

DOES INTERNATIONAL LAW MATTER?

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The importance of international law has grown in an increasingly global world. States and their citizens are interconnected and depend on each other to enforce and comply with international law to meet common goals. Despite the expanding presence of international law, the question that remains is whether international law matters. Do individuals comply with international law? And when they comply, do they comply because they fear penalties or because they desire to behave appropriately? This Article presents results from a randomized field experiment designed to investigate these questions. Major findings include that roughly one in seven international actors is willing to violate international law and the existence of penalties actually motivates some actors to break international law in greater numbers. In the first and largest global field experiment to date, this Article not only advances the scope of research methods generally, but also marks new ground by providing theoretical insights on the central questions of international law.

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International law has grown both in significance and volume in recent decades.¹ In this increasingly interdependent world, an important

¹ Curtis A. Bradley & Jack L. Goldsmith, *Customary International Law as Federal Common Law: A Critique of the Modern Position*, 110 HARV. L. REV. 815 (1997) (discussing the preeminence of customary international law); Paul B. Stephan, *Privatizing International Law*, 97 VA. L. REV. 1573, 1626 (2011) (assessing that the “growth of international law” has meant an increase in international law’s domain); Edith Brown Weiss, *The Rise or the Fall of International Law?*, 69 FORD. L. REV. 345, 351 (2000) (noting that binding international legal instruments have “greatly increased,” non-binding international legal instruments concluded by governments and international

question is whether international law matters.² Despite the criticisms aimed at the effectiveness of international law,³ and the challenges of its enforcement,⁴ there is a belief that international law carries weight.⁵ This

nongovernmental organizations have become “very significant sources of international law,” and private actors have created “important transnational instruments”); Jordan J. Paust, *Customary International Law and Human Rights Treaties Are Law of the United States*, 20 MICH. J. INT’L L. 301 (1999).

² Harold H. Koh, *Why Do Nations Obey International Law?* 106 YALE L.J. 2599, 2600–01 (1997) (noting that several key scholars have argued that international law matters); LOUIS HENKINS, *HOW NATIONS BEHAVE: LAW AND FOREIGN POLICY* (2D ED. 1979) (explaining that “almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time”); Oona A. Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 YALE L.J. 1935, 1937 (2002) (noting that international lawyers most often assume that nations observe international law); Jack L. Goldsmith & Eric A. Posner, *A Theory of Customary International Law*, 66 U. CHI. L. REV. 1113, 1113 (1999) (noting that “[g]overnments take care to comply with [customary international law] and incorporate its norms into domestic statutes”); Laurence R. Helfer & Anne-Marie Slaughter, *Toward a Theory of Effective Supranational Adjudication*, 107 YALE L.J. 273, 276 (1997) (“Supranational adjudication in Europe is a remarkable and surprising success...both [the European Court of Justice and the European Court of Human Rights] developed successful strategies to make their judgments as effective, for the most part, as national court rulings.”); George W. Downs et al., *Is the Good News About Compliance Goods News About Cooperation?*, 50 INT’L ORG. 379, 379 (1996) (explaining that the message from political scientists and scholars is that high compliance with international law is achieved “with little attention to enforcement”).

³ See Douglass Cassel, *Does International Human Rights Law Make a Difference?*, 2 CHI. J. INT’L L. 121, 131–34 (2001) (discussing human rights treaties’ ineffectiveness to change states’ practice); Jack Goldsmith, *Sovereignty, International Relations Theory, and International Law*, 52 STAN. L. REV. 959 (2000) (citing Joseph M. Grieco, *Anarchy and the Limits of Cooperation: A Realist Critique of the Newest Liberal Institutionalism*, 42 INT’L ORG. 485 (1988); Eric Lane, *Mass Killing by Governments: Lawful in the World Legal Order?*, 12 N.Y.U. J. INT’L L. & POL. 239 (1979) (arguing that international agreements are ineffective at preventing a country from killing its own citizens); John J. Mearsheimer, *The False Promise of International Institutions*, 5 INT’L SEC., Winter 1994-1995) (explaining that “[r]ealists are skeptical about cooperation among nations” and that realists believe that “the little cooperation we see is fragile”); J. S. Watson, *Legal Theory, Efficacy and Validity in the Development of Human Rights Norms in International Law*, 1979 U. ILL. L.F. 609, 626–35 (1979) (arguing that states often speak like they will follow international law, but states’ actions indicate the contrary).

⁴ See David S. Ardia, *Does the Emperor Have No Clothes? Enforcement of International Laws Protecting the Marine Environment*, 19 MICH. J. INT’L L. 497, 508–16 (1998) (discussing difficulties in enforcing marine environmental international agreements); Emeka Duruigbo, *International Relations, Economics and Compliance with International Law: Harnessing Common Resources to Protect the Environment and Solve Global Problems*, 31 CAL. W. INT’L L.J. 177, 189–193 (2001) (arguing that costs of compliance and of reporting on compliance makes enforcement difficult); Richard A. Falk, *On Identifying and Solving the Problem of Compliance with International Law*, 58 AM. SOC’Y INT’L L. PROC. 1 (1964) (arguing that enforcement is difficult because of uncertainty

shared belief underlies the work of international scholars and lawyers who debate about how to make international law more effective.⁶

There is a vast literature focused on international compliance.⁷ This literature suffers from two major weaknesses in determining the effectiveness of international law. First, the current theories of international law inappropriately concentrate on states rather than individuals. Whether international law is ultimately effective in accomplishing its goals may depend less on whether a state complies and more on whether sub-state entities act consistently with the goals of international law. This misplaced focus on nations as the primary actor in international law neglects key players in international law: individuals and firms. Nations comply with international law by passing laws and enforcing those laws. Individuals and firms comply with international law by following rather than violating such laws. Indeed, even though international law imposes duties on nations, the effectiveness of international law depends in large measure on the actions of private individuals, who ultimately determine whether international law is effective.⁸

as to the legal rule governing state behavior); Günther Handl, *Compliance Control Mechanisms and International Environmental Obligations*, 5 TUL. J. INT'L & COMP. L. 29 (1997) (arguing that major difficulties in compliance increase with increased complexity of the international regime and with increased costs of compliance); Christopher C. Joyner, *Sanctions, Compliance and International Law: Reflections on the United Nations' Experience Against Iraq*, 32 VA. J. INT'L L. 1, 32 (1991) (arguing that enforcement of international laws is more difficult when the international law is perceived as unfair or illegitimate).

⁵ There is also a debate about compliance with international laws because of imprecise definitions. See Christopher Greenwood, *Ensuring Compliance with International Law, in CONTROL OVER COMPLIANCE WITH INTERNATIONAL LAW* 201 (W.E. Butler ed., 1991) (arguing that maritime laws of war cannot be effectively complied with because it is not clear as to how they apply to current situations); David S. Ardia, *Does the Emperor Have No Clothes? Enforcement of International Laws Protecting the Marine Environment*, 19 MICH. J. INT'L L. 497, 504–05 (1998) (explaining that notwithstanding the many treaties involving environmental concerns, few such agreements substantively define the parties' future obligations); Jack L. Goldsmith & Eric A. Posner, *A Theory of Customary International Law*, 66 U. CHI. L. REV. 1113, 1114–15 (1999).

⁶ Beth A. Simmons, *Compliance with International Agreements*, 1 ANN. R. POL. SCI. 75 (1998) [hereinafter Simmons, *Compliance*]; Abram Chayes & Antonia Chayes, *On Compliance*, 47 INT'L ORG. 175 (1993) (arguing that managerial insights can improve compliance with international law); Koh, *supra* note 1, at 2599.

⁷ See *supra* notes 2–5.

⁸ LUNG-CHU CHEN, AN INTRODUCTION TO CONTEMPORARY INTERNATIONAL LAW 76-80 (2d ed. 2000) (noting the role of individuals and that realistically individuals are the ultimate actor); Helfer & Slaughter, *supra* note 2, at 300 (noting important factors for gaining compliance with international laws); DINAH SHELTON, COMMITMENT AND COMPLIANCE: THE ROLE OF NONBINDING NORMS IN THE INTERNATIONAL LEGAL SYSTEM

Second, there is no agreement on what motivates compliance with international law.⁹ Two major theoretical camps disagree fundamentally on what causes international compliance: sanctions or norms. Proponents of rationalism believe that nations comply because they fear sanctions or other repercussions when they do not comply. On the other side, constructivists argue that nations comply with international law because they want to follow norms and behave appropriately. These opposing frameworks offer two motivations for complying with international law: norms and sanctions. The same motivations arguably exist with private actors deciding whether

(2000) (discussing soft law compliance); Charles Lipson, *Why Are Some International Agreements Informal?*, 45 INT'L ORG. 491 (1991); Kenneth W. Abbott & Duncan Snidal, *Hard and Soft Law in International Governance*, 54 INT'L ORG. 421 (2000). See also Curtis A. Bradley & Mitu Gulati, *Withdrawing from International Custom*, 120 YALE L.J. 202 (2010) (questioning the mandatory nature of customary international law); Terry Nardin, *Ethical Traditions in International Affairs*, in TRADITIONS OF INTERNATIONAL ETHICS 13 (Terry Nardin & David R. Mapel eds., 1993) (contending that international law is not "law" "because it cannot be enforced"). See generally THOMAS M. FRANCK, FAIRNESS IN INTERNATIONAL LAW AND INSTITUTIONS (1995).

⁹ HANS J. MORGENTHAU, POLITICS AMONG NATIONS: THE STRUGGLE FOR POWER AND PEACE (4th ed. 1967) (explaining international compliance with realism theory); FRANCK, *supra* note 8, (arguing that international rules perceived as fair are considered more legitimate and are therefore followed more frequently); Andrew T. Guzman, *A Compliance-Based Theory of International Law*, 90 CAL. L. REV. 1823 (2002) (explaining nations' compliance with international law with international relations theory); ABRAM CHAYES & ANTONIA HANDLER CHAYES, THE NEW SOVEREIGNTY: COMPLIANCE WITH INTERNATIONAL REGULATORY AGREEMENTS (1998) (arguing that a "managerial model" of compliance in which nations cooperate in a problem solving approach to problems should replace the coercive theories that say nations comply because of sanctions); Benedict Kingsbury, *The Concept of Compliance as a Function of Competing Conceptions of International Law*, 19 MICH. J. INT'L L. 345 (1998) (examining various theories of compliance because the concept of compliance does not stand alone, but depends on the theory behind it); John K. Setear, *Responses to Breach of a Treaty and Rationalist International Relations Theory: The Rules of Release and Remediation in the Law of Treaties and the Law of State Responsibility*, 83 VA. L. REV. 1 (1997) (examining breach and compliance with international law); Robert O. Keohane, *International Relations and International Law: Two Optics*, 38 HARV. INT'L L.J. 487, 487 (1997) (describing the competition between the "instrumentalist optic" and the "normative optic" compliance theories); Beth A. Simmons, *Money and the Law: Why Comply with the Public International Law of Money?*, 25 YALE J. INT'L L. 323 (2000) (examining international compliance with the laws governing money and arguing that nations commit to comply with international law when it is credible and plausible that they can commit); Thomas M. Franck, *Legitimacy in the International System*, 82 AM. J. INT'L L. 705 (1988) (arguing that compliance to international law is secured by nations' belief in the legitimacy of the rule, which requires nations to believe that the rule came into existence through the right process); Andrew T. Guzman, *Rethinking International Law as Law*, 103 AM. SOC'Y INT'L L. PROC. 155, 155–56 (2009) (noting that a key question in international law is "how well does international law do in its effort to influence state behavior").

to act consistently with international law. Testing these theories on actors to determine whether norms or sanctions induce compliance—and then exploiting those motivations—could potentially increase the effectiveness of international law.

Despite the importance of determining why actors comply with international law, no scholars have ever tested the motivations for private actors complying with international law. And while these two camps have robust theoretical bases to back their beliefs, both rationalists and constructivists lack strong empirical support.¹⁰ The existing studies cannot determine actual compliance because they suffer from selection bias and a myopic focus on nations rather than other actors.¹¹ Indeed, neither theory of compliance has been tested internationally in ways that can establish causality of actors' compliance.

Because of its ability to uncover causal effects, a large-scale international field experiment is one way to answer these questions.¹² Thus

¹⁰ David D. Cardon, *Does International Law Matter?*, 98 AM. SOC'Y INT'L L. PROC. 311, 312 (2004) (explaining that while certain, specific laws were broken, the laws of war were largely adhered to during the Ethiopian-Eritrean War, which took place between 1998 and 2000); Emeka Duruigbo, *International Relations, Economics and Compliance with International Law: Harnessing Common Resources to Protect the Environment and Solve Global Problems*, 37 CAL. W. INT'L L.J. 177, 183–84 (2001) (reporting “impressive” compliance by 1991 with the 1973 International Convention for the Prevention of Pollution from Ships); Elias N. Stebek, *ICJ Judgment (1994) on the Libya/Chad Territorial Dispute: A Brief Overview and Observations*, 3 MIZAN L. REV. 169 (2009) (discussing Libya's submission to a decision handed down by the International Court of Justice in 1994); James G. Apple, *Enforcement of International Law Is Not Dependent on a “Sword” or Enforcement Mechanism*, INT'L JUDICIAL MON. (Jan./Feb. 2007) (discussing three instances in which countries submitted to an international court's authority: Libya's submission to a decision handed down by the International Court of Justice in 1994, Russia's submission to a decision offered by the European Court of Human Rights in 2006, and seventy-nine out of eighty countries submitting to World Trade Organization Appellate Body decisions through 2006).

¹¹ And (do we need and?) the cross-national comparisons that exist are typically limited to a certain time period, geographic region, or set of events. Consequently, they shed little insight on the current global state of international law compliance. Hiram E. Chodosh, *Comparing Comparisons: In Search of Methodology*, 84 IOWA L. REV. 1025, 1038–40 (1999) (discussing the value of comparisons of international laws but lamenting the lack of good studies due to methodological failures).

¹² Since the 1960s, social scientists have increasingly used field experiments to explore what motivates individuals to act in specific situations. Specifically, scholars rely on field experiments to study theories on economics, social and criminal behavior, and political economy. See, e.g., Richard D. Schartz & Sonya Orleans, *On Legal Sanctions*, 34 U. CHI. L. REV. 274 (1966); Stanley Divorski et al., *Public Access to Government Information: A Field Experiment*, 68 NW. U. L. REV. 240 (1973); Donald P. Hartmann et al., *Rates of Bystander Observation and Reporting of Contrived Shoplifting Incidents*, 10 CRIMINOLOGY

far, however, no experimental studies have investigated key theoretical questions such as compliance with international law.¹³ Through a randomized international field experiment where we use aliases and pose as international consultants seeking a shell corporation, we assess the causes of compliance with international financial transparency laws through assigning more than 1,000 firms to a variety of treatment and control conditions. The results of this global experiment reveal several interesting and significant findings with potential importance for international law and policy.

In examining whether international law matters, our empirical findings reveal that compliance with international law is 51% at best: less than half the contacted firms complied with financial transparency standards. In considering why individuals comply with international law, it turns out that informing firms about the relevant international laws or norms to comply with these laws does not increase the likelihood that firms will actually comply. And surprisingly, informing firms about penalties actually increases the likelihood that the firms who respond will violate international

248, 258 (1972) (finding that half of those who did not report crimes in violation of local law described that reporting would have been impractical in some way); Hans P. Binswagner, *Attitudes Toward Risk: Theoretical Implications of an Experiment in Rural India*, 91 *ECON. J.* 867 (1981) (field experiment to test the theories on the economics of development); Macartan Humphreys & Jeremy M. Weinstein, *Field Experiments and the Political Economy of Development*, 12 *ANN. REV. POL. SCI.* 367 (2009) (using field experiments to study the political economy of development projects because development agencies and implementing organizations find themselves under pressure to show that their interventions are effective); Donald P. Green et al., *Does Knowledge of Constitutional Principles Increase Support for Civil Liberties? Results from a Randomized Field Experiment*, 73 *J. POL.* 463 (2011) (studying knowledge of constitutional law and political behavior); Alan S. Gerber et al., *How Large and Long-Lasting Are the Persuasive Effects of Televised Campaign Ads? Results from a Randomized Field Experiment*, 105 *AM. POL. SCI. REV.* 135 (2011) (studying the effect of campaign ads on political behavior); Gary S. Green, *General Deterrence and Television Cable Crime: A Field Experiment in Social Control*, 23 *CRIMINOLOGY* 629 (1985) (field experiment performed to determine how well a legal threat deters people from committing television signal theft and finding that two-thirds ceased the illegal practice after receiving notice).

¹³ There have been several local randomized field experiments measuring international organizations' interventions in local affairs. See Jeremy M. Weinstein & James D. Fearon, *Can Development Aid Contribute to Social Cohesion After Civil War? Evidence from a Field Experiment in Post-Conflict Liberia*, 99 *AM. ECON. REV.* 287, 287 (2009) (evaluating the impact of a community-driven reconstruction program implemented by the International Rescue Committee in northern Liberia and finding that post-conflict development aid can have a measurable impact on social cohesion); Mary Kay Gugerty & Michael Kremer, *Outside Funding and the Dynamics of Participation in Community Associations*, 52 *AM. J. POL. SCI.* 585, 585 (2008) (finding little evidence that outside funding increased organizational strength of organizations comprised of poor and disadvantaged individuals).

law. Thus, norms do not seem to matter and reference to penalties sometimes cause more international law violations. This study also demonstrates a gap between state compliance and private firm behavior and identifies what motivates firms to decide to act consistently with the goals of international law.

This Article unfolds in three parts. Part I sets forth the two dominant theories of compliance with international law, rationalism and constructivism, then introduces the preeminent debate in international law: does international law matter? Part II sets forth the design and results of an experiment considering whether and why individuals comply with international law. Generally speaking, is compliance motivated by fear of sanctions or a sense of duty to accepted norms? We demonstrate, with systematic data whose results may be surprising to both camps of international law theorists, that compliance is lower than expected, despite the importance of such laws on an international level. Part III examines the results of this field experiment in light of the theories of international law, juxtaposing the findings with potential explanations for the counterintuitive results we encounter. Informing firms about the relevant international law does not increase the likelihood that firms will actually comply and indeed invoking penalties actually motivates some actors to break international law in greater numbers. To provide an explanation for these results we set forth two new theories of rationalism, which we call the conspirator effect and the weak penalty effect. Under the conspirator effect, the willingness of firms to violate international law is influenced by clients who are willing to conspire in violating international law. The weak penalty effect is that weak international penalties induce lower compliance than a lack of international penalties.

I. THEORIES OF COMPLIANCE

While scholars have criticized the divisions used to explain international law and relations theories,¹⁴ many have relied on them to explain what motivates compliance with international law. The prevailing theories can roughly be divided into two opposing frameworks: rationalism and constructivism.¹⁵ Rationalists generally believe that nations comply with

¹⁴ Colin Wright, *Philosophy of Social Science and International Relations*, in HANDBOOK OF INTERNATIONAL RELATIONS 24 (Walter Carlsnaes, et al eds., 2002) (These problems include: “a bar to constructive dialogue; a hindrance to much-needed research into issues of vital concern; a confused misrepresentation of the issues; and most importantly, a construct of those working in the field.”).

¹⁵ There are more than a dozen distinctions and sub-theories of rationalism and

international law when faced with material sanctions. Constructivists believe that nations comply with international law when the international community sets norms that become broadly accepted. After providing a broad framework for these theories, we make a case that both theories have a misplaced focus on states as primary actors in international law.

A. Rationalism

Rationalists believe that nations only comply with international law when they seek to avoid sanctions or obtain material benefits.¹⁶ Rationalism relies formally and informally on rational choice theory, and an explanation of foreign policy through self-interested,¹⁷ goal seeking behavior.¹⁸ Instead of accepting a traditional belief that international law is a powerful check on state behavior, rationalists argue that international law is merely the result of states acting rationally to maximize their interests.¹⁹ Rationalists explain state compliance with international law as a result of a nation's desire to profit materially or because they fear sanctions. Since states are treated like individual actors, rationalists argue that penalties motivate states to act.²⁰

Rationalists assume that states are the primary actors in the

constructivism that are not discussed here. See, e.g., Emanuel Adler, *Seizing the Middle Ground: Constructivism in World Politics*, 3 EUR. J. INT'L REL. 319, 335–36 (1997) (dividing constructivism into four separate camps); SCOTT BRUCHILL ET AL., THEORIES OF INTERNATIONAL RELATIONS 105 (4th ed. 2009) (noting a distinction between realism and idealism within rationalism).

¹⁶ Rationalists do not ever “comply” with international law but act consistently with it when compelled. Goldstein et al., *Legalization and World Politics*, 54 INT'L ORG. 385 (2000). Neoliberal institutionalists generally believe that compliance with international law can be quite high. Simmons is the best example, but there are many others, like Keohane, Snidal, and Abbott, who believe that nations generally comply. See Simmons, *Compliance*, *supra* note 6 at 75.

¹⁷ Anthony Clark Arend, *Do Legal Rules Matter? International Law and International Politics*, 38 VA. J. INT'L L. 107, 121-22 (1997-98).

¹⁸ James Fearon & Alexander Wendt, *Rationalism v. Constructivism: A Skeptical View*, in HANDBOOK OF INTERNATIONAL RELATIONS 54 (Walter Carlsnaes et al. eds., 2002).

¹⁹ JACK L. GOLDSMITH & ERIC A. POSNER, THE LIMITS OF INTERNATIONAL LAW 3–5 (2005). Some rationalists are realists and believe that a state's primary interest is protecting security interests. Jack Goldsmith, *Sovereignty, International Relations, and International Law*, 52 STAN. L. REV. 959, 963 (2000); see also Tom Ginsburg & Richard H. Holmes, *Adjudicating in Anarchy: An Expressive Theory of International Dispute Resolution*, 45 WM. & MARY L. REV. 1229 (2004) (explaining with game theory why countries would comply with decisions rendered by international courts).

²⁰ This can be analogized to individual actors who are also motivated by the threat of penalties. See Joanne M. Miller & Jon A. Krosnick, *Threat as a Motivator of Political Activism: A Field Experiment*, 25 POL. PSYCHOL. 507 (2004).

international system.²¹ As such, states are treated as individual actors that make rational decisions regarding international law and their relations with other states according to a cost-benefit analysis.²² Rationalists largely treat the effects of the international social structure on state interests as exogenous.²³ Accordingly, state interests are best understood by analyzing the internal conditions or external threats or benefits faced by given states rather than outside social considerations.²⁴

Because self-interest guides nations' decision-making, and there are only minor risks of international sanctions with weak and limited enforcement,²⁵ some rationalists posit that compliance with international law is limited.²⁶ Thus, as Goldsmith and Posner argue, "nations mouth their agreement to popular ideals as long as there is no cost in doing so, but abandon their commitments as soon as there is a pressing military or economic or domestic reason to do so."²⁷

First, and fundamentally, critics claim that rationalism does not explain how a state determines its interest.²⁸ Some perceive rational choice theory to be circular because the theory explains that a state acts the way it does because the state is pursuing its interests, but determines the state's interest according to the actions that a state performs.²⁹ Without guiding principles

²¹ Individualists believe that social structures can be reduced to the independent actions of agents. See ALEXANDER WENDT, *SOCIAL THEORY OF INTERNATIONAL POLITICS* 26 (Steve Smith et al. eds., 1999). But see Edward Rubin, *Rational States?*, 83 VA. L. REV. 1433, 1451 (1997) ("Treating collective entities as individuals, with motivations, plans, strategic responses, and the other accouterments of rational actor theory, is extremely convenient. It is much easier than trying to construct their behavior from the behavior of the real individuals who comprise them."); Arend, *supra* note 17, at 119 (citing Robert O. Keohane, *International Institutions: Two Approaches*, 32 INT'L STUD. Q. 379, 386 (1988)).

