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Paradox Lost: Explaining Cross-National Variation in Case Volume at the European Court of Human Rights

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ABSTRACT

Existing research on states and human rights focuses primarily on international treaty ratification, post-treaty rating systems, and ad hoc reports on adherence in individual countries. Additionally, the literature is characterized by disproportionate attention to certain rights to the neglect of others, thereby painting an incomplete and potentially inaccurate picture of a state's practice and implementation of human rights. Consequently, the extant literature too frequently disregards key domestic and international factors as determinants of cross-national variation in the implementation and protection of human rights, and it instead generates paradoxical claims about human rights and state behavior. With Europe as its empirical focus, this study tests one assertion that state strength relative to societal actors impacts the frequency of cases heard at the European Court of Human Rights. Findings suggest that state strength indeed plays a role in the overall number of cases from member states in the European human rights system.

INDEX WORDS: Human rights, Political science, European Court of Human Rights, Council of Europe, International Human Rights Law, International court, Europe, State strength, European Convention on Human Rights, Domestic courts, Paradox, Treaties

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DEDICATION

For the man who never held me back and encouraged me to see the world as much as possible.

This thesis is dedicated in loving memory of Juan Vicente Armendáriz.

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INTRODUCTION

What explains cross-national variation in case volume at the European Court of Human Rights? Human rights are routinely depicted as essential elements necessary for the well-being of any legitimate state and its society. Their very existence and defense are central to the theory and practice of international relations. Rights-based treaties and their attendant policies are purportedly designed to create more accountability in international law and to accommodate the increasingly transnational organization of 21st century civil societies. A state's open commitment to these elements, whether through ratifying treaties or legislating new protections, is welcomed and typically rewarded by the international community. Yet, as has been repeatedly shown, there is a significant difference between a state's public commitments and its actual human rights practices.

To illustrate the variation that exists even across countries that have formally committed to respecting human rights, Table 1 provides one measure of case volume across the 47 member states of the Council of Europe during the 2006-2010 period. Each country has established its commitment to the protection of human rights by ratifying the European Convention on Human Rights and by becoming a member state of the Strasbourg-based Council of Europe. The Council has its own legal arm, the European Court of Human Rights (ECHR), charged with ensuring the full implementation of the European Convention and the rights outlined within it. The data below, provided by the Court, illustrate the number of applications that are submitted from each member state to one of the Court's judicial bodies relative to that state's population in that year. The figures were calculated to reflect the number of applications submitted for every 10,000 people. Overall, the numbers are generally low (below 1.0) and appear stable over time.

However, inspection reveals evidence of some apparent variation with some cases exceeding 1.0 (indeed, rising as high as 6.68 in Slovenia).

Table 1. Allocated Applications by State and Population (2006-2010)

Applications Allocated to a Judicial Body/Population (10,000)

Country	2006	2007	2008	2009	2010
Albania	0.17	0.17	0.24	0.31	0.30
Andorra	1.07	0.50	0.12	0.69	0.94
Armenia	0.30	1.90	0.33	0.40	0.61
Austria	0.42	0.40	0.45	0.49	0.52
Azerbaijan	0.26	0.83	0.39	0.40	0.37
Belgium	0.10	0.12	0.16	0.24	0.28
Bosnia and Herzegovina	0.63	1.82	2.53	1.65	1.71
Bulgaria	0.97	1.07	1.16	1.57	1.78
Croatia	1.44	1.26	1.37	1.70	2.24
Cyprus	0.73	0.81	0.83	0.74	1.47
Czech Republic	2.41	0.78	0.69	0.69	0.58
Denmark	0.13	0.08	0.13	0.11	0.17
Estonia	1.37	1.14	1.26	1.52	1.98
Finland	0.50	0.51	0.52	0.92	0.70
France	0.29	0.24	0.43	0.25	0.25
Georgia	0.24	0.37	4.04	5.03	0.85
Germany	0.19	0.18	0.19	0.18	0.21
Greece	0.33	0.34	0.37	0.46	0.52
Hungary	0.42	0.53	0.42	0.45	0.44
Iceland	0.40	0.29	0.22	0.31	0.47
Ireland	0.10	0.10	0.11	0.14	0.14
Italy	0.16	0.23	0.31	0.60	0.64
Latvia	1.17	1.02	1.09	1.44	1.20
Liechtenstein	0.29	1.42	2.26	3.92	4.17
Lithuania	0.60	0.67	0.76	0.78	0.73
Luxembourg	0.70	0.71	0.72	0.59	0.88
Malta	0.40	0.44	0.29	0.34	0.55
Moldova	1.43	2.48	3.21	3.70	2.65
Monaco	1.25	3.13	1.56	2.73	3.94
Montenegro	…	1.46	2.49	4.30	4.82
Netherlands	0.24	0.22	0.23	0.30	0.44
Norway	0.20	0.13	0.17	0.16	0.18
Poland	1.04	1.10	1.15	1.31	1.51
Portugal	0.20	0.13	0.14	0.14	0.17
Romania	1.53	1.47	2.43	2.45	2.79
Russia	0.70	0.67	0.71	0.97	1.01
San Marino	0.69	0.32	1.30	0.63	1.29
Serbia	0.75	1.43	1.45	1.60	2.14
Slovakia	0.90	0.65	0.90	1.05	1.05
Slovenia	6.68	5.03	6.68	2.91	4.07
Spain	0.08	0.07	0.09	0.14	0.15
Sweden	0.41	0.40	0.35	0.40	0.96
Switzerland	0.38	0.32	0.34	0.61	0.47
The Former Yugoslav Republic of Macedonia	1.45	2.22	1.93	2.39	2.06
Turkey	0.32	0.39	0.53	0.59	0.80
Ukraine	0.53	0.97	1.03	1.03	0.87
United Kingdom	0.14	0.14	0.20	0.18	0.45

Source: The European Court of Human Rights. *The European Court of Human Rights- Reports.* May 2010. http://www.echr.coe.int/ECHR/EN/Header/Reports+and+Statistics/Reports/Annual+Reports/.

Far from representing only random data points, these population-adjusted case frequency numbers may provide important indicators of the actual respect for human rights within member states. For further context, Table 2 offers a preliminary picture of current human rights ratings in the same countries. The scores are averaged from Freedom House's political and civil liberties ratings and arranged in ascending order. Freedom House's rating scale is defined as follows; Free: 1.0-2.5, Partly Free: 3.0-5.0, and Not Free: 5.5-7.0. The Freedom House ratings scheme provides a suitable proxy here for human rights primarily because "the methodology of the survey is grounded in basic standards of political rights and civil liberties, derived in large measure from relevant portions of the Universal Declaration of Human Rights. These standards apply to all countries and territories, irrespective of geographical location, ethnic or religious composition, or level of economic development."[1] The member states of the European Human Rights system have each ratified the European Convention on Human Rights, the region's major human rights treaty. The Convention was modeled after the Universal Declaration of Human Rights as a way to enforce those rights outlined in the Declaration in its ratifying member states. All states are thus formally bound under the jurisdiction of its human rights institutions, which include the Commissioner for Human Rights and the COE's European Court of Human Rights.

[1] Freedom House, Inc. *Welcome to Freedom House: Methodology.* 2008. http://www.freedomhouse.org/template.cfm?page=351&ana_page=341&year=2008 (accessed 26 April 2010).

Table 2. Combined Average Ratings – Independent Countries

Country	PCR	Country	PCR
Andorra	1	Spain	1
Austria	1	Sweden	1
Belgium	1	Switzerland	1
Cyprus	1	United Kingdom	1
Czech Republic	1	Croatia	1.5
Denmark	1	Greece	1.5
Estonia	1	Italy	1.5
Finland	1	Monaco	1.5
France	1	Bulgaria	2
Germany	1	Latvia	2
Hungary	1	Serbia	2
Iceland	1	Romania	2
Ireland	1	Montenegro	2.5
Liechtenstein	1	Albania	3
Lithuania	1	Moldova	3
Luxembourg	1	The Former Yugoslav Republic of Macedonia	3
Malta	1	Turkey	3
Netherlands	1	Ukraine	3
Norway	1	Bosnia and Herzegovina	3.5
Poland	1	Georgia	3.5
Portugal	1	Armenia	5
San Marino	1	Azerbaijan	5.5
Slovakia	1	Russia	5.5
Slovenia	1		

Source: Freedom House. *Combined Average Ratings (Independent Countries).* August 2010. http://www.freedomhouse.org/uploads/fiw09/tablesandcharts/Combined%20Average%20Ratings%20%28Independent%20Countries%29%20FIW%202008.pdf.

