Explaining the Emergence of Human Rights Regimes: Liberal Democracy and Political Uncertainty in Postwar Europe

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Abstract

Formal international human rights regimes differ from most other forms of international cooperation in that their primary purpose is to hold governments accountable to their own citizens for purely domestic activities. Many establish international committees, courts, and procedures for this purpose. Why would governments establish an arrangement that invades domestic sovereignty in this way? Current scholarship suggests two explanations. A realist view asserts that the most powerful democracies seek to externalize their values, coercing or enticing weaker and less democratic governments to accept human rights regimes. A ideational view argues that the most established democracies externalize their values, setting in motion a transnational process of diffusion and persuasion that socializes less democratic governments to accept such regimes. These are often combined:

The most powerful and persuasive democracies coerce and cajole less democratic states into accepting international obligations. I propose a third, institutional liberal view. Drawing on theories of administration and adjudication developed to explain rational delegation in domestic politics, I maintain that governments delegate for a self-interested reason, namely to combat future domestic political uncertainty. It is thus not the most powerful or persuasive democracies, but weakly established democracies that favor enforceable (as opposed to merely rhetorical) human rights obligations, because such commitments help lock in democratic governance against non-democratic domestic opposition. I test these three theories by examining the founding of the European Convention on Human Rights-considered the most successful system of formal human rights guarantees in the world today. In accordance with the institutional liberal view, I find that the strongest postwar advocates of binding human rights guarantees were recently reestablished democracies, while more established democracies like Britain, Sweden, the Netherlands and Denmark uniformly sided with transitional regimes like Greece and Turkey in opposition to binding guarantees. The historical record of negotiating tactics and domestic deliberation offers further support. The general claim that governments bind themselves to

international regimes to dampen domestic political uncertainty might usefully be generalized to other human rights regimes, such as similar UN, Inter-American, and African regimes, as well as to cooperation in other issue areas, including international trade and monetary policy coordination.

The 50 th anniversary of the United Nations' Universal Declaration on Human Rights marks an appropriate moment to reconsider the reasons why governments construct formally binding international regimes to adjudicate and enforce human rights. [1] Such regimes differ from most other forms of international cooperation—and from purely rhetorical human rights declarations like the Universal Declaration itself—in that their primary purpose is to hold governments accountable before international institutions for their purely domestic activities. Such regimes do little to structure transactions among different governments. While some formally empower governments to challenge one another, this almost never occurs. It is a commonplace of international legal scholarship that the distinctiveness of such regimes lies instead in the empowerment of *individual citizens* to bring suit to challenge the domestic activities of *their own government* . The independent courts and commissions attached to such regimes are often empowered to nullify domestic legislation—even if enacted through fully democratic procedures. In this regard, such regimes pose a fundamental challenge not just to the Westphalian ideal of state sovereignty that underlies both realist international relations theory and classical international law, but also, though this is far less often noted, to liberal notions of democratic legitimacy and self-determination. For this reason, their postwar emergence, beginning with the Universal Declaration, has been called the most "radical development in the whole history of international law." [2]

There is a real theoretical puzzle here: Why would any government, democratic or dictatorial, favor establishment of an independent international authority, the sole purpose of which is to constrain its domestic sovereignty in such an unprecedentedly invasive and overtly non-democratic manner? Nearly all scholars who seek to answer this question theoretically, and thereby to explain human rights regimes, advance either a realist or an ideational explanation—or some combination of both.

Those who argue in a broadly realist vein maintain that normative coherence is a function of the concentration of interstate power. Powerful states, some of which happen to be democratic, impose human rights values on weaker ones. Those who argue in a more ideational vein (variously identified as liberal idealists or liberal constructivists) maintain that human rights regimes are a reflection of altruistic ideals. Democratic governments, or transnationally active members of democratic civil societies, are the strongest supporters of human rights regimes. They then externalize their ideology, persuading and encouraging other governments to implement human rights norms. Many scholars espouse both positions at once, arguing that powerful democracies coerce and induce others to respect human rights norms for idealist reasons.

Neither explanation, I argue below, captures the primary motivation behind the construction of formal human rights regimes. Existing theoretical claims rest on a near-total absence of empirical analysis. Neither historians nor political scientists have gone beyond published secondary sources in seeking to

explain the motivations of governments to create and join such regimes. The explanations above are no more than speculation based on casual observation of such regimes. Yet even casual observation is enough to suggest that neither explanation is correct. Even the secondary source record makes clear that the primary proponents of binding international human rights commitments in postwar Europe (as well as other regions) were neither the most democratic nor the most powerful states. Indeed, *strong democracies tend to ally with dictatorships in opposition to binding human rights protection* —a tendency very seldom noted by scholars and for which realists and idealist have no explanation. The primary proponents of formal human rights protection are instead the governments of weak and newly established democracies.

This curious pattern is explicable, I argue in the second section of this essay, only if we adopt a different theoretical starting point—that of domestic self-interest rather than realist power politics or exceptional transnational idealism. It is an act of political delegation akin to the establishment of domestic courts and administrative agencies as understood using theories of delegation drawn from the sub-disciplines of American politics and comparative public policy.

From this perspective—we might term it an institutional liberal or "two-level" perspective—delegation is a tactic to insulate the policies favored by a current government against future domestic political uncertainty. It "locks in" democratic norms against future threats from non-democratic opponents by placing the definition, interpretation, and adjudication of fundamental human rights claims in the hands of an independent international authority. Any violation of human rights is thereby rendered a more salient and symbolic event at home and abroad, against which governments hope to marshal greater domestic and perhaps also international support. The cost of such an arrangement is, however, that a measure of power to nullify or reinterpret individual domestic laws is thereby placed in the hands of the international body likely to render decisions that seek to bring all governments under common principles, rather than accommodating specific national particularities, compromises, exceptions, or political circumstances. The strongest support for legally binding guarantees will come instead from weak democracies, for which the need to stabilize the democratic system outweighs limitations on sovereign control over individual legislation.

In the third section of the essay, I test the realist, ideational, and institutional liberal explanations using historical data drawn from a primary source-based investigation of the origins of what is widely accepted to be the most effective of enforceable international human rights regimes in the world today—and for some decades, the only effective one—the European Convention on Human Rights (ECHR) system under the auspices of the Council of Europe, based in Strasbourg, France. Over the last half century, commentators agree, the European Convention system has established "effective supranational adjudication" in Europe. [3] The European Court has rightly proclaimed the Convention "a constitutional document of European public order." [4] Systematic comparison of national positions and primary-source evidence concerning negotiating tactics and domestic political decision-making strongly confirm the institutional liberal explanation.

The notion that states construct international institutions in order to reduce domestic political uncertainty, I conclude in the fourth and final section, can be usefully extended to other areas of world politics, including other human rights regimes, monetary policy coordination, and trade liberalization.

I. Existing Theories of International Human Rights Cooperation

Unlike international regimes governing international trade, environmental externalities, and international security, human rights enforcement and adjudication regimes do not seek to regulate ongoing international transactions. Instead they constrain governments solely in interaction with their own citizens or residents. [5] Why should governments coordinate their domestic policies?

Existing scholarship seeking to explain why governments accept the constraints on domestic sovereignty imposed by formal international human rights regimes has therefore focused on either power or altruism. These two options define distinctive realist and ideational explanations of human rights regimes, which, despite being viewed historically as antitheses, tend to converge toward similar empirical predictions. These theories are discussed below; their predictions are summarized on the next page on Table One.

To offer a brief preview of our findings, we see that even at the social conferences, sovereignty issues continue to shape NGO-state relations. As expected, sovereignty debates do indeed center around economic and cultural referents, in the absence of much debate about traditional security issues at these conferences. NGOs at the UN conferences of the 1990s exhibit an expanded global role, possessing more potential for independent agency and dialogue with states than at any time before. However, NGOs' agency is also shaped by the procedures and agenda that remain in the hands of states. We also find that money does not "change everything"; on issues of foreign aid discussed at the conferences, recipient states were not willing to have international agreements dictate the percentage of their budget dedicated to social programs. Few donor states were willing to bow to similar recommendations for the percentage of aid they should give for social needs.

TABLE ONE – ESTABLISHING HUMAN RIGHTS REGIMES: CAUSAL MECHANISMS AND PREDICTIONS

	Realism	Ideational Theory	Institutional Liberalism
Supporters and Opponents	Most powerful democratic states are strongest supporters. Smaller states and perhaps non-democracies are opposed.	Most stable and idealistic democracies are strongest supporters. Non-democracies and unstable democracies are opposed.	Weak, but established, democracies are strongest supporters. Strong democracies and non-democracies are opposed.
Negotiating Dynamics	Coercion or inducements by great powers.	Socialization through example or persuasion by established and committed democracies.	Convergence of interest and willingness to accept "self-binding."
Primary Motivations for and Constraints on Participation	Great powers seek to extend specific national ideals, probably for reasons of self-interest or pride, subject to constraint imposed by the cost of coercion or inducement. Smaller states are compelled to comply.	Democratic states have an altruistic desire to extend perceived universal norms, constrained by cost of transnational socialization, persuasion, and organization. Weaker states follow "logic of appropriateness."	Participants seek to secure domestic democracy against future political uncertainty by creating domestic political symbols and, secondarily, mobilizing collective security, subject to constraints imposed by the risk that domestic laws will be nullified.

A. Interstate Power and Human Rights: "For countries at the top, this is predictable"

One distinctive set of theories of international cooperation focus on the distribution of interstate bargaining power. Let us call these "realist" theories. In this view, governments accept formal human rights enforcement regimes because they are compelled to do so by great powers, who externalize their ideology—a view shared by the theory of hegemonic stability and conventional realist bargaining theory. [6] The causal link between the concentration of power in a hegemon or a few great powers, on the one hand, and international cooperation, on the other, runs through the willingness of one or a few great powers to coerce or induce recalcitrant states to accept, adjust to, and comply with international obligations. [7] The major constraint on cooperation is the cost of coercion or inducement; only hegemons

or small ("k") groups among great powers—or, at least, democratic great powers—have the concentrated power to do so. The greater the concentration of relative power capabilities, the greater the pressure on recalcitrant governments and the more likely a regime is to form and prosper.

