1

Introduction

In 1980, following a military coup in Bolivia, the Estrada brothers, Renato and Hugo, were detained near a control gate by a Bolivian military patrol while on their way to visit their sick grandfather. State officials proceeded to remove their belongings and beat and torture them. Following the beating, they were transferred by security forces to a military post, and then to a special security office (Scharrer, 2014a). After being sent to the security office, Renato disappeared. Reflecting on the incident, Hugo claims, "Since we entered the [security office], since then, I have never seen my brother again" (Amnesty International, 2014). To no avail, family members appealed to state authorities, requesting information, calling for an investigation, and filing several formal complaints throughout the 1980s. Finally, in 2003, Hugo requested that the Human Rights Commission in Bolivia investigate the disappearance, and in 2004, the Ombudsman of Bolivia filed a petition in the Inter-American Human Rights System on behalf of Renato (Scharrer, 2014a).

After 22 years of repeated state failures to adequately investigate and prosecute those responsible for the torture and disappearance of Renato, the case reached the Inter-American Court of Human Rights. In 2008, the Inter-American Court delivered a judgment, finding that Bolivia had violated several articles of the American Convention on Human Rights, including the right to life and the right to be free from torture.[1] Following the judgment, the state took several positive steps designed to remedy the rights abuse, including increasing resources for the Interinstitutional Council for the Clarification

[1] The articles violated included Article 4(1), Article 5(2), and Article 7, among several other articles. *Ticona Estrada v. Bolivia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 191, 45(Nov. 27, 2008).

of Forced Disappearances (CIEDEF),[2] a necessity for the CIEDEF to carry out its mandate.[3]

Notably, following the Inter-American Court's judgment, physical integrity rights practices improved in Bolivia. The left panel of Figure 1.1 displays Bolivia's physical integrity rights practices before and after the 2008 adverse judgment. Physical integrity rights include freedom from torture, disappearance, political imprisonment, and extrajudicial killing. These data largely represent allegations of physical integrity abuse made in US State Department and Amnesty International human rights reports. Higher values indicate greater respect for rights, and lower values indicate worse respect for rights (Fariss, 2014). As shown in the left panel of Figure 1.1, respect for physical integrity rights was higher in the 4 years following the Inter-American Court judgment than in the 4 years prior, an indication that the adverse judgment deterred the future abuse of rights in Bolivia.

However, adverse regional human rights court judgments do not always deter future human rights abuses. In August 1974, Rosendo Radilla Pacheco, a musician and political and social activist from Guerrero, Mexico, was traveling with his 11-year-old son by bus from Atoyac de Álvarez to Chilpancingo, Guerrero. The bus underwent a search at a military checkpoint. All passengers were evacuated and only allowed to reboard after the search was completed. However, Rosendo was not allowed back on the bus and was arrested for his possession of *corridos*, traditional Mexican songs telling stories about oppression and the life of peasants (Khananashvili, 2014). Rosendo stated that his possession of the songs was not a crime, to which a soldier replied, "for the meantime, you're screwed" (Khananashvili, 2014, 1790). After his arrest, Rosendo was taken to the military barracks of Atoyac de Álvarez, where he was blindfolded and beaten. His family made repeated efforts to find him. Due to the repressive environment in Mexico, however, relatives and friends who worked for the state warned the family that they could face arrest by state officials if they attempted to pursue or formally file a criminal complaint.

It was not until 1992 that Rosendo's daughter filed the first criminal complaint, which was dismissed for lack of evidence. Subsequent complaints were filed every year from 1999 to 2001. After a series of failed investigations

[2] The Consejo Interinstitucional para el Esclarecimiento de Desapariciones Forzadas, or CIEDEF, is an institution designed to investigate and search for the remains of victims of enforced disappearances that occurred during the dictatorships of 1967 to 1982.

[3] See *Ticona Estrada v. Bolivia*, Monitoring Compliance with Judgment Inter-Am Ct. H.R., (February 23, 2011).

from 2005 to 2009, Rosendo was not located, nor was justice delivered for Rosendo or his family (Khananashvili, 2014). The case was submitted to the Inter-American Court of Human Rights, and in November 2009, the Court found the state to be in violation of several articles of the American Convention on Human Rights, including the articles guaranteeing the right to life and the right to be free from torture.[4]

Although the torture and disappearance in the case of *Radilla Pacheco v. Mexico* took place in the 1970s, like many cases before the Inter-American Court, the rights abuses addressed in the case were still occurring at the time of the 2009 judgment.[5] In fact, when asked about the relevance of the case to current human rights practices, the legal director of the Mexican Commission for the Defence and Promotion of Human Rights claims, "The Army has a history which has not been addressed … and this omission is the source of the human rights violations being committed by the military today" (Peace Brigades International, 2010).

There is little evidence that the judgment influenced human rights practices in Mexico. The Mexican legislature paid lip service to the judgment by proposing a reform to the military justice system stipulating that the military should no longer have jurisdiction in cases related to forced disappearance, torture, and rape committed by soldiers against civilians. However, the Inter-American Court stated that the legislative reform did not go far enough. The Court demanded that the military justice system should only be granted jurisdiction over crimes committed by members of the military against members of the military.[6]

Consistent with the observations of the Inter-American Court, the evidence presented in Figure 1.1 shows that physical integrity rights in Mexico did not improve following the *Radilla Pachco v. Mexico* judgment. In fact, physical integrity rights practices declined in Mexico in the 4 years following the

[4] The Inter-American Court found Mexico had violated Article 5(1), 5(20), Article 3, and Article 4(10), among several others. *Radilla Pacheco v. Mexico*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 209, (Nov. 23, 2009).

[5] One preliminary objection to the case lodged by the state of Mexico involved the Inter-American Court's jurisdiction: the state alleged that the Inter-American Court did not have jurisdiction in the case because the crime had taken place before Mexico accepted the jurisdiction of the Inter-American Court. The Inter-American Court found that disappearances were an ongoing human rights abuse in Mexico, and dismissed the state's objection. Furthermore, the Inter-American Court drew a distinction between instantaneous acts and continuous acts, or abuses that are ongoing, finding that forced disappearances represent a continuous act.

