

Defending the European Court of Human Rights: Experimental Evidence from Britain

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Abstract: As nationalist sentiments gain traction globally, the attitudinal and institutional foundations of the international liberal order face new challenges. One manifestation of this trend is the growing backlash against international courts. Defenders of the liberal order struggle to articulate compelling reasons for why states, and their citizens, should continue delegating authority to international institutions. This article probes the effectiveness of arguments that emphasise the appropriateness and benefits of cooperation in containing preferences for backlash among the mass public. We rely on IR theories that explain why elites create international institutions to derive three sets of arguments that could be deployed to boost support for international courts. We then use experimental methods to test their impact on support for backlash against the European Court of Human Rights in Britain. First, in line with principal-agent models of delegation, we find that information about the court's reliability as an "agent" boosts support for the ECtHR, but less so information that signals Britain's status as a principal. Second, in line with constructivist approaches, associating support for the court with the position of an in-group state like Denmark, and opposition with an out-group state like Russia, also elicits more positive attitudes. This finding points to the importance of "blame by association" and cues of in/out-group identity in building support for cooperation. The effect is stronger when we increase social pressure by providing information about social attitudes towards Denmark and Russia in Britain, where the public overwhelmingly trusts the Danes and distrusts the Russians. Finally, in contrast to Liberal explanations for the creation of the ECtHR, the study finds no evidence that highlighting the court's mission to promote democracy and international peace contains backlash. We show that the positive effects of the first two arguments are not driven by pre-treatment attitudes such as political sophistication, patriotism, internationalism, institutional trust, or political preferences.

Keywords: International Courts; Public Opinion; Human Rights; European Court of Human Rights; United Kingdom

Introduction

As populist sentiments gain traction across the globe, the attitudinal and institutional foundations of the international liberal order face new challenges. One salient manifestation of this trend is the growing backlash against various forms of international adjudication (Alter, Gathii & Helfer 2016). In Latin America, for example, Venezuela left the Inter-American Court of Human Rights in 2012. Similarly, a number of African states have either withdrawn, or threatened to withdraw, from the ICC. And in Europe, Britain's Conservative government recently led an attempt to curb the powers of the European Court of Human Rights (ECtHR). In this climate, defenders of the liberal order often struggle to articulate compelling reasons for why states, and their citizens, should continue investing in the provision of international public goods and delegating authority to international institutions despite sovereignty costs.

This article probes the effectiveness of arguments that emphasize the *appropriateness* and *benefits* of cooperation in containing preferences for backlash among the mass public. We rely on IR theories designed to explain why state elites create international institutions, to derive three sets of arguments that could be deployed during campaigns to boost support for internationalism. The analysis thus explores whether the reasons that lead state elites to champion international cooperation also move the public in a more internationalist direction. Specifically, we use experimental methods to test whether these arguments increase support for compliance and reduce support for backlash against the ECtHR in Britain, where the court is very unpopular.

In line with principal-agent models of delegation, we find that information about the court's reliability as an "agent" boosts support for the ECtHR. Furthermore, associating support for the Court with the position of a like-minded states like Denmark, and opposition to the court with Russia's position, also leads to more positive attitudes.

This finding points to the importance of “blame by association” and cues of in/out-group identity (and related standards of appropriate behavior) in building support for cooperation. We see more positive effects when we step up these “social” pressures by providing respondents with more explicit information about social norms of trust towards Denmark and Russia in British society. In contrast to Liberal explanations for the creation of the ECtHR, the study finds no evidence that highlighting the role of the court in promoting democracy helps contain backlash. Finally, we show that effects of are not driven by pre-treatment attitudes such as levels of patriotism, internationalism, or relevant political preferences.

International Courts, Backlash and Public Opinion

International courts have few means to guarantee the enforcement of rulings (Staton & Moore 2011). It is therefore not surprising that scholars observe great variability in degrees of compliance (Hawkins & Jacoby 2010; Hillebreth 2014). Compliance is important because the foundations of judicial authority shake every time a court hands down a decision and waits for the reaction of its interlocutors. In this sense, states’ compliance with costly rulings indicates high levels of institutional commitment and has the potential to boost judicial legitimacy (Kapiszewski & Taylor 2013: 821). But even though compliance is one of the cornerstones of legitimacy, international courts are usually able to survive, and maintain influence, amidst some level of non-compliance.

By contrast, backlash is a more serious affair because it has the potential to morph into an existential threat to judicial authority. Voeten (2017: 4) distinguishes backlash from non-compliance, defining the former as “a series of government and/or non-governmental actions that aim to curb or reverse the authority of an international

court.” Backlash includes actions such as withdrawing from a court’s jurisdiction, promoting reforms that curb its prerogatives or make access more difficult, and attempts to dismantle courts altogether.

Public opinion features prominently in the literature on backlash against domestic judiciaries. Should inter-branch conflicts occur, public support for courts provides a source of leverage vis-à-vis presidents and legislatures (Vanberg 2005; Helmke & Station 2011). In the United States, for example, research on the relationship between citizens and the Supreme Court finds that the court enjoys high levels of “diffuse support,” a form of institutional loyalty that “embodies the notion that failure to make policy pleasing in the short-term does not necessarily undermine the basic commitment to support the institution” (Gibson, Caldeira & Spence 2005: 189). This “reservoir of goodwill” acts as a shield (Gibson & Caldiera 2009), ensuring that not even highly polarizing rulings trigger backlash (Gibson, Caldeira & Spence 2003).

The defensive properties of public opinion have not been studied as extensively in the case of international courts. Perhaps scholars should not be blamed for this. International courts seem too distant for people to form strong opinions about them. In fact, in a paper that examines support for various international courts, Voeten (2013) finds that attitudes towards these institutions tend to be derivative of attitudes towards other institutions. Strong *favorable* opinions are especially unlikely because international courts not only have to deal with lack of familiarity, or accusations of being anti-majoritarian, but also with the accusation that they are “foreign.” In a pioneering article, Gibson & Caldeira (1995) concluded that the ECJ’s reservoir of goodwill was too thin for people to accept decisions they dislike. The court simply does not hand down enough salient decisions capable of cementing the loyalty of overlapping constituencies. For this reason, international courts often rely on elite-level

legitimation strategies, such as carefully crafted rulings that adjust the margin of appreciation granted to policymakers, or the promotion of partnerships with local actors (Burely & Mattli 1993; Leach & Donald 2016; Gonzalez-Ocantos 2018).

Public opinion, however, still matters. The politics of backlash are not just an elite game. Regardless of whether voters develop structured, stable, or meaningful attitudes that inform their opinions of international courts, or are simply “cue takers” whose views are shaped by elites, citizens are uniquely positioned to legitimize non-compliance and backlash (Buchanan & Keohane 2006: 411).¹ Crucially, international court rulings provide a focal point for elites who oppose internationalism to rally voters. As Colgan & Keohane (2017: 36) argue, “today’s crucial foreign policy challenges arise less from problems between countries than from domestic politics within them.” Indeed, concerns about the role of public opinion in the politics of backlash against the liberal order are particularly pressing in the current populist climate. Voeten links the rise of populist politicians and mass publics to recent episodes of backlash. He suggests that if “governments lose an interest in democratization or in attracting foreign investment, then they also have incentives to withdraw from human rights courts and investment treaties respectively” (2017: 8). In this account, the incompatibility between the nationalism of domestic actors, and the liberal-cosmopolitanism of international courts, is responsible for backlash.

