The Autocratic Law and Politics of International Human Rights Agreements

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Abstract

Some of the world's nastiest dictators have joined on to agreements that, on paper, extend far-reaching human rights to citizens. Others rarely participate. Why? To understand which autocrats ratify international human rights agreements (HRAs) and which do not, I argue that we need to look deeper inside and to unpack autocratic state. Ratifying these agreements is particularly useful to leaders who need to assert or re-establish their legitimacy. In this regard, accepting an HRA as legally binding is a deeply political move. At the same time, taking on these obligations is also a legal decision – and a closer look at states’ legal systems helps us to understand why some countries do not ratify even though political imperatives might push them in that direction. I find support for these propositions in analyses of a comprehensive database of UN HRAs. Leaders who are new to power and rely on a new basis of domestic support are particularly prone to join HRAs. States with common law legal heritages and – even more so – those with Islamic legal institutions are particularly unlikely to ratify.

Draft. Comments welcome, but please do not circulate or cite without approval
1. Introduction

Within less than two years of seizing power in a 1973 coup d’état, the government of Juvénal Habyarimana had ratified\(^1\) five international human rights agreements (HRAs), pledging to prevent and punish genocide, outlawing racial discrimination, and upholding a wide range of political, economic, and social rights. In the ensuing two decades, it became clear that the Rwandan government was unwilling and/or unable to keep many of those promises (Verwimp 2013). Throughout the remainder of his presidency, Habyarimana continued to engage with the international human rights regime in little more than a piecemeal fashion, joining only seven more HRAs by 1994, even though many more were on offer.

One does not have to look far to find other prominent examples of autocrats participating readily in HRAs at politically tumultuous points in time. Within a little over a year of seizing power, for instance, Nicaragua’s Sandinista government had accepted as legally binding six UN HRAs and 16 International Labor Organization accords. Many of these were consistent with the Sandinistas’ ideology and domestic policy platform, although the government had mixed success in terms of implementation (Gorman 1981; Stahler-Sholk 1995). But what did the Ortega government gain from ratifying, and what explains the decision’s timing? Why did the Sandinistas subsequently all but ignore the remaining – and growing – body of international human rights law throughout the rest of the 1980s, much of which coincided with its domestic agenda?\(^2\)

\(^1\) I use this term generically throughout to denote any expression of legal intent to be bound by a treaty – ratification, accession, etc., but not signature. See <author cite> for further discussion.

\(^2\) Nicaragua ratified only three other HRA/ILO agreements in the 1980s, all of them relatively low-profile: one on the nationality of married women, one on abolition of slavery, and one on the non-applicability of statutory limitations for certain human rights abuses.
Well-entrenched democracies are often the strongest proponents of HRAs – a relationship that is fairly straightforward (Landman 2005; Simmons 2009), particularly for agreements that enshrine the rights that democracies hold dear. But it is also common for autocracies to be the first in line to ratify (Hathaway 2002). Yet, some autocracies are far more reticent, delaying ratification by decades or refusing to take part altogether. Why do some autocracies participate readily in the international human rights regime, whereas others drag their heels or opt out entirely?

One of the most common ways of thinking about HRAs, and their ratification, is as an expression of democratic values and preferences (Simmons 2009; Landman 2005). That may provide some insight into why democracies ratify these accords, but it does not give us much purchase on autocracies’ participation. Hence, scholars have developed alternate explanations for why autocracies ratify HRAs. Answers to this question have generally fallen into four camps. The first two focus on international actors; the second two on domestic considerations. One group of scholars views ratification as a way to gain rewards from (Hathaway 2007), or at very least to avoid standing out in the eyes of, interested international actors (Simmons 2009). For others, the desire for praise is key – not because it yields material benefits, but because autocrats, like any leaders, care about their identity and their social standing on the international scene (Goodman and Jinks 2004; Risse and Sikkink 1999; Wotipka and Ramirez 2011; Wotipka and Tsutsui 2008).

Turning now to domestic explanations, some argue that ratification provides autocrats a minor but nonetheless meaningful way of quenching internal opponents’ thirst for reform (Risse and Sikkink 1999; Vreeland 2008). ³ Finally, others view HRA participation as a

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³ See also Conrad 2014 and Conrad and Ritter 2013 for applications.
useful tool for the most abusive autocrats, enabling the latter to signal to domestic audiences just how nasty they are (Hollyer and Rosendorff 2011).

The above arguments provide insight into why some autocrats have ratified some HRAs, but they leave a large number of decisions to join these agreements a mystery. To fill that large gap, we need to dig deeper inside and to unpack the autocratic state. In this chapter, I make two core arguments. First, autocrats use HRA ratification to their political benefit. As others have pointed out, joining these agreements can help to promote good press and create an air of legitimacy (Hafner-Burton and Tsutsui 2005; Hafner-Burton et al. 2008; Wotipka and Ramirez 2008). But how does that insight help us to understand the empirical record of ratification? I argue that some leaders need the good press that ratification can generate, whereas others do not. This need is particularly high when leaders are new to office and do not have an established reputation; or when they are close to losing office.

Second, I argue that we also must unpack autocracies’ legal systems in order to understand ratification. Here, I argue that we need to consider core legal principles in order to comprehend why some autocracies refrain from accepting these agreements as legally binding even though political imperatives might push them in a pro-ratification direction. In common law jurisdictions, the possibility that courts might make unanticipated rulings that will subsequently acquire the status of case law makes politicians wary of HRA ratification – even in autocracies. Others have explored the relationship between common law heritage and HRA ratification (Goodliffe and Hawkins 2006; Simmons 2009; von Stein 2016), but this chapter pushes the literature further by delving into the ways in which Islamic law also puts the brakes on ratification. In these
countries, governments are also wary of HRA ratification. In part, this may be because there is a greater incongruence between treaty principles and practice on the ground. Additionally, though, Islamic law states have very strong legal principles that dictate against making legal promises that cannot be respected. In line with this legal reasoning, Sharia law countries are particularly slow to ratify these agreements.

