with, or those that they intend to comply with voluntarily. If deeper cooperation is to be realized—that is cooperation that actually requires states to do something differently—mechanisms for enforcing rules are necessary (Downs, Rocke and Barsoom 1996, 382-383, 397-399).

Building on their post-war work, international lawyers, by contrast, stressed that what is hampering international law is not a lack of enforcement per se, but weak tools to elicit compliance (Chayes and Chayes 1993, 1995; Franck 1990, 1995; Henkin 1961). Taking the most extreme position, Abraham and Antonia Chayes asserted that "[a]s a practical matter coercive economic—let alone military—measures to sanction violations cannot be utilized for the routine enforcement of treaties...The effort to devise and incorporate such sanctions in treaties is largely a waste of time." (Chayes and Chayes 1995, 7) For Chayes and Chayes, the problem was not just relying on sanctions, rather they argued that the whole emphasis on enforcement was misguided. Enforcement fails as an approach, they claimed, because the main sources of non-compliance are ambiguity in agreements, a lack of state capacity to comply, and the fact that treaties are aspirational and transformative in goals and are thus not in their present stage binding. Chayes and Chayes argued that instead of focusing on enforcement, international institutions and international law should seek to "manage compliance" using normative tools to enhance the compliance-pull of the rules (building a state's sense of obligation, building legitimacy for the rules, and clarifying the meaning of the norms), and institutionalist tools to eliminate obstacles and enhance state capacity to comply (Chayes and Chayes 1993).

While the authors on both sides of the debate put their arguments in strong counter-position, really they did not disagree all that much. The critique of Downs,

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security was at stake, governments intentionally chose from a range of policy options those policies that where most compatible with international law (Boyle 1985; Chayes 1974).

Rocke and Barsoom was in some respects valid. One cannot be content with the idea that "most international law is respected most of the time" if this means that states continue to do whatever they were going to do anyway. Indeed scholars who study compliance increasingly observed that in some respects there is a trade-off between compliance and effectiveness. The literature converged around the idea that the goal of international cooperation should be what Downs et al. call "deep cooperation" and others call "effective compliance"[2]—international agreements should aim to make states do things differently than they might do absent the international agreement, recognizing that prioritizing effectiveness means accepting and even anticipating that there will be some non-compliance.

But Downs, Rocke and Barsoom were also partly wrong; it is not true that without enforcement there is no "deep cooperation." Both camps would agree that cooperative solutions to coordination problems might lead to effective compliance without elaborate enforcement systems. The hallmark of a coordination problem is there is no real incentive to cheat on the agreement. The classic example is the international air traffic control system. It would be inefficient and dangerous for countries to each have their own system to manage airplane traffic—thus we need a cooperative solution. The cooperative solution has countries agree that all pilots flying across borders and all air traffic controllers must have basic English skills and be familiar with a set common commands—something that airlines and countries might not require if there were no international air traffic control rules. For the air-traffic control example, once a system is created, it does not require international monitoring and enforcement. Self-interest will lead airlines and airports to follow the common standard, and ignoring the rule will create its own punishment by increasing the chance of an accident. Self-interest will not always be enough to ensure compliance—sometimes you need mechanisms to address ambiguities in the agreement, to flag national policies that are inconsistent with the coordinated policy, or to provide an extra incentive for governments to change existing national policies that undermine achievement of the coordinated goal. Because in coordination contexts there is no real incentive to cheat, and there are great benefits to international coordination, an elaborate system of enforcement to encourage effective compliance may well be unnecessary (Stein 1983).

There also probably is not as much disagreement about enforcement as it might seem. As Chayes and Chayes later argue, lawyers tend to conceptualize enforcement purely in terms of the formal enforcement mechanisms embodied in international agreements. We saw this when Chayes and Chayes used "coercive sanctions" for their argument about why enforcement strategies are a waste of time. But there are many types of international sanctioning mechanisms, as well as decentralized sanctioning mechanisms, that can meet the political economy criteria of

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[2] On the trade off between compliance and effectiveness, see: (Raustiala 2000)

"enforcement" tools (Downs 1998, 321). Both management and enforcement approaches recognize that tools like reciprocity, sanctions, and the threat of withdrawing inducements can usefully facilitate compliance. Take, for example, the regime regulating intentional oil pollution in the oceans—a case adopted by both camps. Intentional oil pollution occurred because after oil tankers discharged their cargo at a port, oil remnants would pool in the ship's tank. This oil decreased the carrying capacity of the tanker, so once at sea, tanker captains would dump the oil left in the bottom of their tanks into the ocean. The problem of intentional oil pollution was not a coordination problem because there were clear incentives to defect from any the cooperative solution. The first cooperative solution required tankers to use a "load-on-top" (LOT) procedure to keep tankers from dumping oil in the sea. LOT was the most economical solution, because it did not require major investments in new technologies. But according to Ronald Mitchell, LOT failed because: 1) tanker captains had no incentive to comply, 2) it was difficult for states to monitor whether oil tankers were complying, and 3) few states actually had an incentive to play the role of enforcer even though they benefited from decreasing oil pollution off their shores. The second cooperative solution was much more costly, requiring tanker owners to have segregated ballasts and add mechanisms to allow for crude oil washing of tankers (COW). But the new regime worked because it was easy to monitor (one simply had to look to see if tankers had the right technology) and because key states required these technologies for tankers using their ports. Chayes and Chayes are right that creating an international regime to enforce LOT would have been hugely costly and of questionable effectiveness; a better approach was to change the regime itself. Yet it is also true that COW worked where LOT failed because it created an incentive to invest in the technology, and a sanction if one did not invest in the technology. While "enforcement" in this case came from private actors, not the international regime itself, it was nonetheless of critical importance. In the end of the day, tanker owners reluctantly complied because key ports would not allow access to ships without segregated ballasts and crude oil washing devices, insurance companies would not insure ships without this modern technology, and oil companies would not use tankers without insurance (Mitchell 1994, 451-452).

As Oran Young argues, actors are motivated by self interest, enforcement and inducements, pressure from society, a sense of obligation, and habit (Young 1979, chapter 2). It would be silly not to use *all* of these levers to encourage compliance, which is why it is simply sound policy to combine both management and enforcement techniques to promote compliance. It is not clear yet from this discussion that international courts will enhance management and enforcement strategies. Clearly in the example above, having a court would not have helped much. This means we need to think about how and when international courts may helpfully encourage compliance. Jonas Tallberg does just this.

Tallberg shows how the European Union's legal mechanisms facilitate compliance by incorporating both management and enforcement techniques. The European legal system provides an enforcement mechanism for the Commission, and the Commission uses the EU's infringement procedure to enter into a dialogue with national governments about how national policies can be brought into compliance with EU law. This dialogue is in essence about "managing compliance," clarifying ambiguities in the rules, educating the government about what European law requires, working with governments to eliminate obstacles hindering compliance etc. The EU also uses the legal mechanism to harness private litigants to help monitor violations, and enforce European law, with national courts creating sanctions for governments that ignore international law. Tallberg argues persuasively that his findings are not unique to the EU—a large number of international agreements combine management and enforcement techniques to great effect (Tallberg 2002).

