Chapter 1: Literature Review

Introduction

When Vaclav Klaus, the newly elected Prime Minister of the Czech Republic ratified the First Optional Protocol to the International Covenant on Civil and Political Rights in February of 1993 his citizens were awarded a relatively unique set of rights within international law. After exhausting all domestic remedies, the Czech people now possessed the ability to take complaints of human rights abuses directly to a global monitoring body and file a complaint against their government. Ratification of global human rights agreements are generally considered little more than cheap talk by international relations scholars and yet Klaus’ decision to ratify the Optional Protocol to the International Covenant on Civil and Political Rights left his government open to the potential for a very public shaming at the hands of his citizens.

The domestic distribution of rights and obligations inherent in the ratification of this or any other global human rights treaty makes the initial decision on the part of state leaders to ratify puzzling. Ratification of human rights treaties entails new obligations for the state such as requirements for respecting civil and political rights, prohibitions on policies of discrimination, or eliminating torture as a political tool. Comparatively, citizens are the beneficiaries of new rights. In this way human rights treaties award rights to citizens against their governments, creating new obligations for the state and new benefits for the citizens. Despite the major drawback of ratification from the perspective of state leader human rights treaties at both the global and regional levels are becomingly
an increasingly common phenomenon.\(^1\) (See Figure 1) Why are state leaders increasingly willing to cede policy autonomy and commit to these institutions?

Andrew Moravcsik’s (2000) novel explanation for ratification of the European Court of Human Rights (ECHR) suggests that states have an interest in limiting the policy options of future governments that may not share their policy preferences. The benefit of committing to a multilateral human rights agreement from this perspective is the reduction in future policy uncertainty. However, recent work by Beth Simmons challenges the applicability of Moravcsik’s theory outside Western Europe.\(^2\)

A competing approach to explaining ratification of human rights treaties suggests that norms of behavior emerge through social interaction between states.\(^3\) Unlike

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\(^1\) Hathaway 2002, reviews the increase in the emergence of global human rights conventions in the last thirty years. Regional human rights regimes have developed in: Western Europe with the adoption of the Convention for the Protection of Human Rights and Fundamental Freedoms in 1950 which also created the European Court of Human rights; Latin America with the introduction of the American Convention on Human Rights in 1969 which created the Inter-American Court of Human Rights; and to a lesser degree in Africa with the adoption of the African Charter on Human and Peoples’ Rights in 1981 which created the African Commission.


\(^3\) Katzenstein (1996), 19-32.
Moravcsik’s approach, which focuses on the role of future domestic uncertainty in compelling state ratification, the normative approach focuses on evolving conceptions of appropriate behavior. As states interact with one another and attempt to define their interests, their preferences are influenced by the policies and preferences of other states. This suggests that over time states will increasingly look like one another with respect to human rights policies. For Example, Ramirez et al. (2002) suggest that increasingly there is a proper human rights profile that states are adopting. This profile includes ratification of a given set of human rights treaties and participation in a given set of human rights organizations and conferences. Yet, patterns of ratification of human rights treaties in recent years conflict with the normative expectation that states will increasingly adopt similar policies. Rather, patterns of ratification suggest the opposite; states, particularly within the same geographic region are approaching human rights obligations in distinct ways.

Others argue that state accession to international institutions does not result in the fundamental alteration of state policy. Where the policies of international institutions are consistent with a state’s own, the state will recognize this and accede. Where the policies of the institution differ markedly from those of the state, the state will simply refrain from participating. Put simply, state policies are unaffected by participation in a given institution because states only participate in institutions that do not require substantial policy departures. The essence of this critique is that international institutions

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5 For an overview of the regional trends in ratification of human rights treaties see the following section.
6 For a discussion of this perspective see Downs, Rocke and Barsoom (1996).
7 Ibid.
do not matter for any fundamental outcomes in international politics because they reflect, rather than challenge, state interests.\(^8\)

Yet instruments such as the Optional Protocol to the International Covenant on Civil and Political Rights, adopted in 1966, give individuals the ability to file claims of human rights violations against their own governments before an independent arbitrator. Since the adoption of the Optional Protocol to the ICCPR, states parties created three other bodies to give individuals standing in international law through individual petition mechanisms. If governments only accede to international institutions with which they are de facto compliant, how can scholars explain government ratification of individual petition mechanisms and the subsequent claims filed against these same governments? The body of case law developing directly from claims filed against states by their citizens through both individual petition mechanisms and regional human rights courts challenges the assertion that states only ratify agreements with which they are de facto compliant.\(^9\)

In the following section I outline the empirical puzzle of my dissertation. The second section, surveys the relevant literature for this project, including literature regarding why leaders ratify human rights treaties, explanations for regional variations in state policies and links between regionalism and national human rights policies. Section three presents a working definition of region. The fourth section discusses the various forms that the dependent variable, human rights institutions can take in the international system. Section five presents the plan of the dissertation.

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\(^9\) The comprehensive list of cases from the ECHR is available at: www.echr.coe.int/Eng/Judgments.htm. The comprehensive list of cases from the IAHCR is available at: www.oas.org/main/main.asp?sLang=E&sLink=http
Empirical Puzzle

This project is based on two related empirical puzzles. First, absent the inducement of explicit state benefits, what explains the increasing rate of ratification of global human rights instruments? Second, how do observed regional ratification patterns within global human rights instruments help to explain the decision to ratify?

Since 1945 more than 100 global human rights treaties have been established.\textsuperscript{10} These treaties cover a wide range of issues from the rights of children engaged in armed conflict to the prevention of apartheid in sports.\textsuperscript{11} Unlike other types of multilateral agreements, human rights agreements offer no clear collective benefits for states. Instead, both the costs and benefits of global human rights agreements are concentrated within the borders of the state. State leaders lose flexibility in domestic policy, while their citizens enjoy new rights. The paucity of benefits makes the sharp increase in the number of human rights agreements in the last fifty years puzzling.

