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# **Federalism's Flaw: Does Decentralisation Enable the Violation of International Labour Law?**

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*While the ideas expressed within this dissertation are my own, the road traveled in crafting it was far from companionless. I would like to thank both my advisor and another professor for their investments of time and patience during this process. Your collective suggestions have made for a more complete study. I would also like to express my profoundest gratitude to my parents, Heidi and Rick, for helping make this experience possible. I hope to have made you proud. To Cassie, thank you for being my most loyal supporter. Lastly, to Diana, thank you for being with me every step of the way. There is no one I would rather share this journey with.*

## Abstract

The latter half of the 20<sup>th</sup> century saw a wave of political decentralisation sweep the global landscape, leaving a throng of sub-national governments responsible for the administration of previously national responsibilities in its wake. Decentralisation is typically thought to improve policy outcomes through a better matching of administrative decisions to local preferences. While some decentralisation has been found to improve outcomes in the *social* and *economic* spheres, this paper seeks to ascertain whether the beneficial effects of decentralisation extend to *legal* policies. Interestingly, in federal countries, sub-national governments are increasingly responsible for the administration of labour law. As such, this article explores the impact of decentralisation on international labour rights codified by the International Labour Organisation. The study hypothesises that decentralisation is positively associated with the violation of international labour law, as the sub-national bodies responsible for administering labour law operate free from international sanction. Using multiple regression analysis on an originally coded dataset of international labour law violations committed by 135 countries between 1990-2010, the study finds a statistically significant positive relationship between decentralisation and labour law violations. Holding relevant political, economic, and demographic factors constant, decentralisation accounted for 18% of the variation in logged violations, with decentralised countries expected to commit 0.76 more logged violations than otherwise equivalent centralised countries. This finding is robust to an additional measure of decentralisation and to negative binomial regression. In substantiating the hypothesised relationship, the study's findings suggest that decentralisation transforms international labour rights into institutional window-dressing, as national governments gain the legitimacy of ratifying ILO conventions without ensuring that their sub-national entities enforce them correspondingly. These findings indicate that unlike fiscal federalism, political decentralisation harms policy outcomes and highlight the need to improve accountability through the re-centralisation of labour law administration or the creation of legal mechanisms to sanction sub-national actors.

## I. Introduction

According to the United Nations, over 1.5-billion workers lack sufficient labour protections (Bueno, 2017). While advanced countries may dismiss this as a distant concern, social redistribution is becoming less able to counteract the decline in incomes associated with precarious employment. This places significant stress on other services, particularly the health system, with Chandola & Zhang (2018) finding that workers in poor quality work environments

have worse biomarkers than the unemployed. Moreover, the employment-emigration link is so strong that, in 2013, nearly two-thirds of the world's 232-million migrants were migrant workers seeking freedom from labour constraints (ILO, 2015).

While the antecedents of the issue are multifaceted, the derogation from labour law is undeniably a contributing factor. Labour law is conceived as a set of interventions that establish how employees unionise to negotiate collectively with employers. Labour law's associative and collective nature is reflective of the two major rights it is affiliated with: freedom of association and collective bargaining (FACB). For this reason, the terms labour law and FACB rights will be used interchangeably throughout the paper. Though initially controversial, FACB rights are now enshrined as international law in two International Labour Organisation (ILO) conventions: *Convention No.87 Freedom of Association* and *Convention No.98 Collective Bargaining* (FACB conventions). In fact, while they retain jurisdiction over other important issues such as child labour, the ILO (2006, p.1) contends that "freedom of association is [its] *conditio sine qua non*," which indicates the importance of labour rights to the international community. Notwithstanding the ILO's commitment, the evidence suggests a sustained worsening in overall labour rights and an increase in FACB violations (Kucera & Sari, 2018). Research has long sought to equate this erosion in FACB rights with international economic factors, such as globalisation and the 'race-to-the-bottom.' This focus on exogenous variables has left the importance of domestic political factors as mediating forces between labour rights and outcomes relatively understudied (Koh, 1997). The few studies that have turned their focus inwards frequently come with the caveat that domestic variables "are often susceptible to international economic influences" (Greenhill, Mosley, & Prakash, 2009, p.684). As such, there lacks a study that prioritises the unique effect of domestic influences on policy outcomes such as FACB rights.

Notwithstanding this scholarly disinterest, policymakers understand the importance of domestic levers, as shown by Goel & Nelson's (2011, p.486) identification of a trend "towards greater decentralization as a strategy for improving outcomes in the public sector." In fact, Rodden (2006, p.1-2) argues that "other than transitions to democracy, decentralization and the spread of federalism are perhaps the most important trends in governance around the world over the last 50 years." In search of improved service delivery, governments have evidently taken Brandeis' (1932) warning to heart that "to stay experimentation in things social and economic is a grave responsibility." However, while the importance of iterative implementation is clear for 'things social and economic,' one wonders whether the same is true with respect to 'things legal,' such as FACB rights, where consistent administration and enforcement take primacy over concerns for novelty. For this reason, this paper seeks to remedy the neglect of domestic factors on labour outcomes by considering the relationship between FACB rights and decentralisation.

Topicality aside, decentralisation is a logical target to consider as contributing to the collective decline in labour-related outcomes, for while FACB rights are codified on the international stage and committed to by national governments, their enforcement is increasingly a responsibility of sub-national entities free from ILO sanction. Previous studies, like Morantz (2009), have found that labour-related outcomes were worse in jurisdictions where national regulations were devolved to sub-national entities; however, the as-to-yet overlooked relationship between decentralisation and international obligations constitutes a cavernous gap in knowledge. As such, the research question the study purports to solve is whether decentralisation enables the violation of international FACB rights. Using an originally compiled dataset, the study identifies a statistically significant relationship between decentralisation and FACB

violations that is robust across two unique metrics and two alternative modeling choices, thereby suggesting that decentralisation has contributed to the global decline in labour rights.

The paper is structured as follows. After describing the ILO body that adjudicates FACB rights, the Committee on Freedom of Association (CFA), the paper reviews the literature pertaining to the model's key topics of interests, namely decentralisation and international legal compliance. Following this is a methodological section describing the paper's empirical approach, sample, and dependent and independent variables. After presenting and interpreting the results, it will discuss their practical implications, in addition to acknowledging any limitations and identifying opportunities for future research.

## **II. Literature Review**

### **(a) The Adjudicator: ILO Committee on Freedom of Association**

As the study examines the effect of decentralisation on FACB violations, a brief description of the relevant adjudicative body, the ILO's CFA, and its procedures for complaint administration is in order. The CFA was established in 1951 with a mandate to consider complaints and ascertain whether a given country's legislation or practice complies with convention-protected FACB rights (ILO, 2006). The purpose of doing so is to promote respect for associative freedoms both in law and in fact. Since its establishment, it has considered over 3000 FACB-related cases. While both employers and labour can allege violations by the other party, the great majority of cases addressed by the CFA are union-initiated.

The CFA's nine-member panel expertly considers each complaint. Each constitutive element – labour, employer, and government – has three members. The panel adheres to various principles in an attempt to ascertain the truth of the complaint and to avoid arbitrariness. First, no

national of the state against which a complaint has been made may participate. In such an event, one of the body's nine deputy members is called upon as a replacement. Furthermore, the CFA "always endeavours to reach unanimous decisions" (ILO, 2006, p.233), which solidifies one's confidence in the decisions reached. Upon reaching its conclusion, the CFA recommends to the ILO's Governing Body either that the case requires no further examination or that the government involved take necessary steps to bring either its legislation or practices into conformity with the FACB conventions. The CFA does not distinguish between allegations levelled against governments and private actors; rather, it seeks to establish whether or not "a government has ensured within its territory the free exercise of [FACB] rights" (ILO, 2006, p.234).

**(b) Decentralisation and Quality of Government: A Silver Bullet?**

Per de Tocqueville (2000), "'centralization' is now a word constantly repeated but is one that, generally speaking, no one tries to define accurately." The etherealness of the term relates, in part, to differing foci; according to Treisman (2002), there are at least six types of decentralisation. Rather than consider all elements of the concept, the paper focuses exclusively on decision-making decentralisation, also referred to as *political decentralisation*, or, more simply, as *federalism*. The terms decentralisation and federalism will be used interchangeably throughout, and will be understood to mean "the devolution by central government of specific functions...to regional and local governments that are independent of the center within given geographic and functional domains" (Faguet, 2002, p.3). Importantly, this independence from the centre helps answer Bird's (2000, p.135) "central question with respect to political decentralization," namely: who decides and administers.

In addition to providing the best conceptual fit with the paper's theoretical model, there are other reasons to consider the political aspects of decentralisation. Chief among these is the sheer scale of sub-national proliferation. By Marks, Hooghe, & Schakel's (2008) account, there was an eight-fold increase in sub-national authorities between 1950-2006. This has been almost universally heralded as a positive development, particularly given its supposed ability to improve quality of government (QoG). Holmberg, Rothstein, & Nasiritousi (2009, p.137) define QoG as "the traditions and institutions by which authority in a country is exercised," and it reflects a government's ability to formulate and administer effective policies. Studies have been quick to attribute improvements in QoG to the spreading wave of decentralisation. Electorally, federalism's ability to bring the machinery of government closer to the people has been promoted as an effective way to manage pluralism in post-conflict states, as it simplifies how Tiebout's (1956) "consumer-voters" 'voice' their preferences while concurrently discouraging non-participation ('exit') or violence ('disloyalty') (Hirschman, 1970). For example, in South Africa, Horowitz (1991) found that the decentralisation afforded by federalism was essential to "constitutionally engineering" a peaceful transition towards democracy. For many others "and particularly for international agencies such as the World Bank, decentralisation has been seen more in instrumental terms, as a way of improving [QoG]" (Devas & Delay, 2006, p.690).

