

## The Relative Authority of International Law and Courts in the Human Rights and Trade Regimes: A Survey Experiment<sup>1</sup>

Oisin Suttle  
Maynooth University

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### 1. Overview

This paper presents the preliminary results of a survey experiment examining the effects of international illegality on public support for proposed public policies. It adds three specific dimensions to the existing literature on this subject. First, it tests whether the effects of international illegality differ depending on the international regime whose rules are violated, testing the effects of violations of both human rights and trade regimes. Second, it tests how far the involvement of international courts vary these effects. And third, it examines these questions using parallel studies with UK and US respondents to test the robustness and generalisability of the relations identified.

Results confirm that, across both jurisdictions, illegality under either trade or human rights regimes, and with or without the additional involvement of an international court, have a statistically significant negative effect of public support for a policy. They further identify a greater negative effect where an international court has confirmed this illegality, although this result, while consistently observed across all cohorts, is only statistically significant ( $p < 0.05$ ) in one (or, depending on the statistical model adopted, three) cohort and scenario. There is also, in three of four comparable scenarios and cases, an apparently greater effect from illegality under international human rights law, compared to international trade law, but these results are small and not statistically significant.

### 2. Motivation and Theoretical Context

A number of studies have used survey experiments to test whether international illegality reduces public support for policies. Motivated by a concern to examine one possible mechanism by which international law may affect state behaviour, these studies have identified, across a range of scenarios, a moderate but statistically significant support-depressing effect arising from international illegality. This study seeks to extend that work by examining how far these effects vary across regimes, with the involvement of international courts, and across two large anglophone jurisdictions.

#### Variance Across Regimes

International relations scholars have developed various hypotheses to explain the causal efficacy of international law i.e. whether and if so why do states comply with international law.

- Rationalist theorists have emphasised the role of international agreements in facilitating mutually beneficial cooperation, and the importance of reputation in maintaining those schemes. States, on this

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<sup>1</sup> The results presented here are preliminary, examining only a subset of the data collected, and a subset of the hypotheses which it was initially proposed to test. Specifically, it does not examine *inter alia*: (i) results from a smaller Irish respondent sample, or hypotheses whose testing required reliance on this Irish sample. While it was planned to collect an Irish sample the number of responses collected and the poor quality of the data meant that it was not possible to make any sensible use of this. The experience with the Irish sample will be fully discussed in the final version of this paper.; (ii) representativeness or otherwise of the sample. While the research design does not assume a representative sample, it will be necessary to examine whether / how far the sample is representative, including in particular in relation to age and political identification, and to examine how far the effects identified are replicated when the data is disaggregated along these dimensions; (iii) answers to follow-up questions. In addition to the principal, “support” question whose results are discussed here, respondents were asked a number of follow-up questions about the importance of international law and the mechanisms by which they understood it to act. These will be examined in the full paper to see how far they can explain the responses provided to the primary ‘support’ question.

view, comply with international law because they perceive a long term self-interest in sustaining specific cooperative schemes, and in preserving their reputation as trustworthy counterparties in the context of other, including future, agreements.

- Constructivist theorists have emphasised the ways that norms are internalised, constituting standards of legitimate behaviour for states, who come to value compliance with international norms, including international law, for its own sake, independent of instrumental calculations of short or long term self-interest.

These two sets of theories are frequently deployed to explain different aspects of international law. Rationalist theorists' focus on mutually beneficial cooperation and long-term self-interest seem most relevant to agreements in the economic and security contexts, where states accrue clear benefits from cooperation and coordination with other states. They fit less well with certain aspects of international humanitarian law, including especially as it applies to asymmetric conflicts, and to international human rights law, where states expect little if any material benefit from other states' compliance with treaty commitments. Explaining law compliance in these latter areas thus depends more heavily on constructivist theories.<sup>2</sup>

In both rationalist and constructivist accounts, effects on the general public play a significant role, but that role is somewhat different in each case.

- Constructivist accounts understand elite decision-makers as in part motivated by political support. States internalise norms to the extent that the politically active population of those states comes to value compliance with those norms.<sup>3</sup> Where voters see compliance with international law as important, leaders can expect to pay a political cost for departing from those norms.
- Rationalist accounts emphasise material benefits from sustaining cooperation. Public opinion is less directly relevant in these accounts: compliance is more commonly attributed to concerns that non-compliance will result in direct costs, through retaliation by counterparties, or indirect costs, through reputational effects undermining the prospects for future cooperation and/or altering market behaviour. However some of these mechanisms will still be mediated through impacts – including economic impacts – on wider publics, so responses of those publics towards (non-) compliance remain significant.<sup>4</sup>

Political philosophers have sought to answer related but distinct questions about international law's legitimate authority. i.e. whether and under what circumstances states should obey international law?

- A number of different approaches have been developed, emphasising inter alia consent, fair-play, democracy, and various instrumental accounts emphasising the ways that compliance with international law may help states to realise valued goals and/or support and preserve valuable institutions.

As with the international relations literature, different philosophical accounts of international law's authority fit better with some aspects of international than others. In particular, establishing the authority of much international economic law proves difficult under many of these theories, having regard to the manner in which it is made and enforced, the kinds of policies that it regulates, and the values that underpin it.