Such arguments are often invoked to explain human rights regimes. E.H. Carr, Hans Morgenthau and other classical realists argue that governments employ such liberal ideology as justifications for geopolitical and economic interests. [8] Stephen Krasner has maintained that human rights regimes almost invariably reflect the interests, power, and intervention of great powers. [9] Kenneth Waltz presents the theoretical claim in a general form—powerful nations predictably seek to impose their (arbitrary) views on other nations—then applies it to the postwar U.S.:

Like some earlier great powers, we [the U.S.] can identify the presumed duty of the rich and powerful to help others with our own beliefs about what a better world would look like. England claimed to bear the white man's burden; France had its mission civilisatrice ....For countries at the top, this is predictable behavior. [10]

Such efforts are constrained by the willingness and ability of great powers to expend resources for this purpose. Even John Ruggie, a theorist who generally stresses institutional and ideational factors, predicts that human rights regimes are likely to be weaker than nuclear non-proliferation regimes, because the former are of less concern to the core superpower security interests. [11] Jack Donnelly writes of the Inter-American Convention on Human Rights:

Much of the explanation [for] the Inter-American human rights regime...lies in power, particularly the dominant power of the United States....[It] is probably best understood in these terms. The United States, for whatever reasons, decided that a regional regime with relatively strong monitoring powers was desirable, then exercised its hegemonic power to ensure its creation and support its operation. [12]

Others link acceptance of human rights norms to pressures by international financial organizations (the World Bank) or Western donors of development and military aid. [13]

Realist theory is often invoked as an explanation for the emergence of the European, UN, and American human rights regimes in the immediate post-World War II period. It was the dawning of an "American century," and the West was embroiled in a bipolar conflict with the Soviet Union. The U.S. and UK could be expected to use their power to promote human rights, either for reasons of pride or to provide ideological legitimacy for the Western unity against the Soviets.

B. Liberal Idealism: "The Inescapable Ideological Appeal of Human Rights"

Ideational explanations look to the altruistic pursuit of principled ideas. Governments accept binding international human rights norms, in this view, because they are swayed by their obvious ideological and normative appeal. "The seemingly inescapable ideological appeal of human rights in the postwar world," writes Donnelly, who espouses a wide range of explanations for human rights regimes, "is an important element in the rise of international human rights regimes....True hegemony is often based on ideological

'power.'" [14]

Whence the ideological appeal of human rights? Psychological, cultural, historical, and domestic political explanations have been proposed. Some look to moral psychology. Human rights ideals such as the right to life and freedom from torture are said to be intuitively attractive to human beings and are therefore recognized cross-culturally as valid. [15] Others look to cultural homogeneity. States "within the same geographical region, sharing a common history and cultural tradition," it is argued, are more likely to agree on and enforce common human rights provisions—a characteristic often said to distinguish the European and American regions, which share distinctive approaches to human rights "nurtured by a long tradition of common history, religion, culture, and human values," as against the global UN regime. [16] Still others attribute the appeal of human rights to salient historical events, in this case the wave of moral revulsion that followed the experience of Nazi atrocities during World War II. The formation of the European Convention, it has been argued, was "a direct consequence of the Nuremberg Tribunal." [17]

A final ideational approach links support for international human rights protection to domestic democratization and commitment to the "rule of law." [18] This viewpoint has deeper roots in liberal IR theory, extending beyond human rights policy: Thomas Risse has termed this approach "liberal constructivism" and others term it "ideational liberalism." [19] In this view, democratic governments seek to extend their domestic values abroad; the more democratic they are, the more likely they are to do so. Regime theorists Charles and Clifford Kupchan conjecture that "states willing to submit to the rule of law and civil society are more likely to submit to their analogues internationally."[20] International legal scholar Thomas Frank asserts that compliance with international law is a function of normative acceptance of international rules, which in turn reflects their universal form and consistency with domestic norms, as well as the legitimacy of the process that promulgated them. [21] Kathryn Sikkink links what appears to be the particularly enthusiastic support of Scandinavian governments for European human rights enforcement to their domestic democratic and social democratic values. [22]

What all such arguments share at the level of fundamental theory is a commitment to the transformative power of normative discourse and ideals. Ideational theorists insist that the source of international cooperation lies in the persuasive power of an underlying normative belief concerning the value of human rights. Conversely such theorists reject explicitly the possibility that governments might support human rights regimes for self-interested reasons, for example to respond to a pragmatic need for domestic institutional checks and balances or to prevent warfare by buttressing the "democratic peace." [23] The most fundamental motive force behind human rights regimes is not rational adaptation, but transnational socialization—the "logic of appropriateness." [24]

Ideational explanations lay particular emphasis on the mechanism of domestic and transnational public opinion and "principled" interest groups (non-governmental organizations or NGOs). [25] Human rights activism emanates from long-established and domestically generous democracies—say the United States in the UN and the Scandinavians in Europe. Domestic publics and interest groups convince their governments to create regimes and press other states to commit to and comply with them, establish transnational networks, epistemic communities, and global discourses of human rights, which in turn mobilize domestic and transnational civil society and socialize foreign leaders. [26]

Like realism, ideational theory offers a prima facie plausible explanation for the timing of the emergence of human rights regimes in the immediate post-World War II period. To be sure, appeals to psychology or deep culture manifestly fail to do this; at most they help explain why the defense of human rights might be fertile ground for transnational mobilization and persuasion. Yet the post-war period did immediately follow a salient historical event—the Nazi horrors—and raised the specter of Stalinism, and it was a period in which strong democracies like the U.S. and UK emerged as global leaders. There was much idealistic rhetoric and some interest group and partisan mobilization, particularly connected with the promulgation of human rights declarations like the UN Universal Declaration.

C. The "New Orthodoxy": A Curious Convergence of Realism and Idealism

The study of human rights makes unlikely bedfellows. While in principle the realist and ideational theories may seem quite different, in practice they tend to converge. In explaining human rights regimes, few realists utterly forsake idealism and few idealists utterly forsake realism. Instead, there has been a widespread acceptance of a uneasy synthesis of the two.

The realists cited above do not argue that human rights norms are simply propagandistic justifications for the pursuit of national security interests. [27] Instead, they concede that the underlying preferences of the hegemon concerning human rights are independent of its power position: each great power seeks to extend idiosyncratic domestic views or to promote the form of government that is likely to encourage others to ally with it. Underlying state interests are defined domestically, but countries then pursue them by exploiting their relative material capabilities or international institutions. What makes such an argument realist, in this case, is that a different hegemon or great power might promote some values with equal effectiveness; what makes it ideational or liberal constructivist is that domestic societal values determine what values are chosen. [28]

Similarly, few idealists actually believe that the use of force or domestic political calculation is irrelevant. Socialization (i.e. transnational education, imitation, and fundamental normative persuasion) is rarely treated as the sole (or even the primary) mechanism that induces governments to accept formal human rights guarantees. There are those, to be sure, who argue that commitments to fundamental human rights are spread by governments imitating one another—a pure "logic of adaptation." [29] Yet most idealists are more nuanced. Donnelly argues, for example, that "hegemonic ideas can be expected to draw acquiescence in relatively weak regimes, but beyond promotional activities—that is, once significant sacrifices of sovereignty are demanded by states—something more is needed." [30] Many idealists therefore adopt the realist "fall-back" position. [31] They maintain that public interest groups and idealistic values shape the policies of democratic great powers, which then use their preponderant power to construct and enforce international human rights norms. Idealism explains the position of great powers; realism explains the spread of such norms.[32]

There is thus considerably more convergence in empirical analyses of human rights regimes than broad theoretical labels might suggest. Whether realist and liberal constructivist, most human rights scholars predict that established democratic states pressured by domestic interest groups and public opinion will be the primary proponents of the emergence of strong international human rights regimes. As we shall

see below, this is simply not the case. Strong democracies are in fact consistent opponents of binding human rights regimes. Thus before moving on to the empirical analysis, I shall propose a third explanation for the formation of human rights regimes.

II. Institutional Liberalism: Political Uncertainty and Democratic Peace

If the realist and liberal constructivist explanations view human rights regimes primarily as a international or transnational phenomenon, respectively, what I shall term here the "liberal institutional" explanation views it primarily as a domestic phenomenon. This explanation treats international institutional commitments, like domestic institutional commitments, as self-interested means of "locking in" preferred policies in the face of future political uncertainty.

This view, which draws on theory widely employed to explain delegation in American and comparative politics, treats domestic politics as a game in which politicians compete to exercise public authority. It is a game of winners and losers, in which the transfer of power, whether it takes place through majority rule or forcible change, gives individuals the right to profit at the expense of others. [33] In this context, independent political bodies like courts and administrative agencies are not simply means of overcoming Pareto-suboptimal collective action problems (domestic or international) for the general good, but also means by which the winners of political conflict seek to lock in their preferred policies. Independent authorities, whether judges or administrators, are selected with the strategic intent to ensure that laws will be enforced over the long-term in a way consistent with a specified initial intent. Institutional commitments, properly designed, insulate the administration, interpretation, and enforcement of rules from future political opponents. As Terry Moe puts it: "Most political institutions...arise out of a politics of structural choice in which the winners use their temporary hold on public authority to design new structures and impose them on the polity as a whole."[34]

From this perspective, a rational decision to delegate requires that a government weigh two cross-cutting considerations: the surrender of discretion and the reduction of political uncertainty. Consider first the *surrender of discretion* . In democratic politics, groups and individuals compete to establish policies that shape collective behavior or redistribute wealth in their favor. Independent international human rights enforcement, like independent judiciary and administration in domestic politics, seems inconsistent with if not subversive of this interest-based domestic political process, whether democratic or not. Independent judges (or administrators) unsympathetic to any provision that emerges from this democratic process can seek to negate it either by direct nullification or by failing to enforce it effectively. William Landes and Richard Posner observe: "The outcomes of the [democratic] struggle can readily be nullified by unsympathetic judges—and why should judges be sympathetic to a process that simply ratifies political power rather than expresses principle?" (Consider, for example, the sixty years preceding the New Deal in the U.S., in which the federal judiciary obstructed reform favored by the Congress. [35]) From this perspective, there is always some agency cost—the cost of creating an independent agent not fully under the control of government or people—to establishing independent political authority. It is thus hard to see why a sitting government or the domestic groups who support it should ever favor establishment of an independent court or administrative agency.