²² Uta Oberdörster, *Why Ratify? Lessons from Treaty Ratification Campaigns*, 61 VAND. L. REV. 681, 685 (2008).

²³ Arend, *supra* note 17, at 124. But see Oberdörster, *supra* note 22, at 119 (discussing rationalists that "argue that the creation of institutions and regimes can independently influence state behavior); Fearon & Wendt, *supra* note 18, at 56 (arguing that the microeconomic concept of equilibrium is a manner in which rationalism accounts for structure that impinges and influences actors); WENDT, *supra* note 21, at 33.

²⁴ Oona A. Hathaway, *Between Power and Principle: An Integrated Theory of International Law*, 72 U. CHI. L. REV. 469, 479 (2005).

²⁵ Robert Pape, *Why Economic Sanctions Do Not Work*, 22 INT'L SEC. 90, 109 (1997).

²⁶ GOLDSMITH & POSNER, *supra* note 19, at 36–37, 87–88.

²⁷ Jack L. Goldsmith & Eric A. Posner, *Understanding the Resemblance Between Modern and Traditional Customary International Law*, 40 VA. J. INT'L L. 639, 672 (2002).

²⁸ Oona A. Hathaway, Ariel N. Lavinbuk, *Rationalism and Revisionism in International Law*, 119 HARV. L. REV. 1404 (2006) (suggesting that rationalist theorists should provide information about what interests states pursue in order to better support their theory).

²⁹ JACK L. GOLDSMITH & ERIC A. POSNER, *THE LIMITS OF INTERNATIONAL LAW* 10

for a state acting the way it does, rationalism has little explanatory power.³⁰

Second, critics fault rationalism for failing to adequately explain why states consistently enter into and abide by treaties that offer little or no apparent benefit.³¹ For instance, many states accede to and abide by human rights treaties.³² While these treaties impose costs,³³ they offer no material benefit to the state.³⁴ It is unclear why a rational state would enter a human rights agreement: a state with a history of human rights compliance would receive no reputational gains,³⁵ and one with a history of abuse would lose much from ratification.³⁶ Thus, rationalists would not agree that a law

(2005) (“A successful theory of international law must show why states comply with international law.”).

³⁰ However, a rationalist response may argue that states serve their interests by increasing benefits and avoiding penalties, with little regard to international norms. The state’s interests are determined by laws that dictate either penalties for noncompliance or benefits for obedience. See Guzman, *supra* note 9 at 1849 (explaining that a nation’s reputation may be damaged or enhanced by decisions to comply with international law or not; negative effects to reputation serve as penalties and positive effects as benefits). Of course, international penalties and benefits are relevant. Hathaway, *supra* note 24 at 480 (summarizing a rationalist theory of international law compliance by noting that states only join treaties [increasing benefits] that do not require them to act very differently than they already do [incurring little cost]).

³¹ Oona A. Hathaway & Ariel N. Lavinbuk, *Rationalism and Revisionism in International Law*, 119 HARV. L. REV. 1428 (2006). Assumptions such as power and interests matter, states seek to influence one another in pursuit of often conflicting self-interests, and self-help through military force is important. See Jeffrey W. Legro & Andrew Moravcsik, *Is Anybody Still a Realist?*, 24 INT’L SEC. 5, 21 (1999).

³² Alex Geisigner & Michael Ashley Stein, *A Theory of Expressive International Law*, 60 VAND. L. REV. 77, 78 (2007).

³³ Hathaway, *supra* note 24, at 479. A common retort is that entering such treaties is “cheap talk” used by governments to justify their self-interested actions, but the retort fails to explain why “cheap talk” would be valuable. See, e.g., KENNETH WALTZ, *THEORY OF INTERNATIONAL POLITICS* 200 (1979); EDWARD HALLETT CARR, *TWENTY YEARS CRISIS: 1919-39* 71–75 (2d ed. 1946); MORGENTHAU, *supra* note 9, at 11.

³⁴ Rationalists argue that states enter such treaties to protect some self-interest, with weaker states feeling coerced by greater states who actually value human rights. Others explain states complying with international law because of internal pressure created by domestic policies and the costs of possible sanctions. Hathaway, *supra* note 2, at 1946, 1951–52, 1954 ; see also WALTZ, *supra* note 33, at 136 (noting that the “expected costs of enforcing agreements, and of collecting the gains they offer, increase disproportionately as the group becomes larger”).

³⁵ But see David Moore, *A Signaling Theory of Human Rights Compliance*, 97 N.W. L. REV. 879 (2003) (the damage that the U.S. has suffered from not signing onto various human rights treaties, notwithstanding a history of human rights compliance, suggests otherwise).

³⁶ Harlan Grant Cohen, *Can International Law Work? A Constructivist Expansion*, 27 BERK. J. INT’L L. 636, 651–52 (2009).

would carry with it a moral sense of obligation to follow it.³⁷

Thus, according to rationalism, states comply with international law when doing so serves their interests by increasing benefits and avoiding penalties. International norms are not relevant except to the extent that following or violating them produces costs or benefits to the state.

B. Constructivism

Constructivism asserts that states obey international law due to norms.³⁸ To constructivists, international law makes up the structure of the international system: a set of implicit rules upon which meaningful and binding formal agreements are framed.³⁹ According to constructivists, states create and follow international law not because of the instrumental benefits or penalties from complying, but because of their moral and social

³⁷ *Id.* at 636, 657–58. *See, e.g.*, H.L.A. HART, *THE CONCEPT OF LAW* 89 (1961) (Though Hart may not agree that there is necessarily a sense of obligation but that there may be one). *See also* Mark A. Chinen, *Game Theory and Customary International Law: A Response to Professors Goldsmith and Posner*, 23 MICH. J. INT’L L. 143, 158 (2001–02). *See* FERNANDO R. TESÓN, *A PHILOSOPHY OF INTERNATIONAL LAW* 79, 92–94 (1998) (“What is distinctive about doing our duty is that we are obligated to do it especially when it is costly to us, when doing it frustrates some preference or interest that we have. That is why moral choice cannot be captured by strategic analysis.”).

³⁸ Like rationalism, constructivism encompasses a broad range of theories. HENKINS, *supra* note 2, at 25–26. Constructivism draws from critical theory, post modernism, feminist theory, historical institutionalism, sociological institutionalism, symbolic interactionism, structuration theory, and others. *Id.* at 1. Notably, like with rationalism, constructivism is a broad term wherein much debate rages about what does and should fall beneath its umbrella. However, unlike rationalism, the debate rages to the point where a single recipe or definition is problematic. *See* Fearon & Wendt, *supra* note 18, at 56. *See also* Wright, *supra* note 14, at 34–35. Different scholars have included very conflicting ideas under this same label, raising questions about what it really means. *Compare* JOHN GERARD, *CONSTRUCTING THE WORLD POLITY: ESSAYS ON INTERNATIONAL INSTITUTIONALIZATION* (1998), *with* Steve Smith, *Epistemology, Postmodernism and International Relations Theory*, 34 J. PEACE RES. 330 (1997)). Indeed, some constructivists claim that concern about reputation is a rationalist concern and that constructivists are solely concerned about acting morally. *See, e.g.*, LARRY MAY, *THE MORALITY OF GROUPS: COLLECTIVE RESPONSIBILITY, GROUP-BASED HARM, AND CORPORATE RIGHTS* (1987); LARRY MAY, *SHARING RESPONSIBILITY* (1992).

³⁹ Arend, *supra* note 17, at 130. *See* Stephen A. Kocs, *Explaining the Strategic Behavior of States: International Law as System Structure*, 38 INT’L STUD. Q. 535, 538–39 (1994). Kocs has suggested eight constitutive rules. The first three are seen as longstanding principles: “the sovereign equality of states, nonintervention in the affairs of other states, and good faith [pacta sunt servanda].” Five others are seen as more recent: the self-determination of peoples, [the] prohibition on the threat or use of force, [the] peaceful settlement of disputes, respect for human rights, and international cooperation.”

commitment to ideas embodied in treaties.⁴⁰

While constructivists focus on social norms and structures,⁴¹ like rationalists, constructivists focus on states as the central actor in international decision-making.⁴² For constructivists, norms and laws exert a profound impact on state behavior, shaping how people think about their state's role and obligations.⁴³ Self-interest as the sole motivation is rejected, as constructivists instead believe that states determine their national interests and preferences through the social interaction of individuals, groups, and states.⁴⁴

Constructivists believe international law can modify state preferences.⁴⁵ State interactions create a social structure, which in turn influences state interests.⁴⁶ These structures have the ability to influence norms and preferences domestically, to the point where a state's interests reflect the rules of international law.⁴⁷ Accordingly, states are often not convinced that a solution is needed until standards are set by international organizations created and often run by states.⁴⁸ Constructivists assert that state actors are persuaded by normative arguments that adopt new interests and change behavior.⁴⁹ In a world where states operate in an environment of uncertainty, they will often imitate the solutions tried by other apparently successful states.⁵⁰

According to constructivists, norms must be accepted and internalized by the state before any action, or inaction, is attempted on the international level. The degree to which states are persuaded to accept norms is the degree to which they can influence the state's actions in the international arena.

⁴⁰ Hathaway, *supra* note 24, at 476–77.

⁴¹ MARTHA FINNEMORE, NATIONAL INTEREST IN INTERNATIONAL SOCIETY (1996). *See, e.g.,* Wendt, *supra* note 21, at 26 (“People cannot be professors apart from students, nor can they become professors apart from the structure through which they are socialized.”).

⁴² Wendt, *supra* note 21, at 8–9 (arguing that states dictate social relations because they have a practical monopoly on violence).

⁴³ Keohane, *supra* note 9, at 492.

⁴⁴ Hathaway, *supra* note 24, at 481; OONA A. HATHAWAY & HAROLD H. KOH, FOUNDATIONS OF INTERNATIONAL LAW AND POLITICS 112 (2005).

⁴⁵ Thomas Risse & Kathryn Sikkink, *The Socialization of International Human Rights Norms into Domestic Practices: Introduction*, in THE POWER OF HUMAN RIGHTS 1, 57 (Thomas Risse et al. eds., 1999).

⁴⁶ Arend, *supra* note 17, at 129.

⁴⁷ *Id.* at 132.

⁴⁸ FINNEMORE, *supra* note 41.

⁴⁹ Uta Oberdörster, *Why Ratify? Lessons from Treaty Ratification Campaigns*, 61 VAND. L. REV. 681, 689 (2008).

⁵⁰ FINNEMORE, *supra* note 41.

One of the most prominent constructivist theories on compliance is the managerial model propounded by Abram and Antonia Chayes.⁵¹ The managerial model posits that states affirmatively want to conform to international norms, as embodied in international law. Indeed, it is the normative effect of international law and not the fear of reprisal that leads to compliance.⁵² And noncompliance is the result of states' lack of sufficient information or high cost of compliance,⁵³ not a result of self-interested decisions.⁵⁴ In consequence, Chayes and Chayes argue that persuasion and "managing" compliance are more effective than coercing compliance with international law.⁵⁵ Managing compliance includes informing states of international laws that they must abide by and providing states with resources to comply.⁵⁶ This process relies not on the threat of sanctions but on the fear of "alienation" from international networks that have become "central to most nations' security and economic well-being."⁵⁷ Thus, according to the managerial model, the key to international compliance is informing states of the laws, persuading states of their normative import, and helping build capacity to comply with such laws.

⁵¹ The managerial model represents the arguments of a substantial group of international law scholars and a permissible inference from constructivism. *E.g.*, HENKIN, *supra* note 2.

⁵² CHAYES & CHAYES, *supra* note 6, at 9–10, 25–27, 116.

⁵³ Managerialism also recognizes that compliance with international law can be costly and expects that wealthy countries are more likely to comply with international law than poor states. Therefore, managerialists argue that one of the best ways to encourage compliance is to offer economic and technical support to developing countries. Ibrahim F.I. Shihata, *Implementation, Enforcement, and Compliance with International Environmental Agreements – Practical Suggestions in Light of the World Bank's Experience*, 9 GEO. INT'L ENVTL. L. REV. 37, 41 (1996); Emeka Duriugbo, *International Relations, Economics and Compliance with International Law: Harnessing Common Resources to Protect the Environment and Solve Global Problems*, 31 CAL. W. INT'L L.J. 177 (2001); Simon Tay, *Southeast Asian Fires: The Challenge for International Environmental Law and Sustainable Development*, 11 GEO. INT'L ENVTL. L. REV. 241, 289 (1999). For a critique of managerial theory see Downs et al., *supra* note 2, at 379–80 (arguing that states will not be willing to pay the cost of compliance for others and enforcement of this capacity building will be difficult).

⁵⁴ Downs et al., *supra* note 2 at 10. Rationalists also claim that state noncompliance with international law results from a lack of sufficient information.

⁵⁵ Downs et al., *supra* note 2 at 25–26. ("We propose that this process is usefully viewed as management, rather than enforcement.")

⁵⁶ *Id.* at 26.

⁵⁷ *Id.* at 27, n.100. *See also id.* at 26 ("The process works because modern states are bound in a tightly woven fabric of international agreements, organizations, and institutions that shape their relations with each other and penetrate deeply into their internal economics and politics. The integrity and reliability of this system are of overriding importance for most states, most of the time.").

Critiques of constructivism target three main flaws. First, critics claim constructivism fails to offer specific expectations of state behavior or explanations of how state decisions are made, apart from that states will join and comply with international law.⁵⁸ Indeed, the mutually constituted relationship shared by state actors and international structures makes it difficult to determine the effect one has on the other.⁵⁹ As such, it is difficult to validate causal arguments with regards to norms.⁶⁰

In a second related concern, a consistent critique of constructivism is its lack of empirical evidence to back its claims and inability to refute the alternative empirical evidence that contradicts constructivist claims.⁶¹ Indeed, critics claim that both constructivism and rationalism fail to predict behavior or connect adequately with evidence.⁶² Further, the empirical work that does exist flies in the face of conventional constructivist theory regarding norm internalization.⁶³ Constructivists, of course, contest this assertion and point to a growing body of supportive empirical evidence.⁶⁴

Demonstrating the validity of an abstract theory of international compliance is no easy task.⁶⁵ Rationalism's and constructivism's claims thus etch the broad outlines of the debates of international law. While disputing many other issues, the two theories generally agree that states are the primary actors to measure in determining compliance with international law. We question this assertion below and demonstrate that the key to compliance may actually be found in another locus of compliance: private

⁵⁸ Hathaway, *supra* note 24, at 483. This proposition faces mixed empirical support as evidenced in part IV of Hathaway's article. *Id.* See also ANDREW T. GUZMAN, HOW INTERNATIONAL LAW WORKS: A RATIONAL CHOICE THEORY 19–20 (2008) (arguing that constructivism is too complex to offer predictions concerning state behavior since it considers so many sub-state actors).

⁵⁹ Arend, *supra* note 17, at 135. This criticism harkens back to the desire to causally explain all relationships. Constructivists are generally not concerned with this in the same magnitude that rationalists are. *Id.*

⁶⁰ Keohane, *supra* note 6, at 493.

⁶¹ Arend, *supra* note 17, at 134. See, e.g., John J. Mearsheimer, *A Realist Reply*, 20 INT'L SECURITY 82, 92 (1995).

⁶² Richard K. Herrmann, *Linking Theory to Evidence in International Relations*, in HANDBOOK OF INTERNATIONAL RELATIONS 119 (Walter Carlsnaes et al. eds., 2002).

⁶³ Hathaway, *supra* note 24, at 526 (pointing out that states that ratify human rights treaties are more likely to commit human rights violations).

⁶⁴ See e.g., Martha Finnemore, *International Organizations as Teachers of Norms: The United Nations Education, Scientific, and Cultural Organization and Science Policy*, 47 INT'L ORG. 565, 565 (1993) (qualitatively testing the causes of state structure evolution); DAVID LUMSDAINE, MORAL VISION IN INTERNATIONAL POLITICS: THE FOREIGN AID REGIME (1993) (offering statistical evidence that foreign aid is motivated by moral beliefs).

⁶⁵ Herrmann, *supra* note 62, at 119. Some scholars see such attempts as misguided, nothing more than selecting a favorite political preference.

actors' decisions to obey international law.

C. Weaknesses in Prominent International Frameworks

A key point of agreement between constructivists and rationalists is that states are the primary actors to track in determining international compliance. We make the case that this myopic focus on state actors is actually a weakness in international law theory that has prevented the field from measuring actual compliance with international law and garnering the evidence necessary to support its claims. We address these points in turn. First, most areas of international law require an analysis of individual actors within states to determine actual, rather than *pro forma*, compliance. Second, relying solely on state actors to determine international compliance prevents data collection to support theoretical claims given that evidence about sovereign governments is limited.⁶⁶ Further, the evidence collected often suffers from selection bias.

1. States Are Not Primary Actors

Focusing on states as the primary actors in international law does not accurately reflect the effectiveness of international law. If the focus of international compliance is states, the areas to examine include state actions such as legislation, regulation, and enforcement of the laws passed.⁶⁷ Yet to measure compliance in many of the most important areas of international law—human rights, environmental law, global health, labor provisions, and financial regulation—the main locus of international standard compliance is not government.⁶⁸ Instead, ordinary people and firms make specific

⁶⁶ *But see supra* note 24 at 492–93 (on both domestic and international levels, non-governmental organizations assist with the legal enforcement of states' treaty obligations).

⁶⁷ *See, e.g.*, Jide Nzelibe, *Strategic Globalization: International Law as an Extension of Domestic Political Conflict*, 105 NW. U. L. REV. 635 (2011) (arguing that individual politicians may have varying preferences for observing international law commitments based on partisan factors).

⁶⁸ *See, e.g.*, Susan Rose-Ackerman, *Anti-Corruption Policy: Can International Actors Play a Constructive Role?*, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1926852 (forthcoming 2012) (emphasizing the role of international organizations and non-state actors to anti-corruption policy); Bing Baltazar C. Brillo, *The Financial Action Task Force and the AMLA of the Philippines: Dynamics Between Veto Players and a Non-Veto Player in Policymaking*, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1925324 (forthcoming 2012) (arguing that the swiftness of enactment of anti-money laundering laws pursuant to FATF demonstrates the important influence of international bodies on sovereign states); Jordan J. Paust, *Nonstate Actor Participation in International Law and the Pretense of Exclusion*, 51 VA. J. INT'L L. 977 (2011) (documenting the fact that

decisions that aggregate into a pattern of compliance or violation.⁶⁹ For example, an individual firm—not the government—makes the decision to comply with the anti-dumping provisions of trade agreements when selling goods abroad.⁷⁰ Individual military, police, and correction officers make decisions to respect or violate the rights of their prisoners.⁷¹ And corporations and private individuals decide whether or not to pollute, poach endangered species, or otherwise harm biodiversity in a way that violates international environmental agreements.⁷² In one of the landmark pieces on international compliance, Downs studied the maintenance of oil tankers to

international law has never been merely state-to-state and that formal actors have included states, nations, peoples, belligerents, insurgents, among other actors and that other non-state actors have played informal participatory roles) [hereinafter Paust, *Nonstate Actors*]; Jordan J. Paust, *The Reality of Private Rights, Duties, and Participation in the International Legal Process*, 25 MICH. J. INT'L L. 1229 (2004).

⁶⁹ Both realist and liberal institutionalists agree that individual actors are more important than states in many areas of international law. See, e.g., DANIEL DREZNER, *ALL POLITICS IS GLOBAL: EXPLAINING INTERNATIONAL REGULATORY REGIMES* (2007); ROBERT KEOHANE ET AL., *Effectiveness of International Environmental Standards*, in *INSTITUTIONS FOR THE EARTH: SOURCES OF EFFECTIVE INTERNATIONAL ENVIRONMENTAL PROTECTION 3* (Peter M. Haas et al. eds., 1993); CHEN, *supra* note 8; Paust, *Nonstate Actors*, *supra* note 67.

⁷⁰ Though governments also choose whether to enforce these provisions or choose not to enforce, the private actors ultimately decide (based either on norms or sanctions) whether to follow international law. *Goss Int'l Corp. v. Tokyo Kikai Seisakusho, Ltd.*, 321 F. Supp. 2d 1039, 1054-55 (N.D. Iowa 2004) (discussing a Japanese corporation's potential violation of international anti-dumping provisions); *Helmac Products Corp. v. Roth (Plastics) Corp.*, 814 F. Supp. 581, 582, 588 (E.D. Mich. 1993) (discussing a private corporation's violation of federal and international anti-dumping provisions).

⁷¹ See, e.g., Jeff Vize, *Torture, Forced Confessions, and Inhuman Punishments: Human Rights Abuses in the Japanese Penal System*, 20 UCLA PAC. BASIN L.J. 329 (2003) (discussing human rights violations in the Japanese penal system); *United States v. Winters*, 1997 U.S. App. LEXIS 12988 (2007) (convicting prison guard after beating escaped prisoner).

⁷² *Hegglund v. United States*, 100 F.2d 68, 70 (5th Cir. 1938) (finding the master of a motor tank-ship guilty for discharging oil and permitting it to be discharged from his ship into the Calcasieu River in Louisiana); Adrienne J. Oppenheim, *The Plight of the Patagonia Toothfish: Lessons from the Volga Case*, 30 BROOK. J. INT'L L. 293 (2004) (discussing the Volga River Case where a Russian ship, which was carrying several thousand tons of illegally caught Patagonian tooth-fish, was seized by Australians); Lisa Lambert, *At the Crossroads of Environmental and Human Rights Standards: Aguinda v. Texaco, Inc. Using the Alien Tort Claims Act to Hold Multinational Corporate Violators of International Laws Accountable in U.S. Courts*, 10 J. TRANSNAT'L L. & POL'Y 109 (2000) (analyzing Ecuadorian claims that Texaco Corporation breached the Rio Declaration on Environment and Development international agreement by committing large-scale environmental abuse).

describe the key behavior of international maritime regimes,⁷³ which is clearly outside the normal routine of national governments.

