AGENTS OF RECALCITRANCE: GOVERNMENTAL DECENTRALIZATION AND STATE COMPLIANCE WITH INTERNATIONAL HUMAN RIGHTS TREATIES

by

Mintao Nie

A Dissertation

Submitted to the Faculty of Purdue University

In Partial Fulfillment of the Requirements for the degree of

Doctor of Philosophy

Department of Political Science

West Lafayette, Indiana

May 2020

THE PURDUE UNIVERSITY GRADUATE SCHOOL
STATEMENT OF COMMITTEE APPROVAL

Dr. Ann Marie Clark, Chair
Department of Political Science

Dr. James A. McCann
Department of Political Science

Dr. Thomas Mustillo
Department of Political Science
University of Notre Dame

Dr. Eric N. Waltenburg
Department of Political Science

Approved by:
Dr. Patricia A. Boling

To my parents

ACKNOWLEDGMENTS

This project would not have been possible without the support and encouragement of so many people throughout my time at Purdue University. Foremost among them is my mentor and colleague Ann Marie Clark. I thank her for leading me into the study of international human rights law, a topic of theoretical depth and empirical challenges that has never ceased to interest me. She has always been willing to read my manuscripts and provide thoughtful comments. Most importantly, she has taught me to ask important theoretical questions and not to get lost in the weeds of technicalities. For her tireless support and quiet prodding, I will forever be indebted, and I hope I will be able to pay it forward.

I also benefited enormously from countless discussions with my mentor, friend, and colleague Eric N. Waltenburg. I was fortunate to work with him on several research projects on the U.S. Supreme Court, from which I gained insightful perspectives on political institutions and honed my methodological skills. As a resourceful mentor, he pointed me to fruitful lines of inquiry for research puzzles, motivated me to try new methods, and consistently provided me with immediate feedback on my work. More than an academic adviser, he is a friend with whom I often hang out, eat hot dogs for lunch, and share my personal stories. Without his patience, tireless encouragement, and friendship, I would never have been able to complete this project.

This manuscript has also benefited tremendously from the scholarly help of James A. McCann and Thomas Mustillo. Throughout the entire writing process, James A. McCann has always been a solid sounding board for my intellectual challenges as well as personal frustrations. Thomas Mustillo's meticulous reading of my manuscript and his invaluable comments have greatly helped me sharpen my arguments.

I also wish to thank a number of colleagues and scholars who offered me candid and insightful feedback on numerous occasions, including Dara Kay Cohen, Rosalee A. Clawson, Kyle Haynes, Aaron M. Hoffman, Ñusta Carranza Ko, William P. McLauchlan, S. Laurel Weldon, Dwayne Woods, Kuan-sheng Wu, Swati Srivastava, and Logan Strother. The Department of Political Science at Purdue University provided me with an enriching learning environment that made it possible for me to transition from a graduate student to an independent researcher. This dissertation was supported by grants from the Department of Political Science at

Purdue University and the Purdue Research Foundation, and the Ludwig Kruhe Dissertation Fellowship from Purdue's Graduate School.

I have also been blessed to have hugely supportive friends who bring happiness, laughter and warmth to my life. In no particular order, I wish to thank Scovia Aweko, Alberto Beltran, Eliza Osorio Castro, Ñusta Carranza Ko, Kuan-sheng Wu and Bi Zhao. Finally, I would particularly like to thank my parents for their unwavering support for my academic pursuits. It was their endless love and ongoing encouragement that sustained me throughout the many years of research endeavors. This dissertation is dedicated, with love and immense gratitude, to both of them.

TABLE OF CONTENTS

LIST OF TABLES

LIST OF FIGURES

ABSTRACT

Previous research has analyzed a range of domestic stakeholders that make national governments' commitments to international human rights treaties credible, including independent judiciary, legislative veto players, political opposition groups, and non-governmental organizations. But how does the power dynamics within the government affect state compliance with human rights treaties? In this study, I focus on the effect of the central-local governmental structure. My focus on the central-local governmental relations builds on the basic understanding that international human rights norms need to pass through domestic political and administrative processes before they can be implemented on the ground. I argue that a decentralized state in which local authorities enjoy more discretion in local matters is less likely to comply with human rights treaties because decentralization (1) hinders the top-down diffusion of human rights norms between different governmental tiers, (2) creates a great number of local agents that are not subject to pressure from the international society, and (3) enables the central government to deflect international criticism by shifting blame for human rights abuses to local officials. To test my theoretical expectation, I use a mixed methods approach to analyze variation at both the national and subnational levels. I first conduct cross-national analyses of the impact of governmental decentralization on state compliance with the International Covenant on Civil and Political Rights and the United Nations Convention Against Torture. I then use qualitative and quantitative methods to conduct subnational analyses of China and US compliance with international human rights treaties. Complementary streams of quantitative and qualitative evidence from cross-national and within-country analyses suggest that higher levels of decentralization reduce state compliance with international human rights treaties. A practical implication of my research is that failing to hold local authorities accountable creates a mismatch between promoting political accountability and advancing human rights.

CHAPTER 1. INTRODUCTION

"Where, after all, do universal human rights begin? In small places, close to home—so close and so small that they cannot be seen on any maps of the world."

- Eleanor Roosevelt (1958)[1]

1.1 Two Anecdotes

1.1.1 Nepal

On 17 August 2004, the Communist Party of Nepal, a Maoist political party, organized a mass gathering in the Kanchanpur district in the far western Nepal. The security forces raided the meeting and arrested eleven civilians. These eleven men were detained incommunicado under Nepal's Terrorist and Disruptive Activities (Control and Punishment) Ordinance, a law promulgated to counter the Maoist insurgency.[2] After several months' detention, they were put in jail in November. According to Amnesty International, Birman Sarki, one of the eleven prisoners, suffered from "severe mental disabilities" due to torture and ill-treatment by soldiers in the detention center.[3] Allegedly, these soldiers "savagely beat" Birman Sarki after he "express[ed] concerns about the safety of his wife and young children."[4]

In May 2005, the Kanchanpur Appeal Court found these detainees not guilty of any offenses and thus ordered their release. The security forces, however, ignored the court order. Instead of allowing them to go free, they took them to the police station and kept holding them in preventive detention, with the consent of the Chief District Officer of the Regional Police Office in the Kanchanpur district.[5] On June 15, the Kanchanpur Appeal Court ruled again that the group of eleven men were illegally detained and ordered their immediate release. Despite protests from lawyers, journalists, and human rights activists, the security forces flouted the court ruling,

[1] Quoted from "The Great Question," a speech delivered by Eleanor Roosevelt at the United Nations on 27 March 1958, https://harpers.org/blog/2007/12/roosevelt-on-human-rights-in-the-small-places/.
[2] Replacing the Terrorist and Disruptive (Prevention and Punishment) Act of 2002, the Terrorist and Disruptive Activities (Control and Punishment) Ordinance came into force in October 2004.
[3] See Amnesty International. UA 247/05, 22 September 2005, https://www.amnesty.org/download/Documents/84000/asa310762005en.pdf.
[4] Ibid.
[5] Ibid.

throwing the eleven detainees back into the jail again.[6] On behalf of these detainees, human rights lawyers then filed a case in the Nepalese Supreme Court. The Nepalese Supreme Court affirmed the decision of the Kanchanpur Appeal Court. But the eleven detainees were still believed to be held in the police station: after the detainees stepped out of the court room, they were ordered by the security personnel to "get back into the vehicles" and were then taken away "in the direction of the Kanchanpur Regional Police Office."[7]

Commenting on reports of civilians rearrested following their release by court order in Nepal, Mr. Sayed Kassem El-Masry, an expert on the United Nations (UN) Committee Against Torture, expressed concern that these detainees were at risk of torture. He also pointed out that the widespread human rights violations committed by the Nepalese security forces—arbitrary dentition, disappearance, summary execution, and torture—reflected "[t]he consistent disregard of the security forces for the rule of law."[8] Mr. Ole Vedel Rasmussen, a member on the UN Committee Against Torture, also commented that "[s]uch contempt of court illustrated the unchecked power exercised by the police and the security forces."[9]

As a state party to the Convention against Torture (CAT) since 1991, the Nepalese government had made legislative efforts to prohibit the use of torture, for example, the Compensation Relating to Torture Act of 1996, the Human Rights Commission Act of 1997, and the State Cases Act of 1993.[10] Despite these legislative efforts as well as other administrative measures, the UN experts as well as many human rights organizations found evidence of systematic practice of torture by law enforcement officials, including the police, the security forces, and the Royal Nepalese Army. According to a 2001/2002 survey conducted by the National Human Rights Commission, a supervisory and investigative body of human rights violations in Nepal, most of the 594 torture allegations were carried out by the security forces.[11]

---

[6] Ibid.
[7] Ibid.
[8] Summary Record of the 669th Meeting of the Committee Against Torture, CAT/C/SR.669, 16 November 2005, para. 15-16, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2FC%2FSR.669&Lang=es.
[9] Ibid, para. 24.
[10] Addendum of Nepal, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, CAT/C/33/Add.6, 14 January 2005, para. 126, https://www.refworld.org/docid/42cd6f5c4.html. See para. 24 for a full list of such legislation.
[11] Ibid, para. 53.

These statistics corroborate Mr. Rasmussen's claim that "[t]here seemed to be a lack of control over the security forces" in Nepal.[12]

Yet the Nepalese government played down the torture allegations received by human rights groups. Although conceding that "[t]hese allegations sometimes bear some truth," the Nepalese government argued, "these are not the outcome of a deliberate State policy, but are rather isolated acts carried out by individuals."[13] In its second periodic report submitted to the UN Committee Against Torture, the Nepalese government also tried to make the rebels the scapegoat for the widespread use of torture and ill-treatment. It accused the Maoist insurgents of committing a growing number of incidents of torture in the decade-long internal armed conflict in Nepal. Despite large-scale human rights violations committed by rebel groups, Amnesty International, on the other hand, found that most torture allegations it received came from government-controlled regions.[14] The UN Committee Against Torture thus found Nepal's excuse not justified. It reminded the Nepalese government that "no exceptional circumstances whatsoever may be invoked as a justification of torture."[15]

1.1.2 China

On the morning of 18 April 2005, a group of officials from the Family Planning office of Shuanghou Town, Linyi County, Shandong Province, searched a house for Ms. Liu. They wanted to check if she had undergone sterilization. But they could not locate Ms. Liu, so they abducted Mr. Yuancheng Liu, Ms. Liu's 59-year-old father who happened to stay in his daughter's house at the time of the search. Mr. Liu was taken to the Family Planning office and was held in detention there. The next morning, Mr. Liu's son went to the Family Planning office and made an inquiry about his father's whereabouts. A guard told him that his father would not

[12] Summary Record of the 669th Meeting of the Committee Against Torture, CAT/C/SR.669, 16 November 2005, para. 23.
[13] Addendum of Nepal, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, CAT/C/33/Add.6, 14 January 2005, para. 134.
[14] See Amnesty International. "Briefing for the United Nations Committee against Torture," October 2005, https://www.amnesty.org/download/Documents/84000/asa310792005en.pdf.
[15] Conclusions and Recommendations of the Committee against Torture, CAT/C/NPL/CO/2, 15 December 2005, para. 10, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT/C/NPL/CO/2&Lang=En.

be released until it was confirmed that Ms. Liu had surgical sterilization. Otherwise, she would need to take contraceptive pills or use an intrauterine device.

In the afternoon, Mr. Liu's wife and his son brought food and visited the Family Planning office again. They could not find Mr. Liu this time, so they came back home. The next day, on their way to the Family Planning office in the town, Mr. Liu's family members found him lying unconscious near a bridge. After Mr. Liu returned to consciousness, he revealed that the family planning officials had starved and tortured him. He was released only because his health condition severely deteriorated. He also said that while he was in detention, the mayor and several security guards dragged him out of the detention room. They beat his head with brooms, slapped on his face, violently kicked his legs, and poured cold water onto his face.[16]

Mr. Yuancheng Liu was one of many victims in a coercive family planning campaign in Linyi County that was exposed by several human rights lawyers in 2005. According to their investigation, family planning officials in Linyi and the thugs they hired routinely engaged in forced entry into homes, arbitrary arrest, unlawful detention, and torture.[17] In the detention room, officials stripped victims' clothes and brutally beat them with sticks and whips. They deprived victims of sleep and their access to food and water. They used violent threats and humiliating language against victims. Victims also suffered from abusive detention conditions, as scores of men and women were jammed in one small room, and they were forced to urinate in jars.[18]

The systemic, coercive family planning campaign in Linyi County is one episode of repression associated with the statewide implementation of the "one-child-per-couple" population and family planning policy in China since 1979. International society has long criticized China's one-child policy for violating women's reproductive rights, which the Chinese government was committed to protect upon its ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1980. What concerns the international society more is the coercive and abusive measures taken by family planning officials to enforce the policy in many places of the country. The widespread practice of ill-

[16] Biao Teng, a Chinese human rights lawyer and defender, documented Yuancheng Liu's experience of ill-treatment by local officials in his report, *Investigation Report of Family Planning in Linyi* (*Linyi Jihua Shengyu Diaocha Shouji*), http://m.kdnet.net/share-9207122.html. An English version of this report can be found at https://www.womensrightswithoutfrontiers.org/chenreport.pdf.
[17] Ibid.
[18] Ibid.

treatment by local officials put China in breach of the CAT, which it ratified in 1988, and drew wide condemnation from abroad.

Responding to international condemnation of local governments' reprehensible efforts to control population, Chinese delegates objected before the UN Committee against Torture in May 2000 that "China has all along adhered to the principle of combing state guidance with people's voluntarism and is firmly opposed to any forcible order, [and] coercive measure in any form."[19] Deflecting international criticism of abusive human rights practices in the enforcement of family planning programs, they said, "It is true however that some family planning functionaries *in the grass-roots* have adopted a simple and rude approach…Any case of rude and rough approach by family planning functionary, once discovered will be resolutely checked and rectified" [emphasis added].[20] Other top officials also made similar remarks to defend the Chinese government's commitments to the CAT. For example, in 2004, Baige Zhao, vice minister of the State Family Commission, publicly stated that the family planning policy in China is voluntary rather than coercive.[21] On 25 August 2005, Xiulian Gu, vice chairman of the Standing Committee of the National People's Congress and chairman of All-China Women's Federation, said that the Chinese government prohibits forced abortions and compulsory sterilizations, and that the Chinese government implements voluntary family planning through policy guidance such as levying fines.[22]

Partly due to the unabating international outcry over coercive family planning practices, the Chinese government introduced a new Population and Family Planning Law (PFPL) on 1 September 2002 to standardize the implementation of family planning policies nationwide and to protect the rights of citizens. Previously, local authorities had exercised broad discretion when implementing family planning policy. As a result, family planning regulations had varied greatly across places (Zhang 2017). In an interview with a Chinese official news media shortly after the

[19] "China: Human Rights Violations and Coercion in One-Child Policy Enforcement," Hearing before the Committee on International Relations, Serial No. 108-158, 14 December 2004, p. 46, https://chrissmith.house.gov/uploadedfiles/2004.12.14_china_-_human_rights_violations_and_coercion_in_one-child_policy_enforcement.pdf.
[20] Ibid, pp. 46-47.
[21] Shen, Bin. "State Family Planning Policy Shouldn't Be Delegitimized by Forced Abortions" (Jisheng Guoce Buneng Bei Qiangxing Duotai Mohei). *Oriental Morning*. 14 June 2012, http://news.ifeng.com/opinion/society/detail_2012_06/14/15279583_0.shtml.
[22] Ibid.

enactment of the PFPL, Bingli Zhao, vice minister of the State Family Planning Commission, commented on the issue of forced family planning operations by local officials. He noted that:

> [I]n the early days of family planning, to check the overgrowth of population, some inexperienced staff handled things in oversimplified and even uncivilized way… Now the Law on Population and Family Planning provides legal protection for the legitimate rights and interests of citizens. According to the law, those who implement birth control policies by taking oversimplified and uncivilized ways may be sued and punished.[23]

The PFPL represented an optimistic beginning, but China watchers were skeptical of its effectiveness. As Taylor (2015) pointed out, "though the national government may have prohibited these practices, local and provincial officials implementing the policy frequently did not pay heed, because helping to keep the birthrate low was often a path to a promotion." The coercive family planning campaign in Linyi, as I discussed earlier, happened after the PFPL was promulgated. Indeed, reports of forced abortions and sterilizations continued elsewhere in China. Incidents of torture and ill-treatment by local officials occurred frequently in many other places as well. In a hearing on the coercive enforcement of China's one-child policy, US House Representative Tom Lantos of California commented that "Some local officials in China understand this basic truth and have implemented truly voluntary family planning programs," but "too many officials at the national and local levels refuse to step away from the old dogma and cling to the coercive family planning practices which have denied basic human rights to women all over China."[24]

1.2 The Elephant in the Room: The Decentralized Governmental Structure

The anecdotes from Nepal and China highlight that although national authorities have taken steps to promote various rights enshrined in international human rights treaties, local law enforcement officials continue to violate them, thereby putting states in breach of their human rights commitments (Hafner-Burton and Ron 2009; Lutz and Sikkink 2000; Risse 2017). When

[23] Hu, Huiting. "Family Planning Law and China's Birth Control Situation," 18 October 2002, http://www.china.org.cn/english/2002/Oct/46138.htm.
[24] "China: Human Rights Violations and Coercion in One-Child Policy Enforcement," Hearing before the Committee on International Relations, Serial No. 108-158, 14 December 2004.

the international society criticized domestic human rights abuses, state officials deflected these criticisms by putting the blame on uncooperative local officials as well as non-state actors.

Local authorities' defiance contradicts the dominant view in the human rights literature that "[n]oncompliance in the area of human rights—especially for the most egregious violations—can rarely be explained by bureaucratic failure" (Hafner-Burton 2005, 598). Central to this view is the assumption that the state (usually the executive) is a unitary actor with full control of domestic policies (Chayes and Chayes 1993; Risse 2017). If a state violates human rights treaties, it must do so deliberately. Consequently, most scholars have looked for various domestic actors that stand on the opposite side of the executive and analyzed how they can rein in rights-abusing governments. Among these do-gooders are political opposition groups, legislative veto players (Lupu 2015), independent judiciaries (Keith 2002a), and human rights nongovernmental organizations (NGOs) (Keck and Sikkink 1998; Simmons 2009). Yet, the role of local authorities as opposed to the central government is largely under-theorized, despite many accounts of local officials' withdrawal from national governments' commitments to human rights treaties. The central government is responsible for treaty negotiation and ratification, but it is the local governments that put human rights policies into practical application. Although the central government has made a legal commitment to international human rights law, local authorities by no means automatically conform to policies flowing from the top. Very often various governmental tiers have divergent interests in many issue areas, including human rights. And this is true in both democracies and authoritarian regimes.

Building on the basic understanding that international human rights norms need to pass through convoluted political and administrative processes before they can be translated into local practice, in Chapter 2, I develop a theoretical framework to explain how the relationship between the central and local governments affects state compliance with human rights treaties. A key concept epitomizing the relationship between different governmental tiers is decentralization—the phenomenon of power dispersion from the national government to local authorities. The past few decades have witnessed the global spread of decentralization reforms (Treisman 2007). Redistributing resources and authority, these reforms have affected a broad spectrum of policy issues, such as corruption (Fan, Lin, and Treisman 2009), economic growth (Enikolopov and Zhuravskaya 2007; Thornton 2007), and even happiness (Voigt and Blume 2012). The effect of decentralization on state compliance with human rights treaties, however, remains unexplored.

This neglect is unfortunate, since "[h]uman rights are not that different from other policy areas" (Risse 2017, 143).

The central argument of this study is that a state in which local authorities enjoy more discretion over local matters is less likely to comply with human rights treaties. First, decentralization creates barriers to the top-down diffusion of human rights norms. It also exacerbates the principal-agent problem so that human rights abuses committed by local authorities cannot be easily detected by the central government. Second, the reputational mechanisms that provide state leaders with incentives to comply with human rights treaties have less influence on the large number of local authorities in a decentralized political system. Third, a decentralized governmental structure enables the central government to deflect international criticism by shifting blame for human rights abuses to local officials. This blame-shifting strategy helps state leaders muddle the assignment of political accountability, insulates the central government's legitimacy from popular resistance, and excuses national governments from taking the full responsibility for human rights protection and promotion.

1.3 Cross-National and Within-Country Evidence

To test my theoretical expectation, in Chapter 3, I conduct cross-national analyses of the impact of governmental decentralization on state compliance with the International Covenant on Civil and Political Rights (ICCPR) and the UN Convention Against Torture (CAT).[25] Specifically, I analyze the joint effect of decentralization and human rights treaty ratification on a range of human rights outcomes. I take special care by using the coarsened exact matching to control for states' nonrandom ratification of international human rights treaties. My findings show that decentralization reduces a state's level of compliance with human rights treaties.

In Chapter 4, I collect original event data on state agents' use of torture and ill-treatment at the provincial level in China between 2008 and 2018 and conduct a subnational analysis of China's compliance with the CAT. Using this fine-grained dataset to measure the core outcome of interest in my subnational analysis, I find that higher levels of decentralization—proxied by greater fiscal power-sharing between the central government and provincial administrations, greater geographic distance of a provincial capital to the national capital, and when a party

[25] See the full text of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment at https://treaties.un.org/doc/Treaties/1987/06/19870626%2002-38%20AM/Ch_IV_9p.pdf.

secretary in a province is native-born—increases the prevalence of state agents' use of torture and ill-treatment.

In Chapter 5, I investigate how the power-sharing between states and the federal government affects the US compliance with Article 36 of the Vienna Convention on Consular Relations (VCCR), which guarantees foreign nationals' right to consular notification and access when they are arrested or detained by law enforcement officials in the receiving states. Relying on a rich set of qualitative evidence—court opinions, press releases, news reports, and government policy statements, I delineate the history of US engagement with legal challenges arising from violations of the Vienna consular rights before the US Supreme Court and the International Court of Justice (ICJ). I also provide a rich narrative of the mechanisms I put forth in my theoretical framework. I find that US noncompliance with the Vienna consular rights is mainly attributable to state-level governments that are not receptive to international law. Due to reputational concerns, the federal government showed sympathy toward international appeals and ICJ decisions. But federalism concerns were so strong that when confronted by foreign governments in the ICJ, the US federal government used the domestic constitutional arrangement as an excuse not to strengthen the enforcement of the VCCR.

In addition to qualitative analysis, I also conduct a quantitative analysis of the impact of federalism on the prevalence of violations of the Vienna consular rights at the state level in the US. I collect original event data on law enforcement officials' violations of the Vienna consular rights at the state level from court opinions since 1999. Using this novel dataset in my quantitative analysis, I find that when the ideological gap between political elites and local law enforcement officials shifts to the conservative end, violations of the Vienna consular rights are more prevalent. Taken together, the qualitative case study and the quantitative work identify generalizable relationships between governmental decentralization and state compliance with international human rights treaties.

By demonstrating that a decentralized governmental structure deters the national government from complying with international human rights treaties, my research contributes to the literature on the relationship between state capacity and governmental respect for human rights. Existing studies tend to focus on the central government's lack of control over non-state actors, such as criminal groups, paramilitary forces, and transnational corporations (Börzel and Risse 2013; Mitchell, Carey, and Butler 2014; Risse 2017), and have paid little attention to the

inner workings of the government. Repudiating the assumption that the government is a unitary actor, my research provides evidence on how divergent motives and constraints of different governmental tiers affect domestic human rights practices.

This study also speaks to a growing body of empirical literature on the relationship between state capacity and state compliance behavior. In their pioneering work, Chayes and Chayes (1993) draw attention to the nexus between state capacity and state compliance with regulatory treaties, but they do not clearly explain what state capacity is. In later works, scholars make an effort to clearly define and measure state capacity. For example, studying European Union (EU) member states' compliance with European law, Börzel et al. (2010) use three indicators--governmental autonomy from veto players, GDP per capita, and bureaucratic professionalism--to measure state capacity. Similarly, analyzing determinants of governmental respect for civil, political, and physical integrity rights, Cole (2015) measures state capacity with territorial reach, military capacity, and bureaucratic efficiency.

Although these works recognize that state capacity plays an important role in the execution of national policies, they tend to treat state bureaucracy as a non-political machine (Chayes and Chayes 1993; Cole 2015). To them, states' noncompliance behavior is simply caused by some mechanical malfunction of this machine, such as administrative inertia and logistic shortage. Yet bureaucracy is not devoid of politics. My study departs from the extant literature by highlighting the role of local authorities as opposed to the central government in implementing human rights law. Additionally, the existing research fixes its sight firmly on domestic factors. My study, however, goes beyond this domestic focus by examining how domestic institutional structure interacts with international factors. Specifically, my theoretical framework sheds light on the national government's strategic use of its decentralized political arrangement to evade international scrutiny.

Lastly, my study complements existing cross-national analyses of human rights practices by investigating subnational variation in human rights violations in China and the US. In the human rights literature, scholars have fiercely debated the validity of cross-national and time-series data on human rights conditions (Clark and Sikkink 2013; Fariss 2014; Hafner-Burton and Ron 2009). The general view of this literature is that the human rights field would benefit from within-country analysis of high-quality subnational data. The subnational analysis I conduct for

China and the US also adds to the scant empirical literature on the politics of human rights within countries (Chen and Chen 2016).

One major policy implication of my research is that keeping an eye on national leaders still matters, but neglecting local officials creates a mismatch between promoting accountability and advancing human rights. Human rights advocates, monitors, and policy makers should continue to pay close attention to instances and perpetrators of human rights abuses at the local level. Instead of reporting aggregate human rights records in numbers at the state level, human rights organizations are encouraged to document subnational human rights abuses and to make them accessible to the media and the public. In this regard, Datakind, a group of experts committed to using data science to advance humanity, has experimented with mapping the occurrence of human rights violations across the globe.[26] Compared with the traditional approach of reporting aggerate, state-level human rights violations in abstract numbers, using data visualization tools to display instances of human rights violations brings contextualized human rights information to the fore and could help bring about more localized and targeted advocacy campaigns.

In addition to naming and shaming state leaders, human rights organizations should also expose local officials' repressive conduct. Since the early 1970s, Amnesty International has been documenting local officials' misconduct in its urgent action bulletins (Clark 2001). Amnesty circulated these bulletins within its network and urged its members to appeal to relevant governmental officials via letter-writing. Although evidence has shown that Amnesty's urgent action campaigns contribute to better human rights protection (Hendrix and Wong 2013), such strategy has not been used by a wide range of human rights organizations. Findings from my research call for more ways to hold local officials accountable.

[26] See descriptions of Datakind's project "Strengthening Global Human Rights through Mapping," https://www.datakind.org/projects/strengthening-global-human-rights-through-mapping.

CHAPTER 2. GOVERNMENTAL DECENTRALIZATION AND STATE COMPLIANCE WITH INTERNATIONAL RIGHTS TREATIES

The adoption of the *Universal Declaration of Human Rights* (UDHR) in 1948 ushered in a new era of a rich body of international human rights treaties that codify into written form universal norms, practices, and rules about human rights protection.[27] While the UDHR is rhetorical and aspirational, the many human rights treaties adopted by the UN in the ensuing decades—notably the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESR)—impose legally binding obligations of varying degrees on state parties (Abbott et al. 2000). Upon ratifying certain human rights treaties, state parties might be obligated to create domestic implementing institutions, submit regular reports to monitoring bodies at the UN, and participate in complaint procedures for inter-state disputes and individual allegations.

State parties' obligations to fulfill their commitments to human rights treaties arise from the fundamental legal principle of *pacta sunt servanda*—the parties of a treaty shall act in good faith (Abbott et al. 2000). Louis Henkin (1979, 47) once famously said, "almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time." But when we look at the human rights practices across the world, Henkin's assessment does not ring true. The hard and bitter truth is that "While the vast majority of countries have ratified nearly all the major human rights treaties, rights violations remain common."[28] A few studies even find that governments become more repressive after ratifying some human rights treaties (Hafner-Burton and Tsutsui 2005b; Hill 2010).

These surprising findings might be caused by the changing standard of accountability: as states are held to higher standards of human rights protection over time, we ought to find more incidents of human rights violations that would otherwise not be considered abuses previously

[27] There are nine core international human rights treaties, including the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the Convention on the Elimination of All Forms of Discrimination against Women (1979), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), the Convention on the Rights of the Child (1989), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), the International Convention for the Protection of All Persons from Enforced Disappearance (2006), the Convention on the Rights of Persons with Disabilities (2006). For a list of supplementary optional protocols, see https://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx.

[28] See Posner, Eric. 2014. "Human Rights Law Is Too Ambitious and Ambiguous." *The New York Times*, https://www.nytimes.com/roomfordebate/2014/12/28/have-human-rights-treaties-failed.

(Clark and Sikkink 2013). Indeed, after accounting for the changing standard of accountability, states' respect for human rights appears to improve over time (Fariss 2014). Despite this encouraging finding, the gap between formal treaty commitments and actual rights practices is nevertheless persistent.

2.1 Domestic Mechanisms: Horizontal Checks and Balances

Scholars have produced a spate of research to explain the gap between formal treaty commitments and actual rights practices. A range of factors are found to bear on the arduous process of internalizing human rights norms that are embedded in human rights treaties. The international society can nudge states into respecting the validity of human rights principles through naming and shaming (Clark 2013; Hafner-Burton 2008), economic sanctions (Carneiro and Apolinário 2016; Drury and Li 2006; Peksen 2009; Wood 2008), and interstate socialization and acculturation (Goodman and Jinks 2013; Greenhill 2010). But international pressure only goes so far because compliance with human rights treaties is an "inherently domestic affair" (Hillebrecht 2014, 3). Once a state ratifies a treaty, "institutionalization and habitualization processes become the dominant mode of social action" (Risse and Sikkink 1999, 34). In such processes, scholars find that an array of domestic stakeholders—independent courts, political opposition parties, and civil society organizations—can hold their government accountable for honoring their treaty commitments (Hillebrecht 2014).

How do these domestic stakeholders help enforce international human rights treaties? First, independent judiciaries serve as a primary enforcement mechanism of treaty obligations by holding state officials criminally accountable for their human rights abuses (Keith 2002a; Keith, Tate, and Poe 2009b; Powell and Staton 2009). When judiciaries are independent from administrative manipulation, civilians are more likely to bring allegations of human rights abuses in the courts because they are less afraid of retaliations by the executive. Independent judiciaries also help provide redress to victims of human rights abuses by conducting fair and unbiased investigations.

The positive effect of independent judiciaries on promoting human rights principles extends beyond individual cases. By handling individual claims, independent judiciaries clarify the legal specificities of human rights principles. This helps create clear-cut precedents that would "expose political elites to new standards" and deter future rights-abusing behavior

(Hillebrecht 2014, 22–23). Another positive spill-over effect is that by hearing cases, independent judiciaries provide a forum through which human rights practices and norms are debated. This contentious process helps diffuse human rights norms not only among the relevant parties to a case in the courtroom but also among the mass public.

In addition to independent judiciaries, political opposition parties can also help facilitate compliance with human rights treaties. Political opposition groups often spearhead the effort to ratify human rights treaties. Ratifying human rights treaties usually is not the incumbent party's default choice because it increases the costs of repression. But the incumbent party will nonetheless commit to human rights treaties if doing so can placate political opposition parties and shore up its political legitimacy in the short run (Conrad 2014; Hillebrecht 2014, 23; Vreeland 2008). Even after the incumbent party ratifies a human rights treaty, it might break its promises. Yet political opposition groups can function as a brake in the legislature, using their veto power to obstruct the incumbent party's effort to renege on its commitment to human rights protection. Moreover, political opposition parties help promote compliance with human rights treaties by diffusing information about human rights abuses and translate human rights norms in the civil arena. To do so, political opposition groups strategically "turn minor human rights issues into much larger political concerns" in legislative debates, amplifying the relevance of international human rights principle (Hillebrecht 2014, 23).

Another mechanism set in motion by treaty ratification relates to civil society actors (Neumayer 2005). Some states ratify human rights treaties because they sincerely want to promote human rights; others do so for instrumental reasons such as reaping poll gains or getting more foreign aid (Simmons 2009). Regardless of their motives, when ratifying human rights treaties, governments—at least symbolically—affirm the validity of the set of universally endorsed human rights norms and principles embedded in these treaties. Moreover, the fundamental legal rule among civilized nations is that state parties to a treaty shall act in good faith to fulfill their obligations under the treaty terms. The acceptance of norms' validity and the fundamental legal rule that "treaties shall be complied with" provide civil society actors with the moral high ground to name and shame rights-abusing governments' hypocrisy (Clark 2001; 2013; Finnemore and Sikkink 1998; Keck and Sikkink 1998). Very often human rights organizations work with free media, using sensational language to spread news about human

rights violations (Sikkink 2011). In doing so, they appeal to sympathetic audiences at home and from abroad, bringing national governments into line with international human rights standards.

2.2 State Capacity

The literature discussed above, or the so-called "enforcement school," sheds light on how various domestic stakeholders—independent judiciaries, political opposition parties, and civil society organizations—help bring national governments into conformity with human rights treaties (Börzel et al. 2010). These studies, however, rely on one problematic assumption—the state (usually the executive) violates human rights treaties deliberately (Chayes and Chayes 1993). According to this assumption, treaty ratification is just empty talk, and human rights treaties are mere parchment barriers. Yet, evidence suggests that human rights treaties for ratification represent "considered and well-developed conceptions of national interest that have themselves been shaped to some extent by the preparatory and negotiating process" (Chayes and Chayes 1993, 183). The domestic process of treaty ratification also involves rounds of political pushing and pulling between different governmental agencies, political parties, and interest groups. Thus, once national governments decide to ratify a treaty, they rarely hold the idea that they will violate them routinely; instead, they expect themselves to discharge their treaty obligations (Chayes and Chayes 1993, 184–87). As Creamer and Simmons (2015, 590) aptly argue, "Many countries do comply with most of their treaty obligations, and even more genuinely *want* to comply" [emphasis original].

If we accept the assumption that states do want to comply with treaties they have ratified, then treaty noncompliance is not deliberate but involuntary. And this is where the managerial school of thought about international legal compliance, a body of literature I will discuss next, departs from the enforcement school. Paving the way for the managerial model, Chayes and Chayes (1993; Chayes, Chayes, and Mitchell 1998; Putnam 1988) identify three culprits in states' involuntary noncompliance with regulatory treaties: ambiguous treaty terms, deficient domestic regulatory capacity, and the time lag between ratification and implementation (Chayes and Chayes 1993). Ambiguous terms in human rights treaties can be clarified by international courts and domestic judiciaries. But compliance with court decisions is not automatic (Hillebrecht 2014). As prior anecdotal evidence shows, the Nepalese security forces kept detaining civilians despite multiple court orders of the detainees' release. The time lag between

ratification and implementation reflects domestic regime's resistance to the changing standard brought about by human rights agreements. In a sense, the time lag between ratification and implementation is due to the lack of sweeping reforms. Thus, treaty noncompliance is a top-down management issue rather than some kind of "purposeful disobedience" by national governments "who choose defection from the rules" (Hafner-Burton 2005, 597).[29] In short, the fundamental constraint on treaty compliance is states' weak capacity to enforce domestic human rights policies and regulations (Chayes, Chayes, and Mitchell 1998).

Chayes and Chayes (1993; Chayes and Chayes 1995) draw attention to the nexus between state capacity and state compliance with regulatory treaties in their pioneering work, but they do not clearly explain what state capacity, or lack thereof, is. Filling this gap, Börzel and Risse (2013; Risse 2017) explore different aspects of state capacity deficiency, or "areas of limited statehood." They define "areas of limited statehood" as "those parts of a country in which central authorities (usually governments) lack the ability to implement and/or enforce rules and decisions and/or in which the legitimate monopoly over the means of violence is lacking" (2013, 66). To them, the "areas" of limited statehood can be different configurations of territory, policy issue areas, and demographic segments (Börzel and Risse 2013, 66). Despite their broad definition of the "areas" of limited statehood, their case studies of Guatemala and Georgia mainly illustrate how abusive non-state actors—urban gangs, criminal groups, transnational corporations, and secessionist groups—detract from central authorities' commitment to human rights treaties.

Börzel and Risse (2013)'s conceptualization of areas of limited statehood does not lend itself to quantitative measurement. As they put it, "[u]nfortunately, we do not have good (and quantifiable) data on the nature of the phenomenon of limited statehood" (Börzel and Risse 2013, 68). To aid in testing the effect of state capacity in empirical studies, other scholars have proposed operational definitions of state capacity from resource-based and institution-based approaches (Börzel et al. 2010). The resource-based approach defines state capacity with the resources—economic, financial, military, and human—a state can mobilize to enforce its will, while the institution-based approach looks at how "the domestic institutional structure influences

[29] The original quote from Hafner-Burton (2005, 597) is "[t]he behavior is almost always caused by purposeful disobedience by *actors* who choose defection from the rules" [emphasis added]. The managerial model assumes that subnational actors are defiant, not the central authority.

the degree of a state's capacity to act and its autonomy to make decisions" (Börzel et al. 2010, 1369). As to the latter approach, although both the enforcement school and the managerial school adopt institutional perspectives, the difference between them is stark. Whereas scholars in the enforcement school look at how states' rights-abusing behavior can be checked by institutional constraints outside the executive (i.e., independent judiciaries, political opposition parties, and a vibrant civil society), those in the managerial school examine institutional constraints that prevent states from upholding their treaty commitments.

For instance, Börzel et al. (2010) integrate resource-based and institution-based approaches to define and measure state capacity. They examine how state capacity interacts with power and legitimacy of norms to affect European Union (EU) member states' compliance with European law.[30] They measure state capacity with three indicators: governmental autonomy from veto players, GDP per capita, and "bureaucratic efficiency and professionalism of the public service" (Börzel et al. 2010, 1375–76). They consider veto players because veto players hinder the central authorities from changing existing policies that are unfavorable to human rights protection. They include GDP per capita because it indicates the recourses states can tap to ensure compliance. They also look at bureaucratic efficiency because it indicates a state's capability to mobilize resource it has. Here, we can see how the different assumptions about states' motive for treaty compliance change scholars' theoretical presupposition of some of the institutional constraints. Consider the effect of veto players. Assuming states deliberately violate treaty terms, the enforcement model theorizes that legislative veto players, or political opposition parties, help rein in rights-abusing national governments (Lupu 2015). In contrast, assuming states' noncompliance behavior is involuntary, the managerial model contends that veto players "produce gridlock" to "undermine the ability of the government to change policies even when such change is necessary for compliance" (Börzel et al. 2010, 1375).

While Börzel et al. (2010) study EU member states' compliance with European law, not regional human rights obligations in particular, Cole (2015) empirically analyzes the effect of state capacity on governmental respect for civil, political, and physical integrity rights enshrined in the ICCPR, one of the core international human rights treaties. Echoing Börzel et al.'s (2010)

[30] Börzel et al. (2010) find that although powerful states have the worse compliance records, the deleterious effect of rebellious power is moderated by state capacity. Specifically, states with strong administrative capacity but limited power to resist pressure from the EU are the best compliers; states with limited capacity but enough power are the worse compliers; and states with weak capacity and limited power fall in the middle.

view about the malignant nature of power, he argues that militarily strong states are more prone to use repression (Cole 2015; 2018). He also argues that bureaucratic efficacy, or "the capacity of the state actually to … implement logistically political decisions," help promote human rights. So does a state's territorial reach, the "ability to project authority outward from the organizational center into peripheral areas." He finds that ICCPR membership by itself does not affect civil, political, and physical integrity rights. Rather, ICCPR membership is more likely to improve relevant rights outcomes in states with higher levels of bureaucratic efficacy, places having "autonomous, durable, and effective administrative institutions capable of translating policies—including treaty commitments—into practices."[31] Surprisingly, territorial reach does not moderate the effect of ICCPR membership on relevant rights outcomes.

Another recent study by Creamer and Simmons (2015) investigates the effect of state capacity on state parties' reporting obligations under the CAT. State parties to the CAT are obligated to submit periodic reports to the UN Committee Against Torture, a monitoring body that oversees state parties' implementation of the CAT, on how the pertinent rights are implemented. But some state parties fail to comply with this central obligation by not submitting reports punctually. The quality of state parties' reports also varies. Situating themselves in the managerial school, Creamer and Simmons (2015) argue that it takes substantial legal, financial, and human resources for state bureaucracies to prepare for reports. So richer countries are more likely to better comply with their reporting obligations. In addition to financial resources, states with a National Human Rights Institution (NHRI), a supposedly independent monitoring agency with expertise in human rights, are better equipped for producing timely and high-quality reports. Their findings suggest that only institutional capacity from NHRI matters.

