

Democratic Backsliding and Compliance with International Human Rights Law

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1. Introduction

Pacta sunt servanda – the idea that treaties are to be obeyed – is a bedrock principle of international law (Henkin 1979). Without it, states, international institutions, and non-governmental organizations would not dedicate the time and resources they do to bargaining over and crafting international agreements. Nor, without a general expectation that treaty commitments carry forward, would individual governments bother investing effort and political capital in ratifying and implementing international accords. Unless otherwise specified, treaties are expected to stand the test of time – and it is for this reason that courts have generally embraced a narrow application of doctrines that would easily nullify existing legal commitments (Binder 2013). Changes in a country’s leadership, political leanings, or institutions are rarely seen as sufficient grounds for negating previous treaty obligations.

Yet, even a casual observer will note that compliance¹ is not a given: although legal commitments are meant to carry forward, in reality, the practice is much more complex. Particularly in the human rights (HR) arena, a vast literature has shown that despite their massive expansion, HR legal instruments have impacts only under special conditions (Hafner-Burton 2014) – which remain contested. Here, the debate has centered chiefly on the role of domestic institutions, particularly those typically associated with (liberal) democracy.² While there is some evidence that democratic institutions can help to give these agreements ‘bite’ because they provide a mechanism for holding leaders to account, findings are very mixed. Results, moreover, vary a great deal from treaty to treaty, and from one compliance metric to another.

¹ Throughout, I define ‘compliance’ as the degree to which a country’s practice aligns with what a treaty prescribes or proscribes. There are many ways to problematize this definition, but in the interest of space, I set them aside. C.f., Kingsbury 1998.

² This literature is rather large. See for example Conrad 2014; Conrad and Ritter 2013; Lupu 2013a, 2014b; Simmons 2009; and von Stein 2016.

In recent years, another phenomenon has attracted the attention of policymakers and scholars alike. In every region of the world, at least one country has experienced ‘democratic backsliding’ – the “state-led debilitation or elimination of any of the political institutions that sustain democracy” (Bermeo 2016: 5). From a treaty compliance perspective, this phenomenon is interesting for several reasons. Many current backsliders became parties during periods of transition – toward democracy (Hafner-Burton et al. 2015), toward market economies (Smith-Cannoy 2012), and so on. Now, conditions have changed. These cases are important from a theoretical standpoint because one of the most crucial functions of international human rights law is to enshrine a goal and to ensure that it stands the test of time (and change). Does international law compel these governments to behave better than they otherwise would have? (And if so, under what conditions?).

These cases are analytically interesting because they offer causal inference leverage on several dimensions. First, as is now well-understood in the literature, selection and endogeneity problems make gauging treaty impacts challenging (von Stein 2005; Lupu 2013a). Backsliding cases offer leverage precisely because they involve situations in which the conditions that led countries to join, and those now present, are likely substantially different.³ Second, assessing HRA effects is particularly challenging because for many of these agreements, the conditions needed for compliance and enforcement are very similar (von Stein 2016). For instance, does Norway abide by its obligations under the International Covenant on Civil and Political Rights (ICCPR) because it values these entitlements anyhow, or because domestic institutions and practices help to ensure the enforcement of these promises?

³ Grieco et al. (2009) offer a similar approach in their exploration of partisan shifts and IMF treaty compliance.

Third, in countries with extensive, robust, ‘democratic’ institutions and practices, it is difficult to pinpoint which institution and/or practice is doing the legwork in the story of HRA compliance. For instance, does Norway take its obligations under the Disabilities Convention seriously because citizens will punish leaders electorally for breaking promises⁴, because civil society ensures that breaches will be publicized and criticized, because its courts will enforce these duties, or because legislative and administrative checks and balances make it a priority? It is difficult to say because in most entrenched democracies, these institutions go hand-in-hand. In contrast, as detailed later, backsliding countries are often more diverse. This opens up potential opportunities to better gauge which institutions are having causal impact.

2. Democratic Backsliding

What is democratic backsliding? The answer depends, to some extent, on one’s definition of democracy (Diamond 2015). A minimalist understanding would focus on electoral procedures: not only do votes have to translate into candidate/party choice (i.e., ballots must be counted and actioned), but there must also be a widespread right to participation and genuine, frequent, competition for office (Lust and Waldner 2015). But many would argue that free and fair elections are only meaningful if other conditions are fulfilled. First, as Dahl (1971) argues, citizens must enjoy equal civil and political liberties, particularly freedom of speech and association, so there can be a free exchange of ideas and information, including criticism of officials.

Second, there must be accountability mechanism(s), to ensure that governments justify their actions, and to punish leaders who breach codes of conduct and/or laws

⁴ Several studies acknowledge that this is possibly the weakest link in the chain. See for example Conrad 2014; Conrad et al. 2017; and von Stein 2016.

(Lust and Waldner 2015). There is debate about what, exactly, those mechanisms should look like. Constraints on executive power (e.g., checks and balances, such as legislative veto players) are one such mechanism, but these can vary notably even in the highly democratic world. Courts are also important. When sufficiently independent, they enable citizens to challenge their governments, and have the ability to determine whether government (in)action is consistent with existing legislation. Additionally, these mechanisms can play a crucial role in ensuring that the will of the majority (embodied, particularly, in elections) does not trammel upon the rights of the minority (Madison 1788). In the human rights arena, this can be tremendously important.

At its core, then, democracy entails (1) free and fair elections. But making (1) meaningful, and ensuring that this system of leader choice endures, requires (2) basic civil liberties, as well as (3) accountability mechanisms. For this reason, (1), (2), and (3) are tightly linked, and unlikely to exist in isolation for long. Following Lust and Waldner (2015: 4), I understand democratic backsliding to mean a degradation in competitive elections, civil liberties, and/or accountability. In assessing backsliding, we want to avoid false negatives: it needn't necessarily involve a full-scale democratic breakdown and regime change. We also want to avoid false positives: the deterioration should be fairly substantial – not simply part of the normal back-and-forth struggle of political change (Lust and Waldner 2015). I return to this question in the empirical analyses.

Is democratic backsliding actually happening? The answer depends on at least three things: (1) what metric one employs; (2) what amount of change qualifies as 'backsliding'; and (3) which countries one includes in the comparison. Freedom House (2017) certainly believes backsliding is underway: a recent report declares "2016 marked the 11th consecutive year of decline in global freedom." Diamond (2015: 144), relying on the broader Freedom House data time-period (since 1972), echoes the point

that “the world has been in a mild but protracted democratic recession since about 2006.” Levitsky and Way (2015: 46) disagree, describing that decrease as “extremely modest,” and show that other metrics demonstrate no deterioration or even net *gains* for democracy. Furthermore, they argue, some countries that now appear to be backsliding never really qualified as democracies; metrics such as Freedom House may well overstate how democratic those regimes were at their apogée. (Instead, they label those regimes ‘competitive authoritarians’ [Levitsky and Way 2002]).

Whether the world has, overall, experienced a democratic decline in recent years remains debated. So, too, does the question of whether countries such as Russia were ever really democracies. What is clear is that a number of countries have undergone substantial deterioration in electoral competitiveness, civic space for dissent and opposition, and/or accountability in recent years. Often, these changes have resulted from executives’ efforts to concentrate their own power and to entrench the ruling party’s control (Diamond 2015: 147; see also Bermeo 2016 and Kendall-Taylor and Frantz 2016). But that is not the only path. In some cases, efforts (first) focus more heavily on stripping the courts of authority, for instance. In some cases, such as Egypt, the courts have tried to fight back and to maintain some autonomy, even as opposition voices are quashed and the hope of elections that truly enshrine democratic accountability becomes more distant.