Responding to Backlash

What arguments or cues move public opinion on international political issues? Most of what we know comes from experimental studies of attitudes towards foreign policy in the United States, especially attitudes towards military intervention. Scholars have found that arguments that activate *instrumental*, *national interest* considerations,

as well as arguments that link issue positions with *norm-compliant or identity-consistent behavior*, have the capacity to sway the public.

The mass public cares about advancing the national interest. Herrman, Tetlock & Visser (1999) find that support for war increases when citizens receive clear signals that American interests are at stake. Voters are also sensitive to cues that highlight the costs of foreign policy choices. For example, Flores-Macias & Kreps (2017) argue that in addition to information about human causalities, messages regarding the financial costs of war affect attitudes towards military intervention. Specifically, they show that if the public is told that war is funded through taxes rather than borrowing, support declines, because taxes impose more direct costs on citizens. Similarly, Hoffman et al. (2015) show that awareness of viable diplomatic alternatives, reduce support for military intervention. War is costly, and should only be adopted as a measure of last resort. The few existing studies that move beyond the use of force to look at support for international institutions, also find that cost perceptions matter. In the case of the ICC, frames that emphasize heightened prosecutorial risk for national military personnel undermine support for complete ratification of the Rome Statute in the US (Guisinger & Saunders 2017; Zvogbo 2019) and elsewhere (Chaudoin forthcoming).

The US public seems equally responsive to messages that highlight normative and identitarian considerations. NGO “moral” activism is more effective when campaigners link their message to core societal values, for example by generating empathy with victims (McEntire, Leiby & Krain 2015). Kreps & Maxey (2018) find that a sense of moral obligation helps explain support for humanitarian intervention. Similarly, Zvogbo (2019) shows that human rights frames that highlight the US’s historic support for international criminal tribunals activate considerations about behaving in accordance with the country’s internationalist identity, and boost support

for the ICC. Finally, cues that link foreign policy to violations of international law decrease support for use of drones (Kreps & Wallace 2016) and torture (Wallace 2013).

We contend that cost-benefit and normative/identitarian frames are also likely to shape support for the ECtHR. We turn to influential IR theories of why states decide to create, join, or maintain such institutions, to derive three possible arguments that could be deployed by campaigns seeking to boost support. Two of these arguments emphasize the benefits of cooperation, whereas the third highlights the appropriateness of cooperation. One advantage of this approach is that the theoretical frameworks we seek inspiration from outline the micro-foundations of elites' decision to cooperate. These micro-foundations can be adapted to explore the determinants of the public's support for cooperation. Our goal is therefore to investigate whether the reasons proposed by leading paradigms for why elites promote international cooperation are also useful to identify the public reasons that might draw citizens towards internationalism. In what follows we outline our three frames, and then discuss whether some frames are more likely to sway the public than others.

Courts as agents of states

An influential proposition in IR theory is that states create international institutions to advance their national interest. Cooperative behavior helps states overcome collective action problems and information asymmetries, as well as coordinate around specific solutions to address mutual challenges. States thus accrue benefits that wouldn't be achievable via individual actions (Keoheane 1984; Martin & Simmons 2000). According to this rationalist perspective, states design international institutions so that they reflect, and are responsive to, state interests. In other words, and especially in the case of powerful states, international institutions are purposefully

engineered tools rather than straightjackets.

In line with this view, some authors argue that states support the ECJ “because it mitigates the incomplete contracting and monitoring problems that would otherwise hinder the realization of mutual gains from trade liberalization” (Garrett 1995: 172). Proponents of this approach generally reject the notion that international courts can transform or contravene national interests (Posner & Yoo 2005). In fact, scholars maintain that governments can easily influence international judicial decision-making (Elsig & Pollack 2014; Voeten 2007; Stone 2011; Larsson & Naurin 2016). In the case of the ECJ, judges “understand that their power [...] depends critically on the continuing acquiescence of” governments (Garrett 1995: 173), and rarely challenge their principals.

The argument that courts are reliable agents of contracting states has been seriously challenged (Alter 2001). But as a set of assumptions about why elites decide to invest in international public goods, the rationalist view offers an argument that could resonate with the public. We contend that if elites decide to contribute to the creation of international courts because they believe these institutions tend to embody the goals and interests of their creators, remaining on average reliable and responsive, providing citizens with information about their country’s participation in processes of delegation can also lead them to believe that the sovereignty costs incurred are offset by “institutional ownership.” Following this line of reasoning, the Court will likely prove beneficial in the long-run because its mission, its institutional DNA, reflects the preferences of its principals, despite occasional rulings that may prove displeasing.

Offering concrete information about judicial deference can reinforce this logic, further deterring backlash. This is because such information directly signals the actual reliability of the court as an “agent.” A reinforcement of this kind could be particularly

necessary to guarantee the effectiveness of the principle/agent argument if the institution is perceived to have taken on a more expansive role than originally envisaged. In the case of the ECtHR this could be due to its larger docket or activism concerning controversial human rights issues. Indeed, philosophers have noted that while state consent is a plausible basis for the legitimacy of the authority of international institutions, especially if those consenting are democratic societies, consent might be insufficient if institutions show no restraint (Christiano 2012: 386). Displays of deference can therefore enhance legitimacy by signaling an open, consensual and non-hierarchical approach to rule-making.

International courts as anchors of democratic stability

A second perspective also assumes that states cooperate in pursuit of benefits, but does not necessarily assume institutions will be deferent to principals. In fact, institutions such as international courts are appealing in so far as they have the potential to constrain the behavior of domestic elites in pursuit of other goals. Specifically, the focus is on states creating international courts to “lock-in” desirable aspects of the status quo. For instance, Andrew Moravcsik (2000: 228) famously argues that the main promoters of the European Convention and Court of Human Rights were the governments of new, fledgling democracies: “By placing interpretation in the hands of independent authorities [...] governments seek to establish reliable judicial constraints on future nondemocratic governments.” For post-WWII political elites in these countries, it was important to endow the ECtHR with the capacity to sound alarm bells that increased the costs of authoritarian reversals.

The ability of international institutions to lock-in democracy also explains why established democracies supported the creation of the Court. Since democratic political

stability was thought to enhance the prospects of a “democratic peace,” established democracies were keen to encourage commitment to the ECtHR among their neighbors, especially potentially threatening ones (ibid: 229). International peace was undoubtedly a concern following WWII. For example, Bates (2011: 40) describes the Convention as a “collective pact against totalitarianism.” In this context, countries such as Britain participated actively in the drafting process and supplied key judges to the new ECtHR. Interestingly, however, they did not accept its jurisdiction until much later (Madsen 2011: 49-50). Similarly, after the collapse of the USSR, the prospects of EU enlargement served as “a catalyst behind efforts to create a stronger ECtHR” (Voeten 2011: 68). The “locking-in” logic played a role: the EU needed additional reassurance that new members would remain stable and like-minded democracies.

On this basis, we contend that reminding the public about the historic mission of the ECtHR, in particular, its role in the promotion of cherished goals such as continental democracy and peace, could also boost levels of institutional support among the public, despite sovereignty costs.

The appropriateness of cooperation

For constructivists, the dynamics and outcomes of international cooperation are not governed exclusively by cost/benefit analyses, but are influenced by norms, and the ideas that states develop about themselves and others. States acquire an identity that is associated with standards of appropriate behavior, and these standards in turn lead them to promote, accept or eschew participation in cooperative ventures. Applying to join organizations, or providing public goods, allows states to express and affirm values consistent with “who they are.” Furthermore, ideas about others, which are usually the product of international interactions, shape how states perceive the behavior and

intentions of their interlocutors, and may therefore facilitate or hinder cooperation.

