

2019

Human Rights Conditions: What We Know and Why It Matters

David Weissbrodt

Patrick Finnegan

Follow this and additional works at: <https://scholarship.law.umn.edu/mjil>



Part of the [Law Commons](#)

Recommended Citation

Weissbrodt, David and Finnegan, Patrick, "Human Rights Conditions: What We Know and Why It Matters" (2019). *Minnesota Journal of International Law*. 263.

<https://scholarship.law.umn.edu/mjil/263>

This Article is brought to you for free and open access by the University of Minnesota Law School. It has been accepted for inclusion in Minnesota Journal of International Law collection by an authorized administrator of the Scholarship Repository. For more information, please contact lenzx009@umn.edu.

Article

Human Rights Conditions: What We Know and Why it Matters¹

David Weissbrodt* and Patrick Finnegan**

Abstract

It may be impossible to understand the cause of every human rights violation. Causal research is a useful endeavor, however, as it sheds light on the *conditions* that produce human rights violations and compliance. Such knowledge can help improve the effectiveness of human rights advocacy strategies to target and influence these conditions. This survey examines four broad themes: (A) Government Behavior and Structure; (B)

1. This article is partially adapted from Chapter 17, *What Seem to be the Causes of Human Rights Violations and How Might Knowledge as to Causation be Used?*, of DAVID WEISSBRODT ET AL., *INTERNATIONAL HUMAN RIGHTS: LAW, POLICY, AND PROCESS* (4th ed. 2009).

* David Weissbrodt is a Regents Professor Emeritus at the University of Minnesota Law School, as well as Director Emeritus of the University of Minnesota Human Rights Center. He served as UN Special Rapporteur on the Rights of Non-citizens from 2000–2003. A widely published scholar of international human rights, his publications include: DAVID S. WEISSBRODT, *VULNERABLE AND MARGINALISED GROUPS AND HUMAN RIGHTS* (Mary Rumsey ed., 2011); DAVID WEISSBRODT & FIONNUALA NÍ AOLÁIN, *INTERNATIONAL HUMAN RIGHTS: LAW, POLICY, AND PROCESS* (4th ed. 2009); DAVID WEISSBRODT, *THE HUMAN RIGHTS OF NON-CITIZENS* (2008); DAVID WEISSBRODT & CONNIE DE LA VEGA, *INTERNATIONAL HUMAN RIGHTS LAW: AN INTRODUCTION* (2007); *CTR. FOR HUM. RTS. CRIME PREVENTION & CRIM. JUST. BRANCH, HUMAN RIGHTS AND PRE-TRIAL DETENTION: A HANDBOOK OF INTERNATIONAL STANDARDS RELATING TO PRE-TRIAL DETENTION*, U.N. Doc. HR/P/PT/3, U.N. Sales No. E.94.XIV.6 (1994); as well as numerous additional books, book chapters, and articles.

** Patrick Finnegan is a Research Assistant to Professor Weissbrodt; freelance writer and consultant; and former Assistant Director of the University of Minnesota Human Rights Center. He has considerable experience as a contributing writer, editor, and researcher for various human rights publications, including articles, book chapters, training manuals, and reports. He holds a Masters of Public Policy from the Humphrey School of Public Affairs at the University of Minnesota.

Armed Conflict; (C) Economic Factors; and (D) Psychological Factors. The findings by scholars and practitioners are myriad and complex, but some general trends are observable. Democratic governments tend to better protect a broad range of human rights, especially when paired with an independent judiciary. Democratization may involve short-term disruption but has long-term payoffs in respect for human rights. Repression in weak states heightens the likelihood of civil wars. Armed conflict, in turns, tends to generate the most grave human rights abuses. Economic factors are deeply intertwined with the full spectrum of human rights in two key ways: (1) the distribution of resources (economic, social, and cultural rights); and (2) economic structures and incentives that may encourage repression. Individual psychological factors, such as the tendency to obey authority, group identity, and exclusionary ideologies can lead people to commit atrocities, especially in the context of armed conflict.

Following this overview, the article discusses some of the controversies and challenges in human rights research. These issues include: differences in qualitative and quantitative methods; surveillance bias in statistical work; and the difficulty of comparative work. The article then explores theories of how international human rights norms influence state behavior and how this influence affects domestic conditions. The article concludes by reiterating that causal research can improve advocacy, and adds that it may serve a persuasive function as well. Causal research can help human rights advocates make the case for policies that contribute to the promotion and protection of human rights. It can do so by establishing the credibility of policy proposals, demonstrating that advocates understand the problems they seek to address.

OUTLINE

I. INTRODUCTION.....	3
II. CAUSES OF HUMAN RIGHTS VIOLATIONS AND COMPLIANCE...5	
A. GOVERNMENT BEHAVIOR AND STRUCTURE.....7	
1. Early Studies.....7	
2. The Decision to Repress.....10	
3. Democracy and Democratization.....11	
4. Judicial Independence and Transitional Justice.....14	
5. Corruption.....16	
B. ARMED CONFLICT.....18	
1. State Capacity and Civil War.....18	
2. External Effects and Influences.....20	
C. ECONOMIC FACTORS.....21	
1. The Economic, Social, and Cultural Rights Gap.....22	
2. Economic Factors and Repression.....25	
3. Economic Inequality and Human Rights.....28	
D. PSYCHOLOGICAL FACTORS.....31	
1. Authority.....31	
2. Group Identity.....35	
3. Socialization.....38	
III. CHALLENGES IN HUMAN RIGHTS RESEARCH.....42	
IV. INTERNATIONAL NORM DYNAMICS.....47	
A. INTERNATIONAL NORMS AND DOMESTIC POLITICS.....48	
B. “ACCLTURATION” AND HUMAN RIGHTS.....50	
V. CONCLUSION.....51	

I. INTRODUCTION

International human rights have traditionally been the domain of lawyers and political activists, but now constitute a rapidly developing area spanning an array of disciplines and professions, including anthropology, economics, law, political science, public health, public policy, and sociology. Research on what causes human rights violations and compliance is a relatively recent development. It is a lively, expanding, and contested area of inquiry, due in no small part to the complexity of the subject matter.

Human rights abuses do not emanate from a single cause or even a single set of causes. They can also be highly contextual;

factors that may relate to poor human rights compliance in some countries may seem to have no consequence in others. One may start by asking if there are really causes or merely innumerable contributing factors to human rights violations. If this is the case, is it worth it to do causal research at all? Can such an endeavor produce helpful generalizations? If so, would it have any practical use?

Despite these difficulties, the authors of the present article believe the answer to these questions is “yes.” Studying the causes of human rights violations and compliance offers a wealth of useful information. Social scientist James Scott faced a similar dilemma in his study of the roots of resistance in settings of political and social domination. He observed that, even after all factors that might shed light on the matter had been considered, it remained impossible to predict with precision when or how collective acts of resistance will occur. He concluded, nonetheless, that there is “a role for social analysis in understanding this phenomenon.”² A public health physician, for example, may not be able to predict whether a particular individual will fall ill, but he or she may be able to say something useful about the *conditions* that may facilitate an epidemic, and thereby develop solutions and preventive strategies. Strategies that successfully change these conditions can reduce the risk of infection for any given individual.

Public health interventions include short-term crisis response and long-term preventive strategies. For example, in response to a cholera outbreak, a humanitarian agency may deploy medical teams to treat affected persons. In the long-term, increasing access to clean drinking water and adequate sanitation will eliminate some of the biggest risk factors for waterborne diseases. Similarly, if human rights researchers can identify key political, economic, and social conditions that lead to human rights violations, they can develop and recommend corrective solutions. For instance, short-term remedial measures can include immediate political and legal action, such as organizing peaceful protests or filing court cases in response to specific violations. In the long-term, political and economic pressure can be brought to bear on a state, both domestically and internationally, to alter repressive patterns of behavior and enact democratic reforms.

2. JAMES C. SCOTT, DOMINATION AND THE ARTS OF RESISTANCE: HIDDEN TRANSCRIPTS 218 (1990).

While research on human rights conditions has advanced considerably in recent years, much work remains to be done to develop a fuller understanding. Scholars and practitioners have used empirical methods to test different theories. A few areas, such as government behavior and armed conflict, have been studied more than others. Similarly the causes of certain *types* of human rights abuses have received more attention than others; scholars have examined violations of personal integrity rights in far more detail than economic and social rights. This article presents an overview of the most common causal theories pertaining to human rights conditions, highlighting a number of important studies and insights. It also identifies challenges and gaps in the research. This article then discusses how international human rights norms influence state behavior. It concludes by arguing that causal research itself plays a role in advancing the human rights movement. Although the article draws on a variety of sources, it is not exhaustive owing to space constraints. Interested readers are encouraged to further explore the causal literature on human rights conditions to enrich their understanding.

II. CAUSES OF HUMAN RIGHTS VIOLATIONS AND COMPLIANCE

Various sources produce information on human rights abuses, including governments, international governmental organizations (IGOs), nongovernmental organizations (NGOs), activists, journalists/media outlets, and scholars engaged in field research, as well as firsthand accounts from victims, witnesses, and perpetrators. Such information is commonly generated through fact-finding inquiries undertaken by IGOs, NGOs, and governments. Depending on its mandate, a fact-finding inquiry may entail such activities as: long- or short-term investigations (involving interviews and site visits); research; needs assessments (*e.g.*, for humanitarian, social, or other assistance); trial observations; prison visits; visits to refugee camps; and election observations.

Two of the most widely-used sources of information for scholarly research on human rights violations are the U.S. State Department's Country Reports on Human Rights Practices and Amnesty International's Annual Reports. Based on these reports, scholars developed two of the most commonly used

quantitative human rights indices, which are: (1) the Political Terror Scale (PTS) and (2) the Cingranelli-Richards Human Rights Dataset (CIRI).³ PTS and CIRI each have their own numerical scales to rate abuse levels, with each level representing a certain frequency or intensity of human rights violations.

Since human rights cover many aspects of human existence, however, not all categories of rights can be assessed in the same way. PTS and CIRI mostly focus on abuses of personal integrity rights, such as extrajudicial killings, disappearances, torture, and arbitrary arrest.⁴ Two other commonly used indices—the Freedom in the World Reports and the Polity IV Project—are used to measure civil and political rights based on analysis of a country's government structure and practices.⁵ There are no widely accepted standard measures for economic and social rights compliance, which partially explains the relative lack of research in this area. Although some scholars use economic development data to gauge such rights, such as the Human Development Index,⁶ these indicators do not necessarily offer information on *government efforts* to comply with economic and social rights obligations.⁷ In an effort to fill this gap, Fukuda-

3. See David L. Cingranelli, David L. Richards & K. Chad Clay, CIRI HUMAN RIGHTS DATA PROJECT (2014), <http://www.humanrightsdata.com/p/data-documentation.html>; Mark Gibney et al., THE POLITICAL TERROR SCALE (2015), <http://www.politicalterroryscale.org/Data/Data-Archive.html>. It should be noted that PTS has recently added Human Rights Watch reports as a third source for country rankings, but this dataset is much less complete than the U.S. State Department and Amnesty International reports.

4. CIRI also has some data on civil and political rights, as well as the rights of women and workers. See CIRI HUMAN RIGHTS DATA PROJECT, Frequently Asked Questions (2011), <http://www.humanrightsdata.com/p/faq.html>.

5. See FREEDOM HOUSE, FREEDOM IN THE WORLD 2016 (2016), https://freedomhouse.org/sites/default/files/FH_FITW_Report_2016.pdf; Monty G. Marshall & Ted Robert Gurr, *The Polity Project*, CTR. FOR SYSTEMIC PEACE, <http://www.systemicpeace.org/polityproject.html> (last visited Sept. 25, 2018). Measures of democratic governance are often used as a proxy for civil and political rights compliance. See Emilie M. Hafner-Burton & James Ron, *Seeing Double: Human Rights Impact through Qualitative and Quantitative Eyes*, 61 WORLD POL. 360, 365 (2009). A useful resource for comparing constitutional structures between countries is the Constitute Project. See Zachary Elkins et al., CONSTITUTE PROJECT, <https://www.constituteproject.org> (last visited Jan. 21, 2019).

6. See U.N. Dev. Programme, Human Development Index (HDI), <http://hdr.undp.org/en/content/human-development-index-hdi> (last visited Jan. 21, 2019).

7. Hafner-Burton & Ron, *supra* note 5, at 29, 387.

Parr et al. have created the Social and Economic Rights Fulfillment (SERF) index, which “uses international administrative and survey data” to establish a measure of how well a country fulfills its economic and social rights obligations relative to its available resources.⁸ Preliminary results from SERF data analysis are discussed *infra* on pages 23–25.

The following four sections will cover, broadly speaking, the most studied causes of human rights violations identified by researchers and practitioners: (1) Government Behavior and Structure; (2) Armed Conflict; (3) Economic Factors; and (4) Psychological Factors. Although each section covers ostensibly different subject matter, these categories are necessarily artificial. Different causes of human rights abuses are often deeply interconnected. Furthermore, certain human rights abuses may themselves lead to additional violations.

A. GOVERNMENT BEHAVIOR AND STRUCTURE

Government behavior and structure are two of the most obvious places to look for human rights violations. In the international human rights system, states are the primary bearers of responsibility for human rights conditions. As such, government is one of the most thoroughly studied areas in the research, especially as it pertains to personal integrity rights. To make this subject matter easier to digest, this section is broken down into five subtopics: (1) Early Studies; (2) The Decision to Repress; (3) Democracy and Democratization; (4) Judicial Independence and Transitional Justice; and (5) Corruption.