This chapter is organized as follows. In the next section, I provide a brief overview of the existing HRA ratification literature, focusing particularly on current explanations of autocratic behavior in particular. Although these arguments provide some insight, they either do not map particularly well onto the treaties at hand (for reasons discussed below), or they get us partway but leave a great many ratifications unexplained. In section 3, I present the main argument, which hinges on the idea that we need to open up the autocratic state, focusing not only on the political usefulness of ratification, but also on the very real impediments that their legal systems can impose. Section 4 presents the data and modeling approach. Rather than focusing on one agreement or a handful of ‘core’ HRAs, I explore the entire body of international human rights law. This is an important improvement. This section is also novel in introducing to the treaty ratification literature the conditional frailty model (Box-Steffensmeier and De Boef 2006; Box-Steffensmeier et al. 2007), which I argue is the most appropriate method for analyzing multiple ratifications. The subsequent section presents the core findings, which support my argument that domestic politics and law matter for understanding autocracies’ ratification of these agreements. The final section concludes, and provides a glimpse of what we explore in the following chapter.
2. There is a Puzzle – But Have We Already Solved It?

We know much more about HRA commitment and compliance than we did just a few years ago. While there is still heated debate about the causes and effects of these agreements (Hafner-Burton 2012), one of the more consistent findings to come out of the literature is that well-entrenched democracies often ratify quite readily, particularly for HRAs that enshrine the entitlements that democracies hold dear (Cole 2005, 2009; Hafner-Burton et al. 2008; Landman 2005; Neumayer 2008; Simmons 2009; von Stein 2016). Explaining the ratification practices of countries without a long history of democratic governance is not as straightforward. Some are transitioning to democracy, and they are often the most avid supporters of these accords. For these countries, ratification can serve as a tool for binding future leaders, and for enabling current leaders to credibly signal their true intentions (Hafner-Burton et al. 2015; Moravcsik 2000). This chapter is interested in the large remaining group of countries that do (or did) not fit into either of these camps.

It is also important to clarify what type of HRA this chapter focuses on. Some UN HRAs – particularly those that empower individuals to lodge complaints at the UN and/or impart universal jurisdiction⁴ – can impose meaningful sovereignty costs on states (Cole 2012; Hafner-Burton et al. 2015; Smith-Cannon 2012). This chapter does not explore these types of commitments. Although interesting and important, these are substantively different from the bulk of UN HRAs. As detailed elsewhere (<author cite>) and discussed briefly later in this chapter, most UN HRAs impose minimal sovereignty costs in the sense that they do not empower individuals to take complaints to a higher authority and do not give the courts of other states jurisdiction beyond national borders.

⁴ Discussed below.
This chapter focuses on ratification as the outcome of interest. Why should we care about ratification? This act is one of the most important steps a government can take with regard to a treaty. It is an “explicit, public, and lawlike promise by public authorities” (Simmons 2009: 8), indicating acceptance of a legal obligation (Vienna Convention on the Law of Treaties, articles 11 and 12). It is also important because a treaty’s entry into force typically requires that a certain number of countries first ratify. Of course, recognition of a treaty as legally binding does not necessarily mean that governments comply. Indeed, the question of whether these agreements have causal effects on human rights practices remains hotly contested, particularly in the human rights arena.\(^5\) In this chapter, I set that question aside in order to give sufficient attention to the question of why governments do and don’t become parties to these agreements in the first place.

Overall, then, I am interested in when/why autocracies (that are not in the midst of a transition to democracy) ratify HRAs that engage limited sovereignty costs. Here, it is worth establishing empirically that there is indeed a puzzle. After all, autocracies are tremendously diverse. If their ratification decisions are a function of how autocratic or democratic they are, then the conventional understanding of HRA participation as an expression of democratic values applies here, too, and there is nothing more to explain. To demonstrate that there is indeed something to puzzle about, I present here a simple overview of the relationship between HRA ratification and democracy. A more thorough description of the data is available in <author cite.>

Figure 1 displays boxplots of ‘incidence rate’ data, which tell us the probability that a country ratifies an HRA in a given year (given that it did not already do so), as a function of

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\(^5\) See Hafner-Burton 2012 for a good overview of the literature.
its Polity score (Marshall et al. 2010). Several observations are of note. First, democracies tend to ratify more readily than non-democracies. Second, the degree of democraticness correlates with the ratification rate, but – importantly for my purposes – only for countries at or above the standard threshold of 6. Ratification, in other words, only appears to be an expression of democratic values among the relatively democratic. Figure 1a (appendix) provides additional detail, displaying the total percentage of available HRAs each autocracy has ratified. The most important thing to note here, and in Figure 1, is that among autocracies, there is no relationship between where a country lies on the autocracy-democracy spectrum and how readily it participates in the HRA regime.

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6 I.e., Polity score > 6 vs. Polity score ≤6. An incident rate comparison and a stratified log-rank test of the equality of survivor functions for the two groups are both highly statistically significant (p < .001).

7 Admittedly, Figure 1a misses important nuance because it is a snapshot of the percentage ratified as of 2012 or the country’s last year as an autocracy. Countries’ Polity scores can, of course, vary over time. It is for this reason that I also rely on the incidence rate approach (Figure 1) and conduct more sophisticated analyses later.
Hence, there is an empirical puzzle. But have we already solved it? After all, we do not lack alternative explanations for why autocracies ratify HRAs. In the remainder of this section, I discuss these explanations and demonstrate that they are insufficient to explain the wide variation in HRA participation across the autocratic world.

A first group of scholars views HRA ratification as a way for governments to reap benefits (or to avoid costs) from international actors. On the ‘benefits’ side, several have argued that governments join these agreements in the hopes of gaining more aid from other (particularly Western) governments, more foreign investment, and/or more support from or participation in international organizations (IOs) (Baird 2011; Hathaway 2002; 2007; and Oberdörster 2008). Conceptually, it is difficult to understand why actors would reward such obviously disingenuous behavior (Simmons 2009). Furthermore, Nielsen and
Simmons (2015) find little evidence that ratification leads to concrete material benefits such as increased aid, greater access to preferential trade, and so on.\(^8\) Hence, the proposition that countries ratify HRAs in exchange for material incentives seems fairly problematic even if it is frequently found in the literature (Nielsen and Simmons 2015).

