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Domestic Judicial Institutions and Human Rights Treaty Violation

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Democratic and autocratic states routinely violate their international agreements protecting human rights. Scholars typically link ratification and compliance behavior theoretically but test their models separately; however, if the behaviors are jointly determined then we should treat them that way empirically. We consider how domestic judiciaries influence the joint choice to ratify and comply with international human rights regimes. Using data on the ratification status of states under the Convention Against Torture (CAT), states' torture practices, and a series of measures of judicial effectiveness, we examine whether legal institutions are likely to constrain state behavior and by implication raise the costs of ratification.

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), 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.[1] Importantly, it is not just autocracies that violate the CAT. Democratic regimes disregard their responsibilities at an alarming rate. Perhaps most disturbing, 81 percent of ratifying states violated the convention in the very year of ratification, including 78 percent of

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[1] 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 (Table A1).

TABLE 1. State Violations of the *Convention Against Torture* (1987–2004)

	Violators (average yearly percentage of states)*	*Systematic violators* (average yearly percentage of states)*	*Percentage of states that violated in year of ratification***
All states	83%	42%	81%
Democracies***	77%	30%	78%

Note. Sources: Cingranelli and Richards (2008).
*The average percentage of states by year, from 1987 to 2004, that both ratified the *Convention* without reservation and violated it according to the Cingranelli and Richards data set.
**The percentage of states that violated the *Convention* in the same year they ratified it.
***We use the dichotomous regime type measure provided by Cheibub and Gandhi (2004).

the democratic ratifiers. Why is it that so many states adopt and violate their international human rights obligations?[2]

Familiar theories of treaty ratification do not explain well this pattern of behavior. Scholars have suggested that states take on international obligations to "lock-in" preferred policies in the face of future political uncertainty (Moravcsik 2000) or to provide costly signals of a commitment to future behavior (Farber 2002; Mansfield and Pevehouse 2006; Simmons 2000). Whatever these theories imply for ratification, they both predict widespread compliance, which is clearly not evident in Table 1. If the lock-in argument does not anticipate subsequent compliance, it is unclear how a government would think it was "locking-in" a policy.[3] 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, in an early piece on the subject, Hathaway (2002) suggested that ratification might be costless, an insight that would be consistent with subsequent non-compliance; however, if treaties are costless, then we ought to observe universal ratification, which we do not. Certainly, we should not observe states placing reservations on their ratification status, which we do.

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 link explicitly the choice to ratify the treaty to the choice to comply (Hathaway 2005, 2007). It should allow the implications of these choices to vary, so that it is possible to identify conditions under which we should observe particular combinations of behavior across states (Goodliffe and Hawkins 2006; von Stein 2008). In this paper, we develop a simple game theoretic 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 like Hathaway (2005), we view as the primary enforcement mechanism for legal obligations, and as such, the primary

[2] Prohibition of torture is a customary international law norm with the status of *jus cogens*. Empirically it is impossible to fully separate the effects of the *jus cogens* norm and the CAT. The behavior of the CAT signatories should be to a larger extent shaped by the Convention versus the *jus cogens* norm simply because the former sharpens the general international law prohibition against torture. Also, the CAT constitutes a more tangible, well-defined, and specific prohibition. Finally, if the CAT were irrelevant we should not observe the effects on judicial effectiveness detailed below.

[3] For a different sort of "lock-in" argument, see Ikenberry (2001).

domestic cost of adopting new international rules of conduct. Key to the argument's logic is the recognition that effective domestic enforcement is not only a function of the power of courts to set limits on state behavior, 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.*

As we develop our argument, we wish to underscore three general conceptual and methodological points. First, if we believe that ratification and human rights behavior are linked theoretically, as much of the literature contends, then we should consider the empirical implications of our arguments for this joint process. Rather than thinking theoretically about the joint process of adoption and compliance, yet only testing one type of behavior (e.g., ratification or compliance), we should be examining the process as it is described in theory, and in theory, scholars seem to have a joint process in mind. Second, it is crucial that we unpack the standard domestic institutional explanation of compliance, one that posits a positive effect of democratic regimes. Scholars have recognized that we should distinguish theoretically between the elements of the democratic regime type that promote majority rule and those that enforce legal constraints on the state; however, in many cases this theoretical distinction is not reflected in empirical tests, especially in the context of state-sponsored torture. Third, in so far as we pursue legal institutional explanations for human rights behavior, it is extremely useful to consider how the literature on judicial politics has conceptualized and explained judicial power. Careful attention to that literature suggests implications for how we might go about measuring legal constraints on state power.

We divide the remainder of this paper as follows. In the subsequent section, we unpack the democracy 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. We conclude by discussing implications for human rights research and for institutional design.

What About Democracy Influences Ratification and Compliance?

Scholars find that democracies largely keep the promises they make (Dixon 1994; Landman 2005; Leeds 1999; Martin 2000; McGillivray and Smith 2000; Powell and Mitchell 2007; Simmons 2000; Siverson and Emmons 1991).[4] Consistent with this literature, von Stein (2008, 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, it is crucial that we unpack the theory linking democracy to costly ratification. One strain of the democracy argument highlights majoritarian influences, claiming that democracies keep their international commitments because constituents will punish their representatives for violating treaties (Keith 1999, 2002; Poe and Tate 1994; Poe, Tate, and Keith 1999). Democratic political institutions "provide the tools for the public to hold government officials accountable for their actions" (Keith 2002, 122). While it is possible that the representative element of democracy will constrain leaders, majorities under threat appear quite willing to tolerate violent

[4] For opposing argument see Weis and Jacobson (1998), and Busch and Reinhardt (2002). Also see Dai (2006).

repression (Davenport, Armstrong, and Moore 2007). And of course, the notion that majorities punish governments for human rights treaty violations is at least in mild tension with the data in Table 1.

A second strain of the democracy argument links democratic compliance with effective legal mechanisms of enforcement more typically found in democracies (Hathaway 2007; Neumayer 2005; von Stein 2008). This rationale for a democracy effect gives causal primacy not to majoritarian influences but rather to the elements of the regime where legal obligations are typically enforced: the judiciary (Hathaway 2005, 2007; Keith 2002; Skaar 2001).[5] 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; Clark, Golder, and Golder 2008, 315–16). Interestingly, several studies advancing the legal element of the democracy argument fail to directly measure legal constraints on state power.[6] Instead, a measure of democracy is used to capture the quality of a domestic legal framework. In fact, Hathaway (2007), von Stein (2008), and Neumayer (2005) all use the Polity IV measure to capture legal constraints on state power. Unfortunately, this measure also captures the majoritarian elements of democracy, which makes distinguishing between the two mechanisms impossible. In this paper, we wish to develop further the theoretical implications of positing that domestic legal institutions are core elements of a model of a human rights behavior and that for that reason, domestic legal institutions should influence both human rights treaty ratification and human rights protection. However, as the literature on the democratic effect suggests, it is critical to include measures of both the majoritarian and rights-protecting elements of a regime.

