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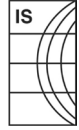
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Abstract

A recent movement has extended previous emphases on the rights of national citizens by asserting the global human rights of all persons. This article describes the extent to which this change is reflected in the language of national constitutions around the world. Human rights language – formerly absent from almost all constitutions – now appears in most of them. Rather than characterizing developed or democratic states, human rights language is, first, especially common in countries most susceptible to global influences. Second, human rights language is driven by the extent of the international human rights regime at the time of a constitution's writing. Third, human rights language tends to appear in newer constitutions and in the constitutions of emergent and reorganized states. National constitutions are imprinted with global social conditions, which now stress the discourse of human rights.

Keywords

Constitutions, globalization, human rights, political sociology

Introduction

A worldwide expansion of the rights of people as citizens of national societies has been transformed, particularly since the Second World War, into a global discourse

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of universal human rights. Treaties and international organizations have expanded explosively: more human rights are commonly asserted; they are extended to more types of persons, they penetrate more deeply into society, and more social forces around the world are expected to enforce them. Previous research has examined the rise and spread of human rights and their penetration into international and national institutions (e.g., Cole, 2005; Elliott, 2007, 2008; Hafner-Burton and Tsutsui, 2005; Koo and Ramirez, 2009; Lauren, 2003; Stacy, 2009; Suárez, 2007; Tsutsui and Wotipka, 2004). Yet consideration of the impact of human rights on the most fundamental national statement of rights, the constitution, has been limited (with the notable exceptions of Arjomand [1992] and Go [2003]). Given the highly symbolic nature of accession to human rights principles, constitutions seem natural places for such discourse.

In this article, we consider the impact of the emergent human rights regime on the language of national constitutions. These documents, historically protective of national sovereignty, have nevertheless tended to reflect global models. In earlier eras, new liberal and democratic constitutions, including that of the United States, expressed Enlightenment ideals concerning the rights of citizens. Most recently, constitutions seem to reflect claims of the universal rights and values inherent in all individuals, no matter their citizenship. Our purpose is to (a) chart the extent and contours of human rights language in national constitutions and (b) investigate the factors that impact the use of constitutional human rights discourse.

We approach these issues by empirically studying the constitutions current as of 2005 in 189 countries. Our investigation reveals that human rights language, once entirely absent, is now present in a majority of constitutions, but varies substantially across countries. Three different theoretical perspectives may help account for this variation. First, human rights language may be a product of regime characteristics and national history and most common among democracies, modernizing states, and those countries seeking reconciliation after authoritarian or oppressive episodes. Second, the national adoption of international norms may reflect direct formal or informal linkages between a nation-state and the international system. We emphasize a third perspective: national framing reflects the global human rights environment at the time of constitutional adoption, particularly for emergent and peripheral states most exposed to the world order. Recent research has identified the worldwide environment as an important factor for the establishment of national human rights institutions (see Koo and Ramirez, 2009); we focus on the symbolic and discursive side of this expansion.

To examine these views, we undertake investigations on two dimensions. We chart the basic contours of human rights language in constitutions and qualitatively consider the evidence for different pathways to the adoption of the human rights discourse. Second, we introduce cross-national indicators for multivariate regression models to examine the different predictors of constitutional human rights. The results support our expectation that human rights language is driven by the exogenous global environment and occurs particularly in newly emerged or reorganized states.

Background: From citizen to human rights

Over the course of the 20th century, discourse on rights shifted from a focus on citizen rights located in the state, to human rights, depicted as universal in nature (see Shafir and Brysk, 2006).

Citizen rights

The historically expanded standing of the individual person in national polities is a main research theme. Marshall (1964) noted the expansion of citizenship rights from the basic civil rights of the 18th century to political rights in the 19th century, and then to broadened economic and social rights in the 20th. The nation-state was a kind of world ideological model, not simply a local organizational structure. The modern research literature stresses the point (e.g., Anderson, 1991; Bendix, 1978; Grew, 1984; Meyer et al., 1997; Nettl, 1968), and also emphasizes the expansive substantive themes of this model. Over time, states everywhere expand, and over time they reach down increasingly to incorporate (and control, of course) individual persons as rights-bearing citizens.

A demonstration of these points appears in national constitutions. These documents turn out to be quite stylized, reflecting globally standardized notions of what the state is about and what it is to do (see Go, 2003; Thornhill, 2008). And over time, they incorporate greatly expanded conceptions of the rights of national citizens (Boli, 1976, 1987). Their patterned change is global in character, with new countries constitutionally empowering citizens reflecting world customs at the time of their origin (see Stinchcombe, 1965). Thus some of the strongest statements of citizen rights are to be found in the constitutions of very new and socioeconomically marginal countries. For instance, recent constitutions attend to the rights of children, a matter given little emphasis a century ago (Boli-Bennett and Meyer, 1978).

