Explaining Away the Human Rights Dummy

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Abstract

Looking at a random sample of international agreements across the issue areas of economics, environment, human rights, and security, it is striking that human rights agreements (HRAs) are more likely to be imprecise than other kinds of agreements. HRAs also contain more reservations than other kinds of agreements. Is this because HRAs are just meaningless scraps of papers? Or are the imprecision and reservations deliberate, rational choices by the states designing these agreements, choices, moreover, that imply that these agreements are intended and expected to influence state behavior? This paper aims to unpack the black box of HRAs in order to understand what renders them to be less precise and contain more reservations than other international agreements. Drawing on Rational Design theory, we essentially make the coefficient on human rights disappear once we control for the underlying cooperation problems present in the random sample of agreements as well as the number of parties to the cooperative endeavor. Importantly, we also set up a way of adjudicating between our theory and those who believe that HRAs are meaningless. We find that not only are HRAs rationally designed initially; the evolution of these agreements confirms their rightful place on the continent of international law.

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Introduction

When one examines a random sample of international agreements across the issue areas of economics, environment, human rights, and security, there are a number of interesting variations in agreement design. One of the more striking variations is the fact that human rights agreements (HRAs) are more likely to be imprecise than agreements in any other issue area. Does this mean that those who argue that human rights agreements are simply scraps of paper or meaningless agreements, perhaps meant to placate an interest group, are right?

One possible explanation for the imprecision of HRAs displayed in Table 1, consistent with the argument that such agreements are intentionally weak, is that the less precise an agreement, the more variability in potential outcomes. As Simmons (2010: 277) notes, "precision reduces the plausible deniability of violation by narrowing the range of reasonable interpretations." Therefore, it could be argued that imprecision, by allowing so much variability in outcomes, results in what is in reality noncompliance being justified as compliance. Of course, as the law and economics literature argues, imprecision usually leads to more delegation, and that delegation reduces somewhat the variance of potential outcomes; hence it could be argued compliance is still encouraged when a state knows it can be taken to court.[2]

Table 1: Precision by Issue Area (percentage of each issue area)

Issue Area	Very Vague/ Ambiguous (%) (1)	Somewhat Vague/ Ambiguous(%) (2)	Somewhat Precise (%) (3)	Very Precise (%) (4)	Total (%)
Economics	0	2	62	36	100
Environment	2	28	49	21	100
Human Rights	7	32	46	15	100
Security	2	17	45	36	100
Total	2	15	53	30	100
Pearson chi2 (9) = 40.65 p=0.000					

When one examines this same random sample, it becomes apparent that HRAs are also more likely to have reservations attached to them.[3] Table 2 shows that no other issue area even

[2] Koremenos (2013b), looking at agreements across the issue areas of economics, environment, human rights, and security, indeed finds a statistically significant inverse relationship between the precision of an agreement and whether it delegates dispute resolution authority to an international body. Also, Morrow (2007: 567) in his study of compliance with Prisoner of War agreements finds that "legal clarity matters when legal obligation does not exist, but it has no statistically discernible effect when both sides have ratified the relevant treaty. The difference in reciprocity across levels of legal clarity when at least one side has not ratified the relevant treaty is statistically significant at more than the .001 level, but it is insignificant and in the wrong direction when both sides have ratified the relevant treaty."

[3] A reservation is "a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State"

comes close to having proportionally as many reservations attached to its agreements than the issue area of human rights. Again, it is tempting to argue, as many do, that this disproportionate number of reservations illustrates that at least some states are not serious about their human rights obligations and try therefore to lessen their commitments through reservations.

Table 2. Number of Reservations by Issue Area (percentage of each issue area)

Issue Area	No Reservation (%) (1)	1-5 Reservations (%) (2)	Above 6 Reservations (%) (3)	Total (%)
Economics	99	1	0	100
Environment	98	2	0	100
Human Rights	68	20	12	100
Security	87	9	4	100
Total	91	6	3	100
Pearson chi2(6) = 37.90 p=0.000				

Instead of being content simply to say, "well, human rights agreements are unique" and as such exert much less influence on state behavior than other agreements, in this paper, we aim to unpack the black box of human rights in order to understand why HRAs are less precise than other international agreements and much more likely to include reservations. We entertain the possibility that there may be another reason for the imprecision and reservations of human rights agreements that is consistent with the argument that they are indeed meaningful. We use the tools of Rational Design (Koremenos, Lipson, Snidal 2001) and of the Continent of International Law (COIL) project (Koremenos 2013a), elaborated below, to understand if and why some human rights agreements are rationally designed to be imprecise and/or to incorporate reservations.

This analysis takes Rational Design a step forward by considering how its independent variables interact, since Rational Design posits a series of univariate conjectures. We focus on two cooperation problems in particular: Distribution problems and Coordination problems (the latter being elaborated by Koremenos (2013a)). We argue that, because HRAs are more likely than any other issue area to be characterized by Distribution problems *without* Coordination problems, large, heterogeneous groups of states with various cultures, ideologies, and institutional differences can solve their underlying distribution problems over which norms should be articulated in HRAs through imprecise language and reservations, which serve as flexibility devices. Over time as new norms take hold, agreements should become more precise and/or states will withdraw their reservations.

We will examine our conjectures about the Rational Design of HRAs, or more precisely, about agreements with particular combinations of cooperation problems, using the COIL dataset, a random sample of international agreements across the issue areas of economics, environment, human rights, and security (see Koremenos 2013b for a description). Results on the relationship

(Article 2(1)(d) of the 1969 Vienna Convention on the Law of Treaties). http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

between agreements characterized by distribution problems with and without coordination problems and the precision of language as well as reservations support our expectations.

In what follows, we elaborate the idea of looking at combinations of distribution and coordination problems and present some empirically-testable comparative static predictions. We then briefly introduce the data used in our analysis. We present an analysis of both precision and reservations, including some anecdotal evidence on the withdrawal of reservations. We then conclude, highlighting the complementarity of our Rational Design framework with other approaches in international relations and law.

Rational Design Theory and Human Rights

The driving assumption of Rational Design is that we cannot compare across agreements to understand variations in agreement design, like the degree of precision embodied in the main substantive goals of an agreement, without understanding the cooperation problems that states face when negotiating particular agreements. Thus our starting point in trying to understand whether HRAs might be rationally designed to be less precise than other agreements is an examination of the underlying cooperation problems that tend to characterize the human rights issue area as well as those problems that do not. By doing so, we hope to gain insight into both what makes the human rights issue area unique and how it is similar to other issue areas in a way that deepens our understanding of all issue areas and international cooperation more generally.

What do we mean by underlying cooperation problems? Both Rational Design and the COIL research project, which elaborates and refines Rational Design, posit that states often, but not always, face distribution and enforcement problems. These might then be shaped by various degrees of uncertainty about the state of the world, the behavior of other actors, and their preferences. Finally, the number of actors and asymmetries among them affect the nature of the cooperation problem. The COIL project adds a number of possible cooperation problems to the mix, including the establishment/exportation of norms and coordination problems.[4] Both Rational Design and COIL disaggregate cooperation problems so that each particular agreement is characterized by the presence or absence of each possible cooperation problem.[5] Thus, instead of trying to force situations into 2x2 games, one situation might be quite complex, being characterized by underlying enforcement problems, distribution problems, uncertainty about the state of the world, and uncertainty about behavior, for instance, while another agreement might be quite simple, trying only to encourage positive externalities, like scientific cooperation.

Table 3 presents some descriptive statistics regarding the cooperation problems underlying the agreements in the random sample. It is interesting to examine not only the

[4] A complete description of the set of the COIL cooperation problems (including examples) is available on the COIL website.

[5] In reality, all situations are characterized by almost all cooperation problems to some degree, but COIL codes them as existing if they are present in high as opposed to low levels. For example, uncertainty about preferences always exists to some degree in any interaction, but a situation has to be characterized by high uncertainty about preferences (e.g., USSR and US during the Cold War as opposed to US and Canada during the same period) for it to be considered present.

patterns across all agreements, but also the ways in which the Human Rights column is both similar to other issue areas and unique.

