Model Behavior: Considering Judicial Decision-Making at the European Court of Human Rights

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In 1980, John Hirst, a British citizen, pleaded guilty to the manslaughter of his landlord and was sentenced to life in prison, with the possibility of parole. Under the United Kingdom Representation of the People Act 1983, the government guarantees the right to vote in a parliamentary or local election so long as an individual is properly registered, has proper citizenship, and is of proper voting age (Representation of the People Act 1983, Part 1 and 2). Offenders in prison, however, are legally restricted from voting under Part Three of the Act, which states that, “a convicted person during the time that he is detained in a penal institution in pursuance of his sentence... is legally incapable of voting at any parliamentary or local government election.” Convicted of manslaughter and imprisoned, Hirst lost his right to vote.

After going through the appeals process in British courts, Hirst filed an application with the European Court of Human Rights. Hirst argued that the restriction on voting rights of prisoners had no legitimate state aim and, in fact, marked a step backwards in the trend to expand—not restrict—voting rights. Furthermore, he claimed that while Parliament considered disenfranchisement a part of the punishment for a crime, the rehabilitative aim of prison should only restrict the right to liberty. The government argued that the law did have a legitimate aim to punish prisoners, plus the punishment was only for those that have been convicted of serious crimes. Finally, the British government countered that the ECtHR had allowed a wide margin of appreciation¹ in regard to this right, which was reflected in the variety of approaches taken by member states. Ultimately, the Grand Chamber held by twelve votes to...

¹ The margin of appreciation is the consideration by the European Court of Human Rights that each country should be allowed some degree to determine the respect for individual rights based upon national interests or values (Yourow 1996). This will be further explained in Chapter Two.
five that there had been a violation of Article 3 of Protocol No. 1. In its judgment, it reaffirmed the right to vote as not being an absolute right, but also noted that “the right to vote is not a privilege” and that “any departure from the principle of universal suffrage risks undermining the democratic validity of the legislature thus elected” \((\text{Hirst} \text{ v. United Kingdom [GC] no. 74025/01})\).

Compare this to the case of \textit{Scoppola v. Italy}. In 2000, an Italian Court in 2000 found Franco Scoppola guilty of the murder of his wife, attempted murder of one of his sons, ill-treatment of his family, and illegal possession of a firearm. He was sentenced to thirty years, reduced from a lifetime sentence, as well as a lifetime ban from public office. Following the trial, Scoppola’s name was removed from the electoral rolls, which he appealed in 2004.\(^2\) While Scoppola argued that the judgment in \textit{Hirst} also applied to his circumstances, particularly since the ban from public office was not related to the punished offense, the Italian courts disagreed. Furthermore, they noted the main difference between the two cases was that there was a degree of proportionality in the Italian law which was not found in the United Kingdom’s law. Following the Court of Cassation’s decision, Scoppola sought relief from the European Court of Human Rights.

While the panel chamber judgment of the European Court of Human Rights found that there was a violation of Article 3 of Protocol No. 1, the Grand Chamber held by sixteen votes to one that the Italian laws did not violate Article 3 of Protocol No. 1. To ascertain the

\(^2\) Italian law is written so that any individual that is convicted of an offense punished by imprisonment is also banned from public office, which may be temporary or permanent depending on the crime. Individuals that are banned from public office also forfeit their right to vote for the term of the ban.
compatibility of the national law with the Convention, the European Court of Human Rights considered if the restriction on the right to vote was both a legitimate aim of the state and if the means were proportionate. First, the Court found that “disenfranchisement pursued the legitimate aims of enhancing civic responsibility and respect for the rule of law and ensuring the proper functioning and preservation of the democratic regime” (*Scoppola v. Italy* [GC], no. 126/05). Secondly, it reaffirmed the principles set forth in *Hirst* and found that it was proportional. In particular, it pointed out that when disenfranchisement occurs is well-defined and can be adjusted to the circumstances at hand, which was contrary to the finding of the panel that the laws were automatic and indiscriminate. Finally, the Court recognized that, “the margin of appreciation afforded to the respondent Government in this sphere has therefore not been overstepped” (*Scoppola v. Italy* [GC], no. 126/05).

The difference between the judgments focuses on the application of the margin of appreciation and on the interpretation of national laws, raising questions about the decision-making of the European Court of Human Rights. Would a different Grand Chamber bench have found the United Kingdom’s law within the margin of appreciation? Or would a different bench have upheld the lower chamber’s original judgment that found Italy’s law outside of the margin of appreciation? If the applications were from different member states, would the outcome have remained the same? Do these same patterns exist when looking at other rights that the Convention protects? The few studies there are on the decision-making of the European Court of Human Rights do little to shed light onto these questions.

This paper examines these questions using an integrated model of judicial decision-making to understand under what circumstances is the European Court of Human Rights likely
Judicial Decision-Making at the European Court of Human Rights

The consideration of decision-making of the European Court of Human Rights can be best characterized by the emphasis on legal doctrine and methods of interpretation surrounding the Convention and national law. In particular, there has been a focus on the doctrine of margin of appreciation and its use by the Court. The doctrine of margin of appreciation has been described in multiple different ways (e.g. Yourow 1987; Arai-Takahashi 2002; Benvenisti 1999; Greer 2000; Merrills 1995), but the one commonality between all of the descriptions is that it is a doctrine of judicial review that considers “the notion of space in which States can legally move” while still balancing their obligations under the Convention (Kratochvíl 2011, 327). In other words, margin of appreciation is the consideration by the Court that each country should be allowed some degree to resolve conflicts that arise surrounding respect for individual rights based upon national interests or values (Yourow 1996).

One of the complaints surrounding the margin of appreciation is that the Court applies the doctrine in an ad hoc way (see Kratochvíl 2011 for a summary on these positions). O’Donnell (1982) argues that there are three standards used to determine whether or not to grant a member state government a narrow margin of appreciation. First, the Court will
consider if there is general consensus in law and practice among the member states (O’Donnell 1982, 479). Second, the Court examines if the rights presented in a case are considered fundamental to a democratic political system (O’Donnell 1982, 484). Third, the Court may engage in a specific textual analysis and consider language comparing the national law to the accommodation clauses found in the Convention (O’Donnell 1982, 489). If one or multiple of these standards are employed or found by the Court, it is more likely to take a narrow view on the margin of appreciation. This, in turn, may increase the likelihood of finding against the member state.

Because of the focus on the legal reasoning, interpretation, and development of doctrine by the Court, this research can be described as falling within the legal model tradition. There have only been a handful of attempts (Voeten 2007, 2008; Dothan 2011) to bring the assumptions of judicial behavior to the study of the ECtHR. The two studies by Voeten represent an initial attempt to adapt attitudes about the margin of appreciation into an ideological scale for the European Court of Human Rights while looking at individual judges’ behavior. Dothan (2011), on the other hand, approaches the Court’s behavior through a strategic lens at the institutional level.

