Introduction

Rule of law is an exceptionally strong norm in modern societies. In most political settings, therefore, being able to credibly argue that you have the law on your side increases your chances of getting what you want. Court decisions may provide such legal ammunition to individuals, advocacy groups, and to governmental actors. At the same time, those actors whose rights and interests are reinforced by court decisions may contribute to ensuring that these decisions are effectively implemented, even in the face of political resistance from recalcitrant state actors. This mutual dependence between courts and their compliance partners is a fundamental feature of judicial power (Staton and Moore 2011, 561–62).

However, not all court decisions are equally helpful in this regard. Specifically, we argue that judgments containing dissenting opinions are less powerful compared to unanimous decisions. The reason is that dissent reduces the perceived legal authority of the judgment, by inducing the suspicion that the decision was based partly on the subjective preferences of the majority. Supportive compliance partners are thereby given a weaker hand, making it harder for them to argue that they have "the law" on their side, compared to if the court had spoken with one voice. Furthermore, actors who are negatively affected by the judgment may use the dissenting opinion as a point of reference to undermine the authority of the ruling. As a consequence, in contexts where compliance with court decisions is contested, judgments that contain dissent do not carry the same weight and are less likely to be complied with. This is the case even if dissent on the bench actually increases the quality of the majority judges' written reasoning, which been suggested in the literature (Haire, Moyer, and Treier 2013).

We examine the empirical relationship between dissent and compliance for two courts that face significant compliance challenges – the Inter-American Court of Human Rights (IACtHR) and the European Court of Human Rights (ECtHR). These courts are similar in that they provide important opportunities for individuals to seek redress for human rights violations committed by their own states. The two courts differ significantly, however, in their institutional design, the type and number of cases they adjudicate, their remedial practices, compliance-monitoring regimes (Hawkins and Jacoby 2010: 37), and in the politics of their member states.

We use two novel datasets concerning the compliance with judgments of the IACtHR and ECtHR (Stiansen, Naurin, and Bøyum 2018; Stiansen and Voeten 2017). Our empirical analysis indicates that rulings affected by judicial dissent are significantly less likely to be complied with than unanimous rulings. This negative relationship holds both for IACtHR remedial orders and ECtHR judgments and across different model specifications. Although it is challenging to definitely determine a causal relationship between judicial dissent and non-compliance, our study is the first to provide compelling observational evidence from two different cases pointing in that direction. It adds to previous experimental evidence (Zink, Spriggs, and Scott 2009) suggesting that open dissent undermines support for judicial decisions.

Our study contributes to the comparative research on judicial politics in several ways. Constitutional and international courts vary significantly in the extent to which they allow and practice dissent. The literature on the institutional design of courts emphasizes the trade-off between accountability, transparency and judicial independence. It is argued that courts may successfully combine transparency and judicial independence as long as judges have non-renewable terms, which makes them less sensitive to political pressure (Dunoff and Pollack 2017). Our argument suggests

that this balancing act needs to take into account the possibility that transparency—in the form of open dissent—may also weaken the ability of independent courts to effectively change state actors' unlawful behavior.

Our findings suggest that striving for unanimity may be an important strategy for courts that confront significant compliance challenges. This resonates with the literature that argues that courts frequently use rhetorical legitimation strategies when they face an adverse political environment (Hume 2006; Lupu and Voeten 2012; Larsson et al. 2017). These scholars have assumed that perceptions of legal authority are crucial for how judgments are received, and that courts seek to persuade relevant audiences of the legal authority of their decisions. While previous studies have demonstrated that courts act strategically, by being more careful to ground their judgments in legal arguments when they expect political resistance, our study indicates that they have good reasons to do so. Attempting to achieve unanimous decisions is an additional instrument in that toolbox, not yet addressed in the literature. That said, holding back dissent may also generate costs in terms of overall legitimacy for a court, due to a lack of transparency.

Our study also has implications for the research on the international human rights judiciary and its ability to protect human rights. While the significant compliance problems that these courts face have been much discussed, few studies have asked what the courts can do themselves to promote the implementation of their judgments (Staton and Romero (forthcoming) and Stiansen (forthcoming) are recent exceptions). Previous studies of compliance with international human rights courts have focused mainly on characteristics of the respondent state, such as the quality of democratic institutions and the capacity of state institutions to implement rulings (Hillebrecht 2014a; Hillebrecht 2014b; Anagnostou and Mungiu-Pippidi 2014; Voeten 2014; Grewal and Voeten

2015). However, we know surprisingly little about how the content and form of judicial decisions contribute to the likelihood of effective compliance in this context. Our argument implies that failing to convincingly signal legal authority may have real consequences for the ability of international human rights courts to provide effective remedies to people whose fundamental rights have been violated.

Judicial Dissent and Compliance

Our theoretical argument combines the insight of two separate strands of scholarship. From the comparative and international judicial politics literature we take the argument that the effectiveness of courts in terms of influencing policy change largely hinges on the implementation of their decisions being followed through by favorably inclined domestic constituencies. A second literature has debated the pros and cons of dissenting opinions in judicial decision-making, including a possible negative effect on legal authority. We discuss these literatures in turn, before we turn to the empirical investigation of compliance with the international human rights judiciary.

Courts, Compliance Constituencies and Legal Authority

Comparative judicial politics scholars argue that the political and reputational costs that may compel state authorities to comply with court rulings that they would prefer to ignore, depend on the joint probability that important constituencies will detect non-compliance and view it unfavorably (Vanberg 2001, Vanberg 2005, Staton 2004, Staton 2006, Gauri, Staton, and Cullell 2015. See also; Rosenberg 2008:23). While a central assumption in the literature is that open defiance of court decisions will often be costly due to diffuse support for domestic courts, there is a recognition that costs may vary depending on public support for specific court decisions (e.g. Vanberg 2005).

Scholars studying international courts have emphasized how national actors use court rulings to strengthen their position in domestic debates (Simmons 2009; Alter 2014). Opinions on specific judicial decisions are likely to be shaped by political interests. Alter (2014, 19) refers to compliance constituencies as actors with interests that are congruent with an international court's interpretation of international law. Compliance constituencies may include both governmental and civil-society actors. These actors are expected to use the legitimacy of the law bestowed upon them by the court to gain leverage in domestic political debates. Groups that are able to claim successfully that they have the law on their side may help bring about compliance by pushing for necessary policy changes. Perceptions of courts as the embodiments of rule of law have been found to work as a shield from political resistance for international courts (Burley and Mattli 1993, 72).

Another strand of scholarship argues that international court judgments may provide "political cover" for domestic policy change (Allee and Huth 2006). Faced with an international court judgment, domestic decision-makers may be able to implement policy changes that would otherwise have been prohibitively controversial. As noted by Voeten (2013, 433), this argument too hinges on domestic audiences perceiving the international court as legitimate. Thus, whether the pro-compliance actors are located inside the state institutions or in civil society, broader societal beliefs about the legal authority of the courts are important for whether they will succeed in facilitating compliance.

In the context of our empirical analysis – international human rights regimes – previous research indicates that actors within the legislature or the executive may use human rights judgment to promote political goals resisted by other government actors (Hillebrecht 2012b; Hillebrecht 2012a), including not least the judiciary (Huneeus

2011). Relevant compliance constituencies may also include civil-society actors making use of the judgments to mobilize for compliance against the interests of hostile governments (Cavallaro and Brewer 2008). In either case, perceptions of legal authority are crucial to legitimize political aims or to shame defiant governments for their failure to live up to rule of law standards (Simmons 2009; Hathaway and Shapiro 2011; Alter 2014, 21–22). The effectiveness of such strategies depends on the belief in the validity of the reasoning of the court. Only if the judicial dictates are viewed as authoritative will reference to them be persuasive.

