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The Domestic Adoption of International Human Rights Law: the Roles of Regional and National High Courts in Latin America

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THE DOMESTIC ADOPTION OF INTERNATIONAL HUMAN RIGHTS LAW: THE ROLES OF REGIONAL AND NATIONAL HIGH COURTS IN LATIN AMERICA

by

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DEDICATION

To my parents who have always been incredibly supportive and inspiring.

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I would like to thank my committee and my colleagues who have challenged, mentored, and supported me.

ABSTRACT

This dissertation addresses the question: *under what conditions do regional and national high courts matter in the promotion and domestic incorporation of international human rights law*? In order to address this question, I argue that domestic high courts can proactively adopt international human rights laws through their interpretation of the law and resulting case decisions. Regional courts promote international law, particularly through their requirement of domestic legal reforms in their judgments. I examine the extent of state compliance with these requirements, where compliance consists of these changes in the domestic legal system thereby institutionalizing international laws and transforming them into enforceable law. These arguments are evaluated through original data consisting of the universe of compliance records of Latin America to the Inter-American Court of Human Rights from 2001-2015 and Latin American high court cases. I find that domestic high courts successfully and unilaterally institutionalize international human rights laws and a much higher compliance rate with even such stringent regional court requirements as domestic legal reform. The influence of regional and national high courts is much higher then traditional scholarship credits.

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CHAPTER 1

INTRODUCTION

How does international law, particularly human rights law, become domestic law? This question carries legal and practical implications that remain understudied yet crucial for effective human rights policy and successful international human rights regimes. While scholars and practitioners increasingly observe legal internationalization, or domestic laws emerging in the international arena (see Mitchell and Powell 2013; Sikkink 2011; Risse, Ropp, and Sikkink 1999; Finnemore and Sikkink 1998),[1] the question of to what extent international laws[2] influence domestic politics, behavior, and law remains contentious. The majority of scholarship that asks this question focuses on the influence of international law on state (leadership) behavior. While this is an obviously important perspective, especially in terms of human rights violations, the legal perspective is equally important. Laws influence behavior by creating incentive structures and expectations for people and their behavior, setting national political discourse, establishing the relationships between governments and people (as well how people interact with each other), creating categories of political identities and conferring

[1] These phenomena are not only discussed by academics but also by policy makers and justices—see, for example, "The Internationalization of Law" lecture with Justice Stephen G. Breyer, Dr. Mireille Delmas-Marty, Vivian Curran (hosted by Brookings Institution).

[2] International law is defined as law that is binding to international organizations, states, and (sometimes) individuals, where law is a "series of rules regulating behavior, and reflecting, to some extent, the ideas and preoccupations of the society within which it functions" (Shaw 2008, 1).

responsibilities, freedoms, and powers to these categories (and determining the selection of people within each category), and regularizing behavior, expectations, and identities. Laws formally institutionalize each of these identities and relationships, define behaviors and norms, and do so in through a transparent, consistent, predictable legalistic process that confers legitimacy. Furthermore, laws influence behavior over time in that it affects behavior and identities contemporaneously as well as future behavior, identity affiliation, political discourse, and normative expectations. Hence, evaluating the degree to which international law catalyzes changes in domestic human rights laws provides insight into international law's ability to effectuate comprehensive, long-term or permanent changes in domestic politics. As such, examining the role of international law in redefining domestic political contexts lends itself as a more stringent and more comprehensive way to evaluate the importance and influence of international law, especially compared to evaluations relegating its influence to instigating immediate changes in state government behavior exclusively.

This dissertation thus offers an important perspective of to what extent do international human rights laws influence domestic laws. It does so in two broad manners. The first addresses the relationship between international law with states' domestic high courts to identify the role of these high courts in translating and implementing international law as domestic, legally enforceable law. This section examines the influence of strong, independent courts on domestic rights practices and provides preliminary evidence on the extent to which high courts have been in proactive in promoting human rights protections consistent with existing international law. The second manner in which this dissertation addresses the influence of international law on

domestic legal systems is through the compliance records of states with the Inter-American Court of Human Rights. I evaluate the influence of international law specifically through regional court jurisprudence by its ability to effectuate domestic legal changes within states. These two approaches enable a more comprehensive understanding of how international law influences domestic law and practice and emphasize the roles of national and supranational courts in this process.

How does international law influence state behavior?

This dissertation builds upon previous research examining the influence of international law on state behavior. Previous research on this topic, however, has evolved substantially. Realist international relations scholars originally asserted that international law, similar to other international institutions,[3] do not exert an independent influence on states. States, the argument goes, choose to participate in institutions that already reflect their behavior and preferences (Byers 1999; Mearsheimer 1994; Downs, Rocke, and Barsoom 1996). In other words, international legal institutions should be understood as states choosing to follow the rules they created rather than states choosing to become constrained by independent, external rules (Mearsheimer 1994). Similarly, Downs, Rocke, and Barsoom (1996) argue that states only enter into international agreements when they are already complying with them. As such, these legal rules do not facilitate 'deep' agreements, or exert any influence on member states.[4] Hence international legal

[3] Institutions are defined as a relatively stable set or structure of identities, interests, rules, and norms that stipulates how actors should interact with each other, prescribe acceptable forms of behavior.

[4] These authors also address the problems of selection bias, which provides spurious inferences as to how frequently states comply and how 'deep' the agreements are. In essence, the lack of accounting for why sates enter into the agreements leads to systematic overstating the effect of international legal agreements and institutions. Von Stein (2005) uses this argument to reexamine Simmons' (2000) work on IMF

institutions are epiphenomenal, simply reflecting existing states preferences and power dynamics. As such, international legal institutions are argued to not have an independent agency and thus do not exert any external or independent influence on state preferences or behavior.[5]

Additionally, international human rights institutions typically have difficulty in credibly arguing and effectively implementing enforcement mechanisms because the desired behavior (as well as the deviant behavior) occurs strictly domestically (see Moravcsik 2000). Since the behavior the international institution attempts to control is not on the international level but rather state actions towards domestic individuals, monitoring procedures and enforcement mechanisms must be different than those typically used in agreements in other international regimes. Essentially, the only credible enforcement mechanism is the empowerment of individuals and the creation of outlets such as international courts (Moravcsik 2000).[6] Yet the influence and effectiveness of supranational judicial bodies remains contentious in that while commitment problems can be solved by third-party adjudication (Morrow 1999), these bodies frequently lack

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compliance, arguing that once selection biases are accounted for—that is once the factors that cause joining the agreement in the first place—the international laws do not issue much constraining force on state behavior. In other words, compliant behavior is not induces by the legal rules themselves but rather the original factors or reasons that led the state to make the legal commitment in the first place. More generally, von Stein (2005) asserts that this selection bias accounts for between 31% and 95% of the results typically produced without accounting for these selection factors.

Of course, Simmons and Hopkins (2005) responded to von Stein (2005) theoretically and empirically asserting that treaties can both constrain and screen simultaneously and showing that 'selection bias' does not account for the differing results between Simmons (2000) and von Stein (2005). They further replicate Simmons; (2000) results using preprocessing matching to reduce model dependency.

[5] Although even the prominent critic Hans Morgenthau (1954) concedes that "to deny that international law exists as a system od legally binding rules flies in the face of all of the evidence."

[6] Mitchell and Hensel (2007) make a similar argument, where international institutions can actively promote compliance through supporting third-party settlement, but they also argue that international legal institutions can promote compliance passively through peer pressure.

enforcement mechanisms all together. Judicial or quasi-judicial bodies are often created in order to credibly argue for and implement treaty agreements (Moravcsik 2000), yet they suffer from the same lack of enforcement mechanisms as the original agreement. As such, some argue that these bodies similarly reflect existing power structures rather than exert independent influence. Garrett and Weingast (1993), for example, find that European Court of Justice (ECJ) is a "docile creature of state interest" that must cater to dominant member-states in order to preserve its independence and legitimacy (see also Garrett 1995, 1992; Garrett, Keleman, and Schultz 1998).[7] Carrubba, Gabel, and Hankla (2008) similarly find that the ECJ is sensitive to member-states' threats of noncompliance and threats of override and therefore behaves strategically in their decisions applying international law.[8] Furthermore, Carrubba (2005) questions the ability of these adjudicative bodies in enabling 'deeper' international agreements after finding limited support for supranational courts' ability to help overcome enforcement problems in international agreements (so although courts generally facilitate cooperation they cannot promote deeper cooperation). Hathaway (2002) concludes that noncompliance to human rights treaties, specifically, is common due to the lack of enforcement and low or nonexistent costs for noncompliance but also finds that states that have ratified human rights treaties generally have better rights practices than states that haven't ratified—which, rather than being optimistic, implies that these treaties are 'shallow' agreements that only reflect the selection effects of ratification rather than influence of treaties

[7] Alternatively, Alter (2009, 2001) argues that the threat to limit the ECJ's jurisdiction is not credible because of the decision rules requiring a unanimous vote for such a treaty amendment.

[8] On the other hand, Mattli and Slaughter (1995) assert that ignoring legal precedent and bending to member-state political will would hurt the ECJ's legitimacy more so than making a legally sound decision that a state ignores or contests.

themselves (Downs, Rock, and Barsoom 1996). Hafner-Burton (2005) similarly emphasizes the need for enforcement mechanisms in human rights agreements that explicitly tie agreement benefits to member compliance; as such, preferential trade agreements, due to their coercive enforcement mechanisms, are more effective at curbing rights violations than 'softer' human rights agreements. Hence, the lack of enforcement capabilities of adjudicative bodies and supranational courts, which were created to help solve enforcement problems inherent in the original international agreement, preclude independent influence of the institutions and relegate these agreements and bodies to reflect and cater to the same political power distributions that exist in the international system.

Yet, if legal institutions are merely epiphenomenal of power distributions (Barnett and Finnemore 1999), then states would not rationally choose to create and maintain them (Keohane and Martin 1995). Hence states' decision to create institutions implies that the states believe that such institutions will and do have an independent effect that merits their existence. The recent proliferation of these international agreements and supranational judicial bodies therefore implies that these international institutions are perceived as influential, effective, and desirable. While only six permanent international courts existed in 1985, today at least 25 permanent international courts and over 100 quasi-legal and ad hoc systems that interpret international rules and assess compliance with international law exist (Mitchell and Powell 2013; Alter 2011). This proliferation, along with global judicialization or empowerment of courts and quasi-judicial institutions, is partly due to increased emergence and diffusion of democratic norms for third-party conflict adjudication in the international system (Mitchell 2002; Stone Sweet

2000; Tate and Vallinder 1995). In essence, the proliferation of judicial bodies originates in the belief that law engages with complex political issues in more neutral, "less overtly power-laden," predictable, and consistent manner (Raustiala and Slaughter 2002). Still, this rapid emergence of these bodies globally as well as their increasing power suggests their ability to influence states—begging the question of how do these international legal institutions benefit states, and how can they be useful or influential without 'hard' or coercive enforcement mechanisms?

One benefit of these institutions that merit their creation is that international legal institutions provide a means through which states can achieve certain end goals that states would not be able to achieve on their own—particularly cooperation (Abbott and Snidal 1998; Keohane and Martin 1995; Keohane 1984). International legal institutions allow for the building of trust by enabling repeated interactions between states, enabling reciprocity, facilitating negotiations, monitoring and enforcing agreements, managing conflicts and resolving disputes, solving coordination problems, making commitments more credible, and reducing the transaction costs of cooperation (Stone Sweet 2000; Barnett and Finnemore 1999; Jervis 1999; Abbott and Snidal 1998; Keohane and Martin 1995; Keohane 1984). More specifically, international legal institutions manage state expectations in terms of their interactions with other states and supranational legal institutions, solve coordination problems (through managing expectations and producing or reinforcing norms, through enabling the spread of information, and creating focal points), reduce transaction costs (by enabling coordination), monitor and enforce agreements across states, provide adjudication or remedies for conflict, issue political and legal identities, and does so through explicit, transparent, and legalistic processes.

Furthermore, international legal institutions provide this benefit because they are autonomous, having independent agency, rather than simply a process through which collective action problems can be solved (O'Neill, Balsiger, and VanDeveer 2004; Barnett and Finnemore 1999). In this sense, international legal institutions can transform state identities and interests (Wendt 1992) as well as codify, alter, socialize, [9] and enforce behavioral norms, defined as "standard[s] of appropriate behavior for actors with a given identity" (Finnemore and Sikkink 1998). Hence, these institutions should be conceptualized not as epiphenomenal or mere tools of statecraft but as "a relatively stable set or structure of identities and interest, where such structures are often codified into formal rules and norms but these have motivational force only due to an actor's socialization to and participation in collective knowledge" (Wendt 1992). Hence, while the degree of influence may differ across state actors, international legal institutions should be conceptualized as agents of change. As agents of change, that are fundamentally different from the sum of its component states, these legal institutions are autonomous entities that create actors, specify responsibilities and authority, define the work of these actors, given meaning and normative value to such work, and constitute and construct the social world (Barnett and Finnemore 1999).

International legal institutions are thus created and granted authority over the states—including the states that participated in their creation. The authority granted to these institutions grows over time as the institution gains technical and specialized knowledge that is not easily accessible to the member states as well as accrues related

[9] Socialization is defined as "the process by which actors acquire different identities, leading to new interests through regular and sustained interactions within broader social contexts and structures" (Bearce and Bondanella 2007).

skills (Barnett and Finnemore 1999). Thus, international legal institutions become "global governor[s]," or "authorities who exercise power across borders for purposes of affecting policy and creating issues, setting agendas, establishing and implementing rules or programs, and evaluating and adjudicating outcomes" (Avant, Finnemore, and Sell 2010). Indeed, international legal organizations create and act upon their own agendas independently of member states, and their legitimacy arises from their perception of impersonal rule-makers and enforcers (Barnett and Finnemore 1999; see also Nielson and Tierney 2003).

Not only do international legal institutions influence state behavior by providing solutions to the problems of cooperation, enabling and constraining state behavior, and setting independent agendas, these legal institutions increase interdependence, thereby making relationships more costly for each party to forego (Baldwin 1989). This increased interdependence changes the cost-benefit structure analyses for each member state as well as changes these calculations for those outside of the institution. Additionally, increased interconnectedness and interactions between states can, in and of itself, alter state identities, values, interests, and thus behavior through processes of socialization that occur through repeated interactions and dialogues across states enabling norms to diffuse throughout the international community and become internalized by sates (Risse, Ropp, and Sikkink 1999; Greenhill 2010; Bearce and Bondanella 2007; Checkel 2005; Pevehouse 2005, 2002; Simmons 2000; March and Olsen 1998; Finnemore and Sikkink 1998; Meyer et al. 1997; Koh 1996; Wendt 1992).

Hence, international legal institutions offer solutions to collective action problems as well as induce cooperation through their roles as agents of change, influencing state

interests and behavior despite the lack of binding obligation, lack of "overarching monopoly of force," and lack of "strong sense of community" (Gemkow and Zürn 2012). These benefits and influence appear to exist functionally and theoretically despite the absence of traditional coercive enforcement mechanisms.[10] So how are these legal institutions influential without enforcement mechanisms?

Two pathways provide alternative enforcement mechanisms through which influence and compliance can be induced: international pathways and domestic pathways. At the international level, international law may be part of self-sustaining international institutions that benefit all members even if members must comply with unwanted decisions occasionally (Abbott et al. 2000; Koremenos, Lipson, and Snidal 2001).[11] In this sense, rationalist states gain more from these institutions than without them, even taking into consideration occasional unwanted decisions. Constructivist arguments add to this rationalist approach by asserting that these laws are further substantiated by internalized norms and community bonds exist in the international realm that enable persuasion, learning, acculturation, and socialization (Goodman and Jinks 2004; Byers 1999; Finnemore and Toope 2001; Koh 1996, 1997; Franck 1988, 1990). Hence, international reputation, reciprocation, and norm observation and internalization enable

[10] Not all scholars think these traditional enforcement mechanisms are necessary, effective, or desirable. Chayes and Chayes (1993) argue that "managerial" models of international law that deemphasize formal compliance definitions, are transparent, and include technical and financial assistance are more likely to induce compliance than traditional enforcement models with strict standards of compliance (because noncompliance will occur due to ambiguity in the agreement, the lack of state capacity to comply in affirmative obligations, and the necessity of transition periods and inevitable changes over time rather than due to states decisions to not comply).

[11] The repeated nature of the interactions, rather than a one shot game, can also lead to state behavior consistent with international obligations without necessarily implying that the law influenced national behavior (Guzman 2002). However, these results only hold if the game is finite and sanctions and/or reputations costs either do not exist or are sufficiently small to not alter the equilibrium.

international legal institutions to exert influence and induce compliance (Henkin 1979).[12] However, the internalization of international norms extends beyond state leadership to their domestic political contexts—creating a domestic political pathway where domestic political forces reinforce international legal pressures and provide the necessary enforcement mechanism. Thus, alternative enforcement mechanisms exist that allow these legal institutions to influence states and invoke compliance and highlight the nature of the two-level or nested games state leadership must simultaneously play (Putnam 1988; Tsebelis 1991).[13] I discuss these mechanisms briefly below.

Reputational Costs

International laws set expectations for appropriate state behavior and obligates states to fulfill commitments. They determine the rules of interactions between states within the international system and/or the international or world society (Checkel 2005; Lechner and Boli 2005; Meyer et al.1997; Bull 1977). States incur reputational costs when other states and political actors perceive that the state has failed to honor a commitment. Hence, because states derive benefits from their reputation, states hesitate in compromising their reputation. Noncompliance signals that a state's commitments are not credible, which can be costly for states. Thus, reputational costs can induce state

[12] Henkin (1979) is perhaps most famous for his aphorism that "almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time." He further argues that this widespread compliance almost all of the time induces scholars to bias the selection of analyses to noncompliant cases.

[13] Compliance is defined as a "state of conformity or identity between an actor's behavior and a specified rule" (Raustiala and Slaughter 2002). It is important to note also that international law can influence states in manners other than compliance. Legal rules can alter state behavior even when states fail to comply. Alternatively, compliance could also occur exogenously of the international legal rule or agreement; for instance the fall of the Soviet Union led to systematic compliance with several environmental laws (Raustiala and Slaughter 2002).

compliance to international legal obligations. In her evaluation of compliance to IMF legal rules and agreements, Simmons (2000) asserts that these laws induce compliant state behavior by the increased reputational costs of reneging instilled by the institution and due to the related "peer pressure" from other states in the region. Guzman (2002) similarly finds that international law is influential only when it commits a state to an obligation in the eyes of other states, thereby inducing reputational costs for noncompliance, and that these agreements are most effective with repeated, multilateral interactions with small stakes for direct sanctions.[14] Hence, even for rationalist states, inducing reputational costs can promote compliance with international laws.

Socialization

Socialization[15] consists of changes in ideas, values, identities (and thereby behaviors) due to repeated interactions with other actors, such as through international institutions, focal points, or epistemic communities. [16] Increased and repeated exposure to legal norms through interactions with other states can lead to norm convergence, where actors that may not have agreed with or shared a normative belief eventually converge in their acknowledgment and support of the legal norm. These norms influence the identities and policy interests of states, thereby influencing state behavior (Greenhill 2010;

[14] The issue for small stakes is that if noncompliance requires direct sanctions like military force, these sanctions are not credible as they are contrary to the self-interest of the sanctioning state(s) (Guzman 2002).

[15] Socialization is similar to Goodman and Jink's (2004) concept of acculturation, the "general process by which actors adopt the beliefs and behavioral patterns of the surrounding culture." Acculturation, like socialization, includes mimicry and identification (among others) and is effective when groups generate varying degrees of cognitive and social pressures, real or imagined, to conform.

[16] Epistemic communities are defined as "a network of professional with recognized expertise and competence in a particular domain and an authoritative claim to policy relevant knowledge within that domain or issue-area" (Haas 1992).

Pevehouse 2005, 2002; Simmons and Elkin 2004; Bearce and Bondanella 2003; Mitchell 2002; Risse, Ropp, and Sikkink 1999; Finnemore and Sikkink 1998; Koh 1996; Jepperson, Wendt, and Katzenstein 1996; Gaubatz 1996; Chayes and Chayes 1993; Keohane and Martin 1995; Wendt 1992; Ikenberry and Kupchan 1990).[17] The influence of socialization has been observed for legal norms (Koh 1998, 1997, 1996; Chayes and Chayes 1995, 1993); human rights practices (Greenhill 2010), human rights norms (Risse, Ropp, and Sikkink 1999; Finnemore and Sikkink 1998), democracy ratings (Pevehouse 2002, 2005), and general interest convergence (Bearce and Bondanella 2007) as well as serves as the primary mechanism for the observed diffusion of international legal and human rights norms (Simmons, Dobbin, and Garrett 2006).[18] For example, Mitchell (2002) finds that non-democracies behave more similarly to democracies in their participation of peaceful third-party settlements of territorial disputes as the proportion of democracies in the international system increases (making democratic norms more prevalent). Simmons (2000) concludes that commitments to international law by regional neighbors exert a positive influence on state compliance to international law. In other words, states are more likely to comply when their neighbors are complying. These social pressures induce states to conform in complying with international legal rules and norms.

[17] As with most aspects of the domestic-international linkages, norms move from the domestic to international arena as well as move from the international to domestic arena, working their influence through each arena's institutions (Risse, Ropp, and Sikking 1999; Finnemore and Sikkink 1998).

[18] Socialization processes resembles the isomorphism literature (DiMaggio and Powell 1983; Powell and DiMaggio 1991). Organizational isomorphism occurs when organizations in the same field tend to adopt similar practices and structures. Generally speaking, this literature only recognizes three types of isomorphism: 1) coercive isomorphism, where organizations "respond to direct demands or pressure from outside actors," 2) normative isomorphism, where organizations draw on shared cultural or value orientations, and 3) mimetic isomorphism, where organizations duplicate behaviors of others within their sector (Barnes and Burke 2006).

Domestic Politics

Finally, international legal institutions exert influence and induce compliance by altering the domestic politics within a state. Specifically, these laws exert influence through characteristics of electoral politics and domestic legal systems. For example, liberal democracies are more likely to comply with international law than other regimes (Checkel 2001; Gaubatz 1996; Jacobson and Weiss 1995; Dixon 1993).[19] One reason for this is that domestic constituencies can influence national compliance through electoral leverage when domestic constituents are informed of the status of compliance (Dai 2005). Cingranelli and Filippov (2010) add that electoral competition can only induce compliance and constrain rights violations if politicians are in a political situation where monitoring and exposing violations by the incumbent public official are beneficial; such a situation is more likely to occur in low magnitude proportionally represented districts that and where voters can vote for individual candidates. Without these properly aligned incentives, compliance and rights violations are easily ignored. Hence, international law alters the domestic political environment where some actors may gain while other may lose if the state government does not comply. When actors victimized by noncompliance have leverage over the government, then compliance can be rational for states provided they have incentives to monitor and expose violators (Cingranelli and Filippov 2010; Dai 2005; see also Linos 2011).

The rule of law and domestic legal systems are even more important perhaps than electoral leverage. In this case, domestic legal systems serve as enforcement mechanisms for international agreements (Simmons 2009; Alter 2009, 2001; Powell and Staton 2009;

[19] Although see Busch and Reinhardt (2000) for evidence that democracies are less likely to comply with GATT rulings.

Powell and Mitchell 2007; Simmons 2000; Koh 1998, 1997, 1996; Slaughter 1995).[20] In general, there are four domestic legal factors that induce and enforce compliance: a) domestic legal norms themselves, b) the degree of congruence in the international laws and domestic laws (and legal norms), c) the degree of independence the national judiciary enjoys, and d) internalization of international legal (and human rights) norms. For instance, the pervasiveness of domestic legal norms like *pacta sunt servanda*[21] increases the likelihood of compliance with international law (Mitchell and Powell 2013; Powell and Mitchell 2007). This legal norm is paramount in Islamic law states, which leads to Islamic law states having the most durable commitments (Mitchell and Powell 2013). On the other hand, because *pacta sunt servanda* is significantly weaker in common law states and because of their adherence to *stare decisis* legal norms where precedent in binding, common law states to enter into highly precise, specific, and detailed commitments and place the most reservations on their commitments. The norm of *stare decisis* does not exist in Islamic law and does not formally exist in civil law countries, although civil law states do abide by an informal consistency rule where trends of similarly decided cases are considered in legal decision-making. Hence, civil law countries are likely to enter into agreements that are less precise and specific than common law countries. These legal norms are important because they provide the framework or context within which a commitment is made, what the commitment entails and requires, and under what

[20] These legal institutions ad legal norms may be what drive liberal democracy results in evaluations of compliance (Simmons 2000; Gaubatz 1996). O'Donnell (2001) suggests that democracies should be defined in relation to the state legal system, since the legal system is what enacts and supports the fundamental aspects of democracy. As such, 'democracies' implies certain basic freedoms, related to the legal and moral principles of the community, exist , are effectively enforced, and equally applied across the population (O'Donnell 2001).

[21] This norm denotes that agreements must be kept.

conditions the commitment is completed or nullified (Mitchell and Powell 2013; Powell and Mitchell 2007).

The degree of similarity or congruence between these domestic legal norms with international commitments similarly influences both the acceptance of international obligations and compliance with these commitments (Mitchell and Powell 2013; Powell and Mitchell 2007). This congruence is important because it reduces the requirement of obtaining new information and skills, makes translating the international law into enforceable domestic law easier since it is legally consistent with existing rules, and lends legitimacy to the international agreement. States with domestic legal norms and procedures similar to those utilized in the international law are more familiar with the technical information, norms, and legal procedures (Powell and Mitchell 2007). Hence, these states already have the capacity, resources, and experience to participate in this system and adhere to the commitments. Legal congruence also lends legitimacy to the international legal agreement since they use the same normative legal framework as existing domestic laws. In both of these cases novelty creates uncertainty, so the level of congruence between the international and domestic laws reduces uncertainty and minimizes the need for acquiring new information, skill, and capabilities in order to participate and fulfill legal commitments. For example, when international laws and supranational courts that adhere to legal procedures most similar to domestic civil law systems, civil law states are more likely to enter into commitments and comply. Powell and Mitchell (2007) find this to be the case for the International Court of Justice (ICJ) where civil law states are the most likely to accept ICJ jurisdiction compared to common law or Islamic law.

Domestic judicial independence levels and rule of law development similarly influence compliance with international laws. States with independent national courts are more likely to comply with international law than states without independent judiciaries (Powell and Staton 2009; Keith 2002; Slaughter 1995).[22] Judicial independence, where judges are insulated from improper private or partisan influence and from other governmental branches, is crucial for courts to hold the state government accountable for the obligations. Effective, independent courts further enable litigation and new litigation strategies where victims created by noncompliance may seek judicial remedies—particularly in the context of human rights—since the courts are perceived as impartial and even receptive to their cases as well as willing and able to constrain or sanction noncompliance violations (Simmons 2009; Moravcsik 2000). Furthermore, independent courts are often emboldened after states commit to international (human rights) agreements and thus more likely to constrain and sanction violators (Powell and Staton 2009). Effective judiciaries create *ex post* costs for states considering violating the agreement, thereby incentivizing the state to comply. Effective judiciaries even create sufficiently high *ex post* costs for noncompliance that they moderate noncompliance with torture commitments in dictatorships (Conrad 2014; see also Conrad and Ritter 2013).[23] Kelley (2007) similarly finds that domestic rule of law has an independent effect on decisions to keep international agreements where domestic rule of law norms influence the decision to *keep* rights agreements rather than the decision to *enter* into the

[22] However, states with strong, independent judiciaries are less likely to enter into international obligations because of this domestic enforcement of the obligations (Powell and Staton 2009; Hathaway 2007; Von Stein 2005; Moravcsik 2000; Helfer and Slaughter 1997).

[23] Conrad and Ritter (2013) additionally suggest that effective judiciaries provide sufficient ex post cost to incentive compliance provided the leadership is secure in his or her position (but not for insecure leadership).

agreement, contrary to the arguments of Hathaway (2002) and Downs, Rocke, and Barsoom (1996). Additional evidence of international law's influence through domestic courts emerges in the inability of states to ignore or reject European Court of Justice (ECJ) rulings without countering their own courts through allegations of violating the rule of law domestically (Burley and Mattli 1993), and compliance occurs due to the ability of the ECJ to foster links with European national courts who are able and willing to work with the ECJ, thereby 'hooking' international and domestic law (Mattli and Slaughter 1995; Alter 1998). On the other hand, when national courts cannot be invoked states are more likely to ignore or contest international commitments like supranational court decisions (Alter 2009, 2001). Thus, domestic judiciaries serve as domestic sources of enforcement (Simmons 2009; Dai 2005; Alter 2009, 2001).

Finally, the internalization of international legal and human rights norms requires that these norms penetrate the state and enter the domestic political and legal systems. Internalization or institutionalization requires that these norms have been "incorporated into [a party's] own value system" and legal system (Koh 1997, 1998) and have "acquire[d] a 'taken-for-granted' quality and are no longer a matter of broad public debate" (Finnermore and Sikkink 1998). As such, full internalization or institutionalization induces "obedience" or rule-induced compliant behavior rather than behavior induced by the anticipation of (coercive) enforcement (Koh 1997, 1998). Hence, norms that are institutionalized by the state by definition affect the domestic political context (Powell and Staton 2009; Collins, Jr. et al. 2008; Shaw 2008; Vreeland 2008; Seider, Schjolden and Angell 2005; Hafner-Burton 2005; Neumayer 2005; Friedman and Perez-Perdono 2003; Donnelly 2003; Moustafa 2003; Hathaway 2002; Pevehouse 2002;

Russell and O'Brien 2001; Cingranelli and Richards 1999; Poe, Tate, and Keith 1999; Koh 1996, 1997; Poe and Tate 1994). The norms then diffuse and infiltrate domestic politics, including the domestic legal system and judges, non-governmental organization and lawyers, and citizens. The incorporation of these values and identities garners legal standing to victim generated by noncompliance, influence litigation strategies and judicial decision-making,[24] and instigates the mobilization of citizens and organization politically (Simmons 2009). More specifically, international human rights norms and their associated legal norms infiltrate domestic politics and identify victims with legal standing who are now informed about their rights, have expectations about appropriate and inappropriate behavior, and now have legal standing, access to legal remedies (domestically and/or internationally), and legal support from international and domestic human rights organizations and non-governmental institutions. Simmons (2009) shows that international treaty laws instigate domestic mobilization of citizens and rights advocates to formalize and demand their own liberation (7).

Yet, the degree to which these domestic enforcement mechanisms induce compliance depends upon qualities of the international legal obligation as well. Franck (1988) emphasizes the importance of legitimacy in inducing compliance, where legitimacy is the combination of clarity and transparency of the commitment, symbolic validation, coherence (referring to the consistence of application and context of the rule), and adherence (or the degree to which a rule fits within a normative hierarchy of rule-making). International laws that are clear, transparent, coherent, and consistent with

[24] Not only does the internalization of these norms influence sincere behavior, but it induces strategic behavior as well. For example, lawyers could alter litigation choices and strategies through sincere changes in their beliefs but could also alter these strategies because they now have additional legal rules to support their case and new frames to argue their case (see Wedeking 2010 for lawyer's strategic use of frames).

exiting rule-making and legal applications are more likely to induce compliance that laws without these characteristics (see also Chayes and Chayes 1993). Carey (2000) argues that parchment' rules, or rules that are explicitly written down, contribute to international agreement effectiveness because its written nature enhances its "focalness" that facilitates communication and aligns the member expectations about outcomes. Furthermore, international obligations that are perceived as legitimate to domestic constituents within states are more likely to exert domestic political pressures through citizen mobilization and litigation (Simmons 2009) as well as through electoral pressures (Dai 2005).[25] Hence, international law does not automatically influence states nor necessarily influence states in precisely the same manner.[26]

Hence, this dissertation asks: under what conditions does international law become domestic law, and what roles do domestic and regional judiciaries play in domestic incorporation of international law? I examine these questions by analyzing the incorporation of international human rights laws into domestic law in Latin America, specifically examining the roles of domestic high courts and the Inter-American Court of Human Rights. Chapter 2 provides the theoretical framework under which these questions are examined. The empirical chapters that follow (Chapters 3 and 4) evaluate

[25] However, in order for these obligations to enjoy legitimacy, citizens must be informed of them. While some legal institutions are relatively obscure, like the Court of Justice of the European Communities, they still enjoy public support and legitimacy through its connection with the European Union more generally—which induces state compliance (Caldeira and Gibson 1995).

[26] Organizational structure is similarly important in the likelihood of compliance, evidence by the constraining effect of international law on military lawyers during times of war (Dickinson 2010) and United States legal advisors (Scharf 2009). In particular, formal contracts influence the organization's cultural norms regarding compliance; the organization's hierarchical structure in terms of the location of decisions, monitoring, and administration; and the existence of a compliance unit (Dickinson 2010). Compliance is most likely when compliance agents within an organization when a) these agents are integrated with each other and other operational employees, b) they have a strong understanding of, and commitment to, the rules being enforced, c) they operate within an independent hierarchy, and d) they can confer benefits and impose penalties based upon compliance (Dickinson 2010).

the questions: a) under what conditions do domestic high courts promote human rights consistent with international law, and b) to what extent and under what conditions do regional courts matter in domestic rights protections and the domestic incorporation of international human rights laws? Chapter 5 offers some concluding remarks and addresses to what extent can regional courts pressure or aide domestic high courts in the incorporation of international law and domestic rights protections.

CHAPTER 2

THE ROLE OF COURTS IN THE ADOPTION OF INTERNATIONAL LAW

This dissertation fundamentally argues that international law matters. More specifically, I argue that international human rights laws matter despite the absence of enforcement. International law matters and exerts influence in similar ways to domestic laws (Staton and Moore 2011), especially with an increasingly globalized and interdependent world. International laws influence behavior by creating incentive structures for people and behavior—thereby constraining behavior—and by serving as focal point that coordinates expectations and interaction among actors (Carey 2000; Vanberg 1998; Weingast 1997). They can contribute to the establishment and maintenance of political order by coordinating expectations among political actors about the limits of state authority (Carey 2000; Weingast 1997), and international laws can coordinate citizen beliefs about when a government has transgressed domestic and international limits of state authority (Vanberg 1998). Beyond coordination, international laws similarly alter expectations regarding states' behavior when the government publicly commits itself to be legally bound to a specific set of rules (Simmons 2009, 14). Laws also set political agendas and discourse, issue political and legal identities, and establish legal remedies and adjudicative processes as well as provide support for litigation (Simmons 2009). Hence, international laws, especially within the human rights regime, are influential since they establish political

order and processes, provide identities, create and coordinate expectations, and alter cost-benefit incentive structures and expectations regarding behavior.

I examine the incorporation of international human rights law[27] rather than other areas of law for three reasons. The first is that international human rights law is normatively[28] and politically important, yet scholarship has provided mixed results in terms of the degree to which rights violations can be reduced, particularly through international agreements (see, for instance, Fariss 2014; Keith, Tate, and Poe 2009; Simmons 2009; Kelley 2007; Neumayer 2005; Hathaway 2002; Downs, Rocke, and Barsoom 1996; Mearsheimer 1994). The protection of human rights, especially by effective courts and legal systems, is crucial in constraining state behavior and maintaining legal accountability (Apodaca 2004; Domingo 1999). Such legal

[27] I define international law broadly as law that is binding to international organizations, states, and (sometimes) individuals, where law is a "series of rules regulating behavior, and reflecting, to some extent, the ideas and preoccupations of the society within which it functions" (Shaw 2008, 1). This definition includes treaty agreements as well as customary law rules, which consist of state practices that are recognized by the international community "as laying down patterns of conduct that have to be complied with" (Shaw 2008, 6). These customary rules establish behavioral norms that are binding to all states unless the state explicitly dissents and protests from the start of the custom (Shaw 2008, 89). Perhaps the most prominent area of international customary law is international human rights law where most human rights have moved beyond treaty law and into customary law due to widespread state practice (Shaw 2008, 275I). I therefore include customary law and norms because, since international customary law remains binding to all parties, research including only international treaty law essentially ignores a substantial and influential portion of international law and thus underestimates the effects of international law on state behavior and legal institutionalization.

[28] Some criticize that international law is a Western concept that does not easily translate to non-Western states (Freeman 2002). More extremely, some argue that the 'universality' of human rights serves merely as a disguise for cultural imperialism (Freeman 2002, 102). However, universal human rights includes the obligations of Westerners to respect the rights of non-Westerners where such universalism insists that some human rights apply in all cultures despite their diversity and/or by requiring diverse interpretations and applications of human rights rules in different cultural contexts (Freeman 2002, 104). Indeed, "international human-rights institutions have generally accepted that universal human-rights standards ought to be interpreted differently in different cultural contexts" (Freeman 2002, 104). Hence, the *application* of these human rights may differ (and should differ) across cultural contexts but the inherent protections embodied by the rights are universal.

In terms of the Inter-American Court of Human Rights more specifically, most of the cases that reach the court involve "gross violations of basic human rights upon which all legal systems and societies would agree" so "there has yet been little occasion for the application of specifically American standards or for the cultural relativism otherwise to become an issue" (Harris 2004, 12).

accountability underpins the establishment of the rule of law, in which governments are held accountable to the law, and is key to democratic consolidation (Apodaca 2004; Domingo 1999). Thus, enhancing our understanding of which policies effectively reduce rights violations and expand right protections has significant real-world, political implications that affect people around the world.

The second reason is that human rights law is unique in that it necessarily creates tensions between international and domestic law and questions the degree to which law guides behavior.[29] Because rights violations and protections are strictly domestic in nature, international laws must violate the historically paramount norm of state sovereignty that dictates that states have complete and exclusive control over their people, property, and territory. Such a violation of state sovereignty puts international law and domestic law in competition. International laws further create tensions with domestic law by making the international system accessibly to individuals. These laws provide legal standing and remedies outside of the sovereign state's legal system, where states are committed to abiding these supranational institutional decisions. Furthermore, uncertainty remains in the degree to which legal rules and norms guide or determine behavior in the first place. In no other issue area are the discrepancies between law and behavior as observable as within human rights, and few other areas of law catalyze these tensions between international and domestic law.

The third reason is that examining the incorporation of international human rights laws into domestic law contributes to unraveling the constructivist arguments of

[29] Obviously law is not a necessary or sufficient condition for behavior or changes in behavior. Changes in laws could produce little to no effect or even contrary effects on behavior. It is also possible to observe behavioral changes without changes in law.

transnational legal processes, norm 'life cycles,' and 'spiral models' of norm socialization (Risse, Ropp, and Sikkink 1999; Finnnemore and Sikkink 1998; Koh 1996, 1997). As research has increasingly observed the diffusion, or spread, of human rights norms across the international system, scholars have recently asserted several models to explain this diffusion. Koh (1996, 1997) proposes a 'transnational legal process,' defined as the "complex process of institutional *interaction* whereby global norms are not just debated and *interpreted,* but ultimately *internalized* by domestic legal systems" [italics in original]. Finnemore and Sikkink (1998) expand Koh's (1996, 1997) thesis by arguing that human rights norms evolve in a patterned 'life cycle' consisting of three phases: a) *norm emergence* where "norm entrepreneurs" attempt to persuade a critical mass of states to embrace these new norms, b) *norm cascade* where states socialize other states to become norm followers, and c) *norm institutionalization* which occurs when these norms "acquire a 'taken-for-granted' quality and are no longer a matter of broad public debate" (Finnermore and Sikkink 1998). Risse, Ropp, and Sikkink (1999) further build upon these theories of norm socialization and offer a five-phase "spiral model' of human rights norms socialization that emphasizes the importance of transnational advocacy networks in the diffusion of these norms.

Despite the significant contributions of these models, however, the models lack clear theoretical mechanisms for the final stage: norm internalization or institutionalization where the norms become incorporated into the domestic political structures and identity—which is necessary to "depersonalize norm compliance" and to ensure implementation regardless of individual beliefs (Risse, Ropp, and Sikkink 1999, 17). My examination of the mechanisms through which states incorporate international

human rights law within their domestic legal systems thus unravels some of this internalization process. The codification of international human rights laws into the domestic body of law validates and legitimizes international human rights laws, incorporates them into domestically enforceable law, creates legal focal points that aligns expectations and centers national discourse, and redefines the relationship between the government and its constituents, and issues legal identities to constituents. Hence, the incorporation of international law fundamentally alters the state's legal identity as a whole. Examining the influence of international law on domestic laws therefore addresses these processes of internalization to contribute a better understanding of the degree to which human rights laws and norms are becoming internalized, under what conditions does internalization occur, and whether national high courts or regional courts influence this process.

This dissertation also fundamentally argues that courts matter in the enforcement and incorporation of international law and the development of the human rights. National and supranational courts have crucial roles within the promotion, implementation, and success of international human rights laws. Courts clarify the meaning of commitments and identify violations, thereby providing hidden information about whether actors are behaving consistently with their commitments and maintaining a system of reputation (Guzman 2008). National and supranational courts constrain state government behavior and hold it accountable,[30] inducing credible commitments (Alter 2009; Moravcsik 2000;

[30] Supranational and national courts face similar problems in terms of enforcement mechanisms since both are dependent upon other political actors to enforce their decisions—and often the actor required to implement the decision is the same actor whose behavior is under review (Staton and Moore 2011). One assumption that I make throughout the dissertation is that supranational courts and domestic courts can be studied in similar ways, following Staton and Moore (2011).

North and Weingast 1989; see also Moustafa 2007). They also serve to 'lock-in' policies and political norms from future losses of power, such as newly won domestic democratic norms (Moravcsik 2000; see also Helmke 2005). Most basically, courts are necessary to move laws from "parchment barrier" to effective constraints on state rights violations (Keith, Tate, and Poe 2009).[31]

In terms of incorporation, regional courts help apply international law within particular cultural contexts and thereby clarifying the commitment and obligations. Supranational courts interpret international law and apply it to specific cases leading to specific domestic policies and remedies. They grant legal access to individuals who may be disenfranchised domestically and lend legal identities to victims of rights abuses. They enforce human rights agreements as well as provide monitoring resources to identify noncompliance to international law. These resources and pressures enable domestic incorporation through their decisions requiring domestic change, including changes in domestic laws.

Domestic courts are particularly well suited to initiate internalization by validating, codifying, and institutionalizing international human rights laws and norms into domestic law. This institutionalization legitimizes the international law as well as transforms the law into an enforceable domestic law that forms part of state's legal identity. Such institutionalization of international human rights laws is necessary for the establishment of the rule of law by constraining state behavior so as to prevent human rights violations and to hold the state legally accountable for such violations. Hence, the courts, through institutionalizing international human rights laws domestically, potentially have the power to establish the rule of law in states that had previously ruled

[31] These arguments assume independent, effective courts not merely the presence of a court.

by law, abusively using the law as merely another tool of government (Ginsburg and Moustafa 2008; Kleinfeld 2006; Tamanaha 2004).

Even anecdotally, domestic courts seem to play an important role in the incorporation of international human rights laws. In several cases, domestic courts appear to serve as leaders in promoting domestic legal change so as to expand human rights protections, making domestic laws more consistent with international law. For example, the Indian Supreme Court ordered parliament to come up with suitable legislation to conform with the principles outlined in the (then ratified) Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in order to address sexual harassment in the workplace (Simmons 2009: 255). Similarly, in Botswana, a court of appeals declared the 1987 Citizenship Act, which stripped Botswana female citizens married to foreigners of their right to pass on their Botswana citizenship (and thus political rights, such as the right to vote) to their children, unconstitutional (Simmons 2009: 255).

In other cases, domestic courts seem to require the aid of international law in promoting human rights. For instance, in Japan, women had attempted to use the courts to improve employment protections since the 1960s, albeit unsuccessfully until the passage of CEDAW (Simmons 2009: 255).[32]

[32] Yet, even in other cases courts appear to hinder (sometimes actively) domestic legal changes so as to preclude the development of human rights protections. In Chile, for example, the Supreme Court hindered human rights development and protection regarding torture—despite the ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)—by holding international treaties to be inapplicable retroactively (thereby upholding the national amnesty laws for government officials accused of torture), refusing to allow civilian courts to hold trials for military officers (thereby granting these officers the protection of 'in-house' justice), and preventing the prosecution of crimes under international law (Simmons 2009: 292).

Despite these anecdotes, however, little systematic analysis exists on the role of domestic courts and the legal community in the incorporation and implementation of international human rights laws. Yet, recent global judicialization along with the establishment (and reestablishment) of constitutional courts with judicial review powers, combined with the rapidly growing international judiciary has lead to previously unknown levels of 'new constitutionalism' that "establishes fundamental human rights as substantive constraints on legislators and administrators, and provides for judicial protection of these rights against abuses by public authority" (Shapiro and Stone Sweet 2002; Seider, Schjolden, and Angell 2005; Moustafa 2003; Epp 1998; Tate and Vallinder 1995). These processes further make domestic courts ideal actors for international law incorporation.

Hence, I argue that international laws, supranational courts, and national high courts matter in the incorporation and effectiveness of international law as well as in the development, promotion, and implementation of human rights protections. I examine these relationships by evaluating the influence of international human rights laws, the Inter-American Court of Human Rights, and national high courts in Latin America. I use Spanish-speaking, civil law countries in Latin America and the regional court so as to take advantage of a most similar system design. These countries have similar histories, including experiences with being former colonies, the same language, and the same legal system. As such, this region is less diverse relative to member-states in European regional regimes like the European Court of Justice and to member-states of international courts like the International Court of Justice or the International Criminal Court. The most similar systems approach is designed to eliminate as much of the variation across

states that might lead to spurious conclusions about the relationships between legal institutions and the influence of international law.

2.1 Latin American National High Courts and International Human Rights Law Incorporation

In 2013, the United Nations awarded the Mexican Supreme Court of Justice (*Suprema Corte de Justicia de la Nación* or SCJN) the UN Defense of Human Rights Award. This extremely prestigious award has been received by, among others, Malala Yousafzai (2013), Nelson Mandela (1988), Jimmy Carter (1998), Eleanor Roosevelt (1968), Dr. Martin Luther King (1978), the International Committee of Red Cross (1978), and Amnesty International (1978).[33] Yet this was the first time a court received the award.[34] This international recognition of a domestic court's promotion of human rights is striking in that it represents the first time a court receives such recognition—and in that this accomplishment does not corroborate the widespread assumption that courts do not play an important, systematic role in the promotion of human rights.

This event is perhaps also surprising in that it appears in the midst of escalating violence within Mexico between the federal government, organized crime, and drug cartels. Indeed, the increased militarization of the war on drugs has left Mexican citizens vulnerable to rights violations such as disappearance and torture. Perhaps most prominently, international news and rights organizations shunned the federal government for not effectively protecting the rights of, or investigating the disappearance of, forty-

[33] See Appendix A for the full list of recipients.

[34] The UN Defense of Human Rights Award began in December of 1968 and is awarded every five years (http://www.ohchr.org/EN/NewsEvents/Pages/HRPrizeListofpreviousrecipients.aspx).

three students from the state of Guerrero and the murders of people nation-wide.[35] For example, Human Rights Watch chides the Mexican government for making little progress in prosecuting the widespread killings, enforced disappearances, and torture committed by soldiers and police in the effort to combat organized crime.[36] From 2007 to 2013, more than 26,000 people had been reported disappeared or missing, and Mexico's security forces have participated in these enforced disappearances since the launch of the 'war on drugs.' In June of 2013, the Mexico's National Human Rights Commission (CNDH) said it was investigating 2,443 disappearances in which it found evidence of the involvement of state agents.[37] Hence, the awarding of the Mexican Supreme Court for promoting human rights despite the seemingly contradictory trend of right violations due to cartel violence reemphasizes the importance of determining *under what conditions do courts matter in the promotion of human rights consistent with international human rights law*.

Yet, this anecdote exhibits the increasing reality that domestic courts can—and do—take the lead in promoting human rights. Through trends of judicialization, courts have grown in power and are starting to exert their influence in adopting international human rights laws and legal norms unilaterally. I argue that courts matter in promoting human rights—even, in some cases, when they do not enjoy high levels of judicial independence. However, the roles that courts play differs across rights—specifically between physical integrity rights and empowerment rights. Furthermore, I argue that judicial independence is not the most important domestic political factor determining the degree to which

[35] (http://www.hrw.org/news/2014/11/07/mexico-delays-cover-mar-atrocities-response)

[36] (http://www.hrw.org/world-report/2014/country-chapters/mexico)

[37] (http://www.hrw.org/world-report/2014/country-chapters/mexico)

human rights laws are enforced. I also argue that the Mexican Supreme Court anecdote is not a single, isolated event. Latin America, albeit to differing extents, is experiencing trends where their national high courts are behaving proactively in promoting domestic laws that are consistent with international law and frequently derived directly from international laws.

Domestic courts should matter in the incorporation or adoption[38] of international human rights laws for several reasons. First, increasing judicialization enables courts to exert substantial influence over policy decisions. Judicialization, or the global expansion of judicial power, means that courts are playing a more integral part in policy decisions that were originally exclusively determined by legislative and executive bodies (Tate and Vallinder 1995). These trends of court empowerment are evident worldwide and occur in common law countries and civil law countries alike, including Latin America, Western and Eastern Europe, India, Malta, the Philippines, Egypt, Israel, Canada, Australia, the Netherlands, Sweden, Namibia, and the United States (Seider, Schjolden, and Angell 2005; Moustafa 2003; Shapiro and Stone Sweet 2002; Stone Sweet 2000; Epp 1998; Tate and Vallinder 1995). Hence, courts are increasingly able to assert their preferences in policy determinations that previously excluded them. In other words, courts are able to influence a wider set of national policy decisions.

Judicialization has also led to stronger, more powerful courts. Partially due to democratization trends and the influence of American jurisprudence and power, judicialization trends incorporate the creation of stronger judiciaries in transitioning or

[38] I use the terms "incorporation," "adoption," and "institutionalization" interchangeably to refer to the codification of international laws into domestic law, either through executive order, legislation or court decisions. Hence, an international law is adopted/incorporated/institutionalized when it has become enforceable domestic law.

new regimes. Particularly in Latin America, for example, democratization processes have included the creation of more insulated judiciaries with fixed salary and tenure. Courts have thus become increasingly autonomous and independent from other government agencies (although to varying degrees). Increased judicial power, combined with the access to policy making originally prohibited to them, has set a stage for court activism—especially in regards to international human rights laws.

Courts are further able to promote international human rights laws domestically because of the growing norm that courts are the appropriate bodies to address grievances, especially with increasing accessibility of courts. Increasing numbers of judicial and quasi-judicial bodies have emerged in the international arena, partly due to (and contributing to) the legitimacy of human rights regimes where judicial bodies play the crucial role of the distributor of justice. Increased numbers of judicial bodies (especially within human rights regimes) expand the accessibility of courts to individuals, which leads to more individuals seeking justice through courts, and encourages the growth and interactions of transnational epistemic communities[39] of human rights advocates and judicial/legal communities. These communities not only socialize[40] members (and perhaps other actors with whom they interact), but these networks of communities enable transnational coordination for international pressure, media attention, and litigation

[39] Epistemic communities are defined as "a network of professional with recognized expertise and competence in a particular domain and an authoritative claim to policy relevant knowledge within that domain or issue-area" (Haas 1992).

[40] Socialization is defined as "behavioral changes that presumable come about through changes in the actors' interests" where these changes arise through the process of interaction with other actors, leading to individuals copying or learning from the behavior exhibited by others (Greenhill 2010). Socialization is similar to Goodman and Jink's (2004) concept of acculturation, the "general process by which actors adopt the beliefs and behavioral patterns of the surrounding culture." Acculturation, like socialization, includes mimicry and identification (among others) and is effective when groups generate varying degrees of cognitive and social pressures, real or imagined, to conform.

strategies. Each of these processes sets the stage that enables and empowers courts to play an active role in promoting human rights.

On the few occasions courts make an appearance in rights discourse, existing scholarship asserts that, at best, domestic courts matter only when they enjoy a high level of judicial independence. I argue that a high level of judicial independence is not necessary for courts to promote human rights and that the need for judicial independence differs across rights. Namely, I argue that while courts may need high levels of judicial independence in order to protect physical integrity rights, such high levels of judicial independence are not necessary for the promotion (and expansion) of empowerment rights. The reason for this distinction is that courts a play different role between these types of rights. Courts primarily serve as constraints to government behavior for physical integrity rights; yet, because courts have the responsibility to define and apply empowerment rights through their legal interpretations and their application of the law, courts can unilaterally promote and expand empowerment rights.

Hence, for physical integrity rights (PIR), like freedom from torture, political imprisonment, forced disappearance, and extrajudicial killing,[41] domestic courts must hold the government accountable for violations and/or deter the government from engaging in these behaviors by generating the credible expectation that violators will be held accountable. Thus, judicial independence, conceptualized as the insulation of the court (and its judges) from undue external or internal pressure that enables the court to produce decisions reflective of sincere court preferences,[42] plays a crucial role in the

[41] The definition of physical integrity rights is derived from Cingranelli and Richard's (2010) definitions.

[42] This definition is thus a *de facto* judicial independence, distinct from *de jure* judicial independence, which focuses only on the formal rules designed to insulate judges from undue pressure. This

protection of these rights. The extent to which members of a court are insulated from government pressure largely determines the degree to which a court is able and willing to confront it. In other words, in order for a court to effectively constrain government behavior, it must be (at least somewhat) independent from political control. Since the perpetrators of physical integrity rights are often government agencies or representatives, unless courts have some degree of insulation, they will be unlikely to rule against their political benefactors—or even hear the case in the first place. Hence, courts must enjoy relatively high levels of judicial independence in order to credibly hold a government agency accountable or to deter rights violations.

On the other hand, domestic courts have the opportunity to promote empowerment rights rather than simply constrain executive behavior. Empowerment rights consist of the freedoms of speech, assembly, association, religion, foreign and domestic movement, worker's rights, and electoral self-determination.[43] Courts can unilaterally expand empowerment rights protections by generating new rights and by expanding the application of existing rights to new situations and/or to new groups of people. Courts have much more power to determine empowerment rights because these rights are often already embedded in existing domestic laws. Hence, courts can expand the application and enforcement of these laws through their interpretation of the law and through their decisions. The fact that courts already have the power and responsibility to interpret and

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conceptualization includes judicial autonomy, where the decisions of the court are reflective of court preferences and decision-making. While this concept of judicial independence includes both external and internal pressures, I am mostly concerned with freedom from external pressures, i.e. horizontal accountability. As such I do not discuss the independence of lower court judges from superior court judges; rather, I am concerned with the degree to which high court judges are independent from pressure exerted from other government agencies and bodies.

[43] The definition of empowerment rights is derived from Cingranelli and Richard's (2010) definitions. Later analyses introduce flexibility to the specific rights included in empowerment rights.

generate law enable them to enact these expansions legitimately. This institutional legitimacy also makes it difficult for executive to challenge the courts.

Because of this unique role, judicial independence only matters up to a point. Judicial independence would be necessary to confront the government should it violate these rights, just as with physical integrity rights, but these rights do not always require governmental confrontation. For instance, high levels of judicial independence may not be necessary in order to resolve cases between private entities. Nonetheless, when a court is completely dependent upon a government, the court is not likely to hear rights cases or rule in ways that supports or enforces rights. Some degree of judicial independence is necessary in order for a court to choose to hear rights cases as well as resolve them in rights-affirming ways regardless of whether the government approves of the decisions. Hence, judicial independence is necessary in order for a court to play an active role in rights protections. Once this level of judicial independence is reached, opening the proverbial door for the court, the court does not need its level of independence to continue to expand in order to rule progressively.

Regardless of the type of right, domestic courts can promote human rights through increasingly holding violators accountable and expanding rights protections to a larger set of situations or contexts for a larger proportion of society. Yet, if courts have the ability to promote human rights protections, then why would courts choose to promote these rights? Three broad reasons can answer this: 1) judges serving on courts sincerely belief promoting rights is morally right or makes good policy and/or are compelled by their perceived duty to promote rights, 2) principal-agent hierarchical relationships motivate

courts to apply laws congruent with regional courts, and 3) judges seeking to garner increased power for the court as an institution strategically choose to promote rights.

Judicial Preferences: Attitudes and Role Conceptions

The first possible mechanism inducing judges, and the courts they serve, to promote human rights laws and protections is that either their attitudes and sincere policy preferences are congruent with rights promotion and/or they perceive their duty and role as a judge obligates them to promote rights. If judges' decisions are a "function of what they prefer to do, tempered by what they think they ought to do, but constrained by what they perceive is feasible to do," then the first two choices, representing the attitudinal and role theory models, may account for the choice to promote (Gibson 1983). Hence, their attitudes encompass what judges prefer to do while role orientations consist of what judges think they ought to do.[44]

Attitudes congruent with rights promotion may lead judges to choose to promote human rights. Like other political actors, judges render decisions based upon their personal attitudes, values, and preferences (Segal and Spaeth 2002, 1993; Segal 1997; Segal and Cover 1989; Schubert 1965; Pritchett 1954). Hence, this mechanism asserts simply that judges promote rights protections because they prefer to. In this scenario, judges choose to promote rights because it moves national policy closer to the judge's preferred policy location and/or because promoting rights makes 'good' law.

[44] What judges think they ought to do also includes legal concerns. For example, a judge may want to apply the law a particular way congruent with his or her personal policy preference but the case facts may not allow such a decision. While I do not discuss these legal concerns here as I am primarily concerned with why judges would choose to promote human rights, I do not seek to imply the lack of consideration of legal factors. It is possible that judges choose to promote rights due to case facts, but I include these legal concerns within both the attitudinal and role theory models.

Role expectations could also interact with, mitigate, or constrain the translation of judicial attitudes into behavior. The role expectations consist of the norms of 'proper' behavior within a particular role or situation (Gibson 1983, 1978). The combination of sets of role expectations inherent within an identity or office creates a role orientation of the occupant with that identity or within that office. Role orientation is thus "a psychological construct which is the combination of the occupant's perception of the role expectations of significant others and his or her own norms and expectations of proper behavior of a judge" (Gibson 1978). In essence, the perception of the appropriate behavior inherent within an office, position, or identity may influence the behavior and attitudes of the occupant. These perceptions include those created by the occupant but also by other judges, rights-related or legal epistemic communities,[45] and the judicial 'audience' in general (Baum 2006). Norms about judges and judging arising from each of these communities influence judicial decision-making through judges' concerns about reputation, popularity, and respect at the individual and institutional levels (Baum 2006; Mishler and Sheehan 1996; Miceli and Cosgel 1994). In short, "judges, like other people, get satisfaction from perceiving that other people view them positively" (Baum 2006). For this reason, judges' perceptions about themselves as well as perceptions about how other people view and respect them influence judicial decision making and the calculus to promote rights or not.

Furthermore, the persistent interactions with these sets of norms across audience communities could also socialize the occupant to take on the identity defined by these norms perceived within the role of a judge (Glick 1992). Regular exposure to and

[45] Epistemic communities are defined as "a network of professional with recognized expertise and competence in a particular domain and an authoritative claim to policy relevant knowledge within that domain or issue-area" (Haas 1992).

interactions with the rights-related and legal epistemic communities, including judges, lawyers, litigants, and other actors, not only provide normative expectations that inform the role orientation of a judge but socializes the judge to alter his or her own identity and expectations. Increased and repetitive exposure of legal and role norms can lead to norm convergence, where actors that may not have agreed with or shared a normative belief eventually converge in their acknowledgment and support of the legal norm. Additionally, epistemic communities may provide judges rationale for adopting new rights policy solutions as well as make contingent arguments that define policies as "right under certain circumstances" (see Dobbin, Simmons, and Garrett 2007; Dobbin and Sutton 1998; Glick 1992; Haas 1989; see also DiMaggio and Powell 1983). Hence, socialization can change judicial attitudes as well as role orientations. For instance, because courts are widely considered the cornerstone of human rights protections, judges may promote rights because they believe they should (due to their membership in the court) or because they want to. The point at which judges learn and take on the perceived role, identity, and obligatory behavior of a 'judge' is where role theory converges with the attitudinal model. Even judges that may not have sought to promote rights before becoming a judge, or even early in their career, may learn and become socialized to these norms, thereby changing their attitudes. In this sense, the role orientation no longer constrains behavior but redefines the judges' attitudes and preferences.

It is important to recognize that role orientations do not necessarily constrain attitudes since they may reinforce existing attitudes or redefine attitudes all together. As such, both mechanisms may influence judges to choose to promote human rights laws that are consistent with international laws. Judges may promote rights because they prefer to,

because they think they ought to, or because they have learned to want to. Indeed, Walker (2012) finds that the "pressures that judges feel to advance human rights are generally self-imposed [where] [t]hese social elites view human rights as fundamental rights."[46] Hence, attitudes and expectations may determine the degree to which judges choose to promote rights.