Voeten’s studies consider the margin of appreciation on the Court and how this affects individual judges’ behavior. Using a similar method to the ideological spectrum used within the American context, Voeten creates an activist-restraint spectrum for judges on the ECtHR. 3 This

3 While Voeten follows the methodological tradition of creating and assigning ideological scores to judges that have been previously used in the American context (e.g. Epstein et al. 2007), his description of ideology is not the same. In the American context, the Judicial Common Space scores are ideological scores for Supreme Court justices that place the justices same unidimensional space as NOMINATE Common Space scores for the U.S. Congress and the
division separates judges between judicial activism, or those that are more likely to rule in favor of the applicant, and judicial restraint, or those that are more likely to defer to grant governments (Voeten 2007, 675). “Judicial activism” and “judicial restraint” are used and operationalized based on the specific context of the European Court of Human Rights based upon the margin of appreciation where “those who believe that this margin should be broad stress that the subsidiarity principle suggests that it is appropriate to grant a great deal of deference to national practices, policies, and perceived interests. Judges on the other side of the spectrum tend to believe that states have less room to hide behind local customs and stated national interests when it concerns the implementation of the Convention” (Voeten 2007, 675). He, in turn, has created estimated ideal points for judges that served from 1960 to 2006 based upon their votes in cases other than votes on their home countries.

Voeten focuses on the national appointment process explaining the divisions, in particular respect for domestic human rights protection, government ideological divisions, and

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presidents (Poole and Rosenthal 1997; Poole 1998). Therefore, Supreme Court justices can be placed on a spatial dimension based upon ideology ranging from -1 (liberal) to 1 (conservative). When Voeten (2007) uses the terms ideology, judicial activism, and judicial restraint, he does so in a way that is not used in the American judicial context. By ideology, Voeten refers to the willingness of a European Court of Human Rights judge to either uphold or reverse the actions of a member state government. This measurement is similar to the Martin-Quinn scores (Martin and Quinn 2002), but it does not place the European Court of Human Rights judges on the same ideological spectrum as member state governments like the Judicial Common Space scores do for the U.S. Supreme Court justices. Furthermore, the use of “judicial activism” in the American context has used since the mid-20th century (Kmiec 2004, 1446). Unfortunately, it is a rather empty term with multiple definitions including the invalidation of constitutional actions of other branches; failing to adhere to precedent; judicial policy-making; departing from accepted interpretation; or, results-oriented judging (Kmiec 2004, 1444). It is, however, devoid of any true ideological interpretation and, for instance, has been used against both conservative justices in the *Lochner*-era and liberal justices when expanding minority and criminal rights in the 1960s (Cover 1982).
political support for European integration (Voeten 2007, 676). Over time, he notes, that judges have become more likely to rule in favor of the applicant and the rulings are related to the appointing government ideology, government attitudes about the European integration project, and are from EU-aspirant countries (Voeten 2007). This measurement, in turn, has been employed to examine if judges are likely to support, or vote, with their national government. He finds that “judges who are expansive in the way they apply Convention rights when they evaluate other countries also tend to be more likely to find violations again their home nations” (Voeten 2008, 431). Additionally, judges that are from former socialist countries are more likely to vote against their own government as well as other former Soviet countries (Voeten 2008, 428). He argues that both of these conclusions suggest that judges are policy-seekers with specific preferences and are willing to advance those preferences, even against their own nation.

Dothan (2011) employs a type of strategic model that considers the goal of the Court to promote a long-term strategy concerning compliance with its decisions. In its judgments, the Court has to balance its own reputation with the likelihood that a state will comply with its decision. For Dothan, this means that the “court is not concerned with compliance in the case at hand; it is instead willing to risk noncompliance in the case at hand in order to increase its future changes of compliance by increasing its reputation” (2011, 124 [Footnote 22]). In other words, the goal of the decision-making by the Court is to ultimately secure compliance with its decision and, in turn, the Convention.

Therefore, the Court keeps in mind that its reputation needs to remain intact or grow through the respect for the institution and its judgments. It can attempt to gain reputation by
trying “to determine the costliest judgment with which a state will comply” by drawing upon
the Court’s “assessments of the expected cost to the state, its own reputation, the state’s
reputation, and the nature of the reasoning” (Dothan 2011, 126). Moreover, if the Court is
looking at advancing its long-term goals, it might take some short-term losses. Dothan points to
when the Court may issue a less materially costly judgment for a member state, but one that
may advance novel legal arguments in an opinion. In these cases, it might damage the short-
term interests of the Court but “by legitimizing new forms of reasoning... the court can obtain
compliance with more costly future judgments and thus increase its ability to promote is
preferences” (Dothan 2011, 127).

These studies mark progress in understanding better how the European Court of Human
Rights operates as a judicial institution. With that said, however, there are some shortcomings
that need to be addressed. First, all three studies discussed look only at judgments that find a
member state in violation of the Convention. Voeten (2007, 2008) considered the votes of
judges where the Court found a violation, focusing on if the decision was considered activist or
not or if a judge voted against her own member state. Dothan (2011) used case studies to
explore the potential issue of strategic decision-making. Still absent from the discussion is how
the Court decides to reach that judgment of finding a violation. While the two studies by
Voeten do suggest that judges on the European Court of Human Rights are policy-seeking
individuals, there is little said about the judgment or the cases themselves. Meanwhile, Dothan
argues that the Court will be strategic so long as, “the court acts as if it intentionally follows this
strategy” to promote the long-term goal (2011, 124 [emphasis in text]). The problem with this is
that there is no easy way to discern sophisticated, strategic behavior from non-strategic or
sincere, strategic behavior by the Court because sophisticated, strategic behavior requires that
the judge register an empirical manifestation that the judge or Court was acting contrary to its
preferred policy preference (Hettinger, Lindquist, and Martinek 2004, 125-126). Under
Dothan’s argument, that would require that the Court register the constraints of its decision
and makes considerations to secure compliance. These studies about the judicial behavior of
the European Court of Human Rights does move the scholarship in the positive direction, but
there is significant work that needs to be done. This should start with looking at the decision-
making of the ECtHR.

Margin of Appreciation

One of the most explanatory variables in the American context of the judicial decision-
making literatures is the inclusion of a measure of ideology to capture policy preferences.
Coinciding with the rise of the attitudinal model in American judicial politics, scholars have
developed more and more nuanced versions of ideology scores starting with the Segal-Cover
scores (1989) and continuing with the Judicial Common Space score (JCS), which produces an
ideology score for each term for each justice, as well as the score of the Court per term to take
into account changing policy preferences of justices (Epstein et al. 2007, 3; Epstein et al. 1998).