Empirical studies of the effect of state capacity on state compliance with human rights treaties, either substantive compliance (i.e., rights outcomes) or procedural compliance (i.e., report submission), consistently find that states with stronger institutional capacities are better compliers. But the theorization of domestic institutional structure in the managerial school is limited in three aspects.

[31] Cole (2015, 419) uses three indicators to measure a state's bureaucratic efficacy, including levels of military involvement in domestic politics, whether a state's "bureaucracy has the strength and expertise to govern without drastic changes in policy or interruption in government services," and levels of political corruption. Moreover, he finds that the effect of ICCPR membership does not depend on a states' coercive capacity and territorial reach, another two dimensions of state capacity in his study.

First, the role of local governments is missing. This missingness is surprising because scholars in the managerial school focus on the execution of policies, but they pay little attention to local governments that administer most of the policies made by the central authorities. The central government is responsible for treaty negotiation and ratification, but it is the local governments that put into practice human rights policies and regulations on the ground. Even though the central government has made a legal commitment to human right law, local governments by no means would follow suit. Very often different governmental tiers have divergent interests in many issue areas, and human rights is no exception. For example, in China, the central government maintains a National Complaints Bureau to handle citizens' petitions and complaints about local officials' misconduct and transgression. This appeal system is meant to get citizens involved in monitoring local authorities and to provide a bottom-up mechanism to redress citizens' grievances. But its unintended effect is that local officials often "resort to ruthless means to prevent local citizens from contacting high-level authorities," such as arbitrary arrest, administrative detention, illegal imprisonment, and torture (Wong and Peng 2015, 36).

A second analytical inadequacy is that political explanations are missing. Scholars in the managerial school argue that "state capacity is a necessary ingredient for the execution of policy" (Chayes and Chayes 1993; Cole 2015, 414). Particularly, they claim that "bureaucratic capacity will give states the administrative and logistical abilities to implement their human rights treaty commitments" (Cole 2015, 414). That being said, they treat state bureaucracy as a non-political machine. States' noncompliance behavior is simply caused by some mechanical malfunction of this machine such as administrative inertia and logistic shortage. But state bureaucracy is not devoid of politics. Related to the foregoing point I have made, various actors in the bureaucracy have different political motives and constraints. The theorization of domestic institutional structure in the existing literature does not tell us how the political dynamics between different actors affect policy outcomes.

Lastly, the managerial school falls short of explaining the interplay between domestic and international factors. Assuming that states deliberately violate their treaty commitments, not only has the enforcement school dissected a range of domestic and international constraints on states' rights-abusing behavior, but it has also analyzed how domestic constraints interact with international factors. For example, civil society organizations amplify their criticisms of domestic rights abuses by strategically framing them with prevailing human right norms. In

doing so, they make a strong moral case for pressure from the international society on rights-abusing governments (Keck and Sikkink 1998). Yet, most scholars in the managerial school fix their sights firmly on domestic factors, although Lake (2014) is an exception. Her case study of the Democratic Republic of Congo shows that *extreme* state fragility provides an entry point for the international society to intervene, channeling resources and training programs toward domestic judicial sector reform (Lake 2014). Very weak states could succumb to international pressure, but the rest could be very jealous of their sovereignty and are resistant to external actors' intervention. When states violate human rights either deliberately or involuntarily, "a force for good" in the international society is usually galvanized to denounce these abuses. How do those self-described "guilt-free" national governments respond to international criticism of their rights-abusing behavior? Existing studies in the managerial school offer no answer to this question.

To address the above limitations, I develop a theoretical framework to explain how the central-local governmental relations affect state compliance with human rights treaties. First, I focus on the role of local authorities as opposed to the central government partly because local authorities not only administer most of the national policies, but also commit the bulk of the human rights violations (Börzel and Risse 2013; Cole 2015; Risse 2017). Second, although the existing studies in the managerial school are peppered with factual presentation of human rights abuses committed by decentralized agents, they rarely offer political explanations. To remedy this omission, I discuss mechanisms that link the central-local governmental structure to states' treaty compliance records. Third, going beyond the managerial school's domestic focus, I analyze how domestic institutional structure interacts with international factors. To foreshadow my argument in the next section, I discuss how the national government may use its weak capacity as an excuse to deflect international scrutiny.

2.3 Patterns of Treaty Compliance over Central-Local Governmental Relations

The sharing of powers—legislative, judicial, and administrative—between the central government and local authorities is ubiquitous but with varying degrees in different political systems. It is useful to start discussing these differences between unitary and federal systems. (As I will discuss later, the unitary-federal dichotomy is too coarse to capture the extent of power sharing between different governmental tiers.) In unitary states, although the central government

commands all the powers, local governments are delegated with authority to implement national laws and policies made by the central government. Local authorities are expected to faithfully carry out the central government's orders, but very often they have considerable discretion over policy implementation. This discretion stems from the central government's tacit approval and inadequate oversight.

On the other hand, in a federal system, the division of power between the federal government and component units is guaranteed by the Constitution. For example, in the United States, the powers given to the federal government are enumerated in the Constitution, such as the power to make treaties, to declare war, and to regulate commerce. The powers not delegated to the federal government are reserved for the states.[32] Some powers, however, overlap between the federal government and individual states. States in the US traditionally have substantial authority in criminal law and family law, among others.

The division of power between the central government and local authorities, however, is in a state of flux. In the US, the New Deal era witnessed an immense growth of the federal government. In the ensuing decades, as economic and financial matters become more complicated thanks to globalization, a network of federal agencies that regulate a broad range of issues has been expanding. Despite the federal government's ever-increasing regulatory power, a new wave of federalism concerns has grown in tandem, seeking to ward off the federal government's encroachment on states' turf. A recent ruling handed down by the US Supreme Court on 14 May 2018 in *Murphy v. National Collegiate Athletic Association* bespeaks the Court's reaffirmation of states' rights and the anti-commandeering doctrine, a legal rule that prohibits the federal government to compel states to enforce federal policies (Jackson 2008).[33] In this case, by a 6 to 3 vote, the Court struck down the *Professional and Amateur Sports Protection Act*, a federal gambling statue passed by the Congress in 1992 to prohibit state-sanctioned sports betting.

This renewed federalism that protects states' independence from the federal encroachment in the US find its parallel—decentralization reforms—in other parts of the world.

[32] Specifically, the Tenth Amendment of the US Constitution stipulates that "The powers not delegated to the United States by the Constitution, not prohibited by it to the States, are reserved to the States respectively, or to the people." Article 1 Section 10 of the US Constitution lists powers prohibited to States, such as imposing duties on imports or exports, making treaties with foreign countries, and maintaining troop.
[33] 584 US __ (2018).

Developed countries such as the United Kingdom and France carried out "decentralization or 'devolutionizing' reforms" (Voigt and Blume 2012, 230). Decentralization reforms have also been in vogue in the Third World, as Dillinger (1994) observes that all but twelve of the world's seventy-five largest developing and transitional countries have been experimenting with decentralization projects (Amat and Falcó-Gimeno 2014; Bardhan 2002; Rodden 2004; Treisman 2007). Through decentralization reforms, the central government aims to bring the government closer to people by transferring authority and responsibility to subnational governments. Restructuring the power relations between different governmental tiers, these institutional reforms affect a wide range of policy issue areas nationwide. For example, Senegal started a decentralization reform in 1972, creating 320 rural communities headed by elected councils that controls land allocation (Wilfahrt 2018). Since then, the reform has marched on, and the 1996 reform further expanded rural communities' autonomy, granting them control over a wider range of social services (Wilfahrt 2018).

Consider Indonesia as another example. In the aftermath of a financial crisis and a wave of separatist movements, Indonesia began its decentralization reform in 1999: the Indonesian parliament passed two regional autonomy laws (Law 22 and Law 25), giving sub-provincial districts and municipalities authority over a wide variety of matters including imposing taxes (Arnold 2009; Firman 2009). Five years later, the regional autonomy law of 2004 (Law 32) was passed to replace the 1994 laws. This new law clarified the separation of powers between the central government and local governments in Indonesia. Except for matters reserved for the central government, local government were granted the "broadest autonomy" (Butt 2010, 7).[34] Indonesia has ever since been transformed from a centralized unitary state to a decentralized quasi-federal state (Arnold 2009; Bertrand 2007).

The foregoing two decentralization reforms illustrate that local governments in unitary states can have no less autonomy than states in federal systems do. To reiterate, Indonesia is a unitary state nominally, but its governmental structure mirrors a federal state. Hence, the unitary-federal dichotomy does not well capture the extent of the power sharing between different governmental tiers. Dardanelli (2019, 273) is correct that "unitary/federal and de/centralized are

[34] Although granting local governments substantial autonomy, the 2004 law also "provides more opportunities for the central government to monitor and intervene in regional affairs" (Arnold 2009, 184). For instance, according to this law, regional heads are required to "tender reports to the central government" (see Arnold 2009, 194, fn. 57).

orthogonal dimensions because some unitary states are decentralized and some federal ones are centralized" (Biela, Hennl, and Kaiser 2012; Lijphart 1999). Similarly, Voigt and Blume (2012, 230) point out that "federally constituted states can be highly centralized and states constituted in a unitary fashion can be highly decentralized."

In short, the notion of decentralization better represents governmental structure. This conceptualization is crucial in mapping the theoretical construct to its attendant quantitative measurement. Some empirical studies in the human rights literature have used a federalism dummy (i.e., federal versus unitary states) to test the effect of governmental structure (Simmons 2009). The use of a federalism dummy is justified if it intends to measure the constitutional choice in a political system; however, if we want to study post-constitution political dynamics, a federalism dummy might be too coarse a measurement (Voigt and Blume 2012, 238). In my study, I focus on the implementation of human rights treaties on the ground, which could deviate from the constitutional choice on the books. Therefore, decentralization is a better concept to depict the power relations between different governmental tiers.

Does decentralization bear on treaty compliance? In few states is the central government in full control of domestic affairs. The notion of consolidated statehood is rather a myth than a reality (Risse 2017). Typically, different layers of government are built to represent divergent interests and to address a wide variety of appeals. One dilemma in a decentralized political system is conflict of interests between different governmental tiers. Local authorities can exercise not only *de jure* but also *de facto* veto power over a legislation and policy introduced by the central government: legislative members who represent local interests have *de jure* veto power because passing a nationwide bill needs their consent; other local players who are not elected, like bureaucrats, police officers, and security guards, have *de facto* veto power over national policies if they choose not to faithfully implement them. To address the implementation gap, the central government can establish oversight mechanisms, but local authorities enjoy considerable informational advantages.

Scholars of public policy and administration have long recognized the important role of coordination between different levels of government in improving policy implementation (Emilsson 2015; Hensengerth and Lu 2019). The co-dependent relationship between different institutions and stakeholders has also gained currency in studies of policy implementation at the regional and international levels, particularly in the European Union (Gollata and Newig 2017;

Schröder-Bäck et al. 2019; Stephenson 2013). Surprisingly, there is little cross-fertilization between disciplines of public policy and international law. Although a few political scientists from the managerial school have conducted sophisticated statistical analyses of the impact of bureaucratic capacity on treaty compliance, their works are thin in theory and emptied of agents and political explanations.

One exception is *Doubly Uncooperative Federalism and the Challenge of US Treaty Compliance* written by legal scholar Jonathan Nash. Nash (2016) studies how the federal-state relationship affects US treaty compliance. He develops a typology that maps different kinds of treaty compliance behavior corresponding to different combinations of "the federal government—and the state government—acting in ways that are consonant, and dissonant, with the treaty regime" (12). According to his typology, when both the federal government and states governments act in ways that are consonant (dissonant) with the treaty regime, we observe full compliance (no compliance). Moreover, when the federal government acts in ways that are dissonant with the treaty regime but state governments act in ways that are consonant with the treaty regime, the result is "state over-compliance" (Nash 2016, 12–13). Conversely, when the federal government acts in ways that are consonant with the treaty regime but state governments act in ways that are dissonant with the treaty regime, we see "state under-compliance" (Nash 2016, 12–13).

Nash (2016)'s typology illustrates how treaty compliance behavior varies along federal-state relations, but it is limited to federal systems. I extend his typology to a wider scope, including both unitary and federal states where the national government and subnational authorities share power. Figure 1 presents different patterns of treaty compliance along central-local governmental relations regarding treaty commitment. For analytical convenience, I assume that there are two actors—the national government and local authorities. I also assume that both actors can choose either to fully commit to a treaty or to pay no respect to it. (In reality, actors' commitment to the treaty regime is best conceptualized as a continuum rather than a binary choice.) Although the typology shown in Figure 1 applies to all sorts of regulatory treaties, I focus my discussion on patterns of state compliance with human rights treaties below.

Consider the right-lower quadrant first. It describes a scenario in which the national government in a country has not ratified a human rights treaty and local authorities pay no heed to it. I refer to it as "concerted noncompliance." In this scenario, human rights violations could

be widespread in this country. But the national government denies its rights-abusing behavior, rejects international human rights norms, and is reluctant to ratify the treaty. A group of progressive forces, including human rights organizations, human rights activists, and leading countries such as Canada, usually use moral persuasion and instrumental benefits to pressure the national government into ratifying the treaty (Simmons 2009; Wotipka and Tsutsui 2008).

Although the national government is unwilling to ratify a human rights treaty, progressive subnational governments can take the lead, implementing policies that resonate with the treaty terms at the local level. Nash (2016) refers to this "state compliance in excess of what domestic law requires" as "state over-compliance" in a federal system. But I use "spotty compliance" to describe such a scenario, emphasizing the limited scale of subnational rights-promoting practices that go beyond national legal commitment to international human rights law (see the left-lower quadrant in Figure 1). The reason is that if subnational rights-promoting practices are widespread, as the term "state over-compliance" suggests, it makes little sense for the national government to resist ratifying a treaty. After all, the costs of ratifying such a treaty is low provided that relevant rights norms have already been observed in many parts of the country.

Despite their limited scale, subnational rights-promoting practices could have positive spill-over effects. That is, good human rights practices can spread from one region to another. Studies of policy diffusion have found ample evidence that subnational governments learn from each other about best practices, and that the competition for human capital and tax revenues have been one of the driving forces behind cross-regional policy adoption and imitation in a country (Shipan and Volden 2008). Most of these studies, however, deal with policies in social and economic issue areas. Few empirical studies shed light on the spread of policies about civil and political rights in a country.

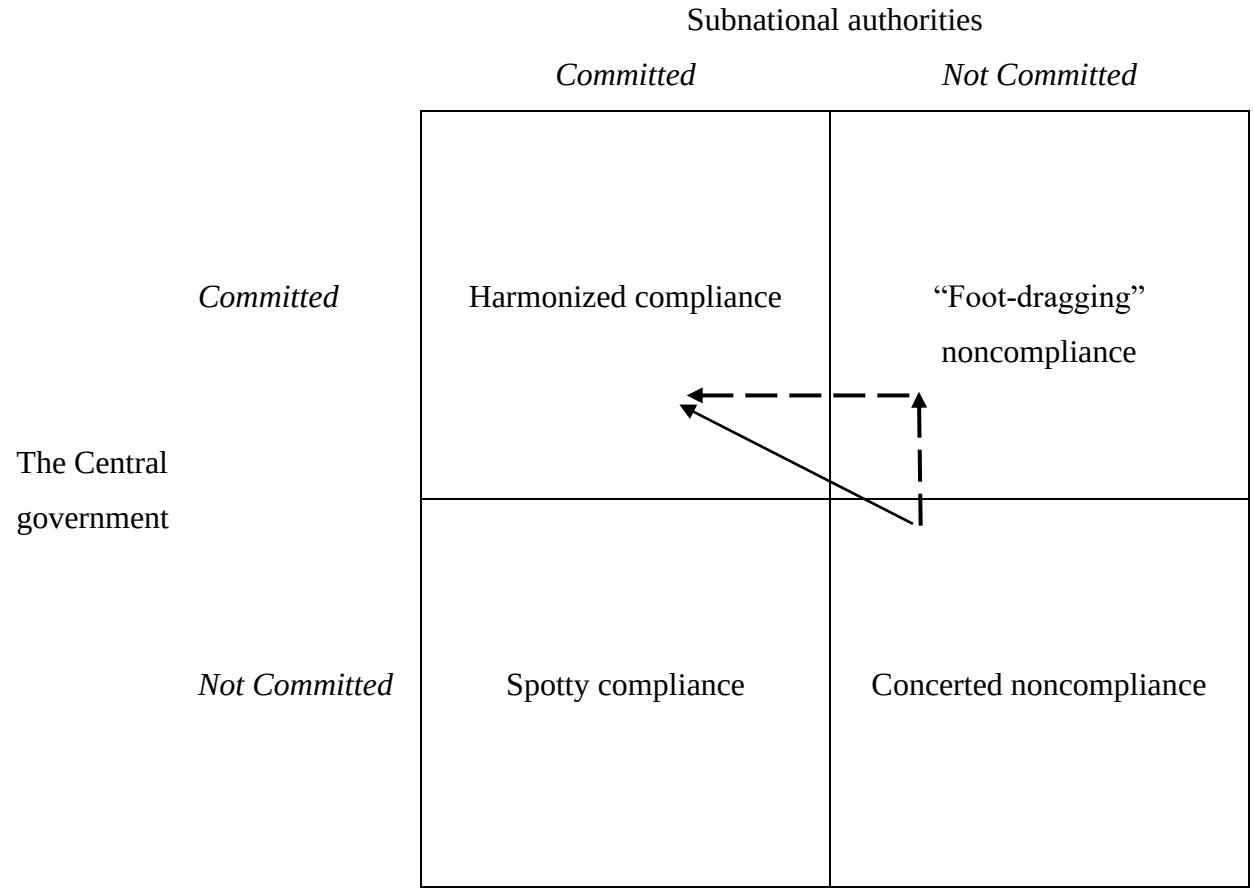

Figure 1. Patterns of Treaty Compliance

Note. Figure adapted from Table 1 in Nash (2016, 12).

The right-upper quadrant in Figure 1 describes a setting that is the focus of my study. In this setting, the national government is committed to a human rights treaty, but subnational authorities still engage in human rights violations, putting the national government in breach of its treaty commitment (Nash 2016). To highlight subnational governments' detraction from the national government's commitment to human rights treaties, I refer to this scenario as "foot-dragging noncompliance." In this "foot-dragging noncompliance" scenario, the national government has transitioned from denying to accepting norms that are embedded in a human rights treaty (or the stage of "prescriptive status" in Risse and Sikkink (1999)'s spiral model, a process of states' socialization in the international human rights regime). Consistent with the managerial school's assumption, the national government is committed to fulfilling its treaty

obligations after ratifying the treaty. To discharge its treaty obligations, the national government enacts laws and creates institutions to implement relevant human rights policies and regulations.

Despite the national government's legislative and administrative efforts to comply with the treaty it has ratified, the implementation of those national policies and regulations usually meets with obstacles at the subnational level. Börzel and Risse (2013; Risse 2017) argue that these obstacles stem from "areas of limited statehood," places where the national government does not fully control. Börzel et al. (2010) identify them as shortage of resources, institutional veto players, and bureaucratic inefficiency. Similarly, Cole (2015) describes them as strong coercive capacity, weak bureaucratic capacity, and limited territorial outreach. I depart from these studies by analyzing the impact of a decentralized governmental structure. In the next section, I will discuss in detail that a decentralized governmental structure provides local authorities with ample opportunities to detract from the national government's treaty commitment.

Lastly, the left-upper quadrant in Figure 1 describes the "harmonized compliance" scenario in which both the central government and local authorities are in compliance with a human rights treaty (Nash 2016). To reach this stage, both the central government and local authorities have gone through the internalization and habitualization process (Risse and Sikkink 1999). At this stage of "harmonized compliance," all the governmental units have fully internalized the norms enshrined in the treaty. No prodding or pushing is needed, because these norms have become habitualized principles of action for them.

Roughly speaking, the mainstream human rights literature as well as most of the research in the managerial school have explored ways that states transition from "concerted noncompliance" to "harmonized compliance," although it is more appropriate to drop the two modifiers, i.e., "concerted" and "harmonized," because these works pay little attention to the role of local authorities as opposed to the central government. More importantly, the typology I adapt from Nash (2016) carves out the setting of "foot-dragging noncompliance," an intervening stage between "concerted noncompliance" and "harmonized compliance" that is under-theorized in the extant literature. Next, I will analyze how a decentralized governmental structure affects state compliance with human rights treaties.

2.4 Decentralized Governmental Structure and State Compliance with Human Rights Treaties

Human rights treaties prescribe a set of norms that are "standards of appropriate behavior" for states to treat their citizens (Finnemore and Sikkink 1998, 891). Human right norms, especially those about civil and political rights, are mostly western (Moyn 2010). A few progressive states and nongovernmental organizations have vigorously promoted these domestic norms at the international level and have helped institutionalize them via legally binding treaties and independent monitoring institutions (Clark 2001). Despite their western origin, international human rights norms are not uniformly accepted in western countries, not to mention a swath of developing countries that could find them alien in the first place. Even after states ratify human rights treaties, internalizing the norms in these treaties is not guaranteed because "international norms must always work their influence through the filter of domestic structures and domestic norms" (Finnemore and Sikkink 1998, 893).

2.4.1 Information Asymmetry

How does a decentralized governmental structure filter the working of international human rights norms? To answer this question, it is useful to know that compliance with human rights treaties, or norm internalization, involves two processes: norms diffusion and the detection of norms violation. Consider norms diffusion first. I define it as a series of legislative and administrative measures taken by the central government to spread good practices of human rights protection. These measures include enacting laws and regulations, promoting human rights education, training bureaucrat and professionals, disciplining police and security personnel, and creating monitoring mechanisms.

While the central government is in charge of enacting national laws and regulations, local officials are responsible for putting them into practical application. A decentralized governmental structure hinders the translation of human rights laws and policies into local practices for the following two reasons. First, when a state initiates a decentralization reform, it delegates more power to a large number of local officials who are likely to find global human rights norms foreign. Compared with state leaders, local officials are less likely to care about human rights. For one thing, local officials tend to be less educated. Bardhan (2002, 189) remarks that "in most countries, central bureaucracies attract better talent," but "the quality of

staff in local bureaucracies—including basic tasks like accounting and record-keeping—is very low." Researchers find that people with less talent, or lower levels of education, are less concerned about human rights (Getz 1985; Koo 2017; McFarland and Mathews 2005). For another, local officials tend to know less about global affairs. Although no direct evidence demonstrates local officials' deficient understanding of global affairs, the theory of world society aptly suggests so, as local officials are distant from international foci where participants (usually state leaders) are socialized and acculturated to adopt universal values and global scripts (including international human rights norms) (Meyer et al. 1997). As to the relationship between knowledge about global affairs and human rights concern, findings from survey studies show that people (specifically, college students and young adults) who know less about global affairs show less concern about human rights (Barrows 1982; Torney-Purta, Wilkenfeld, and Barber 2008).

Second, more governmental tiers in a decentralized state amount to more barriers to the smooth transmission of human rights norms between different governmental tiers. This problem is in part due to the ambiguous legal character of human rights treaties. Unlike regulatory treaties in the areas of trade and weapons, terms and provisions in human rights treaties are usually vague (Abbott and Snidal 2000; Chayes and Chayes 1993; Chayes, Chayes, and Mitchell 1998). This characteristic of human rights treaties reduces the costs of treaty ratification: the lack of clarity in human rights treaties allows states to adopt a broad interpretation of treaty provisions and provides states with legal wiggle room to justify their behavior that would otherwise not be tolerated under treaties with determinate clauses (Abbott and Snidal 2000).[35]

Although ambiguous provisions in human rights treaties make it less costly for states to ratify them, they make it harder for national governments to translate them into measurable and concrete benchmarks that can be used to evaluate local officials' implementation efforts. Even assuming that national governments know what to do, the problem of treaty implementation is especially severe in decentralized states. The reason is unlike mundane social services such as "street cleaning or garbage collection," the implementation of human rights policies—much like "power production and transmission" or "bulk supply of clean water and public sanitation"—

[35] Despite the reduced costs of human rights treaties, it is worth noting that unlike what Hathaway (2002) assumes, ratifying human rights treaties is not costless. States' accession to human rights treaties offers a focal point for domestic and international human rights groups to put pressure on national governments (Simmons 2009).

requires “sophisticated expertise” and coordinated, long-term social engineering (Bardhan 2002, 190). Coupled with “the disadvantages of isolation, poor training and low interactions with other professionals” in local bureaucracies, the fragmented and diffused authority structure in decentralized states makes it harder for central authorities to transmit human rights norms (Bardhan 2002, 189). When it comes to implementing human rights treaties, “the central government may not know *what* to do; the local government may not know *how* to do it” [emphasis original] (Bardhan 2002, 189–90; Bird 1995).

Not only does decentralization impede the top-down norms diffusion, but it also hinders central authorities’ detection of human rights violations that happen at the local level. The central authorities’ failure to effectively monitor local human rights violations stems from the principal-agent problem that is present in any institution with a hierarchical governing structure but is especially severe in states with high levels of political decentralization. The principal-agent problem arises from a setting in which a principal delegates tasks to an agent, but the agent does not faithfully carry out his or her obligations out of self-interests. As a result, the principal suffers from losses in his or her expected payoffs. Although the principal can induce the agent to take actions that are in alignment with the principal’s interests, the principal may not be able to detect the agents’ deviant behavior because “the agent has an informational advantage over the principal” (Miller 2005, 204).

In the case of treaty implementation, the national government is the principal, and local officials are the agents. As the managerial model assumes, after the national government ratifies a human rights treaty, it wants to discharge its treaty obligations (Chayes and Chayes 1993; Chayes, Chayes, and Mitchell 1998; Creamer and Simmons 2015). Yet the national government’s sincere treaty commitment aside, the greater number of local officials, especially law enforcement officials, might not conform. The reason is: except for some idiosyncratic economic conditions (such as difficult life conditions) and cultural characteristics (such as “the history of devaluation of a group of people”), human rights violations are more of an institutional product (Staub 1985; 2000, 370). As Conrad and Moore (2010, 462) put it, “the creation of hierarchies where one group of people is given authority over another tends to produce abuse of the latter by the former” (Conrad and Moore 2010, 462; Staub 1985; 2000, 370). Indeed, the institutional origin of some of the worst human rights violations such as torture is so sticky that “police departments in France, the United Kingdom, and the United States innovated” clean

torture after these mature democracies "began to outlaw the use of torture" (Conrad and Moore 2010, 462; Ron 1997).

Knowing that local officials, especially law enforcement officials, would continue rights-abusing practices, the central authorities can create monitoring mechanisms to militate against the agency problem. But a decentralized governmental structure prevents the central authorities from effectively monitoring human rights practices at the local level for several reasons. First, as the principal-agent theory predicts, it is easier for local officials in a decentralized state to cover up human rights violations, because local officials have greater informational advantage over their central principal. Recall that decentralization originates from the central government's need to cater to a heterogeneous demand and appeals. As the central government grants local officials more power and autonomy, not only do local officials have greater discretion over local matters, but they also control local information including those about governmental wrongdoing.

Take China for example. To promote economic growth, the Chinese central government started a series of fiscal and administrative decentralization reforms beginning in the mid-1980s (Cai and Treisman 2006). Although the Chinese central government still uses a centralized promotion system to keep a firm grip on its subordinate cadres, China has gradually transformed from a highly centralized state to a decentralized state over the last several decades (Li and Zhou 2005; Maskin, Qian, and Xu 2000; Montinola, Qian, and Weingast 1995). Local officials are given substantial discretion over local matters such as economic development, social stability, and the provision of public goods, but they take advantage of the discretion to promote their self-interests. Wallace (2016, 16) finds that Chinese local officials manipulate subnational growth data, or what he calls "juke the stats," to "fool officials at the center who would reward apparent star performers based on reported records." Related to civil and political issues, Pan and Chen (2018) study citizens' online complaints in China, a form of public participation in the digital age the Chinese central government uses to collect information about lower-level officials' misconduct. Comparing a local prefecture's online sentiment-monitoring reports submitted to provincial leaders and the large stock of raw online posts kept for internal circulation at the prefectural level, they find that local officials strategically hide from provincial leaders citizens' complaints about the prefecture government's misconducts such as corruption and violence (Pan and Chen 2018).

Similarly, the brick and mortar version of the online complaint platform in China is the *letters and visits* (or *Xinfang*) appeal system, a bottom-up administrative petition procedure, which traces its origin to China's imperial past (Minzer 2006). At the center of this petition system is the complaint bureau where citizens can lodge complaints and grievances against government wrongdoing and police misconduct. With limited avenues to seek justice at the local level, a great number of citizens travel all the way from different parts of the country to Beijing, the national capital, to petition for redress at the national complaint department. Fearing that citizens' petitions to the higher-level authorities would injure their promotion prospects, local officials have used various ways to sabotage this bottom-up accountability mechanism. Mayoral and township leaders have recruited people to surveil petitioners. Local authorities have also hired gangsters to forcefully intercept citizens on their way to petition.[36] Abuses of human rights frequently occur when local officials confront petitioners. Reports show that local officials have used abusive ways to punish petitioners, such as harassing them and their family members, throwing them in black jails, and detaining them in labor camps.[37]

One might argue that because a decentralized governmental structure brings the government closer to people, it would promote transparency, accountability, and civic engagement, conditions that contribute to good governance including better human rights protection (Oates 1972; Ostrom, Tiebout, and Warren 1961). Especially when local politicians are elected, voters can easily punish corrupt and abusive local authorities by voting them out of office. Thus, decentralization seems to be the panacea for many social ills. As Hooghe and Marks (2009, 232) put it, "local decisions are best made by locals." Notwithstanding decentralization's expected benefits in theory, many scholars caution that one pathology of decentralization is local elite capture, the collusion of local elites and local authorities to capture rents at the expense of other groups (Bardhan and Mookherjee 2005; Enikolopov and Zhuravskaya 2007; Hamilton, Madison, and Jay [1789] 1937). Indeed, a cross-national study conducted by Bohara et al. (2008) demonstrates that torture is more prevalent in more corrupt countries where local agents have more opportunities to hide their repressive acts.

---

[36] "China's Citizen Complaint System: Prospects for Accountability," Roundtable before the Congressional-Executive Commission on China, 4 December 2009, https://www.cecc.gov/sites/chinacommission.house.gov/files/documents/roundtables/2009/CECC%20Roundtable%20-%20China%27s%20Citizen%20Complaint%20System%20Prospects%20for%20Accountability%20-%2012.4.09.pdf.

[37] Ibid.

Furthermore, a body of cross-national research suggests that decentralized states are more corrupt. Treisman (2000, 440–41), for example, finds that unitary states are perceived as less corrupt, because more effective hierarchical control in unitary states "limit[s] the extraction of subnational officials to more reasonable levels." Studying firms' reported bribery behavior, Fan, Lin, and Treisman (2009, 22) find that bribery is more frequent and more costly in countries with "a larger number of administrative or governmental tiers" and "[l]arger subnational bureaucracies." Besides cross-national studies, many country studies also observe elite capture plagued decentralized provision of public goods in countries such as Bangladesh (Galasso and Ravallion 2005), Ecuador (Araujo et al. 2008), Ghana (Aberese Ako, Anyidoho, and Crawford 2013), and India (Foster and Rosenzweig 2002). Corrupt states are often those with very poor human rights records, so there is a strong reason to believe that a decentralized governmental structure hinders the promotion and protection of human rights.[38]

2.4.2 Lack of Reputational Mechanisms at the Local Level

In the previous section, I argued that a decentralized governmental structure reduces state compliance with human rights treaties because: first, it hinders the top-down transmission of human rights norms, and second, it impedes central authorities' detection of local human rights violations. Although I touched on central and local authorities' different receptiveness to human rights norms, I focused on how the dynamics between different governmental tiers, particularly the principal-agent problem, affects the national government's effort to incorporate human rights norms. In this section, I put reputation, the major "compliance pull" of international human rights norms, at the center of my analysis, and elaborate on how a decentralized governmental structure affects this unique mechanism of social influence.

Scholars of international relations have contemplated the question of "compliance pull" in international law—why states comply with some international rules but not others (Franck 1990). Following the logic of consequences (March and Olsen 1995; 1998), rationalists argue

[38] According to Bardhan and Mookherjee (2000), American founding fathers in the Federalist Papers (Hamilton, Madison, and Jay [1789] 1937) contemplated the extent of elite capture at different levels of government. This "Madisonian presumption" holds that "the lower the level of government, the greater is the extent of capture by vested interests, and the less protected minorities and the poor tend to be" (Araujo et al. 2008, 1023; Bardhan and Mookherjee 2000, 135). The history of the civil rights movement in the United States suggests the important role of the federal government in achieving minorities' rights.

that states do not take human rights treaties seriously, because compliance with human rights treaties does not bring about reciprocal benefits but the costs of treaty enforcement are high to the international society (Koh 2005). On the other hand, applying the logic of appropriateness, constructivists argue that states consider not only material interests but also social identify that is constructed through ongoing inter-state interactions (March and Olsen 1995; 1998; Wendt 1999). From repeated inter-state interactions emerge international rules that reflect common understandings, practices, and principles shared by the majority in the international community (Lebovic 2006; Lebovic and Voeten 2009; Risse and Sikkink 1999). Acting in contravention of these rules could result in identity dissonance and the loss of social status for the violating states, as the dominant group could use various mechanisms of social control—"shaming, shunning, exclusion, and demeaning"—to compel commitment to rules (Johnston 2001, 499; Lebovic 2006; Lebovic and Voeten 2009). To avoid the reputational harm caused by the international society's naming and shaming, states are willing to conform to human rights treaties that embody a set of common practices and standards about how a state treats its own citizens.[39]

Although constructivists' theory better explains an ever-growing body of international human rights norms in world politics, its emphasis on social identity masks the interplay of material interests and reputational concerns that is commonplace in international relations. Studies have shown that states incorporate human rights standards in preferential trade agreements to induce better human rights protection (Hafner-Burton 2005); that naming and shaming a state's poor human rights records by human rights international non-governmental organizations (INGOs) reduces foreign direct investment in developing countries (Barry, Clay, and Flynn 2013); that INGO shaming causes member states from the Organization for Economic Cooperation and Development (OECD) to bypass poorly governed recipient countries and channel foreign aid through non-state actors (Dietrich and Murdie 2017). Clearly, a state's treaty obligations are not separated from material interests.

To bridge the traditional rationalist-constructivist divide, several scholars have developed theories of reputation that integrate rationalists' and constructivists' perspectives (Guzman 2008;

[39] Scholars in the English School have made similar arguments but go one step further to embrace communitarianism. For them, states follow international rules not only to acquire legitimacy but also to maintain the working of the international society in which they are embedded. As Hurrell (1995, 59) put it, "states follow specific rules, even when inconvenient, because they have a longer-term interest in the maintenance of law-impregnated international community."

Tomz 2007). Like constructivists, they maintain that there are certain behavioral norms that most states observe and accept most of the time in international politics. States care about their reputation and social status. But reputation is not divorced from material interests. Reputation acts as a signal of what type a state is, cooperative or uncooperative, and it can affect a state's interaction with other states in different issue areas including economic matters. With respect to treaty compliance, a states' reputation refers to "judgments about [its] past response to international legal obligations" that are "used to predict future compliance with such obligations" (Guzman 2008, 73). The extent to which a state fulfills its treaty obligations serves as a gauge for other states to predict its future behavior in similar settings. Because a state's preferences cannot be directly observed, other states can only tell whether a state is cooperative or uncooperative by collecting and judging information about its past compliance behavior (Guzman 2008; Tomz 2007, 17). That said, reputation, or "the shadow of the future" in Robert Axelrod's words, appears intangible on the surface, but it actually entails material consequences, because "a high reputation allows [a state] to make more credible promises to other states and to extract more gains from its international engagements" (Axelrod 1984; Guzman 2008, 74).

According to this signaling theory of reputation, a state decides to comply with human rights treaties because it wants to present itself to the outside world as a reliable and cooperative partner. In doing so, not only does it want to acquire legitimacy in the international community, but it also seeks to prove its trustworthiness in an anarchical world where mistrust and uncertainty plague international cooperation. Putting this theoretical expectation to an empirical test, scholars find either a null effect or a short-term effect of INGO naming and shaming on government respect to human rights (Franklin 2008; Hafner-Burton 2008). The inconsistency between theoretical expectation and empirical findings prompts scholars to further explore the scope conditions of the effect of naming and shaming. Murdie and Davis (2012), for instance, show that human rights criticism only improves human rights conditions when there is a domestic presence of human rights INGOs in targeted states and when third party actors put pressure on rights-violating states.

Murdie and Davis (2012)'s research suggests that states' reputational concerns are not uniform but depend on pressure from external actors, domestic or international. Closely related to this study is a small but important body of international law literature that criticizes the unitary character of states' reputations, the prevailing assumption in the compliance literature (Brewster

2009a; 2009b; Downs and Jones 2002; Keohane 1999). Criticisms about the unitary character of states' reputations are twofold. First, even assuming that states are unitary actors, states' reputations are not restricted to treaty compliance, but extend to other issue areas. And states' reputation in one issue area might not be easily transmissible to another issue area (Brewster 2009b; Downs and Jones 2002).

Second, states are not unitary actors. The prevailing view in the compliance literature holds that states are a single entity that controls its territory and actions. This simplistic assumption is helpful when it is used in the prisoner's dilemma game to illustrate how states' reputational concerns suppress states' desertion from treaty commitments (Brewster 2009b; Guzman 2008). But in practice, states are "a collection of people, traditions, government processes, political parties as well as individual leaders," so "[u]sing the state as the relevant unit in reputational analysis systematically exaggerates and biases the importance of reputation in government decision-making" (Brewster 2009a, 327; 2009b, 249).

Next, relaxing the assumption of states as a unitary actor in reputational analysis, I examine how the reputational costs of treaty (non)compliance differ between national leaders and local authorities. A few studies have analyzed how domestic politics influences states' reputational concerns. For example, Park and Hirose (2013) study how a state' inclination to international cooperation changes as different political parties sit at the negotiation table. Dafoe and Caughey (2016) examine how US presidents' reputational concerns for resolve in military conflicts change along the North-South division. My analysis, instead, focuses on the central-local governmental dichotomy, highlighting that a state may not fully internalize the reputational costs of human rights treaty compliance (Brewster 2009a). To evaluate national leaders' and local authorities' reputational costs of treaty noncompliance, I draw on the three conditions Heyman (1973, 822–23) identifies for the effect of reputation: "any violation must be known; it must be known by a party whose reactions to the violation are important to the violator; and the expected costs of violation to the violator must exceed the benefits of giving in to the conflicting temptation."

First, reputation are judgments about a state's past practices of discharging treaty obligations (Guzman 2008). Thus, gathering information about a state's compliance behavior is crucial for other states to make the correct judgment. It follows that reputational costs of treaty noncompliance are higher if it is easier to detect a state's violation of a treaty. Applying this

logic to subnational actors, I argue that other things being equal, reputational costs are higher for national leaders than to local authorities because it is easier to bring national leaders' noncompliance behavior to public notice. As I have discussed earlier, political opposition parties play a critical role in monitoring the executive's treaty compliance behavior. When the executive violates its treaty commitment, political opposition parties have incentives to expose the noncompliance behavior because doing so helps them reap electoral gains (Hillebrecht 2014) . Moreover, the treaty breach by national leaders typically involves drastic changes to current national policies, which lend themselves to public notice.

In contrast, it is harder to gather accurate information about human rights violations committed by local officials, because mechanisms of checks and balances are weaker at the local level. In places where human rights violations are widespread and fact-finding is most needed, avenues for seeking justice such as courts and civil society organizations are usually limited. Local authorities' abusing practices might permeate citizens' daily life, but victims might be afraid to stand up and talk. When this happens, local authorities can cover up their abusive practices and promote alternate storylines.

The second factor that determines the amount of reputational costs of treaty noncompliance is the violator's audiences (Heyman 1973). When there is a unified group of actors that are willing to sanction violators, reputational costs are higher. Compared with local authorities, national leaders have a larger group of audience concerned with human rights problems. Leaders from progressive countries can put pressure on national leaders in international foci where high-level politicians conduct diplomatic talks and political negotiations. International organizations with human rights mandates as well as prominent human rights INGOs can also take advantage of these occasions to criticize culpable national leaders. Media, especially the Northern media, play a critical role in exposing egregious human rights abuses to a wider sympathetic constituency at the global level; in a saturated media environment, notorious state leaders often attract media attention. Besides international audiences, national leaders face domestic pressure from domestic opposition groups and human rights non-governmental organizations (NGOs). Although these domestic groups are usually too weak to constrain the rights-abusing government, they could seek help from external actors to put pressure on the national government.