Generalizing Tallberg's claims, and focusing exclusively on what international courts may add, one can say that the international legal process can facilitate compliance by harnessing litigants to help monitor violations, by providing an outside venue with a third party that can help resolve disputes, and by creating a process that by design encourages a diplomatic resolution of disputes in the direction of greater compliance with international law. The possibility of a legal remedy can mobilize potential litigants to use the threat of a legal suit as a negotiation tactic. The threat of a court case can push forward negotiations regarding a contested state policy. The legal process then heightens the opportunities and incentives for diplomatic resolution of the dispute. As the litigation proceeds, ambiguities in the law are clarified and sub-issues are resolved so that the disagreement between disputants narrows. And often judges will indicate through their questions, and through interim rulings, how they are likely to rule, encouraging the likely loser to see the writing on the wall, and to reassess (Hudec 1993, 360-361).[3] The slow nature of the process provides a good reason for both parties to prefer to settle out of court. The prospect that the court will side in favor of the litigant with law on their side encourages settlement that is closer to what the law requires. Should parties fail to settle, legal mechanisms can create negative consequences for states found to be violating the law. One sanction is the ruling itself. Legal mechanisms can also be linked to a sanctioning process to induce compliance.

As should be clear from this description of how the legal process works, the vast majority of legal cases will be settled along the way and the cases that actually make it to a legal ruling will be the "hard" cases where parties refuse to compromise

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[3] If the parties themselves do not settle the case, legal rulings try to elicit voluntary adherence by the parties. While judges appeal to legal discourse, often legal rulings give a little to each party, so that each can walk away and claim victory (Shapiro 1981, 9-10).

and settle.[4] Indeed a completely effective legal system would have no cases decided by a court, because violations once discovered would lead to legal settlements before a court ruling. Because the cases making it to court are the hardest cases, one cannot assess whether legal systems enhance compliance simply by examining whether or not there is compliance with legal rulings. One must also look at how having an international court to issue a final ruling shapes out-of-court negotiations and settlements. There are many studies in domestic contexts that do just this. These studies examine how the possibility that a court will declare a winner or a loser creates bargaining endowments for each side, leading to a negotiation and settlement process with outcomes similar to what the court would decide.[5] What we need are studies that look at how international courts create a shadow over the international political process.

The above arguments certainly represent an ideal view of the role legal systems can and do in fact play in eliciting compliance. Part IV of this paper will raise a number of problems with international adjudication as a technique to encourage compliance. For now I will avoid larger philosophical questions, and simply say that the promise that legal systems may encourage compliance is likely behind the decision of governments to create and use international courts. The next section turns to the question of why states create and use international courts.

III. Why We Might Want to Create International Courts — or "Why Delegate"?

While the debate about enforcement versus management approaches to elicit compliance was not focused on international courts per se, the delegation literature does think about how international courts as external institutions with delegated authority may facilitate compliance. By "delegating authority," the literature means the handing over of some element of decision-making authority by "principles"—those who have the constitutional authority to legislate or decide (i.e. legislatures bodies, state governments)—to "agents," independent actors (i.e. administrative agencies, central banks, international institutions etc.) who serve at the desire and pleasure of the principles. The literature is not about courts per se—courts are mainly conceptualized as "a" third-party institution/actor with delegated authority. Despite its limitations, the delegation literature is one of the few places where there is a discussion of why states may see international courts as useful and how international courts may contribute to state compliance with international law. Conceiving of international courts in terms of delegating authority is perhaps the

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[4] Supporting this argument are the findings of Eric Reinhardt and Lawrence Busch that states are most likely to be satisfied in cases that are settled earlier in the legal process—because cases where there is a ready compromise at hand are settled before a court ruling is issued. See: (Busch and Reinhardt 2000; Reinhardt 2001)

[5] An early analysis in this vein is (Mnookin and Kornhauser 1979).

main way international courts are discussed in the American political science literature.[6]

Part I argued that international courts can help facilitate diplomacy, build normative support for international rules, remove ambiguities and increase the precision of international rules, and build a states' capacity to comply. Interestingly, these are not the reasons the delegation literature draws on to explain why countries delegate authority to international courts. Why not these reasons? From a rational choice perspective, there is no a priori reason to believe that states or anyone really should have in interest in international law being respected. Clearly states negotiate treaties because the treaty serves their interest. But the benefit of a treaty may come entirely from using ratification as a signal of a government's support of an issue. Or, states may mainly want other countries to follow the rules while retaining their own freedom to cheat whenever they want. If cheating undermines the benefits of cooperation, states may want a system to enhance compliance. But even then the desire to create compliance does not per se explain why you would delegate authority to an international court, since delegation involves significant sovereignty costs for states. The rational choice literatures is thus trying to explain why *delegating authority* to *international courts* serves the interest of states, and why it serves states' interest more than a self-help system where there is no delegation and states can interpret the law on their own, enforce law on their own, and cheat when they want. To answer this question, the literature looks to functional role delegation serves. Summing up the literature, one finds the following reasons to justify why states delegate authority to international courts:

1) States delegate to increase the credibility of a commitment. The number one given reason to delegate is to make a commitment more credible. For example, Giandomenico Majone argues that governments agree to transfer to independent central banks the power to set interest rates, and to courts the power interpret international rules, because businesses believe that central banks and courts are less likely to be swayed by electoral imperatives, and thus governments will be forced to follow through on their promises (Majone 2001). Andrew Moravcsik makes a similar claim arguing that Central European countries signed on to the European Convention of Human Rights and agreed to delegate interpretation to the European Court of Human Rights, to demonstrate to their citizens the government's commitment to democracy (Moravcsik 2000). Lloyd Gruber sees another attraction to delegating to commit; ruling parties may sign on to an international agreement

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[6] Indeed the special volume of *International Organization* dedicated to the phenomenon *Legalization in World Politics* discusses of international courts in terms of "delegating of interpretive authority to third parties" and includes delegation as one of the three defining criteria of what constitutes legalization (Abbott, Keohane, Moravcsik, Slaughter and Snidal 2000; Goldstein, Kahler, Keohane and Slaughter 2001).

and intentionally lock in their commitment so that subsequent leaders cannot back away (Gruber 2000, 81-88). It is not clear in Majone or Moravcsik's arguments if states mainly want to imply that a commitment is more credible, or if delegation in fact impedes governments' ability to walk away from commitments. I will separate the idea of a signal from reality in argument seven—take the first argument as meaning that states delegate enforcement authority to international courts because when there is an international court to enforce an agreement it is harder for states to walk away from their commitments.