What is true domestically is surely even more so internationally. We would expect to see cross-national

differences concerning the precise scope and nature of enforceable human rights even greater than those among domestic groups. An international judiciary is thus likely to impose an inconvenient constraint on any given national government with particular views concerning the issues under its jurisdiction. From this perspective, "national sovereignty," the commitment to national rather than international adjudication of human rights claims, is the equivalent of a domestic government's desire to retain discretion and autonomy vis-à-vis courts and administrative agencies. This inconvenience stems not only from the inherently cumbersome nature of international litigation and the difficulty of enforcing international judgements, but also from the lack of sympathy international judges or administrators are likely to feel for national particularities. Whereas the launching of open-ended and global judicial discourse over the harmonization of human rights practices may have seemed attractive to those who draft international covenants, it is surely less so from the perspective of an individual national government.

More concretely, an international human rights regime imposes two sorts of constraints on member states: one normative and the other institutional. First, an international treaty may promulgate a precise list of human rights that differs from specific national practices of established democracies. In the case of Britain, a country without a written bill of rights, for example, the European Convention on human rights introduced such a list for the first time. In other countries distinctive national traditions concerning the balance of specific rights in specific cases are likely to differ from any international treaty. In his contribution in 1949 to the UNESCO Committee on the Theoretical Bases of Human Rights (chaired by the political scientist E.H. Carr), University of Chicago philosopher Richard McKeon pointed out that any international human rights document must necessarily contain ambiguities and tensions, perhaps even contradictions, within it—concerning the precise interpretation and resolution of conflicts between general principles. Different countries and groups—even among democratic rule-of-law societies—"advance special interests." [36] These divergent views do not simply reflect self-interested special interest pleading, but ambiguities and contradictions among divergent concepts of man and society, which in turn lead to legitimate disagreements concerning the scope, conflict and application of specific rights. One legal scholar notes that "the key issues on human rights (whether in the courts or in public controversy) is not about the existence of a basic human right or its source but is about the validity of a limitation imposed on that right." [37]

Second, international human rights regimes establish single centralized institutional mechanisms for appealing and enforcing particular interpretations of those rights—in the case of the European Convention, the European Commission and Court of Human Rights. Particularly for nations without a constitutional court, this marks a significant innovation. [38] If such a court was to develop a coherent jurisprudence, as the drafters of the UN's Universal Declaration foresaw, it could only doing so by imposing a measure of harmony on the idiosyncrasies of national systems in the interest of general principles. Uncomfortable external constraints would surely be imposed.

In sum, the surrender of sovereignty imposes a real cost on any government that signs onto a human rights regime. Recalling, as noted above, that the primary purpose of international human rights courts and commissions—in contrast, say, to international legal norms for commercial transactions—is *not* to adjudicate international disputes arising from the coordination of transnational policy externalities. It therefore remains unclear why any government, democratic or dictatorial, should ever establish or accept such an international regime. Even if a government decided for some reason that it required judicial oversight, why not simply incorporate such principles into a domestic statute or constitution and establish

a domestic court or administrative agency to enforce human rights? Why would a national government accept an independent, external normative and institutional checks on its behavior that are uncontrolled by its direct will *and* unconnected with its distinctive political values?

The answer lies in the second major consideration that enters into a government's decision whether to delegate to an independent political body: *reduction of political uncertainty* . Politicians delegate power to human rights regimes, like domestic courts and administrative agencies, to stabilize future political behavior of domestic governments. A politician must always calculate that:

While the right to exercise public authority happens to be theirs today, other political actors with different and perhaps opposing interests may gain that right tomorrow, along with legitimate control over the policies and structures that their predecessors put in place. Whatever today's authorities create, therefore, stands to be subverted or perhaps completely destroyed—quite legally and perhaps without any compensation whatever—by tomorrow's authorities. [39]

To defend against this eventuality, government authorities today may seek to institutionalize favored policies in such a way as to insulate them from the actions of future governments. A government is most likely to employ this tactic when it is committed to a certain policy but faces strong internal challenges that may threaten its realization in the future—in short, where it faces *high political uncertainty* .

The fundamental purpose of human rights regimes, from this perspective, is to reduce future political uncertainty concerning adherence to basic human rights. Most democratic governments seek to assure future democratic rule. While domestic commitments, if truly effective, are surely to be preferred, there may be no way to implement a domestic judicial constraint that can withstand determined non-democratic opposition. Under such circumstances, governments may have an incentive to make a salient international commitment to human rights enforcement—playing a "two-level" strategy by "tying their hands." By placing certain authoritative functions in the hands of independent authorities managed in part by foreign governments—in other words, by alienating sovereignty, governments may be able to establish more reliable judicial constraints on future behavior. Salient and symbolic constraints of this type may trigger domestic, or perhaps transnational and international, opposition to any breach of the democratic order. In sum, such independent bodies are means employed by democratic regimes to avoid political retrogression or "backsliding."

In this view the decision of any individual government whether to support binding international human rights enforcement depends, therefore, on the relative importance placed by a government on the two basic factors analyzed above: protection of sovereignty and reduction of political uncertainty. The governments that most strongly support human rights regimes will be those that are democratic, thus rendering the sovereignty costs relatively low, and that face high political uncertainty concerning the future domestic adherence to human rights norms.

What does this mean concretely? As with realist and idealist theory, we expect *non-democracies* (or *not yet fully established democracies*) to oppose binding human rights commitments, since such governments are likely to face particularly large inconvenience from challenges to domestic sovereignty, yet have no interest in stabilizing future democracy.

More surprisingly—and in contrast to realist or liberal constructivist predictions— *strong, well-established democracies* should also oppose binding human rights commitments. Strong democracies face an increased (if modest) risk of nullification of domestic laws without a corresponding

increase in the stability of domestic democracy, since this is already high. While such governments may support rhetorical declarations in favor of human rights, they have good reason—indeed, democratically legitimate reason—to reject binding international adjudication and enforcement of human rights claims. The only justification for a confident democracy to support reciprocally binding international human rights commitments, pure idealism aside, would therefore be to pacify other states—that is, because they believe that a "democratic peace" can be locked in by domestic rule-of-law institutions. [40] They generally favor non-binding human rights declarations or one-sided commitments, but will ally with dictatorships against binding guarantees.

The strongest support for binding human rights regimes should come not from strong democracies but from *weak democracies* , that is, from democratic regimes that are firmly established at the moment but fear future instability. Only where there are real threats to future democracy from the extreme right or left, the military, or religious or nationalist movements, is concern about future political uncertainty likely to outweigh the inconvenience of supranational adjudication. [41] For such regimes, the inconvenience of supranational nullification of specific provisions is outweighed by the promise of greater political certainty concerning the fundamental tenets of democratic, rule-of-law governance.

Like the realist and ideational explanations, the institutional liberal approach offers a prima facie explanation for the emergence of human rights regimes in Europe after World War II. New and unstable democracies emerged or reemerged in Western Europe during this period. In the next section, we shall see that it was indeed the newly emerging democracies that played the most active role in creating formal international human rights regimes over the strenuous objections of their more democratic and non-democratic counterparts.

III. Competing Theories and the European Convention on Human Rights

The European Convention on Human Rights, which came into force (in its initial form) in 1953, enumerates a set of civil and political rights. [42] A Committee on Human Rights reviews petitions, which it can judge admissible if they meet several criteria, most importantly exhaustion of domestic remedies. The Commission can investigate the case, seek to settle it, or forward it under certain circumstances to a Court of Human Rights, whose decisions governments are legally bound to follow. Optional protocols, subsequently accepted by nearly all member states, provide governments with options to permit individual, as well as state-to-state petitions, and to recognize the jurisdiction of the Court. Many governments, most recently Britain, have incorporated the Convention into their domestic law. [43]

In the hundreds of cases in which explicit ECHR decisions have been taken or "friendly settlements" have been reached prior to a final Court decisions, the result has been modification of statutes, rules, and decisions concerning criminal procedure, penal codes and the treatment of prisoners, vagrancy legislation, civil codes, systems of legal aid fees and civil legal advice, the rights of illegitimate children, military codes, expropriation policies, systems of awarding building permits, treatment of the mentally ill, reformatory centers, wiretapping, government censorship of the press, interrogatory techniques, and homosexual relations. In countless additional cases, litigants have pleaded the European Convention before domestic courts.[44] Compliance is so good that ECHR judgments are, in the words of two leading

international legal scholars, “as effective as those of any domestic court.” [45]

The negotiation and ratification of the European Convention on Human Rights took place between 1949 and 1953, under the auspices of the Council of Europe. At the first session of the Council’s Consultative Assembly in September 1949, its legal committee under the chairmanship of the Frenchman Pierre-Henri Teitgen recommended that an organization be created to ensure adherence to human rights in Europe. Extended meetings of governmental committees and consultations with the Assembly itself through the first half of 1950 led to the signing of the European Convention, which came into force three years later.