Both in the comparative and the international judicial politics literature scholars have found that judges that fear non-compliance or override are likely to engage in strategic rhetorical action with the purpose of convincing outside audiences of the legal quality and authority of their decisions (Hume 2006; Lupu and Voeten 2012; Larsson et al. 2017). Characteristics of judicial decisions that undermine external audiences' perception of these decisions as principled and impartial may weaken their usefulness for compliance constituencies, and decrease the costs domestic decision-makers face from refusing to abide by their dictates. Empirically, there is evidence that a perception that courts do not decide cases in a principled and neutral manner undermines public support for the judiciary (Scheb and Lyons 2001). There is also at least indirect evidence that perceptions of legal quality influence compliance. Voeten (2012) finds that respondent states are more likely to comply with judgments from the ECtHR when these are rendered by a higher proportion of career judges. He argues that this finding may be explained by professional judges being better able to persuade respondent states and compliance constituencies of the legal validity of their judgments.

Dissenting Opinions and Legal Authority

The occurrence of dissenting opinions varies widely between constitutional and international courts and over time (Epstein, Segal, and Spaeth 2001; Dunoff and Pollack 2017; Bentsen 2018). While some courts allow judges to publish dissenting opinions, others have institutional rules protecting the secrecy of the deliberations. In some courts the judges make frequent use of the opportunity to write dissenting opinions, while in other courts it is a rare event. At the national level, allowing public dissent has been alien to the civil law tradition, but widely accepted in common law systems (Hanretty 2012). International courts vary significantly in their practices regarding dissent, both with respect to formal institutional rules and informal norms (Dunoff and Pollack 2017). While, the Court of Justice of the European Union has a practice of never publishing dissenting opinions and the World Trade Organization's Appellate Body rarely does so, the judgments of the International Court of Justice contain dissents in the majority of cases (Lewis 2006, 903–4).

The literature suggests a number of potential benefits and drawbacks of judicial dissent (Vitale 2014, Stephens 1952, Sunstein 2005, Haire, Moyer, and Treier 2013, Dunoff and Pollack 2017, Jain 2018). We return to some of the trade-offs highlighted by this scholarship in the conclusions where we discuss our study's policy implications. For now, most relevant are concerns about preserving the authority of the court and communicating legal certainty (Westerland et al. 2010). A central argument against the publication of dissent is the presumed negative effect on public confidence and credibility (Vitale 2014, 91f). The legal authority of courts and their decisions, according to this view, is dependent on the perhaps fictitious but effective idea that judicial decisions are the "necessary results of a principled interpretation" (Bourdieu

1986, 818) of legal texts. As argued by Shapiro (1986), the ability of judges to persuade their audiences that their rulings are unbiased interpretations of the law, rather than reflections of the judges own policy preferences, is crucial to their authority. Thus, judicial dissent may damage the legitimacy of a court decision by undermining the credibility of the argument that the decision reached is based only on sound legal principles. The idea that a court's decision followed naturally from an impartial application of the law becomes considerably less credible if the judges themselves do not agree that this is the case. As argued by Stack (1996, 2240), "The presence of a dissenting Justice demonstrates that behind the word 'Court' in the 'opinion of the Court' sit individual Justices". Vitale, similarly, summarizes this argument against the practice of public dissent as follows:

> a dissenting opinion explicitly or implicitly calls into question the persuasiveness and authority of the majority judgment. Dissents signal to the public that the law is political – i.e., a creation of individual judges expressing their predilections. This in turn leads the public to question the authority of the judiciary and the law they are formulating (Vitale 2014, 91f).

Importantly, this loss of authority may occur even if the dissent actually increases the legal quality of a judgment, as the majority is forced to sharpen their arguments (see e.g. Haire, Moyer, and Treier 2013; Vitale 2014, 87). What counts in the compliance phase is the perception of legal authority among significant compliance constituencies, rather than the quality of the legal analysis as such. It is possible that external audiences may be more struck by the lack of unanimity than by the level of sophistication of the legal analysis of the majority.

There is some micro-level evidence supporting the expectation that belief in the "myth of legality" is associated with acceptance of court decisions as fair (Baird and Gangl 2006), and that people view split legal decisions less favorably than unanimous ones.

Survey experiments conducted by Zink, Spriggs, and Scott (2009) indicate that split decisions reduce individuals' willingness to support US Supreme Court decisions, although Salamone (2014) finds that the negative effect of split decisions on public support may be limited to low-salience issues. So far, however, we are not aware of any observational studies of the costs associated with judicial dissent.

Judicial Dissent and Compliance

To summarize, extant scholarship suggests (1) that perceptions of legal authority are important for compliance and (2) that judicial dissent can undermine the perceived authority of judicial orders. If both of these arguments are correct, it follows that judicial dissent increases the risk of non-compliance. That is the hypothesis that we will test empirically.

It is not hard to find salient examples of judicial dissent being invoked to justify non-compliance. One such example is found in the Italian Supreme Court's *Judgment No. 49 of year 2015*, which held that Italian courts would only be bound by ECtHR judgments applying "consolidated" ECtHR case law. As one indicator of what would count as evidence that the ECtHR did not rely on consolidated case law, the Italian Supreme Court pointed to "the existence of dissenting opinions, especially if fueled by robust arguments".

In debates concerning specific implementation processes, judicial dissent is sometimes used by opponents of implementation to suggest that there might be other legitimate views concerning what "the law" requires. Consider for instance a statement from one member of the House of Lords, Baron Scott of Foscote, during a debate concerning

British compliance with the 2005 ECtHR *Hirst v. United Kingdom* judgment. Scott pointed out that the "judgment contained a dissenting opinion from five of the 17 judges, including Judge Costa," and argued that "in the opinion of many, including myself, the dissenting opinions are far more convincing than those of the majority" (quoted by Wagner (2010)). This example shows how judicial dissent can be used to justify non-compliance.

The potential for judicial dissent to reduce compliance also seems to be a concern for judges of several courts. Even if judges are allowed to decide cases by majority vote, courts often try to achieve unanimous decisions (Mathen 2003, 323). Perhaps most famously, the time delay before the 1954 US Supreme Court decision in *Brown vs. Board of Education* was reportedly due to the perceived need by chief justice Warren to secure a unanimous decision in a highly contested case. The outcome was subsequently celebrated by civil-society groups that argued that the "Court's interpretation of the law was 'very clear'"(Rosenberg 2008, 43). Chief Justice John Marshall is also known to have actively discouraged dissent during his time as chief justice of the US Supreme Court (1801-1835), for the reason that he believed dissent to be detrimental to the legitimacy of the court.

Similar practices have been noted for a wide range of courts. Supreme courts in Western Europe typically have rules against publishing dissenting opinions precisely because of the risk that such opinions may promote non-compliance (Hanretty 2012, 671–72). In Russia too, limitations on the publication of dissenting opinions from the Constitutional Court have been introduced in order to "limit the use of dissenting opinions as arguments in favor of noncompliance" (Trochev 2002, 101). Lewis (2006, 903–5) has suggested that dissents in the World Trade Organization's Appellate Body has been actively discouraged due to concerns about how dissent will affect legitimacy and the

likelihood of non-compliance. In short, actors within various domestic and international courts seem to share a concern that judicial dissent may be damaging for compliance because it undermines the legitimacy of the decision.

In the remainder of this article, we consider whether rulings of the IACtHR and the ECtHR are less likely to have been complied with if they were opposed by one or more judges on the bench.

Evidence from the IACtHR

We first consider evidence from the IACtHR. The IACtHR was established in 1979 to interpret the American Convention on Human Rights and adjudicate alleged violations of the Convention by state parties that have accepted the jurisdiction of the IACtHR. To date, 22 states have accepted the jurisdiction of the of the IACtHR, but two states, Trinidad and Tobago in 1998 and Venezuela in 2012, have later denounced it.