In the background of all these standardized doctrines of citizen rights was a world process (with origins in Western Christendom [Arjomand, 1992]) celebrating the standing of the individual human person. And some constitutions, as with the case of the United States, embody the notions that the rights of citizens are to be found in a natural law predating the state itself. But this traditionally liberal pattern, with its emphasis on due process, is not the dominant one through the 20th century (Hooper, 1988). The dominant pattern stresses the rights of citizens derived from their membership in the state: natural law thus legitimates the state and supports the individual citizen more indirectly.

Human rights

The rise of the world human rights movement is well documented (e.g., Lauren, 2003; Stacy, 2009). The disasters of the first half of the 20th century – including two massive wars and a destructive depression – were attributed to virulent nationalism, and a world order of some sort was obviously needed. Nuclear warfare, a Cold War, and massive decolonization intensified this understanding. And against the ethno-nationalism of the

period, which had culminated in the Holocaust, notions took hold of the individual human, not the corporate group or nation, as the fundamental constituent of society. Aggressive views of universal rights were asserted even by imperialist Britain and the racist United States in the Atlantic Charter. And against some resistance from these powers (together with the Soviet Union), a dramatic assertion of global human rights appeared in the 1948 United Nations Declaration of Human Rights (Lauren, 2003).

Since 1948, discourse has expanded dramatically, and at the symbolic level, the human rights movement has been an astonishing success. Even as the notion of human rights was actively promoted through international *realpolitik* (Dezalay and Garth, 2002), it became an important symbolic basis for international law (Moyn, 2010). Many international treaties and other global instruments now assert a constantly expanding array of human rights (Cole, 2005; Elliott, 2007; Elliott and Boli, 2008), and a constantly expanding array of social forces are obligated or entitled to pursue them (Elliott, 2007, 2008). International organizations advocating human rights have grown very rapidly (Tsutsui and Wotipka, 2004; Wotipka and Tsutsui, 2008). Major international efforts, for example, turn primary education and now secondary education into the universal rights of all humans and the responsibility of many social groups to enforce (Chabbot, 2003). Similar movements support a human right to health (Inoue, 2003) or human rights education (Suárez, 2007) and redefine access to such institutions as healthcare (Inoue and Drori, 2006) and employment (Risse, 2009), as human rights. Nation-states everywhere in the world at least formally subscribe to the principles involved (Hafner-Burton et al., 2008; Wotipka and Tsutsui, 2008).

Overall, the world human rights movement has worked in multiple ways. It asserts the rights as worldwide, taking precedence over national sovereignty. Rights are explicitly extended to more sorts of people – women, children, the elderly, the handicapped, gays and lesbians, indigenous people, and people of all ethnic and religious and racial groups. More categories of rights are involved, including cultural and religious rights. And human rights principles penetrate into the social structure, affecting the family, the school, the military, the university, and the religious organization, as well as the national state.

The human rights movement has expanded far beyond any organizational capacity to carry the stated rights into practice. Researchers generally agree that nation-states subscribing to human rights do not implement them at high rates (Cole, 2005; Hafner-Burton and Ron, 2007; Hafner-Burton and Tsutsui, 2005; Hafner-Burton et al., 2008; Hathaway, 2002; Neumayer, 2005; Vreeland, 2008). The researchers often retain the view, however, that expansive statements of rights are likely to have a global effect (independent of local formal adoption): this argument is core to world society theory (Meyer, 2009). Be that as it may, here we are concerned with the global diffusion of norms and models into national constitutions, not with their implementation in practice.

Research questions and theoretical perspectives

Our research questions are simple. World human rights principles are not consistent with the dramatic emphasis on national sovereignty built into practically all national polities and the entire interstate system (Krasner, 1999). Yet the world human rights movement has the highest global legitimacy. So:

RQ1: How, and to what extent, do modern national constitutions adapt to the global human rights movement and its universalistic tone?

RQ2: What factors affect the degree of penetration, into national constitutions, of human rights themes?

Three perspectives offer explanations for the prevalence of human rights language in national constitutions. First, constitutional human rights language may be the product of democracy and modernization (e.g., Arat, 2003; de Mesquita et al., 2005). Human rights imagery is at its core a modern liberal view of citizenship and, accordingly, democratic regimes may be more likely to incorporate human rights into their legal institutions. For example, democracies are more likely than autocracies to create human rights commissions or ombudsmen offices (Koo and Ramirez, 2009). This could also be the case for modernizing nations, with human rights language thus consistent with economic development and integration into the international system. The process may be even more pronounced for nations that have undergone democratic transitions, where institutionalization of human rights provisions serves as ‘‘locking in’’ the domestic political status quo against their nondemocratic opponents’ (Moravcsik, 2000: 244). In reaction to authoritarian or repressive pasts, new governments may establish their legitimacy or undertake national reconciliation by enshrining human rights. From this perspective, constitutional human rights language is a product of national regime characteristics.