To be sure, the decisions of private actors occur under the umbrella of international laws established by independent sovereign governments coming together through international coalitions. And governments play a vital role in formal compliance with international law by enacting and enforcing domestic laws that implement international agreements. All of the state actions help to establish an environment of compliance within a state. The greater the enforcement of international law within a state, the more likely it is that private actors will follow such laws either because of norms or due to benefits or punishments.⁷⁴

States set up an environment of compliance (or noncompliance) through the ratification of international law and through the enforcement of domestic law aimed at fulfilling the goals of international agreements.⁷⁵ In order to test the effectiveness of the environment of compliance in a nation, we can do one of two things. First, we can determine what laws states have passed, the resources they have placed into enforcing them, and how often the laws are enforced. This is formal compliance, which we look at. The second method is determining how private actors are reacting to the environment of compliance set up by the states and determining whether the laws in place are actually inducing compliance by those individuals who ultimately make the decision to comply. While the first gives us important information about what actions the state has taken, the method that really gets at the effectiveness of international law is examining individual decisions.

For instance, in examining Norway's compliance with marine antidumping provisions, two options exist: formal and informal compliance. Formal compliance examines the domestic and international laws Norway has in place to stop antidumping, including examining the off-shore police force designated to enforce such laws. A test of informal compliance includes examining whether companies on Norway's shores are actually violating these provisions. While an examination of formal compliance is helpful in this example, only informal compliance gets to the heart of determining the effectiveness of international law. This is not to say that states should be ignored as key actors in considering the effectiveness of international compliance, but rather that the actual effectiveness of

⁷³ Downs et al., *supra* note 2.

⁷⁴ Harlan G. Cohen, *Finding International Law: Rethinking the Doctrine of Sources*, 93 IOWA L. REV. 65, 97 (2007) (describing the theories that support that if the right enforcement mechanisms are arrayed, states will comply with international law).

⁷⁵ *Id.* at 95.

international law can only be measured through studying private actors as well as states.⁷⁶ Thus, our study looks at both of these—formal and informal compliance: formal compliance by states and informal compliance by individual private actors.

We point out here that we are not necessarily measuring state motivations to comply through the actions of private actors. Since even states as governments are aggregate actors, in order to truly understand why states are complying with international law, the investigator must examine the motivations of all of the state actors who signed, ratified, and enforced international laws.⁷⁷ Given the daunting archival and aggregation challenges involved, we sidestep state motives and instead measure private actors' motivations for complying with international law.⁷⁸ One weakness of this approach may be that private actors' motivations are more likely to be solely driven by the balance of profit and risk while a state may have multi-faceted reasons for complying with international law.⁷⁹ Thus, measuring private motivation will not accurately measure state motivation. This may be the case, but there is also a large body of support for the position that states often act indirectly out of profit motives, as frequently the laws enforcing international provisions are thwarted due to the lobbying of financially invested domestic parties.⁸⁰ Therefore, while states may not

⁷⁶ Paul B. Stephan, *Privatizing International Law*, 97 VA. L. REV. 1573, 1575 (2011) (“Today the production and enforcement of international law increasingly depends on private actors, not traditional political authorities.”)

⁷⁷ This could take place through an archival, qualitative assessment or perhaps by measuring the amount of resources a state invests in enforcing a particular law. We leave this to future researchers, though we note that the framers of the international law will often not be the same individuals who ratify the law or sign it. Consequently, there is a question of which motivations actually matter.

⁷⁸ The slightly dismissive response to this criticism is that measuring state motivations does not matter as much as private motivations. Motivating private actors to comply with international law induces actual international compliance, thus this is the critical measure to determine on the aggregate why nations are complying with international law. And while it would be interesting to determine the motivations of the state actors who sign on and enforce international laws, ironically, this is not as critical to determining whether private actors actually comply with international law.

⁷⁹ This may suggest that states are more complex than private actors, and thus a more complex theory should apply to determining state action. This is a possibility to be explored by future researchers. See Paul B. Stephan, *Privatizing International Law*, 97 VA. L. REV. 1573, 1618 (2011).

⁸⁰ David P. Baron, *Review of Grossman and Helpman's Special Interest Politics*, 40 J. ECON. LIT. 1221 (2002) (noting the political influence of special interest groups on securing benefits for their members through lobbying activities). For instance, the Incorporation Transparency bill introduced in the United States would ratify the FATF and UNOTC agreements made by the U.S. and require identity documents from individuals

always be motivated by financial incentives, many are influenced by private actors within them that are indeed profit seekers. Measuring private motivation as a proxy for state motivation is an imperfect metric, but it may be superior to solely measuring state motivations because it is more likely to get us closer to measuring actual compliance—and therefore to improving compliance with international law.

Consequently, are we simply measuring the motivations of private actors to comply with international law or are we actually measuring the effectiveness of international law? We make the case that we are measuring the effectiveness of international law. If the international compliance decision is made by private actors, then this is where we must measure the level of compliance and the motivations for compliance.

An example illustrates this point. If the goal is to stop the excessive number of terrorist shell companies from being formed, we would want to determine how well nations are complying with laws targeted at stopping the formation of such companies. We would also want to determine what motivates compliance with these laws so that we can increase compliance. One way is to examine the framework of laws put into place by state actors to stop the formation of these companies and determine whether these laws are enforced against such companies. But since what we really care about is whether these shell companies are being formed, we must also examine the private bodies within the nation who actually form terrorist shell companies and determine why they are allowing the formation of such companies.⁸¹

Since it is ultimately private behavior that we want to influence, we want to know whether private actors fear sanctions or realize there are international norms against formation of such corporations. Thus, the

seeking to incorporate in the United States. Though this bill has broad support in international law and public opinion, it was thwarted primarily by the lobby of incorporation firms in the U.S. who stand to gain from their relatively lax standards compared to foreign competitors. *See, e.g.,* REBECCA MENES, *CORRUPTION IN CITIES: GRAFT AND POLITICS IN AMERICAN CITIES AT THE TURN OF THE TWENTIETH CENTURY* 4–5 (2001) (“At the end of the 19th Century, the governments of many (though not all) large American cities came to be dominated by what was known at the time as “machine” politics,—patronage based political systems where the government dispensed private favors in exchange for votes.”); Nicholas Confessore, *Varied Bills for Special Interests Move Quietly Through Albany*, N.Y. TIMES (June 30, 2010) (discussing a bill that would only benefit the owner of a large tobacco store, allowing his store to be exempt from strict antismoking laws); *Charge Corruption in the Wool Tarriff: Carded Wool-Makers Ask Taft Not to Sign Payne-Aldrich Bill Till an Inquiry Is Made*, N.Y. TIMES (Aug. 5, 1909) (asking President Taft to withhold signing a bill into law until investigating the role wool manufacturers played in its formulation).

⁸¹ This is of course assuming that we do not care about the expressive power and the effect of such laws aside from how they affect behavior.

motivation of private actors to comply provides insight on how effective international laws are and what motivates compliance with such laws. We note as well that ultimately, state actors do not make the decision to comply—their private citizens do. Although we measure private actors, this gives us important insights into the environment of compliance that the state has established and how the state can alter its framework to improve compliance. Thus, when we determine that private actors comply more often with international law, we may reveal a greater motivation of that state for encouraging compliance with such laws, but we certainly also demonstrate that international law is effective in that state.

Examining state action is important to measure formal ratification of international law and evaluate how effective the enforcement regime is in ensuring compliance. But to gain important insights into the effectiveness of the international law, measuring private action is vital. Thus, both rationalist and constructivist scholars have misplaced their emphasis on states as primary actors, when obtaining a pulse on the true impact of international law often requires measuring private actors. With this improper emphasis on states, international scholars have largely failed to garner robust evidence to support their claims.⁸²

2. Compliance Studies Fail Without Robust Evidence

Though international scholars place a prominent focus on studying compliance with international law,⁸³ they have in large part failed in garnering evidence to support their claims. A central unresolved difficulty of international law is whether international commitments arise from compliance and are thus subject to strong selection bias.⁸⁴ Selection bias presents a problem where it is difficult to determine how unobserved factors limit the ability to establish causality.⁸⁵ With compliance research, the fundamental problem with selection bias is determining whether countries that comply with international law are in some way fundamentally different than the countries that do not comply. Prior research on compliance with

⁸² *But see supra* note 24, at 492–93.

⁸³ *See* Chayes & Chayes, *supra* note 6; Downs et al., *supra* note 2; Simmons *supra* note 6; Kal Raustiala & Anne-Marie Slaughter, *International Law, International Relations and Compliance*, in *HANDBOOK OF INTERNATIONAL RELATIONS* 538 (Walter Carlsnaes et al. eds., 2002).

⁸⁴ Downs et al., *supra* note 2; Beth Simmons, *Compliance with International Agreements*, 1 *ANN. REV. POL. SCI.* 75 (1998); Jana Von Stein, *Do Treaties Constrain or Screen? Selection Bias and Treaty Compliance*, 99 *AM. POL. SCI. REV.* 611 (2005).

⁸⁵ Richard A. Berk, *An Introduction to Sample Selection Bias in Sociological Data*, 48 *AM. SOC. REV.* 386 (1983).

international law suffers from an inability to determine the effects of unobservable factors that create selection bias.⁸⁶ For instance, in claiming that nations comply with international law due to strong norms, constructivists fail to account for the fact that nations may comply with laws that are easiest to comply with or the fact that nations complying with international law are fundamentally different than those who fail to sign on.

To explain the significance of selection bias in studying international law, we examine a prominent debate among leading international scholars in the managerial school. In their foundational article, Abram and Antonia Chayes argue that compliance with international law is the norm and noncompliance results due to ambiguities and a lack of capacity to comply with international law, rather than deliberate defiance.⁸⁷ In response to the optimism of the “managerial” school, Downs brings to light the nontrivial challenges posed by selection problems.⁸⁸ Compliance with international standards might be the norm precisely because states acceded to those standards that are easy to meet.⁸⁹ If this is so, compliance is explained by selection bias rather than the constraining power of international law.⁹⁰

Founded on rationalist insights regarding compliance motivations, Simmons counters with a defense of compliance.⁹¹ With an empirical lens, she focuses on conventions prohibiting currency restrictions. She discusses the theoretical potential for endogeneity and selection problems, attempting an empirical correction. Simmons suggests that international standards foster compliance, but the effect stems from reputational issues that states face if they back out of an agreement.⁹² Employing observable variables to lessen the problem of non-random selection, she concludes that reputational factors do in fact induce compliance to agreements proscribing currency

⁸⁶ *See id.*

⁸⁷ Chayes & Chayes, *supra* note 6.

⁸⁸ Downs et al., *supra* note 2, at 383 (explaining that a treaty is an endogenous strategy because states choose the treaties they make from an infinitely large set of possible treaties. “If some treaties are more likely to be complied with than others or require more enforcement than others, this will almost certainly affect the choices states make . . . [S]tates will rarely spend a great deal of time and effort negotiating agreements that will continually be violated. This inevitably places limitations on the inferences we can make from compliance data alone. . . . [W]e do not know what a high compliance rate really implies”).

⁸⁹ Raustiala *supra* note 79; DANIEL DREZNER, *ALL POLITICS IS GLOBAL: EXPLAINING INTERNATIONAL REGULATORY REGIMES* (2007).

⁹⁰ Chayes & Chayes, *supra* note 6 at 186–87 (noting that once nations have decided to ratify they tend to comply because (1) it is easier to make decisions once and (2) nations presumably ratified because it was in their interest.)

⁹¹ Simmons, *supra* note 2.

⁹² *Id.*

restrictions, especially when neighboring countries also commit to and abide by legal standards. Thus, from a rationalistic viewpoint, nations basically respond to the economic and social pressure generated by the actions of nearby countries and often observe such standards.

Tackling Simmons's alleged failure to address selection bias, Von Stein analyzes the same set of conventions proscribing currency controls, finding that countries began complying with international standards long *before* acceding to international agreements.⁹³ Thus, Von Stein's reanalysis implies that countries signing on to international treaties are inherently different than those refraining to do so, which suggests selection bias. Apparently, numerous unobservable factors conditioned states for international compliance, and states joined international agreements only after undergoing this alteration.⁹⁴ Von Stein's work is quite compelling, but it fails to explain the *actual* causes of compliance with international standards, leaving the question vague, unresolved, and unobserved.⁹⁵

As the debate described above illustrates, much of the controversy surrounding the causes of compliance turns on selection bias. Yet all present studies exclusively rely on conceptual arguments or tests that use observational data that cannot explain the causes of compliance.⁹⁶ While by no means a panacea, field experiments have the potential to allow a better evaluation of the causes of compliance, particularly when combined with theoretical analysis and critique. This Article uses randomization in a field experiment to avoid the problem of selection bias that exists in previous tests of whether countries comply with international law.

Other fields have addressed selection bias by employing experiments that use random assignment to the treatment and control conditions.⁹⁷ When correctly carried out, any outcome-based differences between groups are causally attributed to the intervention, because in expectation the

⁹³ Von Stein, *supra* note 80.

⁹⁴ *Id.*

⁹⁵ It is important to determine whether Von Stein believes that complying states and noncomplying states are different or whether he just points out pre-adoption trajectories for the two types of states are different.

⁹⁶ And indeed, international scholars like Von Stein have lamented the failure of experiments to uncover cause and effect in IR. *Id.* at 612. The implication: if they could be used, randomized trials might shed light on unresolved questions.

⁹⁷ This approach continues to achieve prominence and success in fields such as international political economy. See Stephen D. Levitt & John A. List, *Field Experiments in Economics: The Past, the Present, and the Future*, 53 EUR. ECON. REV. (2009); Macartan Humphreys & Jeremy M. Weinstein, *Field Experiments and the Political Economy of Development*, 12 ANN. REV. POL. SCI. 367 (2009) (using a randomized field experiment where the units of analysis are normal individuals that can be treated as research subjects).

randomization process balances and neutralizes the effects of any other observable and unobservable factor. The problem embedded in conventional international law analysis is clear: sovereign governments have typically been the objects of inquiry. This creates a misplaced focus as much of international law is complied with or violated by private actors rather than states. But as demonstrated above, the key to actual compliance with international law is private actors, who are observable.⁹⁸ Furthermore, manipulating sovereign nations to gather solid empirical data presents serious practical and ethical difficulties. As a result, international law theory has been limited by a lack of robust evidence as to why nations comply with international law. And thus, in measuring state action as well as private compliance with international law through a field experiment, we can form a test of actual compliance with international law while avoiding the selection bias of traditional empirical analysis in this area.

D. Testing International Compliance

With the goal of determining the level of compliance with international law and the motivation for complying with such laws, we measure both formal and informal compliance. In other words, we measure what states claim to be doing to follow international law and what they are actually doing, and give insight as to why they are doing it.

While we hope to shed light on the two key questions in international law, we do not intend to affirmatively resolve the question of why nations comply with international law. To do so would require an understanding of the motivations of a large sample of state and private actors in a natural setting, which is impossible to do in one area of law, let alone every area of international law. Our aim is also limited by an imperfect metric of state action, which examines the environment of compliance in a state and the actions of private actors. Nonetheless, what we show tells us something very important about how effective international law is at capturing state compliance in one important domain, and it provides insight on *why* such compliance occurs.

1. Distinguishing Formal and Actual Compliance

Compliance occurs when nations behave as their governments have agreed to under international law. Conversely, violations of international

⁹⁸ The other key here is that private actors can be not only observed but manipulated, allowing a testing.

law result when nations depart from agreed upon actions.⁹⁹ Determining the effectiveness of international law requires examining compliance by the national government as well as the actions of private actors regulated by the international law at play. As discussed above, the two tests of international compliance are formal and actual compliance. Formal compliance with international law is relatively easy to determine. Formal compliance involves examining the regulatory framework that nations have put in place to enforce international laws. It looks strictly at what national laws have been passed and the level of enforcement of such laws. Actual compliance is much more difficult to ascertain. It examines whether private actors in these nations, which are the real targets of these laws, are actually complying with the regulations and thus fulfilling the goals of the laws. Since private bodies may not honestly admit to violating international law, we use a field experiment to test actual compliance.

a. Why Financial Transparency?

We choose international financial transparency as the area for our field experiment for several reasons. First, it is at the intersection of corporate law, global security, and international criminal law. Financial transparency law is an area where the world has allegedly come together with one voice to ratify global standards,¹⁰⁰ with the belief that they are critical to stopping international terrorism and corruption.¹⁰¹ Particularly as it comes to money laundering and cross-border terrorism, the international community has purportedly committed to a collaborative approach to make headway against these crimes.¹⁰² Thus, in an area with substantial international

⁹⁹ ORAN YOUNG, COMPLIANCE AND PUBLIC AUTHORITY (1979) (defining compliance as “actual behavior” following “prescribed behavior” and defining noncompliance or a violation as “actual behavior [that] departs significantly from prescribed behavior”).

¹⁰⁰ See, e.g., INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF THE FINANCING OF TERRORISM UNITED NATIONS, TREATY SERIES, vol. 2178, p. 197, Ch. XVIII: Penal Matters, Part 11 (Apr. 10, 2002), No. 38349; INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF ACTS OF NUCLEAR TERRORISM, UNITED NATIONS, TREATY SERIES, vol. 2445, p. 89, Ch. XVIII: Penal Matters, Part 15, Jul. 7, 2007, No. 44004.

¹⁰¹ This also provides a large pool of countries to test, as 180 countries have signed on to international financial transparency laws.

¹⁰² See UNITED NATIONS, UNITING AGAINST TERRORISM REPORT (discussing the importance of counter-terrorism coordination and information sharing to stop terrorism); Elizabeth MacDonald, *Shell Games*, FORBES, Feb. 12, 2007, at 96 (explaining that there is no cooperation or united front in the U.S. to force states to verify ownership of corporations, allowing the formation of roughly 1.9 million private companies each year with less information than is required to obtain a driver’s license); *Assistant Secretary for Terrorist Financing David S. Cohen Remarks on Terrorist Financing Before the Council*

agreement, we can examine whether private actors really comply with the laws set forth by their nations and what motivates them to comply when they do.

Second, international financial transparency law is an area of law that includes strong norms in following financial transparency laws, and it is also an area that generates sanctions for noncompliance. Financial transparency standards involve both hard¹⁰³ and soft laws,¹⁰⁴ which may involve sanctions for breaking or not complying with international legal norms.¹⁰⁵ This provides a good testing ground for the theories of rationalism and constructivism, which disagree on the relative import of penalties and norms on inducing compliance. This creates an ideal testing ground, in an area about which the international community claims to be serious, to reveal how determined governments in fact are and whether relevant private actors are motivated by strong norms or the threat of sanctions.

Finally, we test international transparency standards because one of the front lines of the war on terrorism is financial.¹⁰⁶ Indeed, the laws at the heart of this article have powerful implications for security, crime, and

on Foreign Relations as Prepared for Delivery, U.S. TREASURY DEPARTMENT OFFICE OF PUBLIC AFFAIRS, Jan. 28, 2010 (explaining that the Taliban and al Qaeda understand the critical role that a strong, sound and transparent financial system plays in safeguarding a nation's security and that they expose weaknesses in such laws to finance terrorism).

¹⁰³ Hard laws are those that have legal binding force. Gregory C. Shaffer & Mark A. Pollack, *Hard vs. Soft Law: Alternatives, Complements and Antagonists in International Governance*, 93 MINN. LAW REV. 193 (2009).

¹⁰⁴ Soft laws are laws that may be quasi-legal and without binding force. They may also have weaker enforcement than hard laws. Andrew T. Guzman & Timothy Meyer, *International Soft Law*, 2 J. LEGAL ANALYSIS 171 (2010).

¹⁰⁵ Prior scholarship distinguishes international commitments into hard law and soft law, which have varying degrees of rigor. "Hard law" agreements obligate states in precise legal ways, with governments sometimes delegating both interpretation and enforcement to an independent organization. Abbott & Snidal, *supra* note 8. On the other hand, "soft law" accords outline presumably weaker standards of conduct that are likely either less precise or less independently enforced. *Id.* Debates in the international literature discuss the relative effectiveness of soft and hard law on international compliance. Financial transparency with respect to company ownership is governed by both soft and hard law. This intersection between hard and soft law makes financial transparency an ideal testing ground as it includes both standards, including standards that contain penalties. Employing an experiment in the area of financial transparency allows a close look at whether legal penalties or international norms cause compliance with international law.

¹⁰⁶ Lisa Anderson, *Global Partnership to Combat Corruption Launched*, REUTERS (Sept. 21, 2011) (explaining that incorporation transparency is "designed to thwart tax evaders, money launderers, corrupt politicians and even terrorist organizations from hiding behind American shell companies" and noting that "the demand for transparency is unstoppable and the technology makes it irresistible").

international political economy. The first step in stopping terrorism sometimes includes stopping formation of suspect anonymous entities used to finance terrorism and launder money, leading to billions in damages each year.¹⁰⁷ As such, international laws now require that to form a corporation, individuals must provide identity information.¹⁰⁸

b. Testing Compliance with Financial Transparency

As with most international laws, compliance with international financial transparency occurs when individual actors decide whether to comply with laws requiring identity disclosure of beneficial owners. As such, when an individual tries to legally incorporate a company, international standards require the corporate services provider—a for-profit body specializing in setting up legal entities for others—to obtain important identifying information. International law requires these firms to obtain a notarized copy of the individual’s identification and proof of address, such as a utility bill.¹⁰⁹ Non-compliance with financial transparency standards permits the formation of anonymous “shell” corporations that cannot be traced to the real person or people in control, facilitating corruption, organized crime, money laundering, and terrorism. According to the World Bank, some of the world’s most destructive and threatening activities are carried out through such shells.¹¹⁰ For instance, shell companies have been traced to rogue activities by Muammar Gaddafi in Libya,¹¹¹ a covert nuclear program

¹⁰⁷ See World Bank, *The Misuse of Corporate Vehicles*, (Wash, D.C. 2011) ; President Obama said that his administration will support passage of the Incorporation Transparency and Law Enforcement Assistance Act, which would require U.S. states where companies are registered to collect information about the true owners, in compliance with FATF standards. Anderson, *supra* note 12.

¹⁰⁸ *Declaration of the Summit on Financial Markets and the World Economy*, November 15, 2008, G.A. Res. 55/25, art. 7 ¶ 1(a), U.N. Doc. A/RES/55/25 (Nov. 15, 2000); see also FATF, FATF 40 RECOMMENDATIONS: OCTOBER 2003 (2010). These often include a notarized passport copy and certified utility bill. Without such documentation, individuals can form anonymous, untraceable “shell” corporations.

¹⁰⁹ We note here that FATF Recommendation 24 does not state that notarized identification is essential, but practically speaking, this is how many countries comply with the language of the Recommendation. There are three options for satisfying Recommendation 24, including strong investigative powers, information at the registry and information collected by the corporate service provider. Many countries have ended up complying using the third option, which has evolved into requiring notarized identification documents.

¹¹⁰ PAUL SCHOTT, REFERENCE GUIDE TO ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM (2006); *The Misuse of Corporate Vehicles in Grand Corruption Cases*, WORLD BANK.ORG, [hereinafter *Misuse of Vehicles*].