Principal-Agent Motivations

Secondly, principal-agent hierarchical relationships motivate courts to apply laws congruent with regional courts.[47] These relationships denote the superior court as the principal and lowers as the, presumably, faithful agents of the superior court. In general, this hierarchical relationship appears strong in American federal courts, where circuit courts faithfully comply with Supreme Court precedent and changes in jurisprudence with little to no agency loss due to lower court ideological preferences (Westerland et al.

[46] Furthermore, often judges' activities promoting rights "are relatively unobserved by both domestic and international actors." Walker's (2012) description of his findings in Central American courts continues to argue that, while the judges themselves may advance human rights, citizens also attempt to advance these human rights through the legislative arena. Yet, he similarly argues, the courts still play an important role as the center of "administration and enforcement of the legislative provision" (Walker 2012).

[47] At this point I do not distinguish between decision congruence where cases are decided similarly due to case facts versus responsiveness where lower courts respond to changes in principal court policy or decision changes (Songer, Segal, and Cameron 1994). This distinction, while important, tends to become problematic since these concepts converge in terms of regional court- high court hierarchical relationships within the human rights issue area. Supranational court human rights decisions infrequently change in any meaningful way due to the nature of the cases and rights violations. Even when court membership changes or institutional and political contexts shift, supranational courts tend to remain consistent in their application of human rights law. Hence, there is little opportunity to evaluate responsiveness in this manner. Domestic high courts, on the other hand, more frequently alter their decisions and policies, especially after changes in judge membership and political contexts. Responsiveness is thus more important and more easily identified for evaluation within the domestic judicial context. Hence, the evaluations in this dissertation deal primarily with congruence, while only partially accounting for responsiveness in terms of changes in domestic legal systems and court activity after regional court decisions. (In other words, responsiveness is only included to the extent that domestic legal changes occur after the presence of a regional court decision. The 'response' in this scenario is triggered by the presence of a supranational court decisions rather than changes in supranational court jurisprudence.)

2010; Songer, Segal, Cameron 1994; Songer and Sheehan 1990; Songer 1987).[48] Similarly, Randazzo (2008) and Baum (1980) find that superior appellate courts also constrain lower federal district courts in the United States.[49]

There are four motivations where this hierarchical relationship will induce the incorporation or adoption of international law: a) fear of reversal due to corresponding reduction of personal recognition, respect, and/or reputation, b) fear of reversal due to the impeded inability to shape policy, c) advancing career and fear of reducing ability to advance, and d) compliance as a good in and of itself due to role conceptions, respect for authority, and desire to produce legally accurate and consistent decisions (Klein and Hume 2003).

In terms of the first two motivations, fear of reversal can be caused by personal reputation motivations or policy-making motivations. For example, a national high court may comply with a regional court and international law in order to avoid international shaming and reprimand, thus incurring reputational costs. National high court judges could similarly comply in order to maintain their ability to influence and determine policy; if the court does not comply and its decision reversed, then the court has lost its ability to determine policy in that area.

[48] Both find that the lower courts generally serve as faithful agents, although Westerland et al. (2010) find that lower court ideology does not influence its behavior while Songer, Segal, and Cameron (1994) finds that some room remains for agency loss due to lower court pursuing their own ideological preferences.

[49] Baum's (1980) results are more similar to Songer, Segal, and Cameron (1994) rather than Westerland et al. (2010)—albeit perhaps less optimistic—in that superior courts "exert significant influence over the decisions of their subordinates" but that they do not completely determine lower court behavior or determine lower court behavior in "any absolute sense." Hence, superior court influence, he argues, is one of several factors that determine lower court behavior and it may explain less than other factors not included in his analyses (such as judge preferences).

While fear of decision reversal is possible, however, national high court decisions are rarely considered by a regional court and therefore unlikely to be reversed. Hence, the likelihood of this event is so low that such a motivation is unlikely. This intuition is similarly addressed in American judicial scholarship where lower court fear of reversal is unlikely due to the fact that the Supreme Court hears only a tiny percentage of cases, rendering the likelihood that the Supreme Court will hear a case and reverse it extremely unlikely (Klein and Hume 2003).[50] Indeed, Klein and Hume (2003) find that this motivation does not appear to explain lower court compliance[51] to U.S. Supreme Court decisions. Thus, it seems that this motivation, while possible, is not particularly persuasive. It is even more unlikely to serve as a motivation since the regional court examined here, the Inter-American Court of Human Rights, does not serve as an appellate court to national high courts as declared through its 'fourth instance' rule (Harris 2004, 12).

The third motivation deals with judges' career ambitions where compliance is motivated either by the desire to advance one's career or by the fear of reducing one's ability to advance. These motivations depend both on individual ambitions and the institutional structure of the judiciary. Put simply, national high court judges could strategically comply with regional court decisions and international law more generally

[50] Note that this argument applies only terms of lower courts and the American Supreme Court. Hierarchical relationships between appellate and district courts may experience these motivations since there is a much greater likelihood that lower court decisions will be evaluated by the superior. Evidence exists suggesting that a stigma is attached to a judge's reversal rate (Baum 1978; Caminker 1994), and Randazo (2008) finds that the anticipation or fear of negative responses by courts of appeal is the constraining force on U.S. federal district courts, inducing these lower courts to curtail their ideological influence (Randazzo 2008). However, this constraint applies to civil liberties and economic cases but not to criminal cases (Randazzo 2008).

[51] Compliance is defined here as the faithful application of existing higher court precedent and deciding cases as the higher court would be expected to (Klein and Hume 2003).

because it serves their personal career ambitions. For example, noncompliance could reduce a judge's ability to advance his or her career due to the reputation of rights negligence or violation or due to ignoring existing legal standards. Alternatively, compliance where a judge rules against the state may reduce the judge's ability to advance a career in politics within that home state. While these motivations are important, it is unclear the extent to which they occur at the institutional level. In other words, while an individual judge may behave according to these motivations, it is unlikely that this behavior would be observable or meaningful at the institutional level. Because courts consist of multiple judges with likely diverse career ambitions, it seems unlikely that as a whole these behaviors would influence court jurisprudence. [52]

The fourth motivation suggests compliance may occur simply because the national high courts view compliance as a good in and of itself that is desirable or beneficial. Judges may view their authority and position within a framework that dictates that they should comply in order to assure legal accuracy and consistency or to respect authority and the hierarchical legal structure.[53]

[52] Looking specifically at the regional-national high courts hierarchical relationship, the IACHR is a part-time body consisting of seven judges who serve six-year terms and are nominated by Convention parties and elected by the General OAS Assembly. While they all have legal backgrounds, few have ever served as a judge in their home state. The majority of judges were previously academics or had previous experience in diplomacy and politics (Harris 2004, 23). Hence, it seems unlikely that national high court judges are motivated to seek career advancement to the IACHR specifically. Obviously, this does not preclude career motivations in general since there are other judicial, political, and non-political careers that judges may seek.

[53] Yet the application of traditional principal-agent model to supranational and national court relationship may be problematic. Stone Sweet (2000) argues that this framework does not work well for European Union relationships since there is no clear hierarchy and the degree of oversight remains unclear. Furthermore, the assumption that principals select their agents is violated in these international-national relationships.

Empowerment of Court

The final, third explanation for why courts may choose to incorporate international law and promote human rights consists of institutional motivations where judges seek to empower the court as an institution and seek to avoid reductions in judicial power.[54] As such, judges are concerned with expanding public support and increasing legitimacy, which empowers the court, making it more capable and effective at constraining state behavior. Alternatively, they are also concerned with avoiding behavior that would delegitimize the court, reduce public support, and thereby weaken the court, making it vulnerable to institutional dependency, government attacks, and ignored decisions. In these cases, these concerns would predict that a court would prefer to appear as an impartial arbiter that is independent of political interests. This would lead to the incorporation of international human rights laws and compliance with regional court decisions since compliance signals the court's impartiality, independence from state government influence, legal accuracy and consistency, and its advocacy of the public. In general, pro-human rights decisions consistent with international law would increase public support of the court, thereby empowering the court as an institution.[55] Expanding human rights protections can improve court standing in the eyes of the public, which may increase the degree of (diffuse) public legitimacy the court enjoys. Increased legitimacy

[54] This mechanism could be categorized another principal-agent motivation.

[55] Due process rights in particular may not lead to increased public support and legitimacy. While international human rights laws seek to protect criminal rights and trial rights, these laws can be extremely unpopular. The reason is that in some cases, the protection of due process rights leads to the perception that criminals are benefitting from international law rather than the victims of crimes. For instance, a convicted foreign national convicted of drug crimes and murder who is later released to the home country rather than serving his or her sentence would lead to public outcry and backlash since in this case international law's protection of due process rights appears to benefit the convicted criminal rather than the victims of his or her crimes.

can translate into greater judicial power or effectiveness since improved public support for a court makes executive challenges to court decisions more costly politically.

While this dissertation does not distinguish between these possible motivations for expanding human rights, these reasons make it plausible that courts might want to expand human rights if they are able to. Two main outcomes should appear if courts are deciding to promote human rights. First, courts with discretionary dockets should increase the proportion of rights cases within those dockets. Increases in human rights cases imply increased court attention to rights issues and the desire of the court to rule on these issues. Secondly, promoting courts should increase pro-individual (i.e. pro-rights protection) decisions. Increased attention to rights issues is insufficient for rights protections and expansion; courts must decide cases in a way that promotes human rights protections in order to support these arguments.

Promoting courts, however, often must face possible repercussions for their decision to promote human rights—especially in non-democracies or transitioning countries. Often these decisions limit government behavior, which may lead to an executive choosing to ignore the court decision, thereby not enforcing it, and/or the government punishing the court through the removal or suspension of jurisdiction, impeachment or member removal, court packing, court dissolution, reduction of salary and funding, threats of harm, and so on. Hence, courts have incentives to behave strategically when incorporating international laws when the government may not be supportive. Namely, courts are unlikely to promote international law institutionalization if they believe that they will face significant punishment costs.

This intuition finds anecdotal evidence and mixed empirical support in even liberal democracies as illustrated in separation of powers models for the United States Supreme Court, legislative, and executive branches. Take, for instance, Franklin D. Roosevelt's court packing plan, which altered United States Supreme Court jurisprudence. More systematically, the Supreme Court typically defers to Congress when it is hostile toward the Court and lacks public support (Clark 2009) and avoids striking down laws when it is ideologically distant from Congress (Segal, Westerland, and Lindquist 2011). [56] Supreme Court judges may also switch their votes to align themselves to congressional preferences, although in a limited number of situations (Hansford and Damore 2000). Similar strategic court behavior determines the degree to which the Supreme Court defers to executive; for instance, the Supreme Court is more likely to defer to strongly backed,

[56] Although Segal (1997) finds that the Supreme Court "overwhelmingly" votes sincerely based upon their ideological preferences rather than engaging in sophisticated or strategic voting. More extremely, Sala and Spriggs (2004) reject separation of powers considerations outright. Yet, Bergara, Richman, and Spiller (2003) argue that Segal's (1997) results are biases from economic issues, which, once correctly modeled, produce more support for separation of power constraints on the court. Zorn and Bowie (2010) similarly find support that ideological preference voting increases as one moves up the American judicial hierarchy. This postulate and corresponding evidence suggests that lower courts become increasingly constrained as one moves down the hierarchy (although these constraints include differing goals and ability to move policy). The influence of judicial hierarchy is further compounded by the interaction of hierarchical and collegial politics at lower court level, thereby increasing Supreme Court control (Kastellac 2011). Lax (2012) however also shows that this hierarchical structure informs Supreme Court decision-making and choice of doctrine, which enables it to strategically establish doctrines that allow or preclude strategic noncompliance by lower courts. This implies that lower courts are strategically constrained by its superiors. Thus, the degree to which the United States Supreme Court is constrained by their anticipation of legislative and executive response or reaction retains mixed support.

Even the likelihood of congressional override and congressional attention received mixed conclusions. While much of the research assumes relative infrequency of congressional attention and override, Eskridge (1991) finds that from 1975 to 1990, each Congress has overridden on average twelve Supreme Court statutory decisions and half of the Court's statutory decision "have been or will be the specific focus of congressional hearings.

Scholarship has also examined the incidence and causes of Congressional overrides. In particular, case-specific factors, electoral consideration of public opinion, age of the statute, ideological fragmentation of the Court, Court ignoring legislative signals and government positions all play a role in predicting Congressional override within the United States (Hettinger and Zorn 2005; Ignagni and Meernik 1994; Eskridge 1991).

popular executives and in cases involving foreign policy and military affairs (Yates and Whitford 1998).

Outside of the United States, these separation of power dynamics also emerge. For example, Vanberg (1999) finds that Germany's constitutional court is constrained in similar ways as the United States in that it must be attentive to the preferences of the governing majority since the ability of the court to advance goals depends upon their cooperation. Russia found significant constraints in its inability to induce government compliance with and enforcement of its decisions—even if it had congressional backing (Epstein, Knight, and Shvetsova 2001). Cooter and Ginsburg (1996) similarly imply that legislatures constrain courts in their likelihood of override or repeal when they find that courts become much more activist when this likelihood decreases in a variety of countries (like the United States, United Kingdom, Israel, Japan, Austria, Belgium, Italy, Ireland, Germany, Sweden, Spain, Canada, Denmark, Finland, Norway, Netherlands, New Zealand, Australia, and Luxembourg).

Moving beyond established democracies, these constraints and negative governmental responses become increasingly severe. Between 1985 and 2008, Latin American judiciaries, for example, experienced increasingly frequent attacks by the government. In the late 1980s, these courts saw five attacks, which grew to fourteen in the early 1990s; since 1995, the average number of states sits at eleven every five years (Helmke and Staton 2011, 309). Most typically, these states experience threats of impeachment and purging most frequently, although individual level and institutional level attacks are roughly equal (Helmke and Staton 2011, 311; Helmke 2010). Ecuador, Bolivia, Argentina, Venezuela, and Peru experience the most frequent attacks on their

courts (Helmke and Staton 2011, 309). Peru, for example, ruled against the government, who then responded by ignoring the decision and firing the judges involved (Finkel 2008). The courts of Argentina and Nicaragua have further experienced government attacks on their independence (Helmke 2010). Indeed, most countries in Latin America have either multiple attacks or none (Helmke and Staton 2011, 309). More troubling is that these attacks have become increasingly successful over the last decade. Where these attacks saw a 40% success rate between 1995-1999, the rate jumped to 57% in the 2000-2005 and 83% from 2005-2008 (Helmke and Staton 2011, 309). Over this time frame, the courts' experiences of institutional attacks remain relatively constant while individual level attacks have somewhat diminished. This credible, and frequent, threat of attack on the courts alters court behavior. For example, Argentine judiciary behaves strategically based upon the anticipated responses of the government that constrains it (Iaryczower, Spiller, and Tommasi 2002).

Similar intuitions are evaluated in the international law literature where supranational courts must face possible repercussion from member-states. The combination of voluntary membership and absence of enforcement mechanisms has led some scholars to believe that these institutions must behave strategically in order to survive and remain independent.[57] Carrubba, Gabel, and Hankla (2008), for instance, find that the ECJ is

[57] These are obviously the same arguments that the same scholars typically use to argue that institutions are ineffective and epiphenomenal. The main difference between these international courts versus domestic courts is the assumption of threat severity. In essence, because the international system is assumed to be anarchical while domestic politics are hierarchical, threats to supranational courts and threats of noncompliance are more severe than they would be for similar situations domestically. To put it plainly, this assumption implies that these threats are insurmountable in the international system and less problematic in domestic political contexts. As mentioned previously, I reject this assumption and implicitly argue that both international and domestic courts face similar pressures, institutional threats, and threats of noncompliance (see Staton and Moore 2011 for similar arguments). Moreover, these institutions may have similar solutions to these threats.

sensitive to member-states' threats of noncompliance and threats of override, therefore behaving strategically in their decisions applying international law (see also Garrett and Weingast 1993).[58] Keleman (2001) finds similar political constraints on the ECJ and GATT/WTO adjudication. Posner (2004) argues that the International Court of Justice (ICJ) has declined due its continually bowing to member-states pressures and thus not applying the law impartially.

Hence, even when courts seek to promote rights and international law, they are constrained by domestic political factors. However, these constraints can vary in intensity, likelihood, and avoidability. Institutional rules and judicial independence insulate these promoting courts to some degree from at least the most severe sanctions and determine the likelihood and costs of sanctioning in the first place. The degree of legitimacy and public support further induce *ex post* costs on a government that sanctions or attacks the court. Hence, it is unclear the extent to which and under what conditions courts seeking to incorporate international law in the face of constraints can do so effectively.

Separation of powers scholarship offers four main factors that can determine court success or failure in this context: judicial independence, court legitimacy (referring to its public support), domestic political competition, and government fragmentation. In essence, court legitimacy and domestic political competition make government sanctioning of the court more costly (*ex post*) because the government would some of its political support which may lead to its loss of power should it get ousted by an opposing party. Additionally, the presence of domestic political competition, or opposition parties,

[58] Stone Sweet and Brunell (2012) contest these results who assert that, even using the same data, the treat of override is not credible.

makes the loss of public support more costly in and of itself since they can mobilize citizens to response to the government action, which could lead to protests, rioting, and political instability (as well as regime change). Judicial independence and government fragmentation refer mainly to *ex ante* costs of sanctioning where judicial independence makes it more costly and less likely that the government can successfully sanction the court and where governments that are highly fragmented or fractionalized suffer from severe collective action problems in coordinating action among a large set of veto players with diverse preferences. In essence, these factors increase transaction costs for sanctioning. Yet, few studies—none to my knowledge—examine these factors together. It is therefore unclear how to prioritize these factors and determine which are necessary or sufficient for successful court incorporation of international human rights laws.

These intuitions are evaluated in Chapter 3, which addresses the question: *under what conditions do courts promote human rights, thereby incorporating international human rights law*? Using original and secondary data from Latin America, Chapter 3 evaluates the differing influence of judicial independence on physical integrity rights protections and empowerment rights protections and provides preliminary qualitative evidence of trends in national high court activism incorporating international human rights laws. I find that several Latin American high courts are effectively and unilaterally incorporating international human rights laws into their domestic legal systems. Finally, the chapter offers a game theoretic model that identifies the conditions under which a high court would choose to proactively adopt international rights law even in the face of possible sanction.

2.2 Inter-American Court of Human Rights (IACHR) and Human Rights Law Incorporation

One of the tensions generated by the simultaneous presence of domestic courts and regional courts is whether these institutions and their jurisprudence compete with or compliment each other. This dissertation argues that regional courts matter in the incorporation of human rights laws and that, while some competition is inherent,[59] they primarily serve as a complement to domestic judiciaries. Just as domestic courts can provide enforcement to regional court decisions, regional courts can legitimize domestic jurisprudence, potentially serving as an enforcement mechanism to deter government attack by making negative government reactions more costly (*ex post*). In essence, the congruence of regional court decisions with domestic jurisprudence lends legitimacy to domestic courts that bolsters public support. These perceptions of legitimacy may be due to the policy or case outcomes themselves, the regional court's independent and impartial

[59] Competition is triggered when the policy preferences between these courts diverge. In other words, the greater the ideological distance between the regional court and domestic court, the more these institutions compete over policy. In terms of human rights policies, this occurs when the domestic court is more conservative (less receptive to human rights) than the regional court.

Benvenisti (2008), however, makes an intriguing argument implying the unavoidable competition between international law and domestic law. He asserts that national high courts strategically cite and incorporate foreign and international law as a response to perceived threats to court power. In this scenario, democratic national courts only incorporate international law when they perceive external threats to the domestic democratic process and national sovereignty, which inherently threaten court power and independence. The intuition is that self-interested courts seek to protect their judicial power in the face of ever growing global regulations that increasing leaves national courts with dwindling opportunities to regulate and restrain domestic political institutions. Hence national courts use international law in order to regain national sovereignty and "empower domestic democratic processes by shielding them from external economic, political, and even legal pressures," in order to regain their lost power or avoid losing their power to regulate domestic institutions. Incorporation, then, occurs not from deference to international law or norms but from the attempt to reclaim national sovereignty within a prisoner's dilemma framework. Most simply, incorporation of international law is the strategy pursued by national courts who seek allies with whom to cooperate to maintain the balance of power between the court and government under perceived times of threat. Benvenisti (2008) asserts that this explains why high courts within democracies to not regularly incorporate or cite international law as they only do so when under threat. Furthermore, he argues that this similarly explains why national courts in non-democracies, which continually face these external economic, political, and legal pressures arising from globalization, are "frantically clinging" to international law.

procedures, legal accuracy, or independence from domestic political influences that contaminate domestic legal procedures.

Secondly, regional courts can also help translate and apply international human rights laws within its particular region with unique cultural contexts. Regional court interpretation and application of the law readies the law to become incorporated domestically by clarifying the conditions under which it applies and how it should be implemented. For example, because Kosovo did not receive instructions on how to assess the compatibility of existing national laws with international human rights, judges were left with the task to interpret compatibility (Sannerholm 2012). Judges were thus faced with the arduous task of interpreting national laws (especially criminal codes) in light of international human rights law as well as other regulations from Yugoslav laws and the law promoted by the international organization working with Kosovo (namely, UN, EU, and Organization for Security and Cooperation in Europe). This led to the de facto rewriting of previous laws. Judges could request clarifications from the Special Representative of the Secretary-General (SRSC) on matters of implementation, but the binding status of such clarifications remained unclear (Sannerholm 2012). The lack of instruction combined with the undetermined legal framework that would be reinstated (and the legal exceptions that led to the application of the non-reinstated framework) led to legal chaos (Sannerholm 2012). Hence, domestic courts may need instruction on how to implement international human rights laws domestically or instruction as to the correct interpretation of these laws.

Similarly, regional courts can provide information and create a focal point that identifies the shortcomings of the domestic legal system that can instigate legal reform

and mobilization. Because these courts often identify specific domestic laws that are inconsistent with international human rights law, they attract attention to that inconsistency and facilitate mobilization for legal reform.

Finally, regional courts serve as members of the same legal and human rights epistemic communities and transnational advocacy network. Indeed, international legal institutions are the "primary vehicles for stating community norms and for collective legitimation" (Risse, Ropp, and Sikkink 1999, 8). Shared membership within these same communities with similar socialized norms, values, role orientations, and goals help conform domestic and regional preferences, thereby enabling preference convergence. These social pressures can lead to convergence in both strictly legal procedural issues and human rights issues (as well as their interaction). Moreover, the ECJ and European national courts are members within the same "community" of courts where each court is a check on the other, each asserting their respective claims in a process of dialogue through incremental decisions signaling opposition or cooperation (Slaughter 2000).[60] Hence, this "dialogue of constitutionalism" enables socialization and domestic incorporation (Slaughter 2000). Furthermore, the ECJ is cited by national courts outside of Europe where is has no authority, such as South Africa, Zimbabwe, and the British Privy Council sitting as the Constitutional Court of Jamaica (Slaughter 2000), and its interpretative procedures and reasoning have often similarly been accepted by the IACHR and United Nation Human Rights Committee. This type of diffuse socialization

[60] Not all European national courts treat the ECJ as a superior however. Germany's Constitutional Court is the most vocal about it peer status with the ECJ, and Italy and Belgium have made similar claims (Slaughter 2000; see also Stone Sweet 2000).

and influence that leads to incorporation is consistent with shared membership within legal and rights-related epistemic communities.[61]

Hence, regional courts are influential in that they participate in the "transnational legal process" consisting of the courts interacting with domestic legal systems and transnational epistemic communities, helping interpret international legal norms and their application, and enabling, pressuring, or socializing domestic internalization (see Koh 1996). I know turn to a brief background of the Inter-American Court of Human Rights and its institutional mechanisms for inducing compliance and rights incorporation.

Background of the IACHR

The Inter-American System of Human Rights, consisting of the Inter-American Court of Human Rights and the Commission on Human Rights, is derived from the overlapping regional agreements of the American Declaration of the Rights and Duties of Man (1948) and the American Convention on Human Rights (1969). The main function of the Court and Commission is to oversee compliance with the American Convention on Human Rights.

The Inter-American Commission on Human Rights is a permanent, part-time body headquartered in Washington, D.C., where it meets in regular and special sessions several times a year. The Commission consists of seven members, or commissioner, who are elected by the Organization of American States (OAS) General Assembly for four-year terms. Elected commissioners have the possibility of re-election on one occasion, for a maximum period in office of eight years. They serve in a personal capacity and are not

[61] These pressures similarly explain the decision o ratify international agreements (Wotipka and Tsutsui 2008).

considered to represent their countries of origin but rather they represent "all the member countries of the Organization" (Art. 35 of the Convention). No two nationals of the same member state may be commissioners simultaneously, and commissioners are required to refrain from participating in the discussion of cases involving their home countries.

The Commission is responsible for monitoring human rights situations within the hemisphere and, when necessary, publish country-specific reports. The Commission also conducts on-site visits to states to investigate a particular case or to more generally monitor general rights situations. It further holds conferences and seminars to encourage rights awareness, issues recommendations to member-states that would further right protection, issues precautionary measure requests to states in order to avoid serious harm in urgent cases, receives and investigates individual petitions alleging rights violations, and refers cases to the Court.

The Inter-American Court of Human Rights is a part-time institution composed of seven independent judges, headquartered in San José, Costa Rica. Judges are nominated by OAS member states and elected by the OAS General Assembly, and they serve six-year terms with one possible reelection for another six-year term. All judges have legal backgrounds although only a limited number ever served as a judge in the home country. Most judges have been academics or have experience in diplomacy and politics (Harris 2004). No member-state may have more than one representative judge serving on the Court at any time, although, unlike the Commission, judges are not required to recuse themselves from cases involving their home country. If a member-state is party to a case as a defendant and does not have a representative judge on the Court, the state is entitled to appoint an ad hoc judge to the Court for the case.

The IACHR serves two purposes: adjudicating contentious cases and issuing advisory opinions. States must be parties to the Convention and voluntarily submit to the IACHR's jurisdiction for the Court to be competent to hear cases involving that state. States have the option of granting blanket compulsory jurisdiction or submitting for an individual case. Most of the region has granted blanket compulsory jurisdiction to the Court, including Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, and Venezuela.

Contentious cases can be referred to the Court by a state party or by the Commission. Unlike the European system, individual citizens are not allowed to take cases directly to the Court; however, individuals who believe their rights were violated submit a complaint to the Commission who will determine the admissibility of the claim. If the state is found at fault, then the Commission will serve the state a list of recommendations to make amends for the violation. If the state ignores the recommendations and/or if the case is particularly important then the Commission will refer the case to the IACHR. Hence, the IACHR serves as a measure of last resort in that it takes a case only after the failure of resolving the matter in a noncontentious way and after the exhaustion of domestic legal remedies.

The right to lodge a complaint to the Commission applies to any person, group of people, or any non-governmental entity legally recognized in one or more OAS member-states. In the majority of the cases submitted to the Commission, the applicant is typically the victim, family member of the victim, or representative of the victim (usually a lawyer from a nongovernmental human rights organization). The complaint or petition must be

in writing, include the name and signature of the petitioner (and legal representative), identify the act of violation, specify the location, date, and time of the alleged violation, as well as the identities of the perpetrators whenever possible. The petition must allege that a member-state or state agent is responsible by its action or inaction. The petitioner must also include whether the petitioner has attempted to exhaust domestic remedies and what the outcomes of these attempts have been. The failure to include certain information is not fatal to the petition, and the Commission will request the petitioner supply whatever further information is required.

As with other civil law legal systems, the IACHR does not include a rule of binding precedent, although both the Court and Commission generally refer to their earlier decisions, and the Commission follows the jurisprudence of the Court on both interpretation and its enforcement procedures. The Court requires a quorum of five judges, and its decisions are final and not subject to appeal, although judges may submit dissenting opinions.

IACHR Institutional Mechanisms of Influence and Compliance

Unlike the European Court of Justice, the IACHR originally had no formal monitoring mechanism to identify compliance or noncompliance. However, the Inter-American Court of Human Rights now has several institutional mechanisms designed to induce compliance. In particular, the IACHR utilizes its publication of compliance reports and conventionality control, described below.

In 1996, the IACHR took it upon itself to issue yearly compliance reports that monitor state compliance. These compliance reports are based upon reports from

victims, from the Inter-American Commission of Human Rights, and from the state. The IACHR can also request a private hearing in addition to these submitted reports. Based upon these reports identifying and evaluating state compliance to the specific reparations required by the IACHR judgment, the IACHR writes and publishes a compliance report summarizing these arguments and its evaluation of compliance and noncompliance with regard to each reparation order.[62]

State parties challenged this practice in 2003, leading the IACHR to assert that the American Convention implicitly granted these procedures. The Court reasoned that although the practice is not explicitly authorized by the Convention, "the effectiveness of the judgments depends on compliance with them."[63] The IACHR has published compliance records since 1996 for each case pending compliance on a yearly basis.

In addition to compliance reports, the IACHR has recently devised a new tool of "conventionality compliance" that essentially grants judicial review powers to national courts in that it compels national judges to uphold the American Convention on Human Rights and IACHR case law. In effect, this tool compels national judiciaries to review legislation under the parameters of the Convention as interpreted by the IACHR. Conventionality control was created with the context of *Almonacid-Arellano v. Chile (2006)*[64] where the domestic courts did not nullify or set aside the legislation the IACHR

[62] IACHR judgments of reparations determine the outcome of the case as well as the specific reparations the state must enact in order to remedy the violation. These reparations can include payment of damages, erecting monuments and plaques, creating scholarship funds, accepting responsibility for rights violations, delivering victim remains, establishing human rights training courses for the police or military, mental health support, the publication of the IACHR judgment, and domestic legal reform. Hence these compliance reports record when partial and full compliance occurs for each of these reparation orders.

[63] *Baena Ricardo et al. Case (Panama)* (2003), Inter-Am. Ct. H.R. (Ser. C) No. 104, at para. 129, *Annual Report of the Inter-American Court of Human Rights: 2003*, OEA/Ser.L/V/III.61/Doc. 1 (2004).

[64] *Almonacid-Arellano et al. v. Chile*, Judgment of 26 September 2006, Series C No. 154.

argued was contrary to the human rights protections granted in the American Convention (Candia 2012). The declaration of ineffectiveness is design to ensure consistency between domestic and international law. The framework of this tool allows for the IACHR and national courts to exercise control.[65]

In a sense, conventionality control refers to judicial supervision of national legislation in general as well as declarations of ineffectiveness and declarations of nonconformity. The IACHR typically evaluates conventionality based upon the Convention, although it has recently expanded to other treaties and conventions (Castan 2013). Conventionality control only enables the IACHR to rule on domestic legislation's consistency with international law and state liability for failing to fulfill its obligations under the Convention. The Court cannot become a court of fourth instance.[66]

In terms of conventionality control as exercised by national judiciaries, these courts should evaluate and declare inconsistency in domestic laws and norms and act according to their competencies and procedures to "disapply" the violating law (Castan 2013). Conventionality control obliges domestic judges to disregard laws that fail to conform to the Convention when articulating their arguments in a human rights case. Hence, conventionality control is designed to expand domestic (legal) human rights

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[65] The Court uses the term 'conventionality control' to refer only to national court control while Latin American scholars use the term to address IACHR control as well (Castan 2013).

[66] One should also note that conventionality control measures occur at the merits stage while reparation requirements of domestic legal reform occur at the reparations stage. This suggests a conceptual distinction between the two; reparations requiring legal reform are designed to remedy the violations while conventionality control with its declarations of ineffectiveness and inconsistency are obligations the state committed to through the Convention (Castan 2013). The IACHR explains in *Garrido and Baigorria v. Argentina* (Judgment on reparations of 27 August 1998, Series C No. 39, para. 72), that the "obligation to guarantee and ensure effective exercise is independent and different from the obligation to make reparation." A reparation is "an attempt to erase the consequences that the unlawful act may have had for the affected person" and others; as such, the affected party retains the right to waive that right to reparation.

protections by inducing judges to decide case according to what is established in the Convention as interpreted by the IACHR.

Conventionality control has been applauded by some for the superiority of international human rights law, compelling state compliance, and expanding rights protections at local levels—without having to go through the national legal process (the first, second, and third instances) until the victim can reach the IACHR. However, not only did its creation draw criticism from states whose judiciaries essentially received judicial review powers but also from scholars, who criticized the same aspects that received applause. In particular, these criticisms largely center on that fact that conventionality control removed domestic democratic processes and violates state sovereignty, unilaterally and undemocratically rendered domestic judiciaries supreme, and created public policy problems (see, for instance, Candia 2012).

Yet, despite these mechanisms that suggest regional courts are (or can be) influential and important in incorporation, empirical evidence of compliance and international law incorporation have been—at best—mixed. Posner and Yoo (2005) argue that the IACHR has had "trouble securing compliance with its decisions," apparent in the single case of full compliance and 5% overall compliance (including full and partial compliance). Hawkins and Jacoby (2010) provide a more comprehensive, yet descriptive, analysis of the IACHR finding that, in general, it secures 50% partial compliance and 6% full compliance. More importantly, however this is the first study that evaluates regional court influence on incorporation where they identify compliance with the IACHR order to reform domestic laws. Compliance to these orders occurs 7% of the time—which is the lowest compliance rate relative to other reparation requirements.

According to the Court itself, however, it secures, in general, an 18% full compliance rate and 62% partial compliance rate (reported in the 2014 Annual Report by the Inter-American Commission on Human Rights).[67] It does not, however, report individual reparation compliance.

General compliance rates, however, can only provide indirect evidence that the IACHR, and regional courts more generally, influence the incorporation of international human rights laws domestically. Some of the reparations in which determine compliance rates are not likely representative of incorporation. For example, the return of victim remains, the erecting of a plaque or monument, or the creation of a scholarship does not alter domestic legal systems or identities. Some reparation may lead to incorporation but do not necessitate incorporation of international legal norms. For example, human rights training programs help disseminate information about rights protections and violations, which could instigate socialization to these norms domestically. The expunging of victim criminal records may set an informal legal standard upon which future judges refer. The only direct way to gauge incorporation that generates lasting change that influences the identity of the states and the interactions among all its citizens are changes in domestic laws themselves. Hence the only reparation demanded by the IACHR that directly produces these effects are when it demands that domestic laws are amended, repealed, or established. Hence, in order to most directly evaluate the influence of the IACHR on domestic incorporation of international human rights laws is to examine the extent to which states are altering their domestic legal systems, thereby complying with IACHR orders.

[67] (http://www.oas.org/en/iachr/activities/speeches/23.04.14.asp)

Merging International Law and International Relations to Explain Compliance

Additionally, while compliance rates serve as useful indicators (with important implications), they do not explain why or under what conditions compliance occurs. Compliance rates, in other words, offer no causal mechanisms or explanations for when compliance occurs or why it occurs at all. Fortunately, existing scholarship offers several theoretical mechanisms that may cause the incorporation of international human rights law and compliance; these mechanisms can be broadly summarized through categories of causal factors: domestic political costs and incentives, domestic legal system and the rule of law, regional 'peer pressure,' transnational advocacy network and mobilization, and entrenchment within the international human rights regime.

Domestic Political Incentives

The first mechanism broadly asserts that compliance occurs because of a cost-benefit analysis by the state and court. While noncompliance is formally costless in that it does not induce 'hard' sanctions, compliance may be beneficial and/or noncompliance could be costly. In this scenario, the IACHR can induce or predict compliance based upon changes or conditions within the state. In terms of domestic political factors that make noncompliance costly, most theories postulate that these factors consist of the following: the ease with which political actors can alter policy (due to the number of veto player and level of government fractionalization), domestic political competition and the presence of opposition parties, state capacity, foreign aid, foreign direct investment, and regime type.

The ease with which political actors can alter domestic laws likely informs state decisions to comply. States where there are few constraints or veto points in changing the law per IACHR request are more likely to be able to comply than states where legal policy change is difficult and heavily constrained. In essence, the greater the number of veto players and the greater their ideological distance, the higher the transaction costs to comply. As change in laws require more political actors with veto power, the more difficult collective action agreements become. Similarly, as government fractionalization or the more divided political actors' preference become, the higher the transaction costs and less likely legal reform is possible.

Domestic electoral or political pressure on the incumbent should similarly inform decisions to comply. When political competition is intense, the higher the likelihood that the decision to not comply will lead to *ex post* costs since the political opposition has incentives to mobilize the opposition. In other words, when political competition is intense, opposition parties are likely seeking to mobilize their supporters and gain new support. If an incumbent makes a 'bad,' unfavorable, questionable decision—like choosing to ignore international obligations to respect rights and issue reparations received by the IACHR—then the opposition will take that decision and run with it, mobilizing their supporters and erode incumbent support. Of course, this mechanism assumes that (at least) the opposition parties are aware of the IACHR reparation orders and that they care or find it strategically beneficial.

State capacity highlights the dilemma some state may face where a state is willing to comply but lacks the resources to comply. The lack of resources could refer to the lack of economic resources, informational deficiency, or the need for skill acquisition. In

terms of all three, more developed countries may exhibit greater compliance because they not only have the will to but the capacity to comply. Economic development enables financial resources that that state can allocate to compliance, but improved economic conditions should also facilitate the proliferation of human rights organization and nongovernmental organizations as well as enable their work disseminating information through improved technology and increased access to it and supplying necessary skills for mobilization and litigation (Meernik et al. 2012).

Foreign aid may influence the likelihood of compliance in that it represents external economic pressure to comply as well as increase international attention (Keck and Sikkink 1998, 6). However, Lebovic and Voeten (2009) find that governments lack the incentive to punish human rights violations bilaterally and that human rights violations have no effect on multilateral aid allocations. Other scholars similarly question whether human rights practices influence foreign aid policies (see Apodaca and Stohl 1999; Poe 1990); nonetheless, states may feel pressure to comply with IACHR decisions in order to ensure the continuation of economic assistance.

Foreign direct investments offer a similar consideration in the decision to comply. Foreign direct investment (FDI) provides economic pressure that would induce a higher probability of compliance. Foreign investors seek to protect their investments and property from encroaching state governments. Hence, states must signal safe investment through their respect for the rule of law—not just through the existence of property rights but also through their respect for independent adjudication with possibility of unfavorable decisions with which the state will comply. If states do not comply with court decisions, then investors should have little faith that the state would respect other court decisions

that rule against the state in favor of the investors. This lack of credibility in terms of maintaining protected investments would lead to foreign investors to not invest, thereby reducing FDI. Furthermore, foreign investors are wary of investing in states publicly targeted by human rights organizations for rights violations, meaning that 'naming and shaming' strategies international nongovernmental organizations (INGOs) impose real costs on states (Barry, Clay, and Flynn 2013). If a state is a party to an IACHR case, it is likely also the target of human rights 'shaming' campaigns, which would persuade a state to comply in order to salvage its investments (or the IACHR generates sufficient publicity to warrant similar effects).

Finally regime type may be important in that it determines the incentive structures in the first place. More democratic regimes are more likely to comply with the IACHR decisions. However, the influence of regime retains little value in terms of micro-theory causal mechanisms. It is likely that the influence of regime simply captures the above mechanisms.

Domestic Legal Systems and the Rule of Law

Domestic legal system and the rule of law may similarly contribute to international law internalization and compliance. Regarding domestic legal norms and the level of congruence with the IACHR, no variation exists across selected Latin American states. All of these states have civil law systems and grant blanket compulsory jurisdiction to the IACHR. However, they differ in terms of their rule of law development. National high courts with higher levels of judicial independence may represent states that have a higher regard or respect for the rule of law. In this case, high

level of judicial independence proxies the state' respect for the rule of law. States with high respect for the rule of law are more likely to comply with IACHR decisions. Effective judiciaries create *ex post* costs for states considering violating the agreement, thereby incentivizing the state to comply (Conrad 2014; Kelley 2007; see also Conrad and Ritter 2013).

However, independent judiciaries that serve as effective constraints may lead to the state to decide to not comply with orders for legal reform precisely because the court will hold the state accountable to the commitment. In other words, states seeking to comply without being held accountable under the reformed laws would be less likely to comply if they know that they will be required to follow the law by the judiciary. This is the same intuition as that for the relationship between judicial independence and treaty ratification and compliance, where states only comply with treaty obligations if domestic legal enforcement is strong but are less likely to ratify treaties, thereby adopting new constraints, if domestic legal enforcement is strong (Powell and Staton 2009). The existence of independence courts that are able and willing to keep the government in check creates *ex post* costs for the government to amend the laws in ways that constrains it in the future.[68]

Yet another possible scenario occurs when national courts enjoying high levels of judicial independence decide to unilaterally alter the domestic law, such as through conventionality control. Because these courts are independent, they face fewer, less

[68] High level of judicial independence might also increase the likelihood of the IACHR to judge state remedies as compliant since part of their evaluation for full compliance is that they believe the violations in question will either not occur in the future or will be domestically enforced. The IACHR would have little faith that the new laws would be effective if the state's high courts do not have a reasonable degree of judicial independence.

severe, and/or less probable negative responses by the government. For example, in *Bámaca Velásquez v. Guatemala*, the Guatemalan Supreme Court declared it "necessary to execute the nullity of the national resolution" that the IACHR declared "violates the universal legal principles of justice" and ordered new trial proceeding offering "an unrestricted respect of the rules of due process." It further nullified the previous verdicts by the lower courts and declared the 'self-enforceability of the Judgment issued by the Inter-America Court." In this case, the courts unilaterally complied with the IACHR without the support or consultation from either the executive or legislative branches. Since independent courts are often emboldened after states commit to international human rights treaties and thus more likely to constrain and sanction violators, it seems plausible that the same effect would occur after an IACHR reparation order or conventionality control order (Powell and Staton 2009; Simmons and Danner 2010).

The first two judicial independence mechanisms predict contradictory responses: one where judicial independence leads to compliance while the other leads to noncompliance. It is unclear which of these competing tensions would emerge victorious or if they would simply cancel each other out. The third mechanism moves the rational choice from the state government to the courts, which makes this mechanism fundamentally different in process from the other two mechanisms. However, its leads to predictions that higher levels of judicial independence would lead to increased likelihood of compliance as well as increased likelihood of conventionality control declarations and an activist court.

'Peer Pressure'

'Peer pressure' from neighbors or regional peers may also induce compliance to IACHR due to reputation costs.[69] States incur reputational costs when other states and political actors perceive that the state has failed to honor a commitment. Since virtually all of Latin American share membership in the same institutions and have committed to the same obligations, reputational costs are likely to be high for noncompliance. Noncompliance signals that a state's commitments are not credible, which can be costly for states—especially since all other states in the region are held accountable to the same commitments.[70]

'Peer pressure' could also be induced through socialization where the reputational cost are incurred not from the loss of credibility in commitments but from lack of conformity to role orientations, norms, values, and goals shared by members within the same community. The motivations are difficult to distinguish and may occur simultaneously. For example, Simmons (2000) finds that commitments to international law by regional neighbors exert a positive influence on state compliance to international law. In other words, states are more likely to comply when their neighbors are complying, but we do not know whether the reputational costs were rationalist-economic or normative.

[69] In addition to reputation costs, 'peer pressure' can induce compliance through economic competitive advantage strategies where states may compete for foreign aid, foreign direct investment, and trade agreements.

[70] This satisfies Guzman (2002)'s argument that international law is influential only when it commits a state to an obligation in the eyes of other states.

Transnational Advocacy Network and Mobilization

Human rights organizations are crucial in the monitoring of rights violations, the publication and dissemination of this information, the mobilization of individuals and parties on these issues, and the presence of rights on political agendas through mobilization and lobbying for legal reform (Meernik et al. 2012; Brysk 1993). Human rights organizations with permanent locations with a state (rather than INGOs with temporary volunteers) are the most likely to aware of the lack of legal changes as well as the presence of IACHR cases still pending compliance,[71] and they are the most likely to publish this information and push compliance onto the national agenda and mobilize opposition. These organizations are also crucial to the theory of international shaming where these are the organizations that demand international attention in order to initiate a 'shaming' strategy and pressure the state regime domestically through mobilizing citizens and opposition groups. The presence of these organizations increases the potential costs for noncompliance; therefore increased presence of human rights organizations should increase the likelihood of compliance to IACHR decisions.

Rights Regime Entrenchment

The more entrenched a state is within the international rights regime, the more social, reputational, and normative pressures states face and the greater the associated costs should states fail to comply with IACHR decisions. The more international treaties, conventions, covenants, and protocols the state has ratified, including the supplementary

[71] I assume that these organizations are aware of IACHR cases pending compliance because these cases typically have favorable decisions for the victims and HROs, and these decisions provide legitimation to HRO missions as well as increased relevancy of the organizations themselves (and the amount of attention on and funding for the organizations which are crucial for INGO survival).

and optional ones, the greater the states' obligations to their rights commitments to the IACHR and other members within the regime community. Additionally, noncompliance for an entrenched state could be more costly in that it calls into question its credibility to a wider set of commitments. Thus, states that are more entrenched within the international human rights regime are more likely to comply with IACHR reparations to reform domestic law relative to less-entrenched states.

Chapter 4 addresses these sets of intuitions by examining to what degree IACHR jurisprudence influences domestic law. More specifically, it addresses the extent to which states comply with IACHR reparation orders requiring domestic legal reform as evidenced by its compliance reports. It further examines under what conditions compliance occurs, whether regional or neighborly "peer pressure," domestic political factors, transnational advocacy network, international rights regime entrenchment, or case facts primarily induce compliance. I use compliance reports rather than conventionality control since compliance reports offer systematic and consistent evaluations of compliance by the IACHR itself. As such, it provides less speculative and subjective analysis of IACHR and international law influence. I use an original dataset of the universe of publicly available compliance reports from 2001-2015, again evaluating the compliance of Spanish-speaking, civil law Latin American states.

Chapter 4 also addresses the possibility of the IACHR issuing these reparation orders requiring domestic legal changes strategically. One of the main problems plaguing supranational courts in that it questions their relevance and influence it the observation that these court behave strategically based upon anticipated member-state reactions. Hence, it is possible that the IACHR is strategic in issuing decisions that require domestic

legal reform. If the IACHR believes that a state will not comply with its orders, then the Court may lose legitimacy. Hence, it is possible that the IACHR issues reparations that are likely to be complied with in order avoid the risk that its orders will be ignored in order to protect the legitimacy and relevancy of the institution.

CHAPTER 3

THE DOMESTIC LEGAL STRUGGLE: THE ROLE OF HIGH COURTS

In 2013, the United Nations awarded the Mexican Supreme Court of Justice (*Suprema Corte de Justicia de la Nación* or SCJN) the U.N. Defense of Human Rights Award. This extremely prestigious award has been received by, among others, Malala Yousafzai (2013), Nelson Mandela (1988), Jimmy Carter (1998), Eleanor Roosevelt (1968), Dr. Martin Luther King (1978), the International Committee of Red Cross (1978), and Amnesty International (1978).[72] Yet this was the first time a court received the award.[73] This international recognition of a domestic court's promotion of human rights is striking in that it represents the first time a court receives such recognition—and in that this accomplishment does not corroborate the widespread assumption that courts do not play an important, systematic role in the promotion of human rights.

This event is perhaps also surprising in that it appears in the midst of escalating violence within Mexico between the federal government, organized crime, and drug cartels. The increased militarization of the war on drugs has left Mexican citizens vulnerable to rights violations such as disappearance and torture. Perhaps most prominently, international news and rights organizations shunned the federal government for not effectively protecting the rights of, or investigating the disappearance of, forty-

[72] See Appendix A for the full list of recipients.

[73] The UN Defense of Human Rights Award began in December of 1968 and is awarded every five years (http://www.ohchr.org/EN/NewsEvents/Pages/HRPrizeListofpreviousrecipients.aspx).

three students from the state of Guerrero and the murders of people nation-wide.[74] For example, Human Rights Watch chides the Mexican government for making little progress in prosecuting the widespread killings, enforced disappearances, and torture committed by soldiers and police in the effort to combat organized crime.[75] From 2007 to 2013, more than 26,000 people had been reported disappeared or missing, and Mexico's security forces have participated in these enforced disappearances since the launch of the 'war on drugs.' In June of 2013, the Mexico's National Human Rights Commission (CNDH) reported that it was investigating 2,443 disappearances in which it found evidence of the involvement of state agents.[76] Hence, the awarding of the Mexican Supreme Court for promoting human rights despite the seemingly contradictory trend of right violations due to cartel violence and conflict militarization leads to the research question evaluated in this chapter: *under what conditions do courts promote human rights, thereby incorporating international human rights law*?

This question is important to better understand recent observations of human rights diffusion, and it is necessary for understanding domestic high court roles in the incorporation of domestic legal systems. In short, this question's implications address the broader debate of whether international law matters. Existing research primarily addresses this question by evaluating state compliance to international treaties. Courts rarely play a role in these discussions. This nearly exclusive focus on state executive actors, however, ignores the increasing reality that domestic courts can—and do—take the lead in promoting human rights. Through changes in both international and domestic

[74] (http://www.hrw.org/news/2014/11/07/mexico-delays-cover-mar-atrocities-response)

[75] (http://www.hrw.org/world-report/2014/country-chapters/mexico)

[76] (http://www.hrw.org/world-report/2014/country-chapters/mexico)

politics, as well as the inception of conventionality control, courts have grown in power and are starting to exert their influence in adopting international human rights laws unilaterally. This chapter argues that courts matter in promoting human rights domestically and in internalizing international law—even when they do not enjoy high levels of judicial independence. However, the role that courts play differs across rights, specifically between physical integrity rights and empowerment rights. As such, this chapter fills the lacuna regarding the role of courts in the expansion and institutionalization of international human rights laws.

3.1 When should domestic courts matter?

Courts should matter in the incorporation or adoption[77] of international human rights laws for several reasons. First, increasing judicialization enables courts to exert substantial influence over policy decisions. Judicialization, or the global expansion of judicial power, means that the courts are playing a more integral part in policy decisions that were originally exclusively determined by legislative and executive bodies (Tate and Vallinder 1995). These trends of court empowerment are evident worldwide and occur in common law countries and civil law countries alike, including Latin America, Western and Eastern Europe, India, Malta, the Philippines, Egypt, Israel, Canada, Australia, the Netherlands, Sweden, Namibia, and the United States (Seider, Schjolden, and Angell 2005; Moustafa 2003; Shapiro and Stone Sweet 2002; Stone Sweet 2000; Epp 1998; Tate and Vallinder 1995). Hence, courts are increasingly able to assert their preferences in

[77] I use the terms "incorporation," "adoption," and "institutionalization" interchangeably to refer to the codification of international laws into domestic law, either through executive order, legislation or court decisions. Hence, an international law is adopted/incorporated/institutionalized when it has become enforceable domestic law.

policy determinations that previously excluded them. In other words, courts are able to influence a wider set of national policy decisions.

Judicialization has also led to stronger, more powerful courts. Partially due to democratization trends and the influence of American jurisprudence and power, judicialization trends incorporate the creation of stronger judiciaries in transitioning or new regimes. Particularly in Latin America, for example, democratization processes have included the creation of more insulated judiciaries with fixed salary and tenure. Courts have thus become increasingly autonomous and independent from other government agencies (albeit to varying degrees). Increased judicial power, combined with the access to policy making originally prohibited to them, has set a stage for court activism, especially with regard to international human rights laws.

Courts are further able to promote international human rights laws domestically because of the growing norm that courts are the appropriate bodies to address grievances and distribute justice, especially with increasing accessibility of courts. Increasing numbers of judicial and quasi-judicial bodies have emerged in the international arena, partly due to the legitimacy of human rights regimes where judicial bodies play the crucial role of the distributor of justice.[78] Increased numbers of judicial bodies—especially within human rights regimes—expand the accessibility of courts to individuals, which leads to more individuals seeking justice through courts, and encourages the growth and interactions of transnational epistemic communities[79] of

[78] While only six permanent international courts existed in 1985, today at least 25 permanent international courts and over 100 quasi-legal and ad hoc systems that interpret international rules and assess compliance with international law exist (Mitchell and Powell 2013).

[79] Epistemic communities are defined as "a network of professional with recognized expertise and competence in a particular domain and an authoritative claim to policy relevant knowledge within that domain or issue-area" (Haas 1992).

human rights advocates and legal communities. These communities not only socialize[80] members and other actors with whom they interact, but these networks of communities enable transnational coordination for international pressure, media attention, and litigation strategies. Each of these processes sets the stage that enables and empowers courts to play an active role in promoting human rights.

Judicial independence

On the few occasions courts make an appearance in rights discourse, existing scholarship asserts that, at best, courts matter only when they enjoy a high level of judicial independence. I argue that courts can promote human rights without a high level of judicial independence and that the need for judicial independence differs across rights. Namely, I argue that while courts may need higher levels of judicial independence in order to protect physical integrity rights, such high levels of judicial independence are unnecessary for the promotion of empowerment rights. The reason for this distinction is that courts a play different role between these types of rights. Courts primarily serve as constraints to government behavior for physical integrity rights; yet, because courts have the responsibility to define and apply empowerment rights through their legal interpretations and application of the law, courts can unilaterally promote and expand empowerment rights. I discuss this distinction in more detail in the next section.

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[80] Socialization is defined as "behavioral changes that presumable come about through changes in the actors' interests" where these changes arise through the process of interaction with other actors, leading to individuals copying or learning from the behavior exhibited by others (Greenhill 2010). Socialization is similar to Goodman and Jink's (2004) concept of acculturation, the "general process by which actors adopt the beliefs and behavioral patterns of the surrounding culture." Acculturation, like socialization, includes mimicry and identification (among others) and is effective when groups generate varying degrees of cognitive and social pressures, real or imagined, to conform.

3.2 How do courts matter?

While I argue that domestic courts matter in the incorporation of international human rights laws through their expansion of domestic rights protections, the way in which courts matter depends upon the type of rights. In other words, courts do not play the same role across all rights. Specifically, courts either constrain government behavior in order to preclude rights violations and hold violators accountable or define, apply, and expand rights through their interpretation and application of law. Typically, courts serve primarily as constraints for physical integrity rights while they have more flexibility to be proactive with empowerment rights. I discuss each relationship below.

Physical integrity rights versus empowerment rights

Physical integrity rights (PIR) consist of an individual's right of freedom from torture, political imprisonment, forced disappearance, and extrajudicial killing.[81] For these rights, courts must hold the government accountable for violations and/or deter the government from engaging in these behaviors by generating the credible expectation that violators will be held accountable. Thus, judicial independence, conceptualized as the insulation of the court (and its judges) from undue external or internal pressure that enables the court to produce decisions reflective of sincere court preferences,[82] plays a

[81] The definition of physical integrity rights is derived from Cingranelli and Richard's (2010).

[82] This definition is thus a *de facto* judicial independence, distinct from *de jure* judicial independence, which focuses only on the formal rules designed to insulate judges from undue pressure. This conceptualization includes judicial autonomy, where the decisions of the court are reflective of court preferences and decision-making. While this concept of judicial independence includes both external and internal pressures, I am mostly concerned with freedom from external pressures, that is horizontal accountability. As such I do not discuss the independence of lower court judges from superior court judges; rather, I am concerned with the degree to which high court judges are independent from pressure exerted from other government agencies and bodies.

crucial role in the protection of these rights. The extent to which members of a court are insulated from government pressure largely determines the degree to which a court is able and willing to confront it. In other words, in order for a court to effectively constrain government behavior, it must be at least somewhat independent from political control. Since the perpetrators of physical integrity rights are often government agents or representatives, unless courts have some degree of insulation, they will be unlikely to rule against their political benefactors—or even hear the case in the first place. Hence, courts must enjoy relatively high levels of judicial independence in order to credibly hold a government agency accountable and/or to deter rights violations.

For empowerment rights, however, courts have the opportunity to promote these rights rather than simply constrain executive behavior. Empowerment rights consist of the freedoms of speech, assembly, association, religion, foreign and domestic movement, worker's rights, and electoral self-determination.[83] Courts can unilaterally expand empowerment rights protections by generating new rights and expanding the application of existing rights to new situations and/or to new groups of people. Courts have much more power to determine empowerment rights because these rights are often already embedded in existing domestic laws. Hence, courts can expand the application and enforcement of these laws through their interpretation of the law and decisions. The fact that courts already have the power and responsibility to interpret and generate law enables them to enact these expansions legitimately. This institutional legitimacy also makes it difficult for executive to challenge the courts.

[83] The definition of empowerment rights is derived from Cingranelli and Richard's (2010) definitions. Later analyses introduce flexibility to the specific rights included in empowerment rights, such as women's rights.

Because of this unique role, judicial independence only matters up to a point. Judicial independence would be necessary to confront the government should it violate these rights, just as with physical integrity rights, but these rights do not always require governmental confrontation. For instance, high levels of judicial independence may not be necessary in order to resolve cases between private entities. Nonetheless, when a court is completely dependent upon a government, the court is not likely to hear rights cases or rule in ways that supports or enforces rights. Some degree of judicial independence is necessary in order for a court to choose to hear rights cases as well as resolve them in rights-affirming ways regardless of whether the government approves of the decisions. Hence, some degree of judicial independence is necessary in order for a court to play an active role in rights protections. Once this level of judicial independence is reached, opening the proverbial door for the court, the court does not need any additional judicial independence to continue to expand in order to rule progressively.

This leads to the first set of hypotheses:

H_1: Judicial independence has a positive influence on the protection of physical integrity rights.

H_2: Judicial independence has a positive influence on the protection of empowerment rights until some threshold. After this threshold, judicial independence is unnecessary in the protection of empowerment rights.

Methodology

I evaluate these hypotheses examining the role of judicial independence on the respect for human rights using data from Latin America from 1981-2010. I use Spanish-speaking, civil law countries in Latin America since these countries provide a wide range of variation in rights protections and judicial independence levels while maintaining a most similar system design. These states share the same legal system, similar political histories (including colonial histories), and the same language. While not all idiosyncratic features of these states are accounted for, this design removes as much unwanted variation as possible so as to avoid spurious inferences and allow for comparison across these states. Specifically, the countries included are as follows: Mexico, Belize, Guatemala, Honduras, El Salvador, Colombia, Nicaragua, Panama, Venezuela, Ecuador, Peru, Bolivia, Paraguay, Uruguay, Chile, Argentina, Costa Rica, Dominican Republic, Cuba, and Haiti.

The dependent variables are the respect for physical integrity rights (Fariss 2014) and for empowerment rights (Cingranelli and Richards 2010). While both dependent variables are derived from Cingranelli and Richards' (2010) data and ordinal measures, I use Fariss' (2014) latent variable of physical integrity rights in order to account for changing standards over time.[84] Fariss (2014) uses a dynamic ordinal item response theory model that relaxes the assumption that standards of accountability have not changed over time. Substantive reasons to relax this assumption, including the fact that our ability to monitor rights abuses, gather information, and disseminate that information has changed significantly over time. Hence, over time our ability to identify rights

[84] The Pearson correlation coefficient between Fariss (2014) and Cingranelli and Richard's (2010) original physical integrity rights score is 0.854.

violations has improved and with it our expectations have become increasingly stringent (Fariss 2014). For this reason, Fariss (2014) transforms Cingranelli and Richard's (2010) ordinal scale to a latent, standardized variable that allows for these changes in "standards of accountability" where higher values represent greater respect for these rights. Figure 3.1 shows the latent respect for physical integrity rights (including torture, extrajudicial killing, political imprisonment, and disappearances) across countries over time.