A second view is that national human rights language reflects linkage to world society. World society now emphasizes human rights; as states enter into the international system they are subject to both formal legal pressure and informal normative pressure to adopt the relevant norms. Some such international pressures are direct, formal, or coercive: for example, Demirel-Pegg and Moskowitz (2009) show that American foreign aid is now conditional upon, and motivated by, human rights concerns. Similarly, prospective members of the European Union must formally change their laws on rights, due process, and penalty standards. Linkage with world society can also operate more indirectly, as ‘soft law,’ to enhance compliance with global civil society (Boyle, 1999; Mörth, 2004). For example, Tsutsui and Wotipka (2004) show that membership in international nongovernmental movements positively affects ratification of human rights treaties. Lebovic and Voeten (2009) show that the multilateral character of such international organizations as the World Bank and the United Nations Commission on Human Rights works to shame countries into compliance with international human rights standards. Whether formal or informal, the provisions of a national constitution may serve as one form of human rights adoption. In sum, this perspective suggests that human rights language is a product of linkage between national states and the international system.

Third, our primary argument is that constitutional human rights language is also driven by the global environment of human rights discourse, independent of national characteristics and international linkages. We suppose that national constitutions tend over time to incorporate the increasingly legitimated global human rights language. They may do so in rather abstract and rhetorical ways, reflecting abstract natural law themes rather than the aggressive positive law forms employed for rights associated with citizenship. That is, we expect human rights themes to be incorporated more as a ‘sacred canopy’ covering the polity than as positive norms within it. In this fashion, the potential inconsistency between national sovereignty and global authority is minimized.

Thus, we argue that the global rights environment drives human rights at a national level. We expect that human rights will be found most strongly in those national constitutions most exposed to the present world order, specifically in (a) the most recent constitutions and (b) the constitutions of the newest and the most peripheral countries. We expect to find the least human rights language in the most inertial constitutions reflecting longer and stronger national histories – those of the most developed and oldest countries. In other words, it is the state of global rights discourse at the time of constitutional formulation that determines the national framing of law and rights. Our expectations here reflect the fundamental observation of Stinchcombe (1965) that organizational features reflect the circumstances obtaining at the time of origin and the findings of Koo and Ramirez's (2009) research on human rights institutions. Research on constitutions and earlier forms of citizenship rights has strikingly reinforced this observation (Boli, 1976, 1987; Boli-Bennett and Meyer, 1978).

Charting human rights language in constitutions

To examine the prevalence of human rights language in national constitutions, we draw upon the comprehensive database *Constitutions of the Countries of the World*. The database compiles English translations of the current constitutions of 189 different countries. From the electronic database of constitutions that were in effect in 2005, we conducted automated counts of key rights phrases, including 'right' and 'human right,' verifying the results to be rights language rather than other uses of the words. The year 2005 was chosen as the most recent year for which all constitutions were available: data availability and resource constraints make it impossible for us to examine constitutions more longitudinally.

Human rights language in constitutions is fairly widespread around the world. About 60% of the constitutions make at least one mention of 'human rights,' with an average of slightly over 6 mentions per constitution. Comparatively, rights language in general (including citizenship rights) is the norm with an average of 86 mentions of 'rights' across the 189 constitutions. Human rights language appears to be additive in that new formulations of rights and liberties are included in newer or amended constitutions but do not replace older imageries.

Human rights language also tends to appear in preambles and general introductions to rights sections. For example, the Venezuelan constitution's preamble refers to the 'universal and indivisible guarantee of human rights,' and El Salvador affirms the 'human person' as the basis of the state (Preamble). Yet preambles are primarily symbolic rather than explicit legal guidelines. For instance, the current French constitution, originally written in 1958, has not one, but three preambles as it includes both the Declaration of the Rights of Man and Citizen from the 18th century First Republic and the Fourth Republic's 1946 preamble. But the main part of the constitution's articles remains administrative and legal in nature. Across all constitutions, the proportion of rights phrases that explicitly reference human rights is fairly low, averaging 5%. Overall, this suggests that for many countries, many legal rights continue to be presented as citizenship rights, rather than human rights. This falls in line with our expectation that human rights language operates as a general symbolic canopy rather than a set of explicit specific legal formulations.

Possible pathways to human rights adoption

The marked variation found indicates that while human rights language is widespread, penetration into constitutions is not uniform. Table 1 presents the top 10 countries with the most rights per page, human rights per page, and human rights as a proportion of rights phrases. The lists suggest that two national experiences might be pathways to human rights adoption: (1) a democratic transition from an autocratic past, specifically communism; and (2) attempts at resolving a history of violent conflict or oppression. Of the 21 constitutions that are more than one standard deviation from the mean of human rights per page, 16 countries experienced postcommunist transitions or democratic transitions within three years of a constitution's writing, supporting previous findings by Moravcsik (2000). Also 10 of these 21 countries experienced an episode of serious political violence or civil war since 1946.