[6] See *Radilla Pacheco v. Mexico*, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., (May 14, 2013).

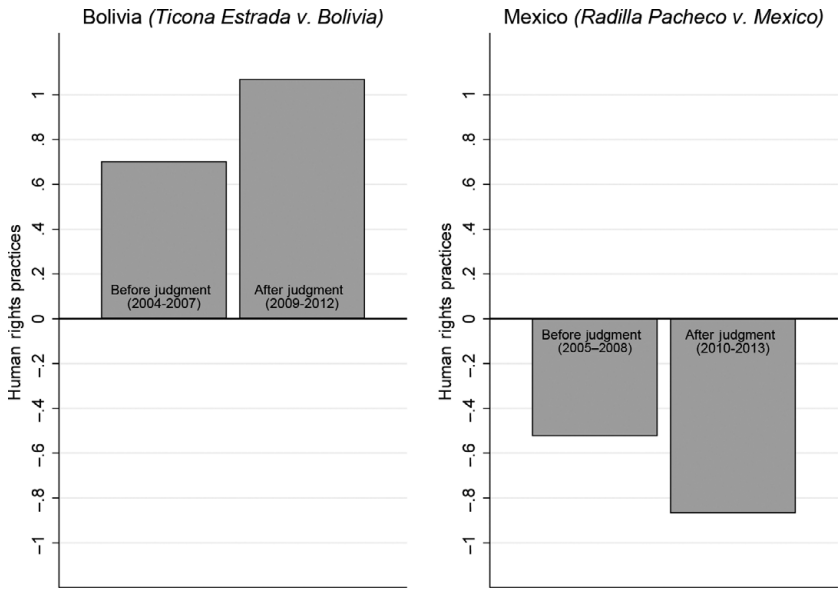

FIGURE 1.1. Average respect for physical integrity rights before and after adverse Inter-American Court judgments

Notes: Figure 1.1 displays the average level of physical integrity rights practices before and after the 2008 adverse Inter-American Court of Human Rights judgment in Bolivia in the left panel and before and after the 2009 adverse Inter-American Court of Human Rights judgment in Mexico in the right panel. Data on physical integrity rights are taken from Fariss (2014) and range from about −2 to +3 in the Americas.

adverse judgment. Moreover, in the year of the judgment (2009), disappearances were only occasionally taking place, but they increased in the years after the judgment (Cingranelli, Richards, and Clay, 2014).

The disparity in human rights practices following the adverse judgments in Bolivia and Mexico is puzzling and raises an important question: *Do adverse judgments rendered by regional human rights courts deter future abuses?* I argue that yes, adverse judgments rendered against a country can deter future human rights abuses, but only when the chief executive has the capacity and willingness to respond to the adverse judgment with human rights policy changes.

This book examines the conditions under which regional human rights courts improve human rights practices. Regional human rights courts render judgments in individual cases of human rights abuse, often because individuals and their families seek justice for a specific human rights violation. However, regional courts have a much broader mandate: Adverse judgments should discourage the commission of future human rights abuses by instilling fear

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of the consequences of continued abuse, that is, regional courts seek to deter further abuses. In fact, the European and Inter-American Courts of Human rights often require states to undertake measures of nonrepetition, including changes to laws, procedures, and administrative practices, designed to ensure that similar violations do not occur in the future (Hillebrecht, 2014).

A major contribution of this book is the focus on regional court *deterrence*. While many studies focus on compliance with regional human rights court orders (e.g., Hawkins and Jacoby, 2010; Hillebrecht, 2014), in this book, I examine regional court deterrence, or the effectiveness of regional courts. Studying deterrence provides better insight into the broad influence of regional human rights courts on future state human rights practices, as opposed to state compliance with a list of court orders. As I discuss in Chapter 2, there are two types of deterrence, general and specific. With general deterrence, states are deterred when they observe the consequences faced by other human rights–abusing states. Specific deterrence focuses on the rights-violating state; adverse judgments rendered against a rights-abusing state discourage that state from violating rights in the future. In other words, general deterrence captures the influence of the presence and activity of regional courts more generally on state human rights practices, while specific deterrence captures the influence of specific adverse judgments on the adverse judgment recipient's human rights practices. As I argue in more detail in Chapter 2, specific regional court deterrence is more likely to be effective than general deterrence because adverse judgments directly influence the recipient state's expectation of future adverse judgments and the costs thereof.

Despite the important deterrent mandate of regional human rights courts, like the European or Inter-American Courts of Human Rights, they face real and tangible enforcement challenges. States are sovereign, and as a result, there is no authority above the state to ensure enforcement of regional court judgments. The enforcement problem is even greater with respect to international or regional human rights law because international human rights agreements do not govern interactions among states, which often generate mutual cooperative benefits (e.g., trade benefits). Rather, international human rights law governs the state's relationship with its own citizens, and states do not receive the same type of cooperative benefits when they join an international (or regional) human rights agreement. That is, a trade agreement provides trade benefits for member states (e.g., tariff reduction, free trade). States recognize that to receive such trade benefits, cooperation in the trade regime is necessary, as states that fail to cooperate will lose access to such benefits. On the other hand, international human rights law is unique in that states agree to cooperate on policy that is largely domestic – the treatment of their

own citizens. The decision by a state to withdraw or threaten to withdraw from the international human rights regime and engage in human rights abuses often has little influence on other member states. As a result, there are fewer mechanisms by which to enforce international human rights law than other types of international law.

As a result of these enforcement challenges, I argue that the chief executive plays a key role in the enforcement of adverse regional court judgments. As head of state, executive responsibility includes ensuring human rights policy changes following adverse regional human rights court judgments. In response to an adverse judgment, the executive adopts, administers, monitors, and enforces human rights policy, all of which are necessary for ensuring greater human rights protections.