On the ‘costs’ side, Simmons (2009: 88-94) argues that some governments ratify HRAs to avoid international criticism – as a sort of ‘social camouflage.’ Governments select policies that mimic those of neighbors for two chief reasons: to avoid looking like holdouts that resist the substance of the treaty, and to evade NGO pressure campaigns. The logic here is very much one of ‘moving with the pack’ to avoid scrutiny. There is ample evidence that governments ratify HRAs more readily when their peers – particularly their neighbors – are also doing so (Goodliffe and Hawkins 2006; Greenhill and Strausz 2014; Simmons; 2009; Vreeland 2008; Wotipka and Ramirez 2008; Wotipka and Tsutsui 2008). Still, this argument leaves many ratifications unexplained. It tells us nothing about regional first/early movers. Why, for instance, was Ethiopia the first nation in the world to ratify the Genocide Convention, whereas most of its neighbors took decades to join the agreement and several still are not parties? Nor does it tell us why some countries remain holdouts even as their peers succumb to pressures to blend in. For example, why did Nicaragua wait almost 40 years to join the Convention on the Elimination of Racial Discrimination, whereas most of its peers became parties within 15 years? Social camouflage does not explain these cases or the numerous ones like it.

Others, working chiefly in the world society tradition in sociology and the constructivist tradition in IR, emphasize the non-material benefits of ratification. Autocrats,

\(^8\) See also Wotipka and Tsutsui 2008, who find only mixed evidence that countries receiving more development aid are more prone to ratify HRAs.
like all leaders, care about their social standing and their identity on the international scene (Goodman and Jinks 2004; Risse and Sikkink 1999; Wotipka and Ramirez 2011; Wotipka and Tsutsui 2008). NGOs and international governmental organizations (IGOs) act as ‘agents of socialization’ by pressuring leaders to ratify treaties (Finnemore and Sikkink 1998). Governments recognize the legitimacy gains that ratification produces (in the eyes of international actors) and join on because NGOs, IGOs, and Western governments tell them it is what they “are supposed to do” (Wotipka and Tsutsui 2008: 736). Goodman and Jinks (2004) emphasize that it need not be the case that the ratifying government/leader view the treaty content as valid; rather, it/(s)he has only to understand that the reference group values the treaty content.

These ideas garner mixed support in the quantitative literature. The fact that countries typically ratify HRAs more readily when their neighbors are doing so can be taken as evidence of social or identity pressures, which often play out regionally. In line with the idea that human rights conferences revitalize human rights activists and serve as focal points for the articulation of standards, ratification rates increase following these events, although findings are not always consistent (Cole 2005; Wotipka and Ramirez 2008). Others are skeptical that ratification alone carries non-material benefits (Nielsen and Simmons 2015). If ratification makes it harder for governments to get away with abusive behavior, why would the intangible benefits of ratification be worth that cost? If, in contrast, ratification creates no costs down the road, why would actors that care about human rights

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9 Goodman and Jinks (2004) emphasize that it need not be the case that the ratifying government view the treaty content as valid; rather, it has only to understand that the reference group values the treaty content.  
10 As stated earlier, this could – alternatively – be taken as supporting evidence for the materialist logic. As Goodliffe and Hawkins (2006) note, both theories make the same prediction.
praise such cheap talk? Nielsen and Simmons (2015) find no evidence that HRA ratification systematically increases praise or reduces criticism.

A third perspective focuses on the *domestic* purpose(s) that HRA ratification can serve. Ropp and Sikkink (1999) were perhaps the first to note that governments often commit to these agreements when they are making other minor moves to ‘open up’ the political space at home. Seen from this viewpoint, ratification is part of a constellation of relatively costless ‘cosmetic changes’ that autocratic governments take when they are trying to stave off pressure for further reform. Similarly, Vreeland (2008) sees ratification as minor but nonetheless meaningful way for leaders, who are increasingly under the gun, to quench opponents’ thirst for change. Consistent with this idea, he finds that autocracies that allow multiple parties are more likely to ratify the CAT as compared to those in which power-sharing is not allowed.

This perspective has three main limitations when it comes to understanding HRA ratification. First, it does not account for why many countries ratify even in the absence of a viable domestic opposition.\(^\text{11}\) Cameroon, to take one example among many, was one of the first countries to join the CAT, while a strict ban on opposition parties was in place and none of its neighbors had yet ratified. Second (and conversely), it does not tell us why a number of countries where opposition parties are legal and surviving, if not thriving, refrain from participating in HRAs. Consider Malaysia, where parties have been legal for decades and the opposition is relatively vociferous, as compared to other non-democracies (or semi-democracies). Malaysia has ratified a very limited number of HRAs – only about one in four. It remains a stranger to the CAT, the ICCPR, and the ICESCR, to name a few.

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\(^{11}\) See Conrad 2014 and Conrad and Ritter 2013 for an exploration of why some countries ratify the CAT slowly or not at all, even when opposition groups are viable.
Third, many of the HRAs that governments join are unrelated, or at best marginally related, to the issues that matter most to domestic opposition groups. The latter likely have a direct interest in the entitlements covered by agreements like the CAT and the International Covenant on Civil and Political Rights (ICCPR). In contrast, better protections for children, persons with disabilities, and/or migrant workers are rarely at the top of opposition parties’ list of demands. It is hard to believe that ratification of treaties in these areas serves as a tactical concession to domestic critics.

Hollyer and Rosendorff (2011a, 2011b) also emphasize domestic politics, but with a very different interpretation of its relevance for HRA ratification. They argue that participation in these agreements is a useful tool for the most abusive autocrats, who aim to signal to domestic audiences just how willing to repress they are. Ratification, the logic goes, inflicts punishment on leaders who repress and later lose office. Only authorities who place high value on maintaining power and are willing to abuse rights if necessary will make such international legal commitments (Hollyer and Rosendorff 2011a: 277). Consistent with this argument, they find, among autocracies, that eventual CAT participants have higher torture rates than those that never join. Participants also survive longer in office.

At the heart of Hollyer and Rosendorff’s (2011a, 2011b) argument is the proposition that ratification increases the cost of repression to leaders if they lose office. This is plausible (though still debatable) for the CAT, whose universal jurisdiction provision allows perpetrators to be arrested and prosecuted in any member-state – and not only where the abuses took place. It was this provision that allowed Augusto Pinochet’s pathbreaking arrest in the UK, on the basis of a Spanish arrest warrant, for torture
committed in Chile (Goodliffe and Hawkins 2006). However, universal jurisdiction is extraordinarily rare in the international human rights regime, in two regards. First, very few HRAs\textsuperscript{12} include such provisions in the first place. Second, even those agreements that include these clauses rarely see them activated (Slaughter 2004). Consequently, Hollyer and Rosendorff’s (2011a; 2011b) approach is unlikely to give us much leverage in understanding HRA ratification more broadly. Most of these agreements simply do not generate significant international putative costs.