A decade ago, scholars used general metrics of ‘democracy’ to try to understand this complex interaction between international law, domestic institutions/politics, and human rights outcomes. The results were tremendously mixed, and gauged the underlying mechanism(s) poorly (c.f., Hathaway 2007). Now, we have much better data. To get at these questions empirically, I explore backsliding patterns across the four

components, using four metrics that are now common in the comparative politics and IR literature.

For electoral backsliding, I use V-Dem's *electoral component* index, which gauges the extent to which "suffrage is extensive; political and civil society organizations can operate freely; elections are clean and not marred by fraud or systematic irregularities; and the chief executive of a country is selected (directly or indirectly) through elections" (Coppedge et al. 2016: 51). To gauge civil liberties backsliding, I use V-Dem's *civil liberties* index, which indicates whether government agents exert physical violence, and whether the government places constraints on private and/or political liberties (Coppedge et al. 2016: 70).

As discussed earlier, accountability has (at least) two dimensions. For judicial independence, I use V-Dem's *high court independence* index, which assesses the extent to which the judicial decisionmaking is autonomous, adopting its sincere view of the record, as opposed to simply adopting the government's position regardless of the case's merits (Coppedge et al. 2016: 202). For executive constraints, I focus on the legislature's role, using V-Dem's measure, which indicates the extent to which the legislature or government agencies have the capacity to investigate, question, and exert authority over the executive (Coppedge et al. 56).

For each of the four measures, I calculate (1) the highest (i.e., most 'democratic') value achieved between 1990 and 2016; (2) the lowest value achieved in recent years (2015 and 2016). I then subtract (2) from (1) and map the values onto the maps in Figure 1. The goal of this approach is to provide a recent snapshot of how far a country has fallen in its experience of democracy over the past quarter-century. It is superior to the not-uncommon practice of comparing early 1990s levels with recent levels because a number of countries where democratic institutions are now under serious threat

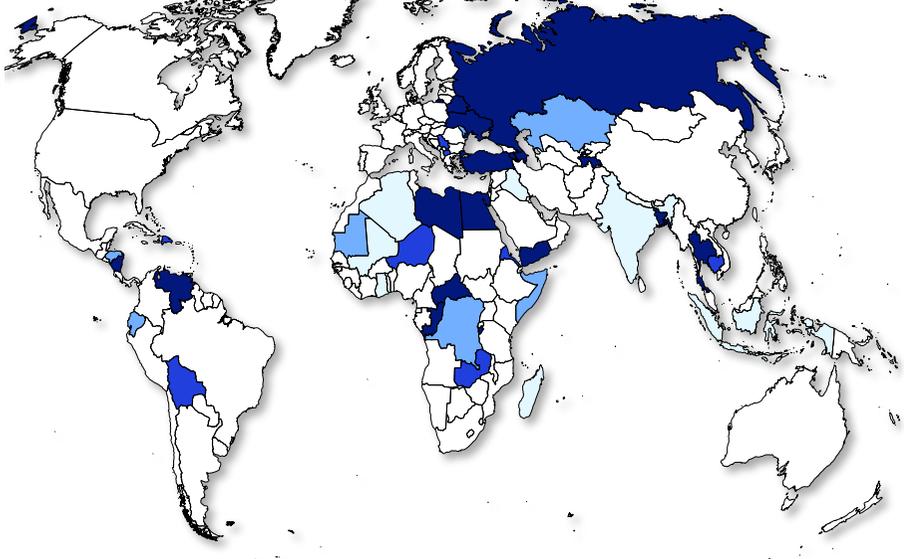
achieved their most robust phases at later points (e.g., Thailand, Fiji, and Belarus, depending on the component of democracy one focuses on).

Figure 1 demonstrates clearly that many of the countries having experienced backsliding in the past quarter-century have done so on all dimensions. Venezuela is a prime example, ranking third for electoral backsliding, seventh for civil liberties backsliding, first for executive constraints backsliding, and second for judicial backsliding. This will come as no surprise to those familiar with politics in the Bolivarian Republic, particularly since 2004. President Chávez harassed critics (including the opposition), captured the courts, and concentrated his own power – legally. Although competitive and generally on schedule, elections became less and less free and fair under Chávez.

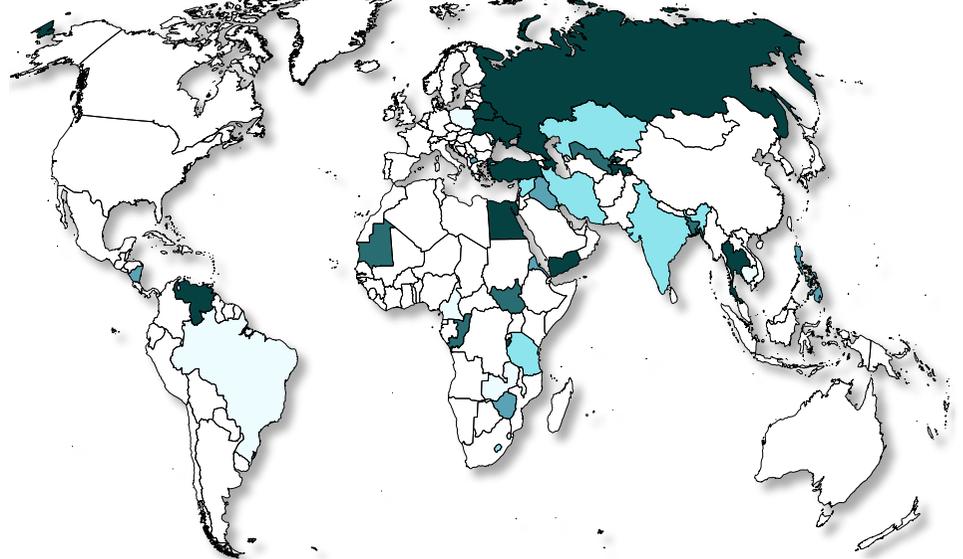
This situation has deteriorated under Maduro (starting 2013), but 2015 elections put the opposition in power, restricting the President’s ability to pass legislation. However, the result has been further backsliding: Maduro responded by declaring the National Assembly devoid of legality and placing the courts (now stacked with loyalists) in charge, postponing gubernatorial elections, and making other changes design to disempower the opposition (Corrales 2016). Figure 2, slide 1, presents data on the four metrics for Venezuela since 2004. I normalize the variables between 0 and 1 so they can be visualized on the same graph. It is evident that Venezuela’s backsliding has negatively affected all areas of ‘democracy,’ first through constraints on the executive, then by dramatic reductions in the courts’ independence, and later through harmful limitations on democratic elections and civil liberties. The sole notable exceptions are executive constraints, which tightened somewhat in 2011 (following the 2010