Table 3. Cooperation Problems by Issue Area

Cooperation Problem	Economics (%)	Environment (%)	Human Rights (%)	Security (%)	Total (%)
Uncertainty about behavior	2	42	46	43	25
Uncertainty about preferences	0	2	34	15	9
Uncertainty about the state of the world	78	67	27	45	60
Enforcement problem	37	40	27	26	33
Distribution problem	18	19	56	26	27
Commitment problem	38	2	34	2	24
Positive externalities	9	58	2	4	16
Norm Exportation	2	33	83	13	24
Coordination	30	14	5	45	26
N	103	43	41	47	234

While some might expect that the prevalence of norm exportation may seem to make the human rights issue area unique and we need not look any further than that cooperation problem, there are disarmament agreements and environmental agreements that also attempt to create or spread norms. Additionally, it is not surprising that human rights score high on uncertainty about behavior. It is very difficult to see if human rights standards are being upheld in schools, in offices, or in prisons without on the ground monitoring. But this cooperation problem also characterizes many environmental agreements, where it is difficult to see what individual firms are doing with respect to pollution controls. Some HRAs, like those bilateral agreements that govern reciprocal rights for workers, are indeed characterized by a prisoners' dilemma like payoff structure and hence are coded as having underlying enforcement problems. A state wants its workers to be treated well in other states but would prefer not to spend resources on foreigners working within its borders.

HRAs are very likely to be characterized by distribution problems because they regulate how a state treats its own citizens within its own territory, which has long been the exclusive jurisdiction of the sovereign state. Distribution problems exist when there are multiple cooperative solutions possible and the actors have strongly different preferences among them. When sitting down at the table to negotiate HRAs, states can disagree about a number of things,

chiefly, what rights should be included and how those rights should be defined. This distribution problem may arise from ideological differences, from cultural differences, from domestic institutional differences, or from the gap between a state's current human rights practice and the proposed standard. Still, agreements in other issue areas are also characterized by distribution problems.

Importantly, however, by examining the underlying cooperation problems that characterize HRAs, we do find a unique combination of cooperation problems, so to speak, that does distinguish many, but not all, HRAs from agreements in other issue areas. Unlike the classic issue areas for which there are distribution problems, e.g., territorial boundaries or technical standards, the issue area of human rights does not pose a strict coordination problem. Rather, in HRAs, we find the frequent occurrence of an underlying distribution problem without an underlying coordination problem. We elaborate this in the next section.

Interacting Cooperation Problems: Distribution and Coordination

One of the Rational Design conjectures states that, as the severity of the Distribution problem increases, states (actors) are more likely to incorporate Flexibility into their cooperative agreements. Here we refine this conjecture both by zeroing in on (im)precision and reservations as forms of flexibility and by considering the interaction of two cooperation problems: Distribution and Coordination, defined as follows:

> **Distribution problem:** When more than one cooperative agreement is possible, each actor naturally prefers the one giving it the greatest (expected) payoff. This leads to *distribution problems* — differences over which alternative cooperative agreement to implement. The size of a distribution problem depends on how each actor compares its preferred alternative to other actors' preferred alternatives. In games in which both actors prefer the same outcome, there is no distribution problem. *Distribution problems* are greater when actors want to cooperate in a "Battle of the Sexes" game, and these problems increase with the intensity with which the players prefer alternative outcomes. In repeated Prisoners' Dilemma-type games for which there are multiple efficient equilibria, the distribution problem depends on actor's differences "along the Pareto frontier." Finally, in a zero-sum game, the problem is strictly distributive since a better outcome for one leaves less for the other. In allocating quotas for harvesting West Coast salmon, for example, Canada and the United States know how many fish will be caught in total; the only question is how many will be caught by each country's fishermen, hence the *distribution problem*.

An example of an agreement for which the underlying cooperation problem is characterized by a distribution problem is the 1971 "Agreement concerning the compensation of Netherlands interests" (UNTS 11868) between Egypt and the Netherlands. At the time, Egypt owed the Netherlands compensation because Egypt had nationalized private assets. The issue was how much compensation, which is most certainly characterized by zero-sum qualities when comparing alternatives.

> **Coordination problem:** While all agreements require "coordination" on agreement text, COIL has a very specific definition of a coordination problem. In situations characterized by underlying coordination problems, actors must coordinate on exactly one outcome to

be better off cooperating. The worse it is to 'miss' some specific solution, the more severe the coordination problem. In terms of utility functions, coordination problems would be characterized by utility functions that are steep around an outcome. If not hitting one specific outcome is not too bad, there is no coordination problem. A utility function with some satiation point, e.g. a simple quadratic one, helps illustrate the problem: The wider the curve, the less important is coordination on a specific outcome because being slightly off doesn't diminish utility by much.

An example of an agreement for which the underlying cooperation problem is characterized by a coordination problem is the New START Treaty, recently ratified by the US Senate, and superpower arms control treaties, more generally. Suppose a superpower arms control agreement simply stipulated "reduce ballistic weapons." Then reducing by any amount would constitute compliant behavior. But if the two sides reduce weapons to different degrees in such a competitive and sensitive issue area, it could be argued, and has been by many US senators, that at least one side is hurt very badly. Importantly, that state which reduced more would prefer not to have had any agreement at all. By contrast, consider a human rights agreement that calls for the abolition of child labor. If some states define child as someone under 18 years of age and act accordingly while others define child as someone under 15 years of age, as long as both are reducing child labor however they define it, both states are better with the agreement than without it. Surely, the state that defines a child as anyone under 18 years of age would prefer the other state to act in a similar fashion, but it still prefers the other state reducing child labor for those under 15 years of age than not reducing at all.

In what follows, we elaborate the four possible combinations of Distribution and Coordination problems, thereby extending the Rational Design framework.

Both Distribution and Coordination

In many issue areas where there is a distribution problem, there is also a coordination problem in which complete coordination is necessary, e.g., one clear boundary, one clear technical standard. Take the example of export quotas in a commodity agreement. When states wanted to cooperate to stabilize and raise the price of coffee, they needed to coordinate exactly on a supply of coffee to ensure that the price would be what it was intended to be. Oversupply by one state would cause the price to change, and defections in such strategic situations actually can cause the entire agreement to fail. This was the case for many attempts at coffee cooperation before the 1962 International Coffee Agreement (see Bates 1997 and Koremenos 2002). Not only is complete coordination necessary or the parties will be worse off; states also have to divide the coffee market -- the epitome of a distribution problem. Thus commodity agreements, like the set of coffee agreements and the informal cooperation of OPEC, are characterized by both underlying distribution and coordination problems. Consider the famous Battle of the Sexes game. Coordinating on an exact movie (or ballet) is not mentioned as a necessary condition. But most would agree that, in such a situation, coordinating on different movies is worse than no cooperation at all!

Coordination without Distribution

Some issues are characterized by coordination problems without distribution problems. When the issue at stake is how to cooperate against frontier forest fires, states must completely

coordinate their responses and have in place the directions and infrastructure to do so. One state would fight a raging fire very differently depending on whether it was going it alone or it knew exactly how another state were helping. However, the distribution problem in this issue is quite low – it's really not about who gets how much. Bilateral efforts to prevent double taxation also fit this category. States must coordinate their tax laws and information exchange in order to ensure the successful implementation of such agreements, which are aimed at both preventing tax evasion and limiting double taxation. Finally, bilateral efforts aimed at protecting classified information must first coordinate on what is considered classified and who exactly has access to such information.