In summary, I argued in this section that the existing literature is either of limited use or only gets us partway toward explaining autocrats’ ratification of most UN HRAs. The evidence of material or intangible international rewards for ratification is fairly limited. While some countries do appear to join out of a desire to blend in (with motivations that may be instrumental, social, or identity-based), many hold out. Still others join in the absence of such pressures. The view that ratification is a concession to domestic critics gives us some leverage, but why do many countries participate even in the absence of viable internal pressure, and why do those under such pressures sometimes refrain from participating? Finally, it is difficult to map the argument that the nastiest governments use HRAs to convey their type onto the typical HRA. Most of these accords do little or nothing to make international punishment more likely or more painful if a leader is ousted.

3. Delving Deeper into the Domestic Law and Politics of Human Rights Agreements

This article views ratification as both a political and a legal decision. It is political because the decision to submit these agreements for approval lies in the hands of leaders –

\textsuperscript{12} In the Database, only the Geneva Conventions and the CAT contain a universal jurisdiction provision. In the quantitative analyses, I conduct robustness checks without these agreements to confirm that the results are not driven by these exceptional agreements.
usually heads of state, often but not always in consultation with legislative authorities (if they exist). If we believe that leaders are interested in maintaining office, then it follows that they will use the ratification decision to their political advantage if at all possible, weighing the benefits it creates against the costs it might incur. Treaty participation is also a legal decision. It is, as discussed earlier, one of the most important steps a state can take in international law (Simmons 2009). As Powell and Mitchell (2007) and Mitchell and Powell (2011) have shown, the domestic legal context in which leaders and governments operate varies quite notably from country to country. We need to look inside these legal systems to understand better when and why some countries participate in HRAs, whereas others do not.

The notion that leaders take on international legal obligations when it brings them political benefit (as compared to the costs) is not particularly controversial. Nor is the premise that domestic legal systems can affect this decision-making as well (Powell and Mitchell 2007; Mitchell and Powell 2011). Indeed, other studies have focused on such mechanisms in the HRA arena and beyond (c.f., Conrad 2014; Conrad and Ritter 2013; Hollyer and Rosendorff 2011a, 2011b; Hong 2016; Lupu 2015; Simmons 2009; Risse and Sikkink 1999; Risse et al. 2013; von Stein 2016; Vreeland 2008), and where appropriate, this article draws from those insights.

My approach also does not deny that leaders and governments face international pressures to ratify these agreements. Indeed, one need only to consult the websites of influential international nongovernmental organizations (INGOs) such as Amnesty

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13 This is a common and not particularly controversial assumption. See, among many others, Bueno de Mesquita et al. 2005.
14 This is a decidedly rationalist view of international legal decisionmaking. I would appreciate feedback on whether I need to engage more with alternative approaches (e.g., norm-based, socialization-based, etc.).
International and Human Rights Watch to see that ‘ratification campaigns’ are alive and well. The existence of pressure from other governments is also undeniable (Oberdörster 2008). These international pressures can be important in pushing governments to join these agreements (Goodman and Jinks 2004; Simmons 2009; Wotipka and Ramirez 2008; Wotipka and Tsutsui 2008), but they do not tell the whole story. Rather, I argue, the decision also hinges crucially on what is happening in the domestic arena.

Political Incentives

On a basic level, all leaders – whether they face competitive elections or not – encounter two competing incentives when considering taking on an international human rights obligation. On the one hand, it is generally believed that joining these agreements generates good press (Cole 2005; 2009; Hafner-Burton and Tsutsui 2005; Hathaway 2007 Simmons 2009) and can help to appease domestic critics (Conrad 2014; Risse and Sikkink 1999; Vreeland 2008).\(^{15}\) I refer to these as \(B\) (benefits). On the other hand, leaders have to worry that these legal obligations might be used to hold them accountable. I refer to these potential costs as \(C\). If domestic institutions are robust enough, the potential of enforcement can deter countries that anticipate difficulty complying from ratifying at all (Conrad 2014; Hathaway 2007; Powell and Staton 2009). In contrast, when these domestic institutions are relatively sclerotic – as is often the case in autocracies – leaders have to worry less about the possibility of enforcement (von Stein 2016).\(^{16}\) In a nutshell, although

\(^{15}\) Nielsen and Simmons 2015 find little evidence that there are systematic international rewards or praise for ratification, but they do not explore international ratification ‘campaigns.’ Additionally, they suggest that the rewards for participating in these agreements might be domestic. Another chapter in this project explores domestic good press surrounding IHRA participation.

\(^{16}\) This is a spectrum, rather than a dichotomy. Democracies tend to have more robust domestic mechanisms of enforcement (courts, civil society protections, etc.) than do autocracies, but there is a great deal of variation within the autocratic and democratic ‘worlds.’
all leaders consider the relationship between $B$ and $C$ when contemplating ratification, the probability that $C$ is realized is typically lower in autocracies.

Autocracies may place a greater emphasis on/have a greater need for $B$ as compared to democracies as well. It is well established in the comparative politics literature that autocrats face a serious informational problem: without the mechanisms of free and fair elections, they simply do not know the distribution of their support in the population or among smaller groups with the power to overthrow them (Wintrobe 2000). The thin informational environment also makes it difficult for citizens to know the true extent of political, social, and economic problems (Lohmann 1994; Wintrobe 2000). Autocrats also face a fundamental challenge of costly rule. They can buy support, or repress opposition, but both are costly to maintain (Bueno de Mesquita et al. 2003). Repression in particular incentivizes citizens, including potential opponents, to overstate their true level of support. As a result, the autocrat knows less about what citizens truly think of him/her, and the more reason he/she has to fear them (Wintrobe 2000).

Short of holding democratic elections (Magaloni 2010), one solution to these problems is to take small steps to open up the political space, such as allowing free(er) debate or liberating a limited number of political prisoners. Tactics such as these are risky in at least two respects: the autocrat may not like what he/she learns from this process about his/her true level of support; and, having allowed free debate and set a few dissidents free, he/she may find it hard to control further internal liberalization (Risse, Ropp, and Sikkink 1999). Given an inch, opponents often push for another inch … or a mile.