In addition, ratification of these treaties and participation in human rights regimes has followed interesting and often predictable regional patterns. The evidence for regional trends in domestic human rights policies can be found in: 1) the emergence of and participation in regional supervisory mechanisms for the promotion of human rights and 2) patterns of ratification in global human rights treaties.

Europe has the most extensive regional supervisory mechanism for the protection of human rights. Ratification of the Convention on the Protection of Human Rights and

\textsuperscript{10} This number is obtained from the United Nations High Commissions for Human Rights which lists all existing international human rights instruments. This list is available at www.unhchr.ch/html/intlist.htm.
Fundamental Freedoms has become a requirement for membership in the EU. Since 1950, the European Court of Human Rights has exercised oversight of compliance with the European Convention. States and individuals regularly use the Court and it has developed an extensive body of case law since its inception. In 2003 alone, the ECHR decided 703 cases.

Similarly, the Inter-American system of human rights is used by states parties to contest human rights abuses. This system is composed of two pillars: The Charter of the Organization of American States (The Charter) and the American Convention of Human Rights (Pact of San Jose). The latter, makes great strides toward advancing the cause of human rights in the region by creating a regional court, The Inter-American Court of Human Rights. The IAHCR hears cases referred by the Commission that are brought by states parties, individuals, and non-governmental organizations. Individuals cannot petition the Court directly, but rather submit complaints to the Commission which are then forwarded to the Court. Unlike the ECHR, the IAHCR’s path to becoming a legitimate regional court was never a foregone conclusion. Indeed, the IAHCR did not decide a contentious case, Velasquez Rodriguez v. Honduras, until 1981.

Unlike the European and Inter-American human rights regimes, the African system does not possess a regional court. In 1981 the Organization of African Unity (OAU) adopted the African Charter on Human and Peoples’ Rights. The Charter entered into force in 1986. The Charter established a commission aimed at the promotion (rather than protection) of human rights that can accept claims by states parties and non-

12 Baehr 1999, 72.
14 Rules of Procedure of the Inter-American Commission: Article 23
15 On the legitimacy of the IAHCR see Pasqualucci 2003, 331-339.
governmental organizations. While all forty states that are member of the OAU have ratified the Charter, chronic under-funding has significantly hindered the Commission’s ability to promote human rights in the region.\textsuperscript{16} Finally, in February of 2003 member states of the Association of Southeast Asian Nations (ASEAN) met in Manila for their tenth annual Colloquium on Human Rights to discuss a number of issues including the creation of a regional supervisory mechanism for the protection and promotion of human rights. The states failed to make any concrete progress on the creation of a regional supervisory instrument.\textsuperscript{17}

The variations between regional supervisory mechanisms suggest the existence of distinct regional preferences over human rights policies. Western Europeans have made accession to the EU conditional on ratification of the European Convention on Human Rights, suggesting that the protection of human rights is of paramount importance in this region. Ratification patterns within global human rights institutions parallel the trends found among regional supervisory mechanisms. Ratification of the Rome Statute of the International Criminal Court for example suggests distinct regional preferences over ratification.(Figure 2) Western Europe exhibits a 95% ratification rate, while no states in

\textsuperscript{16} For more on the limitations of the African human rights regime see Baehr 1999, 80. See also Steiner and Alston 1996, 689-705.

\textsuperscript{17} Summary Report of the Tenth Annual ASEAN-ISIS Colloquium on Human Rights. Available at: www.siiaonline.org/asean/articles/tenth_asean_isis_colloquium_on_human_rights.pdf
South Asia have ratified.

**Figure 2: Regional Ratification Trends in the ICC**

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<thead>
<tr>
<th>Region</th>
<th>Ratification Level</th>
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<tbody>
<tr>
<td>South Asia</td>
<td>100</td>
</tr>
<tr>
<td>Asia</td>
<td>80</td>
</tr>
<tr>
<td>Middle East</td>
<td>60</td>
</tr>
<tr>
<td>North East</td>
<td>40</td>
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<tr>
<td>East Asia &amp; Pacific Rim</td>
<td>20</td>
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<tr>
<td>Sub Saharan Africa</td>
<td>10</td>
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<tr>
<td>Latin America</td>
<td>5</td>
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<tr>
<td>Eastern Europe</td>
<td>5</td>
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<td>Western Europe</td>
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International relations scholarship suggests that governments should be inclined to participate in international agreements that offer benefits for the state. The benefits need not be tangible to induce ratification - the promise of an important role for the state in the global institution might be sufficient to explain ratification of these treaties. Yet governments are not explicitly offered any benefits when they ratify human rights treaties. Unlike ratification of the WTO, state leaders do not walk away from the ratification table with the explicit promise of lower tariffs. Why then do these leaders continue to ratify global human rights instruments? Is there some implied benefit to ratification that remains unaccounted for? In addition, ratification of global human rights instruments and the creation of local supervisory mechanisms follow distinct regional patterns. How does the regional context influence a leader’s decision to ratify? In the following section I survey the existing literature that attempts to account for ratification of human rights treaties.

**Explanations for Ratification of Human Rights Conventions**
This literature review is divided into two sections. In the first section, I review the literature that addresses my first research question—why do states ratify global human rights institutions. The second section reviews the regionalism literature in an attempt to uncover explanations for regional trends in national human rights policies.

Power and Coercion

For those ascribing to realpolitik, there is little use in attempting to understand why governments ratify human rights institutions. States create, participate in, and comply with international institutions in response to pressure and coercion from powerful states. While the demand for such regimes may originate in the periphery of the international system, only powerful actors, which are by definition states, can act on those demands and supply the relevant institutions. Krasner (1991) for example details the struggle for a number of global communications regimes. Despite demands of smaller states that radio frequency slots be reserved for future use, large states had an interest in assigning all of the slots. If larger states allowed for allocation at a later period, they risked losing slots to weaker states that had grown stronger in the interim period. This global regime conforms closely to realist expectations. The institution that ultimately developed, much to the dismay of smaller states, mirrored the interests of powerful states. Continued compliance with the radio frequency regime in the periphery of the international system can also be ascribed to the pressure exerted by powerful states on weaker states. The underlying assumption here is that smaller states neither participate nor comply with these institutions in the absence of pressure and coercion from larger states.

