

Why Do Leaders Accept the International Criminal Court's Jurisdiction? Theory and Evidence

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Abstract

This article contributes to an understanding of why national leaders voluntarily accept the jurisdiction of the International Criminal Court, granting it the right to prosecute them. It theorizes that leaders trade off the risk of unwanted prosecutions against the deterrent threat that prosecutions pose to political rivals and patrons of domestic enemies, who may conspire to violently oust leaders. The risk of unwanted prosecutions and the court's deterrent threat both arise because the court's prosecutions credibly communicate guilt for atrocities and may trigger leader-specific economic punishment by wealthy donor states that prefer to keep atrocity-doers out of office. Empirical analysis of all leaders (1998–2008) with panel-data methods demonstrates, as hypothesized, that a greater receipt of development capital increases the probability that a leader accepts the court's jurisdiction only when he can obstruct his own prosecution, and that the court's jurisdiction prolongs a leader's tenure and prevents violent challenges to the regime.

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INTRODUCTION

Years before the International Criminal Court (ICC) reached its landmark first conviction in the trial of the Congolese warlord, Thomas Lubanga, jurists and statesmen had called the court a tour de force of the global rule of law¹ and an institution facing so few checks from sovereign states that it has “virtually unlimited discretion in practice.”² The ICC is the first institution tasked with enforcing atrocity law³ across the world by prosecuting political and military elites for common tactics and byproducts of war and repression—murder, torture, disappearances, sexual violence, forced population transfers, and child soldiering, for instance. The ICC is the successor of the United Nations ad hoc international tribunals. Unlike them, however, it is permanent, may prosecute at-will once a state has granted it jurisdiction, and promises to disregard sovereignty by declaring national judiciaries unable or unwilling to prosecute.

¹Cassese 2011

²Kissinger 2001, 95

³Atrocity law draws on international humanitarian law, criminal law, human rights law, and case law of the United Nations tribunals. The ICC now prosecutes war crimes, crimes against humanity, and genocide as defined in the Rome Statute of the International Criminal Court.

Nevertheless, leaders of more than sixty percent of states accepted the ICC's jurisdiction by ratifying or acceding to the Rome Statute in the decade since the treaty opened in 1998.⁴ Why have leaders voluntarily authorized an international institution to prosecute, and perhaps, to imprison them?

The ICC and the ad hoc courts that preceded it face serious obstacles to ending impunity for atrocities, but they have proven that they are not paper tigers. They have tried and imprisoned hundreds of former state officials and nine former leaders.⁵ The ICC's prosecutor has now conducted preliminary investigations of atrocities in at least eighteen states under the court's jurisdiction and has indicted more than thirty nationals of five such states: Democratic Republic of the Congo Central African Republic, Kenya, Côte D'Ivoire, and Mali. Two leaders even accepted the ICC's jurisdiction only to find the court prosecuting regime insiders a few years later.⁶ Even when international criminal courts have little hope of making arrests, the politicians under their scrutiny take the courts seriously, launching campaigns to delegitimize or revoke their authority.⁷

⁴When a state ratifies or accedes to the Rome Statute it gives the ICC jurisdiction to prosecute crimes committed by a state's nationals or on its territory in two ways: unilaterally or when prompted by the ratifying state's self-referral. In addition, the United Nations Security Council may issue Chapter VII a referral granting the ICC the authority to prosecute anyone, anywhere. The Security Council may not veto prosecutions, but it may issue Chapter VII resolutions deferring them for a year. States parties may exit the Rome Statute, but even exit will not halt ongoing investigations and prosecutions. The Rome Statute does not allow reservations.

⁵Imprisoned leaders are Rwanda's Jean Kambanda, Sierra Leone's Foday Sankoh, Liberia's Charles Taylor, the Federal Republic of Yugoslavia's (FRY) Slobodan Milošević, Republika Srpska's Radovan Karadžić, Momčilo Krajišnik and Biljana Plavšić of Bosnia and Herzegovina, Kosovo's Ramush Haradinaj, and Cote D'Ivoire's Gbagbo. Three were convicted and sentenced to between eleven years' and life imprisonment. Of the remaining six, Sankoh died in the Special Court for Sierra Leone's custody just after his indictment, while Milošević died in the International Criminal Tribunal for the Former Yugoslavia's (ICTY) custody in his fifth year of trial. Taylor and Karadžić have been in the Special Court for Sierra Leone's and ICTY's custody since 2006 and 2008 and are on trial. The ICTY acquitted Haradinaj in 2008, but he is presently on trial again. Gbagbo is currently awaiting trial in the ICC's custody.

⁶The leaders referred to are Kenya's Mwai Kibaki and Côte D'Ivoire's Laurent Gbagbo, whom the court indicted.

⁷"Bashir Defies War Crime Arrest Order," *New York Times*, 6 March 2009; "Hezbollah Looks for Shield From Indictments' Sting," *New York Times*, 24 July 2010; "Rough Road Ahead as Kenya Plans to Lobby UN's Big Five," *Daily Nation*, 5 February 2011.

The apparent power of international criminal courts has led some scholars to propose that international civil society and a few influential states have subtly pressured much of the world to accept the ICC's jurisdiction.⁸ Other scholars contend that leaders see the court as a device for credibly committing to governing humanely.⁹

This article instead argues that a prime motive for accepting the ICC's jurisdiction is to marginalize political competitors—the Thomas Lubangas of the world. Leaders trade off the ICC's potential to harm their own careers in unwanted prosecutions against the similar threat that the court poses to contenders for office and the foreign patrons of domestic enemies of the state. The court's power to harm political careers stems from its ability to credibly communicate personal guilt for atrocities, which may trigger economic punishment by rich democracies that prefer to keep atrocity-doers out of office. Leaders may exploit their control over inculpatory evidence to preemptively sabotage investigations and prosecutions, but the court's discoveries of guilt result from evidence that has been expensively and persuasively vetted. The reliance of incumbents on development capital to gain and keep office is crucial to explaining the deterrent threat of prosecution. The chance that the state will lose significant sums of development capital raises the opportunity cost of supporting violent regime change to domestic elites. The chance that the patrons of secessionists, terrorists, and organized criminals in neighboring states will suffer economic punishment triggered by prosecutions based on theories of broad criminal liability may cause those patrons to rescind their support.

Two patterns consistent with this argument are documented below with panel of 509 leaders from all states outside of the Organisation for Economic Co-Operation and Development (OECD) Development Assistance Committee (DAC) from 1998 to 2008. First, leaders of autocracies, who are better able to obstruct prosecution, are more likely to accept the ICC's jurisdiction when they receive larger amounts of development capital from rich democracies. Leaders of democracies,

⁸Deitelhoff 2009, Goodliffe et al. 2012

⁹Ginsburg 2009, Simmons and Danner 2010

who are more exposed to prosecution, are neither more nor less likely to ratify under rising levels of development capital. In other words, leaders ratify when doing so poses a threat only to their enemies. Second, ruling under the ICC's jurisdiction protects leaders, giving them more time in office and less anti-regime violence.

The article proceeds in five parts. The section, Related Literature reviews theory on the ICC's jurisdictional expansion. The section, Theory explains why ICC prosecutions can damage political careers, identifies the conditions when leaders can evade prosecution, lists empirical implications, and proposes three hypotheses. The section, Evidence reviews the data and empirical strategy employed. It improves on extant work with a multiple imputation algorithm to reduce bias arising from missing data, a variety of panel-data techniques to account for cross-national heterogeneity, and a form of exact matching to reduce model dependence. It then interprets the results mentioned in the previous paragraph. The section, Implications discusses a handful of implications for theories of political institutions, international law, and international criminal justice. The Conclusion summarizes the article and its main insights.

RELATED LITERATURE

The expansion of the ICC's jurisdiction since 1998 has attracted substantial scholarly attention. There are five major theories explaining why leaders would accept the court's jurisdiction.

The *cultural* theory claims to explain a readily apparent fact: many OECD members quickly signed and ratified the Rome Statute. Both versions of this theory argue that domestic political and legal cultures make states accept or reject the authority of international institutions like the ICC. The first version of the theory claims that the liberal democratic and legalistic cultures of democracies transform the identities of their citizens and statesmen, who place high value on defending human rights and using law and courts to confront crime.¹⁰ The second version models

¹⁰Bass 2000, Kelley 2007. Simmons 2009, Ch. 3 presents a version of this argument where governments weigh the expected difficulty of compliance and consequences of non-compliance

the ICC's institutional design (1994–1998) as an interstate coordination game whose outcome determined the expected costs that a state would encounter while governing under the ICC's rule. The outcome left a set of likely future winners (states with European legal traditions) and losers, with the former more likely to submit to the court's jurisdiction.¹¹

The remaining four theories advance explanations for why many states outside of the OECD and Europe have accepted the ICC's jurisdiction. The *empty-promises* theory argues states have done so to win praise for endorsing the values and accoutrements of modernity—a painless choice, since the ICC cannot identify and punish the guilty.¹² By contrast, the *diffuse-reciprocity* proposes that states believed that they could curry favor with economically, militarily, and culturally powerful states by adopting their positions on the design and jurisdictional reach of the ICC.¹³ The *persuasion* theory emphasizes another sort of cross-border influence. It claims that international non-governmental organizations (NGOs) have been persuading statesmen to view life under a strong and independent ICC as complementary, rather than contrary, to their interests.¹⁴ Finally, the *civil-peace* theory proposes why states might independently welcome the ICC's jurisdiction. The court acts as a surrogate for domestic institutions that fail to credibly commit a state to treating domestic enemies humanely. States value such a commitment because they value peace. They know that formerly repressed groups that expect the state to commit atrocities or to grant post-atrocity amnesties will turn to violence.¹⁵ States accept the threat of international criminal prosecutions to tie their hands against illegal repression.

These five theories make diverse claims, add to our understanding of the ICC, and have two things in common. First, they say virtually nothing about whether and how the court might enforce against these values.

¹¹Mitchell and Powell 2011, Ch. 4

¹²Hafner-Burton and Tsutsui 2005 applies this theory to the global human rights regime.

¹³ Goodliffe and Hawkins 2009, Goodliffe et al. 2012.

¹⁴Struett 2008, Deitelhoff 2009

¹⁵See Ginsburg 2009 and Simmons and Danner 2010. Chapman and Chaudoin 2012 rebut findings in the latter.

compliance with atrocities law. They never disagree with the basic idea this is the court's goal, and that punishing crime by prosecution is supposed to be its means. Indeed, the civil-peace theory rests on the premise that the court can prosecute. Yet it never explains how. Nor do the other theories. This is a puzzling silence. How to enforce compliance with international law in anarchy is a central question in political science. Literatures on law, courts, and human rights have wrestled with it, because it is arguably prior to the question of commitment.¹⁶ Authorities have every reason to weigh their exposure to prosecution when choosing whether to commit to an agreement. This article argues that the case of the ICC is no different.

