

## Domestic Judicial Institutions and Human Rights Treaty Violation

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### Abstract

Common arguments concerning the ratification of and compliance with international human rights agreements anticipate either subsequent compliance or universal ratification. In practice, these agreements are routinely violated yet not every state ratifies without reservation. Understanding this empirical pattern requires an argument that explicitly considers the link between a state's ratification and compliance choices. In our view, these choices involve a tradeoff between alleviating pressure to accept international human rights norms and managing regime authority. We argue that the effectiveness of the domestic judiciary influences the way states resolve this tradeoff. Using data on the ratification status of states under the *Convention Against Torture* (CAT) and states' torture practices, we find that the joint probability of being ratified under the CAT and violating its terms decreases in the effectiveness of a state's judiciary. We also find that the joint probability of not being ratified and engaging in behavior proscribed by the CAT increases in the effectiveness of a state's judiciary.

## Introduction

Although there is some hope that international law can prevent states from carrying out cruel, dehumanizing acts of violence (Chayes and Chayes, 1993, Lutz and Sikkink, 2000, Landman 2005), the descriptive evidence over the past two decades raises some serious questions. Consider the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT). The basic fact is that states routinely violate their obligations under the CAT. Table 1 indicates that the average percentage of states (by year) that have ratified and at least minimally violated the CAT since it became binding in 1987 is 83. The percentage of states that have systematically violated the CAT is 42.<sup>1</sup> Importantly, it is not just autocracies that violate the CAT. Indeed, the average yearly percentage of democracies that have at least minimally violated their commitment to the CAT is 77; the percentage that have done so systematically is 30. Perhaps most alarmingly, 81% of ratifying states violated the convention in the very year of ratification, including 78% of the democratic ratifiers. Why is it that so many states adopt and violate their international human rights obligations?<sup>2</sup>

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<sup>1</sup> As Table 1 indicates, a state is coded as a violator if there is at least one reported incident of state sponsored torture. Systematic violators are those states for which there are at least 50 reported incidents of state sponsored torture. A list of the countries that violated in the year of ratification is provided in the appendix.

<sup>2</sup> Prohibition of torture is a customary international law norm with the status of *jus cogens*. This means that the norm against torture has obligatory character (Lutz and Sikkink, 2000). Besides being nonderogatory, it is also very specific and well-defined. Despite these two characteristics, we do not see a high degree of compliance with this norm.

[Table 1]

Perhaps common theories of treaty adoption can explain what is happening here. On one popular account, governments adopt international obligations in order to bind successors to normatively appealing policies (Moravcsik, 2000, Reinhardt, 2002). By “locking-in” preferred norms, treaties serve as a sort of insurance policy against future losses of power.<sup>3</sup> Another common argument is that states adopt international obligations in order to signal commitments to particular policies or to the international order itself (Farber, 2002; Simmons 2000; Mansfield and Pevehouse, 2006). Adopting international norms, in this sense, serves as a costly signal to interested parties. A final argument is that states ratify treaties because they constitute costless commitments (Hathaway, 2002). In so far as international legal agreements lack serious enforcement powers, they are merely low cost opportunities to express support for a cooperative international enterprise. While each of these approaches has great appeal and receives some empirical support, not one sits easily with the human rights ratification and compliance facts.

The first two arguments assume that adopting international obligations is a costly enterprise (at least for democracies), and that accordingly promises will be kept. If the lock-in argument does not anticipate subsequent compliance, it is unclear how a government would think it was “locking-in” a policy. Similarly, if the credible commitment argument does not predict subsequent compliance, it is unclear why ratification would constitute a credible signal to interested parties. At a minimum, these theories must predict that ratifying administrations will keep their international obligations, at least for a short period of time. So, it is unclear how they would explain non-compliance in the year of ratification. Finally, while the costless commitment argument can explain widespread non-compliance, if treaties are costless, then we ought to

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<sup>3</sup> For a different sort of “lock-in” argument, see Ikenberry (2001).

observe universal ratification, which we do not. Certainly, we should not observe states placing conditions, or reservations, on their ratification status.

So, if standard theoretical models of treaty adoption struggle to explain the behavior we observe, what kind of a model can? In our view, a successful model will have the following characteristics. It will provide a micro-level foundation for the macro-level data on which scholars typically test their arguments. It will explicitly link the choice to ratify the treaty to the choice to comply (Vreeland, 2003). It should allow the implications (i.e. the costs and benefits) of these choices to vary (Goodliffe and Hawkins, 2006, von Stein, 2005a), so that it is possible to identify conditions under which we should observe particular combinations of behavior. In this paper, we develop a simple game theory model of human rights treaty adoption and violent state repression, which explicitly links a state's choice to violate human rights to its choice to be part of an international regime that condemns such behavior. The model highlights a tradeoff between international and domestic pressures. The way that states evaluate this tradeoff hinges on the *effectiveness of the domestic legal system*, which we view as the primary enforcement mechanism for legal obligations, and as such the primary domestic cost of adopting new international rules of conduct. Key to the argument's logic is the recognition that effective domestic enforcement is not just a function of government perceptions of judicial independence, but also of the government's expectations over whether victims of repression will seek legal redress. In this sense, the mechanism linking domestic tools of human rights treaty enforcement to the state's perceived costs of ratification runs through the people likely to bring claims against the government. The costs of ratification are lower when judicial systems are ineffective than when they are effective *because citizens are unlikely to seek legal redress when courts are unlikely to provide it*. On this account, two kinds of states adopt international obligations: those

that have no need for violent repression and those that have a need, yet face few domestic legal constraints. Thus, states (both democracies and autocracies) adopt international treaties fully intending to violate them when their legal systems will not hold them to account. In contrast, states that have some need for repression but face domestic legal constraints simply do not adopt new, international obligations (Powell 2006).

In this sense, we are in agreement with von Stein's (2005a) claim that treaties depend on domestic enforcement. We also share her view that empirical estimates of treaty effects might be biased if they do not take into account the selection mechanism for treaty adoption (von Stein 2005b). That said, we believe that the selection process ought to be explicitly linked to compliance behavior in a theoretical model, rather than treated as a statistical problem that should be addressed in empirical models that estimate treaty compliance. In addition, we do not agree that domestic enforcement is provided by democracy.<sup>4</sup> At the very least, we believe it is useful to unpack the standard international relations story of how democracies provide enforcement. In addition, the model we present not only anticipates selection effects, it strongly suggests that human rights conventions will have no effect on subsequent behavior at all, a theoretical finding that is highly consistent with the empirical literature (but see Landman 2005).

We divide the remainder of this paper as follows. In the subsequent section, we unpack the "democracy as an enforcement mechanism" argument. We then present our theoretical model and identify conditions under which we should expect states to adopt and violate international human rights obligations. In our empirical section, we use data on CAT ratification behavior and actual incidents of torture to estimate the joint probability of ratifying and violating, conditioned

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<sup>4</sup> We cite von Stein (2005a) with the author's permission, recognizing that the empirical results in the manuscript are preliminary.

on a measure of judicial system effectiveness. We highlight two key empirical results. First, the joint probability of being a CAT ratifier and torturing is decreasing in the effectiveness of the domestic judiciary. Second, the joint probability of not being a ratifier and torturing is increasing in the effectiveness of the domestic judiciary. We conclude by discussing implications for human rights research and for institutional design.

### **Does Democracy Increase the Costs of Adoption?**

Scholars find that democracies largely keep the promises they make (Siverson and Emmons, 1991, Dixon, 1994, Gaubatz, 1996, Simon and Gartzke, 1996, Leeds, 1999, Lai and Reiter, 2000, Martin, 2000, McGillivray and Smith, 2000, Simmons, 2000, Goldsmith and Posner, 2005).<sup>5</sup> Consistent with this literature, Von Stein (2005, 6-7) suggests that democratic processes render human rights treaty ratification costly for states, and as such, democracies should be careful about the obligations they adopt. While we agree that international obligations are most likely enforced domestically, our argument differs in two ways.

First, it is crucial that we unpack the theory linking democracy to costly ratification. The standard story suggests two reasons why democratic obligations will be kept: 1) because constituents will punish their representatives for violating treaties, and 2) because democracies contain effective legal mechanisms of enforcement. While it is possible that the representative element of democracy will constrain leaders, it is not clear how majorities in the United States, Israel or Colombia constrain (or have ever constrained) their leaders from violating human

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<sup>5</sup> Other scholars argue that democracies are less likely to keep their international commitments (Weiss and Jacobson, 1998, Bush and Reinhardt, 2002, Powell, 2006b). These contrasting empirical findings regarding democracy and compliance are to some extent reconciled in Dai, 2006, who focuses on the political attributes of competing domestic interests.

rights. Majorities under threat appear to tolerate violent repression (Davenport, Armstrong and Moore 2006). In addition, the notion that majorities punish governments for human rights treaty violation is at least in mild tension with the data in Table 1. That said, the second element of the standard story seems quite plausible. In particular, we argue that the source of domestic enforcement of international legal obligations is where legal obligations are typically enforced domestically: the judiciary (see also Cross, 1999; Keith, 2002; Skaar, 2001).<sup>6</sup> Of course, many states that provide meaningful opportunity for representation have ill-functioning judiciaries, and a number of states that do not offer much in the way of representation have effective domestic legal enforcement (Brown, 2002). In short, our view is that the explanation for the varying costs of treaty ratification lies in the domestic judiciary.