Figure 1. Democratic Backsliding Around the World

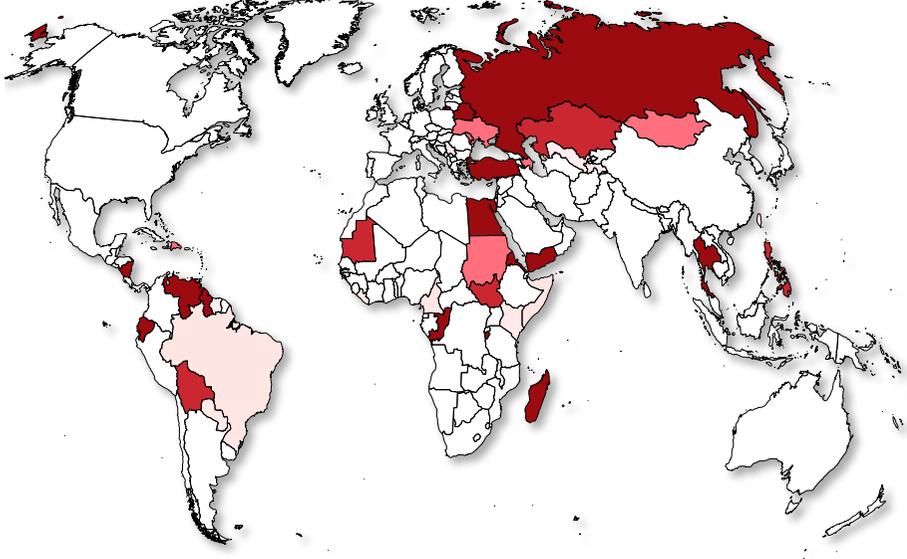
Electoral Backsliding



Civil Liberties Backsliding



Executive Constraints Backsliding



Judicial Independence Backsliding

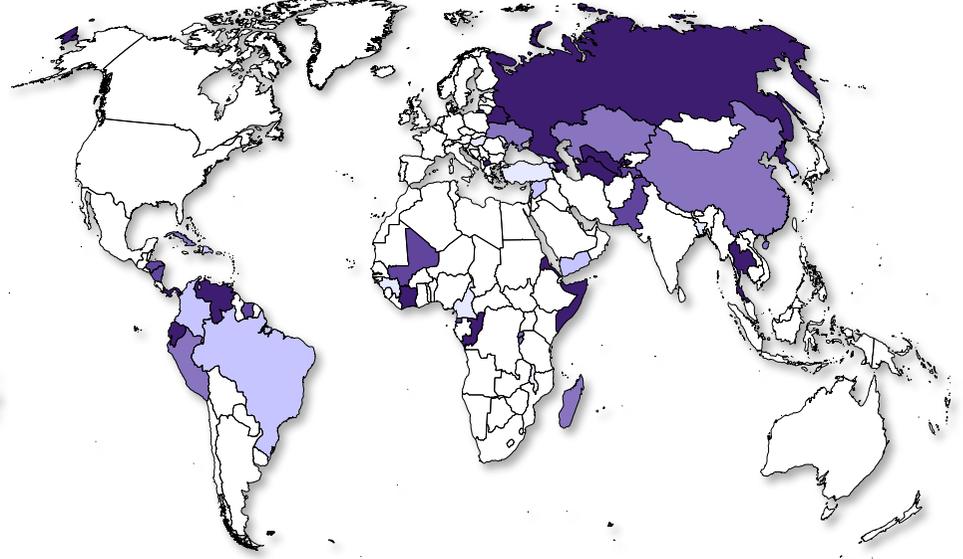
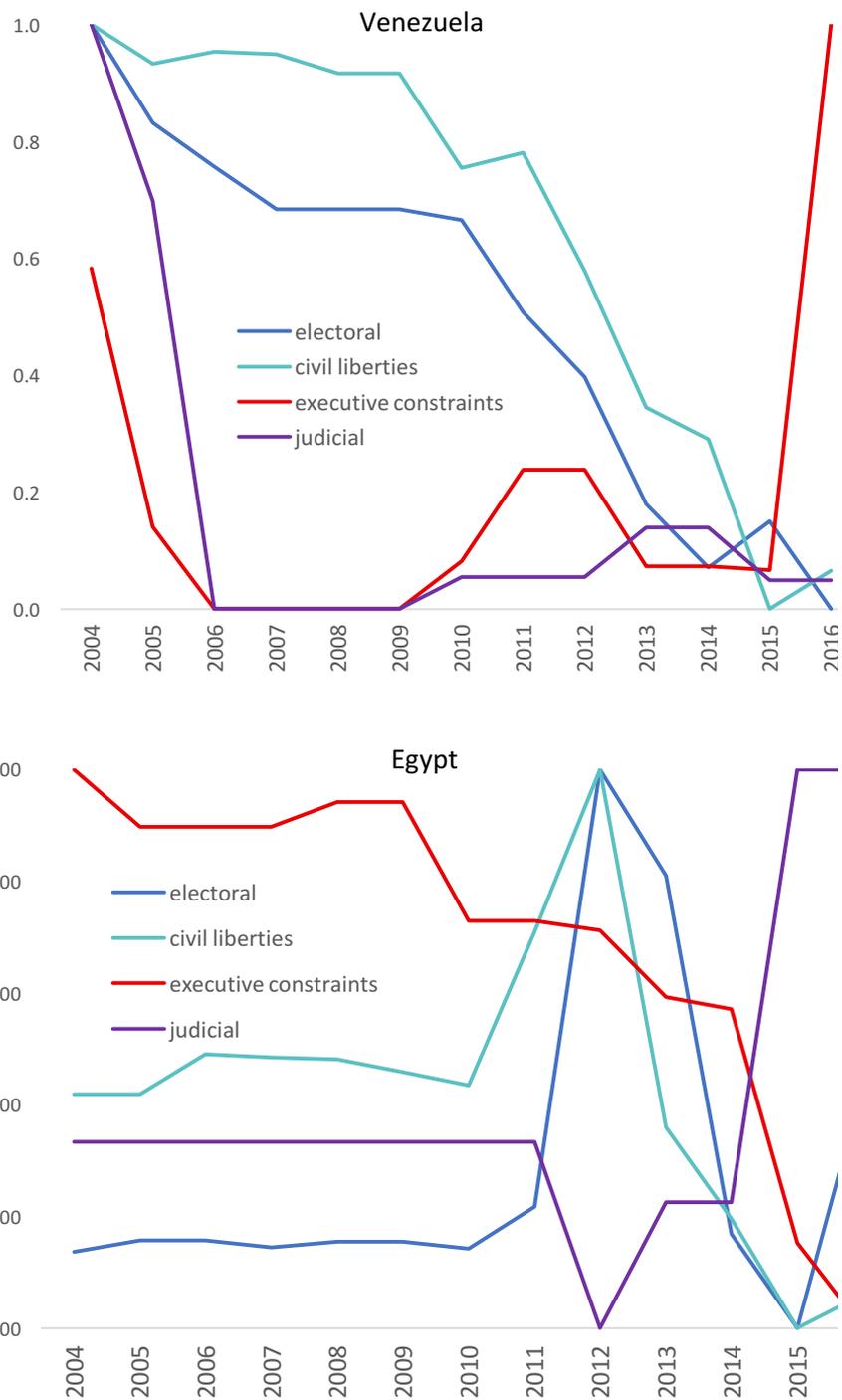


Figure 2: Democratic Change in Two Countries



To enhance visual representation, each metric is normalized between 0 and 1.

parliamentary elections, which saw gains for the opposition) and notably in 2016 (following the 2015 parliamentary elections, which gave power to the opposition).⁵

⁵ Given the Supreme Court’s takeover of the National Assembly, this executive-constraints trajectory will look different in V-Dem in 2017. See Corrales 2017.