¹¹¹ *Dirty Dictator Loot: Obama Talks Tough, but the U.S. Remains a Haven for the Ill-*

in Iran,¹¹² Russian arms dealing,¹¹³ North Korean weapons stockpiling,¹¹⁴ and al-Qaeda terrorist activities.¹¹⁵

Indeed, anonymous shell corporations have caused billions in damage to nations,¹¹⁶ demonstrating the harm of a lack of financial transparency and noncompliance with international financial disclosure.¹¹⁷ Thus, not only does our experiment shed light on whether international law is effective but it also may aid governments in stopping the formation of anonymous incorporation and help combat a range of financial crimes.

To test formal compliance with international financial transparency law, we examine applicable soft and hard international laws. The distinctions

Gotten Gains of Bloodthirsty Despots, NEWSWEEK (Mar. 13, 2011) (noting that while freezing assets owned by Gaddafi's children, the U.S. is looking the other way with Teodoro Obiang, son of Equatorial Guinea's brutal dictator).

¹¹² Representative Malony, *Incorporation Transparency and Law Enforcement Assistance Act*, H.R. 6098 (noting that movement of funds through banks in NY by entities controlled by the Iranian Military through domestic shell companies that "were opened in two different states to further secret Iranian interests").

¹¹³ *License to Loot*, THE ECONOMIST (Sept. 17, 2011) (Iran, al-Qaeda, and a Russian arms trader have all benefited from America's regime that allows "lax" shell company formation).

¹¹⁴ Michael Field, *Web of Intrigue*, SUNDAY STAR TIMES (May 29, 2011) (noting that Mexican drug cartels, Russian organized crime organizations, and North Korean arms smugglers all have used New Zealand based shell corporations).

¹¹⁵ *Haven Hypocrisy*, THE ECONOMIST (Mar. 26, 2009) (discussing America's attractiveness to those looking to form shell corporations); Dan Izenberg, *A Critical Step in Terrorism Prevention*, THE JERUSALEM POST 6 (Nov. 11, 2004) (discussing legislation that would allow the government to "more easily prevent payments to the widows and orphans of suicide bombers and other terrorists killed in action"); Kelly Carr and Brian Grow, *Special Report: A Little House of Secrets on the Great Plains*, REUTERS, (Jun. 28, 2011) ("Criminals use U.S. shell companies to commit financial fraud, drug trafficking, even terrorist financing, in part because our states don't require anyone to name the owners of the companies they form.").

¹¹⁶ In 2002, the Kenyan government called for bids to create a new national passport system. Although a French firm bid €6 million, the Kenyan government secretly chose to award the contract to a British company called Anglo-Leasing Finance, which bid €30 million. Upon acceptance of its bid, Anglo-Leasing immediately subcontracted the work out to its French competitor for €6 million. A low-level government official disclosed the deal to the media, creating public outrage in both England and Kenya. Upon inquiry, it turned out that the company, Anglo-Leasing, was nothing more than an English postal address; it was an anonymous "shell" corporation. The investigation was derailed because the real names of the firm's owners could not be discovered. MICHELA WRONG, *IT'S OUR TURN TO EAT: THE STORY OF A KENYAN WHISTLE BLOWER* (2009); Memorandum from E.N. Mwai, Controller and Auditor-Gen. to Kenya Nat'l Audit Office (Apr. 2006).

¹¹⁷ See FATE, *THE MISUSE OF CORPORATE VEHICLES, INCLUDING TRUST AND COMPANY SERVICE PROVIDERS* (2006); *Keeping Foreign Corruption out of the United States: Four Case Studies*, STATE.GOV, *Misuse of Vehicles*, *supra* note 87.

between soft law and hard law may not indicate one being more effective, stricter, or yielding greater compliance, but we use these distinctions to demonstrate the standards that apply. One applicable soft law we test is set by a non-state actor, the Financial Action Task Force (FATF), an intergovernmental body tasked with promoting international financial transparency.¹¹⁸ Its members consist of nation-states that set and monitor enforcement of regulations to counter both money laundering and terrorist financing. The FATF published 49 recommendations that countries should adopt if they are serious about not harboring unscrupulous financial activity domestically.¹¹⁹ These recommendations are in actuality enforced,¹²⁰ and have been endorsed by the United Nations Security Council,¹²¹ and the Bretton Woods institutions.¹²² Specifically, the FATF Recommendations 10, 22, and 24 require financial institutions to “undertake customer due diligence measures, including identifying and verifying the identity of their customers,” when “establishing business relations . . . [and] [where] there is a suspicion of money laundering or terrorist financing.”¹²³ The FATF also

¹¹⁸ ANDREW T. GUZMAN, *HOW INTERNATIONAL LAW WORKS: A RATIONAL CHOICE THEORY* (2008) at 160, 231 n.41 (describing the FATF as an exception to other soft laws because it includes both monitoring and sanctions and does not, like other soft laws “omit formal sanctions . . . and other devices that serve to amplify the costs of a violation or allow states to avoid an obligation while remaining in compliance with the precise language of the agreement”); Ben Saul, *Terrorism and International Criminal Law: Questions of (In)Coherence and (Il)Legitimacy*, in *INTERNATIONAL CRIMINAL JUSTICE: LEGITIMACY AND COHERENCE* (forthcoming Gideon Boas et al. eds., 2012) (discussing the importance of the FATF Recommendations as international soft law on terrorism).

¹¹⁹ FATF, *supra* note 14. The FATF is specifically geared towards assessing a country’s compliance with Recommendations, not private individuals. Background to Methodology, No. 1, p. 3. Under the FATF, incorporation services are defined as DNFBPs (designated non-financial businesses and professions), see FATF Recommendations, Glossary. DNFBPs are included with financial institutions and are equally required to comply with Recommendation 10, 20, 23 when it relates to creation of companies. See *Methodology for Assessing Compliance with the FATF 40 Recommendations and the FAFT 9 Special Recommendations [hereinafter Compliance]* ¶¶ 12.1, 16.1, 16.1 n.27 (2009) (Recommendation numbers altered to reflect changes FATF instituted in February 2012. See *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation [hereinafter Standards]* [2012]).

¹²⁰ See *supra* note 104–06.

¹²¹ *Id.*

¹²² Bretton Woods is a system of monetary management that set forth rules for financial and commercial relations among industrialized countries. See A. VAN DORMAEL, *BRETTON WOODS: BIRTH OF A MONETARY SYSTEM* (1978).

¹²³ FATF, *supra* note 14 (interpretive notes also require these basic obligations to be set out in laws or regulations); see *Compliance, supra* note 91, at ¶ 27. Lawyers, law firms and companies are defined as financial institutions or legal persons depending on the context. *Id.* at 61. See *Standards* at 4-5 for comparison of Recommendation numbers prior

requires nations to pass laws to sanction private institutions for noncompliance.¹²⁴

On the whole, the FATF requires financial institutions to identify their customers and verify the true owners when they establish business relations or where there is suspicion of money laundering or terrorism.¹²⁵ The FATF explains that not only should countries formally comply with standards but that they should also demonstrate that they have been effectively implemented by private institutions in their country.¹²⁶ And further, when a country signs on to FATF standards, it is obligated to impose mandatory requirements with sanctions for noncompliance with the FATF.¹²⁷ Indeed, the FATF spells out that countries should ensure that “dissuasive criminal, civil or administrative sanctions” are available to deal with violators of FATF Recommendations, including for senior management of firms.¹²⁸ Governments must also require their financial institutions to report suspicious activity in the creation of a corporation.¹²⁹

The FATF has enjoyed considerable success in diffusing its rules, with 180 countries committed to follow these international standards.¹³⁰ Hold-

to February 2012 with current Recommendation numbers.

¹²⁴ *Compliance*, supra note 91, at 12 and ¶¶ 26–27 (explaining that these sanctions should be “effective, proportionate and dissuasive” and “directly or indirectly applicable for a failure to comply”).

¹²⁵ FATF, supra note 14, at 4-5; see also *id.* at 7 (dealing specifically with forming a corporation). *Id.* at 11-12. The Recommendations also require financial institutions and DNFBPs to assess and manage or mitigate money laundering and terrorism financing risks. Assessed risks should be documented and risk management controls identified and monitored, see *Standards* at 33. Countries are required to designate a competent authority within the country to monitor and ensure compliance by DNFBPs with the power to sanction if necessary. See *Compliance*, supra note 91, at ¶¶ 24.1, 24.2.1.

¹²⁶ *Compliance*, supra note 91, at ¶¶ 15–16, 19 (effective implementation of the FATF includes that “the requisite law, regulation or other enforceable means is in place and is being effectively implemented . . . [using] quantitative data and qualitative and other information.”)

¹²⁷ See *id.* at ¶ 11 (explaining that business and institutions “should be required by law or regulation” to comply with FATF Recommendations).

¹²⁸ FATF, supra note 14, at 9, Recommendation 17.1. Note that Recommendation 17 has been renumbered as Recommendation 35, see *Standards* at 5.

¹²⁹ Recommendation 20 says “financial institution[s] . . . should be required, by law, to report promptly its suspicions to the financial intelligence unit (FIU)” when it “suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity.” *Id.* at 8. Recommendation 22 holds DNFBP’s to the Recommendation 20 requirements during the “creation, operation or management of legal persons.” *Id.* See *Standards* at 4-5 for comparison of Recommendation numbers prior to February 2012 with current Recommendation numbers.

¹³⁰ The FATF recommendations promoting financial transparency have achieved considerable legitimacy and support worldwide, gaining endorsements from the UN

outs have been publicly blacklisted such that otherwise recalcitrant states have been persuaded to incur domestic regulatory costs rather than risk reputational damage and possible disinvestment.¹³¹

Beyond the FATF, there are a few notable hard international law conventions that require financial transparency. The United Nations adopted two agreements requiring identity disclosure of corporate owners which have been ratified by almost all UN members. For example, the UN Convention against Transnational Organized Crime (UNTOC) commits member states to compel identity disclosure in business dealings. Article 7 of the UNTOC states that parties “shall emphasize requirements for customer identification.”¹³² The other hard law that requires essentially the same information is the International Convention for the Suppression of the Financing of Terrorism.¹³³ Specifically, Article 18 concentrates on combating anonymous corporations and explicitly requires parties to implement and enforce domestic legislation requiring firms to obtain “information concerning the customer’s name, legal form, address, directors and provisions regulating the power to bind the [corporate] entity.”¹³⁴ While these hard laws have identity requirements like the FATF, they do not go as far in creating severe consequences, such as blacklisting and sanctions, as the soft law provisions of the FATF.¹³⁵

Taken together, the soft (FATF) and UN hard laws all require information on the identity of corporate owners in order to form a corporation. The countries that have signed on to the FATF have agreed not only as a nation to enact domestic legislation requiring financial transparency but they have also agreed to effectively implement these laws and require private bodies within their borders to comply. Thus, in this

Security Council (Resolution 1617) and G20 for example. *Declaration of the Summit on Financial Markets and the World Economy* (November 15, 2008).

¹³¹ See *supra* note 100 discussing FATF blacklist; Drezner *supra* note 73, at 142-45; J.C. Sharman, *The Bark Is the Bite: International Organizations and Blacklisting*, 16 REV. INT’L POL. ECON. 573 (2009).

¹³² G.A. Res. 55/25, art. 7 ¶ 1(a), U.N. Doc. A/RES/55/25 (Nov. 15, 2000). UNTOC rapidly gathered 146 signatures from 178 countries; 125 states have since ratified and another 30 acceded by simultaneously signing and ratifying. See UN CONV. AGAINST TRANSNATIONAL ORGANIZED CRIME (Nov. 15, 2000).

¹³³ *International Convention for the Suppression of the Financing of Terrorism*, 10 MSU-DCL J. INT’L L. 641 (2001) It has a total of 173 parties as well as four states that signed but have not yet ratified.

¹³⁴ G.A. Res. 54/109, U.N. Doc. A/RES/54/109 (Dec. 9, 1999).

¹³⁵ As of October 2010, FATF membership extends to 36 nations, including the United States, the other OECD countries, and South Africa, Singapore, Russia, Hong Kong, China, Brazil, and Argentina. See FATF Members and Observers, http://www.fatf-gafi.org/document/52/0,3746,en_32250379 (last accessed Feb. 10, 2012).

study we test both formal compliance by nations with FATF provisions and actual compliance by private bodies within these nations as the FATF requires both forms of compliance.

2. Three Tests of Formal Compliance

To determine formal compliance, we review the legislative, regulatory and enforcement structures put in place to implement FATF provisions. The FATF is the gold standard in international financial transparency, money laundering and counter-terrorist financing, and thus we start there in this test of formal compliance. We examine 100 countries who have signed on to the FATF and UNTOC to determine their level of formal compliance with international financial transparency laws.¹³⁶

To test formal compliance with international laws on financial transparency, we examine three areas. First, and most simply, we examine which countries have become members of the FATF,¹³⁷ as 36 countries have done.¹³⁸ Becoming a member of the FATF requires a country to demonstrate political support for the 49 FATF Recommendations and maintain a high level of compliance with them.¹³⁹ We presume that countries that are FATF members may demonstrate higher compliance with its provisions than other nations that have simply signed on to comply with its standards.¹⁴⁰ Second, we examine whether according to a multilateral peer review initiated by the FATF, FATF signatories achieve compliance with its financial transparency provisions.¹⁴¹ This evaluation determines the

¹³⁶ For current list of FATF countries *see* www.fatf-gafi.org.

¹³⁷ Note that while 180 countries have committed to comply with FATF provisions through external bodies, only 36 have actually become FATF members. *See infra* note 134–36.

¹³⁸ Current member states include Australia, Belgium, Brazil, Canada, China, Denmark, France, India, Japan, The Netherlands, Mexico, New Zealand, Norway, Republic of Korea, Russian Federation, Singapore, South Africa, Spain, Turkey, United Kingdom and United States. *See* www.fatf-gafi.org. The difference between FATF members and others who are members of satellite bodies is that the former are rule-makers concerned with implementation whereas all regional bodies are bound to adopt FATF standards.

¹³⁹ FATF Membership Policy, 29 February 2008 at www.fatf-gafi.org

¹⁴⁰ Though we are not sure that FATF membership means any more than FATF signers that are members of FATF-like regional organizations. *See, e.g.*, Group of International Finance Centre Supervisors (GIFCS) and Gulf Cooperation Council at <http://www.fatf-gafi.org>. We test the difference between member and nonmember states, though, in case there is a difference.

¹⁴¹ This multi-lateral peer review includes a review team from various countries that review and visit the various countries to determine their level of compliance with FATF provisions. *See* www.fatf-gafi.org.

level of compliance by each country with all 49 Recommendations based on the regulatory framework and enforcement mechanisms they have put into place. Finally, we examine separately the domestic regulations each country has in place that require identity verification upon incorporation.

On the first test, FATF member countries fare no better in a comparison of formal compliance than non-member countries. After an examination of extensive peer reviews,¹⁴² FATF member nations, who are required to exhibit higher compliance with FATF provisions than other nations, do not in fact demonstrate higher compliance.¹⁴³ In fact, non-FATF members actually demonstrate higher compliance rates, though these results are not statistically significant.¹⁴⁴ Against expectations, FATF members that have accepted higher obligations and that should be more likely to accept norms, show no better formal compliance than other countries.

Now we examine how FATF signatories overall fare with formal compliance with international FATF provisions. Thus far, more than 100 countries have undergone a mutual evaluation that examines how well the country has instituted regulations to enforce the FATF Recommendations. According to the mutual evaluations, an average of 40% of countries were fully or largely nationally compliant with the 49 FATF standards.¹⁴⁵ In contrast, only 1.94%, 1.94%, and 7.76% of these same countries were fully compliant with Recommendations 10, 22, and 24, respectively.¹⁴⁶ The rate for full formal compliance is extremely low, though for Recommendations 24 and 10, considering countries that have taken steps to comply but had not reached full compliance, the compliance rate jumps to 79.59% and 63% respectively.¹⁴⁷ Overall, with this second test, there is some indication of

¹⁴² Peer reviews are called mutual evaluations by the FATF. These evaluations are the primary way that the FATF determines whether countries are complying with its provisions. The evaluations must be independent, objective and accurate and are cross-checked by the FATF with other enforcement bodies. *See Key Principles for Mutual Evaluations and Assessments*, at <http://www.fatf-gafi.org>.

¹⁴³ *See* Appendix C.

¹⁴⁴ *See* Appendix E.

¹⁴⁵ Only 14.66% of countries were fully compliant with FATF standards, 35% partially compliant and 22.5% noncompliant. *See* Appendix B.

¹⁴⁶ The full chart on compliance by these 100 countries with FATF recommendations is contained in Appendix B.**APPENDING B NEEDS SOME WORK/CLARIFICATION-FOLLOW COMMENTS TO ADD SUMMARY LINES TO CHART *See Standards* at 4-5 for comparison of Recommendation numbers prior to February 2012 with current Recommendation numbers.

¹⁴⁷ For Recommendation 10, a similar analysis (including partial compliance, largely compliance and full compliance) brings the total to 63.09% and with Recommendation 12 to 35.91%. *See* Appendix B for definition of noncompliance, compliance and partial and largely compliant. *See Standards* at 4-5 for comparison of Recommendation numbers prior

low formal compliance with the FATF.

Finally, we examine the level of formal compliance with identity requirements for incorporation outside of the FATF framework. We do this by examining which countries by domestic law require identity information to create a corporation and whether they require notarized identity documents.¹⁴⁸ This test actually demonstrates a high level of compliance. Of the 48 countries we examine, 79% require identity documents, though only 25% require these documents to be notarized.¹⁴⁹ However, we note that most of these identity documents would not be subject to any verification and would not satisfy the compliance requirements for our field experiment.¹⁵⁰

Overall, the three tests of formal compliance provide no conclusive results and only give some indication of the level of formal compliance with international financial transparency laws. The goal of the FATF is to ensure that all international corporations are formed only after receiving identifying information. While many countries have signed on to FATF provisions and require corporate identities by law, full formal compliance with the FATF is low. The key question that is left unanswered is whether the level of compliance countries demonstrate is enough to achieve the goals of the FATF.

Even after analysis of formal compliance, the two key questions we began with still remain: is international law effective and if so, why? Given the varied levels of formal compliance, we cannot ascertain the precise extent of compliance with international financial transparency law. We can only reach this by examining actual compliance with these provisions by private bodies within these nations. Since private bodies are the ones who actually apply (or fail to apply) financial transparency laws (requiring identity documents or incorporating without such documents), they are the key to determining actual compliance with international law. And especially absent in this analysis thus far is the *cause* of such compliance. Do firms comply with international incorporation laws because they fear FATF sanctions or because it has become an accepted international norm? The analysis of formal compliance generally does not attempt to assess the causes of international compliance.

to February 2012 with current Recommendation numbers.

¹⁴⁸ Arguably, faking notarized documents is possible but much more difficult given stricter government regulations of notaries in many countries and the fact that it often constitutes fraud.

¹⁴⁹ See Appendix C.

¹⁵⁰ The identity requirements in Appendix C require list of shareholder and director names but not identity documents. Thus, these listed as partially compliant in Appendix C would be noncompliant in our experiment.

We demonstrate below how a field experiment is one approach that avoids this failure and helps shed light on whether international law is effective and why individuals comply with it.

II. THE FIELD EXPERIMENT

The central controversies of international law compliance include whether committing to international standards induces compliance, or merely reflects a prior law-abiding disposition. Thus far, however, no experimental studies have investigated compliance with international law.¹⁵¹ And indeed scholars criticize field experiments for not addressing the larger and important theoretical questions, instead focusing on policy studies of “what works.”¹⁵² This field experiment is unique in that it targets the major theoretical questions in the international law and relations literatures. Whether and why international regulations are followed or flouted are important questions that strike at the heart of major disputes as to whether compliance with international law results due to sanctions or norms.¹⁵³

Through a randomized international field experiment where we use aliases and pose as international consultants seeking a shell corporation, we assess the causes of compliance with international financial transparency laws through assigning more than 1,000 firms to a variety of treatment and control conditions.

The experimental approach we employ provides the potential answer to

¹⁵¹ See *supra* note 6. And none have specifically examined the effectiveness of international anti-terrorism policies. Daniel G. Arce et al., *Terrorism Experiments*, 48 J. PEACE RES. 373 (2011) (noting that field experiments are unique in anti-terrorism policies, with “few field experiments hav[ing] been run in this domain”). But see Michael Tomz, *Reputation and the Effects of International Law on Preferences and Beliefs* 32 (Feb. 2008), <http://www.stanford.edu/~tomz/working/Tomz-IntlLaw-2008-02-11a.pdf> (using a field experiment to understand “how international law affects preferences and beliefs,” Tomz demonstrated that international treaties may change cost/benefit calculations, stemming from an increased commitment to international law and a reputational cost of renegeing on international commitments).

¹⁵² Susan D. Hyde, *The Future of Field Experiments in International Relations*, 628 THE ANN. OF AM. ACAD. POL’T. & SOC. SCI. 72, 75 (2010) (noting that field experiments are often criticized for dealing with insignificant phenomena, failing to address the big questions).

¹⁵³ This experiment is not assuming though that the subjects are working under a blank slate. Obviously, their impressions will be based not only on the treatments we give them but also on their various levels of knowledge about international laws and their opinions and business practices relating to such laws. We try to address this concern through randomization which should provide a good sampling of different subjects for each of the various treatments.

the question of whether international law is effective and why individuals comply with it. After describing the nature and construction of the field experiment and sample, we explain the logic behind the placebo and treatments and explain how they test the two dominant international law theories. The coding procedure then outlines how we determine compliance rates. Finally, we present the findings in terms of response and compliance rates.

A. *Why a Field Experiment?*

An additional advantage of the field experimental design is that it ameliorates the external validity difficulties that have limited the usefulness of laboratory experiments, and it also addresses selection bias in a way that enables the identification of causal effects.¹⁵⁴ While experiments offer a uniquely powerful method to identify causal effects, critics have challenged the external validity of such exercises when taking place in a lab.¹⁵⁵ Our study sidesteps many of these dangers: incorporation firms are the actual subjects of interest, the subjects are unaware they are being analyzed, and no one is self-selecting into the experiment. This advance is quite significant because, to the degree that experiments have been employed in international law,¹⁵⁶ they are almost all laboratory experiments.¹⁵⁷

This study promises comparatively high external validity because it draws subjects from almost every country in the world.¹⁵⁸ Moreover, our

¹⁵⁴ See Berk, *supra* note 54.

¹⁵⁵ For example, Levitt and List demonstrate that when subjects know they are being scrutinized (such as in laboratory experiments), and when volunteers self-select into experiments, this creates strong limits on any generalized conclusions. Stephen D. Levitt & John A. List, *What Do Laboratory Tests Measuring Social Preferences Tell Us About the Real World?* 21 J. ECON. PERSP. 153 (2007).

¹⁵⁶ See *supra* note 6.