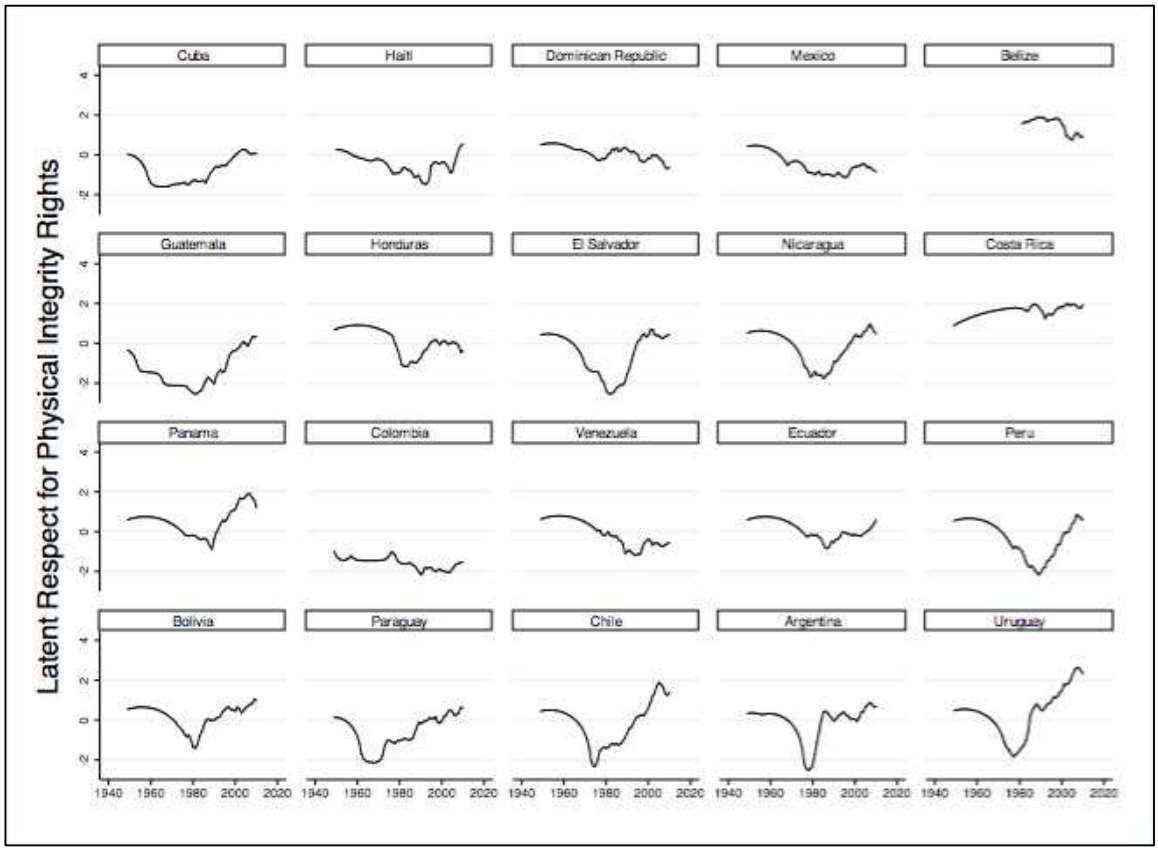

Figure 3.1: Latent Respect for Physical Integrity Rights

This type of variable is unfortunately unavailable for empowerment rights, leading to the use of the original Cingranelli and Richards (2010) data, which is an ordinal scale of

latent respect for rights consisting of an additive index of component rights. These empowerment rights incorporate foreign movement, domestic movement, freedom of speech, freedom of assembly and association, freedom of religion, workers' rights, and electoral self-determination.[85] This measure is calculated by the sum of each category's ordinal score, making the variable range from 0 to 14, where higher values represent greater levels of respect. Figure 3.2 depicts the ordinal levels of respect for empowerment rights across countries over time.

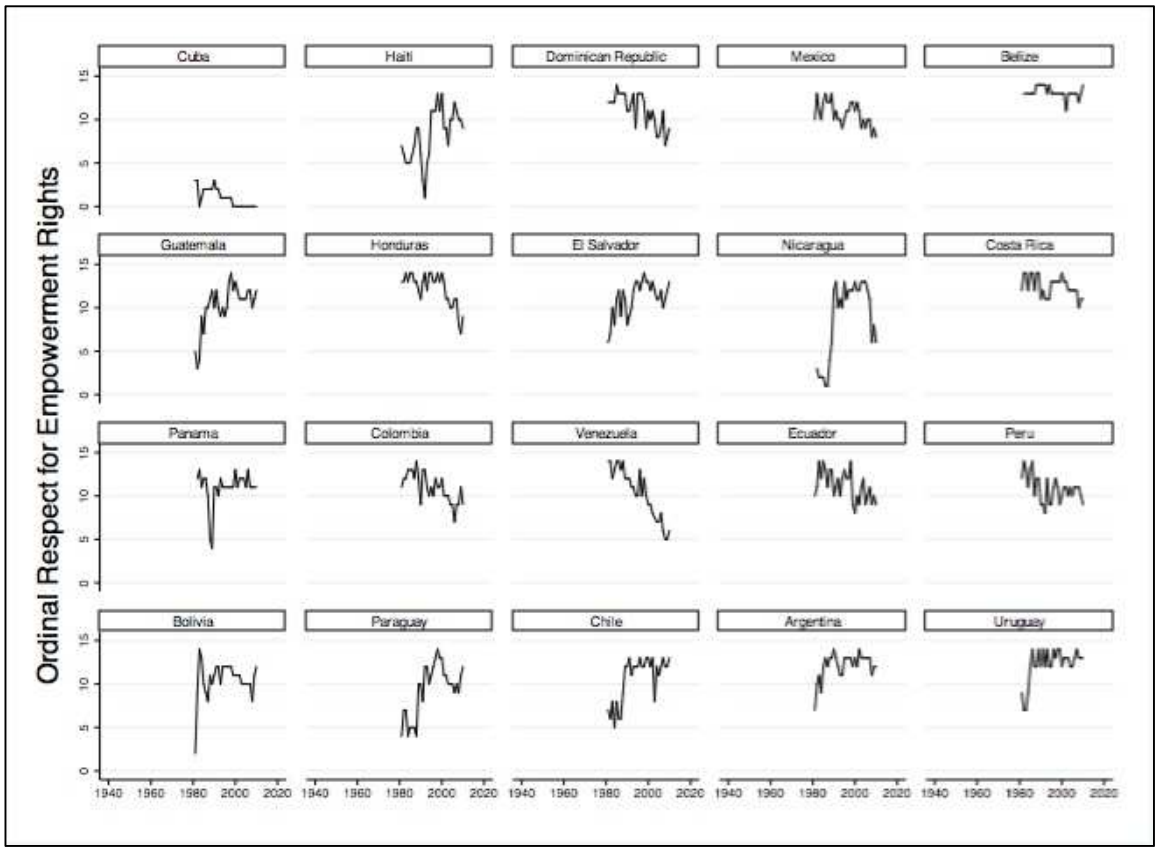

Figure 3.2: Ordinal Respect for Empowerment Rights

[85] This conceptualization of empowerment rights derives directly from Cingranelli and Richards (2010). I introduce an alternative conceptualization in the analyses.

Both dependent variables measure the latent 'true-value' of government respect for these rights,[86] encompassing the degree of government respect as well as legal protections and the enforcement of these legal protections. In this sense, these dependent variables include information of the degree of violations and the degree to which rights laws are effectively protecting individual rights.

There are four main independent variables: judicial independence, court legitimacy, political competition, and political constraint (or fragmentation). The main independent variable of interest, of course, is judicial independence. I use Linzer and Staton's (2012) latent measure of judicial independence, which is derived from several other indicators. [87] This measure of judicial independence is preferable because it solves the other indicators' problems of missing data, measurement error, temporal dependence, and other limitations (Linzer and Staton 2012). This measure ranges from zero to one, where higher values represent greater judicial independence. I predict that this variable will have a positive, significant, and *linear* relationship with respect for physical integrity rights while having a positive, significant, and *nonlinear* influence on respect for empowerment rights. More specifically, I hypothesize a threshold beyond which judicial independence become insignificant. Figure 3.3 depicts the variation in judicial independence levels of each country over time using data from Linzer and Staton (2012).

[86] Note that Fariss (2014) provides a latent variable measure while Cingranelli and Richards (2010) measure is an additive index of the respective rights in an attempt to obtain government respect for rights (rather than counts of violations).

[87] This latent variable measure is derived from the following eight measures: Feld and Voigt (2003), Howard and Carey (2004), Cingranelli and Richards (2010), Marshall and Jagger (2010), Keith (2012), PRS Group (2013), Rios-Figueroa and Staton (2013), and Johnson, Souva, and Smith (2013). As such the variable ranges between zero and one, assuming that the latent judicial independence follows a Bayesian random walk process.

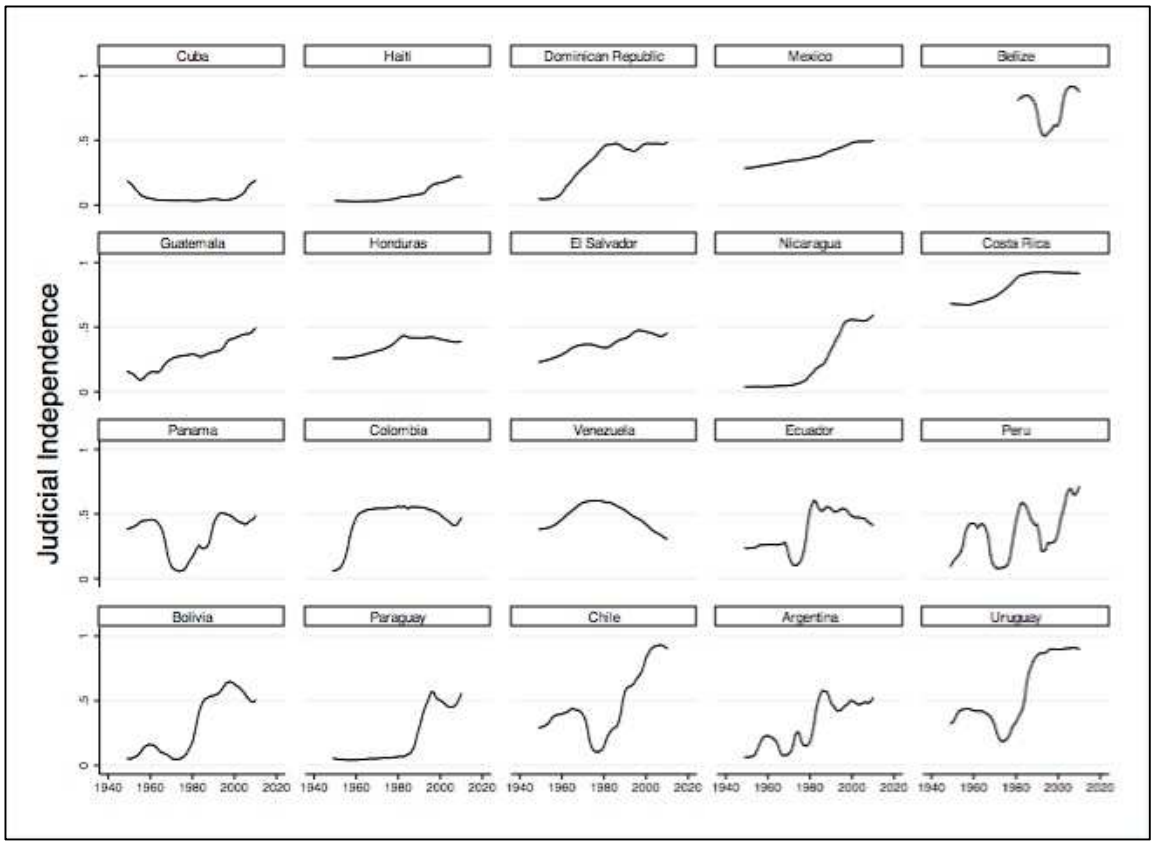

Figure 3.3: Judicial Independence by Country

A second independent variable is the level of legitimacy the high court enjoys. However, such a measure is problematic since no such measure currently exists that is comparable across countries and over time. Hence, I proxy high court legitimacy with government institutional legitimacy.[88] I use the International Country Risk Guide's Indicator of Quality of Government scores spanning 1948-2008. These scores consist of the mean value of ICRG variables "corruption," "law and order," and "bureaucracy quality," scaled from 0 to 1, where higher values indicate higher quality of government.

[88] An alternative measure that would more appropriately represent perceived judicial legitimacy is the public approval of the court provided in the *Latinobarómetro*. However, this measure only exists from 1995-2008 and provides relatively little variation. The World Values Survey also includes confidence in the justice system but similarly only exists for ta handful of countries and years. (It provides only 20 observations in the entire dataset).

While measure is obviously a blunt tool, the intuition is that it will capture—if not underestimate—people's trust of the courts as part of the larger governmental institution. The greater the degree of corruption and the lower the strength and impartiality of the legal system, in particular, should play into people's faith in the judiciary. I include this variable because the more legitimacy a court enjoys, the more leverage it has when holding the government accountable. In essence, legitimacy derived from public support of the court creates costs for a government that chooses to violate the law, not enforce court decisions, and/or sanction the court for unfavorable decisions. Thus, the greater the legitimacy of a court, the better a court is able to hold a government accountable and pressure a government to respect and enforce its decisions. Hence, legitimacy should have a positive, significant relationship with respect for both PIR and empowerment rights.

Third, domestic political competition is included because the more competition a ruling party experiences, the more likely opposition will mobilize citizens to punish a government that does not respect human rights and the rule of law. Such punishments could be electoral, where the ruling party will not be reelected or, more severely, where the ruling party is ousted. This variable is measured using the *Index of Political Competition* developed by Vanhanen (2011), which measures the percentage of votes gained by smaller parties in parliamentary and/or presidential elections. More specifically, the measure is calculated by subtracting (from 100) the percentage of votes won by the largest party, multiplied by the percentage of the population that actually voted in the election. Hence, this measure ranges from 0 to 50, higher values representing greater levels of political competition. I predict that political competition has a positive

and significant relationship with respect for both PIR and empowerment rights.

Finally, political constraint addresses the degree of difficulty an actor experiences when attempting to enact a policy violating human rights and/or sanctioning a court for attempting to hold the government accountable or for promoting rights. The intuition is that the easier it is for a government to enact such policies, the less likely rights will be effectively protected or promoted. This variable is measured by institutional difficulty, by using Henisz's (2006; 2000) Political Constraints data from 1960-2007. This index measures the feasibility of policy change, or the extent to which a change in preferences of any one political actor may lead to a change in government policy. The measure incorporates the number of independent branches of government with veto power over policy change (including the judiciary) as well as legislative alignment, measuring the extent of alignment across the branches of government (as measured by the extent to which the same party or coalition of parties control each branch and the extent of preference heterogeneity within the legislative branch). Hence, the greater the number of branches and veto players and less these actors are ideologically aligned, the higher the transactions costs to move policy, thereby constraining political actors. The index scores are derived from a spatial model and ranges from 0 to 1, where higher scores indicate more political constraint (that is, policy change becomes less feasible due to higher transaction costs coordinate the policy change).[89] Thus, I predict a positive, significant relationship between institutional costs and the degree of respect for PIR and empowerment rights.

[89] I also model iterations using Henisz's (2006; 2000) political alignment between the executive and upper legislative chamber and between the executive and lower legislative chamber for the same substantive results.

Control variables are included in model iterations, but the substantive effects of the main variables remain the same, thus, for the sake of simplicity, I have omitted the control variables in the tables below. (Please see Appendix B, however, for those results including controls). The control variables include foreign direct investment as a net inflow percentage of GDP, provided by the World Development Indicators by the World Bank. I also include GDP per capita based on purchasing power parity (in 2005 international dollars), derived from the World Development Indicators by the World Bank. Regime type is also included, measured as Pemstein, Meserve, and Melton's (2010) Unified Democracy Score (UDS) posterior means which models regime type as a latent variable. I control for population as well, as provided by the World Development Indicators. War is also included as a dummy indicating presence (interstate, internal, and internationalized internal), derived from the UCDP/PRIO Conflict Database (2013).[90]

Because I am using panel data (cross-sectional time-series data), I use panel-corrected standard error models (Beck and Katz 1995) to evaluate the influence of judicial independence on physical integrity rights and empowerment rights, respectively. Since OLS standard errors are typically inaccurate for panel data, panel-corrected standard errors correct for this, providing accurate estimates of the variability of the OLS estimates by taking into account the contemporaneous correlation of the errors (heteroskedasticity).[91] However, any serial correlation of the errors must be eliminated

[90] There are no periods of extra-state war for these countries during this time period; hence this variable is excluded. I also checked oil export, foreign aid, and the distribution of income among individuals/household (Gini Index) each with no significant effect.

[91] OLS estimates are optimal for panel data when the errors are known (or assumed) to be spherical; however this assumption is quite strong given the likely temporal and spatial correlation, panel heteroskedasticity (which is more complicated than both time-series and cross-sectional heteroskedasticity), and temporal dependence common in panel data. Feasible generalized least squares, first described by Parks (1967) transforms the errors to make them spherical and more appropriate for OLS, although it

before the calculation of panel-corrected standard errors (Beck and Katz 1995). My data shows no autocorrelation in the errors and homoskedastic panel errors. In this case, where panel variance is homoskedastic and shows contemporaneously independent errors, OLS standard errors are accurate. Indeed, fixed effects models provide the same substantive results as panel-corrected standard error models.[92] However, Beck and Katz (1995) show that panel-corrected standard errors still perform just as well as OLS standard errors in these cases, even though the errors become less spherical. Hence, because there is virtually no cost and substantial benefit to using these PCSE, Beck and Katz (1995) recommend always using PCSE for panel data. Nonetheless, I provide both panel-corrected standard error and fixed effects models. I account for temporal trends by using autoregressive lags of the dependent variables and of the main independent variable of interest: judicial independence.[93]

Before turning to the results of these models, however, even descriptive statistics imply the different influence of judicial independence across these rights. Figure 3.4 reveals a linear relationship between judicial independence and respect for physical integrity rights (see the blue line). Intuitively, the more judicial independence a court enjoys, the more it can effectively constrain state executive behavior. On the other hand, judicial independence has a nonlinear relationship with respect for empowerment rights (see the red line). Increased judicial independence improves empowerment right protections only up to a point, after which judicial independence has no effect.

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assumes that the error structure and process are known. It has also been shown that FGLS produces less efficient estimates than OLS, especially in small samples, and produce extremely overconfident standard errors producing misleading results (Beck and Katz 1995).

[93] While empowerment rights are an additive index of categorical variables, there are sufficient categories to merit OLS regression since categories of 5 or more often reproduce OLS estimates (Long 1997).

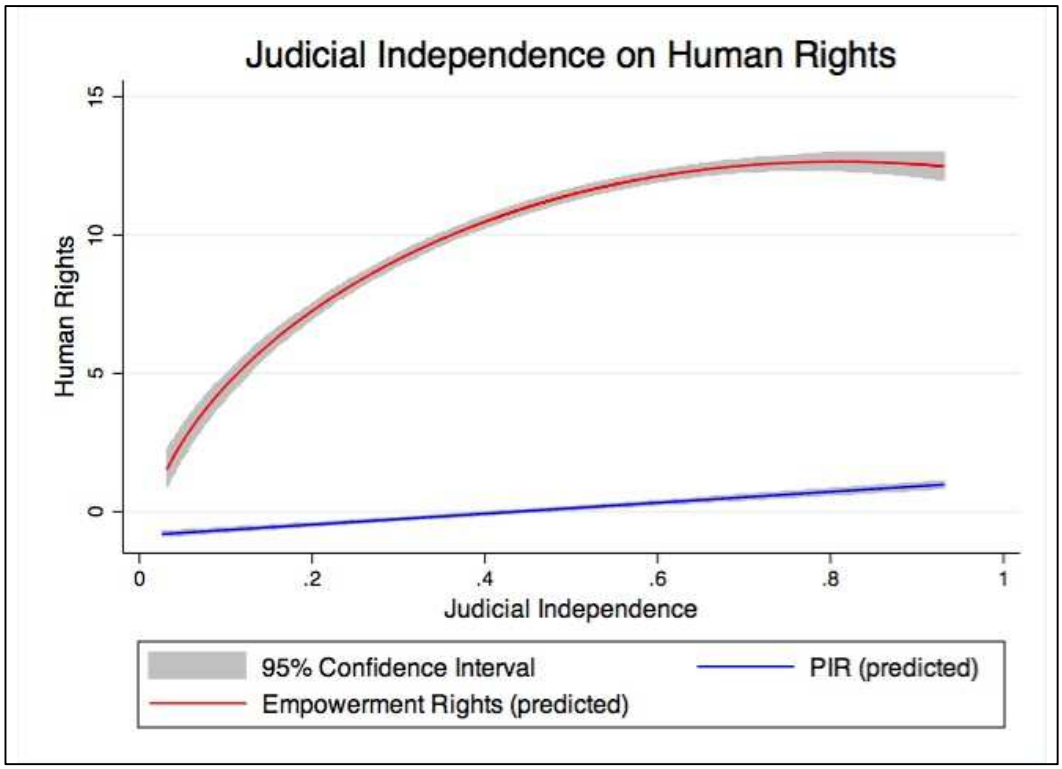

Figure 3.4: Judicial Independence on Human Rights

Yet, these descriptive statistics are insufficient. Thus, I test the influence of judicial independence on respect for human rights using panel-corrected standard error and fixed effects models for Latin America from 1981 to 2010. Since I expect a nonlinear relationship between judicial independence and respect for empowerment rights, I include a quadratic term of judicial independence. I also center judicial independence scores by subtracting the mean from each judicial independence score before squaring. I center these scores for two reasons: a) centering reduces the correlation (multicollinearity) between the linear and quadratic terms, and b) centering shows the separate contribution of the linear and quadratic terms. Table 3.1 provides the empirical results for the panel-corrected standard error models while Table 3.2 provides the fixed

effects models with robust errors. (Full models with control variable coefficients are provided in Appendix B under Table1B and Table 2B, respectively).[94]

Table 3.1: Panel-Corrected Standard Error Model of PIR and Empowerment Rights in Latin America, 1981-2010

	Physical Integrity Rights	Empowerment Rights
Judicial Independence	2.187*** (.551)	3.706** (1.350)
One year lag, Judicial Independence	-2.806** (.1.024)	--
Two year lag, Judicial Independence	.744 (.548)	--
Judicial Independence^2	--	-6.953*** (2.005)
Institutional Legitimacy	-.119 (.072)	.147 (.694)
Political Competition	-.000 (.001)	-.015* (.007)
Political Constraint	-.032 (.047)	.043 (.474)
One year lag, Rights	1.306*** (.058)	.498*** (.042)
Two year lag, Rights	-.376*** (.057)	--

[94] I check for issues due to multicollinearity in the fixed effects models using uncentered variance inflation factors. While perfect collinearity violates the assumptions of classical linear regression models, severe multicollinearity leads to large variances and standards errors as well as wide confidence intervals, which makes statistical significance difficult to determine. Hence, this could lead a false conclusion that a variable has no statistically significant relationship with the dependent variable (Type II error). Despite multicollinearity, however, estimates remain BLUE although unreliable. None of these models show perfect or severe multicollinearity.

For the physical integrity rights model, moderate collinearity exists between GDP, political competition, institutional legitimacy, and political constraint (with variance inflation factors between 10 and 18).

For the (original) empowerment rights fixed-effects model, the mean variance inflation factor is 8.85, with moderate collinearity (VIF between 10 and 20) between judicial independence, lagged empowerment rights, GDP, institutional legitimacy, and political competition. However, none of these variables show severe multicollinearity.

For the reconceptualized empowerment rights fixed-effects model, the mean variance inflation factor is 9.79, with moderate collinearity (VIF between 10 and 20) between institutional legitimacy, political competition, GDP and judicial independence, and lagged empowerment rights. No severe multicollinearity exists, however.

Constant	-.015 (.048)	5.916*** (.607)
N	371	369
Number of Groups	18	18
Observations per Group, Average (min, max)	20.6 (14, 21)	20.5 (14, 21)
Prob $> X^2$	0.000	0.000
R^2	.983	.618

* p < .05 ** p < .01 *** p < .001

Dependent variables are the degree of respect for physical integrity rights and empowerment rights, respectively. Empowerment rights model has centered judicial independence scores (where I subtracted the mean from each score before squaring). Coefficients represent the results of panel-corrected standard error models (with robust standard errors listed in parentheses).

Table 3.2: Fixed Effects: PIR and Empowerment Rights in Latin America, 1981-2010

	Physical Integrity Rights	Empowerment Rights
Judicial Independence	1.722*** (.536)	4.740** (1.711)
One year lag, Judicial Independence	-2.658** (.948)	--
Two year lag, Judicial Independence	1.044* (.517)	--
Judicial Independence^2	--	-8.681* (3.473)
Institutional Legitimacy	-.030 (.101)	.306 (1.038)
Political Competition	.000 (.001)	.003 (.009)
Political Constraint	-.017 (.054)	1.141* (.579)
One year lag, Rights	1.206*** (.051)	.343*** (.045)
Two year lag, Rights	-.357*** (.049)	--
Constant	-.212* (.095)	8.287*** (.936)
Rho	.512	.748
N	371	369
Number of Groups	18	18

Observations per Group, Average (min, max)	20.6 (14, 21)	20.5 (14, 21)
Prob > F	0.000	0.000

* p < .05 ** p < .01 *** p < .001

Dependent variables are the degree of respect for physical integrity rights and empowerment rights, respectively. Empowerment rights model has centered judicial independence scores (where I subtracted the mean from each score before squaring). Coefficients represent the results of fixed effects models with robust standard errors listed in parentheses.

One first notices that in both models judicial independence is positively and significantly correlated with rights protections. However, judicial independence has a linear relationship with physical integrity rights only. Hence, increases in judicial independence correspond with increases in respect for physical integrity rights in the first year, holding all else constant. Yet, judicial independence has a nonlinear yet significant relationship with respect for empowerment rights—here modeled as a quadratic function.[95] Notice that the negative sign on the quadratic term refers to the concave nature of the function (where the apex is at the top and the curve opens downward). The significance of the quadratic term indicates that increases in judicial independence correspond with increased respect for empowerment right only until a threshold. The coefficient of the quadratic term provides the steepness of the downward curve. These results provide a way estimate the threshold or turning point at which judicial independence no longer holds a linear relationship with respect for empowerment rights. By taking the derivative of the regression equation with respect to judicial independence and setting to zero, one finds that the threshold limit for judicial independence is roughly

[95] Including a quadratic term in the regression assumes a global influence of the variable (Keele 2008). That is, that the variable's predicted influence on the dependent variable is constant for all values of the independent variable (i.e. the quadratic term). However, this assumption holds for linear regression relationships as well (Keele 2008).

0.533 (for the panel-corrected error model) or 0.546 (for the fixed effect model).[96] This is corroborated with the eyeball test of the descriptive statistics graph (Figure 3.1) and supports my hypothesis ($\boldsymbol{H_2}$) in that this level represents only mid-level judicial independence (which, again, ranges from zero to one).

Turning to the other independent variables, institutional legitimacy does not reach statistical significance for either physical integrity rights or empowerment rights. This is likely because the legitimacy of government institutions poorly proxies court legitimacy. Similarly, political competition fails to reach significance for physical integrity and empowerment rights in all models except for the panel-corrected standard error model of empowerment rights where it holds the opposite sign than expected.[97]

Political constraint has a significant and positive relationship with empowerment rights only in the fixed effect model. As the level of political constraint increases, there is a corresponding increase in respect for empowerment rights. However, this relationship does not appear in the panel-corrected standard error model.

While the results presented in Tables 3.1 and 3.2 are revealing, graphs better illustrate the relationship between each of the variables. Figure 3.5 depicts the relationship between judicial independence (using raw scores) and respect for rights with 95% confidence intervals.[98] The blue line illustrates the positive, linear relationship between judicial independence and respect for physical integrity rights in Latin America from 1981-2010. The red line illustrates the positive but nonlinear relationship between

[96] Substantively these numbers reflect the same thing where the threshold point is mid-level judicial independence.

[97] Note that political competition and regime type are correlated at a .83 level; however, political competition fails to reach significance if regime type is dropped for both types of rights.

[98] Estimates are taken from the fixed effects models for simplicity.

judicial independence and respect for empowerment rights. The graph reveals that the estimated threshold where judicial independence no longer has a significant effect on empowerment rights is between .5 and .6—which corroborates the threshold calculation of 0.533-0.546. Hence, courts only need judicial independence to promote empowerment rights up until they have mid-range judicial independence. Once courts achieve mid-level judicial independence, they no longer need additional judicial independence to promote empowerment rights.

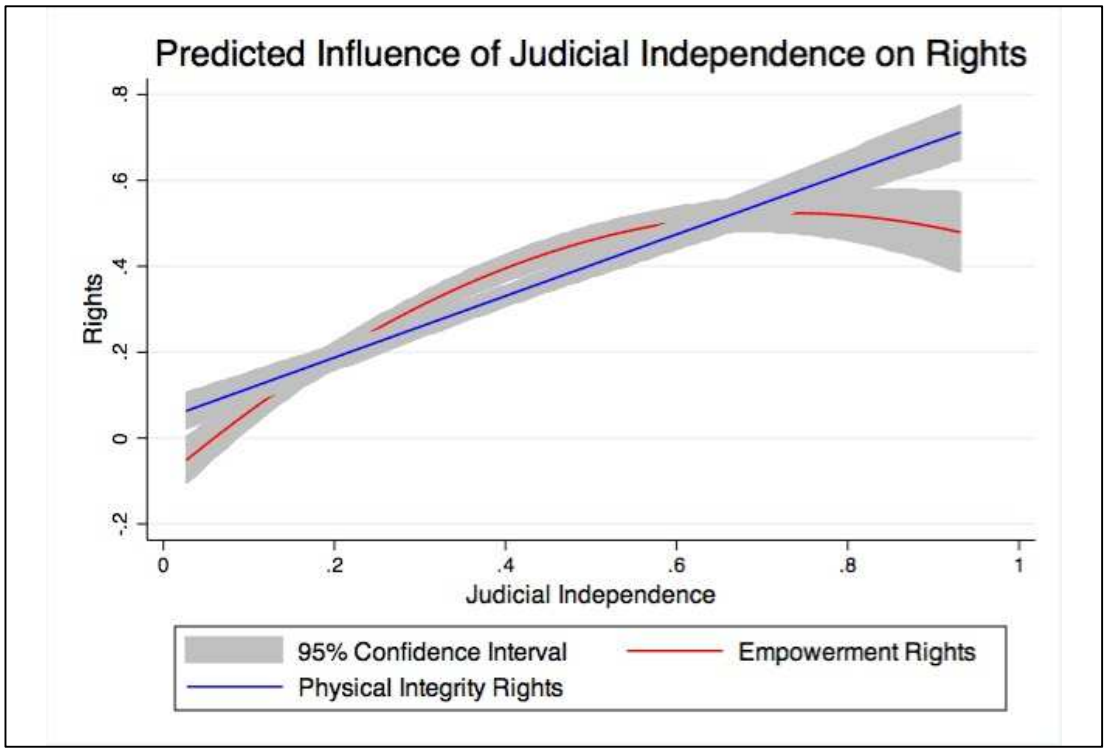

Figure 3.5: Influence of Judicial Independence on Rights

Empowerment rights reconceptualized

The previous analyses conceptualized empowerment rights as Cingranelli and Richards (2010) originally conceived them. That is, they consist of foreign movement,

domestic movement, freedom of speech, freedom of assembly and association, freedom of religion, workers' rights, and electoral self-determination. I reconceptualize empowerment rights to include women's social rights, women's economic rights, and women's political rights, while excluding electoral self-determination and workers' rights since they may be influenced by political interests beyond the rights issue area. Hence this reconceptualization defines empowerment rights as an additive index consisting of foreign movement, domestic movement, freedom of speech, freedom of assembly and association, women's social rights, women's political rights, women's economic rights, and freedom of religion. All of these component measures are derived from Cingranelli and Richard's (2010) data. This new dependent variable, named *Empowerment Rights Reconceptualized*, ranges from 0-18. Figure 3.6 (page 96) depicts the shifts in physical integrity rights, empowerment rights (original), and empowerment rights reconceptualized. For the most part, the general shifts in empowerment rights remain similar regardless of how one conceptualizes them.[99]

I reanalyze the data using this new dependent variable, again using centered judicial independence scores. Table 3.3 (page 97) reflects the results of fixed effect model with the replication of the original fixed-effects empowerment rights model to ease comparison.[100] The full table of results with control variables is included in Table 3B in Appendix B.

[99] With the possible exception of Argentina.

[100] A panel-corrected standard error model could not be run for the reconceptualized empowerment right due to lack of overlapping time periods, resulting in the inability to estimate the disturbance covariate matrix using casewise inclusion. Fixed effect models have reported the same substantive results and are therefore used.

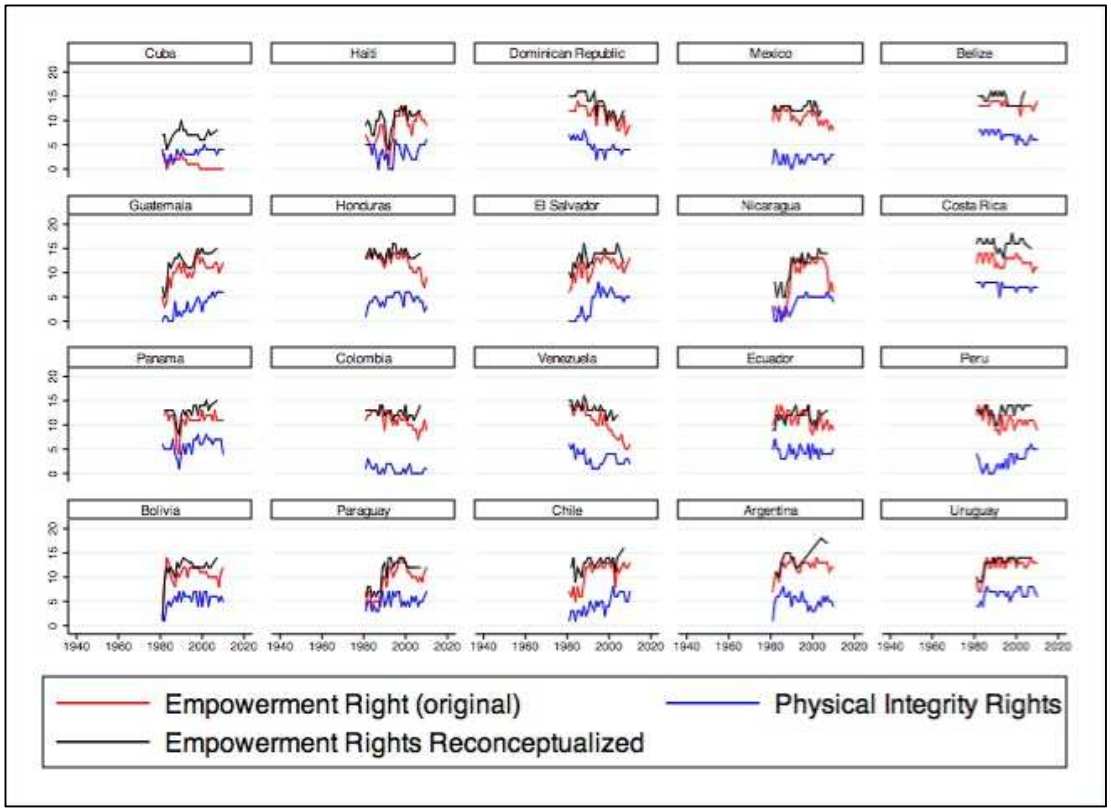

Figure 3.6: Rights Trends by Country

One first notices that these models are virtually identical with the exception of political constraint, where it fails to achieve significance for the reconceptualized empowerment rights. This analysis corroborates the asserted nonlinear, threshold relationship and furthermore suggests that the threshold level of judicial independence as 0.561. Figure 3.7 depicts the similarity between the original and reconceptualized empowerment rights models, where the blue line represents the marginal effects of the original CIRI empowerment rights and the green line represents the marginal effects of the reconceptualized empowerment rights values. (Note this figure uses raw judicial independence scores rather than centered scores.) While these models are virtually

identical, these analyses provide confidence that the threshold or nonlinear relationship between judicial independence and empowerment rights is not spurious.[101]

Table 3.3: Empowerment Rights in Latin America, 1981-2010

	Empowerment Rights (CIRI 2010)	Empowerment Rights Reconceptualized
Judicial Independence	4.740**	3.586*
	(1.711)	(1.568)
Judicial Independence^2	-8.681*	-6.389*
	(3.473)	(3.223)
Institutional Legitimacy	.306	1.050
	(1.038)	(.960)
Political Competition	.003	.006
	(.009)	(.009)
Political Constraint	1.141*	.499
	(.579)	(.552)
One year lag, Rights	.343***	.345***
	(.045)	(.050)
Constant	8.287***	8.567***
	(.936)	(.963)
Rho	.748	.504
N	369	335
Number of Groups	18	18
Observations per Group, Average (min, max)	20.5 (14, 21)	18.6 (9, 21)
Prob > F	0.000	0.000

* p < .05 ** p < .01 *** p < .001

Dependent variables are the degree of respect for empowerment rights. Both models have centered judicial independence scores (where I subtracted the mean from each score before squaring). Coefficients represent the results of fixed effects models with robust standard errors listed in parentheses.

One first notices that these models are virtually identical with the exception of political constraint, where it fails to achieve significance for the reconceptualized empowerment rights. This analysis corroborates the asserted nonlinear, threshold relationship and furthermore suggests that the threshold level of judicial independence as

[101] In addition, the reconceptualized empowerment rights are perhaps more intuitive and more interesting for individuals concerned with promoting women's rights.

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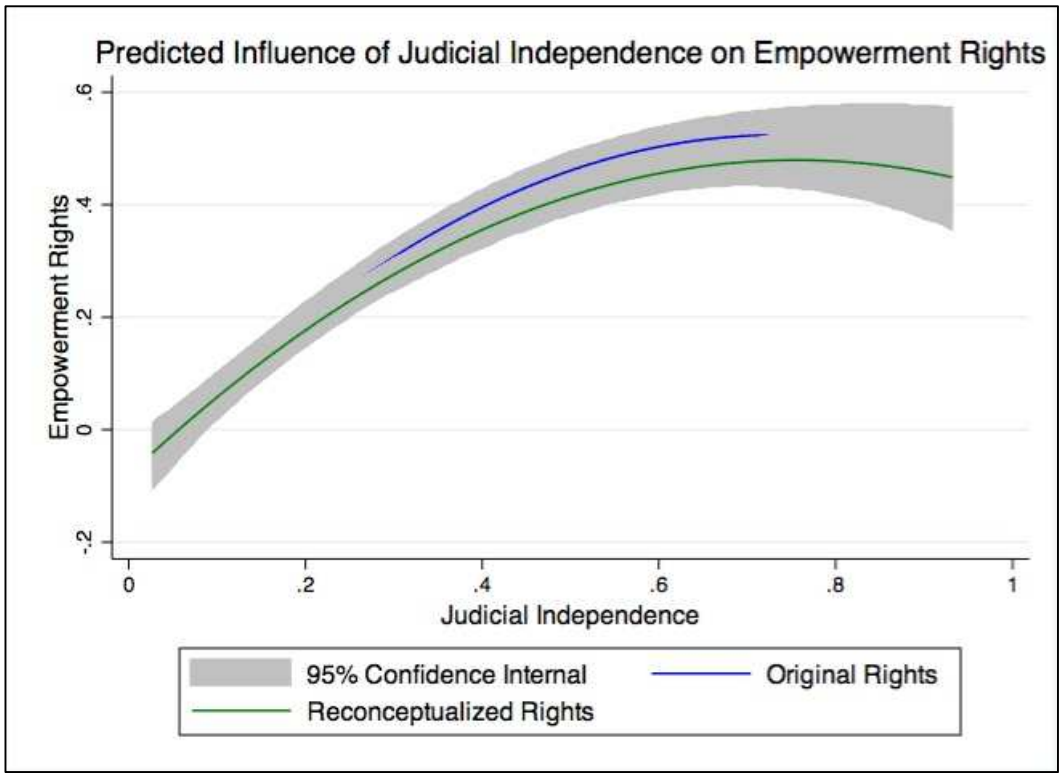

Figure 3.7: Influence of Judicial Independence on Empowerment Rights

[102] In addition, the reconceptualized empowerment rights are perhaps more intuitive and more interesting for individuals concerned with promoting women's rights.

Conclusion

This section asserts that courts play different roles in the protection and promotion of human rights depending upon the type of right. Specifically, courts serve as constraints on government behavior for physical integrity rights like torture, forced disappearance, political imprisonment, and extrajudicial killing. Yet courts are able to promote empowerment rights like civil, social, political, economic rights due to their institutional ability and responsibility to define and apply these rights through their jurisprudence. This difference in roles implies a different relationship between judicial independence and rights protection. Where courts serve as constraints, judicial independence is expected to have a significant, positive, and linear relationship with respect for physical integrity rights. Yet, where courts are able to define and actively promote rights through their interpretation and application of the law, judicial independence only has a significant and positive relationship with empowerment rights until some threshold. Both of these hypotheses earn support through the series of analyses provided in this section. These analyses, along with the descriptive data themselves, suggest that the threshold of judicial independence is roughly at the midpoint of the scale, between .533 and .561. Hence, a court needs only partial judicial independence in order to influence empowerment rights. After this threshold, judicial independence does not significantly affect the level of respect for empowerment rights.

These results suggest the need for better theories distinguishing between the role of courts and judicial independence on human rights. It also suggests the need to distinguish between different types of rights. Despite the promotion and increased protection of civil liberties and rights in Mexico, for instance, widespread physical

integrity rights have remained prominent in the news. Hence two distinctive trends have emerged within Mexico where the federal judiciary has improved rights protections and actively sought to promote rights in several areas (as discussed in the next section) but the increased militarization and escalation of drug cartel eradication has left citizens vulnerable to physical integrity rights violations.

Thus, while judicial independence remains an important influence on physical integrity rights, it is not the simple solution to remedy violations of civil, social, economic, and political rights. Thus, popular judicial reforms may need to be reexamined or reformulated to more appropriately implement the desired goals. For instance, these results suggest that judicial reforms focusing primarily on increasing judicial independence may improve government respect for physical integrity rights but such reforms are unlikely to influence the respect and protection of other rights, unless the country has very little (below midpoint) judicial independence.

3.3 Why would courts choose to incorporate international human rights law?

Regardless of the type of right, domestic courts can promote human rights through increasingly holding violators accountable and expanding rights protections to a larger set of situations or contexts for a larger proportion of society. Yet, if courts have the ability to promote human rights protections, then why would courts choose to promote these rights? Three broad reasons can answer this: 1) judges serving on courts sincerely belief promoting rights is morally right or makes good policy and/or are compelled by their perceived duty to promote rights, 2) principal-agent hierarchical relationships motivate

courts to apply laws congruent with regional courts, and 3) judges seeking to garner increased power for the court as an institution strategically choose to promote rights.

Judicial Preferences: Attitudes and Role Conceptions

The first possible mechanism inducing judges, and the courts they serve, to promote human rights laws and protections is that either their attitudes and sincere policy preferences are congruent with rights promotion and/or they perceive their duty and role as a judge obligates them to promote rights. If judges' decisions are a "function of what they prefer to do, tempered by what they think they ought to do, but constrained by what they perceive is feasible to do," then the first two choices, representing the attitudinal and role theory models, may account for the choice to promote (Gibson 1983). Hence, their attitudes encompass what judges prefer to do while role orientations consist of what judges think they ought to do.[103]

Attitudes congruent with rights promotion may lead judges to choose to promote human rights. Like other political actors, judges render decisions based upon their personal attitudes, values, and preferences (Segal and Spaeth 2002, 1993; Segal 1997; Segal and Cover 1989; Schubert 1965; Pritchett 1954). Hence, this mechanism asserts simply that judges promote rights protections because they prefer to. In this scenario, judges choose to promote rights because it moves national policy closer to the judge's preferred policy location and/or because promoting rights makes 'good' law.

[103] What judges think they ought to do also includes legal concerns. For example, a judge may want to apply the law a particular way congruent with his or her personal policy preference but the case facts may not allow such a decision. While I do not discuss these legal concerns here as I am primarily concerned with why judges would choose to promote human rights, I do not seek to imply the lack of consideration of legal factors. It is possible that judges choose to promote rights due to case facts, but I include these legal concerns within both the attitudinal and role theory models.

Role expectations could also interact with, mitigate, or constrain the translation of judicial attitudes into behavior. The role expectations consist of the norms of 'proper' behavior within a particular role or situation (Gibson 1983, 1978). The combination of sets of role expectations inherent within an identity or office creates a role orientation of the occupant with that identity or within that office. Role orientation is thus "a psychological construct which is the combination of the occupant's perception of the role expectations of significant others and his or her own norms and expectations of proper behavior of a judge" (Gibson 1978). In essence, the perception of the appropriate behavior inherent within an office, position, or identity may influence the behavior and attitudes of the occupant. These perceptions include those created by the occupant but also by other judges, rights-related or legal epistemic communities,[104] and the judicial 'audience' in general (Baum 2006). Norms about judges and judging arising from each of these communities influence judicial decision-making through judges' concerns about reputation, popularity, and respect at the individual and institutional levels (Baum 2006; Mishler and Sheehan 1996; Miceli and Cosgel 1994). In short, "judges, like other people, get satisfaction from perceiving that other people view them positively" (Baum 2006). For this reason, judges' perceptions about themselves as well as perceptions about how other people view and respect them influence judicial decision making and the calculus to promote rights or not.

Furthermore, the persistent interactions with these sets of norms across audience communities could also socialize the occupant to take on the identity defined by these norms perceived within the role of a judge (Glick 1992). Regular exposure to and

[104] Epistemic communities are defined as "a network of professional with recognized expertise and competence in a particular domain and an authoritative claim to policy relevant knowledge within that domain or issue-area" (Haas 1992).

interactions with the rights-related and legal epistemic communities, including judges, lawyers, litigants, and other actors not only provide normative expectations that inform the role orientation of a judge but socializes the judge to alter his or her own identity and expectations. Increased and repetitive exposure of legal and role norms can lead to norm convergence, where actors that may not have agreed with or shared a normative belief eventually converge in their acknowledgment and support of the legal norm. Additionally, epistemic communities may provide judges rationale for adopting new rights policy solutions as well as make contingent arguments that define policies as "right under certain circumstances" (see Dobbin, Simmons, and Garrett 2007; Dobbin and Sutton 1998; Glick 1992; Haas 1989; see also DiMaggio and Powell 1983). Hence, socialization can change judicial attitudes as well as role orientations. For instance, because courts are widely considered the cornerstone of human rights protections, judges may promote rights because they believe they should (due to their membership in the court) or because they want to. The point at which judges learn and take on the perceived role, identity, and obligatory behavior of a 'judge' is where role theory converges with the attitudinal model. Even judges that may not have sought to promote rights before becoming a judge, or even early in their career, may learn and become socialized to these norms, thereby changing their attitudes. In this sense, the role orientation no longer constrains behavior but redefines the judges' attitudes and preferences.

It is important to recognize that role orientations do not necessarily constrain attitudes since they may reinforce existing attitudes or redefine attitudes all together. As such, both mechanisms may influence judges to choose to promote human rights laws that are consistent with international laws. Judges may promote rights because they prefer to,

because they think they ought to, or because they have learned to want to. Indeed, Walker (2012) finds that the "pressures that judges feel to advance human rights are generally self-imposed [where] [t]hese social elites view human rights as fundamental rights."[105] Hence, attitudes and expectations may determine the degree to which judges choose to promote rights.

Principal-Agent Motivations

Secondly, principal-agent hierarchical relationships motivate courts to apply laws congruent with regional courts.[106] These relationships denote the superior court as the principal and lowers as the, presumably, faithful agents of the superior court. In general, this hierarchical relationship appears strong in American federal courts, where circuit courts faithfully comply with Supreme Court precedent and changes in jurisprudence with little to no agency loss due to lower court ideological preferences (Westerland et al.

[105] Furthermore, often judges' activities promoting rights "are relatively unobserved by both domestic and international actors." Walker's (2012) description of his findings in Central American courts continues to argue that, while the judges themselves may advance human rights, citizens also attempt to advance these human rights through the legislative arena. Yet, he similarly argues, the courts still play an important role as the center of "administration and enforcement of the legislative provision" (Walker 2012).

[106] At this point I do not distinguish between decision congruence where cases are decided similarly due to case facts versus responsiveness where lower courts respond to changes in principal court policy or decision changes (Songer, Segal, and Cameron 1994). This distinction, while important, tends to become problematic since these concepts converge in terms of regional court- high court hierarchical relationships within the human rights issue area. Supranational court human rights decisions infrequently change in any meaningful way due to the nature of the cases and rights violations. Even when court membership changes or institutional and political contexts shift, supranational courts tend to remain consistent in their application of human rights law. Hence, there is little opportunity to evaluate responsiveness in this manner. Domestic high courts, on the other hand, more frequently alter their decisions and policies, especially after changes in judge membership and political contexts. Responsiveness is thus more important and more easily identified for evaluation within the domestic judicial context. Hence, the evaluations in this dissertation deal primarily with congruence, while only partially accounting for responsiveness in terms of changes in domestic legal systems and court activity after regional court decisions. (In other words, responsiveness is only included to the extent that domestic legal changes occur after the presence of a regional court decision. The 'response' in this scenario is triggered by the presence of a supranational court decisions rather than changes in supranational court jurisprudence.)

2010; Songer, Segal, Cameron 1994; Songer and Sheehan 1990; Songer 1987).[107] Similarly, Randazzo (2008) and Baum (1980) find that superior appellate courts constrain lower federal district courts in the United States.[108]

There are four motivations where this hierarchical relationship will induce the incorporation or adoption of international law: a) fear of reversal due to corresponding reduction of personal recognition, respect, and/or reputation, b) fear of reversal due to the impeded inability to shape policy, c) advancing career and fear of reducing ability to advance, and d) compliance as a good in and of itself due to role conceptions, respect for authority, and desire to produce legally accurate and consistent decisions (Klein and Hume 2003).

In terms of the first two motivations, fear of reversal can be caused by personal reputation motivations or policy-making motivations. For example, a national high court may comply with a regional court and international law in order to avoid international shaming and reprimand, thus incurring reputational costs. National high court judges could similarly comply in order to maintain their ability to influence and determine policy; if the court does not comply and its decision reversed, then the court has lost its ability to determine policy in that area.

[107] Both find that the lower courts generally serve as faithful agents, although Westerland et al. (2010) find that lower court ideology does not influence its behavior while Songer, Segal, and Cameron (1994) finds that some room remains for agency loss due to lower court pursuing their own ideological preferences.

[108] Baum's (1980) results are more similar to Songer, Segal, and Cameron (1994) rather than Westerland et al. (2010)—albeit perhaps less optimistic—in that superior courts "exert significant influence over the decisions of their subordinates" but that they do not completely determine lower court behavior or determine lower court behavior in "any absolute sense." Hence, superior court influence, he argues, is one of several factors that determine lower court behavior and it may explain less than other factors not included in his analyses (such as judge preferences).

While fear of decision reversal is possible, however, national high court decisions are rarely considered by a regional court and therefore unlikely to be reversed. Hence, the likelihood of this event is so low that such a motivation is unlikely. This intuition is similarly addressed in American judicial scholarship where lower court fear of reversal is unlikely due to the fact that the Supreme Court hears only a tiny percentage of cases, rendering the likelihood that the Supreme Court will hear a case and reverse it extremely unlikely (Klein and Hume 2003).[109] Indeed, Klein and Hume (2003) find that this motivation does not appear to explain lower court compliance[110] to U.S. Supreme Court decisions. Thus, it seems that this motivation, while possible, is not particularly persuasive. It is even more unlikely to serve as a motivation since the regional court examined here, the Inter-American Court of Human Rights, does not serve as an appellate court to national high courts as declared through its 'fourth instance' rule (Harris 2004, 12).

The third motivation deals with judges' career ambitions where compliance is motivated either by the desire to advance one's career or by the fear of reducing one's ability to advance. These motivations depend both on individual ambitions and the institutional structure of the judiciary. Put simply, national high court judges could strategically comply with regional court decisions and international law more generally

[109] Note that this argument applies only terms of lower courts and the American Supreme Court. Hierarchical relationships between appellate and district courts may experience these motivations since there is a much greater likelihood that lower court decisions will be evaluated by the superior. Evidence exists suggesting that a stigma is attached to a judge's reversal rate (Baum 1978; Caminker 1994), and Randazo (2008) finds that the anticipation or fear of negative responses by courts of appeal is the constraining force on U.S. federal district courts, inducing these lower courts to curtail their ideological influence (Randazzo 2008). However, this constraint applies to civil liberties and economic cases but not to criminal cases (Randazzo 2008).

[110] Compliance is defined here as the faithful application of existing higher court precedent and deciding cases as the higher court would be expected to (Klein and Hume 2003).

because it serves their personal career ambitions. For example, noncompliance could reduce a judge's ability to advance his or her career due to the reputation of rights negligence or violation or due to ignoring existing legal standards. Alternatively, compliance where a judge rules against the state may reduce the judge's ability to advance a career in politics within that home state. While these motivations are important, it is unclear the extent to which they occur at the institutional level. In other words, while an individual judge may behave according to these motivations, it is unlikely that this behavior would be observable or meaningful at the institutional level. Because courts consist of multiple judges with likely diverse career ambitions, it seems unlikely that these behaviors would influence court jurisprudence as a whole. [111]

The fourth motivation suggests compliance may occur simply because the national high courts view compliance as a good in and of itself that is desirable or beneficial. Judges may view their authority and position within a framework that dictates that they should comply in order to assure legal accuracy and consistency or simply to respect authority and the hierarchical legal structure.[112]

[111] Looking specifically at the regional- national high courts hierarchical relationship, the IACHR is a part-time body consisting of seven judges who serve six-year terms and are nominated by Convention parties and elected by the General OAS Assembly. While they all have legal backgrounds, few have ever served as a judge in their home state. The majority of judges were previously academics or had previous experience in diplomacy and politics (Harris 2004, 23). Hence, it seems unlikely that national high court judges are motivated to seek career advancement to the IACHR specifically. Obviously, this does not preclude career motivations in general since there are other judicial, political, and non-political careers that judges may seek.

[112] Yet the application of traditional principal-agent model to supranational and national court relationship may be problematic. Stone Sweet (2000) argues that this framework does not work well for European Union relationships since there is no clear hierarchy and the degree of oversight remains unclear. Furthermore, the assumption that principals select their agents is violated in these international-national relationships.

Empowerment of Court

The third, final explanation for why courts may choose to incorporate international law and promote human rights consists of institutional motivations where judges seek to empower the court as an institution and seek to avoid reductions in judicial power.[113] As such, judges are concerned with expanding public support and increasing legitimacy, which empowers the court, making it more capable and effective at constraining state behavior. Alternatively, they are also concerned with avoiding behavior that would delegitimize the court, reduce public support, and thereby weaken the court, making it vulnerable to institutional dependency, government attacks, and ignored decisions. In these cases, these concerns would predict that a court would prefer to appear as an impartial arbiter that is independent of political interests. This would lead to the incorporation of international human rights laws and compliance with regional court decisions since compliance signals the court's impartiality, independence from state government influence, its legal accuracy and consistency, and its advocacy of the public. In general, pro-human rights decisions consistent with international law would increase public support of the court, thereby empowering the court as an institution.[114] Expanding human rights protections can improve court standing in the eyes of the public, which may increase the degree of (diffuse) public legitimacy the court enjoys. Increased legitimacy

[113] This mechanism could be categorized another principal-agent motivation.

[114] Due process rights in particular may not lead to increased public support and legitimacy. While international human rights laws seek to protect criminal rights and trial rights, these laws can be extremely unpopular. The reason is that in some cases, the protection of due process rights leads to the perception that criminals are benefitting from international law rather than the victims of crimes. For instance, a convicted foreign national convicted of drug crimes and murder who is later released to the home country rather than serving his or her sentence would lead to public outcry and backlash since in this case international law's protection of due process rights appears to benefit the convicted criminal rather than the victims of his or her crimes.

can translate into greater judicial power or effectiveness since improved public support for a court makes executive challenges to court decisions more costly politically.

While this dissertation does not distinguish between these possible motivations for expanding human rights, these reasons make it plausible that courts might want to expand human rights if they are able to. Two main outcomes should appear if courts are deciding to promote human rights. First, courts with discretionary dockets should increase the proportion of rights cases within those dockets. Increases in human rights cases imply increased court attention to rights issues and the desire of the court to rule on these issues. Secondly, promoting courts should increase pro-individual (i.e. pro-rights protection) decisions. Increased attention to rights issues is insufficient for rights protections and expansion; courts must decide cases in a way that promotes human rights protections in order to support these hypotheses.

This leads to the second set of hypotheses:

H_3: Promoting courts should exhibit increased proportions of rights cases in discretionary dockets.

H_4: Promoting courts should exhibit increased pro-individual (pro-human rights) decisions.

Methodology

I evaluate these hypotheses predicting changes in discretionary docket and decision outcomes using original and secondary data for Spanish-speaking, civil law

Latin American countries, although emphasizing the case of Mexico as it is in the midst of a transitioning judicial system as well as experiencing diverging rights trends. In this sense, the case study is descriptive as well as provides preliminary qualitative evidence to which I can compare my hypotheses. While this methodology limits my ability to identify causal mechanisms and constrains generalizability, this evidence is the first examine these trends of domestic high court incorporation of international human rights laws. As such this preliminary evidence is useful in generating attention to this important topic and in generating empirically testable theories that are tailored to Latin American experience and international law-national court dynamics. Furthermore, while these case studies do not provide a systematic test of the hypotheses I proposes, they do provide preliminary evidence as to whether domestic high courts do choose to promote human rights protections in manners that are consistent with international legal norms and some useful information about the domestic political contexts within which these processes occur.

The inclusion of other Latin American countries is based upon available data. Unfortunately, relatively little research examines these courts' human rights practices empirically or qualitatively. While more research examines their judicial independence and judicial review behaviors, this data is not appropriate for human rights cases within a civil law system. Further exacerbating the dearth of data, few courts make their decisions publicly available. Even within the handful of courts that do publish their opinions, they publish selectively for foreign readers. This introduces serious concerns of selection bias. Hence not only are case selections limited, the cases themselves provide incomplete data. Nonetheless, this data is helpful in evaluating change numbers and proportions of cases

but provides no information about human rights cases specifically or the associated decisions.

I offer original data on the case of Mexico and emphasize its case throughout because it incorporates complex and contradictory domestic politics including a recently transitioning judicial system, intensifying organized crime and cartel violence, and significant achievements in certain areas of human rights. Moreover, Mexico exemplifies the same judicialization trends as experienced throughout Latin America where, since the 1980's, courts have become increasingly politically important (Seider, Schjolden, and Angell 2005). Latin American courts are increasingly asserting rights not effectively guaranteed by the executive or legislature, leading to citizens to increasingly resort to courts to resolve issues that were previously reserved for the political sphere (Seider, Schjolden, and Angell 2005). Mexico's Supreme Court of Justice[115] has similarly evolved and transformed through a series of constitutional reforms and changes in the power structures of the Mexican political system (Ríos-Figueroa 2007). [116] As with many other

[115] Mexico's Supreme Court of Justice (*Suprema Corte de Justicia de la Nación)* (**SCJN**) sits atop the judicial hierarchy much like the United States Supreme Court. As the highest federal court, it consists of eleven members: the elected President of the Supreme Court (similar to the United States' Chief Justice) and ten Ministers. Justices are proposed by the President of Mexico and confirmed by the Senate, much like in the United States. Each Justice is appointed to serve 15 years, and the President of the Court serves under the title for four years. (Nonconsecutive reappointment is possible.)

[116] Judicial reforms occurred in 1917, 1994, 1996, and 2008. The 1917 constitutional reforms included changes to appointment procedures and the tenure system, which allowed for considerable autonomy from the executive (Domingo 2000). However, while the Supreme Court adopted a fairly independent position with regard to the executive and ruled against government interests at times, subsequent reforms in the 1920s-30s aimed to curb judiciary action—leading to a more passive, deferential Court (Ríos-Figueroa 2007; Domingo 2000).

After taking office, President Zedillo institutes a series of judicial reforms to better insulate the Court from political pressures. The 1994 reforms created a Judicial Council (*Consejo de Judicatura*), relieving administrative burdens (like lower court appointments, the administration of the judicial budget, disciplinary mechanisms to control corruption), limited the role of the executive in Supreme Court appointments, granted 15 year tenure to provide insulation from the executive, removed executive approval as a requirement for the administration of the judicial budget, reduced the size of the Supreme Court from 26 to 11 members, reduced benches from four to two, and forced the resignation of all current Court members in order to appoint new members. Importantly, the reforms also expanded the Court's jurisdiction

Latin American countries, the Mexican Supreme Court had been perceived as historically subservient to the executive, corrupt, and ineffective until 1994. Since the 1994 judicial reforms, the Court has adopted a more active role, taking controversial positions, and garnering public attention in an unprecedented manner for judicial review and rights cases (Domingo 2005; 2000). This expansion of review powers has emboldened the Court to take a more active and public role, dealing with controversial issues more openly than in the past (Domingo 2005; 2000). Indeed, the Court finally openly challenged executive power in 2000, when the Court resolved a conflict between lower chamber members of Congress and President Zedillo to investigate illegal campaign funds (Staton 2010). Importantly, the increased activism of the Court as a check to executive power has occurred in hand with relatively high compliance to the Court's rulings, even when they are political inconvenient to the ruling party (Staton 2010; 2007).[117]

In 2008, Mexico passed additional judicial reforms that introduced public, oral trials to criminal cases and instituted the presumption of innocence and police investigations. While this reform passed in 2008, however, the deadline for full implementation by the Mexican states is 2016. As such, as of October of 2013, only three of the 32 states have fully implemented these reforms with 13 states having partially transitioned.

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of judicial review with policy-setting (*erga omnes*) effects and increased the accessibility for litigants to promote cases of constitutional review. These reforms created new jurisdiction of abstract review (actions of unconstitutionality) and expanded existing concrete review (constitutional controversies). (Reforms in 1996 further expanded Court jurisdiction, enabling it to rule of electoral laws at the federal and state level.) Each of the reforms since 1994 has enabled the Court to play a more active and prominent role in Mexican politics.

