Importing Human Rights through Domestic Constitutional Protections:

Establishing the Relationship Between the International Human Rights Regime and Domestic Institutions

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Abstract

Scholars have shown that integration into the international human rights regime leads countries to exercise greater respect for domestic human rights (e.g. Landman 2005). Particularly, the international human rights covenants that member countries enter are pivotal to the domestic protection of human rights. However, the effectiveness of these covenants varies significantly within the regime’s member countries. To explain these variations, scholars tend to look to the regime’s difficulties monitoring and enforcing the implementation of covenants (e.g. Bayefsky 2001). Few studies, however, examine the effect of domestic institutional factors on the implementation of human rights covenants. In this study, we provide important insight into the protection of human rights by examining the role of domestic institutions, specifically constitutional provisions, in the implementation of human rights covenants. In particular, using the Comparative Constitutions Project (forthcoming), we conduct a large-N, cross-national analysis of the most recent constitutions of the all developing countries between 1981 and 2006 to test the effect of constitutionally established supremacy of treaties, separation of powers, judicial independence, and the interaction of these provisions on the enforcement of human rights covenants and respect for human rights (data derived from Landman (2005) and CIRI Human Rights (2004)). We find that states with constitutional treaty supremacy clauses who are also sign or ratify international human rights covenants are more likely to respect the rights of their citizens than states that lack one or more of these characteristics.
Four primary explanations of cross-national variation in respect for human rights have been tested in contemporary research: political, economic, institutional, and cultural. These explanations have been tested looking at both international and domestic factors. In many studies, domestic factors have been found to have a significant impact on whether a country respects human right (e.g. Davenport 1995, 1996, 1999; McNitt 1995; Mitchell & McCormick 1988; Pion-Berlin 1984; Poe & Tate 1994; Poe et al. 1999; Regan and Henderson 2002). In contrast, international factors, specifically the adoption of international human rights covenants, have not been found to have any significant effect (e.g. Landman 2005). For the most part, these studies examining respect for human rights have focused exclusively on either domestic or international factors, though controlling for the effects of the other types of factors. However, these have failed to test for the possibility that the effect of international factors may be contingent on domestic factors.

In this study we seek to better our understanding of the effect of international factors, specifically international human rights covenants, on respect for human rights by examining whether their effects are conditioned by domestic factors. Specifically, we argue that the impact of international covenants will depend upon certain domestic constitutional factors, specifically the status of treaties vis-à-vis domestic laws and domestic institutions, particularly judicial independence and the separation of legislative and interpretation powers. We theorize that international covenants are more likely to be respected when they are explicitly given superior status over constitutional and statutory law. These covenants are also more likely to be respected when the power to interpret
treaties and the power to enter treaties and make legislation are vested in separate branches.

We find support for our hypothesis: states with constitutional treat supremacy clauses that also sign or ratify human rights treaties are less likely to violate the physical integrity rights of their citizens than states that do not exhibit both of these qualities. Overall, however, the relationship is still negative. Though this may seem counter-intuitive at first, it should not be any surprise considering the countries which are included in our analysis. We are looking at all developing countries which are far more likely to violate the physical integrity rights of their citizens than the developed. However, even among these violators, it appears that international human rights covenants are having some positive effect when coupled with a domestic constitutional provision ensuring international treaties are superior to domestic law. Surprisingly, however, we find that neither judicial independence nor vesting the power of treaty review into a separate institution has a significant impact on human rights violations.

**International Human Rights Covenants and Domestic Institutions**

*International Covenants.* One dominant stream of research concerning the causes of human rights violations is cast at the international level. This body of literature has largely found that international factors have little to no effect on domestic respect for human rights. Much attention has been paid to the role of international human rights covenants within this body of literature. Camp Keith (1999) argues that there is no statistical correlation between ratification of the International Covenant for Civil and Political Rights and increased respect for human rights. Similarly, Hathaway’s (2002) more in-depth study of various international human rights treaties, confirms these
findings. Hathaway concludes treaty ratification is not only ineffective (in fact states that ratify often have worse human rights records than those that do not), but at times can actually produce negative results: “treaty ratification is not infrequently associated with worse, rather than better, human rights ratings than would otherwise be expected” (Hathaway 2002: 1999).

