Best Evidence: The Role of Information in Domestic Judicial Enforcement of International Human Rights Agreements*

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Abstract

Independent domestic courts play important roles in enforcing international human rights agreements, thereby providing a mechanism by which international institutions can affect government policy. Yet this enforcement power is constrained not only by independence but also by the courts' ability to overcome information problems. Domestic courts' enforcement power depends on information in two ways: the costs of producing legally admissible evidence of abuses and the applicable legal standards of proof. When countries ratify international agreements, judicial enforcement can improve government practices when evidence-production costs and standards of proof are low, but not otherwise. With respect to personal integrity rights violations, evidence is especially difficult to obtain, and standards of proof are high, meaning that the courts will not be able to constrain government practices. By contrast, evidence-production costs and standards of proof are lower for other civil rights violations, so courts will be able to prosecute offenders and bring governments into line with their international commitments. Consistent with this theory, I find that commitments to the International Covenant on Civil and Political Rights (ICCPR) have significantly improved governments' respect for the freedoms of speech, association, assembly and religion. With respect to personal integrity rights, however, I find that commitments to the ICCPR have not improved government practices.

1 Introduction

Do commitments to international institutions have independent effects on state behavior? This central question in the international relations literature has received critical attention in recent years, resulting in both theory and empirical evidence regarding the effects of commitments

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to international institutions in a variety of policy areas (Keohane 1984; Mitchell 1994; Victor, Raustiala and Skolnikoff 1998; Simmons 2000; Kelley 2007). The question seems especially complex with respect to human rights, where international enforcement mechanisms thought to work in other areas, such as reciprocity and peer enforcement, do not appear to function (Downs and Jones 2002; Simmons 2009). As a result, scholars have increasingly turned to various other mechanisms by which commitments to human rights treaties might affect government practices, including normative pressure (Finnemore and Sikkink 1998; Keck and Sikkink 1998) and domestic political mobilization (Hafner-Burton and Tsutsui 2005; Conrad 2011). Domestic courts also appear to play a major role in the domestic enforcement of international human rights law. In some countries, the judiciary is sufficiently powerful to prosecute other government actors for violating their international commitments. Knowing this, these governments can use such commitments to constrain their future policy choices (Cross 1999; Keith 2002; Apodaca 2004; Keith, Tate and Poe 2009; Powell and Staton 2009).

Despite the progress scholars have made on explaining the effects of human rights treaties, the existing research has nonetheless left us with two important puzzles. First, independent domestic courts do not appear to improve human rights practices everywhere. Many countries, such as Chile (1972), Costa Rica (1968) and Portugal (1978), have ratified the International Covenant on Civil and Political Rights (ICCPR) and have independent judiciaries, but continue to commit human rights violations, especially torture. Given that the courts of such states are sufficiently independent to enforce these legal obligations, we might expect this enforcement mechanism to deter such violations, yet that does not seem to be the case. Second, the empirical results with respect to the effects of human rights treaties have been mixed. This is especially true for the effects of ICCPR membership: studies have found that it either improves, does not affect or even worsens state respect for human rights (Hathaway 2002; Hafner-Burton and Tsutsui 2005; Simmons 2009; Hill 2010).

These two puzzles are closely related. We can better understand why human rights treaties appear to be effective in some areas and not others by analyzing which types of legal obligations domestic courts can effectively enforce. I argue that understanding the extent to which domestic courts can enforce international human rights commitments requires accounting for the fact that human rights practices and violations are highly multi-dimensional (McCormick

and Mitchell 1997; Hathaway 2002; Davenport 2007*b*). Governments have many potential tools of repression at their disposal, and mechanisms that reduce the use of certain of these tools may not impact others. This paper seeks to address these issues by asking the following question: Does enforcement by domestic courts constrain government practices with respect to all human rights, or does this mechanism only function in certain areas?

Independent courts can be effective enforcers, but enforcement also depends on information. Courts generally have weak monitoring powers and must rely on other actors to produce information regarding violations of law. This paper explains when domestic courts can effectively enforce international human rights law by analyzing when they are likely to have the information necessary to do so. Scholars have analyzed the mechanisms for producing information about human rights violations in much detail. We know NGOs and the media perform crucial roles in monitoring governments, collecting information from victims and educating the domestic and international public about abuses (Keck and Sikkink 1998; Risse, Ropp and Sikkink 1999; Dai 2007; Hafner-Burton 2008). What is missing from this literature, however, is an analysis of the link between these information mechanisms and domestic courts as an enforcement mechanism. These mechanisms are less compatible than much of the literature implicitly assumes.

In the legal context, information consequentially becomes subject to the laws of evidence. Much of the information we may have about violations may be inadmissible in courts. As a result, courts have a different set of information before them than can be used outside the judicial process for "information politics" (Keck and Sikkink 1998). Courts' effectiveness as enforcers of human rights law is systematically affected by the availability of legal evidence, and that availability varies by the type of human rights violation. Courts are unlikely to be effective enforcers in areas where evidence of violations is especially costly to obtain–even if actors outside the judicial process have significant amounts of information about such violations. In addition, even when a certain amount of admissible evidence can be produced, it may not be sufficient to meet the applicable standard of proof in order to secure a prosecution. The ability of courts to overcome this information asymmetry therefore depends on the cost of producing admissible evidence of violations and on the standard of proof. When evidence-production costs and the standard of proof are low, violators of law are likely to be prosecuted and therefore the prospect of domestic judicial enforcement constrains government actors. When these costs and standards

are high, however, violators are not likely to be prosecuted, so potential prosecution by domestic courts will provide little incentive for governments to conform their actions to their international legal commitments.

Applying this argument to the human rights context, I argue that evidence-production costs and standards of proof are high with respect to violations of personal integrity rights, such as torture, extrajudicial killings, political imprisonment and disappearances. Thus, I expect that courts will not be able to constrain governments into reducing these violations, including governments that sign an international commitment to do so. By contrast, both evidence-production costs and standards of proof are relatively low with respect to violations of other civil rights, especially the freedoms of speech, association, assembly and religion. I therefore expect that domestic courts can enforce respect for these rights and, as a result, that commitments to human rights treaties result in improvements in government practices in these areas. I test this theory by analyzing the effects of ratification of the ICCPR on respect for several human rights from 1981 to 2007. To address governments' self-selection into the ICCPR, I use a propensity-score matching technique designed to allow us confidence in our inference regarding this relationship. I find that ratification of the ICCPR has improved government respect for the freedoms of speech, association, assembly and religion, but has not reduced the extent to which governments use torture, extrajudicial killings, political imprisonment and disappearances.

This paper makes several contributions to our understanding of the effects of international institutions. I provide a theory that explains which types of international commitments are and are not likely to be enforceable by independent domestic judiciaries. Underlying this theory is the notion that these mechanisms depend not only on the types of legal institutions involved, but also on the ways in which different types of legal violations create different information problems. A key insight of this argument is that, in the judicial context, information is highly constrained by the laws of evidence and, therefore, that the information-producing mechanisms analyzed in the literature on human rights may not produce information that can be used by courts as legal enforcers. While both monitoring and enforcement have been thoroughly analyzed in the human rights context, my argument is that while the information-gathering functions of NGOs and the media are crucial for some enforcement mechanisms, we should not assume that the same set of information can be used in the judicial enforcement mechanism. Indeed, information brought

before the courts is systematically different. Finally, my analysis provides new empirical results regarding the effects of ICCPR ratification on several areas of human rights. I use disaggregated measures of individual human rights practices in order to examine the specific areas in which the treaty has affected government policy and where it has not. In contrast to several prior studies, I find that ICCPR ratification has not significantly affected government practices with respect to personal integrity rights. My results also include novel findings that the ICCPR has improved respect for several other rights, including the freedoms of speech and association.

2 The Effects of International Commitments

States commit to international agreements for various reasons. At times, states ratify treaties that require them to make little or no changes relative to the status quo. Other commitments may simply be forms of cheap talk, especially when compliance is weakly monitored or enforced (Downs, Rocke and Barsoom 1996). In such situations, we can expect that commitment to international law will not significantly change government policy. Yet scholars argue that, on many occasions, governments commit to treaties in order to constrain their behavior and achieve outcomes that may not have occurred otherwise (Moravcsik 2000). The debate regarding the effects of international law has been pushed forward in recent years along at least two fronts. The first is a line of research that has produced important empirical tests of existing theories. Secondly, scholars have refined existing theory in order to improve our understanding of the mechanisms by which governments can constrain themselves by making international commitments.

