HOW INTERNATIONAL LAW OBLIGATES:
INTERNATIONAL IDENTITY, LEGAL OBLIGATION, AND
COMPLIANCE IN WORLD POLITICS

DISSERTATION

Presented in Partial Fulfillment of the Requirements for the Degree Doctor of
Philosophy in the Graduate School of The Ohio State University

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ABSTRACT

All political leaders represent the political authority of the state and are committed to state sovereignty. Yet some are also moved by a sense of perceived international legal obligation and defer to international legal rules and institutions. Why do some politicians develop a sense of legal obligation and defer to international law while others do not? This dissertation seeks to explain the psychological logic of legal obligation.

Legal obligation entails a tension between commitment to the sovereign authority of the state and deference to international law, and imposes psychological “sovereignty costs” upon politicians. I explain the psychological logic of legal obligation by analyzing the effect of international superordinate identification on the resolution of this tension.

My central claim is that political leaders’ degree of international identification critically shapes their sense of legal obligation by affecting the perceived legitimacy of international law’s authority. I argue that international identification, through the causal mechanism of reference group membership, prompts politicians to re-conceptualize their countries as members of the international community rather than view statehood separate from membership in the society of states. International identification helps actors assimilate state-concept into the prototype of international community member, shift their understandings of the state’s legitimate duties to the international level, and associate sovereignty with recognized member status rather than with supreme decision-making authority. As a result of these transformations, international identification
increases the perceived legitimacy of international law’s authority, influences how politicians process the psychological “sovereignty costs” involved in legal obligation, and thus conditions actors’ ability to reconcile commitment to sovereignty with deference to international law. Therefore, I argue that the variation in individual levels of legal obligation is created by the strength of international identification. High international identifiers view deference to international law as a responsibility of membership in the international community, and thus could balance sovereignty with deference with relative ease, leading them to form a strong sense of legal obligation. Low international identifiers perceive deference as loss of sovereign capacity, and thus lack a viable sense of legal obligation.

I also analyze the relationship between legal obligation and compliance. I posit that a strong sense of legal obligation strengthens politicians’ compliance resolve by acting as a self-imposed constraint and by heightening their sensitivity to social pressure to uphold international law. Therefore, legal obligation increases an actor’s propensity to favor compliance even when compliance is costly.

Employing survey and experimental methods, I test for the effect of international identification on the degree of legal obligation as well as examine the direct influence of legal obligation on compliance preferences. I evaluate my hypotheses both in the context of European Union law and international law. Using data from an original survey of German Parliamentarians and laboratory experiments, and employing quantitative methods of analysis, I find a systematic relationship between international identification and legal obligation strength. I further discover that a strong sense of legal obligation raises the threshold of compliance cost tolerance and increases compliance resolve.
To My Family

&

For Karo$
ACKNOWLEDGEMENTS

Writing my dissertation has been a real learning experience. I learned a lot about scholarship, good research, and about myself. I am grateful for the advice and support of many individuals who helped me go through this experience and contributed to my professional and personal growth. I owe a lot to my committee. Rick Herrmann, my advisor, stood by me through all the ups and downs and supported me from the time I arrived at Ohio State until the completion of this project. He always offered insightful comments and helped me improve my work. By allowing me to engage his work, he showed me how to combine rigor with innovation. But Rick also challenged me a great deal and pushed me to think harder. His critical eye made me a resilient scholar.

This dissertation would not have been possible without the support and guidance of Alex Wendt. He believed in me when I had trouble believing in myself. He played a crucial role in the early stages of this project and helped me get out my pre-prospectus blues. I will never forget that he met with me four times in two weeks before the prospectus meeting. Alex’s encouragement was also present in the later stages of this project. He always masterfully combined encouragement with constructive criticism. It is also thanks to Alex that I broadened my intellectual horizons.

I am very grateful to Alex Thompson for providing invaluable guidance and incredibly helpful comments. Alex had been very patient with my work and helped me learn how be patient with it myself. He pushed me to reach higher standards of
scholarship while maintaining a positive attitude. I learned a lot about good scholarship and professionalism from Alex, and I am still learning. He is a great professional role model, and working with him has been a privilege.

Many thanks should also go to individual faculty members at my department for providing a vibrant academic environment and supporting us graduate students in our first steps towards scholarly independence. I especially thank Sonja Amadae, Larry Baum, Kathleen McGraw, Jennifer Mitzen, Randy Schweller, Daniel Verdier, Herb Weisberg, and Jack Wright for encouraging me. I am also grateful to my department, the Mershon Center, and to the Graduate School for providing financial and research support.

I am fortunate to have had wonderful graduate student colleagues. Rachel McGuire and Banks Miller had been my friends for a long time and sometimes gave me a home away from home. I owe a lot to Rachel for listening to me and for “going outside” with me whenever I needed it. I am glad I got a chance to observe Banks’ professionalism. Rebecca Moore, Seth Goldstein, Eric Grynaviski, and Tim Luecke had always been wonderful comrades. John Oates, Clement Wyplosz, and Erin Graham had been a joy to talk to whether the subject was work, our shared professional struggles, or minutia that helped us take a break. I thank Matt Scherbarth for our “political science talks” throughout the two years we were neighbors. Special thanks goes to Dane Imerman for being a good colleague and helping me put things in perspective.

I am also indebted to many individuals who played important roles in my life during my graduate career. I owe a lot to Casey for keeping me “sane” and helping me change the way I look at things. He showed me the art of “thinking strong.” Casey probably does not know this, but he had been my rock.
David had been an amazing friend and a good influence on me. He encouraged me to appreciate life no matter what was happening on “the dissertation front.”

Ilhami’s “writing music” came in very handy during 5 am writing sessions. Cem’s e-mails motivated me to write better and more efficiently.

Clifford Griffin, a professor at North Carolina State University, believed in my intellectual skills and had been a great mentor. Zeynep’s friendship may be the most important personal gain of my masters years. She became the sister I never had.

I am very lucky to have met Jack. He inspires me and contributes to my intellectual life just by being himself. If there is always tomorrow for our friendship, I look forward to many tomorrows.

My greatest debts are to my family members who loved and supported me unconditionally. Whenever I looked in my father’s eyes, I found peace and the strength to carry on. My father Nedim always believed in me and encouraged me to focus on my education. Aysegul, my mother, had been my lighthouse and karmic friend throughout my academic life. My grandmother Sevim gave me the survival skills that brought me thus far. Ali, my granddad, showed me the importance of hard work and courage. When I was growing up, Nilgun taught me how to think for myself. When I was writing my dissertation, she encouraged me to use this quality even when I was frustrated. Citir showed me that distance does not matter when it comes to love. I could not have accomplished much in life without my family. Finally, I owe a lot to Karos. He was there for me no matter what. From Ankara to Europe to the U.S., Karos had been my companion. This dissertation is dedicated to Karos and to “my people,” with great appreciation.
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CHAPTER 1

INTRODUCTION

Those who act in international affairs, statesmen, diplomats, judges, advocates, regularly and unhesitatingly assume the existence of a juridical obligation in international law.

James L. Brierly (1958:19)

1.1 The Curious Case of Legal Obligation and The Theory

All political leaders represent the political authority of the state and are committed to state sovereignty. Yet some are also moved by a sense of perceived legal obligation and defer to international legal rules and institutions.¹ Why do some politicians develop a sense of legal obligation and defer to international law while others do not?² How does legal obligation, defined as an actor’s subjective acknowledgement of international law’s governing authority, influence preferences and facilitate policies of dutiful compliance? These questions motivate this dissertation.

Legal obligation represents a distinct disposition that signifies deference to the governing authority of international law. It refers to a subjective motive that indicates an

¹ I make a distinction between duty and obligation. A duty denotes a specific performance requirement or a command. Obligation in my usage always stands for a motive and refers to the subjective state of perceiving an action--a duty-- as required. I fully conceptualize felt obligation and felt legal obligation in chapter 2. For distinctions between an obligation and a duty, see, for example, Brandt (1964) and Ladd (1970).

² As I will further discuss in chapter 2, my interest in legal obligation is puzzle-driven. My arguments make no moral claims.
actor’s acknowledgement of international law’s governing authority, defined as the authority to impose legitimate duties and demand compliance (Hart, 1961; Raz, 1990a, 1979; Hurd, 1990, 1991). This acknowledgement involves the subjective delegation of sovereign decision-making authority to international law to guide state behavior (Coleman, 2000; Hurd, 1999; Raz, 1999 Regan, 1999; Kornhauser, 1999).

Legal obligation is primarily rooted in the institutional normativity of law. As Max Weber (1978) has explained in his discussion of legal-rational authority, the basis of legal obligation is the authority of law itself perceived to hold the right to command (e.g. Burgess, 2002; Kronman, 1983, Regan, 1999; Kornhauser, 1999). Since legal obligation flows from the recognition of international law’s right to govern as a social institution, it embodies the intrinsic value of upholding legal rules and represents recognition of lawful office above the state. In this sense, obligation to international law marks deference to international juridical authority (see e.g. Lake, 2009, 2007).

In the anarchy of international politics, where sovereign states remain the ultimate centers of authority and international law lacks formal power, political deference to international juridical authority poses a critical puzzle that requires an explanation. A defining characteristic of the anarchic international system populated by sovereign states is the absence of formal juridical authority (Lake, 2007, 2003). Anarchy privileges the sovereign authority of the state and designates it as the supreme form of authority (Waltz, 1979; Gilpin, 1981; Wight, 1949; Milner, 1991). Hierarchical relations may develop

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3 Brian Schmidt’s (1998) concept of juristic state refers to the characterization of the state in terms of legal authority. As David Lake (2007) explains, in this conceptualization of authority, the state equals law. On the juristic state and formal-legal authority further see Lake (2009). On the juristic definition of state sovereignty and public power also see Loughlin (2003).
between states (Lake, 2009, 2007), international institutions may become authoritative
(Barnett and Finnemore, 2004; Hurd, 2007); yet if “...authority is law, and vice versa,” as
David Lake (2007:53) notes, then anarchy effectively implies juridical anarchy.

The primary role of political leaders under juridical anarchy is to represent the
sovereign authority of the state and by extension the will of the people in the
international arena (e.g. Loughlin, 2003; Urbinati and Warren, 2008; Hathaway and
Lavinbuk, 2006; Ku, 2000). On the surface, politicians have little reason to maintain a
sense of legal obligation and defer to international law. What obligates the bearers of
sovereign authority are national laws and institutions rather than international law, which
is created by states for political reasons (Abbott and Snidal, 2000), binds only
consensually, and lacks systematic enforcement (Barkun, 1968; Kelsen, 1961; Austin,
1995). Importantly, deference to international law is likely to be psychologically costly for
state representatives. In addition to limiting their decision-making and policy autonomy,
acknowledging international law’s right to govern and subjectively delegating sovereign
judgment capacity to international legal institutions clashes with politicians’ role of
representing the political authority of the sovereign state (Lindhal, 2003; Bradley and
Kelley, 2008; Abbott and Snidal, 2000). Obligation to international law conflicts with
agents’ commitment to sovereignty, thereby causing a motivational conflict. Therefore, we
might expect all state representatives to lack felt legal obligation and eschew deference to
international law. On what grounds, after all, can international law evoke an obligatory
motive?

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4 Obligation to international law conflicts with agents’ commitment to sovereignty, thereby causing a motivational conflict. Therefore, we might expect all state representatives to lack felt legal obligation and eschew deference to international law. On what grounds, after all, can international law evoke an obligatory motive?

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Contrary to conventional expectations, however, state representatives display important variation in their sense of perceived legal obligation and willingness to defer to international law. This variation in deference tendencies across actors raises important questions about the factors that motivate politicians to subjectively acknowledge the authority of international law and about the independent effect of international law on state behavior. Where does a sense of legal obligation come from? Why do politicians vary in their willingness to defer to international law? How does a sense of international legal obligation shape policy choices?

Despite the clear importance of these questions, the literature lacks a cogent explanation. Existing literatures in International Relations (IR) and International Law (IL) largely treat legal obligation as a technical matter to describe the extent to which legal rules formally bind states (Abbott et al., 2000; Abbott and Snidal, 2000). To date, little has been done to articulate a comprehensive theory of legal obligation that explains why international legal rules inspire in a sense of legal obligation in policy makers and motivate deference. In this dissertation, I develop and test a theory that explicates the psychological logic of legal obligation. Drawing upon the literatures on Social Identity and Social Influence, and using arguments from Legal Theory, I provide a theoretical framework for explaining why and under what conditions political actors develop a sense of legal obligation, why they vary in their relative willingness to defer to international law, and how legal obligation shapes dutiful compliance.

Legal obligation entails a tension between commitment to the sovereign authority of the state and deference to international law, and implies a motivational conflict; it imposes
psychological “sovereignty costs” upon political actors. Just like legalization imposes “sovereignty costs” upon governments by limiting their autonomy (Abbott and Snidal 2000), subjectively delegating decision-making authority to international law creates a motivational conflict and leads to psychological “sovereignty costs” because it restricts politicians’ decision-making authority and policy autonomy, and most importantly clashes with their fundamental role of representing the sovereign authority of the state (Hathaway, 2007; Erne, 2009, also see Barkin and Cronin, 1994). For a sense of legal obligation to form, this tension must be settled and deference must be made compatible with the practice of sovereignty at the individual level.

I explain the psychological logic of legal obligation by analyzing the effect of international (collective) identification on the resolution of this tension. International identification, as I employ it here, represents an actor’s attachment and perception of his or her state’s connection to an international superordinate community, such as the international community or the European polity. It refers to those parts of “self-and state-concept” that are tied to international political associations (Tajfel, 1981; Brewer, 2001).

My central claim is that political leaders’ degree of international identification critically shapes their sense of legal obligation by affecting the perceived legitimacy of
international law’s authority, and thus influences actors’ ability to reconcile sovereignty with deference to international law. I argue that international identification, through the causal mechanism of reference group membership, prompts politicians to re-conceptualize their countries --and by extension themselves-- as members of the international community rather than view statehood separate from membership in the society of states. International identification helps actors assimilate state-concept into the prototype of international community member, shift their understandings of the state’s legitimate duties to the international level, and associate sovereignty with recognized member status rather than with supreme decision-making authority.

As a result of these transformations, international identification increases the perceived legitimacy of international law’s authority, influences how politicians process the psychological “sovereignty costs” involved in legal obligation, and thus conditions actors’ ability to reconcile sovereignty with deference. Therefore, the variation in individual levels of legal obligation is created by the strength of international identification. High international identifiers view deference to international law as a responsibility of membership in the international community, and thus could balance sovereignty with deference with relative ease, leading them to form a strong sense of legal obligation. Low international identifiers perceive deference as loss of sovereign capacity, and thus lack a viable sense of legal obligation.

This explanation of legal obligation draws on a causal model of obligation-formation built upon the mechanism of reference group membership (Kelman and Hamilton, 1990; Turner, 2005; Terry, Hogg and McKimmie, 2000). Reference groups
implicated in identities provide focal points for understandings of normativity, and as a result shape actors’ perceptions of legitimate duty and political institutions worthy of deference. By determining which groups and group norms have significance for an individual, identity-centered reference groups serve as guides to relevant duties and rights, and authoritative institutions in a social group. Therefore, through the mechanism of reference groups the extent of international identification conditions the sovereignty-deference equilibrium. High identification integrates the sovereign state into the international community member prototype and prompts deference to international legal institutions as a responsibility of membership. In contrast, weak identification hinders this integration and prevents deference to international law. Thus, I hypothesize that high international identifiers are more likely to hold a sense of legal obligation than low international identifiers.

Since it represents internalized respect for international law’s institutional authority, legal obligation naturally implies a strong preference for compliance. Specifically, legal obligation shapes compliance decision-making in two ways. First, it acts as a self-imposed constraint upon policy makers and renders them less likely to prefer defection when temptation strikes (e.g. Price, 2008; Klotz, 1995; Herrmann and Shannon, 2001). Second, obligation to international law makes actors more responsive to social norms, and thus more sensitive to social pressure to uphold international legal rules (e.g. Goodman and Jinks, 2004; Checkel, 2001; Kauffman and Pape, 1994). As a result, a sense of legal obligation increases politicians’ readiness to tolerate compliance costs and pay a higher price for compliance. Thus, I posit that legal obligation leads to an increased compliance
propensity even when compliance is costly and at odds with individual state interests; legal obligation strengthens actors’ compliance resolve.

While the effect of international identification on the settlement of the sovereignty-deference tension at the individual level constitutes the core of the proposed theory of legal obligation, my argument introduces an important additional dimension of international law and combines a micro approach to explaining political motives with a new structural account of international law and legalization, thereby connecting agents to structures (Carlsnaes; 1992; Wendt, 1987; Dessler, 1989).  

Focusing on the constitutive dynamics of legalization, I conceptualize legalization as an associational practice of forming legally defined “communities of principle” that gives an expressive quality to international legal rules (Franck, 1990; Dworkin, 1986). Expanding the existing “obligation, precision, delegation” model of legalization (Abbott et al., 2000; Abbott and Snidal, 2000), I argue that legal rules express associative duties in international polities, defined as duties that derive from states’ memberships in international political communities and are owed to other members and to body politic who have the “standing” to expect their performance (Gilbert, 2006a; Tussmann, 1960; also see Bull, 2002; Hurrell, 2000; Franck, 1990). It is this expressive dimension of international law, I contend, that makes international identification central to the formation of legal obligation at the individual level.

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8 On the importance of explaining behavior in terms of interactions between agents and structures, also see, Jervis (1976), Herrmann (1988).

Employing survey and experimental methods, I test for the effect of international identification strength on the degree of legal obligation as well as examine the direct influence of legal obligation on compliance policies. First, using data from an original survey of German Parliamentarians, I analyze German politicians’ sense of obligation to European law and international law. I find that a high degree of attachment to the European policy associates with a strong sense of obligation to European law. This sense of obligation, in turn, results in an increased willingness to favor compliance with European Union (EU) law. My results further establish that European identity and obligation to EU law operate independently, and thus cannot be subsumed under support for European integration or a multilateralist foreign policy disposition.

Importantly, I discover that the relationship between international identification, legal obligation, and compliance preferences holds at the international level. I show that parliamentarians who highly attach to the international community maintain a stronger sense of obligation to international law than those who lack this attachment. I observe that this relationship largely remains robust when political party affiliation, procedural legitimacy of laws, and individuals’ normative agreement with legal duties are taken into account.

I further demonstrate that obligation to international law raises actors’ cost tolerance thresholds and facilitates compliance. Even though compliance costs decrease the willingness to uphold legal rules across all politicians, strong legal obligation holders are significantly more resistant to compliance costs. I find a robust relationship between legal obligation and support for compliance even when compliance with international law
is at odds with Germany’s material interests. Similarly, I observe that strong legal obligation holders are significantly less likely to give into temptation. Strong obligation holders tend to favor compliance in costly compliance situations even if their government could get away with violation without facing social or material sanctions or has the luxury to comfortably fend off enforcement.

Second, I analyze the causal claims of my theoretical argument as well as examine its internal validity using data obtained from controlled laboratory experiments, I offer individual level evidence supporting the systematic relationship between international identification and legal obligation on the one hand, and legal obligation and compliance preferences on the other. Consistent with my previous findings, I show that individuals who highly identify with the international community hold a stronger sense of obligation towards international law even if they question the normative or procedural legitimacy of international treaties and agreements. Critically, I demonstrate that the effects of procedural and normative legitimacy on legal obligation do not operate in a simple linear fashion, but are moderated by how much an individual attaches to the international community.

I further find that strong legal obligation holders are significantly more likely to favor compliance with international legal rules even when compliance requires sacrificing national interests. Additionally, I discover that strong and weak legal obligation holders are differentially affected by enforcement risks. On balance, the possibility of material and social sanctions in case of non-compliance leads to an increased compliance propensity.
Yet enforcement is only a secondary consideration for strong legal obligation holders given their deferential dispositions.

Explaining the psychological logic of legal obligation has implications for important theoretical, political, and normative debates over the role of international legal institutions in the international system, and contributes to a host of theoretical and policy dialogues over the prospects of global governance. First, by explaining the subjective determinants of legal obligation, this dissertation illuminates a critical puzzle in international politics and directly contributes to IR and IL literatures that address the role of law in world politics. The theoretical argument advanced here also refines Rationalist and Constructivist approaches in IR and their Instrumentalist and norm-based counterparts in IL on the obligatory quality of international law and the independent effects of legal rules on state behavior. Focusing on the micro-foundations of legal obligation, this study counters pessimistic or optimistic perspectives and shows that the obligating power of international law is in the eye of the beholder.

Second, this study has implications for global governance. As many have noted, governance is most effective and durable when law following is voluntary and based on a sense of legal obligation rather than on coercion or self-interest (Weber, 1978; Easton, 1965; Dahl and Lindblom, 1992; Hurd, 2007; Nardin, 1987; Kornhauser, 1999). By explaining the psychological basis of legal obligation, this dissertation directly contributes to an understanding voluntary compliance with international law in world politics (Franck, 1990; Kratochwil, 1989; Young, 1979). As a result, it explicitly engages heated policy debates over global governance and suggests international identification as an
important mechanism capable of enhancing the efficacy of institutional legalization and overcoming collective action problems by facilitating a sense of international legal obligation.\(^{10}\) Modeling the effects of international identification on the authority relationship between state representatives and international legal institutions, furthermore, leads to an improved account of how political leaders manage dueling domestic and international structures of authority as well as helps specify the conditions under which the legal culture of the international system reflects juridical authority rather than juridical anarchy. Finally, by forming a connection between IR and IL scholarships, and by bringing the insights from Social Psychology and Legal Theory into studies of international law, this dissertation takes an important step towards multidisciplinary research on international legal institutions.

1.2 What is Legal Obligation and Why Does it Matter?

Legal obligation, as I employ it here, refers to a subjective motive\(^{11}\) that indicates an actor’s acknowledgement of international law’s governing authority, that is the authority to impose legitimate duties and demand compliance (Hart, 1961; Raz, 1990a, 1990b; 1979; Hurd, 1999, 1991; Flathman, 1980). Legal obligation represents a distinct disposition that signifies deference to the institutional authority of international law

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\(^{10}\) On the importance of collective identity for addressing collective action problems, see Wendt (1994). On collective action problems, see Olson (1965).

\(^{11}\) I use motives and reasons interchangeably and bracket the philosophical questions regarding reasons, causality and intentionality. See for example, Davidson (1963), Hutto (1999).
(Kornhauser, 1999; Regan, 1999). In renowned law scholar Lon Fuller’s (1969) words, legal obligation reflects “fidelity to law.” 12

Like all obligations, legal obligation is a relational disposition that originates from an authority relationship between an actor and an obligating medium, such as a rule or institution, and belongs to the general category of deference outcomes. Yet, legal obligation indicates a specific form of deference. This sense of obligation flows from the recognition of international law’s right to govern as a social institution in its own right (Weber, 1978; Hart, 1961; Raz, 1990a, 1979; Hurd, 1999, 1991). 13 Legal obligation in this sense represents recognition of lawful office above the state and implies deference to international juridical authority (see e.g. Lake, 2009, 2007). It is, therefore, different from obligations based on one’s belief in the legitimacy of a specific rule’s substantive content or those based on social pressure (Hurd, 2007; March and Olsen, 1998). This is not to claim that normative content of laws or social expectations do not figure in legal obligation. The point rather is that legal obligation marks a particular kind of authority relation between actors and legal institutions that is primarily rooted in deference to law qua law. Daniel Bodansky’s (2006:293-294) reference to an Isaac Newton poster further illuminates the point.

The idea [essence of law’s independent authority] was nicely expressed in a poster I once saw showing Isaac Newton sitting beneath the apple tree, with an apple just beginning to fall. The poster proclaimed at the bottom, ‘Gravity: It’s not just a good idea. It’s the law!’

12 Also see H.L.A. Hart’s (1961) distinction between the “internal” and “external” views of law.

13 Positive law is a social fact that has no ultimate reference to abstract higher order norms such as morality. The literature on positivism cannot be cited here in full. For a starting review of legal positivism, see, for example, Green (2009). For varieties of positivism, such as inclusive and exclusive positivism, see Himma (2002) and Marmor (2002) respectively. On the autonomy of law, generally see the collection of essays in George (1996). This autonomy claim is largely a function of the social fact thesis of positivism.
Of course, with gravity its status as ‘law’ adds nothing to its force - that is the joke. But the joke depends on our understanding the term, ‘law’, not merely in terms of physical regularities but in a second legal sense, as providing a reason for action in and of itself, because of its status as ‘law.’ Like the law of gravity, an international law may be adopted by states because they consider it a good idea. But once adopted, its legal force does not depend on states continuing to accept the rules as a good idea, its status as law constitutes an independent reason for action.

Legal obligation, as I employ it, is also distinct from the formal legal obligations countries take on by consenting to specific international agreements and treaties. Indeed, exposing the subjective dimension of legal obligation to complement its technical use dominant in the institutionalist literature in IR is the central objective of this dissertation (Abbott et al., 2000; Abbott and Snidal, 2000). The psychological face of legal obligation is also separate from its “sociological face” (Reus-Smith, 2003:595). The sociological aspect of legal obligation attends to the societal recognition of international law as binding against the backdrop of a socio-historical context. It looks at law’s authority from outside-in and is largely agnostic to obligation in a psychological sense at the individual level. Legal obligation as used here examines law’s authority from inside-out and attends to the subjective face of obligation. While the psychological and sociological aspects of legal obligation are complementary, an emphasis on the former includes different explanatory objectives and calls for particular analytical and methodological choices.

Finally, my characterization of legal obligation differs from how it is typically described in Legal Theory and Philosophy and from the more general concept of political

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14 Throughout this study, I will refer to the formal legal responsibilities of states as legal duties or legal obligations. The term legal obligation in the singular form always refers to legal obligation in the subjective sense.
obligation (Green, 1988; 2010; Pennock and Chapman, 1970). Philosophers and legal theorists refer to legal obligation in discussing broader matters of political obligation; some even equate legal obligation with political obligation (Horton, 2010). Political obligation is fundamentally concerned with the relationship between citizens and authoritative institutions in a political community (Green, 1988; Horton, 2010; Raz, 1990a, 1990b).

The question of legal obligation from a philosophical point of view is whether law’s demand for obedience is “morally” justified and whether members of a political community have a “moral” obligation to obey its laws. This obligation is also called authentic obligation and is not necessarily concerned with individuals’ subjective motivations for obeying the law (cf. Tyler, 1990; Schwartz and Orleans, 1967; McGraw and Scholz, 1991). Whether international law imposes to an authentic obligation upon states has also received some attention. Eric Posner (2003), for example, argues that states do not --and should not have-- an “objective moral” obligation to obey international legal rules. Goldsmith and Posner (2005), similarly, question the moral nature of legal obligation in a sociological sense.

The philosophical question of moral obligation to obey the law raises a myriad of political and normative issues (Edmundson, 1999; 2004; Green, 2010). The so-called problem of evil laws is perhaps the most controversial one and concerns whether individuals have an objective obligation to obey immoral laws (Green, 2010; Coleman, 1989; Greenwalt, 1987; Gilbert, 2006a). In the international context, this issue is sometimes raised in debates over the legitimacy and accountability of international
institutions. The democracy deficit international organizations (IOs) may exhibit, some have argued, could undermine democratic domestic governance and obligate countries and by extension citizens to follow norms over which there is no universal normative consensus (Dahl, 1999; Goldsmith and Posner, 2005; Held, 2004). Questions pertaining to the moral legitimacy of international law’s claim to authority and states’ moral obligation to obey international law are outside the purview of this study (see, for example, Hathaway and Lavinbuk, 2006). I employ legal obligation always in the psychological sense to refer to the subjective state of perceiving an obligation to international law and examine its causes and consequences for international politics. Importantly, I bracket the question of evil laws and assume that international law does not suffer from any alarming moral defect.

International law plays a pivotal role in international politics. Starting with the Treaty of Westphalia (1648), international politics has become substantially legalized. Since the end of World War II alone, governments have created thousands of international treaties in various policy domains ranging from international trade to weapons control, from human rights and international criminality to the protection of the environment. Over 150,000 international treaties and related documents have been registered with Secretariat of the United Nations (UN) as required by Article 102 of the

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15 On the democracy deficit of international organizations, see Dahl (1999), Keohane, Macedo and Moravcsik (2009). On the democracy deficit of EU institutions, see, for example, Majone (1998). On issues of accountability in international politics, generally see Grant and Keohane (2005).

16 Nevertheless, I am attentive to the normative implications of my analysis.
of the UN Charter since 1946. Over 500 major multilateral treaties were deposited with the Secretary General as of January 1, 2009.\footnote{http://treaties.un.org/}

Following the establishment of the International Court of Justice (ICJ) in 1945, judicialization has steadily accompanied the legalization of world politics, leading to an emergent rule of law in the international system. Over the last few decades, states have established several courts and tribunals and created new judicialized dispute settlement procedures designed to adjudicate on governments’ compliance with their international legal responsibilities. The International Criminal Court (ICC), the World Trade Organization (WTO) dispute settlement procedure, the International Tribunal for the Law of the Sea (ITLOS), and the International Centre for the Settlement of Investment Disputes are just a few notable examples. The proliferation of regional judicial bodies, such as the African Court of Human and Peoples Rights (AfCHPR), the Central American Court of Justice (CACJ), and the Court of Justice of the Andean Community (TJAC), similarly, indicate the unparalleled importance of institutional legalization.

International law imposes formal legal obligations upon states. When states sign onto legal agreements or treaties, they assume legal obligations (Abbott et al., 2000; Abbott and Snidal, 2000). In international relations, the basis of legal obligations is consent.\footnote{In 1927, the International Court of Justice in the \textit{S.S. Lotus Case (France vs. Turkey)} declared that states are only bound by rules of law they explicitly consent to commit. Also see the Vienna Convention on the Law of Treaties (1969). \textit{Erga omnes} and \textit{ius cogens} are exceptions to voluntarism and are considered binding upon all states. On \textit{erga omnes}, see, for example Ragazzi (1997), on \textit{ius cogens}, see Bassiouni (1996), Caplan (2003), on persistent objector, see, for example, Charney (1985).} States are only bound by international treaties they have consented to commit
and ratified. Legal obligations are binding upon states, and thus are different from obligations based on coercion, comity or morality alone (Abbott et al., 2000). They invoke specific norms, procedures, and discourses embodied in the international legal system, and are protected by the principle of *pacta sunt servanda* (Abbott et al., 2000; Brownlie, 1998). Legal obligations also allow states and other relevant parties to raise legal complaints and resort to legal remedies when there is a breach. Legalization re-configures the nature of state interaction by orienting actors to focus on the correct interpretation and application of legal rules and de-legitimizing claims based purely on state interests and power (Abbott et al., 2000; Byers, 1999; Kratochwil, 1989).

International politics does not just happen. Political agents make it happen. The real power of law in world politics in effect depends on politicians’ sense of legal obligation and willingness to defer to international law. While formal legal obligations define states’ legal duties, felt legal obligation grounds the international legal system. Political leaders’ acceptance of international law’s governing authority is what makes international law and formal legal obligations meaningful in the first place (Reus-Smith, 2003; Finnemore and Toope, 2001; Brunnee and Toope, 2010; Nardin, 1987). Indeed, it is this felt sense of obligation that explains the commitment to institutional legalization shared by generations of politicians from Tsar Nicholas II to President Obama as well as the diplomatic maneuvers states sometimes make to refuse legal responsibility. It is also this sense of obligation that explicates why even great powers, despite their ability to defect with relative ease, sometimes choose to comply with international law even when

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19 States that have not signed but not ratified a treaty are still obligated to refrain from acts that would defeat the spirit and purpose of the treaty.
compliance is “painful” as Department of State Legal Adviser John Bellinger (2005-2009) once put it.20

Legal obligation has critical implications for world politics. The central political significance of legal obligation derives from its power to facilitate systematic and voluntary compliance with international law. Formal legal obligations merely define states’ legal responsibilities on paper. These obligations are binding upon governments to the extent political leaders perceive them as binding and are guided by a sense of legal obligation. Otherwise, international agreements and treaties represent little more than “scraps of paper.” Felt legal obligation transforms written legal duties into duties that are subjectively adopted by political leaders, and thus anchors the international legal system. “The real power of law to secure systemic compliance does not rest, primarily on police enforcement… but, rather, on the general belief of those to whom the law is addressed that they have a stake in the rule of law itself: that law is binding because it is the law,” opines international law scholar Thomas Franck (2006:91). In this sense, the real power of law in world politics lies in the sense of perceived legal obligation it evokes.

The anchoring effect of legal obligation is more important than ever given the unprecedented depth and scope of institutional legalization. Interdependence and the growing complexity of global problems, normative and practical ones alike, increasingly require deeper forms of cooperation among states (Held and McGrew, 2002; Byers, 2000; Nye and Donahue, 2000; Prakash and Hart, 1999). To devise effective solutions to functional problems as well as to advance specific normative ideals, states typically turn to

international law (Abbott and Snidal, 2000; Shaffer and Pollack, 2010; Rosenau, 2002). Even though governments seek to advance their preferences when formulating international treaties and agreements and exert a certain degree of control over the extent of legalization, complex global problems sometimes necessitate harder forms of law that require important and often costly changes in policy, limit sovereign authority through third party dispute settlement mechanisms, and significantly narrow the universe of political strategies available to states by introducing highly precise behavioral requirements (Abbott and Snidal, 2000). 21 True law-making and law-following are sometimes pragmatic or habitual. Yet there is no question that not all cooperation is “shallow,” not all laws are functional, and not all compliance is trivial. 22

Building institutions and making laws only partially meet the growing demands of effective global governance in the current era. If compliance with international law solely depends on instrumental calculations, enforcement, and on the broader political advantages of multilateralism, the life a stable international legal order is likely to be as long as the next conflict between legality and self-interest, especially when powerful states are at stake (Goldsmith and Posner, 2005; Guzman, 2008; Morgenthau, 1985; Mearsheimer, 1994/95). 23 As the burdens of compliance increase, so does the tendency to violate, making the infrastructure of legal governance flimsier.

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22 On the different forms of adherence to international law, see Koh (1997).

23 On multilateralism see, for example, Ruggie (1992).
The value added of legal obligation is its ability to shape policy at times of crunch by swaying states to comply with international law when compliance appears to be costly (Ratner, 2003; Young, 1979; Barkun, 1968; Brunnee and Toope, 2010; Kratochwil, 1989). At the structural level, legal obligation serves this purpose by shaping the legal culture of the international system. Building upon Lawrence Friedman (1997) and David Nelken (2004), among others, I define international legal culture as the set of principled ideas towards international law and legal institutions, tenor of preferences for compliance prevailing in the international system, and probability of self-restraint states will exercise to resist violating laws when compliance requires significant changes in behavior. International legal culture represents a continuum with juridical authority on one hand and juridical anarchy on the other.

When a sense of legal obligation operates at the individual and state levels and is widely shared at the structural level, the legal culture of the international system will represent juridical authority.24 This legal culture exhibits an incentive structure that rewards compliance, manifests strong beliefs about the normativity of international law, and embodies robust preferences for compliance that are relatively resistant to compliance costs. As Max Weber (1978) has explained, the culture of juridical authority represents a “valid” system that is capable of sustaining itself by encouraging compliant behavior from within.25 Legal obligation directly contributes to the validity of the international legal system by creating a commitment to international rule of law and allegiance to

24 I return to the structural implications of legal obligation in chapter 2 and outline a typology of international legal cultures.

25 See Hurd (2007) for a similar application of Weber’s notion of validity.
international legal institutions (Brunnee and Toope, 2010). A sense of legal obligation shared by political leaders, therefore, is critical to the overall stability of the international legal order which lies at the center of global governance.

Legal obligation also has implications for the anarchic international system and state sovereignty. As there is no *de jure* legal authority in the international system that is formally above the state, anarchy is the orthodox characterization of the international system. The existence of legal obligation problematizes this traditional model. The presence of legal obligation in actors’ policy postures indicates that despite the absence of formal-legal authority in the conventional sense, the international system nevertheless contains a *de facto* structure of legal authority that is subjectively and inter-subjectively recognized (e.g. Bull, 2002; Buzan, 2004; Nardin, 2008; Kratochwil, 1989).

Locating legal authority in world politics calls for a re-formulation of the notions of the anarchy and authority (Hurd, 2007; Ruggie, 1993; Onuf and Klink, 1989), suggests a transformation in the meaning and practice of sovereignty (James, 1999; Philpott, 1999; Bierksteker and Weber, 1999; Lake, 2003), and raises important questions about the nature of “empirical statehood” in an increasingly legalized world (Sorenson, 1999:598; Lyons and Mastanduno, 1995). Normatively, legal obligation and the authority relationship it denotes have implications for principles of popular sovereignty and domestic democracy, and expose critical issues about how obligation to international law can be made consonant with the obligation to the country and serving the will of the nation in political representation. 26(Dahl, 1999; Majone, 1998; Nye, 2001; Moravcsik,

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26 On this problem, also see the normative undertones of Goldsmith and Posner’s (2005) argument.
2004; Hathaway and Lavinbuk, 2006; Ku, 2000). By explaining the psychological determinants of legal obligation and analyzing the effects of this motive on policy choices, this dissertation engages some of these issues and contributes to a fuller understanding of the operation of international law in world politics.

1.3 The Literature and The Puzzle of Legal Obligation

Louise Henkin (1979) was correct. States do comply with international law. Routine compliance is not that surprising especially when cooperation is “shallow” requiring little deviation in behavior (Downs, Rocke, and Barsoom, 1996). Yet a sense of international legal obligation held by some representatives of sovereign states and patterns of dutiful as opposed to strategic compliance do present critical puzzles that require an explanation. Thus far little has been done to develop convincing theory of legal obligation that explains why legal rules inspire in a sense of legal obligation in policy makers, why actors vary in their deference dispositions, and how legal obligation affects compliance preferences. This deficiency has left existing IR and IL approaches to international law and compliance ill-equipped to address the empirical challenge of international law’s obligating power and fully grasp the effects of legal rules on state behavior.

Discourse and practice in international politics indicates that responsibilities imposed by international agreements and treaties are critically important for some actors and elicit a sense of legal obligation. “...For this is not a unilateral moratorium, but a specific and solemn legal obligation,” noted President Kennedy in this remarks on the
Nuclear Test Ban Treaty.\textsuperscript{27} Kennedy’s emphasis on the moving force of legal duties attests to the sense of obligation they elicit. “Australia clearly has a legal obligation as a coalition partner in ensuring the prisoners [it] hand[s] over are well treated,” noted Labor defense spokesperson Chris Evans.\textsuperscript{28} His statement on the government’s concerns over the treatment of Iraqi prisoners taken by the Australian Navy, similarly, reveals the sense of obligation evoked by Australia’s formal legal duty to ensure the proper treatment of prisoners as a coalition partner. Even the Israeli government’s 2010 report on Gaza operation investigations, highlighted a legal duty along with a humanitarian duty implying the parallel operation of perceived legal and moral obligation.\textsuperscript{29}

When legal duty calls, furthermore, it calls with a different kind of authority. The abiding allure of legalization over the course of centuries indicates the specificity of international law’s “pull” (Franck, 1990). Starting with the Treaty of Westphalia and continuing with Hague Peace Conventions, generations of politicians have turned to international law to manage world politics. And there is good reason for that; legal agreements capitalize on actors’ deference to international law. Since the sense of obligation evoked by international law ascribes a self-enforcing quality to international norms, legal solutions facilitate dutiful compliance, and thus represent relatively more robust cooperative outcomes than non-legal ones (Young, 1979; Barkun, 1968). This is why many leaders were disillusioned when the 2009 Copenhagen Climate Change

\textsuperscript{27} \url{http://millercenter.org/scripps/archive/speeches/detail/3377}.

\textsuperscript{28} The Australian, May 11, 2004 All-round Country Edition.

\textsuperscript{29} \url{http://www.mfa.gov.il/MFA/Terrorism+-Obstacle+to+Peace/Hamas+war+against+Israel/Gaza_Operation_Investigations_Update_Jan_2010.htm}. 
Summit failed to create a legally binding agreement. A legal agreement was considered “absolutely vital” in the words of French President Nicholas Sarkozy because legality inspires in a sense of legal obligation that is independent from instrumental concerns or normative considerations.  

Talk is not necessarily cheap when it is followed by action. Costly cases of compliance show the obligating power of international law and indicate that compliance is sometimes dutiful rather than pragmatic. The United Kingdom, for example, adhered to the European Court of Justice’s (ECJ) Working Time Directive Case decision (C-84/94) even though it had to pay a high price for implementing European work time law and change its existing social policy. The costs Britain would have incurred from continuing non-compliance in the form of financial penalties would have been much smaller. Yet, the dutiful path was chosen nevertheless (Beach, 2001). Similarly, Ecuador, a signatory to the Statute of the International Criminal Court (ICC), refused to sign a bilateral non-surrender agreement with the U.S. claiming that such an act will violate the Court’s Statute. Despite being threatened with sanctions by the U.S., Ecuador did not breach its legal commitments (Kelley, 2007). Even great powers sometimes choose dutiful compliance despite the luxury of violation with few repercussions. Following the indictment of the Bosnian Serb leader Radovan Karadžić, a name long regarded by America as a credible player in peace negotiations, the U.S. government felt legally bound to comply and searched for alternatives (McGuinnes, 2006).

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30 [http://news.bbc.co.uk/2/hi/science/nature/8421910.stm]
In short, temptations are resisted, compliance costs are paid, and laws are upheld because some political actors are moved by a sense of international legal obligation. Conversely, it goes without saying that international law fails to obligate others. For example, during the Cuban Missile Crisis, Dean Acheson had no qualms about overlooking international law. “...[L]aw does not deal with such questions of ultimate power--power that comes close to the sources of sovereignty,” Acheson noted, suggesting the absence of any sense of obligation to international law (quoted in Chayes, 1974). The Bush administration’s overall attitude towards international law, similarly, suggests that the President and prominent members of his administration lacked a sense of international legal obligation. The administration’s withdrawal of the U.S. from the Optional Protocol to the Vienna Convention on Consular Relations, the “unsigning” of the treaty establishing the International Criminal Courts (ICC), and controversial policies arguably breaching the Geneva Conventions manifest lack of deference to international law, as does the invasion of Iraq in 2003 in the absence of a UN Security Council authorization justified by the doctrine of preemption (c.f. Bradley, 2009).

These policies stand in stark contrast to those of the Obama administration and signify an important re-orientation of both policy and attitude; issues I will examine in chapter 5. In the same vein, while President Sarkozy, the European Commission’s President Jose Manuel Barroso, and the chair of Kyoto Protocol talks John Ashe sought to capitalize on international law’s obligating effect at the Copenhagen Climate Change Summit, the head of the Chinese delegation Xie Zhenhua was content to focus on China’s sovereignty and national interests and simply accept the deal short of a legal
agreement.\textsuperscript{31} The phenomenon of legal obligation and the variation in deference tendencies across political agents present critical puzzles, implicating theory and policy alike, that require an explanation. Thus, a fuller account of the role of international law in world politics calls for analyzing the psychological dynamics of legal obligation and its effects on countries’ compliance policies.

Despite its central importance as the anchor of the international legal system, the literature lacks a convincing explanation of the psychological logic of deference to international law. Even though the IR literature on international law and compliance has bourgeoned in the last few decades, a handful of works aside, the psychological dynamics of legal obligation have remained unexplored. Since Thomas Franck (1990) pointed to the “pull” of international law, many scholars have talked about the obligatory quality of international law. Yet, why state representatives subjectively recognize international law as binding and develop a sense of obligation towards laws have remained largely unexplained. Typically, legal obligation has been discussed by international law scholars with descriptive analysis (e.g. Chayes and Chayes, 1995); no clear explanation of how legal obligation forms has been offered.

The literature on legalization has successfully attended to the technical side of legal obligation, yet it neglected, even sometimes marginalized, its subjective dimension. The 2000 International Organization Legalization Volume, for example, simply treated legal obligation as a formal matter and defined it as the extent to which legal rules officially bind states, thereby specifying their legal responsibilities (Goldstein et al., 2000; Abbott et

\textsuperscript{31} http://news.bbc.co.uk/2/hi/science/nature/8421910.stm.

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The mechanization of legal obligation in this way is problematic because as Martha Finnemore and Stephen J. Toope (2001:755, emphasis added) note “[t]o be effective, obligation needs to be felt, and not simply imposed through a hierarchy of sources of law.” In fact, the lack of attention to the subjective side of legal obligation creates an important theoretical problem for functionalist approaches. Without an explanation of why formal international legal obligations evoke felt legal obligation, the normative weight of contractual obligations must be established either by theoretical fiat -- often through a circular logic-- or derived from a prior normative basis, such as Hans Kelsen’s ultimate Groundnorm. Recent works on international law are increasingly becoming cognizant of this analytical issue (e.g. Reus-Smith, 2004; 2003; Finnemore and Toope, 2001; Brunnee and Toope, 2000).

Of course, Constructivist scholars have long talked about the effects of norms in international politics and emphasized how a “logic of appropriateness” could guide state behavior (March and Olsen, 1998; e.g. Finnemore, 2000; Lutz and Sikkink, 2000; Checkel, 2001, Klotz, 1995), but they have not specifically investigated the micro foundational dynamics of legal obligation to complement its technical treatments.

Fortunately, as scholars are beginning to realize the importance of explaining why and when state representatives are moved by a sense of obligation to international law, interest in legal obligation is growing. Reus-Smith (2003), for example, has offered an “interstitial” account of why states accept international law to be binding and shed light on “sociological face” of legal obligation, which serves as the backdrop to the formation of felt legal obligation. Jutta Brunnee and Stephen J. Toope (2011), have offered an
“interactionist” theory of legal obligation by combining Lon Fuller’s (1969) theory of law with insights from Constructivism (particularly Adler, 2005) and located the obligatory quality of international law in specific formal criteria of legality or what Fuller (1969) referred as the “internal morality” of law and in continual practices of legality among state and non-state actors. While these handful of works have contributed to our understanding of the obligatory quality of international law, the literature still lacks an explanation of agentic deference to international law and legal institutions. This project contributes to this emerging wave of literature by developing and testing a theoretical framework for explaining psychological logic of legal obligation. With its focus on the subjective side of legal obligation, this study also complements functional perspectives.

1.4 The Polarization of the Compliance Literature and Legal Obligation

Party responsible for the absence of a systematic explanatory account of legal obligation is the polarization of the compliance literature in IR and IL into pessimistic and optimistic camps. The former largely marginalizes legal obligation while the latter posits the regularity of obligatory action. This divide has led to sweeping generalizations, thereby leaving both optics ill-equipped to address the co-existence of deference and defiance.

Theories of compliance are largely centered on opposing views on legal obligation. Instrumentalist and norm-based approaches in IL broadly corresponding to Rationalist

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The inspiration for the labels of pessimism and optimism came from Alexander Thompson’s comments on earlier versions of this chapter.
and Constructivist theories of IR offer two competing answers to the question of why states comply with international law that are overly pessimistic or optimistic about legal obligation respectively (Keohane, 1997; Hathaway and Koh, 2004; Hathaway, 2005; Tallberg, 2002). Instrumentalists and Rationalists characterize compliance as a strategic decision based on self-interest calculations. States use legalization to solve specific political problems and make laws that serve their interests (e.g. Simmons, 2000; Morrow, 2007; Mitchell and Hensel, 2007; Downs and Jones, 2002; Guzman, 2008). Compliance follows as long as costly changes in behavior are not required (Downs, Rocke, and Barsoom, 1996). Versions of Instrumentalism that dovetail the Realist view in IR, characterize legal agreements as epiphenomenal and question the independent effects of law on state behavior (Morgenthau, 1985; Mearsheimer, 1994/95; Goldsmith and Posner, 2005). According to these perspectives, law typically “screens” it may occasionally “constrain” but it does not obligate.33

International law scholars emphasizing the normative authority of international law, conversely, argue that international law exerts an independent compliance “pull” which creates a norm of compliance in the international system because actors feel an internalized obligation to comply (Franck, 1990; Chayes and Chayes, 1995, 1993; Koh, 1997). Thomas Franck’s (1990) account on procedural legitimacy constitutes the most prominent argument for the obligatory quality of international law. The norm-based tradition parallels Constructivist studies in IR that explain states’ compliance with international norms on the basis of ideational factors, such as acculturation (Goodman

33 On the screen-constrain debate, see Downs, Rocke, and Barsoom (1996), Von Stein (2005), Simmons and Hopkins (2005).
and Jinks, 2004) and norm internalization (Checkel, 2001), and point to the general obligating role of norms in the international society (Finnemore, 1996; Price, 1995; Tannenwald, 1999). In contrast to their pessimistic counterparts, for optimistic approaches, international law mostly obligates.