Decentralisation's theorised QoG benefits are thought to result from a two-pronged process. First, decentralisation reorients accountability relationships downwards towards the citizens. As local populations gain control over sub-national officials, particularly through their vote's ability to reward or punish policy decisions, it becomes increasingly rational for decentralised agents to act in accordance with local preferences. As such, it has been found that the sub-national devolution of power incentivises regional officials to respond to local needs,

while concurrently muffling their responsiveness to central commands (Faguet, 2011). While decentralisation generates the rational *imperative* to improve service delivery for local populations, it also provides the political *ability* to do so. Specifically, the delegated decision-making authority that differentiates true decentralisation from mere deconcentration gives sub-national officials the flexibility to respond to proximate circumstances. This has been borne out in U.S. environmental policy, as Chang, Sigman, & Traub (2013) discovered that states that voluntarily assume control over the implementation of federal ecological policy are found to have more stringent regulations that benefit the local environment. In short, the flexibility inherent to decentralisation allows officials to ‘translate’ policies to account for contextual variation, thereby improving both a policy’s fit with an “existing network of practices and infrastructure” (Sausman, Oborn, & Barrett, 2016, p.564), and, ultimately, service quality.

### **(c) Centralised Compliance, Decentralised Defiance? Decentralisation and Rule of Law**

While the implementation of “local versions of national guidelines” (Sausman et al., 2016, p.566) is desirable when discussing policy *principles*, this becomes a problematic vice when dealing with more formalistic *rules* (Braithwaite, 2002), of which laws – including FACB conventions – are the classic example. Unsurprisingly, then, Loeper (2011) found that decentralisation has rarely been invoked as a solution to problems beyond the fiscal sphere. More adroitly, Ellingsen (1998, p.266) posited, “the study of laws, regulations, and standards may require a different” view of decentralisation altogether. As of yet, however, such a viewpoint has failed to penetrate the literature. This may be attributable to definitional priming leading studies to prioritise the substantive over the procedural components of QoG. Specifically, many studies probing the link between decentralisation and governance define the latter in Fukuyaman terms, whereby governance is “a government’s ability to make and enforce rules, and to deliver

services, *regardless of whether that government is...subject to the rule of law*" (Faguet, 2013, p.3). This may have systematically skewed scholarly interest towards decentralisation's influence on the service delivery component of QoG at the expense of considering potential costs in the form of a weakened rule of law. This is a weakness of the current decentralisation literature, as rule of law is one of the three most commonly used measures of QoG and should not be overlooked (Holmberg et al., 2009). Interestingly, one of the lone studies to include the rule of law found that political decentralisation reduced government quality by approximately 60% (Kyriacou & Roca-Sagales, 2011).

Though rule of law is a multifaceted concept, it includes factors that are relevant to the current study such as the enforceability of rights, as evidenced by its inclusion in the World Bank's (2018) *Rule of Law* indicator. On this note, Henkin's (1979, p.47) seminal work on state behaviour asserts that "almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time." His adoption of a state-centric worldview presupposed "a nation-state without public rival in its own realm" (Spiro, 1997, p.580). However, modern developments have challenged the descriptive accuracy of this viewpoint, as Spiro (1997, p.668) found "many newly emerging [international] rights implicate areas of law...which have been within the near-exclusive authority of [subnational] governments." It is therefore clear that the increasing shift from a monocentric system of government to a polycentric system of governance raises serious accountability and compliance challenges, particularly when dealing with the sub-national implementation of national legal commitments (Koliba, Mills, & Zia, 2011).

There are various mechanisms through which a decentralised structure could undermine the rule of law. Typically, this argument is made in the form of the increased rent-seeking

opportunities that a deeper government provides. Studies have established a positive relationship between decentralisation and corruption, as it increases the opportunities for special interests to capture sub-national politicians (Goel & Nelson, 2011; Bardhan & Mookherjee, 2006). However, the more relevant mechanism for the purposes of this study is the institutional structure of decentralisation itself. As the principal item in the social contract, governments are required to uphold the rule of law, and, viewed statutorily, most countries have sufficient FACB-related protections. However, Berliner, Greeleaf, Lake, Levi, & Noveck (2015, p.36-37) argue that government officials within the same country “often diverge in interests and goals...central and local governments often have distinct sets of incentives that may lead them to act in contradictory ways.” By introducing additional, autonomous layers of government, decentralisation exponentially increases the amount of veto players in the system, resulting in greater heterogeneity in administration than could be expected under centralised authority. Though desirable in the context of service delivery, this heterogeneity is the antithesis of legal policy, which is intended to be uniformly enforced. As such, the sub-national administration of key policy areas risks implicating the international responsibilities of nation-states, and in the process “pits federal control over [international] affairs against the nation's commitment to federalism” (Doherty, 1996, p.1281).

#### **(d) Strategic Decentralisation: False Positives and Radical Decoupling**

While decentralisation's detrimental effects on compliance have thus far been presented as a benign result of its institutional structure, some theoretical perspectives would suggest that it is more intentionally pursued to undermine compliance. Similar to how elites may pre-emptively democratise in order to attract further investment or subdue popular tensions (Acemoglu & Robinson, 2008), there is a risk that decentralisation is not pursued to enhance governance.

Rather, Gradstein (2017, p.111) finds the “devolution of power can be viewed as useful by political leaders or ruling elites, out of strategic motives” to undercut their international obligations. A useful comparison can be made to the work of Simmons (2009), who suggests that the ratification of international conventions is often pursued for its effectiveness as a “social camouflage” rather than out of an intrinsic desire to uphold them substantively. While it is logical to assume that ratification reflects acceptance of the values a convention expresses, this rationale hides a significant amount of ‘false positives.’ This is to say that a number of national governments ratify international conventions without intending to comply, thereby enabling them to gain the legitimacy benefits associated with treaty ratification and avoid the compliance burdens. In effect, this transforms meaningful documents, such as the FACB conventions, into mere “window-dressing” in practice (Levitsky & Murillo, 2009). There is evidence to support that states do approach international law in this strategic fashion, with Mosley (2010) finding no significant difference in labour outcomes between ratifying and non-ratifying countries and Peksen & Blanton (2017) finding that the ratification of core labour standards actually reduces the expected value of FACB rights by 4%. Importantly, while the window-dressing argument is often levied against developing countries, its connection with decentralisation means extending its applicability to federal states across the economic spectrum. Even American studies have posited that federalism has transformed the ratification of international laws into “a largely hollow, falsely symbolic act” given that it “is state-level conduct that is most often condemned as violating international [law]” (Spiro, 1997, p.567).

The ILO has predominantly relied on legal mechanisms which helped ensure sub-national enforcement of international obligations. One such mechanism is the doctrine of state responsibility, which “holds central governments accountable for the conduct of constituent

authorities” (Spiro, 1997, p.567). Since this exposes them to retribution for noncompliance, national governments should theoretically be incentivised to nudge sub-national governments responsible for enforcement towards compliance. In fact, the CFA (2003) has made use of this mechanism by reminding national governments that “a State cannot use the argument that other commitments...can justify the non-application of ratified ILO Conventions,” with one such commitment being to federalism. However, the degradation of labour rights in the face of pervasive decentralisation underscores the thin nature of international legal mechanisms and their inability to pierce deeper domestic structures (Kanetake, 2016). While Spiro (1997, p.580) argues that reliance on state responsibility “attracted little controversy in a century dominated by the state system,” it is outdated in the face of increasingly autonomous sub-national actors that are absolved of any responsibility for violating international laws, such as FACB conventions.

The evisceration of the doctrine of state responsibility has further exposed the porous gaps in the ILO’s enforcement capabilities to prospectively non-compliant states. In fact, despite their comprehensive monitoring system, ILO findings of FACB violations have never resulted in the imposition of sanctions (Peksen & Blanton, 2017), due in part to their unwillingness to hold national governments responsible for the violations of their sub-national peers. This proven difficulty of direct sub-national enforcement has created a ‘perfect storm’ that renders the ILO’s associative accords highly conducive to ‘radical decoupling,’ which “is a paradoxical outcome in which convention ratification might have the opposite of their intended effect” (Peksen & Blanton, 2017, p.77). This occurs through an ostensibly rational calculus, wherein the lack of enforcement keeps the cost of violating their commitments fairly low. Following this logic, there is a risk that FACB conventions could simply serve to relieve pressure from domestic and

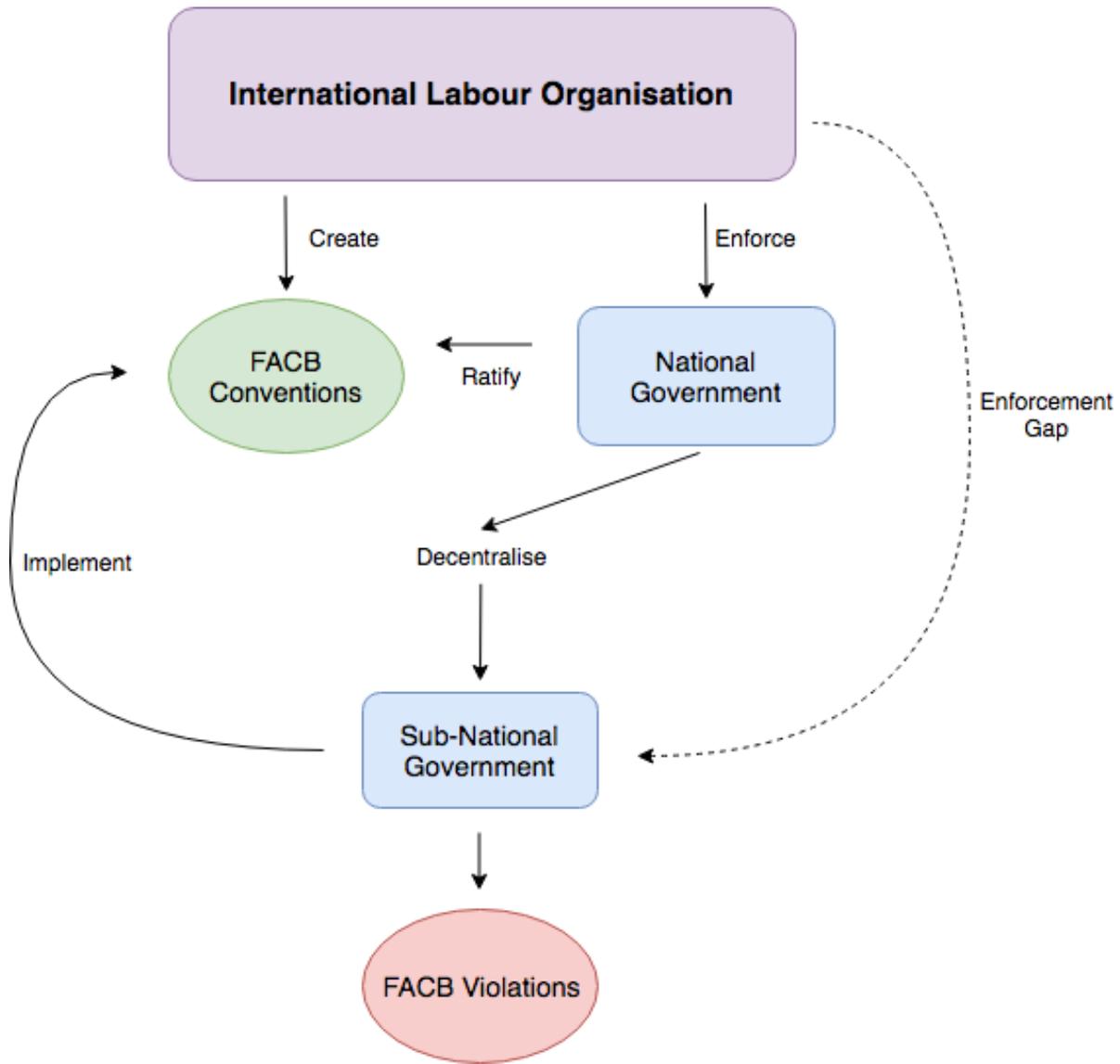
international actors absent any real change in performance and actually cover subsequent labour violations enabled by decentralised administration (Hathaway, 2002).