Yet, backsliding is often messier, moving in fits and starts and affecting different dimensions of political life in different ways. Consider Egypt, also displayed in Figure 2 (since 2004, to provide temporal comparison with Venezuela, although little happened prior to 2011). In the wake of the Arab Spring, popular uprisings led to President Mubarek's resignation and a huge opening-up of the political space, with presidential elections and greater tolerance of protest and free speech in 2012. These elections, of course, enabled the Muslim Brotherhood to take over, which then attempted to pass an Islamist constitution giving President Morsi substantial powers. The military's 2013 coup subsequently reversed most democratic gains, but – notably – the courts have not followed this trajectory. Instead, the Egyptian judiciary has asserted some degree of autonomy in the wake of the Arab Spring, dissolving one-third of the parliament after finding that the previous year's election had been unconstitutional, finding that the panel created to draft a new constitution had been formed unconstitutionally, and rejecting legislation outlawing Mubarek-era ranking officials from subsequently running for office (Daragahi 2012).

The courts have continued to attempt to assert their independence since the coup that put Al Sisi in power as well; several cases have ruled against the government.⁶ To be clear: Egyptian courts face genuine threats to their independence; they do not enjoy the autonomy seen in the courts of most advanced industrialized democracies. However, the important point here is that they are fighting to maintain (some degree of) autonomy. Whereas President Al Sisi has banned protests, severely curtailed the activities of NGOs, and shut down critical media outlets, the courts are fighting for independence with some success. However, recent legislation allowing the president to

⁶ BBC. Egypt court voids ruling halting transfer of islands to Saudi Arabia. April 2, 2017.

appoint the most senior members of the judiciary places the system under significant threat (Amnesty International 2017).

3. Democracy, Backsliding, and Human Rights Treaty Compliance

Many (though – importantly – not all) countries that are now struggling with democracy ratified various HRAs during the wave of political and economic change that swept the globe in the early 1990s. Whether these governments had sincere intentions of entrenching reform or, rather, were more motivated by a desire to appeal to markets and to Western donor governments is a question of debate (Smith-Cannoy 2012). Whether their motivations were sincere or not, what is now clear is that domestic institutional conditions have changed. It is undeniable that these treaty obligations carry forward in a legal sense. But do they carry forward in practice? Do they impose real constraints on governments' treatment of citizens, even when domestic conditions have changed?

Consider Armenia. In 1993, soon after independence, it acceded to a host of major UN HRAs, including the Convention Against Torture (CAT) (although it has yet to allow individuals to lodge complaints), the Covenant on Civil and Political Rights (ICCPR) (including its optional protocol allowing individual citizens to lodge complaints), and the Covenant on Economic, Social, and Cultural Rights (ICESCR).⁷ This took place amidst a backdrop of great hope for the country, which many perceived (at the time) as an exemplar of democratic and economic transition in the region (Bravo 2007). Although imperfect, civil liberties in Armenia have generally remained stable or improved since independence. Its first elections, in 1991, were generally understood to be free and fair,

⁷ www.humanrightstreaties.org.

and the repeal of Soviet-era legislation and the drafting of a Constitution with extensive human rights protections signaled that change was underway.

Yet, by 1994, Armenian electoral procedures were under serious question, and by 1998, the President was forced to resign in a bloodless coup organized by the military and by members of his administration. Since, the integrity of Armenian elections (ballot stuffing, counting flaws, intimidation and violence, and so on) has deteriorated further (Bravo 2007). Furthermore, the 1995 Constitution was deeply problematic because all judges are appointed by the President (with the recommendation of the Judicial Council). This and other limitations on the judiciary's independence came to a head in the disputed presidential elections of 2003. Although it refused to overturn the election result, the Constitutional Court did find that significant election-relation violations occurred, and recognized that (forced) administrative detention of many candidates harmed the Presidential opposition candidate's chances (Human Rights Watch 2003). Consequently, the Court recommended a referendum of confidence in the President within a year. Although this was an important moment of (relative) independence for the Armenian judiciary, the government's decision to ignore the latter recommendation demonstrated a substantial inability to provide timely or real remedies to documented violations (Bravo 2007). The Armenian judiciary has slumped further into subservience to the executive.

The Armenian case is intriguing because the country took on several treaty obligations at a time when it appeared that domestic political institutions would be conducive to enforcement of these obligations. Over time, (aspects of) those institutions have frayed or been dismantled; conditions have changed. This is a useful test of whether and how international human rights law 'works.' Debates about whether treaties 'matter' have hinged in part on the perennial problem of selection bias and

endogeneity that are well known (Downs et al. 1996). Yet, the Armenian case is not of this ilk: conditions *have* changed, in ways that may not have been anticipated at the time of ratification. Armenia is not unique, for several countries have taken on treaty obligations and subsequently experienced significant democratic backsliding.

Here, it is useful to outline precisely how democratic institutions are thought to affect compliance with international human rights law. Scholars have emphasized four main ways in which democratic institutions can serve as HRA enforcement mechanisms. First, because free and fair elections make it easier for citizens to punish leaders, leaders operating in democratic electoral systems have stronger incentives to keep their promises. Citizens might punish leaders because they are opposed to the particular rights abuse, and/or because they disapprove of rule-breaking in particular. Hence, the electoral mechanism might engage two different audiences (pro-rights, pro-treaty-abiding), but in both cases, the idea is that HRAs are an easier tool for citizens to activate if they have access to a free and fair ballot box.

There are two main challenges to the argument that elections enhance human rights treaty compliance. First, electoral contestation is a majoritarian institution. If the majority prefers rights violations, then we should in fact expect elections to *exacerbate* compliance. It may be hard to believe that citizens would actually *want* leaders to abuse rights, but this overlooks an important point: the majority is sometimes willing to tolerate or even support abuse when targeted at a minority, particularly if the former derives some benefit, such as a heightened sense of security (Conrad et al. 2017b). Second, among all the things that voters care about, it seems hard to believe adherence to human rights law would be toward the top of the list. Tomz (2008) and Wallace (2013) have demonstrated in survey/experimental settings that citizens care about

adherence to international rules, but whether these preferences turn into electoral rewards or punishments is much harder to establish.

Civil society has long been understood as a mechanism for giving international human rights law meaning and force. Citizen groups often make appeals to human rights norms (including international law) regardless of the country's ratification status, but some argue that ratification ups the ante (Simmons 2009). Civic groups can use treaties as rhetorical and mobilization tools (Keck and Sikkink 1998), and it is harder for a government to claim no dedication to the principle(s) a treaty enshrines if it has gone to the trouble of ratifying. Some think of HRAs as 'focal points' around which civil actors – be they pro-human rights, pro-international law, or both – coalesce (Simmons 2009).

A critique similar to that of the electoral component can be raised in the context of the civil society mechanism. If the majority of citizens, or those willing to mobilize, are opposed to the right in question, this could work *against* compliance. Hence, it is hasty to believe that providing a tighter alignment between policymakers and citizens will always push toward compliance; this depends crucially on what citizens *want*. A different criticism acknowledges that civil society can play an important role in advancing human rights causes, but questions whether a ratified treaty adds anything to the equation. After all, citizen groups often make appeals to human rights norms (including international law) regardless of the country's ratification status; for instance, most websites dedicated to Syrian war crimes and genocide make no reference to international legal obligations. Conversely, those wishing to make legal appeals do not necessarily need treaties, for some of the most fundamental rights are covered by *jus cogens*.