Second, identifying the domestic judiciary as the source of treaty enforcement is only half the battle, because domestic judiciaries do not enforce obligations simply because they are adopted. Courts enforce legal obligations, especially those concerning human rights abuses, when individuals raise accusations. This suggests a second difference in our account from existing models. In our model, the choices the state makes to adopt international obligations and repress individuals are (in part) a function of the expected choices that potential targets of repression make to seek legal redress for violations. Of course, the choices of targets will depend on their expectations over enforcement in the domestic judiciary; however, treating the judiciary as if it simply enforced the rules states adopt misses an important element of the legal process. Domestic legal enforcement matters, but it matters (again in part) because citizens will not seek

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<sup>6</sup> This argument sits well with the literature on compliance that focuses on how subnational players such as bureaucracies, interest groups, or judges in national courts can provide domestic sources of enforcement (Checkel, 2001, Keohane, Moravcsik, and Slaughter, 2000).

legal redress when courts are unlikely to provide it. In this sense, our argument not only suggests an answer to the puzzle of treaty adoption and violation, it also suggests a number of additional empirical implications for the behavior of citizens.

### **A Model of Treaty Adoption and Repression**

Our model of international human rights treaty adoption and compliance is simple. Players are assumed to have discrete strategy sets and they have discrete distributions over the state of the world. Despite these restrictions, we believe that the model helps clarify answers to a few important questions. If we believe that features of the domestic political environment influence the costs of treaty ratification (e.g. Goodliffe and Hawkins, 2006, von Stein, 2005a), what do we have to believe about the ways these treaties are enforced in order to explain why a state would ratify and violate the agreement? What does a state gain by joining an international human rights regime when it intends to violate its terms? Why bother ratifying in the first place?

The model contains two players: the state and a citizen (who may be best conceptualized as a potential target of state repression). Our aim is to identify the conditions under which the state will adopt and violate international standards governing the use of violence. As a baseline matter, we need to ask why states might ever violently repress individuals. We propose that they do so in order to undermine potential threats on their sovereignty. In this sense, states repress people in order to derive information about potential anti-regime mobilizations and to render those parties interested in mobilizing incapable of doing so (see Wantchekon and Healy, 1999 for similar goals).

Figure 1 summarizes the sequence of actions in the model, an extensive form game of incomplete information. The players are initially endowed with a set of resources. Without loss of generality, we fix the value the state places on its resources as 1. Assuming that no citizen is

as equally endowed as the state, we assume the citizen values his resources at  $k \in (0,1)$ . The state begins by making two choices in sequence. First, it chooses whether to adopt international standards governing violent repression or not. If it adopts these standards, we assume that the state creates civil and criminal penalties for violation.<sup>7</sup> Consistent with the notion that there is some expressive benefit to joining the human rights regime (Hathaway 2002; Simmons, 2000), we assume that states pay a cost,  $p \in (0,1)$ , for failing to ratify the agreement. This is the cost of pariah status in the league of nations, which is imposed by fellow states or NGOs or any other source of international embarrassment. States do not want to lose their reputation, credibility, and trust; they want to demonstrate to other member of the international system that they rightfully belong to the group (Finnemore and Sikkink, 1998, Eckersley, 2004, Wippman, 2004).<sup>8</sup> We assume that a state also pays  $p$  if it ratifies and a citizen brings a claim against it in court, and it is caught in violation.<sup>9</sup> Second, the state chooses whether or not to repress the citizen. The consequence of repression is that the state extinguishes the citizen's resource. If the state chooses not to repress, the citizen may choose to attack the state, which it can do by spending its resource

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<sup>7</sup> This is consistent with *Convention Against Torture* article 4.

<sup>8</sup> According to Elster (1989c), feelings of embarrassment, guilt and anxiety that are a result of violating a social norm, may lead to adherence to that norm.

<sup>9</sup> The latter assumption, which may appear overly restrictive, can be sustained on one of two grounds. First, we might reasonably assume that it will be easier for the international NGOs like Amnesty to identify instances of violent repression when citizens raise formal claims against the state (Nagan and Atkins, 2001). Second, we could re-specify the model so that repression is always observed, imposing a cost on the state in addition to that which it pays for not signing. Such a model would produce identical dynamics to that which we model below.

$k$ . By doing so, the citizen trades his personal resource for a portion of the state's, which it obtains by attacking it. Of course, not all citizens are equally capable of capturing the state's resources, so we assume that if the citizen attacks, it will gain  $\varepsilon \in (0,1)$  of the state's resources, leaving the state  $1-\varepsilon$ .<sup>10</sup> The parameter  $\varepsilon$  measures the threat the citizen poses to the state.

[Figure 1]

If the state represses after having adopted the international standards, the citizen will have no resources with which to launch an attack against the state. Still, he may seek legal redress for violations of the state's international obligations in either civil or criminal court.<sup>11</sup> If the citizen wishes to access the court, he will pay an access cost  $\delta > 0$ . If he raises a claim against the state and the judiciary is effective (as described below), he will regain  $\beta k$ . Here,  $\beta \in (0,1)$  captures the fact that some proportion of  $k$  will be irreplaceable. If the judiciary is ineffective, he regains

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<sup>10</sup> An alternative set-up might assume that  $\varepsilon$  is some increasing function of  $k$ . While certainly plausible, and perhaps more empirically satisfying, such an assumption would not change the basic result that follows. The same can be said for a model in which citizens could choose to spend some portion of  $k$ .

<sup>11</sup> Clearly the precise form of redress will vary depending on whether the individual seeks civil penalties or makes a criminal accusation. While it is common for criminal courts to assign monetary penalties, "redress" in the criminal law is likely to be psychological. Moreover, this set-up assumes that states have no rules against torture if they do not sign the treaty. Clearly this is not true. What is true, however, is that international interpretations of the *Torture Convention* are at least as broad, and provide at least as much protection as any state in the world (Nagan and Atkins 2001). Thus, it is reasonable to assume for most states that treaty adoption constitutes a genuine increase in the rights the state agrees to protect.

nothing. Likewise for the state, if the judiciary is effective and a claim is raised, we assume that it loses its resources as punishment for violating its obligations; if the judiciary is ineffective, the state loses nothing even if the citizen raises a claim. If the state does not adopt the international standards and represses the citizen, the game ends.

The key source of uncertainty in the model, which both players confront, concerns whether the domestic judiciary is effective. By “effective,” we mean two things: 1) it is capable of recognizing state violations of its international obligations if claims of violation are brought and 2) it is both willing and capable of imposing penalties for violation. As we know from the judicial politics literature, the second condition is not exogenously given in a society, but rather emerges endogenously out of a complex set of interactions between government officials, judges and the public (Helmke 2005; Staton 2006; Vanberg 2005). For our purposes, all that we need to be true is that governments and citizens have similar beliefs about whether their judiciaries constitute genuine constraints on the state or not. Although players might have a good sense of how effective the judiciary is, neither the citizen nor the state will be exactly certain about whether any judge will either hear a case based on a treaty or choose to apply an international interpretation of treaty provisions. With probability  $q \in (0, 1)$ , the players will believe that the domestic judiciary is effective, and with  $1-q$  the players will believe that it is not.

### *Equilibria*

For any vector of exogenous parameters, there is a unique pure strategy subgame perfect equilibrium (SPE). Key to the analysis is the *judicial effectiveness condition*, which determines whether the citizen will seek legal redress for violations of the state’s international commitments.

This condition, defined on  $q$ , is  $q^* = \frac{\delta}{\beta k}$ . For any  $q > q^*$ , the citizen will go to court in

equilibrium if she is repressed; however if  $q \leq q^*$ , the citizen will not. The cases can be grouped

into four substantively relevant classes of equilibria. Figure 2 provides a visual summary of these cases.

[Figure 2]

**Trivial Compliance** (For  $\varepsilon \leq k$ , the following profile constitutes an SPE)

State: Adopt the international standards and do not repress

Citizen: Do not seek legal redress and do not attack the government if  $q \leq q^*$   
 Seek legal redress and do not attack the government if  $q > q^*$ .

This case is found on the left side of both panels in Figure 2, where the citizen's expected return from attacking the state is minimal ( $\varepsilon \leq k$ ). When the citizen poses little threat to the state, he will prefer to save his resources rather than to waste them in an ineffective attempt to harm the regime. Knowing this, the state has no incentive to violently repress the citizen, even as the costs of doing so vanish (as  $r \rightarrow 0$ ). Adopting international standards under these conditions is trivial, in so far as the state simply saves the costs of pariah status via ratification.