The IACtHR is composed of seven judges, who are elected for six-year terms by the Organization of American States (OAS) General Assembly. The judges may be re-elected once. In contrast to the ECtHR, the IACtHR cases are heard by the full Court. However, if a judge is a national of the respondent state, she may recuse herself from participating in the case. If the respondent state has no national on the bench or the national judge has recused herself, the respondent state may appoint an *ad hoc* judge. The *ad hoc* judge is not required to be a national of the respondent state, but must fulfil the same eligibility criteria as the judges elected by the OAS General Assembly. Thus, in some instances there are eight judges involved in a case. The quorum for the Court is five judges. If the bench was to be split between an even number of judges, the President would break the tie.

Contentious adjudication in the IACtHR results from applications launched by individuals or NGOs to the Inter-American Commission on Human Rights (IACmHR) which investigates the claims and issues recommendations to the respondent state (e.g. Hillebrecht 2012b: 960-961). If the respondent state fails to comply with these recommendations, the IACmHR may submit the case to the IACtHR, which will decide the case on the merits and order the remedies it considers necessary. States that have accepted the IACtHR's jurisdiction are bound by Article 68(1) of the Convention to comply with the IACtHR's judgments, but similar to other courts the IACtHR has few means to enforce its rulings

Research Design

We employ a novel dataset on IACtHR judgments (Stiansen, Naurin, and Bøyum 2018). The dataset is based on the detailed case summaries published by the *Inter-American Court of Human Rights Project* at Loyola Law School, Los Angeles.[1] The database contains information on 181 IACtHR judgments, from the initial proceedings before the Inter-American Commission of Human Rights (IACmHR) and the IACtHR, to the implementation phase.

Units of Analysis

We use the remedial orders rendered by the IACtHR as our units of analysis. Each remedial order sets out a specific measure that the state needs to implement in order to comply with the judgment. Using the remedial orders rather than the judgments as the units of analysis is appropriate because judges may dissent to only some of the ordered remedies. Moreover, previous research shows that it is common for states to comply

[1] See https://iachr.lls.edu/.

with only a subset of the remedies ordered in the judgment (Hawkins and Jacoby 2010; Hillebrecht 2014a).

Since 1996, the IACtHR has monitored compliance with its remedial orders in compliance hearings (Hawkins and Jacoby 2010, 37). Based on information from the judgments and the compliance hearings, we identify the specific measures that the respondent state needed to comply with and the level of compliance with each discrete obligation. As our dependent variable is compliance, we include only the remedial orders that have been subject to at least one compliance hearing. We can thus not include remedies from the period before the IACtHR started its compliance monitoring, and also not the most recent remedial orders for which the IACtHR has yet to hold compliance hearings. Our analysis is based on 1272 remedial orders from 138 different adverse judgments against 21 different respondent states.

Dependent Variable

Our dependent variable is compliance with the remedial order. We base our compliance measure on the conclusions reached by the IACtHR in its compliance hearings. Consistent with Hawkins and Jacoby (2010, 48–49) and Huneeus (2011, 508–9), we adopt the IACtHR's own perspective of whether an order has been complied with. For our main models, we code compliance to be achieved if the IACtHR rules that the state has *fully* complied with the order and therefore closes its monitoring of the particular remedy. In our dataset, 55 per cent of the remedial orders have been fully complied with by the respondent state. However, the compliance rate varies considerably between different types of remedies (see also Hawkins and Jacoby 2010:57, Huneeus 2011, Parente 2018).

In some cases, the IACtHR rules that compliance with a remedial order is *partial*. In our dataset, 12 per cent of the remedial orders have achieved the status of partial compliance but have not yet been fully complied with. While the partial compliance is a theoretically interesting outcome (Hillebrecht 2009), it is not clear how IACtHR rulings on partial compliance ought to be interpreted. In some cases, partial compliance may indicate that the state is in the process of achieving full compliance, but has not yet completed the required task. In other cases, partial compliance can occur if the state is seeking to comply with the order, but circumstances outside its control make full compliance unfeasible. To make sure that the results are not driven by our binary definition of compliance, our appendix reports results from a model in which the dependent variable is an ordered categorization of compliance with "partial compliance" as a middle category between full compliance and non-compliance. It shows that the operationalization of compliance has very limited influence on our results.

Independent Variable

Our dataset also makes it possible to measure judicial dissent at the remedy level. Our measure of dissent is a binary indicator of whether any judge voted against the specific remedial decision. We use a binary indicator of dissent because only one of the remedial orders in our dataset included more than one dissent. On three occasions the dissenting judges wanted stronger remedies. As the dissent in these cases are unlikely to provide arguments against compliance, we do not code them as dissents.

Our dataset contains 80 split decision remedial orders, relating to 11 different judgments, and affecting 6 different respondent states. Thus, although split remedial decisions are not common in the IACtHR, they do occur from time to time, and it is feasible to estimate their relationship with compliance.

A close reading of relevant dissenting opinions reveals that the stated reasons for dissent, as expressed in the opinions, include disagreement with the majority concerning whether it is appropriate to rule against the state, concerns that the ordered monetary remedies are excessive or concerns that the ordered remedies fall outside the jurisdiction of the IACtHR. All of these publicly stated reasons for dissent fit well with our theoretical argument concerning how dissents can be used to undermine the legal authority of a judicial order and hence undermine compliance. A list of dissenting opinions and summaries of their content are reported in the appendix.

Control Variables

There are reasons to suspect that judicial dissent might correlate with the likelihood of compliance even in the absence of a causal relationship. On the one hand, both judicial dissent and non-compliance may be related to the controversy surrounding a case. For instance, Judge Eduardo Vio Grossi's dissent in the case of *Artavia Murillo et al. v. Costa Rica* was motivated by the same disagreement concerning whether life begins at conception that would likely have led to resistance in Costa Rica even if the judgment had been unanimous. On the other hand, collegial pressure to avoid dissent may be stronger in cases where compliance is expected to be difficult to achieve.[2] Although it is impossible to completely circumvent these threats to inference with the available data, we are able to control for a rich set of confounders that might be expected to affect both the likelihood of dissent and the likelihood of compliance.

First, we know from previous research that the likelihood of compliance depends on the type of remedy. The type of remedy might also influence the likelihood of dissent if some judges view certain remedies as too challenging for the respondent state or

[2] As discussed, US Supreme Court's the judgment in *Brown vs. Board of Education* was famously delayed due to the perceived need to achieve consensus in the controversial case.

outside the mandate of the Court. When controlling for the type of remedy, we seek to capture both the practical and political difficulty of implementing the needed remedy (Staton and Romero forthcoming) and differences in the type of domestic actors responsible for implementation (Huneeus 2011). Accordingly, we divide the remedies into five categories: monetary payments, legislative measures, practical measures that can be achieved by the executive acting alone (such as the construction of memorials or reinstatements of sacked public officials), judicial remedies involving either prosecution of perpetrators or action by domestic courts, and measures of publication of the judgment or acknowledgement of the violation.