Others emphasize the role of accountability mechanisms. Lupu (2013a), for instance, argues that although legislative veto players make ratification less likely to begin with, they also make HRAs more effective by making it harder to reverse policies. Once ratified and incorporated into law, treaties are much harder to violate if legislative actors have to sign off on such decisions. Legislative opponents can deny support to executives wanting to alter the status quo by refusing to support legislation that cuts against compliance, by holding tightly onto purse-strings, and/or by bringing contentious treaty violations into the public view.

The biggest challenge to the veto-players-as-treaty-enforcement argument is that it hinges on the status quo being a rights-friendly one. If, in contrast, the status quo is one of rights violations, the prevalence of veto players might frustrate attempts to rectify the situation, by making it more difficult to pass implementing legislation or to change problematic existing law, etc. An additional consideration is that of scope. Legislative veto players are likely to ‘matter’ in rights areas in which the executive tends to meddle; areas over which executives and legislatures struggle for authority.

Others underscore the role of the judiciary. Slaughter (1995) was perhaps the first to point out that domestic courts can play a crucial role in the enforcement of international law. This can be particularly powerful in the human rights context, as (well-functioning) courts have the authority to review whether government (in)action adheres to existing law, including ratified treaties;⁸ they are also charged with guaranteeing individual rights and enabling citizens to challenge their government if necessary. Some studies have shown that treaties can have real bite when the judiciary is sufficiently independent (Lupu 2013b; von Stein 2013).

⁸ But see below for caveats.

However, the prospect of judicial enforcement can be a double-edged sword. Indeed, some studies have found that countries with independent courts often opt not to join these agreements, particularly when coming into compliance would be hard (von Stein 2016) or when there is not intense pressure from opposition groups to participate (Conrad 2014). Additionally, domestic courts have complex doctrines surrounding when international agreements can be invoked – hence, they may choose or be required not to order other domestic parties to adhere to rules. In another vein, Lupu (2013b) points out that for some rights violations, it is difficult to obtain evidence, and the standards of proof are high. In these cases, it is hard even for independent courts to restrain governments because the former have a limited ability to actually prosecute violations. A final point is that domestic courts do not operate in a vacuum. Even the most independent judiciaries operate in given social contexts; (a perception of) too much judicial activism can lead to backlash on the part of citizens and/or leaders.

As discussed earlier, countries such as Armenia are of interest to the study of HRA compliance because they involve situations where the conditions in place at the time of ratification have changed notably. Cases such as these are also notable because they potentially provide an opportunity to better gauge *which* domestic institution is doing the legwork in the causal story of treaty compliance. Previous studies have struggled to parse out the differences, either because of poor data availability (for instance, Hathaway [2007] is chiefly interested in domestic legal enforcement, but measures this using the Polity data) and/or because countries with free and fair elections also tend to protect civil liberties, and typically have accountability mechanisms as well (von Stein 2016).

Better data (Coppedge et al. 2016) provide a fix for the first problem. And, while acknowledging that some countries regress on most or even all dimensions, the

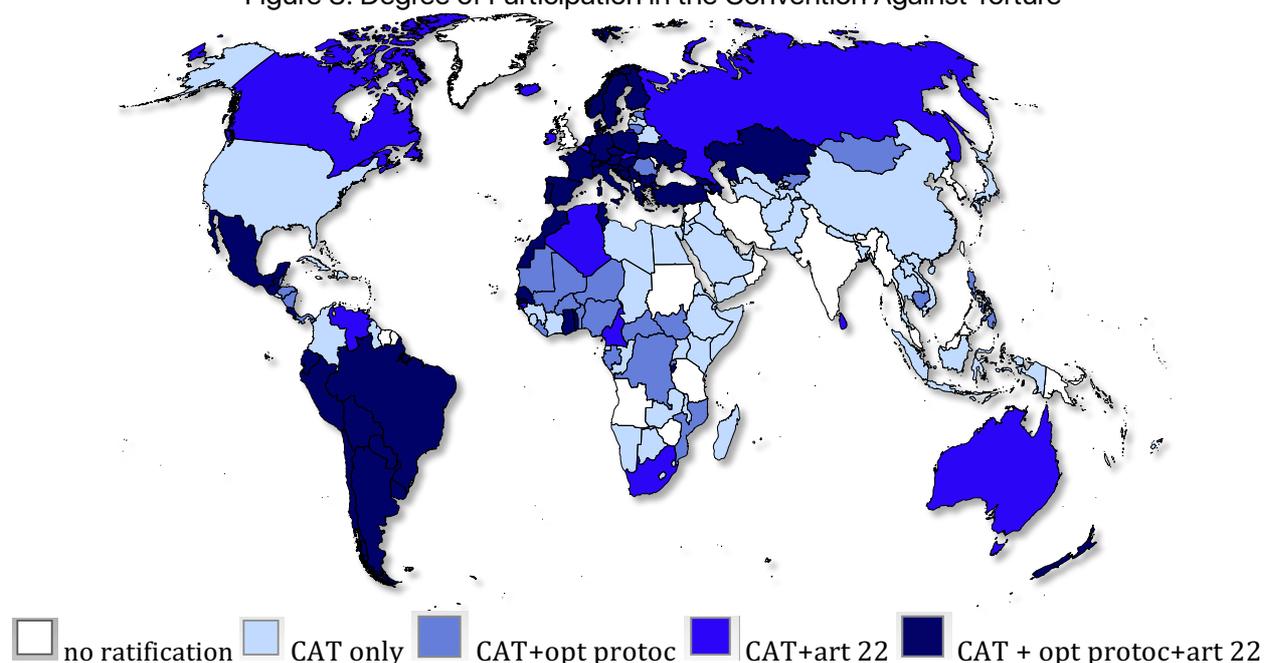
diversity of backsliders' experience provides a possible solution to the second problem. In other words, because their backsliding has not been uniform, countries like Armenia and/or Egypt might give us leverage in understanding which domestic institution(s) matters (most) in the enforcement of international human rights law.

4. A Preliminary Look at Some Data

The purpose of this section is to do some preliminary data analysis of the relationship(s) between ratification of HRAs, democratic backsliding, and the human rights practices pre/proscribed by the particular treaty in question. There are dozens of HRAs from which to choose (von Stein 2017), but I focus here on two accords (along with their relevant optional articles/protocols). The first is the CAT, created in 1984; its optional article 22 is of particular interest because it enables governments that so desire to delegate authority to the Committee Against Torture to receive complaints from individuals who allege that their government has failed them. The CAT's 2002 optional protocol further delegates authority to the Committee, allowing the Subcommittee on the Prevention of Torture to conduct visits to monitor countries' adherence to the agreement. This agreement has been the subject of many studies, so I do not discuss it further here (c.f., Conrad 2014; Conrad and Ritter 2013; Simmons 2009). For informational purposes, Figure 3 shows each country's ratification status vis-à-vis the CAT.

The important point to take away from Figure 3 is that within the 'backsliding world,' there is great diversity in international legal commitments to eradicate the use of torture. Kazakhstan has accepted every aspect of the CAT: the main convention, article 22 (allowing individuals to lodge complaints with the Committee), and the optional protocol allowing for visits from the Subcommittee on Prevention. Armenia ratified the

Figure 3. Degree of Participation in the Convention Against Torture



CAT within two years of independence; it has yet to accept article 22, but was among the earliest ratifiers of the optional protocol. In contrast, Russia – already a party to the CAT since 1987 – accepted article 22 just as the Soviet Union was disintegrating. Hence, its citizens can – and have – lodged complaints against their government for failing to abide by the Convention (Smith-Cannoy 2012). Yet, Moscow has refused to allow monitoring visits. One need not look tremendously far to find a backslider that has largely eschewed the CAT regime: Uzbekistan, for instance, has only become a party to the CAT, but does not accept the more invasive components. To find a bona fide backslider (Iran and Syria do not really qualify, as neither has ever been sufficiently democratic) with no CAT obligations whatsoever, one must look further East, for example to Burma/Myanmar.