[117] Of course, increased Court activism has not always been met with welcome. In 2004, *Partido Revolucionario Institucional* (PRI) members[117] called for the impeachment of two Court justices for having attempted to review a constitutional action in which President Fox challenged the constitutionality of a congressional override of the federal budget.

Changes in proportion of rights cases in discretionary dockets

Mexico

In order to evaluate changes in discretionary dockets (***H_3***), I use action of unconstitutionality cases (*acciónes de inconstitucionalidad*) and *facultad de atracción* cases.[118] These cases represent the only discretionary portions of Mexico's Supreme Court of Justice's docket, but they represent only a fraction of the Court's docket.[119] Tables 3.4 – 3.6 show each category's number of cases and percentage of the docket from 2009-2014.

Table 3.4 Discretionary Docket: Action of Unconstitutionality Cases

Year	Action of Unconstitutionality (Number of Cases)	Action of Unconstitutionality (Percentage of Docket)	Total Docket (Number of Cases)
2009	96	1.04%	9191
2010	37	0.41%	9054
2011	34	0.35%	9749
2012	67	0.57%	11849
2013	43	0.33%	13032
2014	113	0.80%	14195

[118] The Supreme Court gained this jurisdiction in a constitutional amendment in 1988.

[119] Action of unconstitutionality cases became part of the Mexican Supreme Court's docket in 1994 as part of a series of judicial reforms. These represent abstract review over the constitutionality of state and federal laws whereas constitutional controversies deal with only concrete claims through *a posteriori* review. Action of unconstitutionality case outcomes apply to general policy when eight or more justices agree on the resolution. Constitutional controversy resolutions may have general policy-setting or specific (litigant only) effects depending upon the case. The Supreme Court has exclusive jurisdiction to both case types (unlike *amparo* suits) and resolves both *en banc*. I do not include constitutional controversies in the analysis because these cases deal primarily with problems between different levels and branches of the government, such as between the state and national government or between the executive and legislative branches. As such, these cases do not typically consist of human rights issues.

Table 3.5: Discretionary Docket: *Facultad de Atracción* Cases

Year	*Facultad de Atracción* (Number of Cases)	*Facultad de Atracción* (Percentage of Docket)	Total Docket (Number of Cases)
2009	127	1.38%	9191
2010	176	1.94%	9054
2011	282	2.89%	9749
2012	437	3.69%	11849
2013	453	3.48%	13032
2014	702	4.95%	14195

Table 3.6: Total Discretionary Docket

Year	Cases Combined (Number of Cases)	Cases Combined (Percentage of Docket)	Total Docket (Number of Cases)
2009	223	2.43%	9191
2010	213	2.35%	9054
2011	316	3.24%	9749
2012	504	4.25%	11849
2013	496	3.81%	13032
2014	815	5.74%	14195

Actions of unconstitutionality are discretionary abstract review cases dealing with the constitutionality of state and federal laws, and their outcomes apply to general policy when eight or more justices agree on the resolution. *Facultad de atracción* cases represent a discretionary *amparo*[120] jurisdiction where if a case falls outside of the Court's appellate jurisdiction but the Court deems some element of the case to be fundamentally important to Mexican law, it may rule on the matter itself. Tables 3.4, 3.5, and 3.6 show that Mexico enjoys discretionary power in only a small proportion of cases. They also reveal, however, that the Court has been increasingly activist in terms of

[120] *Amparo* cases are part of the Court's mandatory docket and appellate jurisdiction, and court rulings in these cases apply only to the particular litigants in that case unless the Court makes the same ruling for five consecutive cases, whereby lower courts must apply the same conclusion to all similar future cases (Ríos-Figueroa 2007). As such, court rulings in these cases generally do not alter national policy (as they would in common law countries). Also, *amparo* cases were heard *en banc* until 2003.

"attracting" cases that would otherwise fall outside of their jurisdiction while showing only relatively minor fluctuations in abstract judicial review. The increased presence of human rights cases on this discretionary docket implies increased Court attention to rights issues and the desire of the Court to rule on these issues in ways that affect national law.

Table 3.7 depicts the proportion of cases by litigant for action of unconstitutionality cases (*acciónes de inconstitucionalidad*) in Mexico from 2008-2014. As the percentages in red indicate, rights cases introduced by the National Commission for Human Rights have garnered increasing attention by the Court. These yearly percentages *underestimate* the percentage of rights cases since rights cases are often brought forward by other litigants (which would appear in the other categories).[121] Nonetheless, the percentage of rights cases, brought forward by the Commission of Human Rights, the Supreme Court ruled upon increased to nearly 28% in 2013.[122] Since these cases represent a discretionary portion of the Court's docket, the Court therefore decided to rule upon more rights claims brought forward by the National Commission for Human Rights in 2013 and to a lesser degree in 2011. Yet, the Court appears to have a relatively stable proportion of these cases relative to other action of unconstitutionality cases brought by other litigants, with an average of 15.7% each year.

Table 3.8 similarly reveals increased judicial attention and activism in *facultad de atracción* cases (in red).[123] These cases represent a discretionary *amparo* jurisdiction where if a case falls outside of the Court's appellate jurisdiction but the Court deems

[121] Note that individuals do not have standing for action of unconstitutionality cases.

[122] However, from 2009 to 2013, action of unconstitutionality cases have declined as a proportion of cases decided by the Court while caseload has increased over the same period (see Table 5).

[123] The Supreme Court gained this jurisdiction in a constitutional amendment in 1988.

Table 3.7: Mexico's Supreme Court: Action of Unconstitutional Cases by Litigant

	2008 (Sept-Nov.)	2009 (Dec 2008-Nov 2009)	2010 (Dec 2009-Nov 2010)	2011 (Dec 2010-Nov 2011)	2012 (Dec 2011-Nov 2012)	2013 (Dec 2012-Feb 2013)	2014 (Dec 2013-Nov 2014)	Cumulative (Dec 2008-Nov 2014)
Political Party	55%	49%	44.7%	23.5%	23%	27.9%	69.0%	45.3%
Legislative Minorities	20%	17.7%	7.9%	8.8%	6%	11.6%	8.8%	11.0%
Solicitor General	20%	18.8%	36.8%	50.0%	58%	32.6%	8.8%	28.6%
National Commission for Human Rights (CNDH)	3%	14.6%	10.5%	17.6%	13%	27.9%	10.6%	14.3%
Total Number of Cases	20	96	37	34	64	43	113	391

Data compiled from: https://www.scjn.gob.mx/transparencia/paginas/trans_jurisd.aspx. Note that 2008 data reflects only the final fourth trimester.

some element of the case to be fundamentally important to Mexican law, it may rule on the matter itself. Hence the increased number of these cases indicates that the Court is increasingly choosing to rule on rights issues. It also implies an increasingly activist Court since these cases would normally fall outside of their jurisdiction. By resolving an increasing number of these cases, then, the Court is essentially informally expanding its jurisdiction.[124]

[124] Note that this informal expansion of their jurisdiction remains constitutionally valid.

Table 3.8: Annual Trends in Case Type and Case Load

	2009	2010	2011	2012	2013	2014
Action of Unconstitutionality	96	37	34	67	43	113
Direct *Amparo*	2,448	2,952	3,060	3,951	4,572	6164
Indirect *Amparo*	2,292	1,031	883	777	689	965
Constitutional controversy	122	94	130	124	115	121
Facultad de atracción	127	176	282	437	453	702
Total Case Load	9,191	9,054	9,749	11,849	13,032	14,195

Data compiled from: https://www.scjn.gob.mx/Transparencia/Indicadores_Gestion/SGAIG2T14.pdf.

Table 3.8 also shows marked increases in direct *amparo* cases, which also consist of rights cases but part of the Court's mandatory docket (in blue). *Amparo* primarily protects individual constitutional rights, and direct *amparo* consist of appeals of the final judgments in criminal or civil cases. [125] All Mexican citizens, civic organizations, indigenous communities, and even the government (when acting as a private moral person) may bring *amparo* suits (Staton 2010). Since these cases are mandatory, this substantial increase in cases does not necessarily reveal the Court's desire to resolve these particular rights issues (unlike the changes in the discretionary docket composition), but it implies increased rights litigation. Yet, such a marked increase from 2009 to 2013 of nearly double the number of direct *amparo* cases (a difference of 2,124 cases resolved per year) may be in part a response to the Court's signaled interest to rule on rights issues. In essence, because the Court has signaled increased interest in and increased

[125] Indirect *amparo* (*amparo en revisión)* are claims heard in the first instance by the federal district courts in response to a) the publication of laws they by their mere promulgation prejudice the claimant's liberties, b) acts and decisions not arising out of judicial, administrative, or labor tribunals, c) judicial, administrative or labor tribunal decisions executed outside the bounds of the trial or after its conclusion, d) acts within a trial whose executive would cause irreparable damage, and e) decisions within a trial that affect parties outside the trial (Staton 2010). Hence, in these cases, the Supreme Court exercises appellate jurisdiction.

receptiveness to rights issues through their discretionary docket (and increasing pro-rights decision, as will be discussed shortly), litigants are more likely to appeal their *amparo* suits so that the Court will address their issue and likely rule in their favor (Baird 2007). Judicial rulings by the Supreme Court since the 1994 reform, and especially after 2000, have indicated the willingness of the Court to act independently of the executive and even rule against the government (Domingo 2005). These rulings—along with the high levels of government compliance to them—have signaled to individuals, opposition parties, and political opponents that legal mobilization is a useful means to assert legal boundaries (Domingo 2005).[126]

Costa Rica's Constitutional Court

Increased *amparo* resolutions, along with increasing caseloads, are also evidence in Costa Rica since the creation of the Constitutional Court (*Sala IV*) in 1989. In 1990, its first year of operation, the Constitutional Court received 2,300 cases which increased to 13,400 cases per year by 2002 (Wilson 2005). Of these cases, *habeas corpus* cases increased from an average of 829 cases over the first five-year period of operation to 1,355 cases on average by 2002 (Wilson 2005). *Amparo* cases similarly increased from an average of 3,553 cases over the first five years to 11,665 cases by 2002 (Wilson 2005). Table 3.9 reveals the number of cases the Court considered per year. Hence, not only has the Court received increasing petitions for cases, but the Court has increased the number of cases it considers substantially.

[126] While the Mexican Supreme Court has become a credible, effective, and active political player, lower courts, for the most part, have not undergone the same transformation. Lower courts remain embedded in the passive, corrupt, and subservient role to the local politics.

Table 3.9: Number of Cases Considered by *Sala IV* per Year

Year	Cases Considered
1990	1,600
1997	7,000
2000	10,000
2008	18,000

Additionally, this substantial increase in cases heard by the Court consists primarily of human rights or *amparo* cases (Wilson 2011). While these cases form part of the mandatory docket, they represent the Court's willingness to challenge the elected branches as well as the Court's openness to allow weak, marginalized, and poorly organized groups who had largely been ignored or excluded from policy-making to seek legal redress (Wilson 2011; 2005). Costa Rica's 1949 Constitution included many of these rights, but the Court's previous inactivity relegated them to merely rights on paper (Wilson 2005). As such, the increased litigation became a product of Court signaled interest in adjudicating rights cases and their enforcement of these constitutional rights.[127]

Colombia's Constitutional Court

Similar trends occur in Colombia. Since the 1991 constitution, the Colombian Constitutional Court issued 235 decisions in 1992, while issuing 1123 decisions in 2002 (Espinosa 2005). Table 3.10 illustrates the increases in Court decisions from 1992-2002. One notices that the Court issued the most decisions in 2000, reaching 1754 rulings.

[127] Substantial increases in litigation reaching the Costa Rican Constitutional Court are also a product of the new rules that broadened the accessibility of the Court, where litigation is inexpensive and has minimal requirements for filing. In addition, cases may be brought by any individual without legal counsel and without filing any formal paperwork (Wilson 2005).

Table 3.10: Colombian Constitutional Court Docket

Year	Total number of decisions
1992	235
1993	598
1994	582
1995	630
1996	718
1997	680
1998	805
1999	993
2000	1754
2001	1344
2002	1123

Conclusions

These three countries reflect two important trends (not including the increasing proportion of pro-rights decisions discussed next). The first is that the Mexican Supreme Court is actively increasing the number of rights cases they hear in their discretionary docket. This activism has signaled the Court's interest in and receptiveness to rights cases, which may persuade potential litigants to seek the court (see Baird 2007). Trends in *amparo* cases in courts' mandatory dockets suggest that people are increasingly turning to the courts to resolve their rights issues. Colombia's and Costa Rica's Constitutional Courts share in Mexico's trend of increased rights-oriented caseloads. Many of these changes have occurred with the opening of access to the judiciary, which is crucial for a court to be more active in defending rights (Wilson and Rodriguez Cordero 2006; Smulovitz and Peruzzotti 2000).

However, while courts are increasingly adjudicating rights issues and are increasingly asked to resolve such issues, these increases in rights cases may not be

unequivocally positive. One detriment is that due to the increased litigation, the mandatory docket of these courts has increased substantially—creating unreasonable workloads for most courts. Hence, in the response, courts must pay more attention to procedural requirements in order to throw out improper cases. The increased need to reduce caseloads means that some cases are not being heard, primarily due to procedural requirements. This could disenfranchise poor, uneducated, or rural right-seeking litigants who may not enjoy support from lawyers or NGOs. Massive caseloads may also lead to delays in trials and resolutions, which may lead to due process, criminal, and procedural rights infringements.

Changes in decision outcomes in rights cases

Mexico

In addition to the Mexican Supreme Court's increasing attention to rights cases, the Court has increasingly resolved cases in favor of individual rights. The Court has become especially active in promoting *habeas corpus* and criminal procedure rights, anti-discrimination and reproductive rights, and civilian rights with respect to military actions. The Court's active promotion of individual rights through their decisions is illustrated by the UN's awarding of the Defense of Human Rights Award in December of 2013, stating, "The national Supreme Court has accomplished very considerable progress in promoting human rights through its interpretations and enforcement of Mexico's constitution and its obligations under international law. Additionally, the national Supreme Court has set important human rights standards for Mexico and the Latin America region."[128] Indeed, the Court has placed increased emphasis on human rights and increased weight to

[128] (http://www.ohchr.org/EN/NewsEvents/Pages/hrprize.aspx)

international treaty obligations. In 2011, the Court declared that judgments by the Inter-American Court of Human Rights is the "law of the land," and the Court ruled in 2013 that rights that are guaranteed by international human rights treaties have equal weight to those guaranteed by the Mexican constitution. Furthermore, court decisions include substantial references to international laws, including treaties, conventions, IACHR, and other supranational court decisions.

Perhaps the most significant of the policy changes instituted by the Mexican Supreme Court is the reduction of military jurisdiction and the extent to which military enjoy in-house criminal or disciplinary procedures. In 2011, the Court ruled to reform Mexico's flawed military justice system to hold soldiers accused of human rights violations accountable for their crimes. It declared that no civilian or human rights case should be tried in the military justice system. The ruling also stated that courts are obligated to comply with Inter-American Court of Human Rights judgments and that its jurisprudence should be taken into account by Mexican judges. In 2012, the Court formally declared unconstitutional part of military code requiring service members charged with a crime against civilians to be tried before a court martial. The Court further published a formal order confirming its ruling and directing ordinary federal criminal courts to henceforth assume jurisdiction. The same year, the Court conferred legal standing to third parties who were not themselves direct victims of military aggression, which enabled family members of civilians killed by military forces to intervene procedurally in such cases.

Since 2008, criminal and procedural rights have taken a forefront in Supreme Court promotion—so much so that the Court has faced significant public controversy. While the 2008 reforms to move the country to faster public, oral trials with police authorized to

investigate crimes proved a significant shift in criminal procedure, these reforms have not yet been fully instituted nationwide. As of 2013, only three of the 32 states had fully transitioned, while thirteen states had partially transitioned. Hence, full implementation of these institutional protections should not be expected until 2016 (the deadline), especially with the difficulty of retraining prosecutors, lawyers, police, and judges. Yet the Supreme Court has moved to enforce criminal and procedural protections, especially through the presumption of innocence and firm conviction to due process rights. In 2013, the Court ruled that evidence obtained through torture and other violations of human rights is inadmissible. The Court also released a Canadian national who was in custody for 18 months on charges to try to smuggle one of Gaddafi's sons into Mexico for failure of due process rights. Even more controversially, the Court ordered the immediate release of Florence Cassez, a French national, who had been in prison for 85 months after being convicted of kidnapping and murder as one of the heads of *Los Zodiacos* gang on grounds that her rights to due process were violated.

In terms of women's rights and discrimination, the Court has also made significant moves actively promoting rights. In 2012, the Court reinstated the original attempted murder charge in a domestic abuse case and remanded the prosecution to a judge for a new trial, saying that the victim's legal rights were violated when the charge of reduced by a lower court judge. From 2011 to 2013, the Court expanded abortion rights through a series of cases by striking down state laws that declared that life begins at conception and decriminalized abortions. The Court also upheld state laws authorizing gay marriage in 2012 in a series of cases and required the recognition of those marriages across all Mexican states. In 2013, the Court ruled that anti-gay comments and homophobic speech

are not protected speech—which marks the first case dealing with hate speech heard by the Court. Indeed, in 2014 the Inter-American Court of Human Rights applauded Mexico's Supreme Court for adopting a Protocol that aims to help judges decide cases dealing with sexual orientation and gender identity in ways that conform to internationally recognized rights standards.[129] In essence, this Protocol calls on judges to question the neutrality of the law applicable to a case if a situation of disadvantage is identified on account of gender identity or sexual orientation.

Hence, even though Mexico has not been considered pioneering or progressive with regards to rights—even as recently as 2011 (see Helmke and Ríos-Figueroa 2011)—important transitions are underway. Specifically, the Mexican Supreme Court has played an active role in promoting rights and enforcing these rights through promoting, if not mandating, reforms of the judiciary, military code, criminal codes. For example, consistent with the 2011 Court decision, both houses of Congress passed a reform of military justice code in 2014. This reform ensures that abuses committed by the military against civilians are investigated and heard in civilian, rather than military, jurisdiction.[130]

Furthermore, Mexico's Supreme Court constitutionalized the IACHR's conventionality control in 2011, where the Court recognizes the IACHR decisions as *res judicata* and thus binding. This 2011 constitutional amendment changed several articles of the Constitution, creating a "new legal system of human rights protections" (Colli-Ek 2012) that places responsibility on all Mexican state authorities to take into account treaties to which Mexico is a party and requiring them to always favor rules that favor the

[129] (http://www.oas.org/en/iachr/media_center/PReleases/2014/095.asp)

[130] (http://lawg.org/action-center/lawg-blog/69-general/1326-mexico-passes-historic-reform-to-the-military-justice-code-)

person. The Supreme Court has furthered issued decisions that altered the way Mexican judges adjudicate cases where human rights are involved by fully recognizing IACHR decisions as *res judicata* and obligatory, by introducing conventionality control applied *ex officio* by all judges and allow judges to disregard domestic norms that breach human rights and contravene international human rights treaties, and implementing administrative actions to professionalize federal judges in the use of conventionality control. Hence, the Mexican Supreme Court dramatically changed the way judges (can) adjudicate.

Beyond the high court, conventionality control appears preliminarily effective at the lower levels as well. In 2012, just one year after the constitutional amendment, lower court decisions in three Mexican states (Jalisco, Nuevo Leon, and Oaxaca) made conventionality control arguments in 5.4%-14.2% of human rights (direct *amparo*) cases (Aguiar-Aguilar 2014). Specifically, lower courts in Jalisco made arguments using conventionality control in 5.4% of cases, Nuevo Leon courts made the same conventionality control arguments in 13.6% of cases, and Oaxaca made conventionality control arguments in their decisions in 14.2% of cases (Aguiar-Aguilar 2014). These courts (and lawyers) still defend human rights protections using national laws more so than international law, but frequently cite the American Convention on Human Rights, the International Covenant on Civil and Political Rights, Universal Declaration on Human Rights, United Nations Convention on the Rights of the Child.

Lawyers cited these international laws as well as conventionality control more frequently than the federal judges, however, which is relatively unsurprising since Mexican courts' adoption of conventionality control is so recent. In other words,

litigation strategies change more quickly than lower court judicial decisions after changes in domestic policy. Considering that lawyers and their litigation is strategic (Wedeking 2010) and often responsive to changes in human rights laws (Simmons 2009), it seems logical that lawyers add these new legal norms and frames into their litigation strategies.

The virtually immediate appearance of conventionality control and the frequent references to international law at Mexican state court levels provide some optimistic evidence of the use of these legal rationales by both local lawyers and lower courts in addition to the significant changes by the Mexican Supreme Court. While the Supreme Court appears to want to play an active role in catalyzing domestic legal change, promote human rights, and internalize international laws, this preliminary evidence provides limited but optimistic support that the Supreme Court is effectively facilitating international human rights law incorporation.

Costa Rica

In addition to increased numbers of rights cases, the decisions by Costa Rica's *Sala IV* has led to the institution to be considered a protector of the people—and deservingly so in that it has supported the rights of diverse people. In 1990, for example, the Court ruled that civil service exams had to be administered in Braille, affirmed the collective rights of indigenous populations, protected the right to keep seeing-eye dogs in taxis for the blind, protected journalists' right to work, and kept Rastafarian's from being barred from buildings due to their religion (Wilson 2011). The Court protected women's rights through ruling that a woman may seek sterilization without her husband's consent in 1992, affirming equality in divorce law, and protecting equal rights for naturalization

through marriage. The Court also issued rulings dictating that prison guards cannot use gas against prisoners and that HIV patients have the right to be treated in state-run hospitals and clinics. The Court further expanded individuals' health rights—a right not provided in the constitution but derived from the right to life, social security protection, and international treaties signed by the Costa Rican government (Wilson 2011).

Over the first ten years of its existence, the *amparo* cases (in general) have had a 25% success rate (Wilson 2011). Looking at health rights however, the Court transitioned from rejecting state-funded HIV treatments in 1992, to requiring treatments by 1997 for three cases, and finally leading to 60% pro-individual decisions in health cases since 1997 (Wilson 2011). Similar trends occur for other health areas, especially concerning breast cancer patients.

Despite the Court's activism, there has been relatively little political backlash and criticisms leveled against the court have not transformed into actions or policies against the Court. Furthermore, despite criticisms, compliance with court decisions remains relatively high. Furthermore, the "hyperactivity" of the Court, particularly in terms of rights, has not shifted or subsided despite the turnover of serving judges (although different judges use different readings of the constitution and laws). The Court's general tendency to protect individual human rights and hold governing powers accountable has remained stable.

Colombia

Similar trends have occurred in Colombia, making it one of the traditional success stories in Latin America. In 2002, the Colombian Constitutional Court's decisions

granted protections to fundamental rights in 58% of the cases (Espinosa 2005). Since its inception, the Constitutional Court has promoted health rights by expanding its application to adults, children, and AIDS patients. In 1992, the Court unanimously ruled that the right to life and personal integrity must be preserved when threatened by the lack of access to diagnostic cervices, medicine, treatments, and surgeries. In 1995, the Court unanimously declared that children's right to health is fundamental in and of itself, and includes the right to receive treatment—even in cases of incurable disease. In 1999, the Court unanimously asserted that the right to health, under certain conditions, can entitle social security affiliates to receive treatment abroad when no treatments are available nationally.

The Colombian Constitutional Court has expanded indigenous rights as well. In 1992 it ruled that national authorities may not disregard indigenous communities in the building of infrastructure, thereby requiring a consultative process with the affected indigenous groups. In 1997, the Court ruled that indigenous communities have the fundamental collective right to preserve their cultural identity and, in a similar ruling, that indigenous individuals have the right to be judged by traditional indigenous authorities. The Court expanded these rights a year later when it decided that indigenous authorities have the right to exclude nonindigenous religious groups or churches from preaching in their territory in order to preserve their cultural integrity.

The Court further expanded human rights protections through its 2000 decision requiring the executive to attend to displaced populations, its 1995 decision banning employer discrimination of trade unions, and its 1999 decision banning school discrimination against poor students, as well as other decisions upholding minimum

income, the right to determine one's own gender, the right to develop one's personality, the right to determine one's sexual orientation, the right to be free from discrimination, and equality of religion.

The Court's active expansion of rights,[131] combined with the tradition of compliance on the part of elected branches and lower courts, has made the Court particularly influential in setting previously marginalized rights topics on the political agenda and empowering private individuals. Indeed, the social actors that have made the most frequent use of the Court to advance their own interests have been those with the least power within the policy-making processes that affect them (Espinosa 2005).

Chile

Disappointedly, Chile's regular judiciary and constitutional court have chosen not to actively pursue or promote human rights despite democratization until only recently. During Pinochet's military regime, the Supreme Court made it impossible to defend human rights through its perceived role to obey and apply existing law rather than determine justice. During the transition period, even as the Chilean courts were accused of lacking "moral courage" and being "reckless and biased," the courts maintained their conservative stance hindering human rights development by holding international treaties to be inapplicable retroactively (thereby upholding the national amnesty laws for government officials accused of torture), refusing to allow civilian courts to hold trials for military officers (thereby granting these officers the protection of 'in-house' justice), and

[131] While the Court appears to advance rights claims in cases under concrete review, the Court tends to defer to the executive more in rights cases under abstract review compared to other cases in abstract review (Rodriguez-Raga 2011). This deference may be due to substantive case facts that differ systematically between rights cases under concrete versus abstract review.

preventing the prosecution of crimes under international law (Simmons 2009: 292; Cuoso 2005; Hilbink 2007).

Even after several judicial reforms and the arrest of General Pinochet, the Constitutional Court remained passive, formalistic, mechanical, and deferential (Cuoso 2005). In most cases where the Constitutional Court does object to legislation under judicial review, it is merely based upon a technical deficiency rather than enhancing rights (Cuoso 2005). More disturbing is that for the majority of freedom of speech cases the Supreme Court resolved, the perpetuator of the rights violations was the Court itself rather than the executive or legislative branches. Even when the elected branches did not censor reporters, authors, and directors, the Supreme Court supported censorship, justifying their decisions as simply "applying laws that give preeminence to the protection of honor over speech, and that if the law is bad, the political branches ought to change it"—despite, of course, the fact that these rights were protected by the Chilean constitution (Cuoso 2005). Similar trends occurred in discrimination cases, where the Supreme Court upheld discrimination against women, homosexuals, HIV patients, and the disabled, indigenous population, and children out of wedlock. Even reforms to modernize the archaic criminal procedure codes were instituted by the executive rather than initiated or mandated by the courts, which never questioned the constitutionality of the codes. Furthermore, national amnesty laws were deemed legally untenable by the Chilean Supreme Court only recently, in the 2006 case where the Supreme Court make explicit that the CAT determines that the national amnesty law cannot be applied to crimes against humanity (Simmons 2009: 294; Hilbink 2007). Indeed, the Supreme Court systematically avoided constitutional interpretations and protections by ruling in favor of

petitioners in only 2.83% of *inaplicabilidad* cases[132] between 1990 and 1996 (Gómez 1999).

Only recently, have Chilean courts begun to move away from their passive, deferential, and conservative role. Since 2005, Chilean courts have done an about-face on rights adjudication where they now actively investigate previously shelved cases and convict military officials (Couso and Hilbink 2011; Huneeus 2010). Additionally, the Chilean Supreme Court has even embraced international human rights law, although somewhat inconsistently (Cuoso and Hilbink 2011; Marré and Carvajal 2007), and lower court judges have begun taking independent, "innovative" stands in the defense of human rights even challenging institutional superiors and elected officials (Cuoso and Hilbink 2011; Valenzuela and Muñoz 2007). Thus the courts have begun to enter the political sphere similar ways as Mexico, Costa Rica, and Colombia, becoming an important political actor.[133]

The institutional reforms in 2005 substantially impacted the Constitutional Court's jurisdiction and caseload due to the transfer of *recursos de inaplicalidad* cases from the Supreme Court's jurisdiction to the Constitutional Court and increased accessibility to members outside of the political elite. The reforms also significantly changed the membership of the Constitutional Court when judges no longer sit on both Supreme and Constitutional Courts (as before), and constitutional judges are selected from an independent pool of academics and politicians. This reform in selection has led

[132] These cases are concrete constitutional review cases with *inter partes* effects.

[133] This about-face has both ideological and institutional origins (Cuoso and Hilbink 2011). A paradigm shift in the Chilean legal community moved the courts away from the formalism and prioritizing the necessity and legitimacy of judicial protection of rights. A series of reform also contributed to the professional profiles and incentive changes of those seeking careers in the judiciary (particularly at the lower court level and constitutional court level).

to increasingly professional, full-time judges who remain outside of the original hierarchical judicial structure so that court members represent a more assertive, activist, pro-rights attitude compared to previous judges embedded in the traditional culture of the judiciary prone to passive, conservative, and deferential decision making. These institutional reforms, combined with the growing rights-based constitutional discourse in Chile, have led to a more activist and political influential Constitutional Court that has abandoned its previously formalistic trends to invoke international human rights law and comparative jurisprudence in unprecedented ways and rule against the government's preferred policies.

Soon after these reforms, the Constitutional Court issued decisions promoting human rights, including ruling that health organizations' raising the premiums of aging clients was unconstitutional because the right to health care had priority over the freedom to contract, ruling unconstitutional portions of the Civil Code on grounds that it violated the right to identity for children born out of wedlock. Indeed, the Court even endorsed the notion that the rights recognized in the International Covenant on Social, Cultural, and Economic Rights, Convention on the Rights of the Child, and the American Convention of Human Rights are integral parts of Chile's constitutional system. These unprecedented decisions and endorsement of international law as valid Chilean constitutional law has marked the beginning of a political active Court seeking to engage in and promote human rights for the first time since Chile's return to democracy. It is important to note, however, that these changes are relegated to the Constitutional Court (and a proportion of lower courts of first instance) rather than the Supreme Court, which has provided no

evidence of transitioning away from the formalistic, conservative, passive, and deferential judicial tradition.

Conclusions

Courts have the ability to promote and expand human rights protections in a unique way. This section has examined the changing trends in national court decision outcomes in order to determine whether courts are increasingly protecting human rights. In the cases of Mexico, Colombia, and Costa Rica, the courts appear to play active roles, although to varying degrees, in determining human rights policy through their decisions. Despite strong conservative, anti-right trends, Chilean courts is beginning exhibit optimistic behavior much more in line with international human rights law and norms.

Yet this section only provides a brief a survey of the recent trends within Latin American states and produces no causal mechanisms for these trends. These trends are likely due to a variety of factors, which need to be evaluated. At this point, however, much of this data does not exist. Ideologies and political attitudes of judges likely determine part of these observations. In particular, Chile's about face only occurred after constitutional reforms and complete turnover of Court membership. In order to evaluate the relative strength of various causal mechanisms like judicial ideology, constitutional amendment, conventionality control, or domestic political pressures, future research must systematically examine case outcomes across these countries and offer ways in which to operationalize these mechanisms. Despite the preliminary qualitative nature of these case study, however, they do tell us that Mexico is not a unique case in that it is promoting rights, although it may be the most active and effective (or have the best publicity, see

Staton 2010). Hence, the recent changes in IACHR and region, as well as the general trends of rights promotion suggest that this is a good time to examine these ongoing processes.

Section conclusions

This section asserted that domestic high courts are well suited for the incorporation of international law through their ability to promote human rights protections consistent with international law. The section hypothesized that promoting courts should be evident through changes in their discretionary docket and through trends in their case outcomes. Preliminary qualitative evidence in Latin America illustrates growing trend that these courts are becoming more receptive to rights litigation and increasingly issuing favorable outcomes. Some courts are also increasingly choosing to hear rights cases within their discretionary docket, but this trend follows closely in line the observation that people are increasing seeking resolution through the courts to resolve these issues. In addition, several Latin American countries provide preliminary qualitative evidence for federal courts' effective promotion of human rights. However, these results are limited, especially in that they cannot be generalized, they do not identify the details of these processes, and they do not offer a causal mechanism for these promoting trends. Hence, these case studies are far from conclusive.

Additionally, while right promotion is typically considered a benefit (or moral obligation), the court activism exhibited in these trends remains controversial and potentially retain detrimental consequences. Increased caseloads in predominantly mandatory dockets means that courts must eliminate cases on superficial bases, such as

procedural requirements, without addressing the substance of the case. Hence, portions of rights cases—especially of the poor, uneducated, and isolated—may be thrown out. Additionally, the increased workload may lead to substantive changes in the quality of decisions and their enforcement. Increased due process rights can also negatively affect the legitimacy of the courts and judicial system when criminals are perceived to be better protected than victims. The release of perceived criminals also may lead to increased vigilante violence where individuals take matters into their own hands rather than seek resolution through the judiciary.

Comparison to common law countries

The question remains about how generalizable are these Latin American trends in promoting human rights. While the results are limited, do we see similar behavior in common law countries? I address this issue, albeit briefly, here.

Figure 3.8 illustrates the percentage of pro-individual decisions in civil liberty and criminal cases in common law countries, taken from the High Courts Database compiled by Stacia Haynie, Reginald Sheehan, Donald Songer, and C. Neal Tate (2007). The data provides information on the decisions produced by eleven high courts over time, including the Australian High Court (1969-2003), Canadian Supreme Court (1969-2003), Indian Supreme Court (1970-2000), Namibian Supreme Court (1990-1998, but with only 17 observations), Philippines Supreme Court (1970-2003), South African Supreme Court of Appeal (1970-2000) and Constitutional Court (1995-2000), Tanzanian Court of Appeal (1983-1998), United States Supreme Court (1953-2005), United Kingdom's Judicial Committee of the House of Lords (1970-2002), Zambian Supreme Court (1973-

1997), and Zimbabwe's Supreme Court (1989-2000). The red line reflects the percentage of pro-individual decisions from a sample of criminal cases per year. The blue line reflects the yearly percentage of pro-individual decision of sampled civil liberties cases.

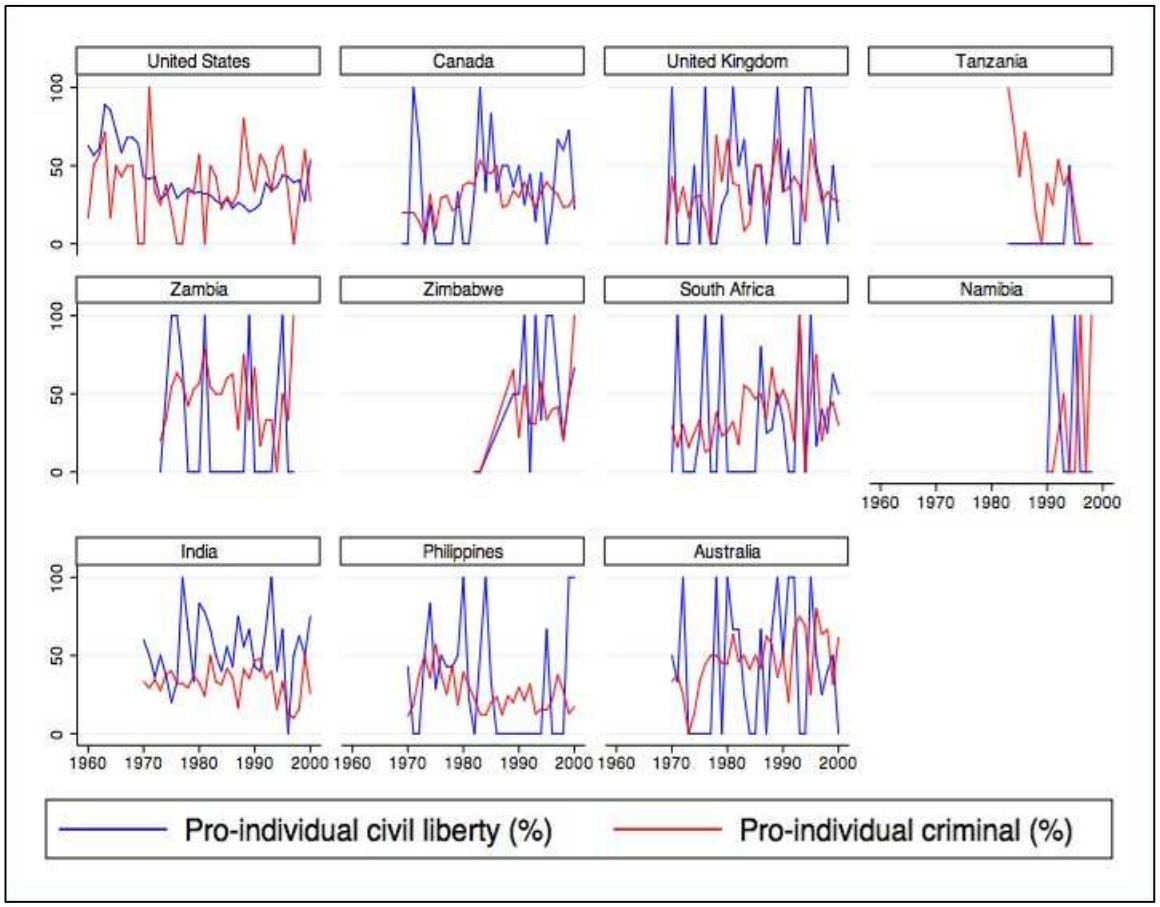


Figure 3.8: Pro-individual Decisions in Civil Liberties and Criminal Cases in Common Law Countries

Despite the fluctuations, pro-individual decisions have generally increased, albeit modestly, for criminal cases in most countries, particularly in South Africa, Zimbabwe, Canada, and Australia. Civil liberties case trends are less apparent due to the wide fluctuations, although the United States appears to have experienced a decrease in pro-individual civil liberties cases while Canada appears to have modestly increased pro-

individual outcomes.[134] However, trends are difficult to identify with such prominent fluctuations. Figures 3.9 and 3.10 reflect the yearly change in pro-individual rights decisions for these countries in civil liberties and criminal cases, respectively.

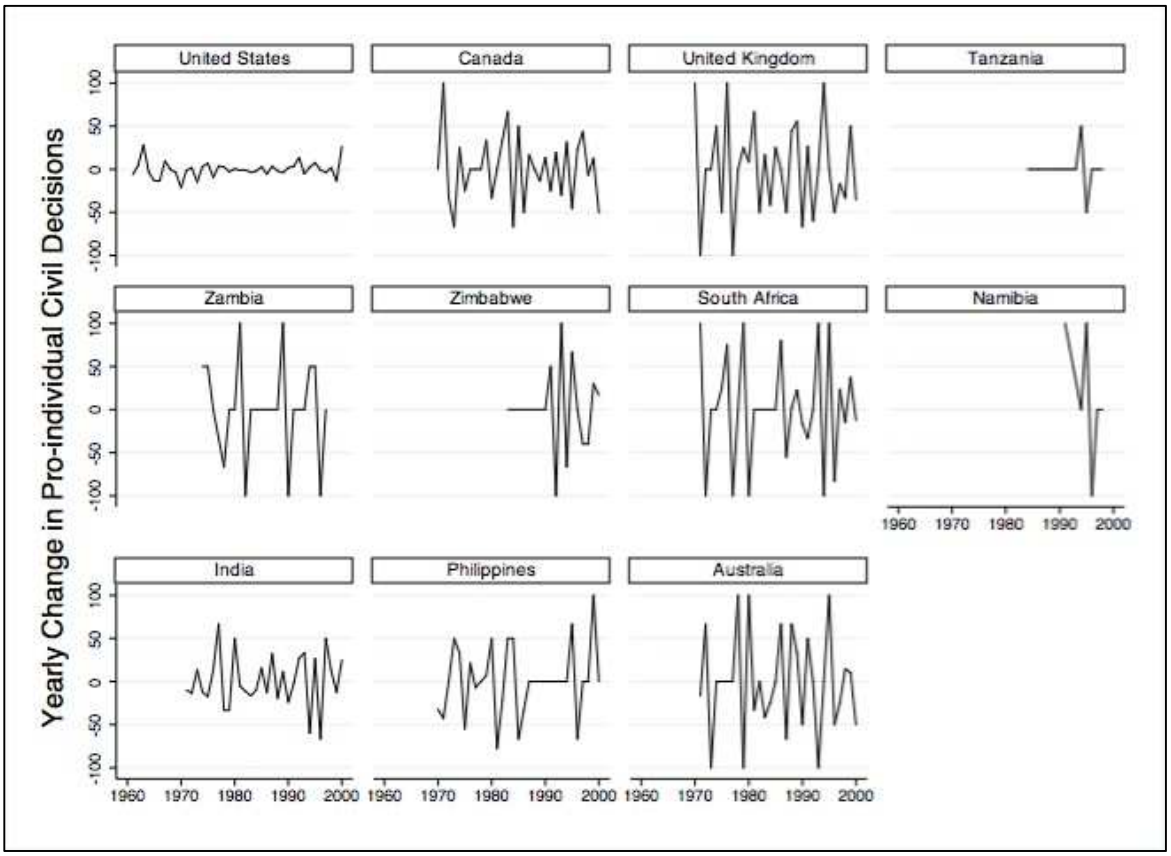


Figure 3.9: Yearly Change in Pro-individual Civil Liberties Decisions

Figures 3.9 and 3.10 reveal that these courts are typically much more consistent with their levels of pro-individual decisions in criminal cases compared to civil liberties cases—with the exception of the United States which exhibits much less yearly fluctuation for civil liberties cases than criminal cases. The absence of positively-sloped trends in

[134] Note that only the high courts of the United States, United Kingdom, and Australia have discretionary dockets.

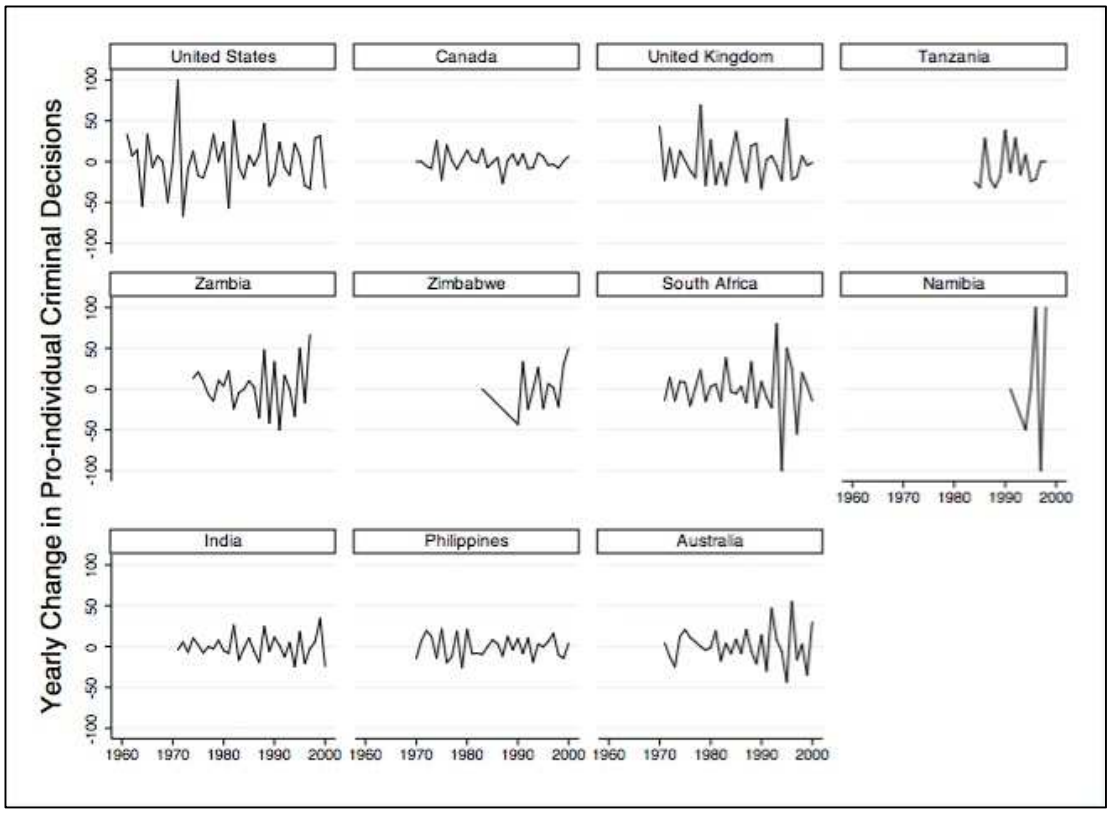


Figure 3.10: Yearly Change in Pro-individual Criminal Decisions

either civil liberties or criminal cases suggests that there are no long-term trends in rights promotion. Of course, these graphs are purely descriptive and are limited by the fact that they include a significant time range and we have no Latin American graphs with which to compare. Even limiting the time frame does not produce obvious coherent trends. These graphs make clear, however, that either the United States is noticeably more consistent with civil liberties cases than its criminal cases and much more consistent than other country's handling of civil liberties, or the measures devised to define and categorize these cases and outcomes are particularly well suited to the United States but less so to the other countries. The wide fluctuation around zero also implies legal uncertainty or inconsistency may exist in either the adjudication or litigation of civil

liberties cases. Criminal cases, for most countries, may be more straightforward. The wide-ranging fluctuations in civil liberties cases could also be due to the substance of the cases themselves. For example, even as civil liberties rights become more entrenched legally and socially, the cases the high courts resolve are often more complicated and less straightforward. Hence, it is not obvious what causes the fluctuations over time.

3.4 Game theoretic model of domestic court promotion

Promoting courts, however, often must face possible repercussions for their decision to promote human rights—especially in non-democracies or transitioning countries. Often these decisions limit government behavior, which may lead to an executive choosing to ignore the court decision (i.e. not enforcing it) and/or the government punishing the court through the removal of jurisdiction, impeachment or member removal, court packing, court dissolution, reduction of salary and funding, threats of harm, etc. Hence, courts have incentives to behave strategically when incorporating international laws when the government may not be supportive. Namely, courts are unlikely to promote international law institutionalization if they believe that they will face significant punishment costs. This intuition is illustrated formally in a game theoretic model.

The following simple game theoretic model identifies the conditions under which domestic high courts may be expected to institutionalize international human rights laws despite the possibility of significant constraints by state governments. This model moves beyond standard separation of powers models and principal-agent models common within the judicial field to include legal, strategic, and political parameters. This model thus

formalizes the conditions under which domestic high courts could essentially unilaterally institutionalize international human rights laws, thereby promoting human rights even in the face of possible punishment.[135]

The following sequence of events summarizes the strategic interactions between a domestic high court and the state government. In the first stage, a domestic high court (HC) must decide whether to institutionalize international law domestically, where 'y' represents institutionalization or the change in domestic human rights policy through the court's decision. Specifically, the court has two options: a) $y = 0$ where the court chooses not to institutionalize the law and no domestic policy change follows, and b) $y > 0$, where the court chooses to institutionalize international law, thereby changing domestic policy.

The next stage consists of the state government (S) determining whether to sanction or punish the court (B) or not (~B) for each state of the world.[136] In other words, the government decides to punish the court for suspected or perceived policy change (y). Any sanctions the government attempts have the probable effectiveness of J, representing the degree of judicial independence, which is known to both the government and court. The

[135] Note that this model is appropriate only for decisions that alter national policy. As such it is inappropriate for *amparo* cases (which requires five similar, consecutive decisions in order to establish policy). Hence, for Mexico, this model would only include actions of unconstitutionality and constitutional controversies. This model could be applied to common law countries, however, which have the legal norm of *stare decisis* or precedent. Also, this model generally predicts the conditions under which a court would be judicially active. As such it is not limited to rights cases.

[136] State governments often have several tools to sanction or punish 'wayward' or 'activist' courts. Such tools typically include the ability of state governments to remove court jurisdiction, impeach judges, eliminate courts entirely, creating new courts to bypass the existing courts, and determining the level of judge salary and personal safety. For example, in April of 2013, a Hungarian constitutional amendment nullified the entire jurisprudence of the high court from 1990-2012 and inserted into the new constitution a series of laws previously declared unconstitutional by the Court. Even in United States, legislative attempts to curb Supreme Court jurisdiction occurred when the Court threatened to overturn a congressional scheme (see, for instance, *Ex Parte McCardle*, 74 U.S. (7 Wall.) 506 (1868) where the Court upheld Congress' attempt to prevent the Supreme Court from considering the constitutionality of post-Civil War military reconstruction in the South).

government's decision to sanction or not, however, is constrained by the degree of domestic political competition and sensitivity to its citizen support (p), where the higher the value p, the more likely citizens and opposition parties will mobilize to enact political costs electorally or calling upon the international community to pressure and/or sanction the government.

If the state government decides to not sanction the court (~B), then the new domestic human rights law and policy stands. However, if the government sanctions the court (B) then the domestic human rights policy reverts to the status quo. In other words, regardless of the extent of domestic policy change (y), the government's decision to punish always leads to the status quo policy. The game then ends and payoffs received.

The utility function of the government is the following, provided the government does not sanction or punish the court:

$$-(S-y)^2 + L$$

where S represents the government's policy preference point for domestic human rights policy, y represents the newly implemented human rights policy/law, and L represents gained legitimacy or a reputation boost. The utility function for the government should it sanction the court is the following:

$$Jy + (1-J)Q - pc_S$$

where J represents judicial independence, y represents the newly implemented human rights policy/law, Q represents the status quo (original domestic human rights law), p represents the likely domestic political costs, and c_S represents the institutional (and logistical) costs of punishment incurred by the state government. Institutional costs refer to the costs a government incurs for implementing the punishment; in other words, this

term measures how easy or difficult it is for a government to decide and implement a sanction on the court.[137] Institutional costs are related to the degree of political fragmentation within the government, or how easy it is for a government to acquire the necessary support to enact a sanction.[138]

The utility function of the domestic court (HC), under the condition that it decides to institutionalize international law and is not sanctioned, is the following:

$$-(\theta - y)^2 + L - \varepsilon$$

where θ represents the international law policy position, y again represents the newly implemented human rights law/policy, L represents a legitimacy/reputation boost, and ε represents a small implementation cost for the court (which could include increases in work load for institutionalization).

The utility function of the domestic court, under the condition that it decides to institutionalize and is sanctioned, is the following:

$$-\frac{c_C}{J} - (\theta - Q)^2$$

where c_C represents the cost of being sanctioned incurred by the court, J represents judicial independence, θ represents the international law policy position, and Q represents the status quo domestic human rights policy.[139]

[137] Another way of conceptualizing these cost are vertical political costs (domestic political costs driven by the electorate, opposition parties, or citizen body) and horizontal political costs (institutional costs where the government must coordinate a sanction and implement it).

[138] This cost goes to zero when there is no political fragmentation or the executive/legislative bodies need no additional support and can unilaterally sanction.

[139] Each institution's utility function assumes a unidimensional human rights policy space as well as single-peaked preferences. This assumption is not unreasonable since this model refers to a single policy issue area. (Although, the model could be generalized for court activism in general.)

Hence, this game represents the strategic dynamics between a domestic high court, which is assumed to prefer the new international policy over the status quo policy, and the state government, which prefers the status quo to the new human rights policy.[140] The court is constrained by the government through the possibility of sanctions, yet the government is also constrained by institutional factors and political factors. The sequence of events and utilities are depicted below in Figures 3.11 and 3.12 (see page 144 and 145).

Solutions

Using backward induction, the government (S) is indifferent between sanctioning and not sanctioning the domestic high court when $y = S \pm \sqrt{(-Q + JQ - Jy + L + pc_S)})$. Hence, in order for the domestic high court to move human rights policy and maintain it (that is, not be sanctioned), then it must institute legal human rights change no more than $(S \pm \sqrt{(-Q + JQ - Jy + L + pc_S)})$. These solutions provide predicted main variables that determine the likelihood of sanctioning, and thereby inform the court's decision to institutionalize or not. These variables consist of the government's domestic policy preference, the domestic policy status quo, judicial independence of the domestic high court, domestic high court legitimacy, likelihood of political costs, and the institutional costs incurred by the government should it choose to punish the high court.

[140] This assumption is not required for the model (as it simply turns the difference between government's preferred policy point (*S*) and new legal policy (*y*) to zero. However, substantively, I am interested in courts promoting rights, especially in non-democracies or democratizing countries. In these cases, there is likely to difference between court and government preferences.

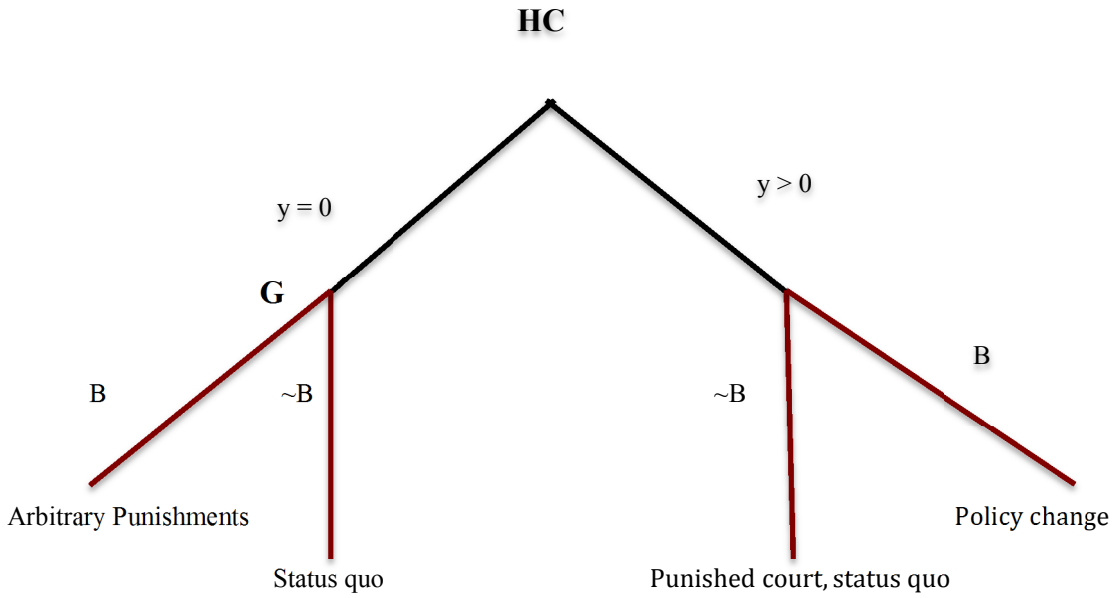


Figure 3.11: Game theoretic model for policy-setting cases with substantive outcomes.

Policy preferences

While the above variables take on empirical values for the evaluation of this model, state government policy preference and the domestic policy status quo (represented by *S* and *Q* in the solution set above, respectively) take on assumed, standardized values. Deriving values for these variables is an attractive alternative because no existing data includes cross-country ideological measures that can be easily compared across countries and

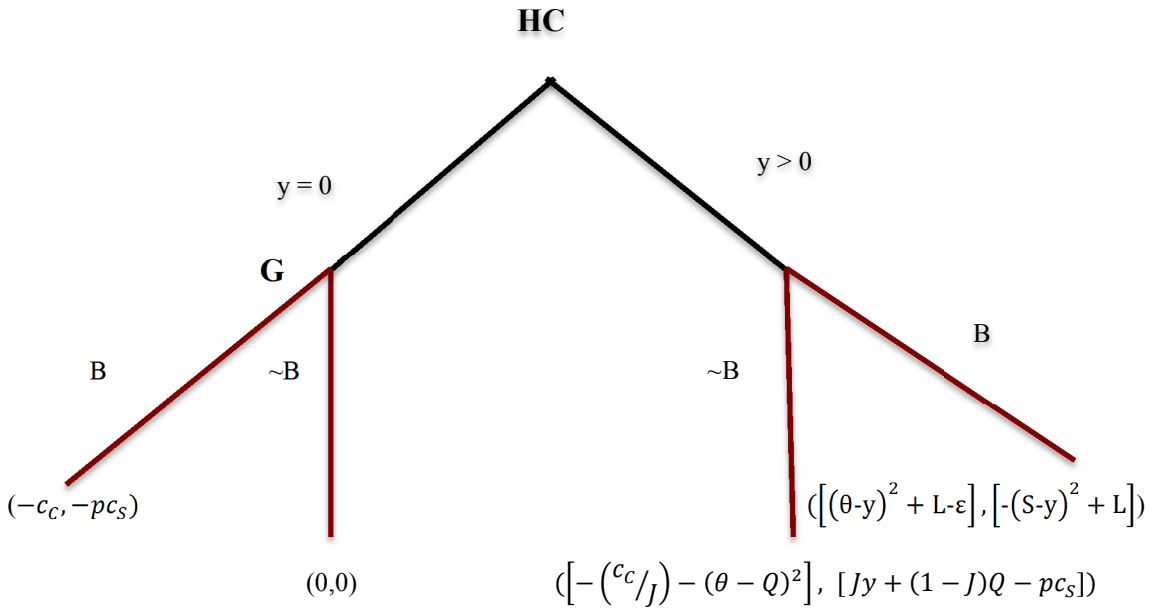


Figure 3.12: Game theoretic model for policy-setting cases.

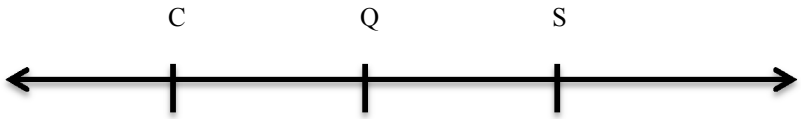
across time.[141] Hence, I assume that the status quo policy point is 0. Institutional policy preference points are determined in relation to the status quo point and standardized so that they range from -1 to 1. Standardization makes the solutions for each condition simpler and more intuitive without altering the relationship between points. This approach, when substituted into the solution sets, provides the three possible conditions: a) where the government policy preference is equal to the status quo ($S = Q$), b) where the government policy preference is right (more conservative/ less favorable to human rights) of the status quo ($S > Q$), and c) where the government policy preference is left (more liberal/more favorable to human rights) of the status quo ($S < Q$).

[141] Even within American politics scholarship this proves problematic.

In the first condition, where the government policy preference is the same as the domestic status quo ($S = Q$), both values are assumed to be 0. When both S and Q are assumed to be 0,[142] then the solution set reduces to

$$y = +\sqrt{(-Jy + L + pc_S)}.$$[143]

In the second condition, where government preference is right (more conservative/ less protective of human rights) of the status quo ($S > Q$), then S takes on the value of 1 (while Q remains at 0). Because the current policy (status quo) is to the left of government preferences, this condition implies that the domestic high court is more liberal (i.e. more protective of human rights) than the government. This can be demonstrated below, where C represents the court policy preference:



In this case where ($S > Q$), the solution set reduces to:

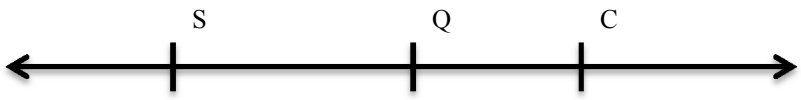
$$y = 1 + \sqrt{(-Jy + L + pc_S)}.$$

In the last condition, where the government preference is left (more liberal/ protective of human rights) of the status quo ($S < Q$), then S takes on the value of -1. This condition implies that the domestic high court is more conservative (i.e. less protective of

[142] This scenario does not imply a location for the court's policy preference. That is, the court's policy preference could be anywhere along the spectrum. However, the likely scenario and that scenario substantively of interest is that the court is more liberal/supportive of human rights than the government policy preference and status quo. The court has less incentive to move policy away from the status quo if they prefer that location.

[143] Following the assumption that the court wants to move policy to be consistent with international law, the solution is the positive square root. Hence, while mathematically the square root in this condition (as well as the following conditions) may be positive or negative, only positive roots are included in the solution sets.

human rights) than the government—thereby pulling the status quo (Q) right.[144] This can be demonstrated below:



In this case ($S < Q$), the solution set reduces to:

$$y = -1 + \sqrt{(-Jy + L + pc_S)}.$$

Note, however, that this condition occurs since the model formalizes court activism in general but violates the assumption that courts want to move domestic policy toward international law. For this reason, I mention this condition yet will not discuss it further.

Based upon these solution reductions, one sees that the main variables remain judicial independence, court legitimacy, domestic political costs, and institutional costs. Hence, the model predicts that court promotion is a function of judicial independence, legitimacy, and costs incurred by the government (domestic political and institutional costs). More interestingly, this model predicts that these variables are *interchangeable*.[145]

In order for a court to promote, y must be greater than zero (per the solution set).