The timing of the negotiation is, as we have seen, consistent with all three theories—realist, idealist, and liberal. The first decade after World War II was one of emergent bipolar conflict, powerful democratic great powers, salient historical reminders of human rights violations, and the reestablishment of democratic governance. To assess the relative importance of various theories, we therefore require more fine-grained evidence of national calculations, of which three types are considered below: the cross-national pattern of national positions, the negotiating tactics employed, the direct documentary record of national motivations, taken from debates in the Assembly of the Council of Europe and confidential documents of governmental deliberations in one critical country where these are available, namely the United Kingdom (UK). Each, we shall see, strongly supports the institutional liberal view.

A. Cross-National Variation in Negotiating Positions

Realist and ideational theories both predict that the most firmly established and committed democratic states, the most powerful states, or most powerful democracies will be the primary supporters of international human rights norms. Institutional liberal theory, by contrast, suggests that weak democracies will most strongly support binding international human rights guarantees, while strong democracies will support only declarations and dictatorships or transitional democracies no commitment at all.

Three issues of institutional design in the negotiations implicating national sovereignty played a fundamental role in the negotiation of the European Convention—each was essential to the future effectiveness of the regime. The first involved *the autonomy of international officials* : Should the Convention create no central authority, a quasi-judicial body of government representatives, or an independent court? A second involved *the power of the central authorities* : Should the Convention mandate that member states grant the Court jurisdiction? A third involved *individual access to the system* : Should the Convention mandate that member states grant private individuals and groups direct access to supranational institutions?

These three issues generated parallel, if not precisely identical, coalitions among national governments, suggesting that they tap a single underlying dimension of state preference. Austria, Belgium, France, Germany, Iceland, Ireland, and Italy supported creation of a Court of Human Rights and mandatory jurisdiction, while Denmark, Greece, Luxembourg, the Netherlands, Norway, Sweden, Turkey and the United Kingdom were opposed to anything except a court whose jurisdiction remained optional. On the question of whether the right of individual petition should be automatic, there was slightly more ambivalence, but Britain, Greece and perhaps also the Netherlands remained the most skeptical. [46]

To uncover the relationship between democratic governance and support for binding human rights

regimes revealed by these cleavages, measures of each are employed. On the independent variable side, the length of continuous democratic rule measures the strength of democratic norms and institutions—as is conventional in the literature on democracies and foreign policy. [47] European governments involved in the negotiations can thus be divided into three categories. "Strong democracies" that had been continuously under democratic rule since before 1920 and remained so thereafter: Belgium, Denmark, Luxembourg, Netherlands, Norway, Sweden, Netherlands, and the United Kingdom. "Weak democracies" were firmly established during the negotiations and remained so thereafter, but which established or reestablished democracy at some point between 1920 to 1950: Austria, France, Italy, Iceland, Ireland, and West Germany. "Transitional democracies and dictatorships," the third category, consists of two governments that either were not fully democratic by 1950, due to civil war or internal repression, and did not remain so thereafter: Greece and Turkey. [48] On the dependent variable side, votes for both mandatory binding jurisdiction and individual petition define support for a binding regime; a vote against either marks opposition to the regime. [49]

TABLE 2 – STABILITY OF DEMOCRATIC GOVERNANCE AND NATIONAL POSITIONS ON THE EUROPEAN CONVENTION ON HUMAN RIGHTS[a]

	UNSTABLE OR NON-DEMOCRACIES (Continuous democracy not yet clearly established by 1950)	**WEAK DEMOCRACIES** (Continuous democracy only since a date between 1920 and 1950)	**STRONG DEMOCRACIES** (Continuous democracy since a date before 1920)
SUPPORTS ENFORCEMENT (Mandatory Individual Petition and Compulsory Jurisdiction)	--	Austria, France, Italy, Iceland, Ireland, Germany[b]	Belgium[c]
OPPOSES ENFORCEMENT (Optional Individual Petition and/or Compulsory Jurisdiction)	Greece, Turkey (Portugal[d], Spain[d])	--	Denmark, Sweden, Netherlands, Norway, United Kingdom, Luxembourg[c]

Coding

a - The coding of most cases is self-explanatory. Greece and Turkey are distinguished as unstable, whereas Austria, France, Italy, Iceland, Ireland, Germany as weak, in that: (1) Greek and Turkish democracy is still not fully stabilized. It was less than a year after conclusion of the bloody Greek civil war. (2) Greek and Turkish democracy were widely viewed as limited by the role of the military and incomplete judicial autonomy. (3) Greece would slip back into dictatorship in 1974. This coding is consistent with the American politics literature. Terry Moe points out that governments must have sufficient power to put institutions in place—indeed, initial coalitional strength enters into his model as an independent factor; it seems reasonable to think that governments unable to rule by established democratic means therefore should be placed in a distinct category.

b - Germany, not yet a member of the Council of Europe, did not have voting rights, but participated actively in the negotiations.

c - Belgium initially hesitated, supporting the convention only with optional protocols, but then came to favor mandatory enforcement.

d - Spain and Portugal, both dictatorships, were neither invited to participate in the negotiations nor, in striking contrast to Germany, showed any interest in doing so.

e - Luxembourg abstained on some proposals for mandatory enforcement.

The pattern of positions, summarized on Table 2, strongly confirms institutional liberal theory. There is almost no support for the realist or ideational view that the most democratic (or the most powerful) countries support human rights guarantees. All six weak democracies (plus one of the ten strong democracies) support binding human rights guarantees. By contrast, nine of the ten strong democracies join both transitional democracies in opposing one or both such guarantees (or, in the case of Luxembourg, abstaining). The sole national position unexplained by liberal theory—a strong democracy that supported binding guarantees—is that of Belgium. Yet even this exception is not fully disconfirming, for closer inspection reveals that among all the governments involved, Belgium's position was among the least stable. Belgian representatives originally sided with the other strong democracies against binding guarantees and shifted their position only late in the negotiations. [50] Not only are the strongest democracies overwhelmingly opposed, but there is no evident (realist) relationship between power and national preferences. Britain, the strongest among European great powers, was opposed, whereas France, Germany, and Italy were supportive. Small countries were split. [51]

On the question of the scope of the rights to be protected under the regime, a similar cleavage emerged. Advocates of a strong system supported an open-ended grant of institutional authority. As Teitgen put it: [52]

Experience shows the court comes first. For the Court deals with cases; it progressively establishes a jurisprudence. Confidence is inspired according to the value of this jurisprudence....A long time afterwards, codification may be achieved; this will define and crystallize the results acquired by judicial experience.

Consistent with both tactical and fundamental motivations, more skeptical countries, such as Britain, the Netherlands, Sweden, and Denmark sought a more precise and narrower enumeration of rights and warned against an ambitious, open-ended system. [53]

B. Negotiating Tactics

Each of the three theories generates distinctive predictions about the tactics employed in interstate negotiations. Realist theory, with its stress on interstate power, leads us to expect attempts by great powers to coerce or induce changes in the behavior of weaker states. Ideational theory predicts a strong role for transnational persuasion by interest groups based in more democratic countries. Institutional liberal theory predicts little interstate strategic interaction, either persuasive or coercive; cooperation is instead driven and limited by convergence of self-interest among democratic governments.

Negotiating tactics reveal little direct evidence to support realist theory. No great power (or any other government) appears to have made threats or offered inducements to secure stronger commitments.

Indeed, the most important regional powers, the U.S. and the UK, were absent or opposed. There exists somewhat more evidence, if largely circumstantial, to support ideational theory. Certainly the European movement, working through the Assembly of the Council of Europe, engaged in transnational discussion and mobilization. Yet there is little evidence that this discourse influenced the positions of either parliamentary politicians in the Assembly or representatives of national governments. These remained stable, except for a modest tendency to move toward compromise on a flexible system of optional protocols, through the negotiations. [54] While there is no direct evidence of transnational influence, we cannot entirely dismiss the possibility that subtle forces of persuasion and organization were at work.

The preponderance of the evidence concerning negotiating tactics, however, confirms institutional liberal theory. Governments focused primarily on practical institutional compromises that would assure that the system functioned flexibly to assure each state its preferred level of sovereign control. No government was forced to accept de facto constraints, at least in the short-term, greater than it ideally sought. The use of optional protocols afforded governments near total formal flexibility in selecting their preferred level of commitment.

Rather than seeking to coerce or persuade one another, or mobilizing groups in civil society, governments engaged in a classical international negotiation in which new institutions were modified to a compromise level close to the lowest common denominator. Favorable governments proposed that the members of the intermediary Commission on Human Rights be nominated by the Court—a clear effort to render international institutions more independent. More skeptical governments sought to grant power of nomination to the Council of Ministers, where the states would have greater influence. [55] They also sought to delay the proceedings, as well as limit future uncertainty, by enumerating a precise list of rights or transferring the issue to the less effective UN Commission on Human Rights. [56]

The precise enumeration of rights reflected neither pressure from NGOs nor a desire to conform to the "focal point" for global debate established a few years previously by the UN system, but careful calculation of domestic institutional consequences. Indeed, its advocates saw the European system as, in this respect, a reaction to the UN system, which was widely viewed as too broad and vague to be effective. The European system was designed instead to be potentially enforceable, which meant that the scope of rights had to be narrowed considerably. [57] The particular rights came not from any single system, as realists would predict, nor from the most advanced systems or transnational interest group proposals, as idealists would predict, but from an explicit comparative legal analysis of the member state constitutions. [58] Primary attention was paid to limiting the scope of the document in order to reduce the risk of inconvenient nullification.

Secondary variation in the positions of national representatives on this question reflects self-interested concern by conservatives and socialists about the nullification of particular types of law favored by their constituencies. Social democratic representatives sought to assure that social welfare rights were not threatened and that property rights did not restrict state intervention in the economy. Christian Democratic representatives sought to protect the right of private familial, educational, and religious choice, as well as opposing any right to redistribution of property. [59] As the institutional liberal explanation leads us to expect, the result was a document carefully crafted not to offend either side by conforming to national practices of both center-left and center-right parties. [60] The scope of the convention was reduced to the least controversial among basic political and civil rights.