Second, in none of the theories do states accept the court's jurisdiction for reasons that are incompatible with the ICC's goals of replacing impunity for atrocities with justice. None of the theories suggests that states manipulate the court for repressive ends. Yet this presumption of benign or good intentions contrasts with some important facts. Central African Republic's François Bozizé, Democratic Republic of the Congo's Joseph Kabila, Uganda's Yoweri Museveni lead states routinely accused of atrocities, but these men did not just accept the court's jurisdiction. They exercised their right under the Rome Statute to demand that the ICC investigate their enemies' behavior.¹⁷ And whether by design or not, the court has pursued or locked up many a leader's potential rival. The majority of the court's 33 indictees are, in fact, entrepreneurs who led or cooperated with violent anti-regime challenges.¹⁸ The presumption about states' intentions also contrasts with theories in which states and political authorities do manipulate institutions, law, and

¹⁶Guzman 2008, Staton and Moore 2011, Gilligan 2006, Simmons 2009

¹⁷The junta leading Mali after the March 2012 also self-referred a situation to the ICC in 2013 due to its struggle against Al Qaeda in the Islamic Maghreb. Mali's president, Alpha Oumar Konaré, accepted the court's jurisdiction in 2000 while fighting insurgents supported by Libya.

¹⁸The most notable of these figures are Jean-Pierre Bemba Gombo, Joseph Kony, Uhuru Kenyatta, and William Ruto. ICC has only indicted four current or former incumbents: Laurent Gbagbo, Omar Al-Bashir, Muammar Gaddafi, and Saif al-Islam Gaddafi. Alassane Ouattara deposed Gbagbo in April 2011 and surrendered him to the ICC. Bashir remains at large. The elder Gaddafi was killed during his ouster. The younger Gaddafi remains in Libyan custody.

even human rights treaties to coerce or repress others.¹⁹ Again, this article contends that the case of the ICC is no different.

THEORY

Many leaders accept the ICC's jurisdiction to marginalize threats to their domestic political survival. They trade off the risk of self-exposure to an ICC prosecution against the deterrent threat that a potential ICC prosecution poses their rivals and enemies, who may conspire to violently oust them. The risk of self-exposure and this deterrent threat arise for the same reason: ICC prosecutions credibly communicate guilt for atrocities. This information may trigger leader-specific economic punishment by wealthy donor states that prefer to keep atrocity-doers out of office.

The following sections ask why ICC prosecutions harm anyone's political career, and why leaders accept the ICC's jurisdiction. They then identify three empirical implications to be tested.

Why ICC prosecutions create information harmful to the careers of politicians

Domestic political elites—military elites, large landowners, prominent business owners, first families, local officials, and intermediaries who deliver votes—demand payment in pork, patronage, and club or public goods in exchange for putting or keeping politicians in leadership posts.²⁰ Whether leaders distribute private or public goods to buy the support of elites, and whether or not leaders are elected, they must carefully cultivate their reputations as breadwinners to stay politically competitive.

A significant source of the capital that domestic elites expect leaders to raise comes from international sources. Foreign aid and loans in particular are known to prolong leaders' tenure in

¹⁹Moe 2005, Hollyer and Rosendorff 2011

²⁰Bueno de Mesquita et al. 2003, Hicken 2011

office.²¹ Fewer than thirty rich liberal democracies disburse most of this aid. These democracies make outward capital transfers contingent on recipients' behavior and enforce the deal with the threat of leader-specific punishment.²² By leveraging their wealth, rich democracies manipulate—indeed, play kingmaker in—the politics of poorer states.

Moral and economic objections to aid for leaders with dirty hands

Citizens in rich donor-democracies may not object to the use aid as a tool of statecraft. A reasonable conjecture, however, is these citizens *do* object when aid helps evil leaders stay in power. In particular, pivotal groups of citizens are likely to object to financing states led by people guilty of grave international crimes like genocide, child-soldiering, torture, and massacres. There are moral and economic reasons for this objection. The moral reason is that many citizens support the foreign aid regime because they wish to improve the welfare of foreigners.²³ Financing evil leaders harms rather than helps foreign populations. The economic reason is that the ultimate source of any democracy's foreign aid budget is the national tax base, which these citizens contribute to. Given credible and public proof that a foreign leader is guilty of atrocities, democracies should manipulate aid flows with the goal of deposing the offending leader. Aid may be used a stick when anti-aid sentiment dominates, or as a carrot when pro-aid sentiment dominates.²⁴

²¹Smith and Vreeland 2006, Bueno de Mesquita and Smith 2008, 2010, Kono and Montinola 2009, Licht 2010, Ahmed 2012

²²Hafner-Burton 2005, McGillivray and Smith 2008, Lebovic and Voeten 2009

²³Lumsdaine 1993, Milner and Tingley 2010*a,b*

²⁴When aid is used as a stick, donors threaten to cut aid unless there is leadership turnover. When aid is used as a carrot, donors promise a country's government increased aid flows, conditional on turnover. A separate paper by the author presents evidence that democratic donors provided successors of leaders prosecuted by international criminal courts with large, sustained aid bonuses. States are less likely to use trade and investment policy sanctions as tools to induce turnover. The most effective of these sanctions (e.g. trade controls and asset freezes) require UN Security Council authorization as uses of force under international law. Trade and investment policy tools may generate strong opposition from particularistic domestic interests, defeating the effectiveness and credibility of the sanctions. Targeted states may, moreover, seek substitute partners for trade and investment. Democratic donors face none of these problems when they use aid as a carrot or

The problem is that few citizens of rich democracies know the definitions of atrocity crimes, few know who should be guilty of those crimes, and few know who *is* guilty of them. Simply put, the average citizen lacks the attention and expertise to sort through the first two matters, while credible evidence bearing on the third matter is hard to discover and assemble into a persuasive case. A key difficulty in addressing all three matters is the fact that politicians and other elites nearly always delegate atrocities to their subordinates, and they rarely document their orders and intentions. Building a credible case against atrocity-doers is a task fraught with conceptual and inferential complexities—a task for which NGOs, many international organizations, and national institutions are unequipped.²⁵ To be sure, there are cases where it is crystal clear to most observers who is personally responsible for atrocities, even as they occur. State-led massacres in the Libyan and Syrian revolutions are examples, but they are exceptions to the rule. Most of the time, it is ambiguous who is personally responsible for atrocities.

The credibility of international criminal prosecutions

The ICC plays a key role here. The court specializes in legitimately resolving the complexities of assigning personal guilt for atrocities and credibly communicating that, at the very least, those whom it indicts and convicts are more likely to be guilty than those whom it does not. Three of the court's qualities explain its credibility: a *legitimacy* quality, an *investment* quality, and a *reputational* quality.

First, the ICC is founded on and employs relatively legitimate and transparent norms, rules, and procedures. The Rome Statute and the ICC's Elements of Crimes reflect more than a stick. Manipulating aid flows is not a recognized use of force in international law. Fewer business interests are involved in aid policy. And because OECD donors have by far the most consistently generous aid programs, non-democratic donors are no substitute for democratic donors.

²⁵Human rights NGOs tend to assign guilt at aggregate levels of government and ask international criminal courts to investigate further. A case in point is the Amnesty International 2000 inquiry into NATO's bombing in Serbia. In anticipation of this report, the ICTY's prosecutor released its own report. The prosecutor argued against indicting NATO member officials for war crimes, because of insufficient evidence and the impracticality of prosecution.

century of development in humanitarian law, human rights law, international criminal law, and decades of international negotiations and expert conferences. The ICC's Rules of Procedures and Evidence, moreover, reflect both general principles of international law and decades of case law emerging from the United Nations tribunals.²⁶ While the crimes outlined by the Rome Statute are controversial in some quarters and vaguer than some crimes prosecuted in domestic legal systems,²⁷ NGOs, international organizations, and domestic bureaucracies and courts are far more likely to employ idiosyncratic and less legitimate standards and procedures in assigning personal guilt, when they do assign it.

Second, the ICC has an unrivaled ability to invest in collecting evidence, interpreting atrocity law, and evaluating the merits of cases. This is principally due to the size of its budget, which has exceeded \$100 million every year since 2009.²⁸ The court's investment does two things. It lowers both the rate of mistaken non-indictments and non-convictions (false negatives) and the rate of mistaken indictments and convictions (false positives). It also sends a costly signal to casual observers that the court has in fact taken steps to lower its false-inference rates. The court may reach an inflexible lower bound on the probability of a false negative ruling due to the indecisiveness of evidence in many cases. However, its investments help it push the probability of *false positive rulings* toward zero. By contrast, NGOs, international organizations, and national courts invest far less in any given case. The budgets of the two largest NGOs focusing on human rights worldwide are roughly half the size of the ICC's.²⁹

Third, ICC judges evaluating a case stake their reputations in the legal community for

²⁶Schabas 2011

²⁷Goldsmith and Krasner 2003

²⁸The resolutions of the ICC's Assembly of States Parties hosted at the court's website publishes budgets from 2002-2011. In 2009, the Office of the Prosecutor claimed a quarter of the budget.

²⁹Neither of these two NGOs—Amnesty International (AI) and Human Rights Watch (HRW)—publicizes its budget, but NGO Monitor reports that AI's 2007 budget was about \$60 million and HRW's 2008 budget was \$42 million. See <<http://www.ngo-monitor.org/index.php>>. While Oxfam, CARE, and World Vision have budgets roughly six times larger than the ICC's, they spend on a wider set of activities than AI, HRW, and the ICC do.

professional competence—for issuing decisions with a low false-positive rate in particular. This sort of reputation, in turn, influences their chances of re-election to posts in the ICC and of selection for jobs in firms, universities, and courts elsewhere. The ICC’s judges may react to legal and political biases,³⁰ but their fears of acquiring reputations for recklessness should be the overriding concern. By contrast, judges prosecuting the rivals and enemies of their political masters do not care about cultivating such reputations. In regimes other than long-established democracies, leaders often use judges and courts as instruments to coordinate and legitimize repression, building cases against regime enemies with weak evidence and unfair reasoning.³¹ Finally, there is little reason to believe that fact-finders working for international NGOs would seek the sort of reputations that ICC judges seek. The cutthroat marketplace for NGO funding often pushes these organizations to produce dramatic results at the expense of credibility.³²

In summary, the ICC’s power to damage politicians’ careers arises from the interplay of clientelism, the liberal foreign aid regime, and the credibility of information revealed during ICC prosecutions. The court’s public disclosures of politicians’ behavior can disqualify them from the fruits of the foreign aid regime, thereby ruining their futures as viable candidates for national leadership. *Aspirant* incumbents in addition to current incumbents will be affected by these disclosures. This important detail explains why incumbents ever accept the ICC’s jurisdiction.

