International Institutional Design and Human Rights: The Case of the Inter-American Human Rights System

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Keywords: human rights, international law, international courts

Most studies examining the effectiveness of international human rights law treat international human rights institutions as equally (un)influential on state behavior. I argue that institutional design explains variation in state response to international human rights law. Using the institutions in the Inter-American Human Rights System (Court and Commission), I argue that judgments from the highly legalized body (Court) are associated with human rights improvements, while decisions from the less legalized body (Commission) are associated with a greater likelihood of formal complaints. Using the Ill-Treatment and Torture (ITT) data and original data on Commission decisions, I find support for these expectations.

1 Introduction

To what extent does international institutional design influence state human rights behavior? Most studies examining the influence of international human rights law on state behavior find that international human rights treaties exhibit little independent influence on state behavior. Rather, international human rights law has important indirect effects on state behavior through its influence on domestic politics (e.g. domestic political institutions or domestic mobilization) (e.g. Simmons 2009, Powell and Staton 2009, Conrad and Moore 2010*b*, Conrad and Ritter 2013, Lupu 2015). However, prior studies treat most pieces of international human rights law as though they are equally influential on domestic politics. I argue that international human rights institutions vary in their institutional design and such variation has different effects on the likelihood of rights-related changes.

To examine the influence of international institutional design on state human rights practices, I turn to the Inter-American Human Rights System (IAHRS). Unlike most international human rights law, which relies on relatively weak oversight mechanisms such as mandatory self-submitted state reports on compliance, the IAHRS utilizes a model of individual petition, whereby victims of human rights abuse are allowed to submit complaints to supranational legal bodies.[1] The Inter-American Human Rights System represents an ideal testing ground for the influence of international institutional design on human rights practices because the IAHRS is made up of two legal bodies that differ substantially in their level of legalization. The primary regional human rights treaty in the Americas (American Convention on Human Rights) establishes a human rights Commission and Court. The Commission represents a more weakly legalized body that receives and considers individual petitions. When the Commission finds a violation, commissioners either draft a report detailing a series of recommendations or submit the case to the Inter-American Court. The Court represents a more strongly legalized body that renders binding legal judgments. For adverse judgment recipients, the Court provides states with a specific set of orders necessary for compliance.

In this article, I argue that international institutional design has important effects on state human rights behavior. More specifically, I argue that the Court, as a more highly legalized body, has an important influence on domestic mobilization efforts, which subsequently influences state human rights behavior. As a more weakly legalized body, the Commission is less likely to generate successful domestic mobilization

[1] The European Human Rights System has features similar to the American System. No other regional human rights system has a similar level of judicialization.

and subsequently, human rights policy changes. However, I argue that the Commission lends legitimacy to rights-based petitions and is influential in the likelihood of potential litigants filing formal complaints of rights abuses domestically.

This article makes several contributions to the study of the effectiveness of international human rights law. First, while recent work has focused almost exclusively on the conditional influence of domestic politics in explaining the effectiveness of international human rights law, I suggest that variation in international institutional design also influences domestic actors' response to international human rights institutions. More specifically, I argue that the influence of international human rights institutions on the behavior of domestic mobilization efforts depends on the extent to which the international institution is legalized.

As a second contribution, rather than focusing on *international* human rights treaties, I focus on a less systematically studied *regional* human rights system (Huneeus and Madsen 2018). The IAHRS "has been on the leading edge of the legalisation and adjudication turns in international politics more generally and international human rights more specifically" Engstrom and Hillebrecht (2018, 1118). In fact, Huneeus and Madsen (2018) note that "it is in the regional systems where much - if not most - of the human rights action has unfolded, and not only in recent years, but from the very beginning (4)." Moreover, regional human rights bodies possess several features that arguably make them more influential than international human rights treaties. For example, the IAHRS engages with states extensively after states ratify the American Convention on Human Rights, meaning that states are subject to oversight by the Commission and Court, a process not replicated by most international human rights legal bodies.

Third, this paper examines a particularly understudied international legal body. Although scholars have assessed the influence of the Inter-American Court of Human Rights on state behavior (e.g. Hawkins and Jacoby 2010, Huneeus 2011, Hillebrecht 2014, Haglund Forthcoming), to date, little work has examines the influence of the Inter-American Commission on state human rights behavior. Some debate has emerged about whether the Commission as a relatively weak quasi-judicial human rights body in the region has an impact on state behavior (Kletzel 2018). I contribute to this line of work by arguing that the Commission has an important influence on the behavior of potential litigants.

Finally, current work focuses either on compliance with specific orders of regional human rights courts (e.g Hawkins and Jacoby 2010, Huneeus 2011, Hillebrecht 2014) or on the preventive role of the Inter-American Court, including the extent to which the Court deters future human rights abuses (Lessard 2018, Haglund Forthcoming). Other relevant work on regional human rights systems focuses on the influence of

the European Court of Human Rights on state behavior (Helfer and Voeten 2014, Anagnostou and Mungui-Pippidi 2014). Yet, these studies tend to consider the influence of regional legal bodies on state human rights practices broadly (e.g. physical integrity abuses), rather than government adjustments to repressive policies in response to adverse judgments from regional legal bodies. I argue that in order to avoid high costs associated with comprehensive human rights policy changes, the government is likely to engage in tactical adjustments following an adverse Inter-American Court judgment. I disaggregate repression utilizing the Ill-Treatment and Torture (ITT) dataset to examine variation in state torture tactics following Commission decisions and Court judgments.