Second, we introduce several measures of case controversy as captured by the resistance the case meets from the respondent state. Whereas some judgments meet fierce resistance by the respondent state and even have led states to leave the Inter-American human rights system, other judgments are welcomed by governments as opportunities to address certain human rights challenges. While controlling for state reactions to the specific remedies would introduce post-treatment bias, we consider it important to control for signals of state resistance observed prior to the remedial ruling. We propose three measures for this purpose. The first measure is a count of the number of preliminary objections filed during the proceedings before the court. Raising preliminary objections is a strategy responding states can use to attempt to avoid a consideration of the merits of the case (Pasqualucci 1999), and more objections can be interpreted as evidence for stronger state hostility towards the case. Of the judgments included in our dataset, 53 per cent had at least one preliminary objection and the maximum number of preliminary objections filed in a case is 10. Of the remedial orders with at least one preliminary objection, 13 per cent were affected by dissent. By contrast, the only instances of judicial dissent in a case where no preliminary objections

were filed are the monetary remedies in the case of *Maritza Urrutia v. Guatamala*, which *ad hoc* Judge Arturo Martínez Gálvez dissented against because he considered the awards to be excessive. This difference suggests that to the extent that preliminary objections signal state resistance also during the compliance stage, it is important to control for them when estimating the relationship between dissent and compliance.

Our second measure of state resistance is a binary indicator of whether the state explicitly acknowledged international responsibility for the violation during the proceedings of the case. In some cases, the respondent state chooses to admit that a human rights violation has occurred and that it has international legal responsibility for the violation (Pasqualucci 2012, 8). States that are willing to admit responsibility when the case reaches the IACtHR may also be expected to be inclined to implement the remedies ordered by the Court. Acknowledgements of international responsibility were made in 29 per cent of the judgments and affect 41 per cent of the remedial orders in our dataset. None of the dissents in our dataset were made in cases in which the respondent state had acknowledged international responsibility. As the willingness to acknowledge international responsibility may be expected to also affect the compliance process, it is thus important to control for such acknowledgments when estimating the relationship between dissent and compliance.

As a final measure of state resistance, we consider whether the respondent state appointed an *ad hoc* judge to sit on the case. The appointment of *ad hoc* judges provides an important avenue for states to have their views represented on the bench. It is thus not surprising that *ad hoc* judges are more prone to dissenting than the regular judges. In fact, eight out of the ten cases in our dataset that included dissents in relation to remedial orders were written by *ad hoc* judges. Yet, the respondent state only appointed an *ad hoc* judge in about 45 per cent of the judgments in our dataset.

Third, the salience of the case to other societal actors might be an important confounder. As discussed, compliance with judicial decisions often depends on the likelihood that compliance will be monitored by domestic actors able to punish non-compliance. The mobilization of civil-society groups during the proceedings has been used as a measure of the attentiveness of pro-compliance constituencies (Vanberg 2005, 103). Civil-society involvement has also been argued to be important for compliance with IACtHR judgments (Cavallaro and Brewer 2008; Hillebrecht 2014a). At the same time, civil-society organizations may be expected to be more easily mobilized in the type of controversial cases that also invite more dissents. We therefore control for the attentiveness of potential compliance constituencies using a count of the number of *amici* briefs filed before the IACtHR during the case proceedings. Although some briefs are submitted by legal academics and individuals, transnational and domestic civil-society groups are a main provider of *amici* briefs. More generally, *amici* activity may reflect attention to the case among broader audiences and we thus expect the *amici* count to be informative of the extent of attentiveness to the case among potential compliance constituencies. The share of cases with at least one *amicus curiae* brief in our data is 38 per cent.

Fourth, case controversy might vary depending on the type of human rights violations that are at stake. To account for this possibility, we control for the type of rights violated using the categorization developed by Hillebrecht (2014a, 52). Based on the articles of the American Convention of Human Rights found to be violated in the judgment, we code whether the judgment involved one or more of four types of human rights violations: physical integrity rights (violations of articles 4, 5, 6, 7(1), and 7(2)), political and civil rights (violations of articles 12, 13, 14, 15, 16, 18, 19, 20, 22, and 23), legal procedure and due process rights (violations of articles 7(4), 7(5), 7(6), 7(7),

8, 9, 10, 24, and 25), and privacy and property rights (violations of articles 11, 17,24).[3] Most of the ordered remedies are from judgments finding violations of physical integrity rights and due process rights.

Finally, previous research on compliance with international human rights courts has highlighted the importance of several country characteristics for compliance outcomes. If judges are sensitive to the risk of non-compliance when they decide whether to dissent, such country characteristics may confound the relationship between dissent and compliance. We therefore control for three characteristics of the respondent state expected to be important for compliance.

First, previous research suggests that the extent to which responding governments are held accountable by other actors is important. As argued above, pro-compliance actors in civil society, the independent media, or in other government institutions are essential for compliance politics (Hillebrecht 2014a; Hillebrecht 2014b). To control for the ability of other domestic actors to hold governments accountable, we therefore include the accountability index provided by the Varieties of Democracy project. This index measures the "ability of a state's population to hold its government accountable through elections", through "checks and balances between institutions", and through "oversight by civil society organizations and media activity" (Coppedge et al. 2018).

Second, when compliance requires agreement among several institutions, veto-player problems may be expected to delay the implementation process (Huneeus 2011). To control for the presence of domestic veto-players, we include the political constraints index developed by Henisz (2000). This index is coded on an approximate interval scale

[3] Due to the low number of cases, we omit Hillebrecht's (2014b) "social, economic and cultural rights" category.

ranging from 0 to 1. It measures whether policy change requires agreement between different state institutions, and the degree of policy preference alignment between them.

Third, in line with managerial perspectives on compliance (Chayes and Chayes 1993), Voeten (2014) and Grewal and Voeten (2015) also find the respondent states' capacity for implementing judgments to be important for compliance with ECtHR judgments. The degree to which the state's institutions are capable of implementing difficult measures can similarly be expected to affect compliance with IACtHR remedial orders. We thus include the International Country Risk Guide's (ICRG) bureaucratic quality measure from the year of the remedial ruling.

Summary statistics for all variables included in the regression models are reported in appendix.

Estimation

Because our dependent variable is binary we use binomial logistic regression.[4] To account for our three-level data structure where remedial orders are nested in judgments and respondent states, we estimate hierarchical models with random intercepts at both the judgment and country level.[5] Because each judgment has only one respondent state, the judgment-level intercepts are nested in countries. To account for how the likelihood of compliance will vary depending on the time since the judgment, we also include a cubic polynomial of time since the remedial judgment.

Results

Results from the hierarchical logistic regression models are reported in Table 1. The dependent variable in all models is a binary indicator of whether the respondent state

[4] Our results are robust to specifying the model instead with a probit link function. Comparing model fit suggests that the logistic specification fit the data better.
[5] The models are estimated using the lme4 package in (Bates et al. 2015).

has complied with the remedial order. The main independent variable is whether the decision on the remedial order contained a dissenting vote. All models include random intercepts at both the judgment and country level and the cubic time trend, but we introduce the control variables gradually to assess whether the estimated relationship is sensitive to any particular set of controls. With the exception of the bivariate model, our coefficient for judicial dissent and the associated standard error are relatively stable across the different model specifications.

Model 1 includes only the independent variable and the random intercepts. In this model, the relationship between judicial dissent and compliance is not statistically significant. The lack of a relationship in the bivariate model can be explained by the fact that most split decisions in our data concern monetary remedies, which have a higher compliance rate than other types of remedial orders.

In model 2, we control for the type of remedy, and here we find a strong and significant relationship between judicial dissent and the likelihood of non-compliance. Given the large differences in the likelihood of compliance between different types of remedial orders[6] (see also Huneeus 2011, Parente 2018), it is not surprising that this particular control is important. This negative and significant relationship between dissent and compliance holds across the subsequent model specifications.

[6] The monetary remedies have the highest compliance rate, with 71 per cent of the payments having been paid in full. Legislative and judicial remedies on the other hand have compliance rates at 24 and 15 per cent, respectively. With a compliance rate of 68 per cent, orders to publish the judgment or acknowledge state responsibility are comparable to the monetary remedies. Remedial orders of a practical nature, or requiring only executive action, have a compliance rate of 28 per cent.