Neither Coordination nor Distribution

Some cooperative endeavors have neither coordination nor distribution problems underlying them, like those which encourage sharing of scientific information. For example, there is a set of agreements in the random sample for which Germany sends scientists to developing countries to help them with issues like plant protection. Exchange of notes constituting an agreement recognizing the right of Norwegian nationals in Spain and Spanish nationals in Norway to vote in municipal elections

Distribution without Coordination

Finally, some agreements have distribution problems without coordination problems. As we argue in the introduction, human rights agreements are often the subject of an underlying distribution problem as each state wants to see its preferred norm be the one that is codified or exported to other states. But if State B embodies a slightly different norm than the one promulgated by State A, State A can keep its norm and is not worse off than it would be without an agreement.

Table 4 presents descriptive statistics on the combinations. In columns 1-4, the incidence of the four possible combinations of *distribution* and *coordination* problems is displayed according to issue area. With a random sample of 234 agreements, there are quite a few interesting patterns. Human rights agreements are most likely to be characterized by *no coordination but distribution problems* (51 percent). Security agreements more than any other issue area are characterized by *no distribution but coordination problems* (40 percent) while environmental agreements and human rights agreements are least likely to be characterized by *no distribution but coordination problems* (9 percent and 0 percent, respectively). Economics agreements are most likely to address *both coordination and distribution problems* (18 percent). Finally, more than half of the agreements (58 percent) have neither distribution problems nor coordination problems underlying them.

Table 4. Distribution Only, Coordination Only, Both Distribution and Coordination, Neither Distribution nor Coordination Problems by Issue Area (percentage of each issue area)

Issue Area	Distribution, No Coordination (%) (1)	No Distribution, Coordination (%) (2)	Distrib, Coord. (%) (3)	Neither (%) (4)	Total (%)

			(3)		
Economics	0	12	18	70	100
Environment	14	9	5	72	100
Human Rights	51	0	5	44	100
Security	21	40	4	34	100
Total	16	15	11	58	100
Pearson chi2 (9) = 98.29 p=0.000					

We now elaborate what this combination of *Distribution but No Coordination* looks like in a typical human rights agreement negotiation. Think of the negotiation of a human rights agreement as a strategic interaction between two states, State 1 and State 2, which comprise the subcommittee drafting the agreement. These two states have asymmetric preferences over a particular substantive human rights norm yet they believe in the importance of human rights standards. This common interest sets them apart from certain other states that have no interest in setting and spreading human rights standards. It is assumed that each state prefers its own norm to be reflected in the final draft. It is also assumed that both desire to raise the bar of human rights above some threshold that might be held by third states. While States 1 and 2 are the drafters, they hope and expect other states to become members of the agreement and they are assumed to hold so much of the power that the negotiation game is really between them.

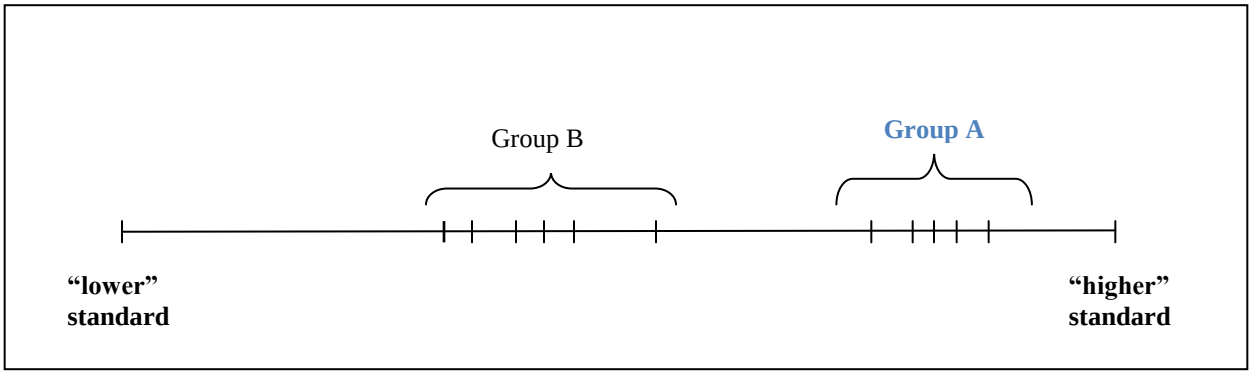
Suppose the standard in question is women's rights and the scale of this norm ranges from 1 to 10. The norm equals 1 when women are considered not equal to men in any way and 10 when women are not only considered equal in every way but also all national laws and pay rates must be changed to reflect this standard. State 1 has NORM 8, including non-discrimination against women in the workplace enforced by a state agency, while State 2 has a NORM 6, including non-discrimination against women in the workplace. Three strategies are equally possible for each state: 1) proposing a standard based on its own norm, 2) proposing a standard based on the other's norm due to the process of persuasion, and 3) walking away from the negotiation. Consider the following scenario. If either state needs to change its standard, it prefers no agreement at all to an agreement with a higher or lower standard. Specifically, State 2 would rather not be a part of any agreement at all than change (raise) its standard to NORM 8; likewise, State 1 would prefer no agreement to changing (lowering) its standard to NORM 6. Still although both states strongly prefer to remain with their own specific norms, as long as they are not pressured to switch to the other's standard and thereby pay the implementation costs of such a change, they accept that the other party will remain regulated by its own norm. They do prefer an improved international human rights standard on women's rights to no agreement at all.

The outcome just described can be achieved through the design provision of vague language, a form of flexibility. The language of the treaty could read, "Women will not be discriminated against in the workplace, and this right shall be enforced by state agencies when possible given constitutional or other constraints," or "non-discrimination in the workplace enforced by state agencies, as long as the new policies do not run counter to national laws."

Employing such language, HRA drafting is a loose coordination among states with asymmetric preferences over the specifics of substantive human rights standards but with a common desire to raise standards for third parties. Importantly to States 1 and 2, represented by Group A in Figure 1 below, states whose behavior reflects norms that fall below that which can be interpreted through the vague language, States in Group B in Figure 1, are forced to change at least somewhat if they want to be in compliance with the agreement.

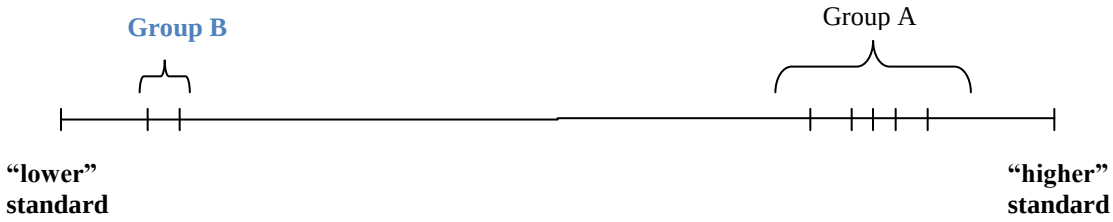
A real-life example might help make this point clearer. One of the agreements from the random sample is the American Convention on Human Rights (UNTS 17955). This agreement, created by the Organization of American States (OAS), contains a right to life provision in Article 4.1, "Every person has the right to have his life respected.[6] This right shall be protected by law, in general, from the moment of conception. No one shall be arbitrarily deprived of his life." Importantly, this article was the subject of great negotiation among the states, especially because 12 out of the 23 OAS member states permitted abortion in certain cases. Like Ehrlich and Posner (1972) and Koremenos (2013b) would predict, this rather large, heterogeneous group could not agree on precise language and hence the final provision had the words "in general" added to allow enough ambiguity in interpretation that all states could sell it to their publics.

Figure 1. Vague Language



While imprecision can solve the distribution problem facing actors when their ideal points are at least relatively near each other, what happens when some states have preferences that are truly outliers, not necessarily on the overall agreement (if such were the case, they would most likely not be at the negotiation table at all) but on particular provisions? Consider Figure 2 below, which illustrates a set of preferences on the proposed adoption provision in the Convention on the Rights of the Child (CRC). While some imprecision in language could probably resolve the distribution problem regarding this provision for States in Group A, States in Group B have outlier ideal points. In situations with such a configuration of preferences, Group B States can add reservations to the agreement, specifically targeting the provision at issue. Reservations permit states' individualized opt-out (or softening) on particular provisions while remaining as parties to the entire treaty. Indeed, this is what many states with entrenched alternatives to adoption did for this very convention.