2) Delegating to courts may be an attractive way to commit when a government wants to play on uncertainty for political reasons. Because having full information is key in shaping any rational decision, rational choice explanations see the lack of information, or manipulation of information, as a factor shaping political decision-making. From this insight comes the notion that delegation itself may be a tool to play on or manipulate information and thereby shape the political outcome. By intentionally committing to a fairly vague rule, and delegating responsibility to a court to apply the rule on a case-by-case basis, a government can fool those actors who might oppose a given rule to tacitly support the international agreement. By committing through delegation, the government locks-in its larger objective, and has someone else to blame when the costs of the commitment become clear and domestic actors complain (Moravcsik 1998, 74).

3) When issues are technically complex, and thus less amenable to political negotiation and political control, legal systems may be attractive. Governments may want to shield themselves from having to master and negotiate minutia after minutia—turning the issue over to seemingly neutral technocrats (perhaps a supra-national administrator or a specialized courts) to resolve (Moravcsik 1998, 69). Or, having courts fill in the blanks can seem more efficient than bringing together all parties to specify an agreement, especially if any such agreement would require formal state ratification (Abbott and Snidal 2000, 430-431; Pollack 1997, 104).

4) When governments want to remove certain issues from the domestic or international political process, an international legal system may be helpful. Here the argument is not that it is attractive to play on uncertainty, but rather politicians may believe that the political process leads to sub-optimal outcomes or that having an issue actively debated in the political process is itself destructive. For example, Beth Simmons found that one reason states turned territorial over disputes over to a third-party to resolve was to neutralize the contested issue by removing it from domestic political debate (Simmons 2001). Robert Hudec notes that governments may decide to turn a problem over to an international legal body to appease and thus demobilize domestic political actors, to buy time, or to avoid being

directly involved in resolving an issue yet still be seen as doing something (Hudec 1987). Governments may also simply want to get rid of disputes that aggravate a bi-lateral relationship. For example, according to a negotiator of the North American Free Trade Agreement, NAFTA's chapter 19 was added because the US did not want to harmonize its law with Canada, nor did it want to turn disputes over countervailing duties into an inter-governmental issue.[7] By delegating to bi-national panels the authority to resolve these disputes, governments could remove a politically divisive issue in US-Canadian relations and escape the pressure of domestic firms.[8]

5) Delegating to a court may simply work better than relying on self-help enforcement. States may actually want compliance, and find that delegating enforcement to a court works better than a self-help system to increase compliance. Delegation to a court is likely to be better than a self-help system when there are a large number of actors making monitoring of compliance difficult. For example, Paul Milgrom, Douglass North and Barry Weingast argue that when there were few traders involved in international trade, traders did not need a system to monitor or enforce compliance. Traders could rely on a self-help system, entering into contracts only with people who had a good reputation and punishing traders who broke contracts by besmirching their reputations. Because there were few traders, because they all knew each other, and because traders cared about their reputation, the fear of compromising one's reputation was enough of a reason to respect a contract. But when the number of traders became so large that it is became hard for individual traders to know each other's reputation, reputation no longer was enough to elicit compliance with contracts, thus traders wanted a third party to enforce agreements. In this context, courts were a convenient choice (Milgrom, North and Weingast 1990). Beth and Robert Yarbrough make a similar argument, asserting that as a tool of enforcement, tit-for-tat reciprocity does not work in multi-party complex systems. Thus the larger the number of signatories, the more likely there is to be delegation to a court (Yarbrough and Yarbrough 1992, 17-19).[9]

6) Delegating authority to international courts may be attractive because it lessons the role of power in dispute resolution. The strongest powers can use unilateralism to enforce agreements while cheating when they want. Strong powers thus are less likely to want to create a system of third-party enforcement.

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[7] Chapter 19 creates a system of bi-national panels to review decisions of administrative bodies within each country. The panels do not enforce international law, rather they seek to ensure that national administrations apply their own national law correctly and without unfair discrimination against foreign firms.

[8] Based on an interview the Deputy Chief negotiator for NAFTA and New WTO, and the lawyer in charge of the US-Canada Free Trade Area for the United States Trade Representative (May 19, 1997, Washington D.C.).

[9] This argument is supported by the findings of James McCall Smith. See: (McCall Smith 2000)

But weaker powers may demand third-party enforcement so that everyone will be held accountable to the same rules, including strong powers. And strong powers may need to create a legal system to get others to sign on to the agreement (McCall Smith 2000, 148).

7) Delegation may be a good way to signal a commitment to an agreement without really binding a state or committing real resources to enforce the agreement. Argument 1 assumed that delegation did in fact increase the credibility of an agreement. But in most cases states have created international courts while refusing to give international legal bodies tools to enforce legal rulings. If courts do not in fact make commitments more credible, then it may be that states delegate to courts to capture the benefits of the signal. For example, when governments want to reinforce key values, creating a legal system may enhance the perception, if not the reality, that these values confer genuine rights for individuals. Gary Bass who seeks to explain why war crimes tribunals have been created on an ad hoc basis across time offers a non-cynical argument in this vein. Bass argues that empirically speaking, liberal countries are more likely to create war crimes tribunals. He explains this finding by arguing that liberal countries create ad hoc tribunals to uphold their values (and perhaps because since they almost never commit gross atrocities, they will not called to account in front of the court.) (Bass 2000) A cynical argument in this vein comes from Giulio Gallarotti who claims that international institutions may provide a cheap way to demonstrate that a government is doing something to address an international issue, while in practice it is not expending any significant resources to realize an international objective (Gallarotti 1991).

The delegation literature focused on the benefits of delegation, but one of the main benefits was that delegation increases the credibility of a commitment. Indeed five of the seven explanations above were basically reasons why creating international courts would make a government more likely to comply with the agreement.[10] This literature clearly focuses more on the act of delegation than the fact that it is a *court* exercising the delegated authority. Much of the literature in fact displays little sense of how courts work in practice. The assertions that delegating to international courts actually makes a commitment more credible, helps hide the costs of an agreement, deals well with technical issues, removes issues from the domestic political agenda, is better than a self-help system, sends signals, or lessons the role of power in dispute resolution are questionable.

Indeed scholars who study the factors shaping compliance with international agreements would not expect courts to enhance compliance. The many studies on

[10] Argument 3 about filling in the detail of technically complex agreements may or may not be about compliance. Filling in agreements is another role that the delegation literature expects courts to serve.

the factors shaping state compliance with international rules (Jacobson and Weiss 1995; Victor, Raustiala and Skolnikoff 1998; Young and Levy 1999; Young 1992) have found a number of very elementary factors contributing to compliance with international law. Precise obligations (Jacobson and Weiss 1995), private sector involvement in drafting and implementing rules (Jacobson and Weiss 1995; Mitchell 1994), a sense that obligations are equitable (Franck 1995; Jacobson and Weiss 1995), compliance by countries nearby (Jacobson and Weiss 1995; Simmons 2000), and a number of domestic attributes (whether there is already legislation in place on the issue, if a country has significant administrative capacity, smaller country size, and whether the country is a democracy) are all positively associated with compliance (Jacobson and Weiss 1995; Simmons 2000). At this point we are back to the arguments of the "management approach." If these factors determine whether or not there is compliance, it is hard to see how courts could add much. One would be better off trying to manage compliance.