Table 1 Three-level logistic regression models

	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6
Dissent against remedial order	−1.24	−2.55*	−2.77*	−2.78*	−2.87*	−2.60*
	(1.15)	(1.15)	(1.19)	(1.22)	(1.26)	(1.27)
Legislative remedy		−3.16***	−3.17***	−3.17***	−3.21***	−3.04***
		(0.64)	(0.64)	(0.64)	(0.65)	(0.67)
Practical/executive remedy		−2.60***	−2.60***	−2.60***	−2.58***	−2.56***
		(0.32)	(0.32)	(0.32)	(0.32)	(0.32)
Judicial remedy		−3.99***	−4.00***	−4.00***	−4.00***	−4.11***
		(0.45)	(0.45)	(0.45)	(0.45)	(0.47)
Publication remedy		0.33	0.32	0.32	0.34	0.36
		(0.35)	(0.35)	(0.35)	(0.35)	(0.35)
Number of preliminary objections			−0.11	−0.11	−0.13	−0.13
			(0.19)	(0.19)	(0.19)	(0.19)
Violation acknowledged by state			−0.65	−0.65	−0.16	−0.31
			(0.78)	(0.78)	(0.81)	(0.84)
ad hoc judge			0.80	0.80	0.83	0.84
			(0.72)	(0.73)	(0.72)	(0.74)
Number of *amici*				0.00	0.03	−0.02
				(0.06)	(0.07)	(0.07)
Physical integrity rights					−1.08	−0.68
					(0.89)	(0.92)
Political and civil rights					0.26	0.20
					(0.79)	(0.90)
Legal Procedure/due process rights					−0.69	−1.16
					(1.71)	(1.72)
Privacy and property rights					−1.77†	−1.96†
					(0.99)	(1.03)
Veto players						0.36
						(2.41)
Accountability institutions						1.61
						(1.12)
Bureaucratic quality						0.48
						(0.81)
Time trend	−91.48***	−65.98***	−66.42***	−66.39***	−68.01***	−67.96***
	(10.08)	(9.86)	(9.94)	(9.85)	(10.18)	(10.25)
Time trend^2	15.59*	4.74	5.72	5.72	7.83	8.95
	(7.10)	(7.64)	(7.81)	(7.73)	(8.09)	(8.36)
Time trend^3	−6.33	0.17	0.14	0.13	−1.94	−3.23
	(5.88)	(7.07)	(7.09)	(7.03)	(7.36)	(7.58)
(Intercept)	0.05	1.33**	1.32†	1.32†	2.91	0.42
	(0.47)	(0.48)	(0.68)	(0.70)	(2.01)	(2.38)
AIC	1098.74	928.20	932.00	934.00	936.91	927.48
BIC	1134.78	984.83	1004.08	1011.22	1034.73	1040.62
Log Likelihood	-542.37	-453.10	-452.00	-452.00	-449.46	-441.74
Num. obs.	1272	1272	1272	1272	1272	1265
Num. groups: Judgments	138	138	138	138	138	136
Num. groups: Respondent states	21	21	21	21	21	20
Var: Judgments (Intercept)	12.85	11.58	11.57	11.57	11.47	12.35
Var: Respondent states (Intercept)	1.20	1.44	1.37	1.36	1.12	0.08

$^{***}p < 0.001$, $^{**}p < 0.01$, $^{*}p < 0.05$, $^{\dagger}p < 0.1$

Model 3 includes our three measures of initial resistance from the respondent state, the count of preliminary objections, the dummy for whether the state explicitly acknowledged international responsibility, and the dummy for whether an *ad hoc* judge was appointed. Including these controls does not have any important influence on the coefficient for judicial dissent. In model 4 we add the count of *amicus curiae* briefs submitted to the Court. The coefficient has the expected positive sign, indicating that broader societal awareness positively impacts on compliance, but it is not statistically significant. More importantly for our purposes, the relationship between judicial dissent

and compliance is robust to controlling for the count of *amici* briefs. Model 5 introduces controls for the type of human rights violations addressed by the judgment, while model 6 adds the country-level controls. The relationship between judicial dissent and a greater risk of non-compliance holds also in these models.

Because our model is non-linear, the estimated change in the predicted probability of compliance associated with judicial dissent depends on the other variables in the model. For the remedial orders in our data, the average predicted probability for full compliance is .24 if the remedial order was affected by judicial dissent and .56 if the order was unanimous. Thus, there is a substantially important difference in the likelihood of compliance associated with judicial dissent.

The models reported in Table 1 suggest that judicial dissent has an effect on compliance that is independent of important confounders such as the degree to which the respondent state signaled resistance during the initial proceedings and the extent to which the case is salient to civil-society actors. Nevertheless, there might still be unmeasured differences between judgments and remedial orders that explain both dissent and non-compliance. Sensitivity analysis allow us to assess how important an omitted variable would have to be to invalidate our inferences (Frank 2000; Clarke 2009; Frank et al. 2013). The sensitivity test shows that a potential omitted variable correlated with both dissent and compliance at .15 (conditional on the other covariates in the model) would be sufficient for the dissent coefficient to be insignificant at the .10 level.[7] Because the existence of such a variable is not unimaginable, caution is warranted when interpreting the relationship between judicial dissent and compliance as causal. This caveat

[7] We use the "konfound" package developed by Rosenberg, Xu, and Frank (2018) to conduct the sensitivity test. For the purpose of the causal sensitivity test, we re-estimated model 6 as a linear probability model. The linear probability model yields substantively similar results as the logistic models and is reported in the appendix.

notwithstanding, our analysis lends at least some support for the expectation that judicial dissent is associated with a greater risk of non-compliance.

Evidence from the ECtHR

We now turn to evidence from the European Court of Human Rights (ECtHR). The ECtHR was established in 1959 to adjudicate alleged violations of the European Convention on Human Rights in the Council of Europe states. The importance of the ECtHR greatly increased after the end of the Cold War when former communist states joined the Council of Europe and the jurisdiction of the ECtHR. Today, the ECtHR has jurisdiction of human rights complaints launched by individuals in 47 Council of Europe states.

Previously, applications were filtered through the European Commission of Human Rights, but this commission was abolished in 1998. The increase in member states and the fact that individuals can now complain directly to the ECtHR after exhausting domestic remedies led to a significant increase in the ECtHR's case load from the late 1990s.

The ECtHR is composed of one judge from each member state. Each judge is elected by the Council of Europe's Parliamentary Assembly from a list of three candidates nominated by the relevant member state. Until 2010, judges were elected for renewable six-year terms. Since 2010, judges have been elected for nine-year terms, but may no longer be re-elected.

Since the entry into force of Protocol 11 in 1998, merits judgments are rendered by seven-judge Chamber panels or by seventeen-judge Grand Chamber panels (Leach 2011, 11). Cases may reach the Grand Chamber either because the Chamber

relinquishes jurisdiction or because the Chamber judgment is appealed. For cases decided in Chamber, panels consist of the judge nominated from the respondent states and six other judges from the section of the court that deals with cases against the relevant respondent state. The sections are set up for periods of three years and the composition of each section aims to be balanced with respect to the gender and geographic and legal origin of the judges. The ECtHR currently has five sections. For cases decided in Grand Chamber, the panel always consists of the Court's president and vice-presidents, the section presidents, and the judge nominated from the respondent state. The remaining judges are selected through lottery.

Research Design

To investigate the relationship between judicial dissent and compliance with ECtHR judgments, we employ a novel database of ECtHR cases (Stiansen and Voeten 2017). This database includes information about all ECtHR judgments rendered by June 1, 2016, their implementation by respondent states, and dissenting opinions.