For this reason, it is not uncommon for autocrats to employ alternative ‘positive’ tactics that they perceive as carrying a smaller potential to unleash strong forces of change.
Wintrobe (2000: 37) argues that one such mechanism for generating loyalty/popularity (or, at least, for reducing negative assessments) is engaging in activities that make leaders look good, generate good press or even good will, and/or cultivate an air of legitimacy. This chapter argues that ratification is one such maneuver. The idea that ratification brings good press and even legitimacy is prevalent in the literature. Hathaway (2002; 2007) is perhaps most often associated with the idea with the idea that ratification brings rewards for taking a pro-human rights position, but Hafner-Burton et al. (2008), Goodman (2002), and Goodman and Jinks (2004) similarly argue that participating in these agreements can confer legitimacy benefits. Wotipka and Tsutsui (2008) also emphasize the legitimacy gains that ratification can produce.

Where does the good press itself come from? One answer is that the regime itself generates this information, publicizing the allegedly meaningful steps it has taken to ensure the rights of its citizens. This kind of maneuvering is hard to do (without criticism for failing to deliver on promises) in systems with an independent press, but when the press is censored or outright controlled, the government has a much stronger reign over the public portrayal of its actions (Hollyer et al. 2015). A second source is NGOs and international organizations themselves. These groups have ongoing 'ratification campaigns,' and even a cursory look at their websites shows that they publicly applaud ratification when it happens. Note that this is distinct from, but not necessarily contrary to, Nielsen and Simmons's (2015) findings that ratification does not systematically ramp down NGO criticism or ramp up praise from Western governments.

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Is the autocrat’s intended audience domestic or international? As discussed earlier, scholars such as Vreeland (2008) focus chiefly on the domestic incentives, arguing that participating in treaties like the CAT can provide a minor but nonetheless meaningful way of quenching internal opponents’ thirst for reform. The timing of Chile’s participation in that agreement, for example, certainly seems to fit this story: six months after (re)legalizing parties and amidst massive pressure from domestic groups, President Pinochet signed the accord in September 1987 and transmitted it to the legislative junta, which ratified a year later – just five days before the plebiscite that led to the regime’s ouster. Yet there is just as much evidence that the audiences are international. In the Chilean case, overseas groups were relentless in their campaign to end torture in Chile and to push the country into the CAT regime (Hawkins 2002). And Risse and Sikkink (1999), who were perhaps the first to coin the term ‘tactical concessions,’ argue that these moves are often made chiefly to appease international critics.

In reality, the target audiences may be domestic, international, or – increasingly likely under globalization – both. The core idea, then, is that certain autocrats need – for domestic political reasons – the good press that HRA ratification can generate. But if that is the case, why do some autocracies participate so heavily in this body of international law, whereas others hold out? What does it tell us about the timing of ratification in particular countries? Not all autocrats need these tools. Instead, the ‘need’ for these agreements depends on the political situation at home. Ratification of HRAs is useful to leaders who need to fabricate good press/legitimacy but has limited domestic means with which to do so.

18 See also Conrad and Ritter 2013; and Conrad 2014.
19 Ley Orgánica Constitucional de los Partidos (n° 18603), Biblioteca Nacional del Congreso de Chile, March 23, 1987.
This need tends to be highest when a leader’s authority and legitimacy are in question. As I argue more thoroughly in chapter X, this is most likely to be the case in two situations: (1) when a leader or government first comes to power and his/her policy stance and method of governance has yet to be established; or (2) when a leader is about to lose power (see also Hong 2016; Simmons 2009; and Smith 2016). The second part of the sentence in clause (1) is important. Although leadership change in some countries – autocracies and democracies alike – entails a fundamental shift in policy, this is not always the case. Brazil’s military junta is a good example: leaders were replaced at regular intervals through a system of term-limits, but the underlying support coalition and resulting policies were largely the same from president to president. As a result, the only truly ‘new’ period of office was that of Castello Branco after the coup. Following Mattes et al. (2016: 2), “foreign policy change can occur after any leadership change but should be particularly likely when the new leader represents different domestic groups than her predecessor.”

Legal Context

Although much of the HRA literature has emphasized the relative paucity of robust judicial enforcement mechanisms in many (though not all) autocracies (Hathaway 2007; Conrad 2014; Conrad and Ritter 2013; von Stein 2016), it has not delved much into the legal principles that underpin these countries’ judiciaries. One finding to emerge from a number of studies is that countries with common law legal heritages are generally wary of participating in HRAs (Goodliffe and Hawkins 2006; Simmons 2009; von Stein 2016). This

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20 Note to conference participants: these ideas need further development, but I lack the space to do so here. I develop these in another chapter, but would certainly appreciate ideas (cites, criticisms, etc.) even though I do not provide you with a great deal of information here!
section draws from that work, but deepens it by pointing our attention to the distinctiveness of Islamic law systems. Indeed, awareness of the main tenets of Islamic law is particularly important in understanding why some of these countries are less prone to participate in HRAs even when leaders and their support coalitions change.

Powell and Mitchell (2007) and Mitchell and Powell (2011) understand the world as having three major legal systems: common, civil, and Islamic. There are, of course, hybrids and countries that do not readily fit into any of these categories. The principle of *stare decisis* (“stand by things decided”) forms the backbone of common law systems: judges are bound by precedents established in previous decisions and must consider whether their rulings are consistent with existing case law. No such obligation exists in other legal systems (Powell and Mitchell 2007). This is important for any area of international law, but perhaps most of all for areas that pertain to the intimate question of how governments treat their citizens (Simmons 2009). There is a much more real possibility in common law systems that judges will apply treaties (or, for that matter, any legislation) in unintended ways (Goodliffe and Hawkins 2006). Courts can draw from other rulings, and – once made – those rulings can acquire the status of law and affect subsequent decisions. This explains why common law countries are typically much slower to ratify HRAs or refrain from participating altogether.

The HRA literature has paid much less attention to the uniqueness of Islamic law states. This is a blind-spot, as an understanding of some core principles enshrined in these countries’ legal systems provides important insight into why they ratify HRAs so infrequently. For some, the very notion that human beings have entitlements – as opposed to duties owed to God – is problematic; in other words, from this perspective, there is an
inherent conflict between human rights and Islam (Baderin 2003). There is no doubt that certain rights, particularly those in the realm of women’s equality, are particularly problematic for Sharia law countries. But even setting aside that question – which is fundamentally about the congruence between what a treaty pre/proscribes and what state practice looks like – there are other reasons why Islamic law is likely to throw the brakes on HRA ratification.

