

Constitutions in World Society: A New Measure of Human Rights

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INTRODUCTION

It is well known that constitutions, which are valorized as national statements of unity, values, and purpose, are not conceived of nor written by domestic actors alone. Constitution-making relies heavily on international legal traditions and archetypical imageries of the source and purpose of law (Arjomand 1992; Elkins, Ginsburg, & Simmons 2013; Go 2003; Law 2016; Law and Versteeg 2011; Resnik 2008). Beyond cultural constructions of law, it is also apparent that there exists a technical consulting class, exemplars of constitutions, international governmental organizations, and civil society actors who stand ready to assist with and even write these putatively sacred national documents (Elkins, Ginsburg, & Melton 2009; Halliday & Shaffer 2015). We thus argue that constitutions should be considered global-transnational documents as much as national ones.

Specifically, how constitutions treat legal rights reveals global-transnational imprints. Conceptions of rights have undergone a striking evolution across the centuries – from the naturally God-given to the rewards of citizenship in a polity, and now an inalienable part of individual humanity (Lauren 2003; Stacy 2009). A striking aspect of this development is the sanctification of personhood and a widely legitimate image of society built upon individuals rather than corporate groups (Frank & Meyer 2002; Meyer & Jepperson 2000). This has in no small part been accompanied and accomplished by the growth of what sociologists term “world society” – the network, discourses, and institutions of transnational actors and ideologies that fill the vacuum of a non-existent global state (Meyer, Boli, et al. 1997). Human rights, once absent from law, now fill the conceptions and operations of nearly all aspects of nation-state institutions (Cole 2012; Elliott 2007; Koo & Ramirez 2009; Suárez 2007). From

our perspective, human rights may, in fact, constitute a coherent transnational legal order (TLO) by itself (see Halliday & Shaffer 2015). Its expression in constitutions is thus as much a product of global norms as local actors.

Our previous work has documented global influences on the incorporation of human rights language in constitutions (Beck, Drori, & Meyer 2012). Here, we build on this idea and introduce a measure of constitutional human rights that incorporates the discourse on rights as well as specific legal provisions (see also Elkins, Ginsburg, & Simmons 2013). The measure is based on the Universal Declaration of Human Rights and cross-national, longitudinal data on constitutions. Our examination of this measure demonstrates that it is robust, as well as explanatory of variation in constitutional human rights. We first discuss the neo-institutional world society perspective on the development of human rights. Then, we introduce our new measurement of constitutional human rights and replicate our previous study to demonstrate its robustness. Our findings confirm that constitutions display striking world influences in both language and law, and can be fruitfully considered supra-national documents.

HUMAN RIGHTS IN WORLD SOCIETY

The idea of universal human rights is quite old. Versions are found in ancient Greek, and ancient Chinese, thought (Risse & Meyer 2016). These ideas tend to be sketchy, bloodless, and little worked out: the philosophers focused much more on questions of rights and justice within the political community, not in an imagined human world. Notions of universal rights took on more meaning in western Christendom, with the understanding that everyone – women, children, and “savages” – had souls giving them special and potentially equal standing, sacralized and organized in a universal Church. Secularization with the Enlightenment turned the more transcendental soul into a person – real on more and more dimensions – and broke up the Church into partially-secular national-states with ultimate authority to be universally respected (e.g., Anderson 1991; Bendix 1978; Nettl 1968).

Thus the main focus, in the literature on rights, has been on the rights of citizens in national states, not conceptions of more universal human rights. Following Marshall (1964), a picture of constantly expanding ranges of citizenship rights arises. The expansion occurs on several dimensions. First, more and more citizenship rights are developed – from civil to political to socio-economic, and now to psychological and cultural rights (Boli 1987; Frank & Meyer 2002; Go 2003; Thornhill 2008). Second, rights spread around the world in standardized ways (Anderson 1991; Meyer, Boli, et al. 1997). And

third, citizenship rights increasingly are globalized: they come under the scrutiny of more and more supranational bodies, whose principles of soft law increasingly take on the appearances of rather hard law (e.g., in the European Union, but also many other structures).

All these changes refer to citizenship rights, though as we note above they are increasingly globalized. They appear with great and increasing regularity in national constitutions, which incorporate increasing ranges of them (Boli 1987), with increasing detail (e.g., Boli-Bennett & Meyer 1978 on the recognition of children). In some of the nineteenth-century constitutions – including the American one – rights are seen as prior to the national state, and rooted in some sort of natural or religious order. More commonly in later periods with the high period of the nation-state system, citizenship rights are seen as derived from the majesty of the state (Hooper 1988), with citizenship as the primary identity of the person.

Increasingly, after the late nineteenth century, explicitly supranational notions of human rights developed – and exploded later in the twentieth century: the story is well established (Lauren 2003; Stacy 2009). World War I was one trigger, and imagery of human rights over and above national citizenship were clearly part of the culture around the League of Nations. But the Great Depression, World War II, and the mass human destructions of the period, were all seen as reflections of the disasters of nationalism gone wild. Nuclear warfare, a Cold War, and a huge wave of decolonization reinforced the point. In some readings, the dominance of the radically liberal and individualist United States played an important role.

In any case, aggressive notions emerged that the individual human, not the national state, was the locus of universal rights. In the Atlantic Charter, imperialist Britain (and racist United States) celebrated rights principles neither of them would institutionalize at home: later on the Soviet Union joined them. And the ideas took hold in the world at large: so against some resistance from the great powers, the 1948 United Nations Declaration of Human rights appeared (Lauren 2003) and was dramatized in world attention.