**Reluctant Compliance**

*Ineffective judiciary sub-case* (For  $\varepsilon \in (k, r]$  &  $q \leq q^*$  the following constitutes an SPE)

State: Adopt the international standards and do not repress

Citizen: Do not seek legal redress and attack the government

*Effective judiciary sub-case* (For  $\varepsilon \in (k, r+p]$  &  $q > q^*$ , the following constitutes an SPE)

State: Adopt the international standards and do not repress

Citizen: Seek legal redress and attack the government

This case, divided into two sub-cases, is found in the upper right portions of each panel in Figure 2. In this equilibrium, the citizen expects to gain enough by attacking the state.

Accordingly, this is a state that faces some sort of threat; however, the threat is minimal, or at least the state is unwilling to spend the resources necessary to eliminate it. Consequently, since the state does not intend to repress the citizen, it will adopt the international standards, saving the pariah cost. Here again we observe compliance with the convention in equilibrium, but compliance is not trivial. The state will be attacked and could solve the problem with repression,

but it chooses not to, reluctantly. Note that compliance is increasingly difficult for the state when it knows that the citizen will not seek legal redress if attacked. Compare the size of the *Reluctant Compliance* areas across the left and right panels. The area in the left panel is smaller. On the left, the only thing stopping the state from repressing the citizen is its own cost of repression. This is true because it knows that the citizen will not seek legal redress if repressed, and so the state will save the pariah cost by adopting the standards. In this world, the temptation to adopt and violate the agreement is strong. In contrast, in the right panel, if the state represses, it pays the cost of repression and the pariah cost, because the citizen will go to court, and the state will be caught. In this world, the temptation to adopt and violate is considerably weaker. This tension, driven by the effectiveness of the judicial system foreshadows the following two results.

**Non-Compliance** (For  $\epsilon > \max\{k, r\}$  &  $q \leq q^*$ , the following constitutes an SPE)

State: Adopt the international standards and repress

Citizen: Do not seek legal redress and attack the government

This equilibrium is depicted in the lower right corner of the left panel in Figure 2. This behavior is evident in states like Albania, Brazil, Nigeria and Peru. The logic of this equilibrium is as follows. The state is willing to use its resources to put down threats to its sovereignty via repressive means, and its judiciary is insufficiently likely to enforce international obligations. As a consequence, targeted populations do not bring claims. In so far as governments do not expect to be challenged, they can save the pariah cost by adopting the agreement yet continuing to engage in behavior proscribed by the treaty. In this sense, the incentive to adopt and defy international human rights regimes is transparent. States gain rhetorical space in the international system without giving up their practices at home. The space is the ability to claim that they are in good standing with the international law of human rights, even though they maintain practices proscribed by the agreement, but which they believe ensure their sovereignty. Violations are not

observed, because claims are not raised. Clearly this overstates the role of the judicial system. We observe violations outside of formal legal process (see n 8). Although the model suggests that no claims will be brought in equilibrium, the empirical implications we draw from the logic here need not be so dependent on this knife-edged behavior. Indeed, all that is necessary, is that individuals in states with ineffective judiciaries are far less likely to challenge formally violations of their human rights than individuals in states with effective judiciaries, and that violations are more likely to be observed when they are considered in a formal legal process.

**Opt Out** (For  $\varepsilon > \max\{k, r+p\}$  &  $q > q^*$  the following constitutes a SPE)

State: Do not adopt the international standards and repress

Citizen: Seek legal redress and attack the government

Depicted in the lower right portion of the right panel, this equilibrium describes the process by which states select to opt out of human rights regimes when they would be enforced at home. In our view, this is the story of states like Israel or the United States of America, which only ratified the CAT after placing serious reservations on their status. Indeed, the American reservations effectively limit the definition of torture to the United States' federal judiciary's interpretation of the U.S. Constitution. Thus, for the United States, CAT ratification amounted to issuing a renewed commitment to the 5<sup>th</sup> and 8<sup>th</sup> Amendments. States in this equilibrium face the same incentives to repress as those under the *Non-Compliance* equilibrium, yet since their judges are likely to enforce new obligations, they do not adopt them.

### **Empirical Implications**

The theoretical model suggests a number of empirical implications concerning both citizen and state behavior. In this paper we focus on how the effectiveness of the domestic judiciary influences the choices of states to formally join international human rights regimes and to violently repress individuals under their control. Consequently, as we move to an empirical

test of this model, we will seek to explain variance in the joint probability of fully ratifying an international treaty on human rights and repressing human rights. The empirical proposition that we test is that the joint probability of being fully ratified under an international human rights agreement and engaging in behavior proscribed by that agreement is weakly decreasing in the effectiveness of the domestic judiciary. A quick glance at Figure 2 makes the point. As we move from left to right across the panels, the probability that the judiciary is effective increases ( $q \rightarrow 1$ ). As this probability increases, we should be decreasingly likely to observe cases in the *Non-Compliance* equilibrium, where states ratify human rights agreements and engage in repressive behavior not expecting their courts to hold them accountable. What we are more likely to observe as we move to the right across Figure 1 are states that are in the *Opt Out* equilibrium. That is, we should be increasingly likely to observe states avoiding ratification and engaging in practices proscribed by the agreement. At the very least, we are certainly *no more likely* to observe states in the *Non-Compliance* equilibrium. Analogously, a left-ward move across the figure makes it no less likely that we will observe states in the *Non-Compliance* equilibrium. As courts become ineffective, the incentive to ratify and violate is strong. This argument suggests the following two hypotheses.

*Non-Compliance Hypothesis:* The effect of judicial effectiveness on the joint probability of ratifying a human rights agreement and engaging in practices that violate its terms (behavior consistent with the *Non-Compliance* equilibrium) is less than or equal to zero.

*Opt Out Hypothesis:* The effect of judicial effectiveness on the joint probability of not ratifying a human rights treaty and engaging in practices that violate its terms (behavior consistent with the *Opt Out* equilibrium) is greater than or equal to zero.

## Data

Although the model is applicable to many forms of violent repression, we test its predictions on the choices of states to adopt the CAT and to torture.<sup>12</sup> The temporal domain of our study is 1987-2001, and the unit of analysis is a state-year. We use this time frame because the CAT entered into force on 26 June 1987.

### *Dependent variables*

Since we wish to estimate the joint probability of being fully ratified under the *CAT* and torturing, we require two dependent variables. Our first dependent variable, *Ratify*, captures information about states' ratification status under the *CAT*. *Ratify* is binary, taking a value of 1 if a state has ratified the *CAT* in a particular year and has placed no reservations on its agreement, and 0 otherwise.<sup>13</sup> Our second dependent variable, *Torture*, is also binary, taking a value of 1 if a state sponsored more than 50 instances of torture during a particular year, 0 otherwise. This variable treats only the most systematic violators of the *CAT* as non-compliant; however, the *CAT* does not give states an upper bound on torture – it proscribes it in any amount.

Accordingly, we also estimate our models on a second measure of torture, *Anytorture*, which is also binary, taking a value of 1 if a state sponsored at least 1 act of torture during a particular year, and 0 otherwise. Data for these variables come from the Cingranelli-Richards (CIRI) Human Right Database (2004), which contains information about government respect for a wide

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<sup>12</sup> We have also estimated models using an empirical measure of extra-judicial killings, a form of torture under the *Convention* we believe. The results we report here are only stronger in those models.

<sup>13</sup> We find consistent results below using a measure of ratification status that ignores reservations.

range of human rights.<sup>14</sup> Given our theoretical discussion, we wish to estimate the following model.

$$\begin{aligned}\Pr(\text{Ratify}=1) &= \gamma_1(\text{Judicial Effectiveness}) + \beta_{1k}(\text{Controls1}) + \varepsilon_1 \\ \Pr(\text{Torture}=1) &= \gamma_2(\text{Judicial Effectiveness}) + \beta_{2k}(\text{Controls2}) + \varepsilon_2\end{aligned}$$

Although we could estimate this model with two separate probit models, we do not wish to assume that the errors of these equations are uncorrelated. Accordingly, we estimate a series of bivariate probit models. Given our hypotheses, we expect  $\gamma_1 \leq 0$  and  $\gamma_2 \leq 0$ .