Figure 2. Reservations



The provision regarding freedom to adoption (Article 21) is the most reserved article in the entire CRC.[7] Canada entered a reservation to this article in order to respect its indigenous groups' "alternative care" culture.[8] A large number of Islamic states also reserved Article 21 by referring to the incompatibility of adoption with Shari'a law. Cohen (1989) explains that it has long been argued in Islamic states that the inter-related extended family structure should be intact from the addition of an outsider. Kafala, which is like permanent foster care under which a child may legally and permanently live with a family but cannot use the family's name nor inherit from them, serves as an alternative instrument for taking care of abandoned or orphaned children in these states (Cohen 1989: 1451). Islamic states such as Kuwait, Oman, and United Arab Emirates could still commit to the CRC despite their different preferences regarding freedom to adoption by reserving Article 21.[9] For example, the United Arab Emirates added a reservation to Article 21 that "since, given its commitment to the principles of Islamic law, the United Arab Emirates does not permit the system of adoption, it has reservations with respect to this article and does not deem it necessary to be bound by its provisions."[10] The U.S. State Department notes "there is a vast variance in the implications and observance of Shari'a law from country to country. Generally, however, Islamic family law does not allow for adoption as that concept is understood in the United States."[11]

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[7] Fifteen states have lodged reservations to Article 21: Argentina, Bangladesh, Brunei Darussalam, Canada, Egypt, Indonesia, Jordan, Kuwait, Maldives, Oman, the Republic of Korea, Spain, Syrian Arab Republic, United Arab Emirates and Venezuela. For this example only, I counted the number of reservations added until December 23, 2012, not those initially lodged when the treaty was open for signature. http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en (Accessed on December 23, 2012).

[8] UNICEF Innocenti Research Centre. *Law Reform and Implementation of the Convention of the Rights of the Child*. December 2007: 10

[9] Although Indonesia is not governed officially by Sharia law, it is the most populous Muslim state in the world and Sharia Law has great influence in certain regions like the Aceh province.

[10] See the following link to the UNTC website for a detailed list of countries that made reservations to Article 21 of the CRC: http://treaties.un.org/Pages/ViewDetails.aspx?src=UNTSONLINE&tabid=2&mtdsg_no=IV-11&chapter=4&lang=en.

[11] The United States of America. Department of State. Bureau of Consular Affairs. *FAQ: Adoption of Children from Countries in Which Islamic Shari'a Law Is Observed*. Print.

Finally, the design provision of Optional Protocols accommodates states whose norms exceed those which can be accommodated through vague language, often by allowing greater enforcement and monitoring of the human rights standards incorporated in the substantive provisions and at times by adding additional standards. As Figure 3 demonstrates, Group A' states can be accommodated through this mechanism within the same international agreement. (Data limitations preclude testing any conjectures about optional protocols.)

Figure 3. Optional Protocols

Many scholars argue that reservations are not detrimental to the legitimacy of HRAs. Their arguments are quite compelling. For instance, Neumayer (2007: 397) views reservations as a means to address diversity across states. By addressing this diversity, reservation provisions make broader participation possible. Put differently, by allowing a tailored exemption from a particular article to the extent that the exemption is not incompatible with the object and purpose of a treaty, states that would have otherwise stayed outside the treaty regime can participate (Goodman 2002; Harrison 2005; Helfer 2006; Miles and Posner 2008; Swaine 2006). Kearney and Powers (2011) demonstrate that reservations allow states to accommodate domestic veto players (see Bradley and Goldsmith (2000) and Goodman (2002)[12] for the U.S. case). Furthermore, reservation provisions also lead to deeper participation among states (Helfer 2006; Swaine 2006); states would draft much weaker treaties if reservations were harder to lodge. Additionally, reservations are informative to non-reserving states, aspiring to contract with reserving states (Swaine 2006). Reservations enable states to reveal their types, including their preferences and their domestic constraints, and thereby serve as a costly signal because they show a state's willingness "to subject its self-exemption to international scrutiny" (Swaine 2006: 338).

Some might be surprised at the kinds of states that take advantage of reservation provisions. Neumayer (2007)[13] shows empirically that liberal democracies tend to add more

[12] Goodman (2002: 545) illustrates how President George Bush and Assistant Secretary of State Richard Schifter formulated their rhetoric using reservations to encourage the Senate to ratify the ICCPR. Goodman (2002: 546) also cites Kaufman (1990) to demonstrate that the U.S. executive tends to "overcompensate in submitting its package of reservations to the Senate as a means of securing approval."

[13] Neumayer (2007: 406) includes certain "understandings" and "declarations" in his measure of reservations to the extent that these understandings and declarations are equivalent to reservations as defined in Article 2(1)(a) of the Vienna Convention on the Law of Treaties.

reservations than any other regime type (see also Miles and Posner 2008). Liberal democracies want only to commit to treaty obligations with which they are able and willing to comply. On the other hand, non-democratic states that do not take international law seriously will not feel as compelled to add reservations (Goodman 2002: 551).[14] Drawing from Risse and Ropp (1999), Goodman (2002: 552) suggests that non-democratic states that do add reservations upon ratification signal that they begin to subscribe to "the prescriptive legitimacy of international rules" by "genuinely balancing competing goals."[15]

Reservations are reciprocal. That is, not only are obligations modified for the reserving state; these modifcations apply to all other state parties. In many of the well-known, multilateral human rights endeavors, states do not face Prisoner Dilemma-like incentives to defect. Consider religious freedom: A state's payoff from honoring its own citizens' religious rights within its territory would not be adversely affected by another state's violation of its citizens' religious rights.[16] The strategy of conditional reciprocity so common in enforcing cooperation in situations with underlying enforcement problems is thus not optimal in such human rights endeavors; such strategies hurt the "punishing state" and do not induce compliance by the defecting state. This logic applies to the reservation provisions as well, as Swaine (2006) so expertly explains. He states (2006: 341-2): "it is unlikely that a secular state would benefit from Sharia-related reservations, or that others would benefit from Belgium's (former) CEDAW reservation exempting Belgian law that required the sovereign and successors to the crown to be male."

A consideration of the spatial models and discussion above leads us to the following conjectures.

C1: *Ceteris paribus***,** agreements that are characterized by either No Distribution and Coordination problems or Distribution and Coordination problems are more likely to be precise than those characterized by Distribution But No Coordination problems.

[14] Miles and Posner (2008:11) also present a suggestive descriptive statistic in this regard. Based on their dataset, "the average European country issues reservations in 44% of the multilateral treaties it joins, and the average Latin American country issues reservations in only 17%."

[15] Goodman (2002: 553) uses Chile's reservation to Article 2 of the Convention against Torture as an example. According to Goodman, in response to the Committee Against Torture's criticism of the validity of this reservation, the Chilean government explained that its reservation was formulated in order to reconcile domestic legislation with the obligations of the CAT and it was up to the next government to decide whether to abide by all the terms of the CAT and thereby withdraw this reservation.

[16] Goodman (2002: 537) argues that cooperation through reciprocity is not applicable to human rights treaties except for the cases in which military superpowers consider grave violation of human rights in other states a direct threat to their own security or in which some states view promoting universal human rights protection in terms of their own political identity. The COIL sample, following the United Nations Treaty Series, has a broader net when identifying HRAs and thus finds that some HRAs do have underlying enforcement problems for which reciprocity is useful.

C2: *Ceteris paribus*, agreements that are characterized by either No Distribution and Coordination problems or Distribution and Coordination problems are less likely to contain reservations than those characterized by Distribution But No Coordination problems.

C3*: Ceteris paribus*, agreements that are characterized by underlying Enforcement problems (that is, underlying Prisoner Dilemma-like incentives) are less likely to contain reservations than those not characterized by Enforcement problems.

