

Generating Executive Implementation Incentives: The Role of Domestic Judicial Power in Supranational Human Rights Court Effectiveness

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September 5, 2013

Do supranational human rights courts influence respect for rights? Conventional wisdom suggests that absent hard enforcement mechanisms, international legal obligations have little influence on state 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 supranational human rights courts over time and these supranational 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 paper, 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 largely behaves in expectation of implementation by the domestic judiciary. When the executive expects the domestic judiciary to engage in implementation, the executive follows through on implementation by employing a policy of respect for rights. However, all domestic judiciaries do not engage in implementation with equal probability. When the domestic judiciary is relatively powerful, autonomous and effective, domestic judges garner public support for their institution, overcome procedural difficulties, and face a higher shaming cost for evasion of implementation. As a result, powerful domestic judiciaries generate incentives for domestic judges to implement regional court decisions, which, in turn, influences executive expectations of implementation. Using a Bayesian hierarchical linear model, I test the hypothesis that domestic judicial power is positively associated with implementation of regional court decisions. I examine regional court violations for all countries under the jurisdiction of the ECtHR from 1981-2006 and those under the jurisdiction of the IACtHR from 1989-2010 and I find that domestic judicial power plays an important role in the effectiveness of regional court decisions.

1 Introduction

To what extent do supranational human rights courts influence respect for rights? Despite the unprecedented growth in the activity of regional human rights courts, we know relatively little about their effectiveness. 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 the Inter-American Court orders (i.e. threats to legitimacy and procedural problems). Why would Argentina's Supreme Court choose to take these actions? In this paper, I seek to explain variation in state response to regional court decisions. More specifically, I examine the role of domestic actors in regional court implementation, and consequently, the effectiveness of regional courts in improving state human rights practices.

In 2003, when the case of *Bulacio v. Argentina* was before the IACtHR, Argentina scored a 5 on the CIRI physical integrity rights index, slightly higher than 2002 (4) and 2001 (3) (Cingranelli and Richards 2010b).¹ However, two years following the IACtHR finding of a violation (2005), Argentina scored a 6 on the physical integrity rights index, the highest score Argentina received since the mid-1990s. While this empirical observation is merely suggestive, it does raise the question: might it be the case that Argentina's compliance with the IACtHR decision played a role in the corresponding national improvement in physical integrity rights?

I argue that the executive plays the primary role in regional court implementation and effectiveness. State agents responsible for human rights violations report to the executive. As a result, the executive is located at the top of the chain of command and represents the final authority on human rights policy within the state. The executive determines and sets forth the policy on rights, or the tactics to be used by agents under executive employ. The executive then carries out this policy largely through monitoring and sanctioning of executive branch actors and agents. Regardless of which state actor the regional court tasks with implementation of its ruling, the decision to respect rights ultimately lies with the executive.

¹The CIRI physical integrity rights index ranges from 0-8, with higher scores indicating greater respect for rights. This index includes four types of physical integrity rights violations: torture, extrajudicial killing, political imprisonment, and disappearances.

As a result of the executive's position, the decision to carry out a policy of respect for rights (or not) plays a major role in the effectiveness of the court, or the extent to which the regional court influences respect for rights. The executive faces various incentives *not* to engage in implementation, largely as a result of direct material costs, loss of decision-making power, and loss of strategic political relationships. However, the executive also faces both direct and indirect threats to political survival, which generate executive incentives to respect rights. Direct implementation incentives include those associated with international and domestic audience costs directly attributed to the executive. Indirect implementation incentives involve the executive's *expectation* of implementation by other domestic actors, notably the domestic judiciary. When the executive expects implementation of regional court decisions by the domestic judiciary, the likelihood of executive implementation rises, and consequently, the executive increasingly chooses to carry-out and enforce the implementation efforts of domestic judges.

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 engage in implementation efforts. However, like the executive, domestic judges also face various incentives *not* to engage in implementation. Domestic judges possess incentives *not* to implement regional court decisions when the domestic judiciary retains little public support, procedural difficulties tie-up implementation efforts, and/or domestic judges face low shaming costs for evading regional court implementation. Nonetheless, domestic institutions generate incentives for domestic judges to engage in implementation. Specifically, domestic judicial power attenuates the influence of non-implementation incentives by increasing public support for regional court implementation, overcoming procedural difficulties, and increasing transparency (thereby raising the shaming costs of non-implementation). Domestic judicial power influences executive expectation of implementation by the domestic judiciary, making executive implementation and respect for rights associated with regional court decisions more likely. Further, regional court judges behave in expectation of the behavior of domestic judges and the executive, and concentrate their resources and efforts where they expect implementation. In this paper, I identify the incentives and explain the behavior of domestic judges and the role of domestic judicial power in regional court effectiveness.

By focusing on the 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 hope to explain the conditions under which these regional legal bodies have their greatest influence on respect for rights. Further, rather than focusing on the state as a single actor engaging (or not) in implementation

(as has been done in previous research), the theory presented and explored in this paper focuses closely on the interests and incentives of domestic judges and the executive to implement regional court decisions. In what follows, I argue that regional human rights courts (specifically, the European Court of Human Rights and the Inter-American Court of Human Rights) charge domestic actors with implementation of regional court decisions. While the regional court typically does not identify these actors by name, the orders of regional human rights legal bodies generally imply the involvement of various actors, including the domestic judiciary.

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 cannot 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 examine 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).² 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-

²I also make reference to regional court “*implementation*” throughout much of the paper. 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.

dividual 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 treaty regime or supranational legal regime and member states charge regional human rights courts with the advancement of human rights. Some scholars even claim that regardless 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. Of course, for a supranational human rights court to function effectively, the state often must comply first, particularly with respect to orders to engage in policy change (amend, repeal, or adopt legislation) (Vanberg 2001, Kapiszweski and Taylor 2012). 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 for a court to be effective. States may choose noncompliance with parts of the 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.

Further, while direct litigation remains important for the advancement of human rights, it may not address systemic problems. 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). Examining the effectiveness of the entire regional human rights court regime, rather than compliance with individual cases, provides additional evidence for the importance of the regional court as an international actor.

I define the effectiveness as 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 the regional court finding of a violation is associated with greater respect for rights within the state. Regional court effectiveness is best conceptualized as the difference between respect for rights following a court case and respect for rights at the time a human rights violation was committed. The stylized timeline below 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 the regional court case from the time the rights violation was committed. In what follows, I explain the *effectiveness* of regional human rights court decisions, in the form of improved human rights practices.

$$\begin{aligned}
 & HumanRightsViolation_{t1} \rightarrow DomesticRemediesExhausted \rightarrow RegionalCourtCase \rightarrow \\
 & \quad \quad \quad RegionalCourtRuling \rightarrow Compliance \rightarrow RespectforRights_{t2} \rightarrow \\
 & \quad \quad \quad \quad \quad \quad Effectiveness = Respect_{t2} - Respect_{t1}
 \end{aligned}$$

3 Why Focus on Domestic Politics to Explain Effectiveness?

To date, little research focuses explicitly on compliance with international human rights courts, with even less addressing the effectiveness of these courts. However, a great deal of research addresses compliance with international human rights treaties. That research highlights three factors generally attributed to compliance: selection, management, and domestic politics. First, high compliance is argued to be 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 (Downs, Rocke and Barsoom 1996). Second, Chayes and Chayes (1993), argue that managerial issues, including ambiguity in treaty language, lack of technical capacity to implement the treaty, among other factors, lead to noncompliance. One implication of these arguments is that states intend to comply with the international treaties they ratify. However, some states largely in compliance with international agreements fail to ratify treaties that would require little change in behavior (Simmons 2009). Further, some states ratify treaties with no intention to comply, particularly dictatorial regimes that find ratification relatively costless (Simmons 2009).³

A third, and much more promising, explanation for compliance stems from domestic politics. States commit to international treaties based on expectations of enforcement. Given the absence of effective international enforcement mechanisms in most human rights agreements, enforcement must be carried out domestically. Domestic politics place significant constraints on the behavior of domestic actors to comply (or not) with their international legal commitments (Hathaway 2005, Neumayer 2005, Hathaway 2007, Powell and Staton 2009, Simmons 2009, Vreeland 2008, Cingranelli and Filippov 2010, Conrad and Moore 2010).

Further, domestic politics likely play an even larger role in the effectiveness of regional human rights courts than in the enforcement of international human rights treaties. In fact, Hillebrecht (2012) argues that domestic actors are important for compliance with the IACtHR, particularly the role of the executive in building political will and pro-compliance coalitions of judges and legislators. Regional human rights courts hear complaints associated with individual cases of human rights abuse and render judgments against a state, often giving the state direct orders to engage in actions to bring itself into compliance.⁴ International human rights treaties, on the other hand, are largely self-enforcing, relying on state reports of human rights

³Simmons (2009) refers to these types of states as false negatives and false positives, respectively.

⁴The IACtHR provides orders requiring more specific actions, while the ECtHR delegates to states and assesses their behavior at a later date.

practices and limited monitoring. Clarity and precision offered by the regional court finding of a violation primes domestic actors to respond (with some type of action along the compliance/noncompliance spectrum) to international court judgments. As such, domestic politics remain particularly pertinent to the effectiveness of regional courts.

4 The Regional Court

Regional court judges constitute key actors for ensuring the effectiveness of regional court decisions because they represent the final arbiter in cases brought against the state. 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.⁵ 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.⁶ Regional 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 2011). 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). State governments appoint regional court judges. This leaves open the potential for highly political appointment 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 can achieve autonomy from state influence through institutional design. First, founding documents charge regional courts with the appointment of international civil ser-

⁵Current 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).

