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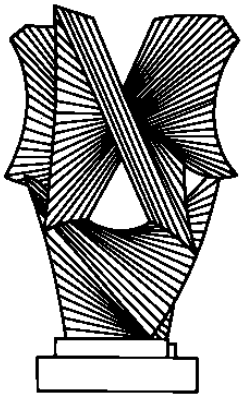

# GETTING TO RIGHTS: TREATY RATIFICATION, CONSTITUTIONAL CONVERGENCE, AND HUMAN RIGHTS PRACTICE

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# Getting to Rights: Treaty Ratification, Constitutional Convergence, and Human Rights Practice

Zachary Elkins, Tom Ginsburg & Beth Simmons*

*This Article examines the adoption of rights in national constitutions in the post-World War II period in light of claims of global convergence. Using a comprehensive database on the contents of the world's constitutions, we observe a qualified convergence on the content of rights. Nearly every single right has increased in prevalence since its introduction, but very few are close to universal. We show that international rights documents, starting with the Universal Declaration of Human Rights, have shaped the rights menu of national constitutions in powerful ways. These covenants appear to coordinate the behavior of domestic drafters, whether or not the drafters' countries are legally committed to the agreements (though commitment enhances the effect). Our particular focus is on the all-important International Covenant on Civil and Political Rights, whose ratification inclines countries towards rights they, apparently, would not otherwise adopt. This finding confirms the complementary relationship between treaty ratification and domestic constitutional norms, and suggests that one important channel of treaty efficacy may be through domestic constitutions.*

## INTRODUCTION

Two decades ago, Professor Louis Henkin began his magisterial *The Age of Rights* with a ringing claim of universality:

> Ours is the age of rights. Human rights is the idea of our time, the only political-moral idea that has received universal acceptance. The Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948, has been approved by virtually all governments representing all societies. Human rights are enshrined in the constitutions of virtually every one of today's 170 states—old states and new; religious, secular, and atheist; Western and Eastern; democratic, authoritarian, and

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> totalitarian; market economy, socialist, and mixed; rich and poor, developed, developing and less developed. [1]

The claim of the "universality" of human rights is as enticing as it is puzzling. On the one hand, it is hard to deny the apparent ubiquity of at least *some* formal rights in both international and domestic law. On the other hand, many have questioned the genuine embrace of these rights worldwide, and a raft of observers—from pundits to practitioners to scholars—have questioned whether rights on paper have influenced the enjoyment of human rights on the ground.[2]

This Article examines the "universalization" of human rights over the past half a century. Numerous theories focus on the convergence of rights around the world, by which we mean increasing similarity in legal texts and broader discourses about rights among different countries. For example, Law notes that the rise of globalization coincided with an increased protection of human rights, and posits that this has involved a convergence in constitutional protections accorded to rights.[3] Tushnet concurs, arguing that national constitutional practice is inevitably converging under pressures of globalization.[4] Others assume that convergence has already occurred, a pattern that may have crystallized even generations ago. Weinrib, for example, identifies a postwar constitutional paradigm, developed in reaction to Nazism, in which equality and human dignity are central and in some ways superior to local history and culture.[5] These scholars emphasize the role of the international environment in informing national choices about human rights.

There has been relatively little evidence demonstrating convergence as an empirical matter.[6] Furthermore, there has been no study that shows the mechanism by which rights may have spread to the extent they have. This Article seeks to remedy this situation by providing comprehensive evidence

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1. LOUIS HENKIN, THE AGE OF RIGHTS xvii (1990).

2. *See generally* Oona A. Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 YALE L.J. 1935, 1989 (2002) (finding that ratification leads in some cases to *less* observance of human rights); Eric A. Posner, *Why is Human Rights Law Such a Failure?* (Feb. 26 2012) (on file with author) (arguing that human rights law has been unsuccessful).

3. *See* David S. Law, *Globalization and the Future of Constitutional Rights*, 102 NW. U.L. REV. 1277, 1306–07 (2008) (positing mobility as a mechanism for rights convergence).

4. Mark Tushnet, *The Inevitable Globalization of Constitutional Law*, 49 VA. J. INT'L L. 985, 989 (2009) (arguing convergence is inevitable); *see also* Mark C. Rahdert, *Comparative Constitutional Advocacy*, 56 AM. U.L. REV. 553, 561 (2007) (arguing that convergence is occurring).

5. *See* Lorraine E. Weinrib, *The Post-War Paradigm and American Exceptionalism*, *in* THE MIGRATION OF CONSTITUTIONAL IDEAS 84, 89–90 (Sujit Choudhry ed., 2006).

6. *See* ZACHARY ELKINS, TOM GINSBURG & JAMES MELTON, THE ENDURANCE OF NATIONAL CONSTITUTIONS 25–27 (2009) (demonstrating decline in the United States as a constitutional model and the spread of rights provisions). *See also* David S. Law & Mila Versteeg, *The Declining Influence of the United States Constitution*, 87 N.Y.U.L. REV. 762 (2012) (describing the decline of the U.S. model and the rise of Canada as a model); Zachary Elkins, Tom Ginsburg & James Melton, *Comments on Law and Versteeg's* The Declining Influence of the United States Constitution, 87 N.Y.U.L. REV. 2088 (2012) (arguing that drafting cohort is an important determinant of content).

of the level of convergence and evaluating an important mechanism: the role of international human rights documents in coordinating state behavior with regard to national constitution making.

The evidence we present in this Article suggests there has indeed been substantial convergence with regard to human rights. We show that the prevalence of every right known to us, with possibly one exception, has increased monotonically since the right first entered the universe of national constitutions. We might think of the prevalence of a right as a one-way ratchet—once introduced, the right will not leave the scene and increases in popularity. Consequently, the *number* of rights included in the typical national constitution has increased steadily over the years. Also, and importantly, the number of countries *with* rights has increased steadily.

We also show how international law, in both its "hard" (binding) and "soft" (nonbinding) variants, has contributed to the incorporation of many human rights into the domestic constitutions of a significant number of states. In particular, we present evidence that suggests the Universal Declaration of Human Rights ("UDHR") and its complementary treaty, the International Covenant on Civil and Political Rights ("ICCPR"), have played crucial roles in the spread of formal human rights into national constitutions. Moreover, we find that both international agreements and incorporation of the rights contained in those agreements into domestic law have facilitated improvements in rights practices on the ground. The international instruments, evidently, have served as crucial focal points that have inspired political action as well as formal constitutional change.

It seems almost cliché, at this point, to note that human rights have diffused to many parts of the globe.[7] In sociology, adherents of the World Society school claim that international human rights norms are scripts of modernity that "reflect legitimating ideas dominant in the world system at the time of their creation."[8] Others attribute the spread of human rights to more general processes of political and economic globalization.[9] Elkins and Versteeg and Goderis make the point that diffusion is a major source of norms for national constitutions.[10] Law and Versteeg argue that constitu-

7. *See generally* BETH A. SIMMONS, MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS (2009); DAVID P. FORSYTHE, THE INTERNATIONALIZATION OF HUMAN RIGHTS (1991); MARGARET E. KECK & KATHRYN SIKKINK, ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS (1998); THE POWER OF HUMAN RIGHTS: INTERNATIONAL NORMS AND DOMESTIC CHANGE (Thomas Risse et al. eds., 1999).

8. John Boli-Bennett & John W. Meyer, *The Ideology of Childhood and the State: Rules Distinguishing Children in National Constitutions 1870–1970*, 43 AM. SOC. REV. 797, 805 (1978); *see also* Christine Min Wotipka & Francisco O. Ramirez, *World Society and Human Rights: An Event History Analysis of the Convention on the Elimination of All Forms of Discrimination Against Women*, *in* THE GLOBAL DIFFUSION OF MARKET AND DEMOCRACY 303 (Beth A. Simmons, Frank Dobbin, & Geoffrey Garrett eds., 2008).

9. Law, *supra* note 3, at 1343; *see also* Weinrib, *supra* note 5; Tushnet, *supra* note 4; Rahdert, *supra* note 4.

10. Zachary Elkins, Designed by Diffusion: International Networks and the Spread of Democracy (Fall 2003) (unpublished Ph.D. dissertation, University of California, Berkeley) (on file with author); Benedikt Goderis & Mila Versteeg, *The Transnational Origins of Constitutions: An Empirical Investigation*

tional treatment of human rights falls into two different models: libertarian and statist.[11] Parallel to this literature, a growing number of empirical studies have begun to document how, if at all, the globalization of legal norms has affected actual human rights practices on the ground. Some of these studies have been skeptical that constitutional rights or the ratification of human rights treaties[12] translate directly into better human rights practices. Recent research, however, suggests that treaties are quite effective instruments for rights improvements when there is the opportunity for political and/or legal mobilization to demand effective implementation.[13]

This Article fleshes out a plausible mechanism behind the domestic mobilization for international human rights: the incorporation of these rights into domestic constitutions. We argue that the ratification of treaties produces both a *direct* as well as a *mediated* influence on domestic respect for human rights via constitutional incorporation. We use data from the Comparative Constitutions Project ("CCP"), a comprehensive effort by two of the authors to study the contents of the world's constitutions since 1789, to explore three related questions.[14] First, is there any evidence that countries actually incorporate into their constitutions the particular human rights recipes found in major international documents? Second, does ratification make any difference in the probability of such incorporation occurring?[15] And third, has the transmission of rights from international to national covenants (if that has indeed occurred) affected rights performance on the ground?

Our answers to all three questions are affirmative. We find that the international instruments have a powerful coordinating effect on the contents of

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(6th Annual Conference on Empirical Legal Studies Working Paper Series, 2011) available at http://ssrn.com/abstract=1906707 (citing diffusion as a major source of rights provisions).

11. David S. Law & Mila Versteeg, *The Evolution and Ideology of Global Constitutionalism*, 99 CAL. L. REV. 1163, 1170 (2011).

12. *See* Linda Camp Keith, *Constitutional Provisions for Individual Human Rights (1977–1996): Are They More Than Mere "Window Dressing?"*, 55 POL. RES. Q. 111 *passim* (2002) (constitutional rights); Hathaway, *supra* note 2 (human rights instruments); Emilie M. Hafner-Burton & Kiyoteru Tsutsui, *Human Rights in a Globalizing World: The Paradox of Empty Promises*, 110 AM. J. SOC. 1373, 1374 (2005) (human rights instruments).

13. SIMMONS, *supra* note 7 (providing evidence for the role of social groups in making rights effective).

14. We have identified 935 unique constitutional systems since 1789, and have gathered data on roughly two-thirds of these cases. The sample for the present Article includes 549 of the world's 801 constitutions written during this period. Most countries of the world now have a document identified as a constitution integrated into a single document. *See* COMPARATIVE CONSTITUTIONS PROJECT, www.comparativeconstitutionsproject.org (last visited Sept. 30, 2012) [hereinafter Comparative Constitutions Project]. For a small number of countries (Israel for example), we rely on a series of documents that form the highest normative level in the legal system. *See id.* We exclude the United Kingdom entirely from our analysis, as the decision rule for what statutes and norms count as constitutional is quite complex. *See* HANNA LERNER, MAKING CONSTITUTIONS IN DIVIDED SOCIETIES 16 n.7 (2010) (noting that the British Constitution is a different model).