1. Early Studies

The traditional argument has been that democratic governments respect rights more than authoritarian ones, therefore efforts to democratize will reduce human rights violations. Early studies on human rights violations supported this theory. In one of the first studies of its kind, Mitchell and McCormick tested several purported causes of human rights violations using quantitative indicators.⁹ They carried out their

8. SAKIKO FUKUDA-PARR ET AL., FULFILLING SOCIAL AND ECONOMIC RIGHTS 15 (2015).

9. Neil J. Mitchell & James M. McCormick, *Economic and Political Explanations of Human Rights Violations*, 40 WORLD POL. 476, 484–85 (1988).

study prior to the existence of PTS and CIRI, so Mitchell and McCormick devised their own measures of violations based on the Amnesty International World Report of 1985.¹⁰ They coded 123 countries for (1) torture and arbitrary killing; and (2) political imprisonment.¹¹ They tested several theories on government behavior. For example, Chomsky and Herman, among others, argued that the United States and other first world countries fueled human rights violations in the third world by supporting governments that repress to maintain favorable investment conditions; in other words, countries with more external capitalist interest will have higher levels of repression.¹² Mitchell and McCormick did find that countries with medium or high levels of trade with Western countries experienced high levels of imprisonment and torture, but these correlations diminished when controlled for a country's population size.

In the late 1970s, Jeane Kirkpatrick, who later became U.S. President Ronald Reagan's ambassador to the United Nations, advanced a theory that communist "totalitarian" governments are necessarily worse human rights abusers than "traditional" authoritarian governments.¹³ Mitchell and McCormick found partial support for Kirkpatrick's assertion in terms of political imprisonment, even when controlling for population and income.¹⁴ When examining torture, however, Mitchell and McCormick found that traditional authoritarian governments tortured more often than communist governments.¹⁵ In the aggregate, combining torture and imprisonment, Mitchell and McCormick observed no significant difference between the two regime types.

Howard and Donnelly argued that classically liberal governments necessarily respect human rights more than communitarian governments,¹⁶ since communitarian regimes

10. *Id.* at 484.

11. *Id.*

12. See NOAM CHOMSKY & EDWARD S. HERMAN, *THE WASHINGTON CONNECTION AND THIRD WORLD FASCISM* (1979).

13. Jeane Kirkpatrick, *Dictatorships and Double Standards*, 68 COMMENT. 34-44 (1979).

14. Mitchell & McCormick, *supra* note 9, at 493-94.

15. *Id.* at 494-95.

16. Howard and Donnelly define "communitarian societies" as "those [societies] that give ideological and practical priority to the community (sometimes embodied in the state) over the individual." See Rhoda E. Howard & Jack Donnelly, *Human Dignity, Human Rights, and Political Regimes*, 80

subordinate individual rights to a larger collectivity.¹⁷ Mitchell and McCormick tested a “lighter” version of this theory—that liberal governments *tend to* respect human rights more than communitarian ones—and found the conclusion to be essentially correct.¹⁸ Their data could not, however, confirm the stronger formulation of the argument as expressed by Howard and Donnelly. Mitchell and McCormick’s study was certainly a landmark for its time, but it did have a key limitation: it did not employ historical data on human rights trends over time.¹⁹ This issue was addressed by subsequent scholarly work, including the creation of PTS (and later on, CIRI), which assigned human rights ratings on an annual basis.²⁰

In 1994, Poe and Tate published another seminal study that focused on personal integrity rights abuses, including murder, torture, disappearance, and political imprisonment.²¹ Their data included 153 countries for the years 1980–87. Their findings supported some of the same conclusions of Mitchell and McCormick’s study. They found that democratic governance and the presence of armed conflict were the two most significant aspects of repression.²² Levels of economic development and population size had effects as well, but less dramatic than democracy or warfare. Their analysis found no significant effects emanating from population growth rates, British cultural influence, or military control. In 1999, Poe, Tate, and Keith followed up this study by revisiting their earlier model with a larger PTS dataset, analyzing the human rights practices of over 150 countries between 1976 and 1993.²³ Their findings confirmed some of their earlier results, but contradicted others. For example, they found clearly that military control of a country was associated with higher levels of repression.²⁴ Similarly, countries with a British colonial legacy experienced less

AM. POLIT. SCI. REV. 801, 808 (1986).

17. *Id.*

18. Mitchell & McCormick, *supra* note 9, at 496.

19. *Id.* at 484.

20. Cingranelli et al., *supra* note 3; Gibney et al., *supra* note 3.

21. See Steven C. Poe & C. Neal Tate, *Repression of Human Rights to Personal Integrity in the 1980s: A Global Analysis*, 88 AM. POL. SCI. REV. 853, 854 (1994).

22. *Id.* at 866.

23. Steven C. Poe et al., *Repression of the Human Right to Personal Integrity Revisited: A Global Cross-National Study Covering the Years 1976–1993*, 43 INT’L STUD. Q. 291, 292 (1999).

24. *Id.* at 305.

personal integrity abuse (relative to other countries).²⁵ Additionally, this second study's results suggested that economic growth has a negative impact on repression, but that a one percent annual population increase has a positive relationship to human rights abuses.²⁶

Although Poe and Tate (and later Keith) studied similar types of human rights violations to those abuses explored by Mitchell and McCormick, they disagreed on a key point. As noted *supra*, Mitchell and McCormick measured two categories of violations: (1) political imprisonment; and (2) torture and arbitrary killing. They justify making this distinction on the grounds that torture and killing constitute a separate and "qualitatively worse activity" than political imprisonment.²⁷ Secondly, Mitchell and McCormick argue that, empirically speaking, "there is a considerable gulf between states with political prisoners and those [states] that use torture and killing."²⁸ Poe and Tate rejected that dichotomy in their 1994 study. They argued that torture, execution, disappearance, and political imprisonment all manifest in a single dimension: the willingness of a regime to harm citizens it sees as a threat.²⁹

2. The Decision to Repress

While more recent research confirms the essential finding that authoritarian governments violate human rights more than democratic ones, there is some nuance. In her review of social sciences research on human rights, Hafner-Burton notes that the process of democratization can lead to political instability, which can result in human rights abuses.³⁰ Conversely, not all authoritarian governments are equally repressive; personalist or military dictatorships tend more toward severe violence than single-party governments.³¹ Even with this caveat, Sikkink notes that there is a lack of convincing evidence that governments transitioning to democracy perpetrate more abuses than authoritarian governments. Furthermore, these "semi-

25. *Id.* at 291.

26. *Id.* at 307.

27. Mitchell & McCormick, *supra* note 9, at 484.

28. *Id.* at 484–85.

29. Poe et al., *supra* note 21, at 298.

30. Emilie M. Hafner-Burton, *A Social Science of Human Rights*, 51 J. PEACE RES. 273, 275 (2014).

31. *Id.* at 275–76.

democracies” are far less prone to genocidal violence.³²

One of the most basic findings pertaining to why states choose to repress is that they respond to threats—real or perceived—to the established political order. Reviewing four decades of literature on repressive behavior by national governments, Davenport notes,

Considering different time periods and countries, as well as a wide variety of measurements for both conflict and repression, every statistical investigation of the subject has found a positive influence. When challenges to the status quo take place, authorities generally employ some form of repressive action to counter or eliminate the behavioral threat; in short, there appears to be a ‘Law of Coercive Responsiveness.’³³

While this notion may seem intuitive, the evidence shows important details. Researchers have constructed more complex models of government decision-making, where leaders engage in cost-benefit analyses of repressive tactics, selecting repression when they believe benefits exceed costs and success is likely.³⁴ As Sikkink writes, “According to the rational choice approach, those in power choose to repress dissent when the costs of doing so are lower than the costs of institutionalizing liberal democracy.”³⁵ In this framework, states are rational actors concerned with the preservation and/or expansion of their authority. The effects of repression on dissent, however, vary greatly; sometimes repression succeeds in quelling opposition, but other times it does not.³⁶

3. Democracy and Democratization

The process of democratization can play a key role in a government’s threat calculations. As Hafner-Burton notes, “[d]emocratization can threaten incumbent leaders, who then resort to abuses in order to hold on to power. Threatened leaders

32. KATHRYN SIKKINK, *EVIDENCE FOR HOPE: HUMAN RIGHTS IN THE 21ST CENTURY 193–94* (2017).

33. Christian Davenport, *State Repression and Political Order*, 10 ANN. REV. POL. SCI. 1, 7 (2007).

34. *Id.* at 4.

35. SIKKINK, *supra* note 32, at 185.

36. Davenport, *supra* note 33, at 8.

can also encourage nationalism, which in turn can lead to conflicts and abuse.”³⁷ So, while a country may be transitioning from authoritarian to democratic structures, proto-democratic leaders often still view threats to their incumbency with an authoritarian mentality. Scholars have given this transitional repression the somewhat macabre designation of “more murder in the middle.”³⁸ Presidential elections in these circumstances can result in leaders using political terror to assure their victory. Some research suggests, however, that national legislative elections are often accompanied by improved respect for human rights, even in some authoritarian settings.³⁹

Researchers have observed that countries must deeply internalize democratic norms to see major reductions in personal integrity violations.⁴⁰ Once achieved, this “democratic threshold” then leads to significant decreases in government repression.⁴¹ For instance, the analysis of Bueno de Mesquita et al. corroborated previous scholarship suggesting that, as democratization progresses, established leaders feel threatened and use repression to hold on to power.⁴² Their study highlighted multiparty electoral competition and constraints on executive power as the most significant factors in achieving the democratic threshold; elections without these crucial features may signify poor human rights conditions.⁴³

Bueno de Mesquita et al. also suggest that democratization must be a long-term enterprise in order to succeed. Early democratic reforms yield little discernible immediate benefit, but are necessary steps to reaching the democratic threshold: “[T]he creation of a government that effectively protects human rights can be a slow and frustrating process. It can be slow because it requires a substantial number of institutional reforms to be in place. And it can be frustrating because most of the reforms that are necessary will not immediately lead to better human rights protection. The payoff will only come after a number of reforms are made.”⁴⁴

37. Hafner-Burton, *supra* note 30, at 275.

38. Davenport, *supra* note 33, at 11.

39. Hafner-Burton, *supra* note 30, at 275–76.

40. *Id.* at 275.

41. *See, e.g.*, Davenport, *supra* note 33, at 11.

42. Bruce Bueno de Mesquita et al., *Thinking Inside the Box: A Closer Look at Democracy and Human Rights*, 49 INT'L STUD. Q. 439, 451 (2005).

43. *Id.* at 449–50.

44. *Id.* at 455.

Chronic personal integrity rights abuses, however, still occur in some well-established democracies.⁴⁵ Improved accountability measures for human rights in democratic societies may lead the authorities to use methods of torture or ill-treatment that leave less visible marks. In his detailed study of torture and democracy, Rejali argues that “[p]ublic monitoring leads institutions that favor painful coercion to . . . evade detection, and, to the extent that public monitoring is not only greater in democracies, but that public monitoring of human rights is a core value in modern democracies, it is the case that where we find democracies torturing today we will also be more likely to find stealthy torture.”⁴⁶ Rejali observes that monitoring has even had an effect on non-democratic states. He cites several historical examples of authoritarian governments choosing less visible torture techniques when the target prisoners were subject to more international scrutiny, especially with the development of international human rights monitoring.⁴⁷

While Rejali readily concedes that the torture record of democratic states is, as a whole, less severe than authoritarian states, he explores why some democracies have legalized torture or violated prohibitions on its practice. Once again, threat or the perception of threat are key factors. During a time of crisis, for example, well-established national security bureaucracies and agencies can overwhelm democratic restraint, circumventing or co-opting normal accountability mechanisms.⁴⁸ On a more individual level, Rejali theorizes that justice systems that value and privilege confessions by persons accused of crimes may incentivize law enforcement to resort to coercive techniques against suspects.⁴⁹ Despite these findings, however, democratic governance still appears to be a decisive factor in the improvement of human right conditions. As Sikkink observes, “[N]umerous studies on the causes of human rights violations have made it clear that democracy is essential for human rights to succeed, but not sufficient. While many democracies do not have robust human rights practices, there are not any countries

45. Hafner-Burton & Ron, *supra* note 5, at 372. Hafner-Burton and Ron estimate that just over 36% of the global population live in democracies where major human rights abuses occur, although they acknowledge that India’s enormous population size accounts for most of this number.

46. DARIUS REJALI, *TORTURE AND DEMOCRACY* 8 (2007).

47. *Id.* at 12–13.

48. *Id.* at 46–49 (discussing French police and army actions in Algeria during the 1950s).