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<sup>2</sup> This should not imply that constructivist theories have nothing to say about economic law: the economic liberalism underpinning much economic law is itself value-laden, and those values may be internalised to a greater or lesser extent.

<sup>3</sup> This is not the only relevant mechanism. Socialisation / acculturation can also happen at the elite level. However, elites are subject to electoral or other political support disciplines, so socialisation that is limited to the elite level will be unstable absent some element of mass socialisation (as elites who follow elite norms not shared by political support constituencies can expect to lose support.)

<sup>4</sup> Signalling models emphasise treaties as signalling mechanisms to international counterparties, but in order for those signals to be credible they must also run through the domestic political system.

### Variance depending on the Role of International Courts and Tribunals

International courts and tribunals have become an increasingly prominent feature of international law over the past three decades. Despite lacking the kind of enforcement capacities typically associated with domestic courts, states have given greater roles to independent judges and arbitrators to determine their legal rights and obligations across areas as diverse as trade, investment, human rights, international criminal law and the law of the sea, and have made international litigation a prominent part of their international political practice.

Why international courts matter, and whether and to what extent states do and should have regard to their decisions are points of debate within both international relations and political philosophy.

Amongst rationalist international relations scholars, establishing / accepting the jurisdiction of international courts is commonly understood as a commitment strategy, reducing the opportunities for states parties to agreements to rely on ambiguities in those agreements to avoid their obligations. The existence of an international court, and the knowledge that this court may hold against the state, thus increases the reputational costs associated with violation. For constructivists, by contrast, international courts constitute part of the social context in which states negotiate their own understandings of norms of conduct and appropriate behaviour: compliance with the decisions of courts is itself an important normative commitment for states with strong rule-of-law traditions, while the international court also constitutes a privileged participant in debates about the meaning and content of substantive norms within a given regime.

Political philosophers have interrogated the grounds of international courts' and tribunals' authority, which is distinct from the bindingness of the law that they administer. Again, different theories will offer different answers: for consent theorists and those emphasising democratic credentials, the existence of international courts whose interpretations of treaty texts diverge significantly from the expectations of the parties may be a challenge. By contrast, theories emphasising fair-play, deliberative rationality or the instrumental value of particular regimes, including for coordination, may more readily support tribunals' authority even where interpretations depart from treaty text and authors' expectations.

### Variance Across States

Both international relations and (at least some) political philosophy theories of international law's authority suggest that we should expect to see variance across states.

Amongst international relations scholars, rationalists expect to find variance having regard to *inter alia* the position of a particular state within the international distribution of power, the centrality of a particular state in a given regime, and the benefits and burdens accruing to a particular state, whether from a specific norm or regime, or from international cooperation in general. Constructivists will expect to see variance in the extent to which particular norms and regimes are internalised by particular states, which may vary over time. Both rationalists and constructivists might also expect to see differences in the importance of, and hence deference to, international courts depending on the size of the states involved: for smaller states, international adjudication offers an attractive means to level power imbalances, while larger states may perceive greater prospects of achieving their goals through less legalized means.

Amongst political philosophers, the relative power of states may be relevant to establishing how far consent or other process-based accounts of legitimate authority apply to those states, while the distribution of both benefits and capacities may be relevant to evaluating natural duty, fair play and instrumental accounts of authority.

This study primarily examines attitudes across two anglophone jurisdictions: the United Kingdom and the United States. While these states have much in common<sup>5</sup>, including culturally, they occupy very different positions in the international system and economy, playing quite different roles in the constitution and operation of key

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<sup>5</sup> They have similar liberal democratic regime types, with strong rule of law / judicial independence, so accounts emphasising these (e.g. Slaughter 1995) are likely to see in similar lights

international institutions. Public discourse in relation to key international institutions has also diverged sharply over recent years across these jurisdictions.

The United Kingdom has historically played an active role in the development of the international human rights regime, including as a key driver of the European Convention of Human Rights. International human rights protections have, however, become more controversial in the United Kingdom over the past decade, with prominent calls – including especially from members of the Conservative Party which has been in government since 2010 – for UK withdrawal from the European Convention. The UK has also been an active participant in the international trade regime from its foundation, albeit as a member state of the European Union from 1973 until 2020. While the political movement towards Brexit plausibly expresses some of the same anti-globalisation sentiments reflected in more recent US attitudes and policies, the dominant rhetoric of anti-European campaigners in the UK has been a pro-trade one, characterising the European Union as a protectionist power in contrast to trade-expanding ambitions of campaigners.

The United States has historically been reluctant to commit to international human rights institutions. While it signed the American Convention of Human Rights and the ICESCR, it has never ratified either agreement. It is a party to the ICCPR, but subject to reservations, and is not a party to Optional Protocol 1 which affords a right of individual complaint. It has historically played a more central role in the international trade regime, leading the negotiation of the original GATT and as one of the key participants in subsequent trade rounds, including pressing in the Uruguay Round for stricter binding dispute settlement. However the period since 2016 has seen a significant pulling back by the United States from the trade regime, including through its blocking of appointments to the WTO Appellate Body, which has effectively suspended the operation of that institution.

