

Compliance in Context:

Extralegal Determinants of Extradition in Chile and Japan



By Dolan Bortner, IR Program, Watson Institute for International and Public Affairs, May 3, 2017

Research Puzzle

- Extradition
 - Exchange of a fugitive between states
 - Popularly conceived of as entirely legal
- *But* verdicts change across time and space without changes in law
- Something other than law must explain variance

Augusto Pinochet



El Chapo



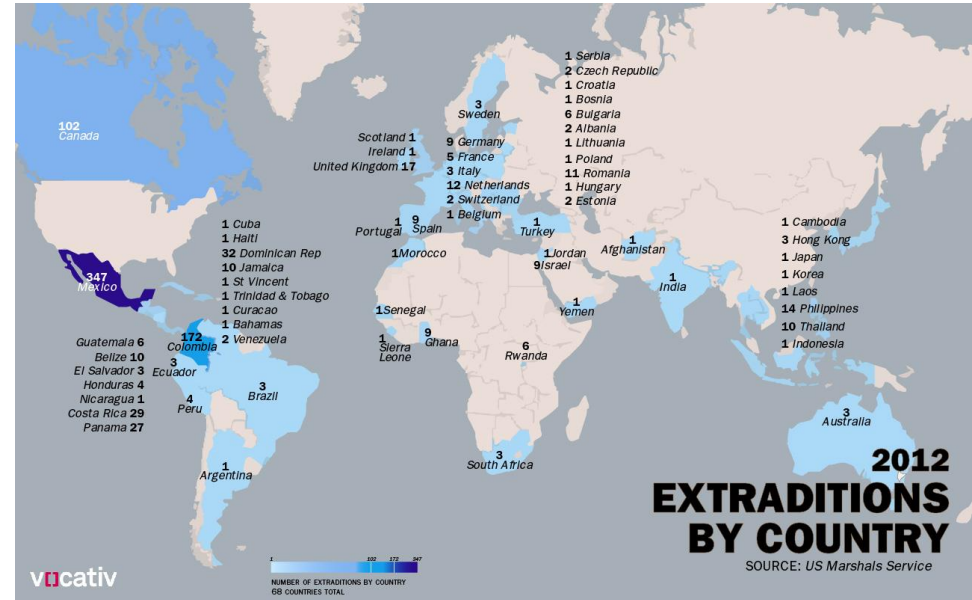
Research Questions

- What factors influence a state to extradite or not to do so, and why might these decisions change?
- What explains variation in the decisions of the trials against former Peruvian President Alberto Fujimori in Japan (noncompliance) and Chile (compliance)?

Significance

The Practical Need for a Study of Extralegal Influences on Extradition

- Extradition...
 - Costs millions of dollars per request
 - Increases annually
 - Puts lives at risk
 - Is unevenly enforced
 - With repercussions for human rights justice



Significance (con't.)

Existing Scholarship, Its Limitations, & My Contribution

Literature	Existing Scholarship	My Contribution
Extradition	Single case	Comparative
	How? Legal process	Why? Extralegal
Compliance	<ul style="list-style-type: none">• Rational and/or normative variables• Untestable	<ul style="list-style-type: none">• Rational <i>and</i> normative variables• Testable
	State	Individual/Sub-State
	Actors' interests: too expansive or too limited	Actors' interests: categorizable
	Noncompliance is opposite of compliance	Noncompliance is separate phenomenon

