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The New Normal:
International Relations in
a Shifting World Order

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Doctor of Philosophy in Political Science

by

Cody M. Giddings

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ABSTRACT OF THE DISSERTATION

The New Normal:

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Professor Leslie Nicole Johns, Chair

A growing number of increasingly authoritarian states, such as the Russian Federation, People's Republic of China, Hungary and Turkey, have spent the better part of the 21st century seeking to challenge the existing international order. These efforts have broadly centered around undermining existing international norms and molding new ones better suited to their governance models. The most prominent example of these authoritarian backed challenges to the "Old Order" came on February 24, 2022 as Russian missiles landed in Kyiv in what became the opening salvo of the first full-scale interstate conflict on the European Continent since 1945. However, even prior to Russia's invasion of Ukraine, its status in the international community over the past decade was as precarious as it was contentious. The 2014 annexation of Crimea directly challenged almost 50 years' worth of international legal norms and jurisprudence developed in the aftermath of World-War II through its participation (or lack-thereof) in international organizations such as the United Nations (UN) and the European Court of Human Rights (ECHR). While the Russian Federation is far from

the only authoritarian actor seeking to reshape the international system, this dissertation seeks to examine how – in both the international and domestic political sphere – these states have ushered in a "New Normal" for international relations.

Building on Ginsburg (2020) and the growing prevalence of "authoritarian international law" that has in many ways typified authoritarian states challenges to the post-1945 international system, this dissertation first focuses on autocratic regimes' increasing obstruction of international organizations such as the European Court of Human Rights (ECHR) from expanding and crystalizing international legal norms that have served as staples of the "traditional" world order. Following this examination of authoritarian driven shifts in the international legal system this research demonstrates how domestic politics in both autocratic and democratic states in the form of differing public preferences toward crisis bargaining could potentially help explain the recent emergence of significant interstate conflict in an international system that for the most part had been devoid of such wars since 1945. Finally this work closes by providing the reader with an in-depth qualitative examination of just how domestic institutions in autocratic regimes such as the Russian Federation have contributed to the establishment of a "New Normal" by altering interactions in supranational norm building organizations such as the ECHR.

Despite this project's extensive focus on Russia, such approaches could also be applied to several other contexts. While this would require additional data collection that is not described here (should it be possible) it might provide some broader conclusions about how domestic judiciaries impact international organizations like the ECHR in the world more broadly. As a whole, the questions mentioned throughout this dissertation represent a broad overview of attempts to study the impact of the shifting international order on international human rights courts, specifically the ECHR. As such this dissertation makes a novel contribution to the study of a shifting international order and its impacts in the human rights arena and will hopefully help foster similar research on other countries or even other contexts or international bodies like the African Court on Human and Peoples' Rights.

The dissertation of Cody M. Giddings is approved.

Jeffery B. Lewis

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Robert Trager

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University of California, Los Angeles

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To Valerie and the rest of my family, this dissertation would not be possible without their love and support.

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Obtaining a Doctorate in any field is a daunting and humbling process. There are many obstacles and moments of self-doubt that arise throughout the process that drive many away from the pursuit entirely. However, thanks to the enduring support, strength, and wisdom of those that supported me throughout this process, I was able to accomplish something that I often began to wonder if I was capable of. While there are many I need to thank, I would first like to thank Valerie Wirtschafter for her unshakeable faith in me and her unwavering support of me in times of hardship and in times of triumph. Without Valerie none of this would have been possible, and for that I am eternally grateful. I would also like to thank my Dissertation Committee Chair, Leslie Johns, who provided me not only with exceptional guidance and advise, but also gave me the intestinal fortitude required to finish a dissertation. I have greatly benefited from Leslie's counsel and her wealth of knowledge during my time at UCLA, and her support through this process is something I will always remember. I would also like to thank the rest of my Dissertation Committee: Jeff Lewis, Maggie Peters, and Robert Trager. Without all of you this dissertation would have never seen the light of day, and I deeply appreciate all the time and effort you all spent to help see this dissertation to the end. Although many supported me during my time at UCLA, I would also like to acknowledge all those that supported me well before I stepped foot in Westwood in 2016. To my family, I love you all and I would not be where I am today without you.

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Introduction

1.1 Introduction

A growing number of increasingly authoritarian states, such as the Russia Federation, Hungary and Turkey, spent the better part of the 21st century seeking to challenge the existing international order. These efforts have broadly centered around undermining existing norms and molding new ones better suited to their governance models. In Russia, even prior to the latest invasion of Ukraine, its status in the international community over the past decade was as precarious as it was contentious. The annexation of Crimea directly challenged almost 50 years' worth of international legal norms and jurisprudence developed in the aftermath of World-War II through its participation (or lack-thereof) in international organizations such as the United Nations (UN) and the European Court of Human Rights (ECHR).

In this chapter, I assess what these effort to reshape (and on occasion, undermine) the existing international order have looked like with respect to one facet of global governance – the international human rights space. I also evaluate what that may mean for the longevity of such international bodies in a world following the recent full-scale invasion of Ukraine.

In 2015, just shortly after the Russian Federations' annexation of Crimea in 2014, the ECHR ordered the Russian Federation to pay out 605,553 Euros in damages for human

rights violations. Across all member-states in the same period, the ECHR ordered states to pay, on average, 81,640 Euros in damages. Such a disparity is not all that surprising given Russia's more authoritarian government and past record on human rights. Yet, despite this seemingly large gap in human rights outcomes between states like Russia and other ECHR members, when one examines the types of cases that reached the purview of the ECHR in the first place, these distinctions become less obvious. In 2015, the ECHR ordered Italy to pay around 24% less than Russia in damages for all human rights violations. At the same time, the Italian government faced only 10% fewer cases of due process violations, 80% more cases of privacy violations and nine times the number of cases related to violations of religious freedom than Russia. By most common measures of regime type, Italy is far from being an authoritarian state where such human rights abuses might be commonplace. However, when comparing the number of cases related to specific types of violations that reach the ECHR, it would appear that Italy and Russia are not so different in the area of human rights. Despite the vastly different economic and political circumstances of Russia and Italy, what explains the similar frequency of these due process and other types of cases at the ECHR?

An extensive literature on international institutions has provided some answers to these questions by examining the role that international institutions, including the International Criminal Court or the Convention Against Torture, play in influencing domestic state behavior with respect to human rights. More often than not, these arguments have focused on how participation in Inter-Governmental Organizations is used as a means to reap desirable domestic political outcomes that local politicians or activists would not otherwise be able to accomplish in the area of human rights. Others have suggested that leaders use participation in human rights institutions as a form of costly signaling to domestic political actors that they will either curb human rights abuses (Vreeland, 2008) or that they are strong enough to commit violations despite participation (Hollyer and Rosendorff, 2011). Yet, few have attempted to study how the interaction between domestic court systems and international institutions, like the ECHR, might complicate such comparisons. Furthermore, the unex-

pected differences highlighted above with respect to Russia and Italy call in to question what might be shaping the distribution of ECHR cases we see. Knowing that domestic institutions, such as the judiciary, in some states, like Russia, are not completely independent in their decision making (Solomon Jr, 2008), in what ways might they shape state participation in human rights courts?

Given the relative youth of international human rights courts, this question has not been a significant focus of current scholarship. Using extensive ECHR case data from 1992 to 2018, this research builds on existing literature by showing that domestic courts do, in some cases, play a formative role in shaping the distribution of human rights cases that reach the purview of the ECHR. I argue that in states with lower levels of judicial independence, where executives have the ability to influence the behavior of the judiciary, domestic courts may use strategic provisions of redress and procedural obstacles to limit the number of human rights cases that escape their jurisdiction and reach the ECHR. This is due to the fact that in order to have standing in the ECHR, plaintiffs bringing cases against ECHR member-states must demonstrate that they have "exhausted all domestic remedies" to secure just satisfaction for alleged human rights violations (Leach, 2011). As a result, there is ample opportunity for states with less independent judiciaries to strategically alter the distribution of cases that reach the ECHR from their courts. If such activity occurs at the domestic level, this type of behavior may have important implications for the future success of international human rights courts, which seek to bind domestic actors to international law and prevent them for circumventing the spirit of these organizations. I argue that the calculus of the executive and judiciary's behavior centers around a cost-benefit trade-off between participation in the ECHR and various sources of cost, particularly financial ones. As such, I expect leaders to attempt to limit the most financially costly cases from reaching the court.

Ultimately, the evidence presented in subsequent sections partially supports the existence of efforts to alter ECHR case distributions, but it appears to occur not with the most financially costly violations, but with violations that one would expect to occur more frequently

in authoritarian-leaning states. Specifically, high judicial independence is associated with an increase in the number of less financially costly social integrity violations, which include religious freedom and due process. Among all ECHR members, states with higher levels of judicial independence from the executive appear to have a statistically significant higher number of cases at the ECHR relating to the right of assembly. Further, despite its lack of statistical significance, the direction of the association between judicial independence and the number of cases at the ECHR that relate to violations such as religious freedom, due process, and privacy are consistent with the argument that executives of states with lower judicial independence will influence the judiciary to limit the number of cases that reach the ECHR. Cases pertaining to the more financially costly, physical integrity violations – extrajudicial killings, torture, and unlawful detention — decrease in number at the ECHR as domestic judicial independence increases. However, if I assess only ECHR members in the upper or lower quantiles of judicial independence, or in other words the states with the 25% most independent and the 25% least independent judiciaries, decreases in judicial independence appear to significantly reduce the number of cases related to social integrity violations like freedom of religion or due process. These results suggest that leaders in states with lower levels of judicial independence may, use the domestic courts to prevent certain types of human rights cases from reaching the ECHR.

Although I claim that the interests of the executive drive the efforts of the domestic court to reduce the number of ECHR cases in less judicially independent states, I cannot evaluate the mechanisms that shape these findings. This is due to the fact that the means through which domestic courts act to keep human rights cases in their jurisdiction is purposefully kept opaque in order to avoid potential blow-back from the international community or the domestic public. Due to this veil of secrecy, as well as the current data limitations, determining precisely how domestic judicial independence impacts the distribution of human rights cases that reach the ECHR is beyond the scope of this work. What is clear, however, is that the distributions of cases at the ECHR may be skewed by domestic courts in less

judicially independent states. These findings highlight the impacts domestic judicial systems have on outcomes regarding human rights cases. As the codification of human rights at the international level continues to expand in scope and jurisdiction through international courts like the ECHR, this relationship may require more attention.

The remainder of this paper is organized as follows: in section II, I examine the existing literature on the relationship between international institutions and domestic politics in the context of human rights. I also offer a more detailed description of my theory by arguing that states with lower levels of judicial independence will attempt to reduce the number of financially costly human rights cases that reach the ECHR. In section III, I describe the data collection process as well as the ECHR case data, human rights violations reports, country-specific covariate data, and judicial independence data used to conduct the empirical tests of the theory outlined in section II. In this same section, I describe the models and methods used to conduct the empirical tests to assess the theory from section II, and I report their results. I then discuss the findings and assess alternative explanations in section IV. I conclude with a summary of the key findings, examine what the results might indicate for the future of international human rights courts like the ECHR, and provide some avenues for future research.

1.2 Domestic Politics, International Institutions, and Human Rights

Although the political science literature on human rights organizations is extensive, it has focused almost exclusively on either motivations for participation or issues of compliance. Below I conduct a brief review of this scholarship and then turn to a more narrowed discussion of research on the relationship between judicial independence and human rights. With respect to recent work on participation in human rights institutions, scholarly debate centers around domestic versus international signaling. Some, including Thompson (2006),

stress the importance of international signaling in understanding motivations for states to participate in IOs. This research shows that state involvement in international organizations can facilitate information transmission to domestic actors about other states intentions regarding coercive policies. In the context of the Convention Against Torture (CAT), Hollyer and Rosendorff (2011) argue that states specifically sign and choose not to comply with human rights agreements to send costly signals to their domestic constituencies that they are strong enough to suppress dissent and unrest. Conversely, Vreeland (2008) argues that signing agreements, such as the CAT, has more to do with leaders signaling to domestic political actors their willingness to be constrained in order to maintain power. Fang (2008) also suggests that participation in international organizations can reveal true democratic leader types and allow the public to restrict their leader's actions in both international and domestic political affairs.

Although this research falls more in line with that of Vreeland (2008) and Lupu (2013) than Thompson (2006) by suggesting that domestic politics plays a formative role in determining how states participate in institutions like the ECHR, it also builds off of work done in the area of compliance. Among scholars who have focused on explaining varying rates of compliance with human rights institutions or agreements, the interaction between domestic and international institutions serves as a major focal point of study. Dai (2005) demonstrates that compliance with international institutions is simply a reflection of domestic electoral leverage and the amount of information available to domestic constituencies about state compliance. Others argue that the strength of escape clauses that allow for domestic political concerns to override international agreements mostly explain rates of compliance (Hafner-Burton, Helfer and Fariss, 2011). With respect to issues of LGBT rights, Helfer and Voeten (2014) demonstrate that ECHR judgments greatly alter the probability of national level policy changes across all member-states. Despite the fact that this research points to states like Russia who have used their domestic judicial systems to prevent such policy changes (Mälksoo, 2016), others show that international court judgments are used to fa-

cilitate domestically unpopular practices. In particular, Allee and Huth (2006) argues that state leaders often strategically use international legal rulings to shift blame away from themselves for costly domestic policies or concessions allowing them to pursue their controversial agendas. Although the literature has yet to reach a consensus on whether the interactions between domestic political institutions and international organizations increases the effectiveness of human rights agreements, what is clear is that domestic political incentives and institutions matter a great deal in determining both state participation and compliance.

While issues of participation and compliance tend to be the dominant focus of literature on international human rights courts, in the case of the ECHR some have conducted in-depth examinations on the impact that nationality has on the impartiality of judges on the court. There is a strong debate between those like Bruinsma (2007), who claim nationality plays a key role in determining how some judges will rule on cases involving their home country, and those such as Voeten (2008), who argue that such biases are relatively insignificant in international human rights court. There is also a smaller portion of this research agenda dedicated to the determinants of state implementation of judgments in the ECHR. Grewal and Voeten (2012) demonstrate that conditional on the difficulty of the ruling handed down by the ECHR, bureaucratic and judicial capacity as well as executive power strongly influence the time frame in which judgments are implemented domestically. This research seeks to build off Grewal and Voeten (2012) by looking not at the end product of domestic implementation of judgments but at the role that domestic characteristics, particularly domestic judicial independence from the executive, play in shaping the types of cases that reach the ECHR in the first place. In the past, scholars have cited judicial independence as a key predictor of both corruption (Ríos-Figueroa, 2006; Rose-Ackerman, 2007) and human rights violations (Crabtree and Fariss, 2015; Abouharb, Moyer and Schmidt, 2013). However, its role in international courts has been less studied. Those such as Posner and Yoo (2005) argue that in contrast to Chayes and Chayes (1998), Helfer and Slaughter (1997), and others, that judicial independence is an "undesirable" attribute in international tribunals, and it may

work to limit rather than improve the quality of international tribunals.

1.3 Theory

Although scholars have widely studied the interaction between domestic politics and international institutions, previous research has centered on issues of state participation or compliance. While the research agenda focused on the relationship between judicial independence and human rights outcomes is similar in size, it almost entirely pertains to domestic politics and human rights outcomes. In the following sections of this paper, I seek to unite these literatures by arguing that, in the context of the ECHR, domestic judicial independence greatly impacts human rights outcomes at the international level. In particular, I claim that even when controlling for differences in country-specific characteristics and base levels of human rights violations, the number of human rights cases from states that reach the ECHR is shaped by their respective levels of domestic judicial independence from the executive.

More specifically, I argue that member states with lower levels of ***de facto*** judicial independence are more likely to try to limit the number of human rights cases that leave the domestic court system and reach the jurisdiction of the ECHR.[1] Excluding those that fall under the purview of "special circumstances," cases that have standing or are admissible in the ECHR are those brought against states for the periods in which they have been members of the court and in which the plaintiffs have "exhausted domestic remedies" to obtain just satisfaction or are made unable to pursue such domestic avenues of redress by their government (Leach, 2011). When judiciaries are more independent, it is more difficult for the executive to influence domestic courts to strategically raise the administrative requirements needed to comply with domestic procedural rules or to selectively provide "effective and

[1]For the purposes of this study *de facto* judicial independence most closely resembles the definition provided by Linzer and Staton (2015). In short, it is the ability of a judiciary in practice – as opposed to by rule – to make decisions independently from the influence of the executive.

sufficient remedies" to plaintiffs. This might prevent plaintiffs from taking their cases to the ECHR, and as a result, out of the state's jurisdiction and into the international sphere (Leach, 2011).

While the rules governing the processes through which individuals take cases to the ECHR may at first appear to be time invariant, their interpretation by the judiciary is not, especially in states like Russia, with low levels of judicial independence. Special supervisory review procedures (Mälksoo, 2016) are one such example of how changing legal interpretations may become a judicial obstacle used to prevent citizens from taking cases to the ECHR.[2]. Domestic provisions of financial compensation for plaintiffs is another way judiciaries prevent plaintiffs from bringing their grievances to the ECHR. I expect that across the ECHR, domestic courts with less independence from the executive will either create similar significant and selective barriers to exhausting domestic remedies for human rights cases or attempt to strategically provide "effective and sufficient remedies" for violations that may disqualify plaintiffs from seeking more costly redress, in both reputational and financial terms, at the ECHR.

I argue that when a leader decides to exert their influence on a less independent judiciary in order to limit the number of cases that reach the ECHR, they face a cost-benefit trade-off. More specifically, the executive must weigh the costs of strategically using domestic courts to prevent human rights cases escaping their jurisdiction against the benefits of their participation in the ECHR. Executives that wish to maximize their gains from participation in the ECHR, will seek to minimize the costs required to maintain their membership in the court and reap the benefits the ECHR provides. However, when leaders consider the ways in which they can minimize cost, they must do so in both the domestic and international arenas. With respect to the domestic costs, there are three primary sources of cost: monetary costs, opportunity costs, and reputational costs. In terms of monetary costs, when states commit human rights abuses and victims of these abuses seek restitution in the domestic

[2]In 2007, the Russian Constitutional Court declared that plaintiffs could only bring cases to the ECHR after they had completed the "supervisory stage of their litigation in civil proceedings" (Mälksoo, 2016)

court system or ECHR, they are often forced to use limited financial resources to address the violations. These financial costs come in the form of legal defense against the victims of human rights abuses in both the domestic judiciary or the ECHR, as well as from domestic legal settlements, domestic court ordered monetary restitution to victims, and ECHR mandated monetary compensation to victims. Given that some types of cases, particularly physical integrity violations, often carry larger ECHR ordered financial penalties than other types of cases, like social integrity violations, these monetary costs can vary greatly based on the distributions of cases that reach the ECHR.[3] As a whole, these financial costs have important domestic implications for leaders that use their limited finances to maintain domestic support from key stakeholders or the broader public. Should the pecuniary costs of participation in the ECHR grow too large, it may foster domestic dissent that threatens leaders' positions of power.

Along with these monetary costs, states must account for numerous opportunity costs in their cost-benefit calculus. When the preferences of the executive are to use their limited political capital to influence the judiciary to limit the number of human rights cases that reach the ECHR, they sacrifice their ability to spend that political capital on other critical areas of domestic governance, such as the security forces, the legislative branch, or the suppression of dissent. Additionally, for those leaders or heads of the judiciary that rely on a selectorate of supporters to remain in their positions (De Mesquita et al., 2005), domestic reputations – even in non-democratic regimes – are of vital importance. When a judiciary allows for the preferences of the executive or others to influence their judgments on human rights, it can greatly harm domestic perceptions of the court system as both competent and effective. Such perceptions, in turn, may generate dissent that can lead to widespread domestic unrest or encourage regime insiders to challenge the authority of the judiciary or even the executive themselves.

In addition to domestic sources of cost, reputational and financial damages to the state

[3]See Table 1.1 for more information of ECHR financial penalties by case type.

in the international arena also play a large role in the decision-making process of leaders. Given the extensive issue linkage between human rights and international trade agreements (Hafner-Burton, 2005), international reputations with respect to human rights also carry significant material attachments in the form of financial advancement. Should states garner a reputation in the international community for overtly flouting human rights norms, their ability to access critical trade markets and other politically relevant international institutions may be severely diminished. As a result, such a reputation may impose costs on the state by reducing the number or potential economic trading partners and allies. Further, the international community may also directly levy economic sanctions against states for their human rights records and efforts to circumvent the ECHR via domestic judiciaries.

The case of Sergei Magnitsky is one poignant example that more clearly illuminates the international costs leaders must consider in their decisions to shape the distribution of human rights cases at the ECHR. After the 2009 death of Magnitsky during pre-trial detention in Moscow, the United States levied economic sanctions against Russia, froze the assets of select Russian officials, including Yelena Stashina, the Tveryskoy District Judge that prolonged Magnitsky's detention, and barred them from entering the United States.[4] US officials have used the Magnitsky case as a justification for raising economic sanctions and other penalties against any state or individual that is perceived to be responsible for human rights abuses. While this case clearly highlights the potentially large international costs of participating in human rights courts that allow victims to bring cases out of the domestic court system and into the international arena, it also demonstrates why limiting the number of human rights cases that escape the state's jurisdiction may be appealing to certain leaders. By limiting cases from reaching the ECHR, executives may be able to minimize international costs that come from human rights cases, like the Magnitsky case.

Executives may seek to minimize the domestic and international costs they pay for participating in the ECHR due to the benefits they gain from their membership. These benefits

[4]See https://www.state.gov/e/eb/tfs/spi/globalmagnitsky/ for more information on the US Sanctions and *Magnitskiy and Zharikova v. Russia* for information on the ECHR case.

range from the symbolic to the substantive. On the symbolic end, state involvement in the ECHR allows to executives to signal their willingness to respect human rights to their respective publics. Given the extensive costs that leaders must pay to participate in institutions like the ECHR, they can create somewhat credible commitments to respect human rights that may reduce domestic opposition to their leadership, particularly if it is more authoritarian in nature. On the more substantive side, participation in human rights institutions, like the ECHR, comes with lucrative access to the European commercial market as well as opportunities for international trade with the European community. In particular, involvement in the Council of Europe (CoE) and numerous other European communities is directly connected to participation in international human rights courts (Mälksoo, 2016).[5] As such, the appearance of active participation becomes a necessity.

Given the costs and benefits highlighted above, I argue that court systems of less judicially independent states can reduce the costs of participation, while still maintaining their status as "compliant," even if only marginally, by limiting the number human rights cases – especially costlier cases – from reaching the ECHR. This allows the state more latitude to combat domestic opposition and dissent. Such flexibility in domestic politics is often beneficial to regimes that rely upon fragile political or public coalitions to remain in power. In addition, the fact that the ECHR can levy binding financial and non-financial penalties against member-states that have committed human rights violations, means that states can benefit greatly from reducing the number of cases that reach the jurisdiction of the ECHR in the first place. Compliance with these selective penalties provides the state with an opportunity to further bolster a *façade* of credibility at the ECHR. In addition, in states with less judicial independence, allowing select cases to reach the court may also bolster the impression among the international community that leaders in those countries too desire to reduce human rights abuses. This may be particularly credible signaling to the international community, given the potentially binding financial cost associated with allowing even some

[5]The CoE is an international organization separate from, but closely related to the European Union. It deals with numerous issue areas such as international law, human rights, and democratization.

cases to reach the ECHR. As such, I argue that influencing the judiciary to limit the number of domestic human rights cases that reach the ECHR is one way leaders can appear to conform to international human rights norms, given that after such efforts the state would have fewer punishments to comply with in the first place. Overall, the appeal for states with less independent judiciaries to manipulate the set of human rights violations that reach the ECHR is strong.

1.4 Empirics

1.4.1 Descriptive Statistics

From this larger theoretical framework of cost-minimizing behavior, I draw two main empirically testable theoretical implications. The first being that if less independent judiciaries are influenced by the latent preferences of the executive to reduce the costs of state participation in the ECHR, there should be fewer instances of human rights cases reaching the court from these states than states with higher levels of judicial independence. Secondly, when accounting for other state-level covariates, if executives of states with lower levels of judicial independence use domestic court systems to minimize ECHR participation costs and reap the largest returns from their participation in the court, there should be relatively fewer cases related to more financially costly violations at the ECHR than those cases related to less monetarily costly violations. Consistent with most literature on human rights abuses, Table 1.1 suggests that the most financially costly ECHR cases are those that relate to what are commonly referred to as physical integrity violations and the least financially costly cases relate to social integrity violations.[6]

On average, ECHR cases related to physical integrity violations such as extrajudicial killings (Article 2), torture (Article 3), and indefinite or unlawful detention (Article 5) carry

[6]While there are numerous types of cost aside from financial ones that states pay for their participation in the ECHR, current data constraints limit our ability to objectively measure and empirically test them.

Table 1.1: ECHR Case Costliness by Average Financial Penalty (1992-2017)

Violation	Art. 9	Art. 6	Art. 10	Art. 11	Art. 3	Art. 5	Art. 8	Art. 2
Protected Rights	Religious Freedom	Due Process	Expression	Assembly	Torture	Indefinite Detention	Privacy	Life
Cost (Euros)	7,760	12,802	13,823	14,567	20,134	20,199	20,568	29,635
Cost Ranking	1	2	3	4	5	6	7	8
Total No. Cases	1,020	3,747	233	98	549	2,504	1,925	944
Physical Integrity Violation	No	No	No	No	Yes	Yes	No	Yes
Social Integrity Violation	Yes	Yes	Yes	Yes	No	No	Yes	No

Note: Cost ranking ordered from low to high. Excludes 6 cases greater than 1,000,000 Euros.

higher ECHR ordered financial penalties than social integrity violations such as due process (Article 6), religious freedom (Article 9), expression (Article 10), and assembly (Article 11). As such, should the theory be correct we would expect that states with lower levels of judicial independence will send fewer cases related to physical integrity violations to the ECHR than cases related to social integrity violations. Using an extensive set of data on ECHR cases and member-state characteristics that I detail in the following sections, I test the validity of the following major theoretical hypotheses:

H1: States with lower levels of judicial independence will have, on average, fewer human rights cases at the ECHR than states with higher levels of judicial independence.

H2: Unlike states with higher levels of judicial independence, states with lower levels of judicial independence will have relatively fewer human rights cases related to physical integrity violations at the ECHR than cases related to social integrity violations.

By comparing the number of various types of cases among states with high judicial independence, such as Great Britain, to those with low judicial independence, such as Russia, we can see some suggestive evidence consistent with the H_1 but not with H_2. As demonstrated in Figure 1.1, a state with consistently lower levels of judicial independence like Russia, seems to have significantly higher counts of cases pertaining to violations of religious freedom, due process, indefinite detention, torture, and extrajudicial killings than states with consistently higher levels of judicial independence, like Great Britain. When it comes to the number of cases at the ECHR relating to social integrity violations of freedoms of expression, assem-

bly, and privacy, it appears that there is little to no significant difference between Russia and Great Britain, despite their vastly different case records on other types of human rights cases. If domestic judicial independence and court systems play only a minor role in shaping the distributions of cases that reach the ECHR, then based on baseline patterns of alleged human rights abuses Russia should generally send a consistently higher number of cases to the ECHR across all types of violations.

We would expect Russia to have higher case counts on all types of violations than Great Britain, but what we see appears to suggest that either the baseline levels of alleged human right are incorrect, that domestic court systems or other institutions are impacting the distribution of cases that reach the court, or that some other unobserved factor is driving these differences between Russia and Great Britain. Does this pattern hold when expanded to all ECHR member-states? Figure 1.2 would suggest that this pattern remains consistent across the ECHR. Using the average levels of judicial independence from Linzer and Staton (2015) between 1992 and 2011, I compare ECHR case counts of member states within the upper quantile of average judicial independence to member states in the lowest quantile of average judicial independence in the ECHR from 1992 to 2011.[7]

Similar to Figure 1.2, we see a pattern among states with higher or lower levels of judicial independence consistent with that of Great Britain and Russia. As a whole there appears to be some suggestive evidence that supports the theoretical argument that states with lower levels of judicial independence will have fewer numbers of ECHR cases. Yet, based of these descriptive analyses, there also seems to be little support for H_2. Executives of states with lower levels of judicial independence do not appear to try to limit the typically more financially costly physical integrity cases. While these descriptive statistics suggest that leaders may simply try to limit any type of human rights cases from reaching the ECHR that they can as opposed to the most financially costly types, when we account for base levels of alleged human rights violations and other country-specific characteristics, this may

[7]These figures only use HUDOC case data up to 2011 due to the fact that the global judicial independence data from Linzer and Staton (2015) is only recorded up to 2011.