As a two country study, there are obviously significant limitations on the generalisability of claims that can be made about how authority varies across jurisdictions. It can provide a limited test of cross-jurisdiction hypotheses, but a key purpose in adopting the two country approach over a single-country approach is also to try to control for some of the specific experiences in any single jurisdictions.

### 3. Hypotheses

This theoretical context suggests a number of hypotheses that this study seeks to test.

In relation to variance across regimes, the following hypotheses are examined:

- HA0: *There is no difference in the effect on public support of a policy based on whether the policy is prohibited by international human rights law or international trade law.* (i.e. no difference in results between international trade and international human rights cases.)
- HA1: *Prohibition by international human rights law has a greater support-depressing effect than prohibition by international trade law.* (Supports constructivist international relations theories which emphasise internalisation of human rights norms, and reflects findings of political philosophy scholarship on moral reasons to comply with international law.)
- HA2: *Prohibition by international trade law has a greater support-depressing effect than prohibition by international human rights law.* (Supports rationalist international relations theories, and suggests greater role of prudential rather than moral reasoning on the part of voters.)
- HA3: *Prohibition by international law norms that are described as distributive has a lesser support-depressing effect than prohibition by similar norms not described in these terms.* (Supports political philosophy theories that imply limited authority of distributive law.)

In relation to the involvement of international courts, the following hypotheses are examined:

- HB0: *The fact that an international court has found a policy to be unlawful has no additional effect on public support, beyond that resulting from the policy's being described as unlawful simpliciter.* (Suggests that international courts have little if any de facto authority among voters.)

- **HB1:** *The fact that an international court has found a policy to be unlawful has an additional support-depressing effect compared to a situation where a policy's is described as unlawful simpliciter.* (Suggests that international tribunals have significant de facto authority which enhances the practical bindingness of the international laws they administer.)
- **HB2:** *The support-depressing effects of an international court having found a policy unlawful are greater in the case of international trade law than international human rights law.* (Suggests that the de facto authority of international tribunals is greater where they are tasked with sustaining international cooperation and protecting expectations amongst different states, compared to cases where they are tasked with policing the self-binding commitments of individual states. Compatible with rationalist accounts of international courts' role.)
- **HB3:** *The support-depressing effects of an international court having found a policy unlawful are greater in the case of international human rights law than international trade law.* (Suggests that the de facto authority of international tribunals is greater where they are tasked with examining complex moral questions, compared to those where they are tasked with simply policing compliance with past commitments by relevant states. May be more compatible with constructivist than rationalist accounts of courts' authority.)

In relation to variance across jurisdictions, the following hypotheses are examined<sup>6</sup>:

- **HC0:** *There is no difference in the support-depressing effect of prohibition by international law between the two jurisdictions studied.* (Implies international law non-compliance has the same effect on public opinion across the three states.)
- **HC1:** *Illegality under international human rights law has a comparatively greater support-depressing effect in the United Kingdom, while illegality under the international trade regime has a greater support-depressing effect in the United States.* (Supports view that states that have played a prominent role in establishing specific regimes, and thereby more firmly committed their reputation to them, will be more concerned about subsequent violation of the laws of those regimes.)
- **HC2:** *Illegality under international human rights law has a comparatively greater support-depressing effect in the United States, while illegality under the international trade regime has a greater support-depressing effect in the United Kingdom.* (Supports view that perceived benefits and costs from particular regimes affect level of voter concern for violation of laws of those regimes.)
- **HC3:** *International illegality has a greater support-depressing effect in the United Kingdom than the United States, across both regimes.* (Supports rationalist / realist accounts that emphasise greater concern to breach of law in smaller and less powerful states.)<sup>7</sup>
- **HC4:** *Prior finding of illegality by an international court has a greater support-depressing effect in the United Kingdom than the United States, across both regimes.* (Supports view that smaller and less powerful states have greater reason to value, and comply with, third party adjudication than larger and stronger states.)

#### 4. Study Design

In order to test these various hypotheses, we conducted a vignette-based online survey experiment, focusing primarily on respondents' reported support for a hypothetical policy to address medical costs. By varying the

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<sup>6</sup> These hypotheses depart from those initially intended to be tested, insofar as the original research design depended on collecting a meaningful Irish sample. Adjustments here reflect the absence of an Irish sample, which limits what claims can be tested. For full transparency, the hypotheses as originally articulated in the research design are included as Appendix 2 below.

<sup>7</sup> This result is somewhat borne out in work on violations of trade agreements, which are more frequent where the stronger party does not have reason to fear retaliation from the weaker party.

way the policy is described to different respondents, we seek to test how various features, and specifically the hypothesised international law features, affect public support.

A key goal of the study is to test for variance in the effects of illegality under human rights and trade regimes. To isolate the regime effect, as much else as possible must be kept fixed. In particular, it was necessary to identify a policy proposal that might plausibly raise legal difficulties under both human rights and trade regimes.