[144] This condition typically occurs during transitional periods where the members of the court remain from the previous (ousted) regime. For instance, the Chilean Supreme Court hindered human rights development and protection regarding torture—despite the ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)—by holding international treaties to be inapplicable retroactively (thereby upholding the national amnesty laws for government officials accused of torture), refusing to allow civilian courts to hold trials for military officers (thereby granting these officers the protection of 'in-house' justice), and preventing the prosecution of crimes under international law (Simmons 2009: 292). Human rights development and protection did not propel forward until after several judicial reforms and the arrest of General Pinochet (Simmons 2009: 293; Hilbink 2007: 185). National amnesty laws were deemed legal untenable by the Chilean Supreme Court only recently, in the 2006 case where the Supreme Court make explicit that the CAT determines that the national amnesty law cannot be applied to crimes against humanity (Simmons 2009: 294).

[145] By interchangeable I mean that one component is substitutable by another. Hence none of the components (judicial independence, legitimacy, political competition, or political fragmentation) is individually necessary in order for a court to promote rights policy.

For the first two conditions (where $S = Q$ and $S > Q$) this occurs when the square root value is positive.[146] (Note that the square root must be taken from a positive number in order to avoid imaginary numbers.) Additionally, the higher the positive value of the radicand,[147] the larger the square root—leading to a larger shift in policy (y). So the shift in policy by the court is maximized when the radicand reaches its highest point. In other words, policy shift is the highest when legitimacy, domestic political costs, and institutional costs are at their highest values.

One way to maximize the radicand is to maximize court legitimacy. As legitimacy (L) increases, all else equal, the radicand increases. Another way to maximize the radicand is to maximize domestic political costs (that is, political competition and/or sensitivity to citizen support) and/or institutional costs (that is, political fragmentation or fractionalization). As either component increases, holding all else equal, the radicand increases, leading to a greater shift in policy by the court.

Interchangeability or substitutability occurs for domestic political costs and institutional costs due to their multiplicative term. In other words, these components are interchangeable since an increase in either increases the radicand. Hence, even if political competition and sensitivity to citizens is low but non-zero, the presence of institutional costs like political fragmentation can drive up the radicand and thus lead to court promotion. Similarly, if institutional costs are low but non-zero, domestic political costs can still drive up the radicand. In other words, both domestic political costs and

[146] In the third condition, which is not discussed since it violates the assumption that the court prefers to move domestic policy closer to international law, the larger the square root value means that the domestic policy change (y) moves closer to zero (i.e. no change) until the square root value surpasses 1, when the court may choose to promote. Until the square root value takes on the value of 1, however, the court may shift policy to be more conservative and less supportive of human rights. Again this condition occurs since the model formalized court activism in general.

[147] The radicand refers to the number beneath the square root symbol (i.e. the number one takes the root of).

institutional costs are not necessary for the court to promote; only one is necessary (so long as the other is non-zero). Furthermore, *it doesn't matter which it is*. In this sense, domestic political costs are interchangeable with institutional costs, and vice versa.[148]

Along the same lines, court legitimacy is interchangeable with both political and institutional costs. As legitimacy increases, the radicand also increases. Even if domestic political costs and institutional costs are zero (either or both), legitimacy can drive the radicand upward. The converse holds true as well, where is legitimacy is at zero, the combination of costs can drive the radicand upward. Of course, having both legitimacy and costs be non-zero further increases the radicand. In other words, L is interchangeable with pc_S. Thus, *the court will promote if it has either legitimacy or the government incurs costs* (or both, but only one is needed to promote).

Finally, when judicial independence is at its least—zero—then it becomes irrelevant (because the term drops out) and when it's at its highest ($J = 1$) then the term becomes $-y$. Hence, when judicial independence is at its minimum and maximum, respectively, the solutions become:

$$y = +\sqrt{(L + pc_S)}$$

$$y = 1 + \sqrt{(-y + L + pc_S)}$$

This suggests that *courts can promote even without judicial independence*. So long as legitimacy is present and costs occur (that is, they are non-zero), then the court will promote even without judicial independence.[149]

These solutions generate testable hypotheses about the degree to which these

[148]Hence, p is interchangeable with c_S.
[149] This solution reaffirms the results produced in Section 3.2 where courts matter even if they do not have high levels of judicial independence.

domestic factors influence court activism. Contrary to popular conceptions, judicial independence is not necessary for the promotion of rights by domestic courts and court should have much wider latitude to promote and expand rights policies more so than typically assumed. According to this model, a court that completely lacks judicial independence will promote as long as it has a) public support *or* b) sanctioning incurs some cost. Thus, judicial independence is *unnecessary* for court activism. Moreover, *judicial independence is not sufficient to lead to promotion*.

More intuitively, promotion will occur as long as there is some public support for the court and some costs will be incurred if the state were to sanction. Also intuitively, as the domestic political costs and institutional costs increase, the greater the court activism. Less intuitively, political competition and the transaction costs for sanctioning are of equal importance and substitutable.

However, these costs do not matter if a court has public support. Even in scenarios where the government is completely unconstrained, the court will still promote so long as it has some public backing and legitimacy. Hence in dictatorship where transaction costs of moving policy is essentially zero, court will engage in activist behavior so long it has public support.

Alternatively, if the court has no public support, then it will only promote if the government faces *ex post* costs or if there is some degree of political competition.

These solutions contribute a more nuanced perception—or at least testable predictions—of what factors are necessary and/or sufficient for court promotion or activism more generally. The main counterintuitive prediction is the judicial independence is neither necessary nor sufficient for court promotion. Public support of

the court is a sufficient condition but not a necessary condition. *Ex post* costs incurred by the government for sanctioning are also sufficient but not necessary conditions. The steeper the sanctioning costs and the greater the public support for the court increase the size of the policy shift, where the most significant policy shifts by the court occur when both sanctioning costs and legitimacy are present and high.

3.5 Chapter Conclusions

This chapter addressed the role of domestic high courts on the institutionalization or adoption of international human rights laws. It evaluated the influence of judicial independence across different types of rights, offered preliminary evidence of recent trends of Latin American high court promotion of human rights, and argued that judicial independence is neither a necessary nor a sufficient condition for the promotion of human rights. This argument is consistent with each of the sections in this chapter, particularly in terms of empowerment rights protections, the extent to which citizens seek courts for resolutions, and Latin American qualitative trends of rights promotion; the game theoretic model corroborated these observations as well as provides a more nuanced perception of how domestic factors interact or influence court behavior.

These judicial independence results corroborate Helmke and Rosenbluth's (2009) conclusion that judicial independence is not necessary for the rule of law. Furthermore, judicial independence, they find, is a poor indicator for how deeply committed a government is towards its minority and individual rights. The game theoretic model presented here, however, contradicts their intuition that judicial independence is more important when electoral competition is muted, however, yet corroborates their argument

that public support is important in maintaining the rule of law. Furthermore, these results provide the conditions under which Helmke and Rosenbluth (2009) conclude, "each may substitute where the other is lacking."

Yet, these analyses leave much to be desired for future work. It is important to discover whether federal court promotion affects individuals, especially when civil law mandates that most rights cases do not set policy unless a specific majority is reached and/or a series of similar, consecutive decisions occur. In terms of Mexico's judicial reform, will states adequately transition to the new system to make the rights enshrined effectively enforced? Additionally, problems of police corruption rampant in Latin America may leave several rights to fall behind. Also, how do ideologies and the professionalization of justices affect the decision to promote rights? How do international legal changes through conventionality control, for example, compare to domestic institutional changes in their ability to influence international law internalization? Are these recent trends in rights promote and court activism temporary or part of a longer process of the development of the rule of law?

Furthermore these analyses treated international law in its broadest sense. By doing so the chapter only addressed normative, diffuse influences of international law rather than treaty provisions, international agreements, or supranational court jurisprudence. In other words, this chapter likely underestimates the influence of law because it only captured unlinked international legal and human rights norms rather than explicit commitments and obligations. Hence, I now turn to these explicit international commitments and agreements, specifically those to the IACHR.

CHAPTER 4

REGIONAL COURTS AND THE ADOPTION OF INTERNATIONAL HUMAN RIGHTS LAW

This chapter addresses the role of regional court jurisprudence in the domestic adoption of international human rights laws. Despite the proliferation of judicial and quasi-judicial bodies in the international arena scholars remain split as to whether supranational courts, and international law more generally, exert influence. This chapter evaluates the following questions in an effort to contribute to this debate: do states comply with regional court decisions, particularly those with legal reform requirements? How long do states take to comply? Under what conditions do they comply with required domestic legal reform? Does 'peer pressure' induce compliance?

Because I am interested in the internalization of international human rights laws, I focus on legal reform. While informative, general compliance rates can only provide indirect evidence that the IACHR, and regional courts more generally, influence the incorporation of international human rights laws domestically. Some of the reparations that determine compliance rates are not likely to be representative of incorporation. For example, the return of victim remains, the erecting of a plaque or monument, or the creation of a scholarship does not alter domestic legal systems or identities. Some reparations may lead to incorporation but do not necessitate incorporation of international legal norms. For example, human rights training programs help disseminate information

about rights protections and violations which could instigate socialization to these norms domestically. The expunging of victim criminal records may set an informal legal standard upon which future judges refer. Yet, the only direct way to gauge incorporation that generates lasting[150] change that influences the identity of the states and the interactions among all its citizens are changes in domestic laws themselves. Hence the only reparation demanded by the IACHR that directly produces these effects are when it demands that domestic laws are amended, repealed, or established. Hence, in order to most directly evaluate the influence of the IACHR on domestic incorporation of international human rights laws is to examine the extent to which states are altering their domestic legal systems, thereby complying with IACHR orders.

Despite the institutional and political mechanisms that suggest regional courts are or can be influential and important in incorporation summarized in Chapter 2, empirical evidence of compliance and international law incorporation have been at best mixed. Posner and Yoo (2005) argue that the IACHR has had "trouble securing compliance with its decisions," apparent in the single case of full compliance and 5% overall compliance (including full and partial compliance). Hawkins and Jacoby (2010) provide a more comprehensive yet descriptive analysis of the IACHR finding that, in general, it secures 50% partial compliance and 6% full compliance. More importantly, however this is the first study that evaluates regional court influence on incorporation where they identify compliance with the IACHR order to reform domestic laws. Compliance to these orders occurs 7% of the time—which is the lowest compliance rate relative to other reparation requirements. According to the Court itself, however, it secures, in general, an 18% full

[150] The majority of IR scholarship examines these questions through changes in state behavior following the ratification of treaty provisions. While also worthwhile, these changes are not institutionalized or internalized and do not represent permanent or lasting change.

compliance rate and 62% partial compliance rate (reported in the 2014 Annual Report by the Inter-American Commission on Human Rights).[151] It does not, however, report individual reparation compliance. Using the same coding devices as Hawkins and Jacoby (2010), I generate an original dataset of compliance records from 2001-2015 reveal *a 32% full compliance rate (and an even higher overall compliance rate of 72%) to reparations requiring domestic legal reform*.[152] These levels of compliance, while perhaps not as high as they could ideally be, are significantly higher than those previously calculated, largely due to the longer timeframe that I examine. Note, however, that these compliance rates deal exclusively for legal reform reparations not for the entire case. Yet, of the reparations utilized by the IACHR, this reparation is the most difficult to achieve. These findings imply a significantly higher compliance level to the IACHR that previously assumed, especially with perhaps the most difficult reparation with which states must comply.

Merging International Law and International Relations to Explain Compliance

Since these compliance rates do not explain why or under what conditions compliance occurs, one must offer theoretical mechanisms that cause the incorporation of international human rights law and compliance. These mechanisms can be summarized through sets of factors: domestic political costs and incentives, domestic legal system and

[151] (http://www.oas.org/en/iachr/activities/speeches/23.04.14.asp)

[152] Coding for full compliance is identical to Hawkins and Jacoby (2010), but the coding for partial compliance may not be. Hence the appropriate comparison between my findings and theirs is that of full compliance.

the rule of law, regional 'peer pressure,' transnational advocacy network and mobilization, and entrenchment within the international human rights regime.

Domestic Political Incentives

The first mechanism broadly asserts that compliance occurs because of a cost-benefit analysis by the state and court. While noncompliance is formally costless in that it does not induce 'hard' sanctions, compliance may be beneficial and/or noncompliance could be costly. In this scenario, the IACHR can induce or predict compliance based upon changes or conditions within the state. In terms of domestic political factors that make noncompliance costly, most theories postulate that these factors consist of the following: the ease with which political actors can alter policy (such as the number of veto player and degree of government fractionalization), domestic political competition and the presence of opposition parties, state capacity, foreign aid, foreign direct investment, and regime type.

The ease with which political actors can alter domestic laws likely informs state decisions to comply. States where there are few constraints or veto points in changing the law per IACHR request are more likely to be able to comply than states where legal policy change is difficult and heavily constrained. In essence, the greater the number of veto players and the greater their ideological distance, the higher the transaction costs to comply. As change in laws require more political actors with veto power, the more difficult collective action agreements become. Similarly, as government fractionalization or the more divided political actors' preference become, the higher the transaction costs and less likely legal reform is possible.

Domestic electoral or political pressure on the incumbent should similarly inform decisions to comply. When political competition is intense, the higher the likelihood that the decision to not comply will lead to *ex post* costs since the political opposition has incentives to mobilize the opposition. In other words, when political competition is intense, opposition parties are likely seeking to mobilize their supporters and gain new support. If an incumbent makes a 'bad,' unfavorable, questionable decision—like choosing to ignore international obligations to respect rights and issue reparations received by the IACHR—then the opposition will take that decision and run with it, mobilizing their supporters and erode incumbent support. Of course, this mechanism assumes that (at least) the opposition parties are aware of the IACHR reparation orders and that they care or find it strategically beneficial.

State capacity highlights the dilemma some state may face where a state is willing to comply but lacks the resources to comply. The lack of resources could refer to the lack of economic resources, informational deficiency, or the need for skill acquisition. In terms of all three, more developed countries may exhibit greater compliance because they not only have the will to but the capacity to comply. Economic development enables financial resources that that state can allocate to compliance, but improved economic conditions should also facilitate the proliferation of human rights organizations and nongovernmental organizations as well as enable their work disseminating information through improved technology and increased access to it and supplying necessary skills for mobilization and litigation (Meernik et al. 2012).

Foreign aid may influence the likelihood of compliance in that it represents external economic pressure to comply as well as increase international attention (Keck

and Sikkink 1998, 6). However, Lebovic and Voeten (2009) find that governments lack the incentive to punish human rights violations bilaterally and that human rights violations have no effect on multilateral aid allocations. Other scholars similarly question whether human rights practices influence foreign aid policies (see Apodaca and Stohl 1999; Poe 1990); nonetheless, states may feel pressure to comply with IACHR decisions in order to ensure the continuation of economic assistance.

Foreign direct investments offer a similar consideration in the decision to comply. Foreign direct investment (FDI) provides economic pressure that would induce a higher probability of compliance. Foreign investors seek to protect their investments and property from encroaching state governments. Hence, states must signal safe investment through their respect for the rule of law—not just through the existence of property rights but also through their respect for independent adjudication with possibility of unfavorable decisions with which the state will comply. If states do not comply with court decisions, then investors should have little faith that the state would respect other court decisions that rule against the state in favor of the investors. This lack of credibility in terms of maintaining protected investments would lead to foreign investors to not invest, thereby reducing FDI. Furthermore, foreign investors are wary of investing in states publicly targeted by human rights organizations for rights violations, meaning that 'naming and shaming' strategies international nongovernmental organizations (INGOs) impose real costs on states (Barry, Clay, and Flynn 2013). If a state is a party to an IACHR case, it is likely also the target of human rights 'shaming' campaigns, which would persuade a state to comply in order to salvage its investments (or the IACHR generates sufficient publicity to warrant similar effects).

Finally regime type may be important in that it determines the incentive structures in the first place. More democratic regimes are more likely to comply with the IACHR decisions. However, the influence of regime retains little value in terms of micro-theory causal mechanisms. It is likely that the influence of regime simply captures the above mechanisms.

Domestic Legal Systems and the Rule of Law

Domestic legal system and the rule of law may similarly contribute to international law internalization and compliance. Regarding domestic legal norms and the level of congruence with the IACHR, no variation exists across selected Latin American states. All of these states have civil law systems and grant blanket compulsory jurisdiction to the IACHR. However, they differ in terms of their rule of law development. National high courts with higher levels of judicial independence may represent states that have a higher regard or respect for the rule of law. In this case, high level of judicial independence proxies the state' respect for the rule of law. States with high respect for the rule of law are more likely to comply with IACHR decisions. Effective judiciaries create *ex post* costs for states considering violating the agreement, thereby incentivizing the state to comply (Conrad 2014; Kelley 2007; see also Conrad and Ritter 2013).

However, independent judiciaries that serve as effective constraints may lead to the state to decide to not comply with orders for legal reform precisely because the court will hold the state accountable to the commitment. In other words, states seeking to comply without being held accountable under the reformed laws would be less likely to

comply if they know that they will be required to follow the law by the judiciary. This is the same intuition as that for the relationship between judicial independence and treaty ratification and compliance, where states only comply with treaty obligations if domestic legal enforcement is strong but are less likely to ratify treaties, thereby adopting new constraints, if domestic legal enforcement is strong (Powell and Staton 2009). The existence of independence courts that are able and willing to keep the government in check creates *ex post* costs for the government to amend the laws in ways that constrains it in the future.[153]

Yet another possible scenario occurs when national courts enjoying high levels of judicial independence decide to unilaterally alter the domestic law, such as through conventionality control. Because these courts are independent, they face fewer, less severe, and/or less likely negative responses by the government. For example, in *Bámaca Velásquez v. Guatemala*, the Guatemalan Supreme Court declared it "necessary to execute the nullity of the national resolution" that the IACHR declared "violates the universal legal principles of justice" and ordered new trial proceeding offering "an unrestricted respect of the rules of due process." It further nullified the previous verdicts by the lower courts and declared the 'self-enforceability of the Judgment issued by the Inter-America Court." In this case, the courts unilaterally complied with the IACHR without the support or consultation from either the executive or legislative branches. Since independent courts are often emboldened after states commit to international

[153] High level of judicial independence might also increase the likelihood of the IACHR to judge state remedies as compliant since part of their evaluation for full compliance is that they believe the violations in question will either not occur in the future or will be domestically enforced. The IACHR would have little faith that the new laws would be effective if the state's high courts do not have a reasonable degree of judicial independence.

human rights treaties and thus more likely to constrain and sanction violators, it seems plausible that the same effect would occur after an IACHR reparation order or conventionality control order (Powell and Staton 2009; Simmons 2009).

The first two judicial independence mechanisms predict contradictory responses: one where judicial independence leads to compliance while the other leads to noncompliance. It is unclear which of these competing tensions would emerge victorious or if they would simply cancel each other out. The third mechanism moves the rational choice from the state government to the courts, which makes this mechanism fundamentally different in process from the other two mechanisms. However, its leads to predictions that higher levels of judicial independence would lead to increased likelihood of compliance as well as increased likelihood of conventionality control declarations and an activist court.

'Peer Pressure'

'Peer pressure' from neighbors or regional peers may also induce compliance to IACHR due to reputation costs. States incur reputational costs when other states and political actors perceive that the state has failed to honor a commitment. Since virtually all of Latin American share membership in the same institutions and have committed to the same obligations, reputational costs are likely to be high for noncompliance. Noncompliance signals that a state's commitments are not credible, which can be costly for states—especially since all other states in the region are held accountable to the same commitments.

'Peer pressure' could also be induced through socialization there the reputational cost are incurred not from the loss of credibility in commitments but from lack of conformity to role orientations, norms, values, and goals shared by members within the same community. The motivations are difficult to distinguish and may occur simultaneously. For example, Simmons (2000) finds that commitments to international law by regional neighbors exert a positive influence on state compliance to international law. In other words, states are more likely to comply when their neighbors are complying, but we do not know whether the reputational costs were rationalist-economic or normative.

Transnational Advocacy Network and Mobilization

Human rights organizations are crucial in the monitoring of rights violations, the publication and dissemination of this information, the mobilization of individuals and parties on these issues, and the presence of rights on political agendas through mobilization and lobbying for legal reform (Meernik et al. 2012; Brysk 1993). Human rights organizations with permanent locations with a state are the most likely to aware of the lack of legal changes as well as the presence of IACHR cases still pending compliance,[154] and they are the most likely to publish this information and push compliance onto the national agenda and mobilize opposition. These organizations are also crucial to the theory of international shaming where these are the organization that demand international attention in order to initiate a 'shaming' strategy and pressure the

[154] I assume that these organizations are aware of IACHR cases pending compliance because these cases typically have favorable decisions for the victims and HROs, and these decisions provide legitimation to HRO missions as well as increased relevancy of the organizations themselves (and the amount of attention on and funding for the organizations which are crucial for INGO survival).

state regime domestically through mobilizing citizens and opposition groups. The presence of these organizations increases the potential costs for noncompliance; therefore increased presence of human rights organization should increase the likelihood of compliance to IACHR decisions.

Rights Regime Entrenchment

The more entrenched a state is within the international rights regime, the more social, reputational, and normative pressures states face and the greater the associated costs should states fail to comply with IACHR decisions. The more international treaties, conventions, covenants, and protocols the state has ratified, including the supplementary and optional ones, the greater the states' obligations to their rights commitments to the IACHR and other members within the regime community. Additionally, noncompliance for an entrenched state could be more costly in that it calls into question its credibility to a wider set of commitments. Thus, states that are more entrenched within the international human rights regime are more likely to comply with IACHR reparations to reform domestic law relative to less-entrenched states.

Before turning to my model and methodology, I offer a brief reminder of the IACHR as an institution.

Background to IACHR

The Inter-American Court of Human Rights was established by the American Convention on Human Rights in 1979, but Court only received its first case in 1986. Its first judgment on preliminary objections in *Velásquez-Rodríguez v. Honduras* became

published in 1987, and its first compliance report was published on September 10, 1996.[155] Compliance reports, while not part of the original charter of the Convention, is an implied enforcement mechanism the IACHR established by 1996. As of 2004, twenty-five of the 34 American states have ratified the American Convention and 21 have granted the IACHR compulsory jurisdiction (Posner and Yoo 2005).[156]

The IACHR is a permanent court of seven judges that has advisory[157] and contentious jurisdiction, where its decisions are legally binding and not subject to appeal. The Court only has the authority to hear cases claiming a violation of the American Convention and has authority to reparations, remedial actions, and compensation for violations.

The process for cases heard by the IACHR proceeds in essentially three phases, after which a judgment is published (although sometime the judgment contains all phases). The first phases are the admissibility and merits stage, where the Court evaluates the merits and admissibility of the case as well as their jurisdiction to hear the case and the preliminary objections phase where states submit their objections to the IACHR hearing the case. The final stage is when the Court issues a judgment ruling the outcome and a judgment on reparations that explicitly states what remedial actions a state must

[155] Not all cases have compliance reports. In some cases, the Court acknowledged the state's preliminary objections and dismissed the case. Other cases are still pending merit and reparations judgments. Many of the cases whose reparations and judgments have been issued recently also do not have compliance reports.

[156] All of the Latin American, Spanish-speaking, civil law countries analyzed in this chapter have ratified the American Convention and granted compulsory jurisdiction to the IACHR. The Dominican Republic was the latest to grant compulsory jurisdiction in 1999. The date of compulsory jurisdiction grants by country are as follows: Peru 1981, Ecuador 1984, Chile 1990, Venezuela 1981, Panama 1990, Guatemala 1987, Argentina 1984, Colombia 1985, Paraguay 1993, Mexico 1998, El Salvador 1995, Uruguay 1985, Costa Rica 1980, Bolivia 1993, Nicaragua 1991, Honduras 1981, and Dominican Republic 1999.

[157] The IACHR can render advisory opinions interpreting the Convention or other human rights treaties at the request of the Commission, any OAS member state (regardless of whether it is a party to the Convention), or certain OAS organs.

take in order to comply with the Court's judgment. In most cases, the Court will also issue compliance reports on a yearly basis for each case pending full compliance.

The IACHR has been active,[158] where an estimated 169 contentious cases have received judgments by the Court. Additionally, the Commission received 2000 petitions in 2013—the most its ever received—and has 1753 cases at the admissibility and merits stage by the end of 2013. Table 4.1 shows the yearly activity of the Court and Commission.[159]

While data are not available for each year due to changes in reporting by the Inter-American Commission of Human Rights, one sees several trends in the data, represented in Figure 4.1 through Figure 4.3. First, Figure 4.1 shows that the number of cases presented to the IACHR by the Inter-American Commission of Human Rights has increased over time. While only two cases were submitted to the Court in 1997, sixteen cases were submitted in 2010 and 11 in 2013. Hence the Court has been increasingly asked to adjudicate contentious cases over time. Figure 4.2 reveals that not only has the Court been presented with more cases but the Court has issued increasing numbers of decisions, thereby answered the call to adjudicate in greater numbers of cases. Albeit with some fluctuation (and despite the particularly low number for 2014 due to lack of data from compliance records), the IACHR has not only heard more cases but has issued decisions on them.

[158] For clarification, the abbreviation IACHR always refers to the Court rather than the Commission (which shares the same acronym).

[159] Data are derived from the Commission's annual reports, with the exception of the number of judgments issued or published by the IACHR, which is derived from the original dataset of compliance reports.

Table 4.1: Usage and Activity of Inter-American Court of Human Rights

Year	Number of Judgments Issued by IACHR	Merit Reports Issued by IACHR	Number of Cases Presented to IACHR	Number of Petitions to Commission	Number of Petitions Processed by Commission	Percent of Petitions Processed by Commission
1988	1	--	--	--	--	--
1989	2	--	--	--	--	--
1990	0	--	--	--	--	--
1991	0	--	--	--	--	--
1992	0	--	--	--	--	--
1993	0	--	--	--	--	--
1994	0	--	--	--	--	--
1995	3	--	--	--	--	--
1996	1	--	--	--	--	--
1997	3	23	2	435	147	34%
1998	4	25	3	571	116	20%
1999	4	30	7	520	161	31%
2000	4	23	3	658	110	17%
2001	7	4	5	885	96	11%
2002	1	11	7	979	83	8%
2003	5	6	15	1050	115	11%
2004	11	4	12	1319	160	12%
2005	14	7	10	1330	150	11%
2006	15	8	14	1325	147	11%
2007	8	4	14	1456	126	9%
2008	9	7	9	1323	118	9%
2009	12	13	11	1431	122	9%
2010	8	4	16	1598	275	17%
2011	13	--	--	--	--	--
2012	19	--	--	--	--	--
2013	13	--	11	2000	340	17%
2014	2	--	--	--	--	--
2015	--		--	--	--	--

Part of the reason for increased litigation at the IACHR is likely due to the dramatic increases of petitions submitted to the Commission over time. As shown in Table 4.1 and Figure 4.3, the number of petitions submitted to the Commission has increased from 435 petitions in 1997, to 2000 petitions in 2013. Hence, people seeking justice are increasing utilizing the Commission and thus the Court. However, the Commission processes a relative stable number of petitions that are deemed admissible

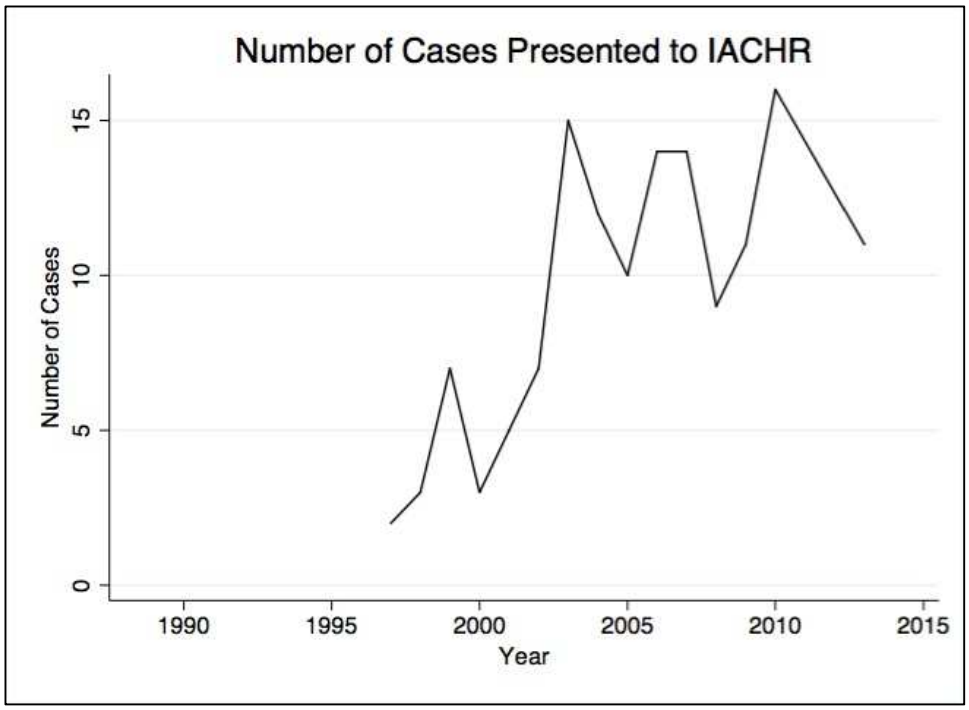


Figure 4.1: Cases Presented to IACHR by Commission

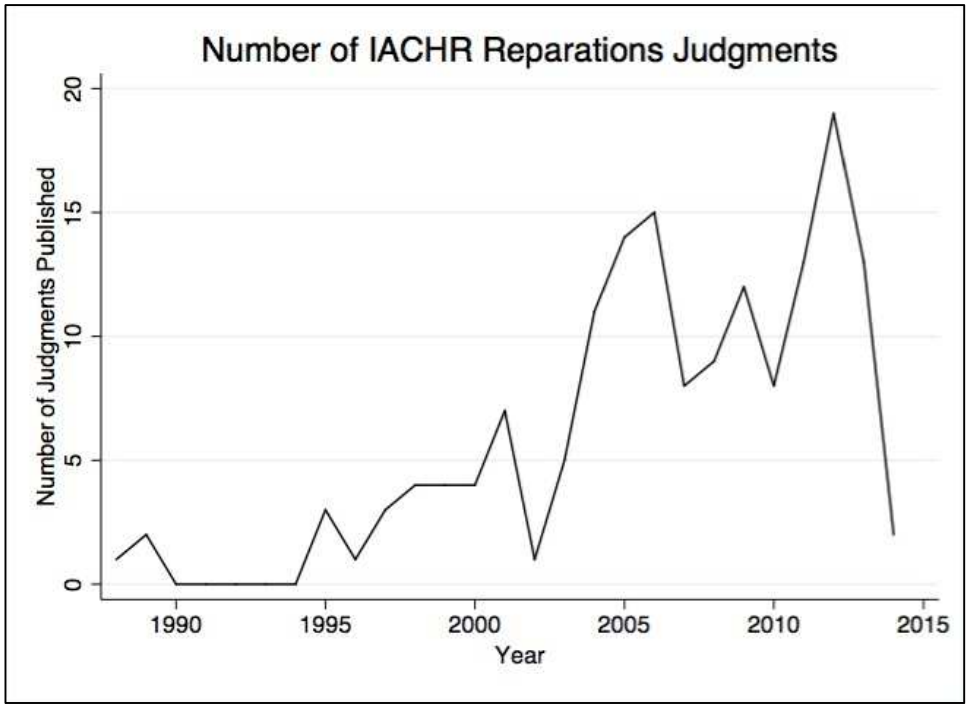


Figure 4.2: IACHR Reparations Judgments

and therefore processed to open a case.[160] (Although speculative, this stability is likely due to workload considerations of both the Commission, who has to investigate each admissible petition and case, and the Court.)

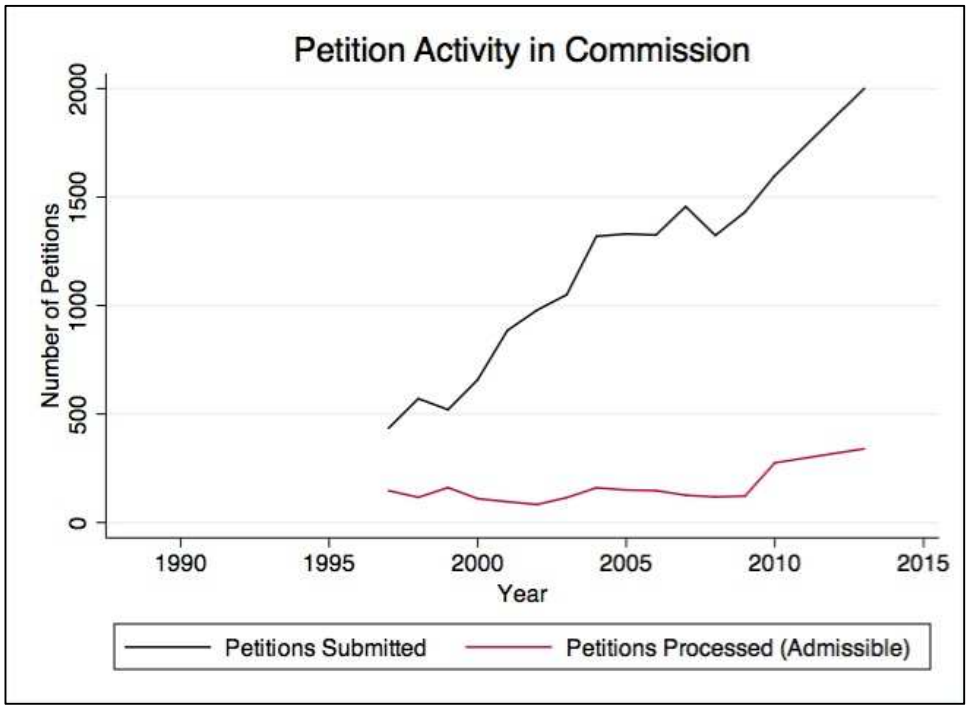


Figure 4.3: Petition Activity in the Inter-American Commission

[160] There are four admissibility requirements (set forth in Article 46(1) of the American Convention): 1) the exhaustion of domestic remedies (where the burden of proof for exhaustion is on the State); 2) compliance with the 6 month rule that states a petition must have been filed within 6 months from the date on which the party alleging the violation of the rights was notified of the final judgment of domestic legal remedies (for cases where domestic remedies were inadequate/ineffective then the court uses a 'reasonable time' test and this rule does not prevent the bringing of a claim that concerns an alleged violation that may have commenced more than 6 months before the case is brought but that involves a continuing breach); 3) no case may be pending before another international forum on the same subject; and 4) the provision of details of the petitioner or his/her representative which requires that the 'petition contains the name, nationality, profession, domicile, and signature of the person or persons of the legal representative of the entity lodging the petition. There are also inadmissibility requirements: 1) any of the requirements of admissibility has not been met; 2) the petition or communication does not state facts that tend to establish a violation of the rights guaranteed by the Convention; 3) the statements of the petitioner or the state indicate that the petition or communication is manifestly groundless or obviously out of order; or 4) the petition is substantially the same as one previously studied by the Commission or another international organization.

Hence the IACHR is not irrelevant and has been increasingly sought out by people seeking justice for rights violations.[161] For the most part, the Court has responded by increasing the number of cases it hears and issues decisions on. Furthermore, the Court remains relevant in that it retains, in general, an 18% full compliance rate and 62% partial compliance rate (reported in the 2014 Annual Report by the Inter-American Commission on Human Rights).[162]

Yet, despite the increasing usage of the Commission and Court and these general compliance rates, little is known as to how the IACHR influences state behavior—especially the degree to which its decisions influence domestic state laws regarding human rights. While previous scholarship examining the effects of international law and regional courts on rights violations (typically physical integrity rights violations) is important, the influence of international law through regional courts is the most stringent test of international law and regional court influence. Domestic legal reform initiated due to the IACHR's requirement in their judgment on reparations is the most stringent test of compliance and international law/regional court influence in that it is the most costly to the state compared other types of reparations required by the Court and the most difficult one with which to comply. Reforming domestic human rights law offers a more permanent, widespread change that affects the entire nation rather than individual litigants. In addition, by making international law enforceable domestically, such reforms expand legal protections, grant legal standing and legitimization to potential future

[161] Victims or the family of victims submit the majority of petitions.

[162] (http://www.oas.org/en/iachr/activities/speeches/23.04.14.asp)

litigants seeking justice in domestic courts, and make state violations more costly in that they can be held accountable domestically for reneging/violating domestic law.

However, no existing data or scholarship, to my knowledge, examines to what degree and in what way does international law through the IACHR influences domestic law. Hence, in order to examine the degree to which international law becomes domestically adopted and institutionalized (again per the order of IACHR), I generated an original dataset of the IACHR cases and compliance from 2001-2015, which I describe below. In order to maintain a most similar system design for analysis, I limit all analyses to Spanish-speaking, civil law Latin American countries as described in Chapters 2 and 3.

Data and Descriptive Statistics

The original dataset is compiled from the universe of public documents made available by the Inter-American Court of Human Rights (online at http://www.corteidh.or.cr/index.php/compliance-with-judgment).[163] This data spans from 2001-2015.[164] The unit of analysis is at the individual case level, with 114 unique cases.[165] This data codes whether the Inter-American Court of Human Rights required the

[163] These include documents in English and Spanish.

[164] To my knowledge, the IACHR has issued/heard 159 cases for Latin America (excluding Suriname, Haiti, Brazil, Barbados, and Trinidad and Tobago). Of these, compliance records exist (and are included in the data) for 114 cases. There are, to my knowledge, 14 cases that require domestic legal reform for which no compliance records could be obtained. Similarly, compliance records could not be obtained for 22 cases that did not require domestic legal reforms, 6 cases where I do not know what the reparations were, and 3 cases where no reparations or compliance records exist because the state was not found at fault (2 cases) or where a friendly settlement was reached (1 case). Coding on reforms and issue area were cross-checked when possible with the Loyola University Law School's IACHR Project (https://iachr.lls.edu).

[165] While the cases begin in 1987, compliance records are available only as early as 2001; in other words, the earliest compliance record publicly available was published in 2001. Each unique case often comprises several compliance reports (in addition to the judgments on merits and reparations). Compliance reports for

state to amend, adopt, or repeal existing domestic laws as part of the required reparations issued in its judgments. Reparation requirements often consist of the payment of pecuniary and non-pecuniary damages, public statements on the radio or in newspapers acknowledging state responsibility for the human rights violations, the creation of education scholarships, the erection of monuments or plaques, human rights training courses for police and/or military, the investigation and prosecution of individual(s) responsible for the violations, identification and delivery of victim remains to family, the publication of the Court's judgment, the creation of databases, expunging of criminal records, investing in a regional fund for rights victims (*Fondo de Asistencia Legal de Víctimas*),[166] providing victims with medical and psychological treatment and assistance, and the annulment of any domestic sentences. However, for a proportion of cases, the regional court requires permanent changes in state domestic law.[167] Of the 114 unique cases heard by the Inter-American Court (pertaining to Spanish-speaking, civil law countries only), 50 cases require changes in the state's domestic law or 44% of cases require domestic legal reform.

For these cases, the data codes noncompliance as 0, full compliance as 1, and partial compliance as 2. In order to register as full compliance, the Inter-American Court

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an individual case vary from one to eleven reports, where reports are typically published once a year. Hence, more recent cases often have fewer compliance reports than older cases.

[166] This fund, el Fondo de Asistencia Legal del Sistema Interamericano, was established in 2008 by the Organization of American States (OEA) General Assembly with the goal of assisting human rights victims access the Inter-American Court (and Commission) who would otherwise not be able to take their case to the Court. The fund relies on voluntary contributions and by OEA state members.

[167] Coding for domestic legal changes must affect the population and be (effectively) permanent, so expunging criminal records for individuals, human rights training for military, new trials, annulment of sentences for individuals, the initiation of criminal investigation, etc. are not considered changing of domestic law.

must explicitly conclude in its compliance report that the domestic law requirement is fully complied with. Hence, I use the Court's judgment for successful compliance because the Court's own determination of compliance is the most straightforward and consistent way to gauge compliance across cases. Of the 50 cases requiring legal changes, there are 16 full compliance cases (32% full compliance).[168]

In order to register as partial compliance, I define partial compliance as domestic legal changes that the Court explicitly applauds. In essence, these cases consist of successful changes in domestic laws per the Court requirement for compliance, but the Court wishes to wait to see how the law is implemented before issuing their 'full compliance' judgment. Most of these partial compliance cases are determined partially compliance by the Court itself; however, the Court provides no explicit procedures or requirements to declare partial compliance. Hence, Court standards for declaring 'partial compliance' are unknown, and it remains unclear whether these standards or requirements have remained the same over time and across cases. For example, the legal reforms catalyzed by *Loayza Tamayo v. Peru* were declared as partially compliant in 2003, yet the Court declared full compliance in 2011 despite no additional changes in domestic reform. For this reason, I code partial compliance as successful domestic legal reform per Court judgment but where it remains to be seen that the law will be implemented and enforced in a manner consistent with international law and the Court

[168] Full compliance represents 14% of the data.

judgment. Of the 50 cases requiring legal changes, there are 20 partial compliance cases (40% partial compliance).[169]

Using this coding scheme, the rate of compliance by reforming domestic laws to international standards in Spanish-speaking, civil law Latin American countries is ***32% for full compliance*** (16/50 cases), ***40% for partial compliance*** (20/50 cases), and ***72% overall compliance,*** which includes both full and partial compliance (36/50 cases).[170]

These levels of compliance are particularly high—especially if one remembers the 7% compliance recorded by Hawkins and Jacoby (2010). Indeed this compliance record is especially noteworthy because the types of legal reforms required for compliance are not superficial. All domestic legal changes were designed to match domestic law to international human rights laws standards. These reforms include creating legally defined crimes of forced disappearance, altering anti-terrorism laws to include due process and habeas corpus rights (along with other detention condition issues), and expanding civil, political, and economic rights to disenfranchised or indigenous groups. For example, in *Herrera Ulloa v. Costa Rica*, the IACHR ordered Costa Rica to "bring its domestic legal system into conformity with the provisions of […] the American Convention." Costa Rica fully complied in 2010 by 1) making a range of amendments to the Code of Criminal Procedure, such as "expanding the judgment appeals system by adding a criminal judgment appeals proceeding; reforming the review procedure; and, strengthening the principle of orality in criminal proceedings;" 2) creating a judgment

[169] Partial compliance represents 17.5% of the data. Note that for two cases there were multiple legal reforms required where one was fully complied with while one had not been. These have been coded as partial compliance.

[170] Eleven cases in the compliance data are excluded where the countries are not Spanish-speaking or civil law countries. These include Suriname, Haiti, Brazil, Barbados, and Trinidad and Tobago.

appeals recourse so that all judgments and dismissals issued in the trial phase are appealable; and 3) modifying the judicial review proceeding, which "shall act against the judgment issued by the tribunals of appeal i) when the existence of contradictory orders issued by said tribunals are alleged, or by said tribunals and by the Court of Criminal Review, or ii) when the judgment does not comply with or erroneously applies a substantive or procedural legal precept."[171] This case is representative of the stringent requirements the Court has for appropriate legal reform across cases and countries and reflects the substantial reform requirements necessary.

Similarly, the IACHR in *Trujillo Oroza v. Bolivia* ordered the state to adopt, "in accordance with Article 2 of the Convention, [of] those measures for the protection of human rights that will ensure the free and full exercise of the right to life, to freedom and humane treatment and the right to fair trial and judicial protection, in order to avoid that detrimental facts such as the ones of the case at hand occur in the future." Bolivia complied[172] by establishing the crime of forced disappearances within its domestic legal system and amending police-related laws to be consistent with international treaties and conventions Bolivia was a party to (along with implementing training programs for the armed forces for human rights and humanitarian law).

In a final example of *Almonacid Arrellano v. Chile*, Chile amended its Code of Military Justice in 2007, limiting military justice and amnesty and the jurisdiction of military courts in cases of rights violations by soldiers in addition to remanding cases with the litigants in question to ordinary courts under criminal proceedings. Thus, these

[171] Again, note that domestic legal reform does not refer to the annulment of criminal charges, the investigation and prosecution of those responsible, and other legal matters that apply only to the specific case and individual litigants. Domestic legal reform must be nation-wide reform that is permanent, influencing or having the ability to influence all persons and future legal conflicts.

[172] Bolivia partially complied in 2002 and 2004 but reached full compliance in 2007.

domestic legal reforms are not merely superficial reforms to irrelevant laws but rather significant changes in domestic legal proceedings and the legally protected rights enjoyed by individuals.

Table 4.2 shows the level of state participation as a litigant. In other words, the table shows how many times each state has had to appear before the IACHR. For example, Peru has had to appear before the IACHR in 25 individual cases while Costa Rica has only had one case against it. (Note, however, that these numbers excludes cases that do not have compliance records, i.e. cases that were filed but dismissed by the Court, cases pending judgments on merits and/or reparation, and newly filed cases.) As one can see, Peru has had the most active career with the IACHR, followed by Guatemala, Ecuador, and Colombia. On average, a state appears before the Court seven times (average is 6.71 times).

Figure 4.4 demonstrates the number of cases that require domestic legal reforms by country. The IACHR issued the most reparations requiring domestic legal reform to Peru and Guatemala by far. Peru had eleven cases that required domestic legal reforms to match domestic law to international standards while Guatemala had eight cases making the same requirement. Every other state has five or fewer cases that require domestic legal change, but Honduras and El Salvador have never been required to alter their domestic laws.

Figure 4.5 depicts overall compliance by country. The blue (navy) represents the number of cases the IACHR determined require domestic legal reform. The red represents the number of cases where each state has fully or partially complied with the

Table 4.2: Frequency of State as Litigant to IACHR Case[173]

Country	Number of Cases as Litigant	Percentage of Cases
Peru	25	21.93%
Ecuador	12	10.53%
Mexico	6	5.26%
El Salvador	3	2.63%
Guatemala	17	14.91%
Bolivia	4	3.51%
Honduras	4	3.51%
Nicaragua	2	1.75%
Panama	4	3.51%
Costa Rica	1	0.88%
Chile	6	5.26%
Argentina	6	5.26%
Colombia	11	9.65%
Dominican Republic	1	0.88%
Paraguay	6	5.26%
Uruguay	1	0.88%
Venezuela	5	4.39%

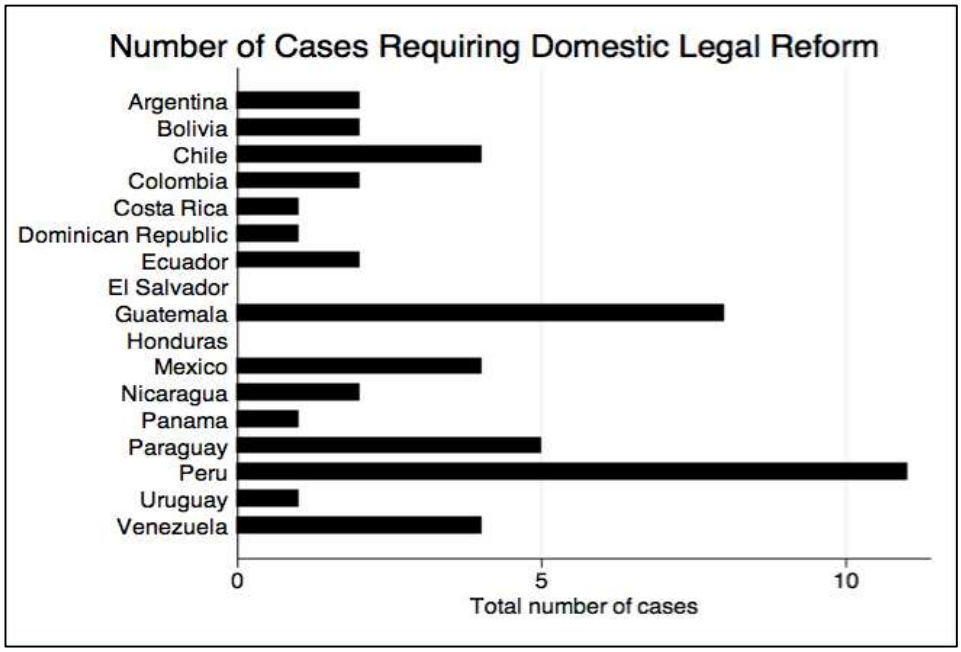

Figure 4.4: Number of Cases Requiring Legal Reform by Country

[173] Belize has not appeared before the IACHR in any case in this data and is therefore excluded.

IACHR reparations orders. Of these cases requiring legal reform, Peru and Guatemala have the most cases where they have fulfilled or partially fulfilled domestic reform requirements. Of course, these states have had the most opportunities to comply; yet these states appear to (attempt to) comply with IACHR decisions in a majority of their cases. Additionally, Argentina, Bolivia, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, Mexico, Nicaragua, and Panama have partially or fully complied with all of the cases requiring legal change. Uruguay has never complied with any cases (although there is only one case). Guatemala fully or partially complied with five out of eight cases. Paraguay partially or fully complied with two out of five cases. Peru partially or fully complied with six out of eleven cases, and Venezuela fully or partially complied with two out of four cases. Again, El Salvador, and Honduras have never been required to alter their domestic laws and therefore have no cases with which to comply in this regard.

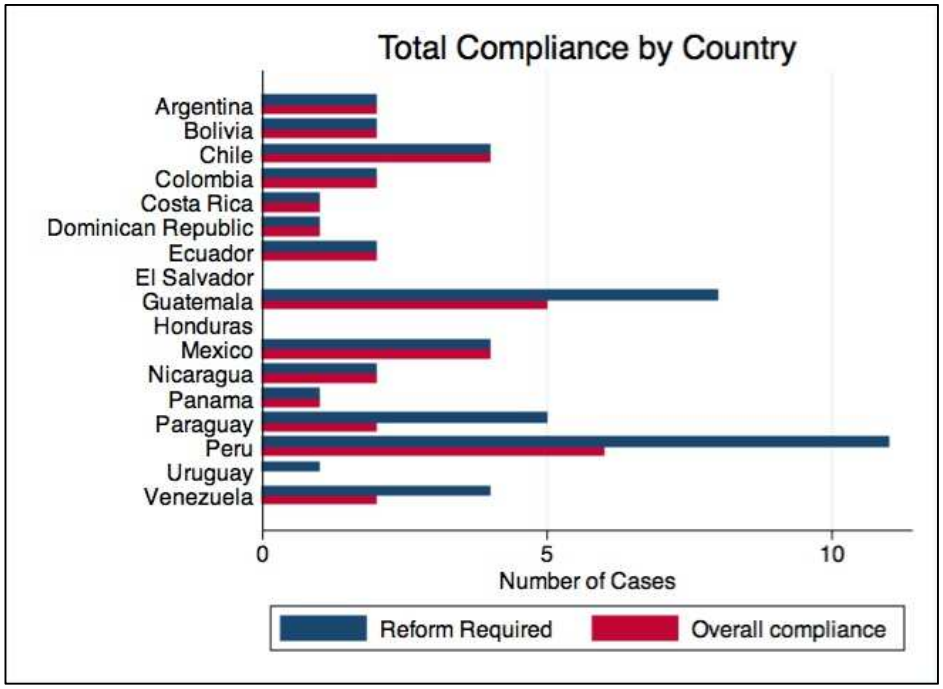

Figure 4.5: Overall Compliance by Country

Figure 4.6 compares the cases requiring domestic legal changes to each state's full compliance. The blue (navy) represents the number of cases the IACHR determined require domestic legal reform. The red represents the number of cases where each state has fully complied with the IACHR reparations orders. Only Ecuador and Costa Rica have fully complied with all the cases. Chile has fully complied with 75% of cases. Argentina, Bolivia, Mexico, and Nicaragua have fully complied with 50% of cases. Peru has fully complied with 27.3% of cases, while Paraguay has fully complied with 20% of cases. Guatemala has fully complied with 12.5% of cases (one out of eight cases). Colombia, Dominican Republic, Panama, Uruguay, and Venezuela have not fully complied with any IACHR case requiring domestic legal reform.

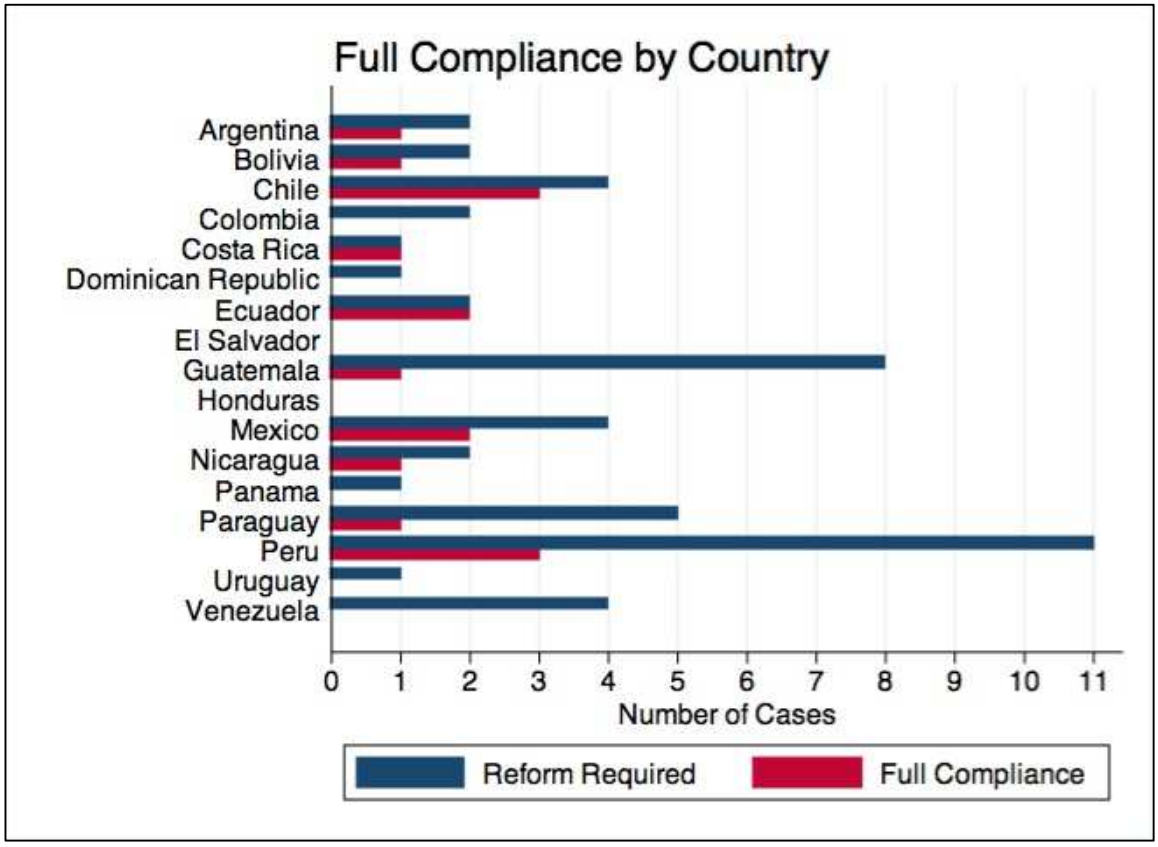

Figure 4.6: Full Compliance by Country

Time to compliance

The data also include the time (in years) it takes for a state to comply. Time to compliance measures the number of years between the judgment of reparations to the compliance record declaring full or partial compliance. The first year where the legal reform is deemed fully or partially complied is coded.[174] In other words, the compliance year consists of the first year declaring partial or full compliance. For cases that are partially compliant and then achieve full compliance later in time, the compliance year consists of the year of the full compliance declaration. ***The average length of time to full compliance is 4.56 years, with a minimum of 2 years and maximum of 12 years.***[175] ***The average length of time to partial compliance is 4.95 years, with a minimum of 2 years and maximum of 11 years***.[176]

Figure 4.7 represents how long, on average, it takes a state to fully or partially comply with an IACHR cases that requires domestic legal reform that pushes domestic law to match international law. For each state, the blue (navy) represents the average number of years until overall compliance while the red represents the median number of years until overall compliance. On average, it takes less time (between two and three years) for Chile, Ecuador, and Panama to comply compared to Bolivia, Colombia, Costa Rica, Dominican Republic, Guatemala, Nicaragua, Peru, and Venezuela which all take between five to seven years to comply. Argentina, Mexico, and Paraguay take roughly three to four years to comply with IACHR decisions.

[174] For a noncompliant case, the year of the most recent compliance report published by the Court is coded.

[175] The median is four years, and the mode is two or four years for full compliance.

[176] The median is four years, and the mode is three years for partial compliance.

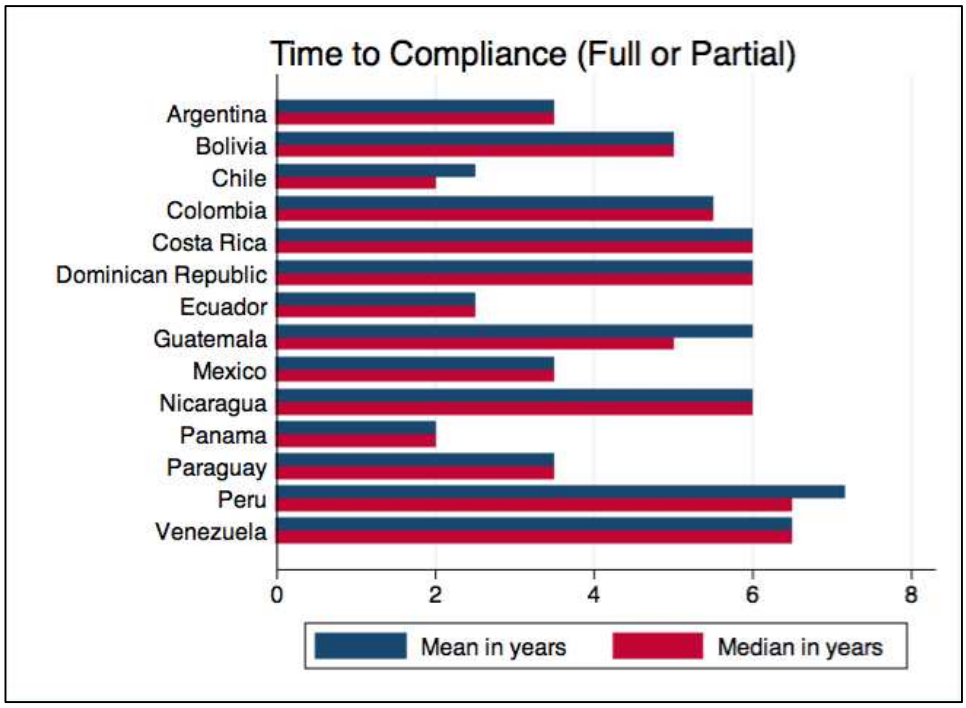

Figure 4.7: Time to Compliance by Country

Figure 4.8 depicts the time each state takes to fully comply with the domestic legal reform requirements, where blue (navy) represents the average number of years until full compliance and red represents the median number of years until full compliance. This figure shows that Bolivia, Costa Rica, Nicaragua, and Peru take the longest amount of time (six or more years) to fully comply with an IACHR decision. All other states take, on average, less than five years to fully comply. Argentina, Chile, and Ecuador take, on average, the least amount of time to fully comply with domestic legal reforms (between two to three years).

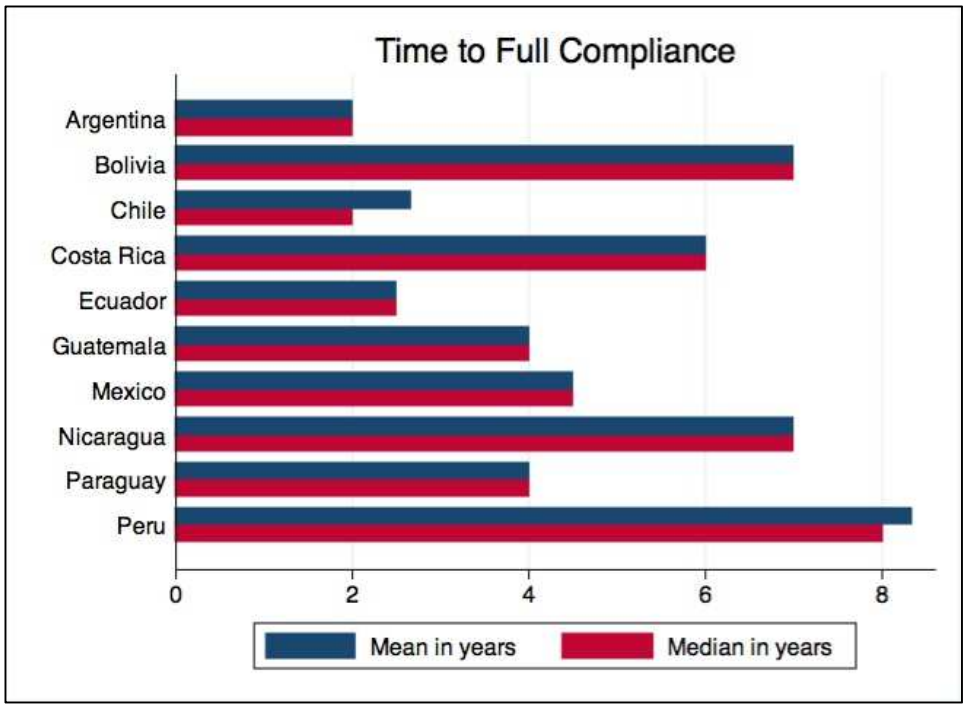

Figure 4.8: Time to Full Compliance by Country

Issue area

The data further includes the rights issue area, including physical integrity rights and empowerment rights, as well as torture, arbitrary detention, forced disappearance, extrajudicial killing, right to life, due process rights, civil and political rights, economic/social/cultural rights, discrimination, women's rights, LBGT rights, family rights, privacy rights, freedom of assembly and association, freedom of expression, indigenous rights (and 'other'). Figure 4.9 depicts the breakdown of cases by issue area. Physical integrity rights cases (shown in navy) are the majority issue area with 80 cases while empowerment rights cases (shown in gray) make a close second with a little over 60 cases. Looking more specifically at the types of PIR cases, torture is the largest category of PIR cases, followed by arbitrary detention and then forced disappearances.