C. Domestic Deliberations and Public Justifications

What do the justifications of national politicians in public and private reveal about the motivations of governments? The justification advanced most consistently for construction of a European human rights system by its advocates in the Assembly was that it would help preserve democratic governance in the face of domestic totalitarian threats of the right and left. Teitgen, the chief French advocate in the Assembly, considered “Fascism, Hitlerism and Communism” as the major postwar threats to democracy—on the latter he spoke of the "abominable temptation" to "exchange...freedom for a little more bread." [61] This argument reappeared more often than any other.

While broadly consistent with all three theories, the particular arguments advanced tally most of all with the institutional liberal theory. Member states, Teitgen argued, should seek to:

...prevent—before it is too late—any new member who might be threatened by a rebirth of totalitarianism from succumbing to the influence of evil, as has already happened in conditions of general apathy. It is not enough to possess freedom; positive action must be taken to defend it....Would Fascism have triumphed in Italy if, after the assassination of Matteoti, this crime had been subjected to an international trial? [62]

This was not simply a moral concern illuminated by the recent Fascist past; the Communist threat was mentioned just as much—in France, Communists enjoyed near-plurality support in domestic elections. In addition, these concerns were explicitly linked to the belief that non-democratic states tend to be warlike. There is, for example, evidence that Teitgen’s motivation was at least in part to assure the stability of German democracy and thereby the security of France—a position he was persuaded to accept by none other than Konrad Adenauer. This clearly contradicts the conjecture of ideational theorists that no one in this era was aware of a link between democracy and peace. [63]

Consistent with institutional liberal arguments, the most explicit statements in support of the ECHR as a barrier against future tyranny were advanced neither by countries with the longest democratic heritage, nor even by those most threatened by potential violations of the democratic peace, but—as the liberal view predicts—by weak democracies, in particular the representatives of Italy and Germany. (The latter was not an official member, but enthusiastically sought to participate—in contrast to the governments of Spain and Portugal.) The author of perhaps the most thorough-going proposal for strong centralized institutions, the Italian Benvenuti, pointed out the need to prevent totalitarian movements—a problem, he argues, particularly important in nations where democracy is not firmly established. Another Italian representative, Mr. Cingolani, who also advanced a comprehensive proposal, affirmed "the principle of the joint responsibility of democratic states." [64] One German representative went further, proposing a treaty obliging all member states to come to each other's aid, apparently with force, if freedom were threatened. [65] Surely it was not by chance that postwar Germany and Italy contemporaneously adopted systems of constitutional judicial review—thereby shifting political weight away from traditional parliamentary sovereignty toward an independent judiciary. [66]

The details of the debate about the expected functioning of the system tend to provide further evidence

for the institutional liberal view. The primary expectation was not that the regime would strengthen democracy by mobilizing political or military intervention by foreign governments to enforce human rights norms. Instead it was widely acknowledged that the domestic political institutions of member states would remain the primary site of adjudication, with international adjudication serving as an external signaling device that might trigger a domestic response. Even skeptical British government officials feared not direct foreign influence, but that Parliament would be obliged to respond to the rulings of an international court or revise domestic law in accordance with the Treaty—outcomes that concerned them in confidential discussions. [67]

Why, critics in the Assembly asked, was a system required among democratic nations at all? The basic purpose, advocates made clear, was not to introduce human rights to societies where they were not already recognized, nor to supplant domestic judicial and legislative review, nor to codify the full range of human rights recognized in various countries. Instead the arrangement was justified primarily as a means to prevent backsliding by weak democracies. As Maxwell-Fyfe of the UK put it: "In answer to the criticism that, as signatories will be limited to democratic states the Convention is unnecessary...our plan has the advantage of being immediately practicable; it provides a system of collective security against tyranny and oppression. [68] The system was necessary despite the prior existence of the UN system, precisely because it was designed actually to be effective, which was possible only to the extent that all its members shared an essentially democratic political culture. [69]

Thus the major concern of skeptics had to do not with the security or ideological implications of the commitment, but its compatibility with idiosyncratic domestic legal practices. The fear of nullification of domestically legitimate national laws dominated discussion—a fact that not only supports the institutional liberal view, but also underscores that the participants took the commitment seriously. [70] On this point it is instructive to examine more closely the contrary position of the United Kingdom. In public British officials and politicians took an ambivalent position; in private they were strongly opposed. From a methodological perspective, the UK's position is critical, since—as the oldest and most firmly established democracy in Europe—its opposition (like that of Denmark, Sweden, Luxembourg and the Netherlands) constitutes a particularly striking disconfirmation of idealist and realist theories. [71] It is also one country for which we have a wealth of reliable archival documents and oral histories.

The British, as we have seen, supported international declaratory norms, but firmly opposed any attempt to establish binding legal obligations, individual access, centralized enforcement, or binding jurisdiction. [72] As W.E. Beckett, Legal Advisor to the Foreign Office—and the source within the British government of the initiative to participate—put it: "We attach the greatest importance to a well-drafted Convention of Human Rights but we are dead against anything like an international court to which individuals who think they are aggrieved in this way could go." [73] Yet even Beckett, the originator of the initiative in the UK government, conceded the existence of "overwhelming objections" to any strong means of enforcement in Britain involving an individual right of petition and independent external oversight.

For these reasons, the British considered opposing the Convention altogether, yet British leaders did not feel that Britain could take a completely negative position. [74] As an internal Foreign Office memo put it, "Political considerations, both domestic and foreign, compel us now to bring ourselves to accept" the right of individual petition in the Treaty, "the alternative, namely refusal to become a party to a

Convention acceptable to nearly all the remaining States of the Council of Europe would appear to be almost indefensible." [75] This view reflected the 1948 turnaround in British foreign policy in response to the perceived rise of the Soviet threat—the West needed to win the propaganda battle and strengthen continental democracies, as well as maintain the military balance. It was for this purpose that Britain and France had taken the lead in forming the Council of Europe. [76] There was perhaps a potentially idealist element as well. A 1951 Colonial Office draft circular recalled that "In deciding to sign the Convention, His Majesty's Government took into account the importance attached to it by public opinion both in and outside this country." [77] There was, finally, support from the small, if active European federalist movement in Britain, which was responsible for the first proposals concerning enforcement. [78]

Yet such pressures led Britain only to accept a human rights declaration, not binding enforcement. The British consistently sought to water down the Convention, rather than opposing it outright—the same position they were to take soon thereafter in the negotiation of UN Human Rights Covenants. [79] As a means to slow the negotiations and limit the potential risk of open-ended jurisprudence, the British government called for careful enumeration and definition of human rights before agreeing on any enforcement mechanism. [80] Foreign Minister Ernest Bevin himself instructed British negotiators to secure changes in the provisions for individual petition and to veto any contrary provision "even if it [means] being in a minority of one."[81] In the end, acting on Prime Minister Clement Atlee's direct instruction, the British delegation sought to place the right of individual petition and the jurisdiction of the Court into optional protocols on the jurisdiction of the court and the right of individual petition. [82]

Having secured these concessions, the Cabinet unanimously accepted the desirability of signing the Convention and did so. Ratification proceeded without difficulty. The Atlee government, still treating the Convention as a declaratory document, made no effort to introduce implementing or incorporating legislation. Yet even this outcome—which had no immediate concrete consequence—was viewed among officials in the British government as second-best, since once the document was signed, they were fully aware that future political pressure might well arise to incorporate the Treaty or to accept the optional protocols. Foreseeing that a future government, as the Lord Chancellor put it, "might be forced to concede" the jurisdiction of the Court, the British government sought also to include a clause permitting any state to withdraw from the Convention on six months notice. [83]

What precise motivations dominated internal British deliberations? Confidential documents reveal that the primary concern was not the British record on human rights. As a 1947 memo to Atlee from the Parliamentary Secretary for Foreign Affairs, Hector McNeil, observed, Britain had an "extremely good record." The definition of rights in the Convention was, so the Foreign Office memo to Cabinet in 1950 concluded, "consistent with our existing law in all but a small number of comparatively trivial cases." [84] Nor, despite some consistent, if scattered references—particularly by the Colonial Office—was the British government primarily concerned that the provisions might be employed by residents of British colonies and dependencies. Though this played some role, it was not the type of concern mentioned most often in domestic deliberations; moreover, a colonial clause was included in the Convention. [85] Nor, finally, despite the fact that the Council of Europe Assembly was the locus of federalist activity, was the government concerned about the connection between human rights guarantees and European federalism. The British government had for a half-century consistently resisted all efforts to make international

human rights law directly enforceable in British courts—and continued to do so thereafter, regardless whether its forum was European or not. [86]

British opposition was motivated instead almost entirely by what A. Maxwell, Permanent Secretary to the Home Office, described as "grave apprehension about what might happen at home." [87] They feared that the system would somehow undermine political practices and institutions in the UK that, while not constituting unambiguous violations of human rights, were idiosyncratic. This "grave apprehension" resulted only in small part from a calculation of concrete consequences. Major concerns—such as the belief of some in the Labour Party, led by Chancellor of the Exchequer Stafford Cripps, that the Convention might restrict government intervention in the economy, including entry of government inspectors into private homes—were dealt with through explicit enumeration of rights. [88] (The British position changed not at all under the Conservative government of Anthony Eden.) Colonial Secretary Jim Griffiths was concerned that "extremist politicians" among "political immature" peoples in the colonies would exploit the document, but such concerns were voiced only intermittently in government deliberation and a colonial clause limited any automatic application.[89]

Explicit concerns tended to be trivial. Lord Chancellor Jowitt worried that "the Convention would prevent a future British government from detaining people without trial during a period of emergency...or judges sending litigants to prison for throwing eggs at them; or the Home Secretary from banning Communist or Fascist demonstrations." [90] It is striking that the British officials were concerned about such scenarios not because extremist groups in Britain were particularly strong—after all, the French and Germans sought to employ the Convention precisely in order to dampen far more real threats from extremism—but because they were so weak. The underlying concern was not that some opponents of the regime might get away with egg-throwing during a state of domestic emergency, but a broader, more diffuse fear that Britain would be subject to random nullification of domestic laws. In other words, absent a compelling set of concrete concerns, it was the protection of British institutional idiosyncrasy that elicited violent rhetoric from British politicians and officials. The Lord Chancellor's official paper criticized the draft convention as: [91]

So vague and woolly that it may mean almost anything. Our unhappy legal experts...have had to take their share in drawing up a code compared to which...the Ten Commandments—are comparatively insignificant....It completely passes the wit of man to guess what results would be arrived at by a tribunal composed of elected persons who need not even be lawyers, drawn from various European states possessing completely different systems of law, and whose deliberations take place behind close door....Any student of our legal institutions must recoil from this document with a feeling of horror.