The study relied on a vignette involving proposed compulsory licensing of pharmaceuticals, which plausibly raised issues under both human rights law (UDHR Art 27(2), ECHR Protocol 1, ICESCR Art 15(1), American Declaration Art 13, ACHR Art 21) and international trade law (TRIPS Agreement). While subject-matter experts may have clear views on whether the policy described in the vignette in fact violates rules of the relevant regimes, and the United States is not in fact a party to any of the human rights treaties that protect intellectual property, respondents were not expected to be subject-matter experts, so simply ensuring that the scenarios are plausible should suffice for experimental validity.

The specific issue addressed (medical costs) is highly salient in both jurisdictions, and related issues (encouraging innovation, development costs and profits of pharmaceutical companies, compulsory licensing) have been prominently discussed in recent years in the context of Covid-19 vaccines, so it was expected that respondents would have, or be able to form, views on the issue posed, independent of the experimental (international law) treatment. (A vignette specifically addressing vaccine patents was considered but rejected as this was expected to raise complications due to political controversies in relation to covid-19 vaccines.)

All respondents read the same base vignette, as set out above. For each respondent, the headline (“Proposed Policy to Cut Medical Costs”) was the same. However the sub-headline (in a slightly smaller font than the main headline, but still larger than the body text) was different, with the control group reading a sub-headline that “Critics worry about long term impacts”, and treatment groups reading a sub-headline drawing their attention to the most important aspect of the treatment, ranging from “Policy violates international human rights law” to “International court confirms policy violates international trade law. Each group also read some additional text at the end of the base vignette, which constituted the relevant treatment, and which described in more detail the supposed international legal position. In the case of the control group, this additional text comprised a statement that “The Attorney General has advised that this proposal does not raise any issues under international law.”. Test groups read that the policy violated either international human rights law, or international trade law. For two groups (1A and 2A), this was the only additional text. Two further groups (1B and 2B) read an additional line, to the effect that similar policies had recently been found unlawful by a relevant international court or tribunal. For UK respondents reading that the policy violated human rights, this referred to the European Court of Human Rights. As no international human rights court has jurisdiction over the United States, for US respondents reading that the policy violated human rights this line referred to the International Court of Justice. For both jurisdictions, those reading that the policy violated trade law were told that this had been confirmed by the WTO Appellate Body. Finally, two further groups (3A and 3B) read the same text as groups 2A and 2B respectively, indicating that the policy violated international trade law and, for the latter group, that this has been confirmed by the WTO Appellate Body. However, groups 3A and 3B were presented with one

Base Vignette

Please consider the following hypothetical scenario and answer the questions that follow.

**Proposed Policy to Cut Medical Costs**  
**[SUBHEADLINE HERE]**

As you probably know, many medicines are protected by patents, which mean that the owners of those patents are the only ones who can legally manufacture and sell those medicines. This allows them to charge much higher prices than they could if they had to compete with other manufacturers.

As part of efforts to reduce prescription drug prices, the government is considering issuing compulsory licences for the ten most commonly prescribed patented medicines, which would allow other manufacturers to compete with the patent owners, forcing down prices.

Advocates of compulsory licensing say that these licences are essential to reduce the excessive costs of essential medicines and the exorbitant profits of drug companies. Opponents say that compulsory licences unfairly burden these companies, and that it will discourage investment and innovation, reducing the supply of new medicines in the future.

further piece of information, to the effect that “*Supporters of the relevant international trade laws say they produce overall economic benefits. Critics say these laws benefit some states more than others, and benefit some groups within states at the expense of others.*” The purpose of this addition was to specifically draw these respondents’ attention to the potential distributive role of international trade law in general, and international intellectual property protection in particular. The full text of the various treatments, including both sub-headlines and additional text, is set out below:

<p><b>Control</b></p> <p><u>Subheadline:</u> Critics worry about long term impacts</p> <p><u>Additional Text:</u> The Attorney General has advised that this proposal does not raise any issues under international law.</p>
<p><b>Test 1A – Human Rights Law Violation, No Court Involvement</b></p> <p>Subheadline: Policy violates international human rights law</p> <p>The Attorney General has advised that introducing this proposal would violate international human rights laws, by infringing on patent owners’ property rights, including violating international human rights treaties that [country] has signed and ratified.</p>
<p><b>Test 1B Human Rights Law Violation, with Court Confirming Violation</b></p> <p><u>Subheadline:</u> International court confirms policy violates international human rights law</p> <p>The Attorney General has advised that introducing this proposal would violate international human rights laws, by infringing on patent owners’ property rights, including violating international human rights treaties that [country] has signed and ratified.</p> <p>The [European Court of Human Rights / International Court of Justice], the highest court for international human rights disputes, has recently confirmed that compulsory licensing schemes of this kind violate relevant human rights treaties.</p>
<p><b>Test 2A Trade Law Violation, with No Court Involvement</b></p> <p><u>Subheadline:</u> Policy violates international trade law</p> <p>The Attorney General has advised that introducing this proposal would violate international trade law, by infringing on patent owners’ property rights, including violating international trade treaties that [country] has signed and ratified.</p>
<p><b>Test 2B Trade Law Violation, With Court Confirming Violation</b></p> <p><u>Subheadline:</u> International court confirms policy violates international trade law</p> <p><u>Additional Text:</u> The Attorney General has advised that introducing this proposal would violate international trade law, by infringing on patent owners’ property rights, including violating international trade treaties that [country] has signed and ratified.</p> <p>The WTO Appellate Body, the highest court for international trade disputes, has recently confirmed that compulsory licensing schemes of this kind violate relevant international trade treaties.</p>
<p><b>Test 3A Trade Law Violation, with No Court Involvement, and reference to Law’s Distributive Effects</b></p> <p><u>Subheadline:</u> Policy violates international trade law</p> <p><u>Additional Text:</u> The Attorney General has advised that introducing this proposal would violate international trade law, by infringing on patent owners’ property rights, including violating international trade treaties that [country] has signed and ratified.</p> <p>Supporters of the relevant international trade laws say they produce overall economic benefits. Critics say these laws benefit some states more than others, and benefit some groups within states at the expense of others.</p>
<p><b>Test 3B Trade Law Violation, With Court Involvement, and reference to Law’s Distributive Effects</b></p> <p><u>Subheadline:</u> International court confirms policy violates international trade law</p> <p><u>Additional Text:</u> The Attorney General has advised that introducing this proposal would violate international trade law, by infringing on patent owners’ property rights, including violating international trade treaties that [country] has signed and ratified.</p> <p>The WTO Appellate Body, the highest court for international trade disputes, has recently confirmed that compulsory licensing schemes of this kind violate relevant international trade treaties.</p> <p>Supporters of the relevant international trade laws say they produce overall economic benefits. Critics say these laws benefit some states more than others, and benefit some groups within states at the expense of others.</p>

Having read this text, respondents were asked to answer a series of questions.

Immediately after reading the vignette, respondents were asked the following multiple-choice question:

Based on the scenario you have just read, how strongly would you support or oppose the proposed policy?

- Strongly Support
- Support
- Slightly Support
- Slightly Oppose
- Oppose
- Strongly Oppose

How respondents answered this question (referred to below as “Support”) constitutes the primary test of the hypotheses above. Results of this question are set out in the results section below.

Having answered the Support question, respondents were next presented with an attention check question. Respondents who failed this attention check were immediately routed out of the survey, and their answers to the Support question were removed from the results data.

Respondents who successfully completed this attention check were next asked a manipulation check question. (Both attention check and manipulation check are asked after the main experimental question in order to avoid any possibility that these may bias responses.) The purpose of this question was to confirm whether respondents had in fact understood and retained the key information from the vignette, and specifically the information comprising the treatment. Respondents were therefore asked the following:

Which of the following statements best describes the international legal position of the proposed compulsory licensing scheme?

- i.) The new scheme does not raise any international law issues.
- ii.) The new scheme violates international human rights law.
- iii.) The new scheme violates international human rights law and an international court has found similar schemes unlawful.
- iv.) The new scheme violates international trade law.
- v.) The new scheme violates international trade law and an international court has found similar schemes unlawful.

Respondents who did not correctly answer the manipulation check remained in the survey, and answers to both the experimental and follow-up (see below) questions were recorded. However, at the analysis stage, respondents whose answers to the manipulation check indicated that they had not picked up even the most basic features of the scenario (i.e. whether the policy was lawful or not, and which regime the illegality related to) were removed from the data set. However if a respondent correctly identified the regime under which the illegality arose (i.e. trade vs human rights), then their responses were retained, even if they selected the wrong response in relation to the presence or absence of an international court. (E.g. a respondent in group 1A should select option ii on this question, but their answers were retained provided they selected either ii or iii. If they selected i, iv or v then their responses were removed. In the final version of this paper the analysis will be replicated (a) including all responses and (b) including only responses where the respondent answered the manipulation check exactly correctly, and results of these additional analyses will be separately reported.)

Following the manipulation check, respondents were asked a series of follow-up questions. Responses to these questions do not form part of this preliminary survey. However they are described below for the sake of completeness. (The final version of this paper will examine these responses in detail, using these together with the answer to the Support question to further interrogate the various hypotheses.)

On a scale from 1 to 5, where 5 means "Very Important" and 1 means "Not important at all", how important is international law in affecting your level of support for the proposed compulsory licensing scheme?

- 5 – Very Important



- 4 – Important
- 3 – Moderately Important
- 2 – Slightly Important
- 1 – Not Important at All

Please rate your agreement or disagreement with each of the following statements.

[6 point response scale: Strongly Agree / Agree / Slightly Agree / Slightly Disagree / Disagree / Strongly Disagree]

- If a country breaks international laws this will harm its international reputation and make others less likely to trust that country in the future.
- If a country breaks international laws it makes it more likely that other countries will do the same.
- International laws provide a good guide to the best policies for each country to adopt.
- International laws reflect an international consensus about how countries should behave as members of the international community.
- It is unfair for a country to break international laws when other countries comply with them.
- When a country agrees to a treaty it makes a promise, and it is wrong to break promises.

## 5. An Error and Consequent Caveat

One potentially significant error was made in the conduct of this experiment. However, there is good reason to think that it does not undermine the validity of the results.

