INTRODUCTION

International law has long been burdened with the charge that it is not really law. This misleading claim is premised on some undeniable but misunderstood facts about international law: that it lacks a centralized or effective legislature, executive, or judiciary; that it favors powerful over weak states; that it often simply mirrors extant international behavior; and that it is sometimes violated with impunity. International law scholarship, dominated for decades by an improbable combination of doctrinalism and idealism, has done little to account for these characteristics of international law. And it has made little progress in explaining how international law works in practice: how it originates and changes; how it affects behavior among very differently endowed states; when and why states act consistently with it; and why it plays such an important role in the rhetoric of international relations.

This book seeks to answer these and many other related questions. It seeks to explain how international law works by integrating the study of international law with the realities of international politics. Our theory gives pride of place to two elements of international politics usually neglected or discounted by international law scholars: state power and state interest. And it uses a methodological tool infrequently used in international law scholarship, rational choice theory, to analyze these factors. Put briefly, our theory is that international law emerges from states acting rationally to maximize their interests, given their perceptions of the interests of other states and the distribution of state power. We are not the first to invoke the idea of state interest to explain the rules of international law (Oppenheim 1912). But too often this idea is invoked in a vague and conclusory fashion. Our aim is to integrate the notion of state interest with simple rational choice models in order to

offer a comprehensive theory of international law. We also draw normative lessons from our analysis.

This introduction discusses the assumptions of our analysis, sketches our theory in very general terms, and locates our position among the various schools of international law and international relations scholarship.

Assumptions

The assumption that states act rationally to further their interests is not self-evident. All components of this assumption—that the state is the relevant agent, that a state has an identifiable interest, and that states act rationally to further these interests—are open to question. Nonetheless, we believe state-centered rational choice theory, used properly, is a valuable method for understanding international law. What follows is a brief discussion of our use of the concepts of state, state interest, and rationality. Further detail is provided in subsequent chapters.

State

The existence of a state depends on the psychology of its citizens. If all U.S. citizens stopped believing that the United States was a state, and instead began to believe that they were citizens of Indiana or Texas or some other subunit, then the United States would cease to exist and numerous new states would come into existence. (This is in effect what happened when the Soviet Union and Yugoslavia disintegrated in the 1990s.) Moreover, "the state" is an abstraction. Although the identity of the state is intuitively clear, the distinction between the state and the influences on it sometimes blurs. Relatedly, the state itself does not act except in a metaphorical sense. Individual leaders negotiate treaties and decide whether to comply with or breach them. Because the existence of a state and state action ultimately depend on individuals' beliefs and actions, one could reject the assumption that states have agency and insist that any theory about the behavior of states must have microfoundations in a theory of individual choice.

Despite these considerations, we give the state the starring role in our drama. The main reason for doing so is that international law addresses itself to states and, for the most part, not to individuals or other entities such as governments. NAFTA did not confer international legal obligations on President Clinton or the Clinton administration, but rather on the United States. The United States remains bound by these obligations until a future government withdraws the United States from the treaty. Moreover, although states are collectivities, they arrange themselves to act like agents, just as corporations do. Corporations are generally easier to understand than states. Corporate interests—to make money for the shareholders, subject to agency costs resulting from the delegation of authority to individuals who run the firm—are (usually) easier to identify. And it is easier to assume that corporate obligations remain in force despite the turnover of managers, directors, and shareholders because the obligations are enforced by domestic courts regardless of who happens to be in control of the corporation. Still, state interests can be identified (as we explain later), and through various domestic institutions states can and do maintain their corporate identity. Both ordinary language and history suggest that states have agency and thus can be said to make decisions and act on the basis of identifiable goals.