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18 Moravisck 2000, 225.
Because there are very few obvious material incentives for states to participate in
global human rights institutions, it seems appropriate to suggest that, particularly smaller
states may participate in human rights institutions in response to pressure or coercion
from large states. Yet, if we extend this line of reasoning, the institutions themselves
should collapse when they no longer serve the interests of powerful states. If other
methods to exert pressure emerge or the balance of power shifts and the newly powerful
have no interest in coercing through a given institution that institution should fall into
disuse. The US attempt to undermine the International Criminal Court is a case in point.
The US is currently conditioning continued military aid for smaller states on their
willingness to sign Status of Force Agreements (SOFA). These agreements oblige states
to offer US nationals immunity from the ICC. Large, wealthy states like the US possess
the ability to alter the costs and benefits of ratification for smaller states in the
international system and thus can influence which states choose to ratify human rights
agreements.

The Institutions are Irrelevant

Another variant of the realist critique of institutionalist theory is that the
institutions themselves are irrelevant. Downs, Rocke, and Barsoom (1996) suggest that
despite the apparent rise in multilateral cooperation and compliance in recent years, states
may not necessarily be cooperating at deeper levels. Rather, the paucity of enforcement
mechanisms, or deep levels of cooperation, suggest that states are simply designing and
participating in institutions with which they are already complying. From this

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19 Donnelly (1986) makes this argument with respect to the Inter-American Human Rights regime. (626)
21 Rudolph (2001) is a good example of this argument. Rudolph argues that while the demand for war
    crimes tribunals stems from humanitarian ideals the actual process of constructing the regime is dominated
    by powerful states and ultimately reflects their preferences.
perspective, the institution itself is irrelevant in shaping state behavior because institutions reflect rather than challenge state interests. The underlying distinction between this model and that presented in the previous section is that this perspective implies that states only ratify institutions with which they are de facto compliant.

This argument is particularly pervasive within international relations with respect to human rights institutions. Scholars are often quick to point out that institutions such as the Convention Against Torture require relatively little of states, and thus suggest that ratification is unsurprising because it amounts to little more than cheap talk. Because scholars often complain that state ratification of human rights institutions constitutes little more than cheap talk, this project addresses institutions that require a costly commitment, individual petition mechanisms. Individual petition mechanisms challenge the notion that states only ratify agreements with which they are de facto compliant. If states were de facto compliant and respected their citizens’ human rights following the terms of the International Covenant on Civil and Political Rights, for example, then explaining state ratification of the complaint mechanism would be unproblematic. States do not violate their citizen’s rights so ratification is costless because the complaint mechanism will never be used. However, individual petition mechanisms in global institutions are used extensively, suggesting that states are not de facto compliant with the terms of the agreements they ratify. The use of individual petition mechanisms in global institutions challenges the assertion that ratification of these mechanisms is due to de facto compliance.

Normative Explanations

22 To date there have been more than 1200 petitions filed by individuals through the International Covenant on Civil and Political Rights and the Convention Against Torture. Additional information is available at: http://www.unhchr.ch/html/menu2/8/stat2.htm.
Unlike realist or institutionalist approaches, which focus on power dynamics and collective benefits respectively, a normatively based explanation for ratification focuses on both the social construction of identity and the cultural institutional context within which actors define their interests.\(^{23}\) As states interact with one another norms of behavior emerge and evolve. Katzenstein (1996) suggests that the process through which norms develop occurs in a variety of ways: “spontaneously evolving, as social practice; consciously promoted, as political strategies to further specific interests; deliberately negotiated, as a mechanism for conflict management; or as a combination, mixing these three types.”\(^{24}\) Identities are constructed through social interaction and shift in response to evolving conceptions of what constitutes legitimate state behavior.\(^{25}\) The dynamics of self-help and anarchy allow states to define their identities and interests through social interaction over time. Wendt (1992) suggests that, “this principle of identify formation is captured by the symbolic interactionist notion of the “looking glass self,” which asserts that the self is a reflection of an actor’s socialization.”\(^{26}\) State preferences create a feedback effect as they are both created by and influential in the creation of international institutions.\(^{27}\)

Normative models assign great weight to the influential, rather than coercive abilities of transnational forces such as IO’s and liberal, democratic states.\(^ {28}\) Finnemore (2001) argues that an influential IO- the United Nations Educational, Scientific and Cultural Organization realigned the preferences of states in favor of creating domestic,

\(^{23}\) Katzenstein 1996, 19-32.  
\(^{24}\) Ibid., 21.  
\(^{25}\) On this point see Wendt 1992, 398.  
\(^{26}\) Wendt 1992, 404.  
\(^{27}\) Ibid at 405.  
\(^{28}\) See Risse, Rop, and Sikkink (1999) for another example of this approach.
bureaucratic level science organizations. She bolsters the constructivist argument that state actions and identities are both influenced by and constitutive of institutions. This approach suggests that socialization will result in isomorphism across state policies—before 1955 fourteen states possessed these science bureaucracies, after 1975 eighty-nine states possessed them.  

Wotpika and Ramirez (unpublished) argue that states are increasingly “constructed from and influenced by world models of progress and justice set forth by universalistic scripts for authentic nation-statehood.” These standards should result in greater nation-state isomorphism emphasizing the proper role of the nation-state with respect to human rights policies, for example. Ramirez, Meyer, Wotipka, and Drori (2002) explain:

The proper nation-state has a proper human rights profile and that includes participating in the proper human rights organizations and conferences, signing the proper human rights treaties and conventions, developing proper human rights law and policy, and behaving as if adhering to the regime mattered. The enactment of the ‘human rights affirming regime’ model is facilitated by the human rights regime and also fuels expansion of the regime. That is, there are human rights treaties, organizations, and experts that influence nation-state enactment of human rights policies and this enactment adds to the taken for granted character of the regime.