Postcommunist nations, especially, tend to have explicit recognitions of past injustices and extensive progressive rights language. For instance, the 1997 constitution of Poland begins 'having recovered, in 1989, the capacity to determine its fate in a sovereign and democratic way' (Preamble). Mongolia's constitution not only references independence but the importance of human rights and 'the supreme objective of building a humane and democratic civil society' (Preamble). And the constitutional preamble of Bosnia and Herzegovina makes specific reference to both international human rights law and the internationally agreed upon 1995 Basic Principles on the drafting of a constitution.

Countries with histories of conflict, such as Bosnia, El Salvador, Uganda, and Guatemala, also tend to rank among the highest in terms of including human rights language in their national constitutions. For instance, the 2003 Rwandan constitution declares the 'fight against the ideology of genocide' (Article 9) a fundamental principle of the state. Similarly, South Africa's constitution explicitly declares its purpose to 'heal the divisions of the past and establish a society based on democratic values, social justice

Table 1. Top 10 constitutions in 2005 (with year constitution written) by rights mentions.

Rights per page		Human rights per page		Human rights per rights	
Country (year)	Value	Country (year)	Value	Country (year)	Value
Latvia (1922)	5.82	Bosnia (1995)	1.38	Bosnia (1995)	.40
Slovenia (1991)	4.64	Serbia (2003)	1.21	New Zealand (1908)	.37
Serbia (2003)	4.58	Slovenia (1991)	.55	Uganda (1995)	.28
Hungary (1949)	4.53	Venezuela (1999)	.49	Serbia (2003)	.26
Ethiopia (1995)	4.51	Togo (1992)	.48	Ghana (1992)	.26
Estonia (1992)	4.29	Benin (1990)	.42	Benin (1990)	.23
Turkmenistan (1992)	4.24	Indonesia (1945)	.41	Venezuela (1999)	.20
Slovakia (1992)	4.13	Ukraine (1996)	.40	El Salvador (1983)	.20
Azerbaijan (1995)	3.95	Uganda (1995)	.39	Togo (1992)	.19
Germany (1949)	3.81	Philippines (1986)	.36	Philippines (1986)	.19
World mean	1.73	World mean	.09	World mean	.05
(SD)	(1.02)	(SD)	(.17)	(SD)	(.07)

and fundamental human rights' (Preamble). Accordingly, South Africa's Constitutional Court is specifically empowered to ensure the human rights of all citizens.

However, it may not only be national experience that drives constitutional human rights language. Human rights language adopters seem to be primarily peripheral and emergent polities rather than established core nations: among the countries with the most human rights language are Bosnia and Herzegovina, Serbia, Uganda, Ghana, Venezuela, and El Salvador (see Table 1). And for the most part these countries have *relatively recent* constitutions or, as in the case of the extensively enumerated rights of Latvia and Hungary, have aggressively amended older constitutions in the wake of a democratic transition. Thus, it appears that constitutional language may be a product of the interaction of national experiences with the global human rights discourse that is exogenous to any one state (see Go, 2003). For illustrative purposes, Figure 1 presents scatterplots of the proportion of rights that are framed as human rights by the year of a constitution's original writing and then by the corresponding cumulative number of human rights instruments in the world (see the indicators section below for measurement details) for the 180 constitutions that have been written since 1914. Notably, the average year in which constitutions were written is 1975. In fact, only 15 of the constitutions currently in effect were originally written before the Second World War, with the American and British the only ones dating to before 1800. Both of these indicators are highly correlated with the proportion of stated rights that are human rights ($p < .001$) suggesting that the exogenous world environment is a major factor in constitutional language.

This implication is supported by a comparative consideration of democratic transitions in Europe. In the 1970s, three European countries had significant democratic transitions: in 1974 a military coup and resulting Carnation Revolution in Portugal paved the way to a new democratic constitution in 1976; also in 1974, the Regime of the Colonels in Greece collapsed after the Turkish invasion of Cyprus and the Athens Polytechnic mass uprising, resulting in a republican constitution in 1975; and in

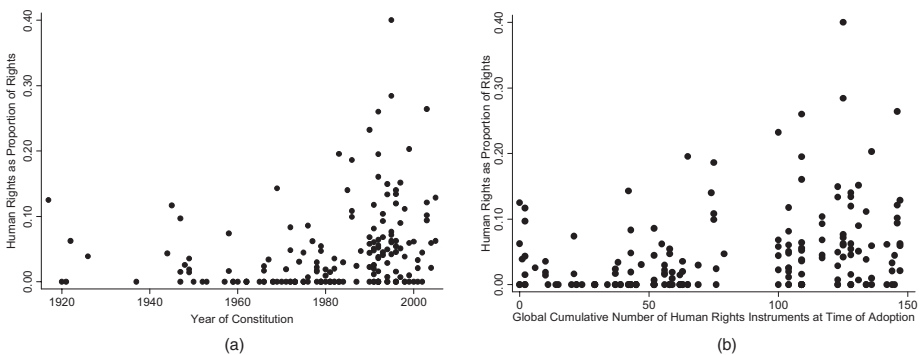


Figure 1. Scatterplots of human rights mentions as a proportion of rights mentions by year of constitution and global cumulative number of human rights instruments at time of constitution adoption for post-1914 constitutions ($N = 180$).