That said, I argue that the executive may not make important human rights policy changes following an adverse judgment for at least two reasons. First, human rights policy change is *costly*, as it generates both material and political costs. For example, putting programs in place to monitor the behavior of state agents, like the police, may entail significant material costs (e.g., body cameras). Second, the executive may have *incentives* to maintain repressive policies. The executive often finds repressive policy to be a useful strategy for quelling the opposition, particularly when executive survival in office is threatened. Given the high costs of improving human rights practices and the incentives that executives have to repress, regional human rights courts face clear and tangible challenges to their ability to deter future human rights abuses. I argue that the executive is more likely to make human rights policy changes following an adverse judgment only when the executive has the *capacity* and *willingness* to make such changes.

Because policy change is costly, the executive must have the *capacity* to adopt, administer, monitor, and enforce human rights policy. So, *when does the executive have the capacity to respond to adverse judgments with human rights policy change?* I argue that the executive has greater capacity to protect some types of rights more than others. That is, the protection of civil and political rights is more feasible because it is more directly under the executive's control. Improving civil and political rights does not require the same amount of resource expenditure as improving other types of rights, like physical integrity rights. By analyzing data on adverse regional human rights court judgments involving different types of rights violations (i.e., civil and political rights violations and physical integrity rights violations), I demonstrate that the feasibility of human rights policy change directly influences the executive's capacity to respond to adverse regional court judgments. I further explain that the executive has a greater capacity to respond to adverse

judgments with human rights policy change when the state has access to outside resources (e.g., international capital). When the executive has the confidence of creditors, fiscal flexibility to engage in human rights policy change grows. Examining data on state creditworthiness, which represents fiscal flexibility, I demonstrate that the ability to call on outside resources provides the executive with greater capacity to make human rights policy changes in response to adverse regional court judgments.

Moreover, because the executive has incentives to utilize repression, the executive must be *willing* to improve human rights, but *when will the executive be willing to respond to adverse judgments with human rights policy change?* I argue that executive willingness to undertake human rights policy change following adverse regional court judgments depends on pressure from the mass public, foreign economic elites, and domestic political elites. With respect to mass public pressure, the executive is more likely to make human rights policy changes following an adverse judgment when the executive is insecure in office and less likely to do so when the state faces threats to the political and social order. Leveraging evidence from data on election timing and executive vote share, I find that the mass public can generate pressure on the executive to respond to adverse judgments with human rights policy change. Furthermore, analyzing data on political stability and the absence of violence and terrorism shows that the mass public can also generate pressure on the executive to not undertake human rights policy change following an adverse judgment.

As for elite pressure, foreign elites push the executive to engage in human rights policy change following an adverse judgment when they condition access to economic resources on human rights practices. Using data on foreign direct investment, I show empirically that when the executive faces a potential loss of economic benefits, the executive is more likely to respond to adverse judgments with human rights policy change. Similar to foreign economic elites, domestic political elites such as domestic judges and legislators are also capable of generating pressure on the executive to prioritize human rights policy following an adverse judgment. Using data on national judicial power and the number of legislative veto players, I show evidence that under certain conditions, domestic political elites pressure the executive to change human rights policy in response to an adverse judgment. Taken together, focusing on executive capacity and willingness to respond to adverse regional court judgments provides important insights into the puzzle of when adverse judgments deter future human rights abuses.

The theoretical argument in this book stipulates that adverse regional human rights court judgments can deter future human rights abuses, but their deterrent influence depends on executive capacity and willingness to make

human rights policy changes. While executive capacity and willingness are important for ensuring regional court deterrence, regional courts are unique institutions with a distinct influence on executive behavior. Although there are many types of international human rights law, regional human rights courts are particularly well suited to deter future human rights abuses. In the next section, I discuss several unique features of regional human rights courts and the important influence regional courts exhibit on state human rights practices.

1.1 WHY ARE REGIONAL HUMAN RIGHTS COURTS IMPORTANT FOR RIGHTS PROTECTION?

As part of the international human rights regime, regional human rights courts play a vital role in ensuring human rights protections. Whereas international human rights law generally plays an important role in setting international standards and encouraging domestic mobilization (Simmons, 2009), regional human rights courts have several unique features that make them particularly important for the protection of rights in the regions in which they render judgments. Regional human rights courts are the only supranational (operate above the level of the state) judicial bodies designed to hold states accountable for human rights abuses by rendering adverse judgments against states.[7] Because regional human rights courts have a truly unique responsibility and function, treating them as though they are roughly equivalent to other international human rights institutions means that scholars and practitioners miss the unique influence of these regional courts on state human rights practices. In this section, I discuss how regional courts fit into the larger international human rights regime as well as the key institutional design features that make regional courts uniquely suited to influence state human rights practices.

Despite the critical role that regional courts play in protecting human rights, like international human rights law more generally, they are unable to do so without domestic actors. International law suffers from an enforcement problem as there is no central authority to enforce legal commitments made by states. Enforcement of international *human rights* law is arguably even more problematic because whereas most international law governs relationships among states, international human rights law governs state-society relations. Enforcement mechanisms like reciprocity and retaliation help ensure enforcement of international law generally because states often receive positive

[7] The International Criminal Court represents an international court designed to hold *individuals* accountable.

benefits from their cooperation with other states. For example, membership in an international trade agreement or alliance provides economic or security benefits for both states involved. International human rights law, on the other hand, does not ensure such positive benefits. Rather, international human rights law is unique in that state cooperation involves agreeing to regulate behavior that is largely domestic, or the relationship between the state and society. Given significant enforcement challenges, the impact of international human rights law has been met with skepticism.

International human rights law presents a unique enforcement issue, and I argue that regional human rights courts are particularly well suited to address the enforcement challenge. Regional (or supranational) human rights courts represent international legal bodies charged with the promotion and protection of human rights. Regional human rights courts are *international* in nature, and when states accept their jurisdiction, regional courts have the authority and legal backing necessary to interpret international law (Alter, 2014). That is, regional courts are judicial bodies and have the authority to judge whether state behavior aligns with international law. Regional human rights courts are unique in this regard, as most international human rights treaties do not have corresponding courts with the power to interpret the law. Regional human rights courts are designed to ensure state accountability for human rights abuses. In this way, they are not designed to hold individuals criminally accountable, but rather, they hold states accountable by rendering adverse judgments against states and monitoring state human rights behavior postjudgment. By rendering adverse judgments, regional human rights courts are designed to deter future human rights abuses by the state.