In this study, I show that both pessimism and optimism about legal obligation are ill-founded. Neither of these optics can fully explain why some political leaders are deferential towards international law whereas others are defiant because both perspectives homogenize political actors and neglect the factors that influence their perceptions of international law’s authority.34 Since they pay insufficient attention to subjective understandings of the binding force of contractual obligations, for example, Instrumentalist and Rationalist perspectives cannot fully account for why some governments implement policies of dutiful compliance but others do not.

Legitimacy-based arguments, similarly, cannot fully explicate the variation politicians exhibit in the extent of felt obligation to international law. Procedural legitimacy arguments, for instance, cannot make sense of why two agents react differently to procedurally equivalent laws. A similar analytical problem troubles normative legitimacy arguments. I do not deny that legal and moral obligation could overlap and operate in tandem. Nevertheless, this variant of legitimacy explanation often misses why some politicians give primacy to normative considerations whereas others could form a sense of legal obligation partly independent of such concerns. I agree that the procedural and normative legitimacy of international legal rules matter. Yet their importance for the

34 For arguments emphasizing actor-level characteristics on compliance with international norms, see Herrmann and Shannon (2001) and Shannon (2000).
formation of legal obligation is also subjectively construed by political leaders. A coherent explanation of legal obligation calls for understanding the factors that make actors put differential emphasis on procedural and normative legitimacy of laws in forming a sense of legal obligation.

While competing models of compliance principally differ on the obligatory quality of international law, they have one shortcoming in common. Both characterize the authority relation between governments and international law as uniform, and thus fail to grasp how international identity orientations shape state representatives’ perceptions of international law’s authority, and as a result lead to varying degrees of legal obligation. The “pull” of international law does not operate in a black or white fashion as pessimistic and optimistic optics posit. Rather, the normativity of international law is subjectively construed. I argue that the motivational importance of legal obligation is shaped by the degree of politicians’ international identification, which influences the perceived legitimacy of international law’s authority, and as a result condition actors’ sensitivity to psychological “sovereignty costs” and ability to reconcile deference to international law with representing the sovereign authority of the state. To explain the variability of deference across actors, therefore, we need to re-orient our analytical focus towards the individual determinants of authority relations and analyze how international attachments shape leaders’ perceptions of international law’s authority, thereby resulting in obligatory or utilitarian motives.

35 I examine content and procedural legitimacy based arguments as alternative explanations of legal obligation and probe the skeptical instrumentalist claim as the null hypothesis. I further explore these arguments in chapter 3.
This project contributes an improved understanding of the obligating quality of international law and helps specify the scope conditions of pessimism and optimism by undertaking this task. The theoretical framework advanced here builds bridges between Instrumentalist/Rationalist and Constructivist/norm-based models by introducing the subjective dimension of legal obligation into research on compliance and institutional legalization and tries to overcome the polarization of the compliance literature. By bringing in politicians into the theoretical study of international law, this project helps redirect the existing scholarship towards agency and seeks to contribute to efforts to de-anthropomorphize the state.

1.5 Plan of the Dissertation

This dissertation examines the psychological logic of legal obligation and analyzes the role of international attachments on the formation of a deference motivation towards international law. In the next chapter, I lay the groundwork for the theory of legal obligation. I conceptualize legal obligation, identify its major characteristics, and explain how it differs from alternative attitudes to law and paths to compliance. Drawing on literatures in Legal Theory and Psychology, I present a comprehensive and usable definition of legal obligation and explain the image of law in legal obligation and alternative compliance motivations. The second half of chapter 2 explores the implications of legal obligation for international politics. Specifically, I focus on the consequences of legal obligation for the nature states’ compliance policies and for the legal culture of the international system.
In chapter 3, I develop a theoretical framework for explaining why and under what conditions politicians develop a sense of legal obligation towards international law and derive testable propositions. I first explore the motivational conflict involved in acknowledging the governing authority of international law and discuss the tension between deferring to international law and representing sovereign authority. I then explain why international identification is critical for the settlement of this tension and outline how the mechanism of reference group membership implicated in international social identification shapes actors’ perceptions of the legitimacy of international law’s authority, thereby conditioning their ability to reconcile deference with sovereignty. I then investigate the operation of legal obligation and identify the pathways through which it affects decision-making and compliance preferences followed by a discussion of alternative arguments, the observable implications of my theory, and my research design and methodological choices. In the second half of chapter 3, I turn to the macro-foundations of legal obligation. Connecting the micro-foundations of my argument to the structural level, I also explore the expressive dimension of international legal rules and outline why the formation of legal obligation is linked to attachment to international polities. In expanding my argument, I emphasize the overlooked aspects of law and legalization. I offer an alternative to functionalist characterizations of legalization and formal descriptions of law and explicate the expressive dynamics underlying international legal normativity.

Chapter 4 tests the predictions of the theory and traces the causal mechanisms with original survey data obtained from German parliamentarians (Seventeenth Bundestag) in
December 2009. I test for the effects of European identity and international collective identity on obligation to European law and international law respectively. Evaluating my argument in the context of Europe serves as a critical first test of its explanatory ability. The international part of the analysis further examines the performance of the theory at the international level as well as explores its broader applicability.

In chapter 5, I analyze the psychological determinants of legal obligation and its effects on compliance in a series of laboratory experiments. The objective of this chapter is to test the causal claims of my theoretical argument as well as examine its internal validity. Since laboratory experiments allow the researcher to study the relationship between a set of explanatory variables and the dependent variable by controlling for the effects of potential confounding factors, they offer an invaluable way of evaluate the analytical rigor of theoretical arguments (McDermott, 2002; Shadish, Cook and Campbell, 2002; Kinder and Palfrey, 1993). To the extent attachment to the international community influences agents’ sense of obligation to international law, as I posit, the dynamics of this relationship should be similar across individuals. By providing individual level evidence, the analyses presented in this chapter help further evaluate the proposed theory of legal obligation.

Chapter 6 summarizes the results and concludes the analysis by discussing the broader theoretical and practical issues at stake. I first review the theoretical and empirical contributions of this research, address questions of generalizability, and discuss possible directions for future research. Second, I discuss some of the broader theoretical
and practical significance of legal obligation, specifically its implications for the anarchic international system, sovereignty and democratic representation, and global governance.
CHAPTER 2

LEGAL OBLIGATION AND ITS IMPLICATIONS FOR INTERNATIONAL POLITICS

2.1 Introduction

Legal obligation strikes at the heart of the international legal system and indeed constitutes the rationale for institutional legalization. A subjective sense of legal obligation shared by state representatives serves as the anchor of the international legal system. Legal obligation defined in this study as the subjective acknowledgement of international law’s governing authority is what makes international law and formal legal obligations a reality.

A lot has been said about formal legal obligations (Goldstein et al., 2000). Yet legal obligation as a subjective political drive has received little attention (c.f. Brunnee and Toope, 2010). Both IR and IL literatures provide limited guidance on the meaning and implications of felt legal obligation (Finnemore and Toope, 2001). What is more, the concept of obligation has remained rather unexplored (c.f. March and Olsen, 1998). Obligation just like self-interest is a fundamental human disposition that is central to understanding international politics.

36 Recall that in chapter 1, I have explained the differences between legal obligation in a subjective sense and legal obligation in a formal sense. I reserve the term legal obligation to this subjective motive throughout this study. I occasionally use legal obligation in plural form to refer to formal legal duties governments undertake by signing onto to international treaties and agreements.
social relationships and social order more broadly. Indeed, individuals' understandings of their duties and responsibilities, that is subjective motives of obligation, underlie much of social life (Mansbridge, 1990). Keohane (1990) similarly observes that obligation along with empathy explains much of moral action in world politics. But what is obligation? What legal obligation? And what does legal obligation do in international politics?

In this chapter, I address these questions. This chapter lays the groundwork for the causal theory of legal obligation I develop in chapter 3. This chapter is composed of two main parts. In the first part, I conceptualize legal obligation, identify its major characteristics and explain how it differs from alternative attitudes to law and paths to compliance. Drawing on literatures in Legal Theory and Psychology, I present a comprehensive and usable definition of legal obligation and explain the image of law in legal obligation and alternative compliance motivations. In section two, I explore the implications of legal obligation for international politics. Specifically, I focus on the consequences of legal obligation for the nature states’ compliance policies and for the legal culture of the international system.

Part One: What is Legal Obligation?

2.2 Understanding Legal Obligation

360 B.C.E. Athens. An Athenian court finds Socrates guilty and condemns him to death. Socrates’ friends orchestrate an escape plan. Crito, at the break of the dawn, sneaks into the prison and tries to persuade Socrates to escape death. “Fear not,” Crito says, “there are persons who at no great cost are willing to save you and bring you out of
prison.\textsuperscript{37} Socrates refuses and chooses the hemlock. He chooses to obey the laws of Athens. A lot has been said about Socrates' reasons for obeying Athenian law and whether he did the right thing.\textsuperscript{38} It is clear, however, that Socrates acted from a sense of legal obligation. But what exactly is legal obligation? In this section, I introduce the major characteristics of legal obligation, highlight its differences from other types of obligations and reasons for conformity, and develop a usable definition of the concept. I further attend to the nexus between obligation and non-compliance, and offer a way to understand violation of laws in the presence of legal obligation. This section also defines the central terms used throughout the project and lays the groundwork for my theoretical framework of legal obligation.

Before proceeding, it is critical to note once again that my interest in legal obligation is problem-driven, not motivated by a political or normative agenda. What guides this research is the empirical puzzle of legal obligation and the analytical difficulties it poses to existing IR and IL perspectives. I make no moral claims about the desirability of obeying the law or legitimacy of legal authority in international politics. The issue of whether states have a moral obligation to obey international law is, similarly, outside the scope of my research. I am only interested in legal obligation as a subjective motive, in its causes and implications for international politics.

Legal obligation represents a distinct subjective disposition that signifies deference to the institutional authority of international law. This felt obligation marks the intrinsic


\textsuperscript{38} See Dagger (2008) for a detailed review.
value of upholding legal rules and indicates internalized respect for international juridical authority. When a sense of legal obligation is in place, law *qua* law is perceived to hold the right to impose duties and demand compliance (Weber, 1978; Burgess, 2002; Kronman, 1983). Prominent scholar H.L.A. Hart’s (1961) refers to a subjective sense of legal obligation as the “internal view of law” while Lon Fuller (1969) characterizes legal obligation as “fidelity to law.”

Feelings of obligation arise from subjective acknowledgements of duty claims made by rules and institutions. Like all obligations, legal obligation springs from the subjective adoption of duty claims. Yet legal obligation corresponds to a particular outcome of duty adoption and primarily rests on the acceptance of law’s institutional authority. This mode of duty adoption does not presuppose an actor’s personal agreement with laws’ substantive content (norm internalization) and differs from public acceptance of duties motivated by instrumental benefits.

A focus on the different types of obligations illuminates the specificity of legal obligation. To be obligated is to accept an authority’s duty claim as one’s own and as a result develop a reason for action. Duty acceptance or deference could take different forms and lead to three ideal types of obligations: *putative obligation*, *theoretical obligation* and *practical obligation*. Each obligation corresponds to a particular outcome of legal duty acceptance and marks a specific authority relation between an actor and a legal rule or institution. The variation in outcomes of duty acceptance is shaped by *why and how* an individual espouses a duty. 39

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39 This discussion draws on perspectives in Legal Theory. This literature is vast and cannot be cited here in full. For a useful starting points see, for example, Hurd (1991), Lefkowitz (2006), Mackie (1981), Shiner (1990) and Edmundson (2004), Regan (1999).
Duty acceptance can take three different forms; content-endogenous (CE), content-dependent (CD), and content-independent (CI). Content here refers to the behavior required by a rule or institution, namely what is demanded by a duty claim. “One should pay taxes,” “one should not litter,” or “one should complete the reading assignments before class,” all indicate the content or behavioral requirements of different duty claims.

If the acceptance of a duty has less to do with the fact that it is required by a rule but is guided by instrumental motives, such as avoiding punishment or realizing certain benefits from compliance, then the mode of duty acceptance is CE and the resulting obligation is putative. If the acceptance of a duty is dependent upon one’s normative agreement with its content, namely on the nature of the action this duty requires, then the mode of duty acceptance is CD. The resulting sense of obligation is a theoretical obligation. If a duty is accepted independent of one’s personal agreement with its content but acknowledged because it is demanded by a rule or institution regarded as authoritative, the mode of duty acceptance is CI. A sense of obligation arising from this mode then represents a practical obligation (Hurd, 1999; Soper, 2002; Raz, 2009).

Paying taxes is a useful example to illuminate the differences between putative, theoretical, and practical obligations. If an individual pays taxes because he or she is afraid of getting caught and facing enforcement, the driving sense of obligation is putative. If an individual pays taxes because he or she personally values contributing to the public good, then duty acceptance is CD and the felt obligation is a theoretical obligation. If this deference is guided by the fact that the person respects the authority of tax laws, even though he or she is not necessarily interested in contributing to public
goods and fulfilling a civic duty, then the duty acceptance is CI and the resulting obligation is a practical obligation.

These are fine and empirically challenging distinctions and CE, CD, and CI modes of deference could indeed overlap. Nevertheless, it is important to recognize these variations in order to arrive at a full theoretical understanding of legal obligation and the concept of obligation more generally. This variation in felt obligations and corresponding authority relations is important both for grasping the distinctiveness of legal obligation as a motivating drive and for understanding varieties of authority relations between actors and institutions. Authority, as I employ it here, refers to legitimate right to rule (Weber, 1978; Day, 1963; Dahl, 1957; Flathman, 1980). Even though authority has become a central concept in the existing literature (e.g. Hurd, 2007; Ruggie, 1998; Barnett and Finnemore, 2004), variations in authority relations and obligations have typically been missed. Authority relations have largely been characterized in a uniform manner and insufficient attention has been paid to differences in authority relations (cf. Lake, 2009, 2007). By unpacking dynamics of deference and offering a typology of obligations, this chapter helps contribute to a better conceptualization of obligations and micro-foundational dynamics of authority.

An obligation is putative when states seem to submit to international law, yet what looks like deference is self-interest in disguise as Realists in IR and Instrumentalist scholars in the IL literature argue (Morgenthau, 1985; Mearsheimer, 1994/95; Goldsmith and Posner, 2005; Guzman, 2008). The authority of law in this case is putative or non-existent. An actor with this type of obligation resembles Holmes’ “bad man” who is only
instrumentally motivated. As Holmes (1897:461) put it, “what does [legal duty] mean to a bad man? Mainly… a prophecy that if he does certain things he will be subjected to disagreeable consequences.”

An obligation is theoretical when actors internalize the normative content of legal rules, as Constructivists note (Finnemore, 2000; Lutz and Sikkink, 2000; Checkel, 2001; Klotz, 1995), yet this socially or morally motivated sense has little to do with the institutional authority of international law per se. As such, law constitutes a theoretical authority only. Consider the norm against the use of controversial interrogation techniques, for example. There is disagreement over the use of such techniques. Some consider them acceptable under certain conditions, others disagree. The obligation perceived by those who already view these methods as illegitimate represents a theoretical obligation. Their deference has less to do with the fact that a legal norm prohibits these techniques; rather it is guided by what they think is normatively right or wrong. When a theoretical obligation is present, an actor’s rationale is “logic of appropriateness” (March and Olsen, 1998) or normative content-legitimacy. “The operative process in legitimation,” as Ian Hurd (2007: 31, emphasis added) argues, “is the internationalization by the actor of an external standard...A rule will become legitimate to an individual (and therefore behaviorally significant) when the individual internalizes its content and reconfigures his or her interests according to the rule.”

Legal obligation at its core is a practical obligation and as such differs from putative and theoretical obligations in important ways. Legal obligation does not presume content-based norm internalization. Internationalization could take place, but is incidental. Duty
acceptance is shaped by the act of commanding rather than by what is commanded (Hurd, 1991; Hart, 1994; Soper, 2002). Legal obligation therefore is shaped by the institutional authority of international law and denotes the subjective acknowledgement of lawful office above the state. In this context, law is perceived as a practical authority structure. The deference of an actor motivated by a sense of legal obligation is influenced by the *practical difference* law makes in his balance of reasons (Waluchow, 1990; Coleman, 1998; Raz, 1979).

If dissenters, to return to the above example, refrain from advocating the use of harsh interrogation measures because they respect the legal prohibitions against their use, then their sense of obligation represents a practical obligation. The authority of law makes a practical difference in their balance of reasons (Raz, 1990a; 1979; Hurd, 1999; 1991). Legal obligation, therefore, is guided by what might be called the logic of practical difference. 40

Before unpacking the constituent elements of legal obligation, it is important to further clarify my usage of the concept, differentiate it from cognates, and define the key terms. Obligation is typically employed to tap two related, yet analytically separate constructs: a subjective state and a behavioral requirement or a duty (Ladd, 1970). As indicated previously, I make a distinction between duties and obligations. A duty denotes a specific performance requirement or a command. Obligation always stands for a motive and refers to the subjective state of perceiving an action--a duty-- as required. Standing, an obligating medium such as a rule or institution indicates the channel that obligates,

40 Sometimes this is referred as an authority’s reason-giving ability.
that evokes the motive of obligation. Obligation-formation refers to the process through which obligations emerge and entails an interactive dynamic between an actor and an obligating medium.

It should be clear by now that legal obligation, as I employ it here, is distinct from the official binding-ness of legal rules. Formal binding-ness of rules implies nothing about how and why they become binding in thought and translate into felt legal obligation. Legal obligation, furthermore, is distinct from the “sociological face” of legal obligation (Reus-Smith, 2003:595) or the “objective” obligation to obey the law (Green, 1988; 2004; Pennock and Chapman, 1970).

2.3 Legal Obligation and Alternative Paths to Compliance

Legal obligation naturally entails a strong preference for compliance. Compliance, however, is a multiply determined outcome. States comply with international legal rules for different reasons that are not mutually exclusive (e.g. Koh, 1997). Alternative paths to compliance may produce similar behavioral effects, yet path each involves a different process of rule-following and carries different implications for the authority of law in world politics. It is critical, therefore, to discuss the contrasts and parallels between legal obligation and major compliance motivations emphasized in IR and IL literatures (Keohane, 1997; Hathaway, 2005; Hathaway and Koh, 2005). Here, I specifically focus on sanctions, including reputational ones, self-interest, and legitimacy, and discuss the image of law implied in each.
Compliance paths can be classified along two main dimensions: the nature of law’s role and the locus of actors’ motives. The first dimension pertains to the role played by legality. Law can exert an active or a passive influence. In the former instance, the law and its perceived authority constitute the central reasons for compliance. The effect of law on preferences and behavior is consequential independent of the negative or positive implications of compliance. When legality plays a passive role, conversely, compliance is determined not by the fact that a course of action is demanded by a legal rule, but by the desirability of the required action however this appeal may be defined.

The second dimension concerns the locus motivations, which could be internal or external. In the former case, reasons for compliance are tied to factors internally valuable to the actor, such as his or her own assessments of the virtues of deferring to the law or his individual conception of normativity. In the latter instance, compliance reasons originate from external incentives or disincentives associated with the a given course of action. Paths to compliance, accordingly, could be summarized in an analytical matrix as representing ideal types. Table 2.1 presents the matrix of compliance paths. As can be seen, legal obligation differs from alternative paths by being an intrinsic motive and marking the active role of international law. In other instances, authority of law and its significance tend to be diluted.
Sanctions or coercion refer to the strategy of “[o]ne state or a coalition of states with convergent interests, forc[ing] other states to engage in actions that serve the interests of the first state or states” (Goldsmith and Posner, 2005:28). Sanction-based compliance is compliance out of fear. Hart’s (1994) criticism of command theories of law, such as that of John Austin’s, clearly illustrates the point. As Hart (1994:28) notes, command theories reduce legal structures to “orders backed by threats” or to “gunman point.” (c.f. Tyler and Jost, 2007). On this view, actors do not comply because they perceive an obligation; they comply because they are obliged. Similarly, reputational arguments partly emphasize fear-based compliance (Guzman, 2008; Downs and Jones, 2002). As states wish to develop a good reputation for trustworthiness to maintain cooperative relationships, the fear of losing one’s reputation in case of non-compliance provides an incentive for compliance (Guzman, 2008). Thus, compliance is guided by the value actors attach to their own credibility and on the probability of others adjusting their estimates of their reputation (Downs and Jones, 2002). In the words of Michael Barkun (1968:64), sanction-oriented approaches relegate legal orders to a “social pathology.”
Legal obligation stands in stark contrast to different versions of fear-based compliance. Actors moved by legal obligation prefer compliance irrespective of the risk of punishment (e.g. Soper, 2002). They possess what is sometimes called a “duty heuristic” (Scholz and Pinney, 1995; Casey and Scholz, 1991). In this sense, those moved by legal obligation are the antithesis of Holmes’ bad man who is only interested in the instrumental consequences of (non)compliance. 41

Legal obligation and self-interest will produce observationally similar outcomes if expected gains from compliance outweigh compliance costs (Downs, Rocke and Barsoom, 1996; Mearsheimer, 1994/95; Goldsmith and Posner, 2005). Compliance motivated by legal obligation, however, is critically different from utilitarian compliance. Legal obligation epitomizes the willingness to exercise sovereign capacity in favor of international law and compliance. Instrumental benefits remain secondary when a sense of legal obligation is present. Instead, compliance becomes an interest itself (Ellis, 1971; Kornhauser, 1999). When states approach rule-following with materialistic egoism, conversely, they calculate the expected payoffs from compliance, but compliance itself is not valuable (Hurd, 2007; Kornhauser, 1999; Berman, 2006). Deference is not part of preferences. Even when self-interest has a long-term orientation and entails concerns for reciprocity and reputation, compliance is externally motivated (e.g. Keohane, 1984; Oye, 1986; Axelrod, 1984). As I will discuss shortly, legal obligation does not imply blind obedience. Decision-makers are still able to assess the costs and benefits of compliance. Unlike in the case of self-interest, however, these assessments now include psychic payoffs.

41 On the internal view of law versus the so-called bad man, see Finkelstein, Goldberg, Green, Nance, Perry, Shapiro and Zipursky in *Fordham Law Review*, 75, 2006. On an economic analysis of the internal view, see, for example, Cooter (2006).
as well (Hurd, 2007; Kornhauser, 1999; Wendt, 1999, 1994). Non-compliance in the presence of legal obligation, for example, is likely to result in dissonance and self-image costs.

Legitimacy and legal obligation are intimately related concepts. Both mark the intrinsic value of compliance and are in part guided by a sense doing the right thing or “logic of appropriateness” (Hurd, 2007; March and Olsen, 1998; Finnemore, 19996; Finnemore and Sikkink, 1998). Yet they are different in important ways. Even though it is true that an individual’s perception of the legitimacy of a rule generates a sense of obligation and steers behavior towards compliance, legitimacy and legal obligation are shaped by different rationales (e.g. Tyler, 1990; Hurd, 2007; Zelditch, 2001).

As I explained previously, if a sense of obligation is created by the normative legitimacy of a rule, then the obligation is a theoretical obligation. Recall that the mode of duty adoption here is CD. Legitimacy motivates compliance to the extent the individual internalizes the content of a rule (i.e. strong socialization) (e.g. Hurd, 2007). The obligating medium in this case largely functions evidentially or similar to a heuristic and appeals to the actor’ pre-existing conception of normativity (Hurd, 1991). It obligates passively.

When an actor is moved towards compliance because he believe others have internalized the content of a law, the locus of motivation is external and the law remains

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42 For the time being I keep Thomas Franck’s (1990) analysis of legitimacy and international law separate from IR treatments of legitimacy.

43 Here I exclude thin socialization because this mode of duty acceptance tends to be public and motivated by social approval needs or desire to avoid marginalization. As such, it does not fully count as an obligatory motive as the concept is used here.

passive similar to incentive-based compliance (i.e. weak socialization) (e.g. Checkel, 2001; Johnson, 2001). In contrast, legal obligation represents a practical obligation. Law obligates not simply by appealing to internalized or societal norms. Rather, it obligates because actors perceive the law qua law to hold the right to command; because they value compliance with the law. The basis of obligation is the normativity of law not the normativity of what it commands.

2.4 Obligation as a Subjective State

The ought is not merely a feeling, some esoteric quality that can be glimpsed by the phenomenologist in a happy moment. It influences real events (Heider, 1958: 228).

The concept of obligation has a long history in philosophy, ethics and, deontology as well as moral psychology. The philosophical roots of obligation and similar normative dispositions date back to Aristotle, Socrates, Hume, and Kant. Psychological lineage could be traced back to Piaget (1948), Kohlberg (1976, 1971), Heider (1958), and to Hollingworth (1949). A lot has been said by philosophers over the course of centuries about the foundations, consequences, and rationality of normative behavior (e.g. Korsgaard, 1996). Psychological approaches to moral agency, while relatively younger, have similarly covered extensive ground in understanding the origins and implications of moral intuitions and obligatory behavior (e.g. Haidt, 2007). Obligatory motives, for example, have been examined in the social influence literature (Cialdini and Golstein 2004; Cialdini, 2001; Kelman and Hamilton, 1989), studies of group norms (Terry, Hogg and McKimmie, 2000), and in research on altruism and pro-social behavior (Penner et
Some level of theoretical dialogue also has taken place between philosophical and psychological approaches (Wren, 1990).

Surprisingly, however, obligation as a subjective phenomenon remains underdeveloped. A recent edited volume by psychologists Norman J. Finkel and Fathali M. Moghaddam (2004), for example, laments this lacuna. This lack of conceptualization is puzzling given the centrality of obligations in guiding human conduct. In this section, I attempt to address this void. Instead of reviewing various literatures in detail, I extract from the common threads in philosophical and psychological treatments of obligation and offer a conceptualization of the construct as a subjective phenomenon.

Two principles guide this undertaking: comprehensiveness and usability. The definition of obligation should be comprehensive and capture the central components normative motives. It should also be able to accommodate varieties of obligations, such as legal or moral obligation. At the same time, this conceptualization must be usable and lend itself to empirical analysis and measurement. Guided by these two interests, the following discussion first unpacks the concept obligation and then addresses legal obligation.

### 2.4.1 The Frames of Obligation

Obligation is a motive, a reason for action given a duty claim in social influence. A sense of obligation arises when a duty claim is accepted as one’s own duty as function of the perceived legitimacy of influence. Hollingworth (1949: 3), who has carried out one of the earliest psychological studies on obligation, defines obligation as “the recognition of
imperatives in thought and action.” This recognition implies the acceptance and personalization of the duty. Obligation is composed of two frames: an action frame and a reason frame as presented in table 2.2. The action frame concerns the implications of the acceptance of a duty as required. The reason frame pertains to the alternative bases of obligation arising from different authority claims.

<table>
<thead>
<tr>
<th>Action Frame</th>
<th>Reason Frame</th>
</tr>
</thead>
<tbody>
<tr>
<td>Required-ness of Action</td>
<td>Grounds of Obligation (Bases of Authority)</td>
</tr>
<tr>
<td>Independent Behavioral Effects</td>
<td>-Legal</td>
</tr>
<tr>
<td>Dissonance</td>
<td>-Moral</td>
</tr>
<tr>
<td>Justified Complaint</td>
<td>-Social</td>
</tr>
</tbody>
</table>

Table 2.2 Frames of Obligation

The Action Frame

Obligation is about doing. We feel obligated to either perform an action or refrain from it.\(^{45}\) The action frame consists of four stages: recognition, interpretation, performance, and evaluation of action. Obligation requires recognizing the potentiality of action. An actor should first realize that a certain behavior may normatively apply to him and be primed to initiate a deliberation process. Rest’s (1986) four-stage theory of moral decision-making, for instance, starts with the individual’s awareness of the moral issue at hand, namely recognition that he is faced with a decision to pass a judgement to act either morally or immorally. Once the normative applicability of a situation is recognized, the action it involves must be interpreted as required. Subjective construction of an action as

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\(^{45}\) From this point onwards, I do not differentiate between action and inaction.
required is a necessary condition for the experience of obligation. This is the *required-ness* aspect of obligation. For obligation to have logical consistency, required-ness concurrently involves feeling barred from not performing the act in question or behaving contrary to it. For example, the obligation to follow the law parallels the obligation not to deliberately act against the law. The positive and negative aspects of obligation operate in conjunction (Beller, 2008).

Obligation *moves*. It steers behavior. The moving quality of obligation directly follows from its required-ness aspect. Constructing an action as required and experiencing a sense of obligation calls for performing the action. Heider (1958: 224-225), drawing upon Lewin (1944) has characterized obligation as a “force field.” As Angyal (1941:156) notes, force fields are behavior-prompting; they do more than establishing the broader contours of conduct. Force fields possess valence. Contrasting an obligation with a value, for instance, illustrates the difference made by the moving quality of the former. A value is a guiding-principle (Heider, 1958; Lewin, 1944; Feldman, 2003). Guiding-principles do not necessarily induce a particular behavior but shape the universe of relevant forcefields. Obligation as a force factor, in contrast, explicitly steers behavior towards a certain direction (Angyal, 1941; Heider, 1958).

This steering, furthermore, possess a distinct quality. Feeling obligated motivates behavior largely for the *sake* of performing the required action, precisely because it is regarded as required. According to Kant, for instance, an action is only dutiful when it is motivated by the sense of obligation itself (Guyer, 2006). Heider (1958:232), similarly,

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46 On values and especially on their political implications, see Feldman (2003) for a review.

47 See Denis (2011) for a detailed review.
notes that “ought-credit” is only to be assigned when an action is performed for its own virtue rather than for expedience. Tapping its unique steering characteristics, independent behavioral effects, constitutes the second component of obligation.

Naturally, no action has a single motive. The performance of a duty may suit some conception of interest and offer auxiliary benefits. Over-emphasis on expedience, however, creates a false dichotomy emptying both obligation and interest at once (Neblett, 1976). Performing an action on the basis of obligation does not assume that the action in question always requires sacrifice or acting contrary to one’s interests. In fact, when a behavior is recognized and interpreted as required, it becomes part of one’s interest-set (Wendt, 1999; 1994; Hurd, 2007; Weber, 1978; Tyler, 1999). Furthermore, performing an action because it is regarded obligatory does not assume that a sense of obligation must be the sole motive. What the independent behavioral effects component requires is for obligation to be a consequential motive. In this regard, the independent behavioral effect dimension is significance not exclusivity.

Obligation, finally, includes an evaluative component that concerns both the self’s and others’ judgements in case of non-compliance. When an obligation is perceived, not performing the action generates dissonance (Hollingworth, 1949; Festinger and Carlsmith, 1959; Festinger, 1957). When an actor considers a certain way of behaving as obligatory not performing that action is likely to result in self-criticism, guilt, and distress (Erikson, 1964; Colby and Damon; 1992; Aquino and Reed, 2002; Oliner and Oliner, 1988). Research on moral identity, similarly, has established that moral aspects of one’s identity function as self-regulatory mechanisms and create constraints on actions and
general behavioral inclinations (Blasi, 1984; Damon and Hart, 1992; Erikson, 1964; Monroe, 2001). Anticipatory self-constraints are applied, according to Bandura (1991), in order to avoid self-condemnation and dissonance.

Criticism, however, is not limited to self-criticism. The experience obligation shapes how the self constructs others’ reactions when he fails to perform his duties. Obligation involves acknowledging condemnation or punishment in case of non-conformity as warranted reactions. Outsiders’ criticisms are often accepted as justified complaints. Kar (2006:881), for example, notes that, “breach… gives some other person or group standing to complain or warrants what would otherwise be resented, namely certain forms of punishment or coercion for non-compliance.” In his description of the “internal view of law,” Hart’s (1994:255), similarly, notes that accepting an action as required “consist in the standing disposition of individuals to take such patters of conduct both as guides to their own future conduct and as standards of criticism….” Originating from the evaluative part of the action frame, dissonance and justified complaint represent the last two components of obligation as a subjective state.

The Reason Frame
For I am and always have been one of those natures who must be guided by reason, whatever the reason may be which upon reflection appears to me to be the best; and now that this fortune has come upon me, I cannot put away the reasons which I have before given: the principles which I have hitherto honored and revered I still honor. Socrates

The reason frame concerns the grounds for perceiving and performing an action as one’s duty. It pertains to the source of an actor’s motivation. Obligations come in many flavors. Legal, moral, social, and filial obligations are the prime examples. Obligations could overlap or conflict. Actors could be moved by more than one obligation in a given
situation. As there are multiple cites of normativity, a rigid distinction between obligations would be unrealistic, yet at a higher level of abstraction, obligations vary in terms of their motivational sources.

There is a long-standing debate in philosophy between Rationalists and Intuitionists on the origins of normative action, and this debate has implications for how we conceptualize obligation and approach its bases (Horgan and Timmons, 2007). For Intuitionists, normativity is intimately related to sentiment and emotion. For Rationalists, normativity originates from reason and reflection. Hume and Kant respectively epitomize these approaches (Denis, 2011). For Hume, moral rights and wrongs are largely a function of sentiment. Acting in benevolent ways, for instance, does not require additional motives. Kant, conversely, locates the basis of moral behavior in thought and deliberation. For Kant, the foundation for moral behavior is not intuition but a sense of obligation which requires deontic reasoning (Korsgaard, 2009).

This debate also constitutes the main bone of contention in contemporary psychological approaches to normative behavior (e.g. Haidt and Kesebir, 2010). The developmental tradition pioneered by Piaget and Kohlberg conceptualizes moral behavior as a function of individuals’ cognitive maturity which enables them to better reason about the right course of action (Gibbs, 1995; Horgan and Timmons, 2007). Affect-based models of morality, most notably, the social-intuitionist theory developed by Jonathan Haidt, ground moral behavior in “affect-laden intuitions” (Haidt, 2007:998). Intuitionists argue that affective reactions rather than cognitive reasoning and
deliberation shape moral judgement and conduct. In Haidt’s model, for instance, “the intuitive primacy principle” shapes the immediate reaction to a normative situation, reasoning constitutes post-hoc process seeking a rationalization for moral action (Haidt and Kesebir, 2010).

To be sure, conceptual differences exist between legal obligation and classic notions of morality. Nevertheless, legal obligation still belongs to the general category of normative motives. The intuition-reason debate therefore has implications for how we characterize legal obligation and how we approach the role of law in shaping this motive. If legal obligation is affectively guided, our theoretical accounts need to include evolutionary and neuroscientific bases, and the specific role is played by legality cannot be simply assessed cognitively. If we could characterize legal obligation primarily as cognitive, then the Kantian approach could be adopted and obligations could be categorized on the basis of what shapes this cognition. I take the latter route and conceptualize legal obligation as a reflective and reason-based process. I do not claim that affect and cognition --or intuition and reason-- are independent from each other, yet three important reasons justify conceptualizing legal obligation primarily as reason-based.

First, Intuitionists typically focus on what is sometimes referred as “natural” normativity and assume objectively valid normative standards. Benevolence, for Hume, for instance is a natural virtue. It is for this reason that he posits benevolence to be affectively oriented. Not all obligations, however, are based on natural normativity. In

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48 On emotions, see, for example, Zajonc, (1980) and Damasio (1994).

49 I do not mean to imply that emotion and cognition are mutually exclusive. My focus here is on the salience of cognition. I assume that reasons and reflection play a dominant role in shaping obligation when political or legal authority is involved.
fact, obligations arising from authority claims made by social rules and laws are puzzling precisely because these norms do not articulate objective morals (e.g. Delacroix, 2006). Since my interest is in assessing legal obligation as an obligation based on socially constructed normativity, it is not only justified but important to conceptualize obligations as reason-based for the purposes of this study. There is after all nothing inherently normative in legality. In *Treatise*, Hume points to this issue. He characterizes legal obligation as an artificial virtue. Artificial virtues are not intuitive, but reason-based (Cohon, 2010).

Second, the un-deliberative view of normative judgement is not uniformly accepted. Nichols (2004), emphasizing the inseparability of reason and emotion, for example, notes that the former plays a critical role in the formation of obligation as well as in the experience of dissonance and cognitive imbalances. Other theoretical accounts of moral agency and moral judgment, similarly, acknowledge the role of principled reasoning in the formation of obligations (e.g. Hauser, 2006). The quest for locating identifiable motives that shape obligations, accordingly, is worth keeping alive and allows us to capture the different classes of obligations (e.g. moral, legal, social, filial obligations).

The third rationale for conceptualizing obligation as a reason-based motive is specific to international relations and pertains to the constructed nature of normativity at the international level. Shared normative understandings exists in world politics. Many scholars have demonstrated this (e.g. Finnemore, 2000; Lutz and Sikkink, 2000; Klotz, 1995). Despite the importance of norms, however, a great deal of normative pluralism also exists in international affairs. Newly developed rules and norms, for example, require
reflection and deliberation on the part of state representatives before they could subjectively be regarded as duties and obligate. To be sure, politicians are socialized into shared normative understandings over time in institutional settings (e.g. Johnston, 2001) and through public deliberation (Mitzen, 2005). Unlike developmental socialization through family and schooling, however, this mode of socialization still calls for reasoning and reflection. Habitualized obligatory drives are of course possible, but the thinner nature of normative discourse in world politics justifies conceptualizing obligation more as a cognitively rather than purely affectively shaped construct.

To summarize, we can identify legal, moral and social norms as the three central grounds of obligations on the basis of the reason frame. These sources refer to the anchor of obligation. If social norms are the main factor in shaping one’s sense of obligation, then the obligation is anchored in socially accepted standards of behavior. It is the normativity of social norms that alters the individual's balance of motives and evokes a sense of obligation. If laws motivate a sense of obligation, then the sense of obligation is grounded in legality. The giving of reasons to the individual is performed by legal rules as opposed to non-legal ones. Understanding obligation as reason-based motive allows us to identify its possible bases and maintain distinctions between alternatives. Assuming a reflective processes with respect to socially constructed normativity, furthermore, is theoretically for consistent with much of the literature on artificial virtues.
2.5 Legal Obligation in the End

I have already discussed the fundamental characteristics of legal obligation and explained that it arises from the CI adoption of legal duties and represents a practical obligation.\textsuperscript{50} I have also explained the differences between theoretical and practical obligations and shed light on the variation in authority relations. In this section, I further unpack the notion of content-independence and summarize my conceptualization of legal obligation.

Actors animated by legal obligation hold a distinct image of law. They attribute normative authority to law. The anchor of the reason frame, to return to the frames of obligation, is the legal status of a rule. The duties demanded by legal rules are espoused primarily because the perceived institutional authority of law. As such, legal obligation differs from putative and theoretical modes of deference.

Joseph Raz’s (1999, 1986, 1979) discussion of legal authority allows us to identify the role law plays in shaping legal obligation as a practical motive of deference. Raz’s theory of law is a lot more comprehensive than I can do justice here. The intricacies of his account, however, could be bracketed for the time being. What matters for our purposes is his understanding of content-independency and practical authority.

Raz (1986:35) classifies a reason as content-independent “if there is no direct connection between the reason and the action for which it is a reason.” That is, the reason for performing a behavior is not necessarily related to the nature or content of that behavior but is based on some other consideration. When law is regarded as providing a

\textsuperscript{50} Recall that CI refers to content-independent duty acceptance and CD to content-dependent.
content-independent reason for action, the behavior mandated by law is carried out primarily because it is mandated by the law; not because of its moral virtue, instrumental benefits or consequences of non-compliance. The agent accepts the duty demanded by law as his and adopts it in a CI manner because it values deference to law. As Heidi Hurd (1991) explains, when law holds practical authority over an actor,

\[
[t]he very fact that some course of action has been commanded is thus thought to function, by itself, as a sufficient reason to act as commanded: it is thought, that is, to render impotent the reasons that one had antecedently to avoid the action commanded….[\]

In contrast, a theoretical authority functions similar to a heuristic. It provides a reason for belief but not for action. “The utterances of a theoretical authority ... leave untouched the balance of reasons one antecedently has to perform or not a certain action” (Hurd, 1991: 1616). The authority is mostly a reminder, a cue to prior normativity. Regan (1990) characterizes the reasons offered by a theoretical authority as indicative. Indicative reasons point to and reinforce other reasons. They themselves do not move. Practical authority, conversely, offers intrinsic reasons. Its reasons move (also see Kornhauser, 1999).

Marking the CI adoption of legal duties, legal obligation constitutes a practical obligation. It captures the motive of deference to law \textit{qua law}. Legally required behavior may produce byproducts that are valuable in other ways. Yet these considerations remain secondary to the fact that the action was originally required by a legal rule. Law obligates on its own grounds. Combining the discussions thus far, legal obligation could be conceptualized as follows: Legal obligation refers to the subjective state of accepting law’s duty claims as reasons for compliance, approaching compliance with a strong sense of
required-ness and interest in upholding the law (independent behavioral effects), experiencing dissonance in case of non-compliance and recognizing social disapproval and criticism as justified complaints.

2.6 A Delicate Triangle: Legal Obligation, Compliance and Overridibility

Legal obligation implies a stable preference for compliance. It alters the balance of reasons in favor of law-following. But is it a guarantee for compliance? Does it need to be a guarantee? I argue that it is not. More importantly, it does not need to be. Countervailing forces do matter. The connection between obligation and compliance is not deterministic. A famous phrase from Kantian ethics explains this logic: “ought implies can.” The responsibility to follow normative prescriptions presupposes the ability to do. Normative standards cannot demand the impossible. Nor can they demand too much. Selfless-ness and heroism are not necessary conditions for the experience and relevance of obligations.

Consider the following folk tale. Waking up in the middle of the night, a man finds his house on fire. He realizes that he is forced to make a decision between saving his own children or the neighbor's children who came for a sleepover the day before. Of course, he feels an obligation to save all the children but he does not have enough time to do so before the house collapses. In the end, the obligation to save his own children overrides the obligation to save the neighbor's children. This final outcome, however, does not negate the experience of an obligation to rescue all of the children in the first place.
Obligations, in this sense, are usually what philosophers call *prima facie* (Wasserstorm, 1963; Edmundson, 2004). That is, they capture a general experience of duty.

An actor with a sense of legal obligation, accordingly, believes that in general following the law is the right thing to do. All else being equal, he is inclined to obey. More importantly, he is more likely to comply than those who perceive no sense of legal obligation. The holder of a legal obligation is also more likely to try harder to resist temptations to violate legal rules. Yet he is not blind to costs and benefits (material and psychic), other obligations, and to alternative preferences.

Obligation, furthermore, does not imply “superrogation” (Fishkin, 1982:5). Superrogation pertains to “heroic behavior” and actors “cannot be blamed for failing to live up to [heroic] standards” (Fishkin, 1982:3-5). We applaud heroes but we do not expect everyone to be one. Neither do domestic and international law. Consider the hypothetical example of a starving man who has exhausted all means of finding food and is about to die. Stealing, while against the law and his sense of legal obligation, could, nevertheless, become an option. This logic is captured in the necessity argument used to justify breaking the law.\footnote{Brudner (1987:354) observes that some cases of necessity are so extreme that “[non-compliance] is neutral rather than morally blameworthy.” Going back to our case of the starving man, if “no threat of future punishment could induce him to submit to the present certainty of death, [that is] the \textit{de facto} non-compellability” of the situation, then he is justified to break the law despite his general preference for deference” (Brudner, 1987:354).} Brudner (1987:354) observes that some cases of necessity are so extreme that “[non-compliance] is neutral rather than morally blameworthy.” Going back to our case of the starving man, if “no threat of future punishment could induce him to submit to the present certainty of death, [that is] the \textit{de facto} non-compellability” of the situation, then he is justified to break the law despite his general preference for deference” (Brudner, 1987:354).
Legal obligation, similarly, does not presume superrogation. This position is reflected in the International Law Commission’s Draft Article on exceptions to wrongfulness (Crawford, 2002; Boed, 2000). Draft article 33 discusses the conditions under which states can be exempt from wrongful conduct and establishes the criteria for the state of necessity. When a country’s “essential interests” are concerned and the country itself has not contributed to the condition of necessity, according to the Commission, it may be temporarily discharged of its legal duties. The implication of doctrine of necessity is that international law does not expect heroism from states and state leaders but a general sense of legal obligation.

Finally, the existence of legal obligation does not imply that other preferences cease to matter. States continue to hold other interests some of which may conflict with the willingness to uphold legal rules. How divergent preferences interact and are prioritized calls for a theory of preference structuring which is outside the scope of this project (also see Gelpi, 2003). Compliance is only one of several consequences of legal obligation. The measure of the importance legal obligation is not only its ability to sideline all other interests and unconditionally result in compliance. Legal obligation is important because of its ability to turn compliance into a preference through the formation of an authority relationship between states and the law, and the implications of this relationship for the legal culture of the international system.

Accordingly, there is value in examining the relationship between legal obligation and compliance probabilistically (e.g. Kornhauser, 1999). This achieves two objectives.

First, it allows us to acknowledge the possibility of overridibility under specific circumstances and take the complex nature of preferences into consideration. Second, a probabilistic approach enables us to assess the marginal impact of legal obligation on compliance propensities. Whether legal obligation guarantees compliance is the wrong question to ask. The more informative question is whether those who have a hold a sense of obligation to international law are more likely to favor compliance and whether they are more willing to pay a higher price to comply.

Skeptics might rightfully wonder whether the possibility of overridibility negates the idea of legal obligation altogether. I argue that it does not. Locating obligation to law as an indicator of an authority relationship and a stable compliance motive indicates that the skepticism about legal obligation is not automatically justified. As I will explain in chapter 3, the anarchic structure of the international system does not by definition preclude the existence of legal obligation.

Part Two: What Does Legal Obligation Do International Politics?

2.7 Individual, State, and Structural Level Implications

Legal obligation refers to the subjective acknowledgement of international law’s governing authority. Thus, at the hearth of legal obligation lies an internalized commitment to relevant international laws and to the international legal system. When a sense of legal obligation prevails, law becomes self-enforcing and exerts what Thomas Franck (1990) has called an independent *compliance pull*. Jeremy Waldon (1994) refers to
this autonomous influence of law as the loyalty effect which is grounded in what law is, not just what it does.

Even though legal obligation is fundamentally an individual level construct, its importance extends beyond this level of analysis. Legal obligation has critical implications at the state and system levels. At the individual level, legal obligation has direct decisional effects on agents’ policy preferences and broader attitudes towards law and compliance. At the state level, legal obligation has behavioral effects on governments’ compliance policies. At the structural level, legal obligation has effects on the legal culture of the international system. These effects are realized through processes of agentic, bureaucratic, and systemic fidelity. Borrowing Fuller’s (1969) notion of fidelity as a heuristic, I briefly discuss the three mechanisms of fidelity and outline the implications of legal obligation at different analytical levels. Table 2.3 provides a preview of the implications of legal obligation. Since my focus in this study is on the individual level dynamics of legal obligation, I discuss the actor-level implications of legal obligation at greater length in chapter 3 when I present my theory of legal obligation.
<table>
<thead>
<tr>
<th>Level of the Effect</th>
<th>Individual Level</th>
<th>State Level</th>
<th>Structural Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type of the Effect</td>
<td>Decisional Effects</td>
<td>Behavioral Effects</td>
<td>Systemic Effects</td>
</tr>
<tr>
<td>Pathway of the Effect</td>
<td>Agentic Fidelity ↓</td>
<td>Agentic Fidelity ↓</td>
<td>Systemic Fidelity ↓</td>
</tr>
<tr>
<td></td>
<td>- self-imposed constraints</td>
<td>- politicians’ compliance preferences</td>
<td>- changes in the payoff structure through instrumental and normative rewards and constraints</td>
</tr>
<tr>
<td></td>
<td>- increased sensitivity to social pressure</td>
<td>- intra-organizational goals and discourses</td>
<td></td>
</tr>
<tr>
<td>Domain of the Effect</td>
<td>Politicians’ Compliance Preferences</td>
<td>Nature of Governments’ Compliance Policies</td>
<td>Legal Culture Continuum (From Juridical Anarchy to Juridical Authority)</td>
</tr>
</tbody>
</table>

Table 2.3 Effects of Legal Obligation by Levels of Analysis

Before proceeding, two specifications are required. The first pertains to my general theoretical orientation towards the operation of normativity, specifically towards the relationship between norms, interests, and identities. The second concerns my approach to decision-making. How normativity influences actors continues to be a central debate in IR theory. Norms and rules, according to Constructivists, are constitutive of identities and alter interests and behavior as a result (Katzenstein, 1996; Tannenwald, 1999; Finnemore, 1996). For Rationalists, norms influence utility functions by influencing beliefs and ideas (Goldstein and Keophane, 1993), providing information, generating reputational concerns (Downs and Jones, 2002), and by allowing for signaling of intentions (Gelpi,
This divide is in part shaped by alternative, and possibly competing, theoretical understandings of interests and identities. For some, identities and interests as actor level phenomena could be analyzed independent of the surrounding normative environment. If so, there is reason to focus on the causal effects of norms. For others, systemic normative dynamics powerfully shape actor level factors and are re-defined by them through feedback effects. If this is the case, social normativity and unit level factors should be viewed as mutually constituted. This debate has implications for how we conceptualize the behavioral effects of legal obligation. Obligation to law renders compliance a stable preference, but is this motive constitutive of state identities or shapes expectations of utility? I recognize that normative structures, including international law, shape actors’ behavior through both causal and constitutive processes (e.g. Fearon and Wendt, 2002). While I acknowledge the constitutive effects of normativity, I adopt the institutionalist position about the effects of normativity and combine it with a foreign policy analysis (FPA) framework (Hudson, 1995 with Vore).

