

# The Administrative Foundation of the Rule of Law

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*This article builds upon the observation that political rulers have to rely upon administrators to implement their policy decisions to uncover two mechanisms by which legal limits, understood in terms of fundamental human rights, can be self-enforcing. We show how the effectiveness of such legal limits depends on administrators' expectation that rights violations might be costly in the future, when the current ruler's grip on power ends. We also show how the effectiveness of legal limits depends on administrators' expectation about each others' actions when asked to execute an illegal policy, which allows for the possibility that human rights laws might induce compliance by making a particular behavior salient. The analysis contributes to a general understanding of the mechanisms by which law can effectively limit the arbitrary power of the government.*

In the classical liberal conception of government, the preservation of individual liberty necessarily depends upon limiting the arbitrary power of the government.<sup>1</sup> It requires that certain governmental practices are not policy options, which implies substantive constraints on the exercise of public authority. Such limits are understood as human rights and take the form of individual legal protections against the government, including due process of law and the rights to life, association, free expression, and physical integrity. These legal protections are enshrined in international customary law, international bills of rights, human rights declarations, and written national constitutions.

However, prominent scholars such as Jean Bodin, Thomas Hobbes, and John Austin thought that the very notion that the law can limit the government is incoherent in that it requires a government that is self-binding. In these accounts, the rule of men necessarily undergirds the rule of law since legal limits invariably rest upon the government's willingness to respect them. This is the case because the mere existence of written legal protections does not necessarily restrain the government from violating individual rights in specific situations. In other words, human rights laws that prohibit arbitrary governmental practices are "parchment barriers" that hardly have a limiting effect on a government intending to do mischief. Because the

government can always circumvent the law by simply ignoring it, the ideals of limited government and human rights crucially depend on how consistently governmental officials observe legal constraints in practice.

Political rulers, those with power to make policy decisions, are unlikely to observe human rights laws especially if doing so threatens their hold on power. For example, political rulers often prefer to resort to violence to quell peaceful public protests, which, in turn, can result in gross human rights violations, including torture, arbitrary detention, and extrajudicial killings. However, political rulers have limited physical capacity to implement their policy decisions, including rights violations and violent repression of peaceful antigovernment protesters, but rather have to rely on administrators such as security and military forces to execute their policies, whether legal or illegal (Cox 2011a; Dixit 2010).

That political rulers depend on administrators for policy implementation is an institutional fact of both premodern and modern polities (Finer 1997). Yet scholars have not systematically explored how the separation of policymaking from policy execution can induce government compliance with legal limits in practice. We know little about the incentives and interactions among the state officials who make and implement policy decisions, and, as a result, the specific mechanisms by which legal limits can constrain the

<sup>1</sup>An online appendix containing supplemental information for this article is available at <http://dx.doi.org/10.1017/S002238161300100X>.

behavior of those people who are in a position of violating human rights are not well understood.<sup>2</sup>

In this article, we develop a game-theoretic analysis of an interaction between a political ruler and administrators to uncover two mechanisms by which legal limits, understood in terms of fundamental human rights, can be self-enforcing in practice. First, we show how the effectiveness of such legal limits depends on administrators' expectations that participating in human rights violations might be costly for them in the future. If such violations make the administrators vulnerable to the possibility of sanctions when the ruler's grip on power ends, they are more reluctant to exert effort when the ruler asks them to implement illegal policies. In turn, such administrative foot-dragging can induce the ruler to stick to legal policies, despite his preference for illegal policies—the ruler may be better off if he gets high implementation effort for a less preferred but legal policy than if he gets low implementation effort for his preferred but illegal policy.

Second, we show how the effectiveness of legal limits depends endogenously on the strategic interaction within the government. The administrators face a coordination problem when the ruler asks them to execute policies involving rights violations, which implies that multiple equilibria of implementation effort are possible. As a result, the ruler's equilibrium cost for violating the law, which arises from his dependence on administrators for policy execution, is also a function of how administrators coordinate their implementation effort. This cost is lower if administrators coordinate on a high rather than a low implementation effort. The difference between the ruler's equilibrium cost in the low-effort equilibrium scenario and the high-effort equilibrium scenario can be thought of as an endogenous cost of violating the law. We show that this endogenous cost can be the most important factor in explaining the effectiveness of legal limits.

Factors that affect how administrators coordinate their expectations can then play an important role in inducing government compliance with legal limits. This allows for the possibility that human rights laws, if their core precepts are widely known, may induce compliance by making a particular behavior salient. If human rights laws highlight which government actions are legitimate and if they are common knowledge (in the sense that everyone knows that everyone else knows the gist of these laws, and so on), they can coordinate administrators' expectations about each

other's actions.<sup>3</sup> Our analysis then suggests that investments in the advocacy and publicity of human rights laws can have an effect on government compliance with legal limits by affecting administrators' expectations about each other's actions when asked to execute policies involving rights violations.<sup>4</sup>

Our analysis contributes to a general understanding of the mechanisms by which law limits the exercise of public authority (Hardin 1989; Weingast 1997). The existing scholarship suggests that laws are self-enforcing only if the costs of disobeying the law outweigh the benefits (Holmes 2003). In these accounts, the effectiveness of law in limiting the government mirrors the effectiveness of mechanisms by which the government can be sanctioned for violating the law. In the spirit of these studies, our work shows that the more effective the likelihood of sanctions on administrators for executing illegal policies, the more effective are the limitations on the exercise of government power, all else equal. Such sanctions, we show, are necessary to constrain a ruler who otherwise would prefer an illegal policy. However, sanctions alone do not fully explain the extent to which the ruler respects legal limits. The possibility of sanctioning administrators for past rights violations opens up a different channel, apart from sanctions, through which legal limits can be effective. How administrators coordinate their actions when asked to execute an illegal policy also determines the extent to which legal limits effectively constrain the ruler.

The article adds to a small but growing political economy literature that emphasizes the interaction between the rulers and administrators as an important element for the emergence of constitutional government (Cox 2011b; Gonzalez de Lara, Greif, and Jha 2008; Greif 2008; Myerson 2008). Myerson (2008) develops a model of autocratic politics to show how features of constitutional government can develop from basic problems of trust in the relationships between rulers and their supporters. Greif (2008) suggests that the dependence of the rulers on administrators for policy implementation is key to our

<sup>3</sup>Human rights laws such as prohibitions on torture or summary killings point to certain appropriate behavior such as no torture or no summary killing, which may suggest low effort to be appropriate when administrators are ordered to implement policies that violate these rights.

<sup>4</sup>As such, our analysis adds to a literature on human rights which investigates the mechanisms by which governments comply with the precepts of human rights laws (Camp Keith, Tate, and Poe 2009; Goodliffe and Hawkins 2006; Hafner-Burton and Tsutsui 2005; Lebovic and Voeten 2006; Powell and Staton 2009; Simons 2009, among others).