1975, Spain moved from fascism to democratic constitutional monarchy after the death of Franco, establishing a new constitution in 1978. Not only were these three cases democratic transitions, they also occurred in countries with living memories of oppression and violent conflict in the Spanish Civil War of the 1930s and the post-Second World War Greek Civil War and suppression of communists. Crucially, however, the transitions occurred before the maturation of both the legal and discursive international human rights regime: in 1975 there were only 52 human rights instruments globally, compared to 100 in 1990 and 147 in 2005. Accordingly, the Greek constitution of 1975 makes no mention of human rights even though it has been amended as recently as 2002, and the Spanish and Portuguese constitutions each mention human rights only twice.

In contrast, democratic transitions in Europe since the end of the Cold War lead to the adoption of much more human rights language. The 20 nations of Europe, including Russia and (East) Germany, that have had postcommunist transitions average over 8 mentions of human rights. For the former Yugoslavian nations that experienced this transition most violently in civil war, the average in their 2005 constitutions jumps to over 19 mentions. Bosnia and Serbia both rate among the highest human rights adopters in the entire world (see Table 1). This comparison supports our primary expectation: constitutional language is dependent on the exogenous environment of the human rights regime at the time of a constitution's writing. As rights discourse expands into more spheres and strengthens with time, newly organized polities are more likely to include human rights in that most fundamental statement of national purpose – the constitution.

To examine the evidence for this perspective, we turn to multivariate analyses.

Cross-national indicators for multivariate regression

Based on our coding of human rights language detailed above, we use the raw frequency count of 'human right' phrases in national constitutions in 2005 as the dependent variable for multivariate regression. For explanatory measures, we rely upon indicators common in cross-national research that match the theoretical perspectives discussed previously. Specifically, we consider regime characteristics, formal and informal linkage between states and the international community, the strength of the global human rights regime at the time of a constitution's writing, and a set of controls. All indicators, except as noted below, are from the year 2005 to match our cross-sectional study design.¹

Democracy and regime characteristics

To examine the role of democracy and regime characteristics, we use two standard indicators from the well-known Polity IV dataset (Marshall and Jaggers, 2009). First, we use the standard 'Polity2' code for 2005 as an indicator of how democratic the regime adopting the document is. The regime score code runs from full autocracy to full democracy on a scale of -10 to 10.² Second, we include the 'Durability' code for 2005, which is the number of years since a regime has undergone a structural transition, defined as a movement of three points or more on the polity scale. To these two common indicators, we add a third: the average political terror scale score in 2005 (Gibney et al., 2011). This five-point

scale of state repression is based on US State Department and Amnesty International reports. From previous research, we know that there is decoupling between human rights practices and the symbolic assent of treaty ratification (Cole, 2005; Hafner-Burton et al., 2008; Hathaway, 2002). It seems plausible that a similar pattern will be evident in constitutional language. We also include a dummy variable for whether or not the country is, as of 2005, postcommunist as our qualitative investigation suggests an emphasis on human rights in such nations.

General and field-specific international linkages

We examine the effects of two indicators of a country's linkage to global civil society. First, we use an indicator of formal linkage to international human rights law: the number of the 'core seven' United Nations human rights treaties ratified by 2005 (see Hafner-Burton and Tsutsui, 2005). From prior research we know that treaty signing is both a product of world society linkage (see Cole, 2005; Wotipka and Tsutsui, 2008) and an indicator of participation in global civil society forms (see Hafner-Burton et al., 2008). Second, we account for informal linkage to global civil society with the number of international nongovernmental organization memberships in a country in 2005, drawn from the Union of International Associations's *Yearbook of International Organizations* (2005–2006).³ This indicator, logged so to adjust its uneven distribution across countries, is a commonly used measure of linkage with, or embeddedness in, world society.

Global human rights discourse

Our primary interest is the extent of human rights discourse present in the world at the time of national organization or reorganization. As an indicator of this, we rely upon a previous coding of human rights instruments formally recognized by the Office of the United Nations Commissioner for Human Rights (from Elliott, 2008). From this source, we use the global cumulative number of instruments that existed in the world in the year of a constitution's adoption. This indicator thus represents a *global* measurement of the extent of human rights' legal formulation and legitimated discourse.

Controls

To account for the variation in the length of constitutions, we include the standardized page length as a control. Some countries do not have formal constitutions (New Zealand, Canada, the United Kingdom, and Israel), but rather rely on a series of legal documents that can be quite lengthy. Excluding such countries from the following analyses does not change the significance or directions of our primary results.