Why leaders accept the ICC’s jurisdiction

Leaders face internal threats. Political rivals from within and without the regime aspire to oust them, undermine their campaigns to expand executive power, and organize anti-regime violence in the form of coups, rebellions, riots, and protests. Terrorists and organized criminals undermine their rule indirectly by burdening the state’s coffers and revealing the regime’s incompetence.

³⁰Voeten 2008, however, finds little evidence of potential biases in judicial decisions at the European Court of Human Rights.

³¹Pereira 2005

³²Cohen and Green 2012

Meddlesome foreign incumbents patronize these actors, supplying them with ideological motives, sanctuary, money, labor, weapons, and intelligence.

To deal with these threats, leaders have traditionally either co-opted or repressed them. Both options come with strings attached. Co-optation is costly and it may be impossible, while relying on security forces for repression increases their power to induce leadership turnover.³³

The ICC's jurisdiction presents leaders with an alternative. The key consideration leaders must consider when deciding whether to use the court as an ally is the trade-off between two effects of jurisdiction: a *security effect* and an *exposure effect*. The security effect arises because jurisdiction protects leaders from those who threaten their rule. The exposure effect arises because leaders who accept jurisdiction expose themselves and their regime allies to prosecution. A straightforward implication is that leaders accept jurisdiction when this trade-off favors them.

The security effect

The court's jurisdiction provides leaders with domestic security via two mechanisms. First, jurisdiction deters their direct political rivals from cooperating with domestic elites to challenge the regime. Second, jurisdiction deters the foreign patrons of rivals and other internal threats (who may not be interested in holding public office) from continuing to support their clients. Consider the two mechanisms in turn.

Leaders who wish to marginalize direct rivals for office exploit three facts. First, rivals must credibly promise a future flow of resources to domestic elites whose support rivals need to enter and remain in office. Foreign aid supplies a big slice of these resources. Second, leaders have unique control over the supply of evidence that could inculcate their enemies from crimes committed in the course of regime change by virtue of their access to the state's intelligence institutions.³⁴ Leaders

³³Svolik 2012

³⁴Regime change is often accomplished by irregular technologies of conflict like persecution, insurgency, terrorism, and genocide, in which superiors (e.g. domestic rivals and elites) are likely to become liable for international crimes. The well-known history of international criminal prosecutions at Nuremburg and since the Cold War's end has taught superiors this lesson.

can, and have, delivered such evidence to the ICC for review. Third, the credibility of the promise comes into question if the ICC has jurisdiction to prosecute strategies of violence arising from conflict between the loyalists and challengers. Leaders, rivals, and elites all know that foreign donor democracies view ICC indictments (and convictions, if cases proceed to trial) as credible signals of guilt and may act upon them with leader-specific punishment. Rivals and elites take this into account *ex ante* when deciding whether to coalesce and challenge the incumbent. The court's jurisdiction thus protects leaders from rivals by raising the opportunity cost to elites of supporting a challenge to the regime, which deters cooperation between elites and rivals.

The security effect's second mechanism comes into play when leaders face threats from terrorist, irredentist, or criminal organizations. The rulers of these internal threats are unlikely to care about international prosecutions and their effect on the foreign policy of donor-democracies, except in the rare case where they seek political office. However, they typically rely on the patronage of foreign incumbents *who do* care about international prosecutions. Leaders can exploit their fear of ICC prosecutions. They can accept the court's jurisdiction to deter unwanted patron-client ties.

The legal pursuit of foreign patrons

Foreign patrons may seem legally removed from responsibility for violence in other states. Yet international criminal courts have pursued them in court with several theories of liability: individual criminal responsibility, individual criminal responsibility in the context of a joint criminal enterprise, and command responsibility. These have evolved over the past six decades from treaty and case law.

First, the Rome Statute considers a defendant liable for crimes as either a principal or secondary co-perpetrator pursuant to the theory of individual criminal responsibility if he organizes, masterminds, controls, orders, solicits, induces, aids, abets, otherwise assists, provides

the means for, or in any other way intentionally contributes to the commission of the crime.³⁵ Second, the statute considers a defendant individually criminally responsible as a co-perpetrator for crimes pursuant to the theory of joint criminal enterprise if he partakes in a plan to commit the crimes, even when this plan is unwritten and implicit, and even when the crimes are simply predictable consequences of the plan rather than outcomes called for by the plan.³⁶ Third, if the defendant was neither part of a joint criminal enterprise nor was individually responsible for the crimes, he may still be liable as a negligent superior pursuant to the theory of command responsibility. This line of prosecution requires proof of a superior-subordinate relationship between the defendant and perpetrators. Cross-border patron-client relationships are fair game, however, since the relationship between the defendant and perpetrator does not need to be direct, military, hierarchical, or de jure. The defendant must only have had the de facto capacity to prevent the perpetrator's behavior or punish the perpetrator retroactively.³⁷

International criminal courts actually do prosecute foreign patrons with these theories.³⁸ The Special Court for Sierra Leone indicted Taylor, alleging that the former president of Liberia is individually responsible for atrocities committed by three rebel groups that fought in Sierra Leone from 1996 to 2002. The ICTY's prosecutors argued that Yugoslav ex-president, Milošević partook in a joint criminal enterprise with Serbian paramilitaries who committed atrocities in Croatia and

³⁵See Article 25 of the Rome Statute.

³⁶Drawing on customary international law, the ICTY promulgated joint-criminal-enterprise doctrine in two judgments: Prosecutor v. Delalić et al., Judgment, Case No. IT-96-21, Trial Chamber, 16 November 1998 and Prosecutor v. Tadić, Judgment, Case No. IT-94-1, Appeals Chamber, 15 July 1999. See Cryer et al. 2010, 367–373.

³⁷Danner and Martinez 2005, Cryer et al. 2010, 387–400

³⁸See e.g. Prosecutor v. Taylor, Indictment, SCSL-03-01-I, 7 March 2003; Prosecutor v. Milošević, Second Amended Indictment, Case No. IT-02-54-T, 24 July 2004; Prosecutor v. Milošević, Amended Indictment, Case No. IT-02-54-T, 23 November 2002; D.Ê Mehliis, "Report of the International Independent Investigation Commission Established Pursuant to Security Council Resolution 1595 (2005)," S/2005/662, 20 October 2005; "Report: UN Tribunal to Link Iran's Supreme Leader with Hariri Assassination," *Haaretz*, 15 January 2011; and Prosecutor v. Bemba, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, Case No. ICC-01/05-01/08, 15 June 2009.

in Bosnia and Herzegovina from 1991 to 1995. And one year after the final Milošević indictments, the outgoing chief prosecutor of the United Nations Special Tribunal for Lebanon wrote a report blaming Syrian President Bashar al-Assad and his subordinates for the assassination of Lebanese Prime Minister, Rafik Hariri and 21 others in 2005. The report hinted that when the tribunal issues indictments, it would use several of these three theories to prosecute Hezbollah's foreign patrons. There is speculation that the tribunal's new chief prosecutor has, since then, issued sealed indictments against Syrian authorities and Iran's Ayatollah Ali Khamenei for delivering the assassination order to Hezbollah via Iran's Revolutionary Guards Quds Force. Finally, the ICC indicted Bemba Gombo pursuant to the command-responsibility theory, alleging his responsibility for atrocities committed by his followers during Central African Republic's civil war in 2002 and 2003.

The exposure effect

The other side of the trade-off that leaders confront with the ICC is the fact that accepting the court's jurisdiction exposes them and their regime allies to prosecutions launched at the court's discretion. The main danger here is that journalists, foreign intelligence agencies, NGOs, mediators, activists, and domestic prosecutors and judges give the court sufficient evidence for unwanted prosecutions. If this triggers a prosecution of a leader or his allies, the new information revealed by the indictment and trial could spell the end of their careers.

The aftermath of interethnic violence surrounding Kenya's 2007–2008 election illustrates this danger. Kenya's national commission to investigate atrocities had given Kofi Annan, the African Union mediator, a list of suspected perpetrators and a box of evidence soon after the crisis. When the Kenyan parliament struck down legislation for a hybrid special tribunal to Annan's dissatisfaction, he gave these items to the ICC. The court promptly indicted Kenyan officials with deep ties to the president, Mwai Kibaki. It also indicted Uhuru Kenyatta, Kibaki's ethnic ally for allegedly bankrolling ethnic gangs. When Kenyatta emerged as the frontrunner of Kenya's 2013

general election even amid his indictment, the United States and other Kenyan donors warned that if Kenyatta took office, there would be consequences.³⁹

How leaders can obstruct exposure to prosecution

To a greater or lesser extent, however, leaders can engage in obstructionism to shield themselves and their allies in government from prosecution. The ICC's ability to build a credible case for indictment or conviction will often require state cooperation. Leaders may be happy to submit evidence against their enemies, but will suppress evidence inculcating them or their allies. They can use state security forces and less conventional means to destroy or hide physical evidence (graves and documents) and to co-opt, intimidate, or kill witnesses. They can also invoke the ICC's complementarity principle, which names national courts the "courts of first instance" for prosecuting atrocities if they are "able and willing" to, as justification for limiting the ICC's ability to collect evidence on the ground. The following paragraphs explore the significance of such obstructionism, and the conditions where it can occur.

Histories of the United Nations tribunals and the ICC reveal grand obstructions of justice. It is well known that states often bury and rebury the massacred in secrecy to hide evidence of atrocity crimes. Serbian and Syrian security forces have even been caught in the act.⁴⁰ Remote sensing techniques offer some hope of finding mass graves. But mere evidence of a mass grave's existence is thin evidence in an international criminal prosecution. Only the downfall of a regime reveals unambiguous evidence on the extent of the killings, the identities of the dead, and how and when they died.⁴¹ Documentation of a *plan* for atrocities, when it exists, is easier to erase.

³⁹See the comments of the U.S. Assistant Secretary of State for African Affairs quoted in "US Warns of 'Consequences' in Kenya Elections," *Huff Post World*, 7 February 2013. Indictees with ties to Kibaki are Francis Muthaura and Hussein Ali. The ICC dropped charges against Kenyatta in 2015, citing retaliation against its witnesses and government obstructionism.