A Model of Treaty Adoption and Repression

In this section we develop an account of international human rights treaty adoption and compliance. The model is simple. Players are assumed to have discrete strategy sets and beliefs. Despite these restrictions, we believe that the model helps answer 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; Hathaway 2007; 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

[5] This argument sits well with the literature on sub-national sources of compliance (Checkel 2001; Keohane, Moravcsik, and Slaughter 2000).

[6] A notable exception is Goodliffe and Hawkins (2006), whose paper includes measures of the rule of law and legal tradition. Importantly, however, this paper deals only with treaty adoption. Concerning human rights behavior, Apodaca (2004) includes a rule of law measure and a *de jure* measure of judicial independence alongside the Polity IV measure. Likewise, Cross's (1999) model of protection, unreasonable searches and seizures include judicial independence and political rights measures. These studies are highly suggestive of an independent legal institutional effect; however, the research designs of both studies are limited in ways that call for additional analysis. Apodaca restricts her sample to the year 1996 (because of data availability) and to a set of countries that she claims are either "developing or transitional" (Apodaca 2004, 295). Cross's analysis is run on measures that take averages across the 1980s, reducing the number of observations to less than 60. New data availability makes it possible to assess legal effects in years other than 1996 and without taking decade averages.

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).

The players are initially endowed with a set of resources. Without loss of generality, we fix the value the state places on its resources at 1. The citizen values his resources at $k \in (0,1)$. The state begins by making two choices. It chooses whether to adopt international standards governing violent repression or not.[7] If it adopts these standards, we assume that the state creates civil and criminal penalties for violation.[8] 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, 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 members of the international system that they rightfully belong to the group (Eckersley 2004; Finnemore and Sikkink 1998; Wippman 2004).[9] 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.[10] Second, the state chooses whether 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 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 $1-\varepsilon$.[11] The parameter ε measures the threat the citizen poses to the state.

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, she may seek legal redress for violations of the state's international obligations in either civil or criminal court.[12] If the citizen wishes to access the court, she will pay an access cost $\delta > 0$.[13] If she raises a claim and the judiciary is effective

[7] Alternatively, we can conceptualize this choice as the choice to maintain a state's ratification status under a convention. Of course, the cost of denouncing is likely higher than the cost of not adopting an agreement in the first place. This difference can be accounted for in the model by imagining that p (introduced below) is likely higher in the case of a state that has already adopted the agreement and is choosing whether to denounce. We address the empirical implications of this interpretation in our empirical section.

[8] This is consistent with *Convention Against Torture* article 4.

[9] According to Elster (1989), feelings of embarrassment, guilt, and anxiety that are a result of violating a social norm, may lead to adherence to that norm.

[10] 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.

[11] An alternative set-up might assume that ε 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.

[12] 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.

[13] As the model we are considering here is general, and as we are ultimately interested in explaining state behavior, we have not distinguished in great detail between individual experiences in the criminal or civil justice system. An individual may raise an international law claim in his or her main criminal defense or in a collateral attack on his or her imprisonment, as in *habeas corpus* or *amparo*. And an individual can seek civil damages (see Scott 2001 for a discussion of tort claims in international law).

(as described below), she regains βk. Here, $\beta \in (0,1)$ captures the fact that some proportion of k will be irreplaceable. If the judiciary is ineffective, she regains nothing.[14] 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 concerns whether the domestic judiciary is effective. By effective we mean that the judiciary constitutes a genuine constraint on state behavior.[15] In the broadest sense, what we have in mind here is that the judiciary has rendered state commitments to respect rights credible, as anticipated by North and Weingast (1989). This means that the judiciary is willing and capable of imposing penalties for rights violations. The concept of effectiveness reflects Cameron's (2002, 135) power concept of judicial independence (also see Larkins 1996, 611). Cameron suggests that an actor is powerful if there is a causal relationship between her preferences and outcomes. He writes, "In other words, an actor has power when a particular outcome is desired and causes that outcome to transpire. By extension, an actor (like a judge) has independence or autonomy when he or she consistently has power over the relevant outcome." On this account, a court is not independent if it is only free from undue external influence at the decision-making stage. Rather, independence requires the authoritative implementation of judicial policy. To avoid confusion with alternative concepts of judicial independence, we call a system in which courts are influential an *effective* system.[16]

As we know from the judicial politics literature, whether or not a court (and by implication the judicial system as a whole) comes to constitute a genuine constraint on the state is not exogenously given, but rather emerges endogenously out of a complex set of interactions between government officials, judges, and

[14] Alternative factors shaping a person's decision whether to go to court may include the parties' risk preferences, the amount of damages at stake, the cost of litigating, etc (Bebchuk 1984; Fournier and Zuehlke 1989; Nalebuff 1987; Priest and Klein 1984; Shavell 1982; Spier 1992). In a simple form, the β parameter captures a number of the theoretical forces orthogonal to judicial effectiveness that influence the choice to seek legal redress. As is clear below, as β decreases, and the returns from the legal system drop, the citizen is less likely to litigate. Interest groups may sponsor legal strategies for the sake of publicity rather than to win particular cases (see note 7[1]). Under such an argument, the citizen would obtain some additional utility from getting into court, whatever the outcome, but the state's calculus as it pertains to the pariah cost is unaffected.

[15] Effective judiciaries are useful but it is certainly possible that they are insufficient to ensure the protection of human rights, and by implication, to increase the costs of ratifying international agreements. A long history of research in judicial politics highlights the role of ideology in judicial decision-making (e.g., Segal and Spaeth 2002). It is possible that a court that *could* constrain the state from violating rights might choose not to because the judges on it simply view many state actions as human rights violations or because institutional norms suggest a highly deferential standard of review in the contexts where human rights claims emerge (Hilbink 2007). Accounting for the ideology of the world's judiciaries and their standards of review concerning human rights claims is well beyond the scope of this study, but it is in our view a fruitful avenue of future research. Nevertheless, it is important to recognize that the empirical tests here are biased toward null findings in light of the fact that conservative ideologies and highly deferential standards only serve to lesson constraints on the state in practice and thus reduce the costs of ratification.