49. *Id.* at 49–55.

with robust human rights practices that are not democracies.”⁵⁰

4. Judicial Independence and Transitional Justice

Various studies have attempted to disaggregate which specific factors of government behavior and structure are most significant to reducing personal integrity rights violations. While the research has yielded useful insights into individual characteristics of democracy, it also suggests that these characteristics are most effective when packaged together as a comprehensive set of reforms. For example, in 2009, Keith, Poe, and Tate tested the effects of three key types of constitutional provisions on state repression: (1) Individual freedoms protections (free speech, assembly, etc.); (2) Independence of the judiciary; and (3) Restrictions on the use of emergency measures.⁵¹ Of the judicial independence variables examined, those factors relating to the insulation of regular courts from political interference proved most significant in reducing human rights abuses.⁵² The strongest findings in Keith, Poe, and Tate’s study, however, pertained to constitutional restrictions on the use of emergency measures by government officials.⁵³ Especially important were (1) the requirement of legislative approval before a state of emergency can be declared; and (2) the prohibition on the dissolution of the legislature during a state of emergency.⁵⁴

Keith, Poe, and Tate found many constitutional provisions on individual freedoms to be statistically insignificant by themselves.⁵⁵ They proved significant, however, when aggregated. This finding suggests that constitutional rights protections must operate in tandem to be effective, rather than be adopted as single provisions in isolation. When Keith, Poe, and Tate ran their statistical models over a ten-year period, the results suggested a significant aggregate positive impact on respect for personal integrity rights.⁵⁶

Constitutional provisions for an independent judicial

50. SIKKINK, *supra* note 32, at 194–95.

51. Linda Camp Keith et al., *Is the Law a Mere Parchment Barrier to Human Rights Abuse?*, 71 J. POL. 644, 645 (2009).

52. *Id.* at 658.

53. *Id.* at 654.

54. *Id.*

55. *Id.* at 652.

56. *Id.* at 657.

branch of government have increasingly become a global norm of state structure since the end of the Cold War. In addition to Keith, Poe, and Tate, many theorists have identified an independent judiciary as a critical component of democracy that promotes respect for human rights. When the judiciary is sufficiently empowered, the argument goes, it has a constraining effect on state behavior by imposing material and reputational costs for the use of repression.⁵⁷ Other commentators caution, however, that even institutionally independent courts may not always issue rulings that are favorable to human rights. If a given political environment is authoritarian in nature, even independent courts may produce jurisprudence more consistent with that prevailing ethos.⁵⁸

In her detailed study of political repression and courts, Keith tested the effects of *de facto* judicial independence on personal integrity rights and civil liberties. Her findings suggest that, in general, an independent judiciary does in fact reduce the probability of state repression.⁵⁹ Crabtree and Fariss reached the same general conclusion in a study using different statistical models and some variable substitutions.⁶⁰ Keith's study also sheds light on the relationship between formal judicial independence, as set forth in constitutions, and actual state practice. She found that the largest predictor of current judicial independence is past judicial independence, suggesting that a state's political culture is a critical factor that self-reinforces over time.⁶¹ Her analysis also found that the presence of formal, constitutional provisions establishing judicial autonomy generally have a positive effect on actual practice, but only when accompanied by multiparty electoral competition and constraints on executive power.⁶² In this context, the courts may function as an alternate venue through which governing factions that lose power may continue to influence policy or protect themselves from repression by successor governments.⁶³

Connected to the accountability rendered by independent

57. LINDA CAMP KEITH, *POLITICAL REPRESSION: COURTS AND THE LAW* 169 (2012).

58. *Id.* at 170–71.

59. *Id.* at 176, 188.

60. See Charles D. Crabtree & Christopher J. Fariss, *Uncovering Patterns Among Latent Variables: Human Rights and De Facto Judicial Independence*, 2:3 RES. POL. 1 (2015).

61. KEITH, *supra* note 57, at 159.

62. *Id.* at 165.

63. *Id.* at 186–87.

courts, evidence suggests that prosecuting perpetrators of past human rights violations in countries transitioning to democracy improves human rights practices. Kim and Sikkink have demonstrated that transitional countries that undertook human rights prosecutions experienced less repression over time than those countries that did not.⁶⁴ In a subsequent study, Kim and Sikkink probed this finding in further detail, using data on human rights conditions in seventy-eight transitional countries between 1980 and 2009.⁶⁵ They explored the effects of human rights trials, both in terms of process and verdicts. In general, prosecutions that result in convictions have the greatest mitigating effect on repression.⁶⁶

Kim and Sikkink also found that the *process* of prosecution (arrests, indictments, trials, etc.) served to reduce repression, albeit to a lesser degree than conviction. Additionally, the effect of human rights trials on repression is much higher for high-level prosecutions (*i.e.*, of high-ranking officials suspected of grave abuses) than low-level prosecutions. High-level convictions had an additional specific deterrence effect on extrajudicial killings.⁶⁷ While prosecutions that led to acquittals did not decrease repression in the aggregate, they still appeared to deter torture. It is not fully clear as to why, but Kim and Sikkink venture that “it is possible that prosecution adds an additional and necessary level of enforcement that challenges the torturers’ sense of secrecy and immunity”⁶⁸

5. Corruption

Another significant factor in whether a government respects human rights norms is corruption. It is a clear display of the interdependence of civil and political rights, on the one hand, and economic, social, and cultural rights, on the other. Official corruption can have a significant effect on a government’s respect for its economic, social, and cultural rights obligations.

64. Hun Joon Kim & Kathryn Sikkink, *Explaining the Deterrence Effect of Human Rights Prosecutions for Transitional Countries*, 54 INT’L STUD. Q. 939 (2010).

65. Hun Joon Kim & Kathryn Sikkink, *How Do Human Rights Prosecutions Improve Human Rights After Transition?*, 7 INTERDISC. J. HUM. RTS. 69, 74 (2012).

66. *Id.* at 71.

67. *Id.* at 85.

68. *Id.* at 83.

In its simplest form, the theft of public resources for the private gain of corrupt officials detracts from a government's capacity to invest in providing access to food, water, educational opportunity, or adequate health infrastructure.

Corruption usually infringes on the right to equal protection before the law, which is a bedrock principle of international human rights. Corrupt practices exclude certain individuals and groups from protections and access to public goods, while providing preferential treatment for others, violating the tenants of non-discrimination.⁶⁹ As Sepúlveda Carmona and Bacio-Terracino note, "Article 26 of the International Covenant on Civil and Political Rights (ICCPR) prohibits discrimination in law or in fact in any field regulated and protected by public authorities, and its application is not limited to those rights provided for in the ICCPR."⁷⁰ Corruption has a particularly detrimental effect on vulnerable groups, such as the poor, who lack the financial means, or political influence, to obtain favorable treatment.⁷¹

Corrupt acts can be direct human rights violations. Sepúlveda Carmona and Bacio-Terracino provide several examples. For instance, if a judge is bribed to influence the outcome of a case, it is a violation of fair trial rights. If someone must bribe a doctor for treatment at a public hospital, his or her right to adequate health is denied. Direct violations may also result from a failure of government officials to exercise due diligence to prevent other officials from perpetrating corrupt acts.⁷² Corruption may also lead indirectly to abuses, serving as a necessary condition of human rights violations. For example, border officials could be bribed by human traffickers to enable cross-border movement of trafficked persons for sexual exploitation. Although the officials may not be directly engaged in the immediate act of trafficking, they are accessories, without the participation of whom the violation could not occur. Corruption may contribute to a broader socio-political context in which human rights are easily disregarded. Take, for example, a corrupt electoral process that leads to protests against election

69. Magdalena Sepúlveda Carmona & Julio Bacio-Terracino, *Corruption and Human Rights: Making the Connection*, in CORRUPTION AND HUMAN RIGHTS: INTERDISCIPLINARY PERSPECTIVES 25, 32 (Martine Boersma & Hans Nelen eds., 2010).

70. *Id.* at 32.

71. *Id.* at 35–37, 39.

72. *Id.* at 29.

results that are then violently put down by the government. The government in question may resort to arbitrary detention, torture, and/or extrajudicial killings to suppress dissent.⁷³

B. ARMED CONFLICT

Armed conflict is one of the best understood causes of human rights violations. Whether international armed conflict or—as is more often the case in the 21st century—non-international armed conflict, wartime conditions enable the most serious of human rights abuses to occur. The evidence suggests a cyclical relationship: inasmuch as armed conflict *causes* human rights violations, widespread human rights abuses may also *lead to* armed conflict. As Hafner-Burton writes, “Scholars now know with high certainty that one of the most significant predictors of political terror is violent conflict. *The central insight about violent conflict is that it creates cycles of human rights abuse that are difficult to interrupt.*”⁷⁴

1. State Capacity and Civil War

During armed conflict, weak states may employ extreme violence to assert or reassert dominance. They may also be unable to exert disciplined command and control over their own armed forces and proxies to stop them from abusing the population. In some cases, states may lack the critical capacity to stop insurgent or terrorist groups from committing human rights violations. Englehart argues that state weakness is now the more widespread problem, globally speaking, than the excesses of powerful states.⁷⁵ Many states have difficulty exercising basic authority owing to a combination of factors, such as colonial legacies of corruption or ethnic conflict, as well as uneven development and inadequate infrastructure.⁷⁶ Although states bear primary legal responsibility for human rights conditions within their territory, weak or failed states lack the capacity to restrain third party violators or even their own agents. This lack of control can have dire consequences during

73. *Id.* at 29–30.

74. Hafner-Burton, *supra* note 30, at 274.

75. *See, e.g.*, Neil A. Englehart, *State Capacity, State Failure, and Human Rights*, 46 J. PEACE RES. 163, 163 (2009).

76. *Id.* at 165.

armed conflict as state security forces can abuse the population with impunity and civilians may use the chaos of war to settle grudges.⁷⁷ In his empirical analysis, Englehart found that increased state capacity correlates with more respect for personal integrity rights, including a significant reduction in extrajudicial killings.⁷⁸

If state weakness itself can cause human rights violations, it may also lead to armed conflict, which can generate further abuses. As Rost observes:

[G]overnment-sponsored violations of the most basic human rights to personal integrity are closely linked with a high risk of civil war onset. Furthermore, state weakness contributes to increasing the risk of civil war, which is in line with most studies on civil war onset. As the simulations [in this study] show, it is the combination of state weakness and repression that pushes civil war risk to its highest levels.⁷⁹

Low-level conflict in weak states can trigger a cycle of human rights abuses that escalates into civil war. Perceiving a threat to its power, a government may crack down on an opposition group and on other civilians it believes to be affiliated. This repression may provoke armed resistance against the government. To compensate for their lack of power relative to the state, rebel groups may resort to guerrilla tactics, possibly relying on civilian support. Government forces may, in turn, terrorize civilians in a bid to erode the rebels' strength.⁸⁰ Rost concludes that increasing government repression in weak states can thus be a useful predictor of impending civil war.⁸¹

State weakness, political terror, and a cycle of violence often produce gendered harms in situations of civil war. Rape, for example, disproportionately affects women and girls in war zones. While men and boys are more likely to be killed in war as combatants (or potential combatants), women and girls tend to suffer more acutely from less lethal violence like rape, as well as

77. *Id.* at 163, 169.

78. *Id.* at 171–74.

79. Nicolas Rost, *Human Rights Violations, Weak States, and Civil War*, 12 HUM. RTS. REV. 417, 436 (2011).

80. *Id.* at 418.

81. *Id.* at 436–37.

displacement and lack of medical care.⁸² As Cohen argues, the private crime of rape is common in many societies, but wartime rape often has distinct characteristics, including public commission of the act, often by multiple perpetrators, which can have a terror effect on the population.⁸³

2. External Effects and Influences

Civil war can also influence human rights conditions outside of the immediately affected state. Danneman and Ritter argue that states near other states experiencing civil war will increase domestic repression to preempt the spread of rebellion.⁸⁴ Civil wars seldom remain contained within national borders and often have spillover effects on neighboring nations.⁸⁵ The authors' analysis leads them to conclude that:

Generally, leaders are wary of civil strife in their neighborhood spreading to their nation. To prevent diffusion, they increase repression . . . These findings suggest leaders are concerned primarily with the mechanical drivers of civil war diffusion that are tied to geography, such as refugee flows and transnational rebel groups, rather than cultural or political similarities . . .⁸⁶

In this context, states undertake repression not to imitate their neighbors, but to “avoid their fate.”⁸⁷ Danneman and Ritter interpret the events of the “Arab Spring” of 2011 through their model. When major dissent broke out in Tunisia and Egypt, other Middle Eastern and North African governments engaged in preemptive crackdowns, notably Algeria, Bahrain, Iran, Libya, and Syria. The results of these repressive policies had different effects: Whereas in Algeria and Iran, government authority prevailed (at least in the short-term), brutal civil wars

82. Dara Kay Cohen, *Explaining Rape during Civil War: Cross-National Evidence (1980–2009)*, 107 AM. POL. SCI. REV. 461, 462 (2013).

83. *Id.* at 464.

84. See Nathan Danneman & Emily Hencken Ritter, *Contagious Rebellion and Preemptive Repression*, 58 J. CONFLICT RESOL. 254, 255 (2014).

85. *Id.* at 255–56..

86. *Id.* at 272.

87. *Id.* at 254, 273.

erupted in Libya and Syria.⁸⁸

A number of studies have found that international arms transfers tend to exacerbate human rights violations in repressive or conflict-afflicted states, and sometimes in states that carry both these characteristics.⁸⁹ When the Cold War came to an end, the arms market dynamic in the West, Eastern Europe, and the former Soviet Union changed in notable ways; many countries cut their defense budgets, decreasing domestic demand and placing pressure on arms manufacturers to find new markets through exports. The U.S. offered favorable loan terms for arms purchases, encouraging its embassies around the world to facilitate sales. In many former Eastern Bloc and Soviet countries, surplus arms and military-focused infrastructure encouraged aggressive marketing for arms exports.⁹⁰ The post-Cold War weapons market fueled the often ethnically charged armed conflicts of the 1990s and 2000s: “For example, it was not only major suppliers such as the French, the Belgians, and the Russians that sold arms and ammunition to Rwanda before the genocide in 1994, but also a number of former communist countries such as Romania, Bulgaria, the Czech Republic, and Slovakia.”⁹¹

C. ECONOMIC FACTORS

Economic context is a vital piece of the human rights puzzle and is deeply intertwined with political and social context. Economic factors influence human rights conditions in two broad ways: firstly, in the distribution of resources, which has the most direct implications for economic and social rights. Major inequalities or the misappropriation of public goods for private gain can endanger human rights pertaining to basic needs, such as food, water, shelter, and adequate health. States may fail to make adequate efforts to provide for their population’s basic needs or may even deliberately deprive certain groups of

88. *Id.* at 270.