At first glance, it appears that Tables 1 and 2 contradict one another. For example, in Table 2 Freedom House rates two member states (e.g., Russia and Azerbaijan) as being on the threshold of "not free." Yet, ECHR data show a low number (below 1) of applications coming from both states relative to their population in all four years prior to 2010. Alternatively, Liechtenstein has been showing an increase in the number of applications with the number well above 1 (4.17) in 2010. However, Freedom House rates Liechtenstein with the highest "free" rating of 1. Slovenia, Romania, and Croatia are three additional states considered "free" according to Freedom House despite showing their number of allocated cases increasing or fluctuating yet still remaining above 1. Because Slovenia is a member of the European Union,

the variation illustrated in the tables above suggests that whether or not a state is a member of the EU does not consistently determine the number of cases advanced to the Court.

We therefore have temporal and cross-national variation, as well as apparent contradiction between a ratings scheme and trends in grievances brought to a court of last appeal. This illustration of the apparent variation between case numbers and ratings schemes creates a paradox, which has largely been the focus of current research on states' declared commitments to human rights and their behavior. To date, most published research focuses on state ratification of human rights treaties and on compliance as depicted by index ratings or country reports. Like Table 2 above, such ratings and reports are treated as proxies for measuring the progress of states in upholding their treaty commitments and thus illustrating a kind of record in human rights practices. These studies seek to explain why it is that among a set of states—each of which has ratified the same treaty or treaties—there are some with better apparent records than others. With the exception of some recent efforts by constructivists, the extant literature is predominantly populated by rationalist approaches that venture little beyond attempting to explain why states ratify treaties. As a consequence, these studies have created a literature in which the focus on state costs and interests is so strong that a grim picture emerges. To illustrate, Hathaway (2002), Simmons (2009), and Hafner-Burton and Tsutsui (2005) all claim that human rights treaties and international systems actually—and indeed paradoxically—make conditions worse on the ground for human rights. One reason for the bleak assessments may lie in the methods used by aggregated human rights rating scales and yearly case reports such those provided by Amnesty International. Too frequently, these scales lose important information by dichotomizing state performance (i.e., ratified/did not ratify) or undervaluing the lifecycle of post-ratification implementation processes.

The ratification of a human rights treaty is consistently treated as a proxy for the telling moment of a state's commitment to human rights values and norms, yet post-ratification variation across states is still evident. As will be demonstrated, previous research has largely failed to recognize that actual adherence to human rights values and norms is a lengthy process (perhaps even multi-generational) that is shaped differently in different country contexts by alternative configurations of domestic and international factors. Such variation and contradiction provide the puzzles that drive this research investigation. While recognizing a wide range of potential influences on post-ratification human rights practices within countries, this study narrows its focus to those factors that confound compliance and that help explain cross-national variation in case submissions to the ECHR. As will be explained, the number of cases does not necessarily reflect a state's actual respect for human rights (i.e., a high number of cases equaling less commitment or worse conditions). Instead, the number of cases from each state may be more appropriately seen as reflecting the degree to which it utilizes the Court over time and ultimately how well it implements its commitment to the European Convention on Human Rights. While other arguments pertaining to the indications of case volume are prevalent and valid, the present study holds that the volume of cases each state submits to the European Court indicates simply its use of the Court.

Despite the Court's utilization by states, some human rights issues and even violations could be overlooked within domestic borders as cases in the Court are violations that have successfully passed the criteria of exhausting all domestic remedies and have additionally passed the process of being forwarded to a judicial body in Strasbourg. Such a process can take several years before it is heard in the European Court. While there are several causal mechanisms studied in the literature, this study will focus on the overall strength a government maintains over

its citizens and institutions. The primary hypothesis of this study is that state strength affects the volume complaints leaving national jurisdictions for review by an international institution. This, in turn, reflects states' ability to exercise and utilize international human rights institutions and conventions to which they are signatories. A state generating more submissions to the Court may illustrate fidelity to upholding the Convention and utilizing the Court, whereas a state forwarding fewer cases may be indicative of a domestic system that inhibits claims. A third plausible alternative is that states with fewer cases sent to the ECHR may be more effectively resolving alleged human rights violations within national judicial processes, thereby limiting appeals to a supranational Court. The thesis seeks to enhance clarity on these alternatives by, first, identifying broad cross-national patterns using quantitative data. That approach is then supplemented by more focused attention on select individual cases.

LITERATURE REVIEW

The most controversial studies within the literature of human rights and international law are those claiming that treaty ratification worsens human rights conditions (Hathaway 2002, Simmons 2009, and Hafner-Burton and Tsutsui 2005). Most of these studies tend to side with the rationalist literature in claiming that states use treaty ratification as a form of "window dressing" (Hafner-Burton 2005, 1381) and that they are disingenuously seeking carrots (or at least the avoidance of sticks) from the international community rather than the actual enhancement of human conditions. Much of this literature is vulnerable to criticism on grounds of overreliance on incomplete and unreliable large-N datasets that apply questionable assumptions across all states (Barsh 1993). Moreover, the myopic focus on internationally

orchestrated ratification—to the exclusion of factors pre- and post-dating that act—is problematic. Ignoring domestic-level contexts of signatory states brings with it some significant explanatory peril.

At first glance, the distinction between a strong state and a weak one appears reversed and even paradoxical, yet upon further inspection the apparent paradox is lost and a clearer distinction is revealed. In the absence of national institutional remedies, one way to hold states accountable for treaty violations is to design supranational institutions with enforcement powers. However, strong centralized states can, either expressly or indirectly, have a restrictive effect on citizen access to such institutions. This may be especially true in a system such as Europe's where by rule all domestic means of addressing human rights violations must be exhausted before reaching the Court in Strasbourg. A more centralized state would thus be classified as a strong state. Additionally, contrary to what is immediately assumed a high number of cases in the ECHR does not necessarily mean that a state is fraught with more rights violations or is less committed to its treaty obligations. More cases could indicate that the state is effectively respecting the Court and adhering to rather than sidestepping its obligations. This means that citizens within a state with a higher number of cases may face fewer barriers to accessing not just the ECHR but also all necessarily prior venues for presenting their grievances. A state such as this would thus be referred to as a weak state because it does not exercise the same gatekeeping capacity to restrict submissions to Strasbourg. A weak state, however, is not synonymous with a weak democracy.

A strong state on the other hand, could possibly be shown to constrict access to Strasbourg for several reasons. Cases could be prevented from appearing in the European Court either because they are settled within or even outside domestic institutions thus never coming to

the attention of the Council, or simply because access to domestic remedies is more difficult than within a weak state. Suppression at lower levels pre-empts and prevents exhaustion of domestic remedies, which is required before a case will be considered by the ECHR. Additionally, a strong state with a smaller caseload in the European Court could also offer a window into the establishment of its domestic legal institutions. Fewer complaints could be leaving domestic borders either because human rights cases are successfully settled within domestic courts or the opposite could be true. All speculation on these possibilities are valid and valuable, however gaining an exact explanation into a state's exercise of strength and its activity in domestic courts is a challenge in itself. Therefore, one of the purposes of this study is to gain an insight and offer preliminary ideas into whether state strength is acting as a type of filter, either hindering or allowing human rights case submissions past its borders and into the hands of an international legal body in addition to illustrating the overall resort to or use of an international court by its member states.

Strong State vs. Weak State

Scholars have emphasized the importance of state strength in enforcing international human rights domestically. Boyle and Thompson (2001) use state strength as an independent variable, and hypothesize that the degree of domestic strength a state has can indicate how well domestic institutions are utilized in addition to revealing the resort to international mechanisms when those same domestic institutions fail to accommodate violations. Boyle and Thompson defend their reasons for observing state strength by stating that the same activities that lead to claims in one country may continue to be overlooked in another (Waters 1996). Boyle and Thompson thus define a weak state as being characterized by formal divisions of power and

policymaking processes that are open to civil societies. As explained by the authors, weak states tend to "foster more domestic mobilization and legal activity by providing more opportunities to impede or challenge political or legal decision making" (Boyle and Thompson 323).

On the other hand, a strong state makes a clear distinction between the state and its civil society. Civil servants are the main operators working in very specific roles and are kept separate from the state's civil society. "The operating logic of highly differentiated states is that special interests and power relationships taint statements of individual interest and make it undesirable and impractical to draw policy directly from individuals within society" (Boyle and Thompson 324). This system gives the state authority to determine and act for the collective welfare of the citizenry. Strong states thus are able to effectively define the public good and serve it in a more concentrated highly bureaucratic fashion. Additionally, the people within strong states tend to look first to the state to solve problems or concerns within the state rather than to take matters into their own hands. Boyle and Thompson claim that a state's strength, which has been shown to affect legal activity domestically, also has similar tendencies and results internationally. The strength of a state can thus offer an insight into how human rights commitments are carried out domestically, but also internationally. In their study Boyle and Thompson find that weak states do produce more case submissions to the European human rights system. A strong state on the other hand produces fewer because it is "likely to filter or preempt individual action, including legal action at the international level, just as it does at the local level" (Boyle and Thompson (337). The Boyle and Thompson study inspires and informs the present analysis, but given limits on their data (e.g., case numbers and years), this thesis seeks to both corroborate and extend their findings.