⁴⁰"Serbia Finds Where Bodies Are Buried, and Investigates," *New York Times*, 31 July 2001; "Serbs 'Burning Bodies in Rush to Hide War Crimes Evidence,'" *The Guardian*, 5 March 1999; "U.N. Monitors in Syria Find Grisly Traces of Massacre," *New York Times*, 8 June 2012.

⁴¹Stover, Haglund and Margaret 2003

The paramount example is Imperial Japan's subterfuge during the two-week period between its 1945 surrender and the start of the Allied occupation and Tokyo War Crimes Tribunal. Gary Bass reminds us that "even in the best of circumstances, it is hard to prevent war criminals from destroying the evidence...Japanese militarists set off bonfires, destroying records of the secret police and military, transcripts of imperial conferences, cabinet deliberations, and records on prisoners of war and on campaigns in China."⁴² The thoroughness of their efforts led tribunal judge Radhabinod Pal to issue a dissenting opinion acquitting every high-ranking defendant, partly on grounds of insufficient evidence.

With or without physical evidence, international criminal prosecutions rely crucially on witness testimony to prove the mental elements of atrocity crimes. Herein lies a serious weakness of international criminal courts. Political authorities co-opt, intimidate, and murder witnesses and their families. Court officials may be able to weed out false allegations against high-level indictees in cross-examination, but they can do little with witnesses who remain silent, make plausible denials, give inconsistent testimony, or refuse to take the stand. Surveys from three ICC situations suggest a lack of confidence in the court's ability to protect its collaborators. Just 21% of Kenyan respondents thought that people cooperating with the court in April 2010 were "very safe," while a plurality of 37% thought that cooperators were "unsafe." In Uganda just 2% admitted knowing how to contact the court in 2007. In Democratic Republic of the Congo, just 12% admitted knowing how contact the court in 2008.⁴³ The ICC has since tried to safeguard witnesses in the Kenya situation by flying them and their families out of the country, offering lifetime protection, and condemning the sources of intimidation.⁴⁴ Yet witness protection programs have failed in all

⁴²This obstructionism extended to the murder of trial witnesses and thousands of "suicides" by potential defendants. Bass 2000, 303.

⁴³On the difficulty of witness protection, see Combs 2010, 130–138 and Peskin 2008. For the surveys, see Vinck et al. 2007, 2008 and "Kenyans Overwhelmingly Support the ICC Prosecutions," *Synovate Pan-Africa*, April 2010.

⁴⁴ICC Chief Prosecutor, Fatou Bensouda claims that in Kenya, "There are serious efforts, and timeless efforts to find out where witnesses are, threaten them and their families. Some are even

modern international criminal courts, sometimes dramatically.⁴⁵

Finally, international criminal courts have engaged in jurisdictional battles with openly uncooperative states, delaying investigations and trials for years in some cases. Serbia, Croatia, Rwanda, Democratic Republic of the Congo, and Uganda have refused to surrender suspects and witnesses, granting them domestic trials or amnesties instead. So has the new government of Libya, which has appealed to the Rome Statute's principle of complementarity in pressuring the ICC to let its courts to prosecute atrocities arising from the country's revolution. Using this justification, Libya has retained custody of Saif al-Islam Gaddafi and illegally detained the court's investigators seeking to interview Libyan witnesses.⁴⁶ The court faces similar problems with Uganda, which created a special branch of its judiciary to shield state authorities from prosecution, and with Kenya, which maintains that national courts, a domestic tribunal, and a domestic truth commission should override international prosecutions.⁴⁷ These jurisdictional battles matter a great deal. Stalling prosecutions does not merely postpone indictments and convictions. *It may prevent them from ever occurring.* The evidence sought by the ICC has a short half-life. Potential targets of investigation gain time to destroy residual physical evidence, and the credibility of witness testimony naturally degrades as time passes.⁴⁸

being offered bribes" in "Kenyan Government Not Cooperative, Says ICC," *Citizen News*, 17 February 2013. One Kenyan witness who fled the country said, "We have negotiated for lifetime protection and we will not be returning home because that will be too risky" in "ICC Gives 14 Witnesses Lifetime Protection," *AllAfrica.com*, 11 July 2011.

⁴⁵For example, the intimidation and murder of witnesses in the trial of former Kosovo Liberation Army commander and Kosovo prime minister, Ramush Haradinaj, arguably caused his acquittal at the ICTY. See "Former Kosovo Leader to Be Retried," *The New York Times*, 21 July 2010; "War Crimes Court Frees Former Leader of Kosovo," *The New York Times*, 29 November 2012.

⁴⁶"Congo: Support for Ex-Warlord's Arrest," *New York Times*, 12 April 2012; "Libya Resists International Court's Claim on War Crimes Case," *New York Times*, 21 March 2012; "International Court Team is Held in Libya," *New York Times*, 10 June 2012. Also see Peskin 2008.

⁴⁷Sriram and Brown 2012

⁴⁸Combs 2010, 14–16

How the exposure to prosecution is conditional on democracy

Obstruction of international criminal investigations is not inevitable, however. Leaders will be less likely to successfully protect themselves and their allies if they can be replaced in competitive elections. In other words, the exposure effect of accepting the court's jurisdiction should be greater in minimalist democracies.⁴⁹

There are two reasons for this. First, it will always be in the interest of some set of voters and civil society organizations to remove obstructionist leaders from office. Obstructionism perpetuates the grievances of multiple groups: those aggrieved by atrocities, those aggrieved because they value the rule of law, and those aggrieved because they prefer their government to comply with its international legal commitments. If these groups are large and influential, and if the political opposition can capture their support and win elections, then it can halt and reverse obstructionism. Second, random events like policy blunders, term limits, recessions, and scandals are more likely to force an incumbent from office in a democracy than in an autocracy.

Simply put, obstructionist leaders are more likely to exit office in democracies than in autocracies, regardless of whether obstructionism contributes to their downfall. When they leave office, they lose control of many means to obstruct justice. This exposes them and their protégés to prosecution and imperils their political futures.

Serbia: an example of how democracy thwarted obstructionism

The downfall of Vojislav Koštunica illustrates how democracy can expose a leader's protégés to international prosecution.⁵⁰ As Serbia's president and then its prime minister, Koštunica fought

⁴⁹Przeworski et al. 2000, Ch. 1, Cheibub, Gandhi and Vreeland 2010

⁵⁰Koštunica served as president from 2000 to 2003, and prime minister from 2004 to 2008. On the events in Serbia recounted below, see Peskin 2008; "Trial Reveals How Serbian Fugitive Hid," *New York Times*, 26 December 2006; "After Key Arrest by Serbia, European Union Is to Reopen Talks," *New York Times*, 8 June 2007; "Europe Spars With Serbia Over Union and Kosovo," *New York Times*, 7 February 2008; "Karadzic Arrest Is Big Step for a Land Tired of Being Europe's Pariah," *New York Times*, 23 July 2008; "Serbia's Election: Blow West," *The Economist*, 12 May

jurisdictional battles with the ICTY, a court whose need for state cooperation and vulnerability to obstructionism matches the ICC's. He also cooperated with the military to hide several high-level indictees with intimate knowledge of who in Serbia had masterminded brutal massacres in Croatia and Bosnia and Herzegovina. The most prominent of these men were Radovan Karadžić, Ratko Mladić, and Goran Hadžić.

Koštunica suffered a series of setbacks beginning in 2006. First, the European Union (EU) halted accession talks in frustration with Serbia's obstructionism. The Serbian Justice Ministry also prosecuted eleven of Mladić's handlers, who publicly revealed where they took their orders from. Second, Koštunica made a fateful decision to oppose Europe's support for Kosovo's independence, vowing to withdraw Serbia's bid for EU membership and develop closer relations with Russia instead.

These developments precipitated a crisis in 2008. Serbia's president, Boris Tadić and his pro-EU Democratic Party dissolved a governing coalition with Koštunica's Democratic Party of Serbia and scheduled a parliamentary election. Koštunica's party lost 13 seats in the election, but its alliance with the Serbian Radical Party meant that a second alliance with the pivotal Socialist Party could give the coalition a parliamentary majority. The socialists had abandoned their party's initial hostility toward the ICTY and Europe by the middle of the decade. They sided with Tadić after his party won the plurality of seats with nearly 39% of the popular vote. This put Koštunica's party and the radicals in the minority, and Koštunica out of a job.

Koštunica thus alienated the EU for multiple reasons—some related to his government's obstruction of justice, some arguably not—destroying the coalition that kept him in office. His career ended amid the growing demand by centrist and leftist Serbian politicians for compliance with the ICTY, which Europe had made a prerequisite for cooperation on trade and immigration. The new government began dismantling Serbia's obstructionist agenda upon taking office. It

2008; "Europe Tested as War Crimes Suspect Remains Free," *New York Times*, 21 October 2010; "Serbia Arrests Its Last Fugitive Accused of War Crimes," *New York Times*, 20 July 2011.

captured Karadžić in Belgrade that July, delivered him to the ICTY, and did the same to Mladić and Hadžić in 2011.

Empirical implications

A theory in which leaders trade off the security and exposure effects of the ICC's jurisdiction when choosing whether to accept it has three straightforward predictions. First, a greater receipt of aid increases both the security and exposure effects in democracies, where leaders are less likely to be able to obstruct prosecutions. Both effects increase, because a potential ICC prosecution is more costly to leaders and their enemies alike when eligibility for foreign aid is a prerequisite for gaining and maintaining a position of leadership. Autocrats, by contrast, will be more likely to succeed at obstructing unwanted prosecution. A greater receipt of aid will therefore increase the security effect relative to the exposure effect for autocrats, but not for democrats. The implication is that only autocrats should become more likely to accept the court's jurisdiction as aid inflows increase.

HYPOTHESIS 1: Aid from wealthy donor democracies has no effect (a positive effect) on the probability that the leader of a democracy (leader of an autocracy) ratifies the Rome Statute.

This is not to say that democrats will always find that the exposure effect outweighs the security effect. Leaders of either regime type may find that the security effect outweighs the exposure effect. Democrats may not be criminally liable, or random circumstances may have reduced their exposure to prosecution even though they committed crimes. Generally, leaders who have selected into the court's jurisdiction have done so, because in their cases, the security effect outweighs the exposure effect. An observable implication is that leaders under the court's jurisdiction should enjoy longer tenures and face less anti-regime violence.

HYPOTHESIS 2: The ICC's jurisdiction reduces the probability that a leader loses office.

HYPOTHESIS 3: The ICC's jurisdiction reduces the probability that a leader experiences anti-regime violence.