89. See, e.g., Shannon Lindsey Blanton, *Instruments of Security or Tools of Repression? Arms Imports and Human Rights Conditions in Developing Countries*, 36 J. PEACE RES. 233, 233–35 (1999); Cassady Craft & Joseph P. Smalldone, *The Arms Trade and the Incidence of Political Violence in Sub-Saharan Africa, 1967-97*, 39 J. PEACE RES. 693, 704–06 (2002); Lerna K. Yanik, *Guns and Human Rights: Major Powers, Global Arms Transfers, and Human Rights Violations*, 28 HUM. RTS Q. 357, 357–61 (2006).

90. Yanik, *supra* note 89, at 380–84.

91. *Id.* at 384.

opportunities and resources. States may also fail to prevent violations of economic, social, and cultural rights by third parties, such as businesses. Secondly, economic structures and incentives can encourage governments to repress their populations, resulting in civil and political rights violations. For example, a government seeking to attract international investment by minimizing the cost of doing business may use force to break up a strike over low wages.

As noted in the introduction of this piece, the literature on the relationship between economic factors and repression is more extensive than the study of economic, social, and cultural rights. Although there have been some notable advances in recent years, economic, social, and cultural rights remain, on the whole, a less studied and emphasized topic. This deficiency constitutes a key gap in the study of causes of human rights violations.

1. The Economic, Social, and Cultural Rights Gap

Identifying violations of the rights contained in the International Covenant on Economic, Social and Cultural Rights (ICESCR) can be a difficult undertaking. Such assessment involves evaluating *state efforts* to promote those rights, not simply whether a state's economic performance is adequate. Economic, social, and cultural rights are the subject of progressive realization over time, often requiring sustained engagement to meet everyone's basic needs and improve living standards. Personal integrity abuses, however, can be curbed more quickly, by governments refraining from certain practices, such as arbitrary killing and torture.⁹²

Lack of agreement on the scope and application of economic, social, and cultural rights may also contribute to the difficulty of identifying violations, let alone causes. Amnesty International has noted that "[r]emaining scepticism about economic, social and cultural rights as enforceable rights is based on the perception that their scope and content are unclear, and that it is not appropriate for courts to interfere in these issues, as they involve political decisions on allocation of resources."⁹³ Western countries have traditionally placed less emphasis on these

92. Hafner-Burton & Ron, *supra* note 5, at 365.

93. AMNESTY INT'L, HUMAN RIGHTS FOR HUMAN DIGNITY: A PRIMER ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS 33 (2d ed. 2014), <https://www.amnesty.org/en/documents/pol34/001/2014/en/>.

rights, instead backing the primacy of civil and political rights.⁹⁴ This reluctance has affected UN human rights mechanisms, conferring less apparent value on economic, social, and cultural rights, despite the 1993 Vienna Declaration's insistence on the equality and indivisibility of all rights categories.⁹⁵ Although human rights NGOs and the UN have developed models for incorporating a human rights framework into government budgeting,⁹⁶ these models are relatively new and it is not yet clear what effects they will have.

Related to this research gap is the lack of international jurisprudence on economic, social, and cultural rights relative to civil and political rights. The Committee on Economic, Social and Cultural Rights has generated a substantial body of General Comments and country review materials.⁹⁷ It did not start operating, however, until 1987, eleven years after the ICESCR entered into force.⁹⁸ Furthermore, the Optional Protocol to the ICESCR, establishing an individual complaint mechanism, only entered into force in 2013.⁹⁹ By contrast, the Human Rights Committee began taking individual complaints and issuing jurisprudence in 1976, the year the Civil and Political Covenant and its first Optional Protocol entered into force.¹⁰⁰ As Forman observes, “[C]ivil and political rights have had a several decades head-start in terms of jurisprudential development, leading to significant disparities in the depth of understanding between the two sets of rights.”¹⁰¹

Another complication in the promotion of economic, social,

94. See, e.g., Henry F. Carey, *Economic, Social, and Cultural Rights*, in OXFORD RESEARCH ENCYCLOPEDIA OF INTERNATIONAL STUDIES (online ed., 2017), <http://internationalstudies.oxfordre.com/abstract/10.1093/acrefore/9780190846626.001.0001/acrefore-9780190846626-e-161>; Lisa Forman, *Can Minimum Core Obligations Survive a Reasonableness Standard of Review under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights?*, 47 OTTAWA L. REV. 561 (2016); Philip Alston, *Human Rights in the Populist Era*, JUST SECURITY (Oct. 18, 2017), <https://www.justsecurity.org/46049/human-rights-populist-era/>.

95. Carey, *supra* note 94, at 19.

96. See, e.g., FUNDAR–CENTRO DE ANÁLISIS E INVESTIGACIÓN ET AL., DIGNITY COUNTS: A GUIDE TO USING BUDGET ANALYSIS TO ADVANCE HUMAN RIGHTS (2004); U.N. OFF. HIGH COMMISSIONER FOR HUM. RTS. & INT’L BUDGET PROJECT, REALIZING HUMAN RIGHTS THROUGH GOVERNMENT BUDGETS, U.N. DOC. HR/PUB/17/3 (2017).

97. See, e.g., AMNESTY INT’L, *supra* note 93, at 27.

98. Forman, *supra* note 94, at 563.

99. *Id.*

100. *Id.*

101. *Id.*

and cultural rights is the uneasy relationship between the human rights and development sectors. Efforts to incorporate human rights principles into international development programming have encountered a number of challenges.¹⁰² Although “rights-based development” has become a popular framework, many development projects still result in significant human rights violations. In the case of the World Bank, major abuses occurred despite the existence of institutional safeguards designed to limit the negative consequences of Bank-sponsored projects.¹⁰³ Vandenhole and Gready note that development agencies and human rights organizations are traditionally seen to have different relationships with the state.¹⁰⁴ Development agencies generally view themselves as cooperative partners with the state, while human rights organizations challenge the state for its misconduct.¹⁰⁵ The organizational culture of development agencies also poses a challenge. Technically-minded personnel focused on quantifiable outcomes may resist adopting a normative framework, such as human rights. Development organizations may also lack clear internal accountability standards for human rights.¹⁰⁶

Despite these persistent challenges, scholars and advocates are beginning to explore economic, social, and cultural rights in more depth. For example, as noted *supra* on pages 6–7, Fukuda-Parr et al. developed the SERF index in an attempt to measure states’ fulfillment of economic and social rights obligations. Comparing SERF data to other human rights indicators, Fukuda-Parr et al. identified some key correlations. First, their findings confirmed previous research noting a positive

102. In this context, the human rights-based approach pertains to implementation of international development programs using human rights as a guiding framework, which is distinct from the right to development as set forth by the U.N. Declaration on the Right to Development (G.A. Res. 41/128) and other instruments.

103. See, e.g., AMNESTY INT’L, *supra* note 93, at 32–33; Sasha Chavkin et al., *How the World Bank Broke Its Promise to Protect the Poor*, INT’L CONSORTIUM INVESTIGATIVE JOURNALISTS (2015), <http://www.icij.org/project/world-bank/how-world-bank-broke-its-promise-protect-poor>; HUMAN RIGHTS WATCH, *ABUSE-FREE DEVELOPMENT: HOW THE WORLD BANK SHOULD SAFEGUARD AGAINST HUMAN RIGHTS VIOLATIONS* (2013), https://www.hrw.org/sites/default/files/reports/worldbank0713_ForUpload.pdf.

104. See, e.g., Wouter Vandenhole & Paul Gready, *Failures and Successes of Human Rights-Based Approaches to Development: Towards a Change Perspective*, 32 NORDIC J. HUM. RTS. 291 (2014).

105. *Id.* at 295.

106. *Id.* at 300–02, 310.

association between democracy and good governance, on the one hand, and better economic and social rights performance, on the other. While some authoritarian governments may succeed in fulfilling their economic and social rights responsibilities, they are—on the whole—more likely to fail in doing so.¹⁰⁷ Additionally, countries with constitutional or other domestic legal protections for socioeconomic rights performed better on the SERF index than countries without such measures.¹⁰⁸ Gender equality exhibited the strongest correlation with positive SERF scores. This observation led Fukuda-Parr et al. to note that “improved gender equality must necessarily be associated with the fulfillment of social and economic rights: a society that excludes half of its population cannot possibly be said to be fulfilling the rights of all of its members.”¹⁰⁹ Although these scholars found no significant correlation between socioeconomic rights and human rights treaty ratification, they acknowledged that their “analysis is constrained by lack of sufficiently nuanced data.”¹¹⁰ These preliminary findings from the SERF index data are correlative, but not causal. They do, however, lay important groundwork for further research.

2. Economic Factors and Repression

Research has yielded insight into the connections between economic issues and repressive state behavior. In the early study by Mitchell and McCormick, discussed *supra* on pages 7–10, the authors tested what they called “the simple poverty thesis”¹¹¹—that is, that poorer countries experience more violations. They found partial support for this theory, noting that there appeared to be an income threshold at which countries experience a dramatic decrease in torture and/or political imprisonment.¹¹² Schmitz and Sikkink summarize two essential points from the “simple poverty” literature: First, resource scarcity constricts a government’s policy options, making repression a more appealing choice to maintain power. Secondly, resource-

107. FUKUDA-PARR ET AL., *supra* note 8, at 131–33.

108. *Id.* at 140-1.

109. *Id.* at 147.

110. *Id.* at 143.

111. Theory advanced by former Secretary of State Robert McNamara, as quoted in SAMUEL P. HUNTINGTON, *POLITICAL ORDER IN CHANGING SOCIETIES* (1968).

112. See, e.g., McCormick & Mitchell, *supra* note 9, at 488.

strapped governments use less-efficient methods of repression, requiring more frequent and intense application to maintain control.¹¹³ Some scholars believe the “simple poverty” approach is incomplete, as it does not examine other factors, such as a country’s distribution of wealth (an issue explored *infra* on pages 28–31).¹¹⁴

The basis of a country’s economy can influence its government’s conduct. For instance, evidence suggests that states often repress their residents when their economies are based on extractive industries.¹¹⁵ DeMeritt and Young studied the relationship between oil and/or natural gas wealth and personal integrity rights. They undertook to test the longstanding theory that countries that rely on fossil fuel for income and less on their populations as a tax base would experience more personal integrity rights violations. The phenomenon occurs, the argument goes, because taxation requires some form of popular consent, even if minimal; but oil, natural gas, and other similar resources do not come with this constraint.¹¹⁶ Income from oil and gas may also discourage leaders from developing a public goods infrastructure that would facilitate the generation and collection of tax revenue, thereby impeding economic development.¹¹⁷

DeMeritt and Young’s statistical models yielded a positive relationship between a state’s reliance on oil or natural gas revenue and its use of repression, even when controlled for a variety of other potential factors, including higher levels of democracy. DeMeritt and Young further note that “Since oil increases repression and recent work has found that repression increases the likelihood of civil war . . . oil should also have an indirect impact on civil war onset.”¹¹⁸ The authors offer the caveat that their theory is one of general trends and probability: “Not all states that repress have oil Likewise, not all states with oil will repress [their populations].”¹¹⁹

113. Hans Peter Schmitz & Kathryn Sikkink, *International Human Rights*, in HANDBOOK OF INTERNATIONAL RELATIONS 6 (Walter Carlsnaes et al. eds., 2d ed. 2013).

114. *Id.* at 6.

115. Jacqueline H.R. DeMeritt & Joseph K. Young, *A Political Economy of Human Rights: Oil, Natural Gas, and State Incentives to Repress*, 30 CONFLICT MGMT. PEACE SCI. 99, 100, 102 (2013).

116. *Id.* at 99, 101.

117. *Id.* at 102.

118. *Id.* at 114.

119. *Id.* at 115.

A country's external economic relationships may also affect its tendency to use coercive measures against its population. There is substantial debate among scholars on whether free trade and foreign direct investment improve or worsen human rights conditions.¹²⁰ Many preferential trade agreements include human rights provisions, but the effectiveness of these terms is another source of debate; different studies have come to contradictory conclusions.¹²¹ Structural adjustment policies advanced by the International Monetary Fund and the World Bank have been a source of controversy since their introduction in the 1980s. Structural adjustment required loan recipient nations to adopt a series of measures designed to shrink and decentralize governments, ostensibly to facilitate debt service and economic growth, as well as reduce corruption. These measures included cutting government social spending, privatizing state-owned enterprises, and reducing trade barriers.