Does (the degree and/or duration of) a country’s commitment to the international anti-torture regime affect its ability to comply with this agreement? A number of studies have explored this question, so the purpose of this section is not to rehash those debates (c.f., Conrad 204, Conrad and Ritter 2013, and Simmons 2009, among others).

Rather, I am interested in assessing whether and how democratic backsliding affects compliance, if at all.

As discussed earlier, identifying 'backsliders' can be challenging. We have already established the concepts of interest – free/fair elections, civil society protections, and two accountability mechanisms. But must a country have reached a certain level of democratic embeddedness to be considered a backslider? And how severe should the regression be to qualify as backsliding? On both questions, I avoid imposing decisions on the data. Substantial institutional deterioration in a country that never really achieved entrenched democracy (perhaps Ghana in the 1980s) is considered backsliding in the same way as does substantial deterioration where most thought democracy to be the “only game in town” (perhaps Chile in 1973). In that same spirit, I use a country's degree of deterioration to indicate the severity, rather than imposing a dichotomy of 'backsliders' and 'non-backsliders.' Both decisions may call for reassessment in a subsequent draft.

Using each of the institutional measures described earlier, I create four separate variables indicating the degree of backsliding. If a country experienced no institutional change or an improvement toward greater electoral integrity (respect for civil liberties, etc.), its value is zero. This allows us to focus our attention on backsliding. Chile suffered the largest single-year backslide in electoral integrity (in the data) in 1973, as a result of the military coup that ousted President Allende and put General Pinochet in power for a quarter of a century. Only a year and a half later, Cambodia experienced the largest single-year deterioration in civil liberties (in the data), when the Khmer Rouge took power. Czechoslovakia underwent the largest single-year judicial independence slip in 1948, when the Soviet-led Communist coup eviscerated a court system that was about as independent as current-day Japan's. Finally, the largest one-year drop in legislative

constraints on the executive involved Thailand in 2013-2014, which eventually resulted in Prime Minister Shinawatra ouster and the military junta's takeover.

In this preliminary set of analyses, I explore two key questions:

- Do ratifiers behave differently from non-ratifiers?
- Does backsliding affect ratifiers differently from non-ratifiers?

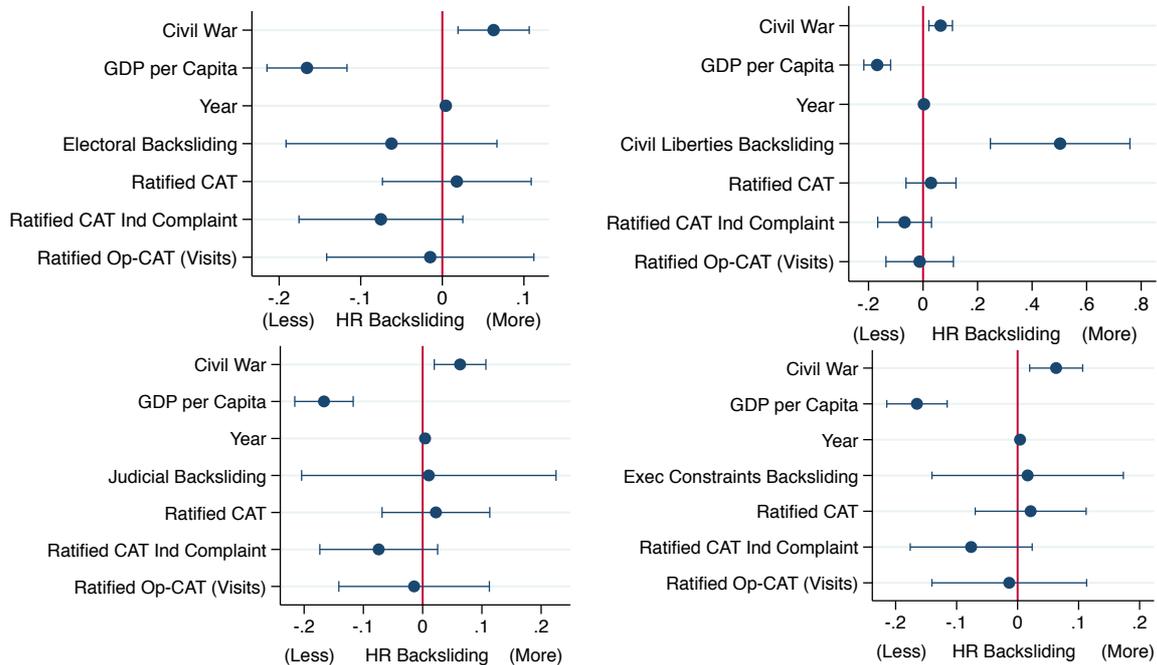
I start with separate analyses of human rights backsliding, using each of the four institutional backsliding variables described above. I use the CIRI data, which gauge government respect for the right not to be tortured, summarily executed, disappeared, or imprisoned for political beliefs (Cingranelli, Richards, and Clay 2014). Because there is no agreement on how best to measure government respect for human rights, I later use the PTS data. The dependent variable is the change in human rights practices (lagged one year); larger (positive) values indicate more serious backsliding. An example of substantial human rights backsliding includes Fiji, whose 1987 coups jettisoned the country into a period in which torture, imprisonment of those of opposing political views, and other violations were common.

I use a GLS random effects model with a lagged dependent variable and robust clustered standard errors. I also include the country's baseline PTS score, as backsliding might depend on how severe the human rights situation already is. I also include variables that other studies have found to affect human rights practices: whether a civil war is underway, GDP per capita, and the year of the observation. Because the CAT regime has many options, I gauge three components: whether a country has ratified (1) the main agreement; (2) the optional provision allowing for individual citizens to lodge complaints; and/or (3) the optional provision empowering the Subcommittee to perform monitoring visits. Figure 4 presents the base models, which do not look at any interactive relationships.

The main upshots of Figure 4 are: (1) the ‘standard’ variables (civil war and wealth) predict backsliding as one would expect, which is encouraging; and (2) only civil liberties backsliding links tightly with human rights backsliding (the three other variables have no obvious relation to it); and (3) ratification status does not bear any relation to human rights backsliding.

These initial non-results for (2) and (3) are not altogether surprising. A large literature has documented the CAT’s strange relation to physical integrity rights practices.⁹ Furthermore, if we believe that treaties affect compliance through domestic institutional channels, then the effects are interactive. To test that argument, I add to the analyses an interaction of the relevant ‘democratic backsliding’ variable and the relevant treaty ratification variable.

Figure 4. Base Models of Physical Integrity Rights Backsliding



⁹ Among a vast literature, see Conrad 2014; Conrad and Ritter 2013; and Simmons 2009.