How can we reconcile this enthusiasm of rational choice scholars for international courts with the suspicion of legal scholars and others that international courts will not achieve the stated objectives, and will in fact contribute little to increasing compliance with international law? It could be that rational choice approaches have created a rationalistic tower of babble—delegating to international courts does not help achieve any of the objectives they expect, and states will either comply or defect from an agreement regardless of if there is third-party enforcement. But then one must wonder why politicians are increasingly creating and using international courts. It could also be that courts do not in fact enhance the credibility of agreements, but states may still want international courts to use when they want to capture other benefits discussed above. Or, it could be that the literatures are speaking past each other because they focus on different cases. For example, the compliance literature focuses almost exclusively on the environment—maybe there is something about the issue of the environment that makes courts less useful. Part III pursues the second and third explanations, considering the areas where courts might be more or less desirable and useful.

IV. International Courts and Compliance with International Law

Given these conflicting claims, how can we understand the relationship between international courts and compliance? Drawing from the analysis above, this section develops propositions about where and when international courts will be more or less likely to enhance compliance with international law. These are not hypotheses about whether or not international courts are likely to be created—since states may choose to create an international court for reasons other than their belief the court will enhance compliance with international law. But the propositions can provide guidance as to when delegation to an international court may enhance compliance

with international law, and thus by implication when delegation does or does not increase the credibility of a commitment. The propositions also provide a guide to when we might expect international courts to enhance compliance with international law.

Indisputably compliance is most likely when states see international cooperation and compliance with international agreements as fundamentally in the state's interests. Even if we assume, as Chayes and Chayes say we should, that states intend to comply with international agreements most of the time, international courts may be helpful in ensuring that states *do* comply. International courts may resolve ambiguities in the agreement, or create a motivation to follow through and correct policies that accidentally violate international law. Courts may also dissuade actors who might have an incentive to cheat. Courts are certainly not the only, and perhaps not even the best, means to resolve ambiguity or motivate compliance. But especially when states want to comply, we would expect international courts to potentially be helpful. The caveat to this would be "coordination contexts" where agreements are self-enforcing because all actors have an incentive to follow the common rules, and violating the common rules in itself harms an actor. In coordination contexts, having a court may be simply irrelevant.

> **Proposition 1: "Cooperation contexts" and "unintended violations," not "coordination contexts"**
> Courts are likely to be most helpful in enhancing compliance in "cooperation contexts" where states generally want to comply, but where there might be an incentive to cheat, or a reason not to correct policies that accidentally violate international law. International courts are less likely to contribute much to enhancing compliance in coordination contexts where there is no incentive to cheat.

The delegation literature noted that bi-lateral agreements can be enforced through direct reciprocity. States may still want to create and use international courts to resolve disagreements about the international agreement, and to remove issues from the bi-lateral political agenda, but it is not clear that delegation per se in such contexts will appreciably enhance compliance with the agreement. In multilateral contexts, states know it is harder to use reciprocity to address non-compliance. This leads to the proposition that international courts may be more likely to enhance compliance in multi-lateral contexts.

> **Proposition 2: "Multi-lateral contexts"**
> Courts are most likely to help enhance compliance in multi-lateral contexts where self-help works less well. In bi-lateral contexts self-help and tit-for-tat reciprocity may be sufficient to elicit compliance.

The delegation literature also notes that courts may be useful to shift blame. From this insight one can argue that in situations where shifting blame makes it more likely that a government will comply, international courts may enhance compliance with international law. There are at least two contexts in which one could imagine that shifting blame would be useful. When the costs of agreement are distributed narrowly on a small group of actors, the "losers" who bear the brunt of the costs are likely to mobilize to complain (Olson 1965). When there are diffuse but broad benefits to complying with an agreement, shifting blame on a court for disappointing a small group of losers may be attractive and useful. Shifting blame may also be useful when politicians mainly want to create certainty so that business can plan and invest. Because any set of rules is likely to have distributional consequences, we can expect groups to mobilize and advocate on behalf of specific rules, and to try to change existing rules to better fit their liking. Politicians may prefer that judges deal with these cases because judges are more likely than political bodies to act consistently.[11]

Proposition 3: "Diffuse Benefits, Narrow Costs"
Courts may be most helpful in enhancing compliance where the benefits of compliance are diffuse but the costs of compliance are distributed narrowly.

Proposition 4: "Creating Certainty"
When governments want to create consistent, reliable rules that private actors will use, we would expect delegation to international courts to both facilitate national coordination and enhance compliance with international rules.

While propositions one through four narrow the realm some, we are still left with what is probably the vast majority of multi-lateral contexts. To move beyond this, we must consider how courts work, and the factors shaping state compliance with international law.

International courts may be better at negative efforts to contribute to compliance than they are at positive efforts. If it is simply enough to remove legislation that undermines compliance, a court condemnation of an illegal policy can provide an incentive for a state to change existing laws or to remove national rules that violate international law. When compliance is achieved merely by bringing national laws into accord with international rules, international courts may be useful to encourage compliance.

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[11] One expects judges to care more about consistency across legal cases than pleasing litigants, because consistency makes rulings appear more neutral and less arbitrary.

Proposition 5: "Formal compliance"
When compliance mainly involves formally ratifying international rules, codifying international principles into national law, or removing objectionable national laws from the legal record, international courts may provide an incentives and pressure for governments to formally comply with international agreements.

It may be the case, however, that the vast majority of non-compliance occurs in situations where there is formal compliance, but governments are not implementing the law to achieve the treaty's objectives. In many if not most cooperation contexts, one needs positive government action to create effective compliance. Legal rulings cannot in themselves create positive policies, and using a punitive approach often is not a great way to push governments into positive action. The next four propositions are situations in which positive action is necessary for compliance.

Aspirational agreements aim to change behavior to achieve a goal. Aspirational agreements are likely to be best served by creating sweeteners to encourage compliance rather than inventing punishments to deter violations. For aspirational agreements, one often needs to build a country's internal capacity to achieve the goal. Where international agreements are primarily aimed at building capacity, international courts are unlikely to be enhance compliance.

Proposition 6: "Aspirational Agreements Needing Capacity Building"
Where multi-lateral agreements aspire to high goals, where many states are far from achieving the goals, and/or where many states may well lack the capacity to achieve the goals, international courts are likely to be undesirable and unhelpful in facilitating compliance.