Local authorities, on the other hand, deal with an incredibly parochial audience. Although in many cases human rights organizations put a spotlight on local officials for human rights, but they target their advocacy effort mainly toward national leaders. For example, for information purposes, Amnesty International diligently documents human rights abuses committed by local officials in its urgent action bulletins; but for activism purposes, it mainly mobilizes activists to appeal to high-ranking officials through letter-writing campaigns (Clark 2001). For most civil servants and law enforcement officials at the local level, they report to their immediate bureaucratic superiors who are primarily concerned with practical issues rather than normative concerns such as human rights protection. Land disputes are a case in point. In many developing countries, to promote economic development, it is a common practice for local governments to confiscate land owned by farmers, villagers, and indigenous people. Land disputes often result in serious violations of human rights law. According to reports released by the Indonesian National Commission on Human Rights in 2016, land disputes not only involves unlawful takeover of indigenous forests but also numerous cases of human rights abuses, including "displacement, intimidation, violence."[40] From local officials' perspectives, economic interests clearly trump human rights protection.

Third, reputational costs depend, in part, on the expected penalties of violating treaty obligations. For national leaders, the set of penalties is high for breaching their treaty commitments. If their treaty noncompliance behavior is brought to public notice, they could suffer a crisis of legitimacy, as sympathetic domestic constituency, human rights international nongovernmental organizations, liberal states, and intergovernmental organizations with human rights mandates would make a concerted effort to condemn national leaders' hypocrisy (Simmons 2009). They could also face prosecution by the International Criminal Court (ICC) if they engage in grave violations of international law, including genocide, war crimes, and crimes against humanity. Even not convicted, national leaders could suffer significant "health and financial losses" under ICC investigations (Appel 2018, 11; Kim and Sikkink 2010, 942). In contrast, if local officials are held accountable for their violations of human rights, they often receive administrative punishments, such as fines, reprimand, demotion, and dismissal. In rare

[40] "Landmark Report Investigates Human Rights Abuses Suffered by Indigenous Communities Affected by Land Conflicts in Indonesia." Rights + Resources. 2 May 2016, https://rightsandresources.org/en/blog/landmark-report-investigates-human-rights-abuses-suffered-indigenous-communities-affected-land-conflicts-indonesia/#.XTHyPOhKiUl.

cases do they stand in domestic trials. Local officials that commit human rights abuses often get away with impunity or light sentence, because leaders are concerned that harsh punishment might dampen the morale within a bureaucracy, thereby eroding elite support for a government (Mitchell 2012, 23).

Table 1 summarizes the three factors that determine the effect of reputation for national leaders and local authorities, respectively. To recap, national leaders face a broad international audience motivated by human rights cause and a domestic audience that can use treaty noncompliance behavior to delegitimize the incumbent leaders. Local authorities, however, face a much narrow audience and are often not held accountable for their rights-abusing behavior. Additionally, national leaders' treaty noncompliance behavior relates to state policies, so it is distinct from local officials' human rights abuses, which tend to be individually initiated. Thus, it is harder to establish a pattern of rights-abusing behavior committed by local authorities. In short, the effect of reputation is much weaker for local officials than for national leaders.

While the major "compliance pull" of international law—reputation—has a weaker effect on local officials, a decentralized governmental structure makes it even harder for international law's reputational mechanism to exercise its centrifugal force onto local officials, mainly because decentralization makes local authorities' rights-abusing behavior less visible. Decentralization not only creates a large number of local officials but also exacerbates the principal-agent problem. Human rights violations might be widespread at the local level, but a fragmented and diffuse governmental structure prevents the national government and the international society from gathering efficient and reliable information about local human rights violations. Not only does decentralization reduce the reputational costs for local authorities, but it also makes national leaders less concerned about their international reputation, as national leaders can take advantage of the diffused authority structure to shift the blame for rights-abusing behavior to local officials. I will elaborate on this point in the next section.

Table 1. Factors that Determine Reputational Costs of Human Rights Treaty Noncompliance for National Leaders and Local Authorities

	National Leaders	Local Authorities
Visibility	High	Low
Audiences	State leaders, IOs, human rights INGOs, domestic NGOs, domestic opposition parties	Administrative superiors
Punishments	Legitimacy crisis, international prosecution, financial losses	Administrative punishment, domestic prosecution, fines

2.4.3 Blame-Shifting

In this section, I discuss the question: how does a decentralized governmental structure affects the effect of reputation on national leaders? I have argued that national leaders are concerned about their reputation for fulfilling their commitments to human rights treaties on the international scene. After decades of growing norms of human rights protection, having a good reputation on human rights not only strengthens national leaders' legitimacy of ruling their countries, but also helps them develop trade relations with other countries as well as multinational companies. As a result, the international community, especially human rights NGOs that do not have a coercive arsenal at their disposal, have relied on the softer approach of "naming and shaming" to shine an unwelcome spotlight on rights-violating countries and their leaders. Leaders in these rights-violating countries are accused of not living up to their human rights commitments. Through naming and shaming, the international community hopes that national leaders who are wary of the potential damage to their reputation would take measures to bring their countries into conformity with international standards.

The activity of naming and shaming is essentially the assignment of responsibility to an actor for his or her action that contravenes common rules, standards, and expectations in a social setting. As Maestas et al. (2008, 613) put it, "Attributions are the primary means through which individuals explain events, identify causes, and, more generally, increase their sense of control over their environment and over future events." The causal attributions of responsibility serve as

the "psychological adhesive" that connects a factor or an actor not only to an event, but also to relevant prescriptions that allow people to take control of the event, especially when it involves a negative outcome (Schlenker et al. 1994, 632). In democracies, election is the main mechanism through which citizens hold politicians accountable for their conduct. Like politicians, states are also held accountable by international law for fulfilling certain obligations and duties, for example, protecting the human rights of people within their territories. When states do not live up to common standards, the international society may impose political, economic, and moral sanctions on culpable states as well as their leaders.

Causal attributions of responsibility play a critical role in regulating and enforcing rules, standards, and norms in a social setting, and particularly, in holding politicians accountable to their audience in politics. But the formation of such attributions is not clear-cut (Rudolph 2003; Rudolph and Grant 2002). The economic voting literature holds a general view that the assignment of political accountability depends on institutional contexts. Particularly, divided government is found to muddle voters' judgment of governmental responsibility for economic conditions, making it harder for voters to reward or punish the incumbent government (Cutler 1988; Rudolph 2003). For example, Leyden and Borrelli (1995) find that voters are more likely to punish the incumbent gubernatorial party for high state unemployment when it controls both chambers of the state legislature. Lowry, Alt, and Ferree (1998) find that the effect of fiscal policy outcome on gubernatorial elections is weaker after a period of divided government than one-party control. Similar patterns also appear in national elections. Rudolph's study (2003) demonstrates that the effect of voters' economic perceptions on presidential approval is stronger when voters attribute the responsibility of running the national economy to the president. In addition to divided government, a weak coalition government is also more likely to avoid blame for an economic downturn compared with a strong coalition government in parliamentary democracies (Lybeck 1985; Weaver 1986, 392).

While voters are sophisticated enough to discern who should be held accountable in different institutional contexts (for example, divided government vs. unified government), politicians are keenly aware of voters' heterogeneous formation of responsibility attributions, and they strategically shape or frame voters' perception of policy outcomes, especially negative ones (McGraw 1991; Rudolph 2003). One common strategy politicians use to avoid blame for negative policy outcomes is blame-shifting—partially or fully denying the causal link between

them and the negative outcome, and designating the responsibility to other actors (McGraw 1991, 1136). Politicians take advantage of the tangled bureaucracy to shape citizens' perception of events, using the blame-shifting strategy to avoid being answerable to negative policy outcomes. The blame game among politicians in the midst of Hurricane Katrina's political fallout vividly illustrates that the "confusing layers of bureaucracies and redundancies in services" in a federal system make it easier for politicians to deny accountability and thus harder for citizens to hold politicians answerable to their conduct (Maestas et al. 2008, 609).

Applying the insights from the economic voting literature to state compliance with human rights treaties, I argue that a decentralized governmental structure dilutes the effect of reputation on national leaders for the following reasons. When the international society criticizes national leaders for treaty noncompliance, a decentralized governmental structure provides fertile ground for national leaders to shift the blame to local officials, thereby muddling the assignment of political accountability. Coercive measures aside, a powerful strategy the international society uses to influence states' human rights practices is naming and shaming. The first and foremost component of this discursive strategy is "naming"—identifying the perpetrators of human rights abuses. Only after the culprits are identified can the international society shed a spotlight of shame. Targeted criticism is more likely to succeed because finding and isolating the persons at fault serves as the critical causal link between incidents of human rights violations and the remedies needed to redress these violations. Indeed, scholars find that human rights activists are more likely to lead successful advocacy campaigns if they can establish a causal connection between harm and perpetrators (Keck and Sikkink 1998).

But national leaders are not passive bystanders. They deflect international criticisms by putting blame on others. One of the common scapegoats are armed nonstate actors. The Indonesian government's response to public outrage at the massive human rights violations in East Timor in 1999 is an example in point. In response to public outcry, General Wiranto, the Chief of Staff of the Indonesian Army, blamed the militias for the atrocities in East Timor. He defended that the military had limited role in commanding the militia members, despite the militias' close relationship with the Indonesian military (Jetschke 2011). Moreover, as the anecdotal evidence presented in Chapter 1 shows, the Nepalese government accused the paramilitary forces of committing widespread human rights abuses, although most of the torture

allegations Amnesty International received were from regions under the central government's control.

Limited control over paramilitary groups and militias allows state leaders to make an excuse for human rights abuses in pockets of "limited statehood" (Mitchell, Carey, and Butler 2014; Risse 2017). Similarly, a decentralized governmental structure helps national leaders to play down violations of human rights treaties by transferring the blame to local officials. A decentralized governmental structure features divided authority and shared responsibilities between the central government and local authorities. Unless there is a statewide rights-abusing policy, national leaders can reasonably claim that local authorities other than the central government are putting the state in breach of human rights treaties.

In practice, national leaders use two common communicative tactics to divert the moral pressure from the international society. One tactic is accusing subnational officials of violating human rights, despite the central government's commitment to human rights protection. In 2004, 43 students from the Mexican state of Guerrero planned to attend a demonstration. But before they showed up at the site for protesting, they were kidnapped, disappeared, and then murdered. Facing international condemnation of the massacre as well as the worsening human rights conditions in Mexico, President Peña Nieto defended the federal government's incompetence, stating that the mass murder was "a strictly local issue" and the governor of the state of Guerrero "should take responsibility."[41]

Another tactic that state leaders use to manage blame is minimizing the severity of human rights violations, and framing rights-abusing behavior as some errant conduct committed by individual local officials. For example, denying allegations of the widespread use of torture and ill-treatment in the enforcement of family planning policy, Chinese top officials asserted that the central government has never permitted violent practices of birth control. Although they admitted the existence of rights violations in the family planning work, they stressed that these rights-abusing cases were sporadic incidents committed by a few "uncivil" local officials.[42] In doing so, top officials seek to present an alternative storyline: the central government has always

[41] Ackerman, John M. "Why America Is to Blame for Mexico's Carnage and Corruption." Foreign Policy. 26 November 2014, https://foreignpolicy.com/2014/11/26/why-america-is-to-blame-for-mexicos-carnage-and-corruption/.

[42] See China's Comments by the Government of the People's Republic of China Concerning the Concluding Observations and Recommendations of the Committee against Torture, CAT/C/CHN/CO/4/Add.2, pp. 16-17.

upheld its commitment to human rights protection; local officials' idiosyncratic deviance rather than high-level officials' wicked intentions caused those rights-abusing incidents.

By observing the above-mentioned two communicative tactics that state leaders use to evade international criticisms, we can hardly tell if state leaders are truly unable to control their uncooperative subordinates or they merely use decentralization to cover up their dishonest delegation of abusive policies. Irrespective of different intentions, by shifting blame to local officials, national leaders confuse the assignment of political accountability and divert the moral pressure from the international society. One major domestic political consequence of blame-shifting, a common phenomenon in a decentralized political system, is reduced domestic pressure for drastic social reforms. The prevailing view in the extant literature suggests a linear causal pattern of treaty compliance: the rights discourse enshrined in human rights treaties and the naming and shaming by the international society help mobilize conscientious domestic constituents to demand more rights; the increased pressure from domestic constituents in turn forces the government to change its current rights-abusing policies and practices, thereby leading to better compliance with human rights treaties (Simmons 2009).

This line of reasoning, however, ignores the fact that the fragmented authority structure in a decentralized political system draws away the target of domestic constituents' grievances from central authorities to local officials, thereby insulating the central government from legitimacy crisis. Very often popular confrontation starts sporadically at the local level. While local authorities are allowed greater discretion over responses to local matters, they also become the main target of blame if citizen resistance gets out of hand. When citizens' confrontations with local authorities escalate, the central government can take advantage of the political space created by decentralization and play the role of an arbitrator (Cai 2008).

One study shows that although the Chinese central government usually turns a blind eye to local repression, it strategically stands up for citizens in popular resistance movements to prevent public anger over local governments form spilling over into the central leadership (Cai 2008). In short, in a decentralized political system, the central government is less wary of losing its legitimacy because it is easier to shift the responsibilities of repressing popular resistance to local officials. If the central government can contain state-society confrontation at the local level, large-scale reforms aimed at improving human rights conditions are unlikely.

2.5 Conclusion

The past several decades have witnessed a proliferation of international human rights legal instruments. The norms enshrined in them have gained a firm foothold in world politics, as most of the countries have ratified most of these human rights treaties. But human rights violations are widespread, not only in authoritarian regimes but also in democratic countries. The gap between formal commitments to human rights treaties and actual human rights practices on the ground is perplexing. Assuming that states are unitary actors that deliberately violate their treaty commitments, scholars in the enforcement school explore how other domestic actors, such as independent judiciary, political opposition parties, and civil society organizations, influence governments' respect for human rights. Rejecting the assumption underlying the enforcement model, scholars in the management camp hold that states want to comply with human rights treaties. But due to the lack of strong institutional capacity, states fall short of enforcing treaties they have ratified.

Situating in the management school, my study theorizes about how a decentralized governmental structure affects state compliance with human rights treaties. My focus on domestic governmental structure builds on the basic understanding that international human rights norms, which originated from certain domestic customs and standards but have been largely independent from domestic rights practices in most countries, need to pass through convoluted political and administrative processes before they can be translated into local practice. My theoretical framework highlights how the relations between two important domestic actors—the central government and local authorities—play a complementary role in implementing international human rights treaties.

To summarize, I argue that a state in which local governments enjoy more discretion in local affairs is less likely to comply with human rights treaties for three main reasons. First, in a decentralized political system, a great number of officials are created at the local level and are given broad discretion over local matters. The increased governmental layers and the sheer number of local officials hinder the smooth top-down transmission of human rights norms. A decentralized bureaucratic structure also exacerbates the principal-agent problem, making it harder for the central government to detect human rights violations committed by local officials.

Second, a decentralized governmental structure makes reputation mechanisms—the main "compliance pull" of human rights treaties—less effective. Naming and shaming are one of the

main tools at the international society's arsenal to constrain state behavior. A state's reputation not only affects its political legitimacy but also has material repercussions since human rights protection is sometimes linked to other issue areas such as trade and foreign aid. Through naming and shaming the international society hopes that rights-abusing states that are concerned about their reputation would stop violating human right treaties. But the reputational costs are much lower for local officials than state leaders in a decentralized political system. Consequently, local officials are less subject to pressure from the international society. Third, and relatedly, state leaders in a decentralized political system can take advantage of the divided authority structure to credibly shift blame to local officials for violating human rights treaties. By shifting blame to local officials, state leaders muddle the assignment of political accountability and insulate the central government's legitimacy from popular resistance.

My theory for the relationship between a decentralized governmental structure and state compliance with human rights treaties makes several contributions. To begin with, although scholars in the management school dispute the assumption that states are unitary states, they pay little attention to the political dynamics between different actors within state apparatuses. Moving beyond merely conducting statistical analyses of the effect of bureaucratic inefficiency, my theoretical framework explicitly delineates how the central government and local authorities' incentives and constraints affect states' treaty compliance behavior in a decentralized authority arrangement.

Additionally, my theoretical framework considers the interplay between domestic and international factors. Most of the studies in the enforcement school center on domestic explanations for noncompliance behavior at the expense of examining how international influences are filtered by domestic political processes. To fill this gap, I examine how a decentralized political structure filters the reputational mechanisms of international human rights law by watering down the reputational costs of local authorities vis-à-vis national leaders. I also analyze how national leaders' strategic use of blame-shifting dilutes the moral pressure from the international society's naming and shaming activities. In this next chapter, I will put my theoretical perspectives to empirical testing. I will conduct cross-national analyses of how governmental decentralization affects state compliance with the ICCPR and the CAT.

CHAPTER 3. THE EFFECT OF GOVERNMENTAL DECENTRALIZATION ON STATE COMPLIANCE WITH INTERNATIONAL HUMAN RIGHTS TREATIES: EVIDENCE FROM CROSS-NATIONAL ANALYSES

In the previous chapter, I theorized about the relationship between governmental decentralization and state compliance with human rights treaties in three aspects. First, decentralization hinders information flows about norms diffusion and human rights abuses. Transferring more policymaking power to local governments creates more barriers for a shared understanding of norms between different governmental tiers. In a decentralized political system, implementing treaty-related regulations and policies takes considerable time and effort. Moreover, having greater discretion gives local authorities information advantages, thereby weakening the central government's ability to discipline local officials. In a decentralized political system, it is easier for local officials to cover up and lie about human rights abuses that happen at the local level.

Second, the reputation mechanism that incentivizes state leaders to comply with international law does not work well for local-level officials. Less concerned about reputational payoffs and costs, local-level officials have fewer incentives to comply with human rights law. Third, more discretion power means more responsibilities. A decentralized power structure shields the central government from popular grievances. By shifting blame to local officials who engaged in repression, the central government maintains social order and its legitimacy. Consequently, in a decentralized political system, the central government has fewer incentives to carry out large-scale reforms aimed at improving human rights conditions. The above arguments lead to the hypothesis:

Hypothesis: The marginal effect of ratification of international human rights treaties on improving human rights practices is positive when decentralization is at its lowest level; this effect declines in magnitude as the level of decentralization increases.

3.1 Data

In this chapter, I test the joint effect of decentralization and ratification of international human rights treaties on human rights practices. The unit of analysis is the country-year. In terms of human rights treaties, I choose the ICCPR and the CAT.

3.1.1 Dependent variables

The ICCPR was adopted in 1966 and entered into force in 1976. It commits states to respect abroad range of civil and political rights. Here, I focus on violations of physical integrity rights that are widely studied by other scholars (Clark 2013; Hill 2010; Lupu 2015; Poe, Tate, and Keith 1999). In the ICCPR, Article 6 stipulates that individuals have the inherent right to life. Article 7 prohibits torture or other cruel, inhuman or degrading treatment or punishment. Article 9 provides that individuals should not be arbitrarily arrested or detained. To measure human rights outcome concerning the effect of ICCPR ratification, I use the Cingranelli-Richards (CIRI) physical integrity rights index (Cingranelli, Richards, and Clay 2014). This additive index measures government respect for extrajudicial killings, disappearance, torture, and political imprisonment. The score of physical integrity rights ranges from 0 to 8. A higher score indicates greater government respect for physical integrity rights.

In addition to the ICCPR, I also test how decentralization conditions the effect of CAT ratification. Adopted in 1984 and entering into force three years thereafter, the CAT is specifically designated to protect individuals from torture, one of the most egregious violations of human rights. To operationalize torture, I draw on the CIRI human rights data (Cingranelli, Richards, and Clay 2014) and the Political Terror Scale (PTS) data (Wood and Gibney 2010). Torture in the CIRI data set is coded as 0, 1, and 2, with a higher score indicating greater government restraint from using torture. The PTS measures levels of a state's repression. Although a state's repressive tactics go beyond torture, torture and other cruel, inhuman or degrading treatment are nonetheless widely practiced by repressive regimes. The PTS therefore is an alternative indicator of torture. The PTS ranges from 0 to 5, with a higher score indicating higher levels of political terror. As an additional note, the PTS data rely on the US State Department and Amnesty International's annual reports. As a result, it has two separate measures of political terror: PTS-State Department and PTS-Amnesty International.

3.1.2 Independent variables

The ratification of the ICCPR is simply a dummy variable. So is the ratification of the CAT. For both treaty ratification variables, a state receives a score of 1 from the year of ratification and 0

otherwise. Data on ratification of international human rights treaties are provided by the Office of the High Commissioner for Human Rights.

To operationalize decentralization, I use (Hooghe et al. 2015)'s measures of three dimensions of decentralization: institutional depth, policy scope, and representation. To start with, the index of institutional depth ranges from 0 to 3, with a higher score indicating a greater extent to which a local government is not subject to veto from the central government. Second, the index of policy score is coded into five values, ranging from 0 to 4. A higher score indicates that a local government has substantial power over a range of policies. Third, the index of representation measures the extent to which a local government's legislature and executive are independent. This additive index sums scores for the legislature and the executive and is grouped from 0 to 6. Again, a higher score indicates that a local government has more power over electing assembly and appointing members in the executive.

To capture the overall effect of the above-mentioned three dimensions of decentralization, I use the principal component analysis (Cole 2015) to generate a single factor score based on indices of institutional depth, policy score, and representation. Moreover, the Hooghe et al. (2015)'s data on decentralization are only available for 76 countries in my analyses. Because decentralization is not a distinct phenomenon either for democracies or for autocracies, it is hard to tell whether the effect of decentralization is underestimated or overestimated in my analyses. To test the joint effect of decentralization and treaty ratification, I interact treaty ratification variables with the factor score of decentralization. According to my hypothesis, these interaction terms are supposed to be signed differently from treaty ratification indicators. In other words, treaty ratification variables should be positively associated with better human rights outcome, whereas the interaction term of decentralization and treaty ratification should be negatively associated with better human rights outcome.

3.1.3 Controls

I take into account a battery of controls. The first set of controls includes regime type and regime durability. Democracies are more likely to respect human rights than do non-democracies because democratic institutions hold political leaders accountable to their constituents and restrain them from repressing citizens (Davenport 1999; 2007; Poe and Tate 1994; Poe, Tate, and Keith 1999). Regime durability also affects a state's propensity to violate human rights as newer

and mature regimes may have different preferences (Lupu 2015). I include measures of regime type and regime durability from the Polity IV data set (Marshall, Gurr, and Jaggers 2013).

I also include a set of variables measuring domestic characteristics. First, I include a measure of political constraints that the executives face from opposition parties (Henisz 2002). Leaders who face threats from opposition parties are less likely to use repression (Conrad 2011; Lupu 2015). Second, there is some evidence suggesting that economic development is positively associated with a state's respect for human rights (Henderson 1991; Neumayer 2005; Poe and Tate 1994; Poe, Tate, and Keith 1999). Economic scarcity intensifies intergroup competition and thus destabilizes political and social order. Under volatile political and social conditions, governments are more likely to resort to repression. GDP per capita is often used as a proxy for economic development, so I control for economic development using a measure of GDP per capita collected by the World Bank. Third, related to economic development, a larger population worsens the problem of economic scarcity. Henderson (1991) finds that states with larger populations tend to rely more on the use of repression (also see Poe and Tate 1994). I therefore control for populations using data provided by the World Bank. Both GDP per capita and population are logged to correct for skewness.

I follow the human rights literature to include international non-governmental organization (INGO) memberships as a control. INGO memberships capture how closely a state is tied to the international society. States deeply embedded in the international society face intensive social and ideological pressure on their behavior (Hughes, Krook, and Paxton 2015; Keck and Sikkink 1998; Risse and Sikkink 1999). As emitters and promoters of global norms and scripts, INGOs engage in the naming and shaming of states' noncompliance behavior and thus help curb human rights violations (Clark 2013; Hendrix and Wong 2013). The measure of the number of INGOs is derived from Hafner-Burton and Tsutsui (2005a).

Another domestic characteristic is federalism. A dummy variable is used to capture federalism, 1 for a federal state and 0 otherwise (Persson and Tabellini 2003). As mentioned before, Simmons (2009, 69–71) argues that states with federal political structures are slower to ratify human rights treaties due to “the political costs associated with satisfying a larger number of quasi-veto players” (69-71). But to my knowledge, scholars have not yet incorporated federalism into analyses of compliance with human rights treaties. As I argue in this paper, the presence of a large number of local actors impedes the implementation of human rights-related

polices and regulations. Federalism breeds not only de jure veto players in the legislature but also de factor veto players in the bureaucracy. However, as Blume and Voigt (2011; Voigt and Blume 2012) point out, a dichotomous variable of federalism is a poor measure of decentralization because it neglects many institutional nuances. Nevertheless, I control for federalism avoid omitted variable bias.

Finally, there is some evidence demonstrating that repression committed by states is rampant during periods of wars. In times of civil conflict, governments commonly use repressive measures to strike down challengers and dissidents (Davenport 2007; Hill 2010). International war experience is also hypothesized to affect a state's repressive behavior (Poe and Tate 1994). Thus, I control for state involvement in civil war and international conflicts using the UCDP/PRIO armed conflict data (Gleditsch et al. 2002; Uppsala Conflict Data Program 2015).

3.2 Method

Studies of the effect of human rights treaties ought to tackle the fact that the act of ratifying human rights treaties is not random. As noted by Simmons (2009), states' propensity to ratify international human rights treaties is influenced by domestic legal hurdles and human rights conditions. For those that widely respect human rights, they will be more likely to ratify human rights treaties because they anticipate compliance. For those that fall short of respecting human rights, they will nonetheless commit to treaties if they expect to reap some material and/or immaterial benefits in the short run. Some states respect human rights in principle, but they fail to enter into treaties due to domestic political hurdles. There are also other states that will not ratify human rights treaties because they anticipate high costs of compliance (Hathaway 2007; Simmons 2009). As such, those that ratify human rights treaties and those that are reluctant to do so are not comparable. Because states do not commit to international human rights treaties randomly, the estimated effects of human rights treaties will be biased if we do not accounted for states' differential propensity to ratify human rights treaties (Conrad and DeMeritt 2013; Hill 2010; Simmons and Hopkins 2005; Stein 2005).

I follow Hill (2010), using coarsened exact matching (CEM) to adjust for the selection bias of treaty ratification (Blackwell, Iacus, and King 2009; Iacus, King, and Porro 2012). By using CEM, I preprocess the raw data and then generate a new data set in which those that ratify treaties are matched with those that did not ratify treaties with respect to a set of pre-CEM

covariates that are supposed to affect a state's propensity to commit to human rights treaties. These pre-CEM covariates used to perform the CEM procedure include democracy, political constraints, population, GDP per capita, INGO memberships, civil war, and international conflict (Hill 2010). To implement CEM, researchers need to group each pre-CEM covariates into substantively indistinguishable categories (Blackwell, Iacus, and King 2009). For continuous variables such as regime type and political constraints, I thus choose 25th, 50th, and 75th percentiles as cut-off points. The INGO memberships variable is recoded into six groups ranging from 0 to 10, 11 to 50, 51 to 100, 101 to 500, 501 to 1000, and 1001 and more (Hill 2010). Dichotomous variables such as the onset of civil and international wars need no coarsening in the CEM.

Because many observations have missing values that are probably not random, I use Amelia II to impute missing values before using the CEM to preprocess the raw data set (Honaker, King, and Blackwell 2011). After performing the CEM and imputation, I use ordinary least square (OLS) model to analyze the combined effect of decentralization and ICCPR ratification as the index of physical integrity rights is continuous (Model 1). To analyze the combined effect of decentralization and CAT ratification, I use a series of ordered probit models because the CIRI's torture index (Model 2), the PTS-Amnesty International terror scale, and the PTS-State Department terror scale (Model 4) are ordinal.

3.3 Findings

Table 2 presents the results of Models 1-4 that analyze how decentralization conditions the effect of ICCPR ratification on physical integrity rights and the effect of CAT ratification on state's use of torture or repression. Overall, the results support my hypothesis. According to my theory, the effect of treaty ratification weakens as levels of decentralization increase. In all models, the interaction terms of treaty ratification and decentralization are associated with worse human rights practices. To better facilitate the interpretation of these interaction terms, I present four plots in Figure 2 that illustrate how the effect of treaty ratification changes at different values of decentralization in each model. I also overlay within each plot a histogram depicting the percentage of observations at different values of decentralization (Berry, Golder, and Milton 2012).

Model 1 assesses the effect of ICCPR ratification on state's respect for physical integrity rights. Consistent with my hypothesis, the coefficient of the interaction term of ICCPR ratification and decentralization is negative and statistically significant. Panel (a) in Figure 2 provides substantive interpretations of this result, showing the marginal effect of ICCPR ratification on state's respect for physical integrity rights as a function of decentralization. This plot shows that ratification of the ICCPR has no impact on human rights practices in states with low and medium levels of decentralization and has negative effect on human rights practices in states with high levels of decentralization (>=1.13), which account for 18% of the sample in Model 1. This null effect of ICCPR ratification in states with low and medium levels of decentralization is not surprising as previous studies also find that ratifying the ICCPR does not constrain state behavior (Lupu 2013a; 2013b). The negative effect of ICCPR ratification in highly decentralized states is in line with prior findings (Hafner-Burton and Tsutsui 2005a; Hill 2010; Neumayer 2005). More importantly, this finding suggests that the negative effect of ICCPR ratification is contextual, depending on levels of decentralization. The central government's ratification of the ICCPR mobilizes domestic rights groups by enhancing the legitimacy of their pursuit of rights and freedom. Notwithstanding the central government's commitment to international human rights law in states with high levels of decentralization, local government officials will not refrain from using repression to suppress growing opposition voices.

Table 2. The Joint Effect of Decentralization and Treaty Ratification on Human Rights Outcomes

	Model 1: Physical Integrity Rights	Model 2: CIRI-Torture	Model 3: PST-AI	Model 4: PTS-State Dept.
ICCPR Ratification	-.0287			
	(.1306)			
ICCPR Ratification ×	-.2510**			
Decentralization	(.1061)			
CAT Ratification		-.0977	-.2181	-.3365
		(.2556)	(.2091)	(.2682)

Table 2 continued

CAT Ratification ×		-.2348*	.3131*	.4926*
Decentralization		(.1221)	(.1650)	(.2635)
Decentralization	.2745**	.1792	-.0833	-.4221
	(.1160)	(.1381)	(.1797)	(.2810)
Democracy	.1524**	.0717***	-.0844***	-.0917***
	(.0234)	(.0228)	(.0236)	(.0226)
Regime Durability	.0080***	.0042*	-.0085***	-.0077*
	(.0016)	(.0023)	(.0032)	(.0043)
Political Constraint	-.4962	.8450	1.0788	.0662
	(.4083)	(.7733)	(.7389)	(.6983)
Federalism	-.4680**	-.3181	.2394	.3046*
	(.2202)	(.1934)	(.1579)	(.1748)
INGOs	.0003	.0004**	-.0003*	-.0003
	(.0002)	(.0002)	(.0002)	(.0002)
Populations (logged)	-.4283***	-.4005***	.2165**	.3495***
	(.0508)	(.0650)	(.0950)	(.1133)
GDP per Capita	.3694***	.3210***	-.3280***	-.5783***
(logged)	(.1369)	(.1155)	(.1244)	(.1393)
Civil War	-2.8660***	-.8117	2.1268***	2.0344***
	(.2144)	(.6251)	(.5358)	(.6047)
Fixed Effects for Year	Yes	Yes	Yes	Yes
Observations	771	1062	1062	1062
Number of Countries	70	74	74	74

Note: Cells show coefficients with robust standard errors clustered at the country level in parentheses. The dependent variable in Model 1 is the CIRI physical integrity rights index, with a higher score indicating greater government respect for physical integrity rights. The dependent variable in Model 2 is the torture index in CIRI with a higher score indicating greater government restraint from using torture. The dependent variables in Model 3 and Model 4 are PTS-Amnesty International and PTS-State Department terror scales respectively, with a higher score indicating higher levels of political terror. Across Models 1-4, international war is omitted, because so few observations experience international war. * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$ (two-tailed).

The findings from Model 2 also support my hypothesis that decentralization weakens the effect of CAT ratification, although the coefficient of CAT ratification is not significant from zero across different values of decentralization. As a robustness check, I use two alternative measures of state repression of which torture is one major form. Models 3 and 4 test the effect of CAT ratification using the PTS-Amnesty International and PTS-State Department terror scales as the dependent variables, respectively (Wood and Gibney 2010). For both the PTS-Amnesty International and the PTS-State Department terror scales, higher scores indicate higher levels of state repression.

The findings from Models 3 and 4 are in harmony with my hypothesis, as the interaction terms in both models are statistically significant and positively associated with worse human rights practices. Panels (c) and (d) in Figure 2 illustrate how the coefficient of CAT ratification changes at different values of decentralization for Models 3 and 4 respectively. Both plots indicate that in states with low levels of decentralization, ratification of the CAT reduces state repression. However, as the levels of decentralization increase, ratification of the CAT has no impact on human rights practices. Specifically, medium and high levels of decentralization render the CAT ratification ineffectual. About 69% of the sample in Model 3 and about 54% of the sample in Model 4 fall in the regions where CAT ratification has no impact.

I have established that the marginal effect of treaty ratification on state respect for human rights is a function of decentralization. It might also be helpful to examine the other side of the coin—the marginal effect of decentralization as a function of treaty ratification status. Figure 3 displays how the effect of decentralization on different human rights outcomes differ between non-ratifiers and ratifiers of the ICCPR and the CAT. One notable finding is that the effect of decentralization for treaty ratifiers is estimated with higher precision as the associated confidence interval is narrower across the board. One reason is the sample size of treaty ratifiers is larger than that of treaty non-ratifiers. Moreover, I do not find substantial difference between treaty non-ratifiers and treaty ratifiers in the effect of decentralization on human rights outcomes. I am reluctant to give a causal interpretation of how the effect of decentralization differs by treaty ratification status because the regression models were estimated on a sample matched by treaty ratification status, not levels of decentralization.

In term of control variables, democracy and regime durability are associated with better human rights practices in all of the models. Although the finding about the effects of political

constraints and federalism is somewhat mixed, there is some evidence that federal states are less likely to promote human rights. The findings in this study lend partial support to the argument that greater number of INGO memberships lead to better human rights practices, as the effect of INGO memberships is statistically significant in only Models 2 and 3. Consistent with previous findings, wealthier states are more likely to respect human rights, whereas larger populations or civil war are associated with worsening human rights conditions.

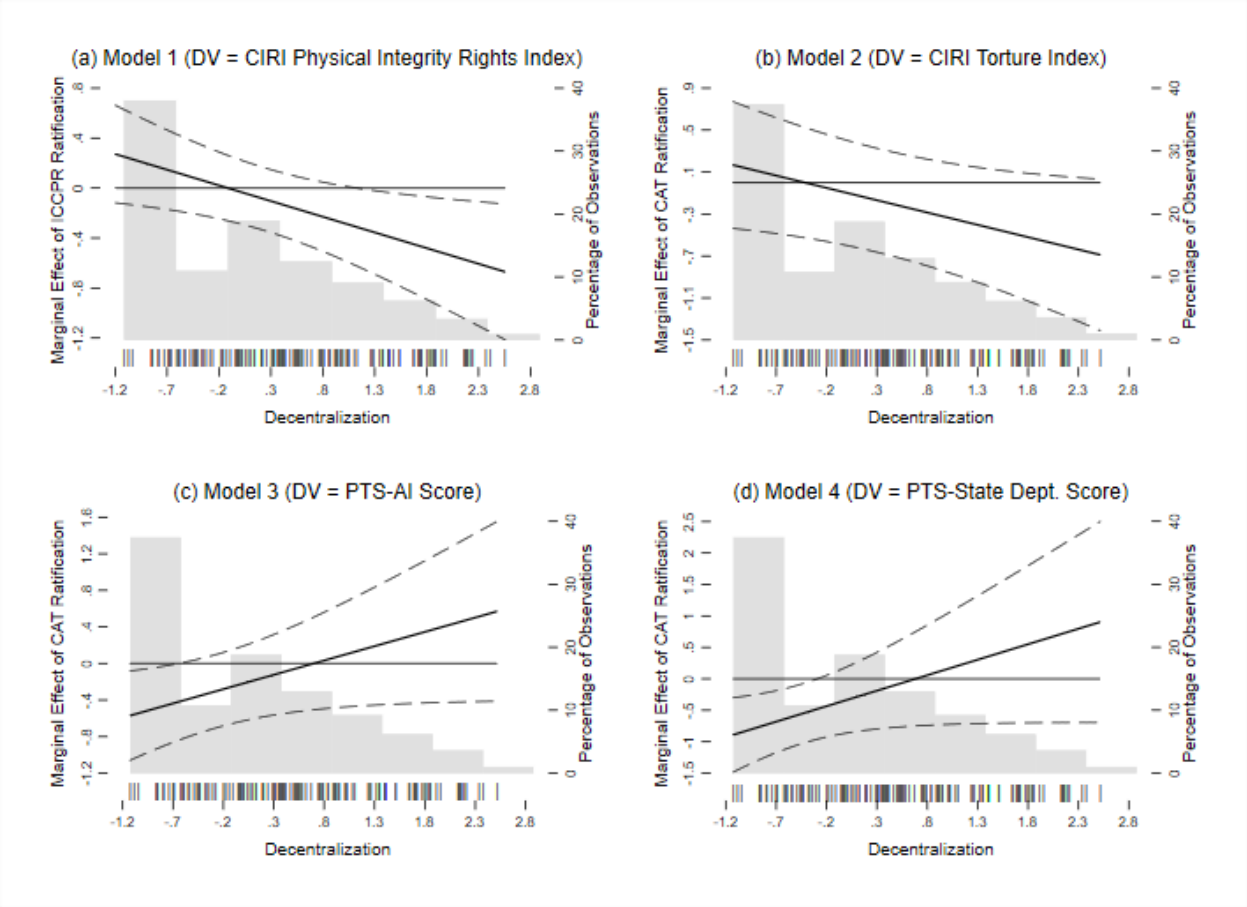

Figure 2. Plots for Evaluating the Marginal Effect of Treaty Ratification at Different Levels of Decentralization. Panel (a) displays the marginal effect of the ICCPR ratification at different levels of decentralization in Model 1. Panels(b)-(d) illustrate the marginal effect of the CAT ratification at different levels of decentralization in Models 2-4 in which CIRI's torture index, PTS-Amnesty International score, PTS-State Department score are used as the dependent variables, respectively. For each panel, the vertical axis on the right-hand side presents the percentage of observations in the sample at different values of decentralization.

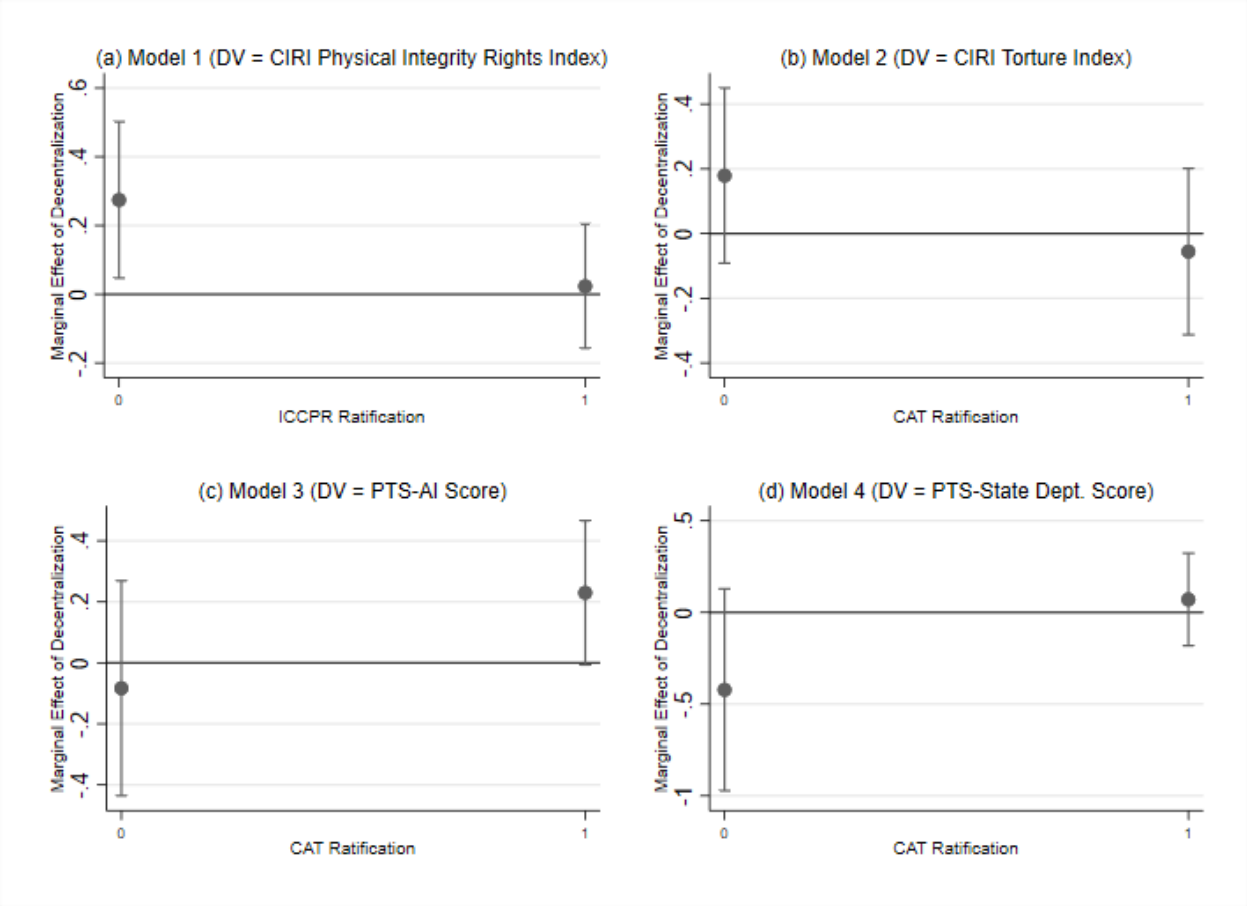

Figure 3. Plots for Evaluating the Marginal Effect of Decentralization for treaty non-ratifiers (=0) and treaty ratifiers (=1). Panel (a) displays the marginal effect of decentralization for non-ratifiers and ratifiers of the ICCPR. Panels (b)-(d) illustrate the marginal effect of decentralization for non-ratifiers and ratifiers of the CAT in Models 2-4 in which CIRI's torture index, PTS-Amnesty International score, PTS-State Department score are used as the dependent variables, respectively.