At this point it is useful to ask whether any of the theories of commitment to the ICC presented in “Related Literature” make the same predictions. The civil-peace theory in fact predicts Hypothesis 3, and there is some evidence that the ICC’s jurisdiction causes civil war termination.⁵¹ None of the theories predict Hypotheses 1 and 2, however. The only theory in which aid might play a role is the diffuse-reciprocity theory. Yet if states ratify the Rome Statute to please powerful donors, as that theory implies, then aid should increase the probability of ratification in all regime types. Finally, since no theory expects leaders to ratify the Rome Statute out of a concern for political survival, none predicts that the court’s jurisdiction keeps them in office.

EVIDENCE

Multiply imputed cross-national panel data at the leader level

Cases and unit of observation

The hypotheses are tested on a panel data set of leaders outside of the OECD Development Assistance Committee. Leaders from these wealthy democracies are excluded because the patronage politics and civil tensions described in the theory are arguably absent in these states, and because these states are generally aid donors rather than recipients.⁵² The resultant panel has 509 leaders from 169 states.⁵³

The time frame under observation is from the opening of the Rome Statute in 1998 until 2008. Daily measures of two of the dependent variables are available, but because most independent variables and controls are measured annually, the convention in the literature has been to take

⁵¹Simmons and Danner 2010

⁵²The DAC’s members are Australia, Finland, Italy, South Korea, Austria, France, Luxembourg, Spain, Belgium, Germany, Netherlands, Sweden, Canada, Greece, New Zealand, Switzerland, Denmark, Ireland, Norway, United Kingdom, Japan, Portugal, the United States, and the European Commission.

⁵³Dates of incumbencies come from Archigos for the pre-2004 period and from the Central Intelligence Agency afterward. See the supplementary appendix. Leaders holding power in non-consecutive terms are separate panels.

quarterly measures of the data.⁵⁴ The unit of observation is thus the leader-quarter (equivalently, country-quarter).

Dependent variables: ratification, exit from office, and anti-regime violence

Tests of Hypotheses 1–3 rely on three dependent variables. The first measures a leader’s decision to ratify the Rome Statute (*Leader ratifies*). The second indicates whether a leader exits office (*Leader exits office*) in any manner. The third measures anti-regime violence. Following other studies of the impact of human rights institutions on anti-regime violence, this is operationalized with a continuous measure of civil war battle deaths.⁵⁵

Independent variables: democracy, aid, and ICC jurisdiction

Democracy is measured with a variable (*Democracy*) equal to one when the state’s executive had been elected, the legislature had been elected, multipartism was legal and multiple parties were competitive, opposition parties were in fact serving in the legislature, there had been alternation of executive power in the recent past, and the executive had never illegally closed the lower house of the legislature and rewritten the constitution in his favor.⁵⁶

Aid from rich democracies is measured in four ways: concessional aid disbursed solely by the rich democracies of the DAC and European Commission (*Aid from DAC and EC*), multilateral concessional aid (*Aid from WB, IMF, etc.*) and non-concessional aid (*IMF loans*) from international banks where they enjoy large voting blocs and much de facto influence, and the sum of the above (*Total aid and loans*).⁵⁷ The latter three variables are described below.

⁵⁴Simmons and Danner 2010, Chapman and Chaudoin 2012

⁵⁵See Chapman and Chaudoin 2012, Hollyer and Rosendorff 2011. Civil war battle deaths is an admittedly indirect operationalization, but it certainly measures an important aspect of anti-regime violence. Moreover, it does not cause the rare-dependent-variable estimation and inference problems that a *coups d’etat* variable would cause. See the supplementary appendix for data sources.

⁵⁶Cheibub, Gandhi and Vreeland 2010

⁵⁷Throughout, concessional aid refers to Official Development Assistance. Eighteen of the AfDB’s 77 members are DAC members, holding 43.8% of the AfDB’s 2011 vote share. Twenty of

Democracies channel much of their development capital through The World Bank, the International Monetary Fund (IMF), and two smaller banks. The African Development Bank (AfDB) and its Fund (AfDF) disburse aid to African states. The Asian Development Fund (AsDF) of the Asian Development Bank (AsDB) disburses concessional aid to any of its members. Each bank finances the aid with member-guaranteed bonds, and member contributions. These contributions determine the voting power allocated to members. Each bank disburses both concessional aid and non-concessional aid such as export credits, short-term loans, and loans at market rates. The World Bank's International Development Agency (IDA) and the IMF's Poverty Reduction and Growth Facility (PRGF) are big sources of concessional aid. The World Bank's International Bank for Reconstruction and Development (IBRD) and AsDB, on the other hand, disburse non-concessional flows. The sum of aid from the IDA, PRGF, AfDB, AfDF and AsDF yields a single measure of aid from banks under wealthy democracies' partial but substantial control (*Aid from WB, IMF, etc.*). Data on non-concessional flows are measured by IMF loans (*IMF loans*), the only public data source on such flows with good coverage.⁵⁸

All aid variables are measured annually in gross terms, divided by a state's gross domestic production (*GDP*), and then exponentiated by 8^{-1} . This attenuates right-skew, which can increase the leverage of rare data in the right tail and make it harder to detect relationships. Unlike the logarithm, it is defined at zero, and histograms reveal that an inverse hyperbolic sine transformation (almost logarithmic but also defined at zero) leaves too much right-skew in the aid variables.

The independent variable used to test Hypotheses 2–3 is *ICC jurisdiction*. It indicates whether the AsDB's 67 members are DAC members, holding 56.5% of organization's 2011 vote share. The same democracies form large voting blocs in The World Bank and IMF. Vote shares are available at the banks' websites. See Stone 2002, Vreeland 2009, and Dreher, Sturm and Vreeland 2008 on the policy impacts of this influence. Dividing aid variables by GDP does not affect the substantive conclusions drawn in this paper. See the supplementary appendix for evidence of this, and for the data sources.

⁵⁸IBRD and AsDB loans by recipient are unavailable. See the supplementary appendix for data sources.

a state is under the court's jurisdiction because an incumbent or ex-leader ratified the Rome Statute.

Control variables

Research on the ICC suggests a number of potential confounds. These include European legal traditions, a strong rule of law, and a peaceful history in the decade prior to the opening of the Rome Statute.⁵⁹ There are a number of reasons why these variables might confound the relationships predicted by Hypotheses 1–3. Democratic donors may be more willing to disburse aid to autocracies with European legal traditions or a peaceful history in the 1990s. Each variable, moreover, may reduce the chance of anti-regime violence independently, through mechanisms other than causing the state to accept the court's jurisdiction. Research on human rights treaties also suggests that states strategically select into or out of treaties based on their propensity for repression.⁶⁰

Analyses below thus control for binary indicators of legal tradition (*Common*, *Islamic*, and *Mixed*) with civil legal tradition as the reference category. They also control for The World Bank's time-varying Rule of Law measure (*Rule of law*), a dummy indicating a state's participation of an armed civil conflict from 1988 to 1998 resulting in at least 25 battle deaths (*Prior conflict*), and a state's mean score on the Political Terror Scale from 1988 to 1998 (*Prior repression*).⁶¹

A clear cause of how much aid a state receives is the state's level of development. Controlling for development would be crucial if, as is indeed the case, democratic donors send aid to underdeveloped states, and underdeveloped states seek out the ICC's jurisdiction to tie their hands, as prior work argues. Since underdevelopment is also a plausible cause of civil conflict and state failure,⁶² it potentially confounds the Rome Statute ratification's effect on leader exit and anti-regime violence. Analyses below control for this with two variables: *GDP* exponentiated by 8^{-1}

⁵⁹Kelley 2007, Mitchell and Powell 2011, Chapman and Chaudoin 2012

⁶⁰Hollyer and Rosendorff 2011

⁶¹See the supplementary appendix for data sources.

⁶²Blattman and Miguel 2010

and a state's median infant mortality rate between 1945 and 1998 (*Prior infant mortality*).⁶³

Multiple imputation of missing data

[Table 1 about here]

Missing data in control variables is a serious problem in regression-based empirical work on the ICC. For example, about 18% and 21% of observations on measures of The World Bank's Rule of Law variable and Polity IV's index of regime type, respectively, are missing in 1998–2008. Researchers have dealt with this by list-wise deletion, dropping between 5% and 29% of observations.⁶⁴ Inferences from these regressions are biased, however, unless the pattern of missingness is completely unpredictable—and missingness in cross-national data is arguably patterned on a states domestic politics and foreign relations. This article multiply imputes the missing data with an imputation model designed for cross-national data.⁶⁵ The model assumes that transformations of all variables used in the analysis are Multivariate Normal and follow distinct trends in 15 regional cross-sections.⁶⁶ Summary statistics of the imputed data are in Table 1.

⁶³See the supplementary appendix for data sources.

⁶⁴Simmons and Danner 2010 analyze quarterly data from 1998 to 2008 where The World Bank's Rule of Law measure and Polity IV's index of regime type are missing on 15% and 28% of cells, respectively. In their Table 1, between 5% and 29% of the data are missing. Numbers are similar for Chapman and Chaudoin 2012.

⁶⁵Honaker and King 2010

⁶⁶Regional time trends are estimated with cubic splines with three knots each. To reduce imputation error, the data set is extended back to 1988(1) and includes other well-observed variables. See the supplementary appendix for these variables and state memberships in the following regions: the Caribbean, Central America, South America, North America, Western Europe, Southeastern Europe and the Balkans, former Soviet Europe, former Soviet Asia, Middle East and North Africa, Sub-Saharan Africa, East Asia, Southeast Asia, South Asia, Oceania, and Australia/New Zealand.

Tests of Hypothesis 1

Estimation framework

Hypotheses 1 is tested in logit regressions with duration dependence terms modeling the baseline hazard. Because observations are dropped from the data set after the dependent variable equals one, the models are nearly equivalent to multiple-record Cox regression. This estimation framework is called event history logit. The model, with some subscripts suppressed, is as follows.

$$\text{Leader ratifies} \sim \text{Bernoulli}(\text{logit}^{-1}[\alpha_j + \gamma_y + d_{kt} + X\beta + Z\delta]) \quad (1)$$

A leader's choice to ratify in a given quarter is a function of independent variables X , controls Z , and a duration dependence term d_{kt} for t quarters of incumbency in country k since the opening of the Rome Statute. Unit intercepts α_j and time intercepts γ_y are specified at the leader and year level.⁶⁷ The term $Z\delta$ is a linear additive function of the control variables *Common*, *Mixed*, *Islamic*, *Rule of law*, *GDP*, *Prior conflict*, *Prior repression*, and *Prior infant mortality*. The term $X\beta$ includes an interaction between *Democracy* and one of the four predictors measuring aid receipts from rich democracies. If Hypothesis 1 is correct, then the slope coefficient on each aid variable should be positive for autocracies but statistically indistinguishable from zero for democracies.