15. Here we focus on the ICCPR, which, unlike the UDHR, is a binding international instrument that requires state ratification to be effective. We ask whether the act of ICCPR ratification increases the likelihood that a government will make its constitution explicitly compatible with its international human rights obligations.

national constitutions. This is an important finding, as it is analytically challenging to evaluate the effect of *specific* mechanisms of constitutional convergence. We also find that ratification is important, and that binding international law leads to new rights in subsequently adopted national constitutions. Finally, we show that normative convergence has been accompanied by changes in actual human rights practice.

Our finding has implications for the literature on constitutional convergence as well as for international law. For constitutional convergence, we show that constitution making is embedded in a broader transnational context. Formal participation in international regimes has an impact on domestic constitution making. This finding also suggests that international law is most effective when it works through domestic institutions, including constitutional structures. The international and constitutional levels of governance are mutually reinforcing and complementary.

The Article begins by reviewing existing theories of normative convergence in Part I and offering our own account. Part II then provides descriptive evidence of the increasing propensity for national constitutions to include rights. It shows a general upward trend, accelerating after World War II. Part III turns to the UDHR as a template for national constitutions, showing how the UDHR had a coordinating effect on *which* rights were adopted. Part IV looks at the effects of ratification, focusing especially on the case of the ICCPR. Part V turns to the question of whether international ratification makes a difference in actual outcomes on the ground, in terms of better rights protection. Part VI concludes.

## I. Theories of Convergence

Before turning to our empirical examination, let us briefly consider the mechanisms by which international instruments and national practices might influence each other. The UDHR was designed to express fundamental values of the community of nations, and to articulate the importance of human rights in the wake of World War II. The UDHR was not designed to be legally binding. But which rights were, or are, fundamental? By including some rights and excluding others, the UDHR implied that some rights are more important than others, and such a statement might plausibly have influenced national policymakers.[16]

How were the rights listed in the UDHR chosen? Clearly its menu of rights reflected many norms that had first been instantiated in national constitutional practice, particularly those of Western nations. Some have even claimed that human rights are a Western imposition.[17] But scholars examin-

16. For background on the drafting of the UDHR, see, for example, Simmons, *supra* note 7.

17. *See* Eva Brems, Human Rights: Universality and Diversity 82 (2001) (describing views of Lee Kuan Yew and Mahathir Mohamed).

ing the drafting of the UDHR have demonstrated the important role of smaller countries like Afghanistan and Saudi Arabia, and other non-Western powers like China, in pushing for inclusion of human rights in the U.N. Charter.[18] Articles 22 through 27, which address socio-economic rights, were promoted not just by the Soviet bloc but also by Latin American, Asian, and Middle Eastern countries.[19] Thus, the UDHR reflected the culmination of a long-standing international political movement, and was not simply an imposition of powerful Western states.[20] It was, however, unenforceable as a legal document.

One interesting—but often inscrutable—matter concerns the mechanism of diffusion of these norms. Certainly, convergence can occur from any combination of the many processes of interdependence that surface in discussions of policy adoption. Scholars have typologized this interdependence in various ways.[21] A central question is whether any purported convergence in rights is coordinated or not by international arrangements or actors as opposed to being subject to a more horizontal, peer to peer, set of processes. In the former instance, we would expect convergence to conform to the example set by international or regional covenants; in the latter, we would expect a pattern of adoption by which national models appear as core documents.

As is well known, the normative consensus embodied in the UDHR took legal form only later through the two international covenants promulgated in 1966: the ICCPR and the International Covenant on Economic, Social and Cultural Rights ("ICESCR").[22] It is sometimes asserted, though it has not yet been empirically documented, that these legal instruments, together with the UDHR, have formed the basis for national bills of rights, in which case we would expect that the international instruments have served as a mechanism of convergence.[23] In this case, convergence is a product of the reciprocal relationship between constitutions and treaties, as the two levels mutually construct the script of rights.

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18. *See* Susan Waltz, *Universalizing Human Rights: The Role of Small States in the Construction of the Universal Declaration of Human Rights*, 23 HUM. RTS. Q. 44, 49–66 (2001) (describing the role of small states); Susan Waltz, *Reclaiming and Rebuilding the History of the Universal Declaration of Human Rights*, 23 THIRD WORLD Q. 437, 442–46 (2002) [hereinafter Waltz, *Reclaiming*] (emphasizing breadth of contributions from a range of countries).

19. *See* Waltz, *Reclaiming*, *supra* note 18, at 444. Note that some of the "second generation" rights, such as a right to education, had been instantiated in national constitutions since the latter part of the nineteenth century, and are associated with the rise of the welfare state.

20. *Id.* at 439–41.

21. *See, e.g.*, Zachary Elkins, *Constitutional Networks*, *in* NETWORKED POLITICS: AGENCY, POWER, AND GOVERNANCE 43 (Miles Kahler ed., 2009) (describing several possible modes of policy interdependence among states); THE GLOBAL DIFFUSION OF MARKETS AND DEMOCRACY (Beth A. Simmons, Frank Dobbin & Geoffrey Garrett eds., 2008) (same).

22. LOUIS HENKIN, INTERNATIONAL LAW: POLITICS AND VALUES 179 (1995) (discussing bifurcation of covenants).

23. *Id.* at 180–81.

In the human rights realm, Goodman and Jinks divide mechanisms into three categories: coercion, persuasion, and acculturation,[24] a typology not too dissimilar from others developed in other substantive domains.[25] Coercion occurs when states seek to encourage others to adopt norms, either through carrots or sticks.[26] In the present context, this might occur when one state forces another to adopt a set of international or national human rights norms, either through pressure to sign international instruments or constitutional imposition.[27] Persuasion is when one actor convinces another that norms are worth adopting, and involves a form of learning.[28] Acculturation, in contrast, occurs when actors internalize the idea that norms should be adopted through some sort of "logic of appropriateness," in March and Olson's widely-used phrasing.[29] In this sense, the idea of acculturation suggests that decision makers take in a broader, less direct, set of influences. Summarizing studies from the earlier World Society literature, Goodman and Jinks argue that these analyses demonstrate the important role of acculturation in both the spread and impact of human rights.[30] They note that neither wealth nor external pressure seem to be sufficient explanations of the spread of rights discourse. Rather, they suggest that acculturation of state actors is the primary mechanism by which rights spread.[31] Constitutional rights and international rights share the same ideological origins, and the same experience of isomorphic diffusion which, in their account, bears little or no relation to conditions on the ground.

Goodman and Jinks speculate that such cultural processes might work in a number of ways. Government decisionmakers might themselves be acculturated to adopt particular norms.[32] Alternatively, acculturation might occur through transnational interest groups that seek to change norms and behavior.[33] Finally, acculturation might occur at the level of the mass public, which then pressures leaders to adopt shared norms.[34] For all these accul-

24. Ryan Goodman & Derek Jinks, *How to Influence States: Socialization and International Human Rights Law*, 54 DUKE L.J. 621, 630–38 (2004) (describing the three mechanisms).

25. *See, e.g.*, Zachary Elkins & Beth A. Simmons, *Globalization and Policy Diffusion: Explaining Three Decades of Liberalization*, *in* GOVERNANCE IN A GLOBAL ECONOMY: POLITICAL AUTHORITY IN TRANSITION 275 (Milers Kahler & David A. Lake eds., 2003) (in the context of economic policy).

26. *See* Goodman & Jinks, *supra* note 24, at 633.

27. *See* Zachary Elkins, Tom Ginsburg & James Melton, *Baghdad, Tokyo, Kabul. . .Constitution Making in Occupied States*, 49 WM. & MARY L. REV. 1139, 1154 (2008).

28. Zachary Elkins & Beth A. Simmons, *On Waves, Clusters and Diffusion: A Conceptual Framework*, 598 ANNALS AM. ACAD. POL. & SOC. SCI. 33, 42–45 (2005); Goodman & Jinks, *supra* note 24, at 635.

29. *See* James G. March & Johan P. Olsen, *The Logic of Appropriateness, ARENA Working Paper 04/09*, available at http://www.sv.uio.no/arena/english/research/publications/arena-publications/workingpapers/working-papers2004/wp04_9.pdf; Goodman & Jinks, *supra* note 24, at 638.

30. Goodman & Jinks, *supra* note 24, at 646–53.

31. *Id.*

32. *Id.* at 654.

33. *See generally* KECK & SIKKINK, *supra* note 7; Margaret Keck and Kathryn Sikkink, *Transnational Advocacy Networks in the Movement Society*, *in* THE SOCIAL MOVEMENT SOCIETY 217 (David S. Meyer & Sidney Tarrow eds., 1998).

34. *See* Goodman & Jinks, *supra* note 24, at 654–55.

turation-based accounts, we might expect that the international instruments would serve as both evidence of global norms, and also as channels through which national decisionmakers are acculturated. We should thus expect some impact of the adoption of the international instruments.

In a recent contribution, Law argues that competition for skilled labor in a globalized economy provides a mechanism for convergence in terms of rights protection.[35] His argument is that high-end workers prefer a package of policies that are protective of civil and political liberties, and so states competing for such workers will have to adopt rights.[36] In Law's theory, the race-to-the-top provides the mechanism for the spread of rights. The independent effect of the international instruments is quite limited in this story, so we would likely observe very little difference in the counterfactual world with no international covenants.

Law and Versteeg posit several other mechanisms by which constitutions could converge.[37] First, constitutions might converge in content as a result of learning.[38] As countries learn what works and does not work in other contexts, they may imitate each other. This can involve a more-or-less rational process of institutional adoption, but also can reflect cognitive biases that lead to imitation.[39] Second, and closely related to the first mechanism, they argue that constitution makers may conform to external norms in order to win acceptance from other nations.[40] Third, they posit the existence of constitutional networks, whereby the benefit of adopting a particular provision increases with the number of other countries that have the same provision.[41]

To summarize, we find many expectations of convergence in the literature. We have relatively little systematic evidence that convergence has occurred. We also have much theoretical disagreement about the manner in which convergence occurs, and very little direct evidence from constitutional drafters. Some theories privilege horizontal channels of diffusion, in which case we ought to expect that international instruments would have relatively little impact. Other theories focus on acculturation and socialization, and would expect some convergence as a result of the internationalization of rights.

We investigate three channels through which human rights law, domestic and/or international, improves human rights on the ground: (1) *direct treaty effects*, by which governments change their behavior in response to the spe-

35. Law, *supra* note 3, at 1329–30.

36. *Id.* at 1304–07. *But see* Holning Lau, *Human Rights and Globalization: Putting the Race to the Top in Perspective*, 102 Nw. U.L. Rev. Colloquy 319, 319 (2008) (cautioning against use of race-to-the-top metaphor).

37. Law & Versteeg, *supra* note 11, at 1171–87.

38. *Id.* at 1173–75.

39. *Id.* at 1174.