Units of Analysis and Dependent Variable

Compliance with ECtHR judgments is monitored by the Committee of Ministers of the Council of Europe. The Committee of Ministers has established a specialized secretariat, the Department for Execution of ECtHR judgments to conduct the day-to-day monitoring of implementation processes and make recommendations concerning when compliance has been achieved. Çali and Koch (2014) find that this system contributes to a relatively effective and unbiased compliance monitoring.

Consistent with previous research (Voeten 2014; Grewal and Voeten 2015), our measurement of compliance is based on the conclusions reached in this compliance-monitoring system. Specifically, we consider whether the Committee of Ministers has closed the compliance monitoring by rendering a final resolution. To account for the

duration of the implementation process, we count the number of days between the judgment and the final resolution.

The Committee of Ministers organizes the monitoring of multiple judgments under the heading of lead cases, which are the first cases to identify a particular human rights violation in a particular respondent state. If compliance is not promptly achieved, it is not uncommon that a respondent state is faced with multiple new ECtHR judgments pertaining to the same human rights violation affecting other applicants. In such cases, the compliance monitoring for these repetitive judgments is grouped under the lead case. The respondent state is considered to have complied when it has remedied the violations identified both in the lead case and in repetitive cases grouped under it. The compliance with lead cases and repetitive cases can therefore not be assessed independently. Lead case judgments are therefore the appropriate units of analysis for studies of compliance with ECtHR judgments (Voeten 2014; Grewal and Voeten 2015).

We exclude from the analysis cases that were settled amicably between the applicant and the respondent state or that were decided by the now defunct European Commission of Human Rights. After these exclusions, we are left with a dataset of 3735 judgments. Of these, 2474 had been complied with by June 1, 2016 which is the last date of observation in the dataset.

Independent variables

Our theoretical argument concerns judicial dissent that provides arguments against compliance. The content and direction of all dissenting opinions was coded in the dataset. For each contested issue in split judgments, it was coded whether the dissenting opinion favored the respondent state or the applicant. We use this information to

measure the judicial dissent that favored the respondent state on at least some of the contested issues.

We measure dissent based on whether there was disagreement concerning the lead case judgment. First, we create a dummy variable that takes the value 1 if at least one judge dissented in favor of the respondent state and 0 otherwise. 425 of the judgments in the dataset (or about eleven per cent) contained at least one pro-government dissent. As shown by Voeten (2008), judges are more prone to dissent against cases that find a violation by their appointing governments. The dissent from such judges might be expected to be particularly likely to relate to how controversial the case is in the respondent state. We therefore also include a dummy capturing whether the non-national judges dissented. 358 judgments (or about ten per cent of our dataset) contained at least one pro-government dissent from a judge other than the national judge.

In contrast to the IACtHR, we have several judgments from the ECtHR in which more than one judge dissented. Qualitative evidence from implementation processes suggests that how many of the judges that dissented can make a difference in debates concerning compliance. For instance, opposition politicians arguing against legislative measures introduced to comply with the *Folgerø and others v. Norway* stressed that the judgment was rendered by the smallest possible majority in the Grand Chamber (Odelstinget 2008). We therefore also consider the share of the judges on the panel that dissented in favor of the respondent state.

The share of dissenting judges has a mean value of .028, reflecting the fact that such narrow majorities are rare.[8] When excluding dissents from national judges, the mean share of dissenting judges is 0.024.

Control variables

An important concern with respect to causal inference – for the ECtHR as for the IACtHR – is that judgments may vary systematically either because judges tend to disagree in particularly controversial cases or because the expectation of a challenging compliance process lead the Court to suppress open dissent. In the first scenario, we risk overestimating the effect of dissent on compliance, while in the second scenario we risk underestimating the same effect. In the appendix, we therefore consider panel composition – specifically the propensity of individual judges on a panel to submit separate opinions – as an instrument for dissent. Voeten (2012) argues that because the composition of judges other than the non-national judge is decided through rotation or lottery, panel composition may be considered exogenous to compliance. Unfortunately, we find that this instrument is not strong enough to make us confident in the result of this analysis. Our primary identification strategy is therefore to estimate multivariate models in which we condition on potential confounders.

The types of measures needed for compliance is important also in the ECtHR context. For instance, judgments that require legislative changes can be expected to be more controversial and tend to be implemented at a slower rate than other judgments (Stiansen 2019). We therefore control for the type of remedies required for implementation. Specifically, we control for whether the judgment required legislative changes, jurisprudential changes, executive action, practical measures (such as the

[8] Because the dissenting judges may have dissented to different parts of the judgment, the share of judges dissenting on at least one issue can exceed .5.

rehabilitation of prisons), publication and dissemination of the judgment, and individual measures (such as returns of property or reopening of domestic proceedings). Because a judgment may require more than one type of measure, these categories are not mutually exclusive.

In contrast to the IACtHR, applicants may – after exhausting domestic remedies – bring cases directly to the ECtHR. As a result, the ECtHR has a much greater caseload and many of its judgments concern routine issues of limited legal controversy. As a proxy for the degree to which the judgment was associated with legal controversy, we consider the judgment's contribution to development of new ECtHR case law. Innovative judgments that contribute to developing new convention law might face a greater likelihood of resistance from respondent states. Disagreement concerning how the ECtHR's case law ought to develop is also one of the primary sources of dissent. The ECtHR registry classifies judgments in four importance levels: judgments that are sufficiently important to be included in a case report, other judgments that "make a significant contribution to the development, modification, or clarification" of case law (importance level 1), judgments that do not make such significant contribution, but still "go beyond merely applying existing case law" (importance level 2), and finally judgments of "little legal interest" (importance level 3). Because this variable is on the ordinal scale, we introduce it as a set of dummy variables with case reports as the reference category.

Both pro-government dissent and compliance difficulties may be particularly likely for judgments that go far in what may be considered an "applicant friendly" or "violationist" direction. We therefore control for how "applicant friendly" the median judge on the panel is based on the judge ideal points available from Stiansen and Voeten (2018).

More controversial judgments are also more likely to be decided in the Grand Chamber, where dissent is also more frequent. On the one hand, the controversy surrounding such cases may contribute not only to more frequent dissents, but also to a lower likelihood of prompt compliance. On the other hand, judgments rendered by the Grand Chamber may be considered particularly authoritative and therefore face less resistance within respondent states. We therefore include a dummy variable that takes the value of 1 if the judgment was rendered by the Grand Chamber and 0 otherwise.

Both the likelihood of dissent and compliance politics might be influenced by the number and types of human rights violations identified in the judgment. We therefore include a count of the number of articles found to be violated and a set of dummy variables for the most frequently violated articles. Specifically, we control for whether article 2 (right to life), article 3 (prohibition of torture), article 5 (right to liberty), article 6 (right to fair trial), article 8 (right to respect for private and family life), article 10 (freedom of speech), article 13 (right to an effective remedy), article 14 (prohibition of discrimination), and article 1 of protocol 1 (right to private property) were violated.

We include fixed effects on the respondent state. In addition, we control for domestic veto players, bureaucratic quality, and strength of accountability institutions using the same set of variables as for the IACtHR analysis.

Finally, we control for the year of the judgment both as a linear time trend and using three dummy variables that indicate whether the judgment was rendered after important institutional changes in the European human right system that might be expected to influence judicial behavior and compliance: Protocol 11 which established the permanent court in 1998, changes in the Committee of Ministers' working methods which strengthened the compliance monitoring in 2006, and finally Protocol 14 which

increased the term limits for the judges and removed the possibility for re-election in 2010.

Summary statistics for all the included variables are reported in the appendix.