For each of the treatment groups, the additional text indicating international illegality included a line in the following form:

*“The Attorney General has advised that introducing this proposal would violate international [human rights / trade] laws, by infringing on patent owners’ property rights, including violating international [human rights / trade] treaties that [country] has signed and ratified.”*

The intention was that “[country]” in this line would be replaced by the name of the relevant state (i.e. “the United States” / “the United Kingdom”). This was done correctly for US respondents. However, an error by the investigator meant that, for UK respondents, the country included here was “Ireland” rather than “the United Kingdom”. This was a result of the survey having been run with a pilot sample of Irish respondents immediately before the UK sample, and a failure to correctly update the text.

This error necessarily casts some doubt on the validity of the UK results. In particular, we might expect that this error would reduce the treatment effect across the board. However there is no obvious reason why it would affect one treatment group more than others. Nonetheless the first best response here would obviously be to rerun the whole UK section of the experiment, with the correct name included. Limited funding, as well as other practical constraints, meant that this was not possible. However, we did rerun the experiment for one of the UK treatment groups (*Group 1A Human Rights Law Violation, No Court Involvement*), with the correct country name included. Results for this additional group are extremely close to those for the same group with the incorrect country name. (Mean = 2.666 vs 2.696,  $p = 0.766$ ), strongly suggesting that the error in the country name has not affected the overall responses. Nonetheless, it constitutes an important caveat to the results reported.

## 6. Results

The preliminary results reported here rely only on answers to the primary *Support* question.

The question asked respondents to rate their support for the proposed policy on an unnumbered six-point scale from “Strongly Support” to “Strongly Oppose”. This was translated into a numerical scale, with 1 being “Strongly Support” and 6 being “Strongly Oppose”. (This means that, in interpreting the mean results below, a lower mean indicates a higher level of support for the policy. A higher mean for the various test groups thus indicates a greater reduction in support as a result of the international illegality described to the relevant respondent group.) Following the removal of respondents who had failed the attention or manipulation checks (the latter on the basis outlined above), mean and 95% confidence intervals were calculated for the control and each treatment groups for each jurisdiction. These were separately calculated for (i) all respondents; (ii) UK respondents only (iii)

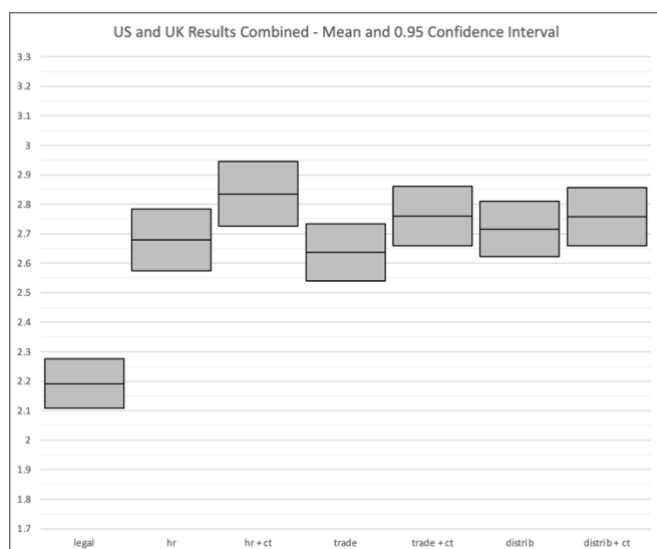
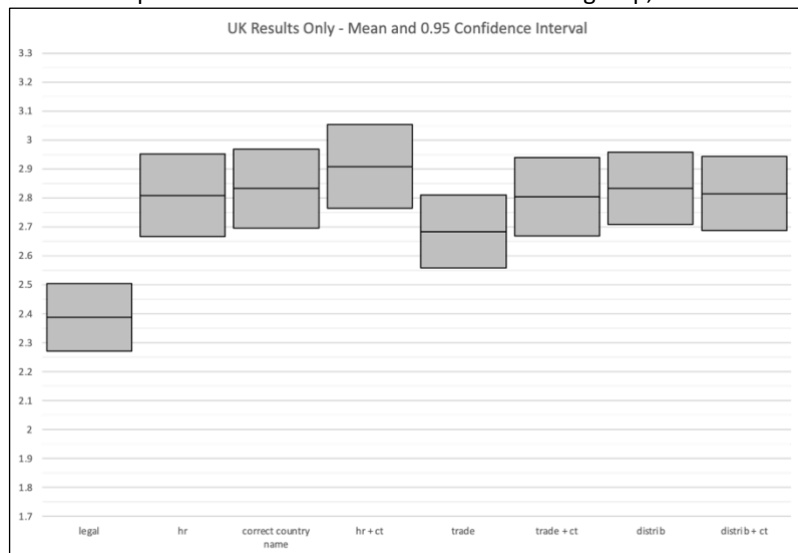
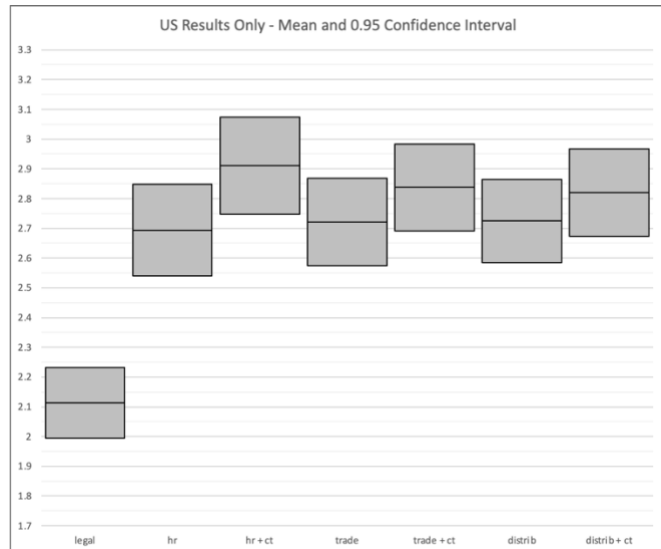
US respondents only. Samples in each group were then compared using a t-test (two sample, equal variance, two-tailed) to identify statistically significant variations among the groups.