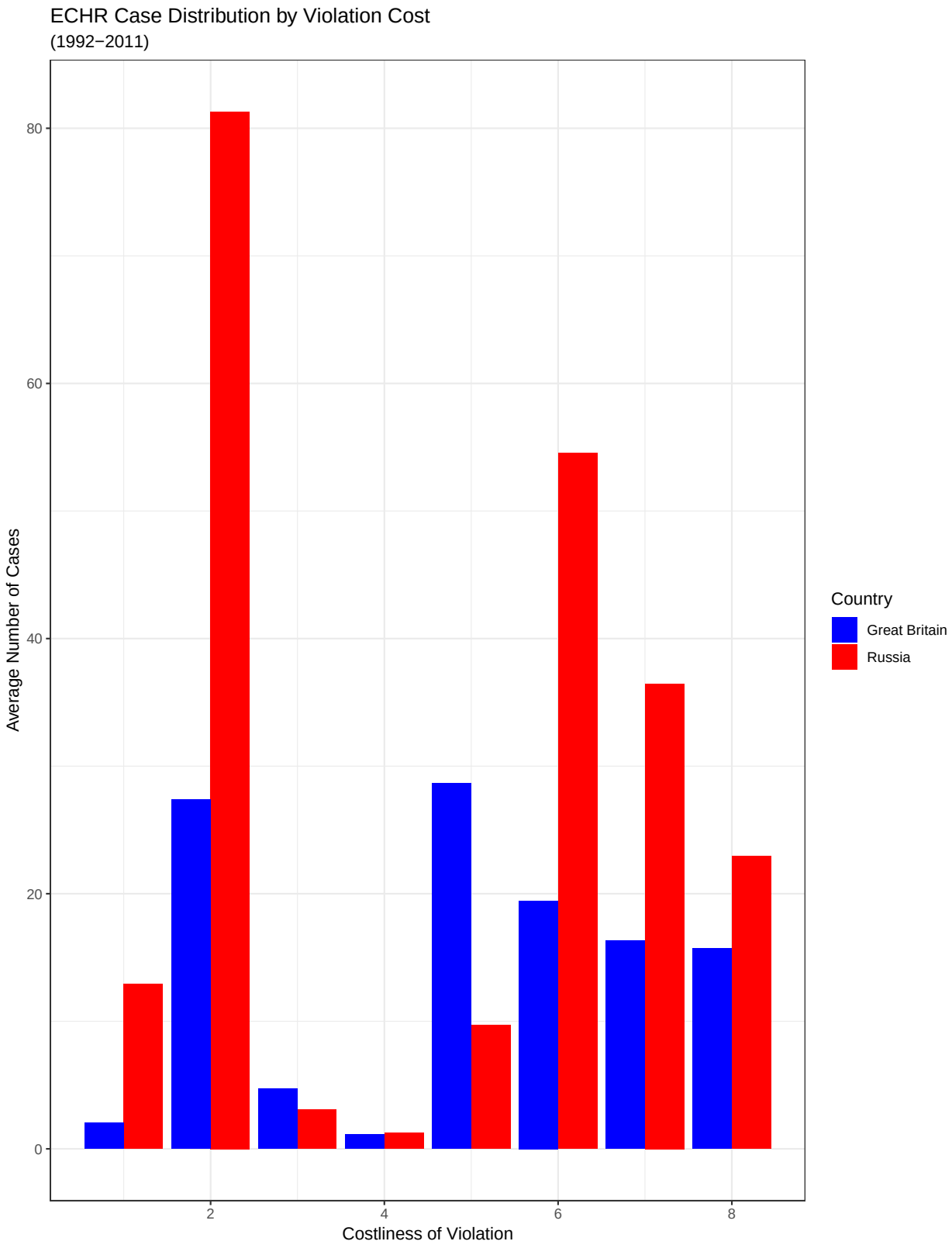


Figure 1.1: Impact of Judicial Independence on British and Russian Case Distributions -

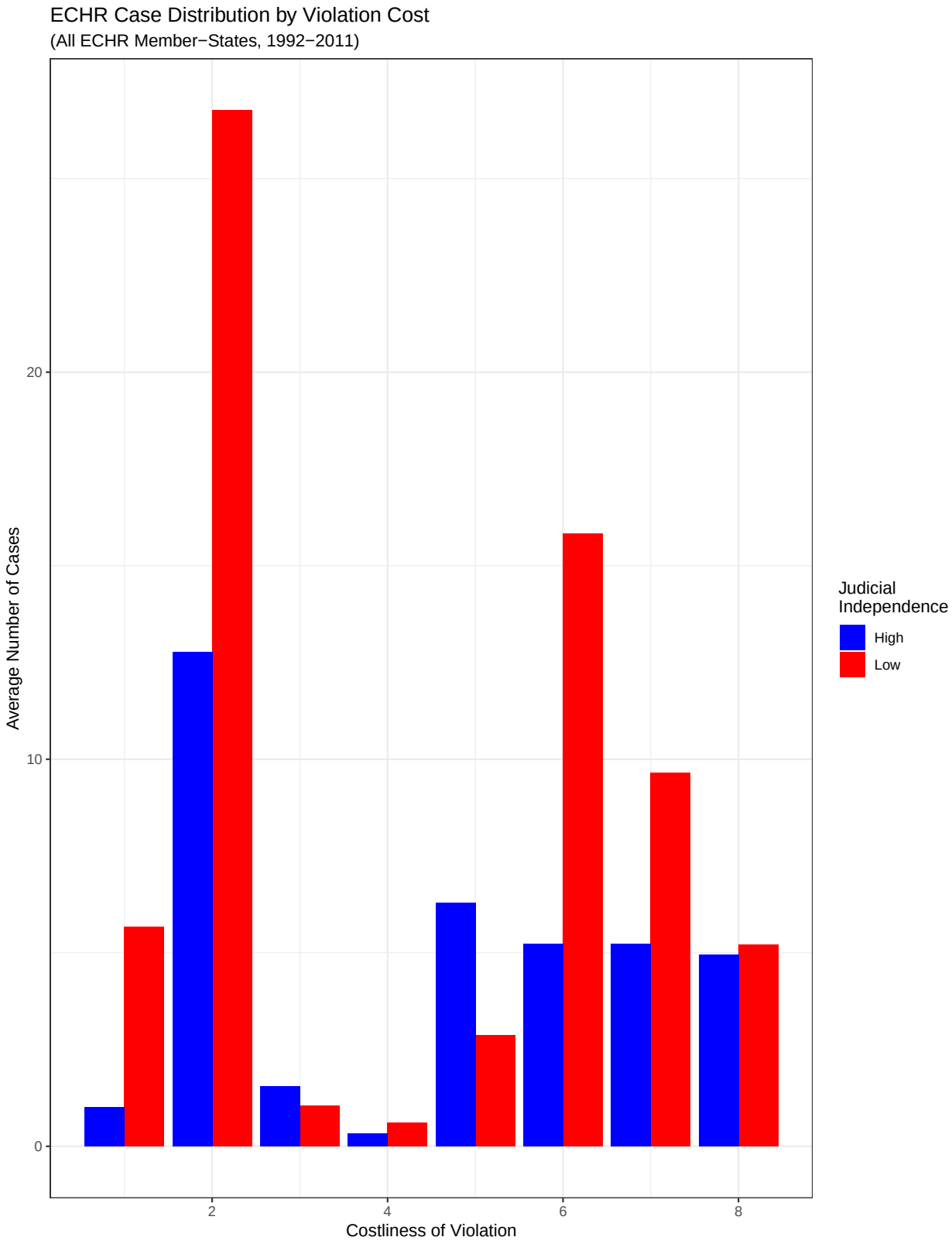


Figure 1.2: Impact of Judicial Independence on ECHR Case Distribution - Note: Linzer and Staton (2015) global judicial independence data is only available through 2011.

not be the case.

1.4.2 Empirical Strategy

Using the ECHR case files from the Council of Europe's Human Rights Documentation database (HUDOC) from 1992 to 2017, I construct a novel cross-national, time-series panel dataset from which I conduct a large-N quantitative study that assesses the validity of H_1 and H_2. This data includes details on punitive fines, article violations, and domestic court filings across all ECHR member states. I use a panel linear model to estimate the association between differing levels of judicial independence from the executive and the number of cases related to certain types of alleged human rights violations that reach the ECHR. Across all models, I use unit and time fixed effects to control for exogenous shocks that may effect both the domestic judiciary and levels of human rights cases, as well as time-invariant characteristics at the country level. I also use "HC2" robust standard errors that are clustered on the country level, to best estimate the true model uncertainty. The exact model specifications can be expressed as:

$$ECHR\_Case_{it} = \beta_1 LJI_{it} + \beta_2 lnPop_{it} + \beta_3 GDPpc_{it} + \beta_4 PHYSINT_{it} + \beta_5 SOCINT_{it} + \alpha_{it} + \epsilon_{it}$$

$ECHR\_Case_{it}$ is the total number of human rights cases at the ECHR related to a certain type of violation – the outcome of interest – from country i at time t. LJI_{it} is the measure of judicial independence for country i at time t, $lnPop_{it}$ is the logged population of country i at time t, $GDPpc_{it}$ is the gross domestic product per capita of country i at time t, $PHYSINT_{it}$ is the level of alleged physical integrity violations in country i at time t, and $SOCINT_{it}$ is the level of alleged social integrity violations in country i at time t, with country i and year t fixed effects.

1.4.3 Data

To assess the hypotheses outlined above, I rely on a number of different data sources. The main data used in this study comes from the Council of Europe's Human Rights Document Database (HUDOC), the Cingranelli and Richards (2010) Human Rights Data Project (CIRI), Linzer and Staton (2015) global measures of latent judicial independence dataset, and the Coppedge et al. (2015) Varieties of Democracy (V-Dem) dataset. There are various other data sources which are used primarily to conduct robustness checks and assess alternative model specifications. For the sake of brevity and ease of reading, these can all be found in the appendix of this paper. The majority of this data covers all ECHR member states from 1992 to 2011 and is presented in a country-year format that allows for time-series analyses.

HUDOC Data

The data collected from the HUDOC database contains information on 45,784 individual cases of human rights violations of all types from 1992 to 2018 for 47 different member-states.[8] Each case contains metadata with unique case identification numbers, respondent countries, types of cases, case dates, and types of judgments or decisions, as well as details on case conclusions. I also use data on ECHR ordered pecuniary damages to establish an imperfect yet objective measure of material cost for various types of alleged violations. In addition to the case metadata that is available on the HUDOC website, I collected the entire case files themselves. Using text analysis on the whole case files, I constructed an original dataset with information on court issued pecuniary damages and frequencies of unanimous judgments or decisions, as well as the domestic courts of first instance used by plaintiffs before their cases were brought to the ECHR.

As is evident from Table 1.2 below, which depicts the frequency of cases related to

[8]This includes both lead and follow cases. For more information on the distinction between lead and follow cases see Leach (2011).

certain ECHR article violations by year, the most common type of case that reaches the ECHR is related to violations of Article 6. These violations typically relate to due process infractions that limit citizen rights to a fair trial under the European Convention on Human Rights. Such violations often have to do with excessive delays or resource constraints that prevent due process on the part of the judiciary, which is one possible explanation for their disproportionate frequency in the ECHR (Mälksoo, 2016). Articles 2 through 5, which for the most part follow Article 6 as the most frequent types of ECHR cases, can be described as physical integrity violations such as torture, extrajudicial killings, and indefinite detention.[9]

Table 1.2: ECHR Cases by Article Violation (1992-2018)

Year	# Total	Art. 2	Art. 3	Art.4	Art. 5	Art. 6	Art. 7	Art. 8	Art. 9	Art. 10	Art. 11	Art. 12	Art. 13	Art. 14
1992	381	64	92	47	76	258	39	82	6	18	9	4	24	24
1993	524	103	136	59	129	330	40	109	23	27	8	3	54	21
1994	864	130	180	69	233	698	45	138	10	28	13	5	85	46
1995	1,043	200	215	106	266	844	43	179	26	52	17	1	85	63
1996	1,044	211	153	114	270	792	68	205	21	37	7	4	53	59
1997	1,168	191	163	78	272	885	85	210	34	57	12	8	57	43
1998	1,206	195	125	65	261	976	78	194	18	36	14	1	48	31
1999	627	95	122	52	172	406	109	115	30	42	10	1	23	22
2000	1,115	139	67	98	202	852	322	289	23	44	8	0	62	42
2001	1,311	154	217	135	300	1,000	271	210	85	29	11	0	106	90
2002	1,419	141	203	140	268	989	386	211	133	58	13	5	94	78
2003	1,257	133	357	137	223	895	376	177	208	61	12	3	123	82
2004	1,258	127	470	131	267	878	271	135	256	56	10	0	144	67
2005	1,674	276	848	255	412	1,195	379	174	558	99	28	1	292	112
2006	2,238	322	1,412	346	586	1,634	431	275	1,033	121	37	8	618	168
2007	2,261	231	590	229	418	1,419	519	225	197	81	33	6	283	141
2008	2,845	270	642	368	371	1,280	929	322	244	72	29	4	291	280
2009	2,645	265	629	234	405	1,117	851	192	29	65	27	4	326	141
2010	2,657	269	635	239	474	1,388	873	220	22	78	26	6	281	116
2011	2,521	259	813	233	450	1,474	1097	232	32	73	27	3	379	135
2012	2,585	333	1,007	334	744	1,433	852	386	71	114	40	7	503	200
2013	2,382	289	938	290	841	1,384	554	303	110	99	37	4	509	183
2014	2,468	297	955	307	723	1,266	614	334	120	97	35	5	482	171
2015	2,333	279	925	242	652	1,252	593	244	93	103	50	3	427	131
2016	2,492	370	1,004	345	795	1,201	647	293	109	105	38	6	477	129
2017	2,573	330	958	286	678	1,293	564	293	86	119	63	3	585	118
2018	893	104	305	82	235	437	181	109	19	57	31	1	176	38
Total	**45,784**	**5,777**	**14,261**	**5,021**	**10,723**	**27,576**	**11,217**	**5,856**	**3,596**	**1,828**	**645**	**96**	**6,587**	**2,731**

Note: The substantive rights protected by each article are as follows: Life (2), Torture (3), Slavery (4), Indefinite Detention (5), Due Process (6), Arbitrary Punishment (7), Privacy (8), Religious Freedom (9), Expression (10), Assembly (11), Marriage (12), Effective Remedy (13), Discrimination (14). Case data includes ECHR cases up to May of 2018.

Figure 1.3 also provides a visual overview of these physical integrity violations for each ECHR member state. While many states, such as Spain, Norway, and Estonia, have relatively few instances of these types of violations, there is still large variations among countries, such

[9] Article 7 relates to violations of "punishment without law" or those cases in which citizens are punished for crimes that were not codified by law. Article 12 relates to the right to marry. Article 13 deals with rights to effective remedies. Article 14 pertains to the prohibition of discrimination.

as Greece, Russia, and Turkey. While Figure 1.3 focuses exclusively on physical integrity violations, Articles 8 through 11, which are for the most part less common than physical integrity violations, pertain mostly to social rights such as the rights to privacy, freedom of thought, assembly, and religion. While *prima facie* it seems that overall the most severe violations such as extra judicial killings (Article 2) and the less severe violations such as freedom of expression (Article 10) are rare, it also appears to be the case that these trends are consistent over time. Such consistency is interesting given that while the HUDOC data does cover all ECHR member-states from 1992 to 2018, the composition of the ECHR member-states changed dramatically over this period.

Table 1.3, which outlines these membership changes in the ECHR and other international court systems, provides a clearer picture of the changing membership profiles of these bodies over time. In particular, the period between 2004 and 2006 saw to the addition of eight new member-states, most of which were from former Soviet bloc countries.[10]

Given the 20% change in ECHR membership, one might have expected some changes in the proportions of case violations across the ECHR states. Surprisingly, for the most part, I observe a consistent pattern. However, as demonstrated by Von Stein (2005), such consistency may be the result of selection effects that arise from the efforts of these new member-states to meet the criteria for ascension into the ECHR.[11] In an attempt to account for such large variation in membership and avoid problems that may arise from non-random data missingness, I choose to restrict the analysis below to the post-2005 period in which ECHR membership became more stable. In terms of the unit of analysis, the country-year count of ECHR cases serves as the base unit for the analysis. I create a country-year count of cases for each type of human rights violation as described in the European Convention on Human Rights. These counts of various ECHR cases for a specific country in a specific year

[10]These states include Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Monaco, Montenegro, and Serbia.

[11]These criteria include membership in the Council of Europe, certain changes in domestic legislation, and numerous other human rights related policy benchmarks.

Figure 1.3: ECHR Physical Integrity Cases by Member State (1992-2017) -

Table 1.3: Country Membership Profiles

	ECHR/CoE		ICC		ECJ/EU	
	Member	Entry Year	Member	Entry Year	Member	Entry Year
Albania	Yes	1995	Yes	1998	No	N/A
Andorra	Yes	1994	Yes	2001	No	N/A
Armenia	Yes	2001	No	N/A	No	N/A
Austria	Yes	1956	Yes	2000	Yes	1995
Azerbaijan	Yes	2001	No	N/A	No	N/A
Belgium	Yes	1949	Yes	2000	Yes	1958
Bosnia and Herzegovina	Yes	2002	Yes	2002	No	N/A
Bulgaria	Yes	1992	Yes	2002	Yes	2007
Croatia	Yes	1996	Yes	2001	Yes	2013
Cyprus	Yes	1961	Yes	2002	Yes	2004
Czech Republic	Yes	1993	Yes	2009	Yes	2004
Denmark	Yes	1949	Yes	2001	Yes	1973
Estonia	Yes	1993	Yes	2002	Yes	2004
Finland	Yes	1989	Yes	2000	Yes	1995
France	Yes	1949	Yes	2000	Yes	1958
Georgia	Yes	1999	Yes	2003	No	N/A
Germany	Yes	1950	Yes	2000	Yes	1958
Greece	Yes	1949	Yes	2002	Yes	1981
Hungary	Yes	1990	Yes	2001	Yes	2004
Iceland	Yes	1950	Yes	2000	No	N/A
Ireland	Yes	1949	Yes	2002	Yes	1973
Italy	Yes	1949	Yes	1999	Yes	1958
Latvia	Yes	1995	Yes	2002	Yes	2004
Liechtenstein	Yes	1978	Yes	2001	No	N/A
Lithuania	Yes	1993	Yes	2003	Yes	2004
Luxembourg	Yes	1949	Yes	2000	Yes	1958
Malta	Yes	1965	Yes	2002	Yes	2004
Republic of Moldova	Yes	1995	Yes	2010	No	N/A
Monaco	Yes	2004	No	N/A	No	N/A
Montenegro	Yes	2007	Yes	2006	No	N/A
Netherlands	Yes	1949	Yes	2001	Yes	1958
Norway	Yes	1949	Yes	2000	No	N/A
Poland	Yes	1991	Yes	2001	Yes	2004
Portugal	Yes	1976	Yes	2002	Yes	1986
Romania	Yes	1993	Yes	2002	Yes	2007
Russian Federation	Yes	1996	No	N/A	No	N/A
San Marino	Yes	1988	Yes	1999	No	N/A
Serbia	Yes	2003	Yes	2001	No	N/A
Slovak Republic	Yes	1993	Yes	2002	Yes	2004
Slovenia	Yes	1993	Yes	2001	Yes	2004
Spain	Yes	1977	Yes	2000	Yes	1986
Sweden	Yes	1949	Yes	2001	Yes	1995
Switzerland	Yes	1963	Yes	2001	No	N/A
Macedonia	Yes	1995	Yes	2002	No	N/A
Turkey	Yes	1950	No	N/A	No	N/A
Ukraine	Yes	1995	No	N/A	No	N/A
United Kingdom	Yes	1949	Yes	2001	Yes	1973

Note: Entry year is the year that the state became a member of the institution.

serve as the dependent variable for the empirical analysis.

Human Rights Data

In order to account for the differing rates of human rights violations between ECHR members, it is necessary to collect data on not only the distribution of human rights violations that reach the ECHR, but also the number of alleged levels of human rights violations that never

reach the ECHR. The CIRI Human Rights Data Project has such data for almost all of the 47 ECHR member states. This data, which I use to generate a baseline level of human rights abuses per country, covers alleged levels of human rights violations from the late 20^{th} century through 2011. The CIRI database is composed mostly of U.S. State Department country reports on human rights and Amnesty International's annual reports on human rights (Cingranelli and Richards, 2010). The data is discrete and records the number of instances that states have allegedly committed various types of human rights violations. The types of human rights violations this data covers focuses mainly on physical integrity violations, social rights violations, and religious freedom violations. While the limited sources of the data and the often-secretive nature of the reporting on human rights violations reduces the amount of variation in violations we can observe and account for, should there still be evidence of domestic courts influencing the distribution of human rights cases that reach the ECHR from various member-states, they would be biased downward given that states are likely to commit more unobserved human rights violations than are reported in the CIRI data.

Judicial Independence Data

In combination with the HUDOC and CIRI databases, the last main source of data used in the empirical tests below is a measure of judicial independence. Despite the fact that most scholars would agree that judicial independence plays a central role in the arena of human rights within both domestic and international courts systems, the definition of judicial independence itself is widely contested. Tiede (2006) define judicial independence as "the judiciary's independence from the executive branch in any given country... [and] may be measured by the amount of discretion that individual judges may exercise at any particular moment in time, concerning any specific area of the law." Others have defined it as the ability of "judges to develop legal opinions unconstrained by the preferences of other actors" (Voeten, 2013). Many of these definitions diverge when considering the range of actors from which a judiciary must be independent. Even more disagreements on the definition emerge

when considering whether it is *de jure* judicial independence or *de facto* judicial independence that should be prioritized to determine impacts on human rights outcomes.[12] La Porta et al. (2004) use *de jure* measures of judicial independence such as constitutionally defined judicial appointment procedures to conduct their analyses.

Others use *de facto* outcome based measures of judicial independence, such as contract intensive money (Clague et al., 1999) or judicial decisions against ruling parties (Ríos-Figueroa, 2007). Ultimately, there is little evidence to support a strong relationship between *de jure* and *de facto* judicial independence (Ríos-Figueroa and Staton, 2012) so these definitional differences mean a great deal for those who wish to study the impact of judicial independence on human rights outcomes. However recent work has attempted to bridge the divide between *de facto* and *de jure* measures of judicial independence by creating a latent measure of judicial independence that accounts for both temporal dependence and non-random missing data, two very common features of most available measures of judicial independence (Linzer and Staton, 2015). Studies, such as Crabtree and Fariss (2015), that have used this latent measure have already demonstrated that previous measures of judicial independence may under-state their impact on human rights outcomes.

To addresses these definitional discrepancies and measurement concerns, I use data from Linzer and Staton (2015) to assess levels of judicial independence across the ECHR. This data, which builds of Keith (2011); La Porta et al. (2004); Feld and Voigt (2003); Howard and Carey (2003); Cingranelli and Richards (2010) and others, constructs a unified measure of latent judicial independence from 1948 through 2011. This measure serves as the independent variable for the subsequent empirical analyses. The data covers all ECHR member states and addresses a number of the problems associated with other measures of judicial independence, such as temporal dependence in observed and unobserved variables, conceptual boundedness in latent quantities, data missingness, and measurement error in other observable variables

[12]For a lengthy discussion on *de jure* and *de facto* judicial independence see Melton (2013), Linzer and Staton (2015), or Ríos-Figueroa and Staton (2012).

(Linzer and Staton, 2015).[13]

It appears that many of the former Soviet-bloc countries have lower average levels of judicial independence than their Western European counter-parts. While this can possibly be attributed to these countries relative youth and rapid democratic transitions, this type of variation will allow for me to test the robustness of the theory in a wide range of contexts. I also use another measure of judicial independence, Contract Intensive Money (CIM) used by (Feld and Voigt, 2003), in order to assess the robustness of the hypotheses. As demonstrated in Figure 1.4, there is wide variation in the level of domestic judicial independence among ECHR member-states. While Azerbaijan, Russia, and Armenia have the three lowest average levels of judicial independence among ECHR members during this period, Luxembourg, Denmark, and Germany appear to have the most independent judiciaries in the ECHR. While these results at the higher and lower ends of the judicial independence spectrum are not surprising, there are surprisingly some mature democracies like France and Italy, that seem to possess only middling to below average levels of judicial independence.

[13]This latent variable approach also addresses other issues with previous measures of judicial independence by first assuming that latent judicial independence follows a Bayesian random walk prior process, which permits one to smooth estimates over time leading to greater statistical power (Linzer and Staton, 2015).

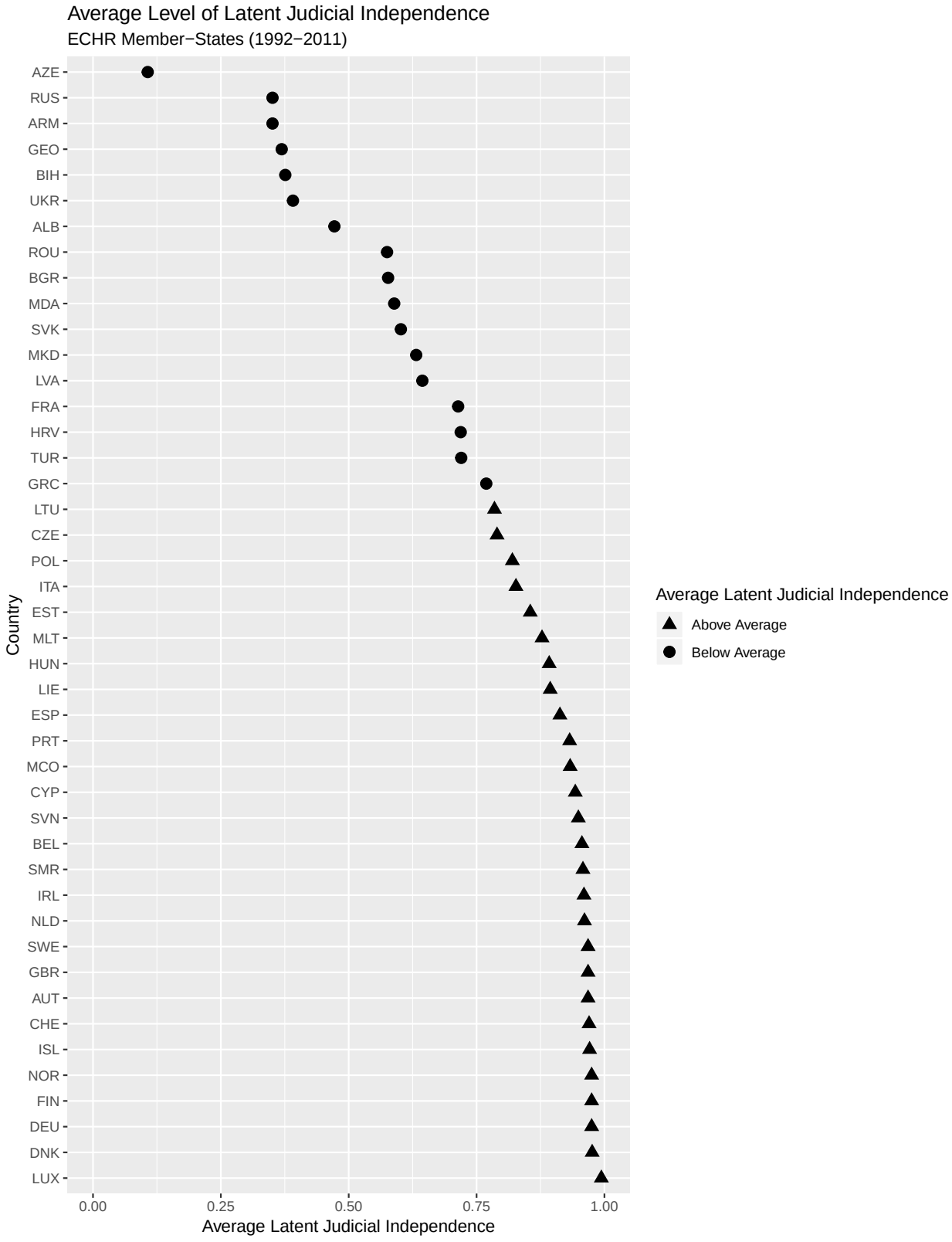


Figure 1.4: Latent Judicial Independence -

Covariates and Fixed Effects

Given the diverse nature of the 47 ECHR member-states, including income inequality or levels of ethno-linguistic fractionalization, there are numerous potential confounding variables that could influence the outcome of interest. While the empirical strategy cannot rule out the influence of every one of these differing state-level factors, I can account some of the most likely confounders in a panel linear model. Data from the V-Dem dataset on country-level covariates, including GDP per capita, logged population size, and GINI coefficients cover all ECHR member-states from 1900 to 2012 (Coppedge et al., 2015). This data is collected from a variety of different sources, including the World Bank and International Monetary Fund, as well as through independent efforts by field experts.[14] Information on other relevant country covariates are obtained from the International Political Economy Data Resource, which collects information on factors such as trade flows and CIM (Graham and Tucker, N.d.). In addition to controlling for confounders in the panel linear model, I also use the "plm" and "lfe" packages in *R* to create country fixed effects which account for time-invariant factors and year fixed effects that account for time-variant but global factors that may impact the outcome of interest. These fixed effects can be thought of as dummy variables for each country and each year that relate to a specific ECHR case. Taken together, these model specifications help to ensure that variation among ECHR member-states regarding other characteristics aside from the variable of interest, judicial independence, do not, by themselves, explain the differing counts of ECHR cases should they exist. Given that judicial independence changes over time within country and not just across countries, these fixed effects will not account for variation in levels of judicial independence.

Results

Using panel linear models with country clustered $HC2$ robust standard errors, I evaluate the effect of judicial independence on the presence of ECHR case violations from 2006 to

[14] See Coppedge et al. (2015) for further information on data collection process and coding procedures.

2012. Table 1.4 presents the results of this assessment. In general, I observe results that are consistent with H_1 and H_2 with respect to the frequency of cases and their respective levels of monetary cost that reach the ECHR from particular states. For states that have higher levels of latent judicial independence from the executive, I find that on average the number of ECHR cases from these states also increases in a statistically significant manner. In other words, the preliminary evidence shown in Table 1.4 suggests that states with lower levels of judicial independence have fewer cases of certain types of human rights violations brought to the ECHR. This is consistent with the theory highlighted above. Further, we also observe that there is statistically significant evidence to support H_2, which posits that the number of cases pertaining to more financially costly physical integrity violations will occur with higher frequency at the ECHR from states with higher levels of judicial independence.