The placement of the state at the center of analysis necessarily limits the scope of analysis. We do not discuss, except in passing, difficult and important topics at the margins of international law about how states form and disintegrate. Many scholars view European Union integration as a possible model for a more ambitious public international law. Although the EU project is in some respects constituted by international law, we think it is more usefully viewed as an example of multistate unification akin to pre-twentieth-century unification efforts in the United States (which, during its Articles of Confederation period, was viewed by some as a federation governed by international law), Germany, and Italy. In any event, we offer no theory of state unification or integration. Nor (except briefly in chapter 4's analysis of human rights) do we have much to say about the opposite claim that the state is losing power downward to smaller state units (for example, the disintegration of the Soviet Union and the former Yugoslavia), to substate units (for example, the devolution movements throughout Europe), and to multinational corporations and transnational NGOs.

State Interest

By state interest, we mean the state's preferences about outcomes. State interests are not always easy to determine, because the state subsumes many institutions and individuals that obviously do not share identical preferences about outcomes. Nonetheless, a state—especially one with well-ordered political institutions—can make coherent decisions based upon identifiable preferences, or interests, and it is natural and common to explain state action on the international plane in terms of the primary goal or goals the state seeks to achieve.

We generally identify state interests in connection with particular legal regimes by looking, based on many types of evidence, to the preferences of the state's political leadership. This assumption is a simplification and is far from perfect. But it is parsimonious, and it is appropriate because a state's political leadership, influenced by numerous inputs, determines state actions related to international law. In some contexts in the book—for example, in explaining the significance of the ratification process for treaties, or in analyzing the domestic interest groups that affect a state's international trade policy—we will depart from this simplifying assumption and consider how various domestic groups and institutions influence the political leadership's decisions related to international law.

We avoid strong assumptions about the content of state interests and assume that they can vary by context. This distinguishes our work from the work of some realists, who assume that a state's interests are limited to security and (perhaps) wealth. Our relative agnosticism about the content of state interests has led some critics of our previous work to argue that we can adjust state interests as necessary to fit the conclusions we want to reach. It is true that the power of our explanations depends on the accuracy of our identification of state interests, and that state interests are in some contexts difficult to identify or controversial. We have tried to identify as objectively as possible state leaders' preferences in connection with particular legal regimes; we leave it to our critics to determine whether we have succeeded.

The concept of state interest used in this book must not be confused with the policy that promotes state welfare. In every state, certain individuals or groups—elites, corporations, the military, relatives of dictators—have disproportionate influence on leaders' conduct of state policy. Even in democratic states, the institutions that translate individual preferences into particular policies are always imperfect, potentially derailed by corruption, incompetence, or purposeful hurdles (like separation of powers), and sometimes captured by interest groups. The inevitable presence of these distorting mechanisms means that the "state interest" as we use the term is not necessarily, or even usually, the policy that would maximize the public good within the state. Any descriptive theory of international law must account for the agency slack of domestic politics, and we do so primarily by focusing on what leaders maximize (see Krasner 1999). One consequence of this approach is that our use of the term "state interest" is merely descriptive of leaders' perceived preferences and is morally neutral. To take an extreme example, when we analyze a leader's interest in committing human rights abuses, we refer only to what the leader perceives as the best policy to maintain his or her authority; we do not suggest that human rights abuses are ever morally justifiable.

Rational Choice

It is uncontroversial that state action on the international plane has a large instrumental component. Rational choice theory provides useful models for understanding instrumental behavior. Political scientists' use of rational choice tools has brought considerable insight to many aspects of international relations and has opened many fruitful research agendas. We believe rational choice can shed similar light on international law.

Our theory of international law assumes that states act rationally to maximize their interests. This assumption incorporates standard premises of rational choice theory: the preferences about outcomes embedded in the state interest are consistent, complete, and transitive. But we do not claim that the axioms of rational choice accurately represent the decision-making process of a "state" in all its complexity, or that rational choice theory can provide the basis for fine-grained predictions about international behavior. Rather, we use rational choice theory pragmatically as a tool to organize our ideas and intuitions and to clarify assumptions. No theory predicts all phenomena with perfect accuracy. And we do not deny that states sometimes act irrationally because their leaders make mistakes, because of institutional failures, and so forth. Our claim is only that our assumptions lead to better and

more nuanced explanations of state behavior related to international law than other theories do.