For the combined samples and each of the separate UK and US samples, there was a statistically significant support-depressing effect resulting from international illegality, which obtained regardless of which regime the proposed policy violated, and regardless of whether or not an international court had found the policy to be illegal.

This support-depressing effect appeared larger in the US sample than the UK sample. So, for example, for Group 1A (*Human Rights Law Violation, No Court Involvement*) the mean US response was 0.581 lower than the control group, whereas for the UK the mean response was only 0.394 lower. However, this may simply reflect the higher level of support for the policy amongst US respondents in the control scenario, meaning that there was more room for respondents to reduce their support in response to the experimental treatment.

In addition to confirming that each of the experimental treatments had a statistically significant support-depressing effect, the study sought to examine whether these effects varied across regimes, with the presence of absence of international court involvement, and with explicit reference to the relevant laws' distributive effects.

In relation to the role of courts, in both national groups, and in consequence in the combined group, the mean support level where a court (whether trade or human rights) has confirmed the relevant violation is lower than where the policy is described as unlawful but no court involvement is mentioned. (The only case where this relationship does not hold is between the two distributive treatment groups in the UK sample – more on this below.) However this result is only statistically significant ( $p \leq 0.05$ ) in the case of the combined sample, and there only in the case of the human rights violation. However, in the case of both the involvement of a trade court in the combined sample, and the involvement of a human rights court in the US sample, the two-tailed t-test gives a result ( $p \leq 0.1$ ) such that, on a one-tailed test, these results would be statistically significant. A decision was made in advance of this study to conduct two-tailed tests, on the basis that for a number of hypotheses, results might run in either direction. However for the involvement of courts specifically, where their effect might reasonably



be expected to be either zero or positive, a one-tailed test could be appropriate, which would make these two results statistically significant. More generally, the fact that the same, albeit not statistically significant, pattern is observed across all samples strongly supports the view that the involvement of a court increases the support-depressing effect across both regimes.

In relation to inter-regime comparisons, there is no clear difference in the treatment effects depending on whether illegality arises under the trade or human rights regimes, and certainly no statistically significant difference. In the UK case, the support depressing effect of illegality under the trade regime appears slightly less than that under the human rights regime, whether a court is involved or not. In the US case, the effect of a court finding of illegality is smaller under the trade regime than the human rights regime, but the effect of illegality under the trade regime absent a court finding is marginally larger than illegality without a court under the human rights regime. On balance, the results reported here do not suggest that the support-depressing effect of illegality is significantly different across these two regimes.

Finally, in relation to whether drawing respondents' attention to the distributive quality of international regimes affects the support-depressing effect of international illegality, the results suggest that it does not, but there is one outlier result that will require further analysis. Amongst US respondents, the inclusion of a paragraph drawing their attention to critiques of international trade law in distributive terms had almost no appreciable effect on mean support for the policy. Similarly, in the UK case, where an international court has found the policy to be unlawful, highlighting the relevant international laws' distributive qualities has no appreciable effect on policy support. The outlier is the scenario where a policy violates international trade law, but there is no reference to a court or tribunal. In this scenario, the inclusion of a reference to the relevant laws' distributive effects resulted in a marked further drop in support for the policy, and hence a greater treatment effect, than where this distributive feature is not highlighted. The mean additional treatment effect here is relatively large (0.149), given the size of the treatment effect in the non-distributive trade scenario (0.286). Including the reference to the trade regime's distributive effects increased the treatment effect by over 50%. Further, while not statistically significant at the 5% level, the observed significance ( $p=0.1$ ) is strong enough to merit further examination. None of the hypotheses on the basis of which this study was designed would explain this result. It may simply be a statistical outlier. However further analysis, including by reference to the follow-up questions examining the mechanisms respondents believed apply, may help to make sense of this result.

## 7. Conclusion

This is a preliminary analysis of results from this study. A fuller analysis will examine responses to the various follow-up questions to further interrogate the study's hypotheses, as well as applying a range of alternative statistical tests and approaches to ensure robustness of results.