While there is no measurement for ideology on judges from the European Court of
Human Rights, it is possible to measure a judge’s preference towards either deferring to the
national government or not. This is typically discussed as the margin of appreciation doctrine,
which refers to “the latitude allowed to the member states in their observance of the
Convention” (O’Donnell 1982, 475; Hutchinson 1999; Yourow 1987). When the concept of the
margin of appreciation is discussed, it refers to the attempts by the Court to balance the
interests of the member state with the goals and protections of the Convention. In certain circumstances, the Court takes a narrow approach towards the margin of appreciation with rights that are considered fundamental (O'Donnell 1982). In other cases, it takes a broader approach which may include looking at how other member states address the right in question, the national values and interests, and if the member state has made the infringement proportional to the balancing state interest (O'Donnell 1982).

While it typically discussed in light of a judgment, Voeten (2007) provides a measurement that he argues operates like a measurement of ideology does for the U.S. Supreme Court for individual judges on the European Court of Human Rights. The measurement of margin of appreciation is derived from ideal point scores which covers ninety-seven judges that have sat on the Court from 1960 until 2006 (Voeten 2007). Voeten (2007) has discussed this as an ideology-like measurement for the European Court of Human Rights. I, however, would not go so far to suggest that this is equated with ideology, particularly given the malleability of the terms judicial activism and judicial restraint. Rather, the score measures the general preference of the judges, and ultimately the bench, to give deference to the national government or to prefer to seek accordance with the Convention.

The individual score for a judge’s deference to the margin of appreciation is calculated in a manner similar to the judicial ideology scores of the U.S. Supreme Court justices (Martin and Quinn 2002). The scores are a reflection of a probabilistic spatial model used to estimate ideal points. These ideal point estimates are based upon observed vote choices, specifically dissents of judges, in judgments except when the judge in question heard a case from their home country (Voeten 2007, 682). In turn, an item-response theory is employed to create the
ideal points with cut-points (Voeten 2007, 683) which allows for a voting continuum to be translated into vote choices (Voeten 2007, 682). In Voeten’s model (2007), the activist-restraint spectrum ranges from -3 (most activist) to 3 (most restraint), but I have recoded to range from 3 (most activist) to -3 (most restraint) to make the interpretation of the data more intuitive.

Using these scores, I calculate the average level of activism for the judges on the bench for a given case. There are currently margin of appreciation scores for 95 judges of the European Court of Human Rights between 1960 and 2006, which is the majority of the judges but does not cover all judges that have sat on the bench, particularly missing judges that served only a short amount of time or in an ad hoc basis when the member state judge could not serve on a case. The average level of activism variable for each bench does include the judge’s score in cases where the application is from her home country. Prior research in the U.S. context has shown that group identity in judicial decision-making has little to no effect (e.g. Walker and Barrow 1985; Boyd, Epstein, and Martin 2010), while Voeten finds that judges are likely to be more supportive of their national governments (2008, 425). The average level of activism is calculated by adding all of the available margin of appreciation scores and dividing by the number of scores per bench, not the number of total judges. There are, however, benches that have judges with no margin of appreciation score.

Previous research suggests that, “given the facts of a case, an activist judge is more likely to rule in favor of the applicant than a judge on the self-restraint side of the spectrum. Thus, the division is ultimately about the degree of deference a judge prefers to grant governments” (Voeten 2007, 675). If the margin of appreciation scores are supposed to operate
in a way similar to the judicial common space scores in understanding the policy preferences, I argue that:

\[ H1: \text{An application heard by a bench that has a higher margin of appreciation average, will be more likely to find a member state in violation with the Convention compared to a bench with a lower margin of appreciation average.} \]

**Grand Chamber**

One of the unique institutional features of the European Court of Human Rights is that it is composed of three different levels of benches—the committee, the chamber, and the Grand Chamber. While institutional feature has evolved over time, there has always been at least some differentiation on whether the bench was composed of part of the Court or the full Court. Not only is there an institutional difference in the number of judges composing the different benches, but the types of applications and legal questions that judges will hear is also related to the bench-level. The chamber level hears questions of both applicability and merits, but typically only rules on the merits of the application where the question itself is not novel, but the case law is not as well established. Moreover, following the judgment of the chamber or the committee decision, a party to the case has three months to file an appeal for the Grand Chamber to hear the case.

The Grand Chamber, or the full bench of the European Court of Human Rights, will only hear applications that they accept on appeal from the lower chamber or if the application raises a novel or important question. These decisions may not be appealed. If a member state is found in violation of the Convention, the application is closed and the case is referred to the Committee of Ministers to supervise the execution of the judgment. Therefore, I code cases heard by the Grand Chamber, or the full bench, as (1) and all other cases heard by a lower court chamber as (0).
These institutional features highlight reasons to consider applications heard by the Grand Chamber differently than applications whose final judgment is not reached by the Grand Chamber. I expect to find:

H2: An application heard by the Grand Chamber, or a full bench, will be more likely to find a member state in violation of the Convention compared to when an application is heard by a lower court chamber.

**Case Issue Area**

One of the other components of the attitudinalist model of judicial decision-making beyond policy preferences is that the facts of the case must also be taken into account (Segal and Spaeth 2002, 86). But there has also been a push towards the inclusion of understanding how courts modify their behavior around the facts of a case. Richards and Kritzner (2002) find that “jurisprudential regimes structure Supreme Court decision making by establishing which case factors are relevant for decision making and/or by setting the level of scrutiny the justices are to employ in assessing case factors” (315). Brace and Hall (1997) find similar results at the state court level where, “[w]ith the effects of the political influences held constant, the specific features of the cases have a significant impact on the votes cast by individual justices. When confronted with particular facts designated explicitly by statute... justices acquiesce” (1226). In other words, the facts of the case can cut through the political and institutional effects, particularly if the facts signal a necessary outcome, to a justice. There could be a similar finding at the European Court of Human Rights where a certain set of case issues triggers the Court to finding a violation of the Convention more often than other sets of case issues.

Broadly, there are twenty-four distinct case issues that the ECtHR may find a member state violating. These case issues correspond to their respective articles within the European Convention on Human Rights or subsequent protocols. The majority of the case issues
correspond to articles within the original Convention, which was passed as a reaction to the UN
Declaration of Human Rights. Subsequent protocols expanded upon the rights protected. In my
analysis, I do not look at the impact of individual rights. Instead, I consider the underlying types
of rights that the Convention protects in order to gain more theoretical leverage of the rights.
To do so, I create four broad categories of case issue areas: bodily integrity rights, political
rights, criminal rights, and socioeconomic rights.

