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International Human Rights Treaty Reservations: Compliance Through Non-Compliance

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Abstract:

Do reservations make international human rights law more or less powerful? Scholars are divided on the overall utility of reservations and attempt to explain their effect on human rights compliance with descriptive variables such as liberal democracy, or domestic legal protection, but assume compliance depending on the subjective appeal of these descriptive variables. This study will attempt to test the utility of reservations by taking a new approach – directly testing utility by conducting empirical analysis on whether or not the submission of a reservation affects compliance with international human rights requirements. I argue that contrary to previous research positing a negative utility, and the formal mechanism to object to reservations within the international law regime, reservations have a positive utility and are submitted by states who actively intend to comply with their international law obligations. To evaluate my theory, I examine the relationship between total reservations submitted by states to the six major human rights treaties with that of these states’ human rights compliance scores. Controlling for a number of factors, I find that there is a significant positive relationship between reservations and human rights compliance. This may indicate that reservations are associated with a positive utility, providing an argument against the formal practice of submitting an objection to another ratifying state’s reservation as the positive utility of reservations may allow states to commit to international human rights treaties on terms that provide an overall benefit to their compliance, and thus make international human rights law more powerful.
Introduction

The widespread human rights revolution in the late 20th century resulted in perhaps the most dense and potent set of international rules and institutions that protect individual rights than any before in human history (Simmons, 2009). However, today the international human rights movement seems to be in retreat. Widespread human rights compliance is not evident, and both autocratic and democratic states have commonly disregarded their international human rights treaty responsibilities (Powell and Staton, 2009). In fact, common scholarship no longer focuses on the idealism of compliance with these treaties, but rather on the limits of these treaties with cynicism overtly demonstrated in the titles of their works: The Limits of International Law, The Perils of Global Legalism, Hijack Justice, The Last Utopia, The Endtimes of Human Rights, The Human Rights Paradox, and the Twilight of Human Rights Law (Dancy and Fariss, 2017).

With the globalized human rights regime seemingly entering grim prospect, why do some states comply with their international human rights treaty requirements while others do not? Compliance with international law is defined as “the degree to which state behavior conforms to what an agreement prescribes” (Young, 1979, p. 104), and is therefore ultimately determined by state practice and outcome, rather than legal process or universality. Past research on why states comply with international human rights law is broadly grouped under explanations within the “rational actor models” and “normative theory models”. The rational actor models primarily focus on explanations that describe the state as a rational self-interested actor whom acts after weighing the costs and benefits of compliance. This includes compliance as a form of coincidence with existing interests and policies, compliance as a strategy to achieve long term self-interested ends, and compliance as result of domestic politics and pressures. The normative

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1 This varied compliance is visualized in Figure 1.
actor models explain compliance as a result of repeated interactions and the development of norms within the international system. This includes a broad refutation of the state as acting for their own reasons, and a belief that the state acts in compliance because the treaties are fostered and discussed by peers and are legitimate, just, and fair (see appendix for further elaboration on these theories).

While these existing theories are fairly collectively exhaustive and praised by scholars within the international law and international relations fields, I believe that they have failed to consider a mechanism of treaty submission which may affect compliance; the submission of a reservation, understanding, or declaration upon ratification, which I will collectively group under the term “reservation” for the purpose of this thesis. A reservation is a formal “customization” of a treaty upon ratification in which a government picks and chooses which treaty commitments they will or will not be bound by. For example, states may attach reservations that cancel application of particular aspects of a treaty, or they may adopt optional provisions that increase their obligations. In other words, reservations are a tool that allows for flexibility in treaty design (Koremenos, 2016). However, according to article 19 of the Vienna Convention on the Law of Treaties, opened for signature May 23, 1969, the flexibility offered by a reservation is only valid if the reservation does not defeat the object and purpose of the treaty; with the object and purpose of these treaties theoretically being to encourage universal human rights compliance.

Reservation submission is common practice, in fact as of 2001 around 26% of states have submitted a reservation to at least one of the six major international human rights treaties that I will discuss in this thesis. Language used in reservations can take sufficiently broad form, but is notably characterized by statements such as “reserve the right to continue to apply…”² “reserves

² Excerpt United Kingdom Reservation A to the ICCPR
the right not to apply… where compliance with these provisions would be contrary to religious or personal laws”, 3 and “because the prohibitions would contravene the First Amendment to the Constitution… reservation to the effect that Article 20 does not authorize or require the restriction..”. 4 Thus, the language used within many reservations outlines the state to continue to pursue obligations that are more ambitious than that of the treaty and/or enable the treaty to be ratified in a way that doesn’t conflict with domestic and personal laws; qualifications that reflect intended compliance. Furthermore, the United States, in submitting what is called an unprecedented amount of reservations upon ratification of the International Covenant on Civil and Political Rights (ICCPR), cited within their document reserving to the ICCPR that ratification was intended to “remove doubts about the seriousness of the U.S commitment to human rights, and strengthen the impact of U.S efforts in the human rights field” (Pell, 1992, p. 3), and that the proposed reservations were to “clarify the nature of obligation” and/or to allow immediate compliance until “changes in U.S law allow the United States to come into full compliance” (Pell, 1992, p.4). Therefore, in submitting the most reservations to a single human rights treaty to date, the United States did so with intent to comply with the international human rights regime, believing the reservations submitted did not mitigate this intent but merely allowed for ratification. Similar sentiment is seen within both the United Kingdom and Singapore, among others not cited within this thesis. (Keller, 2014; Justice, n.d.).

