

# Conclusion

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① The Rationality Principle

- ② Morrow (2007)  
Class Presentation  
Discussion

- ③ Simmons (2010)  
Class Presentation  
Discussion

# The Rationality Principle

## What Do We Mean by Rationality?

What does rationality mean? The answer is not obvious . . .

- Binmore (2009, 2): “No formal definition of rationality will be offered. [. . .] I think that rationality principles are invented rather than discovered. To insist on an a priori definition would be to make the Pythagorean mistake of prematurely closing our minds to possible future inventions.”

# The Rationality Principle

## What Do We Mean by Rationality?

- Gilboa (2010, 5): “I have a personal preference for a different definition of rationality, which is much more subjective. According to this definition, a mode of behavior is rational for a given person if this person feels comfortable with it, and is not embarrassed by it, even when it is analyzed for him.”

# The Rationality Principle

## What Do We Mean by Rationality?

For almost all of our purposes, it is sufficient to define rationality as follows: rational behavior is behavior consistent with *complete* and *transitive* preferences (McCarty and Meirowitz 2007, 6)

# The Rationality Principle

## What Do We Mean by Rationality?

- Complete preferences: confronted with any two options, denoted  $x$  and  $y$ , a person can determine whether she does not prefer option  $x$  to option  $y$ , does not prefer  $y$  to  $x$ , or does not prefer either
- Transitive preferences: confronted with three options,  $x$ ,  $y$ , and  $z$ , if a person does not prefer  $y$  to  $x$  and does not prefer  $z$  to  $y$ , then she must not prefer  $z$  to  $x$

Isabel to present on Morrow (2007), “When Do States Follow the Laws of War?”

# Morrow (2007): "When Do States Follow the Laws of War?"

## Motivation

- Do international treaties change what states do?
- Realism, liberalism, and constructivism provide different answers to this question



- Realism: If states comply with an international treaty, they do so because it is in their interest even if the treaty did not exist; international institutions mirror the distribution of power and regime type has not effect on compliance

- Liberalism: International treaties can facilitate compliance with agreements because they clarify obligations, what acts constitute violations, and appropriate responses to violations; as international law can be enforced through domestic institutions, regime type can influence compliance

- Constructivism: States comply with international obligations because they internalize the norms underlying such obligations; socialization to norms is more important than formal treaties

- It is difficult to separate these three perspectives with evidence because all three provide a broad view of why compliance occurs

# Morrow (2007): "When Do States Follow the Laws of War?"

## Specific Research Question

- When do states comply with the laws of war (i.e., international humanitarian law)?

## Morrow (2007): “When Do States Follow the Laws of War?”

### An Institutional View of Treaties and Compliance

- Political institutions that persist (i) induce stable patterns of behavior and (ii) are stable against replacement by alternative institutions
- In other words, institutions induce institutional equilibria and are equilibrium institutions

# Morrow (2007): "When Do States Follow the Laws of War?"

## An Institutional View of Treaties and Compliance

- Equilibria require two conditions:
  - The actors' equilibrium strategies are mutual best replies
  - The actors share a common conjecture that they will play a specific equilibrium

# Morrow (2007): "When Do States Follow the Laws of War?"

## An Institutional View of Treaties and Compliance

- International treaties matter when they induce a particular pattern of behavior that a different agreement would not
- Because common conjectures must be mutual knowledge, ratification of a treaty by both sides is necessary for them to understand that they intend to honor that treaty



## Morrow (2007): “When Do States Follow the Laws of War?”

### An Institutional View of Treaties and Compliance

- Reciprocity is a tool of enforcement when one side breaches an agreed standard
- Clear legal standards reinforce reciprocal enforcement by clarifying what acts constitute violations and which do not
- States should be more likely to respond to violations that breach these legal “bright lines” than to acts that are not clearly illegal

# Morrow (2007): "When Do States Follow the Laws of War?"

## An Institutional View of Treaties and Compliance

- Liberals view the law-bound nature of democracies as central because international obligations can be grounded in domestic law
- Leaders of democracies are also more susceptible to pressure from domestic audiences; if domestic audiences hold democratic leaders accountable for their public commitments to the laws of war, then democracies should be more likely to comply if they have ratified the relevant treaty regardless of what the other side does
- So democracies should comply more often when they have a legal obligation

# Morrow (2007): "When Do States Follow the Laws of War?"

## An Institutional View of Treaties and Compliance

- Constructivists view democracies as more likely to comply because their societies are more open to norm entrepreneurs from civil society and so more likely to be socialized to follow these norms
- Constructivists also contend that all states should be more likely to comply even unilaterally if they have accepted the norms through treaty ratification
- So democracies comply more often generally

# Morrow (2007): “When Do States Follow the Laws of War?”

## An Institutional View of Treaties and Compliance

- Realists disagree with all of these views because they see the pressures of international competition to be so great that variations in domestic system will not influence policy during wartime
- So democracies should not comply more often than other states