International law, like domestic legal systems, is a regulatory structure. It prescribes behavior and demands compliance (Finnemore and Sikkink, 1998; Brunnee and Toope, 2010). As a regulatory structure, international law is designed to change behavior. Even constitutive legal rules, such as sovereignty, purport to regulate state behavior and make states comply with the prescriptions of laws concerning other states’ internal sovereignty (Krasner, 1999; Barkin and Cronin, 1994). This implies that international law’s main objective is to get states comply. What creates the outcome of compliance, in turn, is the

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prior decision-making process. With the exception of automatic compliance, compliance arises from decisions made by governmental actors. Re-directing our attention to compliance allows us to focus on the causal effects of international legal normativity and on the patterns of decision-making shaping in compliance policies. Therefore, I posit that legal obligation makes compliance a preference and tilts the balance of actors’ preferences in favor of compliance by influencing calculations of subjective expected utility. 

I conceptualize utility broadly to include all relevant material and psychic considerations (e.g. Hurd, 2007). I approach compliance decision-making from a FPA perspective and compliance decision-making as a two-level process that involves state leaders and bureaucracies. For the purposes of this study, I confine my analysis to governmental decision-making and exclude non-governmental domestic actors (e.g. Simmons, 2009; Dai, 2007).

2.7.1 Legal Obligation at the Individual and State Levels

At the individual level, legal obligation affects politicians’ compliance preferences and broader attitudes towards international law through agentic fidelity. This mechanism operates through self-imposed constraints and increased sensitivity to social pressure which raise actors’ willingness to tolerate compliance costs. First, since legal obligation implies a willingness to comply, decision-makers motivated by a sense of legal obligation will apply self-regulatory mechanisms and impose constraints upon themselves in order not to choose defection (e.g. Bandura, 1991). Second, because compliance becomes a

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54 On subjective expected utility see, for example, Fishburn (1981).
preference for those moved a sense of legal obligation, actors will be guided by a stronger sense of “logic of appropriateness”, which in addition to creating self-restraint will make them more sensitive to social pressure (March and Olsen, 1998; Hurd, 2007). Thus, a stronger sense of legal obligation associates with a stronger compliance propensity. I return to these dynamics in chapter 3.

At the state level, legal obligation influences governmental organizations and introduces compliance into their balance of their preferences. This effect is realized through bureaucratic fidelity which influences organizational goals and discourses, and inter-organizational politics. Research on organizational and bureaucratic politics has shown that organizations pursue their own organizational goals which may range from budget to relative influence over other institutions (Allison, 1971; Halperin, 1974; Huntington, 1960; Neustadt, 1970). Often, organizations, develop standard operation procedures (SOPs) to mechanize the pursuit of organizational goals. Organizations may pursue parochial interests and may sometimes be inflexible due to SOPs (Hudson, 1995 with Vore; Allison, 1971; Schilling, Hammond, and Snyder, 1962). Nevertheless, if deference to international law is part of an organization’s bureaucratic culture, organizational goals will include promoting adherence to international agreements and treaties. As Barnett and Finnemore (2004:19) note, “[t]he rule and routines of a bureaucracy shape bureaucrats’ view of the world, define their social tasks, shape their interests, and orient them in similar ways toward the world.” Bureaucratic culture also establishes organizational goals and discourses, and sculpts the identity of an organization. To the extent deference to international law is part of the bureaucratic
culture of organizations involved in compliance policy making, organizations will form
favorable compliance preferences.

If bureaucratic politics is pulling and hauling between organizations, as Graham Allison (1971) argued, then the presence of legal obligation in bureaucratic cultures will shape the parameters of inter-organizational politics. When deference to international law is embedded in bureaucratic culture of one or more organizations involved in policy making, it will influence the nature of inter-organizational debates, change acceptable policy proposals, and delimit legitimate organizational behavior. Even if organizations compete for relative influence, the role of legal obligation in bureaucratic politics will affect the dynamics of this competition.

Assuming that compliance decision-making constitutes a two-level game that involves state leaders and relevant bureaucracies, the nature of governments’ compliance policies will be shaped by the weight of legal obligation at the individual and organization levels (see also Koh, 1997). The matrix presented in table 2.4 offers a typology of compliance policies based on influence of legal obligation at these two levels.

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55 On two-level games, see Putnam (1988).
Nature of Compliance Policies

<table>
<thead>
<tr>
<th>Legal Obligation at the Leader Level</th>
<th>Strong</th>
<th>Weak</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strong Organizational Level</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Strong</td>
<td>Deferential Compliance</td>
<td>Bureaucratic Compliance</td>
</tr>
<tr>
<td>Weak</td>
<td>Leadership Compliance</td>
<td>Strategic Compliance</td>
</tr>
</tbody>
</table>

Table 2.4 Typology of Compliance Policies

If legal obligation is strong both at the individual and organizational levels, compliance represents deferential compliance and is primarily, though not necessarily exclusively, guided by the acceptance of international law’s authority. When key policy makers hold a sense of legal obligation, yet the organizations involved in the policy process do not, compliance is likely to reflect the will of state leaders rather than the preference of the state apparatus as a whole. Conversely, when leaders lack a sense of legal obligation, but deference to international law is largely embedded in bureaucratic cultures, compliance will be a function of bureaucratic ingenuity and presumably represent a departure from the government’s general orientation. Finally, if neither leaders nor domestic institutions are motivated by a sense of legal obligation, compliance will be instrumentally motivated and reflect strategic calculations of self-interest only.
2.7.2 Legal Obligation at the State and Structural Levels

At the structural level, the widespread presence of legal obligation in combination with the salience of legal obligation at the state level, changes the legal culture of the international system. Systemic fidelity operates by cultivating a norm of compliance, which in turn alters the incentive structure states face when making compliance decisions. When a sense of legal obligation is shared by a critical mass of states, it will make compliance the standard behavior for the majority of the states in the international system. As Chayes and Chayes (1995) have put it, compliance will become the norm. A strategic environment that rewards compliance, in turn, facilitates law-following through a variety of pathways, such as by acculturating states (Goodman and Jinks, 2004), by motivating domestic interest groups (Simmons, 2009; Dai; 2007; Koh 1997) as well as by raising the social costs of defection (Hurd, 2007; Checkel, 2001). Systemic fidelity, in other words, operates both by directly socializing states into compliance and by increasing social pressure for compliance.

In his analysis of rational-legal authority, Weber (1978) explains that legal orders stabilize societal patterns of behavior both directly and indirectly. A “valid” legal system by rewarding compliance and punishing non-compliance moves both deferential and defiant actors towards compliant conduct.56 The widespread presence of legal obligation in the international system, therefore, it will alter the payoff structure associated with compliance, thus change how states calculate their interests.

56 Ian Hurd (2007) has also used Weber’s notion of validity to explain the structural effects of legitimate international organizations.
The structural effects of legal obligation together with its importance at the unit level will influence the legal culture of the international system. Legal culture is a critical, though contested, concept that has important behavioral implications for what social units actually do with laws. Lawrence Friedman (1997) has defined legal culture as “ideas, values, expectations, and attitudes towards law and legal institutions which some public or some part of the public hold.” David Nelken (2004:1) conceptualizes legal culture as a “way of describing relatively stable patterns of legally oriented social behavior and attitudes.” Bierbrauer (1994:243) provides a more specific list of ingredients and argues that legal culture encompasses “interrelated concepts as legitimacy and acceptance of authorities, preferences for and beliefs about dispute arrangements, and authorities’ use of discretionary power.”

Drawing upon these studies, I define international legal culture as the set of principled ideas towards international law and legal institutions, tenor of preferences for compliance prevailing in the international system, and probability of self-restraint states will exercise to resist violating laws when compliance requires significant changes in behavior. I conceptualize the international legal culture is a continuum with juridical authority on one end and juridical anarchy on the other. The framework presented in table 2.5 captures the possible international legal cultures which are shaped by the salience of legal obligation at the state and structural levels.

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57 My focus here is on the external legal culture, namely the societal beliefs and attitudes on law and legality. Internal legal culture refers to the ideas and actions of legal professionals. For this distinction, see, for example, Friedman (1985).

58 For a critique of the concept of legal culture, see Cotterrell (1997).
### International Legal Culture

#### Legal Obligation at the Structural Level

<table>
<thead>
<tr>
<th>Legal Obligation at the State Level</th>
<th>Prevalent</th>
<th>Limited</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strong</td>
<td>Juridical Authority (Valid)</td>
<td>Emergent Juridical Authority (Increasing Validity)</td>
</tr>
<tr>
<td>Weak</td>
<td>Fragmented Juridical Anarchy (Decreasing Validity)</td>
<td>Juridical Anarchy (Invalid)</td>
</tr>
</tbody>
</table>

Table 2.5. Typology of International Legal Cultures

When legal obligation is strong at the state level and prevalent at the structural level, the legal culture of the international system will represent juridical authority. If units are largely motivated by a sense of legal obligation and the international system exhibits an incentive structure that rewards compliance, then beliefs about the normativity of international law will be strong, preferences for compliance will be robust, and the probability that states will exercise self-restraint and engage in costly compliance will be high, thereby representing juridical authority. This legal culture is valid to return to Weber’s (1978) notion and is capable of sustaining itself with limited enforcement by encouraging compliant behavior. An institution is authoritative when its right to rule is acknowledged by the ruled and its demands are fulfilled. When shared ideas express the
importance of deference to international law, governments hold pro-compliance preferences and are highly likely to resist temptations to violate their treaty commitments, international law becomes a *de facto* structure of authority. The horizontal nature of international law has led many to portray the international system as juridical anarchy. This characterization, however, only holds true from a formalistic perspective. The operation of legal obligation in the international system establishes a social system based on juridical authority.

Juridical anarchy is only one end of the legal culture continuum and arises when legal obligation is limited both at the unit and system levels. The legal system in an anarchic culture is not valid. This may be because the system has is newly established, for example, following a major war, or has become obsolete because it no longer reflects the social and normative realities of the international society. A legal culture of emergent juridical authority develops when critical players in the international system are guided by a sense of legal obligation, yet the norm of compliance has limited weight in the international system overall. In this legal culture, an external incentive structure that favors compliance has yet to materialize. The existing legal system in this sense is only partially valid. Finally, a culture of fragmented juridical anarchy arises when the validity of the system is being questioned by counter-hegemonic ideas and discourses by major units. To summarize, the anarchic structure of the international system does not dictate the legal culture of the international society. Departing from a formalistic approach and adopting a Socio-legal perspective allows for understanding how legal obligation alters the
conventional model of juridical anarchy and leads to alternative legal cultures. I explore some of these dynamics in chapter 3 and introduce insights from Socio-legal Positivism.

2.8 Conclusion

In this chapter, I have sought to establish the groundwork for the theory of legal obligation I develop in chapter 3. The first part of this chapter examined both obligation and legal obligation from a conceptual perspective and offered a definition of legal obligation. I also outlined possible variations in authority relations and discussed the specificity of legal obligation and the practical authority relationship it denotes. Specifically, I have defined legal obligation as the subjective state of accepting law’s duty claims as reasons for compliance, approaching compliance with a strong sense of required-ness and interest in upholding the law (independent behavioral effects), experiencing dissonance in case of non-compliance and recognizing social disapproval and criticism as justified complaints.

In section two, I have explored the implications of legal obligation for international politics. I have first discussed on the consequences of legal obligation for states’ compliance policies and specified deferential, strategic, bureaucratic, and leadership compliance as four ideal type compliance policies depending on the importance of legal obligation at the leader and governmental levels. Second, I have examined the implications of legal obligation for the legal culture of the international system. Focusing on the weight of legal obligation at the unit and structural levels, I have identified four possible legal cultures: juridical authority, emergent juridical authority, fragmented
juridical authority, and juridical anarchy. In the next chapter, I turn to the psychological determinants of legal obligation and provide a theoretical framework for explaining why politicians form a sense of obligation towards international law.
CHAPTER 3

A THEORY OF LEGAL OBLIGATION

INTERNATIONAL IDENTIFICATION, MEMBERSHIP AND THE PSYCHOLOGICAL LOGIC OF LEGAL OBLIGATION

Feelings of obligation can constitute a powerful incentive to comply with behavioral prescriptions in specific situations...Obligations may sometimes become even more binding in decentralized social systems than in centralized ones.

Oran Young (1979:23-33)

3.1 Introduction

A sense of perceived legal obligation lies at the heart of the international legal system and renders formal legal obligations consequential and truly binding. A sense of legal obligation shared by political leaders is important because it leads to voluntary and dutiful compliance with international law irrespective of the likelihood of rewards and punishment, it motivates governments to pay a higher price for compliance even when compliance fails to serve their egoistic interests, and it helps shape the legal culture of the international system. Thus, a sense of perceived legal obligation grounds institutional legalization and global legal governance.
Politicians “make” international politics. The real power of law in world politics, in effect, depends on politicians’ sense of legal obligation and willingness to defer to international law. Fortunately, a sense of legal obligation in some leaders’ policy postures seems clear, as does the effect of this motive on state behavior. This observation presents an important puzzle because, on the surface, representatives of sovereign states have little reason to hold a sense of obligation to international law. All politicians are committed to state sovereignty, yet some are also moved by a sense of legal obligation and defer to international law. In the anarchy of international politics, it is not immediately clear why actors vary in the extent of their sense of legal obligation.

This chapter addresses this interesting puzzle and explicates the psychological logic of deference to international law. I offer a theoretical framework for explaining why and under what conditions political actors develop a sense of perceived legal obligation and how legal obligation shapes compliance preferences. I then derive testable hypotheses from this framework and identify the observable implications of my argument. Given the importance of legal obligation for the stability of the international legal system and for the independent effects of international law on state behavior, the question of why political agents defer to international law is possibly one of the most critical questions that should be of interest to scholars and policy-makers alike.

This chapter is composed of two main part. Part one offers a theoretical framework for explaining the psychological logic of legal obligation at the individual level. Part two sheds some light the macro-foundations of legal obligation. Part one develops in four sections. The first section expands the conceptual analysis of legal obligation carried out
in chapter 2 and discusses the tension between deference to international law and commitment to state sovereignty entrenched in legal obligation. I explain why acknowledging the governing authority of international law—and subjectively adopting legal duties in the process—leads to a tension between sovereignty and deference, and results in what I have called psychological “sovereignty costs,” that is, a condition of motivational conflict. The next section of part one presents my theoretical framework. I explicate why international identification plays a critical role in the settlement of the sovereignty-deference tension and how the extent of international identification prompts actors to form varying degrees of legal obligation.

I argue that international identification, through the causal mechanism of reference group membership, affects the perceived legitimacy of international law’s authority and influences how actors process psychological “sovereignty costs.” As a result, the extent of international attachment conditions politicians’ ability to reconcile sovereignty with deference to international law and leads to varying degrees of legal obligation.

Section three examines the relationship between legal obligation and compliance and spells out how legal obligation increases compliance resolve and facilitates costly compliance. I argue that legal obligation increases compliance propensity even when compliance is costly and at odds with individual state interests by acting as a self-imposed constraint upon policy-makers and by raising their sensitivity to social pressure. In the final section of part one, I review alternative arguments of legal obligation followed by a discussion of the observable implications of my theoretical framework and presentation of research design and methodological approaches used in its empirical evaluation.
Part two illuminates the macro-foundations of legal obligation mentioned in the individual level theory and helps connect agents to structures (Carlsnaes; 1992; Wendt, 1987; Dessler, 1989). Starting with a discussion of the “analytical” problem of essentialism, which indirectly figures in functionalist approaches to legalization and in many discussions of international law's authority, I discuss the constitutive dynamics of legalization and explore the expressive dimension of international law. I conceptualize legalization as an associational practice of forming legally defined “communities of principle” (Franck, 1990; Dworkin, 1986), and I argue that legal rules express states’ associative duties, namely responsibilities of legitimate membership in international political communities (Gilbert, 2006a; Tussmann, 1960; also see Bull, 2002; Hurrell, 2000; Franck, 1990; Manning, 1962; Reus-Smith, 2004). International law’s authority, in this sense, originates from the collective will of states constituting rule communities. As such, international law expresses legitimate influence upon members of legally defined political associations (Franck, 1990; Manning, 1962; Buzan, 2004; Bull, 2002).

It is this expressive dimension of international law, I contend, that makes international identification central to the formation of legal obligation at the individual level. With this theoretical move, I hope to contribute to the existing “obligation, precision, delegation” model of legalization (Abbott et al., 2000; Abbott and Snidal, 2000) and partly connect the psychological and sociological dimensions of legal obligation (Reus-Smith, 2003).

59 I use essentialism only in an analytical sense and draw on the insights of law scholars and legal theorists. My understanding of this problem is not directly connected to how it is used post-structuralist accounts. The relevant literatures are cited in part two. 82
Part One: Micro-foundations

3.2 Legal Obligation and Psychological Sovereignty Costs: The Motivational Tension Between Sovereignty and Deference

I have previously defined legal obligation as the acknowledgement of international law’s governing authority, defined as the authority to impose duties and demand compliance. In chapter 1, I have also explained that legal obligation is primarily grounded in the authority of international law as a social institution rather than being based on the normative content of individual legal rules. Accordingly, the basis of a sense of legal obligation is the perceived authority of international law qua law.

Following this framework, in chapter 2, I have differentiated between three ideal types of authority relations and corresponding obligations, and noted that legal obligation represents a practical authority relation between political actors and international legal institutions, and thus constitutes a practical obligation (Hurd, 1999; Soper, 2002; Raz, 2009). A practical obligation, to return to the themes of chapter 2, differs from a theoretical obligation because it is indicates deference to the normative claims of authoritative institutions instead of being shaped by an actor’s individual understanding of normativity. Thus, legal obligation is largely shaped by the practical difference the institutional authority of international law makes in motivating deference (Hurd, 1991; Hart, 1994; Soper, 2002; Regan, 1999).

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60 Other relevant works have been cited in chapter 2.
An obligation is a subjective motive, a disposition, that forms in response to an authoritative duty claim made by a rule or institution (Kelman and Hamilton, 1989; Morselli and Passini, 2011). A sense of obligation develops when the duty claim, a required action, is accepted and personalized as one’s own and the institution’s right to command is recognized. Authority relations, or obligation-formation seen from the perspective of an individual, represent a type of social influence (Kelman and Hamilton, 1989). In a social influence situation, the objective of the influencing agent is to motivate the acceptance of a new belief or behavior and produce motivational, attitudinal, and behavioral change (Kelman, 2006; Kelman and Hamilton, 1989; Cialdini, 2001). In the same vein, authoritative institutions seek to transform an actor’s existing dispositions and behavioral inclinations, and motivate deference. The objective of obligating mediums in social influence is to prompt an actor to deviate from his or her original stance, adopt the duty, and form a sense of obligation (Kelman, 2006; Kelman and Hamilton, 1989; Cialdini, 2001). As explained previously, if a duty is adopted as a result of the practical difference the authority claim makes in one’s balance of reasons, the ensuing obligation constitutes a practical obligation.

Even though IR scholars are increasingly interested in the concept of authority (e.g. Hurd, 2007; Ruggie, 1998; Barnett and Finnemore, 2004; Lake, 2009), the individual level dynamics of authority relations have not been fully charted. This indeed is an important shortcoming because understanding the dynamics of legal obligation and obligation-formation more broadly requires unpacking authority relations between individual decision-makers and institutions simply because authority is a perceptual factor.
based on the subjective relationship between an individual and an institution making an authority claim (e.g. Barnett and Finnemore, Hurd, 2007).

What specifically differentiates authority relations from other forms of social influence, such as persuasion and attitude-change, is the target’s delegation of autonomous judgment and decision-making authority to the obligating medium. Delegation, in the subjective sense, refers to the grant of authority to an obligating medium to guide one’s judgment and actions, and allow it to make a practical difference in one’s balance of reasons. This understanding of delegation is consistent with how it is used at the state level (Bradley and Kelley, 2008; Majone, 2001). In this sense, a sense of legal obligation forms when political actors subjectively delegate sovereign judgment and decision and making authority to international legal rules and institutions, acknowledge international law’s governing influence, and adopt legal duties as required actions.

Just like legalization imposes “sovereignty costs” upon states (Abbott and Snidal 2000), subjectively delegating decision-making authority to international legal institutions creates psychological “sovereignty costs” for state representatives because it limits their decision-making and policy autonomy, and most importantly clashes with their role of representing the political authority of the state in the international arena (Hathaway, 2007; Erne, 2009, Spiro, 2000; Hathaway and Lavinbuk, 2006). Legal obligation, accordingly, entails a tension between two motivations; commitment to the sovereign authority of the state and deference to international law.

The extant literature on legalization has successfully attended to the institutional side of “sovereignty costs.” Abbott and Snidal (2000: 436) note that these costs “can
range from simple differences in outcome on particular issues, to loss of authority over
decision making in an issue-area, to more fundamental encroachments on state
sovereignty.” In the formal sense, delegation of decision-making authority to international
bodies could be costly because states sacrifice decision-making and policy autonomy, and
thus could potentially lose the power to govern important domestic issue areas (Abbott

However, sovereignty costs are not merely institutional. Delegation of decision-
making authority to international law is also psychologically costly for agents of sovereign
states and evokes a condition of motivational conflict; a tension between sovereignty and
defereence (Baumeister, 2005; Baumeister and Vohs, 2007). When a sense of legal
obligation is present, the limitations imposed by international law on states’ autonomy
cease to be simple institutional constraints. They became legitimate commands justified
by the acknowledgement of international law’s right to impose duties and demand
compliance. Accordingly, subjectively delegating decision-making authority to
international law marks the temporary suspension of sovereign judgment, and thus is not
automatically consonant with loyalty to the political authority of the state.

What obligates political actors in their primary roles are domestic laws and
institutions. Limitations on decision-making and policy autonomy imposed by state law
are for the most part legitimate and could evoke an obligatory logic because these
restrictions are fundamentally tied to principles of national association established by
constitutions. Constraints by definition imply rights and entitlements for relevant others
and are indispensable components of the political and legal constitutional settlement
expressing popular sovereignty (Swaine, 2004; Loughlin and Walker, 2007; Ku, 2000). Therefore, it is not surprising for agents to perceive state law as legitimate and recognize its governing authority both as politicians and as citizens. Thus, a sense of perceived obligation to domestic law is arguably less psychologically costly. Actors have obvious reasons to acknowledge the governing authority of domestic law, form a sense of legal obligation, and thus could arguably reconcile deference with individual autonomy.

In contrast, acknowledging international law’s governing authority through the subjective delegation of sovereign decision-making authority to international legal institutions is psychologically costly and implies a motivational conflict because it clashes with politicians’ fundamental commitment to state sovereignty and with the task of representing the political authority of the state internationally.

If the central role of political agents is to represent the will of the people domestically, their primary role internationally is to represent the sovereign authority of the state in the name of the people. I do not mean to imply that sovereignty is an uncontested and unchanging concept (e.g. Lake, 2007; Reus-Smith, 1999; Philpott, 2001; Ashley, 1986; Biersteker and Weber, 1999), yet regardless of how it may be defined, sovereignty still lies at the heart of international relations (e.g. Krasner, 1999; 2001; Jackson, 1990). International politics ultimately rests on the representation of the political authority of the state on the world scene and on the pursuit of national interest that underpins this authority (e.g. Morgenthau, 1985; Waltz, 1979, also see Spruyt, 1994). In fact, underlying the debates over the democracy deficit of IOs is in part the proper representation of the sovereign authority of the state in the international arena which
embodies the will of the people (e.g. Dahl, 1999; Keohane, Macedo and Moravcsik, 2009; Majone, 1998).

The “central normative problem” of democracy concerns the extent to which the laws of the state reflect the preferences of people (Rehfeld, 2009:214; Pitkin, 1967; Urbinati, 2008). Since representative democracy uses political agents as mediators between citizens and laws, this problem may be “restated in terms of the relationship between citizens and their representatives: how closely must a representative’s votes on legislation correspond to the preferences and will of his or her constituents” (Rehfeld, 2009:214).

This normative question centers upon the notion that political actors, despite differences in their particular institutional roles, are fundamentally agents of citizens who endow them with political authority to act (Pitkin, 1967; Urbinati and Warren, 2008). This primary domestic responsibility to act in the name of citizens translates into the international responsibility to represent sovereignty which is granted to politicians by citizens. In fact, the pursuit of national interest, common to all countries, originates from this very principle-agent relationship between people and leaders (e.g. Morgenthau, 1985). Citizens first constitute, then invest sovereign authority in political actors who in turn pursue the will of the people internationally (Lindhal, 2003; Loughlin and Walker, 2007).

Politicians value decision-making and policy autonomy precisely because these mechanisms are the central components of pursuing the interests of the nation and representing the sovereign authority in the international arena. Decision-making and policy autonomy both subjectively institutionally enable politicians to fulfill their central
responsibility of serving people who remain the ultimate holders of sovereignty. A sense of perceived obligation to international law, therefore, must be psychologically costly. Acknowledging international law’s governing authority through the subjective delegation of sovereign decision-making authority involves a motivational conflict because it contradicts politicians’ fundamental responsibility and clashes with their commitment to state sovereignty.

A motivational conflict, briefly defined, refers to a tension between two drives or inclinations (Baumeister, 2005; Baumeister and Vohs, 2007). Typically, the notion of motivational conflict is situated within dissonance theory which linking cognition and motivation (Jones, 1998; Elliot and Devine, 1994) posits consistency of motivations and predicts dissonance, a state of psychological discomfort, arising from inconsistent motivations (Festinger, 1957). Motivation briefly defined is “any sort of general derive or inclination to do something” (Baumeister and Vohs, 2007:2). Thus, motivational conflict could arise from different types of inconsistencies, such as tensions between biological and social derives (e.g. Baumeister and Leary, 1995; Baumeister, 2005) or conflicting personal inclinations (e.g. Wolfe and Johnsen, 1995). Discomfort arising from clashing drives often leads to conflict motivational conflict reduction through a series of strategies of self-regulation (e.g., Baumeister, Heatherton, Tice, 1994).

My intent here is not to delve into the details of these psychological processes. Rather, my objective is to call attention to the tension between sovereignty and deference and highlight that the formation of a sense of legal obligation requires the settlement of this tension. Because they treat authority relations in a uniform manner, missing from
optimistic and pessimistic perspectives on legal obligation is an emphasis on the inconsistency evoked by two dueling motivations and an understanding of how state representatives manage this imbalance. Political leaders are not inherently defiant or deferential towards international law. Rather, they experience different levels of motivational conflict, and thus are more or less sensitive to psychological sovereignty costs involved in legal obligation. Accordingly, explaining the logic of legal obligation requires exploring how actors settle the tension between sovereignty and deference and attending to the factors that shape their ability to harmonize deference to international law with the importance of sovereignty.

3.3 International Identification, Authority Relations, and The Logic of Legal Obligation

I argue that international identification plays a critical role in politicians’ ability to reconcile sovereignty with deference to international law, and thus affects the degree of legal obligation. By shaping perceptions of international law’s legitimate influence, international identification influences how much motivational conflict agents experience, and thus affects the extent to which they could delegate sovereign decision-making authority to international law and acknowledge its governing authority. High international identifiers experience less motivational conflict because they perceive international law’s authority legitimate and could embrace deference as a membership responsibility in the international community, thereby forming a strong sense of legal obligation. In contrast, low international identifiers experience more motivational conflict
because they do not fully perceive international law’s authority as legitimate and fail to accept legal duties as membership responsibilities. As a result, they are likely to lack a viable sense of legal obligation.

In what follows, I introduce the central components of my explanatory framework and move on to derive testable hypothesis. I start with a general discussion of international collective identity and then explain the effect of international identification on legal obligation using insights from theories of Social Identity, Social Categorization, and Social Influence. Discussion of alternative arguments, research design, and methodological strategies follow the presentation of my theoretical framework.

3.3.1 International (Collective) Identification

While power, interests, or information might structure actors’ preferences under different conditions, international identification affects their susceptibility to psychological sovereignty costs involved in legal obligation and how much motivational conflict they experience in acknowledging the authority of international law. Whether a politician could subjectively delegate sovereign authority to international law and form a sense of legal obligation depends on whether he or she perceives international law’s exercise of power as legitimate, which is shaped by the extent of identification with the international community governed by international law.

Identity has become a central concept in the IR literature in the last few decades.\textsuperscript{61} A large body of research has studied the influence of identities on a variety of issues, such

\textsuperscript{61} This literature is too large to cite here fully.
as international security and order (Wendt, 1999, 1994; McSweeney, 1999; Mattern, 2005; Mercer, 1995), foreign policy (Campbell, 1998; Hopf, 2002; Mitzen, 2006a; Jepperson, Wendt, and Katzenstein, 1996), international cooperation and solutions to collective action problems (Wendt, 1994), nuclear proliferation (Hymans, 2006) as well as on political integration and security communities (Cronin, 1999; Adler and Barnett, 1998) to give just a few examples. Indeed, with the advent of Constructivism, an identity turn began to characterize the IR scholarship.

Identity is a complex and multi-dimensional construct (e.g. Brubaker and Cooper, 2000; Fearon, 1999; Abdelal et al., 2009). The many uses of identity in different literatures further complicate efforts to conceptualize it. James Fearon (1999) alone identifies 14 definitions of identity. Identity at its core refers to the understanding of the self (Gecas, 1982). 62 My interest here is particularly on collective identity.63 Abdelal et al. (2009:19) define identity, notably collective identity, as a “social category that varies along dimensions of identity “content” and “contestation.” As contestation defines the extent of shared or inter-group agreement over the consensus on the content of identity, it is a group level phenomenon. Therefore, content of identity deserves more attention for the purposes of this project. Content includes constitutive norms, social purposes, relational comparisons, and cognitive models. Constitutive norms refer to the norms that define group membership, social purposes tap the shared collective goals of the group, relational comparisons capture comparisons of the in-group to out-groups, and cognitive models

62 There are various approaches to identity and alternative definitions. See, for example, Hogg, Terry and White (1995) for a comparison between identity theory and social identity theory.

63 I return to definitions of collective identity in the following sections.
indicate perceptions of situations and interests grounded in given collective identity
Abdelal et al. (2009:19).

One tendency in the IR literature is to equate identity with role. Even though IR scholars have not agreed upon a shared definition of identity, the construct is often used to refer to states’ understandings of their roles in the international systems and in particular relationships with other states or groups of states. Employed in this way, it taps the state’s corporate identity (e.g. Wendt, 1994). Indeed a large body of Constructivist work on identity dovetails role theory. James Rosenau (1990: 2) has defined a role as the “attitudinal and behavioral expectations that those who relate to its occupant have of the occupant and the expectations that the occupant has of himself or herself in given situations” (also see Cottam, 1986; Holsti, 1970; Walker, 1987). Wendt (1992:397), similarly defines identities as “relatively stable, role-specific understandings and expectations about self.” Roles are, of course, an important component of identities and defining identity as a state’s role may be justified under certain conditions given the importance of the state as an actor in international politics.

Nevertheless, identity, especially collective identity, is more than role-concept (Abrams and Hoog, 1999; Abrams, 1999). Its content includes an understanding of the self, a definition of the self’s fundamental characteristics, and a demarcation of the self from others (e.g. Herrmann and Brewer, 2004).

Since legal obligation is a first-person construct, my approach to identity is grounded in the Social Psychology literature and is particularly shaped by Social Identity Theory (SIT) (Tajfel, 1982) and Social Categorization Theory (SCT) (Turner, 1982; Tajfel
and Turner, 1979). This understanding parallels Abdelal et al.’s (2009) content component of identity and goes beyond role-concept. How leader identities influence state policy and how feelings of legal obligation get aggregated within the state apparatus are, of course, critical questions. Nevertheless, it is only after analyzing the relationship between identity and legal obligation at the politician level that we can being to examine unit level questions.

In am interested in international (collective) identity. As noted previously, when I refer to international identity, I mean attachments to international polities. My primary focus in this project is on identification with the international community but I also examine identification with the European polity as a critical supranational identity category. International identity and similar constructs, such as transnational identity, are increasingly being used in IR theory. Definitions vary, yet the emphasis on extended identities continues to grow. Conceptualizing collective identity as the blurring of the self-other distinction, for example, Alexander Wendt (1999, 1994) has proposed collective identity formation as a solution to collective action problems and catalyst for systemic change. Bruce Cronin (1999), focusing on variations in the nature of transnational identities has examined the development of alternative security systems. Christopher Hemmer and Peter Katzenstein (2002) demonstrated that perceptions of collective identification largely shaped the difference in post-World War II American foreign policy towards the North Atlantic and Southeast Asia. A burgeoning literature on EU studies, similarly has addressed the influence identification with Europe on policy attitudes and preferences (Herrmann, Risse and Brewer, 2004).
Much of the literature in IR scholarship examines collective identity as the self’s integration with an other, however the self and the other may be defined. Collective identity, described in this way, marks a new social role for the self arising from a redefined relationship with the other (e.g. Wendt, 1994). This extended self is still a critical aspect of my account of international identity. The self-other merge is indeed a fundamental characteristic of collective selves (e.g. Smith and Henry, 1996; Brewer and Gardner, 1996; Troop and Wright, 2001). Collective identity as employed here, however, is different from a role and refers to the psychological location of the self in a specific identity category.

Following Ashmore, Deaux and McLaughlin-Volpe’s (2004:81), I conceptualize collective identity as subjective associational category membership and a set of cognitive beliefs associated with that category, including its norms values, and interests. Collective identity strength pertains to importance of the category membership and to the salience of the cognitive beliefs associated with that category.

International identification, as I employ it here, represents an actor’s attachment and perception of his or her state’s connection to an international superordinate polity. It refers to those parts of “self-and state-concept” that are tied to international social groups (Tajfel and Turner, 1986; Brewer, 2001). In this regard, international identification captures “those levels of the self” that are beyond the personal and nation-state level and derive from attachment to international polities defined at varying levels of inclusiveness (e.g. Brewer, 1991; Brown, 2000; Brewer and Gardner, 1996).
The central process that shapes collective identity is self-categorization (Tajfel and Turner, 1986; Hoog and Abrams, 1988). “Collective identification,” Ashmore, Deaux and McLaughlin-Volpe (2004:81) note, “is first and foremost a statement about categorical membership. A collective identity is one that is shared with a group of others who have (or are believed to have) some characteristic(s) in common.” Quoting Simon and Klandermans (2001), the authors refer to collective identity as “a place in the social world.” Of course, collective identity is multi-faceted, context-specific, and malleable. Yet collective identity is also “chronic” and a central component of one’s self-understanding (Sherman, Hamilton, and Lewis, 1999, also see Brewer and Gardner, 1996). The variability of identity salience does not negate the fact that specific collective identities are stable components of self-concept and systematically inform perceptions, values, and behavior (Tajfel, 1981; Thoits and Virshup, 1997).

Before proceeding, it is critical to mention why collective identity rather than social identity is the preferred term here. Collective identity offers more explanatory leverage because it does not presume a strict in-group/out-group distinction and negativity towards out-groups. SIT and SCT typically associate social identity with in-group/out-group differentiation and comparison (Abrams and Hoog, 1999; Abrams, 1999; Tajfel and Turner, 1979). Collective identity does not assume these processes to be necessary conditions for the formation of a subjective sense of collective selfhood (Ashmore, Deaux and McLaughlin-Volpe, 2004; Brewer, 2001). This flexibility allows for studying superordinate identification without automatic reference to out-groups and other-ing
tendencies and leaves these matters as scope conditions to be specified and hypotheses to be tested. Therefore, collective identity potentially offers more explanatory leverage.

Collective identity still embodies the core attributes of social identity. Henry Tajfel (1981:255), in his frequently quoted definition, describes social identity as “that part of an individual’s self-concept which derives from his knowledge of his membership of a social group (or groups) together with the value and emotional significance attached to that membership.” Thoits and Virshup (1997:106), in a similar fashion, interpret social identity as “socially constructed and socially meaningful categories that are accepted by individuals as descriptive of themselves.” Understood as subjective category membership, collective identity is consistent with the different definitions and uses of social identity.

Furthermore, there is a notable move in identity studies away from social identity to collective identity (Brewer, 2001). A growing number of scholars have called into question the term social identity noting that all aspects of the self are social. As identity requires difference, sociality is inevitably involved in understandings of the self at all levels (Connolly, 1991; Abdelal et al., 2009; Brewer, 2001; Abizadeh, 2005). The signifier social, therefore, does not fully differentiate an extended identity from other aspects of the self.

Collective identification has not been extensively studied and fully tested at the international level. Identification with the international community even appears troubling to some who doubt its presence as a meaning category of identification (Smith, 1992; 1990; Walzer, 1992; Mouffe, 2000; c.f. Abizadeh, 2005). Why political actors would identify with the international community, and if they do, how this orientation could be reconciled with national identities similarly raise important questions. What the
international community is and what it does, furthermore, remain somewhat unclear. These are legitimate concerns, yet do not warrant foreclosing the importance of the international community as a salient superordinate category of attachment and international identification by theoretical fiat.

Arguably, international identification remains an empirical question and five main reasons justify the analysis of international identification as defined in this study. First, my definition of international identity does not presume emotional attachment which is typically assumed to be the most critical obstacle to collective identification with international communities. Rather, international identification as employed here, emphasizes categorization of the self and one’s country as a member in associations of states accompanied by an understanding of shared interests and an interdependent future. This conception of collective identification at the international level does not require the affective ties national identity presumes. What it requires at minimum is that a politician categorizes himself as a members in international associations and hold a view of the state as a member in international polities. As I will explain shortly, what ultimately motivates the formation of legal obligation is not necessarily an affective attachment to an association but a politician’s inclusion of himself and his country in an association as members.

Second, it is sometimes assumed that to be consequential, collective identity at the international level must include at least certain aspects of national identity, such as ingroup favoritism so that it could result in pro-social outcomes (e.g. Smith, 1991; Huntington, 2004; c.f. Wendt, 1999). This argument may not be entirely justified on
theoretical grounds. International politics is different from domestic politics in important ways. Exporting theories of national identity to the international level to examine international identification does not take into account the specificity of world politics. What identity at the international level entails and the conditions under which this identity produces important behavioral effects should be assessed with explanatory frameworks developed for understanding collective identification at the international level rather than directly modeled on accounts addressing national identity.

Third, ample evidence suggests that international community may indeed constitute a meaningful category of identification as described here even if it does not entail strong emotional attachments. David Ellis (2009:3) in his important contribution to continuing scholarly debates on international community notes that “[v]irtually every world leader has at some point uttered the words ‘international community’ in the course of a foreign policy speech.” Examples abound. Even if such references are rhetorical only, the fact that international community as a category is so widely evoked offers reason to believe that some form of international identity is indeed shared by many politicians. As such, examining the ability of the international community to draw identification remains a worthwhile, albeit challenging, pursuit.

IR scholars have long shown interest in the international community as a construct. It figures, for instance, in the classical Realism-Idealism debate in which Realists decidedly questioned its effectiveness (Morgenthau, 1985; Carr, 1946). Departing from this skeptical position Hedley Bull (2002) pointed to the social fabric and institutional framework of state interactions and characterized world politics as an international society in which
states share common interests and rules. In some accounts, progression from the international society to the international community is assumed to take place when common morals, values, identities and a shared ethos emerge (e.g. Schmmelfenning, 2002). While the international society is a state-centric political organization, furthermore, the international community is described as a community of humankind centered upon the governance of human relations. International community, in Jackson’s (2000)’s terms represents a universitas.

Whether such a community exists at the international level and assuming it does, what it precisely entails continue to be discussed by IR scholars. Our interest here, however, is not on the precise characteristics of international community. Our focus is distinct. It is on the international community as a category of membership, as an associational grouping of identification. We can therefore be temporarily agnostic to what the international community really is or ought to be and to what extent it is truly present. What matters for our purposes is international identification as a socio-spatial position. I also do not limit my understanding of international community to the societas vs. universitas distinction (Jackson, 2000). Where an actor locates international community on this continuum is ultimately an empirical question. Furthermore, as it should be clear by now, I acknowledge the cross-cutting and nested nature of international associations. This approach allows for studying international identification with different international superordinate communities.

Fourth, the nature of identity as a construct suggests that international identification is indeed theoretically feasible. Identity is not a primordial phenomenon. Identities are
constructed, and thus could be re-constructed. Even though identities tend to be sticky, they are not fixed (Wendt, 1999; Gaertner et al., 1993; Tyler, Kramer, and John, 1999). Indeed, identity change is a central theme in IR and Social Psychological studies. International identification, therefore, is as likely as any other identity from a theoretical point of view (Abizadeh, 2005; c.f. Brewer, 1991). Why and under what conditions this theoretical possibility translates into an empirical reality and the interplay of international identification with national and sub-national identities are separate matters that are exogenous to my theoretical framework. They require additional explanatory frameworks and empirical analyses. The point, however, remains that there is nothing inherent in the concept of identity itself that forecloses identification at the international level.

Finally, the multi-dimensionality of identities and possibility of self-categorization at different levels imply that pre-existing national identities do not need to automatically hinder international superordinate attachments (Forgas and Williams, 2002; Tyler, Kramer and John, 1999; cf. Brewer, 1991). International identity is unlikely to be as thick as national identity, yet inclusion of the self and state-concept at the international level as a membership category can co-exist with prior identities.

Having defined collective identification as a subjective category membership and a set of cognitive beliefs associated with that category, I emphasize three dimensions of international identification: categorization, common interests/purpose, common fate/future. These aspects of international identity are consistent with much of the literature in Social Psychology (Ashmore, Deaux and McLaughlin-Volpe, 2004) and largely correspond to IR treatments of the concept. Wendt’s (1999: 343) four indicators of
international collective identification, for example, are interdependence, common fate, homogeneity, and self-restraint. While I bracket homogeneity and leave it as an empirical question, my conceptualization of international identification fully captures Wendt’s remaining cognitive indicators. I deliberately exclude self-restraint in order not to blend identification with action. While I recognize the relationship between identity and action, I do not include behavioral practices in the definition of international identification.

Categorization is the fundamental element of any group identity (Tajfel and Turner, 1986; 1979). It refers to categorizing the self in a social group and captures the subjective placing of the self in a category of membership (Ashmore, Deaux and McLaughlin-Volpe, 2004). Categorization at the international level, therefore, pertains to how much a politician perceives himself—and his country by extension—as a member of an international associational category. Common interests constitute the second aspect of international identity. This dimension refers to a politician’s perception of shared interests with other states and with the political community as a whole. Specifically, this indicator taps how much actors regard the interests of their country to be tied to the interests of others. Common fate and common future are two dimensions of international identities that pertain to perceptions of interdependence, particularly to the degree to which an actor regards him or herself in an interdependent relation with others in a group (Gurin and Townsend, 1986; Campbell, 1958). Interdependence as employed by Social Psychologists is somewhat different from how the construct is used by IR scholars (e.g. Keohane and Nye, 1977). Interdependence taps how an individual believes to share a mutual fate with others in the same category and how much he or she imagines a joint
future (Gurin and Townsend, 1986; Campbell, 1958). Interdependence, put differently, concerns the depth of a group’s “inclusion” in the self (Aron and McLaughlin-Volpe, 2001; Aron et. al., 1991; Smith and Henry, 1996; Smith, Murphy and Coats, 1999). Common fate and future, accordingly, pertain to the extent to which a politician perceives occurrences in other countries and in the international community to be consequential for her or her country and considers the future of his or her nation influenced by and linked to the prospects of others.

3.3.2 International Identification, Membership, and the Logic of Legal Obligation

International identity explains the psychological logic of legal obligation because it shapes the perceived legitimacy of international law’s authority and affects politicians’ ability to harmonize commitment to the sovereign authority of the state with deference to international law. Therefore, explaining the formation of a sense of obligation to international law requires analyzing how international identification influences perceptions of rightful authority, thereby evoking a sense of legal obligation. Accordingly, the independent variable is the extent of an actor’s international identification and the dependent variable is the degree of legal obligation.

International identification shapes the perceived legitimacy of international law’s authority because it prompts politicians to re-conceptualize understandings of their countries --and by extension themselves-- as members of the international community.
rather than view statehood autonomous from membership in the society of states.\textsuperscript{64} As actors attach to the international community, they come to define statehood more on the basis of recognized member status in the international community and less on the basis of unit level attributes, particularly the supreme authority of the state.\textsuperscript{65} International identification helps politicians assimilate “self and state-concept” into the prototype of international community member and view their country embedded in the society of states as a member (Turner, 2005; Simon and Oakes, 2006; Hoog, 2001; Franck, 1990).

The sense of membership in the psychological group of international community generated by international identification leads to the perceived legitimacy of international law’s authority and allows for a sense of legal obligation to form because it shifts actors’ understandings of legitimate duties, corresponding rights, and authoritative institutions to the international level and subsequently changes their understandings of sovereignty (Kelman and Hamilton, 1989; Morselli and Passini, 2011).\textsuperscript{66}

First, because international identification prompts the re-characterization of the structure of social interaction (Brewer and Gardner, 1996; e.g. McClintock, 1972) and particularly results in the recognition of reciprocal interdependencies (e.g. Keohane and Nye, 1977), the sense of membership involved in international identification, shifts politicians’ conceptions of the duties and rights of the state to the superordinate international community level (Simon and Oakes, 2006; Turner, 2005). Shared notions of

\begin{itemize}
  \item \textsuperscript{64} It also produces social categorization effects, namely accentuation of category differences, which are not directly relevant for the present discussion.
  \item \textsuperscript{65} On the recognition of the state, see, for example, Lauterpacht (1947).
  \item \textsuperscript{66} On psychological transformations, generally see Kelley and Thibaut (1978), De Cremer and Van Vugt (1999), Kramer and Brewer (1986).
\end{itemize}
normativity found at the international level reshape national, sub-national, and individual understandings of the duties and entitlements of the state, and transform them to fit international principles of association established and maintained by international law (Depret and Fiske, 1999; Turner, 2005; Franck, 1990). International identification “serves as a cue to relevant rights and duties” originating from normative structure of the international community and specifying shared standards of appropriate member behavior (Louis and Taylor, 2005:119).

Second, international identification through the transformation of normativity changes politicians’ understandings of sovereignty. Sovereignty and authority are intimately related constructs as many have observed (see Lake, 2003). Internally, sovereignty implies supreme decision-making authority within a territorially defined political community (Krasner, 1999). Externally, sovereignty indicates a “relationship of formal equality” among states and absence of any higher authority above the state (Krasner, 1999; Jackson, 1990). As Hinsley (1986:26, emphasis original) notes, sovereignty captures “the idea that there is a final and absolute political authority in the political community ... “and no final and absolute authority exists elsewhere.” When state is defined as a member of the international community and understandings of the state’s valid duties are shifted to the international level through international identification, the importance of supreme decision-making authority for sovereignty declines and is partly replaced by shared notions of legitimate political agency in the international society (e.g. Reus-Smith, 1999). This revised notion of sovereignty differs from the one dominant in the absence of international identification because it connects sovereignty to conditions of legitimate
member behavior in the international community defined by shared notions of normativity rather than associate it with categorical authority. On this view, the sovereign is not simply the final arbiter of domestic issues free from the influence of any higher structure of authority but a participant in the society of states cognizant of its duties as well as rights that are attach to conditions of legitimate membership (Franck, 1990; Bull, 2002; Reus-Smith, 1999).