Prevailing standards of behavior are not equally likely to emerge from all international actors. Risse-Kappen (1996) argues that members of the community of liberal democracies are not only less likely to fight each other but are also more likely to

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30 Wotpika and Ramirez (unpublished), 10.
create institutions to serve their common interests and ideals.\textsuperscript{32} Thus, norms of behavior in the international system should be promoted and institutions created by established democracies. Other scholars have pointed to the increasingly important role of transnational advocacy networks and non-governmental organizations as the propagators of global standards of behavior.\textsuperscript{33} In attempting to explain the impetus behind costly moral action by states Kaufmann and Pape (1999) find that the pressure to end British involvement in the transatlantic slave trade stemmed neither from others states, nor from transnational organizations. Rather, the authors focus specifically on the pressure exerted by a domestic religious movement to explain why the British government would seemingly work against its own financial interests and criminalize trade in slaves.

Taken together these works suggest that states are socialized to adopt human rights norms by the global community- primarily by liberal, democratic states\textsuperscript{34} but also by transnational actors\textsuperscript{35} and even movements originating within the borders of the state\textsuperscript{36}. The process of socialization takes time and does not affect all states in the same period. Many scholars working from a constructivist lens describe this process, through which norms permeate the global community, as a norm cascade.\textsuperscript{37} A norm cascade occurs when a norm entrepreneur persuades states to adopt a new norm, the norm is adopted by a critical mass of states, and finally a norm cascade occurs as those that embrace the norm pressure others to accept it. As more states adopt a given norm, its

\textsuperscript{32} Risse-Kappen 1996, 397.
\textsuperscript{33} Keck and Sikkink 1998 argue that transnational advocacy networks, on behalf of victims of human rights abuses pressure violating states to change their behavior in a variety of different states.
\textsuperscript{34} On this point see Risse-Kappen 1996, 397. See also Reus-Smit 1997, 564 and Wendt 1992, 404.
\textsuperscript{35} See Keck and Sikkink 1998. See also Finnemore 2001 and Nadelmann 1990.
\textsuperscript{36} Kaufmann and Pape 1999.
\textsuperscript{37} Wotpika and Ramirez unpublished. See also Finnemore and Sikkink 1998, 895.
legitimacy as part of the appropriate nation-state script increases.\textsuperscript{38} This mechanism suggests that as more states adopt a norm other states will be inclined to emulate their example.\textsuperscript{39} In addition, states have varying access to appropriate scripts and norms. Those states that are more embedded in the broader world order will be more likely to be socialized to accept appropriate standards of behavior.\textsuperscript{40} Such access can be achieved through participation in global human rights conferences, ratification of treaties or support for transnational human rights movements.

While normative models seek to fill an important gap in international relations literature- namely explaining the origin and substance of state preferences, this work cannot account for observed empirical patterns in national human rights policies. First, models of state behavior that predict greater isomorphism in state human rights policies neglect patterns of policy divergence. Regional supervisory mechanisms for the protection of human rights, such as the Inter-American Court of Human Rights, The African Court for Human and Peoples’ Rights and the European Court of Human Rights are in fact quite distinct institutions differing in the amount of access they offer individuals and NGO’s, the range of rights protected, and the support they enjoy from states within their jurisdictions.\textsuperscript{41} Moreover, the vast regional variations in the rates of ratification of the core United Nations human rights treaties undercuts constructivist

\textsuperscript{38} Finnenmore and Sikkink 1998, 895.

\textsuperscript{39} Both Wotipka and Ramirez and Simmons test the influence of external socialization by considering the number of other states that have ratified a given set of treaties.

\textsuperscript{40} Wotipka and Ramirez argue that the more nation states are embedded in the broader world order the more they will learn how “to talk the talk.” (14) In other words, the more integrated a state is in the broader world the more likely that state will be socialized to accept appropriate standards of behavior. They test this assertion by considering state participation in general international institutions such as the UN, and issue specific institutions. They also construct a variable to take into account national experience with international treaty ratification to test state embeddedness.

\textsuperscript{41} For more on the Inter-American Court of Human Rights see Palqualucci 2003. For more on the European Court of Human Rights see Moravisck 2000. For a comparison of the three courts see Mohamed 1999.
predictions that a single set of human rights norms will inform national human rights policies.\textsuperscript{42} Second, normative models point primarily to liberal democracies as the source of cosmopolitan norms.\textsuperscript{43} Yet the United States has been the most vocal opponent of new human rights institutions such as the International Criminal Court. In addition, many states with questionable human rights records—such as Cuba, Sudan, and Zimbabwe have held important positions within the United Nations Human Rights Commission in recent years. A representative from Libya held the panel’s chairmanship in 2003.\textsuperscript{44} The absence of liberal democratic states and the active involvement of autocratic states in global human rights institutions directly contradicts constructivist predictions.

Contrary to constructivist assertions state human rights policies are not growing increasingly similar. Rather, recent patterns suggest growing divergence in national and regional human rights policies and constructivist tools are ill-fitted to explain this phenomenon. Moreover, the absence of prominent liberal democracies and the presence of gross human rights violators within global human rights institutions challenges the theoretical underpinnings of constructivist models.

\textit{The Influence of Regional Organizations}

Pevehouse (2002) focuses on the role that regional organizations play in facilitating democratic transition and consolidation. He argues that participation in regional organizations can serve as an important policy tool offering benefits to both the military and business elites who would otherwise be resistant to democratic transition and

\textsuperscript{42} The appendix to chapter 2 includes charts illustrating the regional rates of ratification for the Convention on the Elimination of All Forms of Racial Discrimination, The International Covenant on Civil and Political Rights, The Convention on the Elimination of All Forms of Discrimination against Women and the Convention against Torture.