This means compliance with agreements aimed at addressing poverty, improving education, providing rural health etc. are unlikely to be enhanced by creating an international court to enforce the agreement. Even if developed countries can afford to do nearly anything that is a priority, we may still need to create a capacity to comply so as to build domestic support for the agreement. The area of the environment, for example, might meet these criteria. It is also possible that there are pathways towards achieving a goal, and at the early stages of international cooperation, one might tend to prefer to start with a non-binding agreement and inducements to comply and at a later stage rely on courts to keep states in line with the agreement (Abbott and Snidal 2003).

Kathryn Sikkink and Margaret Keck tell us that non-governmental actors are most likely to influence government policy when they can exploit the gap between what governments say they are committed to, and what they are actually doing (Keck and Sikkink 1998, 12-14). From this one can develop the proposition that

when international courts are applying rules with broad societal support, states are more likely to be shamed into compliance with the ruling. But where international law lacks broad societal support within the polity violating the rule, governments may be put in a position of essentially having to choose between international rules and domestic values. Given this choice, domestic values are likely to win out.

> **Proposition 7: "No International Consensus" v. "National Consensus but Government Violations"**
> Where there is deep domestic disagreement with international rules, international courts are unlikely to force a government to comply. But, where there is a broad societal consensus in a state, but non-compliance, international courts can be a tool for groups to exploit the gap between what governments say they are doing, and what they are actually doing, creating political pressure that enhances compliance with international rules.

International legal rulings may still be desirable even when they lack broad domestic consensus, as over time international legal rulings may help shift the internal political consensus towards compliance with international law. But international legal condemnation could also counter-productively trigger a popular backlash. In any event, we should not expect condemnation by an international court to directly lead to state compliance with the international rule where the international rules lack domestic public support. This means that for issues where there is wide consensus—like international laws about genocide and war crimes—we might find courts more helpful in encouraging compliance. For issues where there is great international disagreement, such as the importance of civil and political rights as human rights, international courts may be less likely to facilitate broad compliance. But within regions where there is a shared consensus, international courts may encourage compliance within the region.

Exceptional situations, like the terrorist attacks in the United States, are likely to be seen as deserving of a waiver with respect to international law. Also, where situations are new and fluid, states are unlikely to want an international court to intervene and lay down a hard rule.

> **Proposition 8: "Extreme Situations"**
> In very new, very fluid and exceptional situations states will not want to delegate decision-making power to international courts and they are less likely to respect decisions of international courts.

This means in practice that the realm of security is not an area we should expect international courts to enhance compliance. We may still find international courts

capable of interpreting and applying international rules in security contexts, and these courts may help where states voluntarily turn to a court to resolve a dispute. It is also likely that there will be exceptions and caveats written into international rules to create safety values governments can use in these extreme and fluid situations.

The above analysis suggests that certain issues will have characteristics that make them more or less amenable to having international courts enhance compliance with international law. But even when international courts *can* encourage compliance, it is not clear that they *will* encourage compliance. The delegation literature is in error when it makes this leap, assuming that delegation actually makes a commitment more credible.

Courts are passive institutions. They must be called upon by litigants before they can issue a ruling. One would expect that where actors think an international legal ruling will be unhelpful in changing a state's behavior, litigants may avoid raising legal cases so as to conserve political resources. But even when there is the potential for international courts to enhance compliance with international law, litigation may still be eschewed. Studies of how international courts are actually used have identified a number of factors leading to variation in when and how international courts are used. These factors will lead to variation in when international courts in fact enhance state compliance with international law. I have classified this literature into two types categories: factors that may contribute to variation across countries, and factors that may contribute to variation in when litigants turn to courts.

1. Variation across countries:

Most international relations theories take the state as the unit of analysis, identifying how variation in and across states leads to changes in state behavior. The following three propositions take states as the unit of analysis, and expect variation based on factors that emerge from the dominant theories in international relations.

For many international relations scholars, power is the main currency of international relations. Realists would expect stronger states to be less influenced by international courts than weaker states. To support this view, one need only point to the extremely checkered history of the United States when it comes to supporting and following the rulings of international courts. But how power influences whether or not courts enhance compliance is not entirely clear. Geoffrey Garrett and others have hypothesized that strong powers have a greater ability to undermine the power and legitimacy of an international court, and are thus able to shape international legal rulings to protect and promote their interests (Garrett 1995; Garrett and Weingast 1993; Tsebelis and Garrett 2001). This argument has been strongly criticized (Alter 1998), and there is little empirical support for this claim. While power may not influence how international courts decide cases, one

can imagine an arc in the influence of international courts: the weakest countries may simply be unable to comply with international law while the strongest powers may be able to more easily bear the negative consequence of a court ruling and even an international sanction, so that international courts may be most likely to influence countries in the middle ranges of power.

> **Proposition 9 "State power"**
> International courts may be less able to encourage compliance by the most powerful states, because powerful states may be better able to withstand the negative consequences of legal rulings. The weakest states may lack state capacity to comply, and not be influenced by international courts. This would suggest that international courts are most likely to enhance compliance among middle range powers.

The WTO system of dispute resolution seems to exemplify this arc. The way the WTO system is crafted allows the poorest countries to be largely exempt from complying with WTO law, and the richest countries to easily buy their way out of complying with WTO law. The WTO system is also used disproportionately by advanced industrial countries (Sevilla 1997, 1998), suggesting that WTO system itself is a tool of enforcement for the powerful. It is a tool for the powerful, however, not because the powerful can sway WTO rulings, but because WTO rules disproportionately benefit the United States and Europe, and because the US and Europe have the greatest legal capabilities to exploit the WTO system to its full effect.

The implication of the above proposition is that the level of development will in some way determine whether or not states comply. But while the WTO system may exemplify the above arc, this does not mean that international courts have a differential influence based on the power of a state. Indeed if the primary way courts elicit compliance with their rulings is through persuasion (Shapiro 1981, chapter 1), one would expect power to matter little in shaping whether or not there is compliance with international legal rulings. Supporting the argument that level of development matters less than other factors is the finding in the compliance literature that larger states have a harder time complying with international rules when compared to smaller states (Jacobson and Weiss 1995; Simmons 2000), and studies on the EU that find that Italy, France, Belgium and Greece seem to have worse compliance records when compared to other European states, all of which are advanced industrial societies (Borzel 2001, 819). Proposition 10 diverts the focus away from power as the variable, onto state capacity as a factor to explain variation. State capacity is not necessarily shaped by level of development. For example, even very rich countries may find themselves unable to control certain actors in society, and democratic countries may be so politically hamstrung that they cannot pass domestic legislation on any subject.

Proposition 10 "State Capacity"
International courts may be less able to encourage compliance in any event if the fundamental barrier to compliance is a lack of state capacity to comply, not simply a lack of state will to comply.