## Morrow (2007): "When Do States Follow the Laws of War?"

### An Institutional View of Treaties and Compliance

- Reciprocity on the laws of war also occurs at the level of individual soldiers
- Individual soldiers possess the ability to commit violations on their own against state policy, with the scope of such violations varying across issues
- They also can retaliate on their own against violations they perceive against their fellow soldiers

# Morrow (2007): "When Do States Follow the Laws of War?"

## An Institutional View of Treaties and Compliance

- Therefore, there is an agency problem: militaries attempt to control the acts of their soldiers to reduce violations by individuals
- There is also a problem of noise: states at war can only judge one another's compliance from their actions on the battlefield and reports about their conduct
- Difficulty in determining the exact nature of the other side's policy could lead to inadvertent retaliation and a breakdown of the agreement

## Morrow (2007): "When Do States Follow the Laws of War?"

### An Institutional View of Treaties and Compliance

- The agency argument suggests that states should respond more strongly to centralized violations than those that are the result of individual violations
- The noise argument contends there should be no difference in response

# Morrow (2007): "When Do States Follow the Laws of War?"

## Hypotheses

- Reciprocity exists; the compliance of one side increases with the compliance of the other
- Joint ratification strengthens reciprocal responses
- Democracies are more likely to comply when they have ratified the most recent treaty even if the other side has not
- Reciprocal responses are made to individual violations as well as to state ones
- Compliance decreases as the scope for individual violations increase across issues



# Morrow (2007): "When Do States Follow the Laws of War?"

## Data

- All CoW interstate wars from the Boxer Rebellion to the Gulf War
- Multilateral wars are broken into warring dyads
- States under unified command are treated as one observation
- Each warring dyad leads to two directed dyads
- This leads to 222 warring directed dyads from 48 interstate wars

- For each warring directed dyad, behavior of the first member toward the second member is coded on eight different issues areas in the law of war:
  - Aerial bombardment
  - Ceasefire
  - Chemical and biological weapons
  - Treatment of civilians
  - Protection of cultural property
  - Conduct on the high seas
  - Prisoners of war
  - Treatment of wounded

- The international treaties (including draft treaties) were grouped into the eight issue areas
- Major and minor violations were identified from the relevant treaties in each issue area (see pp. 562f.)

- Dependent variable: ordinal variable measuring compliance
- This variable is based on two measures, one for magnitude of violations and one for frequency of violations, and has four levels: 1—full compliance, 2—high compliance, 3—low compliance, and 4—noncompliance

- Regression of  $A$ 's compliance toward  $B$  on variable measuring  $B$ 's compliance toward  $A$ ; but, if reciprocity is present,  $B$ 's compliance toward  $A$  depends on  $A$ 's compliance toward  $B$  (endogeneity problem)
- As a robustness test, use of instrumental variables to address endogeneity problem
- In the analysis, the state whose compliance is assessed is referred to as violator, while the other side is called victim

# Morrow (2007): "When Do States Follow the Laws of War?"

## Data Analysis

- Two sets of independent variables
- Reciprocal variables:
  - Victim's noncompliance
  - Interaction between victim's noncompliance and clarity of victim's violations
  - Interaction between victim's noncompliance and joint ratification
  - Interaction between victim's noncompliance, clarity of victim's violations, and joint ratification
  - Interaction between victim's noncompliance and individual violations
  - Interaction between victim's noncompliance and state violations

- Nonreciprocal variables:
  - Joint ratification
  - Violator ratified
  - Violator is democracy
  - Interaction between violator is democracy and joint ratification
  - Interaction between violator is democracy and violator ratified
  - Power ratio
  - Interaction between power ratio and joint ratification
  - Indicator variables for issue areas
  - Other variables (see p. 564f.)
- Positive coefficients indicate lower compliance; negative ones, greater compliance

- Reciprocity is stronger when both sides have a legal obligation through joint ratification
- Legal clarity matters when legal obligation does not exist, but it has no statistically significant effect when both sides have ratified the treaty
- The difference in reciprocity across levels of legal clarity when at least one side has not ratified the treaty is significant
- Reciprocity under joint ratification is always stronger than without it for a given level of legal clarity



## Morrow (2007): "When Do States Follow the Laws of War?"

### Findings

- Democracies comply more highly on their own if they have ratified the treaty
- But democracies also commit more violations when they are not bound through ratification
- For nondemocracies, only joint ratification produces restraint

# Morrow (2007): “When Do States Follow the Laws of War?”

## Findings

- Figure 1 shows that ...
  - democracies that have not ratified the treaty have the worst record of compliance,
  - followed by nondemocracies regardless of ratification status,
  - with democracies that have ratified having the best record;
  - however, joint ratification does not appear to prevent democracies from retaliating against opponents