\textsuperscript{43} On this point see Risse-Kappen 1996, 397. See also Reus-Smit 1997, 564 and Wendt 1992, 404.

consolidation. Using both statistical analysis and case studies, Pevehouse convincingly argues that there is a strong relationship between participation in regional organizations and democratic transition and consolidation.

Participation in global human rights institutions, much like participation in regional organizations might serve to reassure dominant social groups that their rights will be protected. Pevehouse’s theory identifies two social groups, business elites and the military that stand to lose out in the transition to democracy. Pevehouse argues that participation in regional organizations can help assuage their fears of losing power during a democratic transition. Ratification of constraining articles within human rights agreements might serve the same purpose for opposition groups. If an opposition group believes that their rights will be secure during and after the transition to democracy, they may be likely to embrace the transition.

I list this work as a competing explanation for two reasons. First, while Pevehouse is not attempting to explain ratification of global human rights institutions, he is explaining a related phenomenon. If states and important domestic elites in particular are willing to transition to democracy in exchange for benefits accruing through accession to regional organizations, that these same leaders would also be willing to ratify global human rights institutions in exchange for accession into potentially beneficial regional organizations is plausible. I advance a different regionally-based story for ratification in the next section. Second, this work considers the causal role of regional institutions in propelling domestic state action, namely transitions to democracy. The theory I offer also considers the influence exerted by regional factors in altering state behavior.

*Democratic Lock-in*
While working as a constraint on current elites, the attractiveness of global human rights treaties from this perspective is the ability to reduce political uncertainty and lock-in current preferences for future national governments. Indeed, Damrosch argues that this tradeoff between ceding policy autonomy and reducing domestic political uncertainty led the Soviet Union to delegate significant domestic legal authority to a quasi-independent Constitutional Commission.\textsuperscript{45} Yet, leaders may also choose to retain policy autonomy at the expense of future domestic political certainty by opting not to ratify binding international agreements. A state’s leaders chose between tying the hands of future governments by locking in their policy preferences (while tying their own hands at the same time) or retaining autonomous control over policy.

Moravcsik (2000) argues that not all states are equally likely to ratify human rights treaties. He suggests that newly transitioning and unstable democracies will be more likely to ratify than autocracies and established democracies. Because newly transitioning and unstable democracies, unlike autocracies and established democracies, are attempting to lock-in democracy in an unstable environment, they stand to gain more from locking in their policy preferences. Leaders of established democracies know that their governments are unlikely to fall and are therefore unwilling to sacrifice policy autonomy for future domestic certainty.\textsuperscript{46} Autocracies are typically unwilling to relinquish control of domestic policy making authority because they too stand to gain little from tying the hands of future governments.

This theory is the primary competing explanation offered in the literature for explaining state ratification of human rights institutions. Unlike Pevehouse’s theory

\textsuperscript{45} Damrosch 1991, 2324.
\textsuperscript{46} The United States policy with respect to the ICC is a good example of this phenomenon.
which focuses on the role that regional organizations play in reassuring domestic social groups, Moravcsik’s theory focuses on the role ratification plays in reducing the policy options for future governments. This makes a good deal of sense for tenuous or newly established democracies, however this theory cannot account for ratification by established democracies. When the states of western Europe ratified the European Convention on Human Rights in the post World War II era they had a lot to gain in terms of government stability by ratifying. But this theory cannot explain the extraordinarily high rates of ratification of human rights treaties by established democracies in western Europe throughout the second half of the twentieth century. By the 1970’s democracy had become entrenched thus eliminating the need to lock it in. Moravcsik’s also falls short of fully explaining ratification because he focuses solely on domestic instability and fails to take into account the regional context and regional patterns of ratification.

**Explanations for Regional Variation**

In this section I survey the literature that seeks to explain regional variation in state policies. I begin this section with a discussion of the limitations of theories used to explain ratification of human rights treaties. The primarily problem with these theories is that they simply neglect the regional context within which states make ratification decisions. Global and domestic forces are not the only forces that can influence the decision to ratify, regional factors should be taken into account in any complete theory of ratification of human rights instruments.

Existing theories that seek to explain the motivation behind state participation in global institutions are problematic because they cannot explain observed empirical patterns. Realists predict the demise of institutions that fail to serve the interests of
powerful states, yet the institutions persist. Institutionalists argue that states will only participate in institutions that do not require policy alterations. However, state participation and prosecutions in regional human rights courts suggest that states are not only participating in those institutions with which they are de facto compliant. Normative models predict state policy alignments which are again, undercut by the distinct regional patterns of ratification in human rights treaties. Democratic lock-in, while theoretically satisfying has limited applicability outside of western European and thus cannot explain a lack of human rights institutions in east Asia for example. These approaches fail to give a complete explanation for the impetus behind ratification of human rights instruments because they neglect the regional patterns of state human rights policies. Why do states create regional supervisory mechanisms for the protection of human rights that seemingly duplicate the work of existing global institutions? Why does ratification of global institutions cluster regionally- why have all of the states in western Europe ratified the Rome Statute of the International Criminal Court while none of the states in east Asia have done the same? The following section reviews the literature that covers regional trends in state policies.

In attempting to explain state behavior, a growing body of literature identifies strong regional effects across a wide range of issue areas. Scholars have attributed regional clustering to a variety of distinctly regional characteristics. These include: common religion, post-colonial status, types of legal systems, democracy, and socioeconomic income level. The argument that follows from these theories is that region is simply a proxy for some other common characteristic among states. This makes a good deal of sense in some cases. For example, it should come as little surprise that

47 See section 3.2 for a review of many of these theories.
some highly democratic states of Western Europe are now exclusively implementing universal jurisdiction statues. These statues give these Western European states the ability to try those accused of gross violations of human rights in other states.\footnote{See for example: New York Times, “Sharon Faces Belgian Trial After Term Ends,” 2/13/2003.} The following surveys some of this literature in an attempt to parse out possible explanations for regional trends in national human rights policies. I discuss two possible explanations, but in the interest of space refrain from discussing all possibilities. Other distinctly regional characteristics include: legal system, government type, income level, and education level. These will be treated as control variables in the statistical analysis.