A different source of cross-national variation could be regime type. Anne-Marie Slaughter and Andrew Moravcsik have argued that international courts are more likely to influence liberal democracies than they are non-liberal regimes. Their arguments are supported primarily by pointing to Europe case, where the European Court of Justice and the European Court of Human Rights are heavily used legal institutions that clearly influence state behavior (Moravcsik 1997; Slaughter 1995). An alternative explanation of this case in particular, however, would be that it is not democracy per se that makes the difference, rather we are observing a neighborhood effect in Europe, where compliance with international legal rulings by other countries enhances respect for international rules (Simmons 2002). In this scenario, it just so happens that European countries are also democracies.

Testing the relationship between democracy and international dispute settlement has yielded inconclusive results. It seems that dyads made up of two democracies are more likely to bring serious conflicts to third parties for resolution (Dixon 1994; Raymond 1994), and to resolve disputes through negotiation rather than war (Dixon and Senese 2002). These third parties are not necessarily courts, thus this finding may not mean that democracies are more likely to respect international legal rulings when the other party is also a democracy. Indeed whether third-party dispute resolution works better for democratic dyads is not clear. Gregory Raymond finds that arbitration is no more likely to succeed in resolving disputes between two democracies when compared to disputes between a democracy and a non-democracy, or two countries with authoritarian regimes (Raymond 1996). There are also a wealth of examples of democracies being unwilling to follow rulings of international legal bodies, and of democratic dyads being unable to resolve their disputes through international adjudication (Alvarez 2001).

While the link between democracy, international adjudication, and compliance with international law is tenuous at best, we cannot rule out that regime type may matter. Indeed the liberal theory provides a counter-expectation for the arc in proposition nine—the strongest countries could be highly open to influenced by international courts because they are liberal democracies. We must also consider the counter-argument that compliance may be less influence by regime time than by geographic proximity to countries that tend to comply with international rules.[12] Thus we are left with two relevant propositions, and the prospect that proposition

[12] What could be driving the neighborhood effect is not entirely clear. It may be that regions share similar values. Or neighborhood effects may be club effects, with states wanting to be part of a complying club, or not wanting to comply if they will be the lone sucker who follows rules that no one else does (Simmons 1998, 2000, 2001)

12 may actually explain proposition 11.

Proposition 11: "State regime type"
Liberal theorists posit that democracies are more likely to abide by legal rulings than non-democracies—regardless of if the ruling involves a sanction.

Proposition 12: "Neighborhood effects"
International courts are most likely to enhance compliance with international law if nearby states generally respect and follow international legal rulings.

2. Variation emerging from difference in the appeal of litigation

There may also be variation within or across similar countries, even in cases where the issue is simply ambiguity in the law. One source of variation will be differing uses of litigation strategies. Not all actors who can potentially use international litigation as a strategy to influence compliance will do so. A number of studies have investigated variation in when groups turn to litigation to advance their goals revealing variation based on legal culture, the wealth of actors in litigation, and in the types of groups that are likely to litigate (Alter 2000; Alter and Vargas 2000; Caporaso and Jupille 2000; Conant 2002; Galanter 1974; Harlow and Rawlings 1992). These findings suggest that there will be variation in which states use litigation as a tool to influence policy. Clearly when actors push compliance through international courts, international courts are most likely to enhance compliance with international law. From this literature, one can make the following propositions:

Proposition 13: "Litigation as a cultural practice"
Countries where it is common for citizens and businesses to use litigation to pursue interests and where the legal system generally works are likely to turn to litigation as a tool to address non-compliance by other countries. In other words, countries with higher litigation rates are more likely to pursue international litigation than countries with lower litigation rates.

Proposition 14: "Wealth of interests behind litigation"
Wealthy individuals and large firms are more likely to raise cases, and be able to use the legal system to their advantage. Where there are wealthy actors with the resources and interest to prepare cases for governments to pursue, countries are more likely to turn to litigation as a tool to address non-compliance.

Propositions 13 and 14 do not explain when litigation is likely to actually encourage compliance—propositions 1-12 would still apply. Mainly the last two propositions highlight sources of an unequal influence of courts on different countries, reminding us that there may be distributional consequences to using courts to enforce compliance with international law.

This article has mainly reviewed the scholarly literature with an eye to discerning potential relationships between international courts and compliance with international law—a subject of considerable controversy. A main goal of this analysis has been to move beyond the debate of whether or not enforcement or management approaches to compliance work, to start focusing on when enforcement approaches may enhance compliance with international law. Propositions one through eight above provide a guide for thinking about variation in the ability of international courts to enhance compliance across issues. These propositions may help us avoid over-generalizing from single cases, as they imply that sometimes courts can enhance compliance, and other times international courts will be irrelevant or actually unhelpful.

To suggest that international courts enhance compliance is to suggest that overall international courts do good in the world. After all, we would hope that countries would keep their promises, and anything that encourages respect for promises seems good. But law itself may reflect the interests of the powerful, so that encouraging compliance itself has distributional consequences. In addition, propositions eight through fourteen suggest that relying on international courts to enhance compliance will have significant distributional consequences across countries and across actors within countries. International litigation may well affect disproportionately middle range powers and liberal democracies, and the interests that may be best served by having international courts enforcing international law may be wealthy actors in Western countries that tend to litigate. The next section considers other reasons to caution support for international courts as a tool to enhance compliance.

V. The Pitfalls of International Courts

This article has been motivated by the observation that states have made a choice to increasingly create and use international courts, yet in practice we know very little about how international courts influence state behavior. The article has focused on one aspect of the relationship between courts and state behavior—namely whether international courts enhance compliance with international law. Obviously there are other questions to ask about international courts, and other ways international courts can influence state behavior besides enhancing compliance. Indeed to focus on the role of international courts in enhancing compliance with international law may be to only focus on the good side of what international courts may contribute.

There may be a number of unintended consequences that result from creating and using international courts. I have already noted that relying on adjudication to enforce compliance will likely benefit rich actors and rich countries. There is also a potential for backlash to be generated by international courts themselves.

Backlash could come from a number of sources. If international courts are looking carefully at the wording of agreements, we should expect actors to increase their scrutiny of negotiated texts. Increased scrutiny might lead to more domestic opposition to international agreements leading governments to back out of agreements or refuse to comply with existing agreements (Goldstein and Martin 2000; Helfer 2002). It is also possible that the adversarial nature of international adjudication can actually exacerbate conflict between states, impeding diplomatic efforts and undermining the good will of states to cooperate or comply with legal rulings (Alter 2003; Weiler 2000). And the fact that international rules are enforceable may encourage governments to actually adopt deviant behavior to avoid being held accountable by international courts, using extra-legal pressure to keep potential litigants or prosecutors from bringing a case, or crafting policies to skirt legal suits.