Through the subsequent period, and to the present, the expansion of human rights norms in global society has been astonishing. Elliott (2007, 2011, 2014) tracks the numbers of international instruments that assert human rights – the growth has been rapid. Also expanding, he finds, are the ranges of rights asserted as universal human rights: political, social, cultural, religious, economic, and so on. Thus studies note the expansion of asserted human rights in education (Chabbott 2003; Suárez 2007), health (Inoue & Drori 2006), employment (Risse 2009), and many other areas.

The long history of growth in rights is depicted in a number of historical reviews (Lauren 2003; Stacy 2009), which tend to emphasize long-term continuity. Moyn (2010) takes issue with this perspective, emphasizing the discontinuity between citizenship rights as rooted in the nation-state and the human rights of recent decades as reflecting a dramatic transcendence of the state and re-asserting the universal bases of human rights. And indeed, there is a clear distinction between rights as defined in the positive law of national states and similar rights as seen as some sort of “natural law” based more universally. In our previous work, we noted that, in typical national constitutions, rights of citizenship take on clear legal forms, and are developed in legalized discussions, while human rights tend to be asserted more grandly in preambles and other depictions of national identity in universalized frames. Absent a world state organization, this seems inevitable: the identity-defining aspects of national constitutions refer to a wider moral order, while the positive laws and rights asserted treat the national-state itself as a basis.

Overall, there is a great deal of continuity in the substantive rights seen variously as nationally-based or as human rights. And there is an enormous expansion in such rights, worldwide, over a long period of time. But it is important to see the current re-grounding of these rights as overriding the former doctrines of national sovereignty as an important shift. The weakening of the primordial status attributed to the national state as core actor in human history is clearly linked to the expanded rights attributed to individuals. It is also linked to changes in the rights involved: as Elliott (2007, 2014) shows, the shift to modern human rights involves a shift in conceptions of rights from entitlements to empowerments. The human, apparently, is able to make a wider range of legitimate choices than is the citizen.

Further, the groups seen in the international instruments as entitled to pursue their own rights and the rights of others expand greatly over time. It is not simply the obligation of nation-state signatories to support universal rights: It is the obligation of all of us. It now, thus, becomes more and more legitimate for all sorts of groups to penetrate the sovereign boundary of a deviant national state in support of the rights of its citizens – now seen in their universal status as humans.

Beyond international treaties and other instruments, universal human rights expand in other arenas as well. Relevant international organizations (both governmental and especially non-governmental) have grown rapidly (Hafner-Burton 2013; Hafner-Burton, Tsutsui, & Meyer 2008; Tsutsui & Wotipka 2004; Wotipka & Tsutsui 2008). In Halliday and Shaffer’s (2015) terms, human rights is a clear case of a transnational legal order, where norms, actors, and institutions align to promote a particular set of

practices. Obviously, the expansion of global human rights norms vastly exceeds the capacity (and perhaps the desire) of extant social and political systems to implement them. It is well understood that national-states that support and adopt the relevant norms are often unlikely to implement them (Hafner-Burton, Tsutsui, & Meyer 2008; Hathaway 2002; Vreeland 2008). The term “decoupling” from sociological neo-institutional theory is often employed to describe the situation (Meyer 2010). However, the same line of theorizing suggests that widespread agreements on norms like human rights are likely to have diffuse long-term effects on all sorts of participants in world society, entirely over and above their limited short-term effects on adopting entities. An emergent literature looking for long-term and diffuse effects produces findings supportive of such ideas (Cole 2013; Cole & Ramirez 2013).

Questions of implementation entirely aside, it is entirely clear that the global human rights movement has had dramatic effects on the normative and policy frames of national states and other organizations. Human rights treaties are ratified around the world, and both public and private organizations incorporate them in their formal schemes and policies. All sorts of social movements arise, asserting their rights to assess events around the world (perhaps in countries protagonists could not find on their maps) in terms of human rights principles.

Our earlier study (Beck, Drori, & Meyer 2012) provided evidence on the penetration of global human rights norms into national constitutions over time, showing clear influences of these norms, especially in more recent periods. In the present study, we examine the situation with much better data, and much more sophisticated measurement.

One can theorize the situation from several points of view. More phenomenological institutionalisms suggest that nation-state identities, including constitutional structures, are themselves abstract models, and are built up and supported from frames in their environments (Meyer 2009; Meyer, Boli, et al. 1997). From this point of view, it is not surprising that a world cultural movement finds reflections in the identities claimed by subunits. More traditionally functionalist lines of thought see the expanded status of the human individual as a natural product of socio-economic development, and thus characterizes the current period. Extensions of such ideas might imagine generalizations of such effects in a period in world society in which goals of socioeconomic development are deeply institutionalized in world political and economic systems. But most versions of this general line of thought would predict great differences among countries differing in developmental status in their adoption of human right principles.

More realist institutionalisms might imagine world human rights norms as constructed in world power centers (obviously including the United States, but also its putative spin-offs in the World Bank and other structures), and as diffused through a variety of incentive structures. It is, however, difficult to imagine why raw centers of power would have such goals – dominating the world is not facilitated by widespread human rights norms, it would seem (see, e.g., Ritter 2015).

Theoretical issues aside, our goal here is less to examine any hypotheses about the issue than to examine, with improved data and measures, the strength of the impact of the global human rights system on national constitutional structures. We agree here with Ginsburg (Chapter two this volume) that constitutions represent a process through which different groups and actors advocate for particular norms and interests. In this sense, constitutions can be an expression of underlying global norms and transnational legal orders even as their very existence is transnationally normative. Constitutional documents are thus another vehicle for the spread and institutionalization of the cultural content of modern world society.