In a more extensive study, Landman (2005) uses more sophisticated statistical methods and incorporates reservations into the analysis, but also comes to question the true effectiveness of international human rights covenants. Specifically, he finds that the effect of signing or ratifying these covenants on domestic respect for human rights is fairly mild thus instilling little optimism about the future effectiveness of international human rights covenants. Landman tempers his findings by noting that the lack of effectiveness may be because the covenants are simply complementing the effect of simultaneous domestic processes of democratization, increasing wealth, and growing interdependence.

Domestic Institutions. Another body of literature argues that domestic factors, not international factors, are largely responsible for the respect a country shows for human rights. Simmon (2006), for instance, argues that democratization is responsible for improved human rights records because it improves the accountability of the government and, thus, increases the cost of violating human rights. In addition to democratization, Neumayer (2005) finds that a strong civil society is also necessary for respect for human rights. The findings that domestic factors, particularly democracy are key for human rights respect lead Hafner-Burton and Tsutsui (2007: 408) to speculative over whether “human rights laws matter least among governments that were the primary targets of the
legal regime- terribly repressive, autocratic states without internal advocates for reform.”

In other words, the literature on domestic factors finds that those states which have already democratized, have developed civil societies, and are economically advanced show better respect the human rights of their citizens, while states who do not exhibit these characteristics will be more likely to violate the human rights of their citizens- all irrespective of states signing and/or ratifying international human rights treaties.

While it is likely that international human rights conventions are complementing other contemporary processes (e.g. Landman 2005), we argue it is also likely that there is an interactive relationship taking place between these conventions and domestic institutions which has gone unnoticed. Schmitz and Sikkink (2002) and Bayefsky (2001) assert the relative ineffectiveness of the treaties is due to a mere lack of enforcement. More specifically, there is no “form of agency to bring them [human rights treaties] to the domestic level” (Schmitz and Sikkink 2002: 529). While this observation may be true with regards to the ability of intergovernmental, international, and non-governmental organizations to enforce treaties within countries, institutions within a country may be established that aid treaty enforcement domestically. In particular, institutions may be established that make violating treaties more difficult within a country and thus aid in their enforcement. For instance, some countries constitutionally mandate that treaties are supreme to domestic law. Domestic institutions such as this may serve as a de-facto enforcement mechanism of the international human rights regime, particularly in relation to human rights covenants.

Treaty Supremacy
By entering into an international treaty, a government is agreeing to abide by the international norms and regulations the treat puts forth. With regards to human rights covenants, member states agree to respect the human rights of its citizen according to the parameters established by the treaty. The extent to which countries abide by these agreements depends largely on their own willingness to self enforce the regulations since the international governmental organizations, as well as non-governmental organizations, have little ability to ensure the compliance of member states. Thus, a country’s level of compliance is largely a product of its commitment and ability to enforce the treaty within its own borders.

One indication of a country’s commitment to enforce treaties in general, including human rights covenants, is the status of treaties relative to domestic statutory and constitutional law. In countries where treaties are inferior to either statutory or constitutional law, the level of commitment to the treaty may be lower because they can be easily circumvented via new legislation or constitutional amendments. Thus, entering a treaty does not necessarily mean that the treaty’s regulations become the supreme law of the land. On the other hand, when treaties are superior to statutory or constitutional law, the level of commitment to treaties in general is higher because the government cannot simply nullify or circumvent them through its traditional lawmaking actions. Rather, the treaty becomes the supreme law overriding all other forms of legislation unless the country chooses to withdraw from the treaty. Thus, when superior legal status is granted to treaties, countries are accepting a higher level of commitment to them when they are entered into, and the government within a country faces greater restraints in attempting to nullify or simply ignore the treaty. Therefore, when treaties are granted
superior status within a country, violations of that treaty should be relatively fewer than in states where treaties are legally inferior.

Treaty supremacy clauses are especially important to respect for treaties when there is a regime change within a country. When a country enters a treaty, the desire to invalidate a treaty should be minimal as long as the regime that entered the treaty remains in power. However, if the regime changes and the new regime is hostile to the treaty, the desire to remain within the parameters of the treaty lessens. As a result, the regime should be more willing and thus more likely to violate the treaty. When treaties are granted superior status, however, the ability of the government to skirt or nullify the treaty is limited to withdrawing from the treaty or blatantly violating it since traditional means of legislation would not effectively harm the treaty’s clauses. Since both withdrawing from and ignoring a treaty are costly activities compared to simply legislating around it, regimes may be more likely to incur the cost of abiding by the treaty when they cannot easily circumvent it.