In their detailed study of the relationship between human rights and structural adjustment, Abouharb and Cingranelli analyzed variables pertaining to 131 countries for the time period of 1981 to 2003.¹²² They found that, on the whole, "World Bank and IMF structural adjustment programs usually cause increased hardship for the poor, greater civil conflict, and more repression of human rights, resulting in a lower rate of economic development."¹²³ Cuts in social spending and/or the establishment of user fees for social services mandated by the adjustment programs rendered access to critical goods and services, such as healthcare and potable water, unaffordable for the most needy.¹²⁴ The unpopularity of these austerity measures has often led to protests in the past, which in turn resulted in an increased likelihood of government repression. Indeed, Abouharb and Cingranelli observed that "the longer the period that countries have spent under structural adjustment

120. For a useful summary, see Schmitz and Sikink, *supra* note 113, at 6.

121. See, e.g., EMILIE M. HAFNER-BURTON, *FORCED TO BE GOOD: WHY TRADE AGREEMENTS BOOST HUMAN RIGHTS* (2009); Tessa Khan, *Unfair Trade? Preferential Trade Agreements, Human Rights and Inequalities*, 57 DEV. 423 (2014); Gabriele Spilker & Tobias Böhmelt, *The Impact of Preferential Trade Agreements on Governmental Repression Revisited*, 8 REV. INT. ORGAN. 343 (2013).

122. M. RODWAN ABOUHARB & DAVID L. CINGRANELLI, *HUMAN RIGHTS AND STRUCTURAL ADJUSTMENT* 4 (2007).

123. *Id.*

124. *Id.* at 4, 11-12. 139-141.

agreements the worse are levels of government respect for personal integrity rights.”¹²⁵

These two scholars also observed, however, that structural adjustment was associated with notable improvements in democratic governance and some related civil and political rights: “Governments involved with structural adjustment the longest have better-developed democratic institutions. They have elections that are freer and fairer. Their citizens have more freedom to form and join organizations, and they have more freedom of speech and press.”¹²⁶

3. Economic Inequality and Human Rights

The impact of economic inequality on human rights conditions is an emerging area of focus. Amnesty International recently noted that “Gross economic and social inequality is an enduring reality in countries of all political colours, and all levels of development. In the midst of plenty, many are still unable to access even minimum levels of food, water, sanitation, education, health care and housing.”¹²⁷ While there are currently no explicit human rights standards against major economic disparities, some scholars and practitioners argue that there is an “implicit obligation” to address income inequality.¹²⁸ As Aguilar and Saiz write, “Economic inequality is clearly a human rights concern where it can be shown to be a cause or consequence of human rights violations.”¹²⁹ Two principal reasons why major income disparities are a human rights issue are: (1) the obligation of States Parties to the Covenant on Economic, Social and Cultural Rights and other instruments to promote socioeconomic rights “to the maximum of [their] available resources;”¹³⁰ and (2) the principle of equality and the prohibition on discrimination based on social status.¹³¹

125. *Id.* at 137–41, 150, 181.

126. *Id.* at 5.

127. AMNESTY INT’L, *supra* note 93, at 13.

128. RADHIKA BALAKRISHNAN ET AL., *RETHINKING ECONOMIC POLICY: THE RADICAL POTENTIAL OF HUMAN RIGHTS* 48 (2016).

129. Gaby Oré Aguilar & Ignacio Saiz, *Tackling Inequality as Injustice: Four Challenges for the Human Rights Agenda*, OPEN GLOBAL RTS. (Mar. 30, 2016), <https://www.openglobalrights.org/tackling-inequality-as-injustice-four-challenges-for-h/>.

130. G.A. Res. 2200A (XXI), art. 2(1), International Covenant on Economic, Social and Cultural Rights (Dec. 16, 1966).

131. *See* Aguilar & Saiz, *supra* note 129, at 3.

In regard to available resources, corruption and the misappropriation of government resources play a key role, as discussed *supra* on pages 16–18. International tax law and policy are another potential source of socioeconomic rights violations. The simple formulation of this argument is that tax evasion, including the use of tax havens, diminishes resources that would otherwise be available to governments to fulfill such rights obligations as adequate healthcare and education. In its study of 500 tax treaties signed by African and Asian countries, ActionAid concluded that low-income countries lose billions of dollars annually owing to provisions on dividends and interest payments. Specifically, “[t]reaties that lower-income countries have with OECD countries . . . take away more rights to tax than those with non-OECD countries. Worryingly, the deals struck with OECD countries are getting worse over time.”¹³² As an example, ActionAid cites a provision in tax treaties signed by Bangladesh which causes the country to lose \$85 million annually.¹³³ This lost revenue could have paid for health services for 3.4 million people.¹³⁴ The International Bar Association has concluded that countries that facilitate tax evasion, either domestically or abroad, could be in violation of their international human rights obligations.¹³⁵

Evidence shows that major economic inequality is associated with negative human rights conditions, especially with regard to discriminatory social outcomes.¹³⁶ Human rights scholars have turned to economic, sociological, and public health studies for insight, matching the studies’ conclusions with international human rights obligations. Reviewing studies on the effects of income inequality, Balakrishnan et al. found that lower-income persons—and lower-income countries—experienced worse health conditions and educational outcomes

132. ACTIONAID, MISTREATED: THE TAX TREATIES THAT ARE DEPRIVING THE WORLD’S POOREST COUNTRIES OF VITAL REVENUE 4 (2016), <http://www.actionaid.org/publications/mistreated-tax-treaties-are-depriving-worlds-poorest-countries-vital-revenue>.

133. *Id.* at 3.

134. *Id.* at 3. Calculation based on Bangladesh’s per capita health spending rate at the time of the report’s publishing.

135. INT’L BAR ASS’N, TAX ABUSES, POVERTY AND HUMAN RIGHTS: A REPORT OF THE INTERNATIONAL BAR ASSOCIATION’S HUMAN RIGHTS INSTITUTE TASK FORCE ON ILLICIT FINANCIAL FLOWS, POVERTY AND HUMAN RIGHTS 149 (2013), <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=4A0CF930-A0D1-4784-8D09-F588DCDDFEA4>.

136. BALAKRISHNAN ET AL., *supra* note 128, at 39–40.

relative to their higher income counterparts.¹³⁷ MacNaughton's review of pertinent literature reached similar conclusions, finding that, not only are health outcomes worse, but also that violence and discrimination are more prevalent in highly-unequal societies.¹³⁸ Analyzing data on inequality for UNICEF, Ortiz and Cummins found that "unequal societies, in general, are much more prone to political instability, or, in other words, to be destabilized or overthrown by unconstitutional or forceful means, which includes politically-motivated violence and terrorism . . ."¹³⁹ Reaching a similar conclusion, the UN Independent Expert on foreign debt and human rights noted that "[I]f inequality entrenches social cleavages along regional, religious, racial or ethnic lines, social instability and violent internal conflict are more frequent."¹⁴⁰

Some theoretical arguments focus on the incentives of the economic elite in highly-unequal societies. That is, a small elite with disproportionate wealth is more likely to engage in human rights abuses to protect their status. The incentive to repress may be intensified if the elite face strong redistributive demands from the general population.¹⁴¹ Landman and Larizza tested a hypothesis based on this theory: countries with greater concentrations of income and/or landed wealth are more likely to abuse civil and political rights. They concluded that "[b]road patterns of concentration of resources (particularly income), which some would see as violating the notion of the 'progressive realization' of economic and social rights, are related to patterns of abuse of personal integrity rights."¹⁴² Although Landman and Larizza found that higher levels of democracy and economic development mitigate abuses to some degree, they concluded that "[O]ur results demonstrate that politically inclusive

137. *Id.* at 32, 39–40.

138. Gillian MacNaughton, *Beyond a Minimum Threshold: The Right to Social Equality*, in *THE STATE OF ECONOMIC AND SOCIAL RIGHTS: A GLOBAL OVERVIEW* 271, 287–89 (Lanse Minkler ed., 2013).

139. Isabel Ortiz & Matthew Cummins, *Global Inequality: Beyond the Bottom Billion* 35 (Apr. 2011) (Working Paper) (on file with the UNICEF Dept. of Pol'y & Prac.), https://www.unicef.org/socialpolicy/files/Global_Inequality_REVISSED_-_5_July.pdf.

140. Human Rights Council, Rep. of the Indep. Expert on the Effects of Foreign Debt and Other Related Int'l Fin. Obligations of St. on the Full Enjoyment of Human Rights, Particularly Econ., Soc. and Cultural Rights, ¶ 21, U.N. Doc. A/HRC/31/60 (2016).

141. Todd Landman & Marco Larizza, *Inequality and Human Rights: Who Controls What, When, and How*, 53 *INT'L STUD. Q.* 715, 718–19 (2009).

142. *Id.* at 731.

institutions (in the form of democratic regimes) might not be sufficient to prevent rights abuses. Governments also need to pursue the realization of economically inclusive institutions”¹⁴³

D. PSYCHOLOGICAL FACTORS

The complex institutions and relationships that comprise governments and the global economy can make it easy to forget that each violation of human rights is a very personal event for victims, perpetrators, and bystanders. By shifting one’s focus to the individual human beings involved in a given human rights abuse, new kinds of questions emerge. What factors motivate people to obey authority? What factors convince people to harm others for political or social ends? How do governments or other organizations use these factors to mobilize enough people to carry out large-scale repression? Conversely, what motivates people to overcome prejudice or resist violent behavior? Why do people often support pluralistic worldviews, including universal human rights?

1. Authority

Sociologist Max Weber once wrote that individuals conduct their social affairs and relationships according to their perception of “legitimate authority.”¹⁴⁴ Individuals may accept this authority for a variety of reasons. They may identify personally with authority figures; they may feel a sense of duty to a greater whole; they may share ideological or religious beliefs with leaders; or they may obey an authority out of simple self-interest.¹⁴⁵ In the generation following World War II and the Holocaust, scholars of social psychology carried out studies to test the conditions in which ostensibly ordinary, “good” people might commit acts that violate their moral aversion to harming others. The most well known of these studies are Milgram’s studies of obedience and Zimbardo’s Stanford Prison Experiment.

In 1961, social psychologist Stanley Milgram started a

143. *Id.*

144. MAX WEBER, BASIC CONCEPTS IN SOCIOLOGY 71 (H.P. Secher trans., 1962).

145. *Id.* at 75.

series of experiments at Yale University designed to test “destructive obedience.”¹⁴⁶ These initial experiments involved male subjects from a variety of occupations.¹⁴⁷ The subjects were told that the purpose was to study the effects of physical punishment on memory. Each test involved an experimenter, one subject, and an accomplice (whom the subject believed to be another subject). In a rigged drawing, the subject was assigned to play the role of “teacher” and the accomplice was given the role of “learner.” The learner was connected to a shock generator and the subject was instructed to conduct memory tests with the learner. If the learner answered a question incorrectly, the subject administered an electrical shock. For each error, the experimenter directed the subject to increase the shock intensity by one step, even when the voltage reached dangerous levels. The subjects were only informed of the true nature of the experiment afterwards.¹⁴⁸ The learner was an actor who was not actually receiving any shocks.¹⁴⁹

Milgram repeated the same essential scenario with varying proximity and levels of contact between subject and learner. Throughout the tests, subjects exhibited considerable physical signs of stress, at times verbally rejecting the experiment. Subjects’ protests, however, often did not affect their compliance with the demands of the experimenter.¹⁵⁰ Milgram expressed surprise at the high level of obedience by subjects in the first experiment.¹⁵¹ In 1974, Milgram repeated his experiments with female subjects and obtained a rate of obedience nearly identical to his first all-male experiments.¹⁵²

Milgram noted that obedience to the experimenter’s demands was lower when the learner and subject were closer together.¹⁵³ Milgram suggested several possible reasons for this result. For example, the subject may feel less shame and guilt

146. See Stanley Milgram, *Behavioral Study of Obedience*, 67 J. ABNORMAL & SOC. PSYCHOL. 371 (1963) [hereinafter Milgram, *Behavioral Study*]; Stanley Milgram, *Some Conditions of Obedience and Disobedience to Authority*, 10 HUM. REL. 57 (1965) [hereinafter Milgram, *Some Conditions*].

147. Milgram, *Behavioral Study*, *supra* note 146, at 372; Milgram, *Some Conditions*, *supra* note 146, at 59.

148. Milgram, *Behavioral Study*, *supra* note 146, at 373–74; Milgram, *Some Conditions*, *supra* note 146, at 59–60.

149. Milgram, *Behavioral Study*, *supra* note 146, at 373.

150. *Id.* at 375–76.

151. *Id.* at 376.

152. Milgram, *Some Conditions*, *supra* note 146, at 71.

153. Milgram, *Behavioral Study*, *supra* note 146, at 376.

about his action when he cannot see the victim.¹⁵⁴ Milgram also considered the scientific and institutional authority of the experimenter to carry significant implications, writing, “if in this study an anonymous experimenter could successfully command adults to subdue a fifty-year-old man, and force on him painful electric shocks against his protests, one can only wonder what government, with its vastly greater authority and prestige, can command of its subjects.”¹⁵⁵

In 1971, Professor Philip Zimbardo at Stanford University established a mock prison in which subjects were to be split into guard and prisoner groups for a duration of two weeks.¹⁵⁶ The goal of the experiment was to explore interpersonal dynamics in a context of confinement. After six days, however, the exercise was terminated as the guards degraded and brutalized the prisoners. None of the participants in the study had shown any particular signs of aggression or cruelty in their pre-experiment assessments. As in the case of Milgram’s studies, Zimbardo and his colleagues had not predicted the level and intensity of deteriorating conditions in the mock prison.