MEASURING HUMAN RIGHTS IN CONSTITUTIONS

Previous quantitative work on the appearance of rights in national constitutions has employed two different strategies. First, scholars have recognized that constitutions are discursive and symbolic documents as much as they are legal ones. To account for this, Law (2016) uses insights from computational linguistics to examine the preambles of constitutions as they tend to be expressions of national values, rather than merely law. More simply, Beck, Drori, and Meyer (2012) measure rights discourse by the number of times the phrase “human rights” is used within a document. A second strategy has been to examine the provisions of constitutions themselves. An early effort along these lines was undertaken by John Boli (1987; see also Boli-Bennett & Meyer 1978). More recently, data collected by Benedikt and Versteeg (2011) have been used to quantify rights within constitutions and their global spread (e.g., Law & Versteeg 2011) and Elkins, Ginsburg, and Simmons (2013) demonstrate that the Universal Declaration of Human Rights provided a menu of rights options available to constitution drafters.

Quantifying rights by symbolism and practicality are not mutually exclusive strategies. We thus construct a measure of human rights in constitutions that reflects both discursive and legal inclusions of human rights. To do so, however, what human rights actually are must be defined with

care, particularly since numerous studies have documented the incorporation of older rights models – natural rights, citizen rights, etc. – into the sacred canopy of contemporary human rights frames (e.g., Beck, Drori, & Meyer 2012; Lauren 2003; Law & Versteeg 2011; Moyn 2010; Stacy 2009). Even without delving deeply into definitions of human rights, it is apparent that what constitutes a human right is global – that is broadly shared across the world – and transnational – existing outside above the laws of any one country. Global and transnational articulations of human rights are undertaken by international organizations, technical classes of legal experts, and civil society actors. While these actors interact in and influence a variety of domains, international governmental organizations are often taken to be key global-transnational sites of human rights production (Meyer, Boli, et al. 1997). We thus follow previous work by emphasizing the special role of the United Nations and its treaty regimes in the development of human rights (Cole 2005, 2009; Elkins, Ginsburg, & Simmons 2013; Elliott 2014; Hafner-Burton & Tsutsui 2005; Sandholtz 2015).

Among the articulations of human rights produced by the United Nations, the Universal Declaration of Human Rights has a special place. Not only is it the first explicit articulation of human rights for the post-World War II states system; it is also widely known and legitimated by actors of the global-transnational system. It is the most translated document in the modern world and provides the discursive and legal basis for international human rights law. As such, it provides a baseline description of what a human right is, even as subsequent treaties have extended and elaborated its protections.¹

We match the discourse and provisions of the UDHR, including its preamble and articles, to data collected by the Comparative Constitutions Project (Elkins, Ginsburg, & Melton 2014). The CCP data, while not complete nor the only cross-national database of constitutions, provide a systematic coding of constitutional provisions over a lengthy period of time for the entire world. We are thus able to generate measures for over eight thousand country-year observations. Two coders examined the UDHR separately, identifying variables in the CCP data that matched the discourse of the Declaration as well as its specific provisions.² Sixty-five different variables in the CCP were identified as being present in the UDHR, which covers over 70 percent of the text of the

¹ Elkins, Ginsburg, and Simmons (2013) also use the UDHR to examine how treaty ratification affects constitutions.

² The CCP data includes codings of general statements such as “Does the constitution refer to the ‘dignity of man’ or ‘human dignity?’” as well as specific law such as “Does the constitution provide for freedom of assembly?”

Declaration and 31 percent of variables that cover rights in the CCP.³ This is in line with previous work that finds that measureable human rights, even as they have expanded, are still a subset of all possible rights (Beck, Drori, & Meyer 2012; Law & Versteeg 2011). Table 4.1 lists the variables and corresponding Declaration text identified.

The CCP variables are then combined into a sixty-five-point index of human rights discourse and law in national constitutions. A constitution is coded as having a right or phrase present if the dataset codes it affirmatively, including rights that are limited in some fashion. In the few cases of CCP codes of “other” requiring explanation, the right is treated as not being present. The resulting index covers 8,141 country-year observations from 1789 to 2013. The index ranges from zero – in 17 cases where no UDHR rights are found – to a high value of fifty-eight, with a mean score of twenty-five (SD = 12.63) over the entire time period.

Figure 4.1 presents the mean score by year on the UDHR index. Not surprisingly, the average global inclusion of human rights increases over time, with notable jumps after the Declaration’s 1948 adoption and the collapse of communism in 1989. This suggests that the index is capturing the general expansion in human rights across the last two centuries, even when they had yet to be conceived as such.

Figure 4.2 shows the geographic spread of UDHR rights in 2013. The countries with the highest scores appear to be more peripheral states, such as in South America, Sub-Saharan Africa, and Eastern Europe. Older democracies, such as in North America, Western Europe, and the British Commonwealth have relatively lower scores. This may seem counterintuitive at first, but previous research has found that older, more established constitutions are less likely to incorporate human rights discourse even as they are amended (Beck, Drori, & Meyer 2012). Newer constitutions, particularly those of societies that are more susceptible to international influence, are more likely to adopt human rights talk. This pattern is borne out by consideration of the top and bottom ten countries on the UDHR scale (see Table 4.2). In 2013, Ecuador scores the highest, with fifty-eight of sixty-five possible human rights dimensions, and has a recent constitution from 2008. On the other hand, the Australian constitution has only six human rights indicators. Australia’s constitution dates to 1901 and has only been amended eight times, most recently in 1977. The initial

³ Of the text of the Declaration not covered, only two articles dealing with rights have no analogue in the CCP data (Articles 6 and 28). The number of possible CCP variables is calculated from its sections on voting, criminal procedure, rights, and education.