- Regarding the issue areas, there is clear hierarchy of compliance:
  - Chemical and biological weapons have the best record of compliance,
  - followed by armistice/cease fire,
  - conduct on the high seas,
  - aerial bombing;
  - protection of cultural property,
  - treatment of enemy wounded,
  - treatment of prisoners of war,
  - and treatment of civilians
- Note that the hierarchy of compliance across issues matches the scope of individual violations across issues

Morgan to present on Simmons (2010), "Treaty Compliance and Violation"

# Simmons (2010): "Treaty Compliance and Violation"

## Research Questions

- Why do states comply with or violate international treaties?
- What mechanisms lead to compliance or violation?
- What is the state of knowledge about this in political science?

- The article looks at the politics of (non-)compliance with international treaties
- The article is a literature overview/review
- It discusses the explanations and mechanisms for treaty (non-)compliance—first the theory of this and then as applied to four different kinds of treaties:
  - Security, war, and peace
  - International trade
  - Protection of the environment
  - Human rights
- As any good literature review does, it then discusses strengths, weaknesses, and missing aspects of this literature in the conclusion

- An international treaty is a formal, usually written, agreement between sovereign states that is legally binding
- Treaties create international legal obligations
- International treaties are the principal source of international law (literally inter-national: inter-state)

# Simmons (2010): “Treaty Compliance and Violation”

## As an Aside: Sources of International Law

- The sources of international law are listed exhaustively in Article 38 of the the Statute of the International Court of Justice, itself an annex to and an integral part of the United Nations Charter
- Apart from international treaties (which it calls “international conventions”), Art. 38 SICJ lists the other two (three) sources of international law:
  - Customary international law
  - General legal principles
  - Subsidiarily, decisions by courts and legal opinions by international law scholars
- These other three sources are rarely ever studied in political science, but (treaty) compliance is



# Simmons (2010): “Treaty Compliance and Violation”

## Treaties and Compliance

- There can be hard or soft (international) law: “must” vs. “should;” typically, treaties are hard law
- To be bound by a treaty, states must sign **and** ratify it
- States are under no obligation to do so (contractual freedom)
- But once they do, they “must” (or in soft law, “should”) comply with treaty, i.e., fulfill the (legal) obligations it sets

## Simmons (2010): “Treaty Compliance and Violation”

### Why Do States (Ever) Comply With Treaties?

- From a realist perspective, treaty compliance should be purely a matter of choice and interest: comply when it is in their interest, do not comply when it is not
- This is possible because there is no central enforcement of international treaties, nor of any sanctions for noncompliance: anarchy may mean noncompliance with impunity
- Yet, states do sometimes comply with treaties—actually quite often and even in circumstances where we (or at any rate a (neo-)realist) would least expect it: international trade terms, human rights, “laws of war,” . . .
- So there is compliance—treaties do change state behavior; why is this so?

## Simmons (2010): "Treaty Compliance and Violation"

### Why Do States (Ever) Comply With Treaties?

- From a theoretical point of view: treaties can't be enforced by a third party (because there is none), so if they are to exact compliance, they must be self-enforcing
- Still, states then comply out of self-interest: they gain more from compliance with a treaty than from violating it
- The mechanisms are:
  - Reciprocity (repeated games, ability to retaliate with the attendant costs)
  - Reputation (trust, no desire to set precedents, risk of future noncompliance and the attendant costs)

## Simmons (2010): "Treaty Compliance and Violation"

### Compliance Mechanisms: Reciprocity

- Classical tit-for-tat: noncompliance by  $A$  at  $t$ , inflicting costs on  $B$ , may entail noncompliance by  $B$  at  $t + 1$  or later, inflicting costs on  $A$
- This appears to be the principal mechanism for compliance, not least because it is a means of enforcement by later retaliation
- This concept is useful in a range of cases: trade agreements, laws of war, signaling to markets, ...
- It is related to the idea of credible commitments (to comply): states are less likely to comply if they are unsure whether the other side(s) will comply as well

## Simmons (2010): “Treaty Compliance and Violation”

### Compliance Mechanisms: Reputation and Credible Commitments

- Credible commitments must be signaled: apart from past compliance, this helps to build a reputation for compliance
- This signal has an audience: domestic, international, certain groups or constituencies
- When the demands of audiences clash, such signaling may be difficult (e.g., if you want to be cooperative internationally but responsive domestically)
- While signaling activities may be easy, “talk is cheap” because preferences may be time-inconsistent: you may want to comply today and reap the benefits, but then violate tomorrow
- So for a signal to be credible, it must be costly in some sense