**Common Religion**

States with similar religious majorities may tend to ratify the same treaties and avoid ratifying others. If a majority of states in the same geographic region share a common religion then common patterns of ratification may tap into an underlying, religious based preference, rather than some distinctly regional dynamic. Simmons and Elkins (2003) demonstrate an increase in global liberalization of the current account, capital account, and exchange rate regime over time as a result of competitive economic pressures and emulation of states with a similar religious background.

**Post Colonial Status**

States with a history of colonialism may be less willing to participate in any institution that serves to potentially compromise their sovereignty. For example, the Calvo clause, named after its creator, Carlos Calvo attempted to guarantee the sovereign immunity of Latin American states in their business dealings with international investors, primarily the US.\footnote{Smith 1996, 100-101.} The Calvo clause stated that foreign investors would rely on the
domestic courts of the host country rather than taking their claims to their home country.\textsuperscript{50} Though not addressing the issue of global human rights institutions \textit{per se}, the Calvo clause and the doctrine of sovereign immunity from which it developed suggests that states with a history of domination will take precautions to prevent future domination. Coupled with the realist view of international institutions which suggests that strong states use institutions primarily to exert pressure on weaker states, Latin American states would be well served to both advance the principle of sovereign immunity as well as avoid participation in institutions dominated by potential threats.

\textbf{Regionalism and National Human Rights Policies}

There is a paucity of literature that discusses cross regional trends in national human rights policies directly. More often scholars focus on one region without comparing their findings to other regions\textsuperscript{51} or focus entirely on explaining ratification of a single treaty without reference to regional trends.\textsuperscript{52} There are a few recent, though primarily unpublished exceptions to this trend. Ramirez, Soysal, and Shanahan (1997) consider explanations for the expansion of suffrage to women between 1890 and 1990. They find that in their later period (1931-90) regional effects exerted a strong influence on a state’s decision to enact female suffrage. They attribute this phenomenon to regional peer pressure, arguing that states within the same region face increasing pressure to emulate one another.\textsuperscript{53} This explanation is consistent with many of the regionalism theories in other issue areas.\textsuperscript{54} Similarly, Wotipka and Ramirez (unpublished) find that

\begin{itemize}
\item \textsuperscript{50} Ibid.
\item \textsuperscript{52} See Vreeland (unpublished).
\item \textsuperscript{53} See pages 740 and 742.
\item \textsuperscript{54} See section 3.2 for a discussion of more of these regional theories outside the area of human rights.
\end{itemize}
ratification of the Convention on All Forms of Discrimination Against Women (CEDAW) is, in part, conditioned by the number of other states in a region that have already ratified. Finally, Simmons (unpublished) tests Moravcsik’s democratic lock-in hypothesis on the six “core” United Nations human rights treaties. She finds that a county’s commitment to these treaties is largely conditioned by the density of regional commitment. As an increasing number of states in one’s region ratify, each individual state is more likely to ratify. Simmons attributes this to regional socialization, arguing that “governments are socialized to do what their regional peers tend to do” (25). These findings suggest that a regional approach to understanding state ratification of human rights treaties may also be appropriate.

**Defining Region**

This investigation places great weight on regional political forces in explaining national human rights policies. This focus necessitates a more precise discussion of the term region. Defining the elusive concept of region has been the source of much scholarly debate, yet scholars lament the lack the progress that has been made. There are at least four distinct approaches to explaining how a region should be conceptualized. These approaches include: geographic, cultural, economic, and security related. I briefly review this literature and then explain the approach to region used throughout this project.

The first approach to defining the term region is straightforward - a region is a “group of countries located in the same geographically specified area.” This is the

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55 Wotipka and Ramirez (unpublished), 23.
56 Simmons (unpublished), 21.
57 See Mansfield and Milner 1999, 590. See also Morgan 1997, 25.
58 Mansfield and Milner 1999, 590.
approach used by international financial institutions, such as the World Bank to categorize countries. Though seemingly simple, this approach is not without its difficulties. As Milner and Mansfield (1999) point out attempting to draw lines around geographic regions is quite difficult. Some consider Turkey, for example part of Europe. Others would place Turkey in the Muslim bloc. This difficulty stems from one’s conception of what constitutes a region. A region might simply be a grouping of geographically proximate states or a region might be a grouping of states that share a common history or culture. Milner and Mansfield note that though few would actually place the US and Russia in the same region, Alaska is closer to Russia than the contiguous United States. While geography can be used as a rough guide to identify states that are in the same region, by itself geography neglects other factors that contribute to widely held conceptions of regional boundaries.

Cultural approaches help to fill this gap. Katzenstein (1997) suggests that Asian identity is both “socially constructed and politically contested.”59 Yet, he is careful to note that his approach does not overlook the objective, geographic existence of a region.60 Instead, Katzenstein relies on Deutsch (1981) and argues that regions are composed of countries that are interdependent over a wide range of variables—such as history, language, ethnicity, and social interactions. This interdependence is fluid and shifts over time and in response to prevailing political and social conditions. As Koschmann (1997) illustrates “without the West there is no East. The very idea of Asia is

60 Some scholars that focus on economic regions advocate the abandonment of geography altogether in defining regions. Such an approach focuses on economic groupings, which transcend geographic proximity. For examples of this approach see Anderson and Norheim 1993 and Cohen 1997.
ultimately empty and variously exploitable.”61 His point is that the concept of region is relational. This approach is particularly appropriate for this project because it takes into account both the physical, geographic borders as well as cultural factors that contribute to widely held conceptions of regional boundaries.