Without directly stating it, Boyle and Thompson hint that a weak state tends to be a more democratic one. In a conventional sense, a democratic state would not have many claims appearing in an institution such as the European Court of Human Rights. However, Boyle and Thompson find that most claims appearing in the European Court are from weak or more democratic states (2001, 326). This does not necessarily mean that democratic states yield more violations or have weaker protection and implementation over nondemocratic states. Indeed one common finding in the literature of human rights that is consistently highlighted among scholars and will serve as a control variable in this study, is the fact that democratic countries are better at protecting and implementing human rights and thus have better overall human rights outcomes (Hathaway 2002, Hafner-Burton and Tsutsui 2005, Simmons 2009, Neumayer 2005, Boyle and Thompson 2001). This focus has flourished in the literature on human rights and a state's interests can take on forms as simple as the fundamental values a state holds (Neumayer 2005, Simmons 2009) to the nature of the state.

Structure of Domestic Legal System

The connection and eventual responsibility of the state in adapting international human rights law lies within its domestic courts. As several scholars have previously expressed (Simmons 2009, Conforti and Francioni 1997), domestic courts need to cooperate with international mechanisms and legal systems in order to see implementation of human rights and other matters of international law universally. In the case of the European human rights system, for example, complaints must have exhausted all domestic courts and legal mechanisms before they can be considered by the European Court of Human Rights.

The legal nature of a state has been studied in its effects on a state's human rights practices. Some studies find that common law systems are more reluctant to recognize not only human rights, but any international legal system because its domestic institutions raise barriers or create disincentives to not only ratify fundamental treaties but also, and most importantly, implement them thus reflecting the state as a poor observer of human rights (Henkin 1995). Other scholars concentrate on the impact this characterization has on domestic courts and its eventual impact on its citizenry. Drzemczewski, for example, explains that a state whose constitution does not allow for the supremacy of international law has reflected the extreme difficulty its domestic courts have in accommodating international law into their respective legal systems (1983, 233).

Wildhaber refers to these barriers and impact on domestic courts as telling signs of whether a state has a dualist or monist approach towards international law. According to Wildhaber, a state is said to be dualist if it treats international law and domestic law as two separate and distinguishable bodies of law. Using the European Convention on Human Rights as an example, Wildhaber claims that most of these countries "have incorporated the Convention into their domestic legal order and apply it now faithfully and effectively" (Wildhaber 2007, 218). Wildhaber explains that the classically dualist countries currently in the Council are the Anglo-Saxon and Scandinavian countries that have traditionally supported the dualist approach.

Monist states on the other hand, are those that see international and domestic law as part of the same system of law. Although he acknowledges that few countries subscribe to the idea that the European Convention on Human Rights is viewed on the same level as constitutional law, Wildhaber feels the need to elaborate on his definition; "the term monism can either mean that the Convention is directly applicable in municipal law, or that it is applicable at the level of

statutory law, or at the level of constitutional law, or at an above-statutory level, superior to statutes, but inferior to the Constitution. He concludes his definition by claiming "this is the case for the vast majority of the new Member States in Central and Eastern Europe" (Wildhaber 218-219).

Regional Human Rights Systems

One intriguing factor that most human rights scholars touch upon but do not adequately or directly address is the unique possibility of regional human rights systems and their impact on state implementation of human rights. Hathaway acknowledges that states are more likely to ratify and implement regional human rights treaties, such as the European Convention on Human Rights, over universal ones (2000), recognizing the importance and possibilities with regional institutions like a human rights court. Hathaway states that regional treaties such as the European Convention on Human Rights tend to include stronger enforcement and monitoring mechanisms than universal ones. The European Convention and even the American Convention "put in place courts that can hold party states that accept the court's jurisdiction accountable for violations of rights established by the treaties, and the treaties contain individual and state-to-state compliant mechanisms" (2017). This statement acknowledges the fact that human rights do not exist in a vacuum but do require political institutions to define, promote, and protect them (Walzer 2006, 228). Hathaway also admits that there have been examples of changes in domestic laws or practices by ratifying states to the European Convention in response to decisions from the European Court of Human Rights. Yet regardless of whether or not a member state utilizes or recognizes decisions by such implementation mechanisms, variation in the actual utilization or activity from member states in an international legal body continues to

exist even within the European human rights system despite its strong enforcement and monitoring.

The overall literature of human rights has created a broad field in which many factors are claimed to contribute to a state's commitment to human rights. Yet most of this literature does not focus on domestic dynamics within states. Exceptions include studies of the role of NGOs and mobilization (Goodman and Jinks 2003, Jenkins 1983, Risse, Ropp and Sikkink 1999, Tsutsui and Wotipka 2004, Chandler 2001), history of and/or the establishment of democracy (Hathaway 2002, Hafner-Burton and Tsutsui 2005, Simmons 2009, Neumayer 2005), and the practice of naming and shaming (Johnston 1997, Risse, Ropp and Sikkink 1999, Simmons 2009). Yet the above examples of domestic factors that have been studied can arguably be said to still require third parties in order to be implemented. While acknowledging the factors listed above by controlling for them, this study argues that state strength plays a vital role in how a state utilizes international institutions designed with the intention of upholding certain human rights practices and expectations.

HYPOTHESIS AND INDICATORS

Despite being under constant reform, the European human rights system is consistently regarded as the most effective and developed supranational institution with its own international legal body for the protection and implementation of human rights. The European human rights system, which is established by the Council of Europe, currently contains 47 member states that have each ratified the European Convention on Human Rights and its 18 articles. The European Court of Human Rights provides yearly statistical data not only on the Court's activities, but also

on each of the 47 member states' activities within the Court since the beginning of their membership to the Council of Europe.

The Court's data include telling statistics such as details of cases brought to the Court from a member state including the number of cases forwarded to a judicial body of the Court, the number of those cases that were then struck out, and even the nature of the cases in regards to articles of the European Convention that are being violated. Thus data provided by the Court serve as an indicator for human rights implementation and progress within member states and their impact on the international level as the Court allows for both individuals and states to file complaints to be considered in its jurisdiction. While inter-state complaints are rare, the individual right to petition the Court is a compulsory feature to all 47 member states. The European Court states that this right applies to "natural and legal persons, groups of individuals, and to non-governmental organizations" (The European Court of Human Rights 2009). The Council of Europe adds "A State condemned by the European Court of Human Rights is obliged to adopt individual measures such as restitution or the re-opening of the procedure. The Court may also order the State to pay the applicant a sum of money as 'just satisfaction', in that the money in question serves as compensation and erases the consequences for the victim" (The Council of Europe 2010). These requirements alone thus provide an insight into the internal workings in the process of implementing human rights within a state.

The present thesis does not claim to have the answer to the overall question of why some states show better commitments or practices of human rights over others. While this is perhaps one of the most essential questions yet to be answered in the field of human rights and even international law, this study instead seeks to examine a smaller part of the puzzle by observing a regional institutional body specifically founded and committed to implementing respect for

human rights within its member states. This study serves as a continuation of Boyle and Thompson's 2001 study, which addressed the same question in attempting to explain why there is existent variation in human rights cases from member states in the Council of Europe. While Boyle and Thompson raise questions not only about states' actions in human rights implementation, they also raised questions about the workings of the Council of Europe. Yet in reviewing their study further, there are some fundamental improvements which need to be addressed in order to gain a better insight into the question of variation among states. Additionally the Council of Europe and especially its human rights court, remains a type of institutional experiment as it is continually undergoing reforms and development. The present thesis can thus serve as starting point and continuation for future study and research into the workings of the Council.

Boyle and Thompson's study, although published in 2001, uses data from the Council of Europe between 1976 and 1993. This means only 30 member states were studied, of which none were from the most recent member states to have ratified the European Convention and are subject to the ECHR. Also, and perhaps most importantly, during this time period the procedure for bringing a complaint to the European Court of Human Rights first required submitting a case to the European Commission on Human Rights, a branch of the European human rights system designated with the task of filtering claims coming from member states to the Court. In 1998, the Court was transformed into a full-time court and the process of direct submission by citizens from member states to the Court without the procedural approval of the Commission was made possible (Wildhaber 2007, 225). From the time the Court was reformed as a full-time court, an influx of cases inundated the Court as the numbers of complaints increased and continues to do so. The Court itself continues to be reformed in order provide better management of case loads.