# Simmons (2010): "Treaty Compliance and Violation"

## Compliance Mechanisms: Audience Costs

- This leads to the idea of audience costs: signal, in a costly manner, to the audience(s) in question that you will comply because noncompliance will be costly for you
- This overcomes fears of noncompliance, time-inconsistency and incentives to misrepresent
- The costs can be ex ante or ex post:
  - Ex ante costs are sunk costs (investments in compliance that you will not recover in the event of noncompliance)
  - Ex post costs are the costs of backing down from compliance
- Ex post costs help make a treaty self-enforcing
- Both ex ante and ex post costs predict treaty compliance

# Simmons (2010): "Treaty Compliance and Violation"

## Constructivist Perspective

- The idea of reputation links rational choice to constructivism: noncompliance with a treaty means a reputation loss
- On rational choice terms, reputation is a function of past behavior
- On constructivist terms, compliance with legal obligations entails discursive power, and law is perceived as inherently valuable and therefore desirable
- Both account for the normative power of law, the question is why that is so
- The typical mechanism is socialization, whereby actors come to see law as valuable
- Socialization can mean enforcement of violations (punishment), acculturation (adopting extant social facts) or norm diffusion through persuasion

# Simmons (2010): "Treaty Compliance and Violation"

## Empirical Studies of (Non)Compliance in Four Issue Areas

- As more and more information on treaties and (non)compliance becomes available, hypotheses about (non)compliance can be tested empirically
- E.g. about mechanisms:
  - Reciprocity or reputation?
  - What are the audience costs and the audiences?
  - What are the costs of signaling and is signaling taking place?
  - Is there evidence for socialization or norm diffusion?
- Empirical work on (non)compliance has largely been in four different domains:
  - Security, war, and peace
  - International trade
  - Protection of the environment
  - Human rights
- Most but not all of these studies are quantitative



## Simmons (2010): “Treaty Compliance and Violation”

Applications: War, Peace, and Security

- Alliances, peace agreements, territorial boundaries and the “laws of war” (strictly speaking: international humanitarian law) are all typically governed by treaties
- These are critical aspects of international relations, and compliance is therefore not easily explained except by credible commitments
- This entails that costly signals, audience costs, reputation, and, to a degree, reciprocity may all matter here as explanations
- Studies cover alliances, peace agreements, treatment of soldiers and of civilians in armed conflict
- References to the *legal* nature of such treaties combine signaling and constructivist approaches

## Simmons (2010): "Treaty Compliance and Violation"

### Applications: International Trade

- Focus has typically been on *effectiveness* of trade agreements rather on *compliance* with them: do trade agreements expand trade volumes? (rather than: are trade agreements complied with?)
- Yet there is an obvious reciprocity mechanism at play here: trade agreements are concluded for mutual benefit (e.g., privileged bilateral trade terms)
- Violate a preferential trade agreement and lose your own advantage (retaliation makes treaty self-enforcing)
- Additionally, there is sometimes a compliance enforcement mechanism (e.g., WTO Dispute Settlement), which is very effective (90% compliance)
- More generally, institutional design of trade agreements may mean that credible commitments are being signaled: sunk costs of effort, audience costs of noncompliance

## Simmons (2010): “Treaty Compliance and Violation”

### Applications: Environmental Protection

- A clear puzzle: if there is no environmental protection, pollution is cheaper (or can be done at zero cost)
- Hence there are, a priori, no ex post costs for non-compliance; so why is there compliance with environmental treaties?
- In addition, these treaties often bind non-state actors in addition to states and their hidden actions and hidden information predict noncompliance
- But if they become visible—if detection of noncompliance becomes more likely—the costs of noncompliance rise, making compliance more likely
- The enforcement can then fall to audiences, who may impose costs (e.g., reputation loss)
- This can be done through environmental regimes which make such information available
- Yet the causes for choosing or setting up these regimes in the first place remain relatively unclear

## Simmons (2010): "Treaty Compliance and Violation"

### Applications: Human Rights

- Classically a matter of normative acceptance: actors are discursively persuaded, or the norm is constructed, that human rights must be observed
- No obvious retaliation or reciprocity mechanism at work, because human rights are internal to states
- Realist story has been one of coercion into compliance, i.e., signing, ratifying, and applying a treaty, or by naming and shaming in human rights fora (e.g., UN)
- Still, commitment to and compliance with a treaty may not coincide
- As a result, domestic political regimes (democracy) and the domestic political situation are more important for compliance than any of the preceding mechanisms
- Signaling commitment to key audiences may also matter

- Treaty compliance is not just a realist story of “comply if in interest”
- There are clear theoretical and empirically validated mechanisms for greater compliance
- However, not all these mechanisms apply to all kinds of treaties
- For some kinds of treaties, the causes of (non)compliance are still unclear
- Yet the empirical fact remains that treaties, once in place, do sometimes, if not often, change state behavior, so the research program into their compliance is well-founded, relevant and compliance can and should be researched empirically