¹⁵⁷ But see Susan D. Hyde, *The Observer Effect in International Politics: Evidence From a Natural Experiment*, 60 WORLD POL. 37 (2007); Susan D. Hyde, *Experimenting in Democracy Promotion: International Observers and the 2004 Presidential Elections in Indonesia*, 8 PERSP. ON POL. 511 (2010).

¹⁵⁸ When Cohen and Dupas claimed that the results of their experiment in Western Kenya proved that free distribution of mosquito nets was more effective at preventing malaria than selling nets, they were met with critics that challenged their extrapolation of findings from one region of one country to the rest of the developing world. Jessica Cohen & Pascaline Dupas, *Free Distribution or Cost Sharing? Evidence from a Randomized Malaria Prevention Experiment* (Brookings Global Econ. and Dev. Working Paper No. 11, 2007); Angus Deaton, *Evidence-Based Aid Must Not Become the Latest in a Long String of Development Fads*, in MAKING AID WORK 55 (2007); Dani Rodrik, *The New Development Economics: We Shall Experiment, But How Shall We Learn?* (Harv. Kenn. Sch. Work. Paper No. RWP08-055, 2008).

web-based design allows us to surmount common geographical limitations. We also cluster the subject pool into major blocs of countries, such as the Organization for Economic Cooperation and Development (OECD), tax havens, and low-income countries. As a result, our international experiment does not require extrapolating findings from one region of the world to another and promises results that match what we can expect in the real world.¹⁵⁹

B. Experimental Design and Treatments

We used aliases and posed as international consultants seeking confidential incorporation in 182 countries. We assessed the causes of compliance with international financial transparency standards through random assignment of 1,015 incorporation firms (hereinafter “firms”) worldwide to a variety of treatment and control conditions. These treatments and placebo conditions varied the information provided about international law and the rationale behind the standards. A large sample size is particularly important to uncovering significant findings in an international study,¹⁶⁰ thus we relied on a large pool ($N > 1,000$) of firms worldwide.¹⁶¹

Each experimental condition confronted firms with a decision to comply or refuse to comply with international financial transparency standards. Each e-mail made an inquiry about incorporating abroad while seeking to safeguard confidentiality and limit tax and legal liability. We sent e-mails from aliases posing as consultants and containing a treatment or placebo to each service provider. All e-mails requested confidential incorporation, which contravenes international standards. To determine compliance with international law, we examined (1) whether the firm responds to the e-mail and (2) whether or not the firm demands certified identity documents in accord with international law.

The experiment included a placebo and three treatments that are described below.¹⁶² We examined the differences between treatment and control groups to assess the effects on firms’ propensity to (1) respond to

¹⁵⁹ This results in greater external validity than laboratory experiments.

¹⁶⁰ Susan D. Hyde, *supra* note 108, at 511 (1,822 village-level observations to test whether international observers impacted the quality of democratic elections); Donald P. Green et al., *Getting out the Vote in Local Elections: Results from Six Door-to-Door Experiments*, 65 J. POL. 1083 (2003) (Sample size of 18,933).

¹⁶¹ The final sample includes more than 2,100 international services and 1,400 services in the United States.

¹⁶² The full experiment includes several other treatments, which are described in another work. See Baradaran, Findley, Nielson and Sharman (forthcoming).

the e-mail inquiry and (2) comply with international law by requiring the disclosure of applicants' identity.¹⁶³ The answers to these questions form the basis of determining soft and hard compliance.

1. Placebo

The placebo e-mails originated from aliases associated with wealthy, low-corruption OECD countries,¹⁶⁴ which we collectively called "Norstralia." The placebo simply requested confidential incorporation with no mention of any international laws that may apply. In the placebo condition, the researcher purported to be from one of a basket of wealthy countries (Denmark, New Zealand, Finland, Sweden, Netherlands, Australia, Norway, or Austria).¹⁶⁵ We also varied the name and location of the consultant in case there were any differences in treatment based on a particular country or geographic proximity.¹⁶⁶ This "control" group of nations, "Norstralia," should typically be associated with fairly rigid practices, come from the least corrupt countries ranked on the Transparency International's Corruption Perceptions Index (CPI) index, and generally not be perceived to be associated with international terrorism. All of the subsequent experimental conditions discussed below make use of the Norstralia countries.

2. International Standards

The first treatment invoked international standards. It seeks to test the regulatory power of an international institution, the FATF, which has broad support of the global community. This treatment is agnostic about *why*

¹⁶³ Treating firms as individual actors is a necessary simplification. Many firms are no doubt quite large and those responding to emails are likely low level employees with little discretion to deviate from company policy. However, regardless of the prominence of the employee responding to the email, the response is still indicative of the effectiveness of international law. *See also infra* nn. 259-60 (demonstrating that further review by a supervisor is unlikely to change the initial response).

¹⁶⁴ Organization for Economic Cooperation and Development, or OECD includes twenty countries including those listed in the text as well as other relatively wealthy countries which include the United States and the United Kingdom.

¹⁶⁵ For instance, like Nigeria with email scams.

¹⁶⁶ Only a few of the top ten least corrupt on the CPI (Switzerland and Singapore, for example) are excluded because they are associated with financial secrecy or other "tax-haven" conditions. Interviews and other material from the corporate sector indicate that the prospective client's country of residence and the business sector are the primary indicators of risk to the finance industry. KPMG INTERNATIONAL, GLOBAL ANTI-MONEY LAUNDERING SURVEY 25 (2007).

nations may comply with international law but assesses whether actors are more likely to comply if they know of the existence of such laws and what they require.

This treatment began with the consultant explaining FATF requirements on disclosure of identifying information when forming a corporation. The consultant then stated that he would still like to maintain confidentiality and limit disclosure as much as possible. Like the control and other treatments, the alias then asked specifically what documentation may be required to form a corporation. The managerial school of international law would expect that service providers worldwide should be more likely to follow international standards when they receive a prompt about the existence of these standards.

3. Rationalism

The second treatment invoked rationalism as well as references to international law. Like the first treatment, the second treatment informed the firm of the existence of the FATF, which sets standards of disclosure of identifying information when forming a company. To probe a rationalist mechanism, this treatment also indicated that legal penalties may follow with a violation of these standards. The consultant then stated that he would still like to avoid disclosure of private information, subtly stating that he is willing to violate international law. This treatment probed how firms respond to rationalist references to international standards. This treatment considers whether firms are less likely to comply with international law when they run the risk of costly punishment. Rationalists expect that compliance with international law should increase here relative to the placebo, and the International Standards treatment, due to existence of sanctions.

4. Constructivism

The final treatment is a constructivist one where the e-mail evoked norms of appropriateness and widespread conformity as the rationale for complying with international law. This treatment specifically informed the firm that most countries have signed on to FATF standards that require disclosure and notes that “as reputable businessmen” both the applicant and firm want “to do the right thing” by international rules, although it still asked for nondisclosure of private information, if possible.¹⁶⁷ According to

¹⁶⁷ See Appendix A for sample language for each treatment and control.

constructivists, actors act ethically to ensure their behavior conforms to generally shared conceptions of appropriate conduct. Thus, constructivism would expect that normative statements will make service providers more likely to comply with international law than the placebo condition.

C. Constructing the Sample

This experiment required extracting data to create a subject pool of firms willing to incorporate new businesses on behalf of a client for a fee.¹⁶⁸ At the start of this experiment, no sampling frame for firms existed.¹⁶⁹ We therefore built a non-random frame from available government data and internet information, which had not been catalogued or organized previously in a systematic way.¹⁷⁰ Some firms exist primarily as Internet entities.¹⁷¹ Others are long-established traditional companies that provide incorporation assistance, while still others are specialized law firms that offer incorporation as one of many services.¹⁷² The final result is a large subject pool of firms that is broadly representative of global incorporation firms that have an Internet presence.

D. Blocking and Random Assignment

Before randomly assigning our treatment and control conditions, we administered a “blocking” procedure on the dataset to improve the sample

¹⁶⁸ The fee ranges between \$1000 and \$3000.

¹⁶⁹ We collected information on firms, including name, contact information, locations, service areas, and costs. In addition, to reduce bias in the selection of firms, we avoided commercially sponsored links and took great care not to duplicate correspondence to the same firms. Duplication of correspondence to service providers is a notable concern and we took great care to avoid this. Many services respond to multiple names or are closely affiliated with other providers. Sending two emails to the same provider could both bias our sample and allow for detection.

¹⁷⁰ To obtain our sample, we extracted government data and conducted extensive internet searches to ensure a comprehensive selection of services from each nation in the sample. For the international sample, we relied almost exclusively on Google searches but also obtained data from government and commercial listings. With such an enormous market and the possibility of underground markets, it was impossible to obtain all incorporation firms. However, with extensive searching by seven researchers over a period of five months, we feel confident that we have captured a large portion of the most accessible parts of the market. Given their public presence, these firms are arguably more likely to be compliant than other firms that are “off the radar,” as the former firms are more likely to be scrutinized by regulators and law enforcement. Therefore, any differences should bias in favor of compliance in the experiment, making this a conservative test.

¹⁷¹ See, e.g., an internet incorporation company, www.incorporate.com.

¹⁷² See, e.g., law firms that provide incorporation services, www.lawinc.com.

design.¹⁷³ Blocking is a technique that places units of analysis into groups that are similar to one another. In such a situation, the experiment will better compare “like with like” and improve our ability to draw inferences from observed effects. Blocking is performed by taking covariates that are expected to influence the outcome of interest and using them to create natural groupings in the sample.

For the international sample, we used country groupings and service-type classifications to create the experimental blocks. We presume that countries falling into similar classifications should have more homogenous business practices.¹⁷⁴ Countries were grouped according to OECD membership, tax-haven status, relative income, and ratings for ease of doing international business. First, we clustered OECD and tax haven countries into their own strata.¹⁷⁵ To classify the remaining host countries in the sample, we formed three additional strata according to the World Bank’s *Ease of Doing Business* index; with subsets for high, medium, and low “friendliness” to business among the developing countries.¹⁷⁶

¹⁷³ At the outset, we must note that we omit a discussion of balance statistics for the blocking strata. Unfortunately, the nature of our data is such that the current dataset has no quantifiable variables with which to evaluate the homogeneity of the observations within blocks as well as heterogeneity between blocks. While a quantitative balance test would be preferable, our blocking criteria are theoretically sensible and, we would argue, sufficient for creating relatively homogeneous experimental blocks.

¹⁷⁴ As an additional blocking criterion, we employed service type, separating law firms from specialized incorporation services. We presume that these types of providers may respond differently to our requests and deem the covariate notable enough to warrant inclusion in the block design. We used the Coarsened Exact Matching routine in Stata to generate the statistical blocks. *See* Matthew Blackwell, et al., *Coarsened Exact Matching in Strata*, 9 STATA J. 524 (2009). Within each blocking stratum, a treatment or control condition employing standard Stata routines was randomly assigned.

¹⁷⁵ We generally used four OECD factors for determining whether a jurisdiction is a tax haven: (a) whether the jurisdiction imposes no or only nominal taxes, (2) whether there is transparency in the government, (3) whether there are laws that prevent the effective exchange of information for tax purposes with other government on taxpayers benefiting from the no or nominal taxation, (4) whether there is an absence of a requirement that the activity be substantial.

¹⁷⁶ *Ease of Doing Business Index*, WORLDBANK.ORG (2012). Note that some critiques of the World Bank Doing Business indicators provide that these indicators are problematic and push compliance with particular policy objectives which make it possible for countries to appear like great business destinations when their compliance with World Bank compliance is paper-based and not rooted in reality. *See, e.g.*, Simon Commander & Jan Svejnar, *Do Institutions, Ownership, Exporting and Competition Explain Firm Performance? Evidence from 26 Transition Countries*, IZA Discussion Paper No. 2637 (2007); Benjamin Eifert, *Do Regulatory Reforms Stimulate Investment and Growth? Evidence from the Doing Business Data, 2003-07*, (Center for Glob. Dev. Work. Paper, January 14, 2009).

We then randomly assigned an alias (and country of origin), the text of the e-mail, and the subject line of the e-mail.¹⁷⁷ We gave each treatment condition, alias, e-mail text, and subject line a unique identifying integer, and randomly assigned the integers within blocks for each corresponding condition.¹⁷⁸

E. Conducting the Experiment

We purposely conducted the entire experiment via e-mail, with firms receiving the placebo e-mail or one of the treatment e-mails.¹⁷⁹ Each e-mail is from a professed consultant expressing a desire to incorporate a firm to enhance confidentiality while simultaneously limiting legal liability and tax obligations.

This experiment involves deception: we sent all e-mails under aliases to service providers.¹⁸⁰ Researchers generated fictitious male identities for each country identified in the emails to use with the correspondence.¹⁸¹ While deception should be avoided when possible in research, the creation of fictitious personas enabled systematic variation of the placebo and the treatments. Furthermore, this fairly low level of deception should help to create an environment in which subjects behave most naturally. This is an essential motivation for field experiments,¹⁸² especially where the behavior of subjects may be inappropriate.¹⁸³

Furthermore, we drafted 33 unique e-mails and randomly assigned them to each observation. We wrote each e-mail according to the same criteria

¹⁷⁷ See Appendix A.

¹⁷⁸ We varied these slightly to avoid the risk of detection if a firm accidentally received two emails.

¹⁷⁹ Examples of each are included in Appendix A.

¹⁸⁰ Twenty-one aliases were created with associated email accounts; each alias corresponded to a country used in the experiment.

¹⁸¹ We did not interject gender as a potential difference between treatments as all of the aliases were based on the most popular male names in the country the inquirer was based. See Marianne Bertrand & Sendhil Mullainathan, *Are Emily and Greg More Employable than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination*, 94 AM. ECON. REV. 991 (2004) (determining that people with traditionally white names were 50% more likely to receive call-backs in response to help wanted ads than those with traditionally African-American names); David Neumark, *Detecting Discrimination in Audit and Correspondent Studies* (Nat'l Bureau of Econ. Res. Work. Paper No. 16448, 2010). Each email address was created by combining an alias with a Gmail extension in the following form: "alias@gmail.com". The names were carefully vetted so that no special connotation would accompany any alias, such as a famous actor or athlete.

¹⁸² See ROYCE SINGLETON JR. ET AL., *APPROACHES TO SOCIAL RESEARCH* 452 (1988).

¹⁸³ Though, no laws were violated in this study.

but infused them with different styles, syntax, and diction to ensure uniqueness.¹⁸⁴ Employing a wide variety of approach e-mails both minimized the possibility of detection and mitigated the outlier effects of any particular e-mail text.¹⁸⁵ Furthermore, the strategy allows us to control for individual e-mail effects in our final analysis, ensuring that an alternatively-worded e-mail evincing strong fixed effects did not bias our results.

F. Coding Protocol

For full compliance, the FATF mandates that firms require certified identity documents from customers before creating a company.¹⁸⁶ International standards dictate that firms should then maintain this documentation so that the company's true owners can be uncovered by law enforcement if necessary. Without such identity documents, there is no way to determine who is really in control of the new corporation. The company becomes in effect anonymous and thus a perfect vehicle for engaging in a wide range of illicit activities.

We code responses to control and treatment e-mails as compliant, partially compliant, non-compliant with international standards, or as a refusal of service.¹⁸⁷ Codes are also assigned for the specific documents that service providers request from the alias consultant.¹⁸⁸ We categorize firms

¹⁸⁴ With aliases originating in countries where English is not the native language, we introduced two minor grammar, syntax, or spelling errors to increase authenticity.

¹⁸⁵ We carefully reviewed each email to ensure that no details were presented disproportionately, thereby biasing treatment effects and creating potential outliers. Despite the similarities, each email differed enough to limit detection potential if one service were to receive two of our experimental emails. None of the specific texts were found to be statistically related to outcome measures, so the textual differences did not bias the results. Likewise, none of the aliases linked to specific countries were significantly related to outcomes, indicating no meaningful differences across the aliases.

¹⁸⁶ This includes a certified copy of at least one official photo identity document like a notarized copy of a passport picture page or national identification card. For full compliance, proof of address is required, which can come for instance with a notarized utility bill.

¹⁸⁷ When more than five business days pass with no response from providers, the researcher playing the consultant role sends a standardized brief second email. When a firm's initial response to the approach email fails to specify the requirements for identity documentation (if any), researchers pull from a standardized pool of response scenarios and draft a suitable follow-up email. In each case, the researchers respond to as many questions as prudent, and then refer back to the initial email and request information pertaining to the service's requirements for identifying documents.

¹⁸⁸ The emails are cross-checked to ensure reasonable standardization before sending

that require notarized/certified photo identification as “compliant.”¹⁸⁹ We code subjects that only require a non-notarized/uncertified copy of photo identification as “partially compliant.”¹⁹⁰ Finally, we classify firms that do not request any kind of documentation as “non-compliant.”¹⁹¹ For the subjects that refuse to provide assistance, we distinguish between non-respondents and refusal to provide service.¹⁹² This detailed coding scheme allows us to develop a categorical, unordered set of outcomes that captures more fully the levels of compliance with international standards.

Once we obtain the specified information about identity documents, researchers inform firms that their “needs have been met” and they no longer need the firms’ assistance. To maintain the experiment’s security, all correspondence occurs through specially created e-mail accounts and telephone numbers to create and verify the accounts.¹⁹³ We use proxy servers to randomly assign IP addresses around the globe (with a concentration in East Asia and Europe) to prevent firms’ determining that e-mails actually came from the United States. To maintain anonymity of subjects, once we receive the correspondence from the firm, we delete all identifying information and analyze subject companies using only their randomized identification numbers.¹⁹⁴

them out. For example, when providers request a Skype or phone conversation, research assistants stress that travel commitments make this unworkable, and that communication must occur via email. When providers suggest multiple options for incorporation (*e.g.*, a choice of a Nevada or Delaware company), the protocol is to choose that preferred by the provider, or where there is no preference, to select the first option mentioned. With respect to questions about taxes, research assistants indicate that this is being addressed domestically.

¹⁸⁹ See *supra* note 104 for discussion of notarized documents.

¹⁹⁰ *Id.*

¹⁹¹ To more carefully distinguish between “compliant,” “partially compliant,” and “non-compliant” services, we further parse response codes according to the specific types of documents required by each service. Using a series of “document codes,” we record each relevant identifying document as outlined and clarified by the FATF and the Basel Committee, respectively. See Basel Committee on Banking Supervision, *Compliance and the Compliance Function in Banks* (2005) available at <http://www.bis.org/publ/bcbs113.pdf> For example, we record whether the service requires a notarized passport copy, a passport copy, or an in-person visit. We also capture requests for address proof (such as an original utility bill), bank reference letters, business plans, funding source disclosure, curriculum vitae, and a variety of other identifying documents that are suggested by the Basel Committee.

¹⁹² We also analyze the content of the received emails to trace motives and rationales.

¹⁹³ We used foreign cellular accounts to avoid detection.

¹⁹⁴ Before filing copies of correspondence for future reference, we purge all identifying information from them. Copies of correspondence are on file with the authors.

III. RESULTS FROM A TEST OF COMPLIANCE

To accurately determine the effectiveness of international law, we must examine both response rates and compliance rates and formal and informal compliance with international law. First, we determine whether the international firms respond to an inquiry about confidential incorporation. Next, we test whether they comply with international laws requiring disclosure of identity. This test involves formal and informal compliance. Formal compliance comes through examining the acts taken by the sovereign nation to implement and enforce international financial transparency laws.¹⁹⁵ To gain insight, we examine an earlier analysis of the international law commitments undertaken by the nations relating to financial transparency.¹⁹⁶ This provides some useful information that demonstrates a nation's willingness to comply with international law. But, as discussed above, formal compliance cannot tell the entire story.¹⁹⁷ Despite laws and procedures, it remains to be seen whether anonymous shell corporations can still be formed in each nation. A test of actual compliance at the level of private actors measures the effectiveness of the nation in implementing and enforcing international law and disseminating such rules to the firms in the jurisdiction.¹⁹⁸ To the extent these firms ignore international law, it is an indication that their nation is not conforming to global standards that require sanctioning of firms that do not comply with these provisions. After preliminary results examining response rates in Part III.A, Part B discusses compliance rates that indicate surprising results about the proportion of private actors likely to comply with international law. We discuss the implications of the results and compliance rates in the next section.

A. Experimental Results Across Treatment and Control Conditions

We now turn to an analysis of response rates across treatment and control conditions. We report experimental results for 1,015 firms here.¹⁹⁹ The subject must make a decision to reply to an e-mail request in the first place, following which compliance with international requirements to

¹⁹⁵See Chris Brummer, *How International Financial Law Works (and How It Doesn't)*, 99 GEO. L.J. 291 (2011).

¹⁹⁶ See *supra* notes 115–20 and accompanying text.

¹⁹⁷ See *supra* Part I.D.2.

¹⁹⁸ See *supra* note 189

¹⁹⁹ The balance of subjects received alternative treatments and are reported elsewhere. See Baradaran et al., *supra* note 181. Note that some services either returned error messages indicating invalid email addresses or responded in a foreign language.

demand identity documents is a second step. But that initial decision to respond can be analyzed in its own right and should indicate something important about the treatments' effects on the willingness of subjects to correspond with the potential customers. After all, if firms do not reply, they cannot violate international standards. In a key way, then, non-response for some subjects may indicate a "soft refusal" to do business with a potential customer and is certainly less costly or bold than outright withholding of services. Our background interviews with service providers strengthen this interpretation.²⁰⁰ While many of the non-responses may result from disinterest or poor management of correspondence on the part of subjects, randomization across treatments should balance these tendencies across the subject pool. Any significant differences in response rates should then indicate meaningful treatment effects for subjects' propensity toward soft refusal.²⁰¹

Table 1 lists the response rates and compliance rates for the placebo and treatment conditions. Firms were compliant if they demanded notarized identification, thereby being fully compliant, or refused service. Otherwise they were scored non-compliant. Table 1 also lists the response rates for the placebo and treatment conditions indicating statistically significant mean differences from the control condition.²⁰²

Table 1: Response and Compliance Rates across Experimental Conditions²⁰³

Condition	Total Sent	Number of Responses	Response Rate	Number Compliant	Compliance Rate as a Percent of
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²⁰⁰ Before conduction our experiment, we interviewed firms and collected information on them regarding services, costs, contact information, and locations.

²⁰¹ Before conducting our experiment, we surveyed a medium-sized sample (n=59) of international studies scholars to gauge their expectations of our response outcomes. On average, the scholars guessed that 42 percent of subjects would respond (with a relatively high standard deviation of 22 percent). Over the subject pool the actual response rate averaged 51 percent – higher than the experts expected. The results of this survey of international studies scholars is on file with authors.

²⁰² Analysis of experimental data typically proves more straightforward than is often the case with observational studies. The values of confounding variables – both observed and unobserved – have been balanced across the conditions, and the blocking procedure likely improved the balance yet further. Thus, simple difference of means tests employing t-statistics can be used to report treatment effects. In the far right column we report significance levels (compared to the control condition) using one-tailed t-tests.