<sup>2</sup>For a related discussion, see Dragu (2011), Hafner-Burton (2012), and Moore (2010).

understanding of the emergence of constitutional states. Cox (2011) argues that the institution of ministerial responsibility solved the moral hazard problem that generated the king's malfeasance before the English Glorious Revolution. We contribute to this scholarship by developing a game-theoretic model of an interaction between a ruler and administrators to illustrate some novel mechanisms through which legal limits, understood in terms of fundamental rights, can be self-enforcing in practice.

The article also contributes to a theoretical debate about the mechanisms by which law affects behavior. The positivist account of the law posits that legal rules are just threats backed by sanctions (Austin 1977). Without denying the power of sanctions, some scholars suggest coordination as another mechanism for generating legal compliance (Almendares and Landa 2007; Calvert 1992; McAdams 2000; Myerson 2004; Sugden 1986). The existing studies mostly analyze how law can coordinate the citizens' expectations and suggest that (private) law can generate some compliance expressively, apart from its sanctions. We add to this literature in two ways. First, we show how coordination within the government is important for understanding the conditions under which (public) law can limit the government itself. Second, our study indicates that both sanctions and coordination can simultaneously affect the efficacy of legal limits; our analysis also permits a comparison of the effectiveness of these two mechanisms.

The article proceeds as follows. We begin with the formal model and then present the analysis. We next provide some extensions and robustness exercises on our basic framework, and, finally, we discuss some implications of our analysis. The online appendix contains the formal proofs.

## Model

Consider the set of all possible governmental policies,  $p \in \mathbb{R}_+$  and let, without loss of generality,  $L = [0, \ell]$  be the set of governmental policies that are permissible under the legal standard  $\ell$ . In other words,  $\ell$  represents a legal limit on the exercise of government power so that not everything the government does is legal: only policies  $p \leq \ell$  are legal while policies  $p > \ell$  are illegal. As mentioned, this legal standard can be understood in terms of fundamental human rights established in customary international law, international bills of rights, and/or domestic constitutions, including prohibitions on torture and other cruel, inhuman, or degrading treatment or punishment, on

extrajudicial killings and summary executions, on forced disappearances, and on prolonged arbitrary detention. Higher law constraints in the form of fundamental human rights are the prevailing contemporary norm. The fact that most countries—including authoritarian states—have signed various international human rights treaties and conventions (Simmons 2009) and also have written constitutions containing bills of rights (Law and Versteeg 2011) indicates the normative force of human rights.<sup>5</sup>

Even though the legal standard  $\ell$  limits the exercise of government power on paper, a ruler can simply ignore the legal constraint in practice. If the ruler's most preferred policy is a legal policy, the ruler has no incentive to violate the law, and therefore, there is no tension between the legal standard  $\ell$  and government practices. On the other hand, if the ruler's most preferred policy is an illegal policy, the ruler has an incentive to violate the law, and therefore, there is scope for investigating the mechanisms by which government practices are consistent with the legal standard  $\ell$ . We focus our analysis on such situations and study how the ruler's dependence on administrators for policy execution can render the legal limit  $\ell$  self-enforcing.

The government consists of two types of players: a political ruler and a continuum of administrators. The ruler can be understood either as an individual (such as a king, dictator, or president) or as a collective actor (such as a ruling party or an oligarchy) having formal power over policy choices. The administrators can be understood as those individuals directly responsible for executing a ruler's decisions such as members of police, security, and military forces. Thus, the ruler has the power to choose a policy  $p \in \mathbb{R}_+$ . While the legal limit  $\ell$  is de jure binding, the ruler can ignore the legal standard if he finds it in his interest and choose a policy  $p > \ell$ . Each administrator chooses a level of effort  $e_i \in \mathbb{R}_+$  to implement the ruler's policy choice  $p$ .

Although the ruler has formal power over policy decisions, the ruler's policy choices have no consequences if the administrators do not execute them. For example, a ruler might order soldiers to repress peaceful demonstrators; however, the policy has no practical effect if soldiers won't implement it. Policy outcomes then are a function of both the ruler's chosen policy and the level of implementation effort

<sup>5</sup>Human right laws impose substantive constraints on positive law and thus political rulers cannot circumvent the constraint by moving the legal line so that everything they do is legal.

the administrators put into executing the respective policy. Therefore, the ruler's utility  $U_R(p, \bar{e})$  depends on both the policy  $p$  and the average implementation effort of administrators  $\bar{e}$ . We assume that  $U_R(p, \bar{e})$  is single-peaked and concave in  $p$  and increasing in  $\bar{e}$ ,<sup>6</sup> that is, the ruler's utility increases if administrators put more effort into executing a policy  $p$ . We make no assumption on the sign of  $\frac{\partial^2 U_R(\cdot)}{\partial p \partial \bar{e}}$ .

Administrator  $i$ 's utility from the policy outcome is given by  $G_i(p, \bar{e})$ . We make no assumption whether the administrators prefers a legal or an illegal policy; also, this part of the administrators' utility function can vary among administrators. Administrator  $i$  also gets an effort payoff  $\Pi(e_i)$  for executing the policy, where  $\Pi(\cdot)$  is single-peaked and concave in  $e_i$  with  $\Pi'(0) > 0$ ,  $\Pi'' < 0$ ,  $\lim_{e \rightarrow \infty} \Pi'(e) < 0$ .<sup>7</sup>

Administrator  $i$ 's utility also depends on whether she implements a legal or an illegal policy. If the ruler asks the administrators to execute a policy involving rights violations, the administrators are the direct perpetrators, and thus they are directly associated with the observed physical consequences of such illegal actions. For example, if the ruler orders the torture of political opponents or the violent repression of peaceful demonstrators, members of security forces, and/or military are the ones inflicting the physical harm or carrying summary killings required by such orders.

When executing such illegal decisions, the administrators can never be certain that there will be no future (legal or nonlegal) costs for their actions. This is the case since the ruler can at best guarantee impunity for as long as he maintains power. However, even a ruler with an absolute power today does not have a perpetual hold on governmental power. Intrinsic political uncertainty associated with changes in power exists not only in democratic polities, where it is institutionalized by means of elections held at regular time intervals, but also in nondemocratic polities, where rulers lose power in a variety of unexpected ways including death, coups, and revolutions (Svolik 2009). When the current ruler loses power, administrators can be held accountable for past human rights violations in a

variety of ways, as the literature on transitional justice indicates (Kim and Sikkink 2010; Mayer-Rieckh and Pablo de Greiff 2007).

To formalize these ideas, let administrator  $i$ 's expected cost for executing an illegal policy be  $t(\bar{e}) \cdot s \cdot K(e_i)$ . The function  $t(\bar{e})$  represents the likelihood that the current ruler loses power in the future, as seen from administrator  $i$ 's perspective at the time of executing an illegal policy  $p > \ell$ . The ruler's likelihood of holding power is higher if administrators put more effort into executing the illegal policy  $p$ , and thus  $t(\bar{e})$  decreases in  $\bar{e}$  (with  $t' < 0$  and  $t'' > 0$ ). For example, if the ruler orders violent repression of peaceful demonstrators, the ruler is more likely to maintain power if the security and military forces put high effort into quelling public dissent. After the current ruler loses power, it is possible, but not certain, that administrator  $i$  will be held accountable for past human rights violations for various reasons, including incomplete evidence of past crimes, scarcity of resources, and political will. Thus let  $s$  represent the probability that administrator  $i$  is held accountable for executing an illegal policy when the ruler is out of power.