The empirical research on the effects of commitments to international law has produced mixed results. I focus this discussion on research that examines the effect of ICCPR ratification, although the foregoing also applies to research on other human rights treaties (Hathaway 2002) as well as other types of international agreements (Mitchell 1994; von Stein 2005). In the first cross-national study of its kind, Keith (1999) found that ICCPR member-states were no more (or less) likely to respect the human rights of their citizens, when controlling for other factors known to affect this behavior. Likewise, Hathaway (2002) finds no significant statistical relationship between ICCPR ratification and respect for trial rights and civil liberties. Using a different model

specification, Hafner-Burton and Tsutsui (2005) find that ICCPR members are somewhat more likely than non-members to repress their citizens, especially in terms of personal integrity rights violations. The findings in these papers have been updated by recent efforts that use more sophisticated methods to address treaty commitment selection effects. First, Neumayer (2005) uses Heckman selection models and finds that ICCPR members are more likely to violate the personal integrity rights and civil rights of their citizens, using as dependent variables the pooled measures of both sets of rights provided by the Political Terror Scale and Freedom House, respectively. Second, Simmons (2009) uses an instrumental variables model and finds that ICCPR members are more likely than non-members to abolish the death penalty and respect religious freedom, but not to respect trial rights. Most recently, Hill (2010) matched ICCPR members to non-members based on several observable predictors of ICCPR ratification. He finds that ICCPR members become more likely to violate their citizens' personal integrity rights, as measured by the index of Physical Integrity Rights provided by the Cingranelli-Richards Human Rights Data Project (2009) (CIRI).

Several mechanisms work to improve the human rights practices of governments, including normative persuasion and political pressure (Keck and Sikkink 1998; Lutz and Sikkink 2000; Hafner-Burton 2008). Yet the success of these types of mechanisms need not be contingent on a government having made an international legal commitment to uphold respect for human rights. By contrast, the key mechanism by which such commitments can constrain governments and result in improvement in human rights practices is their incorporation into domestic law (Hathaway 2007; Powell and Staton 2009). A key to the enforcement of international law upon its incorporation into domestic law is an actor willing and able to perform this function, most often the judiciary. Particularly in the human rights literature, researchers have argued that respect for human rights is better in countries with domestic judicial systems that are sufficiently autonomous from other branches of government to allow them to check executive and legislative power (Cross 1999; Keith 2002; Apodaca 2004; Keith, Tate and Poe 2009). Both the Universal Declaration of Human Rights and the ICCPR note that an independent judiciary is crucial to maintaining respect for human rights. Others argue that it is not the autonomy of the domestic judiciary that is crucial in this context, but its effectiveness. Powell and Staton (2009) argue that judicial effectiveness 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" (p. 151). Thus, while there is an important debate regarding whether the crucial characteristic of the judiciary is its autonomy or its effectiveness (Staton and Moore 2011), there seems to be a consensus that the domestic judiciary is essential to the enforcement of international agreements.

3 Domestic Courts and International Commitments

The key to the arguments above is that domestic courts can perform an important enforcement function depending on institutional characteristics and powers. Simmons (2009), for example, has recently argued that the effectiveness of domestic litigation as a treaty enforcement mechanism depends on judicial independence. Building on her work and that of others, this paper argues that the effectiveness of this mechanism depends on much more. The literature on international human rights institutions has analyzed enforcement by domestic courts and the production of information about violations, but has insufficiently linked these two mechanisms. A key contribution of this paper is to provide this link and demonstrate how it systematically affects when courts can perform their enforcement functions.

When violators are less likely to be punished through domestic judicial action, the power of the courts to bring governments into line with international law decreases. The law-and-economics literature often adopts a statistical terminology and refers to occasions on which a violator of law is not prosecuted as type II errors (Png 1986; Cooter and Rubinfeld 1989). A higher likelihood of type II error creates a lower incentive for actors to obey the law because there is a lower probability that they would face a penalty for not doing so (Polinsky and Shavell 1989). Adopting this terminology, this section sets forth an argument regarding when the probability of type II error is lower and, therefore, domestic courts are more likely to be effective enforcers of international legal commitments.

Information is crucial to the reduction of type II error. Enforcement mechanisms depend on effective monitoring mechanisms. Violators cannot be punished unless their transgressions are observed. While courts have strong enforcement powers, they have relatively weak monitoring powers. "Judicial enforcement is costly and imperfect," argue Sanchirico and Triantis (2007, p. 72), "largely because of limits on the court's ability to detect facts accurately." As U.S. Supreme

Court Justice Brennan wrote in Speiser v. Randall, "There is always a margin of error in fact-finding" (357 U.S. 513, 525-26).

Courts face important information asymmetries with respect to enforcing international commitments on the other branches of government. Legislatures and executives often violate legal commitments and have an incentive to keep these violations hidden, especially if they expect judicial prosecution. When guilty parties make greater efforts to prevent prosecution, including by hiding information, the probability of type II error increases (Rubinfeld and Sappington 1987). Unlike legislatures and other institutions, courts generally have little power to directly monitor other actors. In the language of McCubbins and Schwartz (1984), courts cannot use police patrol monitoring mechanisms, but instead must rely on fire alarms. That is, courts depend on other actors to bring information to them regarding alleged violations of international commitments. Overcoming information asymmetries through fire alarm mechanisms is therefore a crucial component of effective enforcement of international commitments by domestic courts.

Information takes on a specific meaning in the judicial context and is subject to rules governing its acquisition, authentication and admissibility that do not apply in other contexts: the laws of evidence (Bentham 1825; Wigmore 1981). Thus, "court action is a function not of what can be observed by the court but what evidence is actually presented to the court by the ... parties" (Bull and Watson 2004, p. 1). The laws of evidence have two important consequences for the issues addressed in this paper. The first is that, in order to prosecute a violator, the court must have information that is admissible as evidence. Not all of the information (as the term is more broadly used in the international relations literature) that actors may possess regarding violations of international law will be admissible in court. While jurisdictions vary greatly in terms of the rules of evidentiary admissibility, they all have such rules, and there are many similarities among them (Damaska 1973, 1992). Secondly, the amount of evidence that is sufficient to prove an allegation in court varies greatly depending on the type of claim. In legal terms, this is known as the standard of proof. The purpose of a standard of proof is to instruct the fact-finding actor (such as a jury) about the level of confidence it must have in its verdict.

As a result, courts' ability to overcome information asymmetries and enforce international law depends on two factors: the cost of producing admissible evidence and the standard of proof. In some contexts, it is relatively less costly for the parties to locate relevant information that is

legally admissible as evidence, while in other contexts doing so will entail significantly greater costs. To be clear, I refer here not to the cost of producing information about violations in the general sense, but specifically to the cost of producing the type of information that is likely to be admissible in court. This is especially pertinent because, in many cases, parties have powerful incentives to hide and tamper with evidence (Sanchirico 2004, 2006), thus raising the cost of discovery. The cost of producing legally admissible evidence is a key determinant of litigants' probability of winning at trial (Tullock 1980; Cooter and Rubinfeld 1989). Higher evidence-production costs generally result in a lower probability of finding against a guilty or responsible party, which increases the probability of type II error(Cooter and Rubinfeld 1989). Because the standard of proof determines the amount of evidence that must be produced at trial, its effect is analogous to that of evidence-production costs. Higher standards of proof require greater amounts of evidence, thus making prosecution more costly and increasing the probability of type II error (Rubinfeld and Sappington 1987).

The foregoing has the following implications for domestic judicial enforcement of international law. When evidence-production costs and standards of proof are relatively low, courts are likely to have sufficient evidence brought before them to overcome information asymmetries and effectively hold other branches of government responsible for breaches of international legal commitments that have been incorporated into domestic law. If rights are violated, victims will be more likely to be able to litigate claims for such violations, resulting in penalties against governments and their agents. We should expect governments to strategically anticipate such prosecutions and therefore become less likely to violate international commitments, so we may not observe such prosecutions. [1] In turn, this means that, under such conditions, commitment to international agreements will have a constraining effect on governments, causing them to change their behavior toward meeting their international legal obligations.