In seeking to understand why we observe forms of cooperation that entail sovereignty costs, this literature emphasizes socialization (Finnemore & Sikkink 1998; Risse-Kappen, Ropp, & Sikkink 1999). When certain practices come to be seen as morally or technically unacceptable, or incompatible with any given identity, states agree to cooperate to enshrine new norms in treaties, and create mechanisms to police deviant behavior. State identity thus features prominently in constructivist accounts because it can be transformed during cycles of socialization, leading to the creation of institutions or greater compliance (Checkel 2001). State identity also explains successful “norm entrepreneurship” by non-state actors. For instance, scholars posit that norm entrepreneurs are able to persuade states to transform their practices when campaigns strategically frame new ideas about right or wrong in ways that highlight the compatibility of emerging standards with the values that already underpin states’ identities (Keck & Sikkink 1998). Moreover, “norm cascades” gain momentum as states seek to emulate the behavior of countries they perceive as part of their in-group. States want to avoid opprobrium by interlocutors they respect, and prefer not to be perceived as acting “out of character” or be the victims of blame by association. As Mantilla (2018: 323) puts it with regards to treaty negotiations, “to stand alone (or nearly alone but in “questionable” company), may lead isolated delegates to reason that serious social status damage may befall” their state.

The implication is that when norm-violating behavior is a latent possibility, appeals to identity can be a powerful way of shaming states back into supporting compliance, or deterring backlash. Pointing out the *inconsistencies* between how states present themselves and how they ultimately behave, or the *consistency* between norm-violating behavior and the values and practices of out-group actors, can prove quite

effective as a means to reinforce socialization. These socialization mechanisms have been shown to work well among elites, and we expect them to also work among citizens.

We therefore hypothesize that associating support for international institutions with the position or behavior of countries that citizens perceive as part of an international “in-group,” can be effective in fostering positive attitudes towards those institutions. Similarly, associating backlash with the position of “out-group” countries may also bolster supportive views. In other words, linking compliance or backlash to the behavior of other actors in the international system signals socially (un)desirable behavior, and reinforces cooperation.

Which frames are likely to resonate with the public?

All frames can be plausibly expected to provide a boost for internationalism. Moreover, since we know perilously little about the kinds of cues that move public opinion vis-à-vis international courts like the ECtHR, it seems appropriate to adopt a relatively agnostic position, and investigate whether a series of different frames work. Having said this, it is still legitimate to wonder whether there are any reasons to believe that some frames stand a greater chance than others.

First, as previously noted, the literature shows that both instrumental (cost-benefit) and principled (normative, identitarian) cues have the capacity to shape public opinion on international politics. Unfortunately, this literature does not offer robust theoretical priors (or evidence) to form strong expectations about which type of argument is more likely to resonate with voters or to produce more pronounced shifts in opinion. There is, however, a general acceptance across major IR paradigms that the (US) public’s default position when it comes to foreign policy is normative rather than

instrumental. As Kertzer et al. (2014: 825) put it, “for liberal idealists and constructivists, the moral foundations of public opinion, mobilized by norm entrepreneurs, opens up the possibility of positive moral action, whereas for realists, the public’s moralism [...] is one of the main reasons why foreign policy should be insulated from the pressures of public opinion.” Give this moralist attitudinal baseline, normative/identitarian arguments in support for the ECtHR are perhaps more likely to resonate than arguments that trigger cost-benefit calculations.

Second, and relatedly, when it comes to instrumental frames, existing studies of public support for international institutions or foreign policy tend to examine the effect of highlighting costs. For example, the risk of ICC prosecutions against military personnel, human casualties, or the fiscal implications of war. Unsurprisingly, the findings suggest the public isn’t prepared to accept such concrete, human and/or personal sacrifices. By contrast, our two instrumental frames focus on benefits that are more distant and diffuse, rather than on concrete costs: the first frame portrays the ECtHR as a reliable tool designed to advance the national interest (in our case, British interests), while the second focuses on the ECtHR’s contribution to political/democratic stability in Europe. Foreign policy elites may be able to appreciate such benefits, but it is less clear whether this approach is likely to be as effective a rhetorical strategy among the public. For this reason, we may also expect that, both the principle/agent and democracy promotion frames are less likely to succeed than the identitarian frame. The latter is much more personal: it activates social desirability concerns and taps onto more immediate feelings of group belonging.

Third, while both instrumental frames focus on diffuse benefits, the democracy promotion frame is less likely to contain opposition and backlash than the principle/agent frame. Accepting the democracy promotion argument requires some

degree of altruism: the ECtHR benefits other countries by ensuring they remain democratic, and imposes sovereignty costs on all members. There are of course benefits in having democratic and non-aggressive neighbours, but such benefits are likely to be less apparent or relevant today than when the Court was created. The principle-agent argument, by contrast, depicts a more direct positive relationship between the Court and the national interest. As we already argued, this is especially true if the message contains concrete information about the reliability of the Court as creature of the country's international statecraft. Furthermore, while it is possible that emphasizing the Court's democracy promotion function discourages extreme forms of backlash (e.g. elimination), it is still less likely to boost support for remaining a member. This is because the frame does not point to the general benefits of remaining a member, which the principle-agent frame does. Instead, it focuses on the benefits for other countries. So just like in the 1950s-60s Britain supported the ECtHR without accepting its jurisdiction, the democracy promotion argument may only persuade British citizens to keep the Court in place to check on other countries but not on the UK.

Research Design

The ECtHR, established in the 1950s, is tasked with holding member states accountable for their compliance with the European Convention. The Court was one of the most controversial features of the Convention as it had the potential to undermine states' control over the evolution of the European human rights regime. In fact, when the document entered into force in 1953, only two states, Denmark and Ireland, accepted the Court's jurisdiction (Bates 2011: 40). Today the situation is very different: the ECtHR has jurisdiction over 47 countries and 800 million people.

Madsen (2011) argues that the Court went through a series of phases, progressively emboldening its pro-rights doctrines. Until the mid-1970s, judges were constrained by the lack of a robust corpus of international human rights law, as well as by a limited membership, but were nonetheless able to navigate these constraints, affirming the Court's authority. By the mid-1970s, some of the constraints of the initial phase had become less severe, and the Court "did not waste much time in turning this opportunity into progressive law" (Madsen 2012: 27). As activism increased and membership broadened, the Court's docket exploded. Clashes with a variety of member states naturally ensued. Since the 1990s there have been several attempts to reform the ECtHR, some with the goal of weakening it (Helfer 2012; Madsen 2016).

Britain has been a recurrent protagonist of these clashes. In no other state "have proposals to weaken the Court or denounce the Convention become part of *mainstream* political discourse as they have in the UK" (Leach & Donald 2016:10). In recent years skepticism towards the ECtHR has increased even more. Attacks launched by the media as well as by politicians in response to controversial decisions,² have dented mass support. In a poll conducted in 2011, only 19% of respondents agreed that the ECtHR was a "good thing" for Britain (Voeten 2013: 418). Furthermore, compliance with judgments is usually a highly politicized affair. Hillebrecht (2014: 102) characterizes the UK as a "begrudging complier." In 2012, the row over *Othman (Abu Qatada) v. UK*, a decision that stopped the deportation of an Islamist terrorist suspect, coincided with Britain's chairmanship of the Council of Europe. This presented the ruling Conservative Party with a unique opportunity to orchestrate backlash. While the ensuing Brighton Declaration signed by member states did not perfectly reflect British hostility towards the ECtHR, it did raise the prospects for future reforms aimed at weakening the Court (Helfer 2012; Madsen 2016).