Estimation

Compliance with ECtHR judgments can take several years to achieve even for willing states. At the same time, compliance is sometimes achieved after several years of defiance. It would therefore be problematic to only consider the outcome and not the duration of the ECtHR implementation processes. Our preferred estimator for modelling compliance with ECtHR judgments is therefore Cox model, using the number of days until compliance (and a censoring indicator) as our dependent variable.[9] . However, in the appendix we report logistic regression models of compliance outcomes. Our results do not depend on the choice of estimator.

Results

A set of Cox models of compliance with ECtHR judgments are reported in Table 2. The models are reported as coefficients with standard errors in parentheses. They include different measures of judicial dissent, along with the full set of control variables discussed above and are stratified by the respondent state to account for unobserved country-level variation. Average marginal differences in median expected years until compliance associated with dissent are reported in Figure 1. The marginal differences are calculated based on the Cox models using the method proposed by Kropko and Harden (2017).

[9] Throughout, we check for violations of the proportional hazard assumption using the Grambsch and Therneau (1994) test and interact any offending variables with the natural logarithm of time (Box-Steffensmeier and Zorn 2001)

In model 7, we include a dummy for whether at least one judge dissented in favor of the respondent state. In line with Hypothesis 1, the model suggests a statistically significant relationship between judicial dissent and compliance. The magnitude of this relationship is relatively moderate. The average marginal difference reported in Figure 1 suggests that judgments in which at least one judge dissented in favor of the respondent state are on average implemented about 5 months later than other judgments. This difference suggests that judicial dissent is not a primary explanation for lagging implementation of ECtHR judgments. Yet, judicial dissent has a discernable influence on compliance politics even when we control for a range of indicators of case controversy and the compliance environment.

The judge nominated from the respondent state might be particularly sensitive to controversy within the respondent state when deciding whether to dissent. In Model 8, we therefore include a dummy which takes the value 1 if any of the other judges dissented. Excluding the national judge, slightly strengthens the negative relationship between judicial dissent and prompt compliance. When the national judge is excluded, the average marginal difference in the expected median time until compliance increases to about 6.3 months.

Table 2 Stratified Cox models of compliance with ECtHR judgments

	Model 7	Model 8	Model 9	Model 10
Pro-government dissent	-0.19^{*}			
	(0.09)			
Pro-government dissent, excluding national judge		-0.24^{*}		
		(0.09)		
Share of judges dissenting in favor of government			-0.70^{*}	
			(0.31)	
Share of judges dissenting in favor of government, excluding national judge				-0.86^{*}
				(0.34)
Need for legislative changes	-5.45^{***}	-5.46^{***}	-5.46^{***}	-5.46^{***}
	(0.73)	(0.72)	(0.71)	(0.71)
Need for legislative changes * log(t)	0.64^{***}	0.64^{***}	0.64^{***}	0.64^{***}
	(0.11)	(0.11)	(0.11)	(0.11)
Need for jurisprudential changes	-0.59^{***}	-0.59^{***}	-0.59^{***}	-0.59^{***}
	(0.12)	(0.12)	(0.12)	(0.12)
Need for practical measures	-0.50^{***}	-0.50^{***}	-0.50^{***}	-0.50^{***}
	(0.09)	(0.08)	(0.09)	(0.09)
Need for executive action	-0.40^{***}	-0.40^{***}	-0.41^{***}	-0.41^{***}
	(0.06)	(0.06)	(0.06)	(0.06)
Need for publication of judgment	0.08	0.08	0.08	0.08
	(0.09)	(0.09)	(0.09)	(0.09)
Need for individual measures	-0.41^{***}	-0.41^{***}	-0.41^{***}	-0.41^{***}
	(0.06)	(0.06)	(0.06)	(0.06)
Grand Chamber judgment	0.13	0.14	0.13	0.14
	(0.08)	(0.08)	(0.08)	(0.08)
Ideal point of median judge	-0.08	-0.09	-0.09	-0.08
	(0.14)	(0.14)	(0.14)	(0.14)
Importance level 1	0.09	0.10	0.10	0.10
	(0.10)	(0.10)	(0.10)	(0.10)
Importance level 2	0.00	0.00	0.01	0.00
	(0.09)	(0.09)	(0.09)	(0.09)
Importance level3	0.45^{***}	0.44^{***}	0.45^{***}	0.45^{***}
	(0.10)	(0.11)	(0.10)	(0.10)
Number of articles violated	-0.16	-0.16	-0.15	-0.15
	(0.16)	(0.16)	(0.16)	(0.16)
Right to life violation	-0.42	-0.42	-0.42	-0.43
	(0.23)	(0.23)	(0.23)	(0.22)
Prohibition of torture violation	-0.21	-0.21	-0.22	-0.22
	(0.12)	(0.12)	(0.12)	(0.12)
Right to liberty violation	-0.06	-0.06	-0.06	-0.06
	(0.16)	(0.16)	(0.16)	(0.16)
Right to fair trial violation	-0.04	-0.04	-0.05	-0.05
	(0.10)	(0.10)	(0.10)	(0.10)
Right to respect for private and family life violation	-0.05	-0.05	-0.05	-0.05
	(0.10)	(0.10)	(0.10)	(0.10)
Freedom of expression violation	-0.08	-0.07	-0.08	-0.08
	(0.12)	(0.12)	(0.12)	(0.12)
Right to effective remedy violation	-0.03	-0.03	-0.03	-0.04
	(0.17)	(0.16)	(0.16)	(0.16)
Prohibition of discrimination violation	0.42^{*}	0.42^{*}	0.41^{*}	0.41^{*}
	(0.18)	(0.18)	(0.18)	(0.18)
Private property rights violation	-0.34	-0.34	-0.35	-0.35
	(0.23)	(0.23)	(0.23)	(0.23)
Veto players	0.51	0.54	0.51	0.52
	(0.57)	(0.57)	(0.57)	(0.57)
Bureaucratic quality	-0.15	-0.15	-0.15	-0.15
	(0.12)	(0.12)	(0.12)	(0.12)
Accountability institutions	1.83^{**}	1.83^{**}	1.82^{**}	1.81^{**}
	(0.59)	(0.59)	(0.59)	(0.59)
Year of judgment	-0.05^{**}	-0.05^{**}	-0.05^{**}	-0.05^{**}
	(0.02)	(0.02)	(0.02)	(0.02)
Judgment rendered after protocol 11	-1.05^{***}	-1.06^{***}	-1.05^{***}	-1.05^{***}
	(0.20)	(0.20)	(0.20)	(0.20)
Judgment rendered after change in Committee of Minister working methods	0.11	0.11	0.12	0.12
	(0.13)	(0.13)	(0.13)	(0.13)
Judgment rendered after protocol 14	0.36	0.37	0.38	0.37
	(0.84)	(0.84)	(0.84)	(0.84)
Judgment rendered after protocol 14 * log(t)	0.04	0.04	0.03	0.04
	(0.12)	(0.12)	(0.12)	(0.12)
AIC	17873.26	17870.71	17872.70	17870.41
Num. events	2357	2357	2357	2357
Num. obs.	3552	3552	3552	3552

$^{***}p < 0.001$, $^{**}p < 0.01$, $^{*}p < 0.05$.
All models are stratified by respondent state.
Standard errors are clustered by respondent state.

Models 9 and 10 considers whether judgments that contain more than one dissent are even less likely to be promptly complied with. In Model 9, we include the share of all judges on the panel that dissented in favor of the respondent state. In Figure 1, we display the average difference in time until compliance associated with having $\frac{3}{7}$ of the judges dissenting in favour of the respondent state. Such judgments are on average implemented close to 8 months after comparable judgments without dissent. In line

with our expectations, there are thus greater compliance challenges associated with having a minimal majority judgment than by having a single dissenting judge.