As a result of these transformations, international identification increases the perceived legitimacy of international law’s authority. When the locus of rightful duty and action shifts to the international level and sovereignty is associated with legitimate membership, the governing authority of international law is perceived to be legitimate, and thus could be acknowledged as a membership responsibility in the international community. Thus, by rendering international law’s authority legitimate, international identification allows for the subjective delegation of decision-making authority to international law and leads to a sense of legal obligation. Attachment to the international community concurrently alleviates the tension between sovereignty and deference and reduces the motivational conflict --psychological sovereignty costs-- created by the subjective delegation of decision-making authority to international by making deference as part of the definition of the “we” (Turner, 2005). The variation in individual levels of legal obligation, in turn, is created by the strength of international identification. High international identification increases the degree of legal obligation, while low international identification hinders it. The logic of my core argument is illustrated in Figure 3.1.
The central mechanism this argument is based on is reference group membership (Turner, 2005; Terry, Hoog, McKimmie, 2000; Terry and Hoog, 1996). A reference group is a category of membership that is significant to an actor and provides a basis for self-orientation and self-appraisal, broadly defined (e.g. Kelley and Thibaut, 1978). Reference groups are groups with which individuals compare themselves and which they use as normative and informational sources of personal beliefs, attitudes, and behavior. Existing research has firmly established that self-categorization and the resulting collective
identification shape a multitude of processes, including cooperation, group loyalty and cohesion, persuasion, and perceptions of authority (Kramer, 2006; De Cremer and Van Vugt, 1999; Simon and Oakes, 2006; Turner, 2005).

When collective identity is at work, individuals regard the social group as their reference group and come to view themselves as group members. This re-casting in the definition of the self leads to transformations in the definition of one’s goals, interests as well as understanding of normativity in terms of the reference group prototype (Terry, Hoog, McKimmie, 2000; Terry and Hoog, 1996; Turner, Reynolds and Subasic, 2008).

Since collective identity-centered reference groups shape understandings of normativity, they influence the perceived legitimacy of authority claims. Kelman and Hamilton (1989) note that acknowledgement of authority’s exercise of power depends on the perceived legitimacy of authority, which is shaped by the authority’s appeal to individuals’ collective identity commitments. Tyler and Degoey (1995), similarly, explain that when collective identification is strong, authority is perceived as legitimate and leads to a sense of obligation because deference to authority is regarded as submitting to authority-conferring in-group norms and to the collective will of the group; namely a membership responsibility in one’s reference group. Referent influence theory, similarly points to the significance of membership in social influence and posits that the sense of membership created by self-categorization at the collective level prompts individuals to define themselves in terms of the group member prototype that demarcates model attitudes, behaviors, and duties for in-group members (Terry, Hoog, McKimmie, 2000; Terry and Hoog, 1996). In short, since collective identification help assimilate the self into
the reference group prototype, it allows individuals to perceive authority claims as legitimate and acknowledge duties as their membership responsibilities.

Accordingly, it is through the mechanism of reference group membership that international identification increases the perceived legitimacy of international law’s authority, enables actors to acknowledge the governing authority of international law, and thus leads to a sense of legal obligation. Construction of the international community as a significant reference group helps assimilate the state into the prototype of international community member, which in turn functions as a guide for the duties of the state and institutions worthy of its deference established by international principles of association. At the same time, this assimilation process downplays the importance of ultimate decision-making authority for the sovereign state and highlights the nexus between legitimate political agency defined by shared notions of normativity and recognized sovereign status in the international community. Thus, international identification alleviates the tension between sovereignty and deference to authority.

At this point, it is critical to explore the role of international law in the construction of the international community member prototype. The prototypical member of the international community is a state that generally respects international law and appreciates its importance for the shared interests, and social purpose of states as a group. It recognizes the importance of international law for the very rationale of the international political order and acknowledges law’s authority as a part of its membership in the society of states and participation in collective political action. This is because, as I will further discuss in the next section when I extend my argument, international law
represents an associative structure of authority, and thus expresses states’ associative duties that derive from their membership in the society of states (e.g. Franck, 1990; Bull, 2002; Manning, 1962; Nardin, 1983).

An associative structure, as I employ it here, is one that constitutes a political community by establishing the fundamental principles of association and preserves unity by functioning as a protective belt. An associative structure grounds the reasons for collective action in a polity by specifying the collective will and shared interests of units and sustains the social purpose of political order by delineating the normative boundaries of the polity. Associative duties, generated by associative structures of authority, accordingly, express conditions of legitimate membership in the polity; that is, the responsibilities that attach to member status.

International law embodies the principles of association in world politics, and as a result represents an associative institution that constitutes and preserves the political community upon which the rationale of international politics rests (Franck, 1990; Manning, 1962; Buzan, 2004; Reus-Smith, 2004). Without a doubt, international politics takes place within a legal framework predicated upon customary and treaty law, and this legal architecture grounded in the historical evolution of the international politics both constitutes the international polity as a particular union of sovereign states and maintains

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the principles of association among states by delimiting legitimate behavior. The foundational principles of international law, *pacta sunt servanda*, sovereignty, and non-intervention, are the constitutive principles of the international community that underlie the basic principles of co-existence among states and structure their interactions (Jackson, 1999; James, 1978, 1999; Arend, 1998; Mayall, 2000; Nardin, 1983). Stephen A. Kocs (1994), *pace* Neorealists, goes so far as to argue that it is the international legal order, not anarchy, that constitutes the ordering principle of world politics (c.f. Waltz, 1979).

Among the fundamental rules laid out by international law, sovereignty represents the cardinal norm of the international society. The international order is predicated upon the mutual recognition of sovereignty that establishes a system of legal equality among states (Krasner, 1999; Jackson, 1990). And yet, the sovereign state largely owes its privileged position to international law because “international law enshrines the doctrine of sovereignty” (Arend, 1998:142). By so doing, international law not only specifies conditions of legitimate statehood, but identifies who is an agent, a subject rather than an object, in the international society (Cutler, 2001; James, 1999; Jackson, 1999). The empowerment of the state with legal personality by international law in turn, creates the association of states as a particular kind of polity centered upon the sovereign state.

International law also delineates normative boundaries of the international community by resting the definition of legitimate political agency on the acknowledgement of foundational principles, including the binding force of law in international affairs (Bull, 2002; Kratochwill, 1989; Mayall, 2000; Nardin, 1983; Reus-Smith, 1999). Since international law routinely links validation of recognized state status
to acceptance of international law's obligatory quality, it articulates standards of appropriate behavior married to the principal structure of association in international affairs. This is precisely why the Preamble of the United Nations (UN) Charter makes a specific reference to upholding legal responsibilities arising from treaty law or other sources of international law.  

Accordingly, international law expresses associative duties of states. Associative duties as I conceptualize them are responsibilities that originate from membership in a polity and are owed to particular others (Dworkin, 1986; Seglow, 2010; Horton, 2010, Arend, 1998). The duties international law expresses, therefore, duties that primarily derive from states’ memberships in international the international community. The first distinctive characteristic of associative duties as a general category of duty is that they imply a special relationship with the polity of which one is a member and are vindicated by the existence of this relationship (Seglow, 2010). Second, they imply relations of “owing” among the constituent units of the polity. Associative duties are owed to particular others in the polity and to body politic as a whole who have “standing” to expect their performance (Gilbert, 2006; Dworkin, 1986; Horton, 2010; Tussmann, 1960).  

In this regard, these responsibilities are directional between duty-holders and bearers. Relationships of owing are somewhat different from reciprocity in that they denote either implicitly or explicitly designated right holders who are entitled to demand compliance. Third, since associative duties attach to one’s member status or role in the polity, they cannot be renounced without renouncing status and participation rights in the

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69 Also see Gilbert’s other works in this context, such as Gilbert (2003, 2000).
association (Dworkin, 1986; Hardimon, 1994; Horton, 2007). Since associative duties apply to units in their roles as members of the association, their normativity is partly grounded in the role itself, which in turn renders the continuation of one’s membership in the association conditional upon the fulfillment of associative responsibilities (Hardimon, 1994; Dworkin, 1986; Gilbert, 2006). Duty holders with standing, therefore, could assert claims and raise questions about one’s commitment to the role in case of non-performance.

My interest here is on the expressive function of international law. I argue that international law expresses states’ associative duties. I do not claim that legal responsibilities of states “objectively” represent associative duties. Instead, I contend that given the associative nature of international law, responsibilities specified by legal rules express associative duties that articulate standards of membership in the international community and denote ties of owing among states. In legal theory, associative duties are assumed to develop without explicit consent simply by virtue of one’s membership in a polity. I do not deny the role consent play in creating states’ contractual responsibilities. Nevertheless, I argue that international legal responsibilities based on consent can still have an expressive dimension. I will return to this point in part two.

International legal rules, I argue, carry a particular kind of social meaning in that they express duties of membership that attach to states in the international society as a matter of their recognized agent status. Referring to the responsibilities generated by the

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70 This is the defining characteristic of the so-called associative political obligation. See references above.

71 See references in the introductory chapter.
constitutive principles of international law, such as sovereignty and respect for treaties, Thomas Franck’s (1990:202) following observation attests to the associative dimension of international legal duties: “[T]hey cannot be extinguished by renouncing a consent... but only by extinguishing the statehood status which is the real basis of the [duty].” Franck (1990:196) further notes that obligations incurred as a result of contracts are recognized because states view them “owed... to the community of states as the reciprocal of that community’s validation of their nation’s statehood.” In fact, the norm of compliance in the international community (e.g. Chayes and Chayes, 1995) is largely a function of the associative meaning legality attaches to contractual responsibilities.

Drawing insights from the English School, particularly writings of Wight and Bull, Andrew Hurrell (1995), similarly, connects the authority of specific legal rules to the overarching legal structure of the international society, which establishes the fundamental principles of association among states. Barry Buzan’s (2004) survey of “bedrock institutions” similarly attests to the associative dimension of international law. Even if the purposes of international association evolves through states’ continued interactions, to the extent they are represented in international law as a result of aspirational, functional, or normative practices of legalization, international law remains an associative institution articulating the basic structure of the international polity and expressing the terms of membership.

The prototypical state in the international community, accordingly, is one that recognizes the fundamental principles of association in the society of states established by international law and understands legal responsibilities --both contractual and constitutive
ones-- linked to these principles as standards of recognized state status. As international law directly implicates the member status of the state in world politics and the self-definition of the state so constituted, the prototypical member is one that is cognizant of international law’s regulatory, constitutive as well as empowering importance. The prototypical international community member recognizes the nexus between legitimate statehood and respect for international law as a condition of membership in the society of states and of sovereign status. Of course, prototypicality is a relative notion and involves the definition of an ideal member in contrast to an out-group that accentuates the difference between the in-group and out-groups through the meta-contrast principle (e.g. Turner, 1987; Waldzus and Mummendey, 2004). The prototypical member of the international community respectful of international law, in this sense, differs from other units whether they are non-state actors, “un-civilized groups,” or rogue states because its acknowledges the formative relationship between international law and legitimate agency in international affairs.

Therefore, when politicians identify with the international community and assimilate the state into the prototype of international community member, they come to perceive the authority of international law as legitimate, and thus form a sense of legal obligation. International attachment renders the international community a significant reference group, which in turn provides a focal point for perceptions of rightful authority and the corresponding duties of the state. International identification re-orient understanings of the duties of the state to reflect associative duties expressed by international law rather than only reflect national rules and regulations. The use of the
prototypical member as a reference guide, at the same time, makes deference to international law’s governing authority compatible with sovereignty by linking legitimate agent status to respect for international law as a condition of membership in the society of states. As such, international identification evokes a sense of legal obligation and facilitates deference to international law as a responsibility of membership in the international community.

Thus, the variation in individual levels of legal obligation is created by the strength of international identification. High international identifiers shift their understandings of valid duty to the supranational level and redefine statehood on the basis of the member status of the state rather than on supreme authority. As a result, they perceive international law’s authority to be legitimate and form a sense of legal obligation. Attachment to the international community concurrently alleviates the tension between sovereignty and deference and the reduces motivational conflict --the psychological sovereignty costs-- created by the subjective delegation of decision-making authority to international by rendering deference as part of the definition of the “we.” High international identifiers, therefore, could balance sovereignty with deference, accept international legal duties as membership responsibilities, and form a strong sense of legal obligation.

In contrast, when there is little or no attachment to the international community, the duties of the state are defined at the national rather than the international level and center upon constitutionally established national principles of association. In the absence of the integration of state-concept into the deferential prototypical international
community member, furthermore, statehood is construed in as an attribute of the state, particularly its power to exercise supreme authority over a given territory while recognizing no higher power. As a result, low international identifiers do not perceive international law’s authority as fully legitimate and fail to form a viable sense of legal obligation. In parallel, low international identifiers experience a higher degree of motivational conflict. When the authority of the state centers upon its exercise of control through authoritative decisions, subjectively acknowledging the decision-making authority to international law cannot be balanced with commitment to the political authority of the state, thereby intensifying the psychological costs of deference. As such, low international identification hinders the formation of a sense of obligation to international law. The following proposition specifies the core argument of this theoretical framework:

*Proposition I (International Identification): The higher the degree of international identification, the stronger the sense of legal obligation.*

3.3.3 From Legal Obligation to Compliance

Like all obligations, legal obligation entails a strong potentiality for compliance. Since obligations originate from duty adoption, a sense of obligation calls for performing the adopted duty. It is not surprising therefore that felt obligation to law motivates compliance. As I explained previously, however, the importance of legal obligation is not simply its ability to facilitate compliance. The most critical consequence of legal obligation is the authority relationship it implies between sovereign states, their
representatives, and international legal institutions. Such an authority relationship suggests a transformation in the constitutional characteristics of the international system and in the exercise of sovereign authority under juridical authority (e.g. Lake, 2009; Reus-Smith, 1999; Hurd, 2007; Barkin and Cronin, 1994).

Nevertheless, it is important to explore the relationship between legal obligation and compliance and examine the pathways through which this disposition affects compliance preferences. Spelling out why and when legal obligation results in compliance also allows us to realistically analyze the conditions under which legal obligation might fail to secure compliance. Before proceeding a caveat is in order. The obligation-compliance framework offered here does not amount to a theory of compliance (e.g. Hathaway, 2005; Simmons, 2009). Unlike theories of compliance that seek to explain broad compliance patterns, this model is only designed to capture the relationship between legal obligation and compliance.

A sense of legal obligation affects behavior and increases compliance resolve because it serves as a self-imposed constraint to resist violating the laws upon politicians and makes them more sensitive to social pressure to comply with international law. I chapter 2, I have referred to these mechanism as agentic fidelity. In this section, I further unpack how they shape compliance preferences.

Following Oran Young (1979:104), I define compliance as conformity of behavior to what is prescribed. “Compliance can be said to occur,” Young notes, “when the actual behavior of a given subject conforms to prescribed behavior, and non-compliance or
violation occurs when actual behavior departs significantly from prescribed behavior.” 72 I conceptualize compliance decision-making a choice process in which political actors assess internal and external costs and benefits of compliance and decide on a course of action selecting among alternatives (e.g. Young, 1979:15-17). I assume that actors are purposeful, possess preferences, and can assess internal and external payoffs. Compliance could also take place habitually (e.g. Hart, 1961). The automaticity of habits, however, breaks down when choices are involved. For the purposes of this research, I exclude situations in which compliance is not decided but simply happens. Chapter 2, I have touched upon the debates over the causal and constitutive effects of normativity on identity and action, and explained my approach. Consistent with my psychologically informed institutionalist position, I focus on the specific behavioral effects of legal obligation and temporarily bracket how it may change state identities.

Legal obligation increases compliance resolve through two main pathways. First, it acts as a self-imposed constraint and allows an actor to self-regulate. Since it implies a willingness to comply, decision-makers motivated by this political disposition will apply self-regulatory mechanisms and impose constraints upon themselves in order not to choose defection (e.g. Bandura, 1991 Baumeister and Vohs, 2005). This effect is quite intuitive and could be produced by several causal dynamics, such as cognitive consistency (Festinger, 1957; Heider, 1958; Newcomb, 1968), the need for sustaining positive self-

72 For a general review of compliance research, see Simmons (2010).
evaluations and self-regard (Snyder, 1979; Cialdini and Golstein, 2004; Deutsch and Gerard, 1955) or the desire to avoid self-condemnation (Bandura, 1991, 1986).  

Legal obligation further associates with a higher compliance propensity because it strengthens the effects of systemic socio-political pressures for conformity on actors’ preferences. I have previously noted that when legal obligation is shared by a critical mass of actors and is integrated into states’ overall foreign policy orientations, it will reinforce a norm of compliance in the international system and institute a shared sense of “fidelity” to law, to use Fuller’s (1969) terminology (also see Chayes and Chayes, 1993, 1995). The third path connecting legal obligation to compliance is premised upon this systemic fidelity. Recall that I have briefly explored the relationship between the legal culture of the international system and systemic fidelity in chapter 2.

Little has been done to systematically link the effects of societal normative pressures on individual actors’ decision-making processes. How do the socio-political pressures originating from a culture of compliance influence politicians’ preferences? Theories of reasoned action and planned behavior (TRA/PB) provide a useful framework to situate these different influences (Ajzen, 1991; Ajzen and Fishbein, 1980). TRA/TB argue that a given behavior is caused by the intention to perform it. This intention is shaped by two central factors: individual attitudes towards the behavior and subjective (social) norm about the behavior. An individual forms an intention by evaluating what he

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73 Internal referents do not uniformly result in self-regulation. Their effects could be moderated by a number of factors, such as values and value trade-offs, conflicting beliefs, and preferences. See, for example, Tetlock (1986).

74 See Geisinger and Stein (2007) for an application of these theories to expressive law.
or she thinks (personal attitudes) and what others think (subjective norm) about a particular behavior.

Our interest here is not on attitudes but legal obligation as a motive. Theoretically, a motivation is more potent than an attitude, and thus more likely to produce a particular behavior. Nevertheless, the TRA/TB framework’s capacity to incorporate internal and external factors makes it valuable for our purposes. Fidelity effects of legal obligation correspond to the subjective norm in this framework whereas self-constraining and cost-tolerance effects are comparable to attitudes. In addition to moving actors towards compliance directly, through the fidelity it creates, legal obligation also increases compliance propensity by strengthening the impact of social pressures.

As I have explained in chapter 2, the relationship between obligations, including legal obligation, and compliance should be assessed probabilistically, not deterministically. I therefore do not assume that legal obligation eliminates considerations of compliance costs and the ability of an agent to contemplate defection. Rather, the point is that state representatives who are motivated by a sense of legal obligation will be more likely to resist the temptation to defect when compliance costs rise. At this point, it is also important to briefly return to the endogeneity of laws to state preferences (Downs, Rocke, and Barsoom, 1996). Even though we may conceptually assume that all compliance and authority relations at minimum imply loss of agency and thus entail autonomy costs (e.g. Green, 1993), if much of compliance is indeed painless, then the cost-tolerance effects of

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75 See the discussion on obligation in chapter 2.

76 This claim temporarily brackets the managerial model’s argument on the relationship between incapacity and defection (Chayes and Chayes, 1995).
legal obligation may not be pronounced in ordinary situations. They will exist, yet remain latent when little or no deviation from prior preferences is required. These effects will become critical, however, when temptation strikes and compliance becomes costly.

Accordingly, legal obligation’s potential to motivate politicians to absorb higher compliance costs is going to be most relevant in non-medium circumstances. Thus, by acting as a self-imposed constraint and increasing actors’ sensitivity to social expectations, legal obligation raises actors’ compliance resolve, namely their willingness to tolerate higher costs to uphold international law. In this regard, legal obligation increases compliance propensity even when compliance is costly and at odds with states’ instrumental interests. The following proposition specifies the relationship between legal obligation and compliance.

**Proposition II (Compliance Resolve)** The stronger the sense of legal obligation, the stronger the resolve to tolerate compliance costs.

### 3.4 The Null Hypothesis and Alternative Arguments

Debates over whether and how international law and institutions influence state behavior constitute critical debates in IR and IL scholarships. The problem of compliance is at the center of these arguments. Why and under what conditions do states comply with international legal rules? Do laws exert an independent effect on behavior? As I have explained in the introductory chapter, the compliance literature remains polarized due to opposing views on legal obligation. Instrumentalist and norm-based theories in IL resembling Rationalist and Constructivist positions in IR respectively
provide offer two competing answers to the question of why states comply with international law that are pessimistic or optimistic about legal obligation respectively (Keohane, 1997; Hathaway and Koh, 2004; Hathaway, 2005). For Instrumentalists and Rationalists, laws are primarily instruments of states and compliance is a function of calculations of self-interest (Goldsmith and Posner, 2005; Guzman, 2008; Mearsheimer, 1994/95; Downs, Rocke, and Barsoom, 1996). Accordingly, even though laws might sometimes manage to constrain state behavior, they do not obligate. For norm-based and Constructivist accounts, conversely, laws can exert an independent “compliance pull” motivating to states to comply. A sense of obligation, according to these approaches, is possible and develops either in response to the procedural or normative content legitimacy of laws (Franck, 2006, 1990; Chayes and Chayes, 1995; Koh, 1997, also see Finnemore, 2000; Tannenwald, 1999; Klotz, 1995; Lutz and Sikkink, 2000). Despite the contributions of norm-based approaches, pessimists do not seem to be fully convinced. Thus, if skeptics are correct the null hypothesis is the absence of legal obligation as a significant political disposition.

Alternative explanations of legal obligation are rather limited in supply. Norm-based models of compliance have raised important challenges to their Instrumentalist counterparts. However, they remain somewhat analytically under-specified. Missing from much of the optimistic literature on the obligating power of law is a clear explanation of the causal antecedents of this power. Why and how does international law “pull”? Indeed, the explanatory inadequacies of this literature have caused some Instrumentalists to give little credence to these models (e.g. Guzman, 2008; Goldsmith and Posner, 2005).
This undersupply of explanations notwithstanding, two major alternative arguments centered upon the role of procedural and normative legitimacy of legal rules could be identified. In this section, I briefly reiterate to the fundamental logic of these arguments and discuss their main limitations. I turn to them again in the empirical chapters and assess their relative strengths and drawbacks compared to my explanation.

Procedural legitimacy accounts attribute the origins of legal obligation to the processes through which laws are made. Legal rules that are created in accord with correct procedures are assumed to evoke a sense of obligation. According to theory of procedural legitimacy, originally developed in the context of domestic law by Thibaut and Walker (1975), procedures used in legal decision-making influence individuals’ assessments of the fairness of the overall process, reactions to legal authority, and feelings of reported obligation. Building upon this initial framework, later studies argued that procedural legitimacy plays a critical role not only in citizens’ evaluations of judicial decisions but in overall feelings of obligation to legal authority (Tyler, 1994) Tom Tyler (1990) and his colleagues (e.g. Blader and Tyler, 2000), who have extensively studied procedural legitimacy, have also noted that procedural accuracy sustained legal obligation even when the outcomes of decisions reached by legal authorities are detrimental to individuals’ self-interest.

In the context of international law, procedural legitimacy strikes at the heart of Thomas Franck’s (1990) explanation of the “compliance pull.” Legitimacy for Franck (1990:24) is “a property of a rule or a rule-making institution.” Laws that are made according to the principles of “right process” are legitimate, and thus exert “a pull
towards compliance” (Franck, 1990:24). “To the extent a rule or rule process exhibits there four properties [determinacy, symbolic validation, coherence and adherence],” Franck (1990:49) further notes, “it will exert a strong pull on states to comply. To the extent these properties are not present, the institution will be easier to ignore and the rule easier to avoid by a state tempted to pursue its short term self interest.”

Procedural legitimacy explanation has merit and deserves treatment as alternative with which to be reckoned. Procedural correctness indeed is a critical factor assumed to contribute to certain normative ideals, such justice and equality. That laws made in accord with right procedures motivate deferential dispositions, therefore, is a probable explanation. Two major shortcomings, however, limit the explanatory power of procedural legitimacy.

The first shortcoming pertains to the all important “why” question. Why does procedural legitimacy facilitate the acceptance of legal duties and result in legal obligation? A clear mechanism connecting procedural legitimacy to legal obligation remains rather under-specified. Franck’s (1990) proceduralism, for instance, is ambiguous in this regard as many scholars, such as Robert Keohane (1997) have observed. The theory I have presented addresses this analytical linkage problem. By anchoring the micro-foundations of legal obligation in the mechanism of reference group membership created by international identification, the argument advanced here promises to offer a more comprehensive framework.

Psychological versions of procedural legitimacy do specify the connection between right process and obligation, yet this mechanism does not seem to serve its intended
purpose. Instead, it ironically draws on identities. Franck (1990), similarly, brings in the associative importance of international law and connects it membership, yet leaves these insights undeveloped. The second drawback of procedure-based explanations concerns these points. While psychologist Tom Tyler’s initial arguments (e.g. 1990) examined the correlation between procedural legitimacy and legal obligation, his later studies clearly focus on the role of collective identification for explaining legal obligation. In the group-value (Tyler, 1989) and relational models of legal obligation (Tyler, 2001; Tyler and Blader, 2000), Tyler notes that procedurally accurate treatment by legal authorities and fair application of laws result in deferential dispositions because of the “status-value” information individuals derive from these processes. When they are treated fairly by rule-applying institutions, Tyler (2001) later argues, individuals believe that they are valued members of the associational category they identify with because these institutions represent the norms, values, and ideals of that category.

The importance of identity is evident in this claim. Fairness of legal authorities and institutions could only supply “status-value” information when they have associative qualities and are characteristic of the social group with which individuals identify. Thus, group identification rather than procedural legitimacy seems to perform most of the explanatory lifting; procedural legitimacy seems to an intervening variable. A similar problem appears in Franck’s account of legitimacy. In the concluding chapter of The Power of Legitimacy among States, Franck (1990) introduces the associative aspect of international law, and borrowing from Dworkin (1986), makes an argument for membership-based international legal obligation in a sociological sense. The introduction
of the associative qualities of laws shifts the explanatory focus away from procedures to this quality of international law. To be fair, Franck does not examine the psychological dimension of legal obligation. Nevertheless, his late, albeit obvious, emphasis on membership, attests to the plausibility of international identification as the central explanatory factor in the formation of an obligatory disposition at the individual level as my theory posits. Finally, proceduralism cannot explain individual level variations in degrees of legal obligation when the procedural aspects of laws are similar. Given these limitations, the theory I have provided could potentially subsume procedural legitimacy arguments, and thus promises improved explanatory performance.

The second set of arguments explain legal obligation as a function of the substantive normative legitimacy of legal rules. When laws are perceived to be normatively legitimate, they result in a sense of obligation (Darley et al., 2002; Tyler, 1990; Hurd, 2007). In the psychological tradition, scholars have long observed that laws that embody commonly recognized norms, such as the moral prohibition on murder, are regarded legitimate and generate a high sense of obligation (Grasmick and Bursik, 1990; Grasmick and Green, 1980, Darley et al. 2002). Similarly, Constructivist IR scholars have showed that legitimate norms through the “logic of appropriateness” motivate doing the right thing and create an intrinsic interest in compliance (March and Olsen, 1998; Klotz, 1995; Finnemore and Sikkink, 1998; Hurd, 2007). Lon Fuller (1969) with this emphasis on “implicit” law, in the same way, stresses the importance of “congruence” between laws and shared normative principles. Brunnee and Tooppe (2010, 2000) follow suit.
The importance of substantive legitimacy of legal rules could not be denied. It is of course true legitimate rules motivate deference while illegitimate ones evoke discontent and disobedience. Content-based legitimacy arguments have explanatory merits, and thus are more likely constitute complementary rather than competing explanations to my argument. Nevertheless, these arguments alone fall short of explaining legal obligation in full. Just like proceduralism, they tell an important but an incomplete story.

First, this variant of legitimacy is rather agnostic to the specificity of legal obligation and tends to equate it with moral obligation. Of course, legal and moral obligation overlap as well as reinforce each other. But the explanatory problem created by the misspecification of legal normativity is clear. Content-legitimacy arguments, in effect, explain moral or social obligation. The framework I have offered addresses this problem. Attending to legal and social normativity in conjunction while treating them as specific kinds, furthermore, has the potential to sharpen our explanatory ability. Doing so enables us to introduce scope conditions to our theoretical models, specify when and why laws and norms converge or diverge and what implications these tendencies have for state behavior. It also opens up the opportunity to explore how legal socialization may differ from normative socialization and how international institutions could play differential socializing roles in each (e.g. Johnston, 2001).

Second, norm-based legitimacy arguments presume that actors share an obligatory logic across the board. As a result, they fail to explain individual level variation in normative dispositions (Herrmann and Shannon, 2001). This limitation indeed exposes

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77 Recall that the so-called "evil laws" issue has also been bracketed previously.
a broader problem that troubles a good deal of Constructivist research investigating the effects of norms in international politics. The “normativity of norms” is subjectively construed at the individual level. While recognizing the importance of normative content legitimacy, the argument I have proposed, attends to the sources of individual level variation.

Procedural and content-legitimacy are both important alternatives and complement my argument in many ways. Specific deficiencies, however, limit the explanatory power of these arguments. Neither addresses legal obligation in depth and offers sufficient analytical purchase for a full explanation of legal obligation. In the empirical chapters, I intend to demonstrate that my explanatory framework is preferable over alternatives and better explicates the formation legal obligation.

My objective in this project is not to explain compliance. I am only interested in the relationship between legal obligation and compliance. Since compliance is a multiply determined outcome, I examine the impact of legal obligation on conformity in relation to other compliance paths rather than entertain it as an alternative explanation. That is, I do not claim that legal obligation is the only or the most important compliance reason. I make two core claims with respect to the nexus between legal obligation and compliance. First, I predict legal obligation to be a meaningfully stable compliance factor. Second, I posit that the existence of legal obligation will associate with higher compliance propensities even when the costs of compliance are relatively high and its benefits are low. Legal obligation can constitute a valuable alternative explanation of painful compliance. Consistent with the existing literature, I examine the effects of legal obligation on
compliance in relation to instrumental interests, reciprocity, reputation, fear of enforcement, and fear of social criticism (Hathaway and Koh, 2004; Keohane, 1997; Hathaway, 2005).

3.5. Observable Implications

The most important evidence of legal obligation would show that politicians base their compliance decisions on an obligatory logic. Of course, it is not possible to directly observe motives (e.g. Morgenthau, 1985). Nevertheless, viable indicators that analyze actors’ reasons for choosing compliance as well as theoretically derived measures of legal obligation will help uncover whether it “matters.”

The central proposition of my theory of legal obligation is that international identification enables political actors to accept international legal duties as responsibilities of membership, and thus motivates feelings of legal obligation. If this is correct, we should find a direct relationship between international identification and legal obligation. For example, if we observe that politicians who attach to international communities explain their favorable attitudes towards compliance on the basis of a sense of legal obligation, the international identity argument would be supported.

Three related problems complicate the empirical examination of these claims: inference, isolation and dormancy.\textsuperscript{78} The problem of inference originates from the

\textsuperscript{78} Compliance poses other inferential challenges such as endogeneity (Downs, Rocke and Barsoom, 1996) and selection bias (Von Stein, 2005; Simmons and Hopkins, 2005). Note that unless they are statistically corrected, all compliance information is potentially biased. Since states mostly comply with legal rules and since we lack information on undetected non-compliance cases, much of the information on compliance is less than perfect. Endogeneity and sample bias are the most obvious problems.
directly unobservable nature of both legal obligation and identity. Both are individual-level psychological states; the problem of other minds leaves us with an inferential challenge. It is impossible to directly observe motivations and identities. The problem of isolation pertains to the complexity of motivations. Legal obligation is one of several motives that could influence behavior. It is unlikely to be the only factor in motivating compliance. Therefore, the empirical challenge is to isolate its influence from other compliance reasons. The problem of dormancy stems from the nature of compliance. Routine compliance behavior is more about standard operating procedures and automaticity rather than choice. Even if international law obligates, the driving force of legal obligation is not likely to be discussed on a daily basis. Unless a clear compliance choice is involved, this motive could remain latent making its observation very difficult.

These are critical challenges, yet the importance legal obligation is worth the effort to overcome them. There are reasonable solutions to the obstacles posed by inference, isolation, and dormancy, and reliable indicators of international identification and legal obligation could be developed. Of course, one’s analytical approach needs to eschew tautological reasoning and should not derive obligation directly from compliance.

There are two main ways to conduct analysis of political life; by examining what politicians say and what they do. The latter option is only partly available to me. I cannot directly derive legal obligation from compliance and then claim that it predicts compliance. Thus, evidence obtained from what actors say is more suitable to analyze the relationship between legal obligation.
I use survey and experimental methods to analyze the relationship between international identification, legal obligation, and compliance. Both techniques allow for asking individuals about their motives, identities, and preferences, and as a result address the empirical difficulties of studying directly unobservable constructs. Asking questions does not entirely solve the problem of inference but it offers sound estimates of dispositions. Since information is obtained directly when survey and experimental techniques are employed, problems of dormancy, and isolation can be addressed rather successfully.

Proposition one (International Identification) predicts that actors who highly identify with an international community will hold a stronger sense of legal obligation. The strongest evidence that would support this conjecture is a direct association between international identification and legal obligation. We should observe actors who regard an international polity as a significant reference group to express a stronger sense of legal obligation than those who lack an international attachment. In this regard, observing clear differences across high and low international identifiers’ legal obligation levels would strongly support the international identification hypothesis. This is not to suggest that national or sub-national categories cease to be important. The evidence we are looking for is the relevance of international community as another valuable social category of identification which connects to legal obligation. While different techniques may be employed to obtain information regarding international identification (e.g. Abdelal et al., 2009), directly inquiring about identity strength using survey methodology perhaps provides one of the soundest strategies (e.g. Sylvan and Metskas, 2009). By presenting
individuals with a set of questions pertaining to the theoretically derived dimensions of international identification, we can arrive at viable estimates of identity strength and examine their relationship with legal obligation using statistical techniques.

Furthermore, if the international identification argument is correct, we should also observe individual level variation in the strength of legal obligation across identification level in response to similar situational factors. For example, evidence of a strong sense of level obligation expressed by high international identifiers when legal rules are procedurally deficient or when compliance counters states’ self-interest would support the international identification argument. In the same vein, if high international identifiers display a strong sense of legal obligation even though they question the content legitimacy of a particular law, we would obtain support for the international identification conjecture.

Proposition two (Compliance Resolve) predicts that a strong sense of legal obligation associates with a strong resolve to tolerate compliance costs, and thus increases the likelihood of compliance. These predictions, of course, are not counter-intuitive, but for a sound understanding of legal obligation, it is critical to attend to its behavioral effects. This is best achieved by teasing the marginal effects of obligation through comparative analysis. If legal obligation does operate as hypothesized, we should observe systematic differences between the arguments and policy preferences of those motivated by legal obligation and those who are not. We should detect, for example, that strong obligation holders favor compliance even when the anticipated benefits of compliance are small whereas weak obligation holders favor defection in similar situations.
Following a similar logic, evidence of willingness to absorb compliance costs at times of crunch between strong and weak obligation holders would offer supportive evidence. Attitudes towards non-compliance will also be informative. We should, for instance, discern strong obligation holders to express dissonance when violation trumps compliance in their preferences. Similarly, evidence of willingness to comply expressed by strong legal obligation holders even when non-compliance seems to be an easy choice would support the compliance resolve argument. Furthermore, if legal obligation indeed implicates an intrinsic respect for international law, we should observe strong legal obligation to consistently apply legal principles across different strategic situations and prefer enforcing international law regardless of whether enforcement hurts enemies or allies.

3.6. Research Design, Methods, and Data

This dissertation explains why and under what conditions decision-makers develop a sense of obligation to international law and how this political disposition influences their attitudes towards law and compliance. My explanation of legal obligation locates the origins of this motive in international identification and explicates individual level variation in the degree of legal obligation by identification strength. The compliance part of my theoretical framework posits a positive and linear relationship between legal obligation and compliance propensity, and thus connects motives to behavior. The empirical challenges posed by my research questions are considerable but so are the implications of these questions for understanding the role of international law world
politics. It is only after attending to the psychological dynamics of legal obligation that we fully grasp how voluntary compliance with international law materializes and how law in the international system really works. The obstacles posed by the directly unobservable nature of my variables are a matter of epistemology, not of ontology. A comprehensive examination of the observable implications of the proposed model requires a research design that meets “the empirical challenge” of analyzing perceptual variables and their behavioral effects (Herrmann, 1988).

This requires two analytical moves. First, the task of drawing inferences about the relationship between international identity, legal obligation, and compliance necessitates working directly at the individual level of analysis. Both the independent and the dependent variable of the theory advanced here are first-person constructs. Thus, they should be examined at the individual level, not the state level, and ideally with methodologies that allow for the most direct measurement possible. Choosing the appropriate level of analysis is critical for a sound research design but its importance extends beyond that. This strategy brings the decision-maker back into studies of international law, and thus shifts our attention to those who actually construe the normativity of international law and make compliance decisions. With reified understandings of the state, the theoretical study of international law will miss the real subjects of law who interpret and implement it in practice.

Second, identifying the marginal effects of psychological factors upon behavior calls for controlling for situational variation so that the direct effects of cognitive variables could be isolated. These analytical moves promise a systematic way of meeting the
empirical requirements of studying subjective variables. Equally important is their contribution to overcoming situational determinism which rests on theoretical priors about motives and perceptions as the polarization of the compliance literature into pessimistic and optimistic camps indicates.

To achieve these objectives, I rely on survey and experimental methods. First, I use survey methodology to acquire individual level data directly obtained from politicians in which the independent and dependent variables are measured as rigorously as feasible within practical constraints. To this end, I have designed an original survey instrument and surveyed members of the German Parliament (17th Bundestag) between December 2009 and January 2010. The survey instrument, which I discuss in substantial detail in chapter 4, includes specific measures to tap the independent and dependent variables in addition to a number of control variables. Embedded in the survey, furthermore, are experimental designs that allow me to examine the marginal influence of legal obligation across different strategic situations in which compliance trade-offs are experimentally manipulated. By studying the operation of obligation at such critical junctures and systematically varying compliance costs, we can obtain a reliable assessment of how legal obligation operates. Since the survey instrument is specially designed to analyze my research questions, the measures largely address the empirical challenges discussed above, such as isolation. Embedding experiments in the survey instrument, furthermore, allows me to control for situational factors by capitalizing on the advantages of experiments in causal inference.

Financial assistance for the survey has been provided by the Mershon Center for International Security Studies, Ohio State University Graduate School, and Office of International Affairs.
For a comparative analyses, furthermore, I varied the political domain and anchored the questions in the international and European contexts. The survey analyzes legal obligation both to EU law and international law. This comparison allows me to cross-check my conclusions as well as detect potential contextual differences in the functioning of the theoretical model. The inclusion of EU law in the survey analysis and the selection of Germany are explained in detail in chapter 4. Suffice is to mention two central reasons for the time being. The first pertains to the nature of my core claims. The theory of legal obligation I have proposed predicts that international collective identification generates a sense of legal obligation. This conjecture is most likely to be supported in Europe because identification with a supranational international polity is most likely to be present in Europe. If I cannot present evidence indicating a systematic relationship between attachment to Europe and obligation to EU law, there is little reason to further test the theory advanced here. Europe, accordingly, constitutes a critical test case (e.g. Van Evera, 1997).

Second, within European countries, Germany is not necessarily an easy case. Many claim that laws are instruments of states and specifically reflect the interests of powerful actors. If powerful states are more likely to use laws as functional tools to serve their interests, we should expect politicians of a country like Germany that has substantial influence on the formulation of EU laws to view laws instrumentally rather than have a sense of legal obligation. A critical regional player like Germany also has the luxury to violate laws because it could potentially absorb the negative consequences of violation.

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80 A number of other reasons for the selection of Germany are discussed in chapter four.

81 Relevant literatures have been discussed previously.
Thus, Germany is not automatically an easy case for analyzing legal obligation. Finally, even though we cannot know the degrees of international identification and legal obligation in advance, Germany promises to offer sufficient individual level variation. I return to the details of my selection in the empirical chapters. To evaluate the theoretical claims of my argument, I employ quantitative methods of analysis and conduct various statistical tests appropriate for the data.

I further test my theory using data obtained from controlled laboratory experiments conducted with undergraduate students at the Ohio State University. These experiments test the analytical rigor of my explanatory account and provide an internal validity check. In the experimental conditions, I have varied a) substantive areas of international law (e.g. security, environment, and human rights), b) compliance costs and c) procedures of law-making (right process variables). Since laboratory experiments allow the researcher to study the relationship between a set of explanatory variables and the dependent variable by controlling for the effects of potential confounding factors, they offer an invaluable way of evaluate the analytical rigor of theoretical arguments and make causal inferences (McDermott, 2002; Shadish, Cook and Campbell, 2002; Kinder and Palfrey, 1993). I examine my argument using a number of statistical strategies, including Analysis of Variance (ANOVA) and non-parametric tests.

At its core, the theory of legal obligation I have proposed explains the individual level dynamics of commitment to international rule of law. It posits that the variation in strength of legal obligation could be explained by modeling of agents’ international identity orientations. Of course, participants in laboratory experiments and politicians
represent different populations. However, there is reason to believe that micro-level factors, such as cognition, affect, and perception, operate similarly across individuals, thereby suggesting the transportability of experimental conclusions into the international political world (Goldgeiger and Tetlock, 2001; McDermott, 2002). Without a doubt, psychology based theories need to be tested in real world settings. To the extent attachment to the international community influences agents’ sense of obligation to international law, however, the dynamics of this relationship should be similar across individuals. Furthermore, if I discover that my experimental results are consistent with my survey findings, the systematic relationship between international identification, legal obligation, and compliance will be supported.

Part Two: Macro-foundations

3.7 Grounding International Law’s Obligating Power by Addressing the Analytical Burden of Essentialism

International identification explains the psychological logic of legal obligation because it shapes actors’ perceptions of the legitimacy of international law’s authority and affects their ability to balance commitment to the sovereign authority of the state with deference to international law. The assimilation of state-concept into the prototypical member of the international community through the mechanism of reference group membership orients the duties of the state to reflect international principles of association specified by international law rather than narrowly focus on
national principles of association. This shift in the locus of normativity in tandem with reformed understandings of sovereign authority, in turn, enables a politician to acknowledge deference to international law as a responsibility of membership in the international society and harmonize loyalty to the sovereign state with deference to international law.

An identity-based explanation of legal obligation is relevant in the international context because of the associative nature of international law and the expressive function of legal rules that develops as a result. In this section, I shed some light on the macrofoundations of my argument and discuss the origins of international law’s associative expressiveness.

International law represents an associative structure of authority, and thus expresses states’ associative duties, that is responsibilities that derive from countries’ membership in the society of states. An associative structure is one that constitutes a political community, an association, by establishing the fundamental principles of interaction. International law represents an associative structure because the core principles of international law constitute and preserve the political community of states and ground the very rationale of international politics (Buzan, 2004; Mayall, 2000; Nardin, 1983; Reus-Smith, 1999; Franck, 1990).

The core principles of international law, sovereign equality, non-intervention, pacta sunt servanda, and good faith are the first-order rules of world politics. They are formative of the structure of international system and of states as the constituent

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82 Cassese (1986) also identifies respect for human rights, self-determination, prohibition on the threat or use of force, peaceful settlement of dispute as more recently developed additional principles. Also, see Kocs (1994), Shaw (2008), and Coplin (1966).
elements of this system. First-order laws do not simply maintain social order but largely
make world politics possible in the first place by establishing an association of states
(Kocs, 1994; Franck, 1990). As many have noted, the fundamentals of international law
organically arise from the international system, thus are historically and politically
contingent. The Westphalian order, therefore, is a particular kind of political association
centered upon a particular kind of associative structure anchored by the primary rules of
international law (e.g. Jackson, 1999; Osiander, 2001; Spruyt, 1994). Yet, while the
content of these legal rules may vary as a function of prior state interaction, the formative
relationship between the core principles of international law and the society of states
attests to their associative nature.

Since the core principles of international law constitute and preserve the very
association of states, it is easy to understand their expressive dimension. Their social
meaning is distinct because they express membership duties in the association of states.
Indeed, this is precisely why from Suarez to Vitoria to Grotius, from Manning to Franck,
many have connected the institutional aspect states’ legal obligation to membership in the
society of states (e.g. Covell, 2009; Nussbaum, 1954). And when it comes to the
psychological side of legal obligation, partly what unites optimistic and pessimistic
perspectives is an appreciation of the constitutive principles of international law (e.g.
Abbott et al., 2000). Therefore, skeptics may claim that an identity-based argument can
be applied to explain the emergence of a sense of obligation to the primary rules of
international law, but not to treaty law.
I do not impose this scope condition on my argument. Contractual duties based on treaty law, I argue, can still carry a distinct social meaning and express associative duties in legally constituted associations of states. This is because legalization indeed constitutes a formative social practice that establishes associational ties among states, and in turn generates legally defined political communities. In this regard, contractual duties created by institutional legalization express the associative duties of signatories as members and articulate membership responsibilities. As a result, an identity-explanation can be usefully employed to explain the psychological dynamics of obligation to both constitutive and consensual law. Understanding the importance of an identity-argument and the associative expressiveness of treaty law requires revisiting functionalist accounts of legalization and expanding the “obligation, precision, and delegation” centered legalization framework to include expressiveness (Abbott et al., 2000; Abbott and Snidal, 2000).

While international identification through the mechanism of reference group membership explains the psychological logic of legal obligation, international law’s associative nature grounds its obligating power at the structural level. Unfortunately, this characteristic of international law has been neglected by the institutionalist literature on legalization. The extant literature on the formation and design of institutions approaches institutionalization, legal or otherwise, from a functionalist perspective; institutional legalization is mainly a problem-solving mechanism. The dominant rational design approach focuses mostly on the relationship between costs and benefits offered by different institutional solutions (e.g. Koremenos, Lipson, Snidal, 2001; c.f Wendt, 2001).
On this view, political leaders prefer legally binding agreements or hard law when these agreements offer more efficient institutional solutions.

The variation in institutional design, in turn, is determined by “situational features” (Abbott and Snidal, 2000: 423). Given the nature of the problem at hand, actors weigh the benefits of harder forms of legalization against institutional “sovereignty costs.” Negotiators balance solving commitment and incomplete contracting problems, and reducing transaction costs with “sovereignty costs” caused by delegating political authority (e.g. Abbott and Snidal, 2000) A continuum of legalization follows, as a result, reflecting the situational incentive structure.

In the course of evaluating these tradeoffs, furthermore, rational actors seek to assert their preferences and achieve favorable outcomes, as articulated by most theories of international regimes (e.g. Keohane 1984, Axelrod 1984; also see Mearsheimer, 1994/95). Pursuing their countries’ self-interests, whether these interest are myopic or have a long time horizon, political actors bargain to realize solutions that best advance their preferences. This, as Abbott and Snidal (2000) acknowledge, does not imply that laws do not include normative considerations. Of course, they do. More often than not, however, problem-solving remains the central objective of legalization in the institutionalist literature.

Resulting from this rational bargaining process, law is an only an institutional outcome defined by specific formal properties and processes corresponding to gradations of in “obligation, precision, and delegation” (Abbott and Snidal, 2000). Arguing that this portrayal of law is “limited to a collection of formalized and institutionalized features,”
Finnemore and Toope (2001:474) refer to rational bargaining conceptualizations of legalization as “legal bureaucratization.” I agree with the broad contours of functional models of legalization. Laws, to be sure, possess specific technical features and vary along the continuum of legalization. Politicians, furthermore, do pursue their strategic interests during institutional legalization. Yet, in the extant literature, international legal rules are largely stripped of any ability to evoke felt legal obligation at the individual level, which in turn perpetuates the conclusions of pessimistic perspectives on legal obligation.

This issue indeed relates to a deeper question about the authority and binding-ness of international law (Reus-Smith, 2003; Pufong, 2001). Is international law binding upon states? If it is, what grounds its authority? These abiding questions have occupied both IR and IL scholars for decades. International law is created by states to manage cooperation and coordination problems, it is voluntary and not centrally enforced (Barkun, 1968; Kelsen, 1945, Austin, 1995), and it lacks the fundamental properties usually associated with conventional forms of law, such as secondary rules. Given these idiosyncrasies, many “despair for international law,” Louis Henkin (1979:25) observed. Hart (1961) called international law “immature” given the absence of secondary rules. Austin (2002, 1995) referred to international law as “positive morality” given the absence of centralized enforcement.