Although there is some evidence that individuals are deterred as a result of domestic and foreign prosecutions (Sikkink, 2011) and as a result of the activity of the International Criminal Court (Jo and Simmons, 2016), the deterrent effect of regional human rights courts has not yet been explored. Regional human rights treaties, and the courts they establish, have been grouped alongside many United Nations treaties and treaty bodies as part of the state accountability model, whereby they represent institutions designed to hold the state, rather than individuals, accountable for human rights violations. Even though regional human rights courts share some similar features with international human rights treaties, regional human rights courts were designed to operate as distinct legal entities. As such, there is reason to expect that, unlike other international human rights treaties, regional human rights courts can deter future human rights abuses in the states where they render adverse judgments.

I argue that there are three key institutional design features that make regional human rights courts particularly effective in deterring future human rights abuses. Three key differences include (1) exclusive membership, (2) mechanism of influence (judgments rather than recommendations), and (3) institutional independence. First, membership in regional human rights treaties that establish regional human rights courts is more exclusive than membership in international human rights treaties. Exclusive membership means that membership is restricted to a subset of states that meet particular membership criteria. By their very nature, membership in regional human rights treaties (and their associated courts) is limited to a specific region. Like committees of experts that monitor compliance with international human rights treaties, regional court justices are relatively removed from the political and social context of countries where they make recommendations or render judgments (Cavallaro and Brewer, 2008). Arguably, however, regional courts are relatively less removed from the states with which they interact than are the committees of experts that comprise international human rights treaty bodies. Inter-American Court of Human Rights justices are nationals of states with membership in the Organization of American States (OAS), for example.[8] As a result, regional court justices have greater familiarity with the domestic legal and institutional structures of the states in which they render adverse judgments, including the public sentiment associated with particular cases and the domestic reception of adverse regional human rights court decisions by the public. Restricting membership to a regional subset of states ensures that regional court judges are more fully aware of interstate nuances and domestic political differences across states and are thus able to take these factors into consideration when evaluating state responses to regional courts.

Second, regional human rights courts have a unique mechanism of influence in that they render *judgments*, which distinguishes them from other international legal bodies like international human rights treaty bodies, which utilize *recommendations* to influence state human rights behavior. Unlike international human rights treaties, regional human rights courts (established by regional human rights treaties), render decisions against the state for specific human rights abuses. That is, regional human rights courts provide clear censure for human rights violations. Legal interpretation by a supranational judicial body, like a regional court, is arguably more difficult for the state to ignore than a series of recommendations from an international treaty body. For a regional court to render an adverse judgment, an individual petition must

[8] Though they are nationals of OAS member states, they are charged with international civil service.

clear an admissibility stage, meet high standards of proof in a court of law, and be thoroughly examined by a panel of judges, lending adverse judgments substantial legitimacy. To be clear, regional human rights courts *do not* possess strong international enforcement mechanisms, but the clear legal censure provided by an adverse court ruling may be more difficult for political actors to overlook, particularly when compared to recommendations from international human rights treaty bodies. Even the names of the enforcement mechanisms used by treaty bodies and courts invoke distinct responses. *Recommendations* may be likened to suggestions that should be considered by the state, whereas a *judgment* is a final authoritative decision requiring reparations, or actions to remedy human rights abuses. Moreover, civil society actors (e.g., pro-rights advocates) and the public more generally gain more leverage when utilizing an adverse judgment for legal backing than they do when relying on state commitment to an international treaty, increasing their chances of successful mobilization following an adverse regional human rights court decision (Simmons, 2009).

Finally, regional human rights courts are relatively independent international institutions. As interpreters of the law, courts are generally considered to be apolitical in nature, looking to the law (and sometimes legal precedent) and the facts of the case and making an independent determination of whether a violation occurred. The public values the rule of law and checks and balances in government, and therefore values the court, as a means to prevent exploitation by the state (Weingast, 1997). Given that the public's preferences are not necessarily correlated perfectly with the government, the public uses courts as a cue for bad government behavior and as a tool to monitor and sanction that behavior (Carrubba, 2009). Public support is important for courts because it ensures that their decisions are upheld by political actors with enforcement power. Public support is more likely when the court is perceived to be a legitimate actor and when the court operates independent from other political actors.

Unlike national courts, regional human rights courts do not face the same threats to independence from other domestic political actors, such as the executive or legislature. However, regional courts may be susceptible to external political influence because regional human rights courts were, after all, created by states. One of the primary ways states may influence regional court independence involves the careers of judges (Voeten, 2012b, 17). Regional court judges are typically nominated by their home governments and elected by the regional governing body (e.g., Organization of American States). Regional court judges' concern for their careers opens the door to the potential for highly political appointment/election processes in which regional court

judges represent the interests of their home country (Posner and Figueiredo, 2005). Furthermore, empirical evidence indicates that regional court justices may fear reappointment concerns for dissenting opinions (Voeten, 2009).

However, regional courts were designed to discourage undue state influence. For example, regional court justices are considered international civil servants and are not representatives of their home state (Pasqualucci, 2003, 10). In addition, European Court judges are nominated alongside two other candidates by their home states and are elected to 9-year nonrenewable terms (as of the adoption of Protocol 14 in 2010) by majority vote in the Parliamentary Assembly of the Council of Europe. The adoption of the fixed nonrenewable terms provides European Court judges substantial autonomy from the influence of their home states, as reelection concerns do not influence judicial decision making in the regional court. Inter-American Court judges are elected by the OAS General Assembly to 6-year terms, with the option of a one-term renewal. Although the Inter-American Court offers renewable terms, Inter-American Court (and European Court) judges are not elected directly by their home governments, which helps ensure that they remain accountable to constituents concerned with the advancement of human rights within the region, and not solely to constituents of their home state. Empirical evidence shows that European Court judges behave impartially in their decision making and are "politically motivated actors in the sense that they have policy preferences on how to best apply abstract human rights in concrete cases, not in the sense that they are using their judicial power to settle geopolitical scores" (Voeten, 2008, 417).