We also control for the possibility that more recently amended constitutions could be more likely to have incorporated newer discourses by using the age in years of the last amendment to the constitution in force in 2005. Constitutions are often amended (the average year of last amendment is 1996), even though this tends to be administrative or procedural in nature.

As our qualitative examination suggests a role for a history of political violence, we include a dummy variable drawn from the Major Episodes of Political Violence dataset (Marshall, 2009) of countries with at least one episode of serious political violence or higher since 1946.

Finally, we include some standard controls common in cross-national research. Drawn from the World Development Indicators database in 2009, we use the natural log of a country's population in 2005; gross domestic product per capita in 2005 (in 2009 US dollars), also logged; and the amount of trade measured as value of imports and exports as a percent of GDP. While we make no specific predictions for the effects of these indicators, they are common in the literature and useful controls in a cross-national investigation.⁴

Multivariate regression models of human rights language in national constitutions

Method

We conduct multivariate analyses using the previously detailed indicators as explanatory variables. Whereas our descriptive analyses refer to 189 national constitutions, missing data on the explanatory indicators limits our regression analyses to 143 countries. Because data on human rights language in national constitutions are positively skewed, we rely on negative binomial regression for estimation. We also rely on estimation with robust standard errors as a method for correcting for small sample sizes with outliers.

In Table 2, we present five different models. First, we present a control model that includes the length of a constitution, age of the most recent amendment, natural log of population, log GDP per capita, trade as a percent of GDP, and the dummy for an episode of serious political violence since 1946. These variables are kept as controls in subsequent analyses. In the second model, we estimate the added effects of regime characteristics, including the age of the regime, the regime score for democracy, the political terror scale score, and the postcommunist dummy. Third, we analyze the effects of linkage to world society with a model that includes the log of national INGO memberships and our treaty ratification measure. Fourth, we estimate a separate model for the impact of global cumulative number of human rights instruments at the time of a constitution's adoption.

Results

Our first area of interest is the effects of regime characteristics on human rights language. Results of the initial analyses generate some expected patterns (see Model 2, Table 2). There is a significant positive relationship between democracy and human rights language, and negative relationships with economic development and trade. All these relationships, however, disappear in the later analyses incorporating more controls. The age of a regime does seem to have a significant relationship with constitutional language: older regimes are less likely to incorporate human rights. This indicates that emergent nation-states are most susceptible to global influences in the current period, and supports our core argument that constitutions formed in the current period reflect the current

Table 2. Results of multivariate negative binomial regressions (robust standard errors) for number of human rights phrases in constitutions in 2005 ($N = 143$).

	Model 1	Model 2	Model 3	Model 4	Model 5
<i>Controls</i>					
Page length	.005* (.002)	.007 (.004)	.006 (.003)	.006* (.003)	.008* (.004)
Age of last amendment	-.073** (.022)	-.047* (.020)	-.065** (.019)	-.057** (.021)	-.037 (.019)
Population 2005 (ln)	.105 (.111)	.002 (.104)	.191 (.135)	.168 (.102)	.124 (.107)
GDP per capita 2005 (log)	-.639*** (.168)	-.090 (.230)	-.371 (.219)	-.296 (.180)	.271 (.224)
Trade/GDP 2005	-.005 (.004)	-.008** (.003)	-.003 (.003)	-.005 (.003)	-.005 (.003)
Episode of political violence since 1946	.059 (.294)	-.230 (.266)	-.220 (.264)	.050 (.269)	-.340 (.236)
<i>Regime characteristics</i>					
Regime age 2005	–	-.017** (.005)	–	–	-.014** (.005)
Regime democracy score 2005	–	.038* (.018)	–	–	.035 (.025)
Political terror scale score 2005	–	.379* (.174)	–	–	.329* (.148)
Postcommunist country	–	.463 (.316)	–	–	.093 (.283)
<i>International linkages</i>					
Number of human rights treaties signed 2005	–	–	.290* (.132)	–	.246* (.114)
INGO memberships 2005 (log)	–	–	-.696 (.431)	–	-.423 (.344)
<i>Global discourse</i>					
Global cumulative human rights instruments at time of constitution adoption	–	–	–	.012*** (.003)	.010*** (.003)
Constant	2.677 (1.946)	1.596 (1.655)	.454 (2.230)	-.803 (2.010)	-2.975 (1.869)
Wald chi-square	36.84***	68.76***	43.10***	57.81***	100.48***
Degrees of freedom	6	10	8	7	13
Log pseudo-likelihood	-365.62	-354.74	-361.57	-358.33	-345.96
McFadden's R^2	.075	.103	.085	.093	.125

* $p < .05$; ** $p < .01$; *** $p < .001$.

emphasis on human rights. Core nations with strong national political traditions and identities formed in an earlier period seem to be less likely to include global human rights discourse as part of their legal and political foundation even when their constitutions are more recently written or rewritten. We also find a significant positive effect of regime repression. Like treaty signing (see Hafner-Burton et al., 2008), constitutional human rights may be a symbolic gesture for repressive regimes. Finally, in contrast with our qualitative investigation, it seems that a legacy of communism and the experience of political violence are not pathways to human rights adoption once other factors are taken into account. Overall, country-level effects play a limited role in driving the adoption of human rights language.