40. *Id.* at 1177–79 (offering example of Meiji Japan).

41. *Id.* at 1183–87.

cific prescriptions or proscriptions of an international obligation without necessarily adjusting their domestic law; (2) *direct constitutional effects*, which imply that government-rights behavior is constrained by the content of the domestic constitution in the absence of international treaty; and (3) *indirect treaty effects*, by which treaty ratification stimulates a demand for local changes, which in turn increase the likelihood that the rights contained in the treaty will be constitutionalized, and thereby become a tool for domestic legal as well as political mobilization.

Support for these last two "constitutional" channels comports with an emerging theme of the new literature on the efficacy of international human rights law, which asserts that effective human rights protection requires propitious domestic institutions and conditions.[42] Human rights law does not implement itself. Instead it requires social actors to mobilize around it and to demand changes on the ground. Treaties can play a role by mobilizing domestic forces, which, in turn, encourage the incorporation of treaty commitments into domestic law. We conclude that international law matters when local activists, courts and others are able to utilize it in domestic practice, and that constitutional incorporation is one mechanism by which the international legal regime for human rights has an impact locally.

## II. Evidence on Convergence: Rights in National Constitutions

We now turn to an examination of patterns by which national constitutions have adopted rights from historical constitutions and international covenants. We draw on the Comparative Constitutions Project, which records the content of national constitutions as well as international instruments, for all constitutions of independent nation-states since 1789. The project includes information on political institutions, judicial systems, and many other aspects of the formal text, including rights.[43]

We analyze a sample of 680 constitutional "systems," from a sample of 839 historical systems promulgated between 1789 and 2006. In our conceptualization of a constitutional system, minor revisions and amendments occur *within* the same system, but wholesale replacements initiate a *new* system.[44] We analyze systems in the year of their promulgation, and not their subsequent amendments, and thus we evaluate the decisions of a system's original drafters. Our coverage of constitutions is better in the post-World War II period, including well over ninety percent of the documents

42. Emilie M. Hafner-Burton & James Ron, *Seeing Double: Human Rights Impact through Qualitative and Quantitative Eyes*, 61 World Pol. 360 (2009) (reviewing the literature on human rights efficacy); *see also* Simmons, *supra* note 7.

43. For more on the project please see Comparative Constitutions Project, *supra* note 14.

44. For a thorough discussion of this issue, see Zachary Elkins, Tom Ginsburg & James Melton, The Endurance of National Constitutions 50–51 (2009).

adopted after 1945, but we have no reason to expect that our sample for the pre-World War II period is systematically biased in significant ways. Systems excluded from the sample are largely those whose texts are hard to track down and thus tend to be short-lived, older, and less widely known. We also analyze seven major international covenants with human rights provisions, including the UDHR and the ICCPR—two covenants that we analyze in some depth. We chose these seven covenants as the most prominent global and regional treaties covering a range of human rights.

Historically, constitutions have, on average, included an average of twenty-two rights from the set of seventy-four rights listed in the Appendix. See below for a description of how we identified these seventy-four. Figure 1 provides the distribution of the number of rights found across the 680 constitutional cases.

FIGURE 1: DISTRIBUTION IN THE NUMBER OF RIGHTS PROVIDED IN NATIONAL CONSTITUTIONS (N = 680)

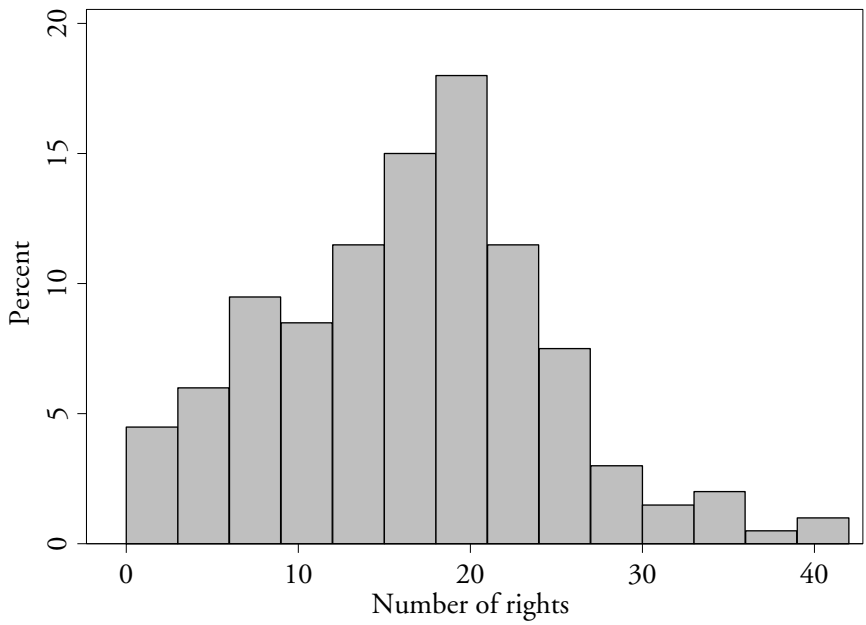


FIGURE 2: NUMBER OF RIGHTS PROVIDED IN NATIONAL CONSTITUTIONS, BY YEAR (N = 680)

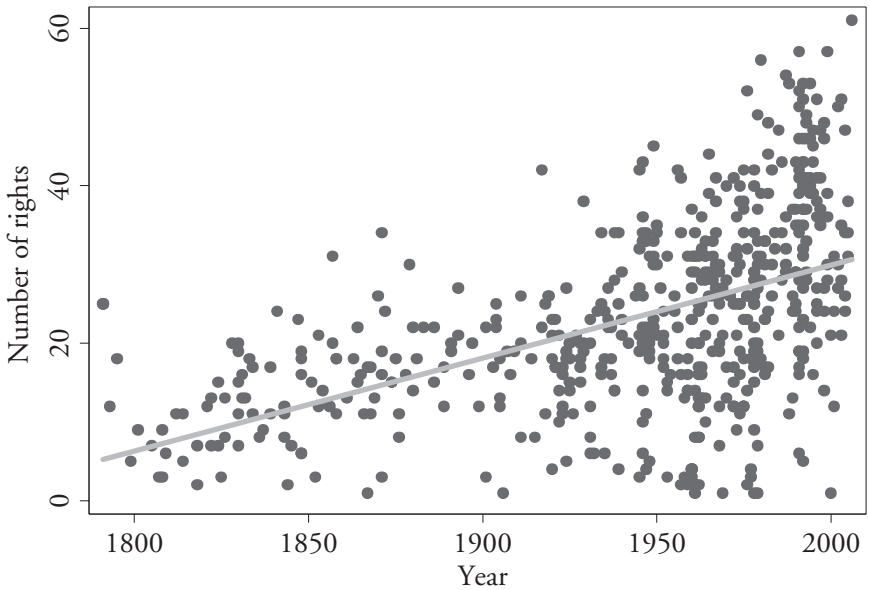



Figure 2 presents a scatterplot of the number of rights according to the adoption year of the constitutions. As the literature suggests, we find that the average number of rights in constitutions has increased over time—presumably, many constitutions are incorporating new rights while retaining older ones. However, not all modern constitutions absorb the new rights; the scatterplot shows a marked increase in the variance in the number of rights over time. While many modern constitutions contain large rights sections, a fair number of them have rights sections no larger than those of the typical nineteenth century constitution.[45]

As for the international covenants, those that we coded include, on average, roughly thirty or so rights from the seventy-four in the CCP survey. For their time, then, these charters included a rather lengthy set of rights, hardly surprising given their nominal purposes. Figure 2 shows that very few constitutions included this many rights prior to 1945. We count twelve constitutions—all in Latin America—that included more than twenty-five

45. A small handful of constitutions do not incorporate any rights, at least not directly. These constitutions are those of: Bhutan (1953); France (1875); Haiti (1811); Latvia (1922); Lesotho (1983); Malawi (1966); Mauritania (1985); New Zealand (1852); Poland (1992); Soviet Union (1924); South Africa (1961); South Africa (1983); and Thailand (1976). At the other extreme, there are fourteen or so recent constitutions (all from developing countries) that provide over 50 rights each. The rights-heavy constitutions and their year of adoption are those of: Slovenia (1991); Ukraine (1996); Slovakia (1992); Yugoslavia (Serbia) (2003); Romania (1991); Portugal (1976); Paraguay (1992); Ethiopia (1994); Brazil (1988); Nicaragua (1987); Cape Verde (1980); Colombia (1991); Venezuela (1999); and Yugoslavia (Serbia) (2006).

rights prior to this time, with most of these including roughly thirty rights.[46] Thus the international bill of rights represented an expansion in the number of rights-claims on the "menu" for most nation-states.

The Appendix identifies the seventy-four rights included in the CCP survey and provides some sense of their popularity by era. We constructed our survey instrument—which covers 667 different elements of constitutions, including many unrelated to rights—by surveying a large number of constitutional texts and then soliciting the views of an international advisory board. Our objective was to compile a highly inclusive set of rights in order to perform a comprehensive inventory of each document. The result was a list of seventy-four rights. Our survey also asks about rights *not* found in our survey instrument, so in theory we have a comprehensive list.

Were we to plot the popularity of each of the seventy-four rights across time (that is, the percentage of constitutions that provide the right, by year), almost every figure would show an upward trajectory. This pattern suggests that rights, once introduced, generally spread across countries and maintain their popularity (at least in the aggregate, if not within countries over time). Not only are rights—of almost all kinds—seeping into the political foundations of states, but the menu of rights available to drafters is expanding as well. There are, of course, some rights that fail to take off, but these are few. Really, the only four rights in our survey that show anything close to a negative or flat trajectory over time after having enjoyed some popularity in the nineteenth century are the right to bear arms, the right to citizenship of those born in the state's jurisdiction (*jus soli* citizenship), intellectual property rights, and the right to a jury trial. In the case of arms, the right really never took off—such protections were never central outside the Americas and were quite contested even within that region.

Then there is the question of universality. Some rights—for example, freedom of expression and freedom of religion—appear to be so central that almost nine of every ten contemporary constitutions include them. The vast majority of rights, however, have penetrated fewer than half of contemporary constitutions and appear to be optional constitutional features. This distribution suggests the distinct possibility of different rights templates, if not a fully à la carte process. Some of this diversity is likely rooted in divergent political and social values among countries—for example, the right to health, as the U.S. experience makes clear, is clearly not for every country. It is also probably the case that drafters across countries have different tastes about scope. Some may view a broad list of, say, forty-five rights as insufficiently parsimonious.