The first of these is *bona fides*. As in civil law jurisdictions, Islamic law requires parties to negotiate contracts in good faith. Historically, there has been no such obligation under common law, although courts’ views on this are shifting and many common law courts attempt to mitigate this problem via legal doctrines that limit the absoluteness of contractual rights/duties (Mitchell and Powell 2011). Good faith is one of the most important premises of Islamic law, and it is no surprise why: lying, fraud, and other deception is contrary to the Koran. This creates an obligation on Islamic law states not to make promises – domestically or internationally – that they have no/little intention of keeping.

Second, and equally if not more important in Islamic law, is the principle of *pacta sunt servanda* – “agreements must be kept.” This premise underlies all of international law (von Stein 2013), but it carries particular force in the domestic systems of Islamic law states. Why? Because, ultimately, “it is God Who is the witness of all contracts” (Rayner 1991, 100, cited in Powell and Mitchell 2007). This creates an obligation to respect contracts concluded with Muslims and non-Muslims alike (Mitchell and Powell 2011). All legal obligations have a sacred component in Islamic law. This stands in contrast to the purely secular nature of legal obligations in common/civil law systems.
Finally, we should consider the *clausula rebus sic stantibus* ("things thus standing"), which attempts to delineate the conditions under an agreement is no longer binding. Under customary international law as well as the Vienna Convention on the Law of Treaties (article 62), a country may only consider itself no longer legally bound if three conditions are met: (1) a fundamental, unforeseeable, change of circumstances has taken place; and (2) those circumstances are essential to the basis of consent to be bound; (3) and the change radically transforms the extent of the obligations. In practice, this clause is rather difficult to define (Mitchell and Powell 2011), and international jurisprudence on this question continues to evolve. However, one important thing is clear: Islamic law states tend to take this principle more seriously than do civil and common law systems (Powell and Mitchell 2007).

To summarize, the possibility that a court might interpret an HRA in unintended ways, and perhaps establish a precedent, tends to make leaders of common law countries more wary of ratifying HRAs than would otherwise be the case (Simmons 2009). Islamic law countries are also likely to be rather hesitant. In the first instance, depending on the issue-area, their human rights practices may deviate more from the norms enshrined in an HRA. Additionally, every step of the way, their legal system incentivizes them to make promises they intend to keep – and can be reasonably sure they will be able to respect into the future. It is no doubt for these reasons that Islamic law countries lodge such heavy reservations to agreements such as the Convention on the Elimination of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (Koremenos 2016).
4. Data and Modeling

To put the ideas developed above to the test, I draw from a dataset of all (ratifiable) UN HRAs created since World War 2. While <author cite> provides a more thorough discussion, it is nonetheless important here to briefly address two questions. First, why look at all HRAs together, rather than exploring them individually or in small numbers, as has typically been the case? While there is no doubt that each agreement has its own story and dynamic and is worth exploring in its own right, the HRAs explored in this article are similar enough that it is sensible to explore them together. This article joins many others in viewing aggregation an important way of addressing some of the literature’s most pressing questions (Böhmelt 2014; Hafner-Burton et al. 2015; Lupu 2016). Most notably, where most research focuses on a handful of prominent agreements like the CAT and the ICCPR, looking to all UN HRAs enables us to gain a more complete and generalizable view of how these accords work as a whole.

Second, how do we ensure that the analysis focuses on HRA commitments with low sovereignty costs, as discussed earlier in this article? I do this in two ways. First, I include all HRAs that have no provisions allowing citizens to file complaints with the UN. 32 of the 40 agreements fit this description. Second, with the eight agreements that do have these mechanisms, I take a nuanced approach. I include the ratification if it did not concurrently (or within the same year) involve acceptance of an individual complaint provision. For instance, Togo ratified the Convention on the Elimination of Discrimination Against Women

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22 Large-N approaches cannot capture these in any depth, but they can explicitly model them.
(CEDAW) in 1983, at which point an individual complaint provision did not exist.\textsuperscript{23} A similar but slightly different example is the ICCPR, whose individual complaint provision was available from the treaty's year of creation, 1966. Togo ratified the ICCPR in 1984 but did not accept the individual complaint option until 1988. I include the 1984 ratification but take Togo out of the data after that date for the ICPR. This approach acknowledges that there is important information to be gleaned from states' decisions to accept low-sovereignty-cost options even when higher-sovereignty costs are, or later become, available.

I start with some simple graphical representations. Figures 2a and 2b display Kaplan-Meier survival curves for all the agreements combined: these curves simply tell us the probability that a country remains a non-ratifier as a function of the number of years since an agreement's creation.\textsuperscript{24} I employ the CHISOLS conception of what constitutes a 'new' leader – he/she must draw from a different societal source of support than his/her predecessor (Leeds et al. 2016). For example, when Raúl Castro assumed the Cuban presidency in 2008, this was a leadership change, but the younger brother draws his support from the same societal groups that his brother did. Hence I do not expect this to be a 'change' that would require a leader to establish legitimacy/good press.

\textsuperscript{23} CEDAW's individual complaint mechanism came into existence in 1999. Acceptance of the new provision among countries that had already ratified was not automatic.

\textsuperscript{24} This is a fairly standard approach in the HRA literature, although one might debate whether it is more appropriate to look at the number of years since a leader has been in office on the x-axis. (I do this in the appendix). The potential problem with such an approach is that it more or less gives a treaty a 'clean slate' each time a new leader (as defined by CHISOLS) comes to office. From an international law perspective, this is not really how treaties work. Additionally, looking at the number of years since taking office can be problematic because many governments are short-lived.
Figure 2a shows clearly that new leaders (as defined by CHISOLS) in their first year in office are much more prone to ratify HRAs than are other leaders. This difference is large and always statistically significant. Figure 2b is somewhat more mixed. Leaders in their last year in office do ratify more, on average. However, this difference is not large for ‘young’ agreements (or countries) – indeed, for the first decade or so of an agreement’s (country’s) life, there is no difference in the two groups’ propensity to ratify. As I show later, this reflects two considerations. First, of course, governments sometimes ratify agreements for reasons that do not have to do with their tenure in office. This is not surprising. Second,

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25 I exclude from Figure 2a leaders in their last year of office. Further tests show that leaders in their first year are typically significantly more likely to ratify than are leaders in their last year in office. (Log-rank test of equality of survivor functions \( p = .013 \)).