There are also legitimacy reasons to be concerned about using international courts to address compliance problems. Courts are by their very nature anti-majoritarian institutions. When international courts set aside popular policies, especially policies that were passed by democratically elected national governments, domestic populations are likely to question the legitimacy of the action.[13] Governments using international courts to shift blame exacerbate legitimacy problems. When governments take all the credit for themselves, and heap all the blame on international institutions, the public is less likely to support international institutions or multilateralism. And while there are a number of techniques international judges can employ to try to build their legitimacy (Helfer and Slaughter 1997), these techniques are more likely to convince legal audiences than they are to sway the broader public. A sense that courts are undermining democracy and trampling national sovereignty can contribute to a broader backlash against international law and international courts, especially when courts are trying to enforce rules that lack popular support.

I have focused in this essay largely on a positive role international courts can play—encouraging compliance with international rules. But in the end of the day I believe that one should weigh the positive and the negative, and consider

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[13] The legalist approach to courts assumes that equal application of the rules to all is both the obligation of courts, and is desirable. Judith Shklar has questioned whether equal application of rules to all is a desirable formula for politics, directly challenging the legalist claim that courts should and do apply rules equally across cases (Shklar 1986). My version of a similar argument is developed elsewhere. I argue that regardless of if political actors created the rules and even ask international legal bodies to resolve a legal issues, having unaccountable international legal bodies impose solutions on national governments creates an inescapable political problem. See: (Alter 2003)

alternative means to the same end. If we are going to increasingly turn to international courts to address international political problems, we need to have a better sense of when international courts are more or less helpful, of the distributional consequences of relying on international courts as an enforcement mechanism for international agreements, and of the unintended side effects of creating and using international courts. We must then evaluate these findings in light of the alternatives. This essay is intended to encourage a greater scholarly focus on international courts, and to lay out a broad research agenda to focus on where, when, and the consequences of international courts for state behavior.

References

Abbott, K., R. Keohane, A. Moravcsik, A. M. Slaughter and D. Snidal. 2000. "The Concept of Legalization." *International Organization*, Vol. 54, No.3: 401-420.

Abbott, K. and D. Snidal. 2000. "Hard and Soft Law in International Governance." *International Organization*, Vol. 54, No.3: 421-456.

_____. 2003. "Pathways to International Cooperation." In E. Benvenisti and M. Hirsch, eds. *The Impact of International Law on International Cooperation*. Cambridge: Cambridge University Press.

Alter, K. J. 1998. "Who are the Masters of the Treaty?: European Governments and the European Court of Justice." *International Organization*, Vol. 52, No.1: 125-152.

_____. 2000. "The European Legal System and Domestic Policy: Spillover or Backlash." *International Organization*, Vol. 54, No.3: 489-518.

_____. 2002. "International Legal Systems, Regime Design and the Shadow of International Law in International Relations." Paper presented at the American Political Science Association Conference, Boston, MA.

_____. 2003. "Resolving or Exacerbating Disputes? The WTO's New Dispute Resolution System." *International Affairs*, Vol. 79, No.4: 783-800.

_____. and J. Vargas. 2000. "Explaining Variation in the Use of European Litigation Strategies: EC law and UK Gender Equality Policy." *Comparative Political Studies*, Vol. 33, No.4: 316-346.

Alvarez, J. 2001. "Do Liberal States Behave Better? A Critique of Slaughter's Liberal Theory." *European Journal of International Law*, Vol.12: 183-246.

Bass, G. J. 2000. *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals*. Princeton, N.J.: Princeton University Press.

Borzel, T. 2001. "Non-compliance in the European Union: Pathology or Statistical Artifact." *Journal of European Public Policy*, Vol. 8, No.5: 803-824.

Boyle, F. 1985. *World Politics and International Law*. Durham: Duke University Press.

Busch, M. and E. Reinhardt. 2000. "Testing International Trade Law: Empirical

Studies of GATT/WTO Dispute Settlement." In D. L. M. Kennedy and J. D. Southwick, eds. *The Political Economy of International Trade Law: Essays in Honor of Robert Hudec*. Cambridge: Cambridge University Press: 457-481.

Caporaso, J. and J. Jupille. 2000. "Transforming Europe: Europeanization and Domestic Change." In M. Green Cowles, J. Caporaso and T. Risse, eds. *Europeanization and Domestic Structural Change*. Ithaca: Cornell University Press: 21-44.

Carr, E. H. 1940. *The Twenty Years' Crisis, 1919-1939: an Introduction to the Study of International Relations*. London: Macmillan.

Chayes, A. 1974. *The Cuban Missile Crisis: International Crises and the Role of Law*. New York: Oxford University Press.

_____. 1993. "On Compliance." *International Organization*, Vol.47, No.2: 175-205.

_____. and A. H. Chayes. 1995. *The New Sovereignty*. Cambridge: Harvard University Press.

Conant, L. J. 2002. *Justice Contained: Law and Politics in the European Union*. Ithaca: Cornell University Press.

Dixon, W. J. 1994. "Democracy and the Peaceful Settlement of International Conflict." *American Political Science Review*, Vol. 88, No.1: 14-26.

_____. and P. D. Senese. 2002. "Democracy, Disputes, and Negotiated Settlements." *Journal of Conflict Resolution*, Vol. 46, No.4: 547-571.

Downs, G. 1998. "Enforcement and the Evolution of Cooperation." *Michigan Journal of International Law*, Vol.19, Winter: 319-344.

_____., D. Rocke and P. Barsoom. 1996. "Is the Good News about Compliance Good News About Cooperation?" *International Organization*, Vol. 50, No.3: 379-406.

Franck, T. M. 1990. *The Power of Legitimacy among Nations*. New York: Oxford University Press.

_____. 1995. *Fairness in International Law and Institutions*. Oxford: Clarendon Press.

Galanter, M. 1974. "Why the 'Haves' Come out Ahead: Speculations on the Limits of Legal Change." *Law and Society Review*, Vol. 9, No.1: 95.

Gallarotti, G. 1991. "The Limits of International Organization: Systemic Failure in the Management of International Relations." *International Organization*, Vol. 45, No.2: 183-220.

Garrett, G. 1995. "The Politics of Legal Integration in the European Union." *International Organization*, Vol. 49, No.1: 171-181.

_____. and B. Weingast. 1993. "Ideas, Interests and Institutions: Constructing the EC's Internal Market." In J. Goldstein and R. Keohane, eds. *Ideas and Foreign Policy*. Ithaca: Cornell University Press: 173-206.

Goldstein, J. M., M. Kahler, R. Keohane and A. M. Slaughter. 2001. *Legalization in World Politics*. Cambridge, MA: MIT.

Goldstein, J. and L. Martin. 2000. "Legalization, Trade Liberation, and Domestic Politics: A Cautionary Tale." *International Organization*, Vol. 54, No. 3: 603-631.

Gruber, L. 2000. *Ruling the World: Power Politics and the Rise of Supranational Institutions*. Princeton, N.J.: Princeton University Press.