As gleaned from above, there are extensive theories of national compliance with international legal obligations; however, Sloss (2012) finds the literature has paid scant attention to key institutional arrangements that can promote or impede compliance. With this in mind, it is important not to overlook decentralisation's role in enabling FACB violations. In delegating the responsibility of enforcing FACB-related rights to the sub-national level, national governments are able to skirt potential ILO consequences. Confronted with cases in which the administration of labour law occurs at the sub-national level, the CFA (1965) has found itself at the mercy of national governments by urging them to "ensure that provincial governments maintain respect for [FACB]," but with no ability to ensure sub-national compliance. Therefore, decentralisation presents national governments with an elusive 'free lunch'; the legitimacy of FACB ratification can be gained without altering sub-national enforcement behaviours, all without any credible risk of repercussion.

Viewing the previous section collectively, it is clear that policy decisions such as FACB convention ratification are "very seldom[ly]...self-executing" (Hill & Hupe, 2014, p.7). In this sense, it is obvious that the rights codified within FACB conventions would be but an edict writ in water and violations would abound if national governments could pursue ratification without ensuring that they have been given effect through proper sub-national implementation; however, as reflected in Figure 1, this is a plausible outcome. Based on the foregoing, and having built on the theory and literature previously set out, the study's hypothesis is that:

*The degree of political decentralisation in a country will be positively related to its amount of international labour law violations.*

Figure 1 – Theoretical Model



### III. Methods

#### (a) Main Empirical Approach

The study uses multiple linear regression models to assess the relationship between decentralisation and FACB violations during the period 1990-2010. While other studies into the correlates of political-economic variables on labour rights have tended to be panel studies, the

time-independent nature of the study's decentralisation variable eliminated the need to study year-fixed effects through a time-series design, and made a cross-sectional design appropriate.

The choice of variable further influenced the study's design, particularly the study period of 1990-2010. As it is interested in political decentralisation, beginning the analysis in 1990 helped avoid the constitutional upheaval that followed Communism. As constitutional documents that codified the devolution of powers were only given "a life after death...since they never mattered [during] Communism" (Elster, 1993, p.171), it was important not to include pre-1990 data. Additionally, 2010 proved a logical place to bound the analysis given the lag between the filing and the concluding of FACB complaints. While CFA procedures state that conclusions are normally reached within 1-2 years (Tajgman & Curtis, 2000), it was common for the delay to reach 5 years, effectively precluding analysis within this period. Seeing as an authoritative conclusion is required to ascertain "whether a [FACB] infringement has occurred" (Tajgman & Curtis, 2000, p.50), it was important to only include cases for which findings had been made.

#### **(b) Robustness Check**

To assess whether the main results are robust to alternative modeling choices, the study also fits a negative binomial model. This model type is appropriate when the conditional variance in the dependent variable exceeds the conditional mean (Blackburn, 2015), which, as reflected in Figure 2, is the case with the FACB violations data. As will be discussed in subsection (d), this was successfully accounted for in the main model; however, "it is [also] important to consider parametric techniques which can accommodate zero values" (Dastrup-Mills, 2013, p.4). Given its ability to account for zero-inflated data in its original form, the negative binomial model merited inclusion as a robustness check. Rather than producing a regression coefficient, the model provides an 'adjusted odds ratio' that specifies the odds of the

outcome occurring in the category of interest compared to the reference category. As such, the model estimates how much more likely (if at all) it is for decentralised countries to have been found in violation of FACB conventions than centralised countries between 1990-2010.

**Figure 2 – Zero-Inflated (Non-Normal) Distribution of FACB Violations**



### (c) Sample

The study's level of analysis being the nation-state, the sample is comprised of data collected on numerous countries ( $n=135$ ). Although both the Treisman (2008) dataset and the ILO's *NORMLEX* system each contain 156 countries, there were two reasons for the sample being more constrained. First, not all subjects were appropriate for inclusion in the study. As the CFA's reports date back to 1952, it includes findings on long-dissolved states such as Czechoslovakia. Seeing as the study's temporal horizon runs from 1990-2010, this precluded the inclusion of such defunct states. Secondly, Treisman's dataset includes countries for which there are no corresponding CFA findings. This typically occurs because a country holds non-member status in the ILO; as of 2018, 7 of the UN's 193 member-states, such as Bhutan, have failed to formally accept the ILO's constitution, which precludes the CFA from making FACB-related

findings against them (ILO, 2014). These preconditions aside, a country was included in the final sample if it was present in both the Treisman (2008) and *NORMLEX* sources.

#### **(d) Dependent Variable**

In the multiple linear regressions undertaken in the study, the outcome variable of interest is *FACB Violations (logged)* over the period 1990-2010. It was appropriate to subject the variable to logarithmic transformation given the non-normal distribution referred to above. Importantly, one may only take the logarithm of positive integers. As there were countries that did not record a violation during the study period, the transformation was achieved by adding 1 to each count, meaning the variable takes the form  $\log(\text{violations}+1)$ . This achieved a distribution that approximated a normal distribution and made multiple linear regression appropriate. In contrast, the negative binomial robustness check uses FACB violations in its original form given its ability to successfully fit over-dispersed count data.

The study operationalises FACB violations by creating an original dataset derived from CFA complaint reports. While the scope of CFA-examined complaints is vast, it “avoid[s] dealing with matters which do not fall within its specific competence” (ILO, 2006, p.233). One can therefore be certain that all the cases upon which the dependent variable is built are strictly FACB-related, irrespective of the form taken by each complaint. While all complaints are publicly listed on the *NORMLEX* system, they take a textual form that is unsuited to quantitative analysis. Converting them into the appropriate form involved manually coding each complaint to determine the result reached by the CFA, of which there are two general possibilities: unsubstantiated or substantiated. A third result-type, in which no determination could be made as a result of non-cooperation on the part of the respondent, also exists; however, as proper CFA-

adjudication requires “objective evidence of the facts” (Tajgman & Curtis, 2000, p.46), a determination was made to code such cases as unsubstantiated.

Unsubstantiated complaints often took the form of the CFA recommending that the case called for ‘no further examination,’ as this language is used “where the CFA finds no violation of [FACB]” (Tajgman & Curtis, 2000, p.66). The CFA concludes cases in this language for various reasons, including when the facts do not constitute an infringement of associative freedoms or when the allegations are too vague to consider the merits of the complaint. Moreover, although domestic transgressions often constitute an international FACB violation, the potential for discrepancies reflects that the conventions establish a statutory floor, rather than a ceiling (Maupain, 1998). As such, the CFA at times hears cases in which a state’s actions “are not in conformity with the provisions of national laws and regulations, [but] are not contrary to the principles of the [CFA]” (CFA, 1993). Said cases are objectively unsubstantiated, irrespective of the normative ire they draw from the ILO.

Conversely, cases in which “the government has been asked to take action” (Tajgman & Curtis, 2000, p.66), on any aspect of the complaint were deemed substantiated, and only substantiated complaints were coded as FACB violations. As these cases can contain allegations of distinct violations that flow from the same set of facts, it was determined that a singular finding of wrongdoing was sufficient for substantiation. Alternatively, numerous findings of wrongdoing in the same complaint were also classified as one violation. In the vast majority of cases, this approach was sufficiently instructive as to enable coding using solely the ‘Recommendations’ section of CFA reports. However, where latent ambiguity existed in the recommendations section, the researcher would make use of a report’s more detailed ‘Conclusions’ section to ensure the appropriate coding. Granted this method involved reliance on

the researcher's judgment and – as a one-author study – does not benefit from the procedural safeguard of inter-rater reliability, it closely followed ILO procedures and explanatory documents to maximise coding consistency across cases. Per the ILO (2006), its use of these procedures has enabled it to maintain continuity when determining whether allegations are founded or not.

### **(e) Independent Variables**

*Political Decentralisation* (full model). Decentralisation is operationalised using Treisman's (2008) dichotomous decision-making decentralisation variables of 'autonomy' and 'residual authority.' While autonomy captures whether a country's constitution reserves decision-making on a given issue (such as labour law) to a sub-national legislature, residual authority awards sub-national governments the exclusive authority to legislate on issues that the constitution has not specifically assigned to a given level of government. For example, the German constitution (Art. 30) recognises the residual power of states by contending that "except as otherwise provided...the exercise of state powers and the discharge of state functions is a matter for the *Länder* (states)." Any difference between the two concepts is semantic, for while the decentralisation captured by autonomy is more explicit, the sub-national administrative powers awarded through residual authority are equivalent in practice. As such, when a country's constitution was designated as awarding *either* autonomy or residual authority to sub-national levels of governments, it was assigned a decentralisation score of 1. If a country's constitution awarded *both* autonomous and residual powers, the maximum decentralisation score remained 1.