Scholars are divided on the overall utility of these reservations –see, for example, Schabas, 1994, 1996; Henkin, 1995; Lijnzaad, 1995; Bradley and Goldsmith, 2000; Tyagi, 2000; Swaine, 2006– and as described by Neumayer (2007), these primarily form two competing perspectives. From the first perspective, reservations serve as an opt out of state legal obligations

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3 Excerpt Singapore reservation 1 to the CEDAW
4 Excerpt United States’ Reservation 1 to the ICCPR
and limit the universal applicability of the treaty, which is critiqued to devalue the entire human rights regime. From the second perspective, reservations account for the cultural, religious, or political diversity across states and are filed by states which actively intend to comply with the rule of the treaty –which is in line with state cited reasons for reservations. Scholars have attempted to explain the overall utility of these reservations as a test of these two differing perspectives with descriptive variables such as liberal democracy, or domestic legal protection, and use these descriptive variables to position reservations as associated with negative or positive utility. Thus, the problem with past research is that it assumes compliance; it is not just autocracies and other likely perpetrators that violate human rights treaties, but also democracies and those that are characterized by descriptive variables that make them seemingly the strongest defenders of international human rights requirements (Hathaway, 2002).

The question motivating this study thus emerges: do reservations make international human rights law more or less powerful? This study will attempt to test the utility of reservations by taking a new approach. Rather than assuming utility by testing a relationship with a descriptive variable and inferring that variables effect on compliance, I will directly test the utility of reservations by conducting empirical analysis on whether or not the submission of a reservation affects overall compliance with international human rights obligations. This will provide important insight into this phenomenon because compliance is presumably the object and purpose of these treaties and regardless of theoretical universality or positive perception, compliance defines the power of the international human rights regime. If reservations help affect greater compliance with the international human rights regime, then formally objecting to them and/or placing limitations on a state’s ability to file a reservation may actually undermine the object and purpose of the treaty. Conversely, if reservations hurt compliance with the human
rights regime then it would be in the best interest of all ratifying members to uniformly object to any and all reservations. Thus, in testing if reservations affect a country’s likelihood to comply with their international human rights responsibilities, this thesis will also provide insight into the appeal of a state formally objecting to or failing to object to another state’s reservation upon ratification.

This thesis is structured as follows: the next section describes existing theory on the utility of reservations from which a testable hypothesis is derived from. I then state my hypotheses and describe the theory behind this research. This is followed by a section on data research design that explains my variables and their measurement for the purpose of the empirical analysis. I then discuss the findings and their implications, concluding with an analysis on the desirability of formally submitting an objection to another state’s reservation.

Existing Explanations on the Utility of Reservations

The entire legitimacy and role of reservations is heavily contested among scholars, and human rights treaties are subjected to more reservations than any other international treaty (Neumayer, 2007). On the one hand, it seems counterproductive to allow a state to observe a permanent legal derogation in the form of a reservation to certain aspects of a treaty. However, on the other hand, it makes sense that the international human rights regime would do whatever is necessary to encourage universal adoption of state parties who would otherwise be noncommittal and restricted to join. This theoretical disagreement forms the crux of the two competing perspectives on the overall utility of reservations among scholars, and while some scholars’ research does not explicitly state negative or positive utility, in the following section I
will examine their explanations and place their research where I believe it affects the general disposition towards reservations.

*Reservations are associated with negative utility*

In adopting general comment No.24, the UN Human Rights Committee has expressed itself as increasingly hostile and concerned with the scope and application of reservations to human rights treaties (Redgwell, 1997). In fact, the committee feels as though in encouraging widespread participation they may have sacrificed the integrity of these treaties. This is in line with the broad critique of the international community that reservations undermine the universality of human rights treaties; indeed, the argument citing a negative utility of reservations is more or less rooted within this perception. For example, following the World Conference on Human Rights in 1993, the Vienna Declaration and Programme for Action called for:

All States [to be] encouraged to avoid, as far as possible, the resort to reservations. …The World Conference on Human Rights encourages States to consider limiting the extent of any reservations they lodge to international human rights instruments, formulate any reservations as precisely and narrowly as possible, ensure that none is incompatible with the object and purpose of the relevant treaty and regularly review any reservations with a view to withdrawing them.