Bodily integrity rights underlie the concept of human dignity. These rights speak to
protecting human life from the state and are fundamental in their nature. Political rights
constitute individual protections for participation in the political process. Criminal rights include
rights that protect the rights of both citizens and non-citizens in the criminal, civil,
administrative, and military judicial systems, but particularly refer to rights that respect proper
criminal procedures. While some of the rights included in this category are typically thought of
alongside political rights, it is more useful to consider these rights in their own category. These
rights speak particularly to national judiciaries, judicial independence, and the rule of law.
Finally, socioeconomic rights contribute and protect an individual’s rights to their social and
economic development. There is typically an understanding that these rights are positive rights
that citizens may demand from the state as well as may be progressively realized.

Figure 1: Composition of Case Issue Areas

<table>
<thead>
<tr>
<th>Case Issue Area</th>
<th>Corresponding Rights (Case Issue)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bodily Integrity</td>
<td>Right to life (Article 2)</td>
</tr>
<tr>
<td></td>
<td>Prohibition of torture (Article 3)</td>
</tr>
<tr>
<td></td>
<td>Prohibition of slavery and forced labor (Article 4)</td>
</tr>
<tr>
<td>Political Rights</td>
<td>Libery and security (Article 5)</td>
</tr>
<tr>
<td></td>
<td>Freedom of conscience (Article 9)</td>
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<tr>
<td>Freedom of expression (Article 10)</td>
<td>Right to a fair trial (Article 6)</td>
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<td>-----------------------------------</td>
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</tr>
<tr>
<td>Freedom of assembly and association (Article 11)</td>
<td>Right to due process (Article 7)</td>
</tr>
<tr>
<td>Prohibition of discrimination (Article 14)</td>
<td>Prohibition of expulsion of aliens (Protocol 4, Article 4)</td>
</tr>
<tr>
<td>Right to free elections (Protocol 1, Article 3)</td>
<td>Right to procedural safeguards for aliens (Protocol 7, Article 1)</td>
</tr>
<tr>
<td>Right to appeal (Protocol 7, Article 2)</td>
<td>Compensation for wrongful conviction (Protocol 7, Article 4)</td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th>Criminal Rights</th>
<th>Socioeconomic Rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>Right to respect a person's private life (Article 8)</td>
<td>Right to respect a person's private life (Article 8)</td>
</tr>
<tr>
<td>Right to marry (Article 12)</td>
<td>Right to marry (Article 12)</td>
</tr>
<tr>
<td>Right to protection of property (Protocol 1, Article 1)</td>
<td>Right to protection of property (Protocol 1, Article 1)</td>
</tr>
<tr>
<td>Right to an education (Protocol 1, Article 2)</td>
<td>Right to an education (Protocol 1, Article 2)</td>
</tr>
</tbody>
</table>

To reach the final variables concerning the case issue area, I take several steps when examining the cases. First, cases are coded for the corresponding Convention right where the Court considered a specific issue with (1) for when the right was ruled upon in the merits stage and (0) if it was not. This excludes some Convention rights that the Court may have had to address in the judgment because when an applicant files with the Court, the application may include any number of perceived violations. When the Court hears an application at the commission level and considers both the applicability and merits, it also decides which case issues are applicable to the claim. In other words, the case issue area is only coded if the Court officially considered it in the merit stage and announces whether the member state violated said right in the opinion. Next, the articles are grouped into their respective case issue areas as dummy variables with (1) designating that the Court did consider if the case violated one of the rights found within the case issue area and (0) if it did not. Some cases will address multiple case issue areas in the merits, while others may only have one case issue area present in the judgment.
Because each case issue area variable is dichotomous to account for the presence of multiple case issue areas in an application, only three of the four categories will be included in the analysis. The excluded case issue area represents the category that I hold as constant and the other three categories are compared against the constant category. For the main analysis, I choose to compare against criminal rights violations. I believe that the European Court of Human Rights is most likely to find a violation in cases that address criminal rights because of the nature of the rights included in the case issue area. These rights include: right to a fair trial, right to due process, prohibition of expulsion of aliens, right to procedural safeguards for aliens, right to appeal, and compensation for wrongful conviction. If the judges on the European Court of Human Rights have any prior judicial or legal experience, these might be the rights they can most easily identify. Furthermore, there might be a professional standard that these judges wish to uphold and finding a violation in this area is the best way to engage in transnational judicial dialogue (Slaughter 2003) to hold other judges to these professional standards. Therefore, the other case issue areas should be compared to this issue area.

**H3a:** Applications that raise bodily integrity case issue areas are less likely to be found in violation in comparison to applications that raise criminal rights issues.

**H3b:** Applications that raise political rights case issue areas are less likely to be found in violation in comparison to applications that raise criminal rights issues.

**H3c:** Applications that raise socioeconomic rights case issue areas are less likely to be found in violation in comparison to applications that raise criminal rights issues.

The coding scheme, however, reveals another hypothesis that should be considered beyond simply which case issue areas are related to the Court finding a violation, but also if the number of case issue areas may also affect the likelihood of the Court finding a violation. It may
be strategic for the applicants to attempt to claim as many violations as possible in the hopes that the Court finds one of them. It also may be that applications that raise potential violations in multiple areas are truly heinous and therefore, it may be an obvious decision of the Court to find the member state in violation. Therefore, I create an index based on if there were case issue areas present in the application, ranging from (1) to (4), when all are present. As an index variable, I hold one of the categories as constant to compare the other categories against. For this variable, the reference category is cases that only reference one case issue area in the application. I believe that:

H3d: Applications that raise more than one case issue areas in the application will be more likely to be found in violation compared to cases that only raise complaints in one issue area.

Member State Characteristics
The American judicial behavior literature demonstrates that the identity of the party does make a difference in success in court. While discussing in the context of litigation, Galanter (1974) notes that different parties experience the legal system and its rules differently; in particular, being a known entity, or a repeat player, becomes desirable and allows for a certain class of litigants to shape the rules and the outcomes to their advantage. For instance, it can help to explain the success of the federal government as a litigant at the Supreme Court (e.g. Zorn 2002; Sheehan, Mishler, and Songer 1992), why amicus curiae that come from the solicitor general are more likely to be found in majority opinions (Spriggs and Wahlbeck 1997) and why an experienced lawyer makes a difference winning a case (McGuire 1995). While I would ideally like to use member state as an independent variable, this is unadvisable given the nature of analysis and the number of member states. Instead, I choose to
focus on specific characteristics of the member states which may act similarly to the identity of the party.