If administrator  $i$  is held accountable (which happens with probability  $t(\bar{e}) \cdot s$ ), let  $K(e_i)$  represent the cost for executing an illegal policy. This cost increases in administrator  $i$ 's own effort level  $e_i$  with  $K' > 0$ ,  $K'' > 0$ ; that is, administrators who were more involved in the execution of illegal policies face higher expected legal and/or nonlegal penalties.

First,  $K(e_i)$  could represent penalties resulting from the prosecution of past human rights violations, which may occur in the aftermath of the regime change or even several years later. For example, in Greece, within two years after the democratic transition of 1974, the new government prosecuted members of the military and police forces for human rights abuses (Amnesty International 1977). On the other hand, in Chile and Argentina, the courts began convicting hundreds of governmental officials for past human rights abuses more than 20 years after the end of the military dictatorship (O'Donnell 2009; Requa 2012). More generally, prosecutions for human rights crimes of varying scope have occurred in a majority of the countries transitioning from authoritarianism to democracy between 1980 and 2006 (Kim and Sikkink 2010). In addition to domestic prosecutions, governmental officials can be liable for human rights abuses in international tribunals and foreign courts. For example, prosecutions of human rights violations have taken place under the principle of "universal jurisdiction" for crimes committed abroad in courts in

<sup>6</sup>The single-peakness condition implies that the ruler has a most preferred policy, which can be legal or illegal. Therefore one can think of the ruler's utility from policy as implicitly capturing both the direct benefits from policy as well as the potential (direct) costs for choosing an illegal policy.

<sup>7</sup>One can think of  $\Pi(\cdot)$  as being composed of two parts:  $B(e_i)$ , a function that captures the benefits of working with effort  $e_i$  on policy implementation with  $B' > 0$  and  $B'' < 0$ , and  $C(e_i)$ , a function that measures the cost for effort with  $C' > 0$ ,  $C'' > 0$ .

Belgium, Germany, United States, and Spain, amongst others (Macedo 2004).

Second,  $K(e_i)$  could represent career costs such as being fired, promotion losses, or future career-opportunity losses due to past human rights violations. For example, in Portugal, after the fall of the Salazar regime, and in Greece, after the fall of the military junta, members of the police and security forces involved in past human rights abuses were expelled from the public administration (Nobles 2010). After 1989, Central and Eastern European countries adopted laws of varying scope to disqualify governmental officials associated with the repressive apparatus of the communist regime from holding public positions (Nalepa 2010). More generally, transitional governments have engaged in various processes of identifying and screening public employees involved in violations of human rights in the past. Such vetting procedures have resulted in various sanctions on individuals responsible for past abuses: removal from public employment, forced retirement, transfer to insignificant posts, or annulment of promotion (Mayer-Rieckh and Pablo de Greiff 2007).

The preceding discussion does not assume that administrator  $i$  will pay a cost for sure for executing a policy involving right violations; but only that an administrator can never be certain that there would be no future consequences at the time of executing an illegal policy. We make no assumption about the magnitude of the expected cost  $t(\bar{e}) \cdot s \cdot K(e_i)$ ; it can be low or high, depending on the strength of the institutional mechanisms for imposing such costs after the ruler is out of power. We simply want to investigate the mechanisms by which government practices can be consistent with legal limits given the possibility of future sanctions on administrators for (past) illegalities; we will discuss how changes in the magnitude of these expected costs affects the effectiveness of legal constraints as a comparative statics exercise.

Let  $\tau(p, \ell)$  be an indicator variable that takes the value 1 if the policy is illegal (i.e.  $p > \ell$ ) and 0 otherwise. For simplicity of exposition, we denote  $t(\bar{e}) \cdot s = T(\bar{e})$ , with the interpretation that this represents the likelihood that administrator  $i$  pays a cost for executing an illegal policy. Then, administrator  $i$ 's utility function is

$$U_A(e_i, \bar{e}, p, \ell) = G_i(p, \bar{e}) + \Pi(e_i) - \tau(p, \ell)T(\bar{e})K(e_i). \quad (1)$$

The sequence of the game is as follows. First, the ruler chooses a policy,  $p$ . Second, all administrators simultaneously choose their respective level of effort,  $e_i$ .

## The Administrators' Choice of Effort

We solve for the subgame perfect equilibrium of the game. We first analyze the administrators' optimal choice of effort and then the ruler's optimal policy.

In the last stage, the administrators choose how much effort to exert given policy  $p$ . Maximizing administrator  $i$ 's objective function (1) implies that her optimal level of effort is the solution of the following first-order condition:

$$\Pi'(e_i) - \tau(p, \ell)T(\bar{e})K'(e_i) = 0. \quad (2)$$

Because the second derivative is  $\Pi''(e_i) - \tau(p, \ell)T(\bar{e})K''(e_i) < 0$ , the optimization problem is strictly concave in  $e_i$ , and therefore, equation (2) characterizes administrator  $i$ 's optimal level of effort. Moreover, because all administrators face the same optimization problem, given by equation (2), they choose the same equilibrium action  $e_i = e^*$ . As a result, administrator  $i$ 's optimal level of effort is also the average level of effort, i.e.,  $\bar{e} = e^*$ . Substituting  $\bar{e} = e^*$  in equation (2) we get

$$\Pi'(\bar{e}) - \tau(p, \ell)T(\bar{e})K'(\bar{e}) = 0. \quad (3)$$

The equilibrium level of effort depends on the relationship between the policy  $p$  and the legal limit  $\ell$ . If the ruler asks the administrators to execute a legal policy (i.e.,  $p \leq \ell$ ), administrator  $i$ 's faces no penalty, and the equilibrium level of effort in this case, denoted by  $e_{leg}^*$ , is the unique solution of the following first-order condition:

$$\Pi'(e_{leg}^*) = 0. \quad (4)$$

On the other hand, if the ruler asks the administrators to execute an illegal policy ( $p > \ell$ ), administrator  $i$ 's expected penalty for (past) illegalities is positive. The equilibrium level of effort in this case is the solution of the following first-order condition:

$$\Pi'(e_i) - T(\bar{e})K'(e_i) = 0.$$

In this situation, there are potentially multiple equilibrium levels of effort, denoted by  $e_{illeg}^*$ , that solve equation (3). To see this, note that the derivative of expression (3) is  $\Pi''(\bar{e}) - T(\bar{e})K''(\bar{e}) - T'(\bar{e})K'(\bar{e})$ , which has an indeterminate sign because the first term and the third term are negative while the second one is positive. When the positive effect outweighs the negative one, the left-hand side of equation (3) increases in  $\bar{e}$  over some range of values, and therefore, there are potentially multiple solutions of equation (3),

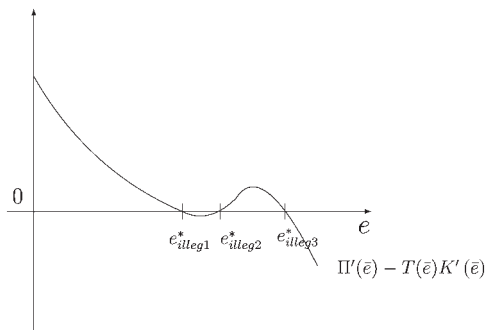
each corresponding to a different equilibrium level of effort. Such a situation is illustrated in Figure 1, where there are three possible equilibrium effort levels  $e_{illeg1}^*$  to  $e_{illeg3}^*$ .