To probe the effectiveness of arguments in favor of the ECtHR, we included an experiment in a survey of 3007 Great British adults fielded in July/August 2018.³ Britain offers an interesting context to evaluate the three arguments. The court is uniquely politicized, and some of its judgments have acquired an unusually high degree of notoriety. This allows us to strengthen the face validity of the experimental setup. Additionally, Britain is a “hard” case to detect framing effects due to the highly antagonizing nature of the ECtHR. Altering baseline opinions in a positive direction with one-off experimental manipulations should be more difficult under such conditions.

We provided all respondents with basic information about the Court and its role as a developer of international law. Although important, this general information does not match well the circumstances under which people come across the ECtHR. Typically, the court is targeted by the media when involved in controversial decisions. To parallel this setting, we (a) described the *Othman (Abu Qatada)* judgment, a ruling that proved hugely unpopular because it touched on hot-button issues such as terrorism and immigration, and (b) concluded the introductory text by restating the most frequent critique against the ECtHR, namely that it “limits what sovereign nations can and cannot do.” This helps provide a setting that resembles the conventional media coverage of the court, and allows us to see how well our treatments perform in shifting attitudes in favor of the ECtHR within that hostile context.⁴

We then randomly assigned respondents to a control condition with no additional information, and 6 treatment conditions with different framings intended to boost support for the ECtHR.⁵ Our treatments can be interpreted as counter-arguments aimed at easing hostility towards the Court. The literature is divided on whether counter-frames cancel each other out or produce more moderate shifts in opinion than

isolated frames. Recent work on political psychology points towards a moderating impact of counter-frames (Zvobgo 2019). In any case, our setup likely “stacks the deck” against finding strong shifts in support for the ECtHR.

Respondents in *treatment groups 1a and 1b* received the following information:

[Treatment 1a] According to experts, support for the European Court of Human Rights is not unanimous among member states. Countries like Russia oppose the court, whereas countries like Denmark support it. [Treatment 1b +] In a recent survey, more than 85% of Britons said they trusted the Danes, and less than 27% said they trusted the Russians.

These treatments operationalize socialization efforts that rely on appeals to international group identity, in particular, efforts to characterize out-group and in-group behavior to imply (in)appropriate behavior “by association.” References to Russia and Denmark are appropriate.⁶ First, previous surveys of UK citizens show high levels of trust in Denmark and low levels of trust in Russia, increasing the likelihood that respondents see Denmark as a country they would like to be associated with, and Russia as an out-group actor. Second, historians have shown striking parallels in the European integration trajectories of Britain and Denmark, especially in during the 1950-70s, when as members of Europe’s periphery, they often coordinated strategies to join the EEC (Broad 2017). Their trajectory with regards to the ECtHR, however, is very different, with Denmark being one of the first Western European countries to accept its jurisdiction, and Britain one of the last. Third, the status of Russia as an out-group actor was particularly salient at the time of the survey because of a diplomatic row over the poisoning of a former Russian double agent in Salisbury. It is worth noting that *Treatment 1b* should have stronger effects because it contains an additional cue from another set of in-group actors: fellow British citizens. This cue makes explicit social

norms of trust vis-à-vis Denmark and Russia.⁷ In so doing, it reinforces social pressure to support the ECtHR.

Treatments 2 and 3 operationalize the two sides of the principal/agent argument. *Treatment 2* presents the ECtHR as a reliable agent by describing actual judicial behavior. This kind of information might be especially important to ensure the effectiveness of the principle/agent argument in a context where the Court is perceived as having taken on a more expansive role. We draw attention to the Court's "margin of appreciation" doctrine, which allows judges to be somewhat deferential towards their principals. In fact, research shows that after recent episodes of backlash, the ECtHR stepped-up the use of the doctrine, precisely to appease discontent (Madsen 2016):⁸

[Treatment 2] According to experts, the European Court of Human Rights usually allows governments flexibility to decide how they comply with rulings.

Respondents assigned to *treatment group 3* were reminded that the ECtHR is a creature of British diplomacy, and that Britain played an important role in shaping its institutional mission. Doing so serves to signal what interests the Court is likely to promote. This frame was inspired by a pro-ECtHR campaign launched by *The Guardian* in 2016 featuring actor Patrick Stewart.⁹ In line with principal-agent models, we expect it to increase support by signaling Britain's status as a principal:

[Treatment 3] According to experts, the European Court of Human Rights was not imposed on the United Kingdom from outside. In fact, the United Kingdom played an important role in creating the Court, and shaping its core mission.

Finally, respondents in *treatment groups 4a and 4b* were reminded of the Court's mission to promote democracy. This is one of the core messages the ECtHR seeks to convey in its public relations literature. For example, a flyer posted on the

Court's website reads: "The Court's case-law makes the Convention a powerful living instrument for meeting new challenges and consolidating the rule of law and democracy in Europe."¹⁰ *Treatment 4b* reinforces this pro-democracy argument by signaling the existence of a social norm among Britons in favor of democracy:

[Treatment 4a] According to experts, the European Court of Human Rights makes Europe a safer place, ensuring all member countries remain stable democracies.

[Treatment 4b +] In a recent survey, over 90% of Britons agreed that democracy is the best system of government.¹¹

All participants were subsequently asked to express their agreement with statements indicating support for a) British *compliance* with rulings even if the state disagrees with the Court; b) British *withdrawal* from the court's jurisdiction; and c) Britain's participation in a campaign to *eliminate* the ECtHR. The order of presentation was randomized. Instead of looking at the effects on each outcome variable separately, we construct a summary index by taking the first component of a polychoric principal component analysis (PCA) (items are measured in ordinal 5-point Likert scales). Doing so helps reduce noise and avoid multiple hypotheses testing (Ansolabehere et al. 2008; Kalla & Sekhon 2019; Hainmueller, Hangartner & Pietrantuono 2017). The PCA confirms that all three items load on a single scale, yielding only one component with eigenvalue higher than one (2.29). We construct our summary index by extracting this component. Following previous work using various survey items as outcomes, we employ the PCA-index as our main outcome variable and use the single items to provide additional information (Dinas, Fouka & Schlapfer 2020; Hangartner et al. 2019).

Results

Figure 1 reports the distribution of answers to the three survey items about attitudes towards the ECtHR. To avoid interference with the treatment, we only report the summary statistics from respondents in the control condition. The first three panels denote the frequencies in the three Likert-scale items, while the last one shows the distribution of the summary index. Like others before us, we find that the Court fails to secure the support of a majority of respondents across all three attitudinal dimensions; not even the total elimination of the Court is opposed by a clear majority.