Table 1.4: Effect of Judicial Independence on Cases

	Dependent variable:							
	Religion	Due Process	Expression	Assembly	Privacy	Torture	Unlawful Detention	Life
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Latent Judicial Independence	30.228	59.040***	10.342***	3.002***	10.305***	26.656**	14.272***	7.730***
	(20.723)	(21.122)	(3.065)	(0.712)	(2.863)	(10.994)	(4.486)	(1.759)
Log Pop	2.327*	14.319***	1.100***	0.339***	3.754***	7.903***	5.272***	3.322***
	(1.377)	(1.298)	(0.138)	(0.073)	(0.745)	(1.698)	(0.755)	(0.414)
GDP per capita	-0.0001	-0.0003*	-0.00001	-0.00000	-0.00000	-0.0002	-0.0001	0.00003
	(0.0001)	(0.0002)	(0.00001)	(0.00000)	(0.00002)	(0.0001)	(0.0001)	(0.00003)
Social Rights Abuses	-2.764	-6.961***	-0.938***	-0.385***	-0.480**			
	(1.696)	(1.296)	(0.290)	(0.078)	(0.235)			
Physical Integrity Abuses						-6.425***	-4.553***	-3.255***
						(1.359)	(0.875)	(0.583)

Note: Models use country clustered "HC2" robust standard errors. *p<0.1; **p<0.05; ***p<0.01

As shown in Model 8 of Table 1.4, I find that a one unit decrease in levels of judicial independence, on average, decreases the number of ECHR cases related to physical integrity rights, such as extrajudicial killings, by approximately eight per year. These effects are even higher for cases related to other physical integrity violations, such as torture and unlawful detention. However, when looking at Table 1.5 on the following page, which uses panel linear models with both country and year fixed effects, I find results that are less supportive of both H_1 and H_2. Unlike the models in Table 1.4, I find that when introducing fixed effects that account for time invariant and country specific factors, judicial independence – which does

change within country and over time – only has a significant effect on ECHR cases related to the right to assembly. In contrast to the theoretical predictions made earlier, a decline in judicial independence on average drives a marginally significant increase in the number of cases relating to assembly at the ECHR.

Table 1.5: Effect of Judicial Independence on Cases (Fixed Effects Models)

	Dependent variable:							
	Religion	Due Process	Expression	Assembly	Privacy	Torture	Unlawful Detention	Life
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Latent Judicial Independence	16.654	105.420	-8.295	-9.015*	2.934	-118.155	-80.817	-24.866
	(111.647)	(102.510)	(11.636)	(4.781)	(25.970)	(118.436)	(74.583)	(36.059)
Log Pop	-24.658	-94.483	-33.566	-13.884*	-54.134	-193.157	-128.708	-70.577
	(174.981)	(84.891)	(24.840)	(7.103)	(35.000)	(213.061)	(112.021)	(51.277)
GDP per capita	-0.002	-0.001	-0.0002*	-0.0001*	0.0003	0.0004	0.0001	0.001
	(0.001)	(0.001)	(0.0001)	(0.0001)	(0.0003)	(0.001)	(0.001)	(0.0004)
Social Rights Abuses	-3.434**	0.395	-0.147	0.063	-0.169			
	(1.344)	(1.274)	(0.134)	(0.072)	(0.375)			
Physical Integrity Abuses						2.598	1.595	0.401
						(2.838)	(1.251)	(0.621)

Note: Models use country clustered "HC2" robust standard errors. Models include country and year fixed effects *p<0.1; **p<0.05; ***p<0.01

While the theory predicts that cases involving physical integrity violations should be observed less as judicial independence decreases, it appears the empirical tests are inconclusive and may even suggest the opposite. While the positive direction of the effect the coefficients now take for those cases related to religious freedom, due process, and privacy is consistent with H_1, their lack of significance provides little other support for the theoretical argument. Further, while not significant, the directions of the effects of judicial independence on the number of cases related to physical and social integrity violations run contrary to what H_2 would predict.

Yet, when I test these findings with alternative measures of judicial independence, I do not observe similar results. Similar to Clague et al. (1999) analysis of human rights outcomes and judicial independence, I test the robustness of the results using CIM as a measure of judicial independence.[15] The results are reported in Table 1.6 above, and suggest that when using CIM, judicial independence is not significantly associated with the presence of various ECHR case violations. Although it would seem that the model is not robust

[15]CIM data used for these tests comes from Graham and Tucker (N.d.).

Table 1.6: Effect of Judicial Independence on Cases (CIM)

	Dependent variable:							
	Religion	Due Process	Expression	Assembly	Privacy	Torture	Unlawful Detention	Life
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Contract Intensive Money	-0.751	-16.614	-0.712	-2.522	11.948	-0.732	7.372	8.428
	(31.132)	(76.769)	(4.709)	(1.701)	(15.324)	(42.601)	(22.296)	(12.921)
Log Pop	101.190	108.212	46.435	11.730	33.453	148.332	77.591	65.508
	(98.459)	(158.368)	(34.602)	(9.442)	(32.706)	(173.740)	(91.920)	(66.635)
GDP per capita	-0.003**	-0.007**	-0.001	-0.0002	-0.001*	-0.005*	-0.003*	-0.002*
	(0.002)	(0.003)	(0.001)	(0.0001)	(0.001)	(0.003)	(0.002)	(0.001)
Social Rights Abuses	-1.804	-2.742	-0.733*	-0.150	-0.900			
	(1.370)	(2.697)	(0.416)	(0.108)	(0.549)			
Physical Integrity Abuses						3.832	2.373	1.597*
						(3.032)	(1.608)	(0.925)

Note: Models use country clustered "HC2" robust standard errors. Models include country and year fixed effects *p<0.1; **p<0.05; ***p<0.01

to these specifications, there are a number of explanations for why this might be. Firstly, as Linzer and Staton (2015) demonstrates, measures of judicial independence such as CIM have large problems with non-random data missingness. While I have attempted to minimize the statistical inference issues that arise with non-random data missingness by restricting the sample of cases to only states that have a recorded level of CIM for a given year, there are still fewer observations to test than with other measures, such as latent judicial independence. Secondly, while latent judicial independence captures numerous first order aspects of domestic judicial systems, CIM only captures secondary order effects of a judicial systems' level of independence. Given these issues with using CIM as a robustness check it is unsurprising that the theory is unsupported.

1.4.4 Alternative Explanations

Overall, the results of the empirical tests thus far provide suggestive, though inconclusive evidence to support H_1, which suggests that states with lower levels of domestic judicial independence report fewer human rights cases reaching the ECHR than those with higher levels of judicial independence. Although there are no statistically significant indications that executives use less independent judiciaries to their benefit in the context of the ECHR, the positive direction of the effects suggests that decreases in judicial independence are also associated with decreases in case counts dealing with less financially costly social integrity

violations at the ECHR. While these results are inconsistent with H_2, they still provide marginal support for the argument that regardless of case type, executives of states with lower levels of judicial independence may use the judiciary to limit the number of cases that reach the ECHR.

Yet, even if it is the case that judicial independence matters in determining the number of cases that reach the ECHR, it still remains unclear which aspects of domestic courts matter. Given the intense focus on interactions between high courts and the ECHR in countries that have lower levels of judicial independence, such as Russia (Mälksoo, 2016), are strategic efforts to alter the distribution of ECHR cases accomplished via a top-down approach? The fewer number of transaction costs that arise from dealing with one or two high courts as opposed to dozens of lower courts would make such an approach an attractive one for the state. Table 1.7 suggests that overall, high court judicial independence does not play a major role in the process.

Table 1.7: Effect of High Court Judicial Independence on Cases

	Dependent variable:							
	Religion	Due Process	Expression	Assembly	Privacy	Torture	Unlawful Detention	Life
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
De Facto High Court Judicial Independence	17.173	1.499	1.437	-0.806	-1.062	10.171	2.974	0.215
	(12.403)	(16.341)	(2.465)	(0.962)	(3.937)	(14.053)	(7.941)	(5.289)
Log Pop	-17.307	-147.711	-28.014	-10.594	-57.383*	-128.445	-88.336	-58.458
	(143.447)	(94.482)	(22.509)	(7.047)	(34.358)	(180.724)	(90.118)	(43.340)
GDP per capita	-0.002	-0.001	-0.0002*	-0.0001*	0.0003	0.0002	-0.00001	0.0005
	(0.001)	(0.001)	(0.0001)	(0.0001)	(0.0004)	(0.001)	(0.001)	(0.0004)
Social Rights Abuses	-3.502**	0.517	-0.160	0.065	-0.144			
	(1.504)	(1.485)	(0.166)	(0.074)	(0.407)			
Physical Integrity Abuses						2.668	1.663	0.411
						(3.199)	(1.408)	(0.706)

Note: Models use country clustered "HC2" robust standard errors. Models include country and year fixed effects *p<0.1; **p<0.05; ***p<0.01

Based on the results above, it appears that high court independence from the executive does not significantly influence the number of cases of any type reaching the ECHR.[16] If the independence of high courts seems to be relatively unimportant in influencing the presence of certain cases at the ECHR, do lower courts play a larger role in shaping the distribution of ECHR cases? The results from Table 1.8 would seem to provide little additional clarity.

[16]Data on high court independence comes from the Coppedge et al. (2015) V-Dem Dataset.

Table 1.8: Effect of Lower Court Judicial Independence on Cases

	Dependent variable:							
	Religion	Due Process	Expression	Assembly	Privacy	Torture	Unlawful Detention	Life
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
De Facto Lower Court Judicial Independence	-0.168	-17.123	-2.144**	-0.742	-1.770	10.282	8.553	0.697
	(12.840)	(15.057)	(1.074)	(0.787)	(2.010)	(8.580)	(11.209)	(4.606)
Log Pop	-36.722	-168.755	-32.048	-10.530	-58.196	-128.187	-81.678	-57.883
	(153.716)	(111.181)	(23.989)	(7.146)	(35.247)	(179.635)	(87.482)	(42.814)
GDP per capita	-0.002	-0.001	-0.0002	-0.0001	0.0003	0.0002	-0.00004	0.0005
	(0.001)	(0.001)	(0.0001)	(0.0001)	(0.0004)	(0.001)	(0.001)	(0.0004)
Social Rights Abuses	-3.463**	-0.138	-0.239*	0.034	-0.215			
	(1.536)	(1.517)	(0.138)	(0.075)	(0.397)			
Physical Integrity Abuses						3.113	1.939	0.433
						(3.463)	(1.489)	(0.780)

Note: Models use country clustered "HC2" robust standard errors. Models include country and year fixed effects *p<0.1; **p<0.05; ***p<0.01

I find that lower court independence from the executive on average only significantly decreases the number of cases relating to violations of rights to expression. While this finding is significant, it still takes a sign opposite to what H_1 would predict. However, the directions of the effects for cases related to physical integrity violations, while not significant, are consistent with H_2, which suggests that executives in less judicially independent states use lower domestic courts to limit more financially costly physical integrity cases from reaching the ECHR. Given these mixed findings it is difficult to interpret which level of the domestic court system, if any, matters more in determining case distributions at the ECHR. The extensive difficulty of operationalizing and quantifying judicial independence could potentially help to explain these mixed results. While there is more information available on the judicial independence of higher courts and judicial systems more broadly, this is not the case for lower courts. As such, determining the direction of executive influence as it relates to human rights violations in domestic judicial systems with low levels of judicial independence, is an avenue worthy of closer study in the future.

Despite the ambiguous results of these empirical tests, it might also be the case that states with middling levels of judicial independence prevent us from observing clear differences between those states with the highest and lowest levels of judicial independence. To address this potential issue, I run similar panel linear models using data from only states in the highest and lowest quantiles of judicial independence among ECHR members. The results of these tests are presented in Table 1.9.

Table 1.9: Effect of Extreme Levels of Judicial Independence on Cases

	Dependent variable:							
	Religion	Due Process	Expression	Assembly	Privacy	Torture	Unlawful Detention	Life
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Latent Judicial Independence	202.750**	337.538**	1.336	-12.620	39.250	53.997	-97.335	-38.611
	(91.222)	(130.462)	(11.632)	(8.128)	(30.246)	(102.429)	(134.140)	(76.589)
Log Pop	45.232	-127.177	-39.351	-21.648**	-47.225	-171.436	-137.471	-92.633
	(192.753)	(206.064)	(38.243)	(9.591)	(43.395)	(215.118)	(111.079)	(68.699)
GDP per capita	0.0005	-0.001	-0.00002	-0.00000	0.0003	0.001	0.001	0.001
	(0.001)	(0.002)	(0.0002)	(0.0001)	(0.0004)	(0.002)	(0.001)	(0.001)
Social Rights Abuses	-2.330**	0.975	-0.057	0.131	0.043			
	(1.103)	(1.060)	(0.235)	(0.118)	(0.349)			
Physical Integrity Abuses						8.053	2.982	0.763
						(4.926)	(2.382)	(0.959)

Note: Models use country clustered "HC2" robust standard errors. Models include country and year fixed effects *p<0.1; **p<0.05; ***p<0.01

When restricting the analysis to those states with either high or low levels of judicial independence, there is a statistically significant positive relationship between domestic judicial independence and the number of cases related to freedom of religion and due process at the ECHR. The direction of the effect is consistent with what H_1 would predict. While, these results provide us with stronger evidence that in states with lower levels of judicial independence, domestic courts may be strategically limiting the number of cases that reach the ECHR, the direction of the effects related to cases regarding physical integrity violations remains inconsistent with H_2. In those states with lower levels of judicial independence, cases pertaining to extrajudicial killings and indefinite detention appear to decrease in number at the ECHR, albeit in an insignificant manner. Given the current level of micro-level data on judicial independence and human rights violations that is available, the mechanisms that would explain these results are difficult to examine. However, these results provide further insight into when judicial independence may matter in determining human rights outcomes. Based on the results presented here, future research on the role domestic court systems play in shaping human rights cases in international courts, like the ECHR, should also focus on often over-looked social integrity violations, such as those related to freedom of religion and due process which may be easier to manipulate in domestic courts given their frequency and cost.

1.5 Conclusion

The aim of this research is to evaluate if and how domestic legal systems – of both authoritarian states seeking to challenge existing international legal norms and other more democratic states hoping to preserve them – shape broader patterns of cross-national participation in international human rights courts, like the ECHR. Attempts to collect cross-national data that relate to the selection of cases in international courts are rare, and this research uses this data to shed light on the complex interplay between the ECHR and domestic court systems. I find suggestive, preliminary evidence for the argument that leaders of states with lower levels of judicial independence may use domestic courts to minimize the costs of participating in human rights courts that provide a number of material benefits. In particular, the presence of cases related to religious freedom and due process rights at the ECHR are two types of human rights cases that are strongly influenced by levels of judicial independence. As levels of judicial independence decrease, the number of these cases that reach the ECHR also decreases. Such a finding is puzzling given that common wisdom would predict that states with high judicial independence are mature, economically developed democracies, that do not typically commit human rights violations and have more adequate legal avenues for plaintiffs to obtain relief in domestic courts. Further, given current data limitations on domestic courts and human rights cases, it remains unclear what mechanisms drive the findings I observe when comparing ECHR cases between states with high and low levels of judicial independence. More information on these cases in domestic court systems will make assessing the potential mechanisms that explain these results, and in what contexts they function, – whether that be in only lower or upper courts, or in states with low and not middling levels of judicial independence – possible. However, even without such data, this research suggests that as the jurisdiction of international human rights courts, like the ECHR, continues to expand, their interaction with domestic judicial systems will play a role in determining the types of human rights outcomes we see in the future, especially in a

world with an increasingly growing chorus of challengers to the previously well-established international order.

2

Changing Domestic Attitudes Toward Conflict in a Shifting International Order

2.1 Introduction

Overall the findings presented in Chapter 1 highlight some of the emerging – and following the Russian Federation's full-scale invasion of Ukraine the growing – obstacles that international organizations such as the European Court of Human Rights face in their continued pursuit of expanding and crystalizing international legal norms that have served as staples of the "traditional" world order since the end of World War II.[1] Outside of the domain of international law and human rights however, another set of challenges to the post-World War II international system have come in the form of changing attitudes towards armed conflict. While the invasion of Ukraine and aggressive changes in force posture among other states such as China (with respect to Taiwan and the United States) may reflect some of the outcomes of these changing attitudes toward armed conflict, it remains unclear just how wide-spread such attitudinal shifts and their impacts on the post World War II system are.

Since the negotiated end to hostilities between the Colombian government and the FARC

[1]This chapter is coauthored with Professor Robert F. Trager from UCLA's Political Science Department.

in 2016, the Western hemisphere has enjoyed a relatively lengthy absence of major armed conflict.[2] In the Eastern hemisphere, conflicts involving state militaries continue in Afghanistan, Iraq, Nigeria, Syria, Turkey, Somalia, Pakistan, Libya, Yemen, Egypt, Sudan, Ukraine and elsewhere. What explains these starkly different regional experiences with armed conflict? To answer this question, many scholars have focused on differences in material factors (Waltz, 2010) or domestic political institutions (Morrow et al., 1999), geography and the presence of natural resources such as oil (Ross, 2006). Others have examined how state identities influence conflict choices or how individual leaders psychological biases predispose them to take certain actions that may shape conflict (Horowitz, Stam and Ellis, 2015). Less scholarship has analyzed how differences in cultural attitudes among polities may or may not influence the onset of conflict and conflict outcomes.

In total, this Chapter examines how attitudes toward armed conflict – in the context of international crisis bargaining – are viewed differently in four countries (two of which reflect the increasingly authoritarian systems challenging existing international norms): Egypt, Israel, Turkey and the United States. Across all four countries approval for crisis bargaining settlements in which one country receives an equal share of a disputed resource compared to those settlements in which one country receives more than the other, are starkly different. With respect to the United States specifically, approval of an equal crisis bargaining settlement is dramatically higher than the approval garnered by a settlement in which the United States receives everything in the settlement.

The findings show that these preferences for equal settlements also vary in their magnitude in the U.S. Egypt, Turkey, and Israel. Surveys from the U.S. and Egypt in particular, indicate that these varying preferences may be heavily linked to differing cultural attitudes. While these explanations are typically understudied in the crisis bargaining literature, this Chapter argues that cultural attitudes are an important part of explaining the varying degrees to which preferences for fairness in these crises are expressed. Using Graham, Haidt

[2]Pinker, Steven and Juan Manuel Santos, *New York Times*, August 26, 2016.

and Nosek (2009) measures of cultural values, this Chapter assess the degree to which certain cultural attitudes influence crisis bargaining preferences. In particular, those work finds that demographic cohorts that generally have more conservative cultural attitudes, as well as those individuals that hold more conservative cultural attitudes such as support for traditional gender roles, adherence to social norms and authority figures, as well as strong feelings of national pride, have significant negative impacts on one's willingness to strike a fair settlement.

2.2 Cultural Attitudes and the Origins of Preferences

While not a predominate topic in international relations, there is still a sizable body of work that has examined how differences in cultural attitudes and preferences influence foreign policy. Constructivist scholars have long argued that differing state identities shape behavior in the international system (Checkel, 1998; Adler, 2013). Consistent with this scholarship, psychologists and sociologists have noted that these cultural attitudes and preferences differ substantially across cultures (Barnea and Schwartz, 1998; Henrich, Heine and Norenzayan, 2010)). Political scientists have demonstrated that differences in fundamental moral values within states predict foreign policy preferences (Kertzer et al., 2014). Dafoe and Caughey (2016) show, for instance, that that U.S. presidents who ascribe to a Southern honor culture are more likely to employ force in an international dispute.[3]

It follows then, that these differences in individual cultural attitudes will result in different approaches to foreign policy. Nevertheless, systematic collection and analysis of cross-national data on differences in these cultural attitudes in the context of foreign policy preferences is rare. Stein (2015) and Liberman (2006) show that death penalty support can proxy for how retributive population's preferences are and that this predicts engagement in conflict. Kertzer and Rathbun (2015) and Bertoli, Dafoe and Trager (2019) argue that differences in

[3]Cohen et al. (1996) provide a further discussion on honor cultures more broadly.

fundamental moral values that are associated with party differences apply cross-nationally and predict differing levels of conflict among politicians on both the right and left. These studies, however, all rely on proxies for variation in the preferences of populations and their leaders – be it the death penalty, party allegiance or civilizational boundaries – and do not analyze how foreign policy preferences actually differ across polities.

This study seeks to fill this gap by collecting and analyzing stated foreign policy preferences and cultural attitudes across four countries: the United States, Egypt, Israel, and Turkey. These four countries were for two major reasons. Firstly, to examine countries that varied in their individual cultural attitudes around the six foundation principles of MFT. Based on data obtained by Inglehart (2006) in the *World Values Survey* these four countries varied substantially in their attitudes on foundational principals like Fairness/Cheating (V23), Sanctity/Degradation (V9, V22), and Authority/Subversion (V24, V13).[4] Secondly, the lack of scholarship related to bargaining preferences among the Turkish and Egyptian publics make them good candidates for study and comparison to the more well studied bargaining preferences of the Israeli and American publics. While rationalists would most likely contend that cultural attitudes play little to no role in shaping bargaining preferences, this research argues – in similar fashion to social psychologists and behavioral economists – that cross-national differences in bargaining preferences are strongly shaped by differences in cultural attitudes.

Outside the context of international bargaining crises, those such as Bland (2017) have demonstrated that individuals consistently decline offers in bargaining games based on various personal considerations and beliefs such as perceptions of fairness.[5] Others have shown that those preferences for fairness have been found to vary based on factors such as gender (Eckel and Grossman, 2001) and culture (Henrich et al., 2005). Given the impact of

[4]This data comes mostly from Wave 4 of the *World Values Survey* (Inglehart, 2006) which is the most recent survey to include Israel. This variation among these attitudes still holds among Egypt, Turkey, and the United States through the most recent Wave of the survey, Wave 7. See http://www.worldvaluessurvey.org/WVSOnline.jsp for more information

[5]Specifically the Ultimatum Game developed by Güth, Schmittberger and Schwarze (1982).

these factors in the context of bargaining games, this research suggests that these bargaining preferences may very well impact international crisis bargaining preferences in a similar fashion. Previous research has shown that the "fairness heuristic" commonly observed in the psychology and behavioral economics literature does appear to translate into international bargaining crises. Gottfried and Trager (2016) demonstrate that the U.S. public strongly prefers 50/50 outcomes in international negotiations, even in the absence of fairness primers. And while the "fairness heuristic" has been shown to be a powerful norm in a variety of contexts and cultures (Camerer, 1997; Güth, Schmittberger and Schwarze, 1982; Kahneman, Knetsch and Thaler, 1986; Thaler, 1988; Güth, 1995), there is still significant variation in the strength of preferences for equal divisions in bargaining situations across cultures (Bland, 2017).

In particular, those like Graham et al. (2013) argue that these preferences for fairness are strongly influenced by whether or not individuals hold more conservative cultural attitudes with respect to authority, loyalty, or sanctity.[6] Others such as Hofstede, Hofstede and Minkov (2005) argue that polities that hold cultural attitudes more associated with "long-term orientations" such as flexibility or preference for risk aversion will be more adaptable in their bargaining preferences than those polities that hold cultural attitudes more associated with "short-term orientations."[7] In perhaps one of the more well-known studies on the topic, Inglehart and Welzel (2010) have used cross-national survey projects like the *World Values Survey* to examine how variation in cultural attitudes impact democratization. In a closely related project, Inglehart (2006) use the *World Values Survey* to construct scales of traditional values and survival values in order to assess how modernization shifts individuals attitudes cross-nationally.[8]

Traditional values in the context of Inglehart and Welzel (2010) center around the relative

[6]These conservative cultural attitudes are similar to what Inglehart and Welzel (2010) refer to as traditional values.

[7]Hofstede, Hofstede and Minkov (2005) work focuses on the international business context.

[8]These scales go from traditional to secular-rational values and from survival to self-expression values. See Inglehart (2006) for more information.

importance of religious beliefs, deferences to authority, and the strength of familial ties. Shifts from traditional values to secular-rational values in this scale have been described by those such as Engelbrekt and Nygren (2014), as the "replacement of religion and superstition with science and bureaucracy." In similar fashion to Inglehart and Welzel (2010), those such as Haidt and Joseph (2004) have attempted to map cross-national variation in how cultural attitudes are partitioned along political and religious lines. Ultimately, the work of Haidt and Joseph (2004) served as the basis for the development of *Moral Foundations Theory*. In essence, *Moral Foundations Theory* posits that individuals maintain only a small number of larger moral principles that serve as the foundation for adopting other more specific moral values and attitudes (Haidt, 2012). In the context of *Moral Foundations Theory*, Haidt (2012) find that while both political liberals and conservatives understand the importance of fairness and protecting others from harm, conservatives – unlike most liberals – also strongly rely on foundational moral values such as respect for authority, loyalty, and purity to guide their political beliefs. These differences are not only observed in the United States but also in other countries like South Korea (Kim, Kang and Yun, 2012). In particular, Kim, Kang and Yun (2012) find that while the "patterns of ideological difference in moral concerns are the same, the magnitude of the differences depends upon the particular histories, traditions, and socioecological factors of these different cultures." Given this extensive mapping of cross-national cultural attitudes by Inglehart (2006); Haidt and Joseph (2004); Kim, Kang and Yun (2012), and others, it is possible to locate individuals across cultures in a universal moral values framework that predicts certain foreign policy attitudes, particularly those related to bargaining crises.

However, despite their prominence in social science research, the *World Values Survey* and *Moral Foundations Theory* have significant overlap in their respective mapping and measurement of individual cultural attitudes. In particular, the *World Values Survey* and Inglehart (2006) conception of traditional values appear to be strongly linked with the foundational values that Haidt (2012) show are a basis for conservative political attitudes. In order to

account for this overlap, factor analysis was employed to reduce these overlapping measures of individual cultural attitudes popularized into three major components: empathy, tradition, and power. We argue that individuals that hold more traditional and power oriented attitudes will generally be less approving of 50-50 settlements and less willing to compromise relative to those that exhibit more empathetic and less traditional or power-oriented attitudes. Further, given the fact that these attitudes vary far more between countries than within them (Inglehart and Welzel, 2010), one would expect that the influence of these individual attitudes would translate into cross-national differences in bargaining preferences. We test the following hypotheses to examine the validity of these theoretical expectations:

- **Bargaining Hypothesis:** *Polities will differ systematically in their willingness to compromise even after accounting for differences in the balance of military power, the nature of the historical status quo, the character of their adversaries and the nature and value of the resources in dispute.*

- **Culture Hypothesis:** *Those with more traditional and power oriented attitudes will be less approving of 50-50 settlements and less willing to compromise relative to those with more empathetic and less traditional or power-oriented attitudes.*

Ultimately, this Chapter examines the relationship between these cross-national differences in preferences and the more traditional determinants of foreign policy preferences from the international relations literature, such as the balance of military power and the historical status quo. Similarly to most international relations literature on the topic, one would expect that differences in military power will influence what settlements garner popular approval across all countries. For those countries that benefit from greater levels of military power relative to their opponent in a bargaining crisis, settlements in which the more powerful country receives more favorable terms will be met with greater approval among its citizens relative to settlements that are less favorable to them (Powell, 1999). Further, in concert with those such as Powell (1999), who argue on rationalist grounds that disjunctures between

the balance of power and the balance of goods in the current status quo leads to conflict, one might expect the historical status quo will have similar effects on bargaining preferences.[9] In particular, given the fact that individuals and groups generally develop attachments to goods that are possessed in some fashion and find that they are harder to give up (Kahneman, Knetsch and Thaler, 1991), this work also argues that the status quo favoring one's side will increase the approval of more favorable negotiated outcomes relative to less favorable outcomes.[10] Given these findings, the following hypotheses should be tested:

- **Power Hypothesis:** *Greater military power increases the approval of outcomes that are more favorable relative to less favorable outcomes.*
- **Status Quo Hypothesis:** *The status quo favoring one's side increases the approval of more favorable negotiated outcomes relative to less favorable outcomes.*

While one might expect that military power and the status quo will have these predictable effects on bargaining preferences in all polities, this research argues that differences in crisis bargaining preferences across countries, cannot fully be explained by relative military power or the historical status quo.

While individual attitudes may play a role in determining one's willingness to compromise and their preferences for fairness, this Chapter also argues that certain cohort effects may emerge to amplify certain preferences and desires in these international crisis bargaining scenarios. In particular, given the key role that age (McDonald and Stuart-Hamilton, 1996; Decety, Michalska and Kinzler, 2011; Löckenhoff, De Fruyt and Terracciano A, 2009) and sex (Beutel and Marini, 1995; Kalimeri et al., 2017) play in shaping moral attitudes, one would expect that these cohorts may have emergent properties that impact their preferences for fairness or influence their willingness to compromise in a international dispute. Given the fact

[9] Powell (1999) focused on alternating offer bargaining situations.

[10] The validity of this expectation is tested by varying what the status quo is, without varying markers of what the status quo ought to be. Therefore, ons should not expect to find the symmetric result that the Status Quo favoring the other side decreases the approval of more favorable negotiated outcomes for one's own side relative to less favorable outcomes. Thus, this so called "endowment effect" can push the sides toward conflict when there is a separation between "is" and "ought" (Kahneman and Renshon, 2007).

that traditional and conservative values have often been shown to have strongly associated with older individuals Robinson (2012), one might expect that age would be a significant indicator of an individuals lack of willingness to compromise or agree to a fair settlement in an international bargaining crisis. Yet, based on findings in social psychology that suggest older individuals tend to employ cognitive strategies that minimize the potential for conflict (Grossmann, Na and Varnum, 2010) and demonstrate better reasoning with respect to social dilemmas and conflicts (Luong, Charles and Fingerman, 2011), one could also expect the opposite. In addition to age, there may be similar cohort effects seen when examining the impact of sex on an individual's international crisis bargaining preferences. Given that females have generally been found to be more likely than males to express compassionate attitudes and less likely than men to express competitive attitudes (Beutel and Marini, 1995) one might expect that men will generally be less willing to compromise or approve of fair settlements than their female peers in an international crisis bargaining situation. However, similar to age, numerous studies also indicate that there could likely be an opposite effect. Those like Benenson and Wrangham (2016) demonstrate, women tend to engage in less cooperative behavior than their male counterparts in post-conflict situations. Others such as Dube and Harish (2017) show that states led by women between the 15th and 20th century, were almost 27% more likely to be involved in an interstate conflict than those led by men. Such findings might suggest that women be more aggressive in a crisis bargaining situation and, as a result, less willing to compromise or prefer fairness than men. Given the unclear nature of how these cohort effects may impact bargaining preferences this research does not have any *a priori* knowledge with respect to the direction of any such effects. This research does, however, argue that there will be a cohort effect that significantly influences bargaining preferences. In order to test the validity of this claim the following hypothesis are proposed below:

- **Cohort Hypothesis:** *Individuals that belong to specific demographic cohorts, particularly those related to sex and age, will differ significantly in their willingness to*

compromise and preferences for fair settlements compared to those in a different demographic cohort.