Dothan considered the effects of member state characteristics while examining the possible effects member state reputation may play in the ECtHR’s decision-making process. Although this study only theorizes post-judgment, Dothan (2011) argues that states with low human rights reputations will be offered the costlier judgment compared to member states with higher reputations. While it is difficult to measure reputation, there are two potential other member state characteristics it may be useful to consider: judicial independence and level of democracy.

One of the strongest correlations with state protections of civil, political, and personal integrity rights is judicial independence (e.g. Cross 1999; Keith 2002; Keith, Tate, and Poe 2009; Powell and Staton 2009; Volcansek and Lockhart 2012; Sandholtz 2012). The exact mechanism of how judicial independence works to improve human rights practices is not completely clear, but it does appear to act as a check on the state and empowers the judiciary to hold it accountable. This is true in European Court of Human Rights regime, particularly with the clarification and enhanced nature of status “of the Convention through the incorporation of the Convention into domestic law. In most cases, incorporation means that individuals may plead Convention rights before national judges, who can directly enforce them” (Stone Sweet and Keller 2008, 15).

While there have been debates in the literature about how to best measure judicial independence, I use Latent Judicial Independence (LJI) scores (Linzer and Staton 2015). This is a latent variable estimate of de facto judicial independence composed of both direct and indirect
indicators of judicial independence from eight different sources (Linzer and Staton 2015, 224). The data are a cross-national, time-series that cover 200 countries between 1948 to 2012 with scores ranging from 0 (low judicial independence) to 1 (high judicial independence (Linzer and Staton 2015). In the analysis, I include both the judicial independence score for the member state for the year in which the application was released as well as the year before the judgment was released, to allow for any possible changes in the perception of a member state’s national judiciary that the judges may account for in their decision-making. These two variables will not be run concurrently, although I expect that they will have the same effect. Therefore, I expect to find:

H4a: An application that originates from a member state with a lower judicial independence score will be more likely to be found in violation of the Convention.

Second, I consider a member state’s level of democracy as a secondary characteristic beyond judicial independence. There has been a consistent relationship shown between the protection of human rights and the level of democracy (e.g. Henderson 1991; Davenport 1996; Landman 2005). Whether the relationship is linear or not is called into question, however. Davenport and Armstrong (2004) argue rather than a linear relationship between the protection of human rights and the level of democracy, they find greater protections for human rights are more likely to be found in mid-performing democracies compared to advanced democracies and autocracies. I use Polity IV’s polity2 to measure democracy, which is derived from the level of democracy minus the level of autocracy in a country. Despite the methodological issues that have arisen surrounding it (e.g. Munck and Verkuilen 2002), I
believe that it provides a more nuanced conception of democracy than Freedom House.\(^5\)

Therefore, I believe that:

\[ H4b: \text{An application from a member state with a lower democracy score will be more likely to be found in violation of the Convention.} \]

**Outcome of Case**

My dependent variable that this chapter explains is whether the European Court of Human Rights finds a violation (1) or does not find a violation (0). I examine this data in two different ways. First, I have coded whether or not the Court has found a violation in the case. Second, I use the case issue areas to also code what specific case issue areas the Court finds a member state in violation. This will allow me to complete two different types of analyses to provide a well-rounded look into the decision-making of the European Court of Human Rights.

One analysis will look at the factors that affect the likelihood of the Court finding a violation across all judgments and case issue areas. The second analysis considers what factors impact the likelihood that the Court finds a specific case issue area violation.

The data are drawn from cases that the Court heard between 1961 and 2006 using the European Court of Human Rights Compliance dataset (Voeten 2015). This dataset has two limitations which I address.\(^6\) First, the European Court of Human Rights Compliance database only contains cases where the Court found a member state in violation with the Convention.

---

\(^5\) As Munck and Verkuilen argue, POLITY IV’s measurement uses a procedural definition of democracy and excludes contestation, while Freedom House’s measurement is democracy is maximalist with some concepts touching going outside of the definitional boundaries of democracy (or setting a very low bar) (2002, 9-11).

\(^6\) One of the key limitations that I do not address is that the data stop in 2006. Because I worked to expand the number of applications that the Court heard within the dataset’s time frame, I was not able to expand beyond this date.
Second, the data from the European Court of Human Rights Compliance are limited to cases that the Court has classified as a level one or level two in importance following the case, which denote the importance of the case law that the judgment addresses or creates, as well as only lead cases.

I expand the data to address the limitations. Using the European Court of Human Rights HUDOC database, I recreated the search done by Voeten (2015). In my search, however, I looked at judgements at the importance level of one, two, or three that were heard either at a lower chamber or the Grand Chamber. I did this because the level of importance is ultimately classified after the application is decided and may change from its initial classification (HUDOC 2016). Additionally, I used the HUDOC database to include cases where the Court did not find any violation. This is to address the critically missing aspect of understanding the decision-making process of the European Court of Human Rights.

**Data and Methods**

This analysis considers 5,893 cases from 1961 to 2006 of which the overwhelming majority were found in violation (92.45%) and were decided after the Protocol 11 reforms in 1999 (86.54%). Therefore, I examine the number of judgments where the Court found no violation compared to when it did find a violation pre-1999 reform and post-1999 reform separately. This trend, however, started before the passage of Protocol 11 where the Court heard more applications and found more violations starting in the late 1980s through the 1990s. This corresponds well to the increase in membership in the Council of Europe, especially in the 1990s, with eighteen member states ratifying the Convention during the decade and ten of those countries ratifying before 1995. Because of the differential in both the number of cases
as well as judgments that ended in violation post-1999, I am adding a control variable (Post99) to address this issue. Beyond controlling for post-1999 reforms of Protocol 11, I will also use a cluster option by country identification to help control for member state variance.

Looking at Figure 2, it shows the total number of cases and the judgments where the Court found at least one violation by member state. Three member states (Armenia, Azerbaijan, and Monaco) during this time period had no cases heard by the Court and are not included in the figure.

[Insert Figure 2 here]

Seven member states had 100 percent of the applications heard by the Court result in a finding of a violation, although none of these member states had more than ten applications that the Court heard. Denmark had the lowest percentage of cases result in a violation (53.3 percent) followed by Sweden (63 percent). Italy had the greatest number of cases heard with 1,368 separate applications, finding 97.1 percent of them in violation with the Convention. Turkey followed with 1035 applications where the Court found 97.6 had at least one violation.

In the following analyses, I use logit regression because of the dichotomous nature of the dependent variable. In the first analysis, the model considers the likelihood of the European Court of Human Rights finding a violation across all cases with the post-Protocol 11 control as well as clustered by member state country present in the model. Next, I consider the impact of the post-Protocol 11 and country clusters in the analysis. Likewise, I provide both the model results as well as a model with no control variables. For the discussion of the results, however, I will be using the percentage change in odds in order to ease the interpretation of the results.