⁶Judicial power is discussed in more detail below.

vants. For example, seven independent judges compose the IACtHR. The American Convention charges regional judges with international civil service; in other words, despite the fact that regional judges include nationals of OAS member states, they must not represent their home state (Pasqualucci 2003, 10). This institutional design feature does not always ensure autonomy, but the founder's original goal included ensuring the independence of the regional court from the undue influence of member states. Even if institutional design features, such as the judicial appointment process, only minimally constrain the actions of domestic judges, empirical evidence indicates that international court justices behave independently of states when they operate in the midst of a vibrant civil society (i.e. NGOs, advocacy networks) (Alter and Helfer 2010, Cichowski 2010).

The second characteristic of a powerful judiciary, effectiveness, requires that states actually implement the adverse decisions of the regional court (Helfer and Slaughter 1997).⁷ 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 come into compliance. 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 regional court decisions decline. That is, concerns regarding state acceptance and support of regional court judgments decline as regional court judges expect compliance and support of their decisions. 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 regional court decisions. Nonetheless, achieving and maintaining legitimacy proves to be exceptionally vital for regional courts to influence member state's broader human rights policy.

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.⁸ 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

⁷See Kornhauser (2002) for more on judicial autonomy and Helfer and Slaughter (1997) for more on judicial effectiveness.

⁸Below, I argue that domestic actors, particularly the executive, are important for implementation. The executive represents an actor of central importance as the executive is the actor most centrally engaged in rights-related policies.

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 or the fear of bad international publicity when states fail to comply with an adverse regional court judgment (Guzman 2008). However, in cases where the state may not draw sufficient international attention necessary to ensure compliance or the state possesses other interests that trump compliance concerns, regional courts hold few options to ensure compliance. 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 judgments. Regional court judges often render judgments and decisions against states with domestic legal and institutional structures with which they are less familiar (Cavallaro and Brewer 2008). Further, regional justices typically remain ill-informed regarding the public sentiment associated with particular cases and the domestic reception of 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.⁹ 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 the perpetrators responsible for the human rights violation. 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 lacks the resources necessary to ensure implemen-

⁹Most 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).

tation 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).¹⁰ The simultaneity of 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, cause regional court judges to behave strategically. In other words, regional judges utilize their (limited) resources where court resources prove 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 implement their decisions.

5 Executive Incentives to Implement Regional Court Decisions (Respect Rights)

5.1 Executive Implementation

The executive represents an actor of primary importance for the implementation of regional court decisions, playing an important role in regional court implementation 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.¹¹ 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

¹⁰Resource 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.

¹¹Regional 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).

and Jacoby (2010) argue that higher rates of observed compliance with the injunctive orders tasked to the executive represent 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, Huneeus (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) 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 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 engage in implementation. 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). Indirect executive implementation involves executive decisions to set and carry-out a policy of respect for rights.

5.2 Executive Non-Implementation Incentives

Executive interests in maintaining power generate incentives not to implement regional court decisions. Incentives not to implement regional court decisions include direct 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.”¹² 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). Agents often maintain a significant informational advantage over principals 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 helps 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, regional court implementation may reduce the decision-making power of the executive. By implementing regional court decisions, the principal also removes the ability to readily rely on some of the repressive policies and tactics from his 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 the presence of particular democratic institutions

¹²See *Villagran Morales et al. v. Guatemala (The Street Children Case)* (Compliance with Judgment, Nov. 27, 2003), para. 3.

have little effect on repressive policies when faced with violent internal dissent (Davenport, Moore and Armstrong 2007, Conrad and Moore 2010). In complying with regional court decisions, the executive removes the availability of particular tactics to deal with internal dissent and remain in power. Further, 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.¹³ 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 goals. However, when a regional court rules against a state for a rights violation, the regional court essentially 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). A regional court ruling against a state 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.¹⁴ 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 regional court implementation, 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 control.¹⁵ As a result, the

¹³Conrad 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.

¹⁴See *Trujillo Oroza v. Bolivia* (Reparations 2002), para. 98. operative para. 2.

¹⁵This is termed “moral hazard” by Mitchell (2004), or the unobserved actions of the agents.

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 a judgement against the state, executive implementation 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 regional court judgment implementation is particularly costly and often represents a potential threat to 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 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.

5.3 Threats to Executive 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 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 implementation of regional court decisions. Direct threats include international and domestic pressure on the executive to engage in implementation.¹⁶ Indirect threats to executive political survival, the focus of this paper, stem from the decisions of other actors to implement regional court decisions. Various actors engage in regional court 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 significant reputation costs if domestic judges and/or legislators engage in implementation of regional court decisions, 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.¹⁷ 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 engage in implementation influences the executive's incentives to execute implementation 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. The executive must then decide whether to respect rights by enforcing the actions taken by the domestic judiciary 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 judicial actors. Further, the executive faces potential domestic audience costs for the implementation failure in the

¹⁶I address direct threats to executive survival in more detail in a chapter of my dissertation.

¹⁷I elaborate further below on the potential loss of public support for domestic failure to implement regional court-ordered policy.

face of implementation by domestic judges 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. If regional court effectiveness hinges on the executive's expectation of implementation by the domestic judiciary, when do domestic judges possess incentives to implement the regional court's decision?

5.4 Domestic Judicial Interests (Not) to Implement Regional Court Decisions

As I argue above, the executive often engages in domestic implementation of regional court decisions as a result of indirect threats to political survival, or, the expectation of the extent of implementation by other domestic actors. However, domestic judges face various incentives to evade implementation of regional court decisions, particularly where implementation entails high costs. The three primary factors that generate incentives for domestic judges to evade implementation include low public support, procedural difficulties, and low shaming costs for evasion.

First, low public support for the the domestic judiciary limits its effectiveness and dampens the will of domestic judges to engage in implementation. Public support for the domestic court tends to be low in states with weak domestic judiciaries. As a result, domestic judges may not be able to effectively implement regional court decisions, either as a result of the lack of technical capacity and resources or because of a lack of power to hold legislators accountable for evasion of domestic court decisions. 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 the other highly political institutions because they are “supposed to act as impartial, apolitical referees that are required to advance legal arguments in defense of their decisions” (52).¹⁸ However, in cases where other political actors influence domestic judges or the court as a whole behaves in an overtly political manner in its decision-making, relatively low public support plagues the institution, meaning that the domestic court is not likely to be very effective in compelling domestic actors to implement its decisions.

Citizens value judicial independence and respect for regional or domestic judicial decisions (Vanberg 2005, Carrubba 2005, Staton 2006, Carrubba 2009).¹⁹ A number of reasons have been offered to explain

¹⁸This 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.

¹⁹While most scholars highlight citizen support for the domestic judiciary, the reasons offered for this support can be extended to the regional court as well.

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 implementation of a regional court judgment 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 pressure elected officials to implement 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 concentrate their efforts and resources elsewhere.

While limited public support negatively influences the incentives of domestic judges to engage in implementation of regional court decisions, limited public support for the domestic judiciary also results in severe resource constraints. Where the domestic judiciary receives limited public support, the state grants fewer resources to the court. Regional orders to identify, investigate, and punish perpetrators represent costly reparations, particularly in the context of large-scale human rights violations. The IACtHR often hears cases involving groups of victims and egregious human rights violations (Baluarte and DeVos 2010, Huneus 2012). Domestic judiciaries suffering from low capacity or the lack of resources do not necessarily result in completely incompetent courts, but these courts must be selective in deciding how to expend resources. Investigation of cases often involve large use of state 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 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.²⁰ 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.²¹ The rights violations in this case occurred more than twenty years after the case was given 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 state does not provide adequate financing for investigations by the domestic court.

Second, procedural difficulties make implementation by domestic judges substantially 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).²² Because domestic judges interact with non-judicial actors, including actors in other branches of government, who may have different incentives than those of the regional court, implementation of regional court decisions often represents an inherently difficult task (Ginsburg 2003, Finkel 2008, Pozas-Loyo and Rios-Figueroa 2010). Domestic 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” (Huneeus 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 evade or ignore implementation of 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

²⁰See *Jeremias Osorio Rivera y Otros v Peru*, Merits Report No. 140/11, (October 31, 2011).

²¹See Inter-American Commission of Human Rights Press Release No 68/12 “IACHR Takes Case Involving Peru to the Inter-American Court” (June 15, 2012).

²²However, 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.

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.²³ 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 implementation. Given that no formal rules governing domestic reception of IACtHR rulings exist, domestic courts may face conflicting incentives, often rooted in domestic politics, related to implementing these decisions.

The domestic judiciary suffers from various other procedural difficulties in its ability to implement a regional court decision domestically as well. 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 the regional court finding of a violation 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 conflicts with regional court orders.²⁴ 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.²⁵ 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.²⁶ See 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

²³See *Apitz-Barbera et al. (SFirst Court of Administrative Disputes) v. Venezuela*, 2008 Inter-Am. Ct. H.R. (ser. C) No. 182, at 246 (Aug. 5, 2008).

²⁴Peru and Colombia are important exceptions, as both states have passed legislation which establishes the specific steps that should be taken to implement certain supranational 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.

²⁵See *Castillo Paez v. Peru* (Compliance with Judgment), Inter-Am. Ct. HR, Resolution of 28 November 2002, paras. 7 and 10.

²⁶See *Bueno Alvez v. Argentina* (Merit, Reparations, and Costs), Inter-Am. Ct. HR, Judgment of 11 May 2007, operative para. 8

the final arbiter in interpreting the American Declaration and constitutional law (Naddeo 2007, Levit 1999). 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 the language of the treaty, in ensuring compliance. This argument is easily extended to regional court decisions as “the clarity of IACtHR remedies influences reactions of state governments to these remedies” (Staton and Romero 2012).