The multiplicity of equilibria in this implementation subgame is the result of a coordination game predicated upon the fact that the ruler's grip on power depends on how much effort the administrators put into executing illegal policies. If all administrators exert high effort, the ruler is more likely to maintain power in the future, and thus the administrators' likelihood of sanctions for their illegal actions may decrease substantially. In this case, the second term in equation (3) is small, and  $e_{illeg}^*$  is close to  $e_{leg}^*$ , the value that maximizes  $\Pi(\cdot)$ . In this equilibrium, administrators essentially disregard the possibility of punishment because it is very unlikely to occur. In contrast, if all administrators coordinate on a lower-effort level, then  $T(e_{illeg}^*)$  can be large, and consequently the individually optimal level of effort  $e_{illeg}^*$  is substantially smaller than  $e_{leg}^*$ .

Also, if we evaluate equation (3) at the equilibrium level of effort given a legal policy,  $e_{leg}^*$ , then it is equal to  $-T(\bar{e})K'(e_i)$ , which is strictly negative. This implies that the administrators' optimal level of effort if the ruler chooses an illegal policy is lower than the optimal level of effort if the ruler choose a legal policy; that is,  $e_{leg}^* > e_{illeg}^*$ . We have the following result:

**Proposition 1.** *If the ruler complies with the legal limit (i.e.,  $p \leq \ell$ ), the administrators' optimal effort is the solution of  $\Pi'(\bar{e}) = 0$ . If the ruler does not comply with the legal limit (i.e.,  $p > \ell$ ), the administrators'*

FIGURE 1 Multiple Equilibria in the Effort-Choice Subgame



Note: Figure 1 illustrates a situation in which there are three possible equilibrium effort levels when the ruler orders the implementation of an illegal policy.

optimal effort is the solution of  $\Pi'(\bar{e}) = T(\bar{e})K'(\bar{e})$ . Administrators choose a higher level of effort if  $p \leq \ell$  than if  $p > \ell$ .

### The Ruler's Policy Choice

Given the administrators' equilibrium behavior, we next analyze the ruler's equilibrium policy. Let  $p^r(\bar{e})$  denote the ruler's most preferred policy given that the average administrative effort is  $\bar{e}$ . If  $p$  and  $\bar{e}$  are complements in the ruler's utility function (i.e.,  $\frac{\partial^2 U_R(\cdot)}{\partial p \partial \bar{e}} > 0$ ), then the ruler's preferred level of  $p$  is increasing in the level of effort  $\bar{e}$ , and if  $p$  and  $\bar{e}$  are substitutes in the ruler's utility function (i.e.,  $\frac{\partial^2 U_R(\cdot)}{\partial p \partial \bar{e}} < 0$ ), then the ruler's preferred level of  $p$  is decreasing in the level of effort  $\bar{e}$ . We have the following result:

**Proposition 2.** *If  $\frac{\partial^2 U_R(\cdot)}{\partial p \partial \bar{e}} > 0$ , then  $p^r(\cdot)$  is an increasing function and thus  $p^r(e_{leg}^*) > p^r(e_{illeg}^*)$ . If  $\frac{\partial^2 U_R(\cdot)}{\partial p \partial \bar{e}} < 0$ , then  $p^r(\cdot)$  is a decreasing function and thus  $p^r(e_{leg}^*) < p^r(e_{illeg}^*)$ . Finally, if  $\frac{\partial^2 U_R(\cdot)}{\partial p \partial \bar{e}} = 0$ , then the ruler's ideal policy is independent of the administrators' equilibrium effort level.*

Proposition 2 is intuitive. Proposition 1 tells us that the administrators' equilibrium effort level is higher if the ruler chooses a legal policy. If  $p$  and  $\bar{e}$  are complements in the ruler's utility function, the ruler's optimal policy increases in the administrative effort, and therefore  $p^r(e_{leg}^*) \geq p^r(e_{illeg}^*)$ . On the other hand, if  $e$  and  $p$  are substitutes, the optimal policy decreases in the administrative effort, and therefore  $p^r(e_{leg}^*) < p^r(e_{illeg}^*)$ .

The policy that would maximize the ruler's utility if he had to choose a legal policy, the best legal policy, solves the following constrained optimization problem:

$$\max_p U_R(p, e_{leg}^*) \text{ subject to } p \leq \ell.$$

The solution of this problem is  $p^r(e_{leg}^*)$  if  $p^r(e_{leg}^*) \leq \ell$ , and  $\ell$  otherwise.

If, instead, the ruler does not comply with the legal limit (i.e.,  $p > \ell$ ), the administrators will choose  $e_{illeg}^*$ , which implies that the average level of effort is  $\bar{e} = e_{illeg}^*$ . Thus the following optimization problem characterizes the ruler's decision in this case:

$$\max_p U_R(p, e_{illeg}^*).$$

The solution of the above optimization problem is  $p^r(e_{illeg}^*)$ . If  $p^r(e_{illeg}^*) > \ell$ , then we can call  $p^r(e_{illeg}^*)$  the best *illegal policy* for the ruler (because the administrators will choose  $e_{illeg}^*$  in this case). Note that if  $p^r(e_{illeg}^*) < \ell$ , the ruler is better off choosing a legal rather than an illegal policy because he gets a higher implementation effort.

Let  $\ell^i < p^r(e_{illeg}^*)$  be defined implicitly by the following equation:

$$U_R(\ell^i, e_{leg}^*) = U_R(p^r(e_{illeg}^*), e_{illeg}^*). \quad (5)$$

Intuitively,  $\ell^i$  is defined such that the ruler is indifferent between choosing policy  $\ell^i$  and getting high implementation effort  $e_{leg}^*$ , and choosing the optimal illegal policy,  $p^r(e_{illeg}^*)$ , and getting low implementation effort  $e_{illeg}^*$ . Proposition 3 shows that the ruler's equilibrium policy depends on whether the legal constraint  $\ell$  is above or below  $\ell^i$ .