It is worth commenting briefly on trends within the various substantive domains. In economic and social areas, for example, we witness a moderate

46. These constitutions are those of: Paraguay (1870); Bolivia (1945); Honduras (1936); Bolivia (1938); Paraguay (1940); Mexico (1857); Mexico (1917); Guatemala (1945); Costa Rica (1871); Uruguay (1934); Uruguay (1938); and Cuba (1940).

but noticeable shift after World War II. These "second generation" rights, it seems, do expand in coverage after the UDHR, but are still not found in a majority of constitutions. (See the Appendix for three "snapshots" of each right's prevalence). We also observe some economic and social rights that emerge before the postwar boom. The right to join a trade union is more extensive and predates the right to strike, which penetrates twenty percent of constitutions only with the burst of post-socialist constitutions in the 1990s. Rights to property, of course, have had a long tradition in constitutional systems and continue to be prevalent. In that light, it is somewhat surprising that constitutional commitment to intellectual property rights has not increased over time. For developing countries that do not produce much intellectual property, this may reflect a paradigmatic "substitute" dynamic (that is, substituting international commitments for domestic ones), wherein commitments are directed primarily at outside actors through treaty, and so there is no additional value to adding a commitment in the constitution.

Criminal procedure rights are classic "first generation" rights and observe steadier upward trajectories beginning in the nineteenth century.[47] For some provisions, such as the right to a fair trial, enshrined in Article 10 of the UDHR, and the presumption of innocence, enshrined in Article 11, there seems to have been an upward spike in adoption after the UDHR. The rights to a public trial and to be immune from *ex post facto* law, on the other hand, were already popular before the UDHR, though they also exhibit upward trends. This suggests that the effect of the UDHR was greater in coordinating national norms with regard to a fair trial than a public trial. On the other hand, we also see an upward spike with regard to the right to counsel (not contained in the UDHR) intensifying after its inclusion in the ICCPR.

International instruments seem to influence the norm against torture in an interesting and significant way. Torture is prohibited by the UDHR and the ICCPR, but, despite this, only a minority of constitutional texts mentioned it into the 1980s. When the Torture Convention came into force in 1984, it was followed by a significant increase in the number of countries with constitutional prohibitions.[48]

The only rights that truly appear universal (found, say, in more than ninety percent of constitutions) at the end of the twentieth century are a few of the classic first generation rights: freedom of religion, freedom of expression, and freedom of assembly and association. Prohibitions on slavery and

47. Matthew C.R. Craven, The International Covenant on Economic, Social, and Cultural Rights: A Perspective on Its Development 8 (1995) (describing first, second, and third generation rights).

48. 137 out of 166 constitutions adopted after 1984 explicitly ban torture. Of constitutions adopted before 1984, the comparable figure is 187 out of 552 constitutions. Data on file with authors. This increase is not surprising because Article 2 of the Convention explicitly requires the adoption of legislative measures to prohibit torture. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85.

the right to privacy are also quite widespread. Rights of petition and freedom of the press are less widespread. In terms of the rights most affected by the international instruments, it seems that some of the criminal procedure rights exhibit the most significant shifts: the right to a public and fair trial and to the assistance of counsel reflect important features about the organization of legal systems, and play a role in protecting other rights, to the extent they are justiciable. Below, we investigate these apparent patterns in somewhat more depth.

## III. Forging a Template: The Universal Declaration of Human Rights

The major effort to institutionalize and universalize an international human rights regime dates from just after World War II. The contents of a new global regime for human rights was the first order of business of the new Human Rights Commission of the United Nations, established in 1946, for which the initial goal was to pass a non-binding, yet authoritative, statement of the broad panoply of rights that all sovereign states should observe vis-à-vis their own people.[49]

Of course, this effort to forge a set of global standards did not begin *de novo*. In fact, U.N. actors worked with their *own* set of templates, which presumably derived from another set of templates, and so on.[50] We will assume that these inheritances go back more or less *ad infinitem*, but given the abrupt post-World War II changes, it is convenient to begin our story in 1948.[51] U.N. negotiators drew from not only salient historical documents such as the French Declaration of the Rights of Man, but also from the constitutions of the home countries of the negotiators.[52] It may come as a surprise, however, to learn that what would become the UDHR was hardly a carbon copy of the constitutions of the most powerful states. For example, our analysis suggests that despite the hegemonic position of the United States, the UDHR only weakly resembled the U.S. Constitution's Bill of Rights. Here, we compare the content of the UDHR to that of each of the seventy-six constitutions in effect in 1948 for which we have data (a small number of constitutions are missing in our 1948 sample). Our measure of similarity here is the proportion of some seventy-two rights on which any two documents match, in that both include or both exclude the right. (These seventy-two rights represent any right from the list of seventy-four in the Appendix that has been included in at least five percent of constitutions at any given time since 1789.) We observe that the configuration of rights

49. *See generally* Johannes Morsink, The Universal Declaration of Human Rights: Origins, Drafting, and Intent (1999).

50. *See id.* at xiv (strong influence of Latin American socialist ideas).

51. *See* Henkin, *supra* note 1, at 22–29 (emphasizing World War II as a key turning point).

52. *See* Morsink, *supra* note 49, at 46, 257, 261 (examples of constitutional influence).

in the UDHR is quite different from that of the aged U.S. Constitution, which ranks in the bottom fifth in terms of similarity to the UDHR.[53] The match with the French constitution of 1946 is much better, perhaps due to the participation of influential Frenchmen such as Rene Cassin in the drafting of the UDHR, as well as the fact that the French constitution was written only two years earlier.[54] Rights provisions in the prevailing constitutions of the other U.N. Security Council members do not bear any particular similarity to the eventual UDHR. The similarities of the Soviet and Chinese constitutions to the UDHR are just slightly above the sample average. And while we cannot make a precise comparison with the unwritten British constitution, it seems fair to say that the content of what was to become the founding document of the modern international human rights regime was not dictated by the practices of the dominant powers alone.

This result is consistent with Waltz's and Morsink's descriptions of the influence of smaller countries on the drafting of the UDHR.[55] Indeed, the constitutions most similar to the UDHR are those of Haiti (1946) and Iceland (1944), which were still hot off the press in 1948. These constitutions, as well as those of France and Japan, both of whose post-war constitutions are highly similar to the UDHR, suggest the most robust pattern is that the UDHR is a product of its generation. Indeed, the only distinguishable pattern in the regression models that we have run of the similarity of antecedent constitutions to the UDHR is that of the constitution's age.[56] The generation effect appears to be quite pronounced: for every 100 years of age, constitutions are eight points less similar to the UDHR, which represents a shift of almost two standard deviations in the measure of similarity.[57] Contrast this effect with some null effects. The state-level factors that do *not* predict similarity to the UDHR include a state's *level of development* (as measured by an index of energy consumption and urbanization), its *population size* (despite Waltz's impression mentioned above), its geographic *region*, its *membership in the U.N. Security Council*, and its *status as one of the allied powers in World War II*.[58] The lack of any systematic pattern in the data—apart from the age of a state's constitution—is striking. The finding suggests that, while the world powers very likely exerted influence over the process of writing the UDHR, drafting process was not characterized by the imposition of the constitutional norms of these states. Rather, the process seems to have been one in which drafters capitalized on contemporary trends in rights

53. *Cf.* Law & Versteeg, *supra* note 11 (claiming that U.S. influence was at its highest in this period without any data on prior years).

54. *See* Morsink, *supra* note 49, at 8–10 (discussing the role of Cassin).

55. *See* Waltz, *Reclaiming*, *supra* note 18, at 444; *see also* Waltz, *Universalizing*, *supra* note 18; Morsink, *supra* note 49, at xiv.

56. The dependent variable here is the similarity measure as described above, and the units are the seventy-six constitution-UDHR dyads.

57. Analysis on file with authors.

58. *Id.*

protection that had begun to manifest in recent constitution making episodes across a varied set of countries.

The importance of the UDHR to the elaboration of international treaty law is well known,[59] but what is less appreciated is the extent to which this document also influenced the rights content of new constitutions that were adopted in its wake.[60] For a large number of countries torn asunder by the war, as well as for a growing population of newly independent countries, the UDHR presented a broadly accepted menu of rights viewed internationally as legitimate. Their highly consensual origin meant these rights retained a neutral quality that would be especially attractive to actors working in the wake of political rupture, when it is critical that new governing principles not be perceived as the biased program of one faction. The UDHR's highly inclusive incorporation of both classical negative rights and positive rights (in Articles 22 through 26) no doubt contributed to its attractiveness. In addition to its balance between positive and negative rights, adoption of a template with which other countries have had some experience may have had the additional advantage of providing information about what rights were useful. For these reasons, international human rights standards are likely to be viewed as norms with a relatively high degree of legitimacy by polities in the market for new governing principles.

The evidence we have gathered suggests the UDHR very likely did play such a role. Prima facie evidence can be found in the number and type of human rights provisions included in national constitutions written in the years following the adoption of the UDHR. Data from the CCP show that the UDHR contributed to an expansion in the number of rights enumerated by drafters. Of the set of seventy-four rights that the CCP tracks, the UDHR contains thirty-five distinct rights, while constitutions in force in 1948 contained, on average, only eighteen. To be sure, the number of rights in constitutions has grown steadily since the first modern constitutions of the early 1800s, and even a mean of eighteen represents nearly a forty percent increase compared with the thirteen rights to be found, on average, in 1850.[61] But growth from 1789 until 1948 was decidedly incremental, in part because older constitutions like that of United States were only infrequently updated. By contrast, the average number of rights spikes noticeably in the several years following 1948. In part, this spike is due to an increase in the number of new constitutions introduced after World War II (that is, more constitutions are updated then). However, even controlling for new constitutional starts, 1948 appears to represent an abrupt shift in rights volume. As one indicator, the nine constitutions written in 1947 contain an

59. *See* HENKIN, *supra* note 1, at 19.

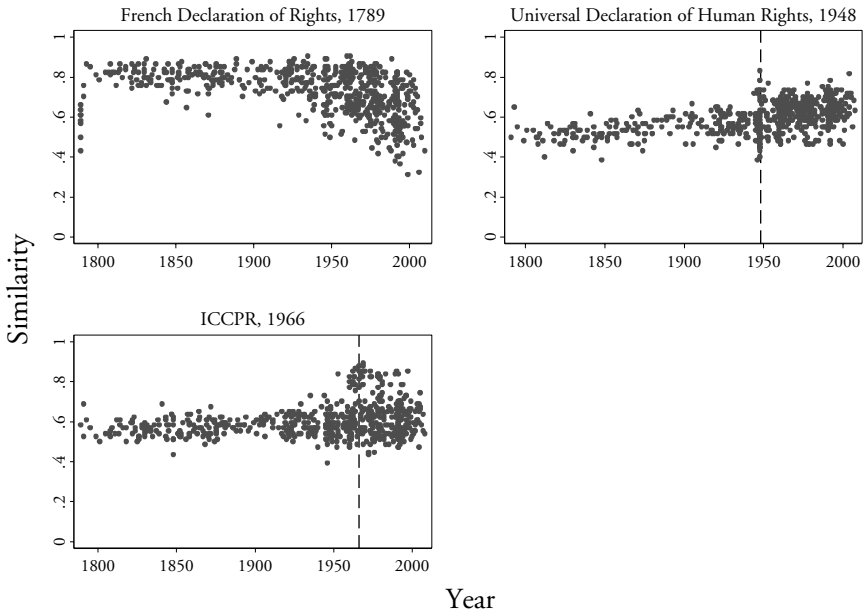
60. Hurst Hannum, *The Status of the Universal Declaration of Human Rights in National and International Law*, 25 GA. J. INT'L & COMP. L. 287, 289 (1995).