5.4.1 The Role of Domestic Judicial Power in Generating Threats to Executive Survival

Domestic judicial power represents an institution capable of constraining the ability of domestic judges to evade implementation of regional court decisions. Powerful domestic judiciaries make it difficult for domestic judges to ignore regional court orders associated with tasks such as reopening and investigating cases. A powerful domestic court generates incentives for implementation by enhancing public support for the domestic judiciary. A powerful judiciary is defined as an autonomous and effective court. Domestic judges possess greater incentive and capability to implement regional court decisions when the domestic judiciary possesses some degree of autonomy. The likelihood of enforcement of supranational litigation by domestic courts increases when domestic courts are free from external political influence, particularly the influence of state agents responsible for violations.²⁷ Freedom from external political influence enhances public support for the institution as the court functions more effectively as a check on the behavior of other governmental actors.

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.²⁸ 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 (Rodriguez-Garavito 2011, Gauri and Brinks 2008, Vanberg 2005, Carrubba 2005). Once the domestic court hands down a decision, other domestic actors, including the legislature, executive, and various state agents, assume the responsibility of implementing the decision. However, like the regional court, domestic courts

²⁷Simmons (2000) further highlights the importance of judicial independence in enforcing human rights, 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).”

²⁸See Staton and Moore (2011) for further discussion of the concept of judicial power as encompassing autonomy and effectiveness.

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 the cooperation of the very institutions whose acts the court has just struck down (6).” Effectiveness also enhances public support for the domestic court, which increases the ability of the court to hold other domestic actors accountable for implementation of domestic court decisions. The ability of the domestic court to represent the final arbiter in making decisions demonstrates the independence and effectiveness, or power, of the court. The role of final arbiter plays a key role in effectiveness where the domestic judiciary may be enforcing decisions that are unpopular with other domestic institutions.

Further, states likely allocate relatively more state resources for the purpose of domestic implementation to powerful domestic judiciaries, or domestic judiciaries with extensive public support. Public backing for the national court makes it more difficult for the state to withhold the resources necessary for implementation of 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. A powerful domestic judiciary, or an autonomous and effective judiciary, possesses these resources as a result of public pressure to maintain the legitimacy of the domestic court.

Also, domestic judicial power provides incentives for domestic judges to implement 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 a 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 in the case of legislation that conflicts with regional court implementation.

Finally, domestic judicial power increases transparency and raises the shaming costs associated with evasion of 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 which actor(s) is responsible 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. The ability of citizens and international audiences to observe evasion increases the costs of shaming for domestic judges because public support for the domestic court declines in the face of evasion, which can damage the legitimacy of the domestic court.

Where a domestic judiciary functions with autonomy and effectiveness, the institution creates incentives for domestic judges to implement regional court decisions, despite the incentives they may possess to evade decisions of the regional court. Further, the executive chooses to respect rights in expectation of implementation by the domestic judiciary. Finally, regional court judges, in expectation of domestic implementation, find states with powerful domestic judiciaries to be in violation relatively more often. As a result, I posit:

***H1 - Domestic Judiciary Hypothesis:** As domestic judicial power rises, supranational court decisions that find human rights violations are more likely to improve domestic respect for human rights.*

Of course, other domestic actors play a potentially important role in regional court implementation (Cavallaro and Brewer 2008, Huneus 2012, Hillebrecht 2012). One might argue that a focus exclusively on the domestic judiciary is misguided, given all of the actors involved in regional court implementation. A focus on the domestic judiciary is important because current scholarship largely ignores judicial and prosecutorial politics in regional court implementation and while scholars acknowledge that domestic judiciaries play an important role in regional court implementation, scholars have neglected to study the politics of judicial actors (Huneus 2012). Huneus (2012) argues that “the actor with the power to comply frequently resides outside the executive, forming part of a formally autonomous justice system...and study of responses to Inter-American Court remedial orders, reveals that autonomous courts can be a vexing source of non-compliance when they have institutional reasons to resist” (153-155).” This means that the incentives of

domestic judges warrant further examination.²⁹ Here, I focus on the role of domestic judicial power in generating incentives for the domestic judiciary to implement regional court decisions. The executive then behaves in *expectation* of judicial implementation. However, I do not neglect the role of other domestic actors in regional court implementation. In fact, I present the theoretical importance of various domestic actors, particularly the executive, the legislature, and civil society more fully in other chapters of my dissertation. Here, I focus specifically on the role of the domestic judiciary, while controlling for the implementation incentives and efforts of other domestic actors.

Further, above I argue that regional court violations found against each state influence respect for rights when the domestic judiciary is relatively powerful. However, as an extension to H1, violations found against other countries in the region play a potentially important role in state behavior regarding respect for rights as well. Given that implementation of regional court decisions entail costs, states aim to deter the probability of shaming by the regional court. As such, states not only respond to violations found by the regional court within their own state, but violations found by the regional court likely trigger a response by officials in neighboring states regarding their human rights practices. Neighboring states, aiming to avoid shaming by the regional court and the subsequent costs associated with implementation of remedial orders, including the potential systemic and institutional changes needed to remedy the violation, use 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 (on Legal Affairs and Rights 2010). Helfer and Voeten (2013) 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. As an example, consider a 2001 case in which the IACtHR found Peru’s amnesty law invalid.³⁰ Argentina’s Supreme Court declared Argentina’s amnesty law unconstitutional in 2005, citing the *Barrios Altos* case as precedent.³¹

²⁹Huneus (2012) argues specifically that “we need to investigate the politics of the national justice systems: why and when, exactly, are judges and prosecutors loath to comply with international institutions?” (155).

³⁰See *Barrios Altos (Chumbipuma Aguirre et al. v. Peru)* (Merits), Inter-Am. Ct HR, 14 March 2001, Ser. C, No. 75, operative para. 4.

³¹See (“La Cámara Federal Confirmó la Invalidez de Leyes Exculpatorias” 2001; §Argentina Attorney-General Confirms Unconstitutionality of Amnesty Laws 2002).

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.³²

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).³³ 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 for which violations are found, 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 may change their human rights behavior in response to regional court judgments in other states with similar human rights practices. As a result, I posit:

***H1a - Regional Hypothesis:** As supranational court decisions that find violations of human rights within the region rise, respect for rights rises in countries where the domestic judiciary is relatively powerful.*

6 Research Design

6.1 Spatial-Temporal Domain

I examine two supranational 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 has reached unprecedented levels over the past two decades.³⁴ European Court activity reached such high levels in the 1990s, that the Court undertook major reforms to streamline their procedures and increase the effi-

³²Importantly, executive *expectation* of implementation by the domestic judiciary in Argentina, despite the IACtHR ruling against Peru, triggered reform in Argentina.

³³While Sikkink (2011) refers specifically to international court prosecutions against individuals, rather than states, these arguments are easily extended to states, in which domestic actors also confront costs in the face of international litigation as well.

³⁴The 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 analysis of this Court's activity inherently difficult.

ciency 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.³⁵ 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). I examine ECtHR judgments from 1981-2006 for all ECHR contracting parties.³⁶

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).³⁷ I examine IACtHR judgments only for those states under the compulsory jurisdiction of the IACtHR for the years 1989-2010.³⁸

³⁵The 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.

³⁶Court 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.

³⁷These 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.

³⁸Data availability limits the ability to examine IACtHR rulings prior to 1989.

6.2 Examining Evidence from the ECtHR and the IACtHR

6.2.1 Dependent Variable: Regional Court Effectiveness

In this paper, I seek to explain regional court effectiveness. I am specifically interested in whether the regional court finding of a violation is associated with human rights practices within the state. The stylized timeline below shows the process from the occurrence of a human rights violation through the regional court case, and the subsequent effectiveness of that court case.

$$\begin{aligned} & HumanRightsViolation_{t0} \rightarrow DomesticRemediesExhausted_{t1} \rightarrow RegionalCourtCase_{t2} \rightarrow \\ & \quad RegionalCourtRuling_{t3} \rightarrow Compliance_{t4} \rightarrow RespectforRights_{t5} \rightarrow \\ & \quad \quad Effectiveness = Respect_{t5} - Respect_{t0} \end{aligned}$$

A primary challenge in determining the effectiveness of a regional court finding of a violation involves determining when $t5$ should be assessed. In other words, how much time should the regional court give the state to implement a court ruling ($t3$) or when should effectiveness (the difference in respect for rights following the 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 a 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.³⁹ 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 final resolution, indicating full compliance by the respondent state.⁴⁰ 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

³⁹Hawkins and Jacoby (2010) base their assessment of typical court behavior on their reading all of the Court's judgments in their study.

⁴⁰Hawkins 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).

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 observe the influence of the regional court on respect for rights.⁴¹

In order to capture 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 represent a difficult test of the hypothesis because evidence is particularly difficult to obtain, and standards of proof are high, meaning that the ability of the court to render judgments against the state is much more difficult (Lupu 2012).⁴² For this reason, examining physical integrity rights likely biases significant 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 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.

6.2.2 Independent Variables

The key independent variable examined is the interaction of a regional court ruling (**Regional Court**) and strength of the domestic judiciary. I examine ECtHR and IACtHR findings of human rights violations related to physical integrity rights. The primary variable of interest is binary, in which a 1 indicates a ECtHR or

⁴¹Hawkins 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.

⁴²While Lupu (2012) 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.

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 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.

I argue that an independent domestic judiciary possessing autonomy and the power to induce a response from other actors charged with implementation increases the likelihood of observing regional court effectiveness. Various measures of judicial independence and effectiveness have been utilized in the literature.⁴³ 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).⁴⁴ 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 1960-2009.⁴⁵ 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”

⁴³See Ríos-Figueroa and Staton (2008) for further discussion of the existing measures of judicial independence.

⁴⁴While Linzer and Staton (2011) refer to this concept as “judicial independence,” it closely resembles the concept of judicial power I describe earlier, as encompassing autonomy and effectiveness.

⁴⁵These 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 Ríos-Figueroa and Staton (2008), and the Fraser Institute’s measure of legal structure and security of property rights as also described in Ríos-Figueroa and Staton (2008).