Consistent with existing theories on cross-national cultural variation, this research argues that it is possible to locate, at least in part, universal values that may shape foreign policy attitudes in a single matrix across cultures. This empirical analysis employs factor analysis to reduce overlapping measures of individual cultural attitudes popularized by Haidt and Joseph (2004) *Moreal Foundations Theory* into three major indicator of bargaining crisis preferences: empathy, tradition, and power. In particular, this work claims that those with more traditional and power oriented attitudes will be less approving of 50-50 settlements and less willing to compromise relative to those with more empathetic and less traditional or power-oriented attitudes. We also argue that cohort effects related to age and sex will have significant impacts on crisis bargaining preferences. Lastly, this Chapter demonstrates that the implications for preferences in crisis bargaining situations are large relative to factors that are typically studied such as the material balance of power and the status quo. The following section describes the data collection process, research design, and factor analysis model specifications used to in the empirical analyses.

2.3 Research Design

In total, this research uses six different survey experiments in four different countries to assess both cross-national variation in crisis bargaining preferences and the relationship between individual cultural attitudes and crisis bargaining preferences. Four of the fielded surveys focused on cross-national variation in crisis bargaining preferences and the impacts of military power and the status quo on those preferences. The other two surveys examine how individual cultural attitudes may explain cross-national variation in crisis bargaining preferences even after accounting for military power and the status quo.

2.3.1 Measuring Variation in Crisis Bargaining Preferences

To examine cross-national variations in crisis bargaining preferences and the impacts of military power and the historical status quo on those preferences, this research employs survey experiments on representative samples of the populations of Egypt, Israel, Turkey and the United States in July 2016.[11] The surveys administered in Egypt, Israel and Turkey were identical and described a conflict over resources in the seabed under the Mediterranean Sea. Respondents were told their country and another unspecified country had made contradictory claims under international law and that both wished to "extract oil, gas and gas hydrates, which scientists believe will become the worlds next alternative energy source." Respondents were then told that their country "and the other country agreed to postpone exploitation of the area's resources until a further determination by the United Nations."

Respondents were then randomly shown one of four treatments or assigned to a control group. The first two treatments of the four concerned the status quo. Respondents were told that "in the past, Egypt/Israel/Turkey has regularly enabled Egyptian/Israeli/Turkish firms to extract resources from the area, while the other country was not engaged in the area," or that the other country had enable it's country's firms while Egypt/Israel/Turkey was not engaged in the area. The third and fourth treatments concerned whether a commitment had been violated. Respondent were told either that "the other country has enabled its country's firms to violate [the agreement to postpone exploitation of resources], and they have begun extracting the resources on a massive scale" or that Egypt/Israel/Turkey had done so. The control group was not told either about the status quo or that one country had violated the agreement.

Participants were then shown one of two power treatments. Half were told that "Egyptian/Israeli/Turkish military capabilities in the region far exceed those of the other country.

[11] The numbers of respondents from each country were, respectively, 1,029, 1,382, 1,141 and 2,003. All experiments were administered over the internet in the language of the country. Appendix Section 4.1 and Appendix Section 4.1 contain more information about polling procedures and a comparison of survey demographics to the national census in each country, respectively.

Military officials were confident that any resulting conflict would be quickly settled in favor of Egypt/Israel Turkey." The other half were told that "The capabilities of the two countries are relatively evenly matched. Military officials believed that any resulting conflict would involve significant casualties on both sides." These treatments were chosen because they were plausible for all three countries in the study when the adversary country was not identified. The two power treatments were fully crossed with the first group of treatments.

Following these two treatment groups, respondents were asked a series of questions about their approval of differing shares for the two countries in a settlement, as well as the drivers of these responses. Respondents also completed attention and manipulation checks. Finally, all respondents were assigned one of two additional treatments. They were told to "suppose that instead of a deal being signed, negotiations ended abruptly" and that a conflict ensued in which 1,100 Egyptian/Israeli Turkish troops and a similar number of troops from the opposing country died. Then the surveys randomly varied which side emerged victorious. Half of respondents were told that "the Egyptian/Israeli/Turkish government decided to withdraw its forces and the other country took complete control of the resource-rich region," and the other half were told reverse. This design allowed for pairwise comparisons of treatment effects on approval of settlements and conflict, thereby allowing for more precise estimates of effects.

The U.S. experiment was similar, but could not revolve around a claim to resources in the Mediterranean Sea. Instead, a comparable dispute was described in the Arctic and Russia was named as the U.S. adversary. The decision to name Russia was made for realism in the power manipulation treatment: only Russia might reasonably be expected to defeat the U.S. in a local conflict in the Arctic. To make it clear that the dispute was a significant economic interest of a country the size of the United States, participants were told that "Over 25% of the world's undiscovered oil and gas are beneath the Arctic seabed, and portions of the ice contain gas hydrates, which scientists believe will become the worlds next alternative energy source." Participants were also given information about the competing U.S. and

Russian claims to the resources under international law and told that the United Nations had ruled that the evidence presented by each country in favor of its claim was "inconclusive."" Other aspects of the experiment follow the experiments in other countries closely with two exceptions. First, the U.S. experiment contained no status quo manipulations. Second, the power treatments specified that Defense Department planners were confident that a "local" conflict would be quickly settled by one side or the other.

2.3.2 Assessing the Relationship Between Individual Cultural Attitudes and Bargaining Preferences

In order to examine how individual cultural attitudes explain cross-national variation in crisis bargaining preferences, survey experiments on representative samples of the populations of Egypt and the United States were conducted during September, 2019 and May, 2020 respectively. The were 1,626 respondents in the Egypt survey and 2,133 respondents in the United States. All experiments were administered over the internet in the language of the country. Appendix Section 4.1 contains further information about polling procedures and some descriptive statistics of the samples.

Both surveys begin with respondents answering a series of questions assessing individual attitudes on a wide range of cultural topics described by Haidt and Joseph (2004).[12] Respondents were provided with a statement on each of the following topics and asked to state how much they agree or disagree with the statement: Suffering, Fairness, Pride, Authority, Disgust, Protection of the Defenseless, Justice, Loyalty, Gender Roles, Nature.[13] These are the measures used to assess the relationship between individual cultural attitudes and crisis bargaining preferences. In addition, this breadth of questions allow for one to examine other cultural divisions and cleavages such as traditional or non-traditional cultures (Inglehart and Welzel, 2010) or short-term orientations or long-term orientations (Hofstede, Hofstede

[12]These questions can be found in Appendix Section 4.1.
[13]The exact statements presented to respondents can be found in Appendix Section 4.1.

and Minkov, 2005). In general these *Moral Foundations Theory* questions have significant overlap in their respective discussions and measurements of individual cultural attitudes. To assess the extent of this overlap this work uses Bartlett's Test of Homogeneity of Variances (Snedecor and Cochran, 1967) and calculated the Kaiser-Meyer-Olkin Measure of Sampling Adequacy (Kaiser and Rice, 1974) of the data. This research finds that in this context, performing dimension reduction on the *Moral Foundations Theory* questions would be appropriate.[14] In order to account for this overlap, factor analysis is employed to reduce these overlapping measures of individual cultural attitudes into a select number of principal axes that explain a significant portion of the variance among the differing measures of individual cultural attitiudes in the *Moral Foundations Theory* questions. Factor analysis is used to conduct this dimension reduction instead of principal component analysis due to the ordinal nature of the data. These principal axes were generated using the "fa" function from the "psych" package in R on a polychoric correlation matrix of the *Moral Foundations Theory* questions described above.[15] A principal factor solution – a common factoring method in factor analysis – with a varimax rotation is used to establish which variables belong to which principal axes.[16] We then average across all of the individual components in each principal axis to create the variables that this research refers to as empathy, tradition, and power. [17]. This Parallel Analysis also demonstrates that reducing the *Moral Foundations Theory* questions into three dimensions is an appropriate choice.[18]

After respondents answer questions on individual cultural attitudes, they are then asked to answer questions about an international crisis bargaining scenario. The survey administered in Egypt presents respondents with a description of a conflict over resources in the

[14]The results of the Bartlett Test produce a p-value of approximately 0 and chi-squared value of approximately 421. The overall MSA for the KMO is 0.91.

[15]A polychoric matrix is also used to condcut these tests and factor analysis due to the ordinal nature of the data.

[16]The Varimax rotation is a widely-used rotation for factor analysis and is relatively straight forward. See Revelle (2020) for more information.

[17]These three principal axes are shown in Figure 4.1 in Appendix Section 4.1 and are what is used to examine the impact of individual cultural attitiudes on international crisis bargaining preferences

[18]See Figure 4.2 in Appendix Section 4.1 for more information.

Table 2.1: Egypt Adversary Matrix

	Cultural Similarity	Cultural Disimilarity
High Power	Turkey	Israel
Low Power	Libya	Greece

seabed under the Mediterranean Sea. Respondents were told that their country (Egypt) and another randomly assigned country (Israel, Greece, Libya, or Turkey) had made contradictory claims under international law and that both wished to extract "oil, gas and gas hydrates, which scientists believe will become the worlds next alternative energy source." Respondents were then told that their country "and the other [randomly assigned country] agreed to postpone exploitation of the area's resources until a further determination by the United Nations."

These surveys name a specific adversary involved in the dispute.[19] This choice allows one to assess the robustness and external validity of the findings by involving a real-world opponent in the dispute rather than just having respondents engage with a hypothetical opponent in a dispute. The set of opposing countries that were selected for inclusion in the survey were based on three different factors: realism, similarity, and military power. With respect to maintaining a sense a realism, the surveys included countries that could physically be involved in a dispute in the Mediterranean Sea. Given that all four of these countries border the Mediterranean Sea, all of these selections would met this criteria. With respect to similarity, this survey also includes countries that shared some level of cultural similarity and dissimilarity.[20] Greece and Israel are included due to their cultural dissimilarity to Egypt relative to Libya and Turkey. Lastly, in terms of military power, Greece and Libya were selected as weaker military powers than Egypt relative to Israel and Turkey. Table 2.1 provides a simplified version of this decision making process with respect to opponent selection.

[19]Four of the six surveys do not name a specific bargaining opponent.

[20]While there are numerous differences in cultural attitudes between Egypt and Turkey or Egypt and Libya, this research treats them as culturally similar to Egypt relative to Israel and Greece and do not wish to imply that there are no differing cultural attitudes between Egypt and Turkey or Egypt and Libya.

The survey administered in the United States described a conflict over a "resource-rich area in the Artic Circle." Respondents were told that their country (the United States) and another randomly selected country or country-bloc (Denmark, Russia, China, and the European Union) had made contradictory claims to the resource-rich area under international law. In similar fashion to the Egypt survey, the set of opposing countries that were selected for inclusion in the survey were based on three different factors: realism, similarity, and power. Table 2.2 below provides a simplified version of this decision making process with respect to opponent selection.

Table 2.2: U.S. Adversary Matrix

	Cultural Similarity	Cultural Disimilarity
High Power	E.U.	China
Low Power	Denmark	Russia

Unlike the Egypt survey, however, respondents in the U.S. survey are also randomly assigned to one of three different treatment groups. The first treatment group contains identical language to the Egypt survey aside from the fact the dispute is taking place in the Arctic Circle. The second treatment group specifies that the resource in dispute is "oil, gas, and gas-hydrates" while the third treatment group specifies the resource in question is "rare earth metals". In the second and third treatment groups, the survey then randomly assigns estimated values to the U.S. economy (in USD) of the resources according to "economists". Each of the resources are either of high value (USD 100 Billion) or low value (USD 10 Million) to the U.S. economy. This design allows one to assess whether or not the resource itself or the perceived value of the resource may be driving these findings.

In both the Egypt and U.S. surveys, following the presentation of the bargaining scenario, respondents were asked a series of questions about their approval of differing shares for the two countries in a settlement, as well as the drivers of these responses. Respondents were also given attention checks and were asked to answer a few demographic questions. In both the Egypt and U.S. survey, respondents were asked to complete two bargaining crisis scenarios

involving two different randomly assigned opponents. The order of the bargaining scenarios is also randomized in order to assess if any of the findings are being influenced by the order in which the scenarios are being presented to respondents.

2.4 Cross-National Variation in International Crisis Bargaining Preferences

Having discussed the various ways in which this Chapter examines cross-national variation in crisis bargaining preferences and assess the impacts of individual cultural attitudes on those preferences, we can now turn to a discussion of the empirical findings. Overall this research finds support for all the proposed hypotheses, although the magnitudes of each effect vary greatly. With respect to the *power hypothesis*, this empirical analysis finds that greater military power increases the approval of outcomes that are more favorable relative to less favorable outcomes. In Egypt, the increase in approval of a negotiated solution on a 10-point scale from a 50/50 outcome to a 100% share of the resources was 45% when Egypt was more powerful versus 30% when the powers were evenly matched. While this effect is marginally significant, in other countries the estimated effects were larger.[21] In Israel, approval increased 15% for a 100% share over the 50/50 outcome when Israel is the more powerful adversary whereas approval significantly declines by 8% when Israel is evenly matched. In Turkey, power lead to a 44% increase versus a 22% increase when the countries are evenly matched.[22] In the U.S., approval falls 22% when the U.S. is powerful and 30% when Russia is more powerful.[23] The overall effects of power across all populations were highly significant and are shown in Figure 2.1 below. While a similar effect of power was observed in all populations, there remained significantly different evaluations of the relative merits of a compromise solution. These effects are significant at conventional levels in the

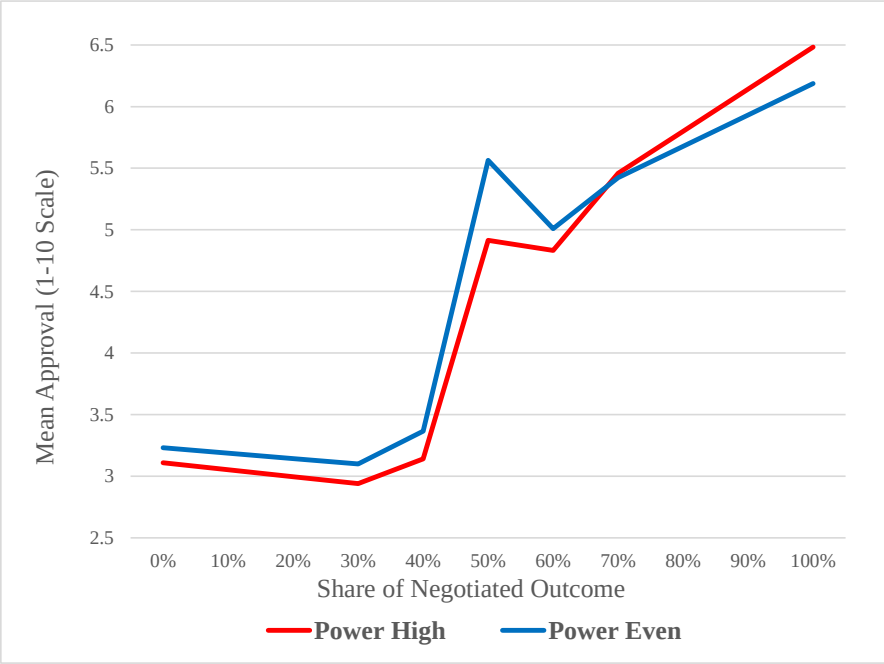
[21] $p = 0.07$

[22] This difference in approval was statistically significant with $p = 0.02$.

[23] This difference was statistically significant with $p < 0.03$.

U.S. and Turkey, on the margin of significance in Israel, and somewhat less significant in Egypt.[24]

Figure 2.1: How Power Influences Negotiation Preferences

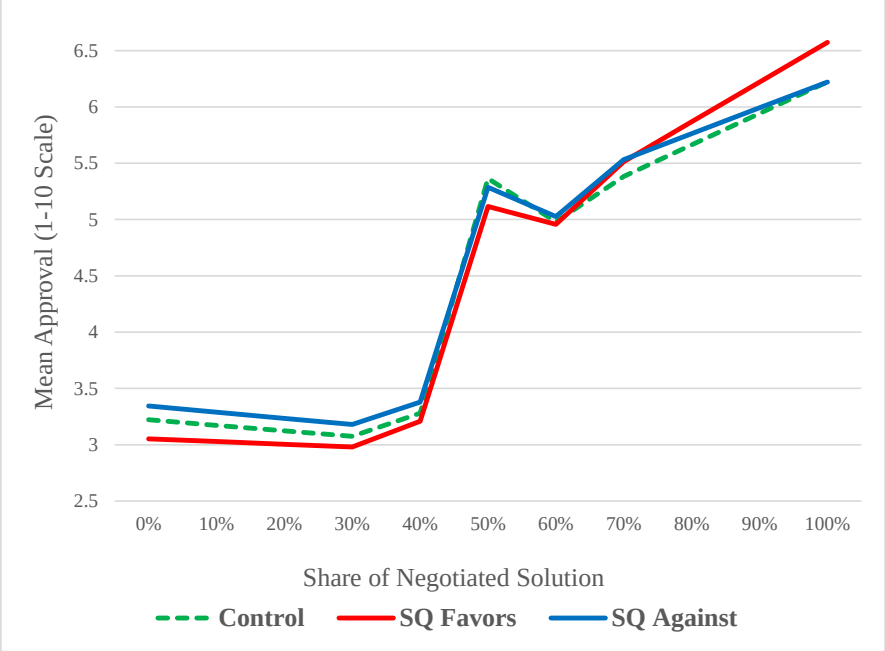


In addition, this research finds that consistent with the *status quo* hypothesis, when the status quo favors one's side it increases the approval of a more favorable negotiated outcome relative to less favorable outcome. In addition, these changes in the status quo appear to have effects of almost the same magnitude across countries. The effects in Israel and Turkey are highly significant and the effect in Egypt is on the margin of significance (p = .07 for the 100% share versus 50% share comparison and p = .12 for 100% versus 0%).[25] Once again, the overall effect across countries is highly significant with respect to the 100% versus 50% shares and for the 100% versus 0%.[26] The overall effects of the status quo on bargaining preferences are shown in Figure 2.2.

Lastly, as suggested by the *bargaining hypothesis*, even after accounting for impacts of military power and the historical status quo, thise research finds that the differences in

[24]The overall effect is highly significant with $p < 0.01$.
[25]Neither of the U.S. experiments included status quo treatments.
[26]$p < .01$ for both cases.

Figure 2.2: How the Status Quo Influences Negotiation Preferences

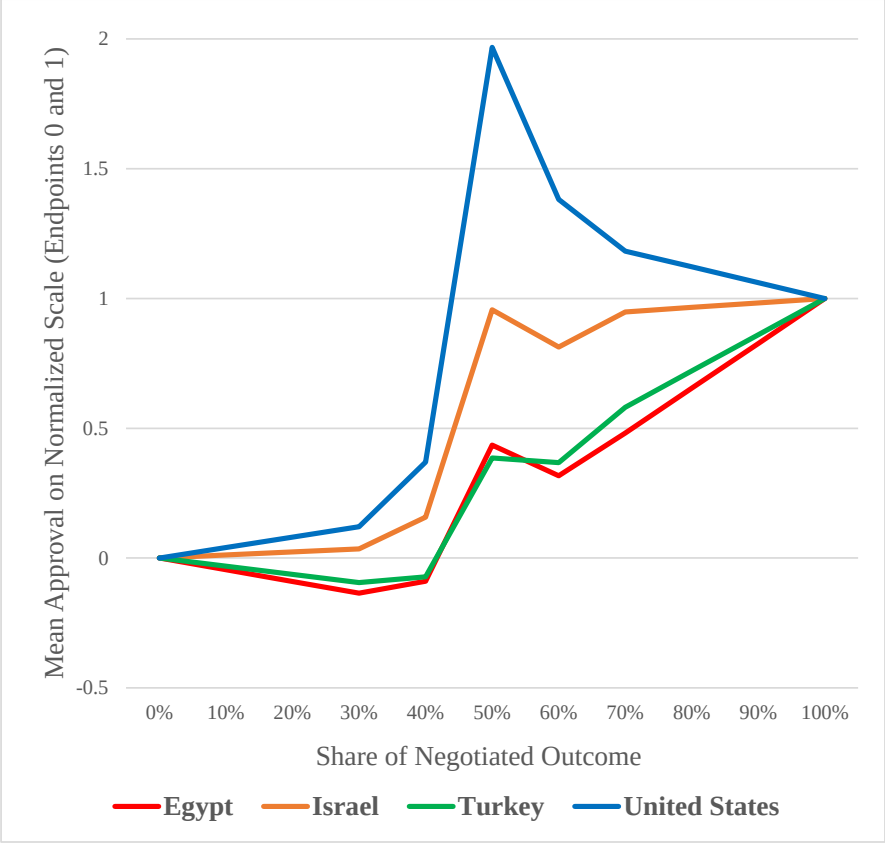


bargaining preferences between polities are massive. These differences in preferences can be seen in Figure 2.3. Figure 2.3 plots the range of mean approval levels for each country across shares of a negotiated solution on a normalized scale where approval at the end points is fixed at 0 and 1. Egypt and Turkey are somewhat similar, but are also very different from both the United States and Israel. While most Egyptians and Turks strongly prefer that their governments negotiate for all of the available disputed resources, most Israelis are statistically indifferent between a 50/50 outcome and a 100% share, and U.S. respondents strongly prefer that the U.S. compromise on an equal share for each side. All of these differences are highly significant.[27]

These results demonstrate that some other factors have significant impacts on predispositions towards conflict and cooperation relative to several more commonly theorized factors such as military power or the historical status quo. Ultimately, individual cultural attitudes could explain a great deal of the cross-national variation in crisis bargaining preferences that one may see. The implications of this finding for conflict behavior are substantial if leaders

[27]The difference between the 50/50 and 100% share outcomes for Egypt and Israel, for instance, has a p-value of less than 0.001

Figure 2.3: Cross-National Bargaining Preferences

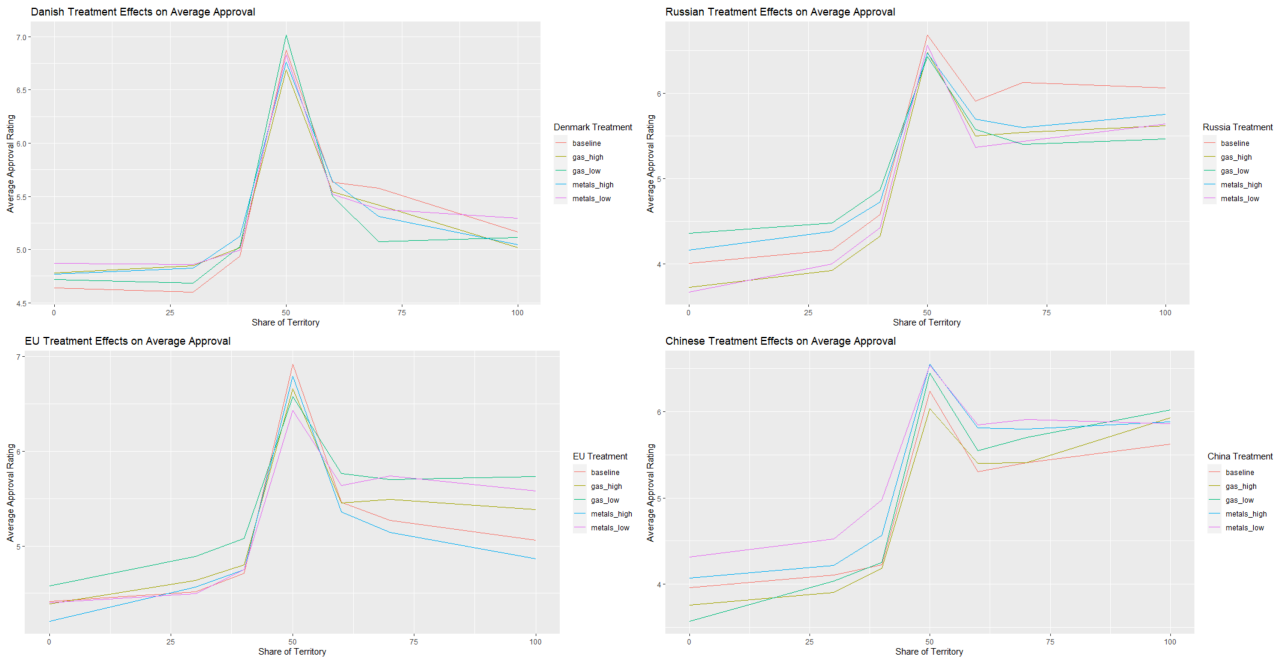


are responsive to popular preferences or hold those same preferences themselves. There are reasons to believe that both are often the case. As Stein (2015) argues, the predispositions of publics influence what is politically salient and therefore what elite calls to action will resonate. In addition, leaders usually come from the societies they head and are products of them and as a result there is reason to believe they think in similar ways. To understand how conflict behavior may therefore be influenced by cultural difference, this research treats these popular preferences measured above as a measure state preferences. The question we can now turn to is how these cultural attitudes shape international crisis bargaining preferences.

In both the United States and Egypt, this research also finds that, in general, individual cultural attitudes partially explain crisis bargaining preferences for equal settlements and willingness to comprise regardless of the adversary in the dispute. Overall, American respondents did not significantly differ in their preferences regardless of whether or not the

adversary was Russia, China, the European Union or Denmark.[28] A similar phenomenon can be observed in Egypt, although when a dispute involves Israel there appear to be somewhat different bargaining preferences that emerge when compared to disputes involving countries such as Libya, Turkey, and Greece.[29] In addition, the findings from the United States also indicate that these preferences for fairness are generally not explained by the type or value of the resource at the center of the dispute.

Figure 2.4: Culture, Bargaining Preferences, and Resources



Taken together, these results support the *bargaining hypothesis*. Regardless of the adversary, traditional explanations of crisis bargaining preferences such as the balance of military power, the historical status quo, and resource value do not fully explain the cross-national variation in crisis bargaining preferences. Yet, it appears that certain cultural attitudes may be significantly linked to crisis bargaining preferences.

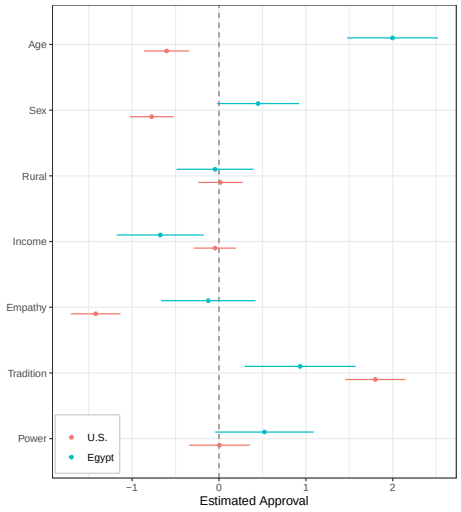
[28] See Figure 4.6 for more information.
[29] See Figure 4.8 in Appendix Section 4.1 for more information.

2.5 Cultural Attitudes and International Crisis Bargaining Preferences

In both Egypt and the United States, individual cultural attitudes may be strongly indicative of crisis bargaining preferences. This Chapter demonstrates that empathetic and traditional attitudes are strong predictors of preferences for 50/50 settlements and general willingness to compromise. This research measures willingness to compromise as the difference in approval between a 100% share of the disputed good and a 50% share of the disputed good. Consistent with the *culture hypothesis* it also seems that those respondents with more traditional and less empathetic cultural attitudes were significantly less willing to compromise than those respondents with less traditional and more empathetic cultural attitudes. These findings are presented in Figure 2.5 in which one's willingness to compromise is regressed – one of the two main dependent variables – upon three principal factors of cultural attitudes while controlling for age, sex, geography, and income. With respect to Egypt, traditional attitudes seem to be significantly linked to an individual's willingness to compromise in an international bargaining crisis. Individuals who support traditional gender roles, have strong national pride, believe strongly in familial loyalties, and believe certain actions are wrong because they consider them to be disgusting, are significantly less willing to compromise in a bargaining crisis. More specifically individuals with these traditional attitudes approve of a settlement in which Egypt receives all of the disputed good much more than a settlement in which it receives half. In similar fashion to Egypt, in the United Stats it seems that individuals with more traditional cultural attitudes such as support for traditional gender roles, strong feelings of national pride, strong beliefs in familial loyalty, and beliefs that certain actions are wrong because they are disgusting, also are significantly less willing to compromise. Further, those that hold more empathetic cultural attitudes with respect to suffering, justice, protecting the defenseless, and fairness were also significantly more willing to compromise in crisis bargaining situations. With respect to Egypt, there does

not appear to be any significant relationship between empathetic cultural attitudes and one's willingness to compromise. In addition, although only marginally significant, those individuals in Egypt – unlike in the U.S. – with more power oriented cultural attitudes were less willing to compromise.