The motivation for unit and time intercepts is to account for the heterogeneity common in cross-national data. The unobserved intelligence, knowledge, ideology, or personal biases of leaders, or institutional influences at the country level may generate over-time correlations in leaders' propensities to ratify the Rome Statute. Global or regional events like the opening of the Rome Statute or economic recessions may generate contemporaneous correlations in leaders' propensities for ratification. These unobserved effects bias parameter estimates, and the bias can

⁶⁷Models are estimated by maximum likelihood.

be severe when the dependent variable is a duration. Random intercepts may attenuate the bias.⁶⁸

Two kinds of duration dependence terms are specified. One set of models specifies a shared term across all countries (i.e., a shared baseline hazard). This is a conventional means to estimate event history logit regressions. The term is modeled nonparametrically by locally weighted least-squares, or lowess.⁶⁹ The second set of models specifies country-specific terms (i.e. country-specific baseline hazards). These are modeled by country-specific cubic polynomials. Country-specific baseline hazards represent idiosyncratic and unobservable time-varying influences on a leader's propensity to ratify.⁷⁰

Findings

[Table 2 about here]

The first four rows of Table 2 display findings from the event history logits with different measures of aid as the key independent variable. Whether the baseline hazard is modeled as shared or as country-specific, the findings generally support Hypothesis 1. Coefficients on the aid variables are positive and significant at the 10% level for autocracies.⁷¹ For democracies, they are small and statistically insignificant in all but one case.

The table also shows that aid under the full control of rich democracies, as measured by *Aid from DAC and EC*, has a larger effect on an autocrat's probability of ratifying than does aid

⁶⁸Unobserved heterogeneity is also recognized as a source of violations of the proportional-hazards assumption in event history models. The random intercepts here are modeled as Multivariate Normal with zero cross-unit (or cross-time) correlation. See Box-Steffensmeier and Jones 2004, 141–142 and Gelman and Hill 2007 for details. Random intercepts are also known as frailty terms and random effects. The models are also known as multilevel or mixed-effects models.

⁶⁹The smoothing parameter is set to 0.5. See Beck and Jackman 1998 and Box-Steffensmeier and Jones 2004 on modeling duration dependence nonparametrically.

⁷⁰Models with country-specific baseline hazards fail to converge when leader-specific random intercepts are specified. In such cases, country-specific random intercepts are specified.

⁷¹One-tailed tests are applied to the coefficients on the aid variables in autocracies, since Hypothesis 1 predicts a positive effect in autocracies. Two-tailed tests are applied to the coefficients on the aid variables in democracies, since Hypothesis 1 predicts a null effect in democracies. Slope coefficients are simulated by the method described in King, Tomz and Wittenberg 2000.

disbursed by multilateral organizations. This is consistent with the theory that the ICC's power to hurt political careers arises from the court's leverage over foreign aid.

[Figure 1 about here]

Panels A–B of Figure 1 illustrate the findings by plotting the expected probability that a leader ratifies the Rome Statute across the support of *Total aid and loans*.⁷² Panel C of the figure shows that democrats are significantly more likely to ratify than autocrats until aid exceeds 5% of GDP, and that autocrats become more likely to ratify in expectation when aid exceeds 21% of GDP.⁷³ Autocrats with this level of aid expect about a 1% probability of ratifying per quarter. This is a large increase over the near 0% probability of ratification for autocrats with no aid.⁷⁴

Robustness to matching

Multiple regression with control variables is meant to rule out endogeneity as the source of an independent variable's purported causal effect. The method can fail, however, if the moments and support of the control variables' distributions are markedly different for observations in different strata of the independent variable. In this scenario (imbalance or lack of overlap), inferences about effects can be highly sensitive to arbitrary modeling choices such as the functional form of the regressors and distributional assumptions in the estimator.⁷⁵ A skeptical reader might object, for example, to modeling the controls linearly and assuming homogenous effects across regime types.⁷⁶ One can imagine any number of such objections.

⁷²Continuous (ordinal and nominal) controls are held at their means (modes) in these simulations.

⁷³Thirty-seven countries received at least this much aid in the sample timeframe.

⁷⁴It is unlikely that autocratic aid recipients *but not democratic ones* are accepting the court's jurisdiction merely to please their donors. The most powerful donor is the United States, whose relations with the ICC are borderline hostile. The findings reported here are robust to using the inverse-hyperbolic sine transformation instead of transformation by exponentiation. See the supplementary appendix.

⁷⁵Iacus, King and Porro 2011

⁷⁶For example, Simmons 2009 and Simmons and Danner 2010 argue the autocracies and democracies ratify human rights treaties and the Rome Statute for different reasons.

Matching is a useful way to mitigate arbitrary concerns about model dependence, and it has become common in the literature evaluating the effects of treaties on state behavior.⁷⁷ It works by first using an algorithm to select a subset of all observations such that distributions of the control variables are approximately balanced across the strata of a binary “treatment” variable. One then proceeds with analysis as usual.

A simple but powerful algorithm, the one adopted here, is coarsened exact matching. The algorithm forms a contingency table defined by all values of the coarsened control variables. It then discards observations in strata without variation in the treatment.⁷⁸ One of the algorithm’s strengths is that it creates balances on multivariate nonlinearities, interactions, moments, quantiles, and comoments of the control variables.

Coarsened exact matching is applied to two data sets, one composed entirely of autocracies, the other composed entirely of democracies. The treatment on which observations are matched in each data set is a dummy called *High aid* equaling one when *Total aid and loans* exceeds the sample 75th percentile.⁷⁹ The key choice a researcher faces with coarsened exact matching is how finely to bin continuous control variables. Finer binning on any given control reduce its maximum level of imbalance, but may also reduce efficiency at the analysis stage. Since theory gives no sense here of how to bin the continuous controls, interquartile thresholds are used.

[Table 3 about here]

Table 3 reports differences in means in the matched sub-samples and raw data. Patterns of imbalance differ across autocracies and democracies, and matching substantially improves balance on nearly every variable.

Returning to Table 2, the bottom two rows report coefficient estimates from the event history

⁷⁷Hill 2010, Hollyer and Rosendorff 2011

⁷⁸Observations are weighted at the analysis stage according to the ratio of treated and controls per strata according to the methods described in Iacus, King and Porro 2011.

⁷⁹The sample 75th percentile of *Total aid and loans* occurs when aid receipts equal 12% of GDP for autocracies, or 14% of GDP for democracies.

logit in Equation 1 fit on each matched data set. *High aid* has a positive and significant effect on the probability that autocrats ratify. The effect for democrats is negative and insignificant. This is consistent with Hypothesis 1.

Tests of Hypothesis 2

Estimation framework

Hypothesis 2 is tested by event history logits predicting a leader’s exit from office in a given quarter. The models have the following form.

$$Leader\ exits\ office \sim \text{Bernoulli}(\text{logit}^{-1}[\alpha_j + \gamma_y + d_{kt} + ICC\ jurisdiction \cdot \beta + Z\delta]) \quad (2)$$

As above, the models have random intercepts at the leader and year level, and the term d_{kt} is specified in two ways: shared and country-specific. Controls in $Z\delta$ includes all controls in Equation 1, plus *Democracy*, *Total aid and loans*, and their interaction. If Hypothesis 2 is correct, then the coefficient on *ICC Jurisdiction* should be negative.

Findings

[Table 4 about here]

The first row in Table 4 displays findings from the basic models with shared and country-specific baseline hazards. Coefficient estimates on *ICC Jurisdiction* are negative and significant in each model.⁸⁰

⁸⁰The Supplementary Appendix considers whether time-invariant, country-specific or leader-specific factors might account for these results by estimating linear probability models (LPMs) with fixed effects by ordinary least squares. *ICC Jurisdiction* has a negative, statistically significant effect in a model with country fixed-effects, but not in one with leader-specific effects. It well known, however, that LPMs are inferior to logit when the dependent variable is binary, that LPMs misestimate slope coefficients, and one cannot justify standard statistical inference with LPMs.

Robustness to matching

[Table 5 about here]

To check that the findings are robust to arbitrary concerns about model dependence, coarsened exact matching on *ICC jurisdiction* is applied to produce a matched data set with balanced control variables.⁸¹ Equation 2 is then fit to these data.

Table 5 shows that matching does in fact reduce mean imbalance for several controls. The matched data set has fewer observations from autocracies and states with common legal traditions, a low rule of law, and a history of civil war. It also has far fewer observations from states with Islamic legal traditions.

Returning to Table 4, the bottom row reports the event history logit coefficient estimates. They are even larger in magnitude than those from the models fit on the full data set, and continue to support the hypothesis. The Sample Average Treatment on the Treated (SATT) calculated from the model fit on the matched data set with country-specific baseline hazards implies that a leader's probability of losing office per quarter declines by .02 (SE = .01) by ruling under the court's jurisdiction.⁸² This seems substantial, since the expected per quarter probability that such a leader in the matched data set loses office is .06 (SE = .08).

⁸¹Continuous variables are again coarsened by interquartile thresholds.

⁸²The reported estimand is actually the local SATT, the effect averaged over only those treated observations with matched control observations. Using the local SATT instead of the SATT (the average effect on all treated observations) avoids extrapolation bias. See Iacus, King and Porro 2011.

Tests of Hypothesis 3

Estimation framework

The continuous dependent variable in tests of Hypothesis 3 is modeled by normal regression as follows.

$$Civil\ war\ deaths \sim Normal([\alpha_k + \gamma_y + d_{ky} + ICC\ jurisdiction \cdot \beta + Z\delta], \sigma^2) \quad (3)$$

Country and year intercepts are specified to account for cross-national heterogeneity. They are modeled as random and fixed in separate models.⁸³ The term d_{kt} is a time trend in *Civil war deaths* meant to rule out spurious associations between the ICC's growing jurisdiction and conflict patterns. This trend is specified in two ways: shared and country-specific. The shared trend is modeled by a lowess function of the year. The country-specific trends are modeled by a cubic polynomial function of the year. Controls in $Z\delta$ include all the controls in Equation 2. The coefficient on *ICC jurisdiction* should be negative if Hypothesis 3 is correct.

Findings

The top two rows of Table 6 report negative and significant coefficient estimates from all four normal regressions, in support of the hypothesis. The coefficients are much smaller in models with country-specific trends. There is little difference between the coefficients estimated by models with fixed and random intercepts.