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83 The binding-ness of international law in the current international system depends on consent. See, for example, Henkin (1979), Schachter (1967/68). For a comprehensive reviews, see, Pufong (2001) and Shen (1998/99).


85 On the characteristics of international law, also see Coplin (1966), Van Dervort (1998), Hathaway (2005), Brownlie (1998), Shaw (2008).
Even though a multitude of arguments have been offered to ground international law’s authority, international law’s institutional differences from state law, particularly the absence of centralized enforcement and the voluntary nature of treaty law, have routinely cast doubt upon its authority in the international system. Borrowing from Brian Tamanaha’s (2000, 2001a) Socio-legal Positivism, I argue that this issue is a function of a broader analytical problem; that is the problem of “essentialism,” that has left many approaches, particularly functionalist positivism, ill-equipped to explain the deeper dynamics of legal normativity.\textsuperscript{86} Given the nexus between agents and structures, this analytical problem has, at the same time, hindered a fuller understanding of obligation-formation at the individual level.

Essentialism “assumes that law is some particular phenomenon that can be captured in a formulaic description [that is based on] some variation of an institutionalized, function-based abstraction of law” (Tamanaha, 2000:312). Hart (1961:1, emphasis original) begins his seminal work with the following observation. “Few questions concerning human society have been asked with such persistence and answered by serious thinkers in so many diverse, strange, and even paradoxical ways as the question *What is law?*”

And there is good reason for the persistence of this question. This misleadingly simple question represents a quest for finding the *essence* of law that defines and delineates law, determines the conditions of legal validity, and constitutes the basis of its obligatory

\textsuperscript{86} As noted previously, I use essentialism only in an analytical sense. My understanding of this problem is not directly connected to how it is used post-structuralist accounts.
quality (Tamanaha, 2001a, 2000; Walby, 2007; Griffits, 1986). This is an important matter. Not only does the essence of law grounds and indeed justifies legal authority at the societal level, but it is intrinsically connected to legal rules’ potential to evoke deference at the individual level (e.g. Kramer, 2005). Missing the essence, a rule does not count as law, and as such lacks the power to obligate (Coleman, 1998; Tamanaha, 2001a, 2000; Marmor, 2002). Without an essence, furthermore, legality loses its particularity. Law is one of several normative systems, and all normative systems purport to obligate. What then differentiates law’s obligating quality from that of other rule-systems? (e.g. Hart, 1961; Finnemore, 2000). The essence addresses what legal theorist Joseph Raz (1979:115) refers as the “unique-ness of law” problem.

The search for a grounding essence concerns all types of law. Many arguments have been offered to account for the validity and authority of law in the domestic context. Defining law as the commands of a sovereign, John Austin (2002, 1995) located law’s obligatory quality in the enforcement authority of a sovereign. As law is the “union of primary and secondary rules,” in Hart’s (1961) account, anything short of this union is not law and not truly authoritative; authority therefore is mainly centered on form. For Kelsen (1967, 1945), law’s authority was grounded in the Grundnorm.

87 It also specifies the form and function of law. These matters further relate to the normative problem of political and legal obligation as I explained in chapter 2. However, my focus here is on the authority of law at the societal and individual level.

88 It is worth noting that the essence-authority connection is sometimes only implied in legal theory. As legal theorists are addressing state law that has an established claim to authority -- unlike international law-- they do not always articulate the importance of the essence for law’s ability to be authoritative. To the extent this essence is posited to be the necessary condition for legal validity, however, its connection to authority is clear.
By and large, an essentialist approach explains the grounds of law’s authority by pointing to presumably indispensable institutional attributes of law—such as enforcement or secondary rules—that anchor and differentiate law’s obligating power. The ability of law to obligate, in other words, is predicated upon particular objective properties. Without them, law-ness and authority remain obscure (Tamanaha, 2001a, 2000; Walby, 2007).

However, formulaic descriptions of law endorsed by essentialist approaches have critical analytical implications. The first is the well-known problem of infinite explanatory regression. In order for the essence to anchor law’s obligating power, either the essence itself must be authoritative or appeal to a prior authoritative factor. Otherwise, it cannot ground legal authority. This problem can clearly be seen in Kelsen’s theory. All laws, for Kelsen, are connected to the Grundnorm which itself is authoritative. In the same vein, if the sovereign status of a ruler is what makes his commands authoritative, then the authority of the sovereign must spring from a prior source (Lake, 2007, also see Mattern, 2005). Rather than explaining the macro foundations of law’s authority, these claims interrupt the explanatory process by positing the authority of an ultimate norm. In so doing, they further assume the ability of this essence to evoke legal obligation at the individual level, yet do not clarify why this happens, let alone explain individual level variation.

Second, by connecting law’s authority to its self-referential formal attributes, essentialism distances the legal system from social units and the socio-political dynamics underlying legal normativity. It posits the prior existence of authoritative law and casts

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89 Reus-Smith (2003) refers to this as the problem of interiority.
this exogenous power upon passive subjects that await being governed (Walby, 2007; Foucault, 1977). In other words, law defines and grounds itself within itself. And law does so with relative autonomy from social and political world it governs. By grounding legal authority in an asocial and self-referential essence, this approach assumes law to be separate and autonomous from society and politics (Habermas, 1996; Foucault, 1977; 1980; Walby, 2007; Litowitz 2000).

This tendency creates problems for explaining both the macro and micro foundations of law’s obligating power. At the structural level, it overlooks transformative socio-political dynamics involved in law-making, and thus misses the social grounds of legal authority. Given this neglect, an essentialist explanation of legal obligation at the individual level disregards the importance of identities in shaping individuals deference to law’s authority in a given political community.

Another analytical limitation of essentialism is its inability to explicate how rules that lack a traditional essence could still be regarded as law and obligate or why conventional law despite the presence of an essence may fail to obligate. Since essentialism a priori limits the factors that could account for law’s authority to formal properties, it fails to explains how unconventional forms of law, such as international law, could hold the power to obligate in a particular community and why traditional law might lack this power (Barkun, 1968; Roberts, 2005). A focus on law’s attributes, at the same time, fails to clarify why law obligates some people more than it does others at the

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90 Questions of autonomy, self-referentiality, and the problems of essentialism are most notably discussed by legal pluralists. For helpful reviews on classical and contemporary legal pluralism, see Walby (2007) and Roberts (2005). For a critique of legal pluralism, see Tamanaha (2000). Two prominent scholars arguing for the autonomy of law are Luhmann (1985) and Teubner (1988).
individual level even though the properties of law remain constant. Legal pluralists have long observed these problems (e.g. Cover, 1983/84; Pospisil, 1971; Griffitshs, 1986; Moore, 1973; Merry, 1988). Addressing these explanatory problems require analyzing how the practices of social units ground law’s authority at the societal level and explaining why identities of individuals associate with felt legal obligation. Eugene Ehrlich’s (1936) famous notion of “living law” captures this point. What makes law law and gives it the power to oblige is how social units define and live their law.

To summarize, essentialism tends to reify law, its authority, and the political community it governs (Tamanaha, 2001; Walby, 2007; Litowitz 2000). It assumes to law to be an exogenously authoritative regulatory structure and disregards the social foundations of legal authority. Given these analytical shortcomings, essentialism restricts the factors that could define law and anchor its authority to a set of formal attributes, and thus imposes a particular account of how law obligates; one that assumes an orthodox essence to be a pre-requisite for legal obligation. As a result, essentialism misses how practices of law-making could create new social relationships, and in so doing endow law with a special ability to oblige at the individual level by engaging identities. Overcoming essentialism and its explanatory limitations require an alternative account of law and its authority that is attentive to the transformative mechanisms involved in practices of law-making and to the importance of identities at the individual level.
3.7.1 Overcoming Essentialism: Social Grounds of Law’s Authority

How can “[l]aws ...made by fools, ... by men, vain authorities who can resolve nothing,” can be authoritative and obligate, Montaigne wondered, and the essence for the authority of state law continues to present a puzzle (Montaigne, 1991:1216 quoted in Delacroix, 2006:14). If this is a puzzle, the basis of international law’s obligatory quality represents a mystery. In the domestic context, the essence of law is routinely located in presumably indispensable institutional attributes of law --such as enforcement or secondary rules-- that anchor and differentiate law’s authority.

International law lacks an orthodox essence. Conventional properties associated with legal validity and authority are largely missing from international law. Some degree of skepticism about international law’s obligatory quality persists because it lacks specific, often self-referential, properties associated with state law claimed to define law and constitute legal authority (e.g Austin, 2002; 1995). The functionalist characterization of legalization in the extant literature is partly rooted in this continuing skepticism caused by the problem of essentialism.

Even though does not essentialism directly figure in IR theory, the dominance of functionalist accounts of legalization has implicitly reproduced the analytical problem of essentialism, thereby limiting to our ability to fully grasp both the institutional and the psychological dimensions of legal obligation. The characterization of legalization only as a functional problem-solving process has largely resulted in the marginalization its constitutive aspects upon which international law’s law-ness and authority hinge. This is a critical void because it is these generative elements that ground international law’s
authority in the first place and grant legal rules their expressive character in the international system. Overlooking the social underpinning of international law’s authority and the expressive function of legal rules, in turn, has prevented an appreciation of why international identification affects politicians’ propensity to form a sense of perceived obligation to international law. Therefore, to overcome the explanatory shortcomings of essentialism, an important theoretical move is required: changing reified understandings of law.

This move represents a departure from formulaic descriptions of law to find its essence. While essentialism looks for an indispensable attribute that defines law, establishes conditions of legal validity and grounds juridical authority, a non-essentialist perspective as presented by Socio-legal Positivism and Legal Pluralism avoids what might be called the reification of law (Walby, 2007). Instead of searching for a formal property to describe “what law is,” this perspective examines how social units define what constitutes “their law” (Cover, 1983/84; Resnik, 2005; Griffiths, 1986; Ehrlich, 1936). Accordingly, from a non-essentialist standpoint, the absence of a conventional essence does not constitute a paradox of authority as it is individuals’ shared understanding and identities as members of a community that shapes their sense of legal obligation.

Brian Tamanaha (2000:313; 2001, 1997) defines law as “whatever people in the social group conventionally recognize as legal norms through their social practices.” Building upon this definition, I re-conceptualize international law as what states collectively identify and authorize as law to govern a set of interactions. It is not necessarily a particular formal property, process, or any other asocial technical element that makes a
rule law; rather it is states’ collective acknowledgement and authorization of a set of rules as law that constitutes legality. Legalized rules, of course, might possess specific technical and procedural elements and are likely to fall somewhere on the legalization continuum. Yet, their law-ness, and obligating power by extension, is not automatically conditioned upon these factors. What makes a set of rules law is prior to these elements and originates from states joint acts of law-making. In this regard, we need to assess the hard-ness of laws not only in terms of where they stand on the legalization continuum, but also in terms of how much authority is actually attributed to them in a social group.91 This is precisely what Weber (1978, meant by “validity.” A rule might be hard in the formal sense, yet fail to hold authority nevertheless. To fully evaluate how deep institutionalization is, we need to conduct parallel investigations of how much authority is formally delegated and how much authority subjectively delegated by social units in the aggregate.

Consider, for example, customary international law.92 Opinio juris refers to the psychological acceptance of a rule as custom in the international society at large (Byers, 2001; Slama, 1990; Stern, 2001). Francois Geny defines it as “inmmaterial or psychological element” (1899, cited in Slama, 1990:613). Customary international law differs from codified international law in terms of its formality. Its binding-ness, furthermore, is not directly predicated upon consensual contracting. What determines whether a rule constitutes customary law or not are not technical elements but primarily opinio juris. A

91 On soft law, see again Chinkin (1989).

92 Opinio juris sive necessitatis in full. On the importance of opinio juris in custom formation, see, for example Elias (1995) for a review.
practice needs to psychologically accepted as custom in the international society for it to have customary law status (Elias, 1995; Stern, 2001). Article 38 of the Statute of the International Court of Justice (ICJ) defines customary law “as evidence of general practice accepted as law (emphasis added). The importance of the subjective element in custom formation implies that what creates the legality of a particular conduct is states’ collective subjective acceptance and authorization of it as law. In other words, the legality of a practice is also defined socially and psychologically, not merely technically.

3.7.2 Associative Ties, Expressive Law, and Legalization

Overcoming the explanatory shortcomings of essentialism allows us discern the constitutive dynamics of legalization, and thus enhance functionalist accounts. I agree with the general outline of functionalist perspectives. Yet in contrast to these models, I conceptualize legalization as a constitutive practice of forming associations of states through collective practices of law-making.

Legalization represents a constitutive practice of creating associational ties and forming legally defined associations; it represents an integrative practice. By creating laws states not only solve functional problems, but establish legally defined associations or what Ronal Dworkin (1986) and Thomas Franck (1990) have referred as “communities of principle.”

The formative dimension of legalization originates from the nature of law-making. If law is what a body of states jointly decide and authorize as law, then an alternative account of legalization follows. Law-making is more than negotiating where to land on
the spectrum of legalization (e.g. Finnemore and Toope, 2001; Hurrell, 2000, Toope, 2000). Rather, it is the shared act of a “reflective collective subject” conscious of its unity around on a specific ideal or project exercising some form of constituent power and creating a polity by defining the temporal, spatial, and normative terms of association under legal authority (Lindhal, 2007; 2006).

At the heath of a political association lie two fundamental elements; a shared social purpose and a domain of governance. Legal authority governs the common space and social relations of a polity and reinforces the collective will and common purpose of the constituent units (Habermas, 1989; Priban, 2007). Legal authority expresses a normative framework of rule that both defines and delineates a polity (Wade, 1955; Loughlin, 2003). If legal authority is both constitutive and indicative of a political association, then the act of defining and authorizing a set of rules as law, that is legalization, represents a constitutive practice of forming associational ties and generating communities of principles because it produces the quintessential elements of a political association.

Legalization defines the common space to be governed by legal rules based on the shared social purpose of the reflective collective subject. It specifies the fundamental terms and conditions of association and identifies the collective will from which these principles originate. Thus, the practice of specifying a set of rules as law and authorizing them with governing power amounts to identifying a spatially and temporally delineated normative framework formative of integrative ties. In this regard, when states collectively establish the legal principles to govern their relations in a given domain and re-define
their the nature of their interactions under legal authority, they specify a polity defined and delineated by legal rules.

“To posit a legal norm, whether general or particular, is to posit a legal order as a historical unity. Law-setting not only involves an on-going process of concretizing legal norms, as Kelsen puts it, but also always raises a claim about the meaning of past, present, and future dimensions of a single collective history,” notes Hans Lindhal (2006: 507-508). Thus, if law-making parallels articulating a legal order, this articulation amounts to instituting an association by a reflective collective subject that both defines and constraints itself by legalization as a polity through time, space, and normative principles. Legal Pluralists have long observed the presence of what Robert Cover (1983/94) has famously referred as “jurisgenerative” communities which create and authorize specific rules as our law in their social practices, and in so doing impose associative duties upon their constituent units. In this regard, the domain of the laws marks the temporal, spatial, and normative terms of association.

Unpacking Lindhal’s (2006: 499-500, emphasis original) discussion of spheres of validity is useful at this point. “[t]he legal ‘ought’ refers to human behavior, the legal norm comprises subjective, objective, temporal, and spatial spheres of validity. Indeed, one can ask four different questions about the validity of a legal norm: Who ought to behave in a certain way? What behavior ought to come about? When ought behavior to come about? Where ought behavior to come about.” The practice of answering these questions through legalization produces the defining characteristics of a political association; that is the domain and subjects of governance, the fundamental principles of
governance, and the common purpose of the subjects from which these principles derive. As such, legalization represents the practice of establishing political associations under legal authority. As Judith Resnik (2008:63) notes, “law pronouncement and law implementation [become] practices for community building, and borders are methods for delineating the contours of the community so constructed.”

The rule communities states form by creating mutual responsibilities in the process of institutional legalization do not presuppose historical, cultural, or emotional ties, could vary in terms of the scope of their membership, and may be universal, regional, bilateral and overlapping. The borders of these associations, the management of multiple memberships, and the resolution of potential tensions between different associative duties are separate questions. The critical point is that legalization creates rule communities delineated and sustained by laws, and their members are associated with each other by legally defined mutual responsibilities and directed duties.

The fact that international law is not fully autonomous from but entangled with politics is sometimes thought to result in a paradox of authority potentially depriving international legal rules of the power to obligate and turning them into political instruments (Teson, 1990; Schachter, 1967/68). If we move away from functional outcome conceptualizations of law and adopt a non-essentialist view of law, however, the intimate connection between law and politics ceases to be a handicap. A focus on the social foundations of juridical authority and the associative nature of laws allows us to explore how legalized rules could hold the power to obligate their very own creators. Laws could indeed obligate because they express membership responsibilities.
This is not to suggest that consent and the sovereign authority of the state cease to matter. States indeed enter the practice of legalization by exercising sovereign power. Participation is an expression of consent to partake in this associational process, a function of state’s decision-making authority. Even though legal duties are consented duties, once incurred they become associative duties (Dworkin, 1986; Tussmann, 1960). They transform into responsibilities of membership in associations of states; duties that are tied to states social status in “communities of principle”. The meaning and practice of sovereignty, as a result, changes for members of these communities. While the original constitution of juridical authority in an association depends on the exercise of state power, once empowered juridical authority exists on its own grounds in the association facing each participant with its right to rule and imposing membership responsibilities (e.g. Weber, 1978).

The precise nature of the transformation state sovereignty may undergo as a result of legalization is ultimately a separate question (Abbott and Snidal, 2000; Moravcsik, 1998; Koremenos, Lipson, Snidal, 2001; Bradley and Kelley, 2008; Hathaway, 2008). How much power will be delegated to the authority of law and how much will be retained by states are likely to be determined by the conditions that motivate actors to enter the associative practice of law-making in the first place. These factors are also going to shape the terms upon which associative principles may be modified and conditions under which duties may be discharged. The point is not the exact nature of the change state’s authority experiences but that such change takes place as a result of the endowment of law with authority to govern a particular association of states. States
continue to retain internal sovereignty and external sovereignty may remain the technical
organizing principle of their interactions (Krasner, 1999; Erne, 2009). By partaking in the
practice of law-making, however, states designate themselves as a distinct polity governed
by juridical authority (e.g. Sweet and Sandholtz, 1997; Swaine, 2004; Majone, 2001;
Walker, 2003). Sovereignty hereafter is practiced in line with associative duties under
juridical authority.

The obligating power of international law rests on this foundation. Legalized rules
are not ordinary rules. They make a difference in kind. As a result of the constitutive
dimension of legalization, legal rules express associative duties in legally defined political
communities. Even though treaty-based legal duties are consented duties, once incurred,
they symbolize associative duties; responsibilities owed to others and to body politic as a
whole (Dworkin, 1986; Tussmann, 1960). Associative duties are responsibilities of
membership in associations of states, as explained previously, that are tied to states’ social
status in communities of principle.

By expressiveness I refer to the social meaning of laws. Expressive law as it is
typically understood analyzes how law alters the social meaning of a given behavior
either by changing the social costs of engaging in that behavior or changing its symbolic
meaning. Developing an economic expressive theory of law, for example, Robert Cooter
(1998: 608) has examined how legality or decisions of courts could change the social
norms prevailing in a society by expressing general societal “commitments,” thereby
altering rational actors’ preferences or eliciting internalized obligation. In an application

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expressive international law, see Geisinger and Stein (2007).
of expressive law to the international context, Geisinger and Stein (2007) have offered a
social-psychological account of compliance.

Cass Sunstein nicely summarizes the core of the expressive function of law. The
expressive function of law, Sunstein (1995/96:2024) notes, is “making statements” as
opposed to controlling behavior directly.” Just like actions are expressive, namely have
meaning, laws carry meaning too. The expressive aspect of international law I am
interested in here is about the voice of law, that is the statements legality makes. Given the
constitutive dimension of legalization, the voice of legal rules articulates membership
duties in legally defined interlocking associations of principle. These duties derive from
states’ memberships in international political communities and are owed to other
members and to the association as a whole. As associative principles, legal rules express
the fundamental terms and conditions of governance in an association and symbolize the
collective purpose of the participants (Habermas, 1996; 1989; Cover, 1983; Resnik,
2005). Associative duties, furthermore, are connected to a special relationship with the
association of which one is a member and are vindicated by the existence of this
relationship as mentioned previously. This special relationship pertains to the common
purpose of the association that constituted the law in the first place. As such, associative
duties are intimately linked to legitimate political agency in associations of states and
symbolize the very responsibilities that cannot be renounced without renouncing member
status and abandoning the reasons for association (e.g. Gilbert, 2006; Horton, 2010;
It is this associative quality of legal rules that endows international law with the power to obligate political leaders. Political leaders have reasons to espouse their countries' legal duties as membership responsibilities arising from states member status in international communities when they identify with these communities. This expressive dimension of legal rules is critical, as we saw, for the formation of a sense of legal obligation at the individual level because it motivates high international identifiers to embrace deference to international law as a responsibility of membership. Because international law carries an associative character and communicates membership responsibilities in international communities, politicians holding high international attachments have reasons to embrace the legal duties of their countries as responsibilities of membership in these communities. As a result, they perceive international law’s influence to be legitimate, experience less motivational conflict between sovereignty and deference, and thus could form a strong sense of legal obligation. In contrast, the expressive dimension of international law does not fully resonate with low international identifiers. Therefore, low identifiers do not fully perceive international law’s influence to be legitimate, view deference to international law’s authority as loss of sovereign power, and thus fail to develop a viable sense of legal obligation.
3.8. Conclusion

The basis of deference to international law is possibly one of the most interesting questions in the study of international organization and law that has critical theoretical, political, and normative implications. This chapter offered a theoretical framework for explaining the logic of political deference to international law. I have undertaken two tasks in this chapter. In part one, I have developed theoretical framework for explaining the psychological logic of legal obligation at the individual level. I have argued that international identification, through the mechanism of reference group membership, affects actors’ perceptions of the legitimacy of international law’s authority and influences how they process psychological sovereignty costs involved in legal obligation. As a result, the extent of international attachment conditions politicians’ ability to reconcile sovereignty with deference to international law and leads to varying degrees of legal obligation. Connecting legal obligation to compliance, I have hypothesized that legal obligation increases compliance propensity even when compliance is costly and at odds with individual state interests by acting as a self-imposed constraint upon policy-makers and by raising their sensitivity to social pressure. In the later sections of part one, I have reviewed alternative arguments of legal obligation, presented the observable implications of my theoretical framework, and discussed research design and methodologies strategies employed in its empirical application.

In Part two, I tried to illuminate the macro-foundations of legal obligation. Starting with a critique of essentialism, I have discussed the constitutive dynamics of legalization and explored the expressive dimension of international law. I have argued that an
identity-based explanation of legal obligation at the individual level is especially relevant in the international context given the associative nature of international legal rules.
4.1 Introduction

In the previous chapter, I have developed a theory that explains the psychological logic of legal obligation by theorizing the effect of international identification on the authority relationship between politicians and international law. Legal obligation, defined as the subjective acknowledgement of international law’s governing authority entails a tension between commitment to state sovereignty and deference to international legal authority and involves a motivational conflict between sovereignty and deference. International identification plays a key role in the settlement of this tension because leaders’ degree of attachment to international polities affects their perceptions of the legitimacy of international law’s authority, and thus conditions their ability to reconcile commitment to state sovereignty with deference to international law. International identification shapes the perceived legitimacy of international law’s authority because it prompts politicians to re-conceptualize understandings of their countries --and by
extension themselves-- as members of the international community rather than view statehood separate from membership in the international community. The transformed view of the state as a member, in turn leads to the perceived legitimacy of international law’s right to rule because it shifts actors’ understandings of legitimate duties, corresponding rights, and authoritative institutions to the collective level and enables them to balance sovereignty with deference. This change in the orientation of normativity enables politicians to accept legal duties as membership responsibilities and acknowledge the governing authority of international law as part of the definition of the “we.” Thus, I have hypothesized that politicians who highly identify with the international community are more likely to hold a stronger sense of legal obligation than those who identify weakly (International Identity Hypothesis). In chapter 3, I have also discussed the connection between legal obligation and compliance. By acting as a self-imposed constraint and increasing actors’ sensitivity to social pressure, I have argued, legal obligation raises politicians’ willingness to tolerate compliance costs, thereby leading to an increased compliance propensity (Compliance Resolve Hypothesis).

In this chapter, I test the central propositions of my theoretical framework using data from an original survey of German parliamentarians. First, I examine the extent to which variation the strength of obligation to European Union (EU) law and international law across parliamentarians can be explained by differences in their degree of attachment to the European and international communities. Second, I test for the effects of legal obligation on the likelihood of support for compliance. I discover that parliamentarians’ identity orientations influence how much obligation they perceive towards both EU law
and international law. I further find a robust relationship between legal obligation and support for compliance even when compliance is at odds with Germany’s material interests.

The empirical analyses presented in this chapter serve four main goals. First, the analyses of obligation to EU law provide a critical test of my theoretical framework. As I explained in the research design section of chapter 3, if strength of legal obligation varies across actors as a function of their international identification and if high international identification associates with a stronger sense of legal obligation, as I argue, evidence from Europe should support my hypotheses because supranational loyalties are most likely to exist in Europe. If my argument fails in the case of Europe, there is little reason to conduct further tests. Second, my survey results show that strength of legal obligation facilitates compliance resolve and moves actors towards compliance even when compliance is costly. Instrumentalist and Rationalist accounts in IL and IR literatures predict that states will violate legal rules when compliance requires significant changes in behavior and as a result becomes costly (Downs, Rocke and Barsoom, 1996; Morgenthau, 1985; Mearsheimer, 1994/95; Goldsmith and Posner, 2005). In experiments embedded in the survey questionnaire, I manipulate compliance costs and demonstrate that a stronger sense of legal obligation attenuates the negative influence of compliance costs on support for compliance. These results counter the general pessimism about legal obligation and about the autonomous effect of international law and legal institutions on state behavior.

Third, I find that the relationship between international identities and legal obligation holds robust across European and international legal systems. I discover that
stronger attachments to Europe and the international community associate with higher levels of legal obligation and propensities to comply. This finding lends support to the argument that the mechanism of reference groups implicated in identities shapes obligation to legal rules partly independent of the characteristics of the legal system and the identity community in question. As I will discuss in the concluding chapter, this finding has practical implications. If attachment to the international community evokes a sense of legal obligation and facilitates compliance, then programs and policies geared towards building a sense of community at the international level are essential for strengthening international legal governance. This chapter starts by introducing the survey instrument and the research design and proceeds by discussing the measurement of variables. I then present the results of statistical analyses obtained from the European and international parts of the survey followed by a summary of the results in the concluding section.

4.2 Research Design

4.2.1 Case Selection

As explained previously, my case selection is guided by the inferential importance of Europe as a critical test case for my argument (Van Evera, 1997; George and Bennett, 2005). After establishing the European Coal and Steel Community (ECSC) in 1952, European countries have continually deepened political integration such that European citizenship, a common security and defense policy, and a common currency have become possible. Thus, European politicians are likely to identify with the European polity and
acknowledge deference to EU law as responsibilities of membership. If I cannot find evidence for my theoretical argument in Europe, it is unlikely that I can find support elsewhere. Analyzing the effects of European identity strength on obligation to EU law and examining the impact of legal obligation on compliance preferences therefore constitute critical tests.

My focus on Germany is shaped by its potential to offer sufficient variation and its importance as a regional player. Even though it is impossible to observationally know in advance how much German parliamentarians identify with Europe and how much obligation they feel towards EU law, a sizable body of research on member states’ compliance rates indicates that Germany, despite being generally compliant, sometimes does violate EU law (Borzel et al., 2007; Mbaye, 2001; Falkner et al., 2005). This suggest that Germany gets an above-average compliance score. Germany’s compliance record is not as good as those of Nordic countries but not as poor as those of the Southern European members. While this does not provide us with direct information on the nexus between supranational identification and legal obligation, it does suggest that German politicians are not intrinsically inclined to uphold or violate the laws whether this is because of legal obligation or some other factor. The selection of Germany therefore allows me to test my hypotheses in a case where I could potentially obtain sufficient variation in strength of actors’ sense of legal obligation and compliance resolve.

The second reason pertains to the relationship between state power, legalization, and compliance. Some scholars argue that because laws reflect the interests of powerful states, powerful countries are more likely to comply with legal rules. Others contend that,
powerful states are more likely to violate laws when compliance is not in their interests simply because they have the luxury to violate legal rules given their influential status (e.g. Borzel et al., 2007). This complex relationship --partly caused by the endogenous nature of legal rules to country preferences-- presents a problem for compliance studies (Downs, Rocke and Barsoom, 1996; Von Stein, 2005), but it serves me well. If powerful states are more likely to use laws as functional tools to serve their interests, we should expect politicians of a country like Germany that has substantial influence on the formulation of EU laws to view laws instrumentally rather than have a sense of legal obligation. As Germany has the luxury to violate EU law compared to weaker members, furthermore, it is not an intrinsically easy case for analyzing legal obligation.

4.2.2 Survey Instrument and Methodology

The survey instrument was designed to measure identification levels, legal obligation, and compliance propensities both at the European and international levels. It also included measures to analyze alternative arguments, foreign policy orientations, and support for EU integration along with a battery of control items. The survey instrument had five main components. To get participants interested in the survey, I started by obtaining information on political party affiliation, demographics, support for EU integration, and support for transfer of powers to supranational EU institutions, such as the Commission and the European Parliament. In part two, I measured European and international collective identity as well as strength of German national identity. Part three measured legal obligation and compliance propensities at the international level. Part four
measured the same constructs at the European level. In the final section of the survey, I measured foreign policy orientations and authoritarian personality as a control item.

The survey instrument also had a number experiments embedded in it that were designed to analyze the effects of legal obligation on compliance resolve varying compliance costs. In the experimental conditions, I varied compliance costs to test whether parliamentarians who have a strong sense of legal obligation are more likely to pay a higher price for compliance across different conditions. I will explain the operational measures in the following sections.

Between November and December 2009, I surveyed all 622 members of the seventeen German Parliament. The survey instrument was delivered in German and mailed to all members of the Bundestag using their publicly available contact information. Follow-up e-mails were sent to boost the response rate. 68 parliamentarians completed the survey. This is admittedly not a high response rate, yet the distribution of the respondents with respect to parliamentary groups is roughly representative of the population as shown in table 4.1. I created two versions of the survey instrument to represent high and low compliance costs in experimental conditions. I used a split-half randomized design and randomly assigned half of the parliamentarians to the high cost condition and the other half to the low cost condition (Fowler, 2009; Weisberg, 2005). Each participant completed only one version of the survey.

Survey methodology provides an effective way to tackle the three main problems caused by the empirically challenging nature of legal obligation, namely problems of inference, isolation and dormancy. Typically, we examine political behavior by analyzing
what actors say and what they do. As I cannot directly derive legal obligation from compliance, the most practical way to examine legal obligation is by studying what actors say. Survey methodology enables me to analyze the origins and operation of legal obligation without necessarily blending it with compliance. Directly asking politicians about their dispositions and identities does not fully address the problem of inference --a function of the infamous problem of other minds--yet it does offer sensible estimates of political motives. Since survey methodology also enables the researcher to directly obtain the necessary information by asking questions, it successfully overcomes problems of dormancy and isolation.

Table 4.1. Distribution of Responses across Political Parties by Seats in the Parliament

<table>
<thead>
<tr>
<th>Sample</th>
<th>Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>CDU/CSU %28</td>
<td>CDU/CSU -239 seats-%38</td>
</tr>
<tr>
<td>SPD %32</td>
<td>SPD -146 seats-%23</td>
</tr>
<tr>
<td>FDP %22</td>
<td>FDP -93 seats-%15</td>
</tr>
<tr>
<td>Left Party %11</td>
<td>Left Party -76 seats-%12</td>
</tr>
<tr>
<td>Alliance 90/The Greens %7</td>
<td>Alliance 90/The Greens -68 seats-%11</td>
</tr>
</tbody>
</table>
4.3 Measurement

4.3.1 Dependent Variable: Legal Obligation

Obligation to EU law and international law have been measured with similar scales. I measured legal obligation using two different sets of questions. The rationale behind each of these items is to tap the importance of law’s independent authority for respondents and get an estimate of how much this consideration shapes their willingness to defer to international law. The first set of questions capture the central components of legal obligation identified in chapter 2, namely required-ness of actions demanded by legal rules, independent effects of law, experience of dissonance, and accepting social criticism as justified complaints in case of non-compliance. The second set of questions are variations of psychologist Tom Tyler’s (1990) frequently employed legal obligation items that have been used measured to individuals’ sense of obligation to domestic legal institutions and authorities. I have revised these questions and modified them to suit international and European politics.

Table 4.2 provides the wording of the questions, response categories, and average responses. The presented examples come from the scale used to measure obligation to international law. In the European context, I have substituted the phrases international law (or international legal rules) with European law and international community with the European Union or the European polity. I have re-coded responses to items in cases where reverse coding was necessary. All responses indicate agreement.
### Table 4.2. Questions Measuring Legal Obligation

<table>
<thead>
<tr>
<th>Dimensions of Legal Obligation</th>
<th>Mean (Std. Dev)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Int’Law</td>
</tr>
<tr>
<td><strong>Required-ness</strong></td>
<td></td>
</tr>
<tr>
<td>How important is it to you personally that Germany complies with its international legal duties?</td>
<td></td>
</tr>
<tr>
<td>(Extremely important, Very Important, Somewhat important, Not so important, Not important at all)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>3.08 (0.98)</td>
</tr>
<tr>
<td>Sometimes compliance with international law becomes difficult and hurts a country’s interests. In cases like this, how strongly do you feel that countries must still comply with international law?</td>
<td></td>
</tr>
<tr>
<td>(Extremely strongly, Very strongly, Strongly, Not so strongly, Not strongly at all)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2.57 (1.18)</td>
</tr>
<tr>
<td><strong>Independent Effects of Law</strong></td>
<td></td>
</tr>
<tr>
<td>There are several reasons why countries obey international law. We are interested how much value you put on upholding international law for its own sake. In other words, how willing are you to support compliance because laws need to be upheld?</td>
<td></td>
</tr>
<tr>
<td>(A tremendous amount, A lot, Somewhat, Not too much, None at all)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2.58 (1.29)</td>
</tr>
<tr>
<td><strong>Dissonance</strong></td>
<td></td>
</tr>
<tr>
<td>How uncomfortable would you feel if your country were to break international law?</td>
<td></td>
</tr>
<tr>
<td>(Extremely uncomfortable, Very uncomfortable, Uncomfortable, Not so Uncomfortable, Not at all)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2.45 (1.15)</td>
</tr>
<tr>
<td><strong>Justified Complaint</strong></td>
<td></td>
</tr>
<tr>
<td>How justified would other countries be in their criticism if your country were to break international law?</td>
<td></td>
</tr>
<tr>
<td>(Extremely justified, Very justified, Justified, Not so much justified, Not justified at all)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2.80 (1.36)</td>
</tr>
<tr>
<td><strong>Cronbach’s alpha for Scale Reliability</strong></td>
<td>0.718</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Tyler Scale</th>
<th>Mean (Std. Dev)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Int’Law</td>
</tr>
<tr>
<td>How strongly do you personally agree that countries should obey international law even if it goes against their interests?</td>
<td></td>
</tr>
<tr>
<td>(Extremely strongly, Very strongly, Strongly, Not so strongly, Not strongly at all)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2.19 (1.14)</td>
</tr>
<tr>
<td>How much do you personally think that a country who breaks international constitutes a threat to the international community?</td>
<td></td>
</tr>
<tr>
<td>(Extremely strongly, Very strongly, Strongly, Not so strongly, Not strongly at all)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2.45 (1.11)</td>
</tr>
<tr>
<td>How strongly do you personally agree that breaking international law is seldom justified?</td>
<td></td>
</tr>
<tr>
<td>(Extremely strongly, Very strongly, Strongly, Not so strongly, Not strongly at all)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2.33 (1.26)</td>
</tr>
<tr>
<td>Continued</td>
<td></td>
</tr>
</tbody>
</table>

172
To be sure, the measurement of legal obligation is challenging. Nevertheless, this epistemological problem is not specific to legal obligation. Indeed, many of the factors that are central to the study of world politics, ranging from power to misperception, from threat perception to national role conceptions are empirically challenging constructs. Legal obligation, in this sense, is not an outlier. Multiplying operational indicators offers a sensible way to measure epistemologically challenging constructs. Thus, I have used two independently created scales and compared their reliability, correlation, and performance. The rationale behind these theoretically derived dimensions of legal obligation has been discussed in chapter 2. As indicated by its reliability, the legal obligation scale has high internal consistency and strongly correlates with Tyler’s (1990) standard legal obligation scale. Principal factor analysis of scale items, further, indicates that items load on a common factor. Eigenvalues for other factors were all less than 1. This result suggest that the questions used in measurement tap a single construct, namely legal obligation. Maximum likelihood factoring, comparing the fit of the one-factor model to the observed correlation matrix and to the fit obtained from a no-factor and a saturated factor models, furthermore, shows that while the current one-factor model is a signifiant improvement over no-factors ($\chi^2 = 270.37$, $p=0.0000$), a saturated factor model does not lead to a
significant improvement ($\chi^2 [5] =2.60, p=0.7614$). Finally, the observed variation in the parliamentarians’ responses should alleviate concerns about social desirability bias in the measurement of legal obligation (Bradburn, Sudman, and Wansink, 2004).

4.3.2 Independent Variable: International Identification

International identification constitutes the primary independent variable in my theoretical framework. Since I am investigating the phenomenological determinants of both obligation to EU law and international law, I measure identities at the European and international levels. As explained in chapter 3, international identification is a continuum along which actors fall between high and low identification. In the international context, I focus on international collective identity; in the European context, I analyze European identity. To measure actors’ international identification, I use four items that tap the theoretically derived dimensions of the construct as explained in chapter 3. Table 4.3 provides the wording of the questions, response categories, and average responses.

<table>
<thead>
<tr>
<th>Dimensions of International Collective Identity</th>
<th>Mean (Std. Dev)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Categorization</strong></td>
<td></td>
</tr>
<tr>
<td>How much do you identify with the international community?</td>
<td>2.29 (1.10)</td>
</tr>
<tr>
<td>(Extremely strongly, Very strongly, Strongly, Not so strongly, Not strongly at all)</td>
<td></td>
</tr>
<tr>
<td><strong>Common Interests/Purpose</strong></td>
<td></td>
</tr>
<tr>
<td>How united do you think are your country and other countries and people around the world in the pursuit of joint purposes and interests?</td>
<td>2.32 (1.12)</td>
</tr>
<tr>
<td>(Extremely united, Very united, United, Not so united, Not united at all)</td>
<td></td>
</tr>
</tbody>
</table>

Table 4.3. Questions Measuring International Collective Identity
### Table 4.3 Continued: Questions Measuring International Collective Identity

<table>
<thead>
<tr>
<th>Question</th>
<th>Mean (SD)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Common Fate/Future</strong>&lt;br&gt;How much do you feel that what happens to other countries and people around the world in general affects your and your country’s fate as well?&lt;br&gt;(A tremendous amount, A lot, Somewhat, Not too much, None at all)</td>
<td>2.35 (1.19)</td>
</tr>
<tr>
<td>How strongly do you agree that countries and people around the world in general share a common future (including you and your country)?&lt;br&gt;(Extremely strongly, Very strongly, Strongly, Not so strongly, Not strongly at all)</td>
<td>2.67 (1.12)</td>
</tr>
</tbody>
</table>

#### Cronbach’s alpha for Scale Reliability

| Cronbach’s alpha for Scale Reliability | 0.739           |

The first item measures the categorization dimension of international identification. It directly asks respondents how much they identify with the international community while leaving the definition of the international community to the respondent’s own understanding. This is critical as the objective here is to capture how much a parliamentarian categorizes him or herself to be the member of a higher order associational category at the international level as he or she subjectively understands it.

The second item on the international identification scale was designed to measure how much politicians perceive the interests of their country to be connected to the interests of other states. This item seeks to measure the common interest and purpose dimension of international collective identity. The last two items pertain to the common fate and common future aspects of collective identity. These questions in part approximate attachment and affinity items used in the measurement of national identity. The notion of sharing a common future with other countries and an understanding of joint fate arguably constitute the “thickest” elements of international identification. The first item

---

94 Relevant literatures have been fully cited in chapter 3.
has been adopted from Herrmann, Isernia and Segatti’s (2009) national identification scale. The final item taps the perceived interdependence of governments’ future.

When the measurement of identity is at stake what often comes to mind is national identity. Measurements of national identity tend to be complex and multidimensional attempting to capture both the intricacies of attachment to the nation and the idea of the nation itself (e.g., Brubaker, 1999; Geller, 1983; Herrmann, Isernia and Segatti, 2009). In contrast to national identity scales, I use fairly straightforward operational indicators of international identification. I do so for four reasons, two theoretical and two analytical. First, international identification, as employed here, does not necessarily require complex measures. The construct itself is rather simple and is centered around three theoretically derived dimensions. These dimensions are sufficiently important to make identity at the international level a meaningful construct. Second, as I indicated in chapter 3, there is no direct theoretical reason to model either the conceptualization or the measurement of identity at the international level on national identity. On the contrary, our definitions and operational indicators should take into account the specificity of international collective identification and its differences from national identity.

The last two reasons behind the international identification measure pertain to our state of empirical understanding of international collective identity. To my knowledge, this construct has not been systematically measured in another survey study involving politicians. Given the roughness of the existing empirical terrain, it is only sensible to start with a simple measurement scale and first assess its reliability and
performance. The more complex our measures get, the more measurement error we introduce, especially with a relatively under-examined construct like international collective identity (Weisberg, 2005).

Principal factor analysis of international identification scale items indicates that items load on a single factor. Only one of the eigenvalues among the four emerges to be above 1. This result suggest that the questions used in measurement tap a single theoretical construct, namely international collective identification. Maximum likelihood factoring compares the fit between the one-factor model and the observed correlation matrix to the fit obtained from a no-factor model and a saturated factor model. Maximum likelihood factoring results indicate that the one-factor model is significantly better than the no-factor model ($\chi^2 [6] =233.86, p=0.0000$). A saturated factor model with two or more factors does not result in a significant improvement ($\chi^2 [2] =2.38, p=0.3040$).

Since Europe constitutes a critical test case for my argument and constitutes a thicker associational category than the international community, I have kept the bar for the assessment of European identity relatively high. To measure European identity I have relied on items developed to measure attachment to the nation (Herrmann, Isernia and Segatti, 2009; Sniderman, Hagendoorn and Prior, 2004). Table 4.4. provides the wording of the questions, response categories, and average responses. Again principal factor analysis shows that scale items load on a common factor. We could therefore infer that the items tap a single construct, that is European identity.
Table 4.4. Questions Measuring European Identity

<table>
<thead>
<tr>
<th>Dimensions of European Identity</th>
<th>Mean (Std. Dev)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Categorization (Relative Identity)*</td>
<td>2.86 (0.99)</td>
</tr>
<tr>
<td>Which of the following statements best describes how you compare your sense of being German to your sense of being European? (Only German, More German than European, As German as European, More European than German, Only European)</td>
<td></td>
</tr>
<tr>
<td>Importance to the Self-Concept</td>
<td>2.83 (1.14)</td>
</tr>
<tr>
<td>How much does being European have to do with how you feel about yourself? (A tremendous amount, A lot, Somewhat, Not too much, None at all)</td>
<td></td>
</tr>
<tr>
<td>Common Fate</td>
<td>3.19 (1.12)</td>
</tr>
<tr>
<td>When someone says something bad about Europe, how strongly do you feel it is if they said something bad about you? (Extremely strongly, Very strongly, Strongly, Not so strongly, Not strongly at all)</td>
<td></td>
</tr>
<tr>
<td>Cronbach’s alpha for Scale Reliability</td>
<td>0.910</td>
</tr>
</tbody>
</table>

*Lower values indicate lower attachment to the European community and higher attachment to the nation.

4.3.3 Measures for Assessing Alternative Arguments and the Null Hypothesis

Procedural and normative legitimacy constitute the two main non-identity-based influences on legal obligation. As explained in chapter 3, I do not disagree with the argument that actors could value procedural correctness of laws and maybe more likely to hold a sense of obligation if they have internalized the substantive normative content of legal rules. However, I argue that an international identity orientation generates obligation to laws even when there are doubts about laws’ procedural or normative legitimacy. Therefore, I posit that an identity explanation of legal obligation is likely to perform better than alternative arguments under specific conditions. To examine the procedural legitimacy alternative argument, I asked respondents about their likelihood of
support for compliance with a procedurally deficient law and likelihood of dissonance when a procedurally deficient law is violated. To capture the importance of perceived normative legitimacy, I asked respondents whether lack of overlap between their personal normative beliefs and the requirements of a law reduces their support for compliance and how much dissonance they would experience if Germany were to violate a law that does not reflect their normative convictions.

I also examine the alternative bases of compliance to evaluate the relationship between legal obligation and other correlates of compliance. To this end, I use items that tap the weight of standard correlates of compliance on parliamentarians’ compliance decision-making process. Specifically, I ask respondents how much emphasis they place on obtaining other countries’ reciprocal compliance, maintaining a credible compliance reputation for Germany, avoiding social criticism and sanctions, and on material gains from compliance. Table 4.5 provides the wording of the questions, response categories, and average responses.

<table>
<thead>
<tr>
<th>Table 4.5. Questions Measuring Variables for Alternative Arguments</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Correlates of Alternative Arguments</strong></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td><strong>Procedural Legitimacy</strong></td>
</tr>
<tr>
<td>Sometimes, international laws are not made exactly according to the correct procedures of law-making. But they become binding laws nevertheless. How likely is it that you would support compliance with a law even if there is controversy over its procedural legitimacy? (Extremely likely, Very likely, Likely, Not so likely, Not likely at all)</td>
</tr>
<tr>
<td>Mean (Std. Dev)</td>
</tr>
<tr>
<td>Continued</td>
</tr>
<tr>
<td>179</td>
</tr>
</tbody>
</table>
Table 4.5 Continued: Questions Measuring Variables for Alternative Arguments

<table>
<thead>
<tr>
<th>How uncomfortable would you feel if your country were to break a law that has not exactly been made according to the correct procedures of law-making?</th>
<th>2.35 (1.26)</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Normative Content Legitimacy</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sometimes, governments sign on to international legal agreements that do not reflect the personal beliefs of all politicians in the cabinet. For instance, not everyone’s personal beliefs are the same when it comes to international environmental laws or laws about the treatment of detainees but laws exists just the same.</td>
<td>2.51 (1.05)</td>
<td>2.77 (0.90)</td>
</tr>
<tr>
<td>How uncomfortable would you feel if Germany were to break a law that does not reflect your personal beliefs?</td>
<td>2.38 (1.25)</td>
<td>N/A</td>
</tr>
</tbody>
</table>

**Correlates of Compliance**

<table>
<thead>
<tr>
<th>Countries comply with international law for many reasons. Below are five of those reasons. Please indicate how important each of them is for your legal compliance decisions?</th>
<th>Int’Law</th>
<th>EU Law</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Reciprocity</strong></td>
<td>Compliance obtains other countries’ reciprocal compliance</td>
<td>3.17 (0.82)</td>
</tr>
<tr>
<td><strong>Reputation</strong></td>
<td>Compliance credibility today ensures gains from future cooperation</td>
<td>3.23 (0.81)</td>
</tr>
<tr>
<td><strong>Risk of Social Criticism</strong></td>
<td>Non-compliance brings international social criticism</td>
<td>2.52 (1.09)</td>
</tr>
<tr>
<td><strong>Risk of Sanctions/Enforcement</strong></td>
<td>Non-compliance risks sanctions and punishment</td>
<td>2.02 (0.85)</td>
</tr>
<tr>
<td><strong>Material Gains</strong></td>
<td>Compliance serves Germany’s material interests</td>
<td>3.35 (0.64)</td>
</tr>
</tbody>
</table>

Instrumentalist and Rationalist accounts in IL and IR respectively have long been skeptical about the independent effects of international law and institutions on state behavior (Morgenthau, 1985; Mearsheimer, 1994/95; Goldsmith and Posner, 2005). According to these arguments, decision-makers view international legal rules
instrumentally rather than approaching them with a sense of legal obligation. Countries comply with international law when it is in their self-interest, but violate legal rules when compliance becomes costly and requires important changes in behavior and policy (Downs, Rocke and Barsoom, 1996). This claim, which continues to be the dominant view in law and compliance literatures, represents the pessimistic null hypothesis. To examine this argument, I rely on three experiments embedded in the survey questionnaire. Both in the international and European settings, I use experimental scenarios which manipulate the material costs associated with compliance followed by questions that ask parliamentarians about their support for compliance. If my argument is correct, we should observe those holding a stronger sense of legal obligation to be more likely to support compliance even when compliance costs rise. I discuss the experimental scenarios in the following sections and provide their exact wording.