2 International Law and State Behavior

In order to assess the influence of international institutional design on state behavior, I turn to research on compliance with international law. Domestic politics, particularly domestic political institutions, provide a compelling explanation for the effectiveness of international human rights law (e.g. Powell and Staton 2009, Simmons 2009, Conrad and Ritter 2013, Hillebrecht 2014, Lupu 2015). Given the absence of effective international enforcement mechanisms in many international human rights agreements, domestic politics influences state expectations regarding enforcement. For example, domestic judicial effectiveness plays a major role in commitment to and compliance with international human rights agreements because the domestic judiciary represents the primary means of enforcement for international agreements (Alter 1996, Powell and Staton 2009, Simmons 2009, Conrad and Ritter 2013). Domestic politics are also important for compliance with regional human rights courts, including the Inter-American Court of Human Rights (Hillebrecht 2014, Haglund Forthcoming).

Domestic pro-rights political movements are also important for the effectiveness of international treaties (Simmons 2009). Human rights treaties provide information used by transnational actors, such as political elites, human rights lawyers, activists, and others to educate individuals regarding their rights. Domestic and international NGOs raise awareness through "naming and shaming" tactics designed to call out violators in the international arena (e.g. Murdie and Davis 2012). As individuals become increasingly aware of their rights, they value rights more highly and mobilize to demand rights-related changes (Simmons 2009).

3 Legalization in the Inter-American Human Rights System

Although the conditional role of domestic politics in ensuring the effectiveness of international human rights law has been well studied, scholars have yet to consider how the design of international human rights law influences domestic mobilization and therefore, respect for rights. International human rights institutions differ in important ways and as a result, they do not equally influence domestic mobilization efforts and subsequent state human rights behavior. Rather, I argue that the strength of legalization of international human rights institutions sends important signals to domestic political and civil society actors.

Legalization refers to a set of characteristics that international institutions may possess. Generally, there are three elements of legalization: obligation (states are bound by a rule or commitment), precision (rules are unambiguous and clearly defined), and delegation (third parties are granted authority to implement, interpret, and apply the rules) (Abbott and Snidal 2000). Highly legalized international law ("hard law") places greater obligations on the state, is precisely written, and delegates interpretative authority to third-parties (Abbott and Snidal 2000). Weakly legalized international law ("soft law") is weakened on one of the dimensions of obligation, delegation, and precision. International human rights law is generally soft, meaning that legalization is relatively weak. However, the strength of legalization is not a simple dichotomy. Legalization represents a continuous concept, varying from hard to soft, and international human rights law (and institutions) also varies along this continuum.

The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights vary considerably in strength of legalization. The Commission is a quasi-judicial body that carries out a wide range of functions, including the processing and adjudicating of individual petitions alleging human rights abuses. Individuals must exhaust all domestic remedies before their petition will be deemed admissible by the Commission. Once admissible, the Commission interacts with the state and the petitioner to gather information. If parties cannot reach a friendly settlement, the Commission prepares a report detailing its conclusions, recommendations, and a timeframe for compliance. Once the deadline for compliance has expired, the Commission proceeds by either, (1) producing and publishing a second report or (2) submitting the case to the Inter-American Court.

The Court is a formal judicial body that hears and rules on cases submitted by the Commission. The Commission serves as the victim's representative at the Court, though victims and witnesses regularly appear before the Court. The Court's rulings are considered legally binding and the Court directly oversees

and monitors compliance with its decisions. There are several key differences between the Commission and the Court. First, the Commission has jurisdiction over all 35 OAS member states, while the Court only has jurisdiction in states that have ratified the American Convention on Human Rights and have accepted the Court's contentious jurisdiction, which includes 20 OAS member states. Membership differences provide an indication that states perceive the sovereignty costs of commitment to the Court to be greater than commitment to the Commission. Second, a decision rendered by the Court represents a clear censure for human rights abuse; that is, adverse Court judgments arguably carry more weight than other types of international shaming, like recommendations from international human rights treaty-bodies or even recommendations from the Inter-American Commission.

3.1 Inter-American Court of Human Rights and Human Rights Policy

Because the Court represents a more highly legalized international institution, adverse Court judgments are likely to generate domestic mobilization and subsequently, domestic pressure on political actors to engage in human rights policy change. An adverse Inter-American Court judgment is important in generating popular mobilization, or "strategic actions by individuals and groups to promote or resist change in a given policy arena" Cichowski (2007, 7).

Two dominant theories emphasize the mechanism through which international human rights law impacts social mobilization. First, international human rights law helps pro-rights activists reprimand and punish political actors in states that fail to comply with their commitments to international human rights law, which deters future abuses (e.g. Hillebrecht 2014). A second view does not emphasize the coercive capacity of international law, but focuses on the role international law plays in fostering dialogue that can lead to a greater acceptance of norms and socialize actors to accept those norms and change behavior (e.g. Goodman and Jinks 2013). Although these two views of the role of international law in facilitating social mobilization are not mutually exclusive, Hafner-Burton, LeVeck and Victor (2015) find that NGO professionals perceive the largest utility of international law for pro-rights advocates to come from punitive strategies that seek accountability (169). That is, NGO professionals believe that international law matters most through its ability to mobilize activists to punish governmental actors who violate international law. Moreover, Ausderan (2014) finds that when countries are shamed by the international community for rights violations, they perceive the human rights conditions in their country more negatively. This negative perception and subsequent punishment often comes in the form of audience costs, whereby international and

domestic audiences can hold government officials accountable through formal channels (e.g. elections) or informal channels (e.g. protest, revolt) for their failure to adhere to human rights commitments.