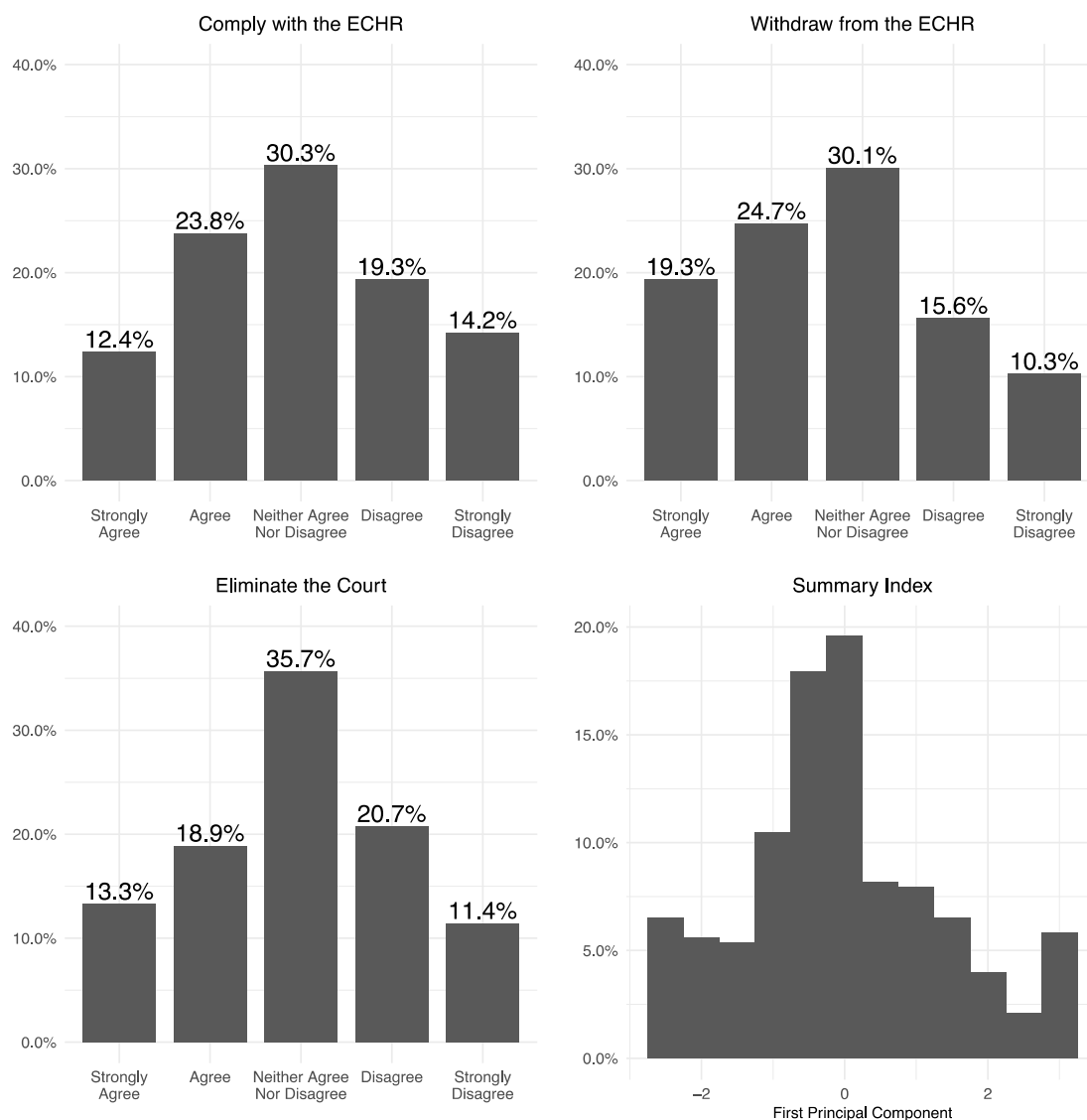


Figure 1: Support for the ECHR including only respondents in the control group.

Can Britons be pushed into adopting more favorable views? Figure 2 presents the main results of the experiment. Both our main outcome variable, the summary index, and the individual survey items were recoded such that higher values indicate more favorable attitudes towards the Court (i.e. more support for compliance, less support for withdrawal/elimination). Overall the picture is somewhat encouraging for the ECtHR. Despite initially priming respondents with a highly antagonizing ECtHR ruling, and explaining that being under the court’s jurisdiction imposes limits on sovereignty, some of the arguments boost support.

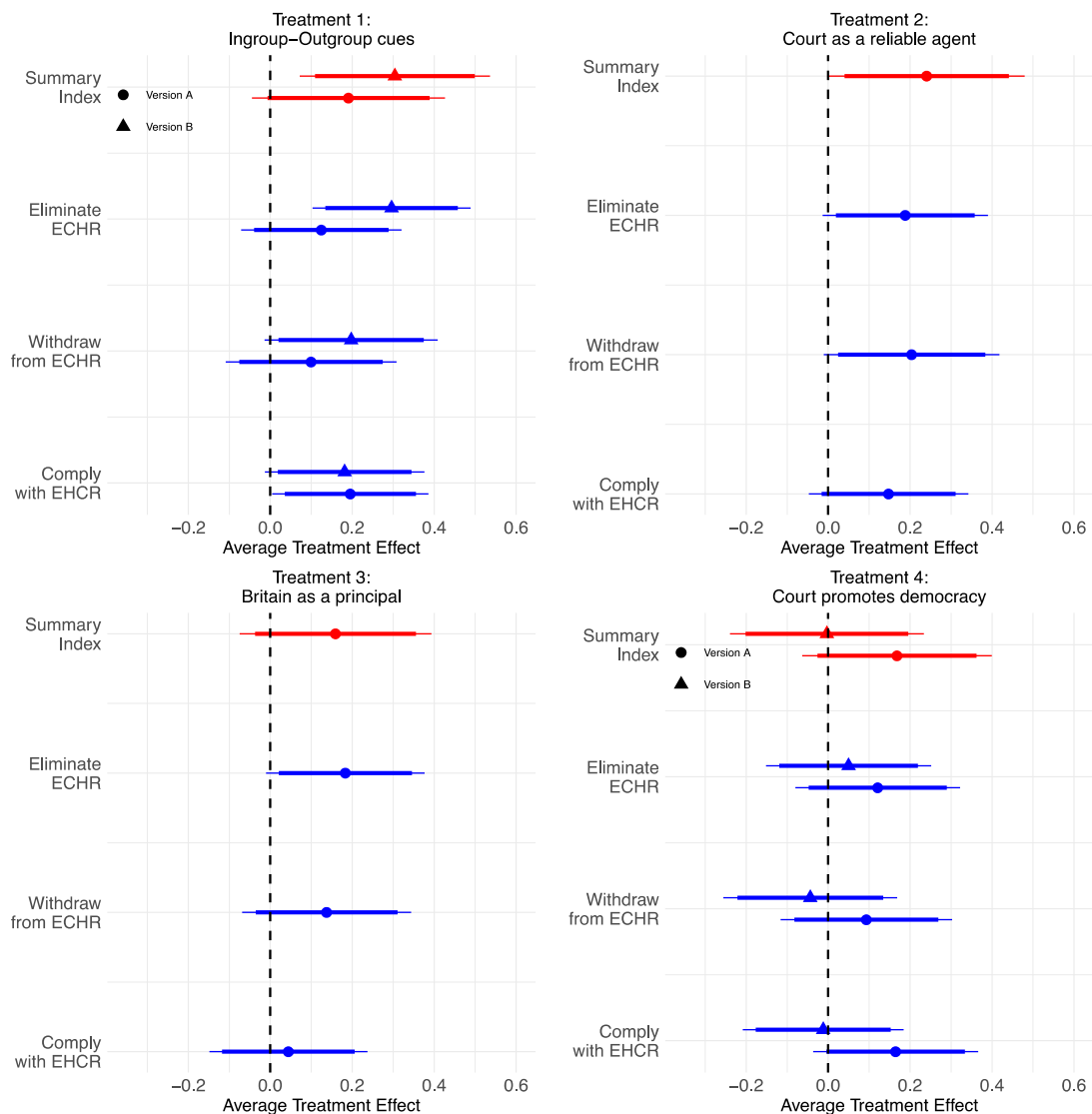


Figure 2: Average Treatment Effects

Note: Thin bars indicate 95% CI, whereas thick bars indicate 90% CI. Responses for the “costly compliance” question were recoded to match the scales of the other two indicators, and thus make sure that higher values denote more positive attitudes. Full regression tables can be found in Appendix C and robustness checks in Appendix D.