Relatively speaking, regional human rights courts are further insulated from the undue political influence that plagues other human rights institutions, such as the UN Human Rights Council, where states are members of the organization and state foreign ministers participate in meetings. As relatively independent bodies, regional human rights courts utilize the power of information to influence domestic actors. When a regional court renders an adverse judgment against a state, it imparts several key pieces of information to the domestic public and political actors. The adverse judgment communicates to the public and domestic political actors that human rights abuses are detectable. After all, regional human rights court judges evaluate the facts of the case and render an adverse judgment when sufficiently high evidentiary standards of proof have been met.[9] Adverse regional human rights court judgments also provide information on the facts of the case, including the

[9] For example, the European Court of Human Rights' evidentiary standards of proof require "beyond a reasonable doubt."

circumstances surrounding the case. This information allows the public and political actors to assess whether or not the abuse was due to a systematic policy failure and the general steps necessary to remedy the abuse. Systematic human rights policy failures often generate many victims, and as a result, adverse regional human rights court judgments also signal that future litigation is likely if human rights abuses continue. Institutional independence provides regional human rights courts with greater leverage to influence state human rights practices than other types of international human rights law.

International human rights institutions vary substantially in their institutional design. By studying regional human rights courts as theoretically and empirically equivalent to other international human rights legal bodies, scholars have missed the importance of key institutional design differences between these legal bodies in explaining variation in their influence on state human rights practices. Because of their more exclusive membership, mechanism of influence (adjudication, rather than recommendations), and institutional independence, regional human rights courts are arguably designed to be more effective in securing rights protections than international human rights treaties. As a result, domestic actors are inclined to take judgments coming from these courts seriously, and understanding when regional human rights courts deter is important for securing and maintaining rights protections globally.

Regional human rights courts, then, have the potential to influence domestic actors, particularly executive behavior. The argument advanced in this book highlights the important role of international political institutions as actors in international politics, as opposed to conceptualizing international institutions as forums designed solely to facilitate state interests or interactions (Gourevitch, 1978).[10]

1.2 COMPARING REGIONAL COURTS IN EUROPE AND THE AMERICAS

In this book, I leverage data on 1,275 adverse European Court of Human Rights judgments involving physical integrity rights violations from 1980 to 2012 and 121 adverse Inter-American Court of Human Rights judgments involving violations of physical integrity rights from 1989 to 2012, as well as human rights data to provide the first comprehensive analysis of the conditions under which decisions handed down by the two most active regional courts in the

[10] This has been termed the "second image reversed" as international factors influence domestic politics (Gourevitch, 1978).

world deter future human rights abuses. The activity of the regional human rights courts in Europe and the Americas is unique and unprecedented.[11] Whereas, most research on regional human rights courts focuses on the work or outcomes of one regional court at the expense of the other (e.g., Pasqualucci, 2003; Christou and Raymond, 2005; Cichowski, 2007; Cavallaro and Brewer, 2008; Keller and Stone-Sweet, 2008), I engage in a comparative approach (following Hawkins and Jacoby, 2010; Hillebrecht, 2014) for several reasons.

First, the European and Inter-American Courts possess unparalleled levels of authority and legitimacy in the international human rights regime, outpacing the activity of other regional or international human rights courts around the world.[12] To get a sense of the unprecedented level of activity of the European Court, Figure 1.2 shows the number of petitions alleging

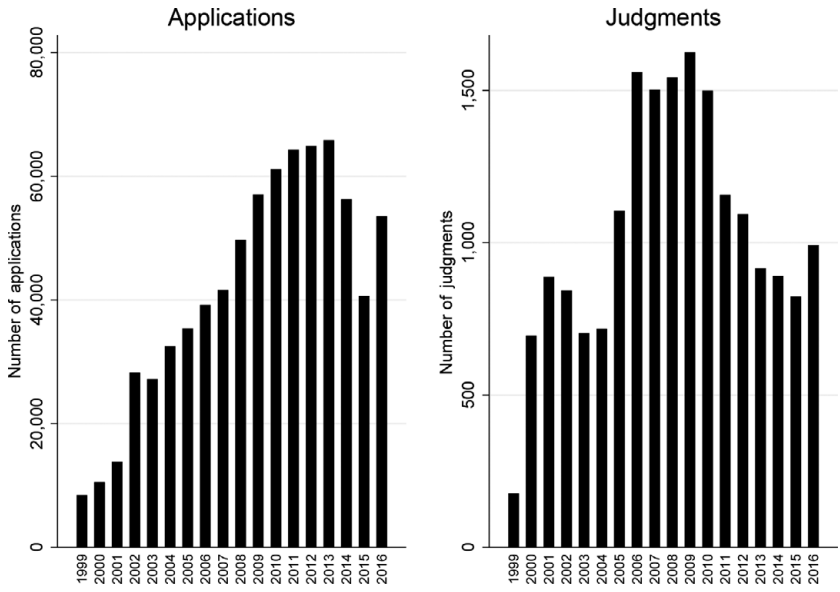

FIGURE 1.2. European Court of Human Rights applications and judgments
Notes: The left panel displays the number of petitions submitted to the European Court each year. The right panel displays the number of adverse judgments rendered by the European Court each year.

[11] The African Court on Human and People's Rights, established in 2004, delivered its first judgment in 2009, finding an application against Senegal inadmissible before the Court. African Court activity continues to increase; however, the AfCtHPR to date has only finalized and closed around 32 cases, making quantitative analysis of this Court's activity inherently difficult.

[12] The African Court on Human and People's Rights is discussed earlier. Similar regional human rights legal bodies do not exist in Asia or the Middle East.

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human rights abuses received by the European Court over time in the left panel and the number of judgments rendered over time in the right panel (ECtHR, 2017). Strikingly, the European Court received between 40,000 to 60,000 applications per year over the past decade.[13] Further, the European Court rendered judgments (decisions on the merits) in around 1,000 to 1,500 cases a year over the past decade. Protocol 14, adopted in 2009, streamlined the processing of cases (particularly repetitive cases), by moving cases that deal with well-established case law of the Court more rapidly through a committee of judges in order to allow the Court to deal with the most important cases (Council of Europe, 2004). As a result, the right panel of Figure 1.2 shows a decline in the number of adverse judgments rendered in the past several years.