How does international human rights law influence the coercive capacity of pro-rights advocates? Simmons (2009) argues that international treaties influence the value individuals place on rights and the probability of successful mobilization around rights-related issues. International legal frameworks raise the rights consciousness of various groups within society, allowing groups to provide meaning to legal outcomes (Cichowski 2007). Pro-rights advocates, therefore, represent the users and consumers of international judicial rulings (Cavallaro and Brewer 2008). Examples abound of the influence of Inter-American Court judgments on domestic mobilization. The case of *Ximenes Lopes v. Brazil* concerned a killing in a psychiatric clinic and generated widespread debate within Brazil about public health policy, leading to the restructuring of the national mental health program in Brazil (Cavallaro and Brewer 2008). Or, the 1997 case of *Loayza Tamayo v. Peru*, which involved the incommunicado detention, physical and psychological abuse, and sentence to twenty years imprisonment for terrorism of María Elena Loayza Tamayo for her association with Peru's Shining Path insurgent group, generated widespread popular support and media attention both in Peru and beyond (Cavallaro and Brewer 2008).

However, international human rights legal bodies do not equally raise the probability of successful mobilization. While a treaty specifies standards of behavior that the state should meet, an adverse Inter-American Court judgment represents a clear censure for rights abuse and specifically highlights the state's failure to protect the rights guaranteed in a regional treaty. Adverse judgments, then, are a form of judical rulemaking, or "a court's authoritative interpretation of existing rules and procedures, which results in the clarification of the law or practice in question" (Cichowski 2007, 7).

An adverse Court judgment, then, generates politically usable information that rights activists can rely on to leverage changes in rights practices within the state. The Inter-American Court also often charges the state with publishing and publicizing adverse judgments, which increases the likelihood that rights advocates gain access to the judgment and utilize it to advocate for rights-related changes. Because the Inter-American Court is more highly legalized than the Commission, successful domestic mobilization is more likely. Consequently, domestic political actors are more likely to expect mobilization in response to an adverse Inter-American Court judgment. The executive represents a domestic actor of particular importance in responding to the Inter-American Court and making human rights policy changes. The executive is the final policy authority on respect for rights and plays a large role in ensuring that human rights are protected

following adverse Inter-American Court judgments. To ensure human rights protections, the executive must adopt, administer, monitor, and enforce human rights policy. However, the administration and monitoring of human rights policy generates not only material costs, but also political costs, as the executive must forgo the use of repressive policy tools in the future.

In response to adverse Inter-American Court judgments, the executive expects to face a greater likelihood of domestic mobilization than when other international human rights bodies make decisions or recommendations. The executive has three options in response to adverse Court judgments: 1) maintain the status quo, 2) comprehensive policy change (adopt, administer, monitor, and enforce human rights policy), or 3) make tactical adjustments. In considering how to respond to adverse Court judgments, the executive must consider the costs and benefits of these three options. First, the executive might ignore adverse judgments from the Court (maintain the status quo) and continue to utilize repressive policies, or at least do little to stop repression from taking place. This option does not incur material or political costs. However, maintaining the status quo in response to an adverse Inter-American Court judgment will likely generate domestic audience costs as pro-rights advocates use the adverse judgment as a focal point around which to mobilize for human rights policy changes. Domestic audiences can mobilize through formal or informal political channels to punish the executive for failing to respond to the rights violations brought to light by the Court.

A second option involves the executive making the necessary human rights policy change: adopting, administering, monitoring, and enforcing human rights policy. Engaging in comprehensive human rights policy changes avoids the domestic audience costs associated with ignoring the court ruling, but the executive assumes high material costs, such as implementing comprehensive monitoring of state agents and ensuring that the appropriate system of rewards and punishments for violation of human rights policy is implemented and enforced. The executive also assumes high political costs associated with forgoing the future use of repression. In response to an adverse Court judgment, options one and two both entail costs – option one involves domestic audience costs and option two involves the material and political costs associated with the adoption, administration, monitoring, and enforcement of human rights policy.

The third option, making tactical adjustments, represents a middle-ground, whereby the costs generated by maintaining the status quo or adopting comprehensive human rights policy change are limited. In response an adverse Court judgment, the executive may want to do something to lower domestic audience costs, but does not necessarily want to make comprehensive human rights policy changes (adopt, administer, monitor, and enforce human rights policy), and thereby give up the use of repressive tactics in the future.

In other words, the executive often finds tactical adjustments to be a useful strategy for curtailing costs following adverse Inter-American Court judgments. Of course, under certain conditions, the executive may choose to maintain the status quo or make comprehensive human rights policy changes. For example, when the executive is certain about the likelihood of mobilization following an adverse judgment, the executive may choose options 1 or 2. That is, when the executive is certain there will be no (or low) mobilization, the executive will likely choose to maintain the status quo and when the executive is certain there will be widespread mobilization following an adverse judgment, the executive will likely make human rights policy changes.[2]

When the executive expects mobilization, but faces uncertainty as to how far pro-rights advocates will push for policy changes, the executive will prefer tactical adjustments. Presumably, following an adverse Court judgment, the executive expects mobilization to occur. After all, the regional court is a relatively legalized international institution, which gives pro-rights movements greater legal backing in their mobilized dissent. Though, the executive often faces uncertainty as to how far mobilization efforts will go and whether those efforts will result in punishment of government officials. As a result, tactical adjustments represent an attractive alternative to major policy reform.