One manner in which treaties can be given superior status is with an explicit statement within the constitution. Article VI, Clause 2 of the United States Constitution, for instance, includes a clause stating that “all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land”, which makes treaties supreme over legislative statutes. This clause prevents the US government from easily overriding the treaty with a congressional act. Similar constitutional treaties can bind the governments of other countries in a similar manner. As a result, we anticipate that countries with such constitutional clauses will be more likely to respect human rights covenants they enter into and, thus, will have fewer violations. However,
because these clauses only come into effect when a country engages in an international treaty, we expect that they should not have an independent effect; rather, they should only have an effect when paired with a relevant treaty.

**Separation of Powers**

For treaty supremacy clauses to be respected within a country, the power to interpret treaties and domestic law must be separated from the power to make domestic law and enter treaties. When a single institution is vested with the power to make domestic law and enter treaties and interpret treaties and domestic law, supremacy clauses have little force because the single institution can ignore the treaty in its legal interpretation or reinterpret the treaty. This is particularly true when the current regime is unfavorable to the treaty. If the powers are all vested into a single body, the body will have little motivation to adhere to treaty supremacy in its legal interpretations. Rather, if the treaty is unfavorable to a majority, the actors should be disposed to interpret the law according to whatever law is most favorable even if that involved ignoring treaty supremacy.

However, if the interpretation power is vested in a different institution, there is a greater likelihood that 1) the alternative institution is disposed to the treaty or prior regimes (Dahl 1957), or 2) has greater motivation to abide by the treaty supremacy and thus the treaty, especially if part or all of the power of the institution is based upon its adherence to abiding by the constitution or the law as opposed to majority support. Thus, supremacy clauses should have the maximum impact when the power to interpret laws is separate from the power to legislate.

**Judicial Independence**
One separation of powers configuration that could maximize the likelihood that
treaty supremacy would be respected vests the legal interpretation power in an
independent judiciary and the law making power in a separate legislative body. An
independent judiciary is less likely to be influenced by the majority’s preferences than an
elected legislative body and more likely to be concerned with abiding by the actual law
since its legitimacy is largely based upon the perception that it is an impartial arbiter (e.g.
Benesh 2006; Gibson, Caldiera, and Baird 1998). As a result, an independent judiciary is
more likely to adhere to treaty supremacy and interpret legislative statutes as inferior than
a legislative body, especially when the majority is ill disposed to the treaty. By
maintaining the inferiority of domestic law to international treaties, courts can prevent
other branches of government from simply legislatively overriding or undermining
international treaties and, as such, can act as a barrier to treaty violation. Thus, vesting
courts with the power to interpret treaties, especially those that are given supreme status,
reduces the odds that the interpretation would violate the treaty and thus increases the
likelihood of compliance.

Indeed, the importance of an independent judiciary for securing human rights
protections has long been recognized by scholars, international organizations, and human
rights activist. Some even assert that “it is the indispensable link in the machinery for
securing individual protection against states’ human rights abuses (Camp Keith 2002,
195).” Scholars have long argued that the judiciary is a necessary check on the executive
and legislative branches of government (e.g. de Tocqueville 1996; Hamilton 1962), and,
by serving as a check, it may be able to effectively guarantee the protection of human
rights (Macovei 1999; Camp Keith 2002; Blasi and Cingranelli 1996). The perceived
importance of an independent judiciary is strongly reflected in the policies of various international organizations. For instance, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights specify that judicial independence is essential for the protection of human rights (see Camp Keith 2002).

Despite the widely held perception that the judiciary is fundamental for the protection of human rights, few studies have sought to empirically understand or examine the effect of judicial independence, if any, on respect for human rights. In one of the only studies on the topic, Blasi and Cingrinelli (1996) find that constitutional judicial independence was positively associated with the protection against political torture, imprisonment, and disappearances. Camp Keith (1999) similarly found that constitutional judicial independence reduced human rights violations. These two studies are among the very few that even examine the effect of judicial independence despite the hypothesized importance. In this study, we will further examine the impact of judicial independence.