Figure 5. Interactive Models of Physical Integrity Rights Backsliding

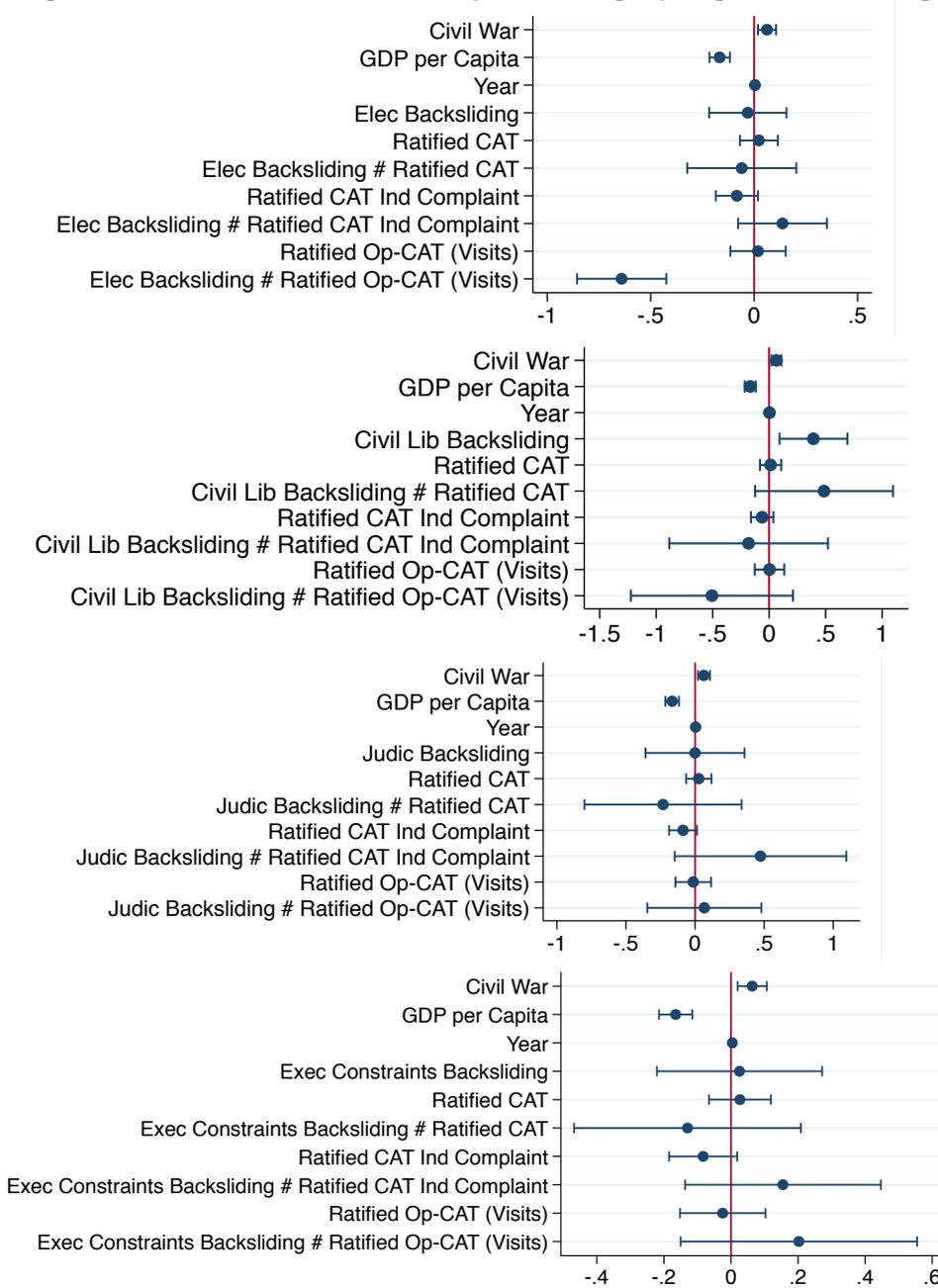


Figure 5 shows that there are some interesting interactive effects worth noting. Referring back to the first question – “do ratifiers behave differently from non-ratifiers?” – the answer is that it very much depends on the nature of the international legal commitment. For the CAT (main treaty), I find no evidence that ratifiers’ human rights backsliding differs from that of non-ratifiers. The only potential exception is in the context of civil liberties backsliding, where there is some evidence that as the civil

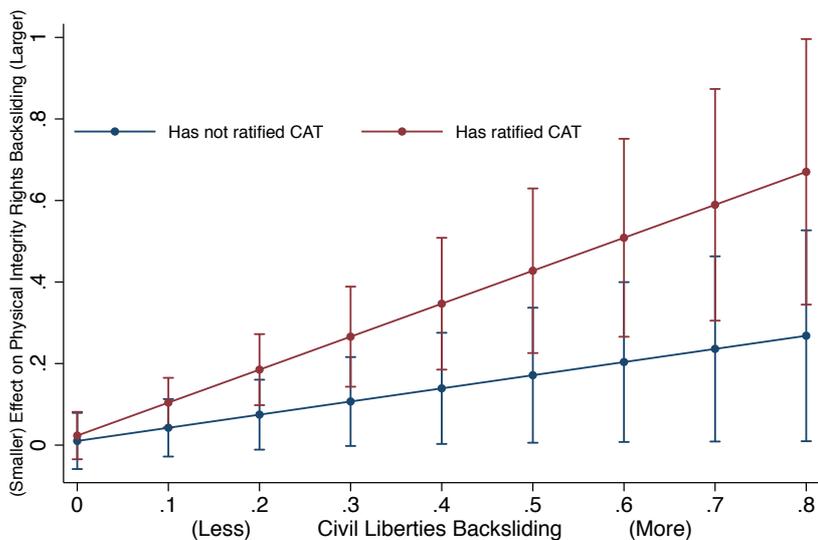
liberties situation deteriorates, ratifiers are *more* prone to suffer physical integrity rights violations (Figure 6, slide a). This may not be surprising, given the extraordinarily mixed findings for this agreement in the broader literature. However, this finding falls short of standard statistical significance. For the CAT's individual complaints procedure, there is some indication that countries experiencing no or very little democratic backsliding, ratifiers face less physical integrity rights backsliding. Again, however, this result falls short of standard thresholds of significance (though it does often come close).

The most notable findings arise in the context of the CAT's optional monitoring (visits) procedure. Returning to Figure 5, it is evident from the interaction term that electoral backsliding affects parties to this agreement differently than it does non-parties. The same can be said of civil liberties backsliders, although this finding falls short of standard thresholds. To better gauge these differential effects, Figure 6, slides b. and c. graph the predicted physical integrity rights backsliding, as a function of electoral and civil liberties backsliding, respectively. The results are strongest for the electoral component: countries that have ratified this optional protocol are significantly less prone to backslide in their physical integrity practices, as compared to non-ratifiers (question 1). The larger the electoral backsliding, the stronger the Op-CAT's effect.

