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DOMESTIC IMPLEMENTATION OF SUPRANATIONAL COURT DECISIONS:
THE ROLE OF DOMESTIC POLITICS IN RESPECT FOR HUMAN RIGHTS

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ABSTRACT

Do regional human rights courts influence government respect for rights? Conventional wisdom suggests that absent hard enforcement mechanisms, international legal obligations have little influence on state's human rights behavior. International human rights courts arguably represent legal bodies posing greater challenges to state sovereignty and greater constraints on state behavior than other international human rights legal mechanisms. As a result, the literature suggests that states are unlikely to delegate to these regional legal bodies and delegation only occurs when (rights-respecting) states expect little change in behavior. However, states have increasingly delegated authority to regional human rights courts over time and these regional legal bodies continue to experience unprecedented growth in activity. Despite growth in the authority and activity of regional human rights courts, we know relatively little about their effectiveness, or the extent to which regional human rights courts influence respect for rights. In this study, I argue that the executive, as the final authority on human rights policy within the state, plays a primary role in regional court implementation and effectiveness. While the executive faces various incentives *not* to adhere to adverse regional court decisions, the executive often also faces various incentives to adhere to adverse decisions of the court (by adopting or implementing a policy of respect for rights), which may trump executive incentives to evade adverse regional court decisions. In this study, I explore direct threats to executive political survival, including international and domestic pressure placed on the executive to adhere to adverse regional court decisions. I also explore indirect threats to executive political survival for failing to adhere to adverse regional court decisions, including expectation of adherence by the domestic legislature and judiciary, as well as executive expectation of civil society mobilization. I then empirically examine the role of threats to executive political survival in generating executive incentives to adhere to an adverse decision through a policy of respect for rights, or the effectiveness of the regional human rights court, using cross-national statistical analysis of regional court decisions in both Europe and the Americas.

CHAPTER 1

INTRODUCTION

To what extent do supranational human rights courts influence state human rights behavior? Regional human rights courts have become increasingly active in international politics over the past two decades. The European Court of Human Rights (ECtHR) delivered 1,625 judgments in 2009, up from the 177 judgments delivered just a decade earlier in 1999.¹ Similarly, the Inter-American Commission of Human Rights (IACmHR) received 1,598 complaints in 2010, a substantial increase from the 658 complaints received in 2000.² With respect to physical integrity rights, prior to the year 2000, the ECtHR found fewer than 50 violations of physical integrity rights per year. However, by 2004, the ECtHR rendered adverse judgment in well over 100 cases related to violations of physical integrity rights by member states per year. In a similar vein, the IACtHR rendered fewer than 10 adverse decisions related to physical integrity prior to the year 2000. However, the IACtHR rendered between 15-20 adverse decisions involving physical integrity rights violations each year from 2004 forward. Despite the increased litigation emerging from these regional human rights legal bodies, we know relatively little about their effectiveness, that is, the extent to which these courts impact domestic human rights practices.

Initial evidence suggests that regional human rights courts exhibit little influence on respect for rights. Contrast the growth in activity of regional human rights courts with changes in state behavior related to respect for rights. Figure 1.1 displays the mean physical integrity rights score in each region over time.³ Physical integrity rights appear to have remained fairly stagnant over time in both regions, particularly in Europe. However, given the substantial rise in the activity of both courts, one might expect a dramatic improvement in respect for rights in both regions if either court produced changes in rights related behavior. These observations suggest that regional human rights courts may produce few changes in government respect for rights.

¹See <http://www.echr.coe.int/Pages/home.aspx?p=home> for more statistics on European Court of Human Rights cases.

²See <http://www.oas.org/en/iachr/> for more on the activity of the Inter-American Commission on Human Rights and <http://www.corteidh.or.cr/index.php/en> for more information on the activity of the Inter-American Court of Human Rights.

³Physical integrity rights include torture, disappearance, political imprisonment, and extrajudicial killing. The physical integrity rights index presented in ?? is coded on a 9-point scale, in which higher values represent greater respect for rights and lower values represent lower respect for rights (Cingranelli and Richards, 2010b).

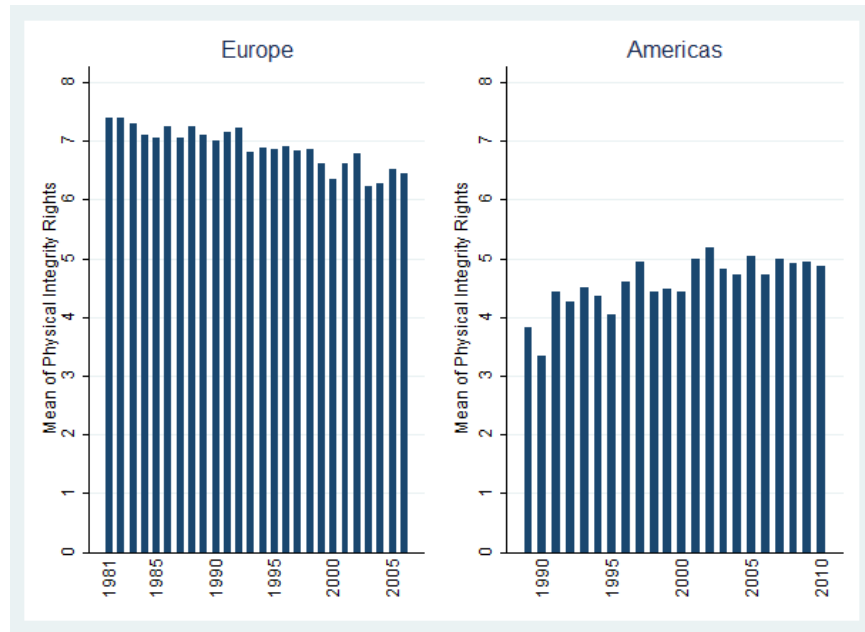


Figure 1.1: Mean Physical Integrity Rights Score Over Time

For the regional court to be effective in improving respect for rights, states must adhere to adverse regional court decisions. Consider the case of *Bulacio v. Argentina*, involving Walter Bulacio, a 17 year old whose severe beating while in police custody resulted in his death. In 2003, the IACtHR ordered Argentina to prosecute a police chief found responsible for the beating and death of the victim. Argentina implemented the adverse IACtHR decision by prosecuting the police chief, despite facing substantial domestic costs associated with re-trial of the defendant, re-opening a closed case, and overturning a prior domestic ruling, among others. Did Argentina’s adherence to the adverse IACtHR decision influence respect for rights?

Figure 1.2 displays Argentina’s physical integrity rights score (the type of rights violated in the Walter Bulacio case) over time. When the Walter Bulacio case was before the IACtHR in 2003, Argentina scored a 5 on the physical integrity rights index, which is slightly higher than Argentina’s 2002 score of a 4, and 2001 score of a 3. However, two years following the adverse IACtHR decision, Argentina scored a 6 on the physical integrity rights index, the highest score Argentina received since the mid-1990s. While this observation is purely suggestive, it does provide an indication of the potential for state adherence to adverse regional court decisions to influence respect for rights.

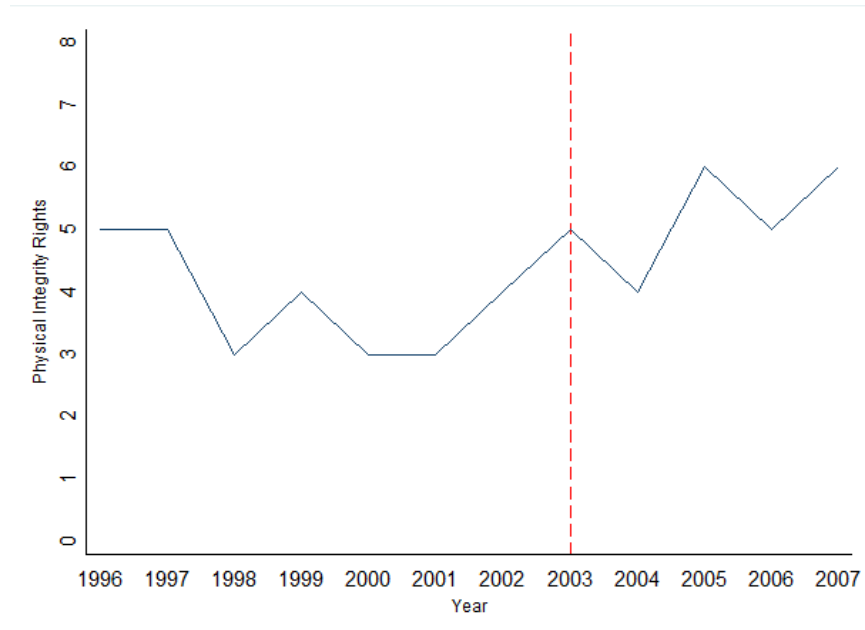


Figure 1.2: Argentina's Physical Integrity Rights Score Over Time

When, or under what conditions, are states likely to adhere to adverse regional court decisions? The empirical evidence indicates substantial variation in state response to adverse regional court decisions. Take two cases in the Inter-American Court, *Suarez Rosero v. Ecuador* and *Blanco Romero v. Venezuela*. *Suarez Rosero v. Ecuador* involved the arbitrary arrest and detention of Suarez Rosero surrounding drug offenses. This adverse regional court decision led to broad reforms, including reforms to Ecuador's penal code related to drug offenses and the release of numerous individuals held in detention for prolonged periods without trial or sentencing.⁴ The second case, *Blanco Romero v. Venezuela*, involved the forced disappearances of numerous individuals by military agents in Venezuela. In contrast to the first case, the state failed to fully implement any part of the adverse IACtHR decision.⁵ As an example of the failure to adhere to the decision, the regional court ruled that the definition of forced disappearances in the Venezuelan Criminal Code did not align with the definition in the American Convention on Human Rights because it distinguished between State actors and those working on behalf of State authorities. Consequently, the Inter-American Court of Human Rights ordered Venezuela to amend the domestic criminal code to conform to international

⁴See *Suarez Rosero v. Ecuador*, Inter-Am. Ct. H.R. (ser. C) No. 35 (Nov. 12, 1997).

⁵See *Blanco Romero v. Venezuela*, Inter-Am. Ct. H.R. (ser. C) No. 138 (Nov. 28, 2005).

legal standards. However, Venezuela has yet to adopt or amend its criminal code to adhere to the standards established by the Inter-American Court. These two opposing observations lead to the question: Under what conditions are regional human rights courts effective in changing state behavior related to respect for rights?

In this dissertation, I argue that state adherence to adverse regional court decisions, or regional court effectiveness, is conditional on domestic politics, particularly domestic political actors and the institutions they inhabit. I argue that the executive, as the primary authority on human rights policy within the state, plays a key role in regional court effectiveness. Despite possessing various incentives *not* to adhere to adverse regional court decisions, the executive also holds incentives to adhere to adverse decisions of the court. I explore the incentives to adhere, which include direct and indirect threats to executive political survival. Direct threats include international and domestic pressure to adhere to the regional court. Indirect threats include the *expectation* of adherence by the domestic legislature and judiciary, and an *expectation* of mobilization by members of civil society. When faced with the appropriate incentives, I argue that executive incentives to adhere to adverse decisions of the regional court will trump incentives not to adhere. In this dissertation, I explore the conditions under which the executive faces direct and indirect incentives to adhere to adverse decisions of the regional court, and subsequently the effectiveness of the regional court.

1.1 Regional Human Rights Courts

Before delving into the research question and theoretical framework, I provide some background on the courts examined in this study. Regional (also termed supranational or international) courts are fairly new actors on the international stage. Regional human rights courts are *international* in nature, granting them the ability to generate legal change across borders. As courts, they possess *legal* backing, allowing them to generate political change through legal interpretation and procedures (Alter, 2014). This legal and international status places regional human rights courts in a unique position to influence domestic human rights outcomes.

In this dissertation, I examine two regional human rights courts, the European Court of Human Rights (ECtHR) and the Inter-American Court of Human Rights (IACtHR). I examine these two courts because their activity reached unprecedented levels over the past two decades.⁶ European Court activity reached such high levels in the 1990s, that the Court undertook major reforms to streamline their procedures and

⁶The African Court on Human and People's Rights, established in 2004, delivered its first judgment in 2009, finding an application against Senegal inadmissible before the Court. African Court activity continues to increase, however, the AfCtHRPR, to date has only finalized and closed around 13 cases, making quantitative analysis of this Court's activity inherently difficult.

increase the efficiency of the Court. The number of judgments issued by the ECtHR nearly doubled from 2000 to 2006 (from 695 in 2000 to 1,560 in 2006).

The European Convention on Human Rights (ECHR) established the ECtHR. The ECHR came into being in 1959 under the Council of Europe and 47 member states are parties to the convention.⁷ The ECtHR hears cases involving violations of the ECHR by contracting parties. Cases can be brought to the ECtHR by individuals, groups of individuals, law firms, NGOs, among others specified in the convention, against states that have ratified ECHR. Upon exhaustion of all domestic remedies, plaintiffs bring cases to the ECtHR. Once the ECtHR finds an adverse judgment against a state, the state is charged with conceiving and executing steps to come into compliance with the Court. A Committee of Ministers, comprising states parties' Ministers of Foreign Affairs, monitors compliance with ECtHR rulings. The Committee asks states to report on measures taken to come into compliance and can offer suggestions to the state to encourage implementation of the judgment (Hawkins and Jacoby, 2010).⁸

The Organization of American States (OAS) established the IACtHR in 1979 with the goal of enforcing and interpreting the provisions of the American Convention on Human Rights (ACHR). In contrast to the ECtHR, adverse judgments found by the Court against states result in "compliance orders" or a list of specific steps the state must take to come into compliance with Court decisions. The Court monitors compliance with its judgments and relies on victims' representatives, the Inter-American Commission on Human Rights, and the state to submit reports on compliance (Hawkins and Jacoby, 2010). The OAS currently consists of 35 members with 24 parties to the ACHR. To date, 21 states accept the compulsory jurisdiction of the Inter-American Court (Pasqualucci, 2003).⁹

These human rights legal bodies differ substantially in their procedures for selecting cases, the mechanisms used for monitoring and securing state compliance with Court judgments, and the political and social context in which the court operates. With respect to the procedures for selecting cases in the ECtHR, individual persons, groups of individuals, or NGOs, among other relevant organizations submit cases to the

⁷The European Union did not establish the ECtHR. All (27) members of the EU are members of the Council of Europe, but not vice versa. However, member states acceded to Protocol 14 in 2010 which provides for the European Union to accede and become party to the European Convention.

⁸In this study, I examine ECtHR judgments from 1981-2006 for all ECHR contracting parties. Court activity increased substantially in the 1990s, particularly after the adoption of Protocol 11 in 1998, which abolished the European Commission on Human Rights and made the Court a full-time body.

⁹These states currently include Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, and Venezuela. Trinidad and Tobago denounced the ACHR and the IACtHR. The ACHR has also not been ratified by Canada or the United States. Venezuela recently decided to denounce the ACHR and pull out the IACtHR. In this study, I examine IACtHR judgments only for those states under the compulsory jurisdiction of the IACtHR for the years 1989-2010.

Court. For a case to be found admissible before the ECtHR, it must meet a number of requirements. The plaintiff must exhaust all domestic remedies, the case must be submitted to the ECtHR no longer than six-months since the date of the final domestic judicial decision, the complaint has to be founded in the European Convention, and the applicant must have suffered a significant disadvantage. Once the ECtHR finds a state in violation of the ECHR, the Court submits the case to a Committee of Ministers and the state then undertakes steps to bring itself into compliance with the Court. Finally, the Committee of Ministers examines the execution of the ECtHR judgment. The IACtHR procedures for the selection of cases, as well as the mechanisms used to monitor state compliance with IACtHR rulings differ greatly from the ECtHR. Member states of the IACtHR include those that have ratified the American Convention on Human Rights, as well as accepted the optional jurisdiction of the Court.¹⁰ Unlike the ECtHR, individuals cannot take cases directly to the IACtHR; instead, cases must first be vetted through the Inter-American Commission on Human Rights (IACmHR). Individuals (or other organizations) first submit cases to the IACmHR. The IACmHR then rules on the admissibility of the case. Once the Commission deems the case admissible, it issues a list of recommendations that the state must undertake to remedy the violation. If the state fails to abide by these recommendations or the Commission finds the case of particular import, the IACmHR refers the case to the Court. As a result of the the limited number of states under the jurisdiction of the Court, as well as the Commission procedures, substantially fewer cases reach the IACtHR relative to the ECtHR. More specifically, of the thousands of cases before the IACmHR, the IACmHR submitted between 5-15 cases to the IACtHR each year from 2001-2009.

Further, the social and political environment associated with the establishment of the European and Inter-American Courts differ substantially. Formed in 1950 following the atrocities and massive human rights violations of the Second World War, the European Court represented an institution necessary for international human rights guarantees. The Western European countries responsible for the establishment of the Council of Europe (the constitutive body of the European Convention) included established liberal democracies with strong domestic institutional commitments to the rule of law (Helfer and Slaughter, 1997, 276). Scholars often attribute the success of the ECtHR throughout the early 1990s to the homogeneity among Western European states (Cavallaro and Brewer, 2008, 772).

States in the Council of Europe committed to implementing ECtHR decisions domestically and did so in both law and practice (Cavallaro and Brewer, 2008, 772). Helfer and Slaughter (1997) maintain that the

¹⁰To date, 21 states fulfill both of these requirements.

political and structural conditions present in most member states largely explained the overall success of and high compliance with the European Court through the 1990s. Specifically, they argue “the existence of domestic government institutions committed to the rule of law, responsive to the claims of individual citizens, and able to formulate and pursue their interests independently from other government institutions, is a strongly favorable precondition for effective supranational adjudication” (Helfer and Slaughter, 1997, 333-334). The ECtHR success in the 1990s demonstrates that domestic democratic institutions committed to the rule of law and separation of powers remain most receptive to supranational adjudication.

As a result of the institutional homogeneity of Western European countries involved in the establishment of the ECtHR, most violations early on involved only “minor and unintentional violations” of the European Convention, requiring few concessions from offending states (Kamminga, 1994). The early European system primarily confronted isolated cases of human rights abuse, typically involving arrest and detention, as well as the fair administration of justice (Pasqualucci, 2003, 5). Despite this initial success, in the early 1990s, the addition of various new members, including many former Soviet bloc states changed the social and political context in which the ECtHR operates.¹¹ The new member states not only possess relatively weaker democratic institutions than the founding members, but the rights violations in new member states involve larger violations, rather than the minor or unintentional violations of the earlier years. Instead, many of these new member states exhibit gross and systematic violations of human rights, requiring systemic structural and institutional remedies. Further, compliance levels with the ECtHR rulings differ from earlier years, as Turkey, Italy, Bulgaria, and Romania together contribute half of the long term pending cases (more than 2 years) before the Committee of Ministers (Hawkins and Jacoby, 2010, 70).

The establishment of the Inter-American Court took place in a much different social and political environment. Formed in 1979, the IACtHR faced a region characterized by primarily authoritarian regimes enmeshed in systematic and violent human rights violations, including widespread extrajudicial killings, political imprisonment, torture, and forced disappearances committed by state agents with impunity. Military dictatorships governed most of Central and South America, leaving Costa Rica, Venezuela, Colombia, and Peru as the only countries willing to let the Inter-American Commission become an effective body for the

¹¹Member states as of 2012 include: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russia, San Marino, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Macedonia, Turkey, Ukraine, and the United Kingdom.

protection of human rights (Buergenthal, 2005).¹² Most states in the Americas strongly opposed the establishment of a regional institution working for the protection of human rights. As the activity of the IACtHR increased in the 1980s, the political landscape in the Americas also changed, as democratic states began to replace authoritarian regimes. However, the IACtHR faced different challenges than the ECtHR in its early years, as adjudication usually involved systematic human rights violations in countries where human rights did not represent entrenched norms within the state. The effectiveness of the IACtHR hinged on its ability to navigate these difficult challenges, specifically, “the political and economic realities of the Americas, where non-democratic regimes and large-scale poverty persist, make enforcement of human rights in this region much more difficult than in Western Europe”(Buergenthal, 1980, 156). High economic inequalities, including extreme poverty and extreme wealth largely characterize the national economies within the Inter-American system. Inequality contributed to political conflict, and social and economic oppression contributed to the rise in political oppression and human rights violations on a society-wide scale (Pasqualucci, 2003, 5).

While early ECtHR success can, in part, be attributed to the “minor and unintentional violations” of state agents, the IACtHR faced systemic, institution-wide problems in many states in the Americas.¹³ Institutional and structural changes contributed to widespread noncompliance with IACtHR decisions. In fact, Posner and Yoo (2005) find that states rarely exhibit full compliance with IACtHR decisions, with state compliance with the IACtHR around approximately 5 percent and compliance with the IACmHR around 4 percent (Posner and Yoo, 2005, 43). More recent work highlights variation in state compliance based on the content of the IACtHR orders, that is, states routinely ignore decisions requiring punishment of offenders or changing of laws, but states have often paid financial compensation (Posner and Yoo, 2005; Basch and Schreiber, 2010). Similarly, states exhibit significantly higher levels of partial rather than full or no compliance. Hawkins and Jacoby (2010) find that states comply with about 50 percent of compliance orders issued by the Inter-

¹²The United States, Canada, and many Commonwealth Caribbean states have not yet ratified the American Convention on Human Rights. The Charter of the Organization of American States (OAS) established the Inter-American Commission on Human Rights. The American Declaration of the Rights and Duties of Man (ADRDM) entered into force alongside the OAS Charter, and while not legally binding, the Inter-American Commission and Court use the ADRDM as a source of international obligation for countries not party to the ACHR. Enforcement of the ADRDM occurs when offending states that have not ratified the American Convention on Human Rights (such as the United States, Canada, and Cuba) violate rights.

¹³Buergenthal (2005, 275) alludes to this difference in his discussion of his time served on the Inter-American Court. He claims that while observing a European Court hearing concerning the legality under the European Convention of corporal punishment in British schools, a colleague leaned over and whispered, “if this issue ever comes to our Court [the IACtHR], we will know that we’ve solved the human rights problems of our region.”

American Court, often only after repeated requests.¹⁴ However, when it comes to institutional changes, state compliance remains unlikely. In fact, scholars find that states comply with IACtHR judgments requiring the amendment, repeal, or adoption of domestic laws or judgments around 7 percent of the time they are issued (Hawkins and Jacoby, 2010, 58). The differences in the social and political context in which the European and Inter-American human rights systems operate suggests that these regional judicial bodies may differ in effectiveness. Given the different challenges faced by these human rights bodies, directly analyzing comparative decisions found by these two legal bodies proves problematic.

Given the vastly different domestic environments in which each court hands down decisions, scholars expect the effectiveness of regional courts to differ. Consider, for example, the difference in selection of cases. The ECtHR examines *any* case submitted by individuals, groups of individuals, or other organizations, while the IACtHR only examines cases in which states knowingly decided not to comply with IACmHR recommendations. As a result, one might expect IACtHR judgments to be less effective in changing state behavior, given state reluctance to comply with the IACmHR. However, the compliance orders issued by the Inter-American Court system are more transparent and clear than the delegative compliance mechanism used in the European system. Lack of compliance with an IACtHR remedial order may represent a more deliberate, intentional failure to comply than is the case in the European human rights legal system, making noncompliance with IACtHR judgments more damaging to a country's reputation internationally.

1.2 Plan of Study

In this dissertation, I examine the role of various political actors, and the institutions they inhabit, in generating ECtHR and IACtHR effectiveness. I explore the manner in which direct executive threats to political survival generate executive incentives to adhere to adverse decisions of the ECtHR and the IACtHR. I also examine the way in which indirect threats to executive political survival produce executive incentives to adhere to both legal bodies.

In the second chapter, I present the theoretical framework from which I generate hypotheses for analysis. I explore the interests and incentives of regional court (ECtHR and IACtHR) judges. I then explore executive incentives *not* to adhere to adverse regional court decisions. Next, I discuss the role of threats to executive political survival in generating executive incentives to adhere to adverse regional court decisions. Finally, I

¹⁴Hawkins and Jacoby (2010) use a different indicator of compliance, allowing for partial compliance with court orders. Posner and Yoo (2005) only report cases in which states complied with every aspect of the Court's rulings.

explore the influence of adverse regional court decisions on respect for rights across borders, or in changing rights-related behavior in other states within the region. In the third chapter, I present the research design to be used in the analysis. I discuss the concepts of interest, as well as their operationalization and the variables utilized in analysis. I then present the model and estimation technique employed.

In chapters 4-7, I generate hypotheses rooted in the theoretical framework and examine the hypotheses empirically using the research design presented in chapter 3. In chapter four, I examine the role of direct threats to executive political survival, including the role of domestic and international pressure. In chapters 5, 6, and 7, I explore indirect threats to executive political survival generated based on an *expectation* of adherence by the legislature, the judiciary, and an *expectation* of mobilization by civil society, respectively. Finally, in chapter 8, I discuss the contributions of the study. I also draw conclusions across chapters, discussing the relative importance of various domestic actors. I also explore some of the differences found across the ECtHR and the IACtHR. Finally, I discuss some avenues for future research.

CHAPTER 2

THEORY

2.1 Introduction

Despite extensive growth in the activity of regional human rights courts, we know relatively little about their effectiveness. In this chapter, I explain variation in state response to adverse regional court decisions. More specifically, I examine the incentives of domestic actors to adhere to adverse regional court decisions and consequently, the effectiveness of regional courts in improving state human rights practices. By focusing on effectiveness of supranational litigation in making broad changes in human rights policy and practice, rather than focusing solely on compliance with specific regional court orders, I explain the conditions under which these regional legal bodies influence respect for rights. Further, the theory presented and explored in this chapter focuses closely on the incentives of domestic actors within the state. I specifically highlight executive incentives to adhere to adverse decisions of the regional court, primarily because the executive represents the final authority on rights-related policy within the state. By focusing on the strategic decision-making processes of domestic actors, this theory moves beyond explanations of compliance and/or effectiveness that focus on the state as a single decision-making entity that responds to adverse regional court decisions.

In what follows, I argue that regional courts (specifically, the European Court of Human Rights and the Inter-American Court of Human Rights) charge domestic actors, including the executive, judges, legislators, and members of civil society with implementation of adverse regional court decisions. While the regional court does not typically identify these actors by name, regional court orders imply the involvement of various actors.

For example, consider the case of *Blake v. Guatemala*; the IACtHR found Guatemala to be responsible for covering up the disappearance and death of a journalist named Nicholas Blake. The IACtHR ordered Guatemala to identify, prosecute, detain, and punish those responsible for the death of the victim.¹ While not directly stated in the IACtHR decision, this type of order requires action by the domestic judiciary, as the domestic judiciary is charged with investigation, adjudication, and sentencing. In this case, the state of

¹See *Blake v Guatemala* (Reparations, 1999, para 28).

Guatemala tried, convicted, and sentenced one individual responsible for the murder of Nicholas Blake to twenty-eight years in prison.² As a second example, consider the 2009 case of González et al. (“Cotton Field”) v. Mexico, in which the IACtHR found the state of Mexico to be responsible for the disappearances and deaths of women and girls in Ciudad Juárez in 2001. The state was found responsible for failing to undertake measures to protect the victims (two of which were minors), prevent the crimes, and conduct an investigation with due diligence, despite the awareness of the presence of patterns of gender-based violence (including the murder of hundreds of women and girls) in the city.³ The Court asked the state to organize the development of prevention policies and training programs for public officials, including those involved in the administration of justice and the police. The provision of instruction in gender rights for public officials represents a task undertaken by the executive branch (Huneus, 2012). Finally, consider the 1979 case of Marckx v. Belgium in which Paula Marckx, an unmarried woman, gave birth to a daughter, and subsequently confronted a domestic legal system that places no legal bond between unmarried women and their children.⁴ As a result, the child’s inheritance rights did not stand on equal footing to those of children born to married mothers. The ECtHR charged Belgium with adopting measures to bring the position of illegitimate children in line with the status of legitimate children (Keller and Sweet, 2008).⁵ Making these types of legislative changes requires domestic legislative action, and as a result, in 1987, Belgium amended its Civil Code, allowing the Committee of Ministers to close the case in 1988.

I argue that the executive, as the final authority on human rights policy within the state, plays a primary role in regional court implementation and effectiveness. The executive faces various incentives *not* to adhere to adverse regional court decisions, largely as a result of three mechanisms: direct material costs, the potential loss of decision-making power, and the potential loss of strategic political relationships. However, the executive also faces both direct and indirect incentives to respect rights. *Direct executive incentives* include incentives rooted in international and domestic audience costs for the failure to adhere to adverse decisions of the regional court. *Indirect executive incentives* involve the executive’s expectation of adherence by other domestic actors (judges, legislators, members of civil society). When the executive expects adherence by other domestic actors, the likelihood of executive adherence rises, and consequently, the executive chooses

²See Annual Report of the Inter-American Court of Human Rights, OEA/Ser.L/V/III.54, doc. 4.

³See González et al. (“Cotton Field”) v. Mexico, 2009 Inter-American Court of Human Rights, (ser. C) No. 205, at 148 (Nov. 16, 2009). All Inter-American Court of Human Rights judgments are available at <http://www.corteidh.or.cr/casos.cfm>.

⁴In order to establish a legal connection, the mother has to undertake specific legal proceedings to recognize maternity before the law or adopt the child.

⁵See *Marckx v. Belgium* (appl. no. 6833/74), Judgment (Plenary), 13 June 1979, Series A, Vol. 31.

to carry-out and enforce the implementation efforts of domestic judges, legislators, and civil society actors. In subsequent chapters, I explore the conditions under which the executive faces direct and indirect incentives to adhere to adverse decisions of the regional court.

2.2 Defining and Explaining Regional Court Effectiveness

Before delving into the theoretical framework, I first define and explain how regional court *effectiveness* differs from *compliance*, because while similar, these concepts should not be used interchangeably. Much of the existing empirical work on regional human rights courts focuses on explaining compliance rates with supranational courts, rather than court effectiveness. Member states charge regional human rights courts with the promotion of human rights generally. For example, the American Convention on Human Rights charges the Inter-American Commission with the task of promoting respect for and defense of human rights (Article 41). *Compliance* is often conceptualized as conformity between behavior and a legal standard (Raustalia, 2000). *Effectiveness*, in contrast, represents a much broader concept and highlights the degree to which a legal rule or standard induces the desired change in behavior (Hawkins and Jacoby, 2010). Effectiveness goes beyond conformity between a specific legal rule and behavior, and better captures the domestic reception of norms generated by regional courts (Keller and Sweet, 2008). Studies examining the reception of international court decisions explore the way court decisions translate into the domestic system, including the way regional court decisions inform the decisions of all branches of government and whether the court decision was part of widespread media coverage and academia Keller and Sweet (2008, 24-26).⁶ Taylor and Kapisweski (2010) call this concept *judicial impact*, which they consider broader than compliance, because it moves beyond simply the actions or policy changes resulting from court decisions (12). Cavallaro and Brewer (2008) maintain that the role of international courts should not only involve issuing judgments in individual legal rulings, but also involve a real-world substantive impact, through interactions with the society over which it has jurisdiction, that is, courts should promote respect for human rights in the areas in which they operate (777).

Effectiveness describes the overall success of a supranational legal regime. Regional human rights courts are charged with the advancement of human rights in member states. Some scholars even claim that regard-

⁶I also make reference to regional court “*implementation*” throughout much of this chapter. The term *implementation* is often used to describe compliance (implementing specific orders), however, here I define implementation as the realization of an application or the act of accomplishing an aim. Regional court implementation efforts consist of improving respect for human rights broadly. References to domestic implementation efforts of regional court decisions, for my purposes, are associated with effectiveness of the court in realizing greater respect for rights.

less of the rate of compliance with human rights court rulings, improvement in respect for human rights represents a good indication of an effective regional court, all else being equal (Posner and Yoo, 2005, 29). Effectiveness focuses on more than simple fulfillment by member states of a series of legal obligations laid out in a document. Instead, effectiveness highlights the broad goals of the human rights regime, to further human rights efforts and improve human rights practices on the domestic level. Cavallaro and Brewer (2008) claim, “supranational courts should view individual cases that are emblematic of persistent or structural human rights problems as opportunities to stimulate broader change on the relevant issues (770).” Absent a broad focus, human rights courts function largely as a lottery in which only a small group of individuals whose cases reach the court actually obtain the benefit, while the larger majority of individuals suffering the same types of human rights violations do not. Direct litigation often translates violations of human rights into cases, placing less emphasis on the structural problems within the state (Barzilai, 2003). Also, viewed independently of others, states do not address common causes of cases and this further divides those who are oppressed (Berkovitch and Gordon, 2008).

Further, from a social scientific standpoint, effectiveness is an arguably more interesting concept to examine. In fact, Martin (2013) argues,

Identification of the causal effect of an institution requires asking a counterfactual: how would state behavior have varied in the absence of the institution? In most instances, asking about compliance provides no leverage on this question...studying patterns of compliance tells us nothing about the causal effect of institutions, which is reputedly the goal of social-scientific research (591-605).

In other words, in social science, effectiveness often represents the outcome of interest, however, due to the lack of data availability and the influence of legal scholarship, the concept of interest studied has often been compliance.⁷

Of course, for a supranational human rights court to function effectively, the state often must comply first, particularly with court orders to engage in policy change (amend, repeal, or adopt legislation) (Vanberg, 2001; Kapiszweski and Taylor, 2013). Compliance with the policy-related provisions of court judgments likely improves respect for human rights broadly. However, while compliance and effectiveness likely correlate highly and generally trend together, compliance remains neither a necessary nor a sufficient condition

⁷In fact, Martin (2013) highlights that scholars such as Simmons (2009), seek to explain compliance, but utilize variables better intended to capture effectiveness. Simmons (2009) argues for the importance of studying behavioral change as changes in behavior represent outcomes of greater substantive interest than compliance outcomes.

for a court to be effective. Raustalia (2000) argues that it is possible to have low compliance, but observe substantive behavioral changes or high compliance and few substantive changes as “compliance with treaties can often be inadvertent, coincidental, or an artifact” (391). States may choose noncompliance with parts of an adverse regional court judgment (recent research documents the relatively higher likelihood of observing partial compliance with court judgments), but states may also choose to comply with a part of the judgment requiring policy changes that are instrumental in improving respect for human rights (making *full* compliance not a *necessary* condition for effectiveness) (Hawkins and Jacoby, 2010). On the other hand, states may comply with the reparations orders that are easier to fulfill (i.e. apologizing, paying costs and expenses, moral damages), and choose not to comply with reparations orders that are more difficult to fulfill (i.e. investigating, publicizing, and punishing violators or amending, repealing, or adopting domestic laws) (Hawkins and Jacoby, 2010). In other words, compliance does not represent a *sufficient* condition for effectiveness either.

I define effectiveness as the degree to which the regional court judgment induces the desired change in behavior, in the form of improved human rights practices. I am specifically interested in whether adverse decisions of the regional court are associated with greater respect for rights within the state. Figure 2.1 shows the process from the occurrence of a human rights violation through the regional court case, and the subsequent effectiveness of that court case. First, a human rights violation is committed within a state. The victim then exhausts all domestic remedies and submits the case to the regional court. The regional court examines the case, determines admissibility, and hands down a judgment. The state then decides to what extent it will comply with the regional court ruling. Finally, the state decides to make (or not make) corresponding changes in rights practices. Effectiveness, then, represents the extent to which human rights practices change following an adverse decision of the regional court from the time the rights violation was committed. In what follows, I explain and examine the *effectiveness* of adverse regional human rights court decisions, in the form of improved human rights practices.

2.3 International Agreements and State Behavior

Ratification of, and compliance with, human rights *treaties* is not fully consistent with state compliance with regional human rights court decisions, let alone the effectiveness of regional court decisions. However, international human rights treaties and regional human rights court decisions both represent international commitments made by states to a legally binding standard of behavior with respect to human rights. Given

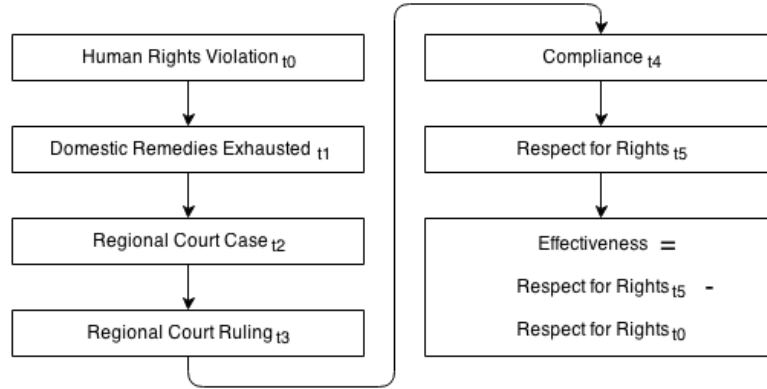


Figure 2.1: Regional Court Effectiveness Timeline

the limited research explaining compliance with, and effectiveness of, adverse regional human rights court decisions to date, the various explanations for compliance with international human rights treaties provide a theoretical foundation for explaining the effectiveness of regional human rights courts. Much of the research on compliance with international human rights agreements operationalizes compliance with international agreements as the extent to which international treaty ratification influences rights-related behavior or respect for human rights. This operationalization of compliance with human rights agreements more closely aligns with the regional court *effectiveness* concept I define above (rather than *compliance* with adverse regional court decisions), in that it examines the extent to which the adverse regional court decision promotes or improves respect for human rights (changes in state behavior). For this reason, the literature on compliance with international human rights agreements provides important theoretical explanations for state behavior related to respect for human rights and hints at potential mechanisms likely to explain the effectiveness of the regional court.

Expectations regarding the level of compliance with international agreements are generally associated with four factors; selection, management, domestic political institutions, and political mobilization. First, some scholars argue that high compliance is the result of a selection effect, in which states that enter into international agreements are those that are compliant with the treaty *ex ante*, leading to little change in behavior following treaty commitment (Downs, Rocke and Barsoom, 1996). Second, others argue that managerial issues are a primary cause of noncompliance with international treaties (Chayes and Chayes, 1993). Management problems include ambiguity in treaty language, lack of technical capacity to implement the

treaty, or treaty provisions that are too ambitious to implement, among numerous other issues. One implication of these explanations is that states are sincere in their decisions to ratify international agreements; they intend to comply with the international treaties they ratify. States either demonstrate an intention to comply by ratifying treaties with which they are already in compliance (or shallow commitments), as Downs, Rocke and Barsoom (1996) argue, or intend to comply, but lack the capability, as argued by Chayes and Chayes (1993).

However, Downs, Rocke and Barsoom (1996) offer only a partial explanation of observed ratification and compliance behavior. Specifically, they explain why states that sincerely⁸ ratify treaties are likely to respect human rights following ratification; namely, states ratify only international agreements containing provisions with which they are already compliant. Likewise, Chayes and Chayes (1993) also offer only a partial explanation of observed state behavior related to treaty ratification. They only explain ratification of treaties by sincere states and the ability to comply depends on managerial issues. Table 2.1 shows the partial explanations of state behavior following treaty commitment offered by Downs, Rocke and Barsoom (1996) and Chayes and Chayes (1993) with respect to compliance with international agreements. Neither argument explains the lack of ratification by rights-respecting states, nor do they explain ratification by insincere states, those that ratify international agreements with no intention to comply.⁹ The problem with these partial explanations is mainly that we observe countries that are largely in compliance with international agreements failing to ratify treaties that would require little change in behavior (Simmons, 2009).¹⁰ We also observe states ratifying treaties with which they have no intention to comply, particularly dictatorial regimes that find ratification relatively costless (Hathaway, 2007; Vreeland, 2008).

While the argument made by Downs, Rocke and Barsoom (1996) focuses on explaining high compliance by states that sincerely ratify international agreements, Chayes and Chayes (1993) explain both states that sincerely ratify and respect rights and those that sincerely ratify and violate rights (those states that intend to comply, but do not comply in practice). They argue that we will observe both sincere ratifying states respecting rights and sincere ratifying states violating rights because some states have a relatively greater capacity to implement a treaty, a treaty is relatively more or less ambiguous, or another managerial problem inhibits a state's ability to respect rights. However, Chayes and Chayes (1993) do not explain compliance

⁸Simmons (2009) defines sincere ratifiers as those that value the content of the treaty and anticipate compliance (58).

⁹Simmons (2009) identifies these ratifiers as strategic ratifiers, or those states that "trade off the short-term certainty of positive ratification benefits against the long-run and uncertain risk that they may face compliance costs in the future" (58). Reasons for ratification may include avoiding criticism, diplomatic rewards, co-opting domestic groups or appeasing international audiences.

¹⁰For example, the United States has yet to ratify the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) even though the principles enshrined in CEDAW are largely consistent with those in U.S. law (Halberstam, 1997).

(or lack thereof) by states that insincerely ratify treaties, or states that choose not to ratify treaties. Further, Chayes and Chayes (1993) argument predicts noncompliance in the face of managerial problems, however, the observed behavior of sincere ratifiers facing managerial problems (noncompliance) is identical to the observed behavior of insincere ratifiers that do not comply as a result of uncertainty about the future consequences of ratification (noncompliance). The latter behavior happens when governments ratify treaties not expecting to be held accountable, but their insincerity may be exposed domestically or internationally and the government may be held accountable for their treaty commitments (Simmons, 2009). As a result, insincere states may commit to international law with little intention to comply, but end up being held accountable regardless. Both types of states do not comply, but it is unclear exactly what mechanism is at work in explaining this behavior.

Table 2.1: Selection and Management Arguments: Expectations Regarding Compliance with International Agreements

	Respect Rights	Violate Rights
Sincere Ratifiers	Downs, Rocke and Barsboom (1996) Chayes and Chayes (1993)	Chayes and Chayes (1993)
Insincere Ratifiers		
Nonratifiers		Downs, Rocke and Barsboom (1996)

In addition to the lack of observed behavior explained by the selection and managerial arguments, extending the argument made by Downs, Rocke and Barsboom (1996) to compliance with adverse regional court judgments is problematic because a judgment handed down by a regional court is a clear censure for violation, even for states that are generally compliant (Hillebrecht, 2009). States accepting the jurisdiction of regional human rights courts recognize that they have the potential to be censured by the court for failure to comply with their international obligations. Unlike many international agreements, states recognizing the jurisdiction of regional human rights courts (specifically the ECtHR and the IACtHR) authorize an individual complaints mechanism for victims of human rights violations domestically, even those states that generally respect rights.¹¹ Also, once the regional court renders an adverse decision against the state, the

¹¹International agreements often allow for monitoring by an international body, but generally, do not allow for an individual complaints mechanism.

court expects the state to remedy the violation, through the fulfillment of reparations orders, including tasks such as the payment of reparations or policy change, and the regional court monitors the state's actions in this regard. A censure by a regional court is a clear legal statement of a violation, not simply a monitoring report regarding state compliance. Contrary to the expectations of Downs, Rocke and Barsboom (1996), an adverse decision by a regional court, requires the state to make specific changes, even states that are, on average, rights-respecting states.¹² Further, numerous rights-violating states are members of both the IACtHR and the ECtHR and as a result, judgments handed down often require significant changes in behavior. Consider the membership of the Inter-American human rights system. Throughout its history, the IACtHR largely consisted of states with relatively weak domestic political institutions, including authoritarian regimes and transitional democracies. Many IACtHR members have been some of the most egregious rights violators and have engaged in large-scale human rights violations. As a result of large-scale violations and weak political institutions, many members of the Inter-American human rights system often require systemic or structural changes to remedy violations found by the IACtHR (Cavallaro and Brewer, 2008). In addition, the early European system primarily confronted isolated cases of human rights abuse, typically involving arrest and detention, as well as the fair administration of justice (Pasqualucci, 2003, 5). Despite this initial success, the addition of various new members in the 1990s, including many former Soviet bloc states changed the social and political context in which the court operates.¹³ Not only do these states have weaker democratic institutions than the founding members, but the rights violations in these new member states are not minor or unintentional violations of the ECHR. Instead, many of these new member states exhibit gross and systematic violations of human rights, requiring systemic structural and institutional remedies. Compliance with the ECtHR changed dramatically with the addition of Turkey, Italy, Bulgaria, and Romania, which together contribute half of the long term pending cases (more than 2 years) before the Committee of Ministers (Hawkins and Jacoby, 2010, 70). Based on these observations, states do not appear to join the

¹²Downs, Rocke and Barsboom (1996) would argue that some states may never expect to be brought before the regional court, and as a result, never to be found in violation nor be ordered to change behavior. However, because the regional court contains an individual complaints mechanism, it is arguably more likely that states will be found in violation of regional conventions associated with the regional court and held accountable than with an international human rights treaty which is only broadly monitored. In other words, the costs of accepting the jurisdiction of the regional court are arguably, relatively higher than the costs associated with implementing a human rights treaty.

¹³Member states as of 2014 include: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russia, San Marino, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Macedonia, Turkey, Ukraine, and the United Kingdom.

membership of these regional human rights systems with the expectation that membership will require little change in behavior.

Given that both Downs, Rocke and Barsoom (1996) and Chayes and Chayes (1993) offer only partial explanations for the observed behavior of states, their failure to explain the wide variation in state behavior related to compliance with international agreements, and the difficulties in extending their arguments regarding international agreements to compliance with regional courts, looking elsewhere for explanations regarding the effectiveness of regional human rights courts proves useful. What, then, can more fully explain the observed variation in state behavior following an adverse regional human rights court decision?

Domestic politics, particularly domestic political institutions, provide a more compelling explanation for the effectiveness of international human rights law (Hathaway, 2005; Neumayer, 2005; Hathaway, 2007; Powell and Staton, 2009; Simmons, 2009; Vreeland, 2008; Cingranelli and Filippov, 2010; Hill, 2010). Commitment to international treaties is largely influenced by state expectations regarding enforcement (Hafner-Burton and Tsutsui, 2007; Guzman, 2008). Given the absence of effective international enforcement mechanisms in many international human rights agreements, domestic politics influences state expectations regarding enforcement. Domestic political institutional arrangements represent powerful predictors of compliance with human rights agreements because they can constrain or facilitate state action related to respect for human rights. For example, domestic judicial effectiveness plays a major role in commitment to and compliance with international human rights agreements because the domestic judiciary represents the primary means of enforcement for international agreements (Alter, 1996; Neumayer, 2005; Hathaway, 2007; Von Stein, 2008; Powell and Staton, 2009; Simmons, 2009). In other words, a domestic political environment characterized by an effective judiciary makes international treaty ratification relatively costly because states expect domestic enforcement.¹⁴ The presence, strength, and effectiveness of domestic institutions explains much more of the variation in state behavior related to compliance with international agreements than either the selection or managerial thesis. For example, both Powell and Staton (2009) and Simmons (2009) explain why non-rights-respecting states will ratify treaties (insincere ratifiers). Insincere ratifiers with relatively ineffective judiciaries may choose to ratify because they pay little cost upon ratification, do not expect the treaty to be enforced domestically, and as a result, the treaty is unlikely to constrain their behavior. Arguments associated with domestic judicial effectiveness also explain why rights-respecting

¹⁴See Simmons (2009) for more on judicial institutions. Specifically, Simmons (2009) argues that common law systems, which emphasize judge-made law through precedent and judicial independence from the government provide incentives for governments to avoid treaty ratification.

regimes choose not to ratify; these states expect the treaty to constrain their behavior because it is likely to be enforced domestically. As another example, consider Vreeland (2008) who explains the role that domestic institutions play with respect to sincere ratifiers. Specifically, he argues that sincere ratifiers violate rights in dictatorships in the presence of particular domestic institutions, that is, dictatorships with multiple political parties are more likely to ratify the Convention Against Torture because alternative political views are allowed and ratification is a relatively cheap way to co-opt constituents into the regime. However, some individuals will go too far, and the regime will engage in rights violations (namely, repression). Table 2.2 shows the substantial variation in state ratification and compliance behavior explained by focusing on the mediating role of domestic institutions.

Table 2.2: The Influence of Domestic Institutions: Expectations Regarding Compliance with International Agreements

	Respect Rights	Violate Rights
Sincere Ratifiers	Powell and Staton (2009) Simmons (2009)	Vreeland (2008)
Insincere Ratifiers	Powell and Staton (2009) Simmons (2009)	Powell and Staton (2009) Simmons (2009)
Nonratifiers	Powell and Staton (2009) Simmons (2009)	Powell and Staton (2009) Simmons (2009)

Hillebrecht (2012) extends the argument regarding domestic institutions and treaty compliance to compliance with the IACtHR. Specifically, she argues that strong domestic institutions provide channels for compliance. According to Hillebrecht (2012), domestic institutions also provide a screening mechanism that separates states committed to protecting human rights from uncommitted states. This allows states to send a credible signal of their commitment to human rights to both domestic and international audiences. She argues that states desire to send credible signals of commitment to respect for human rights because domestic constituencies are increasingly demanding respect for human rights and the failure to comply threatens the electoral prospects of leaders. While focusing on the electoral incentives of domestic actors to comply with international court decisions is promising, Hillebrecht (2012) does not adequately explain the causal process that generates compliance with regional court decisions. There is little discussion as to when the public will hold elected officials accountable, which domestic actors are charged with implementing

regional court judgments, or whether all domestic actors charged with implementation have incentives to adhere to adverse regional court decisions.¹⁵

In addition to domestic institutions, pro-rights political movements are found to have a substantial influence on the effectiveness of international treaties. International treaties directly influence the value individuals place on rights and the likelihood of mobilization success (Simmons, 2009). Nongovernmental organizations (NGOs) work to raise the rights consciousness of the public, particularly regarding the rights enshrined in international treaties. Human rights treaties contain information used by transnational actors, such as political elites, human rights lawyers, activists, and others to educate individuals regarding their rights. Domestic and international NGOs raise awareness through “naming and shaming” tactics designed to call out violators in the international arena (Clark, 2001; Franklin, 2008; Richards, Gelleny and Sacko, 2001). As individuals become increasingly aware of their rights, the value they place on rights grows. Further, international treaties provide citizens not only with information, but also with opportunities to pressure their governments through political mobilization (Simmons, 2009). This often raises the expected likelihood of the success of mobilization (Merry, 2006; Simmons, 2009). Ratified treaties increase the likelihood of success of mobilization by pre-committing the government to be open to group demands, increasing the involvement of legal interests, increasing the legitimacy of pro-rights demands, and increasing the number of strategies that can be used by demanders (Simmons, 2009; Hill, 2012). Domestic pro-rights mobilization also explains substantially more of the observed variation associated with compliance with international treaties than do Downs, Rocke and Barsoom (1996) or Chayes and Chayes (1993). For example, Simmons (2009) explains why insincere ratifiers may actually respect rights (comply). Generally, a state may ratify an international treaty with little intention to comply, but because newly ratified treaties reveal new information to citizens regarding the government’s commitment to rights, and in turn, raise the rights consciousness of domestic groups and organizations, governments may be pressured to comply. Because the government is precommitted to be receptive to the rights enshrined in the ratified treaty, domestic activists place increased pressure on the government to respect rights, which may lead an insincere ratifier to respect rights. However, the likelihood that the government is pressured to comply is also conditional on domestic institutions, institutions that facilitate the ability of activists to place pressure on the government. Given that domestic politics, including domestic actors and the institutions they inhabit, explain much more of the observed vari-

¹⁵Hillebrecht (2012) argues that compliance results when the executive has the “political will” to set a compliance agenda and build a coalition of other domestic actors to engage in compliance behavior. The executive possesses political will to set a compliance agenda in order to set the human rights agenda nationally and consequently make reputational and material gains (967).

ation in treaty compliance, I focus on the importance of domestic politics in explaining the effectiveness of adverse regional human rights litigation.

2.4 The Regional Court

Because they represent the final arbiter in cases brought against the state, regional court judges constitute key actors for ensuring the effectiveness of adverse regional court decisions. Primary among their interests, regional court judges aim to maintain or enhance the legitimacy of the regional court (Voeten, 2012). Absent a perception of regional court legitimacy, the regional court wields little to no power in domestic implementation of its decisions.¹⁶ A legitimate court “commands acceptance and support from the community so as to render force unnecessary” (Cox, 1976). Regional court judges hold a strong interest in maximizing their power (autonomy and effectiveness) in order to enhance the legitimacy of the court.¹⁷ Regional court judges, concerned about the legitimacy and support for the institution within which they serve, seek to ensure their decisions are implemented domestically. More specifically, they aim to secure compliance with their rulings, particularly changes in state behavior, including domestic systemic and structural reforms. The regional court gains legitimacy as an international actor when it possesses power, or asserts influence over the decisions of domestic actors.

A powerful court is both autonomous and effective (Staton and Moore, 2010). First, to be autonomous, regional court judges must ensure freedom from external political influence. Regional courts face external political influence when state governments influence regional court decision-making. One primary means of state influence involves the careers of judges (Voeten, 2012, 17). Regional court judges are typically nominated by their home governments and elected by the regional governing body (i.e. Organization of American States). Voeten (2009) argues that state influence in international court decision-making may result from (1) states selecting judges with the expectation that judges will rule in the interest of the state or (2) governments using some form of sanctions and rewards to generate incentives to rule in the interest of the government (388). Regional court judges’ concern for their careers opens the door to the potential for highly political appointment / election processes in which regional court judges represent the interests of their home country (Posner and Figueiredo, 2005). Further, empirical evidence indicates that regional court justices may fear reappointment concerns for dissenting opinions (Voeten, 2009). However, regional courts

¹⁶Current scholarship highlights the importance of legitimacy for domestic implementation of international law. See Abbott and Snidal (2000); Franck (1990); Chayes and Chayes (1993); Simmons (1998).

¹⁷Judicial power is discussed in more detail below.

can achieve autonomy from state influence through institutional design. First, founding documents charge regional courts with the appointment of international civil servants. For example, seven independent judges compose the IACtHR. The American Convention charges regional court judges with international civil service; in other words, despite the fact that regional court judges include nationals of OAS member states, they must not represent their home state (Pasqualucci, 2003, 10). In addition, ECtHR judges are nominated alongside two other candidates by their home states and are elected to nine-year non-renewable terms (as of the adoption of Protocol 14 in 2010) by majority vote in the Parliamentary Assembly of the Council of Europe. The adoption of the fixed non-renewable terms provides ECtHR judges substantial autonomy from the influence of their home states, as reelection concerns do not plague judicial decision-making in the regional court. IACtHR judges are elected by the OAS General Assembly to six-year terms, with the option of a one-term renewal. While the IACtHR offers the option for renewable terms, IACtHR (and ECtHR) judges are not elected directly by their home governments, indicating that they remain accountable to constituents concerned with the advancement of human rights within the region, and not solely to constituents of their home state.

These institutional design features do not necessarily ensure autonomy, in fact, Voeten (2007) finds that governments aspiring to European Union membership appoint more activist judges to the ECtHR. Even if institutional design features, such as the judicial appointment process, only minimally constrain the actions of judges, empirical evidence indicates that international court justices behave strategically in order to ensure their autonomy. First, international (or regional) court judges operate autonomously when they partner strategically with powerful domestic courts (Alter, 2009; Staton and Moore, 2010) and second, international court judges gain autonomy when they operate in the midst of a vibrant civil society (i.e. NGOs, advocacy networks) and anticipate mobilization from civil society actors in response to their decisions (Cichowski, 2007, 2010; Alter and Helfer, 2010).¹⁸

The second characteristic of a powerful judiciary, effectiveness, requires that states actually implement adverse decisions of the regional court (Helfer and Slaughter, 1997).¹⁹ To achieve effectiveness, the regional court must secure domestic compliance by convincing domestic governmental actors to implement regional court decisions or convincing nonstate actors (domestic or international) to pressure the state to adhere to

¹⁸Staton and Moore (2010) provide a nice discussion of the role of “judge-centered arguments” to explain the independence of international judicial actors. They contrast these arguments with delegation-centered arguments (judicial power rooted in state delegation of judicial review authority to judges) and external arguments (those rooted in formal appointment rules and procedural rules).

¹⁹See Kornhauser (2002) for more on judicial autonomy and Helfer and Slaughter (1997) for more on judicial effectiveness.

an adverse decision. To reiterate, regional court judges' primary interest involves maximizing their power (autonomy and effectiveness) in order to enhance the legitimacy of the court. By enhancing legitimacy, concerns associated with enforcement of adverse regional court decisions decline because regional court judges expect adherence and support for their decisions. As a result, achieving and maintaining legitimacy and power proves to be vital for regional courts to influence member state's broader human rights policy.

Of course, achieving and maintaining the legitimacy or power of the regional court proves considerably difficult as the regional court faces significant limitations in its ability to compel states to comply and states have incentives to evade adverse regional court decisions. More specifically, the regional court faces limitations associated with the lack of enforcement capability, the location of the court (on the regional, rather than state, level), and resource limitations. First, like domestic courts, the regional court lacks an enforcement capability; the regional court possesses no effective mechanism to enforce its judgments (Pasqualucci, 2003). Instead, it must rely primarily upon states to implement its decisions.²⁰ The regional court can order the state to pay reparations, to adopt, repeal or amend domestic law, to identify and punish perpetrators of rights violations, or to undertake symbolic actions, such as apologizing to victims or their families, among numerous other orders. States often engage in partial compliance, undertaking some of these orders, while ignoring others (Pasqualucci, 2003; Hawkins and Jacoby, 2010). The regional court possesses little recourse when its orders are not fulfilled on the domestic level; it does not enjoy concrete enforcement mechanisms. Instead, the regional body relies on state concerns for international reputation, including the fear of bad international publicity when states fail to adhere to an adverse regional court judgment (Guzman, 2008). However, in cases where the state may not draw sufficient international attention necessary to ensure adherence or the state possesses other interests that trump regional court concerns, regional courts hold few options to ensure their decisions are implemented. In these cases, continued evasion of regional court implementation damages the court's legitimacy internationally (Voeten, 2012).

Second, regional courts also suffer from limitations not typically associated with domestic courts. Regional judges face a classic information asymmetry problem; their location places them in a physical and social position relatively far removed from the political and social context of the countries where they make recommendations and issue advisory opinions and judgments. Cavallaro and Brewer (2008) highlight this problem by arguing, "this potential remoteness [of regional court justices], combined with the possibility of

²⁰Below, I argue that domestic actors, particularly the executive, are important for domestic adherence to adverse decisions of the regional court. The executive represents an actor of central importance as the executive is the actor most centrally engaged in rights-related policies.

challenges to their authority, underscores the need for such tribunals to monitor the concrete factors working both for and against human rights in respondent states and to evaluate whether and how they can respond to these factors while maintaining their fundamental identity as impartial judicial bodies” (770). Regional court judges often render adverse decisions and judgments against states with domestic legal and institutional structures with which they are relatively unfamiliar (Cavallaro and Brewer, 2008). Further, regional justices typically remain ill-informed regarding the public sentiment associated with particular cases and the domestic reception of adverse regional court rulings by the public and civil society actors. As a result of this limitation, scholars point to the necessity of building support from the public and other substate actors (Cavallaro and Brewer, 2008; Cichowski, 2004; Alter and Helfer, 2010).

Finally, the regional court often suffers from significant resource limitations and high costs of implementation. Specifically, the Organization of American States (OAS) represents the primary funding mechanism for the IACtHR, yet significant underfunding of the IACtHR results in a shortage of staff attorneys and numerous other problems. To add to the problem, the number of legal staff needed in the Inter-American system fails to keep pace with rising caseloads.²¹ Further, implementation of court decisions, particularly the systemic and structural changes required for effectiveness, carries substantial costs. Consider the case of *Myrna-Mack Chang v. Guatemala*, where the regional court ordered Guatemala to prosecute and punish perpetrators responsible for violating the rights of the defendant. The IACtHR determined that the state of Guatemala failed to fulfill this order in part because it could not find the perpetrators, a task well beyond the resources of the state (Hawkins and Jacoby, 2010, 81). The IACtHR often lacks the resources necessary to ensure state adherence of its decisions, and consequently, the broader effectiveness of the court. In a similar vein, the ECtHR continues to face significant growth in activity, placing a strain on court resources. In fact, the rising case load “threatens to overwhelm the court” (Keller and Sweet, 2008).²² The regional court judge interest in maintaining the legitimacy of the court coupled with the significant limitations placed on the institution and the actors within the institution, often lead to strategic behavior on the part of regional court judges.²³ In other words, regional judges utilize their (limited) resources where court resources prove

²¹Most judges have full-time positions in their countries of residence and must travel to fill their seat on the regional court when needed (Pasqualucci, 2003). Further, voluntary funding often results in conditions on its use, including requiring that the money finance specific projects, and not the ordinary expenses of the court, such as salaries and operations (Pasqualucci, 2003, 347).

²²Resource limitations in the ECtHR played a detrimental role to the Court’s effectiveness prior to 1998, which led to the adoption of Protocol 11. This protocol abolished the European Commission of Human Rights and established the Court as a full-time body. While the ECtHR arguably faces fewer resource limitations than the IACtHR, it is still plagued by rising case loads and limited resources.