61. *See generally* ELKINS, GINSBURG & MELTON, *supra* note 6.

average of 17.6 rights, while the six written in 1949 contain an average of 31 rights!

Moreover, it appears a block of constitutions highly similar to the UDHR emerged very soon after 1948. Figure 3 indicates a significant upward shift in the similarity to the UDHR among constitutions written after 1948, an indication that the particular menu of rights advocated by the UDHR had its adherents. In the graphs, each dot represents a national constitution, situated on the x-axis by year of adoption. The y-axis represents the level of similarity between the rights menu in the constitution and that of the specified international instrument. The dashed line indicates the year of adoption of the instrument. In terms of similarity to the UDHR, we observe that the cluster of dots after 1948 is higher than those below 1948. The upward boost in similarity is even greater for the ICCPR, which we discuss in the following sections. Further, Figure 3 suggests that the rights contained in modern constitutions seem to have diverged from those contained in older documents, such as the French Declaration on the Rights of Man.

Figure 3: Similarity Between National Constitutions and Selected Rights Covenants




Another way to think about the effect of the UDHR is to analyze changes at the level of the right, not the constitution. It would seem that, absent their inclusion in the UDHR, some rights would have been adopted at lower rates than they actually were. We can analyze this possibility by tracking the evolution of particular rights over time. Some trends are evident by

tracking the prevalence of first-generation rights. Rights relating to criminal procedures serve as an illuminating example. Those criminal procedure rights that were enshrined in the UDHR, such as the right to a fair trial (Article 10), and presumption of innocence (Article 11), seem to exhibit an especially steep upward spike after 1948,[62] while other aspects of the rights of the accused not included in the UDHR show no apparent increase in popularity.[63] There is a moderate but noticeable shift after World War II in the inclusion in domestic constitutions of economic and social rights, or "second generation rights" such as those contained in the UDHR, although these rights are still not found in a majority of constitutions.

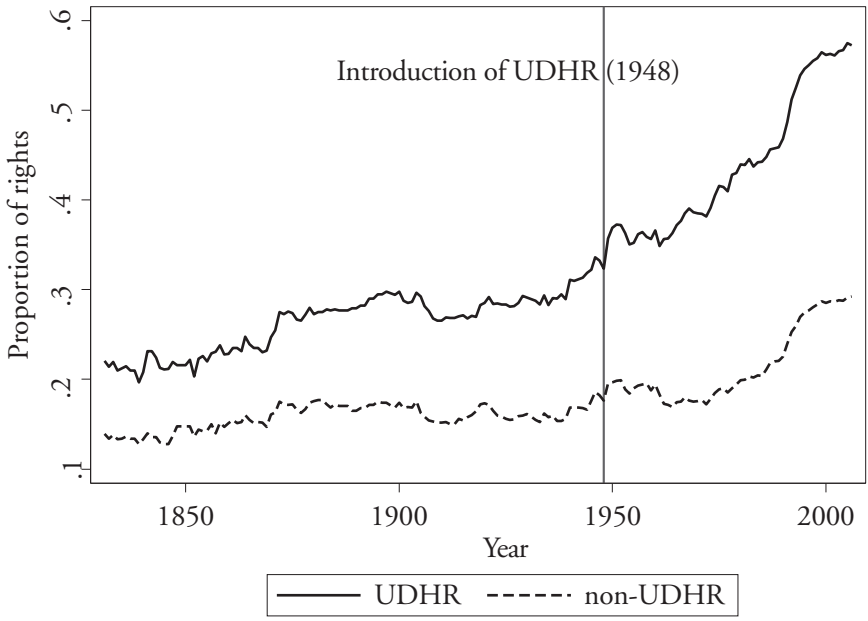
In order to assess the effect of UDHR inclusion on the popularity of a right, it is helpful to think in quasi-experimental terms with, for example, an interrupted time-series design. In such a design, we can treat rights as the unit of analysis, their popularity as the outcome of interest, and inclusion in the UDHR as the intervention or treatment. Of course, the post-World War II era was transformational in many ways—not just because of the introduction of the UDHR—and so a comparison group allows us to isolate the effect of UDHR inclusion over and above any other contemporary influences. That is to say, all rights exploded in popularity after World War II for reasons not limited to the UDHR; the question is whether those included in the UDHR were *especially* explosive in their growth.

In Figure 4, we plot the popularity of each right by its UDHR "status" (that is, whether the right was eventually included or not in the UDHR). Popularity here is calculated as the proportion of constitutions with the right, averaged across rights in each "kind" by year. The figure suggests that rights in both groups have become increasingly prevalent, but those included in the UDHR grew at a faster rate for most of the period (even before 1948) than those excluded from the UDHR. After World War II, the slope increases for both sets but it appears that the slope for those included in the UDHR veers more sharply upward, suggesting their inclusion in the UDHR may have accelerated their incorporation into domestic law.

62. See plots in Zachary Elkins, Tom Ginsburg & James Melton, *Reports*, CONSTITUTION MAKING PROJECT, *available at* http://www.constitutionmaking.org/files/right_to_a_fair_trial.pdf (right to a fair trial), and http://www.constitutionmaking.org/files/presumption_of_innocence.pdf (presumption of innocence).

63. See plots in Zachary Elkins, Tom Ginsburg & James Melton, *Reports*, CONSTITUTION MAKING PROJECT, *available at* http://www.constitutionmaking.org/reports.html (various reports on criminal procedure).

Figure 4: Average prevalence of "UDHR rights" versus "non-UDHR rights," by year




We can analyze the effect more systematically with a count model in which, again, the unit of analysis is the right (that is, freedom of expression, freedom of religion, etc.), with a sample of seventy-four rights. The dependent variable is the number of constitutions written after 1948 (with a sample of 350 constitutions) that include the right. The explanatory variables include (1) the percentage of constitutions providing the right circa 1948, which captures a right's baseline level of popularity; (2) the age of the right, measured as the difference between the first year of its introduction in a national constitution and 1948; and (3) a binary variable indicating whether or not the right was included in the UDHR. We estimate the model with a Poisson regression and report the estimates as incidence rate ratios (i.r.r.) in Table 1. The ratios can be interpreted as the shift in the odds that a constitution will contain a particular right, such that any value greater than one indicates an increased probability of having the right.

TABLE 1: EXPLAINING THE PREVALENCE OF A RIGHT IN POST-1948 CONSTITUTIONS[64]

*Dependent variable: number of post-1948 constitutions that include each right*
Universe: rights in national constitutions

| **Variable** | **Incident Rate Ratio (s.e.)** |
|---|---|
| Proportion in 1948 | 4.74<br>(.23) |
| Age in 1948 | 1.16<br>(.04) |
| Present in UDHR | 1.53<br>(.03) |
| N | 73 |
| Pseudo R-squared | .61 |

Not surprisingly, the prevalence of the right in 1948 is highly predictive of future popularity (i.r.r. = 4.74), suggesting a previously universal right would be almost five times as likely to occur as one that was previously nonexistent. Also, the age of the right (in 100s of years) has a mildly positive effect as well: a shift of 100 years increases the incidence rate by a factor of 1.16, indicating that "older" rights are more likely to appear in post-1948 constitutions than younger ones. More importantly for our purposes, we observe a strong positive effect of the inclusion in the UDHR on a right's future prevalence. In fact, the incidence rate ratio of 1.53 for that variable suggests that inclusion in the UDHR increases the likelihood of the right's inclusion in a constitution by more than fifty percent. This sizable effect suggests that, on the whole, the UDHR provided a set of focal rights from which many polities drew to design their own post-war constitutions.[65]

These are, of course, highly aggregated effects. Our data allows us to look at specific rights whose fates in national constitutions seem particularly influenced by the UDHR. On the one hand, some otherwise obscure constitutional rights seem to have taken off because of the UDHR. For example, in 1948 not a single national constitution in force recognized either the right to "enjoy the benefits of science" or the right to the "free development of one's personality."[66] However, these two rights are prescribed in ten percent and twenty-two percent, respectively, of the 350 constitutions written since

64. n = 73. Unit of analysis is the right (listed in the Appendix). Poisson regression. Standard errors are in parentheses.

65. As an alternative to this model, we plan to run a time-series count model, which maps more precisely onto the interrupted time-series design we sketch above. We also plan to extend the analysis to the other international covenants, in particular the ICCPR.

66. Data on file with authors.

then. With the apparent assistance of the UDHR, at least six rights evolved from ones provided by a distinct minority of constitutions to ones provided by a large majority (that is, right to life, prohibition on *ex post facto* punishment, right to join a trade union, presumption of innocence in trial, right to free movement, and the prohibition on cruel and inhuman treatment). On the other hand, it seems plausible that the right to a jury trial (a decrease of 53%), the prohibition on censorship (a decrease of 31%), the right to petition (a decrease of 34%), intellectual property rights (a decrease of 23%), prohibitions on child employment (a decrease of 11%), and the right to a free press (a decrease of 9%) may have fallen out of fashion in part due to their exclusion from the UDHR.[67] These patterns are consistent with the view that the UDHR had a powerful "template" influence on domestic constitutions in the early post-war years.

## IV. Ratification and Incorporation: The Case of the ICCPR

If international law has influenced formal legal rights through its power as a template for the crafting of national constitutions, there are good reasons to expect binding, ratified accords to have similar effects through distinct channels. Binding treaties raise issues of *legal consistency* for states in a much more immediate way than do non-binding agreements, even ones as important as the UDHR. We expect that treaty ratification has an *independent effect* on the probability that the rights contained in the treaty will eventually be reflected in the domestic constitution. Specifically, we expect states that ratify a binding international obligation to incorporate those rights into their constitutions at a higher rate than those that do not. Moreover, we expect this treaty effect on incorporation to be over and above any effect associated with the earlier exposure of all countries to the norms contained in the UDHR.

Our theory linking the ratification of a human rights treaty with the constitutional incorporation of the rights contained in that treaty is built upon two ideas: *signals* and *supplements*. Signaling refers to the idea that constitutional laws, as the highest legal instrument in a state, send a message about the priority of particular policies.[68] Supplementing refers to the complementarities of adopting the same right at multiple levels of government. The idea is that adoption of norms at multiple levels of government heightens the effectiveness of those norms.

67. If we look carefully at some of these rights, it seems probable some instances of decline had nothing to do with the right's omission from the UDHR. The right to bear arms, for example, whose popularity decreased 82% (from 7% of constitutions to 1%), was already on the decline. The same is true of debtors' rights, which decreased 23% in their prevalence.

68. Daniel A. Farber, *Rights as Signals*, 31 J. Legal Stud. 83, 85 (2002) (explaining the signaling value of constitutional rights).