Figure 2.5: Culture and Willingness To Compromise

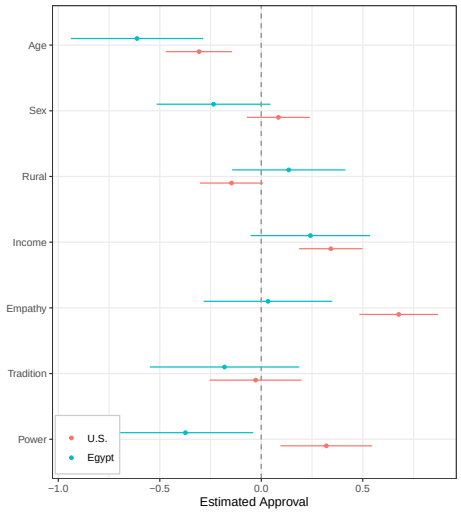


Note: Confidence intervals are at the 95% level and all models use "HC2" robust standard errors.

When examining preferences for fair settlements (50-50 splits) – which this research treats as somewhat different but closely related to one's willingness to compromise – it ssems that in the U.S. those with empathetic and power-oriented are significantly more willing to approve of a fair settlement, while in Egypt only individuals that have power-oriented attitudes are signifciantly less willing to approve of a fair settlement. These findings are presented in Figure 2.6 where preferences for fair settlements are regressed – the second of the two main dependent variables – upon the three principal factors of cultural attitudes while controlling for age, sex, geography, and income.

Further, this Chapter also finds that generally speaking those with more traditional and power-oriented individual cultural attitudes are still significantly less willing to compromise regardless of the adversary involved in the dispute. In the U.S. – across all adversaries – individuals who held less traditional cultural attitudes were significantly more willing to com-

Figure 2.6: Culture and Bargaining Preferences for Fairness



Note: Confidence intervals are at the 95% level and all models use "HC2" robust standard errors.

promise.[30] While those that had more empathetic culutural attitudes were significantly less willing to compromise regardless of the adversary.[31] In Egypt one can observe a somewhat similar pattern to that of the U.S. when it comes to the relationship between traditional and power-oriented attitudes and one's willingness to compromise.[32] Unlike the U.S., in the case of a dispute involving Israel it appears that those with more empathetic cultural attitudes are significantly less willing to compromise.[33] Lastly, while the impacts of traditional cultural attitudes on bargaining preferences in Egypt related to Turkey are on the margin of significance, they reflect a similar direction to that of preferences involving either Greece or Libya when it comes to the impact of traditional or power-oriented attitudes on one's willingness to compromise.

While these findings are consistent with the *culture hypothesis*, this research also finds that cohort effects related to age and sex also have a marginal impact on one's willingness

[30] In other words, respondents were significantly less approving of a settlement in which the U.S. recieved a 100% share compared to a 50% share.

[31] See Figure 4.6 in Appendix Section 4.1 for more information.

[32] See Figure 4.8 in Appendix Section 4.1 for more information.

[33] As indicated in Figure 4.7 in Appendix Section 4.1, this may be a result of Egyptian respondents uniquely ever-increasing approval of settlements in which they receive more territory than Israel.

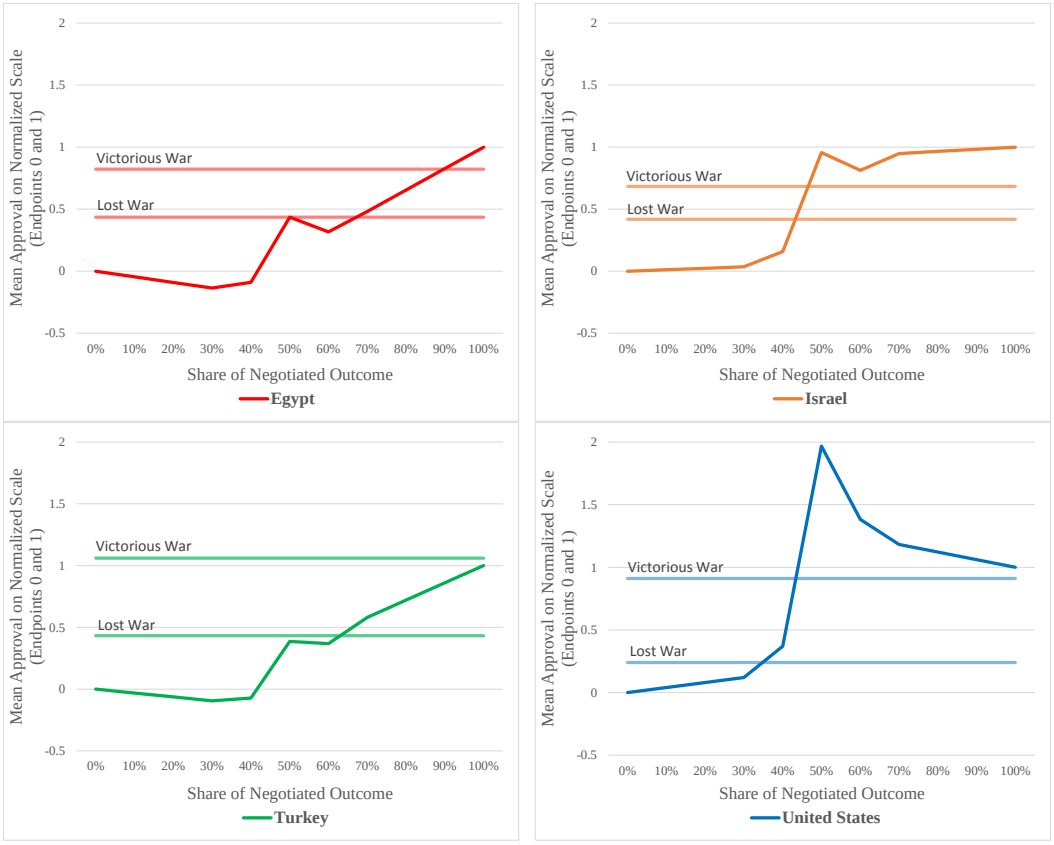
to compromise in both Egypt and the US even after accounting for attitudes related to empathy, tradition, and power. However, the direction of these effects seem to be different in the U.S. than they are in Egypt. In Egypt, age appears to be a significant indicator of one's lack of willingness to compromise compared to those with in the U.S. where the effect is the opposite. While the magnitude of the effect is smaller than the effect of age, when it comes to sex an almost identitical pattern can be seen. When examining preferences for fair settlements (50-50 splits), which this research treats as somewhat different but related to one's willingness to compromise, age appears to be a significant indicator of one's lack of preferences for fair settlements in both countries

Overall, these results show that factors like military power, the status quo, differences between adervsaries or differing historical experiences between adversaries, do not fully explain cross-national variation in bargaining preferences. These findings demonstrate that individual cultural attitudes do in fact explain cross-national variation in crisis bargaining preferences in ways not fully explained by alternative explanations. In general, this analysis finds that across both the U.S. and Egypt, traditional cultural attitudes are associated with significantly less desires to compromise in a crisis bargaining situation. However, it also appears that when it comes to preferences for equal settlements, only those in the U.S. that held more empathetic cultural attitudes were significantly more willing to comprise. Together, these findings offer suggestive evidence that underlying cultural attitudes may explain the drastically different crisis bargaining preferences in Egypt, the United States, and potentially numerous other countries like Turkey and Israel. While Israel serves as a unique case, the fact these findings do not generally appear to change regardless of who the adversary in the dispute is also suggests that the relationship between cultural attitudes and bargaining preferences is robust in nature.

Ultimately, these differing cross-national bargaining preferences have huge implications for conflict onset. In particular, they may influence the onset of two very specific kinds of wars: Sought Wars, which occur when there is no negotiated solution that both sides prefer

to conflict, and Inadvertent Wars which occur when both sides would prefer a compromise but war occurs as a result of bargaining dynamics. Fearon (1995) shows that Sought Wars never occur when states are assumed to be risk averse and prefer ever more of disputed goods. Equating popular and state preferences, however, these assumptions are violated in this data, and thus it is useful to ask when this makes war more likely.[34] Inadvertent Wars occur because, as Fearon (1995) argues, it is in their interests for states to risk war in pursuit of gain. Which combinations of states are likely to fight both types of wars and under what conditions?

Figure 2.7: Culture and Bargaining Preferences in the U.S.



These findings suggest that an understanding of the underlying cross-national differences in cultural attitudes may be key to answering such a question. As shown in Figure 2.7 – which

[34]For statistical analysis of these assumptions on a related dataset, see Gottfried and Trager (2016). Related tests on the data analyzed here show that the traditional rationalist assumptions of concavity and non-satiation do not hold.

plots mean settlement approval alongside approval for winning and losing a conflict in four different countries – the impact of differences in cultural attitudes on appetites for conflict and compromise is made even more apparent. States with individual cultural attitudes similar to the United States seem unwilling to support the sort of conflict that may emerge as a result of an international dispute than those states with different individual cultural attitudes.[35]

2.6 Conclusion

Further research on how cultural attitudes impact crisis bargaining situations would be an important addition to a growing literature individual characteristics – among both leaders and members of the public – and international relations outcomes. Some scholars shy from the analysis of cultural difference given the inherent difficulties in defining and measuring cultural attitudes in a cross-national fashion. Rationalist approaches comfortably avoid the issue by bracketing non-material sources of preference differences. Even constructivists sometimes theorize the influence of identity rather than examine how contemporary identities differ. Attempts to collect systematic cross national data on the values and preferences that relate to international conflict are rarer still. But differences in cultural attitudes appear to influence leader incentives for war and peace profoundly, in ways that may dwarf other more commonly analyzed sources of state actions. Such attitudes and incentives could potentially also partially explain the Russian Federation's recent invasion of Ukraine that many at the time had considered to be unlikely and counter to its national interest.

Overall, as was shown in Chapter 1 and this Chapter, the post-World War II international system as a whole faces – whether it be on the battlefield or in international organizations such as the ECHR – an unprecedented set of challanges. While this dissertation has explored how these challanges from increasingly influentual authroitarian states may or may not alter

[35]See the *World Values Survey* databases for more information on cross-national variation in cultural attitudes.

the "traditional" international order, what is clear is that domestic politics will continue to play an important role.

3

The Growing Role of Russian Autocracy in the International System

3.1 Introduction

As discussed in Chapters 1 and 2, the growing role of autocratic regimes in the post-World War II international system has driven substantial change with respect to interstate relations. Particularly in the context of international law, Ginsburg (2020) highlighted much of this changing dynamic as a result of increasing participation among authoritarian states in international organizations in recent years. In its totality, this dissertation has built upon Ginsburg (2020) by examining just how various domestic institutions in authoritarian regimes have "re-tool[ed] the machinery of international law to suit their own needs," particularly in international bodies that have acted as cornerstones of the post-1945 system such as the European Court of Human Rights (ECHR). The findings from Chapter 1 demonstrated how autocratic states such as Russia have used domestic politics – in this case the judiciary – to circumvent or undermine the ECHR's legitimacy and authority in the hopes to reshaping traditional international norms that had been counter to autocratic regime's interest. The findings from Chapter 2 also demonstrate how domestic politics in the form

of differing public preferences toward crisis bargaining in democracies and autocracies could potentially help explain the recent emergence of significant interstate conflict in an international system that for the most part had been devoid of such wars since 1945. This final Chapter seeks to expand on both of these findings by providing the reader with an in-depth qualitative examination of just how domestic institutions in autocratic regimes such as the Russian Federation have altered interactions in supranational norm building organizations such as ECHR.

In particular, I employ process-tracing through a case study on the interactions between the ECHR and Russia between 2008-2016 to illuminate how – even despite the presence of significant evidence of international legal norm-establishment – domestic institutions in autocratic states such as the Russian Constitutional Court (RCC) can pose challenges to the "traditional" international order. In order to contextually orient the reader and explain why the Russian case selection is a "most likely" type in terms of expecting compliance with or deference to the ECHR, the following section of this Chapter examines the post-World War II history of the ECHR and highlights the "pilot-judgement" process this body now uses to help crystalize international human rights norms surrounding its judgements. Following that, this Chapter then examines the case-study itself and demonstrates how it reflects the importance of domestic politics in explaining the growing change autocracies are bringing to the "traditional" international order. Finally, this Chapter closes by laying a foundation for future avenues of research on other domestic political institutions in autocratic regimes – particularly in Russia – that could further explain this shifting world order being driven – at least in part – at the domestic political level.

3.2 The History of the ECHR as a Norm-Building Institution

From the establishment of the Nuremberg Trials in 1945 to the International Criminal Court (ICC) in 1998, the roles that international institutions have played in protecting human rights has changed dramatically. While bodies like the Nuremberg Trials or the International Criminal Tribunal for Yugoslavia (ICTY) had traditionally been erected in an *ad hoc* manner after incidents with vast human rights abuses, institutions like the European Court of Human Rights (ECHR) and the Inter-American Court of Human Rights (IACHR) have now become permanent fixtures of the human rights landscape (Moravcsik, 2000). In particular, the founding of these permanent international human rights courts have provided not only established formal procedures to address state sanctioned human rights violations, but also an important body of legal jurisprudence on human rights (Lupu and Voeten, 2012).

Yet, the ECHR sits as a unique organization within the realm of international human rights for a number of reasons. In particular, the court's origins within a broader "European experiment" – aimed at preventing a recurrence of the atrocities of World War II – allowed it to evolve into one of the world's first standing supranational human rights institutions. At the close of World War II, the main focus of these efforts by European States to promote and maintain closer political unions in the context of human rights centered around the United Nation's Universal Declaration of Human Rights (UDHR). This landmark international human rights treaty, which was adopted by the United Nations General Assembly in 1948, served as key instrument in codifying human rights related to liberty, life, peaceful assembly, and numerous others on a near global scale.[1] However, despite its historic place as one of the first human rights treaties of its kind, the UDHR still lacked any means to enforce the human rights protections it codified. In an effort to build such enforcement mechanisms and

[1]UNGA Resolution 217 A (III) of December 10, 1948 in Paris, France. Of the 58 UNGA members at the time, 48 countries voted in favor of the UDHR and 8 abstained. Those 8 abstaining countries were made up mostly of the Soviet Union and its allies.

create a legally binding international human rights treaty, the attention of the UN turned toward the development of the International Covenants on Civil and Political Rights and on Social, Economic and Cultural Rights. It was through these efforts to design legally binding and enforceable human rights treaties that many in Europe began to ponder if the creation of a "regional protection system" would be a better way to establish and enforce human rights protections (Myjer and Sharpe, 2010).

Of those that felt such a regional system might be a more effective alternative to the large international treaty systems created in the UN via the UDHR and ICCPR, there were perhaps no stronger advocates than those in the "European Movement" (EMI).[2] The origins of the EMI date back to 1947 when figures such as Winston Churchill and Duncan Sandys formed the Anglo-French United European Movement (UEM) in an effort to advocate for the establishment of political, economic, and monetary unions of European nations. Along with this push for the unification of political and economic systems among European countries, the European Movement also argued for the creation of a "court with powers to control respect by States of human rights and fundamental freedoms" (Myjer and Sharpe, 2010). Some of the first formal proposals for such a court were submitted by the EMI at the Congress of Europe, held in The Hague in May of 1948. The EMI would examine these proposals again at the Congress of Brussels in February of 1949 and ultimately produce the first draft of the European Convention on Human Rights shortly after. This Convention granted protections for ten different human rights and also established "a court that, after filtering by a commission, would annul decisions and measures found to be manifestly incompatible with the principle of those rights" protected by the Convention (Myjer and Sharpe, 2010).

As EMI's efforts to foster European unification and establish the ECHR continued throughout 1949, governments across Europe had been engaged in a groundbreaking diplomatic project of their own: the Council of Europe. Shortly after the Congress of Brussels in February of 1949, this project became a reality when ten States signed the Statute of the

[2]This group was also known as European Movement International (EMI).

Council of Europe on May 5, 1949 in London. Of important significance to the efforts of the EMI and the establishment of the ECHR, the Statue of the Council of Europe stated that 'the safeguard and development of human rights and fundamental freedoms' was one of the Council of Europe's major aims (Myjer and Sharpe, 2010). Pursuant to this aim, the EMI's draft of the European Convention on Human Rights was submitted to the Committee of Ministers and – what was then known as – the Consultative Assembly of the Council of Europe (CoE) in June of 1949 for review.[3] The efforts of the EMI were met with strong opposition by States in the CoE and after a debate and a presentation of the draft of the Convention it was ultimately sent back to the Consultative Assembly's Legal Committee for further review. Part of the strong opposition towards the EIM's draft and the CoE's agenda regarding human rights stemmed from their perception that the UN (via the UDHR) was already dealing with such matters. However, despite this opposition, the Consultative Assembly's Legal Committee chose to craft a list of rights to be included in the draft of the Convention that was inspired by the UN's UDHR. The Committee also saw to the inclusion of a "collective guarantee mechanism" that would allow for inter-state and – more importantly – individual complaints to be brought before a court and adjudicated along with a commission with investigatory powers. Despite opposition to the formation of a court body, the Legislative Committee's draft was adopted and then submitted to the CoE's Committee of Ministers for approval on November 5, 1949, the last day of the Consultative Assembly's session.

After a series of exchanges and debates among the Committee of Ministers and various experts reviewing the draft for the majority of 1950, on August 7 of that year, the Committee of Ministers adopted the Convention draft submitted by the Consultative Assembly with some key modifications. In particular, the Committee of Ministers version of the draft would allow only individual petitions against States that accepted the jurisdiction of the court to be brought to the proposed Commission for review. Ultimately, after another series of

[3]The Consultative Assembly is now known as the Parliamentary Assembly.

discussions among experts regarding amendments sponsored by the Consultative Assembly, on November 4, 1950 the Convention for the Protection of Human Rights and Fundamental Freedoms was signed by all member States of the CoE. The Convention came into full effect on September 3, 1953 after it's ratification by Luxembourg. The Convention became more commonly known as the Treaty of Rome and it served as the basis for the establishment of the ECHR that exists today. The original Treaty of Rome guaranteed "the right to life; the prohibition of torture or inhuman or degrading treatment or punishment; the prohibition of slavery and forced labor; the right to liberty and security; the right to a fair trial; no punishment without law; the right to respect for private and family life; freedom of thought, conscience or religion; freedom of expression; freedom of assembly and association; the right to marry; the right to an effective remedy; and the prohibition of discrimination"(Myjer and Sharpe, 2010).

Numerous other Additional Protocols were added to the Treaty of Rome since its implementation in 1953 but the Protocol No. 9 is probably one of the most influential in expanding the reach of the ECHR. In the Treaty of Rome, Article 25 – per the CoE's Committee of Minister's desires – stipulated that individuals may only bring cases against responsible state(s) directly to the European Commission of Human Rights, not directly to the European Court of Human Rights. Per Article 25, only the Commission could then refer these individual's cases to the Court for adjudication assuming the State in question had accepted the jurisdiction of the Court. Protocol No. 9 which entered into force on October 1, 1994, allowed for individuals to bypass the Commission entirely and bring their cases directly before the Court regardless of whether or not the Commission or State concerned referred it to the Court. [4]. For all intents and purposes Protocol No. 9 made the Commission a somewhat arbitrary and redundant body and ultimately led to its dissolution in a restructuring of the ECHR through the adoption of Protocol No. 11 on November 1, 1998. Today the ECHR's jurisdiction spans over 47 countries across Europe with over 800 million inhabitants and

[4]CoE Treaty Office: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/140

its jurisprudence includes thousands of rulings since 1953 (Myjer and Sharpe, 2010). Participation and acceptance of the jurisdiction of the ECHR via ratification of the European Convention of Human Rights has now become a *de facto* requirement for ascension into the Council of Europe and numerous other supranational European bodies.

3.2.1 The ECHR Since *Lawless v. Ireland*

Along with the ECHR's unique emergence as part of a broader European Movement, one of the more distinct features of the ECHR that separates it from other international human rights bodies is the extensive body of jurisprudence it has developed since its first case, *Lawless v. Ireland* in 1961. With its first case, the ECHR ruled that the authorities of the Republic of Ireland detention of Gerard Lawless – a suspected participant in activities carried out by the Irish Republican Army (IRA) – without trial from July 13 to December 11, 1957 was not a violation of the European Convention on Human Rights.[5] *Lawless v. Ireland* was a significant landmark in the history of international human rights organizations due to the fact it was one of the first human rights cases in which an individual – not a State or international body – was able to bring a State before a supranational body for judgment. From 1961 to 1994, individuals in ECHR Member States were allowed to bring petitions against States for alleged violations of the European Convention on Human Rights before the European Commission of Human Rights which then could refer those individual petitions it found to have legal standing to the ECHR for adjudication. After the adoption of Protocol 9 and 11 – which effectively made the Commission defunct – the number of individual petitions that were sent directly to the ECHR increased almost exponentially. Between 1955 and 1998, there were only 45,000 case applications that had been allocated by the Commission to be adjudicated by the ECHR. After 1998, when the Commission became defunct, there was an exponential growth in the number of applications that were allocated for adjudication by

[5]Lawless claimed that Ireland violated Articles 5, 6 and 7 of the European Convention of Human Rights. In particular, Lawless alleged Ireland failed to provide his rights to liberty and security, a fair trial, and punished him for alleged violations of the law that did not exist.

the ECHR. In 10 of the last 22 years there were more applications for adjudication than all applications submitted between 1955 and 1998 combined.

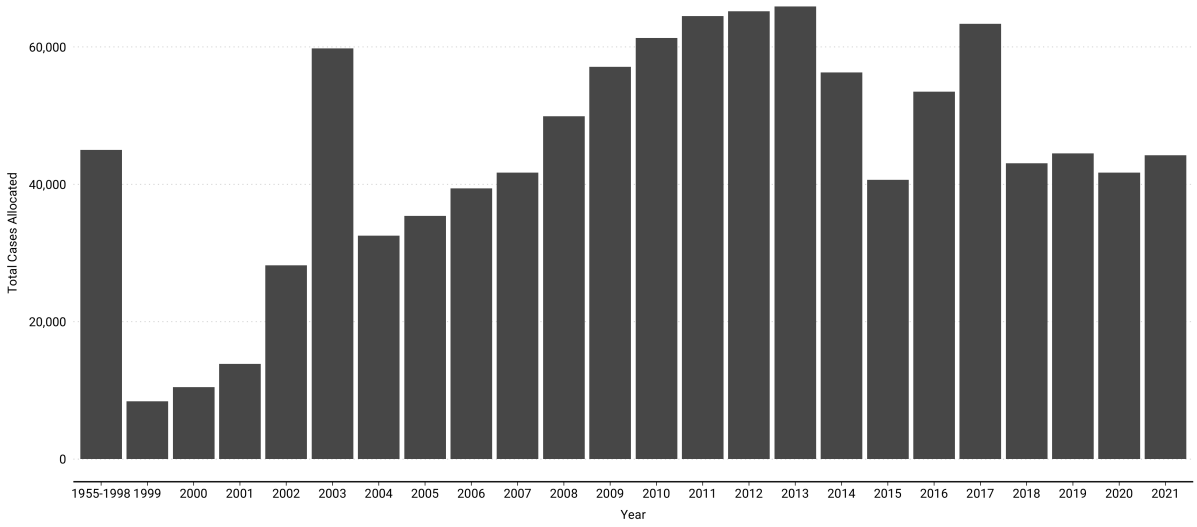


Figure 3.1: ECHR Case Allocations Over Time

While the structural changes to the ECHR via Protocol 9 and 11 explain a large part of this exponential increase in applications, the vast expansion of membership to the Council of Europe and the ECHR. Since 1990, there were 24 States – the majority of which were former Soviet-Bloc Countries – that ratified the European Convention of Human Rights and became members of the ECHR. In particular, the Russian Federation's adoption of the Convention and participation in the ECHR as a Member State, had large implications for the ECHR's increasing case load. Since its ascension to the ECHR in 1998, Russia has perennially had one of, if not the largest amount of applications filed against it in the ECHR.[6]

Since its first ruling in 1961, the ECHR has delivered judgments on over 22,476 cases.[7] The vast majority of these judgments, were delivered after 2001. In fact, in 2001 alone, the ECHR delivered more judgments than it had delivered in the first 40 years of its history. Such an exponential increase is mostly due to the expanded membership of the ECHR through

[6]For more information please see ECHR Annual Reports from 2010-2019.
[7]ECHR Annual Report, 2019.

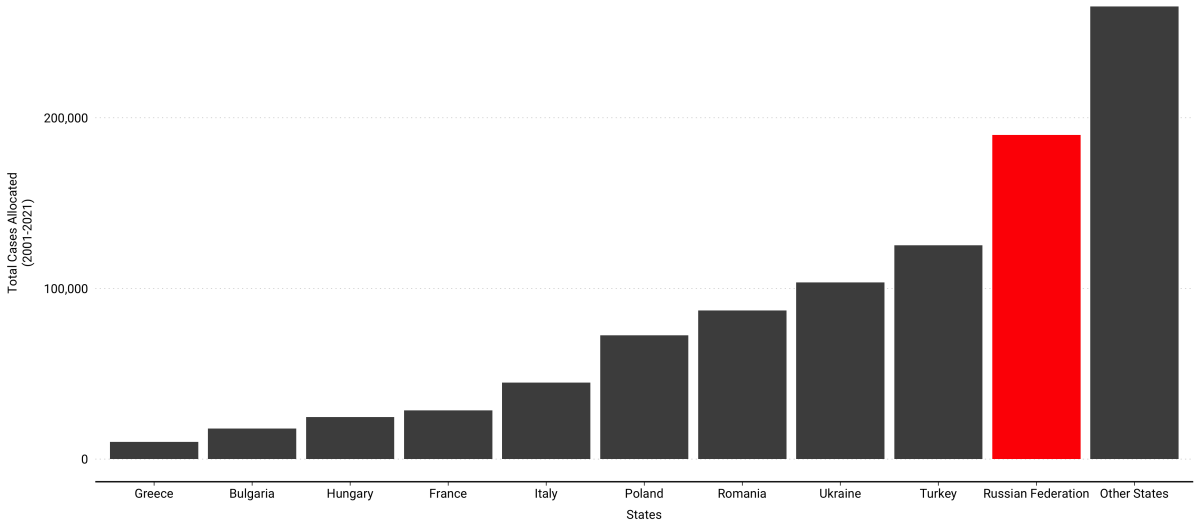


Figure 3.2: ECHR Case Allocations by Member State (2001-2021)

the 1990's and the elimination of the European Commission on Human Rights, which would previously decide which cases could be adjudicated by the ECHR.

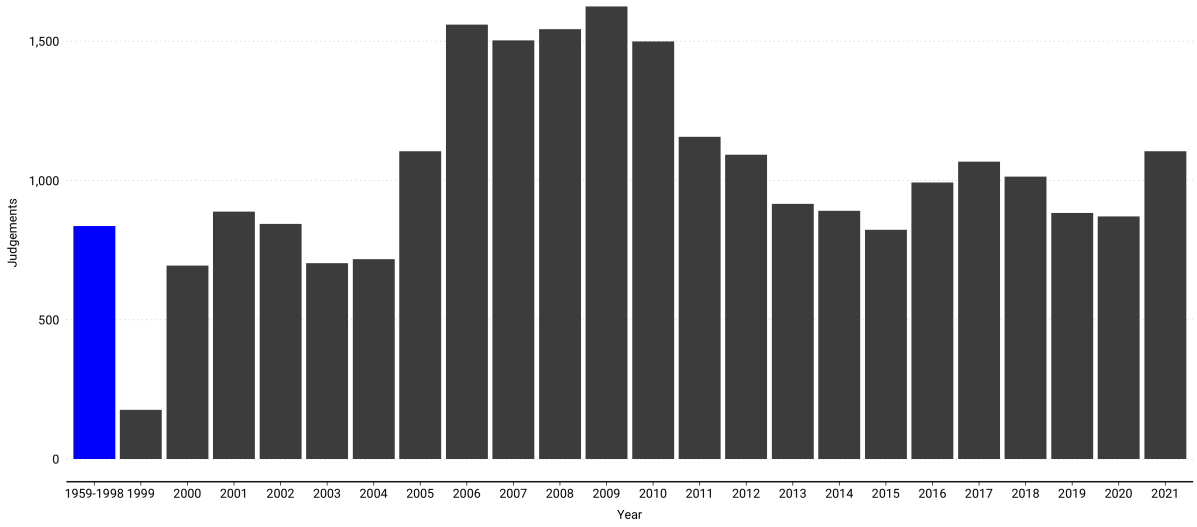


Figure 3.3: ECHR Judgements Over Time

Despite the implementations of Protocol 11, the ECHR's docket has only continued to grow. In an attempt to once again reduce the burden brought about by continued increases in applications to the ECHR and ensure the "long-term effectiveness" of the Court, Protocol 14

was developed and eventually implemented.[8] This amendment had a number of wide-ranging impacts on the ECHR, some of which included implementing new admissibility requirements, revised processes for executing judgements, and measures for dealing with repetitive cases that served as a starting point for the eventual establishment of the pilot judgement process (Paraskeva, 2003). However, it is important to note that while Protocol 14 (and later the pilot judgement process) was eventually ratified by all ECHR member states and implemented, Russia remained notably opposed to the effort to amend the existing ECHR application process at the time. Russia was not only the last member-state to ratify Protocol 14, but it took almost 4 years to do so (2006-2010) after a long series of tense exchanges between the Court and the Russian State Duma (Bowring, 2010). This dynamic interaction between international organizations – particularly the ECHR – and domestic political institutions such as the Russian State Duma is explored later in this Chapter but highlights one of the many persisting challenges posed to the "Traditional" international order by autocratic states examined throughout this dissertation. However, it is important to note that while this research focuses mostly on European international organizations and states, there are number of other global arenas in which this same *tête-à-tête* has been occurring since the beginning of the 21st Century.