Beyond the sheer volume of cases, there is also variation in adverse judgments across states. Figure 1.3 shows the total number of adverse European Court judgments for each state from 1999 to 2016. Darker-colored states received more adverse judgments, and lighter-colored states received the fewest adverse judgments. The average number of judgments during the 1999 to 2016 time period was 288, while the median number was 92. The recipients of the largest number of adverse European Court judgments from 1999 to 2016 include Turkey (2,300), Russia (1,580), Italy (1,517), Romania (953), and Ukraine (886). The recipients of the fewest number of adverse European Court judgments from 1999 to 2016 are Monaco (2), Andorra (4), Liechtenstein (7), Iceland (10), and San Marino (10). Some states received few adverse judgments from the European Court because they did not become members of the Council of Europe (and the European Court) until much later in the time series covered by the data (e.g., Monaco), while other states likely received few adverse judgments because they are greater rights protectors (e.g., San Marino).

Like the European Court, the Inter-American Human Rights System has also become increasingly active over the past several decades. The left panel of Figure 1.4 displays the petitions alleging human rights abuses received by the Inter-American Commission, the body that processes human rights petitions, and the right panel shows the number of adverse judgments made by the Court over time. Figure 1.4 shows a steady increase in the number of applications in the Inter-American Human Rights System over time, with over 2,500 applications received in 2016. Judgments on the merits of the case have also grown, with 10 to 19 judgments rendered each year since 2004.

[13] The lower number of applications over the past few years may be attributed to the Court joining some applications that raise similar legal questions and considering them jointly (ECtHR, 2017).

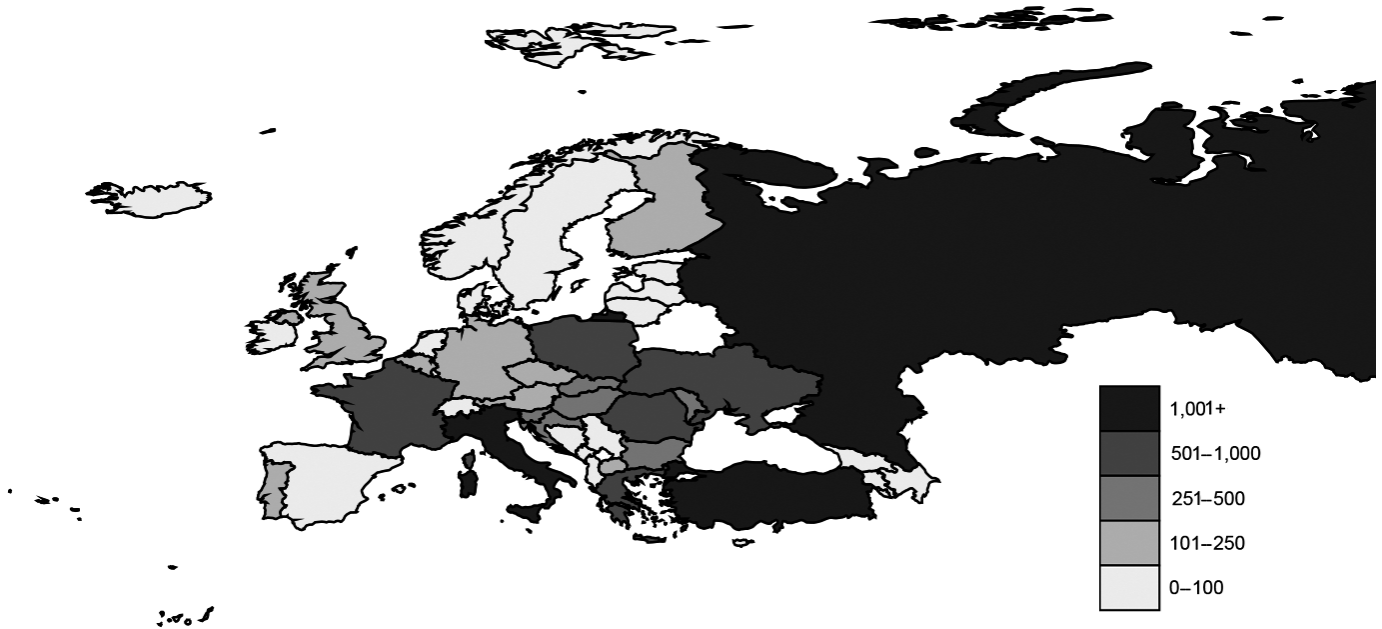

FIGURE 1.3. Adverse European Court judgments by country (1999–2016)

Notes: Figure 1.3 displays the total number of adverse judgments for each state from 1999 to 2016. Belarus and Kazakhstan are nonmembers. Darker-colored states received a greater number of adverse judgments, while lighter-colored states received fewer adverse judgments.

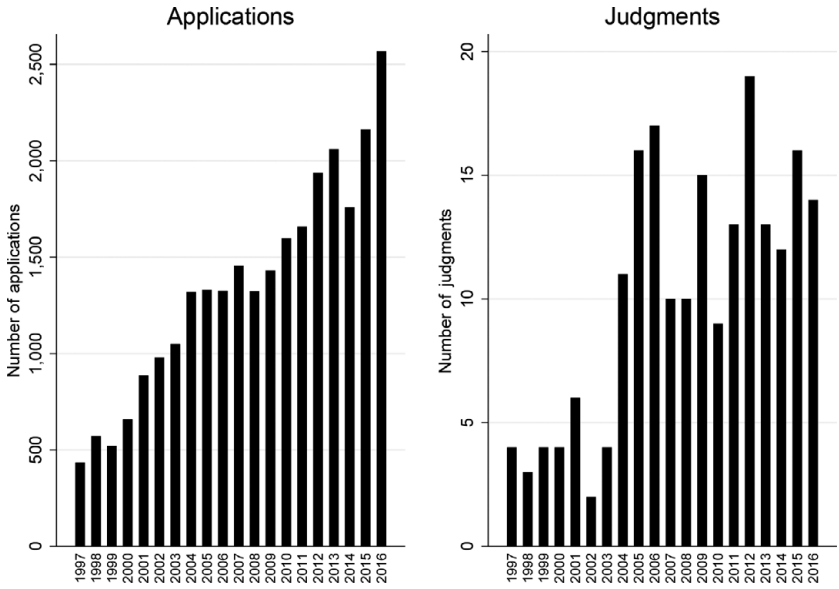

FIGURE 1.4. Inter-American Court of Human Rights applications and judgments
Notes: The left panel displays the number of petitions submitted in the Inter-American Human Rights System each year. The right panel displays the number of adverse judgments rendered by the Inter-American Court each year.