TABLE 4.1. *CCP Variables and UDHR Coverage*

Variable Name	Variable Description	UDHR Article(s)
ACHIGHED	Equal access to higher education	Article 26.1
ASSEM	Freedom of assembly	Article 20.1
ASSOC	Freedom of association	Article 20.1
ASYLUM	Provisions of stateless, refugees, or asylum	Article 14
CITREN	Right to renounce citizenship	Article 15.2
CIVIL	Meritocratic recruitment of civil service	Article 21.2
CRUELTY	Prohibits cruel, inhuman, or degrading treatment	Article 5
DEVLPEERS	Right to individual self determination or personality	Article 22
DIGNITY	Refers to dignity of man or humans	Preamble; Article 1; Article 22; Article 23.3
DUEPROC	Due process	Article 10
EDCOMP	Compulsory education	Article 26.1
EDFREE	Free education	Article 26.1
EDUCATE	Provisions concerning education	Article 26
EQUAL	Equality before law, rights or non-discrimination	Article 7
EQUALGR_1	Equality of gender	Article 2
EQUALGR_3	Equality of country of origin	Article 2
EQUALGR_4	Equality of race	Article 2
EQUALGR_5	Equality of language	Article 2
EQUALGR_6	Equality of religion	Article 2
EQUALGR_10	Equality of color	Article 2
EQUALGR_11	Equality of creed/beliefs	Article 2
EQUALGR_12	Equality of social status	Article 2
EQUALGR_13	Equality of financial/property ownership	Article 2
EQUALGR_16	Equality of parentage	Article 2
EXPOST	Prohibits of ex post facto punishment	Article 11.2
EXPRESS	Freedom of expression or speech	Preamble, Article 19
FAIRTRI	Right to fair trial	Article 8, Article 10
FINSUP_1	General or financial support for elderly	Article 25.1
FINSUP_2	General or financial support for unemployed	Article 25.1
FINSUP_3	General or financial support for disabled	Article 25.1
FINSUP_4	General or financial support for children, orphans	Article 25.2
FNDFAM	Right to found a family	Article 16.1
FREEMOVE	Freedom of movement	Article 13
FREEREL	Freedom of religion	Article 18
HABCORP	Right to habeas corpus	Article 9
HEALTHHR	Right to health care	Article 25.1

TABLE 4.1. (continued)

Variable Name	Variable Description	UDHR Article(s)
INALRGHT	Certain rights are inalienable or inviolable	Preamble
INTPROP_1	Intellectual property rights for patents	Article 27.2
INTPROP_2	Intellectual property rights for copyrights	Article 27.2
INTPROP_3	Intellectual property rights for trademark	Article 27.2
INTPROP_4	Intellectual property rights general reference	Article 27.2
JOINTRDE	Right to form or join unions	Article 23.4
LESIURE	Right of rest or leisure	Article 24
LIBEL	Right of protection from libel	Article 12
LIFE	Right to life	Article 3
MARRIAGE	Right to marry	Article 16.1
MATEQUAL	Matrimonial equality	Article 16.1
OCCUPATE	Right to choose occupation	Article 23.1
OPINION	Freedom of opinion, thought, or conscience	Article 18
OVERTHRW	Right to overthrow government	Preamble
PRESINOC	Presumption of innocence	Article 11.1
PRESS	Freedom of the press	Article 19
PRIVACY	Right to privacy	Article 12
PROPRGHT	Right to own property	Article 17.1
PUBTRI	Generally requires public trials	Article 11.1
REMUNER	Right to just remuneration	Article 23.2, Article 23.3
RULELAW	General statement about rule of law	Preamble
SCIFREE	Right to enjoy benefits of scientific progress	Article 27.1
SHELTER	Right to shelter or housing	Article 25.1
SLAVE	Prohibits slavery, servitude or forced labor	Article 4
SOCECON	Uses words (socio-)economic rights	Article 22
SOCSEC	Refers to social security of society or nation	Article 22
STANDLIV	Right to standard of living	Article 25.1
TORTURE	Prohibits torture	Article 5
VOTEUN	Universal adult suffrage	Article 21.3

evidence thus suggests that the UDHR scale is capturing what other previous measures of human rights language in constitutions did.

The CCP data also provides the number of words present in the rights section of a constitution, which allows for consideration of the extent of overall rights discourse. Rights can be well articulated and extensively elaborated, or given only cursory attention. Over the entire sample, rights sections on average