3.5 Conclusion

A burgeoning literature has explored a wide range of domestic mechanisms through which ratification of human rights treaties alters state behavior. Substantial attention has been paid to national courts, legislative veto players, and NGOs. The effect of another facet of domestic political structure—decentralization—on treaty compliance has been unexplored.

In this chapter, I test how governmental decentralization mediates the effect of human rights treaty ratification on human rights conditions. According to my theory, I expect to find that governmental decentralization dilutes the effectiveness of human rights treaties. Findings from my cross-national analysis of the impact of governmental decentralization on state

compliance with the ICCPR and the CAT lend support to my theoretical expectation. Across the board, ratification of the ICCPR and the CAT improves human rights conditions in a small number of countries with low levels of governmental decentralization, and this positive effect attenuates as levels of governmental decentralization increases.

One practical implication of my findings is that local-level officials should be held accountable for human rights abuses on an equal footing with state leaders. A cursory glance at the naming and shaming of human rights abuses tells us that significant attention is directed to high-ranking officials. Focusing on national leaders still matters, but failing to hold local authorities accountable inevitably creates a mismatch between promoting political accountability and advancing human rights.

CHAPTER 4. CHINA'S COMPLIANCE WITH THE UN CONVENTION AGAINST TORTURE

In previous chapters, I have identified three mechanisms through which decentralization impedes a state's implementation of human rights treaties. First, decentralization makes it harder for the central government to discipline its local counterparts. When local authorities enjoy considerable discretion over local affairs, they can control access to local information, and they have incentives to cover up human rights abuses that happen at the local level. Second, international reputation does not constrain the large number of local agents created by decentralization. Compared with state leaders, local officials are less concerned about their reputation for keeping national commitments to international obligations simply because they are less likely to participate in interstate activities. Third, decentralization encourages the central government to shift the blame for human rights abuses to local officials. Decentralization allocates more duties to local officials. When human rights abuses happen at the local level, the central government can shield itself from popular grievances by shifting blame to local officials and thus keep its legitimacy untarnished. As a result, the central government in a highly decentralized state has fewer incentives to initiate reform to improve human rights conditions.

I have also conducted cross-national analyses of the impact of governmental decentralization on state compliance with two major international human rights treaties, the ICCPR and the CAT. Findings from my large-N statistical analyses largely support my hypothesis that decentralization reduces levels of state compliance with international human rights treaties.

In this chapter, I conduct a case study of China. Specifically, I explore how governmental decentralization affects subnational variation in state agents' use of torture and ill-treatment. I focus on China for two reasons. First, in my cross-national analyses, high-quality data on political decentralization are not available for many authoritarian countries. Thus, findings about the effect of decentralization from the large-N analyses might not be generalizable to authoritarian regimes where human rights matter most. To remedy this problem, I conduct a case study of China, which is an authoritarian regime. Second, empirical studies of China's human rights conditions are scant. This gap in the human rights literature is unfortunate since China is the most populated country, and the international society has long criticized its human rights

practices. To fill this gap, I compile an original panel data on state agents' use of torture and ill-treatment at the provincial level in China. Using this unique dataset, my study is one of the first to empirically investigate how domestic political factors influence the prevalence of rights violations in China.

One final point I want to make concerns my focus on torture and ill-treatment in my within-country study of China. I study the situation of torture and ill-treatment in China because the Chinese government is a signatory of the CAT. Upon ratifying the CAT, state signatories are obligated to take measures to prohibit and prevent torture and cruel, inhuman or degrading treatment or punishment in all circumstances. As I will discuss below, since becoming a state party to the CAT in 1988, the Chinese government has made significant efforts to fulfill its obligations under the CAT by enacting a series of laws and regulations to eliminate torture. Despite many legislative provisions, regulations, and policies promulgated nationwide, the use of torture and ill-treatment by law enforcement officials remains widespread. I exploit the gap between *de jure* rights protection and *de facto* rights protection to examine whether and how governmental decentralization affects the implementation of national law and regulations against torture or, analogously, the prevalence of torture and ill-treatment.

In subsequent sections, I first provide some background information about China's interactions with the CAT regime at the UN. I also present some qualitative evidence from China to illustrate how decentralization impedes the elimination of torture and ill-treatment. I then describe the event data on torture and ill-treatment I have compiled and present some descriptive statistics. Next, I present my estimation strategy and empirical results. The last section concludes.

4.1. Institutional Background and Qualitative Evidence

In this section, I first describe China's engagement with the UN mechanisms related to the CAT. I then present some qualitative evidence from China to demonstrate how decentralization impedes the eradication of torture.

4.1.1 China's Participation in the CAT regime

The CAT was adopted by the UN in 1984 and entered into force in 1987.[43] The CAT aims to prevent torture and other acts of cruel, inhuman, or degrading treatment or punishment. State parties to the CAT are required to take effective domestic measures to prevent torture and ill-treatment, penalizing agents who use torture and compensating affected victims.

China was largely alienated from the international human rights regime in the 1960s and 1970s. But in the 1980s, China showed more interest in participating in various UN human rights mechanisms. Regarding the CAT, China joined the working group to draft the treaty (Boulesbaa 1986). As one of the earliest state parties to the CAT, China ratified the CAT in 1988. It also actively engaged in drafting the Optional Protocol to the CAT (OPCAT) in the early 1990s, a supplementary agreement to the CAT that establishes international and national preventative bodies for places of detention, although China has not yet ratified the OPCAT.[44]

China's proactive engagement with the UN human rights mechanisms since the 1980s is still a puzzle. Like many other socialist states during the Cold War, the Chinese government has placed economic rights on top of civil and political rights and prioritized collective rights over individual rights. Scholars have not provided a convincing answer to explain why China decided to become a signatory of the CAT, which not only imposes universal jurisdiction but also protects individuals from state agents' abuse of power. Some suspect that the Chinese government ratified the CAT because of its power status rather than its sincere commitment to improve rights practices (Kent 2007, 205). On the other hand, Hollyer and Rosendorff (2011)'s game theoretical model demonstrates that authoritarian regimes ratify the CAT to show its resolve in staying in power to opponents: because signatories of the CAT are obliged to "prosecute offenders or extradite them to another party state for persecution," the high costs of rights-abusing leaders' stepping down from power motivate them to ramp up repression against opposition parties. However, in the case of China, the 1980s has not witnessed the emergence of important opposition parties. Thus, I am doubtful that Hollyer and Rosendorff (2011)'s explanations apply to the case of China.

[43] See https://www.ohchr.org/en/professionalinterest/pages/cat.aspx.
[44] The OPCAT establishes a UN Subcommittee on Prevention of Torture that can undertake state visits. The OPCAT also requires state parties to create independent national bodies that monitor places of detention, https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx.

Regardless of the Chinese government's motives to ratify the CAT, as Kent (2007, 205) points out, "[s]ubsequent developments revealed its [the Chinese government's] basic failure to understand and accept the norms, principles, rules, and obligations flowing from its accession." China's initial interactions with the treaty body, the UN Committee against Torture (hereafter referred to the Committee), were turbulent. The Chinese government submitted its first report to the Committee in 1989. The Committee considered the 1989 report as not conforming to the general guidelines and therefore asked the Chinese government to submit a supplementary report. Faced with this "blunt and somewhat unusual request," the Chinese representatives "questioned the Committee's procedures and its competence to pass judgment on the condition of 1.2 billion Chinese citizens" (Kent 2007, 207). The Chinese delegation eventually submitted a supplementary report upon the request of the Committee in 1992. But this supplementary report, as well as subsequent periodic reports, fell short of detailing the rights practices and the implementation of legislative provisions on the ground. Furthermore, in its considerations of reports submitted by China, the Committee repeatedly requested the Chinese government to provide disaggregated statistical data on torture and ill-treatment, but the Chinese government evaded such longstanding requests.[45]

Whereas the Chinese government disagreed with some of the Committee's fundamental recommendations, it was proactive on occasion in cooperating with the Committee. For example, the Chinese government signed the ICCPR in 1998, which contains "specific obligations prohibiting torture" (Kent 2007, 208). In 2005, it issued an invitation to a two-week visit by the UN Special Rapporteur on torture, Manfred Nowak, although after multiple requests to visit and "hundreds of individual communications to China" by his predecessor (Gaer 2017, 106; Rodley 2011). Despite these positive moves, the Chinese government has been reluctant to accept monitoring and country visits by the international society on politically sensitive issues.

4.1.2 Decentralization and the Prevalence of Torture

Although China's participation in the CAT regime has proven to be "a steep learning curve" (Kent 2007, 206), without pressure from various UN human rights bodies as well as international

[45] UN Committee Against Torture. 2000. "Report of the Committee against Torture." A/55/44. UN Committee Against Torture. 2008. *Consideration of Reports Submitted by States Parties under Article 19 of the Convention: Concluding Observations of the Committee against Torture*. Committee Against Torture. 2016. *Concluding Observations on the Fifth Periodic Report of China*. CAT/C/CHN/CO/5.

NGOs, China would not have made steady, albeit slow, progress toward better protection of human rights. For example, since the mid-1990s, the Chinese central government has enacted a series of laws and regulations to improve prison conditions, to prohibit coercive or excessive use of force, and to enhance accountability of law enforcement officials, including police, prison guards, judges, and procurators. These legislative initiatives include the Prison Law of 1994, the State Compensation Law of 1994, the Judges law of 1995, the Public Procurators Law of 1995, the People's Police Law of 1995, the Administrative Penalty Law of 1996, and the new Criminal Law of 1997 (Kent 2007, 210–12).

In the 2000s, to further regulate practices of law enforcement officials and protect the lawful rights of detainees and criminal offenders, the Chinese government promulgated a range of legislative provisions, including the Law on Administrative Punishments for Public Order and Security of 2005, the 2005 amendment to the Procedural Provisions for the Handling of Administrative Cases by Public Security Organs and the Procedural Provisions for the Handling of Criminal Cases by Public Security Organs, the new Law on Lawyers of 2007, Six prohibitions on people's prison police (2006), Six prohibitions for re-education through labor guards (2006), the Provisions on the Interrogation of Criminal Suspects (2010), the Administrative Compulsion Law of 2011, and the Regulations on Administrative Detention Facilities.[46] These numerous laws and regulations, however, seem to have little effect on eliminating the use of torture and ill-treatment on the ground. The Committee against Torture and many international NGOs have been consistently concerned with the widespread use of torture and ill-treatment in China. The 2015 annual report by the US Congressional-Executive Commission on China also remarks that "[h]uman rights and rule of law conditions in China deteriorated in many of the areas…continuing a downward trend."[47]

In response to criticisms from the international society, the Chinese government blamed local officials for not faithfully and effectively implementing legislative provisions and regulations promulgated by the central government:

[46] See China's *Sixth Report of the People's Republic of China on Its Implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT/C/CHN/5). Also see UN Committee against Torture's *Consideration of Reports Submitted by States Parties under Article 19 of the Convention: Concluding Observations of the Committee against Torture*.
[47] US Congress. 2015. "Congressional-Executive Commission on China," p. 2.

> Some State officials, particularly local government employees, still need to enhance their human rights awareness and their performance in exercise of their functions under the law. Cases of slack law enforcement and miscarriages of justice persist.[48]

Similarly, after the Committee against Torture raised the concern about local officials' violent and coercive measures to implement population control policy in Lingyi City, Shandong Province, the Chinese government provided a lengthy explanation:

> The Chinese Government expects that the staff of local governments at all levels will perform their administrative functions, implement the family planning policy and enforce law strictly in accordance with the law and in a civilized manner. *It exhorts them not to violate the legitimate rights and interests of citizens...The competent national authorities have vigorously promoted informed choices of contraceptive methods, redoubled efforts for management in accordance with the law and have requested local authorities to implement the family planning policy in strict accordance with the provisions of laws and regulations*…Anyone who violates laws and regulations shall be held responsible and liable to an administrative or criminal investigation.
>
> *It is true that some officials in individual counties and townships of Linyi city have violated law in carrying out family planning activities and have infringed the legitimate rights and interests of citizens*. However, these officials have been punished in accordance with the law. They have been subject to either administrative detention or removal from their posts. The National Population and Family Planning Commission has tried, through various means, to improve administration in accordance with the law and to safeguard the rights and interests of citizens. It has requested government staff in charge of population and family planning at all levels to learn lessons from these cases, review their own activities and correct any activities that may infringe people's rights. At the same time, it has offered systematic and targeted training in administration that is compliant with the law and in the provision of quality services" (emphasis added).[49]

As we can see from this lengthy explanation, while the Chinese government emphasized its continuing and vigorous efforts to fulfill its obligations under the CAT, it also blamed local officials for the discrepancy between national law and its implementation at the local level.

In the case of China, it is hard to find much concrete evidence to substantiate who should be blamed for human rights abuses, the central government or local authorities. Statistical data on torture are sparse in China. Also, research on Chinese human rights conditions has mostly

[48] See China's *National Report Submitted in Accordance with Paragraph 15(A) of the Annex to Human Rights Council Resolution 5/1* (A/HRC/WG.6/4/CHN/1), p. 19.
[49] See China's *Comments by the Government of the People's Republic of China Concerning the Concluding Observations and Recommendations of the Committee against Torture*, CAT/C/CHN/CO/4/Add.2, pp. 16-17.

assumed that China is a unitary actor and thus, has not adequately analyzed rights abuses by local authorities (Kent 1995; 1999; 2007). Notwithstanding the lack of research on rights abuses by local authorities, in his report after a two-week country visit to China in 2005 as the Special Rapporteur on Torture, Nowak (2006) noticed the detracting role of localism in the central government's efforts to combat torture. He points out that despite the fact that the Ministry of Public Security has issued a rights-respecting code of conduct for law enforcement agents, "local Party Committees enjoy substantial authority to interpret and implement policy in their regions including by exercising leadership over respective Public Security Bureau (PSBs)" (2006, 16).

In China, local authorities' considerable discretion over local matters is also perpetuated by the prevalence of informal political networks of reciprocity that oftentimes sideline formal, institutional frameworks (Dittmer 1995; Nathan 1973; Shih 2004). Resembling the *guanxi wang* (connections) in Chinese traditional society, informal political networks consist of members with "shared ascriptive ties" through common bonds, such as family, birthplace, school and workplace (Lieberthal and Oksenberg 1988). Members within an informal political network exchange various tangible benefits, including resources, promotion, and protection (Nathan and Tsai 1995; Shih 2004). Lots of research has found evidence of a perverse effect of informal political ties on government performance and political accountability (Rose-Ackerman 1999; Stokes 2005).[50] Shih (2004) finds that in addition to economic variables, informal political ties play an important role in the distribution of bank loans from the central government to provincial governments in China. Studying workplace safety in state coal mines, Jia and Nie (2017) find that having a native-born safety regulator, who is typically one of the vice governors in a province, greatly leads to slack enforcement of safety regulations and thus more coal mine deaths.

In addition to this general pattern that in China localism impedes accountability of local agents, central legislative provisions and oversight mechanisms have not been implemented uniformly across the country.[51] On the positive side, several provinces experimented with initiatives against torture. For example, local administration in Hengshui City, Hebei Province, started the "Police Work Areas" program in 2003 to prevent police officers' use of torture in criminal investigations; in Zhejiang province, "local police chiefs will be expected to resign in

[50] But Jiang (2018)'s recent research shows that informal political networks promote economic growth in China.
[51] UN Committee against Torture. 2000. *Report of the Committee against Torture* (A/55/44), p. 23.

any district where there are more than two cases of forced confessions resulting in injuries, miscarriages of justice or public order problem"; in Sichuan province, illegally obtained evidence and coerced confessions are not allowed to be used in courts starting from 2005; in both Hebei and Hubei provinces, local authorities issued regulations to prevent the use of forced confessions in 2006 (Nowak 2006, 15, 35). But on the negative side, Nowak found that in many parts of the country, due to "underfunding and poor remuneration for police," "the pressure to crack cases is larger than the incentive to address abuses" (Nowak 2006, 16). And the Committee and the international society have continuously expressed concerns about the excessive use of force against members of ethnic minority groups, most of which reside in less developed provinces.

The fact that central legislation and policies against torture have not been uniformly implemented across China invites scholarly attention. Although the extant cross-national studies of human rights take into account the structure of governance, e.g., either unitary or federal systems (Simmons 2009), they have paid little attention to the variations at the subnational level. An even more serious problem is that the structure of governance for a country is often defined nominally. In the case of China, the Constitution stipulates a unitary framework of governance. But when it comes to the exercise of power, China resembles a federalist state more than a unitary state (Montinola, Qian, and Weingast 1995). Thus, my study complements the extant literature on human rights by exploring how the subnational power-sharing between different governmental tiers affects the situation of torture and ill-treatment in China.

4.2. Data

I collected a panel data on local officials' use of torture and ill-treatment, fiscal decentralization, political leadership, and other provincial characteristics for 31 provinces in China between 2008 and 2018. As I noted above, I focus on occurrences of torture and ill-treatment because the Chinese government is obligated to enact and enforce laws against the use of torture and ill-treatment nationwide due to its ratification of the CAT. Analyzing the prevalence of torture and

ill-treatment at the subnational level enables me to uncover regional factors that impede the elimination of torture.[52]

4.2.1 Dependent variable

The main dependent variable in my case study of China is the rate of torture and ill-treatment, measured by the ratio of raw counts of torture and ill-treatment to the size of population. Data on the raw counts of torture and ill-treatment are drawn from the Chinese (*Zhongguo*) Rights Protection (*Weiquan*) Monitor (*Dongtai*). The Rights Protection Monitor is an online weekly report (hereafter referred to the Weekly). It is published by the Rights Protection Network (*Weiquan Wang*) (RPN), a human rights advocacy group. Since 2007, the Weekly has documented violations of major categories of human rights, such as freedom of speech, freedom of association and demonstration, freedom from arbitrary detention, freedom from torture, right to housing, right to land, labor rights, freedom from harassment, and civil and political rights.

Following conventional human rights fact-finding practices, for each incident of human rights violations, the Rights Protection Network records what offenders did to the affected persons, and where the rights abuses happened. Related to my research interest, I gathered data on incidents of torture and ill-treatment by local authorities. The following is an excerpt from the Weekly (No. 598) that summarizes an incident of torture:

> Wenying Wan, a human rights defender from Shanghai, came to the Public Security Bureau of Shanghai to file a complaint. She was brutally beaten by a police officer whose badge number was 033703. As a result, four of her ribs were broken. The Public Security Bureau has not yet dealt with her case. On July 2, Wenying Wan asked her friends, Peipei Zheng and Jianfang Chen, to file a criminal case via express mail to the Procuratorate of Jingan, Shanghai and the Procuratorate of Shanghai. She also asked for preservation of evidence. But as of November 30, she has not heard from the authorities.[53]

The Weekly has adopted a standard format of documentation since its early inception, and it has a section for torture and other cruel, inhuman and degrading treatment. As an example, Figure 4 presents the table of contents from the 532nd issue (August 21-27, 2017) of the Weekly.

[52] Although civil and political rights are important topics of study, I choose not to analyze them in the context of China because the Chinese government has not ratified the ICCPR and therefore, it is not fully bound to uphold the treaty terms in the ICCPR.

[53] The reporting of human rights abuses by the Rights Protection Network is in Chinese. This excerpt is a translated English version.

Because most of the Weekly reports published in 2007 are missing, my data collection starts from 2008. I downloaded and coded all the available issues of the Weekly from the Internet between 2008 and 2018.[54] Particularly, I used a string-matching algorithm to process all the weekly reports, identifying the provinces where torture and ill-treatment happened. This geographical information allows me to construct a spatially disaggregated event dataset on torture and ill-treatment at the provincial level in China.[55]


本期目录

一、言论与出版自由 Freedom of speech and press

1、四川成都公民于庸因微信言论遭刑事拘留

二、任意羁押、判刑、监禁 Arbitrary detention, imprisoment, and unjust sentencing

1、律师就福州G20大抓捕案提出严正抗议后法院同意延期开庭
2、获刑一年半的上海维权人士沈佩兰刑满释放
3、江天勇律师案一审在长沙中院开庭
4、陕西洛川访民张王锁到北京上访遭监控羊押

三、酷刑和其它残忍、不人道或有辱人格的待遇 Torture and other degrading and inhumane treatment

1、福州残疾访民雷宗林在看守所遭酷刑
2、苏昌兰狱中病重，心脏刺痛很频繁

四、住房权、强迫征地拆迁 Right to land, and forced eviction

1、洛阳关林公告要求村民舍小家配合拆迁
2、洛阳槐树湾曾红卫等五村民诉市政府强行征地案获受理

五、罢工与劳工权益 Labor strike and workers' righ

1、黑龙江省民代幼教师近四千人集体到该省信访局上访

六、其它骚扰行为 Harassment and threat

1、谢燕益律师获得取保后遭到长期骚扰
2、珠海陈凤明准备进京信访在车站遭拦截
3、成都被强拆户熊克金北京被截访后遭警方训诫

七、公民行动与公民维权 Civil and political rights

1、上海“镇保”失地农民代表第35次到上海市社会保障局维权
2、各地维权人士赴辽宁沈阳法院，声援被构陷的人权捍卫者林明洁

Figure 4. An annotated excerpt from the 532nd issue (August 21-27, 2017) of the Rights Protection Monitor.

In addition to the event dataset on torture and ill-treatment, I also gathered data on population from an online database hosted by the National Bureau of Statistics of China.[56] Based on these two datasets, I compute the prevalence of torture and ill-treatment as the ratio of the raw

[54] Data on some key control variables in my data analysis are not available beyond 2016, so I restrict my data analysis to the time span between 2008 and 2016. For my data analysis, I coded 424 weekly reports. 45 reports published during the time span of my data analysis are missing. The proportion of missing reports is about 10%. Almost half of the missing reports (21 out of 45) are from 2008, so as a robustness check, I exclude observations for the year of 2008 from my analysis. Doing so hardly changes the substantive results of my analysis.
[55] For most of the incidents of torture and ill-treatment documented in the Weekly, I was able to identify places at the city and township level. In this study, however, I focus on variation at the provincial level.
[56] The online database hosted by the National Bureau of Statistics of China can be accessed at http://data.stats.gov.cn/index.htm.

count of torture and ill-treatment to the size of population. There are several reasons why I adjust for population when constructing the dependent variable. First, there are more targets of rights violations in populated places. Failing to adjust for the size of population overestimates the severity of rights abuses. Second, competition over resources is more intense in populated provinces in China. In the last few decades, land grabs by local officials have been a major trigger of political dissent in China. The tournament model of political promotion in China motivates local officials to place economic performance, especially the growth rate of GDP, on top of their agenda (Li and Zhou 2005). Due to this economic incentive, illegal expropriation of farmland by local governments is widespread because land sales are one of the easiest ways to push up GDP growth. Affected farmers often use the petition system, filing complaints against local officials to the central government. Because complaints by citizens reveal local officials' incompetency, local officials have incentives to "silence petitioners, usually with the use of repression" (Wong and Peng 2015, 27).

Before presenting disaggregated data on torture and ill-treatment at the provincial level, I first describe the aggregated data at the national level. In Figure 5, the left panel charts the raw count of torture and ill-treatment across the whole country between 2008 and 2018. Overall, between 2008 and 2012, there is a rising trend in the use of torture and ill-treatment over time. And it reaches its peak in 2012. Yet we see a sharp dip in the use of torture and ill-treatment immediately after 2012. This downward trend continues throughout the rest of the time period. These findings appear to contradict the widely held opinion that the Chinese government has increasingly hardened its grip on the society in recent years (deLisle 2017). If that were the case, we would expect more rather than fewer instances of rights abuses. However, Fein (1995)'s More Murder in the Middle hypothesis might offer an explanation for the decline in the use of ill-treatment after 2013: people are less willing to challenge the state power in a chilling political environment; rights abuses happen less frequently in such an environment simply because political authorities face fewer confrontations (also see Bueno de Mesquita, Downs, and Smith 2005).

Even at the aggregate level, the event data I collect on torture and ill-treatment in China reveal a more nuanced picture of rights abuses on the ground. The two widely used human rights datasets—the Cingranelli-Richards (CIRI) dataset (Cingranelli, Richards, and Clay 2014) and the Political Terror Scale (Wood and Gibney 2010)—are not necessarily helpful for within-country

studies, because these two datasets use only a few categories to classify countries' human rights conditions. In consequence, gradations within each category are brushed away, thereby reducing the amount of variation in rights abuses (Clark and Sikkink 2013). In the case of China, as the right panels of Figure 5 illustrates, China receives the same score in levels of torture and ill-treatment across multiple years. Specifically, according to the CIRI torture index, China receives the same score, 0, between 2008 and 2011, suggesting that torture and ill-treatment have been practiced frequently.[57] The ranking of China's human rights conditions in the PTS also shows no variation. China was assigned a score of 4 between 2008 and 2017 in the PTS, indicating that torture and ill-treatment are widely practiced. Unlike the CIRI and the PTS, the event dataset I collect taps into subnational variation in the use of torture in China that are otherwise not detectable from the CIRI and the PTS scores.

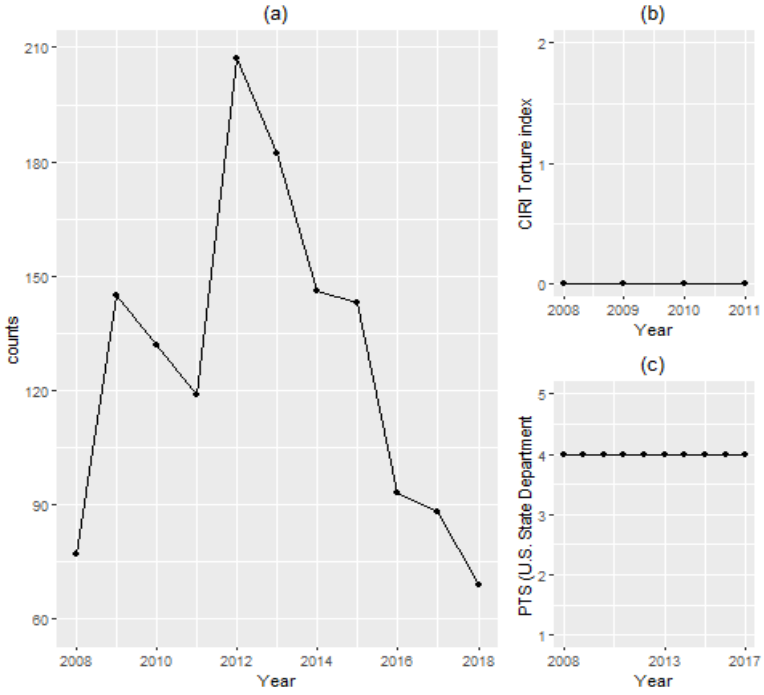

Figure 5. The Prevalence of Ill-Treatment in China. Panel (a) shows the annual count of reported ill-treatment between 2008 and 2018 by the Rights Protection Monitor. Panel (b) displays the CIRI torture Index between 2008 and 2011. Panel (c) displays the PTS score between 2008 and 2017.

[57] The CIRI data are available from 1981 to 2011.

In addition to providing a fine-grained measurement of the use of torture and ill-treatment at the national level, the data I collect can be disaggregated at the provincial level. To the best of my knowledge, I am one of the first to build a panel dataset on China's respect for human rights at the provincial level. Complementing cross-national data, subnational human rights data can aid researchers in testing hypotheses in a narrower geographic scope, maximally controlling for macro-level political, economic, and social factors. In my case study of China, I use the subnational human rights data for China to test how decentralization affects subnational authorities' use of torture and ill-treatment. Next, I report some descriptive findings about the core outcome of my interest.

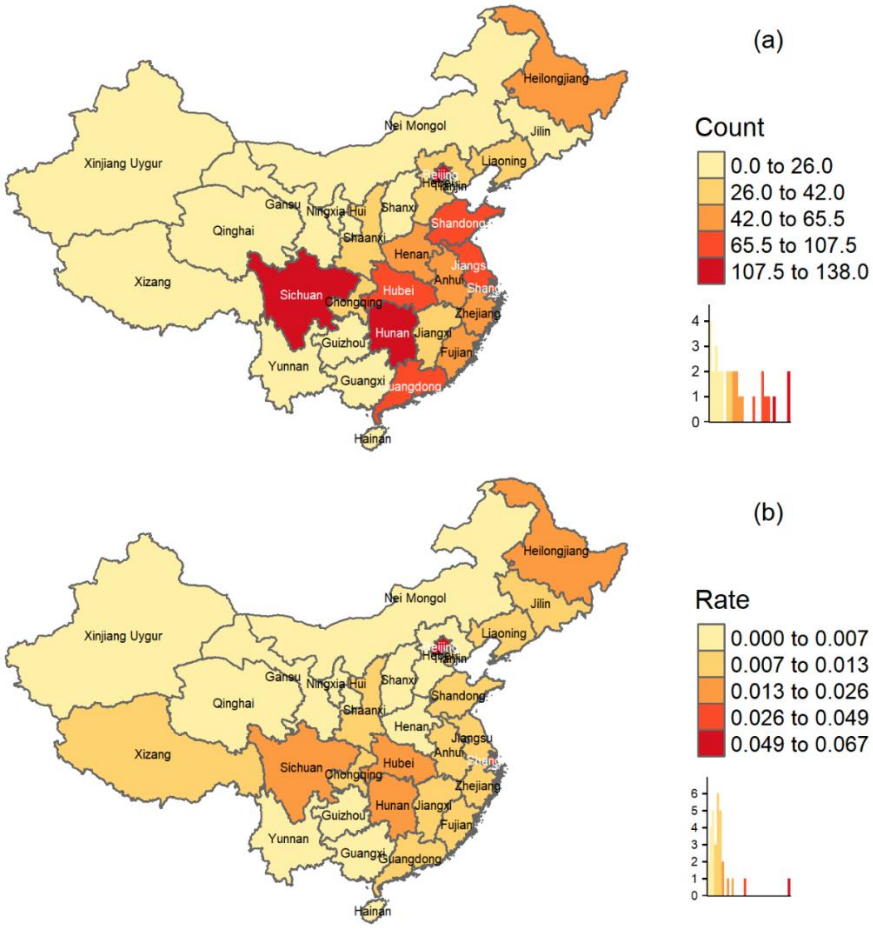

Figure 6. Panels (a) and (b) display choropleth maps of the raw count and the prevalence of torture and ill-treatment over 31 provinces in mainland China between 2008 and 2018, respectively. The prevalence of torture and ill-treatment is computed as the ratio of the raw count to the size of population.

Figure 6(a) plots a choropleth map of the total raw count of torture and ill-treatment over 31 provinces in mainland China between 2008 and 2018. This plot shows that torture and ill-treatment happen more frequently in industrialized and coastal provinces than in inland areas. As discussed before, the use of torture and ill-treatment measured by raw count could be inflated by the size of population. To remedy this problem, I compute the ratio of raw count of torture and ill-treatment to the size of population and then use this quantity of interest to generate a choropleth map (see panel b in Figure 6). Surprisingly, Figure 6(b) shows similar patterns. Again, the use of torture and ill-treatment are more prevent in provinces close to the coast than those located further inland.

There might be a few concerns about the quality of the event data I collect. First, the "information paradox" characterized in the human rights literature (Clark and Sikkink 2013; Keck and Sikkink 1998) suggests that as reporting quality improves, human rights situations might look worse on the surface. This information effect seems not apparent in my dataset. As I discussed above, the dataset I collect shows a rising trend in the use of torture and ill-treatment before 2012 and then a declining trend afterwards. If the information paradox is present in the RPN's reporting of torture and ill-treatment, we would expect the RPN to report more incidents of torture and ill-treatment over time, despite improved human rights conditions. If so, the observed improvement after 2012 could be more dramatic.

Second, the adoption of more stringent standards in evaluating government respect for human rights could increase the false positive rate (Fariss 2018). Practices that either were acceptable or did not attract activists' attention are now under the spotlight. Thus, human rights conditions look worse not because rights abuses begin to occur more frequently, but because more instances of practices are now classified as rights abuses. This changing standard of accountability, however, is not an issue in my dataset, because the definition of torture and ill-treatment is straightforward. Based on my own reading of a sample of the event data I collect, the Weekly has consistently documented as torture and ill-treatment those practices that inflicted serious injury or intense suffering on affected persons.

Third, activists' supply of human rights information might depend on the strength of civil society in different parts of the country. Arguably, it is harder to gather human rights information in remote areas where civil society groups are the least vibrant. That said, in remote areas would incidents of torture and ill-treatment be under-reported. However, the fact that these places

happen to be farther away from the capital and that local authorities in these places enjoy more discretion in local affairs means the estimated effect of decentralization on the prevalence of torture and ill-treatment in my analysis is under-estimated. If there were no under-reporting of torture and ill-treatment in remote areas, I would expect to find a larger effect of decentralization.

Lastly, to empirically evaluate a measure's validity, scholars often compare it with other similar measures. In cross-national analyses of human rights violations, scholars have done so for the CIRI and the PTS which draw on Amnesty International and the US State Department's annual reports to code countries' human rights records.[58] They find that Amnesty International and US State Department's assessments of countries' human rights performance differ in early years but converge over time (Hafner-Burton and Ron 2009; Poe, Carey, and Vazquez 2001). As to the dependent variable in my study, however, I am not able to conduct such a rigorous comparison because, to the best of my knowledge, there is no comparable human rights event data at the subnational level in China. Although Amnesty and US State Department's annual reports record incidents of torture and ill-treatment, this information is mostly for illustrative purposes. For example, in its 2015-2016 annual report, Amnesty concluded that torture and ill-treatment were widespread in China, but it only documented a few incidents of torture and ill-treatment.

Despite the paucity of subnational human rights data, the closest measure I can use to empirically assess the validity of my dependent variable is related to collective incidents such as strikes, protests, and demonstrations. In China, collective incidents often involve citizens' violent confrontation with law enforcement officials, who tend to use excessive force in such circumstances. Drawing on event data on labor strikes that are compiled by China Labor Bulletin,[59] a Hong Kong-based nongovernmental organization dedicated to promoting workers' rights and movement, I evaluate the statistical relationship between the count of torture and ill-treatment in my study and the number of labor strikes[60]. My finding indicates that the correlation between these two measures is statistically significant.

[58] The PTS has recently added Human Rights Watch's annual reports to code countries' human rights records, http://www.politicalterrorscale.org/Data/Documentation.html.
[59] See https://clb.org.hk/.
[60] Data on labor strikes from the China Labor Bulletin are available from 2011. Thus, I conduct an analysis between 2011 and 2018. Specifically, I regress the number of incidents of torture and ill-treatment on the number of labor

4.2.2 Key Independent Variables

To analyze the relationship between decentralization and the prevalence of torture and ill-treatment at the subnational level, I use several proxies to measure the decentralized governmental structure in China. First, I proxy political decentralization by the fiscal power sharing between the central government and local authorities. Since the late 1970s, the Chinese central government has carried out waves of fiscal decentralization reforms, granting local authorities considerable power to manage local economies and promoting competition between different subnational jurisdictions (Jin, Qian, and Weingast 2005). Because the first and foremost priority on the Chinese Communist Party's agenda is economic development, fiscal autonomy granted to local authorities has also brought them more political influence. Thus, although China is a nominally unitary state, the actual power-sharing between the central government and local authorities in China is akin to many other federal political systems (Montinola, Qian, and Weingast 1995).

The fact that the Chinese decentralization reforms are driven by economic concerns rid my estimation of endogeneity problems. Suppose that the Chinese decentralization reforms are motived by the protection of rights and liberties. Then when we analyze the independent effect of decentralization on rights performance, it is critical to control for the effect of human rights conditions on the initiation as well as the scope of decentralization reforms. In this study, however, this kind of endogeneity problem is hardly a concern since decentralization is motivated by separate issues.

Following prior research (He and Sun 2018; Jin, Qian, and Weingast 2005; Montinola, Qian, and Weingast 1995), I use budgetary figures for both revenues and expenditures to construct two measures of fiscal decentralization. For revenue decentralization, I compute the ratio of a provincial government's budgetary revenues to the central government's budgetary revenues, adjusted for the population of the province (He and Sun 2018, 84). Analogously, I create a variable for expenditure decentralization, by computing the ratio of a provincial government's budgetary expenditures to the central government's budgetary expenditures, adjusted for the population of the province. Data on provincial governments and the central government's budgetary revenues and expenditures between 2008 and 2016 are drawn from the

strikes across provinces and years. Standard errors are clustered at the provincial level. The estimated coefficient is .02, and the effect is statistically significant at the conventional .05 level.

Finance Yearbook of China, an annual publication by the Chinese Ministry of Finance. Higher scores of revenue decentralization and expenditure decentralization indicate higher levels of provincial autonomy from the central government. I expect that the effect of these two fiscal decentralization measures to be signed positively.

A second variable I use to operationalize political decentralization is the shortest geographic distance from a provincial capital to Beijing, the national capital. Conceptually, a provincial capital's geographic distance to Beijing measures the costs of the central government's monitoring and surveillance. As the power of the central government extends to places further away, the intensity of controlling local agents decreases (Jia and Nie 2017). Similarly, Cole (2015, 416) argues that "even if the central governments that ratify human rights treaties sincerely desire to honor their commitments, infrastructure deficiencies may render them unable to protect individuals from abuses perpetrated by third parties."

The geographic distance between a provincial capital and Beijing is computed in ArcGIS. I take the logarithm value of the raw geographic distance to account for possible threshold effect. Moreover, in my sample, I include Beijing, which has zero distance to itself. Because the logarithm of zero is undefined, I add one to all the distance scores I compute. By doing so, the distance score of Beijing would be one and has a negligible small but defined logarithm value. Adding one to other distance scores changes their corresponding logarithm values minimally.

The measure of geographical distance has high reliability, but one disadvantage of using it as a proxy for political decentralization is that this variable does not vary over time. Therefore, the estimated effect of political decentralization measured by geographic distance might be underestimated if the latent levels of political decentralization at the provincial level are not strongly correlated with the distribution of a provincial capital's distance to Beijing.

One last proxy for political decentralization is whether the governor or the party secretary is a native-born in a province. Similar to the distance variable described above, this variable measures the transaction costs of collusion at the provincial level (Jia and Nie 2017). Native-born governors or party secretaries usually work for many years in his or her home provinces before they become provincial leaderships (Jia and Nie 2017). In a society permeated with the *guanxi* (relationship) culture, the personal networks they build while working in their home provinces could exacerbate the principal-agent problem, making it harder for the central government to collect information and monitor agents at the local level. Data on whether a

governor or party secretary is a native-born in a province are mainly drawn from the biographical information compiled by *China Vitae*.[61] When the career information about a governor or party secretary is missing in *China Vitae*, I gather relevant information from *Baidu Baike*, the Wikipedia equivalent in China.

4.2.3 Control Variables

I also control for GDP per capita and foreign direct investment, two major provincial characteristics that could affect the human rights conditions. These two variables are standard controls included in cross-national studies of human rights practices.

GDP per capita. Like cross-national studies of human rights, I include GDP per capita to control for economic development. Economic scarcity intensifies intergroup competition and thus destabilizes political and social order. In the context of China, on the one hand, the intergroup competition is manifested in conflicts between different ethnic groups. On the other hand, in less developed places that are without ideal infrastructure facilities to attract investment, selling farmland to developers appears to be one of the few ways to grow the economy. In consequence, economic scarcity makes farmers vulnerable to land expropriation by local governments and village officials. I collect data on GDP per capita from the online data base of the NBSC.