**Proposition 3.** *The ruler's equilibrium policy is*

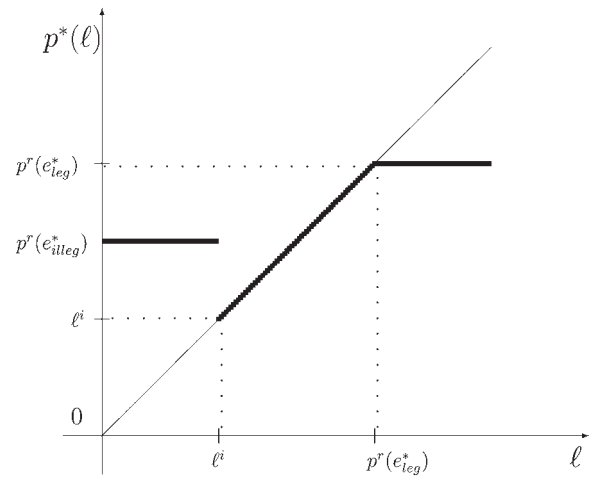
$$p^* = \begin{cases} p^r(e_{illeg}^*) & \text{if } \ell < \ell^i \\ \ell & \text{if } \ell \in [\ell^i, p^r(e_{leg}^*)] \\ p^r(e_{leg}^*) & \text{if } \ell > p^r(e_{leg}^*) \end{cases}. \quad (6)$$

Figure 2 illustrates the three possible situations that Proposition 3 identifies.<sup>8</sup> The variable on the horizontal axis is the legal limit  $\ell$ , while the variable on the vertical axis is the ruler's equilibrium policy choice. If  $\ell > p^r(e_{leg}^*)$ , there is no tension between what the ruler wants to do and the legal limit; in this case, the ruler chooses his most preferred policy, which is legal, while the administrators choose  $e_{leg}^*$ . If, instead, the ruler's most preferred policy is an illegal one,  $p^r(e_{leg}^*) > \ell$ , two cases can occur in equilibrium.

In the middle range, where  $\ell \in [\ell^i, p^r(e_{leg}^*)]$ , the ruler would like to choose a policy that is not allowed under the legal limit  $\ell$ . However, because this would lead to lower implementation effort and because the ruler is better off with high implementation effort, he prefers to comply with the legal limit  $\ell$ . We can call this range the “rule-of-law” region: In this range, the ruler is

<sup>8</sup>Figure 2 is drawn for the case of complements so that  $p^r(e_{leg}^*) > p^r(e_{illeg}^*)$ . For substitutes, this inequality would reverse, while  $p^r(e_{leg}^*)$  and  $p^r(e_{illeg}^*)$  are at the same level for the case in which  $\frac{\partial^2 U_R}{\partial p \partial e} = 0$ .

**FIGURE 2** The Ruler's Equilibrium Policy as a Function of the Legal Limit  $\ell$



Note: Figure 2 illustrates the ruler's equilibrium policy as a function of the legal limit  $\ell$ . The variable on the horizontal axis is the legal limit  $\ell$ , while the variable on the vertical axis is the ruler's equilibrium policy choice. Figure 2 is drawn for the case in which  $p$  and  $\bar{e}$  are complements in the ruler's utility function so that  $p^r(e_{leg}^*) > p^r(e_{illeg}^*)$ .

effectively constrained by the legal limit  $\ell$ . Finally, if  $\ell < \ell^i$ , we have a “rule-of-power region” where the ruler prefers to violate the legal limit  $\ell$  even though the administrators' equilibrium effort will drop to  $e_{illeg}^*$ .

### Rule-of-Law Mechanisms

The preceding analysis suggests two mechanisms by which government practices are consistent with the legal limit  $\ell$ . First, there is a mechanism that works through the possibility of sanctions on administrators for (past) rights violations. Because the effectiveness of policy depends on administrative effort, the ruler can suffer policy implementation losses when demanding that administrators execute an illegal policy. Thus, a ruler might be better off with a legal policy and high implementation effort than with a illegal policy and low implementation effort. The possibility of future sanctions on administrators is necessary to constrain a ruler who prefers an illegal policy. However, this opens up a different channel through which legal limits can be effective: how administrators coordinate their choice of effort when asked to implement an illegal policy influences the extent to which the legal limit  $\ell$  constrains the ruler. Consider two possible equilibrium levels of effort,  $e_{illeg}^l$  and  $e_{illeg}^h$ , when  $p > \ell$ . In this situation, there are two different values of  $\ell^i$ , the cutoff policy that makes the ruler

indifferent between a legal and an illegal policy, say  $\ell_l^i$  and  $\ell_h^i$ . As a result, there are two different rule-of-law regions,  $[\ell_l^i, p^r(e_{leg}^*)]$  and  $[\ell_h^i, p^r(e_{leg}^*)]$ , which implies that the extent to which a ruler complies with the legal limit  $\ell$  differs in the two scenarios.

The relevance of this coordination mechanism is perhaps illustrated when the ruler faces mass demonstrations and needs to resort to violent repression and thus gross human rights violations to keep power (Hardin 1995). How the security and military forces respond to a potential order to violently quell peaceful demonstrators can decisively affect how likely it is that the ruler complies with fundamental human rights. If soldiers were to refuse using force against demonstrators, the ruler is effectively constrained in his policy options, and his grip on power is likely to fade. On the other hand, if soldiers were to intervene forcefully against the demonstrators, the ruler is less constrained in his policy options.<sup>9</sup>

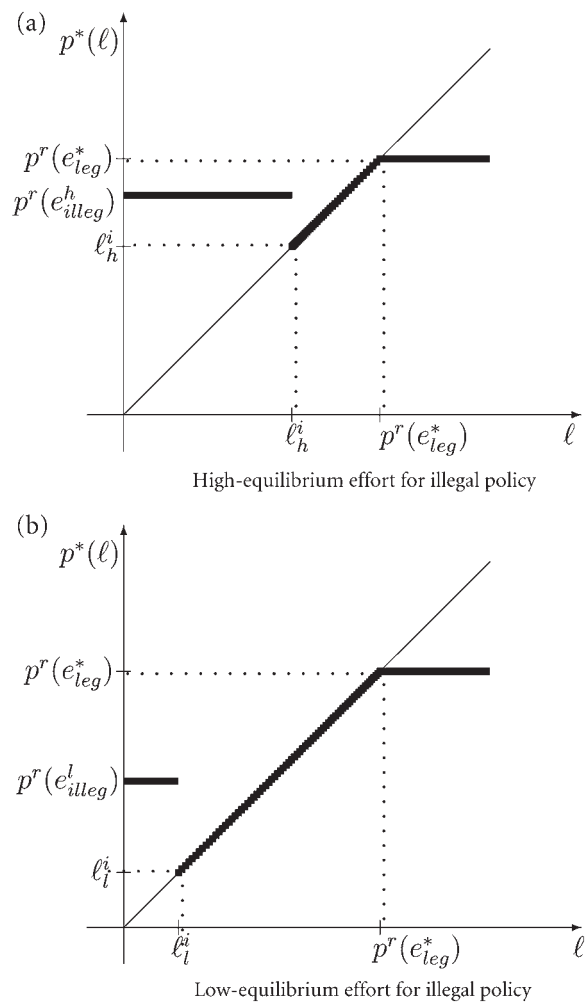
Our framework also allows us to assess the relative importance of the two mechanisms in inducing compliance with the legal limit  $\ell$ . Again consider two possible equilibrium levels of effort if the ruler chooses an illegal policy,  $e_{illeg}^l$  and  $e_{illeg}^h$ , in which case two rule-of-law regions are possible,  $[\ell_l^i, p^r(e_{leg}^*)]$  and  $[\ell_h^i, p^r(e_{leg}^*)]$ . Because the ruler's utility function is increasing in effort, the ruler is more likely to comply with the legal limit  $\ell$  if the difference between the legal and illegal effort is higher, and therefore  $\ell_l^i < \ell_h^i$ .