There is a massive literature critical of rational choice theory, three components of which we address here. First, a word on collective rationality. As understood by economics, rationality is primarily an attribute of individuals, and even then only as an approximation. The term's application to collectivities such as corporations, governments, and states must be performed with care. For some of the reasons mentioned earlier, social choice theory casts doubt on the claim that collectivities can have coherent preferences. But if this critique were taken seriously, any explanation of international law, or, for that matter, even domestic law, would be suspect. Cycling is probably most prevalent not in states but in pre- or nonstates, that is, in aggregations of people who cannot develop stable institutions. As explained earlier, when states exist, people have adopted institutions that ensure that governments choose generally consistent policies over time—policies that at a broad level can be said to reflect the state's interest as we understand the term.

Another challenge to rational choice theory comes from cognitive psychologists, who have shown that individuals make cognitive errors, sometimes systematically. We do not deny the empirical claims of this literature. History is full of examples of state leaders committing errors while acting on the international stage, and it is conceivable that these errors can be traced to the standard list of cognitive biases (McDermott 1998). The problem is that the cognitive psychology literature has not yet produced a comprehensive theory of human (or state) behavior that can guide research in international law and relations (Levy 1997). Such a theory might well result in a more refined understanding of international law and relations. But it might not; individual cognitive errors might have few if any macro effects on international relations. Economic theory has produced valuable insights based on its simplifying assumptions of rationality. Our theory should be judged not on the ontological accuracy of its methodological assumptions, but on the extent to which it sheds light on problems of international law.

Finally, there is the constructivist challenge from international relations scholarship (Wendt 1999). To the extent that constructivism shares similarities with traditional international law scholarship—for example, its commitment to noninstrumental explanations of state behavior—we address its claims throughout the book. Here we address its critique of state preferences. As is usual (but not necessary) in rational choice theory, we take state interests at any particular time to be an unexplained given. Constructivists challenge this assumption. They seek to show that the preferences of individuals, and therefore state interests, can be influenced by international law and institutions. To the extent this is true, it would call into question our theory's ability to explain international law in terms of state interests. We doubt it is true to any important degree, but we cannot prove the point. On the other hand, constructivists have not shown that international law transforms individual and state interests. The relevant question is whether the endogenization of the state's interest, assuming it could be done in a coherent fashion, would lead to a more powerful understanding of how states behave with respect to international law. We provide our theory in the pages that follow, and we leave it to critics to decide whether constructivism provides a better theory of international law.

There is a related point. We consistently exclude one preference from the state's interest calculation: a preference for complying with international law. Some citizens, perhaps many, want their states to comply with international law, and leaders, especially in liberal democracies that tend to reflect citizen preferences, might act on this basis. A rational choice theory could incorporate this preference into the state's utility function. Nonetheless, for two reasons we reject a preference for complying with international law as a basis for state interests and state action on the international plane.

First, even on the assumption that citizens and leaders have a preference for international law compliance, preferences for this good must be compared to preferences for other goods. State preferences for compliance with international law will thus depend on what citizens and leaders are willing to pay in terms of the other things that they care about, such as security or economic growth. We think that citizens and leaders care about these latter goods more intensely than they do about international law compliance; that preferences for international law compliance tend to depend on whether such compliance will bring security, economic growth, and related goods; and that citizens and leaders are willing to forgo international law compliance when such compliance comes at the cost of these other goods. If we are correct about this—and the limited polling data are consistent with our view (Chicago Council on Foreign Relations 2002, 19)—compliance with international law will vary predictably with the price of other goods, the wealth of the state, and other relevant parameters.