[1] This is why, generally speaking, levels of prosecutions for violations of law are not good measures of judicial constraints. When actors know that type II errors are less likely, they adjust their behavior accordingly and become less likely to violate the law. In such a scenario, we are unlikely to observe many prosecutions. By contrast, when the probability of type II error is high, actors will violate the law but not be prosecuted. As a result, the two scenarios are observationally equivalent in terms of prosecutions. This observational equivalence explains why statistics on judicial behavior are thought to be weak indicators of the extent to which courts constrain other actors (Johnson, McMillan and Woodruff 2002).

By contrast, in areas where evidence-production costs and standards of proof are high, even courts that are otherwise capable of enforcing international law will not have sufficient evidence before them to allow them to prosecute violators. While violations may be common, evidence of such violations will be scarce, so victims will not be able to bring forward effective claims against the governments. Courts – even highly independent courts – will have few opportunities to rule on such cases and impose penalties on governments and their agents. Knowing this, when governments commit to international agreements in such areas, they will not be constrained by the prospect of future domestic prosecution for violations. As a result, under such conditions, domestic judicial enforcement will not cause governments to conform their behavior to international law.

4 Domestic Prosecutions of Human Rights: Information as Evidence

The previous section set forth a general argument regarding the conditions under which we can expect domestic courts to be effective enforcers of international commitments. This section applies that argument to international human rights law. It provides an argument regarding which types of human rights violations have low versus high evidence-production costs and standards of proof. I follow Davenport (2007*b*) and others in separating human rights violations into the categories of personal integrity rights and other civil rights and liberties. Personal integrity rights violations include extrajudicial killings and other deprivations of the right to one's life, torture and other inhuman treatment, political imprisonment and forced disappearances. Perhaps because these are often regarded as the worst violations of human rights, they have received the most attention in the academic literature. The other civil rights and liberties I analyze are nonetheless regarded as crucial elements of the international human rights regime. These include the freedom to practice one's religion as well as the freedoms of speech, assembly and association.

4.1 Evidence-Production Costs

The processes of producing information about human rights violations have been analyzed by several important studies (Keck and Sikkink 1998; Lutz and Sikkink 2000; Hafner-Burton

2008; ?). In the context of human rights, the analysis of information has focused on the roles of NGOs and the media, as well as the ways in which international institutions diffuse information (Hafner-Burton 2012). Yet these analyses do not link such information to the judicial process. In certain areas, it is significantly more costly to produce legally admissible evidence that can be used in a court of law than to produce information that can be used in "the court of public opinion." We therefore must think about information costs differently when political and normative processes are the mechanisms for improving human rights practices than when the judicial system is the enforcement mechanism. This section examines different areas of human rights to determine where evidence-production costs are relatively high.

Evidence-production costs are high with respect to personal integrity rights violations and low with respect to violations of other civil rights. The first reason for this stems from the availability of the victims. Dai (2007) argues that, in policy areas where the interests of states and their citizens are not aligned, but victims of violations are available as low-cost monitors, we can expect monitoring of international commitments to be conducted by both NGOs and victims. Thus, "human rights regimes rely most critically on the detection of noncompliance by victims and the communication of noncompliance by NGOs" (Dai 2007, p. 60-61). Yet the availability of victims to monitor violations and report them to others varies greatly along with the type of violation. If a victim is either dead or in government custody, this type of monitoring will not facilitate enforcement. In such areas, victims will not perform a meaningful monitoring function, and this responsibility will instead fall to NGOs and other actors.

When personal integrity rights violations occur, the government is often either in possession of the victim for a significant amount of time, the victim is dead, or the victim is too fearful of reprisal to report the violation. The victim is therefore both less likely to bring a case forward and less likely to be in a position to testify or otherwise provide evidence of the abuses. Amnesty International reported in 1977, for example, that Argentine government agents had intimidated and detained individuals who sought to testify about government abuses.[2] In some situations, the victim's family may report a suspected violation, and this can result in an investigation by NGOs or other actors. When the victim is missing, however, the process of

[2] Amnesty International. 1977. "Report of an Amnesty International Mission to Argentina, 6-15 November 1976."

confirming the violation can take years (and often requires a regime transition). As Lutz and Sikkink (2000) argue, "Disappearances often are difficult to prove because the accuser must show that the victim was deprived of his or her freedom by government agents notwithstanding government claims to the contrary" (p. 635). This problem is especially acute in the judicial setting because the government can prevent accusers from obtaining the evidence needed to support such claims. In Argentina, for example, many of the names of the victims of the military junta from 1976 to 1983 were not confirmed until years later, and many alleged victims remain unaccounted for. One of the junta's most famous victims was Dagmar Hagelin, a Swedish citizen who was mistakenly shot by an Argentine government death squad in 1977. She was subsequently imprisoned, and many NGOs inquired as to her status, but the government always denied having her in custody. Her body was never found, and no one has ever been prosecuted for her death (Simpson and Bennett 1985). The case illustrates the key difference between information generally and evidence: the facts may be "known", but nonetheless not be legally provable.

By contrast, when other civil rights are violated, the victims generally remain free and physically unharmed, and are thus more likely to be able to bring their cases to court and to testify as witnesses. This is largely inherent in the nature of these types of repressive activities. Violations of rights other than personal integrity rights, by definition, do not involve physical harm or government custody of the victims. When a government shuts down a newspaper in violation of free speech rights guaranteed under law, agents of the newspaper are physically unimpeded from taking a case to court and testifying as to the events. This type of situation is also significantly less likely to result in plaintiffs being too intimidated by the possibility of additional government abuses to come forward. Being told that one cannot enter one's place of worship can be emotionally jarring, for example, but the psychological impact of this is likely to be far less damaging than that of prolonged detainment or torture.

The second reason for my argument is that the government is generally in a better position to hide evidence of personal integrity rights violations. This, too, stems from the nature of the violations. Personal integrity rights violations often (but not always) occur in situations in which the government has control of the victim and the surrounding evidence, making it less costly for the government to destroy evidence. This can include not only killing the victim and hiding the body, as in cases of disappearances, but also destroying other physical and

documentary evidence, including the facilities in which the violations occurred. Very little documentary evidence has been produced, for example, regarding the atrocities committed by the Khmer Rouge in Cambodia, because the regime was able to destroy it (Ratner and Abrams 2001). Victims of such violations are often stripped of identification and identifying physical features, thus complicating the ability to use bodies as evidence. This occurred in Guatemala in the 1970s and 1980s, where only 127 of 3171 unidentified bodies had been identified as of 2008 (Snow et al. 2008). Even evidence of torture can be hidden: "The goal of 'clean' techniques is plausible deniability by state executives. One cannot plausibly deny the use of scarring techniques in judicial proceedings. 'Clean' techniques, on the other hand, permit state agents to shift debate about their treatment of prisoners from blatant lying to a 'he said, she said' context in which uncertainty exists" (Conrad and Moore 2010) (p. 461).

Where the government is not in possession of the primary evidence, however, the costs of producing evidence of violations will be low. This is much more likely to be the case in violations of rights other than personal integrity rights. Such violations involve government prohibitions on the rights of individuals to exercise freedoms that are often exercised in public or semi-public places. The right to religious freedom, for example, as defined in Article 18 of the ICCPR, explicitly applies "individually or in community with others and in public or private." Because these rights are often exercised in public, their violation is less likely to be conducted in secret. This means that not only are victims more likely to go to court, but they are also likely to be able to produce physical and documentary evidence of the violation. For example, when government agents illegally break up rallies or protests in violation of the right to assembly, victims are often able to produce photographic and video evidence of the events.

The third reason evidence-production costs are higher with respect to personal integrity rights is that, in general, such violations target fewer victims than do violations of other civil rights. In part, this is because the costs of executing personal integrity rights violations are higher than violations of other rights. Personal integrity rights violations typically require the government to hire agents and provide them with resources and facilities, often for the long term. Torture, for example, is both a capital- and labor-intensive process. Fewer victims means that, all else equal, there are fewer potential plaintiffs to bring lawsuits and fewer potential witnesses to testify in those suits. Violations of other civil rights tend to be less resource-intensive, however,

on a victim-by-victim basis. This is largely because violation of these rights often does not involve direct or prolonged contact between the government's agents and the victims. A single church can be shut down using a squadron of armed police, for example, denying hundreds the right to freely practice their religion. Shutting down websites can deny the right of free speech to many individuals and organizations, yet often requires relatively few government resources.