This same point is echoed by Scholar Louis Henkin, who critiqued the excessive use of reservations as threatening to render human rights futile and the act of submitting reservations
upon ratification as “specious, meretricious, and hypocritical” (1995, p.341). Similarly, some scholars feel as though reservations should not be allowed at all (Lijnzaad, 1995; Redgwell, 1997), and others critique reservations as violating the spirit of the treaty (Henkin, 1995). A reservation is seen to be submitted to serve only the interest of the state, and any of its theoretical negative effects thrust onto the international community in disregard.

Goldsmith and Posner (2005) find that democratic states are more likely to enter reservations to human rights treaties than autocratic states and argue that this occurs in order for the state’s current behavior to be characterized as compliance. Implicit within their theory is the assumption that noncompliance would cost more for the democratic state than the autocratic state (Hill, 2015). This theory does not demonstrate a commitment to comply with international law, rather the state changes their level of commitment through reservations to mimic compliance, and thus changes the scope of the treaty as it applies to the state. Furthermore, Goldsmith and Posner (2005) believe that these international human rights treaties do not alone affect the behavior of countries and that any level of compliance is just the result of a coincidence of interests (Neumayer, 2007), which I interpret to mean that a reservation is perceived to fail to further a state’s human rights practice and does nothing more than limit international obligation.

**Reservations are associated with positive utility**

While heavily critiqued, there is also broad literature that cites reservations as acceptable—perhaps even desirable. Chayes and Chayes (1993) recognized international human rights treaties as aspirational because they attempt to setup norms that the vast majority of countries are not able to immediately comply with. This means that a reservation allows a state to currently commit to the international human rights treaty but need time to before they assume
full obligations. Lijnzaad (1995) builds upon this argument and believes that reservations may theoretically allow increased participation in the international human rights regime – which would indicate it is more universal in nature and with that more legitimate – because they encourage a state to adopt demanding norms that they would otherwise fail to express support for. With this future commitment in mind, some countries actually “renounce at a later stage reservations they have previously set up” (Neumayer 2007, p.10) and Mcbride (1997) conjectures that reservations may serve as an acceptable temporary device.

Neumayer (2007) also found that democratic governments are more likely to enter reservations than autocratic governments, but contrary to the theory of Goldsmith and Posner (2005), Neumayer presents reservations as potentially non-malicious and believes that this association may indicate that governments submit reservations when they “take human rights seriously” (p. 3).⁵ According to Neumayer (2007), liberal democracies submit reservations because they intend to act on their obligation and like any other nation, they similarly want to limit the extent of interference with their sovereignty. Therefore, reservations are desirable because they are acted upon in the self-interest of the state with the state actively intending to comply with their obligation.

State’s themselves say they submit reservations in order to comply, and broadly justify reservation submission as submitted in order to not contradict any existing domestic laws that would otherwise hinder application of these treaties’ commitments. Thus, intending to comply but ensuring that compliance and domestic implementation is possible, and that this implementation is “left to the internal law and processes of each state party”.⁶ This is

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⁵ Arthur Rovine, a former legal advisor to the US State Department, takes a similar stance as Neumayer (1981).
⁶ This comment is submitted by the US and UK in response to the UN Human Rights Committee adopting General Comment No.24, and the inverse of this perspective is argued by the Human Rights Committee in adopting General Comment No. 24; where to implement the treaty in domestic law, such laws “may need to be altered properly to
demonstrated in statements done by the United States, United Kingdom, and Singapore, upon reservation submission—all of whom have a significant number of reservations and above average human rights protection scores.7

Existing literature broadly agrees that reservations have the effect of mitigating the legal obligation of international human rights treaties (Hill, 2015), so it is important to note the effect the domestic legal system has on compliance. Powell and Staton argue that when considering ratification of a human rights agreement the power of the judiciary—the state’s ability to comply with its court decisions—affects the likelihood that a state “feels bound to their international obligations”, and when a judiciary is strong, they are more likely to comply (2009, p. 167). Similarly, Hill found that states are more likely to submit a reservation when the human rights treaty will create “genuine domestic legal constraints”, which means that governments will submit reservations to avoid adopting higher legal standards than already exist in their domestic laws (2015, p. 1129). Hill (2015) believes that these reservations are therefore submitted by states who are taking the law seriously, but this does not necessarily mean that they are taking the norms of these laws seriously.