### **Independent variables**

#### *Judicial Effectiveness*

We begin with the key variable for this analysis: judicial effectiveness. Judicial effectiveness is closely connected to the overall quality of the legal system. In a high-quality legal system, the principle of the rule of law is respected, sound legal enforcement structures exist, and stable institutions protect rights. Ideally, we would like a measure that explicitly captures how likely it is that a state's judiciary will protect an individual against state sponsored torture. Unfortunately, we are aware of no such direct measure in the literature. However, we can measure the general effectiveness of state institutions that protect rights. In this paper, we use the *Contract Intensive*

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<sup>14</sup> The CIRI variable 'torture' refers to the purposeful inflicting of extreme pain, whether mental or physical, by government officials or by private individuals at the instigation of government officials. Torture includes the use of physical and other force by police and prison guards that is cruel, inhuman, or degrading. This also includes deaths in custody due to negligence by government officials (Cingranelli and Richards, 2004).

*Money* (CIM) measure created by Clague et al (1999).<sup>15</sup> The CIM indicates the proportion of money supply that is held in banks (Clague, Knack, Keefer, and Olson 1999,188). The CIM measure constitutes an “objective measure of the enforceability of contracts and the security of property rights” (Clague, Knack, Keefer, and Olson, 1999:186); however, we should question whether it is a valid measure of the extent to which the legal system protects human rights.<sup>16</sup>

### *Validity of the CIM*

We have performed several validity tests. We first considered its correlation with three measures of judicial independence. We do so in so far as there is evidence suggesting that judicial independence is correlated with greater protection of human rights (Blasi and Cingranelli 1996; Cross 1999; Keith 2002 La Porta et al 2004). Accordingly, if the CIM is correlated with measures of judicial independence, we can have greater confidence that it is tapping into our concept of an effective judicial system. This CIM is correlated with the La Porta et al (2004) measure of judicial independence (.31), Feld and Voigt’s (2002) measures of *de jure* (.23) and *de facto* (.2) judicial independence.<sup>17</sup> It is also correlated with the International Country Risk Guide (ICRG) measure of

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<sup>15</sup> Data for the CIM measure come from the International Monetary Fund’s *International Financial Statistics*.

<sup>16</sup> CIM is constructed as the ration of noncurrency money to the total money supply  $(M2-C)/M2$ , where M2 denotes money supply and C is currently held outside banks.

<sup>17</sup> These results are particularly interesting because these three measures are not very well correlated with each other. CIM is also highly correlated with the CIRI (Cingranelli-Richards) physical integrity measures of extrajudicial killing, political imprisonment, and disappearance (The Cingranelli and Richards Human Rights Database, 2004).

the rule of law (.45). Although not overwhelming, each of these correlations is statistically significant.

There are two advantages to the CIM over these other measures for our current purposes. First, with respect to the judicial independence measures, the CIM is a time series measure, while the Feld and Voigt and La Porta *et al* measures are available only cross-sectionally. Unless we want to assume no over time variation in the effectiveness of domestic judiciaries, the CIM is clearly preferable. This is a special concern since the temporal domain of the study spans a world wide period of democratization. The ICRG measure, is available for a relatively long time series; however, its pattern of missing data is alarming. The ICRG is less likely to contain a value for poor countries than for large countries. Since we know that quality legal institutions produce economic development by providing incentives for efficient investment (Barro 1997), this suggests that the ICRG measure is also more likely to be missing for ineffective judiciaries than for effective judiciaries. This is not a serious problem with the CIM, which is nearly as likely to be available for wealthy as for poor states.<sup>18</sup>

Finally, we considered the predictive validity of the CIM, using additional measures from the CIRI database, whose variance should be explained by the CIM if it measures the degree to which judicial institutions protect human rights. In a simple OLS regression of the CIRI physical integrity

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<sup>18</sup> This is not to say that there are no differences between the countries for which the CIM is missing and not missing, but that the difference is trivial relative to the ICRG measure. For example, the average real GDP/capita for those countries whose ICRG measure is missing is \$4204 but \$8821 if the measure is not missing, a difference of 109%. The average real GDP/capital for those countries whose CIM measure is missing is \$8,649 and \$7,011 when not missing. This difference is only 23%.

index, we estimated an extremely large and positive estimate for the CIM. We replicated this finding in a series of logit models estimating the probability of a state engaging in extra-judicial killing, disappearing individuals and of incarcerating political prisoners.<sup>19</sup>

### ***Controls***

In addition to judicial effectiveness, the theoretical model suggests that a state's costs of using violent means to repress its citizens and its perceptions of threats to its sovereignty should influence ratification and repression choices. In order to measure the costs of repression to a state, we use the Composite Index of National Capability (*CINC*) index to measure capabilities of each state (Singer, Bremer, and Stuckey, 1972). The assumption is that states with higher capabilities will perceive lower costs to repression. Though Figure 2 indicates that increasing a state's capabilities should not make it less likely to torture, it is possible that increasing capabilities could make a state less likely to ratify the *CAT*. Accordingly, we expect a negative relationship in the torture equation but do not have a strong prediction in the treaty equation.

In order to capture a state's perceived level of threat, we construct a variable called *Threat*, derived from the Armed Conflict Dataset (PRIO, 2005). This variable is binary, taking a value of 1 if the state faced any of the following types of conflicts: extra-state conflict, interstate conflict, internal conflict, and internationalized internal conflict. *Threat* is coded 0 otherwise. Our predictions for the threat variable in an additive context are again clear for the torture model

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<sup>19</sup> These models all contained measures of a state's regime type, the size of its population and its involvement in inter or intra-state conflict. They are available upon request; however, we do not intend these models to test particular theories. Rather we see them as providing evidence of the CIM's predictive validity.

– increasing threat should never make a state less likely to torture; however, it is possible that the threat variable could be positively or negatively related to treaty ratification.<sup>20</sup>

We also include controls for regime type and population size.<sup>21</sup> Several scholars have theorized that regime type has a substantial impact on states' propensity to sign and comply with international treaties (Von Stein, 2004, Slaughter, 1995, Poe and Tate, 1994). In order to measure democracy, we use Cheibub and Gandhi's (2004) regime measure (*Regime*), where 0 indicates that a state is authoritarian, and 1 indicates that a state is a democracy. We should note that the results are fully robust to an alternative measure of the democracy: the *Polity IV* scores (Jagers and Gurr, 1995). Population has been identified as a predictor of state torture behavior (Henderson, 1993, Davenport, 1995, Poe and Tate, 1994, Poe et al., 1999, Camp Keith, 1999), thus we are also including it in our models. In order to account for the impact of the international community's pressure on a state's ratification and torture practices, we also include a variable, *INGO*, which indicates the number of international NGOs to which citizens of a state have a membership (Hafner-Burton and Tsutsui 2005). If international organizations exert pressure on states to join international conventions and to comply with their obligations, this pressure should be increased as the number of "boots on the ground" increase, which should be correlated with

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<sup>20</sup> We also run each of our models using another measure of threat - a variable called *Terrorist Threat* derived from the MIPT (National Memorial Institute for the Prevention of Terrorism) Terrorism Knowledge Base (TKB), a comprehensive databank of global terrorist incidents and organizations. This variable is a count variable comprised of the number of terrorist incidents during each particular year. Our results remain the same.

<sup>21</sup> Since population size and the CINC measure are highly correlated, we have estimated models dropping population. Results are robust to this change.

the density of citizen participation in the network of international organizations (Sikkink 1993).<sup>22</sup> We have also estimated models with controls for the level of economic development as measured by real GDP per capita (Heston et al 2006).<sup>23</sup> We run these models separately for two reasons. First, scholars might use economic development as a measure of a state's overall capacity or power (e.g. Goodliffe and Hawkins 2006), but we have already included a direct measure of state power: the CINC. Second, we might include development as a rough proxy for institutional quality, but again, we already have such a measure. Moreover, the CIM is correlated with development and there is a strong theoretical reason to believe that quality legal institutions influence growth and development (e.g. North 1990; Barro 1997). Accordingly, when we include real GDP on the right-hand side, the effect of CIM that we estimate is in part direct and in part indirect, running through its impact on development.

## Results

Tables 2A and 2B display the parameter estimates for our bivariate probit models along with White-Huber standard errors clustered on the state. We have also estimated models with time variables based on the method developed by Beck, Katz and Tucker (1998) to account for temporal dependence, and the results are robust to that change. If anything, the CIM results are stronger.<sup>24</sup> Table 2A contains results of the first set of models, where *Torture* constitutes our

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<sup>22</sup> We have also estimated our models using the natural log of this measure, and the results are robust to this change.

<sup>23</sup> We also estimated models with measures of economic growth, but this measure was not significant and did not affect our results, so we have left those models out of the paper.

<sup>24</sup> We are somewhat suspect of the time estimates in those models, where we estimated unusually large coefficients. For example, the coefficient on the time prior to ratification in the ratification

dependent variable in the torture equation. Table 3B displays the parameter estimates of the second set of models, where *Anytorture* is the dependent variable in the torture equation. In both tables, Model 1 is our baseline model, and Model 2 has economic development (*Real GDP*) added as one of the independent variables. Overall, the results suggest support for the key argument in the paper. The *CIM* estimates are negative in both equations, suggesting that states are decreasingly likely to ratify the CAT in full and torture as the effectiveness of their judiciaries' increase. These results hold for both measures of torture. The results in the second column, where we also include a measure of economic development, is consistent with the argument that a part of the effect of CIM runs indirectly through its effect on development. The CIM coefficients are smaller in model 2 (and insignificant in the *Anytorture* equation). The torture equations estimates for the *CIM* confirm the results in Keith (2002) and Cross (1999), both of whom find that independent judiciaries are crucial to reducing human rights abuses.