[16] The most common alternative concept of judicial independence requires that judges be free from undue external influence when developing their opinions (Howard and Carey 2004, 286). They must be considered the true "authors" of their opinions in order to be independent (Kornhauser 2002). There is nothing wrong with this concept; however, for present purposes it ignores the enforcement problem so central to judicial policy implementation (e.g., Carrubba 2003). Clearly, the effectiveness concept requires independence in this sense, but it requires influence as well.

the public (e.g., Ginsburg 2003; Staton 2006; Vanberg 2005; Weingast 1997).[17] For this reason, 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. 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. $q^* = \frac{\delta}{\beta k}$. The citizen will only go to court if repressed if $q > q^*$. The cases can be grouped into four substantively relevant classes of equilibria. Figure 1 provides a visual summary of these cases.

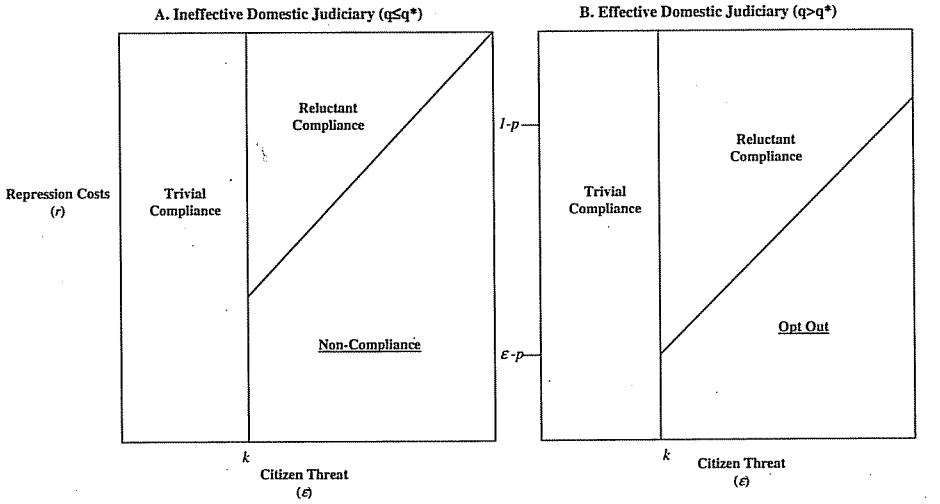

FIG. 1. Equilibrium Predictions: (a) Ineffective Domestic Judiciary ($q \leq q^*$) (b) Effective Domestic Judiciary ($q > q^*$) (Note. Subgame perfect equilibria across the parameter space)

[17] There really is no consensus over precisely how courts come to constitute genuine constraints on governmental power, and thus no consensus over how these commitments become credible. Theories of institutional design suggest that a number of rationales for why states might try to construct independent judiciaries: (1) courts can serve as "insurance" policies for ruling coalitions against further losses of power (e.g., Ginsburg 2003); (2) courts lock-in the long-run implementation of legislative bargains (e.g., Landes and Posner 1975); (3) courts promote economic growth by solving the predation dilemma (e.g., North and Weingast 1989); (4) courts help governments avoid policy failures in a uncertain world, failures which are difficult to fix once legislated (Rogers 2001). Theories of inter-branch relations (which assume an existing system of judicial review) typically suggest that fragmented politics or regime instability are essential for courts to exercise meaningful authority, precisely because it is increasingly difficult to coordinate on a response to an overly active judiciary when government is coalitional, divided, or worse collapsing (e.g., Helmke 2005; Iaryczower, Spiller, and Tommasi 2002). Public support arguments suggest that courts gain leverage over governments when the public can coordinate in an effort to hold the state accountable for transgressions against the rule of law (e.g., Carrubba 2003; Staton 2006; Stephenson 2004; Vanberg 2005; Weingast 1997). As is clear, the field does not lack for arguments about how the incentive to comply with judicial decisions becomes binding on states.

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 1, where the citizen's expected return from attacking the state is minimal ($\varepsilon \leq k$). When the citizen poses little threat to the state, she prefers to save her resources. Knowing this, the state has no incentive to repress, even as the costs of doing so vanish (as $r \rightarrow 0$). Adopting international standards under these conditions is trivial, as the state 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 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 1. Here, the citizen expects to gain enough value by attacking the state to justify the cost. Yet as the threat is minimal, the state does nothing to prevent it. As the state will not repress, it adopts the international standards and saves the pariah cost. Here compliance emerges in equilibrium, but it is costly. 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, 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 results.

Non-Compliance (For $\varepsilon > \max\{k, r\}$ & $q \leq q^*$, the following constitutes an SPE)	
State:	Adopt the international standards and repress
Citizen:	Do not seek legal redress and attack the government

This case is depicted in the lower-right corner of the left panel in Figure 1. This behavior is evident in states like Albania, Brazil, Nigeria, and Peru. 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 continue 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 can observe violations outside of the formal legal process; and, citizens in states with poor judicial systems sometimes allege torture. 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. Two conditions are necessary for the model to help illuminate how judiciaries influence human rights outcomes. First, individuals in states with ineffective judiciaries need to be less likely to formally challenge violations of their human rights than individuals in states with effective judiciaries. Second, violations need to be 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 the United States of America, which only ratified the CAT after placing serious reservations on its status. Indeed, the American reservations effectively limit the definition of torture to the United States' federal judiciary's interpretation of the U.S. Constitution. In a sense, for the United States, CAT ratification amounted to issuing a renewed commitment to the 5th and 8th Amendments. States in this equilibrium face the same incentives to repress as those under the *Non-Compliance* equilibrium, yet as 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, yet in our view the most interesting feature of the analysis is that it encourages us to think simultaneously about behaviors of interest. This is consistent with current human rights regime theory (e.g., Hathaway 2005, 2007; Vreeland 2008); however, when scholars move to data, they typically focus on either ratification or compliance (e.g., Goodliffe and Hawkins 2006; Hathaway 2007). 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 1 makes the point. As we move from left to right across the panels, the probability that the judiciary is effective increases (q increases). As we move from the first panel to the second, we should be decreasingly likely to observe cases in the *Non-Compliance* equilibrium and more likely to observe states in the *Opt Out* equilibrium. At the very least, we are certainly *no more likely* to observe states in the *Non-Compliance* equilibrium. Analogously, a leftward 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 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

The temporal domain of our study is 1987–2000, and the unit of analysis is the state-year. We use this time frame because the CAT entered into force on June 26, 1987.