Data

Dependent Variable

As previously discussed, we are interested in explaining variations in outcomes concerning domestic respect for human rights. In particular, we seek to understand the effect of international human rights conventions and domestic constitutional provisions on respect for physical integrity rights. As such, we utilize the CIRI Respect for Physical Integrity Rights index (Cingranelli & Richards 2004). These data were compiled based on the annual US State Department Country Reports on Human Rights Practices and the

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1 We include an in-depth description of our primary variables of interest. Control variables can be found in Table 1.
Amnesty International Annual Reports; the data are recorded for each state on a yearly basis. The CIRI index is an additive measure which takes into account citizens’ rights to live free from political imprisonment, torture, extra-judicial killing and disappearance. Each of these principle components ranges from 0 to 2 where “2” indicates no violations of a particular type took place during that year, “1” indicates that 1 to 49 violations of that type occurred, and a “0” indicates that more than 50 violations were recorded in that year. The total scale ranges from 0 to 8 where “0” is representative of no respect for physical integrity rights in a country for a given year and “8” is indicative of absolute respect for physical integrity rights.

**Independent Variables**

*Commitment to Human Rights.* The most common measure of a state’s commitment to the human rights regime is the number of human rights covenants which they are a party to as well as their expressed reservations (Landman 2005). However, as we have argued, the likelihood a state will comply with international covenants is not only contingent upon whether they have signed or ratified those covenants, but also the extent to which domestic constitutional provisions guarantee international treaty supremacy. Therefore, we create an interaction term using Landman’s Human Rights Treaty and Reservations Data and the Comparative Constitutions Project Data.

We are interested in respect for physical integrity rights only. Therefore, the covenants included in this study are only those which directly or indirectly call for the respect of all, or a type of, physical integrity rights. In particular, we examine the effect of the following covenants: the International Covenant on Civil and Political Rights, the Optional Protocol to the International Covenant on Civil and Political Rights, the Second
Optional Protocol to the International Covenant on Civil and Political Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. A more specific description of each covenant can be found in Appendix 1.

For each of these covenants, states who ratify are coded “2”, states who only sign are coded “1” and states who do not sign or ratify a covenant are coded “0”. Likewise, states that express no reservations are coded as a “4”. States with reservations are coded 1 through 3 depending upon the content of the reservation; reservations were assessed according to the level of commitment each state displays to the treaty obligations (Landman 2004). Reservations are coded “1” indicating a major impact, “2” indicating a noticeable effect, “3” indicating a minor impact and “4” indicating no reservation. The ratification measure is interacted with the number of reservations to generate the total weighted measure for every individual covenant for each state in a given year; the weighted measure for each covenant ranges from “0” to “8”. By adding the weighted scores for each relevant covenant together, we generate a yearly measure of total commitment to the international human rights norms for each state. Therefore, the final measure ranges from 0 to 32; “0” indicates no commitment to the relevant human rights covenants and “32” indicates complete commitment.

In order to test the hypotheses we put forth that international covenants will have a greater effect when treaties are given superior status to domestic law, we also interact this variable with two measures of constitutional treaty supremacy from the Comparative Constitutions Project (forthcoming). The first measure is whether a country’s constitution deems that international treaties are supreme to statutory law. The second measure is whether international treaties are supreme to constitutional law. For each
measure, we include a dummy variable coded “1” if international treaties are supreme and “0” if they are not or if is not mentioned in the constitution. When interacted, we are left two variables variable ranging from 0 to 32. We also include the two dummy variables in the model, though we do not anticipate that they will have an independent effect. Rather, their effect should be dependent on when a country is party to a treaty.

Judicial Independence. Defining judicial independence is far from straightforward. Within the literature, the concept of judicial independence has been described as “elusive and far more complex than at first appears (Walker 2006).” Iaryczower, et. al. (2002, 700) states that “[t]here are nearly as many definitions and taxonomies of judicial independence as there are authors writing on the subject.” In general, however, most scholars agree that for judiciaries to be independent they must be independent from the parties within a suit and independent from undue influence form governmental actors (Kahn 1993; Fiss 1993; O’Donnell 1994; Larkin 1996). Or, in other words, “judicial independence is the idea that a judge ought to be free to decide cases before her without fears or anticipation of (illegitimate) punishments or rewards (Ferejohn 1999, 355).”