Foreign direct investment. The debate over the impact of foreign direct investment on human rights conditions in host countries continues.[62] Optimists argue that foreign direct investment improves human rights because it exports human rights values (Spar 1998), reduces economic scarcity by bringing in investment (Apodaca 2001), and helps nurture a strong middle-class by boosting the economy. In contrast, pessimists posit that in some cases multinational companies exerts a negative influence on human rights conditions. For example, some oil multinationals are found to depend on "state security forces to manage local populations in the 1990s, thereby becoming complicit in torture, killing, and imprisonment of protesters" (Janz 2018, 165). Evidence from China indicates that instead of introducing standards of transparency and open competition in economic sectors, many multinationals adapt to local practices and offer

[61] The website of China Vitae can be accessed at http://www.chinavitae.com/.
[62] See Janz (2018) for a good review of research on the relationship between foreign direct investment and human rights violations.

illicit kickbacks to local officials, thereby leading to higher levels of corruption (Zhu 2017). By providing rents to authoritarian regimes, as Meyer (1996, 379) points out, multinationals are "investing in repression." Complicating these two competing theories, empirical findings about the impact of foreign direct investment on human rights practices are mixed. Some studies lend support to the optimists' view (Apodaca 2001; Hafner-Burton 2005; Kim and Trumbore 2010), others find null effect (Cao, Greenhill, and Prakash 2013; Sorens and Ruger 2012). Related to my case study, since foreign direct investment is not my key research interest, I control for it to minimize the omitted variable bias. Table 3 presents descriptive statistics.

Table 3. Descriptive Statistics

Variables	N	Mean	Std. Dev.	Min	Max
counts	341	4.109	4.973	0	29
rates	310	0.00103	0.00145	0	0.0107
Revenue decentralization	279	0.0907	0.0695	0.0306	0.378
Expenditure decentralization	279	0.550	0.296	0.214	1.910
Native governor	310	0.252	0.435	0	1
Native party secretary	310	0.0419	0.201	0	1
Geographic distance (log)	330	6.649	1.428	0	7.847
Population (log)	310	8.108	0.847	5.677	9.321
GDP (log)	310	9.454	1.024	5.979	11.41
Foreign direct investment (log)	279	10.64	1.516	6.280	13.69

4.3. Estimation Strategy and Results

To analyze the effect of political decentralization on the prevalence of incidents of ill-treatment at the provincial level in China., I estimate the following specification:

$$Rates\ of\ ill-treatment_{pt} = d \times Decentralization_{pt} + \Sigma x_{ipt}\beta + \varepsilon_{pt} \qquad (1)$$

Rates of ill-treatment is the dependent variable, measured by the number of ill-treatment per ten thousand people for province *p* in year *t*. Since rates are a continuous variable, I estimate an

ordinal least square (OLS) regression model. The key independent variable is levels of decentralization at the provincial level. As I discussed above, I use the fiscal power-sharing between the central government and local authorities to operationalize levels of decentralization. Specifically, I compute two measures of fiscal decentralization using data on budgetary revenues and budgetary incomes. These two measures vary by province and year. As my theory predicts that higher levels of decentralization lead to more cases of torture and ill-treatment by local officials, I expect the effect of decentralization, *d*, to be signed positive. I also add Σx_{ipt}, a set of controls including the log of population, the log of GDP, the log of foreign direct investment, the log of a provincial capital's distance to Beijing, and whether the governor or party secretary is a native-born.

I perform statistical analyses in a stepwise fashion. Table 4 presents results from a series of regression models I estimate. Because the two measures of decentralization are highly correlated, I first enter them separately in columns 1 and 2, respectively. Results from column 1 show that decentralization measured by budgetary revenues has a positive effect on the prevalence of ill-treatment, and this effect is statistically significant at the .01 level. Consistent with my hypothesis, this finding suggests that in provinces that enjoy more discretion over local affairs, the use of ill-treatment by local officials is more prevalent. Surprisingly, the effect of a provincial capital's distance to Beijing, my second proxy variable for decentralization, is negative and statistically significant. It appears that local officials are less likely to use ill-treatment in provinces that are farther away Beijing. This finding contradicts my expectation that higher costs of monitoring local agents are associated with more frequent use of ill-treatment. Whether a governor or a party secretary is a native-born appears to have no bearing on local official's use of ill-treatment. Turning our attention to the controls. GDP has no effect on the use of ill-treatment. But foreign direct investment reduces the use of ill-treatment, as the coefficient associated with foreign direct investment is negative and statistically significant.

In column 2, I run a similar model but use sharing of budgetary incomes between different governmental tiers to measure decentralization. Again, I find a positive effect of expenditure decentralization on the prevalence of torture and ill-treatment. Similarly, the use of ill-treatment is less prevalent in remote provinces. Having a native-born governor and party secretary has no impact at all. In column 3, I enter both measures of decentralization in the regression model. This time, decentralization measured by budgetary revenues has a positive

effect on the prevalence of ill-treatment, whereas decentralization measured by budgetary expenditures has no effect at all. Ill-treatment occurs more frequently in provinces that are closer to Beijing. None of the other variables are statistically significant.

Table 4. Estimated Effects of Governmental Decentralization on the Prevalence of Torture and Ill-Treatment in China, 2008-2016

	(1)	(2)	(3)	(4)
fiscal decentralization (revenues)	0.0082***		0.0060**	0.0062**
	(0.0021)		(0.0027)	(0.0027)
fiscal decentralization (incomes)		0.0012***	0.0006	0.0004
		(0.0004)	(0.0004)	(0.0004)
Distance to Beijing	-0.0004***	-0.0005***	-0.0004***	0.0003**
	(0.0001)	(0.0001)	(0.0001)	(0.0001)
Native-born governor	-0.0002	-0.0003	-0.0003	-0.0003*
	(0.0002)	(0.0002)	(0.0002)	(0.0001)
Native-born party secretary	0.0002	0.0000	0.0002	0.0006**
	(0.0003)	(0.0004)	(0.0004)	(0.0002)
Gross Domestic Product	0.0002	0.0002	0.0003	0.0004**
	(0.0002)	(0.0002)	(0.0002)	(0.0002)
Foreign direct investment	-0.0002*	0.0001	-0.0002	-0.0002
	(0.0001)	(0.0001)	(0.0001)	(0.0001)
Number of observations	270	270	270	261
Time span	2008-2016	2008-2016	2008-2016	2008-2016
Adjusted R^2	0.41	0.40	0.41	0.13

Note: * 0.10 ** 0.05 *** 0.01. Cell entries are estimated coefficients. Standard errors, shown in parentheses, are clustered at the Province × Regime (0 = years between 2008 and 2012; 1 = years between 2013 and 2018) level. Key explanatory variables are two measures of fiscal decentralization calculated from data on budgetary revenues and expenditures. Controls include the log of population, the log of GDP, the log of foreign direct investment, the log of a provincial capital's shortest distance to Beijing, whether the governor and the party secretary are native-born.

A seemingly contradictory finding that merits further attention is that the use of ill-treatment happens far more frequently in Beijing than in other provinces. But the incidents of ill-treatment that take place in Beijing could be inflated. The reason is that citizens in other parts of the country often travel to Beijing to file complaints against local officials, and local officials often send the so-called "retrievers" to abduct petitioners in Beijing and take them back to their home provinces.[63] Evidence has shown that when local officials confront petitioners, rights abuses including torture and ill-treatment occur frequently. To mitigate this problem, I run the regression model specified in equation (1) excluding Beijing from the sample. The findings are presented in column 4. The results of decentralization measured by the sharing of budgetary revenues is robust to the exclusion of Beijing from the sample. Decentralization measured by the sharing of budgetary expenditures, remains statistically insignificant. The distance between a province's capital and Beijing, however, reverses sign. The positive coefficient associated with this distance variable lends support to my hypothesis that local officials are more likely to use ill-treatment in remote provinces due to higher costs of supervision from the central government.

Surprisingly, having a native-born governor reduces the use of ill-treatment. But consistent with my hypothesis, a native-born party secretary has a positive effect on the prevalence of ill-treatment. In China, the governor is in mainly in charge of economic growth, whereas the party secretary of a province is mainly responsible for political issues such as the maintenance of social order. As a result, the party secretary has more incentives to cover up rights abuses committed by local officials because exposing these governmental wrongdoings to the public could dampen their career prospects.

Finally, the effect of GDP is positive, indicating that the use of ill-treatment is more prevalent in affluent provinces. This finding contradicts a cross-national pattern that a higher growth rate of GDP is associated with fewer cases of human rights abuses. However, in the context of China, the positive effect of GDP on the prevalence of ill-treatment suggests some peculiar phenomena in fast-growing places in the third world. Much of the economic growth in China has been driven by cheap labor and land sales. The exploitation of labor and the expropriation of land by public authorities lead to economic growth, but at the same time,

[63] See Human Rights Watch. "'We Could Disappear at Any Time': Retaliation and Abuses Against Chinese Petitioners." 7 December 2005, https://www.hrw.org/report/2005/12/07/we-could-disappear-any-time/retaliation-and-abuses-against-chinese-petitioners.

increase various kinds of hazards, such as rising inequality, and the mistreatment of minorities (farmers, indigenous people, ethnic minorities, etc.), and corruption (Jiang 2018, 987). Thus, it is not surprising that higher GDP growth is associated with higher risks of torture and ill-treatment in China.

4.4. Conclusion

I argue that decentralization impedes state compliance with human rights treaties. Qualitative evidence from China demonstrates that although the central government has promulgated a series of laws, regulations and opinions to reduce the use of torture and ill-treatment by law enforcement officials, localism characterized by high levels of discretionary power enjoyed by local authorities prevents the effective implementation of these measures taken by the central government. Aggravating the problem of localism is the fact that when faced with criticisms from the international society, the Chinese government shifts the blame for rights abuses to local officials.

In addition to qualitative evidence, I compile a unique dataset on state agents' use of torture and ill-treatment between 2008 and 2018 at the provincial level in China. I use this novel dataset to conduct a quantitative analysis of how the risk of torture and ill-treatment is influenced by decentralization, proxied by fiscal power sharing between the central government and provincial governments, the distance of a provincial capital to Beijing, whether a governor or party secretary in a province is a native-born. Across the board, findings show that in provinces having more fiscal power vis- à-vis the central government, torture and ill-treatment are more prevalent. The risk of torture and ill-treatment is also higher in provinces that are farther away from Beijing. Finally, torture and ill-treatment are more widespread in provinces with a native-born party secretary.

CHAPTER 5. US COMPLIANCE WITH ARTICLE 36 OF THE VIENNA CONVENTION ON CONSULAR RELATIONS

> *"The Treaty lives a double life. By day, it is a creature of international law, which sets forth extensive substantive and procedural rules by which the treaty must operate…By night, however, the treaty leads a more domestic life. In its domestic incarnation, the treaty is a creature of national law, deriving its force from the constitutional order of the national state that concluded it."*
>
> *- Duncan B. Hollis (2006)*

In the previous two chapters, I conducted cross-national and within-country analyses of the impact of governmental decentralization on state compliance with human rights treaties. Complementary streams of quantitative evidence from these analyses demonstrate that governmental decentralization deters national governments from complying with human rights treaties. Despite the statistically significant association between governmental decentralization and state compliance with human rights treaties, my analyses of cross-national and within-country variation have not so far shed light on the mechanisms I delineated in my theoretical framework.

In this chapter, I conduct a case study of US compliance with Article 36 of the Vienna Convention on Consular Relations to illustrate how the lack of reputational concerns at the local level and state leaders' use of blame-shifting strategy—two salient characteristics in a decentralized political system—affect national government's compliance with human rights treaties. Adopted by the UN in 1963, the VCCR is multilateral treaty that purports to regulate inter-state relations on a broad range of consular issues. Since its adoption, the VCCR has 48 signatories and 180 state parties.[64] I focus on Article 36 of this treaty because unlike other articles that are mainly concerned with rights and duties of states, it safeguards foreign nationals' *individual* rights to consular notification and access when they are arrested or detained by law enforcement officials in the receiving states. Although the VCCR is not usually considered to be a human rights treaty, as I explain below, it has been cited in a number of international as well as

[64] See https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-6&chapter=3.

domestic legal cases related to the human rights of foreign nationals in the US. In addition, the history of US compliance with Article 36 of the VCCR is replete with diplomatic and legal "pulling and hauling" that occur among key participants—including US federal and state governments, foreign governments, NGOs, and the International Court of Justice (ICJ)—in a series of high-profile lawsuits arising from US noncompliance with Article 36 of the VCCR. Thus, for purposes of my study, US compliance with Article 36 of the VCCR offers a sound focus for considering the relationship of decentralization to protection of individual rights based on international legal standards.

In the following sections, I first delineate the history of US engagement with legal challenges arising from violations of Article 36 of the VCCR in the US Supreme Court and the ICJ. I consider an overview of the history of US engagement with the VCCR, particularly Article 36 of the VCCR, necessary for two reasons. First, although many legal scholars have done an excellent job in examining how federalism complicates the incorporation of Article 36 of the VCCR in the US (Bell 2002; Powell 2001; Spiro 1999), I find little reference to the VCCR by scholars of international relations. Second, and relatedly, by synthesizing historical evidence scattered in the legal discipline and highlighting the interactions between the federal government and state governments in the US, my overview of the history of US engagement with the VCCR sets the background for my ensuing analysis of how the political dynamics in a decentralized political structure prevents national governments from complying with human rights treaties.

After I sketch a brief history of the VCCR and US compliance records, I draw on a rich set of qualitative evidence—court opinions, press releases, news reports, and government policy statements—to provide a narrative of the mechanisms set forth in my theoretical framework. To preview my findings, I find evidence that against the backdrop of renewed federalism concerns, US state governments are not receptive to international law. Due to reputational concerns, the federal government showed sympathy to international appeals and the ICJ's decisions. But federalism concerns were so strong that when confronted by foreign governments before the ICJ, the US federal government used the domestic constitutional arrangement as an excuse not to strengthen the enforcement with the VCCR.

5.1 Background

As the UN was founded, the General Assembly was mandated to "initiate studies and make recommendations for the purpose of … encouraging the progressive development of international law and its codification."[65] In accordance with this mandate, the General Assembly established the International Law Commission (ILC) in 1947, an expert body of public international law.[66] The ILC was tasked to identify customary international law and to codify it by drafting treaties and conventions. Among the topics selected for codification at the ILC's first session in 1949 were consular relations and immunities.[67]

In 1955, the ILC appointed Jaroslav Zourek, a lawyer from Czechoslovakia, as the special rapporteur to head the task of drafting a treaty on consular relations. At the 534th meeting of the ILC on May 6, 1960, a new article proposed by Sir Gerald Fitzmaurice, a British judge representing the United Kingdom, ignited a heated debate on consular access to detained nationals. Specifically, the main area of contention centered around paragraph (b) of Fitzmaurice's proposal, stating that:

> The local authorities shall inform the consul of the sending State without delay when any national of that State is detained in custody within his district; and the consul shall be permitted without delay to visit, converse privately with, and arrange legal representation for any national so detained. Any communications from such as national to the consul shall immediately be forwarded by the local authorities (United Nations 1960, 42).

Three different views surfaced in response to Fitzmaurice's proposal at the ILC's meetings. Grigory Tunkin, a member from the Soviet Union, believed that Fitzmaurice's proposal "went too far" because it "conferred very wide privileges which might conflict with local laws and regulations" (United Nations 1960, 43). Ahmed Matine-Daftary, an Iranian representative, thought that obliging local authorities to inform consular agents immediately might not be realistic because "it was not always possible to discover the identity or nationality of a person who had been detained" (United Nations 1960, 42).

---

[65] See Article 13(1)(a) of the United Nations Charter at http://legal.un.org/repertory/art13_1a1.shtml.
[66] The ILC Commission was established by UN General Assembly resolution 174 (II) at the 123rd plenary meeting on November 21, 1947.
[67] At its first session in 1949, the topics selected by the ILC for codification include the regime of the territorial waters and the high seas, diplomatic relations and immunities, consular relations and immunities, and the law of treaties. For more information, visit http://legal.un.org/diplomaticconferences/.

Disagreeing with nationalists' concern that international treaty would trump local law, rationalists such as Roberto Ago believed that states would find Fitzmaurics' proposal acceptable because "the advantage of reciprocity" outweighed "a sacrifice of their sovereignty" (United Nations 1960, 44). In his opinion, Fitzmaurice's proposal was no different from terms in several existing consular conventions. To him, "[i]f consuls had one regular responsibility it was surely the protection of their nationals who were in difficulty" (United Nations 1960, 43). And nationals detained or arrested in a foreign country were in most need of legal assistance.

Radhabinod Pal and Kisaburo Yokota found Ago's principle of reciprocity less satisfactory. Pal echoed A.E.F. Sandström's view that the relationship between a consul and a detained or arrested national is tantamount to that between a lawyer and a client. Given that "the lawyer's right to visit his client in prison was universally recognized," consular access to nationals was even more important since "the prisoner might not know the language of the receiving State, and might be ignorant of its law and of the mentality and customs of its people" (United Nations 1960, 43). Pal further reasoned that "justice certainly required that law protects a foreign national's rights to "talk and communicate freely with his consul without thereby jeopardizing his defense" (United Nations 1960, 44). He concluded that "[i]f the Commission was to accept the provision on the grounds that it was just, then it should be inserted without any bargaining qualification" and "[t]here should be no suggestion of bargaining in a matter pertaining strictly to justice" (United Nations 1960, 44).

To reconcile the above divergent views, Zourek proposed a compromise text, stating that consular access shall be provided "if the person in custody or imprisoned so requests" (United Nations 1960, 50). Moreover, to alleviate nationalists' concern that international prerogative might conflict with local law, he added that "The freedoms referred to in paragraph 1 of this article shall be exercised in conformity with the laws and regulations of the receiving state, subject to the proviso, however, that the said laws and regulations must not nullify these freedoms" (Quigley 2018, 14–16). In 1961, the ILC forwarded final draft articles on consular relations to the UN General Assembly. The UN convened the United Nations Conference on Consular Relations in Vienna between 4 March and 22 April 1963 to conclude a convention.

When considering the draft articles on consular relations at the 1963 Vienna conference, governments were divided on whether consular access should be conditional on the detained national's wish. Caught up in the rising trend of individual rights protection after WWII, a group

of states including the United States, Australia, and Switzerland argued that the rights and the will of individuals come first and that consular officials shall not be notified unless the individual wished so (Quigley 2018, 17). But a foreign national might not know about the right to consular notification. Thus, the UK and Norwegian delegates favored automatic notification (Quigley 2018, 17–18). Delegates at the Vienna conference eventually reached a compromise: the consulate would not be notified unless the detained foreign national requested so; in the meantime, the detained foreign national should be notified of the right to consular access.

Adopted on 24 April 1963, the VCCR went into force in 1967. Along with the VCCR, the Optional Protocol Concerning the Compulsory Settlement of Disputes went into force in the same year. This Optional Protocol provides the ICJ, the judicial organ of the UN, with compulsory jurisdiction over disputes between state parties arising from the VCCR. As I will show later, the ICJ is a storm center of political controversy where the US federal government and foreign governments jostle and gripe surrounding cases of US law enforcement officials' violations of foreign nationals' consular rights.

The debate over the drafting of Article 36 of the VCCR highlights the conflict between domestic and international law. In the final draft of the VCCR, delegates from national governments made a compromise and agreed that Article 36 should be exercised in conformity with national laws and regulations. In the meantime, it was also emphasized that "the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this article are intended."[68] The "rights" rhetoric used in the formal treaty was not highly controversial when it was drafted in the 1940s. And the VCCR was only remotely considered a human rights treaty. But decades of growth of human rights norms inculcate new understandings of Article 36 of the VCCR. Since the late 1990s, human rights lawyers in the US have started to make an ingenious use of Pal and Sandström's argument in courts, mostly in death penalty cases, that denying a foreign defendant's right to consular notification and access results in procedural injustice. Claims of violations of the VCCR consular rights flooded in before state courts in the US. Some of them even made their way to the US Supreme Court and the ICJ. In the next section, I will recount several high-profile cases related to violations of the Vienna consular rights, and analyze how a decentralized governmental structure, or federalism in the US context, molded US federal and state governments' policy responses to these legal disputes.

[68] See https://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf.

5.2 Federalism and US (Non)compliance with Article 36 of the Vienna Convention of Consular Relations: Qualitative Evidence

5.2.1 The Application of Article 36 of the VCCR in Criminal Defense

Before the mid-1990s, the US government had mostly adopted cooperative measures and held liberal positions on issues of consular notification and access. Since the late eighteenth century, the fledgling US was assertive in signing consular treaties with old European powers as well as Latin American countries to regulate consular functions (Quigley 2018). The Senate unanimously approved the VCCR and the Optional Protocol, which were signed by the US delegate at the 1963 Vienna conference. Upon the approval of the Senate, President Nixon ratified the VCCR in November 1969. Even before US ratification of the VCCR, federal law enforcement agencies had already taken steps to implement policies that gave effect to consular notification and access embodied in Article 36 of the VCCR (Quigley 2018, 32). For example, the Federal Bureau of Investigation and the US Marshal Service issued guidance in 1967, requiring foreign nationals to be advised of the right to access their consulates when they were in detention or under arrest (Garcia 2004; Quigley 2018, 32).

In the mid-1990s, Sandra Babcock, an attorney in the Texas Resource Center, a legal assistance organization, started to lead the efforts of using international law, mainly Article 36 of the VCCR, to seek relief for foreigners on death row in the US.[69] On behalf of Joseph Stanley Faulder, a Canadian convicted of a 1975 murder and sentenced to death by a Texas trial court in 1979, Babcock filed a petition in the US Supreme Court and asked for a review of Faulder's death sentence. In her motion, she maintained that Faulder's right to consular assistance in accordance with terms of the VCCR was violated and that "prosecutors had withheld evidence that might help exonerate him" (Whitaker 1998).

While Faulder's petition to the US Supreme Court was running its course, his case gained international attention as the Canadian government intervened in this case. Lloyd Axworthy, the Canadian Foreign Minister, contacted the Secretary of State Madelein K. Albright and Texas Governor George W. Bush, calling for the postponement of Faulder's execution (Lyman 1998). In response to the Canadian government's request, Albright wrote a letter to Governor Bush on

[69] According to Mark Warren of Human Rights Research, as of December 2019 127 foreign nationals are on the death row in the US. Among them, 52 are Mexicans. For more information, see https://deathpenaltyinfo.org/death-row/foreign-nationals/foreign-nationals-under-sentence-of-death-in-the-u-s.

November 27. In her letter, Albright brought up Babcock's VCCR argument, noting that "consular assistance could well have addressed issues such as Mr. Faulder's legal representation (which the courts have found was deficient in the penalty phase of his second trial) and the different ways in which his family might have been involved" (Quigley 2018, 111). Albright urged Governor Bush to delay the execution until "issues regarding Mr. Faulder's rights under the treaty could be examined" (Whitaker 1998). But Bush deferred the decision until the Texas Board of Paroles and Pardons made a recommendation (Lyman 1998). As a strong supporter of capital punishment, Bush showed no interest in granting clemency. After some futile efforts of Babcock and the Canadian government to seek relief from avenues such as the UN, the Inter-American Commission on Human Rights, and the US Supreme Court, Faulder was executed on 17 June 1999 (Babcock 2002; Quigley 2018, 112).

The novel use of Article 36 of the VCCR as a defense in the *Faulder* case in the mid-1990s sent ripples through the US judicial system (Carter 2003). Following the opinion issued by the US Court of Appeals for the Fifth Circuit, a cascade of litigation was filed in state and federal courts, raising the issue of violations of the VCCR, specifically violations of the right to consular notification under Article 36 of the VCCR. In several prominent cases that involves the death penalty, foreign governments filed motions against the US before the ICJ. The *Breard* case is one such case.

Angel Breard, a Paraguayan national living in the US, was sentenced to death in 1993 for attempted rape and murder. Following failed appeals to state and district courts, he filed a federal habeas corpus petition in 1998. As a foreign national, he was not advised by the Virginia authorities of his right to seek help from his consulate when he was arrested and when he went on trial in state courts. In his petition, he claimed that his trial was marred because his defense attorney and state habeas counsel failed to raise this issue of Virginia authorities' violation of his Vienna consular rights.[70] Although the court admitted that "Virginia's persistent refusal to abide by the Vienna Convention troubles the Court," it reasoned that he never alleged violations of his VCCR rights in state court proceedings.[71] In American federal law, the rule of procedure default forbids federal courts to review a petitioner's claim if he or she fails to present it to state courts

[70] *Breard v. Netherland*, 949 F. Supp. 1255 (E.D. Va. 1996).
[71] Ibid.

without showing cause of prejudice or a miscarriage of justice (Dest 1989). Accordingly, Breard's claim was considered procedurally defaulted and was thus dismissed.

Several months before the dismissal of Breard's federal habeas corpus petition, the Paraguayan government became aware of the *Breard* case. The denial of relief for violation of Breard's consular rights prompted the Paraguayan government to intervene. In September 1996, the Republic of Paraguay, its ambassador and Consul General to the US brought a case against Virginia officials in the same district court. Paraguay alleged that because Breard was never advised of his right to consular access and notification, his rights under the VCCR and a US-Paraguay Friendship Treaty that required comparable notification were violated (Quigley, Aceves, and Shank 2010, 219).[72] The district court dismissed Paraguay's action on the ground that Paraguay's allegations did not constitute a violation of federal law and thus the district court had no subject matter jurisdiction. Paraguay later appealed to the US Court of Appeals for the Fourth Circuit, but the district court's decision was affirmed on 22 January 1998. Breard was set to be executed on April 14.

While seeking to overturn Breard's conviction in courts, Paraguay attempted to stop the imminent execution of Breard through "the good offices" of the US State Department. But the US declined to offer assistance. As Paraguay's diplomatic efforts bore no fruit, Paraguay took the US to the ICJ on April 3 (Bishop 2002, 18).[73] Paraguay also requested provisional measures of protection. On April 9, the ICJ issued a preliminary order unanimously, asking the US to "take all measures at its disposal to ensure that Angel Francis Breard is not executed pending the final decision in these proceedings."[74]

Following the ICJ's preliminary order, the US federal government submitted an amicus brief upon the US Supreme Court's invitation and advised the US Supreme Court to deny both Paraguay and Breard's requests for relief. In the brief, the Solicitor General and the Legal Adviser asserted that the ICJ's order was suggestive rather than mandatory.[75] On the other hand, Secretary of State Albright wrote a letter to the Governor of Virginia, James S. Gilmore. Again, Albright sent a mixed message in her letter. She noted the non-binding nature of the ICJ's order.

[72] In 1859, the United States and Paraguay signed the Treaty of Friendship, Commerce, and Navigation.
[73] See Memorial of the Republic of Paraguay, 9 October 1998, https://www.icj-cij.org/files/case-related/99/13106.pdf.
[74] Ibid.
[75] Ibid.

But due to her concern that "[t]he execution of Mr. Breard in the present circumstances could lead some countries to contend incorrectly that the US does not take seriously its obligations under the Convention," she still requested Governor Gilmore to grant a reprieve of Breard's execution (Quigley, Aceves, and Shank 2010, 138).[76]

The US Supreme Court later denied the petitions of Paraguay and Breard. Governor Gilmore also declined to stay Breard's execution. In his statement, he explained that "[t]he US Department of Justice, together with Virginia's Attorney General, make a compelling case that the International Court of Justice has no authority to interfere with our criminal justice system" (Quigley, Aceves, and Shank 2010, 139).[77] Before the ICJ could rule on the case brought by Paraguay, Breard was executed by lethal injection on April 14. On November 2, Paraguay asked the ICJ to discontinue its case. The US concurred the next day. One week later, the ICJ discontinued the proceedings and removed the case from list. Paraguay's withdrawal of its action against the US in the ICJ saved the US the trouble of confronting a possible unfavorable decision. However, in less than a year, the US would become involved in another tussle over the Vienna consular rights in the ICJ.

Like many other incarcerated foreign nationals in the US, Karl and Walter LaGrand, two German nationals convicted of murder and sentenced to death in Arizona, were not advised of their rights to seek help from consular officials throughout their detention and trials. Germany made an active effort through diplomatic channels to save the LaGrand brothers from being executed. The President and the Chancellor of Germany contacted President Bill Clinton and the Governor of Arizona, Jane Dee Hull, making "energic moral and political appeals." The Foreign Minister and Minister of Justice of Germany also intervened. The German Ambassador to the US and the Consul-General in Los Angeles attended the hearings of the Arizona Board of Executive Clemency and presented the German position in the LaGrand case.[78]

After these futile diplomatic efforts, Germany brought a case against the US before the ICJ. Germany alleged that the US violated the right of its two nationals to consular notification and prevented German consular officials' exercise of consular functions as required by the VCCR, to which both the US and Germany were parties. In its final decision, the ICJ ruled that

[76] Madeleine K. Albright, Secretary of State, wrote a letter to James S. Gilmore III, Governor of Virginia on April 13, 1998.
[77] Statement by Governor Jim Gilmore Concerning the Execution of Angel Breard (14 April 1998).
[78] See Memorial of the Federal Republic of Germany, 16 September 1999.

the procedural default rule, widely applied in US state and federal courts to deny consideration of petitioners' claims of violations of their consular rights, contravened the treaty terms of the VCCR. Responding to Germany's request of reparations, the ICJ decided that "the United States, by means of its own choosing, shall allow the review and reconsideration of the conviction and sentence by taking account of the violation of the rights set forth" in the Vienna Convention.[79]

Although the ICJ clearly ruled in the *LaGrand* case that the US failed to comply with the VCCR by not informing foreign detainees of their consular rights, the ICJ's decision was not clear about what remedies aggrieved detainees would get. Indeed, many US courts ignored the ICJ's decisions when considering petitioners' claims of violations of their consular rights. Moreover, violations of the Vienna consular rights were still widespread at the local level since most of the arrests fall under state jurisdictions and "it has proven all but impossible to guarantee that state law enforcement officials observe this obligation in all cases" (Bellinger III 2019; Epps 2004; Springrose 1999, 186). In a speech delivered to the National Association of Attorneys General, William H. Taft, legal adviser of the US State Department, noted that "we are very much aware that, in most cases, the actual job of complying with these obligations falls to state and local officials. While it is not difficult to comply with the requirement if you know about it, it is difficult to make sure that all of the relevant officials—police officers, sheriffs, prosecutors, prison wardens, police training officers, and the like—know of the obligations and know how to comply" (Cummins and Stewart 2003, 40). Taft's comments aptly suggest that US noncompliance with the VCCR is mainly attributable to local officials' ineffective implementation. As I will show later, a decentralized political structure makes it harder for international law to gain traction on the ground.

The prevalence of violations of the Vienna Convention rights in the US is unknown. Although the federal and state law enforcement agencies maintain data on arrests "by types of crime, age, and region," data on arrests "by nationality or citizenship status" are limited (Lee 2009, 644). Statistics presented in one 1997 case, *Sorensen v. City of New York*, however, shows a tip of the iceberg. According to official records provided by the petitioner, more than 53,000 foreign nationals were arrested in New York in 1997, but only four cases "in which consulates were notified of those arrests" were registered by the New York Police Department Alien Notification Log (Warren 2019).

[79] Judgment of 27 June 2001 in the *LaGrand* Case (*Germany v. United States of America*).

Due to US ongoing noncompliance with the VCCR, on 9 January 2003, Mexico filed an action against the US to the ICJ on behalf of 54 Mexican nationals including Carlos Avena Guillen who were on death row. Mexico dropped two people from its original claim later. The remaining 52 inmates involved in Mexico's final submission were incarcerated in nine different states in the US, including California, Texas, Illinois, Arizona, Arkansas, Nevada, Ohio, Oklahoma and Oregon.[80] In its application, Mexico asked the ICJ to specify what remedies the US authorities should provide when Mexican nationals' consular rights were violated. Furthermore, Mexico asked the ICJ to make a definite interpretation of the rights under Article 36 of the VCCR.

The ICJ delivered its judgment in the *Avena* case on March 31, 2004. Supporting Mexico's claims, the ICJ held that "the process of review and reconsideration should occur within the overall judicial proceedings relating to the individual defendant concerned." In the *LaGrand* case, the ICJ left much discretion to the US to remedy its violation of the Vienna Convention rights. As noted by Mexico, after the *LaGrand* case, many US courts continued to apply the procedural default rule to bar defendants from seeking redress for violation of their consular rights. Reluctant to intervene in municipal legal systems, the US federal government mainly relied on executive clemency to address claims of violations of the Vienna Convention rights. Echoing Mexico's argument that "no state may invoke its municipal law or internal structure to excuse or justify failure to obey international law," the ICJ stated that the clemency procedure as practiced in the US "does not appear to meet the requirements…and that it is therefore not sufficient in itself to serve as an appropriate means of 'review and reconsideration' as envisaged by the Court in the *LaGrand* case."[81] Accordingly, the ICJ concluded that it is incumbent on US courts to undertake "the effective 'review and reconsideration' of the conviction and sentence by taking account of the violation of the rights set forth in the Convention."[82]

As to the interpretation of the Vienna consular rights, Mexico stated that the right to consular notification "has been widely recognized as a fundamental due process rights" and therefore it is a human right.[83] Although the ICJ repeatedly held that the right to consular

[80] See Judgment of 31 March 2004 (*Mexico v. United States of America*), International Court of Justice.
[81] Ibid.
[82] Ibid.
[83] Ibid.

notification is essential to fair trial and "relevant to the enjoyment of due process rights,"[84] it avoided labeling the Vienna Convention rights as human rights since the VCCR is primarily a treaty between national governments. Unlike the ICJ, the Inter-American Court of Human Rights took a bold stance. In an advisory opinion, it held that the right to consular notification "must be recognized and counted among the minimum guarantees essential to providing foreign nationals the opportunity to adequately prepare their defense and receive a fair trial" (Rodley and Pollard 2009, 309).[85]

Indeed, during the Iran hostage crisis in 1979,[86] the US State Department maintained that "Recognition of the rights of notification and access is reflected in the Vienna Convention on Consular Relations, which is widely accepted as the standard of international practice of civilized nations, whether or not they are parties to the convention" (Kadish 1997, 600). It also emphasized that Article 36 of the VCCR "establishes rights not only for the consular officer but, perhaps even more importantly, for the nationals of the sending State who are assured access to consular officers and through them to others" (Quigley 2018, 45). Therefore, regardless of the use of "human rights" label, the history of the drafting of the VCCR and a general understanding and practice among state parties to the VCCR support the interpretation that Article 36 of the VCCR intends to protect individual rights in accordance with certain fundamental principles of justice. Such an interpretation and the consequential international obligations put pressure on national governments to observe individuals' consular rights. However, as I will explain in detail below, whereas the federal government of the US has been generally receptive to the notion of foreign nationals' consular rights, state governments are a major obstacle to the percolation of the Vienna consular rights flowing from the top.

---

[84] Ibid.

[85] "The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law," Advisory Opinion OC-16/99 of 1 October 1999, Inter-American Court of Human Rights, http://www.corteidh.or.cr/docs/opiniones/seriea_16_ing.pdf.

[86] On November 4, 1979, a group of militants occupied the U.S. embassy in Tehran and held 52 American diplomats and citizens as hostages. Denied consular access to its detained nationals, the U.S. lodged proceedings against Iran in the ICJ, as both the U.S. and Iran were parties to the VCCR and its Optional Protocol Concerning the Compulsory Settlement of Disputes. The U.S. requested from the ICJ a provisional measure of protection, an interim order protecting the rights of parties before the issuance of a final decision. On May 24, 1980, the ICJ handed down a ruling in favor of the United States. In its final decision, the ICJ indicated that Iran severely violated Article 36 of the VCCR. See Judgement of 24 May 1980 in Case Concerning United States Diplomatic and Consular Staff in Tehran, https://www.icj-cij.org/files/case-related/64/6293.pdf.

5.2.2 Federalism Concerns

Those cases of violations of the Vienna consular rights that I discussed above have a strikingly similar storyline. After years of imprisonment, a death row foreign national found that he had not been advised of his right to seek help from his consulate when he was detained or arrested by local law enforcement officials. He then filed state and federal habeas corpus petitions to seek relief and suppression of incriminating evidence on the ground that his right to due process and fair trial had been violated because of authorities' failure to advise him of his consular rights under Article 36 of the VCCR, to which the US is a party. His claim of violation of his Vienna consular rights was barred due to the procedural default rule in state courts. When foreign governments intervened on behalf of their nationals, such as appealing to the US President and state governors through diplomatic channels and requesting the ICJ to adjudicate disputes in accordance with the Optional Protocol, the federal government was sympathetic toward foreign governments' appeals, but state authorities were less responsive.

While admitting violations of consular rights and sending apologies to foreign governments, the executive branch at the federal level took effort to persuade state governors, the top law enforcement official in states, to stay execution and reconsider the death penalty cases at issue. State authorities, however, refused the request from the federal government and paid little heed to appeals from foreign governments and international court decisions. Clearly, among the many political actors, state governments have been the most recalcitrant with regard to the enforcement of the Vienna consular rights. To make things worse, US courts also failed to provide judicial remedies. In particular, the US Supreme Court has steadily circumscribed the power of the federal government and undermined the federal government's privileging role in resolving international disputes that arise from subnational governments' action. The division of power between national and state governments as well as the independent judicial branch of government appear to make it harder for international law to penetrate to the local level.

Are subnational authorities obligated to comply with the VCCR or international law at large? Legal scholars have long debated over whether state governments have an independent role in incorporating international law in a federal country. From nationalists' point of view, state

governments are bound by treaties and international agreements (Golove 2000; Ku 2004).[87] This conception of nationalists originates from Article VI of the Constitution, which declares that:

> all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.[88]

The Third Restatement of US Foreign Relations Law, which was issued by the American Law Institute (ALI) in 1987, explicitly conveyed nationalists' understanding of the authority of binding international law. It stated that "International law and international agreements of the United States are law of the United States and supreme over the law of the several States."[89] According to nationalists, speaking with one voice and acting through a unified power is the first and foremost goal in foreign affairs (Powell 2001, 248). This goal necessitates the harmonization of treaties and international agreements in the domestic legal system. Since the conduct of foreign affairs including the power to conclude treaties is entrusted to the federal government, federal control over the incorporation of international law and agreements is necessary to prevent localism (Damrosch 1991; Koh 1998; Ku 2004). Otherwise, as Henkin argued, "[f]ifty states could have fifty different views on some issue of international law and the federal courts might have still another view" (Henkin 1997, 238–39).

On the other hand, revisionists argue that the constitutional arrangement in the US limits the federal government's hierarchical power to enforce international law (Bradley and Goldsmith III 1997). Revisionists have a narrow interpretation of Article VI of the Constitution. They emphasize that except for the enumerated powers granted by the Constitution, the federal government has limited authority to intervene in state affairs (Bradley 1998). Treaties and international agreements are not binding unless they are self-executing, or judicially enforceable without domestic legislative implementation. In other words, unless the Congress enacts federal laws to implement treaties and agreements, state governments have no obligations to observe them (Bradley and Goldsmith 1997). But determining whether a treaty is self-executing is not

[87] Notice that nationalist in the context of domestic incorporation of customary international law in a federal political system have a different meaning than that we use to label some ILC members (see section I).
[88] See Article VI of US Constitution, https://www.archives.gov/founding-docs/constitution-transcript.
[89] Restatement, Third, Foreign Relations Law of the United States, https://home.heinonline.org/titles/American-Law-Institute-Library/Restatement-Third-Foreign-Relations-Law-of-the-United-States-Revised/?letter=R. Also see Ku (2004, 468).

always straightforward. Setting aside the issue of self-execution, if a state government's noncompliance behavior causes international disputes, it is unclear whether the federal government or a state government would gain the upper hand. For one thing, the federal government is entrusted with broad powers to resolve international disputes. For another, state laws that are inconsistent with international treaties are immune to federal intervention if the issues involved fall outside the purview of the Congress.

Clearly, legal uncertainties and contradictions abound in the supposedly privileging role of the federal government vis-à-vis state authorities in enforcing international law in the US. Such a dilemma has lent itself to several lawsuits before the US Supreme Court that provide a fertile ground to study how governmental authorities at different levels react to international legal standards. The *Medellín* case is one such example.