This argument may seem counterintuitive given the depth of NGO activities and media coverage of human rights, much of which is focused on abuses of personal integrity rights because they are the most egregious violations. Indeed, the media's preference for reporting on violent incidents has resulted in the common saying that "If it bleeds, it leads." NGOs collect important information about abuses and participate in the mobilization and education of the public (Keck and Sikkink 1998; Davenport 2007*a*). As a result, we often have vast amounts of information about personal integrity rights violations, potentially more so than with respect to other human rights violations.

Yet the information needed for what Keck and Sikkink (1998) call "information politics" differs significantly from that needed for purposes of judicial evidence. For example, NGOs often receive reports from victims' families that their relatives have been kidnapped and use this information to mobilize pressure against governments. But, as the Hagelin case demonstrates, this information often cannot be used to legally prove an offense, particularly when the government hides the relevant evidence. Lawyers have often criticized NGOs for their fact-finding practices (Franck and Fairley 1980; Weissbrodt and McCarthy 1982; Blitt 2004). Much of the information NGOs use does not constitute direct evidence of violations. Winston (2001) argues that "[Amnesty International] does not get into the business of 'naming names' of suspected perpetrators for this reason" (p.37). NGOs "often need to rely upon hearsay statements, documents which are not fully authenticated, and justifiable inference from indirect evidence" (Weissbrodt and McCarthy 1982, p. 203). While many NGOs have developed policies in order to avoid relying excessively on hearsay, they do rely substantially on interviews of witnesses who are neither under an obligation to speak with the NGO nor under an obligation to tell the truth (Orentlicher 1990). Recognizing this, many NGOs have adopted sampling techniques to help gauge the extent of abuses (Orentlicher 1990). Yet while these tools are helpful in creating awareness of violations in the general sense, they are unlikely to be useful as evidence of specific

violations of individuals' rights. Unfortunately, the physical evidence needed to corroborate these eyewitness reports is unavailable in many situations, especially those involving personal integrity rights violations (Orentlicher 1990).

Media reports similarly rely on information that is inadmissible as evidence. While the media certainly have standards regarding authentication and corroboration, many reports are published based on information obtained from anonymous or second-hand sources. This information is unlikely to be useful as legal evidence. Individuals too fearful to be named in a newspaper article, for example, are unlikely to be willing to provide the same information in a legal proceeding. Because personal integrity rights violations often occur in secret, media reports are unlikely to be based on direct evidence of such abuses. As a result, as Ratner and Abrams (2001) argue, "Evidence normally gathered by journalists, academics, and NGOs for historical or reporting purposes is typically different from that needed before ... courts" (p. 256).

4.2 Standards of Proof

Standards of proof can be thought of as varying along two dimensions: the type of legal system and the type of suit. Along the first dimension, individual states may impose higher standards of proof for all types of claims than other states. Nonetheless, the argument I make here is that in all types of legal systems, claims of personal integrity rights violations face higher standards of proof than claims of violations of other civil rights. The key reason for this is that personal integrity rights violations tend to be criminal offenses, while violations of other civil rights that do not involve physical harm tend to be civil offenses, although the latter could also be criminal offenses. To my knowledge, no study has compiled a comprehensive list of standards of proof by country and by subject matter. In addition, it would likely be extremely difficult to quantify such standards for the purpose of conducting a statistical analysis. Nonetheless, the literature on the comparative law of evidence indicates that my argument is accurate. In all jurisdictions I am aware of, the standard of proof for criminal claims (and, thus, personal integrity rights violations) is higher than the standard of proof for civil claims (and, thus, other civil rights), albeit the magnitude of this gap likely varies.

The following are examples of the differences between the standards of proof for criminal and civil in two of the world's most common legal systems: the common law and civil law

systems. In common law jurisdictions, criminal charges must usually be proved "beyond a reasonable doubt," the highest standard of proof (Wigmore 1981). This standard has sometimes been quantified as requiring a roughly 90% or 95% certainty in the verdict (Simon and Mahan 1971; McCauliff 1982).[3] By contrast, standards of proof for civil cases are relatively low. In the United States, this standard is usually "the preponderance of the evidence," which is generally taken to mean a greater than 50% probability of the correct verdict (Simon and Mahan 1971; McCauliff 1982). As the court in Livanovitch v. Livanovitch famously wrote, "A bare preponderance is sufficient, though the scales drop but a feather's weight." (99 Vt. 327, 131 A. 799, 1926). Other jurisdictions, such as the UK, the British Commonwealth and Scandinavia, refer to this standard as the "balance of probabilities" and interpret it similarly (Wright 2009). In civil law jurisdictions, the question of whether criminal cases have different standards of proof than civil questions is somewhat more complex. The former conventional wisdom was that similar rules applied to both cases, a conclusion largely reached based on the traditional structure of the French legal system. Yet modern analyses have determined that this is no longer the case. Many civil law jurisdictions (including France) have instituted reforms that place less stringent standards on civil offenses and less serious crimes (Damaska 1973). As a result, while the official standards of proof may be similar in both civil and criminal cases, other rules of evidence make up for this similarity such that the difficulty of proving a civil case in a civil law country is similar to the difficulty of doing so in a common law country (Wright 2009; Engel 2009; Taruffo 2003). Thus, in both common law and civil law countries, the standard of proof for criminal cases is higher than that for civil cases.[4]

In summary, both evidence-production costs and the standard of proof for violations of personal integrity rights are high. Not only is it difficult to obtain information regarding such violations that can be used as legal evidence, but quite often the amount of evidence required for a conviction is large. By contrast, with respect to violations of other civil rights, including the freedoms of speech, association, assembly and religion, evidence-production costs are low and standards of proof are often also lower. This means the probability of type II error is large with

[3] Quantifying standards of proof is notoriously difficult, and attempts to quantify individual standards have been met with controversy among judges and legal scholars (Tillers and Gottfried 2006; Weinstein and Dewsbury 2006; Newman 2006).

[4] In a few countries, the same underlying offense can be pursued as both a criminal and civil matter.

respect to personal integrity rights violations, but smaller with respect to other civil rights. Governments that commit to human rights treaties will be likely to face domestic prosecution for violations of the freedoms of speech, association, assembly and religion. If they violate these rights, victims are more likely to e able to successfully litigate claims in domestic courts and impose penalties on governments. Anticipating this, governments that commit to international human rights agreements, will be more likely to improve their respect for these rights. With respect to personal integrity rights, however, this should not be the case. Governments that violate these rights will be unlikely to face prosecution by domestic courts, even if those courts are institutionally independent. Victims of such violations will face high barriers to producing the evidence needed to convict leaders and their agents in domestic courts, and will therefore be unlikely to do so successfully. As a result, when governments commit to international human rights agreements that protect these rights, they will anticipate that they can continue to violate such rights with a low likelihood of prosecution in domestic courts.

This argument leads to the following hypotheses:

Hypothesis 1: Ratification of applicable international human rights agreements improves government respect for the freedoms of speech, association, assembly and religion.

Hypothesis 2: Ratification of applicable international human rights agreements does not reduce government use of illegal killings, torture, political imprisonment or disappearances.

5 Research Design

5.1 The ICCPR

My research design focuses on the effects of ICCPR ratification on state human rights practices. Adopted in 1966 and entered into force in 1976, the ICCPR has since been ratified by 167 countries (as of 2010). Unlike many multilateral human rights treaties that have been adopted more recently, the ICCPR covers a broad range of rights. These include the key personal integrity rights discussed in this paper. Article 6 protects individuals' right to life and thus

prohibits extrajudicial killings by governments. Likewise, Article 7 prohibits torture and cruel, inhuman or degrading punishment. Article 9 provides that individuals may not be arbitrarily arrested or detained. This, together with additional prohibitions on the infringement of political rights, is often deemed a prohibition on political imprisonment and other detentions in violation of due process. The ICCPR does not explicitly address forced disappearances, most likely because the term was not used in common parlance until the abuses of the South American regimes of the 1970s became well-known. Yet the elements of a forced disappearance, most importantly arbitrary arrest and summary execution, are explicitly prohibited by the ICCPR. The ICCPR also prohibits governments from infringing on a broad set of additional civil and political rights. Among these are freedoms of speech and expression (Article 19), assembly and association (Articles 21 and 22), and the practice of religion (Articles 18). Importantly, Article 2 requires members to adopt domestic laws, including legislation as necessary, to "give effect to the rights" enumerated in the treaty.