Hypothesis & Theory

The discussion so far leads to testable hypotheses. Past research on compliance and the utility of reservations has evidenced scholars broadly and theoretically making claims about the effect reservations have on the object and purpose of the treaty—which is seemingly compliance

7 Reservations to the six major treaties studied within this thesis by these states is commonplace, with the United States and the United Kingdom submitting 29 each, and Singapore submitting 13.
with international human rights requirements— but have failed to directly test whether or not these reservations affect future compliance. While this study cannot solve the debate concerning the utility and consequence of reservations, it can, and should inform this debate by directly testing the assumed relationship between reservations and compliance. I expect to find the following result:

\( H1: \) States who submit reservations are more likely to comply with international human rights treaties than those that do not submit reservations

I theorize that this is the case because reservations are a mechanism of compliance— rather than a theory of compliance as described in the appendix— and help a state to actively comply with their international law obligations. Indeed, many states already cite their reservation submissions as helping to enable compliance now or in the future, and while this has been critiqued to be merely an opt out or mimic of compliance (Goldsmith and Posner, 2005), by committing the resources and time to formally submit a reservation one would logically only assume the state actually intends to follow their word and see the treaty find practice and adherence within the state.

Furthermore, existing literature agrees that democracies submit more reservations than non-democracies (Goldsmith and Posner, 2005; Neumayer, 2007), and democracies also struggle with a legal process that is much slower than that of non-democracies. Reservations as a mechanism of compliance may help explain this association, as democracies would submit a reservation in order to immediately help allow for compliance aside from and prior to their otherwise slower domestic legal process. In fact, the United States demonstrated this theory in
their language to the ICCPR citing that the reservations would allow for immediate compliance until “changes in U.S law allow the United States to come into full compliance” (Pell, 1992).

I thus theorize that reservations are submitted by states who actively intend to comply with their international law obligations but may require an additional legal mechanism to do so, which indicates that reservations would be associated with higher human rights compliance scores. This relationship would signify that contrary to the undesirable perspective, and the formal practice of submitting an objection to another ratifying state’s reservation, the utility of reservations is actually positive and have allowed states to commit and adhere to international human rights treaties on terms that provide an overall benefit to the international human rights regime.

It is important to note that because of the nature of this hypothesis, those states who comply with their international human rights requirements but do not require the mechanism of reservations in order to comply are still described and serve to “water down” the relationship between reservations and compliance. These states basically make it more difficult to observe a relationship between reservation submission and compliance because they fully comply without submitting a reservation, and therefore any relationship between reservations and compliance would be an understated effect – with those states who use reservations as a mechanism having higher levels of compliance than observed.

**Data and Research Design**

For information on human rights compliance, I use the data gathered by Christopher Fariss and Keith Schnakenberg (2014). These data contain a single aggregated value of state human rights protection scores based upon state disappearances, extra judicial killing, political
imprisonment, torture, amnesty, genocide, executions, and many others and will be referenced as *Human Rights Compliance Score* for the purpose of this thesis. This data is a latent score coded from the CIRI Human Rights Data Project and measures state human right practices, not policies, and is created from the annual United States Department of State’s Country Reports on Human Rights Practices (Cingranelli, Richards, Clay, 2014). I decided to test a summary variable as *Human Rights Compliance Score* for this study because I required a measure that allowed me to test broad compliance with international human rights requirements, as directed by multiple key human rights treaties. This average *Human Rights Compliance Score* represents the position of the state in one year relative to the average across the entire set of data (1949-2014) of all states, which means that a score of zero represents the average level of compliance over the entire period (1949-2014) and values higher or lower than 0 represent either above average or below average human rights compliance. This allows for an accurate depiction of the states that continuously fall 2 to 3 standard deviations below or above the average. Termed as “a landmark paper” (Roser), before Farris introduced this data set human rights organizations around the world believed that there was no trend, either positive or negative, for human rights compliance. This dataset proved that if corrected for the continually increasing standards by which compliance is measured, human rights have actually positively improved. For simplicity, I consider a state demonstrating a low *Human Rights Compliance Score* to be failing to comply with their human rights treaty requirements, and those states demonstrating a high *Human Rights Compliance Score* to be successfully complying with their human rights treaty requirements.

For my primary independent variable, total reservations to human rights treaties, I use the data gather by Neumayer (2007). This data has been extensively referenced by scholars and describes total reservations for 186 countries to the six core international human rights treaties –
The International Covenant on Civil and Political Rights (ICCPR), The International Covenant on Economic, Social, and Cultural Rights (ICESCR), The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and The Convention on the Rights of the Child (CRC). This data will be referenced as Total Reservations for the purpose of this thesis. This measure is important to my study because it counts reservations to the same convention as one reservation, therefore controlling for when states submit multiple often irrelevant reservations and providing a total number of reservations per state that is more comparable. It is important to note that this data is attributed by a heavy positive skew, with most countries submitting no reservations or almost no reservations, and outliers such as the United States and the United Kingdom submitting substantially more than no reservations, as visualized in figure 3.

As control variables, I adopt indicators that have shown significance in past studies to be strongly correlated with Human Rights Compliance Score, Total Reservations, or both. Therefore, I only include variables that would, if omitted, potentially confound the relationship between Human Rights Compliance Score and Total Reservations. The most substantial of these is democracy, described within the prominent studies of Neumayer (2007), Goldsmith and Posner (2005), and Simmons (2009). These studies find that democracy influences the likelihood that a state will enter a reservation, and democracies are commonly believed to be associated with greater human rights compliance. To measure democracy, I employ the Polity 5 index which measures political systems on a 21-point scale from -10 (hereditary monarchy) to +10
(consolidated democracy). This data will be referenced as *Polity Democracy Score* for the purpose of this thesis.