Medellín was one of the named Mexican nationals in the *Avena* case. He was convicted of murder and sentenced to death in 1993 by a Texas court. He sought state post-conviction relief for his conviction and sentence on the ground that his Vienna consular rights were violated. After failed appeals to state and federal courts, he appealed to the US Supreme Court. The US Supreme Court granted a review of Medellín's appeal in December 2004. But prior to US Supreme Court had a chance to hear Medellín's claims, President George W. Bush issued a Memorandum through his Attorney General on 28 February 2005. In the Memorandum, President Bush wrote that "the United States will discharge its inter-national obligations under the decision" of the ICJ in the *Avena* case.[90] He further directed state courts to "give effect to the decision in accordance with general principles of comity" in the *Avena* case.[91]

President Bush's memo changed the course of the *Medellín* case before the Supreme Court. On 24 March 2005, just four days before the Supreme Court's scheduled argument, Medellín filed a second state habeas corpus petition, asking the Texas court to "review and reconsider" his case pursuant to the ICJ's judgment in the *Avena* case and President Bush's memo. While Medellín's second state habeas corpus was pending, the US Supreme Court held its oral argument as scheduled on March 28. It dismissed the writ filed by Medellín. In its per

[90] Memorandum for the Attorney General, February 28, 2005, https://georgewbush-whitehouse.archives.gov/news/releases/2005/02/20050228-18.html.
[91] Ibid.

curiam opinion, it concluded that the proceeding of Medellín's habeas corpus petition in Texas court "may provide Medellín with the very reconsideration of his Vienna Convention claim that he now seeks."[92] The Texas Court of Criminal Appeals, however, did not grant Medellín the relief. It dismissed Medellín's second state habeas corpus petition, holding that "neither the Avena decision nor the President's Memorandum was 'binding federal law' that could displace the State's limitations on the filing of successive habeas applications."[93] The Texas judges ruled that although the President has authority to settle disputes with a foreign country, "there is no similar history of congressional acquiesce relating to the President's authority to unilaterally settle a dispute with another nation by executive order, memorandum, or directive" (Crook 2007, 479).

After the Texas Court of Criminal Appeals dismissed Medellín's petition, Medellín again filed a case in the US Supreme Court in January 2007. The US Supreme Court affirmed the judgment of the Texas Court of Criminal Appeals and ruled that the President overstepped his authority. In the Supreme Court's view, the *Avena* decision "constitutes an international law obligation on the part of the United States," but "not all international obligations automatically constitute binding federal law enforceable in the United State courts."[94] As maintained by the Supreme Court, the Vienna Convention was not self-executing in the sense that no legislation had been enacted to implement the Vienna Convention. Therefore, the *Avena* decision was not automatically enforceable in state courts.

In terms of the President's power to enforce the ICJ decisions, the Supreme Court held that the President had no constitutional power to convert "a non-self-executing treaty into a self-executing one." In its brief submitted to the Supreme Court, the US federal government argued that the President had authority to rely on executive agreement to settle claims between foreign nations. The Supreme Court disputed this claim, maintaining that the executive's authority to settle international disputes is "narrow and strictly limited" and that it "cannot stretch so far as to reaches deep into the heart of the State's police powers and compel state courts to reopen final criminal judgments and set aside neutrally applicable state laws."[95] Consequently, the Supreme

[92] *Medellín v. Dretke*, 544 U.S. 660 (2005).
[93] *Medellín v. Texas*, 552 U.S. 491 (2008).
[94] Ibid.
[95] Ibid.

Court affirmed the judgment of the Texas Court of Criminal Appeals. Medellín was executed on August 5, 2018.

The Supreme Court did not always go against the US government regarding its exclusive authority in foreign affairs. In *Missouri v. Holland*, a landmark case that was decided almost a century ago, the Supreme Court sided with the US government and upheld the executive branch's authoritative power in foreign affairs (Beiter 2010; Djajic 1999; Hussain 2008). The US and the United Kingdom concluded a treaty on 18 December 1916 to regulate the killing of migratory birds across the U.S-Canada border. Subsequently, the Congress passed the Migratory Bird Treaty Act of July 3, 1918 to implement the treaty. In 1920, the State of Missouri attempted to enjoin Ray P. Holland, US Game Warden, from enforcing the Act. Missouri asserted that the Act interfered with the powers reserved to the states by the Tenth Amendment of the Constitution, including the authority to regulate wild game within their borders. The Supreme Court rejected Missouri's arguments. Authoring the majority opinion, Justice Holmes wrote:

> it is not enough to refer to the Tenth Amendment, reserving the powers not delegated to the United States, because, by Article II, § 2, the power to make treaties is delegated expressly, and by Article VI treaties made under the authority of the United States, along with the Constitution and laws of the United States made in pursuance thereof, are declared the supreme law of the land. If the treaty is valid, there can be no dispute about the validity of the statute under Article I, § 8, as a necessary and proper means to execute the powers of the Government.[96]

In short, the Court's decision in *Missouri v. Holland* implied that state concerns could place little constraints on the treaty power of the federal government. By ruling in favor of the federal government's supremacy in the conduct of foreign relations, the Court's decision in *Missouri v. Holland* showed the doctrine of judicial deference to administrative agencies. The Court's judicial deference to the executive branch in foreign relations issues can also be found in *US v. Pink*, *Youngstown Sheet & Tube Co. v. Bowers*, *Baker v. Carr*, and *Zschering v. Miller* (Djajic 1999).

The Court's judicial deference to the executive was short-lived. Not long after the end of WWII, an undercurrent of federalism surfaced and gradually gained strength in the next half century. This renewed federalism was a counter to the triumphant internationalism during the WWII era. In the early 1950s, Republican Senator John W. Bricker of Ohio spearheaded a

[96] *Missouri v. Holland*, 252 US 416 (1920).

campaign and proposed a series of amendments to the US Constitution (Kaufman and Whiteman 1988; Sikkink 1993, 150). Alarmed by the US intervention in the Korean War and the growing influence of international human rights activism, Senator Bricker and a coalition of "anti-civil-rights and states' rights forces" sought to curb the executive branch's power to make treaties and negotiate international agreements (Henkin 1995, 348).[97] The Bricker Amendment never succeeded, mainly due to President Eisenhower's opposition (Sikkink 2004, 42). However, as Henkin (1995) pointed out, "the human rights movement [also] paid a high price for that victory," because "[t]o help defeat the [Bricker] amendment, the Eisenhower administration promised that the United States would not accede to international human rights covenants or conventions" (348-349).

Indeed, the ghost of Bricker Amendment has casted a long shadow over US participation in the international human rights regime (Henkin 1995) When the US ratifies several human rights treaties, the Senate routinely attaches numerous conditions, including reservations, understandings and declarations (RUDs), to those treaties it ratified (Hussain 2008, 695; Spiro 1997, 575).[98] Prior research on countries' RUD behavior shows that on average, liberal democracies tend to have more RUDs (Neumayer 2007). But among liberal democracies, the US stands alone as it is widely "regarded as applying double standards—namely, wanting to impose international human rights standards on other countries without succumbing to the same standards itself" (Goodman 2002; Neumayer 2007, 404). According to Spiro (1997, 575), the US Senate attached RUDs to human rights treaties mainly because it wanted to relieve subnational authorities of international legal obligations (575). For example, the Senate attached the following clause to the ICCPR:

> That the United States understands that this Covenant shall be implemented by the Federal Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered therein, and otherwise by the state and local governments; to the extent that state and local governments exercise jurisdiction over such matters, the Federal Government shall take measures appropriate to the Federal system to the end that the competent authorities of the state or local governments may take appropriate measures for the fulfillment of the Covenant.[99]

[97] Also see Bricker Amendment, Ohio History Central, http://www.ohiohistorycentral.org/w/Bricker_Amendment.
[98] The United States has ratified three of the nine core international human rights treaties. The major human rights treaties it ratified are the International Covenant on Civil and Political Rights of 1966, the Convention on the Elimination of Racial Discrimination of 1966, and the Convention against Torture of 1984.
[99] See 138 Cong. Rec. S4781-01 of 2 April 1992, http://hrlibrary.umn.edu/usdocs/civilres.html.

These US federalism declarations have long been criticized as being deceitful. Many scholars believe that these federalism declarations make it impossible to "fully implement treaty provisions in to state jurisdictions and thereby impose responsibility for the acts of federal units" (Djajic 1999, 83).

The RUD behavior of the US Senate reflects strongly skeptical attitude towards international law among some politicians, especially Republicans. The distrust of international law cannot be more vividly illustrated by the House Resolution 568 of 2004, which "[e]xpresse[d] the sense of the House of Representatives that judicial determinations regarding the meaning of US laws should not be based on foreign judgments, laws, or pronouncements unless such foreign judgments, laws, or pronouncements are incorporated into the legislative history of laws passed by the House and Senate or otherwise inform an understanding of the original meaning of US laws."[100] House Representatives Bob Goodlatte of Virginia and Tome Charles Feeney of Florida from the Republican party went so far as to propose that "impeachment may even be an appropriate remedy for judges utilizing foreign law to interpret the Constitution" (Malone 2004, 411). Furthermore, against the background of deep-seated mistrust of international and foreign law, it is not hard to understand why the two bills proposed by Berman and Lofgren in 2008 and by Senator Leahy in 2011 never got out of the committees. These two bills, if passed, would have strengthened the enforcement of the VCCR.

The renewed federalism concerns with the executive branch's treaty power permeates not only the legislative branch but also the judiciary. The Supreme Court had readily shown deference to the executive branch and had not placed any limits on the federal government's commandeering of state activities until the late 1970s (Healy 1998, 1733). The Court's ruling in *National League of Cities v. Usery* in 1976 marked the Court's changed course toward "federalism jurisprudence" that purported to protect state sovereignty by putting constitutional limits on the federal power (Healy 1998).[101] In *National Leagues of Cities v. Usery*, the Court ruled that minimum wage and payment for state employees were reserved state activities by the Tenth Amendment. The Court reasoned that although the Commerce Clause conferred plenary power to the Congress, the federal exercise of commerce power has constitutional limits. The

[100] See H.Res.568-108th Congress (2003-2004), https://www.congress.gov/bill/108th-congress/house-resolution/568. This resolution has 74 cosponsors, 59 of which are original ones.
[101] *National League of Cities v. Usery*, 426 US 833 (1976).

Court's federalism jurisprudence "[went] beyond the particular doctrines of [the Commerce] Clause" and tilted the balance in favor of state interests over the treaty power.

The Court's rulings in a series of cases concerning the Vienna Convention, especially the *Medellín* case, illustrate the Court's stance in limiting the federal government's treaty power to regulate state matters. In this regard, though state governments' violations of the Vienna Convention rights led to the federal government's noncompliance with the VCCR, federalism concerns create a hurdle for the federal government to bring state governments into compliance with its treaty obligations. The Court's decision in the *Medellín* case "highlighted, and heightened, uncertainty surrounding the enforcement of treaties in the US courts" (Hathaway, McElroy, and Solow 2012, 53).

The history of US engagement with the VCCR as well as its larger legal and political context show that subnational governments can effectively resist incorporating and enforcing human rights treaties that have been ratified by the federal government. In a federal system such as the US, the federal government possesses the power to conclude international treaties. Yet, subnational governments enjoy not only jurisdiction but also ample discretion to implement many treaty-related policies. In the US, state governments enjoy substantial authority in issues areas such as criminal law and family law (Davis 2006). Thus, state governments can effectively withstand the top-down enforcement of human rights norms. As Spiro (1997) observed, "[f]ederalism has played a complicating factor…It is state-level conduct that is most often condemned as violating international human rights" (567).[102] Indeed, in all the high-profile cases before the ICJ that I have discussed, state governments are the most resistant to giving full effect to the VCCR. State governments consistently ignored decisions rendered by the ICJ and appeals from the federal government and foreign governments.

[102] Sometimes, progressive subnational governments can give effect to human rights norms by enacting local laws and regulations Powell (2001). For example, despite the federal government's reluctance to ratify the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), a group of progressive states and cities in the US passed state and local CEDAW laws and ordinances to address challenges faced by women Powell (2001, 246); Kalb (2011, 77). Likewise, a few states and cities were assertive in implementing the Convention on the Rights of the Child (CRC) in the absence of US ratification of this treaty Kalb (2011, 79–80). In this study, I focus on this scenario in which the federal government has already ratified a human rights treaty, but subnational governments detract from the federal government's fulfillment of its treaty obligations. I do so because ratifying a treaty provides the starting point to discuss compliance with the treaty.

The fact that subnational authorities can deter the federal government from complying with the VCCR demonstrates that domestic governmental structure plays an important role in influencing the effective implementation of international law on the ground. In the following subsections, I will show how the lack of reputational concerns at the local level and the federal government's blame-shifting strategy were in full display in US noncompliance with the VCCR. Before I do so, I will digress slightly and draw attention to some evidence that contradicts common findings in the compliance literature.

One of the consistent findings in the compliance literature is the positive effect of judicial independence on promoting human rights norms (Keith 2002b; Keith, Tate, and Poe 2009a; Powell, Staton, and Jeffrey K. 2009). Yet, in the case of VCCR, US state and federal courts have largely resisted incorporating the Vienna consular rights in domestic legal system. This resistance demonstrates that despite being independent, courts do not always help enforce international human rights treaties. The extant compliance literature should not assume that independent courts automatically lead to progressive human rights norms.

Scholars of international relations have also found that domestic legislative veto players promote state compliance behavior by putting constraints on the executive branch (Lupu 2015). On the one hand, legislative veto players use their veto power to safeguard the incumbent party from reneging on its promises about human rights protection; on the other hand, legislative veto players can help enforce human rights treaties by making available information about human rights abuses to the society and translating external human rights norms (Lupu 2015). Regarding the positive role of legislative veto players in promoting human rights, the compliance literature implicitly assume that the executive branch is the abuser of human rights, whereas the legislative veto players are supporters of human rights. This assumption, however, does not hold when we consider the case of US compliance with the VCCR.

A cascade of litigation about law enforcement officials' violations of the Vienna Convention rights, both in US courts and before the ICJ, shows that the executive branch in the US was a somewhat passive enforcer of Article 36 of the VCCR. It was by no means an egregious abuser of the Vienna Convention rights. Yet, most of the legislators in Congress were against enacting laws to enforce the Vienna consular rights. A few Democrats attempted twice to introduce bills that would bring US into compliance with the VCCR. House Representatives

from California, Howard Berman and Zoe Lofgren, introduced a bill entitled "Avena Case Implementation act of 2008" on July 14, 2008 (Gonzales and Moore 2015, 711). This bill died in the House Committee on the Judiciary. Three years later, Patrick J. Leahy, Senator of Vermont, renewed effort to enforce domestic implementation of the VCCR by introducing the "Consular Notification Compliance Act" (Gonzales and Moore 2015, 711–12). The Leahy-authored bill also died in the Senate Committee on the Judiciary. Apparently, contrary to the assumption that legislative veto players are norms entrepreneurs, in the case of US compliance with the VCCR, most of the legislators were not diligent in observing international human rights norms.

In short, in the compliance literature, scholars often use independent judiciary and legislative veto players to account for variation in state compliance with human rights treaties. But the assumptions underlying the positive effects of these two factors are not justified under some circumstances. I do not argue that these two factors are without traction in explaining cross-national patterns of treaty compliance behavior. Indeed, scholars have consistently found significant effects of independent judiciary and legislative veto players in cross-national analyses. But these effects are average measures. In some cases, such as the case of US compliance with the VCCR, independent judiciary and legislative veto players might exert little or even negative influence. Thus, rather than analyzing the conditional mean, it is worth studying the variance of states' compliance records.

5.2.3 Reputational Concerns

In the previous section, I have illustrated how the unabating federalism concerns impede the US federal government from enforcing the Vienna consular rights. In response to sympathetic appeals from the federal government to observe international obligations that flow from US ratification of the VCCR, subnational authorities as well as domestic courts are resistant to foreign nationals' consular rights. Despite a broad-based opposition to the enforcement of the VCCR in the US, a coalition of progressive forces worked together to put pressure on the US. On behalf of their nationals, foreign governments appealed to federal and state authorities through diplomatic channels. For example, in the *LaGrand* case, the President and the Chancellor of Germany, the Foreign Minister and Minister of Justice of Germany, the German Ambassador to the US, and the Consul-General in Los Angeles all intervened for Karl LaGrand. They made

appeals to the US President and Arizona Governor. In the *Faulder* case, the Canadian Foreign Minister Lloyd Axeworthy personally asked Secretary of State Madeleine Albright to help stop the execution of Faulder (Babcock 2002, 375). When their appeals yielded no results, some foreign governments hoped to seek justice by bringing cases against the US before the ICJ.

Moreover, foreign governments, intergovernmental organizations, and human rights groups submitted amicus curiae briefs to express their positions on issues related to the Vienna consular rights. In the *Medellín* case, the European Union (EU) filed an amicus brief to support Joseph Medellín.[103] The EU contended that Article 36 of the VCCR conferred judicially enforceable rights and that the consular rights are part of customary international law. Thus, the conviction and sentence of Medellín should be reconsidered by the Court. The EU further argued that the state procedural default rule may not be applied. Additionally, human rights activists also organized protests to denounce violations of the Vienna consular rights. For example, Amnesty International USA (AIUSA) joined hundreds of protesters to denounce Florida's violation of Joaquin Martinez's right to consular notification before the US Embassy in Madrid, Spain in December 1999. Sam Jordan, Director of the Program to Abolish the Death Penalty of AIUSA, commented that "[o]nce you allow a state to disregard international treaties that this country has signed and ratified, you lose the moral authority to demand that foreign governments grant our citizens the rights outlined in those treaties."[104] In the *Faulder* case, human rights groups took vigorous efforts to support the commutation of Faulder's death sentence, holding vigils and organizing letter-writing campaigns; about "4,000 letters poured into the Austin office of the Texas Board of Pardons and Paroles in support of commutation" (Babcock 2002, 375).

International pressure, however, had limited impact on US Supreme Court decisions in cases concerning violations of the Vienna consular rights. Although US lower courts admitted that state and local law enforcement officials had violated Article 36 of the Vienna Convention, they consistently denied incarcerated foreign nationals post-conviction relief. Authoring the majority opinion in the *Sachez-Llimas* case, Chief Justice John Roberts conceded that the ICJ's

[103] Brief of Amici Curiae the European Union and Members of the International Community in Support of Petitioner, https://eeas.europa.eu/sites/eeas/files/jose_ernesto_Medellín_petitioner_v._doug_dretke_director_texas_department_of_criminal_justice_corre.pdf.

[104] "Amnesty International to March to US Embassy in Madrid on Sunday to Denounce Florida Violation of International Treaty," US Newswire, 11 December 1999.

judgment deserved respect. He nevertheless delivered a majority opinion that denies the ICJ's judgment.

A few other justices sitting on the Court were more sensitive to the political consequences of the Court's decisions in cases concerning the VCCR. Writing a concurring opinion in the *Medellín* case, Justice Stevens expressed his concern about the political fallout:

> The entire Court and the President agree that breach will jeopardize the United States' "plainly compelling" interests in "ensuring the reciprocal observance of the Vienna Convention, protecting relations with foreign governments, and demonstrating commitment to the role of international law." When the honor of the Nation is balanced against the modest cost of compliance, Texas would do well to recognize that more is at stake than whether judgments of the ICJ, and the principled admonitions of the President of the United States, trump state procedural rules in the absence of implementing legislation.[105]

In his dissenting opinion joined by Justice Souter and Justice Ginsburg, Justice Breyer was also concerned about the international ramifications of the majority's opinion. He wrote that:

> The majority's two holdings taken together produce practical anomalies. They unnecessarily complicate the President's foreign affairs task insofar as, for example, they increase the likelihood of Security Council *Avena* enforcement proceedings, of worsening relations with our neighbor Mexico, of precipitating actions by other nations putting at risk American citizens who have the misfortune to be arrested while traveling abroad, or of diminishing our Nation's reputation abroad as a result of our failure to follow the "rule of law" principles that we preach.[106]

Justice Breyer further admonished the majority for making a decision that ran afoul of the ICJ's supposedly authoritative interpretation of the Vienna Convention and the prevailing sentiment in the international community. Near the end of his dissenting opinion, he wrote that "the Nation may well break its word even though the President seeks to live up to that word and Congress has done nothing to suggest the contrary."[107]

The general pattern of non-compliance with the ICJ's decision in US courts supports my argument that political actors who possess fewer concerns of international reputation are more resistant to embrace international legal standards. Many studies of American judicial politics

[105] *Medellín v. Texas*, 552 US 491 (2008).

[106] Ibid.

[107] Ibid.

have demonstrated that when judges make decisions, they consider attitudes of and possible responses from a range of external actors, such as lower courts, the federal government, and public opinion (Black et al. 2016; Maltzman, Spriggs II, and Wahlbeck 2000; Nie, Waltenburg, and McLauchlan 2019; Segal and Spaeth 2001). In cases that involve national government's treaty obligations, international pressure, especially the ICJ's decisions, is supposed to figure prominently in judges' decision-making process. However, it is widely held that judges in the US are mostly socialized in a domestic context. As Coyle (2015) points out, "a significant portion of the US judiciary has had little exposure to or training in international law and international legal methods" (436). Similarly, Bradley and Goldsmith (1997) observe that "most judges are not familiar with the materials relevant to the resolution of international law questions" (875). Franck (1998) also writes that "[o]ur judges, for the most part, know it [i.e., international law] only as an exotic export of political science departments and their clerks have neither the interest nor ability to look it up" (695). Due to judges' alienation from international law and the international community in general, judges arguably respond to domestic political actors more than to international actors, and they probably care little about their international reputation. Therefore, it is little wonder that most US judges disregard the ICJ's decisions.

The federal government, on the other hand, showed some respect for appeals from the international community. As I mentioned earlier, when the *Breard* case put Paraguay and the US at the center of a bitter international legal tussle, then Secretary of State Madeleine Albright wrote a letter to Virginia Governor James Gilmore and asked him to hold the execution of Breard. Having the ICJ's provisional measure in mind, she wrote that "[i]n light of the Court's request, the unique and difficult foreign policy issues, and other problems created by the Court's provisional measures, I therefore request that you exercise your powers as Governor and stay Mr. Breard's execution" (Quigley 2018, 97). She expressed her concern that US noncompliance behavior might breach the principle of reciprocity, thereby putting in jeopardy the welfare of American citizens abroad. She was also concerned that "[t]he execution of Mr. Breard in the present circumstances could lead some countries to contend incorrectly that the US does not take seriously its obligations under the Convention" (Quigley 2018, 97).

Similarly, in the *Faulder* case, Albright intervened by sending letters to Texas Governor George W. Bush and the Texas Board of Pardons and Paroles, asking the Texas authorities to

grant some executive relief. In her letters, she noted that she was "deeply troubled by the failure of consular notification in this case" and that "no mitigating evidence was presented to the jury in the sentencing phase" (Quigley 2018, 111).[108] She noted that "the strong efforts Canada customarily makes to help its nationals" could have prevented Faulder's trial attorney from mishandling his case at the sentencing phase of his trial (Quigley 2018, 111).[109] She wrote that the US "must not have a double standard," and urged Governor Bush to delay the scheduled execution for clemency review. She also said that although the Vienna consular rights were not judicially enforceable, "this is a case in which consular notification issues may provide sufficient grounds for according discretionary clemency relief" (Quigley 2018, 111).

Albright's interventions, though falling short of calling for a commutation of Beard and Faulder's death sentences, illustrate that political leaders in the federal government are sensitive to international criticisms and appeals. Scholars of world polity argue that nation-states who are more deeply embedded in the international society are more likely to subscribe to global scripts or norms (Beckfield 2010; Meyer et al. 1997). National leaders are the ones who actively participate in various global forums where ideas, appraisals, and lament are exchanged. It follows that national leaders are more concerned about their international reputation and thus, are more receptive to global norms. On the contrary, state and local officials have limited exposure to global platforms. Even when state and local officials know about some norms, norms have limited influence on them because they are less concerned about their international reputation.

In both criminal cases where Albright intervened, state and local officials mostly ignored her requests as well as international pressure. In the *Breard* case, Virginia Governor Gillmore had the executive prerogative to stay Breard's execution. He decided to proceed with Breard's scheduled execution, despite the ICJ's provisional measures of order and Albright's intervention. In the *Faulder* case, the Texas Board of Pardons and Paroles decided not to recommend clemency by a 17-0 vote, regardless of "editorials supporting commutation in major US newspapers, appeals from the Canadian government and the intervention of many prominent organizations and individuals" including Secretary of State Albright.[110]

[108] Also see Amnesty International. "USA (TEXAS) Joseph Stanley Faulder, Canadian national," 16 June 1997, https://www.amnesty.org/download/Documents/144000/amr510761999en.pdf.
[109] Ibid.
[110] Ibid.

Faulder's attorney later found out that the Board members did not even review Albright's letter. She then sued the Board for a due process violation (Babcock 2002, 377). According to Amnesty International, at a court hearing, the Texas Board members mentioned that "they had almost no memory of the particulars of the Faulder case and had paid little attention to the concerns expressed by the State Department."[111] Not only appeals from the Secretary of State but also the president's executive order failed to bring state governments into line with US treaty obligations. After President Bush issued a memorandum, ordering state courts to reexamine cases involving death row inmates named in the *Avena* decision. Jerry Strickland, a spokesman for Attorney General of Texas, commented that "[t]he State of Texas believe no international court supersedes the laws of Texas or the laws of the United States" (Liptak 2005). He further said that "[w]e respectfully believe that the executive determination exceeds the constitutional bounds for federal authority" (Liptak 2005).

The different measures George W. Bush took to handle cases concerning the VCCR when he was the Governor of Texas and when he was the President further demonstrate that reputational concerns resulted from international pressure influence national leaders more than state and local leaders. While the *Faulder* case in Texas was gaining world attention and provoking international criticisms, George W. Bush was unmoved by Albright's request for a reprieve and the Canadian Prime Minister's call for a stay of execution. He commented that "[i]n general, I will uphold the laws of the state of Texas, regardless of the nationality of the person involved," and that "[p]eople can't just come into our state and coldbloodedly murder somebody" (Lyman 1998; Weinstein 1998).

In another Vienna Convention case involving Irineo Montoya, a Mexican national who was sentenced to death, a flurry of international pleas flooded into the Texas authorities' offices. In an open letter addressed to Texas Governor Bush in 1997, a coalition of human rights organizations, activists and lawyers raised the alarm that state and local law enforcement officials "routinely violate a binding international treaty, by failing to notify foreign citizens after arrest of their right to contact and obtain crucial assistance from their consulate."[112] They asked

[111] Ibid.
[112] See Amnesty International. "USA: Texas Cited for Denying the Vienna Convention," 16 June 1997, https://www.amnesty.org/download/Documents/160000/amr510341997en.pdf.

Governor Bush to grant Montoya "a full and fair clemency hearing."[113] According to Amnesty International, the State Department "asked the Texas authorities to investigate the breach of Montoya's consular rights and report back to the State Department prior to Montoya's execution," but "the Texas authorities have so far failed to respond."[114] The Mexican foreign Minister also intervened and asked Governor Bush to delay the execution, but to no avail (Babcock 2002, 379).

As the Governor of Texas, George W. Bush was a staunch supporter of the death penalty, and he showed little sympathy to requests by the State Department and appeals from the international society. However, when he sat in the White House, he softened his longstanding position in support of capital punishment, at least in cases concerning the Vienna consular rights. Recall that after the ICJ issued its judgment in the *Avena* case, President Bush decided to discharge the US obligation under the VCCR and to give effect to the *Avena* decision. On 28 February 2005, he sent a memorandum through his Attorney General, directing state courts to reexamine proceedings involving named foreign nationals in the *Avena* case.[115]

Bush's 28th memorandum was generally considered an executive order. This unprecedented move to interfere with state criminal procedure was contrary to the stance he held in the *Montoya* case. Although the Bush administration was concerned that interference with state criminal procedure would provoke a backlash from state authorities, reputational concerns eventually played an important role in persuading Bush to use his constitutional authority to intervene. Officials in the Bush administration took note of "the President's reputation in certain foreign capitals as a unilateralist eager to exercise executive power in breach of international norms" (Gonzales and Moore 2015, 701). "[N]oncompliance with the ICJ order would only reinforce the belief that the United States was neither respectful of the rights of other nations nor in compliance with international law," some officials in the Bush administration argued, "this perception would further encourage European public opposition to US policy and would likely discourage European governments from working with the United States in Afghanistan and Iraq" (Gonzales and Moore 2015, 701–2).

[113] Ibid.
[114] Ibid.
[115] Memorandum for the Attorney General, February 28, 2005, https://georgewbush-whitehouse.archives.gov/news/releases/2005/02/20050228-18.html.

But the Bush administration did not run headlong into embracing nationalists' view. It tried to maintain a fine balance between international obligations and federalism concerns. One week after the 28th memorandum was issued, the Bush administration withdrew from the Optional Protocol of the VCCR and terminated the ICJ's compulsory jurisdiction over disputes arising from breach of the VCCR. Commenting on the US withdrawal from the Optional Protocol, a State Department spokesman mentioned that the Bush administration was "troubled by foreign interference in the domestic capital justice system but intended to fulfill its obligations under international law" (Liptak 2005). He said that "[w]e are protecting against future International Court of Justice judgments that might similarly interfere in ways we did not anticipate when we joined the optional protocol" (Liptak 2005).

The records of US compliance with Article 36 of the VCCR demonstrate that the differential reputational concerns between state leaders and subnational authorities shaped their different policy responses to legal disputes over violations of the Vienna consular rights. National leaders are more sympathetic toward appeals from the international society because they are concerned that continuing noncompliance behavior would undermine US values and interests in upholding internationally accepted principles. National leaders' receptiveness to moral persuasion is evidenced by Albright's communications with state authorities following foreign governments' pressure and President Bush's changing stance in death penalty cases that involve violations of the Vienna consular rights. Without international pleas and diplomatic pressure, the Bush administration would not have directed state courts to comply with the ICJ's decision in the *Avena* case. In contrast, for subnational authorities who care little about their international reputational concerns, moral appeals hardly hold sway. In no case had governors yielded to requests from the federal government of the US as well as foreign governments.

5.2.4. Blame-Shifting

In a federal system, the federal government possesses the power to conclude treaties. But because the legislative power in a federal system is divided between the federal and state governments, the implementation of treaties often falls within state jurisdictions. In the US, criminal law is states' prerogative, and the federal government has limited power to interfere with the criminal judicial system at the state and local levels. Therefore, when a human rights

treaty includes protection of rights in the criminal justice system, the federal government would have difficulty in enforcing the treaty if state laws are inconsistent with the treaty terms.

These federalism challenges impose substantial costs on the federal government to enforce treaties. When the federal government decides to enforce an international treaty, it seeks to balance between foreign relations and federalism concerns. When the costs of overcoming federalism obstacles are higher than the benefits of complying with the treaty, the federal government will take effective measures to bring states into compliance with the treaty, and vice versa.

The historical practice of US compliance with the VCCR shows that federalism concerns appeared to be a major obstacle. Although national leaders indicated more sympathy toward moral appeals from the international society, the federal government did not take vigorous efforts to give full effect to the VCCR and a series of ICJ decisions in cases of violations the Vienna consular rights. The federal government at most played a passive role in inducing state governments to comply with the VCCR, which fell far short of enforcing the VCCR.

Generally, when the costs of federalism concerns outweigh the benefits of complying with a treaty, the federal government has chosen not to enforce the treaty. The federal government's lackluster enforcement inevitably invites criticisms from the international society because in international law, sovereign states other than subnational governments are the ones held responsible for breach of treaty obligations. That subnational governments violate treaty terms but cannot be held accountable for these violations in international law creates strategic room for the federal government to ward off international criticisms. The federal government can use the constitutional limits placed on its scope of regulating state matters as an excuse for not enforcing the treaty. Being strategic, the federal government shifts the blame of failing to fulfill its treaty obligations to subnational governments and the constitutional arrangement in general. If the federal government uses the blame-shifting strategy effectively, the federal government would have little incentive to take effective measures to implement the treaty.

As I mentioned earlier, the RUD clause attached to international treaties often requires that treaty terms should be exercised in conformity with domestic laws and regulations. Such a "domestic legal conformity" prerequisite allows a range of circumstances under which the treaty terms are not applicable and opens the door for a government's blame-shifting behavior. In the

case of US, the federal government often attaches a federalism clause to a treaty to preserve states' prerogative in certain issue areas (Kalb 2011, 93). For example, the US government attached a federal understanding to the CAT, stating that the treaty will be implemented "to the extent that state and local governments exercise jurisdiction over such matters."[116] The US government also attached the same federalism clause to the ICCPR.[117] It is worth noting that the US did not attach a federalism clause to the VCCR because Article 36 of the VCCR already contains a "domestic legal conformity" prerequisite.

While including a "domestic legal conformity" or a federalism clause protects the interests of subnational governments, it limits the scope of the federal power and disavows the federal government's obligation to enforce the treaty (Davis 2018; Kalb 2011, 93). In fact, "the legal purpose of the 'understandings' is hardly self-evident," because "they are not 'reservations'" and "they do not appear to limit the United States' obligations under international law" (Henkin 1995; Ku 2004, 523). Similarly, although Article 36 of the VCCR states that "this article shall be exercised in conformity with the laws and regulations of the receiving state," it also stipulates that "the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this article are intended."

Not absolving national governments of treaty obligations, the "domestic legal conformity" or federalism clause can be used to preempt possible criticisms of national governments' failure to fulfill their treaty commitments. Indeed, the US federal government has repeatedly emphasized its constitutional limits on regulating a wide range of human rights issues. For instance, in its first report submitted on 24 August 1994 to the Human Rights Committee about its implementation of the ICCPR, the US stated that:

> [T]he federal government established by the Constitution is a government of limited authority and responsibility.…The resulting division of authority, which characterizes the federal system in the United States means that state and local governments exercise significant responsibilities in many areas, including matters such as education, public health, business organization, work conditions, marriage and divorce, the care of children and exercise of the ordinary police power. The prerogative of the states in this regard are so well established that even two

[116] See Cong. Rec. S17486-01 of 27 October 1990, http://hrlibrary.umn.edu/usdocs/tortres.html.
[117] See 138 Cong. Rec. S4781-01 of 2 April 1992, http://hrlibrary.umn.edu/usdocs/civilres.html.

> neighboring states frequently have widely varying laws and practices on the same subjects. Some areas covered by the Covenant fall into this category.[118]

It further noted that "[a]lthough there is a growing body of federal criminal law and procedure, criminal law is still largely a matter of state competence." Commenting on the federal understanding it attached to the ICCPR, the US government wrote in the report that due to the constitutional arrangement, it had no intention to "use the provisions of the Covenant to federalize matters now within the competence of the states." But it then said that "[t]his provision is not a reservation and does not modify or limit the international obligations of the United States under the Covenant." These two statements are contradictory. On the one hand, the US government indicated that it sought to fulfill its obligations under the ICCPR. On the other hand, it did not want to change state law and practices, which, for the most part, were condemned for violating the treaty.

As I noted earlier, the US did not attach a federalism clause to the VCCR because Article 36 of the VCCR already includes a "domestic legal conformity" clause. And many US courts used it to justify the application of state procedural default rule to bar judicial relief to petitioners' claims of violations of the Vienna consular rights. Even in the absence of a federalism clause, the US government routinely used the federalism arguments to reject international criticism. For example, in a brief submitted to the US Supreme Court in the *Breard* case, the Solicitor General argued that "our federal system imposes limits on the federal government's ability to interfere with the criminal justice system of the States" (Bradley 2006, 75). Thus, "measures at the United States' disposal under our Constitution may in some cases include only persuasion … and not legal compulsion through the judicial system" (Ku 2004, 513).

Before the ICJ, the US government also invoked the federalism restrictions as a reason not to give full effect to the provisional measures order issued by the ICJ (Djajic 1999). Upon receiving the ICJ's order, the federal government did nothing more than transmit the order to the US Supreme Court and Virginia Governor Gillmore. Although the State Department later sent a letter asking Virginia's governor to stay Breard's execution, this letter "looked more like an

[118] Initial Report of the United States of America Submitted to the Human Rights Committee, CCPR/C/81/Add.4, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F81%2FAdd.4&Lang=en.

inducement based on the statement of facts rather than a request" (Djajic 1999, 78). Furthermore, the State Department sent a confusing message by saying that the United States "has throughout vigorously defended Virginia's right to go forward with the sentence imposed on Mr. Breard by Virginia's courts" (Quigley 2018, 96). By doing so, the US government appeared to have no intention to obey the ICJ's order, which held that the US "should take al1 measures at its disposa1 to ensure that Angel Francisco Breard is not executed pending the final decision in these proceedings."[119]

The US government made similar arguments of federalism restrictions in the *LaGrand* case before the ICJ. Germany requested the ICJ to issue a provisional measures order to stay the imminent execution of Walter LaGrand. The ICJ granted the order. In the order, the ICJ requested the United States to "take all measures at its disposal to ensure that Walter LaGrand is not executed pending the final decision" of the proceedings at the ICJ.[120] Responding to the ICJ's order, the US government argued that other than transmitting the ICJ's order to Virginia Governor Jane Hull, "the measures at the United States Government's disposal were exceedingly limited."[121] The US government explained that "the character of the United States of America as a federal republic of divided powers" is one of two main factors that limited its ability to give full effect to the ICJ's order.[122] "The separate states are not subsidiary bodies subordinate to the power of the Federal Government and subject to its direction," it further elaborated, "[r]ather, they remain sovereign and the masters of their affairs within the areas of responsibility reserved to them by the United States Constitution."[123] It further called attention to states' prerogative in criminal law, "[o]ne of the most important functions reserved to the states is criminal law enforcement, including the right to impose and administer capital punishment in serious cases prescribed by state law."[124]

But the measures at the federal government's disposal are not limited to persuasion, such as appealing to state governors through written communications. The historical practice of

[119] ICJ's Request for the Indication of Provisional Measures, 9 April 1998, https://www.icj-cij.org/files/case-related/99/099-19980409-ORD-02-00-EN.pdf.
[120] Counter-Memorial of the United States of America, 27 March 2000, para. 116.
[121] Ibid, para. 118.
[122] Ibid, para. 119. In the Counter-Memorial, the US government identified the "extraordinarily short time between issuance of the Court's Order and the time set for the execution of Walter LaGrand" as the other constraining factor.
[123] Ibid, para. 121.
[124] Ibid, para. 122.

federal-state relations suggests that the federal government could take direct, compulsive actions to strengthen US compliance with the VCCR. As Quigley (2004, 51) contends, in some cases "in which a local or state government authority has acted in a way that put the United States in violation of a treaty violation, the US Attorney General has sued." Another telling piece of evidence is that in the wake of the ICJ's *Avena* decision, as noted above, President Bush took an unprecedented move and issued a memorandum to bring state courts into conformity with the *Avena* decision. Although the US Supreme court ruled that President Bush's memorandum was unconstitutional, the very fact that President Bush took such an unprecedented action means that the remedies at the US government's disposal were not restricted to persuasion. Other than President Bush's memorandum, the federal government has not taken any other compulsive legal action to enforce compliance with Article 36 of the VCCR. Following the *Leal* case, another Vienna Convention case decided by the US Supreme Court in 2011, the Obama administration did not propose any legislation to implement the VCCR, despite Democratic control of both houses in the Congress (Atwell 2015, 143).[125]

In summary, when confronting international criticisms of US noncompliance with Article 36 of the VCCR, the federal government resorted to its constitutional limits as an excuse not to give full effect to ICJ decisions and to rectify subnational authorities' violations of the Vienna consular rights that put the US in breach of its treaty obligations under the VCCR. The federal government repeatedly argued that other than persuasion, it has very limited power to compel state governments to observe treaty terms under the VCCR. By shifting the blame of treaty violations to state authorities, the federal government sought to justify the very limited action it took was no half measure.

5.3 Federalism and US (Non)compliance with the Vienna Convention of Consular Relations: Quantitative Evidence from State-Level Analysis of Violations of the Vienna Consular Rights

In the previous section, relying on a rich set of qualitative evidence from several high-profile cases of violations of the Vienna consular rights, I analyzed how federalism impedes US compliance with Article 36 of the VCCR. In the process, I showed that the lack of reputational

[125] *Leal Garcia v. Texas*, 564 US 940 (2011).

concerns at the subnational level contributes to state authorities' resistance to observe US obligations under the VCCR. Furthermore, although national leaders were somewhat sympathetic toward moral persuasion from the international society, they were reluctant to take measures to give full effect to the VCCR and ICJ decisions. To avoid international criticisms of US taking only half measures, the federal government used its constitutional limits to justify the limited action it took.

One could argue that the qualitative evidence I gathered from several high-profile cases might not be generalizable. Therefore, in this section, I conduct a quantitative subnational analysis of the impact of federalism on US compliance with Article 36 of the VCCR. One major obstacle to conducting such an analysis is the collection of data on violations of the Vienna consular rights at the state level. A few studies reported some statistics related to the Vienna Convention implementation such as Warren (2019), Howell (2013), and Rosenfeld (2008), these bits of data are far from systematic. US governments also have not published any data on imprisoned foreign nationals whose consular rights were violated.