It should be noted that the nature and execution of Milgram’s and Zimbardo’s experiments generated some controversy among colleagues and observers. For example, in her response to one of Milgram’s early studies, Baumrind criticized the initial deception of subjects as a fundamental violation of trust that could harm them psychologically by making them think they had injured someone. Furthermore, she argued that the laboratory setting was not an appropriate venue to truly test obedience to authority because subjects entered the experiment with a pre-existing deference to and dependence on the scientific knowledge of the experimenter.¹⁵⁷ The Stanford Prison Experiment also raised serious ethical questions on the treatment of subjects. Professor Zimbardo participated directly

154. *Id.* at 62–65.

155. *Id.* at 75.

156. See Philip Zimbardo, *On the Ethics of Intervention in Human Psychological Research: With Special Reference to the Stanford Prison Experiment*, 2 COGNITION 243 (1973).

157. See Diana Baumrind, *Some Thoughts on Ethics of Research: After Reading Milgram’s “Behavioral Study of Obedience”*, 19 AM. PSYCHOLOGIST 421–23 (1964). Milgram dismissed Baumrind’s concerns, asserting that subjects showed no signs of trauma in follow-up. Furthermore, Milgram argued that the laboratory environment was appropriate precisely *because* it was a context in which deference to authority occurred, much like a military setting. See also Stanley Milgram, *Issues in the Study of Obedience: A Reply to Baumrind*, 19 AM. PSYCHOLOGIST 848 (1964).

in the experiment as Prison Superintendent. In this role, he urged the guards to create an environment that stripped prisoners of their individuality and made them feel powerless: “[T]o the extent that the guards did become brutal, it could be argued that this was due more to the intervention of Zimbardo . . . than to their inherent psychology.”¹⁵⁸

The central theme emerging from the work of both Milgram and Zimbardo is that the role or position of individuals in a hierarchical power structure will determine their behavior and can lead to brutality in deference to authority. This “group role” argument has been challenged as incomplete by proponents of social identity theory. Rather than behavior being dictated purely by institutional position, Haslam and Reicher argue that “people do not take on group roles uncritically but do so only after they have internalised them as part of a social identity that is shared with other people.”¹⁵⁹ In reviewing Zimbardo’s writings on the Stanford Prison Experiment, Haslam and Reicher contest his account of a situation in which the assigned roles of guard and prisoner inevitably led to cruelty. They argue that Zimbardo glossed over instances in which the guards resisted encouragement to be brutal. Furthermore, as noted *supra*, Zimbardo himself assumed the role of Superintendent of the mock prison and issued instructions to the guards, influencing significantly the behavior of his own subjects.¹⁶⁰ As a result of this intervention, Haslam and Reicher argue that the Stanford Prison Experiment “provides limited insight into the way in which tyranny emerges as part of a social process that develops over time.”¹⁶¹

158. Alex Haslam & Steve Reicher, *A Tale of Two Prison Experiments: Beyond a Role-based Explanation of Tyranny*, 9 PSYCHOL. REV. 2 (2003). Elaborating further on Zimbardo’s influence, Haslam and Reicher wrote,

On the one hand, the quashing of the prisoners’ resistance and their subsequent passivity owes much to the fact that Zimbardo encouraged the prisoners to believe that they could not leave the prison. On the other, any brutality displayed by the guards can be seen to have followed directly from the instructions that Zimbardo provided *Id.*

159. *Id.* at 3.

160. *Id.* at 2. After reprinting of some of Zimbardo’s instructions to the guards, Haslam and Reicher add, “Note that Zimbardo clearly sanctions oppressive treatment of the prisoners and, on top of this, he entreats the guards to act in terms of the group of which he is the leader (‘we’re going to take away their individuality’, ‘we’ll have all the power’). At the very least, the leadership of Zimbardo represents a serious confound in the study, which calls into question the internal validity of his analysis.”

161. *Id.* at 5.

In the early 2000s, Haslam and Reicher carried out another prison experiment similar to Zimbardo's, but with some key differences.¹⁶² First, they took no formal role in the mock prison. Another significant difference was the possibility of social mobility at the outset—*i.e.*, a prisoner could become a guard. Later on, they found that when social mobility was eliminated, the prisoners developed a stronger sense of shared social identity. When an industrial relations specialist was introduced into the prisoner group, the prisoners challenged the existing power structure, which eventually led to the negotiated establishment of a more equitable commune. Faced with difficulties in maintaining order, however, many subjects favored reverting to a hierarchical structure toward the end of the experiment. This development did not emerge from role-based behavior, Haslam and Reicher argued, but rather from the *subversion* of roles caused by the emergence of evolving identity-based group dynamics over the course of the study.¹⁶³

2. Group Identity

People naturally tend to divide the world into groups, based on even minimal similarities.¹⁶⁴ Staub studied this tendency and its effects.¹⁶⁵ He refers to the idea of preferring similar people as establishing “ingroups.” Staub writes that “People have a need to maintain their understanding of the world, or to create new understanding . . . They need to defend their personal and societal self-concepts, and under extreme conditions to defend their survival. Many of these needs can be satisfied by experiencing a sense of identity with a group of people . . .”¹⁶⁶ People see others as similar and part of their “ingroup” or, conversely, as members of an “outgroup.” Socialization contributes to the differentiation between groups and to the devaluation of individuals belonging to “outgroups.”¹⁶⁷ In extreme cases, outgroups are characterized as sub-human or

162. The experiment was filmed and broadcast as a documentary for the BBC. BBC, *The Experiment*, YOUTUBE (July 18, 2016), <https://www.youtube.com/watch?v=frMMrkJVnUQ>.

163. Haslam and Reicher, *supra* note 158, at 4.

164. See Ervin Staub, *The Psychology of Perpetrators and Bystanders*, 6 POL. PSYCHOL. 61 (1985).

165. *Id.*

166. *Id.* at 80.

167. *Id.* at 65.

even vermin.

McDoom identifies a key source of prejudicial attitudes as fear resulting from a perceived threat.¹⁶⁸ Such threats can be material (*e.g.*, threats to wealth, power, or security) or symbolic (*e.g.*, threats to values, beliefs, or group norms). He identifies four key psycho-social aspects of group conflict: (1) “Boundary activation”—as the threat grows, ingroup and outgroup distinctions increase in importance; (2) “Outgroup negativity”—as the threat increases, so does the devaluation of the outgroup; (3) “Outgroup homogenization”—members of the outgroup are no longer viewed as individuals; and (4) “Ingroup solidarity”—the demand for ingroup loyalty increases with the level of threat.¹⁶⁹

Although these conditions are necessary for intergroup violence, they are not sufficient. Rather, “while group emotions lead to polarized attitudes, it is material or structural opportunities that mediate whether these emotions are expressed as violence.”¹⁷⁰ In other words, it is when the devaluation of the outgroup is paired with certain structural and social conditions—such as economic desperation or concentrated authority—that it can lead to mass violence. As Staub argues, difficult life conditions get blamed on outgroups, making them the embodiment of threat to ingroups.¹⁷¹ Outgroups thus serve as convenient scapegoats for the misfortunes of ingroups. Outgroups are made to seem dangerous and therefore become legitimate targets of violence in the name of defending the ingroup.

The ways in which this dynamic played out in Nazi Germany are well-documented.¹⁷² The somewhat more-recent Rwandan genocide also offers a salient example. In colonial Rwanda, the Belgian administration cemented a historical, psychological split between the Hutu and the Tutsi ethnic groups. Starting in 1931, for example, Rwandan identity cards identified the ethnicity of the bearer, a practice which continued

168. See Omar Shahabudin McDoom, *The Psychology of Threat in Intergroup Conflict: Emotions, Rationality, and Opportunity in the Rwandan Genocide*, 37 INT'L SEC. 119, 129, 154 (2012).

169. *Id.* at 122, 131.

170. *Id.* at 121.

171. Staub, *supra* note 164, at 63.

172. See, *e.g.*, ROBERT JAY LIFTON, *THE NAZI DOCTORS: MEDICAL KILLING AND THE PSYCHOLOGY OF GENOCIDE* (1986); ERVIN STAUB, *THE ROOTS OF EVIL: THE ORIGINS OF GENOCIDE AND OTHER GROUP VIOLENCE* (1989); Staub, *supra* note 164, at 63.

through independence and up until the genocide in 1994. The Belgian administration also cultivated the belief that the Tutsi were a superior race to the Hutu, descended from an ancient conquering tribe. As such, members of the Tutsi minority were more often placed in positions of prestige or authority in the colonial era. Conversely, Hutus, despite making up the overwhelming majority of the population, were largely excluded from socio-economic opportunities and authority.

At the time of independence, however, the Tutsis lost this privileged colonial-era status and subsequent Hutu nationalist governments stripped them of power. As Hatzfeld wrote, “Having conflated the once-privileged Tutsi aristocrat with the hardworking Tutsi peasant, the populist Hutu administration depicted all Tutsis as scheming, treacherous speculators and parasites in an overpopulated country.”¹⁷³ Throughout the post-independence period, Tutsis were subject to periodic massacres and discriminatory laws.¹⁷⁴ In 1990, the outbreak of civil war intensified anti-Tutsi sentiment: “[W]hile the attacking Tutsi rebels were gaining ground, speeches at Rwandan political meetings, notably at rallies held by the party of President Habyarimana and his ministers, consisted almost entirely of threats made against Tutsis.”¹⁷⁵ After Habyarimana’s assassination in April 1994, Hutu extremists executed a plan to eliminate the Tutsi population altogether, deploying security forces to coordinate mass murder among the populace. Estimates vary, but 800,000 killed is an oft-quoted number.¹⁷⁶ Hutu extremists also hunted down and killed many Hutus who sheltered or otherwise aided Tutsis during the civil war.

McDoom identifies critical aspects of ethnic identity in Rwanda leading up to the genocide, namely: (1) The social construction of “Hutu” and “Tutsi” identity over time; and (2)

173. JEAN HATZFELD, *MACHETE SEASON: THE KILLERS IN RWANDA SPEAK* 54 (Linda Coverdale trans., Picador 2006) (2003).

174. *Id.* at 54–56.

175. *Id.* at 55.

176. Numbers tend to vary, with low estimates at 500,000 and larger ones at 1,000,000; accurate estimation has proven difficult for a variety of reasons, mainly stemming from (1) a lack of data and (2) the questionable accuracy of existing data. Many major sources tend to settle on the 800,000 figure. *See, e.g., The World Still Failing to Act Despite Rwanda Genocide Shame*, AMNESTY INT’L (Apr. 4, 2014), <https://www.amnesty.org/en/latest/news/2014/04/world-still-failing-act-despite-rwanda-genocide-shame/>; Jina Moore, *Rwanda Accuses France of Complicity in 1994 Genocide*, N.Y. TIMES (Dec. 13, 2017), <https://www.nytimes.com/2017/12/13/world/africa/rwanda-france-genocide.html>.

The use of ethnicity by political elites as a political and social device. It was not until the civil war and the assassination of the president—*i.e.*, an elevated situation of threat—that group division in Rwanda led to extermination-level violence.¹⁷⁷ Propaganda played a crucial role in solidifying ingroup and outgroup identity before and during the genocide. Radio broadcasts labeled Tutsis as “cockroaches,” characterizing them as an inhuman infestation.

The concept of purity is an important element of the twisted logic of genocidal violence. By ridding society of the outgroup, the ingroup eliminates a key source of its misfortune and thus “purifies” itself. Dawes explains this mentality: “If a culture can successfully cultivate all-or-nothing, polar thinking, it can divide the world into the pure and impure. The impure deserve injury not only because their impurity is inherently disgusting, but also because it threatens to contaminate the community of the pure.”¹⁷⁸ In this sense, the outgroup is dehumanized to brutal effect; eradicating it becomes a medical act—like disinfecting a wound or administering an antidote—to promote the health of the ingroup. As Lifton observed in regard to the Holocaust, “Nazi perpetrators had to see their victims as posing absolute danger, as ‘infecting’ the ‘German national body,’ and as (in the last three words of Hitler’s testament) ‘deadly Jewish poison’ [T]he general danger of ‘inner Judaization’ and ‘racial pollution’ was perceived as a fundamental threat to German biological and biosocial continuity and immortality.”¹⁷⁹ Similarly, Hatzfeld remarked on how purity during the Rwandan genocide was construed in agricultural terms: “In the rural land of Rwanda, genocide was meant to purify the earth, to cleanse it of its *cockroach farmers*.”¹⁸⁰

3. Socialization

Ingrouping and outgrouping are essential components in the production of perpetrators of mass atrocity. In many cases, scholars have noted that perpetrators are not only socialized to accept extreme violence, but also to view themselves as defenders of the ingroup. In his book on Japanese war criminals

177. McDoom, *supra* note 168, at 135–36.

178. JAMES DAWES, *EVIL MEN* 63 (2013).

179. ROBERT JAY LIFTON, *THE NAZI DOCTORS: MEDICAL KILLING AND THE PSYCHOLOGY OF GENOCIDE* 476–77 (1986).

180. HATZFELD, *supra* note 173, at 70.

convicted following World War II, Dawes sums up how scholars understand the use of group identity to methodically construct the roles, institutions, and conceptions of the other that drive mass violence:

Today, most scholars trace genocidal behavior to organizational identity, social context, and national ideologies, rather than individual personalities

So what do political movements need to make the monsters they need?

First, everybody agrees, you must put them in a group

Group membership can promote not only deindividuation, in which the moral self is psychologically submerged [in a collective], but also what might be called intra-individuation, in which the moral self is psychically subdivided . . . In other words, with deindividuation your relationship to yourself is mediated through your collectivized identity; with intra-individuation your relationship to others is mediated through your specialized social role. The other becomes an abstraction

The existence of roles demanding antisocial behavior, of course, is not enough. Such roles are usually self-limiting. Law provides minimal authorization, and personality provides maximal resistance. Both say: Go only this far. To make war criminals . . . you need the opposite combination: maximal authorization and minimal personality.