[Tables 2A and 2B]

The control variables are nearly all correctly signed and in most cases are picking up meaningful variation. As anticipated, increasing threat makes states more likely to torture. This result holds for both measures of torture. The *Regime* estimate, which captures the effect of democracy on ratifying and torturing is of significant interest here. Both models indicate that, *ceteris paribus*, democracies are more likely than autocracies to ratify the *CAT* without reservations. Consequently, though it is possible that democracy increases the joint probability of ratifying and not torturing, it is unlikely that democracy can explain a key behavior of interest in

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equation was always greater than seven, with a z-score never less than 39. More importantly, the Beck, Katz and Tucker method does not seem to cover our data structure precisely, where we have two equations which are correlated, and dependent variables with multiple failures.

this paper: not ratifying and torturing (behavior in the *Opt Out* equilibrium). This is because autocracy makes a state *less likely to ratify*. Consistent with the results in Hafner-Burton and Tsutsui (2005), states with larger numbers of memberships in NGOs are more likely to sign the CAT and less likely to torture, providing evidence that international issue networks are an important part of the human rights regime story. Finally, the *CINC* coefficient is negative and significant in both equations, suggesting that more capable states are less likely to ratify the CAT without reservations. The one exception to this pattern is that *CINC* coefficient in the torture equation is negative, suggesting that more capable states are less likely to torture. The theoretical model did not anticipate this result.<sup>25</sup>

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<sup>25</sup> It is possible that *CINC* is simply a poor measure of a state's costs of torturing, and reflects some other factor that is excluded from the empirical model. It is also possible that the costs of torture actually increase in the *CINC* measure in so far as it captures the professionalization of a state's security forces. If it is increasingly difficult to induce your agents to torture as their professionalization increases, and *CINC* picks up professionalization, we would expect the estimated result. Since we had no strong prediction regarding the *CINC* estimate in the ratification equation, this interpretation is fully consistent with the results. Finally, the obvious interpretation is that the result falsifies the argument, in part. In so far as torture targets are typically already in state custody, perhaps a model of state torture ought to assume that the costs of torturing for a state are either trivial or constant around the world. Such a change to our model would not remove the dynamics in the *Non-Compliance* and *Opt Out* hypotheses; however, it would suggest dropping *CINC* from the estimation. To consider this possibility empirically, we excluded the *CINC* measure from our models reported in Tables 2A and 2B and obtained nearly identical results as we obtain with the *CINC* specification.

### *Predicted Probabilities*

Tables 3A and 3B, which contain two columns of predicted joint probabilities for substantively informative values of the *CIM* measure (with all other covariates set at their means), display the key quantities of interest. Table 3A contains the predicted probabilities for *Torture*, our measure of systematic human rights violators. Table 3B displays the probabilities for *Anytorture*. The predictions are derived via the method described in Tomz, Wittenberg, and King (2003); however, since *Clarify* does not support our statistical model, we calculate the quantities of interest ourselves. A predicted probability thus represents the mean of a 1000 simulations drawn from the sampling distributions of the estimated parameters in Model 1. In particular, the first column of Table 3A shows estimates of

$$\Pr(\text{Ratify}=1 \cap \text{Torture}=1 \mid \text{CIM}=x_o, \mathbf{Z}),$$

where  $\mathbf{Z}$  is a vector of control variables set at their respective means. For these simulations, we estimated changes in these probabilities for a two standard deviation changes in the CIM. This gives us a sense of the kind of behavioral changes associated with moving from a highly ineffective to a highly effective judiciary. As predicted by the *Non-Compliance* hypothesis, the probability of ratifying in full and systematically torturing is far higher with a highly ineffective judiciary ( $\text{CIM}=.48$ ), .32, than it is with a highly effective judiciary ( $\text{CIM}=.99$ ), .08. Moreover, the change in predicted probability (.24) is statistically significant, as is made clear by the 95% confidence interval at the bottom of the column, which does not contain 0. We obtain similar results for *Anytorture* (Table 3B- first column).

The second column of Tables 3A and 3B show the predicted joint probability of not ratifying and torturing, that is,

$$\Pr(\text{Ratify}=0 \cap \text{Torture}=1 \mid \text{CIM}=x_o, \mathbf{Z}).$$

The *Opt Out* hypothesis suggests that this probability should be increasing in our measure of judicial effectiveness, *CIM*. The predicted probabilities are consistent with that account, though the results are stronger for our models of *Anytorture*. For the *Torture* models, the probability of not ratifying and systematically torturing is predicted to be .30 under a highly effective judiciary and .27 when the judiciary is ineffective. That said, the 95% confidence interval contains 0, so this result, while in the correct direction is not statistically different from zero. On the other hand, Table 3B shows that the probability of not ratifying and torturing at least minimally is .72 when the judiciary is highly effective but only .46 when the judicial effectiveness is low, and the difference between these probabilities is statistically significant. To summarize, the empirical results provide evidence that the states that ratify and violate the *CAT* are those with extremely ineffective judiciaries. Our estimates also suggest that states are more likely to not ratify in full and torture when they face effective judiciaries.

## **Conclusion**

Why do so many states ratify international human rights treaties and then ignore their obligations? Existing theories of treaty adoption and compliance do not fully explain this disturbing fact. We argue that states' choices to violate human rights are linked to the effectiveness of a domestic legal system, which is the main enforcement mechanism of legal obligations, both internal and international. Using a simple game theory model, we show that states are highly likely to adopt human rights regimes and violate them when their domestic legal systems are ineffective, because individuals in those states will not bring claims of human rights violations in expectation of being ignored by the judiciary. Our empirical results suggest that states with ineffective judiciaries are highly likely to ratify and violate, and that states with

highly effective judiciaries are highly likely not to ratify and engage in behavior that would have been proscribed under the agreement.

These findings yield a crucial political dilemma. States will feel bound to their international obligations stemming from the *CAT* only if domestic legal enforcement is strong. However, if domestic legal enforcement is strong, states are less likely to adopt new constraints on their behavior. In short, the factor that encourages compliance prevents states from ratifying. This raises the possibility that promoting the construction of quality legal systems (though it might solve other problems) is unlikely to enhance the effectiveness of international human rights regimes. What can be done to encourage states to ratify human rights agreements and keep their promises?

In our view, realist theory, under which states are concerned only with their survival in an anarchic system, does not offer a compelling answer to this dilemma. According to this view, states will cooperate only to further their own selfish interests. International rules and norms matter if they affect the estimation of their interests. Thus, international law simply mirrors politics, and compliance with international agreements takes place only due to states' interests and power, not legitimacy (Waltz, 1979, Morgenthau, 1948a). This suggests that states will break the stipulations of the *CAT* if they face incentives to do so. Alternatively, they will refuse even to bother with the ratifying of the *CAT* if it does not lie in their interests. International law simply does not matter and is not able to constrain selfish states.

A potentially optimistic picture is painted by the neoliberal school of thought (Keohane, 1984, Axelrod, 1985). Neoliberals propose that states cooperate, sign and uphold international treaties because of efficiency gains and reputational costs. International regimes can enhance compliance with interstate agreements in a variety of ways, from boosting reputation to

“establishing legitimate standards of behavior for states to follow” (Keohane, 1984:244-45). In this way, states through institutions and the shadow of the future, can overcome the conditions caused by anarchy of the system. Unfortunately, it is not clear what efficiencies can be gained by constraining states from violating the rights of individuals within their territory alone (Moravcsik 2000, 217). For example, when Colombia tortures, it largely tortures Colombians; and, when Burundi tortures, it largely tortures Burundis. Would Colombia and Burundi be mutually benefited from a world in which they are simultaneously constrained from using torture against their own domestic enemies? It is not at all clear that they would. As Moravcsik highlights, international cooperation in the human rights context is different from cooperation in policy areas where there are obvious efficiencies to be gained from cooperation. Thus, it is not clear that the neoliberal school has an answer either.

In our view, the answer to this question depends on whether we wish states to generally respect the sovereignty of their international partners or not. If not, then it seems reasonable that reinforcing international legal mechanisms or encouraging states to intervene in the domestic affairs of other states may reduce incidences of violation. Of course, it is unclear how this mechanism would constrain powerful states. It is not obvious that the Netherlands will prevent the United States from violently interrogating suspected terrorists. Additionally, a common rationale for generally respecting the sovereignty of states is that the failure to do so risks conflict. Strengthening international mechanisms of enforcement might very well reduce domestic incidents of torture in particular places, but at what cost?