Instead, I rely on court opinions to generate an objective, albeit imperfect, measure of the dependent variable in my analysis—the prevalence of violations of the Vienna consular rights at the state level. After the innovative use of Article 36 of the Vienna Convention in the *Faulder* case, a flurry of appeals concerning violations of the Vienna consular rights were brought in courts. In these cases, defendants claimed that law enforcement officials failed to advise them of their rights to communicate with their consulates when they were arrested or detained. They filed these claims to seek post-conviction relief. When courts ruled on these appeals, they issued written opinions. In these court opinions, judges typically first described the facts of cases and then explained the reasoning of their rulings.

I take the following three steps to operationalize the dependent variable in my analysis. First, I download all the court opinions containing the phrase "Vienna convention on consular relations" from the *NexisUni* database. Second, because some defendants filed multiple petitions to state and federal courts, I remove duplicate court opinions that involve the same defendant. Third, I read every court opinion and code two pieces of information from case facts. One is whether a case involves the violation of consular rights by law enforcement officials. The other is when and in which state such a violation happened. In a small number of cases in which the

exact date of violation was not recorded, I use the filing date of the petition as the date of rights violation. After these three steps, I obtain the annual raw count of consular rights violations for each state. I then compute the prevalence of consular rights violations by dividing the raw count by the population of foreign-born citizens. Data on foreign-born citizens are drawn from Migration Policy Institute (MPI).[126] Because MPI only publishes demographics data in 1990, 2000, and 2017, I use linear interpolation to fill in the missing values. Table 5 presents descriptive statistics. The number of violations of the Vienna consular rights range from 0 to 10. The values of the prevalence of violation are between 0 and .65.

Table 5. Descriptive Statistics

	Mean	S.E.	Min	Max
Number of violations	0.528	1.101	0.000	10.000
Foreign-born population (in 10,000)	74.634	157.807	1.085	1065.341
Prevalence of violation	0.017	0.053	0.000	0.651
Mass ideology	51.064	15.787	8.450	97.002
Elite Ideology	45.522	15.680	17.512	73.619
Mass-Elite ideological gap	5.204	13.988	-40.460	35.510
Issue salience	0.043	0.203	0.000	1.000
Legal protection	0.041	0.336	-1.000	2.000
Southern border state (1 = Yes)	0.100	0.300	0.000	1.000
Northern border state (1 = Yes)	0.280	0.449	0.000	1.000
Export to the EU (log)	21.459	1.523	16.385	24.348
Exports to the world (log)	23.003	1.327	19.427	26.378
N		950		

I use political ideology as a simple, albeit imperfect, indicator to measure federalism at the state level. In a separate analysis, I investigate the influence of political ideology on state

[126] See Migration Policy Institute, https://www.migrationpolicy.org/programs/data-hub/state-immigration-data-profiles.

legislators' support for the enforcement of the Vienna consular rights. I choose to analyze the voting behavior of Illinois House Representatives on House Bill 1337, which was eventually signed into Public Act 099-0190 (Buys 2015). This Act is by far the most comprehensive regulations at the state level that implement Article 36 of the VCCR. I assume that due to its comprehensive nature, House Bill 1337 should have stimulated lots of controversies and thus, aid me to find how ideological positions affect legislators' voting outcomes.

In this legislator-level analysis, the dependent variable is state legislator's voting behavior. I collect data on Illinois legislators' voting records during the third reading of the bill on 18 March 2015 from the online archive of Illinois General Assembly.[127] The dependent variable is coded as a dummy variable, "1" for casting a "yea" vote, and "0" for casting a "nay" vote. The independent variable in my analysis is legislator's political ideology. Data on the political ideology of individual Illinois state legislators are drawn from Shor and McCarty (2011). Higher scores indicate being more conservative. Lastly, because the dependent variable is a dummy variable, I use logistic regression. Table 6 presents the regression results. The findings show that political ideology has a negative, statistically significant effect on voting behavior. Substantively, state legislators of different ideological stripes are divided in their support for the enforcement of Article 36 of the VCCR. And liberal legislators tend to support the bill.

Table 6. The Effect of Political Ideology on Illinois State Legislators' Voting Behavior on House Bill 1337

Variable	Coefficient	S.E.
Political Ideology	-2.479***	.633
Constant	1.791	.377
N	114	
Pseudo R^2	.305	
Log Likelihood	-36.789	

Note: * $p < .05$, ** $p < .01$, *** $p < .001$.

[127] See http://www.ilga.gov/legislation/BillStatus.asp?GA=99&DocTypeID=HB&DocNum=1337&GAID=13&SessionID=88&LegID=85990.

Building on insights from my analysis of the influence of political ideology on state legislators' support for the enforcement of the Vienna consular rights, I expect that an aggregate measure of political ideology at the subnational level might also capture subnational authorities' willingness to follow orders from the federal government. Because local law enforcement officials handle the bulk of daily investigative tasks, I use data on *mass ideology* to analyze how treaty compliance is affected by the ideological leanings of local law enforcement officials. Since there are no data on local law enforcement officials' political ideology, I use mass political ideology as a proxy to measure the aggregate ideological leanings of local law enforcement officials. I hypothesize that consular rights violations are less prevalent in states where law enforcement officials are more liberal.

Additionally, I test whether *elite ideology* affects state compliance with Article 36 of the VCCR. Similarly, I hypothesize that violations of consular rights are less prevalent in states where the political elites are more liberal. The process of norms diffusion occurs not only between the federal government and state governments but also within states. I expect that violations of consular rights are less prevalent when the ideological gap between the political elites and local law enforcement officials shifts toward the liberal end. Data on mass ideology and elite ideology are from Berry et al. (1998). Larger ideology scores indicate higher levels of liberalism.

I also consider several controls. First, I control for *issue salience*. One reason why violations of the Vienna consular rights are widespread is that local law enforcement officials possibly do not know much about the treaty. Raising awareness of US obligations to the VCCR supposedly reduces noncompliance behavior. Cases filed to the US Supreme Court in general attract more media attention. Thus, I measure issue salience as whether a state was sued before the US Supreme Court. Texas was involved in the *Medellín case* before the Supreme Court in 2008. I thus code all years including and after 2008 as 1 for Texas, and 0 otherwise. I do the same for Virginia and Oregon as both states were involved in Vienna Convention cases before the US Supreme Court in 1998 and 2000, respectively.

Second, a few state legislatures took some initiatives to bring law enforcement officials into conformity with the VCCR (Quigley 2018, 199–201). As early as 1999, California revised

its Penal Code and added a section to address the Vienna Convention.[128] Nevada and Oregon also amended their state statues, adding references to the Vienna Convention.[129] Like California, Florida law once obliged law enforcement officials to make immediate consular notifications upon detaining or arresting foreign nationals (Mckie 2002, 211). But probably due to the prevailing hostile sentiments toward the enforcement of Article 36 of the VCCR, the Florida legislature revised the statues in 2001 (Kadish and Olson 2006, 1232).[130] Lastly, the Illinois state legislature adopted the most comprehensive regulations to enforce the Vienna convention. These laws are enacted to help reduce violations of the Vienna Convention rights. Because some laws are more expansive and stringent than others, I code it as an ordinal variable, with 3 representing more comprehensive law such as that of Illinois to -1 representing regressive law such as that of Florida. States that have not enacted any law assume the value of zero. Higher values of legal protection are hypothesized to reduce the prevalence of rights violation.

Third, I control for southern border states and northern border states. Border states admit more immigrants. Law enforcement officials in border states might be more aware of the Vienna Convention requirements simply because they handle more cases that involved foreign nationals. If that is the case, other things being equal, we would observe fewer instance of rights violation in border states. On the other hand, law enforcement officials might also tend to disregard foreign nationals' consular rights in border states. It is possible that a large population of

[128] Section 834c of the California Penal Code includes: "In accordance with federal law and the provisions of this section, every peace officer, upon arrest and booking or detention for more than two hours of a known or suspected foreign national, shall advise the foreign national that he or she has a right to communicate with an official from the consulate of his or her country, except as provided in subdivision (d). If the foreign national chooses to exercise that right, the peace officer shall notify the pertinent official in his or her agency or department of the arrest or detention and that the foreign national wants his or her consulate notified," https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PEN&division=&title=3.&part=2.&chapter=5.&article=.

[129] Oregon revised state statues and added the following paragraph under section 181.642 "Training relating to Vienna Convention and crimes motivated by prejudice or that constitute abuse": "Understand the requirements of the Vienna Convention on Consular Relations and identify situations in which the officers are required to inform a person of the person's rights under the convention," https://www.oregonlaws.org/ors/2009/181.642. Similarly, Nevada added a paragraph to its state statues in 2013, suggesting that "[t]he Attorney General may establish a program to assist law enforcement personnel and prosecuting attorneys in complying with the requirements of Article 36 of the Vienna Convention on Consular Relations," https://www.leg.state.nv.us/NRS/NRS-228.html#NRS228Sec135.

[130] The revised statues absolved arresting officials of consular notification obligations. The section "Arrest and Detention of Foreign Nationals" in the revised Florida statutes now reads: "Failure to provide consular notification under the Vienna Convention on Consular Relations or other bilateral consular conventions shall not be a defense in any criminal proceeding against any foreign national and shall not be cause for the foreign national's discharge from custody," https://www.flsenate.gov/Laws/Statutes/2011/901.26.

immigrants is viewed as a threat to the society. Therefore, law enforcement officials would not take consular rights seriously. As to the measurement of border states, I analyze southern border states and northern border states separately. Both are coded as dummy variables with 1 indicating a border state, and 0 otherwise. Southern border states are Texas, New Mexico, Arizona, California, and Florida. Northern border states include Maine, New Hampshire, New York, Pennsylvania, Ohio, Michigan, Indiana, Illinois, Wisconsin, Minnesota, North Dakota, Idaho, Washington, and Alaska.[131]

Fourth, I include exports to the World and the EU to examine the effect of international pressure on state behavior. Many studies have found that international economic interdependence helps constrain rights-violating behavior. Although I do not expect foreign governments to impose economic sanctions on US states, I control for states' dependence on foreign trade to mitigate omitted variable bias. Data on state exports are from International Trade Administration (ITA).[132] Lastly, because the dependent variable is a continuous variable, I simply use linear regression model.

Table 7 presents estimated coefficients in three different models I specify. I start in with the inclusion of mass political ideology and other controls. Consistent with my hypothesis, mass political ideology exerts a negative, statistically significant effect on the prevalence of consular rights violations. Substantively, other things being equal, law enforcement officials are less likely to violate the Vienna consular rights in more liberal states. Turning my attention to the set of controls, I find that the effect of issue salience is negative and statistically significant. This finding suggests that bringing a case to the Supreme Court reduces rights violations. When a case made its way to the Supreme Court, it is more likely to gain media attention. A high-profile case not only prompts foreign governments and human rights groups to put pressure on rights-violating authorities, but also educates law enforcement officials about the importance of consular rights in a state that is a party to the lawsuit.

[131] States with either land or water territory bordering a foreign country are considered border states.
[132] See http://tse.export.gov/tse/TSEReports.aspx?DATA=SED&39.1183579&-77.211762&false.

Table 7. The Effect of Federalism on the Prevalence of Violations of the Vienna Consular Rights

	Model 1	Model 2	Model 3
Mass Ideology	-.0004***		-.0003**
	(.0001)		(.0001)
Elite Ideology		-.00004	
		(.00009)	
Ideological Gap			-.0003*
			(.0002)
Issue Salience	-.007**	-.006*	-.006*
	(.002)	(.002)	(.003)
Legal Protection	-.0007	-.001	-.002
	(.001)	(.002)	(.002)
Southern Border States	-.008*	-.007*	-.005
	(.003)	(.003)	(.003)
Northern Border States	-.003	-.004	-.002
	(.004)	(.004)	(.004)
Exports to the EU	.005	.004	.005
	(.003)	(.003)	(.003)
Exports to the World	-.008*	-.007*	-.008*
	(.004)	(.003)	(.004)
Constant	.132**	.103*	.125**
	(.047)	(.042)	(.046)
N	900	950	900
Time Span	1999-2016	1999-2017	1999-2016
Adjusted R^2	.023	.007	.027

Note: * $p < .05$, ** $p < .01$, *** $p < .001$. Standard errors clustered at the state and year level are reported in parentheses.

Surprisingly, state legislation has no impact on rights violations. One plausible explanation for this null effect is that the effect of state legislation could be small, and that a few laws that was passed recently do not pick up the effect. Another explanation could be that although state legislature passed laws and regulations to implement Article 36 of the VCCR, local law enforcement officials do not follow the procedure suggested in these laws and regulations. Even worse, these laws and regulations do not have punitive measures. Thus, it is hard to hold local arresting officials accountable for violations of consular rights.

I also find that violations of consular rights in southern border states are less prevalent. The reason could be that law enforcement officials become more aware of consular rights in southern border states where there is a large concentration of immigrants. Moreover, the Mexico government has been very assertive in helping incarcerated Mexican nationals through various legal assistance programs it created in states bordering Mexico. These efforts could help raise the awareness of lawyer, prisoners, as well as law enforcement officials. On the other hand, I do not find more or fewer violations of consular rights in northern border states. One last set of controls I include in Model 1 are exports to the EU and the World. The findings show that exports to the EU have no effect, but exports to the World have a negative effect. In states with larger volumes of foreign exports, violations of consular rights are less prevalent.

In Model 2, I replace mass political ideology with elite political ideology. The estimated coefficient on elite political ideology is no different from zero. This finding contradicts my finding from my previous analysis that political ideology affects state legislators' support for passing laws to protect the Vienna consular rights. Here, it appears that elite political ideology has little effect on the compliance practice on the ground. The implication is that there could be an implementation gap between political elites and local law enforcement officials. In other words, political elites' support for the Vienna consular rights does not necessarily translate into better protection of the Vienna consular rights on the ground.

In Model 3, I subject the ideological gap between political elites and local law enforcement officials to empirical test by adding a variable that measures the ideological distance between them. For this variable, higher values indicate being more liberal. I keep the mass ideology variable to control for the base level of mass political ideology. The coefficient on

the ideological gap variable is negative and statistically significant. As the ideological gap between political elites and law enforcement officials shifts toward the very conservative end, violations of consular rights become more prevalent. This result is consistent with my argument that treaty noncompliance behavior is more prevalent in a more decentralized political system. In Model 3, the negative and statistically significant effect of mass ideology remains. Moreover, I find little change in the substantive effects of controls in both Models 2 and 3.

5.4. Conclusion

In this chapter, I conduct a case study of US compliance with Article 36 of the VCCR to explain how federalism, a *de jure* form of political decentralization, affects state compliance with human rights law. The US ratified the VCCR in 1969. Under Article 36 of the VCCR, law enforcement officials in the US are obligated to inform foreign nationals about their rights to communicate with their consulates when they are detained or arrested. However, violations of the Vienna consular rights remain widespread. The consequences of such a violation in criminal cases would be severe because the right to consular notification fits closely with the accused persons' enjoyment of the right to fair trial and the right to due process.

A cascade of cases, most of which involved the death penalty, were filed in state and federal courts. A few of them even made their way to the US Supreme Court and were brought before the ICJ by foreign governments. US courts, in large part, denied petitioner's claims of violations of consular rights. The ICJ, however, consistently ruled in favor of individual petitioners. Against the backdrop of renewed federalism, US courts were not receptive to international law and the ICJ's decisions. State governments bluntly rejected the ICJ's orders. Due to reputational concerns, the federal government indicated sympathy to international appeals and the ICJ's decisions. But federalism concerns were so strong that the federal government was reluctant to take direct action to enforce the VCCR. In fact, when confronted by foreign governments before the ICJ, the federal government used the domestic constitutional arrangement as an excuse not to strengthen the enforcement of the VCCR.

In most human rights studies, governmental officials are the abuser of human rights, and national citizens are the victims. In my case study of US compliance with Article 36 of the VCCR, the victims, however, are foreign nationals. Does the nationality of victims have a

bearing on the scope of my theoretical framework? The fact that the victims in cases of violations of the Vienna consular rights are foreign nationals helps me zoom in on the "compliance pull" of international reputational concerns. When victims of human rights abuses are foreign nationals, it is most likely that international forces other than domestic groups would play a greater role in putting pressure on national governments. Indeed, high-ranking politicians from foreign countries, such as Paraguay, Germany, and Mexico, intervened on behalf their nationals whose Vienna consular rights were violated by law enforcement officials in the US. It is in these cases where foreign nationals are victims of human rights violations that international reputation concerns are expected to have the greatest effect on constraining state behavior. Apparently, as my case study has shown, even though international reputational concerns are at stake, a decentralized governmental structure manages to prevent them from bringing national governments into line with international standards.

In addition to qualitative evidence, I conduct a state-level statistical analysis of the effect of federalism on compliance with the VCCR. Drawing data from court opinions, I provide a novel measure of the amount of violations of the Vienna consular rights. Regressing the prevalence of documented violations in court opinions on mass ideology and elite ideology, I find that records of compliance with Article 36 of the VCCR are not uniform between states. Specifically, violations of the consular rights are less prevalent in states where local law enforcement officials are more liberal. State legislation that was enacted to implement the VCCR has no observable impact on the rights practices on the ground. Most importantly, I find that when the ideological gap between political elites and local law enforcement officials shifts to the conservative end, violations of the Vienna consular rights are more prevalent.

Lastly, court opinions are an important source of data on rights violations. But the validity of using court opinions to measure rights practices rests on the assumption that victims are equally likely to bring a case to the court. It is quite possible that victims would not bring a VCCR claim to the court after US courts had consistently denied similar claims. If that is the case, the number I collected from court opinions underestimates the true amount of rights violations. Thus, the effect of federalism in my statistical analysis is a conservative estimate. Future research would benefit from using alternative data sources to validate the quality of court opinion-based events data.

5.5. Appendix

Cases Cited:

Baker v. Carr, 369 US 186 (1962)

Breard v. Netherland, 949 F. Supp. 1255 (E.D. Va. 1996)

Faulder v. Johnson, 81 F. 3d 515 (1996)

Fed. Republic of Germany v. United States, 526 US 111 (1999)

Leal Garcia v. Texas, 564 US 940 (2011)

Medellín v. Texas, 552 US 491 (2008)

Missouri v. Holland, 252 US 416 (1920)

National League of Cities v. Usery, 426 US 833 (1976).

Republic of Paraguay v. Allen, 134 F. 3d 622 (1998)

Sanchez-Llamas v. Oregon, 548 US 331 (2006)

Sorensen v. City of New York, 413 F.3d 292 (2005)

US v. Pink, 315 US 203 (1942)

Youngstown Sheet & Tube Co. v. Bowers, 358 US 534 (1959)

Zschernig v. Miller, 389 US 429 (1968)

CHAPTER 6. CONCLUSION

The adoption of the UDHR in 1948 and the enactment of a series of international human rights treaties thereafter have contributed to the growth of the UN human rights regime. Human rights norms that are codified in these treaties have gained a foothold in international relations, as states continually face human rights challenges from domestic activists, international nongovernmental organizations, and intergovernmental organizations. A continuing debate in International Relations concerns whether international human rights treaties help curb repressive state behavior. Since Hathaway's pioneering study (2002), scholars have analyzed whether and how ratification of international human rights treaties improves human rights conditions on the ground. The general view in the human rights literature holds that human rights treaty ratification in itself does not automatically translate into better human rights performance but depends on various scope conditions to realize its intended effect.

Scholars have found that a variety of domestic actors help make national legal commitments to international human rights treaties credible. Among them, independent judiciaries serve as a primary enforcement mechanism of treaty obligations by conducting unbiased investigations of human rights abuses and clarifying the legal specificities of human rights principles that would hold government officials to new standards (Hillebrecht 2014; Keith 2002a; Keith, Tate, and Poe 2009b; Powell and Staton 2009). Political opposition parties also help facilitate compliance with human rights treaties by using their veto power in the legislature to obstruct the incumbent party's effort to renege on its commitment to human rights protection (Lupu 2015). Lastly, using sensational language to spread news about the gap between formal human rights commitments and actual human rights practices, human rights NGOs gain support from sympathetic audiences to put pressure on national governments to improve their human rights practices (Clark 2001; Finnemore and Sikkink 1998; Sikkink 2011; Simmons 2009).

This body of literature provides important insights into how various domestic stakeholders compel national governments to honor their commitments to international human rights treaties. But a glaring omission in these works is the lack of well-developed analytical frameworks as well as rigorous empirical triangulation for understanding the link between state-level human rights outcomes and local actors' practices that have continuously remade human rights standards and policies flowing from the top. The central government is in charge of

negotiating and ratifying international human rights treaties. But it is the local authorities that put national human rights policies into practical application. Indeed, human rights advocates and policy makers have long noticed that international human rights norms need to pass through the convoluted political and administrative processes before they can be translated into local practice.

Building on the basic understanding that the domestic implementation of human rights policies is rather an arduous process, my research draws attention to the "foot-dragging noncompliance" scenario in which local authorities deviate from the central government's human rights commitments and thus put states in breach of international human rights treaty obligations (Nash 2016). I highlight that a decentralized governmental structure can make international human rights treaties less effective. The reasons are three-fold. First, a decentralized governmental structure creates barriers to the diffusion of human rights norms. It also exacerbates the principal-agent problem so that human rights abuses committed by local authorities cannot be easily detected by the central government. Second, the reputational mechanisms that provide state leaders with incentives to comply with human rights treaties have less influence on the large number of local authorities in a decentralized political system. Third, a decentralized governmental structure enables the central government to deflect international criticism by shifting blame for human rights abuses to local officials. This blame-shifting strategy helps state leaders muddle the assignment of political accountability, insulates the central government's legitimacy from popular resistance, and excuses national governments from taking the full responsibility for human rights protection and promotion.

My theoretical framework departs from existing human rights literature by highlighting the role of local authorities as opposed to the central government in implementing human rights law. In the process, I reveal local authorities as potentially subversive actors in the development of progressive norms and policies. In this regard, my study speaks to a growing body of literature on the pernicious effect of decentralization—the power devolution from the central government to local authorities—on government accountability and performance (Fan, Lin, and Treisman 2009; Mattingly Forthcoming).

The past few decades have witnessed the global spread of decentralization reforms (Treisman 2007). Proponents of decentralization reforms argue that decentralization reforms bring governments closer to the people and thus promotes political accountability (Hooghe and

Marks 2009). Despite their expected benefits in theory, decentralization reforms have been found to give rise to rampant elite capture at the local level in many developing countries (Bardhan and Mookherjee 2000). Scholars also find that decentralized states are more corrupt (Fan, Lin, and Treisman 2009). My research adds to this body of literature by explicating how a decentralized governmental structure deters national governments from effectively complying with international human rights treaties.

The test my theoretical arguments, I conduct cross-national analyses of the impact of governmental decentralization on state compliance with the ICCPR and the CAT, two widely studied international human rights treaties in the existing literature. Specifically, I test how a decentralized governmental structure mediates the effect of ICCPR and CAT ratification on human rights conditions. When I conduct my quantitative analyses, I take special care of adjusting for the non-random ratification of human rights treaties. I use coarsened exact matching to generate a sample in which ratifiers and non-ratifiers of international human rights treaties are comparable (Blackwell, Iacus, and King 2009).

Findings from my statistical analyses show that across the board, ratification of human rights treaties improves human rights conditions in only a small set of centralized states. As levels of governmental decentralization increase, the positive effect of human rights treaty ratification attenuates and gradually becomes statistically insignificant from zero. It is also worth noting that due to the lack of reliable measures of governmental decentralization for authoritarian regimes (Hooghe and Marks 2009), countries included in my cross-national analyses are democracies. The fact that ratifying human rights treaties has no effect in highly decentralized democracies points to the significant, countervailing effect of domestic bureaucracy in places that are the least hostile to international human rights norms. In other words, we would not expect to observe better records of human rights treaty compliance in democracies unless strong oversight from the central government is also present in these countries.

In addition to cross-national analyses, I conduct a subnational quantitative analysis of the impact of governmental decentralization on China's compliance with the CAT for several reasons. First, there has been considerable debate among scholars about the validity of cross-national measures of human rights outcomes (Cingranelli and Filippov 2018; Clark and Sikkink 2013; Fariss 2014; 2018; Hafner-Burton and Ron 2009). A general account in the human rights literature holds that the field would benefit from analysis of subnational variation in human

rights outcomes (Hafner-Burton and Ron 2009). Second, as I mentioned earlier, I only include democracies in my cross-national analyses because measures of governmental decentralization are not available for authoritarian regimes. Thus, findings from my cross-national analyses might not be generalizable to those places where human rights matter most. Additionally, I focus on China because empirical studies of Chinese human rights are scant.

I leverage a unique source of human rights information to construct an original event dataset on state agents' use of torture and ill-treatment in China. Specifically, I draw on weekly reports published by the Rights Protection Network to compile a panel data on the occurrence of torture and ill-treatment at the provincial level in China since 2008. Using this fine-grained dataset to measure the core outcome of interest in my subnational analysis, I find that higher levels of political decentralization, as proxied by greater fiscal power-sharing between the central government and provincial administrations, greater geographic distance of a provincial capital from the national capital, and a native-born provincial party secretary, increase the prevalence of state agents' use of torture and ill-treatment. Complementing results from my cross-national analyses, these findings suggest that my theoretical arguments apply to not only democracies but also authoritarian regimes.

My cross-national analyses and subnational analysis of China's compliance with the CAT establish correlational evidence that a decentralized governmental structure reduces levels of state compliance with international human rights treaties. To shed light on the mechanisms delineated in my theoretical framework, I conduct a qualitative case study of US compliance with Article 36 of the VCCR.

When the experts on the UN ILC was drafting the VCCR in the early 1950s, they envisioned it as a multilateral agreement that aimed to facilitate consular relations and diplomatic exchanges between national governments. Although Article 36 of the VCCR stipulated that law enforcement officials in the receiving states are obligated to inform foreign nationals about their rights to communicate with their consulates when they are detained or arrested, diplomatic officials rather than ordinary citizens were considered as the main rights holders. But as the concept of human rights became more ingrained in world politics, Article 36 of the VCCR emerged from obscurity to a contentious legal and diplomatic issue, and in some cases, a matter of life and death for incarcerated foreign nationals. And the US was mired in the political whirlpool brought about by Article 36 of the VCCR.

The US ratified the VCCR in 1969. Ten years later, the US invoked Article 36 of the VCCR during the Iranian hostage crisis to decry Iran's violation behavior. But its own compliance records over the past few decades have not met international standards. To be fair, the US federal government has taken some measures to protect foreign nationals' consular rights, but noncompliance practices remain widespread at the local level. The international society had not known much about these widespread violations of consular rights until a few human rights lawyers started to make an ingenious use of Article 36 of the VCCR in criminal defense cases, most of which involved the death penalty. Since the late 1990s, numerous cases related to violations of foreign nationals' consular rights were filed in state and federal courts in the US. Some of them even reached the US Supreme Court. The issue of foreign nationals' consular rights manifested its contentious nature most vividly when three foreign countries—Paraguay, Germany, and Mexico—sued the US before the ICJ.

The tumultuous history of US engagement with Article 36 of the VCCR provides a unique testing site for analyzing how an array of actors—foreign governments, the US federal and state governments, the US federal and state courts, the ICJ, and human rights advocates—react to law enforcement officials' continuing violations of the Vienna consular rights that put the US government in breach of its obligations under the VCCR.

Despite several high-profile international legal disputes and numerous domestic legal proceedings arising from US noncompliance with Article 36 of the VCCR, human rights scholars have paid little attention to the diplomatic and legal whirlwind surrounding the VCCR. Although legal scholars have produced abundant research documenting these court cases, this body of legal scholarship tends to focus on legal intricacies and thus falls short of probing political dynamics involved in US governments' policy responses to these legal disputes. Drawing insights from a long line of human rights scholarship and a rich body of legal research, my research sheds light on how a decentralized governmental structure, or the federal system in the case of US, prohibits the federal government from taking direct action in enforcing compliance with the VCCR.

The lack of reputational concerns at the local level is one important hurdle to the effective enforcement of the VCCR. In all the three high-profile international legal disputes brought by foreign governments against the US, the ICJ delivered rulings against the US. Against the backdrop of renewed federalism, US courts were not receptive to the ICJ's decisions. Most of the US courts denied petitioner's claims of violations of consular rights. Foreign

government and human rights organizations used diplomatic pressure and moral persuasion to remind the US federal and state governments of their treaty commitment. Due to reputational concerns, the federal government showed sympathy to international appeals. High-ranking officials in the federal government appealed to state governors several times, calling them to grant a stay of execution and to re-consider relevant legal proceedings. But subnational authorities invariably rejected requests from the federal government and paid little attention to the ICJ's decisions.

The different measures George W. Bush took to handle cases concerning the Vienna Convention when he was the Governor of Texas and when he was the President of the United States also illustrate that reputational concerns influence national leaders more than subnational authorities. As the Governor of Texas, George W. Bush was unmoved by Albright and the Canadian Prime Minister's appeal for a stay of Faulder's execution. But when he was the President of the United States, after the ICJ handed down its decision on the *Avena* case, the Bush administration decided to discharge the US obligation under the VCCR. President Bush issued a memorandum through his Attorney General, requesting lower courts to reexamine proceedings that involve named foreign nationals in the Mexico case. This drastic action taken by the Bush administration stands in stark contrast to his unyielding position in the *Faulder* case when he was the Governor of Texas.

Another reason why a decentralized governmental structure hinders effective enforcement of the VCCR is that the diffused authority structure in a decentralized political system provides a fertile ground for the federal government to shift the blame for treaty noncompliance to subnational authorities. When foreign governments intervened in legal disputes in which their foreign nationals' consular rights were violated, the US federal government used the federal arrangement as an excuse not to take direction action in enforcing compliance with the VCCR. It claimed that except for persuasion, it had very limited ability to interfere with state affairs. But the historical practice of federal-state relations suggest that the federal government can take direction actions to strengthen US compliance with the VCCR. As Quigley (2004, 51) pointed out, in some cases "in which a local or state government authority has acted in a way that put the United States in violation of a treaty violation, the US Attorney General has sued."

My case study of US compliance with the VCCR sheds light on the reputational and blame-shifting mechanisms in my theoretical framework. Recall that my theoretical framework builds on the observation that subnational authorities fall short of observing treaty commitments made by national leaders. I posit that reputational concerns, the major pull of international law, exert divergent effects on national leaders and subnational authorities. Generally, actors that are closer to the stream of international standards are more receptive to international law. In the case of US compliance with the VCCR, compared with national leaders, domestic courts and subnational authorities are less socialized into international society and thus, are resistant to legal norms and decisions emanated from the international society. The fact that George W. Bush acquiesced to the ICJ's decision after he became the President provides direct, if not causal, evidence that reputational concerns are an important factor in influencing political actors' treaty compliance behavior. In addition to the reputational concerns, by examining the interactions between the US and a host of other external actors, such as the ICJ, foreign governments, and human rights defenders, I also show that the US government routinely used the decentralized, domestic authority structure as an excuse not to strengthen enforcement against subnational violators. Clearly, a federal structure, legal and political, is a major obstacle for international law to percolate through the sovereign walls.

Taken together, complementary streams of cross-national and within-country evidence demonstrate that a decentralized political structure reduces levels of state compliance with human rights treaties. The large-N statistical analysis in my study establishes a correlational relationship between governmental decentralization and state compliance with international human rights treaties in democracies. My quantitative analysis of China's compliance with the CAT zooms in on subnational variation and provides additional evidence that the negative effect of governmental decentralization on state compliance with human rights treaties operates not only in democracies but also in authoritarian regimes. Note that in my case study of China, the three indicators I use to measure governmental decentralization, i.e., the fiscal power-sharing between the central government and subnational governments, a provincial capital's geographical distance from Beijing, and whether a provincial party secretary is native-born, mainly tap into the central government's monitoring costs. In this regard, the findings from my case study of China corroborates the information asymmetry argument in my theoretical framework. On the other hand, in my case study of US compliance with the VCCR, I use

political ideology, or more precisely, the gap between elite ideology and mass ideology, to measure the divergent preferences between different levels of governments. Since political ideology plausibly captures actors' preferences towards societal norms, including legal norms and standards, the findings from my state-level analysis of US compliance with the VCCR are in harmony with the reputational concern argument in my theoretical formwork.

One major policy implication of my research is that to advance human rights, human rights NGOs should take measures to hold local officials accountable. Indeed, against the background of central governments' declining control over their territories, there is a growing consensus among human rights activists that promoting human rights practices on the ground necessitates looking beyond nation states. Instead of focusing on states (usually the national governments), the international society has recognized that it is crucial to work with local actors, especially local governments. The European Charter for the Safeguarding of Human Rights in the City of 2000, which has been signed by more than 400 cities, manifests human rights activists' effort to find alternative avenues to bring human rights closer to home. Another example of this new development is the European Coalition of Cities Against Racism, an initiative created by the UN Educational, Scientific and Cultural Organization in 2004. Furthermore, the resolution adopted by the UN Human Rights Council on 26 September 2013 and several subsequent resolutions further demonstrate a global commitment to strengthen the foothold of local authorities in international legal systems.[133] While reminding national governments of their obligations to create official human rights laws and regulations, these resolutions emphasize the important role of local government in translating these formal laws into actual policy outcomes (Oomen and Baumgärtel 2018).

[133] Regarding local governments and human rights, the UN Human Rights Council passed resolutions 24/2 in 2013, 27/4 in 2014, and 33/8 in 2016, https://www.ohchr.org/EN/Issues/LocalGovernment/Pages/Index.aspx.

REFERENCES

Abbott, Kenneth W., Robert O. Keohane, Andrew Moravcsik, Anne-Marie Slaughter, and Duncan Snidal. 2000. “The Concept of Legalization.” *International Organization* 54 (3): 401–19.

Abbott, Kenneth W., and Duncan Snidal. 2000. “Hard and Soft Law in International Governance.” *International Organization* 54 (3): 4221–4456.

Aberese Ako, M., N. A. Anyidoho, and G. Crawford. 2013. “NGOs, Rights-Based Approaches and the Potential for Progressive Development in Local Contexts: Constraints and Challenges in Northern Ghana.” *Journal of Human Rights Practice* 5 (1): 46–74.

Amat, Francesc, and Albert Falcó-Gimeno. 2014. “The Legislative Dynamics of Political Decentralization in Parliamentary Democracies.” *Comparative Political Studies* 47 (6): 820–50.

Apodaca, Clair. 2001. “Global Economic Patterns and Personal Integrity Rights after the Cold War.” *International Studies Quarterly* 45 (4): 587–602.

Appel, Benjamin J. 2018. “In the Shadow of the International Criminal Court.” *Journal of Conflict Resolution* 62 (1): 3–28.

Araujo, M. C., Francisco H.G. Ferreira, Peter Lanjouw, and Berk Özler. 2008. “Local Inequality and Project Choice: Theory and Evidence from Ecuador.” *Journal of Public Economics* 92 (5-6): 1022–46.

Arnold, Luke L. 2009. “Acting Locally, Thinking Globally? The Relationship Between Decentralization in Indonesia and International Human Rights.” *Journal of East Asia and International Law:* 177-203.

Atwell, Mary W. 2015. *An American Dilemma: International Law, Capital Punishment, and Federalism*. New York: Palgrave.

Axelrod, Robert. 1984. *The Evolution of Cooperation*. New York: Basic Books.

Babcock, Sandra. 2002. “The Role of International Law in United States Death Penalty Cases.” *Leiden Journal of International Law* 15: 367-387.

Bardhan, Pranab. 2002. “Decentralization of Governance and Development.” *Journal of Economic Perspectives* 16 (4): 185–205.

Bardhan, Pranab, and Dilip Mookherjee. 2000. “Capture and Governance at Local and National Levels.” *AEA Papers and Proceedings:* 135–39.

———. 2005. “Decentralizing Antipoverty Program Delivery in Developing Countries.” *Journal of Public Economics* 89 (4): 675–704.

Barrows, T. S. 1982. *College Students' Knowledge and Belief: A Survey of Global Understanding*. New Rochelle, NY: Change Magazine Press.

Barry, Colin M., K. C. Clay, and Michael E. Flynn. 2013. “Avoiding the Spotlight: Human Rights Shaming and Foreign Direct Investment1.” *International Studies Quarterly* 57: 532–44.

Beckfield, Jason. 2010. “The Social Structure of the World Polity.” *American Journal of Sociology* 115 (4): 1018–68.

Beiter, Benjamin. 2010. “Beyond Medellin: Reconsidering Federalism Limits on the Treaty Power.” *Notre Dame Law Review* 85 (3): 1163–98.

Bell, Koren L. 2002. “From Laggard to Leader: Canadian Lessons on a Role for U.S. States in Making and Implementing Human Rights Treaties.” *Yale Human Rights & Development Law Journal* 5: 255–91.

Bellinger III, John B. 2019. “Lawlessness North of the Border.” *The New York Times,* July 17. https://www.nytimes.com/2009/07/18/opinion/18bellinger.html (Accessed May 26, 2019).

Berry, William D., Matt Golder, and Daniel Milton. 2012. “Improving Tests of Theories Positing Interaction.” *The Journal of Politics* 74 (3): 653–71.

Berry, William D., Even J. Ringquist, Richard C. Fording, and Russell L. Hanson. 1998. “Measuring Citizen and Government Ideology in the American States, 1960-93.” *American Journal of Political Science* 42 (1): 327–48.

Bertrand, Jacques. 2007. “Indonesia's Quasi-Federalist Approach: Accommodation Amid Strong Integrationist Tendencies.” *International Journal of Constitutional Law* 5 (4): 576–605.

Biela, Jan, Annika Hennl, and André Kaiser. 2012. “Combining Federalism and Decentralization.” *Comparative Political Studies* 45 (4): 447–76.

Bird, Richard M. 1995. “Decentralizing Infrastructure: For Good or For Ill?” In *Decentralizing Infrastructure: Advantages and Limitations*, ed. Antonio Estache. Washington D.C.: The World Bank, 22–51.

Bishop, Anthony N. 2002. “The Unenforceable Rights to Consular Notification and Access in the United States: What's changed Since the LaGrand Case?” *Houston Journal of International Law* 25: 1–98.

Black, Ryan C., Ryan J. Owens, Justin Wedeking, and Patrick C. Wohlfarth. 2016. *U.S. Supreme Court Opinions and Their Audiences*. Cambridge, UK: Cambridge University Press.

Blackwell, Matthew, Stefano Iacus, and Gary King. 2009. “cem: Coarsened Exact Matching in Stata.” *The Stata Journal* 9 (4): 524–46.

Blume, Lorenz, and Stefan Voigt. 2011. “Federalism and decentralization—a critical survey of frequently used indicators.” *Constitutional Political Economy* 22 (3): 238–64.

Bohara, Alok K., Neil J. Mitchell, Mani Nepal, and Nejem Raheem. 2008. “Human Rights Violations, Corruption, and the Policy of Repression.” *The Policy Studies Journal* 36 (1): 1–18.

Börzel, Tanja A., Tobias Hofmann, Diana Panke, and Carina Sprungk. 2010. “Obstinate and Inefficient: Why Member States Do Not Comply with European Law.” *Comparative Political Studies* 43 (11): 1363–90.

Börzel, Tanja A., and Thomas Risse. 2013. “Human Rights in Areas of Limited Statehood: The New Agenda.” In *The Persistent Power of Human Rights: From Commitment to Compliance*, eds. Thomas Risse, Stephen C. Ropp and Kathryn Sikkink. New York: Cambridge University Press, 63–84.

Bradley, Curtis A. 1998. “The Treaty Power and American Federalism.” *Michigan Law Review* 97: 390-461.

———. 2006. “The Federal Judicial Power and the International Legal Order.” *The Supreme Court Review* 2006 (1): 59–113.

Bradley, Curtis A., and Jack L. Goldsmith. 1997. “Customary International Law as Federal Common Law: A Critique of the Modern Position.” *Harvard Law Review* 110 (4): 815–76.

Bradley, Curtis A., and Jack L. Goldsmith III. 1997. “Current Illegitimacy of International Human Rights Litigation.” *Fordham Law Review* 66 (2): 319–69.

Brewster, Rachel. 2009a. “The Limits of Reputation on Compliance.” *International Theory* 1 (2): 323–33.

———. 2009b. “Unpacking the State's Reputation.” *Harvard International Law Journal* 50 (2).

Butt, Simon. 2010. “Regional Autonomy and Legal Disorder: The Proliferation of Local Laws in Indonesia.” *Singapore Journal of Legal Studies:* 1–21.

Buys, Cindy G. 2015. “Illinois Adopts New Law to Better Implement Consular Notification and Access.” *The Globe* 53 (2): 3–6. https://law.siu.edu/_common/documents/publications/buys/buys-globe-10-15-p-3-6.pdf.