The executive makes tactical adjustments by adopting policies designed to curb the use of some repressive policies, such as repressive tactics that are more visible, but have little influence on curbing the use of repressive tactics that are easier to hide or less observable. DeMeritt and Conrad (2019) show that international attention for one type of repressive tactic increases the leader's costs for continuing to use that type of repressive tactic, but does not necessarily increase the costs of all repressive tactics, leading to a substitution of repressive tactics (2). Similarly, Hafner-Burton (2008) argues that states respond to international shaming by decreasing some types of abuse while increasing others. Because international attention for rights abuse (e.g. adverse Court judgment) produces a greater likelihood domestic mobilization and dissent, the executive prefers to maintain access to repressive tactics. As a result, rather than adopt comprehensive human rights policy changes, the executive likely chooses to reduce (or eliminate) the use of some types of repressive tactics when shamed by the Inter-American Court.

[2]In the empirical analysis, I take into account several conditions likely to influence the level of executive certainty regarding the likelihood of mobilization (e.g. judicial independence, freedom of speech).

3.2 Government Torture and Tactical Adjustments in Response to the Court

What kind of tactical adjustments might the executive make in response to adverse Inter-American Court judgments? Torture is a particularly common human rights abuse that occurs in all countries, and is frequently addressed by both the Inter-American Commission and Court. Rejali (2007) distinguishes between two types of torture: scarring torture and clean torture (4). Scarring torture tactics leave marks on the body, while clean torture tactics leave few marks (Rejali 2007, 4). Governments employ policies of clean torture because they are more difficult to detect and interfere with the ability of victims to communicate evidence of abuse (Rejali 2007).

Rejali (2007) argues that when states are being monitored, they are more likely to find plausible deniability of government torture to be important. Adverse Inter-American Court judgments represent an important source of monitoring and as I argue above, highly legalized institutions (like the Court) are more likely to generate mobilization. In expectation of domestic mobilization following adverse Inter-American Court judgments, the executive is more likely to engage in tactical adjustments, including putting policies in place designed to curb the use of scarring torture tactics (that leave evidence of abuse), but not designed to ensure that state agents curb the use of clean torture tactics.

For example, the executive may improve monitoring of scarring torture by ensuring inspections of places of detention include monitoring for evidence of instruments of scarring torture (e.g. scars on detained individuals). At the same time, monitoring programs might not train inspectors to look for evidence of clean torture (e.g. psychological effects of torture). By adopting and implementing policies designed to curb the use of scarring torture, which is inherently more observable, the executive is able to point to evidence of changing human rights policy and practices, thereby appeasing international and domestic pressure, but limiting the material and political costs of policy change. However, by failing to adopt policies to effectively prohibit clean torture tactics, the executive does not have to give up torture as a repressive tactic entirely. As a result, I expect:

> ***H1****: Adverse judgments from the Inter-American Court of Human Rights involving torture are negatively associated with scarring torture, but are not related to the use of clean torture.*

3.3 Inter-American Commission on Human Rights and Human Rights Policy

Although adverse Court judgments generate incentives to make tactical adjustments, I argue that adverse Inter-American Commission decisions do not provide the level of legal backing necessary to raise the probability of successful domestic mobilization. When states do not comply with Commission recommendations, the Commission can either draft and publish a second report, or submit the case to the Inter-American Court. Only a small subset of cases reach the Court. The sheer number of petitions considered by the Commission and the number of cases the Commission submits to the Court provide evidence of this small (albeit non-zero) probability. For example, in 2016, the Commission received 2,567 petitions, published 5 reports on the merits of the case (including recommendations), and submitted 16 cases to the Court.[3] Considering the low likelihood that the Commission forwards a case to the Court, the likelihood of the executive preemptively engaging in tactical adjustments or human rights policy changes in response to adverse Commission decisions, so as to avoid an adverse Court judgment, is low.

Moreover, pro-rights advocates have limited time and resources and as a result, they seek to utilize their valuable resources where they are most likely to be successful. As a less legalized international institution, Commission decisions are less likely to generate domestic mobilization. Because the executive does not expect to face strong domestic mobilization in response to Commission decisions, the executive is unlikely to make tactical adjustments in response to adverse Commission decisions. Making tactical adjustments is not costless as some repressive tactics may be more cost effective than others (DeMeritt and Conrad 2019). As a result of the weaker legalization in the Commission and the subsequent lower likelihood of domestic mobilization following adverse Commission decisions, the executive is likely to maintain the status quo. As a result, I posit:

> ***H2****: Adverse decisions from the Inter-American Commission on Human Rights involving torture are not significantly associated with scarring or clean torture.*

3.4 Inter-American Commission on Human Rights and Potential Litigants

Although adverse Commission decisions do not generate tactical adjustments, I argue that adverse Commission decisions influence the behavior of potential litigants. Adverse Commission decisions send two

[3] For more on the Commission, see `http://www.oas.org/en/iachr/multimedia/statistics/statistics.html`.

important signals to potential litigants: 1) they signal the legitimacy of rights-based petitions against the state and 2) they signal the inadequacy of the domestic judicial process.