If we wish to respect the sovereignty of states in the international system, then it is possible that the answer to the dilemma may only lie in preference change at the domestic level. In this sense, the constructivist perspective provides a potential way out of the problem, albeit a

difficult one. In this view, compliance is less a matter of imposed constraints and faced incentives than of internalized identities and norms of proper behavior (Wendt, 1999, Hurd, 1999, Finnemore and Sikkink, 2001). In some cases, internalization involves a relatively slow acquiescence to an emerging international standard, such as human rights protection, in particular the norm that prohibits torture. What is thus crucial to compliance with international norms is the process “whereby international legal norms seep into, are internalized, and become embedded in domestic legal and political processes” (Koh, 1996:205). According to this argument, states would be more likely to ratify and comply with the stipulations of the CAT if they fully internalized the norm prohibiting torture. This process requires a long and bumpy progression towards a ‘better world.’

In our view, though preference change would work, it is an easy theoretical way out of the problem in one sense and begs a series of questions in another. If preferences could be changed in this way, there would be no need for an international law of human rights, which protects individuals from their governments. In other words, if preferences were different than they are, there would not be a problem. While true, this perspective resolves the problem by assuming it away. In addition, we might ask how we change preferences? According to constructivist thought, the most theoretically interesting instances of internalization begin with norm entrepreneurs and issue-networks, such as courts, legislatures, international organizations, and nongovernmental organizations (Finnemore and Sikkink, 2001, Keck and Sikkink, 1998). Thus, if there is a way out of the dilemma, perhaps it does lie in building effective domestic judiciaries. Although we are agnostic about the particular way toward preference change, in light of states’ domestic incentives to repress, we do believe that it is the most reasonable answer to our dilemma if we wish to respect state sovereignty. Short of systematic domestic preference

change, two worlds are possible. In one, states will continue to respect the sovereignty of other states, and the *Convention Against Torture* will continue to be violated more or less systematically. In the other, the international community will decide to enforce the substantive provisions of its human rights conventions on states that are not sufficiently powerful to defend themselves. The former is clearly not a solution to the problem of torture; the latter may solve the problem, but at the risk of inducing conflict.

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## Appendix

**Table A1. States that violated the *Convention Against Torture* in the year of ratification**

Autocracies		Democracies	
State	Year of Ratification	State	Year of Ratification
Algeria	1989	Albania	1994
Azerbaijan	1996	Armenia	1993
Bosnia-Herzegovina	1993	Australia	1989
Burkina Faso	1999	Belgium	1999
Cambodia	1992	Benin	1992
Congo (D.R.)	1996	Bolivia	1999
Chad	1995	Brazil	1989
Cote d'Ivoire	1995	Burundi	1993
Cuba	1995	Colombia	1987
Cote d'Ivoire	1995	Croatia	1992
Georgia	1994	Cyprus	1991
Guinea	1989	El Salvador	1996
Guyana	1989	Greece	1988
Hungary	1987	Guatemala	1990
Kazakhstan	1998	Honduras	1996
Kenya	1997	Italy	1989
Mozambique	1999	Japan	1999
Niger	1990	Korea (Rep.)	1995
Paraguay	1990	Lesotho	2001
Somalia	1990	Lithuania	1996
Tajikistan	1995	Macedonia	1994
Turkmenistan	1999	Malawi	1996
Uzbekistan	1995	Namibia	1994
		Nepal	1991
		Nigeria	2001
		Peru	1988
		Portugal	1989
		Romania	1990
		Sierra Leone	2001
		Slovakia	1993
		Spain	1987
		Sri Lanka	1994
		Venezuela	1991
		Zambia	1998

Sources. Cingranelli and Richards (2004) dataset

<sup>a</sup> States are coded as violators if they ratified the *Convention* without reservation and sponsored at least one act of terror, as measured by Cingranelli and Richards.

**Table A2. Statistical Summary of Variables**

<i>Variable</i>	<i>Obs</i>	<i>Mean</i>	<i>Std. Dev.</i>	<i>Min</i>	<i>Max</i>
Ratify (ratification without reservations)	3492	0.3572	0.479	0	1
Torture (More than 50 incidents)	2783	0.427		0	1
Anytorture (At least one incident)	2783	0.826		0	1
CIM (Judicial Effectiveness)	2076	0.792	0.161	0.0584	0.999
Capabilities (Repression Costs)	2700	0.006	0.017	0	0.173
Threat	2965	0.238		0	1
Regime (Democracy)	2408	0.492		0	1
Economic Development (Real GDP)	3012	7544.89	7930.03	155.06	54285.46
Population	3271	31231.06	116486	14.26	1294846
INGO	2112	658.19	691.16	0	3523

## A2 Formal Analysis

The state's action set is  $A_{state} = \{(adopt, repress), (adopt, \sim repress), (\sim adopt, repress), (\sim adopt, \sim repress)\}$ . If the citizen has not been repressed, its action set is  $A_{citizen_{\sim r}} = \{attack, \sim attack\}$ . If the citizen has been repressed, its action set is  $A_{citizen_r} = \{seek redress, \sim seek redress\}$ . In what follows, we make the following knife-edge assumptions. If indifferent, the citizen will not attack and will not go to court; and, the state will repress and not adopt international obligations. The players' payoff functions are as follows.

$$u_{state} = \begin{cases} 1 & \text{if } (adopt, \sim repress \ \& \ \sim attack) \\ 1 - \varepsilon & \text{if } (adopt, \sim repress \ \& \ attack) \\ 1 - r & \text{if } (adopt, repress \ \& \ \sim seek \ redress) \\ -r - p & \text{if } (adopt, repress, seek \ redress, \ \& \ judiciary \ effective) \\ 1 - r - p & \text{if } (\sim adopt, repress \ or \ \sim adopt, repress, seek \ redress, \ \& \ judiciary \ ineffective) \\ 1 - p & \text{if } (\sim adopt, \sim repress \ \& \ \sim attack) \\ 1 - \varepsilon - p & \text{if } (\sim adopt, \sim repress \ \& \ attack) \end{cases}$$

$$u_{citizen} = \begin{cases} k & \text{if } (\sim repress \ \& \ \sim attack) \\ \varepsilon & \text{if } (\sim repress \ \& \ attack) \\ 0 & \text{if } (\sim adopt \ \& \ repress \ or \ adopt, repress, \ and \ \sim seek \ redress) \\ -\delta & \text{if } (adopt, repress, seek \ redress, \ \& \ judiciary \ ineffective) \\ \beta k - \delta & \text{if } (adopt, repress, seek \ redress, \ \& \ judiciary \ effective) \end{cases}$$


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### Citizen Behavior

The uncertainty in this model establishes three information sets for the citizen. Let  $I_{c1}$  be the information set that includes any history in which the state has adopted the international obligations and repressed. Let  $I_{c2}$  be the information set that includes any history in which the state adopted and did not repress, and  $I_{c3}$  be the information set that includes any history in which the state did not adopt and did not repress. Given the citizen's payoff function, her expected utilities are equivalent at  $I_{c2}$  and  $I_{c3}$ . Thus, once we find the citizen's optimal choice at

one, we know the optimal choice at the other. The citizen's expected utility of attacking at  $I_{c2}$ ,  $EU_c(Attack|I_{c2})=q\varepsilon+(1-q)\varepsilon\equiv\varepsilon$ . Similarly,  $EU_c(Not\ Attack|I_{c2})=qk+(1-q)k\equiv k$ . Thus, the citizen will choose  $\sim attack$  at  $I_{c2}$  and  $I_{c3}$  if  $\varepsilon\leq k$ , and  $attack$  if  $\varepsilon>k$ . What will the citizen choose at  $I_{c1}$ ? The expected utility of  $seek\ redress$  at  $I_{c1}$  is  $EU_c(seek\ redress|I_{c1})=q(\beta k-\delta)+(1-q)(-\delta)$ , and the expected utility of  $\sim seek\ redress$  is 0. Thus, the citizen will seek redress if and only if  $q > \frac{\delta}{\beta k}$ .

This defines the judicial effectiveness threshold, and sets up four relevant cases for the state.

### *State Behavior*

The state has a single information set.. Given the citizen's optimal strategies derived above, there are four cases to consider.

Case 1. Assume  $\varepsilon\leq k$  &  $q > \frac{\delta}{\beta k}$ , and thus the state expects the citizen will choose  $\sim attack$

if he is not repressed but will  $seek\ redress$  if repressed. The expected utilities for the state are as follows.

$$\begin{aligned} EU_s(adopt\ \& \ repress) &= q(-r-p)+1-q(1-r-p) && \equiv & 1-r-p-q \\ EU_s(adopt\ \& \ \sim repress) & && = & 1 \\ EU_s(\sim adopt\ \& \ repress) & && = & 1-r \\ EU_s(\sim adopt\ \& \ \sim repress) & && = & 1-p \end{aligned}$$

It is immediate that in Case 1, it is optimal for the state to  $adopt\ \& \ \sim repress$ . Since the citizen will not attack, the state can only lose resources by repressing or not adopting.