Regarding empowerment rights cases, civil and political rights consist of the largest proportion of cases, followed by economic, social, and cultural rights. It is important to note, however, that each case typically have several issue areas. For example, just less than 40 cases include both PIR and empowerment rights issue areas (shown in green).[177] Additionally (but not shown in the figure) each case often includes multiple categories within empowerment rights or physical integrity rights. For example, a case may include civil and political rights as well as economic, social, and cultural rights. Similarly, a case may include torture, forced disappearance, and arbitrary detention. Virtually all of the cases included in the data include due process issues (not shown in figure).

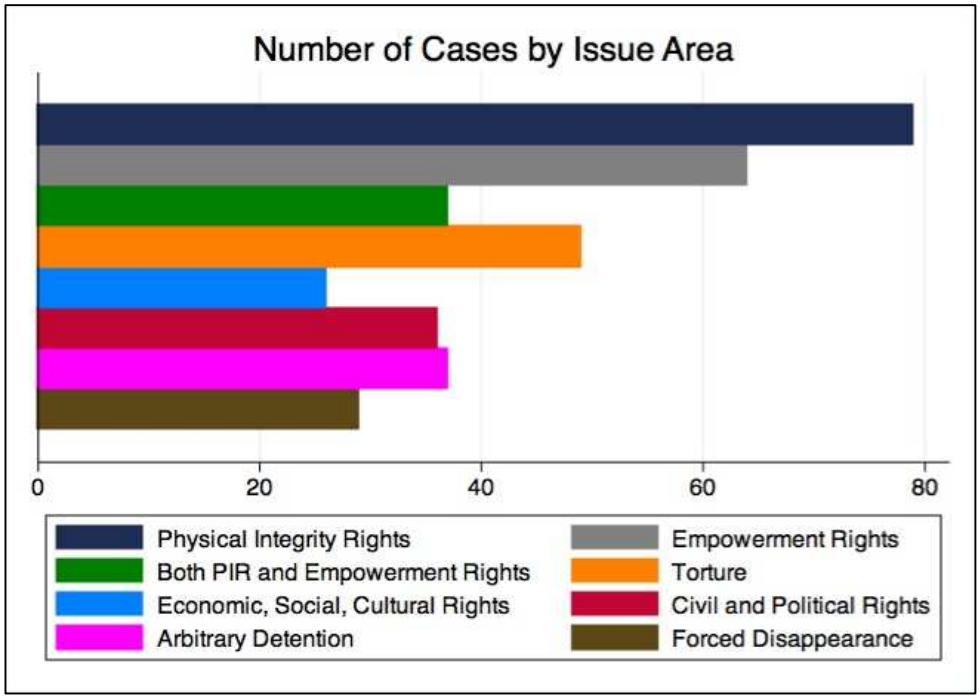

Figure 4.9: Cases by Issue Area

[177] Note that the category of cases with both PIR and empowerment rights issues are not in addition to their component rights. Hence these cases are also included within the PIR category and empowerment rights category.

Because each case often encompasses several issue areas, the purpose of this data is designed to examine whether compliance is based upon or influenced by issue area. Figure 4.10 depicts the number of cases by issue area the IACHR requires domestic legal reform. The Inter-American Court of Human Rights requires more domestic legal reform in physical integrity rights (PIR) cases than empowerment rights cases by roughly double. Additionally, the Court requires domestic legal reform in a majority of the PIR cases it hears. On the other hand, the Court requires domestic legal reforms about half of the time for empowerment rights cases.

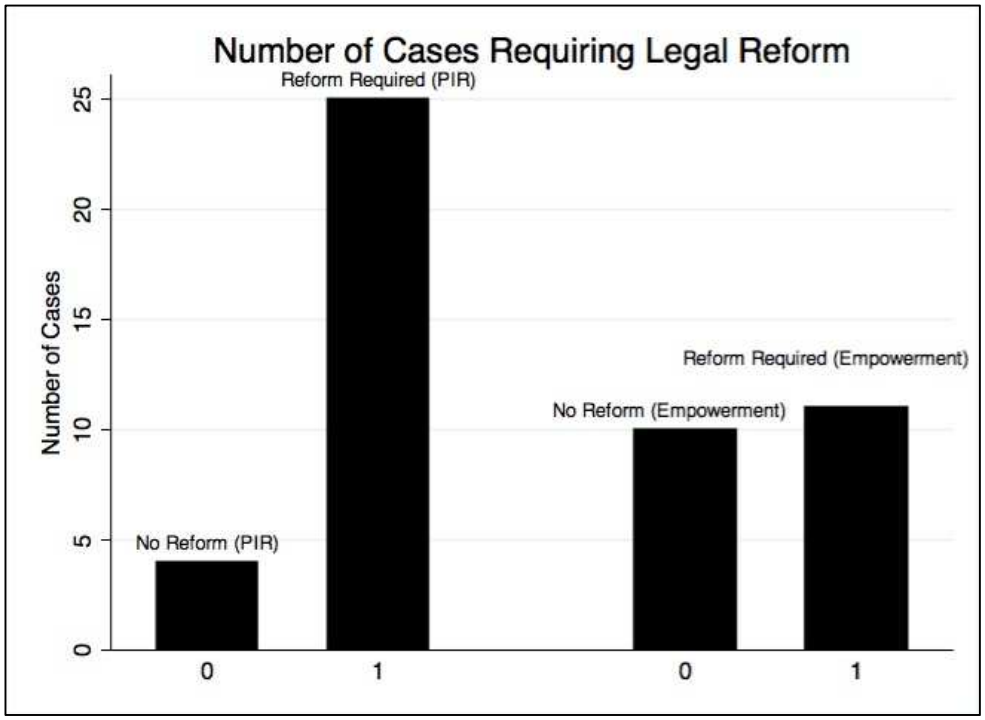

Figure 4.10: Proportion of Cases by Rights Type

Figures 4.11 and 4.12 reveal the breakdown of these cases by state. Figure 4.11 shows the number of physical integrity rights (PIR) cases that require domestic legal

reform. Guatemala and Peru have had the most PIR cases requiring legal reform, while Chile, Ecuador, Panama, and Uruguay have only had one case. Mexico, Paraguay, and Venezuela create a mid-level category with three or four cases each requiring legal reform.

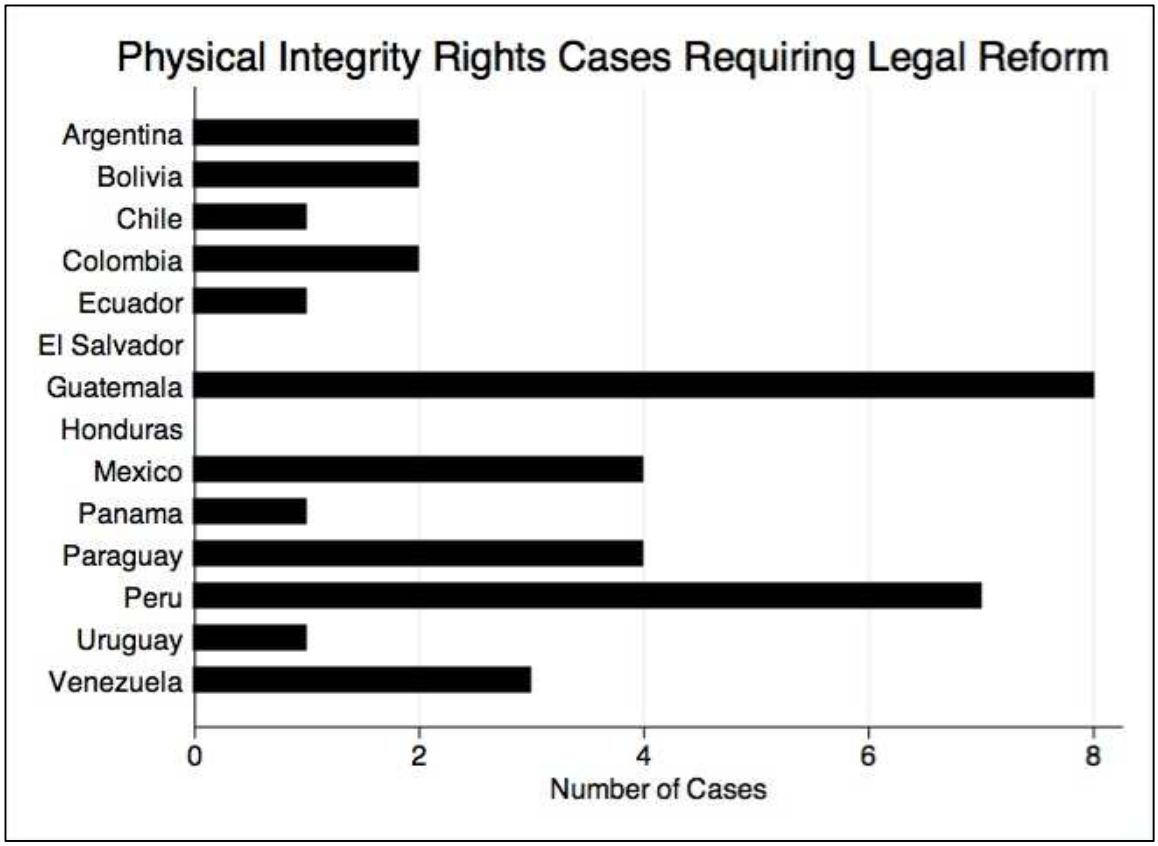

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Figure 4.11: Number of PIR Cases Requiring Reform

Figure 4.12 shows the number of empowerment rights cases that require domestic legal reform. Peru has had the most empowerment cases that require such reform, followed by Guatemala and Paraguay. All other countries have two or fewer empowerment cases that require reform.

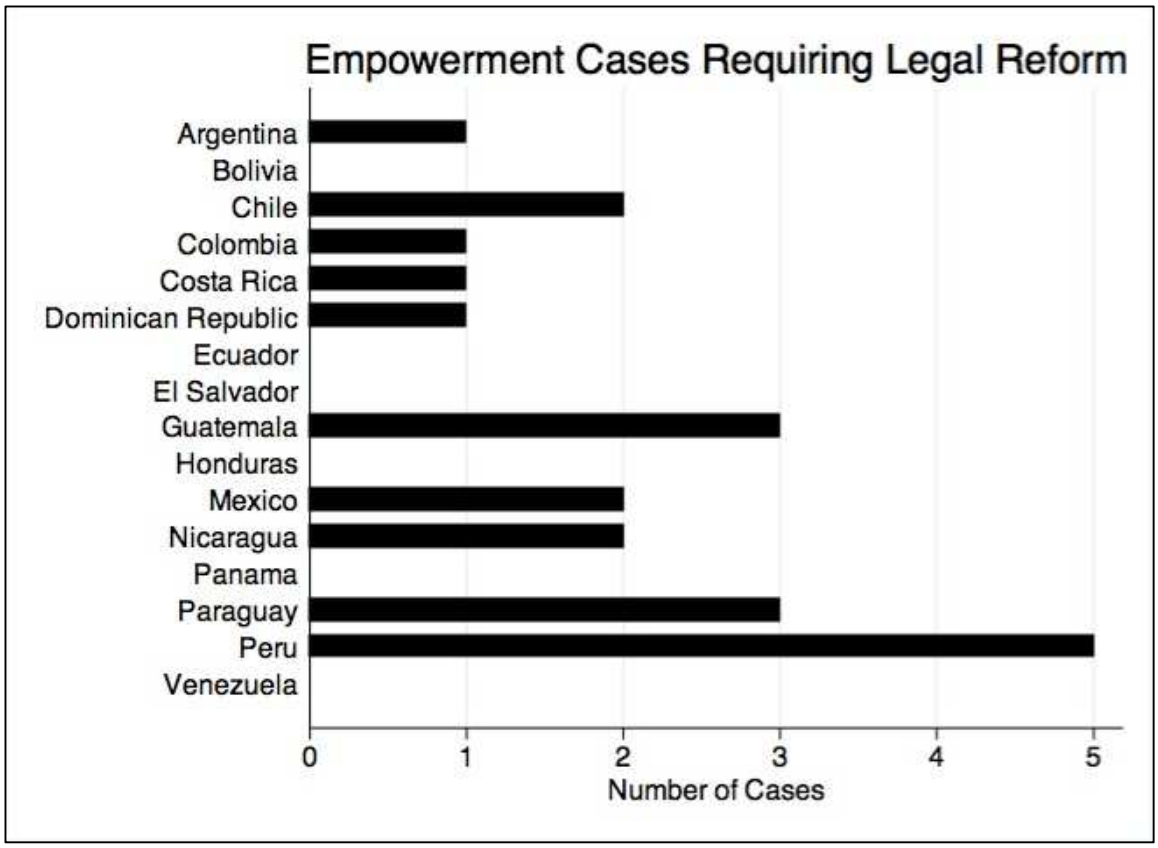

Figure 4.12: Number of Empowerment Rights Cases Requiring Reform

Hence, we see that the IACHR deals with more PIR cases than empowerment rights cases and issues more domestic legal reform reparation requirements for PIR cases. Additionally, all countries have been required to alter domestic law for both PIR and empowerment rights cases except Venezuela, Panama, Ecuador, and Bolivia, which have not had to alter their domestic laws pertaining to empowerment rights.

Turning to compliance by issue area, overall (full or partial) compliance is higher for empowerment rights cases than physical integrity rights cases. Argentina, Chile, Colombia, Mexico complied with all of their PIR and empowerment rights cases requiring legal change. Bolivia, Panama, and Ecuador complied with all its PIR cases and had no empowerment rights cases with which to comply. Costa Rica, Nicaragua, and the

Dominican Republic complied with all of their empowerment rights cases but had no PIR cases with which to comply. Guatemala complied with 62.5% of its PIR cases and 66.7% of its empowerment rights cases. Paraguay complied with 50% of its PIR cases but did not comply with any of its empowerment rights cases. Peru complied with 57.1% of its PIR cases and 40% of its empowerment cases. Venezuela complied with 33.3% of its PIR cases and had no empowerment rights case with which to comply. Uruguay did not comply with its PIR rights case and had no empowerment rights cases with which to comply.

In terms of full compliance, Ecuador has fully complied with all its PIR cases but has no empowerment case requiring legal reform. Chile has fully complied with all its PIR cases and 50% of its empowerment cases. Argentina and Mexico have fully complied with 50% of their PIR cases and all of their empowerment cases. Bolivia has fully complied with 50% of its PIR cases but has no empowerment case requiring legal reform. Peru has fully complied with 28.6% of its PIR cases and 20% of empowerment cases. Paraguay has fully complied with 25% of its PIR case while not complying with any empowerment cases. Guatemala has fully complied with 12.5% of its PIR cases and 33.3% of its empowerment cases. Finally, Panama, Uruguay, and Venezuela have not fully complied with any PIR cases but have no empowerment case requiring legal reform. Costa Rica has fully complied with all its empowerment right cases and has no PIR cases requiring reform. Nicaragua has fully complied with 50% of its empowerment rights cases has no PIR cases requiring legal reform. Colombia has not fully complied with any PIR or empowerment cases. The Dominican Republic has not fully complied with any

empowerment right cases but has no PIR cases requiring legal reform. These trends are depicted in.

Full compliance summary by country

Hence, these descriptive statistics show that only Ecuador and Costa Rica have fully complied with all cases. However, these consist of relatively few cases, where Ecuador had only to comply with its PIR case and Costa Rica to its empowerment rights case. It took Ecuador between just over two years while Costa Rica took six years to comply with these decisions.

Chile has fully complied with 75% of cases, with 100% compliance to its PIR cases and 50% compliance with its empowerment rights cases. On average, Chile takes two years to comply with domestic legal reforms required by the IACHR.

Argentina, Bolivia, Mexico, and Nicaragua have fully complied with 50% of cases. Argentina and Mexico have fully complied with 50% of their PIR cases and with 100% of their empowerment right cases. It takes Argentina, on average, two years to comply while Mexico takes just over four years to comply. Bolivia has fully complied with 50% of its PIR cases and has had no empowerment rights cases with which to comply. Nicaragua has fully complied with 50% of its empowerment rights cases with no PIR cases with which to comply. Bolivia and Nicaragua take roughly seven years to comply.

Peru has fully complied with 27.3% of cases, where it fully complied with 28.6% of its PIR cases and with 20% of its empowerment rights cases. On average, Peru fully complies with IACHR orders after eight years.

Paraguay has fully complied with 20% of cases, where it has fully complied with 25% of PIR cases but with none of its empowerment rights cases. Peru takes, on average, 4 years to comply with the IACHR.

Guatemala has fully complied with 12.5% of cases, where it has fully complied with 33.3% of its empowerment rights cases and 12.5% of its PIR cases. ;On average, it takes Guatemala 4 years to fully comply with IACHR decisions requiring domestic legal reform.

Colombia, Dominican Republic, Panama, Uruguay, and Venezuela have not fully complied with any IACHR case requiring domestic legal reform. Colombia has not fully complied with any PIR or empowerment rights cases. The Dominican Republic has not fully complied with its empowerment right case and has no PIR cases with which to comply. Panama, Uruguay, and Venezuela have not fully complied with any PIR cases, and none have any empowerment rights cases with which to comply.

Implications

Table 4.3 summarizes overall and full compliance by country. Note that the difference between full compliance and overall compliance consists of partially compliant cases. For example, Peru partially complied with two cases or 18.2% of their cases requiring domestic legal changes.

This original data provides contradictory evidence of compliance compared to Posner and Yoo (2005) and Hawkins and Jacoby (2010) who underestimate full and overall compliance to the regional court. While Posner and Yoo (2005) estimate a 5% general compliance rate regardless of reparation type and Hawkins and Jacoby (2010)

Table 4.3: Summary of Compliance by Country

Country	Number of Cases Requiring Reform	Number Overall Compliant Cases	Number Full Compliant Cases	Percentage Overall Compliance	Percentage Full Compliance
Peru	11	5	3	45.5%	27.3%
Ecuador	2	2	2	100%	100%
Mexico	4	4	2	100%	50%
El Salvador	0	0	0	0%	0%
Guatemala	8	5	1	62.5%	12.5%
Bolivia	2	2	1	100%	50%
Honduras	0	0	0	0%	0%
Nicaragua	2	2	1	100%	50%
Panama	1	1	0	100%	0%
Costa Rica	1	1	1	100%	100%
Chile	4	4	3	100%	75%
Argentina	2	2	1	100%	50%
Colombia	2	2	0	100%	0%
Dominican Republic	1	1	0	100%	0%
Paraguay	5	2	1	40%	20%
Uruguay	1	0	0	0%	0%
Venezuela	4	2	0	50%	0%

find a 7% full compliance rate to Court reparations requiring domestic legal reform from 1987-2010, this data suggests significantly higher compliance rates—even as it uses nearly identical coding scheme to Hawkins and Jacoby (2010).[178] Specifically, this data suggests that full compliance to requiring domestic legal change in occurs 32% of the time for Spanish-speaking, civil law Latin American countries and overall (partial or full) compliance occurs 72% of the time from 2000-2015. Furthermore, the IACHR is not on the decline, as suggested by Posner and Yoo (2005), in term of its being increasingly

[178] Coding for full compliance is identical to Hawkins and Jacoby (2010) but some minor variation may exist in the coding for partial compliance. Note, however, that these previous works include all of Latin America rather than only the Spanish-speaking, civil law countries. If I include all countries (rather than only Spanish-speaking, civil law countries) the rate of compliance remains much higher with 28.1% full compliance (16/57 cases), and 68.4% overall compliance (39/57 cases).

asked to adjudicate, its willingness to issue decisions, and its ability to secure compliance.

4.1 Predicting IACHR Legal Reform Reparation Issuance

Before turning to predictions of compliance, the possibility exists that the IACHR is strategic in issuing decisions that require domestic legal reform. If the IACHR believes that a state will not comply with its orders, then the Court may lose legitimacy. Hence it is possible that the Court seeks reparations that are likely to be complied with and avoid the risk that its orders will be ignored so as to protect the legitimacy and relevancy of the institution. This leads to the hypothesis that, if the Court is strategic, it will require domestic legal reform only if the state has previously complied. More specifically, states that have reformed domestic legislation in a previous IACHR are more likely to receive reparations requiring domestic legal reform in a current case.

H_1: States with a history of (ever) complying with legal reform reparations are more likely to receive legal reform reparations in a given case.

Along similar lines, the length of time since a state granted the IACHR compulsory jurisdiction may influence the Court's decision to issue this type of reparation. The Court may feel more secure in issuing this reparation in cases where the state involved has a longer history of recognizing the Court and its jurisdiction in contentious cases. States that only recently recognized the Court's jurisdiction may be

perceived as less likely to comply since they do not have a normative tradition of recognizing the Court and its legitimacy. This hypothesis is summarized below:

H_2: States with a longer history of recognizing the Court's compulsory jurisdiction on contentious cases are more likely to receive legal reform reparations in a given case.

Furthermore, there may be an interaction effect between the amount of time since a state has granted jurisdiction and history of compliance. A strategic Court would be most secure in likelihood of compliance for states that have a long tradition of recognizing the Court's authority and have a strong history of compliance. Hence:

H_3: States with a longer history of recognizing the Court's compulsory jurisdiction on contentious cases and have a history of compliance with previous legal reform reparations are more likely to receive legal reform reparations in a given case.

Not only may the state's history of compliance influence the IACHR's decision to issue legal reform reparations in a particular case, but the distinction between physical integrity rights and empowerment rights may influence the likelihood of the IACHR to render a judgment requiring legal reform. Empowerment right violations may be more easily solved through amending or creating laws rather than PIR where the violations are often due to not the lack of law but the executive ignoring existing law.

Furthermore, all these Spanish-speaking, civil law Latin American states has ratified the Convention Against Torture (CAT)[179] while none have ratified the Covenant on Economic, Social, and Cultural Rights. However, all states have also ratified the Covenant on Civil and Political Rights.[180] Hence, while physical integrity right law is likely to be more established compared to empowerment rights laws this may only be true for economic, social, and political rights. Several of the states ratified the Covenant on Civil and Political Rights prior to ratifying CAT, which might imply that civil and political right-related domestic law is more developed and congruent with international standards than PIR-related domestic law—which is still more developed and presumably congruent with international standards than economic, social, and cultural rights-related domestic law. IACHR may therefore seek to remedy empowerment right violations by ordering the state to develop such laws aligned with these Conventions, particularly regarding economic, social, and cultural rights. These hypotheses are summarized below:

H_4: Cases involving economic, social, and cultural empowerment rights are more likely to receive IACHR orders to reform domestic laws compared to civil and political rights (empowerment) cases and physical integrity rights.

[179] CAT has been ratified by Argentina (1986), Bolivia (1999), Chile (1988), Colombia (1987), Costa Rica (1993), Dominican Republic (2012), Ecuador (1988), El Salvador (1996), Guatemala (1990), Honduras (1996), Mexico (1986), Nicaragua (2005), Panama (1987), Paraguay (1990), Peru (1988), Uruguay (1986), and Venezuela (1991).

[180] The Covenant on Civil and Political Rights has been ratified by Argentina (1986), Bolivia (1982), Chile (1972), Colombia (1969), Costa Rica (1968), Dominican Republic (1978), Ecuador (1969), El Salvador (1979), Guatemala (1992), Honduras (1997), Mexico (1981), Nicaragua (1980), Panama (1977), Paraguay (1992), Peru (1978), Uruguay (1970), and Venezuela (1978).

H_5: Cases involving to physical integrity rights are more likely to receive IACHR order to reform domestic laws compared civil and political empowerment rights cases.

H_6: Cases involving both economic, social, and cultural empowerment rights and civil and political empowerment rights are more likely to receive IACHR orders to reform domestic laws compared to either category alone.

Methodology

In order to evaluate these hypotheses, I use a series of logit models predicting the likelihood of the IACHR issuing a reparation requiring domestic legal reform for a particular case.[181] Before splitting the data into its rights subcategories, however, I run a series of simple logit models predicting the likelihood of IACHR issuing reform reparation based solely on the three main categories of right: PIR, empowerment, and both. I do this partially maintain the integrity of the data and analytical results since the subcategorized data can become unwieldy—as portrayed in in Table 4.4.

The table reveals that the numbers of observations drops noticeably when isolating by type of rights, which is due to the fact that the majority of the cases share issues. There are 42 cases dealing with only PIR; 29 cases dealing with empowerment rights only (not distinguishing between civil and political rights, economic, social, and cultural rights, and neither); 37 cases dealing with both PIR and empowerment rights, broadly speaking; and 6 cases dealing with neither PIR nor empowerment rights. Within

[181] Probit models provide the same substantive results, but Hausman tests suggest logit specificantions are appropriate.

Table 4.4: Categorization of Case by Type of Rights

Type of Rights	**Number of Cases**
PIR only	42
Empowerment only	29
Both PIR and Empowerment	37
Both PIR and Empowerment, *Civil/Political* only	17
Both PIR and Empowerment, *Eco/Soc/Cult* only	4
Bot PIR and Empowerment, both *Civil/Political* and *Eco/Soc/Cult*	5
Both PIR and Empowerment, neither	16
Empowerment only, *Civil/Political* only	3
Empowerment only, *Eco/Soc/Cult* only	7
Empowerment only, both *Civil/Political* and *Eco/Soc/Cult*	9
Empowerment only, neither	19
None of the above (Other)	6

the empowerment (only) rights category, civil and political rights (*Civil/Political)* make up 3 cases, economic, social, and cultural rights make up 7 cases (*Eco/Soc/Cult*). There are 9 empowerment right cases that deal with both civil and political rights and economic, social, and cultural rights. Within the both PIR and empowerment right category, 17 cases deal only with civil and political rights; 4 cases deal only with economic, social, and cultural rights; 5 cases deal with both; and 16 cases deal with neither.

Hence, because of the number of categories and the drop in case observations, I first run a series of logit models using only PIR, empowerment, and 'both' categories. I also include the variables *Previous Overall Compliance* in the first model*,* which is a binary variable that represents whether the state has fully or partially complied with a previous reform order (prior to the date of the IACHR judgment). Hence, cases with states that have fully or partially complied in the past are coded as '1' and '0'

otherwise.[182] Similarly, I include the variable *Previous Full Compliance* in the second model, which is a binary variable that represents whether the state has fully complied with a previous reform order (prior to the date of the IACHR judgment). Hence, cases with states that have fully complied in the past are coded as '1' and '0' otherwise. I also include *Length of Time Since Jurisdiction Grant,* which is calculated by the number of years since the state granted compulsory jurisdiction to the case judgment. In other words, this variable is the difference in case judgment and jurisdiction granting years in order to capture the amount of time a state has recognized Court authority and legitimacy (***H₂***).[183] Finally, I include an interaction term *Jurisdiction Grant*Previous Overall Comply Interaction* consisting of the interaction between *Length of Time Since Jurisdiction Grant* and a state's history of compliance (*Previous Overall Compliance* and *Previous Full Compliance*, respectively). These variables are designed to evaluate ***H₁*** - ***H₃*** where the IACHR may be strategic in issuing legal reform reparations. The results are presented in Table 4.5.

Results

Unfortunately, the coefficients presented above in Table 4.5 are not directly interpretable, so I calculate the marginal effects and predicted probabilities. PIR cases with an average tradition recognizing the Court (i.e. mean number of years since the state

[182] Cases where the year is shared are coded as 0. For example, if the first case of compliance if fulfilled in 2003, and another case's judgment occurs in 2003, the second case is coded as 0 since the Court may or may not know of the state's compliance prior to their decision of ordered a reform reparation.

[183] The mean length of time since granting the IACHR jurisdiction is 19.132 years, with a minimum of 6 year and maximum of 30 years.

Table 4.5: Logit Models Predicting Requirement of Legal Reform

	Baseline Category: PIR	Baseline Category: PIR
Empowerment Rights (only)	-.770† (.467)	-.799† (.469)
Both PIR and Empowerment Rights	-1.059* (.515)	-1.083* (.512)
Previous Overall Compliance	4.920* (2.409)	--
Previous Full Compliance	--	4.729* (2.433)
Length of Time Since Jurisdiction Grant	-.059 (.049)	-.065 (.049)
Jurisdiction Grant*Previous Overall Comply Interaction	-.206* (.107)	--
Jurisdiction Grant*Previous Full Comply Interaction	--	-.192† (.108)
Constant	1.301 (.973)	1.401 (.970)
N	114	114
Prob > X^2	0.021	0.0187
Pseudo R^2	0.108	0.109
Log pseudo-likelihood	-69.707	-69.674
Correctly Predicted	62.28%	64.04%

† p < .10 * p < .05 ** p < .01 *** p < .001

Dependent variable is the likelihood of the IACHR to require a state to reform its domestic law as reparations depending on whether the case deals primarily with physical integrity rights or empowerment rights. Standard errors are clustered by country-year (listed in parentheses). Similar results are reflected in probit specifications, but Hausman tests suggest that logit models are more appropriate. Additionally, the country itself does not significantly predict the likelihood of IACHR requirements to reform domestic laws, and whether the state complied last year does not alter the results nor significantly influences the likelihood of reparation issue.

granted compulsory jurisdiction) and without a history of overall compliance[184] have a likelihood of receiving a reform reparation of 19.39%. A PIR case with an average

[184] Previous compliance pertains only to previous compliance to a specific legal reform reparation in the past. It does not include compliance to other types of reparations or general compliance. I hope to examine these influences in future work.

tradition of IACHR recognition and a history of overall compliance has a likelihood of 97.06%.

Turning to the interaction term, for every additional year since the state recognized the Court's authority and also has a history of compliance, there is a corresponding decrease of 5.06% in the likelihood of receiving a reform reparation.

Empowerment rights cases with an average tradition of recognition of Court jurisdiction and no history of overall compliance have a likelihood of 10.02% in receiving such reparation. Empowerment rights cases with an average tradition of recognition of Court jurisdiction and have history of overall compliance have a likelihood of 93.85% in receiving such reparation.

Cases dealing with both PIR and empowerment right issues with a mean tradition of recognizing the IACHR's jurisdiction and no history of overall compliance have a likelihood of 7.70% in receiving this type of reparation. The same cases with both types of rights, an average tradition of recognition, and a history of overall compliance have a likelihood of 91.95%.

Turning to the second model, which is identical except that it measures previous full compliance (and its respective interaction) rather than overall compliance, we see similar results.

PIR cases with an average tradition recognizing the Court and without a history of full compliance have a likelihood of receiving a reform reparation of 22.17%. A PIR case with an average tradition of IACHR recognition and a history of overall compliance has a likelihood of 96.99%.

With regard to the interaction term, for every additional year since the state recognized the Court's authority and also has a history of full compliance, there is a corresponding decrease of 4.70% in the likelihood of receiving a reform reparation.

Empowerment rights cases with an average tradition of recognition of Court jurisdiction and no history of full compliance have a likelihood of 11.36% in receiving such reparation. Empowerment rights cases with an average tradition of recognition of Court jurisdiction and have history of full compliance have a likelihood of 93.55% in receiving such reparation.

Cases dealing with both PIR and empowerment right issues with a mean tradition of recognizing the IACHR's jurisdiction[185] and no history of full compliance have a likelihood of 8.79% in receiving this type of reparation. The same cases with both types of rights, an average tradition of recognition, and a history of full compliance have a likelihood of 91.60%.

Discussion

These models presented in Table 4.5 reveal the large effect of previous compliance—whether partial or full—on the likelihood of receiving a reparation requiring domestic legal reform. The presence of overall compliance in any previous case increases the likelihood of a PIR case to receive this reparation from 19.39% to 97.06%. The presence of full compliance in any previous case similarly increases the likelihood of a PIR cases to receive a reform order from 22.17% to 96.99%. A similar pattern exists for empowerment rights where overall compliance shifts the likelihood from 10.02% to 93.85%, and for cases with both rights types where overall compliance increases the

[185] The mean length of time since granting jurisdiction is 19.132 years.

likelihood from 7.70% to 91.95%. In terms of the presence of a history of full compliance, empowerment right cases experience an increase from 11.36% to 93.55%, and cases with both PIR and empowerment rights experience a shift from 8.79% to 91.60%. These are large changes to the probability of receiving an order from the IACHR to reform domestic laws. These significant (both substantively and statistically) effects confirm $\boldsymbol{H_1}$ and suggest that the IACHR is indeed strategic in that it issues this type of reparation more frequently when a state has complied to a similar order in the past.

These models further suggest that states with longer histories of recognizing the Court's compulsory jurisdiction to contentious cases do not have a higher likelihood of receiving a reparation for reform ($\boldsymbol{H_2}$). Hence, these results reject $\boldsymbol{H_2}$. However, this history of recognizing Court authority when combined with a history of compliance does significantly affect the likelihood of receiving a reform reparation. However, this influence is negative (thereby rejecting $\boldsymbol{H_3}$). States with longer histories of recognizing Court authority in contentious cases and a history of compliance are less likely to receive a reform reparation. I suspect that this negative influence is due to changes in domestic attitudes towards the Court over time. For example, a regime that acknowledges Court authority in 1988 may not be the same regime with the same attitudes and domestic pressures in 2013. Hence the regime in power at the time of granting compulsory jurisdiction may not the same regime at the time of the case or at the time of compliance. Figures 4.13 and 4.14 depict the relationship between the tradition or history of acknowledging the Court's compulsory jurisdiction (Figure 4.13) and its interaction with previous compliance (Figure 4.14).

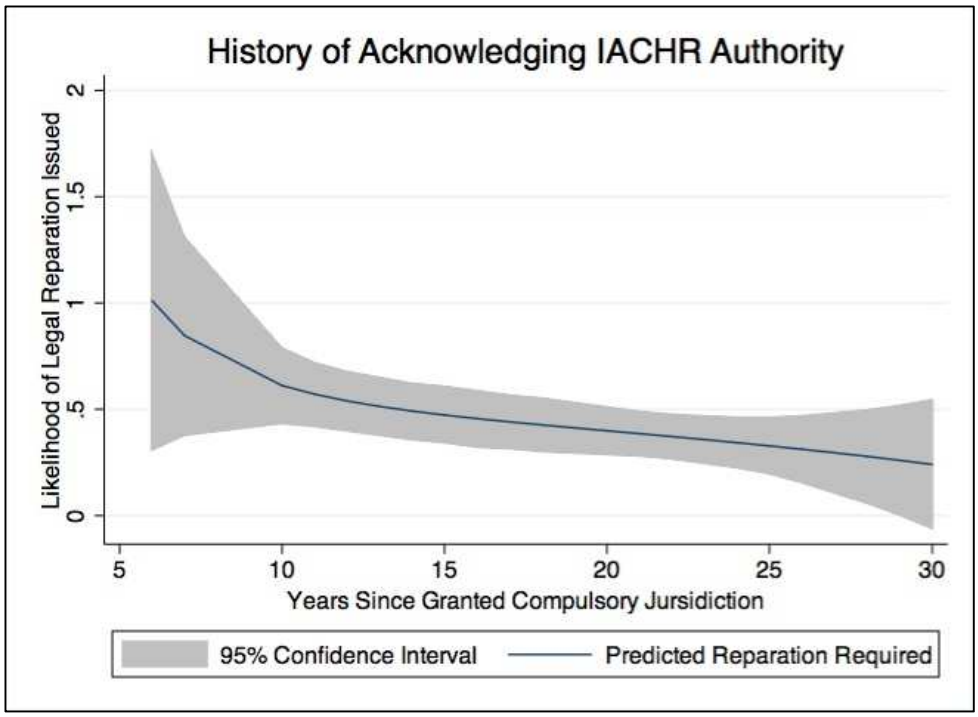

Figure 4.13: Influence of History of Acknowledging IACHR on Reform Reparation Issuance

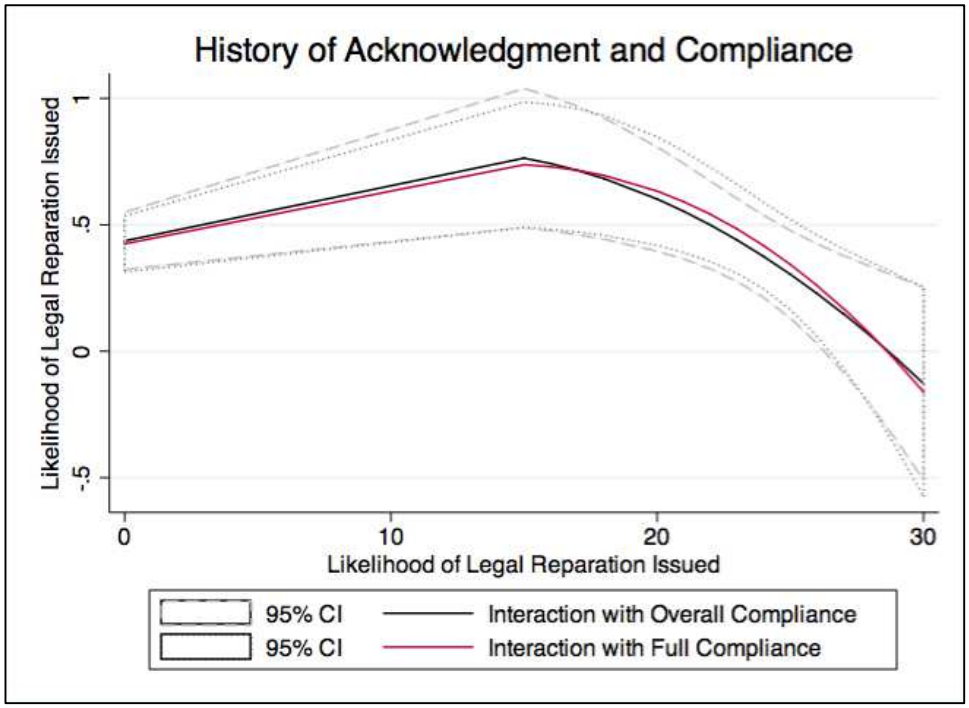

Figure 4.14: Influence of Interaction between History of Acknowledging IACHR and Previous Compliance

The above figures show the relationships between a states' history of acknowledging the IACHR through its granting of compulsory jurisdiction in contentious cases (and its interaction with previous compliance) on the likelihood of the IACHR issuing a reform reparation. Figure 4.13 corroborates the models presented in Table 4.5 where while the length of time since the grant has a slightly negative slope, it does not influence the likelihood of receiving a reform reparation. On the other hand, once it interacts with a history of previous compliance—whether full or partial—it negatively influences the likelihood of receiving such a reparation. This graph adds, however, that this effect only occurs roughly after the 15-year mark. Hence, the negative effect only occurs when there is a substantial amount of time between granting of jurisdiction and the case (and previous compliance). This further implies that my speculation of regime change and attitude change over this significant amount of time may occur and thus drive these results. Future work is necessary, however, to evaluate this conjecture.

Finally, these models further suggests that the empowerment rights are slightly less likely to receive such reparations (albeit at a .10 threshold level) while cases dealing with both PIR and empowerment rights are significantly less likely to receive the same type of reparation, regardless of the history of compliance. While these results do not directly test H_3 and H_4, they reject the intuition that empowerment right violations may be more easily solved through amending or creating laws rather than PIR where the violations are often due to not the lack of law but the executive ignoring existing law.

As it turns out, many of the empowerment rights cases deal with laws that already exist. The violations thus occur because these existing laws are not adequately implemented or enforced to certain persons or situations. For example, states often have

adequate pension and salary laws but these laws were not appropriated applied to group of people (*Abrill Alosilla et al. v. Peru*[186] and *Acevedo Buendía et al. v. Peru*[187]). Physical integrity rights cases, on the other hand, require legal reform often because the IACHR finds that states need to modify their criminal laws in order to eliminate amnesty laws (for example, *Almonacid Arellano v. Chile*, *Barrios Altos v. Peru*, and *La Cantuta et al. v. Peru*), eliminate mandatory sentencing of the death penalty (for example, *Raxcacó Reyes et al. v. Guatemala*), amend laws to open political participation (for example, *Castañeda Gutman v. Mexico* and *Yatama v. Nicaragua*), amend laws to expand property rights (for example, *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, *Sawhoyamaxa Indigenous Community v. Paraguay*, and *Yakye Axa Indigenous Community v. Paraguay*), amend freedom of expression and defamation laws (for example, *Caso "La Última Tentación de Cristo" v. Chile* and *Palamara Iribarne v. Chile*), and establish laws the limit or criminalize arbitrary, prolonged detention and eliminate beatings/torture and forced disappearances (for example, *Bulacio v. Argentina*, *Blanco-Romero et al. v.*

[186] *Abrill Alosilla et al. v. Peru* centers on a violation of the right to judicial protection to the detriment of 233 members of the Union of Lima Water and Sewer Service Functionaries, Professionals, and Technicians. Between 1991 and 1992, the State passed laws eliminating the existing salary scale system. Despite the constitution's guarantee that these laws would not be applied retroactively, Peru applied the laws retroactively and failed to provide an effective domestic remedy for this constitutional violation.

[187] *Acevedo Buendía et al. v. Peru* a law from 1979 allowed persons who retired from the Office of the Comptroller General to collect a pension equal to the salary of an employee performing the same or similar function to the one he or she performed at the time of his or her retirement. This law was replaced in 1992 by a new law that eliminated the right of a pensioner to continue receiving the amount received under the old law. Two hundred seventy-three members of the Association of Discharged or Retired Employees of the Comptroller General of the Republic brought suit to collect pension benefits that were owed to them under the old law.

Venezuela, *Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, *Radilla Pacheco v. Mexico*, and *Fermín Ramírez v. Guatemala*). [188]

With this in mind, I now turn to evaluating H_4 and H_4 asserting that cases involving economic, social, and cultural empowerment rights are most likely to receive IACHR orders to reform domestic laws, followed by PIR cases, and finally civil and political rights (empowerment) cases. Hence, these hypotheses suggest that civil and political rights cases are the most developed (as indicated by treaty ratification) and therefore are the least likely to require reform reparation orders. Similarly, I predict that PIR laws are somewhat developed (as indicated by the relatively recent ratification of CAT by states) and therefore need more reform than civil political rights—which is the most developed of the three areas (per the early and unanimous Covenant ratification)—but less reform than economic, social, and cultural rights cases. Furthermore, I suspect that cases dealing with both economic, social, and cultural rights and civil and political rights are the most likely to receive reform orders than either category alone. These prediction are again summarized below:

H_4: Cases involving economic, social, and cultural empowerment rights are more likely to receive IACHR orders to reform domestic laws compared to civil and political rights (empowerment) cases and physical integrity rights.

[188] However, these results are less surprising if one considers that the need for legal reform may depend less on the type of rights and more the existing state of the law within each country. As noted previously, Peru and Guatemala have the most cases requiring legal reform in both PIR and empowerment rights cases. Hence, the need for legal reform is likely driven by country factors rather than case factors.

H_5: Cases involving to physical integrity rights are more likely to receive IACHR order to reform domestic laws compared civil and political empowerment rights cases.

H_6: Cases involving both economic, social, and cultural empowerment rights and civil and political empowerment rights are more likely to receive IACHR orders to reform domestic laws compared to either category alone.

In order to evaluate these hypotheses, I use a series of dummies to distinguish between PIR (*PIR*), civil and political empowerment right (*Civil/Political*), and economic, social, and cultural empowerment right cases (*Economic/Social/Cultural*). In order to preserve the degrees of freedom, I do not include the variables from the previous model (presented in Table 4.5). I am interested primarily in whether the issue area predicts a reparation ordering domestic legal reform. However, when one runs a full model with issue area subcategories as well as history of compliance and tradition of recognizing Court authority, none of the issue area subcategory variables are significant, and the results are virtually identical to those presented in Table 4.5.[189] For simplicity, I drop the 6 observations that are neither PIR nor empowerment rights; these cases dealt with solely 'other' category rights that do not fit in either category.

[189] The only exception is that cases dealing with economic, social, and cultural rights and where the state has a history of full compliance, the issue are has a significance of .073.

Table 4.6: Logit Predicting Requirement of Legal Reform

	Baseline Category: PIR (neither)
Empowerment Rights (neither)	-1.135 (.696)
Both PIR and Empowerment Rights (neither)	-.847 (.667)
Both PIR and *Civil/Political*	-.316 (.780)
Both PIR and *Eco/Soc/Cult*	.560 (1.046)
Bot PIR and both *Civil/Political* and *Eco/Soc/Cult*	-.827 (1.301)
Civil/Political only	omitted
Eco/Soc/Cult only	1.764† (1.048)
Both *Civil/Political* and *Eco/Soc/Cult*	-.405 (1.040)
Constant	.288 (.343)
N	105
Prob > X^2	0.181
Pseudo R^2	0.076
Log pseudo-likelihood	-66.529
Correctly Predicted	64.76%

† p < .10 * p < .05 ** p < .01 *** p < .001

Dependent variable is the likelihood of the IACHR to require a state to reform its domestic law as reparations. Standard errors are clustered by country-year (listed in parentheses). Similar results are reflected in probit specifications, but Hausman tests suggest that logit models are more appropriate. Note that the 'Empowerment Rights' (first row) refers to the neither category where neither subcategory of rights is included. Similarly, 'Both PIR and Empowerment Rights' category (second row) consists of neither subcategory. '*Civil/Political* only' consists of only 3 observations and was dropped.

Results

These results suggest that the type of rights, once divided into subcategories, does not exert much influence in the IACHR's decision to render a reparation for domestic legal reform. The only types of rights that seem to exert any influence are economic, social, and political rights (without additional PIR involved) and even this influence is only at the .10 threshold. These results suggest that these types of rights are more likely to receive a reparation ordering legal reform, consistent with my hypothesis (***H₄***).

However, the remaining rights do not seem to influence the IACHR decision for reparation (thereby rejecting $\boldsymbol{H_5}$ and $\boldsymbol{H_6}$).

4.2 Predictors of State Compliance to IACHR

While the earlier descriptive statistics describes state compliance to the IACHR, they do not reveal why or when states decide to partially or fully comply with the court's decisions. It is also unclear from the data whether the compliance is primarily determined by case level factors, such as the nature of the case or type of rights litigated, or state level factors, like the level of difficulty to change laws or its level of respect for the rule of law. This section explores these possibilities.

Case Level Predictors of Compliance

Compliance to reparation orders may similarly depend upon the variation across cases. The majority of variation across cases again consists of the type of right—specifically, whether the case deals primarily with physical integrity rights or empowerment rights—and the severity of the crime or likelihood of media attention at the domestic and/or international level.

While empowerment rights and cases dealing with both PIR and empowerment rights are less likely to receive reform order from the IACHR, these empowerment rights cases may similarly influence compliance when such orders are received. Compared to PIR, empowerment rights cases may demand more difficult changes in legislation, particularly due to the level of complexity in drafting or amending the law. Empowerment rights laws may be more difficult to draft since the guarantee of rights

often depends upon individual situations and contexts and cultural norms. For example, laws protecting the pension pay for employees is likely more complicated to draft and pass relative to PIR laws criminalizing torture, forced disappearances, and arbitrary detention (especially since international law most simply states not to engage in these activities). Similarly, empowerment laws regarding the property and contract rights of indigenous populations may have a more difficult time getting passed if there are cultural norms that dictate the inferiority of these group and institutionalized political disenfranchisement. Furthermore, all of the states included in this study have ratified CAT (albeit some only relatively recently) but only some of the empowerment right covenants and conventions, which may imply both the degree of development of these types of laws domestically and state attitudes supporting these rights (at least in principle). Therefore, one might expect that IACHR decisions that require domestic legal reform for empowerment rights cases are less likely to be complied with compared to PIR cases simply due to the fact that these laws are, in general, likely to be more difficult to draft, pass, and implement. This leads to my first hypothesis predicting state compliance to IACHR reform orders:

H_1: Regional court decisions requiring domestic legal reform for empowerment rights cases are less likely to lead to compliance relative to physical integrity rights cases.

Additionally, the degree to which there is likely domestic or international attention to the individual cases may influence the likelihood of compliance. The more domestic and/or international audiences are likely aware of the case, the more pressure

the state will experience to comply. Furthermore, the more attention a case garners, the more likely people, organizations, and parties will mobilize to initiate or contribute to a shaming campaign. In short, the more attention a case garners, the higher the costs for noncompliance. Unfortunately, such data with comparable measures of domestic and international attention for these countries and time period do not currently exist to my knowledge. In terms of measuring international attention, Amnesty International annual reports are based upon rights violations and list all countries every year; these reports do not engage with cases at regional courts or compliance with those court decisions. The compliance records for IACHR decisions are obviously available online, however I suspect that few members of the international community beyond the IACHR itself (and a handful of academics) keep up to date with these records. In terms of domestic attention, newspaper and news reports on the IACHR case would be ideal. However, this data is not currently available, especially across states and time.

Due to these data limitations, I proxy likely domestic and international (media) attention using a crude proxy for each case. To capture the likelihood of domestic attention, I create an ordinal scale ranging from 0 to 2, where higher categories reflect greater likelihood of (prolonged) domestic attention. This measure is extremely crude and relatively subjective, but is informed by the nature of the case, the type of violation(s), the identity of the victim(s), and the identity of the perpetrator(s). For example, a case that deals with prominent political candidates or a conflict between the judicial and executive branches would be coded as '2' in order to distinguish it from cases that deal with the disappearance of a single non-prominent citizen (which would be coded as

'0').[190] Similarly, massacres and mass murders are coded as '2;' the abduction, torture, and/or murder of children and minors are coded as '2;' and murders of prominent, well known individuals are coded as '2.' A coding of 1 typically consists of violations perpetrated by paramilitary or police and the murder of an individual indigenous leader or activist. Codes of '0' most frequently consist of forced disappearances, torture, or murder of individuals who are not prominent individuals in society and cases dealing with pension or salary issues. Hence, these codes, while crude, are designed to capture the likelihood that the domestic population is 1) aware of the violation, 2) aware that the case has been before the IACHR, and 3) aware of any remedial legal changes. (I assume that if the state complies with the IACHR, the state and media will make that information known—and since compliance is legal reform such changes in the law are likely to receive media attention.) This measure inherently assumes a strong correlation between the severity of the violations and the prominence of victims and/or perpetrators in likely media attention. In other words, cases with the most abhorrent or shocking violations and cases dealing with nationally recognizable and popular people are the most likely to receive domestic media attention.[191] The data consists of 32 cases that are categorized as 2 (28.6%), 37 cases categorized as 1 (33.0%), and 43 cases categorized as 0 (38.4% of data).

[190] The category of 0 does not indicate the nonexistence of attention to the case but serves rather as a baseline. Hence, this coding scheme does not seek to trivialize cases or violation, but rather serves only to distinguish cases based upon the perceived likelihood of (prolonged) media attention.

[191] I also assume that these cases are the most likely to have prolonged attention. However, this measure may overestimate the effects because the violations before the IACHR case are sometimes decades old. However, while the cycle of media attention has likely dropped the case itself across this period of time, I believe it remains plausible that there exists a national memory of these most severe/shocking/prominent cases that will be tapped into once the case receives judgment. For example, in the United States, Guantanamo Bay issues dropped out of national medial discourse until recently when it was triggered by Obama's exchange of five Taliban prisoners for an America soldier in 2014.

Similarly, to capture the likelihood of international (media) attention, I create a dichotomous variable (0 or 1), where '1' reflects greater likelihood of international attention. This measure is again crude and is informed by the severity of the violation(s), the identity of the victim(s), and the identity of the perpetrator(s). For example, a case that deals with victims who are foreign nationals (like a U.S. citizen) would be categorized as '1.' Massacres, mass murders, and (alleged) terrorist activities/groups are categorized as '1,' and mass abductions of children at a national scale are categorized as '1.' All other cases are coded as '0.' Hence, this crude proxy is designed to capture the likelihood that the international media/audience is aware of the violation and aware of the need for remedial legal changes. Again, this measure inherently assumes a strong correlation between the severity of the violations and the international or bilateral prominence of victims and/or perpetrators in likely media attention. The data consists of 16 cases that are categorized as 1 (14.3%), and 96 cases categorized as 0 (85.7% of data).[192]

To reiterate, these two variables are designed to capture the likelihood of domestic and international attention to an individual case. Such attention may pressure a state to comply by increasing the normative costs for noncompliance while cases that are ignored by domestic and international audiences retain very few costs for noncompliance.[193] I also include an interaction term combining domestic and international attention variables to capture overall attention.

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[192] This measure may overestimate the effects of international media attention due to the fluctuation and shorter international media cycle. It is likely, in my opinion, that international news experiences a much shorter cycle compared to domestic news cycles in that it takes less time for a story to fall out of international news relative to domestic news where the audience is more directly involved and effected.

[193] While I do not predict that pressure differs across the types of rights per se, these attention variables are partially correlated and informed by the type of rights (PIR or empowerment rights). The likelihood of

H_2: The greater the likelihood of domestic or international attention, the greater the likelihood of compliance, regardless of type of rights.

H_3: The greater the likelihood of combined domestic and international attention, the greater the likelihood of compliance, regardless of type of rights.

I also include a state's history of compliance where states that have previously fully or partially complied with a legal reform reparation order are more likely to comply with a similar order in a given case. I measure this using a series of binary measures. First, I include *Previous Overall Compliance* and *Previous Full Compliance* for each case where a '1' denotes that at the time of the reparation judgment the state had fully or partially complied to a legal reform order (and '0' otherwise). Similarly, I include the variable *Complied Last Year* to denote that a full or partial compliance occurred the year before for any case(s) (and '0' otherwise). I predict that any previous compliance increases the likelihood of compliance in a given case, summarized below:

H_4: States that have a history of (ever) fully or partially complied and states that have fully or partially complied in the last year are more likely to comply with a given case compared to states that do not have this history and states that have not recently complied, respectively.

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attention—especially with an international audience—is more likely for physical integrity rights as they are more obviously unjust, shocking, and make for 'better' news and motivations to mobilize compared to empowerment rights which vary across cultures contexts. However, it is important to note that the type of right does not directly determine the coding for either domestic or international attention variables.

Along similar lines, the length of time since a state granted the IACHR compulsory jurisdiction may influence the likelihood of compliance (*Length of Time Since Jurisdiction Grant*). This measure is designed to proxy the establishment of a norm of compliance or credence to IACHR decisions. The longer a state has granted jurisdiction, the longer a norm of credence to and legitimacy of the IACHR may exist within the state. If this is the case, the longer the amount of time the state has recognized IACHR jurisdiction then the more established norms of compliance should be. However, I suspect a curvilinear relationship between this history and the likelihood of compliance because while states with longer histories of recognizing the Court and its compulsory jurisdiction in contentious cases are more likely to have established norms respecting IACHR authority, such long histories increase the chances that any norms of legitimacy established through the granting of jurisdiction could erode over time and/or the regime is no longer the same one that granted jurisdiction. (For example, the attitudes of the state toward the IACHR in 1985 may no longer reflect state attitudes and the likelihood of compliance in 2015.) Hence, I predict a concave curvilinear relationship where at some point the amount of time since the granting of jurisdiction no longer influences the likelihood or negatively influences it. I also include an interaction term between the length of time since the grant and *Complied Last Year* to identify states with longer histories and recent compliance, suggesting more established norms for respecting Court authority. This interaction term, *Jurisdiction Grant*Complied Last Year Interaction*, should have a positive linear relationship with compliance. These hypotheses are summarized below:

H_5: States with a longer history of recognizing the Court's compulsory jurisdiction on contentious cases are more likely to comply with legal reform reparations in a given case up to a point, where beyond this point the history no longer influences or negatively influences the likelihood of compliance.

H_6: States with a longer history of recognizing the Court's compulsory jurisdiction on contentious cases and have complied in the previous year are more likely to comply in a given case.

Lastly, I control for the length of time, in years, between the judgment issuing the reparation for legal reform and the event of compliance. This variable is creatively named *Length of Time Since Judgment*. The average time since the reparation order is 5.482 years, with a minimum of 1 year and maximum of 17 years. This includes cases that have not yet complied (where the difference is from 2015 to the judgment). I include this variable mostly to control for the fact that compliance may simply be a function of time.

Since the dependent variable of compliance is dichotomous, where '1' denotes compliance and '0' denotes noncompliance, I run a series of logit models.[194] The first model predicts overall compliance, which consists of full and partial compliance; the second model predicts full compliance only. Table 4.7 depicts the results of these models with physical integrity rights cases (with no media attention) as the baseline.

[194] Similar substantive results emerge with probit and rare events logit models, but Hausman tests suggest that logit model specifications are most appropriate.

Table 4.7: Case-Level Logit Models Predicting Compliance to IACHR

	Model 1: Overall Compliance	Model 2: Overall Compliance	Model 3: Full Compliance	Model 4: Full Compliance
Empowerment Rights (only)	-1.004 (.625)	-.954 (.627)	-.837 (.949)	-.744 (.946)
Both PIR and Empowerment Rights	-1.470* (.665)	-1.455* (.673)	-.340 (.746)	-.313 (.772)
Domestic Media Attention	.407 (.355)	.384 (.353)	.610 (.395)	.558 (.387)
International Media Attention	3.436 (4.632)	3.692 (4.190)	6.288 (4.663)	6.666 (4.221)
Domestic*International Attention	-1.519 (2.467)	-1.669 (2.253)	-3.180 (2.403)	-3.392 (2.197)
Previous Overall Compliance	2.613 (3.047)	1.533 (2.634)	--	--
Previous Full Compliance	--	--	5.358 (3.715)	4.058 (3.230)
Complied Last Year (Overall)	.608 (.703)	.560 (.704)	--	--
Complied Last Year (Full)	--	--	.225 (1.048)	.189 (1.077)
Length of Time Since Jurisdiction Grant	-.391 (.274)	-.168** (.062)	-.453 (.374)	-.131 (.082)
Length of Time Since Jurisdiction Grant^2	.007 (.008)	--	.010 (.011)	--
Jurisdiction*Complied Last Year (Overall)	-.126 (.143)	-.073 (.123)	--	--
Jurisdiction*Complied Last Year (Full)	--	--	-.286 (.188)	-.226 (.166)
Length of Time Since Judgment	-.188* (.080)	-.191* (.079)	-.134 (.087)	-.138 (.086)
Constant	5.028* (2.430)	3.354** (1.309)	3.293 (3.073)	.925 (1.533)
N	112	112	112	112
Prob > X^2	0.013	0.010	0.238	0.243
Pseudo R^2	0.216	0.213	0.188	0.181
Log pseudo-likelihood	-54.506	-54.714	-37.305	-37.603
Correctly Predicted	72.32%	70.54%	85.71%	85.71%

† p < .10 * p < .05 ** p < .01 *** p < .001

Dependent variable is the likelihood of compliance to IACHR judgment requiring domestic legal reform. Standard errors are clustered by country-year (listed in parentheses). Similar substantive results occur for probit models, however Hausman tests suggest that logit specifications are appropriate. The final column represents a rare events logit, since there are 16 full compliance observations out of 114 observations total

(whereas overall compliance consists of 36 observations); it provides the same results relative to logit specifications.

Results

The results presented in Table 4.7 reveal several things. First, the expected curvilinear relationship between the length of time a state has granted the IACHR compulsory jurisdiction on contentious cases (until the case judgment) and the likelihood of compliance is rejected by Model 1 predicting overall compliance (in the first, left-most column). Hence, these results reject $\boldsymbol{H_5}$ in the fact that the relationship is not curvilinear.

Model 2 (in the second column from the left) predicting overall compliance reports the same model but without the squared term. The only significant predictors for state compliance in a given case is if the case deals with both PIR and empowerment rights, the length of time since jurisdiction grant, and the time since judgment. Cases dealing with both PIR and empowerment rights are less likely to be complied with relative to PIR rights, lending partial support for $\boldsymbol{H_1}$ which predicts that empowerment rights cases are less likely to lead to domestic legal reform. However, cases dealing with only empowerment rights cases are not significantly different from PIR in terms of the likelihood of compliance—which does not fully support $\boldsymbol{H_1}$. Holding all values at their mean, the predicted probability of compliance to a case dealing with both PIR and empowerment rights is 13.87% whereas the predicting compliance for a PIR case is 40.83%.