Nonetheless, this study has shown a number of important points:

- First, it provides clear evidence that the support-depressing effect of international illegality applies across different international regimes and states.
- Second, it provides strong but not conclusive evidence for the additional support-depressing effect of a finding of illegality by an international court.
- Third, it suggests that there is not a significant difference in the support-depressing effect of international illegality depending on the specific regime involved.
- And fourth, it suggests that drawing respondents' attention to the distributive quality of international law's does not significantly alter their support-depressing effect, subject to the caveat noted above.

**Appendix 1 – Statistical Summaries and Analysis of Responses to Support Question across control and treatment groups**

1. Combined Data – Responses from UK and US respondents pooled and analysed together

<b>US + UK</b>	Legal	HRts	HRts + Ct	Trade	Trade + Ct	Trade Distributive	Trade, Distributive + Court
Count	713	586	637	668	694	666	642
Mean	2.192	2.679	2.835	2.636	2.761	2.716	2.757
0.95 CI	0.083	0.105	0.109	0.097	0.101	0.094	0.099
CI+	2.275	2.784	2.945	2.733	2.862	2.810	2.856
CI-	2.109	2.574	2.726	2.539	2.660	2.622	2.658
T.Tests (2 Tailed)							
Legal vs Each Scenario		8.60276E-13	6.17776E-20	1.1409E-11	3.02464E-17	4.7025E-16	1.7761E-17
Trade vs HRts				0.555378875			
Trade vs Trade + Ct					0.081179207		
HRts vs Hrts + Ct			0.044698799				
Trade Ct vs HRts Ct					0.326381046		
Distributive vs Non-distributive						0.97145519	0.86751599

2. US Data – Responses from US respondents only

<b>US Only</b>	Legal	HRts	HRts+Ct	Trade	Trade + Ct	Trade Distributive	Trade Distributive + Court
Mean	2.113	2.694	2.910	2.721	2.838	2.725	2.820
Count	346	294	324	323	376	331	339
CI	0.119	0.154	0.164	0.147	0.146	0.140	0.148
CI+	2.232	2.847	3.074	2.869	2.983	2.865	2.968
CI-	1.994	2.540	2.747	2.574	2.692	2.585	2.672
T.Tests (2 Tailed)							
Legal vs Each Scenario		4.55E-09	2.38E-14	4.45E-10	2.20E-13	1.15E-10	7.08E-13
Trade vs HRts				0.800			
Trade vs Trade + Ct					0.274		
HRts vs HRts + Ct			0.0602				
Trade Ct vs HRts Ct					0.514		
Distrib vs Non-Distrib						0.971	0.867

3. UK Data – Responses from UK respondents only

<b>UK Only</b>	Legal	HRts	Correct Name	HRts + Ct	Trade	Trade Ct	Trade + Distributive	Trade Distributive + Court
Count	368	293	276	314	346	319	335	303
Mean	2.272	2.666	2.696	2.764	2.558	2.668	2.707	2.686
0.95 CI	0.116	0.143	0.137	0.145	0.126	0.136	0.125	0.128
CI+	2.387	2.808	2.832	2.909	2.684	2.803	2.833	2.815
CI-	2.156	2.523	2.559	2.620	2.432	2.532	2.582	2.558
T.Tests (2 Tailed)								
Legal vs Each Scenario		2.52E-05	3.92E-06	1.80E-07	1.09E-03	1.39E-05	6.74E-07	3.10E-06
Trade vs HRts					0.267			
Trade vs Trae + Ct						0.245		
HRts vs Hrts + Ct				0.342				
Trade Ct vs HRts Ct						0.340		
Right Name vs Wrong Name			0.766					
Distributive vs Non-Distributive							0.100	0.844

## Appendix 2 – Inter-State Hypotheses as Originally Drafted

- HC0: *There is no difference in the support-depressing effect of prohibition by international law between the two jurisdictions studied. (Implies international law non-compliance has the same effect on public opinion across the three states.)*
- HC1: *Illegality under international human rights law has a comparatively greater support-depressing effect in the United Kingdom, while illegality under the international trade regime has a greater support-depressing effect in the United States. Both have similar effects in Ireland. (Supports view that states that have played a prominent role in establishing specific regimes, and thereby more firmly committed their reputation to them, will be more concerned about subsequent violation of the laws of those regimes.)*
- HC2: *Illegality under international human rights law has a comparatively greater support-depressing effect in the United States, while illegality under the international trade regime has a greater support-depressing effect in the United Kingdom and Ireland. (Supports view that perceived benefits and costs from particular regimes affect level of voter concern for violation of laws of those regimes.)*
- HC3: *International illegality has a greater support-depressing effect in Ireland than in the other two jurisdictions, and greater effect in the United Kingdom than the United States, across both regimes. (Supports rationalist / realist accounts that emphasise greater concern to breach of law in smaller and less powerful states.)*
- HC4: *Prior finding of illegality by an international court has a greater support-depressing effect in Ireland than in the other two jurisdictions, and greater effect in the United Kingdom than the United States, across both regimes. (Supports view that smaller and less powerful states have greater reason to value, and comply with, third party adjudication than larger and stronger states.)*