Data

Testing these three conjectures requires data. To that end, data were collected through the COIL research project on the characteristics of a random sample of international agreements drawn from the United Nations Treaty Series.[17] The random sample is conditional on four issue areas: economics, environment, human rights, and security. The data collection was informed, both in terms of what variables were coded and how they were measured, by Rational Design theories and by other theoretical approaches in international relations.

Defining the population of interest represents a crucial first step in any sampling exercise, and, in this context, it meant answering the question of exactly what counts as an international agreement? Inclusion criteria were developed through an iterative process that included consultation with experts in the field, including senior scholars in international relations and international law as well as policymakers at the U.S. State Department's Office of Treaty Affairs.[18]

A coding instrument was used to record the characteristics of the agreements. Among the provisions coded are *flexibility provisions* (e.g., Can a subset of states amend the agreement? If so, is it binding on all members? Are there certain provisions that states can opt out of without losing their membership in the agreement?); *membership provisions* (e.g., Are there particular member states that must ratify the agreement before it enters into force? Are nonstate actors given any rights or responsibilities?); *provisions related to monitoring and compliance* (e.g., Do states exchange information? Is the information self-reported or gathered by an independent agency? Are there penalties for failure to comply with agreement provisions?); and *references to other international agreements*. These are just a sprinkling of the characteristics coded.

The coders for this project were extensively trained in order to give them high levels of both competency and consistency.[19] Two coders independently coded each agreement using an online survey instrument. After they have completed their surveys, an intercoder reliability report was generated for the 375 questions for which there are "quantitative" answers, like yes/no, multiple choice, or a number. The average coded agreement was characterized by disagreement on approximately 15 questions, or 4% of the quantitative questions; the range was between 2% and 11%. Hence from an intercoder reliability standpoint, these statistics are excellent. The inconsistencies were resolved through a close rereading of the agreement and supervised discussion involving the original coders, a trained graduate student, and Koremenos.

[17] For detail regarding how the sample was drawn, see the COIL website.
[18] These inclusion criteria are available on the COIL website.
[19] The majority of coders went through 9-12 months of course-based training, which included both theoretical training and practice coding runs.

With respect to underlying cooperation problems, independent of the coding of the hundreds of institutional design variables, an advanced student with training in rationalist approaches to international cooperation and Koremenos also looked at the agreement, answering the following substantive question among others: How can the cooperation problem be characterized? More than one answer can be chosen for each agreement.

Obviously, these questions are not nearly as straightforward as those pertaining to agreement design. There is indeed an inference made from the agreement to the cooperation problem. There is no way around this in such a study using a random sample of agreements given the observations are the agreements themselves and they cut across diverse issue and sub-issue areas. Nonetheless, there are some factors that should alleviate concerns. First, the inference came by looking at relevant background information, with research being conducted on the relationships among the relevant states (for example, in a bilateral agreement, the relationship of the dyad in the decade or two before the agreement is signed) and on the general problems of the sub-issue at the time. Also, only the substantive goals of the agreement were looked at when trying to infer the underlying cooperation problem(s). Given that the theoretical work focuses on explaining the procedural or design aspects of the agreements, the separation of coders for, what are in these analyses, the independent and dependent variables is critical to the integrity of the project. This approach was extremely labor intensive, but by employing different and multiple sets of trained coders, the field can have confidence in the resulting data.

Let us expand on one of the agreements in the random sample, including the outside research that was done to help code the underlying cooperation problems. The Inter-American Treaty of Reciprocal Assistance and Final Act of the Inter-American Conference for the Maintenance of Continental Peace and Security (UNTS 324) was signed 2 September 1947. It is coded as having the following underlying cooperation problems: uncertainty about the state of the world and a distribution problem. These are elaborated below:

Regarding uncertainty about the state of the world:

Considering the violent history of Latin America, one of the underlying cooperation problems that needed to be addressed was uncertainty about the state of the world. The American states could not be sure what the consequences of joining a security agreement would be, that is, how security obligations assumed under an agreement would materialize over time, and how they would affect relations with other American states in the event of conflicts in the region. To illustrate that South America was a volatile region, the Chaco War fought in the 1930s between Bolivia and Paraguay can be mentioned, as can the fact that, while the Rio Conference was in session, a coup d'etat took place in Ecuador, which led the Central Commission to decide that the Ecuadorian delegate could not sign the agreement on behalf of his country. Moreover, it is interesting to note that the Rio Conference, which was scheduled to take place in the fall of 1945, had to be postponed twice before it could actually be convened in 1947. It was postponed once due to legal concerns about the Act of Chapultepec, and then again because of political tensions between the United States and Argentina (Kunz 1948: 111-120).

Regarding the distribution problem:

A distribution problem can be said to have been present at the time of the negotiation of this agreement since several countries had different opinions about what areas of cooperation should be included in an agreement. Mexico, Argentina, Chile, and Cuba, for example, insisted on including Inter-American economic cooperation, while the United States rejected this idea. Cuba suggested that a provision prohibiting "threats and aggressions of an economic character" be included in the treaty, thereby linking economic policies to that of security (see Kunz 1948).

Variables

We now describe first the dependent and then the independent variables used in the analyses.

Dependent Variable: Precision

The precision variable captures the degree of *precision* surrounding the main prescriptions, proscriptions, and/or authorizations embodied in an international agreement. The overall precision can take on four values from very vague to very precise. An agreement's degree of *precision* or *ambiguity* refers to the exactness or vagueness of its prescribed, proscribed, and authorized behaviors. *Precision* is often reflected in clearly stated "shall/shall nots" as well as in the amount of detail accorded to each behavior. *Ambiguity*, in contrast, refers to how much doubt exists about the way in which the behaviors are to be executed. The main question coders are trained to answer when coding this variable is, "How easy or difficult would it be to tell if an actor is in compliance with the agreement?" The more precise the agreement, the easier it is to say, "Yes, that is compliance," or "No, that is not compliance." In other words, how clearly is the line drawn between acceptable and unacceptable behavior under the agreement?

Easily quantifiable behaviors, like those that dictate compliance with quotas, are usually very *precise*. For example, "Exporting Members shall not exceed the annual and quarterly export quotas allocated to them" (International Coffee Agreement of 1962, (UNTS 6791) Article 36 (2)); the quotas are unambiguously set forth in an appendix. As another example, the "Agreement between the U.S. and Ecuador For Financing Certain Educational Exchange Programs" (UNTS 4114) creates a bilateral commission to administer a joint educational exchange program between the U.S. and Ecuador, funded by Ecuadorian payments for surplus U.S. agricultural commodities. The agreement describes 1) the administrative mechanisms for the management of the program; 2) the types of expenses that can be covered by the program: "payment of transportation, tuition, maintenance, and other expenses incident to scholastic activities;" and 3) the funding mechanisms to support the program. Article 8, which describes the funding mechanism, is more than a page, includes both specific amounts and the exchange rates to be used, and discusses the interaction between the U.S. Department of State and the U.S. Treasury.

Agreements that broaden the range of behavior, like forbidding actions of a military nature, are usually only somewhat *precise*. For example, the Antarctic Treaty (UNTS 5778) states: "There shall be prohibited, inter alia, any measures of a military nature, such as the establishment of military bases and fortifications, the carrying out of military maneuvers, as well as the testing of any type of weapons." This article is somewhat precise because it prohibits the testing of any weapons and begins to define "military nature" as the establishment of military bases and the testing of weapons; however, these terms do not constitute an exhaustive list.

Generally stated behaviors, like those in many human rights treaties, are *vague*. The African Charter for Human and People's Rights (UNTS 26363) contains articles that are both somewhat and very vague. The article stating "Every individual shall have the right to express his opinions within the law." is somewhat vague because, although it specifies a specific human right, the right to express opinions, the boundaries of the term "opinion" are themselves quite vague; the article stating "Every individual shall have the right to civil and political rights." is very vague as the terms "civil" and "political" are never defined.