Ultimately, the extent to which citizens and leaders have a preference for compliance with international law is an empirical question that we do not purport to resolve in this book. But there is a second, methodological reason why we exclude a preference for complying with international law from the state's interest calculation. It is unenlightening to explain international law compliance in terms of a preference for complying with international law. Such an assumption says nothing interesting about when and why states act consistently with international law and provides no basis for understanding variation in, and violation of, international law. A successful theory of international law must show why states comply with international law rather than assuming that they have a preference for doing so.

A related methodological point is that a theory's explanatory power depends, at least in part, on its falsifiability. Some critics of our earlier work have claimed that our theory is not falsifiable. We disagree. While we do not make fine-grained predictions, throughout the book we make claims—for example, that international law does not shift power or wealth from powerful to weak states, and that states cannot solve large-scale collective action problems through customary international law—that empirical evidence could contradict. These predictive claims are not as precise as, say, those made by sophisticated economic analyses. But that level of methodological sophistication is not our aim here. Our aim is, rather, to give a simple but plausible descriptive account for the various features of international law (including many that have been ignored) in terms of something other than a state's propensity to comply with international law.

Theory

With these preliminaries in mind, we now provide a skeleton of our theory of international law. We put flesh on these bones in subsequent chapters.

Consider two states, A and B. At time 1, the two states have certain capacities and interests. The capacities include military forces, economic institutions, natural resources, and human capital. The interests are determined by leaders who take account in some way of the preferences of citizens and groups. At time 1, the states divide available resources in some stable fashion. They divide territory along a border, and they divide collective goods such as airwaves, fisheries, and mineral deposits in ways that might or might not prevent overexploitation.

At time 2, as a result of a shock, the time 1 status quo becomes unstable. In the simplest case, A's power increases (for any number of reasons) relative to B's, and state A demands a greater share of resources from state B. In the past, this demand might have been for territory or tribute. In the modern world, A will often demand something less tangible, such as access to markets, greater protection for intellectual property, military assistance, base rights, foreign aid, or diplomatic assistance. State A might also threaten to close its own markets, violate B's intellectual property rights, reduce the military assistance or foreign aid it had been rendering B, cut back on diplomatic assistance to B, and so forth. Any of these might happen because A had provided these benefits to B in return for benefits that it no longer wants or needs.

If A and B had perfect information about each other (if, that is, each knew the other's interests and capacities completely), and if transaction costs were zero, their relations would adjust smoothly and quickly to the shock, and at time 3 there would be a new division of resources: a new border, new diplomatic activities, a new level of military assistance in one direction or the other, a new level of foreign aid, or new trade patterns. In the real world of transaction costs and imperfect information, their adjustments will be slow and suboptimal. There might be significant conflict, including war, as the states learn about one another and bluff and bargain over the new order, exaggerating their strengths and concealing their weaknesses. Eventually, the situation between the two states will stabilize.

The relations between the two states at any time can be described as a set of rules. But here care must be used, for several very different things might be going on. Consider a border between A and B. The border is a rule that delineates the territory of each state, where it is understood that neither state can send individuals or objects across the border without the permission of the other state. Territorial borders are generally thought to be constituted and governed by international law. Assume that states A and B respect the border. Our theory of international law posits that one of four things might explain this behavioral regularity.

First, it is possible that neither of the two states has an interest in projecting power across the border. State A does not seek resources in state B's territory and would not seek them even if B were unable to resist encroachment. A is barely able to control its own territory and

wants to have nothing to do with B's. State B has the same attitude to state A. When a pattern of behavior—here, not violating the border—results from each state acting in its self-interest without any regard to the action of the other state, we call it a *coincidence of interest.*

There is a second possible explanation for the border. State A might be indifferent between one border and another border deeper in what is now state B's territory. The additional territory might benefit state A, but it would also bring with it costs. The main concern for the states is to clarify the point at which state A's control ends and state B's begins, so that the two states can plan accordingly and avoid conflict. State B has the same set of interests and capacities. Once the two states settle on a border, neither violates the border because if either did, conflict would result. This state of affairs is called *coordination.* In cases of coordination, states receive higher payoffs if they engage in identical or symmetrical actions than if they do not. A classic coordination game from domestic life is driving: all parties do better if they coordinate on driving on the right, or driving on the left, than if they choose different actions.