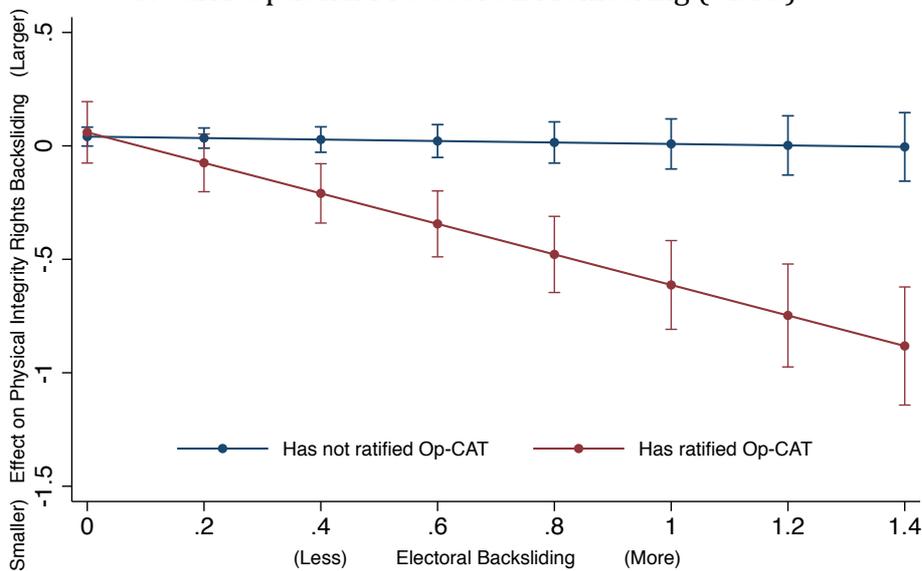
Additionally, electoral backsliding affects the two groups differently (question 2): where it has no discernable impact on non-ratifiers ($p = .554$), it appears to decrease physical integrity rights backsliding among ratifiers ($p < .001$). This is somewhat surprising in the following regard. While it is sensible that Op-CAT ratification alters governments' incentives to couple electoral degradation with heightened physical integrity rights violations, it is hard to understand why ratifiers would be compelled to behave increasingly 'nicely' on the physical integrity front as their electoral situation

Figure 6. Selected Marginal Effects

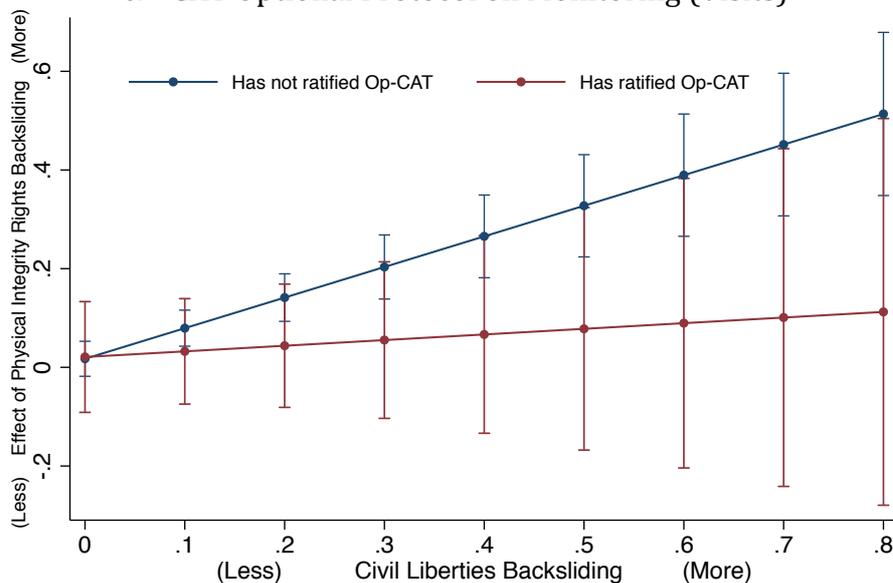
a. CAT



b. CAT Optional Protocol on Monitoring (Visits)



c. CAT Optional Protocol on Monitoring (Visits)



deteriorates. If anything, I would have expected ratification to make the line flat, whereas non-parties to the Op-CAT would typically couple electoral backsliding with physical integrity backsliding. Ostensibly, that is not the case. This deserves further consideration.

Turning now to how civil liberties backsliding affects physical integrity rights in combination with treaty status, one strong finding is that among countries that have not ratified the CAT or any optional provisions, deteriorating civil liberties situations are strongly linked to a worsening in physical integrity rights practices (Figure 5). Neither CAT ratification nor participation in the individual complaints procedure mediates that relationship. However, as in the above paragraph, participation in Op-CAT does mediate that relationship. Indeed, among non-parties to that Protocol, civil liberties backsliding clearly leads to physical integrity rights backsliding ($p < .001$). In contrast, among parties, that relationship washes out (still slightly positive, but small and highly insignificant at $p = .717$). As Figure 6, slide c., shows, the differences between ratifiers and non-ratifiers are fairly large and as one might expect (with the non-ratifiers backsliding in response to backsliding), but this finding falls slightly short of standard statistical significance. Overall, there is little evidence that changes in judicial independence or the degree of legislative interference in the executive's policymaking affect physical integrity rights backsliding.

The most consistent findings in this study pertain to the optional protocol on monitoring/visits, electoral backsliding, and to a slightly lesser degree, civil liberties backsliding. These findings held quite consistently using the PTS data instead. Schnackenberg and Fariss's (2014) latent mean variable is another option, but its calculation may include some of the democratic backsliding variables used herein,

which may pose problems.¹⁰ Of course, the modeling technique here do not control for the potential endogeneity and selection effects that are well-known in the literature. As a result, one has to be careful about inferring much about 'effects.' A next step in this project is to identify the best modeling approach and to conduct the analyses with it.

5. Conclusion

Treaties are to be obeyed. This is one of the most fundamental principles of international law. The fact that countries enter (relatively) freely into them can have a frustrating implication: oftentimes, governments do not join on until they are fairly sure they can comply (von Stein 2016). Yet, governments and regimes can and do change. What is more, governments sometimes take on international legal obligations during periods of tumult. Perhaps their leaders were sincere, wanting to entrench prohibitions on some of the very behaviors to which they were subjected as dissidents. Or, perhaps they were not sincere, but perceived treaty participation as a way to attract foreign investment or development aid. Whatever the motivations, the point is this: times change, but *pacta sunt servanda* – in theory, anyhow.

This article has explored this reality in the context of democratic backsliding, a prominent phenomenon that many (though certainly not all) scholars believe has become particularly prevalent in recent years. This focus allows us to (attempt to) hone in on the mechanisms at play in the idea that democratic institutions form the basis of HRA enforcement. In some ways, the results will be disappointing to champions of the international anti-torture regime. Participation in the CAT and/or the individual complaints mechanism does not appear to prevent physical integrity backsliding, in combination with or independent of democratic backsliding. It may, as some other

¹⁰ Awaiting clarification on this point.

studies have also found (e.g., Hollyer and Rosendorff 2011), make the situation worse – although the findings herein should be regarded as preliminary at best.

However, there is an important area where the findings provide some preliminary evidence that treaties alter leaders' incentives. The fact that participants in the CAT's optional monitoring provision respond differently from non-participants – in the face of substantial electoral and/or civil liberties backsliding – is important. Although preliminary, this finding suggests that (certain types of) *pacta* are indeed *servanda*. It is no coincidence that this component of the anti-torture regime involves real monitoring and a degree of sovereignty cost. Governments that take on this particular obligation will find it difficult to 'hide' physical integrity backsliding or to shake it off as rumor, or necessary for the sake of state security.

Looking forward, this research can be further developed in at least three ways. First, as already noted, a more sophisticated model that accounts for selection and endogeneity is needed. Second, further research on why and how governments became parties to the CAT's optional protocol would be useful as a way of exploring the idea that times change but treaties carry forward. Finally, it would be worthwhile to explore additional human rights treaties to determine whether and how democratic backsliding affects countries' ability to abide by these agreements more broadly.

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