(Linzer and Staton 2011, 14).⁴⁶

In order to examine H1a, 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 those 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 violations of physical integrity were found by the regional court 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.⁴⁷

6.3 Control Variables

In order to capture the role of domestic judicial power in generating executive incentives, I control for other international and domestic factors likely to influence executive implementation incentives.⁴⁸ First, the executive faces high shaming costs when economic benefits are at stake. As Lebovic and Voeten (2009) argue, multilateral aid institutions likely reduce aid in the presence of signals from the international community that certain state actions make them politically acceptable targets. Non-compliance with supranational court decisions signals the absence of state intention to respect rights. I use an indicator of net official development assistance (**Aid**) received by countries in current US dollars taken from the *World Development Indicators*. This variable represents disbursements of loans to countries by agencies of the Development Assistance Committee (DAC), multilateral agencies, and non-DAC countries to promote the economic development and welfare in countries and territories. Second, as executive dependence on domestic constituents grows, respect for rights increases because the executive faces higher incentives to implement regional court decisions. In states where voters can credibly threaten removal from office, the executive responds to voter

⁴⁶For example, the XCONST measure used by Marshall and Jagers (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).

⁴⁷A value of 0 is an indication of no violations of physical integrity found by the regional court or a substantially large difference in physical integrity rights scores between a country and those in the region, or both.

⁴⁸Many of these domestic and international factors are examined in other chapters of my dissertation.

demands to implement regional court decisions. In order to control for threats to executive survival as a result of dependence on a domestic audience, I utilize a variable (**W/S**) developed by Bueno de Mesquita et al. (2005), which measures the ratio of the winning coalition (W) to the selectorate (S).

Executive implementation, and subsequent regional court effectiveness, may also decline as the number of veto players rises, particularly those that are likely to delay or inhibit policy change. Additional veto players may draw out or stall the process of regional court implementation. Larger numbers of veto players also make it more difficult for voters to monitor evasion of regional court implementation by legislators. I employ a variable capturing checks and balances (**Checks**) taken from the World Bank's *Database of Political Institutions*.⁴⁹

Legislative electoral rules also potentially influence executive incentives to implement regional court decisions, as the executive engages in implementation in *expectation* of implementation by the legislature as well as the judiciary. I argue that as the number of access points increases, which are policymakers susceptible to lobbying, the cost of lobbying elected officials declines and voters are increasingly likely to hold their elected officials accountable (Ehrlich 2007). In order to capture the number of access points, I utilize an indicator measuring the mean district magnitude of the House (**DistMag**). This indicator is taken from the World Bank's *Database of Political Institutions*.

Further, freedom of expression influences domestic actor's incentives to implement regional court decisions. Freedom of expression is conceptualized as the extent to which citizens can express their views and opinions without government sanction or censure. Freedom of speech is particularly important because it allow individuals to identify and publicize regional court cases, including speaking out against the actors responsible for human rights violations found by regional courts. I utilize the CIRI measure of freedom of speech (**Speech**), which indicates the extent to which freedoms of speech and press are affected by government censorship, including ownership of media outlets. This variable is coded on a 3-point scale where a "0" indicates complete government censorship of the media, a "1" indicates some censorship, and a "2" indicates no censorship (this does not imply absolute freedom, but instead means that there are freedoms to speak freely and print opposing views without fear) (Cingranelli and Richards 2010a).⁵⁰

The executive also likely behaves in expectation of the strength of civil society. I use a measure of HRO presence (**HRO**) that captures the presence of at least one HRO secretariat location in a given country-year.

⁴⁹For more detailed coding rules on the checks measure, see the Keefer (2005).

⁵⁰I also conduct robustness checks using *de jure* indicators of freedom of expression, that is, constitutional protection of freedom of expression (Keith 2002, Keith, Tate and Poe 2009).

Secretariat locations represent permanent office locations within a state and are based on organizational listings in the *Yearbook of International Organizations* (Murdie and Bhasin 2011). I also utilize a variable that captures legal expertise (**LegalExpert**) within a state. In order to capture the extent of legal expertise, I examine a variable that captures the presence of the International Bar Association's Human Rights Institute.

National Human Rights Institutions (**NHRI**) also potentially play an important role in the effectiveness of regional court decisions by influencing executive expectation of domestic implementation. The NHRIs examined here include classical ombudsman offices, human rights commissions, and human rights ombudsman offices. Data on the presence of NHRIs is taken from Koo and Ramirez (2008) who collected data on the presence of national human rights institutions from the International Ombudsman Institute, an organization for ombudsman offices worldwide.⁵¹ 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. This variable is coded a "1" for country-years in which an NHRI is present, and a "0" otherwise.

In addition to the institutional variables likely to influence executive expectation of implementation, 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).⁵² 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 GDP per capita (**GDP**) taken from the World Bank's *World Development Indicators*. The total population, 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

⁵¹More information on the International Ombudsman Institute can be found at <http://www.law.ualberta.ca/centres/ioi/>.

⁵²Scholars 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.

(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).⁵³

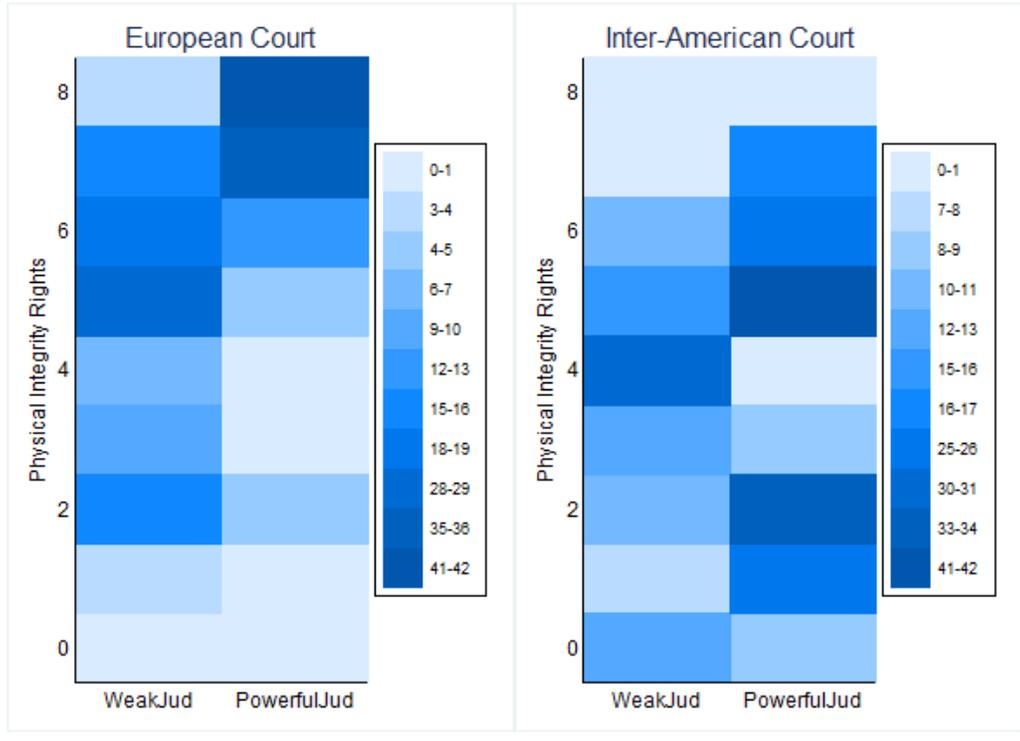
7 Initial Evidence

Figure 1 provides an initial analysis of the relationship between the regional court, powerful domestic judiciaries, and respect for physical integrity rights. The x-axis displays two columns, where the column on the right indicates a powerful judiciary and the column on the left indicates a weak judiciary for members of the ECtHR and the IACtHR.⁵⁴ The y-axis represents the physical integrity rights score of countries two years following the finding of a violation by the corresponding regional court. The shade of color indicates the percentage of country-years resulting in various physical integrity rights scores following the finding of a regional court violation, with darker colors indicating higher percentages and lighter colors indicating lower percentages. States under the jurisdiction of the ECtHR are much more likely to score a 7 or 8 on the physical integrity rights index following the finding of a violation by the ECtHR when the domestic judiciary is relatively powerful. However, countries with relatively weak domestic judiciaries show much more varied physical integrity rights scores following the finding of a violation by the regional court. The pattern remains similar with respect to the Inter-American Court. States score a 5-7 on the physical integrity rights index two years following the finding of a violation by the IACtHR when the domestic judiciary is relatively powerful much more often than when the domestic judiciary is relatively weak. States with weak domestic judiciaries show much more variation in physical integrity rights following the finding of a violation by the IACtHR. While these heat maps provide some initial evidence, they do not control for potential alternative causes or modeling specification issues. I account for these factors in the analysis below.

⁵³A two year lag is examined because the regional court's influence is lagged two years. A lag of one year is inappropriate for these models because it may potentially account for the influence of the court's judgement over a single year. However, models in which a one-year lag is examined produce similar results as those in which a two-year lag is examined.

⁵⁴Given that the measure of judicial power examined here is continuous, I generate a binary variable in which a powerful domestic judiciary in the European sample represents countries with a judicial power score greater than .7, and a 0 indicates otherwise. In the Inter-American sample, a powerful judiciary represents countries with a score greater than .5, and a 0 otherwise. I utilized different cutpoints for the two samples because, on average, countries in the European sample maintained relatively more powerful judiciaries than those in the Inter-American sample.

Figure 1: Influence of Regional Court Judgment and Powerful Judiciary on Physical Integrity Rights



8 Model and Estimation

To test both hypotheses, I employ a Bayesian hierarchical linear regression model in my analysis. 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 ran 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 of the log likelihood test are reported in Table 1 and indicate that in both the ECtHR and the IACtHR models, the parallel regression assumption is indeed violated.⁵⁵ 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 in the appendix. The parameter estimates are in the same direction and remain significant based on the ordered response model.