Measuring judicial independence is even more difficult than defining the concept because the judicial decision making process is not transparent, so it is difficult observing whether a judicial decision was made independently or was the result of political pressure (Larking 1996, 611). This problem is compounded by the fact that in cross-national studies observing corruption or influence is especially difficult and some of the traits that independent judges can exhibited by dependent judges and vice versa. Because observing independent behavior is difficult, many scholars have turned to looking at the
structural and constitutional protections that help to ensure judicial independence and insularity such as life tenure, irreducible salary, fixed court size, transparent appointment process with checks and balances (e.g. Clark 1975). They argue that institutional structures protection judicial independence are necessary for judicial independence in practice and as such can be used as a measure of judicial independence (e.g. Camp Keith 1999). Thus, a variety of studies of judicial independence have created indexes of formal institutional features of the judiciary based on constitutional designs.

Problematically, however, formal guarantees do not necessarily equate to judicial independence. Countries will frequently have constitutional guarantees for judicial independence, but the government can and will often circumvent, ignore, and undermine those formal provisions thus creating formally independent courts that are practically dependent. This type of undermining formal judicial independent was evident in the Philippines during the Marcos regime (Tate and Haynie 1993) and is currently a substantial problem in Latin American countries (e.g. Stotzky 1993; Verner 1984; Walker 2006).

Though anecdotally and logically formal institutional protections are not the best indicator of judicial independence, that claim is subject to empirical inquiry, which very few studies have actually tested. In this study we will, eventually, be embed a test of the difference between formal and practical judicial independence by using two measure of independence: formal and practical in future research. For this paper, due to data limitations, we must stick to an admittedly crude measure of formal judicial independence. For our measure of formal judicial independence, we utilize data on the constitutional provisions concerning the judiciary from the Comparative Constitutions
Project (2007). Specifically, we code a judiciary as being independent if the constitution *explicit references the independence of the judiciary*. If it does, then the country is coded “1” for being independent and all others are coded “0” for not being independence.

Admittedly, this measure fails to fully capture the important nuances of judicial independence. Rather than being dichotomous, judicial independence is better measured as an additive index of the various features that makes a court independent such as fixed salaries, lengthy tenure, difficult removal process (see Blasi and Cingranelli 1996; Camp Keith 2002; Burbank and Feldman 2005). Furthermore, it is limited to *one* aspect of *constitutional* independence and says nothing about de facto independence. In future research, we aim to include a more complete scale measure of constitutional independence and a measure of de facto independence. For the time being, however, this extremely blunt measure is sufficient to capture some aspect of independence. We anticipate that judicial independence will be negative associated with human rights violations or, in other words, will lead to fewer violations.

*Separation of Power.* For separation of powers, we are primarily concerned with whether the power to interpret treaties is separate from legislative power and, specifically, whether it is vested in a judiciary. As such, we include a measure of whether the judiciary is constitutionally vested with the power to interpret treaties derived from the Comparative Constitutions Project (2007). The variable is coded “1” if the judiciary has treaty interpretation power and “0” for all others. If the judiciary is responsible for the interpretation of treaties, then we anticipate that they are more likely to adhere to the true meaning of the treaty and less likely to yield to legislation in conflict. Thus, we expect that when the treaty interpretation power is separate there
should be greater adherence to the provisions of the treaty and, thus, fewer human rights violations.

**Methods and Analysis**

Due to ordered nature of dependent variable, OLS regression is inappropriate, so we employ an ordered logit analysis. The model is highly significant (p < .001) with a respectable pseudo-$R^2$ of .23. The results of the analysis are presented in Table 2.