We begin by positing, in each country, a set of elites that we call the constitutional coalition, with control over the constitutional text.[69] For all countries, constitutional commitments carry unique weight in terms of authority. This is true for countries in which the constitution is a legally enforceable document, as is typical of democracies, because the constitution will trump ordinary law and policy. But it is also true for countries such as China, in which the constitution is used to indicate fundamental policies, even if the document is not legally justiciable.[70] For both democracies and autocracies, then, constitutions are used as *signals* of policy goals, expressing fundamental values of the constitutional coalition. Crucially, we assume it is *costly* for a country to include a provision within its constitution, if only because of the drafting and deliberation costs involved on the part of the constitutional coalition.[71]

The audiences for such constitutional signals may be both *within* the state, namely the citizenry, and *outside* the state, namely treaty partners, international organizations, and foreign publics.[72] Note that we do not assert that the strength of the signal (derived from the costliness of adoption) is equivalent in its effect on these different audiences, or with respect to whether it is sent by a democracy as opposed to an autocracy. But in all cases, a constitution is used to communicate private information about the policy goals of the constitutional coalition. And because it is a signal, adoption of a constitutional promise raises the costs to the state of violating the policy, even without formal enforcement. In this sense, constitutions express commitments that may have greater credibility than ordinary laws, even if they are not universally observed.

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69. We recognize that the size and inclusiveness of this coalition vary widely across jurisdictions.

70. The recent adoption of property rights within the Chinese Constitution, for example, was widely viewed as evidence that the Party was committed to incorporating capitalists into the governing coalition. ELKINS, GINSBURG & MELTON, *supra* note 6, at 175–76; *see also* Randall Peerenboom, *The Social Foundations of China's Living Constitution*, *in* COMPARATIVE CONSTITUTIONAL DESIGN 138, 144–45 (Tom Ginsburg ed., 2012); Michael Dowdle & Stephanie Balme, *Introduction*, *in* CONSTITUTIONALISM IN CHINA 1, 6 (Michael Dowdle & Stephanie Balme eds., 2009).

71. We recognize, of course, that not every country bears a very high cost of adopting constitutional language. For some countries, particularly autocracies, the cost may be so low as to effectively render the constitutional promise "cheap talk." Note also that the "cost" of adoption might be lowered by incorporating the international instrument directly by reference. Some 43/655 of constitutional systems in the CCP data (6.5%) have some sort of reference to a specific international human rights treaty. The most general pattern (n = 35) is a vague reference in the preamble of the nature of "reaffirming the principles of" the UDHR, sometimes along with other documents. This type of reference is prevalent in Africa and is sometimes accompanied by a similar expression affirming the African Charter of Rights and Freedoms. Excluding these preamble cases leaves us only eight constitutional systems (1.2%) which involve incorporating the norms into what we might assume is the operative part of the constitution. These include post-transitional countries: Bosnia (1995), Kosovo (2008), Somalia (2004), Nicaragua (1987), Argentina (1994) (which includes the American Declaration), and Azerbaijan (1991). There is also what might be called the Bolivarian pattern (Venezuela (1999), Bolivia (2009)), which incorporates only unnamed "human rights treaties." We can read this generously to include incorporation. The bottom line, however, is that the phenomenon is not very widespread.

72. Farber, *supra* note 68, at 83–98 (discussing benefits of signaling to investors and domestic constituencies).

In terms of sequence, some states will have well-established constitutional rights in place before they adopt a treaty; for others, the treaty may precede the adoption of constitutional rights. This Article is concerned primarily with the *effects* of treaty ratification on domestic constitutions, and so we focus on a temporal sequence in which treaty ratification occurs *before* full adoption of all rights in a national constitution. In that sense, the relevant question is: why would a constitutional coalition bother to repeat, in a national constitution, commitments that have already been made at the international level?

Signaling provides a partial account. If legal and treaty obligations are signals, presumably the intensity of the signal increases with the number of iterations of it. Thus, adopting a norm at both the international and domestic levels reinforces the strength of the signal to the relevant audiences. In that sense it is quite reasonable that a state would recommit to a right it has already acceded to internationally. The international level helps to make certain rights focal, in turn allowing states to coordinate their signaling behavior around the international script. Note that it is not simply the case that constitutions communicate to national audiences and treaties to international audiences. Indeed, it may be particularly helpful to international audiences to observe the adoption of a norm in a national constitution, which may be presumed by outsiders to be more enforceable than a treaty enforced by the fairly weak international machinery.

Beyond signaling, however, there is the possibility that the adoption of international norms in the local constitution *supplements* the international adoption. Just as Gardbaum argues that the international level of rights enforcement can provide gap-filling and supplementary rules for the domestic constitutional level,[73] so the reverse is also true. Domestic constitutional adoption may incorporate more detailed rules, spelling out the right and its limitations with greater specificity. Constitutional incorporation may also provide institutional supplements: for developed countries, domestic constitutions are usually seen as being enforced by well-regarded professional judges, who may be better able to monitor the government than could the more distant international machinery. At the same time, having some international enforcement can help address concerns that the local rights-enforcers will be captured, as local groups interested in enforcing rights will have multiple fora in which to challenge government behavior. Monitoring by both international and local bodies can help inform actors at the other level that a violation has occurred. Adopting a right at both levels, then, may be useful, particularly for states that intend to enforce international promises effectively.

73. Stephen Gardbaum, *Human Rights as International Constitutional Rights*, 19 EUR. J. INT'L. L. 749, 764 (2008).

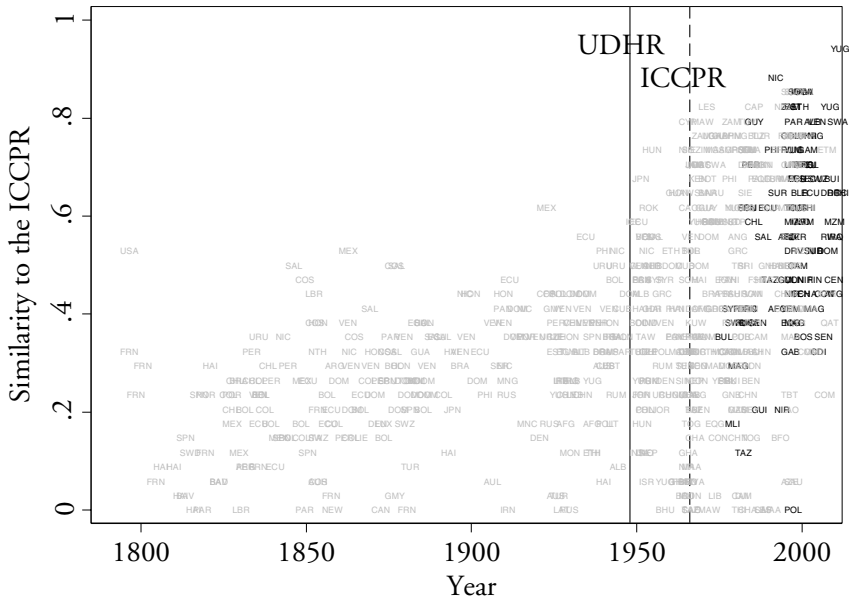
Of course, there is a possibility that the constitutional coalition might treat the international obligation as a *substitute* for domestic institutions, so that ratification of the international instrument precludes the need for adoption at the domestic level (or vice versa). This might be because such adoption at a second level would be redundant or unnecessary.[74] A less charitable interpretation would be that the international commitment provides a convenient cover for the states with no interest in actually enforcing the promises embodied in rights provisions. If jurisdictions are seen as substitutable (whatever the motive), the empirical prediction is largely of divergence between national and international sets of rights.

In short, many kinds of states might like to signal commitment through adoption of domestic norms to match international treaty commitments. Those states that are interested in enforcement, however, are likely to seek to supplement international obligations with domestic constitutional commitments that make the promises more credible. It is not easy to distinguish between these motives empirically and, moreover, it is quite likely that states may be driven by both motives. In any case, at least one of these motives supports a logical link among (1) international ratification, (2) domestic constitutional commitment, and (3) actual enforcement of rights. The signal of international ratification is intensified with domestic commitment; the supplementary feature of the dual levels of obligation increases the probability of actual enforcement.

What do the data say about these three behaviors? We begin by examining how the content of the ICCPR compares with that of constitutions that came before or after. Figure 5 plots the similarity of 626 new constitutions (almost three-fourths of the universe) to the ICCPR across time. Similarity here is the proportion of the fifty-two ICCPR rights (more precisely, the fifty-two ICCPR rights that are tracked in the CCP) that are incorporated in a constitution in the year of its drafting. This measure is, therefore, different from the measure of similarity employed earlier. Here the question is what proportion of ICCPR rights are incorporated in a given constitution rather than what proportion of a larger set of rights are shared between two documents. Constitutions in bold are those from countries that had ratified the ICCPR at the time of their drafting.

74. Certain kinds of rights, for example, might be primarily directed at foreigners and, hence, secured most effectively through international instruments. Few constitutions provide for a right to fair and equitable treatment of foreign investors or the right to repatriate profits. For two examples, see Macedonia (2011) Art. 59 ("Foreign investors are guaranteed the right to the free transfer of invested capital and profits.") and Croatia (1991) Art. 49 ("Foreign investors are guaranteed free transfer and repatriation of the profits and the invested capital."). Such provisions are hardly necessary given the extensive regulation of such matters in bilateral and multilateral investment treaties. Embedding such rights in national constitutions seems to provide little additional commitment value.

FIGURE 5: SIMILARITY BETWEEN NATIONAL CONSTITUTIONS AND THE ICCPR, BY RATIFICATION (BOLD) AND NOT (GRAY)

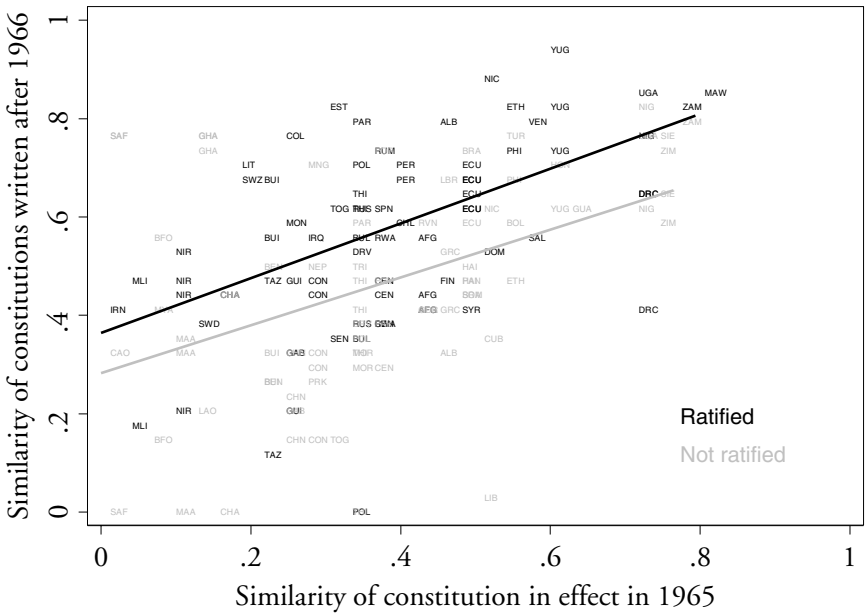



We observe an abrupt increase in similarity to the ICCPR starting in 1948, the year of the UDHR (the content of which, of course, foreshadows that of the ICCPR). Indeed, some of the most similar constitutions to the ICCPR predate the treaty. For example, Zambia's constitution of 1964 and Cameroon's of 1960 match the ICCPR on 88% and 89% of the treaty's rights, respectively. However, we observe an even more abrupt increase in similarity following the drafting of the ICCPR in 1966. States would not ratify the ICCPR until the 1970's, at least, so the highly similar constitutions in these early years are largely those of non-ratifiers. Ten or fifteen years later, the highly similar cases are those of ratifiers. Incorporation of the elements of the ICCPR into constitutions, then, comes well before ratification for many countries, although ratification does appear to predict incorporation.[75] This example only highlights the reciprocal relationship between international covenants and domestic constitutions: constitution writers working in years immediately prior to the official promulgation of a treaty can anticipate and even influence the content of a treaty, which may in turn influence other constitution makers in later years. One would expect that, to some degree, a constitution's similarity to the ICCPR would be a function of the shared content between the country's rights tradition and the ICCPR (which, of course, is built from the constitutions of sovereign states). Figure

75. Interestingly, however, there appears to be a bipolar distribution in the post-ICCPR period. One group is highly similar to the ICCPR, and another substantial group shows no effect at all.