3.2.2 The ECHR's Impact on International Human Rights Institutions

The ECHR's structure served as a model for numerous influential international human rights courts around the world. In particular, the development of bodies such as the African Court on Human and Peoples' Rights (AFCHPR) and Inter-American Court of Human Rights (IACHR) were acutely influenced by the ECHR. As Paolo Carozza, a former President of the IACHR from 2008-2009 put it: "Some of the most evident [influences] have had to do with the structural aspects of the Inter-American Human Rights system. For instance, the

[8] See the following U.K. Ministerial Report for more information.

Inter-American Commission – although originally established by resolution of the General Assembly of the Organization of American States and not by treaty – was consciously inspired by and modeled after the now-defunct European Commission, even if in the subsequent years it evolved to acquire its own distinctive mandates and methods. Similarly, in the drafting of the American Convention on Human Rights in 1967, the Inter-American Juridical Committee fashioned their proposed structures and procedures for the Inter-American institutions in large part on the model of the American Convention's elder sister in Europe."

With respect to the AFCHPR, the historical experiences of the ECHR have acted as a road-map for institutional development. For example, during the formation of the AFCHPR, officials from the East African Court of Justice (EACJ) insisted that the physical location of the AFCHPR be in a separate wing of the East African Community building where the EACJ resided. This insistence was, in part, fueled by the efforts of key historical figures in the European human rights landscape to ensure that the ECHR was viewed as institution completely independent from other legal or political entities (De Silva, 2018). In 1995, this effort was eventually realized with the construction of the ECHR's permanent home in Strasbourg, France. At the time, Czech President Vaclav Havel, a well-known human rights advocate, hoped that the construction of such a permanent residence for the ECHR would quickly become a "concrete symbol of our shared values that are driving European integration." In similar fashion, then President of the ECHR, Rolv Ryssdal, stated that the architecture of the building itself was purposefully designed to seem "open to the outside world, transparent and welcoming" to all (De Silva, 2018). This "open" physical design was, in many ways, meant to symbolize the ECHR's historic decision to allow for individuals to bring their petitions directly to an international human rights body. The President of the AFCHPR, Justice Sylvain Ore, has lobbied African member states to construct a similar permanent home to that of the ECHR, stating that "Africa as a continent needs a home for its Court. It will be a shame to continue operating without one. Since other continents like Europe have one, why not Africa?" (De Silva, 2018). The historical development of the

ECHR within the broader regional political institutions of the CoE and EU, is yet another informative point of comparison for those involved in the continued evolution of the AFCHPR (Murray, 2002).

In addition to the ECHR's role as a structural model for other human rights courts, the extensive "borrowing and cross-fertilization" – as IACHR President Carozza called it – between other regional human rights systems and the ECHR is another important example of the unique and continuing impact the ECHR has on human rights around the world.(Myjer and Sharpe, 2010) These influential exchanges between the ECHR and other international bodies are mostly a result of the vast legal jurisprudence established by the Court since *Lawless v. Ireland* and personal relationships between individuals in the ECHR and other human rights institutions. In recent years, exchanges between the ECHR and IACHR have come in the form of official visits by judges and staff, videoconferences, and even references to each other's case-law in court decisions (IACHR, 2015). The 2014 IACHR decision on *Liakt Ali Alibux v. Suriname* typifies the increasingly more common legal cross-fertilization across international human rights bodies like the ECHR and IACHR. In *Liakt Ali Alibux v. Suriname* the IACHR examined the details of *Del Rio Prada v. Spain* – an ECHR case from 2012 – and its relevance to the prosecution of former Minister of Finances and Minister of Natural Resources from 1996 to 2000 (IACHR, 2015). Although the ECHR is the elder of the two institutions, this interaction between IACHR and ECHR case law is hardly unidirectional. ECHR cases such as *Margus v. Croatia* are among a growing number of instances in which case law from international human rights bodies like the IACHR are influencing judgments in the ECHR. As Erik Fribergh and Pablo Alessandri, registrars of the ECHR and IACHR respectively, state in their work on exchanges between these courts, "the similarity of the rights and freedoms protected by the respective treaties governing the work of the two courts, the existence of equivalent criteria for admissibility and principles of interpretation [and] the increasing similarity of issues brought before the two courts has conferred a new relevance on their respective bodies of case-law" (IACHR, 2015).

However, while the ECHR has often had a supportive and constructive impact on a number of international human rights institutions, it has also served as a source of conflict. With respect to European Courts, the ECHR and the ICJ have previously had differing legal interpretations regarding the rights to private and family life as outlined in Article 8 of the European Convention on Human Rights.(Rincón-Eizaga, 2008). Article 8 defines these rights as follows: "Everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others" (of Europe, 1950). While the rights provided by Article 8 are not absolute, they have become increasingly important in cases involving businesses and anti-trust law cases at the ECHR. Nonetheless, the European Court of Justice (ECJ) established the complete opposite in its ruling on *Hoescht AG v. Commission (1989)*. More specifically, the ECJ took the narrow view that Article 8 was only "concerned with the development of man's personal freedom and may not therefore be extended to business premises" (Rincón-Eizaga, 2008). While case law in the ECHR had not yet existed on the matter at the time of the ECJ's decision, six months later the ECHR clearly outlined its contradictory position in *Chappell v. The United Kingdom*.

In addition to the ECJ, the International Criminal Court (ICC) is yet another international legal institution that has had differing views on human rights law than that of the ECHR. Of particular importance is the ECHR's judgement in the case of *Djokaba Lambi Longa v. The Netherlands*, which serves as a sign-post of the Court's differing views on jurisdiction and admissibility. Those such as Irving (2014), feel that the ECHR has set the standards for jurisdiction to be too high through its case law, and as a result, have made their criteria for admissibility to be much more stringent than that of the ICC. However, other international bodies, like the International Court of Justice (ICJ), may not necessarily

conflict with the ECHR but they do not generally reference or comment on case law set in the ECHR or other regional human rights bodies. In fact, the ECHR itself does not typically reference the case law of other international courts even though it has a reputation for being a "transnationalist" institution (Voeten, 2010). In short, the ECHR does not operate in a vacuum, it sits in a human rights landscape the is diverse in procedure, case law, and jurisdictions. In some instances, it has served as a role model and in others it has been put in contradictory positions, but there can be no doubt that its existence has had a significant impact on international human rights bodies around the world.

3.2.3 Interactions Between the ECHR and Domestic Judiciaries

While the ECHR's impacts on other international human rights bodies is clear, its impacts on domestic judiciaries across its member states are less so. Those such as Helfer and Voeten (2014) demonstrate that ECHR judgments greatly alter the probability of national level policy changes across all member-states.[9] In particular, Allee and Huth (2006) argue that state leaders often strategically use international legal rulings from international bodies like the ECHR to shift blame away from themselves for costly domestic policies or concessions allowing them to pursue their controversial agendas. Others like Mälksoo (2016) show that states like Russia have also used their domestic judicial systems to prevent similar policy changes ordered by the ECHR from being adopted. Nonetheless, one of the understudied ways in which the ECHR can also influence domestic judiciaries is through information sharing and legal exchanges. One of the primary ways information sharing now occurs in the ECHR is through the Superior Court Network (SCN), which is an intranet system whose "operational objective is to create a practical and useful means of exchanging relevant information on Convention case-law and related matters."[10] For example, as the COVID-19 Pandemic unfolded in 2020, member-courts in the SCN held multiple webinars to discuss and provide

[9]This study focuses on issues of LGBT rights.
[10]European Court of Human Rights, "Superior Courts Network".

guidance on how to adapt judicial proceedings to meet challenges by the Pandemic and assess their potential impacts on the right to a fair trial.[11] The importance of this tool and its continuing integration into the fabric of judicial decision making in member-state superior courts was also highlighted by former Court President, Robert Spano, who referred to the informational exchanges between Strasbourg and member-state judiciaries as the “bedrock" of the European Convention system.[12] With respect to dialogue between the Court and national judicial systems that occurs outside the context of the SCN, the informal informational exchanges among members of the Court (ECHR) and their home-country judicial officials are also notable. In particular, the reputation of Anatoly Kovler as an “invaluable" teacher and ambassador of the ECHR to fellow legal professionals in his home country of Russia (Chernishova and Lobov, 2013). Kovler often was spotted explaining the functioning of the ECHR and the application of its case-law to members of the Russian judiciary that travelled to Strasbourg. In addition to visits paid from domestic judicial officials to Strasbourg, members such as Kovler also took care to engage in these same informational and intellectual exchanges during their trips to their home countries (Chernishova and Lobov, 2013). It is this type of interaction between the supranational Court and domestic judiciary that many – even dating back to the vision for European relations laid out by those involved in the EMI and UEM – had hoped would advance the establishment of human rights norms. However, since the turn of the century, many of the changes to the structure and procedural conduct of the ECHR have been centered on more clearly advancing the establishment of legal norms enshrined by the European Convention on Human Rights.

[11] Please see the following Report for more information.
[12] Please see the following Report for more information.

3.2.4 International Norms Establishment via ECHR Pilot Judgements

Ultimately the ECHR's growing body of case-law and legal jurisprudence over the past twenty years has acted as a – among many others – signal of legal crystallization of international human rights norms that even domestic judicial bodies in autocratic states like Russia, can employ as a resource to address human rights cases that reach their dockets. In general, the ECHR's role as an international legal "norm-establishing" institution can serve as both a shield or a sword for judges in domestic courts that have little independence from the state. For those judges that wish to advance or support human rights and victims of abuses, the fact that an international court body with over 10,000 judgments on human rights cases across Europe – including ones from their own country – provides them with ample materials to reference as support for their decisions provides them with both legal credibility and reputational insurance. Although determining which parts of ECHR case law domestic judges will choose to implicitly incorporate into their own domestic decisions – and under what conditions – is difficult, there are unique cases called "Pilot Judgements," that may act as sign posts for how the ECHR will rule on certain subsets of human rights cases. In essence, the pilot judgement process in the ECHR can, in many ways, be compared to class-action process that is a common feature of the U.S. legal system (Chernishova and Lobov, 2013).

In the ECHR there is no codified "class certification" process of cases but in general the cases that fall under the purview of a pilot judgement are determined by the court in an ad hoc manner based on the facts of the case.[13] The major difference between a standard ECHR judgement and a pilot judgement is that the latter not only addresses the individual facts of a specific case, but it also analyzes various systematic problems in the respondent state that have led to many cases of the same type reaching the purview of the ECHR

[13]The standards for cases to be considered similar in the ECHR are lower than those in the U.S. certification system. For example, in the case of *Broniowski v. Poland* any cases related to "former owners of property abandoned when the new Polish Border was moved to the west of the Bug River" qualified as cases that could be resolved under the pilot judgement process (Chernishova and Lobov, 2013).

(Chernishova and Lobov, 2013). The conclusions of a pilot judgement may apply to similar pending cases at the ECHR and even cases that have yet to reach the jurisdiction of the ECHR. The first of these pilot judgements was *Broniowski v. Poland* in 2004 and focused on compensatory payments to Polish citizens that had lost property after World War II (Chernishova and Lobov, 2013). Since 2004, the ECHR has released dozens of these pilot judgements and many have been implemented into domestic law by State Parties to the ECHR. With respect to Russia, some of the more well-known pilot judgements are *Fadeyava v. Russia*, which dealt with industrial pollution, and *Others v. Russia*, which concerned the use of narcotic gas during certain military operations, have been used by the ECHR to quickly resolve dozens – if not hundreds – of similar cases that had been overloading the court's docket.[14]

Given the important significance of these pilot judgements as signals of norm-establishment, following their release one might reasonably expect that domestic judiciaries' approach to cases concerning similar alleged human rights violations would be more likely to be than they would be consistent/in agreement with the previous pilot judgement ruling.[15] In essence, following the issuance of a pilot judgement against a state such as Russia, domestic court judges in Russia would likely be more willing to rule in favor of plaintiffs in similar cases than they would be before the release of the pilot judgement.[16] For example, one would expect that after the release of a pilot judgement such as *Frumkin v. Russia* on May 1, 2016 that dealt with rights to assembly, that there might be an increase in the number of cases related to alleged violations of the right to assembly – which in the case of the Criminal Code of the Russian Federation these would be cases regarding Article 149 (УК РФ Статья 149) –

[14] In *Others v. Russia* over 120 hostages were killed after the use of narcotic gas by Russian security services in an anti-terrorism operation.

[15] In Russia, one must receive a domestic judgement from a second instance court – these are generally regional or district courts – in order to exhaust all domestic remedies to obtain just satisfaction from the State for alleged human rights violations, a key criteria for obtaining standing at the ECHR (Chernishova and Lobov, 2013).

[16] *Frumkin v. Russia* dealt with Russian authorities' failure to communicate with the leaders of a protest demonstration in order to ensure peaceful conduct. The plaintiff in the case was arrested on May 6, 2012 during a political rally at Bolotnaya Square in Moscow, then was detained for a period of 36 hours and subsequently sentenced to fifteen days' administrative detention for failing to abide by police orders.

filed in the domestic court system that plaintiffs would win than there would be prior to the pilot judgement.

Overall, this research argues that ECHR pilot judgements should likely have notable impacts on domestic judicial bodies in Russia for a few reasons. Firstly, Russian courts, particularly the Russian Constitutional Court, have had extensive interactions with the ECHR ranging from legal educational exchanges to implementation of ECHR case law in to domestic law. The extensive exchanges in case law between the Russian Constitutional Court and the ECHR since 1998 have demonstrated to Russian judges and lawyers alike that the judgements from the ECHR may – and often times do – have some impact on domestic law and by extension themselves. In addition, the role that some ambassadors of the ECHR, particularly judges like Anatoly Kovler, in introducing ECHR procedures and case law to Russian judges, magistrates, jurists, and lawyers has helped to garner attention and knowledge of the ECHR's potential positions on domestic human rights cases (Chernishova and Lobov, 2013). It is this awareness of the impacts of ECHR case law on Russian law as well as the existence of the ECHR case law itself that provides domestic judges and lawyers alike with the capacity to realize when certain domestic human rights cases may be more likely to be won at the ECHR and when they may be less likely to be won.

Secondly, given these informational exchanges that occur between the ECHR and the Russian legal system, I assume that Russian judges and lawyers are aware of numerous ECHR procedures, in particular the pilot judgement process. As a result of this knowledge, the nature of the pilot judgement process itself acts as a signal to potential plaintiffs or their lawyers that the criteria needed to receive a favorable judgement at the ECHR may be less strenuous than before the pilot judgement. Given the fact that pilot judgements in general do not yet have a clear codified class certification process and are designed to apply to a wide swath of potential current or future cases, applicant's legal representatives – assuming their clients' cases are even remotely similar to the issue addressed in the original pilot judgement – would likely be more incentivized to bring a case forward to the ECHR more so than they

would in the absence of such a pilot judgement. Such was the case with *Ananyev and Others v. Russia* where the ECHR addressed the systemic issue of remand prison overcrowding (Chernishova and Lobov, 2013). While this particular pilot judgement did not apply to every single prison in every area of Russia, the criteria laid out to determine whether or not a certain case was eligible to be resolved under the pilot judgement process were quite vague and applied to a wide range of Russian prisons (Chernishova and Lobov, 2013). It is this somewhat ambiguous set of criteria for class certification, as well as Russian lawyers and plaintiffs' knowledge of this ambiguity in the pilot judgement process, that drives a potential increase in the number of certain domestic human rights cases being filed in Russian courts as a first step in the process to take their cases to the ECHR should they not receive just satisfaction from the State.

Lastly, given the wide number of cases against the Respondent State – in this case, Russia – that are needed to form a pilot judgement, the process itself acts as a shadow of the future that indicates to domestic judges that international norms regarding certain human rights practices are in the process of being "crystalized" and that addressing the systemic matters discussed in the pilot judgements that the ECHR releases will likely be necessary either judicially or legislatively. Knowing that potential changes to the law stemming from either international pressure to obey crystalizing norms or others in the judiciary that are more amenable to following ECHR jurisprudence from the outset compared to an average member of the judiciary, other domestic judges may be more inclined to rule in the favor of plaintiffs that are alleged victims of the systematic issues addressed following a pilot judgement than they would have been absent such a judgement. It is through these two theoretical mechanisms that the impact of the ECHR – specifically via the pilot judgement process – may be felt at the domestic level with respect to improving human rights outcomes. As a result, I seek to answer the following: Does the issuance of a pilot judgement by the ECHR signify a crystallization of international legal norms (as measured by the case flow or distributions of similar cases in the pilot judgement but from other countries) and if so, how

does such a signal influence human rights outcomes (with respect to Russian Constitutional Court Cases on similar issues).

3.3 Russian Courts and the ECHR – A Case Study

Among the more than 240 pilot judgements between 2004 and 2022, Russia has been listed as the respondent state in 53 of these judgements, followed by Turkey (35) and Poland (32).[17] As discussed above, these pilot judgements are designed to address underlying "systematic problem[s]" in a member-state and are much more impactful than ordinary judgements member-state's might be responding to (Chernishova and Lobov, 2013). In some cases, pilot judgements may impact individuals with similar pending cases and even those who have yet to bring a case to the ECHR. With respect to Russia specifically, the ECHR has identified quite a number of these "systemic" issues and as a result provides us with a sizable pool through which to qualitatively examine the ways in which the ECHR and domestic institutions in autocratic regimes interact. One of the more illuminating cases that highlights the challenges domestic judiciaries can pose for international courts comes in the form of *Burdov v. Russia No. 2*.

The applicant, Anatoliy Tikhonovich Burdov, was a serviceman in the Soviet Army who was ordered to assist in the "liquidation" of the Chernobyl Nuclear Reactor disaster of 1986.[18] The disaster remains the only commercial nuclear power incident in history where radiation-related fatalities occurred and ultimately led to the evacuation of more than 220,000 people from Pripyat, Ukraine and surrounding areas.[19] During Burdov's time as a liquidator between October 1, 1986 and January 11, 1987 he was exposed to "extensive" radioactive emission and suffered detrimental health effects as a result of his efforts to mitigate the threat

[17]These figures were obtained using the ECHR's HUDOC database of Judgements containing the text "Pilot Judgement" in English

[18]Those that participated in the liquidation effort were colloquially referred to as "liquidators". Between 1986 and 1987 about 200,000 liquidators came to Chernobyl from all over the Soviet Union to assist in the recovery and clean-up effort. Please see the following World Nuclear Association report for more information.

[19]Please see the following World Nuclear Association report for more information.

posed by the reactor meltdown. Almost a decade after Burdov left Chernobyl, he brought a case against the Russian Social Security Service in 1997 because he had yet to receive the compensation (8,752.85 RUB) entitled to him for his actions in the liquidation effort.[20] While Burdov received some compensation from the Social Security Service, it was well below what he should have been provided by law. In March of 2000, Burdov formally filed an application with the ECHR to help resolve the issue and obtain his rightfully deserved entitlement.

Despite the ECHR ruling in Burdov's favor in 2002, he did not receive his full compensation as ordered by the ECHR, which eventually led him to file a second petition with the ECHR in 2004.[21] The case (*Burdov v. Russia No. 2*), which was a highly contentious one for the ECHR, was the first pilot judgement issued by the Court against Russia and dealt with non-enforcement of ordered judgements from Russian courts and the ECHR itself (Bowring, 2010). The ECHR then ordered that Russia must "set up within six months ... an effective domestic remedy or combination of such remedies which secures adequate and sufficient redress for non-enforcement or delayed enforcement of domestic judgements in line with the [European] Convention principles." and to provide the applicant the ordered redress.[22] The pilot judgement ultimately led to approximately 5,000 other individuals impacted by the 1986 catastrophe in Chernobyl to obtain restitution from the Russian government and also precipitated a wide range of legal changes to the Russian judicial system between 2005 and 2011 that dealt with the pervasive non-enforcement of court judgments.[23]

At the time of the case Anatoly Kovler, a then long-time Russian Judge at the ECHR had lamented that Russia was a "front-runner" in terms of its inability to execute judgements of the ECHR.[24] Kovler even went so far as to say that the pilot judgement was the ECHR's "reply for Russia's failure to ratify Protocol No. 14" which served as the basis through which the pilot judgement process emerged (Bowring, 2010).[25] However, the Russian government

[20] Please see *Burdov v. Russia* for more information.
[21] *Burdov v. Russia No. 2*.
[22] Please see *Burdov v. Russia (No. 2)* for more information.
[23] Please see the following report for more information.
[24] Please see the following article for more information.
[25] At the time Russia had yet to ratify the Protocol and was the only remaining member-state yet to do

which was represented by the then Russian Minister of Justice, Aleksandr Konovalov, was in fact so displeased with the ECHR that they publicly raised doubts about the "fairness and complete objectivity of the Court," calling the *Burdov v. Russia No. 2* decision and other cases against Russia such as *OAO Neftyanaya Yukos v. Russia* – which had been ruled as admissible to the Court – as "incomprehensible for Russia."[26] This adversarial *tête-à-tête* between the ECHR and Russia in the wake of *Burdov v. Russia No. 2* came to exemplify much of the interactions between the two entities following the release of the pilot judgement in 2009.

However, even though *Burdov v. Russia No. 2* acted as an important signal of the ECHR's willingness to counter "problematic" member-states like Russia, it was their judgement against Russia in *OAO Neftyanaya Yukos v. Russia* in July of 2014 that ultimately pitted the two entities into outright conflict. Yukos – which was a former state-owned oil company that eventually became a private entity – was one of the largest and profitable oil firms in Russia during the early 2000's.[27] Then, in July of 2003 Russian authorities began raiding Yukos properties and in October of that same year the then owner of Yukos, Mikhail Khodorkovsky was arrested and eventually convicted of tax evasion, fraud, and embezzlement which led to a sentence of nine years in prison.[28] Although Yukos eventually disbanded in 2007 and most of its remaining assets were acquired by the Russian state-owned oil company Rosneft, a case was brought by Yukos shareholders (*OAO Neftyanaya Yukos v. Russia*) to the ECHR in an attempt to obtain restitution for their financial loses. After more than a decade since the original submission of the case, in 2014 the ECHR ordered Russia to pay approximately 2.5 billion dollars to those impacted shareholders in a landmark judgement concluding that Russia violated personal property rights guaranteed by the European Convention on Human Rights. While the financial penalty was substantial, several other factors

so.

[26] Please see the following article for more information.

[27] At one point Yukos had been pumping one in every five barrels of oil produced by Russia. Please see the following report for more information.

[28] Please see the following report for more information.

– chief among them the fact that Mikhail Khodorkovsky had often been seen as a potential political rival of President Vladimir Putin – made the judgement even more insulting to many in the Russian Federation compared to cases such as *Burdov v. Russia No. 2*.[29]

Shortly after the 2014 Yukos judgement, tensions between the Russian Federation and the ECHR reached a boiling point. In July of 2015, the Russian Constitutional Court (RCC) issued a ruling (No 21-П/2015) that asserted the law laid out in the Russian Constitution is supreme to that of the European Convention on Human Rights (and by extension the ECHR) in circumstances where the two are conflicting (Mälksoo, 2016). In addition, other domestic institutions such as the Russian Duma and Federation Council quickly gave legislative support to the ruling by amending the federal constitution to enshrine the ruling in law.[30]

This ruling and subsequent amendments to the Russian Constitution created a scenario in which a member-state of the ECHR could challenge and undermine the validity of an international norm-building supranational body supported by decades of case-law in ways that no other member had before. Between 2015 and 2022 the relationship between the ECHR and Russian Federation continued to deteriorate, ultimately ending with Russia's expulsion from the Council of Europe and by extension the ECHR following its unprovoked invasion of Ukraine in February of 2022. This period was marked by tit-for-tat actions such as a suspension of voting rights for Russia in the Parliamentary Assembly of the Council of Europe (PACE) – which has the power to elect judges for the ECHR – and calls from domestic institutions such as the Duma to simply leave the Council of Europe (which eventually happened as mentioned above albeit for somewhat different reasons).

While the impacts of such a challenge from domestic institutions like the RCC on the relationships the ECHR has with other more autocratic member-states (e.g., Turkey or Hungary) is not a preliminary focus of this research, it is certainly something that deserves further attention and examination. Although this qualitative examination of how the Russian Court

[29]Please see the following report for additional information.
[30]Please see the following report for more information.

system (particularly the RCC) interaction with the ECHR has illuminated how domestic institutions in autocratic regimes can still challenge "traditional" international organizations – even in settings where there is a strong legal norm crystalizing like it was in *Burdov v. Russia No. 2* – there are still a variety of other domestic institutions that could play a key role in challenges to the post-1945 international order.

3.4 Avenues for Future Research on Domestic Politics in Autocracies and International Relations

While this dissertation has generally focused on examining interstate relations in a shifting "traditional" international order – that at least in part is being driven by the growing influence of domestic political institutions in autocracies – there are still ample areas for further research on this topic, particularly in the human rights arena. In the following sections this Chapter highlights three separate avenues for future research that might carry forward our understanding of the impact of domestic politics in autocratic institutions – with a main focus on Russia – on international organizations such as the ECHR that have traditionally served as a key feature of the post-1945 international system. The first of these avenues deals with the impact of domestic legislatures on human rights bodies such as the ECHR, the second examines the role that sub-national (e.g., state and local) courts as opposed to national (e.g. constitutional or supreme) courts play in shaping international human rights outcomes, and the third touches on the role that the perceptions of the domestic public in autocratic states may play in impacting human rights outcomes in international institutions such as the ECHR.

3.4.1 Domestic Legislatures in Autocracies and their Impact on the International Order

As one of the three major actors that the ECHR can potentially influence, the court's impact on political representation in domestic legislatures – or conversely the impact of domestic legislatures on the ECHR – deserves further study. In particular, exploring the ways in which the ECHR shapes political discourse around human rights in autocratic states' domestic institutions such as the Russian Duma or the ways in which discourse in the entities like the Duma impacts the ECHR could lead to some important insights in terms of how the international order may continue to shift with increasing authoritarian participation in "traditional" international organizations.

Generally speaking, violating human rights as a member of the ECHR is costly both in terms of money and reputation.[31] Within the Russian context, the case of Sergei Magnitsky, a Russian accountant focusing on state anti-corruption activities, more clearly demonstrates the costs domestic political actors may be forced to pay when human rights cases reach the ECHR. In 2009, Magnitsky died during a prolonged pre-trial detention in Moscow under auspicious circumstances. Shortly after Magnitsky's death, a legal case began to work its way up to the ECHR that generated immensely negative reactions from the international community. On the heels of this legal case, numerous members of the European Union and the United States levied costly economic sanctions against Russia and froze the assets of numerous Russian government officials.[32]

In response to Magnitsky's ECHR case, the Duma began a very public campaign to challenge the legitimacy of the ECHR as well as to discuss the broader issue – or lack the of – with human rights in Russia. Ultimately the Duma began to shift political discussion away

[31] One example of these domestic costs can be found in the UK's £2.7 million worth of legal defense fees paid between 1998 - 2013 relating to ECHR cases that went through their domestic court system. See the followingarticle for more information.

[32] See the U.S. State Department website for more information on the US Sanctions and *Magnitskiy and Zharikova v. Russia* for information on the ECHR case.

from Magnitsky and human rights in Russia and steer it toward human rights issues in the United States by passing a ban on U.S. citizens adopting Russian children.[33] Nevertheless, instead of simply ignore the topic entirely, the ECHR case and the reaction it generated compelled the Duma to publicly discuss human rights issues despite the Russian government's poor record.

With this example in mind – among a number of others such as the extended debate in the Duma surrounding the adoption of ECHR Protocol 14 – it appears that the publicity that the ECHR brings to human rights cases may force the hands of politicians in the Duma to publicly address issues of human rights. As a result, one may expect that only those ECHR cases that directly involve Russia, as opposed to ECHR cases which may indirectly apply to Russia, will drive public debate on human rights within the Duma.[34] To more clearly establish if – and how – the ECHR influences public discussion on human rights within the Duma, one could empirically assess a range of important questions. For example, one such question might be whether or not judgements from the ECHR influence the frequency with which politicians in the Russian Duma publicly discuss human rights issues?

One can argue that when the ECHR releases a judgement on a case involving Russia – especially when Russia is found guilty of committing a human rights violation – it provides a credible signal to the Russian public and the international community that the state is not living up to its commitments under the European Convention of Human Rights. Given the significant financial and reputational costs that come with losing a case at the ECHR, when a judgement from the court against Russia is made, politicians in the Duma are faced with a decision to either challenge or embrace the ruling. Ultimately, what strategy Duma representatives choose to pursue rests upon how well the ECHR cases align with their own political interests to win re-election. Given the Duma's electoral rules – which

[33]Politicians in the Duma and President Vladimir Putin made the case that the negligent death of a Russian adopted child in the U.S. was indicative of numerous other human rights problems in the United States.

[34]This would run counter to the general trend that Helfer and Voeten (2014) point out with respect to LGBT in the ECHR.

strongly incentivize party loyalty – publicly demonstrating commitment to the ruling party provides representatives with an opportunity to ensure continued political and financial support that is crucial for re-election.[35] For those representatives that are in their seats due to their membership in or close alignment to the ruling party, publicly challenging the validity or correctness of the ECHR judgement against the Russian government may be in their best interest if they wish to retain the benefits of public office. In addition to publicly demonstrating party loyalty, challenging ECHR judgements in the Duma may help bolster their chances at re-election if they represent constituents that do not experience as many human rights abuses, are skeptical of Russia's participation in the European Council and ECHR, or rely heavily upon the government's financial support or protection.

A converse logic exists when we consider those representatives in the opposition parties who may not rely on the governing party for continued political or financial support to keep their seats in the Duma. Opposition representatives may use negative ECHR judgments as an opportunity to openly criticize the ruling party in the Duma as well as demonstrate their loyalty to their own political parties. Those representatives with constituents that experience more human rights violations, view Russia's involvement in the European Council as positive, and rely less upon the government for assistance may find that publicly criticizing the governing party over the ECHR judgement will increase their chances of re-election.