Dependent variables

As we wish to estimate the joint probability of adopting the CAT without reservation and torturing, we require two dependent variables. Our first dependent variable, which we call *Ratify*, captures information about states' ratification status under the CAT.[18] For each year *Ratify* takes a value of 1 if a state is ratified under the CAT without reservation, and 0 otherwise.[19] For each year, our second dependent variable, *Torture*, is coded 1 if a state sponsored at least one instance of torture, and 0 otherwise. We also estimate our models on a second measure of torture, *Systematic Torture*, which is coded 1 if a state sponsored at least 50 acts 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 range of human rights.[20] Given our theoretical discussion, we wish to estimate the following model.

$$\Pr(Ratify = 1) = \Phi(\gamma_1(Judicial\ Effectiveness) + \beta_{1k}(Controls\ 1))$$
$$\Pr(Torture = 1) = \Phi(\gamma_2(Judicial\ Effectiveness) + \beta_{2k}(Controls\ 2))$$

We estimate this model via bivariate probit. Given our hypotheses, we expect to estimate $\gamma_1 \leq 0$ and $\gamma_2 \leq 0$; however, these parameters themselves are not precisely the quantities of interest. We are interested in changes in joint probabilities for varying levels of *Judicial Effectiveness*.

Independent variables

Judicial Effectiveness:
In light of our concept and the temporal structure of the data, we are looking for a measure that satisfies five criteria. As a state's court of last resort or

[18] The CAT is not a self-executing treaty. This biases the analysis against our hypotheses if our theory is correct. It is possible for a state with a highly effective judiciary to ratify the CAT in full, not execute the treaty domestically, and engage in behavior prohibited under the agreement. This behavior is a perfect substitute for not ratifying, yet it is not measured. Thus, if we find results, it will be despite this alternative strategic behavior in which states might engage.

[19] Landman (2005, 41–4) distinguishes different types of reservations. We wish to estimate commitment to the CAT without reservation, which is captured by this binary coding.

[20] 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 2008).

constitutional court can be effective while the system as a whole is highly sensitive to undue political pressures (Rios-Figueroa 2006), we need a measure that provides information on the system as a whole. Second, as effectiveness depends on more than the ability to freely develop case outcomes (Carrubba 2003; Vanberg 2005), we need a measure that provides information on the ability of courts to influence policy outcomes. Third, as the concept is behavioral, we want a behavioral measure, rather than say a measure that captures institutional rules that should foster effectiveness (e.g., Apodaca 2004). Fourth, in so far as comparative judicial politics has provided considerable evidence of strategic judicial behavior, we require a measure that is not sensitive to strategy. Finally, in order to take advantage of the time series data on torture and ratification status, it is preferable to use a time series measure. This is appropriate since work by Ginsburg (2003) and Gibson, Caldeira, and Baird (1998) suggests that judicial effectiveness likely changes over time.

Once we recognize that judicial decision-making is strategic (e.g., Helmke 2005; Vanberg 2005), the core measurement challenge is that direct observation of court behavior without estimating how judicial decision-making is influenced by political concerns can be misleading. It is possible to observe an ultimately ineffective court whose decisions appear to be free from undue influence and always implemented, precisely because courts can strategically select and decide cases to minimize conflict (e.g., Ginsburg 2003). For this reason, a precise measure of effectiveness derived from court behavior requires a wealth of case specific data, which allows for the systematic estimation of the extent to which judicial decisions respond to external political pressures (e.g., Helmke 2005; Vanberg 2005), and the extent to which judicial decisions are properly implemented (e.g., Spriggs 1996). For a worldwide sample, comparative judicial politics has yet to produce such data.[21] In light of this problem, scholars might look to measures of effectiveness that capture the types of behaviors we should observe if the judicial system functions as a genuine constraint on the state, especially behaviors that are not obviously correlated with the dependent variable. This is not to say that court-specific measures are invalid. Rather, the point is that given central findings in judicial politics on strategic judicial behavior, we might consider being creative about our measurement choices until we can systematically estimate judicial effectiveness around the world.

With this problem in mind, our first measure of effectiveness is the Contract Intensive Money (*CIM*) measure created by Clague et al. (1999).[22] The *CIM* is "the ratio of non-currency money to the total money supply" (Clague et al. 1999, 188). Conceptually, high values of *CIM* reflect a society's trust in judicial institutions that enforce the banking industry's contractual obligations. To be sure, the *CIM* was conceptualized as a measure of legal protections for property rights, and this is how it has been traditionally used in the literature (e.g., Clague et al. 1999, 186; Souva, Smith, and Rowan 2008). We are assuming that, on average, states that possess judicial institutions that protect property rights are likely to have judicial institutions that protect rights generally. There are good reasons to believe that *CIM* is a valid measure of the extant to which courts protect rights generally, including human rights. In particular, simple predictive validity tests indicate that the *CIM* is negatively associated with a variety of state human rights abuses, including extrajudicial killings, political imprisonment, and disappearances, and it is correlated with other measures of

[21] Tate et al. (2006) have begun to develop a broadly comparative data set on high court decisions; however, at present it covers only 11 states. Thus we are a long way away from having worldwide data on judicial systems.

[22] Data for the *CIM* measure come from the International Monetary Fund's *International Financial Statistics*.

the concept.[23] This measure should not be sensitive to the kind of strategic judicial decision making discussed above, because it does not directly reflect case decisions or compliance, but rather picks up the behavior we should observe from individuals if courts constitute constraints on the state. What is more, as the *CIM* picks up behavior that is consistent with the legal protection of property rights, as long as these protections are associated with the protection of human rights, the *CIM* reflects a decent instrument for such protections, avoiding possible influences of state torture behavior on a subjective coder's evaluation of the legal system's ability to constrain the state.[24] In other words, even if typical judicial effectiveness measures are endogenous to a government's human rights record, the *CIM* is unlikely to suffer from this bias.

In addition to the *CIM,* we use the well-known *International County Risk Guide (ICRG).* The Law and Order measure provides quantitative assessments by unidentified experts of the strength of the law and order tradition in various countries. This variable ranges from 0 to 6, with 6 indicating the highest respect for law and order. Low scores indicate legal systems in which legal outcomes do not necessarily resolve conflicts, while high scores describe the opposite. Several scholars have used the ICRG scores to measure legal system quality and the rule of law (e.g., Kelley 2007; Powell 2006), and critically, they have been used in models of CAT ratification to measure the domestic costs of legal enforcement (Goodliffe and Hawkins 2006).