First, when the Commission publishes a report specifying recommendations that should be undertaken by the state to remedy a rights abuse, potential litigants (victims who have yet to obtain remedy for a human rights violation) recognize that they may be able to secure a remedy for the abuse by pursuing a rights-related claim against the state. Second, because the Commission will only rule a case admissible when all domestic remedies have been exhausted, when the Commission publishes a report on the merits of the case, the Commission signals that the domestic judicial process was inadequate, or at least inconsistent, in protecting human rights, lending greater legitimacy to rights-based claims against the state. Importantly, although potential litigants may be more likely to file domestic formal complaints following Commission decisions, as I argue above, the Commission is not legalized enough to ensure more widespread domestic mobilization. As a result, I posit:

> ***H3****: Adverse decisions from the Inter-American Commission on Human Rights involving torture are positively associated with the number of formal complaints filed involving torture.*

4 Research Design

4.1 Spatial-Temporal Domain

The Organization of American States (OAS) established the Commission in 1959 and the Court in 1979. The American Convention on Human Rights entered into force in 1978 (establishing the Inter-American Court of Human Rights) and the American Convention became authoritative in Commission and Court interpretations.[4] The OAS currently consists of 35 members with 23 states party to the American Convention on Human Rights. Currently, 20 states recognize the contentious jurisdiction of the Inter-American Court.[5] The spatial domain includes all states that have accepted the contentious jurisdiction of the Inter-American Court, which includes 21 states because although Venezuela denounced the Inter-American Court in 2012, it was a member of the Court during the time series covered by the analyses. Because I am interested in state

[4]Notably, the U.S., Canada, Cuba, and several other states have not ratified the American Convention on Human Rights.

[5]Trinidad and Tobago denounced the American Convention and the Court in 1998 and is excluded from the analysis.

response to the Commission and the Court, I choose a sample of states that are subject to the jurisdiction of both international human rights bodies in the IAHRS. I examine adverse Commission decisions and Court judgments for the years 1995-2005. Although the Court rendered its first adverse judgment in 1988,[6] the timeframe of the dependent variable limits the temporal domain. As a robustness check, I estimate a model examining the influence of all adverse Commission decisions related to torture for all 35 members of the Inter-American Commission. The results, reported in the Online Appendix, are robust to this specification.

4.2 Examining Evidence from the Inter-American Human Rights System

4.2.1 Dependent Variable: Government Torture

The primary dependent variables of interest comes from the Ill-Treatment and Torture (ITT) Data Collection Project (Conrad, Haglund and Moore 2014). These data are generated through content analysis of Amnesty International's (AI) publications for the years 1995-2005. The dependent variables utilized to test Hypotheses 1 and 2 represent a count of Amnesty International's *allegations* of scarring and clean torture. An allegation represents a claim by AI that a state has detained and tortured at least one person (Conrad and Moore 2010*a*). I utilize the ITT specific allegation data, which include torture events and are available at the country-date-event unit of analysis. However, because the independent variables, including the primary independent variables of interest, are available at the country-year unit of analysis, I aggregate allegations of scarring and clean torture from the ITT dataset to the country-year. According to the ITT data, scarring torture allegations involve torture that leaves visible marks on the victim (e.g. burning, beating). Clean torture includes tactics such as electrotorture, water torture, dry choking, climatized air, exhaustion exercises, positional torture, sleep deprivation, among various other tactics (Conrad and Moore 2010*b*).[7]

To test hypothesis 3, I utilize an additional variable from the ITT dataset capturing whether AI stated that an allegation of torture was formally reported to the state by either the victim, NGOs, or like-groups. I aggregate formal complaints to the country year by calculating the sum of formal complaints in each country-year.

[6] See *Velásquez-Rodríguez v Honduras.*

[7] See Conrad and Moore (2010*a*) for more detailed information about the types of torture and the rules used to code torture allegations.

4.2.2 Independent Variables

The primary independent variables represent counts of adverse decisions related to torture from the IAHRS. First, I utilize a variable capturing adverse decisions from the Inter-American Commission published in merits reports *(Commission)*. I only include decisions involving violations of Article 5 of the American Convention on Human Rights, which represent violations of the right to be free from torture, or cruel, inhuman, or degrading punishment or treatment. Because the Commission represents an understudied regional body, data on the Commission are scarce. As a result, I collected data on Commission reports of violations of Article 5 by visiting the Inter-American Commission website, downloading reports on the merits, and recording any violations of Article 5. All told, the Commission published 103 violations of Article 5 of the American Convention in its reports from 1995-2005.

Second, I utilize a variable capturing adverse judgments from the Inter-American Court related to Article 5 of the American Convention on Human Rights *(Court)*. Data on Court judgments come from Hawkins and Jacoby (2010), who collected information on case conclusions. All told, the Inter-American Court rendered 42 adverse judgments related to Article 5 of the American Convention on Human Rights from 1995-2005. I lag each of the independent variables one year, to account for the delay in implementation of tactical adjustments. I also expect that there may also be a delay in potential litigants filing formal complaints, making a one-year lag appropriate in models predicting formal complaints as well.

4.3 Control Variables

I utilize several control variables in the models to account for alternative explanations of domestic mobilization and government torture. First, because torture tactics often occur simultaneously, I control for the number of other torture events taking place within the state *(Scarring, Clean, Unstated)*. I also control for the presence of several democratic institutions, including judicial independence *(Judicial Independence)*, the presence of a National Human Rights Institution *(NHRI)*, and freedom of speech *(Speech)*. Control variables capturing state embeddedness in the international human rights regime *(Embeddedness)*, GDP per capita *(GDP (Logged))*, population size *(Population (Logged))*, and civil conflict *(Civil War)* are also included in the models.