However, regardless of whether or not representatives in the Duma will publicly support or challenge an ECHR judgement against Russia, what is important is the fact that the ECHR may be driving political discourse in the Duma toward issues of human rights. In the absence, of such an international body it may very well be the case that human rights violations perpetuated by the state would be ignored entirely by the Duma. Yet, in some situations it may still be the case that representatives in the Duma may find it in their political interests to entirely ignore or refuse to engage in discourse on ECHR judgements

[35]Half of the seats (225) are elected by party-list proportional representation with a 5% electoral threshold, with the other half elected in 225 single-member constituencies by first-past-the-post voting. See the Duma website for more information.

and human rights more broadly. More specifically, centrist representatives that are not entirely dependent upon one group for political or financial support may fall in to such a category. Those representatives that represent constituencies with strong regional governors or those that represent generally competitive electoral districts may benefit from not engaging in potentially controversial discourse on issues of human rights. A a result it may be that the Duma is adapting the ECHR to fit its needs in a fashion consistent with that proposed by Ginsburg (2020).

In order to explore and better understand such phenomena, one might consider examining the transcripts of plenary sessions of the Duma from 1994 to the present. In the context of Russia, plenary sessions are meetings in which Duma representatives of all political parties gather to discuss, amend, and pass proposed laws. The text of these meetings is often thorough and includes statements from a number of representatives from different political factions within the Duma on a wide-range of issue areas. Despite the popular claim that the Duma is "not the place for political discussions", there is extensive research to suggest that these sessions are more than just a formality when it comes to making laws (Treisman, 2018). In particular, given their public nature, these sessions are opportunities for representatives to demonstrate their loyalty and competence to their constituents, colleagues, and party leaders. As such, we would expect that the substance of these meetings – in this particular case the text of the transcripts – is not just empty words. Using this text, one can code mentions of the ECHR or specific human rights, the sentiments that are associated with those references, and then examine their relationship with politician specific characteristics.

In Table 3.1 below is the basic structure of the speech data that could be used. The transcripts themselves come from the Russian State Duma's Transcript Database.[36] While this simplified data frame excludes some other variables that could be used to assess the hypotheses stated above, it still gives a general picture of the type of data that could be used and its structure. The text in the sample data frame comes directly from the transcripts

[36]See the Duma website for more information.

of the Duma plenary sessions and the individual politician data shown below comes directly from public records available on the Russian State Duma's website.[37]

Table 3.1: Sample Duma Transcript Data Frame

Session ID	Convocation	Session	Date	Politician	Party	Age	Education	Region	Text
07-06-072519-1	7	6	072519	Савастьянова О. В.	United Russia	59	Komi State Pedagogical Institute	Kirov Oblast	Уважаемые коллеги
07-06-072519-2	7	6	072519	Крашенинников П. В.	United Russia	55	Sverdlovsk Law Institute	Sverdlovsk	Спасибо большое
07-06-072519-3	7	6	072519	Зюганов Г. А.	Communist Party	75	Oryol State Pedagogical Institute	NA	Сегодня каждый из
07-06-072519-4	7	6	072519	Жириновский В. В.	Liberal Democrats	73	Moscow State University	NA	Сколько раз вносил
07-06-072519-5	7	6	072519	Неверов С. И.	United Russia	58	Siberian Metallurgical Institute	Smolensk	Повестка весенней сессии

In addition to the data above, one can use data that has already been provided by the ECHR's HUDOC case database which contains information on more than 45,784 individual cases of human rights violations from 47 different ECHR member-states between 1992 to 2022.[38] Each case contains meta-data with unique case identification numbers, respondent countries, types of cases, case dates, and types of judgments or decisions, as well as details on case conclusions. One can also use data on ECHR ordered pecuniary damages to establish an imperfect yet objective measure of material cost for various types of alleged violations. These costs could be used to better understand how the costliness of the ECHR judgements impact the type and length of political discussion on human rights issues in the Duma. Further, using text analysis on the whole case files, it is possible to construct an original dataset with information on frequencies of unanimous judgments or decisions, as well as the domestic courts of first instance used by plaintiffs before their cases were brought to the ECHR. In Table 3.2 below is the basic structure of the ECHR case data that could be used in the analysis to determine when ECHR judgements are made and from what areas they originated in.

[37]See the Duma website for more information.
[38]Much of this type of data was used in Chapter 1

Table 3.2: Sample ECHR Data Frame

ID	Title	Respondent	Conclusion	Damages	Unanimous	Court Name
001-182845	CASE OF SERGEY IVANOV v. RUSSIA	RUS	Violation of Article 3	50000	1	Nizhniy Novgorod Regional Court
001-182850	CASE OF PANKOV v. RUSSIA	RUS	Violation of Article 3	16000	1	Dzerzhinskiy District Court of Perm
001-182851	CASE OF AGARKOVA v. RUSSIA	RUS	Violation of Article 2	23780	1	Kaliningrad Regional Court
001-182852	CASE OF DARSIGOVA v. RUSSIA	RUS	Violation of Article 8	0	1	Leninskiy District Court of Grozny
001-182859	CASE OF IBROGIMOV v. RUSSIA	RUS	Violation of Article 14+8	15000	1	Sovetskiy District Court in Vladivostok
001-182860	CASE OF LUTSKEVICH v. RUSSIA	RUS	No violation of Article 3	12500	1	Moscow City Court
001-182862	CASE OF TARKHANOV v. RUSSIA	RUS	Violation of Article 5	5000	1	Sayanogorsk Town Court in Khakassiya
001-182863	CASE OF TITOVA AND OTHERS v. RUSSIA	RUS	Violation of Article 1 of Protocol No. 1	0	1	Moscow City Court
001-182864	CASE OF NAVALNYY v. RUSSIA	RUS	Violation of Article 2 of Protocol No. 4	2000	1	Zamoskvoretskiy District Court in Moscow
001-182865	CASE OF LIPAYEV v. RUSSIA	RUS	No violation of Article 5	740	1	Pervorechensky District Court of Vladivostok

3.4.2 Regional and Municipal Judicial Bodies in Autocracies and their Impacts on the International Order

While leaders may pressure domestic judges to make it more difficult for certain human rights cases to reach the ECHR, it may also be the case that the ECHR allows domestic judges to quietly embed desirable international judicial reasoning or even tacitly promote human rights they otherwise would not be able to. As others have demonstrated in work on the expansion of LGBT rights in Europe, domestic political actors have often attempted to escape the confines of the legislative and legal rules of the domestic political system by using international human rights organizations like the ECHR, to achieve their preferred domestic policy positions (Helfer and Voeten, 2014). This concept is also often referred to as the "Boomerang Model" which was popularized by Keck and Sikkink (1999). Yet, little work in political science has examined if individual legal officials such as judges, especially lower-level judges, engage in similar tactics to establish their preferred judicial outcomes on issues of human rights in domestic law.[39] Even less of the current body of literature on this topic has focused on the behavior of lower court judges in highly authoritarian and less judicially independent states like Russia. Does the ECHR impact the decisions that local judges or justices of the peace – who often possess wide discretionary powers in some judicial systems – make on cases related to human rights (Powell and Staton, 2009)? In states where the independence of the judiciary from the executive is not strong, does the ECHR provide such

[39] Lupu, Verdier and Versteeg (2019) examines aspects of this phenomenon but only in national courts.

local judges with reason to rule against the state or demonstrate their loyalty to the state (Powell, 2013; Ríos-Figueroa and Aguilar, 2018)? These are some of the questions that have yet to be answered in the context of the Russian judicial system and its general conflictual relationship with the ECHR. While there are numerous different approaches to analyze the theoretical puzzle above, future research could focus on empirically testing a wide range of questions.

Overall, the massive body of case-law and legal jurisprudence that the ECHR has built over twenty years has given domestic judges in autocratic states like Russia, a unique resource to address human rights cases. In general, the ECHR can potentially serve as both a shield or a sword for judges in domestic courts that have little independence from the state (Yulia, 2020). For those judges that wish to advance or support human rights and victims of abuses, the fact that an international court body with over 10,000 judgments on human rights cases across Europe – including ones from their own country – provides them with ample materials to reference as support for their decisions gives them both legal credibility and reputational insurance.

By using ECHR case-law either as a logical influence to build a decision or an explicit source of support in domestic human rights cases, domestic judges are potentially able to craft decisions that will be more likely supported at the ECHR – given that they are using the ECHR's reasoning in their arguments – even though they might be overturned at higher levels of the domestic judicial system. This implicit use of ECHR jurisprudence to construct judicial decisions is just one way in which domestic judges that wish to improve human rights outcomes can do so. In countries such as Russia, this approach is beneficial to domestic judges in the sense that they are not plainly stating the potentially controversial source of their legal reasoning. In addition, in lower-level courts where case dockets are often massive and budgets are small, looking to the ECHR's extensive case law to create strong decisions, can often be a cost-effective and quick way to reduce the burdensome work-load.

While assessing how and when domestic judges take legal decisions from the ECHR and

implicitly incorporate them into their own decisions is difficult, there are still cases where explicit references to ECHR jurisprudence can be beneficial to domestic judges that wish to better defend human rights. By explicitly mentioning the ECHR or its legal reasoning in their decisions on human rights cases, domestic judges are providing plaintiffs with a clear signal that their case is relevant to the purview of the ECHR. Such signaling may encourage victims in these cases to seek restitution at the ECHR at a later stage that the domestic judge may not be able to realistically provide them at that time due to political pressure from the government or prosecutors. Further, the explicit nature of including the ECHR in domestic legal decisions may also help increase the already very low likelihood that the ECHR – which has a case docket problem of its own – will grant the plaintiffs standing and hear their cases.[40]

However, while judges may be able to use the ECHR in an implicit or explicit fashion within their own legal decisions in an attempt to advance human rights, they may also use it to demonstrate their loyalty to the state. The contest of legal supremacy between international and domestic human rights law in autocratic states – particularly in Russia – has created an environment where domestic judges who seek to bolster their job security and budgets can prove their worth to the state by asserting the superiority of domestic law over international law like that of the ECHR. One way to demonstrate such legal supremacy is for domestic judges to rule on human rights cases in accordance with domestic law despite its clearly contradictory position to establish ECHR case-law as was done in the case of Anchugov and Gladkov v. Russia in 2013 that dealt with the voting rights of prisoners.[41] In addition to this method, judges wishing to demonstrate their allegiance to the state may choose to reference the ECHR explicitly in their decisions and proceed to disregard it or use it as an opportunity to explain why Russian law takes precedence in their decisions. In essence,

[40]Curtis, Polly. "What's wrong with the European Court of Human Rights?" The Guardian. 2012. https://www.theguardian.com/politics/reality-check-with-polly-curtis/2012/jan/25/european-court-of-human-rights

[41]Anchugov and Gladkov v. Russia, App. No. 11157/04, Eur. Ct. H. R. (2013), HUDOC. This case was used to establish the supremacy of the Russian Constitution over the ECHR in matters of conflicting law.

by mentioning the ECHR in their decisions and ignoring or contradicting it, these judges may demonstrate their willingness to flout well established international legal precedence at the ECHR – to which their state should be bound – and assert the law of the state. Such judicial behavior resembles the signaling behavior of a negotiator who is willing to burn half of his winnings in order to demonstrate his commitment to his preferred bargaining position. Mentioning the ECHR may open the door for a judge to be over-ruled or made to look biased in human rights cases. However, the judge's confidence in the supremacy of the state's law and its resources to avoid these outcomes and provide the rewards that come from demonstrating loyalty to the state makes it beneficial to do so.

Yet, the question remains, what factors determine when a domestic judge will use the ECHR to advance human rights or use it to protect their own positions within the judiciary? Ultimately the main factor that should explain such variation in behavior among these judges are their connections to the federal or regional/state governments. In particular, individual specific characteristics such as age, legal education, appointments, or geographical distance from sources of federal or regional/state authority all serve as potential key indicators of how strong the connection between a judge and the government really is. Personal attributes such as age and legal education can reveal how long or closely related a judge has served within the Russian judicial community and if they come from a cohort that generally remembers the more conservative Soviet legalist system. Specific features of these judges such as who they were appointed by – generally either by Putin or Medvedev – and how far their courts are from centers of government power such as governor's residences may also shed light on the general pressure, they face to support the government beyond their own personal preferences. For example, those judges that have been appointed by the more legalistic former Russian President Dmitri Medvedev might be less concerned about proving their *bona fides* than those appointed by the current Russian President Vladimir Putin or sitting Regional Russian Governors. For those judges that are older, have gone through their legal education in Russia, were appointed by President's with strong control of the federal government – such

as Vladimir Putin – and are located closer to sources of state power like Regional Governors, we would expect judges to be more ready to use the ECHR as a means to support the state and by extension themselves than judges that don't share these traits. Further, for those judges that have larger court budgets there may also be extensive added pressure to curry favor with the government through their decisions on human rights in the hopes they will retain those same budgets in the future.

In order to examine these questions, one would need to collect very granular data on domestic human rights cases in Russia. To do so, one may need to collect information on Russian human rights cases from a public Russian database known as "*SudAct*," which contains a comprehensive set of over 100,000 Russian legal cases from all levels of the Russian judicial system. From these legal case files on human rights issues one can extract information on individual judges, case rulings, case types, as well as some information about the legal justifications the presiding judges used to come to their respective decisions. In Table 4.1 in the Appendix, I demonstrate the basic structure of the Sud Act data that could be used to answer the questions stated above. Using a sample of thirty cases from March 9, 2016 from the SudAct database, I demonstrate the plausibility of such an approach and conduct some preliminary examination of judicial behaviors in Russian courts of first instance. In Table 3.3 below I provide the top 20 most frequently used words, stems, and lemmas by Russian judges in first instance courts in the thirty cases sampled from the Sud Act database.

Table 3.3: Most Frequent Word Usages

Ranking	**Word**	**№**	**Stem**	**№**	**Lemma**	**№**
1	российской (russian)	622	суд (court)	1085	российской (russian)	622
2	федерации (federation)	605	прав (right)	690	федерации (federation)	605
3	рф (rf)	575	российск (russian)	682	рф (rf)	575
4	суд (court)	551	федерац (federation)	663	суд (court)	551
5	соответствии (compliance)	291	рф (rf)	575	соответствии (compliance)	291
6	вреда (harm)	273	дел (case)	555	вреда (harm)	273
7	согласно (according to)	235	закон (law)	499	согласно (according to)	235
8	прав (right)	233	требован (requirements)	487	прав (right)	233
9	истца (plaintiff)	228	лиц (persons)	441	истца (plaintiff)	228
10	содержания (content)	221	истц (plaintiff)	409	содержания (content)	221

In total mentions of the "RF," "Russian," and "Federation" are among the most frequently used terms by judges in these human rights cases. Terms such as "court" and "rights" also round out the top five terms in the preliminary analysis. While it is not surprising these words are the most frequently used words by Russian judges, it is interesting that despite the fact that the ECHR is mentioned at least once in each of these documents, they are very rarely a large focal topic in terms of word usage in case decisions. Given this focus on Russian law, why is it the case that the ECHR is even mentioned at all by these judges? In order to measure key indicators of judicial independence from the government – such as physical proximity to regional governors – and assess their impact on Russian judges' decisions on human rights cases like the ones shown above, one can use Google Map's API to calculate the geographical distance between the locations of each judges' Court House and the closest Russian governor. Geographical distance is one useful quantitative indicator of independence between state leaders and judges because greater distances between these actors are often accompanied by more different bases of political support, resources, and protection. In Figure 3.4 below I demonstrate the plausibility of such an approach by mapping the locations of a subset of the 24 different courts that are featured in the sample of 30 case files and depict their geographical distance from the capital of Russia: Moscow.

While most of the courts from the subset that are depicted in Figure 3.4 are somewhat close to Moscow, the sample as a whole is diverse in terms of its geographical variation. Figure 4.10 in the appendix, which depicts the locations of 23 of the 24 courts identified in our sample of thirty cases, demonstrates the wide range of geographical differences between courts that could be leveraged to better assess the effect of judicial independence on human rights court decisions involving the ECHR. In addition to geographical distance, using information that can be found on publicly accessible district court websites and the Russian State University of Justice, one can obtain information about individual judge characteristics such as age, legal education, and federal government work experience that might be strong indicators of less independent judges. Such judge specific traits may act as good proxies for quantifying

Figure 3.4: Physical Proximity to Moscow

levels of independence from the executive because they either reflect closer relationships with government, more reliance upon state incomes, or propensities to rule on cases using more internationally recognized legal principles rather than domestic ones shaped by the state. With this information in mind, one can begin to assess the various ways in which judicial independence from the executive may impact decision-making on cases that could potentially escape the domestic court's jurisdiction.[42]

In addition, using the text bodies of these documents it may also be useful to employ supervised machine learning to conduct text and sentiment analysis that can identify how often and in what contexts the ECHR is cited or mentioned by individual Russian judges in their case decisions (Fariss et al., 2015). With the assistance of the "RuSentiment" database from the University of Massachusetts Lowell's *Text Machine Laboratory*, it may be possible to identify instances within the case documents that the terms such as the "European Court

[42]Similar research on American judges has been done by Huber and Gordon (2007).

of Human Rights" or "ECHR" are used and extract the surrounding body of text to assess the sentiments that Russian judges are evoking when they mention the international court.[43] This approach can assess more generally whether or not there is positive, negative, or mixed sentiments that individual judges attach to the ECHR in their cases or decisions. While this method has typically been used to study public opinion via social media (and as such may be difficult to apply to a legal setting), using this approach could provide a deeper insight into Russian judges' attitudes toward ECHR case law that would not be made clear by simply examining the rates at which judges rule against or with the state on human rights cases that mention the ECHR. The combination of this text data and novel ECHR case data Ressentiment mentioned above would also allow us to assess how often those cases in which judges mention the ECHR, actually reach the purview of the international court. As a whole, this data, along with the various empirical tests described above, will allow for a thorough examination of whether or not the ECHR alters the behavior of domestic judges on issues of human rights.

3.4.3 The Public, Information, and the Impact of Domestic Perceptions on the International Order

Despite the ability of domestic judges to improve or hinder a plaintiff's odds of reaching the ECHR, the international court may also have a different, more indirect effect on domestic human rights outcomes via the public (Chilton and Versteeg, 2016). Through the publication of cases related to alleged state-sponsored human rights violations, the ECHR enables the public to more effectively coordinate and pressure specific judges to more severely punish undesirable human rights abusers or to make efforts to reduce the number of human rights abuses more generally. Such coordination among the public to push judges for better human rights outcomes is often difficult due to issues with collective action and the lack

[43]This methodology has been widely used in the context of American politics and social media research more broadly.

of available information on violations of human rights (Murdie and Bhasin, 2011). Due to the reputational and financial costs of human rights violations, states and judges alike often keep information on human rights cases purposefully opaque or in some instances completely secret. The lack of such information makes it difficult for members of the public to determine what they need to coordinate their efforts to stop as well as who to direct their efforts at holding accountable for human rights abuses.

However, when human rights cases escape the domestic court system and reach the ECHR, the veil of secrecy that often accompanies alleged human rights violations is lifted. Information about the location of human rights abuses, the alleged perpetrators of those abuses, as well as the scope of the abuses are made public by the ECHR which then allows the public to more efficiently coordinate and accurately target their efforts to hold state officials, such as judges, accountable for not satisfactorily protecting their human rights. This information effect on the public's ability to hold the judiciary and government accountable, is one way in which the existence of an international court body like the ECHR can strengthen the protection of human rights in countries where such coordination is quite difficult. In order to better assess the plausibility of such an informational mechanism one would need to examine if the Russian public acknowledges or references ECHR cases in general? Furthermore, one would also need to understand how Judges would be impacted (if at all) by public perceptions related to such cases.

Even in autocratic states like Russia where political power is typically concentrated among a small selection of individuals, public opinion can have important effects on government policy. Whether it be through non-competitive elections, public protest, or in extreme cases, insurgency, the public has the ability to influence the decision making and policies of their government. The general obstacle that prevents policy change through public opinion in autocratic regimes – and even in many democracies – is the inability of the public to overcome problems of collective action. In countries such as Russia, where information, assembly, and support of non-governmental organizations connected to human rights issues are tightly

restricted, the ability of the public to coordinate their efforts to change government policies and overcome collective action issues is greatly hindered.[44] However, international institutions like the ECHR can reduce these obstacles to collective action by taking traditionally restricted information about cases of human rights abuses and publicizing that information on the international stage.

In autocratic countries that already have broad public support for the protection of human rights, the ECHR may aid in fostering coordination among citizens to pressure governments and judicial officials to better protect or uphold human rights. By making information about human rights cases public to an international and domestic audience, the ECHR can potentially help to focus attention and resources among the Russian public toward changing the behavior of specific government officials or agencies through two different pathways: directly through their own domestic media sources and indirectly from foreign media sources and organizations. When information about these ECHR cases filters back to the public from either of these channels, citizens may learn about the severity of human rights abuses, which government actors allegedly carried out the abuses, and where the abuses occurred. Such information not only allows the public to possibly rally in opposition to a specific government policy, but also to potentially direct the pressure that arises from such coordinated opposition to a specific actor, in a specific location. Without information made public by the ECHR to a national audience, such public pressure would likely be either too difficult to focus on a specific issue, direct at a specific actor, or make popular enough to force policy changes.

While the Russian public generally supports human rights protections it is unclear how such opinions are impacted specifically by the ECHR.[45] On face value it appears that there is widespread support for the ECHR in Russia. In February and March of 2019 over 66% of Russians felt that it was important for their countrymen to file cases at the ECHR.[46] Yet it

[44] See Hollyer, Rosendorff and Vreeland (2019); Little (2016) for more information about collective action problems in autocracies.

[45] 60% of Russians oppose torture by the state in all circumstances according to June 2019 Levada Center surveys.

[46] Levada Center.

remains unclear if such widespread sentiments have driven members of the public to acquire the types of specific information necessary to solve collective action problems surrounding improving human rights protections. It may be the case that when such specific information about human rights abuses is acquired and the underlying sentiments of the public lean toward being supportive of improving human rights protections, that public pressure will influence judicial officials to rule against the government in cases of human rights when they otherwise would not.

Any attempts to answer these questions would either require a large internet or in person survey of members of the Russian public. While the Levada Center, a major Russian polling firm, has conducted some research on the public's preferences related to human rights – and in some cases the ECHR specifically – one would likely still need to field a survey with more specific questions to answer the questions above. However, given the financial limitations and security concerns related to such an endeavor, fielding such a survey in Russia might not be possible. If these obstacles were possible to overcome, the use of a survey experiment that randomizes the provision of information pertaining to the ECHR, ECHR cases, and domestic Russian judges to respondents would potentially be a useful methodological strategy to answering such questions. Even though a survey experiment would likely be the most ideal way to assess the impact of the public on international human rights outcomes, text and sentiment analysis of popular Russian social media websites like VKontakte (VK) could also provide similar insights in to the average awareness of the ECHR and more general sentiments of the Russian public toward the ECHR. Using VK's API to collect information on how many times users either search for the terms "European Court of Human Rights" or "ECHR" or how often users comment, like, or share articles or information related to these terms would potentially allow one to ascertain how aware the Russian public is of the ECHR and the information it makes available on issues of human rights.

Furthermore, by examining the text which accompanies references to the ECHR on VK, one could use "RuSentiment" to conduct sentiment analysis which that identifies whether the

public has a more negative, positive, or mixed reaction to the ECHR or information that the ECHR provides on human rights cases. Further, an approach similar to that of Pelc (2013), which employs the use of specific search terms by the public during specific times on search engines like *Google* could be employed to assess the strength or veracity of public opinion on certain issues. In the Russian context, a similar exercise using popular Russian language search engines such as *Yandex* or *Rambler* to examine search trends around the publication of ECHR cases or judgments involving Russia could be useful.[47]

Table 3.4: Yandex Monthly Search Term Impressions in Russia – August 2019

Ranking	Term	Impressions
1	еспч (echr)	25,132
2	право суд человек (human rights court)	13,630
3	европейский суд по правам человека (european court of human rights)	9,462
4	жалоба еспч (echr complaint)	5,335
5	решение еспч (echr decision)	2,531
6	дело еспч (echr case)	2,448
7	город с европейским судом по правам человека (city with echr)	2,227
8	сайт еспч (echr site)	1,401
9	формуляр еспч (echr form)	1,283
10	постановления еспч(echr rulings)	1,266

Note: Search terms include both "еспч" and "европейский суд по правам человека".

As we can see based on Table 3.4 above, it would appear that Russian users on Yandex are indeed searching for information about the ECHR. Although when compared to search terms such as CSKA – a popular Moscow soccer team that has 2,064,208 impressions per month – it seems the information about the ECHR is not in the highest of demands in Russia. However, it does seem that Yandex users are searching for specific information about cases and decisions from the ECHR. While this Yandex data only provides an overall picture of the magnitude of the desire for information about the ECHR, further work can be done to break this demand down by region and ideally by the week rather than the month.

In combination with data on the decisions of domestic court rulings from the "SudAkt" database, it may be possible to use the timing of these public reactions to the ECHR on Yandex or VK to assess if the public actually altered the behavior of domestic judges on

[47] Yandex's search term statistics tools are referred to as "WordStat."

human rights cases. While it will be difficult to rule out the influence of some omitted variable bias and other theoretical confounders, it may be possible to use a difference in differences approach to determine the causal effect, if any, that the information provided to the public by the ECHR has on the decision making of Russian judges. Along with VK and Yandex, assessing Russian media coverage across different types of media might also provide valuable insight into how information the ECHR provides is spread or not spread. Differences between coverage of human rights cases among more traditional channels such as television stations like "Russia-1" and newer sources of media such as "Echo Moscow" or "Rain TV" – which are also quite different from each other politically speaking – would also provide insight into what conditions may be necessary for information from the ECHR to actually change opinions on issues of human rights.[48]

3.5 Conclusion

In total, this dissertation focuses on a shifting international order that has – at least in part – been precipitated by the growing influence of domestic political institutions in autocratic regimes on international relations. Building on Ginsburg (2020) and the growing prevalence of "authoritarian international law", Chapter 1 focused on autocratic regimes increasing obstruction of international organizations such as the European Court of Human Rights seeking to continue their pursuit of expanding and crystalizing international legal norms that have served as staples of the "traditional" world order since the end of World War II. The findings from Chapter 2 demonstrated how domestic politics in both autocratic and democratic states in the form of differing public preferences toward crisis bargaining could potentially help explain the recent emergence of significant interstate conflict in an international system that for the most part had been devoid of such wars since 1945. This final Chapter sought to expand on both of these findings by providing the reader with an

[48]There is a radio station called Echo Moscow as well as a television shows called Echo TV and Rain TV.

in-depth qualitative examination of just how domestic institutions in autocratic regimes such as the Russian Federation have altered interactions in supranational norm building organizations such as the ECHR while also providing several ways forward for future research.

Despite this project's extensive focus on Russia, such approaches could also be applied to several other contexts. While this would require additional data collection that is not described here (should it be possible) it might provide some broader conclusions about how domestic judiciaries impact international organizations like the ECHR in the world more broadly. As a whole, the questions mentioned throughout this dissertation represent a broad overview of attempts to study the impact of the shifting international order on international human rights courts, specifically the ECHR. As such this dissertation makes a novel contribution to the study of a shifting international order and its impacts in the human rights arena and will hopefully help foster similar research on other countries or even other contexts or international bodies like the African Court on Human and Peoples' Rights.

4

Supplementary Materials

4.1 Chapter 2

Survey Experiments

Egyptian, Israeli, Turkish, and American Survey Experiments

The following surveys were conducted in order to assess cross-national variation in crisis bargaining preferences. In addition, they were designed to examine how distributions of military power and the historical status quo impact crisis bargaining preferences cross-nationally. In Egypt and Turkey, the polls were conducted by local firms affiliated with the Cint network of panels. The Israel experiment was conducted by the Sarid Institute for Research Services. In these countries, the sample skews somewhat towards young, educated males and that can be discussed in Appendix Section 4.1

Below is the text of the survey that was given to respondents in Egypt, Israel, and Turkey: The following questions are about Israeli/Turkish/Egyptian foreign policy. You will read about a situation similar to those the country has faced in the past and may face again in the future. Different leaders have handled the situation in different ways. We will describe one approach Israeli/Turkish/Egyptian leaders have taken and ask for your thoughts on that

approach.

The Situation

Israel/Turkey/Egypt and another country have a longstanding dispute over a resource-rich area in the seabed under the Mediterranean Sea. Both countries claim the right to extract oil, gas and gas-hydrates, which scientists believe will become the world's next alternative energy source. Both countries have made contradictory claims to the area under international law.

[Treatment 1]

(Respondents are put into one of the following treatment groups at random – Transressor Treatment)

a. Israel/Turkey/Egypt and the other country agreed to postpone exploitation of the area's resources until a further determination by the United Nations.

b. Israel/Turkey/Egypt and the other country agreed to postpone exploitation of the area's resources until a further determination by the United Nations. In the past, Israel/Turkey/Egypt has regularly enabled Israeli/Turkish/Egyptian firms to extract resources from the area, while the other country was not engaged in the area.

c. Israel/Turkey/Egypt and the other country agreed to postpone exploitation of the area's resources until a further determination by the United Nations. In the past, the other country has regularly enabled its country's firms to extract resources from the area, while Israel/Turkey/Egypt was not engaged in the area.

d. Israel/Turkey/Egypt and the other country agreed to postpone exploitation of the area's resources until a further determination by the United Nations. However, the other country has enabled its country's firms to violate this agreement, and they have begun extracting the resources on a massive scale.

e. Israel/Turkey/Egypt and the other country agreed to postpone exploitation of the area's resources until a further determination by the United Nations. However, Is-

rael/Turkey/Egypt has enabled Israeli/Turkish/Egyptian firms to violate this agreement, and they have begun extracting the resources on a massive scale.