From a research design perspective, focusing on the ICCPR has several advantages in this context. First, this allows me to test the effects of ratification of a single treaty on different dimensions of government human rights practices. This has the advantage of allowing for a direct comparison of treaty commitment effects while minimizing the extent to which findings may be caused by differences in treaty design. In addition, relying on a single treaty allows me to use the same set of units of observation to test all of my hypotheses. As a result, the only difference between the various regression models reported below is the dependent variable, which allows for clean comparisons between the results. Finally, empirical findings regarding the effects of ICCPR membership have produced mixed results, as discussed below. The extent to which existing work allows for causal inference is debatable, and much of the work has used pooled measures of either personal integrity rights and/or other civil rights. The use of methods designed for causal inference regarding the effects of ICCPR ratification on specific measures of human rights practices may shed light on an important empirical puzzle.

5.2 Addressing Treaty Commitment Selection Effects

Estimating the effects of treaty commitments is known to be a complex proposition. Governments select the treaties they join in part based on their interests and the extent to which

they expect to conform their behavior to the treaties' requirements (Downs, Rocke and Barsoom 1996). As a result, if we model an outcome on treaty commitments without addressing this problem, we could at best say that treaty members are more likely to experience that outcome, but not that this is a causal relationship. A high rate of treaty compliance among treaty members, for example, may simply mean that states that are more likely to comply are also more likely to join.

Scholars have recently begun taking the treaty commitment selection effect seriously and have employed several methods to address it. Among these are Heckman-based modeling (von Stein 2005; Neumayer 2005) and instrumental variables regression (Simmons 2009). Yet both of these methods are highly sensitive to specification and may not be optimal in this context. To produce reliable estimates, both Heckman (Sartori 2003) and instrumental variables (Heckman 1997; Pearl 2000) models require the specification of a variable that is associated with treaty commitment but not with the outcome policy. Yet, because both of these stages are ultimately decisions of government policy, it is particularly difficult to identify factors that contribute to the decision to join a human rights treaty but not to the decision to repress the human rights of citizens (Hill 2010).

The propensity-score matching approach proposed by Simmons and Hopkins (2005) to address this problem is particularly promising. The first step in this approach is to identify the set of factors that predict treaty commitment. The next step is to match treaty members to treaty non-members based on these underlying factors. The result is a sample that is balanced on the probability of treaty commitment. With respect to this sample, we can think of selection as having been randomly assigned (Ho et al. 2007). The sample can then be subjected to further tests, including simple t-tests and multiple regression, to estimate the effects of treaty commitment. Among the advantages of this approach are that it does not require the analyst to make distributional assumptions nor to specify a factor associated with treaty commitment but not with the outcome policy. More generally, matching has been shown to be an effective tool for creating balanced samples when treatment is not randomly assigned.

A significant threat to inference using this approach is the potential that unobservable (or unmeasured) factors affect treaty commitment decisions and are not included in the matching model (Simmons and Hopkins 2005). The estimation of the treaty commitment effect is highly

sensitive to the propensity score estimates (Rubin 1997), and the choice of underlying variables significantly affects the reliability of propensity score analysis (Heckman, Smith and Clements 1997; Heckman et al. 1998; Lechner 2000; Smith and Todd 2005).

? argues that the key factor that determines treaty commitment decisions – one that is difficult to observe directly – is a state's preference for treaty commitments, i.e., which types of treaties it tends to prefer joining. He therefore proposes a methodology to directly estimate these preferences in order to calculate the probability of states committing to specific treaties. This methodology relies on estimating the ideal points of states with respect to universal treaties using the W-NOMINATE algorithm (Poole and Rosenthal 1997), which has traditionally been applied to legislative roll-call voting but has also been used to estimate state preferences (Voeten 2000). In this model, the options of committing and not committing to a treaty are represented by points in an n-dimensional policy space. Each state decides whether or not to commit to a treaty by, among other factors, weighing the distance between these points and its ideal point in this space. The closer a state is to a treaty, the more likely it is to join the treaty (Simmons 2009). Thus, the probability of a particular state ratifying a particular treaty is calculated based on the distance between the state and the treaty in the preference space. Using Monte Carlo simulations, **?** compares this methodology to a more traditional model (such as those used by Hill (2010)) that calculates treaty commitment probabilities based on more easily observable predictors. He shows that the ideal point model out-performs the observables-based model when significant unobservable (or unmeasured) factors influence treaty commitment decisions, a likely scenario in this context of highly complex decision-making. Ideal point estimation performs better in this context because it is designed to reveal the latent preferences that affect decision-making, regardless of whether the underlying reasons for these decisions are observable or unobservable.

I adopt this methodology to estimate the effects of ICCPR ratification. My research design proceeds in three stages. First I use the W-NOMINATE algorithm on a data set of membership in approximately 300 universal treaties.[5] The results provide annual estimates of each country's probability of ratifying the ICCPR. These estimates begin in 1976, the first year in which the

[5] This data set includes all of the universal treaties included in the United Nations Treaty Collection (UNTC). The data includes various types of instruments, including protocols and amendments to treaties, all of which are considered separate treaties for purposes of this analysis. The data are coded "1" for country-years that have ratified a treaty and "0" otherwise. A full list of these treaties is available from the author upon request.

ICCPR was in force, and continue to 2007. In the second stage, I match treaty members to non-members based on these probabilities using the nearest-neighbor algorithm provided by the MatchIt package in the R programming language (Ho et al. 2009). Table 1 sets forth the results of the matching stage. In the full sample, there is a large imbalance between treaty members and non-members in terms of their probabilities of joining the ICCPR. Not surprisingly, ICCPR members are much more likely to have joined the treaty ex ante. After matching, however, these probabilities are much more similar. The treatment group has a 64.7% probability of joining ICCPR, while the control group has a 65.4% probability of doing so. The matching procedure results in a 98.2% improvement in balance on the probability of assignment to treatment.

[Table 1 and about here]

In a third stage, I use the matched sample to estimate the effects of ICCPR ratification on several dimensions of respect for human rights. As dependent variables, I use the measures provided by CIRI. While other measures of human rights practices are also commonly used in the literature, especially the Political Terror Scale (Gibney and Dalton 1996), the CIRI data are particularly suitable to testing my hypotheses because they disaggregate personal integrity rights violations into several types of violations and they provide data on many other areas of human rights. With respect to personal integrity rights, I use the CIRI measures of Extrajudicial Killings, Torture, Political Imprisonment and Disappearances. All four measures are coded as 0, 1 or 2 for each country-year. A score of 2 indicates that the applicable violation did not occur in that year, while a score of 0 indicates the violation was frequent. I also adopt the CIRI measures of Freedom of Assembly and Association, Freedom of Speech and Freedom of Religion. These measures are also coded as 0, 1 or 2 for each country-year. A score of 2 indicates the applicable freedom was not restricted in that year, while a score of 0 indicates it was severely restricted.

A perfectly balanced sample approximates random assignment to treatment, and therefore simple t-tests can be used on such samples in some contexts. My sample is not perfectly balanced with respect to the probability of assignment to treatment, and it is not completely balanced with respect to several additional factors that may influence human rights practices, as shown in Table 2. To correct for this remaining imbalance, I use multiple regression that controls for other factors that may influence human rights practices. As a measure of judicial independence, I adopt the

data provided by CIRI (Judicial Independence), which are coded as 0 for "not independent," 1 for "partially independent" and 2 for "generally independent." Importantly, there is no indication that the laws of evidence were taken into consideration when coding this measure. I include a measure of regime type using the Polity IV data (Marshall and Jaggers 2002) (Polity) because democracies are more likely to respect human rights (Poe and Tate 1994; Davenport 1995, 1999; Poe, Tate and Keith 1999). Newer regimes and well-established regimes may have different tendencies to respect human rights, so I follow Hafner-Burton and Tsutsui (2007) by controlling for this factor using the Polity IV data (Regime Durability). Both foreign wars and civil wars may result in periods of increased repression (Poe and Tate 1994; Poe, Tate and Keith 1999). Civil wars, in particular, may result in periods of lawlessness during which even independent courts have a diminished capacity to constrain the other branches of governments. I control for this using data from the Correlates of War Project. As discussed above, NGOs play a key role in political mobilization against oppression and may succeed in improving government practices. I control for the number of international NGOs (INGOs) in a country using the data provided by Hafner-Burton and Tsutsui (2005). The level of economic development is a well-known predictor of human rights practices (Henderson 1991; Poe and Tate 1994; Poe, Tate and Keith 1999), and I control for this using a measure of per capita GDP provided by the World Bank. I use the natural log of this measure because this effect is likely nonlinear (Davenport 2007*a*). To address potential differences among states of different sizes and potential monitoring biases based on this factor, I follow much of the literature in including a control for the natural log of a state's population, using data provided by the World Bank. To address serial correlation, I include lags of the applicable dependent variable for year $t-1$. A Lagrange multiplier test indicates that additional lags are not necessary to address serial correlation.