6 plots the similarity of post-1966 constitutions to the ICCPR on the y-axis and the similarity of pre-1966 constitutions to the ICCPR on the x-axis, with 1966 being the year of the ICCPR drafting. The analysis, of course, leaves out a set of constitutions (about 100) whose countries did not have a constitution in force prior to 1966 (or at least constitutions that do not appear in the CCP data before 1966). Again, ratifiers are in bold and non-ratifiers in gray. As Figure 6 indicates, the relationship between post-1966 similarity and pre-1966 similarity is a strong one (b~.5 for both groups). Nonetheless, the vertical gap (about .08) in the lines fitted to each group of points suggests a reasonably strong effect of ratification.

FIGURE 6: SIMILARITY OF POST-1966 CONSTITUTIONS TO THE ICCPR, BY SIMILARITY OF THE PRE-1966 CONSTITUTION TO THE ICCPR




To test this more formally, we estimate a random-effects model that takes into account within-country and across-country effects (Table 2). The dependent variable is still similarity to the ICCPR and the cases are new constitutions drafted between 1789 and 2006. The unit of analysis is *not* the country-year, but rather the constitution, and we take into account serial correlation across constitutions within countries that have a historical series of constitutions. Given the heterogeneity in the time period under analysis, we include three time variables: (1) a dummy variable identifying a drafting date in the post-1966 era, (2) a dummy variable indicating the same in the post-1948 era, and (3) a trend term, that is calculated as the difference between the year of the constitution's drafting and 1789 (the year of the

"first" modern constitution). We would expect a bump in similarity after the introduction of the UDHR and after that of the ICCPR, as well as a general trend towards similarity to the ICCPR across the entire 200 years. The results corroborate all three expectations. We also add to the model a one-unit (that is, one-constitution) lag of the dependent variable (the similarity score of the previous constitution from that country). Remember that the model, which assesses within-country effects, already assumes that constitutions within a country's series will be similar to one another. With these controls, the ICCPR ratification coefficient is .08, which is just what it looked like in the scatter plot in Figure 6.[76] Having ratified the ICCPR, then, is associated with an increase of almost ten points in a constitution's similarity to the ICCPR, controlling for the era and a country's prior constitutional tradition vis-à-vis the ICCPR.

Table 2: Explaining the Similarity of Constitutions to the ICCPR[77]

*Universe: National constitutions written after 1789*

| **Variable** | **Coefficient (s.e.)** |
|---|---|
| ICCPR Ratification | 0.080<br>(0.022) |
| Post-1966 | 0.064<br>(0.021) |
| Post-1948 | 0.046<br>(0.024) |
| Years since 1789 | 0.002<br>(<.001) |
| Similarity (c-1)[78] | 0.049<br>(0.044) |
| Constant | 0.070<br>(0.030) |
| Constitutions | 626 |
| Countries | 192 |
| R-squared (between units) | 0.46 |

In short, countries that ratify the ICCPR are decidedly more likely to bring their constitutions in line with the ICCPR. Even though we control

76. A fixed-effect model suggests an even stronger effect of .12.

77. Random-effects model with constitutions as the unit of analysis and countries as the cross-sectional groups. Standard errors are in parentheses.

78. This is the dependent variable scored for the prior constitution.

for the historical predisposition of a country's constitutional law in this equation, we might still worry about endogeneity. That is, are the ratifiers simply those countries whose constitutional predisposition is already in line with the ICCPR? This does not appear to be the case. Across the 150 or so constitutions written since 1966 for which we have data on the prior constitution in force in 1965, there is no significant mean difference in similarity to the ICCPR in 1965 between countries that ultimately ratify and those that do not.[79] That is to say, convergence to the ICCPR in a country's constitutional trajectory occurs only after ratification.

## V. Ratification, Incorporation, and Rights Performance: Evidence on the Power of Legal Complementarity

In this section we explore the effect of treaties and constitutional rights on actual compliance, or performance. Our theory—to recapitulate briefly—implies that treaties work largely by mobilizing domestic forces, which, in turn, encourage the incorporation of treaty commitments into domestic law.[80] We view constitutions, therefore, as mediating some portion of the effect of treaties on compliance, while we recognize that the treaties and constitutions will have a direct effect on compliance. We provide a test of this system of equations here. In summary, we have already shown some evidence that (1) constitutional drafters working under the shadow of the UDHR are more likely to provide for UDHR rights than they are non-UDHR rights and (2) drafters of post-1966 constitutions who have ratified the ICCPR (one of the legal manifestations of the UDHR) are more likely to incorporate ICCPR rights than are their contemporaries who have not ratified the ICCPR.

Still, skepticism about these effects may persist for a variety of reasons. First, we have looked only at the work of constitution makers who are replacing (wholesale) the extant constitution. It could be that less comprehensive revisions (amendments but also interpretive changes) also serve to incorporate the ICCPR (that is, constitutional replacement is only part of the domestic mechanism of incorporating treaty rights). We also have not taken into account the possibility—however remote—that ICCPR ratification itself triggers the replacement of a constitution. That is, it could be that ratification affects not only the character of new constitutions but the likelihood that they are written in the first place.[81] These two possibilities suggest that our analysis makes for a rather conservative test of the overall effect of treaties. If either of the aforementioned possibilities—unobserved incorporation or endogenous constitutional replacement—are operating,

79. Unreported results, on file with authors.

80. *See* Simmons, *supra* note 7.

81. Elkins, Ginsburg, and Melton, *supra* note 6, chapters 5–6, have developed models of constitutional replacement, which might allow us to test this, but for now we leave this question aside.

then the influence of treaties on the content of constitutions may be even more pronounced than anything our analysis suggests.

We therefore have good reason to suspect that treaty ratification influences the content of national constitutions. We note also the parallel work by Simmons which clearly shows that treaty ratification leads to compliance along a host of domains (from fair trials to women's rights).[82] Here we test the indirect effect of ICCPR ratification on civil liberty protection through the intervening mechanism of constitutional incorporation of civil liberties. Our outcome measure of compliance is the civil liberties index from Freedom House, which has coverage from 1972 and therefore coincides reasonably well with the lifespan of the ICCPR. We construct a *de jure* version of the Freedom House index by matching each of the fifteen ingredients that Freedom House coders purportedly use to rate countries to each of fifteen constitutional provisions. These *de jure* and *de facto* measures of civil liberties, then, match fairly well.[83]

In the standard approach to assessing intervening variable models,[84] establishing evidence of mediation requires three conditions to hold: (1) the treatment variable (here, ICCPR ratification) influences the outcome variable (rights compliance); (2) each variable in the causal chain influences the one after it when all prior variables, including the treatment, are controlled; and (3) the treatment variable does not affect the outcome after the intervening variable (incorporation in national constitutions) is controlled. This last condition assumes complete mediation; in most cases, like ours, it is not supposed that the treatment exerts an effect only through the intervening variable. Indeed, we suspect that treaty ratification exerts influence over and above any effect mediated by domestic law.

In our case, this sort of analysis implies three regression equations, the results of which are in Table 3. The first column reports the results of a regression predicting constitutional civil liberties with ICCPR ratification and a number of control variables. The second column reports the results of a regression predicting civil liberty compliance with the complementary set of *constitutional* civil liberty provisions and some control variables. And the third column reports a regression predicting compliance with both treaty ratification and constitutional provisions.[85] The results are consistent with a

82. *See* SIMMONS, *supra* note 7.

83. It is likely that our aggregation method (an additive index of the fifteen items) departs from whatever aggregation method the Freedom House coders use. The Freedom House method is not publicly available.

84. *E.g.*, Reuben Baron & David Kenny, *The Moderator-Mediator Variable Distinction in Social Psychological Research: Conceptual, Strategic, and Statistical Considerations*, 51 J. PERS. SOC. PSYCHOL. 1173, 1176 (1986).

85. These are random-effects models that include, importantly, a measure of the state's predisposition to sign the ICCPR, as measured by the similarity of the state's constitution to the ICCPR in 1965.

theory of constitutional mediation of treaty effects, although both treaties and constitutions exert their own influence on compliance as well.[86]

That is, the first equation suggests that treaty ratification has a noticeable effect (b = .102) on the provision of civil liberties in constitutions—an effect that is consistent with our related findings of ratification effects above. The dependent variable in the first equation is scaled to range from 0 to 1; the .102 increase associated with treaty ratification, which is equivalent to one standard deviation in the dependent variable, is strong. In turn, the second equation suggests that civil liberty provisions in constitutions have a decided effect (b = .134) on compliance, which is also scaled to range from 0 to 1. The third equation, finally, suggests that the treaty effect on compliance is both independent (b = .053) and mediated through civil liberty provisions in constitutions whose effect remains strong (b = .121) even in the presence of treaty ratification. Certainly, these relationships deserve a closer look and more analysis, but our findings here tell a clear story of treaties working both through constitutions as well as independently to change human rights behavior.

86. This simple analysis of the causal steps, however, does not allow us to test the joint significance of the causal paths, nor to estimate the indirect effect of ratification on compliance or the confidence interval surrounding that estimate.