²³See Vanberg (2005); Staton and Vanberg (2008); Voeten (2009) for further discussion regarding the strategic behavior of domestic and international court judges.

relatively more likely to improve respect for human rights. How do regional court judges determine where their decisions will likely be most effective in changing state behavior with respect to human rights? Regional court judges expect their decisions to be most effective in changing state behavior when domestic actors possess incentives to adhere to their decisions.

2.5 Executive Incentives to Implement Adverse Regional Court Decisions (Respect Rights)

2.5.1 Executive Implementation

The executive represents an actor of primary importance for the effectiveness of the regional court, playing an important role in regional court effectiveness at two stages. First, the executive influences the effectiveness of the regional court through compliance with the regional court decision. The regional court may issue orders directly tasking the executive with implementation. For example, the IACtHR often issues injunctive orders charging the executive with taking action.²⁴ Injunctive orders directed at the executive include “tasks as varied as issuing a formal state apology, erecting a memorial, requiring hundreds of state officials to attend courses on human rights and setting up a DNA database to help identify victims.” (Huneus, 2012, 124). Hawkins and Jacoby (2010) find that states comply most often with these types of injunctive orders when issued by the IACtHR. For example, of the 31 compliance orders for which the court charged states with issuing an apology, states complied 40% of the time, but only complied with orders to amend or adopt new legislation (generally tasked to the legislature) at a rate of 7% and complied at a rate of 19% with orders to investigate, identify, publicize, and punish perpetrators (generally tasked to the judiciary). Hawkins and Jacoby (2010) argue that higher rates of observed compliance with the injunctive orders tasked to the executive are a consequence of the relatively low costs of compliance; they argue

it is probably easiest for the state to pay monetary damages or apologize and walk away...although the monetary cost for such damages can be higher than some of the other actions required of states, monetary costs probably do not require as many political capital expenses, coordination efforts, or reputational expenses as some of the other types of reparations. (59).

However, Huneus (2012) argues that injunctive orders given to the executive do not always entail “easy” tasks or tasks less difficult to implement than those given to other actors. The executive (and public ministry)

²⁴Regional court orders make specific requests of the state, but they do not indicate which state actors are charged with fulfilling those requests, that is, they do not name the actor charged with implementation. However, given the content of any specific injunctive order, one can determine which state actor the court charges with implementation (Huneus, 2012).

may be charged with the exhumation of disappeared victims or training state agents in human rights. As a result, one cannot assume executive tasks to be inherently easier to implement, nor assume that they manifest in lower levels of state human rights violations than orders tasked to other state actors.

Second, the executive also plays an indirect role in regional court effectiveness at the final stage of implementation, through the decision to carry-out a policy of respect for rights. The executive represents the final policy authority related to respect for human rights and respects rights largely through monitoring and sanctioning executive branch actors and state agents. The executive includes the leader and the various bureaucrats and state agents under his/her control. The leader, or principal, determines and sets forth the policy on rights, or the tactics to be used by agents under the executive employ. These policies typically result from the level of threat generated by the opposition and institutional constraints (Mitchell, 2004). The principal's primary motivation, political survival, drives the decision of the executive to adhere to adverse decisions of the regional court. Mitchell (2004) argues, "Power is the principal's goal, repression is a tool to achieve and maintain power, ratcheting up and down to counter the opposition's moves..." (33). In other words, organized dissent poses a threat to the legitimacy of the executive (Davenport, 1995). Repression is a tactic commonly used by the executive to deter or eliminate dissent (Davenport, 2007a; Earl, Soule and McCarthy, 2003; Tilly, 1978). As a result, the executive carefully considers costs associated with adherence to adverse regional court decisions, including whether adherence to the decision is likely to impact the ability to rely on repressive behavior and policies in the future. The executive decision to adhere to adverse regional court decisions through instituting a policy of respect for rights largely depends on the costs (both domestic and international) associated with adherence to the regional court decision. In what follows, I focus primarily on executive incentives to set and carry-out a policy of respect for rights following an adverse decision of the regional court because these incentives influence executive behavior related to respect for rights, and thus, regional court effectiveness.

2.5.2 Executive Non-Implementation Incentives

Executive interests in maintaining power and control generate incentives *not* to adhere to adverse decisions of the regional court. Incentives not to implement regional court decisions include material costs, loss of decision-making power, and strategic political considerations. First, regional court orders tasked to the executive branch often entail extensive material costs. Injunctive orders may require extensive delegation to a large number of bureaucrats, including various state agencies across the political system. For example, IACtHR orders sometimes charge states responsible for extrajudicial executions to exhume victim's bodies,

return them to the family, and pay for burial expenses (Pasqualucci, 2003). In the case of *Villagran Morales et al. v. Guatemala* or more commonly termed *The Street Children Case*, Guatemalan state agents dumped the bodies of tortured victims in an uninhabited area of Guatemala. The Court ordered the State to return the body of tortured victim, Henry Giovanni Conteraras, to his mother, Ana Maria Conteraras at no cost to the family (Pasqualucci, 2003). One of the IACtHR compliance monitoring documents (2003) reports that the state attempted to demonstrate compliance by conducting a symbolic burial ceremony for Henry Giovanni Conteraras “alleging that it would be very expensive to find and transfer his remains, owing to the time that had elapsed since they were deposited to a common grave.”²⁵ The IACtHR can also order the state to provide training in human rights to its police and military personnel. Programs may include training to help state agents identify and utilize appropriate interrogation techniques and educate law enforcement and security personnel on human rights standards. These programs may be costly to implement, and often require the extant support of NGOs, NHRIs, community-based organizations, and other human rights experts to fully implement (Delaplace and Pollard, 2006). Further, state agents under executive branch control often possess private or opportunistic incentives (i.e. wealth, survival) that drives repressive behavior (Mitchell, 2004). State agents often maintain a significant informational advantage over the principal because agents carry out policy in the field. The agents may choose to withhold certain pieces of information from the principal, particularly information regarding actions carried out in the field that do not coincide with the principal’s delegated policy. The executive branch often faces significant information asymmetries. Increased monitoring and auditing of agent activities in the field help to alleviate some of these principal-agent problems, however, these types of monitoring programs entail high costs. Executive implementation of regional court decisions often entails extensive material costs, including increased monitoring of state agents and ensuring that state agents comply with executive policy and/or reforms.

Second, adhering to an adverse decision of the regional court may significantly reduce the decision-making power of the executive. By adhering to adverse regional court decisions, the principal often removes the ability to readily rely on some of the repressive policies and tactics currently in his/her arsenal and may have to change long-held repressive policies. Methods of repression vary across states, with some states engaging in particular types of rights violations more than others. The executive often engages in repression in response to domestic threats, particularly internal dissent (Gurr, 1988; Davenport, 1995; Moore, 2000). The executive values these tools as a means to maintain power or remain in office, so much so, that even

²⁵See *Villagran Morales et al. v. Guatemala (The Street Children Case)* (Compliance with Judgment, Nov. 27, 2003), para. 3.

the presence of particular democratic institutions have little effect on repressive policies when faced with violent internal dissent (Davenport, Moore and Armstrong, 2007; Conrad and Moore, 2010). In adhering to an adverse regional court decision, the executive must consider removing or halting the use of the particular tactics for which the state has been implicated by the regional court. This is problematic for the executive because leaders may choose repressive tactics based on their costliness. The financial expenses related to different types of rights violations make some tactics more cost effective.²⁶ As a result, leaders may choose repressive tactics that provide the highest utility, that is, the least costly method that allows the executive to obtain his/her goals. However, when a regional court rules against a state for a rights violation, the regional court engages in a shaming tactic, shining a spotlight on the human rights abuse. Conrad and DeMeritt (2011) argue that “international attention for one form of human rights abuse increases leaders’ costs for continuing that type of abuse, but does not affect the costs for other forms of repression,” and as a result, the leader may have to reduce (or eliminate) the use of some types of repressive tactics (often those that are less costly) when shamed by the regional court (10). An adverse decision found by the regional court often provides a good indication of much more systematic human rights violations. By implementing a regional court decision, the executive claims state responsibility for the human rights violation and by bringing to light the violation found by the regional court, the executive may remove his ability to engage in this type of violation (or repressive policy employing this type of violation) in the future. For example, in the case of *Trujillo Oroza v. Bolivia*, the Court ordered Bolivia to pass legislation to make forced disappearance a crime.²⁷ This legislation presents an obstacle (and increases the cost) for the executive to use forced disappearance as a repressive policy tool in the future.

Finally, the executive may face a loss of strategic political relationships as a result of adherence to an adverse regional court decision, including alienating key political allies (Hillebrecht, 2012, 969). Executive implementation potentially has the effect of implicating particular actors whom the executive (or other governmental actors) might prefer to protect or insulate from responsibility for human rights violations (Huneus, 2012; Tan, 2006). By accepting responsibility and engaging in regional court implementation, the executive might implicate agents under executive control. The principal maintains varying degrees of control over state agent behavior across states (Mitchell, 2004). State agents with the motivation and opportunity to engage in repressive activity are more likely to do so when they are further isolated from executive

²⁶Conrad and DeMeritt (2011) argue that the costs associated with repressive tactics vary. It may be expensive to imprison individuals, which require extensive resources, such as food, water, and prison guards, etc. On the other hand, extrajudicial killing may be less expensive, requiring fewer resources.

²⁷See *Trujillo Oroza v. Bolivia* (Reparations 2002), para. 98. operative para. 2.

control.²⁸ As a result, the greater degree of discretion granted to state agents by the principal, the greater the opportunity for agents to engage in repression. When the regional human rights court renders an adverse judgement against the state, executive adherence involves the acceptance of responsibility for the human rights violation, regardless of whether the human rights violation was a result of principal-agent problems or a matter of delegated executive policy. The executive potentially faces significant audience costs from domestic constituents through the acceptance of responsibility, alienating key political constituents. Hillebrecht (2012) argues, “constituents expect that political elites uphold basic human rights, and they are willing to express their expectations in the media and in the voting booth” (969). Executive acceptance of responsibility and adherence to adverse decisions of the regional court represent a particularly costly task and a potential threat to the political survival of the executive.

For example, in Peru, President Alan Garcia voiced his lack of support for the IACtHR taking cases involving human rights violations committed during his first term. Specifically, in June 1986, state agents summarily executed 118 prisoners in El Fronton, a maximum security island prison off the coast of Lima. The executions took place during the first term of President Alan Garcia, who held office again from 2006-2011. In 2000, the IACtHR found the state in violation of the ACHR. When legal charges were brought against Peruvian officials in 2007, those accused claimed that the statute of limitations expired in 2006. The IACtHR urged the Peruvian state to reopen the case in 2007, ruling that the statute of limitations did not apply, as the crimes committed represented crimes against humanity. The IACtHR also urged a reopening of the investigation into the “intellectual authors” of the crime - President Garcia and other state officials. However, in May 2007, the Attorney General’s Office threw the case out arguing insufficient evidence to prove any responsibility (Paez, 2008). In the case, the executive engaged in evasion of the adverse regional court order by pressuring the state (in this case the judiciary) to not reopen the case, primarily because the current administration would be held responsible for past human rights abuses.

2.5.3 Generating Executive Implementation Incentives: Threats to Executive Political Survival

Direct Threats to Political Survival. For the regional court to be effective, the executive must employ a policy of respect for rights. Cardenas (2007) claims, “which actor wins a domestic battle over state compliance may in the end have more to do with who has the greatest institutional power than who is committed most firmly to an international norm” (13). I argue that without the appropriate executive incentives, the

²⁸This is termed “moral hazard” by Mitchell (2004), or the unobserved actions of the agents.

regional court is unlikely to be effective (improve respect for rights). The executive faces various *direct* and *indirect* threats to political survival, which generate incentives for executive adherence to adverse regional court decisions. *Direct* threats include *international* and *domestic* pressure on the executive to engage in implementation. The executive “has a direct interest in showing both to the world and the voters that the government, and the president in particular, respect human rights” (Huneus, 2012, 129). The executive may pay a higher shaming cost than other domestic political actors as a result of the position of this institution on the world stage. As a result, the executive reaps reputational benefits by fulfilling court orders and engaging in behavioral changes associated with regional court orders (Hillebrecht, 2012). When are these incentives most likely to be at play? That is, under what conditions does the executive pay the highest international and domestic costs for the failure to adhere to adverse regional court decisions?

First, direct *international* costs arise because an adverse decision of the regional court represents an international shaming tool and the state faces costs when failing to adhere to a decision of the regional court. Given that shaming for violations of human rights does not incur material costs, the cost imposed on the state are largely reputational. The executive faces the brunt of these costs, given that the executive plays the most prominent role on the international stage of any state actor and the executive is primarily responsible for respect for rights. International publicity for human rights violations places the state in the international spotlight for the failure to adhere to international human rights norms and commitments. Research shows substantial variation in state response to international shaming. State response to shaming is largely conditional on various factors, including the types of rights for which the state is shamed (Hafner-Burton, 2008), whether the state is a foreign aid recipient (Lebovic and Voeten, 2009), and whether human rights violations are linked to foreign direct investment or international trade (Richards, Gelleny and Sacko, 2001; Hafner-Burton, 2005; Blanton and Blanton, 2007), among other factors. This negative publicity from the regional court often leads to reputational costs and negative externalities that states seek to avoid.

Second, the executive also responds to a domestic audience, which depending on the presence of particular domestic institutions, constitutes an audience more or less important than the audience in the international realm for executive decision-making in response to adverse regional court decisions (Hillebrecht, 2012). The domestic constituents of the executive demand respect for human rights as they “find support for human rights to be critical for democracy...and identify national governments as the duty-bearers of human rights” (Hillebrecht, 2012, 969). To reiterate, the executive’s primary motivation entails political survival and office retention (Bueno de Mesquita et al., 2005). As a result, a domestic environment conducive to

voters holding the executive accountable for human rights violations (including possible evasion of adverse regional human rights court decisions), also represents an environment in which the executive signals a commitment to human rights to his or her domestic audience. Under what conditions do voters hold the executive accountable for human rights violations? Citizens can hold the executive accountable when they can credibly threaten removal from office and executive job security is relatively low. In order to survive in office, the executive often provides public goods which benefit his/her constituents. Because voters value respect for human rights as well as the legitimacy of the regional court, executive evasion of adverse regional court decisions is costly. Hillebrecht (2012) asserts the importance of domestic support and executive office retention in stating, “regular coverage of the Inter-American human rights tribunals in local newspapers and the engagement of domestic civil society groups with the Commission and Court suggest that audiences at home are paying attention to how their elected officials respond to the tribunal’s rulings” (969).²⁹ The executive can signal a commitment to respect human rights by adhering to an adverse decision of the regional court and adopting a policy of respect for rights. In addition to the voter threat to political survival (vertical accountability), the executive also faces a direct threat as a result of the presence of institutional constraints (horizontal accountability). Where the executive is constrained by other domestic political actors, failing to respect rights or adhere to an adverse regional human rights court decision is likely better monitored and publicized, resulting in greater vertical accountability. These two *direct domestic* threats to political survival generate executive incentives to adhere to adverse regional court decisions. Figure 2.2 shows the process by which the direct threats to executive political survival generate executive incentives to adhere to adverse regional court decisions.

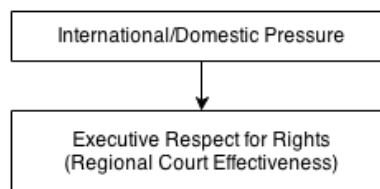


Figure 2.2: Direct Threats to Executive Political Survival

²⁹Hillebrecht (2012) further argues that when executives do not signal a commitment to human rights by responding to IACtHR decisions, voters have responded by expressing dissatisfaction in the voting booth.

Indirect Threats to Political Survival. Indirect threats to executive political survival stem from the decisions of other actors to adhere to adverse regional court decisions. The regional court charges various domestic actors with tasks related to implementation. The executive carefully monitors the extent to which other governmental actors engage in implementation. For example, when the regional court orders the domestic legislature to adopt legislation related to a specific human rights violation and the legislature adopts the legislation, the executive must enforce the new legislation by facilitating the day-to-day implementation of the legislation. Or, when the regional court charges the domestic judiciary with reopening and re-trying accused individuals in a case, the executive branch remains in charge of enforcing similar cases of human rights violations down the line.

When the executive *expects* implementation of regional court decisions from other actors, the executive faces greater incentives to respect rights. Why do the actions of other governmental actors influence the executive's decision to respect rights? The executive plays a prominent role on the world stage, particularly when it comes to respecting rights. As a result, the executive faces reputation costs if domestic judges and/or legislators engage in implementation of regional court decisions or civil society actors press hard for instituting regional court orders domestically, but the executive fails to follow-through. Further, the executive faces domestic legitimacy costs, and ultimately a loss of support from her domestic audience for the failure to carry-out respect for rights following implementation by other domestic actors, including judges and legislators. Indirect executive incentives hinge on the *expectation* of implementation by other domestic actors. In other words, executive expectation of the extent to which other domestic actors adhere to adverse decisions of the regional court influence the direct incentives (international and domestic) of the executive to follow-through on implementation efforts by other domestic actors through the adoption of a policy of respect for rights.

Consider, for example, a regional court case where the executive expects the domestic judiciary to engage in implementation by re-opening and investigating a case and also expects the legislature to implement a regional court decision through the passage of legislation ordered by the regional court. The executive must then decide whether to respect rights by enforcing the actions taken by the domestic judiciary and legislature to implement the regional court decision and carry-out a policy of respect for the rights found to be in violation by the regional court. In choosing not to implement the regional court decision, the executive faces *international* shaming costs for failing to follow-through on implementation, despite extensive implementation efforts by domestic actors. Further, the executive faces potential *domestic* audience costs

for the implementation failure in the face of implementation by domestic actors because voters value respect for rights and the separation of powers. Following implementation by domestic judges, the executive faces fewer international shaming costs and domestic audience costs in choosing to respect rights. Figure 2.3 shows the process by which indirect threats generate executive incentives to adhere to adverse regional court decisions. In subsequent chapters, I explore variation in executive adherence to adverse regional court decisions (regional court effectiveness) as a function of differences across direct threats to political survival (international and domestic pressure) and indirect threats to political survival (expectations of adherence by the domestic legislature, and the domestic judiciary, as well as mobilization by civil society).

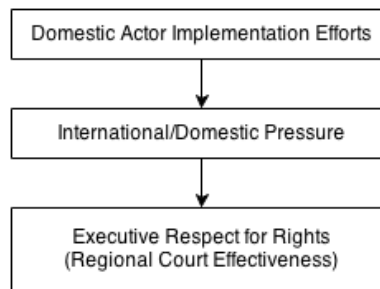


Figure 2.3: Indirect Threats to Executive Political Survival

2.6 Threats to Executive Political Survival in the Regional Context

The regional court, aiming to influence rights-related state behavior, often has an effect on respect for rights beyond the state involved in individual court cases. While adverse decisions of the regional court against each state influence executive behavior in that particular state, adverse decisions of the regional court against other countries in the region play a potentially important role in state behavior regarding respect for rights as well. Given that adherence to adverse regional court decisions entails costs, states aim to deter the probability of shaming by the regional court. As such, the executive not only responds to incentives to adhere to adverse regional court decisions found by the court against the state in which the executive holds power, but also adverse decisions found by the regional court in neighboring states in the region likely trigger a response. Neighboring states, aiming to avoid shaming by the regional court and the subsequent costs associated with adherence, including the potential systemic and institutional changes needed to remedy the violation, use adverse regional court rulings in other states as a signal of future regional court activity.

The regional court often sets precedent in its rulings that hold effect beyond the state where the regional court found a violation. Legal scholars refer to this effect as the *erga omnes* effect, which means “flowing to all” and highlights the influence of the court beyond the specific states involved in a regional court case. One 2010 Council of Europe report highlights examples of policy change in response to ECtHR rulings in other countries (*Council on Legal Affairs, Committee and Human Rights*, 2010). Helfer and Voeten (2014) argue that international court judgments influence policy change under particular institutional and political circumstances, including the threat of future litigation, the persuasive authority of judicial reasoning, and the agenda-setting effect of international court decisions. The agenda-setting influence of regional court litigation plays a particularly important role in executive incentives. Simmons (2009) argues with respect to agenda-setting, “It is one thing not to *initiate* policy change on the national level and quite another not to *respond* once a particular right is made salient through international negotiations” (128). Further, the executive plays a prominent role in foreign affairs, including international legal affairs, and international and domestic audiences seek a response from the executive when international legal commitments have been violated, particularly when the regional court provides a clear censure against the state *and* that censure involves a rights violation.³⁰

The concrete nature of adverse regional court decisions related to human rights violations increases the salience of human rights issues not only to audiences within the state where the violation occurred, but also places the issue on the agenda of various other states, particularly those with similar human rights practices. Consider, for example, the 2004 ECtHR case, *Hirst v. United Kingdom*, in which the ECtHR found the UK to be in violation of the ECHR for limiting sentenced prisoner’s voting rights. In 2006, debate in the Irish Houses of Parliament made reference to the *Hirst* judgment in the ECtHR. Dick Roche, the Minister for Environment, Heritage, and Local Government, introduced a bill to amend the existing electoral law in the Irish parliament in 2006, referring to the *Hirst* judgment, and arguing that the proposed legislation would meet Irish obligations under the ECHR. The Minister claimed, “in light of the [*Hirst*] judgment it is appropriate, timely and prudent to implement new arrangements to give practical effect to prisoner voting in Ireland (Behan and O’Donnell, 2008, 327). As another example, consider a 2001 case in which the IACtHR found Peru’s amnesty law invalid.³¹ Argentina’s Supreme Court declared Argentina’s amnesty law

³⁰The executive is not only charged with international treaty ratification, but also with setting and maintaining a policy or respect for rights, making an executive response to international human rights litigation important to international and domestic audiences.

³¹See *Barrios Altos (Chumbipuma Aguirre et al. v. Peru)* (Merits), Inter-Am. Ct HR, 14 March 2001, Ser. C, No. 75, operative para. 4.

unconstitutional in 2005, citing the *Barrios Altos* case as precedent.³² Rather than face the potential regional court order to amend their domestic amnesty law, Argentina observed the regional court's activity in Peru and amended their own domestic law accordingly.³³

Sikkink (2011) argues that “since individuals pay more attention to legal developments in those countries closer to them, we might expect that prosecutions in one country will have an impact on repression in other countries in the same region” (175).³⁴ In order to capture the influence of the regional court across borders, I argue that countries are likely to pay attention to legal developments in states which are not necessarily physically more proximate, but have human rights practices “closer” to their country. A regional court judgment may have an influence on the behavior of any country in the region. I argue that countries with human rights practices similar to other countries in the region, are more likely to respond to regional court activity in the region. Domestic actors in countries with similar human rights practices view a regional court judgment as relatively more threatening to the possibility of future litigation in their own state. In an effort to preempt future litigation, these actors likely change their human rights behavior in response to adverse regional court decisions in other states with similar human rights practices.

2.7 Conclusion

In this chapter, I argue that regional court effectiveness varies across states, primarily as a result of the incentives of the executive to adhere to adverse regional court decisions. The executive, as the final arbiter on human rights policy, plays an important role in the effectiveness of regional court decisions. Despite incentives to evade implementation of regional court decisions, the executive faces both direct and indirect incentives to respect rights. Directly, the executive may face international pressure or domestic audience costs for failing to implement regional court decisions. Indirectly, the executive behaves in expectation of the behavior of other domestic actors. More specifically, when the executive expects other actors, including domestic legislators, judges, and members of civil society to undertake efforts to adhere to regional court decisions, executive incentives to adhere to the decision and respect rights rise. In the following chapters,

³²See “La Cámara Federal Confirmó la Invalidez de Leyes Exculpatorias” 2001; “Argentina Attorney-General Confirms Unconstitutionality of Amnesty Laws” 2002.

³³Importantly, executive *expectation* of implementation by the domestic judiciary in Argentina, despite the IACtHR ruling against Peru, triggered reform in Argentina.

³⁴While Sikkink (2011) refers specifically to international court prosecutions against individuals, rather than adverse regional court judgments against states, these arguments are easily extended to states, in which domestic actors confront costs in the face of international litigation as well.

I explore the role of direct and indirect threats to political survival on executive incentives to adhere to adverse decisions of the regional court, (and therefore, the effectiveness of the regional court), by generating hypotheses rooted in the theoretical framework developed in this chapter and testing the hypotheses empirically. First, I examine the role of direct international and domestic pressure on the executive's incentives to adhere to the decision. Second, I explore the role of indirect threats to political survival faced by the executive when the domestic legislature adheres to an adverse decision of the regional court. Third, I examine the indirect threat to political survival associated with executive expectation of adherence to an adverse regional court decision by the domestic judiciary. Finally, I explore expectation of mobilization by civil society actors in generating indirect threats to the political survival, executive adherence to adverse decisions of the court, and consequently, regional human rights court effectiveness.

CHAPTER 3

RESEARCH DESIGN

3.1 Introduction

In this chapter, I present the research design used to examine the relationship between direct and indirect threats to executive political survival and regional human rights court effectiveness. Here, I present the conceptualization and operationalization of the variables examined in the analysis. Then, I discuss the model utilized in the analysis. Finally, I provide details on the estimation technique.¹

3.2 Dependent Variable: Regional Court Effectiveness

I am interested in explaining whether adverse regional court decisions are associated with state human rights practices. In the previous chapter, I presented a timeline detailing the path from the occurrence of a human rights violation, to an adverse regional court decision, and to regional court effectiveness.² One challenge in examining regional court effectiveness involves determining when respect for rights following an adverse regional court decision ($t5$) should be assessed. In other words, how much time should the regional court give the state to adhere to an adverse court ruling ($t3$) or when should effectiveness (the difference in respect for rights following an adverse court ruling and at the time of the human rights violation) be assessed? To measure effectiveness, I assess respect for rights 2 years after the regional court issues an adverse judgment. Hawkins and Jacoby (2010) claim that the IACtHR typically provides states with six months to one year from the date they issue reparations, to comply with the Court's judgment.³ Further, the Committee of Ministers in the ECtHR label cases "pending," until full compliance is achieved and the case is officially closed (Hawkins and Jacoby, 2010). The Committee of Ministers assesses compliance through the examination of documents submitted by applicants, NGOs, and NHRIs during the quarterly Committee Human Rights meetings. The Committee continues to monitor the case until the adoption of a

¹In subsequent chapters, I generate hypotheses from the theoretical framework developed in the preceding chapter and implement the research design presented here.

²See Figure 1 in Chapter 2.

³Hawkins and Jacoby (2010) base their assessment of typical court behavior on their reading all of the Court's judgments in their study.

final resolution, indicating full compliance by the respondent state.⁴ Data indicate that 54 percent of ECtHR leading (non-repetitive) cases remain pending for two years or less, while 35 percent of leading cases remain pending between 2-5 years (Hawkins and Jacoby, 2010, 69). In other words, the ECtHR closes the majority of leading cases within 2 years because the Committee finds the respondent state in compliance with the ECtHR judgment, and the ECtHR closes the vast majority of leading ECtHR cases before 5 years have passed. Hawkins and Jacoby (2010) claim that these data provide evidence that “general measures - including complex legal and administrative changes - might take a year or two under the best of circumstances” (69).

I argue that effectiveness is best conceptualized as the broad success of the treaty regime, specifically, the improvement of human rights as a result of regional court activity. Following compliance with a regional court ruling, some period of time must pass before I can assess the effectiveness of regional court decisions. Given that it typically takes one to two years to come into compliance following the issuing of a reparations order (court judgment), I suggest that by assessing effectiveness two years after a regional court ruling, I am able to capture the influence of the regional court on respect for rights.⁵

In order to assess the effectiveness of the ECtHR and the IACtHR, I employ a variable capturing respect for human rights, specifically physical integrity rights. Respect for physical integrity rights represents a difficult test of the hypotheses because evidence is particularly difficult to obtain, and standards of proof are high, meaning that the ability of the court to render adverse judgments against the state for physical integrity rights violations is relatively more difficult (Lupu, 2013).⁶ For this reason, examining physical integrity rights likely biases findings toward the null hypothesis of no effect. I examine respect for physical integrity rights using the physical integrity rights index from the CIRI human rights dataset (Cingranelli and Richards, 2010*b*). Physical integrity rights include four types of rights violations: torture, disappearance, political imprisonment, and extrajudicial killing. The physical integrity rights index is an additive index

⁴Hawkins and Jacoby (2010) argue that cases are closed when “the state has remedied, where possible, the consequences of the violation for the applicant (by adopting individual measures and the payment of just satisfaction) and sought to prevent new similar violations from occurring (by adopting general measures)” (67).

⁵Hawkins and Jacoby (2010) argue that states are more resistant to orders to adopt, amend, or repeal legislation, or investigate, identify, publicize, or punish violators, but states are more willing to undertake symbolic measures, such as apologizing or paying material or moral damages (58). It may be more appropriate to assess *t5* respect for rights more than two years following the regional court ruling given that the reparations orders for which states are most resistant (and likely to delay in implementing) are those most likely to improve respect for rights. Models run with different time lags show little difference in the final results.

⁶While Lupu (2013) addresses domestic courts specifically, these arguments likely apply to regional and international courts as well, which must rely on evidence from the state and non-state actors in order to render a judgment against the state.

constructed from these four rights indicators. This variable ranges from 0 to 8, where a 0 represents no government respect for these four rights and an 8 indicates full government respect for these rights.

3.3 Independent Variables

3.3.1 Adverse Regional Court Decision

The key independent variable represents an adverse regional court decision (**ECtHR/IACtHR**). I examine ECtHR and IACtHR findings of human rights violations related to physical integrity rights, including adverse ECtHR decisions for all countries under the jurisdiction of the ECtHR for the years 1981-2006 and adverse IACtHR decisions for all countries under the jurisdiction of the IACtHR for the years 1989-2010. The primary variable of interest is binary, in which a 1 indicates a ECtHR or IACtHR finding condemning the government for violations of physical integrity in a given country-year and a 0 otherwise (either the court found no violation in any cases brought to it in a given country-year or no cases were brought before the regional court during that country-year). Violations of physical integrity rights include violations of Article 2 (right to life), Article 3 (prohibition of torture), and Article 5 (right to liberty and security) of the European Convention on Human Rights (ECHR) and violations of Article 4 (right to life), Article 5 (right to humane treatment), and Article 7 (right to personal integrity) of the American Convention on Human Rights (ACHR). I use data on ECtHR decisions from Voeten (2007) on ECHR case conclusions and case information. Data on the IACtHR come from Hawkins and Jacoby (2010), who collected information on IACtHR case conclusions as well as the extent to which the state fulfilled compliance orders.

3.3.2 Direct Threats to Executive Political Survival

In order to examine direct threats to executive political survival, I examine competitiveness of executive recruitment (**ExecComp**), executive institutional constraints (**ExecChecks**), and multilateral aid allocations (**Aid**). First, I utilize an interaction term representing the finding of an adverse regional court decision and the competitiveness of executive recruitment. Competitiveness of executive recruitment represents the extent to which mechanisms to advance to an executive position give subordinates equal opportunities to become superordinates (Gurr, 1974). An example of competitive executive recruitment is when a chief executive is selected through popular elections including two or more parties or candidates, while low competitiveness is characterized by executive selection through heredity or in rigged, unopposed elections. Where competitiveness of executive recruitment is relatively greater, I expect threats to executive political survival to be much

higher, as executive job security is relatively lower. Low job security causes the executive to be sensitive to public opinion to ensure political survival. Data on competitiveness of executive recruitment are taken from the Polity IV Project (Marshall, Jaggers and Gurr, 2011).

I also employ an interaction term representing the finding of an adverse regional court decision and institutional constraints on the executive. Institutional constraints measure institutional restrictions on executive behavior (**ExecChecks**). To measure institutional constraints, I use the PolConV measure from the Political Constraints Project (Henisz, 2002). This variable is based on a spatial model and ranges from 0 to 1, with higher values indicating greater institutional political constraints. This measure includes the influence of five governmental institutional constraints, including the executive, two legislative chambers, the judiciary, and subnational government's ability to establish monetary policy. I expect that as institutional constraints rise, the executive is more likely to follow-through with a policy of respect for rights because of the potential political costs associated with having human rights policy failures brought to light.⁷

Finally, I create an interaction term representing the finding of an adverse regional court decision and multilateral aid allocations in 2011 U.S. dollars (**Aid**). Multilateral aid allocations represent aid from international institutions with governmental membership, in which a significant part of the institution's activities constitute development in aid recipients (i.e. World Bank, regional development banks, UN agencies, and various regional organizations) (OECD, 2012).⁸ Data on multilateral and World Bank aid allocations come from the OECD's International Development Statistics.⁹ Aid commitments from the multilateral organizations and the World Bank are "tied most proximately to decisions by governments and IOs to reward or punish the actions of governments" (Lebovic and Voeten, 2009, 85).

3.3.3 Indirect Threats to Executive Political Survival

In order to examine indirect threats to executive political survival, I utilize various variables representing an executive expectation of adherence by the domestic legislature, judiciary, and members of civil society.

Executive Expectation of Legislative Adherence. First, I create an interaction term representing the finding of an adverse regional court decision and legislative veto players (**Veto**). Legislative veto players

⁷I do not utilize the PolConV measure of institutional constraints as a control variable in other models, but instead, I use an indicator of checks and balances on the executive and in the legislature (**Checks**) taken from World Bank's *Database of Political Institutions*.

⁸I also examine aid allocations coming only from the World Bank in 2011 U.S. dollars. More specifically, I examine aid coming from the International Development Association (IDA), a part of the World Bank providing loans and grants for programs aimed at boosting economic growth, reduce inequalities, and improve living conditions. The results are similar in direction and magnitude using aid allocations from the World Bank, so I present the results from models assessing multilateral aid allocations.

⁹See <http://www.oecd.org/dac/stats/idsonline>.

are legislative actors required to agree to proposed legislative changes from the status quo. In order to examine legislative veto players, I employ a variable capturing the vote share of opposition parties in the legislature. As the total vote share of opposition parties increases, I expect policy to be more stable, as divergence of opinions in the legislature grows. This variable is taken from the World Bank's *Database of Political Institutions* (Keefer, 2005).¹⁰ Second, I employ an interaction term representing the finding of an adverse regional court decision and plurality legislative electoral rules (**Plurality**). Plurality systems represent electoral rules in which legislators are elected using winner-take-all / first past the post rule. This variable is binary, in which a 1 indicates a plurality electoral system and a 0 otherwise. Data on plurality legislative electoral rules are taken from the World Bank's *Database of Political Institutions* (Keefer, 2005). Finally, I utilize an interaction term representing the finding of an adverse regional court decision and district size (**DistMag**). In order to capture district size, I include a variable representing the mean district magnitude of the House or the weighted average of the number of representatives elected by each constituency size. Data on district magnitude is taken from the World Bank's *Database of Political Institutions* (Keefer, 2005).

Executive Expectation of Judicial Adherence. In order to examine executive expectation of adherence by the domestic judiciary, I include a measure of judicial power. Various measures of judicial independence and effectiveness have been utilized in the comparative judicial literature.¹¹ Measures operationalizing only judicial independence do not capture the concept of interest, particularly because it is possible to observe an ineffective court that appears independent and effective because judges select cases in an effort to avoid conflict with other political actors (Ginsburg, 2003). As a result, examining judicial behavior can be problematic. I employ a measure of judicial power created by Linzer and Staton (2011). They consider a judge to be powerful if “her decisions reflect her evaluation of the legal regard (autonomous decision-making)” and her decisions “are respected by government officials who disagree with them (effective decision-making)” (12).¹² Linzer and Staton (2011) claim that judicial independence is a latent concept that cannot be directly observed and as such, they create a latent variable, using eight indicators of *de facto* judicial independence and they provide estimates of the level of judicial independence for all countries from

¹⁰In the other models examined in this study, I control for a variable capturing checks and balances (**Checks**) taken from the World Bank's *Database of Political Institutions*. This variable captures checks on the executive as well as legislative checks and provides a good control for the influence of institutional checks in other models. More detailed coding rules on the checks measure, see Keefer (2005).

¹¹See Ríos-Figueroa and Staton (2008) for further discussion of the existing measures of judicial independence.

¹²While Linzer and Staton (2011) refer to this concept as “judicial independence,” it closely resembles the concept of judicial power I describe in detail in Chapter 6, as encompassing autonomy and effectiveness.

1960-2009.¹³ The Linzer and Staton (2011) measure of judicial power provides significant leverage over choosing a single indicator of judicial power (**Judiciary**). Their measure is continuous, allowing me to examine changes in judicial power. However, most notably, each indicator on its own “might be a less reliable indicator of the underlying concept, however, as the underlying concept is latent and very much related to the non-judicial independence features of these measures, their inclusion is highly reasonable” (Linzer and Staton, 2011, 14).¹⁴

Executive Expectation of Civil Society Mobilization. The first variable I examine is an interaction term representing the finding of an adverse regional court decision and freedom of expression (**Speech**). I utilize a variable on freedom of expression representing whether a state constitution provides for freedom of expression or speech. This variable is binary in which a “1” represents the presence of a freedom of expression guarantee in the constitution, and a “0” represents its absence. Data on freedom of expression comes from the Comparative Constitutions Project (CCP), which contains data on the characteristics of national constitutions (Zachary Elkins and Melton, 2009).

Second, I again create an interaction term which indicates the finding of an adverse regional court decision and the prevalence of human rights organizations (**HRO**). I utilize a variable capturing the total number of HROs that have a secretariat location, or a permanent office location, within the state. This variable is intended to capture the presence of HROs with a relatively more permanent presence within each state. Data on the number of HRO secretariat locations are based on entries in the *Yearbook of International Organizations* and provided by Murdie and Davis (2012).

Third, I create an interaction term representing the finding of an adverse regional court decision and the presence of a National Human Rights Institution (**NHRI**). The NHRIs examined here include classical ombudsman offices, human rights commissions, and human rights ombudsman offices. This variable is binary, in which a “1” represents any country-year in which an NHRI is present, and a “0” otherwise. Data on NHRI presence are taken from Koo and Ramirez (2008) who collected data on the the presence of NHRIs

¹³These indicators include Tate and Keith (2009), Howard and Carey (2004), Cingranelli and Richards (2010a), Marshall and Jaggers (2009), Clague et al. (1999), Feld and Voigt (2003), the PRS Law and Order Measure as described in Rios-Figueroa and Staton (2008), and the Fraser Institute’s measure of legal structure and security of property rights as also described in Rios-Figueroa and Staton (2008).

¹⁴For example, the XCONST measure used by Marshall and Jaggers (2009), Fraser and the PRS measure are all hybrid measures that capture expert opinions on the judiciary as well as other features of the legal system (i.e. law and order).

from the International Ombudsman Institute, an organization providing information on ombudsman offices globally.¹⁵

Finally, I create an interaction term representing an adverse regional court decision and the prevalence of legal expertise (**LegalExpert**). I utilize a variable that captures the presence of the International Bar Association's Human Rights Institute (IBAHRI). The IBAHRI provides training and technical assistance for legal professionals and institutions, with the aim of developing the capacity to promote respect for human rights under the law.¹⁶ This variable is binary, in which a "1" captures the presence of IBAHRI activity in a given country-year and a "0" otherwise (either the IBAHRI was not active or not listed as active on the organization's website).¹⁷

3.3.4 Executive Threats to Political Survival in Regional Context

In order to examine the influence of the regional court beyond each individual state (the influence of the regional court in the region), I employ a variable intended to capture the influence of violations in the region. I create a variable representing a weighted count of the number of violations in the region. The variable is weighted by the difference in each country's physical integrity rights score from the mean physical integrity rights score of other countries in the region. To create this variable, I examine the absolute value of the difference in the mean physical integrity rights score for countries in the region and the physical integrity rights score for each country-year in the sample. Then, I reverse the order of the values, so that higher values indicate human rights scores closer to the mean physical integrity rights score in the region. I then interact this variable with the count of violations in the region. This creates a variable in which higher values indicate those country-years where relatively more adverse decisions were rendered by the regional court

¹⁵More information on the International Ombudsman Institute can be found at <http://www.law.ualberta.ca/centres/ioi/>. Koo and Ramirez (2008) examined the list of NHRIs provided by the UN Office of the High Commissioner for Human Rights. They determined the adoption years of the institution by examining the web pages of the individual organizations. For sites that excluded adoption dates, Koo and Ramirez (2008) examined the relevant laws empowering each NHRI and based the adoption year on the timing of the passage of legislation.

¹⁶I explored the use of different proxy measures in an effort to capture legal expertise. Scholars argue that civil law systems represent inquisitorial systems, in which judges investigate and gather evidence, while common law systems represent an adversarial legal tradition, in which judges represent neutral arbiters between opposing parties (Carey, 2002; Mitchell and Spellman, 2013). The adversarial tradition of common law legal systems strengthens the position of lawyers in the legal system, and according to Mitchell and Spellman (2013), "lawyers are more powerful and proactive in common law systems relative to other legal systems due to the adversarial nature of litigation" (1). I examined data on common law systems from Powell and Mitchell (2007), however, the variable only provided minimal variation, as most countries in the sample are civil law countries, which made estimation and model convergence difficult.

¹⁷I obtained a list of states in which the IBAHRI is active on the organization's website and coded whether the organization was active in a particular country-year. More information on the activities of the IBAHRI can be located on their website, <http://www.ibanet.org/IBAHRI.aspx>.

and a country has physical integrity rights scores closer to those in the region. Low values indicate relatively fewer violations of physical integrity found by the regional court and relatively large differences in physical integrity rights scores between a country and the other countries in the region.¹⁸

3.3.5 Additional Control Variables

In addition to the institutional variables likely to influence executive expectations of adherence to adverse regional court decisions, I also utilize a set of control variables commonly used in studies of state respect for human rights. Factors that improve human rights practices include democracy and economic development; factors that hinder good human rights practices include a large population, internal conflict, and prior experience with repression (Davenport and Armstrong, 2004).¹⁹ Democracy (**Democracy**) is operationalized based on Przeworski et al. (2000), in which a regime is classified as a nondemocracy during a particular year if one of the following conditions holds: the chief executive is not elected, the legislature is not elected, there is no more than one party, and alternation does not occur (which applies only to regimes that have passed the previous three rules). Democracy is a binary variable, in which a “1” represents a democracy as meeting these criteria and “0” represents a non-democracy. In order to account for economic development, I utilize a measure of logged GDP per capita (**GDP**) taken from the World Bank’s *World Development Indicators*. The total population (logged), in millions, (**Population**) is also taken from the World Bank’s *World Development Indicators*. Data on the occurrence of civil conflict (**Civil War**) are obtained from the Uppsala Armed Conflict Data Project (Nils Gleditsch and Strand, 2002; Harbom and Wallensteen, 2005). Finally, I include a lagged dependent variable (**Physint (t-2)**) to account for temporal dependence or prior levels of repression (Beck and Katz, 1995).²⁰

3.4 Model

To test the hypotheses generated from the theoretical framework presented in the preceding chapter, I employ a series of Bayesian hierarchical linear regression models in the analysis. I run a series of models, with each one including a single interaction term based on the hypotheses generated in the subsequent

¹⁸A value of 0 is an indication of no adverse decisions of the regional court related to violations of physical integrity or a substantially large difference in physical integrity rights scores between a country and those in the region, or both.

¹⁹Scholars also find interstate conflict to be associated with repression, however, there are few interstate conflicts in the time series covered in my analysis, so, I only control for the occurrence of civil war.

²⁰I utilize a two year lag because the regional court variable is lagged two years. A lag of one year is inappropriate for these models because it may potentially account for the influence of an adverse regional court judgement on state behavior over a single year. However, models employing a one-year lag produce results similar to those in which a two-year lag is examined.

chapters. I control for all other variables (direct and indirect threats to executive political survival and the control variables) in each model. One might argue that because the dependent variable represents ordered factors, rather than real numbers, a general linear model based on ordinary least squares is inappropriate and/or misspecified, and an ordered response model is more appropriate. However, I rely on a linear model primarily because of the large number of categories on the dependent variable. The physical integrity rights variable includes 9 categories, ranging from 0-8. An ordinal response model simultaneously estimates multiple equations (one less than the number of categories on the dependent variable, here 8). However, ordinal response models rely on the parallel regressions assumption, which is likely violated in the case of a large number of categories on the dependent variable. More specifically, the ordered response model assumes that the effects of the single set of covariates employed are the same across all categories of the dependent variable, that is, it assumes that the slopes of the regressions are the same. The assumption in ordered response models is that the relationship between the lowest versus all higher categories of the response model are the same as those that describe the relationship between the next lowest category and all the higher categories, and so on. This assumption is rarely met when the number of categories on the dependent variable is high. Ward and Ahlquist (2013) argue that when there are a large number of categories on the dependent variable, it is common to use continuous regression models such as OLS, particularly when there are roughly similar numbers of observations in each category.

In order to examine whether the parallel regressions assumption is indeed violated, I conducted an approximate likelihood ratio test, comparing the log likelihood from the ordered logit model with the log likelihood from pooling J-1 binary regressions, where the dependent variable is recoded as a series of binary variables. The null hypothesis is that there is no difference in the coefficients between the models and the results indicate whether the coefficients are equal across categories. The results from the various likelihood ratio tests confirm that the parallel regression assumption is indeed violated.²¹ Given that Long and Freese (2001) argue that the violation of the parallel regression assumption is not necessarily a rationale for using ordinary least squares regression, I present ordinal logistic regression (frequentist) results for each model in the appendix to each chapter. The parameter estimates are generally robust to the estimation of an ordered response model.

Further, using Bayesian analysis provides numerous advantages over traditional statistical approaches to the study of international relations. First, frequentist statistical techniques typically test hypotheses con-

²¹The results of each likelihood ratio test are reported in the appendix to each empirical chapter. The approximate likelihood ratio test is calculated in Stata using the `omodel` command (Wolfe and Gould, 1998).

ditional upon an assumption of repeated random samples drawn from a large population (Western and Jackman, 1994). As such, standard regression estimates rely on the presence of sufficiently large sample sizes. However, the sample sizes examined here include 753 country-year observations for the ECtHR and 488 country-year observations for the IACtHR. The absence of a sufficiently large sample size makes estimation difficult. Small sample sizes often produce inaccurate parameter estimates and standard errors.²² Further, in maximum likelihood estimation, small sample sizes often produce cells with no observations and maximum likelihood techniques may not be estimable and often result in nonconvergence. Bayesian estimation techniques do not rely on sufficiently large samples, but instead produce a large number of simulations from the posterior distribution, allowing one to describe the posterior empirically with the simulated values.

Second, the heterogeneity in the cases examined here indicates that each country's baseline probability of domestic adherence to adverse regional court decisions is not the same, even when I account for the influence of various control variables in the model. For example, the addition of new members into the ECtHR in the 1990s represented a departure from the initial consensual approach of the early years of the court. The institutional and contextual variation in new members is particularly high. In rendering judgments, contextual differences produce substantial variation in state adherence to adverse regional court decisions. Using Bayesian analysis, I can account for unobserved heterogeneity using hierarchical modeling techniques (here, incorporating varying slopes and varying intercepts) (Gelman and Hill, 2007).²³ A hierarchical model removes the restriction that the estimated coefficients are constant across individual cases by inserting random intercepts and random slopes and examining variation of these coefficients across groups. Bayesian modeling techniques already incorporate this methodological hierarchy into the model, making the addition of a substantive hierarchy to a Bayesian model fairly straightforward. Further, Gelman and Hill (2007) argue that when the number of groups is small or the model is complicated, including many varying intercepts, slopes, and non-nested components (as is the case here), it might be difficult to obtain enough information to estimate variance parameters precisely (345). Bayesian modeling offers a nice solution because it averages over the uncertainty in all the parameters of the model.

The hierarchical model also allows me to incorporate the potential regional or *erga omnes* effects into the model as a group-level predictor. By adding this hierarchy to the model, I can specify that the magnitudes of the country-specific coefficients, specifically the magnitude of the regional court and various threats

²²This is particularly problematic in my analysis because I incorporate random effects (varying intercepts and slopes) and a group-level hierarchical structure which makes the estimation of accurate standard errors and parameter point estimates difficult because there is less information include in the estimation.

²³I present pooled model estimates for each model in the appendix to each chapter.

to executive political survival, as conditional on the extent to which the regional court renders violations against countries in the region with similar human rights practices (the second level of the model). Bayesian modeling techniques provide a direct way to incorporate the group-level model as prior information in estimating the individual-level coefficients (Gelman and Hill, 2007). Finally, the measure of judicial power examined here is based on a latent variable statistical measurement model, and traditional statistical analysis does not account for the uncertainty in these estimates. Bayesian estimation allows me to incorporate the uncertainty in the judicial power measure taken from Linzer and Staton (2011).

This model can be written as:

$$\begin{aligned}
y_i &\sim \text{Normal}(\mu_i, \tau) \\
\mu_i &= \alpha_i + C_{it}\beta_i + Z_i + \varepsilon_i \\
\alpha_i &\sim \text{Normal}(\mu_{i1}, \sigma_1^2) \\
\mu_{i1} &= \alpha_0 + R_i\delta_1 + v_i \\
\beta_i &\sim \text{Normal}(\mu_{i2}, \sigma_2^2) \\
\mu_{i2} &= \beta_0 + R_i\delta_2 + v_i
\end{aligned}$$

The C variable represents the adverse regional court decision and the various direct and indirect threats to executive political survival.²⁴ This variable is subscripted by i in order to indicate the separate coefficients for the interaction term for each country. Z represents a vector of control variables employed in the first level of the hierarchical model. β_i is modeled as a function of β_0 , its intercept, as well as R, which represents the influence of adverse regional court decisions in the region (weighted by similarity in physical integrity rights abuses), and the error term v_i . The variance of both α and β are estimated from the data. The estimate for δ_2 highlights whether the influence of the adverse regional court decisions against each country are also conditional on regional violations in improving respect for rights.

²⁴More specifically, each interaction term specified above.

3.5 Estimation

All models were estimated via MCMC simulation with JAGS (Plummer, 2004) in conjunction with the R2JAGS package (Su and Yajima, 2013). I simulated two Markov chains for 200,000 iterations, discarding the first 20K iterations from each chain. Convergence was assessed with visual diagnostics, including trace plots of the path of the Gibbs sampler runs (with the burnin period omitted to make the scale more readable), as well as density estimates for the β parameters from the MCMC simulation. As examples, trace and density plots for three of the random slope parameters for the IACtHR (Guatemala, Peru, and Brazil) and ECtHR (Luxembourg, Czech Republic, and Slovak Republic) models are presented in the appendix to each empirical chapter (4,5,6,7). The trace plots for all parameter estimates in each of the models indicate good mixing of the chains and convergence. The unimodality of the density estimates indicate evidence of convergence as well.

3.6 Presentation of Model Results

Frequentist statistical analyses generally rely on null hypothesis significance testing (NHST) in order to determine the relationship between two variables of interest. Two hypotheses are presented, the null hypothesis, which assumes the parameter of interest is equal to zero ($\beta_i = 0$), and the research hypothesis, which assumes the parameter of interest does not equal zero ($\beta_i \neq 0$). A test statistic, a function of the parameter of interest and the data is then calculated and compared with its known distribution assuming that the null hypothesis is true. A p-value is used to make the decision of whether the null hypothesis can be rejected. The p-value is the area in the tail of the assumed distribution for the null hypothesis. The analyst then decides on a level of statistical significance, which represents the probability threshold below which the null hypothesis can be rejected. Analysts then reject the null hypothesis if the achieved significance level is sufficiently small. In order to determine the relationship between variables using frequentist statistical analysis, analysts often report confidence intervals around a parameter estimate, which indicate that some percentage (say 90 or 95 percent) of realized intervals cover the true parameter in repeated random sampling of the data.

There has been an increase in resistance to NHST in the social sciences in recent years (Bakan, 1960; Pollard, 1993; Cohen, 1994; Schmidt, 1996; Hunter, 1997; Gill, 1999; Ward, Greenhill and Bakke, 2010). One primary criticism involves the arbitrariness of selecting significance levels. Rejection threshold levels

were originally selected and provided in tables as a convenience to researchers. Unable to provide every range of a test statistic in the table led to the provision of particular conventional values, including 0.05, 0.01, and 0.001. Gill (1999) claims, “on what basis do we decide that $p = 0.051$ is unacceptable but $p = 0.049$ is cause for rejoicing? There is no published work in political science that provides a theoretical basis for these thresholds” (659). A second concern involves the belief that one minus the p-value is the probability of replicating the significant results in a repeated sample of the study. A low p-value such as $p = 0.05$ is believed to imply that 95 out of 100 replications will be statistically significant. However, the p-value is produced from a single data set and a single test statistic. The value of interest in replication is the distribution of the test statistic in repeated samples (Gill, 1999).

In Bayesian analysis, the parameters of interest are not fixed, but are unknown and determined probabilistically. Rather, the data are considered fixed and we infer the probability of the parameter given the data (rather than the probability of the data, given the parameter). Probability statements about the posterior distribution are obtained by simulating iterative draws from the posterior distribution based on the data. Model parameter results are not expressed as point estimates with some measure of variance, but instead are summarized in probability statements, such as “quantiles of the posterior distribution, the probability of occupying some region of the sample space, the posterior predictive distribution, and the Bayesian forms of confidence intervals: the credible set and the highest posterior density region” (Gill, 1999). In other words, the parameter or interest is not a point estimate, but contains some distribution which we can describe.

Bayesian inference is based on the posterior probability distribution, in which the probability indicates a degree of belief about the relationship between two variables. As a result, in each of the empirical chapters, I present figures representing characteristics of the posterior distribution. The mean value of the posterior distribution is reported for each country under the jurisdiction of the ECtHR and the IACtHR, represented as dots. Each figure also reports a quantile-based 90% probability interval (also called credible interval) from the posterior distribution for each country under the jurisdiction of the ECtHR and the IACtHR. The probability interval indicates that 90% of the posterior probability distribution estimates are within the interval presented, represented as a line. In other words, the interval indicates the region of the parameter space where the probability of covering the parameter is 90%. According to Gill (2008), one mechanism used to conduct Bayesian inference and hypothesis testing involves utilizing descriptions of the posterior as evidence of some effect (231).²⁵ To assess evidence in support of the hypotheses in the following chapters, I can

²⁵Gill (2008) also notes that explicit testing mechanisms are also often performed, particularly when there are multiple competing model specifications arising from theoretical propositions, requiring some method for comparison. I do not utilize these mechanisms

interpret the mean value as the substantive change in the dependent variable (respect for physical integrity rights) produced by a 1-point change in the variable of interest (a 1-point increase in each domestic political factor in the presence of an adverse regional court decision). The probability interval from the posterior distribution indicates that 90% of the posterior distribution lies within that interval. I can then assess the extent to which the interval is in the direction predicted by the hypothesis. For example, if the hypothesis indicates that the expected direction of the effect is positive and the mean estimate is positive, I have provided support for the hypothesis. However, I also need to take into account uncertainty surrounding the mean posterior estimate. Observing primarily positive posterior parameter estimates in the posterior probability interval, I can draw inferences with high probability (90%) that the relationship between the two variables is positive. Observing negative posterior probability estimates indicates less support for the hypothesis, as fewer than 90%, say 85% or 80% of the posterior parameter estimates, for example, are positive (and a larger region of the posterior distribution contains negative parameter estimates).

3.7 Conclusion

I utilize the model presented in this chapter in order to examine the hypotheses developed in each of the subsequent empirical chapters. The model varies in each chapter based on which variable I am interested in examining. However, I control for all other variables (direct and indirect threats to executive political survival and additional control variables) in each model in order to account for potential confounding factors. In the following chapters, I utilize the data and estimate the model presented here to analyze the influence of domestic political factors on executive incentives to adhere to adverse regional court decisions.

in this analysis because I am primarily interested in the relationship between two variables, adverse regional court decisions and respect for rights. While interesting and important in other studies, comparing competing model specifications is not the primary aim of this study.

CHAPTER 4

DIRECT EXECUTIVE ADHERENCE

4.1 Introduction

The executive plays a principal role in the effectiveness of regional human rights courts. The executive helps shape rights-related policy for the state. Executive adherence to adverse decisions of regional human rights courts potentially takes place at two stages. In the first stage, the executive may influence effectiveness through direct compliance with adverse regional court decisions. Regional court orders often charge the executive with carrying out tasks including issuing a formal state apology, paying monetary damages, and erecting a memorial, among others.¹ In the second stage, the executive adheres to adverse decisions of the regional court through adopting and implementing a policy of respect for rights. While important for the legitimacy of the regional court, I argue that executive compliance with specific orders of the regional court in the first stage is unlikely to influence the average level of respect for rights within the state, absent an executive decision to carry-out rights-respecting policy. As I argue in chapter 2, compliance with specific orders does not explain changes in state behavior resulting from the institutional constraint of the regional court. Further, executive compliance often involves orders involving relatively fewer political costs to the state (i.e. issuing a formal apology or erecting a memorial (Hawkins and Jacoby, 2010; Huneeus, 2010)).² As a result, direct executive compliance (first stage compliance) with adverse regional court orders charging the executive with action are unlikely to result in the broader effectiveness of the court. However, adhering to adverse regional court decisions in the second stage better captures an effective regional court, as executive action in the second stage involves changes in state rights-related behavior.

I elaborated on executive incentives *not* to adhere to adverse regional court decisions in earlier chapters. However, the executive also often faces various incentives to adhere to adverse decisions of the court (by

¹Unlike the IACtHR, which issues specific injunctive orders with which the state must come into compliance, the ECtHR delegates compliance to the state. However, the Committee of Ministers of the ECtHR monitors the execution of ECtHR judgments and often finds fault with state responses to adverse judgments. As a result, the state must carefully consider how to come into compliance, which often involves the actions of various actors, including the executive.

²In fact, Hawkins and Jacoby (2010) find that the state complies with IACtHR orders to apologize and pay damages significantly more often than with orders charging other domestic actors to take action, including the legislature and judiciary (58). Hawkins and Jacoby (2010) claim, “although the monetary cost for such damages can be higher than some of the other actions required of states, monetary costs probably do not require as many political capital expenses, coordination efforts, or reputational expenses as some of the other types of reparations” (58).

adopting or implementing a policy of respect for rights), which may trump executive incentives to evade adverse regional court decisions. More specifically, threats to the political survival of the executive generate executive incentives to respond favorably to adverse decisions of the court. Threats to political survival may come from direct domestic and international pressure to adhere to an adverse decision of the regional court. In what follows, I first explore the role that direct domestic and international threats to political survival play in executive incentives to adhere to adverse regional court decisions. I then empirically examine the role of direct executive threats to political survival in generating executive incentives to adhere to an adverse decision through a policy of respect for rights. Using cross-national statistical analysis of regional court decisions in both Europe and the Americas, I assess the effectiveness of both the ECtHR and the IACtHR.

4.2 Direct Threats to Executive Political Survival: Domestic Pressure

The primary motivation of the executive is political survival; leaders want to retain office (Bueno de Mesquita et al., 2003). In order to retain office, the executive faces two possible forms of domestic accountability, vertical and horizontal. First, *vertical* accountability involves voters holding the executive accountable through electoral institutions, that is, threatening removal from office. Vertical accountability represents a greater threat to the executive when competition for executive office is high, or the chief executive is chosen through competitive elections, as opposed to executive selection through mechanisms such as hereditary succession or appointment. In order to retain office, the executive must be sensitive to the interests of the voting public. The executive secures the loyalty of constituents through the provision of some combination of public and private goods (Bueno de Mesquita et al., 2003). When the executive faces high competition in office, job security significantly declines, as the executive can more easily be replaced by new candidates. More specifically, when executive job security is relatively low, the executive has incentives to provide public or private goods in an effort to ensure tenure in office. As the executive faces increasing threats to political survival through fear of removal from office, the provision of public goods becomes particularly cost effective because public goods benefit citizens, regardless of whether they are constituents of the executive (Olson, 1971; Bueno de Mesquita et al., 2003).³ Adherence to an adverse decision of a regional human rights court represents a public good provided by the executive, particularly because voters value the check that the regional court places on the state (Weingast, 1997; Stephenson, 2004; Carrubba, 2009) and respect for rights.

³Public goods share two characteristics; they are nonrival (consumption of the good by one individual does not reduce the availability of the good for consumption by others), and nonexcludable (no one can be effectively excluded from using the good).

Executive incentives to provide public goods, including adherence to adverse regional court decisions through respect for rights, vary based on the extent to which failing to adhere to adverse court decisions threatens the political survival of the executive. The executive likely finds it more cost effective to provide public goods in order to ensure political survival when competition for executive office is high (job security is relatively low), or the executive engages in a competitive political process through regular and contested elections. When the leader is less secure in office, the executive's constituents have a higher probability of being included in a future leader's winning coalition, and are less loyal to the current leader. As a result, when the executive is less secure in office, he/she is particularly sensitive to public opinion, and provides relatively more public goods to constituents. Given that voters value respect for rights as a public good, the executive likely responds favorably to adverse regional human rights court decisions when faced with relatively greater competition for office.