Harlow, C. and R. Rawlings. 1992. *Pressure Through Law*. London: Routledge.

Helfer, L. and A. M. Slaughter. 1997. "Toward a Theory of Effective Supranational Adjudication." *Yale Law Journal*, Vol. 107, No. 2: 273-391.

Helfer, L. R. 2002. "Overlegalizing Human Rights: International Relations Theory and the Commonwealth Caribbean Backlash Against Human Rights Regimes." *Columbia Law Review*, Vol. 102, No. 7: 1832-1911.

Henkin, L. 1961. *How Nations Behave*. New Haven: Yale University Press.

Hudec, R. E. 1987. "Transcending the Ostensible: Some Reflections on the Nature of Litigation Between Governments." *Minnesota Law Review*, Vol. 72: 211-226.

_____. 1993. *Enforcing International Trade Law: Evolution of the Modern GATT System*. New Hampshire: Butterworths.

Jacobson, H. and E. Weiss. 1995. "Strengthening Compliance with International Environmental Accords: Preliminary Observations from a Collaborative Project." *Global Governance*, Vol. 1: 119-148.

Keck, M. E. and K. Sikkink. 1998. *Activists beyond Borders: Advocacy Networks in International Politics*. Ithaca: Cornell University Press.

Majone, G. 2001. "Two Logics of Delegation: Agency and Fiduciary Relations in EU Governance." *European Union Politics*, Vol. 2, No.1: 103-122.

McCall Smith, J. 2000. "The Politics of Dispute Settlement Design." *International Organization*, Vol. 54, No. 1: 137-180.

Milgrom, P., D. North and B. Weingast. 1990. "The Role of Institutions in the Revival of Trade: The Law Merchant, Private Judges, and the Champagne Fairs." *Economics and Politics*, Vol. 2: 1-23.

Mitchell, R. B. 1994. "Regime Design Matters: Intentional Oil Pollution and Treaty Compliance." *International Organization*, Vol. 48, No. 3: 425-458.

Mnookin, R. and L. Kornhauser. 1979. "Bargaining in the Shadow of the Law: The Case of Divorce." *Yale Law Journal*, Vol. 88: 950-997.

Moravcsik, A. 1997. "Explaining International Human Rights Regimes: Liberal Theory and Western Europe." *European Journal of International Relations,* Vol. 1, No.2: 157-189.

_____. 1998. *The Choice for Europe*. Ithaca: Cornell University Press.

_____. 2000. "The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe." *International Organization*, Vol. 54, No. 2: 217-252.

Morgenthau, H. and K. W. Thompson. 1960. *Politics Among Nations* (Sixth ed.). New York: Alfred A. Knopf.

Olson, M. 1965. *The Logic of Collective Action*. Cambridge: Harvard University.

Pollack, M. 1997. "Delegation, Agency and Agenda Setting in the EC." *International Organization*, Vol. 51, No.1: 99-134.

Raustiala, K. 2000. “Compliance & Effectiveness in International Regulatory Cooperation.” *Case Western Reserve Journal of International Law*, Vol. 32: 387-440.

Raymond, G. A. 1994. “Democracies, Disputes, and Third-Party Intermediaries.” *Journal of Conflict Resolution*, Vol. 38, No. 1: 24-42.

_____. 1996. “Demosthenes and Democracies: Regime-Type and Arbitration Outcomes.” *International Interactions*, Vol. 22, No. 1: 1-20.

Reinhardt, E. 2001. “Adjudication without Enforcement in GATT Disputes.” *Journal of Conflict Resolution*, Vol. 45: 174-195.

Romano, C. 1999. “The Proliferation of International Judicial Bodies: The Pieces of the Puzzle.” *New York University Journal of International Law and Politics*, Vol. 31, Summer: 709-751.

Sevilla, C. 1997. *A Political Economy Model of GATT/WTO Trade Complaints.* (5/97). Jean Monnet Working Paper Series.
<http://www.jeanmonnetprogram.org/papers/index.html.>

_____. 1998. *Explaining Patterns of GATT/WTO Trade Complaints.* Working Paper, Vol. 98, No.1. Cambridge, MA: Weatherhead Center for International Affairs, Harvard University.

Shapiro, M. 1981. *Courts: A Comparative Political Analysis.* Chicago: University of Chicago Press.

Shklar, J. N. 1986. *Legalism: Law, Morals, and Political Trials.* Cambridge, MA: Harvard University Press.

Simmons, B. 1998. “Compliance with International Agreements.” *Annual Review of Political Science*, 1998, Vol. 1: 75-93.

_____. 2000. “The Legalization of International Monetary Affairs.” *International Organization*, Vol. 53, No. 3: 573-602.

_____. 2001. “Capacity, Commitment and Compliance: International Institutions and Territorial Disputes.” Unpublished.

_____. 2002. “Why Commit? Explaining State Acceptance of International Human Rights Obligations.” Paper presented at the Delegation to International Organizations, Park City Utah.
< http://faculty.wm.edu/mjtier/simmons.PDF>

Slaughter, A. M. 1995. “International Law in a World of Liberal States.” *European Journal of International Law*, Vol. 6: 503-538.

Stein, A. 1983. “Coordination and Collaboration: Regimes in an Anarchic World.” In S. Krasner, ed. *International Regimes*. Ithaca: Cornell University Press: 115-140.

Tallberg, J. 2002. “Paths to Compliance: Enforcement, Management and the European Union.” *International Organization*, Vol. 56, No. 3: 609-643.

Tsebelis, G. and G. Garrett. 2001. “The Institutional Foundations of Intergovernmentalism and Supranationalism in the European Union.” *International Organization*, Vol. 55, No. 2: 357-390.

Victor, D. G., K. Raustiala and E. B. Skolnikoff. 1998. *The Implementation and*

Effectiveness of International Environmental Commitments: Theory and Practice. Cambridge, MA: MIT Press.

Weiler, J. 2000. *The Rule of Lawyers and the Ethos of Diplomats: Reflections on the Internal and External Legitimacy of WTO Dispute Settlement*: Jean Monet Working Paper Series WP 09/00.

Yarbrough, B. V. and R. M. Yarbrough. 1992. *Cooperation and Governance in International Trade: The Strategic Organizational Approach*. Princeton, N.J.: Princeton University Press.

Young, O. R. 1979. *Compliance and Public Authority: A Theory with International Applications*. Baltimore: Johns Hopkins University Press.

_____. 1992. "The Effectiveness of International Institutions." In J. Rosenau and E.O. Czempiel, eds. *Governance Without Governments: Order and Change in World Politics*. Cambridge: Cambridge University Press: 160-194.

_____. and M. Levy. 1999. "The Effectiveness of International Environmental Regimes." In O. Young, ed. *The Effectiveness of International Environmental Regimes: Causal Connections and Behavioral Mechanisms*. Cambridge, MA: MIT Press: 1-32.