*Regional Authority Decentralisation* (limited model). To overcome the limitations of a dichotomous variable, the study also uses a continuous measure of decentralisation drawn from Hooghe, Marks, Schakel, Chapman-Osterkat, Niedzwiecki, & Shair-Rosenfeld's (2016)

*Regional Authority Index.* An original, 7-point measure was created using the index's two most relevant data points: institutional depth (3-point) and policy range (4-point). Institutional depth captures the extent to which a sub-national government is autonomous, while policy range reflects the range of policies for which a sub-national government is responsible, including FACB-related policies. To construct the measure, the yearly scores of both institutional depth and policy range were summed for the period 1990-2010 and then divided by 21 to provide the average authority that sub-national governments exercised throughout the study period. Despite its enhanced granularity, this measure is only employed in the limited model because of its limited scope ( $n=71$ ) in comparison to the decentralisation measure used in the full model.

*Democracy.* Regime form is controlled for using the Polity2 democracy measure, which ranges from -10 (full autocracy) to 10 (full democracy). The established relationships between democracy and the study's main independent and dependent variables made it vital to control for its potential confounding effect. While autocratic systems tend to be more centralised, democratic nations are characterised by devolution (Stoyan & Niedzwiecki, 2018). The positive association between democracy and labour rights reflects that in participative and competitive political systems, workers and their representatives are more effective in advocating for their interests and protecting their codified rights (Ronconi, 2012; Neumayer & De Soysa, 2006).

*Left Party.* To ensure that violations are a function of *how* authority is structured rather than *who* exercises authority, the study controls for the political representation of left-wing parties. Extensive research supports a positive correlation between leftist parties and the representation of labour rights (Huber, Mustillo, & Stephens, 2008; Iversen & Soskice, 2006; Cook & Bazler, 2013). This offers a basis upon which to expect that FACB outcomes would be stronger in left-leaning countries, and research does support the existence of this state-society

linkage (Ronconi, 2012; Amengual, 2014). The study controls for the political influence of leftist parties by modifying Berliner et al.'s (2015) measure. Using data from the Database of Political Institutions, they summed three distinct indicators: whether a leftist party held the executive office, whether it was the largest in the legislature, and whether it was the largest opposition party. The resulting measure could therefore take a yearly value between 0-3, which was then aggregated over the current study period. This indicates the total amount of time that left-wing parties were in a position to formulate and administer pro-labour laws, with higher numbers suggesting greater domestic protection of labour rights.

*FACB Ratification (in years).* Ratification of the FACB conventions is measured in the sum of the years each convention has been ratified, as derived from the ILO. This measure is more instructive than a simple dichotomous indicator, as – similar to democratisation – ratification may need to be “radical and long-lived” (Treisman, 2000, p.401) to have a significant effect on downstream outcomes. As a ‘core labour standard,’ FACB has effectively been declared to be a fundamental human right by the UN, which Bellace (2001, p.272-273) argues makes it “extremely difficult for any government...to oppose acknowledging this right.” One would therefore assume that ratification reflects an acceptance of the conventions’ normative underpinnings and signifies a country’s willingness to harmonise their laws and practices with the ILO standard, irrespective of how decentralised their political structure is.

*Labour Inspectors.* The number of labour inspectors per country was collected using three principal sources: the ILO, the U.S. Department of Labor, and the U.S. Department of State. Following the advice of Berliner et al. (2015, p.129), this measure was used to approximate labour-specific state capacity, which “offer[s] a more nuanced picture” than broader metrics of state capacity. This is borne out in the empirical evidence, with some studies

suggesting that stronger inspectorates result in greater compliance with labour laws (Ronconi, 2010; Piore & Schrank, 2008), while others find it does nothing to improve workers' outcomes (Bhora, Kanbur, & Mayet, 2012).

*Employees.* The number of employees per country was obtained from *ILOSTAT*. Previous studies have found that population size has a negative relationship with rights compliance, as it increases the opportunities for violations to occur (Poe, Tate, & Keith, 1999; Richards, Gelleny, & Sacko, 2001). While population size is an appropriate control when studying human rights, it is overly broad for a study of FACB rights. Following the logic of the population-human rights relationship, the study controls for a country's number of employees. It is trite law that only employees can be unionised, and it is the employment relationship that provides the legal basis for FACB rights. As such, this avoids including other work arrangements that contribute to employment totals, such as independent contractors and the self-employed, in the measure.

*Lawyers.* To allay concerns that social, rather than political, factors explain the variation in FACB violations, the study uses Michelson's (2013) data to control for the number of lawyers per country. This measure acts as a proxy of litigiousness, with greater numbers implying a higher probability of complaints being filed. Similar relationships have been found to exist in other legal areas (Cross, 1992).

*GDP/Capita.* To assess whether FACB violations reflect development, GDP/capita is controlled for using information from the World Bank. Data was taken for all available years between 1990-2010, with an average GDP/capita value being used in the model. This variable has been found to have a negative relationship with FACB rights in developing countries (Greenhill et al., 2009). Though counterintuitive, this may reflect that advanced economies are often industrial and urbanised, compared to the agricultural and rural economies of lesser-

developed countries. The proportion of industrial workers renders employment more formal and thereby increases opportunities for FACB-related violations, whereas the urban setting makes it easier to report and detect said violations (Neumayer & De Soysa, 2006; Mosley & Uno, 2007).

*Union Density.* Replicating previous studies (Botero, Djankov, La Porta, Lopez-de-Silanes, & Shleifer, 2004), union density is measured using *ILOSTAT*. Research has found some evidence of a positive relationship between union density and labour rights (Berliner et al., 2015). This presumably reflects the strength of collective action, in that workers' protections reflect their political power and voice (Budd, 2004). Problematically, measuring union density in a cross-national context is fraught with difficulties, as some countries mandate membership in state-sponsored unions that afford little bargaining power (e.g. China's All-China Federation of Trade Unions) (Rudra, 2012), whereas others (e.g. France) have weak unionisation rates despite high collective bargaining coverage (OECD & Visser, 2018). This should be kept in mind when interpreting the results.

*Trade.* The study's independent variables focus predominantly on factors internal to each country. Nonetheless, trade's relationship with both decentralisation (Spiro, 1997; Fry, 2017) and labour violations (Mosley & Uno, 2007) is too established to ignore. Trade is measured using the sum of a country's exports and imports expressed as a percentage of its GDP, with the data obtained from the World Bank. This captures the degree of openness in a given economy. Typically, economic openness exposes domestic workers to harsh winds of competition. This risks initiating what Drezner (2001) terms a 'race-to-the-bottom' in which the abrogation of labour standards is a tempting strategy to alleviate the risk of capital flight.

## IV. Results

The correlation matrix in Table 1 shows the direction and strength of the relationships between all of the study's variables. The statistically significant and moderately strong correlation coefficients for both measures of decentralisation to logged violations ( $r=.419$ ;  $p<.001$ ;  $r=.236$ ;  $p=.048$ , respectively) provide preliminary support for the hypothesis.

As mentioned in the 'Independent Variable' section, the study operationalises decentralisation in two ways: dichotomously and continuously. As such, two separate models were run: a full model (with Treisman's (2008) *Political Decentralisation* measure) and a limited model (with Hooghe et al.'s (2016) *Regional Authority Decentralisation* measure). The results will be reported in turn.

### (a) Full Model Results

Having satisfied the correlational burden between *Political Decentralisation* and *FACB Violations (logged)*, the study then ran a regression with two steps in an attempt to further falsify the hypothesised association between decentralisation and labour law violations, the descriptive statistics and model summary of which can be found in Appendix A. The first step involved a simple linear regression, in which *FACB Violations (logged)* was regressed on *Political Decentralisation*. The findings were supportive of the hypothesis, with a move from centralisation to decentralisation increasing the expected amount of logged violations by nearly 1.1 ( $\beta = 1.086$ ;  $p < .001$ ). Taken on its own, this measure of decentralisation purported to explain almost 18% of the total variation in labour law violations.

The second step of the regression involved the inclusion of nine additional measures alongside *Political Decentralisation*, conceptualised as control variables. As reflected in Table 2, while the inclusion of these additional factors marginally reduced its predictive strength,

Table 1 – Correlation Matrix

Correlations

	FACB Violations	FACB Violations (logged)	Political Decentralisation	Regional Authority	Democracy	Left Party	FACB Ratification (in years)	Labour Inspectors	Employees (in thousands)	Lawyers	GDP (per capita)	Union Density	Trade (as a % of GDP)
FACB Violations	1	.799**	.469**	.223	.169	.010	.058	-.029	.053	.176	-.043	-.207	-.239**
			.000	.062	.060	.912	.508	.785	.545	.041	.621	.056	.006
			.135	.71	.135	.135	.135	.94	.135	.135	.134	.86	.134
FACB Violations (logged)		1	.419**	.236**	.167	.037	.066	.037	.144	.260**	-.106	-.279**	-.241**
			.000	.048	.063	.670	.450	.721	.097	.002	.227	.009	.005
			.135	.71	.135	.135	.135	.94	.135	.135	.134	.86	.134
Political Decentralisation			1	.609**	.219	.013	.002	.035	.150	.415**	.130	-.118	-.166
				.000	.024	.895	.987	.758	.114	.000	.173	.312	.082
				.135	.71	.135	.135	.94	.135	.135	.134	.86	.134
Regional Authority				1	.137	.100	-.022	.506**	.439**	.397**	.294	-.063	-.356**
					.274	.407	.857	.000	.000	.001	.013	.625	.002
					.71	.71	.71	.71	.71	.71	.71	.71	.71
Democracy					1	.357**	.275**	-.144	-.075	.170	.440**	.011	.147
						.000	.002	.177	.401	.068	.000	.923	.104
						.135	.135	.94	.135	.135	.134	.86	.134
Left Party						1	.086	.188	.163	.169	.113	.102	-.013
							.317	.070	.058	.049	.197	.351	.883
							.135	.94	.135	.135	.134	.86	.134
FACB Ratification (in years)							1	-.197	-.229**	-.215**	.101	.312**	.024
								.067	.007	.012	.247	.004	.779
								.94	.135	.135	.134	.86	.134
Labour Inspectors								1	.954**	.229	.005	.097	-.189
									.000	.027	.963	.429	.071
									.94	.94	.94	.86	.94
Employees (in thousands)									1	.465**	.019	.055	-.198
										.000	.824	.613	.022
										.135	.134	.86	.134
Lawyers										1	.209	-.111	-.276**
											.016	.311	.001
											.134	.86	.134
GDP (per capita)											1	.379**	.245**
												.000	.005
												.86	.134
Union Density												1	.086
													.437
													.86
Trade (as a % of GDP)													1
													.086
													.437
													.86
													.134

\*\* Correlation is significant at the 0.01 level (2-tailed).  
 \* Correlation is significant at the 0.05 level (2-tailed).

decentralisation remained a statistically significant predictor of FACB violations ( $\beta = 0.759$ ;  $p = .016$ ). Though *prima facie* small, its impact becomes increasingly apparent when one considers that the maximum value of logged violations in the sample was Argentina’s 4.32 violations. As such, the decentralisation coefficient effectively suggests that two countries – one decentralised through federalism and the other fully centralised – with otherwise equal political and economic characteristics would differ in expected violations by 17.6%, with the federalist country exhibiting poorer FACB-related compliance than its centralised counterpart. The magnitude of this effect underscores how decentralisation was the best predictor of violations in the model by a significant margin, with the predicted effect of decentralisation on FACB violations being over 42-times stronger than the next most impactful control variable.