Direct Domestic Vertical Accountability Hypothesis: *As executive competition rises, regional court decisions that find human rights violations are more likely to improve domestic respect for human rights.*

In addition to *vertical* domestic accountability, the executive also faces *horizontal* accountability, or accountability generated through other domestic political institutions. While the executive faces domestic pressure to adhere to adverse regional court decisions generated through threats to executive tenure in office, the executive may also face institutional incentives to adhere to adverse regional court decisions. The executive is much more likely to adhere to adverse regional court decisions to the extent that other domestic political actors can check (veto) the behavior of the executive. Indeed, the repression literature highlights the importance of institutional checks in government for producing political actors capable of drawing attention to executive failure to respect rights (Davenport, 2007b). As domestic political actors (i.e. domestic judges, domestic legislators), and the institutions they inhabit, provide additional checks on the executive, the executive likely expects increased pressure to adhere to adverse regional court decisions related to human rights. Pressure to adhere to adverse regional court decisions and respect rights may come from (1) direct pressure by domestic institutional actors or (2) greater monitoring and publicity may generate vertical accountability as voters possess more information on executive policy failures. The executive is particularly likely to face horizontal accountability to the extent that there exist formal institutional veto points and partisan veto points in other branches of government. That is, the extent to which the legislature contains members of parties not in the executive branch, the extent to which an independent judiciary can check the executive, and the extent

to which subnational levels of government operate domestically, influence executive decision-making. In the face of these institutional constraints, failing to follow-through on a policy of respect for rights following an adverse regional court decision generates significant political costs for the executive.

Lupu (2014) argues, for example, that the executive is unlikely to take away minority rights (repress the opposition) when the legislature is composed of opposition parties because the opposition is unlikely to pass legislation taking away their own rights (and formalistic, legal, forms of repression are costly). As a result, legislative veto players make rights violations increasingly costly. The executive may choose to (illegally) violate rights, but this is likely prohibitively costly as the executive likely faces greater threats to political survival, including electoral punishment.⁴ When institutional checks exist, opposition actors increasingly highlight executive human rights failures, allowing domestic audiences to hold the executive accountable at the ballot box, which may threaten executive political survival. The executive is more likely to be sensitive to regional court outcomes as the capacity to highlight executive failures related to human rights, including evasion of adverse regional court decisions, increases, and this is more likely when there are institutional checks on the executive. As a result, I posit:

Direct Domestic Horizontal Accountability Hypothesis: *As institutional checks on the executive rise, regional court decisions that find human rights violations are more likely to improve domestic respect for human rights.*

4.3 Direct Threats to Executive Political Survival: International Pressure

The executive may face incentives to adhere to adverse regional court decisions when significant international pressure generates a concern for maintaining a rights-respecting reputation. States generally value a good reputation in the international community, particularly because a better reputation makes it easier for a state to secure cooperative relationships in the future when it is in their interest to do so (Guzman, 2008). Adverse regional court decisions represent a form of “naming and shaming,” in which human rights violations are publicized to the international community. International human rights advocates undertake such “naming and shaming” campaigns in an effort to bring rights violations to light, with the hope that negative international publicity will generate reputational concerns and pressure (or persuade) rights-violators

⁴Lupu (2014) discusses executive incentives to *comply* with international human rights law in the face of legislative veto players. While institutional checks (veto players) make noncompliance (repression) more costly, resulting in greater respect for rights, legislative veto players display an opposing relationship with incentives to *commit* to international human rights law and to make domestic policy changes. I focus on the role of veto players in inhibiting regional court ordered policy change in chapter 5.

to respect rights. Governments often engage in tactical concessions in response to international publicity (Risse, Ropp and Sikkink, 1999). Tactical concessions can include the state response to specific compliance orders, such as paying monetary damages or issuing a formal state apology. These tactical concessions are often initially granted for purely instrumental reasons, or based on strategic behavior on the part of the state. For example, the state might engage in tactical concessions to dampen publicity in order to regain foreign aid or facilitate the removal of economic sanctions. However, Risse, Ropp and Sikkink (1999) argue that tactical concessions are often a step in the initial socialization process. In other words, as the state engages in tactical concessions, political actors increasingly “entangle themselves in a moral discourse which they cannot escape in the long run” (16).

The empirical evidence as to whether “naming and shaming” by international actors represents an effective mechanism for changing state behavior related to respect for rights remains mixed. For example, Murdie and Davis (2012) find that states improve human rights practices following shaming by human rights non-governmental organizations, particularly when these organizations are present in the target state, while Hafner-Burton (2008) finds that states often end up increasing certain human rights violations, while reducing other violations following “naming and shaming” by the international community and suggests that governments have varying capacities to respond to these advocacy campaigns. Further, Conrad and DeMeritt (2011) argue that states often substitute particular types of human rights violations for others following international advocacy efforts.

However, the executive represents a domestic actor particularly sensitive to “naming and shaming” by the international community. As the actor primarily charged with conducting foreign affairs, the executive branch reports to the regional court throughout the litigation process. The executive represents the state in interactions with the regional court, making the executive acutely aware of the adverse regional court judgment, the reparations orders issued by the regional court, and extent to which the state is engaging in implementation efforts ordered by the regional court (Huneus, 2012). As a result of the executive’s position in “conducting foreign relations and shaping a state’s foreign policy, it is most actively concerned with the international reputation of the state” (129). The executive has an interest in signaling to the international community that human rights are a concern of the present government. While the executive faces incentives to adhere to adverse regional court decisions based solely on the position of the executive branch on the world stage, executive incentives to maintain a good international reputation are conditional on various factors. Factors such as the need to “lock-in” rights-respecting policies in new democracies (Moravcsik,

2000), the need to maintain access to markets guaranteed in preferential trade agreements that include human rights provisions (Hafner-Burton, 2005), the need to attract foreign direct investment (Richards, Gelleny and Sacko, 2001; Blanton and Blanton, 2007), or the need to maintain foreign aid allocations (Lebovic and Voeten, 2009) influence executive incentives to establish a rights-respecting reputation internationally.

Here, I focus specifically on the government (and executive) incentives to establish a rights-respecting reputation through adherence to adverse regional court decisions in order to maintain current foreign aid allocations or attract additional foreign aid.⁵ States often use foreign aid as a policy tool (McKinlay and Little, 1977; Lebovic, 1988; Alesina and Dollar, 2000; Palmer and Morgan, 2006). In fact, Palmer and Morgan (2006) argue that foreign aid is a foreign policy tool utilized in an effort to “encourage recipients to take desired actions” (122). Evidence indicates that foreign aid donors have conditioned foreign aid disbursements on human rights practices. While not stated explicitly in the World Bank’s Articles of Agreement, Lebovic and Voeten (2009) argue that the World Bank increasingly highlights the connection between human rights and economic development (83). In fact, in 1998, the World Bank published a report arguing that foreign aid is most effective in countries with “good governance” and the World Bank now ranks countries on various aspects of governance, including human rights practices (Dollar and Pritchett, 1998; Kaufmann, 2005). Lebovic and Voeten (2009) argue that “the World Bank was peculiarly attentive to the international standing of a country with respect to its human rights practices, given the Bank’s well-documented liberal bias, attention to the domestic practices of recipient governments, and desire to avoid contentious decisions” (84). Evidence shows that shaming by the UN Commission on Human Rights (resolutions condemning a country for poor human rights practices) is associated with significant and sizeable reductions in aid from multilateral aid agencies and the World Bank (Lebovic and Voeten, 2009).⁶ Given these arguments, I posit:

Direct International Pressure Hypothesis: *As multilateral foreign aid allocations rise, regional court decisions that find human rights violations are more likely to improve domestic respect for human rights.*

⁵I focus on executive incentives to maintain foreign aid allocations because many countries in the IACtHR sample are foreign aid recipients, allowing for substantial variation across countries in executive incentives. Examining the incentives of the executive to establish a rights-respecting reputation in order to “lock-in” rights respecting policies, maintain preferential market access, or attract foreign direct investment should be considered in future studies.

⁶Lebovic and Voeten (2009) examine shaming by the UN Commission on Human Rights and argue that their argument cannot easily be extended to NGOs such as Amnesty International because NGOs do not represent sufficiently impartial assessments of rights violations. However, the argument made by Lebovic and Voeten (2009) can easily be extended to shaming by a regional human rights court because regional human rights courts are inter-governmental organizations charged with investigating and litigating human rights violations. An adverse regional court judgment provides a clear and direct censure for rights violations. Further, adverse regional court decisions have been thoroughly vetted through the regional human rights legal system, a system charged with maintaining impartiality.

4.4 Threats to Executive Political Survival in Regional Context

Above I argue that adverse regional court decisions influence respect for rights when direct domestic and international pressure generate incentives for the executive to adhere to adverse regional court decisions through a policy of respect for rights. However, violations found against other countries in the region play a potentially important role in state behavior regarding respect for rights as well. Given that adherence to adverse regional court decisions can be costly for the state and the executive, the executive may aim to deter adverse regional court decisions by adhering to the regional court's judgments against other states. The executive is increasingly likely to adhere to adverse regional court decisions against other states in the region when faced with domestic pressure to adhere, or when voters credibly threaten the political survival of the executive. As argued above, the executive faces direct domestic pressure to adhere when vertical accountability is generated through greater competition for office and horizontal accountability is generated by checks on executive power. These same arguments apply to executive response to regional court activity in other states because the executive remains sensitive to the public's valuation of respect for rights in order to retain office. As a result, I posit:

Regional Direct Vertical Accountability Hypothesis: *As regional court decisions that find violations of human rights within the region rise, respect for rights rises in countries as executive competition increases.*

Regional Direct Horizontal Accountability Hypothesis: *As regional court decisions that find violations of human rights within the region rise, respect for rights rises in countries as institutional checks on the executive increase.*

Further, to the extent that the executive finds signalling the intention to respect rights to the international community important, the executive responds favorably to adverse decisions against other states in the region. This may deter future “naming and shaming” activity by the regional court against the state of the executive. The extent to which the executive seeks to prevent this type of “naming and shaming” and maintain a rights-respecting reputation is conditional on multilateral aid allocations, particularly those from organizations like the World Bank. The executive can avoid damaging the state's reputation by adhering to adverse regional court decisions against other countries (particularly those with similar human rights

practices) in the region.⁷ Given these arguments, I posit:

Regional Direct International Pressure Hypothesis: *As regional court decisions that find violations of human rights within the region rise, respect for rights rises in countries as multilateral aid allocations increase.*

4.5 Results

4.5.1 Direct Domestic Pressure

Vertical Accountability. Using the research design presented in chapter 3, I analyze the influence of direct domestic pressure on the executive to adhere to adverse decisions of the regional court. Observing a positive parameter estimate for β_i lends support to the direct domestic vertical accountability hypothesis.⁸ A positive mean parameter estimate indicates that as competitiveness of executive recruitment rises, adverse regional court decisions are associated with greater respect for rights. Figure 4.1 shows mean parameter estimates and quantile-based 90% probability intervals for the β_i parameters for each country under ECtHR jurisdiction. The results provide limited support to the hypothesis. Mean parameter estimates (shown as dots) are positive for all 42 countries in the sample, with some countries showing that in the presence of an adverse regional court decision, a one-point increase in competitiveness of executive recruitment (which is coded on a 3-point scale - hereditary selection, dual selection, selection through election) is associated with around a 0.5 - 0.75 point improvement in respect for physical integrity rights, which is a considerable improvement on a dependent variable coded on a nine-point scale. However, 22 of the 42 countries report probability intervals that include positive *and* negative estimates (or intervals that cross the zero threshold on the x-axis).

Results for the IACtHR are reported in Figure 4.2 and lend little support to the direct domestic vertical accountability hypothesis. Again, positive parameter estimates for β_i lend support to this hypothesis. Figure 4.2 shows mean estimates and quantile-based 90% probability intervals for the β_i parameters for each country that has accepted the compulsory jurisdiction of the IACtHR. Mean parameter estimates are positive for 17 out of the 21 countries included in the sample, with countries like Bolivia, Brazil, and Chile indicating that a one-point increase in competitiveness of executive recruitment is associated with around a 0.5 point

⁷Adverse decisions against countries with similar human rights practices are likely perceived by the government as more likely to be a signal of potential future court activity.

⁸ β_i represents the interaction of an adverse regional court decision related to physical integrity and competitiveness of executive recruitment.

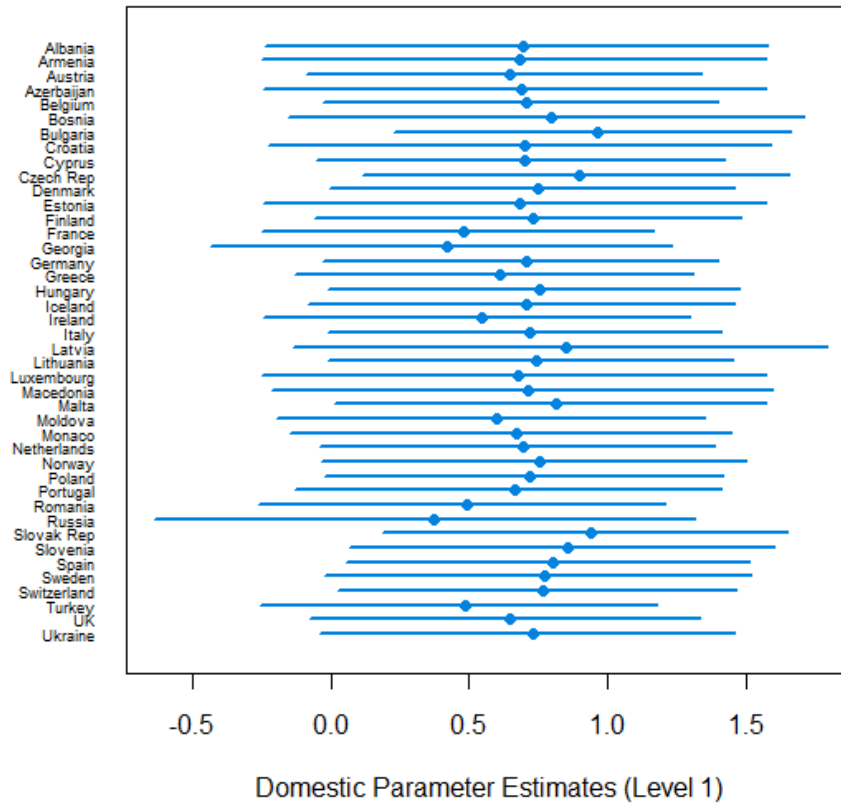


Figure 4.1: ECtHR Model Estimates, ECtHR Violation*Competitiveness of Executive Recruitment

increase in respect for physical integrity rights. However, probability intervals from the posterior distribution for all countries include positive and negative estimates, with some countries showing more uncertainty around the estimate than others. This indicates that the probability that the posterior distribution presents a *positive* estimate, as expected by the hypothesis, is much lower than 90%.

Horizontal Accountability. Turning to the direct domestic horizontal accountability hypothesis, observing a positive parameter estimate for β_i lends support to the hypothesized relationship.⁹ A positive parameter estimate indicates that as institutional constraints rise, adverse regional court decisions are associated with greater respect for rights. Figure 4.3 shows estimates and quantile-based 90% probability intervals for the β_i parameters for each country under ECtHR jurisdiction. I find substantial support for

⁹ β_i represents the interaction of an adverse regional court decision related to physical integrity and institutional constraints.

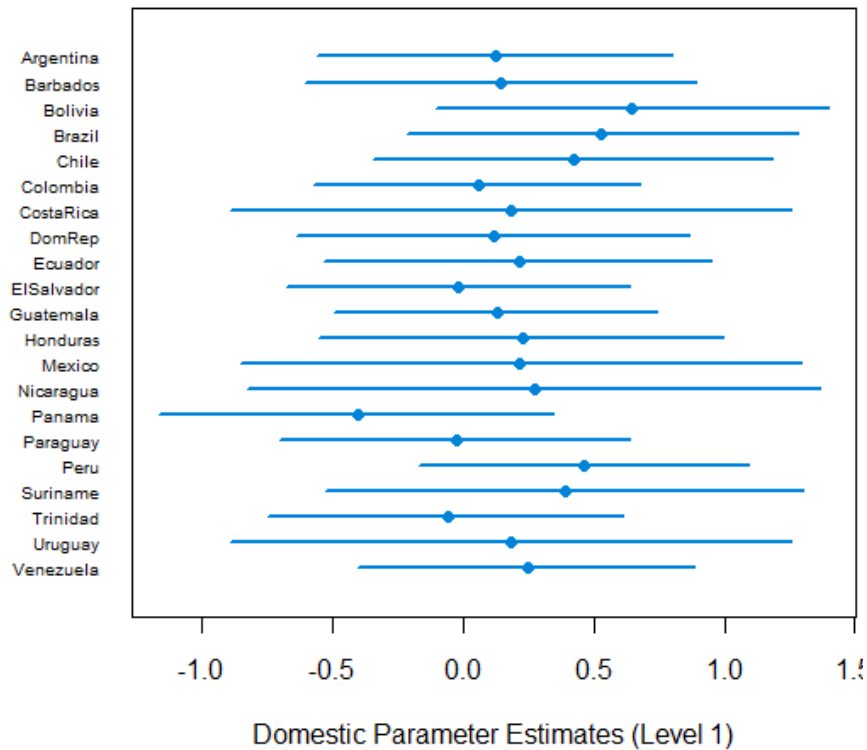


Figure 4.2: IACtHR Model Estimates, IACtHR Violation*Competitiveness of Executive Recruitment

the horizontal accountability hypothesis in the European context, as mean parameter estimates for all countries under ECtHR jurisdiction are positive, with some countries showing that in the presence of an adverse regional court decision, increases in institutional constraints (from the absence of institutional constraints to full institutional constraints) are associated with around a 2.5 point improvement in respect for physical integrity rights, which is quite large on a nine-point scale.¹⁰ Further, the probability intervals indicate that 90% of the posterior probability distribution estimates within the interval are positive for all countries under ECtHR jurisdiction.¹¹

¹⁰I present in-sample predications in the appendix to this chapter, including 1) changes in institutional constraints from zero to the mean value for each country and 2) changes from the mean value for each country to one.

¹¹I also estimated 95% probability intervals (not presented here), which indicate that 95% of the posterior probability distribution estimates are also all positive as well.

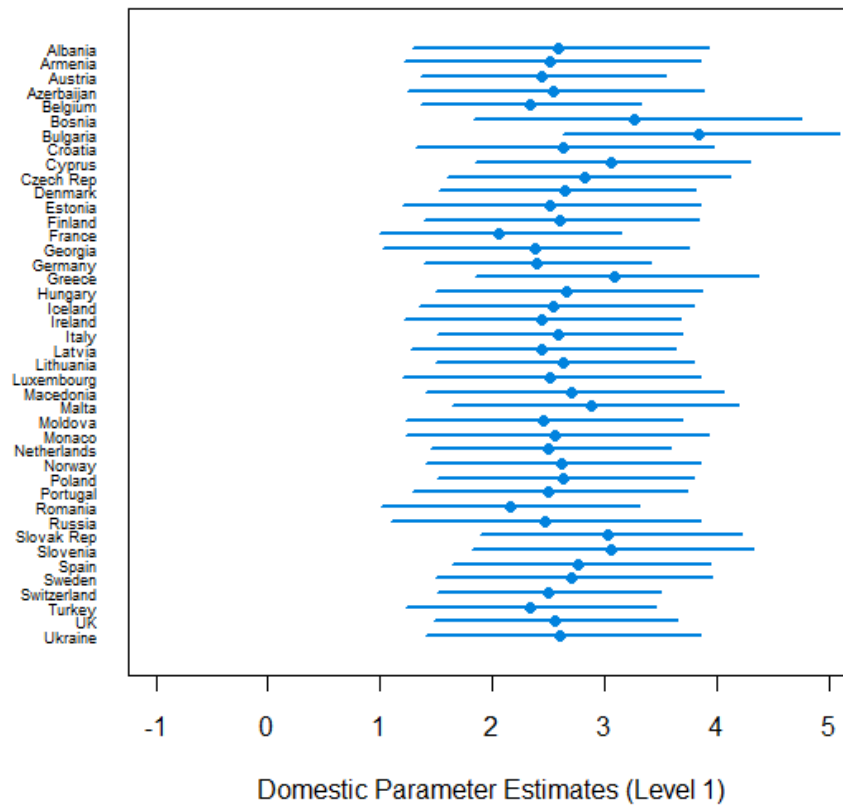


Figure 4.3: ECtHR Model Estimates, ECtHR Violation*Institutional Constraints

While horizontal accountability appears to be particularly important for ECtHR effectiveness, it is substantially less important for IACtHR effectiveness. Figure 4.4 reports mean estimates and 90% probability intervals for the β_i parameters for each country under IACtHR jurisdiction. Figure 4.4 shows that the mean parameter estimates are positive for 16 out of the 21 countries included in the sample, however, 90% probability intervals for all countries under IACtHR jurisdiction include positive *and* negative parameter estimates, which indicates that the probability that the posterior distribution produces a positive estimate (as posited in the hypothesis), is substantially lower than 90%.

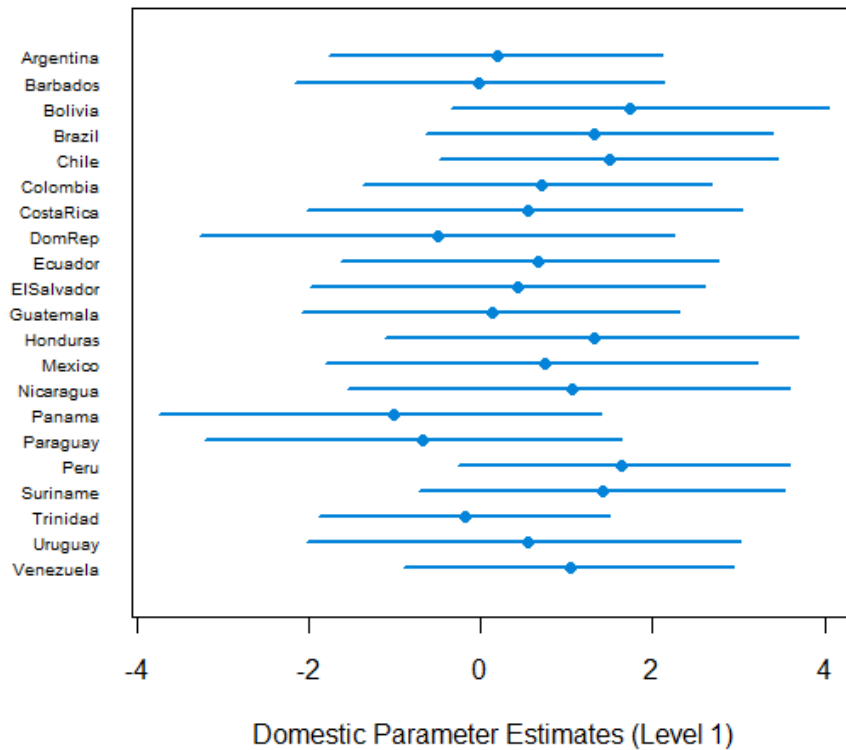


Figure 4.4: IACtHR Model Estimates, IACtHR Violation*Institutional Constraints

4.5.2 Direct International Pressure

Positive parameter estimates for β_i lend some support to the direct international pressure hypothesis.¹² A positive estimate indicates that higher levels of multilateral aid allocations are associated with greater respect for rights two years following an adverse regional court decision. Figure 4.5 displays mean parameter estimates and 90% probability intervals for the β_i parameters for each country under IACtHR jurisdiction.¹³ The results indicate little support for the international pressure hypothesis, as mean parameter estimates for most countries are positive, though the substantive finding, or the size of the parameter estimates, is relatively small for each country under IACtHR jurisdiction. Further, where the mean parameter estimates are positive, 90% probability intervals include parameter estimates that are both positive and negative, indicat-

¹² β_i represents the interaction of an adverse regional court violation related to physical integrity and multilateral aid.

¹³Parameter estimates are shown as dots, quantile-based 90% probability intervals as lines.

ing that the probability that the posterior distribution yields a positive estimate is lower than 90%. Mean parameter estimates for Bolivia, Brazil, Chile, Colombia, Dominican Republic, Ecuador, Peru, Suriname, and Venezuela are positive and the probability intervals for these countries are relatively small as well.¹⁴ In fact, in Suriname, around a \$2,000,000 increase in multilateral aid is associated with around a 0.5 point increase in respect for rights, which is a fairly substantial increase on a scale ranging from 0-8.¹⁵ However, given the substantively small effect, and the uncertainty reported in the probability intervals, the results lend little support to the hypothesis.

I do not report results for direct international pressure faced by the executive following an adverse ECtHR decision because the number of years for which countries under ECtHR jurisdiction received multilateral aid *and* the ECtHR rendered adverse judgments are too few to make estimating a meaningful model plausible. More specifically, there are only 21 country-years (nine of which involve Turkey), out of 744 total country-years for which ECtHR countries received multilateral aid and were the recipients of adverse ECtHR decisions. This provides an initial indication that perhaps in the European context, international pressure to protect rights as a result of multilateral aid allocations likely generate few incentives for the executive to adhere to adverse decisions of the ECtHR.

4.5.3 The Executive in Regional Context

Turning to the results for the regional direct domestic vertical accountability hypothesis, a positive parameter estimate for δ_2 indicates the effect of the cross-level interaction between the level-1 and level-2 predictors on respect for physical integrity rights. The level-1 predictor represents the interaction between an adverse regional court decision and competitiveness of executive recruitment, and the level-2 predictor represents the regional influence (the number of violations in the region, weighted by a country's similarity in physical integrity rights score to those in the region). Figure 4.6 reports results for the ECtHR; a positive parameter estimate indicates that the finding of a violation by the ECtHR is positively associated with respect for physical integrity rights as competitiveness of executive recruitment increases and as the number of adverse ECtHR decisions against countries with similar physical integrity rights scores rises. Figure 4.6 displays the mean parameter estimates and 90% probability intervals for the influence of this cross-level interaction on physical integrity rights in each country in the sample (δ_2). Figure 4.6 lends some support

¹⁴Results from a model estimated so as to only include aid received from the World Bank yield similar results to the model reported here (based on multilateral aid allocations).

¹⁵Estimates reported in the figure are based on multilateral aid allocations in millions of dollars.

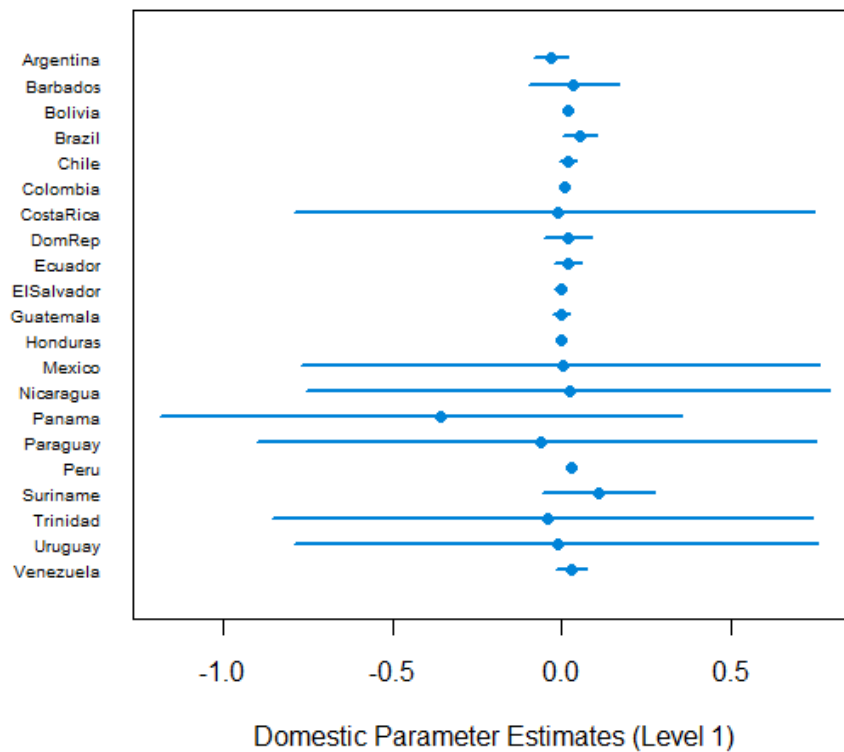


Figure 4.5: IACtHR Model Estimates, IACtHR Violation*Multilateral Aid Allocations

to regional vertical accountability hypothesis, as the results report positive mean parameter estimates for all 42 countries in the sample. However, the probability intervals include positive and negative estimates, indicating that 90% of the posterior probability distribution estimates are not solely positive. However, a quantile-based 85% probability interval (not reported in the figure) indicates that the probability that the posterior distribution displays a *positive* parameter estimate is 85% for all 42 countries under ECtHR jurisdiction, lending some support for the hypothesis. Figure 4.7 displays results for the cross-level interaction for the IACtHR. The IACtHR results provide no support for the regional accountability hypothesis. The mean posterior probability estimates are positive for 20 of the 21 countries in the sample, however, there is much more uncertainty surrounding the regional estimates, as all countries display 90% posterior probability intervals including positive and negative estimates. According to Figure 4.7, competitiveness of executive recruitment generates few executive incentives to adhere to adverse regional court decisions when

the violation involves other countries in the Americas.

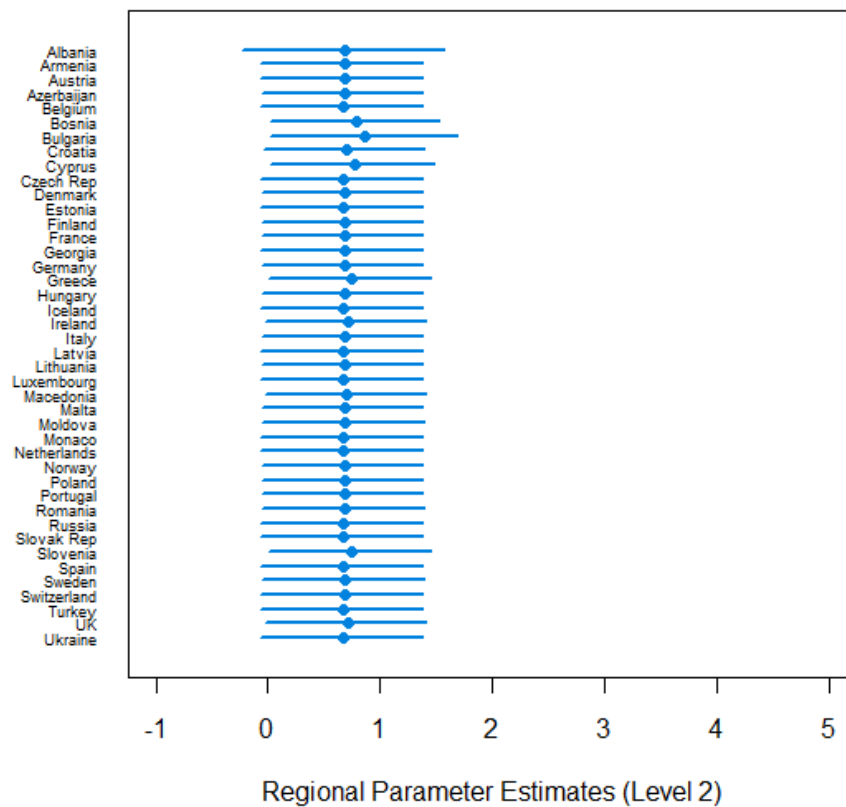


Figure 4.6: ECtHR Regional Model Estimates: ECtHR*Competitiveness of Executive Recruitment

Turning to results for the regional direct horizontal accountability hypothesis, Figure 4.8 reports results for the ECtHR. A positive mean parameter estimate indicates that adverse ECtHR decisions are positively associated with respect for physical integrity rights as institutional constraints rise and as the number of adverse ECtHR decisions against countries with similar human rights practices rise. Figure 4.8 displays the mean estimates and 90% probability intervals for the influence of this cross-level interaction on physical integrity rights in each country in the sample (δ_2). Figure 4.8 lends support to regional horizontal accountability hypothesis, as the results indicate that the probability that the posterior distribution includes a *positive* parameter estimate is 90% for all countries under ECtHR jurisdiction. In fact, some countries show that an adverse decision of the ECtHR is associated with around 2-3 point improvements in physical integrity rights

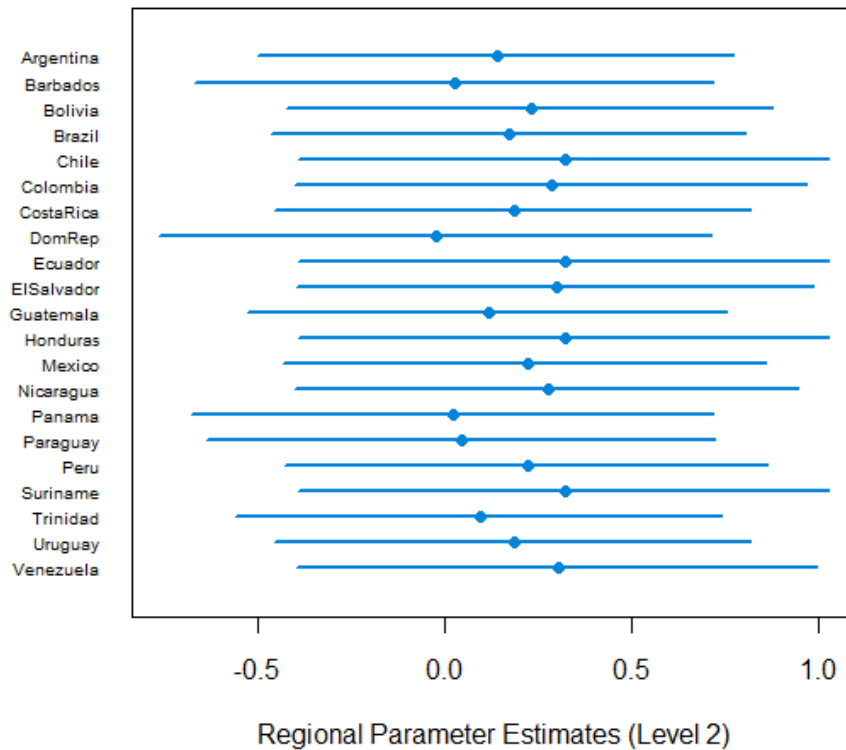


Figure 4.7: IACtHR Regional Model Estimates: IACtHR*Competitiveness of Executive Recruitment

as institutional constraints rise (from the absence of institutional constraints to full institutional constraints) and as the number of violations within the region rise. Figure 4.9 displays results for the cross-level interaction for the IACtHR. Much like the domestic horizontal accountability hypothesis, the IACtHR results lend no support to the horizontal accountability hypothesis. The mean posterior probability estimates are positive for 16 of the 21 countries in the sample, however the results report substantial uncertainty regarding the direction of the relationship, as the probability that the posterior distribution includes a positive parameter estimate, as posited in the hypothesis, is much lower than 90%.

Turning to the regional direct international pressure hypothesis, a positive parameter estimate for (δ_2) indicates the effect of the cross-level interaction between the level-1 (domestic) and level-2 (regional) pre-

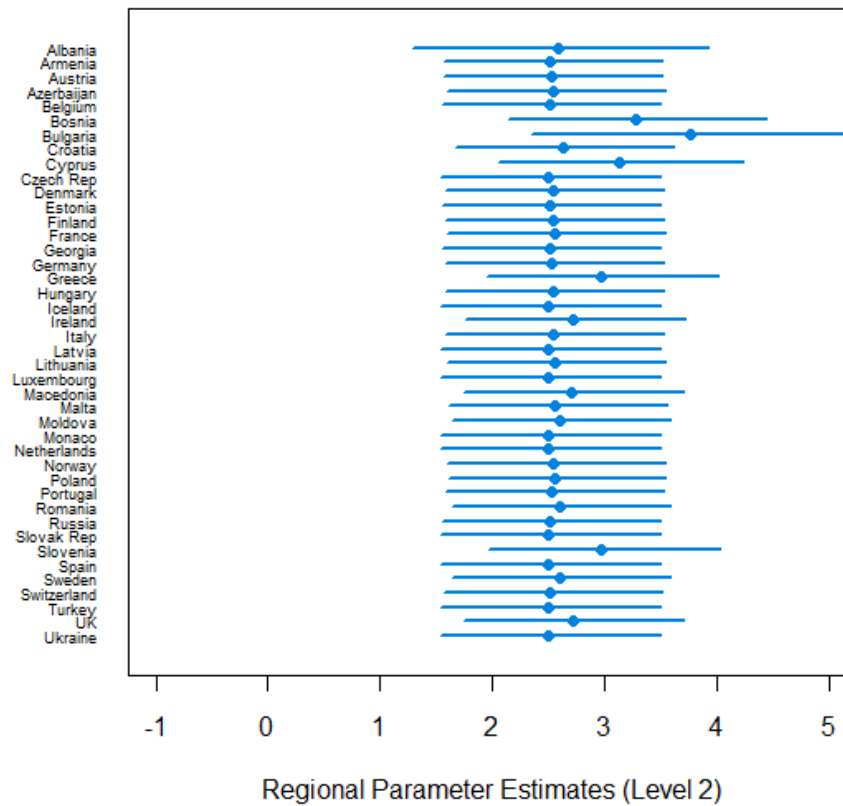


Figure 4.8: ECtHR Regional Model Estimates: ECtHR*Institutional Constraints

dictors on respect for physical integrity rights.¹⁶ A positive mean parameter estimate indicates that the finding of a violation by the IACtHR has a positive influence on respect for physical integrity rights as multilateral aid allocations increase and as the number of violations in the region against countries with similar human rights practices rises. Figure 4.10 displays the mean estimates and 90% probability intervals for the influence of this cross-level interaction on physical integrity rights in each country in the sample (δ_2). Figure 4.10 reports positive mean parameter estimates for 9 of the 21 countries in the Inter-American sample. Interestingly, though not surprisingly, these are the same countries in which the domestic level mean parameter estimates were positive as well. This provides an indication that if states are likely to respond to adverse

¹⁶The level-1 predictor represents the interaction between an adverse regional court decision and multilateral aid allocations, while the level-2 predictor represents the regional influence, or more specifically, the number of violations in the region, weighted by a country's similarity in physical integrity rights score to those in the region.

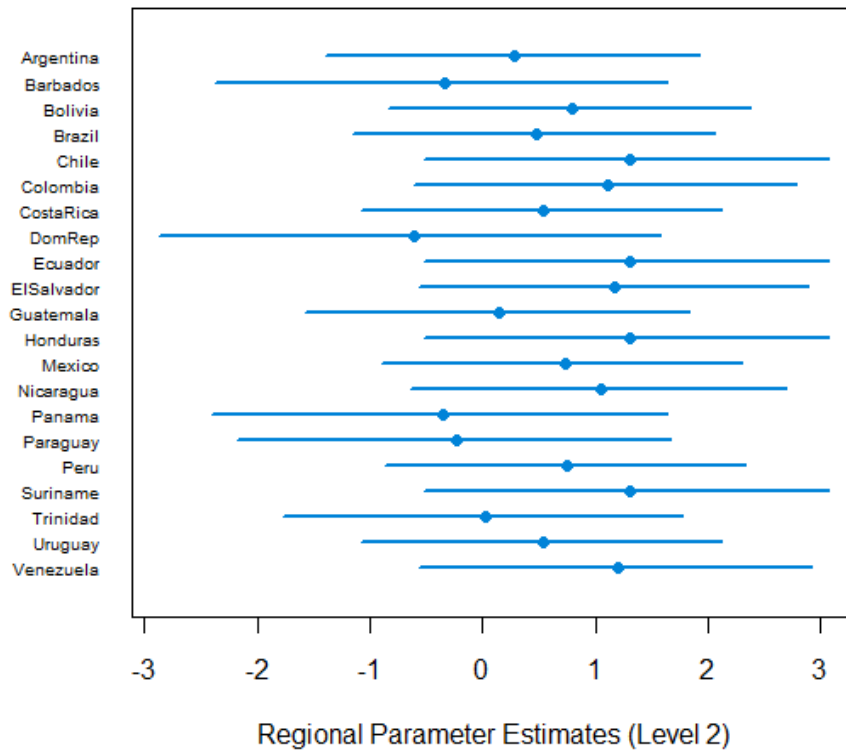


Figure 4.9: IACtHR Regional Model Estimates: IACtHR*Institutional Constraints

decisions of the IACtHR based on the international pressure stemming from the receipt of multilateral aid, they are also likely to respond to adverse decisions of the IACtHR against other countries in the region as well. However, the probability intervals indicate that the probability that the posterior distribution contains a positive estimate is much lower than 90% and this uncertainty lends little support for the direct international pressure hypothesis.

Perhaps executive response to adverse decisions of the regional court (through improved respect for rights) against his/her own state represents a more credible signal to the international community, than improving respect for rights based on adverse decisions of the regional court in other states. The results suggest that international pressure does not generate incentives great enough for all executives to adhere to adverse decisions of the IACtHR in other states in the region. Or perhaps the executive is more likely to respond to adverse decisions of the IACtHR based on international pressure from multilateral lending

agencies by taking direct, symbolic actions to come into compliance with the court (i.e. issuing a state apology, erecting a memorial), actions that are less likely to result in improved respect for rights.

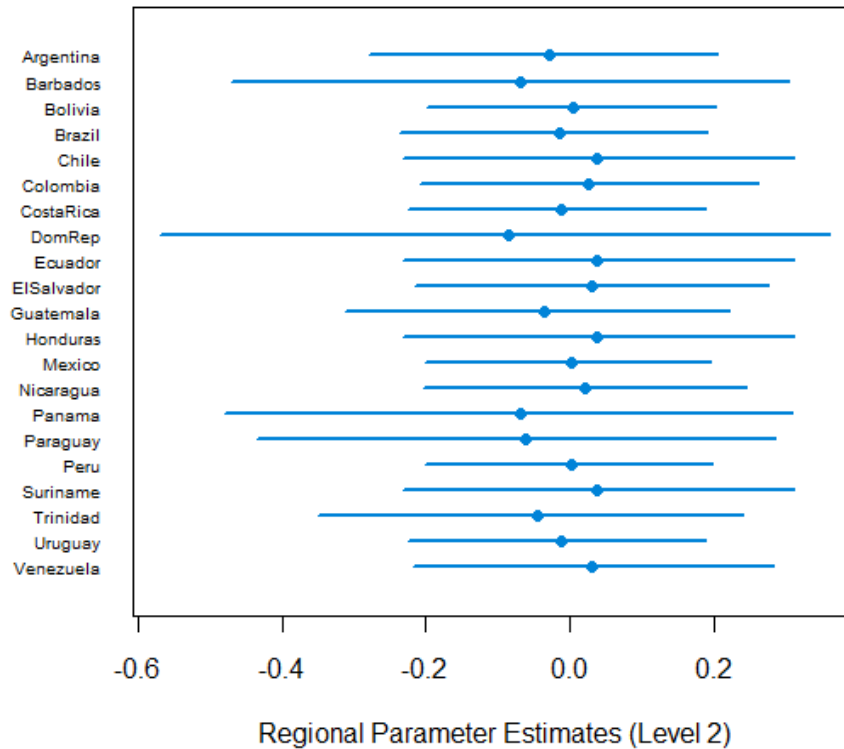


Figure 4.10: IACtHR Regional Model Estimates: IACtHR*Multilateral Aid Allocations

4.6 Conclusion

In this chapter, I generate hypotheses from the theoretical framework, which suggests that executive has incentives to adhere to adverse decisions of regional human rights courts through implementing a policy of respect for rights. These incentives arise when the executive is faced with direct domestic and international pressure. With respect to direct domestic pressure on the executive to adhere to adverse regional court decisions, I find that the executive is likely to respond to ECtHR decisions as domestic pressure rises. More specifically, as horizontal accountability, or institutional constraints rise, the executive is particularly likely to respond favorably to adverse regional court decisions. The finding is particularly robust in the ECtHR

context, indicating that when the executive is constrained by political institutions, the executive is more likely to respond to adverse ECtHR decisions by implementing a policy of respect for rights. Further, I find some evidence supporting the role of competitiveness of executive recruitment in generating executive incentives to respond to adverse ECtHR decisions.

Turning to international pressure, I find that little evidence that the executive is likely to respond to adverse IACtHR decisions as multilateral aid allocations rise. The results indicate that the relationship is particularly small and the role of international pressure in generating executive incentives is even less likely to extend to adverse IACtHR decisions against other countries in the region. The influence of international pressure generated through multilateral aid allocations likely exhibits little influence in the ECtHR context, as most countries under the jurisdiction of the ECtHR are not multilateral aid recipients. Perhaps, at least in the IACtHR context, the substantively small change observed in respect for rights represents executive tactical concessions in the face of international pressure to respect rights (Risse, Ropp and Sikkink, 1999). In other words, the executive responds to the publicity of the adverse regional court decision directly by taking quick, more immediate actions that are easily observable on the international stage, including orders directly tasked to the executive such as issuing a formal apology, paying reparations, or erecting a memorial, and this is particularly the case when faced with international pressure to do so. Perhaps these tactical concessions that are more directly observable by international audiences come at the expense of executive adherence to adverse IACtHR decisions through implementation of a policy of respect for rights. The evidence also does not lend support to the notion that these tactical concessions are part of the initial socialization process, resulting in improvements in respect for rights at a later stage. (Risse, Ropp and Sikkink, 1999).¹⁷ The results indicate that domestic pressure on the executive likely plays a relatively more important role in generating executive incentives to adhere to adverse regional court decisions than international pressure on the executive.

¹⁷Though, (Risse, Ropp and Sikkink, 1999) might argue that this socialization process occurs over a much longer time frame, and includes the actions of various other actors. However, in the model, I control for the influence of various other actors, including members of civil society. Further, the model is robust to the inclusion of lags of various years. In fact, the results become less robust as the time lag grows beyond five years following an adverse regional court decision.

CHAPTER 5

INDIRECT EXECUTIVE ADHERENCE: THE LEGISLATURE

5.1 Introduction

What role does the legislature play in regional human rights court effectiveness? In order for international and domestic pressure to motivate the executive to facilitate legislative efforts and adopt rights-respecting policy, the executive should expect legislative adherence. Regional courts often issue injunctive orders charging the domestic legislature with action, most notably, amending, repealing, or adopting domestic legislation associated with a specific type of human rights violation. The regional court often orders the state to reform its legal system to in order to meet international standards on human rights and ensure those standards are fulfilled domestically in practice.¹

Regional court judges recognize the importance of state action related to the amendment, repeal, or adoption of domestic law because changes to domestic legislation often limit the number of similar cases brought before the court in the future, and therefore reduce the caseload before the regional court. Consider the Loayza Tamayo and Castillo Petruzzi Cases, where the IACtHR ordered Peru to amend certain anti-terrorism and treason laws to conform to the American Convention on Human Rights.² In the Loayza Tamayo case, the victim, María Elena Loayza-Tamayo, was detained by officers of the National Counterterrorism Bureau, without verification or an arrest warrant, based on alleged information from another individual that Loayza-Tamayo was a collaborator of the subversive group “Shining Path.” Loayza-Tamayo was held in incommunicado detention and was subjected to torture, cruel, inhuman, and degrading treatment in an effort to pressure her to incriminate herself. In response to the IACtHR, the Constitutional Court of Peru declared provisions of Decree Laws on terrorism (nos. 25,475 and 25,659) unconstitutional and the

¹ While the IACtHR issues specific injunctive orders which states are obligated to implement in order to achieve full compliance, the ECtHR invites states to take individual and general measures to fulfill adverse regional court judgments. General measures include orders to prevent cases of a similar nature from arising in the future, and can involve steps to amend domestic legislation associated with past human rights violations. The ECtHR Committee of Ministers, which monitors state action following adverse judgments, has incentives to ensure that the state undertakes appropriate general measures because these measures “are critical preemptive tools against the flood of applications that arrive each month” (Hawkins and Jacoby, 2010, 53).

² See *Loayza Tamayo v. Peru* (Reparations, 1998, operative para. 5; *Castillo Petruzzi et. al. v. Peru* (Merits, 1999), operative para. 14.

legislature urgently passed a series of Legislative Decrees to bring the state into compliance with the Constitutional Court. One law, Legislative Decree No. 927, passed in response to the Constitutional Court's ruling, gave those imprisoned for terrorism access to prison benefits, and authorized reductions in the length of sentences, among other reforms.³

Legislative adherence to adverse regional court decisions plays an important role in ensuring a favorable response from the executive to adverse regional court decisions. However, members of the legislature do not always possess incentives or opportunities to adhere to adverse regional court decisions. In fact, legislative incentives to adhere to adverse regional court decisions are mediated by the presence of particular domestic institutional rules and constraints. In this chapter, I first explore legislative incentives to adhere to adverse regional court decisions and the influence these incentives have on executive expectations to adhere (follow-through on legislative implementation efforts). I then empirically examine executive expectations of legislative adherence to adverse regional court decisions and subsequently, the effectiveness of the regional court using cross-national statistical analysis of both the ECtHR and the IACtHR.

5.2 Domestic Legislative Incentives (Not) to Adhere to Adverse Regional Court Decisions

Legislative adherence to adverse regional court decisions entails costs. The costs of adherence do not necessarily involve the actions carried out by the legislature, as it is not inherently difficult to write legislation to align with the regional court's demands, or to attend the legislative session and vote for its passage. The major challenge in legislative adherence to regional court orders is ensuring that competing parties within the legislature can agree to do so (Huneus, 2012). In fact, Hawkins and Jacoby (2010) find that compliance rates are lowest when IACtHR orders involve the amendment, repeal, or adoption of domestic laws or judgments (at only 7%), and speculate that orders that are easier to comply with, such as the payment of monetary costs "probably do not require as many political capital expenses, coordination efforts, or reputational expenses as some of the other types of reparations" (59). Adherence by the legislature is, however, particularly important, as domestic legislative changes are likely to result in broader systemic and structural changes necessary to influence respect for rights.⁴ However, legislators may find legislative

³More specifically, the legislature enacted Law 27913 (January, 9 2003), allowing the executive to legislate in matters of counterterrorism.

⁴While there may be gaps between the adoption (or amendment and repeal) of domestic laws and practice, policy change is arguably a necessary precursor for observing substantive changes in practice on the ground.

changes ordered by the regional court to be costly or problematic to implement, primarily because of 1) public controversy surrounding the case or 2) procedural (institutional) difficulties in passing legislation.

First, while voters generally value respect for rights and seek to ensure that the state provides for rights protection domestically, some cases before a regional human rights court may involve rights issues that are controversial among the public and conflict with existing domestic legislation. For example, cases involving the right to life spark controversy in the Americas. Consider the state of Canada, which joined the Organization of American States in 1990 and expected to ratify the ACHR shortly thereafter, yet, Canada failed to ratify the American Convention on Human Rights and remains a non state-party to the ACHR to date. One major ratification problem involves a conflict between domestic law and the ACHR, as well as a lack of public support for the provision detailing when the right to life begins. Article 4(1) of the ACHR specifies that the right to life remains protected by law “in general, from the moment of conception.” Following an important Supreme Court decision, Canada does not have legislation banning abortion, and “Parliament appears willing to accept this situation more or less indefinitely” (Schabas, 1998, 325).

In a similar vein, consider Trinidad and Tobago, a state that officially withdrew from the IACtHR over conflict involving Article 4 of the ACHR. In the 2002 case of *Hilare, Constantine and Benjamin v Trinidad and Tobago*, the IACtHR found that the mandatory death penalty for those convicted of murder in Trinidad and Tobago violated the prohibition against the arbitrary deprivation of life in Article 4(1) and 4(2) of the ACHR. The IACtHR ordered Trinidad and Tobago to reform current legislation, so that it included different categories or criminal classes for murder, in order to “ensure that the severity of the punishment is commensurate with the gravity of the act and the criminal culpability of the accused.”⁵ In 2000, the legislature in Trinidad and Tobago drafted legislation to limit the scope of the mandatory death penalty to some extent by introducing a classification of murders.⁶ However, following a change of government, the legislation was not forwarded to the president (Hood and Seemungal, 2009). Further, the high murder rate in Trinidad and Tobago contributed to the formation of a public supportive of capital punishment as a way to remedy (and deter) the problem of murder on the island.⁷ Trinidad and Tobago officially denounced the ACHR in 1999 and rejected the provisional measures ordered by the IACtHR in death penalty cases (Pasqualucci, 2003, 344). Regional court cases involving issues that are inherently more controversial are

⁵See (Ser C) No 94 (2002), 21 June 2002, Inter-American Court of Human Rights.

⁶See Act No 90 of 2000 An Act to Amend the Offences Against the Person Act (Ch 11:08) for more on the legislative proposal. Hood and Seemungal (2009) provide a nice summary of the proposed legislation (9).

⁷In fact, a recent survey conducted by the Death Penalty Project shows that 91% of Trinidad and Tobago’s population support capital punishment (Hood and Seemungal, 2010).

unlikely to generate the public support needed to ensure that they are implemented. Given that legislators find public support crucial to maintain survival in office, they pay close attention to public opinion regarding salient, controversial issues. Politicians maintain concern for “what public attention and opinion, once mobilized, may be” following court cases (Vanberg, 2005, 46). Where the public does not provide specific support for the (regional) court, adhering to particular adverse regional court decisions becomes relatively more costly. While legislative changes can be costly to policymakers if the public does not back the specific regional court decision, the public often continues to provide diffuse support for the regional court, or “general support for an institution qua institution, divorced from immediate reference to specific policy outputs” (Vanberg, 2005, 49).⁸

A second, and potentially greater challenge to legislative adherence to adverse regional court decisions involves institutional or procedural challenges to policy change. Tsebelis (2002) argues that policy change is more difficult to the extent that veto players are able to block policy change. Tsebelis (2002) defines veto players as the actors required to agree to proposed legislative changes from the status quo. In other words, policy stability is likely the outcome in the face of numerous veto players. Various scholars point to the importance of veto players in acting as a constraint on executive or other governmental action supportive of repressive policies, and the importance of veto players in ensuring respect for rights (Davenport, 2007b). However, recent work by Conrad and Moore (2010) highlights the challenge that veto players present to constraining human rights violations, particularly torture. They argue that the status quo policy includes the practice of torture, and as a result, as the number of veto players increases, the greater the challenge of adopting policy, including programs designed to prevent or stop torture.⁹

In order for the legislature to adopt, amend, or repeal domestic legislation as ordered by a regional human rights court, the legislature must possess the ability to make policy changes from the status quo. Subsequently, relatively greater numbers of veto players diminish the ability of the legislature to adhere to adverse regional court decisions.¹⁰ Greater opposition in the legislature, divided government (multiple

⁸While Vanberg (2005) refers specifically to domestic courts, specific and diffuse support can be extended to arguments regarding regional courts as well, as regional courts are likely to rely on the support of the public, particularly diffuse support, to ensure that their decisions are implemented domestically. See Chapter 6 for a more detailed discussion on public support for the domestic and regional court.

⁹While veto players are found to be important in ensuring a check on executive behavior, they represent an obstacle in securing rights-related policy change (including incorporating international legal commitments into domestic law) (Simmons, 2009; Conrad and Moore, 2010; Lupu, 2014). See Chapter 4 for more discussion on the role of institutional constraints on the executive.

¹⁰Simmons (2009) makes this argument with respect to international human rights treaty ratification, arguing that legislative veto players represent higher hurdles for domestic treaty ratification as additional legislative veto players raise “the possibility that the government’s externally negotiated agreement runs into domestic opposition” (68).

legislative chambers controlled by different parties), and the extent to which there exist subnational levels of government render the ability of the legislature to adhere to adverse regional court decisions by making changes to the status quo policy, inherently difficult.

Consider the state of Canada or the United States, for example, neither of which have ratified the ACHR. One major challenge to Canadian ratification involves the existence of subnational levels of government. In Canada, provincial governments, rather than the federal government, typically handle human rights issues, and while treaty ratification falls under the authority of the federal government, the federal government must engage in consultations with provincial governments before ratification (Pasqualucci, 2003). Subnational governments often legislate required changes following ratification, including issues involving the right to life, abortion or capital punishment, and these laws may differ by province within a single state. The difficulty in legislating on the federal level makes legislative adherence to adverse regional court decisions requiring the adoption, amendment, or repeal of domestic legislation particularly difficult in Canada.

As a further example of the influence of veto players on legislative adherence to adverse regional human rights court decisions, consider the 2005 case of *Palamara-Iribarne v Chile* in which Palamara, a former military official wrote a book criticizing the Navy. The book led to a military criminal trial for “disobedience” and the “breach of military duties,” and the government banned circulation of the book. The IACtHR ordered the state of Chile to adopt legislative reforms related to freedom of expression in Chile, as well as allow publication and circulation of the book. As a result, Chile examined Article 264 of the Criminal Code which provides for criminal charges of “insult” (*descato*), allowing public officials to prosecute those who criticize them. In assessing compliance following the IACtHR judgement, the state informed the IACtHR of its progress. The state of Chile claimed to be “studying the possibility to present a bill that [would] clarify or modify the scope of Article 264 of the Criminal Code” and the IACtHR found Chile’s efforts insufficient to constitute compliance.¹¹ In response to the IACtHR judgment, President Lagos submitted Bill 212-347 to the National Congress, eliminating the concept of *descato* from Chilean legislation and reforming Article 264 (as well as many other articles) of the Chilean Criminal Code. The Bill passed through the Chamber of Deputies (the lower chamber of the legislature), but after more than a year of delays, the Constitution, Legislation, Justice and Rules Committee of the Senate (the upper house of the legislature) made a recommendation to the full Senate that modified key aspects of the original bill, including leaving the text of

¹¹ See *Palamara-Iribarne v Chile*, Monitoring Compliance with the Judgment, Nov. 30. 2007, para. 23 and 24.

Article 264 virtually intact.¹² Institutional challenges rendered the passage of IACtHR-ordered legislation particularly difficult and the IACtHR orders to reform domestic legislation remain controversial to date. The large number of veto players in the Chilean legislature contributed to the inability to pass legislation ordered by the IACtHR. Based on these arguments, I posit:

***Veto Players Hypothesis:** As the number of legislative veto players rise, regional court decisions that find human rights violations are less likely to improve domestic respect for human rights.*

5.3 Threats to Executive Political Survival: Electoral Rules

While legislative veto players likely inhibit the ability of the legislature to change status quo policy, and may lead to an executive expectation of nonadherence by the domestic legislature, the extent to which voters threaten the political survival of legislators for failing to adhere to adverse regional court decisions, generates legislative incentives to respond favorably to regional court decisions (and an executive expectation of adherence). Citizens value the separation of powers and checks and balances in government. Almond and Verba (1963) argue that citizens in stable democracies share various values, including understandings of the appropriate boundaries of governments. Weingast (1997) argues that citizens support the separation of powers as a legal constraint on the actions of the sovereign. Given that citizens value the separation of powers domestically, I assume that citizens also value the check that the regional court places on state behavior. In addition to the regional court, I also assume that citizens value respect for rights and do not prefer to see their rights violated.

As elected public officials, legislators are primed to respond to citizen interests in order to retain office. However, the policy preferences of voters and elected officials are not always perfectly aligned. As a result, legislator sensitivity to citizen interests vary based on electoral institutional rules. In other words, democratic electoral rules need to place elected officials in a position where electoral benefits encourage adherence to adverse regional court decisions and the monitoring of human rights abuses. Cingranelli and Filippov (2010) argue that the ability to monitor elected officials is conditional on the size of the electoral district, as large proportional representation electoral districts are associated with weak connections between representatives and voters. Yet, as district size decreases, the ability to monitor politicians increases significantly and

¹²For more on the movement of the proposed bill through the legislature, see World Press Freedom Committee open letter to the President of the Chilean Senate at http://www.ifex.org/chile/2005/01/24/wpfc_urges_senate_to_reject_senate/.

the ability to discern responsibility for adherence to adverse regional court decisions and rights violations increases. However, Cingranelli and Filippov (2010) argue that single-member districts (plurality) electoral rules generate high barriers to the entry of new candidates and “forces voters to choose on the basis of a few select ‘important’ issues and put aside less important concerns,” which often include rights concerns, at the expense of other issues (4). In single-member districts, voters can monitor the behavior of elected officials with relative ease, but voters may be unable to focus on rights-related behavior at the expense of other issues, placing elected officials in a position discouraging a focus on rights.