Case 2. Assume  $\varepsilon\leq k$  &  $q \leq \frac{\delta}{\beta k}$ , and thus the citizen will choose  $\sim attack$  if she is not

repressed and chose  $\sim seek\ redress$  if repressed. In this case, the state's expected utilities are as follows.

$$\begin{aligned} EU_s(adopt\ \& \ repress) & && = & 1-r \\ EU_s(adopt\ \& \ \sim repress) & && = & 1 \\ EU_s(\sim adopt\ \& \ repress) & && = & 1-r-p \end{aligned}$$

$$EU_s(\sim\text{adopt} \ \& \ \sim\text{repress}) = 1-p$$

For the same reason as Case 1, it is obvious that the state will choose *adopt and ~repress* here, as well.

Case 3. Assume  $\varepsilon > k$  &  $q > \frac{\delta}{\beta k}$ , and thus the citizen will choose *attack* and *seek redress*.

The state's expected utilities are as follows.

$$\begin{aligned} EU_s(\text{adopt} \ \& \ \text{repress}) &= 1-r-p-q \\ EU_s(\text{adopt} \ \& \ \sim\text{repress}) &= 1-\varepsilon \\ EU_s(\sim\text{adopt} \ \& \ \text{repress}) &= 1-r-p \\ EU_s(\sim\text{adopt} \ \& \ \sim\text{repress}) &= 1-\varepsilon-p \end{aligned}$$

If ever the state wishes to adopt the standards and repress the citizen, it does better to not adopt the standards and repress. This is because the citizen will seek redress and the state will continue to pay  $p$ . Thus, if the state is incentivized to repress in a world with an effective judiciary, it does best to not adopt new legal obligations. Similarly, and as before, if the state is not incentivized to repress, it will prefer adopting the standards to not. Thus, the only issue is whether the state should choose *~adopt & repress* or *adopt & ~repress*. This choice hinges on whether  $1-\varepsilon > 1-r-p$ . There are two sub-cases. If  $\varepsilon \leq r+p$ , then the state will choose *adopt & ~repress*; if  $\varepsilon > r+p$ , the state chooses *~adopt & repress*.

Case 4. Assume  $\varepsilon > k$  &  $q \leq \frac{\delta}{\beta k}$ , and thus the citizen will choose *attack* if she is not

repressed and chose *~seek redress* if repressed. The state's expected utilities are as follows.

$$\begin{aligned} EU_s(\text{adopt} \ \& \ \text{repress}) &= 1-r \\ EU_s(\text{adopt} \ \& \ \sim\text{repress}) &= 1-\varepsilon \\ EU_s(\sim\text{adopt} \ \& \ \text{repress}) &= 1-r-p \\ EU_s(\sim\text{adopt} \ \& \ \sim\text{repress}) &= 1-\varepsilon-p \end{aligned}$$

In Case 4 it is clear that if the state ever considers  $\sim adopt \& repress$ , it does better with  $adopt \& repress$ . This is true because it will save  $p$  by adopting, since no citizen will bring a legal claim against it for repressing. As always, if the state will not repress, it is always better off adopting. Thus, the choice here is between  $adopt \& repress$  and  $adopt \& \sim repress$ . This choice hinges on the size of  $r$  relative to  $\varepsilon$ . If  $r > \varepsilon$ , the state will choose  $adopt \& \sim repress$ ; if  $r \leq \varepsilon$ , the state will choose  $adopt \& repress$ . To summarize, there is a unique subgame perfect equilibrium for any value of the parameters. The cases are as follows.

**Case 1:** For  $\varepsilon \leq k$  &  $q > \frac{\delta}{\beta k}$ , the SPE is  $\{(adopt \& \sim repress), (seek redress, \sim attack, \sim attack)\}$ . This case is on the left of the right panel in Figure 4 (labeled “Trivial Compliance”).

**Case 2.** For  $\varepsilon \leq k$  &  $q \leq \frac{\delta}{\beta k}$ , the SPE is  $\{(adopt \& \sim repress), (\sim seek redress, \sim attack, \sim attack)\}$ . This case is on the left of the left panel in Figure 4 (labeled “Trivial Compliance”).

**Case 3a.** For  $\varepsilon \in (k, r+p]$  &  $q > \frac{\delta}{\beta k}$ , the SPE is  $\{(adopt \& \sim repress), (seek redress, attack, attack)\}$ . This case is in the upper right portion of the right panel in Figure 4 (labeled “Reluctant Compliance”).

**Case 3b.** For  $\varepsilon > \max\{k, r+p\}$  &  $q > \frac{\delta}{\beta k}$  the SPE is  $\{(\sim adopt \& repress), (seek redress, attack, attack)\}$ . This case is in the lower right portion of the right panel in Figure 4 (labeled “Opt Out”).

**Case 4a.** For  $\varepsilon > \max\{k, r\}$  &  $q \leq \frac{\delta}{\beta k}$ , the SPE is  $\{(adopt \& repress), (\sim seek redress, attack, attack)\}$ . This case is in the lower right portion of the left panel in Figure 4 (labeled “Non-Compliance”).

**Case 4b.** For  $\varepsilon \in (k, r]$  &  $q \leq \frac{\delta}{\beta k}$  the SPE is  $\{(adopt \& \sim repress), (\sim seek redress, attack, attack)\}$ . This case is in the upper right portion of the left panel in Figure 4 (labeled “Reluctant Compliance”).

**Table 1. State Violations of the *Convention Against Torture* (1987-2004)**

	<i>Violators<sup>a</sup></i> (Average Yearly Percentage of States)	<i>Systematic Violators<sup>a</sup></i> (Average Yearly Percentage of States)	<i>Percentage of States that Violated in Year of Ratification<sup>b</sup></i>
All states	83%	42%	81%
Democracies <sup>c</sup>	77%	30%	78%

Sources. Cingranelli and Richards (2004)

<sup>a</sup> The average percentage of states by year, from 1987 to 2004, that both ratified the *Convention* and violated it according to the Cingranelli and Richards data set. We code a state as a violator if it sponsored at least one act of torture during the year, according to the CIRI data. A systematic violator is a state for which there are more than fifty reported incidents of torture in a year.

<sup>b</sup> The percentage of states that violated the *Convention* in the same year they ratified it.

<sup>c</sup> We use the dichotomous regime type measure provided by Cheibub and Ghandi (2004).

**Table 2A. Determinants of *Convention Against Torture* Ratification and Systematic Torture (1987-2000)**

	<i>Model 1</i>	<i>Model 2</i> <i>(with Economic Development)</i>
<b>Treaty Ratification Equation</b>	$\beta$ (RSE)	$\beta$ (RSE)
<i>CIM (Judicial Effectiveness)</i>	-1.7** (.69)	-.16** (.72)
<i>Threat</i>	.06 (.2)	.07 (.2)
<i>CINC (Capabilities)</i>	-22.4* (15.1)	-24.1* (17.6)
<i>Democracy (Regime)</i>	.53** (.23)	.56** (.23)
<i>Population</i>	.0000007 (.000002)	.0000009 (.0000017)
<i>INGO</i>	.0005** (.0002)	.0006** (.0002)
<i>Economic Development (Real GDP/capita)</i>	-----	-.00001 (.00002)
<i>Constant</i>	.403 (.49)	.302 (.509)
<b>Torture Equation (<i>Torture</i>)</b>	$\beta$ (RSE)	$\beta$ (RSE)
<i>CIM (Judicial Effectiveness)</i>	-1.02** (.138)	-.55* (.42)
<i>Threat</i>	.68** (.14)	.65** (.15)
<i>CINC (Capabilities)</i>	-32.03** (9.8)	-18.7** (9.5)
<i>Democracy (Regime)</i>	-.15 (.13)	-.14 (.13)
<i>Population</i>	.00002** (.00004)	.00001** (.000004)
<i>INGO</i>	-.0004** (.0001)	-.000005 (.0002)
<i>Economic Development (rgdp)</i>	-----	-.00006** (.00002)
<i>Constant</i>	.55** (.286)	.304** (.308)
	N=1544	N=1519
	$\chi^2=117.88^{**}$	$\chi^2=159.44^{**}$
	$\rho=.07^*$	$\rho=.035^*$

Note. Parameter estimates from bivariate probit estimations with White-Huber errors in parentheses. \*p<.10, \*\*p<.05 (one-tailed tests), <sup>a</sup> (two-tailed test)