Finally, we make use of new measures of judicial independence developed by Howard and Carey (2004), Tate and Keith (2007), and Cingranelli and Richards (2008), respectively.[25] All three measures are derived from the same source—the U.S State Department's annual human rights reports; however, they vary considerably over the concept they seem to be measuring and the target of the measurement.[26] The Howard and Carey measure focuses on the highest court of a state and attempts to capture the extent to which this court's decision-making process is free from undue external interference (Howard and Carey 2004, 288). The Cingranelli and Richards, and Tate and Keith measures, in contrast, appear to measure the independence of the judicial system as a whole and do appear to provide some indication of the extent to which judicial decisions are faithfully implemented. While both measures are behavioral (i.e., they attempt to measure *de facto* independence), they both include significant *de jure* information. Indeed, the highest level of judicial independence for the Cingranelli and Richards measure is based entirely on *de jure* information. All three measures divide states into those with no judicial independence, partial independence, and full independence, which reflects the State Department's own conceptual frame. Because we could not convince ourselves of precisely what placed a state in the middle

[23] Our predictive validity test for the *CIM* makes use of additional measures of human rights abuse from the *CIRI* database. In a simple OLS regression of the *CIRI* physical integrity 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 killings, disappearing individuals, and of incarcerating political prisoners. The *CIM* is correlated with the World Bank's Rule of Law measure, the *ICRG* law and order measure and the Fraser Institute's Judicial Independence and Impartial Courts measures at 0.61, 0.49, 0.55, and 0.51, respectively.

[24] No doubt, there are some systems that seem to protect property rights well but not human rights. We have estimated the models dropping Chile and Singapore from the analysis (the two states most associated with this sort of pattern), and find no differences.

[25] The Cingranelli/Richards and Tate/Keith measures are available at the Democracy Assistance Project: http://www.pitt.edu/~politics/democracy/democracy.html. Remaining measures that might be used to capture effectiveness either provide only *de jure* information (e.g., Apodaca 2004), or are limited to a short time period or only a group of states (e.g., Fraser Institute measure of judicial independence [Fraser's Institute Economic Freedom in the World], Bertelsmann measure of judicial independence [Bertelsmann Transformation Index], the Global Integrity measure of rule of law [Global Integrity: Independent Information on Governance and Corruption], the World Bank measure of the rule of law [The World Bank Worldwide Governance Indicators]).

[26] U.S. Department of State's Country Reports on Human Rights Practices, 1993–2003; available at http://www.state.gov/g/drl/hr/cl1470.htm.

category and because it seemed possible that much had to do with the formal institutional structure of the state's constitution, following one of the Howard and Carey approaches, we have created dichotomous measures that indicate whether a state has no independence versus partial or full independence.[27]

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). States with higher capabilities should perceive lower costs to repression. The *CINC* score is based on the following six characteristics: total population, urban population, iron and steel production, energy consumption, military personnel, and military expenditure of all state members. Though Figure 1 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 sign the *CAT* (e.g., when threat is high). Accordingly, we expect a positive 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 form of conflict identified by the Armed Conflict Dataset and 0 otherwise. Our predictions for the threat variable in an additive context are again clear for the torture model—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.

We also include controls for democracy and population size.[28] Several scholars have theorized that regime type has a substantial impact on states' propensity to sign and comply with international treaties (Landman 2005; Poe and Tate 1994; Slaughter 1995). 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. As this measure is conceptually related to the majoritarian element of democracy, it allows us to disentangle the two democracy arguments summarized above. Population has been identified as a predictor of state torture behavior (Davenport 1995; Henderson 1993; Keith 1999; Poe and Tate 1994; Poe, Tate, and Keith 1999), thus we are also including it in our models. We use the same control variables in our second equation (the torture equation).[29]

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 the density of citizen participation in the network of international organizations (Sikkink 1993).

[27] The results are substantially similar when we use two category dummies, leaving no independence as the reference category.

[28] As population size and the *CINC* measure are highly correlated, we have estimated models dropping population. Results are robust to this change.

[29] We have also estimated models with controls for the level of economic development as measured by real GDP per capita (Heston, Summers, and Aten 2006), and the results of these models, available upon request, are substantively similar to those reported in the paper.

Several scholars have suggested that states' attitudes towards particular international legal regimes are directly influenced by prior action of other states in the region (Goodliffe and Hawkins 2006; Simmons 2000; Wotipka and Ramirez 2007). This argument poses that norms, once established, can directly influence behavior of states. We include two types of controls for international norms. In the ratification equation, *Regional Rate* indicates the percentage of regional partners that have fully ratified the CAT in a particular year.[30] We also include *Global Rate*, which indicates the percentage of states in the world system that are fully ratified in a particular year. Because regional and global norms of actual torture behavior could influence a state's torture activities as well, we also include regional (*Torture Regional Rate*) and global (*Torture Global Rate*) norm variables in the torture equations, though our key results are not sensitive to this specification. These variables indicate the percentage of regional neighbors (states in the world) that engaged in torture during a particular year.

Results

Tables 2 and 3 display the parameter estimates for our bivariate probit models along with White-Huber standard errors clustered on the state. To account for temporal dependence in the equations, we adopt the cubic spline specification suggested by Beck, Katz, and Tucker (1998). We also include a counter-variable that indicates the number of prior failures (i.e., prior years of full ratification or torture) to account for the stickiness of full treaty ratification and torture behavior (Beck, Katz, and Tucker 1998, 1271–72).[31] Table 2 contains results equation by equation of the first set of models, in which *Torture* constitutes our dependent variable in the torture equation. Table 3 contains our second set of models, in which we use *Systematic Torture*. For both tables, we display the results for each measure of judicial effectiveness (*CIM, ICRG, CIRI, Tate/Keith, Howard/Carey*).

We will return to these tables below, but first we present the results concerning the hypotheses we have sought to test, which requires estimating joint probability effects derived from the estimates. Tables 4 and 5 display predicted joint probabilities for informative values of the *ICRG* and *CIM* measures, for *Torture* and *Systematic Torture*, respectively.[32]

In particular, the first five columns of Tables 4 (*Torture*) and Tables 5 (*Systematic Torture*) show estimates of joint probability of ratifying and torturing, conditioned on high and low values of judicial effectiveness, and with all control variables set at their respective means. For the continuous measures, we estimated these probabilities for values of judicial effectiveness two standard deviations below and above the mean level. For the dichotomous measures, we changed the effectiveness measure from zero to one. As predicted by the *Non-Compliance* hypothesis, the probability of ratifying in full and torturing at all decreases as judicial effectiveness increases, and these results are consistent across almost all measures of judicial effectiveness. The difference in predicted probabilities between high and low judicial effectiveness (the substantive effect) varies, however, for each of the measures. Overall, the results are stronger for

[30] All regional codes are based on the United Nations coding scheme as reported in Cingranelli and Richards (2008). In the models displayed in the paper, we used the U.N. subregional codes to increase the variance in world regions; however, we have also estimated the models using the U.N. regional codes and the results are robust across the specifications.

[31] Thus, as we allow states to maintain or denounce their status each year, we allow the administration that sponsors acts of torture to be independent of the administration that initially ratified the convention.