A third possible explanation for the border is *cooperation.* States A and B would each benefit by having some of the other's territory, all things being equal. But each knows that if it tried to obtain more territory, the other state would resist, and a costly breakdown in relations, and possibly war, would result, making both states worse off. Thus, the states agree (implicitly or explicitly) on a border that reflects their interests and capacities, and the border is maintained by mutual threats to retaliate if the other state violates the border. In such cases of cooperation, states reciprocally refrain from activities (here, invasion or incursion) that would otherwise be in their immediate self-interest in order to reap larger medium- or long-term benefits.

The final possibility is *coercion.* State A is satisfied with the existing border, but state B seeks to expand its territory at A's expense. If B is sufficiently powerful, it can dictate the new border. Because state A is weaker and state B benefits from the extra territory whether or not state A resists, state A yields (either before or after military conflict) and a new border is created. Other states might or might not object: they also might benefit from the new border or be powerless to resist it. Coercion results when a powerful state (or coalition of states with convergent interests) forces weaker states to engage in acts that are contrary to their interests (defined independently of the coercion).

This book argues that some combination of these four models explains the state behaviors associated with international law. These models do not exhaust the possibilities of international interaction. But they provide a simple and useful framework for evaluating a range of international legal regimes. As we explain throughout the book, each model has different characteristics that make it more or less stable and effective, depending on the circumstances. Taken together, however, the four models offer a different explanation for the state behaviors associated with international law than the explanation usually offered in international law scholarship. The usual view is that international law is a check on state interests, causing a state to behave in a way contrary to its interests. In our view, the causal relationship between international law and state interests runs in the opposite direction. International law emerges from states' pursuit of self-interested policies on the international stage. International law is, in this sense, *endogenous* to state interests. It is not a check on state self-interest; it is a product of state self-interest. This does not mean, as critics of our earlier work have suggested, that we think that international law is irrelevant or unimportant or in some sense unreal. As we will explain, international law, especially treaties, can play an important role in helping states achieve mutually beneficial outcomes by clarifying what counts as cooperation or coordination in interstate interactions. But under our theory, international law does not pull states toward compliance contrary to their interests, and the possibilities for what international law can achieve are limited by the configurations of state interests and the distribution of state power.

The bulk of the book is devoted to applying this framework to various regimes of international law. The argument unfolds in three parts. Part 1 analyzes customary international law. We are skeptical of the traditional claim that customary international law reflects universal behavioral regularities. And, we argue, the actual patterns of state behavior associated with customary international law reflect either coincidence of interest or *bilateral* cooperation, coercion, or coordination. We bolster these arguments with case studies of four areas of customary international law.

Part 2 analyzes treaties, the second form of international law. The main puzzle here is: Why do states use treaties instead of customary international law? We offer two general answers. First, treaties—which result from self-conscious negotiation and bargaining, and which are

almost always embodied in written form that reduces ambiguity—are more effective than customary international law at specifying what counts as cooperation or coordination. Second, the institutions associated with treaties, including domestic ratification processes and the default rules of treaty interpretation, can provide valuable information that improves cooperation and coordination between states. In addition, part 2 explains how nonlegal agreements relate to legalized agreements; what multilateral treaties accomplish and why their efficacy tends to depend on the logic of bilateral monitoring and enforcement; and the relative roles of retaliation and reputation in treaty compliance. We support our arguments with case studies of international human rights treaties and trade treaties.