Additionally, the Court's statistics have improved since its reformation as it now provides yearly statistics on the details of its workings. Thus, this thesis will not only replicate a part of Boyle and Thompson's 2001 study, but it will also serve as a more updated extension into the workings of a legal human rights body and the states over which it holds jurisdiction.

Dependent Variable

Considering that human rights is among one of the three central pillars to the Council of Europe and that states are not allowed membership status without recognizing it in addition to ratifying the European Convention of Human Rights, the European Court of Human Rights data are deemed as an appropriate measure for depicting the use of an international legal body among its 47 member states. The case volume of each state within the Court is the closest manner in which to observe human rights commitments, actions, and recognition.

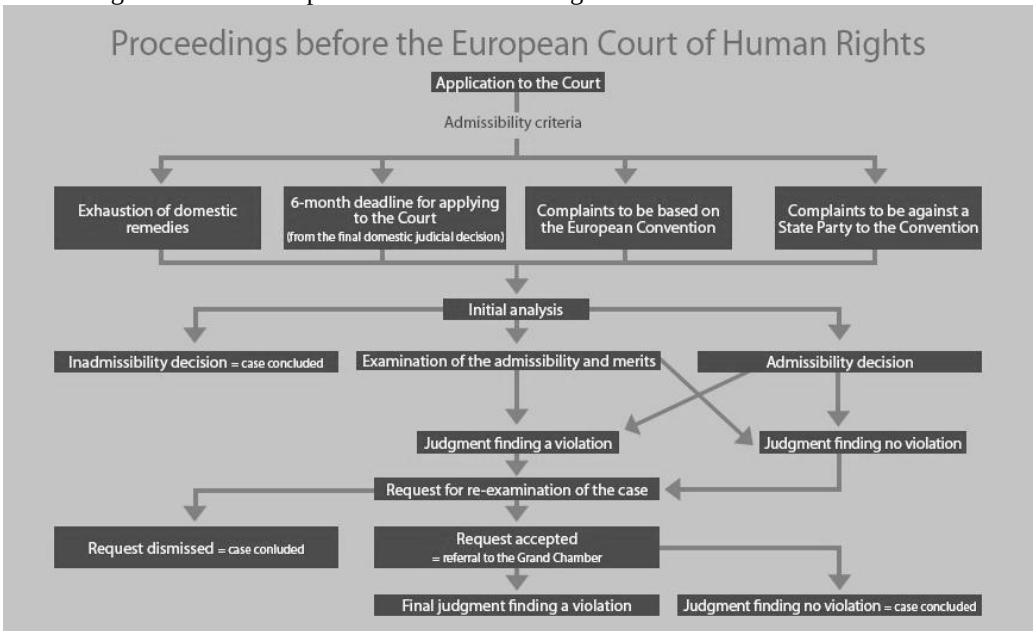
The dependent variable for this study will be the number of cases that have successfully been forwarded to a judicial body from each state in every year, calculated relative to its population as shown in Table 1. The Court's official records however, only provide these data from 2006; therefore, the data have been completed using both Court case statistics and population statistics from Euro Stat Service as described by the Court's methodology (The European Court of Human Rights 2009). Because the ECHR was reformed into a full time court and because the practice of direct appeal was introduced in 1998, all data for this study will begin in 1999 and continue with the latest statistics in 2010.

For the purposes of this study a higher volume of cases in the European Court, as calculated for the dependent variable, does not necessarily indicate a high number of abuses or worsening human rights conditions within that member state. Nor does a low number of cases

indicate less human rights abuses or better conditions within a member state. Rather, a higher volume of cases indicates that a member state is allowing submissions to leave its borders and into an international court, namely the European Court of Human Rights, thus subjecting it to the ruling of a supranational institution. Alternatively, a lower number of submissions leaving states and appearing in Strasbourg could indicate that the state is impeding complaints either by settling cases within its domestic courts or making access to domestic remedies difficult for a proper settlement to be obtained. While exact details of the domestic workings within each state are difficult to extract, the measure for state strength used in this study is calculated with the intention of capturing characteristics determining high versus low case volumes from member states.

The journey of a complaint making its way to a judicial body in the European Court of Human Rights is a long and complex one. First and foremost, before a complaint can be filed with the European Court, it must have completely exhausted domestic legal institutions on all levels. If that criterion is satisfied, then the complex system of determining whether or not a complaint can be forwarded as a case to a judicial body of the Court begins. Figure 1 illustrates the process of a complaint within the Court after this domestic process and before enforcement of the final judgment.

Figure 1. Proceedings before the European Court of Human Rights



Source: The European Court of Human Rights. *Case-Processing Flow Chart*. 2009 http://www.echr.coe.int/ECHR/EN/Header/The+Court/How+the+Court+works/Case-processing+flow+chart/ (accessed December 3, 2009).

The mere process of selecting cases and its eventual journey through the Court is not taken lightly by the ECHR. Court statistics are thus very closely recorded and updated. The numbers of cases from each member state since the start of its membership to the Council of Europe are counted, recorded, and reported to the Parliamentary Assembly of the Council. The Court does release statistics on which states contain the most number of cases and release reports which make those states appear as high violators. However once the population of that state is taken into account, a more accurate picture comes to light. Thus these statistics when calculated together not only provide a more complete view into state activity through a human rights implementation mechanism such as an international court, but most importantly it also allows for a more realistic view of the level of legal human rights violations within each state and gives an insight into how its citizens choose to utilize those legal options available to them.

In terms of the dependent variable's relationship with state strength, which serves as the independent variable in this study, a weak state is expected to yield more cases in the Court because of its characteristics as described in the literature. A weak state is more open and dependent on its citizenry thus allowing its citizens to take advantage of all possible remedies for human rights violations. A weak state's institutions also tend to be more open and accessible to its citizenry. These features thus show more cases appearing in Strasbourg, not because it is demonstrating a lack of commitment to European Convention of Human Rights and the institutions intended to uphold it, but rather because it is respecting the Convention by utilizing the Court and being subjected to its rulings. A strong state on the other hand, is expected to yield a smaller number of cases in the Court for several possible reasons. Human rights cases on the domestic level within a strong state could be settled either through its institutions or outside of them. Additionally, access to domestic remedies could be difficult within a strong state. While the exact details of potential cases which do not surface in Strasbourg are unknown, the above possibilities could discourage citizens seeking remedies to human rights violations from going forward to the ECHR and even all remedies within their own state.

Independent Variable & Hypothesis

As described by Boyle and Thompson state strength can indicate the volume of cases that are forwarded from member states to an international court such as the European Court of Human Rights. As explained above a weak state has tendencies to elicit more from its public before making formal policy proposals or decisions, whereas a strong state allows less or even no degree of openness. Not only does this level of openness to its citizenry play a part, but it can also be used strategically by political elites. Because strong states act on behalf of the public

good rather than working with it, it can become increasingly difficult for an individual to bring attention to human rights violations or issues within that state. Political elites can act strategically in thwarting public attention or opposition by such methods as "making judiciaries less accessible, promoting narrower conceptions of law, and generally keeping courts out of politics" (Jacob 1996, 399). Human rights and the issues surrounding them are thus kept out of the light in order to address another interest. This can as a result affect the amount of cases that arrive to a judicial body in the European Court resulting in a low level of activity from that state in a human rights implementation system. State strength then, as described by Boyle and Thompson, has an inverse relationship to the amount of cases that arrive in the European Court. Thus, the main hypothesis for this study is as follows.

Hypothesis: State strength is inversely related to case volume in that the stronger a state is relative to its citizenry, the fewer cases it will have in the European Court of Human Rights.

This study employs an index utilized by Boyle and Thompson, which measures the degree to which social mobility and legal claims are possible among a population. This index best captures the discussion on weak and strong states outlined in the literature review. The index, originally constructed by Huber et al (1993), creates country scores that range from 0 to 10 with the lower scores representing weaker states. Each country score is based on five factors intended to capture the degree to which a state allows access to domestic institutions among its citizenry. The first factor in Huber et al's index is the strength of federalism with scores indicating either no, weak, or strong federalist systems. Boyle and Thompson explain that "federalism encourages mobilization by dividing power between local and centralized

governmental bodies" (328). The second, third, and fourth indicators in the state strength index are intended to capture the type of government a state contains; existence of a presidential system, whether the state adopts a single member district or proportional representation electoral system, and the strength of bicameralism. These factors are intended to offer a glimpse into both governmental and societal influences on the overall workings of the state and on the degree of reinforcement on each other. Finally, the importance of referenda is measured and calculated into the strength index as a way to capture what Boyle and Thompson claim is "direct democracy through initiatives and referenda." They claim that this can also "foster greater mobilization" (328).