²⁰³ Difference from control condition in two-tailed *t* test: * significant at .1 level, ** significant at .05 level, *** significant at .01 level.

		Responses			
Placebo	268	153	57.1	82	53.6
Intl Standards	232	126	54.3	66	52.4
Rational	254	120	47.2**	51	42.5***
Construct	261	142	54.4	68	47.9

Notably, only the rationalism treatment led to a significant decrease in response rates compared to the placebo condition—with nearly 10 percent fewer responses.²⁰⁴ These differences in response rates suggest that some firms exercise discretion in their correspondence with potential clients. Apparently, if the subjects are primed about law *and* its consequences, a significant set of firms fail to respond to the request for incorporation. The rationalist treatment also caused a significant decrease in compliance rates for those firms that did respond as compared to the placebo, with compliance falling more than 11 percent from 53.6 percent in the placebo condition to 42.5 percent in the rationalist condition. Thus, the rationalism treatment led to an increase in “soft compliance,” by a larger number of firms refusing to respond, but when firms did respond, they were less likely to comply.

Interestingly, we find no statistically significant treatment effects for the other conditions. Mention of international standards and the FATF alone (without noting possible consequences) had no significant effect on response rates or compliance rates. The constructivist treatment, which explicitly mentioned that being “reputable businessmen” required compliance with international norms, did not induce differences in response or compliance rates compared to the placebo condition.²⁰⁵

We now turn to examining response and compliance rates broken down by country groups, including tax havens, OECD countries and high, middle, and low income countries. In the overall sample, 27 percent of the service providers contacted and 51 percent of those who actually responded were

²⁰⁴ This is a difference that is statistically significant at the .05 level in a two-tailed *t* test.

²⁰⁵ Arguably, individuals who seek to act illegally may also rely on constructivist norms but our field experiment examines whether the firm interprets this cue as a reason to comply with international law or not comply. This is the relevant decision.

willing to defy international standards in providing a shell company without requiring notarized proof of the customer's identity.²⁰⁶

Table 2: Non-Compliance Rates Across Country Groups

Country Group	Number of Firms	Number of Responses	Response Rate	Number of Non-Compliant Firms	Non-Compliance Rate as a Percent of Responses
OECD	246	137	55.7	68	27.6
Tax Havens	254	172	67.7***	65	25.5**
Upper-Middle and Lower Income Countries	514	231	44.9***	152	29.5**

*** Significant at .01 level compared to OECD in two-tailed *t* test; ** At 0.05 level

“Tax Haven” countries showed a 12 percent higher response rate than OECD countries, with the difference statistically significant at the .01 level.²⁰⁷ Upper-middle and lower-income countries,²⁰⁸ however, replied at rates nearly 20 percent lower than tax haven countries, again significant at the .01 level.²⁰⁹ Middle- and lower-income countries also responded at significantly lower rates compared to OECD countries, perhaps indicating that firms in wealthy countries are better equipped to deal with international requests for incorporation.²¹⁰

²⁰⁶ See *supra* note 104 for discussion of notarized documentation.

²⁰⁷ See Table 2.

²⁰⁸ Here we grouped lower-middle- and lower-income countries together.

²⁰⁹ We then created a measure of compliance, employing a dichotomous variable with non-compliance and part-compliance scored as “0” and compliance and refusal scored as “1” (with non-responses excluded). See Figure X. When we test the differences in compliance levels among country groups, the disparities remain statistically significant at the .01 level compared to the tax-haven countries.

²¹⁰ This could be due to the importance of their complex and sensitive financial sectors.

B. Compliance Rates with International Law Across Conditions

We first provide the raw results on compliance that do not incorporate response rates. Following, we estimate a selection model that permits us to adequately account for selection into the compliance analysis through an e-mail response. Finally, although we feel non-response likely reflects soft refusal, we also perform additional tests to consider the chance that non-respondents were not “treated” and consequently estimate the potential treatment effect on the treated.²¹¹

Beyond response rates, we also construct a measure that assesses how the treatments affect the propensity to comply with international standards. We undertake this analysis a bit more cautiously, however. It seems clear that compliance rates depend crucially on response rates. That is, if—as we suspect, a failure to reply to a request may—for some significant set of subjects at least—indicate a soft refusal of service, then any inferences drawn from rates of compliance must also consider response rates.²¹² Thus, an accurate analysis of compliance rates may require the inclusion of response rates.

We categorize both non-compliance (a failure to request any kind of identifying documents) and partial compliance (requiring only uncertified documents) as non-compliance and then score them 0 in a binary indicator of compliance.²¹³ We do this because while requiring non-notarized documents is unquestionably better than not asking for any documents, photocopies of both driver’s licenses or passports are notoriously easy to fake. Thus, firms employing such a relaxed application of international standards will likely facilitate many more untraceable shell corporations than firms requiring certified documents.²¹⁴ Additionally, we categorize

²¹¹ In this analysis, we deal with emails that were undeliverable or returned in a foreign language by treating them as untreated observations. *See supra* note 171. Untreated observations are so few that they are statistically insignificant, but this analysis nonetheless enables us to rule out ‘failure to treat’ as a potential source of bias.

²¹² For example, one provider accidentally forwarded us an internal email discussion after receiving a follow up email from our alias. One firm employee asks another: “This one has also come back again. Will I pretend it went into junk or reply?” This provider demonstrates that as we suspect, many services purposely do not respond and indicate a soft refusal to violate international law. This is why we account for response rates and compliance rates in two separate analyses.

²¹³ These results are robust as to treating partial compliance as compliance.

²¹⁴ We note that since some emails indicate familiarity with the FATF some firms may have thought that they could ask for documents and assume that they must be notarized. We made sure to avoid this problem with following-up on the request to determine if they required notarized documents if the initial response did not make this clear.

firms that refuse service or require notarized documents as “compliant”.²¹⁵ Table 3 below reports the results for compliance rates with international law comparing the experimental conditions with the control.²¹⁶

Table 3: Compliance Rates across Experimental Conditions

Condition	Compliance Rate Across Conditions
Placebo	53.6
Intl Standard	52.4
Rational	42.5
Construct	47.9

In analyzing compliance rates, the rationalist treatment, which combines mention of the FATF with a reference to possible legal penalties, has a significant effect on compliance rates as measured, and the effect is negative—it induces *less* compliance than the placebo condition.²¹⁷ This result is unexpected and is discussed in Part III.C. The rationalist treatment also induces more soft refusal than hard compliance, meaning firms receiving rationalist treatment prefer ignoring a firm to directly refusing service.²¹⁸

These results confirm the descriptive statistics showing that OECD countries have higher response and non-compliance rates as compared to response rates generally. A similar effect occurs for the rationalism treatment in OECD countries. These results thus suggest some additional

²¹⁵ We gave them a score of 1 in the binary indicator. Non-response is considered in the first stage of the selection analysis as prior to compliance or non-compliance.

²¹⁶ One difficulty is that most two-stage models cannot identify the model without the addition of different information. We thus use a selection model allowing the same identification parameter— in this case treatment condition – to see how it affects both selection (response) and the outcome (compliance). See Anne E. Sartori, *An Estimator for Some Binary: Outcome Selection Models Without Exclusion Restrictions*, 11 POLITICAL ANALYSIS 2, 111 (2003) (providing a “new maximum-likelihood estimator for selection models with dichotomous dependent variables when identical factors affect the selection equation and the equation of interest”). The selection model also enables us to analyze intravariation relations between response and compliance, thereby obtaining highly statistically significant results.

²¹⁷ This finding is significant at the .01 level. See Appendix F.

²¹⁸ This finding further suggests an intravariation relationship between response and compliance, which reinforces our need for using a selection model. See *supra* note 216.

differences in the treatment effects, especially as it relates to country grouping that will be discussed in the next section.²¹⁹

These results also support the expectations about OECD countries developed in international law theory in some ways, but they are surprising in others.²²⁰ Mainly, the relatively high soft compliance rates in conjunction with relatively low hard compliance rates. The expectation for results would be a lower response rate matched with a *higher* compliance rate, for OECD countries. Some firms would react to the treatment information by not responding, while others would react by being more conscientious in requiring identity documents.²²¹ Yet virtually no firms reacted by informing clients that the requested activities were illegal, regardless of whether the client already knew.²²² Thus, the statistically lower response rate for rationalism, and lower response rates generally, indicate that the treatments may induce some soft compliance. But why do they not also simultaneously induce hard compliance? In other words, why is it that on the one hand the rationalism treatment makes firms more likely to comply with international law through non-response, but at the same time, less likely to follow international law through hard compliance? This is in essence what is happening with the mismatched response and compliance rates with the rationalism treatment. A few explanations of this phenomenon and other counterintuitive results follow below.

C. Discussion Within International Theoretical Framework

²¹⁹ Finally, we reanalyzed the results considering all non-responses as though the treatment emails never arrived and the subjects were never treated. Thus, as opposed to the exercise above where non-response was considered as substantively meaningful, we now regard the problem merely as a statistical fix. We include the bounced emails as well as the foreign language replies infix. The results when we estimate the treatment effect on the treated are similar to those contained in Table 2: each condition displays a negative treatment effect. The rationalism treatment is still statistically significant at the levels reported in Table 2, but now constructivism is also negative and significant for compliance at the 0.1 level.

²²⁰ To compare compliance rates with expected compliance rates, we also surveyed international studies scholars to predict the compliance rates across the field experiment. They actually over-estimated compliance rates, estimating that, on average, 64 percent of firms would comply with international law. This was considerably more optimistic than the observed compliance rate of 49 percent, demonstrating lower actual compliance than expected compliance internationally.

²²¹ To be sure, by agreeing to break the law versus just allowing the client to break the law, the firms may be acting in a less risky manner.

²²² Our finding, that firms across different treatments are all reticent to employ hard compliance, suggests that treatment alone does not account for firms' preference of soft compliance. Rather, some ulterior consideration seems to dictate this preference.

To gain an understanding of how effective international law is, we analyze the nations' formal compliance with laws (regulatory and enforcement mechanisms put into place to enforce international law domestically) and actual compliance (the actions of individual private firms). To test actual compliance with international law we must look to the private actors in these nations in a natural setting. Whether a group of firms comply with international law demonstrates whether the international law agreed to by their home nation is effective. Thus, the effectiveness of the law in this area is an accumulation of individual firms' decisions that may result due to norms or incentives put into place by a nation and motivations of the firm. The decision of these firms to comply or not comply with international law expresses the weaknesses (or strengths) of the formal structures put into place by their nations and also sheds light on which international theory best determines compliance. Since firms are the key players in following or violating international law, their motivations prove significant in determining whether international law is effective and how effectiveness can be improved. With that, we now turn to exploring whether individuals comply with international law and what their motivations are when they do comply.

1. Do Individuals Comply with International Law?

International law requires identity information to ensure transparency while forming a corporation.²²³ The following reply to one of our inquiries from a U.S. firm indicates the disregard of such international laws: "All that you need to do is to provide the name you want for your new company, that's it."²²⁴ The subjects respond to the inquiry to form a confidential corporation as the first step in determining whether nations comply with international financial transparency laws. To get a broad picture of overall international compliance, we review the results from a test of formal compliance,²²⁵ and examine actual compliance below.

To determine whether countries comply with international law, we compare formal compliance rates with actual compliance demonstrated by our field experiment. To get at both formal and actual compliance, we

²²³ See *supra* note 104 and discussion of notarized documents and notes 115–20 discussing FATF requirements.

²²⁴ A similar response stated: "We don't need a whole lot of info from you. You can place the order on our website under 'starting your company.' It should only take 10 minutes and that is all the information we need from you."

²²⁵ See *supra* note 212 and accompanying text for discussion of test of formal compliance.

examine the national legal framework as well as the actions of private actors in each nation who carry out the obligation of the nation to comply with international laws. Next we briefly examine blocks of states (OECD members, tax haven, high-middle income and low-middle income states) to see if we detect any significant differences in formal and actual compliance between blocks of countries.²²⁶

Overall, formal compliance results are mixed. Over 180 countries have signed and ratified the FATF and international transparency laws and have accepted its framework. Digging deeper, we examine the percentage of these countries that are actually complying with these laws. Formal compliance indicates mixed results. Ninety-six percent of countries have ratified national laws requiring identity documents upon incorporation.²²⁷ Yet FATF evaluations show that only 40% of countries comply with FATF provisions,²²⁸ though closer to 75% of countries are largely and partially compliant with these provisions.²²⁹ With formal compliance numbers, it is hard to determine whether countries are actually complying with international laws, since there is no way to know based on the legal landscape how easy it is to form a shell company in the particular jurisdiction. Thus, we turn to actual compliance to determine whether the aims of financial transparency laws are being met internationally.

To determine actual compliance, we exclude non-responses and examine the level of compliance by private actors with international laws. Our field experiment reveals a lower than predicted result; only half of countries (49%) complied with international law, as measured by reviewing the laws passed in compliance with international law, and the level of their enforcement, which may surprise both rationalists and constructivists.²³⁰ The international laws at stake are relevant here. The laws tested here are the international standards of financial transparency, which have been ratified and deemed significant to the worldwide effort to stop corruption and the financing of terrorism.²³¹ The importance of these laws and the

²²⁶ Significant discussion of differences in results between blocks of countries and individual countries will be dealt with at length in a follow-up piece.

²²⁷ See Appendix B.

²²⁸ *Id.*

²²⁹ See Appendix B and D. This brings up the question of what percentage compliance would demonstrate appropriate compliance. For instance, would a state comply with an antiterrorism provision if 50 illegal shell companies were formed each year? 100? We do not reach this important question here but leave this discussion for future researchers.

²³⁰ International scholars predicted that 64% of international services would comply with international law.

²³¹ See notes *supra* 106–11 discussing high profile nefarious activities taken behind the protection of anonymous shell companies by Iran, Libya, al-Qaeda and North Korea. See

consensus about the import of these norms suggest that we should see higher rates of compliance than ordinary international laws.

We first examine the rationalist and constructivist reaction to the moderate international compliance findings. Given the strength of the international norms supporting these laws, constructivists might expect high rates of compliance. Constructivists would be surprised that despite the high acceptance of these laws and norms of global cooperation surrounding these laws, that compliance with them is still weak. Constructivists would likely be most surprised by the relatively low levels of compliance by FATF member countries, who have agreed to uphold and thus should demonstrate the highest level of compliance among all of the signatories. However, these member countries actually demonstrate lower compliance rates in our field experiment compared to nonmember countries.²³²

Some rationalists may also be surprised at the relatively high level of compliance with international laws, as they generally expect low compliance with international law,²³³ due to the low risks of sanctions and weak enforcement of international law. Rationalists might explain higher than expected compliance with the threat of potential sanctions that result for countries that fail to comply. And while the private actors here are not directly subject to such sanctions that are targeted at the national government, international law requires that governments sanction private bodies that do not comply with FATF provisions, and the compliance rate by private actors shows how important the fear of such sanctions are to that government.²³⁴ Thus, governments that comply with such laws and fear sanctions for noncompliance would allow such fear to trickle down to the bodies that have the responsibility for implementing these international laws with sanctions.²³⁵ Overall, the results demonstrated by our field experiment of nearly 50% compliance with international law leave room for further debate by optimists and pessimists as to the significance of international

also, License to Loot, *supra* note 109, at 64 (“An al-Qaeda fund-raiser (using a company called Truman Used Auto Parts), Iran (which owned a Manhattan skyscraper) and Viktor Bout, an arms trader now facing trial, are among those that America’s lax regime has benefited.”)

²³² See Appendix E.

²³³ See Part I.A.

²³⁴ Fear of sanctions may not outweigh the cost of developing the capacity to comply or investing the resources to comply with provisions.

²³⁵ However, our experimental results only partly support this conclusion. A treatment priming the threat of legal penalties indeed decreased the proportion of responses from subjects, but the same prompt also decreased the proportion of those responding who complied with international law. Only for some subjects did the threat of sanctions move them. Others were willing to offer anonymous incorporation despite the primed risk of legal penalties.

law. Even if we consider all of the non-responses as compliant, the non-compliance rate – where firms failed to require notarized identification – would still range between 26 and 28 percent. This suggests that shady customers would, on average, have to contact fewer than four firms to find one that would make anonymous incorporation relatively easy.

2. Who Complies with International Law?

After examining whether firms comply with international law, an important remaining question is firms in *which* countries tend to comply. While we do not undertake an in depth country-by-country analysis here, we present broad trends which challenge the premise of managerial theory.²³⁶ The managerial school theorizes that national compliance depends on relative wealth and resources and an ability to enforce international laws. Interestingly, our results are inconsistent with managerial theory by demonstrating that relative wealth levels do not impact compliance rates.²³⁷ We find that when it comes to *formal* compliance, the results are just as the managerial school would predict—the highest compliance rates are among high-income countries, then middle income followed by low income countries. However, in examining *actual* compliance, tax haven countries show the highest response and hard compliance rates. Indeed, we demonstrate that tax havens actually have 12% higher response and compliance rates than OECD countries, and more than 20% higher response and compliance rates than developing countries.²³⁸

High response rates from tax havens may be explained by the fact that these firms are almost exclusively focused on foreign customers, and so they may be more accustomed to responding to inquiries from abroad. Their counterparts in middle and low-income countries may be less accustomed to foreign businesses and thus may be less likely to follow up on email inquiries. The greater response and compliance rates in tax havens

²³⁶ We reveal a more in depth country-by-country analysis in a forthcoming piece.

²³⁷ See Appendix D. Upper-middle and lower-income countries, however, replied at rates nearly 20 percent lower than tax haven countries, again significant at the .01 level. The response rates for lower-income countries being less than tax havens may support managerial theory. However, there is no statistically significant difference between middle- and lower-income countries and OECD countries.

²³⁸ This is statistically significant at the .01 level. Firms based in the low and middle income countries and middle-high income countries were also significantly less likely to respond (at the .05 level) than those in the OECD countries and replied at rates 20 percent lower than tax haven countries (at the .01 level). We grouped lower-middle and low income countries together, based on the World Bank Ease of Doing Business Index. See *supra* note 170.

compared to OECD countries demonstrate that there is not a strong relationship between income and compliance.²³⁹ This finding undermines managerialist school expectations, which maintain that violations are more likely to be a product of a lack of resources or knowledge rather than deliberate transgressions.²⁴⁰ Indeed, when we explicitly gave subjects information about international law in our experiment, it did not improve compliance rates—rather, it decreased compliance, albeit not in a statistically significant way. The findings also suggest that the emphasis placed on improving international standards through “capacity building” or training may be misdirected.²⁴¹ Thus, we find little consistent relationship between wealth of countries and compliance rates in our field experiment. Therefore, we explore an alternative explanation for differences in compliance rates.

3. Why Comply with International Law?

Based on the international law theory expressed, our field experiment reveals varying response rates as well as varying compliance rates if we analyze non-responses separately.²⁴² It thus sheds light on why firms comply with international law. The results in this area are complicated and deserve some discussion. The discussion that follows first addresses response rates or “soft compliance,” then actual compliance rates, or “hard compliance.” While the last section discussed overall compliance, this section examines the effect of the various treatments—or theories of international law—and how they impact compliance.

a. Soft Compliance

We noticed increased soft compliance, as demonstrated by lower response rates, only with the rationalist treatment. We note here, however, that a relatively small proportion – roughly 10 to 20 percent of the overall subject pool – might be considered “soft” refusals by failing to reply. We followed up on non-responses with several rounds of inquiries from different aliases, culminating with a “non-response check” that was the most innocuous we could design: the email made no mention of a need for confidentiality, taxes, or legal liability and did not inquire after documents.

²³⁹ There is no significant income difference between tax haven and OECD countries; we classify both as high income countries.

²⁴⁰ See *supra* Part I.B.

²⁴¹ See *supra* note 227

²⁴² It is proper to analyze non-responses separately because most reflect exogenous factors that limit firms’ capacity or desire to respond.

In essence, this check sought to verify that the subject firm was still in business and assisting customers. Fully 52 percent of the non-responses failed to reply even to this no-threat inquiry, suggesting that only a minority of non-responses are soft refusals.

Nevertheless, for a non-trivial share of firms, the appropriate interpretation appears to be that non-responses are tantamount to soft compliance. One observation that supports rationalism is that a significant share of firms is more likely to demonstrate soft compliance with international law when prompted that it exists and are told that there are penalties associated with noncompliance. Another observation is that neither mention of international standards nor a normative rationale for following them (constructivist treatment) induced significantly higher compliance than the placebo condition, where there was no mention of these standards. These findings are discussed in turn below.

International firms were more likely to demonstrate soft compliance with international law when informed about the existence of such law and when informed that penalties are associated with noncompliance with these laws. As such, firms responded at statistically significantly lower rates to the inquiry when penalties were invoked than when there was no mention of international law or mention of international law without warning of penalties.²⁴³ When we informed subjects that international laws had associated penalties (rationalism treatment) and told them about the law and what it required, subjects who responded were less likely to comply. Indeed, the overall compliance rate (summing compliant responses with refusals) was 20 percent for the rationalist condition vs. 31 percent for the placebo. This is mixed evidence for the rationalist camp, which argues that nations are more likely to comply when informed of penalties or sanctions associated with international law, rather than when they are simply made aware of the law.

One set of subjects appeared to comply “softly” through no response. But among the rest of the subjects that did reply, they were significantly less likely to follow international law. What is more, these effects seem offsetting, suggesting that many of the subjects failing to respond were those that would likely have complied if they had replied.²⁴⁴ Indeed, despite a prompt about legal penalties, it appears that a significant number of firms are willing to offer anonymous incorporation regardless of the threat of sanctions.

²⁴³ Both low response rates of the rationalist treatment were significant as compared to the control, which made no mention of international law.

²⁴⁴ This result is what clinicians call a “heterogeneous treatment effect,” meaning that the treatment affected some subjects different than others.

Surprisingly, firms were not more likely to show soft compliance with international law when they were informed that it was the international norm to comply with such laws. In the constructivist treatment, we explicitly mentioned the FATF and its disclosure standard, discussed that most countries have signed onto the standard, and remarked that we understood that we were operating as “reputable businessmen.” Notwithstanding these clear prompts and reference to widely accepted international norms,²⁴⁵ the constructivist treatment induced response rates statistically indistinguishable from the control condition and from simply mentioning the international standards. Thus, an appeal to shared norms and reputation makes little difference to firms when weighing whether or not to comply with international law.²⁴⁶ We find this result both surprising and quite interesting as it undermines constructivist accounts of compliance with international standards.²⁴⁷

However, it is important to note here that appeals to international norms may be more persuasive to government representatives than private actors. Thus, if the subjects of our study were government actors, they may have been more likely to comply if they were informed of norms because they may place a greater emphasis on international reputation. This result may still demonstrate something important for obtaining better general compliance with international law. The ineffectiveness of appealing to norms may demonstrate that the government should favor threats and sanctions over appeals to norms for private actors. Overall, thus far, there is little support for the hypothesis that reputational concerns will prove sufficient to motivate compliance.²⁴⁸ Instead, this finding tends to support rationalist view of rules and compliance as a product of power.²⁴⁹ The next

²⁴⁵ Note though that as “clear” as these prompts may be, the client is stating that he wants to keep information secret notwithstanding the law that requires the information to be made known. See Part III.C.4 discussing conspirator theory of rationalism.