Part 3 addresses several external challenges to our theory of international law. Some scholars claim that the pervasive use of international legal rhetoric demonstrates the efficacy of international law that cannot be explained in instrumental terms. We argue that this claim is wrong and show why it would be rational for states to talk to each other in the language of international law even if they were not motivated by a desire to comply with it. Another challenge to our thesis comes from those who claim that, even if states comply with international law only when it is in their interest to do so, they nonetheless have a moral obligation to comply with it against their interest. We argue, to the contrary, that states have no such moral obligation. We also address a related challenge from cosmopolitan theory, which argues that states have a duty in crafting international law to act on the basis of global rather than state welfare. Such duties cannot, we think, be reconciled with cosmopolitans' commitment to liberal democracy, a form of government that is designed to ensure that foreign policy, including engagement with international law, serves the interests of citizens, and that almost always produces a self-interested foreign policy.

International Law Scholarship

Most scholarship on international law has been written by law professors. Although these scholars have proposed many different theories, most of them share an assumption that we reject: that states comply with international law for noninstrumental reasons. Doctrinally, this assumption is reflected in the international law rules of *opinio juris* (the "sense of legal obligation" that makes customary international law binding) and *pacta sunt servanda* (the rule that treaties must be obeyed). Theoretically, the assumption is expressed in various ways, but they all reduce to the idea that a state is drawn toward compliance with international law because compliance is the morally right or legitimate thing to do. Mainstream international law scholarship does not deny that states have interests and try to pursue them. But it claims that international law puts a significant brake on the pursuit of these interests.

Many international law scholars do not question the assumption that states follow international law for noninstrumental reasons. For them, the premise is enough to justify their research agenda, which is that of doctrinalism: identifying the "black letter law" of international law in any given domain, independent of actual behaviors. Other scholars seek to explain the conditions under which international law "exerts a pull toward compliance," that is, exercises normative influence on state behavior (Franck 1990, 24–25). Brierly (1963) says states obey international law because they have consented to it. Franck (1990, 24) says they do so because international law rules came into existence through a legitimate (transparent, fair, inclusive) process. Koh (1997, 2603) says that international law becomes part of a state's "internal value set." This theorizing often fuels, and is overtaken by, normative speculation about improving international law.

In our view, this research agenda is unfruitful. The assumption of a tendency toward compliance has little if any explanatory value. The narrower view—that states are pulled to comply with international law because it reflects morally valid procedures, or consent, or internal value sets—is not supported by the evidence, as we show in subsequent chapters. Noninstrumental accounts of international law also mask many different reasons why states act consistently with international law, and result in an impoverished theory of compliance. Finally, the theories do not provide good explanations for the many important features of international law unrelated to compliance, including variation and change in international law.

There is a more sophisticated international law literature in the international relations subfield of political science. The methodological commitments of international relations theorists in political science are different from those of most international lawyers. Positive analysis is the hallmark of international relations literature; international relations

scholars seek primarily to explain, rather than prescribe, international behaviors. For this reason, among others, international relations scholars take theoretical, methodological, and empirical issues more seriously than international lawyers do, and they draw more generously on economics, sociology, and history.

Until recently, international relations theorists did not study international law as a category apart from the institutions embodied by international law. The dominant American theory of international relations—realism—treated international law as inconsequential or as outside its research agenda (Mearsheimer 2001; Waltz 1979). (A major exception is Hans Morgenthau 1948a.) Other political science theories, such as the English School's theory of international society (Bull 1977), were more optimistic about international cooperation but did not focus on international law as a distinctive institution.

A different strand of international relations theory—institutionalism—uses the tools of rational choice theory to understand international relations. This tradition dates back at least as far as Schelling's (1963) work. Institutionalism's major contribution was to show how states could productively cooperate in the absence of a centralized lawmaker or law enforcer (Keohane 1984; Snidal 1985; Oye 1986). The object of institutionalist analysis was the "regime," a term defined in the literature as "sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations" (Krasner 1983, 2). The original institutionalism movement did not focus on international law as a category distinct from international politics.

