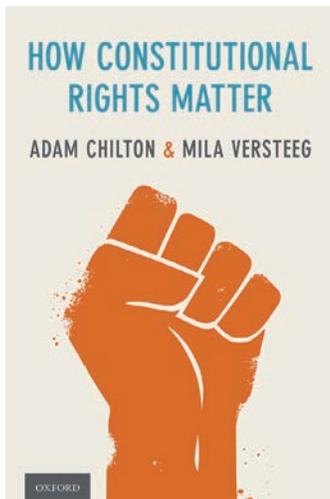


## Adam Chilton on How and When Constitutional Rights Matter

By Claire Stamler-Goody

Enshrining a right in the constitution is no guarantee that a nation will enforce it—but some rights are harder to violate than others, according to a global study conducted by Professor Adam Chilton and a coauthor for a new book that builds on years of research into human rights effectiveness.

The surprising difference, they found, has more to do with who is invested in the right, rather than the type of government enforcing it.



In *How Constitutional Rights Matter* (Oxford University Press, 2020), Chilton and his longtime collaborator Mila Versteeg, a professor at the University of Virginia School of Law, show that both democracies and autocracies are more likely to honor religious freedom, the right to unionize, and the right to form political parties—all of which are

practiced within organizations with a vested interest in their protections. At the same time, both regime types are less likely to honor individual rights like freedom of speech or the prohibition against torture, which generally aren't exercised within organized groups.

“You might think democracies would mean it when they say they won't torture people, and autocracies would be insincere when they say they respect worker rights,” said Chilton, the Walter Mander Research Scholar and an expert on international law, comparative law, and empirical legal studies. “But instead, it seems like groups are the secret sauce in both democracies and autocracies for rights to make a difference.”

The book is part of an ongoing project by Chilton and Versteeg that uses a variety of research methods to examine how constitutional rights work, including a comprehensive statistical analysis covering 194 countries across six decades. The scholars focus on eight constitutional rights: freedom of speech, prohibition against torture, freedom of movement, the right to education, the right to healthcare,

freedom of religion, the right to unionize, and the right to form political parties. To add context and background to their analysis, they also conducted five illustrative case studies across the globe and fielded two survey experiments.

Among their findings: rights practiced by organizations tend to succeed by overcoming two important roadblocks. First, there is the coordination problem—in order to oppose



a rights violation, citizens must agree that said violation exists. Second, assuming citizens agree, they must be able work together to oppose the government. They refer to this obstacle as a collective action problem.

“Imposing political costs on a government can be hard and potentially dangerous work,” Chilton and Versteeg wrote.

“Any citizen considering attending a protest march, for example, might be tempted to stay home if marching entails legal or safety risks [ . . . ] Potential protesters thus need assurance that they will be joined by many others, which is difficult to get for large groups of mostly unconnected citizens.”

In addition to protest, organizations may also succeed in reversing violations through lobbying or litigation—when used strategically by dedicated organizations, they wrote, the constitution can be a powerful instrument.

At the same time, they noted that constitutional rights practiced by organizations are not a cure-all against violations. Leaders are growing increasingly savvy at infringing upon citizens' rights, they wrote—if anything, organizational rights are not strict safeguards, but are more akin to speed bumps slowing down an often inevitable process.

“If the right is there, and there are social groups that are able to put pressure on the government, that can slow the government down,” Chilton said. “And it might slow the government down enough that they actually stop. Though

not always consistently—if there’s a powerful government that’s really committed [to violating a right] over an extended period, they seem to eventually win out.”

Looking toward the future, Chilton and Versteeg wrote that in order to protect constitutional rights, citizens ought to invest in formal organizations dedicated to defending those rights. Moreover, Chilton added, when drafting constitutions, individuals should not put their faith in the statement of rights alone.

“There’s a lot of emphasis on pushing countries to make the right set of commitments,” Chilton said. “But unfortunately, it looks like getting countries to commit and getting countries to respect the rights are just two different problems. Even though the formal commitment might be important for symbolic reasons, for moral reasons, for ethical reasons, it’s less clear that it’s important for actually changing the life and lived experiences of people in various countries.”

## Law School Launches Constitutional Law Institute, Center on Law and Finance

The University of Chicago Law School has launched two new research centers designed to bring a deep focus to both law and finance and constitutional law, two areas of great importance to legal scholars and practitioners.

The Center on Law and Finance is directed by Professor Anthony Casey, a leading scholar of corporate reorganization, corporate governance, and financial regulation. The interdisciplinary initiative brings academics and practitioners together through conferences, workshops, and other events to explore a fast-changing field that grapples increasingly with complex issues around investor activism, venture capital restructuring, distressed investments, valuation disputes, and more.

The Constitutional Law Institute is directed by Professor William Baude, a leading scholar of constitutional law and interpretation. In addition to advancing and sharing scholarship related to constitutional law, the institute creates spaces for respectful debate on difficult topics and convenes leading academics to examine longstanding constitutional issues that impact American society. Its inaugural initiatives include a podcast, *Dissenting Opinions*, that debuted this spring. Hosted by Baude, each episode of the first season features top legal minds discussing a Supreme Court case they believe is misunderstood. In several special “deep dive” episodes, Baude and Professor Adam Chilton discuss originalism.

“As leading thinkers in their respective fields, Professor Casey and Professor Baude bring tremendous knowledge, intellect, and passion to their work, and these new centers are well-poised to generate field-defining ideas and deep engagement with practitioners in two important areas of law,” said Dean Thomas J. Miles, the Clifton R. Musser Professor of Law and Economics. “Both the Center on Law and Finance and the Constitutional Law Institute are dedicated to rigorous inquiry and the robust exchange of ideas, values we hold dear

at the Law School. We are exceptionally grateful to the donors whose generosity made these initiatives possible.”

The Center on Law and Finance began its work in 2019 with a mission built around connecting top thinkers—academics from multiple disciplines and institutions, top practitioners, and students—to better understand how the law interacts with, and shapes, financial institutions. The goal, Casey said, is to foster dialogue aimed at translating cutting-edge research into practical applications and to create a hub for intellectual leadership on these issues.

“As financial markets become more sophisticated and complex, legal analysis of those markets must keep up. This requires the innovative research and rigorous examination that the University of Chicago is known for,” said Casey, who is also the Law School’s deputy dean. “The Center will take advantage of the Law School’s tradition of interdisciplinary study and creative research to tackle this endeavor.”

The Constitutional Law Institute, which launched in early 2020, is particularly committed to free speech, and is focused on creating opportunities for vigorous engagement on challenging topics. The institute takes a nonpartisan, academic approach by promoting deep analysis and centering its work on longstanding constitutional questions rather than responding to recent political questions.

“Our hope is to contribute to scholarly rigor and to help spread the best ideas in constitutional law,” Baude said. “In the long run, that is what constitutional law needs most.”

In addition to hosting events, activities, and visitors, the Constitutional Law Institute will focus on disseminating Law School scholarship on constitutional issues.

“The University of Chicago Law School is an outstanding place for constitutional law,” Baude said. “I’d like its contributions to this field to be as prominently known as its contributions to law and economics.”