A ministerial brief referred to a "blank cheque" that would "allow the Governments to become the object of such potentially vague charges by individuals is to invite Communists, crooks and cranks of every type to bring actions." [92] The British even opposed a clause protecting rights to "free elections" and "political opposition"—apparently because they believed that their unique electoral system might be challenged. [93]

Among the most common complaints was that supreme judicial review would undermine parliamentary sovereignty. Beckett wrote:

It seems inconceivable that any Government, when faced with the realities of this proposal, would take the risk of entrusting these unprecedented powers to an international court, legislative powers which Parliament would never agree to entrust to the courts of this country which are know and which command the confidence and admiration of the world. 94

"Our whole constitution," one government document intoned, "is based on the principle that it is for the Parliament to enact the laws and for the judges to interpret the laws." 95 In short, the British government sought to protect its right to legislate as it pleased.

In comparative perspective, the truly unique characteristic of the British domestic debate is neither the wealth of concrete concerns nor the ideology of parliamentary sovereignty. Many concrete concerns—government intervention in the economy, colonies, concern about political extremists, skepticism of courts, a tradition of insular nationalism—were no different in France and many other Continental countries. Parliamentary sovereignty was a characteristic of most continental systems. In short, every established democracy had good reason to defend its particular idiosyncrasies.

Most striking in comparative perspective is instead the utter absence in the British debate of any self-interested argument *in favor* of membership. In contrast to the arguments of the representatives of France, Italy, and Germany cited above, which stressed the self-interested benefits of collective security against extremist domestic forces or a slow degeneration of domestic democracy, British internal debates and external statements are utterly devoid of such concerns. (At most they viewed the Convention as blocking government action against isolated extremists.) In Britain, marginal inconveniences that elsewhere would have been overridden in the interest of assuring democratic stability became fundamental stumbling blocks to the acceptance of binding international human rights norms. 96 From the very beginning of discussions in the UN, postwar British policy had been not so much opposed as simply apathetic about the entire prospect of human rights protection. 97

To judge from general human rights policy and contributions to the Assembly debates, the British attitude seems to have been typical of other recalcitrants like Sweden, Norway, Denmark, the Netherlands, and Luxembourg. Governments and publics in these countries appear to have been, on balance, more firmly committed to democracy, more altruistically inclined, and (subsequent experience within the regime suggests) more willing to use coercion to spread human rights norms than their more favorable counterparts. Yet, given the vanishingly low level of political uncertainty about the future of domestic democracy in these countries and the benefits of stability for ruling parties and government officials, there was little self-interested incentive to accept a binding international commitment. In rejecting binding obligations, they invoked the imperative to preserve true domestic democratic choice by safeguarding state sovereignty. 98

IV. Human Rights and Beyond: Broader Implications

We have seen that the origins of the European Convention on Human Rights—by all accounts the most successful regime for international human rights adjudication and enforcement regimes in the world today—lie not in commitment to altruistic norms or power politics, but in the self-interested desire of insecure democracies to reduce domestic political uncertainty. The strongest proponents of binding

human rights norms tended to be neither the most democratic nor the most powerful states, but weak democratic systems anxious to mobilize symbolic and perhaps substantial support, primarily at home, against future domestic opponents.

Weak democratic advocates were opposed in their efforts to create a binding regime not just by dictatorships and unstable democracies, but by the most venerable and firmly established democracies—Britain, Sweden, Norway, the Netherlands, and Luxembourg. To be sure, these governments were willing to offer declaratory support aimed at satisfying public opinion, bolstering the democratic peace, or winning the anti-Soviet propaganda battle. Yet the gains from further stabilizing a domestic democratic system in which they already had great confidence were insufficient to justify the empowerment of an international authority authorized to nullify or reinterpret domestic law. The result of this minimal convergence of interest among democracies was a flexible system that permitted national opt-outs of critical provisions. Evidence of cross-national patterns of support, public justifications, confidential arguments for and against the regime, as well as its timing, strongly confirm this theoretical conclusion. By contrast, factors emphasized in existing realist and ideational theories of human rights regimes—interstate coercion, transnational mobilization, and normative persuasion—appear to have played little or no role in the emergence of support for postwar human rights norms.

This unambiguous empirical finding has four major implications for future research on the phenomenon of domestic binding through international institutions in the area of human rights and elsewhere.

The first is that *the theory advanced here should be tested across other similar human rights regimes* . Such analysis might begin with the closely parallel Inter-American, United Nations, and African systems. [99] Preliminary evidence from the negotiation of the UN Human Rights Covenants suggests that the theory applies. At the height of the Cold War, in the early 1950s, the most stable democracies, including the U.S. and the UK, allied with authoritarian and totalitarian states like the Soviet Union, the Peoples Republic of China, and Iran, in opposition to any binding human rights commitments. By contrast, those in favor of binding commitments comprised an unusual alliance of more recently established democracies in Continental Europe, Latin America, and the Pacific. Further research is required to confirm the existence of causal mechanisms implied by this correlation.

A second direction for future research is the development of human rights regimes over time. We have seen that the European Convention, like other major human rights instruments, created a number of optional protocols. Over a subsequent period of nearly five decades, governments progressively adopted optional protocols accepting the jurisdiction of the Court and individual petition. Many incorporated the Convention into domestic law. An understanding of the negotiation of major human rights regimes begins, but does not end, with an understanding of its founding, since the determinants of the evolution of human rights systems are not necessarily the same as those of their founding. Even recalcitrant governments were quite aware that the Convention would alter domestic political arrangements so as to encourage the mobilization of new social demands for human rights enforcement. Further research is required to clarify the dynamics of these longer-term trends. [100]

A third direction for future research is comparison of human rights regimes to cooperation in other issue-areas. As compared to more conventional functional theories of international regimes, which stress reciprocity, this explanation points to a more purely domestic motivation for institutional commitment. [101] If governments employ “two-level” institutional commitments, like domestic

institutional commitments, to "lock in" policies against future political uncertainty in the area of human rights, where else in world politics might a similar dynamic be found?

If the underlying theory advanced here is correct, we should expect to see international commitments where there are efficient means to insulate current policies against future change. Intriguing parallels may be found in the areas of international trade and monetary policy. It has often been noted, for example, that Mexico gained relatively little few concrete U.S. concessions in exchange for its commitment to the North Atlantic Free Trade Area (NAFTA), leading many to speculate that NAFTA was a means of establishing the credibility of the Mexican commitment to trade liberalization against future backsliding. [102] In the process of European monetary cooperation, weak-currency countries like France and Italy have been among the strongest proponents of deeper cooperation—often with the intention of using external policy to stabilize domestic macroeconomic policy and performance. [103]

Fourth and most broadly, this study counsels caution in adopting what might be termed the "new idealism" in the study of world politics. Many scholars today, whether termed liberal constructivists, ideational liberals, or Constructivists, invoke the socializing power of normative claims or principled ideals in international politics. Of course it is true that human rights are themselves important and attractive norms. Moreover, political action to protect them clearly requires mobilization of a diffuse constituency in favor of the provision of what is in fact a public good, which in turn often leads political actors to issue strong normative appeals in support of action. [104]

The most striking finding of this study—given the dominant role of altruistic motivations in nearly every scholarly treatment of human rights—is the near-total absence of evidence in favor of altruistic motivations or transnational socialization, once the analysis is properly controlled for sophisticated forms of self-interest. A number of governments in postwar Europe, already firmly embarked on parallel processes of redemocratization, drew similar, straightforward lessons from major political events—namely that extremist governments were domestically and internationally dangerous. It was these weak democracies whose self-interested support was the critical element behind negotiation of the European Convention; their actions are best explained in terms of instrumental efforts to defend a democratic order at home and "democratic peace" abroad. Moral interdependence among governments is a consequence not a cause of underlying domestic policy convergence.

We should therefore be careful not to jump to the conclusion—as recent studies of foreign aid, arms control, slavery, racism, and human rights tempt us to do—that morally attractive international norms result from transnational normative persuasion and socialization conducted by altruistic governments and social groups, rather than instrumental interaction. Existing scholarship often mistakes self-interested action for fundamental idealistic transformation because it is based almost exclusively on analysis of public professions of idealism, secondary source speculation, or close analysis of NGO activities. Such conjectures, no matter how attractive normatively, cannot be accepted until they are tested against sophisticated theories of instrumental behavior using rigorous cross-national comparison and primary-source documentation. In this case, the application of such theories and methods reverses the conclusion of ideational theories, leaving little room to doubt not only that the true motivations of governments that delegate authority to human rights regimes are self-interested, but that these motivations differed hardly at all from the motivations of governments in the most materialistic areas of domestic politics. If a single lesson can be drawn from the formation of the world's most successful formal human rights regime, it is that in world politics, pure idealism begets pure idealism—in the form

of parliamentary assemblies and international declarations. To establish enforceable international commitments, more is required.