In recent years, political scientists have begun to study international law in its own right (Goldstein et al. 2000). A related development is a growing interest among some international law scholars in the tools of international relations theory (Slaughter, Tulumello, and Wood 1998; Burley 1993; Setear 1996; Abbott 1989). There is also a small but growing rational choice literature in international law being developed by economists and lawyers influenced by economics (Dunhoff and Trachtman 1999; Setear 1996; Sykes 1991; Guzman 2002a; Stephan 1996; Posner 2003; Sykes 2004 is a survey).

Our approach falls closer to the political science international relations tradition, and in particular to institutionalism, than to the mainstream international law scholarship tradition. But, as will become clear, our views differ from international relations institutionalism, from the newer international relations "legalization" movement, and from other rational choice approaches to international law in several respects. Ours is a comprehensive analysis of international law. The greatest overlap between extant international relations and rational choice international law scholarship and our book comes in part 2, on treaties. But international relations scholarship has ignored customary international law (the topic of part 1) altogether, and it has said relatively little about the normative issues discussed in part 3. In addition, we are more skeptical about the role of international law in advancing international cooperation than most (but not all) international relations institutionalists and most rational choice–minded lawyers. And our methodological assumptions are more consistently instrumental than those found in this literature, which frequently mixes instrumental and noninstrumental explanations (Abbott et al. 2000). Finally, unlike the political scientists, whose focus remains the realm of international politics, we are interested primarily in the nuts and bolts of international law.

CONCLUSION

International law is a real phenomenon, but international law scholars exaggerate its power and significance. We have argued that the best explanation for when and why states comply with international law is not that states have internalized international law, or have a habit of complying with it, or are drawn by its moral pull, but simply that states act out of self-interest.

Part 1 argued that customary international law can reflect genuine cooperation or coordination, though only between pairs of states or among small groups of states. Other times, customary international law may reflect self-interested state behavior that, through coercion, produces gains for one state and losses for another. Much of customary international law is simply coincidence of interest.

Cooperation and coordination by custom have natural limits. We showed in part 2 how treaties can help overcome some of these limits. They do so by clarifying the nature of the moves that will count as cooperative actions in repeated prisoner's dilemmas and as coordination in coordination games. Institutions associated with treaties—domestic ratification processes and the default rules of treaty interpretation—can also provide valuable information that promotes cooperation and coordination. Treaties can also reflect coercion and coincidence of interest, although in these contexts the presence of the treaty suggests that an apparent coercion or coincidence of interest situation has some cooperative element. Although treaties can foster cooperation and coordination more effectively than customary international law, there are still limits to what treaties can achieve—limits determined by the configuration of state interests, the distribution of state power, the logic of collective action, and asymmetric information. It follows that some

global problems may simply be unsolvable. This is a depressing conclusion, but is consistent with all we know of human history.

International law rhetoric pervades international relations. For the same reasons that treaties can improve cooperation and coordination by clarifying what counts as cooperation and coordination, international law talk can as well. More often, international legal rhetoric is used to mask or rationalize behavior driven by self-interested factors that have nothing to do with international law. In part 3, we explained why states speak the language of obligation while following the logic of self-interest. We bolstered this claim by arguing that moral citizens would not hold that international law creates moral obligations, and that liberal democracies are unlikely to support a cosmopolitan foreign policy.

We have not exhausted the subject of international law. Some of our descriptive and empirical claims about customary international law and treaties are controversial and might turn out to be wrong or incomplete. It might turn out that there are robust customary international laws that solve multistate collective action problems; we have not found any, but other scholars might. Other scholars might also discover areas of treaty law that reflect significant multilateral cooperation; we have not, for example, studied environmental law or the laws of war, two of the most significant areas of international law. The empirical literature in these fields provides little evidence that treaties enable robust cooperation (see Barrett 2003 on environmental law, Glennon 2001 on the laws of war). But a firm conclusion must await more research.

While we thus have not written a comprehensive treatise on international law, we do hope that this book will help put international law and international law scholarship on a more solid foundation.