4.3.4 Political Control Variables and Demographics

The survey instrument also includes a battery of political control and demographic variables. I ask respondents about the strength of their German national identity, support for delegating authority to supranational EU institutions, support for deepening European integration, and foreign policy dispositions. I also use a variety of standard demographic variables, including political ideology (from extreme left to extreme right), gender, age, level of education, and authoritarian personality trait.

To measure German identity, I rely on three questions. The first question has been adopted from Euro-barometer and taps the nature of respondent’s identification with the
nation relative to identification with Europe. The other two items to capture attachment to the nation have been adopted from Herrmann, Isernia and Segatti (2009). They parallel items used to measure attachment to Europe as explained above. In the wording of these questions, I change the associational category of identification to Germany. To examine how much respondents support delegating authority to supranational EU institutions and deepening European integration, I rely on items from the European Elites Survey. I include these items for two reasons; to isolate the effects of European identification on legal obligation from the possible influence of support for integration and delegation and to tease out the effects of legal obligation on compliance preferences controlling for general pro-European policy postures.

I use a set of six items to measure foreign policy dispositions: internationalism-isolationism, militarism, and multilateralism. I measure respondents’ dispositions of international involvement and multilateral cooperation for both Germany and the EU. As I will discuss in the following sections, foreign policy dispositions allow me to assess the agent level assumptions made by core theories of IR (see for example, Herrmann and Keller, 2004). The internationalist-isolationist disposition pertains to the importance attached to engagement in world affairs, particularly when such engagement is not directly relevant for a country’s established security or economic interests. To measure this disposition, I have used items that replicate existing research (Wittkopf, 1990; Holsti and Rosenau, 1993; Herrmann, Tetlock, and Visser, 1999). Militarist dispositions are measured with two items that seek to get at the importance respondents place on military


96 http://www.affarinternazionali.it/Documenti/EES07_ing.pdf.
power and the use of military force in international relations. These questions again replicate existing standard measures (Wittkopf, 1990; Holsti and Rosenau, 1993). To measure multilateralism, I have used two items adopted from Herrmann Isernia and Segatti’s (2009) cooperative dispositions scale. These items measure a respondent’s support for international cooperation, including cooperation with international organizations. The rationale behind these items is to pit international cooperation against policy autonomy to make respondents face a tradeoff. This strategy allows the researcher to get at respondents’ willingness to make a sacrifice to achieve international cooperation. Given this tradeoff, the question is unlikely to lead to response bias because actors uncomfortable with the costs of international cooperation cannot easily choose cooperation.

I have also measured a set of demographic variables, including political ideology (from extreme left to extreme right), gender, age, level of education, and authoritarian personality trait. The measure of authoritarian personality trait replicates Adorno’s F-Scale (Adorno et al., 1950). The rest of the demographic measures are conventionally used standard items. Table 4.6. presents the wording of the questions, response categories, and average responses.

________________________

97 The scale can be found at http://www.anesi.com/fscale.htm
Table 4.6. Questions Measuring Control Variables

<table>
<thead>
<tr>
<th>Question</th>
<th>Mean (Std. Dev)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Relative Identity</strong>*</td>
<td></td>
</tr>
<tr>
<td>Which of the following statements best describes how you compare your</td>
<td>3.13 (0.99)</td>
</tr>
<tr>
<td>sense of being German to your sense of being European?</td>
<td></td>
</tr>
<tr>
<td>(Only German, More German than European, As German as European, More</td>
<td></td>
</tr>
<tr>
<td>European than German, Only European)</td>
<td></td>
</tr>
<tr>
<td><strong>German Identity</strong></td>
<td>6.49 (2.13)</td>
</tr>
<tr>
<td>How much does being German have to do with how you feel about yourself?</td>
<td></td>
</tr>
<tr>
<td>(A tremendous amount, A lot, Somewhat, Not too much, None at all)</td>
<td></td>
</tr>
<tr>
<td>When someone says something bad about Germany, how strongly do you</td>
<td></td>
</tr>
<tr>
<td>feel it is if they said something bad about you?</td>
<td></td>
</tr>
<tr>
<td>(Extremely strongly, Very strongly, Strongly, Not so strongly, Not</td>
<td></td>
</tr>
<tr>
<td>strongly at all)</td>
<td></td>
</tr>
<tr>
<td>Cronbach’s alpha = 0.944</td>
<td></td>
</tr>
<tr>
<td><strong>Ideology</strong></td>
<td>3.86 (1.56)</td>
</tr>
<tr>
<td>In politics, people sometimes talk about &quot;left&quot; and &quot;right&quot;. Where</td>
<td></td>
</tr>
<tr>
<td>would you place yourself on a scale from 1 to 7, where ‘1’ means</td>
<td></td>
</tr>
<tr>
<td>extreme left and '7' means extreme right?</td>
<td></td>
</tr>
<tr>
<td>(1 Extreme Left... 7 Extreme Right)</td>
<td></td>
</tr>
<tr>
<td><strong>Support for Delegating Authority to Supranational EU Institutions</strong></td>
<td>3.91 (1.39)</td>
</tr>
<tr>
<td>How much do you support allocating greater political power to</td>
<td></td>
</tr>
<tr>
<td>supranational institutions of the European Union such as the European</td>
<td></td>
</tr>
<tr>
<td>Commission or the European Parliament?</td>
<td></td>
</tr>
<tr>
<td>(A tremendous amount, A lot, Somewhat, Not too much, None at all)</td>
<td></td>
</tr>
<tr>
<td><strong>Support for EU Integration</strong></td>
<td>3.50 (1.07)</td>
</tr>
<tr>
<td>How desirable do you think it is to further deepen European integration?</td>
<td></td>
</tr>
<tr>
<td>(Tremendously desirable, Very desirable, Desirable, Not so desirable,</td>
<td></td>
</tr>
<tr>
<td>Not desirable at all)</td>
<td></td>
</tr>
<tr>
<td><strong>Internationalism/Isolationism-Germany</strong></td>
<td>4.85 (2.38)</td>
</tr>
<tr>
<td>Germany should play a leading role in solving global problems around</td>
<td></td>
</tr>
<tr>
<td>the world.</td>
<td></td>
</tr>
<tr>
<td>(Agree strongly, Agree somewhat, Disagree somewhat, Disagree strongly)</td>
<td></td>
</tr>
<tr>
<td>The German government should just try to take care of the well-being of</td>
<td></td>
</tr>
<tr>
<td>Germans and not get involved with other nations</td>
<td></td>
</tr>
<tr>
<td>(Agree strongly, Agree somewhat, Disagree somewhat, Disagree strongly)</td>
<td></td>
</tr>
<tr>
<td>Cronbach’s alpha = 0.934</td>
<td></td>
</tr>
</tbody>
</table>

Continued
### Table 4.6 Continued: Questions Measuring Control Variables

<table>
<thead>
<tr>
<th>Internationalism/Isolationism-EU</th>
<th>4.88 (1.84)</th>
</tr>
</thead>
<tbody>
<tr>
<td>The EU should play a leading role in solving global problems around the world. (Agree strongly, Agree somewhat, Disagree somewhat, Disagree strongly)</td>
<td></td>
</tr>
<tr>
<td>The EU should just try to take care of the well-being of Europeans and not get involved with other nations (Agree strongly, Agree somewhat, Disagree somewhat, Disagree strongly)</td>
<td></td>
</tr>
<tr>
<td>Cronbach’s alpha = 0.785</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Multilateralism-Germany</th>
<th>5.26 (1.99)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pursuing Germany’s interests often means we need to act quickly; going to the United Nations only slows things down. (Agree strongly, Agree somewhat, Disagree somewhat, Disagree strongly)</td>
<td></td>
</tr>
<tr>
<td>German interests are usually best served by cooperating with our allies and with international institutions even if this means we cannot do all the things we want to do. (Agree strongly, Agree somewhat, Disagree somewhat, Disagree strongly)</td>
<td></td>
</tr>
<tr>
<td>Cronbach’s alpha = 0.865</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Multilateralism-EU</th>
<th>5.21 (2.16)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pursuing Europe’s interests often means the Union needs to act quickly; going to the United Nations only slows things down. (Agree strongly, Agree somewhat, Disagree somewhat, Disagree strongly)</td>
<td></td>
</tr>
<tr>
<td>Europe’s interests are usually best served by cooperating with our allies and with international institutions even if this means the Union cannot do all the things it wants to do. (Agree strongly, Agree somewhat, Disagree somewhat, Disagree strongly)</td>
<td></td>
</tr>
<tr>
<td>Cronbach’s alpha = 0.898</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Militarism</th>
<th>4.82 (2.03)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Using military force to solve problems usually makes matters worse. (Agree strongly, Agree somewhat, Disagree somewhat, Disagree strongly)</td>
<td></td>
</tr>
<tr>
<td>Under some conditions, war is necessary to obtain justice (Agree strongly, Agree somewhat, Disagree somewhat, Disagree strongly)</td>
<td></td>
</tr>
<tr>
<td>Cronbach’s alpha = 0.914</td>
<td></td>
</tr>
</tbody>
</table>
Table 4.6 Continued: Questions Measuring Control Variables

**Authoritarian Personality**  

Obedience and respect for authority are the most important virtues children should learn.  
(Agree strongly, Agree somewhat, Disagree somewhat, Disagree strongly)

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Authoritarian Personality</strong></td>
<td>1.20 (0.40)</td>
</tr>
</tbody>
</table>

* The Relative identity measure has been reversed coded for the German identity scale.

---

4.4 Does European Identity Promote Legal Obligation?

4.4.1 Testing the Effect of Attachment to Europe on Legal Obligation Strength

The international identification hypothesis pertains to the relationship between international attachments and legal obligation. It posits that strength of attachment to international political communities evokes a sense legal obligation through dynamics of membership. If this prediction is correct, we should observe parliamentarians who have strong attachments to Europe to hold a robust sense of obligation towards EU law compared to those who identify weakly. Put differently, variation across identification levels should systematically relate to legal obligation strength. To evaluate this hypothesis, I start with correlational analysis and descriptive statistics and then move to mean difference tests between groups. I have used both interval level variables based on cumulative indices and categorical variables in these analysis.  

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98 Results did not change substantively when the Tyler scale instead of my legal obligation scale was used.
As predicted, there was a strong and positive correlation between degree of identification with Europe and strength of obligation to EU law ($r=0.805$, $p<0.05$). About 38 percent of the respondents reported low attachments to the European polity. Approximately 36 percent of the parliamentarians reported moderate identification and about 25 percent reported high identification with Europe. Among those who reported a weak sense of obligation to EU law, an overwhelming majority, about 88 percent, were low identifiers. Among those who reported a strong sense of obligation to EU law, about 59 percent were high and 24 percent were moderate identifiers. Only about 4 percent of the respondents who had stronger feelings of legal obligation were low identifiers. Moderate legal obligation also broadly corresponded to moderate identification. Among those who reported a moderate sense of legal obligation, 64 percent were moderate identifiers and slightly over 35 percent were high identifiers. In this group, only about 7 percent were low identifiers. These results indicate a clear pattern in the hypothesized direction. A comparison of respondents’ degrees of identification across the categories of the dependent variable reveals that those who have stronger attachments to the European polity profess a stronger sense of obligation to EU law. The cross-tabulation in table 4.7 summarizes these results while figure 4.1 presents a visual representation of the observed pattern.

The relationship between EU identity and legal obligation strength, furthermore, remains robust when political party affiliation is taken into account. As could be seen in figure 4.2, high EU identifiers whether they are Christian Democrats, Social Democrats, Liberals, or members of the Green Party have reported a stronger sense of legal
obligation. Unfortunately, the total number of parliamentarians from the Left Part in the sample is only 8. This makes it hard to determine a clear pattern for the Left Party. Among the total 7 respondents who expressed a weak sense of obligation, 6 reported low identification with the EU. Overall the level of attachment and legal obligation were low for the Left Part in the sample.

<table>
<thead>
<tr>
<th>Strength of European Identity</th>
<th>Low Identifiers</th>
<th>Moderate Identifiers</th>
<th>High Identifiers</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Weak Obligation</td>
<td>88.46%</td>
<td>12%</td>
<td>5.88%</td>
<td>39.71%</td>
</tr>
<tr>
<td>Degree of Legal Obligation</td>
<td>7.9%</td>
<td>64%</td>
<td>35.29%</td>
<td>35.29%</td>
</tr>
<tr>
<td>Strong Obligation</td>
<td>3.85%</td>
<td>24%</td>
<td>58.82%</td>
<td>25%</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

Table 4.7. Do Politicians with Stronger European Identity Hold a Stronger Sense of Obligation to EU Law?
To further evaluate my core claim, I conduct a series of analysis of variance (ANOVA) tests. ANOVA provides a powerful way to test for differences among means. The most important value-added of ANOVA over conventional t-tests is that it allows for
comparisons of more than two means (Hamilton, 2009; Field, 2009). If the central hypothesis of the proposed theory is correct, we should observe significant differences between mean levels of legal obligation across low, moderate, and high identifiers. A one-way analysis of variance showed that legal obligation strength differed significantly across levels of attachment to Europe ($F(2,65)= 43.74, p<0.000$). Strong European identifiers reported higher levels of legal obligation than moderate and low identifiers and moderate identifiers expressed higher levels of legal obligation than low identifiers. The largest difference was between high and low identifiers (7.55, $p=0.000$). The result of Bartlett’s test of equal variances is not statistically significant. This means that ANOVA's equal variances assumption is not violated and the results of variance analysis are valid. Even though there are not alarming violations of parametric assumptions in the data, I further conduct the Kruskal-Wallis test as a non-parametric alternative to one-way ANOVA. This test is useful if assumptions of normality or equal-variances are violated (Field, 2009). The result of the Kruskal-Wallis test, corrected for tied ranks, supports the previous findings ($\chi^2 (2, N = 68) = 40.03, p = 0.001$). We can reject the null hypothesis of equal medians and infer that there are significant differences in legal obligation across different levels of European identity. These results support the identity argument and show that there is a strong relationship between European identity and legal obligation; variation in politicians’ degree of legal obligation can be accounted for strength of European identity.
4.4.2 Exploring the Effects of European Identity, Political Dispositions, and Alternative Correlates of Legal Obligation

To further evaluate the explanatory power of European identity, I estimate three regression models. These analysis allow for analyzing the influence of European identity on legal obligation relative to other factors. Model one examines the effects of European identity on legal obligation controlling for a set of political and demographic factors. The results are displayed in the first column of table 4.8. Most notably, parliamentarians holding strong attachments to the European policy were more likely to have a stronger sense of legal obligation. In this baseline model, European identity explained a critical portion of the variation across degrees of legal obligation. For one increment increase in attachment to Europe, there was a 0.84 increase in strength of legal obligation, \textit{ceteris paribus}. Interestingly, German identity was not significant in model one. This implies that strength of national attachment may not have an observable influence on obligation to Europe’s legal system. Among the other political factors, being a member of the Christian Democratic Party had a significant effect of legal obligation. Christian Democratic party identity had a large negative and statistically significant influence on legal obligation strength. Compared to members of the Left Part, Christian Democrats scored about 4 degrees lower on the legal obligation scale, holding all else constant.

Model two includes a series of variables tapping foreign policy dispositions. Existing research has demonstrated that foreign policy dispositions exert a significant effect on preferences and interact with situational factors in shaping policy choices Holsti and Rosenau, 1993; Herrmann, Tetlock, and Visser, 1999). Among the factors included in
model two, support for delegating authority to supranational institutions and deepening European integration are intended to tease out the influence of European identity on legal obligation as well as to examine the individual effects of these factors on legal obligation. First, critics may argue that European politicians could feel obligation to EU law not because they identify with the European polity but because they are generally supportive of European integration and supranational EU institutions. Statistical analysis should help alleviate this concern.

Second, it is important to examine the connection between support for authority delegation and further EU integration and legal obligation. I anticipate favorable attitudes towards delegating authority to supranational EU institutions to have a positive effect on legal obligation. Conceptually, maintaining a sense of obligation to EU law corresponds to the psychological aspect of supranational delegation policies. Indeed, as I explained in chapter 3, legal obligation entails psychological sovereignty costs just like the policy of delegation imposes formal sovereignty costs. Therefore, the more pro-delegation one is, the stronger one’s sense of legal obligation is likely to be.

The relationship between support for integration seems a little more complex. Those supportive of integration may have a strong sense of legal obligation because EU laws facilitate and safeguard the European integration project. If support for further integration is primarily motivated by instrumental considerations, however, its relationship to legal obligation may be negative. I do not posit a specific theoretical expectation regarding the effect of support for EU integration on legal obligation. The empirical analysis should offer insight into this relationship and could open new research
avenues to examine the connection between support for integration and legal obligation connection.

Militarism, internationalism, and multilateralism are used to examine the central claims of Realist and Institutionalist theories of IR. As has been correctly observed by many, structural theories of IR often make assumptions about individuals’ dispositions and motives (Jervis, 1986; Hurwitz and Peffley, 1990; Herrmann and Keller, 2004). Dispositional variables included in model two test for the role of some of the core Realist and Institutional claims at the micro-level. One of the core tenets of traditional Realist accounts is that states pursue self-interest often along with power in the anarchic structure of international politics and prefer not to be restrained by international institutions or a world government (Morgenthau, 1985; Waltz, 1979; Mearsheimer, 1994/95).

Accordingly, assertiveness rather than accommodation, coercion rather than engagement may be the most viable strategies to advance self-interest in a Realist worldview. Therefore Realists may be more inclined to use military force to pre-empt challenges to national self-interest (Holsti 1970). This is not to suggest that a Realist is a war-monger. Quite the opposite. Realism supports the use of force primarily for strategic self-interests and advocates avoiding over-stretch (Morgenthau, 1985). Indeed, the willingness to use military force may be regarded as a way to signal resolve to international audiences to curb their likelihood of posing challenges to national interest. In this sense, the will to use force acts as a deterrent force. The militarism variable included in model two seeks to tap the assertive Realist mindset. The connection between a Realist worldview and legal obligation is not hard to draw. Since Realism mostly
perceives international law and institutions as instruments of great powers, a Realist worldview is likely to be at odds with legal obligation. Furthermore, even though members of the EU --and states more generally-- are creators of supranational laws, and thus have a say in what laws prescribe, treaties and conventions are by design intended to limit the range of policy options available to their signatories (Abbott and Snidal, 2000). Since Realism opposes limits on policy autonomy, a Realist is unlikely to hold a sense of obligation to international legal rules. Thus, the expectation is that the more militarist one is, the less one will hold a sense of obligation to EU law.

The internationalist-isolationist disposition is about the nature and span of international issues an actor views to be relevant to his or her country and worth getting involved (Holsti 1996; Wittkopf 1990). More specifically, this disposition taps one’s willingness to support engaging international issues which may not be directly pertinent to traditional security or economic interests, such as helping to solve global problems for the common good. The connection between this disposition and legal obligation is harder to specify. Internationalists may be more inclined to develop obligation to legal rules because laws typically help address global problems, such as global warming or international development. Yet precisely because internationalists favor involvement in a wide range of issues, they may prefer autonomy and have a distaste for being constrained by legal rules, thereby lacking a sense of legal obligation. Similarly, isolationists may have a higher regard for legal rules because laws reduce the need for individual countries’ involvement by addressing global issues through multilateral cooperation. Alternatively, an isolationist worldview may prevent the formation of legal obligation because laws that address
transnational matters often call upon their signatories to get involved. Thus, I do not posit a specific theoretical expectation regarding the relationship between legal obligation and the internationalist-isolationist disposition.

Finally, the multilateralism disposition included in model two tries to tap some of the micro-foundations of Institutionalism. The core of the Institutionalist argument is that states may sacrifice immediate self-interest and some policy autonomy in order to obtain the long-term benefits from participation in international institutions and international cooperation (Keohane, 1984; Axelrod, 1984; Martin and Simmons, 2001). When enlightened self-interest replaces myopic self-interest, the constraints imposed by international regulatory structures, such as international law and organizations, may be more comfortably tolerated.

The multilateralist disposition measures the extent of support for international institutions and cooperation. Among the three foreign policy dispositions included in model two, I anticipate the relationship between multilateralism and legal obligation to be the strongest. Since multilateralist are generally supportive of institutions and laws, I expect them to hold stronger feelings of legal obligation. Of course, multilateralists could approach legal rules and institutions with instrumental rationality only and conceive laws as instruments of enlightened self-interests. If this is the case, a sense of obligation will be absent. Recent works exploring the perceived authority of IOs have noted that IOs as a result of their specific institutional characteristics could become authoritative over time (Barnett and Finnemore, 2004). Therefore even though governments may initially approach IOs with instrumentally rationality, they could come to acknowledge their
authority over time. A similar logic may apply to the formation of legal obligation. Multilateralists may be supportive of international laws as a function of long-term cooperative interests, but could form a sense of obligation over time. This study cannot examine changes in actors’ attitudes towards laws and institutions over time. However, the results presented below could shed some light on questions of attitudinal change.

The internationalist-isolationist and multilateralist dispositions were measured both for Germany and the EU. These dispositions at the national and European levels were highly correlated in the sample. In other words, parliamentarians supportive of Germany’s involvement in international issues were also supportive of the Union’s international activism. Similarly, those who saw it in Germany’s interest to cooperate with international institutions, particularly with the UN, also supported the European Union’s engagement in institutional cooperation. Therefore, when estimating models two and three, I included a single measure of internationalism and multilateralism collapsing across Germany and Europe to guard against collinearity.

Before presenting the results, a caveat about the relationship between dispositions and legal obligation is in order. My empirical strategy here is to examine correlates of obligation to EU law generally rather than analyze specific EU rules. It is possible that the effects of dispositions on legal obligation vary across different domains of law. For example, militarists may have a weaker sense of legal obligation towards laws concerning the use of force but hold more deferential positions towards trade or environmental laws. Similarly, the effects of European identity could change from one domain of law to the other. This study cannot tease out these variations. Its value lies in showing the broader
pattern of identity-legal obligation connection at the individual level. As such, it serves as a foundation for the investigating additional research questions.

The results of the analyses based on model two are displayed in the second column of table 4.8. European identity, militarism, multilateralism, support for EU integration, and Christian Democratic and Green Party affiliations were significantly related to legal obligation strength. Holding all else constant, one unit of increase in attachment to Europe resulted in a 0.44 increase in the degree of obligation to EU law. As anticipated, militarism was negatively related to legal obligation; a stronger militarist disposition resulted in a 0.39 decline in legal obligation. Multilateralism had a large effect on legal obligation. In fact, the influence of multilateralism on legal obligation strength was higher than that of European identity. *Ceteris paribus,* one unit increase in multilateralism led to a 0.65 unit increase in legal obligation strength. Similarly, support for EU integration had a large impact on legal obligation; approximately as much as the effect of a multilateralist attitude. As was the case in model one, Christian Democratic and Green party affiliations were negatively related to legal obligation. An important conclusion follows from these findings. First, controlling for other consequential factors, the effect of European identity on obligation to EU law remains robust. In other words, European identity exerts an autonomous impact on legal obligation that cannot simply be captured by multilateralism or support for EU integration. This offers support for the international identification hypothesis. Follow-up work, however, should further investigate the connection between European identity, supranationalism, and multilateralism, and explore the ways in which they may interact.
Model three includes two additional variables, procedural and normative legitimacy to assess alternative arguments for legal obligation. As I explained in chapter 3, procedural and normative legitimacy constitute viable alternative arguments. The first locates the origins of obligation to legal rules in the correctness of law-making and application procedures however they may be defined. The logic of procedural legitimacy explanation rests on the assumption that correctness of law-making procedures or procedurally appropriate treatment by legal authorities in face to face interactions evoke a sense of legal obligation because procedurally correct laws are viewed as fair or because individuals derive self-esteem from the application of correct of procedures to their cases (Franck, 1990; Tyler, 1990).

The normative legitimacy explanation, on the other hand, locates the origins of legal obligation in the substantive content of legal rules rather in legality itself. On this view, when individuals concur with the normative requirements of legal rules, they develop a sense of obligation. As could be seen, the normative legitimacy explanation is not really concerned with separating legal obligation from other types of obligation and specifically blurs the distinction between legal and moral obligation. I noted previously that I agree with the broader claims of procedural and norm based explanations of legal obligation. While I recognize their potential explanatory ability, I argue that an identity-based explanation could partly subsume alternative arguments.

Specifically, I posit that the procedural correctness of laws and individual normative agreement with legal requirements are less important for high international identifiers. Model three examines these claims. The results from model three are displayed in the
third column of table 4.8. Results of model three largely replicate those obtained from model two. Normative legitimacy was positively and significantly related to legal obligation whereas the relationship between procedural legitimacy and legal obligation was not significant in the model. For a unit increase in the importance a parliamentarian places on the overlap between his or her normative views and legal requirements, there was a 0.57 increase in the strength of legal obligation. The inclusion of normative legitimacy in model three, however, did not alter the association between European identity and legal obligation.

At this point, a closer look at procedural legitimacy is useful. Even though procedural legitimacy is not statistically significant in model three, it is important to note that parliamentarians in the sample were split into half in their support for procedurally deficient law. While about one half of respondents expressed support for procedurally deficient law, the other half saw procedural problems troubling. This implies that procedural correctness of European law matters to German parliamentarians even though model three was not able to capture its importance.

Further inspection of the relationship between procedural legitimacy and European identity is also important. Procedural correctness of EU law appears to be relatively less important for high European identifiers in shaping deference. For example, 47 percent of high European identifiers strongly supported a procedurally deficient law, compared with 20 percent of moderate identifiers and about 4 percent low identifiers. Thus, it seems that the higher parliamentarians attach to the European polity, the higher the likelihood that they will support EU law regardless of procedural legitimacy considerations. In fact, a
similar pattern appeared for normative content legitimacy. Overlap between personal and legal normativity seems to be less important for high European identifiers than it is for low European identifiers. For instance, about 59 percent of high European identifiers supported laws that do not reflect their personal normative convictions, compared with 20 percent of moderate identifiers and about 4 percent of low identifiers. This suggests that while deference to EU law is partly conditional upon normative agreement with law’s substance for low identifiers, it is somewhat independent of personal normativity for high European identifiers.

Table 4.8. Does European Identity Promote Obligation to EU Law?

<table>
<thead>
<tr>
<th></th>
<th>Model I</th>
<th>Model 2</th>
<th>Model 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>European Identity</td>
<td>0.842 *** (0.260)</td>
<td>0.441 ** (0.246)</td>
<td>0.733 *** (0.156)</td>
</tr>
<tr>
<td>German Identity</td>
<td>-0.986 (0.847)</td>
<td>0.035 (0.690)</td>
<td>-0.291 (0.405)</td>
</tr>
<tr>
<td>Militarism</td>
<td>-0.399 ** (0.167)</td>
<td>-0.267 (0.126)**</td>
<td></td>
</tr>
<tr>
<td>Internationalism/Isolationism</td>
<td>0.094 (0.209)</td>
<td></td>
<td>-0.033 (0.170)</td>
</tr>
<tr>
<td>Multilateralism</td>
<td>0.652 ** (0.222)</td>
<td>0.516 (0.173)**</td>
<td></td>
</tr>
<tr>
<td>Ideology</td>
<td>0.506 (0.383)</td>
<td>0.818 (0.316)</td>
<td>0.406 (0.258)</td>
</tr>
<tr>
<td>Support for delegating authority to EU institutions</td>
<td>0.256 (0.417)</td>
<td>0.084 (0.297)</td>
<td></td>
</tr>
<tr>
<td>Support for EU integration</td>
<td>0.626 * (0.313)</td>
<td>0.534 (0.239)**</td>
<td></td>
</tr>
<tr>
<td>Procedural Legitimacy</td>
<td></td>
<td></td>
<td>0.222 (0.255)</td>
</tr>
<tr>
<td>Normative Content Legitimacy</td>
<td></td>
<td></td>
<td>0.575 (0.270)**</td>
</tr>
<tr>
<td>Age</td>
<td>-0.013 (0.034)</td>
<td>-0.022 (0.028)</td>
<td>-0.023 (0.215)</td>
</tr>
<tr>
<td>Education</td>
<td>0.049 (0.371)</td>
<td>0.029 (0.308)</td>
<td>0.173 (0.237)</td>
</tr>
</tbody>
</table>
4.5 Does Legal Obligation Facilitate Compliance with EU Law? Tests of Temptation Resistance

In the previous section, I examined the relationship between European identity and obligation to European law. I have shown that high European identifiers hold a stronger sense of legal obligation than low identifiers. I have also demonstrated that ceteris paribus, European identity strength is a good predictor of the degree of perceived legal obligation. These results provide support for the international identification hypothesis. In this section, I focus on the compliance resolve hypothesis.

To examine compliance resolve, I used two different strategies which I call temptation tests. In the first temptation test, I told parliamentarians that compliance with EU law could sometimes become difficult and that in such cases member states may choose non-compliance if they could get away with it without risking sanctions or social
criticism. The intent here was to make non-compliance an easy and potentially costless option by reducing the risks of enforcement. If legal obligation has a robust effect on support for compliance, we should observe those holding a strong sense of legal obligation to be more likely to support compliance than their counterparts even though non-compliance appears to be an easy choice. My objective here was to analyze whether parliamentarians resist the temptation to violate EU law. After this introductory statement, I asked respondents to imagine Germany in a situation where it could get away with violating EU law and not take on the burdens of compliance. Parliamentarians were then asked about their support for compliance.

There were clear differences in compliance support across levels of obligation. 48 percent of weak obligation holders, compared to 21 percent of moderate obligation holders, were not so supportive of compliance. 71 percent of moderate obligation holders, compared to 11 percent of weak obligation holders, expressed strong support for compliance. 88 percent of strong obligation holders, compared to 8 percent of moderate obligation holders, were very strongly supportive of compliance. Only strong obligation holders, about 12 percent, were extremely supportive of compliance whereas only weak obligation holders, about 41 percent, were not supportive at all. The cross tabulation in table 4.9 summarizes these results in terms of percentages of respondents. Figures 4.3 and 4.4 summarize these findings in visual forms. Figure 4.3 displays the mean value of support for compliance for three levels of legal obligation (weak, moderate, and strong) in the low punishment risk case. Figure 4.4 shows a controlled comparison across each of the political parties. As could be seen the mean support for compliance rises as the degree
of legal obligation increases. This clear pattern remains stable when we control for party identification. Even though parliamentarians with different political party affiliations have important ideological differences, a strong sense of legal obligation contributes to support for compliance for actors across the political spectrum.

Table 4.9 Do Parliamentarians Holding a Strong Sense of Legal Obligation Resist the Temptation to Violate EU Law?

<table>
<thead>
<tr>
<th>Strength of Legal obligation</th>
<th>Weak Legal Obligation</th>
<th>Moderate Legal Obligation</th>
<th>Strong Legal Obligation</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not Strongly At All</td>
<td>40.74%</td>
<td>20.83%</td>
<td>16.18%</td>
<td></td>
</tr>
<tr>
<td>Not So Strongly</td>
<td>48.15%</td>
<td>26.47%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Strongly</td>
<td>11.11%</td>
<td>70.83%</td>
<td>29.41%</td>
<td></td>
</tr>
<tr>
<td>Very Strongly</td>
<td>8.33%</td>
<td>88.24%</td>
<td>25%</td>
<td></td>
</tr>
<tr>
<td>Extremely Strongly</td>
<td>11.76%</td>
<td>2.94%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>
The second temptation test used an experiment to examine the compliance resolve hypothesis. I investigated the whether legal obligation makes a critical difference in actors’ willingness to tolerate compliance costs. I conducted a 2X1 factorial experiment that was embedded in the survey questionnaire. The experimental manipulation was costs
associated with compliance. In this experiment, I operationalized compliance costs with a reduction in revenues the German government that will experience as a result of compliance with EU law. The wording of the experiment was as follows: “Imagine that the EU passed a new law on taxation that Germany opposed. Compliance with this law will result in a reduction in government revenues by [20%/5%]. How likely are you to support compliance with this law?” What we would like to examine here whether there is a difference in the support for compliance between those who have a stronger sense of legal obligation and those who have a weaker sense specifically in the high cost condition, namely when compliance leads to a twenty percent reduction in government revenues. This way we can assess the extent to which legal obligation acts as a constraint on defection and motivates compliance.

The analytical approach I use here is a two-way ANOVA. This analytical approach is suitable because it allows us to analyze the individual and joint effects of two of the independent variables on the dependent variable. Here the independent variables of interest are levels of legal obligation and compliance costs. Since the objective is to focus on two explanatory variables at once, a one-way ANOVA is not suitable. The overall model was significant ($F(7,60)=9.04, p<0.000$). The two-way ANOVA revealed a significant main effect for the degree of legal obligation pertaining to compliance ($F(2, 60)=3.41, p<0.05$) and compliance costs ($F(1,60)=6.72, p<0.05$). Most important for our purposes is the interaction effect. There was a significant interaction effect ($F(4,60)=2.05, p<0.10$). The interaction term is significant indicating that there was an interaction effect between compliance costs and legal obligation on compliance propensity.
The interpretation of this finding is that politicians with high and low levels of legal obligation were influenced differently by compliance costs. Costs had a relatively lower effect at high levels of legal obligation than at lower levels of legal obligation (Field, 2009). This finding supports the compliance resolve hypothesis. It implies that politicians with a stronger sense of legal obligation are more likely to favor compliance even when costs rise. Figure 4.5 further illustrates this finding. In the high cost condition, support for compliance decreases across all actors. However, while this decrease is extremely sharp for weak and moderate obligation holders, it is rather modest for strong obligation holders. Clearly, a stronger sense of legal obligation increases actors’ willingness to tolerate compliance costs and motivates them to resist the temptation to violate legal rules. Thus, the pessimistic claim of Rationalists and Instrumentalists that non-compliance is the default choice when compliance requires costly changes in behavior and hurts states’ self-interest needs to be qualified. Compliance costs do matter but they do not automatically lead to defection; strong legal obligation holders do resist the temptation. In this respect, Rationalists and Instrumentalists only got half of the story correct because they neglected the driving force of legal obligation under specific conditions.
To further explore the role of legal obligation in shaping compliance preferences, I analyze its relationship to alternative determinants of compliance. Compliance preferences, of course, are influenced by a series of factors. Most notably, expectations of other countries’ reciprocal compliance (reciprocity), building a good reputation for complying to facilitate future cooperation (reputation), fear of sanctions (material enforcement), fear of social criticism (social enforcement), and instrumental gains (self-interest) represent the standard correlates of compliance identified by IR and IL literatures. I do not dispute that each of these determinants of compliance may be important in shaping actors’ preferences. However, I show that a strong sense of legal obligation renders several of the instrumental bases of compliance less influential. 44% of the respondents, for example, noted that obtaining other countries’ reciprocal compliance is an important consideration when making decisions about their own government’s
compliance. Among these respondents, 81% were weak obligation holder, about 21% moderate obligation holders, and over 17% strong obligation holders. This indicates that the importance of reciprocity for compliance decisions decreases as the strength of legal obligation increases. Similarly, about the 25% of respondents who expressed that reciprocity is not a very important consideration, about 59% were strong obligation holders whereas only about 4% were weak and 25% were moderate obligation holders. The same pattern exits for reputation. Building a good compliance reputation for Germany was a very important consideration for about 55% of the respondents. Within this category, however, over 85% were weak obligation holders whereas about 41% were strong obligation holders. Again, the emphasis politicians placed on reputation declined as the degree of legal obligation rose.

An examination of the importance of material interests again reveals a similar pattern. Not surprisingly, the majority of the respondents reported that the material benefits Germany obtains from compliance with EU law were important for compliance decisions. Among the 61% who saw material interests as being very important, about 89% were weak obligation holders. For moderate and strong obligation holders, the significance of material gains decreased considerably. Only 54% of moderate obligation holders considered material interests to be very important and only 30% of strong obligation holders placed a great deal of emphasis on self-interest. We could infer from these findings that, on balance, a strong sense of legal obligation reduces the salience of the central instrumental bases of compliance.
The relationship between enforcement and legal obligation on the one hand, and social criticism and legal obligation on the other was a little more complex. Only about 40% of the respondents noted that fear of enforcement was an important consideration. The correlation between fear of enforcement and legal obligation was not significant (r=-0.002, p=0.987). An identifiable relationship between enforcement and legal obligation did not appear. This may be a function of the existing sample, yet a more theoretically informed explanation could also be offered as well. It may be that parliamentarians define the Union’s compliance and implementation system less in terms of enforcement but more in terms of monitoring. The relationship between legal obligation and the importance of being criticized by other member states for violating EU law was positive, but with the exception of low obligation holders, almost all participants placed high importance on social criticism from other members.

4.6 Does International Identification Promote Legal Obligation?

4.6.1 Testing the Effect of Attachment to the International Community on Legal Obligation Strength

In the previous section, I have examined the connection between European identity, legal obligation, and compliance with EU law. I started evaluating my argument by focusing on this relationship because, as explained previously, Europe constitutes a critical test case for my theoretical argument. The results of my analysis provide considerable support for the argument that collective identification with a political
community allows actors to acknowledge the authority of international law and form a sense of legal obligation. My analysis also showed that legal obligation is indeed a robust determinant of compliance and increases actors’ compliance propensities even at higher levels of compliance costs. These results indicate that the argument developed in chapter 3 passes the critical case test. Thus, there is reason to extend the empirical applications of this argument and test it further. In this section, I undertake these tasks and evaluate my argument at the international level. I start by analyzing the nexus between international collective identification and legal obligation and proceed to analyze the effect of obligation to international law on compliance preferences.

The primary predictor variable of interest here is identification with the international community. There was a moderate and positive relationship between international identification and legal obligation as predicted by the theoretical argument ($r=0.65$, $p<0.001$). The distribution of responses across the three categories of obligation to international law shows a clear pattern in the data in the predicted direction. As levels of identification with the international community increased, so did the sense of obligation. 76 percent of low identifiers, compared to 35 percent of moderate, and 27 percent of high identifiers expressed a weak sense of obligation towards international law. 21 percent of low identifiers, relative to 50 percent of moderate, and 13 percent of high identifiers professed a moderate sense of legal obligation. The pattern was most pronounced in the strong obligation category. About 3 percent of low identifiers compared to 15 percent of moderate identifiers expressed a strong sense of legal obligation. In contrast, 60 percent of high identifiers reported a strong sense of obligation.
to international law. The cross-tabulation in table 4.10 summarizes these results while figure 4.6 presents a visual representation of the observed pattern.

The relationship between international identification and legal obligation largely remains stable when political party affiliation is taken into account even though this relationship appears to be a little more complex in the FDP and the Christian Democratic Union. For Social Democrats, Greens, and members of the Left Party, attachment to the international community was positively related to legal obligation. Overall, parliamentarians who held stronger attachments to the international community reported higher levels of obligation to international law. While this relationship was not as strong as the one between European identity and obligation to EU law, it was stable and in the predicted direction. For Christian Democrats and Liberals, the relationship between international identity and legal obligation appeared to be a little more complex. Christian Democrats and Liberals with weaker attachments to the international community reported a weaker sense of legal obligation than moderate identifiers as hypothesized by the theory of legal obligation. Compared to moderate identifiers, however, high identifiers reported a weaker sense of legal obligation.

The degree of legal obligation for high identifying Liberals was stronger than that reported by low identifying liberals, yet weaker than moderate identifiers. Low and high identifying Christian Democrats reported approximately expressed equal levels of international legal obligation. Overall, however, there was a noticeable pattern in the predicted direction; stronger attachments to the international community generally associate with a stronger sense of obligation to international law.
Table 4.10 Do Politicians with Stronger International Collective Identity Hold a Stronger Sense of Obligation to International Law?

<table>
<thead>
<tr>
<th>Strength of International Collective Identity</th>
<th>Low Identifiers</th>
<th>Moderate Identifiers</th>
<th>High Identifiers</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Weak Obligation</td>
<td>75.76%</td>
<td>35%</td>
<td>26.67%</td>
<td>52.94%</td>
</tr>
<tr>
<td>Moderate Obligation</td>
<td>21.21%</td>
<td>50%</td>
<td>12.33%</td>
<td>27.94%</td>
</tr>
<tr>
<td>Strong Obligation</td>
<td>3.03%</td>
<td>15%</td>
<td>60%</td>
<td>19.12%</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>
To further assess the relationship between international identity and legal obligation, I analyzed whether the differences in reported levels of legal obligation among
low, moderate, and high identifiers were statistically significant. The equal variances assumption of ANOVA is violated in this case. Thus, I use a non-parametric alternative to a one-way ANOVA (Hamilton, 2009; Field, 2009). The result of the Kruskal-Wallis test, indicates that there are statistically significant differences in levels of legal obligation between high and low international identifiers ($\chi^2(2, N = 68) = 18.00, p = 0.001$). This finding offers further support for the identity hypothesis that variation in degrees of obligation to international law could be accounted for by the strength of their international identification.

4.6.2 Exploring the Effects of International Identity, Political Dispositions, and Alternative Correlates of Legal Obligation

To further evaluate my argument that international identification constitutes a critical determinant of obligation to international law, I estimate three regression models. The theoretical rationale behind these models has been explained previously in the EU section. Model one examines the effects of international identity on legal obligation controlling for a set of political and demographic factors. Model two expands this analysis and includes additional tests for the effects of foreign policy dispositions on legal obligation strength. Model three analyzes alternative arguments for legal obligation and compares their marginal effects on legal obligation to that of international identification. Results of these analyses are presented in table 4.11.

Consistent with my earlier findings, international identification had a statistically significant effect on legal obligation in all three models. In model one, the relationship
between legal obligation and international identification was positive and in the predicted direction. *Ceteris paribus*, a one unit increase in international identity strength lead to a 0.35 unit increase in legal obligation. German identity also had a statistically significant relationship to legal obligation, yet a negative effect. As attachment to Germany increased one degree, the sense of obligation to international law decreased by 1.28. European identity also had a statistically significant effect on obligation to international law. Indeed, this effect was rather large. Holding all else constant, a one unit increase in attachment to Europe resulted in a 0.71 degree increase in legal obligation. This is a rather interesting finding. The effect of European identity on legal obligation was larger than the effect of international identity on legal obligation. This may suggest that regionally defined supranational attachments could pave the way for deference to international institutions even when international identities remain thin. Control and demographic variables included in model one did not have statistically significant effects on legal obligation.

Model two included additional tests for the effects of foreign policy dispositions on legal obligation strength. International identity again had a statistically significant effect on legal obligation. Controlling for all else, a one unit increase in international identity strength led to a 0.31 degree increase in legal obligation. The effects of European identity and German identity replicated the results obtained from the estimation of model one. As predicted, militarism had a rather large and negative effect on legal obligation. As militarist disposition increase by one degree, legal obligation declined by about 0.5 degrees. Interestingly, internationalism and multilateralism did not have statistically significant effects on legal obligation.
Multilateralism merits further attention. In the European case, multilateralism had a rather large effect on legal obligation in both models two and three, *ceteris paribus*. Yet its effects disappeared in the international context. One possible explanation of this finding is that international identification might have absorbed the effect of multilateralism because international identifiers are also likely to be multilateralist. Follow-up work should further theorize and investigate the relationship between multilateralism, international identification, and legal obligation.

Model three expanded the analysis to include procedural and normative content legitimacy. The effect of international identity on legal obligation remained robust, while the effects of German and European identity matched earlier findings. Procedural legitimacy did not have a statistically significant effect on legal obligation. Conversely, content legitimacy had a very large and statistically significant effect on legal obligation.

If we take a closer look at the distribution of responses across levels of international identification and emphasis placed on content and procedural legitimacy, however, we observe a clear patterns. While the majority of respondents placed a high emphasis on the overlap between their normative commitments and the substantive requirements of international law, high international identifiers were somewhat less concerned about this match than low international identifiers in forming a sense of legal obligation. For example, in the very high emphasis category, while about 17 percent of the respondents were low identifies, only about 6 percent were high identifiers.

A similar pattern emerged for procedural legitimacy. Even though model three failed to captured its effects, there was a pattern in the data that indicated the importance
of procedural legitimacy. Overall, parliamentarians were less supportive of procedurally deficient laws. However, high international identifiers seemed to be significantly less concerned than low international identities with procedural correctness. For instance, again in the very high emphasis category, while about 26 percent of the parliamentarians were low identifiers, only about 11 percent were high international identifiers. These findings indicate that both procedural and content legitimacy matter in shaping legal obligation. However, to some extent their effects on legal obligation interact with international identification. Arguably, high and low international identifies differentially interpret the relevance of these factors for their sense of legal obligation.

Table 4.11. Does International Collective Identity Promote Obligation to International Law?

<table>
<thead>
<tr>
<th></th>
<th>Model I</th>
<th>Model 2</th>
<th>Model 3</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>International Identity</strong></td>
<td>0.354 *** (0.087)</td>
<td>0.312** (0.116)</td>
<td>0.301** (0.142)</td>
</tr>
<tr>
<td><strong>German Identity</strong></td>
<td>-1.283 *** (0.475)</td>
<td>-1.88** (0.719)</td>
<td>-0.610 (0.355) *</td>
</tr>
<tr>
<td><strong>European Identity</strong></td>
<td>0.715** (0.035)</td>
<td>0.389* (0.244)</td>
<td>-0.513 (0.330)*</td>
</tr>
<tr>
<td><strong>Militarism</strong></td>
<td>-0.491* (0.339)</td>
<td>-0.153 (0.153)</td>
<td></td>
</tr>
<tr>
<td><strong>Internationalism/Isolationism</strong></td>
<td>0.362 (0.385)</td>
<td>-0.025 (0.171)</td>
<td></td>
</tr>
<tr>
<td><strong>Multilateralism</strong></td>
<td>-0.228 (0.220)</td>
<td>-0.046 (0.155)</td>
<td></td>
</tr>
<tr>
<td><strong>Ideology</strong></td>
<td>-0.995 (0.323)</td>
<td>-0.210 (0.347)</td>
<td>-0.433 (0.305)</td>
</tr>
<tr>
<td><strong>Procedural Legitimacy</strong></td>
<td></td>
<td>-0.202 (0.227)</td>
<td></td>
</tr>
<tr>
<td><strong>Content Legitimacy</strong></td>
<td></td>
<td>0.687 (0.160) ***</td>
<td></td>
</tr>
<tr>
<td><strong>Age</strong></td>
<td>-0.035 (0.028)</td>
<td>-0.045 (0.028)</td>
<td>-0.013 (0.264)</td>
</tr>
</tbody>
</table>

Continued
### Table 4.11 Continued: Does International Collective Identity Promote Obligation to International Law?

<table>
<thead>
<tr>
<th></th>
<th>Estimate 1</th>
<th>Estimate 2</th>
<th>Estimate 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education</td>
<td>0.150 (0.309)</td>
<td>0.151 (0.319)</td>
<td>-0.204 (0.281)</td>
</tr>
<tr>
<td>CDU/CSU a</td>
<td>-6.819 (1.472)</td>
<td>-0.244 (1.52)</td>
<td>1.511 (1.40)</td>
</tr>
<tr>
<td>SPD a</td>
<td>1.599 * (1.118)</td>
<td>1.38 (1.13)</td>
<td>2.47 (1.03) **</td>
</tr>
<tr>
<td>FDP a</td>
<td>0.911 (1.586)</td>
<td>0.830 (1.63)</td>
<td>3.07 (1.49)**</td>
</tr>
<tr>
<td>Green Party</td>
<td>0.742 (1.430)</td>
<td>0.790 (1.45)</td>
<td>1.65 (1.32)</td>
</tr>
<tr>
<td>Constant</td>
<td>1.05 (3.14)***</td>
<td>1.64 (4.63)***</td>
<td>1.51 (2.87)**</td>
</tr>
<tr>
<td>Male a</td>
<td>-0.406 (0.505)</td>
<td>-0.329 (0.514)</td>
<td>-0.417 (0.462)</td>
</tr>
<tr>
<td>Adjusted R2</td>
<td>0.5953 ***</td>
<td>0.589***</td>
<td>0.6773 ***</td>
</tr>
</tbody>
</table>

* p < 0.1, ** p < 0.05, *** p < 0.01  
Parliamentary groups are dummy variables with the Left Party as the reference group.  
Male is a dummy variable with female as the reference group.  
Authoritarian personality was not significant in any of the estimated models.  
Reported values are regression coefficients with standard errors in parentheses.