[32] The predictions are derived via the method described in Tomz, Wittenberg, and King (2003); however, as *Clarify* does not support our statistical model, we calculate the quantities of interest ourselves. A predicted probability thus represents the mean of a 10,000 simulations drawn from the sampling distributions of the estimated parameters.

TABLE 2. Determinants of CAT Ratification and State Torture (1987–2000)

	Model 1	*Model 2*	*Model 3*	*Model 4*	*Model 5*
Ratification					
CIM	−1.24*				
ICRG		−0.06			
CIRI			−0.11		
Tate/Keith				0.03	
Howard/Carey					0.21
Threat	−0.31†‡	−0.3*	0.13	−0.04	−0.03
CINC	−4.9	−3.99	3.55	15.64	6.93
Democracy	0.56***	0.36*	0.44*	0.43**	0.27
Population	−0.000001	0.000002	−0.000005*	−0.000005†	−0.000005†
INGO	0.00004	0.0001	−0.0004**	−0.0005**	−0.0004**
Global rate	−1.5	−1.99*	−5.2**	−4.72**	−2.5
Regional rate	0.41	0.0002	1.44*	1.44*	−1.04
No ratification years	−0.42***	−0.44***	−1.38***	−1.19***	−1.06**
Spline 1	−0.02*	−0.03*	−0.04**	−0.04**	−0.03**
Spline 2	−0.019**	−0.02**	−0.06***	−0.05***	−0.04**
Spline 3	0.056*	0.07*	0.13***	0.1**	0.08*
Prior failures	1.7***	1.69***	0.44***	0.55***	0.45***
Constant	0.1	−0.45*	2.76**	2.22**	1.71
Torture					
CIM	−0.75*				
ICRG		−0.21***			
CIRI			−0.33†		
Tate/Keith				−0.16	
Howard/Carey					−0.42**
Threat	0.55***	0.42**	0.33*	0.41**	0.54**
CINC	−21.8**	−11.95*	−36.97**	−19.73	−1.37
Democracy	−0.16	−0.24*	0.04	−0.03	0.17
Population	0.00002***	0.00001**	0.00002**	0.000009***	0.00001*
INGO	−0.0003***	−0.0002*	−0.0003***	−0.0003***	−0.0003***
Global rate	−1.5	−0.1	−5.25**	−3.66**	−2.5
Regional rate	0.63*	0.39	0.64*	0.5†	0.21
No torture years	−0.40***	−0.3***	−0.37***	−0.38***	−0.34***
Spline 1	−0.002***	−0.001	−0.002***	−0.002***	−0.002***
Spline 2					
Spline 3					
Prior failures	0.12***	0.13***	0.15***	0.13***	0.13***
Constant	1.91*	1.48*	3.67***	2.67**	2.2†
n	1,571	1,416	1,089	1,339	1,101
ρ	0.09	0.03	−0.03	0.04	0.01
χ^2	0.73	0.16	0.07	0.11	0.01

Note: Table 2 displays parameter estimates from bivariate probit model of *Ratify* and *Torture*.
The p-values reflect one-tailed hypothesis tests.
*p < .05; **p < .01; ***p < .001; †p < .10; ‡two-tailed test.

the *Systematic Torture* models. Importantly, differences are statistically significant in seven cases (all but the *Tate/Keith* and *Howard/Carey* measures in the Torture models, and *Howard/Carey* in the *Systematic Torture* models), as is made clear by the 95 percent or 90 percent confidence intervals at the bottom of the columns, neither of which contain 0.

The last five columns of Tables 4 and 5 show estimates of the joint probability of not fully ratifying the CAT and sponsoring torture. The *Opt Out* hypothesis suggests that this probability should be increasing in our measures of judicial effectiveness. The predicted probabilities are overall not strongly consistent with that hypothesis. We observe the increase in predicted probabilities in only five

TABLE 3. Determinants of CAT Ratification and Systematic State Torture (1987–2000)

	Model 1	*Model 2*	*Model 3*	*Model 4*	*Model 5*
Ratification					
CIM	−1.24*				
ICRG		−0.06			
CIRI			−0.09		
Tate/Keith				0.04	
Howard/Carey					0.17
Threat	−0.31†‡	−0.292	0.19	0.02	0.04
CINC	−5.12	−4.29	3.52	17.18	7.16
Democracy	0.55***	0.354*	0.45*	0.44**	0.31
Population	−0.000001	−0.000002	−0.000005*	−0.000005*	−0.000005†
INGO	0.00004	0.0001	−0.0005**	−0.0006**	−0.0005*
Global rate	−1.50	−1.99*	−5.38**	−4.87**	−2.84**
Regional rate	0.44	0.02	1.60**	1.61*	1.17†
No ratification years	−0.42***	−0.43***	−1.37***	−1.19***	−1.04**
Spline 1	−0.021*	−0.03*	−0.04**	−0.04**	−0.03*
Spline 2	−0.019**	−0.02**	−0.06***	−0.05***	−0.04**
Spline 3	0.056***	0.07*	0.12***	0.01**	0.08*
Prior failures	1.70	1.71***	0.45***	0.55***	0.45***
Constant	0.098	−0.47*	2.73**	2.21**	1.79
Systematic torture					
CIM	−0.825**				
ICRG		−0.11**			
CIRI			−0.31**		
Tate/Keith				−0.26**	
Howard/Carey					−0.23*
Threat	0.445***	0.43***	0.40***	0.38***	0.45***
CINC	−15.85**	−11.33*	−14.4*	−11.55	−13.35*
Democracy	−0.26†	−0.22*	−0.23*	−0.21*	−0.14
Population	0.000008***	0.000006**	0.000008**	0.000009***	0.000007
INGO	−0.0001*	−0.0001	−0.0002*	−0.00009	−0.00002
Global rate	0.594	1.62	−1.18	−0.47	−1.29
Regional rate	0.713	0.36	0.16	0.32**	0.49
No torture years	−0.43***	−0.44***	−0.31**	−0.27**	−0.35***
Spline 1	−0.0001	0.0001	−0.0009	0.0006	0.001
Spline 2	−0.046*	−0.04*	−0.03	−0.009	−0.017
Spline 3	0.012	0.01	0.008	−0.004	−0.0001
Prior failures	0.136***	0.13***	0.13***	0.12***	0.14***
Constant	−0.015	−0.39	0.42	−0.01	0.086
n	1,576	1,420	1,092	1,343	1,104
ρ	0.07	0.03	−0.03	−0.0004	−0.02
χ^2	0.85	0.16	0.07	0.00001	0.04

Note. Table 3 displays parameter estimates from bivariate probit model of *Ratify* and Systematic *Torture*. The p-values reflect one-tailed hypothesis tests.
*p < .05; **p < .01; ***p < .001; †p < .10; ‡two-tailed test.

cases. Furthermore, only one difference in predicted probabilities is statistically significant (*CIM* in the *Torture* model). To be clear, we do not observe decreases in this joint probability, and the hypothesis suggests a weakly positive relationship. That said, the results are clearly not robust to the various measures.