26 Log-rank test of the equality of survivor functions \( p = .033 \).
some autocracies are very long-lived. It is important to put the data into a more sophisticated model that accounts for these considerations.

In Figures 3a, b, and c, I explore ratification as a function of a state’s domestic legal system. The comparison category for all figures is civil law countries, whose legal systems I expect to place the fewest limitations on ratification. Some legal systems are best classified as ‘mixed’ because they combine elements of more than one approach to the law. For instance, the Nigerian legal system draws from common law inherited from British colonialism with Sharia law (as well as some ethnic customary international law) (Adeni 2007). Similarly, although the Mauritanian constitution recognizes Islam as the ‘sole source of law’ (Constitution de la République islamique de Mauritanie 1991), in practice, the judicial system also draws heavily from French civil law.

Figure 3a shows clearly that common law systems ratify much more slowly (or not at all) as compared to civil law jurisdictions. The same can be said for Islamic law states as compared to civil law countries. Mixed legal systems generally also take longer, although
this comparison is the least obviously different. Overall, Figures 3a, b, and c provide important preliminary evidence that a country’s legal system has important bearing on its ratification decision.

I now proceed to more sophisticated statistical analysis. Following most of the literature on treaty commitment, I use event history analysis, which models the ‘spell’ (in our case, number of years) until the event of interest (ratification) occurs. The typical approach has been to start counting in the year the agreement opened for ratification (or independence, whichever is later). I follow this convention. The data consist of multiple observations per country: up to 64 years per country (1948 to 2011). We also have up to 40 agreements, subject to the provisions outlined in the previous paragraph. The outcome I analyze here concerns events – HRA ratifications – that have two main layers of interdependence. First, states are heterogeneous: their institutions adopt distinct rules; their cultures differ; their underlying commitment to human rights principles varies, and so on. Observed covariates may not control for all this heterogeneity. There are many explanations for these differences, and we can measure some with covariates. Others are harder to operationalize but nonetheless influential.

Second, prior events affect subsequent events. When a new HRA opens for ratification, it is rarely a ‘clean slate.’ Rather, experiences with prior treaties affect perceptions of new treaties in ways that are sometimes hard to capture with covariates. Nor are agreements static over time. For instance, the introduction of a new HRA into the system might invigorate an existing agreement – or, perhaps, render it less appealing. Although there is no legal requirement that a country ratifying one agreement ratify the others, they are often linked in NGO ‘ratification campaigns’ and by international organizations. Hence,
ratifications are likely linked across agreements over time – and measured covariates do not always capture these dependencies.

The first problem is one of heterogeneity – the timing of events is correlated within subject. States may be more likely to experience events “due to unknown, unmeasured, or unmeasurable effects” (Box-Steffensmeier and De Boef 2006: 3518). The second problem is one of event dependence: observed ratifications are linked to other ratifications in time. Given the complexity of treaty ratification decisions, it is highly plausible that the data-generating process results in heterogeneity and/or event dependence. Using standard parametric and semi-parametric models in such a context will provide an incomplete and biased assessment of the dynamics (Box-Steffensmeier and De Boef 2006; Box-Steffensmeier et al. 2007). The combination of heterogeneity and event dependence is particularly problematic (Box-Steffensmeier et al. 2007: 245).

Box Steffensmeier and colleagues’ approach to this double-threat is twofold (Box-Steffensmeier and De Boef 2006; Box-Steffensmeier et al. 2007). First, the conditional frailty model includes a random effect (a frailty) per unit observed (here, countries) that allows the underlying propensities (here, ratifications) to vary. Put simply, the frailty allows countries to be different for idiosyncratic reasons. Second, the conditional frailty approach models dependence across events: each agreement is allowed its own baseline hazard, by stratification on agreement. As a whole, this model is well-suited to my data because it recognizes the underlying variability in states’ propensity to ratify while also taking account of the (likely) interconnectedness of ratifications over time.
There is a wide range of possible independent variables to use. I focus on those that appear the most consistently and/or seem to be important controls vis-à-vis the core theory-testing variables that interest me. The main independent variables are:

- First year in office (Mattes et al. 2016);
- Last year in office (Mattes et al. 2016);
- Legal system (Mitchell and Powell 2007; Powell and Mitchell 2011);
- A general measure of human rights practices (Fariss 2016);\(^{27}\)
- Regional ratification (the percentage of states in the region that have ratified the treaty in question, on a yearly basis);
- HRA embeddedness (the percentage of all other HRAs that a country has ratified, on a yearly basis);
- Issue-area embeddedness (the percentage of all other HRAs in the issue-area that a country has ratified, on a yearly basis);
- Major, minor, democratic transition (Marshall et al. 2010);
- Year of observation;
- Plus numerous alternate variables, in robustness checks: second year in office (Mattes et al. 2016; second-to-last year in office (Mattes et al. 2016); regime type (military, monarchy, personal, party, as defined by Geddes et al. 2014); Polity2 score (Marshall et al. 2010), an alternate gauge of leadership change (Goemans et al. 2009), judicial independence (Coppedge et al. 2016), party ban status (Coppedge et al. 2016), and

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\(^{27}\) This should not (necessarily) be taken as a gauge of human rights compliance. The treaties in this dataset are very diverse in what they require of states. Nonetheless, I include this variable in an effort to control for the possibility that differences in overall human rights practices explain ratification rates.
ratification hurdles (Simmons 2009), new state (indicating whether a state came into existence in the past three years).

5. Findings

Table 1 reports the results of a statistical analysis using the conditional frailty model (Box-Steffensmeier and De Boef 2006; Box-Steffensmeier et al. 2007). The first model considers only whether ratification is any likelier in the first and last years in office; the second model looks at whether any differences are palpable in the second, and second-to-last, years in office. Figure 4 displays the results graphically.