---

### 4.7 Does Legal Obligation Facilitate Compliance with International Law? Tests of Temptation Resistance

In this section, I turn to the compliance resolve hypothesis and examine the effects of legal obligation strength on the degree of support for compliance with international law. My empirical strategy here parallels the one used to examine the relationship between obligation and compliance in the context of EU law and includes three temptation tests, two of which are experiments embedded in the survey instrument. In the first temptation test, I told parliamentarians that compliance with international law could sometimes become difficult and that in such cases countries may choose non-compliance if they could get away with it without risking sanctions or international social criticism.
Again my intent here was to make choosing non-compliance an easy option by reducing the risks enforcement and by making compliance costly. If legal obligation has a significant effect on compliance, parliamentarians holding a strong sense of obligation to international law should still support compliance.

Following this introductory statement, I asked respondents to imagine Germany in a situation where it could get away with violating international law and not take on the burdens of compliance. Parliamentarians were then asked about their likelihood of support for compliance. As could be seen from table 4.12, parliamentarians holding a stronger sense of legal obligation heavily supported compliance with international law despite low enforcement risks. For example, only slightly above 5 percent of moderate obligation holders, compared to over 46 percent of strong obligation holders expressed very strong support for compliance. Similarly, compared to over 38 percent of strong obligation holders who expressed extreme support for compliance, only about 5 percent of moderate obligation holders shared this preference. Among those who did not strongly support compliance, 36 percent were weak obligation holders compared to 26 percent moderate obligation holders. Figures 4.8 and 4.9 summarize these findings in visual forms. Figure 4.8 displays the mean value of support for compliance for three degrees of legal obligation (weak, moderate, and strong) in the low punishment risk case.

Figure 4.9 shows a controlled comparison across each of the political parties. As could be seen, the mean support for compliance rose as the degree of legal obligation increased across the political spectrum, except for the Green Party. Christian Democrats, Social Democrats, Liberals, and members of the Left Party expressed stronger support for
compliance as degrees of legal obligation rose as hypothesized. This trend was most clear in the case of Social Democrats. For the Greens, the relationship between legal obligation and compliance was reversed. Because there are only 5 parliamentarians from the Green Party in the sample, it is difficult to interpret this finding. If we look at the individual responses of Green Party members, we see that the 2 who expressed very strong support for compliance were strong obligation holders as predicted. However, the remaining three who did not strongly support compliance were both weak and moderate obligation holders.

<table>
<thead>
<tr>
<th>Level of Support for Costly Compliance with International Law when Risk of Punishment is Low</th>
<th>Strength of Legal obligation</th>
<th>Weak Legal Obligation</th>
<th>Moderate Legal Obligation</th>
<th>Strong Legal Obligation</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not Strongly At All</td>
<td>38.89%</td>
<td>21.05%</td>
<td>15.38%</td>
<td>29.41%</td>
<td></td>
</tr>
<tr>
<td>Not So Strongly</td>
<td>36.11%</td>
<td>26.32%</td>
<td></td>
<td>26.47%</td>
<td></td>
</tr>
<tr>
<td>Strongly</td>
<td>25.00%</td>
<td>42.11%</td>
<td></td>
<td>25%</td>
<td></td>
</tr>
<tr>
<td>Very Strongly</td>
<td></td>
<td>5.26%</td>
<td>46.15%</td>
<td>10.29%</td>
<td></td>
</tr>
<tr>
<td>Extremely Strongly</td>
<td></td>
<td>5.25%</td>
<td>38.46%</td>
<td>8.82%</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td></td>
</tr>
</tbody>
</table>
The next set of temptation tests used two experiments to further evaluate the compliance resolve hypothesis. To analyze the effect of legal obligation on compliance, I
conducted two 2X1 factorial experiments. Both experiments created a costly compliance situation by manipulating the financial burdens Germany would incur by complying with international law. The first experiment manipulated compliance costs by indicating that an economic plan developed by German experts could reduce unemployment, but would violate international law. “These days, there are many economic challenges countries face. Imagine that some German experts have proposed developing a new economic plan. This plan will give a [tremendous/slight] boost to German economy and bring down the current unemployment rate from around [8.5 % to 3.3/7.8 %]. If Germany implements this plan, however, it will be violating international law. Germany has signed on international treaties that prohibit the proposed economic measures.” After reading this scenario, participants were then asked about their likelihood of support for compliance.

My objective here was observe whether a sense of obligation to international law acts as a constraining force and pushes parliamentarians, especially those in the high cost condition, 3.3 % reduction in unemployment rate, towards supporting compliance. The analytical approach I use here is again a two-way ANOVA which allows for testing the individual and joint effects of two of legal obligation strength and compliance costs on the dependent variable. The overall model was significant (F (5,62)=37.28 p<0.000), and the two-way ANOVA revealed a significant main effect for the degree of legal obligation pertaining to compliance (F (2, 62)=49.12, p<0.000) and compliance costs (F (1, 62) =23.60 p<0.000). There was a significant interaction effect (F (2,62)=2.0, p<0.1) indicating that parliamentarians with stronger and weaker sense of legal obligation reacted differently to the costs associated with compliance. This result supports the
compliance resolve hypothesis. Figure 4.10 further illustrates this finding. In the high cost condition, support for compliance decreased across all actors. However, while this decrease was noticeably sharp for weak and moderate obligation holders, it was rather modest for strong obligation holders.

![Figure 4.10: Support for Costly Compliance with International Law across Weak, Moderate, and Strong Obligation Holders by Experimental Condition](image)

The second experiment mentioned an international environmental law and highlighted the material costs of complying with it. The wording of the experiment was as follows: “Given increasing concerns over the environment, countries are developing new environmental protection plans and turning them into international law. Imagine that Germany has recently signed onto to an international environmental agreement.
Compliance with this treaty, however, will cost Germany [90 million Euros/900 million Euros]." After reading this scenario, participants were then asked about their likelihood of support for compliance. The goal here was again to examine whether a sense of obligation to international law acts as a constraining force and moves parliamentarians, especially those in the high cost condition, 900 million Euros, towards supporting compliance.

The estimated model was significant \((F (5,62)=32.88 \ p<0.000)\), and the two-way ANOVA revealed a significant main effect for the degree of legal obligation pertaining to compliance \((F (2, 62)=32.30, \ p<0.000)\) and compliance costs \((F (1, 62)=55.66 \ p<0.000)\). The interaction effect was not significant in this case. On the surface, this implies that strong and weak obligation holders are not differentially influenced by compliance costs. This finding, however, could be a function of the small sample size. A closer look at the how strongly weak, moderate, and strong obligation holders support compliance in low and high costs conditions casts doubt upon the non-significant finding. Figure 4.11 displays the distribution of responses. As could be seen, compliance costs influenced weak, moderate, and strong obligation holders’ support for compliance somewhat differently. Costs had a large effect on the support of those who held a weak or moderate sense of obligation to international law. Yet strong obligation holders resisted the temptation to violate and still expressed a high support for compliance.
4.8 Conclusion

In this chapter, I have evaluated my theoretical argument that international identification evokes a sense of legal obligation which facilitates a politician’s willingness to tolerate compliance costs, and thus increases support for adherence to international legal rules. This chapter tested for the effects of European and international collective identities on German parliamentarians sense of obligation to European law and international law respectively as well as analyzed the relationship between legal obligation and compliance. Using an original survey of German parliamentarians, I first showed that international identification strongly relates to the degree of legal obligation. Both in European and international contexts, I found that actors with stronger international
attachments hold a stronger sense of obligation and are more supportive of compliance even when compliance seems at odds with governments’ self-interest. Those with weaker attachments, conversely, tend to be weak obligation holders and are less tolerant of compliance costs.

The results of my analysis indicate a systematic relationship between international identification and degree of legal obligation. International attachments matter because they determine whether politicians view international polities as significant reference groups and define statehood in terms of membership in these polities, and thus impacts actors’ perceptions of international law’s authority. As a result, international identification strength influences politicians ability to reconcile deference to international law’s authority with commitment to the sovereign authority of the state, thereby shaping the degree of perceived legal obligation.

High international identification enables politicians to accept the governing authority of international law and espouse the legal duties of their governments’ as membership duties in international polities, thereby leading to a stronger sense of legal obligation. The most important implication of this finding is that both the pessimism of Rationalists and Instrumentalists on legal obligation and the optimism of Norm-oriented and other ideational perspectives needs to be qualified and re-conceptualized as special cases of deference created by identity orientations.

My results on the effect of legal obligation on compliance are also critical. The relationship between compliance costs and compliance constitutes a central question in debates over the effect of international law on state behavior. Rationalists and
Instrumentalist accounts posit that states will violate legal rules when compliance becomes costly and requires significant changes in behavior, such as policy changes, or clashes with states’ individual interests. My analysis have shown that this skepticism is not fully justified. The relationship between compliance costs and compliance support is more complex than it is assumed by pessimists. Both at the European and international levels, I have found that legal obligation attenuates the negative influence of compliance costs on politicians’ support for compliance. Costs do matter and decrease politicians’ willingness to favor compliance. However, the effects of compliance costs on compliance support varies across strong and weak obligation holders. Strong obligation holders are less inclined to advocate violating legal rules as compliance costs rise. This finding supports my argument that a robust sense of legal obligation increases politicians’ compliance costs thresholds and contributes to compliance resolve.

Admittedly, the sample size could raise concerns over the stability of both the regression and ANOVA results (Field, 2009; Grover et al., 2009; Fowler, 2009; Green, 1991). Future work should, of course, further probe the posited relationships using more representatives samples. Nevertheless, the pattern in the data is clear and in the predicted direction. The robustness of the pattern should alleviate some of the potential concerns. Furthermore, the objective of the presented empirical analysis is to test relationships rather than to generalize to the population of the German Parliament. Overall, the pattern in the data is stable. In this regard, these analysis provide a sound first test of the advanced propositions (King, Keohane, and Verba, 1994; Brady and Collier, 2010).
CHAPTER 5

AN EXPERIMENTAL ANALYSIS OF INTERNATIONAL LEGAL OBLIGATION

5.1 Introduction

In this chapter, I analyze the psychological determinants of international legal obligation and its effects on compliance in a series of experiments. The objective of this chapter is to test the causal claims of my theoretical argument as well as examine its internal validity (Shadish, Cook and Campbell, 2002; Brewer, 2000). Since laboratory experiments allow the researcher to study the relationship between a set of explanatory variables and the dependent variable by controlling for the effects of potential confounding factors, they offer an invaluable way of evaluate the analytical rigor of theoretical arguments (McDermott, 2002; Shadish, Cook and Campbell, 2002; Kinder and Palfrey, 1993).

At its core, the theory of legal obligation I have proposed explains the individual level dynamics of commitment to international rule of law. It posits that the variation in strength of legal obligation could be explained by modeling of agents’ international identity orientations. In this regard, my central claim does not necessarily distinguish
between politicians and non-political actors. Of course, participants in laboratory experiments and politicians represent different populations. However, there is reason to believe that micro-level factors, such as cognition, affect, and perception, operate similarly across individuals, thereby suggesting the transportability of experimental conclusions to the international political world (Goldgeiger and Tetlock, 2001; McDermott, 2002). Without a doubt, psychology based theories need to be tested in real world settings. To the extent attachment to the international community influences agents’ sense of obligation to international law, however, the dynamics of this relationship should be similar across individuals. By providing individual level evidence, the analyses presented in this chapter help evaluate the proposed theory of legal obligation. The consistency between my experimental results and other earlier findings, furthermore, implies that there is indeed a systematic relationship between international identification, legal obligation, and compliance preferences.

Using a series of experiments, I test for the effects of international identity strength on the degree of legal obligation as well as examine how variation in the extent of legal obligation influences compliance preferences. As I will explain in the research design section of this chapter, I have designed specific experiments to study the relationship between international identification, obligation to international law, and compliance. In accord with my previous findings, I discover that the strength of individuals’ international attachments systematically shapes the degree of their sense of legal obligation. I find that individuals who highly attach to the international community hold a stronger sense of obligation towards international law even if they question the normative or procedural
legitimacy of laws. I further find that variation in legal obligation strength effectively influences compliance preferences. I observe that individuals who hold strong commitments to international law are significantly more likely to make pro-compliance choices and tolerate compliance costs even if choosing compliance may require sacrificing national interests. Additionally, I discover that risk of material and social sanctions is a secondary consideration for strong legal obligation given their generally deferential dispositions.

This chapter proceeds in four stages. First, I introduce the research design and the measures employed. Second, I present the experimental scenarios and explain the political context each experimental set-up sought to create. I then discuss the statistical techniques used in the analysis followed by the presentation of the results. I conclude by summarizing the overall findings.

5.2 Experimental Research Design

In this section, I introduce the research design of my experimental study and explain the rationale behind each of the experiments. 183 Ohio State University undergraduate students participated in this study comprised of a total of 8 experiments. Proper subject pool solicitation, study recruitment, and post-experiment debriefing procedures were followed as required. IRB approvals were obtained prior to the study and all IRB rules were followed as specified. Participants were drawn from the Political Science Department’s experimental subject pool. Participation was voluntary and students were given extra credit for their participation by the instructors of the courses
they were taking. Participation took place through an interactive computer-based program that presented stimulus material and recorded subjects’ responses. Respondents mostly answered multiple choice questions where the choice options corresponded to the different points on measurement scales created previously. While some questions were directly related to the experimental stimuli, a series of questions served as independent pre-test items.

To ensure the internal validity and protect against bias, participants were randomly assigned to different experimental conditions (Field and Hole, 2003; Brown and Melamed, 1990). The computerized nature of the experiment further created a buffer against potential biases, such as experimenter effects, by allowing for automated data collection (Field and Hole, 2003). In addition to randomly assigning participants to different experimental conditions, I also randomized the order of questions seen by each participant (Bradburn, Sudman, and Wansink, 2004; Field and Hole, 2003). I used a factorial design for each experiment. The specific characteristics of experiments are explained in the following sections. Each experiment was composed of a brief hypothetical story about international law and international politics that was followed by a number of questions.

5.3 Measurement and Instrumentation

Legal obligation, international identification, and political and demographic control variables have been measured with scales similar to those explained in chapter four. Participants’ sense of legal obligation following specific experimental manipulations was
measured with items similar to those in the general legal obligation scale even though
items had been tailored to fit specific experimental set-ups. Compliance, compliance cost
tolerance, and particular compliance policy choices were measured with experiment-
specific items as explained in the following sections. Questions tapping foreign policy
dispositions presented in chapter 4 have been adopted to the American case. Table 5.1.
displays the questions as well as the means, standard deviations, and scale reliabilities
when appropriate. Since items used for the measurement of the dependent variable in
experiments 1 and 2 closely follow the previously introduced legal obligation measures,
they have not been included in table.

Table 5.1. Measures Used in the Experiments

<table>
<thead>
<tr>
<th>Questions Measuring Legal Obligation</th>
<th>Mean (Std. Dev)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Legal Obligation Scale</strong></td>
<td></td>
</tr>
<tr>
<td>Cronbach’s alpha = .608</td>
<td></td>
</tr>
<tr>
<td><strong>International Identification Scale</strong></td>
<td>12.34 (1.06)</td>
</tr>
<tr>
<td>Cronbach’s alpha = .588</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Experiment Specific Compliance Policy and Cost Tolerance Items</th>
<th>Mean (Std. Dev)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Experiment 3</strong></td>
<td></td>
</tr>
<tr>
<td>How strongly do you personally feel that the U.S. should comply with this Convention? (Extremely strongly, Very strongly, Strongly, Not so strongly, Not strongly at all)</td>
<td>3.24 (1.19)</td>
</tr>
</tbody>
</table>

Continued
### Table 5.1 Continued: Measures Used in the Experiments

<table>
<thead>
<tr>
<th>Experiment</th>
<th>Question</th>
<th>Mean (SD)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Experiment 4</td>
<td>How strongly do you personally feel that the U.S. should comply with the Kyoto Protocol?</td>
<td>2.91 (0.98)</td>
</tr>
<tr>
<td>Experiment 5</td>
<td>How strongly do you support developing the proposed missile system?</td>
<td>3.22 (1.16)</td>
</tr>
<tr>
<td>Experiment 6</td>
<td>How strongly do you support developing the proposed economic plan?</td>
<td>2.72 (1.12)</td>
</tr>
</tbody>
</table>

Which of the following best describes the policy you would choose if you were to be a top-government official.
(Fully Comply with this Convention and not break international law, Mostly Comply with this Convention and slightly break international law, Partially Comply with this Convention and somewhat break international law)

Since experts agree that compliance with this convention will take a major effort and hurt U.S. interests, it is clear that the U.S. will incur some costs from compliance. Imagine that these costs will be economic costs. How much cost do you think the U.S. should tolerate in order not to break international law.
($900 million, $300 million, $100 million, $10 million)

Experiment 4
How strongly do you personally feel that the U.S. should comply with the Kyoto Protocol?
(Extremely strongly, Very strongly, Strongly, Not so strongly, Not strongly at all)

Which of the following best describes the policy you would choose if you were to be a top-government official.
(Fully Comply with the Kyoto Protocol and not break international law, Mostly Comply with the Kyoto Protocol and slightly break international law, Partially Comply with the Kyoto Protocol and somewhat break international law)

Since experts agree that compliance with the Kyoto Protocol will take a major effort and hurt U.S. interests, it is clear that the U.S. will incur some costs from compliance. Imagine that these costs will be economic costs. How much cost do you think the U.S. should tolerate in order not to break international law.
($900 million, $300 million, $100 million, $10 million)

Experiment 5
How strongly do you support developing the proposed missile system?
(Extremely strongly, Very strongly, Strongly, Not so strongly, Not strongly at all)

You do not currently support developing the proposed missile system, will you change your mind if the government announced the exact amount of contribution it will make to our security? Which of the following will make you change your mind?
(I will not change my mind, I will change my mind if and only if this system makes a tremendous contribution to our security, I will change my mind even if this system makes a moderate contribution to our security, I will change my mind even if this system just makes a slight contribution to our security)

Experiment 6
How strongly do you support developing the proposed economic plan?
(Extremely strongly, Very strongly, Strongly, Not so strongly, Not strongly at all)

Continued
You do not currently support developing the proposed economic plan, will you change your mind if the government announced the exact amount of contribution it will make to our economy? Which of the following will make you change your mind? (I will not change my mind, I will change my mind if and only if this system makes a tremendous contribution to our economy, I will change my mind even if this system makes a moderate contribution to our economy, I will change my mind even if this system just makes a slight contribution to our economy).

**Experiment 7**

How strongly do you personally feel that the U.S. should punish the new Saudi regime? (Extremely strongly, Very strongly, Strongly, Not so strongly, Not strongly at all)

Which of the following best describes the policy you would choose if you were a top-government official. (Punish the new Saudi regime and not trade with it, Somewhat punish the new Saudi regime by trading on a limited basis, Slightly punish the new Saudi regime by just verbally criticizing it, but do not cut trade)

Since compliance with international law in this case means not taking advantage of the oil trade deals Saudi Arabia is offering, we will be sacrificing a reduction in the price of oil. Will you change your mind and choose to disregard international law if the trade deals the Saudis are offering were to cut the price of gas you are currently paying at the pump? Which of the following price cuts do you think would be irresistible? (From $2.09 to $1.79, from $2.09 to $1.59, from $2.09 to $1.05, I will not change my mind)

**Experiment 8**

What do you think the U.S. should do in this situation? (Punish [Iran/Israel] and take whatever measure is necessary including imposing economic sanctions, Somewhat punish [Iran/Israel], take limited measures but do not impose economic sanctions, Protest diplomatically but not take any other measures)

**Questions Measuring Foreign Policy Dispositions and Control Variables**

<table>
<thead>
<tr>
<th>Internationalism/Isolationism</th>
<th>5.72 (1.72)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cronbach’s alpha = .902</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Multilateralism</th>
<th>6.21 (7.11)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cronbach’s alpha = .765</td>
<td></td>
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</table>

<table>
<thead>
<tr>
<th>Militarism</th>
<th>5.65 (7.22)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cronbach’s alpha = .832</td>
<td></td>
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Continued
<table>
<thead>
<tr>
<th>Measure</th>
<th>Cronbach’s alpha</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Authoritarian Personality</strong></td>
<td>2.34 (0.91)</td>
</tr>
<tr>
<td><strong>Political Knowledge</strong></td>
<td>2.49 (0.94)</td>
</tr>
<tr>
<td>Who is the Secretary General of the United Nations? (Javier Solana, Ban Ki-moon, Dominique de Villepin, Nicolas Sarkozy)</td>
<td></td>
</tr>
<tr>
<td>Was the North Atlantic Treaty Organization primarily formed as… ? (A military-security alliance, a traffic-free trade zone, an economic development union, a maritime &amp; fishing agreement)</td>
<td></td>
</tr>
<tr>
<td>Which of the following is not a member of the UN Security Council? (Germany, United States, China, France, Russia)</td>
<td></td>
</tr>
<tr>
<td>Cronbach’s alpha = .710</td>
<td></td>
</tr>
<tr>
<td><strong>Ideology</strong></td>
<td></td>
</tr>
<tr>
<td>We hear a lot of talk these days about liberals and conservatives. When it comes to politics, do you usually think of yourself as …? (Very liberal, liberal, moderate or middle of the road, conservative, very conservative)</td>
<td></td>
</tr>
<tr>
<td><strong>Party Identification</strong></td>
<td></td>
</tr>
<tr>
<td>Generally speaking, do you think of yourself as a … (Republican, Democrat, Independent, No preference)</td>
<td></td>
</tr>
<tr>
<td><strong>Race</strong></td>
<td></td>
</tr>
<tr>
<td>When you think about your ethnic background, what group do you consider yourself to be a member of? (Black-African American, White-European-American, Asian, Hispanic, Native American, Other, Prefer not to say)</td>
<td></td>
</tr>
</tbody>
</table>
5.4 Experimental Scenarios

5.4.1 Experiments 1 & 2

Experiments 1 and 2 were designed to evaluate alternative arguments for legal obligation discussed in chapter 3. In experiment 1, a hypothetical international convention was presented to participants in different versions. This experiment had a 2X2 factorial design and manipulated the procedural legitimacy of a hypothetical international convention and subjects’ normative agreement with its behavioral requirements. I set the political stage by telling participants that the U.S. signed onto an international convention that is either procedurally correct or deficient. Specifically, participants were told that there is either no or a lot of “controversy over the legitimacy of the procedures followed in the making of this law.” Subjects’ normative agreement was manipulated by stating either “you personally agree that what this law requires the U.S. to do is right. You think that the law is correct” or “you personally disagree that what this law requires the U.S. to do is right. You think that the law is wrong.”

Admittedly, manipulating an individual’s perception of a law’s normative legitimacy is a challenging task. By using an abstract convention, however, I sought to address this problem. I assumed that when they are told to image themselves agreeing or disagreeing with the legitimacy of an abstract convention, subjects would think of an actual law they normatively endorse or oppose. Finally, to control for confounding effects, participants were told that the U.S. does not expect to face negative consequences, such as sanctions or social criticism if it disobeyed this convention. The intent here was to
separate the determinants of legal obligation from considerations of compliance by rendering risk of sanctions irrelevant. After reading the experimental scenario, participants were asked questions measuring their sense of legal obligation. These questions corresponded to the dimensions of legal obligation theorized in chapter 2 and presented in detail in chapter 4.99

Similar two experiment 1, experiment 2 manipulated procedural and normative legitimacy and had a 2X2 factorial design. Instead of using an abstract international convention and experimentally manipulating normative agreement, I pursued an alternative strategy. First, I provided the legal and normative context by talking about the use of controversial interrogation techniques in the questioning of detainees. The objective here was to conjure up specific international rules, particularly the Geneva Conventions, against the use of such measures. I did not mention any specific treaty or convention by name in order not to create any bias. I sought to set the context in an impartial way and explained that there are both supporters and opponents of such interrogation techniques.

Second, instead of directly manipulating normative legitimacy, I asked subjects about their normative agreement with the so-called enhanced interrogation techniques. This strategy made them assign themselves to different conditions naturally and provided a more realistic measure of normative legitimacy. The experimental scenario’s reference to certain interrogation methods as harsh could potentially motivate the majority of participants to oppose the use of such techniques, and thus result in response bias

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99 This measurement strategy has been used for each of the experiments.
(Bradburn, Sudman, and Wansink, 2004). However, the neutral set-up of the political stage potentially helped guard against this risk. While 37 percent of the respondents supported the use of harsh techniques in the interrogation of detainees, about 63 percent opposed it. After reading the experimental scenario, participants were asked questions measuring their sense of legal obligation.

5.4.2 Experiments 3 & 4

Experiments 3 and 4 were designed to assess the relationship between legal obligation and compliance as well as test for the effect of international identification on the strength of legal obligation in strategic situations, defined as cases in which compliance is costly and hurt a country’s self-interest. My primary intent here was to assess Rationalist and Instrumentalist arguments that legal obligation is an inconsequential disposition and defection is the most likely outcome when compliance is at odds with a country’s self-interest (Morgenthau, 1985; Mearsheimer, 1994/95; Goldsmith and Posner, 2005). If attitudes towards international law are solely based on calculations of self-interest, we are least likely to observe a sense of legal obligation and favorable compliance preferences in strategic situations in which a given law contradicts U.S. interests. Furthermore, if self-interest fully shapes attitudes towards international law, we should observe no variation in extent of legal obligation across levels of international identification. My second objective was to examine the role of enforcement risks and long-term benefits of compliance in the formation of legal obligation and compliance preferences.
Both experiments 3 and 4 started by presenting the two sides of the compliance-self-interest debate in an impartial manner. “Some people argue that when a country signs on to an international convention, it must comply with it and not break the law. Others believe that a country may break the law when compliance does not serve its interests.” In experiment 3, this opening statement was followed by mentioning that the U.S. is a signatory to a hypothetical international convention and government officials are currently in the process of deciding whether or not to comply with it. In experiment 4, I used the Kyoto Protocol to add realism by mentioning an actual international agreement. Next, I told participants that compliance with this convention will take a major effort and that experts agree that compliance will hurt America’s interests. The intent here was to create a costly compliance situation and hold it constant in different versions of the experimental conditions.

The manipulated factors in both experiments were risk of punishment in case of non-compliance and long-term benefits of compliance. Both experiments followed a 2X2 factorial design. The manipulations were introduced by stating the level of risk the U.S. could face due to non-compliance as either high or low and by describing the nature of long-term benefits the U.S. anticipates to derive from compliance either as small or large. Participants were then asked a series of questions intended to tap their compliance preferences, willingness to tolerate compliance costs, and sense of legal obligation. First, participants were asked how strongly they support compliance with this convention. Second, they were asked whether they support full, moderate, or partial compliance. Third, participants were asked about their cost tolerance threshold. To gauge how much
cost supporters of compliance are willing to tolerate, I presented respondents with monetary costs defined in million dollar terms. The cost scale had four points corresponding to 900, 300, 100, and 10 million dollars. Finally, I measured the degree of obligation perceived in this case by using the standard items making up the legal obligation scale. In experiment 4, all measures were customized to the Kyoto Protocol.

5.4.3 Experiments 5 & 6

Hypothetical scenarios in experiments 5 and 6 manipulated risk of enforcement and international identification in two strategic situations and followed a 2X2 factorial design. In the first case, participants were told about a forbidden missile system that will increase America’s military security, yet, if implemented, would violate international law. The scenario in experiment 6 replaced the missile system with a new economic plan that would boost the American economy. In both experiments, the illegal nature of the proposed policy created a costly compliance situation by pitting U.S. interests against legal compliance. In accord with the strategy explained previously, risk of enforcement was manipulated by telling participants either that the U.S. will face no or a lot of social criticism or material sanctions from other countries. International identification was manipulated by stating that some leaders think that either “we are all citizens of the global community. We share common problems, objectives, values and futures and our fates are connected” or people are citizens of their own countries; in your case it is the U.S., and countries have their own problems, objectives, values and futures, and fates. The
international identification manipulation was based on the theoretical dimensions of international collective identity discussed in chapter 3.

Admittedly, evoking international identification is a challenging task. However, an analysis of the pre and post-test legal obligation scores of those who originally reported low attachment to the international community and a weak sense of baseline legal obligation shows that stronger attachments and legal obligation were professed after being exposed to the experimental manipulation.100 Once the strategic scene was set, subjects were asked how strongly they support developing the missile system and the economic plan in experiments 5 and 6 respectively. Opponents of these policies were then presented with a challenge. I asked participants whether they would change their minds if the government announced the contribution the missile system or the economic plan would make to national security or national economy. The response options for this challenge question formed a continuum with “I will not change my mind” on one end and “I will change my mind if the new system/plan makes a slight contribution” on the other, and with moderate contribution in the middle.

5.4.4 Experiment 7

In experiment 7, I created another costly compliance instance by pitting upholding international law against punishing a friendly government offering favorable trade deals to the U.S. A hypothetical scenario told participants that a new regime came to power in Saudi Arabia and started blatantly violating human rights. The set-up also

100 Analysis reported below. This analysis may potentially be considered as a manipulation check.
explained that international law requires all countries, including the U.S., to punish Saudi Arabia’s violation of human rights and cut trade relations. To make upholding international by punishing Saudi Arabia costly, I told participants that the Saudi regime is “offering lucrative trade deals to the U.S. that will lower gas prices.”

The experimental scenario manipulated two factors: risk of enforcement and legal obligation. The manipulation of enforcement risk in this experiment paralleled earlier ones. Legal obligation was manipulated by stating that American leaders either “feel strongly about obeying international law” or “make many decision concerning international law.” Since I later asked participants to imagine themselves as a high level government official and obtained their policy preferences, the rationale here was to evoke a sense of obligation to international law by signaling actual politicians’ deference dispositions towards international law. In the weak legal obligation condition, conversely, I simply stated that “American leaders make many decisions concerning international law.” I assumed that this statement is neutral and implies nothing about deference to international law.

After reading the experimental scenario, participants were asked two questions. First, I asked them about the policy they would choose with respect to punishing Saudi Arabia if they were a top-level government official. Next, I presented those who supported punishing the Saudi regime with a challenge and asked if they would alter their decision if the lucrative trade deals offered by Saudi Arabia were to reduce gas prices. To gauge participants’ willingness to tolerate compliance costs, the response options included gradations of price reductions as well as the option of “I will not change my mind.”
5.4. 5 Experiments 8

With this experiment, I tried to examine another dimension of the relationship between legal obligation and compliance. Does legal obligation motivate individuals to apply international law consistency across different strategic situations? Against arguments suggesting the uniform enactment international rules based on a sense of normative obligation or the logic of appropriateness (March and Olsen, 1998), scholars who take an interactionist perspective have argued that normative action is a function of both felt obligation and interpretations of political context (e.g. Herrmann and Shannon; 2001; Shannon, 2000). Interactionist studies have discovered that actors enact international norms, legal or non-legal, differently across strategic situations. Herrmann and Shannon (2001), for example, found that ally-enemy relations make a difference in norm enactment and showed that agents might apply double standards in norm enactment punishing enemies while excusing allies.

Experiment 8 was designed to examine whether a strong sense of legal obligation reduces the likelihood of double standards in the application of international legal principles. Enactment of international legal principles or law enforcement concerns upholding international law, and thus constitutes a different form of compliance. Evidence that shows a strong sense of legal obligation facilitates consistency in law enforcement will support the compliance resolve hypothesis.

A hypothetical scenario manipulated feelings of legal obligation and the identity of the recalcitrant country violating international law. The legal obligation manipulation was the same as in experiment 7. Following existing studies, to manipulate the identity of
the recalcitrant actor, I told participants that either Israel or Iran committed an international crime. The experimental scenario stated that either Israel or Iran “assassinated the leader of a pro-Palestinian political party, who was critical of Israel’s or Iran’s policies, while he was conducting talks in Syria and was caught red handed.” It further explained that this act is a crime under international law because it violates Syria’s sovereignty and that international law requires all countries, including the U.S., to take immediate measures, including imposing economic sanctions. I then asked participants what they think the U.S. should do. The policy options included full punishment in the form of taking all necessary measures, including imposing economic sanctions, partial punishment defined as taking limited measures and not imposing economic sanctions, and protesting diplomatically but not taking other measures.

**Table 6.1: Summary of Experiments by Manipulated and Situational Factors**

<table>
<thead>
<tr>
<th>Experiment</th>
<th>Manipulated Factors</th>
<th>Situational Factors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Experiment 1</td>
<td>Procedural Legitimacy</td>
<td>Normative Agreement</td>
</tr>
<tr>
<td>Experiment 2</td>
<td>Procedural Legitimacy</td>
<td>Procedural Legitimacy</td>
</tr>
<tr>
<td>Experiment 3</td>
<td>Risk of Enforcement</td>
<td>Long-term Benefits of Compliance</td>
</tr>
<tr>
<td>Experiment 4</td>
<td>Risk of Enforcement</td>
<td>Long-term Benefits of Compliance</td>
</tr>
</tbody>
</table>

Continued
5.5 Statistical Tests and Analytical Strategies Used

I used a variety of statistical tests and analytical strategies to examine the effects of international identification on legal obligation and evaluate the influence of legal obligation strength on compliance preferences. To assess the relationship between international identification and legal obligation, I first examined the bivariate correlations between the pre-test identity and legal obligation scales as well as between identity and legal obligation scales in relevant experiments, collapsing across contextual manipulations. In experiments where international identification was manipulated, I used the Mann-Whitney U test as a non-parametric alternative to independent t-tests. To analyze the relationship between international identification, foreign policy dispositions, and political and demographic control variables, I examined the bivariate correlations and conducted chi-square tests to investigate the proportion of high and low international identifiers in
gender and political party categories. I also conducted a series of parametric tests to make inferences about sample means, such as t-tests, and explored the independent and interactive effects of relevant variables with a series of analysis of variance tests (ANOVA). In situations where the assumptions of ANOVA were violated (Damon and Harvey, 1987; Field, 2009), I applied the Box-Cox method to transform the data (Box and Cox, 1964; Hamilton, 2009). The objective here was to transform the data such that the variances are not heterogenous and non-normality is reduced.

5.6 Relationship Between International Identity and Legal Obligation

As predicted by the International Identification Hypothesis, there was a strong relationship between attachment to the international community and a sense of obligation to international law (r=0.81, p < 0.001). Overall, results indicate that a high degree of attachment to the international community consistently increases the degree of obligation to international law. In all relevant experiments --discussed in detailed below-- high international identifiers held a significantly stronger sense of legal obligation than low identifiers (pairwise correlations range from 0.81 to 0.65, all p < 0.001). In experiments 5 and 6 where international identification was directly manipulated, participants in the international identification condition were significantly more deferential towards international law than those in the neutral control condition.

In experiment 5 (U =3336.50, p<0.05) in which the security interests of the U.S. were engaged and in experiment 6 (U =3508.50, p<0.10) where economic interests were
at stake, high international identifiers held a stronger sense of legal obligation than low international identifiers. Critically, results from these experiments further reveal that manipulation of international attachment strengthens the degree of legal obligation for low identifiers. Comparing low identifiers’ general sense of obligation to that measured after receiving the identity treatment in experiments 5 (t(34)=3.37, p=0.001) and 6 (t(34) =2.84, p<0.01) shows a significant increase in levels of pre-test and post-test legal obligation. This is a significant finding because it shows that promotion of international identification reinforces obligation to international law. Even though an experimental analysis lacks external validity, it is important to understand what this result means. If a simple experimental manipulation could generate stronger attachments to the international community, and in turn evoke a stronger sense of obligation to international law, international identity building could be important for the prospects of global legal governance. These results provide support for the international identification hypothesis and imply that reference group membership increases the perceived legitimacy of international law’s authority, thus leading to a sense of legal obligation.

International identification was positively related to internationalism/isolationism (r=0.63, p<0.001) and multilateralism (r=0.17, p<0.05), and negatively related to militarism (r=-0.24, p< 0.001). It was also positively related to political knowledge (r=0.51, p<0.001) and authoritarian personality trait (r=0.07, n.s.). Democrats were significantly more likely to identify with the international community than Republicans ($\chi^2 (3)= 61.08, p<0.001$). International identification was not significantly correlated with age (r=-0.01, n.s.) and there were no significant differences across racial ($\chi^2 (5)=2.21$, n.s.)
and gender groups ($\chi^2 (1)=1.92, \text{n.s}$) in identification levels. On average, liberals were more likely to attach to the international community than conservatives ($\chi^2 (5)= 94.1, p<0.001$). Inspection of zero order correlation obtained from partial correlation analyses suggested that the association between international collective identification and legal obligation remains strong after controlling for a set of political and demographic factors. Controlling for internationalism/isolationism ($r=0.67$), multilateralism ($r=0.81$), militarism ($r=0.80$), political knowledge ($0.77$), age ($0.81$), and authoritarian personality ($0.80$) had relatively little effect on the strength of the relationship between identification and legal obligation levels.

5.6.1 International Identity, Procedural Legitimacy, and Legal Obligation

The argument advanced in this study posits that international identification systematically predicts the degree of obligation to international law. Consistent with the previous findings, strong international identification powerfully affects legal obligation controlling for procedural legitimacy to evaluate the procedural legitimacy alternative argument. In experiments 1 and 2, in which the procedural legitimacy of international conventions were manipulated (an abstract convention in experiment 1 and implicitly the Geneva Conventions on the treatment of prisoners' of war and detainees in experiment 2), high international identifiers expressed a significantly stronger sense of legal obligation than low international identifiers in the procedurally deficient law condition ($t(100) =-8.232, p<0.001$ for experiment 1 and $t(83)=-12.11, p<0.001$ for experiment 2). This
finding supports the international identity hypothesis and suggests that international 
identification leads to deference partly independent of procedural considerations.

Procedural legitimacy was significantly related to legal obligation in experiment 1. 
Degree of legal obligation was lower when the procedural legitimacy of laws was in 
question than when it was not \( (t(181)=2.87, p<0.001) \). Importantly however, the effect of 
procedural legitimacy on legal obligation varied across international identification levels; 
high and low international identifies were affected differently by changes in the 
procedural legitimacy international agreements. There was a significant interaction effect 
between international identification and whether laws were procedurally legitimate or not 
on the degree of legal obligation \( (F(1,179) =10.502, p=0.001) \). In experiment 2, which 
implicitly referred to the Geneva Conventions, there was no statistically significant 
difference in levels of legal obligation across low and high procedural legitimacy 
conditions \( (t(181)=-.765, n.s.) \). This may be because participants’ sense of legal obligation 
in this experimental scenario was guided more by moral concerns than procedural issues 
or perhaps because the experimental manipulation did not work. Thus, investigating an 
interaction effect in this case is not appropriate.

Results from experiment 1, however, indicate that an identity-based explanation of 
legal obligation could offer more explanatory leverage than the procedural explanation. 
The interaction effect observed in experiment 1 suggests that while procedural legitimacy 
is an important factor shaping the degree of legal obligation, its effects are not manifested 
in a simple linear fashion but interact with international identification in a significant way. 
Procedural correctness of international law matters, yet its importance is constrained by
how much an individual attaches to the international community. Overall, these findings show that international identification constitutes both a critical predictor of legal obligation and a filter through which the importance of a law’s procedural correctness is evaluated.

5.6.2 International Identity, Normative Legitimacy, and Legal Obligation

Results of experiments 1 and 2 indicate that normative legitimacy of laws does not singlehandedly shape the degree of legal obligation; rather the effects of normative legitimacy tend to be conditioned by the strength of international identification in consequential ways. In experiments 1 and 2, in which low and high normative agreement conditions were created either by manipulating participants’ normative agreement with a hypothetical international convention (experiment 1) or by measuring their moral attitudes towards harsh interrogation techniques (experiment 2), high international identifiers expressed a significantly stronger sense of legal obligation than low international identifiers in the normative disagreement condition (t(97)=-12.78, p<0.001 for experiment 1 and t(114)=-11.07, p<0.001 for experiment 2). This result again indicates support for the international identity hypothesis and suggests that acceptance of international law’s authority and legal duties have a lot to do with one’s sense of membership in the international community.

On average, participants reported a stronger sense of legal obligation when laws overlapped with their normative views than when there was a mismatch (t(181)=-2.04, p<0.05 in experiment 1 and t(181)=-5.57, p<0.001). In both experiments 1 and 2, the
interaction between international identification and normative legitimacy was statistically significant indicating that normative agreement or disagreement with legally required actions had different effects on legal obligation at different levels of international identity strength (F(1,179)=14.63, p<0.001 in experiment 1, F(1,179) = 2.05, p=0.15 in experiment 2). While low international identifiers were much less inclined to form a sense of obligation when they did not perceive international conventions as normatively legitimate, high international identifiers were more likely to hold a sense of legal obligation than low identifiers despite normative concerns. This implies that even though normative legitimacy has a strong effect on legal obligation, it is not sufficient by itself. It is likely that individuals’ interpret the relevance of their personal normative agreement with a given international convention differently depending on their attachment to the international community.

Finally, a critical condition analysis lends further support to the international identity hypothesis. A critical condition, as I define it here, refers to a condition in which participants’ legal obligation scores are likely to be lowest compared to other conditions. In experiments 1 and 2, among the four experimental conditions, the low procedural/low normative legitimacy condition represents a situation in which legal obligation should be weakest. Comparing legal obligation scores of high and low international identifiers in this critical condition shows that (t (39)=-8.42, p<0.001 in experiment 1 and t(59)=-10.45, p<0.001 in experiment 2) high international identifiers were more deferential towards international conventions than low international identifiers. This result further indicates
that the effect of international attachment on legal obligation appears strong and consistent, and holds across different situational conditions.

5.6.3 International Identity, U.S. Interests, and Legal Obligation

In contrast to the argument developed here, Instrumentalist and Rationalist approaches in IL and IR are skeptical of the importance of legal obligation and expect compliance with international law to be instrumentally motivated (Morgenthau, 1985; Mearsheimer, 1994/95; Goldsmith and Posner, 2005). Specifically, these perspectives posit that states will violate international legal rules when compliance becomes costly and hurts governments’ interests. If legal obligation is an inconsequential disposition and compliance decisions are solely based on calculations of self-interest, we are least likely to observe a sense of legal obligation in strategic situations in which a given law contradicts U.S. interests.

Furthermore, if self-interest shapes attitudes towards international law, we should observe no variation in levels of legal obligation across high and low international identification. Previous analyses presented above have already established that legal obligation is shaped by attachment to the international community as the international identification hypothesis predicts. In the following analysis, I examine the robustness of this relationship by introducing compliance costs and manipulating U.S. interests.

In experiments 3 and 4, participants were presented with costly compliance scenarios in which compliance with an international convention (an abstract international convention in experiment 3 and the Kyoto Protocol in experiment 4), it was argued,
would take a major effort and hurt America’s short-term interests. Both experiments also manipulated the long-term benefits the U.S. expects to obtain from compliance. I first compare participants’ pre-test and post-test scores on legal obligation across levels of identification to evaluate the effects of compliance costs on legal obligation. I then examine how the relationship between international identification, compliance costs, and legal obligation changes when long-term interests are introduced.

Adverse effects of compliance on immediate U.S. interests led to an overall decrease in reported levels of legal obligation from pre to post-test. Participants held a lower sense of legal obligation when compliance was at odds with U.S. interests than when interests were not at stake (Un-standardized pre-test mean 14.73 and post-test means 14.43 and 14.15 in experiments 3 and 4 respectively). High international identifiers, however, held a stronger sense of legal obligation than low identifiers despite compliance costs ($t(181) = -12.83, p<0.001$ in experiment 3 and $U=1166, p<0.001$ in experiment 4). This result indicates that even though the negative effect of compliance costs on short-term U.S. interest resulted in a sharp decrease in legal obligation levels for low identifiers, it influenced high identifiers’ sense of obligation only a moderate amount.

A similar pattern emerged with respect to long-term U.S. interests. In both experiments 3 and 4, the degree of legal obligation was significantly higher when the expected long-term benefits of compliance were larger than when they were smaller ($t(181)=-1.98, p<0.05, U=2514, p<0.001$ in 3 and 4 respectively). Holding immediate compliance costs constant, when compliance offered larger long-term benefits to the U.S., participants expressed a stronger sense of legal obligation than when it offered smaller
long-term benefits. Nevertheless, when we take into account levels of international identification, this uniform relationship changes in an important way. There was a significant interaction effect between the absence or presence of long-term benefits and strength of attachment to the international community in experiment 3 (F(1,179)=12.165, p=0.001). When compliance offered small long-term benefits, there was only a weak sense of legal obligation in low identifiers, but high identifiers’ sense of legal obligation remained robust regardless of the amount of long-term benefits.

To explore whether a similar interaction emerged in the Kyoto experiment, I performed a Box-Cox transformation on the dependent variable. Factorial ANOVA results using the transformed variable indicate (F(1,179)=9.72, p=0.01) a significant interaction between long-term benefits and international identification. This implies that, holding immediate compliance costs constant, high international identifiers held a stronger sense of legal obligation than low identifiers even when the long-term benefits of compliance to the U.S. were small. The strength of the relationship between long-term benefits and legal obligation, accordingly, partly depends on the degree of attachment to the international community.

Experiments 5 and 6 again presented participants with a costly compliance situation by creating a trade-off between security and economic interests of the U.S. and compliance with international law. Both experiments also manipulated international identification as explained previously. If conventional wisdom is correct, the conflict between U.S. interests and international law should lead to a decrease in the degree of legal obligation across all conditions. Conversely, if we observe that those in the high
international identity condition are more likely to profess a sense of legal obligation than those in the low identity condition despite the conflict between national interests and compliance with international law, the international identity hypothesis will be supported.

In experiment 5, in which participants were told about an illegal missile system that would contribute to America’s security interests and asked about their sense of obligation towards international law in this case, those in the high international identification condition were less supportive of developing the missile system and more deferential towards international law than those in the low identification condition \( (t(181)=-2.39, p<0.05) \). The mean level of deference expressed by those who received the international identification treatment was noticeably higher than that expressed by those who did not receive the treatment (Un-standardized means 13.50 and 15.09 respectively). This finding offers support for the international identity hypothesis and raises doubts about the conclusions of pessimistic perspectives on legal obligation.

Furthermore, a clear pattern emerged with respect to the stability of deference to international law. After expressing their support or opposition to developing the illegal missile system, participants were presented with a challenge to their decision and asked whether they would change their mind if the U.S. government announced the contribution the missile system would make to national security. More of those whose attachment to the international community was evoked stuck to their decision not to support the missile system or only altered their original position if the missile system was claimed to make a tremendous contribution—as opposed to slight or moderate contribution—to national security \( (\chi^2(3)= 36.30, p<0.001) \). When international collective
identity was not evoked, participants changed their minds even if the forbidden missile system was claimed to make only a slight or moderate contribution to national security.

Experiment 6 had the same objectives and design like experiment 5 and pitted the economic interests of the U.S. against international law. After being told about an economic plan that would give a boost to the American economy, yet violate international law, participants were asked about their support for developing this plan and their sense of obligation to international law. Results indicate that the manipulation of international identification had a significant effect on the degree of legal obligation as well as on willingness to develop the controversial economic plan.\textsuperscript{101} When international identity was induced, participants were more deferential towards international law and less supportive of the unlawful economic plan than when international collective identity was not made salient (t(181)=-2.37, p<0.05). Similar to the findings of experiment 5, the mean level of deference expressed by those who received the international identification treatment was higher than that expressed by those who did not receive the identity treatment (Un-standardized means 13.42 and 14.96 respectively). Furthermore, when asked what would make them change their minds and support the forbidden economic plan, more of those whose attachment to the international community was evoked resisted the temptation to violate international law by not altering their original decision (χ²(3)= 53.60, p<.001). These results again support the international identification hypothesis and suggest that attachment to the international community significantly affects the degree of obligation to international law.