Consider the United Kingdom, a country with a single-member district electoral system. In the 2008 case of *Greens v the United Kingdom*, the ECtHR ruled against the UK regarding a blanket ban on prisoner voting rights in UK law. Legislation was introduced in parliament at the end of 2010 and in early 2011, the House of Commons held debate, and largely agreed that the motion to retain the current ban stood. Following appeals for an extension, the government published a draft Bill, the Voting Eligibility Draft Bill, though to date, the UK has not undertaken the general measures necessary to execute the ECtHR judgment. While politics are likely at play and voters can easily attribute the failure to adhere to the ECtHR decision to specific elected officials as a result of the single-member district voting rules in the UK, high barriers to entry render it unlikely that voters will threaten the political survival of their elected officials at the voting booth based solely on lack of adherence to the ECtHR.¹³

Following Cingranelli and Filippov (2010), I posit:

***Plurality District Hypothesis:** Regional court decisions that find human rights violations are less likely to improve domestic respect for rights in the presence of plurality legislative electoral districts.*

***District Size Hypothesis:** As the average size of the legislative electoral district increases, regional court decisions that find human rights violations are less likely to improve domestic respect for rights.*

5.4 The Legislature in Regional Context

While an expectation of legislative adherence generates executive incentives to adhere to adverse regional court decisions against each individual state, adverse regional court decisions against other countries

¹³See *Greens and M.T. v. the United Kingdom*, Judgment (Merits and Just Satisfaction), Nov. 23, 2010, applications nos. 60041/08 and 60054/08.

in the region likely influence executive expectations as well. As I argue above, the executive is less likely to expect adherence by the domestic legislature when the legislature is composed of a relatively greater number of veto players. The ability to change status quo policy in response to regional court activity across the border (in other countries in the region) may be an even greater challenge than adhering to adverse regional court orders directly tasking each country with policy change. As a result, I posit:

Regional Veto Players Hypothesis: *As regional court decisions that find violations of human rights within the region rise, respect for rights declines in countries as the number of veto players increase.*

Further, executive expectation of adherence to adverse regional court decisions by the domestic legislature is also conditional on electoral rules. In states where voters possess a relatively greater ability to monitor the behavior of elected officials, the probability of domestic legislative adherence increases. That is, when legislative electoral rules are such that voters can monitor legislative adherence to adverse regional court decisions (plurality electoral districts and relatively lower district size), legislators are more likely to adhere in order to diminish potential threats to political survival. These arguments extend to expectations regarding legislative (and executive) adherence to adverse regional court decisions against other countries in the region as well. Rather than fall victim to adverse regional court orders requiring policy change, legislators can mitigate these costs by engaging in policy change based on adverse regional court orders against other countries in the region. When electoral rules are such that adherence to adverse regional court decisions plays a role in political survival, legislators may be more likely to pre-empt potential regional court activity and engage in policy change before becoming the subject of an adverse decision. As a result, I posit:

Regional Plurality District Hypothesis: *As regional court decisions that find violations of human rights within the region rise, respect for rights declines in countries with plurality legislative electoral districts.*

Regional District Size Hypothesis: *As regional court decisions that find violations of human rights within the region rise, respect for rights declines in countries as district size increases.*

5.5 Results

5.5.1 Veto Players

I apply the research design presented in chapter 3 to analyze the various legislative hypotheses. Negative parameter estimates for β_i provide support to the veto player hypothesis.¹⁴ Figure 5.1 displays mean parameter estimates and quantile-based 90% probability intervals for the β_i parameters for countries in the ECtHR sample.¹⁵ Negative parameter estimates indicate that adverse decisions of the ECtHR are negatively associated with respect for rights as legislative veto players increase. Results displayed in Figure 5.1 do not lend support to the hypothesis. In fact, the results show that the mean estimates are *positive* (rather than negative, as expected) for 38 of the 42 countries in the sample. Interestingly, adverse ECtHR decisions and increases in the vote share of opposition parties in the legislature are likely associated with *greater* respect for rights.

Perhaps veto player analysis is better suited to explain policy stability, and does not do well explaining the direction and magnitude of policy changes (Ehrlich, 2007).¹⁶ Greater opposition in the legislature may provide an additional institutional check on potential legislative evasion. As such, pro-rights advocates can use the legal standard established in an adverse regional court decision and pressure policymakers to change rights-related policy. The extent to which pro-rights advocates can make use of the legal standard set in an adverse regional court decision depends on their ability to locate policymakers sensitive to human rights concerns. As opposition in the legislature grows, pro-rights advocates may be better able to locate policymakers sensitive to their cause and willing to build coalitions behind legislative changes within the legislature. In other words, the opportunity to build a coalition of pro-rights support in the legislature may increase to the extent that there are a greater number of parties represented in the legislature.

Turning to results for the IACtHR, mean estimates and 90% probability intervals for the β_i parameters for all countries under IACtHR jurisdiction are reported in Figure 5.2. The results indicate mixed support for the veto player hypothesis. Mean parameter estimates for 16 of 21 countries in the sample are negative, indicating that adverse IACtHR decisions may inhibit the ability of policymakers to make rights-related policy changes as the number of veto players rise. Though for 5 of the 21 countries (Bolivia, Brazil, Chile, Peru, and Suriname), an adverse IACtHR decision is associated with greater respect for rights as the number

¹⁴ β_i represents the interaction of an adverse regional court decision related to physical integrity and legislative veto players.

¹⁵ Parameter estimates are shown as dots, 90% probability intervals as lines.

¹⁶ Perhaps the variable analyzed here, vote share of opposition parties, better captures representation in government, rather than veto players. Models including variables representing federalism and polarization of governmental parties yield similar results.

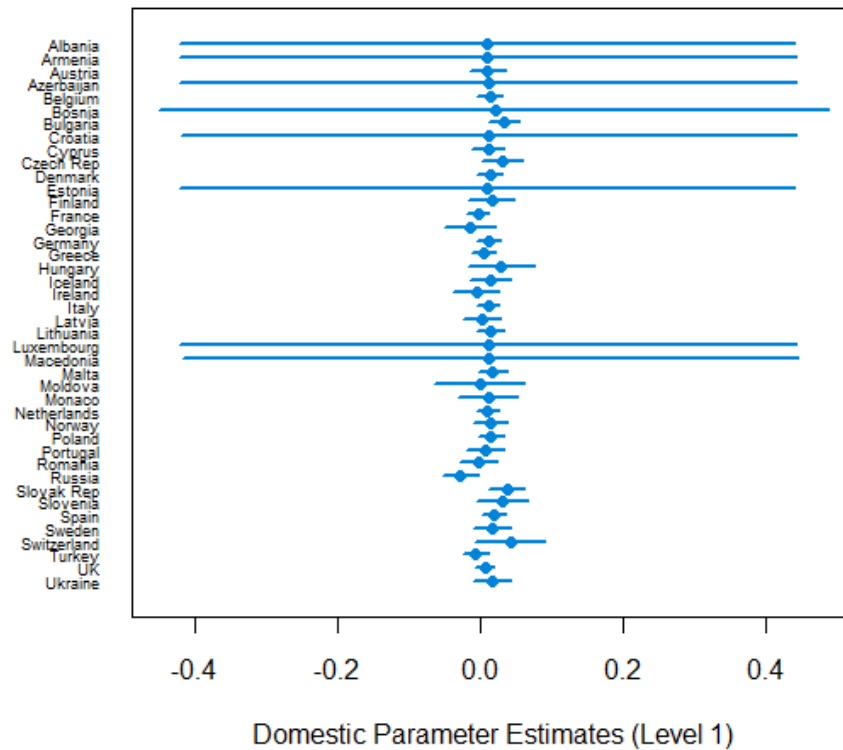


Figure 5.1: ECtHR Model Estimates, ECtHR Violation*Veto

of legislative veto players *increase* (much like the results for the ECtHR). The influence of veto players in the Inter-American context appears to vary by country. Though, it is important to note that the results for both models are substantively small. Also, the posterior probability intervals indicate substantial uncertainty regarding the direction of the relationship for most countries under IACtHR jurisdiction.

5.5.2 Electoral Rules

Turning to electoral rules, negative mean parameter estimates for β_i lend support to the plurality district hypothesis.¹⁷ A negative mean parameter estimate indicates that an adverse ECtHR decision is associated with lower respect for rights in the presence of plurality legislative electoral rules. Mean estimates and 90% probability intervals for the β_i parameters for each country under ECtHR are displayed in Figure 5.3

¹⁷ β_i represents the interaction of an adverse regional court decision related to physical integrity and the presence of plurality legislative electoral rules.

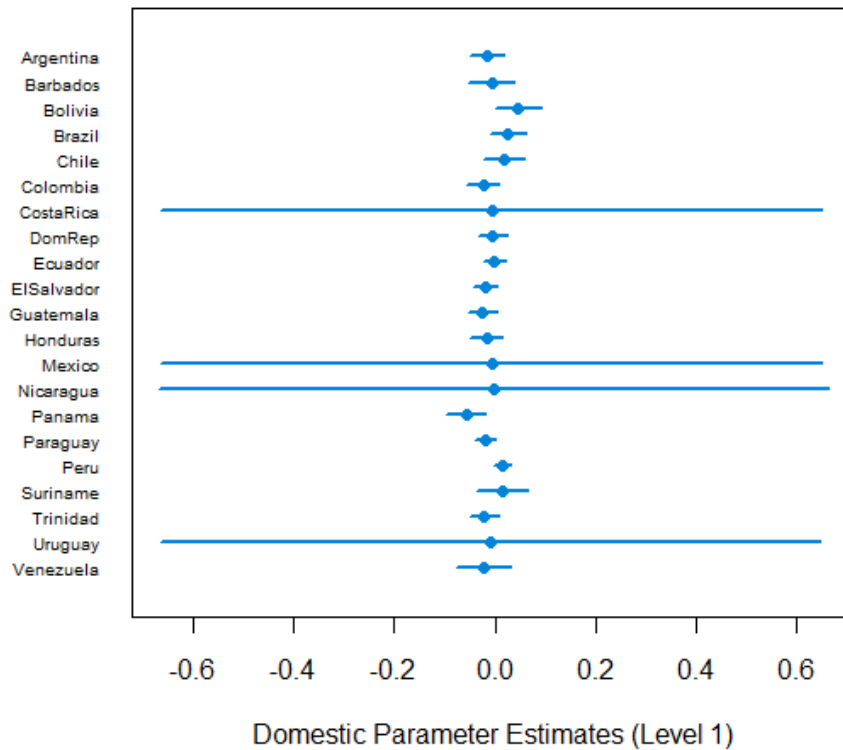


Figure 5.2: IACtHR Model Estimates, IACtHR Violation*Veto

and provide limited support for the hypothesis. Mean parameter estimates are negative for 37 of the 42 countries in the sample, as posited. The findings displayed here provide some support for the argument made by Cingranelli and Filippov (2010) that single-member districts create high barriers to the entry of new candidates and force voters to condition their support on a few important issues, placing less important concerns aside, including holding legislators accountable for adherence to adverse regional court decisions. However, the probability intervals displayed in Figure 5.3 indicate that 90% of the posterior probability distribution display negative and positive estimates. This indicates that the probability that the posterior distribution includes a negative estimate is much lower than 90%, providing little support for the hypothesis.

With respect to the IACtHR, Figure 5.4 displays parameter estimates for all countries under IACtHR jurisdiction. Results for the IACtHR sample provide little support for the plurality district hypothesis. Mean parameter estimates for 14 of 21 countries are *positive*, however, probability intervals indicate substantial

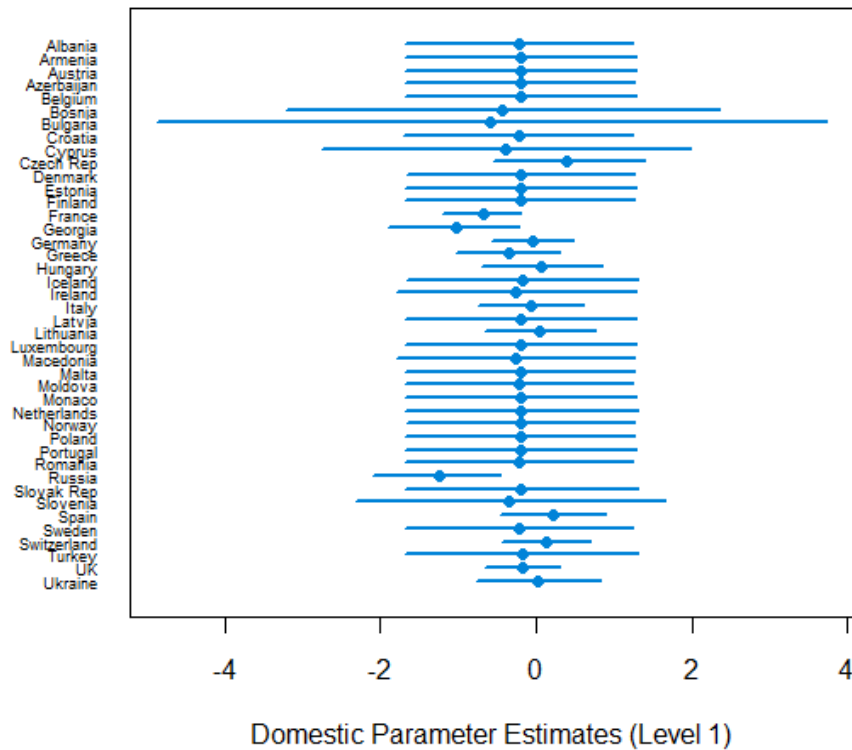


Figure 5.3: ECtHR Model Estimates, ECtHR Violation*Plurality

uncertainty regarding the direction of this relationship. While plurality legislative electoral rules show a negative, though largely uncertain, association with the effectiveness of the ECtHR, these rules appear to exhibit little influence in the Inter-American context.

Turning to the district size hypothesis, negative parameter estimates for β_i lend support to the hypothesis.¹⁸ Mean parameter estimates and 90% probability intervals for the β_i parameters for each country under the ECtHR jurisdiction are reported in Figure 5.5 and provide little support for the hypothesis. Mean parameter estimates for only five of the 42 countries in the sample are negative and 90% of the posterior probability distribution estimates within the interval are not solely negative. In other words, the probability that the posterior distribution includes only *negative* parameter estimates is lower than 90%.

¹⁸ β_i represents the interaction of an adverse regional court decision related to physical integrity and mean district magnitude of the House.

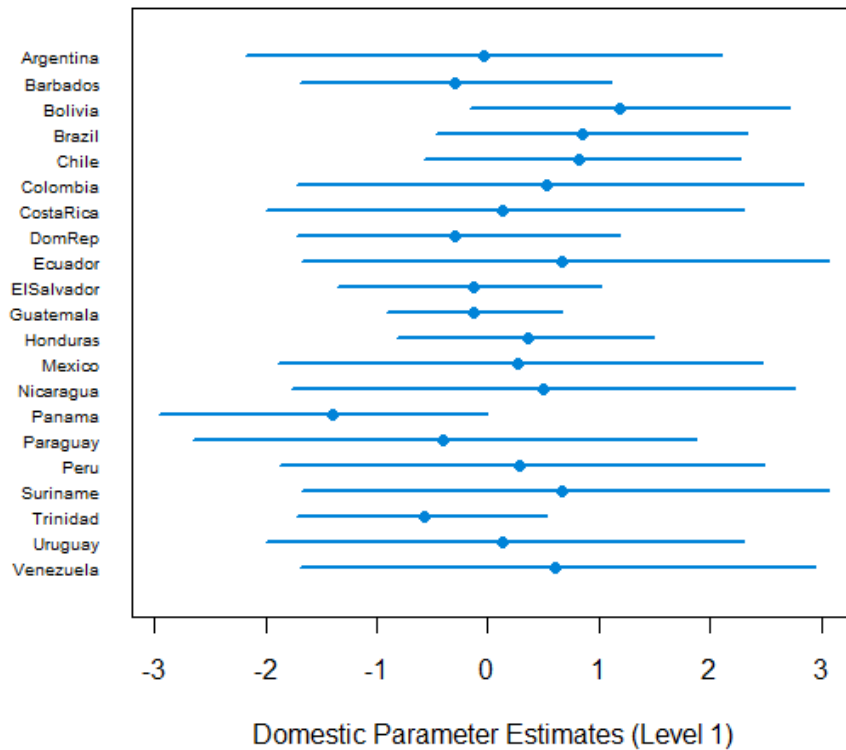


Figure 5.4: IACtHR Model Estimates, IACtHR Violation*Plurality

Following Cingranelli and Filippov (2010), the district size hypothesis posited that countries with relatively higher district magnitude represented an environment with relatively lower personal connection between voters and elected representatives, giving legislators relatively fewer incentives to adhere to an adverse regional court decision in the face of high district magnitude. However, perhaps district size provides a better indicator of the access that voters have to elected officials when it comes to human rights issues. Ehrlich (2007) provides a useful theoretical explanation for this observation, arguing that as the number of access points (policymakers susceptible to lobbying) within a country rise, lobbying becomes less costly for particular constituencies. Ehrlich (2007) focuses exclusively on trade policy, arguing that greater numbers of access points benefit protectionists because they are better able to overcome potential collective action problems and likely take advantage of cheaper lobbying. However, this argument can be extended into policy in other areas. Lobbying likely becomes less costly for pro-rights advocates as access to policymakers

increases, particularly in the face of an adverse regional human rights court decision. An adverse decision of the ECtHR sets a standard of rights protection which pro-rights advocates can utilize in lobbying policymakers. Policymakers are primed to respond to voters on rights-related issues given that voters value respect for rights. An adverse decision of the regional court offers a focal point or legal standard around which pro-rights advocates can collectively organize, and increases the value placed on rights and the probability of successfully mobilizing to secure rights (Simmons, 2009). As a result, in countries with relatively greater numbers of access points, pro-rights advocates can take advantage of the standard set by an adverse decision of the ECtHR, and benefit from relatively cheaper lobbying efforts. As a result, it may be the case that relatively greater numbers of access points, represented here as a larger average number of representatives per district, are associated with greater legislative adherence to adverse decisions of the ECtHR.¹⁹

Turning to the IACtHR, the results are mixed. Figure 5.6 displays results for the IACtHR, with about half of countries displaying positive mean parameter estimates and about half of countries displaying negative mean parameter estimates.²⁰ Further, almost all countries display probability intervals including both positive and negative estimates. The results indicate that we cannot be certain that district size plays an influential role in legislative (and executive) incentives to adhere to adverse IACtHR decisions.

5.5.3 The Legislature in Regional Context

Turning to results for the regional veto player hypothesis, a negative parameter estimate for (δ_2) indicates the effect of the cross-level interaction between the level-1 and level-2 predictors on respect for physical integrity rights. The level-1 predictor represents the interaction between an adverse regional court decision and legislative veto players, while the level-2 predictor represents the ECtHR influence in the region, or more specifically, the number of violations found by the ECtHR in the region weighted by each country's similarity in physical integrity rights to those in the region. Figure 5.7 displays results for the ECtHR and does not lend support to the hypothesis. Parameter estimates for all countries in the ECtHR sample are positive, substantively small, and are very close to zero. This provides an indication that while additional veto players appear to be positively (though weakly) associated with legislative incentives to adhere to adverse ECtHR decisions against each individual country, the evidence does not support the influence of veto players in supporting policy change when the ECtHR renders adverse decisions against other countries

¹⁹Though it is important to note that these results are substantively small in magnitude, indicating that the executive may be more likely to behave in expectation of other governmental actor's behavior, notably the judiciary and civil society.

²⁰Mean estimates and 90% probability intervals for the β_i parameters for each country under IACtHR jurisdiction are reported.

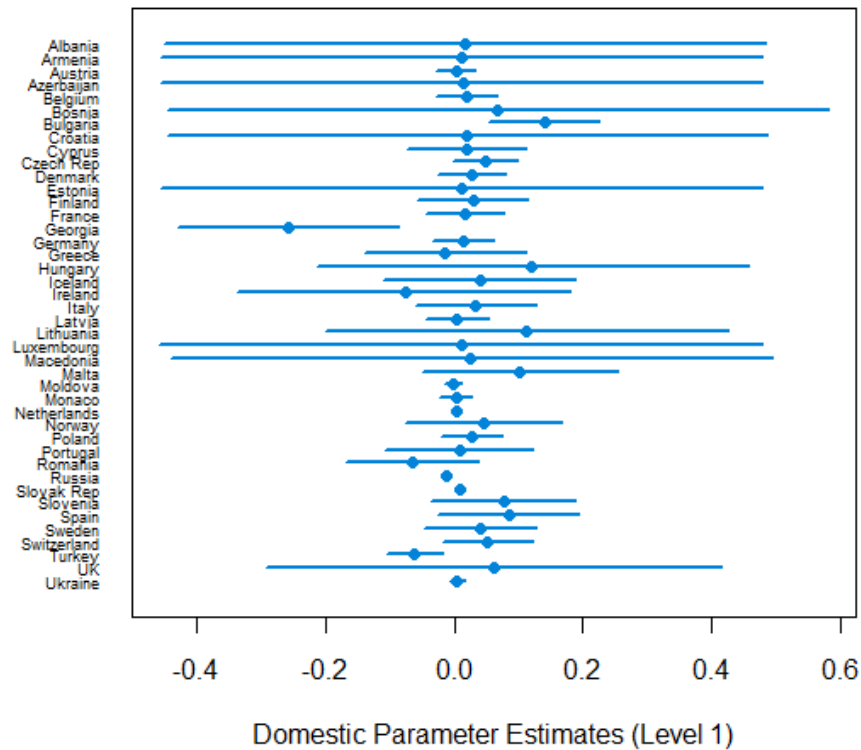


Figure 5.5: ECtHR Model Estimates, ECtHR Violation*District Magnitude

in the region. Perhaps because legislative changes are particularly costly, it may be more difficult for pro-rights advocates to appeal to legal standards established by the regional human rights court in other countries in the region when lobbying elected officials to engage in policy change domestically.

Figure 5.8 displays results for the IACtHR, which do not provide support the hypothesis either. In fact, the results are practically indistinguishable from zero for all countries under IACtHR jurisdiction. Again, it may be the case that the extent to which adverse decisions of the IACtHR within the region can influence policy change is much lower, given the costs associated with engaging in legislative policy changes. Perhaps legislative (or other domestic actor) adherence to an adverse decision of the regional court against other countries in the region is much more likely when such adherence involves actions that are less costly than making legislative changes (i.e. paying reparations or even re-examining court cases). Legislators must weigh the costs of engaging in policy change as a result of the regional court's activity in other countries

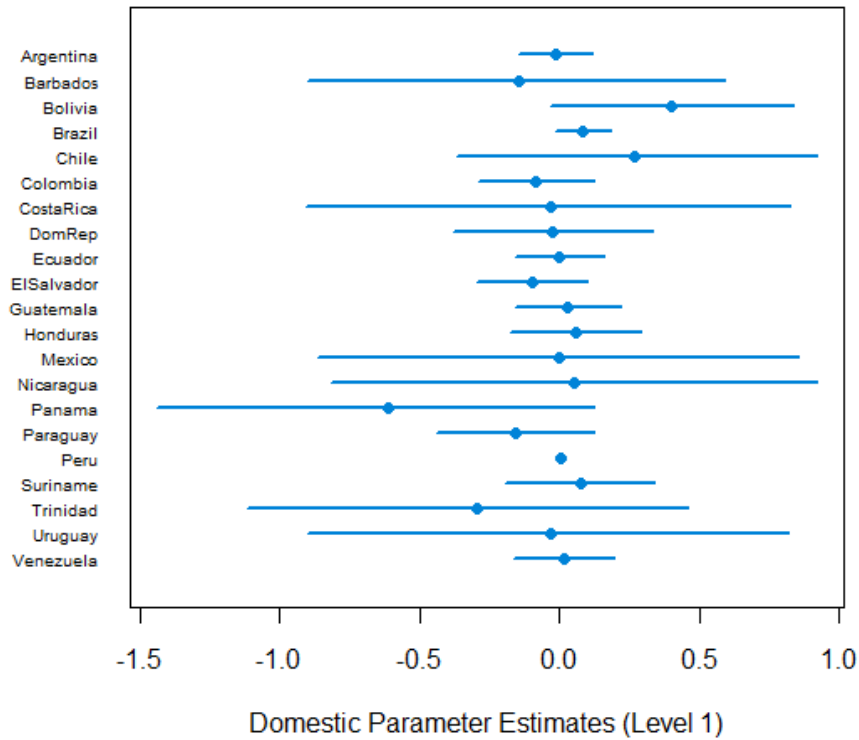


Figure 5.6: IACtHR Model Estimates, IACtHR Violation*District Magnitude

and the potential for the regional court to render an adverse decision against their own state. Given that elected officials may not have long time horizons in comparison to other domestic actors, the signal that the regional court sends (regarding potential future activity of the court) in rendering an adverse regional court decision against another country in the region may not influence their incentive structure to the extent that it may influence the incentive structure of other domestic actors.²¹ Responding to a regional court decision against other countries in the region because of potential future court activity in their own country may not be in the interest of politicians elected for fixed terms.

Turning to results for the regional plurality hypothesis, negative parameter estimates for (δ_2) indicate

²¹Alter (1998) argues that judges and politicians have different time horizons, resulting in significantly different preferences over regional court outcomes. Alter (1998) claims, “Politicians have shorter time horizons because they must deliver the goods to the electorate in order to stay in office. The focus on staying in office makes politicians discount the long-term effects of their actions or, in this case, inaction (130).”

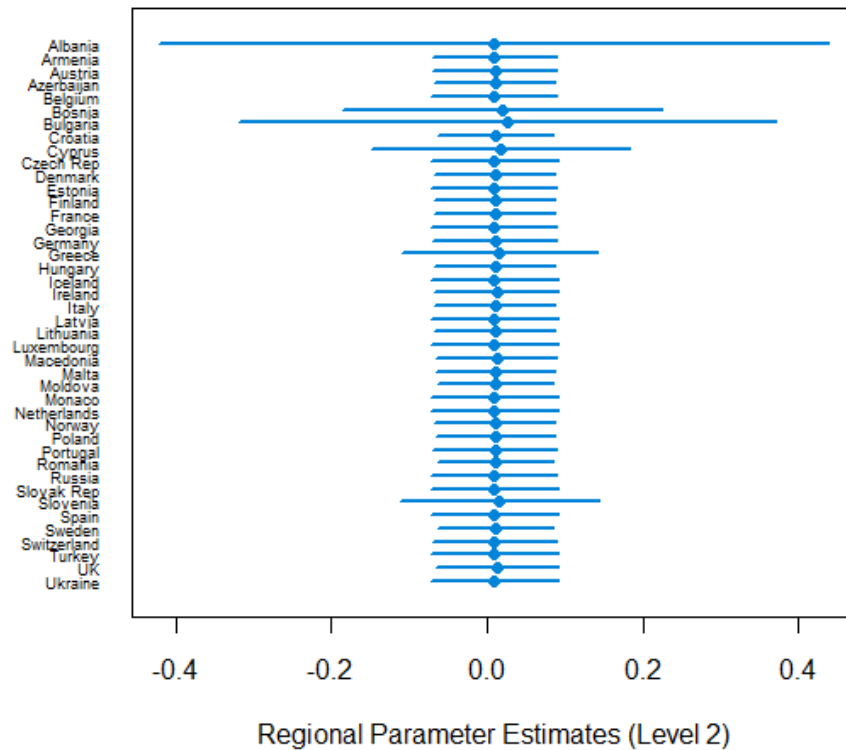


Figure 5.7: ECtHR Regional Model Estimates: ECtHR*Veto

that the finding of a violation by the regional court against countries in the region with similar human rights practices is negatively associated with respect for physical integrity rights in the presence of plurality legislative electoral rules. Figure 5.9 lends limited support for the regional plurality hypothesis as parameter estimates for all countries under ECtHR jurisdiction are negative, indicating that adverse ECtHR decisions against each individual country, as well as adverse decisions of the ECtHR against other countries in the region are negatively associated with respect for physical integrity rights in the presence of plurality legislative electoral rules. Consistent with the argument made by Cingranelli and Filippov (2010), the results provide some support to the argument that in the presence of plurality legislative electoral rules, voters are unable to use ECtHR decisions against other countries in the region to pressure elected officials to adhere to adverse regional court decisions. Further, it is likely the case that plurality legislative electoral rules generate fewer incentives for elected officials to adhere to adverse decisions by the ECtHR found against countries in the

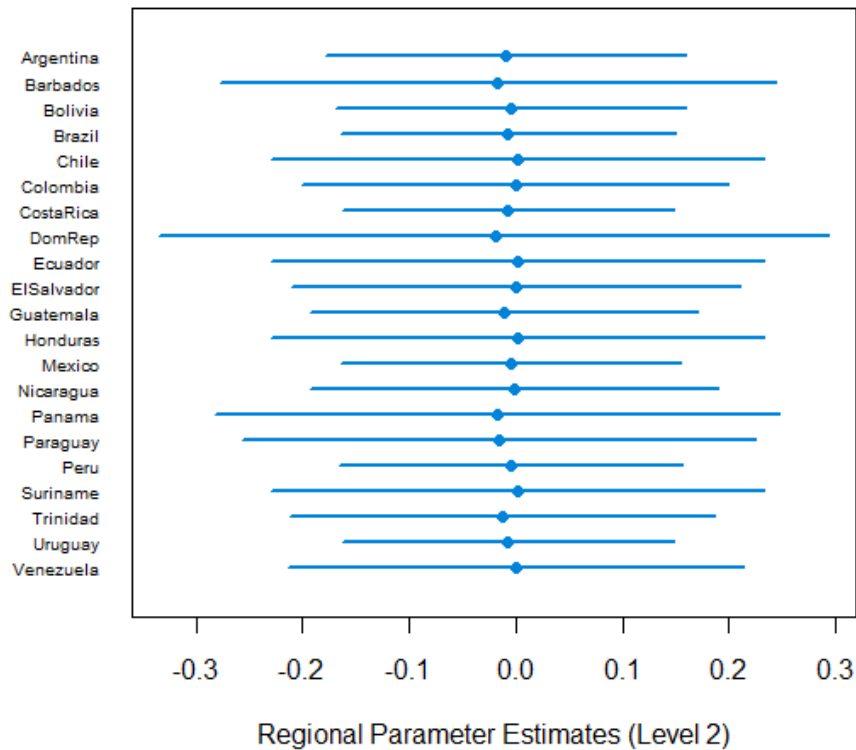


Figure 5.8: IACtHR Regional Model Estimates: IACtHR*Veto

region than against each individual country. That is, elected officials from plurality electoral systems, have little incentive to adhere to adverse ECtHR decisions against their own country and may have even fewer incentives to adhere to adverse ECtHR decisions against other countries in the region. Given that adherence to adverse ECtHR decisions against other countries in the region may be less important to voters than adverse ECtHR decisions against each individual state (which is likely less important than other issues), voters are unlikely to condition their votes on adverse ECtHR decisions against other countries in the region.

Figure 5.10 displays results for the plurality hypothesis for the IACtHR. Results for the IACtHR model are mixed, with 14 of 21 countries displaying positive mean parameter estimates. However, the probability intervals indicate substantial uncertainty regarding the direction of the relationship as the probability that the posterior distribution includes only negative estimates is lower than 90%. Plurality legislative electoral rules exhibit little influence on the incentives of legislators, and the subsequent incentives of the

executive, to adhere to adverse regional court decisions in the Inter-American context. Interestingly, while evidence shows that plurality legislative electoral rules are detrimental to the effectiveness of the ECtHR (though, with substantial uncertainty), the evidence shows that these same electoral rules have little influence on the effectiveness of the IACtHR. The evidence also indicates that European states are less likely to respond to adverse decisions of the ECtHR against other countries when there are plurality legislative electoral rules in place, but this does not appear to be the case in the Americas, as plurality electoral rules show little influence on regional court effectiveness.

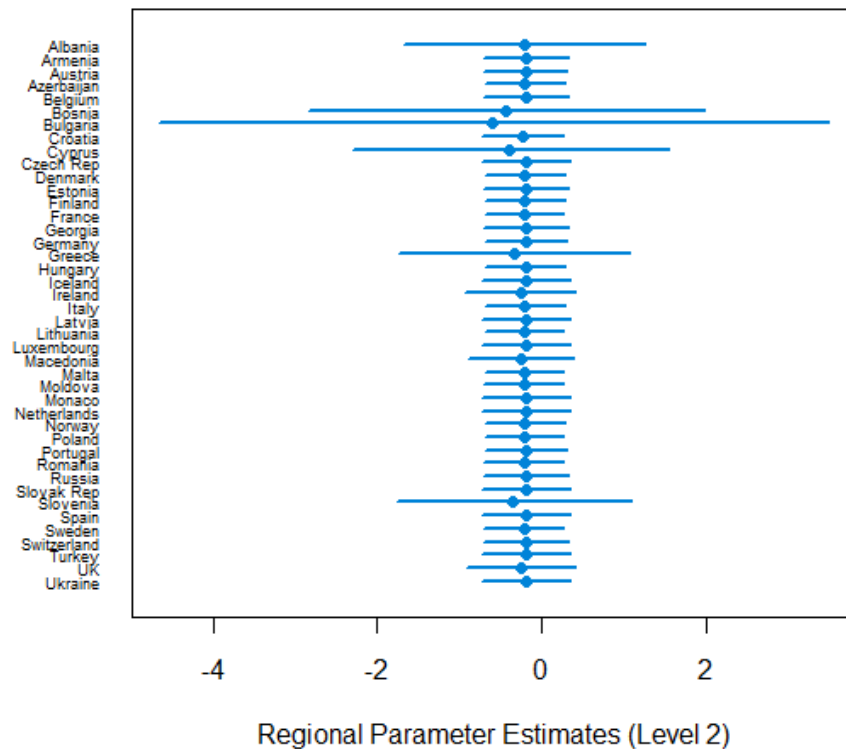


Figure 5.9: ECtHR Regional Model Estimates: ECtHR*Plurality

Turning to the district size hypothesis, Figure 5.11 displays mean estimates and 90% probability intervals for the influence of this cross-level interaction on physical integrity rights in each country in the sample (δ_2), lending little to no support for the hypothesis. Mean parameter estimates are positive for every country in the sample, the opposite of the direction posited and contrary to the argument made by Cingranelli and

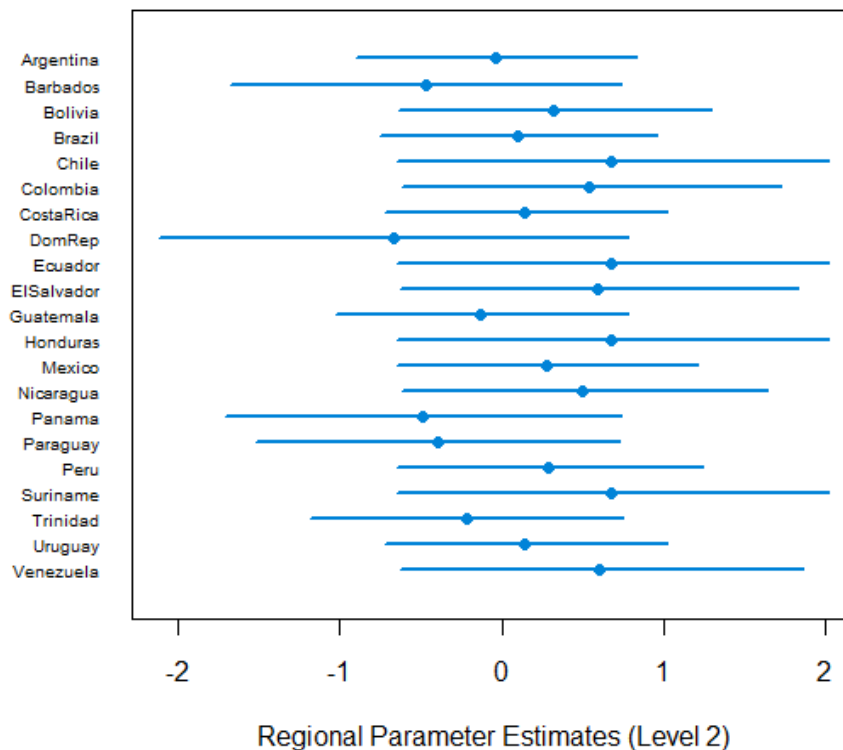


Figure 5.10: IACtHR Regional Model Estimates: IACtHR*Plurality

Filippov (2010) that relatively large district size represents a lack of personal connection between voters and their elected representatives and an inhibited ability to monitor elected officials. Perhaps, as I argue above, relatively large district size provides a better indicator of more access points whom voters can lobby to push for policy change. However, these parameter estimates are relatively small in magnitude and all countries contain probability intervals displaying both positive and negative estimates, indicating substantial uncertainty regarding the direction of this relationship. Perhaps district size generates greater incentives for legislators to adhere to adverse regional court decisions against their own state rather than respond to the ECtHR's activity involving other states in the region. This is plausible, given that the international legal standard set by an adverse regional court decision may provide voters with significantly more leverage in lobbying their elected officials to engage in policy change, and adverse regional court judgments against other states within the region may provide less leverage for rights advocates.

Figure 5.12 results for the IACtHR and the district size hypothesis. The results provide no support for the hypothesis. Mean parameter estimates are similar to those reported in Figure 5.6, with more uncertainty in the posterior probability distribution interval. This indicates that even in countries where district magnitude may generate incentives for legislators to adhere to adverse IACtHR decisions, legislative response to adverse decisions against other states in the region is less certain.

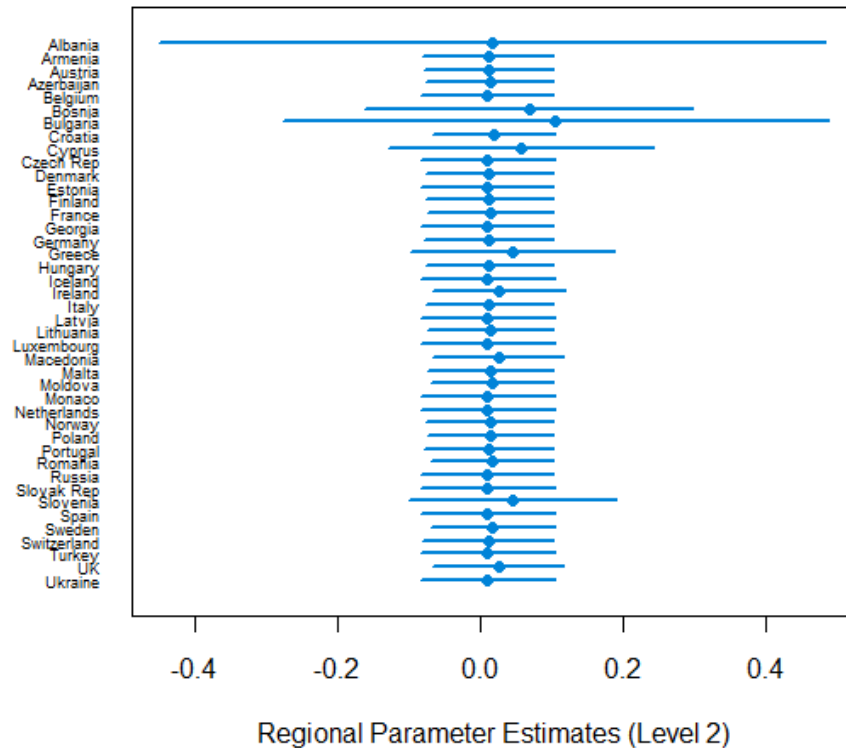


Figure 5.11: ECtHR Regional Model Estimates: ECtHR*District Magnitude

5.6 Conclusion

In this chapter, I argue that the executive has incentives to adhere to adverse regional court decisions in expectation of adherence by the domestic legislature. Legislators, however, have varying incentives to adhere to adverse decisions of the regional court. In the face of legislative veto players, legislators face potential limitations on their ability to respond to regional court orders to adopt, amend, or repeal domestic

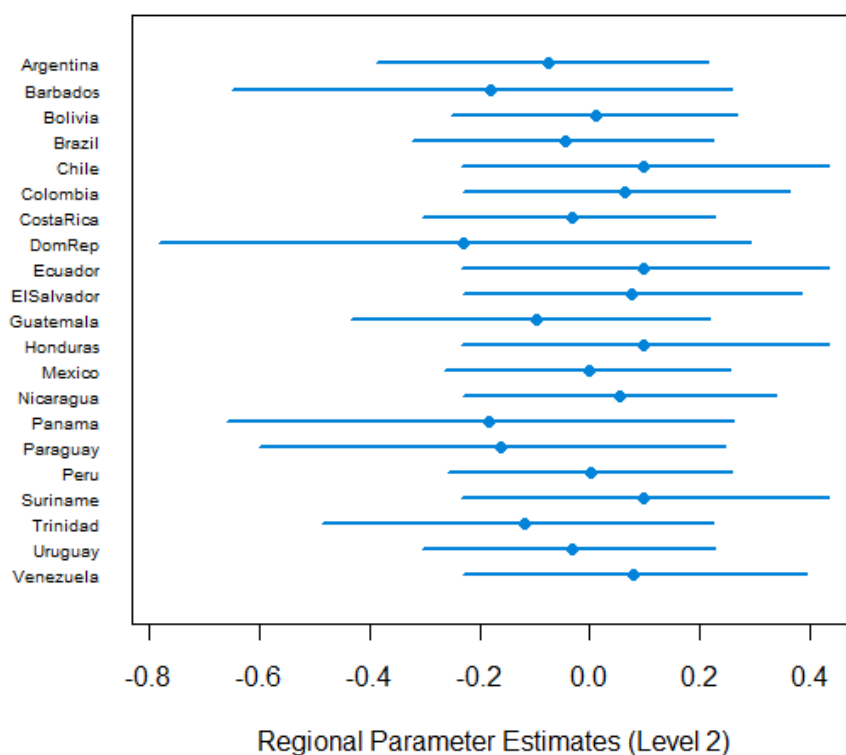


Figure 5.12: IACtHR Regional Model Estimates: IACtHR*District Magnitude

legislation. However, the empirical evidence indicates that additional veto players show a positive association with regional court effectiveness (respect for rights), particularly in the European Court context. I suggest that perhaps opposition in the legislature provides an additional institutional check on legislative evasion and pro-rights advocates may be able to find and access policymakers sensitive to their cause when additional veto players are present. However, the evidence does not support the role of veto players in changing legislative (and subsequently, executive) incentives to respond to adverse ECtHR and IACtHR decisions against other countries in the region. Perhaps the costs associated with legislative changes are too high for legislators to engage in policy change in response to the court's activity against any country other than legislator's own country. The threat of future court activity in a legislator's own country may not outweigh the costs associated with adopting new legislation when faced with such a threat. Further, politicians with shorter time horizons may be unlikely to take the threat of future court activity seriously, as cases take a

significant amount of time to proceed through the regional litigation process.

Further, I argue that electoral rules may generate incentives for legislators to adhere to adverse decisions of the regional court. Plurality legislative electoral rules can create high barriers to the entry of new candidates, resulting in candidates focusing on only a few important, select issues, often not including human rights concerns. I find some evidence to support this notion in the ECtHR context. Plurality legislative electoral rules are negatively associated with legislator incentives to adhere to adverse decisions of the ECtHR. Further, this (albeit uncertain) relationship holds when the ECtHR renders adverse judgments against other countries in the region. That is, plurality legislative electoral rules are negatively associated with legislator incentives to adhere to adverse decisions of the ECtHR against other countries in the region. Perhaps, as the human rights issue becomes further removed from the domestic context (as is the case when the ECtHR is active in other countries in the region), legislators face even fewer incentives to focus on that particular rights-related issue as a part of their platform. However, the evidence shows that this relationship does not hold in the Inter-American context. Plurality legislative electoral rules do not appear to significantly influence legislator incentives to adhere to adverse IACtHR decisions.

With respect to district magnitude, I argued that relatively higher average district magnitude is likely associated with lower personal connection between voters and their elected representatives, giving legislators (and subsequently, the executive), fewer incentives to adhere to adverse regional court decisions. I find with respect to the ECtHR that district magnitude is positively associated with regional court effectiveness, that is, as the average district size grows, legislators are more likely to respond to adverse ECtHR decisions. Perhaps this is because relatively higher district magnitude provides additional access points for voters when lobbying policymakers following an adverse judgment of the ECtHR. This finding holds with respect to ECtHR activity in other countries in the region, but it is not as robust, indicating that lobbying efforts may be less effective in generating legislative incentives to engage in policy change when the adverse ECtHR decision involves other states in the region. Further, legislative electoral rules exhibit little influence on the incentives of legislators in the Inter-American context.

CHAPTER 6

INDIRECT EXECUTIVE ADHERENCE: THE JUDICIARY

6.1 Introduction

As I argue in previous chapters, the primary actor in ensuring regional court effectiveness, the executive, faces various indirect incentives to adhere to adverse regional court decisions. In addition to indirect threats to political survival generated by an expectation of adherence to the regional court by the domestic legislature, the executive also faces indirect threats to political survival from the domestic judiciary. In expectation of adherence to adverse regional court decisions by the domestic judiciary, the executive faces both international and domestic repercussions for failing to follow-through with the development rights-respecting policy. What role does the domestic judiciary play in generating executive expectations of adherence to an adverse regional court decision?

The regional court often orders the state to remedy a human rights violation, including tasking the domestic judiciary with investigating, prosecuting, and sentencing individuals for rights violations. Consider the case of *Bulacio v. Argentina*, in which the Inter-American Court of Human Rights ordered Argentina, among other reparations orders, to prosecute a police chief, thereby vacating the ruling from a previous domestic trial that absolved the police chief of criminal responsibility. Argentina's Supreme Court complied with the Inter-American Court decision, speaking to the legitimacy of the regional court despite the potential threat to the civil rights of the defendant and the procedural difficulty associated with domestically re-opening a closed case. The actions taken by Argentina's Supreme Court are surprising, given the substantial costs associated with implementation of Inter-American Court orders (i.e. threats to legitimacy and procedural problems). Why do Argentina's Supreme Court judges, or the domestic judges of any state, possess incentives to adhere to adverse decisions of the regional court?

Because regional courts direct many of their orders to domestic courts, in order for regional court decisions to be effective (improve respect for rights), the executive must expect that the domestic judiciary will adhere to an adverse regional court decision. However, like the executive (and legislators), domestic judges also face various incentives *not* to adhere. Domestic judges possess incentives *not* to adhere to adverse regional court decisions when the domestic judiciary enjoys limited public support, domestic judges

face procedural difficulties, and/or domestic judges face low shaming costs for ignoring an adverse regional court decision. Nonetheless, domestic institutions generate incentives for domestic judges to adhere to the regional court. Specifically, by increasing concern for domestic judicial public support, overcoming procedural difficulties, and increasing transparency (thereby raising the shaming costs for failures to adhere), domestic judicial power attenuates the influence of incentives not to adhere. Domestic judicial power influences executive expectation of adherence by the domestic judiciary, making executive adherence more likely. In this chapter, I identify and explain domestic judicial (dis)incentives and the role of domestic judicial power in regional court effectiveness. I then empirically examine executive expectations of judicial adherence to adverse regional court decisions (the effectiveness of the regional court) using cross-national statistical analysis of both the ECtHR and the IACtHR.

6.2 Domestic Judicial Incentives (Not) to Adhere to Adverse Regional Court Decisions

Facing indirect threats to political survival, or the expectation of adherence to adverse regional court decisions by the domestic judiciary, the executive is more likely to adhere to regional court decisions as well. However, domestic judges face various incentives to evade or ignore adverse regional court decisions, particularly when adherence is costly. The three primary factors that generate domestic judicial incentives to *ignore* the regional court include limited public support for the domestic judiciary, procedural difficulties, and low shaming costs for evasion.

First, limited public support for the the domestic judiciary inhibits its effectiveness. When the domestic judiciary enjoys little public support for the institution, the ability of domestic judges to influence legal outcomes declines (Vanberg, 2005). One reason low public support is associated with an ineffective domestic judiciary is because the electorate (placing little value in the domestic court) is unlikely to hold legislators accountable for ignoring domestic judicial decisions.¹ Vanberg (2005) refers to public support for the institution as “diffuse support” or support for the court distinct from the policy output of the court and based on the idea that courts represent institutions inherently different from other highly political institutions because

¹Vanberg (2005) argues that the domestic court lacks an enforcement capability and must rely on the public to pressure policymakers into implementing domestic judicial decisions. I discuss specific enforcement limitations faced by the domestic judiciary below.

they are “supposed to act as impartial, apolitical referees that are required to advance legal arguments in defense of their decisions” (52).²

Citizens value the separation of powers and respect for regional or domestic judicial decisions (Vanberg, 2005; Carrubba, 2005; Staton, 2006; Carrubba, 2009).³ A number of reasons have been offered to explain why the public is likely to back the court. Weingast (1997) argues that the public will support the rule of law, and therefore the court, in an effort to prevent exploitation by the state. Others argue that the public is likely to back the court when the policy preferences of the public align closer to the court than to the elected government (Stephenson, 2004). Carrubba (2009) argues that the public comes to recognize the importance of checks and balances in government given that the public’s preferences are not necessarily correlated perfectly with the government. The public uses the court as a cue for bad government behavior, and a tool to increase its ability to monitor and sanction bad behavior. In states where the domestic judiciary is weak, citizens are less likely to rely on the domestic judiciary as a cue for bad government behavior.

Further, when the domestic judiciary enjoys limited public support (citizen valuation of the domestic judiciary is relatively low) and legislators fail to implement judicial decisions, *legislators* are not punished or held accountable. Where it is in the interest of legislators to evade adherence to adverse regional court judgments and they can do so successfully with little electoral cost, legislators will choose to avoid policy change, which further damages the effectiveness of the regional court. On top of that, members of civil society are less likely to organize collectively to pressure elected officials to implement adverse regional court decisions where there is a low probability of successful mobilization (Simmons, 2009). In countries where the domestic judiciary enjoys little public support and/or legislators easily evade implementation as a result, the likelihood of successful mobilization remains low and members of civil society dedicate their resources to other efforts. As such, in the face of limited public support, domestic judicial actors have few incentives to adhere to adverse regional court decisions (i.e. re-open and investigate cases, prosecute individuals, etc.), particularly because absent public support, domestic judges are unlikely to see their decisions enforced.

Another reason low public support is associated with an ineffective judiciary stems from the severe resource constraints faced by a court with limited public support, and subsequently a lack of technical capacity to take action. In the face of little public support for the domestic court, the state grants fewer resources

²This differs from what Vanberg (2005) refers to as “specific support” which is based on approval of the policy outputs generated by the Court. Many argue that these two concepts overlap because specific support may be an important determinant of individual’s level of diffuse support for the court.

³While most scholars highlight citizen support for the domestic judiciary, the reasons offered for this support can be extended to the regional court as well.

to the court. Regional orders to identify, investigate, and punish perpetrators represent costly reparations, particularly in the context of large-scale human rights violations.⁴ Domestic judiciaries suffering from low capacity or a lack of resources do not necessarily result in completely incompetent courts, but these courts must be selective in deciding how to expend resources.

Regional court orders tasked to the domestic judiciary often encompass particularly high costs, as identifying perpetrators of human rights abuses and conducting investigations require the financial support of the state. Consider the case of *Jeremias Osorio Rivera y Otros v Peru*, which involved the forced disappearance of Osorio Rivera by the Peruvian Army in 1991. The IACtHR received the case in June of 2012 because the Inter-American Commission of Human Rights (IACmHR) found the State to be noncompliant with its recommendations. The IACmHR originally issued recommendations to the state to conduct a full investigation into the whereabouts of the victim, and if not found alive, should return his remains to his family.⁵ The IACmHR also ordered the state to discharge criminal proceedings with respect to the case and to fully clear up the incident, identify all the guilty, and impose the corresponding penalties; to provide adequate redress for the human rights violations established in the report.⁶ The rights violations in this case occurred more than twenty years after the case was handed to the IACtHR. As a result, the IACtHR order to find the disappeared and all of those responsible presents a significant task for the domestic court, particularly if the public does not support the court (and pressure elected officials to adequately finance domestic judicial investigations).

Second, procedural difficulties make domestic judicial adherence to adverse regional court decisions particularly costly. Formal rules governing the interaction between supranational and domestic courts do not exist and the domestic reception of regional court judgments is conditional on “‘judges’ expertise, access to the Court’s case law, trust in the court to perform its tasks in good faith, and self-understanding as regulators of Government action and rights protectors” (Keller and Sweet, 2008, 706).⁷ Because domestic judges interact with non-judicial actors, including actors in other branches of government, who may have different interests than those of the regional court, adhering to adverse regional court decisions often represents an inherently difficult task (Ginsburg, 2003; Finkel, 2008; Pozas-Loyo and Rios-Figueroa, 2010). Domestic

⁴The IACtHR often hears cases involving groups of victims and egregious human rights violations (Baluarte and DeVos, 2010; Huneeus, 2012).

⁵See *Jeremias Osorio Rivera y Otros v Peru*, Merits Report No. 140/11, (October 31, 2011).

⁶See Inter-American Commission of Human Rights Press Release No 68/12 “IACHR Takes Case Involving Peru to the Inter-American Court” (June 15, 2012).

⁷However, the lack of clearly defined procedures for implementation may also enhance the ability of the domestic judiciary to implement regional orders because it may allow domestic judges more discretion in the act of implementation.

prosecutions might “implicate actors that those in power prefer to protect, including those serving political office, members of the military, and others connected to powerful social networks that assure impunity” (Huneus, 2012, 125). The executive or other state agents found to be the party responsible for human rights violations likely have incentives to ignore regional court decisions for fear of loss of legitimacy or loss of public support. In states where domestic judges are not highly independent from other branches of government, judge’s incentives to ignore adverse regional court decisions increase. In countries where courts are highly politicized, or the court has little independence and autonomy from other political actors, judges often face conflicting incentives in implementing regional court decisions.

Consider the Venezuelan high courts, which represent courts highly dependent on executive influence. The executive often purges judges from these courts when they render decisions inconsistent with the government’s policies. In the 2008 case of *Apitz v. Venezuela*, the IACtHR ruled that the removal of some judges by the Chavez regime represented a violation of due process guarantees.⁸ The Venezuelan Supreme Court ruled that the IACtHR ruling contradicted Venezuelan constitutional law and called on the executive to withdraw from the ACHR (Huneus, 2010). The low level of autonomy enjoyed by domestic judges plays a crucial role in regional court effectiveness. Given that no formal rules governing domestic reception of adverse IACtHR rulings exist, domestic courts may face conflicting incentives (often rooted in domestic politics) to adhere to an adverse regional court decision.

Further, other procedural difficulties inhibit the ability of the domestic judiciary to adhere to an adverse regional court decision. The domestic judiciary often faces a loss of legitimacy in re-opening cases domestically. Both the ECtHR and the IACtHR require all domestic remedies be exhausted before the case can even reach the regional court, which means that an adverse regional court decision contradicts a previous domestic ruling. For the ECtHR or the IACtHR to even take a case, it confirms the national judicial ruling to be wrong and “high [national] courts may object to having their status as final instance usurped” (Huneus, 2012, 113). The domestic judiciary not only faces a potential loss of legitimacy, but also faces obstacles associated with domestic criminal procedure, including statutes of limitations, double jeopardy, and amnesties (Huneus, 2012; Kristicevic, 2007). Most states do not specify through domestic legislation how regional court decisions will be implemented domestically, let alone how to handle national law that

⁸See *Apitz-Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*, 2008 Inter-Am. Ct. H.R. (ser. C) No. 182, at 246 (Aug. 5, 2008).

conflicts with adverse regional court judgments.⁹ For example, the IACtHR ordered Peru in *Castillo Paez v. Peru* to investigate and punish perpetrators of human rights violations despite the existence of amnesty laws.¹⁰ This decision led to the repeal of amnesty laws in some states in the region (Baluarte and DeVos, 2010). As another example, consider *Bueno Alvez v. Argentina*, in which federal police illegally detained and tortured Bueno Alvez.¹¹ The domestic criminal investigation dragged on for an extended period of time and eventually the statute of limitations ran out on the case. The case reached the IACtHR and the regional court ordered the state to reopen the investigation and the case. The Argentine Supreme Court subsequently ruled that the case did not constitute a crime against humanity and because the statute of limitations had run out, the case had to be closed. The Argentine Supreme Court established itself as the final arbiter in interpreting the American Declaration and constitutional law (Levit, 1999; Naddeo, 2007). These procedural difficulties, as well as the potential harm to domestic court legitimacy provide incentives for domestic judges to ignore regional court decisions that are in opposition to their previous rulings. Other procedural difficulties involve the clarity of regional court orders. Chayes and Chayes (1993) highlight the important role of managerial problems, including ambiguity in treaty language, in ensuring compliance. This argument is easily extended to adverse regional court decisions as “the clarity of IACtHR remedies influences reactions of state governments to these remedies” (Staton and Romero, 2012).

Finally, the domestic court faces few shaming costs for evading or ignoring adverse regional court decisions. Domestic judges possess a particular informational advantage over the electorate regarding the extent of domestic judicial responsibility for ignoring an adverse regional court decision. Domestic judge actions often remain further insulated from international audiences than those of the executive. As the primary actor on the international stage, the executive remains primarily concerned with the international reputation of the state (particularly regarding respect for rights) (Huneus, 2012). Domestic judicial concern with the international standing of the state abroad is relatively low. As such, executive evasion of adverse regional court decisions is monitored more closely internationally than evasion by the domestic judiciary and the executive is likely more sensitive to international pressure to adhere to an adverse regional court decision. Further, when various actors are tasked with action following an adverse regional court decision, the lack of transparency in determining the party responsible for evasion becomes increasingly difficult. Huneus

⁹Peru and Colombia are important exceptions, as both states have passed legislation which establishes the specific steps that should be taken to implement specific regional court orders (Baluarte and DeVos, 2010). See Kristicevic (2009) for further discussion of how legislatures might rewrite laws so that domestic criminal procedures do not impede compliance.

¹⁰See *Castillo Paez v. Peru* (Compliance with Judgment), Inter-Am. Ct. HR, Resolution of 28 November 2002, paras. 7 and 10.

¹¹See *Bueno Alvez v. Argentina* (Merit, Reparations, and Costs), Inter-Am. Ct. HR, Judgment of 11 May 2007, operative para. 8.

(2012) even finds that compliance with IACtHR decisions plummets when *three* actors (as opposed to two or one) are given specific injunctive orders, which may be attributed to the difficulty in determining which actors adhere and which actors do not.

6.3 Threats to Executive Political Survival: Domestic Judicial Power

The institution of domestic judicial power influences domestic judicial behavior by generating incentives to adhere to adverse regional court decisions. Powerful domestic judiciaries make it difficult for domestic judges to ignore regional court injunctive orders associated with tasks such as reopening and investigating cases. Domestic judicial power generates a concern for maintaining public support, helps overcome procedural difficulties, and raises the shaming costs for evasion. A powerful judiciary is defined as an autonomous and effective court.¹² Domestic judges possess a greater capability to adhere to adverse regional court decisions when the domestic judiciary possesses some degree of autonomy. The likelihood of enforcement of regional court litigation by domestic courts increases when domestic courts are free from external political influence, particularly the influence of state agents responsible for violations.¹³ Where the domestic court is not sufficiently independent or autonomous from the government, domestic judges expect their actions to be usurped by other governmental actors, particularly those actors found to be responsible for human rights violations (i.e. state agents in the executive employ).

However, in addition to freedom from external political influence, a powerful judiciary should also be effective, that is, other domestic actors must implement domestic judicial decisions. As I argue above, the domestic judiciary does not independently implement its own decisions, but instead, must be able to induce a response from national authorities, most notably the executive and the legislature, to implement its decisions (Carrubba, 2005; Vanberg, 2005; Gauri and Brinks, 2008; Rodriguez-Garavito, 2011). However, like the regional court, domestic courts encounter a potential implementation problem, in that they possess the formal power to rule against other institutions, but the substantive effect of these decisions generally depends on the way other political actors implement the decision (Vanberg, 2005). As Vanberg (2005) argues, “implementation usually requires the cooperation of many other actors - on many occasions, even

¹²See Staton and Moore (2010) for further discussion of the concept of judicial power as encompassing autonomy and effectiveness. Staton and Moore (2010) also provide a nice discussion of the concept of judicial power as it relates to international and domestic courts.

¹³Simmons (2000) further highlights the importance of judicial independence in enforcing human rights protections, noting “For courts to play an important enforcement role, they must be at least somewhat independent from political control. The government or one of its agencies, representatives or allies is likely to be the defendant in rights cases, and unless local courts have the necessary insulation from politics, they are unlikely to agree to hear and even less likely to rule against their political benefactors” (22).

the cooperation of the very institutions whose acts the court has just struck down” (6). Further, given that the public values the separation of powers and checks and balances in government, the domestic court relies on the public’s valuation of these things for the public to hold elected officials accountable in adhering to *domestic* judicial rulings.¹⁴ The fear of public backlash (at the ballot box, or in opinion polls) can be a forceful inducement for elected officials to implement domestic judicial decisions. Because public support constitutes an important judicial resource for domestic judiciaries to remain effective domestically, a concern for maintaining support for the court influences judicial behavior; judges recognize that current decisions and actions may have implications for future support and this recognition induces judges to be sensitive to public opinion.