Second, we examine the effect of formal and informal linkage to world society. Results indicate some limited support for our expectation that involvement in the norms and discourse of global civil society is a significant predictor of human rights language (see Model 3, Table 2). The number of INGO memberships, an indicator of the strength of informal connection to global civil society, has no significant relationship with human rights language. This is likely due to the fact that the most INGO memberships are in core, established nations that are also insulated from changing global discourse by longer political histories. However, the ratification of human rights treaties, an indicator of formal legal linkage to world society, has a significant positive effect on the amount of human rights language in constitutions. This effect is even stronger for developing nations in a secondary analysis of non-OECD member nations only (results available from the authors upon request), which follows our expectation that emergent and peripheral countries are more susceptible to world influences. Third, our primary focus on global processes is supported in the effect of the number of human rights instruments established worldwide at the time of constitution adoption. Clearly, world influences on rights discourse operate over and above any effects of linkage to global civil society or of regime characteristics. Results (along with control variables) are presented in Model 4 in Table 2. The effect is highly significant and positive for all countries and also for non-OECD countries only. Goodness-of-fit statistics also suggest that this variable explains a good deal of the variance in rights language. This suggests support for our thesis that human rights language is at least partially driven by processes exogenous to a country.

Furthermore, this variable maintains its effect even after regime characteristics and linkage to global civil society are taken into account. The results of this analysis are presented in Model 5 in Table 2. In this model, the effect of the age of regime remains the same: newer regimes are more likely to incorporate human rights language. Interestingly, regime democracy does not maintain its effect once world society indicators are introduced in the all-country sample (see Table 2). More centrally, the effect of treaty signing and the number of human rights instruments available maintain their significant positive effects. The increase in model fit statistics as compared to previous models suggests that the addition of the human rights instrument indicator is not marginal – the effect of world discourse is a robust result. Altogether, the results show that

the use of human rights language is in good part exogenously driven by a changing world society. Crucially, it is the extent of legitimate human rights discourse and law *globally*, independent of formal legal commitments and linkage to world society, which drives this process most forcefully.

Finally, as mentioned throughout, we find support for our expectation that human rights discourse is a feature of the constitutions of newly organized or reorganized states. Human rights language is not consistently affected by established national development, population size, or trade. We find a tendency for younger regimes and more recently amended constitutions to have more human rights mentions. Further, model fit statistics in a secondary analysis of developing nations only indicate that the inclusion of exogenous processes explains even more of the variance of the constitutional language, suggesting these nations susceptibility to changing fashion. In contrast, rights language that does not make explicit human rights reference may be less dependent on global forces. In another secondary analysis (results available from the authors upon request) where the dependent variable is the number of all rights mentions, we found significant results that are mostly similar to the human rights models estimated. But the consistent reduction of coefficient size and fit statistics suggests that there is more of a role for unique national legacies, including communist pasts, in rights language rooted in citizenship norms rather than human rights principles. Thus, human rights tend to be a feature of recently emerged polities more than established nations.

The data employed in our investigation do have some clear limitations. First, the lack of longitudinal data limits our capacity to directly address how constitutional language may have changed over time. Second, as noted earlier, while our coding covers 189 of the 192 countries that are currently members of the United Nations, the regression analyses include only the 143 countries for which all data are available. Many of the countries absent from the analysis, such as the small island states of Oceania, are probably most susceptible to the influence of world society, and thus central to our argument. The absence of data about them in common comparative datasets is indeed unfortunate.

Conclusions

In this article, we explore the penetration of human rights language in contemporary national constitutions, and find that it now occurs in a majority. The results of our analysis suggest support for our primary thesis about the importance of global social conditions in determining the nature of core national institutions. First, we find that the adoption of human rights language in national constitutions serves as a general narrative, rather than a set of practical legal guidelines. Human rights language tends to be an added feature of national constitutions, appended onto previously set articulations of citizen rights. In this manner, potential inconsistency between national sovereignty and global norms appears to be reduced. Second, the inclusion of human rights discourse is not mainly a feature of democratic or non-repressive regimes. It is, indeed, less common in established regimes with longer political traditions and frameworks. This reflects both the inertia of better established countries, and the fact that their formation periods exposed them to older global norms. It may also be possible that constitutions are a relatively protected document, highly symbolic of national sovereignty and myths, and thus

change more slowly than other legal and institutional spheres. Third, constitutional human rights language is often characteristic of emergent polities – especially polities that are most susceptible to world society norms, symbols, and practices. As with many other national characteristics, changing world fashions strike more forcefully at the countries most susceptible to influence, and most recently influenced.