The results of *treatments 1a and 1b* suggest that cueing (in)appropriate behavior by highlighting the behavior of in-group/out-group actors, helps contain backlash. As expected, this is especially the case when these cues are reinforced with information that makes explicit social norms of trust vis-à-vis the countries in question (bars with triangles). To the extent that the identitarian argument is effective, it points to the perils of a deteriorating international environment. If “in-group” states veer to positions that are more hostile towards the Court, which seems increasingly likely in the case of Denmark, or if the public begins to feel closer to Russia, it will be harder to use social opprobrium to moderate backlash.

Looking at the composite index, we find that *treatment 1b* increases support for the ECtHR by 0.3 points of one standard deviation. To assess its magnitude, we put this effect into perspective. Working in a much less polarized setting, Dellmuth & Tallberg (forthcoming) explore how vignettes priming respondents about the performance and the decision-making procedures of international organizations influence support towards them. They employ several treatment conditions. The one registering the strongest effect increases support by 0.15 points of a standard deviation.

We now look closer into the individual items. While the stronger version of the treatment seems to exert a positive effect across all three items, the weaker one works only when it comes to the compliance item. The magnitudes are all of same scale, between 0.2 and 0.3 points in a five-point scale. This amounts to an increase between 6% and 10% in positive views of the Court, depending on the treatment arm and the outcome attitude. For example, the average score for the control group in the 1-5 Likert scale for “compliance” is 2.97, which implies that treatment *1a* pushes responses in a more positive direction by 6.5%. The equivalent figure for treatment *1b* and the

“elimination” item, for which the control group has an average score of 2.9, is an increase of 10%. These effect sizes compare favourably to other studies. For example, in the study by Dellmuth & Tallberg (forthcoming) the treatment with the highest absolute size effect increased support for an international organization by 10%, compared to the control-group.

As expected, the treatments that operationalize the two sides of the principal/agent argument present contrasting findings. First, the effect of *treatment 2*, which provides information about the court’s reliability as an agent, reaches statistical significance at the 95% level on the summary index. The magnitude of the effect is almost identical to that of *treatment 1b*. To get a flavor of the effect size, consider the effect of *treatment 2* on the specific components of the index. The average baseline (control-group) value of the “withdrawal” item is 2.75. The effect of 0.20 thus amounts to a 7% increase in support of the ECHR. This is equivalent to a shift from the 35th percentile of the distribution of support for the ECJ among the EU-27 into the 55th percentile, according the 2007 Eurobarometer study (see also Voeten 2013). Second, providing information about Britain’s status as a principal (*treatment 3*) does not exert a significant effect on support. When looking at the individual items, we see that *Treatment 3*, only (if at all) drives people away from the more extreme position, i.e. elimination. Taken as a whole, the analysis suggests that while emphasizing Britain’s leadership during the creation of the ECtHR might do little to defend the court, the Court’s use of the margin of appreciation doctrine might have some traction among the mass public. This is in line with our expectation regarding the comparative strength of the first version of the principle/agent argument.

Finally, the democracy promotion argument is the least effective of all. As anticipated, this may be because it only signals the importance of having a Court for

Europe, but says little about the benefits for Britain of being itself subject to its jurisdiction. The absence of effects may also be because the public simply does not believe in the argument. Given current episodes of democratic backsliding in Eastern Europe, they shouldn't be blamed for it.

In order to evaluate the extent to which respondents internalized key pieces of information provided in each treatment, the survey included manipulation checks. The order of presentation of the manipulation checks was randomized. We asked participants to express their level of agreement with a series of statements. Those exposed to *treatments 1a and 1b* should on average agree more with the phrase “Denmark supports the ECtHR more than Russia;” those exposed to *treatment 2* with the phrase “When it comes to complying with rulings, the ECtHR allows governments room for manoeuvre;” those exposed to *treatment 3* with the phrase “Britain played a significant role in creating the ECtHR;” and those exposed to *treatments 4a and 4b* with the phrase “The ECtHR promotes democracy in Europe.” The results presented in Figure 3 confirm that *treatments 1 to 3* were internalized fairly well, whereas *treatments 4a and 4b* were not. This result is especially interesting because it suggests that the absence of average treatment effects for the democracy promotion frame may be due to the fact that respondents do not believe the argument or did not understand it.