In coding such a variable for which no quantifiable guidelines have been elaborated in the *Legalization* volume (Goldstein, Kahler, Keohane, and Slaughter 2000), which calls attention to this variable, or elsewhere, it is particularly important to use the same trained coders who can identify the differences and similarities across a set of agreements based on their experience. The COIL project employed such coders, and each agreement was carefully read and coded by two independent coders. Still, as a check on the coding of precision, which, unlike variables like those measuring dispute resolution, requires a judgment call, a third coder examined the entire set of agreements and focused only on precision, thereby noticing any inconsistencies in coding given that he focused solely on one category.[20]

In the analyses, we invert the precision variable so that very precise = 4 while very vague = 1. Hence a greater number implies a more precise agreement whereas a lower number implies a more vague agreement. We use an ordinal logit model to make use of the full range of the precision variable.

Dependent Variable: Reservations

The reservation variable captures whether any state added a substantive reservation to an agreement at the time the agreement was initially open for signature. We are only interested in substantive reservations because our theory addresses the distribution problem over substantive treaty obligations. The theory does not address issues of territorial applicability for states like the United Kingdom or whether a state accepts the jurisdiction of the ICJ. Thus, we modify the reservation variable from the original COIL dataset accordingly. Following Neumayer (2007), understandings and declarations that play the same role as substantive reservations are included in our reservation measure. For detailed coding decisions, please refer to the coding book in the web appendix. The reservations variable is binary: 1 if any reservations were lodged and 0 otherwise. Thus, we use a logit estimation.

Independent Variables: Underlying Cooperation Problems

The main independent variables employed in this analysis are the number of participants involved in the cooperative endeavor and the presence or absence of particular underlying cooperation problem(s) that states are trying to solve – in this case, the presence or absence of

[20] For the record, the coder changed 15% of the agreements. Only one agreement was changed by two categories/numbers with the rest changed by one category/number. (The only other coding project that employs such a technique is Mitchell's database on environmental agreements. See Mitchell and Rothman (2006) for a discussion of the merits of this approach.) Moreover, an environmental law specialist checked the agreements with which he was familiar. His coding was almost exactly the same as the final COIL coding; in one case, he coded "very vague" while COIL recorded "somewhat vague."

underlying distribution problems and coordination problems, and in the case of reservations, an underlying enforcement problem.

Distribution Problems underlying HRAs: Theory and Coding

Given the challenges of coding the underlying cooperation problems, in general, and distribution problems, in particular, we elaborate the coding of distribution problems in the issue area of human rights.[21] As mentioned above, distribution problems exist when there are multiple cooperative solutions possible during a negotiation and actors have strongly different preferences over which solution is best. Distribution problems are present in the negotiation of HRAs when states disagree over which norms either to codify or to establish in these agreements. When sitting down at the table to negotiate human rights agreements, states can disagree about a number of things – most principally, what rights should be included, and how those rights should be defined, especially since the nature and definition of a human right is very much determined by the political and cultural makeup of the state. Thus the political and cultural makeup of a state, as well as domestic political concerns, can lead to disagreement among states regarding the ideal cooperative solution. Put another way, each state is going to have a different understanding of human rights. Some understandings will be very disparate, some very close; the degree of the distribution problem among states can thereby vary from low to high.

Naturally, a state will usually (but not always) strive to establish the same set of norms or values that are already present in its own country, thereby keeping the costs of joining any particular human rights agreement to a minimum. If an agreement establishes norms that differ greatly from, or contradict, the "core values" of an individual state, it will be very costly for this state to join the agreement. In addition to ideological or cultural barriers to cooperation, some states may be confronted by domestic institutional configurations (such as the need for both the president and the Senate to approve most HRAs in the United States) that are costly to overcome, thus making cooperation more difficult.

To ensure the most objective coding possible in this issue area, Koremenos and her COIL team identified three general sources of distribution problems in human rights cooperation. The first is ideological differences; the second is cultural differences; and the third is institutional differences. Obviously, there are overlaps among these categories, as there are in most categories. Nonetheless, the human rights literature makes a compelling case for these three separate categories, and we elaborate each below.

Ideology: The Cold War rivalry between the East and the West, for example, revealed sharp ideological divisions during the drafting of some major HRAs. One example is the failure of the United Nations to draft an all encompassing Human Rights Convention covering civil and political rights together with economic, social, and cultural rights. While the West sought to promote civil and political rights, such as freedom of speech and expression, the Soviet bloc instead focused on economic and social rights such as the right to organize, health care, and housing (Cole 2005; Donelly 1986; Glendon 2001). This divide led to the establishment of two separate agreements rather than one: the International Covenant on Civil and Political Rights and its Optional Protocols and the International Covenant on Economic, Social and Cultural Rights.[22]

[21] See Koremenos 2013 for examples of the coding of other cooperation problems.
[22] UNTS 14668 and UNTS 14531, respectively.

The Cold War rivalry is the main ideological divide used when coding whether a distribution problem exists because of ideology. Another ideological divide is between Labor vs. Capital, which can be captured partly as a rivalry between the US and the Soviet Union, but doesn't align neatly among superpower allies. The drafting of a number of International Labor Organization (ILO) conventions during the Cold War revealed underlying distribution problems based on different ideological viewpoints. Some Western European states adopted positions closer to the Soviet states than to the US. The ILO Convention concerning the application of the principles of the right to organize and to bargain collectively (No. 98) may be seen as an example. While the United States favoured less regulation on the topic of workers, many European and former Soviet states wished to see increased protecting for workers' rights. In this case, the degree of the underlying distribution problem was high.

Culture: Distribution problems may also be rooted in differing cultures among states. One example may be seen in how the individual is viewed in relation to the group. While the West has a strong tradition of focusing on the individual rather than adopting a collectivist approach, Soviet and Asian states traditionally do the opposite, focusing on the group rather than on the individual (see, e.g., Cole 2005; Donnelly 2003; Glendon 2001).

During the drafting of the Universal Declaration of Human Rights, non-Western states (e.g. Asian states and Latin American states) supported by the Soviets were skeptical of Western individualistic concepts as opposed to collectivist or socialist concepts of human beings (Cole 2005; Donnelly 2003; Glendon 2001). In particular, P.C. Chang, a Chinese delegate, elaborated the Asian understanding of a human being such that a man should be viewed in relation to his or her duty to the community, to which this individual belongs and which provides a foundation of the individual's existence per se (Glendon 2001). Later on in the 1990s, "Asian Value" debates challenged the legitimacy of international human rights standards (Donnelly 2003: 107; Glendon 2001). For example, political leaders and intellectuals, such as Lee Kwan Yew in Singapore and Mahathir bin Mohamad in Malaysia, claim that, if a substantial deviation from a common international human rights standard is based on culture, it is legitimate (Donnelly 2003: 107). South American delegates to human rights negotiations have expressed similar view, requesting a balanced view between an individual's rights versus its duties (Glendon 2001). Finally, Cole (2005) points out that the 1990 Cairo Declaration of Human Rights is "quite explicit in declaring that divine law (Shari'a) preempts human rights as promulgated in international law (473)."

Institutional Inertia: Depending on the size of the discrepancy between domestic human rights practices and international human rights standards, states face different costs to committing to HRAs (Hathaway 2003). The United States and the United Kingdom are very alike with respect to culture and ideology, but have institutional differences that might come into play for certain HRAs, like those involving the death penalty. The US has many veto players when it comes to changing the death penalty and hence faces high costs to signing an agreement for which the death penalty is prohibited. Another example may be seen in the Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity, which revealed irreconcilable differences over the issue of non-retroactivity. For a number of states, the issue of non-retroactivity is a key principle of criminal law, guaranteed in their constitutions. This principle protects individuals from being prosecuted for an action that was not considered a crime at the time the action took place. The distribution problem was insurmountable in this case.

As a final example, the agreement between France and Belgium on passenger traffic can be mentioned. Negotiated in 1945, it is a HRA for which any distribution problem can be described as low. Considering the common history and close ties between France and Belgium, it is reasonable to believe that there were no deep divisions regarding the terms and conditions of this agreement. There existed neither ideological, nor cultural, nor institutional obstacles when negotiating the substantive provisions.