In addition to democracy, state capabilities have been critiqued to be relevant to reservations because they are related to legal protection value (Powell and Staton, 2009). As a measure of state capability, I adopt the Composite Index of National Capability Score (CINC). The CINC is an aggregate measure of six individually measured components of national capabilities – Iron and Steel Production, Military Expenditures, Military Personnel, Energy Consumption, Total Population, and Urban Population – the combination of which yields an accurate representation of demographic, economic, and military strength. This data will be referenced as *State Capability Score* for the purpose of this thesis. While I do not explicitly control for a distinct variable of legal protection within this thesis, I do not need to. The variable for legal protection in Hill’s (2015) study was based on polity, economic growth, and ideological characteristics of national constitutions and I control for all the variables employed within Hill’s study except national constitutions, effectively controlling for legal protection.9

Another measure that may confound the effect of total reservations on compliance is the number of treaties ratified by the state, i.e. a state that has only ratified one or two of the six treaties may have had less opportunities to submit reservations and thus their total reservations may be less comparable. To combat this, I employ a measure done by Neumayer (2007) on the number of treaty ratifications per state for the same six core international human rights treaties measured by my primary independent variable. This data will be referenced as *Number of Treaty*

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8 Within political science the Polity measure is by far the most popular measure of democracy (Marshall, Jaggers, and Gurr 2003).

9 I do not need to control for national constitutions because my study is based on multiple human rights treaties with broad protections, and as noted by Hill nearly all of the civil liberties needed for legal protection are in almost all of the world’s constitutions, and thus are probably not very informative about one country relative to another.
Ratifications for the purpose of this thesis. The variable ranges from 0 to 6, with 6 indicating that a state has ratified all of the treaties measured by my primary independent variable and 0 indicating that they have ratified none of them.

The unit of analysis is state because both my dependent and independent variables address state capabilities and characteristics. The period of analysis is restricted to the year 2001, as the data on reservations ends in 2001. While a constraint on time may be critiqued to restrict results as states have a broad time frame to ratify and thus reserve to treaties, I do not believe it does in this case as 190 out of my 194 countries in my dataset had ratified at least one of the six major human rights treaties of my primary independent variable by 2001–with the average state ratifying 4.9 of these 6 treaties. Descriptive statistics for all variables used in the analysis can be found in Figure 4. It is important to note that while Total Reservations, Polity Democracy Score, and State Capability Score may appear to covary—particularly as they relate to wealth and state resources available to submit a reservation (Simmons, 2009)—they do so in a way that is not incredibly significant, with the highest correlation being between Total Reservations and State Capability Score at 38%.

For the analysis, I employ a cross-sectional OLS regression. This is appropriate for this model because the dependent variable is normally distributed, as visualized in figure 2. There also is not a temporal component demanding my data require a more complicated analysis.¹⁰

Findings

The regression output with coefficient and significance estimates for all variables is presented in table 5. Visual regression models for all statistically significant variables are

¹⁰I also tested to see if there was a quadratic relationship and there wasn’t one
presented in tables 6, 7, and 8. As hypothesized, *Total Reservations* appear to have a significant positive relationship with state *Human Rights Compliance Score* at the .01 level, with every 1 unit increase in *Total Reservations* providing nearly a .05 increase in *Human Rights Compliance Score*. This relationship is substantive, particularly if it is causal, because the *Human Rights Compliance Score* variable within this study only has a range of 6.48. This means that a 5 reservation increase to *Total Reservations* would increase *Human Rights Compliance Score* by nearly .25—an increase of .25 for nations like Greece who have ratified all 6 treaties but submitted no reservations would increase their relative *Human Rights Compliance Score* ranking from 73rd among states in my data, to 59th. Furthermore, while this coefficient is already substantive, it is probably understated,11 and I expect *Total Reservations* to actually be associated with an even greater *Human Rights Compliance Score* coefficient.

In regard to my control variables, *Polity Democracy Score* and *State Capability Score* presented a statistically significant relationship, whereas *Number of Treaty Ratifications* did not. *Polity Democracy Score* had a significant positive relationship with *Human Rights Compliance Score* at the .01 level, with democracies demonstrating higher compliance and non-democracies demonstrating lower levels of compliance. *State Capability Score* had a significant negative relationship with *Human Rights Compliance Score* at the .01 level, with those states with greater resources and capabilities demonstrating worse human rights compliance scores than states with less capabilities. It is interesting that *Number of Treaty Ratifications* had no significant relationship with human rights compliance scores. I would have expected those states that are ratifying treaties to have greater respect for their human rights requirements, and those that don’t

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11 This understated relationship is further described within my hypothesis and theory section.
ratify treaties to have less respect for their human rights requirements, but that does not appear to be the case.