The smaller rule-of-law region,  $[\ell_h^i, p^r(e_{leg}^*)]$ , can be interpreted as the effect of exogenous parameters that determine the effectiveness of future sanctions on the administrators for past illegalities (the sanctions mechanism). In contrast, the additional increase in the rule-of-law region if administrators play the low-effort equilibrium, the difference between the two rule-of-law regions,  $[\ell_l^i, \ell_h^i]$ , is the result of administrators coordinating on low rather than high implementation effort. This region can therefore be interpreted as being caused by the factors that determine how the administrators coordinate their behavior (the coordination mechanism). More importantly, the size of the region  $[\ell_l^i, \ell_h^i]$  can be larger than the size of the region  $[\ell_h^i, p^r(e_{leg}^*)]$ . As a result, factors affecting how administrators coordinate their behavior can have the determining effect in

inducing compliance with the law. Figure 3 shows such a situation.

We next present a parametric analysis to illustrate both how we can assess the relative effectiveness of the two mechanisms and that the coordination mechanism can have the determining effect in inducing legal compliance. To this end, let administrator  $i$ 's effort payoff be  $\Pi(e_i) = \beta_1 e_i - \beta_2 e_i^2$ . Then the first-order condition for the equilibrium level of effort when the ruler complies with the legal limit (i.e.,  $p \leq \ell$ ) is

FIGURE 3 Multiple Equilibria and the Rule-of-Law Region



Note: Figure 3 illustrates a situation in which the size of the rule-of-law region due to the coordination mechanism is larger than the size of the rule-of-law region due to the sanctions mechanism. Figure 3a shows the rulers equilibrium policy as a function of the legal limit  $\ell$  if administrators choose high effort when the ruler orders the implementation of an illegal policy. Figure 3b shows the rulers equilibrium policy as a function of the legal limit  $\ell$  if administrators choose low effort when the ruler orders the implementation of an illegal policy.

<sup>9</sup>The 2011 uprisings in various Arab countries illustrate this point: in countries such as Tunisia and Egypt where soldiers did not use force against the citizens, the rulers could not effectively order violent repressions and lost power; in countries such as Bahrain and Syria where soldiers were willing to use force against demonstrators, the rulers prolonged their stay in power.



$\beta_1 - 2\beta_2 e_i = 0$ . As a result, the equilibrium level of effort is  $e_{leg}^* = \frac{\beta_1}{2\beta_2}$ .

Let administrator  $i$ 's cost (in the event that administrator  $i$  is held accountable) be  $K(e_i) = \kappa_1 e_i + \kappa_2 e_i^2$ , where  $\kappa_1, \kappa_2 > 0$ . Also, let the likelihood of being held accountable for past illegal actions for administrator  $i$  be given by the following logistic function that is symmetric around 1:

$$T(\bar{e}) = \frac{\exp(-\theta(\bar{e} - 1))}{\exp(-\theta(\bar{e} - 1)) + \exp(\theta(\bar{e} - 1))}.$$

To solve for the size of the rule-of-law region, consider the following parameter values:  $\beta_1 = 2, \beta_2 = 0.5, \kappa_1 = 0.5, \kappa_2 = 1$ , and  $\theta = 2$ . When the ruler asks administrators to execute an illegal policy ( $\tau(p, \ell) = 1$ ), there are three equilibrium levels of effort  $e_{illeg}^*$ . The middle equilibrium is unstable, as  $\Pi'(\bar{e}) - T(\bar{e})K'(\bar{e})$  is upward-sloping at the mid solution, while the lowest equilibrium ( $e_{illeg}^l \approx .592$ ) and the highest equilibrium ( $e_{illeg}^h \approx 1.876$ ) are both stable equilibria.

We can then analyze the implications of these different potential equilibria for the size of the rule-of-law region. To do so, let the ruler's utility be  $U_R(p, \bar{e}) = -|p^r - p| + \bar{e}$ . Note that this implies that the cutoff policy  $\ell^i$  is defined by  $-|p^r - \ell^i| + e_{leg}^* = -|p^i - p^i| + e_{illeg}^*$ .

Because the rule-of-law region is defined as  $[\ell^i, p^r(e_{leg}^*)]$  and because  $e_{leg}^* = 2$ , the size of the rule-of-law region is  $2 - e_{illeg}^*$ . If the administrators coordinate on the high-effort equilibrium ( $e_{illeg}^h = 1.876$ ), the size of the rule-of-law region is about 0.124, which, as mentioned, can be thought of as the rule-of-law region due to the sanctions mechanism. On the other hand, if administrators coordinate on the low-effort equilibrium ( $e_{illeg}^l = 0.592$ ), the size of the rule-of-law region is about 1.408. The difference in the size of the rule-of-law region if administrators coordinate on low rather than high effort is about 1.284. As a result, in this parametric example, the administrators' coordination on low implementation effort determine most of the extent to which the ruler complies with legal limit  $\ell$ .

The existence of multiple equilibria of effort implies that, in principle, administrators could also condition which equilibrium level of effort they play on which illegal policy the ruler chooses. Such conditioning by administrators could effectively deter the ruler from choosing policies in the region where the administrators

would play the low-effort equilibrium and so, in effect, could provide an important constraint on the ruler.

To show this effect, consider the previous parameter values, and let  $p^r = 3$  and  $\ell = 1.8$ . Suppose that the administrators condition their choice of effort on the illegal policy chosen by the ruler as follows: if the ruler chooses an illegal policy  $p \in [1.8, 2]$ , the administrators play the high-effort equilibrium,  $e_{illeg}^h$ ; and if the ruler chooses an illegal policy  $p > 2$ , the administrators play the low-effort equilibrium,  $e_{illeg}^l$ .