Findings
First, I turn to the results of the model that looks at the likelihood of the Court finding a member state in violation with the Convention with both the post-99 control and country clusters included in Table 1 and significant results interpreted in Figure 2.

Some of the institutional results were unexpected. First, I find the average margin of appreciation of the bench it is not significant when looking across all violations. At this time, there are some judges whose margin of appreciation scores are missing. Moreover, this is the average score for the entire bench, which would include judges' scores that dissented from the judgment. This, in turn, may mask a possible relationship between the margin of appreciation and finding a violation. With that caveat, however, this suggests that while the conceptualization of an activist divide based upon the degree of the margin of appreciation does exist on the European Court of Human Rights, it is not as important for the decision-making process. Furthermore, it may be that scores for the activist-restraint scale for the margin of appreciation do not operate as similarly as political ideology does for the US Supreme Court. This is also not as surprising, given the lack of support for ideology measurements outside of the United States.

Second, when the Grand Chamber hears a case, it does significantly affect the outcome of the case. I hypothesized that it would increase the likelihood of finding a violation, but it actually lowers the likelihood. Cases that are heard by the Grand Chamber are 58 percent less likely to find a violation compared to when an application is heard by a lower chamber. I believed that the presence of the Grand Chamber might signal that this is an important case because it was either on appeal from a lower chamber's ruling or dealt with a novel question
surrounding the case law and increase the likelihood of finding a violation. It may be that judges sitting at this final stage of the judicial process within the European Court of Human Rights may be more cautious if there is doubt surrounding whether or not a violation occurred. Or, another potential, is that the Grand Chamber may reverse lower chamber rulings when it has gone too far in finding a violation, similar to what happened in Scoppola.

I consider the impact of case issue areas and the number of case issues found in an application. When interpreting the results of the case issue areas, it is important to remember that this is not the likelihood of the Court finding a violation in this area; rather, this is the likelihood that the Court will find a violation in this area compared to applications that are within the criminal rights case issue area. While bodily integrity and political rights are in the expected direction, only bodily integrity rights is significant compared to criminal rights. When compared to criminal rights case issue areas, the Court is 79.2 percent less likely to find a violation if the case issue area is bodily integrity rights.

But it may not just be the rights that an application claims, but how many case issue areas that the applicant signals a potential violation in the application. Comparing to applications that only contain one case issue area, applications with three case issue areas are significantly more likely to be found in violation. Compared to an application with only one case issue area raised, an application containing three case areas is 210.9 percent more likely to be found in violation with the Convention. This is confirmed when looking at the non-indexed form of case issue areas within an application. While not included in the analysis, when looking at the number of case issue areas in its non-indexed form, it is a positive and significant at the 90 percent confidence interval. I find that for a change in a one-point increase in the case issue
area total, it increases the likelihood of finding a violation by 75.8 percent. While I cannot speculate on the strategy or reality behind the inclusion of multiple case issue areas, it appears that it does work as a signal for the Court to find a member state in violation.

Finally, I turn to member state characteristics. None of the member state characteristics that I included were significant, although both were in the expected direction. This is not surprising given that this model controls for both cases that were heard after the Protocol 11 reforms in 1999 and, more importantly, clusters by country. I expect that when the model specifications are loosened and either control or both are removed from the model, that these member state characteristics will be significant. These results are presented in Table 2 and interpreted in Figure 3 in the Appendix.

[Insert Table 2 here]
[Insert Figure 4 here]

To start to untangle the effects of the Post-1999 control and the country clusters, I consider alternative models based upon the original model discussed. Across all four models, there are some consistencies that begin to emerge. First, the when a case is heard by the Grand Chamber, this decreases the likelihood that European Court of Human Rights will find a member state in violation compared to when an application is heard by a lower chamber. In the original model, the Grand Chamber was 58 percent less likely compared to when a lower chamber issued a judgment to find a member state in violation with the Convention. I reached similar results in the model without clusters, but did control for post-1999 applicants. However, if the model excluded the post-1999 control, the Grand Chamber was 68 percent less likely to find a violation compared to a lower chamber court.
Second, the Court was less likely to find a violation in cases that raised potential bodily integrity case issue areas compared to criminal rights. When there was no post-1999 control, the Court was 80.3 percent less likely to find a violation if a case raised a bodily integrity rights issue compared to a criminal rights issue. Additionally, in all of the alternative models, the presence of a political rights case issue area decreased the likelihood that the Court would find a violation when compared to the presence of a criminal rights issue. When there was no post-1999 control, the likelihood was 47.5 percent less likely to find a violation compared to a case that had criminal rights case issue area. When the member states were not controlled via clusters but post-Protocol 11 reform was, the likelihood that the Court would find a violation with the presence of a political rights case issue area was 40.1 percent less likely compared to a criminal rights case issue area claim.

Additionally, the presence of three case issue areas significantly increases the likelihood that the Court will find a violation compared to one case issue area in all four models. However, when clusters are dropped from the model, all case issue areas significantly increase the likelihood that the Court will find a violation compared to cases where only one case issue area is raised. While not in the results, I run another analysis with the number of case issue areas collapsed from its indexed form as presented. In both Model Three (without clusters) and Model Four (without any controls), it is significant and in a positive direction with a one point increase in the case issue area resulting in either a 64.4 percent or 75.8 percent increased likelihood of the Court finding a violation.

Finally, in all of the alternative models, judicial independence was significant and in the expected direction. Looking at the percentage change for a one standard deviation change in
judicial independence suggests that for every increase in standard deviation in a member
state’s judicial independence score, that this will decrease the likelihood that the Court finds a
violation between 25.5 and 44.8 percent. This supports current literature that argues that
judicial independence is important for human rights protections (e.g. Powell and Staton 2009;
Sandholtz 2012). The Court only hears applications that have exhausted the national legal
system. If the national judicial system is likely to be one that can identify human rights issues
and act as a check on the other branches of government, an application’s argument about a
perceived violation may not be as tenable. Once again, however, democracy is not significant.
This is not all that surprising given the issues with the measurement itself and the potential
issue of the nature of the relationship between democracy and human rights.

Conclusion
This paper marks the first study concerning the European Court of Human Rights’
decision-making. In order to complete this analysis, this chapter involved the expansion in the
available data, especially concerning judgments where the Court found heard an application on
the merits but did not find a violation. I also expanded the available data to move beyond
looking at the categorization by importance level. While this will need to be further expanded
upon in the future, these two expansions give a more accurate picture at the decision-making
process of the European Court of Human Rights, both for lead cases and other subsequent
cases that follow.