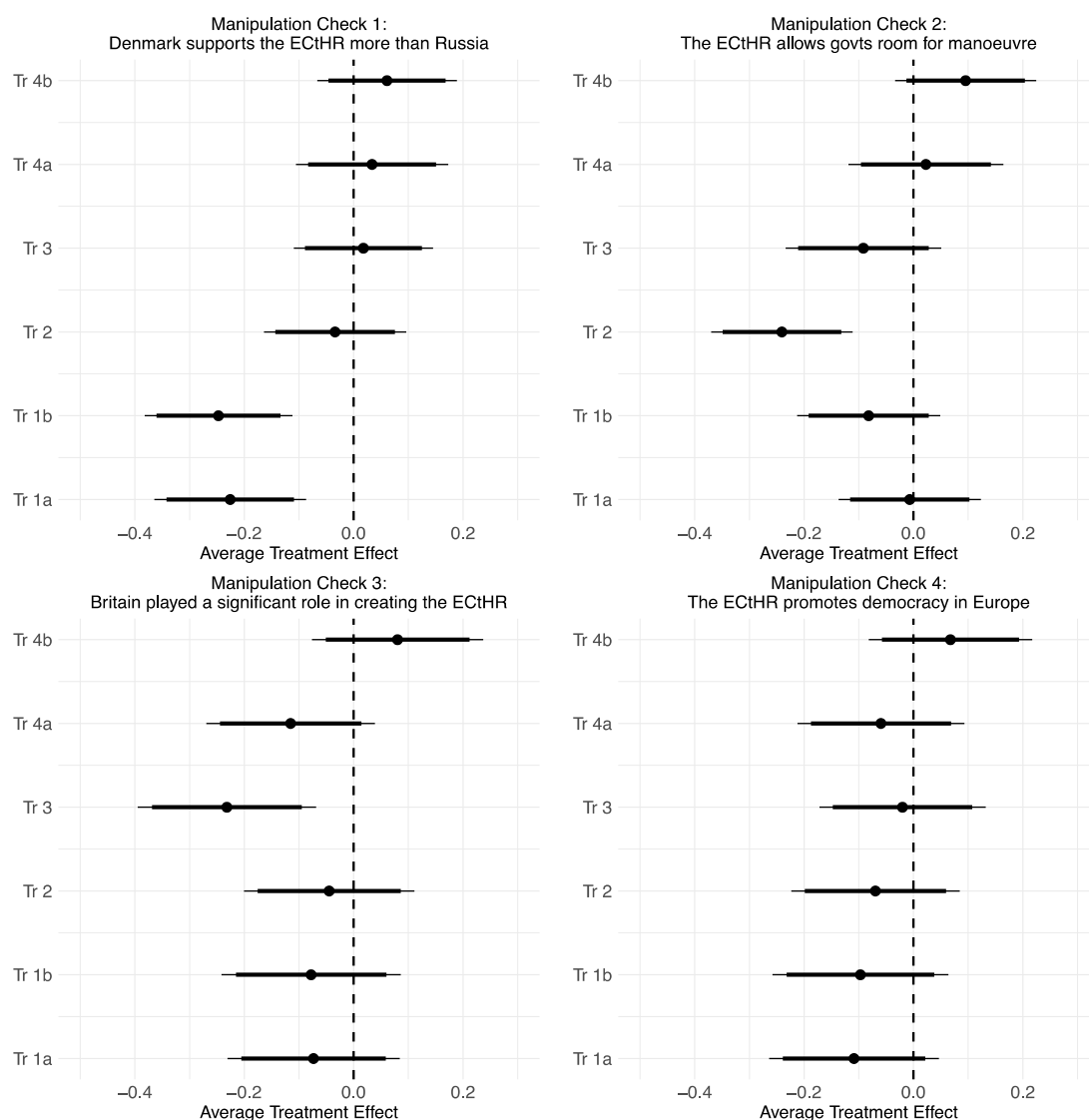


Figure 3: Manipulation Checks

Note: Thin bars indicate 95% CI, whereas thick bars indicate 90% CI. Lower values indicate higher levels of agreement with a statement. Full regression tables can be found in Appendix C.

We now turn to the analysis heterogeneous treatment effects. Motivated reasoning suggests that people react more, and better, to information that is congruent with their priors (Kunda 1990). Are our findings driven by specific subgroups that are particularly sensitive to the treatments? Or are the different arguments able to elicit similar effects across theoretically relevant subgroups? We examine six potential pre-treatment moderators.

First, we compare the magnitude of the effect according to people's vote in the 2016 Brexit referendum. It is possible that our internationalist treatments are more

likely to resonate with *Remain* voters because they are generally better predisposed towards European institutions than *Leave* voters. We compare *Leavers* (the majority) against all other responses,¹² and also look at the moderating effect of baseline attitudes towards European institutions using a measure of trust in the EU. If this “preaching to the choir” hypothesis is correct, in both cases we should see a stronger, positive treatment effect among pro-Europeans.

Second, we explore whether the effects vary by level of political sophistication. Political knowledge tends to make individuals more resistant to new information (Taber & Lodge 2006, Gaines et al. 2007), either because their priors are more rigid (Miller, Saunders & Farhart 2016), or because affective responses to new stimuli are more readily activated (Lodge & Taber 2013). This is especially the case with relatively complex issues, such as those related to supranational institutions (de Vries et al. 2011). We measure political sophistication with a battery of six true/false questions about politics. The resulting measure is the sum of correct answers, with higher values indicating higher levels of sophistication.

Third, we explore whether people’s prior predisposition towards international cooperation shape how they respond to the treatments. This is another version of the “preaching to the choir” hypothesis. If correct, we should see stronger treatment effects among those who are already better predisposed towards international cooperation. This is because our pro-ECtHR arguments are more likely to resonate with pre-existing attitudes and political instincts. We operationalize attitudes towards international cooperation with a 3-items index that measures views about whether Britain should partner with other nations to solve world problems; attitudes towards international aid; and support for interventions in foreign conflicts. In addition, we created a “patriotism” index using four items that measure respondents’ feelings of attachment to their

country. For both variables we construct scales by taking the first component of a polychoric PCA.

Finally, we look at whether prior levels of trust in Denmark and Russia affect people's sensitivity to *treatments 1a and 1b*. We expect a stronger treatment effect among those who already trust Denmark and distrust Russia, our proxies for in/out group identity in these treatment arms. Our measure expresses the difference between trust in these two nations, ranging from low levels of trust in Denmark and high levels of trust in Russia, to the reverse, high levels of trust in Denmark and low levels of trust in Russia. The variable is heavily skewed towards higher values, as the average trust in Denmark is much higher than the average trust in Russia.¹³

Each panel in Figure 4 shows the differential treatment effect according to a one-unit increase in the value of the moderator. This translates into a direct comparison between *Leavers* and *Remainers*, and between those trusting and those not trusting the EU in the first and second plots. For all other plots, we show the change in the treatment effect by increasing the moderator by one unit. In all cases, we derive the point estimates by interacting the moderator with each treatment condition. The overall message is clear: with the exception of patriotism for the case of first treatment arm, there is no instance in which the interaction term approaches statistical significance. In most instances, the differences in the effects are small and imply that the magnitude of the effects are quite uniformly distributed across respondents. Although heterogeneous treatment effects are typically low in survey experiments, this surprisingly high level of homogeneity is indicative that the arguments used to defend the ECtHR can prove effective (or not) across a wide spectrum of respondents.¹⁴

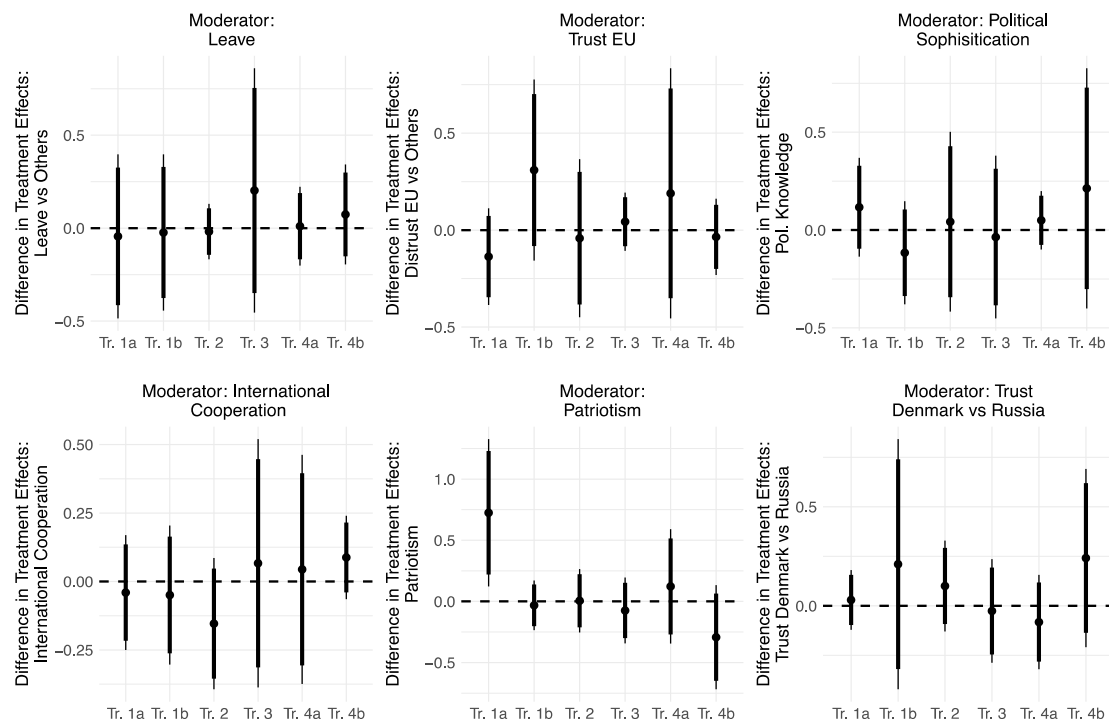


Figure 4: Heterogenous Treatment Effects

Note: Each point estimate, accompanied by the 95% confidence intervals, represents the interaction term in a regression of the summary index on each treatment and the interaction between each treatment and the moderator in question. Full regression tables can be found in Appendix C.