Now let us consider the ruler's optimal policy choice. First, the ruler could obey the law and choose  $p = 1.8$ , inducing administrators to choose the legal level of effort  $e_{leg}^* = 2$ , and this results in utility  $-|3 - 1.8| + 2 = 0.8$  for the ruler. Second, the ruler could choose his ideal policy,  $p = 3$ , inducing administrators to choose the low level of effort,  $e_{illeg}^l = 0.592$ , and this results in utility  $-|3 - 3| + e_{illeg}^l = 0.592$  for the ruler. Third, the ruler could choose the policy  $p = 2$  inducing administrators to choose the high level of effort,  $e_{illeg}^h = 0.592$ , and this results in utility  $-|3 - 2| + e_{illeg}^h = 0.876$  for the ruler. The policy choice  $p = 2$  is thus the ruler's optimal choice in this example. Thus, even though the ruler violates the legal limit, the ruler in this example is in fact constrained by the administrators' equilibrium behavior if administrators condition their equilibrium effort on which illegal policy the ruler chooses.

We obtain our results under the assumption that the administrators face potential punishments for implementing illegal policies only when the ruler is out of power. In other words, a ruler who orders rights violations can make credible commitments to administrators, who implement those abuses, not to sacrifice them on the altar of political expediency while he keeps the reins of power. However, the ruler may find it politically expedient to sacrifice the administrators after an illegal policy is implemented, either to obfuscate his own role or as a bargaining chip in dealing with other actors. The mechanisms of constraint previously identified are even more effective if administrators also fear punishment for implementing illegal policies because the ruler cannot credibly commit to shielding them from potential sanctions while in power.

## Comparative Statics

In this section, we analyze how changes in the administrators' expected cost for executing an illegal policy affect the size of rule-of-law region. We have the following result:

**Proposition 4.** *If the functions  $T(\cdot)$  or  $K'(\cdot)$  shift up, all rule-of-law-regions  $[\ell_k^i, p^r(e_{leg})]$  enlarge.*

The intuition for Proposition 4 is as follows. When the expected cost for illegal actions increases (for example, the function  $T(\cdot)$  shifts up), the equilibrium level of effort  $e_{illeg}^*$  decreases. This is true for each equilibrium of the implementation subgame administrators play when  $p > \ell$ . As a result, the value of the cutoff policy,  $\ell_k^i$ , that makes the ruler indifferent between complying or not with the legal limit  $\ell$  if equilibrium effort  $e_{illeg}^k$  is played, increases, which implies that the rule-of-law region,  $[\ell_k^i, p^r(e_{leg}^*)]$  expands, where  $k$  denotes a particular equilibrium level of effort when  $p > \ell$ . The same logic applies when the marginal cost function  $K'(\cdot)$  shifts up.

Different factors can affect the value of  $T(\cdot)$  and  $K'(\cdot)$ , including whether a polity is democratic or not. The possibility of a governmental change is institutionalized in democracies since elections are held at regular time intervals, which implies that the (ex ante) expectation that there can be a change in power is larger in democratic than in authoritarian regimes. Also, institutional mechanisms that affect the likelihood of penalties for past illegalities, including separation of powers, free mass media, independent judiciary, and a strong civil society, are stronger in democratic than in autocratic regimes. All these factors imply that the rule-of-law region is higher in democratic polities—a comparative statics result that matches the observed empirical pattern that government compliance with individual rights is higher in democratic than in nondemocratic polities, all else equal (Stephenson 2003).

Proposition 4 indicates that higher expected costs for implementing an illegal policy induce more legal compliance, given a particular equilibrium level  $e_{illeg}^*$ . However, from an empirical perspective, the possibility of multiple equilibria may create challenges when estimating the effectiveness of sanctions on legal compliance, especially in cross-national studies.<sup>10</sup> To see this, suppose that we compare two countries where all exogenous parameters are the same except that the administrators' costs for past illegalities are  $K_1(\cdot)$  in the first country and  $K_2(\cdot)$  in the second, and these marginal

costs are such that  $K_2'(\cdot) > K_1'(\cdot)$ . If the equilibrium level of effort  $e_{illeg}^*$  when  $p > \ell$  is the same in the two countries (either the low or the high effort), then the rule-of-law region is larger in the country where the marginal cost is  $K_2'(\cdot)$ . However, if the administrators coordinate on the low-equilibrium level of effort in the country where the marginal cost is  $K_1'(\cdot)$  and on the high-equilibrium level of effort in the country where the marginal cost is  $K_2'(\cdot)$ , then it is possible that the legal constraint is more likely to be respected in the first country, although the administrators' expected cost for implementing an illegal policy is higher in the second country.<sup>11</sup>

### Robustness and Extensions

In this section, we discuss the robustness of our basic results to alternative modeling specifications and also provide some extensions on our framework.

First, in the basic model, administrator  $i$  gets an effort payoff,  $\Pi(e_i)$ , regardless of whether the ruler remains in power or not.<sup>12</sup> We can also work under the alternative assumption that the administrators get an effort payoff only if the ruler stays in power. Recall that the probability that the ruler stays in power is  $1 - t(\bar{e})$ . In this case, administrator  $i$ 's utility function (1) is

$$U_A(e_i, \bar{e}, p, \ell) = G_i(p, \bar{e}) + [1 - t(\bar{e})]\Pi(e_i) - \tau(p, \ell)t(\bar{e})sK(e_i).$$

We can divide this objective function by  $[1 - t(\bar{e})]$ , which is independent of administrator  $i$ 's choice. This gives

$$\frac{G_i(p, \bar{e})}{[1 - t(\bar{e})]} + \Pi(e_i) - \tau(p, \ell) \frac{t(\bar{e})}{[1 - t(\bar{e})]} sK(e_i).$$

Let  $T(\bar{e}) = \frac{t(\bar{e})}{[1 - t(\bar{e})]}s$ . Because the first term of the preceding expression does not depend on  $e_i$ , this objective function has the same form as administrator  $i$ 's objective function in our basic setup. Consequently, all results of the basic model obtain in this variation as well.

Second, we model legality in the basic framework as an on/off variable: if the ruler asked the administrators to execute an illegal policy, the administrators' risk of being penalized in the future is independent of "how illegal" the policy is. More realistically, one can

<sup>10</sup>Multiple equilibria also provide a channel through which a culture of legality within administration can matter. Indeed norms that prohibit bureaucrats from acting on illegal directions from political leaders are well entrenched in advanced democracies. For example, in New Zealand, public servants are informed that ministers' directions should be rejected if "it is reasonably held that instructions are unlawful because it would be unlawful for the minister to issue them" (New Zealand, State Services Commission, The Senior Public Servant at 28, quoted in Kernaghan 2003).

<sup>11</sup>For a different analysis of the effects of multiple equilibria on government policy, see Glazer and Rothenberg (2005).

<sup>12</sup>This assumption can be interpreted as capturing the intrinsic payoff from exerting effort.

think that the administrators' expected penalty is increasing in the extent to which the ruler's policy transgresses the legal constraint  $\ell$ , which can be captured formally by assuming that  $\tau(p, \ell)$  is increasing in  $p$  for  $p > \ell$ . Thus let  $\tau(p, \ell) = 0$  if  $p \leq \ell$ ,  $\lim_{p \rightarrow \ell^+} \tau(p, \ell) = 0$ , and  $\frac{\partial \tau(p, \ell)}{\partial p} > 0$  for  $p > \ell$ .