While the strength index created by Huber et al and utilized in Boyle and Thompson's study of the European Court of Human Rights appears relatively satisfactory, the five factors intended to capture how strong a state is with respect to its legal and societal characteristics are predominantly focused on the domestic rather than international environment. Two of the five factors in particular are found to not be particularly relevant to the overall theory of the present study. Yet, the link between domestic and international forces is an essential question for the overall purpose of this study. The first of the two factors which seem out of place for the nature of this study is the existence of a presidential system. The existence of a presidential system would appear as important in that it could reveal pertinent information about veto power, for example. While a president has the power to veto legislation within its domestic institutions, it becomes more difficult to apply this power in terms of human rights especially when considering its connection to international remedies. Simply measuring the existence of a presidential system as 0 or 1 hardly seems to address any relevant information on veto powers. Additionally, differentiating between the type of executive leader within the 47 members of the Council of

Europe is not relevant when addressing variations in case volumes in international institutions such as the European Court of Human Rights.

Secondly, the importance of referenda again would appear as an important aspect when considering the relative strength of a state. This characteristic is indicated as a dummy variable which assigns either 0 for "none or infrequent" or 1 for "frequent" (Boyle and Thompson, 328). It is indeed important to consider the frequency of referenda or the ability to appeal policies and other matters within a respective state's governments. This could indicate how easily a population has influence on the overall political process and even how difficult it could be to introduce such appeals and have them passed from either the population or even from politicians themselves. However, once again this characteristic is concentrated too much on a domestic process. The importance of referenda within a state's domestic politics does not hold any relevance in international systems and institutions such as those in the Council of Europe. While there are a few member states that do exercise their referendum rights in particular to human rights (e.g. Switzerland), there are more out of the 47 members of the Council, particularly member states from the Post-Soviet bloc, who do not. Thus, this factor is not particularly relevant for the purpose of this study. Having stated the concerns over two of the five factors in the state strength index, two alternative factors have been explored in order to replace the previous indicators.

Firstly considering that this study pertains to international legal matters, it is important to address how states interpret and implement international law. How a country incorporates international law into its overall domestic legal procedures is a telling way of determining its commitment to the human rights treaties it ratifies and its actual practices. A dualist state that makes a distinction between international and domestic law with international legal systems

being higher than domestic ones, would be more likely to follow through with its commitments to international human rights treaties such as the European Convention. While scholars such as Wildhaber have found that dualist states tend to bring more claims to the European Court of Human Rights, the number of these cases has declined over time while their human rights violations have also been shown to increase. This could be because of access to the international institutions after all domestic courts have been exhausted. A monist state on the other hand, which does not make the distinction between international and domestic law could show no activity on the international level and thus no change to its overall human rights rating as its claims would be handled only on the domestic level. Within the domestic level the case could then be "lost" or settled without an attempt to address violations properly. Thus, a monist state's apparent commitment could then be perceived simply as a form of window dressing. This replacement factor into the state strength index will be recorded as a dummy variable. Data from the CIA World Factbook provide information on each country's domestic legal system. A value of 1 will indicate states as having a dualist approach to international law, while a value of 0 will indicate a monist approach.

The second factor which will be used to replace one of the original five is the frequency of membership in IGOs other than the Council of Europe. Unlike NGOs, IGOs have a more direct effect and influence on a state's actual government and processes. A state's membership in IGOs on a fundamental level opens its government to access, actions, criticism, and even sanctions by the international community. This kind of openness is often viewed as being beneficial to the overall health of a state as it allows a more transparent and even democratic environment. This kind of membership also allows for the possibility of what has been referred to as the "boomerang effect." A boomerang effect occurs when individuals who are unable to

find relief for their grievances, turn to actors with international willpower to put pressure on domestic governments especially in the area of human rights when there is evidence or suggestion that rights are being violated or suppressed (Risse, Ropp and Skikkink, 1999). Additionally and perhaps more importantly, membership in several IGOs can allow a state to have more influence and authority internationally, especially if the number of its representatives grant states more votes in these institutions. The state with the most memberships in IGOs among the 47 members of the COE is a member of just over 100 other international organizations. Thus, one of three values will be assigned to each member state; a low number of memberships in IGOs will be assigned a value of 0 while a moderate number will be assigned a value of 1, and a high number of memberships will be assigned a value of 2. These data will be gathered from the Yearbook(s) of International Organizations.

Controls

Several control variables are included in this study, acknowledging past studies that have found them to have some explanatory power. The availability of outlets that allow a population to mobilize for human rights is one variable controlled for in this study. Not only do organizations like I/NGOs and even IGOs serve as links between a populace and its government, but they also help to bring about political, legal, organizational, or social changes on the domestic level. These organizations also bring more accountability and allow the government to be more susceptible to criticism and even praise. What makes INGOs and NGOs different from IGOs, however, is the fact that direct benefits of these groups go to different parties. INGOs and NGOs have more of an effect on a state's citizenry, whereas an IGO more directly affects the state. IGOs also hold onto the concept of sovereignty as being of paramount importance. While

the importance and uniqueness of IGOs are acknowledged among the five factors in the independent variable, the focus on the impact of NGOs will serve as a control because of its more domestic link to the citizenry and government within a state, and for the fact that NGOs are given the right to file a complaint against a member state in the European human rights system. Like the data for IGOs, the number of active human rights NGOs in each country are provided by the Yearbook(s) of International Organizations.

Additional control variables for each year of each member state since their membership to the Council of Europe will consist of the following: The World Values Survey contains relevant questions and data on public opinion within states. Among the questions is one about trust in domestic courts and legal processes. This could possibly reveal some explanatory power in case volume variation from COE member states, as it could show that a populace that does not trust its domestic courts is less likely to make claims in them, and thus the frequency of grievances lodged at the European Court decreases. Press freedom scores provided by Reporters Sans Frontières are included to address any claims of the lack of press freedom within these states. The polity scores provided by the Polity Project for each country for every year since ratification are included in order to measure claims that democratic countries have better human rights practices than nondemocratic countries. Finally, a dummy variable is created to account for membership in the European Union. This could further serve as a democracy claim, given that EU members are usually deemed more open and democratic than non-EU members.

Taking all available variables listed above, the study uses a cross-sectional time series analysis of all the current 47 member states to the Council of Europe in order to test each country's features over the course of membership, starting with data from 1999 when the European Court of Human Rights introduced its new form of reporting and statistics after it was

reformed into a full-time court in 1998. By taking into account state strength, acting as an independent variable, this study seeks to explain to what degree the strength of a state has on the abilities of its citizenry and institutions to utilize the Court in the amount of applications that arrive to a judicial body.

The approach is a reliable and valid one, although we recognize here some imperfections in the data. One of the biggest problems with human rights data is that it is *reported* data. In many cases, reports of human rights do not adequately reflect human rights conditions on the ground. Also these data could have been either over or under exaggerated, or simply "categorized" as indicating a different value. Another possible problem could be that the newer member states to the Council of Europe (e.g, those newly independent states in Central and Eastern Europe) are simply too young to show any significance in their human rights practices. For example, the latest additions to the Council are Serbia and Montenegro, which ratified the convention and became official member states in 2004. In addition to their ratification year, both Serbia and Montenegro are newly independent states. The data could not be sufficient in regards to the amount of years passed since independence for both states.

Confirmation of the hypothesis could throw into question the effectiveness of member states' governments in implementing their human rights commitments. Because this study observes the legal nature of states and mobility of its citizenry, it could show the degree of a state's willingness or ability to cooperate on a legal level. A supported hypothesis could also bring into question the effectiveness of the European human rights system as it is designed for member states to "learn" from the cases submitted against it, and of which it is found at fault. The Court has the power to grant monetary compensation from member states to claimants, however it has no ability to ensure policy or laws are changed within a state's borders to ensure

those human rights violations do not reoccur. Presently, there has been only one incident of a member state resigning its membership to the Council of Europe, only to eventually renew it.[2] However, never has a member state lost its status because of a human rights issue.

On the other hand, should the hypothesis be rejected then the link between a member state's citizenry and an international court of last resort would be missing an explanatory variable; the role of the domestic government and its commitment to human rights. Domestic courts must be exhausted before resorting to the European Court. Cases intended to reach the European Court but failing to do so are "lost" to any explanation of why a human rights violation did not reach the international level while perhaps another case of the same violation did. While it is not possible to observe the nature of each individual case, it could be that a state is acting strategically or rationally. The Court's data serve as a form of naming and shaming with reports being published and reported to the Council's sessions. No member state wants to show up as a "high violator" to other members. Yet at the same time, no member state wants to show no activity on the basis of suspicion. Should state strength show no correlation, there would still be question as to what happens right before a complaint crosses the border and into international hands.