States with a longer history of recognizing the Court's compulsory jurisdiction on contentious cases are *less* likely to comply with legal reform reparations in a given case—which essentially rejects my expectations in $\boldsymbol{H_5}$. While I expected a curvilinear

relationship where the length of time increased the likelihood of compliance and then negatively influenced it, these results show that the length of time has a linear negative relationship. More specifically, the marginal effects indicate that for every additional year since the original granting of compulsory jurisdiction, there is a corresponding 3.15% decrease in the likelihood of compliance.

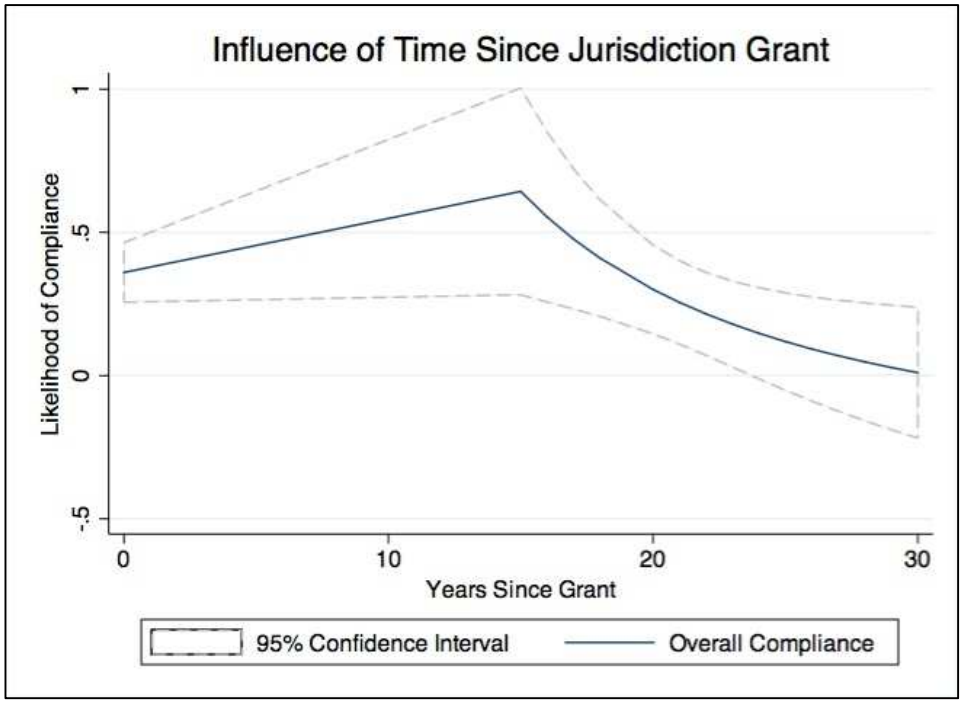

Figure 4.15: Influence of the Time Since Jurisdiction Grant on Compliance

Figure 4.15, above, reveals that there is no significant influence until around the 15 year mark, after which the length of time decreases the likelihood of compliance. These results suggest that state attitudes toward the court at the time of the grant likely erode over time—or become less relevant—and/or that the regime has shifted during this

timespan. Since this is speculation, however, future work is necessary to determine the causes for this decline.

The significance of the time since judgment implies that compliance is also a function of time. The marginal effects indicate that, holding all other values at their means, for every additional year since the judgment of reparations was issued there is a corresponding decrease of 3.75% in the likelihood of compliance. This result is unsurprising in that IACHR cases and judgments become irrelevant over time since whatever pressure to comply, whether domestic or international, wanes over time.

Domestic and international media attention (proxies) do not significantly influence the likelihood of compliance, thereby rejecting $\boldsymbol{H_2}$ and $\boldsymbol{H_3}$. Nor does a history of full or partial compliance—even in the last year. Hence previous compliant behavior does significantly predict future compliance, thus rejecting $\boldsymbol{H_4}$. $\boldsymbol{H_6}$, predicting that states with a longer history of recognizing the Court's compulsory jurisdiction on contentious cases *and* have complied in the previous year are more likely to comply, is similarly rejected.

Turning now to the models predicting full compliance, not only is the relationship between the history recognizing IACHR jurisdiction not curvilinear (as shown in Model 3), but none of the variables reach statistical significance. Hence, none appear to significantly influence the likelihood of full compliance, thereby rejecting $\boldsymbol{H_1}$**-** $\boldsymbol{H_6}$.

Country Level Predictors

The previous models evaluate the degree to which case-level factors influence the likelihood of compliance. However, they do not take into account state-level variables that may predict compliance. Hence, in order to determine the degree to which state

characteristics influence the likelihood of compliance with an IACHR judgment, I transform the case-level data into country-year data.

I include a measure of human rights INGOs with permanent locations within the state since the higher numbers of these organizations represent the increased likelihood of domestic pressure to comply and increased likelihood of the demand for international attention or shaming. Human rights organizations are crucial in the monitoring of rights violations, the publication and dissemination of this information, the mobilization of individuals and parties on these issues, and the presence of rights on political agendas through mobilization and lobbying for legal reform (Meernik et al. 2012; Brysk 1993). Human rights organizations with permanent locations with a state (rather than INGOs will temporary volunteers) are the most likely to aware of the lack of legal changes as well as the presence of IACHR cases still pending compliance,[195] and they are the most likely to publish this information and push compliance onto the national agenda and mobilize opposition. These organizations are also crucial to the theory of international shaming where these are the organization that demand international attention in order to initiate a 'shaming' strategy and pressure the state regime domestically through mobilizing citizens and opposition groups. The presence of these organizations increases the potential costs for noncompliance. Hence I include the variable *HRO,* which measures that number of human rights INGOs, borrowed from Murdie and Davis (2012).[196]

[195] I assume that these organizations are aware of IACHR cases pending compliance because these cases typically have favorable decisions for the victims and HROs, and these decisions provide legitimation to HRO missions as well as increased relevancy of the organizations themselves (and the amount of attention on and funding for the organizations which are crucial for INGO survival).

[196] I also evaluate the models using the natural log of the number of HROs with the same substantive results.

Keep in mind, however, that I examine only compliance to IACHR order to changes domestic laws. Hence, compliance is defined by these domestic legal changes. Because I do not examine general compliance to all reparation types and do not examine human rights violations, the 'shaming' strategy initiated by international attention may not occur or severely moderated. While there is growing evidence that these international 'shaming' techniques are effective in influencing state behavior (Murdie and Davis 2012; Hafner-Burton 2008; Franklin 2008; Brysk 1993), it is unclear whether these strategies would be implemented in the event of state noncompliance to regional court decisions requiring domestic legal reform. It seem unlikely that these strategies would be implemented in this event due to the remaining respect for state sovereignty, especially legally, and the relationship between developed (Western) countries and supranational courts. The United States, for example, has a long history of upholding the supremacy of domestic laws over international laws and not accepting supranational court jurisdictions. The United States is therefore unlikely to shame another state for not altering its own laws at the request from a supranational court despite the fact it may shame states for actively engaging in rights violations. Similarly, while Western Europe is friendly to supranational court decisions and international law, the likelihood of its engaging in 'shaming' strategies is still less than it would for shaming a state to stop violating rights. In other words, the international shaming strategies are designed to lead to changes in state *behavior* but typically stops at state sovereignty lines when it comes to a state's domestic *laws*.

Hence, my inclusion of HROs is primarily designed to capture likely *domestic pressure* rather than 'shaming' strategies per se, although it does also represent the likely

domestic *demand* for international attention and 'shaming' strategy initiation.[197] Meernik et al. (2012) show that the increasing presence of human rights organizations is "critical to the elevation of states to the international human rights agenda." In this sense, I capture the opportunity for international attention in addition to domestic pressure.

H_1: The greater number of permanent HROs, the greater the likelihood of mobilization to exert pressure on the state to comply with legal reform orders, thus increasing the likelihood of compliance.

I account for the degree of entrenchment within the international human rights regime through the inclusion of the variable *Rights Entrenchment*, which measures the number of international treaties, conventions, covenants, and protocols the state has ratified, including the supplementary and optional ones.[198] This variable thus represents the total number of these treaties a state has ratified by that year. The more entrenched a state is within the international rights regime, the more social and normative pressure the state faces if it chooses not to comply with regional court judgments. Furthermore, more entrenched states have more obligations to their rights commitments than less entrenched states. Hence I predict that states that are more entrenched within the international human

[197] In other words, the presence of human rights organizations would capture the likely demand for international pressure but the international response to the demand (that is, not the degree to which or when they would receive it).

[198] This data comes from the United Nations Human Rights Database <http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx>.

rights regime are more likely to comply with IACHR reparations to reform domestic law relative to less-entrenched states.[199]

H_2: The greater a state is entrenched in the international human rights regime, the greater the likelihood of compliance with legal reform orders relative to states that are less entrenched and participate less in the international human rights regime.

I further include the level of judicial independence (*Judicial Independence*) the high court of a state enjoys, using data from Linzer and Staton (2012). States that seek to superficially comply or comply but without being held accountable under the reformed laws would be less likely to reform their domestic laws if they have independence courts since these courts will enforce them. Hence states that seek to comply but remain free from domestic accountability are unlikely to comply in the first place if they know that they will be required to follow the law by the judiciary. This is the same intuition as that for the relationship between judicial independence and treaty ratification and compliance, where states only comply with treaty obligations if domestic legal enforcement is strong but are less likely to ratify treaties, thereby adopting new constraints, if domestic legal enforcement is strong (Powell and Staton 2009). The existence of independence courts that are able and willing to keep the government in check creates *ex post* costs for the government to amend the laws in ways that constrains it in the future.[200]

[199] I sought to include IGO participation as well to better account for participation in the international system and other socialization pressures (Greenhill 2010), but this data is not available for this time frame.

[200] High level of judicial independence might also increase the likelihood of the IACHR to judge state remedies as compliant since part of their evaluation for full compliance is that they believe the violations in question will either not occur in the future or will be domestically enforced. The IACHR would have little

On the other hand however, states with higher levels of judicial independence may represent states that have a higher regard or respect for the rule of law. In this case, high level of judicial independence proxies the state' respect for the rule of law. States with high respect for the rule of law are more likely to abide by IACHR decisions. It is unclear which of these competing tensions would emerge victorious or if they would simply negate each other. As such I am agnostic about the direction of the influence of judicial independence on the likelihood of compliance.

H_3: The higher the level of judicial independence the lower the likelihood of compliance for states that seek to avoid being held accountable to the laws they would need to reform. Alternatively, the higher the level of judicial independence, the more a state may respect the rule of law and therefore be more likely to comply with an IACHR judgment.

The ease with which domestic laws and policy can be altered is also included in predicting the likelihood of compliance. States where there are few constraints or veto points in changing the law or policy are more likely to be able to comply than states where legal policy change is difficult and heavily constrained. Henisz's (2000; 2006) Political Constraint V index, which provides the data for the variable *Political*

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faith that the new laws would be effective if the state's high courts do not have a reasonable degree of judicial independence.

High levels of judicial independence also increase the chances that the high court would unilaterally alter the law or make statements referring to the IACHR judgment. For example, in *Bámaca Velásquez v. Guatemala*, the Guatemalan Supreme Court declared it "necessary to execute the nullity of the national resolution" that the IACHR "declared […] violates the universal legal principles of justice" and ordered new trial proceeding offering "an unrestricted respect of the rules of due process." It further nullified the previous verdicts by the lower courts and declared the 'self-enforceability of the Judgment issued by the Inter-America Court." In this case, the courts attempted to unilaterally comply with the IACHR rather than the executive or legislative chambers.

Constraint, which measures the extent to which a change in preferences of any one political actor may lead to a change in government policy. This measure is composed of the number of independent government branches with veto power over policy change, the extent of party alignment across government branches, and legislative fractionalization or preference heterogeneity. The higher this index of political constraints, the more difficult legal change would be. Therefore:

H_4: The higher the level of political constraints, the lower the likelihood of compliance due to the increased difficulty in successfully changing legal policy.

I further include the likelihood of mobilization and thus domestic pressure on the state by incorporating a measure of domestic political competition. I use the level of political competition, measuring the electoral success of smaller parties (parties other than the largest party) in presidential elections from Vanhanen (2000; 2005).[201] This measure ranges from zero to 100, where higher values represent more intense political competition. The more political competition, the higher the likelihood of domestic mobilization, and thus pressure to make the required legal reforms. Parties that are competing for the offices are more likely to mobilize voters if the state fails to comply with the legal reforms to expand or protect human rights. Hence the state experiences higher domestic political costs if it fails to comply because there are competing parties that will take advantage of the opportunity to mobilize voters and erode support for the existing administration. Hence, I predict that this variable has a significant and positive relationship with the likelihood of compliance. I also predict an interaction effect where

[201] I also used the number of opposition parties for similar results.

the increased combination of HROs and political competition leads to increased likelihood of compliance.

H_5: The higher the level of domestic political competition, the greater the likelihood of compliance.

H_6: As the presence of HRO and political competition combined increases, the greater the likelihood of compliance.

I also include a series of variables to capture spatial diffusion. I account for regional diffusion using a binary variable indicating if other states in the region have fully or partially complied in the previous year. I similarly include a count variable for neighbor diffusion, which consists of the numbers of cases with which a land-locked neighbor fully or partially complied in the previous year. These variables are designed to capture spatial diffusion where the likelihood of compliance increases if another state in the region or a neighbor has recently complied. Similarly, the more instances of recent compliance, the greater the likelihood of compliance.

H_7: A state's likelihood of complying with an IACHR legal reform order increases in the presence of another state within the region complying in the previous year. Similarly, as the number of neighboring states who have complied in the previous yea increases, the state's likelihood of compliance increases.

Finally, I control for regime type using Unified Democracy Scores (UDS), GDP per capita, foreign aid, and foreign direct investments. Pemstein, Meserve, and Melton (2010) provide the Unified Democracy Scores that are a composite scale of democracy using Bayesian latent variable analysis of ten extant scales.[202] This variable ranges from -2.5 to 3.5,[203] where higher values represent higher levels of democracy.[204] It is possible that more democratic regimes are more likely to comply with the IACHR and allow the political space for HROs to exist, organize, and proliferate as well as transmit information (Meernik et al. 2012).

Similarly, more developed countries may have a greater likelihood of compliance since improved economic conditions should enable the existence and proliferation of HROs as well as enable their dissemination of information through improved technology and increased access to it (Meernik et al. 2012).

Foreign aid may influence the likelihood of compliance in that it may represent external economic pressure to comply as well as increase international attention (Keck and Sikkink 1998, 6). However, Lebovic and Voeten (2009) find that governments lack the incentive to punish human rights violations bilaterally and that human rights violations have no effect on multilateral aid allocations. In deed, other scholars similarly question whether human rights practices influence foreign aid policies (see Apodaca and

[202] The UDS incorporate information from 10 measures of democracy: Arat (1991), Bowman, Lehoucq, and Mahoney (2005) (BLM), Bollen (2001), Freedom House (2007), Hadenius (1992), Przeworski et al. (2000) (PACL), Polity scores by Marshall, Jaggers, and Gurr (2006), Polyarchy scale by Coppedge and Reinicke (1991), Gasiorowski's (1996) Political Regime Change measure (PRC), and Vanhanen (2003).

[203] UDS mean estimates in this data range from .045 to 1.286, with a mean of .601.

[204] For the sake of simplicity, I incorporate the UDS posterior distribution mean estimates without any weights bases upon their corresponding measures of uncertainty.

Stohl 1999; Poe 1990); nonetheless, I include it to ensure in order to avoid the possibility of omitted variable bias.

Foreign direct investments are included because they may provide economic pressure that would induce a higher probability of compliance. Foreign investors seek to protect their investments from encroaching state governments. Hence, states must signal safe investment through their respect for the rule of law—not just through the existence of property rights but also through their respect for independent adjudication with possible unfavorable decisions that the state will comply with. If states do not comply with court decisions, then investors should have little faith that the state would respect other court decisions that rule against the state in favor of the investors. This lack of credibility in terms of maintaining protected investments would lead to foreign investors to not invest, thereby reducing FDI. These variables are derived form the Word Development Indicators.[205]

I examine these hypotheses using s series of models with a variety of dependent variables. I predict the presence or absence of compliance using logit models, the percent compliance using fixed effects models, and the event of compliance using Poisson models. I discuss each of these in the sections below.

[205] Alternative model iterations also included net fuel export, net oil export, GINI, trade (as percentage of GDP), civil unrest, political durability, years left in executive term, government fractionalization, opposition fractionalization, and ethnic fractionalization. I included conflict/war (derived from COW) however there are only three observations and so these are dropped.

Logit Models Predicting State Compliance

Since the dependent variable of compliance is dichotomous, I run a series of logit models[206] predicting overall compliance (including both partial and full compliance) and predicting full compliance. The standard errors are clustered around country-year (listed in parentheses).[207] Since one should not expect domestic legal reform compliance unless a case is pending which with to comply, I include only the years where a state has outstanding or pending cases from 1987-2015. These years are calculated from the year of judgment until all pending cases have been complied with either fully or partially. This leaves the data to include 145 country-years, although the time periods for each country differ.

I include the logit models predicting overall and full compliance for comparison as well as the rare event logit specifications for the same models. I include the rare event logit models because there are 15 observations of full compliance within this data and 32 observations of overall (full and partial) compliance. Hence events of full compliance occur for only 10% of the data while overall compliance occurs for 22% of the data.

[206] The same results emerge from probit specifications. Fixed effect logistic regressions produce similar results to the rare events logistic regressions, although it drops HROs, when predicting overall compliance. Random effects logistic regression predicting overall compliance replicates the results of the logit models, producing significant, positive results for rights entrenchment (at the threshold level of .05). Fixed effects logistic regression modeling full compliance does not converge, and the random effects logistic regression for full compliance produces no significant results, similar to the rare event logit. I present logistic regressions with clustered errors rather than their panel versions for the sake of comparison and discussion due to the lack of robust results across models in terms of the significant effects of rights entrenchment, FDI, and political competition. These are the only variables that ever achieve significance across all model specifications and functional forms.

[207] Only three observations of conflict (internal intermediate armed conflict and internationalized internal war) exist in the data, so these variables are omitted from the analyses. This lack of conflict presence is therefore not likely to predict compliance so the omission of these variables should not bias the presented results. Also tested were (latent) respect for PIR (Fariss 2014), oil and fuel exports, total trade as percent of GDP, population, the number of pending cases (both requiring reform and not), executive constraint, number of opposition parties, NGO density, IGO participation, IGOContext (Greenhill 2010), and year dummy variables—none of which resulted in significant influence nor altered the substantive results.

When binary variable events are rare in the data, logistic regression can underestimate their occurrence in the data because the mean of the binary dependent variable is the relative frequency of events in the data (King and Zeng 2001). Hence, the probability of an event is underestimated while non-event probabilities are overestimated. This bias due to rare events amplifies the bias inherent in logit coefficients for finite, small samples (such as those with under 200 observations). Rare events models are designed to correct for this bias using a weighted-least squares correction factor that adds to the probability of an event (Tomz, King, and Zeng 2003; King and Zeng 2001). In this sense, rare event models may be most appropriate for this data. However, while logit coefficients can be biased in finite samples, Bergtold, Yeager, and Featherstone (2011) show that the marginal effects estimates are relatively robust to sample size.

Hence, it is not straightforward whether the rare event or logit model specifications are most appropriate. Additionally, because the rare event models do not have scalar log-likelihoods, likelihood-ratio tests were unable to be performed to determine which model specification is most appropriate. For this reason, I present both model specifications whose results are presented in Table 4.8 below. Note also that the standard errors for the rare event models are not clustered by country-year.

Model 1 reveals that few of the predicted factors likely to influence a state's full or partial compliance to an IACHR order to reform its domestic laws actually exert any systematic influence. Only rights entrenchment, neighbor diffusion, foreign direct investment, and political competition appear to exert any significant, systematic influence on the likelihood of compliance. Because the coefficients are not directly interpretable, I use marginal effects.

Table 4.8: State-level Logit Models Predicting Compliance

	Model 1: Overall Compliance	**Model 2**: Full Compliance	**Model 3**: Rare Event of Overall Compliance	**Model 4**: Rare Event of Full Compliance
Judicial Independence	5.036 (4.338)	13.434 (12.165)	-.212 (3.725)	-1.496 (10.446)
Political Constraint	-1.614 (2.022)	-4.171 (3.272)	1.099 (1.736)	.066 (2.810)
Political Competition	-.076* (.038)	-.083 (.070)	-.016 (.033)	-.004 (.060)
Human Rights INGOs (HRO)	-1.163 (1.469)	-.726 (1.529)	.330 (1.261)	.226 (1.313)
HRO*Political Competition	.006 (.028)	-.006 (.025)	-.009 (.024)	-.006 (.022)
Regime Type	-.458 (3.037)	-1.318 (3.834)	-.317 (2.608)	.794 (3.293)
Rights Entrenchment	.656*** (.203)	.514* (.219)	.247 (.174)	.068 (.188)
Regional Diffusion (Dummy)	-1.885 (1.275)	-.452 (.788)	-.438 (1.095)	.392 (.677)
Neighbor Diffusion (Count)	2.255* (1.068)	.408 (1.212)	.914 (.917)	-.048 (1.041)
Foreign Direct Investment	.403† (.233)	.489 (.489)	.160 (.200)	.146 (.420)
Foreign Aid (Net ODA)	.000 (.000)	.000 (.000)	-.000 (.000)	-.000 (.000)
GDP per capita	-.000 (.000)	-.000 (.000)	-.000 (.000)	.000 (.000)
Constant	-8.586* (3.574)	-7.798* (3.559)	-4.133 (3.069)	-2.026 (3.056)
N	79	79	79	79
Prob > X^2	0.044	0.2458	--	--
Pseudo R^2	0.294	0.2033	--	--
Log pseudo-likelihood	-19.777029	-16.914728	--	--
Correctly Predicted	92.41%	92.41%	--	--

† p < .10 * p < .05 ** p < .01 *** p < .001

Dependent variable is the likelihood of compliance to IACHR judgment requiring domestic legal reform. Standard errors are clustered by country-year (listed in parentheses). Note that when predicting full compliance all spatial variables include only full compliance; alternatively, when predicting overall compliance all spatial variables include overall compliance. There are 15 observations of full compliance

within this data (with 145 observation) and 32 observations of overall (full and partial) compliance. Similar results to the logit models occur under probit specifications, although Hausman tests suggest that logit specifications are more appropriate of the two. Note that judicial independence has a linear relationship with compliance rather than quadratic and dropping foreign aid and/or GDP per capita yields in the same results. (The same results also occur if one replaces the count of neighbor compliance with a dummy for neighbor overall compliance or with a dummy for neighbor full compliance. Similar results occur if one includes total pending cases, the number of cases requiring reform pending, and previous compliance where none exert any influence. Interacting the diffusion terms, including the time since the granting of jurisdiction and its square or its interaction with previous compliance do not alter the results. Adding a one-year lag of compliance does not alter the results. Similarly, adding government fractionalization, the years left in the executive's term, population, total trade, oil exports, fuel exports, ethnic fractionalization, and political durability does not influence the results presented here. If one adds an interaction term between political competition and political constraint, the same results emerge although political competition is no longer significant for overall compliance. These variables are not included in the presented results so as to preserve the integrity of the analysis relative to the degrees of freedom. See Appendix D.)

The degree to which a state is entrenched within the international human rights regime exerts a significant and positive effect on the likelihood of full or partial compliance. For every additional treaty ratified, a state's likelihood to fully or partially comply with an IACHR order for legal reform increases by 1.99%. Hence, at the minimum degree of rights entrenchment where a state has ratified nine treaties, holding all other variables at their means,[208] there is a .241% likelihood that the state will fully or partially comply with the IACHR legal reform order. When the degree of rights entrenchment is at its maximum of 17 treaties ratified, there is a 31.59% chance that the state will fully or partially comply with the IACHR judgment.[209] These results provide support for $\boldsymbol{H_2}$, predicting a significant, positive relationship between the degree of involvement in the international human rights regime and likelihood of compliance.

[208] The means are as follows: 1) UDS (regime type) = .606, 2) judicial independence = .547, 3) political constraint = .458, 4) political competition = 49.468, 5) HRO = 1.671, 6) HRO*Political Competition = 78.116, 7) neighbor diffusion = .127, 8) foreign aid = .000, 9) FDI = 3.426, and 10) GDP per capita = 6983.439.

[209] When rights entrenchment is at its mean of roughly 14 ratified treaties, the likelihood of compliance is 6.06% (while holding all other values at their mean). Similarly the corresponding likelihoods as you add additional treaties are 11.05% at 15 treaties and 19.33% at 16 treaties.

Figure 4.16 shows the number of international treaties, convention, and covenants ratified by each country, and Figure 4.17 shows the relationship between rights entrenchment and the likelihood of compliance.

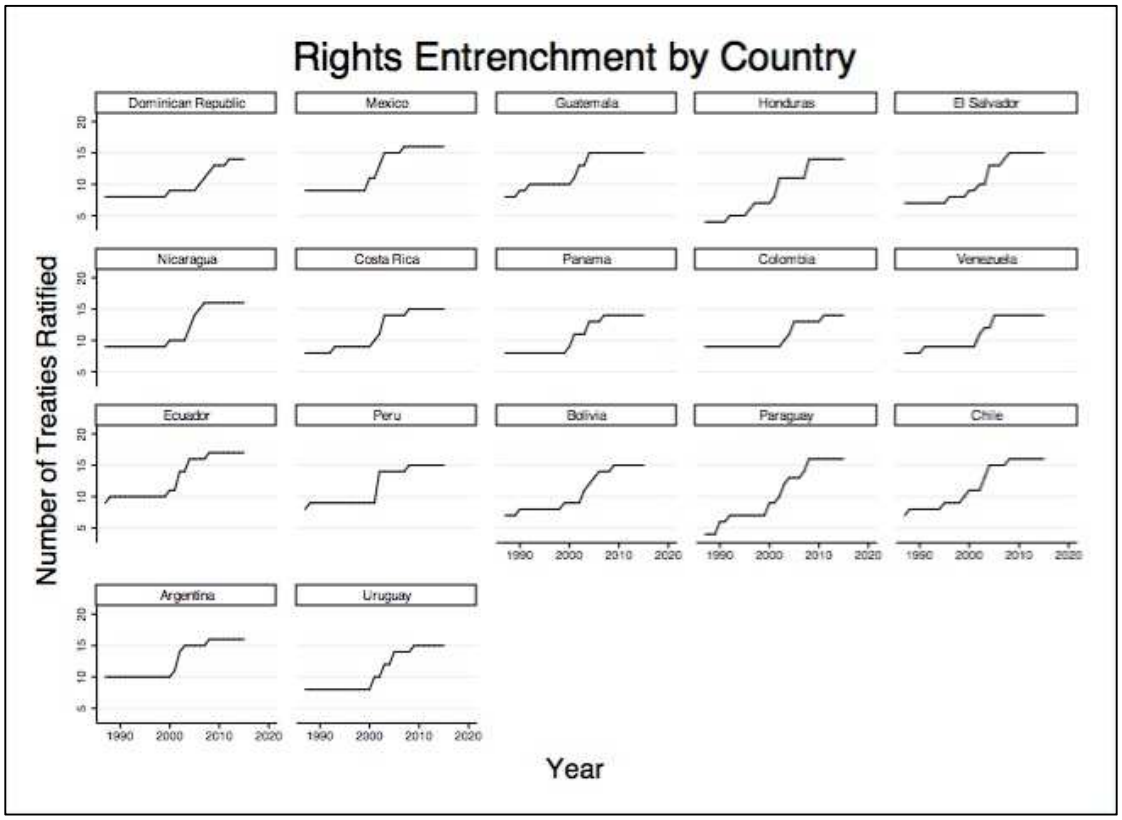

Figure 4.16: Rights Entrenchment Across Countries

Spatial diffusion, measured from neighboring states, also exerts an influence on the likelihood of overall compliance. For every additional land-locked neighboring state that has fully or partially complied in the previous year, there is a corresponding 6.85% increase in the likelihood of overall compliance. When a state has no neighboring states that have fully or partially complied in the last year, there is a likelihood of 2.37% that the state will fully or partially comply. On the other hand, when that state has (the

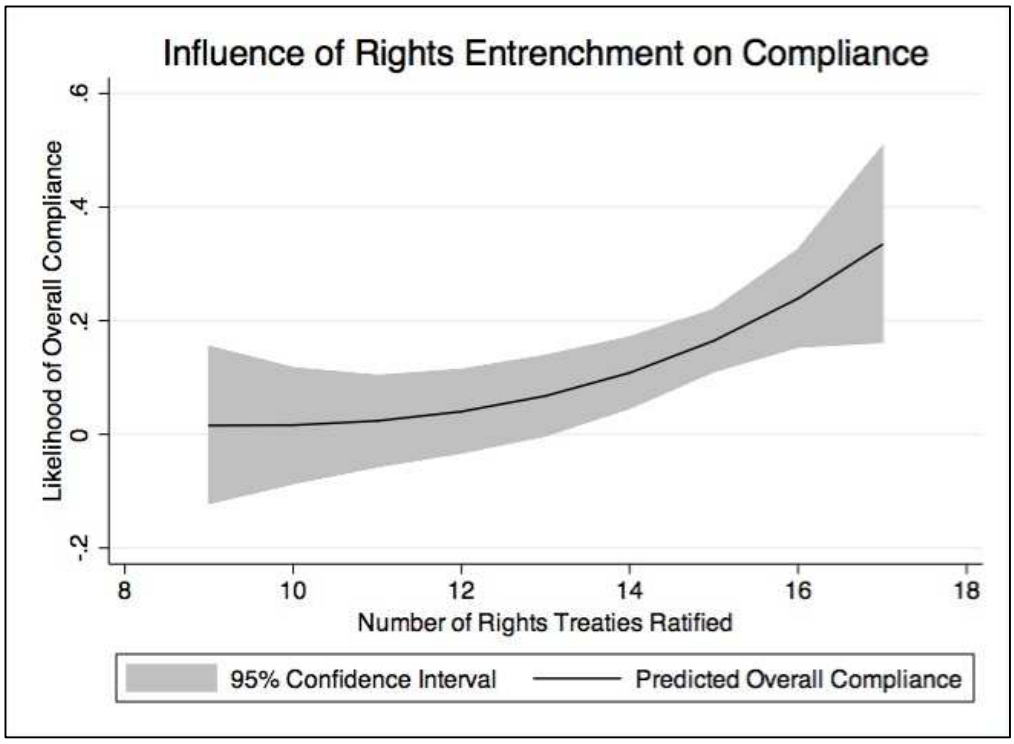

Figure 4.17: Influence of Rights Entrenchment on Overall Compliance

maximum of) 4 neighbors that fully or partially complied in the last year, the likelihood of compliance becomes 99.51%. (With one neighboring state who complied in the previous year the likelihood is18.83%, with two neighbors complying in the previous year the likelihood becomes 68.88%, and with three neighbors complying in the previous year the likelihood becomes 95.48%.) These results provide some support for ***H7,*** although regional spatial diffusion does not appear to have a significant influence.

Foreign direct investment influences the likelihood of overall compliance (at a threshold of .10), where every additional percentage point of GDP that FDI net inflow produces there is corresponding increase of 1.22% in the likelihood that the state will comply with the IACHR and reform its domestic laws.

Finally, political competition has a significant influence on the likelihood of full or partial compliance but it is in the opposite direction of my expectations, thereby rejecting $\boldsymbol{H_5}$ predicting that increased political competition would induce domestic political pressure to comply and thus increase the likelihood of compliance for states (assuming the administration is interested in political survival and stay in office). However, these results show that for every addition vote towards a party other than the largest one (in terms of vote share), there is a corresponding decrease in the likelihood of compliance of .23%.[210] When political competition is at is minimum of 26.7% of the votes go towards smaller parties, the likelihood of compliance is 15.36%; when political competition is at its highest of 70% of votes going to smaller parties, the likelihood of full or partial compliance is .679%. I suspect that this result is due to resource allocation and agenda prioritization where parties in power who are losing power to opposition parties are allocating resources to other policies rather than reforming the domestic laws per the request of the IACHR. It is plausible that parties expect more electoral utility from other policies and actions relative to IACHR compliance.

Turning to Model 2, the only significant influence on the likelihood of full compliance is the degree of entrenchment in the international human rights regime. For every additional human rights treaty ratified by a state, there is a corresponding increase in the likelihood of full compliance with an IACHR judgment by .635%. This provides additional support for $\boldsymbol{H_2}$. When the degree of involvement in the international human rights regime is at its minimum with nine ratified treaties, there is a likelihood of full compliance of .167%When rights entrenchment is at its maximum, with seventeen

[210] I checked for curvilinear effects of political competition using a quadratic functional form (in predicting both overall and partial compliance) but no such effect exists nor does it alter the results presented here.

treaties ratified, the likelihood of full compliance increases to 9.22%. Hence, while the influence of rights entrenchment is similar across overall and full compliance, its effect size is noticeably smaller when predicting full compliance. However, none of the other variables show any significant influence on the likelihood of full compliance, thus rejecting $\boldsymbol{H_1}$ and $\boldsymbol{H_3}$- $\boldsymbol{H_7}$.

The rare event logistic regressions provide no significant results for any of these predictors. However, because of the robust nature of the marginal effects provided by the Models 1 and 2 (Bergtold, Yeager, and Featherstone 2011) and the inability to account for non-independence of (panel) errors with the rare event logit, I believe that the logistic regression results (Model 1 and model 2) are more appropriate.[211] Furthermore, random effects logistic regressions corroborate the effect of rights entrenchment in overall compliance while the results for full compliance corroborates the rare event logit. The combined results form these models suggest that the only factors likely influence full or partial compliance are rights entrenchment, foreign direct investment, and perhaps political competition. Political competition is the least robust of the three across model specifications, and therefore I place more confidence on the effects of rights entrenchment and FDI. Nonetheless, it is noteworthy that all the domestic political factors that would influence the ease with which legal reform is possible and apply pressure for such legal reforms do not systematically influence these events of compliance, and these results are robust across all models, model specifications, and functional forms. This suggests that domestic politics may have little systematic influence on state decisions to fully or partially comply with IACHR judgments requiring domestic legal reform.

[211] Indeed, these rare event results are not robust across model specifications, which also persuades me of the appropriateness of the logit models

Furthermore, compliance to these orders is relatively recent, as shown in Figure 4.18 and Figure 4.19. Figure 4.18 shows the percent compliance (calculated by the number of cases with full of partial compliance divided by the number of pending cases requiring legal reform) across countries and over time. The majority of compliant behavior, in the form of legal reform, occurs after 2000. Indeed, while partial compliance in particular occurs relatively earlier, most compliance occurs around 2009 and 2011, which is most apparent in Figure 4.19. Hence, not only are the judgments requiring compliance relatively rare and recent but compliance is similarly rare and especially recent—which, of course, produces issues for statistical analyses.

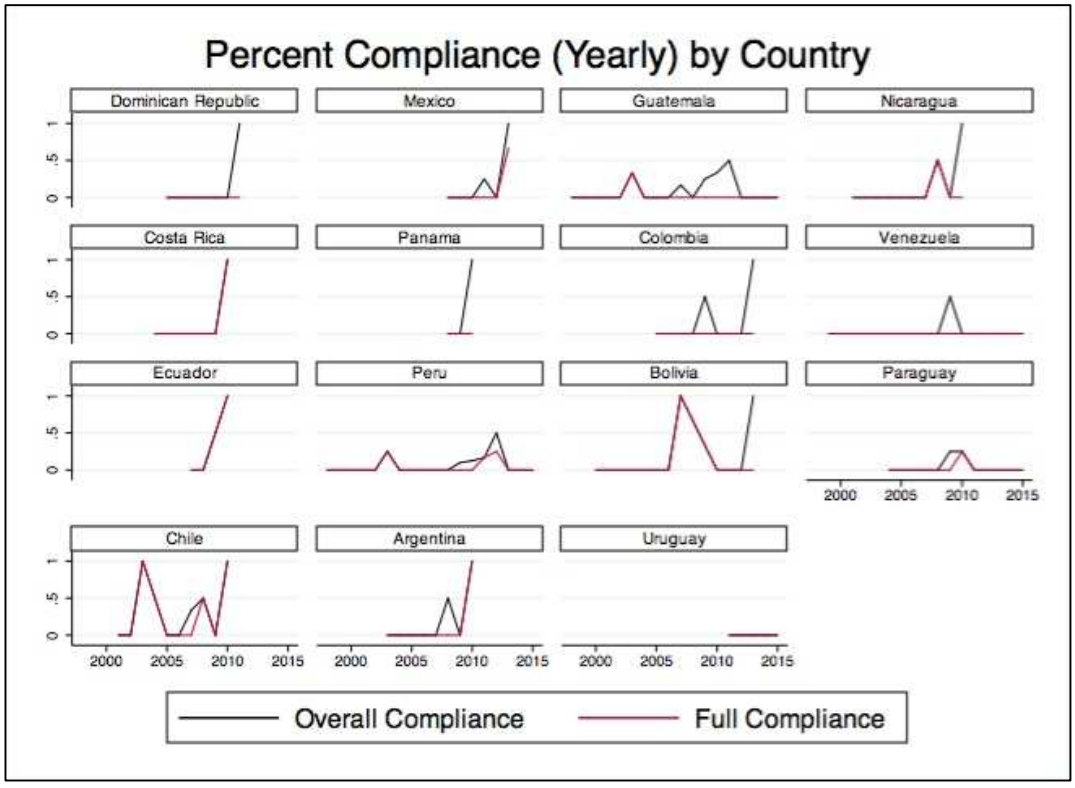

Figure 4.18: Percent Compliance by Country over Time

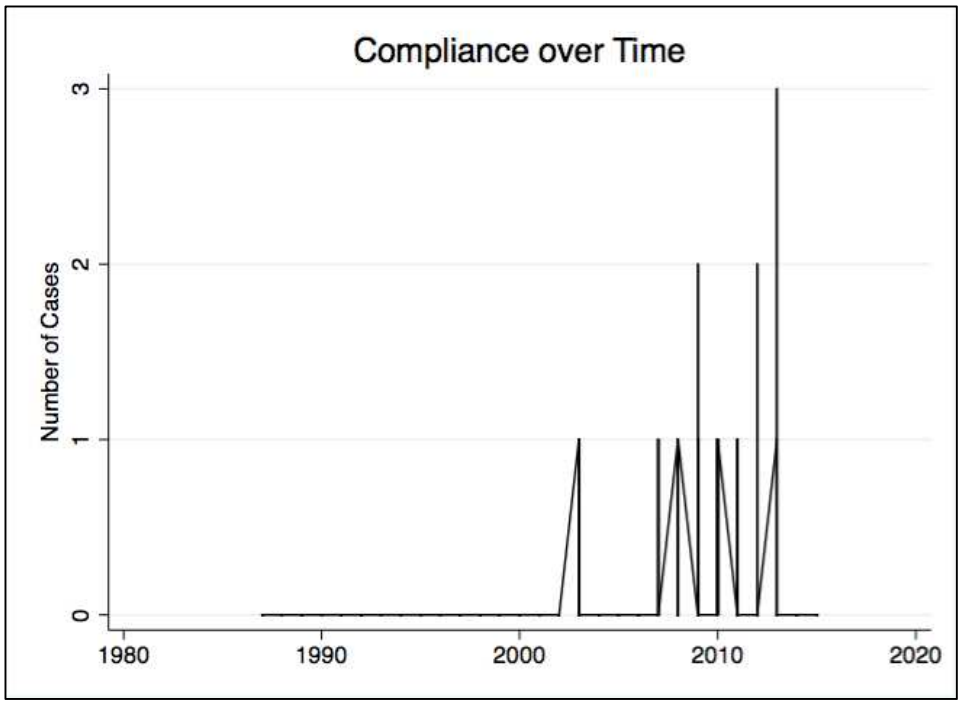

Figure 4.19: Compliance Over Time

Because this state-level compliance data generate three types of data (binary, count, and duration) and to ensure that I avoid aggregation bias that may influence the substantive results of the logistic regressions presented above, I include an event count model of IACHR compliance (Alt, King, and Signorino 2000). I do this because the binary data utilized in the previous models censor the counts of compliance at one. Hence, the above models predict *at least* one event of compliance. In the data however, up to three cases have been fully or partially complied within a year, and up to two cases have been fully complied with in a given year. Because the data-generating process is time independent, in that the same likelihood for compliance in any time period is the same (conditional independence or Markov independence) and events are independence

from each other, I use a Poisson model with exponential distribution (Alt, King, Signorino 2000).[212] I cluster the standard errors around country-year.[213]

The results presented in Models 1 and 2 confirm the significant influence of rights entrenchment on the likelihood of IACHR compliance, whether full or partial. Furthermore, Model 1 corroborates the earlier logistic analyses with the weaker yet significant influences of FDI and neighbor diffusion. However, these models eliminate the influence of political competition (which was marginally significant and in the opposite direction of expectations). The marginal effects estimate that the baseline predicted number of events of full or partial compliance is .037. Holding all else constant, for every additional treaty ratified, the predicted number of events increases by .020. Hence, the predicted number of events increases to .057 with one additional treaty ratified. When rights entrenchment is at its minimum of nine treaties, the predicted number of compliance events is .005, holding all other variables at their means. When rights entrenchment is at its maximum, however, the predicted number of compliance events increases to .310 (again, holding all other variables at their means).

[212] Negative binomial models produce the same results, but there is no evidence of overdispersion since the term for unobserved heterogeneity (alpha) is zero (4.55e-16) when modeling overall compliance and is zero (1.02e-15) when modeling full compliance. (Overdispersion would lead to inefficient estimators that could bias the standard errors downward to lead to spurious inferences that falsely reject the null hypothesis.)

Because there is no theoretical reason to believe separate data generating processes produce the zero and non-zero count events, I do not evaluate zero-inflated count models.

Finally, because the exponential distribution is shared between the Poisson and duration models, the parameters estimated in this model would be similarly estimated in a duration model (Alt, King, Signorino 2000).

[213] Fixed effect Poisson models drop several groups, including HROs, and only converges for overall compliance; random effects Poisson models do not converge for overall compliance while replicates the lack of significant influence of any variables. Hence I present the basic Poisson model with clustered errors for comparison.

Table 4.9: State-level Poisson Models Predicting Compliance Counts

	Model 1: Overall Compliance	**Model 2**: Full Compliance
Judicial Independence	3.731 (2.950)	12.043 (10.138)
Political Constraint	-1.480 (1.466)	-3.784 (2.712)
Political Competition	-.053 (.033)	-.074 (.056)
Human Rights INGOs (HRO)	-1.040 (1.173)	-.654 (1.321)
HRO*Political Competition	.008 (.023)	-.005 (.022)
Regime Type	-.501 (2.369)	-1.185 (3.234)
Rights Entrenchment	.522*** (.163)	.453** (.168)
Regional Diffusion (Dummy)	-1.612 (1.138)	-.423 (.637)
Neighbor Diffusion (Count)	1.560† (.830)	.266 (.849)
Foreign Direct Investment	.284† (.148)	.418 (.368)
Foreign Aid (Net ODA)	.000 (.000)	.000 (.000)
GDP per capita	-.000 (.000)	-.000 (.000)
Constant	-7.347* (2.786)	-7.207* (2.991)
N	79	79
Prob > X^2	0.000	0.149
Pseudo R^2	0.232	0.182
Log pseudo-likelihood	-21.932	-17.553
Deviance Goodness of Fit (Prob > X^2)	25.864 (1.000)	23.105 (1.000)
Pearson Goodness of Fit (Prob > X^2)	47.718 (0.956)	59.761 (0.692)

† p < .10 * p < .05 ** p < .01 *** p < .001

Dependent variable is the count of compliance events. Standard errors are clustered by country-year (listed in parentheses). The p level for neighbor diffusion in Model 1 is .060, and the p level for FDI is .056.

When predicting full compliance events, rights entrenchment is similarly significant, though the baseline predicted number of events of full compliance is .014. Every additional rights treaty ratified increases this baseline prediction by .006—which is a smaller effect than for overall compliance. When rights entrenchment is at its minimum of nine treaties, holding all other factors at their means, the predicted number of full compliance events is .002. When rights entrenchment consists of 17 ratified treaties, then the predicted number of full compliance events is .088.

Diffusion through neighboring states has a significant effects at the .10 level, where for every additional neighboring state that has complied in the last year, the predicted number of compliance events increases by .058. Holding all other values at their means, the predicted number of compliance events is .031 when no neighboring state has complied in the last year and is 3.31 when three neighboring states have complied in the last year. While diffusion through neighboring states seems to exert some influence on the likelihood of overall compliance, however, it does not appear to fur strictly full compliance (see Model 2).

Finally, the predicted number of compliant events increases by .012 as foreign direct investment increases each percentage point as a percentage of GDP. Though foreign direct investment seems to exert some influence on the likelihood of overall compliance, however, it does not appear to exert influence on full compliance (see Model 2).

These models also corroborate the logistic regressions presented previously in that they reject the hypothesized prediction that greater number of permanent human rights INGOs would increase the likelihood of an event ($\boldsymbol{H_1}$), that higher degrees of political

constraint would decrease the likelihood of an event (***H*****4**), that increased political competition domestically would increase the likelihood of compliance (***H*****5**), that increased political competition along with greater numbers of HROs would increase the likelihood of an event (***H*****6**), and part of ***H*****7**, predicting regional diffusion. There is no evidence for an effect of judicial independence levels on the likelihood of the presence or absence of compliance or the likelihood of an event of compliance. This may reject ***H*****3**, but since this hypothesis is agnostic in terms of direction it is also possible that the expected effects occur but simply cancel each other out. The models presented here simply are not able to make this distinction, and future work will need to examine this possibility.

4.3 Chapter Conclusions

This chapter offers new data and implications on Latin American compliance behavior and IACHR reparation behavior. I find that states comply much more frequently than previously assumed even with the most difficult reparation orders. These data offer a new perspective on compliance trends that moves beyond anecdotal evidence. This data therefore offer the opportunity to examine compliance and regional court behavior based upon case and legal considerations as well as political considerations.

This chapter also addressed the possibility of IACHR being a strategic actor in issuing reparations of legal reform. I find that the Inter-American Court of Human Rights is more likely to issue a reparation requiring domestic legal change for states that have previously fully or partially complied to a similar order. The IACHR is also more likely to issue a reform reparation for cases involving empowerment rights and cases involving

both empowerment rights and physical integrity rights. While these results do not directly prove that the IACHR is strategic when issuing these reparations, the increased likelihood of receiving them if one has previously complied suggests that this is a possibility.

If this is the case, the strategic behavior portrayed by the IACHR would be similar to that of the ECJ. Due to the lack of enforcement mechanism, regional courts suffer from perpetual threats of override or irrelevance when their decisions are perpetually ignored. This difficulty can initiate a vicious cycle where regional courts can never gain the legitimacy they need to enforce their decisions. One way to avoid this vicious cycle as well as establish and maintain regional court legitimacy is for the court to make demands that are likely to be complied with. Courts would therefore target compliant states and/or issue trivial demands. In this way, courts could protect themselves from bowing to member-state interest because they are issuing demands while also protecting themselves from rampant noncompliance that erodes their legitimacy, power, and relevance. These possibilities are rarely systematically or empirical examined and is often traded for separation of powers models. However, this tradeoff precludes a comprehensive understanding of the motivations, strategies, and behaviors of supranational judicial institutions.

This chapter's empirical analysis of state compliance to IACHR orders is similarly suggestive yet far from the last word. In terms of case-level predictors for compliance, cases that deal with both PIR and empowerment rights are less likely to be complied with relative to PIR rights. This suggests the possibility that states prefer to comply when compliance requires behavior that is not particularly difficult. In other words, the more comprehensive the task compliance requires, the less likely a states will

make the effort. Of course, these are precisely the cases that would require longer periods of time to comply. The inherent comprehensiveness and difficulty reduces states' ability to achieve collective action quickly and effectively and may require additional resources that are temporarily beyond state capacity.

States who have granted the IAHR compulsory jurisdiction more than fifteen years before the case receives a judgment are less likely to comply with the reparation orders. Similarly, yet unsurprisingly, case compliance in terms of reforming the laws becomes less likely as time goes on. These relationships suggest that commitments to the IACHR erode over time rather than become internalized. However, because these events are so rare and recent, most interpretations are speculative at best at this point in time.

At the state level, the degree of rights entrenchment appears to influence state decisions to comply, and, to a lesser extent, neighbor diffusion and foreign direct investment. These three factors increase the chances of state compliance, but rights entrenchment, or the degree to which a state is involved in the international human rights regime, is the most robust influence of the three. This result lends support to the intuition that membership within communities and the obligations that are inherent in the membership systematically influence behavior. The question this result implies is: what is the micro-theory for this influence? While scholars have a variety of theories that predict behavior consist with these results, these mechanisms typically occur simultaneously and are impossible to measure scientifically. Hence, in order to isolate causal mechanisms that lead to this type of behavior, political scientists must find a way to disentangle these processes both conceptually and methodologically.

While this information about what induces state compliance in important, the factors that do *not* affect compliance are equally noteworthy. The degree of domestic and international media attention does not influence the likelihood of compliance. Previous compliance also does not does significantly predict future compliance. Furthermore, domestic political features do not appear to systematically influence state compliance to the IACHR either. Regime type, the level of judicial independence, the level of political constraints in changing policy, the level of political competition, the development of human rights INGOs, regional diffusion, foreign aid, and economic development do not influence the likelihood of state compliance to the IACHR. It would seem that the traditional factors that scholars rely on, and have found substantial support in other contexts, have no merit in compliance to the IACHR. Yet, these analyses leave much to be desired. First, the rarity of all of the events of interest remains particularly problematic. IACHR decisions are in and of themselves rare. Their decisions to issue a reparation order that requires domestic legal reform is even more rare. Events of state compliance—especially full compliance—are even more rare still. Furthermore, the recent nature of these rare events makes statistical and inferential analysis difficult.

Beyond this dissertation, more work needs to be done to identify whether and in what ways judicial independence may influence a state's decision to comply with IACHR order (and whether it influences the likelihood of receiving such a reform order in the first place). Several theories surround its influence predict contradictory results, yet virtually no empirical research has sufficiently disentangled them when examining international law.

Additionally, future work should address the role of crime and drug-linked crime to these relationships between domestic and international law, especially when it is likely that reformed domestic law that is aligned with international law is not necessarily politically popular even for the population. In Mexico, for example, domestic legal reforms enforcing due process rights were seen to benefit convicted criminals rather than the protect victims' rights. Hence the assumption of single, unified response to the prospect of institutionalizing international law domestically is unrealistic and would likely vary according to states' experience with widespread crime, drug cartels, severe socio-economic divides, and government corruption. These other issues may also influence where IACHR judgments are on the national political agenda. For instance, states dealing with widespread organized crime with heavy casualties may prioritize political stability and citizen safety prior to any action to attempt to comply with the IACHR.

Furthermore, domestic legal changes may not be perceived as an effective or meaningful change by a population, which would make such compliance through these reforms less beneficial politically and less important. Since human rights is most important in terms of state behavior, states where the population perceives a wide divide between the law and behavior are unlikely to care about, trust, or lobby for legal change. When the government is especially corrupt, for example, any legal changes would likely be met with either suspicion or total lack of interest since these changes not lead to changes in state behavior. Hence, legal reforms are only important if the state abides by them and are likely to occur if the state can be expected to abide by them.

Hence, while this chapter seeks to contribute to our understanding of the relationship between international law and domestic law and the dynamics between states and the IACHR, more research is needed to disentangle the complex nature of these phenomena.

CHAPTER 5

CONCLUSIONS: COURTS, COMPLEMENTARITY, AND COMPETITION

This dissertation asks, *how does international human rights law, become domestic law*? This question carries legal and practical implications that remain understudied yet crucial for effective human rights policy and successful international human rights regimes. I attempt to open Pandora's box of processes of internalization, through which states are fundamentally changed. I argue that the legal processes and pressures are equally as important as changes in state behavior. Laws influence behavior by creating incentive structures and expectations for people and behavior, by setting national political discourse, by establishing the relationships between governments and people, by creating categories of political identities and conferring responsibilities, freedoms, and powers to these categories (and determining the selection of people within each category), and by regularizing behavior, expectations, and identities. Laws formally institutionalize each of these identities and relationships, define behaviors and norms, and do so in through a transparent, consistent, predictable legalistic process that confers legitimacy. Furthermore, laws influence behavior over time in that it affects behavior and identities contemporaneously as well as future behavior, identity affiliation, political discourse, and normative expectations. Hence, evaluating the degree to which international law catalyzes changes in domestic human rights laws provides insight into international law's ability to effectuate comprehensive, long-term or permanent changes in domestic politics.

As such, examining the role of international law in redefining domestic political contexts lends itself as a more stringent and more comprehensive way to evaluate the importance and influence of international law, especially compared to evaluations relegating its influence to instigating immediate changes in state behavior exclusively.

This dissertation thus offers two perspectives of how international human rights laws influence domestic laws. The first addresses the relationship between international law with states' domestic high courts to identify the role of these high courts in translating and implementing international law as domestic, legally enforceable law. This perspective examines the influence of strong, independent courts on domestic rights practices and provides preliminary evidence on the extent to which high courts have been in proactive in promoting human rights protections consistent with existing international law. The second manner in which this dissertation addresses the influence of international law on domestic legal systems is through the compliance records of states with the Inter-American Court of Human Rights. I evaluate the influence of international law specifically through regional court jurisprudence by its ability to effectuate domestic legal changes within states. These two approaches enable a preliminary glance at how international law influences domestic law, emphasizing the roles of national and supranational courts in this process.

This dissertation finds support that international law, conceptualized as the broad set of legal processes, rules, expectations, and norms as well as direct orders from a regional court, does influence domestic law and therefore state identity.[214] I find that Latin America appears to in the midst of these influences where its regional court and

[214] The influence of codification on state identity is a long-term process. To be explicit, I do not argue that a change in law necessarily reflects the immediate change in identity.

national courts have made significant institutional changes, legal changes, and normative changes in the way they perceive the fluid relationships between international and domestic laws and in the way these actors interact with each other.

More specifically, I find that domestic judges are incorporating international law into their domestic legal systems. While I do not argue that this is at the expense of judicial preferences or strategic motivations,[215] the fact that international is, in fact, reaching domestic legal systems is important. Combined with the substantial increases in Latin American rights litigation and regional judicialization, this may suggest that international law and courts are experiencing increases in legitimacy. It could also reflect the increasing perceptions of legitimacy and usefulness of law, most generally, in providing desirable and meaningful solutions. All of these trends provide for optimistic predictions as the region continues to develop its rule of law and better protect human rights.

Also significantly, I find that a high level of domestic court judicial independence is unnecessary in protecting many human rights and, congruently, judicial independence is neither a necessary nor sufficient condition for the promotion or expansion of rights laws that are consistent with international law. Judicial independence only serves as a credible threat of accountability in constraining government behavior in relation to physical integrity rights. In terms of combating torture, extrajudicial killing, forced disappearance, and arbitrary detention, higher levels of judicial independence allow courts to more credibly and effectively constrain the government. Beyond these rights,

[215] My suspicion, although not empirical examined in this dissertation, is that Latin American judicial preferences are often in line with international human rights laws (more so than with other issue areas). This alignment does not necessarily mean that judges agree on the application of these laws or even that these preferences are purely sincere.

however, judicial independence appear to offer diminishing returns with rights protections and rendered virtually irrelevant in court decisions to expand rights protections.

While I do not take these results to undermine the importance and desirability of judicial independence, they do call into question scholars' and policy-makers' assumptions of the role judicial independence plays in establishing the rule of law. Two fundamental components of the rule of law is the ability of the government to be constrained by law and the protection of human rights. Judicial independence has largely been credited with producing both of these conditions—even the single most important factor leading to the rule of law (although see Helmke ad Rosenbluth 2009). Policymakers then emphasize judicial reforms focusing primarily on the establishment of judicial independence in their efforts to promote the rule of law internationally. However, these policies only work insofar as judicial independence is truly the primary cause for these conditions. The results presented here call these policies into question. While these policies should be effective (at least theoretically) in preserving physical integrity rights, they are unlikely to produce results in either the enhancement of rights protections beyond PIR, court activism in expanding rights and constraining the government, or the incorporation of international law.

This dissertation also offers new data and suggestive evidence that the IACHR is strategic in it issuance of reparation orders and that state compliance to reparation orders requiring legal reform is based upon case-specific and state-level factors. States that have a history of compliance to previous legal reform orders are significantly more likely to receive future orders, although the likelihood of these events are relatively low. However,

the IACHR also issues significantly more reform orders involving empowerment rights or the combination of PIR and empowerment rights. The importance of this case-level attribute likely—albeit speculatively—represents relative differences in the development of these rights or case complexity. In terms of rights development, this result could indicate the relative underdevelopment of economic, social, and cultural rights. Alternatively, the combination of multiple rights often increases case complexity, which Latin American states may have insufficiently accounted for or correctly balanced in existing domestic law.

In terms of state compliance to IACHR reform reparations, case-level and state-level factors appear to play a role. Cases that deal with both PIR and empowerment rights are less likely to induce compliance. This may suggest that states prefer to comply or are better able to comply when compliance requires behavior that is not particularly difficult or complicated. In other words, the more comprehensive the task compliance requires, the less likely a states will make the effort. Alternatively, the state may simply not the capacity or resources to make certain complex changes to laws. Either way, of course, these are precisely the cases that would require longer periods of time to comply even if the state genuinely intends to comply.

At the state level, the degree of rights entrenchment appears to influence state decisions to comply, and to a lesser extent neighbor diffusion and foreign direct investment. These three factors increase the chances of state compliance, but rights entrenchment, or the degree to which a state is involved in the international human rights regime, is the most robust influence of the three. This result lends support to theories of socialization, social pressure, and epistemic communities arguing that membership and

participation within institutions and communities, as well as the obligations that are inherent in those memberships, systematically influence behavior.

Equally noteworthy are the factors that do *not* systematically affect compliance. The degree of domestic and international media attention does not influence the likelihood of compliance, suggesting that 'naming and shaming' strategies may less effective for IACHR compliance. Previous compliance also does not does significantly predict future compliance, suggesting perhaps that norms of compliance to the IACHR erode over time (across administrations) or are not significant motivations for compliance. Furthermore, several domestic political features do not appear to systematically influence state compliance to the IACHR either. Regime type, the level of judicial independence, the level of political constraints in changing policy, the level of political competition, the development of human rights INGOs, regional diffusion, foreign aid, and economic development do not influence the likelihood of state compliance to the IACHR. It would seem that the traditional factors that scholars rely on, and have found substantial support in other contexts, have no merit in compliance to the IACHR legal reform reparation orders.

The lack of influence of regime type on compliance runs counter other studies examining international law compliance that find that democracies are more likely to comply with international law (assuming they granted jurisdiction in the first place). The level of judicial independence, once again, does not appear to influence the choice to comply. However, the several theoretical mechanisms that predict opposite results could lead to this lack of significance. Future research will need to model specifically for these three relationships in order to accurately determine the role of judicial independence in

regional court compliance. The ease with which legal reform can be enacted does not appear to influence compliance, nor do mechanisms of political opposition or rights advocacy mobilization. State capacity, at least economically, does not exert a systematic influence on choices to initiate legal reform, nor do foreign aid or regional peer consideration.

It is important to note that these conclusions are limited due to data constraints, rarity of events, and the nature of the relationship between international law, domestic courts, and the IACHR. While these empirical results identify the extent to which domestic Latin American courts promote rights laws that are consistent with international law, suggest that the IACHR is strategic to some degree, and identify factors that predict compliance to IACHR jurisprudence, these analyses do not evaluate—or even identify—the relationship between the IACHR and domestic courts.

Determining the precise nature of the relationship between Latin American supranational and domestic court remains unclear. One reason is that the legal reform orders to not demand specific policies. The IACHR simply identifies which laws, with varying degree of specificity, violate Convention commitments and orders the state amend its laws following its domestic authority and legal processes.[216] Hence, while the IACHR may demand that certain legal obstacles for the protection and enforcement of rights be removed, demand the criminalization of forced disappearances, or demand the annulment of mandatory death penalty sentences, the state have significant room to maneuver. Hence, the IACHR does not dictate the final domestic policy, although it

[216] For example, the IACHR declared in *Yakye Axa Indigenous Community v. Paraguay* (2005) that "The State must take such domestic legislative, administrative and other steps as may be necessary, within a reasonable term, t guarantee the effective exercise of the right of property of the members of the indigenous peoples."

evaluates such legal changes based upon the removal of legal obstacles that prevent compliance with the Convention.