Robustness to matching

To check the robustness of these findings, Equation 3 is refit on the same matched data set used to test Hypothesis 2. The results are in the bottom two rows of Table 6, and they continue to support

⁸³Models with fixed (random) intercepts are estimated by ordinary least squares (maximum likelihood).

the hypothesis.

The SATT estimated from the random-intercepts regression with country-specific baseline hazards fit on the matched data set implies that ruling under the Rome Statute reduces the expected per quarter number of civil war deaths by 22 (SE = 15). The expected per quarter number of civil war deaths for leaders under the court's jurisdiction in the matched data set is 71 (SE = 543). This estimate of the SATT is relatively small. However, one might consider it near the SATT's lower bound, since it is derived from the second smallest coefficient estimate in Table 6.

IMPLICATIONS

The previous section presented three robust empirical findings. First, a larger receipt of aid from wealthy democracies makes leaders more likely to accept the ICC's jurisdiction *only* if those leaders can evade an ICC prosecution—only if they are autocrats. Second, leaders substantially prolong their terms in office and prevent anti-regime violence by accepting the ICC's jurisdiction. These findings are consistent with the theory presented here: that leaders are trading off the risk of unwanted prosecutions against the power of the court's jurisdiction to deter violent challenges to their incumbency. What are the implications of the new theory?

First, leaders find the ICC useful for precisely the reason that it endangers their careers: The ICC produces credible, actionable information and has leverage over the foreign aid regime. The court promises them no legitimacy, and it poses a non-negligible even to leaders who expect a low probability of a successful prosecution against themselves and their allies. This contrasts with two extant theories underscoring the limits of international law and institutions when it comes to promoting human rights and preventing atrocities. The *empty-promises theory* argues that international institutions promoting human rights law lack the means to punish non-compliance in the short term, and that leaders make empty promises to respect human rights simply to win

international legitimacy.⁸⁴ Yet another theory advanced by Eric Posner and others argues that the inflexible and ambitious authority of the atrocities regime—now vested in the ICC—keeps many states from accepting its oversight.⁸⁵

Second, when corrupt or weak domestic institutions fail to credibly commit governments to humane governance and obedience to international law, they will also fail to constrain governments from sabotaging oversight by international institutions tasked with monitoring and enforcement. Credible commitment to international agreements requires domestic institutional arrangements that can constrain executive malfeasance. This insight contrasts with the theory that leaders may “tie their hands” to foster long-run domestic cooperation by delegating oversight to international institutions when domestic institutions are too corrupt or weak. It implies, moreover, that the *civil-peace theory* outlined earlier is better suited to explain why some democracies—not autocracies—accept the court’s jurisdiction.⁸⁶

Third, centralizing the regulation of atrocity law in an international court will unevenly affect compliance. While James Morrow argues that interstate-war belligerents in fact regulate their conduct via decentralized reciprocal enforcement, Kenneth Abbott suggests why civil-war belligerents cannot adopt such a strategy: They lack long-term incentives to protect civilians, and the threat of reciprocal punishment often lacks credibility.⁸⁷ A centralized approach is sometimes seen as a solution to this problem—one that may civilize both civil and interstate wars to some extent. Michael Gilligan, for example, argues that such an approach could deter atrocities *ex ante* by giving haven states a credible threat to deny sanctuary to deposed leaders whom the court wants to arrest.⁸⁸ John Bolton and Jack Goldsmith, on the other hand, believe that a centralized approach will fail without the cooperation of major powers—cooperation that is unlikely to materialize

⁸⁴Hafner-Burton and Tsutsui 2005

⁸⁵Posner 2009, Chapman and Chaudoin 2012

⁸⁶Ginsburg 2009, Simmons and Danner 2010

⁸⁷Morrow 2007, Abbott 1999

⁸⁸Gilligan 2006

because of their exposure to prosecution.⁸⁹ This article suggests that the foreign aid regime and a court credibly communicating defendants' guilt underpin a centralized approach to enforcing atrocity law. This approach will fail in some circumstances—specifically, when a state receives little aid from rich democracies, or when its rulers can obstruct unwanted prosecutions.

Fourth, whether an international court trades off peace in pursuit of justice depends on the nature of the threat that it uses to deter politicians from committing international crimes. If that threat is the court's leverage over the foreign aid regime rather than imprisonment, then a mere indictment may provoke a significant increment of punishment by rich democracies via economic statecraft, even though indictment reveals far less about leaders than a successful trial would. This insight contrasts with the theory that, if an international court's deterrent threat is imprisonment, then the court's indictees will simply remain at-large and may commit further atrocities.⁹⁰ It also suggests that targets of prosecution, fearing the political fallout from indictments and convictions, might claim a justice-versus-peace trade-off when none exists.

Finally, this article prompts us to revisit Judith Shklar's apology for the International Military Tribunal at Nuremberg.⁹¹ Shklar acknowledged the tribunal's injustices—its one-sidedness and disregard of the *nullum crimen sine lege* principle—but defended the tribunal for substituting legalism for the extrajudicial disposal of foes, promoting liberalism, and establishing jurisprudence on crimes against humanity. The injustice of the ICC, by contrast, is that illiberal autocrats under its jurisdiction are manipulating the court's legalism and liberalism to entrench their rule. The apology for the ICC is twofold: Autocrats must expose themselves to prosecution, even if only slightly, and the court will deter their enemies from the kind of violence that tends to produce atrocities.

⁸⁹Bolton 2001, Goldsmith 2003

⁹⁰Hencken Ritter and Wolford 2012

⁹¹Shklar 1964

CONCLUSION

The rise of the ICC marks a fundamental shift in the regulation of threats to human and international security. What is the source of the court's power? Why have leaders given jurisdiction over their nationals and territory to it?

The court's power—perhaps its sole power—is the power ruin people's political careers. ICC prosecutions credibly communicate personal guilt for atrocities. The court produces expensively and persuasively vetted evidence of guilt in both indictments and convictions. In many cases this information is novel, and may trigger leader-specific sanctions by wealthy democratic donor states.

Because of this, accepting the court's jurisdiction entails a security effect and an exposure effect. The security effect arises because jurisdiction deters domestic rivals and the patrons of enemies of the state from organizing or abetting anti-regime violence. The exposure effect arises because jurisdiction gives the court's prosecutor the discretion to target a leader and his regime allies for prosecution.

Leaders trade off these two effects, accepting jurisdiction when they expect the security effect to outweigh the exposure effect. Two key factors affect this trade-off: development capital and democracy. First, a dependence on foreign aid disbursed by rich democracies increases both the security effect and the exposure effect. Second, the presence of regular and competitive elections increases the exposure effect by placing a check on a leader's ability to obstruct the ICC's work at the evidentiary stage of prosecutions.

Novel empirical findings support the theory. A greater receipt development capital from the OECD-DAC, World Bank, and IMF makes autocrats, but not democrats, more likely to accept the ICC's jurisdiction. In other words, leaders are more likely to accept the court's jurisdiction when it poses a threat only to their enemies. Leaders also gain protection under the court's jurisdiction. They keep office for longer and experience less anti-regime violence. The research

design leading to these conclusions improves on extant empirical work on the ICC in several ways. It multiply imputes missing data, applies a variety of panel-data methods to account for cross-national heterogeneity, and uses exact matching to mitigate model dependence.

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Tables and Figures for “Why Do Leaders Accept the International Criminal Court’s Jurisdiction? Theory and Evidence”

August 4, 2017

Table 1: Summary statistics on the multiply imputed cross-national data, 1998–2008

	Min	33rd	Med.	Mean	67th	Max	SD	MAD
<i>Dependent variables:</i>								
Leader ratifies	0	0	0	0.02	0	1	0.13	0
Leader exits office	0	0	0	0.04	0	1	0.2	0
Civil war deaths	0	0	0	230	0	19,375	1,403	0
<i>Independent variables:</i>								
Aid from DAC and EC	0	0.52	0.61	0.54	0.69	1.21	0.27	0.18
Aid from WB, IMF, etc.	0	0	0.36	0.31	0.55	0.99	0.30	0.53
IMF loans	0	0	0	0.29	0.56	1.00	0.32	0
Total aid and loans	0	0.57	0.66	0.60	0.74	1.21	0.25	0.19
ICC jurisdiction	0	0	0	0.32	0	1	0.47	0
<i>Control variables:</i>								
GDP	6.63	15.56	17.35	17.92	19.37	37.98	4.83	4.62
Democracy	0	0	1	0.53	1	1	0.50	0
Rule of law	−3.35	−0.73	−0.39	−0.28	0.08	3.14	0.85	0.89
Civil	0	0	0	0.39	1	1	0.49	0
Common	0	0	0	0.09	0	1	0.30	0
Mixed	0	0	0	0.31	0	1	0.46	0
Islamic	0	0	0	0.21	0	1	0.40	0
Prior civil conflict	0	0	0	0.38	1	1	0.48	0
Prior infant mortality	4.10	36.50	58.50	67.00	84.07	197.85	45.55	53.52
Prior repression	0	1.83	2.30	2.46	2.90	5	1.16	1.19
Quarters of incumbency	0	8	15	28.3	27	328	37.5	17.8
Quarters of incumbency since 1998(3)	0	4	8	11	13	41	10	8.9

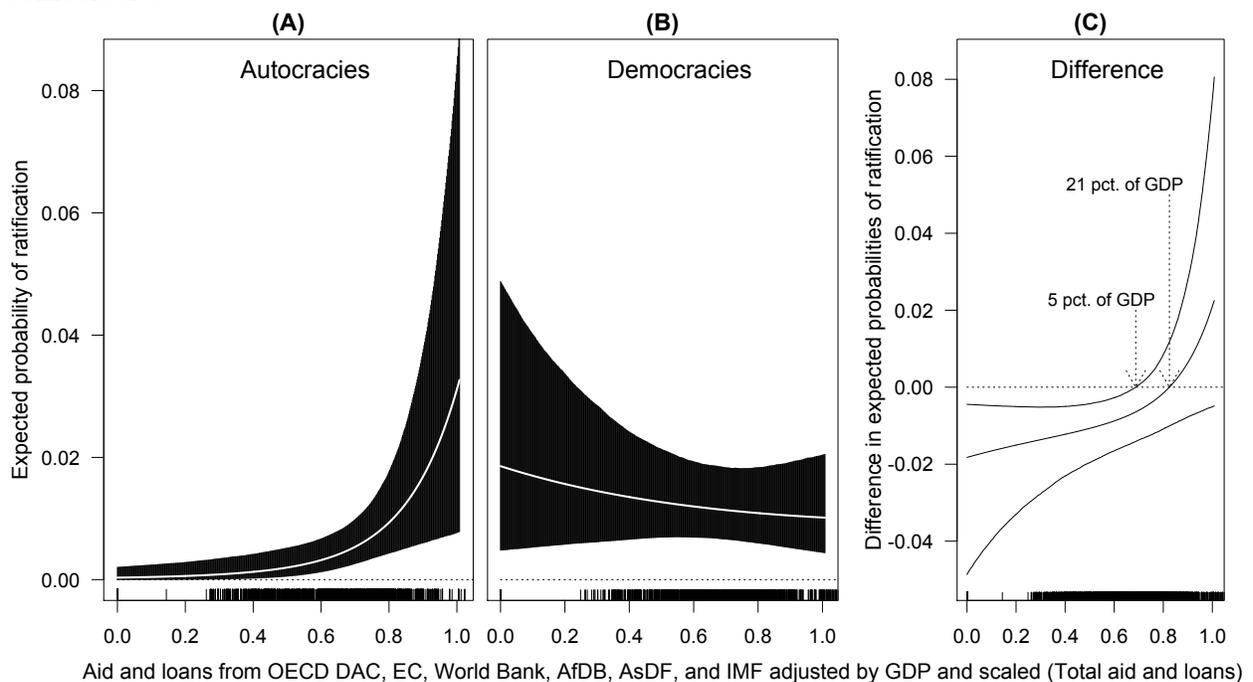
Note: SD is standard deviation and MAD is median absolute deviation.