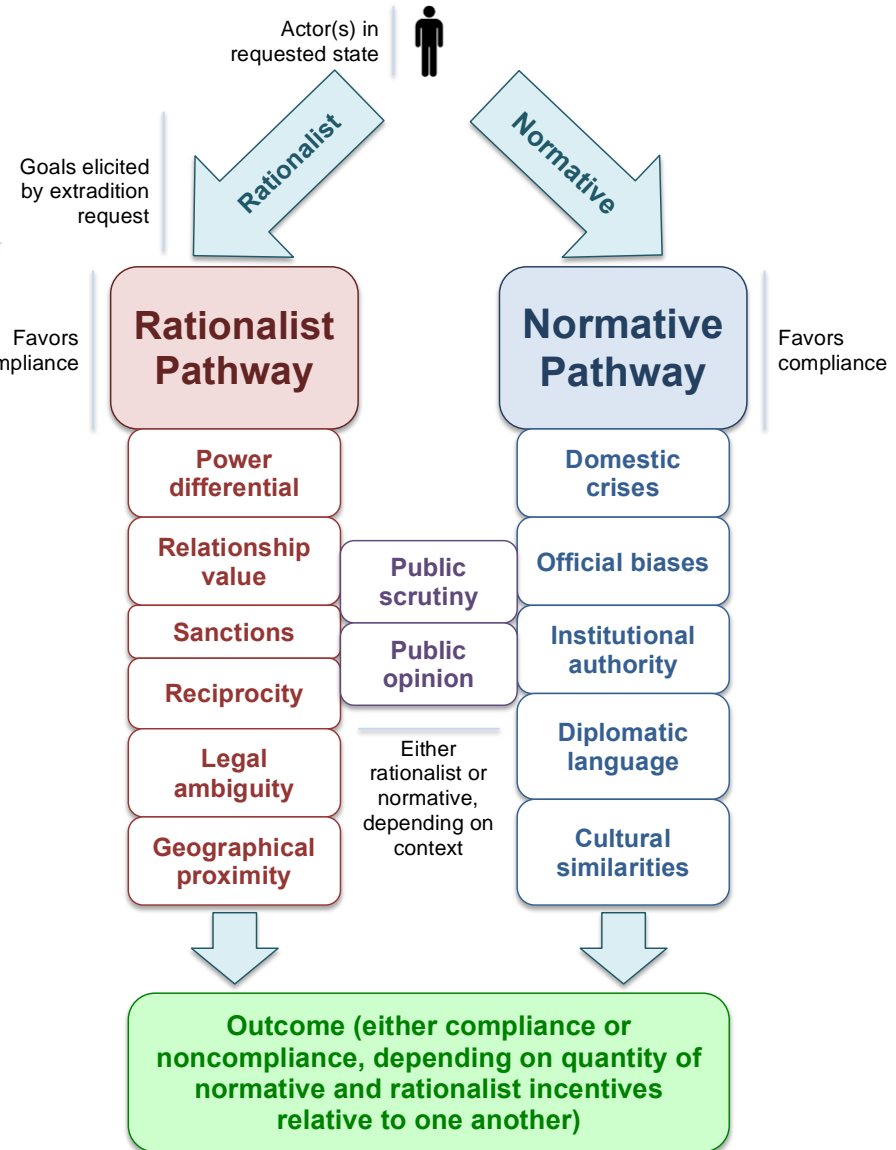
Important Authors

- Checkel: Norms are key for compliance
- Rajkovic: Noncompliance is a distinct phenomenon
- Magnuson and Moravcsik: Individual focus and legal ambiguity
- Lindenberg: Goal-Framing Theory (GFT)

Argument

An Integrated Contextual Model (ICM) for Extradition Decisions

- Takes the individual into consideration
 - Lindenberg/social psychology
- Normative and rationalist scholarship
- Systematizes actors' goals
- Noncompliance is separate
- Empirically verifiable



Research Design

- **Comparative: x-nat'l & longitudinal study in Japan (2000-2005) and Chile (2005-2007)**
 - Data rich
 - Same fugitive, same crimes
 - Chile over time
- **Textual analysis—mixed methods**
 - Content analysis (quant): 1,473 newspaper articles
 - Discourse analysis (qual): Government documents (i.e., Diet transcripts)

Findings

- **Japan**
 - Fujimori as cultural hero
 - Potential martyr
- **Chile**
 - Human rights champion
 - Historical problems with Peru
 - Japanese precedent
- **Effectiveness of ICM to explain outcomes**

Variable Type	Variable	Situation Under Which Compliance Is Most Likely, According to My Model	Fujimori Case in Japan	July Verdict in the Chilean Case	September Verdict in the Chilean Case
Normative	1. Domestic crises	Yes	Yes	Yes	Yes
	2. Official biases	No	Yes	Yes	No
	3. Institutional authority	Yes	No	Yes	Yes
	4. Diplomatic language	Yes	Yes	No	No
	5. Cultural similarities	Yes	No	Yes	Yes
Rationalist	6. Power differential	No	Yes	No	No
	7. Relationship value	Yes	No	Yes	Yes
	8. Sanctions	Yes	Yes	Yes	Yes
	9. Reciprocity	Yes	No	Yes	Yes
	10. Legal ambiguity	No	Yes	Yes	Yes
	11. Geographical proximity	Yes	No	Yes	Yes
Context-Dependent	12 & 13. Public opinion and public scrutiny	Yes	No	No	No

Findings (con't.)

- Self-interest trumps norms
- Context matters
 - Across temporal and spatial lines
 - Chilean border conflict
 - Japanese precedent
 - In combination with other variables
 - Legal ambiguity
 - Domestic crises

Implications for Compliance Theory

- Alteration of state preferences is dubious
 - Calls Checkel (and normative scholarship) into question
- Legal ambiguity \neq noncompliance
 - Contrary to Magnuson
- No hard and fast rules for how extralegal factors behave
- Still, context is not a mixed bag
 - In 2 out of 3 trials, extralegal factors explain legal outcome
 - GFT explains why variables “bubble up”

Implications for International Legal Practice

- Reputational sanctions → compliance
 - Yet, they are not always sufficient
- Legal ambiguity must be combatted
- Predictive value of ICM
 - Means for requesting states to judge odds of successful extradition

Crime, Context, & Compliance— Then and Now