**Table 2 – Full Model Regression Coefficients**

**Coefficients<sup>a</sup>**

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.	95.0% Confidence Interval for B	
		B	Std. Error	Beta			Lower Bound	Upper Bound
1	(Constant)	1.183	.130		9.088	.000	.923	1.443
	Political Decentralisation	1.086	.289	.419	3.754	.000	.508	1.664
2	(Constant)	1.809	.409		4.419	.000	.989	2.628
	Political Decentralisation	.759	.305	.293	2.490	.016	.149	1.369
	Democracy	-.006	.026	-.034	-.229	.820	-.058	.046
	Left Party	.012	.009	.175	1.307	.196	-.007	.031
	FACB Ratification (in years)	.004	.003	.143	1.180	.243	-.003	.010
	Labour Inspectors	-.001	.000	-2.306	-2.878	.006	-.002	.000
	Employees (in thousands)	5.993E-005	.000	2.567	2.976	.004	.000	.000
	Lawyers	-6.640E-006	.000	-.671	-2.333	.023	.000	.000
	GDP (per capita)	1.311E-005	.000	.137	.845	.402	.000	.000
	Union Density	-.018	.007	-.323	-2.476	.016	-.033	-.003
	Trade (as a % of GDP)	-.008	.004	-.309	-2.349	.022	-.015	-.001

a. Dependent Variable: FACB Violations (logged)

Having reported the findings related to decentralisation, the paper will now discuss the various control variables. Overall, the incremental variance explained by the inclusion of the relevant controls amounted to approximately 22% of the total variation in FACB violations. Taken collectively, this meant that the full model explained almost 40% of the variation in FACB violations across the entire sample. The relationships between the distinct controls and FACB violations were in the expected direction; however, not all were significant. Of particular interest was the apparent insignificance of GDP on FACB violations. Previous studies into the correlates of labour rights often limited their scope to developing countries, with Greenhill et al. (2009, p.672) doing so on the basis that labour rights in industrialised nations “are superior to those in developing countries.” However, this conflates *regulatory standards* with *lived experiences*, which “must be delivered ‘out there’” to take effect (Devas & Delay, 2006, p.692). In the intervening space, there are many opportunities for political variables, such as decentralisation, to dilute *de jure* standards and effectively transform them into mere institutional window-dressing rather than substantive protections. The null results for the GDP variable suggest this is what occurs in practice, with decentralisation positively associated to FACB violations *across* the economic spectrum.

Leaving the other non-significant findings aside, the results of the remaining control variables will now be reported. The amount of labour inspectors was negatively associated with the number of violations, which suggests that labour-specific state capacity does have a deterrent effect on prospective violators. However, the coefficient effect was extremely small, with 1000 additional labour inspectors reducing the expected amount of logged violations by only 1 over a twenty-year period ( $p = .006$ ). A similar finding was made with respect to the number of lawyers in a given society. Specifically, the model would predict that an additional lawyer would reduce a country's

amount of logged violations by 0.000007 over the study period ( $p = .023$ ). A negative relationship was also established between violations and union density; a 10% increase in the unionisation rate would be expected to reduce logged violations by 0.18 ( $p = .016$ ), holding all else constant. The unionisation findings are highly disturbing given the hollowing out of trade unions across developed countries, with Kjellberg's (2011) study on 18 OECD members finding that unionisation rates had fallen in each country. Additionally, a country's number of employees was found to be a positive predictor of labour law violations, with an additional million employees associated with an expected increase in logged FACB violations of 0.06 ( $p = .004$ ). While the model's domestic factors behaved as expected, its one international economic factor, trade, did not. The more a country relied on trade, the better their respect for collective labour rights, with a 10% increase in the trade-to-GDP ratio involving an expected reduction of 0.08 logged violations. However, trade's weaker coefficient than both decentralisation and left-party are supportive of Mosley & Uno's (2007, p.934) conclusion that "it is not so much differences in economic internationalization that drive variations in labor rights but differences in political institutions." Taking the results of the full model collectively, it is apparent that decentralisation is one such political institution that drives variations in FACB-related outcomes.

### **(b) Limited Model Results**

The study now turns to examining the effects of Hooghe et al.'s (2016) more granular indicator of decentralisation to determine whether this changes the results. Aside from swapping decentralisation variables and limiting the sample to the aforementioned 71 countries, the analysis is identical to that conducted in the previous section. The descriptive statistics and model summary can be found in Appendix B.

As seen in Table 3, regressing *FACB Violations (logged)* onto *Regional Authority Decentralisation* provided further evidence in support of the hypothesis. When included as the lone predictor variable, the model was 90% confident that a one-unit increase in regional authority would be associated with upwards of .24 more logged violations. The model would therefore predict that countries on opposite ends of the 7-point regional authority scale would differ in logged violations by nearly 1.5 cases across the study period, holding all else constant. On its own, this version of decentralisation was found to explain 6% of the variation in logged violations, which amounts to only one-third of the predictive strength of Treisman’s (2008) decentralisation measure. This likely reflects the aggregate and therefore imperfect nature of the *Regional Authority Index*, which includes decentralisation data on policy areas that are irrelevant to the current study, such as immigration. Including the control variables into the second step of the regression did little to alter the results, with regional authority remaining positively associated with logged violations ( $\beta = .120$ ;  $p = .091$ ), albeit at a lower level of statistical significance.

**Table 3 – Limited Model Regression Coefficients**

		Coefficients <sup>a</sup>						
Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.	90.0% Confidence Interval for B	
		B	Std. Error	Beta			Lower Bound	Upper Bound
1	(Constant)	1.317	.246		5.352	.000	.906	1.729
	Regional Authority	.104	.058	.236	1.800	.077	.007	.201
2	(Constant)	1.855	.842		2.204	.033	.442	3.268
	Regional Authority	.120	.069	.270	1.727	.091	.003	.236
	Democracy	.080	.087	.198	.920	.362	-.066	.227
	Left Party	-.013	.011	-.150	-1.164	.250	-.032	.006
	FACB Ratification (in years)	.002	.005	.072	.492	.625	-.005	.010
	Labour Inspectors	.000	.000	-.141	-.774	.443	-.001	.000
	Employees (in thousands)	1.589E-005	.000	.293	.950	.347	.000	.000
	Lawyers	3.419E-008	.000	.004	.014	.989	.000	.000
	GDP (per capita)	-5.752E-005	.000	-.535	-1.954	.057	.000	.000
	Union Density	.001	.013	.023	.107	.915	-.020	.023
	Trade (as a % of GDP)	-.004	.004	-.154	-.985	.330	-.011	.003

a. Dependent Variable: FACB Violations (logged)

**(c) Robustness Check**

The study now investigates the robustness of its main results against an alternative modeling choice, namely a negative binomial model rather than a multiple regression model. While the over-dispersed nature of FACB violations required a log-transformation to satisfy the assumptions of the linear model, the negative binomial fit the non-log-transformed count data well. This is reflected by its Pearson Chi-Square/degrees of freedom value of .818, which is significantly above the minimum goodness-of-fit threshold of .05 (Mi, Di, & Schafer, 2015), and the fact that over 95% of the residuals are under an absolute value of 2 without systematic deviations away from 0 (Gardner, Mulvey, & Shaw, 1995). Full results regarding the model's goodness-of-fit can be found in Appendix C.

The results of the robustness check are shown in Table 4. It must be noted that the robustness check was run against the full sample, which is why Treisman's (2008) decentralisation variable was included in the model and Hooghe et al.'s (2016) regional authority indicator was not, in an effort to avoid multicollinearity. As seen, decentralisation represents the reference category; therefore, the substantive analysis is made with respect to centralised countries. As evidenced by the adjusted odds ratio, the ILO was 1.378-times less likely to uncover a violation against centralised states than they were against decentralised states during the study period, and this finding was statistically significant at all conventional levels of significance ( $p < .001$ ). This provides further evidence in support of the positive relationship between decentralisation and FACB violations established in the main model, thereby further supporting the paper's hypothesis. The relationship uncovered in the main model is therefore unlikely to be a spurious artifact of either the study's log-transformation or its modeling choice.