**Implications**

The act of submitting reservations and customizing what is meant to be a universal treaty has been heavily critiqued by scholars positing an undesirable utility of reservations, and a formal mechanism to object to these reservations –termed as an objection– is commonly practiced within international law. The findings of this study call into question this negative utility and suggest that reservations may actually have a positive utility on human rights compliance, as there is a significant positive relationship between *Total Reservations* and *Human Rights Compliance Score*.

Submitting a formal objection to another state’s reservations has profound consequences for both the reserving and objecting state. For example, in an advisory opinion the International Court of Justice (ICJ) affirmed the right to submit objections declaring that “if a party to the convention objects to a reservation which it considers to be incompatible with the object and purpose of the convention, it can in fact consider that *the reserving state is not a party to the convention*” [emphasis added] (1951). The ICJ advisory opinion highlights the consequences of these reservations as the protections offered within a treaty may be deemed entirely null to the objecting state if desired. However, excluding a reserving state from membership within their ratified treaty is rather extreme, and is not the only form of recourse available. Rather, a state can object in a way intended to simply negate the legal effects of the reservation (Klabbers, 2000). For example, Italy’s objection to one of the United States’ reservations to the ICCPR in 1993
included language citing that the reservation would be “null and void”, therefore working to deny the reserving state the benefits intended by their reservation.

With that being said, these findings suggest that a state should not resort to objecting to another state's reservation as these reservations may actually signify greater intended human rights compliance. It only makes sense that if a state is actively trying to become a member of the international human rights regime with intent to follow their treaty obligations under this regime – as quantitively indicated within this study, and qualitatively cited by the United States, United Kingdom, and Singapore – then a state should not object and effectively undermine the ability of another state to ratify on their own terms. Indeed, this study also found that Number of Treaty Ratifications was not significantly associated with Human Rights Compliance Score, indicating that ratification alone may not be enough to affect human rights compliance, and that reservation submission may be an important component of ratification for those states attempting to achieve desirable human rights practices. Thus, this study suggests that objecting and denying a state the ability to achieve their intended reservations and/or recognition as a party to the convention is contradictory to encouraging greater human rights compliance. Theoretically, the object and purpose of the international human rights regime is to encourage compliance of international human rights requirements; an objection, as discussed above, may encourage anything but this.

These findings also suggest that there may not need to be an external international institution, such as the International Court of Justice (ICJ), to enforce compliance and/or hear complaints regarding violations. This is because reservations commonly mitigate the legal international enforcement mechanisms of these treaties, and the findings suggest that compliance is realized by these reserving states even with this absence of international enforcement. In fact,
in reference to CEDAW “The most common reservation has been against jurisdiction by the International Court of Justice” (Simmons, 2009, p. 208), and a large portion of reservations to the ICCPR were submitted to article 14, which regulates the arrest and trial jurisdiction of the treaty (Hill, 2015). This may indicate that giving states the ability to leverage their own strong domestic legal institutions or motive to strengthen their legal institutions to achieve compliance, rather than mandating enforcement through the international courts, could have an overall benefit to compliance.

In addition to Total Reservations, Polity Democracy Score and State Capability Score were found to be significantly associated with Human Rights Compliance Score. As expected, the positive coefficient for Polity Democracy Score suggests that democracies have greater human rights compliance. Democracies have been commonly cited to be champions of the human rights regime, and while there have been some historically egregious human rights violations by both democracies and non-democracies, it would be quite surprising to find a relationship suggesting that democracies have worse human rights practices given their institutions promoting “contested elections, freedom of expression, separation of powers, and independent courts” (Conrad, 2013). Unexpectedly, the negative coefficient for State Capability Score suggests that those states with greater capabilities and militaries have worse human rights compliance. Perhaps it is naïve, but I was hoping that those states with greater capabilities would use them to promote greater human rights practices—but this study suggests this is not the case.

Discussion

This study utilized a simple OLS regression to describe an initial relationship between reservations and human rights compliance; thus, providing framework for further analysis. Upon
further study, I would examine this relationship with a temporal component to identify the potentially confounding relationship between a state ratifying and reserving to a treaty, and then having greater human rights compliance as a result of time, not treaty reservation and/or ratification. Furthermore, I would look to delineate when reservations are submitted by a state without intent to comply with the treaty (i.e. when a state submits a reservation actively trying to alter the “object and purpose” of the treaty). An example of this may be the United States reservation submission justifying their torture practices upon reservation to the ICCPR, which were heavily objected to. This form of reservation and justified objection is not discussed within this thesis but should be further examined.