[Treatment 2]

(Respondents are put into one of the following treatment groups at random – Power Treatment)

a. Israeli/Turkish/Egyptian military capabilities in the region far exceed those of the other country. Military officials were confident that any resulting conflict would be quickly settled in favor of Israel/Turkey/Egypt.

b. The capabilities of the two countries are relatively evenly matched. Military officials believed that any resulting conflict would involve significant casualties on both sides.

Following several months of negotiations, Israeli/Turkish/Egyptian leaders announced that a deal had been reached between the sides. Some groups were critical of the government's actions, while others argued that the government had been firm but prudent.

1. On a scale of 1 to 10, where 10 indicates maximum approval, how much would you approve of the way the government handled the situation if, according to the deal,

    a. The other country will receive rights to all of the disputed resource-rich area.

    b. Israel/Turkey/Egypt will receive rights to 30% of the disputed resource-rich area and the other country will receive 70%.

    c. Israel/Turkey/Egypt will receive rights to 40% of the disputed resource-rich area and the other country will receive 60%.

    d. Israel/Turkey/Egypt will receive rights to 50% of the disputed resource-rich area and the other country will receive 50%.

    e. Israel/Turkey/Egypt will receive rights to 60% of the disputed resource-rich area and the other country will receive 40%.

f. Israel/Turkey/Egypt will receive rights to 70% of the disputed resource-rich area and the other country will receive 30%.

g. Israel/Turkey/Egypt will receive rights to all of the disputed resource-rich area.

2. On a scale of 1 to 10, where 10 indicates total agreement, how much do you agree with each of the following statements?

   a. The other country should be punished for its conduct.

   b. The most important thing is for Israel/Turkey/Egypt to avoid a bloody conflict with the other country.

   c. Negotiation of a fair agreement is one of the most important considerations.

   d. A substantial compromise with the other country is likely the best deal that can be negotiated.

   e. A negotiated compromise that is favorable to the other country will cause Israeli/Turkish/Egyptian enemies to challenge Israeli/Turkish/Egyptian interests and Israeli/Turkish/Egyptian allies to question Israeli/Turkish/Egyptian reliability.

   f. A negotiated compromise is in the interests of both sides. Please mark that you Neither Agree Nor Disagree to ensure you are paying attention.

   g. A country should not have the right to use military force for political purposes without U.N. approval.

3. In situations like this, on a scale of 1 to 10, where 10 indicates total agreement, how much do you approve of the use of force by Israel/Turkey/Egypt when necessary?

   Now suppose that instead of a deal being signed, [Treatment 3]

   a. negotiations ended abruptly. Following a tense standoff between Israeli/Turkish/Egyptian forces and the military of the other country, the sides exchanged fire. Over 1,100

Israeli/Turkish/Egyptian troops, and a similar number of the other country's troops, died in the conflict, but militarily the other country had the upper hand in the dispute. The Israeli/Turkish/Egyptian government decided to withdraw its forces and the other country took complete control of the resource-rich region.

b. negotiations ended abruptly. Following a tense standoff between Israeli/Turkish/Egyptian forces and the military of the other country, the sides exchanged fire. Over 1,100 Israeli/Turkish/Egyptian troops, and a similar number of the other country's troops, died in the conflict, but militarily Israel/Turkey/Egypt had the upper hand in the dispute. The other country decided to withdraw its forces and Israel/Turkey/Egypt took complete control of the resource-rich region.

4. In this case, on a scale of 1 to 10, where 10 indicates maximum approval, how much would you approve of the way the government handled the situation?

5. On a scale of 1 to 10, which 10 indicates maximum approval, how much do you agree with each of the following statements?

   a. The Israeli/Turkish/Egyptian government was too moderate in the conduct of foreign policy.

   b. Israeli/Turkish/Egyptian government was too aggressive in the conduct of foreign policy.

   c. The other country deserved this outcome because of its conduct.

   d. Israel/Turkey/Egypt deserved this outcome because of its conduct.

   e. Israeli/Turkish/Egyptian actions were appropriate due to its economic interest in the outcome.

   f. The other country's actions were appropriate due to its economic interest in the outcome.

6. In the scenarios described above, which country was described as violating an agreement by enabling companies to extract resources from the region?

    a. Israel/Turkey/Egypt

    b. The other country

    c. Neither Israel/Turkey/Egypt nor the other country.

7. In the scenarios described above, military officials were confident that any local conflict would be quickly settled in favor of which state?

    a. Israel/Turkey/Egypt

    b. Neither Israel/Turkey/Egypt nor the other country.

8. Do you consider yourself on the left or on the right of the political spectrum?

    a. Far Left

    b. Moderate Left

    c. Lean to Left

    d. Center

    e. Lean to Right

    f. Moderate Right

    g. Far Right

The U.S. survey was almost identical to the ones described above and also conducted in order to assess cross-national variation in crisis bargaining preferences. In addition, it was also similarly designed to examine how distributions of military power and the historical status quo impact crisis bargaining preferences cross-nationally. This survey was conducted seperately to maintain realism and could not be used elsewhere because the vignettes focus on a dispute (identical to those used in Egypt, Turkey, and Israel) in the Arctic Circle. Survey Sampling International administered the survey in the United States.

Additional Egyptian and American Survey Experiments

The following surveys were conducted in order to assess how individual cultural attitudes impact cross-national variation in crisis bargaining preferences and assess the impact of different adversaries on these preferences. These surveys were not identical in order to maintain realism. The Egyptian survey contains a vignette about a dispute in the Mediterranean Sea while the U.S. Survey contains a vignette about a dispute in the Arctic Circle. While the Egyptian survey contains randomized dispute outcomes, the U.S. survey contains constant dispute outcomes but randomized treatments regarding the resource in the dispute and the value of the resource. Both surveys randomize the adversary in the dispute. In Egypt the polls were conducted by local firms affiliated with the CINT network of panels. Survey Sampling International administered the survey in the United States.

Below is the text of the survey that was given to respondents in the Egypt:

You will now be asked questions about your personal preferences and beliefs. Please read the following sentences and indicate your agreement or disagrement. (These were the following choices: Strongly Agree, Moderately Agree, Slightly Agree, Strongly Disagree, Moderately Disagree, Slightly Disagree)

a. Compassion for those who are suffering is the most crucial virtue.

b. When the government makes laws, the number one principle should be ensuring that everyone is treated fairly.

c. I am proud of my country's history.

d. Respect for authority is something all children need to learn.

e. People should not do things that are disgusting even if no one is harmed.

f. It is better to do bad than good.

g. One of the worst things a person could do is hurt a defenseless animal.

h. Justice is the most important requirement for a society.

i. People should be loyal to family members even when they have done something wrong.

j. Men and women each have different roles to play in society.

k. I would call some acts wrong on the grounds that they are unnatural.

The following questions are about Egyptian foreign policy. You will read about a situation similar to those the country has faced in the past and may face again in the future. Different leaders have handled the situation in different ways. We will describe one approach Egyptian leaders have taken and ask for your thoughts on that approach.

Respondents were asked to complete two of the following randomly assigned scenarios in which Egypt is involved in a dispute with one of four randomly assigned countries.

a. Greece

b. Libya

c. Turkey

d. Israel

The Situation

Egypt and [Country] have a longstanding dispute over a resource-rich area in the seabed under the Mediterranean Sea. Both countries claim the right to extract oil, gas and gas-hydrates, which scientists believe will become the world's next alternative energy source. Both countries have made contradictory claims to the area under international law. Suppose that over the next ten years, the countries continued to dispute the Mediterranean resources. [Treatments].

[Treatment Groups]

Respondents are put into one of the following treatment groups at random:

a. Relations between the two countries over these next ten years were similar to their relations previously.

b. Relations between the two countries over these next ten years were tense. Suppose Egypt fought a war with Israel in these years in which thousands of Egyptians died. The war was a military disaster for Egypt; there were few [Country] casualties when a portion of the Egyptian army surrendered unconditionally to [Country] forces.

c. Relations between the two countries over these next ten years were tense. Suppose Egypt fought a war with [Country] in these years in which thousands of [Country] died. The war was a military disaster for [Country]; there were few Egyptian casualties when a portion of the [Country] army surrendered unconditionally to Egyptian forces.

Respondents were then asked the following:
On a scale of 1 to 10, where 10 indicates maximum approval, how much would you approve of the way the government handled the situation if, according to the deal,

a. Country will receive rights to all of the disputed resource-rich area.

b. Country will receive rights to 30% of the disputed resource-rich area and the other country will receive 70%.

c. Country will receive rights to 40% of the disputed resource-rich area and the other country will receive 60%.

d. Country will receive rights to 50% of the disputed resource-rich area and the other country will receive 50%.

e. Country will receive rights to 60% of the disputed resource-rich area and the other country will receive 40%.

f. Country will receive rights to 70% of the disputed resource-rich area and the other country will receive 30%.

g. Egypt will receive rights to all of the disputed resource-rich area.

In the United States Survey the vignette presented to respondents is very similar to the one presented to those in Egypt. Respondents in the U.S. were asked to complete two of the following randomly assigned scenarios in which the United States is involved in a dispute with one of four randomly assigned countries or country-blocs.

a. Russia

b. Denmark

c. China

d. European Union

The Situation

The United States and [COUNTRY] have a longstanding dispute over a resource-rich area in the Arctic Circle. Both countries claim the right to extract [RESOURCE], which economists believe could increase [RESOURCE] production and boost the economy by more than [VALUE]. Both countries have made contradictory claims to the area under international law. Suppose that over the next ten years, the countries continued to dispute the Arctic resources. Relations between the two countries over these next ten years were similar to their relations previously.

Respondents in the U.S. were randomly assigned one of the following resource treatments:

a. oil, gas, and gas-hydrates

b. rare earth metals

Respondents in the U.S. were also randomly assigned one of the following values of the resource in the dispute according to economists:

a. no specified value by economists.

b. $10 million

c. $100 billion

After reading this vignette respondents were then asked the following:
Suppose after several months of renewed negotiations following this period, American leaders announced that a new deal had been reached with [Country] over resource rights in the Arctic. On a scale of 1 to 10, where 10 indicates maximum approval, how much would you approve of the way the government handled the situation if, according to the deal,

a. Country will receive rights to all of the disputed resource-rich area.

b. Country will receive rights to 30% of the disputed resource-rich area and the other country will receive 70%.

c. Country will receive rights to 40% of the disputed resource-rich area and the other country will receive 60%.

d. Country will receive rights to 50% of the disputed resource-rich area and the other country will receive 50%.

e. Country will receive rights to 60% of the disputed resource-rich area and the other country will receive 40%.

f. Country will receive rights to 70% of the disputed resource-rich area and the other country will receive 30%.

g. The U.S. will receive rights to all of the disputed resource-rich area.

Survey Demographics

In Egypt and Turkey, the polls were conducted by local firms affiliated with the Cint network of panels. The Israel experiment was conducted by the Sarid Institute for Research Services. Survey Sampling International administered the survey in the United States. In all countries except the United States, the sample skews somewhat towards young, educated males.

Egypt

Gender:

Gender	Sample	Population
Male	77%	48%
Female	23%	52%

Age:

Range	Sample	Population
18-24	27%	17%
25-34	43%	28%
35-44	22%	19%
45-54	6%	16%
55+	1.6%	20%

Region:

Area	Sample	Population
Cairo	36%	11%
Alexandria	10%	5%
Port Said	2%	1%
Suez	1%	1%
Damietta	3%	2%
Dakahlia	4%	7%
Eastern	4%	7%
Qaliubiya	2%	6%
Kafr El Sheikh	2%	4%
Western	5%	5%
Monoufia	3%	4%
The lake	3%	7%
Ismailia	1%	1%
Giza	9%	9%

Area	Sample	Population
Bani Sweif	1%	3%
Fayoum	1%	4%
Minya	2%	6%
Asyut	3%	5%
Sohag	3%	5%
Qena	1%	3%
Aswan	1%	2%
The palace	1%	1%
The Red Sea	1%	0%
The new Valley	0%	0%
Matrouh	0%	1%
North Sinai	0%	0%
South of Sinaa	0%	0%

Sources: The central agency for publish mobilization and statistics (CAPMAS): http://www.msrintranet.capmas.gov.eg/pdf/EgyptinFigures2015/EgyptinFigures/Tables/PDF/1-%20%D8%A7%D9%84%D8%B3%D9%83%D8%A7%D9%86/pop.pdf. Demographic and health surveys by Ministry of Health and Population and USAID (see http://dhsprogram.com/pubs/pdf/FR302/FR302.pdf).

Israel

Gender:

Gender	Sample	Population
Male	47%	49%
Female	53%	51%

Age:

Range	Sample	Population
18-24	14%	11%
25-34	23%	21%
35-44	20%	19%
45-54	16%	15%
55-64	14%	13%
65-74	11%	9%
75+	2%	7%

Region:

Code	Area	Sample	Population
1	North and Haifa	27%	21%
2	"Sharon" and Samaria	13%	11%
3	Jerusalem	10%	11%
4	Center and the Dan	31%	42%
5	"Shfela" and South	18%	15%

Source: www.cbs.gov.il. Jewish population only.

Turkey

Gender:

Gender	Sample	Population
Male	56%	51%
Female	44%	49%

Age (18-80):

Range	Sample	Population
18-22	15%	12%
23-35	41%	32%
36-55	38%	37%
56-80	4%	19%

Region:

Area	Area (EN)	Sample	Population	tuik symb
Akdeniz Bölgesi	The Mediterranean region	12%	13%	TR6
Doğu Anadolu Bölgesi	East Anatolia Region	3%	4%	TRA
Ege Bölgesi	Aegean Region	17%	13%	TR3
İç Anadolu Bölgesi	Central Anatolia Region	20%	19%	TRB;TR7
Güneydoğu Anadolu Bölgesi	Southeastern Anatolia Region	4%	10%	TRC
Karadeniz Bölgesi	Black Sea region	6%	12%	TR8; TR9
Marmara Bölgesi	Marmara Region	38%	28%	TR1;TR2; TR4

Source: http://www.turkstat.gov.tr; biruni.tuik.gov.tr, Cint's data for the age groups, and census data available at: https://biruni.tuik.gov.tr/bolgeselistatistik

Figures

Figure 4.1: Culture Components

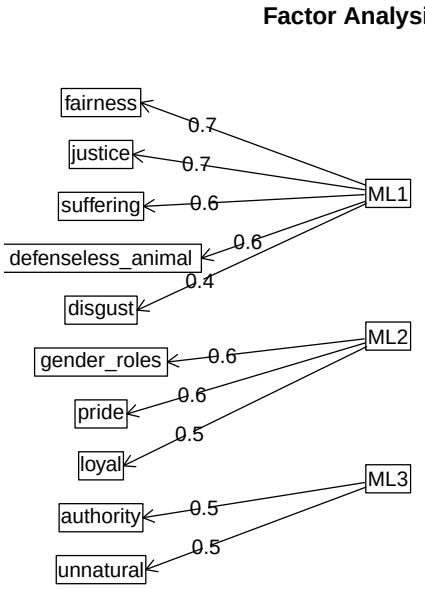


Figure 4.2: Culture Components (2)

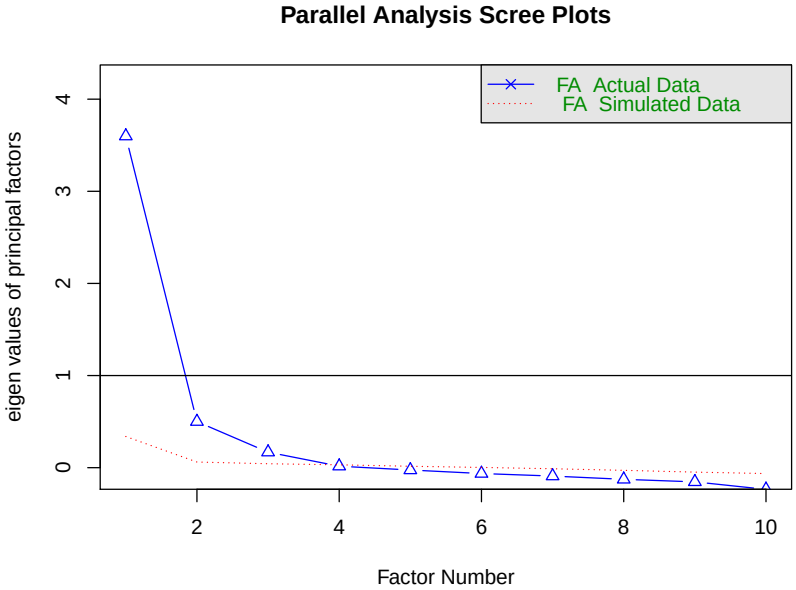
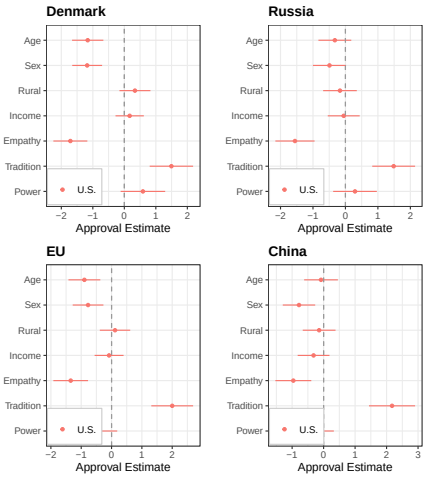


Figure 4.3: Culture and Bargaining Preferences in the U.S.



Note: Confidence intervals are at the 95% level and all models use "HC2" robust standard errors.

Figure 4.4: How Power Influences Negotiation Preferences

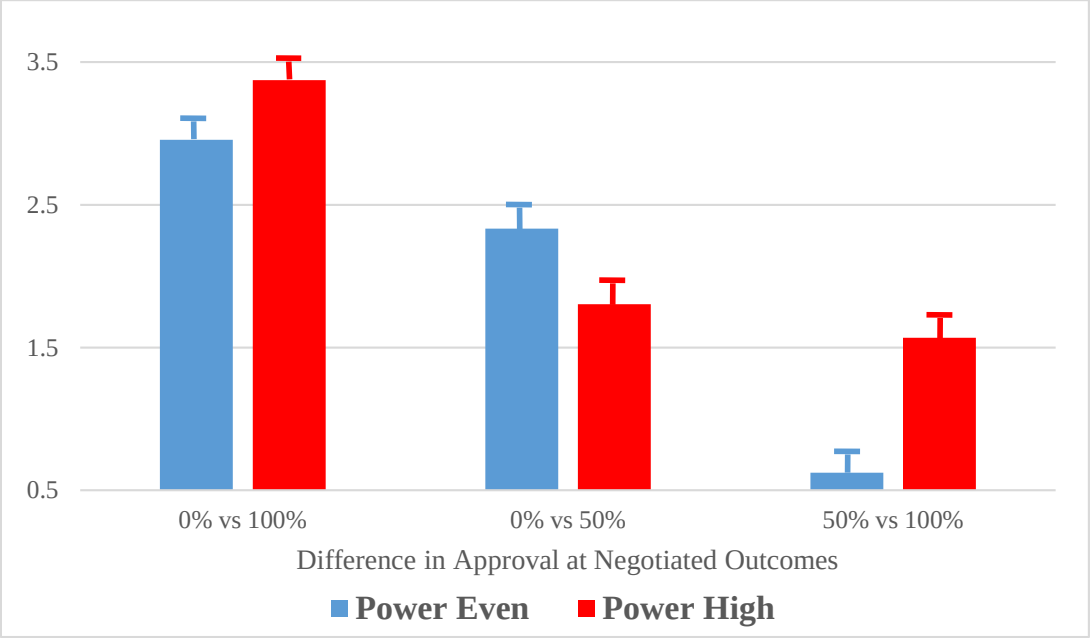


Figure 4.5: How the Status Quo Influences Negotiation Preferences

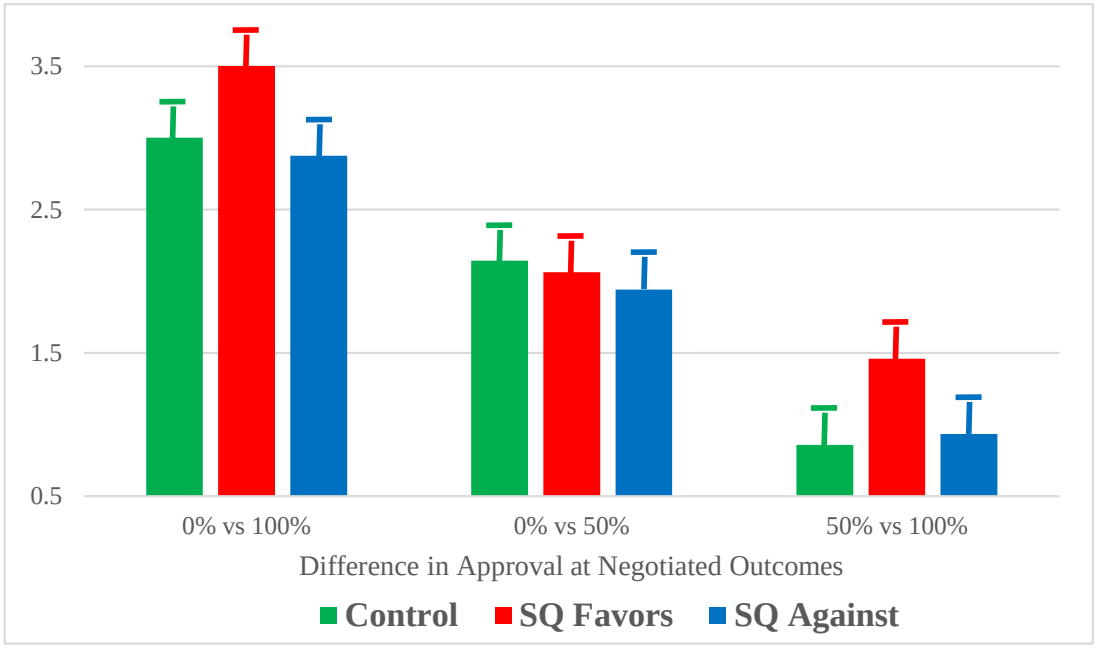
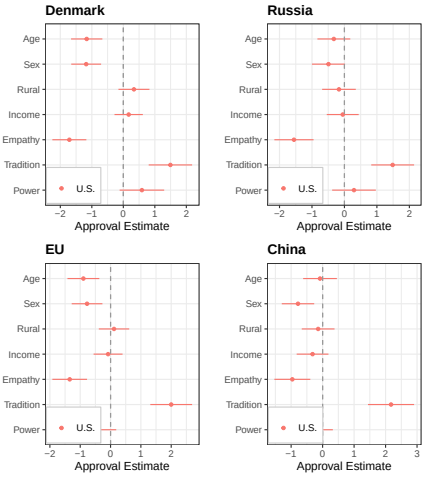
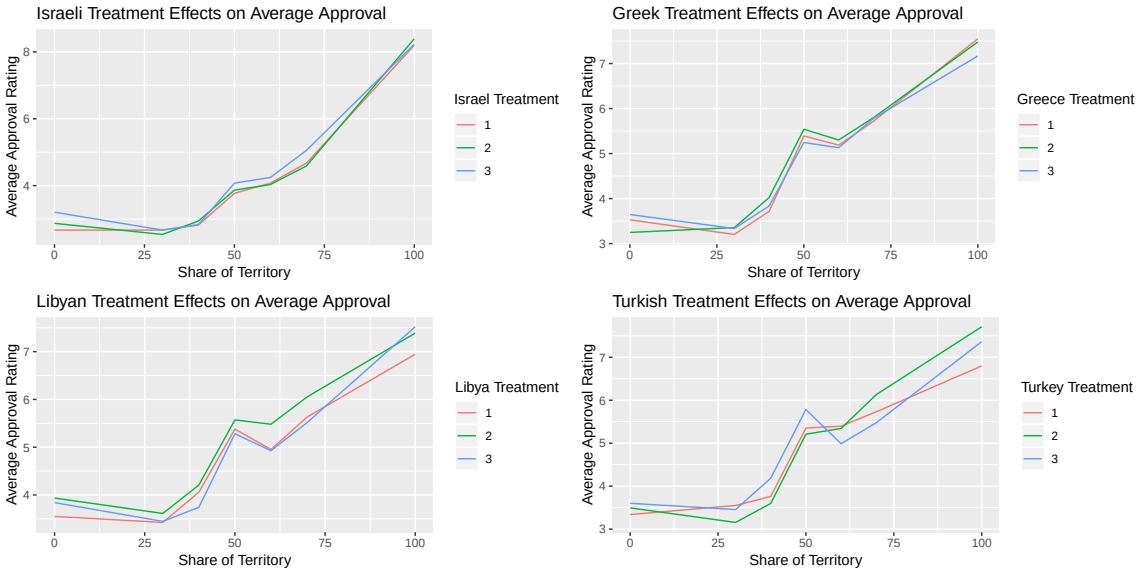


Figure 4.6: Culture and Bargaining Preferences in the U.S.



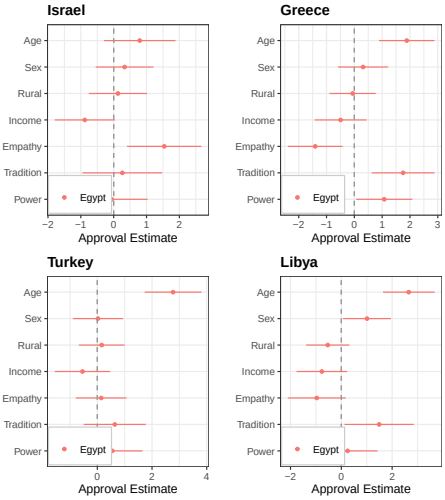
Note: Confidence intervals are at the 95% level and all models use "HC2" robust standard errors.

Figure 4.7: Bargaining Preferences and the Adversary in the Egypt



Treatment 1: No specified conflict outcome. Treatment 2: Egyptian military surrender. Treatment 3: Egyptian military victory.

Figure 4.8: Culture and Bargaining Preferences in the U.S.



Note: Confidence intervals are at the %95 level and all models use "HC2" robust standard errors.

Tables

4.2 Chapter 3

Figures

Figure 4.9 visually displays the frequency usage of specific stems in the thirty cases sampled from the Sud Act database.

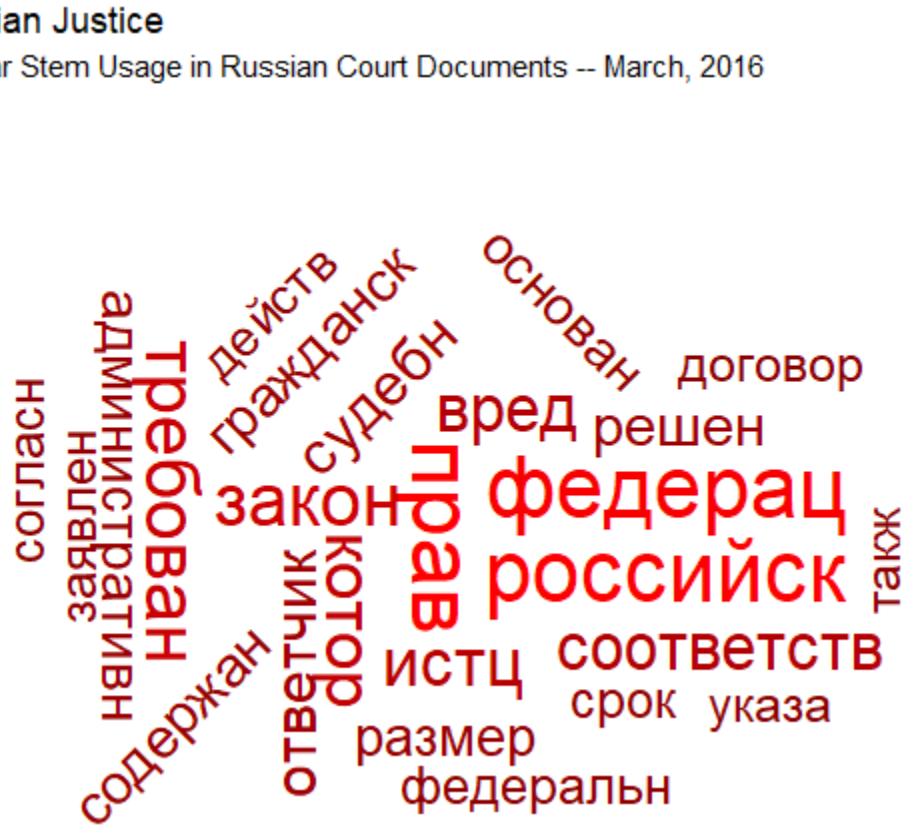


Figure 4.9: *Lighter Color Indicates Higher Usage*

Figure 4.10: Geographical Diversity in Court Locations

Tables

Table 4.1: Sample Data Frame

Variable	
Case	Решение № 2А-141/2016 2А-141/2016~М-95/2016 М-95/2016 от 9 марта 2016 г. по делу № 2А-141/2016
ID	Шишелова Т.Л. (судья)_1
Text	решение по делу а прилузский районный суд республика коми гражданское дело а решениеименем ро федерацииприлузский районный суд республики коми в составепредседательствующего судьи шишелово секретаре кныш е а рассмотрев в открытом судебном заседании в с объячево марта года
Judge	Шишелова Т.Л. (судья)
Court	Прилузский районный суд (Республика Коми)
Decision For State	0

Note: All Data above was obtained directly from the Sud Act Database.

Data Sources

Descriptions of the data sources used for the empirical tests can be found below.

1. HUDOC
2. SudAct
3. Yandex Browser
4. VKontakte
5. Text Machine Laboratory
6. CIRI Human Rights Database
7. Global Latent Judicial Independence
8. Varieties of Democracy (V-Dem)
9. IPE Data Resource

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