Consistent with previous research (e.g. Camp Keith 1999; Hathaway 2002), we find that a country’s level of commitment to human rights treaties has no significant effect on respect for human rights. Furthermore, the coefficient is negative meaning that higher levels of commitment are insignificantly associated with lower levels of respect, though the coefficient is exceptionally close to zero. Research consistently speculates that the reason that higher levels of expressed commitment do not appear to influence human rights violations is because of the nature of the countries that enter these treaties. Developing countries, especially new democracies, tend to enter these treaties in order to gain legitimacy in the international community. Because they are seeking legitimacy, they are also less likely to express reservations to the treaties but, rather, are more likely to accept the treaty in its entirety (see Landman 2005). However, the countries in need of establishing international legitimacy are also the countries that have a higher baseline level of violations. Thus, though signing the treaties may decrease the amount of violations within a country, the cross-sectional results fail to find any association since countries that fail to sign or express reservations may have lower baseline levels of violations.
Though we did not anticipate that treaty supremacy clauses, constitutional or statutory, have an independent effect on human rights, we find that constitutional treaty supremacy has a significant, negative effect on respect for human rights. Statutory treaty supremacy performed as expected and is not significantly associated with human rights, which is understandable since the provision should only come into play when a country is a party to a treaty and thus should not have an independent effect.

Contrastingly, we found that constitutional treaty supremacy has a significant, negative effect ($-0.432$) on respect for human rights ($p < 0.05$), so countries with constitutional treaty supremacy clauses are more likely to violate their citizens’ human rights. We suspect two potential explanations for the negative relationship. First, the types of countries that adopt constitutional treaty supremacy clause may have a higher baseline level of human rights violations. Indeed, the adoption of these clauses may be an attempt to respond to challenging domestic conditions. To examine this possibility, we need to look more closely at type of countries that adopt such provisions. Second, countries that contain constitutional treaty supremacy clauses may be more hesitant to enter into international treaties and more likely to express reservations. Thus, they may have less domestic and international restrictions on human rights violations. To further examine this explanation, we intend to construct a two-stage model controlling for the effect that constitutional treaty supremacy has on treaty membership.

Of primary interest to us is the effect of the interaction between a country’s level of commitment to human rights treaties and constitutional and statutory treaty supremacy. We find mixed support for our theory. Constitutional treaty supremacy behaves as expected and has a positive interactive effect. Thus, when constitutional law is
subordinate to international treaties, higher levels of commitment to human rights has a positive effect on respect for human rights (p < .05), though the coefficient is rather small (.040). Nonetheless, our findings suggest that international treaties can have an effect of respect for human rights when domestic law provides for the incorporation and supremacy of international law.

On the other hand, we found that statutory treaty supremacy does not have a significant interactive effect on respect for human rights. Though this is inconsistent with our hypothesis, the finding is not altogether surprising. Statutory law is subordinate to constitutional law in most countries, thus when treaties are supreme to statutory law, they are still inferior to constitutional law. Governments, therefore, may be able to circumvent the treaty’s clauses through constitutional interpretation or amendment. Furthermore, by relying on constitutional law to undermine treaties, governments may garner greater legitimacy for their actions than if they attempted to legislate around the treaty. Thus, limiting statutory means of skirting treaty restrictions may not be sufficient. This would especially be the case if the judiciary was against a treaty or not wholly independent from the legislature and thus likely to be willing to undercut the treaty. Unfortunately, in this study we do not test for the interactive effect of judicial independence. Overall, however, our results suggest that human rights treaties are effective when they are adopted as the supreme law of the land, and the government is left with no legitimate means of domestically undermining the commitment.

In addition to treaty supremacy clauses, we anticipated that vesting treaty interpretation powers into a judiciary and judicial independence would increase respect for human rights. However, our results fail to support our hypotheses. The judiciary
having the power to interpret treaties does not have a significant effect on respect for human rights, though the coefficient is signed properly. Similarly, judicial independence has a positive but insignificant effect on human rights. Part of the lack of significance is more than likely due to measurement error. Both measurements are overly simple and rather crude, and as data becomes available we hope to improve the measurements. In particular, the separation of powers measure fails to take into account whether the judiciary is the final arbiter of law, which is important because having review power matters only when overriding the judiciary is costly. The measure of judicial independence is similarly problematic. In particular, we need to include formal and informal measurements of powers and institutional independence rather than a simple dichotomy of whether judicial independence is explicit in the constitution. In general, though our results suggest that neither factor is important, we are hesitant to conclude that to be the case. Rather, future research should explore the question with better measurements.