The first finding to emphasize here is that leaders who are new to office (as defined by CHISOLS) are particularly prone to ratify – even when controlling for a variety of other considerations. This finding was highly statistically significant in every model I ran, and robust to the inclusion of each alternate independent variable listed in the ‘alternates’ section above. Model 2 shows that governments in their second year in office are also more likely to ratify – the result falls just short of standard levels of significance (p = .053). Overall, there is very strong support for the idea that new leaders drawing from a new societal support basis ratify very readily. A robustness check confirmed that simply being a new leader is not enough: I added to model 1 a variable indicating whether ARCHIGOS classifies the leader as new, and it was neither large nor statistically significant.

Leaders in their last year in office are also significantly more likely to ratify HRAs; however, this relationship does not hold in the second-to-last year in office. The finding that leaders in their last year in office ratify fairly ready is worth contemplating a bit further, as it has three potential interpretations. One possibility is, as I have suggested, that these leaders are under pressure and use ratification as part of a suite of maneuvers to gain
Table 1. Ratification of UN Human Rights Agreements

<table>
<thead>
<tr>
<th>Model 1</th>
<th>Model 2</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>First year in office</strong></td>
<td><strong>Second year in office</strong></td>
</tr>
<tr>
<td>.604*** (.108)</td>
<td>.629*** (.108)</td>
</tr>
<tr>
<td><strong>Number of ratifications</strong></td>
<td>1,519</td>
</tr>
</tbody>
</table>

***p < .001 **p < .01 *p<.05. Standard errors in parentheses. Results of conditional frailty model of ratification of 40 human rights agreements. The list of agreements is at [www.humanrightstreaties.org](http://www.humanrightstreaties.org).
good press in the hope of prolonging their rule. If this is true, we are in some sense observing the failed attempts – the governments that ratified but nonetheless lost office. What this modeling approach does not pick up is the ‘successful’ cases where ratification (most likely combined with other efforts) generates sufficient good press and legitimacy and staves off defeat. In the future, it would be useful to develop a strategy for identifying governments that are in danger of failing, perhaps along the lines of Conrad and Ritter’s (2013) approach.

Two other interpretations of the finding that ratification rates are higher in last years in office are possible. One, in line with Moravcsik’s (2000) ‘lock-in’ theory, would suggest that leaders on their way out the door are attempting to tie the hands of future governments. The problem with that argument in this context is that the HRAs under consideration are quite ‘soft.’ Tying hands requires some ex ante or ex post cost, and it is not clear that these agreements are capable of accomplishing either unless a substantial domestic transformation ensues. A second possibility is that these leaders understand that they are on their way out but see little cost to a ‘legacy ratification’ (Simmons 2009). Whether one thinks this explanation works, for instance, in the case of Chile’s CAT ratification depends crucially on what junta members thought Pinochet’s chances in the plebiscite were. Ultimately, it would be interesting in future work to attempt to parse these stories out.

The results also demonstrate that legal systems matter. Consistent with previous research (Goodliffe and Hawkins 2006; Simmons 2009; von Stein 2016), common law systems ratify more slowly as compared to civil law systems. But Islamic law countries are even less prone to ratify. This is important, as it helps to explain why a number of countries whose political imperatives push in the direction of ratification are wary of ratification.
Mixed legal systems tend to be less prone to ratify as well, but this is a diverse group of countries, so it is not highly surprising that their behavior is not distinguishable at standard levels from that of civil law countries.

For the most part, the other variables affect ratification as expected. Autocracies with better human rights practices are more prone to ratify, as are those whose regional peers are ratifying en masse. Embeddedness in the HRA in general also spurs governments to ratify more agreements, but – interestingly – embeddedness in a particular issue-area does not. Countries that are about to undergo a major democratic transition are also more likely ratify, but those on the cusp of a minor democratic shift are not. Including the alternate variables discussed earlier did not have a notable impact on the findings. The tests of model fit also indicate that the conditional frailty model is superior to other modeling approaches. Θ is large and likelihood ratio tests show that using this type of model significantly improves model fit. Not controlling for the types of heterogeneity discussed earlier would result in bias and inefficiency.

6. Conclusion

This chapter has argued that an important key to understanding when and why autocrats ratify HRAs lies inside the autocratic state. Leaders in need of good press and symbols of legitimacy – i.e., those who are new to office and do not have a pre-established reputation or track record – are particularly likely to ratify these agreements. Leaders who are close to losing office also ratify readily. Although that latter observation could be consistent with a few causal stories, one of these is a process whereby autocrats are attempting to gain good press in order to prolong their tenure. Overall, the findings strongly indicate that leaders use HRA ratification to their political benefit.
At the same time, the analyses also provide strong evidence that legal heritage matters and can put the brakes on treaty ratification in important ways. The finding that common law countries are typically slow to join is consistent with previous work that focuses on one or a few HRAs. More novel is the finding that Islamic law principles put a palpable damper on the drive to accept HRAs as legally binding. This finding also has an important – and to my knowledge, untested – implication for compliance. The sanctity of *pacta sunt servanda* and the limited scope for *clausula rebus sic stantibus* to offer an escape from obligations in Sharia law should, in theory, mean that Islamic law states are very good at keeping the international human rights promises they make (accounting, of course, for any reservations they might lodge). I tackle this question in chapter X.

In addition to shedding important light on the question of when/why autocrats ratify HRAs, this chapter makes two other contributions to the literature. First, it offers the first global test of ratification of ‘soft’ HRAs, which make up the vast majority of the body of international human rights law. Previous approaches usually proceed on a treaty-by-treaty basis, or explore a handful of ‘hard,’ or high-profile accords. Second, this chapter uses a model specifically intended for data with this structure. I would argue that this is the most appropriate method for modeling multiple ratification, as it accounts for multiple sources of heterogeneity while also allowing each treaty to have its own underlying dynamic.

What we still don’t know is what, concretely, autocrats get out of ratification. I have argued that this act is helpful in generating good press and/or establishing legitimacy, but we have yet to see any hard evidence that accepting HRAs as legally binding actually generates much fanfare. Nielsen and Simmons (2015) do not find much support for this in the press or in Western countries’ discourse. The next chapter argues that answers can be
found in two places: the NGO community (both domestic and international) and the domestic press.
References


Smith, Alastair. 2016. Leader Turnover, Institutions, and Voting at the UN General Assembly. *Journal of Conflict Resolution* 60 (1) 143-163.


Appendix

Alternative Figure 2a. Total Number of HRA Ratifications as a Function of Number of Years Since Taking Office