[2] In 1953, Greece formally resigned and denounced the Council of Europe after indicating that it did not wish to recognize the compulsory jurisdiction of the Court of Human Rights as outlined in the second protocol in the Convention of Human Rights. The Committee of Ministers had previously stated that Greece had violated several articles of the Convention at which Greece held that the second protocol violates its domestic law. On 28 November 1974, Greece renewed its ratification and rejoined the Council of Europe (Drzemczewski 1983).
For analysis on this case consult: A. Ch. Kiss and Ph. Vegleris, 'L'affaire grecque devant le Conseil de l'Europe et la Commission europeene des Droits de l'Homme', 17 *AFDI* (1971), 889-931.

RESULTS AND ANALYSIS

In order to analyze claims to the European Court of Human Rights, annual cross national data from the years 1999-2010 were pooled. Combining time-series and cross-sectional units is a useful method of analysis because variation is not limited to cross-national distinctions or temporal changes. Yet, the use of time series data can create problems such as autocorrelation. As a consequence, an ordinary least squares estimate could yield results that are unbiased but inefficient.

To avoid the potential problems associated with ordinary least squares estimates and autocorrelation, a generalized least squares regression with a fit population-averaged model was used in order to correct for autocorrelation. A lagged dependent variable was also used in order to further help control for the effects of autocorrelation. Because larger states are likely to produce more claims in the Court, the natural log of each state's population in each year was calculated and used as a control variable.

As may be expected, the descriptive statistics do not provide a clear significant pattern in all member states because they do not control for the many possible national differences that can be found in each state. The results of this study's time series analysis are presented in Table 3, which depicts the effects of all variables measured in the estimates on overall cross-national differences and large scale change on the number of allocated cases from each member state in each year since 1999. An additional table on all member states and their state strength score is provided in Appendix A.

Table 3. Time Series Analysis of Variables Affecting the Number of Allocated Cases in the European Court of Human Rights from Each State in Each Year, 1999-2010

Variables	Coef.	Std. Error
State Weakness	0.053	0.024*
Cases	0.000	0.000
Population (logged)	0.005	0.005
NGOs	-0.001	0.000*
Trust in Legal System	-0.012	0.047
Press Freedom	-0.004	0.002
Polity	0.009	0.006
EU Membership	-0.005	0.052
Lagged claims	0.873	0.055***

* Statistically significant at .05 level
*** Statistically significant at .001 level
N= 564 country years

As predicted by the hypothesis, state strength coincided with more claims in the European Court of Human Rights, and the effect was statistically significant at the 0.024 level. This finding is consistent with prior research demonstrating that a weak state promotes making claims to an international legal body (Boyle 1998, Boyle and Thompson 2001, Kriesi 1995, Jacob 1996). The findings in this study extend into those analyses by linking state strength to claims surfacing as cases in the ECHR. The numbers of cases as reported and published by the Court were not shown to be significant thus disproving Boyle and Thompson's 2001 study on the Court. This could very likely be due to the fact that the time period examined by Boyle and Thompson was a premature version of the Court in its processes and in the number of member states. Secondly, this finding also suggests that simply recording the number of cases from each member state and using it as a dependent variable does not reflect a realistic picture of member state activities. Finally, the measure of state strength as used by Boyle and Thompson did not effectively measure the level of strength a state has over its citizenry especially when considering states that had gained membership after 1993 which were captured in this study.

The number of active human rights NGOs was shown to be significant at the 0.001 level, however with a negative coefficient. This would appear to indicate that there is an inverse relationship between the number of allocated cases from member states and the number of active human rights NGOs it has. One possible explanation could be that states with more cases in the Court could be showing a trend in which the number of active NGOs is slowly decreasing over time. Additionally, a state with fewer cases in the Court could also be showing a trend in which the number of NGOs is slowly raising yet not significantly enough to affect the results. Indeed most of the member states with a small number of NGOs are relatively new members to the Council of Europe and are outnumbered by other member states which have been active in the Council even prior to 1999. Perhaps the biggest factor in the findings for NGOs in the data is that the method in which it is collected does not portray the full situation within each member state.

The data on the number of active human rights NGOs was gathered from the Yearbook on International Organizations. This publication states that it reports the number of active NGOs that are registered within a state and/or are formally recognized by the United Nations (Year Book on International Organizations 7-10). As a result, the number of active NGOs within each member state has the tendency to increase and decrease with each year as new NGOs are established and old ones perhaps didn't renew their registration or were dismantled. Most importantly however, the Yearbook on International Organization does not distinguish the nature of these NGOs other than being categorized as dealing with human rights issues.

NGOs can serve different purposes such as serving as watchdogs, offering legal services, or merely advocacy. For example, in Russia there are two NGOs which illustrate this point; Memorial and the Friedrich Naumann Foundation for Freedom. Both are very active

NGOs working for the promotion of human rights within Russia, however the nature of the work between these NGOs is fundamentally different. Memorial serves not only as an advocacy group but also has a staff of lawyers with the purpose of guiding injured parties through Russia's courts and even acting as representation in the European Court of Human Rights in Strasbourg. The Friedrich Naumann Foundation for Freedom on the other hand, is predominantly an advocacy group. Despite the distinctions between the two groups, both are reported as active human rights NGOs within Russia in the Yearbook on International Organizations.

Like NGOs, trust in the domestic legal systems and press freedom scores are shown with negative coefficients. Similar explanations could be made like those dealing with active human rights NGOs, yet because both of these variables failed to show significance in the results, their impact would not affect the overall number of allocated cases from each member state. Finally, the Polity scores of each state and whether or not they are members of the European Union show no significance in the results. This further puts into question previous theories that democracies and members of the EU, which are thought of as being more open and democratic, would have fewer cases within international legal institutions (Hathaway 2002, Hafner-Burton and Tsutsui 2005, Simmons 2009, Neumayer 2005, Wildhaber 2007).

Strong State, Low Case Load: Bosnia and Herzegovina

While the statistical results above illustrate support for the hypothesis of this study, there is an outlying member state which effectively confirms the theory outlined in this study. Of all 47 member states tested in this study two states stand out in the state strength scale as being the strongest. Bosnia and Herzegovina received the maximum score of 10 in the state strength scale. Yet despite the high rating of strength, in terms of the overall theory of this study Bosnia and

Herzegovina has contained a relatively low number of allocated cases in the Court since its inclusion in the Council of Europe in 2002 with its peak being 2.53 cases in 2008. As shown in Table 1, the most recent statistics show Bosnia Herzegovina to have a calculated 1.71 cases in 2010.

In order to address any possible effects Bosnia and Herzegovina may have on the statistical model in this study, an additional model was tested that omitted Bosnia and Herzegovina from the dataset. The result of this test is compared to the result of the previous model with all 47 member states in Table 4.

Table 4. Comparative Time Series Analysis of Variables Affecting the Number of Allocated Cases in the European Court of Human Rights from 47 States in Each Year Compared to 46 States in Each Year, 1999-2010

	Model A		**Model B**	
Variables	**Coef.**	**Std. Error**	**Coef.**	**Std. Error**
State Weakness	0.053	0.024*	0.054	0.023*
Cases	0.000	0.000	0.000	0.000
Population (logged)	0.005	0.005	0.003	0.005
NGOs	-0.001	0.000*	-0.001	0.000*
Trust in Legal System	-0.012	0.047	-0.000	0.046
Press Freedom	-0.004	0.002	-0.002	0.003
Polity	0.009	0.006	0.024	0.013
EU Membership	-0.005	0.052	-0.005	0.051
Lagged Claims	0.873	0.055***	0.875	0.057***

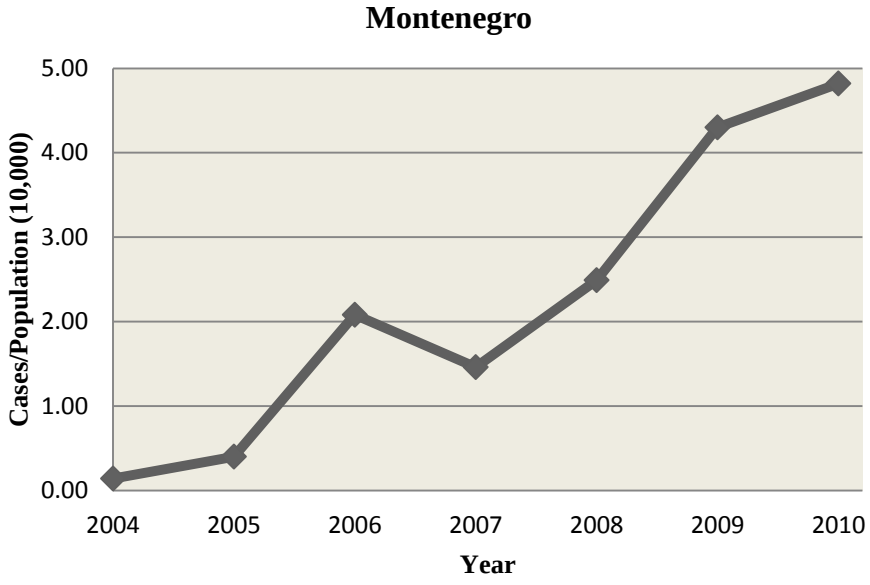
* Statistically significant at .05 level
*** Statistically significant at .001 level
Model A: N= 564 country years
Model B: N= 552 country years

The result of this second model shows little change not only in the independent variable but also in all other variables. This finding thus illustrates further support for the hypothesis of this study in addition to showing Bosnia and Herzegovina's overall effect on data for all member states is minimal.