Table 1: Likelihood Ratio Test of Parallel Regressions Assumption

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

Further, using Bayesian analysis provides numerous advantages over traditional statistical approaches to the study of international relations. First, frequentist statistical techniques typically test hypotheses conditional 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 812 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.⁵⁶ Further, in maximum likelihood estimation, small sample sizes often produce cells with no observations and maximum

⁵⁵The approximate likelihood ratio test is calculated in Stata using the `omodel` command (Wolfe and Gould 1998).

⁵⁶This 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 little information include in the estimation.

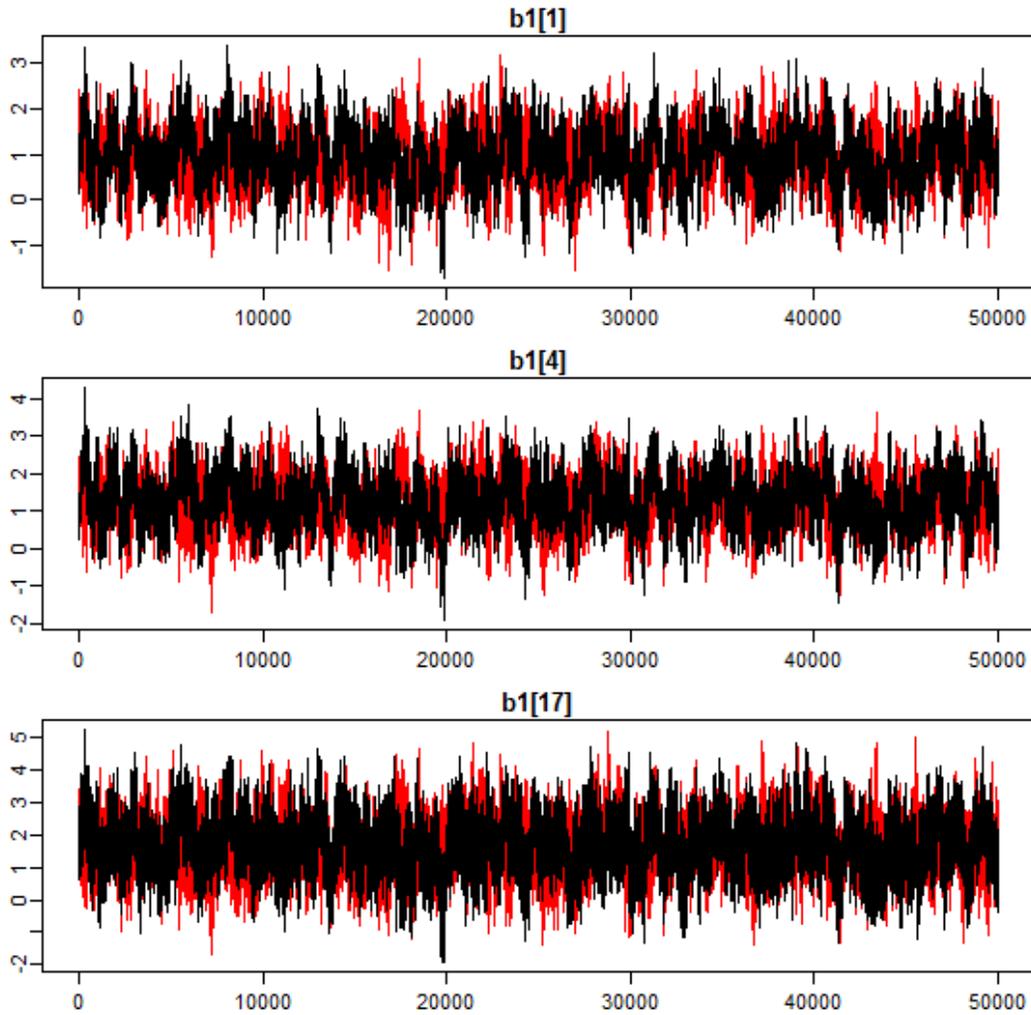
likelihood techniques may not be estimable and often result in nonconvergence. Bayesian estimation techniques do not rely on sufficiently large samples, but instead produce a large number of simulations from the posterior distribution, allowing one to describe this posterior empirically with the simulated values. Third, the heterogeneity in the cases examined here indicates that each country's baseline probability of domestic implementation of 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. The institutional and contextual variation in new members is particularly high. In rendering judgments, contextual differences make a one-size-fits-all policy difficult for the regional court to adopt. Using Bayesian analysis, I can account for unobserved heterogeneity using hierarchical modeling techniques (here, incorporating varying slopes and varying intercepts) (Gelman and Hill 2007). 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 simple. 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 judicial power coefficient (in both models), are 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:

$$\begin{aligned}
y_1 &\sim \text{Normal}(\mu_i, \tau) \\
\mu_i &= \alpha_i + C_{it}\beta_i + Z_i + \varepsilon_i \\
\alpha_i &\sim \text{Normal}(\mu_{i1}, \sigma_1^2) \\
\mu_{i1} &= \alpha_0 + R_i\delta_1 + v_i \\
\beta_i &\sim \text{Normal}(\mu_{i2}, \sigma_2^2) \\
\mu_{i2} &= \beta_0 + R_i\delta_2 + v_i
\end{aligned}$$

The C variable represents the regional court judgment and domestic judicial power interaction term. 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 the regional court violations 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 regional court finding of a violation is conditional on regional violations.

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 150,000 iterations, discarding the first 20K iterations from each chain. Convergence was assessed with visual diagnostics, including traceplots 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. Traceplots for three of the random slope parameters (for the UK, Belgium, and the Czech Republic) in the ECtHR model are show in Figure 2, and random slope parameters (for Guatemala, Brazil, and Bolivia) in the IACtHR model are shown in Figure 3. The traceplots indicate good mixing of the chains. Density plots for three of the random slope parameters (UK, Belgium, and Czech Republic) are shown in Figure 4 and for the IACtHR (Guatemala, Brazil, and Bolivia) in Figure 5. The unimodality of the density estimates indicate evidence of convergence.

Figure 2: ECtHR Traceplots (UK, Belgium, Czech Republic)



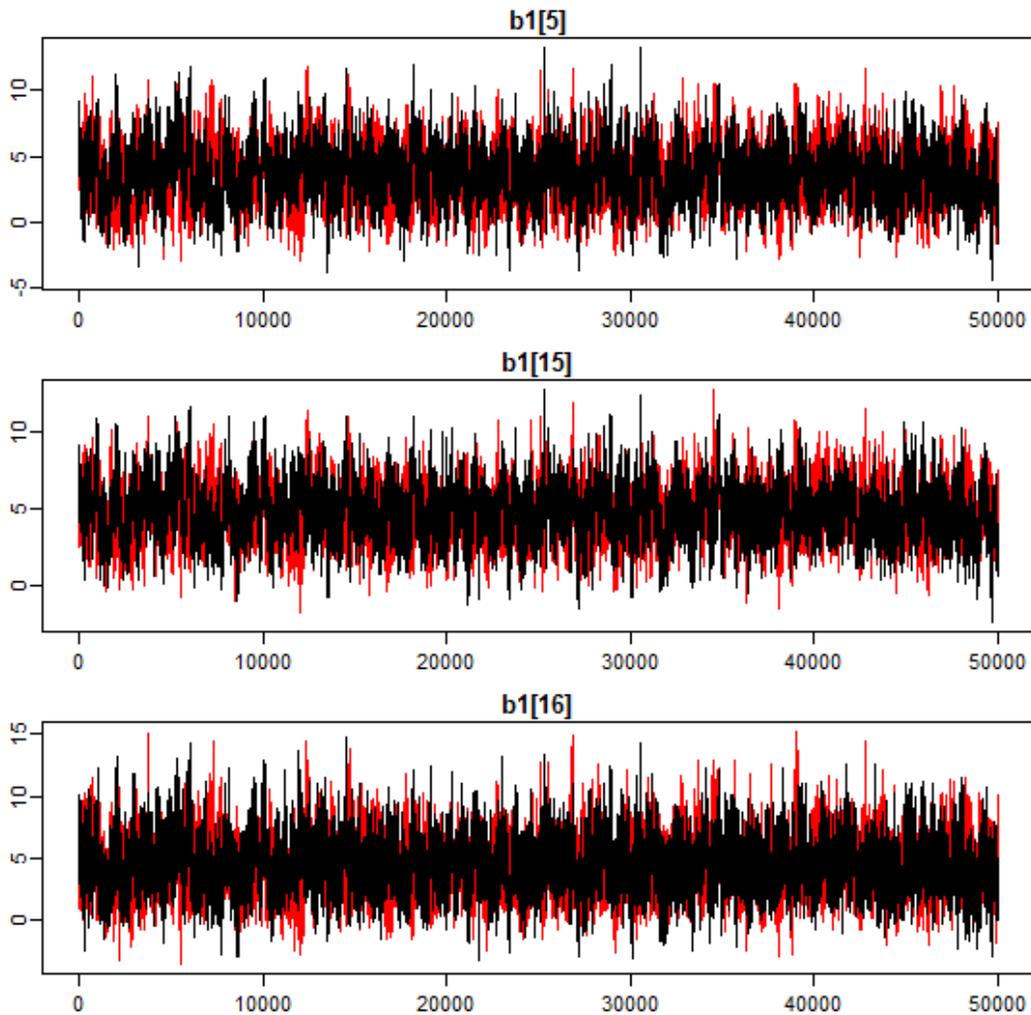
9 Results

Observing a positive parameter estimate for β_i lends support to H1.⁵⁷ A positive estimate indicates that as domestic judicial power rises, the finding of a violation by the regional court is associated with greater respect for rights. I begin with estimates and 90% credible intervals for the β_i parameters for each country under ECtHR jurisdiction, which are displayed in Figure 6.⁵⁸ Almost all countries (with the exception of Malta, Serbia, and Bosnia) have positive 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

⁵⁷ β_i represents the interaction between the finding of a violation by the regional court, here the ECtHR, related to physical integrity rights and domestic judicial power.