In addition because ITT *allegations* of torture made by AI do not represent the amount of torture (or violations) occurring within a state, I follow Conrad, Hill and Moore (2018) and include several control

variables that account for the likelihood that AI makes allegations, including a count of human rights organizations *(HRO)* and a variable taken from the ITT dataset indicating whether NGOs indicated difficulty gaining access to detained individuals and victims *(Restricted Access)*. Finally, AI may rely on beliefs about the state's human rights practices in deciding to make an allegation (learn about and report an allegation). As a result, I include a control variable accounting for lagged physical integrity rights *(Repression (t-1))*. Further information, data sources, and descriptive statistics for all variables in the model are included in the Online Appendix.

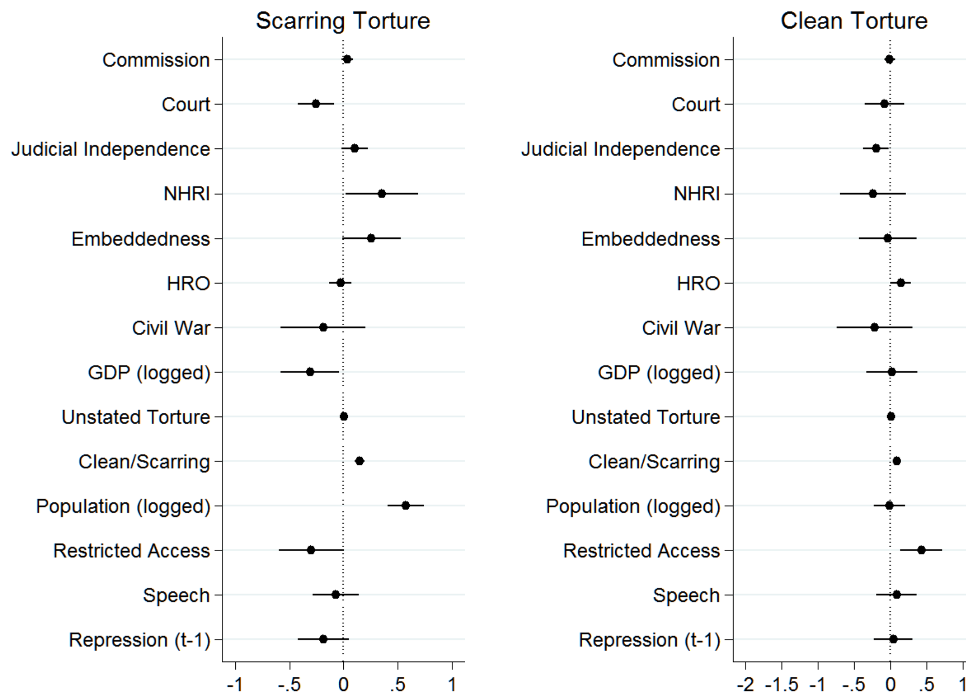
5 Model and Estimation

The dependent variables utilized in the analyses are all counts (of torture events and formal complaints). I estimate three models predicting (1) the number of scarring torture allegations (H1 and H2), (2) the number of clean torture allegations (H1 and H2), and (3) the number of formal complaints lodged against the state (H3). I utilize a negative binomial regression model to estimate the influence of Commission decisions and Court judgments on torture events and formal complaints filed. The negative binomial model is used for modeling count variables, usually for overdispersed count outcome variables (the conditional variance exceeds the conditional mean). The outcome variables examined in this paper, scarring torture, clean torture, and formal complaints, are all overdispersed. The negative binomial model adds a parameter to account for dispersion and the model reduces to the poisson when the parameter is equal to zero (Long and Freese 2001). In a nod to the pooled nature of the data, I utilize Huber-White standard errors. Results from several alternative specifications are presented in the Online Appendix, including random and fixed effects negative binomial regression models and models estimated with standard errors clustered on country. I also examine selection more fully in the Online Appendix by examining descriptive statistics and conducting matching analyses. Results are robust to the matching specification.

6 Results and Discussion

In Hypothesis 1, I posited that adverse Court judgments are negatively associated with scarring torture and unrelated to clean torture. In Hypothesis 2, I posited that adverse Commission decisions are insignificantly related to scarring and clean torture.

Figure 1: Negative Binomial Regression Coefficient Estimates (Scarring and Clean)



NOTES: Coefficient estimates displayed as dots. Lines display 90 percent confidence intervals. When lines do not cross zero, the coefficient is statistically significant ($\alpha = .10$). Results from two-tailed significance tests reported. N = 162.

Coefficient estimates and 90 percent confidence intervals are displayed in Figure 1.[8] The results provide evidence in support of Hypothesis 1. Adverse Court judgments are negatively and significantly associated with scarring torture allegations (left panel), but are not significantly associated with clean torture allegations (right panel). These results suggest that the executive is responding to adverse Court judgments by making adjustments to torture tactics, rather than adopting, administering, monitoring, and enforcing a comprehensive human rights policy. I also find support for Hypothesis 2. Adverse Commission decisions are insignificantly associated with scarring (left panel) and clean (right panel) torture allegations. There is little evidence that in response to the Commission, the executive makes either comprehensive policy changes or tactical adjustments.[9] As a robustness check, I estimated an additional model, displayed in the Online

[8] I exclude the dispersion parameter and the constant from Figure 1. The dispersion parameter is 0.29 in the scarring torture model (standard error of 0.06) and 0.31 in the clean torture model (standard error of 0.11).