When a powerful domestic court evades an adverse regional court decision, the domestic court faces a loss of public support because the domestic court ignored (1) the rights violation (despite public concern for rights) and (2) the check imposed on state actions by the regional court (despite public valuation of checks on government behavior). Observing evasion of an adverse regional court decision, the public withdraws support for the domestic court which is particularly damaging to the domestic court as it relies on public support to remain effective domestically. In other words, in order to see domestic decisions implemented by other public officials, powerful domestic judiciaries must maintain public support for the court, and as a result, they are sensitive to the public’s concern for respect for rights and the regional human rights court. Powerful domestic courts, then, maintain public support through adherence to adverse regional human rights court decisions. In addition, public support may also help with the potential legitimacy deficit faced by the domestic court for having to re-open closed cases. Given that all domestic remedies must be exhausted for a case to reach the regional court, a regional court ruling essentially indicates that the domestic court “got it wrong” in the first place (as domestic judicial decisions may be overturned). However, where the domestic judiciary enjoys wide public support, domestic judges can be less concerned with the potential loss of legitimacy (because the public highly values checks and balances, as well as respect for rights) and the public is more likely to continue to provide diffuse support for an autonomous and effective court.¹⁵

Further, states likely allocate relatively greater resources to domestic judicial implementation efforts when the domestic judiciary is relatively powerful or autonomous and effective. When the domestic judiciary maintains public backing for the court, the state is less likely to withhold the resources necessary for

¹⁴Arguably, the public also values the check that the regional court places on state behavior and recognizing the public’s valuation of the regional court, domestic judges interested in maintaining public support, are more likely to adhere to the regional court.

¹⁵Where the domestic court does not enjoy public support, an adverse regional court decision likely results in even less support for the court, as the voting public may chalk up the initial failure of the domestic court to a lack of autonomy or effectiveness.

adhering to adverse regional court decisions. Citizens value judicial independence as an effective check on state power, and as such, citizens likely pressure the state to provide the appropriate resources and support necessary for the domestic court to carry out regional court orders, particularly those involving fact-finding and investigating.

Also, domestic judicial power provides incentives for domestic judges to adhere to adverse regional court decisions even in the presence of procedural difficulties, such as conflicting laws (amnesty, statute of limitations, etc.). Scholars argue that domestic judicial independence has conflicting effects in the face of some procedural difficulties. On the one hand, domestic judicial independence potentially allows judges to evade implementation in the face of regional court findings that counter a prior ruling or in the face of regional court orders that conflict significantly with domestic legislation. An *independent* domestic judiciary may be in a better position to reject regional court orders when they conflict with the incentives of national judges. Conflicting incentives often result when an adverse regional court decision overturns the prior ruling of the domestic court (Huneus, 2012). On the other hand, an *independent* judiciary possesses the ability to bypass or circumvent procedural difficulties where they exist, given the sufficient isolation from other government actors. Further, while domestic judicial independence may have conflicting effects, judicial power also encompasses effectiveness. In order to overcome procedural difficulties, an effective domestic court is necessary, particularly when the regional court orders domestic courts to take action in the face of existing legislation that conflicts with the regional court's orders.

Finally, domestic judicial power increases transparency and raises the shaming costs associated with evasion of adverse regional court decisions. Domestic and international actors can more easily observe evasion by an autonomous and effective domestic judiciary. In countries where other political actors have sufficient influence over the domestic judiciary, it remains difficult for citizens and international audiences to determine the extent of domestic judicial responsibility for evasion. However, where the domestic judiciary is sufficiently insulated from other political actors, evasion by the domestic judiciary is much more easily observed by international audiences. Rather than pointing the finger at other domestic actors' involvement in the judicial process as a reason for domestic judicial failures to adhere to adverse regional court decisions, adherence (or non-adherence) to the regional court by an independent domestic court is much more transparent. The increased ability of citizens and international audiences to observe evasion by an independent domestic court increases international shaming costs for domestic judges because the public may withdraw support for the domestic court in the face of clear domestic judicial evasion.

Where a domestic judiciary enjoys sufficient power, autonomy and effectiveness, domestic judges face greater incentives (and greater capabilities) to adhere to adverse regional court decisions, and these incentives attenuate the influence domestic judges may possess to evade decisions of the regional court. Further, the executive expects domestic judicial adherence when the domestic judiciary is powerful, and as a result of this expectation, the executive chooses to respect rights. As a result, I posit:

Domestic Judicial Power Hypothesis: *As domestic judicial power rises, supranational court decisions that find human rights violations are more likely to improve domestic respect for human rights.*

6.4 The Domestic Judiciary in Regional Context

As argued in previous chapters, adverse decisions of regional human rights courts against other countries in the region may also influence executive expectations of adherence by other domestic actors, and executive decisions to respect rights. Given that the executive is more likely to expect adherence to adverse regional court decisions by the domestic judiciary when the domestic judiciary is relatively powerful, I posit that the executive also expects adherence by the domestic judiciary to adverse decisions against other countries in the region to the extent that the domestic judiciary is powerful. The domestic judiciary, aiming to avoid the shaming of having prior domestic rulings overturned, possesses incentives to respond to adverse decisions in other countries with adherence. Using the regional court's activity in other countries as a signal of future regional court activity, the domestic judiciary may avoid future cases and the potential threat to legitimacy that they bring to the domestic court through adherence to adverse regional court decisions against other countries in the region. As a result, I posit:

Regional Judicial Power Hypothesis: *As supranational court decisions that find violations of human rights within the region rise, respect for rights rises in countries as domestic judicial power increases.*

6.5 Results

6.5.1 Domestic Judicial Power

I analyze the domestic judiciary hypotheses using the research design presented in chapter 3. Observing a positive parameter estimate for β_i lends support to this hypothesis.¹⁶ Figures 6.1 and 6.2 display mean parameter estimates and quantile-based 90% probability intervals for each country under ECtHR and IACtHR jurisdiction.¹⁷

Looking first at the ECtHR, all countries display positive mean parameter estimates, indicating that two years following the finding of a violation, the ECtHR has a positive influence on respect for physical integrity rights when the domestic judiciary is relatively powerful. In some countries, physical integrity rights improve by 1 point or more, which is a considerable change in respect for rights on an eight point scale in a sample with a mean around six. While probability intervals for four countries also include negative parameter estimates, Figure 6.1 indicates that 90% of the posterior probability distribution estimates within the interval are solely positive for 38 out of 40 countries in the European sample. Even in Europe, a region generally known for the relatively high value placed on respect for rights, the regional court has an influence on respect for rights where domestic judicial power is relatively high.

Turning to the IACtHR, the results displayed in Figure 6.2 are also strong and substantively meaningful. All countries have positive mean parameter estimates, many indicating around a 2-4 point increase in physical integrity rights two years following the finding of a violation by the IACtHR when the domestic judiciary is relatively powerful.¹⁸ The 90% probability intervals for Barbados, Dominican Republic, Panama, Paraguay, and Trinidad include negative estimates, but Figure 6.2 shows that the probability that the posterior distribution includes only positive estimates is 90% for 16 of the 21 countries in the sample. The results indicate that the domestic judiciary is particularly important in generating executive incentives to respect rights.¹⁹

¹⁶ β_i represents the interaction between an adverse regional court decision related to physical integrity rights and domestic judicial power. For more detailed information on the model and estimation, see chapter 3, as well as the appendix to this chapter.

¹⁷Parameter estimates are shown as dots and 90% probability intervals as lines.

¹⁸The larger parameter estimates for the IACtHR model likely reflect the fact that the baseline mean physical integrity rights score for countries in the Inter-American sample is lower (around 4) than in the European sample (around 6). This means that the countries in the Inter-American sample have more room to improve their human rights practices.

¹⁹The results in Figures 6.1 and 6.2 display parameter estimates from a linear regression, which indicate the influence of an adverse regional court decision when domestic judicial power changes from the absence of domestic judicial power (0) to the most powerful domestic judiciary (1). Given that changes in domestic judicial power this large are unlikely to be observed in the data, I also present in-sample predictions in the appendix to this chapter, that is, I include figures displaying (1) a change from the absence of domestic judicial power (0) to the mean domestic judicial power score of each country, and (2) a change from the mean domestic judicial power score of each country to the strongest domestic judiciary (1).

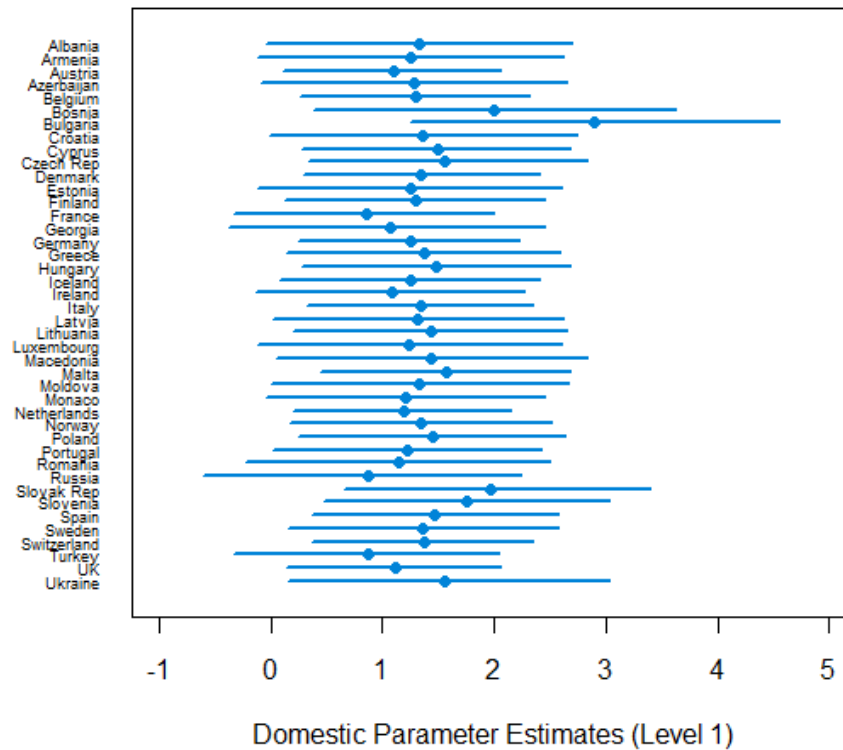


Figure 6.1: ECtHR Model Estimates, ECtHR Violation*Domestic Judicial Power

6.5.2 The Domestic Judiciary in Regional Context

Turning to the regional judicial power hypothesis, parameter estimates (for δ_2) indicate the relationship of the cross-level interaction between the level-1 and level-2 predictors and respect for physical integrity rights (regional court effectiveness).²⁰ Figures 6.3 and 6.4 display mean parameter estimates and 90% probability intervals for the influence of this cross-level interaction on physical integrity rights in each country in the ECtHR and IACtHR sample respectively. Figure 6.3 indicates that violations found by the ECtHR in the region are positively associated with executive incentives to adhere to adverse regional court decisions, and therefore, positively related to respect for rights. Most countries in the European sample display around one point improvements in their physical integrity rights score. This shows that the influence

²⁰The level-1 predictor represents the interaction between an adverse regional court decision and domestic judicial power, while the level-2 predictor represents the regional influence, or more specifically, the number of violations in the region, weighted by a country's similarity in physical integrity rights score to those in the region.

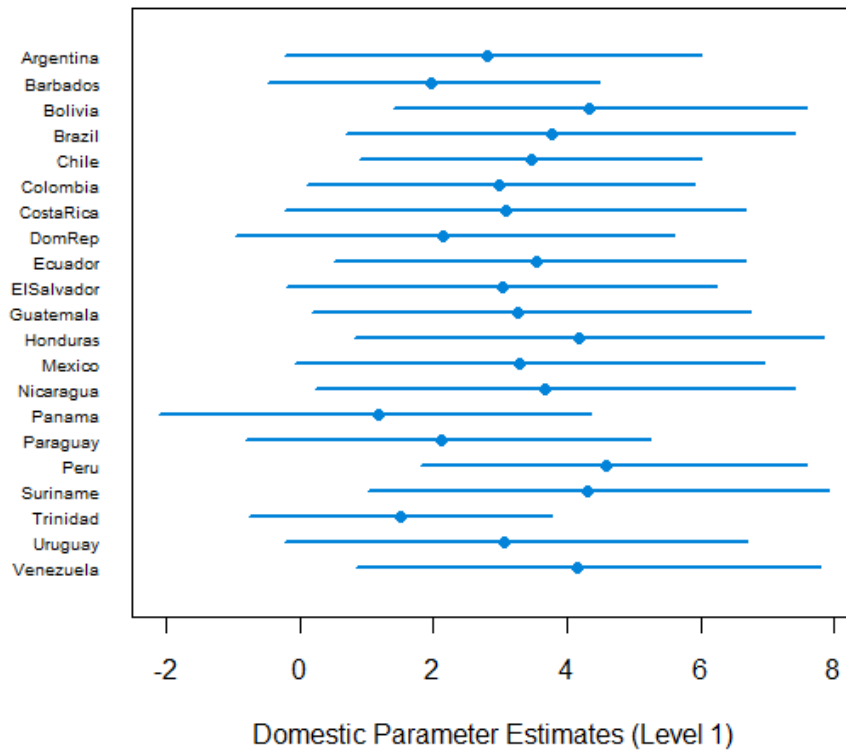


Figure 6.2: IACtHR Model Estimates, IACtHR Violation*Domestic Judicial Power

of domestic judicial power and violations found against each individual country (level-1 predictors) are also conditional on violations found in the region (level-2 predictors).

Looking at the IACtHR, I find additional evidence in support of the regional judicial power hypothesis. Figure 6.4 shows that while some of the posterior distribution contains negative estimates, I observe positive mean parameter estimates for all countries in the sample and 90% of the posterior distribution contains solely positive estimates for 16 of the 21 countries in the sample. The results provide evidence that violations found by the IACtHR against each individual country as well as violations found by the IACtHR in the region are positively related to respect for rights as domestic judicial power rises.

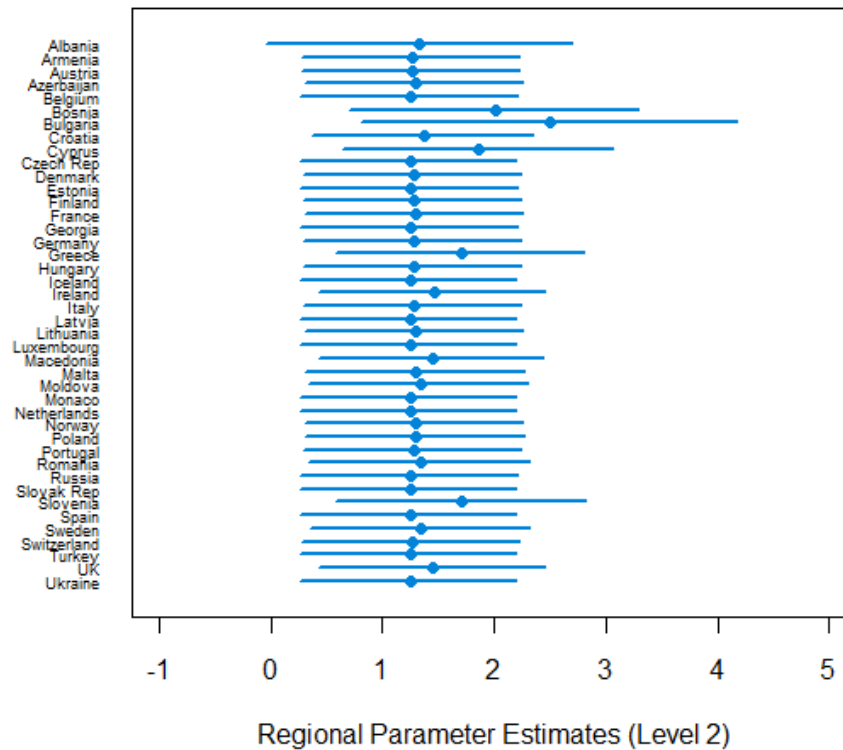


Figure 6.3: ECtHR Regional Model Estimates: ECtHR*Domestic Judicial Power

6.6 Conclusion

In this chapter, I find evidence that domestic judicial power generates domestic judicial incentives to adhere to adverse regional court decisions and consequently, the executive expects adherence by the domestic judiciary when the domestic judiciary is powerful. I find that regional courts are more effective in improving respect for rights when the executive expects domestic judicial adherence, that is, when the executive observes a relatively powerful domestic judiciary. This finding is particularly intriguing with respect to both the ECtHR *and* the IACtHR. Given that members of the ECtHR reside in a region of relatively high respect for rights, there is little room for improvement in respect for rights in the region. However, I find that the ECtHR, conditional on domestic judicial power, is associated with improvements in respect for rights, even

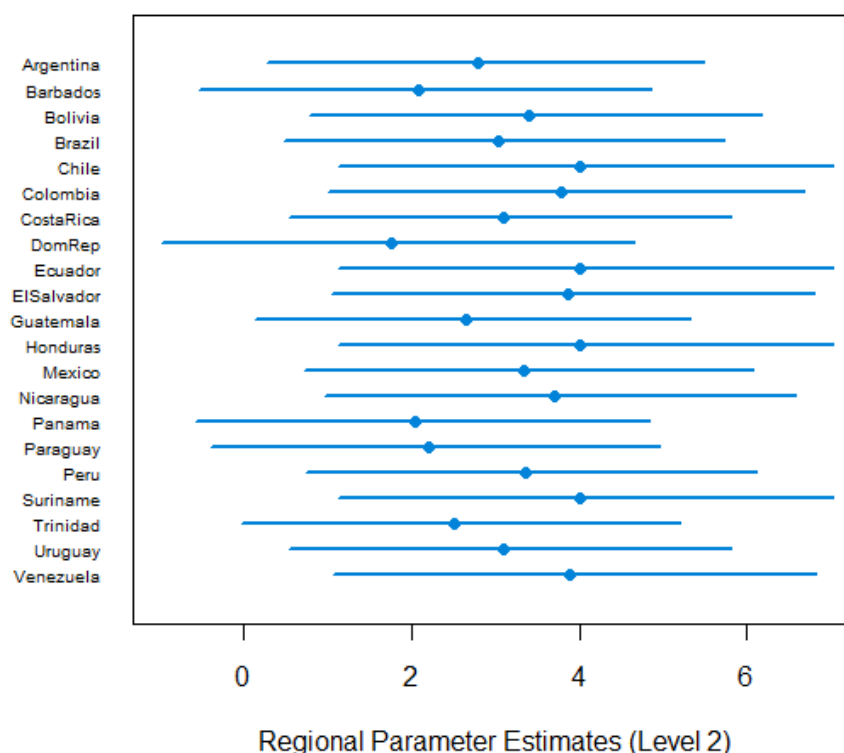


Figure 6.4: IACtHR Regional Model Estimates: IACtHR*Domestic Judicial Power

in a rights-respecting region.²¹ The IACtHR faces different challenges than the ECtHR, as adjudication usually involves systematic human rights violations in countries where human rights historically have not represented entrenched norms within the state. The effectiveness of the IACtHR hinges on its ability to navigate these difficult challenges, specifically, “the political and economic realities of the Americas, where non-democratic regimes and large-scale poverty persist, make enforcement of human rights in this region much more difficult than in Western Europe”(Buergethal, 1980, 156). While early ECtHR success can, in part, be attributed to the “minor and unintentional violations” of state agents, the IACtHR faced systemic, institution-wide problems in many states in the Americas. The need to implement more systemic-level (institutional) changes generated widespread evasion of adverse IACtHR decisions early on. These difficulties

²¹Of course, the addition of various new members, including many former Soviet bloc states is changing the social and political context in which the ECtHR operates.

are argued to dampen the effectiveness of the IACtHR. However, I find that, contrary to what one might expect in a region characterized by such problems, IACtHR judgments are associated with improvements in respect for rights when the domestic judiciary is relatively powerful.

CHAPTER 7

INDIRECT EXECUTIVE ADHERENCE: CIVIL SOCIETY

7.1 Introduction

In previous chapters, I examined executive incentives to adhere to adverse regional court decisions, including direct incentives to adhere based on international and domestic pressure, as well as indirect incentives to adhere, generated by executive expectation of adherence by the domestic legislature and judiciary. Domestic political officials (the executive, legislators, and judges) are charged by the regional court with remedial orders, making their action crucial for the regional court to be an effective legal mechanism (influence respect for rights). However, various nongovernmental actors also play an important role in the effectiveness of the regional court. The executive faces indirect incentives based on the expectation of pro-rights mobilization by various members of civil society. What role do members of civil society play in the incentive structure of the executive?

Helfer and Slaughter (1997) highlight the importance of nongovernmental actors, noting, “individuals and their lawyers, voluntary associations, and nongovernmental organizations are ultimately the users and consumers of judicial rulings to redress a particular wrong or advance a particular cause or set of interests....[A]ppreciation of the relationship between these social actors and the institutions of state government opens the door to deploying them as forces for expanding the power and influence of supranational tribunals.” (312). Members of civil society use adverse regional court decisions as a focal point around which to mobilize and these actors are of central importance in pressuring the executive to adopt and implement a rights-respecting policy. Members of civil society also place pressure on domestic legislators and judges to adhere to adverse regional court decisions, which influences executive incentives. Executive expectation of mobilization and pressure from a vibrant civil society increases the likelihood of executive adherence through a policy of respect for rights. When does the executive expect mobilization around adverse regional court decisions from various civil society actors?

Civil society mobilization is more likely when 1) individuals place a high value on rights and 2) the probability of successfully mobilizing is high (Simmons, 2009). The likelihood of observing these two factors in society hinges on 1) international legal standards (i.e. adverse regional court decisions) and 2) the domestic

institutional environment in which civil society actors operate, that is, the presence of various institutions (i.e. freedom of expression, NGOs, NHRIs, etc.). International legal standards generate legal backing for human rights social movements, directly influencing the value individuals place on rights. Domestic institutions provide an environment conducive to successful mobilization by giving civil society actors the ability to freely mobilize without fear of state reprisal.

7.2 Regional Litigation, Rights Valuation, and Pro-Rights Mobilization

Regional court litigation plays an important role in mobilization efforts. Mobilization efforts are more likely to occur to the extent that individuals 1) value rights and 2) the probability of successfully mobilizing is high (Simmons, 2009). International human rights legal standards, established in various international treaties as well as in international court litigation, influences the perceptions and understandings of rights advocates regarding their claims to particular rights, as well as the enforceability of those claims. International litigation may influence the value placed on rights demands by “suggesting new ways for individuals to view their relationship with their government and with each other” (Simmons, 2009, 141). In other words, when societal norms dictate that the oppression of certain groups within society is “justified, acceptable, or inevitable,” there is very little incentive to organize around rights claims for oppressed groups (Eskridge, 2001, 439). International litigation represents a focal point around which groups may begin to question accepted norms of oppression and provide “alternative frameworks by which the oppressed gain a sense of political identity, legitimacy, and efficacy” (Simmons, 2009, 141). International legal frameworks raise the rights consciousness of various groups within society, allowing societal actors to provide meaning to legal outcomes (Merry, 2006; Cichowski, 2007; Simmons, 2009; Sikkink, 2011).

As an example of the importance of regional court litigation in raising rights consciousness, consider the case of *Lenahan (Gonzales) v. United States of America*, in which the Inter-American Commission on Human rights ruled that the United States needed to do more to protect domestic violence victims.¹ The emergence of violence against women onto the human rights agenda in the early 1990s was contentious, primarily because human rights violations have long been considered to be those perpetrated by the state, not private citizens. This state-centric approach to human rights perpetuates the view that the abuse of women is a cultural, private issue that is not political or public in nature (Bunch, 1990). Despite the adoption of violence against women onto an international human rights legal agenda with the establishment of the 1993

¹See Case 12.626, Inter-American Commission on Human Rights, Report No. 80/11.

Declaration on the Elimination of Violence Against Women (DEVAW), its establishment and enforcement in domestic legal systems remains debated, particularly because of its contentious incorporation onto the international human rights agenda and the consequent debate regarding state responsibility for this type of human rights violation.

In 2011, regional court litigation regarding the state's responsibility for violence against women as a human rights violation came to the fore in the case of *Lenahan (Gonzales) v. United States*. In Castle Rock, Colorado, in 1999, Jessica (Lenahan) Gonzales' estranged husband took her three daughters, despite a restraining order against him. Gonzales called on the police to enforce the restraining order on numerous occasions, but faced resistance, and when police failed to enforce the restraining order, Gonzales' estranged husband murdered the three daughters. This case reached the U.S. Supreme Court and in 2005, the U.S. Court ruled that the local police could not be sued for failing to enforce a restraining order.² Gonzales' lawyers appealed the case to the Inter-American Commission on Human Rights, arguing that the U.S. violated Articles 1 (the right to life, liberty, and personal security), 2 (right to equality before the law), 5 (right to protection, honor, personal reputation, and private family life), 6 (right to a family and to protection thereof), 18 (right to a fair trial), among various other articles of the American Declaration of the Rights and Duties of Man (ADRDM).³ One salient argument included in the U.S. position involved the U.S. claim that the petitioners failed to cite any provisions of the American Declaration that impose an affirmative duty on the United States, such as the exercise of due diligence, to prevent the commission of individual crimes by private parties (IACmHR, 2011, 12). In 2011, the IACmHR issued a landmark decision finding the United States responsible for human rights violations against Gonzales and her three children. The IACmHR argued that "various international human rights bodies have moreover considered State failures in the realm of domestic violence not only discriminatory, but also violations to the right to life of women" (IACmHR, 2011, 44).

The adverse decision of the IACmHR contributed to the legitimacy and efficacy of rights claims related to violence against women. Various local jurisdictions have invoked the IACmHR decision as the standard for claiming freedom from domestic violence as a human right.⁴ International or regional court litigation

²The U.S. Supreme Court argued that Gonzales did not have a property interest in police enforcement of the restraining order and no federal right to sue. See *Castle Rock v. Gonzales* (04-278) 545 U.S. 748 (2005).

³The United States is not a party to the American Convention on Human Rights, and subsequently is not a party to the Inter-American Court of Human Rights, but appeals can still be made to the Inter-American Commission based on the ADRDM.

⁴As of 2013, nine U.S. cities have issued resolutions stating that domestic violence is a violation of women's human rights, including Albany, NY, Baltimore, MD, Cincinnati, OH, Erie County, NY, Miami Springs, FL, Miami-Dade, FL, Montgomery City and County, AL, Seattle, WA, and Washington DC.

provides a standard for which pro-rights advocates can base their rights claims, increasing the rights consciousness of various actors and the likelihood of mobilizing around rights demands.⁵

Beyond the influence that regional court litigation plays in the value placed on rights and in raising rights consciousness, regional court litigation may also influence the probability of successful mobilization. International law precommits the state to be receptive to rights demands (Simmons, 2009, 144). States that have accepted the jurisdiction of the regional court, through ratification of the relevant regional human rights treaty, are primed to respond to adverse decisions of the court, particularly because it provides leverage for domestic rights advocates to pressure policymakers to respond to rights demands. According to Simmons (2009), pro-rights advocates “work assiduously to expose the inconsistencies between precommitment and post-ratification behavior in countries around the world” (145). Adverse regional court litigation can increase interest and advocacy group participation in the monitoring and enforcement of laws domestically (Shapiro, 1981; Cichowski and Sweet, 2003; Hillebrecht, 2012). As rights become increasingly legalized and formalized through adverse regional court decisions, the potential for increased participation among various domestic actors rises. Regional court litigation often creates the social space necessary to facilitate policy discussions that may not have been domestically salient previously (Schneider and Ingram, 1997). Regional court litigation is particularly important in creating opportunities to fill new policy spaces, in fact, Cichowski (2007) claims “the extent to which new policy statements are constructed through litigation or legislative acts, even if they lack concrete policy instruments or enforceability [lead us to] expect increased opportunities for mobilizing action around these issues due to their increased saliency” (15). Adverse regional court decisions increase the legitimacy of rights demands by providing the necessary legal backing for rights claims. As a result, the size of domestic mobilization efforts often grows. NeJaime (2012) even argues, “inside a movement, activists deploy litigation to mobilize and empower constituents and to aid fundraising...outside a movement, advocates use litigation to gain publicity, raise funds from foundations and allies, obtain leverage with government officials, convince the public, and influence elites” (668).

For example, the National Commission for Human Rights (NCHR) in Greece, composed of representatives from NGOs, political parties, trade unions, independent authorities and human rights experts, utilizes ECtHR decisions to generate support for the advancement of rights. The activities of the NCHR in Greece include “issuing resolutions on human rights topics, submitting recommendations on issues such as Greece’s

⁵Simmons (2009) claims that international law, “may contain persuasive new information and ideas that can influence the values and beliefs of a public for whose benefit the agreement was ostensibly designed (143).” In the same way, adverse international court decisions can have a similar influence.

ratification of ECHR Protocols, implementation and dissemination of ECtHR judgments, and publishing an annual report” (Keller and Sweet, 2008, 504). Various organizations assist in the translation of ECtHR judgments into the language of those under the jurisdiction of the court. Further, civil society actors inform the public of ECtHR decisions; in the case of Greece, legal scholars and practicing lawyers translate and publish many ECtHR judgments and in 2006, the Athens Bar Association “distributed to its members a compact guide on the protection of human rights in Europe, which provides an overview of the ECtHR case law” (Keller and Sweet, 2008, 515). Adverse regional judgments provide a legal focal point for pro-rights advocates and increase the number and activity of various non-political actors, as well as the likelihood of successful mobilization.

In addition to increased activity, domestic actors are particularly important in ensuring adherence to adverse regional court decisions, primarily as a result of their intimate familiarity with the local rights environment (Helfer and Slaughter, 1997; Cavallaro and Brewer, 2008). In fact, Cavallaro and Brewer (2008) argue that “supranational tribunals will generally have the greatest impact when their procedures and judgments are relevant to the actors working to advance specific human rights in these countries, including not only state agents but also human rights organizations, social movements, and the media” (775). In other words, adverse regional court rulings are only effective to the extent that they garner the attention and support of various domestic actors including lawyers, voluntary associations, NGOs, and others.⁶ When regional litigation serves as an advocacy tool by various domestic civil society actors, it enhances rights efforts currently taking place. As a result, adverse regional court litigation is likely to generate pro-rights mobilization, and consequently, the necessary pressure for various domestic actors (legislators, judges) to engage in policy change, which increases the probability of executive adherence.

7.3 Domestic Institutions and Successful Mobilization

While adverse regional court litigation increases the value that citizens and various civil society actors place on rights, as well as the probability of successful mobilization, the likelihood of executive adherence to adverse regional court decisions is based on the executive’s expectation of civil society successfully building a pro-rights coalition around adverse regional litigation. Executive expectation of successful mobilization is mediated by the domestic institutional environment, as the presence of various domestic institutions increases the likelihood of successful mobilization by civil society actors. First, where pro-rights movements

⁶Helfer and Slaughter (1997) refer to these domestic actors as the users and consumers of judicial rulings.

enjoy freedom of expression, the likelihood of media coverage of adverse regional court decisions increases. Increased media coverage generates public attention and support for adherence to an adverse regional court decision, which places pressure on political actors to adhere. For example, in the 1997 case of *Loayza Tamayo v. Peru*, the IACtHR found that Peru had violated the rights of Maria Elena Loayza Tamayo, a professor arrested and held in incommunicado detention, physically and psychologically abused, and sentenced to twenty years' imprisonment for terrorism, as a result of her suspected association with the Shining Path insurgent group. The case of Loayza Tamayo generated significant public support and media attention for four years following the case, including a direct appeal by Amnesty International (Amnesty International, 2001).

Further, consider the 2000 ECtHR case of *Lustig Prean and Beckett v. UK*, in which the Royal Navy dismissed two navy personnel upon discovery of their homosexuality. The victims cited a violation of Article 8 of the ECHR (the right to privacy). Keller and Sweet (2008) highlight the extensive media coverage of this case, noting its appearance “in virtually every serious outlet, including *The Guardian*, *The Times*, *The Independent*, *The Daily Mail*, and *The Daily Telegraph*” (93).⁷ A domestic institutional environment characterized by freedom of expression, including freedom of speech and freedom of the media, provides civil society actors with an increased ability to mobilize around adverse regional litigation. Given these arguments, I posit:

Freedom of Expression Hypothesis: *Regional court decisions that find human rights violations are more likely to improve domestic respect for rights in the presence of freedom of expression guarantees.*

While freedom of expression is important for the the purpose of mobilization around regional court cases, the activity of various organizations also remains important in ensuring mobilization. Human rights nongovernmental organizations (HROs) play a key role in transnational advocacy (Keck and Sikkink, 1998; Risse, Ropp and Sikkink, 1999; Hafner-Burton, 2013). Human rights organizations engage in naming and shaming efforts to hold states accountable for human rights violations. HROs often engage in “pressure from below” in an effort to place domestic pressure on the state to change human rights behaviors (Keck and Sikkink, 1998; Risse, Ropp and Sikkink, 1999). In addition to this, HROs engage in “pressure from

⁷Keller and Sweet (2008) also note that media coverage of ECtHR judgments remains irregular, however, when the ECtHR rules on particularly salient issues, the likelihood of media coverage rises. While I do not examine issue salience in this chapter, I argue that the likelihood of media coverage on various issues (salient or not) is low when the media does not operate independently of the state or operates entirely under state control.

above” by working with individuals, third-party organizations, and other governments. Murdie and Davis (2012) find that HRO shaming alone has little influence on respect for rights, however, the effect of HROs is largely mediated by pressure from below and pressure from above. Multiple actors are important for the success of pro-rights mobilization efforts. When HROs partner and work with international legal actors working to improve respect for rights (like regional courts) they are found to be successful in improving human rights practices (Murdie and Davis, 2012). Take for example, the Warsaw Helsinki Foundation of Human Rights in Poland, an HRO responsible for the formation of the Strategic Litigation Programme in 2004. The Helsinki Foundation strives toward “obtaining breakthrough verdicts that would change the practice or legal regulations concerning particular legal issues” (Keller and Sweet, 2008, 595).

Involvement in regional court litigation efforts gives HROs a unique opportunity to publicize and generate mobilization around rights issues. Regional court judges, prosecutors, and other legal actors increasingly recognize the necessity of generating HRO support following adverse regional court decisions. For example, Cavallaro and Brewer (2008) note “the Court [IACtHR] has demonstrated an awareness in recent years of the need for its jurisprudence to be more accessible to human rights activists and the public. In response to feedback from NGOs, governments, and others, it has reduced the length of its judgements...and moved away from highly philosophical dissenting opinions” (817). Given the importance of HROs, I posit

Human Rights Organizations Hypothesis: *As the prevalence of human rights organizations rises, regional court decisions that find human rights violations are more likely to improve domestic respect for human rights.*

A third organization of particular import for successful mobilization are National Human Rights Institutions (NHRIs). NHRIs play a unique role in the space they occupy between international actors, government, and civil society.⁸ They are created by states, often in association with NGOs. However, as domestic institutions, they are not agents of the state and are charged with monitoring state behavior associated with respect for human rights. NHRIs influence executive incentives by acting as a constraint on the state.

First, NHRIs constrain the the actions of public officials by holding them accountable for human rights violations. NHRIs engage in horizontal accountability with other governmental institutions by “impartially investigating the conduct of public administration; recommending changes to law, policy, or practice when

⁸NHRIs evolved from domestic ombudsmen offices, which encouraged individuals to file grievances regarding maladministration by government officials in Europe in the early 19th century (Cheng, 1968). In the 1980s, ombudsmen offices with a specific human rights focus began to grow and in 1991, the Paris Principles were drafted, defining standards for NHRIs. The UN Human Rights Commission adopted the Paris Principles in 1992 and the UN General Assembly ratified these standards in 1993. NHRIs have grown substantially since the creation and adoption of the Paris Principles (Smith, 2006; Koo and Ramirez, 2008; Carver, 2010).

illegal or improper administration is uncovered; reporting to the legislature and the public; and, in some institutions, exercising stronger powers such as court action” (Reif, 2004, 60). NHRIs often possess various horizontal accountability mechanisms, including review of other governmental institutions, judicial review, inspection, investigation, and public reporting. With these horizontal accountability mechanisms, NHRIs can highlight and publicize specific efforts or attempts by other governmental actors to evade adherence to adverse regional court decisions.

Many NHRIs also possess quasi-judicial competence and the power to investigate, including “the ability to demand the production of written documentation, to compel answers to questions, to threaten court proceedings if a person or organization is not cooperative, to publicize the outcome of the investigation, and to access prisons and places of detention” (Smith, 2006, 914). NHRIs often work extensively with regional courts. In fact, Reif (2004) even states “the Inter-American human rights system is accessible to domestic ombudsmen and both the Inter-American Commission and Inter-American Court are increasingly relying on human rights reports and evidence provided by ombudsman” (213). NHRIs often work closely with regional courts following an adverse regional court decision. NHRIs assist directly in the domestic implementation of IACtHR orders (Reif, 2004). The IACtHR often examines and uses as evidence *amicus curiae* briefs or other reports and documents issued by NHRIs and sometimes even uses human rights commissioners and ombudsman as expert witnesses (Reif, 2004). Further, NHRIs are often more intimately familiar with the human rights situation in any specific country, and assist in drafting legislation.⁹ Participation in legislation drafting places the NHRI in an important position to monitor potential evasion by the legislature and other governmental actors as well.

Perhaps just as important as the direct horizontal accountability between NHRIs and other governmental institutions, horizontal accountability mechanisms also allow the NHRI to publicize and publish information in order to stimulate vertical accountability of public officials, which encourages mobilization efforts. This enhances the potential for successful mobilization around an adverse regional court decision. NHRIs inform the public of regional court rulings and human rights violations, invoking vertical accountability by the voting public. A certain degree of “legal literacy” is required for the public to access the courts (Simmons, 2009, 132-135). NHRIs are specifically charged in the Paris Principles with a mandate to educate and inform in the field of human rights, including the mandate to prepare and publicize reports on any human rights

⁹Specifically, the human rights ombudsman in Peru (Defensor del Pueblo) is empowered to “initiate the drafting of legislation...including intervening in the process when bills are presented to Congress, becoming involved in the drafting of the legal text, issuing a report on the draft law which is submitted during legislative debate or, based on his mandate, proposing new laws that will improve human rights protection” (Reif, 2004, 202).

matter and make use of all press organs, which enhances vertical accountability mechanisms (Kjaerum, 2003).

NHRIs that publish regional court decisions increase the value placed on rights and the probability of successfully mobilizing. Take for example, the case of *Ximenes Lopes v. Brazil*, an IACtHR case involving a killing in a psychiatric clinic. The case generated a great deal of domestic interest, particularly from a state human rights commission, human rights organizations, psychiatric professionals, and the media (Cavallaro and Brewer, 2008, 790). The adverse IACtHR decision stimulated debate about public healthcare in Brazil and provided increased leverage for domestic interests to pressure the government to engage in policy change. The Human Rights Commission (the Brazilian NHRI) played a particularly important role in raising awareness and publicizing the progress and outcome of the case itself. Given the importance of NHRIs, I posit

***National Human Rights Institution Hypothesis:** Regional court decisions that find human rights violations are more likely to improve domestic respect for rights in the presence of National Human Rights Institutions.*

A final particularly important set of civil society actors includes human rights legal experts. While HROs and NHRIs draw attention to adverse regional litigation in order to raise the rights consciousness of the public, legal experts help navigate the implementation and effectiveness of adverse regional court decisions. Adverse regional court decisions engage the interest of professional human rights legal actors within the state. In fact, Simmons (2009) claims (with respect to international human rights treaty ratification),

“legal groups may take a new interest in the issues covered by the treaty, debating, publicizing, and interpreting its meaning within the local legal system...additionally, legally trained individuals – strongly motivated by selective incentives – may decide to lend their professional expertise to the nascent rights movement, providing the legal, technical, and advocacy skills that many students of social movements have noted are critical to their success” (146).

Simmons (2009) argues that the growth of “cause lawyering” contributes to the increased effectiveness of human rights litigation. Cause lawyering is “directed at altering some aspect of the social, economic, and political status quo” (Sarat and Scheingold, 1998). Cause lawyers often become involved in social movements and they can be used as “forces for expanding the power and influence of supranational tribunals” (Helfer and Slaughter, 1997, 312). Cause lawyers are particularly important in bringing attention to state responses to adverse regional court decisions. For example, in the *Street Children Case*, the IACtHR found

that Guatemala needed to implement “legislative, administrative or whatever other measures were necessary to conform its domestic law to protect the rights of the child, as set forth in Article 19 of the American Convention” (Pasqualucci, 2003, 248). In this case, the state was charged with determining the most appropriate measures to bring domestic law into conformity with the American Convention.¹⁰ In cases where the steps that need to be taken to come into compliance are not clearly stated, or left up to the state, it becomes increasingly difficult for ordinary individuals to determine whether the executive, legislature, or judiciary made efforts to take the appropriate steps. Where legal expertise is relatively high, the ability of legal experts to hold political actors accountable and facilitate (as well as participate in) pro-rights advocacy efforts increases.

Take, for example, Italy, which has a large network of lawyers active in human rights, and plays an important role in the dissemination of the ECtHR case law, including publishing a journal containing selected ECtHR cases and translating important ECtHR cases into Italian (Keller and Sweet, 2008). One organization involved in the Italian network, the Forensic Union for the Protection of Human Rights, maintains a project to observe and make accessible the jurisprudence of ECtHR case law and provides an important resource for lawyers, judges, government, law enforcement, and individuals to learn about the activity and judgments of the ECtHR.¹¹ Given the importance of legal experts in generating pro-rights mobilization around regional court litigation, I posit:

***Legal Expertise Hypothesis:** As the prevalence of legal expertise rises, regional court decisions that find human rights violations are more likely to improve domestic respect for human rights.*

7.4 Civil Society in Regional Context

While an expectation of civil society mobilization generates executive incentives to adhere to adverse regional court decisions against each individual state, adverse regional court decisions against other countries in the region likely influence executive expectations as well. States seek to avoid the shaming costs of becoming a recipient of an adverse regional human rights court decision by adhering to adverse regional court

¹⁰Further, in the European context, the ECtHR delegates the task of determining the appropriate steps needed to be taken following an adverse regional court decision directly to the state.

¹¹See <http://www.unionedirittiumani.it/osservatorio-cedu/> for more on the activities of this organization.

decisions against other states within the region. In expectation of civil society mobilization, the executive is more likely to adhere to adverse regional court decisions in the region.

Freedom of expression is important in facilitating mobilization around adverse regional court decisions against each country found in violation by the court. However, freedom of expression also increases the opportunity for pro-rights mobilization around adverse regional court decisions against other countries in the region. I also posit that pro-rights advocates will mobilize around adverse regional court decisions in the region, and this is particularly likely when there are freedom of expression guarantees present in society. Freedom of speech and press provide opportunities for individuals to learn about adverse regional court judgments against other countries in the region and to use those rulings as a focal point for mobilization efforts. As a result, I posit:

Regional Freedom of Expression Hypothesis: *As regional court decisions that find violations of human rights within the region rise, respect for rights rises in countries with freedom of expression guarantees.*

Human rights organizations also possess a unique characteristic, in that they often function as part of a large transnational advocacy network, including substantial coordination across borders. HROs often share resources with one another in order to improve respect for human rights. Keck and Sikkink (1998) note the various HROs with expertise in human rights forensic science working in Argentina, “later carried out exhumations and training in Chile, Bolivia, Brazil, Venezuela, and Guatemala” (110). Sharing resources allows HROs to increase mobilization efforts around particular issues (Bartley, 2007; Murdie and Bhasin, 2011). In fact, Bell, Clay and Murdie (2012) even argue that “field building resource mobilization activities of HROs would permeate borders either directly by work across states or indirectly through the movement of resources from HRO-supported domestic groups and individuals to groups with related goals elsewhere” (357). Given that many states located in Europe and the Americas are subject to the jurisdiction of the same regional courts, HROs can utilize adverse regional court decisions against other states in order to change human rights policy within the state where they work. HROs can spark policy change, taking information regarding the regional court’s activity to other members of the NGO network across borders and helping to enhance mobilization efforts. These efforts likely influence executive incentives to respect rights in order to

avoid potential future court activity. I posit:

Regional Human Rights Organization Hypothesis: *As regional court decisions that find violations of human rights within the region rise, respect for rights rises in countries as the prevalence of human rights organizations increases.*

Further, National Human Rights Institutions can use regional court activity in other states as a signal of potential future court activity. NHRIs provide pro-rights activists with information and expertise related to regional court outcomes and decisions. This increases the likelihood of mobilization around regional court litigation. Given that NHRIs are primarily charged with ensuring rights protection, NHRIs are also aware of the regional court's activity in other countries within the region, making them particularly useful in disseminating information on regional court activity to pro-rights advocates, providing legal expertise, and encouraging mobilization efforts. I posit:

Regional National Human Rights Institution Hypothesis: *As regional court decisions that find violations of human rights within the region rise, respect for rights rises in countries with a National Human Rights Institution.*

Legal experts are also capable of drawing attention to regional court litigation taking place in other countries within the region. Legal experts highlight the activity of the regional court in their respective states by publishing, publicizing, and translating regional court judgments. In a similar manner to the other regional hypotheses presented, I posit:

Regional Legal Expertise Hypothesis: *As regional court decisions that find violations of human rights within the region rise, respect for rights rises in countries as legal expertise increases.*

7.5 Results

7.5.1 Freedom of Expression

I apply the research design presented in chapter 3 to analyze the civil society hypotheses. Positive parameter estimates for β_i lend support to the freedom of expression hypothesis.¹² Figure 7.1 displays mean

¹² β_i represents the interaction of an adverse regional court decision related to physical integrity and constitutional guarantees of freedom of expression.

parameter estimates and 90% probability intervals for the β_i parameters for each country under the ECtHR jurisdiction and Figure 7.2 displays mean parameter estimates and 90% probability intervals for the β_i parameters for each country under IACtHR jurisdiction.¹³ Results displayed in Figure 7.1 provide mixed support for the freedom of expression hypothesis. With the exception of Georgia, Romania, Russia, and Turkey, the mean parameter estimates are all positive. Though, the posterior probability distribution estimates in the 90% probability intervals for almost all countries are not solely positive, indicating that the probability that the posterior distribution includes positive estimates is less than 90%. The evidence suggests that we cannot be certain that parchment guarantees of freedom of expression positively influence the incentives of civil society actors to mobilize around adverse European Court decisions.¹⁴ However, the results displayed in Figure 7.2 lend support to the freedom of expression hypothesis. All mean parameter estimates are positive and 90% of the posterior probability distribution estimates within the interval are positive for 20 of the 21 countries under IACtHR jurisdiction. Some countries display 1.5 to 2 point improvements in respect for physical integrity rights two years following the finding of an adverse IACtHR decision when there are freedom of expression guarantees in the constitution.

The results indicate that freedom of expression is particularly important in generating mobilization around adverse IACtHR decisions, and subsequently, executive adherence in expectation of mobilization in the Americas. Perhaps freedom of expression guarantees exhibit a relatively stronger influence in the Inter-American context rather than in the European context as a result of the different mechanisms used to achieve adherence to adverse decisions. The Inter-American Court provides a specific checklist that the state must fulfill, while the European Court delegates to the state the task of conceiving and executing steps to adhere to the decision. The transparency in the IACtHR judgements, relative to the ECtHR, likely reduces the costs for individuals to monitor the behavior of state actors. Cichowski (2007) claims that when the regional court is unintelligible to individuals due to complexity and lack of transparency, regional court decisions may fail to reach ordinary citizens. As individuals increasingly understand the state's responsibilities when faced with an adverse IACtHR decision, freedom of expression improves the probability of successful mobilization. Members of civil society can more easily monitor state adherence (or not) to adverse regional court decisions because failure to adhere is more transparent. This transparency and the increased probab-

¹³A positive parameter estimate indicates that adverse decisions of the ECtHR and IACtHR are positively associated with respect for rights when there are freedom of expression guarantees in the constitution.

¹⁴Using an indicator of de facto freedom of speech, or freedom of speech in practice, yields similar results.

ity of successful mobilization around adverse IACtHR decisions generates an executive expectation of civil society mobilization and subsequently, executive adherence.

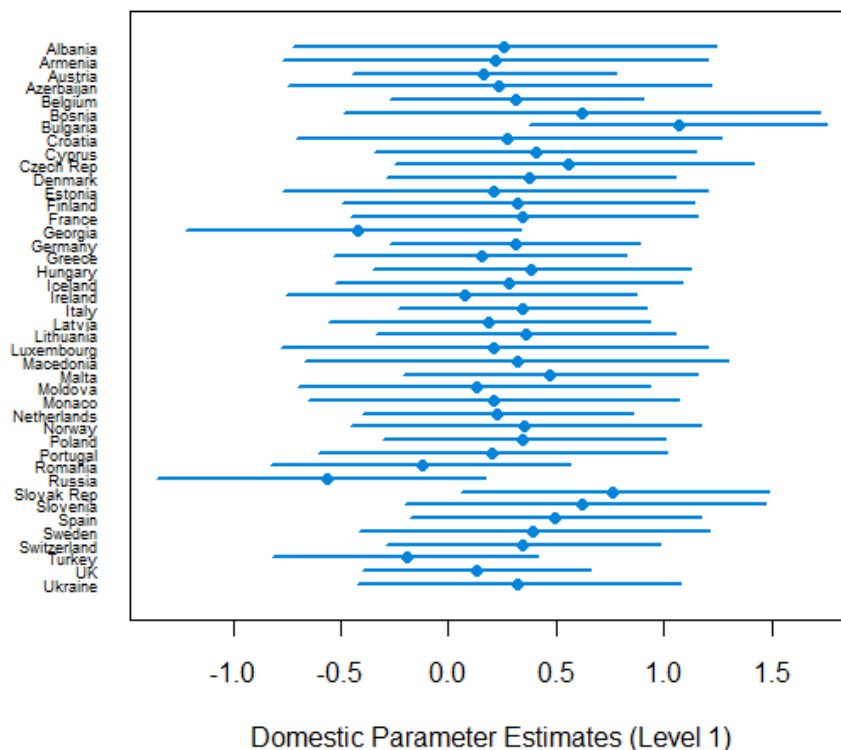


Figure 7.1: ECtHR Model Estimates, ECtHR Violation*Speech

7.5.2 Human Rights Organizations

Turning to the human rights organizations hypothesis, positive parameter estimates for β_i lend support to the hypothesis.¹⁵ Figure 7.3 displays mean parameter estimates and 90% probability intervals for the β_i parameters for each country under the ECtHR jurisdiction and Figure 7.4 displays mean parameter estimates and 90% probability intervals for the β_i parameters for each country under IACtHR jurisdiction. Figure 7.3 provides little support for the human rights organization hypothesis in Europe, as each country under ECtHR

¹⁵ β_i represents the interaction of an adverse regional court decision related to physical integrity and the prevalence of human rights organizations, or the total number of HRO secretariat locations within a state.

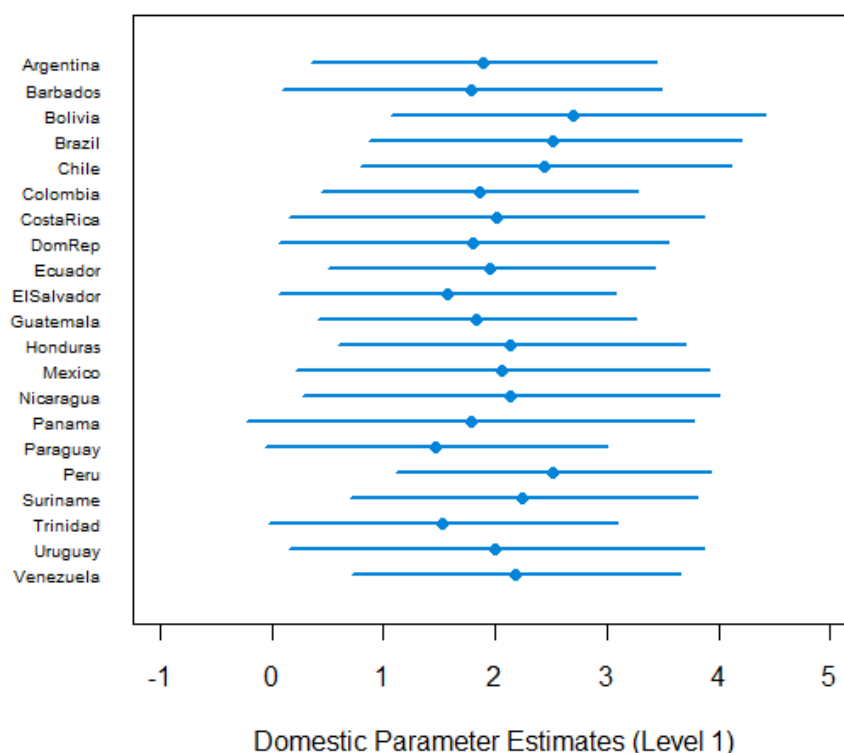


Figure 7.2: IACtHR Model Estimates, IACtHR Violation*Speech

jurisdiction displays 90% of the posterior distribution estimates are both positive and negative.¹⁶ Figure 7.4 shows mixed results, with 18 of 21 countries displaying positive mean parameter estimates, though all estimates show probability intervals including positive and negative estimates.

Perhaps HROs play a less important role post-judgement than they do in the process leading up to the judgment. There is substantial evidence that NGOs fulfill a particularly important role throughout the process of bringing litigation to a regional court, including navigating technical legal aspects in bringing a case to the Court (Pasqualucci, 2003; Keller and Sweet, 2008; Hillebrecht, 2012). In fact, Pasqualucci (2003) notes the importance of NGOs in petitioning the IACtHR, particularly in filing complaints on behalf of individuals, submitting evidence, and representing individuals before the IACtHR, among other tasks.

¹⁶The exception is Bulgaria which displays a positive mean parameter estimate, with 90% of the posterior distribution also displaying positive estimates.

The role of NGOs in making adverse regional court decisions relevant to actors working for the promotion of rights on the ground (as emphasized by Cavallaro and Brewer (2008)) is less clear. Further, in their in-depth analysis of the reception of ECtHR decisions, Keller and Sweet (2008) state,

“As the importance of the ECHR to domestic law increased, we expected networks of human rights litigators and Non Governmental Organizations (NGOs) to grow at both the national and transnational levels. We also expected that these networks would steadily develop capacity to influence the reception process. While human rights NGOs have at least some relevance in most States, none of the reports shows that they regularly exercise decisive influence on important outcomes” (689).

While I can only speculate, if it is the case that HRO’s primary role has been in the pre-litigation and court proceeding processes, then HROs have room to expand their influence in encouraging mobilization post-litigation as well.

7.5.3 National Human Rights Institutions

Positive parameter estimates for β_i lend support to National Human Rights Institution hypothesis.¹⁷ Figures 7.5 and 7.6 display mean parameter estimates and 90% probability intervals for the β_i parameters for each country under the ECtHR and IACtHR jurisdiction respectively. Results displayed in Figure 7.5 provide little support for the NHRI hypothesis, as most countries under ECtHR jurisdiction show negative mean parameter estimates and 90% probability intervals in both the positive and negative direction. Results displayed in Figure 7.6 show a similar pattern, with most countries displaying negative mean parameter estimates and substantial uncertainty around the direction of each estimate in the probability interval. Perhaps one reason for this null finding is the substantial variation in NHRIs not captured by the NHRI measure employed in the analysis. NHRIs are institutions created by the state to regulate state behavior (Smith, 2006). As a result, these institutions vary in their independence, accountability, and effectiveness. However, current data does not capture variation in these institutions, that is, autonomy from the state, the extent of their accountability to citizens, or their effectiveness.¹⁸ Perhaps the extent to which NHRIs influence mobilization efforts, and subsequently executive expectation of mobilization by civil society depends on the amount of control the executive has over NHRI activity, something not captured in the data analyzed here.

¹⁷ β_i represents the interaction of an adverse regional court decision related to physical integrity and the presence of an NHRI.

¹⁸Carver (2010) collected data on the status of NHRIs compiled by the International Coordinating Committee (ICC) of National Human Rights Institutions. However, Carver (2010) finds that nearly 70% of NHRIs receive an “A” Status, indicating that they are in compliance with the Paris Principles, the international set of standards for NHRIs (6). As a result, there is too little variation to utilize ICC status of NHRIs in the models estimated here.

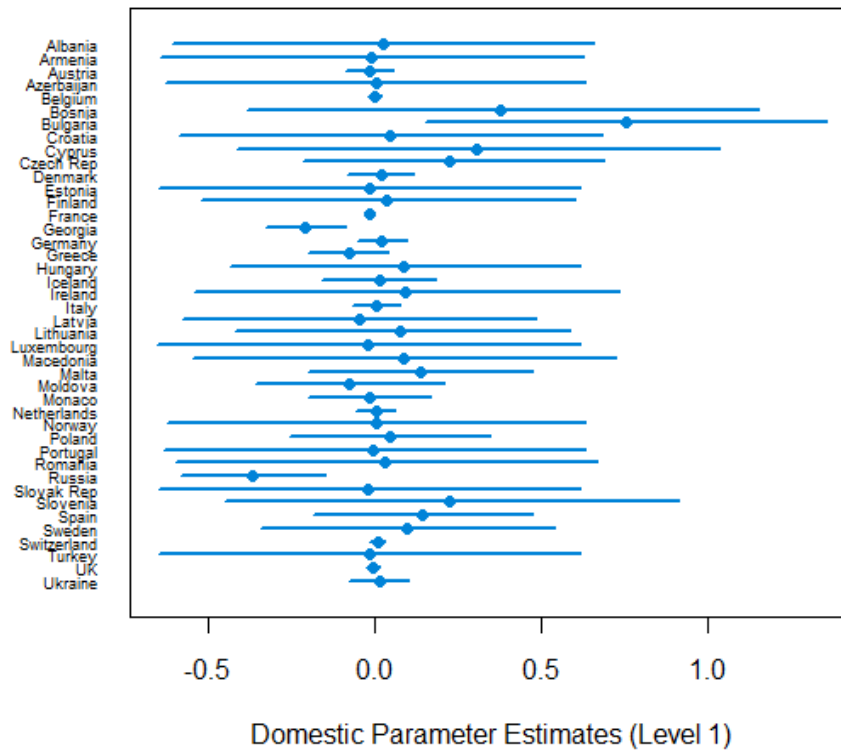


Figure 7.3: ECtHR Model Estimates, ECtHR Violation*HRO

7.5.4 Legal Expertise

Turning to the legal expertise hypothesis, Figures 7.7 and 7.8 display mean parameter estimates and 90% probability intervals for the β_i parameters for each country under the relevant jurisdiction of each court. A positive parameter estimate for β_i lends support to the legal expertise hypothesis.¹⁹ Figure 7.7 provides little support for the legal expertise hypothesis. Most countries under ECtHR jurisdiction display negative mean parameter estimates and have probability intervals including estimates that are both positive and negative. Results displayed in Figure 7.8 lend some support to the hypothesis, as all countries display positive mean parameter estimates and 90% of the posterior distribution includes estimates are positive for 13 of the 21 countries in the sample. Legal expertise appears to play an important role in pro-rights mobiliza-

¹⁹ β_i represents the interaction of an adverse regional court decision related to physical integrity and legal expertise, or the presence of the International Bar Association's Human Rights Institute.

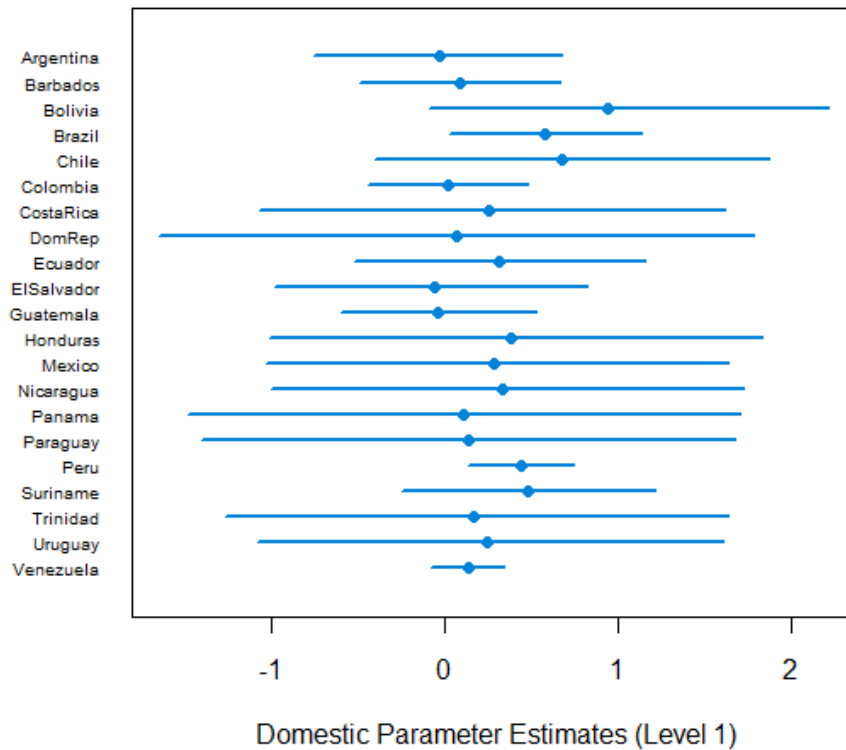


Figure 7.4: IACtHR Model Estimates, IACtHR Violation*HRO

tion efforts in the IACtHR context. Where individuals possess greater access to human rights legal experts, the probability of successful pro-rights mobilization increases. Perhaps one reason I find evidence for the importance of legal expertise in the IACtHR context, and not the ECtHR context, is again associated with transparency. Legal experts can more easily attribute state failure to adhere to adverse IACtHR decisions to specific domestic actors, including the executive, given the clarity or specificity included in the checklist of IACtHR injunctive orders. On the other hand, the lack of clarity in ECtHR orders may result in the state taking only limited action to adhere to an adverse decision and substantial uncertainty regarding steps taken to adhere, which in turn, may result in complex or technical legal difficulties in interpreting the status of adherence. This uncertainty may fail to generate the mobilization necessary to influence executive expectation of mobilization by civil society, and subsequently, executive adherence (respect for rights).