⁵⁸Parameter estimates are shown as dots, 90% credible intervals as the thin line, and 68% credible intervals as the thicker line.

Figure 3: IACtHR Traceplots (Guatemala, Bolivia, Brazil)

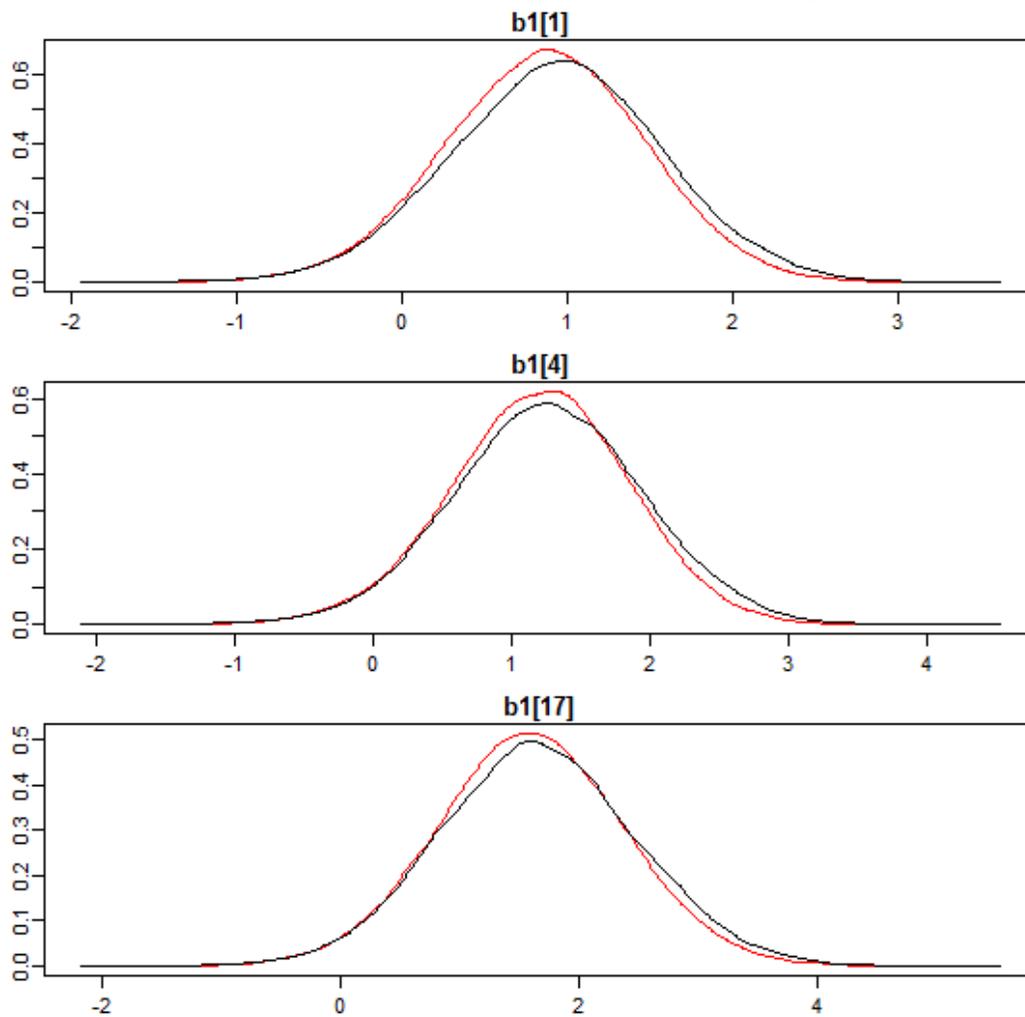


judiciary is relatively powerful.⁵⁹ In some countries, physical integrity rights improve by 1 point or more, which is a considerable change in respect for rights on an eight point scale in a sample with a mean around six. While some of the credible intervals cross zero, Figure 6 indicates that nearly 90% of the probability distribution of the posterior estimates are positive for 39 of the 46 countries in the 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.

Figure 7 displays the means of the other variables included in the first level of the model. The constituent terms for the interaction variable (discussed above) indicate further support for the hypothesis. In-

⁵⁹Bosnia, Serbia, and Malta represent countries with very low judicial power estimates in the sample. This is perhaps an indication of the high uncertainty regarding the influence of the ECtHR in these parameter estimates.

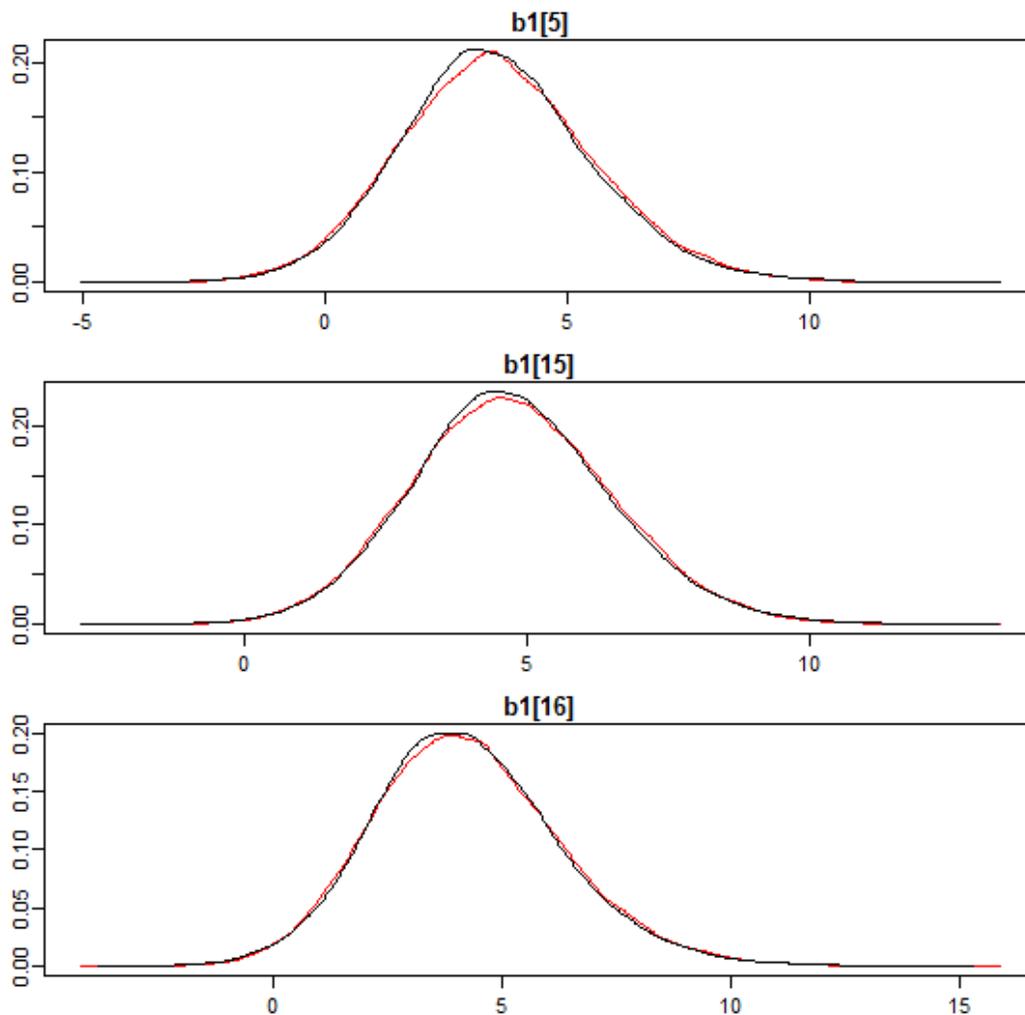
Figure 4: ECtHR Density Plots (UK, Belgium, Czech Republic)



terestingly, 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. Most of the control variables are in the expected direction. The W/S ratio, which captures direct executive pressure to implement regional court decisions is positive and in the expected direction. The lagged physical integrity rights variable has a positive influence on rights and civil war shows a negative influence on rights, as posited. District magnitude, checks and balances, freedom of speech, the presence of human rights organizations, legal expertise, and NHRIs all have small effects and/or credible intervals that contain zero.

Turning to the IACtHR, estimates and 90% credible intervals for the β_i parameters for each country are displayed in Figure 8. The results for the IACtHR model are stronger. All countries have positive

Figure 5: IACtHR Density Plots (Guatemala, Bolivia, Brazil)

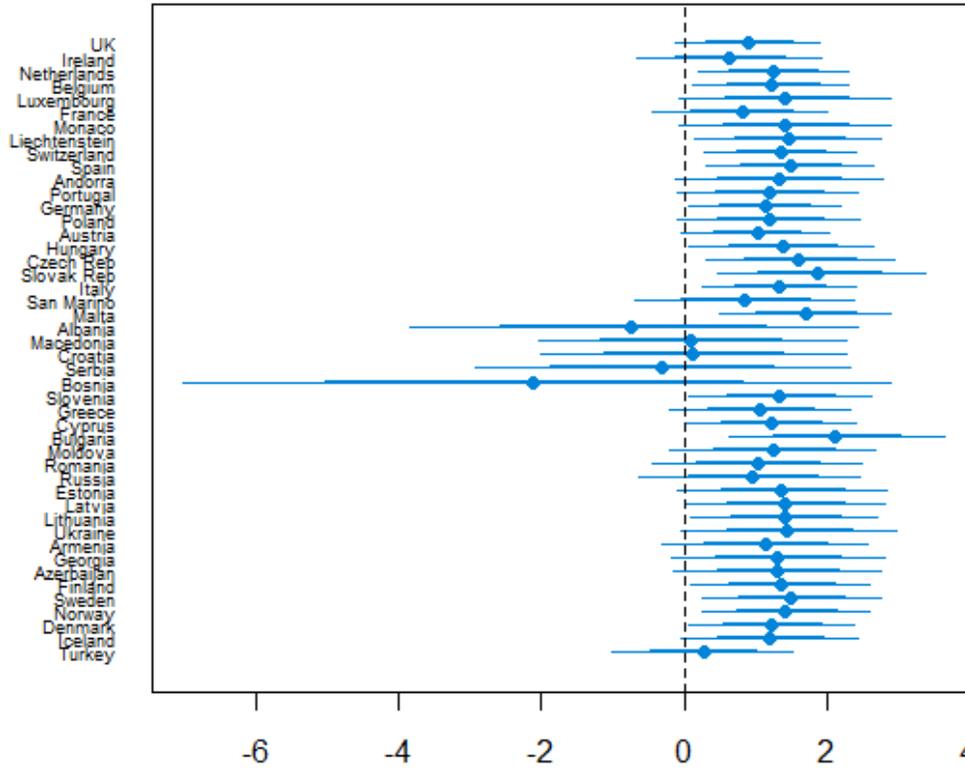


parameter estimates, many indicating an average 2-4 point increase in physical integrity rights two years following the finding of a violation by the IACtHR when the domestic judiciary is relatively powerful.⁶⁰ Credible intervals for the Dominican Republic, Trinidad, Barbados, Panama, and Paraguay contain zero, but the trend displayed in Figure 8 is that nearly 90% of the posterior probability estimates are positive for almost all countries in the region.