[Table 2 about here]

Not surprisingly, there were many observations with missing data among these variables. Because the underlying reasons for the missingness of the data are likely non-random, listwise deletion of these observations may result in biased inference (Little and Rubin 1987). I therefore follow Hill (2010) and others in imputing the missing values using the Amelia II Program (Honaker, King and Blackwell 2009). The data on ICCPR ratifications are for the years 1976 to

2007. However, the CIRI data begin in 1981. Rather than attempting to impute the values of the CIRI variables for all countries for the years 1976-1980, which would be subject to a particularly high degree of uncertainty, I begin my analysis in 1981.[6] To test Hypotheses 1 and 2, I estimated a series of ordered probit models using the CIRI human rights measures as dependent variables. In all models, I include fixed effects for the year of the observation and use standard errors that are robust toward arbitrary heteroskedasticity and that take into account clustering by country.

6 Results and Discussion

Tables 3 and 4 report the results of these regression models. The results provide substantial support for the theory presented in this paper. Table 3 indicates that commitment to the ICCPR causes governments to improve their respect for the key civil rights of the freedoms of speech, association, assembly and religion. Violations of all of these rights have both relatively low standards of proof and evidence-productions costs. Figure 1 reports the marginal effects of ICCPR ratification on respect for civil rights, based on the models reported in Table 3. The effect sizes indicate that the impact of ICCPR membership is not only statistically significant, but also has a substantial impact on respect for these rights. For example, ICCPR members are about 39% more likely to provide an unrestricted right to free speech and 20% less likely to severely restrict that right.

By contrast, when violations of human rights have relatively high evidence-production costs and standards of proof, ratification of ICCPR does not appear to significantly impact government respect for rights. As Table 4 indicates, ICCPR ratification does not seem to improve government respect for personal integrity rights. These results are starkly different from those reported in Table 3, which include the same sample, controls and estimation method, but differ in that they assess the effects of ICCPR ratifications with respect to areas in which victims of human rights violations are more likely to be able to litigate claims against the governments. Not surprisingly, governments of countries experiencing civil war are more likely to oppress their citizens, yet this is significantly more pronounced with respect to personal integrity rights. Such

[6] I conducted the imputation procedure using the full set of 4368 country-years from 1981 to 2007 (rather than the matched sample of 1966) because including the full data set allows for more accurate imputation.

governments are significantly ($p<0.01$) more likely to abuse any of the personal integrity rights than any of the other civil rights.

These results also provide several new findings with respect to ICCPR ratifications. With respect to personal integrity rights, several previous studies have found a relationship between ICCPR ratification and an increase in personal integrity rights violations (Hafner-Burton and Tsutsui 2005; Neumayer 2005; Hill 2010). The methodology I have used in this study builds on their work and is designed to disentangle the selection effects in the treaty ratification process from the treatment effects of such ratifications. My results therefore suggest that prior findings that ICCPR ratification is associated with more violations may have been confounded by selection effects, whereas the treatment effects of such ratifications are not significant for most such rights. These results also provide new evidence regarding the treaty's effects on other important rights. With respect to the freedoms of speech and association, this study provides the first systematic evidence of the effects of ICCPR ratification, indicating that the treaty has substantially improved respect for these rights. My findings also confirm the results in Simmons (2009) that the ICCPR has led to improvements in respect for the freedom of religion.

My results also indicate that commitment to the ICCPR may lead to increases of disappearances (although this finding is significant at $p = 0.066$ so should be viewed as tentative). The argument presented in this paper may help explain this result. Governments often use various forms of repression to accomplish goals such as staying in power and weakening the opposition (Davenport 2007*a*). If the cost of using certain types of repressive techniques increases, governments may become more likely to use other, less costly options (Moore 2000; Poe 2004). My results provide empirical evidence that such substitution may occur. Because ICCPR commitment constrains governments' ability to restrict the freedoms of speech, association, assembly and religion, they may turn to harsher methods, for which evidence is less costly to hide, to accomplish what they no longer can with less egregious human rights violations. Disappearances may be preferable to certain governments in such situations than other personal integrity rights violations because, as discussed above, evidence of such actions is often particularly difficult to produce. This is an argument I hope to explore in greater depth in future work.

[Tables 3 and 4 and Figure 1 about here]

To test the robustness of these results, I estimated several additional models. In the above model, I estimate the probability of commitment to the ICCPR using states' treaty commitment preferences (using W-NOMINATE). It may be the case, however, that these preferences do not capture the full model of treaty commitment. Other factors may affect the probability of ICCPR commitment, most importantly the factors that ultimately affect states' respect for human rights (Powell and Staton 2009). The benefit of including these in the estimate of propensity scores is a potential reduction in omitted variable bias. Including these factors, however, may also introduce new bias if they are measured with bias, if they do not actually affect the probability of treaty commitment, or if the functional form is mis-specified. In an alternate specification, I match states using a model that includes the probability of commitment calculated using W-NOMINATE as well as all of the controls listed in Table 3. I then run a set of ordered probit models on the matched sample that are identical to the models reported in Tables 3 and 4. The balance statistics of this sample are reported in Tables 5 and 6, and the regression results are reported in Tables 7 and 8, all of which are in the Appendix. This alternate specification results in findings that also support my argument. The main difference between the results of this model and those reported above is that, in the former, ICCPR ratification does not have a significant relationship with disappearances.

In addition, I test the robustness of the results using alternative measures of judicial independence. This is a particularly difficult concept to measure, and no single data set has gained universal acceptance. In alternative specifications, I replace the CIRI measure with the judicial independence measure developed by Tate and Keith (2007) and the International Country Risk Guide (ICRG) measure of Law and Order. These alternate specifications yield similar results to those reported above. As the discussion above suggests, the gap between the standards of proof for criminal and civil cases may be especially large in certain common law countries. To check whether the cross-national differences in the size of this gap between these two standards are driving my results, I conduct additional robustness tests in which I add an indicator variable for common law jurisdictions, and obtain similar results to those reported above. Other characteristics of individual legal systems may also affect the judicial process, so I also estimate

additional robustness tests that include indicators for each of the world's five most common legal systems (using the common law as a baseline). These results do not substantially differ from those reported above. Finally, the results are also robust to an alternate specification that uses as its dependent variable the CIRI index of the four separate personal integrity rights measures.

To be clear, my results do not rely on the notion that independent domestic courts are the *only* mechanism for change in human rights practices, but instead that they are the key mechanism for doing so contingent upon commitment to international law. There is significant evidence that normative and political pressure on governments can promote improvements in human rights practices at least in certain situations (Keck and Sikkink 1998; Lutz and Sikkink 2000; Hafner-Burton 2008). I have included NGOs in my model to account for the important work they do in creating these types of pressure. One might argue that an alternative explanation for my results is that such pressure is not effective at reducing abuses of personal integrity rights but is effective at improving respect for other civil rights. Such an argument would be an effective alternative explanation if it could be shown that the effectiveness of such normative and political pressure is contingent upon commitment to international human rights law. If pressure on governments is more effective in some areas of human rights and not others, that alone would not explain why states that commit to the ICCPR become more likely to respect civil rights than ICCPR non-members. Yet it is not clear why the ability of activists, NGOs and others to use normative arguments to convince governments to respect human rights should be contingent upon commitment to international law. To make a normative argument against torture and other egregious abuses of human rights relies primarily on the notion that such practices are immoral, not merely that they are illegal.