The last step in the analysis is to examine the extent to which our treatments had spillover effects on other post-treatment variables, indicating persistent attitudinal changes or even “persuasion”. In terms of *treatments 1a and 1b*, we expect that information about Denmark’s and Russia’s attitudes towards in the ECtHR lead treated respondents to agree more with the view that Britain should behave like countries “similar to us.” In the case of *treatments 2 and 3*, we expect that both versions of the principal/agent argument make treated respondents (a) more likely to support the proposition that the UK needs to defend the institutions it helped shape and (b) less supportive of the view that international institutions are self-serving. Finally, we expect that *treatments 4a and 4b*, which highlight the ECtHR’s role in promoting democracy, make treated respondents more likely to agree with the view that democratic countries make for more reliable partners.

In order to examine these spillover effects, we regress a series of post-treatment indicators against the treatment conditions. Each of these indicators is measured using a 5-point scale, and the order of presentation was randomized. The results (not shown) provide no evidence that respondents who received a given treatment changed their attitudes towards related issues. These null findings put the persuasive power of our treatments into perspective. While we find some effects on attitudes towards compliance and backlash, none of the framings seems to leave an imprint on more general views about international affairs or cooperation. First, this suggests that the effects of the treatments are short-lasting. This is not surprising given that they were put forward in the context of a survey, and without much rhetorical elaboration. In this sense, the fact that they moved attitudes in a positive direction is in itself encouraging. Second, because the framings failed to alter ancillary attitudes, the findings also suggest that positive ATEs are not driven by deep reflection.

Conclusions

Citizens and politicians in many advanced democracies are increasingly skeptical of the benefits of international cooperation. A salient manifestation is the backlash against international courts. In light of the difficulties that supporters of the liberal order face when trying to defend it, in this paper we investigated the effectiveness of arguments that could be deployed to contain backlash against the ECtHR. The study relied on a survey experiment fielded in Britain, where the ECtHR is very unpopular. The main finding is that despite providing respondents with information that unequivocally signals the sovereignty costs of membership, positive arguments that remind citizens of the reliability of the Court as an agent, and those that

associate support for the court with the behavior of an “in-group” states (and opposition with the behavior of an “out group” state), help contain backlash.

We expected the democracy promotion treatment to be the least effective because of its focus on benefits that are both distant and mainly apply to others, not to Britain. We also expected the principle/agent argument to be most effective when providing concrete evidence of the court’s actual reliability. The results support both conjectures. There is, however, evidence that both normative/identitarian and cost-benefit frames have the potential to shift opinions in favor of the Court. In fact, cueing international in/out group identity and the Court’s reliability as an agent, both produce similar effects. This points to the availability of a variety of strategies for those seeking to organize public campaigns. Importantly, these cues seem to work across the board: we find no evidence that treatment effects are driven, for example, by subgroups with a more positive predisposition towards internationalism or specific actors in the international system.

Our paper does not probe an exhaustive set of arguments that campaigners could deploy to contain backlash. In particular, most of our treatments are “state-centric,” and expect citizens to think like their leaders. This excludes arguments that focus on the direct relationship between the ECtHR and individuals rather the relationship between the Court and member states. An obvious next step could therefore be to explore the extent to which arguments that focus on the positive impact of the ECtHR on individual rights have a similar appeal.

When we designed the experiment, we decided that attributing the treatments to “experts” would enhance the neutrality of the messages. However, this might not be a tenable assumption, especially in the current UK context, where support for Brexit is predicted on a profound disbelief in expert opinion. As one prominent Brexiteer put it

during the referendum, “people in this country have had enough of experts.”¹⁵ If this is true, we may have added an additional hurdle for our arguments to alter the attitudinal bases of backlash. In any case, another interesting avenue for future research would be to vary the type of messenger. In addition to experts, researchers could explore the effect of NGOs, parties, or specific opinion leaders.

Finally, researchers could probe the strength of our treatments as a function of the type of general information provided about the ECtHR. We deliberately sought to stack the deck against finding any effects by mentioning a highly salient case that triggered instant opposition. The ruling in question involved the Court protecting the rights of a type of defendant that is unlikely to elicit sympathy: an Islamic preacher accused of terrorism. Do our effects increase in magnitude if citizens are primed with information about cases that do not have such negative connotations or cases that produce tangible benefits for socially accepted groups? That would point to another way in which the Court could seek to bolster its legitimacy. Furthermore, does priming specific rulings produce heterogeneous results among subgroups that are directly aggrieved by that decision, or directly benefit from it? In our case, one could speculate that religious minorities facing the risk of similar accusations as the preacher might be better predisposed to buy the arguments proposed in the treatments than, say, individuals who are concerned about terrorism. Unfortunately, our data does not allow us to test for these differences. Designing future studies with these possibilities in mind might help answer the question of whether benefiting individually from the Court is important in shaping support. It would also help us understand how perceptions of the Court as guarantor of rights for more or less socially accepted groups moderate support.

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Online Appendix

Additional information may be found in the Online Appendix.

Notes

¹ On mass attitudes towards US foreign policy and the EU, see Kertzer & Zeitzoff (2017) and De Vries & Hobolt (2016).

² *Hirst v. UK (2005)*; *Othman (Abu Qatada) v. UK (2012)*

³ See Appendix A for information about the survey.

⁴ The caveat of such a strategy is that we cannot obtain average levels of support because respondents in the control condition have been primed with information about the Court. We opted to sacrifice such information so as to better delve into arguments that can boost support. Studies providing descriptive information about public attitudes to the court show that overall approval remains low (Voeten 2013).

⁵ See Appendix B for balance tests.

⁶ One shortcoming is that this does not allow us to know whether in/out-group produce different effects.

⁷ Figures reported by Pew Global. See <http://www.pewglobal.org/database/indicator/27/country/231> [accessed February 28, 2018]

⁸ In a recent rebuttal to a fierce criticism of the Court made by a former UK Supreme Court Justice, ECtHR Judge Spano emphasized this doctrine as evidence of the institution's restraint and reasonableness. See https://www.law.ox.ac.uk/sites/files/oxlaw/6643926-v1-rso_new_sumption_lecture_london_20022020.pdf [accesses, 2 March 2020]

⁹ For the clip see: <https://www.theguardian.com/culture/video/2016/apr/25/patrick-stewart-sketch-what-has-the-echr-ever-done-for-us-video> [accessed, 9 January 2019]

¹⁰ See https://www.echr.coe.int/Documents/Court_in_brief_ENG.pdf [accessed, 2 March 2020]

¹¹ Figure comes from wave 6 of the WVS.

¹² When comparing only against *Remainers* the results are substantively identical. This is not a surprise as the vast majority belongs to these two groups (47.07% *Leavers*; 40.67% *Remainers*).

¹³ Mean value is 1.13, with standard deviation 0.985 and range from -3 to 3.

¹⁴ One counter-argument is that what really matters is whether respondents are aware of the ECtHR. To examine this source of heterogeneity, we use one of the political sophistication items, which asks respondents whether the ECtHR is part of the EU. Only 30% of the sample answered correctly. In Appendix D we distinguish respondents according to whether they gave the correct answer and find no significant interaction effects. Figures D1a-D1c, show similar differential effect estimates, pointing to absence of such heterogeneity. Figures D6 and D7 replicate this analysis controlling for type of sample (D6) and excluding the top-up sample (D7). Results remain substantively identical to those presented here.

¹⁵ See <https://www.ft.com/content/3be49734-29cb-11e6-83e4-abc22d5d108c> [last accessed, 9 January 2019].