Figure 9 displays the means of the posterior distribution for the other variables included in the model. Again, much like the ECtHR, when the domestic judiciary has no power, a ruling for the plaintiff by the IACtHR has a large negative influence on respect for physical integrity rights two years following the finding

⁶⁰The 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 for improvement.

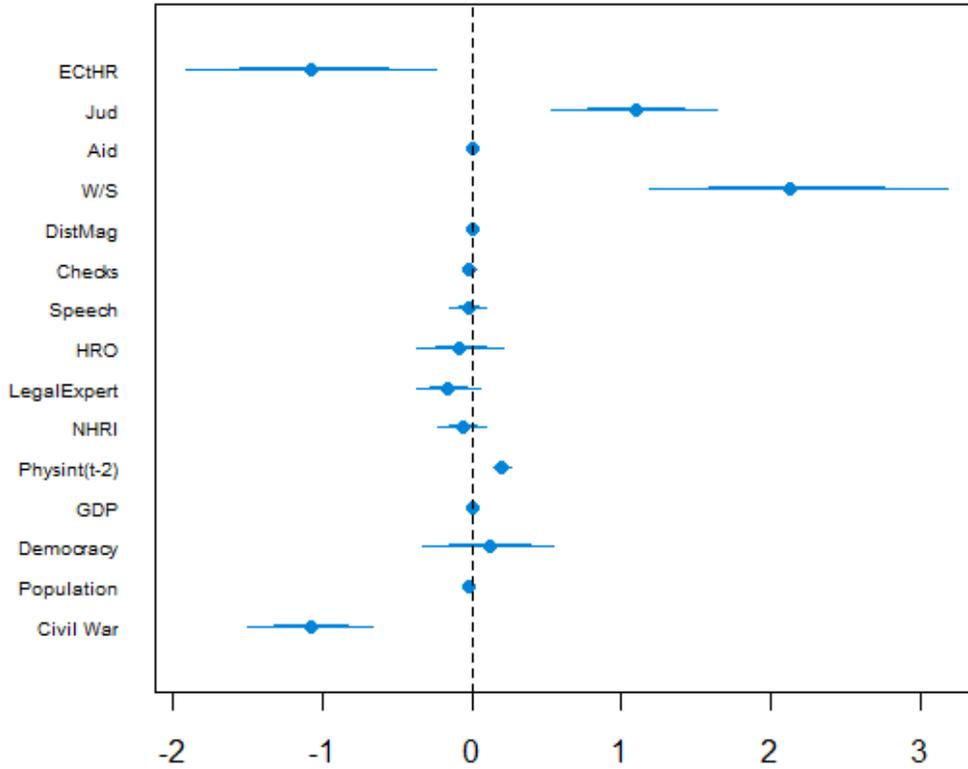
Figure 6: ECtHR Model Estimates, ECtHR Violation*Judicial Power Interaction



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. Both of the 90% credible intervals for these parameter estimates do not contain zero. Like the ECtHR model, lagged physical integrity rights has a positive influence on respect for rights and civil war has a negative influence. Neither of the credible intervals for these variables contain zero, indicating that 90% of probability estimates are in the posited direction. Most of the other variables in the model show small effects and the credible intervals contain zero, indicating that there is a high probability that the posterior estimates contain zero.

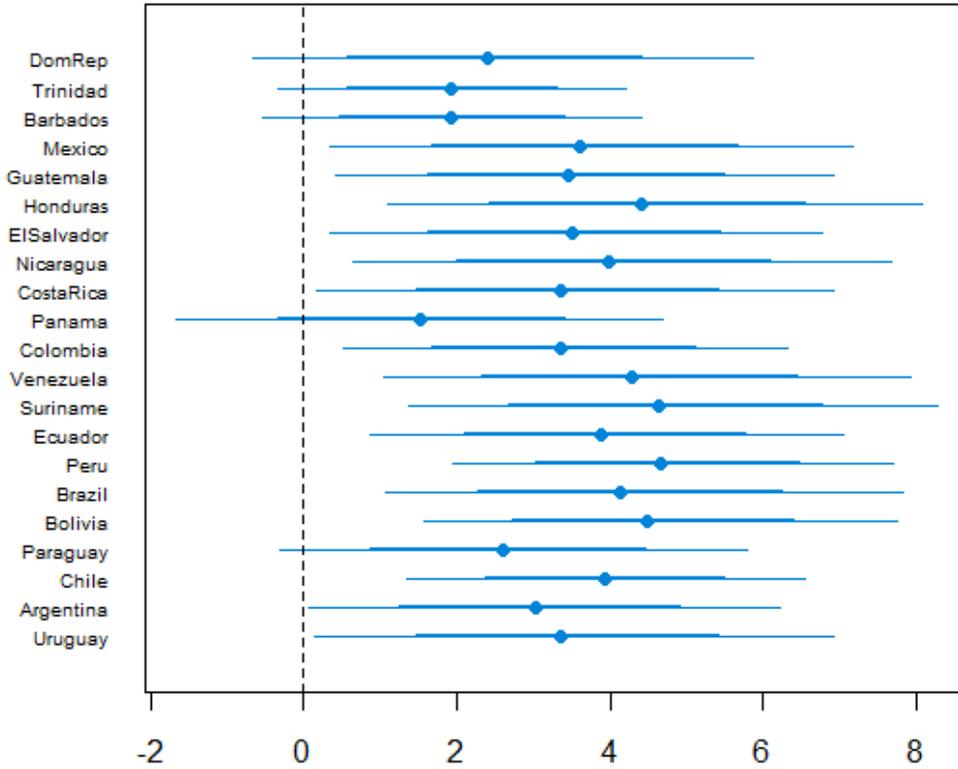
Turning to H1a, a positive parameter estimate for (δ_2) indicates the effect of the cross-level interaction between the level-1 and level-2 predictors (Steenbergen and Jones 2002). The level-1 predictor represents

Figure 7: ECtHR Model Estimates



the interaction between a regional court violation 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. A positive parameter estimate indicates that the finding of a violation by the ECtHR has a positive influence on respect for physical integrity rights when domestic judicial power is relatively high and as the number of violations in the region and the similarity in physical integrity rights score rise. Figure 10 displays the estimates and 90% credible intervals for the influence of this cross-level interaction on physical integrity rights in each country in the sample (δ_2). Figure 10 indicates that violations found by the ECtHR in the region positively influence executive incentives to implement regional court decisions, and therefore, positively influence respect for rights. Most countries in the European sample observe around one point improvements in their physical integrity rights

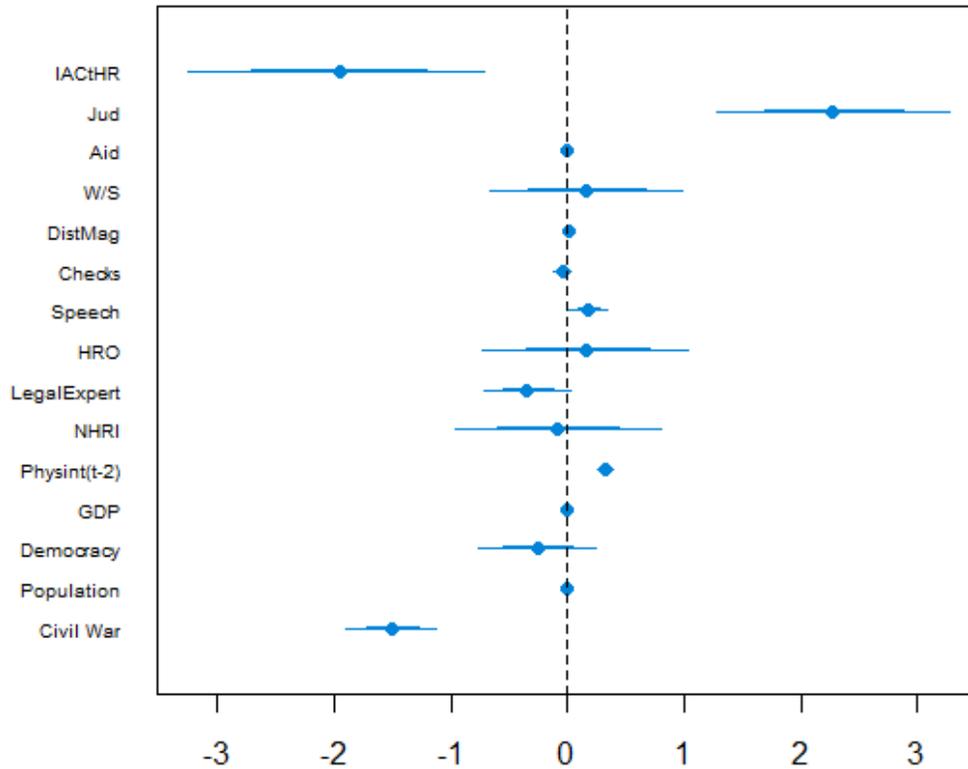
Figure 8: IACtHR Model Estimates, IACtHR Violation*Judicial Power Interaction



score. This shows that the influence 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 H1a. Figure 11 displays the estimates and 90% credible intervals for each country for the cross-level interaction between the level-1 and level-2 predictors (δ_2). A positive parameter estimate indicates that the finding of a violation by the IACtHR has a positive influence on respect for physical integrity rights when domestic judicial power is relatively high and as the number of violations in the region and the similarity in physical integrity rights rises. Figure 11 shows that while some of the credible intervals contain zero, I observe positive parameter estimates for all countries in the sample. These results provide support for H1a, which indicates that violations found by the IACtHR against each individual country as well as violations found by the IACtHR in the region positively