Table 2: Effect of foreign aid on Rome Statute ratification in autocracies and democracies: slope coefficient estimates from event history logits

Data Set	Parameter	Models with a shared baseline hazard			Models with country-specific baseline hazards		
		Est	SE	p	Est	SE	p
Full	Coef. of <i>Aid from DAC and EC</i> in autocracies	5.40*	2.00	0.01	12.0*	4.30	0.01
	Coef. of <i>Aid from DAC and EC</i> in democracies	-0.55	0.66	0.28	-0.96	1.20	0.29
	Model AIC	800			260		
	N = 5,058						
Full	Coef. of <i>Aid from WB, IMF, etc.</i> in autocracies	2.00*	0.94	0.02	2.60*	2.00	0.09
	Coef. of <i>Aid from WB, IMF, etc.</i> in democracies	-1.00*	0.58	0.08	-0.37	1.10	0.38
	Model AIC	800			270		
	N = 5,058						
Full	Coef. of <i>IMF loans</i> in autocracies	2.10*	0.77	0.01	2.10*	1.60	0.09
	Coef. of <i>IMF loans</i> in democracies	0.02	0.51	0.40	-0.35	0.96	0.37
	Model AIC	800			270		
	N = 5,058						
Full	Coef. of <i>Total aid and loans</i> in autocracies	5.30*	1.80	0.01	13.0*	3.90	0.00
	Coef. of <i>Total aid and loans</i> in democracies	-0.52	0.80	0.32	-0.20	1.60	0.40
	Model AIC	800			260		
	N = 5,058						
Autocracies matched on <i>High aid</i>	Coef. of <i>High aid</i> in autocracies	1.20*	0.63	0.04	1.40*	1.10	0.10
	Model AIC	160			67		
	N = 743						
Democracies matched on <i>High aid</i>	Coef. of <i>High aid</i> in democracies	-1.30	1.10	0.20	-0.38	1.40	0.38
	Model AIC	100			45		
	N = 444						

Note: Each model is fit to ten multiply imputed data sets and the results pooled according to Honaker and King 2010. All measures of aid are continuous except for *High aid*, a dummy variable equaling one when *Total aid and loans* exceeds the sample 75th percentile. Control variables include *Common*, *Mixed*, *Islamic*, *Rule of law*, *Prior conflict*, *Prior repression*, *GDP*, and *Prior infant mortality*. The shared baseline hazard is modeled non-parametrically as a function of the number of quarters a leader has been in office since the opening of the Rome Statute for ratification. Country-specific baseline hazards are modeled similarly with cubic polynomials. Random unit intercepts are specified at the leader level (or at the country level when the model does not converge with leader intercepts). Random time intercepts are specified yearly. P-values are one-tailed for autocracies, two-tailed for democracies. Significance at the 10% level is represented by *.

Figure 1: Simulated effect of foreign aid on Rome Statute ratification in autocracies and democracies



Note: Simulations come from the event history logit in Table 2 with random intercepts and a shared baseline hazard. Horizontal axes show the range of *Total aid and loans*. Tickmarks represent the variable's distribution. Sloping white lines represent mean simulated expected probabilities. Black regions are the 95% confidence intervals. Panels A–B show that autocrats, but not democrats, are more likely to ratify when they receive more development capital. Panel C plots the difference between the simulations in Panels A and B. Negative (positive) differences mean that a democrat is more likely (less likely) to ratify than an autocrat is. The upper 95% confidence interval crosses zero at 5% of GDP, while the mean crosses at 21% of GDP.

Table 3: Comparisons of control variable means, matching on *High aid*

	<u>Matched data set</u>		<u>Full data set</u>	
	Low aid	High aid	Low aid	High aid
<i>Autocracies only</i>				
ΔL_1	0.44	0.48	0.15	0.54
GDP	15.0	15.0	20.0	14.0
Rule of law	-0.85	-0.87	-0.50	-0.87
Common	0.06	0.06	0.03	0.06
Mixed	0.55	0.55	0.26	0.41
Islam	0.24	0.24	0.47	0.30
Prior repression	2.90	3.00	2.90	2.90
Prior infant mortality	110	110	74	110
Prior conflict	0.56	0.56	0.38	0.65
N	411	332	2053	683
<i>Democracies only</i>				
ΔL_1	0.49	0.58	0.11	0.68
GDP	13.0	13.0	19.0	12.0
Rule of law	-0.27	-0.26	0.06	-0.24
Common	0.10	0.10	0.17	0.05
Mixed	0.61	0.61	0.22	0.60
Islam	0.00	0.00	0.09	0.02
Prior repression	1.70	1.70	2.30	1.60
Prior infant mortality	50.0	51.0	49.0	64.0
Prior conflict	0.14	0.14	0.35	0.26
N	166	278	1744	579

Note: The matching algorithm is coarsened exact matching. Statistics are taken on ten pooled copies of the multiply imputed data. ΔL_1 , a balance statistic, is the mean of the differences in $L_1(f_{\ell_1 \dots \ell_k})$ for treated and control units. $L_1 \in (0, 1)$ and is half the sum of the relative empirical frequency distribution f across coordinates $\ell_1 \dots \ell_k$ defined by the cross-tab of k discrete predictors.

Table 4: The effect of the ICC’s jurisdiction on the probability that a leader exits office: slope coefficient estimates from event history logits

Data Set	Parameter	Models with a shared baseline hazard			Models with country-specific baseline hazards		
		Est	SE	p	Est	SE	p
Full	Coef. of <i>ICC Jurisdiction</i>	-0.21*	0.13	0.06	-0.30*	0.14	0.02
	Model AIC	2600			2300		
	N = 7,319						
Matched on <i>ICC jurisdiction</i>	Coef. of <i>ICC Jurisdiction</i>	-0.28*	0.21	0.09	-0.45*	0.21	0.02
	Model AIC	1000			920		
	N = 2,701						

Note: Each model is fit to ten multiply imputed data sets and the results pooled according to Honaker and King 2010. Control variables include *Democracy*, *Total aid and loans*, their interaction, *Common*, *Mixed*, *Islamic*, *Rule of law*, *Prior conflict*, *Prior repression*, *GDP*, and *Prior infant mortality*. The shared baseline hazard is modeled non-parametrically as a function of the number of quarters a leader has been in office. Country-specific baseline hazards are modeled similarly with cubic polynomials. Unit intercepts are specified by leader (or by country when the model does not converge with leader intercepts). Time intercepts are specified by year. P-values are one-tailed. Significance at the 10% level is represented by *.

Table 5: Comparisons of control variable means, matching on presence of the ICC's jurisdiction

	<u>Matched data</u>		<u>Un-matched data</u>	
	No ICC jurisdiction	ICC jurisdiction	No ICC jurisdiction	ICC jurisdiction
ΔL_1	0.38	0.38	0.30	0.37
Democracy	0.70	0.70	0.46	0.70
Total aid and loans	0.61	0.60	0.60	0.61
GDP	17.0	17.0	18.0	18.0
Rule of Law	-0.05	-0.04	-0.33	-0.17
Common	0.12	0.12	0.09	0.12
Mixed	0.34	0.34	0.31	0.32
Islam	0.07	0.07	0.27	0.08
Prior repression	2.20	2.20	2.50	2.30
Prior infant mortality	62.0	62.0	68.0	64.0
Prior conflict	0.30	0.30	0.39	0.34
N	1280	1421	4973	2346

Note: The matching algorithm is coarsened exact matching. Statistics are taken on ten pooled copies of the multiply imputed data.

Table 6: The effect of the ICC’s jurisdiction on the number of annual civil war battle deaths: slope coefficient estimates from normal regressions

Data set	Unit & time intercepts	Parameter	Models with a shared time trend			Models with country-specific time trends		
			Est	SE	p	Est	SE	p
Full	Random	Coef. of <i>ICC Jurisdiction</i>	−205*	47	0.00	−26*	21	0.09
		Model AIC N = 7,319	123,692			117,369		
Full	Fixed	Coef. of <i>ICC Jurisdiction</i>	−240*	51	0.00	−65*	34	0.04
		Model AIC N = 7,319	123,465			117,632		
Matched on <i>ICC jurisdiction</i>	Random	Coef. of <i>ICC Jurisdiction</i>	−219*	90	0.01	−40*	27	0.07
		Model AIC N = 2,701	45,127			42,383		
Matched on <i>ICC jurisdiction</i>	Fixed	Coef. of <i>ICC Jurisdiction</i>	−199*	82	0.01	−96*	41	0.02
		Model AIC N = 2,701	44,968			41,934		

Note: Each model is fit to ten multiply imputed data sets and the results pooled according Honaker and King 2010. Control variables include *Democracy*, *Total aid and loans*, their interaction, *Common*, *Mixed*, *Islamic*, *Rule of law*, *Prior conflict*, *Prior repression*, *GDP*, and *Prior infant mortality*. The shared time trend in battle deaths is modeled non-parametrically as a function of the year. Country-specific baseline hazards are modeled with cubic polynomials as a function of the year. Unit intercepts are specified by country. Time intercepts are specified by year. P-values are one-tailed. Significance at the 10% level is represented by *.