Like the European Court, the number of Inter-American Court judgments varies across states as well. Figure 1.5 shows the total number of adverse Inter-American Court judgments for each state from 1997 to 2016. Darker-colored states received more adverse judgments, and lighter-colored states received the fewest adverse judgments. The average number of judgments during the 1997 to 2016 time period was 9.7, while the median number was 6. The recipients of the largest number of adverse Inter-American Court judgments from 1997 to 2016 include Peru (39), Guatemala (25), Ecuador (20), Venezuela (18), and Colombia (17). The recipients of the fewest adverse Inter-American Court judgments from 1997 to 2016 are Barbados (2), Haiti (2), Uruguay (2), Costa Rica (3), and Nicaragua (3). The smaller number of judgments for each state in the Americas compared to Europe can be attributed to the presence and activity of another institution in the Inter-American human rights system, the Inter-American Commission on Human Rights. The Inter-American Commission examines petitions and makes recommendations to states prior to the submission of cases to the Inter-American Court. The process

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FIGURE 1.5. Adverse Inter-American Court judgments by country (1997–2016)
Notes: Figure 1.5 displays the total number of adverse judgments for each state from 1997–2016. Darker-colored states received a greater number of adverse judgments, while lighter-colored states received fewer adverse judgments.

and procedures of the Inter-American Court are discussed in more detail in Chapter 3.

Second, making comparisons between the two regional human rights courts represents a worthwhile enterprise because doing so generates important policy prescriptions. The theoretical and empirical analyses in this book generate policy guidance by identifying the most important actors and institutions in the domestic political process for ensuring regional human rights court effectiveness. Furthermore, drawing comparisons across regions allows for learning and emulation across the two regional human rights legal bodies. That is, where

differences in deterrence of adverse regional human rights court judgments exist across Europe and the Americas, learning and emulating the deterrence processes that works in the other region may be beneficial for securing greater respect for rights. For example, the evidence in this book suggests that the executive is more willing to respond to adverse judgments with human rights policy change in states with relatively higher levels of foreign direct investment inflows. This finding suggests that economic incentives are important for generating executive willingness, but this effect is particularly pronounced in states that are economically vulnerable, like many states in the Americas. Importantly, although many states in Europe are not economically vulnerable, economic incentives may play a role in European Court effectiveness in a subset of states in Europe. Moreover, comparing the differences in effectiveness across the European and Inter-American Courts has important implications for the design of international and regional institutions globally. For example, I show that several factors explain deterrence across both regions, like the role of the mass public in generating pressure on the executive to make human rights policy change, suggesting that the mass public may play an important role in deterrence of future human rights abuses by international human rights legal bodies more generally. Because the regional courts in Europe and the Americas operate in different contexts (e.g., level of development, history of abuses, strength of democratic institutions), the policy prescriptions generated from these regions have particular relevance for the proposed creation and establishment of new regional legal bodies in other regions around the world, including when and where they will be most effective.

Finally, despite some differences in the procedures and processes of the European and Inter-American Courts (on which I elaborate more in Chapter 3), the broad mandate of the European and Inter-American Courts is similar – to provide legal remedy for rights abuses and ensure that similar violations do not occur in the future. Importantly, both courts also face the same enforcement challenges. That is, in order to ensure that similar violations do not occur in the future, both regional courts must rely entirely on the state to implement their decisions. The similarities between the European and Inter-American Courts allows me to utilize a comparative research design, whereby the mandate and enforcement challenges faced by both courts is held constant. I am then able to explore the domestic political processes across states in both regions that are subject to each court's jurisdiction.

In both Europe and the Americas, domestic political challenges dampen the ability of the regional human rights court to ensure implementation of their decisions. Current scholarly work highlights domestic institutions that

facilitate and constrain the achievement of respect for rights domestically (e.g., Davenport, 2007; Richards and Gelleny, 2007; Powell and Staton, 2009; Simmons, 2009; Conrad and Moore, 2010; Lupu, 2015). Drawing important insights from these works, I develop a theoretical framework to understand how the interests and interactions of various domestic political actors influences the likelihood of implementation of regional human rights court judgments and human rights policy changes in the postjudgment period. Theoretically, I expect the domestic political processes necessary to ensure policy change postjudgment to be similar across regions.

To summarize, making comparisons across the regional human rights courts in Europe and the Americas is appropriate because there are no regional legal bodies in existence today that match the authority and activity of the European Court in Europe and the Inter-American Court in the Americas. The sheer number of petitions received by each body illustrates the importance of regional human rights courts in both Europe and the Americas. Victims of human rights abuse are increasingly accessing these courts in pursuit of justice, and this pattern holds in both developed and developing countries. As a result, regional human rights courts have a unique opportunity to utilize their broad mandate to influence human rights practices and policies in different types of states. Also, drawing comparisons allows for policy prescription, as well as the opportunity for learning and emulation not only in Europe and the Americas, but in other regions of the world as well. Finally, the similar mandates and the similar enforcement challenges of both courts allows me to undertake a comparative approach, drawing inferences across both bodies about their ability to deter future human rights abuses.

1.3 ORGANIZATION OF THE BOOK

In Chapter 2, I lay out the full theoretical argument of the book. I begin by discussing the concept of regional court deterrence. In doing so, I discuss two different types of deterrence, general and specific, and argue that specific deterrence will be more effective in improving human rights abuses than general deterrence. I then elaborate on the role of the executive in the adoption, administration, monitoring, and enforcement of human rights policy, followed by a discussion of executive incentives to make human rights policy changes following an adverse regional human rights court judgment. Next, I discuss the costs faced by the executive for making human rights policy changes and the executive's incentives in maintaining a policy of repression. I proceed with a discussion of when the executive will have capacity to adopt, administer, monitor, and enforce human rights policy following an adverse judgment.