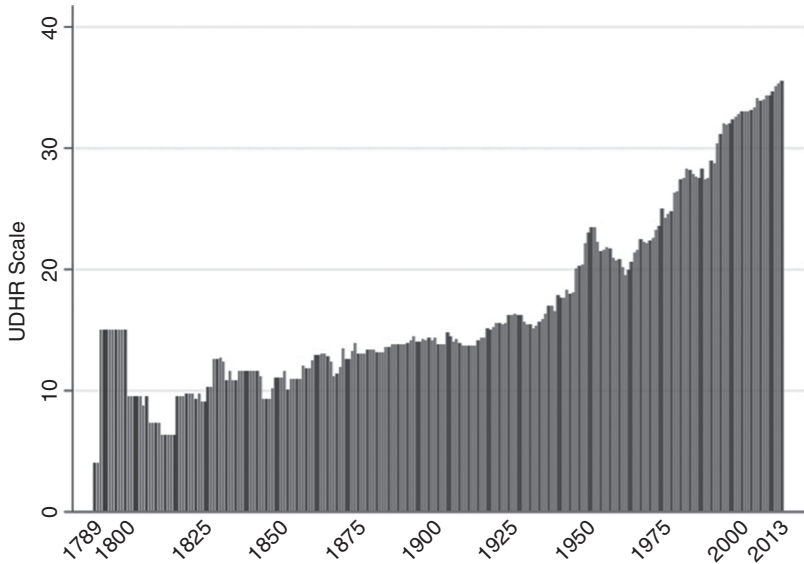


FIGURE 4.1: Average Human Rights in Constitutions by Year

are 2599 words, with a large standard deviation of 2528. This ranges from only forty-four words in a rights section as in the case of Thailand’s 2006 constitution, to 15,799 words as in Mexico’s current constitution. As with human rights, the number of words devoted to explaining rights expands over time. Throughout most of the nineteenth century, the average articulation of rights took less than a thousand words. By 2013, the average constitution devoted 3,624 words to rights. Geographically, in 2013, rights seem to be most extensively discussed in Latin America and least present in island states like Micronesia and Vanuatu, as well as non-democratic regimes like Bhutan, Kuwait, and Laos. The elaboration of rights in general is used below as the basis for comparison to global-transnational influences on human rights.

GLOBAL-TRANSNATIONAL INFLUENCES ON CONSTITUTIONAL HUMAN RIGHTS

A purpose of this study is to evaluate the robustness of a measure of constitutional human rights – the UDHR scale – and how it can be used to examine transnational influences on the constitution-making process. To do so, we build on our prior work on human rights language in constitutions (Beck, Drori, & Meyer 2012). This previous study examined the discourse of human rights in constitutions of the world in 2005 and found statistically significant



FIGURE 4.2: Geography of UDHR Scale in 2013

TABLE 4.2 *Top and Bottom Ten Countries by UDHR Scale, 2013*

Top 10		Bottom 10	
Country	UDHR Provisions	Country	UDHR Provisions
Ecuador	58	Liechtenstein	21
Venezuela	55	Monaco	21
Armenia	55	United States	21
Portugal	55	Luxembourg	18
Bolivia	55	Comoros	17
Serbia	54	Netherlands	16
Ethiopia	53	Singapore	14
Albania	51	Denmark	14
Angola	51	France	10
Azerbaijan	50	Australia	6
Turkey	50		
Ukraine	50		
World Mean	35		

support for the argument that the founding era of a constitution mattered for human rights inclusion above and beyond state-centered and international processes. In the remainder of the present study, we consider whether these results can be replicated using the new measure of human rights language and provisions drawn from the Comparative Constitutions Project dataset.

Cross-National Data on Countries and Constitutions in 2005

The primary dependent variable used is the UDHR index, described above. For secondary regression analyses, we use the number of words present in the rights section of a constitution as coded by the CCP. Controls and independent variables are drawn from Beck, Drori, and Meyer (2012), which contains further details about coding and measurement. Table 4.3 presents descriptive statistics for the variables included in regression analyses. All measures are as of 2005, including the dependent variables, which replicates the cross-sectional design of our earlier study.

In our analyses, we control for aspects common to cross-national research: population size; gross domestic product per capita; and international trade. In addition, qualitative consideration of constitutions suggests that a history of political violence may also affect the adoption of human rights. We also control for the length of constitution, as longer constitutions may be more likely to elaborate specific human rights, and the age of the last amendment – as more

TABLE 4.3 *Descriptive Statistics of Variables Used in Analysis, 2005*

Variable	Mean	S.D.	Min	Max
UDHR scale	35.69	10.80	6	55
Length of rights section	3221.17	2676.18	424	13404
Length in pages	65.60	106.12	11	1210
Years since amendment	8.55	7.81	1	53
Population (ln)	16.23	1.48	13.09	20.99
GDP per capita (log)	3.40	.73	2.01	4.82
Trade/GDP	90.22	48.72	26.65	448.28
History of political violence	.36	.48	0	1
Regime age in years	25.07	31.47	0	196
Regime democracy score	3.73	6.41	-10	10
Political terror scale score	2.62	.99	1	5
Post-communist	.19	.39	0	1
N of HR treaties signed	5.67	1.18	2	7
INGO memberships (log)	2.83	.44	1.53	3.61
Global HR instruments	82.50	47.16	0	147

frequently amended constitutions may be more likely to reflect contemporary understandings of rights. In addition to these controls, we present indicators for three sets of explanations on constitutional variation: regime characteristics, international linkages, and the extent of the global-transnational human rights field.

First, to assess regime-specific effects on constitutions, we include measures for the age of a regime, its level of democracy, the extent of its use of political terror, and whether or not the country is post-communist. For international linkages, we include two measures. As international law may influence constitutional law, we estimate the effect of the number of core human rights treaties signed as of 2005, and an indicator of the embeddedness of a country in world society more generally – international non-governmental organization memberships within a society. World society scholars commonly capture national membership in the transnational system with this latter measure. Finally, our key independent variable reflects founding era effects in force at the time of a constitution's initial adoption – the global cumulative number of human rights instruments recognized by the United Nations (see Elliott 2011). The measure reflects not only international human rights law, but also transnational discourse and legitimization of human rights globally.