DAVID AND GOLLIATH: THE CASE OF MONTENEGRO

In the calculation of state strength, Montenegro received the second highest rating of 9. In terms of the number of allocated cases in the Court, Montenegro currently has the highest number over all 47 member states with 4.82 cases. It is perhaps the smallest country in the Council of Europe with possibly the largest impact in the data. In addition to these findings Montenegro more than any other state, has also seen the sharpest and fastest surge of cases to the Court in its short time as a member state in the Council of Europe. This trend is illustrated in Figure 2.

Figure 2. Montenegro's Case Activity since Start of Membership in the COE



Among closer observation in the data details on Montenegro, several factors surface that could possibly offer explanatory power for the findings tested in this study. Perhaps the biggest factor is the fact that Montenegro is a relatively new state. Although the Council of Europe had already granted membership and had begun to gather data and information, Montenegro formerly declared its independence from Serbia in 2006. This also happens to coincide with the sharp

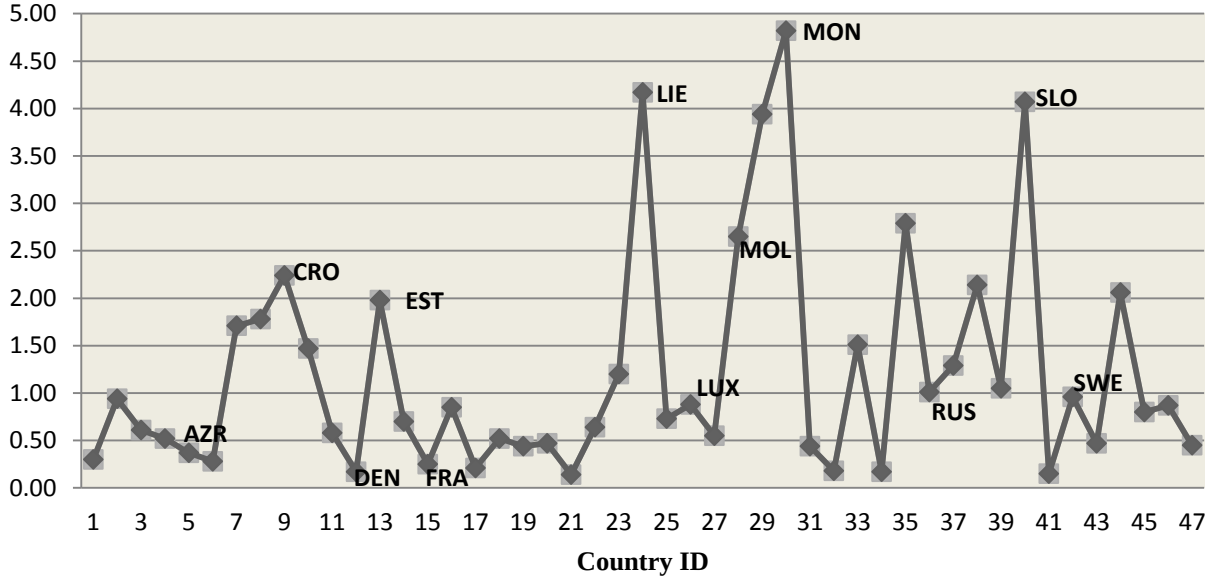
increase in cases from Montenegro to the European Court of Human Rights. This could possibly hold explanatory power in previous research which claims that states undergo a learning process before showing a consistent or satisfactory outcome in human rights practices (Simmons 2009, Barsh 1993, Chayes et al 1993, Cortell 1996, Goldman and Jinks 2003, Risse et al 1999). These theories claim that before a consistent pattern is established with newly independent states, its human rights practices have to gradually worsen before they can improve. The process of worsening and then the improvement is evident that new developing states are in a learning process. Thus, one can expect a type of bell curve pattern that accommodates this idea (Neumayer 2005).

Another possible factor in explaining Montenegro as an outlier could lie in the number of active human rights NGOs within its borders. Montenegro as a state is a very small territory with a small population. Within the data, it shows a very small number of human rights NGOs with the figure at 11 in 2010; however, those very NGOs could possibly be instrumental in seeking international attention and avenues including the European Court of Human Rights. Montenegro has repeatedly shown to be inadequate when addressing formalities for victims beginning with police and even to domestic courts, which could be as a result of being a newly independent state developing its own domestic institutions and procedures. There have been reports of police abuse, deplorable prison conditions, and discrimination on the basis of ethnicity and sexual orientation. As a result current NGOs within the country have responded loudly and have been instrumental in seeking damages for injured parties who have undergone a violation of their fundamental human rights (U.S. Department of State 2011). Because of the above reasons, this could possibly explain why more cases are surfacing in the Court. A quantitative test alone cannot be used to explain national trends such as the case with Montenegro.

A TALE OF TWO OLD MEMBER STATES

Among the top three states with high case loads in the Court are two states which, unlike Montenegro, have been COE member since well before 1999. Liechtenstein and Slovenia are not typically associated with a high number of human rights cases, yet with their number of cases being above 4 (Figure 3), speculation and exploration into the details of their data is inevitable. While neither Liechtenstein nor Slovenia disproves the hypothesis in this study, they serve as intriguing observations because of their more democratic nature and also because of the fact that they are not new states unfamiliar to the workings of the Council of Europe.

Figure 3. 2010 Allocated Cases for all Member States



Source: The European Court of Human Rights. *The European Court of Human Rights- Reports.* May 2010.http://www.echr.coe.int/ECHR/EN/Header/Reports+and+Statistics/Reports/Annual+Reports/.

With regards to the state strength measures for both Liechtenstein and Slovenia, neither score is high or low as both states fall within the middle of the scale. Additionally, both states are rated with the highest Polity score of 10 and Slovenia in particular has been a member of the European Union since 2004. Press freedom scores are low within both states indicating a free

and open media within its borders. Trust in each state's domestic legal system indicates the third of four possible answers in which it states "not very confident." This is also not an unusual finding as most member states answered either the second ("somewhat confident") or third choice, with a heavier weight on the third option. By taking into account all of the indicators from the data in this study, again the literature claiming that democracies and states with more open societies, especially those from a powerful supranational institution such as the EU, are expected to have fewer cases within international legal institutions (Hathaway 2002, Hafner-Burton and Tsutsui 2005, Simmons 2009, Neumayer 2005, Wildhaber 2007) is brought into question.

Perhaps where the explanation regarding Liechtenstein and Slovenia's caseloads lies is in examining the similarities these states have with Montenegro. Like Montenegro, both Liechtenstein and Slovenia are small states with small populations. Unlike Montenegro, however, neither state is newly independent, both within the Council of Europe and internationally, undergoing a possible learning curve as proposed by pervious research (Neumayer 2005). Yet, there is a similar pattern in the number of active human rights NGOs within both states. Both Liechtenstein and Slovenia contain a small number of active human rights NGOs as reported by the Yearbook on International Organizations. Thus, one possible explanation for their status as outliers could be that the current human rights NGOs within these member states are essential and instrumental in settling human rights claims both domestically and in the European Court of Human Rights. These findings could indicate a possible avenue for future research in the role of human rights NGOs with regards to an international legal body such as the Court.

CONCLUSIONS

In contributing to the overall understanding of cross-national variation in ECHR case frequency, the findings of this study suggest that state strength and human rights NGO activity each play a role. Boyle and Thompson's 2001 study, which served as a starting model for this study, is largely corroborated despite the earlier study's reliance on a premature version of the European Court of Human Rights and a total of only 21 member states. Yet even with a surge of cases and workload in the Court and the addition of 26 additional member states, state strength and NGO activity continue to show significance in the present thesis. This further confirms that the strength of a state does indeed hold some apparent explanatory power in the numbers of cases it submits to an international court like the European Court of Human Rights. Additionally, the results found in the present thesis also offer a window into not only the workings and purpose of the Court, but also into the workings of domestic courts and their role in implementing and respecting international fundamental human rights. By including more recent data and a revised approach, this study serves as a continuation into research on the European human rights system and into the overall academic fields of political science, human rights, and international law.