When coding whether there is an underlying distribution problem for any particular human rights agreement, it is imperative to consider each of these categories as potential sources of distributional problems. Actual negotiating records are used when possible.

Control Variables: Number, Polity, the U.S. and Length of an Agreement

We measure the number of participants as the natural log of the number of original participants involved in the negotiation of the agreement;[23] we do not count states that were not initially involved but acceded later. When it comes to the reservation analysis, we add three control variables. To address Neumayer's (2007) claim regarding the association between liberal democracies and reservations, we include the average democracy level of the initial participants to a given treaty. Specifically, we use polity scores from the Polity IV Project (Marshall and Gurr 2012), which range from -10 to 10. We also include a U.S. dummy variable to control for the unique domestic institutional ratification barriers found in the US. It is a binary variable, 1 if the U.S. is a member of a given treaty and 0, otherwise. Lastly, we control for the length of an agreement: the longer the agreement, the more substantive provisions available for a state to enter reservations.

Empirical Tests

In this section, we unveil the underlying mechanisms through which the human rights issue area is linked to both the imprecision of treaty language as well as to the incorporation of reservations. We use ordinal logit models to take full advantage of the information contained in the coding of the precision variable. Our conjectures are that agreements characterized by Coordination Problems with or without Distribution Problems (e.g. *Coordination But Not Distribution Problems* and *Distribution and Coordination Problems*) are likely to be more precise than those characterized by *Distribution But Not Coordination Problems* (*Conjecture 1*); and agreements characterized by Coordination Problems with or without Distribution Problems (e.g. *Coordination But Not Distribution Problems* and *Distribution and Coordination Problems*) are less likely to contain reservations than those characterized by *Distribution But Not Coordination Problems* (*Conjecture 2*); and agreements that are characterized by underlying *Enforcement Problems* are less likely to contain reservations than those not characterized by Enforcement Problems (*Conjecture 3*). The following empirical tests support our main argument: The human rights issue area per se loses its explanatory power once we control for the underlying cooperation problems that brought states to the negotiation table and number of participants.

[23] We use the log of the number of participants because the unlogged variable is highly right-skewed.

According to the first column of Table 5, the *Human Rights Issue Area* is indeed negatively associated with the level of precision in treaty language when only issue area dummies are included in the model (note that security issue area is the excluded category here). This result is statistically significant at the 1 percent level. When we introduce the *Logged Number of Parties*, which is expected to be negatively associated with the level of precision according to the extant literature (Erhlich and Posner 1974; Koremenos 2013), the effect of the human rights issue area is substantively attenuated while still statistically significant at the 5 percent level (column 2 of Table 5). Controlling as well for the underlying cooperation problems through the combinations of *Distribution and Coordination problems* makes the effect of the human rights issue area on the level of precision practically disappear both substantively and in terms of statistical significance (column 4 in Table 5).

Table 5. Ordinal Logit Analyses

	(1) precision	(2) precision	(3) precision	(4) precision
Human Rights Issue	-1.37***	-1.13**	-1.19**	-0.60
	(0.510)	(0.558)	(0.577)	(0.584)
Environment Issue	-0.85*	-0.85*	-0.83*	-0.54
	(0.499)	(0.498)	(0.498)	(0.515)
Economic Issue	0.41	0.32	0.32	0.52
	(0.374)	(0.368)	(0.370)	(0.376)
Distribution			0.33	
			(0.360)	
Coordination with/ without Distribution				1.85***
				(0.622)
Neither Distribution Nor Coordination				0.34
				(0.590)
Number of Parties (logged)		-0.23	-0.29	-0.19
		(0.158)	(0.175)	(0.187)
Cut Points	yes	yes	yes	yes
N	234	234	234	234
Log pseudolikelihood	-234.44	-232.77	-232.30	-220.30

Notes: Robust standard errors in parentheses. *** p<0.01, ** p<0.05, * p<0.10.
To conserve space, we do not report the coefficients of cut points and their standard errors here.

The third column reveals that *Distribution problem* is a coarse variable. Contrary to Rational Design conjecture, it is positively associated with precision and its effect is not statistically significant at any level. However, when we disaggregate *Distribution problem* into sub-categories, including *Distribution But Not Coordination, Coordination But Not Distribution*, and *Distribution and Coordination* as in column 4, *Coordination But Not Distribution* and *Distribution and Coordination* are indeed likely to lead to more precision than the reference

category (excluded dummy), *Distribution But Not Coordination.* And it is statistically significant at the 1 percent level. Similarly, if we leave out any combination of cooperation problems with Coordination (*Coordination But Not Distribution* and *Distribution and Coordination)* as the reference category, the coefficient on *Distribution But Not Coordination* is -1.85 and is statistically significant at the 1 percent level. Overall, the expected relationships between the underlying cooperation problems and the level of precision are supported.

As expected, the more participants in an agreement, the less precise an agreement, although the variable never obtains statistical significance at any conventional levels. The *Environmental Issue Area* tends to lead to vague agreements but it loses its statistical significance when the combinations of underlying cooperation problems are added to the model. The *Economics Issue Area* is positively associated with the preciseness of treaty language across all model specifications but is never statistically significant at any conventional levels. Therefore, the results support our main claim that the presence of *"Distribution But Not Coordination Problems"* (either "*Coordination But Not Distribution Problems"* or *"Distribution and Coordination Problems"*) is more likely to lead to less (more) preciseness in treaty language, not the *Human Rights Issue Area*.

In sum, once we control for such underlying cooperation problems and the number of actors involved, the coefficient on the human rights dummy disappears in terms of both substance and significance. More broadly, this analysis lends support to COIL's premise that the design of human rights agreements can be explained within the same unifying framework that can explain agreements in economics, environment, and security.

Next, we use logit models to examine whether agreements characterized by anything with Coordination such as *Coordination But Not Distribution* and *Distribution and Coordination* are negatively associated with the presence of reservations compared to those with *Distribution But Not Coordination* (*Conjecture 2*) and whether agreements characterized by *Enforcement Problems* are negatively associated with the presence of reservations (*Conjecture 3*). Again, the results corroborate our main claim that it is not the human rights issue area but the underlying cooperation problems that encourage states to lodge reservations.

Table 6 displays these results. The first column essentially repeats the descriptive statistics presented earlier: the coefficient on the *Human Rights Issue Area* dummy is positive and significant when only issue area dummies are included in the model. When we introduce our control variables *Logged Number of Parties, Average Polity, U.S. dummy,* and *Agreement Length*, the effect of the *Human Rights Issue Area* is attenuated and loses its statistical significance (column 2). Inclusion of our main independent variables, *Coordination But Not Distribution* and *Coordination and Distribution Problems* and *Enforcement Problems,* indeed practically erases the coefficient on the *Human Rights Issue Area* both in terms of substance and statistical significance (column 3).

As expected, the variable of Coordination with/without Distribution Problems (e.g. *Coordination But Not Distribution* and *Coordination and Distribution Problems*) is negatively associated with the presence of reservations as is *Enforcement Problem* (column 3). The former is not statistically significant at conventional level but our sample size is relatively small -- not much variation exists in our dependent variable.[24] The expected inverse relationship between

[24] Only 21 out of 234 agreements have at least one substantive reservation entered by a state. Among the 60 agreements with Coordination with/without Distribution, states lodged substantive reservations to only two of them.

Enforcement Problems and reservations is statistically significant at the 10 percent level. The control variables are signed as predicted although the impact of many of them is not statistically significant (columns 2-3). Overall, Conjectures 2 and 3 are supported by the data as is our main point that the human rights dummy loses its explanatory power once one accounts for the underlying cooperation problems.