**Table 4 – Negative Binomial Regression Results**

Parameter	Parameter Estimates						
	Adjusted Odds Ratio	Std. Error	95% Wald Confidence Interval		Hypothesis Test		
			Lower	Upper	Wald Chi-Square	df	Sig.
(Intercept)	4.417	.6896	3.066	5.769	41.028	1	.000
[Decentralisation=.00]	-1.378	.3569	-2.078	-.679	14.918	1	.000
[Decentralisation=1.00]	0 <sup>a</sup>	.	.	.	.	.	.
Democracy	.071	.0551	-.037	.179	1.645	1	.200
LeftParty	.018	.0145	-.010	.047	1.561	1	.212
RatificationYears	-.002	.0047	-.011	.007	.246	1	.620
LabourInspectors	.000	.0002	-.001	.000	1.810	1	.178
Employees	1.464E-005	1.2567E-005	-9.988E-006	3.927E-005	1.358	1	.244
Lawyers	-2.478E-006	1.9343E-006	-6.269E-006	1.313E-006	1.641	1	.200
GDPCapita	-5.205E-005	2.2868E-005	-9.687E-005	-7.231E-006	5.181	1	.023
UnionDensity	-.001	.0122	-.025	.023	.006	1	.938
Trade	-.018	.0051	-.028	-.008	12.978	1	.000
(Scale)	1 <sup>b</sup>						
(Negative binomial)	1 <sup>b</sup>						

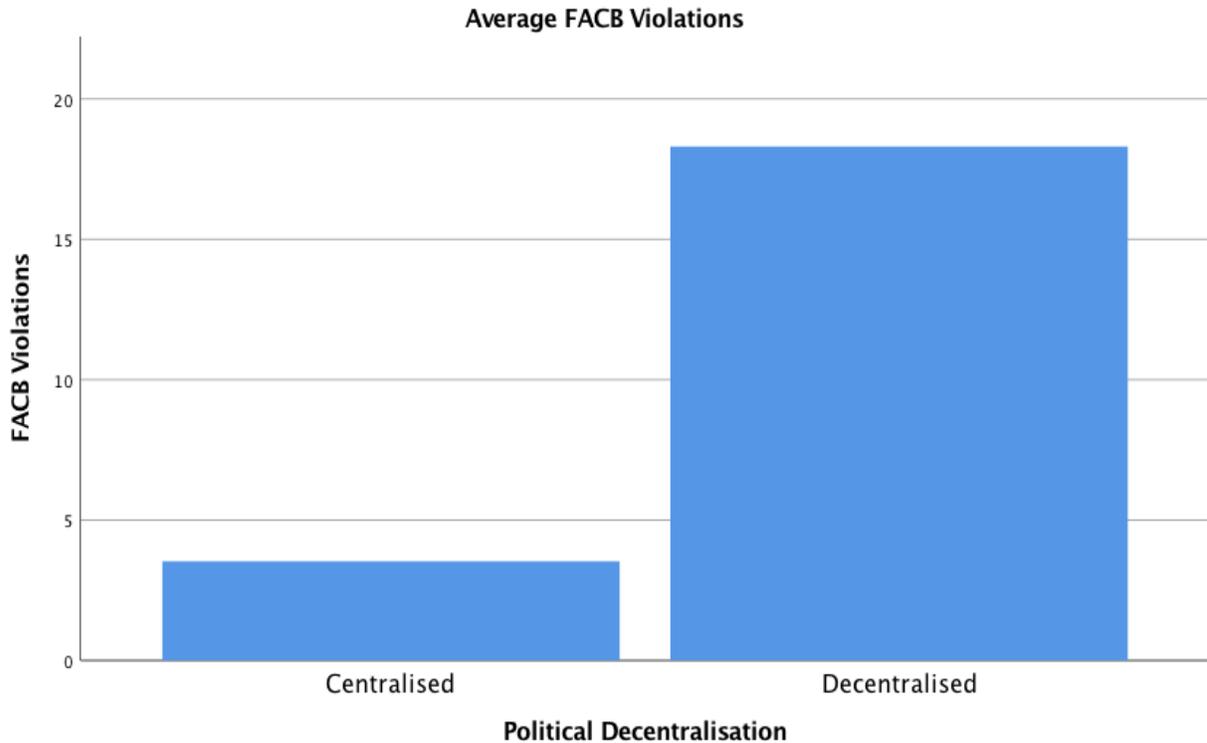
Dependent Variable: Substantiated Complaints  
 Model: (Intercept), Decentralisation, Democracy, LeftParty, RatificationYears, LabourInspectors, Employees, Lawyers, GDPCapita, UnionDensity, Trade

- a. Set to zero because this parameter is redundant.
- b. Fixed at the displayed value.

## V. Discussion

Taken collectively, the study’s results are consistent with Treisman’s (2002) findings regarding political decentralisation’s detrimental effects on policy outcomes, and suggest that increased levels of sub-national autonomy are linked to worse governance outcomes on numerous dimensions. The findings clearly indicate that one such dimension is compliance with FACB rights, as decentralisation transforms said rights into mere institutional window-dressing. Notwithstanding, the inferential waters between decentralisation and violations remain muddled. Are these ‘intentional’ violations whereby states further compound the legitimacy-seeking effects of radical decoupling with devolved implementation and enforcement powers, or are national governments simply impeded from fulfilling their obligations by virtue of the more complicated governance network that Koliba et al. (2011) suggest comes with a dispersed constitutional structure?

Whether decentralisation is a nefarious sword or an inadvertent shield is hard to delineate; however, the public choice model best fits the broader context of international FACB rights. To a large extent, this reflects the inability of the ILO to directly sanction sub-national actors and their unwillingness to hold national governments accountable for violations committed by their devolved entities. For this reason, Freeman & Elliot (2009, p.95) characterised the ILO as the “90-lb weakling of UN agencies.” Faced with this paucity of enforcement, it is increasingly rational for national governments to decentralise, thereby enabling them to devolve FACB administration to sub-national governments. Shielded from international sanction, sub-national governments are effectively free to violate FACB rights, and the results indicate they do, with Figure 3 showing that decentralised countries averaged over 5-times as many violations during the study period. This suggests that when national governments ratify FACB conventions, many do so knowing that their FACB-related practices need not change. In short, decentralisation offers countries an elusive ‘free lunch’ in that it allows them to take symbolic action to gain legitimacy without ensuring the substantive enforcement of said actions on the sub-national level, thereby preventing the discouragement of future business investment (Berliner et al., 2015). This is particularly true given that the monitoring capabilities of international organisations are very limited; typically, they “base their evaluations on parchment institutions rather than actual implementation” (Levitsky & Murillo, 2009, p.127). It is therefore unsurprising that labour rights in practice are radically decoupled from their stated purpose in FACB conventions. As such, despite the literature preferring to explain the derogation from labour standards as the result of international factors such as an economic race-to-the-bottom, the findings support Mosley’s (2005) view that domestic actors still have “room to move” to shape policy outcomes, albeit within the confines of domestic political structures (Brooks, 2002).

**Figure 3 – Average FACB Violations, 1990-2010**

The findings also reinforce the need to disaggregate political and fiscal federalism. While fiscal federalism tends to improve governmental quality, political decentralisation has been found to present a near-universal challenge in the opposite direction (Kyriacou & Roca-Sagales, 2011). Though typically explained as the result of greater sub-national capture and corruption, this study suggests an additional mechanism through which decentralisation undermines domestic policy outcomes: a weakened rule of law, particularly in the form of reduced compliance with, and enforcement of, international covenants. It is therefore clear that the gains experienced through fiscal decentralisation can be completely “offset or mitigated if such decentralization is accompanied by more fragmented subnational government structures” (Goel & Nelson, 2011, p.487). This is particularly distressing given the divergent trajectories of decentralisation and unionisation. Whereas decentralised governments have proliferated over the last 25 years, labour unions are being hollowed out within the OECD and the unionisation rate is

as low as 1-2% in some developing countries (Goel & Nelson, 2011; Hayter, Fashoyin, & Kochan, 2011). Absent a new strategy to protect their interests, the labour movement can expect increasing amounts of FACB violations in the future as decentralisation takes further hold.

Despite voluminous evidence against decentralisation's effects on governance, it continues to be advocated for. This may reflect that in focusing on whether decentralisation has successfully achieved what it set out to do, namely improve the representation of local interests, the literature has largely overlooked the challenges it has created in its place. While proponents of political decentralisation, like Goel & Nelson (2011), have argued that a federalist structure improves service quality through enhanced oversight and accountability, this adopts a static and dyadic view to a fundamentally dynamic context. Though correctly framing the citizen-sub-national government relationship as a principal-agent link, there is reason to believe that sub-national governments have additional principals. In fact, Waterman & Meier (1998) found the number of principal-agent relationships multiply rapidly under federalism. This complicates the dyadic assumptions of standard agency theory, in which "agents are bound by contract to serve democratic principals" (Wood & Waterman, 1991, p.802). However, with the introduction of multiple principals, Waterman & Meier (1998, p.180) find that the agency theory model "offers no clear resolution about which principals should be responded to and which should be ignored." This is particularly true in the context of the current study, which extends the analysis of decentralisation beyond the intra-state level by considering its ramifications on international organisations and obligations. Therefore, despite the theoretical expedience of assuming that devolved governments are more responsive to their citizens, the evidence suggests that sub-national governments may instead prioritise the legitimacy-seeking goals of their national counterparts.

Despite being strongly advocated for in recent years, Oates' (1972) seminal theorem on decentralisation advocates for a cost-benefit approach to the matter. It argues that while it will often generate improved outcomes, the decision to decentralise a policy area depends on the magnitude of externalities it would create. As shown in this study, the negative influence of decentralisation on FACB rights implies that the negative externalities outweigh the benefits. One solution, then, is the re-centralisation of FACB-related administration by national governments. The study's findings support Ellingsen's (1998) conclusion that the uncoordinated nature of decentralised structures makes it difficult to yield socially efficient outcomes in the legal realm. Unsurprisingly, then, Loeper (2011) finds that much of legal policy is standardised through national legislation, thereby precluding legal matters from ever being devolved. While the empirical literature regarding re-centralisation is limited due to its status as a new phenomenon, the initial findings are promising. In Vietnam, Malesky, Viet Nguyen, & Tran (2014, p.145) found that re-centralisation initiatives have succeeded in achieving the government's goal of improved healthcare delivery without having any "discernible effect on services deemed important by Vietnamese citizens." The authors are quick to note, however, that re-centralisation may not impact all policy areas equally; rather, it may only be appropriate when the priorities of both the central government and the locality align. This reflects Faguet, Fox, & Poschl's (2015, p.67) argument that "a centralized state's efficiency in making policy does not necessarily translate into efficient policy implementation, particularly when policies designed centrally are ill-suited to local [interests]." On this note, the validity of a re-centralisation strategy to improve labour outcomes depends on if central governments commit to ILO conventions out of a genuine interest in improving FACB rights. If so, re-centralising the administration of labour law would undoubtedly find support amongst workers and unions.