Finally, all of our control variables behave as expected. Consistent with previous research (e.g. Davenport 1995), we find that democratic regimes are far more likely than autocratic regimes to violate their citizens’ physical integrity rights because of the direct accountability of leaders to citizens in democracies. In line with arguments by Davenport (1995), our analyses also demonstrate that civil conflict negatively impacts respect for physical integrity rights because civil conflict generates a perceived threat by host governments and necessitate repressive governmental responses in order to maintain stability.

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3 See also: Davenport (1999), Franklin (1997), Gartner and Regan (1996), and McNitt (1995).
Structural adjustment agreements and the Cold War period also have a negative effect on domestic respect for physical integrity rights. Structural adjustment agreements negatively and unevenly affect respect for economic and social rights, thus increasing popular protests and simultaneously increasing the need for government repression in order to maintain control (Abouharb & Cingranelli 2006; 2007). The Cold War created a situation in which the two powers were maximizing their alliances; therefore, the human rights practices of other states were ignored in favor of U.S.- or Soviet-friendly governments (Cingranelli & Richards 1999). Other variables are not significant but all are in the expected direction.

**Conclusions**

Overall, we find mixed support for our theory of treaty supremacy. We find evidence that the adoption of constitutional provisions that make treaties supreme to constitutional law increases respect for human rights as countries make stronger commitments to international treaties. However, we fail to find a similar interactive effect for statutory treaty supremacy. Additionally, we find that adoption of constitutional treaty supremacy has an independent, negative effect on human rights, while statutory treaty supremacy has no effect. We speculate that the negative effect of constitutional treaty supremacy is the result of a two stage process that we are not capturing in this model in which countries with treaty supremacy clauses are less likely to make strong commitments to international treaties. We further fail to find support for our theses that separation of powers and judicial independence will increase respect for human rights.
Undoubtedly our model is underspecified and some of our variables suffer from measurement reliability issues. In particular, the most appropriate model would be a two-stage model which takes the initial decision to enter into international human rights treaties into account. Our dataset certainly indicates a need for this, as the majority of states without constitutional treaty supremacy clauses are those states which are more committed to the human rights regime.

Additionally, two measures are particularly problematic at this point in our research, though they will certainly be corrected once the data become available. First, the separation of powers measure does not include whether or not the judiciary is the final arbiter of law. Without this information, the analysis does not take into account the true effect of a judiciary that can impose substantial costs for treaty violation, thus influencing domestic regimes’ willingness to violate their citizens’ physical integrity rights. Similarly, the measure of judicial independence used in our analysis is also insufficient. This is merely a crude measure of whether the domestic constitution explicitly guarantees judicial independence. To truly estimate its effect, we will include both substantive and procedural aspects of judicial independence.

Additionally, we will interact judicial independence with commitment to the international human rights regime via treaty signing or ratification. Thus, while our analysis is suggestive that domestic institutions may influence the effectiveness of an international treaty, we are hesitant to make strong conclusions about all of the institutions of interest. In particular, we expect better measures of separation of powers and judicial independence could alter their individual significance in future tests. In order to better address these issues, we intend to acquire data from the Comparative
Constitutions Project once fully released. This data will include a better separation of powers measure which takes into account whether the judiciary is in fact the final arbiter of law, as well as judicial independence measures of both the formal and informal powers.

We also intend to examine the effect of treaty supremacy on the decision to enter a treaty. Our data suggests it is very likely states which do not have constitutional treaty supremacy clauses are more willing to enter into international human rights treaties than those that do have supremacy clauses. Also, states with supremacy clauses will express more reservations to the treaty if they do ratify. As these clauses largely take away states’ ability to act as completely independent and sovereign entities, we certainly expect this to be the case. Thus, our future analyses will model the relationship of interest as a two-stage process.