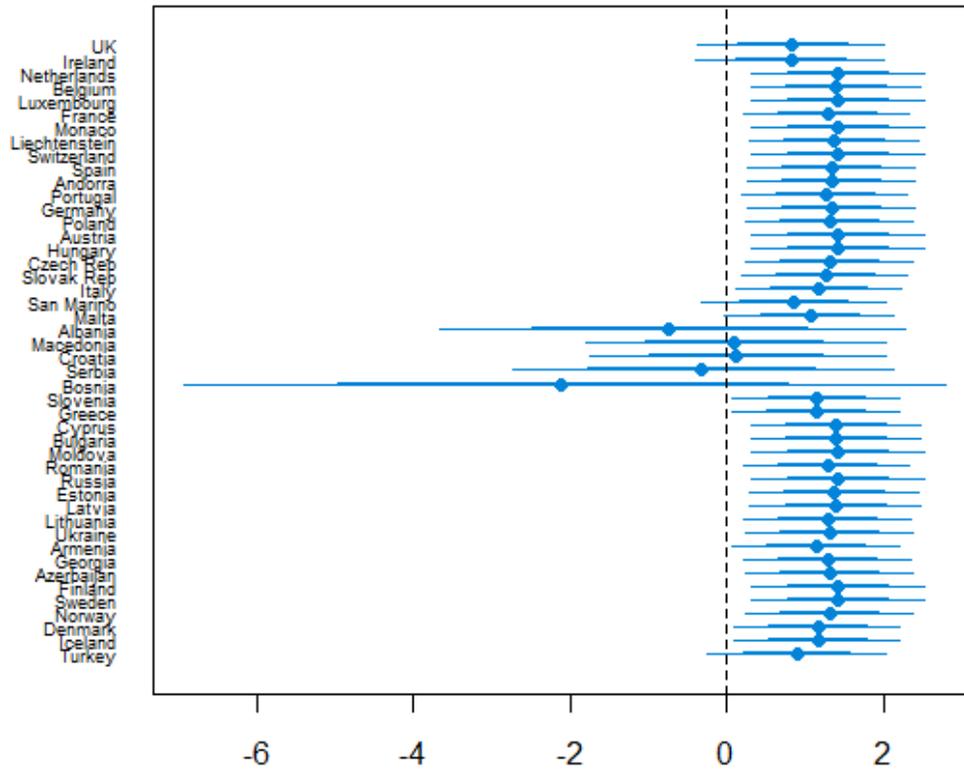
Figure 9: IACtHR Model Estimates



influence respect for rights when domestic judicial power is relatively high.

With respect to both the ECtHR and the IACtHR, the results lend support to the theoretical expectation that the executive behaves in *expectation* of implementation by the domestic judiciary. While the domestic judiciary may have incentives *not* to implement regional court decisions, domestic judicial power generates implementation incentives. The estimates support H1, indicating that domestic judicial power is of particular importance for regional court effectiveness. I also find support for H1a, which indicates that the regional court is influential when it renders judgements in the region, not only on the state it shames in its ruling, but also on other states in the region.

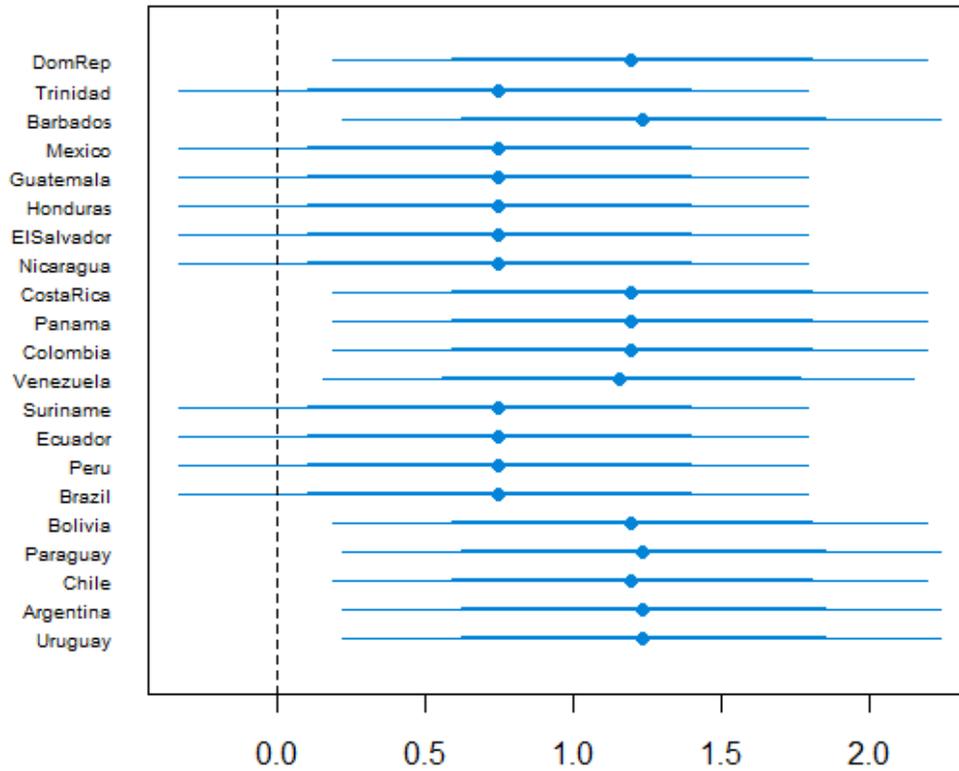
Figure 10: ECtHR Regional Effects



10 Conclusion

Conventional wisdom suggests that international legal commitments, lacking hard enforcement mechanisms, have little influence on state behavior. In this paper, I suggest that regional human rights courts do, in fact, influence state behavior. Drawing on recent work that highlights the wide variation in state response to international legal commitments, I argue that regional court influence is largely conditional on domestic politics. More specifically, the executive responds to expectations of domestic judicial implementation by instituting and engaging in a policy of respect for rights. Domestic judicial power generates domestic judicial incentives to engage in implementation and consequently, the executive expects implementation by the domestic judiciary when the domestic judiciary is powerful. The empirical evidence lends support

Figure 11: IACtHR Regional Effects



to these predictions. I find that regional courts are more effective in improving respect for rights when the executive expects implementation, 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. The ECtHR was 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). 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 in a rights-respecting region.⁶¹

Further, the IACtHR, formed in 1979, 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 protection of human rights (Buergenthal 2005).⁶² However, 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 Inter-American system. This inequality contributed to political instability, 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.⁶³ The

⁶¹Of 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.

⁶²The 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.

⁶³Buergenthal (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.”

need to implement more institution-level changes generated widespread noncompliance with IACtHR decisions. These difficulties have plagued 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.

These results also point to additional avenues for future research. Executive *expectations* also stem from the activities of other actors, most notably the legislature and civil society. A more extensive analysis of these particular actors will likely prove fruitful.⁶⁴ Further, the influence of regional court decisions on other countries in the region appears to play an important role in implementation efforts, as well as the effectiveness of the regional court. These, in addition to other questions, highlight the importance of the study of regional human rights legal bodies, particularly supranational courts, in their ability to constrain state behavior.

⁶⁴I examine the influence of these other actors in more depth in other chapters of my dissertation.

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Table 2: Appendix: Ordered Logit Results: Influence of Regional Court Judgment and Powerful Judiciary on Physical Integrity Rights

Parameter Estimate (S.E.) Reported	ECtHR	IACtHR
Regional Court*Judiciary (t-2)	.967* (0.320)	2.691* (2.128)
Regional Court (t-2)	-2.148** (1.082)	-2.617** (1.566)
Judiciary (t-2)	2.799*** (0.7470)	4.420*** (0.824)
Aid (t-2)	0.003* (0.002)	0.000 (0.002)
W/S (t-2)	1.611** (0.895)	0.791 (0.797)
DistMag (t-2)	0.008** (0.003)	0.006 (0.007)
Checks (t-2)	0.177** (0.056)	-0.073 (0.070)
Speech (t-2)	0.072 (0.167)	0.338** (0.164)
Legal Expert (t-2)	-0.042 (0.241)	-0.655** (0.283)
NHRI (t-2)	-0.220* (0.167)	-0.185 (0.419)
HRO (t-2)	0.111 (0.236)	0.423 (0.422)
Regional Viol (t-2)	0.195* (0.161)	0.166 (0.216)
Physint (t-2)	0.852*** (0.084)	0.759*** (0.079)
GDP	0.000*** (0.000)	-0.000** (0.000)
Democracy	-0.336 (0.448)	-0.436 (0.428)
Population	-0.020*** (0.004)	-0.010** (0.003)
Civil War	-1.84*** (0.599)	-2.395*** (0.385)
r2	0.3044	0.2935
N	812.000	448.000

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