There are, however, scholars who see a direct connection between law-based and norm-based persuasion. Franck (1990), for example, argues that international law exercises a "normative pull" over states, causing them to alter their practices toward legal requirements independently of the prospect of judicial or other forms of enforcements. Relying on this theory, one might argue that my results demonstrate not that judicial enforcement varies between areas of human rights, but rather that the law's normative pull varies. Yet sustaining this argument requires us to believe that international law has a normative pull with respect to the freedoms of speech, association, assembly and religion, but not with respect to personal integrity rights. In

other words, this would mean that the law does not have a normative pull with respect to what are generally regarded as the normatively worst abuses of human rights.

Finally, it could be argued that these results can be explained by the relationship between government leaders and their agents. Many human rights abuses are conducted by government agents, and this may especially be the case with respect to personal integrity rights violations (Conrad and Moore 2010). Thus, one might argue that the mechanism behind my results is that government leaders are often unable to exercise sufficient control over their agents to prevent such abuses. Under this argument, if leaders cannot prevent their agents from committing personal integrity rights abuses, commitment to international law would not reduce such abuses even if courts are just as powerful in constraining leaders' incentives to commit both types of abuses. While it is certainly likely that principal-agent problems of this type exist in this context, this argument overlooks the extent to which judicial enforcement should constrain both government agents and leaders. Government agents are generally just as liable for human rights abuses as are leaders. Not only does the "only following orders" defense famously not apply in human rights law, the scenarios envisioned by this argument involve agents acting on their own accord in violation of executive orders. When agents expect the probability of type II error to be low they should become less likely to violate the law. Thus, the theory presented in this paper should apply to both government agents and leaders.

7 Conclusions

Under certain conditions, domestic courts can perform important roles in the enforcement of international human rights law. Scholars have analyzed and debated which characteristics of judicial institutions are necessary in order for them to function in this manner. Yet the literature has not focused on whether certain violations are more likely than others to be deterred through potential domestic prosecution. The ways in which the domestic judiciary shapes the effects of international law on national governments depend not only on institutional characteristics, but are also contingent on the characteristics of the legal issues at stake. This paper has provided a framework that predicts when enforcement by domestic courts is likely to create a sufficient constraint on governments to prevent violations of their international obligations.

The extent to which domestic courts can enforce international obligations depends on their ability to overcome crucial information problems. While information problems have been analyzed in detail with respect to human rights, the theory developed in this paper explains how the laws of evidence affect those problems in the judicial context. I focus on two factors that affect the probability that violators will be prosecuted: the cost of producing evidence and the standard of proof. These factors are key determinants of the information problem facing the courts, and therefore the effects of independent judiciaries are contingent on them. When evidence-production costs and standards of proof are low, I argue, governments will be more likely to face prosecution and can therefore constrain themselves by making international law. By contrast, when evidence-production costs and standards of proof are high, even independent domestic courts will not be able to overcome their information problems and successfully enforce international legal commitments.

I apply this framework to human rights to determine where we can expect courts to help turn international commitments into meaningful domestic change. I argue that governments that commit to international human rights law will improve their practices with respect to many crucial civil rights, but not with respect to personal integrity rights. A key link that is missing from the human rights literature is that between the well-documented monitoring functions performed by NGOs and other actors and the use of information as evidence in court. While these actors are crucial in the human rights information system, we should not assume that all of the information they produce will be useful in the judicial setting. Much of it is not. Indeed, for several reasons discussed above, legal admissible evidence of the worst types of abuses is often most difficult to obtain.

This argument and the empirical results that support it provide new insights into the debate of whether human rights agreements – and international institutions more generally – affect government policy. Unlike several recent studies, I find that ratification of the ICCPR has not significantly affected the rate at which governments abuse most of the personal integrity rights of their citizens. These are the violations for which legally admissible evidence is most costly to obtain and for which standards of proof are high in all legal systems. By contrast, ICCPR ratifications do improve governments' respect for fundamental freedoms when rights violations are relatively less costly to provide evidence of in court and when the standards of

proof for such claims are relatively low. These include the rights to practice religion freely, the right to free speech and the right to free association, results that should be encouraging to those who argue that international legalization can improve respect for human rights.

My analysis also suggests several potential areas of future research. The first is an application of the underlying theory developed here to policy areas other than human rights. To the extent domestic courts play an important role in enforcing other international commitments, their ability to do so may also depend on factors similar to those I have pointed to in the human rights area. Second, while my discussion has focused on domestic courts, international courts likely face similar information problems. The literature on international courts has debated the extent to which they are independent from the interests of their member-states (Garrett and Weingast 1993; Alter 2008). Yet the theory developed here suggests that the extent to which these courts can constrain their member-states may be limited by additional factors that we have yet to explore in depth. Finally, my empirical results also suggest that ratification of the ICCPR may cause governments to increase their abuse of certain personal integrity rights, although this finding should be viewed as tentative. I have suggested that this may be the result of strategic substitution by governments that lose the option to repress their citizens in less egregious ways after joining the ICCPR. This may also be an indication that international human rights law has become over-legalized (Helfer 2002), leading to consequences unintended by the actors that created it.

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Table 1: Balance Statistics

	Full Sample	Matched Sample
Total Sample Size	4368	1966
Treatment Units (ICCPR Members)	2947	983
Control Units (Non-ICCPR Members)	1421	983
Mean Pr(ICCPR Ratification) - Treatment Group	0.8819	0.6465
Mean Pr(ICCPR Ratification) - Control Group	0.4810	0.6536
Percentage Improvement in Balance		98.23%

Table 2: Additional Balance Statistics

	Treatment Group Mean	Control Group Mean
Judicial Independence	1.03	1.09
Polity	0.17	-0.87
Regime Durability	16.53	24.46
Civil War	0.25	0.19
External War	0.03	0.04
GDP Per Capita (logged)	6.84	7.48
Population (logged)	15.54	15.88
INGOs	372.88	543.47
n	983	983

Table 3: Effects of ICCPR Ratification on Civil Rights

	(1) Freedom of Association	(2) Freedom of Speech	(3) Religious Freedom
ICCPR Ratification	0.171**	0.180**	0.157**
	(0.081)	(0.089)	(0.080)
Judicial Independence	0.160***	0.347***	0.278***
	(0.056)	(0.060)	(0.054)
Polity	0.074***	0.078***	0.041***
	(0.007)	(0.008)	(0.007)
Regime Durability	-0.001	0.002	0.001
	(0.002)	(0.002)	(0.002)
Civil War	-0.095	-0.176**	0.015
	(0.096)	(0.085)	(0.108)
External War	-0.043	-0.161	-0.005
	(0.154)	(0.177)	(0.176)
GDP Per Capita (logged)	-0.030	0.013	-0.112***
	(0.036)	(0.032)	(0.033)
Population (logged)	-0.103***	-0.014	-0.134***
	(0.032)	(0.032)	(0.034)
INGOs	0.000	-0.000	0.000
	(0.000)	(0.000)	(0.000)
Rights_{t-1}	1.309***	0.711***	1.019***
	(0.067)	(0.070)	(0.062)
Fixed Effects for Year	Yes	Yes	Yes
n	1966	1966	1966