²⁴⁶ Arguably, shared norms have also been internalized and may be significant to subjects without mention. If this is the case, these norms are still not able to induce the level of compliance as fear of legal penalties, under the rationalist model. Being reminded of legal penalties induces compliance at a much higher level than reminding subjects of the international norms at play.

²⁴⁷ E.g., THOMAS M. FRANK, *THE POWER OF LEGITIMACY AMONG NATIONS* (1990); Jeffrey Checkel, *Why Comply? Social Learning and European Identity Change*, 55 INT’L ORG. 553 (2001).

²⁴⁸ Beth A. Simmons, *International Law and State Behavior: Commitment and Compliance in International Monetary Affairs*, 94 AM. POL. SCI. REV. 819 (2000) (Most studies are not able to show credibly that international rule compliance is based on anything other than immediate state interests)

²⁴⁹ DANIEL DREZNER, *ALL POLITICS IS GLOBAL: EXPLAINING INTERNATIONAL*

section goes beyond response rates to determine hard compliance with international law, to determine why international firms that responded decided to comply with international financial transparency laws.

b. Hard Compliance

Thus far we have only discussed soft compliance, or whether the subjects refused to entertain our inquiry for a confidential corporation in the first place. Now we examine hard compliance to determine when subjects decide to comply or not comply with international law, why they do so. We arrive at this result by examining whether nations require the requisite information and documentation from the potential clients, as required by the FATF and other international law. Overall, the findings indicate—against our intuition and rationalist expectations—that mention of legal penalties results in *lower* hard compliance with international law.²⁵⁰

Hard compliance rates were highest when we made no mention of international law (control), followed by when they were prompted about the existence of international standards and, finally, when prompted about associated norms against noncompliance. Interestingly, firms were *less* likely to manifest hard compliance with international law when they were informed about penalties associated with such laws. At first blink, a rationalist would expect that a firm would be more likely to comply with international law when informed that there are penalties for noncompliance. However, the opposite result occurs, with lower hard compliance rates with the rationalist treatment.²⁵¹

There may be several explanations for why the threat of penalties produces both lower response rates and lower rates of hard compliance. As noted above, it seems that the firms' initial choice of whether or not to reply creates a sub-set of firms that is more risk-acceptant or risk-insensitive than the initial sample. According to this logic, those most likely to be compliant with international standards, most attuned to the dangers of providing anonymous shell companies, or most uncomfortable with expectations of international law, choose not to respond in the first place, altering the sample of responding firms to favor those who may be less likely to comply. Firms seem to respond to risk by refusing service, rather than by

REGULATORY REGIMES (2007).

²⁵⁰ See Part I.A discussing rationalism. We were not alone in this intuition. We surveyed an expert panel of 63 international political economy scholars prior to conducting the research, and 69 percent expected that the rationalist condition would increase compliance compared to the placebo.

²⁵¹ These results are statistically significant at the .01 level.

changing their propensity to apply international standards. If a firm is content to accept a customer, they then follow their standard customer due diligence procedure—which may be little or nothing. While this explains low response rates at the outset, it does not explain why hard compliance rates are actually *lower* when the firm is informed about penalties for noncompliance. We offer explanations for this counterintuitive result in the form of two conjectures.

4. Conspirator Effect of Rationalism

One way to explain the discrepancy between higher compliance at the outset followed by lower compliance once responses are received is by what we call a conspirator theory of rationalism.²⁵² The high soft compliance (low response) followed by lower hard compliance may provide information about what the firm believes that the potential client knows, and the firm's potential fear (or lack of fear) of being caught. What the firm believes the client knows affects the firm's decision. A noncompliant firm once placed on notice by a client that it is being asked to do something illegal has received a signal that the client is a coconspirator and less worried that it will be reported to the authorities. Indeed, this signal that the client is willing to violate international law is strongest with the rationalism treatment because under that treatment the client wants to violate international law even though she understands and explicitly acknowledges that penalties may result from doing so. On the other hand, if the potential client were naïve and realized that she had been asked for something illegal, she may be more likely to report the violator (the firm) to the authorities.

So the savvy firm, which is aware of international law, feels safer with the conspirator's request and is more likely to offer services that do not comply with the law to that individual than the naïve client. This may explain why the rationalist treatment induces lower response rates than the other treatments. This first step weeds out some firms that are either uncomfortable with what international law requires or are honest and do not want to deal with a client who appears to be willing to violate international law. But, once the firm responds, the rationalism treatment also leads to lower hard compliance rates by firms.

Under the conspirator effect, the logic here is that once the firm knows it has a savvy client who is willing to conspire in violating international law, the firm is now more willing to violate international law—even in the face of legal penalties. Thus, the conspirator effect is greater when the firm

²⁵² The conspirator theory relies on game theoretical logic. See generally DOUGLAS G. BAIRD ET AL., *GAME THEORY AND THE LAW* (1994).

is certain that the consequences for violating international law are serious (i.e., penalties), and thus follows the signal that the client will have no problem violating the law.²⁵³ This then explains why the mention of legal penalties leads to lower compliance with international law among the firms that respond to the query.

This conspirator effect gains support in the difference in results between OECD countries and non-OECD countries. OECD countries actively participate in an international forum on best economic practices and are generally wealthier countries with sophisticated markets. The OECD is comprised of a set of countries required to preserve international economic order through strict regulation.²⁵⁴ Because OECD countries are arguably more invested in international financial stability and their international reputation for upholding financial regulations, their citizens are more likely to comply with such laws—particularly when they perceive them to be serious (i.e., connected with penalties for noncompliance).²⁵⁵ Presumably, among the country blocks, they are less likely to be baited by an open conspirator who is willing to violate international law. This is exactly the result we find. Our results indicate that citizens of OECD countries are more likely to comply with international law when informed of penalties for noncompliance than non-OECD countries.²⁵⁶ Indeed, the OECD countries

²⁵³ The theory here is that an individual is more willing to conspire where the penalties are more severe because they are sure that their conspirator is committed.

²⁵⁴ OECD countries are more likely to comply with international financial regulations because the economies of OECD countries are so integrated one with another that they need to coordinate internationally. See Allison Christians, *Networks, Norms, and National Tax Policy*, 9 WASH. U. GLOB. STUD. L. REV. 1, 2 (2010) (“Increasing economic integration inevitably draws states to coordinate their tax policies.”). Indeed, OECD countries are more likely to accept norms favoring international cooperation. See William Bradford, *International Legal Compliance: Surveying the Field*, 36 GEO. J. INT’L L. 495, 509 (2005) (“[T]ransnational Legal Process Theory ... postulates that repetitive interactions within transnational epistemic communities consisting largely of foreign policy elites give rise to norms favoring cooperation and that the internalization of these norms in domestic law and legal institutions fosters the progressive evolution of rule-governed cooperation.”); OECD countries “are in an iterative relationship in which they learn over time to deepen the natural and rational propensity” to comply with OECD related international rules. William Bradford, *International Legal Compliance: Surveying the Field*, 36 GEO. J. INT’L L. 495, 509 (2005). It may also be that OECD countries are more likely to comply with international financial regulation because OECD countries have self-interests in complying with international financial regulations and their membership in the OECD is simply a reflection of those self-interests. Jack L. Goldsmith & Eric A. Posner, *International Agreements: A Rational Choice Approach*, 44 VA. J. INT’L L. 113 (2003).

²⁵⁵ See *supra* note 200.

²⁵⁶ The effect of the rationalism treatment is different when comparing OECD countries with non-OECD countries. In non-OECD countries, rationalism induces lower

have a reputation for accepting international norms and complying with international financial regulations. However, other countries—less wealthy and with an arguably less sophisticated regulatory regime—are more likely to fail to comply with international law when they are confronted with a willing conspirator, because they have less fear of hypocrisy upon getting caught or less fear of sanctions due to noncompliance.²⁵⁷

As this section makes clear, the conspirator theory of rationalism suggests that individuals are more likely to break international law when dealing with another open, willing violator of international law. We see the effects of this theory as a significant sub-set of firms are more likely to violate international law when they are informed of penalties for violating international law than when they are not informed about penalties. The conspirator effect has less of an influence with actors in more sophisticated markets, such as those in OECD countries.²⁵⁸ Where nations are a part of creating international norms, their private actors are less likely to conspire to break those norms. Thus, the conspirator effect is mitigated with prominent international players that set international norms.

5. Weak Penalty Effect

Another potential explanation of the contradictory rationalism compliance rate is that weak international penalties induce lower compliance than a lack of international penalties. Some individuals who are informed that penalties accompany noncompliance are deterred from responding to the client query compared to the placebo condition where no laws or penalties are mentioned. But those individuals who do not comply may not be violating rationalist logic. The rationalism treatment may receive a lower hard compliance rate than the other two treatments (though a lower response rate) because of the low perceived fear of actual penalties under international law.

compliance rates ($p < 0.05$), which is the overall result for most countries. But in OECD countries, the rationalism treatment (or threat of legal penalties) results in a higher compliance rate ($p < 0.1$). See *supra* note 55 and accompanying text for further discussion of results.

²⁵⁷ There is a possibility that less wealthy countries are more likely to fail to comply with international law because they have a less sophisticated regulatory regime.

²⁵⁸ This may be an example of external outcasting in international law, such that members of the OECD enforce the law by exclusion of noncompliant members from community benefits and cooperation. See Oona Hathaway & Scott J. Shapiro, *Outcasting: Enforcement in Domestic and International Law*, 121 *YALE L. J.* 252, 308 (2011).

The firms who decide to ignore the potential penalties may not fear actual penalties for two reasons. First, the firm who receives the query may disregard the potential penalties they are informed of because they have never heard of the FATF or the international penalties invoked and know based on experience in the field that such penalties are either light or not enforced in their country.²⁵⁹ Rather than indicating that this individual is contradicting her self-interest by failing to avoid penalties, this may simply be a statement on the lack of fear of any actual penalties that may result from violating international law. Of course, the firm here is not violating international law but this fear of sanctions indicates the level of a state's compliance.²⁶⁰ This theory has some support in the finding that middle- and lower-income countries responded at significantly lower rates compared to OECD countries, perhaps indicating that firms in wealthy countries were more likely to be aware that the FATF is soft law and garners no real sanctions.²⁶¹

Second, the individuals may do some very quick research to see whether there are in fact legal penalties and how high they may actually be. They may soon realize that penalties that may apply in not requiring disclosure are in fact light or so far removed from her firm (and generally apply only to the national government) such that she is willing to take the risk of incorporating as normal, despite such standards.²⁶² Thus, the lower compliance rate in the rationalism condition may be an indication that many individuals perceive international penalties for noncompliance to be weak or unlikely and cause them to behave less appropriately than they would without this knowledge. So it appears that individuals may be less likely to comply with international law when there are weak international standards than when they are uninformed about international law. Indeed, the existence of weak penalties may create a disincentive to comply rather than a greater incentive to comply with international law.

6. Potential Confounding Effects

An issue that needs to be addressed is that potentially these treatments are marrying client type and international law type and creating a confounding effect. This argument is that potentially the three treatments are signaling that there is a particular type of customer: the uninformed

²⁵⁹ Though, this individual may have been less likely to respond if informed that a domestic body may penalize them for noncompliance, than an unknown international body.

²⁶⁰ Indeed, the more a firm fears prosecution, the more likely it is that the state enforces international laws domestically.

²⁶¹ See *supra* notes 230 and accompanying text discussing this finding.

²⁶² This could apply to the responses to all of the treatments.

customer, the disobedient customer, and the obedient customer.²⁶³ Arguably, the responses by the firm are based on the signal received from the three customers rather than on the three international law responses: international standards, rationalism, and constructivism. Thus, what we are measuring is not the firm's proclivity to comply with international law but simply their response to the signal given from the different customers. In other words, some firms may be sophisticated enough to calibrate their responses based on the information they receive from prospective clients.

In response, we argue that, first, international law primarily governs the nation and then the firm, not the individual customer. This may even include sanctions on the firm for noncompliance. So, the firm may be watching for signals but ultimately must still consider how international laws bind them. Additionally, assuming that the treatments effectively combine client type with international law compliance, this may not pose a problem for this analysis. We are testing the effects of client type on firms' willingness to follow international law. But international standards explicitly enjoin nations (and their private entities) to scrutinize customers based on their profile (and relative risk), which is significant as the potential customers are all seeking to avoid complying with international law. And as far as the FATF is concerned, all the treatments express the same knowledge of international law and the same inquiry, so the knowledge level and request to learn about document requirements are consistent across treatments.²⁶⁴ Thus, while we cannot separate subjects' judgments about client type from their decisions to comply with international law, we hold enough constant across the international standards, rationalist, and constructivist treatments to make a good case that the treatments are measuring the target causal effects, if any.

Another issue may be that the firm may say anything or agree with the potential client and then make them comply with international law after they have received a commitment for service. Thus, the firm may state up front that they would not require any documentation, because the client's letter indicates that he values privacy. Then, after receiving fees for

²⁶³ The semi-informed customer (FATF treatment) states that the FATF requires disclosure but the individual is not sure what documents are required. The disobedient customer (rationalism) states that international law requires disclosure and penalties may follow, but despite those penalties he still does not want to disclose information. And the hesitatingly obedient customer (constructivism) states that international law requires disclosure and that he would really like to comply with the law, even though he does not want to disclose this information.

²⁶⁴ Indeed, the language expressing knowledge of the FATF requirements is identical across the treatments, and the inquiry after documents is also consistently employed across the 33 individual e-mails.

incorporation, the firm may then state that due to domestic or international law it must have the following documents in order to incorporate. This bait-and-switch approach arguably could be used by firms, though our research indicates that this is unlikely.²⁶⁵ Judging from interviews and previous research in international transparency, we know that providers request a fee and documents at the same time, not sequentially. Thus, the bait and switch approach is unlikely to play a role here, and even if it does the tendency should be balanced across experimental conditions by randomization.²⁶⁶

The implications of these results are that firms are not more likely to comply with international law if informed about the existence of the law, if they are aware of norms to follow such law, or primed about possible sanctions for failing to comply. Indeed, as it turns out, many firms are actually less likely to comply with international law, particularly when they are made aware of penalties that may follow. Two different rationales indicate that less compliance rates in the rationalist treatment may be due to the fact that firms who are fully aware of penalties under international law will still violate those laws when conspiring with a willing and open violator of international law or when they anticipate that international sanctions will be weak. Additionally, nations more closely involved in creating international law, with more sophisticated markets, are more likely to comply with international law when informed about penalties for noncompliance.

CONCLUSION

²⁶⁵ All of the letters ask for anonymous incorporation, so there should be relatively consistent incentives for the bait and switch across the treatments. Thus, even if a bait and switch approach is being used by incorporation services there is a balance induced by the randomization that the bait-and-switch services are evenly distributed across the conditions.

²⁶⁶ See Sharman *supra* note 127, at 573. To the extent bait and switch plays a role, this would be when a website advertises 'anonymous' companies and maybe bank accounts as well, then in the correspondence require identification, though promise not to give it to others unless the customer is engaged in serious crime. We short circuit this by directly asking about identification rather than relying on the website. Also, while the treatments do indicate a desire for confidentiality, they do not indicate that the potential client will not incorporate if asked to disclose documents. Arguably as well it is typical for a client's initial request to innocently ask what information and documents they may have to gather in order to expedite the incorporation process. Moreover, in the prior Sharman study, the author took all of the steps toward incorporation—save transferring the money—in 42 cases and in 3 additional cases he followed through and actually purchased shell companies. In no case did Sharman encounter a bait-and-switch on required documents.

So, as a whole, does international law matter? The answer depends on whether we examine formal state compliance or informal compliance by private actors. As far as formal compliance with international regulations, most states require some financial transparency for incorporation, though most only partially enforce key international laws. A look at informal compliance exposes results that may be encouraging to some believers in the efficacy of international law: about two-thirds of the time, firms complied with international standards.²⁶⁷ This informal test also provides a more accurate test of financial transparency by actually addressing whether firms in such nations are willing to violate international standards targeted at terrorist financing. This informal test resulted in a much less reassuring finding: roughly one in seven international firms require no identity documents at all, suggesting a willingness to form anonymous shell corporations capable of major corruption or terrorism. Nearly half of those who responded—more than one fourth overall—were willing to violate international law by failing to require that identity documents be notarized or otherwise certified. By choosing to serve clients with unverified identities rather than refusing service, these firms enable easier formation of anonymous shell companies.²⁶⁸

Beyond the overall picture of international compliance, an analysis of our field experiment provides several significant findings. It appears that reference to legal penalties significantly lowers response rates. However, while referencing penalties reduced response rates (as might be expected), it also decreased compliance with international transparency standards. Thus, mentioning penalties that would apply for not following international law actually made some firms *less*, not more, likely to follow the law.²⁶⁹ This finding is at odds with the idea that threats of sanctions increase compliance, which is at the core of the rationalist theory that actors are guided by fear of penalties and maximizing self-interest. Though with a conspirator effect of rationalism and a theory based on perceived weakness of international law, we provide potential explanations of why information

²⁶⁷ These results may be encouraging to some supporters, given that both response rates and compliance rates were higher than predicted by international studies scholars. See *supra* notes 192 and 208.

²⁶⁸ Our data mark by far the most robust picture available of global compliance with rules on financial transparency. Compare FATF, *The Misuse of Corporate Vehicles, Including Trust and Corporate Service Providers* (Paris 2006) and World Bank, *The Misuse of Corporate Vehicles*, (Wash.D.C. 2011). . The fact that we discern a significant level of non-compliance helps to address the objection that studies of international standards create a false impression of a rule-governed world. This is thanks to the confirmation bias produced by endogeneity and selection effects. See Part III.D.1.b.

²⁶⁹ This result also took the response rate into account. See Part IV.B.

about sanctions results in lower compliance. Actors may be more likely to violate international law rather than directly decline service when they know that their client is a conspirator, and thus open to ignoring international law, and also when they perceive international penalties to be weak rather than when they learn nothing about penalties. Understanding these motivations can help increase compliance with international law in the context of financial transparency and in other areas. These findings may also aid governments in stopping the formation of anonymous shell companies that have caused billions in damage worldwide, and aid in combating a range of financial crimes, including the bankrolling of terrorism.²⁷⁰

Second, compliance with international law is unrelated to national capacity or wealth. Surprisingly, as a general rule, the level of compliance in low and middle-income countries is not significantly lower than that in wealthy countries. This runs counter to the managerialist presumption and conventional wisdom that compliance is at least in part a matter of having the expertise and wherewithal to implement international standards. The positive implication of this finding is that if low-income countries can secure a high level of compliance, most other countries should be able to do likewise without major expense. The negative implication is that many countries with a low level of compliance have simply chosen not to follow the rules.

Third, and of greatest significance to international law scholars, compliance with international rules is no higher when nations are prompted about the existence and contents of these rules or international norms to comply with such rules. This is a major blow to both the constructivist and managerial school. The managerialist school argues that ignorance, rather than opportunism, may underpin much non-compliance, as actors are simply unaware of what they should be doing. At least in the case of international financial transparency law, however, more information about the standards has no effect on compliance rates. And prompts about international norms to comply with international law had no significant effect on response or compliance rates.

Finally, we articulate a rationale and demonstrate with evidence that states are not the most important actors in all important realms when it comes to determining whether international law is effective. We show that international compliance is not a straightforward product of formal domestic or international regulations and enforcement, but a consideration of informal compliance by private firms and individuals. If compliance

²⁷⁰ See *supra* notes 106–12

were purely driven by whether or not domestic law mandated collecting identity documents for those forming shell companies, we would expect near-perfect compliance from jurisdictions with such a law, and near-zero compliance from those without. However, we see substantial variation as firms in various nations comply or choose not to comply with international standards that their nations has agreed to.²⁷¹ And overall, *formal* compliance with international law by any of the measures does not usually match *actual* compliance.²⁷² These differences indicate that compliance with international law cannot be measured solely by examining a nation's regulatory framework, but must consider how individuals and firms—at the locus of compliance—in fact behave. Thus, against the prominent frameworks of international law, we conclude that states may not be the only primary players in determining whether international law is effective. Indeed, the private actors within them may significantly determine if—and why—international law matters.

²⁷¹ With the exception of a few tax havens, of course. *See supra* note 200.

²⁷² This assertion is debatable in the aggregate, and depends on what we measure.

**DOES INTERNATIONAL LAW MATTER?
APPENDIX**

Appendix A – Example Letters for International Sample¹

Control

Dear [name/company]

I am contacting you as I would like to form an international corporation for my consulting firm. I am a resident of [Norstralia] and have been doing some international consulting for various companies. We are now growing to a size that makes incorporation seem like a wise option. A lot of our newer business is in your region.

My two associates and I are accustomed to paying [Norstralia] income tax, but the rising tax rates make incorporation in another country a more economic alternative. Also, our contracts grow larger and more complicated, so reducing personal liability through incorporation seems more attractive.

As I am sure you understand, business confidentiality is very important to me and my associates. We desire to incorporate as confidentially as we can. Please inform us what documentation and paperwork is required and how much these services will cost?

I would like to start the process of incorporation as soon as possible. Also, how much can we expect your fees to be?

Due to numerous professional commitments, I would prefer to communicate through email. I hope to hear from you soon.

Thank you very much, [alias]

¹ All typos and misspellings in the treatments are intended to make the treatments appear more authentic. These letters simply provide sample language from the many treatment letters that were drafted and distributed.

Treatments

1. International Standard

Dear [name/company]

I am contacting you regarding a business I am trying to set up. I am a consultant and my colleagues and I are seeking to establish an international corporation. I am a [Norstralia] resident, but I do business both locally and with some international client, including some in your region. Our business has been growing substantially, and our goal is to limit tax obligations and business liability.

We would like as much business confidentiality as possible in these early stages of formation. **My internet searches show that the international Financial Action Task Force requires disclosure of identifying information. But I would rather not provide any detailed personal information if possible.**

So, we would like to know what identifying documents will be required to establish this company. We would also like to know what start-up costs will be.

Due to my travel schedule, email will be the best way to reach me. I look forward to hearing from you soon.

Regards,
[alias]

2. Rationalism

Dear [name/company]

I am seeking information on how to incorporate an international company. I hope that you might be able to offer what I need.

I am a consultant, and my business associates and I live in [Norstralia]. Much of our business originates here, where we operate, but our company also grows quickly among international clients. Many of them are in your area. So, we feel that incorporation is a necessary option for us. We hope to limit taxes obligations and business liability.

We would like to know if you feel that you will be able to service us with a corporation. What identifying documents will you request for this transaction? We would prefer to limit disclosure as much as possible.