But making monsters isn't only a matter of conditioning; it's also a matter of narrative. Commonly among unrepentant war criminals, you will see a grandiose self-pity that helps them to preserve a sense of self: I bore the burden of having to do these things. [Psychiatrist] Robert Jay Lifton saw this narrative template in the Nazi doctors at Auschwitz . . . Such self-absolution, in Germany and elsewhere, is made possible by the stories of historical mission and utopian possibility provided by

charismatic leaders.¹⁸¹

Gibson and Haritos-Fatouros' landmark study of torturers in the Greek Army (1967-74) paints a telling picture of the complex interplay of obedience to authority and group identity.¹⁸² Torture did not come naturally to Greek military recruits, but was a product of forced obedience to authority and desensitization to violence. Before being drafted into the military, the men that Gibson and Haritos-Fatouros studied had no record of violence. Trainers used brutality toward the recruits themselves to accustom them gradually to casual violence.¹⁸³ To encourage obedience, the men were physically beaten, verbally abused, and forced to swear loyalty to the military government.¹⁸⁴ Next, trainers forced the men to watch while prisoners were tortured.¹⁸⁵ Finally, the recruits participated in and administered beatings and other methods of torture to prisoners.¹⁸⁶

When soldiers followed orders, including carrying out torture, their commanders would relax the rules of conduct to positively reinforce soldiers' behavior.¹⁸⁷ Disobedience, however, brought harassment, punishment, and intimidation.¹⁸⁸ Strict obedience and desensitization were closely tied to the production of group identity among soldiers in the Greek Army Police Corps (ESA), the elite military unit on which the study focused. "While being harassed and beaten by their officers," Gibson and Haritos-Fatouros wrote, "servicemen were repeatedly told how fortunate they were to have joined the ESA, the . . . most important support of the regime In-group language helped the men to develop elitist attitudes Gradually, the recruits came to speak of all people who were not in their group, parents and families included, as belonging to the 'outside world.'"¹⁸⁹

In her study of wartime sexual violence, mentioned *supra* on

181. DAWES, *supra* note 178, at 46, 52–56.

182. See Janice T. Gibson & Mika Haritos-Fatouros, *The Education of a Torturer*, 20 PSYCHOL. TODAY 50 (1986).

183. *Id.* at 52, 56–57.

184. *Id.* at 52.

185. *Id.* at 56–57.

186. *Id.* at 57.

187. *Id.* at 56.

188. *Id.* at 57 (noting that Gibson and Haritos-Fatouros interviewed many U.S. service members and found that similar training methods were used both in the Marines Corps and in the Green Berets).

189. *Id.* at 52, 56.

pages 19–20, Cohen uncovered a similar dynamic. She explored why some militaries and insurgent groups chronically rape but others do not. While identifying state weakness and “lootable resources” as significant contributing factors, Cohen found strong evidence suggesting that the recruiting mechanism used by armed groups is a decisive factor in whether their agents will commit rape.¹⁹⁰ Specifically, her study found that members of groups that used extreme forms of forcible recruitment tended to rape far more often than groups using less coercive methods.¹⁹¹ In these situations, rape becomes a way to promote social cohesion among abducted recruits with no preexisting social ties to each other. Participation in violent and public acts together, such as gang rape, is used to form such ties.¹⁹² Cohen concludes, “Reports of abduction by armed groups may serve as an early warning sign of an escalating threat of wartime rape. Such a threat may be especially acute under conditions of state collapse and the presence of loutable resources.”¹⁹³

While exclusionary ideologies provide the foundation for atrocities, their mass perpetration involves their conversion into routine. Hannah Arendt’s famous coverage of the 1961 trial of Nazi leader Adolf Eichmann explores this issue. Eichmann coordinated logistics for mass deportations of Jews and others to Nazi death camps during the Second World War. Despite his participation in the Holocaust, Eichmann did not strike Arendt as particularly cruel or remarkable in any other way. In his bureaucratic role, he represented what Arendt referred to as “the banality of evil,” meaning that the commission of mass atrocities (and Eichmann’s role therein) became a routinized daily affair, accompanied by its own euphemistic language: “This ‘objective’ attitude—talking about concentration camps in terms of ‘administration’ and about extermination camps in terms of ‘economy’—was typical of the S.S. mentality and something that Eichmann, at the trial, was still very proud of.”¹⁹⁴

Although some later scholarship calls into question Eichmann’s “ordinariness,”¹⁹⁵ Arendt’s discussion of the

190. Cohen, *supra* note 82, at 471.

191. *Id.* at 469, 476.

192. *Id.* at 464–66.

193. *Id.* at 476.

194. HANNAH ARENDT, EICHMANN IN JERUSALEM: A REPORT ON THE BANALITY OF EVIL 62–63 (1963).

195. See, e.g., DAVID CESARANI, BECOMING EICHMANN: RETHINKING THE LIFE, CRIMES, AND TRIAL OF A “DESK MURDERER” (2006); BETTINA STANGNETH, EICHMANN BEFORE JERUSALEM: THE UNEXAMINED LIFE OF A MASS MURDERER

routinization of atrocity still carries validity. In Hatzfeld's interviews with perpetrators of the Rwandan genocide, for example, one man, Ignace, described how his gang became numb to the horrors they inflicted: "At the beginning we were too fired up to think. Later on we were too used to it. In our condition, it meant nothing to us to think we were busy cutting our neighbors down to the last one. It became a goes-without-saying."¹⁹⁶ The use of institutions to normalize this violence is a key factor as well. As Dawes observes, "[F]or violence to be extensive over space and durable over time, it needs many concentric rings of support . . . You need the workers and bureaucrats who maintain the institutions that produce the violence."¹⁹⁷ Many of Hatzfeld's interviewees explained how low-level officials organized locals into gangs and set the routine for killing.¹⁹⁸ One perpetrator, Pancrace, described it as follows: "[W]e went up to the soccer field around nine or ten o'clock. The leaders would grumble about latecomers, and we would go off on the attack. Rule number one was to kill. There was no rule number two. It was an organization without complications."¹⁹⁹

III. CHALLENGES IN HUMAN RIGHTS RESEARCH

Studies of human rights have been generally one of two types: qualitative or quantitative. Although there are studies that combine the two types, real differences often exist between scholars who focus more on one set of methods or another.²⁰⁰ Qualitative research tends to focus on either case studies of particular countries or human rights situations (and in some cases both). Quantitative studies use statistical methods to study trends in human rights violations over time and to calculate probabilities. Hafner-Burton and Ron have noted that, in general, qualitative case studies tend toward more positive assessments of the effectiveness of international human rights instruments, while statistical studies are less optimistic. They suggest that these distinctions are attributable not only to methodological differences, but also to disparate core assumptions, noting that "the gap between qualitative and

(Ruth Martin trans., Vintage 2014) (2011).

196. HATZFELD, *supra* note 173, at 47.

197. DAWES, *supra* note 178, at 71.

198. HATZFELD, *supra* note 173, at 10–16.

199. *Id.* at 10.

200. Hafner-Burton & Ron, *supra* note 5, at 363, 391.

quantitative researchers is so wide that many liken it to a religious or cultural divide.”²⁰¹

Quantitative analysis is viewed by some scholars and practitioners as a way to develop standardized measures of human rights.²⁰² Public audiences often view numbers as objectively truthful and endow statistics with greater authority than more subjective statements. Statistical measurements, however, usually come with qualifications. As Human Rights Watch analyst Brian Root explains, “When human rights organizations publish figures, even with caveats on limitations, the public will often interpret these figures as facts.”²⁰³ Root cautions that “What must be asked of any dataset is, ‘Why were data recorded, and why would other data have been missed?’”²⁰⁴ In the human rights context, then, quantitative indicators may offer a less complete picture than might generally be assumed. Sikkink discusses how one key function of human rights work is to render “invisible harms” (such as torture or domestic violence) visible, which poses a key challenge: “Most invisible harms are ‘invisible by design’—that is, the perpetrators take steps to avoid detection. Because of that [issue], we can’t measure these human rights violations, only reports of them. For example, when academics are coding Amnesty International reports, they produce a data set of Amnesty International alleged violations, ‘not a census of actual violations.’”²⁰⁵

When drawing causal conclusions about human rights, scholars and practitioners should beware of information effects, defined as “patterns in the data stemming from the process of information collection and interpretation, rather than the process that actually gives rise to human rights violations or their mitigation.”²⁰⁶ In regard to quantitative indices, these information effects can bias the results of statistical analysis. For example, the U.S. State Department and Amnesty International may have difficulty obtaining verifiable

201. *Id.* at 363.

202. Yasmine Ergas, *Human Rights Impact: Developing an Agenda for Interdisciplinary, International Research*, 1 J. HUM. RTS. PRACT. 459, 461 (2009).

203. Brian Root, *Statistics and Data in Human Rights Research*, 107 AM. SOC’Y INT’L L. PROC. 65, 66 (2013).

204. *Id.*

205. SIKKINK, *supra* note 32, at 159.

206. Ann Marie Clark & Kathryn Sikkink, *Information Effects and Human Rights Data: Is the Good News about Increased Human Rights Information Bad News for Human Rights Measures*, 35 HUM. RTS. Q. 539, 540 (2013).

information from a country where major human rights abuses are occurring. This lack of information will affect the resulting reports, which will, in turn, affect how researchers code human rights conditions for a particular country into the PTS or CIRI scales.

When the tools and methods for gathering information improve over time, this change can produce inconsistencies in the source material for statistical studies. Better reporting capacity can result in an “information paradox”—that is, something can appear to occur more often or with more intensity over time if it is monitored more effectively than before.²⁰⁷ In an epidemiological context, for example, the introduction of a more accurate method for diagnosing a given disease may result in more documented cases and, accordingly, an increase in the reported infection rate. At face value, the data would give the impression of a worsening health situation. It may simply be, however, that current conditions are no different than previous conditions, or perhaps have even improved. If this scenario is true, then all that has really changed is the enhanced capability to diagnose cases of the disease. Similarly, if local NGOs in a given country augment their capacity to collect information on human rights abuses by, for instance, hiring more staff to conduct more frequent fact-finding interviews, the NGOs may uncover more violations than previously known. This observation may be due to better reporting by the NGOs and may not necessarily be indicative of a deteriorating situation. NGOs may then unintentionally depict a worsening human rights situation in their publicity and outreach.

“Attention bias” can have a similar effect: if the human rights situation in a given country becomes grave, it may attract more focus from human rights advocates and journalists than before the crisis. Even after the crisis abates, the subsequent elevated scrutiny may uncover more human rights violations than were observed—or observable—before.²⁰⁸ Clark and Sikkink noted that even when real improvements occur, countries rated at high levels of repression in PTS and CIRI tend to keep those ratings over time.²⁰⁹

Changes in the nature of the source material itself may also affect the reliability of statistical analysis. For example, a

207. See MARGARET E. KECK & KATHRYN SIKKINK, *ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS* 194 (1998).

208. Clark & Sikkink, *supra* note 206, at 558.

209. Hafner-Burton & Ron, *supra* note 5, at 382–83.

congressional audit of U.S. State Department reports from the early 1980s found that the reports were more lenient toward U.S.-allied violators in several countries as a result of pressure from the Reagan administration. The reports became less biased as time passed, however, which also affected PTS and CIRI coding.²¹⁰ Standards of what constitute “severe violations” have also changed; what may have counted as a moderate human rights violation in the 1970s may be viewed as severe by current standards. These and other information effects may lead quantitative indices like PTS and CIRI to reflect a more pessimistic view of human rights conditions than may be warranted.²¹¹

This latter factor may be at work in studies of repression associated with the democratization process, as discussed *supra* on pages 11–14. In some notable cases, there is an apparent disjuncture in the data between state behavior and state structure. Ron and Hafner-Burton observe that “political democracy and the human rights behavior of individual states are not identical, and the quantitative measures of each are not highly correlated.”²¹² They note that this phenomenon may be partially explained by information effects: “There may . . . be more *reports* of abuse from countries that are in fact *less* abusive, since the less repressive countries often have a freer press.”²¹³ As Sikkink writes, “Increased information and higher standards are both good news for human rights victims, but they can be bad news for data sets and measurement, which try to compare numbers about human rights over time.”²¹⁴

It should also be remembered that the conclusions of quantitative studies are general and probabilistic in nature, rather than true in every instance. Quantitative studies may identify the degree to which *social or political factor A* influences the likelihood of *human rights violation B*, but it does not follow that *violation B* will always occur when *factor A* is present. Qualitative evidence and analysis can often detect contextual improvements in human rights conditions in ways that statistical methods may miss. For example, Clark and Sikkink found that the CIRI ratings for Guatemala were the same in 1982-83 as in 1990. Other evidence, however, including the

210. Clark & Sikkink, *supra* note 206, at 553.

211. *Id.* at 543, 568.