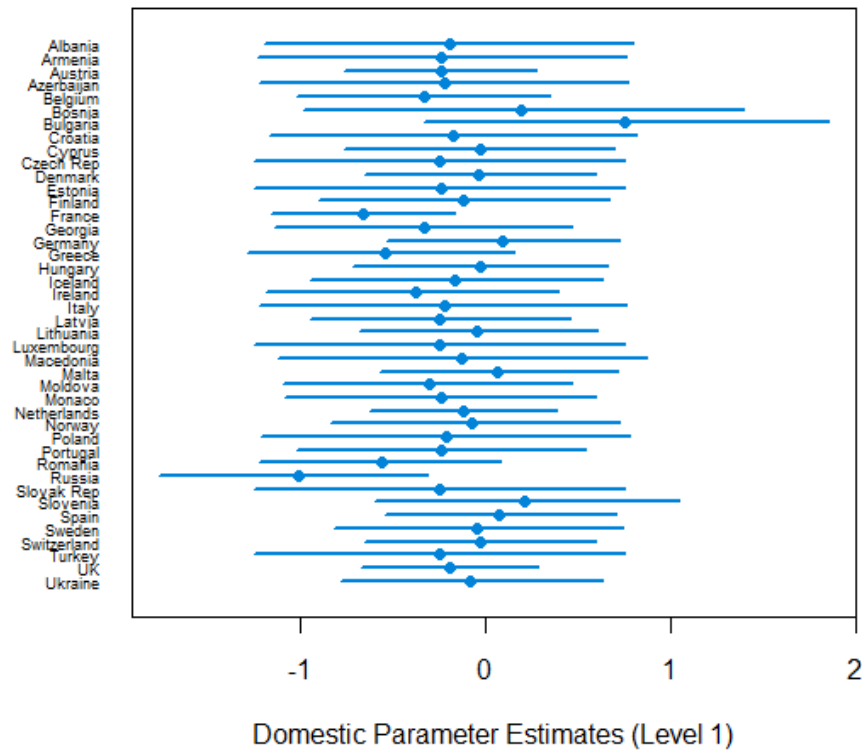


Figure 7.5: ECtHR Model Estimates, ECtHR Violation*NHRI

7.5.5 Civil Society in Regional Context

Turning to results for the regional freedom of expression hypothesis, a positive parameter estimate (for δ_2) indicates the effect of the cross-level interaction between the level-1 and level-2 predictors on respect for physical integrity rights.²⁰ A positive parameter estimate indicates that the finding of a violation by the regional court against countries in the region with similar human rights practices is positively associated with respect for physical integrity rights when the constitution guarantees freedom of expression. Figures 7.9 and 7.10 display mean parameter estimates and 90% probability intervals for the influence of this cross-level interaction on physical integrity rights in each country in the sample. Figure 7.9 provides limited

²⁰The level-1 predictor represents the interaction between an adverse regional court decision and freedom of expression guarantees, while the level-2 predictor represents the influence of adverse regional court decisions in the region, or more specifically, the number of violations found by the regional court in the region weighted by each country's similarity in physical integrity rights to those in the region.

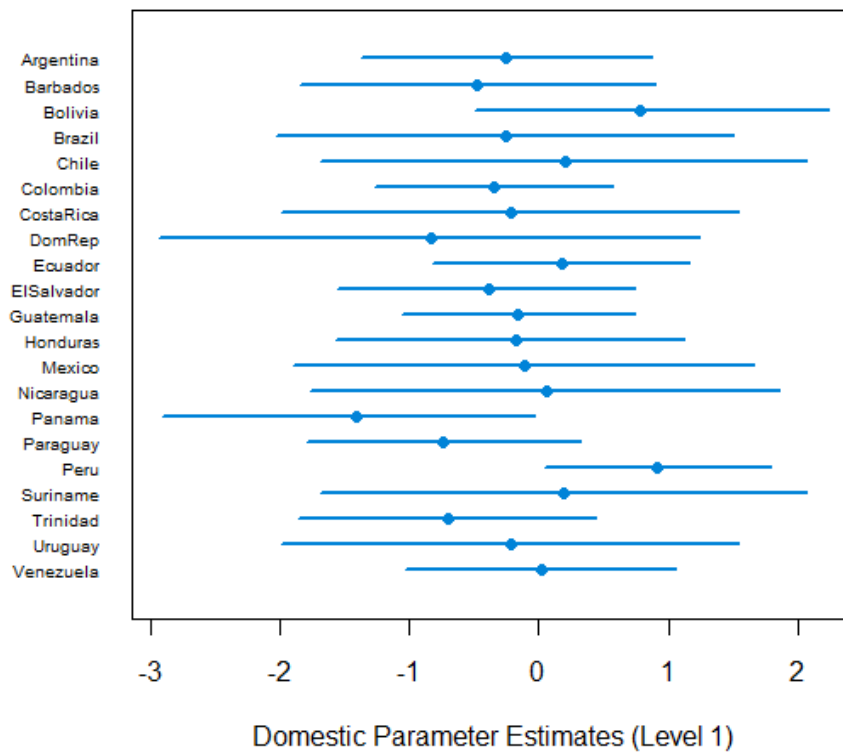


Figure 7.6: IACtHR Model Estimates, IACtHR Violation*NHRI

support for the regional freedom of expression hypothesis. Mean parameter estimates for all countries in the ECtHR sample are positive, though substantively small and all probability intervals include positive and negative estimates, indicating uncertainty regarding the direction of this relationship. Given the relative lack of transparency regarding the steps that constitute adherence to adverse ECtHR decisions and the potential difficulty in mobilizing around adverse regional court decisions against their own country, it is unlikely that members of civil society are able to utilize litigation in other countries within the region in order to generate pro-rights mobilization efforts. Perhaps the probability of successful mobilization does not increase enough to make mobilization efforts cost-effective, given the relative lack of transparency in monitoring state behavior related to an adverse regional court decision.

Figure 7.10 displays results for the IACtHR, lending support to the regional freedom of expression hypothesis. Mean parameter estimates for all Inter-American countries are positive and 90% of the posterior

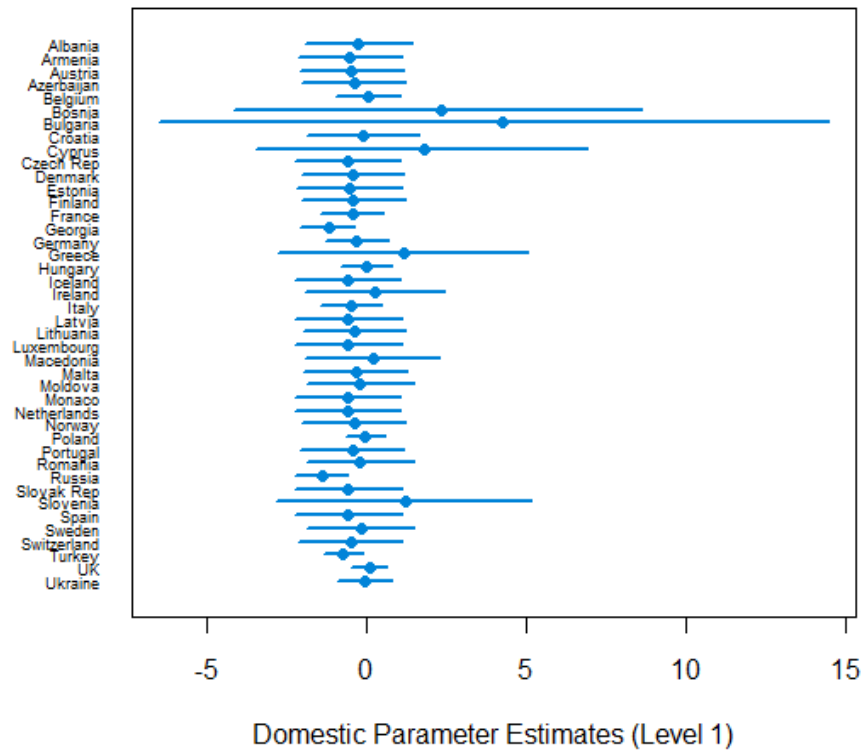


Figure 7.7: ECtHR Model Estimates, ECtHR Violation*Legal Expertise

distribution estimates are positive for all countries in the sample. In other words, the probability that the posterior distribution includes a *positive* parameter estimate is 890%, lending support to the hypothesis. The results indicate that adverse regional court decisions against other countries in the region with similar human rights practices are positively associated with respect for rights when the constitution guarantees freedom of expression. Members of civil society mobilize around adverse litigation against other countries in the region more successfully when freedom of expression guarantees are in place. The relative transparency of injunctive orders given to IACtHR states and the ability to monitor state adherence make mobilization relatively more likely to be successful in the IACtHR context.

With respect to results for the regional human rights organization hypothesis, Figures 7.11 and 7.12 display mean parameter estimates and 90% probability intervals for the influence of this cross-level interac-

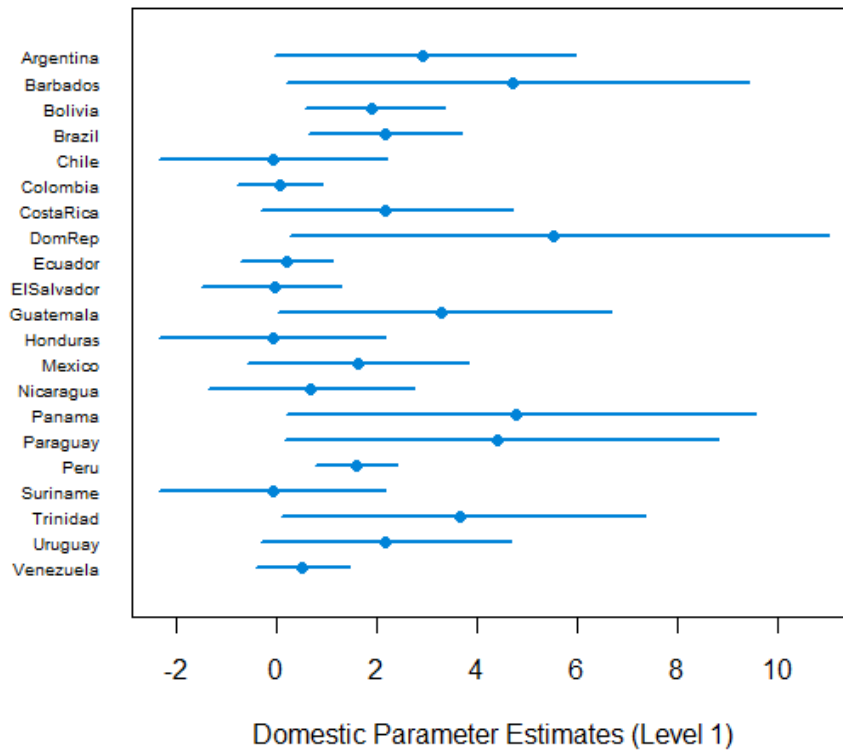


Figure 7.8: IACtHR Model Estimates, IACtHR Violation*Legal Expertise

tion on physical integrity rights in each country in the sample.²¹ Much like the level-1 (domestic) results, Figures 7.11 and 7.12 provide little support for the hypothesis. Mean parameter estimates for all countries are substantively small and the probability intervals indicate substantial uncertainty. Given that I find little support for the role of HROs in generating mobilization around adverse regional court litigation in each individual country, it is unlikely that HROs will be successful in generating mobilization around adverse litigation against other countries within the region.

Turning to results for the regional NHRI hypothesis, a positive parameter estimate indicates that the finding of a violation by the regional court against countries in the region with similar human rights practices is positively associated with respect for physical integrity rights when an NHRI is present within the state.

²¹ A positive parameter estimate indicates that the finding of a violation by the regional court against countries in the region with similar human rights practices is positively associated with respect for physical integrity rights as HRO prevalence increases.

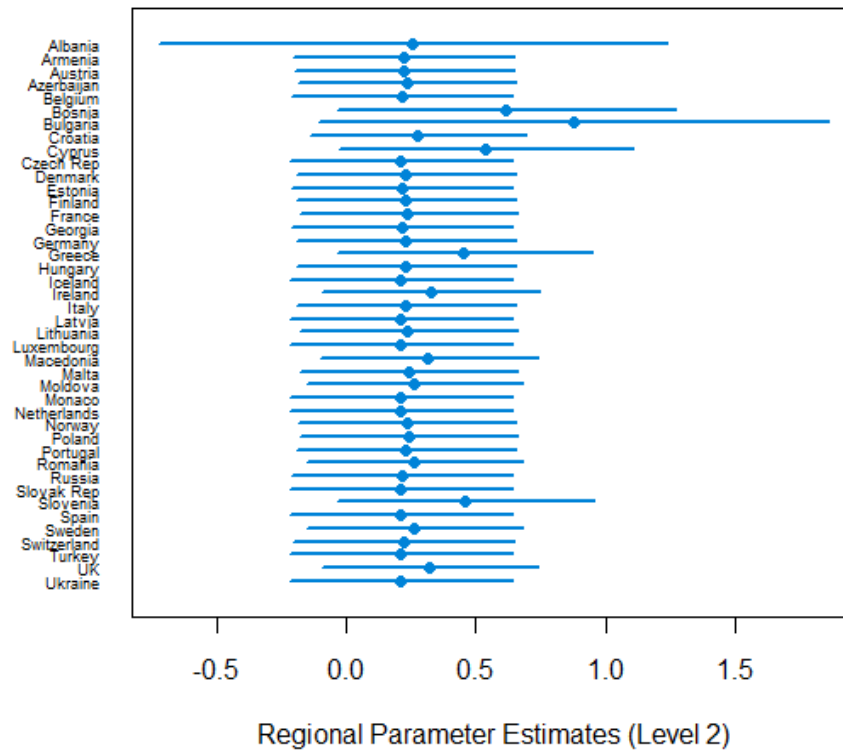


Figure 7.9: ECtHR Regional Model Estimates: ECtHR*Speech

Given that level-1 mean parameter estimates for both the ECtHR and the IACtHR were negative or displayed probability intervals indicating substantial uncertainty, it is unlikely that level-2 parameter estimates are positive. If NHRI presence exhibits little influence on executive incentives in the face of adverse regional court decisions against each individual state, it is unlikely that NHRI presence has a positive influence on executive incentives in the face of adverse regional court decisions against other countries within the region. Figures 7.13 and 7.14 display mean parameter estimates and 90% probability intervals for the influence of this cross-level interaction on physical integrity rights in each country in the sample. Much like the level-1 results, Figures 7.13 and 7.14 provide little support for the regional NHRI hypothesis. Mean parameter estimates are negative for most countries under the ECtHR and the IACtHR jurisdiction and probability intervals indicate high uncertainty in the direction of the relationship.

Finally, looking at results for the regional legal expertise hypothesis, Figures 7.15 and 7.16 display

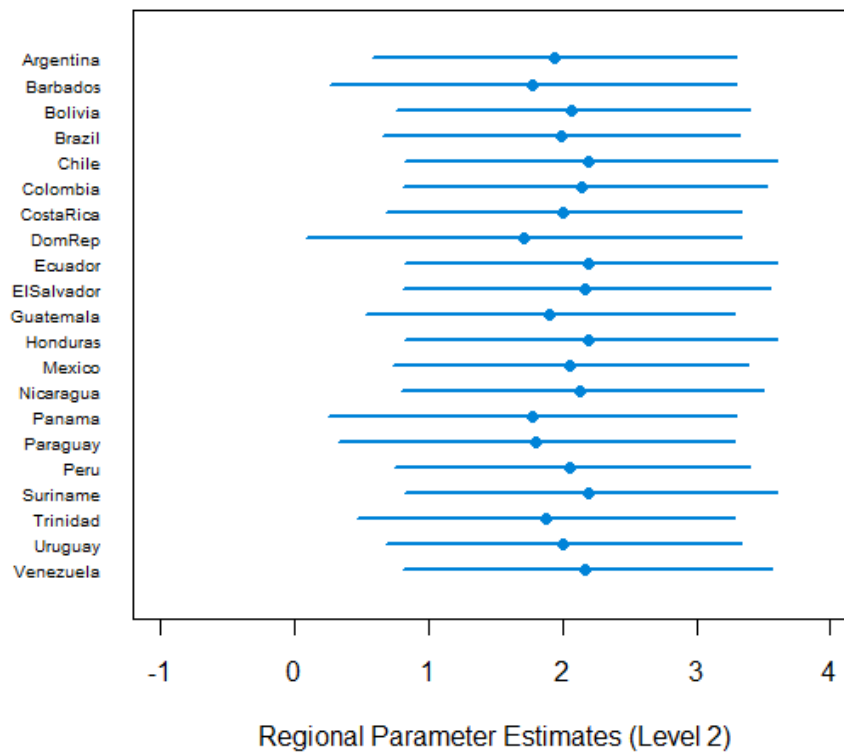


Figure 7.10: IACtHR Regional Model Estimates: IACtHR*Speech

mean parameter estimates and 90% probability intervals for the influence of this cross-level interaction on physical integrity rights in each country in the sample.²² Much like the level-1 results, Figure 7.15 provides little support for the influence of legal expertise, with most countries displaying negative mean parameter estimates and posterior probability distributions including both positive and negative estimates. However, Figure 7.16 lends some support to the hypothesis, with 17 of 21 countries displaying positive mean parameter estimates and 14 of 21 countries showing 90% of the posterior probability estimates to be entirely positive. The number of adverse IACtHR decisions against countries within the region is positively associated with respect for rights in the presence of legal expertise. Legal expertise in the Americas influences executive

²²A positive parameter estimate indicates that the finding of a violation by the regional court against countries in the region with similar human rights practices is positively associated with respect for physical integrity rights when the International Bar Association's Human Rights Institute is present within the state.

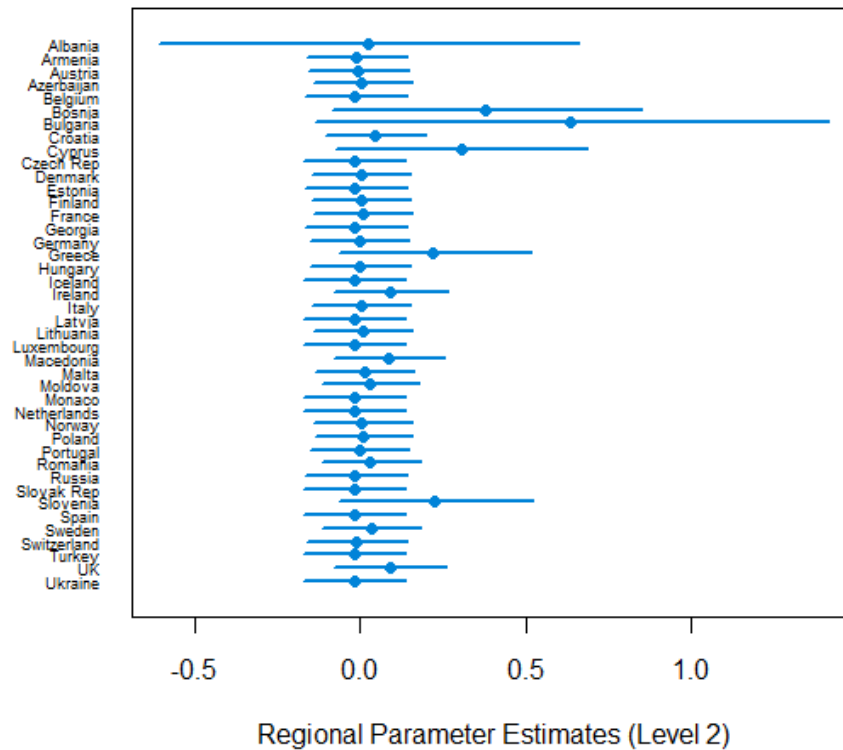


Figure 7.11: ECtHR Regional Model Estimates: ECtHR*HRO

expectation of pro-rights mobilization efforts, and subsequently executive incentives to adhere to adverse regional court decisions, even when regional court activity takes place in other states within the region.

7.6 Conclusion

In this chapter, I argued that executive expectation of mobilization around adverse regional court litigation influences executive incentives to adhere to adverse regional court decisions (respect rights). Mobilization is likely when individuals place a high value on rights and the probability of successfully mobilizing is high. Both of these factors are increasingly likely in the presence of an international legal standard (such as an adverse regional court decision) and in the presence of a domestic institutional environment conducive to successful mobilization. Cichowski (2007) argues (with respect to the European Court of Justice) that “courts can provide important democratic participatory opportunities for citizens and groups by engaging

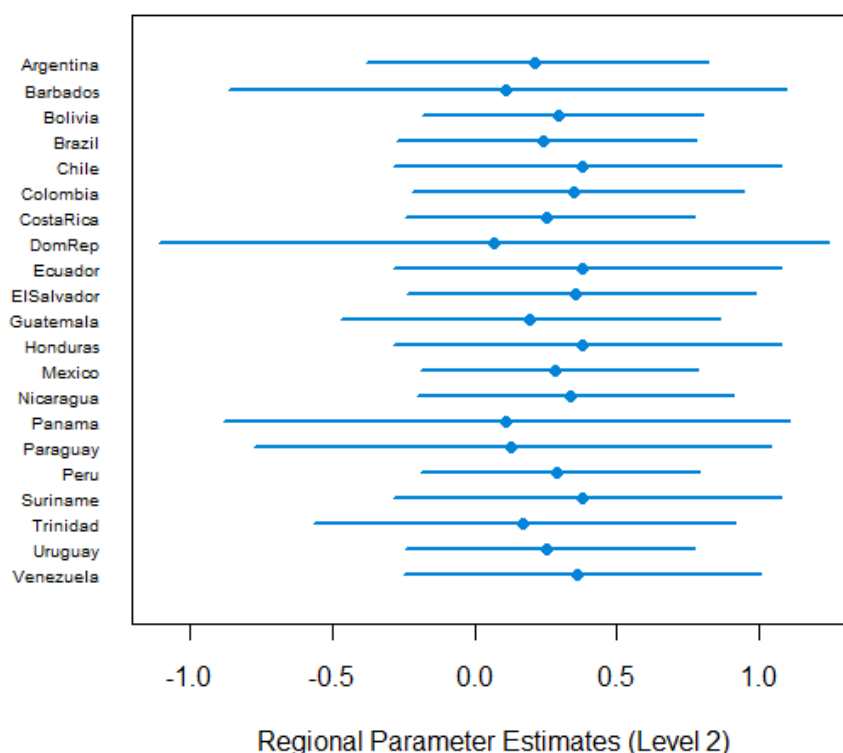


Figure 7.12: IACtHR Regional Model Estimates: IACtHR*HRO

them in the development, monitoring, and enforcement of law” (260). I examine the influence of adverse regional court decisions conditional on a domestic institutional environment likely to encourage mobilization efforts and influence executive incentives to respect rights.

I find evidence that the role of civil society mobilization is relatively more important in generating executive incentives to respect rights in the Americas than in Europe. I find that freedom of expression parchment guarantees and legal expertise are particularly important in generating an executive expectation of mobilization and subsequently, executive incentives to respect rights. I suggest that perhaps this can be attributed to the relatively greater ability of civil society actors to monitor evasion of adverse IACtHR decisions, given the specific checklist provided by the IACtHR to ensure adherence.

Future research would do well to explore the complementary effects of political actors and members of civil society. Cichowski (2007) claims, “these processes of litigation and mobilization do not replace the

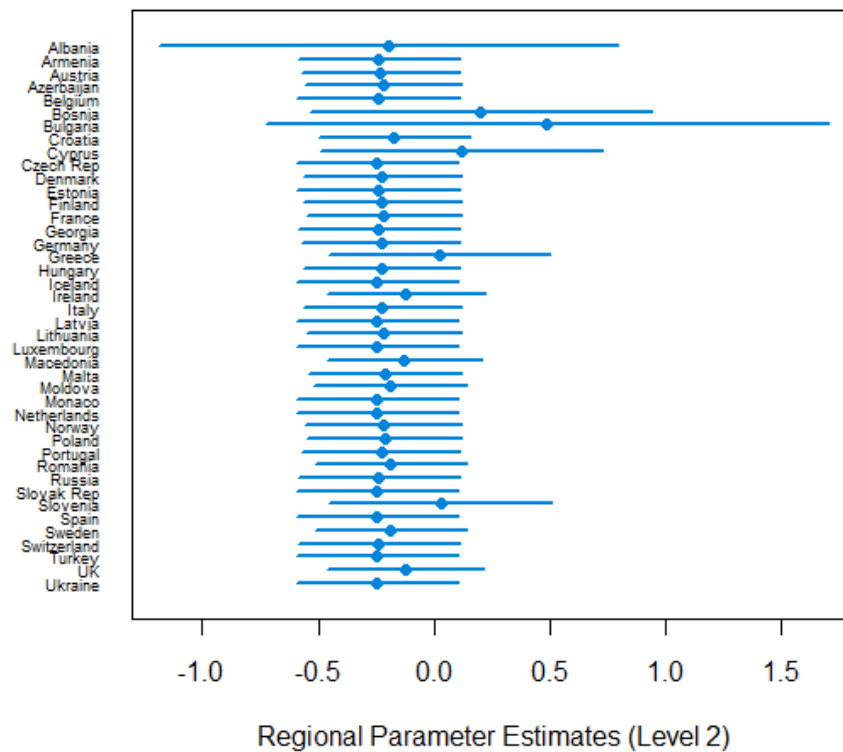


Figure 7.13: ECtHR Regional Model Estimates: ECtHR*NHRI

importance of representative institutions, but instead complement the work of executives and the legislature” (260). Perhaps political actors must first have the necessary incentives to adhere to adverse regional court decisions and civil society mobilization works to enhance those incentives. A fruitful avenue for further research involves exploring the interactions of these various actors, notably the influence of civil society, which is often bracketed in favor of the study of various political actors (Hillebrecht, 2012). With respect to policy, the current scholarship provides evidence that HROs and NHRIs appear to be successful in the pre-litigation process and court proceedings, but as suggested by Cavallaro and Brewer (2008), these organizations might do well to focus their efforts on ensuring adherence with adverse regional court decisions, and ensuring broader respect for rights.

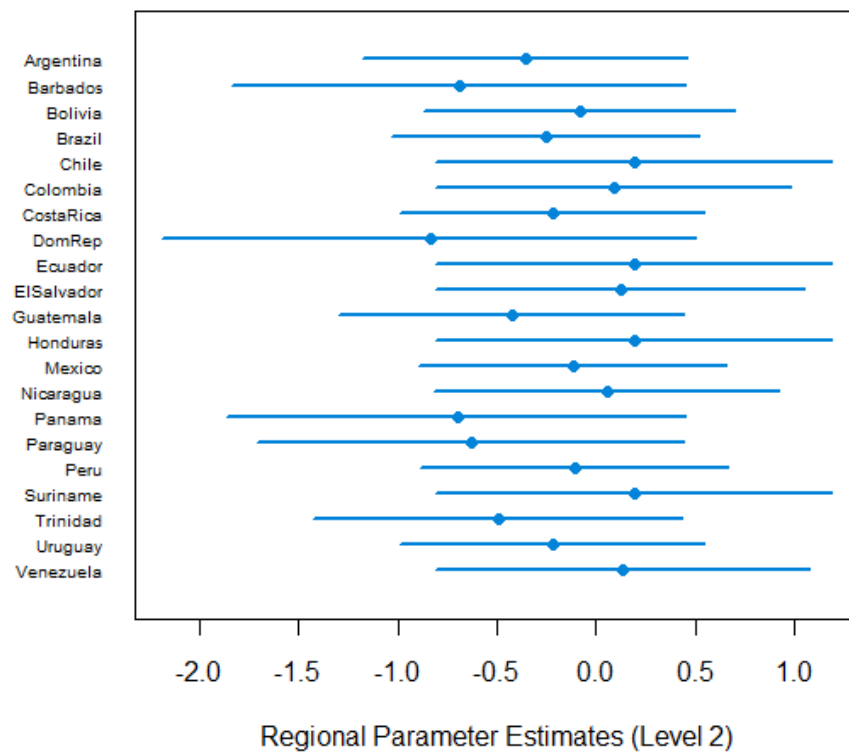


Figure 7.14: IACtHR Regional Model Estimates: IACtHR*NHRI

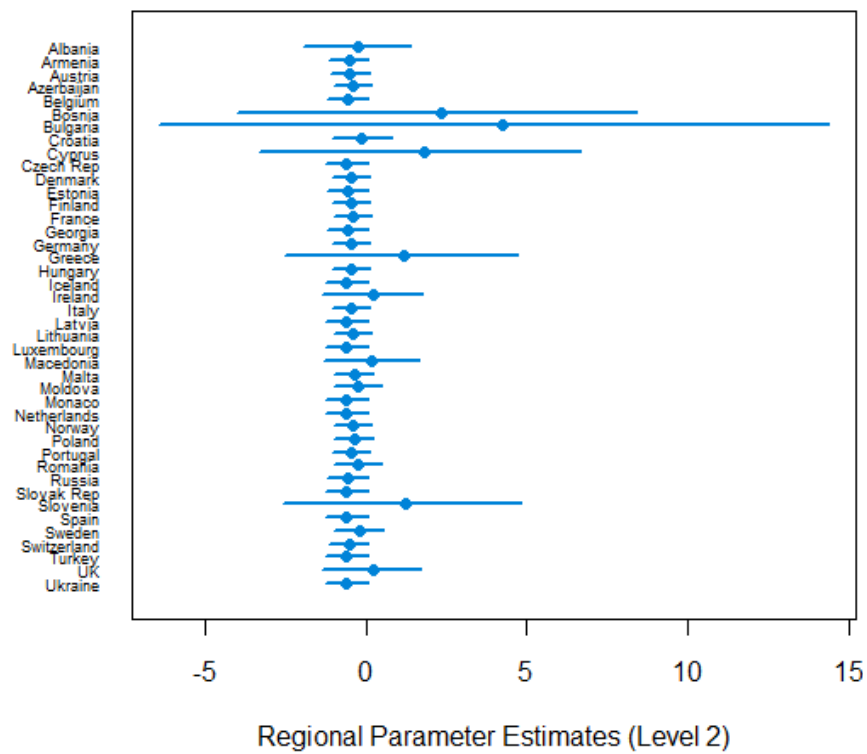


Figure 7.15: ECtHR Regional Model Estimates: ECtHR*Legal Expertise

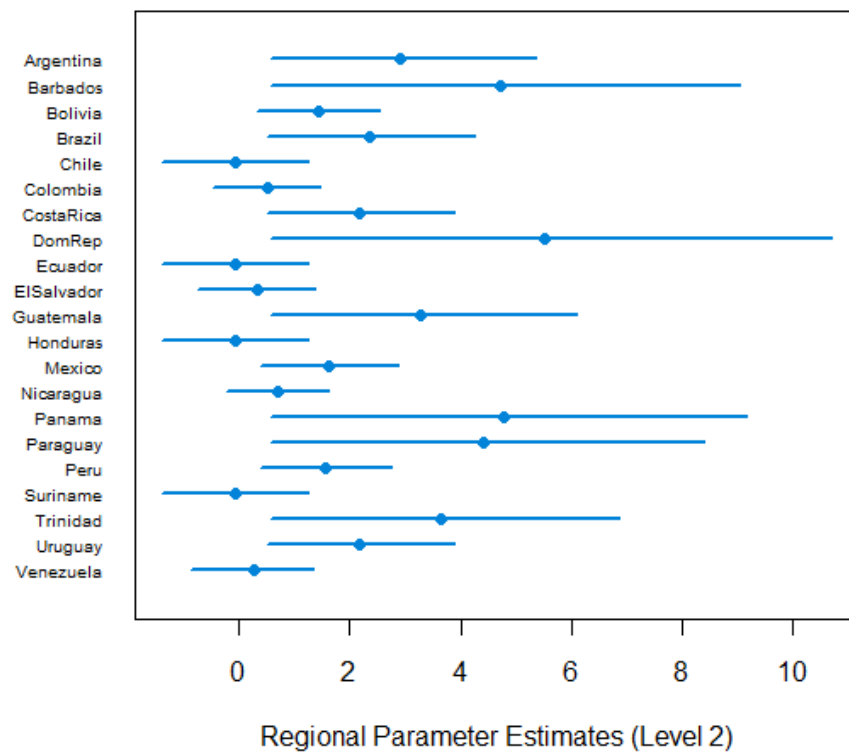


Figure 7.16: IACtHR Regional Model Estimates: IACtHR*Legal Expertise

CHAPTER 8

CONCLUSION

In this study, I examine the effectiveness of regional human rights courts, or the influence of these courts on respect for rights. Through examination of the ECtHR and the IACtHR, I generated expectations regarding the conditions required for the effectiveness of these regional legal bodies. In this chapter, I make four main points. First I discuss the contributions made in this study to scholarship addressing international law and human rights. Second, I highlight the main findings, drawing conclusions about the relative importance of various domestic actors for regional human rights court effectiveness. Third, I address the different observed outcomes for the ECtHR and the IACtHR. Finally, I discuss some ideas for moving forward with future research on regional human rights courts.

8.1 Contributions

This study makes three important contributions to international human rights legal scholarship. First, by focusing on regional human rights courts, rather than international human rights treaties, I explore the role of an additional international human rights legal constraint placed on the state. Scholars studying international human rights legal commitments have focused almost exclusively on the role of international *treaties*, however regional human rights courts represent an international actor with significant potential to influence domestic rights-related behavior. Delegation to international treaties requires that states agree to follow a particular set of rules. International human rights treaties often ensure enforcement of treaty provisions through monitoring mechanisms established in treaty bodies, and optional protocols sometimes offer an individual complaints mechanism. The regional human rights court goes a step further than offering an individual complaints mechanism, as an adverse regional court decision represents a clear censure for a human rights violation (Abbott and Snidal, 2000; Hathaway, 2008; Hill, 2013). State governments authorize regional (or international) courts not only to place rules and restrictions on their behavior, but also to issue public judgments regarding their compliance with rules and their adherence with adverse decisions of the court. A case is investigated, debated, and analyzed, and the state is either held responsible for the rights violation or not. In other words, the legal process involved in adverse judgments grants legitimacy to rights

claims before the regional court. While growing, the lack of scholarship addressing the role these supranational courts play in respect for rights is surprising, given the growth in activity and enhanced authority delegated to these international legal institutions.

Second, rather than focus on *compliance* with regional human rights court decisions as the outcome variable of interest, I focus on the *effectiveness* of the court, or the influence of the court on respect for rights. While compliance presents an interesting outcome of interest for legal scholars and lawyers focused on determining the degree of conformity between state legal commitments and state actions, this outcome is largely inappropriate for social scientific inquiry. Effectiveness highlights changes in state behavior in the presence of particular institutional constraints (Martin, 2013). Neyer and Wolf (2005) state the dichotomy between the two concepts nicely,

Unlike those two concepts, compliance focuses neither on the effort to administer authoritatively public policy directives and the changes they undergo during this administrative process (implementation) nor on the efficacy of a given regulation to solve the political problem that preceded its formulation (effectiveness)...Assessing compliance is restricted to the description of the discrepancy between the (legal) text of the regulation and the actions and behaviors of its addressees. Perfect compliance, imperfect implementation and zero effectiveness therefore are not necessarily mutually exclusive (41-42).¹

Various scholars, including Voeten (2007); Hawkins and Jacoby (2010); and Hillebrecht (2012, 2014), among others, focus extensively on the rate of state compliance with regional human rights court orders, which is not surprising, given the enhanced availability of data on compliance (Martin, 2013). These scholars' efforts have produced extensive data on state compliance with both the ECtHR and the IACtHR, but do not address whether these regional human rights courts are associated with changes in rights-related behavior.

Finally, much of the existing work focuses on the state as a single actor in addressing adverse regional court decisions. However, regional human rights courts often indirectly charge specific domestic actors with actions contributing to state adherence (Huneus, 2012). That is, the regional court often orders the state to adopt legislation (tasked to the legislature), re-open cases (tasked to the judiciary), or issue a formal state apology (tasked to the executive). In fact, Huneus (2012) even states "the problem is also – and often primarily – that implementation of orders involves disparate state actors whose interests, ideologies and institutional settings differ from those of the executive..." (105). Given that adverse regional court decisions

¹This quote was also used in an essay by Martin (2013), who nicely addresses the utility of both concepts.

imply the actions of various domestic actors, I focus on the varying incentives of domestic actors to adhere to adverse decisions of the court. Domestic actors face different incentives to adhere to adverse regional court decisions, and in order to understand regional court effectiveness (the influence of the regional court on state rights-related behavior), we must understand the conditions that generate incentives for domestic actor adherence. As a result, I examine the incentives of the executive, the legislature, the judiciary, and members of civil society to adhere to adverse decisions of the regional court. I find that domestic actors are increasingly likely to adhere to adverse regional court decisions to the extent that they are constrained by particular domestic institutions.

8.2 Major Findings

In this dissertation, I argue that the executive, as the primary actor charged with adopting and instituting rights-related policy domestically, represents an actor of central importance in ensuring regional court effectiveness. The executive faces various incentives *not* to respect rights following an adverse regional court decision, including material costs, threats to decision-making power, and the potential loss of important political relationships. However, as I explore throughout the study, domestic politics can generate incentives for the executive to adhere to adverse regional court decisions through a policy of respect for rights. The executive may face direct incentives, generated by international and domestic pressure on the executive to adhere. However, the executive may also face indirect incentives, generated by an *expectation* of adherence by the domestic legislature and judiciary or an *expectation* of mobilization by civil society actors. Below, I explore four main conclusions found in this study.

First, the domestic judiciary plays a particularly important role in generating executive incentives to adhere. Various scholars highlight the importance of the domestic judiciary, particularly domestic judicial power (autonomy and effectiveness) in compliance and effectiveness of international human rights law (Helfer and Slaughter, 1997; Hathaway, 2002; Powell and Staton, 2009; Simmons, 2009). Given that international human rights law does not include hard enforcement provisions, the domestic judiciary plays a crucial role in ensuring its enforcement and effectiveness. This finding is particularly strong and robust with respect to regional human rights litigation in both Europe and the Americas. Domestic judicial involvement with adverse regional court decisions continues to increase over time. For example, Huneeus (2012) finds that IACtHR remedial orders requiring action on the part of the domestic judiciary have increased from 0 percent of cases in the early 1990s to 66 percent of orders after 2005 and argues that “judicial actors, in

particular, can foster or flout supranational rights regimes” (107). Why is the domestic judiciary such an important domestic actor in ensuring adherence to adverse regional court decisions?

In addition to the domestic enforcement role that domestic courts offer to relatively soft international human rights legal commitments, various scholars also highlight the unique relationship shared between international and national courts. Alter (2009) argues (specifically, with respect to the European Court of Justice) that supranational courts become powerful to the extent that they forge relationships with domestic courts in the region. More specifically, she argues that the supranational court (the ECJ) garnered power by encouraging domestic courts to act as the enforcement arm of European law.² Huneeus (2012) argues that the IACtHR can use remedial orders to “to demonstrate the benefits of partaking in transnational judicial dialogue by deferring to, citing and otherwise promoting national jurisprudence that embeds the Court and its rulings in national settings” (107). Familiarity with the legal process places regional courts in a unique position to understand and require implementation efforts likely to generate enhanced respect for rights through the national legal system.³ Regional human rights court judges, as a result of their legal expertise, recognize the importance of forging relationships with domestic courts, an institution with which they are familiar, in order to see their decisions carried out, and for the regional court to garner authority and legitimacy within the region. Also, given that the executive represents the primary violator of rights, an independent and effective domestic court often constitutes an important source of recourse for victims of rights violations. Understanding this, regional court judges involve one branch of government that likely possesses some autonomy from the state, the judiciary. As a result, I observe that powerful judiciaries, those that are autonomous and effective, play a significant role in ensuring regional court effectiveness. The integration of regional court litigation into the national legal system provides an effective route for the regional court in seeing their adverse judgements (and subsequently, respect for rights) realized domestically.

Second, the executive plays a primary role in regional court effectiveness. I find that in the face of *direct domestic* threats to executive political survival, the executive is increasingly likely to adhere to adverse regional court decisions by implementing a policy of respect for rights. Threats to executive political survival are generated by domestic vertical and horizontal accountability mechanisms. When faced with domestic horizontal accountability to adhere, the results are particularly strong and robust. That is, when the executive

²Alter (2009) suggests that the ECJ fostered competition among lower domestic courts in order to encourage domestic courts to make use of ECJ legal doctrine. By fostering this competition, lower court judges could utilize the ECJ by referring questions of the interpretation of European law to the ECJ. Over time, these referrals placed authority in the hands of the ECJ.

³Voeten (2009) finds that about one-third of judges on the ECtHR have experience as judges on high national courts and many more have direct experience with human rights litigation.

faces institutional constraints, the executive is increasingly likely to have actions monitored, discussed, and publicized by other governmental actors. These institutional constraints increase transparency regarding executive adherence, and as a result, the voting public is increasingly likely to hold the executive accountable. Because horizontal accountability mechanisms (institutional constraints) may enhance vertical accountability mechanisms by increasing transparency and allowing voters to threaten executive political survival for failing to be sensitive to the rights concerns of the voting public, domestic institutional constraints represent an important policy reform in ensuring the effectiveness of regional human rights courts, particularly in Europe.⁴ As the actors charged with conducting foreign relations and often charged with acting as the state interlocutor throughout litigation with the regional court, the executive (and public ministry) play a primary role on the world stage. As a result, it is unsurprising that the executive is constrained by adverse regional court orders. That is, when the state fails to adhere, the executive likely faces greater blame. This substantially increases the costs of non-adherence, particularly in the face of a domestic institutional environment likely to threaten the political survival of the executive for failing to adhere.

Third, the role of the legislature in generating executive incentives to adhere to adverse regional court decisions remains unclear. When compared to the strong and robust relationship between direct domestic pressure on the executive and regional court effectiveness, as well as domestic judicial power and regional court effectiveness, I find relatively little support for the role of the legislature in regional court effectiveness, even when examining the presence of particular institutions likely to generate legislative incentives to adhere.⁵ I expected that the legislature would play a particularly important role, given that orders tasked to the legislature often involve amendment and adoption of legislation, which likely influences rights in practice. Perhaps one reason the legislature plays a relatively small role involves the time horizon of legislators. Alter (2009) argues that politicians have shorter time horizons than do judges and while judges likely focus more extensively on the influence of their actions on their autonomy and effectiveness (power) in the long run (thereby being particularly attentive to the influence that adherence to adverse regional court decisions has on domestic diffuse public support for the institution), politicians may be less likely to see the electoral benefits of adherence. Perhaps initiating legislation secures electoral benefits, but the actual adoption of such legislation is outside the time horizon of a politician. Huneeus (2012) argues,

⁴Interestingly, threats to executive political survival generated by international pressure exhibit little influence on executive incentives to adhere to adverse regional court decisions. Perhaps the threat generated to the political survival of the executive domestically represents a greater concern than the threat to the international reputation of the state. That is, perhaps surviving in office trumps concerns for potentially losing international aid (or other international reputational concerns).

⁵I examine the role of veto players and electoral rules, including plurality rules and district magnitude.

Legislatures are less apt to act by institutional design. Executives are top-down institutions designed for carrying out action. Legislatures are designed for democratic deliberation and contestation. To pass a law, a majority vote must be negotiated and a series of procedural hurdles passed. One only has to see the differences in structure to predict that legislatures will be slower and less likely to implement Court orders (134).

Further, perhaps in order to avoid legislative deadlock or debate, policymaking is often undertaken by the executive or the judiciary in response to adverse regional court decisions. For example, by enacting executive orders in response to an adverse decision, the executive may be able to adhere and bypass potential problems with legislative adherence. If this is the case, then generating executive and domestic judicial incentives to adhere become even more important in ensuring regional court effectiveness.

Finally, civil society may play an increasingly important role in enhancing regional court effectiveness in the future. I find evidence that freedom of expression and legal expertise play an important role in ensuring IACtHR effectiveness. While generating enhanced mobilization efforts does not replace the importance of domestic political actors and the institutions within which they work, civil society actors may complement executive and judicial adherence (Cichowski, 2007). By working together, societal actors and the regional court can maximize their impact on respect for rights. Cavallaro and Brewer (2008) argue that “human rights tribunals should understand that international rights courts are most effective when their work contributes to efforts deployed by domestic activists as part of their broader human rights campaigns” (775). In this study, I find little evidence to support the role of civil society in directly influencing regional court effectiveness. This leaves substantial room for these actors to begin working closely with ensuring that regional court outcomes are realized domestically.

8.3 Europe and the Americas

Given the profoundly distinct environments in which both the ECtHR and the IACtHR emerged, both regional legal bodies display unique practices and procedures. The subject matter examined by both courts differs significantly, as adjudication in Europe typically involves minor violations of the ECHR and adjudication in the Americas often involves large-scale rights violations. The differences in subject matter generate an expectation that adherence to IACtHR orders likely represents a task of profound difficulty, as many states continue to face domestic institutional weaknesses and large-scale human rights abuses. Cavallaro and Brewer (2008) claim with respect to the IACtHR,

In many areas, the rule of law is still solidifying, and in some cases members of the military or of the political party responsible for massive state-sponsored violations in recent decades continue to hold influential positions in current governments...In this climate, the decisions of a supranational tribunal are even less likely to provoke broad change on their own. (785).

One would expect, then, that the IACtHR garners little influence in the region, particularly when compared to the ECtHR, a legal body operating in a region characterized by stable democratic institutions and committed to the rule of law.

Contrary to what one might expect, I find that the IACtHR plays an important role in ensuring respect for rights. Specifically, in the presence of a powerful domestic judiciary, the IACtHR exhibits a strong positive relationship with respect for rights. Interestingly, civil society plays an important role in the IACtHR context, more so than in Europe. Perhaps part of the reason for the influential role of the IACtHR relates to court procedures for ensuring effectiveness. The ECtHR delegates compliance to the state, while the IACtHR hands down a specific checklist of remedial orders required for the state to be in compliance. Also, the IACtHR monitors adherence to its own rulings, while the ECtHR delegates adherence to a Committee of Ministers. This places the IACtHR in a unique position with substantial authority to ensure favorable state response to its judgments. These differences may also account for the importance of civil society actors in the American context. Given that the checklist of orders provided by the IACtHR increases transparency by allowing civil society actors to more easily observe failures to implement specific remedial orders, civil society actors can point to the divergence between adverse regional court orders and state behavior with relative ease.

8.4 Future Research

Further research on regional human rights courts, particularly the ECtHR and the IACtHR, represents a fruitful avenue for study. First, scholars would do well to explore in more depth the relationship between multiple levels of the judiciary. National courts are particularly important in ensuring regional court effectiveness. The interaction and dialogue between these courts will likely generate a better understanding of the role of each level of judiciary in ensuring respect for rights. Second, the literature leaves open substantial room for exploring the interaction of various domestic actors. Here, I examined the role of each actor in generating executive incentives to adhere to adverse regional court decisions, however, domestic actors do

not exist in a vacuum and these actors likely take cues from one another, generating expectations of state adherence. For example, domestic judicial expectation of adherence by the legislature may influence domestic judicial incentives. A fruitful avenue forward would be to focus on the role of civil society in enhancing the incentives of other domestic actors. That is, in this study, I only examine executive expectation of mobilization by civil society, however, civil society mobilization around an adverse regional court decision likely changes the incentives of all domestic political actors. Also, future research should address which combinations of these institutions generate regional court effectiveness. In other words, by examining the domestic political environment most conducive to regional court effectiveness, scholars can offer policy suggestions regarding the most appropriate domestic reforms. A third opportunity for future research involves exploring the regional effects of the ECtHR and the IACtHR. I examined the role of the regional court in generating incentives across borders, that is, the influence of adverse regional court decisions on other countries in the region. I find that adverse regional court decisions likely influence the incentives of actors under a number of conditions, even across borders. However, further exploration of these effects is warranted, including examination of the conditions under which states respond to the regional court's activity in other states.

Further, while I examine the role of regional human rights courts in changing state behavior (effectiveness), the study of state delegation to regional courts presents an avenue for potential exploration, particularly developing theory regarding state decisions to cede sovereignty to regional human rights courts, despite the potential threat to sovereignty that the courts present. Also, the strategic behavior of regional court judges, including variation in the clarity of language used in adverse regional court judgments to encourage compliance, remains an area open for exploration. Finally, examining the selection process by which cases reach regional human rights courts, including the selection process taking place when the Inter-American Commission of Human Rights forwards cases to the Inter-American Court represents a potential avenue for further study.

APPENDIX A

CHAPTER 4 APPENDIX

A.1 Approximate Likelihood Ratio Test Results

Table A.1: Likelihood Ratio Test of Parallel Regressions Assumption - Domestic Pressure (Vertical)

	ECtHR	IACtHR
chi2	177.06	175.64
prob > chi2 (t-2)	0.0004	0.0002

Table A.2: Likelihood Ratio Test of Parallel Regressions Assumption - Domestic Pressure (Horizontal)

	ECtHR	IACtHR
chi2	184.82	179.16
prob > chi2 (t-2)	0.0001	0.0000

Table A.3: Likelihood Ratio Test of Parallel Regressions Assumption - International Pressure

	ECtHR	IACtHR
chi2	NA	171.07
prob > chi2 (t-2)	NA	0.0001

A.2 Ordered Logit Model Results

Given that Long and Freese (2001) argue that the violation of the parallel regression assumption is not necessarily a rationale for running ordinary least squares regression, I present ordinal logistic regression results from frequentist statistical analyses in Tables A.4, B.4, and A.6. The parameter estimates for

the variables of interest are generally in the same direction and remain significant when compared to the Bayesian hierarchical linear regression.¹

Table A.4: Ordered Logit Model Estimates - Domestic Pressure (Vertical Accountability)

Parameter Estimate (S.E.) Reported	ECtHR	IACtHR
Regional Court*ExecComp (t-2)	1.15* (0.914)	0.14 (0.394)
Regional Court (t-2)	-3.58* (2.716)	-0.774 (1.02)
Exec Comp (t-2)	-0.188 (0.227)	0.432** (0.204)
Jud (t-2)	3.32*** (0.768)	4.71*** (0.87)
Aid (t-2)	0.0002 (.0006)	-.000 (.0005)
Dist Magnitude (t-2)	0.004* (0.002)	0.01* (0.005)
Checks (t-2)	0.203* (0.078)	-.186** (0.083)
Speech (t-2)	-0.198 (0.32)	-1.5** (0.598)
HRO (t-2)	0.013* (0.01)	-0.087 (0.079)
Legal Expertise (t-2)	-0.278 (0.252)	-0.637** (0.285)
NHRI (t-2)	-0.43 (0.184)	0.046 (0.205)
Regional Violations (t-2)	-0.0004* (0.0003)	0.001 (0.001)
Physint (t-2)	0.93*** (0.092)	0.753*** (0.087)
GDP (logged)	0.627** (0.196)	-0.666** (0.194)
Democracy	-0.629* (0.469)	-0.667** (0.362)
Population (logged)	-0.369*** (0.063)	-0.199** (0.085)
Civil War	-2.2*** (0.661)	-2.53*** (0.478)
r2	0.3203	0.2995
N	753	448

NOTES: * Significant at 90% confidence, ** Significant at 95% confidence, ***Significant at 99% confidence. Models estimated using robust standard errors. One-tailed significance tests reported.

¹In the frequentist ordered logistic regression, I control for the regional influence, that is, the number of adverse regional court decisions found in the region.

Table A.5: Ordered Logit Model Estimates - Domestic Pressure (Horizontal Accountability)

Parameter Estimate (S.E.) Reported	ECtHR	IACtHR
Regional Court*ExecChecks (t-2)	3.22** (1.49)	0.668 (1.19)
Regional Court (t-2)	-2.56** (1.12)	-0.797* (0.526)
Exec Constraints (t-2)	0.454 (0.772)	-1.58** (0.646)
Jud (t-2)	2.67*** (0.827)	5.45*** (0.943)
Aid (t-2)	0.000 (0.001)	-0.0001 (0.0005)
Exec Comp (t-2)	-0.08 (0.23)	0.371** (0.178)
Dist Magnitude (t-2)	0.005** (0.003)	0.012** (0.006)
Speech (t-2)	-0.264 (0.328)	-1.43** (0.585)
HRO (t-2)	0.012 (0.01)	-0.031 (0.079)
Legal Expertise (t-2)	-0.216 (0.257)	-0.779** (0.286)
NHRI (t-2)	0.082 (0.184)	0.075 (0.204)
Regional Violations (t-2)	-0.001** (0.000)	0.001 (0.001)
Physint (t-2)	0.941*** (0.091)	0.737*** (0.086)
GDP (logged)	0.80*** (0.202)	-0.626** (0.195)
Democracy	-0.659 (0.475)	-0.594* (0.34)
Population (logged)	-0.338*** (0.061)	-0.211** (0.084)
Civil War	-2.39*** (0.678)	-2.49*** (0.462)
r ²	0.3173	0.2997
N	753	448

NOTES: * Significant at 90% confidence, ** Significant at 95% confidence, ***Significant at 99% confidence. Models estimated using robust standard errors. One-tailed significance tests reported.

A.3 Model Convergence Diagnostics

Density plots for three of the random slope parameters (Luxembourg, Czech Republic, and Slovak Republic) for the domestic pressure model for the ECtHR are shown in Figure A.1 and for the IACtHR domestic

Table A.6: Ordered Logit Model Estimates - International Pressure

Parameter Estimate (S.E.) Reported	IACtHR
Regional Court*Aid (t-2)	0.017 (0.017)
Regional Court (t-2)	-0.97* (0.55)
Aid (t-2)	-0.002 (0.002)
Jud (t-2)	4.77*** (0.87)
Exec Comp (t-2)	0.49** (0.179)
Dist Magnitude (t-2)	0.01* (0.005)
Speech (t-2)	-1.51** (0.58)
HRO (t-2)	-0.08 (0.078)
Checks (t-2)	-0.192** (0.083)
Legal Expertise (t-2)	-0.647** (0.284)
NHRI (t-2)	0.033 (0.208)
Regional Violations (t-2)	0.001 (0.001)
Physint (t-2)	0.755*** (0.085)
GDP (logged)	-0.735*** (0.194)
Democracy	-0.737** (0.341)
Population (logged)	-0.206** (0.084)
Civil War	-2.7*** (0.473)
r ²	0.3019
N	448

NOTES: * Significant at 90% confidence, ** Significant at 95% confidence, ***Significant at 99% confidence. Models estimated using robust standard errors. One-tailed significance tests reported.

pressure model (Guatemala, Bolivia, and Brazil) in Figure A.2.² The unimodality of the density estimates indicate evidence of convergence. Trace plots for three of the random slope parameters (Guatemala, Bolivia, and Brazil) in the international pressure model for the IACtHR are shown in Figure A.3.

²Competitiveness of executive recruitment is used as an indicator of domestic pressure in the ECtHR model and executive institutional constraints is used as an indicator of domestic pressure in the IACtHR model from which these trace plots were generated.

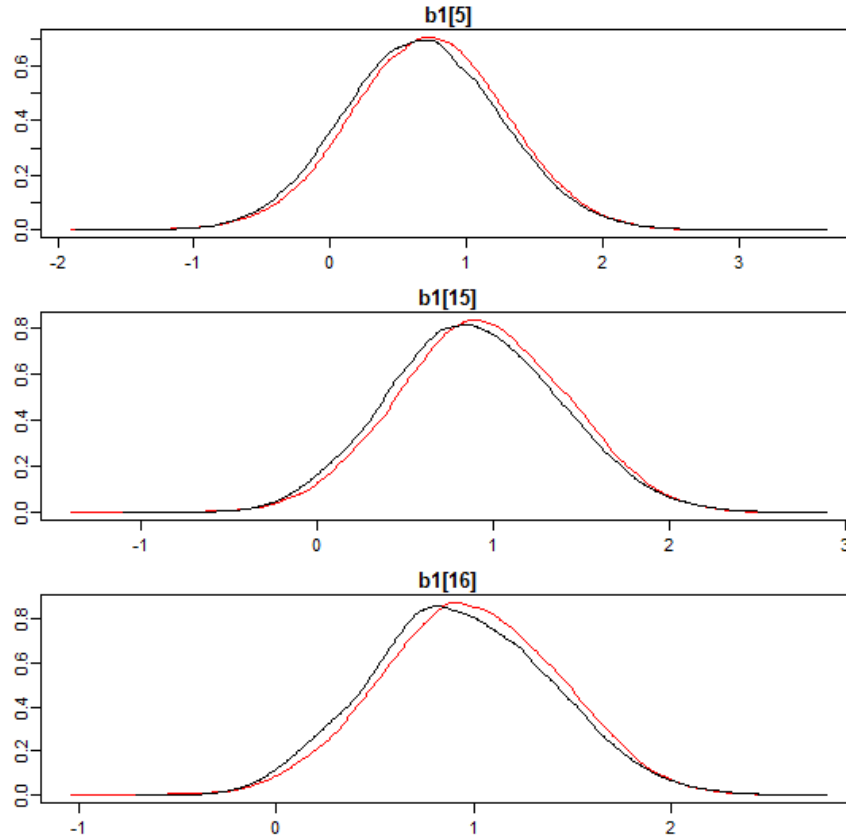


Figure A.1: ECtHR Density Plots (Domestic Pressure - Executive Competition) (Luxembourg, Czech Republic, Slovak Republic)

A.4 Control Variable Results

For the models in Chapter 4, I control for the following variables: judicial power, district magnitude, freedom of speech, human rights organizations, NHRI presence, legal expertise, GDP per capita (logged), democracy, population (logged), civil war, and past repression. In each model, I also include the constituent terms of the interactive variable, as well as the other direct executive incentive variables (competitiveness of executive recruitment, institutional checks, and multilateral aid). Measurement and operationalization of these variables are described in more detail in Chapter 3.

Figures A.4 and A.5 display the parameter estimates for the various control variables included in the first level of the ECtHR and IACtHR vertical accountability models. The constituent terms for the interaction variable (adverse decision of the ECtHR/IACtHR and competitiveness of executive recruitment) indicate that

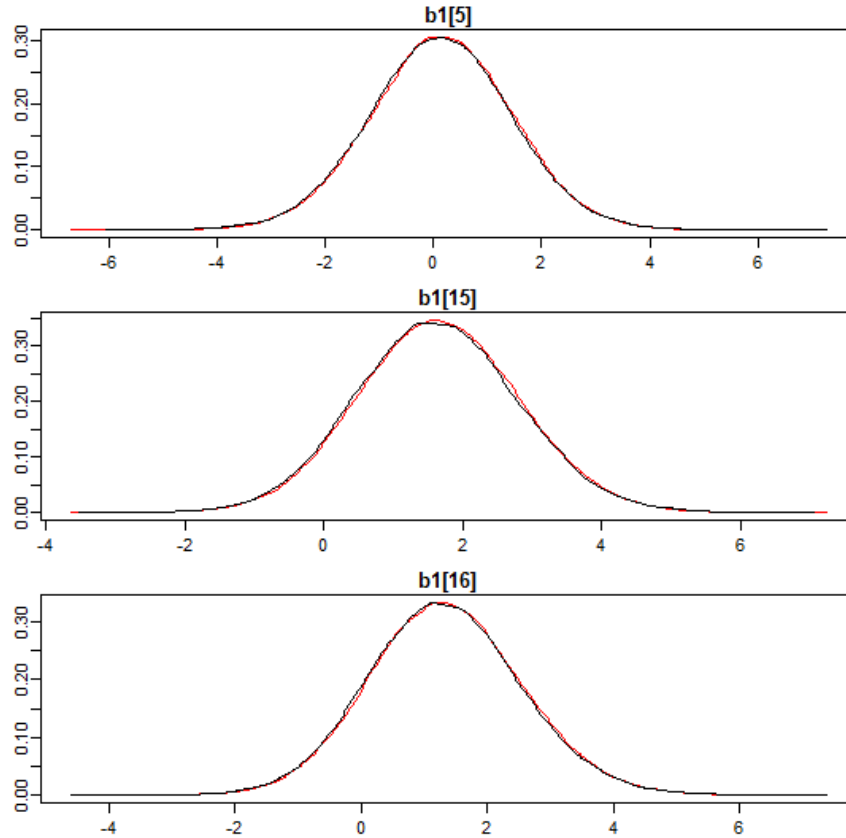


Figure A.2: IACtHR Density Plots (Domestic Pressure - Executive Constraints) (Guatemala, Bolivia, Brazil)

the ECtHR and the IACtHR have a negative influence on respect for physical integrity rights in the absence of a competitive executive recruitment process. Competitiveness of executive recruitment is negatively associated with respect for physical integrity rights in the absence of an adverse decision of the ECtHR, though the substantive effect is small and the credible interval contains zero. Competitiveness of executive recruitment is positively associated with respect for physical integrity rights in the absence of an adverse decision of the IACtHR, though the result for both constituent terms include credible intervals that contain zero, indicating that 90% of the posterior probability distribution include estimates with either a positive or negative sign, though the trend displayed in the figure is that nearly 90% of the posterior probability estimates are negative for the IACtHR constituent term and positive for the competitiveness of executive recruitment constituent term.