Nonetheless, our current model provides evidence that the effectiveness of international treaties may in fact be conditioned by domestic factors. Specifically, states which have constitutional clauses making international treaties the supreme law of the land are more likely to adhere to human rights treaties, thus increasing their respect for the physical integrity rights of their citizenry. We attribute this to the decreased ability of the domestic regime to legislate around, or completely ignore, international treaties if they are granted this special status. Otherwise, domestic law may be utilized to carry out a domestic leadership’s agenda irrespective of treaty membership.
References


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<td>Variable ranges from “0” to “8” where “0” indicates no respect for physical integrity rights and “8” indicates absolute respect.</td>
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<td>Physical Quality of Life Index</td>
<td>Composite measure of three indicators: infant mortality rate, life expectancy at age one, and the adult literacy rate.</td>
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<tr>
<td>Population</td>
<td>Total population of all residents of a given state</td>
</tr>
<tr>
<td>UK Colonial Heritage</td>
<td>1 = states that are former colonies of the UK, 0 = all other states</td>
</tr>
<tr>
<td>Cold War</td>
<td>1= Cold War year, 0 = All other years</td>
</tr>
</tbody>
</table>
Table 2. Ordered Logit Analysis of Respect for Physical Integrity Rights

<table>
<thead>
<tr>
<th></th>
<th>Coefficient (Standard Errors)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Domestic Constitutional Factors and Treaty Membership</strong></td>
<td></td>
</tr>
<tr>
<td>Commitment to HR Treaties</td>
<td>-.003 (.010)</td>
</tr>
<tr>
<td>Statutory Treaty Supremacy</td>
<td>.267 (.231)</td>
</tr>
<tr>
<td>Constitutional Treaty Supremacy</td>
<td>-.432 (.245)**</td>
</tr>
<tr>
<td>Commitment to HR Treaties*Statutory Treaty Supremacy</td>
<td>-.009 (.015)</td>
</tr>
<tr>
<td>Commitment to HR Treaties*Constitutional Treaty Supremacy</td>
<td>.040 (.024)**</td>
</tr>
<tr>
<td>Separation of Powers (Judicial Review of Treaties)</td>
<td>.075 (.265)</td>
</tr>
<tr>
<td>Judicial Independence</td>
<td>.204 (.156)</td>
</tr>
<tr>
<td><strong>Political Factors</strong></td>
<td></td>
</tr>
<tr>
<td>Regime Type</td>
<td>.040 (.011)***</td>
</tr>
<tr>
<td>UK Colonial Heritage</td>
<td>.225 (.153)</td>
</tr>
<tr>
<td>Cold War</td>
<td>-.452 (.146)**</td>
</tr>
<tr>
<td><strong>Economic Factors</strong></td>
<td></td>
</tr>
<tr>
<td>GDP per capita</td>
<td>.000 (.000)</td>
</tr>
<tr>
<td>Change in GDP per capita</td>
<td>.011 (.001)</td>
</tr>
<tr>
<td>Structural Adjustment</td>
<td>-.030 (.013)***</td>
</tr>
<tr>
<td><strong>Conflict</strong></td>
<td></td>
</tr>
<tr>
<td>Civil Conflict</td>
<td>-1.622 (.170)***</td>
</tr>
<tr>
<td>Interstate Conflict</td>
<td>.101 (.132)</td>
</tr>
<tr>
<td><strong>Other</strong></td>
<td></td>
</tr>
<tr>
<td>Population</td>
<td>-.001 (.000)</td>
</tr>
<tr>
<td>Physical Quality of Life Index</td>
<td>.001 (.005)</td>
</tr>
<tr>
<td>Respect for Physical Integrity Rights(\text{t-1})</td>
<td>.874 (.048)***</td>
</tr>
<tr>
<td><strong>Cut-Points</strong></td>
<td></td>
</tr>
<tr>
<td>Cut1</td>
<td>-.939 (.469)</td>
</tr>
<tr>
<td>Cut2</td>
<td>.288 (.473)</td>
</tr>
<tr>
<td>Cut3</td>
<td>1.562 (.466)</td>
</tr>
<tr>
<td>Cut4</td>
<td>2.735 (.472)</td>
</tr>
<tr>
<td>Cut5</td>
<td>4.085 (.461)</td>
</tr>
<tr>
<td>Cut6</td>
<td>5.282 (.484)</td>
</tr>
<tr>
<td>Cut7</td>
<td>6.537 (.486)</td>
</tr>
<tr>
<td>Cut8</td>
<td>8.59 (.522)</td>
</tr>
<tr>
<td><strong>Pseudo R(^2)</strong></td>
<td>.23</td>
</tr>
<tr>
<td>N</td>
<td>1150</td>
</tr>
</tbody>
</table>

* p < .10, ** p < .05, *** p < .01, one-tailed test