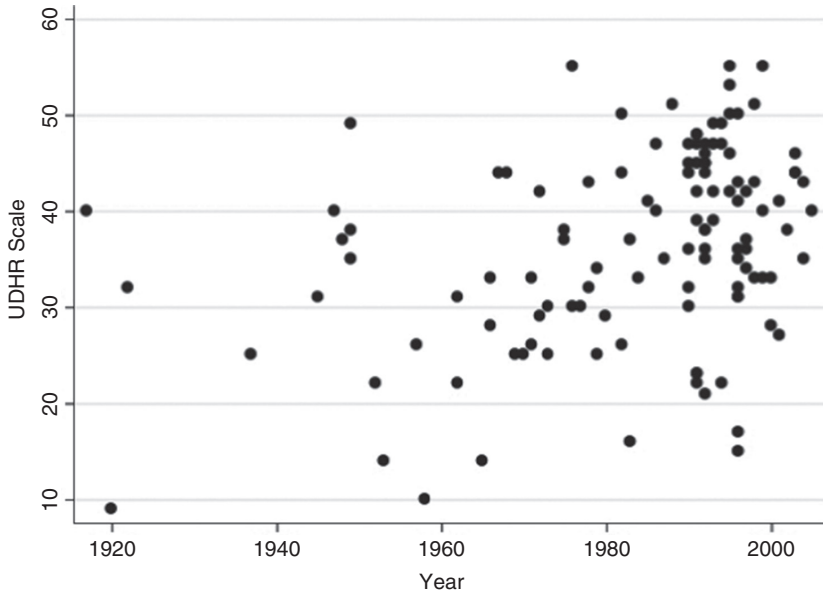


FIGURE 4.3: UDHR Scale and Year of Constitution

Results of Cross-National Analyses

Our primary argument is that constitutional human rights reflect global-transnational processes. As the transnational human rights regime and frame has grown in scope and legitimation, national law is more likely to incorporate understandings of the individual as the fundamental unit of society and personhood as sacred. We argue further that this process is unique to those rights conceived of as human rights. Thus, legal rights in general will not reflect the same transnational influences. The time in which a constitution is adopted is thus key – constitutions reflect the global-transnational environment at the time of their writing as much as national context.

Figures 4.3 and 4.4 present scatterplots of human rights language and provisions by the year of a constitution and the extent of the transnational human rights regime. For interpretability, the presentation is limited to constitutions written after 1914. Upon examination, it is clear that the number of UDHR provisions present in a constitution tracks time rather closely. More recent constitutions tend to have higher scores on the human rights index, and older ones lower. Not surprisingly, the relationship is statistically significant ($\beta = .46, p < .001$). The UDHR index also tracks the number of human right instruments at the time of writing (see Figure 4.4). This relationship is also

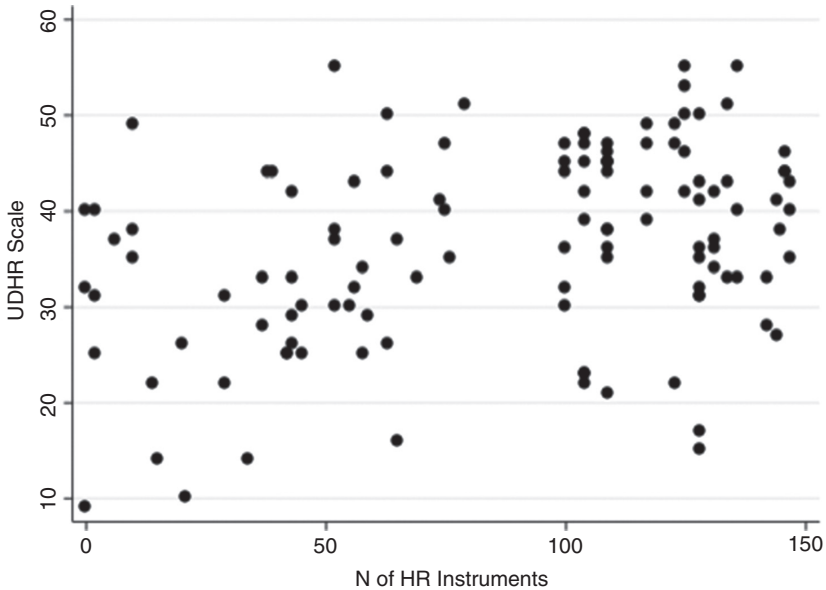


FIGURE 4.4: UDHR Scale and Human Rights Regime

statistically significant with a similar effect as the year of constitutional adoption ($\beta = .43, p < .001$).

In contrast, there is less of a relationship between the length of the rights section and the year of constitution and the transnational human rights environment. Figures 4.5 and 4.6 present scatterplots of the number of words devoted to rights in a constitution by year and number of human rights instruments. While there are increases in length along both axes, bivariate correlation shows that the relationships actually trend in a slight negative direction, and neither is statistically significant. In other words, the amount of attention paid to rights does not appear to be caused by founding era effects, unlike human rights.

To examine these trends systematically, we employ multivariate regression analyses (see Table 4.4). Model 1 in Table 4.4 presents the results from Beck, Drori, and Meyer (2012) that used human rights mentions in a constitution for comparison. Models 2 and 3 examine the new UDHR index of human rights and the number of words devoted to rights respectively. For each model, we present only the results of all independent variables and controls; partial models are available from the authors upon request. Given different configurations of missing cases for each dependent variable, the sample size differs across models.