Figures A.6 and A.7 display the parameter estimates for the various control variables included in the

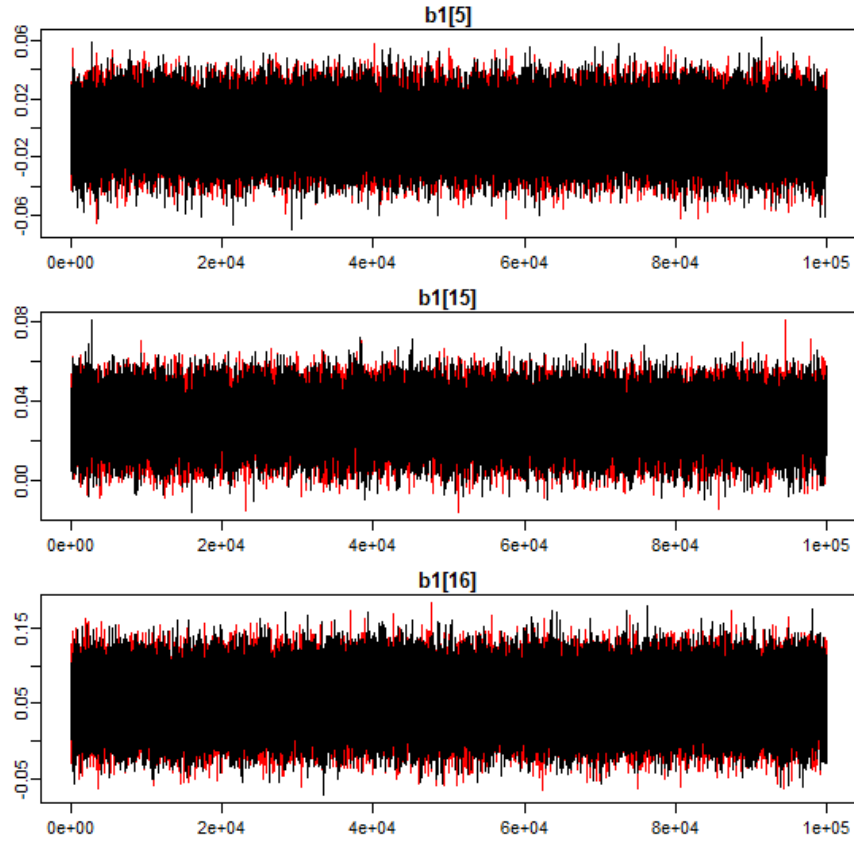


Figure A.3: IACtHR Trace Plots (International Pressure) (Guatemala, Bolivia, Brazil)

first level of the horizontal accountability model. The constituent terms for the interaction variable (adverse decision of the ECtHR or IACtHR and institutional constraints) indicate that both regional courts have a negative influence on respect for physical integrity rights in the absence of institutional constraints. Interestingly, institutional constraints are negatively associated with respect for physical integrity rights in the absence of an adverse decision of the ECtHR and the IACtHR.³

Figure A.8 displays the parameter estimates of the additional control variables included in the first level of the model. The constituent terms on the interaction variable indicate that the IACtHR is negatively associated with respect for physical integrity rights in the absence of multilateral aid allocations, while

³Perhaps this relationship reflects the extant policy stability characterizing governments with large numbers of veto players (Tsebelis, 2002).

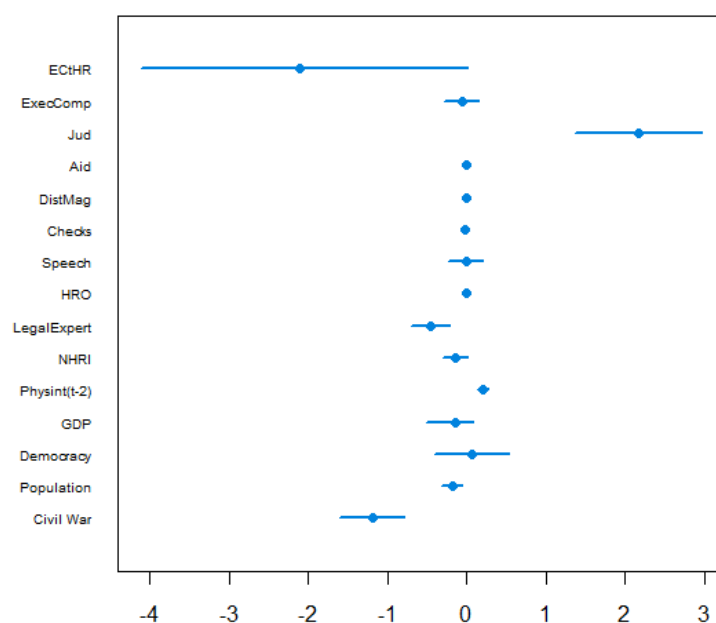


Figure A.4: ECtHR Domestic Vertical Accountability Model Estimates (Control Variables)

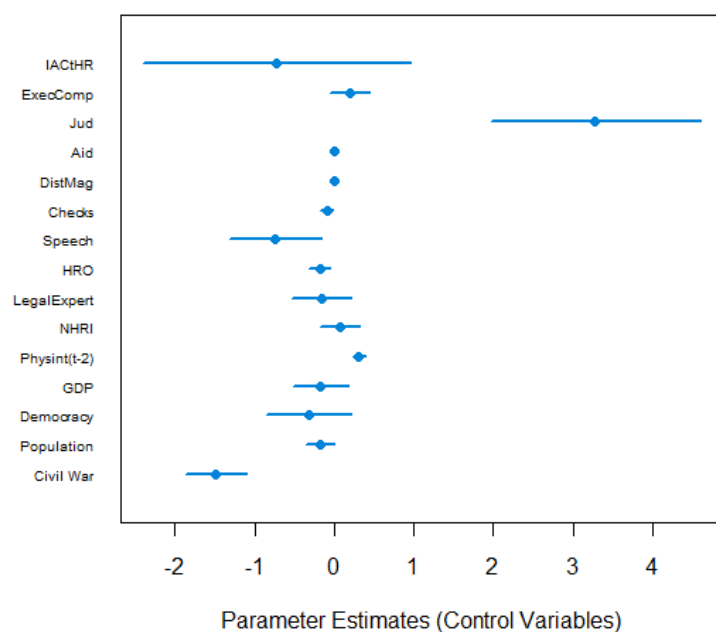


Figure A.5: IACtHR Domestic Vertical Accountability Estimates Model Estimates (Control Variables)

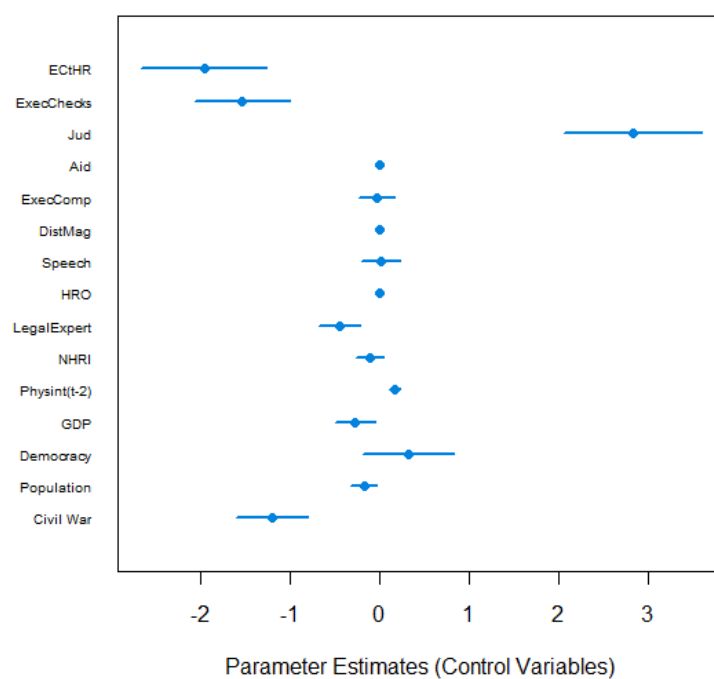


Figure A.6: ECtHR Domestic Horizontal Accountability Model Estimates (Control Variables)

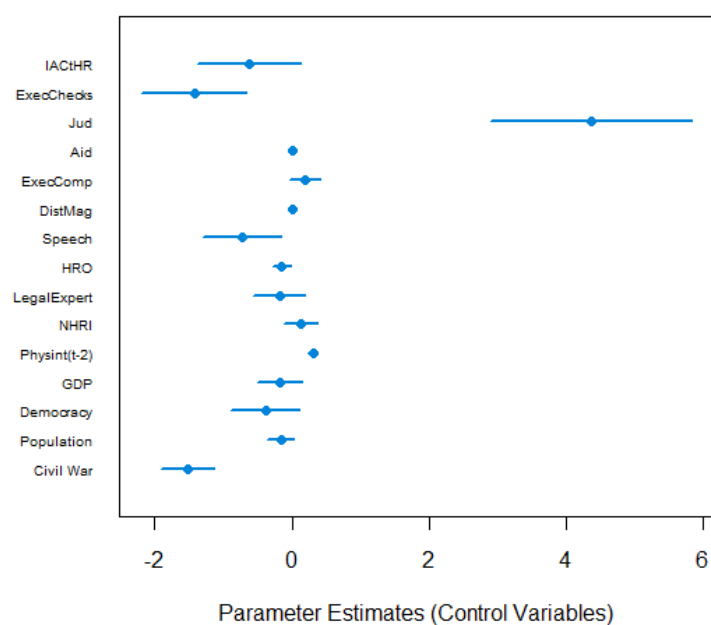


Figure A.7: IACtHR Domestic Horizontal Accountability Model Estimates (Control Variables)

multilateral aid allocations are positively associated with respect for physical integrity rights in the absence of an adverse decision of the IACtHR, though the relationship is substantively small.

Many of the parameter estimates for the other control variables are in the expected direction in many models. Domestic judicial power is positively associated with respect for physical integrity rights. Multilateral aid has a positive, though substantively small influence of respect for rights. The lagged physical integrity rights variable is positively associated with rights and civil war is negatively associate with rights, as posited. District magnitude, checks and balances, freedom of speech, the presence of human rights organizations, legal expertise, and NHRI presence all have small effects and/or credible intervals that contain zero.

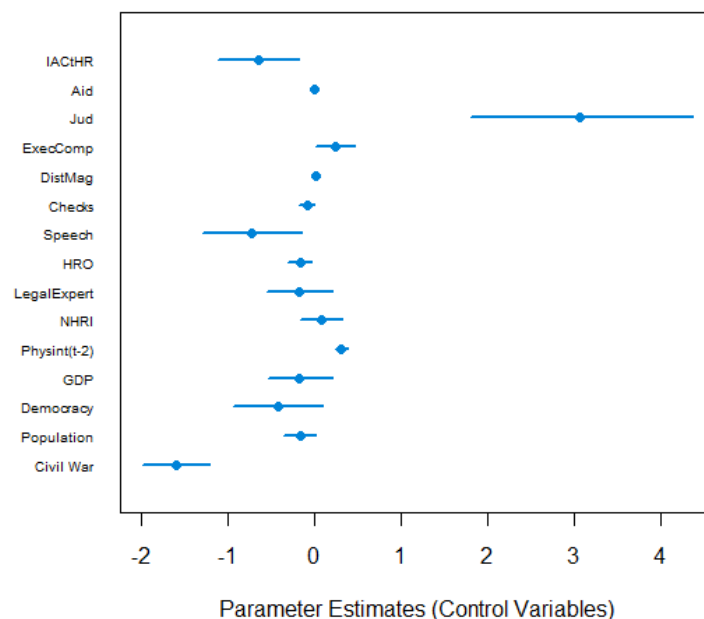


Figure A.8: IACtHR International Pressure Model Estimates (Control Variables)

A.5 Pooled Model Estimates

Table A.7, A.8, and A.9 displays model results for pooled executive models, excluding hierarchical modeling techniques (random slopes and random intercepts). When pooled, the results show that horizontal

accountability remains particularly important in the European Court context. Further, nearly 90% of the posterior estimates are positive for the vertical accountability hypothesis in the European context as well. The pooled results are weaker for the IACtHR sample.

Table A.7: Pooled Model Estimates - Domestic Pressure (Vertical Accountability)

Parameter Estimate (90% Credible Intervals) Reported	ECtHR	IACtHR
Regional Court*ExecComp (t-2)	0.718 (-0.098 - 1.54)	0.18 (-0.597 - 0.954)
Regional Court (t-2)	-2.17 (-4.382 - -0.019)	-0.692 (-2.344 - 0.971)
Exec Comp (t-2)	-0.062 (-0.271 - 0.148)	0.199 (-0.048 - 0.443)
Jud (t-2)	2.193 (1.411 - 2.975)	3.204 (1.934 - 4.489)
Aid (t-2)	0.001 (0.000 - 0.001)	0.000 (0.000 - 0.001)
Dist Magnitude (t-2)	-0.002 (-0.004 - 0.001)	0.006 (-0.002 - 0.014)
Checks (t-2)	-0.018 (-0.062 - 0.27)	-0.087 (-0.169 - -0.004)
Speech (t-2)	-0.006 (-0.222 - 0.208)	-0.713 (-1.296 - -0.14)
HRO (t-2)	0.004 (-0.006 - 0.015)	-0.181 (-0.314 - -0.05)
Legal Expertise (t-2)	-0.455 (-0.692 - -0.218)	-0.151 (-0.527 - 0.226)
NHRI (t-2)	-0.14 (-0.302 - 0.022)	0.073 (-0.177 - 0.322)
Regional Violations (t-2)	.718 (-0.03 - 1.47)	0.18 (-0.49 - 0.84)
Physint (t-2)	0.201 (0.14 - 0.265)	0.312 (0.24 - 0.384)
GDP (logged)	-0.172 (-0.455 - 0.101)	-0.104 (-0.442 - 0.256)
Democracy	0.055 (-0.455 - 0.101)	-0.312 (-0.841 - 0.219)
Population (logged)	-0.18 (-0.319 - -0.047)	-0.182 (-0.365 - -0.002)
Civil War	-1.19 (-1.603 - -.776)	-1.483 (-1.867 - -1.099)
Intercept	6.02 (3.59 - 8.54)	3.78 (0.99 - 6.38)

A.6 In-Sample Predictions

Figures A.6 and A.6 display in-sample predictions for the β_i parameter estimates, in which β_i represents the interaction between an adverse ECtHR decision related to physical integrity rights and executive institutional constraints. Parameter estimates in Figure A.6 indicate the effect of an adverse decision of the ECtHR on respect for physical integrity rights as institutional constraints increase from 0 (no executive constraints) to the mean institutional constraints score for each country. Parameter estimates in Figure A.6 indicate the effect of an adverse decision of the ECtHR on respect for physical integrity rights as executive constraints increase from the mean executive constraints score for each country to 1 (full executive constraints). The results indicate that smaller, in-sample changes in executive constraints remain positively associated with respect for rights in the presence of an adverse ECtHR decision.

Table A.8: Pooled Model Estimates - Domestic Pressure (Horizontal Accountability)

Parameter Estimate (90% Credible Intervals) Reported	ECtHR	IACtHR
Regional Court*ExecConstraints (t-2)	2.68 (1.43 - 3.90)	0.59 (-1.63 - 2.79)
Regional Court (t-2)	-1.61 (-2.645 - -1.235)	-0.627 (-1.372 - 0.12)
Exec Constraints (t-2)	-1.496 (-2.055 - -0.944)	-1.431 (-2.187 - -0.674)
Jud (t-2)	2.721 (1.897 - 3.492)	4.405 (2.934 - 5.906)
Aid (t-2)	0.001 (0.000 - 0.001)	0.000 (-0.001 - 0.001)
Exec Comp (t-2)	-0.025 (-0.235 - 0.179)	0.197 (-0.029 - 0.424)
Dist Magnitude (t-2)	-0.002 (-0.004 - 0.001)	0.005 (-0.002 - 0.012)
Speech (t-2)	0.018 (-0.187 - 0.223)	-0.707 (-1.29 - -0.129)
HRO (t-2)	0.001 (-0.009 - 0.012)	-0.157 (-0.29 - -0.025)
Legal Expertise (t-2)	-0.446 (-0.674 - -0.218)	-0.179 (-0.556 - 0.199)
NHRI (t-2)	-0.121 (-0.28 - 0.039)	0.133 (-0.116 - 0.381)
Regional Violations (t-2)	2.63 (1.61 - 3.61)	0.59 (-1.13 - 2.31)
Physint (t-2)	0.176 (0.113 - 0.238)	0.302 (0.232 - 0.373)
GDP (logged)	-0.196 (-0.454 - 0.068)	-0.166 (-0.513 - 0.197)
Democracy	0.36 (-0.11 - 0.834)	-0.387 (-0.887 - 0.125)
Population (logged)	-0.166 (-0.312 - -0.027)	-0.159 (-0.343 - 0.025)
Civil War	-1.202 (-1.6 - -0.806)	-1.516 (-1.894 - -1.137)
Intercept	2.63 (1.61 - 3.61)	4.15 (1.25 - 6.82)

Table A.9: Pooled Model Estimates - International Pressure

Parameter Estimate (90% Credible Intervals) Reported	IACtHR
Regional Court*Aid (t-2)	-0.009 (-0.30 - 0.28)
Regional Court (t-2)	-0.656 (-1.13 - -0.182)
Aid (t-2)	0.000 (-0.002 - 0.002)
Jud (t-2)	3.075 (1.786 - 4.386)
Exec Comp (t-2)	0.236 (0.008 - 0.468)
Dist Magnitude (t-2)	0.004 (-0.003 - 0.012)
Speech (t-2)	-0.727 (-1.307 - -0.159)
HRO (t-2)	-0.176 (-0.309 - -0.044)
Checks (t-2)	-0.093 (-0.176 - -0.011)
Legal Expertise (t-2)	-0.173 (-0.549 - 0.204)
NHRI (t-2)	0.073 (-0.172 - 0.319)
Regional Violations (t-2)	-0.009 (-0.28 - 0.26)
Physint (t-2)	0.307 (0.235 - 0.379)
GDP (logged)	-0.166 (-0.49 - 0.187)
Democracy	-0.42 (-0.925 - 0.086)
Population (logged)	-0.175 (-0.358 - 0.005)
Civil War	-1.602 (-1.993 - -1.209)
Intercept	4.45 (1.73 - 6.93)

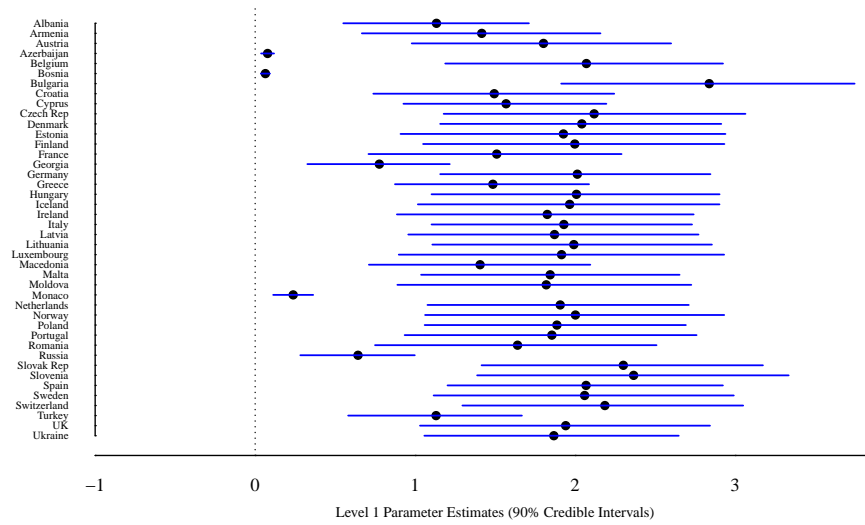


Figure A.9: Effect of Adverse ECtHR Judgment on Physical Integrity Rights as Executive Constraints Increase from 0 to Mean Country Value

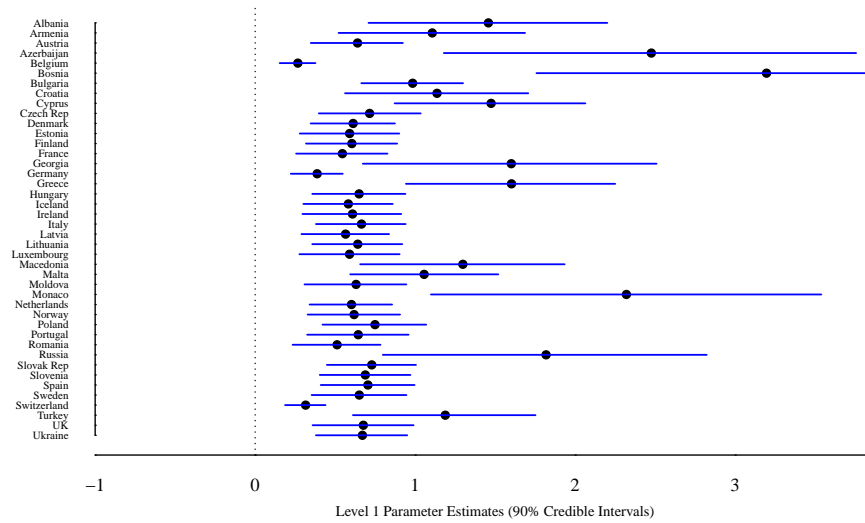


Figure A.10: Effect of Adverse ECtHR Judgment on Physical Integrity Rights as Executive Constraints Increase from Mean Country Value to 1

APPENDIX B

CHAPTER 5 APPENDIX

B.1 Approximate Likelihood Ratio Test Results

Table B.1: Likelihood Ratio Test of Parallel Regressions Assumption - Veto Players

	ECtHR	IACtHR
chi2	209.49	205.96
prob > chi2 (t-2)	0.0000	0.0000

Table B.2: Likelihood Ratio Test of Parallel Regressions Assumption - Plurality

	ECtHR	IACtHR
chi2	198.01	207.35
prob > chi2 (t-2)	0.0000	0.0000

Table B.3: Likelihood Ratio Test of Parallel Regressions Assumption - District Magnitude

	ECtHR	IACtHR
chi2	207.68	226.99
prob > chi2 (t-2)	0.0000	0.0000

B.2 Ordered Logit Model Results

Long and Freese (2001) argue that violating the parallel regression assumption in an ordered response model does not constitute a reason for estimating OLS regression. Tables B.4, B.5, and B.6 present results from an ordinal logistic regression for each model estimated in chapter 5 using frequentist statistical techniques. The parameter estimates for the variables of interest are generally in the same direction and remain

statistically significant (or not) when compared to the Bayesian hierarchical linear regression.¹ All legislative variables of interest continue to exhibit a similar relationship with respect for rights, that is, substantively small and uncertain. Given that I control for other variables likely to be related to executive incentives, the models are similar to one another. However, the variable of interest (the interactive variable) changes in each model based on the hypothesis being tested. As a result, I display results for each model estimated.

B.3 Model Convergence Diagnostics

Figure B.1 displays density plots for three of the random slope parameters for countries under the jurisdiction of the ECtHR (Luxembourg, Czech Republic, and Slovak Republic) for the veto players model. Density plots for three random slope parameters for countries under the jurisdiction of the IACtHR (Guatemala, Bolivia, and Brazil) for the plurality model are displayed in Figure B.2. The unimodal distributions for both chains provide evidence of convergence in both models. Figure B.3 displays trace plots of the path of the Gibbs sampler runs for three of the random slope parameters for ECtHR countries (Luxembourg, Czech Republic, and Slovak Republic) in the district magnitude model. The trace plots indicate good mixing of chains, providing evidence of convergence.²

B.4 Control Variable Results

In each model in Chapter 5, I control for the following variables: judicial power, multilateral aid, competitiveness of executive recruitment, freedom of speech, human rights organizations, NHRI presence, legal expertise, GDP per capita (logged), democracy, population (logged), civil war, and past repression. In each model, I also include the constituent terms of the interactive variable, as well as the other legislative variables (veto players, using an indicator of institutional checks, and district magnitude). Details on the measurement and operationalization of all control variables are provided in Chapter 3.

Figures B.4 and B.5 display the parameter estimates and 90% credible intervals for the control variables included in the first level of the ECtHR and IACtHR veto players models. The constituent terms for the regional court (ECtHR and IACtHR) are negatively associated with respect for physical integrity rights when opposition vote share is zero. The constituent terms for opposition vote share are negatively associated with respect for rights in the absence of an adverse decision of the ECtHR or the IACtHR, indicating

¹In the frequentist ordered logistic regression, I control for the regional influence, that is, the number of adverse regional court decisions found in the region weighted by similarity in physical integrity rights.

²The plots for other random slope parameters provide similar evidence of convergence.

Table B.4: Ordered Logit Model Estimates - Veto Players

Parameter Estimate (S.E.) Reported	ECtHR	IACtHR
Regional Court*Veto (t-2)	0.001 (0.014)	-0.005 (0.011)
Regional Court (t-2)	-0.259* (0.611)	-0.226 (0.423)
Veto (t-2)	-0.188 (0.007)	0.001 (0.005)
Jud (t-2)	2.96*** (0.77)	4.42*** (0.851)
Aid (t-2)	-0.001 (0.000)	-0.0002 (0.0005)
Exec Comp (t-2)	-0.073 (0.221)	0.352** (0.18)
Dist Magnitude (t-2)	0.005* (0.003)	0.01** (0.006)
Speech (t-2)	-0.257 (0.324)	-1.46* (0.584)
HRO (t-2)	0.016* (0.01)	-0.073 (0.079)
Legal Expertise (t-2)	-0.265 (0.252)	-0.71** (0.286)
NHRI (t-2)	0.034 (0.183)	0.103 (0.20)
Regional Violations (t-2)	-0.001** (0.0003)	0.001 (0.001)
Physint (t-2)	0.965*** (0.088)	0.754*** (0.086)
GDP (logged)	0.68*** (0.205)	-0.643*** (0.194)
Democracy	-0.388 (0.444)	-0.749** (0.343)
Population (logged)	-0.33*** (0.06)	-0.229** (0.084)
Civil War	-2.19*** (0.647)	-2.37*** (0.468)
r ²	0.3142	0.2966
N	753	448

NOTES: * Significant at 90% confidence, ** Significant at 95% confidence, ***Significant at 99% confidence. Models estimated using robust standard errors. One-tailed significance tests reported.

that perhaps veto players inhibit policy change in the absence of adverse regional court decisions, however, adverse regional court decisions (at least in the ECtHR context) may give pro-rights advocates the legal ground on which to build support. The other control variables employed in the veto players model behave largely as expected, that is, domestic judicial power displays a positive relationship with respect for physical integrity rights, while past repression (lagged physical integrity rights) and civil war display negative rela-

Table B.5: Ordered Logit Model Estimates - Electoral Rules (Plurality)

Parameter Estimate (S.E.) Reported	ECtHR	IACtHR
Regional Court*Plurality (t-2)	-0.241 (0.426)	0.561 (0.663)
Regional Court (t-2)	-0.117 (0.262)	-0.647* (0.425)
Plurality (t-2)	-0.15 (0.215)	-0.532** (0.199)
Jud (t-2)	3.07*** (0.79)	4.71*** (0.866)
Aid (t-2)	0.0004 (0.0005)	-0.000 (.0004)
Exec Comp (t-2)	-0.117 (0.222)	0.3332** (0.163)
Checks (t-2)	0.19** (0.082)	-0.08 (0.074)
Speech (t-2)	-0.191 (0.313)	-1.6** (0.624)
HRO (t-2)	0.017* (0.01)	-0.159** (0.086)
Legal Expertise (t-2)	-0.264 (0.261)	-0.545** (0.295)
NHRI (t-2)	-0.036 (0.184)	0.159 (0.198)
Regional Violations (t-2)	-0.0004* (0.0003)	0.0007 (.001)
Physint (t-2)	0.962*** (0.089)	0.742*** (0.086)
GDP (logged)	0.577** (0.193)	-0.57** (0.194)
Democracy	-0.521 (0.451)	-0.902** (0.333)
Population (logged)	-0.332*** (0.065)	-0.184** (0.085)
Civil War	-1.94*** (0.583)	-2.65*** (0.486)
r ²	0.3191	0.2997
N	753	448

NOTES: * Significant at 90% confidence, ** Significant at 95% confidence, ***Significant at 99% confidence. Models estimated using robust standard errors. One-tailed significance tests reported.

tionships with physical integrity rights. Results for the other control variables indicate substantively small relationships with high uncertainty in the estimates.

Figures B.6 and B.7 display parameter estimates for control variables in the first level of the ECtHR and IACtHR plurality models respectively. With respect to the IACtHR, the constituent term for an adverse IACtHR decision is negatively associated with respect for physical integrity rights when legislative elections

Table B.6: Ordered Logit Model Estimates - Electoral Rules (District Magnitude)

Parameter Estimate (S.E.) Reported	ECtHR	IACtHR
Regional Court*Dist Magnitude (t-2)	0.007 (0.006)	0.006 (0.17)
Regional Court (t-2)	-0.306* (0.248)	-0.46* (0.348)
Dist Magnitude (t-2)	0.002 (0.003)	0.008* (0.005)
Jud (t-2)	3.34*** (0.76)	4.54*** (0.859)
Aid (t-2)	0.0004 (0.0006)	-0.0002 (0.0005)
Exec Comp (t-2)	-0.138 (0.223)	0.41** (0.201)
Checks (t-2)	0.198** (0.077)	-0.086 (0.074)
Speech (t-2)	-0.199 (0.316)	-1.54** (0.595)
HRO (t-2)	0.016* (0.01)	-0.09 (0.081)
Legal Expertise (t-2)	-0.286 (0.184)	-0.656** (0.286)
NHRI (t-2)	-0.053 (0.184)	0.109 (0.200)
Regional Violations (t-2)	-0.0004* (0.0003)	0.001 (0.001)
Physint (t-2)	0.952*** (0.09)	0.748*** (0.088)
GDP (logged)	0.574** (0.20)	-0.641** (0.194)
Democracy	-0.46 (0.461)	-0.727** (0.37)
Population (logged)	-0.3672*** (0.063)	-0.209** (0.086)
Civil War	-1.98*** (0.621)	-2.49*** (0.493)
r2	0.3201	0.2974
N	753	448

NOTES: * Significant at 90% confidence, ** Significant at 95% confidence, ***Significant at 99% confidence. Models estimated using robust standard errors. One-tailed significance tests reported.

do not reflect plurality electoral rules (or when electoral rules reflect proportional representation, rather than plurality). The ECtHR exhibits little influence on respect for rights in the absence of plurality electoral rules. Plurality legislative electoral rules are negatively associated with respect for physical integrity rights

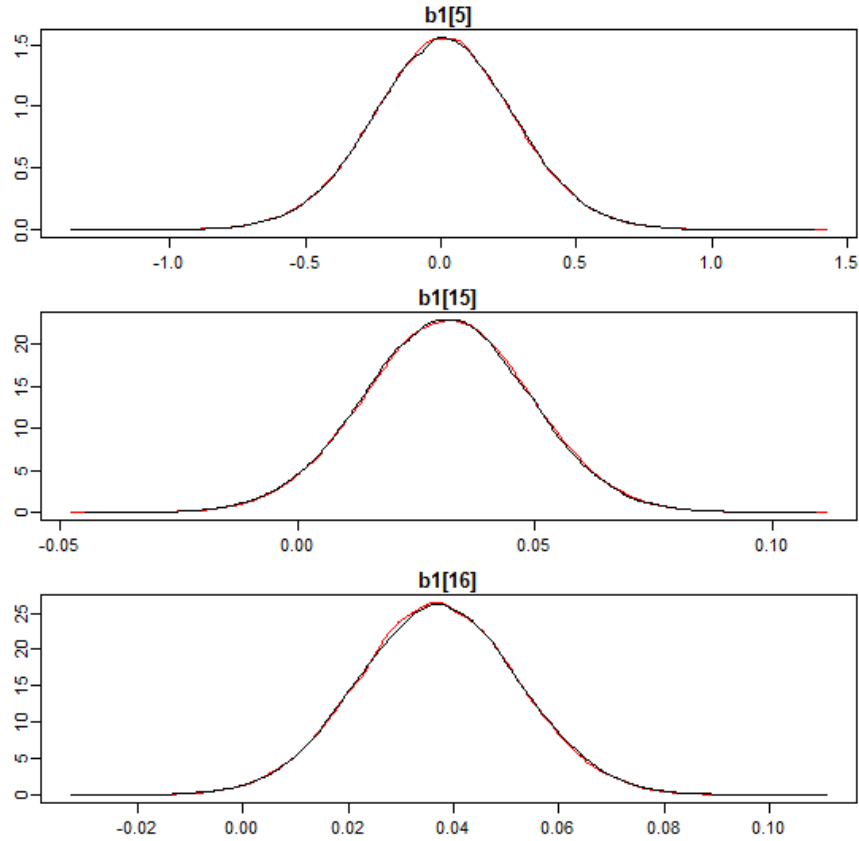


Figure B.1: ECtHR Density Plots (Veto) (Luxembourg, Czech Republic, Slovakia)

in the absence of adverse regional court decisions.³ The findings for the plurality electoral rules variable is consistent with arguments made by Cingranelli and Filippov (2010) in that plurality rules create higher barriers to the entry of new candidates and force voters to select among a few important issues. Again, additional control variables in both models remain in the expected direction or display substantively small relationships and/or high uncertainty in the estimates.

Finally, Figures B.8 and B.9 show parameter estimates for the additional variables included in the ECtHR and IACtHR district magnitude models. The constituent terms for the interaction variable indicate that adverse decisions of the ECtHR and IACtHR are negatively associated with respect for physical integrity rights when the average district magnitude of the House is zero, as there are no access points (in theory)

³However, one should note that the credible intervals contain zero for both constituent terms, indicating uncertainty in the direction of the relationship.

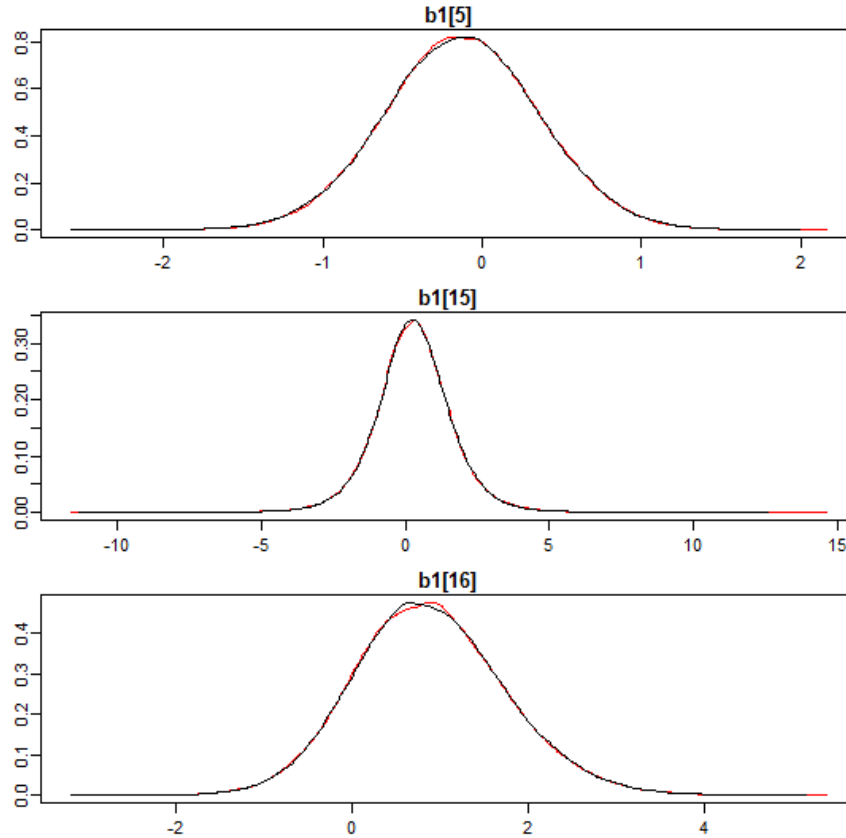


Figure B.2: IACtHR Density Plots (Plurality) (Guatemala, Bolivia, Brazil)

for voters to lobby. District magnitude is positively associated with respect for physical integrity rights in the absence of an adverse regional court decision in both models, though this result is not substantively interesting (only marginally above zero). Further, the other control variables in the model display estimates consistent with those posited in chapter 3 and/or display substantively small estimates with a high degree of uncertainty.

B.5 Pooled Model Estimates

Tables B.7, B.8, and B.9 display model results for pooled legislative models, excluding hierarchical modeling techniques (random slopes and random intercepts). The pooled estimates show little relationship between legislative adherence to adverse decisions and regional court effectiveness. This is consistent with the hierarchical models, which demonstrate that these relationships vary across county.

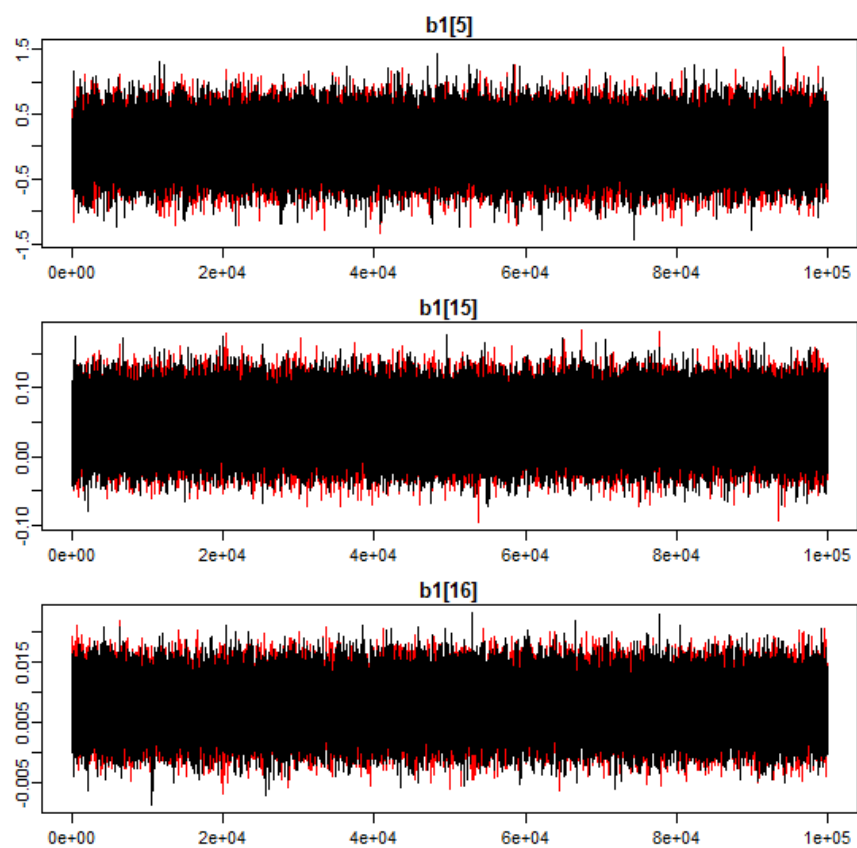


Figure B.3: ECtHR Trace Plots (District Magnitude) (Luxembourg, Czech Republic, Slovakia)

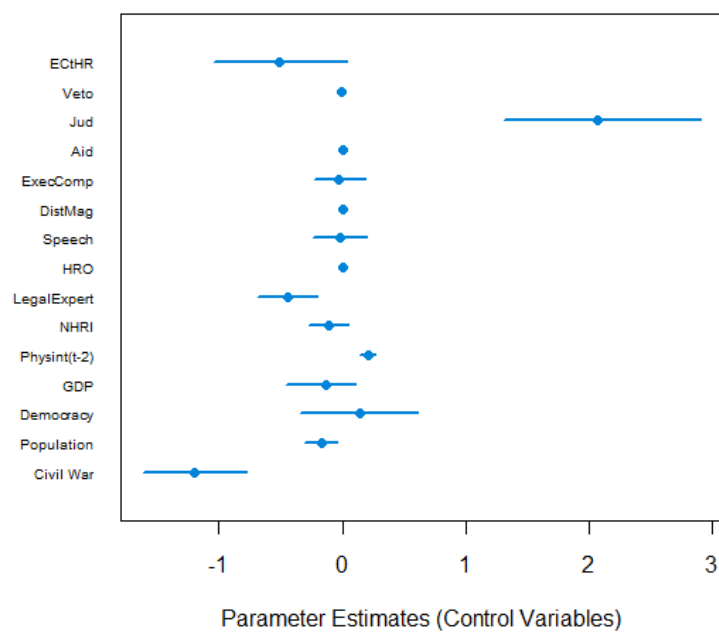


Figure B.4: ECtHR Veto Players Model Estimates (Control Variables)

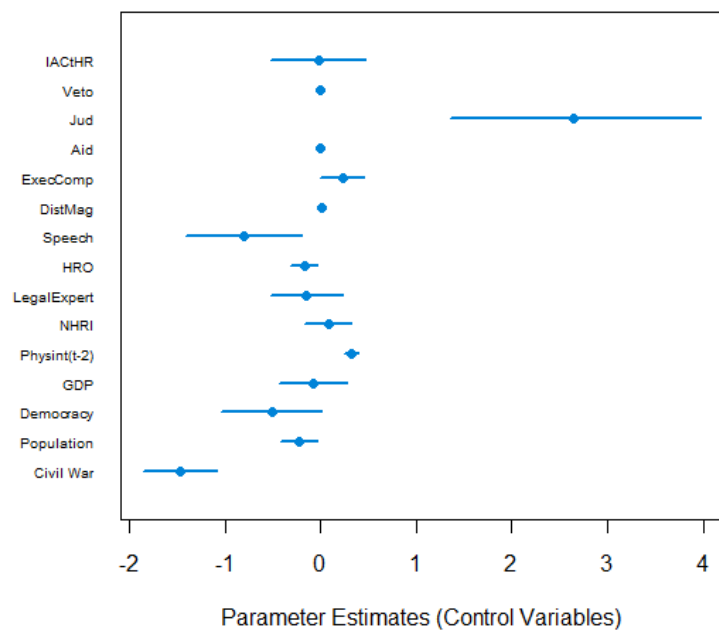


Figure B.5: IACtHR Veto Players Model Estimates (Control Variables)

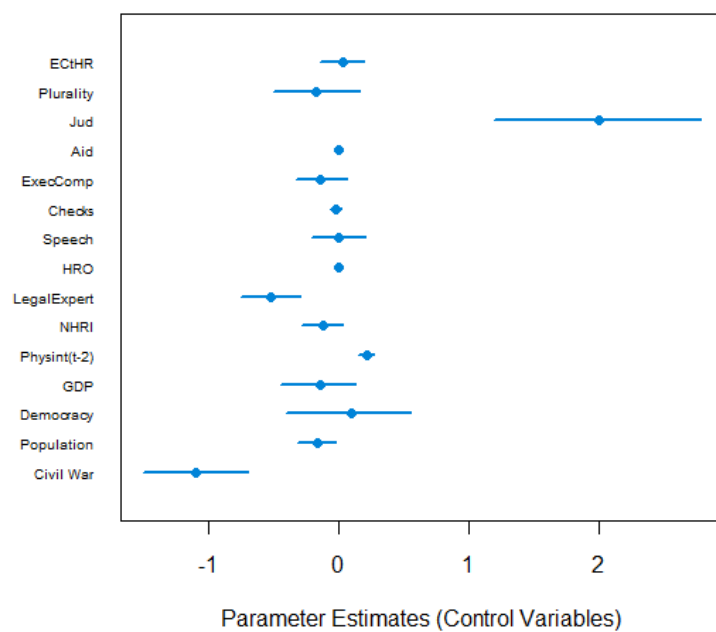


Figure B.6: ECtHR Plurality Model Estimates (Control Variables)

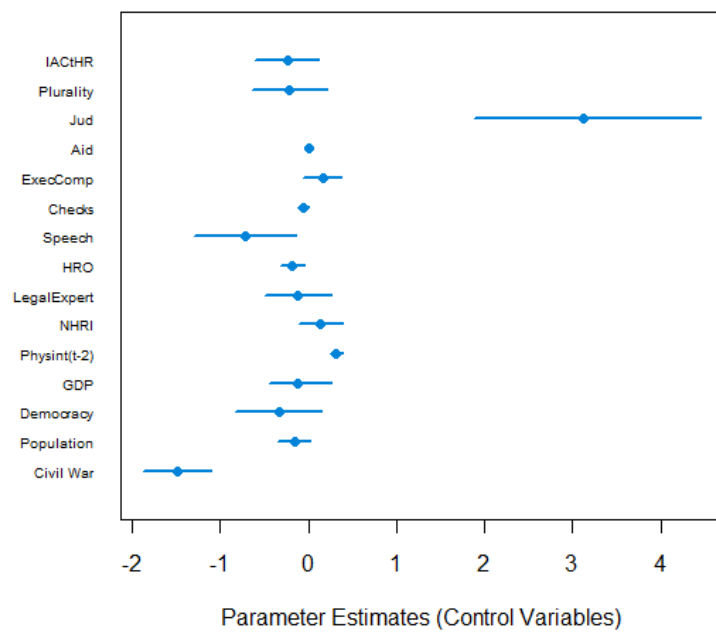


Figure B.7: IACtHR Plurality Model Estimates (Control Variables)

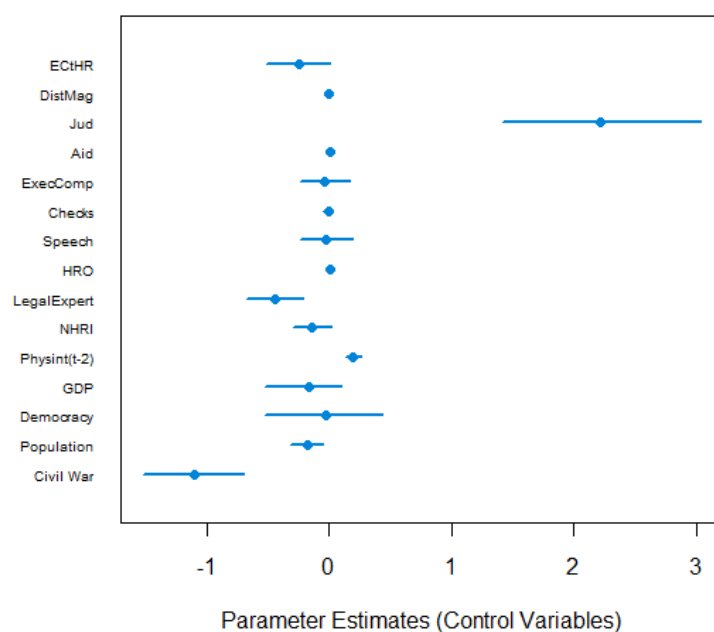


Figure B.8: ECtHR District Magnitude Model Estimates (Control Variables)

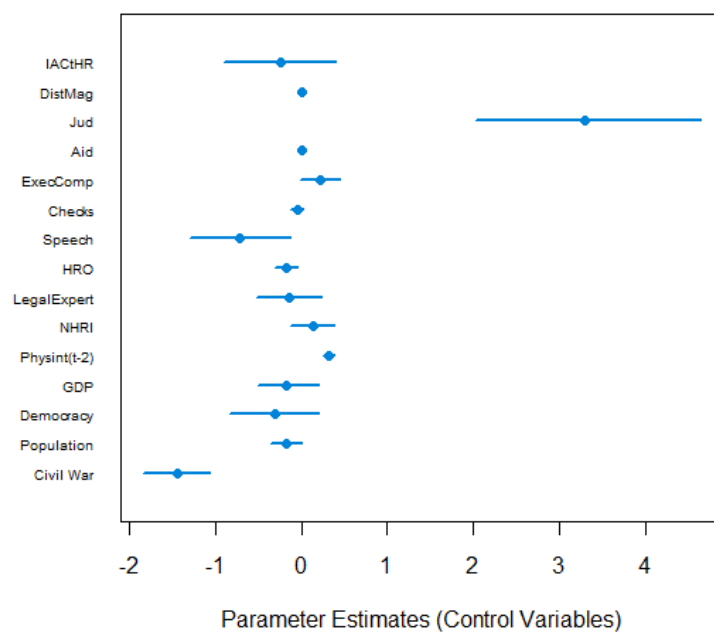


Figure B.9: IACtHR District Magnitude Model Estimates (Control Variables)

Table B.7: Pooled Model Estimates - Veto Players

Parameter Estimate (90% Credible Intervals) Reported	ECtHR	IACtHR
Regional Court*Veto (t-2)	0.012 (-0.093 - 0.116)	-0.006 (-0.159 - 0.147)
Regional Court (t-2)	-0.527 (-1.061 - 0.005)	-0.026 (-0.522 - 0.469)
Veto (t-2)	-0.003 (-0.008 - 0.002)	0.002 (-0.002 - 0.007)
Jud (t-2)	2.021 (1.254 - 2.786)	2.689 (1.417 - 3.998)
Aid (t-2)	0.001 (0.000 - 0.001)	0.000 (-0.001 - 0.001)
Exec Comp (t-2)	-0.026 (-0.247 - 0.174)	0.225 (0.003 - 0.451)
Dist Magnitude (t-2)	-0.002 (-0.004 - 0.001)	0.004 (-0.003 - 0.012)
Speech (t-2)	-0.02 (-0.234 - 0.199)	-0.8 (-1.4 - -0.213)
HRO (t-2)	0.005 (-0.006 - 0.015)	-0.172 (-0.307 - -0.036)
Legal Expertise (t-2)	-0.439 (-0.677 - -0.202)	-0.146 (-0.527 - 0.238)
NHRI (t-2)	-0.111 (-0.272 - 0.05)	0.078 (-0.172 - 0.327)
Regional Violations (t-2)	0.012 (-0.081 - 0.104)	-0.006 (-0.212 - 0.20)
Physint (t-2)	0.208 (0.143 - 0.271)	0.322 (0.25 - 0.395)
GDP (logged)	-0.104 (-0.404 - 0.19)	-0.085 (-0.452 - 0.297)
Democracy	0.148 (-0.34 - 0.625)	-0.505 (-1.027 - 0.023)
Population (logged)	-0.173 (-0.307 - -0.042)	-0.221 (-0.406 - -0.038)
Civil War	-1.199 (-1.619 - -0.78)	-1.466 (-1.846 - -1.085)
Intercept	5.30 (2.59 - 7.94)	3.76 (0.763 - 6.55)

Table B.8: Pooled Model Estimates - Plurality

Parameter Estimate (90% Credible Intervals) Reported	ECtHR	IACtHR
Regional Court*Plurality (t-2)	-0.226 (-1.604 - 1.15)	0.18 (-1.59 - 1.98)
Regional Court (t-2)	0.019 (-0.155 - 0.192)	-0.237 (-0.594 - 0.117)
Plurality (t-2)	-0.163 (-0.5 - 0.17)	-0.204 (-0.627 - 0.236)
Jud (t-2)	1.928 (1.124 - 2.722)	3.182 (1.868 - 4.534)
Aid (t-2)	0.001 (0.000 - 0.001)	0.000 (-0.001 - 0.001)
Exec Comp (t-2)	-0.123 (-0.327 - 0.078)	0.166 (-0.055 - 0.391)
Checks (t-2)	-0.023 (-0.066 - 0.02)	-0.058 (-0.127 - 0.01)
Speech (t-2)	0.005 (-0.203 - 0.215)	-0.692 (-1.277 - -0.111)
HRO (t-2)	0.004 (-0.006 - 0.015)	-0.177 (-0.311 - -0.045)
Legal Expertise (t-2)	-0.518 (-0.746 - -0.29)	-0.119 (-0.496 - 0.257)
NHRI (t-2)	-0.129 (-0.29 - 0.032)	0.141 (-0.104 - 0.387)
Regional Violations (t-2)	-0.226 (-0.958 - 0.504)	0.179 (-0.92 - 1.3)
Physint (t-2)	0.217 (0.155 - 0.28)	0.322 (0.25 - 0.395)
GDP (logged)	-0.092 (-0.381 - 0.188)	-0.12 (-0.456 - 0.189)
Democracy	0.098 (-0.382 - 0.576)	-0.341 (-0.832 - 0.146)
Population (logged)	-0.163 (-0.309 - -0.025)	-0.152 (-0.33 - 0.034)
Civil War	-1.104 (-1.509 - -0.699)	-1.488 (-1.87 - -1.106)
Intercept	5.45 (2.79 - 8.10)	3.91 (1.46 - 6.52)

Table B.9: Pooled Model Estimates - District Magnitude

Parameter Estimate (90% Credible Intervals) Reported	ECtHR	IACtHR
Regional Court*Dist Magnitude (t-2)	0.02 (-0.152 - 0.192)	-0.025 (-0.464 - 0.409)
Regional Court (t-2)	-0.255 (-0.513 - 0.004)	-0.25 (-0.897 - 0.404)
Dist Magnitude (t-2)	-0.003 (-0.005 - 0.000)	0.002 (-0.006 - 0.011)
Jud (t-2)	2.183 (1.422 - 2.958)	3.216 (1.927 - 4.558)
Aid (t-2)	0.001 (0.000 - 0.001)	0.000 (0.000 - 0.001)
Exec Comp (t-2)	-0.037 (-0.245 - 0.173)	0.215 (-0.022 - 0.453)
Checks (t-2)	-0.008 (-0.051 - 0.035)	-0.047 (-0.117 - 0.024)
Speech (t-2)	-0.03 (-0.242 - 0.183)	-0.699 (-1.279 - -0.111)
HRO (t-2)	0.003 (-0.008 - 0.013)	-0.17 (-0.303 - -0.036)
Legal Expertise (t-2)	-0.447 (-0.677 - -0.217)	-0.133 (-0.51 - 0.255)
NHRI (t-2)	-0.141 (-0.301 - 0.018)	0.131 (-0.122 - 0.382)
Regional Violations (t-2)	0.019 (-0.086 - 0.125)	-0.025 (-0.361 - 0.304)
Physint (t-2)	0.194 (0.132 - 0.258)	0.322 (0.25 - 0.394)
GDP (logged)	-0.164 (-0.411 - 0.101)	-0.107 (-0.451 - 0.278)
Democracy	-0.047 (-0.53 - 0.44)	-0.307 (-0.829 - 0.212)
Population (logged)	-0.186 (-0.324 - -0.056)	-0.172 (-0.357 - 0.012)
Civil War	-1.104 (-1.518 - -0.689)	-1.438 (-1.827 - -1.05)
Intercept	6.05 (3.56 - 8.41)	3.491 (0.522 - 6.21)

APPENDIX C

CHAPTER 6 APPENDIX

C.1 Approximate Likelihood Ratio Test Results

Table C.1: Likelihood Ratio Test of Parallel Regressions Assumption - Judiciary

	ECtHR	IACtHR
chi2	190.55	195.62
prob > chi2 (t-2)	0.000	0.000

C.2 Ordered Logit Model Results

Given that Long and Freese (2001) argue that the violation of the parallel regression assumption is not necessarily a rationale for running ordinary least squares regression, I present ordinal logistic regression results from frequentist statistical analysis in Table C.2. The parameter estimates are in the same direction and remain significant based on the ordered response model.¹

C.3 Model Convergence Diagnostics

Figure C.1 displays density plots for three of the random slope parameters (Luxembourg, Czech Republic, and the Slovak Republic) in the ECtHR model. The unimodality of the distributions provides evidence of convergence for the three parameters. Figure C.2 displays trace plots for three of the random slope parameters (Guatemala, Bolivia, and Brazil) for the IACtHR model. The trace plots display good mixing of the two chains, providing evidence of convergence in the IACtHR model as well.²

¹In the frequentist ordered logistic regression, I control for the regional influence, that is, the number of adverse regional court decisions found in the region.

²The plots for other random slope parameters provide similar evidence of convergence.

Table C.2: Ordered Logit Model Estimates - Judiciary

Parameter Estimate (S.E.) Reported	ECtHR	IACtHR
Regional Court*JudicialPower (t-2)	0.975* (1.14)	2.75* (2.06)
Regional Court (t-2)	-0.887* (0.94)	-1.69** (0.98)
Judicial Power (t-2)	3.14*** (0.776)	5.18*** (0.89)
Aid (t-2)	0.000 (0.001)	-0.0001 (0.0005)
Exec Comp (t-2)	-0.128 (0.227)	0.473** (0.178)
Dist Magnitude (t-2)	0.004* (0.003)	0.009** (0.005)
Veto (t-2)	0.198*** (0.078)	-0.17** (0.082)
Speech (t-2)	-0.372* (0.322)	-1.32** (0.589)
HRO (t-2)	0.228 (0.217)	1.45** (0.531)
Legal Expertise (t-2)	-0.08* (0.252)	-0.635** (0.28)
NHRI (t-2)	-0.08 (0.192)	-1.19** (0.525)
Regional Violations (t-2)	-0.0004* (0.000)	0.001 (0.001)
Physint (t-2)	0.94*** (0.091)	0.724*** (0.084)
GDP (logged)	0.678*** (0.197)	-0.51** (0.214)
Democracy	-0.56* (0.448)	-0.755** (0.334)
Population (logged)	-0.35*** (0.061)	-0.381*** (0.11)
Civil War	-2.23* (0.65)	-2.53*** (0.442)
r ²	0.319	0.3038
N	753	448

NOTES: * Significant at 90% confidence, ** Significant at 95% confidence, ***Significant at 99% confidence. Models estimated using robust standard errors. One-tailed significance tests reported.

C.4 Control Variable Model Results

The control variables examined in the domestic judiciary models include direct threats to executive political survival (multilateral aid allocations and competitiveness of executive recruitment). I also control for other indirect threats to political survival, including executive expectation of adherence from the legisla-

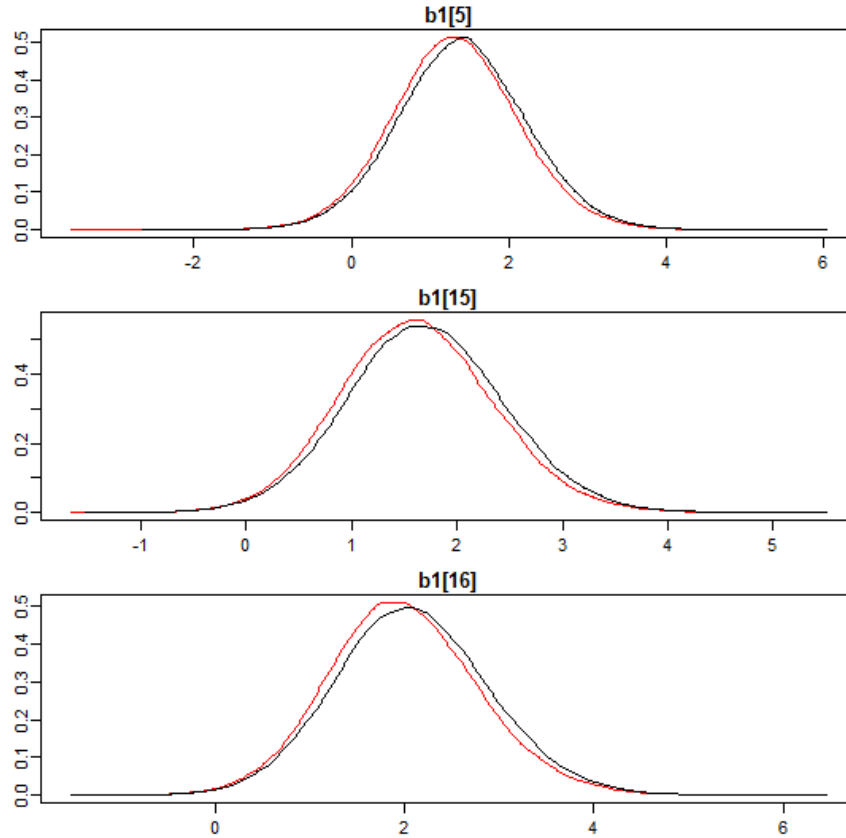


Figure C.1: IACtHR Density Plots (Judiciary) (Luxembourg, Czech Republic, Slovak Republic)

ture (veto players and electoral rules), as well as executive expectation of mobilization from civil society (freedom of expression, HRO presence, NHRI presence, and legal expertise). Finally, I utilize a set of control variables commonly used in studies of state respect for human rights, including democracy, economic development, population, civil war, and prior experience with repression.³

Figure C.3 displays the parameter estimates of the control variables included in the first level of the ECtHR model. The constituent terms for the interaction variable provide additional support for the hypothesis. Interestingly, the ECtHR has a negative influence on respect for physical integrity rights in the absence of a powerful domestic judiciary, while a powerful domestic judiciary has a positive influence on respect for physical integrity rights in the absence of a ECtHR finding of a violation. Figure C.4 displays the parameter estimates of the posterior distribution for the other variables included in the model. Again, much like the

³See chapter 3 for more detailed information on modeling and estimation, as well as control variable operationalization.