A third approach to region points to shared economic institutions62 and trade flows between countries to identify regions. Such an approach takes geography into account only to the extent that it contributes to economic relationships between states. Some scholars argue that any reference to geography in defining regional boundaries is problematic. Studying common currency among various states Cohen (1997) suggests that “where effective use or authority of a money extends beyond the frontiers of a single country, we may legitimately speak of a currency ‘region.’”63 Here, the defining feature of a region is not geography, history, or culture but rather a shared currency. Other work in this field focuses on regional economic agreements, with debates revolving around the degree to which regional trade arrangements serve as compliments or substitutes for global trade agreements.64 In a recent edited volume various authors writing on this subject debate the causes of regionalism, with some suggesting that it is the result of geography and others suggesting that it the result of intentional policy choices by governments.65

In the field of international security the defining feature of a region is a common security threat. Lake and Morgan (1997) draw on Buzan’s (1991) concept of a regional security complex which emphasizes the interdependence of states with common security

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61 Koschmann 1997, 83.
62 Preferential trade agreements (PTA’s), for example.
63 Cohen 1997, 50.
64 See Milner and Mansfield 1997. See also Anderson and Blackhurst 1993.
65 The volume is edited by Milner and Mansfield 1997b.
concerns. Buzan also focuses on geography, suggesting that geographically proximate states often but do not always have common security concerns. Lake and Morgan expand Buzan’s concept of the regional security complex, suggesting that while appropriate during the Cold War, Buzan relies too much on super-power influences in a post Cold War world. Lake and Morgan focus on the degree to which each states’ security policy creates externalities “…the security externalities are far more extensive, compelling, and durable among members of a regional security complex than they are between those members and other states.” They focus on the inter-dependence of security policies between states to identify those states that are part of the same region.

It is important to note at the outset that my work can potentially fit well with any of these approaches to region. Relying on geography makes obvious sense for statistical testing, but as noted earlier a strict reliance on geography would overlook other common factors that contribute to regional classifications. A social constructivist approach is also appropriate because this project focuses on the ways in which national human rights policies (specifically the decision to delegate to a global human rights institution) are negotiated and constructed in reference to regional peers. An economic classification of region could also work here because I’m arguing that states compete with regional peers to send signals to the international community in order to attract foreign aid. In this regard identifying regional economic peers makes the most sense because states will likely compete for aid with those that are similarly situated economically. Finally, a security approach may also be appropriate because I identify regional crises as the key

\[\text{66} \text{ Lake and Morgan 1997, 28-29.} \]
\[\text{67} \text{ Lake and Morgan 1997, 29.} \]
variable that motivates states to seek out signals that demonstrate that they are committed to democracy, such as ratification of constraining articles in human rights treaties.

Following the work of Deutsch (1981) this project employs a blended approach to region. Quoting Deutsch (1981) Katzenstein suggests that a region is “a grouping of countries markedly interdependent over a wide range of different dimensions.”68 This is the approach to region that is used throughout this investigation. The primary benefit of such an approach is an allowance for change. In the statistical analysis regional variables are created using geographic classifications but dummy variables are included to take into account common religion and post colonial status. Regions defined by common security concerns and regional trade agreements are not included in the quantitative analysis but are considered in the case study chapters. While geography is used again as a way to tap into basic regional boundaries in the case studies, cultural, economic and security regions are also employed.

A blended approach to region is appropriate for this project because, at its core this work suggests that state’s human rights policies are constructed and contested in response to regional peers. This allowance for change is key to this project because I do not argue that human rights policies are created in a vacuum or determined solely by either domestic or international forces. Instead, my approach suggests that though initially motivated by regional crises states ultimately make strategic decisions about how best to package themselves to the international community in relation to their regional peers.

The Dependent Variable: Human Rights Institutions

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68 Katzenstein 1997, 11.
Most discussions of human rights treaties focus on the ratification of the treaties themselves. Scholars have often criticized this focus and correctly pointed out that many of these treaties (like many of those discussed in the introduction) are simply cheap talk ultimately making little difference in state policy. This project will shift the focus away from human rights treaties that require no delegation or monitoring. Instead, I consider ratification of individual petition mechanisms which by definition require oversight of a sovereign’s domestic human rights policies by an independent third party. I argue later that these mechanisms constitute the most credible commitment that states can make to respect the human rights of their citizens within extant human rights institutions.

Human rights institutions take a number of different forms. In order to differentiate among these forms I use a component of the legalization scale, which consists of the level of obligation, delegation, and precision specified by an international agreement.69 The level of delegation within international human rights agreements varies both among current treaties and over time. Figure 3 depicts the degree of sovereignty costs that some of these arrangements entail. In the wake of World War II, a number of human rights agreements surfaced that, while technically binding on participant states required no delegation to third parties. Among the most well known documents are the 1948 Universal Declaration of Human Rights and the two international covenants on human rights (the International Covenant on Civil and Political Rights and the International Covenant on Economic and Social Rights), both of which were adopted by the General Assembly of the United Nations in 1966.70 While exceedingly important in the development of a body of universal human rights law, these General Assembly

69 Goldstein, Kahler, Keohane, and Slaughter 2001, 3.
70 Baehr 1999, 9.
resolutions did not require any method of external review on state behavior.\textsuperscript{71} Without delegation, non-compliance with human rights commitments is much more difficult to detect and may persist unimpeded.

Other human rights institutions, such as the Genocide Convention require those suspected of committing acts of genocide be tried either by a national tribunal or an international tribunal.\textsuperscript{72} This is an admittedly low level of delegation but surpasses the degree of delegation in the Universal Declaration of Human Rights, for example, which does not stipulate any oversight mechanism. In stark contrast, two regional institutions, the European Court of Human Rights and the Inter-American Court of Human Rights serve as arbitrators between states and their citizens. States that have ratified the articles

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{Figure3.pdf}
\caption{Delegation to International Institutions}
\end{figure}

\textsuperscript{71} The Optional Protocol to the International Covenant on Civil and Political Rights is one exception to this. However, the optional protocol was not adopted as part of the original document and need not be accepted by states parties that have ratified the ICCPR.