TABLE 4.4 *Results of Multivariate Regression of Rights Measure, 2005*

	Model 1: Beck et al. 2012	Model 2: UDHR Scale	Model 3: Length of Rights Section
Length in pages	.008* (.004)	.065** (.022)	.015*** (.002)
Years since amendment	-.037 (.019)	-.085 (.102)	.005 (.007)
Population (ln)	.124 (.107)	.774 (.700)	.015 (.059)
GDP per capita (log)	.271 (.224)	.940 (1.712)	.111 (.122)
Trade/GDP	-.005 (.003)	-.018 (.016)	-.001 (.001)
History of political violence	-.340 (.236)	-1.858 (1.542)	-.039 (.119)
Regime age in years	-.014** (.005)	-.091* (.039)	-.004 (.003)
Regime democracy score	.035 (.025)	.097 (.143)	.033** (.010)
Political terror scale score	.329* (.148)	.745 (1.00)	.008 (.088)
Postcommunist	.093 (.283)	9.716*** (1.733)	.199 (.133)
N of HR treaties signed	.246* (.114)	1.630* (.683)	.151** (.051)
INGO memberships (log)	-.423 (.344)	-3.616 (2.157)	-.160 (.193)
Global HR instruments	.010*** (.003)	.049* (.021)	.001 (.001)
Constant	-2.975 (1.869)	14.239 (13.831)	5.885*** (.864)
R-squared	.125	.490	.048
N	143	122	113

In our 2012 study, we found that constitutional measures of human rights were negatively associated with regime age and positively associated with the length of a constitution, the use of political terror by a regime, the number of human rights treaties a country had signed, and the number of human rights instruments in existence at the time of a constitution's adoption (see Model 1, Table 4.4). The positive and statistically significant effect of the transnational

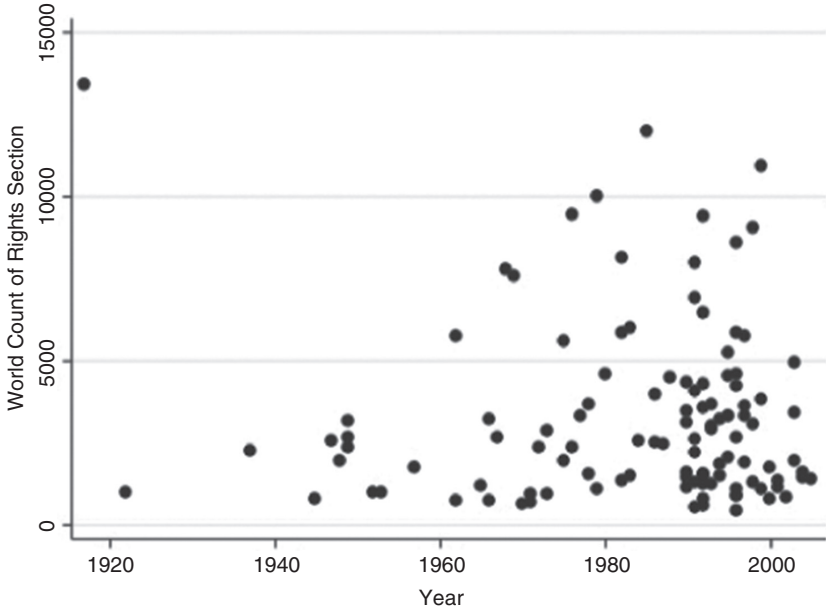


FIGURE 4.5: Rights Discourse and Year of Constitution

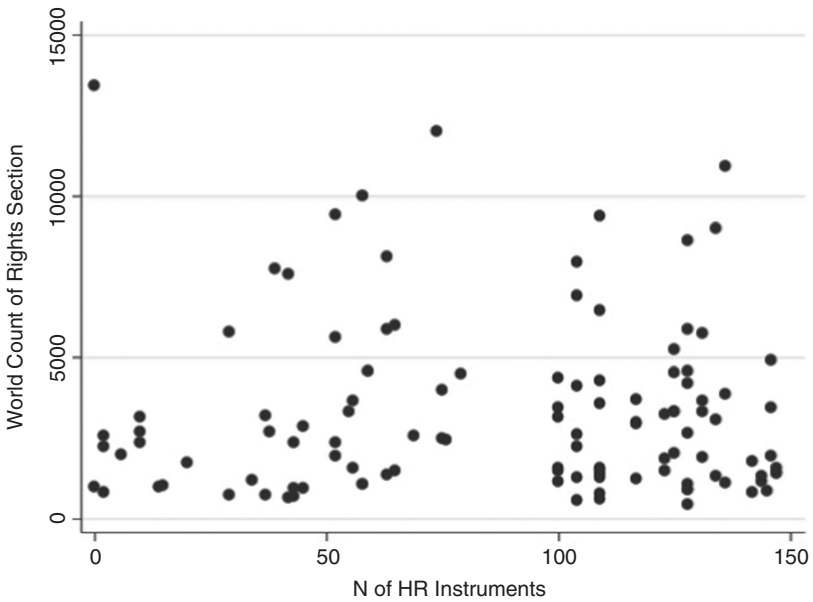


FIGURE 4.6: Rights Discourse and Human Rights Regime in Year Written

context and constitution's founding era held across all combinations of indicators.