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Endnotes

Note 1: I would like to thank Mary Ann Glendon, Virginie Guiraudon, and Robert Paarlberg for comments; Alejandro Lorite, Alexandra Samuel, and Ilya Somin for research assistance; and Stephen Holmes, Brian Simpson, and Richard Tuck for other special assistance on this paper. I gratefully acknowledge financial and logistical support from the Weatherhead Center for International Affairs and the Center for European Studies, Harvard University. Back.

Note 2: Humphrey 1974-75, 205, 208-209; Krasner 1995-96; Falk 1981, 4, 153-183, who also points to the role of non-governmental organizations in enforcing human rights as another aspect of this revolution. Back.

Note 3: Helfer and Slaughter 1997, 283, who draw on Shapiro 1981, 7, 26-36. Back.

Note 4: Loizidou vs. Turkey , 310 Eur. Ct. H.R. (Ser. A, 1995), 27. Back.

Note 5: I do not treat human rights declarations. Hypocrisy in signing an international human rights declaration appears to be without immediate cost, regardless of a country's domestic policies, because the resulting obligations are not directly enforceable. It may be that liberal democracies are more likely to sign such declarations, but they are hardly alone. At the height of the Cold War, the US, the USSR, China, Iran, and dozens of other countries found ways to work around their differences and signed the wide-ranging UN Declaration on Human Rights. While it is possible that in the longer term such declarations help mobilize societal opposition to non-democratic governments, as some have argued in the cases of the Inter-American and "Helsinki" CSCE/OSCE regimes, it is telling that governments interested in rendering such systems effective have consistently seen it as necessary to add mechanisms for raising and resolving disputes over human rights in order. This resulted in the signing of the UN Covenants and the CSCE Vienna mechanism in 1989. See Brett 1996. Back.

Note 6: Some take the opposite view, namely that great powers tend to oppose strong human rights regimes. This view was, for example, that of the Lebanese head of the Commission charged with drafting the UN Declaration, Charles Malik, who thereby explained the combined opposition of the US, UK USSR, and China. This inductive generalization lacks theoretical underpinnings and is thus difficult to assess. One might conjecture that large states have a commitment to sovereignty independent of the substantive issue at stake—an argument that would, incidentally, be ideological, not realist. In any case, as we shall see, the inductive generalization does not hold up. Samnøy 1993, 76; Glendon 1998. Back.

Note 7: Here we consider only a purely realist variant that rests on the ability of a hegemonic state to coerce or induce acceptance. Lake 1993. Back.

Note 8: Carr 1946; Morgenthau 1960. Back.

Note 9: Krasner 1992. Back.

Note 10: Waltz 1979, 200. Back.

Note 11: Ruggie 1983, 104. Back.

Note 12: Donnelly 1986, 625, also 637-638; Ruggie 1983, 99. Back.

Note 13: Brysk 1994, 51-56. Back.

Note 14: Donnelly, "Human Rights," 638. Back.

Note 15: Keck and Sikkink 1998; Sikkink 1993. Back.

Note 16: Siegart 1983, 26-27; Ando 1992, 171-172. Also Donnelly "Human Rights." Back.

Note 17: Whitfield 1988, 31, also 28-31; Drzemczewski 1988, 220. Back.

Note 18: Russett 1993. Back.

Note 19: Risse-Kappen 1996; Moravcsik 1997. Back.

Note 20: On foreign aid, Lumsdaine 1993; Kupchan and Kupchan 1991, 115-116. Back.

Note 21: Frank 1988. Back.

Note 22: Sikkink 1993. Also Lumsdaine 1993 on foreign aid; McElroy 1992 on humanitarian action in US foreign policy more generally. Back.

Note 23: Finnemore and Sikkink 1998. Keck and Sikkink 1998, 203, conjecture that governments before the 1990s could not possibly have sought human rights regimes for the instrumental reason of preserving the democratic peace because the establishment of human rights policies and regimes "came well before the emergence of the new social knowledge" that undemocratic regimes undermine the "public good" of peace. As we shall see in the empirical section below, this equation of "social knowledge" with academic political science greatly underestimates the ability of non-academics to generate a widely accepted consensus about such issues. For a more solidly grounded view, Helfer and Slaughter 1997, 331-335. Back.

Note 24: Finnemore and Sikkink 1998; Donnelly 1986. Back.

Note 25: Sikkink 1993; Risse-Kappen 1994; Finnemore 1996. Back.

Note 26: E.g. Keck and Sikkink 1998. Back.

Note 27: Even if this were the case, the argument would not be entirely realist, since the claim that democratic governments are more likely to side with the West does not necessarily follow from realist theory. Realists increasingly concede that societal preferences play an important, often determinant role in alliance formation. For an overview of this literature, see Legro and Moravcsik forthcoming. Back.

Note 28: On this sort of realist "fall-back" or "two-step" position more generally, see Legro 1996; Moravcsik 1997, 543; Keohane 1986, 183; Legro and Moravcsik forthcoming. Back.

Note 29: Ramirez, Soysal, and Shanahan, 1997. Back.

Note 30: Donnelly 1986, 638-639. Back.

Note 31: For such a synthesis, see Keck and Sikkink 1998, 201-209. In generalizing about human rights regimes, Keck and Sikkink focus extensively on the trans-cultural attractiveness of ideas, the density of transnational organization, and the vulnerability of targets to sanctions. They contrast their explanation to an explanation that focuses on domestic preconditions, which they do not develop in detail but swiftly reject as clearly secondary. Back.

Note 32: Ruggie 1983, 98-99. Back.

Note 33: Moe 1990. Back.

Note 34: Moe 1990, 222, 213. Institutions are "weapons of coercion and redistribution...the structural means by which political winners pursue their own interests, often at the great expense of political losers." In the domestic constitutional context, constitutional change is locked in by the fact only a super-majority is typically able to amend; the constitution can be seen as a means by which super-majorities bind subsequent majorities. The case we are analyzing here, like the case of

administrative delegation, is more complex, since treaties are generally ratified by majority, and the non-democratic opponents are bound not by majority but by the extent of their coercive power. On the underlying issues, see Pasquino 1998. Back.

Note 35: Landes and Posner 1975, 896. Courts do not simply nullify laws, but also act at times like true co-legislators, redefining the content of the law. Also Pasquino 1998, 49. Back.

Note 36: McKeon 1949, 35, cited in Glendon 1998, 1157, also 1155-1157. Back.

Note 37: Costello 1992, 177. McKeon predicts that if the ambiguities within any such system are to be overcome and not lead to "degeneration," they must be made "productive," serving as the "beginning points for further advances." Mary Ann Glendon has argued that such conflicts were foreseen in the late 1940s by the drafters of the UN Universal Declaration on Human Rights, most of whom came from countries with a civil law tradition, in which the resolution of specific tensions through the interpretation and application of general principles is seen as the engine of legal progress. Glendon 1998, 1170-1172. Back.

Note 38: Drzemczewski 1988, 11. The rights enumerated in the Convention could be enforced—most analysts say more effectively—by incorporating the Convention into domestic law. Back.

Note 39: Moe 1990, 227. This body of theory is generally applied to democratic governance, which means that we can assume the effectiveness of legitimate bodies to enforce political bargains. Here we extend this insight to international politics; the prospect of fundamental regime changes raises an even more basic commitment problem. Back.

Note 40: Russett 1993. Democratic great powers should encourage reciprocal human rights commitments only where they are concerned about future security threats. This argument is, of course, liberal rather than realist, since for realists the domestic governance of states should make no difference. Back.

Note 41: Governments must of course have sufficient freedom at the current time to act in this way; it would be somewhat surprising to see a democratic government that requires non-democratic means to stay in power—for example, a government under heavy military influence or engaged in a civil war—take such a step. We therefore expect transitional regimes, as opposed to recently established democracies that seek protection against future political uncertainty, to be skeptical of binding human rights commitments. Back.

Note 42: The scope of these rights are narrower than those in the UN's more ambitious Universal Declaration, to which it was in this regard a pragmatic reaction. Back.

Note 43: The Commission screens the petitions to establish the admissibility of the complaint, including ascertaining that the individual whose rights are alleged to be violated has exhausted all domestic remedies. If the complaint is deemed admissible, the Commission conducts an inquiry, requests more information from the parties, and seeks to move them toward a "friendly settlement." If no settlement is reached, the Commission issues a legal opinion on whether the Convention has been breached and has the right—for cases against member states that have accepted the optional protocol (Article 46) acknowledging compulsory jurisdiction, which today includes all members—to refer the case to the Court of Human Rights. Defending states have the same right, but plaintiffs do not. The Court is

empowered to make a binding judicial decision de novo as to whether a violation has taken place. If the Court does not seize the case, the Committee of Ministers, a body comprised of national government representatives renders a final decision whether the Convention has been breached. The Convention protects the rights of all persons within the jurisdiction of a member state, whether that person is an alien, refugee, stateless, or a national. For overviews, see Janis, Kay, and Bradley, 1995; Robertson and Merrills 1993; van Dijk and van Hoof 1990. Back.

Note 44: For an overview of domestic incorporation and the resulting jurisprudence, see Polakiewicz and Jacob-Foltzer 1991; Drzemczewski 1988, 11-12; Merrills 1993. Back.

Note 45: Compliance is exemplary. In nearly all cases where so ordered, member states amend legislation, grant administrative remedies, reopen judicial proceedings, or pay monetary damages to individuals whose treaty rights were violated. Carter and Trimble 1995, 309. Back.

Note 46: Council of Europe 1975, IV/248-252, also 132ff, 242-296, also I/xxiv, 10-24, 296ff; passim, and V/68-70. By the time the member states came to negotiate individual petition, underlying positions were harder to make out, since it was becoming increasingly clear that such provisions will be optional. Back.

Note 47: E.g. Russett 1993. Back.

Note 48: For a further discussion of this coding, see the notes to Table Two. Back.