In this situation, every level of  $p > \ell$  maps into a different maximization problem for administrators. The administrators' optimal level of effort as a function of the ruler's policy choice is as follows:  $e^*(p)$  is a function that is constant if  $p \leq \ell$  (i.e.,  $e^*(p) = e_{leg}^*$  for  $p \leq \ell$ ), strictly decreasing if  $p > \ell$ , and approaches the level of  $e_{leg}^*$  from the basic model if  $p$  is close to  $\ell$  (i.e.,  $\lim_{p \rightarrow \ell^+} e^*(p) = e_{leg}^*$ ).

The results of our basic model are in fact stronger if the severity of sanctions increases in the extent to which the ruler's policy exceeds the legal limit. In this situation, the likelihood of future penalties on administrators has some effect on the ruler's chosen policy even when the ruler's optimal choice is to ask the administrators to execute an illegal policy. Even in this case, the ruler will not choose his ideal policy but rather a policy lower than  $p^r(e_{illeg}^*)$ , which implies that the rule-of-law region expands relative to the rule-of-law region from the basic model. The intuition is that a slight decrease in the ruler's chosen policy, starting from the ruler's ideal policy, has a negligible direct effect on the ruler's utility, but strictly increases the administrators' implementation effort, which has a first-order effect on the ruler's utility.

Third, in our analysis, we assume that all administrators have the same expectation regarding the likelihood of the ruler's grip on power in the future. We can also analyze the situation in which administrators differ in their beliefs regarding the strength of the regime. This analysis is relevant for two reasons. First, it indicates that our results are robust to perturbations such as incomplete information. Second, relative to the complete information model, administrators will not choose the same equilibrium level of implementation effort  $e_{illeg}^*$  when  $p > \ell$ . This heterogeneity in administrators' behavior (i.e., different administrators choose different equilibrium levels of effort) does not affect the results of the previous analysis. We present this analysis in the online appendix.

## Discussion

Overall our analysis suggests that the institutional design of the interactions between political rulers and administrators is important for understanding the

mechanisms that trigger government compliance with the law in practice. In this context, establishing institutional norms that prohibit administrators from acting on illegal directions from political leaders can have a substantial effect on achieving the rule-of-law ideal. Bureaucratic norms of this sort are well entrenched in advanced democracies; fostering such norms of administrative behavior might strengthen the rule of law in countries undergoing rule-of-law reforms.

Our analysis also has some policy implications regarding the question of whether lower-level governmental officials should be held accountable for involvement in rights violations. From a policy perspective, our analysis suggests that even if political leaders are difficult to be held accountable for ordering rights violations, they can still be effectively constrained if administrators are sanctioned for past human rights violations. Leaders might be difficult to be held liable for ordering legal violations once they leave office for various political reasons, including the political reluctance of new leaders to prosecute former leaders for fear of political instability or retaliation. By contrast, it may be easier to hold administrators liable both because, from a legal perspective, they are the direct perpetrators and also because, from a political perspective, administrators might not have sufficient political clout to oppose ex post punishments.

Our analysis tends to favor punishing lower-level officials for implementing illegal policies, at least under conditions where doing so would induce the leaders to comply with the law. It may seem unfair though to punish lower-level officials who were "just following orders" when political leaders, who ordered those transgressions, remain unpunished. Although such fairness concerns are important, lower-level officials will be more likely to follow the leaders' orders when asked to implement illegal policies if they expect amnesties for past illegalities, which, in turn, increases the leaders' incentives to disregard legal limitations. As such, there can be tensions between providing ex ante incentives, by committing to a policy of punishing lower-level officials for past illegalities, and ensuring ex post fairness, by not imposing penalties on lower-level officials when leaders escape punishments.

A dynamic implication of our model is that the ruler would try to avoid the resistance of administrators to its illegal policies. First, if possible, the ruler would try to conceal illegal policies, which implies that the ruler's ability to keep policies secret for the long term decreases his need to follow the law while transparency and governmental leaks increase his observance of the law. Second, if possible, the ruler would prefer to

appoint to administrative positions family members or other people irrevocably identified with his regime (such as members of the same ethnicity, for example) because they might already be in a position where they will suffer costs with certainty if the regime falls, so they will do anything to preserve the regime, including implementing any illegal policy.<sup>13</sup> Casual observation suggests that this phenomenon is prevalent in some authoritarian regimes. For example, in Libya, Gaddafi kept the military weak and underfunded but his own private army well trained and strong, while appointing family members to key economic and political positions. Third, if possible, the ruler would prefer to insert vague emergency clauses in the constitution so that he can order rights violations under a plausible legal cover when his hold on power is threatened. For example, nineteenth-century constitutions in Latin America contained emergency clauses allowing executive authorities “to take the necessary measures” to meet internal threats (Loveman 1993), and such vague provisions were often used to quell peaceful public dissent.

Our analysis complements existing studies that examine the importance of coordination among citizens in supporting the rule of law (Fearon 2011; Weingast 1997). For example, Weingast (1997) argues that effective constraints on political power require the collective opposition of citizens when the ruler transgresses legal limits. However, classical dilemmas of collective action can hamper the occurrence of such mass protests; that is, citizens may fail to coordinate their efforts and take concerted action even if the ruler’s illegal policies are widely unpopular. In contrast, the mechanisms of constraint we identified can work even when the public does not take direct action against the ruler in the present time. This is the case because, even if there is no present popular opposition against illegal actions, administrators cannot be certain

<sup>13</sup>This observation suggests that if the administrators cannot perceive any adverse consequences from additional illegal actions, perhaps because the potential punishment for past illegalities is maxed out, they will do whatever it takes to preserve the regime. To diminish such incentives to “fight till the last bullet,” it might be desirable to not punish ill deeds that occurred early in the regime. This, in turn, suggests that punishment for criminal service to a past regime may need to focus mainly on crimes committed towards the end of the regime. However, there can be challenges in terms of how to design (optimally) such punishment schemes: if the statute of limitations is too short, the administrators may think that there is little chance of regime change while their current crimes are legally vulnerable to prosecution, but if the statute of limitations is too long, the administrators may think that their potential punishment cannot be increased.

that there will be no future consequences for past illegalities when the ruler is out of power.<sup>14</sup>

The substantive focus of our model is to uncover some mechanisms by which legal limits can constrain the exercise of public authority; however, the game-theoretic analysis of the interaction between the ruler and the administrators has more general applicability. In fact, one can put the gist of the model more generally: because rulers do not have a perpetual hold on power, a ruler may be constrained in his policy choices insofar as subordinates fear that they might be punished for their role in implementing a particular policy associated with the respective ruler. As such, the framework could be further developed to investigate the mechanisms by which rulers’ opportunistic behavior might be reduced, especially in weakly institutionalized environments.

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<sup>14</sup>Moreover, sanctioning administrators does not require popular collective action to demand the punishment of past legal violations. A future regime might investigate and prosecute past human rights violations in response to demands of international actors, human rights organizations, and activists seeking justice for victims (O’Donnell 2009; Requa 2012).

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