I focus on the feasibility of executive policy change and the executive's access to outside resources. Finally, I discuss when the executive will be willing to adopt, administer, monitor, and enforce human rights policy following an adverse regional court judgment. Specifically, I focus on pressure placed on the executive to make human rights policy changes by the mass public, foreign economic elites, and domestic political elites.

In Chapter 3, I draw an empirical distinction between general and specific deterrence and empirically assess general regional court deterrence. In order to examine deterrence by regional courts, it is important to understand how regional courts operate, and as result, I begin this chapter by describing the processes and procedures of the European and Inter-American Courts of Human Rights. Next, I describe the data I utilize in the analysis in Chapter 3 and subsequent chapters. I start with the outcome of interest, human rights practices (dependent variable), which captures regional human rights court effectiveness, or the extent to which the regional court deters future human rights abuses. In discussing effectiveness, I distinguish between two important concepts: compliance with regional court orders and regional court effectiveness. I argue that effectiveness is better captured by studying deterrence and present some descriptive analyses highlighting the difference between these two concepts.

I proceed in Chapter 3 by providing a descriptive summary of human rights practices (an indicator of effectiveness) and regional human rights court activity (judgments) in Europe and the Americas. Finally, I conduct an analysis of *general regional court deterrence*. To do so, I examine the influence of the *presence* of each regional court on respect for rights as well as the influence of the *activity* of each regional court on respect for rights. I conclude the chapter by presenting findings from the empirical analyses, finding little support for the general deterrent effect of the European Court in Europe and some support for the general deterrent effect of the Inter-American Court in the Americas. Given these inconsistent findings on general deterrence, I focus on specific deterrence in the remaining empirical analyses in this book.

Chapter 4 examines the role of state capacity in executive human rights policy change following an adverse regional human rights court judgment. Specifically, I test hypotheses capturing (1) the influence of the feasibility of human rights policy change on respect for rights following adverse regional court judgments and (2) the influence of fiscal flexibility on respect for rights following adverse judgments. With respect to the feasibility of policy change, I find that the executive is more likely to make policy changes that are feasible following an adverse regional human rights court judgment. More specifically, the executive is more likely to make civil and political rights

policy changes than physical integrity rights policy changes in both Europe and the Americas. I also find that adverse judgments rendered in states with greater fiscal flexibility are associated with higher respect for rights than adverse judgments rendered in states with lower levels of fiscal flexibility.

Chapter 5 examines executive willingness to make human rights policy change following an adverse regional human rights court judgment as a result of mass public pressure. I empirically examine two hypotheses related to the role of the mass public in generating executive incentives to adopt comprehensive human rights policy change: (1) the role of executive job security as a result of the timing and competitiveness of the election and (2) the role of threats to the political and social order in generating executive incentives to adopt comprehensive human rights policy following an adverse regional human rights court judgment. I find that when the executive is insecure in office (prior to an election), an adverse judgment is significantly associated with human rights improvements. I also find that adverse regional human rights court judgments are associated with higher respect for rights when they occur prior to a *competitive* election. Turning to the second expectation, I find that executive adoption of comprehensive human rights policy is less likely when there are threats to the political and social order, including violence, terrorism, and crime. In considering these hypotheses together, when adverse judgments are rendered prior to an election year in politically stable states, respect for rights is likely to be higher than when an adverse judgment is rendered either prior to a nonelection year or when the state is politically unstable.

In Chapter 6, I examine the role of elites in generating executive incentives to make human rights policy change in response to adverse regional human rights court judgments. I look specifically at the influence of (1) foreign economic elites and (2) domestic political elites (national judges and legislators). First, with respect to foreign economic elites, I show that the threat of losing foreign investment or aid for failing to make human rights policy changes following an adverse judgment can sufficiently pressure the executive to adopt, administer, monitor, and enforce human rights policy. More specifically, I show that states with larger foreign direct investment inflows are more likely to have higher levels of respect for rights following an adverse regional human rights court judgment than states with lower levels of foreign direct investment.

With respect to domestic political elites, I argue and find evidence that national judicial power increases executive expectation of national judicial implementation of regional court orders. Consequently, I find that the executive is more likely to make human rights policy changes when the national judiciary is powerful. However, this finding is stronger and more consistent in the Americas than Europe, which I discuss in more detail in

Chapters 6 and 8. I also show in Chapter 6 that a relatively high number of legislative veto players with preferences different from the executive increases executive expectation of legislative implementation of regional court orders, though the results appear to be conditional on the number of judgments and type of abuse being examined, which suggests that the executive may take cues about the likelihood of legislative implementation from various legislative institutions (discussed more in Chapters 6 and 8).

In Chapter 7, I examine the joint influence of executive capacity and willingness and find that the deterrent effect of regional human rights courts is amplified in the presence of high capacity and high willingness. In other words, in states with high capacity executives, the presence of a highly willing executive amplifies the deterrent effect of the regional court. Similarly, in states with highly willing executives, the presence of high-capacity executives amplifies the deterrent effect of the regional court. However, the results indicate that capacity is more important in the amplification of regional court deterrence for highly willing executives in the Americas than in Europe, which may be due to more extensive capacity limitations in the Americas relative to Europe. I discuss this finding in more detail in Chapters 7 and 8.

Finally, Chapter 8 summarizes my theory and central findings. In this concluding chapter, I bring together the various empirical tests presented in Chapters 3–7 and draw important comparisons across the two regional legal bodies, highlighting the importance of particular actors for the effectiveness of the European and Inter-American Courts of Human Rights. In doing so, I discuss how differences in the domestic political institutional structure in Europe and the Americas or the institutional design differences in the European and Inter-American Courts explain differences in the strength of findings across the two regions. I then discuss several important policy implications that can be gleaned from the research in this book, particularly policy recommendations related to the design of effective international human rights law and regional courts more specifically. Finally, I discuss several important and promising paths for future research.