\textsuperscript{72} Article 6, Genocide Convention, Adopted by Resolution 260 (III) A of the United Nations General Assembly on 9 December 1948.
associated with these bodies allow for external review of their human rights policies by impartial courts. This constitutes a very high degree of delegation.

States can subject their human rights policies to external review by ratifying individual petition mechanisms in global institutions. Individual petition mechanisms allow individuals to bring a claim against their government before a global or regional body. Typically, individuals do not have standing in international law. States are generally charged with filing claims on behalf of their citizens against foreign states. The International Court of Justice, for example does not accept claims by individuals. Yet, the area of human rights presents a unique and controversial problem for international law.

When a government is responsible for systematically violating the rights of its citizens, where can those citizens go to seek relief? If municipal law does not protect them, and the government itself is perpetrating the violation of rights, then individuals must be able to petition global or regional bodies for relief themselves. There are four global human rights institutions that possess individual petition mechanisms:

- The International Covenant on Civil and Political Rights (ICCPR)
- The Convention Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT)
- The Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

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73 Article 34, Statute of the International Court of Justice.
74 Malanczuk (1997) discusses the unique dilemma that human rights pose for international law and includes a brief historical discussion of individuals and international law. (100-04)
These mechanisms differ very little with respect to their protections and procedures. While all of the treaties require a two-step procedure to accept the competence of the attendant committee to receive complaints on behalf of alleged victims, the treaties differ with respect to what two steps must be taken. The women’s convention and the racial discrimination convention both require ratification of an optional protocol in addition to ratification of the treaty in order to accept the competence of the committees. In the torture convention and the ICCPR states must ratify the treaty and declare that they accept the competence of the committee to receive complaints from their citizens. Functionally, these requirements are all but identical. Both require two steps with an explicit declaration of the competence of the committee.

For all of the treaties, petitions may be submitted to the oversight committee on behalf of individuals or groups of individuals. Each of the treaties has a built-in complementarity provision-meaning that the oversight committee can only accept petitions if the accused state has failed to investigate or unnecessarily prolonged the investigation. The women’s convention, ICCPR and the torture convention all follow the same procedures for receiving complaints. When a written complaint is received by the committee the committee immediately notifies the accused state. The state is then given six months to complete an investigation and explain what remedies have been taken. For the racial discrimination convention the accused state has only three months to

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75 For the ICCPR the oversight committee is the Human Rights Committee. For the Convention against Torture the oversight committee is the Committee Against Torture. Racial Discrimination complaints are heard by the Committee on the Elimination of Racial Discrimination. The oversight committee for the Women’s convention is the Committee on the Elimination of Discrimination against Women.

76 The powers of the CEDAW oversight committee are unique in that at any time during the committee’s investigation but before a final decision has been reached, the committee may send an urgent request to the state being investigated to take immediate measures to prevent irreparable damage to the victim. (CEDAW Optional Protocol, Article 5) The committee also has the ability to request a visit to the state under investigation, provided that the state has granted permission. (CEDAW Optional Protocol, Article 8)
complete their investigation and report to the committee. The committees do not accept anonymous petitions, but the women’s committee will keep the names of the petitioners confidential if requested. All of the information necessary for petitioning the relevant committees is readily available on the United Nations website.77 Contact information, model petitions and explanations of petition procedures for each of the committees is stored in the same place on the UN website so there are no variations in ease of petition between the committees.

At the end of an investigation the oversight committee sends their opinion both to the state under investigation and the individual that filed the petition. At the end of each year the reporting committees present the results of all of their investigations to the General Assembly.78 While the committees can formally do no more than publicly shame a state for violating the terms of a human rights treaty, new follow-up procedures allow oversight committees to request that the states accused of human rights abuses submit a list of changes made to domestic legislation one year after the conclusion of the investigation.79 The list is supposed to address, in a point-by-point manner the implementation of the committees recommendations. These new procedures have been successful in pushing Azerbaijan, for example to implement extensive domestic torture legislation, suggesting that these oversight committees are affecting state behavior.80

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77 http://www.unhchr.ch/html/menu2/complain.htm
78 Convention Against Torture Article 24; CEDAW Article 21; ICCPR Optional Protocol Article 6; CERD Article 14, Sect. 8.
79 Conclusions and Recommendations of the Committee against Torture: Azerbaijan. 17 November 1999. A/55/44, paras. 64-69. Available at: http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/A.55.44.paras.64-
80 For the committees recommendations to Azerbaijan regarding domestic torture legislation see: Conclusions and Recommendations of the Committee against Torture: Azerbaijan. 17 November 1999. A/55/44, paras. 64-69. Available at: http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/A.55.44.paras.64-
These individual petition mechanisms constitute the highest sovereignty costs available to states within extant human rights institutions, primarily because they permit external review of a sovereigns’ domestic human rights policy.\textsuperscript{81} 

**Plan of the Dissertation**

In Chapter two I outline my explanation for state ratification of global human rights instruments and regional patterns of ratification. I then test that argument against the prevailing explanations in the literature in a large statistical test. Chapter three is a qualitative analysis of ratification in eastern Europe in the 1990’s. In this region I focus specifically on the Slovakian and Czech experiences with ratification of the Convention on the Elimination of All Forms of Racial Discrimination. The following chapter consists of a qualitative analysis of ratification in Central Asia, focusing on Tajikistan and Kyrgyzstan. This chapter also evaluates these states’ experiences with ratification of the Convention on the Elimination of All Forms of Racial Discrimination during the 1990’s. Chapter five synthesizes the information obtained from this project and presents concluding observations.

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\textsuperscript{81} Amnesty International, arguably the most influential global human rights NGO, has a campaign devoted exclusively to encouraging states to ratify individual petition mechanisms in these bodies. For more information see: [www.amnesty.org/campaign/](http://www.amnesty.org/campaign/) in the Treaty Bodies section.
Works Cited