Looking at the decision-making model itself, I find that the Court is especially responsive
to both the facts of the case and the number of different types of human rights violations that
are claimed in an application. From my analysis, the Court is less responsive and less likely to
find a violation for issues that raise bodily integrity or political rights violations compared to
criminal rights violations. This demonstrates that not all case facts or issues are treated the same by the Court. Moreover, considering that the one case issue that was positive was not significant, it appears that criminal rights are especially concerning to the judges of the European Court of Human Rights. Given the professional judicial and legal background of many of the Court’s judges (Voeten 2008), this may provide some insight into why no other case issue area is more likely to be found in violation when compared to criminal rights. Or, it may also be that judges on the European Court of Human Rights are forward-looking towards enforcement of its decision. As such, communicating the exact nature of the violation as well as the remedy to a legal audience may result in faster times to compliance.

It is not just the type of case issue area that is raised, but applications that raise violations in multiple difference case issue areas are more likely to be found in violation compared to applications that raise violations in only one case issue area. While this analysis does not untangle if the Court is finding violations in multiple case issue areas as well, this does suggest some sort of signaling from the applicant to the Court that a violation of the Convention has occurred. This may be signaling by the applicants as a way to grab the attention of the Court or to hedge the applicants’ bet that one of the potential raised claims will result in a violation.

Finally, a judgment is more likely to be found in violation with the Convention if it is heard at a lower chamber compared to the Grand Chamber. This helps to inform scholars more about how the institutional arrangement of the Court affects judgment outcomes. It is the lower chambers that does the bulk of the work at identifying violations of the Convention. While the Grand Chamber may be more visible to the public because of media attention, it is
not more likely to find a violation. This may suggest that it acts as a check on lower chamber judgments that go too far in their interpretation of the Convention or that the Grand Chamber is not as likely to push the Convention’s interpretation of violations as perceived. Future research, however, should investigate this further. First, there needs to be the inclusion of committee judgments so that the full range of the institutional settings is accounted for in decision-making models. Second, whether the Grand Chamber is hearing a judgment that has been appealed from a lower chamber or relinquished because of the nature of the question should also be accounted for in future research.
Appendix

1. Figure 2: Percentage of Cases Found in Violation by Member State

![Percentage of Cases Found in Violation](image)

2. Table 1: Logit Regression of the European Court of Human Rights Finding a Violation

<table>
<thead>
<tr>
<th></th>
<th>Coef. (Robust Std. Err.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Margin of Appreciation Average</td>
<td>-.009 (.173)</td>
</tr>
<tr>
<td>Grand Chamber</td>
<td>-.868*** (.200)</td>
</tr>
<tr>
<td><strong>Case Issue Area</strong></td>
<td></td>
</tr>
<tr>
<td>Bodily Integrity</td>
<td>-1.57*** (.376)</td>
</tr>
<tr>
<td>Political Rights</td>
<td>-.512 (.299)</td>
</tr>
<tr>
<td>Socioeconomic Rights</td>
<td>.338 (.232)</td>
</tr>
<tr>
<td><strong>Number of Case Issues Present</strong></td>
<td></td>
</tr>
<tr>
<td>Two</td>
<td>.533 (.393)</td>
</tr>
<tr>
<td>Three</td>
<td>1.13* (.520)</td>
</tr>
<tr>
<td>Four</td>
<td>1.88 (1.39)</td>
</tr>
<tr>
<td><strong>Member State Characteristics</strong></td>
<td></td>
</tr>
<tr>
<td>Judicial Independence</td>
<td>-1.86 (1.86)</td>
</tr>
<tr>
<td>Democracy</td>
<td>-.141</td>
</tr>
</tbody>
</table>
1. **Post-1999**

<table>
<thead>
<tr>
<th></th>
<th>Coef.</th>
<th>Robust Std. Err.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constant</td>
<td>4.572**</td>
<td>(.165)</td>
</tr>
<tr>
<td>Post-1999</td>
<td>1.57***</td>
<td>(.180)</td>
</tr>
</tbody>
</table>

Log Pseudo-likelihood: -1356.77

***p<.001, **p<.01, *p<.05

3. **Figure 3: Likelihood of Finding a Violation: Percentage Change in Odds**

![Percentage Change in Odds](image)

4. **Table 2: Logit Regression of the European Court of Human Rights Finding a Violation (Alternative Models)**

<table>
<thead>
<tr>
<th></th>
<th>No Protocol 11 Control</th>
<th>No Country Clusters</th>
<th>No Controls</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Coef. (Robust Std. Err.)</td>
<td>Coef. (Std. Err.)</td>
<td>Coef. (Std. Err.)</td>
</tr>
<tr>
<td><strong>Margin of Appreciation</strong> Average</td>
<td>.552** (.185)</td>
<td>-.009 (.187)</td>
<td>.552** (.180)</td>
</tr>
<tr>
<td><strong>Grand Chamber</strong></td>
<td>-1.15*** (.187)</td>
<td>-.868*** (.167)</td>
<td>-1.15*** (.158)</td>
</tr>
<tr>
<td><strong>Case Issue Area</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Bodily Integrity</strong></td>
<td>-1.63*** (.379)</td>
<td>-1.57*** (.186)</td>
<td>-1.63*** (.180)</td>
</tr>
<tr>
<td><strong>Political Rights</strong></td>
<td>-.644* (.287)</td>
<td>-.512** (.193)</td>
<td>-.644** (.186)</td>
</tr>
</tbody>
</table>
### Table: Percentage Change in Odds (Alternative Models)

<table>
<thead>
<tr>
<th></th>
<th>Model 1</th>
<th>Model 2</th>
<th>Model 3</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Socioeconomic Rights</strong></td>
<td>.308 (.240)</td>
<td>.338 (.183)</td>
<td>.308 (.178)</td>
</tr>
<tr>
<td><strong>Number of Case Issues Present</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Two</td>
<td>.419 (.366)</td>
<td>.533* (.211)</td>
<td>.418* (.205)</td>
</tr>
<tr>
<td>Three</td>
<td>1.07* (.475)</td>
<td>1.134** (.438)</td>
<td>1.07** (.423)</td>
</tr>
<tr>
<td>Four</td>
<td>1.75 (.133)</td>
<td>1.88* (.894)</td>
<td>1.75* (.864)</td>
</tr>
<tr>
<td><strong>Member State Characteristics</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Judicial Independence</td>
<td>-3.76* (1.83)</td>
<td>-1.86** (.673)</td>
<td>-3.76*** (.646)</td>
</tr>
<tr>
<td>Democracy</td>
<td>-.132 (.240)</td>
<td>-.141 (.082)</td>
<td>-.132 (.079)</td>
</tr>
<tr>
<td>Post-1999</td>
<td></td>
<td>1.57*** (.131)</td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td>7.04*** (1.90)</td>
<td>4.30*** (.578)</td>
<td>7.09*** (.525)</td>
</tr>
<tr>
<td>Log Likelihood or Log Pseudo-likelihood</td>
<td>-1356.77</td>
<td>-1287.51</td>
<td>-1356.77</td>
</tr>
</tbody>
</table>