Note 49: This is consistent with the insight that such regimes are enforceable almost entirely through individual, not state, action. For a looser coding more reliant on the notion that governments, rather than domestic authorities, enforce obligations, see Sikkink 1993. Back.

Note 50: Council of Europe 1975, I/80-82, 88-90, III/254-256, but 268. Back.

Note 51: Opposition also appears uncorrelated with the possession of colonies. Britain and the Netherlands are skeptical, while France and Belgium—the former with, if anything, a closer legal relationship to its colonies than Britain—were supportive. Germany was supportive; Sweden opposed. Some might speculate that opposition was connected with the lack of a domestic tradition of judicial review, but of course France and many supporters of a strong Convention lacked this tradition as well. Any causality in the case of Italy, Germany and Austria is, moreover, likely to be spurious; it is far more plausible to argue that these countries Germany adopted both domestic and international judicial review due to some common factor—as the institutional liberal theory predicts. Pasquino 1998, 46. Nor is there any clear relationship with adherence to a civil law tradition. Back.

Note 52: Council of Europe 1975, I/276. Back.

Note 53: Council of Europe 1975, I/80-82, 88-90; III/254-256, but 268. Back.

Note 54: Many leading advocates of the Convention were also members of the “European” movement, which was strongly represented in the Consultative Assembly. Some clearly viewed the ECHR as a step toward European integration. Yet national positions are not fully correlated with this either—with the Netherlands opposed. Consistent with my interpretation here is that both adherence to Europe and support for a binding ECHR reflect (in this period but not later) the influence of a third factor—say

democratic stability and the reduction of security threats. Back.

Note 55: Council of Europe 1975, III/268-70. Back.

Note 56: On the Dutch position. Council of Europe 1975, III/268, 304, 306, IV/178. Belgium and Luxembourg support the broad enumeration if there is to be a court (which Belgium supports, with Luxembourg abstaining), and precise enumeration if there will not be one. Some Belgian representatives took a more skeptical position. Sweden remains uncommitted. Council of Europe 1975, IV/106-108. Back.

Note 57: Teitgen 1988, 481. Back.

Note 58: Even if one traces the European system back to the UN Universal Declaration of 1948—a dubious assumption, since the ECHR was in many ways a reaction to the UN system—the enumeration of rights in the UN Declaration was itself drawn not from proposals of activists per se , but primarily from systematic and scholarly analyses of comparative law, above all that provided by the American Law Institute and the UN itself, as well as from prior documents like the Pan American Declaration, and was then whittled down significantly through intergovernmental negotiation. See Glendon 1998; Glendon 1998b, Chapter 3; Humphrey 1984, 31-32. Back.

Note 59: Council of Europe 1975, I/166-186, 242-264; II/48-132 for debates on marriage, education, and property. For a response to the claim that these rights are controversial because intrinsically more difficult to define, see V/304-314. Back.

Note 60: Fernand Dehousse, a strong supporter of the Convention, was a Socialist; hence he had differences with Teitgen over family rights, property rights, and education. Teitgen 1988, 480. Back.

Note 61: Council of Europe 1975, I/40-42. Back.

Note 62: Council of Europe 1975, I/192, 120, 64, also 60-64, for statements by others, I/66, 84, 120ff, 192-194, 276, 278-280, 292. Back.

Note 63: In 1949, Chancellor Konrad Adenauer told Teitgen that integration was needed against Germany, not just Russia. "He needed no more" to convince him to work for the Council of Europe and Communities. Teitgen 1988, 476. As noted above, Keck and Sikkink 1998, 203, speculate that no one could have thought of the claim before the 1980s, but in the argument dates back to the 18 th-century and was widely popularized in the Wilsonian aftermath of World War I. See Moravcsik 1997. Back.

Note 64: Council of Europe 1975, II/142. Back.

Note 65: Council of Europe 1975, V/328-330, 336-340. Teitgen's remarks make it clear that he was thinking above all of the Communist threat. As well as deepening of a truly federal Europe along the lines of the Anglo-French Union proposal of 1940. Back.

Note 66: Ackerman 1997, 773. In Italy, this provision was placed in the constitution by Christian Democrats who feared the advent of a Socialist-Communist majority, just as a similar provision was placed into the French constitution in 1974 by the Giscard government for similar reasons. Pasquino 1998, 39, 44-48. Back.

Note 67: Lester 1994-5, 4-5. Teitgen also believed that only democratic regimes with good will toward the human rights guarantees would be able to overcome domestic opposition; hence the negotiation and implementation of the Convention depended on the good will of such regimes. Teitgen 1988, 482. The UK government was very concerned that domestic law might have to be rewritten, but in order to ensure ratification suppressed this fact in statements to Parliament Back.

Note 68: Council of Europe 1975, I/120. Back.

Note 69: Council of Europe 1975, I/50-52. Hence, in contrast to the International Court of Justice, individual petition to the Human Rights Commission was possible—though in this end this was only an optional protocol. Teitgen nonetheless maintained that the convention would have a preventative effect. Teitgen 1988, 488. Back.

Note 70: Council of Europe 1975, II/246ff also 148-187; I/54; also I/64-68. Social Democrats tended to be somewhat more skeptical of a strong court, fearing it would enforce conservative interests; one leading spokesman for the British Labour Party called the Court "anti-democratic and reactionary." Back.

Note 71: The UK position was also viewed as decisive. See e.g. Paul-Henri Spaak, cited in Teitgen 1988, 478. Back.

Note 72: Marston 1993, 799-800. Back.

Note 73: Marston 1993, 804. Back.

Note 74: W.E. Beckett, Legal Advisor to the Foreign Office, April 1947 Foreign Office meeting, cited in Marston 1993, 798, also 798-804. Back.

Note 75: Marston 1993, 811. Back.

Note 76: Simpson 1998, 15-19, 37-38. Back.

Note 77: Marston 1993, 824. The resulting positions were approved by the Cabinet and forwarded to the Foreign Office. Some British officials attributed the support of others for a court of human rights as a desire to assert the "symbolic significance" of the Council vis-à-vis the claims of Communist governments. Marston 1993, 809. Back.

Note 78: Simpson 1998, 37-38. Back.

Note 79: In his 1951 memorandum to the Cabinet on the UN Covenant, the new Foreign Secretary, Herbert Morrison, wrote "As the United Kingdom government has always played a leading part in promoting [human rights in the UN], it would be difficult to draw back at this stage. In these circumstances, the prudent course might be to prolong the international discussions, to raise legal and practical difficulties, and to delay the conclusion of the Covenant for as long as possible." The Cabinet instructed the Foreign Secretary to act accordingly. Lester 1984, 55. Back.

Note 80: Marston 1993, 808. See also the British position in the Council of Experts, reported in the second half of Council of Europe 1975, III, especially 182, 280, 304. Back.

Note 81: Marston 1993, 814. Britain withdrew a similar intention to veto on the issue of colonial dependencies. Back.

Note 82: Marston 1993. Back.

Note 83: The Lord Chancellor's paper is summarized in Lester 1984, 53-54; also Marston 1993, 824-826. Back.

Note 84: Marston 1993, 811. Indeed, with a lack of modesty characteristic of British international politics in this period, government deliberations cited the advantages of setting a good example for foreign countries as a strong reason for Britain to take an active role in the negotiations. Back.

Note 85: The Colonial Office consistently warned that colonial citizens might submit petitions, but such concerns appear to have been isolated and intermittent. Marston 1993, 806-807, 809-810, 812, 816. Back.

Note 86: Lester 1994-5, 3. Back.

Note 87: Marston 1993, 813. When the issue finally reached the Cabinet, the consensus among ministers—after making brief mention of colonial and economic concerns, seems to have swiftly arrived at the same conclusion. Back.

Note 88: Lester 1994-5, 2. Back.

Note 89: Lester 1994-5, 2; also Marston 1993, 812-813; Lester 1984, 54-59. Back.

Note 90: Lester 1994-5, 2. Back.

Note 91: Lester 1984, 52 Back.

Note 92: Marston 1993, 806. Back.

Note 93: Council of Europe 1975, III/182, 264. Back.

Note 94: Marston 1993, 803. Back.

Note 95: Marston 1993, 799. Back.

Note 96: It might be argued that the longer a democratic form of government is in place, the more attached to its institutions its citizens and elites grow. Hence we would expect countries Britain, the Netherlands, and Sweden to be particularly attached to national idiosyncrasies. This suggests that the standard measure employed in studies of the "democratic peace" to measure the strength of an ideological support for democratic governance might also be measuring more instrumental support for institutions. Cf. Russett 1993. Back.

Note 97: For evidence that the British government placed very low priority on the issue from the start, assigning very junior officials to handle it, see Samnøy 1993, 46-47. Back.

Note 98: On the subsequent willingness of Sweden, Norway, Denmark and the Netherlands, as well as France and Austria, to pressure foreign states, see Sikkink 1993. On Sweden, see Council of Europe

1975, III/262, 264. Research into domestic deliberations within each country would increase the reliability of deductions drawn from cross-national variation of national positions and public statements. Back.

Note 99: For an overview, see Robertson and Merrills 1996. Back.

Note 100: Moravcsik 1995. Back.

Note 101: For elaboration, see Moravcsik 1994. Back.

Note 102: Haggard 1997. Back.

Note 103: Collins 1988; Moravcsik 1998, Chapters 4, 6; Krugman 1994, 189-194. Back.

Note 104: Wilson 1980. This hypothesized generalization holds whether the ultimate goal is normative (e.g. altruistic provision of human rights) or materially self-interested (e.g. regulatory protection). This suggests—in contrast to the terms of the "rationalist vs. constructivist" debate—that the distinction between principled and non-principled ideas is not the theoretically most fruitful or fundamental distinction. For a relatively supportive view from the constructivist side, see Finnemore and Sikkink 1998. Back.