My internet searches show that the international Financial Action Task Force sets standards for disclosure of identifying information when forming a company. I also understand that legal penalties may follow violation of these standards. But I would like to avoid providing any detailed personal information if possible. If you could answer these questions and also let us know about your prices, we very much appreciate it.

Thank you for the time to address our query. Business obligations make communication difficult, so we would prefer to correspond with email.

Until we speak again,
[alias]

3. Constructivism

Dear [name/company]

I am a resident of [Norstralia] and would like to inquire about your process to form international corporations. With several associates, I operate consulting firm in [Norstralia]. We deal with a growing number of international clients, many that come from your area, and would like to pursue incorporation options for liability and taxes purposes.

We are particularly concerned with keeping business interactions private; thus, we are eager to limit information disclosure as much as possible. **My internet searches show that the international Financial Action Task Force sets standards for disclosure of identifying information when forming a company and most countries have signed on to these standards. As reputable businessmen, I am sure we both want to do the right thing by the international rules. But I would like to avoid providing any detailed personal information if possible.**

Can you please inform me what your start-up costs are and what kind of identification or documents we will need to provide? We are all fairly burdened with commitments, so email communication is preferable.

Thank you in advance,
[alias]

Appendix B: International Formal Compliance with FATF Forty-Nine Recommendations

GLOBAL RESULTS (AS PERCENTAGES)					
FATF Forty Recommendations	Non-Compliant (NC)	Partially Compliant (PC)	Largely Compliant (LC)	Compliant (C)	Not Applicable (NA)
1. ML offence	5.82%	50.48%	38.83%	4.85%	
2. ML offence – mental element and corporate liability	1.94%	28.15%	50.48%	19.41%	
3. Confiscation and provisional measures	4.85%	38.83%	43.68%	12.68%	
4. Secrecy laws consistent with the Recommendations		15.53%	31.06%	53.39%	
5. Customer due diligence	36.89%	51.45%	9.70%	1.94%	
6. Politically exposed persons	64.07%	19.41%	13.59%	0.97%	
7. Correspondent banking	54.36%	19.41%	17.47%	8.73%	
8. New technologies & non face-to-face business	34.65%	34.65%	18.81%	11.88%	
9. Third parties and introducers	21.78%	27.72%	10.89%	10.89%	28.71%
10. Record keeping	8.73%	32.03%	36.89%	22.33%	
11. Unusual transactions	21.35%	47.57%	25.24%	5.82%	
12. DNFBP – R.5, 6, 8-11	64.07%	32.03%	1.94%	1.94%	
13. Suspicious transaction reporting	20.79%	51.48%	24.75%	2.97%	
14. Protection & no tipping-off	5.82%	27.18%	25.24%	41.74%	
15. Internal controls, compliance & audit	12.68%	55.33%	30.09%	1.94%	
16. DNFBP – R.13-15 & 21	58.25%	35.92%	3.88%	1.94%	
17. Sanctions	15.53%	54.36%	26.21%	3.88%	
18. Shell banks	10.67%	45.63%	21.35%	22.33%	
19. Other forms of reporting	14.56%	7.76%	9.70%	67.96%	
20. Other NFBP & secure transaction techniques	15.53%	21.35%	24.27%	38.83%	
21. Special attention for higher risk countries	42.71%	36.89%	13.59%	6.79%	
22. Foreign branches & subsidiaries	39.60%	24.75%	20.79%	5.94%	8.91%
23. Regulation, supervision and monitoring	16.83%	56.43%	25.74%	0.99%	
24. DNFBP - regulation, supervision and monitoring	58.41%	35.64%	5.94%		
25. Guidelines & Feedback	32.67%	41.58%	21.78%	3.96%	
26. The FIU	15.53%	29.12%	42.71%	12.68%	
27. Law enforcement authorities	4.95%	30.69%	37.62%	26.73%	
28. Powers of competent authorities	0.97%	8.73%	18.44%	71.84%	
29. Supervisors	5.82%	40.77%	40.77%	12.68%	
30. Resources, integrity and training	16.83%	49.50%	30.69%	29.70%	
31. National co-operation	6.93%	34.65%	42.57%	15.84%	
32. Statistics	26.21%	39.80%	32.03%	1.94%	
33. Legal persons – beneficial owners	20.38%	54.36%	17.47%	7.76%	
34. Legal arrangements – beneficial owners	12.68%	29.12%	9.70%	8.73%	39.80%
35. Conventions	6.86%	48.03%	37.25%	7.84%	
36. Mutual legal assistance (MLA)	2.97%	23.76%	53.46%	19.80%	
37. Dual criminality	1.94%	18.44%	34.95%	44.66%	
38. MLA on confiscation and freezing	6.79%	34.95%	42.71%	15.53%	
39. Extradition	7.92%	11.88%	48.51%	31.68%	
40. Other forms of cooperation	4.85%	33.98%	38.83%	28.15%	
Nine Special Recommendations					
SR.I Implement UN instruments	24.27%	51.45%	20.38%	3.88%	
SR.II Criminalise terrorist financing	24.27%	39.80%	29.12%	6.79%	
SR.III Freeze and confiscate terrorist assets	36.89%	45.63%	15.53%	1.94%	
SR.IV Suspicious transaction reporting	37.86%	30.09%	24.27%	7.76%	
SR.V International cooperation	19.41%	27.18%	43.68%	9.70%	
SR.VI AML requirements for money/value transfer services	34.31%	33.33%	22.54%	8.82%	0.98%
SR.VII Wire transfer rules	51.45%	28.15%	16.50%	3.88%	
SR.VIII Non-profit organisations	36.63%	41.58%	15.84%	5.94%	
SR.IX Cross Border Declaration & Disclosure	37.62%	39.80%	14.85%	4.95%	1.98%

*** Margin for Error: 0.02% (totals for each recommendation are never lower than 99.98% or higher than 100%)**

Data compiled from either 101, 102 or 103 Mutual Evaluation Reports, depending on the recommendation (March, 2009)

Compliant: The Recommendation is fully observed with respect to all essential criteria.

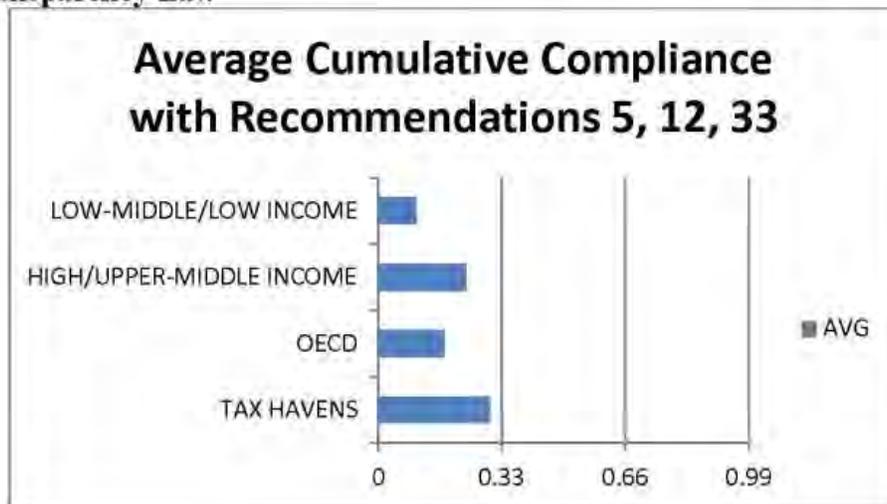
Largely compliant: There are only minor shortcomings, with a large majority of the essential criteria being fully met.

Partially compliant: The country has taken some substantive action and complies with some of the essential criteria.

Non-compliant: There are major shortcomings, with a large majority of the essential criteria not being met.

Not applicable: A requirement or part of a requirement does not apply, due to the structural, legal or institutional features of a country e.g. a particular type of financial institution does not exist in that country.

Appendix C: Formal Compliance with International Financial Transparency Law



	Rec 5	Rec 12	Rec 33
Argentina*	NC	NC	NC
Australia*	NC	NC	LC
Austria*	PC	PC	PC
Bahamas	PC	PC	LC
Belize	NC	PC	NC
Bermuda	NC	NC	C
Brazil*	PC	NC	PC

² This chart illustrates the average cumulative compliance by country group with Recommendations 5, 12, and 33. Compliance with each individual recommendation is valued as follows: NC = 0, PC = 0.0825, LC = 0.0165, C = 0.33. Compliance by country with each recommendation is shown in the table below.

British Virgin Islands ³	LC	PC	PC
Bulgaria	PC	PC	LC
Canada*	NC	NC	NC
Cayman Islands	LC	PC	C
Chile	PC	NC	PC
China*	PC	NC	NC
Colombia	PC	PC	C
Cyprus	PC	PC	LC
Czech Republic	PC	PC	PC
Denmark*	LC	LC	PC
Ghana	NC	NC	PC
Hong Kong*	PC	NC	PC
India*	PC	NC	PC
Indonesia	PC	NC	NC
Isle of Man	PC	PC	LC
Israel	PC	NC	PC
Jordan	PC	NC	PC
Kenya ⁴	NC	NC	NC
Liechtenstein	PC	PC	PC
Malaysia	LC	PC	PC
Malta	LC	LC	C

³ The follow-up evaluations for the British Virgin Islands, the Cayman Islands, Denmark, Spain, and the United Kingdom, identified that compliance with Recommendation 5 had improved and accordingly they are categorized here as LC. Additionally, the follow-up evaluation in Denmark also identified that compliance with Recommendation 12 had improved to the level of LC. (Caribbean Financial Action Task Force [CFATF], *Second Follow-Up Report: Virgin Islands*, at 10, (June 1, 2010) available at http://www.cfatf-gafic.org/downloadables/Follow-Up_reports/Virgin_Islands_2nd_Follow-Up_Report_%28Final%29_English.pdf; Caribbean Financial Action Task Force [CFATF], *Third Follow-Up Report: Cayman Islands*, at 7, (Oct. 28, 2010) available at http://www.cfatf-gafic.org/downloadables/Follow-Up_reports/Cayman_Islands_3rd_Follow-up_Report_%28Final%29_English.pdf; Financial Action Task Force [FATF], *Mutual Evaluation Third Follow-Up Report, Anti-Money Laundering and Combatting the Financing of Terrorism: Kingdom of Denmark*, at 12, 26, (Oct. 22, 2010) available at <http://www.fatf-gafi.org/dataoecd/58/32/46253145.pdf>; Financial Action Task Force [FATF], *Mutual Evaluation Fourth Follow-Up Report, Anti-Money Laundering and Combatting the Financing of Terrorism: Spain*, at 14, (Oct. 22, 2010) available at <http://www.fatf-gafi.org/dataoecd/59/15/46253063.pdf>; Financial Action Task Force [FATF], *Mutual Evaluation Fourth Follow-Up Report, Anti-Money Laundering and Combatting the Financing of Terrorism: United Kingdom*, at 11, (Oct. 16, 2009) available at <http://www.fatf-gafi.org/dataoecd/59/15/46253063.pdf>).

⁴ There is no FATF Mutual Evaluation Report available for Kenya on the FATF website, however in an FATF Public Statement dated June 24, 2011, the FATF discussed Kenya's noncompliance generally and in relation to some specific recommendations (http://www.fatf-gafi.org/document/54/0,3746,en_32250379_32236992_48263734_1_1_1_1,00.html#kenya).

Mexico*	PC	NC	NC
Panama	LC	PC	NC
Peru	LC	PC	C
Poland	NC	NC	PC
Romania	PC	NC	LC
Serbia	PC	NC	PC
Seychelles	NC	NC	NC
Singapore* ⁵	LC	PC	PC
Spain*	LC	LC	PC
St. Kitts and Nevis	NC	PC	LC
Switzerland*	PC	PC	NC
Thailand	NC	NC	PC
Turkey*	NC	NC	PC
UK*	PC	PC	PC
Ukraine	PC	NC	PC
United Arab Emirates	NC	NC	PC
Uruguay	NC	NC	NC
USA Incorp Services	NC	NC	NC
USA Law Firms	NC	NC	NC
USA Overall*	PC	NC	NC
Vietnam	NC	NC	PC

* Indicates country is an FATF member.

⁵ The follow-up evaluations for Singapore and Spain identified improved compliance. In Singapore, compliance with Recommendations 12 and 33 improved but not to the level of LC, and has been categorized here as PC (Financial Action Task Force [FATF], *Mutual Evaluation Second Follow-Up Report, Anti-Money Laundering and Combatting the Financing of Terrorism: Singapore*, at 5, (Feb. 25, 2011) available at <http://www.fatf-gafi.org/dataoecd/3/61/47221430.pdf>). In Spain, compliance with Recommendation 12 improved to a sufficient level of compliance that has been categorized here as LC. Compliance with Recommendation 33 improved but not to the level of LC, and has been categorized here as PC (Financial Action Task Force [FATF], *Mutual Evaluation Fourth Follow-Up Report, Anti-Money Laundering and Combatting the Financing of Terrorism: Spain*, at 5, (Oct. 22, 2010) available at <http://www.fatf-gafi.org/dataoecd/59/15/46253063.pdf>).

Appendix D: International Formal Incorporation Identity Requirements

Country	Identity Required	Type	Notarized identity	Type
Argentina	X	Identification of all shareholders (Commercial Companies Law, "Sociedades Comerciales", Law 19550 of Apr. 3, 1972, t.o. 1984 [D. 841 of Mar. 20, 1984] as am'd by Law 23576 of July 19, 1988 as am'd)	X	Notarized signatures of founding partners (http://doingbusiness.org/data/exploretopics/starting-a-business)
Australia	X	List of directors and subscribers (Corporations Act §117)		
Austria		1980 Law on Limited Liability Companies and the Stock Company or Corporation; 1965 Austrian Corporation Law		
Bahamas		Companies Act 1992, §§3, 6, 48, 118; Business Licenses Act 1980; International Business Companies Act 2000, §§181, 184, 185		
Belize		Regulations of June 2001; Companies Act, §§5, 38, 251		
Bermuda	X	The names, addresses and nationalities of the persons who subscribe their names to the memorandum. (Companies Act (CA)1981, §§6, 53, 62(1-2), 91(1-2), 98, 133; CA Amendment 2009, 3rd Schedule, Part I (§114))		
Brazil	X	List of shareholders names(Law 6404 of Dec. 15, 1976 as am'd; C.C. arts. 1088, 1089)		
British Virgin Island		Business Companies Act (BCA) 2004, §§5, 9; BCA Amendment 2005, §§2, 55, 67-77, 132; International BCA 2000, §§185, 186		
Bulgaria	X	Notary certification of manager(s)' signature (Arts. 158-252 LC).	X	Notarized manager's signatures (Arts. 158-252 LC).
Canada	X	Registered names of managers/directors (Business Corporations Act, §§5, 14, 100, 118, 119, 136)		
Cayman Islands	X	Each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes. (Companies Law (CL) (2009 Revision), §§26, 163, 179, 229(1), 230)		
Chile	X	The names of shareholders in notarized deed (Doing Business in Chile, Laws 18046 of Oct. 21, 1981 as amended, 18045 of Oct. 21, 1981 as amended)	X	Names of shareholders notarized (Doing Business in Chile, PKF available at http://www.pkf.com/media/131770/doing%20business%20in%20chile.pdf)
China	X	Photocopy of the identity card of the individual shareholders (http://doingbusiness.org/data/exploretopics/starting-a-business ; 1988 Registration Regulations Art. 4)	X	Identity card (http://doingbusiness.org/data/exploretopics/starting-a-business)
Colombia	X	Name, nationality and domicile of shareholders (C. Com. 98-121, 373-376)		
Cyprus	X	Registered names of managers/directors and officers (Companies Law, Ch. 113, §§14,75, 81, 102, 192, 197, 347)		
Czech Republic	X	Registered names of legal owners, officers, and managers/directors (Commercial Code (Act No.513/1991 Coll.), §§24, 28, 62, 156, 175, 184(5), 194(5,7), 217a		
Denmark	X	Government obtained digital signature required to register business (http://doingbusiness.org/data/exploretopics/starting-a-business ; Act on Central Business Undertaking Register, Consolidated Act No. 653 of June 15, 2006)		

		Subscriber, shareholder and directors names and information (http://doingbusiness.org/data/exploretopics/starting-a-business ; Ghana Companies Code 1963 (Act 179))		
Ghana	X			
Hong Kong	X	Managers/directors, legal owners, officers (Hong Kong Companies Ordinance, §§14, 73, 153(B), 154,333)		
India	X	Register names of directors and secretary (Martindale-Hubble India Law Digest, 2.03; Companies Act 1956)	X	Government obtained DIN number required which requires proof of identity (http://doingbusiness.org/data/exploretopics/starting-a-business)
Indonesia	X	Full name and information of managers, directors, commissioners, members and partners of business (Martindale-Hubble Indonesia 2.02; Law No. 3 of 1982)	X	Identity card of Pres. Required for trade license (http://doingbusiness.org/data/exploretopics/starting-a-business)
Isle of Man	X	Each subscriber must write opposite to his name the number of shares he takes. (Companies Act 1931, §§5, 12,64, 312)		
Israel	X	List of directors (Martindale Hubble Israel Law Digest, 2.03; Companies Law 2005)	X	Authenticated directors signatures (http://doingbusiness.org/data/exploretopics/starting-a-business)
Jordan	X	Each subscriber must write opposite to his name the number of shares he takes. (Companies Law No. I of 1989)		
Kenya	X	Particulars of Directors and Secretary (http://doingbusiness.org/data/exploretopics/starting-a-business ; Companies Act 2009)		
Liechtenstein	X	Registered name of managers/directors (Personen- und Gesellschaftsrecht, Art.180, 279, 291, 263)		
Malaysia	X	Particulars of at least 2 shareholders and 2 Malaysian directors (http://doingbusiness.org/data/exploretopics/starting-a-business ; Registration of Businesses Act (Act 197); Companies Act (Act 125))		
Malta	X	Name and information of subscribers and directors (Martindale-Hubble Malta Law Digest, 2.03; Companies Act, Act XXV of 1995)		
Mexico	X	Names, nationality and residences of incorporators (Martindale-Hubble Mexico Law Digest, 2.03; General Law of Mercantile Companies, of July 28, 1934 as am'd)		
Panama	X	Registered names of managers/directors (Commercial Code Decree-Law No. 32 of 1927)		
Peru	X	Name, occupation and domicile of incorporators (Martidale-Hubble Peru Law Digest, 2.03; General Law of Societies, Law 26887 of Dec. 5, 1997 as am'd)		
Poland		The application for registration of the company shall be signed by all members of the management board. (The Code of Commercial Partnerships and Companies (2000) Articles164, 166.)		
Romania		Law 31/1990		
Serbia	X	Authenticated signatures of founder(s) (http://doingbusiness.org/data/exploretopics/starting-a-business ; Law on Business Companies 2003)	X	Authenticated signatures (http://doingbusiness.org/data/exploretopics/starting-a-business)
Seychelles		Companies Ordinance 1972, §§3, 10, 21, 100, 164, 310		
Singapore	X	Registered names of managers/directors and officers (Companies Act, Ch. 50, §§19, 66, 126, 145, 171, 172, 367; Business Registration Act, Ch. 32, §6)		
Spain	X	The public deed of incorporation must have the identity of the shareholders, including a fiscal identification number for each (http://doingbusiness.org/data/exploretopics/starting-a-business ; Royal Decree 1784/1996 of July 19)	X	Fiscal Identification number (http://doingbusiness.org/data/exploretopics/starting-a-business)
St. Kitts and Nevis	X	Registered names of managers/directors and officers (Companies Act 1996 (No. 22 of Registered office 1996), §§4, 8, 51, 72, 73, 195)		
Switzerland		Code of Obligations, Ordinanza sul registro di commercio del 17		

		ottobre 2007 (Stato 1° gennaio 2008), Art. 66-68		
Thailand	X	Name of owner (Martindale-Hubble Thailand Law Digest, 2.03; Commercial Registration Act (No. 2), B.E. 2549 (A.D. 2006))		
Turkey	X	Notarized identity cards of company managers (http://doingbusiness.org/data/exploretopics/starting-a-business ; Com. C. 35)	X	Notarized identity cards (http://doingbusiness.org/data/exploretopics/starting-a-business)
Ukraine		Companies Law, Sept. 19, 1991		
United Arab Emirates	X	Registered names of managers/directors (Companies Law 2009, DIFC Law No. 2 of 2009, Art. 11, 38, 51,115)	X	Passport copy of partners (http://doingbusiness.org/data/exploretopics/starting-a-business)
United Kingdom	X	Statement of company's proposed officers (Martindale-Hubble England Law Digest, 2.03; Companies Act 2006)		
United States		Delaware Code, Title 8, Ch.1, §§101, 132, 141(a), 145, 158, 371		
Uruguay	X	Registered names of managers/directors and officers (Ley Nº 16.060 Sociedades Comerciales, art. 13; Ley Nº 17.904, art. 13, 16;)		
Vietnam	X	Must maintain register of members or register of shareholders (Law on Enterprises, Art. 9, 1992)	X	Copy of people's identity card, passport (Law on Enterprises, Art. 16, 1992)

Appendix E: Average International Compliance: Formal (National Regulations) and Informal (Field Experiment)



NOTES: Cumulative compliance is the sum of countries compliance with recommendations 5, 12, and 33. The difference in average compliance between FATF member countries and Non-FATF member countries in the field study, formal data, and cumulative compliance data was 0.053, 0.085, 0.04 respectively. Difference in means tests show that these differences are not statistically significant. For the field study, a two-tailed t-test yielded a p-value of 0.45; for the formal compliance data, the p-value was 0.26; for the cumulative compliance data, the p-value was 0.2857.

FATF Member Country and Non-Member Country Compliance: Two-Sample Difference in Means T-Test Results

	FIELD STUDY	FORMAL COMPLIANCE	CUMULATIVE COMPLIANCE
Difference in FATF/NON-FATF Means:	0.053	0.083	0.04
T-Statistic:	0.7571	1.145	1.072
Degrees of Freedom:	45	44	63
P-Value:	0.4538	0.26	0.286

NOTES: Cumulative compliance is the sum of countries' compliance with recommendations 5, 12, and 33. For purposes of the difference in means tests, the null hypothesis is that the difference in average compliance between FATF and Non-FATF countries is zero. Thus, p-values reflect the degree of confidence with which we can reject that hypothesis. For example, a p-value of 0.4538 means we are about 54 percent confident that the difference in means is not zero.

Appendix F: Selection Model of Response and Compliance

Treatments	Response	Compliance	Resp. Constant	Comp. Constant	N
Int'l Standards	-0.070 (0.113)	-0.062 (0.119)	0.179** (0.077)	-0.507*** (0.080)	500
Rationalism	-0.248** (0.179)	-0.332*** (0.120)	0.179** (0.077)	-0.507*** (0.080)	522
Constructivism	-0.068 (0.109)	-0.134 (0.116)	0.179** (0.077)	-0.507*** (0.080)	529

Standard errors in parentheses

*** $p < 0.01$, ** $p < 0.05$, * $p < 0.1$