**Table 2B. Determinants of *Convention Against Torture* Adoption and Torture (1987-2000)**

	<i>Model 1</i>	<i>Model 2</i> <i>(with economic development)</i>
<b>Treaty Ratification Equation</b>	$\beta$ (RSE)	$\beta$ (RSE)
<i>CIM (Judicial Effectiveness)</i>	-1.72** (.69)	-1.64** (.72)
<i>Threat</i>	.06 (.20)	.07* (.20)
<i>CINC (Capabilities)</i>	-22.7* (15.6)	-24.9* (18.1)
<i>Democracy (Regime Type)</i>	.53** (.23)	.561 (.227)
<i>Population</i>	.0000007 (.000002)	.0000007 (.0000017)
<i>NGO</i>	.0005** (.0002)	.0006** (.0002)
<i>Economic Development (Real GDP/capita)</i>	-----	-.00001 (.00002)
<i>Constant</i>	.40 (.498)	.30 (.508)
<b>Torture Equation (Anytorture)</b>	$\beta$ (RSE)	$\beta$ (RSE)
<i>CIM(Judicial Effectiveness)</i>	-.958** (.517)	-.48 (.49)
<i>Threat</i>	.69** (.19)	.71** (.21)
<i>CINC (Capabilities)</i>	-49.9** (17.0)	-34.0** (17.6)
<i>Democracy (Regime)</i>	-.19 (.16)	-.22* (.17)
<i>Population</i>	.00003** (.00004)	.00002** (.000009)
<i>NGO</i>	-.0006** (.0001)	-.0004** (.0002)
<i>Economic Development (Real GDP/capita)</i>	-----	-.00004** (.00002)
<i>Constant</i>	1.95** (.409)	1.72** (.372)
	N=1544	N=1519
	$\chi^2=113.12^{**}$	$\chi^2=117.20^{**}$
	$\rho=.17^*$	$\rho=.17$

Note. Parameter estimates from bivariate probit estimations with White-Huber errors in parentheses. \*p<.10, \*\*p<.05 (one-tailed tests), <sup>a</sup> (two-tailed test)

**Table 3A. Predicted Joint Probabilities of Signing the *Torture Convention* and Torturing by Judicial Effectiveness (*Torture*)**

	<i>Probability of Ratifying Convention and Torturing</i>	<i>Probability of Not Signing Convention and Torturing</i>
Low Judicial Effectiveness (CIM=.48)	.32	.27
High Judicial Effectiveness (CIM=.99)	.08	.30
Difference (95% Confidence Interval)	-.24 (-.12, -.50)	.03 (-.31, .11)

Note. Cells display predicted joint probabilities, derived from the parameter estimates in Model 1. The predicted probabilities are calculated following the method in Tomz, Wittenberg, and King (2003), though since *Clarify* does not support the model we estimate, we calculated the necessary quantities ourselves in *Stata 9*. We draw 1000 simulations off the sampling distribution of the estimated parameters. We then create 1000 simulated joint predicted probabilities, for each relevant value of *CIM*, setting all other variables at their means. The predicted probabilities we report are the means of these simulated distributions. The difference is thus:

$$\Pr(\text{Treatyfull}=1, \text{Badtorture}=1, \rho | \text{CIM}=.99) - \Pr(\text{Treatyfull}=1 \text{ and } \text{Badtorture}=1 | \text{CIM}=.48).$$

**Table 3B. Predicted Joint Probabilities of Signing the *Torture Convention* and Torturing by Judicial Effectiveness (*Anytorture*)**

	<i>Probability of Ratifying Convention and Torturing</i>	<i>Probability of Not Ratifying Convention and Torturing</i>
Low Judicial Effectiveness (CIM=.48)	.51	.46
High Judicial Effectiveness (CIM=.99)	.20	.72
Difference (95% Confidence Interval)	-.31 (-.71, -.11)	.26 (.06, .69)

Note. Cells display predicted joint probabilities, derived from the parameter estimates in Model 1. The predicted probabilities are calculated following the method in Tomz, Wittenberg, and King (2003); though since *Clarify* does not support the model we estimate, we calculated the necessary quantities ourselves in *Stata 9*. We draw 1000 simulations off the sampling distribution of the estimated parameters. We then create 1000 simulated joint predicted probabilities, for each relevant value of *CIM*, setting all other variables at their means. The predicted probabilities we report are the means of these simulated distributions. The difference is thus:

$$\Pr(\text{Treatyfull}=1, \text{Anytorture}=1, \rho | \text{CIM}=.99) - \Pr(\text{Treatyfull}=1 \text{ and } \text{Anytorture}=1 | \text{CIM}=.48).$$

**Figure 1. Human Rights Regime Model  
(Sequence of Play)**

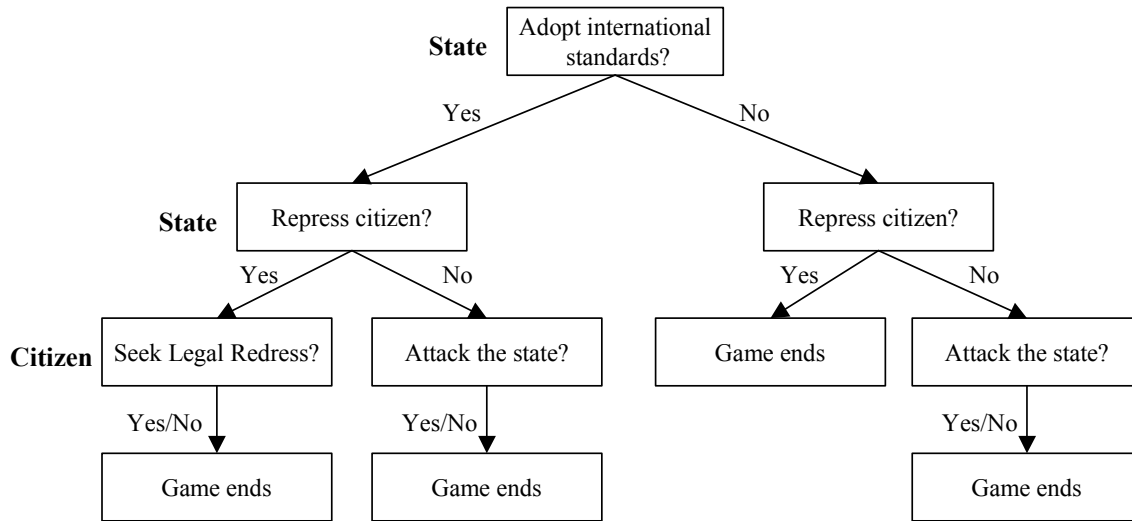
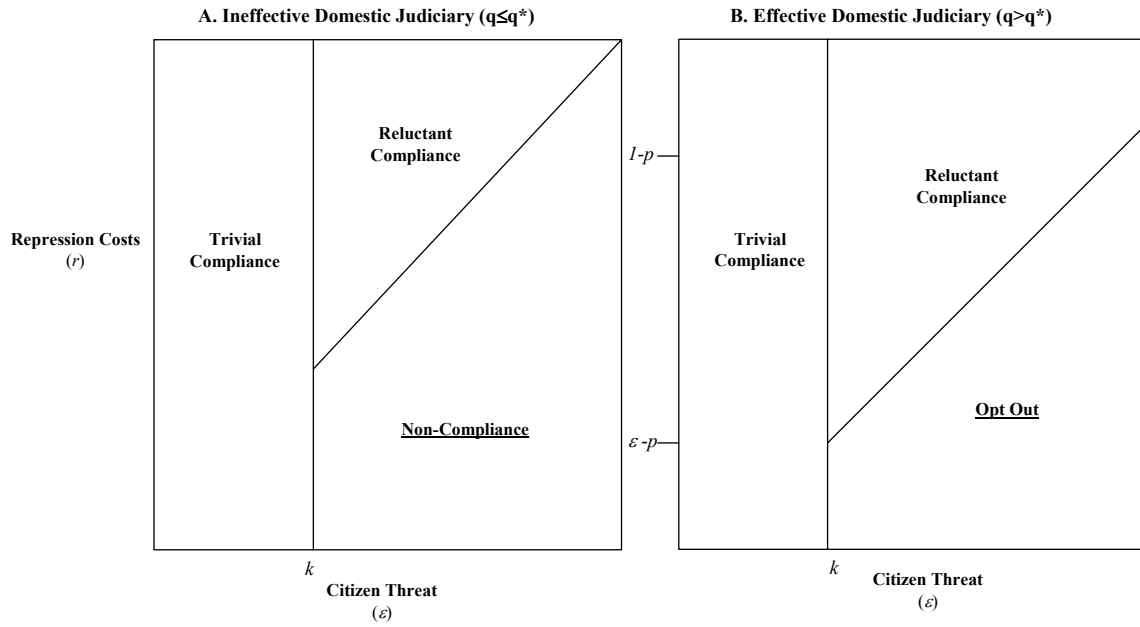


Figure 2: Equilibrium Predictions



Note. Subgame perfect equilibria across the parameter space.