\textsuperscript{101} Results regarding compliance with international law are discussed in the following sections.
Additionally, these findings indicate that strength of international identification is closely associated with the robustness of deference to international law. On balance, high international identifiers’ sense of legal obligation appeared much more resistant to temptations. This study cannot fully assess whether the relationship between international identification and legal obligation changes when different interests are involved. The results presented above suggest that this relationship holds robust both in the security and economic domains even though the effect size in both experiments was rather small and almost equal (r=0.17). Follow-up research should further investigate potential variations in the influence of international identification and legal obligation across different policy areas.

5.6.4 International Identity, Risks of Enforcement, and Legal Obligation

In the previous section, I have analyzed the robustness of the association between attachment to the international community and legal obligation with experiments that present costly compliance situations and pit U.S. interests against international law. In this section, I further scrutinize the stability of the relationship between international identification and legal obligation by introducing risks of enforcement in case of non-compliance. The international identification hypothesis posits that strong international identifiers will be more likely to hold a sense of obligation to international law than low international identifiers. If the relationship between international identification and legal obligation is indeed sufficiently strong, it should hold regardless of the risks of enforcement (either in the form of social criticism or material sanctions) in cases where
compliance with international law is costly and conflicts with U.S. interests. Specifically, high international identifiers should display a strong sense of legal obligation even when enforcement risks associated with the violation of legal rules are low.

In addition to presenting participants with a costly compliance situation and manipulating the long-term benefits the American government expects to obtain by complying with international law (an abstract international convention in experiment 3 and the Kyoto Protocol in experiment 4), experiments 3 and 4 also manipulated the risks the U.S. could face due to non-compliance. In experiment 3, participants were more deferential towards international law when the risk of enforcement was high than when it was low \((t(181)=-2.32, p<0.05)\). A significant interaction emerged between risks and international identification \((F(1,179)=14.83, p<0.001)\). Low international identifiers’ professed sense of legal obligation was significantly weak when risk of sanctions was low, yet it increased when enforcement risks became salient. For high international identifiers, however, the sense of legal obligation was systematically high in the low and high enforcement risks conditions alike. This important finding suggests that the effects of enforcement risks on legal obligation are largely moderated by the strength of international identification. Furthermore, there was a noticeable difference in the degree of legal obligation in the low punishment risk condition between high and low international identifiers \((t(83)=-11.37, p<.001)\).

In experiment 4, which involved the Kyoto Protocol, punishment risks again had a significant effect on the degree of legal obligation. When punishment risks were low, participants held a decreased sense of legal obligation than when these risks were higher.
Factorial ANOVA results on the transformed dependent variable, however, indicate that high and low international identifiers’ sense of obligation to the Kyoto Protocol were affected differently by the absence or presence of enforcement risks (F(1,179)=22.89, p<0.001). When enforcement was not an issue, low international identifiers’ were not strongly deferential towards Kyoto. Their sense of legal obligation, however, rose when the risks of material or social sanctions increased. For high international identifiers, the effect of enforcement risk on legal obligation was significantly smaller.

Results of experiment 6, which created a trade-off between the economic interests of the U.S. and international legal rules replicate these findings. Participants experienced a weaker sense of legal obligation when enforcement risks were lower than when they were higher (t(181)=0.049, p<0.10). However, changes in enforcement risk levels did not really seem to influence high identifiers’ sense of legal obligation (F(1,179)=8.37, p<0.01). Results of experiment 7, which created a conflict between the security interests of the U.S. and international law, also revealed a difference in the degree of legal obligation as enforcement risks changed, but this difference was barely significant (t(181)=-1.98, p<.05). The interaction effect between risks and international identification was similarly significant, pointing to differences in the effect of enforcement risks on legal obligation across high and low international identifiers (F(1, 179)=12.79, p<0.001).

Thus, it could be argued that fear of facing sanctions activated a deferential disposition in those who do not normally attach to the international community, but enforcement concerns were significantly less relevant for those who identify with the
international community. These results strongly support the international identity hypothesis and indicate that international identification directly contributes to deference to international law as well as conditions the effects of enforcement concerns.

A critical condition analysis for low benefit/low risk conditions of experiments 3 and 4, furthermore, shows that holding compliance costs constant, high international identifiers held a significantly stronger sense of legal obligation than low international identifiers even when long-term benefits of compliance were small and risk of enforcement was low ($t(40)=-8.82$, $p<0.001$ for experiment 3 and $U=3.0$, $p<0.001$ for experiment 4). This finding again supports the claim that attachment to the international community leads to a strong sense of obligation to international law and facilitates deference.

5.7 Relationship Between Legal Obligation and Compliance

Having evaluated the international identification hypothesis pertaining to the origins and robustness of legal obligation, in this section, I focus on the relationship between legal obligation and compliance. According to the theory of legal obligation I have developed in chapter 3, legal obligation increases the likelihood of an actor’s support for compliance by raising his or her willingness to pay a higher price for compliance. This is because legal obligation both serves as a self-imposed constraint on violating international law and makes actors more sensitive to societal pressures for compliance. In the following sections, I examine the Compliance Resolve Hypothesis and analyze the effect of legal obligation on compliance and on the implementation of international law across
different strategic situations. Specifically, the experiments created alternative strategic situations by manipulating U.S. interests at stake, risk of enforcement in case of non-compliance, and in the case of enactment of legal principles the image of the country engaging in illegal behavior which requires a response from the U.S. government.  

5.7.1 Legal Obligation, U.S. Interests, and Tolerance of Compliance Costs

In experiment 7, I created a costly compliance situation in which participants need to make a decision to comply with or violate international law. This experimental scenario discussed in detail above created a conflict between U.S. interests and compliance by presenting a trade-off between accepting lucrative trade deals from Saudi Arabia that will lower gas prices and punishing Saudi Arabia for its violations of international humanitarian law by imposing economic sanctions. Strength of legal obligation was manipulated by telling participants that American leaders “feel strongly about following international law” or “make many decisions regarding international law” to correspond to strong and weak legal obligation conditions respectively.

Participants in the strong legal obligation condition were more supportive of punishing Saudi Arabia, thereby complying with international law, than those in the weak legal obligation condition ($U=2136$, $p<0.001$). This results supports the compliance resolve hypothesis and indicates that when a sense of legal obligation is present, individuals are willing to pay a price to comply with international law and sacrifice self-interest.

102 On the role of images in international relations see Herrmann (1985) and Herrmann et al. (1987).
To further probe those supportive of punishing the Saudi regime, I asked respondents about their specific policy choices. My intent here was to examine the nature of compliance they had in mind they when expressed support for compliance. Specifically, I asked participants supportive of compliance whether they prefer full compliance with international law by cutting all trade relations with Saudi Arabia, moderate compliance by trading on a limited basis, or partial compliance by just verbally criticizing the Saudi regime but not cutting trade relations. In accord with the previous findings, more of those whose sense of legal obligation was evoked supported full or moderate compliance and chose punishing Saudi Arabia by cutting trade relations. Conversely, when a sense of obligation was not activated, a large proportion of respondents opted for just verbally criticizing the Saudi regime ($\chi^2(2)= 10.2, p<0.01$).

Participants were further subjected a cost tolerance test. Those who chose full or moderate compliance were asked whether they would change their mind and disregard international law if the trade deals with Saudi Arabia lowered the price of gas at the pump. The response options presented participants with specific amounts of reductions in the price of gas. The objective here was to make the costs of compliance with international law as concrete as possible and analyze the extent to which a sense of obligation raises the threshold for tolerating compliance costs. Results indicate that when legal obligation was strong, the preference for compliance was robust. More of those who were in the strong legal obligation condition either did not change their mind or were willing to tolerate larger compliance costs to uphold international law before they could be convinced to alter their decision. Conversely, when legal obligation was not salient,
even a small reduction in gas prices persuaded participants to change their minds ($\chi^2(3) = 11.85, p<0.01$).

Results of the Kyoto experiment lend further support to the compliance resolve hypothesis. This experiment also included measures of compliance and compliance cost tolerance. After explaining participants that compliance with the Kyoto Protocol would take a major effort and compromise America’s interests, I asked participants who favored complying with the Kyoto Protocol about their specific policy preferences. Similar to the measurement items discussed in the previous experiment, participants were asked whether they prefer full compliance, moderate compliance, or partial compliance.

The follow-up question on the willingness to tolerate compliance costs presented these costs in financial terms and asked respondents how much economic burden they were willing to tolerate to ensure compliance with the Kyoto Protocol. Of those who supported full or moderate compliance, strong obligation holders were the majority and weak obligation holders the minority ($\chi^2 (2) = 4.97, p<.10$). For example, of those who supported partial compliance with the Kyoto Protocol, slightly over 20 percent were weak obligation holders, but only 8 percent were strong obligation holders. Of those who supported full compliance, about 49 percent were weak obligation holders whereas over 56 percent were strong obligation holders. Consistent with this result, more of those who were willing to pay a higher price to comply with the Kyoto Protocol were strong obligation holders ($\chi^2 (3) = 36.40, p<0.001$). For instance, of those who were willing to pay 900 million dollars, the highest price for compliance included in the response options, over 36 percent were strong obligation holders whereas only about 10 percent were weak
obligation holders. Those who opted for paying the lowest price for compliance, 10 million dollars, were overwhelmingly weak obligation holders.

These findings offer strong support for the compliance resolve hypothesis and indicate that a sense of legal obligation does associate with a systematic willingness to pay a larger price to uphold international law by raising compliance costs thresholds. Legal obligation both generates a preference for compliance and has an observable effect on policy choices.

5.7.2 Legal Obligation, Risks of Enforcement, and Compliance

Having shown that legal obligation systematically strengthens preferences for compliance, which remain robust in face of high compliance costs, I now analyze how the inclusion of enforcement risks in the equation influences the relationship between legal obligation and compliance again in costly compliance situations. Skeptics of legal obligation expect actors to eschew compliance when compliance is costly. The likelihood of defection, they further posit, will increase if non-compliance is cheap. Introducing risk of enforcement by manipulating the risks of material and social sanctions governments could face in case of violations into our analysis examines this argument against the compliance resolve hypothesis proposed here. Evidence of strong legal obligation holders preferring compliance even when compliance costs are high and enforcement risks are low will support the compliance resolve hypothesis.

I examine these issues again with the Saudi Arabia and Kyoto experiments which included the relevant manipulations and necessary measures. Variation in the risk of
enforcement had a significant effect on the willingness to comply with international law and punish Saudi Arabia, yet this effect was not in the predicted direction. Participants were more supportive of compliance when enforcement risks were low than when they were high in the Saudi case ($U=3304, p<0.05$). The interaction effect using Box-Cox transformation between risks and legal obligation was also not significant ($F(1,179)=0.027, n.s.$) even though there was a main effect for legal obligation ($F(1,179)=6.55, p<0.01$). This finding partly supports the compliance resolve hypothesis but does not show that strong obligation holders are less sensitive to enforcement risks than weak obligation holders. One way to interpret this finding is to speculate that risks have little relevance because of the specificity of humanitarian law used in this experiment. It could be that when international humanitarian law is involved individuals are supportive of compliance irrespective of the risks of enforcement at stake. Future studies should experimentally manipulate domains of international law and examine whether compliance is more likely when normative issues are at stake.

Results from experiment 4, the Kyoto experiment, show that risk of enforcement has a notable influence on the support for compliance. Participants were more supportive of full compliance than partial or moderate compliance ($\chi^2(2)=46.48, p<0.001$). However, compliance costs did not make much difference across risk levels ($\chi^2(3)=4.78, n.s.$). Consistent with the compliance resolve hypothesis, strong obligation holders were supportive of full compliance with Kyoto and willing to tolerate higher compliance costs than weak obligation holders even when the risk of social and material sanctions the U.S. could face were low. For example, while 55 percent of strong obligation holders supported
moderate compliance in the low enforcement risk situation, only 37 percent of weak obligation holders favored compliance in the same condition. Similarly, 32 percent of strong obligation holders relative to only 8 percent of weak obligation holders chose full compliance with the Kyoto Protocol. This result indicates that a robust sense of legal obligation leads to a stable preference for compliance even in situation where enforcement risks are low and compliance costs are high. Overall, these findings indicate that enforcement risks are less important for those who have a sense legal obligation; legal obligation instigates a preference for compliance independent of considerations of sanctions.

5.7.3 Legal Obligation and Consistency in the Application of International Legal Principles

While the results presented above provide supportive evidence for the compliance resolve hypothesis, it is also important to examine the extent to which a sense of legal obligation leads to consistency in the enactment of international legal principles. Existing studies found variation in the application of international norms and rules across different strategic situations; actors enact international principles --legal or moral-- in some cases but not in others (Herrmann and Shannon, 2001). Herrmann and Shannon (2001), for example, discovered that agents’ perceptions of strategic situations affect their likelihood to apply international norms and observed that motivations attributed to the state defying international norms, power relationships between the U.S. and the recalcitrant actor, the
image of this actor, and whether U.S. interests are at stake influence the enactment of international norms.

If obligation to international law embodies a preference for upholding international legal rules, as I argue, then it should motivate actors to enact international legal principles consistently across different strategic situations and not apply double standards in law enforcement. For example, strong legal obligation holders should defend international law irrespective of whether the recalcitrant actor is an ally or an enemy. Evidence indicating such a pattern could provide strong support for the compliance resolve hypothesis proposed here.

By manipulating different dimensions of strategic situations, experiment 8 sought to examine the effects of legal obligation on the consistent enactment international legal principles. Following extant research, the experimental scenario included actual countries as I explained in the research design section of this chapter previously. Even though the use of country names reduces the degree of experimental control, it has the advantage of adding realism to the experiments. Furthermore, the countries used in experiment 8 are important for the core interests of the U.S. and offer variation in the strategic nature of bilateral relations.

Experiment 8 told respondents that Israel or Iran committed a crime under international law by assassinating a high profile pro-Palestinian political party leader and asked about their policy preferences. I also manipulated feelings of legal obligation by telling participants about American leader’s attitudes towards international law as explained previously. If the compliance resolve hypothesis is correct, we should observe
those in the high obligation condition to be more supportive of punishing both Israel and Iran alike than those in the low obligation condition. Critically, we should find that strong obligation holders are more likely to consistently enforce international law across allies and foes than low obligation holders and are as willing to punish Israel as they are to punish Iran.

Results indicate that the image of the state breaking international law has a significant effect on participants’ willingness to apply international legal norms and on their specific policy choices ($\chi^2(2) = 6.15, p<0.05$). When the recalcitrant country was Israel, participants chose taking limited measures or protesting diplomatically rather than fully punishing Israel’s violation of international law and imposing sanctions. Conversely, when Iran violated international law, participants were more supportive of imposing sanctions. For example, when the recalcitrant actor was Israel, only about 26 percent of participants chose imposing sanctions, 33 percent opted for taking limited measures, and slightly over 40 percent favored only protesting diplomatically. Conversely, when the recalcitrant state was Iran, over 40 percent of participants favored imposing sanctions, about 38 percent chose limited measures, and 20 percent opted for diplomatic protests. The manipulation of legal obligation also had an observable effect on policy choices ($\chi^2(2) = 124.5, p<0.001$). Those in the strong legal obligation condition overwhelmingly chose imposing sanctions rather than taking limited measures or protesting diplomatically.

To examine whether enemy-ally relations interact with legal obligation, I collapsed the policy choices into punishment and diplomatic protest and estimated a factorial logistic regression. The overall model was not significant. Both the coefficients for the
independent variables and the interaction variable were not significant. More simpler
cross-tabulation analysis, however, reveal a general pattern which offers partial support for
the compliance resolve hypothesis. Both strong and weak obligation holders were willing
to punish Iran and favor imposing sanctions, yet when Israel was the violator country,
strong legal obligation holders were more willing to enact international legal principles
and punish Israel. When Israel was the violator of international law, about 52 percent of
the participants in the strong legal obligation condition relative to 13 percent in the weak
legal obligation condition chose taking limited measures against Israel. Similarly, about 48
percent of those whose sense of legal obligation was evoked relative to the 2 percent
whose sense of legal obligation was not evoked opted for imposing sanctions against
Israel. This implies that strong obligation holders were more willing to punish Israel than
weak obligation holders. These results do not conclusively establish that strong legal
obligation holders are willing to punish allies and enemies alike to uphold international
law. Yet they do suggest that strong legal obligation holders tend to be more consistent in
their application of international legal principles.

5.8 Conclusion

In this chapter, I have evaluated the theory of legal obligation developed in chapter
3 with a series of laboratory experiments. Even though laboratory experiments lack
external validity, they provide an effective tool of causal inference (Druckman et al.,
2006). Specifically, experiments help isolate the cause hypothesized to generate a
particular effect through mechanisms of experimental control and random assignment
(Field, 2009; McDermott, 2001). As a result, experiments are important complements to observational studies. To test the two central propositions of the theory of legal obligation, I have relied on two sets of analyses. The first analyzed the relationship between international identification and legal obligation, examined non-identity based arguments of legal obligation, and explored the influence of interests and enforcement risks on the relationship between international identification and legal obligation. The second set of analyses investigated the effect of legal obligation on preferences for compliance, tolerance for compliance costs, and on the enactment of international legal principles. These investigations also explored the role of interests, enforcement risks, and the image of legal norm violators in compliance decision-making.

Results of the first series of analyses offer support for the international identification hypothesis. First, I find that high international identifiers are significantly more deferential towards international law than low identifiers. Second, I show that while the procedural legitimacy of international law matters, its effect on legal obligation is moderated by how much an individual attaches to the international community. Third, I observe that individuals interpret the relevance of their personal normative agreement with international conventions differently depending on their attachment to the international community. This implies that even though normative legitimacy has a meaningful effect on legal obligation, its effects are not manifested in a simple linear but vary across levels of international identification. The first set of experiments also show that high international identifiers' sense of legal obligation is much more resistant to compliance costs and than that of low identifiers. On balance, when compliance with international law offers little
long-term benefits or hurts immediate U.S. interests, levels of legal obligation declines. Nevertheless, this decline is rather modest when international identification is strong. In the same vein, high international identifiers are significantly more willing to tolerate compliance costs and do not easily opt for violating legal rules. Finally, I find a positive relationship between risk of enforcement and legal obligation. Fear of facing sanctions in case of non-compliance seems to activate a deferential disposition, thereby increasing reported levels of legal obligation. High and low identifiers, however, vary in their reactions to enforcement risks suggesting that enforcement concerns are significantly less relevant for those who identify with the international community.

Results of the second series of experiments provide evidence in support of the compliance resolve hypothesis. I find that strong legal obligation holders are significantly more likely to tolerate compliance costs and favor upholding international law even if compliance conflicts with U.S. interests. I also find that strong legal obligation holders prefer robust compliance policies rather than weak ones. When a sense of legal obligation was evoked, for example, participants were more willing to punish an ally state by imposing sanctions rather than just verbally criticize its illegal behavior. Second, results indicate that heightened enforcement risks increase compliance propensities. Strong legal obligation holders, however, favor compliance somewhat independent of enforcement risks. In low risk conditions, for example, strong legal obligation holders are more supportive of compliance than weak obligation holders. Finally, I find modest support for the claim that a sense of legal obligation motivates actors to apply international principles consistently across allies and enemies. The identity of the recalcitrant state violating
international law has an observable main effect on the likelihood of law enforcement; enemies are more readily punished than allies. Yet strong legal obligation holders seem to be somewhat more willing to enact international legal principles than weak obligation holders even if enforcement implies punishing a friendly government.

These results indicate that the normativity of international law at the individual level is subjectively construed through the effect of international identification on the perceived legitimacy of international law’s authority. In this regard, neither the pessimism of Rationalist and Instrumental approaches nor the optimism of their norm-based counterparts about legal obligation is fully justified. Individuals do not hold inherently defiant or deferential attitudes towards international law; their sense of legal obligation depends on the extent to which they attach to the international community.

If legal obligation entails a conflict between commitment to the sovereign authority of the state and deference to international, and if the settlement of this conflict depends on the subjectively understood legitimacy of international law’s right to govern, then it is the re-conceptualization of self-concept and statehood in terms of membership in the international community created by international identification that helps address this tension and facilitates deference. And if legal obligation indeed transforms states’ legal duties written in international agreements and treaties into felt duties, then legal obligation constitutes a distinct path to compliance that increases the likelihood of compliance even when states’ egoistic interests are not directly served. The results of the experiments presented in chapter shed light on these dynamics and provided individual
level evidence that supports the theorized relationship between international identification, legal obligation, and compliance.
CHAPTER 6

CONCLUSION

6.1 Introduction

Despite differences in their roles within the bureaucratic structure of the state, all politicians are committed to sovereignty and protective of the political authority of the state. The inclination to guard sovereignty indeed appears to be a shared trait across the political spectrum traversing ideological and policy divides. And yet some politicians are also moved by a sense of perceived obligation to international law and defer to international legal rules and institutions. As legal obligation arises from the subjective delegation of decision-making authority to international law and marks the acknowledgement of law’s governing authority, it entails a tension between commitment to the sovereign authority of the state and deference to international law. I have referred to the motivational conflict implied by legal obligation as psychological “sovereignty costs.” How do representatives of sovereign states reconcile sovereignty with deference? Why do some politicians develop a sense of legal obligation and defer to international law while others do not? How does obligation to international alter compliance preferences? This dissertation analyzed the psychological logic of legal obligation and addressed these questions.
I have explained legal obligation by analyzing the effect of international identification on the authority relationship between politicians and international law. I have argued that the degree of international identification shapes politicians’ sense of legal obligation by affecting the perceived legitimacy of international law’s authority, and thus influences actors’ ability to reconcile commitment to sovereignty with deference to international law. High international identifiers perceive international law’s influence legitimate because international attachments prompt them to re-conceptualize the sovereign state as a *member* of the international community rather than view it as an autonomous entity separate from its membership.

The assimilation of the state-concept into the prototype of international community member transforms the definition of sovereignty from indivisible supreme authority towards member status in the international community and shifts politicians’ understandings of the state’s legitimate duties and corresponding rights to the international level. This transformation enables actors to acknowledge the governing authority of international law as a responsibility of membership, that a condition of legitimate political agency in the international society. In this regard, when international attachment is strong, the tension between sovereignty and deference is reduced and deference to international law is understood as a membership responsibility of the state in the international community. In contrast, since low international identifiers do not assimilate the state-concept into the deferential prototypical international community member, they tend to view sovereignty as supreme authority. Therefore, acknowledgement of international law’s authority is perceived as loss of sovereign
capacity, preventing a sense of legal obligation. Accordingly, my central claim is that high international identifiers are more likely to hold a sense of legal obligation than low international identifiers.

Focusing on the nexus between legal obligation and compliance, I have argued that legal obligation increases compliance resolve through two pathways. Since legal obligation embodies internalized respect for international law’s authority, it naturally acts as a self-imposed constraint. The second way legal obligation guides behavior is by making actors more sensitive to the norm of compliance prevailing in the international community, and thus more sensitive to social pressure. Therefore, I have hypothesized that legal obligation leads to an increased compliance propensity even when compliance is costly and at odds with individual state interests. In this regard, legal obligation strengthens actors’ compliance resolve.

In an effort to link connect agents to structures, I have also explored the macro-foundations of legal obligation and the expressive dimension of international law. Starting with a discussion of the “analytical” problem of essentialism (Tamanaha, 2000; 2001a), I have argued that functionalist approaches to legalization neglect the formative elements of law-making, and thus miss the expressive quality of legal rules. Focusing on the constitutive dynamics of legalization, I have conceptualized legalization as an associational practice of forming legally defined “communities of principle” (Franck, 1990; Dworkin, 1986) and I argued that legal rules express states’ associative duties in international polities, namely responsibilities of legitimate membership. Besides illuminating the nexus between the structural and individual dynamics of legal obligation,
this analysis helped explicate why an identity argument can offer a great deal of analytical leverage to explain the psychological logic of legal obligation in international politics.

Employing survey and experimental methods, I have tested for the effect of international identification strength on the degree of legal obligation as well as examined the direct influence of legal obligation on compliance preferences. First, using data from an original survey of German Parliamentarians, I have analyzed German politicians’ sense of obligation to European law and international law. I have shown that a high degree of attachment to the European polity associates with a strong sense of obligation to European law, which in turn increases the willingness to favor compliance with even when compliance costs seem high.

Importantly, I have discovered that the relationship between international identification, legal obligation, and compliance preferences holds at the international level. My analyses showed that parliamentarians who highly attach to the international community maintain a stronger sense of obligation to international law than those who lack this attachment. I have also discovered that, legal obligation significantly increases compliance resolve controlling for varying degrees of compliance costs as well as other strategic factors, such as self-interest, risk of enforcement, and anticipated long-term benefits of compliance. These are important findings for two main reasons. First, evidence of identification with the international community shows that collective identity is indeed possible at the international level and constitutes a measurable perceptual variable that is distinct from national and other superordinate attachments. Second, my results indicate that international identity strengthens compliance through a sense of legal
obligation. Thus, if reinforcing global legal governance calls for promoting deference, then international identity construction appears to be a viable policy.

The results of my experimental analyses provided individual level evidence based on data obtained from a controlled setting and were highly consistent with the findings of the German parliamentarians survey. Employing 8 experiments, I have conducted two sets of analyses. The first examined the relationship between international identification and legal obligation, investigated non-identity based arguments of legal obligation, and explored the influence of interests and enforcement risks on the relationship between international identification and legal obligation. The second set of analyses focused on the effect of legal obligation on preferences for compliance, tolerance of compliance costs, and on the enactment of international legal principles. I have also studied the role of interests, enforcement risks, and the enemy/ally image of norm violators in compliance decision-making.

Results of the first series of analyses offered strong support for the international identification hypothesis. First, I showed that high international identifiers are significantly more deferential towards international law than low identifiers. Second, I discovered that while procedural correctness of international agreements matters, its effect on legal obligation is moderated by how much an individual attaches to the international community. Finally, I observed that individuals interpret the relevance of their personal normative agreement with international conventions differently depending on their attachment to the international community. These findings strongly support the identity-based theory of legal obligation proposed here. Furthermore, results pertaining
to procedural and normative legitimacy point to a critical finding. Even though normative and procedural legitimacy have a meaningful effect on legal obligation, their effects are not manifested in a simple linear but vary across levels of international identification. This indicates that norm-based arguments of legal obligation are indeed incomplete because they reify the state as a unitary actor and make assumptions about individual level variables rather than explaining individual level variation by analyzing the factors that shape individuals’ interpretations of procedural and normative legitimacy.

The first set of experiments also showed that high international identifiers' sense of legal obligation is much more resistant to compliance costs than that of low identifiers. I found that as individuals attach more and more to the international community, their willingness to tolerate compliance costs increases, which in turn reduces their propensity to neglect international law. I have also discovered that high and low identifiers vary in their reactions to enforcement risks suggesting that enforcement concerns are significantly less relevant for those who identify with the international community.

Results of the second series of experiments provided supported the compliance resolve hypothesis. I discovered that strong legal obligation holders are significantly more likely to tolerate compliance costs and favor upholding international law even if compliance conflicts with U.S. interests. I also found that strong legal obligation holders prefer robust compliance policies rather than weak ones. When a sense of legal obligation was evoked through experimental manipulations, for example, participants were more willing to punish an ally state by imposing sanctions rather than just verbally criticize its illegal behavior. Second, results indicate that even though enforcement risks increase the
probability of compliance, strong legal obligation holders’ willingness to uphold legal rules is somewhat independent of enforcement risks. I observed that strong legal obligation holders are on average more supportive of compliance than weak obligation holders at different levels of enforcement risks.

Legal obligation only had a modest effect on the consistent application of international law across allies and enemies. The identity of the recalcitrant state violating international law had an observable main effect on the likelihood of law enforcement; enemies were more readily punished than allies. Yet strong legal obligation holders seem to be slightly more willing to consistently enact international legal principles than weak obligation holders even if enforcement implied punishing a friendly government.

Having summarized the core elements of my theoretical framework and results of its empirical applications, in the next section, I spell out the theoretical and empirical contributions of this research, address questions of generalizability, and discuss possible directions for future research. Second, I discuss the broader theoretical and practical significance of legal obligation, specifically its implications for the anarchic international system, sovereignty and democracy, and global governance.
6.2 Theoretical and Empirical Contributions

This research contributes to the theoretical study of international law by offering a comprehensive theory of the psychological side of legal obligation. This is a significant value-added because it is the subjective sense of legal obligation maintained by political leaders rather than formal responsibilities written on pieces of paper that anchors the international legal system. While the extant institutionalist literature has greatly improved our understanding of the institutional side of legal obligation (Abbott and Snidal, 2000; Abbott et al., 2000), the psychological dynamics of legal obligation have remained unexplored in the IR scholarship (Finnemore and Toope, 2001). By and large, the IL literature has similarly sidelined legal obligation (Guzman, 2008; Goldsmith and Posner, 2005, cf. Brunnee and Toope, 2010). This void is ironic given how frequently Thomas Franck’s (1990) famous expression of “the pull of law” is used evoked in various studies. Yet a handful of exceptions aside, little has been done to articulate a theory of legal obligation and test it empirically. By offering a theoretical framework to explain neglected side of legal obligation and evaluating it systematically, this study advances our understanding of how international law actually “pulls” and complements functionalist perspectives on legalization as a result.

The core argument of this dissertation centers upon the importance of international identity for the formation of a sense of obligation to international law. This argument makes an important contribution to norm-based approaches to international law as well as to some Constructivist accounts by providing an explanation of why and under what conditions attachment to international polities results in a sense of legal
My explanation helps the literature go beyond descriptive reports and specifies a set of causal processes through which legal obligation forms. A satisfactory theory should also be able to explain when a certain outcome is less likely to emerge. The international identification argument fulfills this requirement. I explain why high and low international identification associate with strong and weak degrees of legal obligation respectively. Thus, the theory of legal obligation I have proposed helps refine the theoretical claims of pessimistic and optimistic approaches to legal obligation by establishing a set of scope conditions.

The explanation of legal obligation I have offered is potentially generalizable to other contexts. If international identification is a strong predictor of legal obligation, then this argument should apply to different legal domains and identity communities. The empirical evidence presented in this project indeed shows that international attachment strongly associates with legal obligation both in the context of Europe and the international community. The consistency of evidence between my findings suggest the generalizability of the argument. Additional work, however, is needed to examine how much this explanation transports to different contexts. For example, to the extent there is some degree of attachment to the Association of Southeast Asian Nations (ASEAN), how strongly does this attachment predict deference to supranational rules and regulations? Similarly, future research should investigate how the relationship between international identity and legal obligation works in different domains of international law. In some of my survey and laboratory experiments, I have experimentally varied the domain of law as
well as the national interests at stake, and obtained evidence supporting my argument. Nevertheless, additional work is needed to explore issue-specific considerations.

Third, this project orients the polarized compliance literature to a new direction. The battle-lines in the compliance literature are drawn between Instrumentalist/Rationalist accounts and norm-based/Constructivist perspectives (Hathaway and Koh, 2004; Keohane, 1997; Hathaway, 2005). Competing views on legal obligation lie at the heart of this polarization. Instrumentalist/Rationalist accounts are pessimistic about legal obligation. Norm-based accounts are optimistic. Common to both approaches, however, is an under-appreciation of the individual level cognitive factors that make politicians defiant or deferential. In this regard, both Instrumentalist/Rationalist accounts and norm-based/Constructivist perspectives tell an incomplete story because rather than directly examining legal obligation at the appropriate level of analysis, they rely on theoretical assumptions about individual level motives (Herrmann, 1988; Singer, 1961). I would even go so far to argue has that this analytical shortcoming has prevented progress in the theoretical study of compliance in the last few years.

By attending to the obligating power of international law at the individual level, this research encourages the compliance literature to bring decision-makers back in the study of compliance with international law. Future research should investigate how variation in legal obligation levels across politicians influences compliance in different domains of law as well as investigate the extent to which the international identity argument generalizes to representatives of countries with different cultural and bureaucratic traditions, and more importantly with different levels of political power.
Additional work should also investigate whether international identification and legal obligation interact with other critical cognitive variables, such as cognitive style (Tetlock, 1983) or operational code (e.g. George, 1969), as well as with other individual level dispositions, such as nationalism or ideology. And perhaps a larger issue is at stake here. The theoretical study of international law and compliance could greatly benefit from integrating insights from FPA and investigating compliance decision-making at the individual, bureaucratic, and inter-organizational levels. After all, the effects of international law on state behavior are realized through compliance decisions that are taken at multiple levels within the black box of the state.

Fourth, I sought to shed some light on the sociological dimension of legal obligation to better ground its psychological side. Borrowing insights from Legal Theory and Philosophy, I have focused on the constitutive underpinnings of legalization and re-conceptualized legalization as a transformative practice of forming associational ties and establishing legally “communities of principle” (Franck, 1990; Dworkin, 1986). Using this premise, I have emphasized the expressive function of legal rules and argued that they represent associative responsibilities in law-bound associations of states. The most distinctive feature of associative duties is that they articulate the terms of membership in polities, and thus pertain to legitimate political agency. With this move, this research contributes to functionalist accounts on legalization (Abbott et al., 2000; Abbott and Snidal, 2000). I identify an ideational dimension of legalization that may be usefully added to the existing “obligation-precision-delegation” model. At the same time, the argument for associative nature of legal rules responds an important call made by
important IR scholars over a decade ago. To re-phrase Martha Finnemore’s (2000) question: what is the “distinctiveness” of law? The associative nature of law and the expressive dimension of legal rules offer one possible answer. Future work should further develop this argument and bring additional insights from expressive theories of law routinely used in the domestic context (e.g. Sunstein, 1995/96; Cooter, 1998).

Finally, this research takes an important step towards multidisciplinary research on international legal institutions. By establishing a connection between IR and IL scholarships and by bringing the insights from Social Psychology and Legal Theory into studies of international institutions and law, this projects helps demonstrate the value of theoretical pluralism for developing stronger theoretical frameworks. While Legal Theory and Socio-legal studies could offer new avenues of productive research on international law, Social Psychological theories of identity, social influence, and social power could assist us IR scholar to arrive at richer understanding of authority in international politics.

Perhaps the most important empirical contribution of this research is its systematic approach to studying two directly unobservable, albeit critically important, perceptual variables: international identity and legal obligation. A lot has been said about international (collective) identity and legal obligation, yet little has been done empirically. Existing work in IR has attended to the theoretical dimension of international identity as explained in chapter 3. To my knowledge, however, international identity has not been empirically examined in a systematic manner. Combining IR perspectives on international identity with insights from SIT and SCT (Tajfel and Turner, 1986), I have developed operational measures of international identification that are generalizable to
different contexts and systematically tested for the effect of international attachments on legal obligation in the European and international contexts. Similarly, to my best knowledge, the concept of legal obligation has not been examined as it applies to international law and politics. Using a multitude of theoretical perspectives, I have developed the theoretical dimension of legal obligation and created specific operational measures to examine it empirically. In this regard, this project makes an important contribution by meeting two critical empirical challenges. I hope to inspire future research to further advance the systematic study of both international identification and legal obligation.

As I have discussed in the research design section of chapter 3, if we would like to draw inferences from perceptual variables, such as identity and legal obligation, and examine their effects on political attitudes and behavior, our investigations must focus on the individual level of analysis. This research did precisely that. Employing survey and experimental methodology, this project evaluated the claims of the theory of legal obligation at the appropriate level of analysis and offered individual level evidence of the international identification argument. Furthermore, this dissertation took an important step towards increased rigor in the study of international law. With its attention to systematic methods of measurement and data collection at the theoretically correct level of analysis, and its focus on statistical tests, the results of my analyses show that international identity critically shapes the degree of legal obligation, and legal obligation in turn increases compliance resolve, ceteris paribus.
Furthermore, both the statistical strategies and the experimental manipulations used in the survey study and the laboratory experiments, allowed me to control for alternative arguments of legal obligation as well as vary situational factors when evaluating the theory of legal obligation. Therefore, the results of my analyses illustrate the marginal effect of international identification on legal obligation and indicate clear empirical patterns across different strategic situations.

Finally, this research makes an important contribution by testing the theory of legal obligation at the international level as well as in Europe. My findings indicate that the identity argument holds in both contexts. Despite their differences, both European identity and international identity, two of the most important supranational attachments in world politics today, strongly predict a sense of perceived legal obligation. Evidence of this relationship across different political domains opens up a host of new research avenues and raises important questions about how “nested” and “cross-cutting” superordinate identity communities and legal systems operate in parallel in international affairs (Herrmann and Brewer, 2004:8).
6.3 Theoretical, Normative, and Policy Implications

“If the poet says, 'Go and catch a falling star', or whatever it may be, he doesn't [sic.] seriously issue an order,” said Austin (1970:241). And many have likened international law to the poet. Yet despite all the skepticism about international law’s authority in world politics, a sense of legal obligation in many politicians’ policy positions seems clear, as does the effect of this motive on state behavior. In addition to providing an explanatory theory of legal obligation, this research has explored the implications of legal obligation for the nature of states’ compliance policies and the legal culture of the international system. In this section, I further unpack some of these implications.

Few would argue that anarchy equals lawless and chaos. However, many may claim that anarchy, in effect, implies juridical anarchy given the absence of legal authority in world politics in the conventional formal sense (e.g. Weber, 1978; see Lake, 2009). The manifest importance of legal obligation counters this skepticism. While the international system may lack Weberian type juridical authority, its legal culture may indeed represent juridical authority when a sense of legal obligation is shared by a large number of leaders and a norm of compliance prevails in the international system (Chayes and Chayes, 1995). This is an important matter. First, if international politics indeed reflect a certain measure of juridical authority, then the anarchic description of the international system needs to be revised (also see Hurd, 2007; Barnett and Finnemore, 2004; Lake, 2009). Anarchy may continue to describe the overarching framework of world politics, yet it may not properly depict the whole picture. Specifically, anarchy may not have a single legal
culture. Juridical anarchy is arguably only one of four possible legal cultures varying across degrees of legal obligation.

Second, if juridical authority indeed does not require centrally enforced commands, then international law is certainly not the poet. Thus, it is critical to examine what constitutes juridical authority in a political system that lacks a central authority to enforce legal rules. This research represents one notable attempt towards this direction.

Third, legal obligation and its structural implications have critical repercussions of sovereignty. If state sovereignty is the constitutive principles of world politics, how does it get transformed under juridical authority? Since legal obligation arises from the delegation of sovereign decision-making authority to international law and acknowledging its governing authority, it turns technical responsibilities into accepted duties. As a result, legal constraints become more than simple institutional limitations on policy autonomy. Rather, they become internalized responsibilities. Legal obligation, therefore, recasts the meaning and practice of sovereignty (Biersteker and Weber, 1996; Lake, 2007). This has implications for how we theorize sovereignty and examine its manifestations in international politics.

Overall, each of the three issues discussed above have critical implications for IR theory. Anarchy and sovereignty are the two central constructs that lie at the core of the discipline of IR. Perhaps very few disciplines make such “a big deal” about authority as we IR scholars do. This is because observing relations of authority in international politics challenges our central assumptions. Legal obligation is fundamentally a type of authority relationship. Whether we conceptualize it at the individual level as I did in this
The implications of legal obligation as well as the relationship between legal obligation and international identities certainly extend beyond theory. Important political and normative issues are at stake here. “New sovereigntists,” as Peter Spiro (2000) calls them, worry that too much power is taken away from the sovereign state by international organizations and law (also see Hathaway, 2007). Vociferous concerns have been raised by politicians, academics, and prominent political elites against the erosion of sovereignty over the last decade. Other critics of global governance, who remain wary of the accountability deficit of international structures of authority, often join new sovereigntists and raise questions about the implications of delegation for domestic democratic governance (Nye, 2001; Grant and Keohane, 2005). In contrast, supporters of global governance and cosmopolitans celebrate institutional legalization. They welcome the promise of international organizations and law to address collective action problems, distributional conflicts, and potentially promote international justice (Held, 2007; 2004).

Therefore, the relationship between international identity and legal obligation could be a double-edged sword. If sovereigntists are justified in guarding the authority of the state for political and normative reasons, then politicians with international attachments who are deferential towards international law are likely to be a source of concern. Conversely, if the prospects and promises of global governance ultimately rest on voluntary compliance with international law, and if legal obligation arguably represents the most viable path to compliance, an important policy implication follows:
strengthening the foundations of global governance requires constructing attachments to regional and international superordinate communities in order to increase deference.

Interdependence and the growing complexity of global problems, normative and practical ones alike, increasingly require deeper forms of cooperation among states (Held and McGrew, 2002; Byers, 2000; Nye and Donahue, 2000). Building institutions and making laws are critical instruments to address the challenges of global issues. Therefore, we are likely to witness an increase in international institutionalization. To the extent we could integrate functional mechanisms of accountability into international legal institutions and address other democratic deficiencies, then the relationship between international identity and legal obligation could be viable instrument of progressive international politics and contribute to the efficacy of global governance.

6.4 Conclusion

In this chapter, I have summarized my theoretical argument and the results of my empirical analyses, reviewed the theoretical and empirical contributions of this dissertation, and explored a series of theoretical, normative, and political issues exposed by legal obligation. Before closing, I return to the central variables of this project and briefly discuss considerations for future research in studying international identity and the broader concept of obligation.

Liah Greenfeld (1992) cautions us that inter-national politics may be hard to imagine if people were to stop imagining nations. Benedict Anderson (1991), conversely, notes that nations are “imagined communities” which technically implies that they be re-
imagined in different ways. Empirical research from Social Psychology shows that individuals are indeed capable of imagining themselves as part of different identity communities in addition to the nation (e.g. Martinotti and Stefannizi; 1995; Gaertner et al., 1993). In this research, I have observed the co-existence of national, European, and international identifications in the case of German parliamentarians. Therefore, there is reason to believe that despite the “thin-ness” of the international community as a category of identification, there is value in further examining the implications of international identity for world politics and exploring the ways in which international identities may be constructed. Insights from studies on multiculturalism, for instance, could shed light on how superordinate identities may be constructed in face of cultural and normative pluralism and power differentials in world politics. (e.g. Sniderman and Haagedoorn, 2007). If international identity increases legal obligation, and in turn contributes to the efficacy of legal governance, then it is a worthwhile effort to investigate how international identity may be imagined.

Robert Jervis (1988: 348) notes that “[c]onsiderations of morality, fairness, and obligation are almost surely a large part of the explanation for the fact that individuals in society co-operate much more than the Prisoners’ Dilemma would lead us to expect.” In this sense, the move towards studying the “logic of appropriateness” represents an important advancement in IR theory (March and Olsen, 1998). However, more is required to arrive at a better understanding of obligation and its effects on preferences. Despite the empirical challenges involved, future research should borrow further insights from psychological analyses and systematically examine obligation at the decision-making
level. Furthermore, game theory could be usefully applied to the analysis of obligation. The rigor of formal modeling could alleviate some of the theoretical challenges posed by the theoretical study of legal obligation and uncover new avenues for systematic empirical research.
APPENDIX

Experimental Scenarios Used in the German Parliamentarians Survey

Experimental manipulations are presented in italics within brackets. A split half randomized design was employed for this survey.

Experiment One

Imagine that the EU passed a new law on taxation that Germany opposed. Compliance with this law will result in a reduction in government revenues by [20 %/5 %].

Experiment Two

These days, there are many economic challenges countries face. Imagine that some German experts have proposed developing a new economic plan. This plan will give a [tremendous/slight] boost to German economy and bring down the current unemployment rate from around [8.5 % to 3.3/7.8 %]. If Germany implements this plan, however, it will be violating international law. Germany has signed on international treaties that prohibit the proposed economic measures.

Experiment Three

Given increasing concerns over the environment, countries are developing new environmental protection plans and turning them into international law. Imagine that Germany has recently signed onto to an international environmental agreement. Compliance with this treaty, however, will cost Germany [90 million Euros/900 million] Euros.
Experimental Scenarios Used in the Laboratory Study

Experimental manipulations are presented in italics within brackets. The order in which respondents received the experimental manipulations was rotated randomly as was the order of follow-up questions.

Experiment One

States are increasingly turning to international law to manage their relations. Imagine that the United States has become a signatory to a prominent international convention. There is [no/a lot of] controversy over the legitimacy of the procedures followed in the making of this law. It [has/has not] followed the right procedures. You personally [agree/disagree] that what this law requires the U.S. to do is actually right. You think the law is [correct/wrong]. At the same time, the U.S. does not expect to face many negative consequences, such as material sanctions or social criticism in case of non-compliance. In short, there is a procedurally [legitimate/illegitimate] international law in question, you personally [agree/disagree] with its substance [and/yet] the U.S. is a party to the Convention.

Experiment Two

Some people think that countries may use harsh interrogation techniques in questioning detainees under certain conditions. Others feel that the use of such techniques is not justified. Personally, what do you think? Do you think the use of harsh interrogation techniques may be justified? [Yes/No] Regardless of whether you think such techniques can be used or not, however, international law prohibits the use of harsh interrogation techniques in questioning detainees. [And/yet] there is [no/a lot of] controversy over the procedural legitimacy of the procedures followed in the making of this law.

Experiment Three

Some people argue that when a country signs on to an international convention, it must comply with it and not break the law. Others believe that a country may break the law when compliance does not serve its interests. Imagine the U.S. is a signatory to an important international convention and is currently in the process of deciding how to comply with it. Experts agree, however, that compliance with this convention will take a major effort and hurt immediate U.S. interests. At the same time, the risks the U.S. could face due to non-compliance are [high/low] and the broader benefits of compliance U.S. expects to obtain someday in the future are [small/large].
Experiment Four

Some people argue that when a country signs on to an international convention, it must comply with it and not break the law. Others believe that a country may break the law when compliance does not serve its interests. The U.S. is a party to the Kyoto Protocol which requires countries to reduce their greenhouse emissions. Experts note, however, that compliance with Kyoto will take a major effort and hurt immediate U.S. interests. At the same time, the risks the U.S. could face due to non-compliance are [high/low] and the broader benefits of compliance U.S. expects to obtain someday in the future are [small/large].

Experiment Five

Nowadays, countries face many different security threats. Imagine that some American experts have proposed developing a new forbidden new missile system that will increase America’s military security. If implemented, this proposal will violate international law [but/and] the U.S. will face [no/a lot of] social criticism or material sanctions from other countries. Some leaders think that [we are all citizens of the global community. We share common problems, objectives, values and futures and our fates are connected. So the U.S. should not go its own way on this issue and should abandon the missile system/ people are citizens of their own countries; in your case it is the U.S., and countries have their own problems, objectives, values and futures, and fates. So, the U.S. should go its own way on this issue and develop the missile system]. [Furthermore/However], the U.S. has signed on to international treaties which prohibit the proposed security system.

Experiment Six

These days, there are many economic challenges countries face. Imagine that some American experts have proposed developing a new economic plan to give a boost to our economy. If implemented, this plan will violate international law [but/and] the U.S. will face [no/a lot of] reaction from other countries. Some leaders think that [we are all citizens of the global community. We share common problems, objectives, values and futures and our fates are connected. So, the U.S. should not go its own way on this issue and should drop the new plan/ people are citizens of their own countries; in your case it is the U.S., and countries have their own problems, objectives, values and futures, and fates. So the U.S. should go its own way on this issue and develop the plan]. [Furthermore/However], the U.S. has signed on to international treaties which prohibit the proposed economic measures.
Experiment Seven

Imagine a new regime comes to power in Saudi Arabia and starts blatantly violating human rights. At the same time, the new regime offers lucrative trade deals to the U.S. that will lower oil prices. International law requires all countries, including the U.S., to punish Saudi Arabia’s violation of human rights and cut trade relations. American leaders [feel strongly about obeying international law/make many decisions concerning international law]. If the U.S. chooses not to punish Saudi Arabia, it will receive [no/a lot of] social criticism or material sanctions from the international community. [But/And] countries that do not punish the new regime will be breaking international law themselves.

Experiment Eight

Imagine that [Iran/Israel] assassinated the leader of a pro-Palestinian political party who was critical of [Iran’s/Israel’s] policies while he was conducting talks in Syria and was caught red handed. This act violates Syria’s sovereignty and is a crime under international law. International law requires all countries, including the U.S., to punish [Iran’s/Israel’s] behavior and asks them to take all the immediate measures including imposing economic sanctions. American leaders [feel strongly about obeying international law/make many decisions concerning international law] and they now have to decide what to do about this situation.


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