For the current measure of human rights as articulated by the Universal Declaration of Human Rights, we find mostly similar effects. Model 2, Table 4.4 presents the results of ordinary least squares regression as the UDHR scale (which has a distribution approaching normality). Here, the inclusion of human rights language and legal provisions is again positively associated with the length of a constitution and the number of core human rights treaties signed. Also, similar to the earlier results, older regimes are less likely to incorporate UDHR rights. Most crucially, the number of human rights instruments globally at the time of writing is also positively and significantly associated with the inclusion of UDHR rights.

These results thus support our primary argument – that human rights in constitutions are driven by the transnational context. Further, that we replicate the findings of our previous study suggests quite strongly that both the old measure – number of mentions – and the present measure – UDHR provisions – of constitutional human rights are capturing an actual transnational dynamic of constitution-making.⁴ The cross-validation also supports the use of the UDHR index for future work on human rights in constitutions.

There are two notable differences between the earlier study and the present results. First, for the UDHR scale, post-communism has a statistically significant and positive effect on the adoption of constitutional human rights. We do not find this surprising as our previous work suggested such a pattern, even if our multivariate analyses could not verify it. Second, the explanatory power of the UDHR index models is much greater than the discursive human rights measure employed in our previous paper. The amount of the variance explained in Model 1 is modest ($R^2 = .125$), while Model 2 explains a substantial portion of constitutional human rights language and law ($R^2 = .490$). These two differences suggest that the UDHR scale does a better job at capturing the interplay of human rights and the global environment than our previous measure. We thus conclude that the UDHR index is a robust measurement of human rights symbolism and legal authority in constitutions.

Finally, for comparison, Model 3 in Table 4.4 presents the results of multivariate analysis of the number of words in the rights section of constitutions. Here, we use zero-truncated negative binomial regression as there are no constitutions in 2005 without a rights section and there is notable positive skew in the dependent variable. The findings here are not dissimilar from our

⁴ Unsurprisingly, the two measures are correlated ($\beta = .40, p < .001$).

previous secondary analyses of mentions of the word “right” in a constitution. In Model 3, unsurprisingly, the length of a constitution still matters, as does being a signatory of core human rights treaties and having a more democratic regime. Yet the cumulative number of instruments at time of adoption does not have a significant effect at all. Further, the variance explained by this model drops substantially ($R^2 = .048$).

In short, transnational dynamics do not mark rights in general as much as human rights specifically. Human rights are a distinctively global-transnational frame; one that is carried by global discourse, transnational institutions, and international actors, and embedded in national consciousness.

CONCLUSIONS

This study has two purposes: First, to present and test the validity of a measure of constitutional human rights discourse and law; and, second, to demonstrate how the inclusion of human rights in constitutions are driven by global-transnational as much as national characteristics and international linkages. We conclude, through comparison to our prior study, that the measure of constitutional human rights based on the Universal Declaration of Human Rights is robust and provides, in fact, a better way to examine human rights than discourse measures alone. Further, multivariate analyses confirm that constitutional law and language is affected by the transnational context at the time of its adoption. This contrasts to the articulation of civil and citizen rights more generally, where such world society influences are not found. In short, constitutions should be considered global-transnational documents as much as national ones.

This study thus extends a world society understanding of human rights. Rather than just a feature of international institutions and actors, world society scripts are present in domestic law and national symbolism. Constitutions are an institution of world society, much as previous work has found for ministries, educational systems, social movement activism, and other national features (e.g., Boli, Ramirez, & Meyer 1985; Inoue & Drori 2006; Meyer, Frank, et al. 1997; Schofer 2003; Schofer & Longhofer 2011; Suárez 2007; Tsutsui & Wotipka 2004). Our findings also suggest that legal scholarship that approaches constitutions as made in part by diffusion processes, legal archetypes, and international relationships is a fruitful area of inquiry (e.g., Elkins, Ginsburg, & Melton 2009; Elkins, Drori, & Meyer 2013; Goderis & Versteeg 2011; Law 2016; Law & Versteeg 2011).

The literature on transnational legal processes focuses on the recursive construction and diffusion of legal norms as well as the formation of transnational legal orders. Here, legal norms are institutionalized through transnational/global, national, and local normative settlement and alignment with a specific issue domain (Halliday & Shaffer 2015; Shaffer 2012). A transnational legal order view is particularly insightful as it theorizes the conditions and interrelationships (between various actors) that undergird the mechanisms of the emergence, persistence, strength, and demise of transnational legal norms which exogenously help shape even the most putatively “national” documents such as constitutions. Our findings here do not address the exact mechanisms by which the transnational legal order of human rights penetrates constitutional law. Rather, we document the conditions under which such penetration is more or less likely. Further conversation between global-transnational sociology and legal scholarship is likely to advance our understanding of both the transnational system and constitutions.

A logical extension of the work presented here is to consider whether international treaties, which have been found to have direct influences on national policy (Cole 2005; Cole & Ramirez 2013), may affect constitutional provisions themselves. The method of coding employed for the document that enshrined the modern discourse of human rights – the Universal Declaration of Human Rights – could be applied to the core human rights treaties recognized by the United Nations, or even all human rights instruments. As Elkins, Ginsburg, and Simmons (2013) find, signing the International Covenant on Civil and Political Rights leads to more constitutional human rights. This may also be the case for other human rights treaties. Second, as the analyses presented here are diagnostic and cross-sectional, there is room for further refinement and assessment of causal relationships. Future work can, and should, use an index of human rights provisions in a longitudinal fashion. Such work could confirm that constitutional human rights owe a debt to the culture of world society and its legitimation of the personhood of individuals.

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