To summarize, although we observe strong support for the *Non-Compliance* hypothesis, the results for the *Opt Out* hypothesis are not robust to the different measurement choices. Although there are good theoretical reasons to believe that the *CIM* provides a very good, if non-intuitive, measure of the effectiveness concept at the system level, clearly the overall pattern does not indicate robust support for this hypothesis.

TABLE 4. Predicted Joint Probabilities of Ratifying the *Torture Convention* and Torturing by Judicial Effectiveness (*Torture*)

	Probability of ratifying in full and torturing					*Probability of not ratifying in full and torturing*				
	CIM	*ICRG*	*CIRI*	*Keith/Tate*	*Howard/Carey*	*CIM*	*ICRG*	*CIRI*	*Tate/Keith*	*Howard/Carey*
Low effectiveness	0.88	0.88	0.66	0.62	0.53	0.07	0.11	0.31	0.33	0.42
High effectiveness	0.76	0.72	0.60	0.62	0.57	0.16	0.14	0.34	0.31	0.32
Difference	−0.12	−0.15	−0.06	−0.002	0.04	0.08	0.03	0.02	−0.02	0.09
[95% Conf. Interval]	[−.59, −.02]	[−.57, −.04]	[−.32, −.06]	[−0.19, .08]	[−.20, .17]	[.001, .53]	[−.06, .40]	[−.07, .26]	[−.09, .16]	[−.22, .14]
[90% Conf.Interval]										

Note. Displays predicted joint probabilities of ratifying (and not ratifying) the CAT without reservation and engaging in systematic torture for low and high levels of judicial effectiveness. Low Effectiveness sets *CIM* at .5, *ICRG* at 1, and the other variables at 0. High Effectiveness sets *CIM* at .99, *ICRG* at 6 and the other variables at 1.

TABLE 5. Predicted Joint Probabilities of Ratifying the *Torture Convention* and Torturing by Judicial Effectiveness (*Systematic Torture*)

	Probability of ratifying in full and torturing					*Probability of not ratifying in full and torturing*				
	CIM	*ICRG*	*CIRI*	*Keith/Tate*	*Howard/Carey*	*CIM*	*ICRG*	*CIRI*	*Tate/Keith*	*Howard/Carey*
Low effectiveness	0.63	0.68	0.29	0.34	0.24	0.05	0.08	0.14	0.18	0.18
High effectiveness	0.44	0.49	0.21	0.29	0.22	0.06	0.09	0.12	0.14	0.12
Difference	−0.18	−0.19	−0.08	−0.06	−0.02	0.01	0.01	−0.02	−0.04	0.06
[95% Conf. Interval]	[−.47, −.09]	[−.44, −.05]	[−.25, −.02]	[−.21, .01]	[−.18, .04]	[−.06, .27]	[−.07, .29]	[−.08, .15]	[−.09, .09]	[−.13, .09]
[90% Conf. Interval]				[−.21, −.001]						

Note. Displays predicted joint probabilities of ratifying (and not ratifying) the CAT without reservation and engaging in systematic torture for low and high levels of judicial effectiveness. Low Effectiveness sets *CIM* at .5, *ICRG* at 1, and the other variables at 0. High effectiveness sets *CIM* at .99, *ICRG* at 6 and the other variables at 1.

Let us turn back to Tables 2 and 3 and see what else we might learn from the models about the patterns of CAT ratification and torture. It is clear that the mixed results on the *Opt Out* hypothesis derive from differences across the measures in the ratification equation rather than the torture equation. Indeed, the torture equation results are highly robust. The effectiveness measures are all signed in the expected direction, and with the exception of the *Tate/Keith* measure in Table 2 they are significant, especially so in the models of *Systematic Torture.* These torture estimates are consistent with the results found in Keith (2002) and Cross (1999), which found support for legal effects on human rights abuses. In the torture context, whether or not we wish to link ratification of human rights treaties to compliance behavior explicitly, the results strongly suggest an impact of effective judicial systems. Controlling for a measure of the majoritarian elements of democracy, we can say with a high degree of confidence that the legal constraint element of democracy seems to reduce instances of torture.[33]

The lack of robustness emerges in the ratification equations. Although coefficients for three out of five measures of judicial effectiveness (*CIM, ICRG, CIRI*) are negative, as we would expect, only one (*CIM*) is statistically significant. In fact, the coefficients for *Tate/Keith,* and *Howard/Carey* measures are positive, if far from significant. We could ask whether the State Department measures are simply too likely to pick up *de jure* influences or suffer from idiosyncratic coder biases; however, the more responsible inference here is that we should be far less certain about theories (ours included) that predict legal effects on ratification, or we need better data to test it. We return to this issue below.

Many of the control variables are correctly signed and in most cases they pick up meaningful variation. First and foremost, the democratic regime estimates, which capture the effect of democracy on ratifying and torturing, are of significant interest here. All ten 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 this paper: not ratifying and torturing (behavior in the *Opt Out* equilibrium). This is because autocracy makes a state *less likely to ratify.* Democracies are also less likely to engage in systematic torture. These results do suggest renewed support for the notion that majoritarian pressures can induce good human rights behaviors.

There is significant evidence of temporal dependence in both equations. Substantively, increasing threat makes states more likely to torture. This result holds for all measures of judicial independence. Consistent with the results in Hafner-Burton and Tsutsui (2005), states with larger numbers of NGOs are less likely to torture, reflecting the importance of international issue networks. As far as the ratification behavior, we get mixed results for the NGOs depending on the measures of judicial effectiveness used. Interestingly, coefficients for the NGO estimates in the *CIRI, Tate/Keith, Howard/Carey* models are negative and statistically significant suggesting that states with larger number of NGOs are less likely to ratify the CAT. Finally, the *CINC* coefficient is statistically unrelated to the ratification behavior, but it is negative and significant in all but three torture equations, suggesting that stronger, more developed states are less likely to torture.[34] The global rate variable does not appear to explain much in the way of full

[33] Results are robust to a specification in which we include measures of third and fourth wave democracies as in Landman (2005).