One indirect implication that has been acknowledged in the past and is slowly showing more focus in contemporary research is the idea that states that are producing the most caseloads or activity in an international system could eventually have the greatest influence in shaping international law. Dezalay and Garth, for example, suggest that although citizens in particular are bringing forth claims and even criticism against their state to the Court, they may also at the same time be introducing their national norms into the system (122).

For another example, although the overall effect is significantly lessened when calculated with its population, Russia currently contributes about a fifth of the total number of cases to the

European Court of Human Rights. Because of this caseload from one member state alone, the single judge from Russia currently also works with the judge from Sweden in order to alleviate and handle the caseload. Upon viewing the detailed statistics on Russia alone, over 70% of the cases settled pertain to Article 6 in the European Convention on Human Rights, which describes the right to a free, fair, and speedy trial. When viewing the statistics on the nature of cases from all 47 member states, the majority of the total caseload in the Court also pertains to Article 6 in the Convention. Dezalay and Garth would thus argue that the Court's attention is distracted and focuses predominantly on Article 6 cases as the nature of cases from one member state could falsely indicate that these abuses are happening more often than other types of abuses (124-125). Not only could this possibly be influencing the Court's attention, it could also be influencing the selection process of claims to the Court and even the cases being decided on the domestic level.

More contemporary research on the subject above attributes it to human rights being predominantly associated with a purely Western ideal and even claiming a form of Western imperialism in that Western states use human rights as a bargaining tool in the international arena (Simmons 2009, Wall 2000). Yet should this theory show some kind of support, the European human rights system would be an intriguing case as the influence in the example above is coming from an Eastern state rather than a Western state.

Finally, the findings of this study have implications outside of Europe. Because significance was found pertaining to state strength and human rights NGOs in a relatively homogeneous sample, it is possible that variation also exists on a bigger or more international level. Additionally, because the European human rights system is seen as a model to other regional and even international court systems, this study's findings could serve as a reference for further influence or reform on the international level. While it is far from perfect, the European

human rights system is perhaps the best system for human rights currently in existence. Indeed because of the European system's long history, use, and even effectiveness, it will continue to be seen as a model supranational legal system for the protection of fundamental human rights both internationally and domestically.

WORKS CITED

Barsh, Russel Lawrence. "Measuring Human Rights: Problems of Methodology and Purpose." *Human Rights Quarterly 15*, 1993: 87-121.

Boyle, Elizabeth Heger, and Melissa Thompson. "National Politics and Resort to the European Commission on Human Rights." *Law & Society Review, Vol. 35 No. 2*, 2001: 321-343.

Chandler, David. "The Road to Military Humanitarianism: How the Human Rights NGOs Shaped A New Humanitarian Agenda." *Human Rights Quarterly 23*, 2001: 678-700.

Chayes, Abram, and Antonia Handler Chayes. "On Compliance." *International Organization*, 1993: 47(2): 175-205.

Cortell, Andrew P., and James W. Davis, Jr. "How Do International Institutions Matter? The Domestic Impact of International Rules and Norms." *International Studies Quarterly 40*, 1996: 451-478.

Dezalay, Yves and Bryant C. Garth. *Global Prescriptions: the Production, Exportation, and Importation of a New Legal Orthodoxy.* The University of Michigan Press, 2002.

Drzemczewski, Andrew Z. *European Human Rights Convention in Domestic Law: A Comparative Study.* Oxford: Oxford University Press, 1983.

Freedom House, Inc. *Welcome to Freedom House: Methodology.* 2008. http://www.freedomhouse.org/template.cfm?page=351&ana_page=341&year=2008 (accessed 26 2010, April).

Goldstein, Robert Justin. "Limitations of Using Quantitative Data in Studying Human Rights Abuses." *Human Rights Quarterly 607*, 1986: 607-612.

Goodman, Ryan & Derek Jinks. "How to Influence States: Socialization and International Human Rights Law." *Duke Law Journal, Vol. 54, No. 3*, 2004: 621-703.

Goodman, Ryan and Derek Jinks. "Measuring the Effects of Human Rights Treaties." *European Journal of International Law Vol. 14 No.1*, 2003: 171-183.

Hafner-Burton, Emilie M. & Kiyoteru Tsutsui. "Human Rights in a Globalizing World: The Paradox of Empty Promises." *American Journal of Sociology Vol. 110, No. 5*, 2005: 1373-1411.

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

Henkin, Louis. *How Nations Behave: Law and Foreign Policy.* New York: Council on Foreign Relations, 1995.

Jacob, Herbert. "Conclusion." In *Courts, Law & Politics in Comparative Perspective*, by E. Blankenburg, H.M. Kritzer, D.M. Provine, & J. Sanders H. Jacob. New Haven: Yale University Press, 1996.

Jenkins, J. Craig. "Resource Mobilization Theory and the Study of Social Movements." *Annual Review of Sociology 9 (1)*, 1983: 527-553.

Johnston, Douglas M. *Consent and Committment in the World Community: The Classification and Analysis of International Instruments.* Irvington-Hudson, NY: Transnational Publishers, 1997.

Merry, Sally Engle. "Transnational Human Rights and Local Activism: Mapping the Middle." *American Anthropologist Vol. 108, Issue 1*, 2006: 38-51.

Meyer, John W., John Boli, George M. Thomas, and Francisco O. Ramirez. "World Society and the Nation-State." *American Journal of Sociology 103(1)*, 1997: 144-181.

Neumayer, Eric. "Do International Human Rights Treaties Improve Respect for Human Rights?" *Journal of Conflict Resolution, Vol. 49 No. 6*, December 2005: 925-953.

Risse, Thomas, Stephen C. Ropp, and Kathryn Sikkink. *The Power of Human Rights: International Norms and Domestic Change.* Cambridge University Press, 1999.

Schmitter, Philippe C., & Gerhard Lehmbruch. *Trends Towards Corporatist Intermediation.* Beverly Hills: Sage Publications, 1979.

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

Smelser, Neil, B. Badie, and P. Birnbaum. *The Sociology of the State Revisited.* Cambridge, MA: Blackwell, 1994.

The Council of Europe. *Individual Measures.* 2010. http://human-rights-convention.org/impact-of-the-european-convention-on-human-rights/impact-for-citizens/?lang=en (accessed October 2010).

The European Court of Human Rights. *European Court of Human Rights in Brief.* Report, Strasbourg: Council of Europe Publishing, 2009.

The United Nations. *The Universal Declaration of Human Rights.* December 10, 1948. http://www.un.org/en/documents/udhr/index.shtml (accessed May 13, 2010).

Tsutsui, Kiyoteru and Christine Min Wotipka. "Global Civil Society and the International Human Rights Movement: Citizen Participation in Human Rights International Nongovernmental Organizations." *Social Forces*, December 2004, 83(2): 587-620.

U.S. Department of State. *2010 Human Rights Reports: Montenegro.* April 8, 2011. http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154441.htm (accessed July 12, 2011).

Wall, Christopher. "Human Rights and Economic Sanctions: the New Imperialism." *Fordham International Law Journal*, 2000: 577-611.

Walzer, Michael. *Just and Unjust Wars.* New York: Basic Books, 2006.

Waters, Malcolm. "Human Rights and the Universalization of Interests: Towards a Social Constructivist Approach." *Sociology*, 1996: 593-600.

Wildhaber, Luzius. "The European Convention on Human Rights and International Law." *The International Comparative Law Quarterly 56:2*, 2007: pp. 217-231.

Yearbook of International Organizations. *Vol. 5: Statistics, Visualizations and Patterns.* Brussels, Belgium: Union of International Associations, Edition 47, 2010.

Appendix A

Calculated State Strength Scale for 47 Countries

Country	SS	Country	SS
Denmark	3	United Kingdom	5
Greece	3	Andorra	6
Bulgaria	4	Iceland	6
Croatia	4	Ireland	6
Cyprus	4	Liechtenstein	6
Estonia	4	Slovenia	6
Germany	4	The Former Yugoslav Republic of Macedonia	6
Latvia	4	Albania	7
Luxembourg	4	France	7
Moldova	4	Netherlands	7
Poland	4	Romania	7
Slovakia	4	Serbia	7
Spain	4	Turkey	7
Switzerland	4	Ukraine	7
Austria	5	Armenia	8
Belgium	5	Azerbaijan	8
Czech Republic	5	Georgia	8
Finland	5	Italy	8
Hungary	5	Monaco	8
Lithuania	5	Russia	8
Malta	5	San Marino	8
Norway	5	Montenegro	9
Portugal	5	Bosnia and Herzegovina	10
Sweden	5		

***Score is based on a 0-10 (weak- strong) scale**