Table 6. Logit Analyses

	(1) reservation	(2) reservation	(3) reservation
Human Rights Issue	1.15**	0.41	0.05
	(0.552)	(0.853)	(0.893)
Environment Issue	-1.82	-1.90*	-1.12
	(1.105)	(1.138)	(1.155)
Economic Issue	-2.70**	-3.02*	-3.28*
	(1.098)	(1.605)	(1.701)
Coordination with /without Distribution			-0.66
			(1.113)
Neither Distribution Nor Coordination			-1.52*
			(0.890)
Enforcement			-1.79*
			(1.035)
Number of Parties (logged)		1.49***	1.61**
		(0.511)	(0.703)
Average Polity		0.14	0.15
		(0.118)	(0.133)
US		0.41	0.19
		(0.733)	(0.731)
Agreement Length		0.02	0.03
		(0.048)	(0.052)
Constant	-1.92***	-6.00***	-5.01**
	(0.438)	(1.869)	(2.093)
N	234	223	223
Log pseudolikelihood	-53.939	-32.269	-29.484

Notes: Robust standard errors in parentheses. *** p<0.01, ** p<0.05, * p<0.10.

OPTIONAL PROTOCOLS

Table 7: Optional Protocols by Issue Area (percentage of each issue area)

Issue Area	No Optional Protocol (%) (1)	Optional Protocols (%) (2)	Total (%)
Economics	100	0	100
Environment	100	0	100
Human Rights	93	7	100
Security	98	2	100
Total	98	2	100
Pearson chi2(3) = 10.26 p=0.016			

Table 8: Optional Articles by Issue Area (percentage of each issue area)

Issue Area	No Optional Articles (%) (1)	Optional Articles (%) (2)	Total (%)
Economics	95	5	100
Environment	98	2	100
Human Rights	73	27	100
Security	100	0	100
Total	93	7	100
Pearson chi2(3) = 29.42 p=0.000			

Adjudicating among Arguments: What Happens Over Time?

How might we adjudicate between arguments that chalk up the imprecision of HRAs to a lack of seriousness on the part of participants when it comes to compliance as opposed to those that argue that imprecision is a rational design meant to solve the distribution problem among states?

One research strategy is to consider what happens over time. Like Constructivists, I believe one goal of HRAs is to export norms to places they do not exist and reinforce them in places where they may be tenuous. According to my argument, if imprecision is necessary to solve the underlying distribution problem to get the agreement going in the first place, as norms take hold or change in the direction contemplated by the agreement, we would predict two things:

1. Agreements dealing with similar sub-issues would become more precise over time, and

2. States that made reservations to solve the distribution problem would begin to withdraw them.

With respect to the sub-issue of the death penalty, according to Simmons (2009), the language addressing the abolishment of the death penalty has become *more precise* over time across various human rights instruments. In the Universal Declaration of Human Rights, the death penalty is not explicitly banned. The ICCPR, eighteen years later, prohibits the death penalty in a qualified manner. Seventeen years later, *Optional Protocol* No. 6 of the European Convention on Human Rights bans the death penalty but allows states to add reservations for the most serious crimes during war. Likewise, the Second *Optional Protocol* to the ICCPR in 1989 bans the death penalty "in all situations, including war, unless a country specifies otherwise through reservation at the time of ratification." These latter two occurrences also illustrate Figure 8-3 in practice, with states with the highest standards accepting optional obligations.[25]

HRAs can also become more precise over time through narrower treaty interpretation by courts (Helfer 2003; 1998). The European Court of Human Rights has done this slowly and cautiously and has succeeded by many accounts.

Regarding reservations, states who added reservations upon ratification or accession might withdraw all or some of them over time if either norms evolve on average towards those contemplated by the more passionate human rights champions or a change in domestic politics gives greater relative power to those who support additional human rights.

Regarding CEDAW, 25 states have withdrawn reservations (Wotipika and Ramirez 2007), and half of the 16 Muslim member states have either withdrawn reservations or promised to do so. This behavior is consistent with reservations serving as a form of flexibility to solve the initial distribution problem: As this distribution problem lessens, some flexibility is "withdrawn." If states were simply adding reservations to make noncompliance easier, why would they ever withdraw their reservations?

Whether reservations will be withdrawn is conditional on the type of distribution problem being solved by the reservations in question. If the distribution problem is ideological and enshrined in constitutions, this is not a matter of norms converging; thus the flexibility needed to attain agreement will prevail. Such is the case with the Convention on the Elimination of All Forms of Racial Discrimination (CERD) for which only 1 out of 37 reservations has been withdrawn. For instance, Article 4 of CERD contradicts the Freedom of Speech principle enshrined in many constitutions, including those of the United States and France, and was thus the most reserved substantive provision with a total of 20 states lodging reservations to Article 4.[26]

It is also worth noting that, while the evidence is consistent with our general argument, insincere ratification of HRAs does still occur. Still, the withdrawal of reservations in the case of CAT illustrates the dynamic element of the argument. Specifically, the case of Chile illustrates

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[25] The point about the norm taking hold (and the distribution problem being thereby lessened) is still valid if one looks at both the number of accessions over time as well as the number of withdrawals of reservations allowing the use of the death penalty during war. See http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-12&chapter=4&lang=en.

[26] Article 4 states: "States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination."

the distributional problem being solved by regime change: Pinochet was replaced with Aylwin, whose mandate was to bring democratic principles, including respect for human rights, back to Chile. In general, reservations allow states like Pinochet's Chile to ratify the agreement, despite not being sincere about complying with the spirit of the agreement; then, if and when such states transition to democracies, the agreement is in place and reservations can be withdrawn, very much in the spirit of Simmons 2009 argument about the effectiveness of human rights agreements in transitional democracies.

Given this promising anecdotal evidence about states' reservations being used to solve the distribution problem as opposed to making noncompliance easier, we then looked at the withdrawal of reservations over the COIL random sample. For the 21 agreements that had reservations added at the time of signature (one economic agreement, one environmental agreement, six security agreements, and thirteen human rights agreements), states have withdrawn reservations from the one economics agreement and from over half of the HRAs, in which multiple states withdrew their reservations across time.

Conclusion

This analysis leads credence to the view that HRAs are meaningful components of international law and can be understood within the COIL framework. The relative imprecision of HRAs and the addition of reservations are rational responses to an underlying Distribution problem that is not complicated by an underlying Coordination problem. The original Rational Design conjecture, Flexibility increase with the Distribution problem, is thus refined when it comes to the particular devices of precision and reservations.

This analysis also shows the potential complementarity of various approaches to international cooperation. COIL explicitly incorporates an important component of the Constructivist research agenda, that of norm exportation, and shows how the withdrawal of substantive reservations substantiates the claim that norms do indeed take hold across states. Finnemore and Sikkink (1998: 888) argue that "standards of appropriateness" might change over time through a "life cycle" of evolving norms. According to Finnemore and Sikkink, a norm emerges when norm entrepreneurs attempt to persuade an important group of states to incorporate the new norm. And then, the norm "cascades" occur as these convinced "norm leaders attempt to socialize other states to become norm followers" by pressuring or urging them to feel good about themselves with better international legitimacy (1998: 895). In the end, the norm is finally internalized and taken for granted. They conclude that these "internalized or cascading norms may eventually become the prevailing standard of appropriateness…" (1998: 895). We have shown that this life cycle of norms may happen in the context of a treaty by initially allowing more imprecise language and tailored exemption by granting reservations with treaties evolving into more precise international and states withdrawing their initial reservations over time.

Our study opens up a few possible venues for future research on the effectiveness of international treaties, in particular HRAs. This paper implies that, when scholars examine treaty compliance or effectiveness, they need to take into account inherent differences in treaty design in terms of flexibility, which allow different levels of treaty obligations in the first place. Most of the extant studies on compliance/effectiveness seem to assume that all members are subject to the same treaty standard of behavior even though some states initially tailor treaty obligations to their needs at least in the short run. Scholars must also consider more medium and long-term

data since the mechanisms identified here are ones that change over time. Failure to address such factors may result in the over-estimation of non-compliance.

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