***<p<.001, **p<.01, *p<.05, N = 5819

5. **Figure 4: Percentage Change in Odds (Alternative Models)**

![Percentage Change in Odds (Alternative Models)](image)

**Note:** Judicial Independence percent change in standard deviation
6. First, one of the difficulties that emerged in this analysis is the issue of correlation and multicollinearity. This is one of difficulties, particularly because there are significant levels of correlation between the variables to the point where I was concerned with multicollinearity. Although there the standard errors did not appear to be inflated, I still decided to test the specification of the complete model looking at when the Court finds a violation in a judgment. Using a program specifically designed to test for multicollinearity in logistic regression models, I found the variance inflation factor (VIF) for all the specified dependent and independent variables, but had to consider the case issue area total in its non-indexed form. What this tests is, “if all of the variables are orthogonal to each other, in other words, completely uncorrelated with each other, both the tolerance and VIF are 1. If a variable is very closely related to another variable, the tolerance goes to 0, and the variance inflation gets very large” (UCLA Institute for Digital Research and Education 2016). I would need to be concerned about multicollinearity if there is a tolerance score of 0.1 or less, which there is not.

### Collinearity Diagnostics of Model 1

<table>
<thead>
<tr>
<th>Variable</th>
<th>VIF</th>
<th>Tolerance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Violation</td>
<td>1.12</td>
<td>.894</td>
</tr>
<tr>
<td>Margin of Appreciation</td>
<td>1.11</td>
<td>.903</td>
</tr>
<tr>
<td>Average</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Grand Chamber</td>
<td>1.10</td>
<td>.907</td>
</tr>
<tr>
<td>Bodily Integrity</td>
<td>1.37</td>
<td>.730</td>
</tr>
<tr>
<td>Political Rights</td>
<td>1.37</td>
<td>.731</td>
</tr>
<tr>
<td>Socioeconomic Rights</td>
<td>1.66</td>
<td>.604</td>
</tr>
<tr>
<td>Area Total</td>
<td>2.18</td>
<td>.458</td>
</tr>
<tr>
<td>Judicial Independence</td>
<td>2.90</td>
<td>.345</td>
</tr>
<tr>
<td>Democracy</td>
<td>2.90</td>
<td>.345</td>
</tr>
<tr>
<td>Post-1999</td>
<td>1.25</td>
<td>.796</td>
</tr>
<tr>
<td>Mean VIF</td>
<td>1.70</td>
<td></td>
</tr>
</tbody>
</table>

Additionally, comparing the models based around the inclusion (or exclusion) of country-level clusters and post-1999 reforms of Protocol 1999 reveals some information for future endeavors. The presence of clusters suppresses the significant levels of judicial independence and the difference between criminal rights case issue areas and political rights. I have a difficult time completely discounting judicial independence as an explanatory variable, but this analysis reveals that there may be other member state characteristics that should be considered in the future.

Moreover, the Protocol 11 reforms clearly and significantly affected the European Court of Human Rights’ jurisdiction, the number of cases, and the percentage of cases where a violation was found. It also has an impact on the likelihood of when the European Court of Human Rights finds a violation. Curiously, I ran the original model except I specified when the post99 control was equal to (1) and again when it was equal to (0) as shown in the table. Again, with the clusters, the model did not necessarily perform much differently than the original
specified model. However, without the clusters, there are once again results that look similar to the alternative models. This confirms that future endeavors should consider if differentiating between pre- and post-Protocol 11 reforms is theoretically useful for the model but also consider how to gain leverage to help explain differences in violations beyond using clustered analysis if possible.

Logit Regression of the European Court of Human Rights Finding a Violation (Post-1999 Alternative Model)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Coef. (Robust Std. Err.)</td>
<td>Coef. (Std. Err.)</td>
<td>Coef. (Robust Std. Err.)</td>
<td>Coef. (Std. Err.)</td>
</tr>
<tr>
<td>Margin of Appreciation Average</td>
<td>.045 (.250)</td>
<td>.045 (.221)</td>
<td>.042 (.302)</td>
<td>.042 (.376)</td>
</tr>
<tr>
<td>Grand Chamber</td>
<td>-1.61*** (.234)</td>
<td>-1.61*** (.208)</td>
<td>-.073 (.360)</td>
<td>-.073 (.245)</td>
</tr>
<tr>
<td><strong>Case Issue Area</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bodily Integrity</td>
<td>-1.44** (.417)</td>
<td>-1.43*** (.231)</td>
<td>-1.82*** (.440)</td>
<td>-1.82*** (.337)</td>
</tr>
<tr>
<td>Political Rights</td>
<td>-.696 (.365)</td>
<td>-.696** (.247)</td>
<td>-.357 (.267)</td>
<td>-.357 (.293)</td>
</tr>
<tr>
<td>Socioeconomic Rights</td>
<td>.371 (.265)</td>
<td>.371 (.228)</td>
<td>.205 (.391)</td>
<td>.205 (.303)</td>
</tr>
<tr>
<td>Number of Case Issue Areas</td>
<td>.453 (.289)</td>
<td>.453* (.211)</td>
<td>.749* (.365)</td>
<td>.748** (.277)</td>
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<tr>
<td><strong>Member State Characteristics</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Judicial Independence</td>
<td>-1.47 (1.64)</td>
<td>-1.47* (1.730)</td>
<td>-2.77 (2.85)</td>
<td>-2.77 (1.76)</td>
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<tr>
<td>Democracy</td>
<td>-.170 (.204)</td>
<td>-.170 (.090)</td>
<td>-.091 (.349)</td>
<td>-.091 (.239)</td>
</tr>
<tr>
<td>Constant</td>
<td>5.45*** (1.70)</td>
<td>5.45*** (.625)</td>
<td>3.72 (2.54)</td>
<td>3.72 (1.56)</td>
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<td>Log Likelihood/Log Pseudo-likelihood</td>
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<td>-908.56</td>
<td>-363.35</td>
<td>-363.35</td>
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<tr>
<td></td>
<td>N = 5165</td>
<td>N = 5165</td>
<td>N = 654</td>
<td>N = 654</td>
</tr>
</tbody>
</table>

***p<.001, **p<.01, *p<.05
Works Cited


Cases

Hirst v. United Kingdom [GC], no. 74025/01

Scoppola v. Italy [GC], no. 126/05

Statutes