That we find significant effects for both the legal commitment of treaty signing and the global discursive environment brings up an additional implication. Research on governance has yielded mixed judgments about whether institutionalization of the rule of law is best accomplished through formal ‘hard’ law or informal ‘soft’ law (Boyle, 1999; Hafner-Burton et al., 2008; Mörth, 2004). For instance, it is possible to interpret the high rate of postcommunist human rights adoption as an effect of the formal dictates of European Union membership. Yet even postcommunist countries that have little hope of joining the EU, such as Mongolia, make use of the human rights frame. On the other hand, informal influences such as the role of constitutional advisory bodies like the Venice Commission (European Commission for Democracy through Law) and other international organizations or individuals could have an effect on the adoption of human rights. In short, our data cannot speak to the exact mechanisms by which the diffusion of human rights discourses spread, and further research is needed.

While our analysis finds that democratization and a history of conflict are not the main pathways to constitutional human rights, it is likely that there is a role for national experience. Examples suggest the power of history: in France, ‘Parliament convenes as of right’ (Article 16) recalling the 18th-century Third Estate; in Malta, elections can be suspended upon a reasonable suspicion of corruption (Article 56); Latvia’s postcommunist return to the constitution of 1922 indicates a national memory of the grand past; and New Zealand’s extremely high level of human rights language suggests a unique national discourse that is perhaps due to continued reconciliation with the Maori population. As Keller (2009) finds for national violence commissions, it is likely that national experience interacts with the global environment to produce human rights discourse in ways that are difficult to quantify. Future research could investigate these patterns and provide a richer picture of this interaction.

In sum, human rights language is now a common feature of national constitutions, and is driven by the global environment. The shift in discourse from the rights of man and citizen to the rights of all humanity is now a global process adding a universalistic tone to the conversation on rights anchored in national mechanisms.

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Notes

1. We choose this design as there is no reason to assume that constitution drafting and amendment occur independently of national and global factors. This also avoids thorny methodological issues: the regime who drafts a new constitution is often far different from the regime set up by the new constitution. Further, investigation of lagged indicators yields similar results.
2. Countries with regimes in transition with interregnum values of –66, –77, and –88 are excluded from multivariate analyses. Alternative regime democracy indicators, Polity2 code averaged over 1995–2005 and Polity2 code in the year in which a constitution was written, bear similar results.
3. INGO counts from UIA include federations of international organizations, universal membership organizations, intercontinental membership organizations, and regionally defined membership organizations.
4. We also considered age of the constitution and a dummy variable of pre-1980 constitutions to account for the possible effects of human rights oriented US foreign policy under the Carter administration, but found no significant effects that were not accounted for by our global human rights instruments measure.

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Résumé

Des changements récents sont intervenus pour étendre les droits des citoyens limités jusqu'à présent au cadre national et affirmer les droits de l'homme pour tous dans le monde entier. Cet article montre dans quelle mesure cette évolution se traduit dans le langage des constitutions nationales à travers le monde. Le langage des droits de l'homme – autrefois absent de la plupart des constitutions – est désormais présent dans la plupart d'entre elles. Pour commencer, on peut dire que plutôt que de caractériser les États développés ou démocratiques, le langage des droits de l'homme est particulièrement courant dans les pays les plus exposés aux influences mondiales.

Deuxièmement, le langage des droits de l'homme est fonction de l'état des dispositions internationales en matière de droits de l'homme au moment de la rédaction d'une constitution donnée. Troisièmement, le langage des droits de l'homme tend à apparaître dans les constitutions les plus récentes ainsi que dans les constitutions d'États émergents et d'États qui ont connu une réorganisation. Les constitutions nationales sont influencées par les conditions sociales à l'échelle mondiale, qui mettent désormais en avant le discours sur les droits de l'homme.

Mots-clés: constitutions, droits de l'homme, mondialisation, sociologie politique

Resumen

Un movimiento reciente ha extendido el énfasis previo en los derechos de los ciudadanos a nivel nacional, afirmando los derechos humanos de todas las personas a nivel global. Este artículo describe hasta qué punto este cambio se refleja en el lenguaje de las constituciones nacionales alrededor del mundo. El lenguaje de los derechos humanos, anteriormente ausente de casi todas las constituciones, aparece ahora en la mayoría de ellas. En primer lugar, el lenguaje de los derechos humanos es especialmente común en los países más susceptibles a las influencias globales, antes que una característica exclusiva de los países democráticos o desarrollados. Segundo, el lenguaje de los derechos humanos está condicionado por la extensión de los derechos humanos en el momento de redacción de una constitución. Tercero, el lenguaje de los derechos humanos tiende a aparecer en las constituciones más nuevas y en las constituciones de los estados emergentes y reorganizados. Las constituciones nacionales están impregnadas de las condiciones sociales globales, las cuales destacan ahora el discurso de los derechos humanos.

Palabras clave: constituciones, derechos humanos, globalización, sociología política