Notwithstanding its promise, it is important to note Treisman's (2002, p.33) warning that "findings about decentralization and government quality do not imply that the best remedy will always be re-centralization." This is because despite this paper's findings regarding the negative ramifications of political decentralisation, the enhancement of sub-national autonomy is typically viewed as desirable from both citizens and politicians alike. For citizens, devolved authority is praised for its ability to re-balance the power relationship between them and their government. Moreover, many local politicians view sub-national politics as an effective 'springboard' into national politics; therefore, taken collectively, efforts to re-centralise authority is "likely to generate hostility and resistance" (Myers & Dietz, 2002, p.246). As such, Eaton & Dickovick (2004, p.98) conclude that re-centralisation efforts in Latin America have only proven successful in contexts characterised by crisis, as it "weaken[s] the ability of pro-decentralization forces to oppose these attempts." Seeing as FACB rights lack "any kind of global norm recognizing their importance" (Berliner et al, 2015, p.52), the abrogation of FACB protections is unlikely to be treated as a crisis outside of organised labour; therefore, recentralisation efforts are unlikely to find much support. As such, though the re-centralisation of countries' FACB systems may constitute the simplest solution to the problems identified in this study, public reformers must heed Alford's (2008, p.360) advice and temper their proposals with "political acceptability and administrative feasibility," which are two prerequisites that re-centralisation seemingly lacks.

In the absence of a domestic structural solution, the strengthening of international legal mechanisms becomes paramount. While a softer approach would arguably be preferable to formal legal mechanisms, the lack of a strong normative commitment to FACB rights on the international stage necessitates juridification. In the absence of "fear on the part of nations...[of] violat[ing] maxims generally received and respected" (Austin, 1954, p.201) international

commitments – particularly those made to powerless agencies such as the ILO – lack what Franck (1990) calls a strong “compliance pull.” As such, the lack of moral unanimity surrounding the importance of FACB conventions precludes the ILO’s ability to expect compliance through Henkin’s (1979, p.315) normative chain of “acceptance,...observance, [and] then the habit and inertia of continued observance.” When combined with the aforementioned fact that sub-national “member states of federations are not recognized as having international personality” (Sibary, 1992, p.450), it is apparent how decentralisation enables the radical decoupling of FACB conventions in practice.

With the doctrine of state responsibility having proven outdated in an era characterised by the proliferation of sub-national entities immune to international sanction, a move from the indirect (and ineffective) *state* responsibility towards a more direct *sub-national* responsibility appears necessary. Advocates of sub-national responsibility, like Spiro (1997, p.580), contend that, “where subnational authorities enjoy effective decision-making control...they should also be held legally responsible for violations of international law.” By exposing those actually responsible for upholding labour rights to real enforcement, one would expect a stronger compliance pull and a reduction in the disparity in violations between federal and centralised states. As suggested by the lack of significant results for the ratification variable, it is clear that unlike with democracy, the long-lived (formal) acceptance of labour rights does not correlate with improved outcomes. As such, it is apparent that “some sub-national officials will come to respect [FACB] rights only when it shames their jurisdiction and hits their pocketbooks” (Spiro, 1997, p.596). This proposed solution has found popular support recently given that it does not seek to eradicate the autonomy of sub-national entities as does re-centralisation. Rather, to Meyer (2017, p.266), it represents a novel effort “to reconcile a robust federalism with the

increasing importance of local governments to international affairs,” and, in doing so, closes the pernicious accountability gaps that currently contribute to a culture of non-compliance amongst decentralised states. Viewed from this perspective, political decentralisation is not inherently problematic; however, it does create problems when pursued in isolation. What is required is a countervailing force that balances sub-national officials’ devolved decision-making authority with accountability considerations.

## **VI. Limitations**

Despite taking initial steps to bridge the scholarly gap between decentralisation and international FACB violations, the study’s limitations must be acknowledged. First, some may view the Treisman (2008) measure as a poor operationalisation of decentralisation that, in turn, may have contributed to the positive findings. Treisman’s (2002, p.8) “methodological preference [was] to use formal criteria,” namely constitutions, when categorising states as decentralised or not. He notes, however, that others may have other preferences given that the rules in practice may differ from those constitutionally prescribed. Arguably, states that flout their constitutional protections are also more likely to violate their international obligations, such as upholding FACB rights, than those who respect their constitutional limits. The weaker coefficient found in the limited model results, which captured the degree of decentralisation in practice rather than in law, is mildly supportive of this concern. Despite maintaining statistical significance when including control variables, there is a risk the full model’s constitutional understanding of decentralisation missed other potential confounding factors.

Second, the study’s chosen dependent variable – logged FACB violations – may be criticised by some as a poor proxy of international labour law compliance. This predominantly

reflects the fact that the number of violations could indicate one of two things. While few violations could reflect the “perfect administration” of FACB commitments (Hood, 1976), it could also be a function of state capacity, such that weaker domestic enforcement capabilities cripple a state’s ability to discover violations. Similar critiques have been levied against studies measuring the effects of decentralisation on environmental law (Sjoberg, 2016). For this reason, previous studies have relied on Mosley & Uno’s (2007) data. The FACB rights measure used in these studies is lauded for its use of three distinct sources to reduce biased estimates, including U.S. State Department reports. However, while the use of additional sources can alleviate single-source bias, it can concurrently introduce new biases into the measures. For example, there is a non-zero chance that governmental reports – such as the State Department’s *Reports on Human Rights Practices* – can be biased in light of diplomatic ties towards allies and adversaries (Poe, Vazquez, & Carey, 2001). Despite their widespread use, these datasets do not provide an unassailable measure of FACB rights and practices. As such, mobilising multiple sources is no panacea to the inherent challenge of quantifying qualitative phenomena. The dichotomous nature of the FACB violations variable can also be critiqued for capturing the *presence* of violations rather than their *severity*. In this sense, the study’s covariational method is unable to distinguish between cases of, for example, insufficiently promoting collective bargaining with those involving the murder of trade unionists, which have been deemed the least and most severe FACB violations, respectively (Kucera & Sari, 2018). Notwithstanding these limitations, the theoretically novel nature of the research and its robust findings make the study a strong contribution to the public administration literature.

## VII. Concluding Remarks & Future Research

This study contributes to the literature regarding the consequences of decentralisation on international legal obligations, specifically ILO-protected FACB rights. It finds that the effect of decentralisation on FACB violations is robust across different measures of decentralisation and distinct modeling choices, thereby casting further doubt on the prudence of including it as an integral component of the 'good governance agenda' (Grindle, 2004). The relationship between decentralisation and poor labour practices was persistent across regime types, domestic party compositions, and levels of economic growth, which suggests the results are broadly generalisable. These findings underscore the importance of distinguishing between types of decentralisation, for whereas fiscal federalism often benefits the Tieboutian consumer, the greater FACB violations exhibited by federal countries is yet another example that political decentralisation harms policy outcomes. Faguet et al. (2015, p.73) contended that "decentralization's most powerful impact...comes not through its direct effects on the structure of government, but rather through its effects on the democratic norms and practices that underpin the state." What the study's results suggest, however, is that a state's structure and its practices are fundamentally interconnected, with decentralised structures making certain practices – such as the violation of international FACB rights – occur with more frequency than in its absence. As such, while Brandeis argued that to prevent decentralisation was a grave *responsibility*, the results of this paper suggest that the inverse is true; that the sub-national administration of nationally-ratified, internationally-protected legal obligations has grave *consequences* for labour rights in practice.

The study's identification of a significant relationship between two previously unconnected concepts suggests various lines of future inquiry. First, having established the

existence of a relationship between decentralisation and international FACB violations, additional research is needed to clarify its nature. The study's findings are robust to the inclusion of two measures of decentralisation, thereby capturing both conceptual depth and cross-national breadth, in addition to proving the relationship's validity across two distinct model choices. To this end, future studies would do well to take the positive relationship discovered in this paper as given and instead focus their resources on conducting longitudinal studies geared towards establishing a temporal ordering of the variables. For example, if decentralisation were found to lead to increased violations, this would enable firmer assertions to be made regarding intentionality on the part of national governments. Conversely, if FACB violations were found to precede increasing levels of decentralisation, a reasonable inference is that states viewed a federalist devolution of power as a viable structural reform to improve domestic governance in accordance with conventional scholarly understandings regarding decentralisation's potentially remedial effect. Only when studies begin to address this will we be able to conclude whether decentralisation is a strategic tool of non-compliance or something more benign, such as another example of Hood's (1974) "multi-organisational sub-optimisation" given the coordination challenges inherent to central-local relations (Mah & Hills, 2014).

Second, further research is needed to establish whether the decentralisation-violation link is consistent across policy domains. Thus far, the few studies that have explored decentralisation's effect on the exercise of legal responsibilities have been limited to the environment. Interestingly, said studies have found that while the sub-national enforcement of anti-pollution regulations has increased inter-jurisdictional variation in pollution levels, it has not been associated with an increase in average pollution (Sigman, 2014). In other words, the environmental studies have found that decentralisation enables the tailoring of national

guidelines to local conditions, but does not initiate destructive regulatory competition by virtue of a race to the bottom. Granted, the environmental studies were focused on the sub-national enforcement of *national* – and not international – standards. As such, radical decoupling was unlikely to be a factor in these environmental decentralisation studies, which could explain why the sub-national entities remained responsive to their hierarchical commands.

Notwithstanding these important caveats, one must wonder whether any attributes of labour rights themselves are what drove the positive association between decentralisation and FACB violations. Does decentralisation enable the violation of FACB rights simply because, unlike other areas of international law, there is no strong normative commitment to collective labour rights? Or is it because poor labour practices involve less ‘spillage’ in the form of cross-border externalities when compared to poor environmental practices? This reflects that labour is much less mobile than natural resources such as water and air, meaning that poor labour practices are better internalised within the offending jurisdiction, thereby limiting the amount of external pressure for change. In fact, when faced with debilitating market shocks that erode the quality of their work environment, Caliendo, Dvorkin, & Parro (2015) find that over 95% of workers remain in their current sector and location rather than seek better workplace protections elsewhere, which effectively mitigates the geopolitical implications of FACB-related violations. This is consistent with Goodman & Jinks’ (2004, p.629) argument that designing effective human rights regimes is made more difficult by the fact that “externalities arise only sporadically and typically affect only a few (bordering) states,” for if this is the case, then countries simply have no interest in safeguarding international rights domestically. Ultimately, only the completion of further studies in diverse policy settings will enable us to ascertain whether

decentralisation undercuts the international commitments made by national governments in other domains, or whether the finding is unique to labour rights.