Conclusion

Do reservations make international human rights law more or less powerful? Scholars are divided on the overall utility of reservations, with a sophisticated understanding developing along a battleground of research positing both negative and positive utility. However, these studies broadly assume the utility of reservations by testing the relationship between reservations and descriptive variables and then using these descriptive variables to position reservations as associated with either negative or positive utility. Utility should be directly related to compliance with international human rights law because compliance is seemingly the object and purpose of these treaties. Thus, the problem with past research is that it assumes compliance. Regardless of a reservation’s effect on universality, by directly analyzing their effect on compliance I shed light on their true utility and inform the debate amongst scholars.

I theorized that those states who submit reservations are likely to comply with international human rights treaties, because these states actively intend to comply with their
international human rights obligations and by committing the resources and time to formally submit a reservation, one would logically only assume they intend the treaty to see practice and adherence within the state. In the regression analysis I found support for this theory; *Total Reservations* to human rights treaties appear to have a significant positive relationship with state *Human Rights Compliance Score*. This calls into question existing research positing a negative utility and suggests that a state should not resort to objecting to another states reservation as these reservations may actually signify greater intended human rights compliance. Indeed, this study also found that *Number of Treaty Ratifications* were not significantly associated with *Human Rights Compliance Score*, indicating that ratification alone may not be enough to affect greater human rights compliance, and that reservation submission may be an important component of ratification for those states intending to comply with their international human rights requirements.
Appendix

Figure 1: Heat Map of Human Rights Protection by Country (Primary Dependent Variable)
Source: Human Rights Protection Scores – Farris, Schnakenberg (2014) – OurWorldInData

Further Elaboration of Theories on Compliance:

As mentioned, previous literature on human rights treaty compliance has presented broad theories in both rational actor models and normative theory models. Compiled and termed by Oona Hathaway (2002), these models collectively demonstrate a vast amount of literature on the puzzle of treaty compliance, and at the risk of overly simplifying this rich research I will summarize below in an attempt to draw out their broad implications.

Rational Actor Models

International human rights law has commonly been critiqued to fail to restrict state behavior, with states complying only if it is in their self-interest to do so. Proponents of theories
within the rational actor models believe that no state would really change their behavior in response to a human rights treaty; change would happen only because of some other motivation or consequence. Prominent theories within this model are compliance as coincidence, compliance as strategy, and compliance as a byproduct of domestic politics.

Oona Hathaway terms compliance as coincidence to describe when a state seemingly complies with their international human rights treaty obligations not because they are constrained by the treaty but because “compliance is coincident with the path dictated by self-interest in a world governed by anarchy and relative state power” (2002, p. 1946). This theory is drawn and perhaps conceived by Kenneth Walt’s *Foundational Theory of International Politics* (1979) which does not believe that international actors are bound by international institutions or act differently because of these institutions. Any form of continued compliance would then be coincidence or because a state is genuinely committed to human rights. Simmons (2009) describes this state interest theory as “the common wisdom” and “the most common answer”. This view is well represented among proponents of realism, and they believe that without a proper enforcement mechanism on state interest “governments will not honor international human rights treaties when it is not in their interest to do so” (Simmons, 2009, p. 115). A practiced enforcement mechanism is not commonly evidenced as international human rights treaties rarely have any restraining power and powerful countries who may act as this enforcement mechanism by employing sanctions—political, economic, military or otherwise—to coerce other countries into improving their human rights record rarely do so (Neumayer, 2007).

The theory of compliance as coincidence is thus significant because if it is accurate any analysis of any international institution variable—such as the literal interpretation of ratification or RUDs and their legal constraints—that demonstrates correlation with higher compliance would
be at most only a confounding variable that is an effect of coincidence or state interest. This is important to note because within the rest of this literature review and my empirical study I will comment on statistically significant variables that arise from these international institutions which if presented within the coincidence theory would not actually be perceived to predict state behavior.

The theory of compliance as strategy is similar to the compliance as coincidence theory in that it shares an emphasis on state interest but otherwise believes that international institutions have been empowered and are “rational, negotiated responses to the problems international actors face” (Koremenos, 2001, p. 768). This theory is pushed by institutionalists such as Robert Keohane (1985, 1984), who argue that states comply with their international human rights obligations because they allow states to maximize utility when pursuing their own self-interest—effectively “restraining short term power maximization in pursuit of long-term goals” (Hathaway, 2009). Contrary to the compliance as coincidence theory, this theory would then believe that the treaty, as an institution, actually helps affect compliance and is a real constraint in the eyes of the state because although there are high costs to ratification and compliance, these costs do not outweigh the benefits of long term universal human rights practices. In fact, a study done by Fariss in 2013 found that the very act of ratifying a human rights treaty correlates with higher levels of respect for human rights. Thus, the institutional act of ratifying a treaty and the high cost associated with it may further indicate why states comply as they have a vested commitment to the treaty and are obligated to abide by it (Simmons, 2009).