In model 10, we include the share of the judges other than the national judge that dissented. In Figure 1, we consider the difference in expected time until compliance if $\frac{3}{6}$ of the non-national judges dissented. The average marginal difference is about 11 months. The Kaplan-Meier estimate of the median time until compliance in our dataset is about 51 months. The estimated average delay of 11 months suggests that judicial dissent is associated with greater compliance difficulties that are substantively important also in the ECtHR setting.

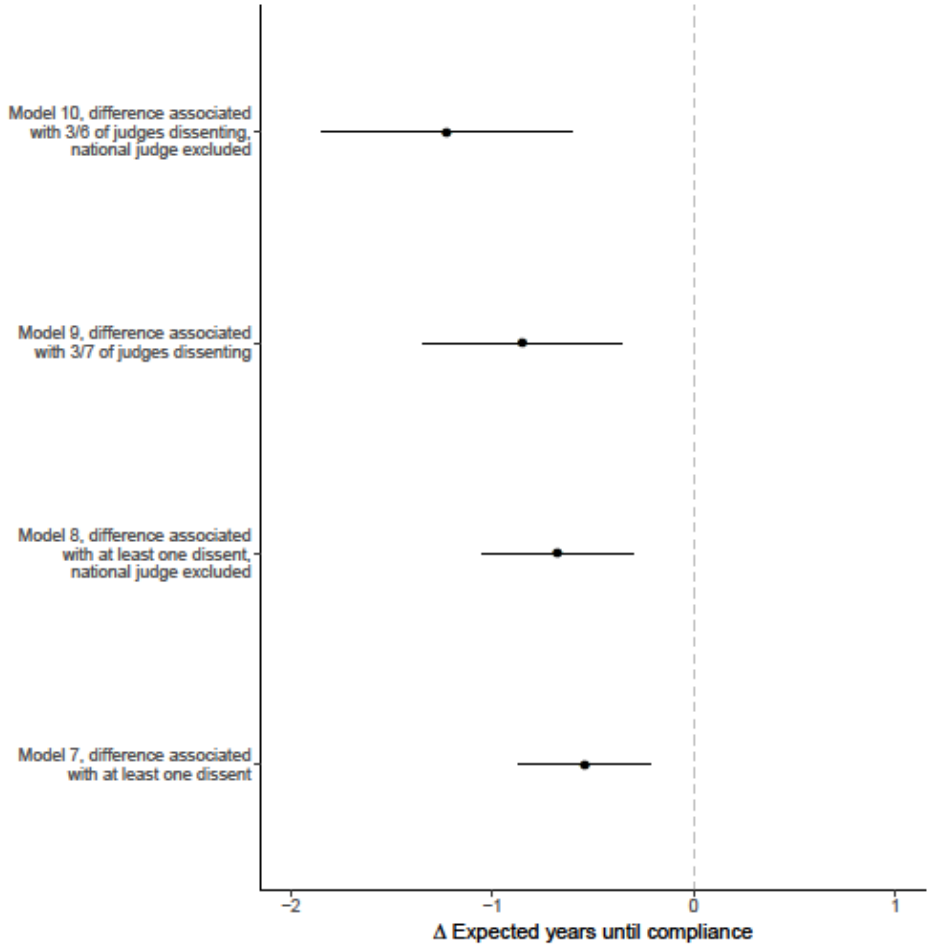

Figure 1 Average marginal differences in median expected years until compliance with ECtHR judgments associated with judicial dissent. Error bars indicate 95 per cent confidence intervals.

Conclusions

Our study indicates that judicial dissent may reduce courts' ability to achieve compliance with their rulings. To be clear, we do not claim to provide definitive proof of a causal relationship. Future research may wish to further investigate the veracity of the causal relationship between dissent and non-compliance. We do, however, find evidence of a statistical relationship that holds for two courts that are found in rather different institutional and contextual circumstances, and when controlling for a rich set of potential confounders. Our observational evidence is, moreover, consistent with

micro-level experimental evidence concerning how open dissent influences acceptance of judicial decisions (Zink, Spriggs, and Scott 2009). The best available evidence is therefore at least suggestive of a relationship between judicial dissent and greater compliance challenges.

These findings have important implications for actors involved in the institutional design of constitutional and international courts and the judges sitting on these courts. When deciding whether to allow and practice judicial dissent, these actors have to weigh a number of different and partly contrasting considerations. Extant scholarship argues, on the one hand, that open judicial dissent increases transparency and enables other actors to hold individual judges accountable for their decision-making (Dunoff and Pollack 2017), which may increase the overall legitimacy of the court. Scholars have also argued that judicial dissent may strengthen the quality of majority judgments as majorities are forced to confront opposing views (Haire, Moyer, and Treier 2013; Vitale 2014, 87) and as open dissent might promote judges' individual sense of responsibility for their rulings (Stephens 1952, 396—97). Moreover, dissenting opinions can play an important role in the gradual evolution of the law (Vitale 2014, 87—88). On the other hand, there are important concerns about the consequences of dissent for the career prospects of judges (Strezhnev 2015), and – in part by extension – for judicial independence (Dunoff and Pollack 2017).

Our findings suggest that judges and other decision-makers need to consider the increased risk of non-compliance associated with split judicial decisions. However, given the potential beneficial effects of allowing dissent for the overall legitimacy of the court it is not clear that encouraging a policy of suppressing dissent in the international human rights regimes would advisable. Furthermore, dissent is already

quite rare for both IACtHR and the ECtHR judgments, perhaps as a consequence of judges already being aware that dissent may weaken the authority of the judgment.

One specific practice that is relevant here is allowing a judge from the respondent states to sit on the bench. A large share of the dissents in the IACtHR are by *ad hoc* judges appointed by the respondent state. Similarly, the ECtHR always includes on the bench a judge appointed by the respondent state, and these judges are particularly prone to dissent. Again, there is a trade-off here between increased legal authority stemming from a unanimous decision, on the one hand, and other sources of legitimacy, on the other hand. A national judge may be valuable by bringing local knowledge of the defendant state. Furthermore, while removing judges from the respondent state might be an effective way of reducing dissents, having a national judge on the bench is likely to be important for the legitimacy of international courts in the eyes of national actors. Thus, even if judicial dissent exacerbates compliance problems, courts need to be cautious when responding to these challenges.

Our findings have several implications for the judicial politics literature. We provide support for a chain of arguments that links domestic compliance politics to perceptions of legal authority. It has been argued that court rulings influence politics by transferring legitimacy to actors with interests that align with the court's interpretation of the law, and that compliance hinges on the ability of these actors to use their strengthened position in domestic debates to facilitate policy change (e.g. (Alter 2014: chapter 2). In line with this argument, we show that variation in the degree to which judgments are likely to be perceived as legitimate influences the likelihood of compliance and the duration of implementation processes.

Furthermore, the relationship between judicial dissent and compliance means that judges can influence the reception of their judgment by their actions. This finding contributes to the scholarship on domestic and international courts that argue that persuading external audiences of the legal qualities of judgments is important for courts when they face a hostile compliance environment (Hume 2006; Voeten 2012; Larsson et al. 2017). While existing scholarship has demonstrated that courts act strategically to influence their perceived legitimacy when they face political challenges, we show that there is indeed a relationship between one characteristic of the judicial output likely to influence perceived legitimacy – judicial dissent – and the likelihood of compliance.

Finally, the negative relationship between judicial dissent and compliance suggests that the positive effects of allowing dissents, such as increasing transparency and assuring individual judicial responsibility (Stephens 1952, 396–97), need to be weighed against the need to secure judgments likely to be complied with. It also suggests that when a unanimous decision cannot be reached, judges may be advised to increase the efforts in terms of other available strategies to promote compliance.

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