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**Appendix A - Full Model Descriptive Statistics and Model Summary**

**Descriptive Statistics**

	N	Minimum	Maximum	Mean	Std. Deviation
FACB Violations (logged)	135	.00	4.32	1.4045	1.04709
Political Decentralisation	135	.00	1.00	.2035	.40442
Democracy	135	-10.00	10.00	3.6744	6.00619
Left Party	135	.00	58.00	17.3897	14.91565
FACB Ratification (in years)	135	.00	137.00	83.8971	39.80476
Labour Inspectors	94	6.00	25000.00	743.8298	2666.81858
Employees (in thousands)	135	115.00	485287.00	12407.2941	44857.14726
Lawyers	135	220.00	1040000.00	35651.0441	105811.4798
GDP (per capita)	134	500.51	55564.15	10847.4424	10908.93797
Union Density	86	.2	90.4	22.510	18.5120
Trade (as a % of GDP)	134	.41	247.80	75.8421	38.93486

**Model Summary**

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate	Change Statistics				
					R Square Change	F Change	df1	df2	Sig. F Change
1	.419 <sup>a</sup>	.176	.163	.95769	.176	14.091	1	66	.000
2	.625 <sup>b</sup>	.391	.284	.88575	.215	2.240	9	57	.032

a. Predictors: (Constant), Political Decentralisation

b. Predictors: (Constant), Political Decentralisation, FACB Ratification (in years), Left Party, Trade (as a % of GDP), GDP (per capita), Labour Inspectors, Union Density, Lawyers, Democracy, Employees (in thousands)

**Appendix B - Limited Model Descriptive Statistics and Model Summary**

**Descriptive Statistics**

	N	Minimum	Maximum	Mean	Std. Deviation
FACB Violations (logged)	71	.00	4.32	1.6644	1.17841
Regional Authority	71	.00	7.00	3.3234	2.66175
Democracy	71	-7.00	10.00	7.8286	2.90540
Left Party	71	.00	54.00	20.5352	13.26309
FACB Ratification (in years)	71	.00	137.00	94.6197	37.18462
Labour Inspectors	71	6.00	5581.00	620.1311	992.37838
Employees (in thousands)	71	115.00	140462.00	11657.4930	21752.48138
Lawyers	71	466.00	1040000.00	49902.3521	133980.7687
GDP (per capita)	71	1400.63	55564.15	16380.1322	10958.98513
Union Density	71	.20	90.40	23.0413	19.55713
Trade (as a % of GDP)	71	21.99	247.80	80.4915	44.03812

**Model Summary**

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate	Change Statistics				
					R Square Change	F Change	df1	df2	Sig. F Change
1	.236 <sup>a</sup>	.056	.038	1.15552	.056	3.240	1	55	.077
2	.591 <sup>b</sup>	.349	.207	1.04929	.293	2.300	9	46	.032

a. Predictors: (Constant), Regional Authority

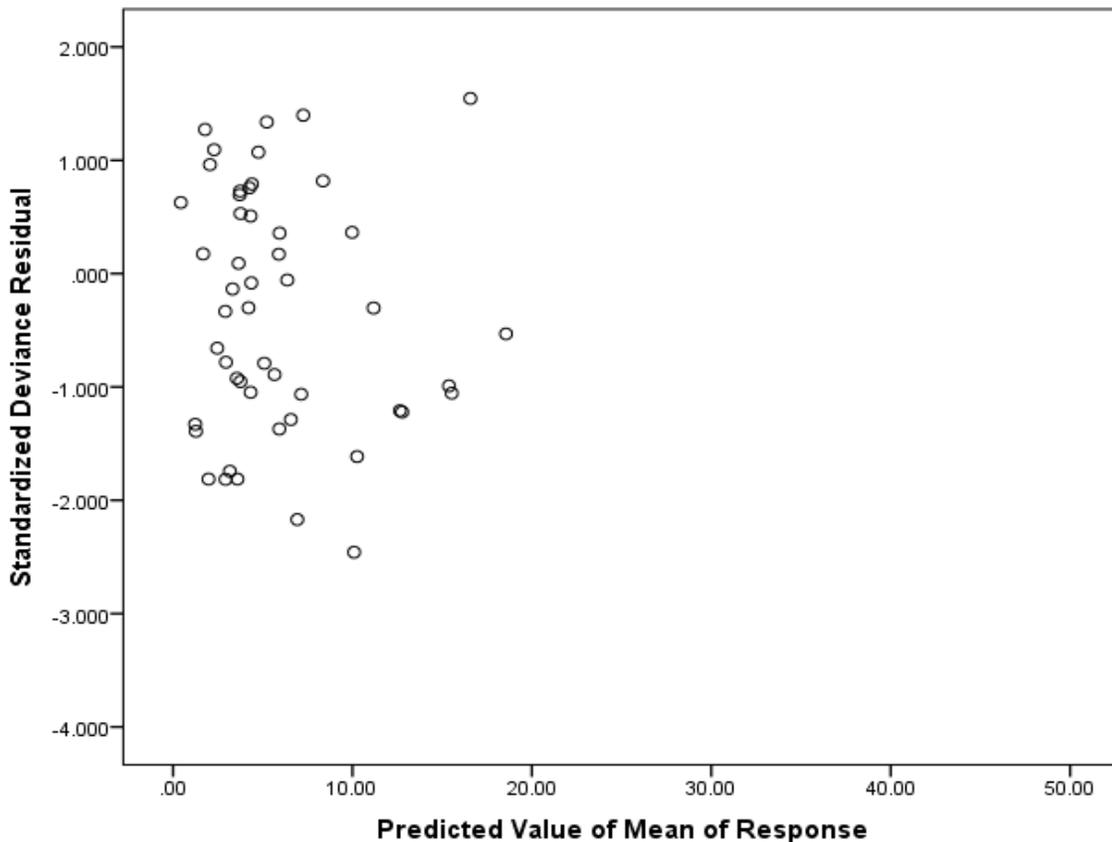
b. Predictors: (Constant), Regional Authority, FACB Ratification (in years), Democracy, Left Party, Trade (as a % of GDP), Union Density, Lawyers, Labour Inspectors, GDP (per capita), Employees (in thousands)

**Appendix C - Negative Binomial Model Goodness-of-Fit**

**Goodness of Fit<sup>a</sup>**

	Value	df	Value/df
Deviance	57.745	44	1.312
Scaled Deviance	57.745	44	
Pearson Chi-Square	35.994	44	.818
Scaled Pearson Chi-Square	35.994	44	
Log Likelihood <sup>b</sup>	-158.708		
Akaike's Information Criterion (AIC)	339.416		
Finite Sample Corrected AIC (AICC)	345.555		
Bayesian Information Criterion (BIC)	361.497		
Consistent AIC (CAIC)	372.497		

Dependent Variable: Substantiated Complaints  
 Model: (Intercept), Decentralisation, Democracy, LeftParty, RatificationYears, LabourInspectors, Employees, Lawyers, GDPCapita, UnionDensity, Trade<sup>a</sup>



### Appendix D – Variable Sources

Variable	Description	Source
FACB Violations	Violations in law or in practice of either ILO <i>Convention No.87 Freedom of Association</i> and <i>Convention No.98 Collective Bargaining</i>	ILO <i>NORMLEX</i> – CFA Reports
FACB Violations (logged)	Natural logarithm (FACB Violations + 1)	ILO <i>NORMLEX</i> – CFA Reports
Political Decentralisation	A country is politically decentralised if its constitution endows sub-national legislatures with either “residual authority” or “autonomy” to decide on specific policy areas	Treisman (2008) <i>Decentralization Dataset</i>
Regional Authority	7-point scale capturing the extent to which a regional government is autonomous rather than deconcentrated (4-point) and the range of policies for which a regional government is responsible (3-point)	Hooghe et al. (2016). <i>Measuring Regional Authority: A Postfunctionalist Theory of Governance, Volume I</i> . Oxford: Oxford University Press
GDP (per capita)	GDP per capita based on purchasing power parity (PPP). PPP GDP is gross domestic product converted to international dollars using purchasing power parity rates. An international dollar has the same purchasing power over GDP as the U.S. dollar has in the United States	The World Bank <i>Data Bank</i> – GDP per capita, PPP (current international \$)
Union Density	The percentage of a country’s total number of employees that are union members	<i>ILOSTAT</i> – Industrial Relations
FACB Ratification (in years)	The sum of time that a	ILO <i>NORMLEX</i> – Ratifications by

	country has ratified both <i>ILO Convention No.87 Freedom of Association</i> and <i>Convention No.98 Collective Bargaining</i>	Country
Employees (in thousands)	Employees are all those workers who hold employment contracts that give them a basic remuneration that is not directly dependent upon the revenue of the unit for which they work. This excludes other work arrangements, such as independent contractors or self-employment	<i>ILOSTAT</i> – Employees (in thousands)
Democracy	Democracy captures regime form on a 21-point scale ranging from -10 (hereditary monarchy) to +10 (consolidated democracy)	<i>Polity2</i> – Index of Democracy
Number of Lawyers	The number of people in a country whose primary occupation is “lawyer” or “legal professional”	Ethan Michelson <i>Women in the Legal Profession 1970-2010</i>
Left Party	The sum of years during which a left-leaning party was either: 1) in control of a country’s executive office; 2) the largest party in the legislature; or 3) the largest opposition party	Database of Political Institutions (adapted from Berliner et al. 2015)
Trade (as a % of GDP)	Trade is the sum of exports and imports of goods and services measured as a share of gross domestic product	World Bank <i>Data Bank</i> – Trade (% of GDP)
Labour Inspectors	The number of inspectors responsible for ensuring private-sector compliance with domestic labour laws	1. US Department of State reports 2. US Department of Labor reports 3. ILO reports 4. Danish LO/FTF Council reports