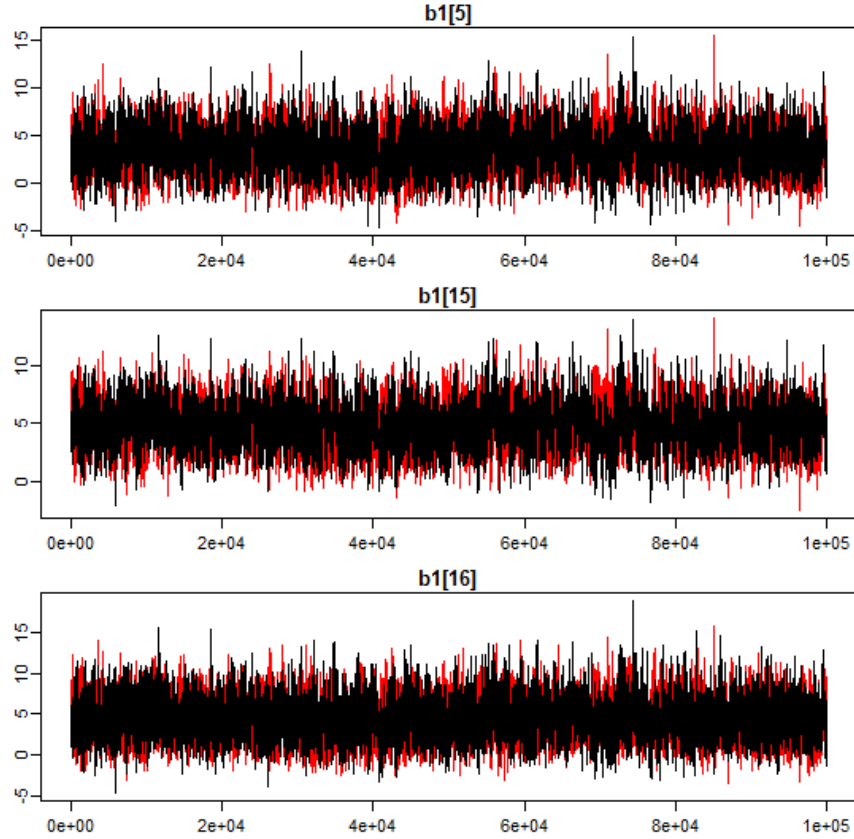


Figure C.2: IACtHR Trace Plots (Judiciary) (Luxembourg, Czech Republic, Slovak Republic)

ECtHR, when the domestic judiciary has no power, a ruling by the IACtHR for the plaintiff has a large negative influence on respect for physical integrity rights two years following the finding of a violation when the domestic judiciary has no power. Domestic judicial power, on the other hand, has a strong positive influence on respect for physical integrity rights in the absence of an IACtHR finding of a violation. Most of the control variables are in the expected direction and/or have a small substantive relationship with respect for rights (or high uncertainty - credible intervals containing zero).

C.5 Pooled Model Estimates

Table C.3 displays model results for a pooled model, excluding hierarchical modeling techniques (random slopes and random intercepts). The results displayed indicate that the pooled model shows a positive relationship between an adverse regional human rights court decision and respect for physical integrity rights

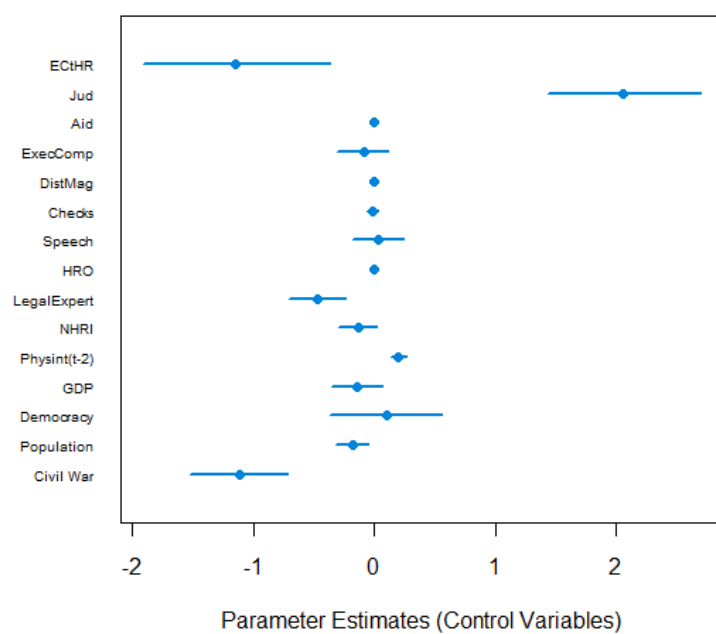


Figure C.3: ECtHR Judiciary Model Estimates

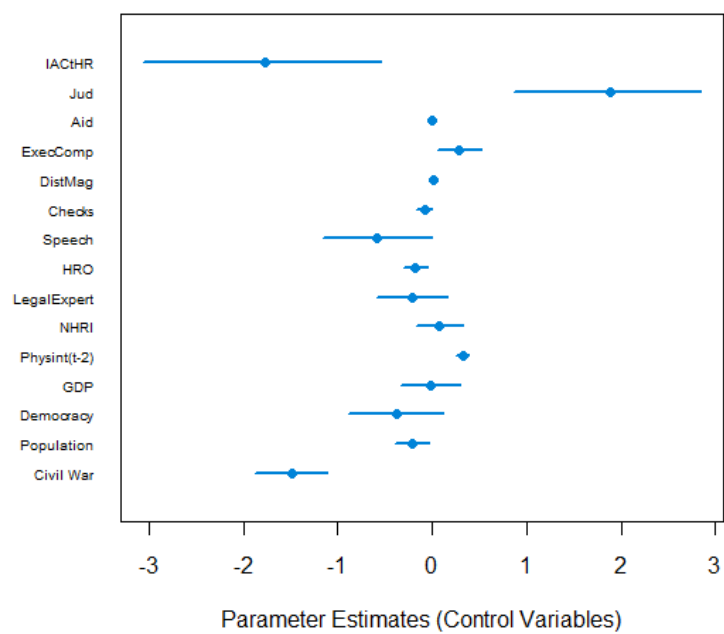


Figure C.4: IACtHR Judiciary Model Estimates

as domestic judicial power rises. The models show evidence of robustness to the exclusion of random effects in estimation.

Table C.3: Pooled Model Estimates

Parameter Estimate (90% Credible Intervals) Reported	ECtHR	IACtHR
Regional Court*JudicialPower (t-2)	1.5 (0.31 - 2.71)	3.09 (0.08 - 6.24)
Regional Court (t-2)	-1.26 (-2.03 - -0.514)	-1.72 (-2.97 - -0.51)
Judicial Power (t-2)	1.33 (0.69 - 1.96)	2.414 (1.454 - 3.377)
Aid (t-2)	0.001 (0.000 - 0.001)	0.000 (-.001 - 0.014)
Exec Comp (t-2)	-0.41 (-0.26 - 0.179)	0.283 (0.059 - 0.506)
Dist Magnitude (t-2)	-.002 (-0.004 - .001)	0.006 (-0.001 - 0.014)
Veto (t-2)	-0.012 (-0.06 - 0.031)	-0.089 (-0.17 - -0.008)
Speech (t-2)	0.034 (-0.178 - 0.246)	-0.661 (-1.247 - -0.08)
HRO (t-2)	0.004 (-0.006 - 0.015)	-0.178 (-0.31 - -0.047)
Legal Expertise (t-2)	-0.475 (-0.71 - -0.24)	-0.16 (-0.53 - 0.211)
NHRI (t-2)	-0.13 (-0.29 - 0.04)	0.071 (-0.172 - 0.317)
Regional Violations (t-2)	1.51 (0.53 - 2.51)	3.09 (0.44 - 5.82)
Physint (t-2)	0.22 (0.15 - 0.28)	0.317 (0.247 - 0.387)
GDP (logged)	-0.014 (-0.283 - 0.244)	-0.112 (-0.442 - 0.237)
Democracy	0.131 (-0.34 - 0.611)	-0.379 (-0.889 - 0.126)
Population (logged)	-0.189 (-0.33 - -0.05)	-0.209 (-0.39 - -0.034)
Civil War	-1.11 (-1.52 - -0.71)	-1.52 (-1.903 - -1.14)
Intercept	4.86 (2.41 - 7.5)	4.13 (1.35-6.75)

C.6 In-Sample Predictions

Figures C.6 and C.6 display in-sample predictions for the β_j parameter estimates, in which β_j represents the interaction between an adverse regional court decision related to physical integrity rights and domestic judicial power. Parameter estimates in figures C.6 and C.6 indicate the effect of an adverse decision of the regional court on respect for physical integrity rights as domestic judicial power increases from 0 (the weakest domestic judiciary) to the mean domestic judicial power score for each country. The results indicate that smaller, in-sample changes in domestic judicial power continue to exhibit a positive influence on respect for rights in the presence of an adverse regional court decision (for both the ECtHR and the IACtHR). Parameter estimates in figures C.6 and C.6 indicate the effect of an adverse regional court decision on respect for physical integrity rights as domestic judicial power increases from the mean domestic judicial power score in each country to a 1 (the strongest domestic judiciary). Even in Europe, a region with relatively high domestic judicial power scores, adverse ECtHR decisions are associated with improvements in respect for

physical integrity as domestic judicial power continues to increase. In the Americas, adverse IACtHR decisions are likely associated with substantial improvements in respect for physical integrity rights as domestic judicial power increases to 1 (most powerful domestic judiciary).

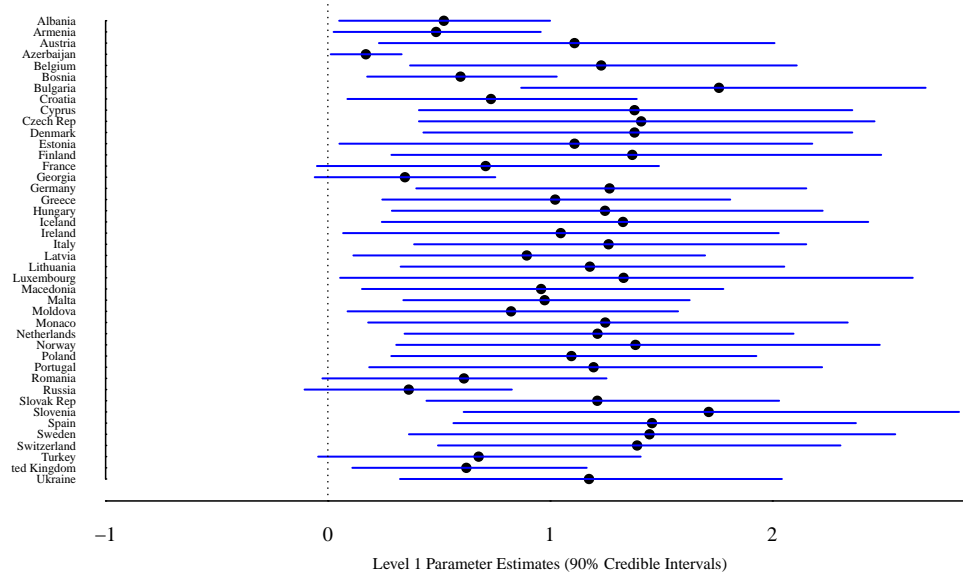


Figure C.5: Effect of Adverse ECtHR Judgment on Physical Integrity Rights as Domestic Judicial Power Increases from 0 to Mean Country Value

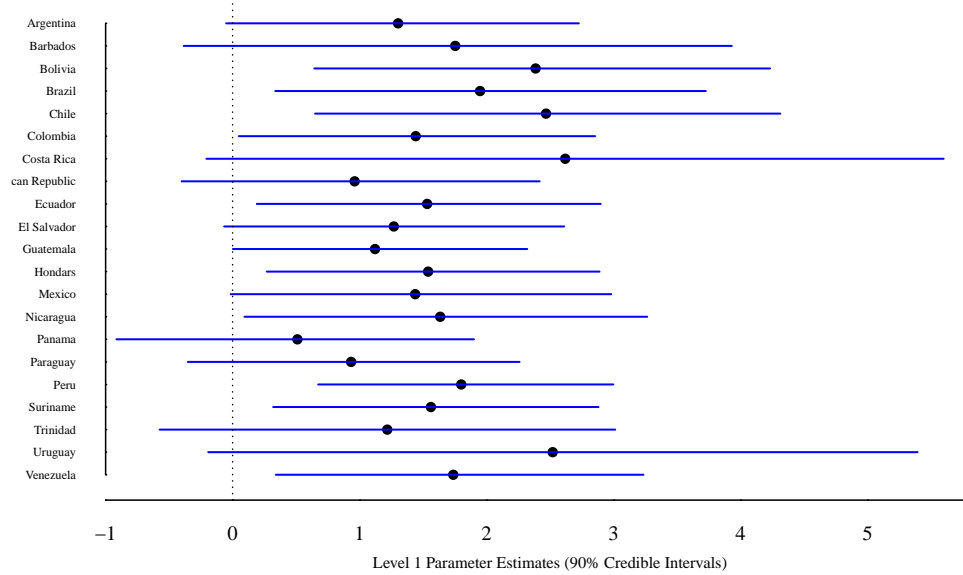


Figure C.6: Effect of Adverse IACtHR Judgment on Physical Integrity Rights as Domestic Judicial Power Increases from 0 to Mean Country Value

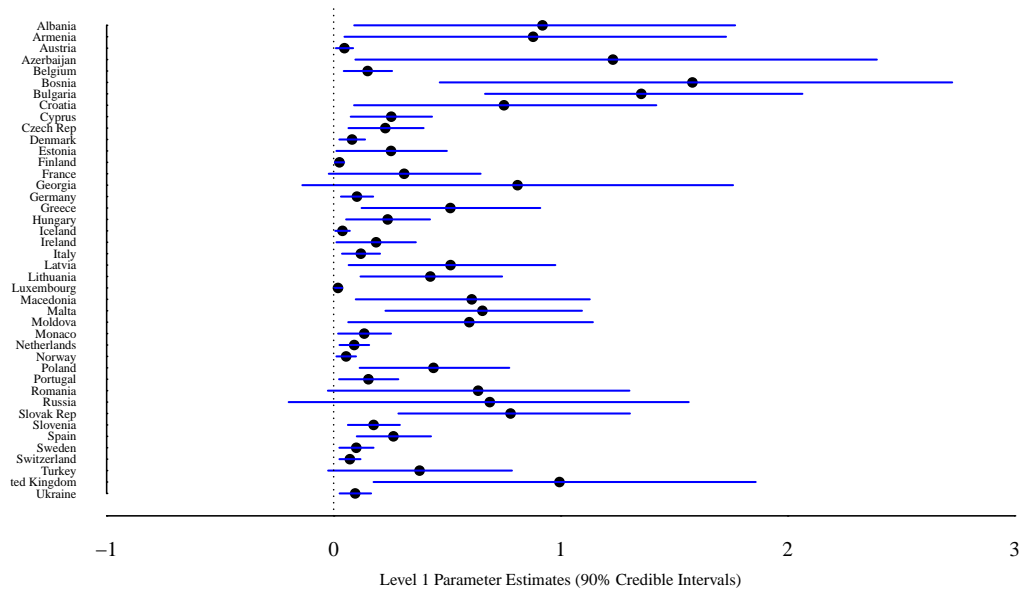


Figure C.7: Effect of Adverse ECtHR Judgment on Physical Integrity Rights as Domestic Judicial Power Increases from Mean Country Value to 1

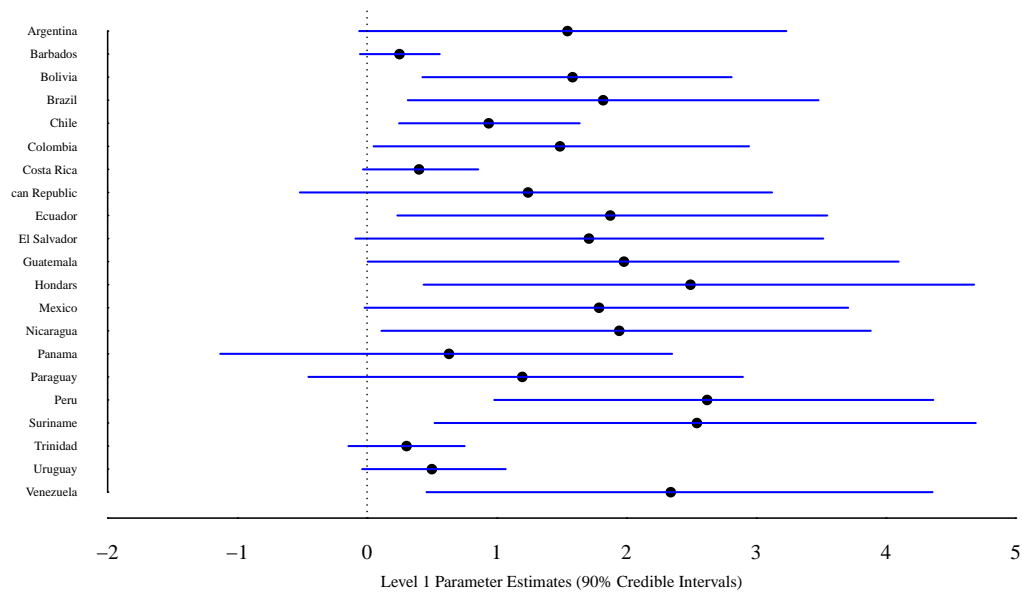


Figure C.8: Effect of Adverse IACtHR Judgment on Physical Integrity Rights as Domestic Judicial Power Increases from Mean Country Value to 1

APPENDIX D

CHAPTER 7 APPENDIX

D.1 Approximate Likelihood Ratio Test Results

Table D.1: Likelihood Ratio Test of Parallel Regressions Assumption - Freedom of Speech

	ECtHR	IACtHR
chi2	191.11	196.88
prob > chi2 (t-2)	0.0000	0.0000

Table D.2: Likelihood Ratio Test of Parallel Regressions Assumption - HRO

	ECtHR	IACtHR
chi2	176.87	181.41
prob > chi2 (t-2)	0.0004	0.0001

Table D.3: Likelihood Ratio Test of Parallel Regressions Assumption - NHRI

	ECtHR	IACtHR
chi2	208.35	220.98
prob > chi2 (t-2)	0.0000	0.0000

Table D.4: Likelihood Ratio Test of Parallel Regressions Assumption - Legal Expertise

	ECtHR	IACtHR
chi2	209.60	216.47
prob > chi2 (t-2)	0.0000	0.0000

D.2 Ordered Logit Model Results

Given that Long and Freese (2001) argue that the violation of the parallel regression assumption does not necessarily constitute justification for running OLS regression, I present ordinal logistic regression results from frequentist statistical analysis in Tables D.5, D.6, D.7, D.8. The parameter estimates for variables of interest are in the same direction and remain significant based on the ordered response model.¹ Again, as in the other appendices, these models are similar, however, the interactive variable of interest changes in each model.

D.3 Model Convergence Diagnostics

Figures D.1 and D.2 display trace plots for three of the random slope parameters (Luxembourg, Czech Republic, and Slovakia) in the ECtHR freedom of expression model and the ECtHR human rights organization model.² The trace plots indicate good mixing of the chains, lending support for model convergence. Density plots for three of the random slope parameters (Guatemala, Peru, Brazil) for the IACtHR National Human Rights Institution model and the IACtHR legal expertise model are shown in Figures D.3 and D.4. The unimodality of the density estimates indicate evidence of convergence.³

D.4 Control Variable Results

For each model estimated in chapter 7, I control for the following variables: judicial power, multilateral aid, competitiveness of executive recruitment, veto players, electoral rules, GDP per capita (logged), democracy, population (logged), civil war, and past repression. In each model, I also include the constituent terms of the interactive variable, as well as the other civil society variables (freedom of expression, HRO presence, NHRI presence, and legal expertise). Details on the measurement and operationalization of all control variables are provided in Chapter 3.

Figures D.5 and D.6 display the parameter estimates for control variables in the first level of the freedom of expression models. The constituent terms for an adverse ECtHR and IACtHR decision are negatively associated with respect for physical integrity rights when there is no constitutional guarantee of freedom of

¹In the frequentist ordered logistic regression, I control for the regional influence, that is, the number of adverse regional court decisions found in the region.

²Traceplots for the IACtHR freedom of expression model and IACtHR HRO model display similar patterns.

³Density plots for the ECtHR NHRI model and ECtHR legal expertise model display similar patterns, indicating evidence of convergence.

Table D.5: Ordered Logit Model Estimates - Freedom of Speech

Parameter Estimate (S.E.) Reported	ECtHR	IACtHR
Regional Court*Speech (t-2)	0.817* (0.707)	4.85*** (0.674)
Regional Court (t-2)	-0.831* (0.671)	-5.11*** (0.610)
Speech (t-2)	-0.620* (0.387)	-1.81*** (0.575)
Jud (t-2)	2.21*** (0.762)	4.68*** (0.869)
Aid (t-2)	0.001 (0.001)	-0.0002 (0.001)
Exec Comp (t-2)	-0.174 (0.218)	0.373** (0.185)
Dist Magnitude (t-2)	0.004* (0.003)	0.009* (0.006)
Checks (t-2)	0.199** (0.078)	-0.080 (0.075)
HRO (t-2)	0.188 (0.216)	-0.087 (0.081)
Legal Expertise (t-2)	-0.336 (0.253)	-0.661** (0.290)
NHRI (t-2)	-0.035 (0.186)	0.104 (0.202)
Regional Violations (t-2)	-0.001* (0.003)	0.001 (0.001)
Physint (t-2)	0.952*** (0.090)	0.761*** (0.085)
GDP (logged)	0.713*** (0.197)	-0.641*** (0.196)
Democracy	-0.578 (454)	-0.679** (0.342)
Population (logged)	-0.342*** (0.061)	-0.207** (0.087)
Civil War	-2.18*** (0.617)	-2.46*** (0.484)
r ²	0.3195	0.3029
N	753	448

NOTES: * Significant at 90% confidence, ** Significant at 95% confidence, ***Significant at 99% confidence. Models estimated using robust standard errors. One-tailed significance tests reported.

expression. The constituent term for freedom of expression is also negatively associated with respect for rights in the absence of an adverse decision of the ECtHR and IACtHR.⁴ The results show that freedom of expression alone has little influence on respect for rights, however regional court litigation generates an opportunity for ordinary citizens to use litigation to generate mobilization efforts, at least in the Inter-

⁴Though the credible interval for the ECtHR estimate contains zero.

Table D.6: Ordered Logit Model Estimates - HRO

Parameter Estimate (S.E.) Reported	ECtHR	IACtHR
Regional Court*HRO (t-2)	-0.036* (0.019)	0.177 (0.602)
Regional Court (t-2)	0.129 (0.268)	-0.521* (0.448)
HRO (t-2)	0.028** (0.013)	-0.089 (0.081)
Jud (t-2)	3.17*** (0.757)	4.56*** (0.857)
Aid (t-2)	0.001 (0.001)	-0.0002 (0.0004)
Exec Comp (t-2)	-0.145 (0.221)	0.389** (0.183)
Dist Magnitude (t-2)	0.004* (0.003)	0.010** (0.006)
Checks (t-2)	0.190** (0.077)	-0.086 (0.074)
Speech (t-2)	0.253 (0.320)	1.46** (0.596)
Legal Expertise (t-2)	-0.241 (0.254)	-0.654** (0.286)
NHRI (t-2)	-0.008 (0.186)	0.095 (0.208)
Regional Violations (t-2)	-0.001* (0.000)	0.001 (0.001)
Physint (t-2)	0.958*** (0.090)	0.751*** (0.085)
GDP (logged)	0.648*** (0.199)	-0.638*** (0.196)
Democracy	-0.416 (0.460)	-0.691** (0.340)
Population (logged)	-0.365*** (0.062)	-0.212** (0.087)
Civil War	-2.06*** (0.601)	-2.47*** (0.001)
r ²	0.3214	0.2974
N	753	448

NOTES: * Significant at 90% confidence, ** Significant at 95% confidence, ***Significant at 99% confidence. Models estimated using robust standard errors. One-tailed significance tests reported.

American context. The additional control variables in the freedom of expression models are largely in the expected direction. Domestic judicial power is positively associated with respect for physical integrity rights, past repression, represented by the lagged physical integrity rights variable, is positively associated with physical integrity rights, and civil war is negatively associated with respect for rights.

Figures D.7 and D.8 display the parameter estimates for control variables in the HRO models. Adverse

Table D.7: Ordered Logit Model Estimates - NHRI

Parameter Estimate (S.E.) Reported	ECtHR	IACtHR
Regional Court*NHRI (t-2)	-0.434 (0.403)	-0.343 (0.630)
Regional Court (t-2)	0.091 (0.319)	-0.151 (0.512)
NHRI (t-2)	0.031 (0.198)	0.137 (0.209)
Jud (t-2)	3.23*** (0.765)	4.57*** (0.858)
Aid (t-2)	0.001 (0.001)	-0.0002 (0.0004)
Exec Comp (t-2)	-0.142 (0.223)	0.391** (0.183)
Dist Magnitude (t-2)	0.004* (0.003)	0.010** (0.006)
Checks (t-2)	0.198** (0.077)	-0.087 (0.074)
HRO (t-2)	0.016* (0.010)	-0.090 (0.081)
Legal Expertise (t-2)	-0.3-02 (0.251)	-0.657** (0.287)
Speech (t-2)	0.210 (0.321)	1.45** (0.591)
Regional Violations (t-2)	-0.0004* (0.0003)	0.001 (0.001)
Physint (t-2)	0.948*** (0.090)	0.753*** (0.086)
GDP (logged)	0.629*** (0.090)	-0.643*** (0.195)
Democracy	-0.513 (0.454)	-0.694** (0.341)
Population (logged)	-0.367*** (0.063)	-0.207** (0.087)
Civil War	-2.06*** (0.0002)	-2.47*** (0.001)
r ²	0.3200	0.2975
N	753	448

NOTES: * Significant at 90% confidence, ** Significant at 95% confidence, ***Significant at 99% confidence. Models estimated using robust standard errors. One-tailed significance tests reported.

ECtHR and IACtHR decisions are negatively associated with respect for physical integrity rights in the absence of HRO secretariat offices within a state, though the credible interval for the ECtHR includes zero. The constituent term for the prevalence of HROs is also negatively associated with respect for rights in the absence of an adverse decision of the ECtHR and IACtHR.⁵ This finding is in line with Murdie and

⁵However, both estimates are substantively small and the credible interval for the ECtHR estimate contains zero.

Table D.8: Ordered Logit Model Estimates - Legal Expertise

Parameter Estimate (S.E.) Reported	ECtHR	IACtHR
Regional Court*Legal Expert (t-2)	-0.828** (0.51)	1.09** (0.602)
Regional Court (t-2)	-0.005 (0.252)	-0.904** (0.401)
Legal Expertise (t-2)	0.001 (0.252)	-0.799** (0.297)
Jud (t-2)	3.36*** (0.777)	4.53*** (0.864)
Aid (t-2)	0.000 (0.001)	-0.0003 (0.0005)
Exec Comp (t-2)	-0.161 (0.227)	0.536** (0.187)
Dist Magnitude (t-2)	0.004* (0.003)	0.010** (0.006)
Checks (t-2)	0.203** (0.077)	-0.088 (0.073)
HRO (t-2)	0.016** (0.010)	-0.104* (0.081)
Speech (t-2)	0.122 (0.323)	1.42** (0.596)
NHRI (t-2)	-0.066 (0.184)	0.105 (0.201)
Regional Violations (t-2)	-0.0004* (0.003)	0.001 (0.001)
Physint (t-2)	0.919*** (0.093)	0.751*** (0.086)
GDP (logged)	0.624*** (0.197)	-0.647*** (0.195)
Democracy	-0.432 (0.467)	-0.795** (0.343)
Population (logged)	-0.368*** (0.062)	-0.204** (0.087)
Civil War	-2.26*** (0.687)	-2.53*** (0.473)
r ²	0.3208	0.2993
N	753	448

NOTES: * Significant at 90% confidence, ** Significant at 95% confidence, ***Significant at 99% confidence. Models estimated using robust standard errors. One-tailed significance tests reported.

Davis (2012), who argue that the influence of HROs on respect for rights is conditional on their work with international legal actors. The control variables behave largely as expected in the HRO models.

Turning to the NHRI models, Figures D.9 and D.10 display the parameter estimates for control variables utilized the first level of the model. The constituent term for an adverse ECtHR decision is positively signed, though the credible interval contains zero, indicating uncertainty regarding the direction of this relationship.

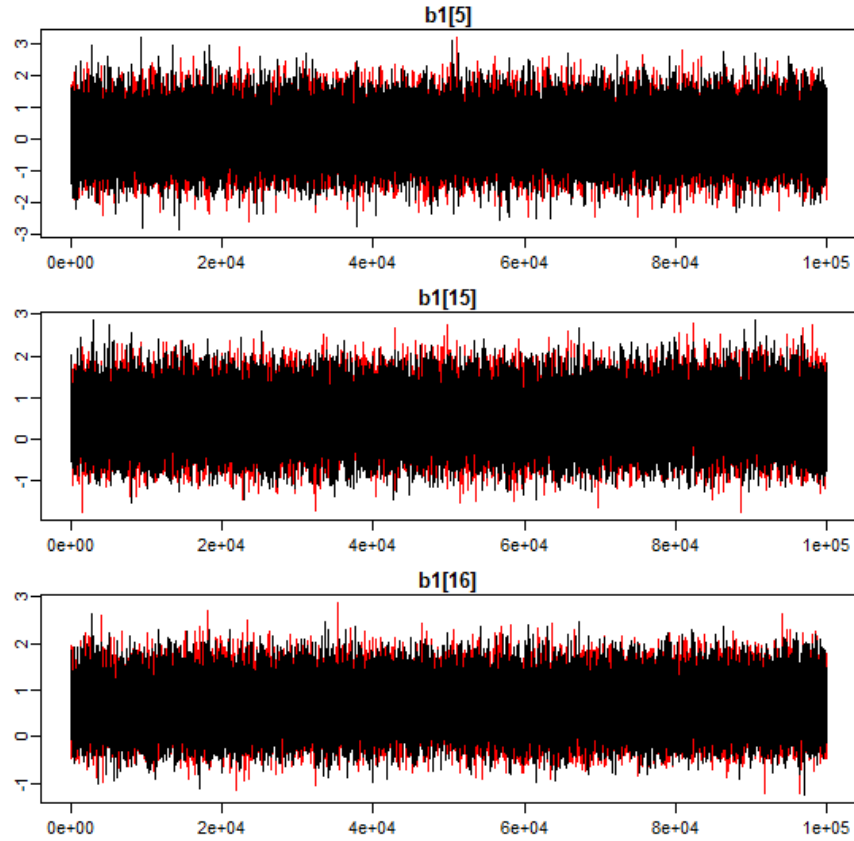


Figure D.1: ECtHR Trace Plots (Speech) (Luxembourg, Czech Republic, Slovakia)

The constituent term for an adverse IACtHR decision is negatively associated with respect for physical integrity rights in the absence of an NHRI, though the credible interval also includes zero. The constituent term for NHRI presence is also negatively associated with respect for rights in the absence of an adverse decision of the ECtHR and IACtHR.⁶ Absent more disaggregated data, determining the influence of NHRIs remains difficult. Against, the additional control variables are largely in the expected direction in the HRO models.

Finally, Figures D.11 and D.12 display the parameter estimates for control variables in the legal expertise models. An adverse ECtHR decision is almost substantively indistinguishable from zero and the constituent term for adverse IACtHR decisions is negatively associated with respect for physical integrity rights in the absence of legal expertise. The constituent term for legal expertise is also negatively associated with respect

⁶However, both estimates are substantively small and the credible interval for the ECtHR estimate contains zero.

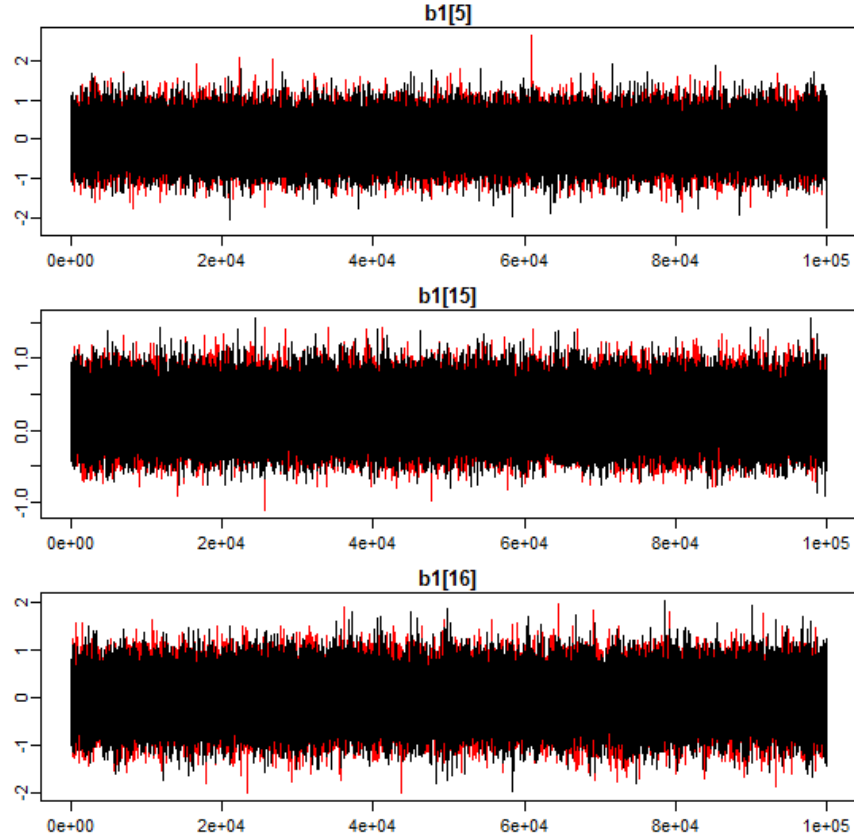


Figure D.2: ECtHR Trace Plots (HRO) (Luxembourg, Czech Republic, Slovakia)

for rights in the absence of an adverse decision of the ECtHR and IACtHR. This provides some evidence that legal expertise is particularly important for the effectiveness of adverse IACtHR decisions, but when pro-rights advocates cannot use adverse regional court litigation (in the absence of adverse IACtHR decisions), legal expertise plays little role in encouraging or enhancing pro-rights mobilization efforts. Control variables display parameter estimates generally in the expected direction or indicate little substantive influence on respect for rights in the legal expertise models.

D.5 Pooled Model Estimates

Tables D.9, D.10, D.11, and D.12 display pooled model results for each of the civil society models, excluding hierarchical modeling techniques (random slopes and random intercepts). The results from the pooled models indicate that the variables of interest (freedom of expression and legal expertise for the

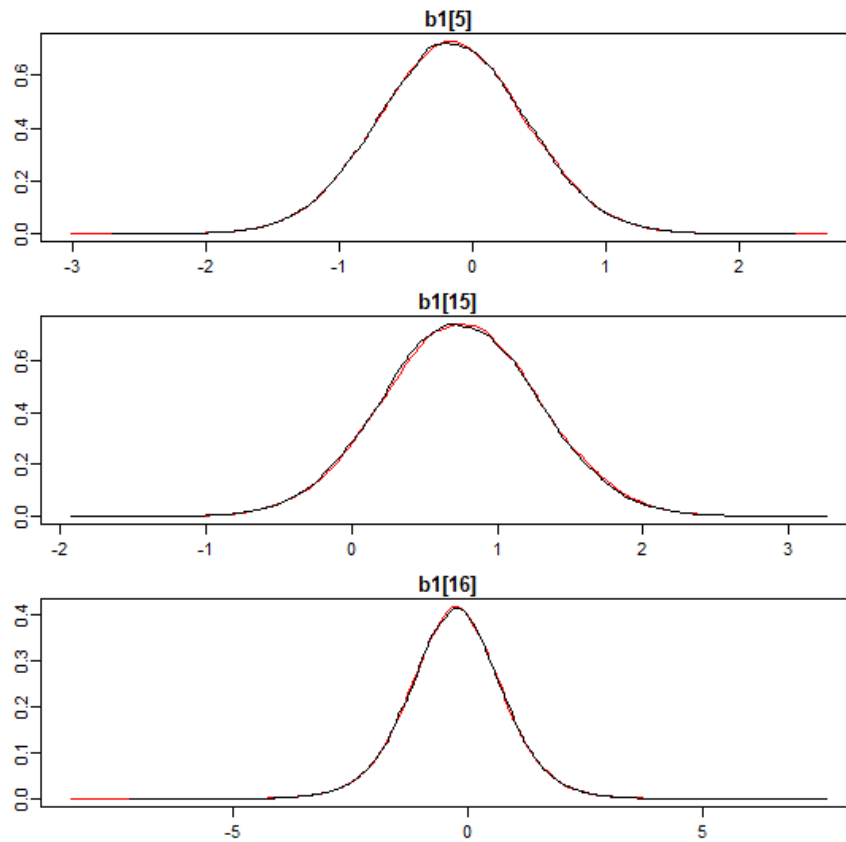


Figure D.3: IACtHR Density Plots (NHRI) (Guatemala, Peru, Brazil)

IACtHR) appear to be robust to the exclusion of the hierarchical model, though pooling results for the IACtHR legal expertise model generates more uncertainty regarding this relationship.

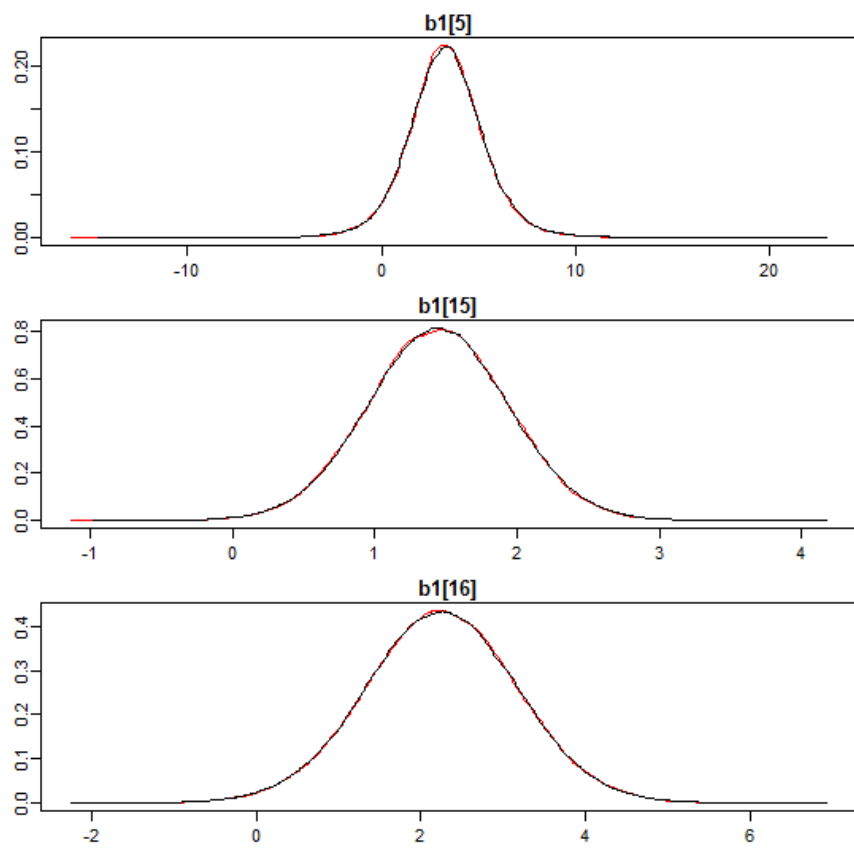


Figure D.4: IACtHR Density Plots (Legal Expertise) (Guatemala, Peru, Brazil)

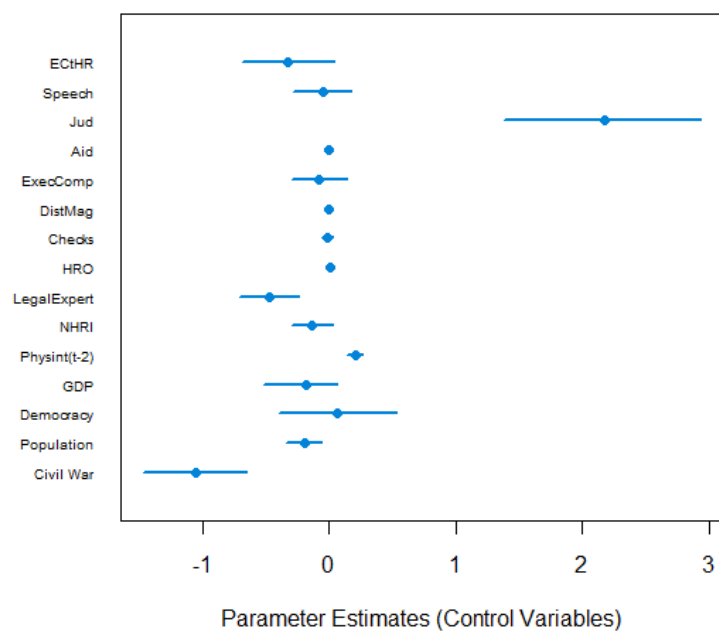


Figure D.5: ECtHR Freedom of Expression Model Estimates (Control Variables)

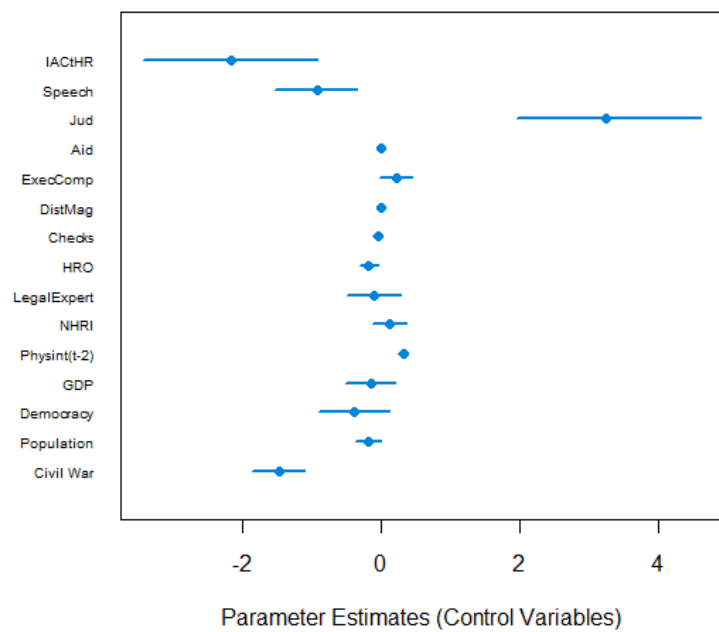


Figure D.6: IACtHR Freedom of Expression Model Estimates (Control Variables)

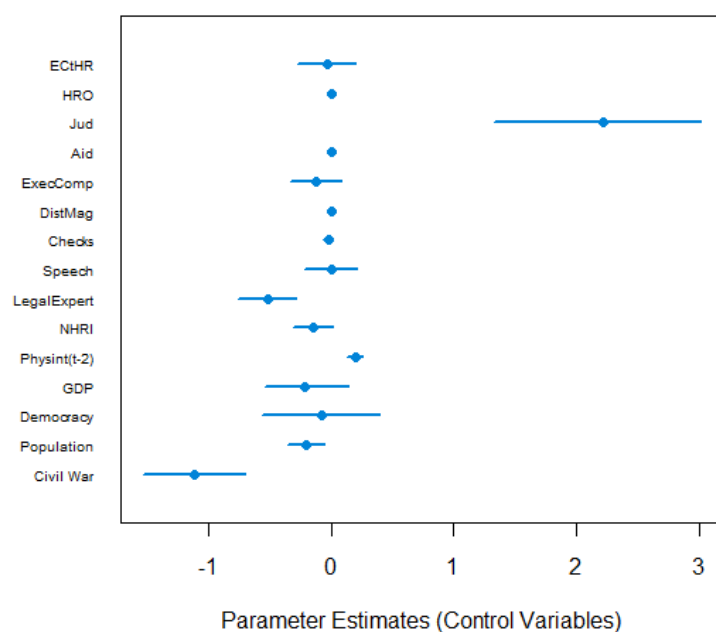


Figure D.7: ECtHR HRO Model Estimates (Control Variables)

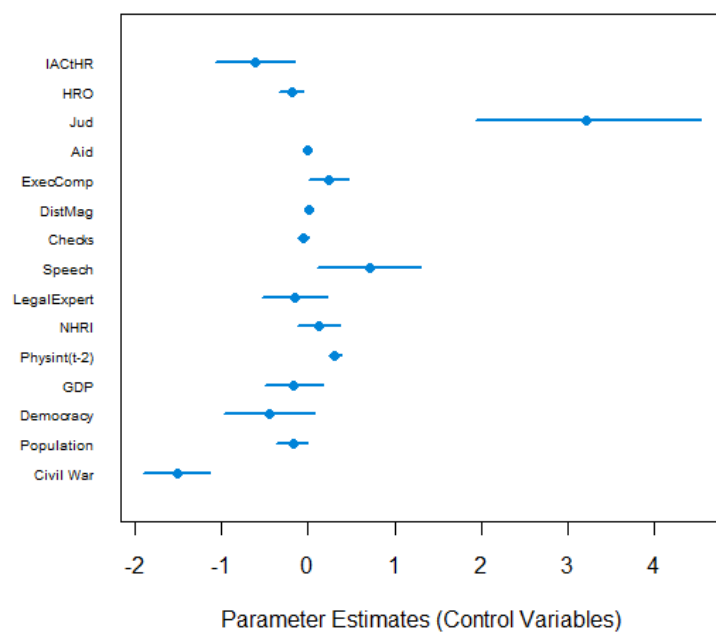


Figure D.8: IACtHR HRO Model Estimates (Control Variables)

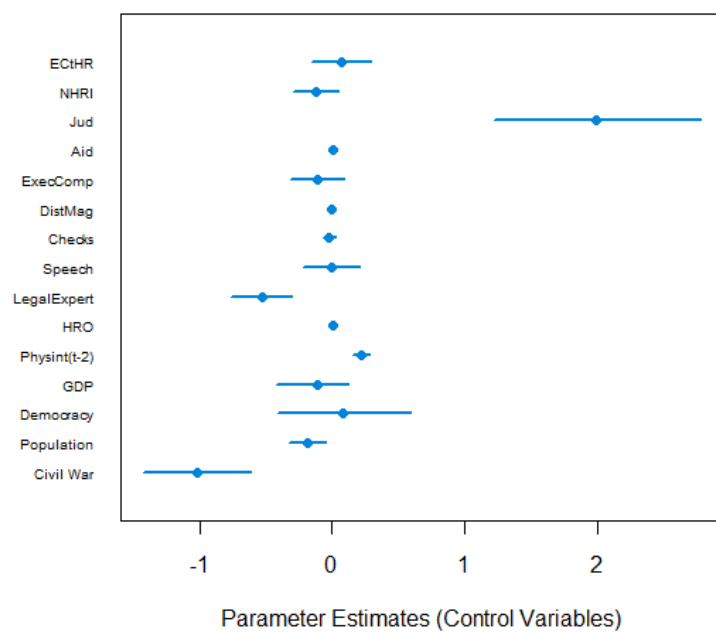


Figure D.9: ECtHR NHRI Model Estimates (Control Variables)

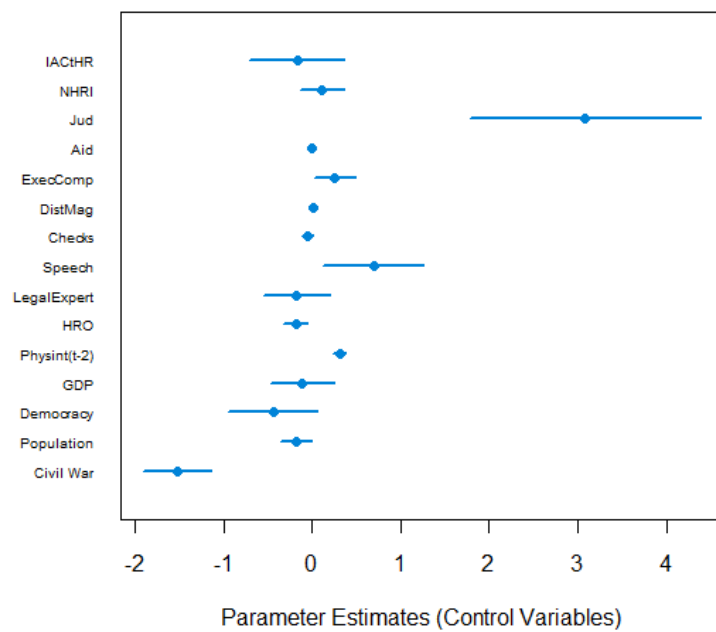


Figure D.10: IACtHR NHRI Model Estimates (Control Variables)

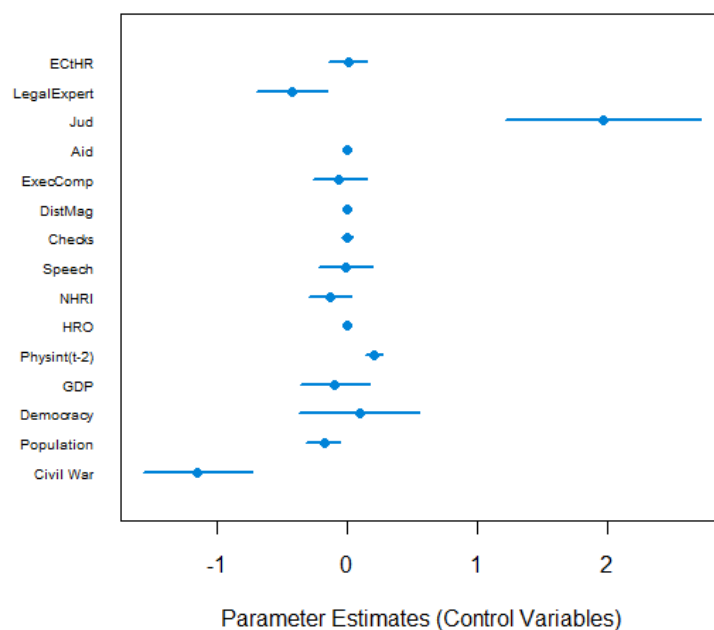


Figure D.11: ECtHR Legal Expertise Model Estimates (Control Variables)

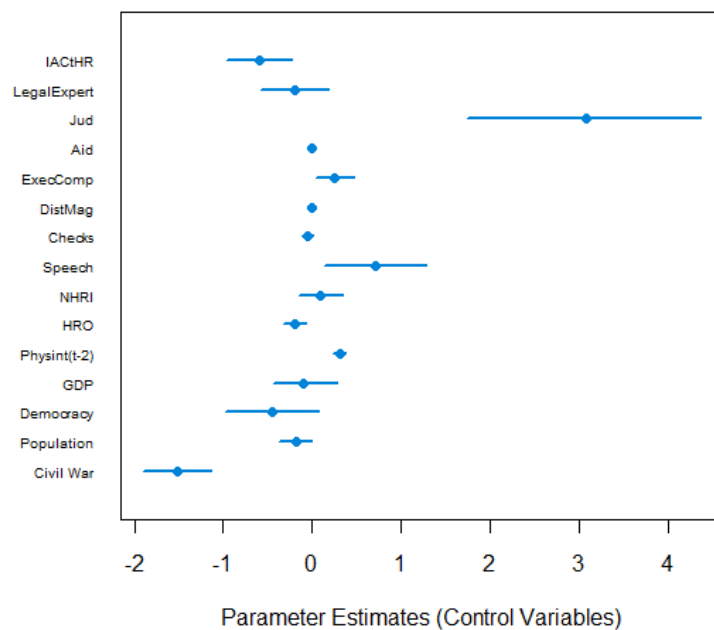


Figure D.12: IACtHR Legal Expertise Model Estimates (Control Variables)

Table D.9: Pooled Model Estimates - Speech

Parameter Estimate (90% Credible Intervals) Reported	ECtHR	IACtHR
Regional Court*Speech (t-2)	0.273 (-0.50 - 1.05)	2.05 (0.405 - 3.69)
Regional Court (t-2)	-0.325 (-0.69 - 0.041)	-2.19 (-3.455 - -0.926)
Speech (t-2)	-0.05 (-0.279 - 0.181)	-0.907 (-1.518 - -0.316)
Jud (t-2)	2.128 (1.383 - 2.88)	3.239 (1.921 - 4.573)
Aid (t-2)	0.001 (0.000 - 0.001)	0.00 (0.00 - 0.001)
Exec Comp (t-2)	-0.066 (-0.277 - 0.141)	0.214 (-0.009 - 0.438)
Dist Magnitude (t-2)	-0.002 (-0.004 - 0.001)	0.004 (-0.004 - 0.011)
Checks (t-2)	-0.008 (-0.051 - 0.035)	-0.045 (-0.114 - 0.024)
HRO (t-2)	0.003 (-0.007 - 0.014)	-0.179 (-0.311 - -0.047)
Legal Expertise (t-2)	-0.469 (-0.701 - -0.238)	-0.102 (-0.482 - 0.281)
NHRI (t-2)	-0.136 (-0.294 - 0.022)	0.122 (-0.126 - 0.373)
Regional Violations (t-2)	0.273 (-0.18 - 0.72)	2.05 (0.643 - 3.45)
Physint (t-2)	0.209 (0.147 - 0.273)	0.316 (0.244 - 0.387)
GDP (logged)	-0.156 (-0.368 - 0.081)	-0.113 (-0.451 - 0.254)
Democracy	0.072 (-0.406 - 0.54)	-0.378 (-0.891 - 0.13)
Population (logged)	-0.191 (-0.328 - -0.061)	-0.181 (-0.369 - 0.006)
Civil War	-1.057 (-1.468 - -0.645)	-1.474 (-1.855 - -1.091)
Intercept	5.87 (3.73 - 7.93)	3.85 (0.96 - 6.52)

Table D.10: Pooled Model Estimates - HRO

Parameter Estimate (90% Credible Intervals) Reported	ECtHR	IACtHR
Regional Court*HRO (t-2)	0.05 (-0.39 - 0.50)	0.27 (-0.73 - 1.29)
Regional Court (t-2)	-0.046 (-0.281 - 0.187)	-0.615 (-1.073 - -0.156)
HRO (t-2)	0.005 (-0.006 - 0.016)	-0.193 (-0.33 - -0.055)
Jud (t-2)	2.137 (1.317 - 2.972)	3.157 (1.859 - 4.468)
Aid (t-2)	0.001 (0.000 - 0.001)	0.00 (-0.001 - 0.001)
Exec Comp (t-2)	-0.104 (-0.315 - 0.106)	0.235 (0.008 - 0.462)
Dist Magnitude (t-2)	-0.001 (-0.003 - 0.002)	0.003 (-0.004 - 0.011)
Checks (t-2)	-0.022 (-0.067 - 0.022)	-0.049 (-0.118 - 0.019)
Speech (t-2)	0.006 (-0.213 - 0.221)	0.709 (0.136 - 1.291)
Legal Expertise (t-2)	-0.519 (-0.754 - -0.282)	-0.152 (-0.529 - 0.231)
NHRI (t-2)	-0.157 (-0.322 - 0.007)	0.119 (-0.127 - 0.367)
Regional Violations (t-2)	0.048 (-0.138 - 0.237)	0.27 (-0.40 - 0.95)
Physint (t-2)	0.202 (0.136 - 0.268)	0.309 (0.238 - 0.382)
GDP (logged)	-0.147 (-0.438 - 0.151)	-0.098 (-0.454 - 0.236)
Democracy	-0.085 (-0.545 - 0.375)	-0.436 (-0.954 - 0.076)
Population (logged)	-0.192 (-0.339 - -0.054)	-0.184 (-0.367 - -0.002)
Civil War	-1.126 (-1.541 - -0.712)	-1.504 (-1.89 - -1.117)
Intercept	6.067 (3.17 - 8.87)	2.25 (-0.36 - 4.92)

Table D.11: Pooled Model Estimates - NHRI

Parameter Estimate (90% Credible Intervals) Reported	ECtHR	IACtHR
Regional Court*NHRI (t-2)	-0.17 (-0.97 - 0.62)	-0.19 (-1.60 - 1.21)
Regional Court (t-2)	0.076 (-0.147 - 0.299)	-0.167 (-0.705 - 0.367)
NHRI (t-2)	-0.115 (-0.284 - 0.053)	0.11 (-0.144 - 0.364)
Jud (t-2)	2.064 (1.257 - 2.884)	3.031 (1.773 - 4.30)
Aid (t-2)	0.001 (0.000 - 0.002)	0.00 (-0.001 - 0.001)
Exec Comp (t-2)	-0.12 (-0.329 - 0.093)	0.255 (0.03 - 0.475)
Dist Magnitude (t-2)	-0.001 (-0.004 - 0.001)	0.003 (-0.004 - 0.01)
Checks (t-2)	-0.024 (-0.068 - 0.02)	-0.049 (-0.117 - 0.019)
Speech (t-2)	-0.012 (-0.222 - 0.199)	0.708 (0.136 - 1.285)
Legal Expertise (t-2)	-0.537 (-0.769 - -0.306)	-0.179 (-0.554 - 0.196)
HRO (t-2)	0.003 (-0.007 - 0.014)	-0.19 (-0.321 - -0.058)
Regional Violations (t-2)	-0.17 (-0.56 - 0.21)	-0.192 (1.14 - 0.75)
Physint (t-2)	0.218 (0.153 - 0.281)	0.311 (0.24 - 0.383)
GDP (logged)	-0.193 (-0.494 - 0.089)	-0.088 (-0.409 - 0.261)
Democracy	0.072 (-0.425 - 0.56)	-0.44 (-0.95 - 0.067)
Population (logged)	-0.195 (-0.341 - -0.057)	-0.178 (-0.361 - 0.002)
Civil War	-1.014 (-1.419 - -0.612)	-1.523 (-1.907 - -1.136)
Intercept	6.37 (3.69 - 9.22)	2.19 (-0.50 - 4.58)

Table D.12: Pooled Model Estimates - Legal Expertise

Parameter Estimate (90% Credible Intervals) Reported	ECtHR	IACtHR
Regional Court*Legal Expert (t-2)	-0.034	2.037 (-0.47 - 4.52)
Regional Court (t-2)	0.007 (-0.14 - 0.154)	-0.593 (-0.959 - -0.226)
Legal Expertise (t-2)	-0.428 (-0.702 - -0.155)	-0.202 (-0.584 - 0.18)
Jud (t-2)	1.924 (1.132 - 2.682)	3.111 (1.864 - 4.377)
Aid (t-2)	0.001 (0.000 - 0.001)	0.000 (-0.001 - 0.001)
Exec Comp (t-2)	-0.064 (-0.266 - 0.14)	0.254 (0.029 - 0.482)
Dist Magnitude (t-2)	-0.002 (-0.004 - 0.001)	0.003 (-0.005 - 0.01)
Checks (t-2)	-0.002 (-0.045 - 0.041)	-0.056 (-0.124 - 0.013)
Speech (t-2)	-0.018 (-0.229 - 0.192)	0.7 (0.114 - 1.287)
NHRI (t-2)	-0.131 (-0.289 - 0.029)	0.099 (-0.147 - 0.345)
HRO (t-2)	0.000 (-0.01 - 0.01)	-0.187 (-0.317 - -0.057)
Regional Violations (t-2)	-0.12 (-1.45 - 1.22)	2.038 (-0.05 - 4.10)
Physint (t-2)	0.205 (0.144 - 0.267)	0.312 (0.241 - 0.384)
GDP (logged)	-0.111 (-0.363 - 0.225)	-0.14 (-0.491 - 0.209)
Democracy	0.103 (-0.375 - 0.571)	-0.457 (-0.966 - 0.055)
Population (logged)	-0.186 (-0.324 - -0.056)	-0.179 (-0.362 - 0.001)
Civil War	-1.146 (-1.564 - -0.729)	-1.519 (-1.901 - -1.137)
Intercept	5.55 (2.25 - 7.98)	2.61 (-0.10 - 5.39)

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