TABLE 3: EXPLAINING CIVIL LIBERTY PROVISIONS AND CIVIL LIBERTY COMPLIANCE[87]

*Universe: Independent states (1972–2006)*

| | Civil Liberty Provision | | Civil Liberty Compliance | |
|---|---|---|---|---|
| | (1) | | (2) | (3) |
| ICCPR Ratification (t-1) | 0.102<br>(9.48) | | | 0.053<br>(6.84) |
| GDP per capita | -0.051<br>(1.15) | | 0.058<br>(1.99) | 0.002<br>(0.07) |
| Democracy (Polity) (t-1) | 0.238<br>(13.12) | | | |
| Logged population | 0.073<br>(6.25) | | -0.025<br>(2.86) | -0.040<br>(4.52) |
| Percent urban | 0.139<br>(2.25) | | 0.431<br>(9.06) | 0.369<br>(7.66) |
| Official religion | 0.306<br>(15.68) | | -0.022<br>(1.49) | -0.017<br>(1.16) |
| ICCPR Predisposition | 0.015<br>(5.72) | | -0.001<br>(0.52) | -0.001<br>(0.40) |
| Civil liberty provisions | | | 0.134<br>(12.06) | 0.121<br>(10.81) |
| Constant | -0.481<br>(4.49) | | 0.540<br>(6.69) | 0.672<br>(8.20) |
| Observations | 3977 | | 3712 | 3712 |
| Number of countries | 120 | | 127 | 127 |

**N.B. Cells represent regression coefficients with t-scores in parentheses.**

## VI. CONCLUSION

Our analysis has focused on the impact of international treaty ratification on domestic constitutional adoption of rights, and the effect of both levels of legal obligation on actual rights protection. We focus on two leading international human rights instruments, the UDHR and the ICCPR, and find that they have had an important coordinating role in terms of the pattern of rights adoption in subsequently enacted national constitutions. Constitution writers working under the umbrella of international rights treaties are more

87. Random-effects model, with t-stats in parentheses.

likely to pattern their documents after the international instruments, but they are even more likely to do so if their country has ratified the instrument. These findings are consistent with a view in which international instruments provide a focal set of norms for constitution makers. In our theory, a focal set makes perfect sense if the state is choosing to strengthen the signals it sent earlier in its signing of the international treaty and/or it is choosing to build domestic legal machinery necessary for the enforcement of the rights in question. It is worth noting that, on balance, constitution makers are *not* following some sort of substitution approach, in which they choose to omit the same rights from a newly written constitution that they had committed to in an international treaty.

Actual rights compliance is the last and most important piece of this puzzle, of course. Does duplication of ICCPR rights in a country's constitution lead to increased compliance? We find that, while both treaties and constitutions exert their own direct influence on compliance, there also appears to be a distinct mediating effect of constitutions on actual rights protection. In other words, one way in which international norms work is *through* adoption in national constitutional texts. This result is consistent with a theory that constitutions and international treaties supplement each other in terms of enforcement mechanisms. Adoption of a norm at both levels increases the probability that the norm will actually be enforced, probably—in our view—because it provides multiple monitors and alternative fora in which to challenge government behavior. One implication is that proponents of international human rights regimes should encourage adoption of core norms into domestic constitutions, so as to increase the probability of effective enforcement.

The connection between the ratification of international instruments and national constitutions also implicates problems of the simultaneous operation of multiple levels of regulatory authority. While duplication of rules, say between a state and national constitution, may seem to be wasteful, it also has the potential to reinforce effective implementation.

In more general terms, our results contribute to the important project of unpacking and tracing the implications of international law in domestic law and politics. We know from recent analyses that domestic mobilization is crucial for the efficacy of international norms.[88] We have shown that constitutions provide one channel through which domestic mobilization can occur. Getting to rights, it seems, may require taking multiple paths.

88. *See* SIMMONS, *supra* note 7.

## Appendix: Percentage of Constitutions that Include Selected Rights, by Era[89] (n=549)

| Right[90] (CCP Variable Name in all caps) | Constitutions that Include Right (%) | | |
|---|---|---|---|
| | 1789–1914 (n=122) | 1915–1948 (n=104) | 1949–2006 (n=350) |
| ARMS: The right to bear arms | 8.2 | 3.8 | 1.4 |
| ASSEM: Freedom of assembly | 49.2 | 87.5 | 85.7 |
| ASSOC: Freedom of association | 43.4 | 85.6 | 87.4 |
| ASYLUM: Provisions for the protection of stateless persons | 14.8 | 16.3 | 42.0 |
| BUSINES: The right to conduct/establish a business | 23.0 | 32.7 | 26.3 |
| CAPPUN: Restrictions on the use of capital punishment | 19.7 | 34.6 | 22.9 |
| CENSOR: Prohibition of censorship | 47.5 | 37.5 | 24.0 |
| CHILDPRO: Guarantee of the rights of children | 2.5 | 22.1 | 43.1 |
| CHILDWRK: Limits on child employment | 1.6 | 26.0 | 21.1 |
| CITDEP: Grant to the government of the right to deport citizens | 7.4 | 19.2 | 40.0 |
| CITREN: The right of citizens to renounce their citizenship | 1.6 | 6.7 | 16.6 |
| CITSUFF_1: *Jus soli* citizenship | 59.0 | 44.1 | 30.5 |
| CONRIGHT: Mention of consumer rights or consumer protection | 1.6 | 1.9 | 10.6 |
| CORPPUN: Prohibition on the use of corporal punishment | 32.0 | 21.2 | 7.1 |
| COUNS: The right to counsel if one is indicted | 11.5 | 20.2 | 64.0 |
| CRUELTY: Prohibition of cruel, inhuman, or degrading treatment | 25.4 | 25.0 | 57.7 |
| CULTRGHT: Reference to a state duty to protect or promote culture | 3.3 | 25.0 | 52.6 |
| DEBTORS: Prohibition on the detention of debtors | 10.7 | 20.2 | 13.4 |
| DEVLPERS: Provision for an individual's right to self development | 0.8 | 1.0 | 22.3 |
| DOUBJEP: Prohibition of double jeopardy | 12.3 | 19.2 | 36.6 |
| EXAMWIT: The right to examine evidence or confront all | 11.5 | 4.8 | 23.1 |
| EXPOST: Prohibition of punishment by laws enacted *ex post* | 56.6 | 45.2 | 70.9 |
| EXPRESS: Freedom of expression or speech | 68.9 | 83.7 | 86.9 |
| FAIRTRI: The right to a fair trial | 4.9 | 4.8 | 32.9 |

89. Era is classified by the promulgation date of the constitution.

90. Labels for rights are taken directly from the CCP Survey Instrument. Comparative Constitutions Project, *supra* note 14. Rights are coded as "provided" or "not provided," with conditional provisions coded as "provided." Further information on this dichotomous coding is available from the authors.

| | | | |
|---|---|---|---|
| FALSEIMP: The right to some redress in cases of false imprisonment | 9.8 | 14.4 | 30.9 |
| FNDFAM: The right to found a family | 0.8 | 13.5 | 23.7 |
| FREECOMP: The right to a free and/or competitive market | 3.3 | 6.7 | 16.6 |
| FREEMOVE: Freedom of movement | 54.1 | 56.7 | 74.9 |
| FREEREL: Freedom of religion | 50.0 | 87.5 | 88.9 |
| HABCORP: The right to protection from unjustified restraint | 41.8 | 57.7 | 71.4 |
| HEALTHF: Specification that healthcare should be provided at state expense | 0.0 | 3.8 | 16.9 |
| HEALTHR: Mention of the right to health care | 0.0 | 13.5 | 38.3 |
| INFOACC: Right of an individual to view government information | 1.6 | 1.9 | 18.0 |
| INHERIT: Inheritance rights | 3.3 | 16.3 | 28.0 |
| INTPROP: Intellectual property rights | 39.3 | 34.6 | 20.9 |
| JOINTRDE: The right to form or to join trade unions | 4.1 | 32.7 | 69.4 |
| JURY: Requirement of a jury or any form of citizen participation in criminal trials | 36.9 | 22.1 | 14.3 |
| JUVENILE: Provision for juveniles of special rights/status in criminal process | 0.8 | 3.8 | 10.9 |
| LEISURE: A right of rest and leisure | 3.3 | 32.7 | 37.4 |
| LIBEL: The right of protection of one's reputation | 13.9 | 11.5 | 21.7 |
| LIFE: A right to life | 23.8 | 39.4 | 60.3 |
| MARRIAGE: The right to marry | 8.2 | 20.2 | 22.6 |
| MATEQUAL: Provision for matrimonial equality | 0.0 | 12.5 | 26.0 |
| MIRANDA: A right of the accused to silence or protection from self-incrimination | 40.2 | 35.6 | 39.7 |
| NOMIL: A right to exemption from military service for conscientious objectors | 2.5 | 0.0 | 14.9 |
| OCCUPATE: The right to choose one's occupation | 34.4 | 41.3 | 39.7 |
| OPINION: Freedom of opinion, thought, and conscience | 60.7 | 71.2 | 76.3 |
| PETITION: A right of petition | 73.8 | 73.1 | 46.9 |
| PREREL: The right/possibility of pretrial release | 23.0 | 19.2 | 20.9 |
| PRESINOC: A presumption of innocence in trials | 5.7 | 8.7 | 60.3 |
| PRESS: Freedom of the press | 44.3 | 54.8 | 53.4 |
| PRISONRG: Requirement that the names of those imprisoned be recorded in a register | 1.6 | 1.0 | 2.0 |
| PRIVACY: A right of privacy | 47.5 | 68.3 | 72.9 |
| PROPRGHT: A right to own property | 49.2 | 67.3 | 75.1 |
| PROVHLTH: Mention of a state duty to provide health care | 1.6 | 19.2 | 35.7 |
| PROVWORK: Mention of a state duty to provide work/ employment | 0.8 | 13.5 | 14.9 |
| PUBTRI: A general requirement of public trials | 33.6 | 42.3 | 57.7 |

| | | | |
|---|---|---|---|
| REMUNER: The right to just remuneration, fair compensation, etc. | 4.9 | 16.3 | 43.7 |
| RGHTAPP: The right of defendants to appeal judicial decisions | 10.7 | 11.5 | 30.6 |
| SAFEWORK: The right to safe/healthy working environment | 4.9 | 14.4 | 26.6 |
| SAMESEXM: The right for same-sex marriages | 0.0 | 0.0 | 0.0 |
| SCIFREE: A right to enjoy the benefits of science | 0.8 | 0.0 | 10.0 |
| SELFDET: A people's right of self determination | 0.0 | 8.7 | 12.6 |
| SEPREL: An explicit decree of separation of church and state | 3.3 | 17.3 | 24.0 |
| SHELTER: The right to shelter or housing | 0.8 | 6.7 | 19.4 |
| SLAVE: Prohibition of slavery, servitude, or forced labor | 50.8 | 27.9 | 42.6 |
| SPEEDTRI: The right to a speedy trial | 5.7 | 7.7 | 24.3 |
| STANDLIV: A right to an adequate or reasonable standard of living | 0.0 | 13.5 | 20.9 |
| STRIKE: A right to strike | 1.6 | 13.5 | 39.1 |
| TESTATE: A right of testacy, or the right to leave property to one's heirs | 8.2 | 4.8 | 7.4 |
| TORTURE: Prohibition of torture | 28.7 | 26.0 | 58.0 |
| TRANSFER: The right to transfer property freely | 17.2 | 8.7 | 13.7 |
| TRILANG: Specification that a trial has to be in a language of the accused | 0.0 | 6.7 | 31.4 |
| WOLAW: Mention of *nulla poena sine lege* or equivalent | 54.1 | 58.7 | 63.7 |

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