Cai, Hongbin, and Daniel Treisman. 2006. “Did Government Decentralization Cause China's Economic Miracle?” *World Politics* 58 (4): 505–35.

Cai, Yongshun. 2008. “Power Structure and Regime Resilience: Contentious Politics in China.” *British Journal of Political Science* 38 (3): 411–32.

Cao, Xun, Brian Greenhill, and Aseem Prakash. 2013. “Where Is the Tipping Point? Bilateral Trade and the Diffusion of Human Rights.” *British Journal of Political Science* 43 (1): 133–56.

Carneiro, Cristiane L., and Laerte Apolinário. 2016. “Targeted Versus Conventional Economic Sanctions: What Is at Stake for Human Rights?” *International Interactions* 42 (4): 565–89.

Carter, Linda E. 2003. “Compliance with ICJ Provisional Measure and the Meaning of Review and Reconsideration Under the Vienna Convention on Consular Relations: Avena and Other Mexican Nationals (Mex. V. U.S.).” *Michigan Journal of International Law* 25 (1): 117–34.

Chayes, Abram, and Antonia H. Chayes. 1993. “On Compliance.” *International Organization* 47 (2): 175–205.

———. 1995. *The New Sovereignty: Compliance with International Regulatory Agreements*. Cambridge, MA: Harvard University Press.

Chayes, Abram, Antonia H. Chayes, and Ronald B. Mitchell. 1998. “Managing Compliance: A Comparative Perspective.” In *Engaging Countries: Strengthening Compliance with International Environmental Accords*, eds. Edith B. Weiss and Harold Jacobson. Cambridge, MA: MIT Press, 39–62.

Chen, Titus C., and Dingding Chen. 2016. *International Engagement in China's Human Rights*. New York: Routledge.

Cingranelli, David, and Mikhail Filippov. 2018. “Problems of Model Specification and Improper Data Extrapolation.” *British Journal of Political Science* 48 (1): 273–74.

Cingranelli, David L., David L. Richards, and K. C. Clay. 2014. “The CIRI Human Rights Dataset.”

Clark, Ann M. 2001. *Diplomacy of Conscience: Amnesty International and Changing Human Rights Norms*. Princeton, NJ: Princeton University Press.

———. 2013. “The Normative Context of Human Rights Criticism: Treaty Ratification and UN Mechanisms.” In *The Persistent Power of Human Rights: From Commitment to Compliance*, eds. Thomas Risse, Stephen C. Ropp and Kathryn Sikkink. New York: Cambridge University Press, 125–44.

Clark, Ann M., and Kathryn Sikkink. 2013. “Information Effects and Human Rights Data: Is the Good News about Increased Human Rights Information Bad News for Human Rights Measures?” *Human Rights Quarterly* 35 (3): 539–68.

Cole, Wade M. 2015. “Mind the Gap: State Capacity and the Implementation of Human Rights Treaties.” *International Organization* 69 (2): 405–41.

———. 2018. “Does might make right or fight? Coercive capacity, democracy, and human rights, 1975 to 2010.” *Journal of Human Rights* 17 (2): 147–62.

Conrad, Courtenay R. 2011. “Constrained Concessions: Beneficent Dictatorial Responses to the Domestic Political Opposition1.” *International Studies Quarterly* 55 (4): 1167–87.

———. 2014. “Divergent Incentives for Dictators: Domestic Institutions and (International Promises Not to) Torture.” *Journal of Conflict Resolution* 58 (1): 34–67.

Conrad, Courtenay R., and Jacqueline H. R. DeMeritt. 2013. “Constrained by the Bank and the Ballot.” *Journal of Peace Research* 50 (1): 105–19.

Conrad, Courtenay R., and Will H. Moore. 2010. “What Stops the Torture?” *American Journal of Political Science* 54 (2): 459–76.

Coyle, John F. 2015. “The Case for Writing International Law into the U.S. Code.” *Boston College Law Review* 56 (2): 433–92.

Creamer, Cosette D., and Beth A. Simmons. 2015. “Ratification, Reporting, and Rights: Quality of Participation in the Convention against Torture.” *Human Rights Quarterly* 37 (3): 579–608.

Crook, John R. 2007. “Texas Court Rejects Presidential Order to Review Consular Notification Death Cases.” *American Journal of International Law* 101 (2): 478–80.

Cummins, Sally J., and Davie P. Stewart, eds. 2003. *Digest of United States Practice in International Law*.

Cutler, Lloyd N. 1988. “Some Reflections About Divided Government.” *Presidential Studies Quarterly* 18 (3): 485–92.

Dafoe, Allan, and Devin Caughey. 2016. “Honor and War.” *World Politics* 68 (2): 341–81.

Damrosch, Lori F. 1991. “Role of the United States Senate Concerning 'Self-Executing' and 'Non-Self-Executing Treaties'.” *Chicago-Kent Law Review* 67: 515–32.

Dardanelli, Paolo. 2019. “Conceptualizing, Measuring, and Mapping State Structures—with an Application to Western Europe, 1950–2015.” *Publius: The Journal of Federalism* 49 (2): 271–98.

Davenport, Christian. 1999. “Human Rights and the Democratic Proposition.” *Journal of Conflict Resolution* 43 (1): 92–116.

———. 2007. “State Repression and Political Order.” *Annual Review of Political Science* 10 (1): 1–23.

Davis, Martha F. 2006. “The Spirit of Our Times: State Constitutions and International Human Rights.” *N.Y.U. Review of Law & Social Change* 30: 359-409.

———. 2018. “The Upside of the Downside: Local Human Rights and the Federalism Clauses.” *Saint Louis University Law Journal* 62: 921-938.

deLisle, Jacques. 2017. “Law in the China Model 2.0: Legality, Developmentalism and Leninism under Xi Jinping.” *Journal of Contemporary China* 26 (103): 68–84.

Dest, Stephanie. 1989. “Federal Habeas Corpus and State Procedural Default: An Abstention-Based Interest Analysis.” *The University of Chicago Law Review* (56): 263–94.

Dietrich, Simone, and Amanda Murdie. 2017. “Human Rights Shaming through INGOs and Foreign Aid Delivery.” *The Review of International Organizations* 12 (1): 95–120.

Dillinger, William. 1994. *Decentralization and Its Implications for Urban Service Delivery*. Washington D.C.: The World Bank.

Dittmer, Lowell. 1995. “Chinese Informal Politics.” *The China Quarterly* 34: 1034.

Djajic, Sanja. 1999. “The Effect of International Court of Justice Decisions on Municipal Courts in the United States: Breard v. Greene.” *Hastings International & Comparative Law Review* 23: 27–108.

Downs, George W., and Michael A. Jones. 2002. “Reputation, Compliance, and International Law.” *Journal of Legal Studies* S1: 95-114.

Drury, A. C., and Yitan Li. 2006. “U.S. Economic Sanction Threats Against China: Failing to Leverage Better Human Rights.” *Foreign Policy Analysis* 2: 307–24.

Emilsson, Henrik. 2015. “A National Turn of Local Integration Policy: Multi-Level Governance Dynamics in Denmark and Sweden.” *Comparative Migration Studies* 3 (1): 244.

Enikolopov, Ruben, and Ekaterina Zhuravskaya. 2007. “Decentralization and political institutions.” *Journal of Public Economics* 91 (11-12): 2261–90.

Epps, Valerie. 2004. “Violations of the Vienna Convention on Consular Relations - Time for Remedies.” *Willamette J. International Law & Dispute Resolution* 11: 1–37.

Fan, C. S., Chen Lin, and Daniel Treisman. 2009. “Political decentralization and corruption: Evidence from around the world.” *Journal of Public Economics* 93 (1-2): 14–34.

Fariss, Christopher J. 2014. “Respect for Human Rights has Improved Over Time: Modeling the Changing Standard of Accountability.” *American Political Science Review* 108 (2): 297–318.

———. 2018. “The Changing Standard of Accountability and the Positive Relationship between Human Rights Treaty Ratification and Compliance.” *British Journal of Political Science* 48 (1): 239–71.

Finnemore, Martha, and Kathryn Sikkink. 1998. “International Norm Dynamics and Political Change.” *International Organization* 52 (4): 887–917.

Firman, Tommy. 2009. “Decentralization Reform and Local-Government Proliferation in Indonesia: Towards a Fragmentation of Regional Development.” *Review of Urban & Regional Development Studies* 21 (2-3): 143–57.

Foster, Andrew D., and Mark R. Rosenzweig. 2002. “Democratization, Decentralization and the Distribution of Local Public Goods in a Poor Rural Economy.”

Franck, Thomas M. 1990. *The Power of Legitimacy among Nations*. New York: Oxford University Press.

———. 1998. “Dr. Pangloss Meets the Grinch: A Pessimistic Comment on Harold Koh's Optimism.” *Houston Law Review* 35: 683-698.

Franklin, James C. 2008. “Shame on You: The Impact of Human Rights Criticism on Political Repression in Latin America.” *International Studies Quarterly* 52: 187–211.

Gaer, Felice. 2017. “Picking and Choosing? Country Visits by Thematic Special Procedures.” In *The United Nations Special Procedures System*, eds. Aoife Nolan, Freedman Rosa and Thérèse Murphy. Brill, 87–130.

Galasso, Emanuela, and Martin Ravallion. 2005. “Decentralized Targeting of An Antipoverty Program.” *Journal of Public Economics* 89 (4): 705–27.

Garcia, Michael J. 2004. “Vienna Convention on Consular Relations: Overview of U.S. Implementation and International Court of Justice (ICJ) Interpretation of Consular Notification Requirements.” https://fas.org/sgp/crs/row/RL32390.pdf (Accessed May 25, 2019).

Getz, I. 1985. “Moral Reasoning, Religion, and Attitudes toward Human Rights.” Doctoral dissertation. University of Minnesota.

Gleditsch, Nils P., Peter Wallensteen, Mikael Eriksson, Margareta Sollenberg, and Håvard Strand. 2002. “Armed Conflict 1946-2001: A New Dataset.” *Journal of Peace Research* 39 (5): 615–37.

Gollata, Judith A.M., and Jens Newig. 2017. “Policy Implementation through Multi-Level Governance: Analysing Practical Implementation of EU Air Quality Directives in Germany.” *Journal of European Public Policy* 24 (9): 1308–27.

Golove, David M. 2000. “Treaty-Making and the Nation: The Historical Foundations of the Nationalist Conception of the Treaty Power.” *Michigan Law Review* 98 (5): 1075–1319.

Gonzales, Alberto R., and Amy L. Moore. 2015. “No Right at All: Putting Consular Notification in its Rightful Place After Medellin.” *Florida Law Review* 66 (2): 685–717.

Goodman, Ryan. 2002. “Human Rights Treaties, Invalid Reservations, and State Consent.” *American Journal of International Law* 96: 531-560.

Goodman, Ryan, and Derek Jinks. 2013. *Socializing States: Promoting Human Rights through International Law*. New York: Oxford University Press.

Greenhill, Brian. 2010. “The Company You Keep: International Socialization and the Diffusion of Human Rights Norms.” *International Studies Quarterly* 54: 127–45.

Guzman, Andrew T. 2008. *How International Law Works: A Rational Choice Theory*. New York: Oxford University Press.

Hafner-Burton, Emilie M. 2005. “Trading Human Rights: How Preferential Trade Agreements Influence Government Repression.” *International Organization* 59 (3): 593–629.

———. 2008. “Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem.” *International Organization* 62: 689–716.

Hafner-Burton, Emilie M., and James Ron. 2009. “Seeing Double: Human Rights Impact through Qualitative and Quantitative Eyes.” *World Politics* 61 (2): 360–401.

Hafner-Burton, Emilie M., and Kiyoteru Tsutsui. 2005a. “Human Rights in a Globalizing World: The Paradox of Empty Promises.” *American Journal of Sociology* 110 (5): 1373–1411.

———. 2005b. “Human Rights in a Globalizing World: The Paradox of Empty Promises.” *American Journal of Sociology* 110 (5): 1373–1411.

Hamilton, Alexander, James Madison, and John Jay. [1789] 1937. *The Federalist Papers*. New York: Tudor.

Hathaway, Oona A. 2002. “Do Human Rights Treaties Make a Difference?” *The Yale Law Journal* 111: 1935-2042.

———. 2007. “Why Do Countries Commit to Human Rights Treaties?” *Journal of Conflict Resolution* 51 (4): 588–621.

Hathaway, Oona A., Sabrina McElroy, and Sara A. Solow. 2012. “International Law at Home: Enforcing Treaties in U.S. Courts.” *The Yale Journal of International Law* 37: 51-106.

He, Qichun, and Meng Sun. 2018. “Does Fiscal Decentralization Increase the Investment Rate? Evidence from Chinese Panel Data.” *Annuals of Economics and Finance* 19 (1): 75–101.

Healy, Thomas. 1998. “Is "Missouri v. Holland" Still Good Law? Federalism and the Treaty Power.” *Columbia Law Review* 98 (7): 1726–56.

Henderson, Conway W. 1991. “Conditions Affecting the Use of Political Repression.” *Journal of Conflict Resolution* 35 (1): 120–42.

Hendrix, Cullen S., and Wendy H. Wong. 2013. “When Is the Pen Truly Mighty? Regime Type and the Efficacy of Naming and Shaming in Curbing Human Rights Abuses.” *British Journal of Political Science* 43 (3): 651–72.

Henisz, Witold J. 2002. “The Institutional Environment for Infrastructure Investment.” *Industrial and Corporate Change* 11 (2): 355–89.

Henkin, Louis. 1979. *How Nations Behave*. 2nd ed. New York: Columbia University Press.

———. 1995. “U.S. Ratification of Human Rights Conventions: The Ghost of Senator Bricker.” *American Journal of International Law* 89 (2): 341–50.

———. 1997. *Foreign Affairs and the United States Constitution*. 2nd ed. Oxford University Press.

Hensengerth, Oliver, and Yiyi Lu. 2019. “Emerging environmental Multi-Level Governance in China? Environmental protests, public participation and local institution-building.” *Public Policy and Administration* 34 (2): 121–43.

Heyman, Philip B. 1973. “The Problem of Coordination: Bargaining and Rules.” *Harvard Law Review* 86 (5).

Hill, Daniel W. 2010. “Estimating the Effects of Human Rights Treaties on State Behavior.” *The Journal of Politics* 72 (4): 1161–74.

Hillebrecht, Courtney. 2014. *Domestic Politics and International Human Rights Tribunals: The Problem of Compliance*. New York: Cambridge University Press.

Hollis, Duncan B. 2006. “Executive Federalism: Forging New Federalist Constraints on the Treaty Power.” *Southern California Law Review* 79: 1327–96.

Hollyer, James R., and B. P. Rosendorff. 2011. “Why Do Authoritarian Regimes Sign the Convention Against Torture? Signaling, Domestic Politics and Non-Compliance.” *Quarterly Journal of Political Science* 6 (3-4): 275–327.

Honaker, James, Gary King, and Matthew Blackwell. 2011. “Amelia II: A Program for Missing Data.” *Journal of Statistical Software* 45 (7): 1–47.

Hooghe, Liesbet, and Gary Marks. 2009. “Does Efficiency Shape the Territorial Structure of Government?” *Annual Review of Political Science* 12 (1): 225–41.

Hooghe, Liesbet, Gary Marks, Arjan H. Schakel, Sandi C. Osterkatz, Sara Niedzwiecki, and Sarah Shair-Rosenfield. 2015. *A Postfunctionalist Theory of Governance. Vol. I: Measuring Regional Authority*. Oxford: Oxford Univ. Press.

Howell, Nicole M. 2013. “A Proposal for U.S. Implementation of the Vienna Convention's Consular Notification Requirement.” *UCLA Law Review* 60: 1324–81.

Hughes, Melanie M., Mona L. Krook, and Pamela Paxton. 2015. “Transnational Women's Activism and the Global Diffusion of Gender Quotas.” *International Studies Quarterly* 59 (2): 357–72.

Hurrell, Andrew. 1995. “International Society and the Study of Regimes: A Reflective Approach.” In *Regime Theory and International Relations*, ed. Volker Rittberger. Oxford: Clarendon Press, 49–72.

Hussain, Laura M. 2008. “Enforcing the Treaty Rights of Aliens.” *Yale Law Journal* 117 (4): 680–722.

Iacus, Stefano M., Gary King, and Giuseppe Porro. 2012. “Causal Inference without Balance Checking: Coarsened Exact Matching.” *Political Analysis* 20 (1): 1–24.

Jackson, Craig. 2008. “The Anti-Commandeering Doctrine and Foreign Policy Federalism-The Missing Issue in Medellin v. Texas.” *Suffolk Transnational Law Review* 31 (2): 335–75.

Janz, Nicole. 2018. “Foreign Direct Investment and Repression: An Analysis Across Industry Sectors.” *Journal of Human Rights* 17 (2): 163–83.

Jetschke, Anja. 2011. *Human Rights and State Security: Indonesia and the Philippines*. Philadelphia, PA: University of Pennsylvania Press.

Jia, Ruixue, and Huihua Nie. 2017. “Decentralization, Collusion, and Coal Mine Deaths.” *Review of Economics and Statistics* 99 (1): 105–18.

Jiang, Junyan. 2018. “Making Bureaucracy Work: Patronage Networks, Performance Incentives, and Economic Development in China.” *American Journal of Political Science* 62 (4): 982–99.

Jin, Hehui, Yingyi Qian, and Barry R. Weingast. 2005. “Regional decentralization and fiscal incentives: Federalism, Chinese style.” *Journal of Public Economics* 89 (9-10): 1719–42.

Johnston, Alastair I. 2001. “Treating International Institutions as Social Environments.” *International Studies Quarterly* 45 (4).

Kadish, Mark J. 1997. “Article 36 of the Vienna Convention on Consular Relations: A Search for the Right to Consul.” *Michigan Journal of International Law* 18 (4): 565–613.

Kadish, Mark J., and Charles C. Olson. 2006. “Sanchez-Llamas v. Oregon and Article 36 of the Vienna Convention on Consular Relations: The Supreme Court, The Right to Consul, and Remediation.” *Michigan Journal of International Law* 27 (4): 1185–1237.

Kalb, Johanna. 2011. “The Persistence of Dualism in Human Rights Treaty Implementation.” *Yale Law & Policy Review* 30 (1): 71–121.

Kaufman, Natalie H., and David Whiteman. 1988. “Opposition to Human Rights Treaties in the United States Senate: The Legacy of the Bricker Amendment.” *Human Rights Quarterly* 10 (3): 309–37.

Keck, Margaret, and Kathryn Sikkink. 1998. *Activists Beyond Borders: Advocacy Networks in International Politics*. Ithaca, NY: Cornell University Press.

Keith, Linda C. 2002a. “Judicial Independence and Human Rights Protection around the World.” *Judicature* 85 (4): 195-00.

———. 2002b. “Judicial Independence and Human Rights Protection Around the World.” *Judicature* 85 (4): 195–200.

Keith, Linda C., C. N. Tate, and Steven C. Poe. 2009a. “Is the Law a Mere Parchment Barrier to Human Rights Abuse?” *The Journal of Politics* 71 (2): 644–60.

———. 2009b. “Is The Law a Mere Parchment Barrier to Human Rights Abuse?” *The Journal of Politics* 71 (2): 644–60.

Kent, Ann. 1995. “China and the International Human Rights Regime: A Case Study of Multilateral Monitoring, 1989-1994.” *Human Rights Quarterly* 17 (1): 1–47.

———. 1999. *China, the United Nations, and Human Rights: The Limits of Compliance*. Philadelphia, PA: University of Pennsylvania Press.

———. 2007. *Beyond Compliance: China, International Organizations, and Global Security*. Stanford, CA: Stanford University Press.

Keohane, Robert O. 1999. "International Relations and International Law: Interests, Reputation, Institutions." *Proceedings of the Annual Meeting (American Society of International Law)* 93: 375–79.

Kim, Dong-Hun, and Peter F. Trumbore. 2010. "Transnational Mergers and Acquisitions: The Impact of FDI on Human Rights, 1981-2006." *Journal of Peace Research* 47 (6): 723–34.

Kim, Hunjoon, and Kathryn Sikkink. 2010. "Explaining the Deterrence Effect of Human Rights Prosecutions for Transitional Countries1." *International Studies Quarterly* 54 (4): 939–63.

Koh, Harold H. 1998. "Is International Law Really State Law?" *Harvard Law Review* 111: 1824–61.

———. 2005. "Internalization Through Socialization." *Duke Law Journal* 54: 975-982.

Koo, Jeong-Woo. 2017. "The Construction of Human Rights Actorhood: Findings from the Korean General Social Survey." *Journal of Human Rights* 16 (3): 261–75.

Ku, Julian G. 2004. "The State of New York Does Exist: How States Control Compliance with International Law." *North Carolina Law Review* 82: 457-533.

Lake, Milli. 2014. "Organizing Hypocrisy: Providing Legal Accountability for Human Rights Violations in Areas of Limited Statehood." *International Studies Quarterly* 58 (3): 515–26.

Lebovic, James H. 2006. "The Politics of Shame: The Condemnation of Country Human Rights Practices in the UNCHR." *International Studies Quarterly* 50: 861–88.

Lebovic, James H., and Erik Voeten. 2009. "The Cost of Shame: International Organizations and Foreign Aid in the Punishing of Human Rights Violators." *Journal of Peace Research* 46 (1): 79–97.

Lee, Victoria M. 2009. “Giving State and Local Law Enforcement the Benefit of the Doubt: How to Ensure VCCR Compliance Without Judicial Remedies.” *Journal of Law and Policy* 17 (2): 609–52.

Leyden, Kevin M., and Stephen A. Borrelli. 1995. “The Effect of State Economic Conditions on Gubernatorial Elections: Does Unified Government Make a Difference?” *Political Research Quarterly* 48 (2): 275–90.

Li, Hongbin, and Li-An Zhou. 2005. “Political turnover and economic performance: the incentive role of personnel control in China.” *Journal of Public Economics* 89 (9-10): 1743–62.

Lieberthal, Kenneth, and Michel Oksenberg. 1988. *Policy Making in China: Leaders, Structures, and Processes*. Princeton, NJ: Princeton University Press.

Lijphart, Arend. 1999. *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries*. New Haven, CT: Yale University Press.

Liptak, Adam. 2005. “U.S. Says It Has Withdrawn from World Judicial Body.” https://www.nytimes.com/2005/03/10/politics/us-says-it-has-withdrawn-from-world-judicial-body.html (June 10, 2019).

Lowry, Robert C., James E. Alt, and Karen E. Ferree. 1998. “Fiscal Policy Outcomes and Electoral Accountability in American States.” *American Political Science Review* 92 (4): 759–74.

Lupu, Yonatan. 2013a. “Best Evidence: The Role of Information in Domestic Judicial Enforcement of International Human Rights Agreements.” *International Organization* 67 (3): 469–503.

———. 2013b. “The Informative Power of Treaty Commitment: Using the Spatial Model to Address Selection Effects.” *American Journal of Political Science* 14 (1): n/a-n/a.

———. 2015. “Legislative Veto Players and the Effects of International Human Rights Agreements.” *American Journal of Political Science* 59 (3): 578–94.

Lutz, Ellen L., and Kathryn Sikkink. 2000. “International Human Rights Law and Practice in Latin America.” *International Organization* 54 (3): 633–59.

Lybeck, Johan A. 1985. “A Simultaneous Model of Politico-Economic Interaction in Sweden, 1970–82.” *European Journal of Political Research* 13: 135–51.

Lyman, Rick. 1998. “Aliens' Rights Are Issue in Texas Death Row Case.” https://www.nytimes.com/1998/12/08/us/aliens-rights-are-issue-in-texas-death-row-case.html (May 26, 2019).

Maestas, C. D., L. R. Atkeson, T. Croom, and L. A. Bryant. 2008. “Shifting the Blame: Federalism, Media, and Public Assignment of Blame Following Hurricane Katrina.” *Publius: The Journal of Federalism* 38 (4): 609–32.

Malone, Linda A. 2004. “From Breard to Atkins to Malvo: Legal Incompetency and Human Rights Norms on the Fringes of the Death Penalty.” *William & Mary Bill of Rights Journal* 13 (2): 363–416.

Maltzman, Forrest, James F. Spriggs II, and Paul J. Wahlbeck. 2000. *Crafting Law on the Supreme Court: The Collegial Game*. Cambridge, UK: Cambridge University Press.

March, James G., and Johan P. Olsen. 1995. *Democratic Governance*. New York: Free Press.

———. 1998. “The Institutional Dynamics of International Political Orders.” *International Organization* 52 (4): 943–69.

Marshall, Monty G., Ted R. Gurr, and Keith Jaggers. 2013. “Polity IV Project: Political Regime Characteristics and Transition, 1800-2013.”

Maskin, Erie, Yingyi Qian, and Chenggang Xu. 2000. “Incentives, Information, and Organizational Form.” *The Review of Economic Studies* 67 (2): 359–78.

Mattingly, Daniel C. Forthcoming. “Resopnsive or Repressive? How Frontline Bureaucrats Enforce the One Child Policy in China.” *Comparative Politics*.

McFarland, Sam, and Melissa Mathews. 2005. “Who Cares About Human Rights?” 26 (3): 365–85.

McGraw, Kathleen M. 1991. “Managing Blame: An Experimental Test of the Effects of Political Accounts.” *American Political Science Review* 85 (4): 1133–57.

Mckie, Karen L. 2002. “Executions and Apologies: The U.S., International Law and Right to Consular Notification.” *Critical Criminology* 11: 199–215.

Meyer, John W., John Boli, George M. Thomas, and Francisco O. Ramirez. 1997. “World Society and the Nation-State.” *American Journal of Sociology* 103 (1): 144–81.

Meyer, William H. 1996. “Human Rights and MNCs: Theory versus Quantitative Analysis.” *Human Rights Quarterly* 18 (2): 368–97.

Miller, Gary J. 2005. “The Political Evolution of Principal-Agent Models.” *Annual Review of Political Science* 8 (1): 203–25.

Minzer, Carl F. 2006. “Xinfang: An Alternative to Formal Chinese Legal Institutions.” *Stanford Journal of International Law* 42: 103-179.

Mitchell, Neil J. 2012. *Democracy's Blameless Leaders: From Dresden to Abu Ghraid, how Leader Evade Accountability for Abuse, Atrocity, and Killing*. New York: New York University Press.

Mitchell, Neil J., Sabine C. Carey, and Christopher K. Butler. 2014. “The Impact of Pro-Government Militias on Human Rights Violations.” *International Interactions* 40 (5): 812–36.

Montinola, Gabriella, Yingyi Qian, and Barry R. Weingast. 1995. “Federalism, Chinese Style: The Political Basis for Economic Success in China.” *World Politics* 48 (1): 50–81.

Moyn, Samuel. 2010. *The Last Utopia: Human Rights in History*. Cambridge, MA: The Belknap Press.

Murdie, Amanda M., and David R. Davis. 2012. “Shaming and Blaming: Using Events Data to Assess the Impact of Human Rights INGOs1.” *International Studies Quarterly* 56 (1): 1–16.

Nash, Jonathan R. 2016. “Doubly Uncooperative Federalism and the Challenge of U.S. Treaty Compliance.” *Columbia Journal of Transnational Law* 55: 3–64.

Nathan, Andrew J. 1973. “A Factionalism Model for CCP Politics.” *The China Quarterly* 53: 34–66.

Nathan, Andrew J., and Kellee S. Tsai. 1995. “Factionalism: A New Institutionalist Restatement.” *The China Journal* 34: 157–92.

Neumayer, Eric. 2005. “Do International Human Rights Treaties Improve Respect for Human Rights?” *Journal of Conflict Resolution* 49 (6): 925–53.

———. 2007. “Qualified Ratification: Explaining Reservations to International Human Rights Treaties.” *The Journal of Legal Studies* 36 (2): 397–429.

Nie, Mintao, Eric N. Waltenburg, and William P. McLauchlan. 2019. “Time Chart of the Justices Revisited: An Analysis of the Influences on the Time It Takes to Compose the Majority Opinion on the U.S. Supreme Court.” *Justice System Journal* 40 (1): 54–75.

Nowak, Manfred. 2006. “Report of the Special Rapporteur on Torture and Other Cruel, Inhuman.” E/CN.4/2006/6/Add.6.

Oates, Wallace E. 1972. *Fiscal Federalism*. New York: Harcourt Brace Jovanovich.

Oomen, Barbara, and Moritz Baumgärtel. 2018. “Frontier Cities: The Rise of Local Authorities as an Opportunity for International Human Rights Law.” *European Journal of International Law* 29 (2): 607–30.

Ostrom, Vincent, Charles M. Tiebout, and Robert Warren. 1961. “The Organization of Government in Metropolitan Areas: A Theoretical Inquiry.” *American Political Science Review* 55 (4): 831–42.

Pan, Jennifer, and Kaiping Chen. 2018. “Concealing Corruption: How Chinese Officials Distort Upward Reporting of Online Grievances.” *American Political Science Review* 112 (3): 602–20.

Park, Jong H., and Kentaro Hirose. 2013. “Domestic Politics, Reputational Sanctions, and International Compliance.” *International Theory* 5 (2): 300–320.

Peksen, Dursun. 2009. “Better or Worse? The Effect of Economic Sanctions on Human Rights.” *Journal of Peace Research* 46 (1): 59–77.

Persson, Torsten, and Guido E. Tabellini. 2003. *The Economic Effects of Constitutions*. Cambridge, MA: The MIT Press.

Poe, Steven C., Sabine C. Carey, and Tanya C. Vazquez. 2001. "How Are These Pictures Different? A Quantitative Comparison of the US State Department and Amnesty International Human Rights Reports, 1976-1995." *Human Rights Quarterly* 23 (3): 650–77.

Poe, Steven C., and C. N. Tate. 1994. "Repression of Human Rights to Personal Integrity in the 1980s: A Global Analysis." *American Political Science Review* 88 (4): 853–72.

Poe, Steven C., C. N. Tate, and Linda C. Keith. 1999. "Repression of the Human Right to Personal Integrity Revisited: A Global Cross-National Study Covering the Years 1976–1993." *International Studies Quarterly* (43): 291–313.

Powell, Catherine. 2001. "Dialogic Federalism: Constitutional Possibilities for Incorporation of Human Rights Law in the United States." *University of Pennsylvania Law Review* 150: 245-295.

Powell, Emilia J., Staton, and Jeffrey K. 2009. "Domestic Judicial Institutions and Human Rights Treaty Violation." *International Studies Quarterly* 53 (1): 149–74.

Powell, Emilia J., and Jeffrey K. Staton. 2009. "Domestic Judicial Institutions and Human Rights Treaty Violation." *International Studies Quarterly* 53: 149–74.

Putnam, Robert D. 1988. "Diplomacy and Domestic Politics: The Logic of Two-Level Games." *International Organization* 42 (3): 427–60.

Quigley, John. 2004. "The Law of State Responsibility and the Right to Consular Access." *Willamette J. International Law & Dispute Resolution* 11: 39–52.

———. 2018. *Foreigners on America's Death Rows: The Legal Combat Over Access to A Consul*. Cambridge, UK: Cambridge University Press.

Quigley, John, William J. Aceves, and S. A. Shank. 2010. *The Law of Consular Access: A Documentary Guide*. New York: Routledge.

Risse, Thomas. 2017. “Human Rights in Areas of Limited Statehood: From the Spiral Model to Localization and Translation.” In *Human Rights Futures*, eds. Stephen Hopgood, Jack Snyder and Leslie Vinjamuri. New York: Cambridge University Press, 135–58.

Risse, Thomas, and Kathryn Sikkink. 1999. “The Socialization of International Human Rights Norms into Domestic Practices; Introduction.” In *The Power of Human Rights: International Norms and Domestic Change*, eds. Thomas Risse, Stephen C. Ropp and Kathryn Sikkink. Cambridge, UK: Cambridge University Press, 1–38.

Rodden, Jonathan. 2004. “Comparative Federalism and Decentralization- On Meaning and Measurement.” *Comparative Politics* 36 (4): 481–500.

Rodley, Nigel, and Matt Pollard. 2009. *The Treatment of Prisoners under International Law*. 3rd ed. New York: Oxford University Press.

Rodley, Nigel S. 2011. “On the Responsibility of Special Rapporteurs.” *The International Journal of Human Rights* 15 (2): 319–37.

Ron, James. 1997. “Varying Methods of State Violence.” *International Organization* 51 (2): 275–300.

Rose-Ackerman, Susan. 1999. *Corruption and Government: Cause, Consequences, and Reform*. Cambridge, UK: Cambridge University Press.

Rosenfeld, Eric. 2008. “Irreconcilable Differences: How Sanchez-Llamas v. Oregon Undermines Article 36 of the Vienna Convention on Consular Relations.” *University of Pittsburgh Law Review* 69: 789-808.

Rudolph, Thomas J. 2003. “Who's Responsible for the Economy? The Formation and Consequences of Responsibility Attributions.” *American Journal of Political Science* 47 (4): 698–713.

Rudolph, Thomas J., and J. T. Grant. 2002. “An Attributional Model of Economic Voting: Evidence from the 2000 Presidential Election.” *Political Research Quarterly* 55 (4): 805–23.

Schlenker, Barry R., Thomas W. Britt, John Pennington, Rodolfo Murphy, and Kevin Doherty. 1994. “The Triangle Model of Responsibility.” *Psychological Review* 101 (4): 632–52.

Schröder-Bäck, Peter, Tamara Schloemer, Timo Clemens, Denise Alexander, Helmut Brand, Kyriakos Martakis, Michael Rigby, Ingrid Wolfe, Kinga Zdunek, and Mitch Blair. 2019. “A Heuristic Governance Framework for the Implementation of Child Primary Health Care Interventions in Different Contexts in the European Union.” *Inquiry: The Journal of Health Care Organization, Provision and Financing* 56: 1-9.

Segal, Jeffrey A., and Harold J. Spaeth. 2001. *The Supreme Court and the Attitudinal Model Revisited*. Cambridge, UK: Cambridge University Press.

Shih, Victor. 2004. “Factions matter: personal networks and the distribution of bank loans in China.” *Journal of Contemporary China* 13 (38): 3–19.

Shipan, Charles R., and Craig Volden. 2008. “The Mechanisms of Policy Diffusion.” *American Journal of Political Science* 52 (4): 840–57.

Shor, Boris, and Nolan McCarty. 2011. “The Ideological Mapping of American Legislatures.” *American Political Science Review* 105 (3): 530–51.

Sikkink, Kathryn. 1993. “The Power of Principled Ideas: Human Rights Policies in the United States and Western Europe.” In *Ideas and Foreign Policy: Beliefs, Institutions, and Political Change,* eds. Judith Goldstein and Robert O. Keohane. Ithca and London: Cornell University Press, 139–71.

———. 2004. *Mixed Signals: U.S. Human Rights Policy and Latin America*. Ithca and London: Cornell University Press.

———. 2011. *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics*. New York: W.W. Norton & Company.

Simmons, Beth A. 2009. *Mobilizing for Human Rights: International Law in Domestic Politics*. New York: Cambridge University Press.

Simmons, Beth A., and Daniel J. Hopkins. 2005. “The Constraining Power of International Treaties: Theory and Methods.” *American Political Science Review* 99 (4): 623–31.

Sorens, Jason, and William Ruger. 2012. “Does Foreign Investment Really Reduce Repression?” *International Studies Quarterly* 56 (2): 427–36.

Spar, Debora. 1998. “The Spotlight and the Bottom Line: How Multinationals Export Human Rights.” *Foreign Affairs:* 7–12.

Spiro, Peter J. 1997. “The States and International Human Rights.” *Fordham Law Review* 66 (2): 567–96.

———. 1999. “Foreign Relations Federalism.” *University of Colorado Law Review* 70: 1223-1275.

Springrose, Linda J. 1999. “Strangers in a Strange Land - The Rights of Non-Citizens under Article 36 of the Vienna Convention on Consular Relations.” *Georgetown Immigration Law Journal* 14: 185-213.

Staub, Ervin. 1985. “The Psychology of Perpetrators and Bystanders.” *Political Psychology* 6 (1): 61–85.

———. 2000. “Genocide and Mass Killing: Origins, Prevention, Healing and Reconciliation.” *Political Psychology* 21 (2): 367–82.

Stein, Jana von. 2005. “Do Treaties Constrain or Screen? Selection Bias and Treaty Compliance.” *American Political Science Review* 99 (4): 611–22.

Stephenson, Paul. 2013. “Twenty Years of Multi-Level Governance: ‘Where Does It Come From? What Is It? Where Is It Going?’.” *Journal of European Public Policy* 20 (6): 817–37.

Stokes, Susan C. 2005. “Perverse Accountability: A Formal Model of Machine Politics with Evidence from Argentina.” *American Political Science Review* 99 (3): 315–25.

Taylor, Adam. 2015. “The Human Suffering Caused by China's One-Child Policy.” *Washington Post,* October 29. https://www.washingtonpost.com/news/worldviews/wp/2015/10/29/the-human-suffering-caused-by-chinas-one-child-policy/?utm_term=.7e4bd4e2f8bd (Accessed June 25, 2019).

Thornton, John. 2007. “Fiscal Decentralization and Economic Growth Reconsidered.” *Journal of Urban Economics* 61 (1): 64–70.

Tomz, Michael. 2007. *Reputation and International Cooperation: Sovereign Debt across Three Centuries*. Princeton, NJ: Princeton University Press.

Torney-Purta, Judith, Britt Wilkenfeld, and Carolyn Barber. 2008. “How Adolescents in 27 Countries Understand, Support, and Practice Human Rights.” *Journal of Social Issues* 64 (4): 857–80.

Treisman, Daniel. 2000. “The Cause of Corruption: A Cross-National Study.” *Journal of Public Economics* 76: 399–457.

———. 2007. “What Have We Learned About the Causes of Corruption from Ten Years of Cross-National Empirical Research?” *Annual Review of Political Science* 10 (1): 211–44.

United Nations. 1960. *Yearbook of the International Law Commission 1960: Summary Records of the Twelfth Session, 25 April - 1 July 1960*.

Uppsala Conflict Data Program. 2015. “UCDP/PRIO Armed Conflict Dataset Codebook, Version 4-2015.”

Voigt, Stefan, and Lorenz Blume. 2012. “The Economic Effects of Federalism and Decentralization—A Cross-Country Assessment.” *Public Choice* 151 (1-2): 229–54.

Vreeland, James R. 2008. “Political Institutions and Human Rights: Why Dictatorships Enter into the United Nations Convention against Torture.” *International Organization* 62 (1): 65–101.

Wallace, Jeremy L. 2016. “Juking the Stats? Authoritarian Information Problems in China.” *British Journal of Political Science* 46 (1): 11–29.

Warren, Mark. 2019. “Foreign Nationals and Death Penalty in the US.” https://deathpenaltyinfo.org/foreign-nationals-and-death-penalty-us (June 3, 2019).

Weaver, R. K. 1986. “The Politics of Blame Avoidance.” *Journal of Public Policy* 6 (4): 371–98.

Weinstein, Henry. 1998. “Foreigners on Death Rows Denied Rights, U.S. Says.” https://www.latimes.com/archives/la-xpm-1998-dec-10-mn-52566-story.html (June 10, 2019).

Wendt, Alexander. 1999. *Social Theory of International Politics*. New York: Cambridge University Press.

Whitaker, Barbara. 1998. “High Court Postpones Execution of Canadian.” https://www.nytimes.com/1998/12/11/us/high-court-postpones-execution-of-canadian.html (May 26, 2019).

Wilfahrt, Martha. 2018. “Precolonial Legacies and Institutional Congruence in Public Goods Delivery.” *World Politics* 70 (2): 239–74.

Wong, Stan H.-w., and Minggang Peng. 2015. “Petition and Repression in China's Authoritarian Regime: Evidence from a Natural Experiment.” *Journal of East Asian Studies* 15: 27–67.

Wood, Reed M. 2008. “"A Hand upon the Throat of the Nation": Economic Sanctions and State Repression, 1976-2001.” *International Studies Quarterly* 52 (3): 489–513.

Wood, Reed M., and Mark Gibney. 2010. “The Political Terror Scale (PTS): A Re-introduction and a Comparison to CIRI.” *Human Rights Quarterly* 32 (2): 367–400.

Wotipka, Christine M., and Kiyoteru Tsutsui. 2008. “Global Human Rights and State Sovereignty: State Ratification of International Human Rights Treaties, 1965-2001 1.” *Sociological Forum* 23 (4): 724–54.

Zhang, Junsen. 2017. “The Evolution of China’s One-Child Policy and Its Effects on Family Outcomes.” *Journal of Economic Perspectives* 31 (1): 141–60.

Zhu, Boliang. 2017. “MNCs, Rents, and Corruption: Evidence from China.” *American Journal of Political Science* 61 (1): 84–99.