[34] It is possible that *CINC* is simply a poor measure of a state's costs of torturing. 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, in the sense that it may be increasingly difficult to induce your agents to torture as their professionalization increases.

ratification behavior or torture. The regional evidence is only partly consistent with Goodliffe and Hawkin's (2006) findings, yet we suspect that our choice to focus on ratification without exceptions likely explains the differences.[35] Results of five models suggest that states are more likely to ratify the *CAT* if the percentage of regional neighbors that fully ratified the Convention increases.[36]

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 have developed further the argument 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. This approach encourages thinking explicitly about ratification and compliance as a joint process. We presented two hypotheses about the joint probabilities of ratification and compliance. We find results consistent with the hypothesis that the joint probability of ratifying and torturing decreases in judicial effectiveness and mixed results with respect to the hypothesis suggesting that the probability of not ratifying and torturing increases in judicial effectiveness.

If the model we develop is ultimately correct, then solving the international problem of torture is likely to be difficult. 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. 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.

On the other hand, it is important to note that the mixed results of judicial effectiveness really deal with the ratification choices of states and not torture behavior. There is strong evidence that effective judicial systems seem to protect individuals against torture. And if the right answer to the ratification question is that judicial effectiveness is entirely unrelated to states' choices to adopt international human rights agreements, then developing domestic judiciaries, a core goal of the international rule of law project, may very well help solve the torture problem. In order to know whether the model we develop is ultimately right requires data that the field does not yet have available, but should develop. The reason is that many features of the domestic judiciary can influence its ability to constraint the state and thus ultimately raise the costs of ratification. States can restrict jurisdiction. Judges can share government interests in repressive human rights regimes or they may follow strong legal norms of deference (Hilbink 2007). For these reasons, we need to know precisely what steps states have taken to implement international agreements domestically. We need to know more about the dominant ideologies and norms of the judicial systems around the world. We need to know precisely what legal mechanisms are available to redress

[35] We should also note that Goodliffe and Hawkins use World Bank regional codes, while we rely on codes provided by the United Nations.

[36] We have also estimated models in which we control for two measures of federalism from the DPI Database (Beck et al. 2001). The first indicates whether a country contains autonomous regions and the second indicates whether subnational units are elected. We do so to address the possibility that governments may have derived greater trouble monitoring torture behavior when there are subnational units. We found significantly mixed results with these measures across the different judicial effectiveness models, though the results for the judicial effectiveness measures were roughly identical. As neither of these variables is correlated with the key independent variables and as we did not have a strong theoretical expectation for them, we exclude them from the analysis presented here.

physical integrity violations. We must know more about the jurisdiction of the world over state sponsored torture and potentially how different legal instruments (e.g., *amparo vs. habeas corpus*) influence the ability of courts to meaningfully influence state behavior. This is the kind of empirical information that will ultimately be needed to identify well how much of a constraint courts place on governments and thus identify the varying legal costs of adopting new international human rights norms. Our suspicion, our hope at least, is that these data will be collected by scholars inspired by law and politics research that spans the traditional subfields of political science.

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-Herzegovenia	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 (2008) dataset. [a]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

Variable	*Obs*	*Mean*	*SD*	*Min*	*Max*
Ratify (ratification without reservations)	3517	.357		0	1
Torture	2802	.826		0	1
Systematic Torture (more than 50 incidents)	2802	.425		0	1
CIM	2154	.801	0.153	0.014	0.999
ICRG	1804	3.69	1.55	0	6
Howard/Carey	1409	.492		0	1
Tate/Keith	2055	.659		0	1
Cingranelli/Richards	1355	.787		0	1
Capabilities (repression costs)	2700	.006	0.017	0	0.173
Threat	2965	.238		0	1
Regime (democracy)	2408	.492		0	1
Population	3292	31355.97	116146	14.26	1294846
INGO	2112	658.19	691.16	0	3523
Global rate	3517	.348		.12	.505
Regional rate	3490	.360		0	1
Torture global rate	2874	.336		.515	.842
Torture regional rate	2874	.728		0	1
Systematic torture global rate	2802	.336		.235	.431
Systematic torture regional rate	2802	.365		0	1

A2 Formal Analysis

In what follows, we assume that 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.

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

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

Equilibrium Behavior

The uncertainty in the model means that the citizen does not know whether the judiciary is effective; however, she observes the state's choices perfectly. If the state does not repress the citizen, her expected utility of attacking the state is $q\varepsilon + (1-q)\varepsilon \equiv \varepsilon$, and $qk + (1-q)k \equiv k$ if she does not attack. If repressed, her expected utility of seeking redress is $q(\beta k-\delta) + (1-q)(-\delta)$, and 0 if she does

nothing. Thus, the citizen will attack if $\varepsilon > k$ if the state does not repress and will seek redress if and only if $q > \frac{\delta}{\beta k}$ is repressed.

Given the state's payoff function above and the citizen's optimal choices, there are four cases to consider. If $\varepsilon \leq k$ and $q > \frac{\delta}{\beta k}$, and thus the state expects the citizen not to attack yet seeks redress if repressed, it is obviously optimal for the state to adopt the international standards and not repress. This is the *Trivial Compliance* case (left side of the right panel in Figure 1). If $\varepsilon \leq k$ and $q \leq \frac{\delta}{\beta k}$, again the state's optimal choice is to adopt the standards and not repress, saving the repression cost. Thus, this is the second *Trivial Compliance* case (left side of left panel in Figure 1). Third, if $\varepsilon > k$ and $q > \frac{\delta}{\beta k}$, then the citizen will attack and seek redress. If ever the state wishes to adopt the standards and repress the citizen $(1-r-p-q)$, it might as well not adopt and repress $(1-r-p)$. And if it would not repress, the state is clearly better-off adopting the standards and obtaining $1-\varepsilon$. Thus, if $\varepsilon \in (k,\ r+p]$, then the state will adopt and not repress, which is the *Reluctant Compliance* case (upper-right area of right panel). If $\varepsilon > \max\{k,\ r+p\}$, then the state will not adopt and repress, the *Opt Out* case (lower-right area of right panel). Finally, if $\varepsilon > k$ *and* $q \leq \frac{\delta}{\beta k}$, then the citizen will attack if not repressed yet not seek redress if repressed. Clearly, adopting the standards and repressing is better than not adopting and repressing $(1-r > 1-r-p)$, and if the state does not repress, it is always better-off adopting the standards. Thus, the question is whether the costs of repression are larger than the cost of allowing the citizen to attack. If $\varepsilon > \max\{k,\ r\}$, then the state will adopt yet repress the citizen. This is the *Non-Compliance* case (lower-right area of left panel). If for $\varepsilon \in (k,\ r]$, then the state will adopt and not repress, another case of *Reluctant Compliance* (upper-right area of left panel).

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