[9] I report statistical tables with coefficient estimates and standard errors in the Online Appendix. Results are significant at the $p < .05$ level.

Appendix, that uses the aggregate level of torture as a dependent variable, taken from Cingranelli, Richards and Clay (2014). The model results show no significant relationship between adverse Court judgments or adverse Commission decisions and the aggregate level of torture, suggesting that the state is more likely to respond to international bodies by making tactical adjustments than by engaging in comprehensive human rights policy changes.

In order to provide a better sense of the substantive impact of the variables, Table 1 reports Incidence Rate Ratios (IRRs). Bolded values are those that are statistically significant. Each additional adverse Inter-American Court judgment against a country is associated with 23 percent fewer scarring torture allegations, holding all other variables in the model constant.[10]

Table 1: Incidence Rate Ratios

	Scarring	Clean
Commission	1.03	0.99
Court	**0.77**	0.93
Judicial Independence	1.11	**0.83**
NHRI	**1.43**	0.79
Embeddedness	1.30	0.97
HRO	0.97	**1.16**
Civil War	0.83	0.81
GDP (Logged)	**0.73**	1.02
Unstated	1.01	1.01
Clean	**1.16**	–
Scarring	–	**1.10**
Population (Logged)	**1.77**	0.99
Restricted Access	**0.74**	**1.54**
Speech	0.93	1.09
Repression (t-1)	0.83	1.04

NOTES: Bolded values indicate statistical significance ($p < .10$). Results from two-tailed significance tests reported.

With respect to the control variables, judicial independence is negatively and significantly related to scarring torture, likely because there is a greater expectation of prosecution in a court of law following scarring torture events. NHRI presence is positively and significantly related to scarring torture, which may indicate that NHRI presence plays a significant role in ensuring scarring torture is brought to light. Embeddedness in the international human rights regime, civil conflict, freedom of speech and prior repression are

[10]The number of victims of scarring torture decline by a factor of 0.77, holding all other variables constant in the model.

not significantly associated with scarring or clean torture.

Clean and scarring torture are positively associated with one another, but unstated torture is not significantly related to other types of torture. As expected, country wealth is negatively related to scarring torture and population size is positively related to scarring torture. AI reports of restricted access are negatively associated with scarring torture and positively associated with reports of clean torture. Where access is restricted, AI is less likely to have access to victims of scarring and clean torture, however, the positive relationship with clean torture means that despite restricted access, AI continues to make clean torture allegations.

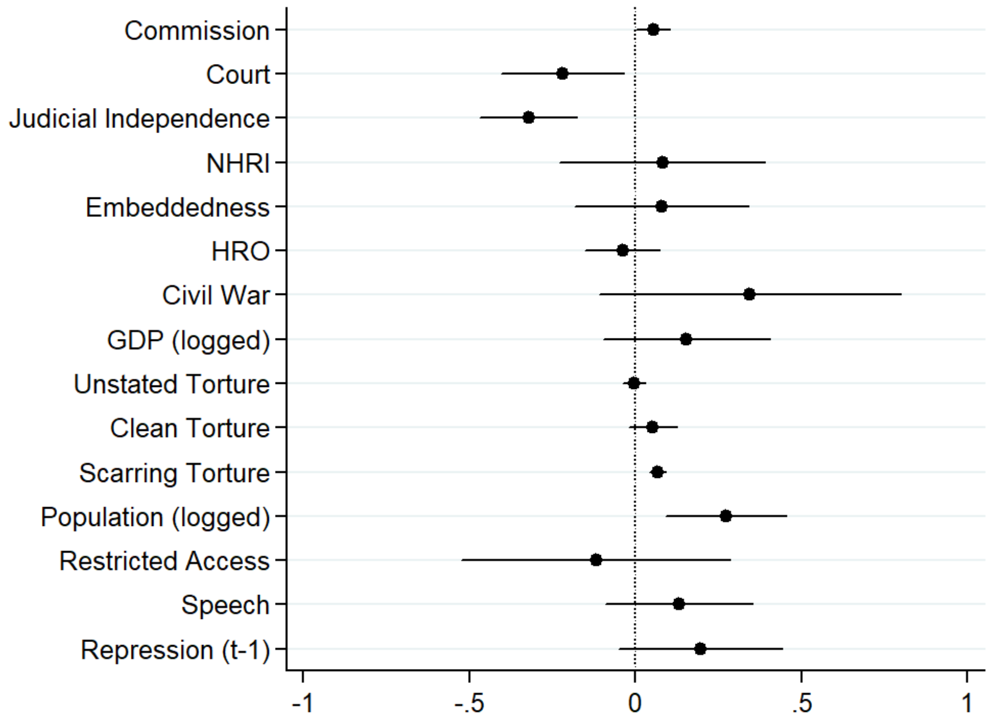
Figure 2 displays results in support to Hypothesis 3.[11] Adverse Commission decisions are positively and significantly associated with formal complaints.[12] Alternatively, adverse Court judgments are negatively (and significantly) associated with formal complaints. Perhaps because Court decisions are more likely to be associated with tactical adjustments, fewer individuals find it necessary to file formal complaints following adverse Court judgments (at least complaints related to scarring torture). Table 2 displays incidence rate ratios. Bolded values are those that are statistically significant. For each additional adverse Commission decision, the rate ratio for formal complaints is expected to increase by a factor of 1.06, meaning that for each additional adverse Commission decision, domestic formal complaints are expected to increase by 6 percent, holding all other variables constant.

