OVERLEGALIZING HUMAN RIGHTS: INTERNATIONAL RELATIONS THEORY AND THE COMMONWEALTH CARIBBEAN BACKLASH AGAINST HUMAN RIGHTS REGIMES

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As the ratification of human rights treaties increases and the use of supranational adjudication to challenge human rights violations becomes more widespread, international legal scholars and international relations theorists alike have started to examine the effects of the increasing legalization of human rights norms. This Article raises the claim that international human rights law can become overlegalized, and it draws upon international relations theory and new empirical evidence to explore a recent case study of overlegalization. The Article seeks to understand why, in the late 1990s, three Commonwealth Caribbean governments denounced human rights agreements and withdrew from the jurisdiction of international human rights tribunals. It concludes that, while the denunciations can be viewed as arising from certain features unique to the Caribbean—in particular a dispute over capital punishment or judicial imperialism by the region's highest appellate court—they can also be understood as a response to the overlegalization of the governments' human rights commitments. In addition, the Article reassesses realist, ideational, and liberal international relations theories of treaty formation and compliance in light of the Caribbean case study, concluding that the notion of overlegalization adds nuance to the predictive power of these three theories.

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