Ordered Probit Models

Robust standard errors in parentheses

* $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

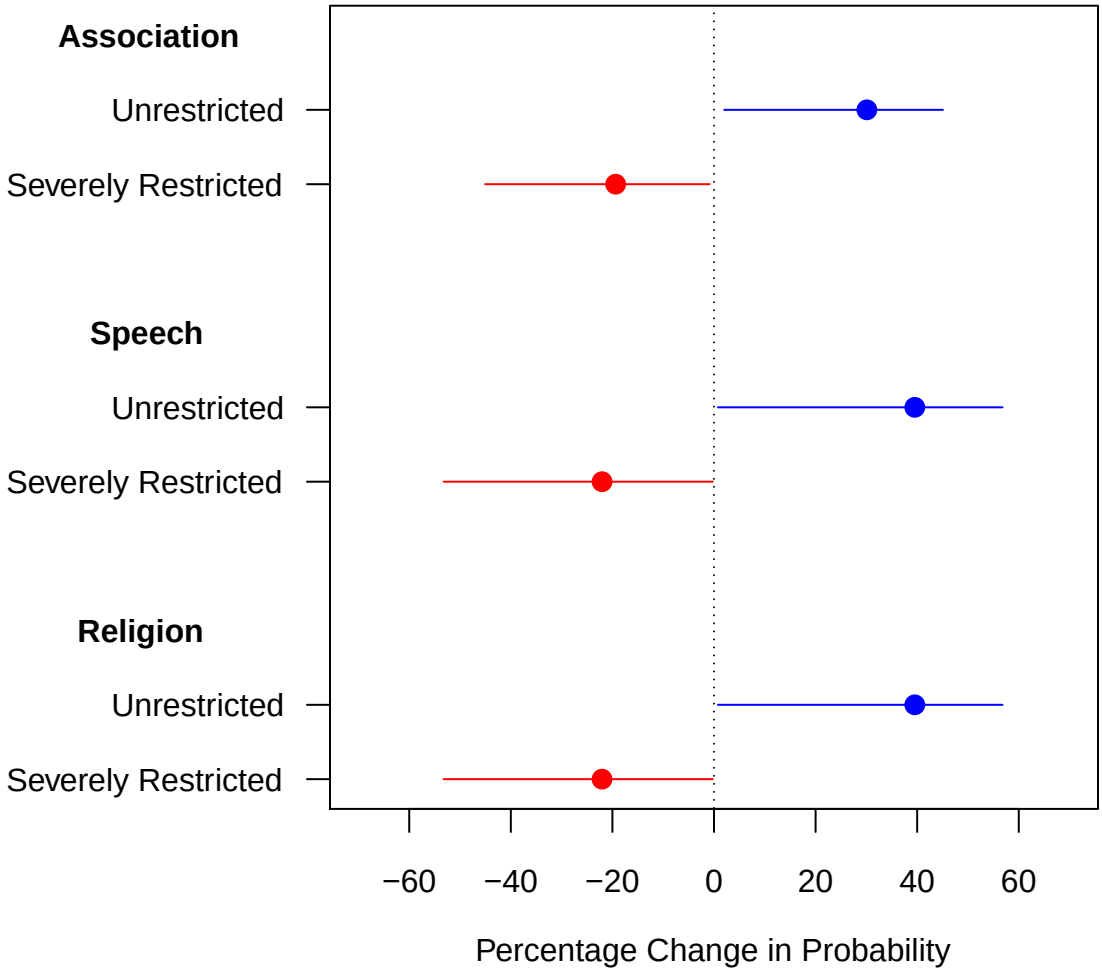
Table 4: Effects of ICCPR Ratification on Personal Integrity Rights

	(1) Killings	(2) Torture	(3) Imprison.	(4) Disapp.
ICCPR Ratification	-0.099	-0.032	0.087	-0.143*
	(0.080)	(0.074)	(0.080)	(0.078)
Judicial Independence	0.176***	0.213***	0.287***	0.273***
	(0.060)	(0.059)	(0.059)	(0.064)
Polity	0.002	0.018***	0.059***	-0.005
	(0.006)	(0.006)	(0.006)	(0.006)
Regime Durability	0.004*	0.003*	0.003	0.001
	(0.002)	(0.002)	(0.002)	(0.002)
Civil War	-0.843***	-0.643***	-0.574***	-0.882***
	(0.096)	(0.101)	(0.110)	(0.078)
External War	-0.358**	-0.314	-0.372*	0.024
	(0.182)	(0.222)	(0.207)	(0.174)
GDP Per Capita (logged)	0.111***	0.060*	0.034	0.035
	(0.037)	(0.033)	(0.036)	(0.037)
Population (logged)	-0.107***	-0.088***	-0.133***	-0.095***
	(0.028)	(0.027)	(0.037)	(0.028)
INGOs	-0.000	-0.000	-0.000	0.000
	(0.000)	(0.000)	(0.000)	(0.000)
Rights_{t-1}	0.910***	0.965***	0.979***	0.877***
	(0.061)	(0.064)	(0.060)	(0.056)
Fixed Effects for Year	Yes	Yes	Yes	Yes
n	1966	1966	1966	1966

Ordered Probit Models

Robust standard errors in parentheses

* $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$


Association
Unrestricted
Severely Restricted
Speech
Unrestricted
Severely Restricted
Religion
Unrestricted
Severely Restricted
−60
−40
−20
0
20
40
60
Percentage Change in Probability

8 Appendix

This Appendix sets forth the results of an alternate specification to the models presented in the main text. Tables 5 and 6 provide the balance statistics of the matched sample. Tables 7 and 8 provide the results of ordered probit models used to estimate the effects of ICCPR commitment using the matched sample.

Table 5: Robustness Test Balance Statistics

	Full Sample	Matched Sample
Total Sample Size	4368	1970
Treatment Units (ICCPR Members)	2947	985
Control Units (Non-ICCPR Members)	1421	985
Mean Pr(ICCPR) - Treatment Group	0.8819	0.6879
Mean Pr(ICCPR) - Control Group	0.4810	0.6605
Percentage Improvement in Balance	93.17%	

Table 6: Additional Robustness Test Balance Statistics

	Treatment Group Mean	Control Group Mean	% Improvement in Balance
Judicial Independence	1.11	1.06	62.54
Polity	0.09	-0.48	88.63
Regime Durability	23.89	23.93	94.37
Civil War	0.21	0.19	30.7
External War	0.03	0.03	79.89
GDP Per Capita (logged)	7.44	7.36	72.06
Population (logged)	15.88	15.86	94.72
INGOs	603.24	550.15	84.41
n	985	985	

Table 7: Robustness Test: Effects of ICCPR Ratification on Civil Rights

	(1) Freedom of Association	(2) Freedom of Speech	(3) Religious Freedom
ICCPR Ratification	0.201**	0.153**	0.196**
	(0.090)	(0.077)	(0.090)
Judicial Independence	0.140***	0.350***	0.235***
	(0.052)	(0.060)	(0.059)
Polity	0.067***	0.069***	0.037***
	(0.008)	(0.008)	(0.009)
Regime Durability	-0.002	0.001	-0.000
	(0.002)	(0.002)	(0.002)
Civil War	-0.116	-0.208**	-0.101
	(0.097)	(0.102)	(0.111)
External War	0.037	-0.126	-0.035
	(0.151)	(0.169)	(0.203)
GDP Per Capita (logged)	0.005	0.000	-0.084
	(0.045)	(0.038)	(0.045)
Population (logged)	-0.056	-0.033	-0.066
	(0.042)	(0.031)	(0.042)
INGOs	0.000	0.000*	0.000
	(0.000)	(0.000)	(0.000)
Rights_{t-1}	1.359***	0.794***	1.081***
	(0.073)	(0.075)	(0.062)
Fixed Effects for Year	Yes	Yes	Yes
n	1970	1970	1970

Ordered Probit Models

Robust standard errors in parentheses

* $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

Table 8: Robustness Test: Effects of ICCPR Ratification on Personal Integrity Rights

	(1) Killings	(2) Torture	(3) Imprison.	(4) Disapp.
ICCPR Ratification	-0.047	-0.040	0.083	-0.120
	(0.073)	(0.072)	(0.079)	(0.081)
Judicial Independence	0.117*	0.135**	0.206***	0.288***
	(0.061)	(0.059)	(0.055)	(0.059)
Polity	0.007	0.021***	0.065***	0.001
	(0.006)	(0.006)	(0.007)	(0.008)
Regime Durability	0.005***	0.001	0.001	0.000
	(0.002)	(0.001)	(0.002)	(0.002)
Civil War	-0.797***	-0.524***	-0.553***	-0.842***
	(0.089)	(0.109)	(0.127)	(0.089)
External War	-0.225	-0.321	-0.374*	-0.082
	(0.203)	(0.224)	(0.211)	(0.168)
GDP Per Capita (logged)	0.086**	0.071**	-0.007	0.027
	(0.034)	(0.033)	(0.034)	(0.036)
Population (logged)	-0.175***	-0.152***	-0.180***	-0.123***
	(0.026)	(0.025)	(0.039)	(0.028)
INGOs	0.000	0.000	0.000	0.000*
	(0.000)	(0.000)	(0.000)	(0.000)
Rights_{t-1}	0.965***	0.976***	1.025***	0.907***
	(0.066)	(0.066)	(0.063)	(0.063)
Fixed Effects for Year	Yes	Yes	Yes	Yes
n	1970	1970	1970	1970

Ordered Probit Models

Robust standard errors in parentheses

* $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$