A second reason is that the IACHR does not directly interact with domestic courts. IACHR is primarily devised to engage with state governments rather than domestic legal systems, which is evidenced by the fact that IACHR reparation orders are directed to state governments and virtually never address the state's court. Only a handful of compliance records reveal domestic judicial responses to IACHR orders. Hence, at least in terms of the IACHR compliance reports, the incorporation of international law is not directly through the courts but rather through legislative, executive, or administrative processes. While this does not suggest that the IACHR has no direct connect to or influence over domestic judiciaries, the nature of the reparation orders and compliance reports makes the identification of these relationships difficult.

In contrast to compliance report enforcement mechanisms for incorporation, conventionality control may provide the more direct link between the IACHR and domestic courts. Perhaps its recent establishment indicates willful efforts on the part of the IACHR to seek more direct contact with, and perhaps influence over, domestic courts. However the motivations for its creation as well as the perceptions of its intent remain unclear. Conventionality control renewed interest toward the basic question of whether international law is designed to serve as a complement to domestic law or threatens domestic law.

Complementarity or Competition?

One may interpret that the IACHR is attempting to empower itself and national judiciaries by cooperating through conventionality control, but this obligation could be empowering to domestic courts or perceived as a threat to their existing judicial discretion. In other words, conventionality control may lend power and legitimacy from the IACHR to domestic courts whereby this granting of authority empower domestic courts to ignore existing laws that run counter to the Convention. This is likely to be the case only if the IACHR and domestic courts share similar interpretations of Convention rights and obligations. In this case, the IACHR lends its authority so as to provide an enforcement mechanism for domestic judicial decisions that uphold these interpretations in the face of a potentially noncompliance state government. If the state government is noncompliant to its own judiciary, it can expect increased *ex post* costs for noncompliance in terms of legitimacy and potentially in terms domestic political costs. Since the judiciaries are posing a united front, state noncompliance to its own courts is simultaneously noncompliance with international law and IACHR jurisdiction. Hence, governments are not choosing merely to ignore their domestic courts but the cooperative strategy raises the stakes in such a way where domestic decisions of noncompliance of domestic courts is simultaneously violations of international jurisprudence and commitments. Put more simply, one instance of domestic noncompliance automatically becomes three instances of noncompliance. By raising the stakes in this manner, it is possible that domestic noncompliance could more easily trigger international 'naming and shaming' and domestic mobilization. The shift from one to three instances of noncompliance raises the perceived severity of government noncompliance and implies

greater state disregard for Convention commitments and human rights, possibly leading to greater public awareness and mobilization.

On the other hand, domestic courts could perceive conventionality control as a threat to their judicial discretion. In other words, conventionality control granted by the IACHR attempts to supplant domestic judicial preferences and discretion with its own. As such, it relegates domestic judicial jurisprudence as inferior to IACHR interpretation of law and violates state sovereignty. Hence, international law moves away from an ongoing dialogue between courts to a dictation of legal interpretation and application where international law always reigns supreme. This places not only international and domestic law in competition, but it initiates a competitive power struggle within the judicial community where domestic judges struggle to maintain their discretion, or the freedom and ability to interpret laws and apply them based upon their own preferences, roles, and expectations.

If one accepts Benvenieti's (2008) prediction that domestic courts, when facing this external threat, would then strategically cite and incorporate international law so as to protect their judicial power in the face of expansionary international legal institutions that increasing leave national courts with dwindling opportunities to regulate and restrain domestic political institutions, then one would expect the increased reference and incorporation to international law.[217]

However, this prediction leads to the behavioral equivalence of the models of complementarity and competition. Both models predict increased incorporation and citation of international law, although for extremely divergent reasons. The model of

[217] Recognize that Benveneiti's (2008) argument did not deal with explicitly international law threats; rather I am applying his framework of threat response to international law threats.

complementarity suggests that increased reference to international law empowers domestic courts relative to state governments by presenting a unified legal front that raises the stake of domestic noncompliance and making noncompliance more costly. Hence, even if courts do not agree with the IACHR or international law, referring to it can be strategically beneficial when the courts anticipate noncompliance. The model of legal competition actually asserts the same argument. The difference is where the threat is coming from. In the model of complementarity, the domestic courts' perceived threat is that of noncompliance by the state government while in the model of competition, the domestic courts' perceived threat is an external, foreign threat—which could be the international law itself. When this is the case, like in conventionality control situations, then the paradoxical solution to the threat of international law is using international law. The intuition, I suppose, is that a political actor must play the game in order to protect her ability to be in the game at all.

The problem with this solution to the model of competition is that in order to achieve short-term security, courts are contributing to threat itself in the long run. The most they 'play the game' to stay relevant and retain their power of discretion, these courts further entrench international law and legal norms within domestic societies as well as promote its diffusion internationally. Especially since increased reference to international law is often gauged as a metric of its success, the courts are contribution to their own (perceived) demise.

It is interesting to note that both of these models suggest international is merely a tool to be used by rationalist, strategic domestic courts. Neither makes any real mention about the quality of law, normative pressures, or the constitutive nature of law; this

absence, or perhaps agnosticism, brings scholars back to original divides between neoliberal and constructivist paradigms. However, since both models predict increased engagement with international law and norms, courts are submitting themselves into the same types of socialization and peer pressures exerted from the transnational legal community. Hence the neoliberal and constructivist are not really at odd with each other, but the neoliberalist story ends much sooner than the constructivist version that continues beyond the (perhaps strategic) entry into these pressures that can have systematic but unintended effects on political actors.

This discussion highlights the problem of how do we distinguish between the use of international law as evidence of its moral or normative success that affects the hearts and minds of diverse people and its use as merely another political tool that has no effect or purpose beyond short-term calculated benefit? Even more perplexing—or intriguing depending upon your point of view—is how much does this distinction matter? If one argues that participation in a complex network of social interactions with diverse communities of actors, regardless of the reason of entry or participation, influences one's identity, preferences, role orientation, social values, and paradigm through which one experiences and interprets the world, then the distinction of these model does not matter.

The real influence of international law comes from two related characteristics: a) its ability to create these networks as well as induce exposure to and repeated interactions with other actor networks (which is not unique to international law), and b) through the interpretation of its success. So long as international law's use is interpreted as its success, it use retains the power to persuade and influence others. Once its use is tossed aside as simply another political tool in a tool kit, its ability to influence the hearts and

minds of people falls apart and relegates its influence to strictly rationalist cost-benefit analyses. Because we interpret international law to be something more than a political tool, it can be. Furthermore, the more we believe it to be successful and effective, the more power it has to be effective and successful.[218]

[218] This leads to moral quandary for political scientists: if eroding public belief in international law causes its erosion, should we actively contribute to its erosion? While I do not argue that international law should not be questioned or objectively and systematically examined, it highlights the all too frequently ignored question of how our evaluating and evaluations contribute to the very phenomena we examine.

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APPENDIX A –PREVIOUS U.N. DEFENSE OF HUMAN RIGHTS AWARD RECIPIENTS

The United Nations Prize in the Field of Human Rights

FIRST AWARD - December 1968 - 20th Anniversary of the Universal Declaration of Human Rights

Manuel Bianchi (Chile), Ambassador, Chairman of Inter-American Commission on Human Rights

René Cassin (France), Original member of Human Rights Commission

Chief Albert Luthuli (posthumously) (South Africa), President of the ANC

Mehranguiz Manoutchehrian (Iran), Attorney/Legal Adviser and Senator

Petr Emelyanovich Nedbailo (Ukraine), Member, Human Rights Commission

Mrs. Eleanor Roosevelt (posthumously) (U.S.A.), First Lady, President of the Human Rights Commission

SECOND AWARD - December 1973 - 25th Anniversary of the Universal Declaration of Human Rights

Dr. Taha Hussein (posthumously) (Egypt), Professor of Literature

C. Wilfred Jenks (posthumously) (UK), Director-General of International Labour Office

Maria Lavalle Urbina (Mexico), Lawyer, Professor

Bishop Abel Muzorewa (Zimbabwe), President of the ANC, Bishop of United Methodist Church

Sir Seewoosagur Ramgoolam (Mauritius), Prime Minister of Mauritius

U Thant (Myanmar), Secretary-General of the United Nations

THIRD AWARD - December 1978- 30th Anniversary of the Universal Declaration of Human Rights

Begum Ra'Ana Liaquat Ali Khan (Pakistan)

Prince Sadruddin Aga Khan (Iran)

Reverend Dr. Martin Luther King (Posthumously) (USA)

Mrs. Helen Suzman (South Africa)

The International Committee of the Red Cross

Amnesty International

Vicaria de la Solidaridad (Chile)

Union nationale des femmes de Tunisie

FOURTH AWARD - December 1988- 40th Anniversary of the Universal Declaration of Human Rights

Baba Murlidhar Devidas Amte (India), Lawyer

John Humphrey (Canada) Director, United Nations Division of Human Rights

Prof. Adam Lopatka (Poland), President, Supreme Court of Poland

Bishop Leonidas Proaño (Ecuador)

Nelson Mandela (South Africa)

Winnie Mandela (South Africa)

FIFTH AWARD - December 1993- 45th Anniversary of the Universal Declaration of Human Rights

Mr. Hassib Ben Ammar (Tunisia), President of the Arab Institute for Human Rights

Dr. Erica-Irene Daes (Greece), Chair/Rapporteur, Working Group on Indigenous Populations

James Grant (U.S.A.), Executive Director of UNICEF

The International Commission of Jurists

The Medical Personnel of the Central Hospital of Sarajevo

Dr. Sonia Picado Sotela (Costa Rica), Jurist, Vice President of the Inter-American Court of Human Rights

Ganesh Man Singh (Nepal), Supreme Leader of the Nepali Congress

The Sudanese Women's Union

Father Julio Tumiri Javier (Bolivia), Founder and President, Permanent Assembly of Human Rights in Bolivia

SIXTH AWARD – December 1998 – 50th Anniversary of the Universal Declaration of Human Rights

Sunila Abeyesekera (Sri Lanka), Director of Inform

Angelina Acheng Atyam (Uganda), who has worked to secure the release of children in rebel captivity in Uganda

Jimmy Carter (U.S.A.), former President of the United Sates

Jose Gregori (Brazil), Head of the Brazilian National Secretariat for Human Rights

Anna Sabatova (Czech Republic), one of the founding members of "Charter 77"

A Prize was given in honour of all **human rights defenders**.

SEVENTH AWARD – December 2003 – 55th Anniversary of the Universal Declaration of Human Rights

Enriqueta Estela Barnes de Carlotto (Argentina), President of the Asociación Abuelas de Plaza de Mayo [Association of Plaza de Mayo Grandmothers]

Deng Pufang (China), Founder and Director of the China Disabled Persons' Federation

The Family Protection Project Management Team (Jordan)

Shulamith Koenig (U.S.A), Executive Director of the People's Movement for Human Rights Education

The Mano River Women's Peace Network in West Africa (network of women's organizations from Sierra Leone, Liberia, and Guinea)

Sergio Vieira de Mello (Brazil), special posthumous award

EIGHTH AWARD – December 2008 – 60th Anniversary of the Universal Declaration of

Human Rights

Louise Arbour (Canada), former UN High Commissioner for Human Rights

Benazir Bhutto (posthumously) (Pakistan), former Prime Minister and leader of the opposition who was assassinated.

Ramsey Clark (U.S.A.), former Attorney General

Dr. Carolyn Gomes (Jamaica), of Jamaicans for Justice

Dr. Denis Mukwege (Democratic Republic of the Congo), co-founder of the General Referral Hospital of Panzi

Sr. Dorothy Stang (posthumously) (Brazil), murdered nun, Human Rights Watch

NINTH AWARD – December 2013 – 65th Anniversary of the Universal Declaration of Human Rights

Mr. Biram Dah Abeid (campaigner against slavery) from Mauritania

Mr. Abeid, himself the son of freed-slaves, is engaged in an advocacy campaign to eradicate slavery. In 2008, he founded an NGO, the Initiative for the Resurgence of the Abolitionist Movement. His organization seeks to draw attention to the issue and to help take specific cases before courts of law. Mr. Abeid recently won a human rights defenders award for his work.

Ms. Hiljmnijeta Apuk (human rights activist and campaigner for rights of people with disproportional restricted growth – short stature) from Kosovo*

Hiljmnijeta Apuk has been an activist for the rights of the persons with disabilities for over 30 years, both domestically as well as internationally. She is the founding director of the Little People of Kosovo non-governmental organization and acts as national coordinator of an awareness campaign for employment possibilities of persons with disabilities. In addition to working for many years on rights of persons with muscular dystrophy and of those with disproportionally restricted growth up to the height

of 125cm, Ms. Apuk is also an artist, working to promote authentic culture of persons with disabilities through her artwork. Ms. Apuk was a member of the Ad Hoc Committee of the UN General Assembly on drafting of the Convention of the Rights of Persons with Disabilities.

Ms. Liisa Kauppinen (President emeritus of the World Federation of the Deaf) Finland

Dr. Liisa Kauppinen has been a 'voice' for the human rights of deaf people since 1970. She was effective in securing the inclusion of references to signed languages, Deaf Culture, Deaf Community and the identity of deaf people within the UN's Convention on the Rights of Persons with Disabilities in 2006. Dr Kauppinen's human rights work, however, has not focused exclusively on the rights of deaf people, but also on rights of women and women with disabilities. Dr Kauppinen's passion for international work lead to a number of development co-operation projects with Deaf Communities in Africa, Central Asia, South East Asia, Latin America, the Balkans and North West Russia.

Ms. Khadija Ryadi (Former President of the Morocco Association for Human Rights) Morocco

Khadija Ryadi has been a human rights activist since 1983 when she joined the Moroccan Association for Human Rights. Ms. Ryadi has been at the fore-front of several human rights causes, including fight against impunity, full equality between men and women, self-determination and freedom of expression regardless of sexual orientation. She is a coordinator of a network of 22 human rights NGOs in Morocco.

Supreme Court of Justice of Mexico (Mexico's Constitutional Court)

The Mexican Supreme Court of Justice provides legal protections for constitutional rights of Mexican citizens and residents. The national Supreme Court has accomplished

very considerable progress in promoting human rights through its interpretations and enforcement of Mexico's constitution and its obligations under international law. Additionally, the national Supreme Court has set important human rights standards for Mexico and the Latin-American region.

Malala Yousafzai (student activist), Pakistan

Malala Yousafzai has become a symbol for young women's rights the world over. Initially a vocal and well-known advocate for education and women's rights, she was already a well-known figure speaking out on the girls' crucial right to education, women's empowerment and the links between the two. After surviving an October 2012 assassination attempt in retaliation for her actions and advocacy for education and women's rights, Ms. Yousafzai has demonstrated her courage and commitment by continuing to speak out on behalf of the rights of girls and women.

(*) *Reference to Kosovo should be understood in full compliance with United Nations Security Council resolution 1244 and without prejudice to the status of Kosovo*

APPENDIX B – CHAPTER 3 FULL MODELS WITH CONTROLS

Table B.1: Panel-Corrected Standard Error Model of PIR and Empowerment Rights in Latin America, 1981-2010

	Physical Integrity Rights	Empowerment Rights
Judicial Independence	2.187*** (.551)	3.706** (1.350)
One year lag, Judicial Independence	-2.806** (.1.024)	--
Two year lag, Judicial Independence	.744 (.548)	--
Judicial Independence^2	--	-6.953*** (2.005)
Institutional Legitimacy	-.119 (.072)	.147 (.694)
Political Competition	-.000 (.001)	-.015* (.007)
Political Constraint	-.032 (.047)	.043 (.474)
One year lag, Rights	1.306*** (.058)	.498*** (.042)
Two year lag, Rights	-.376*** (.057)	--
Federal Direct Investment	.008** (.003)	.005 (.028)
GDP per capita	.000 (.000)	-.000** (.000)
Population	-.000*** (.000)	-.000* (.000)
Regime type (UDS)	.047 (.035)	1.366*** (.276)
Interstate Conflict	.027 (.024)	.136 (.255)
Internal Conflict	-.032*** (.010)	-.179* (.082)
Internationalized Internal Conflict	.023 (.023)	-.451 (.238)

Constant	-.015 (.048)	5.916*** (.607)
N	371	369
Number of Groups	18	18
Observations per Group, Average (min, max)	20.6 (14, 21)	20.5 (14, 21)
Prob $> X^2$	0.000	0.000
R^2	.983	.618

* p < .05 ** p < .01 *** p < .001

Dependent variables are the degree of respect for physical integrity rights and empowerment rights, respectively. Empowerment rights model has centered judicial independence scores (where I subtracted the mean from each score before squaring). Coefficients represent the results of panel-corrected standard error models (with robust standard errors listed in parentheses).

Table B.2: Fixed Effects Model of PIR and Empowerment Rights in Latin America, 1981-2010

	Physical Integrity Rights	Empowerment Rights
Judicial Independence	1.722*** (.536)	4.740** (1.711)
One year lag, Judicial Independence	-2.658** (.948)	--
Two year lag, Judicial Independence	1.044* (.517)	--
Judicial Independence^2	--	-8.681* (3.473)
Institutional Legitimacy	-.030 (.101)	.306 (1.038)
Political Competition	.000 (.001)	.003 (.009)
Political Constraint	-.017 (.054)	1.141* (.579)
One year lag, Rights	1.206*** (.051)	.343*** (.045)
Two year lag, Rights	-.357*** (.049)	--
Federal Direct Investment	.008* (.004)	.035 (.039)
GDP per capita	.000 (.000)	-.000 (.000)
Population	.000 (.000)	-.000** (.000)
Regime type (UDS)	.081* (.039)	1.372*** (.415)
Interstate Conflict	.023 (.029)	.040 (.312)
Internal Conflict	-.068*** (.016)	-.491*** (.146)
Internationalized Internal Conflict	.024 (.023)	-.459 (.242)
Constant	-.212* (.095)	8.287*** (.936)
Rho	.512	.748
N	371	369
Number of Groups	18	18
Observations per Group,	20.6 (14, 21)	20.5 (14, 21)

Average (min, max)		
Prob > F	0.000	0.000
R^2 within	.954	.581
R^2 between	.979	.157
R^2 overall	.970	.252

* p < .05 ** p < .01 *** p < .001

Dependent variables are the degree of respect for physical integrity rights and empowerment rights, respectively. Empowerment rights model has centered judicial independence scores (where I subtracted the mean from each score before squaring). Coefficients represent the results of fixed effects models with robust standard errors listed in parentheses.

Table B.3: Fixed Effects Model of Empowerment Rights in Latin America, 1981-2010

	Empowerment Rights (CIRI 2010)	Empowerment Rights Reconceptualized
Judicial Independence	4.740** (1.711)	3.586* (1.568)
Judicial Independence^2	-8.681* (3.473)	-6.389* (3.223)
Institutional Legitimacy	.306 (1.038)	1.050 (.960)
Political Competition	.003 (.009)	.006 (.009)
Political Constraint	1.141* (.579)	.499 (.552)
One year lag, Rights	.343*** (.045)	.345*** (.050)
Federal Direct Investment	.035 (.039)	-.000 (.036)
GDP per capita	-.000 (.000)	-.000 (.000)
Population	-.000** (.000)	-.000 (.000)
Regime type (UDS)	1.372*** (.415)	.937* (.384)
Interstate Conflict	.040 (.312)	.006 (.280)
Internal Conflict	-.491*** (.146)	-.278* (.133)
Internationalized Internal Conflict	-.459 (.242)	-.108 (.248)
Constant	8.287*** (.936)	8.567*** (.963)
Rho	.748	.504
N	369	335
Number of Groups	18	18
Observations per Group, Average (min, max)	20.5 (14, 21)	18.6 (9, 21)
Prob > F	0.000	0.000
R^2 within	.581	.482
R^2 between	.157	.338
R^2 overall	.252	.369

* p < .05 ** p < .01 *** p < .001

Dependent variables are the degree of respect for empowerment rights. Both models have centered judicial independence scores (where I subtracted the mean from each score before squaring). Coefficients represent the results of fixed effects models with robust standard errors listed in parentheses.

APPENDIX C – MEXICAN SUPREME COURT

Table C.1: Mexico's Supreme Court of Justice: Case Trends

	2008 (Sept 2008-Nov 2008)	2009 (Dec 2008-Nov 2009)	2010 (Dec 2009-Nov 2010)	2011 (Dec 2010-Nov 2011)	2012 (Dec 2011-Nov 2012)	2013 (Dec 2012-Feb 2013)	2014 (Dec 2013-Feb 2014)	(Dec 2008-Feb 2014)
Direct Amparo	17.2%	14.0%	18.0%	16.2%	20.48 %	17.9%	25.3%	17.93%
Indirect Amparo	9.7%	19.6%	13.8%	10.6%	8.94%	6.19%	8.58%	11.03%
Constitutional Issue	2.5%	2.7%	1.9%	2.5%	1.98%	1.70%	1.91%	2.09%
Action of Unconstitutionality	2.0%	2.1%	0.8%	0.7%	1.09%	0.64%	1.02%	1.00%
Direct Amparo	1.2%	0.7%	0.4%	1.2%	1.06%	0.71%	0.64%	0.82%
Modification of Jurisprudence	0.3%	0.2%	0.6%	0.4%	0.10%	0.18%	0	0.27%
Total Number of Cases (Decided)	1003	4564	5024	5177	5851	6720	1573	29361

Data compiled from: https://www.scjn.gob.mx/transparencia/paginas/trans_jurisd.aspx. Note that 2008 data reflects only the final fourth trimester, and the 2014 data only reflects the first trimester data. 2012 data includes cases for substitution of jurisdiction (9 cases or 0.15%)—which is not included above.

Table C.2: Mexico's Supreme Court of Justice: Constitutional Case by Issue Type

	2008 (Sept-Nov.)	2009 (Dec 2008-Nov 2009)	2010 (Dec 2009-Nov 2010)	2011 (Dec 2010-Nov 2011)	2012 (Dec 2011-Nov 2012)	2013 (Dec 2012-Feb 2013)	2014 (Dec 2013-Feb 2014)	Cumulative (Dec 2008-Feb 2014)
Municipal	80%	67.5%	64.1%	65.9%	83.6%	84.3%	73.3%	73.2%
State	20%	26.8%	28.3%	29.5%	13.8%	14.8%	16.7%	22.4%
Federal	0	5.7%	7.6%	4.5%	2.6%	0.9%	10.0%	4.4%
Total Number of Cases	25	123	92	132	116	115	30	616

Data compiled from: https://www.scjn.gob.mx/transparencia/paginas/trans_jurisd.aspx. Note that 2008 data reflects only the final fourth trimester, and the 2014 data only reflects the first trimester data.

Table C.3: Mexico's Supreme Court of Justice: Constitutional Cases by State

	2008 (Sept-Nov.)	2009 (Dec 2008-Nov 2009)	2010 (Dec 2009-Nov 2010)	2011 (Dec 2010-Nov 2011)	2012 (Dec 2011-Nov 2012)	2013 (Dec 2012-Feb 2013)	2014 (Dec 2013-Feb 2014)	Cumulative (Dec 2008-Feb 2014)
Guerrero	16%	0	2.4%	0.8%	3.5%	1.8%	0	1.5%
Districto Federal	12%	6.0%	3.5%	0.8%	0	1.8%	0	3.4%
Jalisco	12%	8.6%	7.1%	23.8%	22.1%	6.1%	3.7%	13.4%
Oaxaca	12%	22.4%	12.9%	13.5%	16.8%	7.9%	11.1%	14.8%
Tabasco	8%	3.4%	3.5%	7.1%	0	0	7.4%	3.2%
Guanajuato	4%	0.9%	1.2%	0.8%	4.4%	0.9%	0	2.0%
Tlaxcala	4%	1.7%	7.1%	1.6%	0	1.8%	3.7%	1.9%
Morelos	8%	11.2%	14.1%	9.5%	15.0%	51.8%	33.3%	19.5%
Estado de Mexico	4%	4.3%	4.7%	2.4%	3.5%	0	0	2.7%
Colima	4%	0.9%	0	0	0.9%	0	0	0.2%
Veracruz	4%	1.7%	4.7%	1.6%	1.8%	2.6%	7.4%	2.9%
Yucatan	0	1.7%	0	0.8%	0	0	3.7%	0.5%
Nuevo Leon	12%	10.3%	11.8%	13.5%	7.1%	8.8%	22.2%	11.9%
Sonora	0	1.7%	1.2%	1.6%	1.8%	3.5%	0	2.7%
Campeche	0	4.3%	0	0.8%	0	0	0	1.0%
Chihuahua	0	1.7%	1.2%	0	0.9%	0	0	1.4%
Puebla	0	0.9%	2.4%	0.8%	0.9%	2.6%	3.7%	1.4%
San Luis Potosi	0	6.0%	1.2%	0.8%	4.4%	0.9%	0	1.7%
Zacatecas	0	2.6%	3.5%	0.8%	3.5%	2.6%	0	2.0%
Queretaro	0	5.2%	0	0.8%	9.7%	1.8%	0	3.1%
Nayarit	0	3.4%	1.2%	3.2%	0	0	0	1.0%
Hidalgo	0	0.9%	1.2%	0	0.9%	0	0	0.5%
Quintana Roo	0	0	5.9%	2.4%	0.9%	0	0	1.0%
Baja California	0	0	4.7%	1.6%	0	3.5%	0	1.5%
Aguascalientes	0	0	2.4%	0	0	0.9%	0	0.7%
Chiapas	0	0	1.2%	0	0	0	0	0.2%
Sinaloa	0	0	1.2%	0.8%	0	0.9%	3.7%	0.7%
Michoacan	0	0	0	5.6%	0.9%	0	0	1.5%
Baja California Sur	0	0	0	4.0%	0	0	0	1.2%
Coahuila	0	0	0	0.8%	0.9%	0	0	0.5%
Total Number of Cases	25	116	85	127	113	114	27	589

Data compiled from: https://www.scjn.gob.mx/transparencia/paginas/trans_jurisd.aspx. Note that 2008 data reflects only the final fourth trimester, and the 2014 data only reflects the first trimester data.

Table C.4: Mexico's Supreme Court of Justice: Action of Unconstitutional Cases by Litigant

	2008 (Sept-Nov.)	2009 (Dec 2008-Nov 2009)	2010 (Dec 2009-Nov 2010)	2011 (Dec 2010-Nov 2011)	2012 (Dec 2011-Nov 2012)	2013 (Dec 2012-Feb 2013)	2014 (Dec 2013-Feb 2014)	Cumulative (Dec 2008-Feb 2014)
Political Party	55%	49%	44.7%	23.5%	23%	27.9%	6.3%	34.0%
Legislative Minorities	20%	17.7%	7.9%	8.8%	6%	11.6%	31.3%	12.9%
Solicitor General	20%	18.8%	36.8%	50.0%	58%	32.6%	31.3%	36.4%
National Commission for Human Rights (CNDH)	3%	14.6%	10.5%	17.6%	13%	27.9%	31.3%	16.7%
Total Number of Cases	20	96	37	34	64	43	16	294

Data compiled from: https://www.scjn.gob.mx/transparencia/paginas/trans_jurisd.aspx. Note that 2008 data reflects only the final fourth trimester, and the 2014 data only reflects the first trimester data.

Table C.5: Mexico's Supreme Court of Justice: Action of Unconstitutionality Cases by Issue Type

	2008 (Sept-Nov.)	2009 (Dec 2008-Nov 2009)	2010 (Dec 2009-Nov 2010)	2011 (Dec 2010-Nov 2011)	2012 (Dec 2011-Nov 2012)	2013 (Dec 2012-Feb 2013)	2014 (Dec 2013-Feb 2014)	Cumulative (Dec 2008-Feb 2014)
Local Laws	100%	92.7%	100%	97.1%	93.75%	97.7%	75.0%	94.2%
Federal Laws	0	6.3%	0	2.9%	4.69%	2.3%	25.0%	5.1%
Legislative Power Agreement	0	1.0%	0	0	0	0	0	0.3%
Local Power Agreements	0	0	0	0	1.56%	0	0	0.3%
International Treaties	0	0	0	0	0	0	0	0
Total Number of Cases	20	96	37	34	64	43	16	294

Data compiled from: https://www.scjn.gob.mx/transparencia/paginas/trans_jurisd.aspx. Note that 2008 data reflects only the final fourth trimester, and the 2014 data only reflects the first trimester data.

Table C.6: Mexico's Supreme Court of Justice: Amparo Cases by Issue Type

	2008 (Sept-Nov.)	2009 (Dec 2008-Nov 2009)	2010 (Dec 2009-Nov 2010)	2011 (Dec 2010-Feb 2011)	2012 (Dec 2011-Nov 2012)	2013 (Dec 2012-Feb 2013)	2014 (Dec 2013-Feb 2014)	Cumulative (Dec 2008-Feb 2014)
Direct Interpretation of Constitution	4.1%	2.0%	0.7%	0.7%	11%	2.4%	0	4.2%
Local Laws	15.5%	45.6%	3.5%	4.0%	10%	5.3%	8.5%	19.2%
Federal Laws	77.3%	51.3%	94.6%	95.4%	76%	83.7%	89.0%	75.2%
International Treaties	3.1%	0.8%	1.0%	0	1%	2.9%	0	0.8%
Total Number of Cases	97	894	691	151	523	416	82	2741

Data compiled from: https://www.scjn.gob.mx/transparencia/paginas/trans_jurisd.aspx. Note that 2008 data reflects only the fourth trimester, 2011 data reflects only the first trimester, and 2014 data only reflects the first trimester. Cumulative data for 2008, 2011, and 2014 are unavailable. Table does not include itemization for SEFA.

Table C.7: Mexico's Supreme Court of Justice: Amparo Cases by Case Type

	2008 (Sept-Nov.)	2009 (Dec 2008-Nov 2009)	2010 (Dec 2009-Nov 2010)	2011 (Dec 2010-Feb 2011)	2012 (Dec 2011-Nov 2012)	2013 (Dec 2012-Feb 2013)	2014 (Dec 2013-Feb 2014)	Cumulative (Dec 2008-Feb 2014)
Administrative	80.4%	90.9%	60.5%	82.1%	68.26%	71.2%	69.5%	76.7%
Civil	3.1%	2.3%	2.3%	2.6%	3.82%	6.3%	1.2%	3.0%
Penal	15.5%	4.3%	29.8%	6.0%	23.52%	14.2%	15.9%	15.2%
Labor	1.0%	1.5%	7.1%	6.6%	4.21%	7.7%	13.4%	4.2%
International Right	0	0.9%	0.1%	0	0	0	0	0.3%
Electoral	0	0.1%	0.1%	2.6%	0.19%	0	0	0.6%
Total Number of Cases	97	894	691	151	523	416	82	2741

Data compiled from: https://www.scjn.gob.mx/transparencia/paginas/trans_jurisd.aspx. Note that 2008 data reflects only the fourth trimester, 2011 data reflects only the first trimester, and 2014 data only reflects the first trimester. Cumulative data for 2008, 2011, and 2014 are unavailable.

APPENDIX D –CHAPTER 4 ALTERNATIVE MODELS

Table D.1: Logit Predicting Requirement of Legal Reform

	Baseline Category: PIR	Baseline Category: Empowerment Rights
Physical Integrity Rights (only)	--	.644 (.467)
Empowerment Rights (only)	-.978* (.481)	--
Both PIR and Empowerment Rights	-1.070* (.498)	-.377 (.517)
Constant	.336 (.332)	-.357 (.352)
N	114	113
Prob > X^2	0.049	0.096
Pseudo R^2	0.046	0.033
Log pseudo-likelihood	-74.596	-75.030
Correctly Predicted	63.16%	61.06%

* p < .05 ** p < .01 *** p < .001

Dependent variable is the likelihood of the IACHR to require a state to reform its domestic law as reparations depending on whether the case deals primarily with physical integrity rights or empowerment rights. Standard errors are clustered by country-year (listed in parentheses). Similar results are reflected in probit specifications, but Hausman tests suggest that logit models are more appropriate. Additionally, the country does not significantly predict the likelihood of IACHR requirements to reform domestic laws.

Table D.2: Alternative Case-level Logit Models Predicting Compliance to IACHR

	Overall Compliance	Full Compliance	Rare Event Logit: Full Compliance
Empowerment Rights (only)	-1.120† (.631)	-.918 (.918)	-.732 (.841)
Both PIR and Empowerment Rights	-1.470* (.617)	-.451 (.687)	-.347 (.576)
Years Since Reparation Judgment	-.190* (.080)	-.146† (.087)	-.110 (.078)
Years Since Granted Court Jurisdiction	-.176*** (.048)	-.163** (.065)	-.141* (.059)
Domestic Media Attention	.405 (.356)	.562 (.372)	.484 (.325)
International Media Attention	3.949 (4.834)	6.346* (3.202)	5.068† (2.977)
Domestic and International Attention	-1.846 (2.572)	-3.27† (1.718)	-2.555 (1.619)
Constant	3.649** (1.170)	1.532 (1.326)	1.184 (1.203)
N	112	112	112
Prob > X^2	0.003	0.100	--
Pseudo R^2	0.204	0.1664	--
Log pseudo-likelihood	-55.398	-38.291	--
Correctly Predicted	76.79%	85.71%	

† p < .10 * p < .05 ** p < .01 *** p < .001

Dependent variable is the likelihood of compliance to IACHR judgment requiring domestic legal reform. Standard errors are clustered by country-year (listed in parentheses). Similar substantive results occur for probit models, however Hausman tests suggest that logit specifications are appropriate. Domestic and international media attention (interaction) has a p value of .057 when predicting full compliance in a logit specification (second column). The final column represents a rare events logit which I ran since there are 16 full compliance observations out or 114 observations total (whereas overall compliance consists of 36 observations); it provides similar results relative to logit specifications.

Table D.3: Alternative Case-level Logit Predicting Compliance for PIR Cases

	Overall Compliance	Full Compliance Only
Both PIR and Empowerment Rights	-2.132 (1.335)	.634 (.947)
Years Since Granted Court Jurisdiction	-.212* (.0873)	-.153 (.100)
Domestic Media Attention	1.095* (.528)	.432 (.582)
International Media Attention	-14.074** (4.676)	4.592 (2.992)
Domestic and International Attention	14.835*** (2.454)	-2.509 (1.568)
Constant	4.411* (1.749)	.920 (1.557)
N	36	36
Prob > X^2	0.000	0.519
Pseudo R^2	0.291	0.143
Log pseudo-likelihood	-15.719	-18.240
Correctly Predicted	77.78%	77.78%

* p < .05 ** p < .01 *** p < .001

Dependent variable is the likelihood of compliance to IACHR judgment requiring domestic legal reform. Standard errors are clustered by country-year (listed in parentheses). There are 10 observations of full compliance within this data (with 36 observation) and 25 observations of overall (full and partial) compliance. Similar results occur under a rare events logit model predicting full compliance. Similar results also occur under probit specifications, although Hausman tests suggest that logit specifications are more appropriate.

Table D.4: Alternative Case-level Logit Predicting Compliance for Empowerment Cases

	Overall Compliance	Full Compliance Only
Both PIR and Empowerment Rights	-4.125 (2.201)	-1.505 (1.934)
Years Since Granted Court Jurisdiction	-.222** (.073)	-.146 (.116)
Domestic Media Attention	3.288* (1.365)	2.639 (1.426)
International Media Attention	Omitted	38.293*** (4.088)
Domestic and International Attention	Omitted	-19.535*** (2.269)
Constant	2.952* (1.567)	-.668 (1.600)
N	17	21
Prob > X^2	0.013	0.000
Pseudo R^2	0.301	0.344
Log pseudo-likelihood	-8.053	-9.162
Correctly Predicted	70.59%	80.95%

* p < .05 ** p < .01 *** p < .001

Dependent variable is the likelihood of compliance to IACHR judgment requiring domestic legal reform. Standard errors are clustered by country-year (listed in parentheses). There are 8 observations of full compliance within this data (with 21 observation) and 14 observations of overall (full and partial) compliance. Similar results also occur under probit specifications, although Hausman tests suggest that logit specifications are more appropriate. Correlation between overall compliance (full and partial compliance) and international media attention is .343 but includes only 4 non-zero observations. Likelihood of domestic media attention predicting full compliance barely missed significant levels with p = .064.

Table D.5: State-level Logit Models Predicting Compliance

	Overall Compliance	Full Compliance	Overall Compliance	Full Compliance
Judicial Independence	1.454 (4.573)	11.077 (13.802)	4.085 (4.523)	5.961 (5.258)
Political Constraint	1.147 (3.057)	-1.426 (5.724)	.316 (1.578)	-.291 (1.740)
Political Competition	-.084 (.051)	-.120 (.086)	-.059 (.039)	-.075 (.047)
Durability of Regime	-.023 (.038)	-.043 (.041)	--	--
Regime Type	-2.526 (4.007)	-5.813 (6.175)	-4.329 (3.572)	-6.819 (4.918)
Rights Entrenchment	.879*** (.277)	1.061* (.456)	.842*** (.214)	.714** (.279)
Regional Diffusion	-2.257 (1.557)	.487 (1.295)	--	--
Neighbor Diffusion	2.346 (1.496)	-.886 (2.127)	--	--
Executive Term Left (Years)	.058 (.325)	.285 (.410)	--	--
Government Fractionalization	-2.450 (3.121)	omitted	-4.432 (3.133)	omitted
Foreign Direct Investment	.507 (.279)	.363 (.454)	.259 (.162)	.398 (.281)
Years since Granting of Jurisdiction	-.008 (.146)	-.161 (.312)	--	--
Years since Join OAS	-.053 (.116)	.057 (.181)	--	--
Foreign Aid (Net ODA)	-.000 (.000)	-.000 (.000)	--	--
GDP per capita	-.000 (.000)	-.000 (.000)	.000 (.000)	-.000 (.000)
Constant	-7.540* (3.340)	-9.713* (4.942)	-11.163*** (3.355)	-8.011** (2.620)
N	83	52	83	52
Prob > X^2	0.000	0.151	0.009	0.050
Pseudo R^2	0.321	0.262	0.252	0.222
Log pseudo-likelihood	-19.332	-13.724	-21.322	-14.474

Correctly Predicted	91.57%	88.46%	90.36%	88.46%

* p < .05 ** p < .01 *** p < .001

Dependent variable is the likelihood of compliance to IACHR judgment requiring domestic legal reform. Standard errors are clustered by country-year (listed in parentheses). There are 15 observations of full compliance within this data (with 145 observation) and 32 observations of overall (full and partial) compliance. Similar results also occur under probit and rare event logit specifications, although Hausman tests suggest that logit specifications are more appropriate. Note that dropping foreign direct investment and GDP per capita results in the same results. (The same results also occur if one replaces the count of neighbor compliance (in the previous year) with a dummy for neighbor overall compliance or with a dummy for neighbor full compliance. Similarly, dropping the time since joining the OAS yields the same results.)

Table D.6: Logit Predicting Overall Compliance

	Overall Compliance	Overall Compliance	Overall Compliance	Overall Compliance
Judicial Independence	134.472* (61.539)	56.018 (32.225)	13.159 (8.010)	7.158 (4.678)
Judicial Independence^2	-84.188 (46.522)	-35.410 (23.567)	--	--
Political Constraint	-6.988 (5.434)	-2.995 (3.574)	-2.939 (4.563)	-1.891 (3.221)
Political Competition	-.084 (.096)	-.103* (.051)	-.087* (.041)	-.075 (.045)
Executive/ Lower Legislative Alignment	4.611 (2.564)	1.640 (1.401)	1.619 (1.645)	1.738 (1.255)
Regime Type	-5.742 (4.695)	-2.613 (2.943)	.117 (3.393)	-2.658 (3.316)
Rights Entrenchment	1.603*** (.476)	1.083*** (.288)	1.160*** (.315)	1.100*** (.257)
Regional Diffusion (Dummy)	-3.538 (1.905)	-2.401 (1.580)	-2.779 (2.217)	-2.128 (1.397)
Neighbor Diffusion (Count)	3.302 (2.151)	2.412 (1.285)	2.961 (1.960)	2.825** (1.064)
INGO (HRO)	-1.904 (1.596)	-.837 (.527)	-1.949 (1.581)	--
Previous Compliance (Dummy)	-3.777 (2.361)	-1.889 (1.064)	-3.153 (1.831)	-1.475 (1.039)
Pending Cases Requiring Reform	2.485 (2.323)	--	-.719 (1.440)	--
Pending Cases Requiring Reform^2	-.469 (.275)	--	--	--
Total Pending Cases	.780 (.751)	--	.537 (.705)	--
Foreign Direct Investment	1.093** (.378)	.521* (.239)	.545 (.350)	.452* (.226)
Foreign Aid (Net ODA)	-.000 (.000)	-.000 (.000)	.000 (.000)	--
GDP per capita	-.000 (.001)	-.000 (.000)	.000 (.000)	-.000 (.000)
Constant	-66.123** (25.952)	-28.307** (11.423)	-18.480*** (5.022)	-16.160*** (4.279)

N	79	79	79	83
Prob > X^2	0.126	0.212	0.010	0.018
Pseudo R^2	0.466	0.350	0.353	0.306
Log pseudo-likelihood	-14.958	-18.218	-18.133	-19.779
Correctly Predicted	89.87%	92.41%	91.14%	91.57%

* p < .05 ** p < .01 *** p < .001

Dependent variable is the likelihood of compliance to IACHR judgment requiring domestic legal reform. Standard errors are clustered by country-year (listed in parentheses). There are 15 observations of full compliance within this data (with 145 observation) and 32 observations of overall (full and partial) compliance. Similar results also occur under probit specifications, although Hausman tests suggest that logit specifications are more appropriate. (The same results also occur if one replaces the count of neighbor compliance (in the previous year) with a dummy for neighbor overall compliance or with a dummy for neighbor full compliance.) In the first column predicting overall compliance, the squared term for judicial independence approaches significance at a .070 level, the degree of alignment between the executive and lower legislative chamber approaches at a .072 level, the regional diffusion dummy approaches significance at a .063 level, and the squared term of pending cases requiring reform approaches significance at a .088 level. In the second column, judicial independence approaches significance at a .082 level, neighbor diffusion nears significance at .060, and previous compliance nears with .076. Previous compliance approaches significance at a .085 level in the third column predicting overall compliance. In the final, fourth column, political competition has a p level of .097, and GDP per capita has a level of.084. Similar results occur if one trades executive and legislative alignment for government fractionalization.

Table D.7: Rare Event Logit Predicting Full Compliance

	Full Compliance	Full Compliance	Full Compliance	Full Compliance
Judicial Independence	-122.254**	-20.031	-2.011707	-.9047986
	(45.935)	(24.007)	6.849833	7.145613
Political Constraint	42.712**	5.642	.2614035	-.1462526
	(13.763)	(3.859)	3.183474	2.867178
Political Competition	.448	.113	-.0087744	-.0187487
	(.247)	(.112)	.0592416	.0601663
Executive/ Lower Legislative Alignment	-6.363	-.625	.402954	.5074739
	(3.733)	(1.965)	1.181707	1.039691
Regime Type	-8.389	-1.954	.249	-.1559984
	(8.421)	(3.996)	(3.319)	2.760052
Rights Entrenchment	-3.822*	-.705	.1121603	.2040449
	(1.770)	(.841)	.274046	.2701786
Regional Diffusion (Dummy)	8.823*	1.798	.2626466	-.0332039
	(4.452)	(1.459)	.9725326	1.06836
Neighbor Diffusion (Count)	-5.363	-.254	.9417136	1.138197
	(6.260)	(2.364)	1.175878	1.188134
INGO (HRO)	10.963*	2.074	.0065743	-.0124503
	(4.598)	(2.907)	.6130564	.6948115
Previous Compliance (Dummy)	11.774*	2.558	-1.163295	-1.330003
	(5.211)	(1.689)	.8835629	.9193744
Pending Cases Requiring Reform	-1.976	1.183	--	--
	(7.523)	(3.125)		
Pending Cases Requiring Reform^2	1.337	--	--	--
	(.804)			
Total Pending Cases	-3.835	-.725	--	--
	(2.336)	(1.500)		
Foreign Direct Investment	-3.377	-.652	.0851662	.1809718
	(1.758)	(.885)	.4162528	.3896511
Foreign Aid (Net ODA)	.000	.000	.000	--
	(.000)	(.000)	(.000)	
GDP per capita	.005*	.001	.000	.000
	(.003)	(.002)	(.000)	(.000)
Constant	69.152***	8.739	-2.492	-3.165255
	(18.431)	(8.477)	(3.429)	3.662385
N	79	79	79	79

* p < .05 ** p < .01 *** p < .001

Dependent variable is the likelihood of compliance to IACHR judgment requiring domestic legal reform. Standard errors are listed in parentheses. There are 15 observations of full compliance within this data (with 145 observation) and 32 observations of overall (full and partial) compliance. (The same results also occur if one replaces the count of neighbor compliance (in the previous year) with a dummy for neighbor overall compliance or with a dummy for neighbor full compliance.) In the first model (left-most column) executive/legislative alignment nears significance with a p level of .088, political competition barely misses significance at a level of .069, and foreign direct investment is borderline significant with a level of .055.

Table D.8: Logit Predicting Full Compliance

	Full Compliance	Full Compliance	Full Compliance
Judicial Independence	133.368* (55.820)	47.856 (28.871)	18.636* (8.064)
Political Constraint	-35.444* (16.724)	-8.754 (4.641)	-6.363 (3.748)
Political Competition	-.461 (.300)	-.230 (.135)	-.126 (.070)
Executive/ Lower Legislative Alignment	5.336 (4.537)	2.706 (2.363)	1.362 (1.391)
Regime Type	8.176 (10.233)	5.340 (4.806)	-3.450 (3.907)
Rights Entrenchment	3.320 (2.151)	1.773 (1.012)	.964** (.323)
Regional Diffusion (Dummy)	-5.874 (5.410)	-2.593 (1.754)	-1.294 (1.145)
Neighbor Diffusion (Count)	8.808 (7.607)	4.345 (2.843)	1.722 (1.384)
INGO (HRO)	-11.379* (5.587)	-5.727 (3.496)	-.982 (.722)
Previous Compliance (Dummy)	-12.187* (6.333)	-7.472*** (2.031)	-3.108** (1.040)
Pending Cases Requiring Reform	-.038 (9.142)	-4.863 (3.759)	--
Pending Cases Requiring Reform^2	-1.404 (.976)	--	--
Total Pending Cases	4.918 (2.839)	2.626 (1.804)	--
Foreign Direct Investment	2.790 (2.137)	1.273 (1.064)	.706 (.490)
Foreign Aid (Net ODA)	-.000 (.000)	-.000 (.000)	.000 (.000)
GDP per capita	-.006 (.003)	-.002 (.002)	-.001 (.000)
Constant	-65.823** (22.398)	-26.370** (10.195)	-13.307*** (4.036)
N	79	79	79

Prob > X^2	0.281	0.007	0.161
Pseudo R^2	0.595	0.447	0.313
Log pseudo-likelihood	-8.593	-11.751	-14.597
Correctly Predicted	97.47%	94.94%	93.67%

* p < .05 ** p < .01 *** p < .001

Dependent variable is the likelihood of full compliance to IACHR judgment requiring domestic legal reform. Standard errors are clustered by country-year (listed in parentheses). There are 15 observations of full compliance within this data (with 145 observation) and 32 observations of overall (full and partial) compliance. (The same results also occur if one replaces the count of neighbor compliance (in the previous year) with a dummy for neighbor overall compliance or with a dummy for neighbor full compliance.) In the first column, GDP per capita nears significance at a .076 p level, total pending cases has a p value of .083. In the second column, political constraint borders significance at .059 p level, rights entrenchment approaches significance at a .080 level, and political competition approaches with a level of .088. In the third column, political competition reaches a p level of .071, GDP per capita reaches .081 p level, and political constraint reaches .090 level. The same results in the third (final) column occur if foreign aid is dropped.

Table D.9: Event Count Model of Compliance (Poisson)

	Overall Compliance	Full Compliance	Overall Compliance	Full Compliance
Judicial Independence	1.527 (3.492)	9.456 (10.693)	2.747 (3.199)	4.799 (3.616)
Political Constraint	.673 (2.575)	-1.566 (4.786)	.391 (1.263)	-.346 (1.314)
Political Competition	-.057 (.041)	-.100 (.072)	-.052 (.034)	-.064 (.037)
Durability of Regime	-.023 (.032)	-.037 (.033)	--	--
Regime Type	-2.402 (2.965)	-4.290 (4.397)	-3.112 (2.611)	-5.207 (3.194)
Rights Entrenchment	.707*** (.211)	.871* (.366)	.693*** (.178)	.582** (.237)
Regional Diffusion (Dummy)	-1.947 (1.306)	.160 (1.135)	--	--
Neighbor Diffusion (Count)	1.727 (1.157)	-.456 (1.759)	--	--
Executive Term Left (Years)	.074 (.255)	.244 (.345)	--	--
Government Fractionalization	-2.275 (2.545)	-281.264*** (65.925)	-2.805 (2.432)	-270.505*** (38.488)
Foreign Direct Investment	.365 (.197)	.271 (.354)	.283* (.138)	.292 (.189)
Years since Granting of Jurisdiction	-.011 (.122)	-.149 (.248)	--	--
Years since Join OAS	-.023 (.093)	.049 (.146)	--	--
Foreign Aid (Net ODA)	-.000 (.000)	-.000 (.000)	--	--
GDP per capita	-.000 (.000)	-.000 (.000)	-.000 (.000)	-.000 (.000)
Constant	-7.286** (2.545)	-8.367* (3.832)	-9.236*** (2.336)	-6.919*** (1.903)
N	83	83	83	83
Prob > X^2	0.000	0.000	0.000	0.000
Pseudo R^2	0.258	0.318	0.237	0.288
Log pseudo-	-21.521	-14.852	-22.128	-15.499

likelihood				

* p < .05 ** p < .01 *** p < .001

Dependent variable is the count of case compliance to IACHR judgments requiring domestic legal reform. The number of events occurring per year ranges from 0-3 for overall compliance and 0-1 for full compliance. For overall compliance, there are 113 observations of 0, 29 obsrvations of 1, 2 observations of 2, and 1 observation of 3. Standard errors are listed in parentheses, clustered by country-year. Foreign direct investment nears significance at a .064 level in the first model column predicting overall compliance. The same results occur if one replaces the count of neighbors' compliance with presence of full compliance or with dummy of neighbors' compliance. The same substantive results predicting full compliance occur using a negative binomial model, although the first and third columns—those predicting overall compliance--do not converge.

Table D.10: Event Count Model of Compliance (Poisson)

	Overall Compliance	Full Compliance	Overall Compliance	Full Compliance
Judicial Independence	109.553*** (31.784)	34.464 (19.717)	116.970*** (31.960)	6.354* (2.818)
Judicial Independence^2	-71.372** (23.474)	--	-77.282*** (22.227)	--
Political Constraint	-4.665 (4.681)	-6.551* (3.176)	-7.339 (5.150)	-2.281 (3.667)
Political Competition	-.052 (.050)	-.176* (.092)	-.039 (.055)	-.061* (.032)
Executive/ Lower Legislative Alignment	3.276 (1.956)	2.168 (1.608)	3.752 92.173)	1.330 (1.342)
Regime Type	-4.809 (2.998)	4.765 (3.596)	-7.520* (3.152)	-1.564 (2.221)
Rights Entrenchment	1.130*** (.276)	1.407* (.699)	1.087*** (.285)	.873*** (.189)
Regional Diffusion (Dummy)	-2.415 (1.520)	-1.993 (1.137)	-1.535 (1.167)	-2.099 (1.516)
Neighbor Diffusion (Count)	1.632 (1.168)	3.530 (2.102)	.771 (.893)	1.782 (.952)
INGO (HRO)	-1.249 (1.171)	-4.171 (2.449)	-.728 (.425)	-.608 (.334)
Previous Compliance (Dummy)	-3.005 (1.732)	-5.289*** (1.161)	-2.675* (1.293)	-2.391** (.950)
Pending Cases Requiring Reform	1.975 (1.187)	-3.780 (2.762)	2.883 (1.613)	.249 (.225)
Pending Cases Requiring Reform^2	-.330* (.171)	--	-.338 (.226)	--
Total Pending Cases	.479 (.526)	2.003 (1.318)	--	--
Foreign Direct Investment	.702*** (.169)	.980 .7113596	.656*** (.145)	.410** (.143)
Foreign Aid (Net ODA)	-.000 (.000)	-.000 (.000)	--	--

GDP per capita	-.000 (.000)	-.002 (.001)	.000 (.000)	-.000 (.000)
Constant	-52.596*** (13.127)	-20.265** (7.009)	-55.795*** (14.016)	-13.832*** (3.383)
N	79	79	79	79
Prob > X^2	0.0000	0.000	0.000	0.000
Pseudo R^2	0.3685	0.375	0.355	0.274
Log pseudo-likelihood	-18.030	-13.414	-18.406	-20.729

* p < .05 ** p < .01 *** p < .001

Dependent variable is the count of case compliance to IACHR judgments requiring domestic legal reform. The number of events occurring per year ranges from 0-3 for overall compliance and 0-1 for full compliance. For overall compliance, there are 113 observations of 0, 29 observations of 1, 2 observations of 2, and 1 observation of 3. Standard errors are listed in parentheses, clustered by country-year. In the first model column, predicting overall compliance, executive/legislative alignment has a p value of.094, previous compliance (whether full or partial) has a p value of .083, and the number of cases pending requiring reform has a p value of .096. In the second column, predicting full compliance, judicial independence has a p value of .080, INGO human rights organizations have a p value of .089, regional diffusion has a p value of .080, and neighbor diffusion has a p value of .093. In the third column, pending cases requiring reform reaches a p value of .074, executive/legislative alignment reaches a p value of .084, and INGO human rights organizations have a p value of .087. In the final, fourth column, neighbor diffusion narrowly misses significance with a p value of .061, INGO human rights organizations have a p value of .068. (The same results occur if one replaces the count of neighbors' compliance with presence of full compliance or with dummy of neighbors' compliance.) The same substantive results occur using a negative binomial model. For the full compliance models, the squared terms were not significant and therefore dropped.

Table D.11: Fixed Effects Models Predicting Percentage Compliance

	Overall Compliance	Full Compliance	Overall Compliance	Full Compliance
Judicial Independence	-.587 (.630)	-.599 (.616)	-.272 (.502)	-.343 (.491)
Political Constraint	-.134 (.268)	-.125 (.263)	-.178 (.251)	-.179 (.246)
Political Competition	-.005 (.004)	-.003 (.004)	-.005 (.004)	-.004 (.004)
Durability of Regime	-.020 (.030)	-.019 (.029)	--	--
Regime Type	-.188 (.226)	-.123 (.221)	-.163 (.199)	-.108 (.194)
Rights Entrenchment	.004 (.028)	.005 (.027)	.032* (.014)	.032* (.014)
Regional Diffusion	-.002 (.063)	.035 (.061)	--	--
Neighbor Diffusion	.055 (.072)	-.025 (.070)	--	--
Executive Term Left (Years)	.005 (.017)	-.001 (.017)	--	--
Government Fractionalization	-.234 (.152)	-.243 (.149)	-.233 (.139)	-.229 (.136)
Foreign Direct Investment	.045* (.018)	.036* (.018)	.041* (.017)	.036* (.016)
Years since Granting of Jurisdiction	omitted	omitted	--	--
Years since Join OAS	.046 (.038)	.040 (.037)	--	--
Foreign Aid (Net ODA)	-.000 (.000)	-.000 (.000)	--	--
GDP per capita	-.000 (.000)	-.000 (.000)	-.000 (.000)	-.000 (.000)
Constant	.325 .417)	.461 (.408)	.245 (.349)	.397 (.341)
N	83	83	83	83
Number of Groups	14	14	14	14
Observations per group: avg (min,	5.9 (1, 11)	5.9 (1, 11)	5.9 (1, 11)	5.9 (1, 11)

max)				
Prob > F	0.1885	0.2916	0.0764	0.1426
F(14,55)	1.39	1.21	--	--
F(8,61)	--	--	1.90	1.60
R^2 Within	0.262	0.2362	0.1994	0.1737
R^2 Between	0.165	0.1013	0.2248	0.0899
R^2 Overall	0.0057	0.0017	0.0056	0.0006
Rho	.903	.89982997	.4799269	.59501815

* $p < .05$ ** $p < .01$ *** $p < .001$

Dependent variable is the percentage level of compliance to IACHR judgments requiring domestic legal reform. Standard errors are listed in parentheses. Similar results also occur under random effect specifications, although Hausman tests suggest that fixed effect specifications are more appropriate. Note that dropping time since joining OAS and GDP per capita results in the same results; similarly, including the total number of cases, both requiring reform and not, does not alter the results. The time since granting the IACHR jurisdiction and joining the OAS is correlated at a .612 level.

Table D.12: Fixed Effects Models Predicting Percentage Compliance

	Overall Compliance	Full Compliance	Overall Compliance	Full Compliance
Judicial Independence	-.254 (.841)	-.065 (.820)	.107 (.663)	.300 (.651)
Judicial Independence^2	--	--	--	--
Political Constraint	-.110 (.298)	-.043 (.290)	-.083 (.297)	-.015 (.299)
Political Competition	-.007 (.004)	-.006 (.004)	-.007 (.004)	-.005 (.004)
Executive/ Lower Legislative Alignment	-.058 (.074)	-.027 (.073)	-.066 (.074)	-.036 (.072)
Regime Type	-.086 (.207)	-.039 (.201)	-.147 (.201)	-.104 (.197)
Rights Entrenchment	.048* (.020)	.049* (.019)	.047** (.017)	.050** (.017)
Regional Diffusion (Dummy)	-.015 (.080)	.019 (.078)	.020 (.072)	.051 (.071)
Neighbor Diffusion (Count)	.073 (.081)	-.006 (.079)	.043 (.077)	-.036 (.076)
INGO (HRO)	omitted	omitted	omitted	omitted
Previous Compliance (Dummy)	-.194 (.127)	-.232 (.124)	-.228 (.120)	-.269* (.118)
Pending Cases Requiring Reform	-.077 (.065)	-.075 (.063)	--	--
Pending Cases Requiring Reform^2	--	--	--	.--
Total Pending Cases	.039 (.036)	.038 (.035)	--	--
Foreign Direct Investment	.038* (.018)	.030 (.017)	.036* (.017)	.029 (.016)
Foreign Aid (Net ODA)	-.000 (.000)	-.000 (.000)	--	--
GDP per capita	-.000 (.000)	-.000 (.000)	-.000 (.000)	-.000 (.000)

Constant	.115 (.662)	.025 (.646)	-.153 (.573)	-.272 (.563)
N	79	79	79	79
Number of Groups	14	14	14	14
Observations per group: avg (min, max)	5.6 (1, 11)	5.6 (1, 11)	5.6 (1, 11)	5.6 (1, 11)
Prob > F	0.115	0.168	0.090	0.170
F(14,51)	1.59	1.44	--	--
F(11,54)	--	--	1.74	1.47
R^2 Within	0.303	0.284	0.262	0.231
R^2 Between	0.311	0.388	0.190	0.045
R^2 Overall	0.006	0.010	0.047	0.052
Rho	.641	.559	.477	.422

* p < .05 ** p < .01 *** p < .001

Dependent variable is the percentage level of compliance to IACHR judgments requiring domestic legal reform. Standard errors are listed in parentheses. Similar results also occur under random effect specifications, although Hausman tests suggest that fixed effect specifications are more appropriate. Judicial independence squared and pending cases requiring reform squared are not significant (or close to it) and therefore omitted from the model specifications. In the first column modeling overall compliance, political competition reaches a p level of .088. In the second column, previous compliance (whether full or partial) misses significance with a p level of .066, and foreign direct investment has a p value of .081. In the third column, predicting overall compliance, previous compliance narrowly misses statistical significance with a p value of .063. In the fourth column predicting full compliance, foreign direct investment misses significance with a p value of .089. While INGO number is omitted in these fixed effects model, it never becomes significant nor alters the substantive results in the random effect models.

APPENDIX E – RATIFIED INTERNATIONAL AGREEMENTS INCLUDED IN RIGHTS ENTRENCHMENT

Supplementary Convention on Abolition of Slavery

Geneva Convention, Treatment of Prisoners of War

Convention Against Torture

Convention on Genocide

Geneva Convention, Protection of Civilians During Times of War

Convention on the Elimination of Racial Discrimination

Covenant on Civil and Political Rights

Protocol Relating to the Status of Refugees

Worst Forms of Child Labor Convention

Protocol to Prevent, Suppress, and Punish Trafficking Persons

Optional Protocol to Convention on Rights of Child (Armed Conflict)

Optional Protocol to Convention on Rights of Child (Sale/Prostitution/Pornography)

Convention on the Rights of Persons with Disabilities

Protocol Against Smuggling Migrants, Land Air Sea

Convention on the Political Rights of Women

Convention on Abolition of Forced Labor