Unlike the other aforementioned theories, the theory of compliance as byproduct of domestic politics focuses less on the state as an institution and more on the domestic political process of the state. As a liberalism approach, this theory finds support in the work of Immanuel
Kant and his essay *Perpetual Peace*. This is because his work has broadly come in modern iteration to find “that domestic politics matter” (Hathaway, 2002, p. 1948). This theory holds that the parts of the whole –interest groups, state actors, societal ideas– submit a significant pressure on the government to comply. Because of the representative nature of this theory, it is underlined by the need for liberal democracy. Research done by Anne-Maria Slaughter and Laurence Helfer (1998) found that liberal democracies were more likely to comply with international legal agreements, and they believe this is because interest groups were mobilized and pressured the government to comply. Thus, in the theory of compliance as a byproduct of domestic politics compliance is an effect of domestic interests supporting international interests and ultimately pushing the government to uphold their treaty obligations (Hathaway, 2002).

**Normative Models**

The normative models believe that understanding the importance of ideas and the persuasive power of these ideas is needed to fully understand compliance. These theories are based on more than just self-interest or on anything that can be calculated economically, but rather on norms, beliefs, and other pressures that are more or less intangible. I will summarize below two separate theories within this model: compliance by persuasive discourse and compliance by legitimate and just rules.

The compliance by persuasive discourse theory is predominantly described in the works of Abram and Antonia Chayes. This model places power in the process of international discourse, and repeated interactions between transnational actor’s cause norms to become socialized and create an obligation amongst one another that they cannot ignore (Chayes and Chayes, 1995). This is based on the assumption that states will willingly comply with their
international treaty commitments regardless of an enforcement mechanism; or in this case that enforcement mechanism is a socialized and persuasive norm between countries.

The compliance by legitimate and just rules theory believes compliance arises as a result of international treaties that are legitimate and perceived as fair and transparent. Phillip Trimble (1990) described aspects of this theory when he stated international law and its treaties as “rhetoric” that is persuasive only if it is legitimate through “consistency of accepted norms” (Hathaway, 2002, p. 1958). Thomas Franck elaborated on this theory and found four primary characteristics of international treaties that determine legitimacy and thus compliance: transparent and non-ambiguous, a symbol of an important part of a social order, coherence in that it treats all cases the same, and applied through the international rules process system (1995). Thus, compliance is influenced by the overall perception of the treaty, and if the treaty is seemingly legitimate, fair, transparent, and perhaps most uniquely a symbol of an important social order, then compliance is more likely.
Figure 2: Histogram of Human Rights Compliance Score (Primary Dependent Variable)

Figure 3: Histogram of total reservations to human rights treaties (Primary Independent Variable)
**Figure 4: Summary Statistics for Dependent and Independent Variables**

<table>
<thead>
<tr>
<th>Variable</th>
<th>Mean</th>
<th>STD</th>
<th>Min</th>
<th>Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>Human Rights Compliance Score</td>
<td>0.2</td>
<td>1.25</td>
<td>-2.73</td>
<td>3.75</td>
</tr>
<tr>
<td>Total Reservations</td>
<td>3.36</td>
<td>5.24</td>
<td>0</td>
<td>29</td>
</tr>
<tr>
<td>Polity Democracy Score</td>
<td>3.11</td>
<td>6.61</td>
<td>-10</td>
<td>10</td>
</tr>
<tr>
<td>State Capability Score</td>
<td>0.52</td>
<td>0.017</td>
<td>3.72E-07</td>
<td>0.165</td>
</tr>
<tr>
<td>Number of Treaty Ratifications</td>
<td>4.9</td>
<td>1.51</td>
<td>1</td>
<td>6</td>
</tr>
</tbody>
</table>

**Figure 5: Regression Analysis**

<table>
<thead>
<tr>
<th></th>
<th>Dependent variable:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Human Rights Compliance Score</td>
</tr>
<tr>
<td>Total Reservations</td>
<td>0.047*** (0.016)</td>
</tr>
<tr>
<td>Number of Treaty Ratifications</td>
<td>-0.069 (0.073)</td>
</tr>
<tr>
<td>Polity Democracy Score</td>
<td>0.074*** (0.013)</td>
</tr>
<tr>
<td>State Capability Score</td>
<td>-0.136*** (0.044)</td>
</tr>
<tr>
<td>Constant</td>
<td>0.016 (0.383)</td>
</tr>
</tbody>
</table>

| Observations | 154 |
| R²           | 0.263 |
| Adjusted R²  | 0.243 |
| Residual Std. Error | 0.964 (df = 149) |
| F Statistic  | 13.263*** (df = 4; 149) |

*Note:* *p<0.1; **p<0.05; ***p<0.01
Figure 6:

Visual Regression for Total Reservations

Figure 7:

Visual Regression State Capability Score
Figure 8:

Visual Regression Polity Democracy Score


-1.5 -1.0 -0.5 0.0 0.5

-10 -5 0 5 10
Works Cited


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