Turning to the control variables, judicial independence is negatively associated with formal complaints. The judicial independence variable captures high court independence. Perhaps independence of lower level courts (rather than high courts) or local corruption is more influential in explaining the likelihood of individuals filing formal complaints than high court independence. Embeddedness in the international human rights regime, HRO presence, NHRI presence, country wealth, and civil war are not significantly related to formal complaints. Clean and unstated torture are insignificantly related to formal complaints. However, scarring torture is positively related to complaints, perhaps because potential litigants possess evidence of abuse. Population size is positively related to formal complaints as a larger population increases the sheer probability of torture (and complaints). Finally, restricted access and freedom of speech are insignificantly

[11] I exclude the dispersion parameter and the constant from Figure 2. The dispersion parameter is 0.281 (standard error of 0.08) in the formal complaint model.

[12] I report statistical tables with coefficient estimates and standard errors in the Online Appendix. Results are significant at the $p < .10$ *level.*

Figure 2: Negative Binomial Regression Coefficient Estimates (Formal Complaints)



NOTES: Coefficient estimates displayed as dots. Lines display 90 percent confidence intervals. When lines do not cross zero, the coefficient is statistically significant (α = .10). Results from two-tailed significance tests reported. N = 162.

associated with formal complaints.

7 Conclusion

While most research treats international human rights institutions as though they are equally (un)influential on respect for rights, I argue that there are important institutional design differences among international human rights institutions. More specifically, I argue that the level of legalization of an international human rights institution has an effect on domestic mobilization efforts, and subsequently, state human rights practices. Using the two primary bodies in the IAHRS (Court and Commission) to examine variation in legalization, I argue that because the Court is more strongly legalized, domestic human rights advocates are more likely to mobilize around adverse judgments of the Inter-American Court. In expectation of domestic mobilization following an adverse Inter-American Court judgment, the executive is more likely to undertake human rights reforms. However, rather than make comprehensive human rights policy changes,

Table 2: Incidence Rate Ratios

	Formal Complaints
Commission	**1.06**
Court	**0.80**
Judicial Independence	**0.73**
NHRI	1.01
Embeddedness	1.08
HRO	0.963
Civil War	1.41
GDP (Logged)	1.17
Unstated	0.99
Clean	1.05
Scarring	**1.07**
Population (Logged)	**1.31**
Restricted Access	0.888
Speech	1.14
Repression (t-1)	1.22

NOTES: Bolded values indicate statistical significance ($p < .10$). Results from two-tailed significance tests reported.

the executive is more likely to make tactical adjustments by adopting policies designed to curb the use of human rights abuses that are more visible, such as scarring torture tactics. In addition, as a more weakly legalized body, Commission decisions are less likely to generate domestic mobilization. Though, I argue that the Commission sends a signal to potential litigants that their rights claims (and petitions) are legitimate and that the domestic legal process has been inadequate. Potential litigants, then, are more likely to file domestic formal complaints of rights abuse following the publication of Commission decisions. Using data from the Ill-Treatment and Torture (ITT) dataset and original data on Inter-American Commission decisions from 1995-2005, I find support for my expectations.

This study has several important implications for scholarship on international human rights law, as well as for policymakers working to secure better rights protections. First, much of the focus in research on international human rights law and state behavior focuses on the conditional influence of domestic politics in ensuring human rights protections. I diverge from this approach by arguing that the behavior of domestic actors varies based on the design of international human rights institutions. That is, domestic actors consider the strength of the legal claims from international institutions before mobilizing in response to the actions of international human rights institutions. By considering variation in international institutional design,

scholars can gain a better understanding of the influence of international human rights law on state behavior.

Second, I examine a relatively understudied human rights legal body, the Inter-American Commission. Although the findings show that adverse Commission decisions are not significantly related to the use of various torture tactics, they are significantly associated with the number of formal complaints filed against the state. As more formal complaints are filed domestically, domestic and international attention are more likely to focus on the problem of torture, meaning that the Commission plays an important role in bringing abuses to light over time. Moreover, while the Inter-American Human Rights System has maintained the dual commission-court structure, the European Human Rights System abandoned this dual approach, which suggests that future work should seek to illuminate the mechanisms through which the European Court influences the behavior of potential litigants. This study has additional implications for the effectiveness of the European Court of Human Rights. Although the European Court operates under a different context than the regional human rights system in the Americas, Huneeus and Madsen (2018) claim that "where the regional systems differ the most is therefore not in their institutional designs, which are generally rather similar at a formal legal level, but the temporality of when they have managed to run ideas into actual institutions (5)." Given the similarity in institutional design, the findings in this article suggest that the European Court should have an influence on the government torture similar to the Inter-American Court.

Finally, in examining compliance with international human rights law, scholars often look to changes in state human rights practices following ratification of an international human rights treaty. However, the findings in this article show that such changes may not be straightforward. That is, rather than absorbing the costs associated with making comprehensive human rights policy changes, the executive may engage in policy adjustments. I show that in response to adverse Inter-American Court judgments, the executive adopts policies designed to curb the use of torture tactics that are more observable (i.e. scarring torture), but does not make policy changes associated with the use of clean torture tactics. Notably, such findings can only be elucidated by disaggregating repressive tactics (torture).

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