212. Hafner-Burton & Ron, *supra* note 5, at 383.

213. *Id.*

214. SIKKINK, *supra* note 32, at 168.

Guatemalan Truth Commission (1997-99) report, indicates that lethal government repression peaked in 1982-83. In 1982, there were well over 17,000 deaths and disappearances, compared to 598 in 1990. So while personal integrity violations still occurred in Guatemala in 1990, they were less severe and widespread than in the early 1980s.²¹⁵

Even taking these information effects into account, however, quantitative studies can still yield instructive and useful results that enhance understanding of human rights conditions. Qualitative studies can provide crucial context, nuance, understanding, and additional evidence that may not be adequately captured by statistics. Qualitative studies vary greatly in scope and focus, however. They often lack standardized methods of observation and analysis, making comparative work more difficult.²¹⁶ Comparative work can be difficult between statistical studies also, depending on what information gaps exist in the data sets in question. For example, some governments may be able and willing to collect better data than others. This more complete information may make it appear that human rights violations are more prevalent in those countries. The problem may be worse in other countries that do not collect relevant figures—or at least not as thoroughly—but the lack of data makes it difficult to demonstrate by statistical means.²¹⁷

Both qualitative and quantitative methods of study have advantages and limitations. As Sikkink observes, “Some data is better than no data, but not all sources of data are equal.”²¹⁸ An accurate view of a given human rights situation is more likely to emerge from using a variety of information sources and analysis tools. While recent developments in causal research on human rights are positive and illuminating, there are still gaps to fill. As discussed *supra* on pages 22–25, research on violations of economic and social rights lags significantly behind studies on civil and political rights. Economic and social rights cover some of the most basic human needs and require further serious study and analysis.

215. Clark & Sikkink, *supra* note 206, at 557–58.

216. Hafner-Burton & Ron, *supra* note 5, at 382.

217. See SIKKINK, *supra* note 32, at 157 (demonstrating this issue with UN data on global sexual violence).

218. *Id.* at 178.

IV. INTERNATIONAL NORM DYNAMICS

After examining principal causes of human rights violations and compliance, it is useful to examine *how* governments internalize international human rights norms. This issue is a political one as much as it is a legal one. It is one thing for a government to sign and ratify a treaty and quite another to make a sincere effort to uphold treaty obligations. Indeed, the traditional “international relations” model posits one government of a sovereign nation-state negotiating in some way with one or more other governments. These governments interact mainly on security or trade issues between them. Concern over the internal affairs of another country is not a significant factor in this traditional model. Yet the modern backdrop is more complicated. In the decades following World War II, international leaders increasingly challenged the notion that governments have exclusive sovereignty over what happens within their borders. Since then, most countries in the world have signed on to at least one human rights treaty, signaling a public agreement to have their internal conduct scrutinized by external actors. The relatively recent proliferation of human rights NGOs and other non-state actors has prompted a body of scholarship which attempts to discern how these international norms influence state behavior.

In their seminal work, *ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS* (1998), Margaret Keck and Kathryn Sikkink described the growth and impact of transnational NGO coalitions on state and intergovernmental decision-making.²¹⁹ Using the examples of human rights in Latin America, environmental policy, and violence against women, the authors describe how advocacy networks define new global issues and effect change. Human rights advocates do so by winning commitments from key individuals in governments and monitoring the implementation of those commitments. Keck and Sikkink’s “Boomerang Pattern” theory showed how such changes may occur: an NGO in *state A* will work with an NGO in *state B* (or an international NGO) to change *state B*’s foreign policy with the objective of pressuring *state A* to change its domestic practices. Subsequent research has delved further into the nuances of how states internalize

219. See MARGARET E. KECK & KATHRYN SIKKINK, *ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS* ch. 1 (1998).

international norms.

A. INTERNATIONAL NORMS AND DOMESTIC POLITICS

In her pioneering study, *MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS* (2009), Beth Simmons explored the answer to the question: “Why would a government decide to make a commitment to its peers internationally to behave in certain ways toward its own citizens?”²²⁰ Different states may join human rights treaties for different reasons. Often, a state’s decision to ratify (or not) is the product of its political preferences—that is, the ratifying state genuinely supports the content of the treaty and can bind itself with relatively low costs for compliance. For example, “States with strong democratic participation and civil liberties tend to support treaties that reflect those . . . ideals Autocratic regimes have little natural preference for committing themselves to provide expanded rights to their people.”²²¹

For many states, this conclusion is intuitive enough, but the picture becomes more complex when governments with seemingly no predilection for a given treaty’s content ratify it anyway. Simmons labels such governments as “false positives,” which she defines as “states that ratify international human rights agreements but apparently without any intention of trying to come into compliance with their obligations.”²²² False positives appear to be making short-term calculations to deflect international criticism by signing a treaty, but ratification often has unanticipated—and unintended—domestic consequences.²²³

These domestic effects are particularly strong in countries where the political system is in a state of flux—that is, neither a strong democracy nor a stable authoritarian government.²²⁴ Treaties offer domestic advocates an additional legal and political basis on which to make demands on their government.²²⁵ Discussing her findings on ratification of the International Covenant on Civil and Political Rights (ICCPR), Simmons observed that “[G]overnments’ willingness to reduce

220. BETH A. SIMMONS, *MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS* 351 (2009).

221. *Id.* at 353–54.

222. *Id.* at 354.

223. *Id.* at 355.

224. *Id.* at 360.

225. *Id.* at 361.

interference in the free practice of religion was associated with ratification of the ICCPR, but this effect was especially strong in this large, heterogeneous set of [transitional] countries. Even more striking, *only* in these partially democratic or transitioning countries did the ICCPR have any effect on provisions for a civil liberty as important as fair trials. Similarly, the [Convention Against Torture] has had a significantly bigger positive impact in countries in which democracy has had a tenuous foothold.”²²⁶ Simmons notes that ratification also requires states to report to treating monitoring bodies, to which domestic rights advocates can submit shadow reports challenging their government’s version of events.²²⁷

International human rights norms influence states in deeper and subtler ways beyond decisions on treaty ratification. Elkins, Ginsburg, and Simmons found that the Universal Declaration of Human Rights and subsequent treaties informed many of the substantive rights obligations contained in national constitutions around the world.²²⁸ They observed that certain core human rights provisions are the most ubiquitous, including freedoms of expression, religion, and association.²²⁹ Privacy rights and prohibitions on slavery are also widespread.²³⁰ Not all constitutions reflect international norms comprehensively, although the average number of rights contained in constitutions has increased over time along with the development of international human rights treaties.²³¹

A large number of constitutions crafted in the years immediately following 1948 incorporate many provisions of the Universal Declaration of Human Rights. The Covenant on Civil and Political Rights and the Convention Against Torture exhibited similar influence in the time periods surrounding their drafting or, and sometimes including, entry into force. “Constitution writers working under the umbrella of international rights treaties are more likely to pattern their documents after the international instruments,” write Elkins et al., “but they are even more likely to do so if their country has

226. *Id.* at 360.

227. *Id.* at 364.

228. See Zachary Elkins et al., *Getting to Rights: Treaty Ratification, Constitutional Convergence, and Human Rights Practice*, 54 HARV. INT’L L.J. 61 (2013).

229. *Id.* at 73.

230. *Id.* at 73–74.

231. *Id.* at 71.

ratified the instrument. These findings are consistent with a view in which international instruments provide a focal set of norms for constitution makers.”²³² The authors argue that ratification and constitutionalization of rights provisions improve domestic human rights practices by increasing the likelihood of enforcement.²³³ They found this observation especially applies where there is greater opportunity for domestic political action.²³⁴

B. “ACCUULTURATION” AND HUMAN RIGHTS

Evidence also suggests that states are motivated to adopt human rights norms in part because other countries do so, which Goodman and Jinks call “acculturation.”²³⁵ They define acculturation as “the general process by which actors adopt the beliefs and behavior patterns of the surrounding culture. More specifically, this mechanism induces behavioral changes by pressures to assimilate—some imposed by other actors and some imposed by the self.”²³⁶ This process is distinct from persuasion in that it operates less explicitly and focuses on the relationship between norm adopters and other actors, not the content of the norm itself.²³⁷ On a global level, states adopt international norms, including human rights, partly in response to a sort of macro-level peer pressure—*e.g.*, a state endorses a human rights norm adopted by other countries with which the state shares intergovernmental organization membership. Conversely, states that are more isolated are more likely to eschew global norms.²³⁸

One example of acculturation arises when a country adopts a norm for which it does not necessarily have a functional need.²³⁹ An example of this phenomenon is the global norm of constitutional governance structure. As Goodman and Jinks write,

232. *Id.* at 91–92.

233. *Id.* at 92.

234. *Id.* at 64.

235. See RYAN GOODMAN & DEREK JINKS, *SOCIALIZING STATES: PROMOTING HUMAN RIGHTS THROUGH INTERNATIONAL LAW* (2013).

236. *Id.* at 4.

237. *Id.* at 26.

238. *Id.* at 46–47, 68–69. One caveat that Goodman and Jinks add is that acculturation can diffuse both “good” norms, like human rights, and “bad” norms, such as repressive tactics. Acculturation is a causal process, not an outcome. *Id.* at 74, 137.

239. *Id.* at 43.

A quick survey of the globe shows that national constitutions exhibit remarkable isomorphism across a range of rights-related dimensions Some current states . . . resemble early Westphalian states more than they resemble their twenty-first-century counterparts. Yet almost all current states still elect to have a written constitution Nearly every constitution adopted since the Universal Declaration of Human Rights . . . has contained some set of rights provisions.²⁴⁰

Kathryn Sikkink's groundbreaking study of transitional justice norms provides a compelling example of regional acculturation and the interaction between international norms and domestic politics.²⁴¹ Sikkink charts the spread of the increasingly prevalent norm that government leaders responsible for grave human rights violations should be held criminally accountable for their actions. She observes that Latin American countries have conducted the bulk of domestic human rights trials, carrying out 55% of such trials between 1979 and 2009.²⁴² It was Argentina's prosecution of ex-junta leaders in the 1980s that inspired numerous other domestic prosecutions. Sikkink writes,

[W]hy were the Argentines more successful in diffusing their model [of transitional justice] than the Greeks or the Portuguese had been? First, Argentina was operating in a region where dozens of other countries were undergoing transition at the same time Second, the Argentine human rights movement had inserted itself more firmly within the consolidating international movement.²⁴³

V. CONCLUSION

Valuable perspectives on human rights causality come from a variety of academic disciplines and practical expertise. The present article has covered many studies, methodological tools, and sources of data by which to measure and evaluate human

240. *Id.* at 60–61.

241. *See generally* KATHRYN SIKKINK, *THE JUSTICE CASCADE: HOW HUMAN RIGHTS PROSECUTIONS ARE CHANGING WORLD POLITICS* (2011).

242. *Id.* at 21–22.

243. *Id.* at 88.

rights conditions. No one study, tool, or dataset is a panacea. Practitioners and scholars should avail themselves of a large analytical “toolbox.” They should also be discerning, considering which methods and sources of evidence are most appropriate to help answer their research questions. Uncritically accepting the findings of one type of study over others risks blinding scholars and practitioners to other valuable knowledge. When one only has a hammer, everything looks like a nail.²⁴⁴

It is worth now revisiting one of this article’s introductory questions: why should scholars and practitioners study the causes of human rights violations? What is the use in doing so? To address a complex problem with any success, one must first understand it. As the introduction argues, knowing the causes of rights violations can improve responses to and help prevent such abuses, as well as improve the effectiveness of existing mechanisms and efforts. Understanding causation shines light on the *conditions* in which human rights compliance can thrive. For example, countries with independent judiciaries tend to experience less repression, especially when combined with multiparty elections and limitations on executive power. In this context, courts can serve as a bulwark against repression by imposing legal and reputational costs on political authorities who use excessive force. With this understanding in mind, human rights leaders can support efforts to strengthen a country’s judicial institutions. Possible actions and policies to achieve this end include: enacting constitutional protections for judicial independence and authority; training judges in human rights norms; mobilizing public pressure on political leaders to respect court decisions; ensuring all parties to a case have adequate legal representation; and investing in sufficient courtroom facilities.

Causal research can inform future investigations and enhance predictive capabilities, such as the detection of warning signs of a potential human rights crisis. For example, if a national leader compares a certain ethnic group within his or her country to vermin, human rights advocates can identify this dehumanizing language as a warning sign of a potential violence toward members of that group. With this understanding, advocates can examine what additional structural factors—such as competition for scarce resources—may lead to an outbreak of mass violence. Human rights leaders can mobilize international

244. ABRAHAM H. MASLOW, *THE PSYCHOLOGY OF SCIENCE* 15–16 (1966).

pressure to push the government to stop using dehumanizing language and rescind discriminatory policies. In the long-term, advocates can encourage governments to address larger structural factors through equitable socio-economic policies.

While understanding causation is an integral part of successful human rights advocacy, causal research can also serve a persuasive function. In the past few years, populist, nationalist, and authoritarian political forces in the United States, Europe, the Philippines, and elsewhere, pose a renewed direct challenge human rights. In the U.S., for example, President Donald Trump was elected on a nationalist, anti-immigrant platform, receiving public support from white supremacist leaders. As a result of such developments, the human rights movement is put in the position of having to defend its basic principles in a credible way. As Philip Alston observed in his recent article on human rights and populism, “[W]e need to acknowledge the need to devote more time and effort to being persuasive and convincing, rather than simply announcing our principles as though they were self-evidently correct and applicable.”²⁴⁵

Causal research can help human rights advocates make the case for policies that contribute to the promotion and protection of human rights. The ability to explain the conditions in which abuses thrive can also aid in persuading stakeholders that human rights advocates’ policy proposals are credible. These explanations may also convey a sense that human rights violations are solvable or at least manageable problems. This essential message, that human rights conditions can and should improve, may sustain the human rights movement in the face of formidable challenges.

245. Alston, *supra* note 94.