

Does Access to Justice Improve Countries' Compliance with Human Rights Norms?— An Empirical Study

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Introduction

When and why do countries comply with international law? This question has been the focus of much research on international law in the United States.¹ It is a question that is particularly pertinent to the area of

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1. See, e.g., Kal Raustiala & Anne-Marie Slaughter, *International Law, International Relations and Compliance*, in HANDBOOK OF INTERNATIONAL RELATIONS 538, 529-45 (Walter Carlsnaes et al., eds. 2002). Originally, the question was whether international law makes a difference in state behavior at all. See, e.g., LOUIS HENKIN, *HOW NATIONS BEHAVE* 49-68 (2d ed. 1979); HANS J. MORGENTHAU, *POLITICS AMONG NATIONS: THE STRUGGLE FOR POWER AND PEACE* 4-15, 271-306 (5th ed. 1973). After international lawyers had spent decades trying to prove that international law does indeed make a difference, and after many international relations theorists began to explore the influence of international
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human rights, where, at first blush at least, nations appear to have little incentive to live up to international norms. Nonetheless, since World War II, countless advocates, government officials, and academics, convinced that their work makes a difference for the lives of people across the globe, have committed their careers to creating human rights treaties, obtaining ratification of those treaties, and getting states to comply with the commitments made. Not until recently, however, have scholars undertaken the task of considering in depth the way in which international human rights law affects actual state practice. The result has been a number of theories to explain the behavior of states in the face of human rights obligations and international norms more generally.² Few of these theories, however, have been tested empirically.

In this Article, I set out to test one hypothesis explaining conformance of nations with human rights norms derived from a number of these theories—that the more a country grants individuals access to its courts, the less likely that country is to violate international human rights norms. This hypothesis will be familiar to U.S. lawyers from the idea of the private attorney general, which Congress has used on various occasions to promote the enforcement of federal norms by private individuals in the courts of the United States.³ Moreover, the hypothesis is based on the assumption that increasing access to justice allows individuals and groups to espouse public-interest claims as their own, thus multiplying enforcement actions and undermining the gate-keeping capacity of states to control what norms are enforced and how. If this hypothesis tests as expected, we will not only have empirical evidence in favor of the strongly held belief of U.S. lawyers that private attorneys general work, but also empirical support for an

institutions and norms on state decision-making, the focus changed to when and why nations comply with international law. See, e.g., ABRAM CHAYES & ANTONIA HANDLER CHAYES, *THE NEW SOVEREIGNTY: COMPLIANCE WITH INTERNATIONAL REGULATORY AGREEMENTS* 1-28 (1995); THOMAS M. FRANCK, *FAIRNESS IN INTERNATIONAL LAW AND INSTITUTIONS* 7-79 (1995); JACK L. GOLDSMITH & ERIC POSNER, *THE LIMITS OF INTERNATIONAL LAW* 23-224 (2005); Andrew T. Guzman, *A Compliance-Based Theory of International Law*, 90 CAL. L. REV. 1823, 1840-86 (2002); Oona A. Hathaway, *Between Power and Principle: An Integrated Theory of International Law*, 72 U. CHI. L. REV. 469, 497-500 (2005) [hereinafter Hathaway, *Integrated Theory*]; Harold Hongju Koh, *Why Do Nations Obey International Law?*, 106 YALE L.J. 2599, 2635-58 (1997) (reviewing ABRAM CHAYES & ANTONIA HANDLER CHAYES, *THE NEW SOVEREIGNTY: COMPLIANCE WITH INTERNATIONAL REGULATORY AGREEMENTS* (2005) and THOMAS M. FRANCK, *FAIRNESS IN INTERNATIONAL LAW AND INSTITUTIONS* (1995)).

2. See *infra* text accompanying notes 21-69 (reviewing existing theories).

3. See, e.g., SEAN FARHANG, *THE LITIGATION STATE: PUBLIC REGULATION AND PRIVATE LAWSUITS*, 3-6 (2010); Hannah L. Buxbaum, *The Private Attorney General in a Global Age: Public Interest in Private International Antitrust Litigation*, 26 YALE J. INT'L L. 219, 222-25 (2001); Bryant Garth, Ilene H. Nagel & S. Jay Plager, *The Institution of the Private Attorney General: Perspectives from an Empirical Study of Class Action Litigation*, 61 S. CAL. L. REV. 353, 357-66 (1988); Daniel L. Meltzer, *Detering Constitutional Violations by Law Enforcement Officials: Plaintiffs and Defendants as Private Attorneys General*, 88 COLUM. L. REV. 247, 253-327 (1988); Trevor W. Morrison, *The Private Attorney General and the First Amendment*, 103 MICH. L. REV. 589, 597-607 (2005); William B. Rubenstein, *On What a Private Attorney General Is—And Why It Matters*, 57 VAND. L. REV. 2129, 2133-71 (2004).

important pathway to the enforcement of human rights law, and international law more generally.

I test the stated hypothesis with a systematic empirical analysis of an original dataset involving 90 countries over a period of ten years. The outcome is sobering: My results support the hypothesis that access to court improves compliance with human rights norms. But the correlation is weaker and considerably less robust than expected; that is, the results change significantly depending on the statistical model used and the kinds of human rights involved. There is a silver lining, however. One component of access to court—the right to counsel—performs more impressively than the others. It is more robustly associated with better human rights practices, although this association, too, is weaker than expected. In what follows, I will set out what we know about compliance with human rights norms, explore the theories that have been developed explaining compliance, and set out why we assume access to justice to be an important factor influencing compliance in Part I. I will then describe my dataset as well as the research design more generally in Part II, followed by a discussion of the results in Part III.

I. What We Know and What Theory Predicts

A. When and Why Does International Human Rights Law Make a Difference?

Efforts to improve the treatment of individuals through the establishment of minimum standards in international law go back generations. In the period prior to World War I, such efforts mostly consisted of treaty obligations that victorious powers imposed on losing countries to protect religious minorities, as well as the 19th century drive to outlaw slavery and protect the wounded.⁴ After World War I, attempts to protect minorities through the Versailles Treaty and the League of Nations Covenant increased measurably.⁵ The atrocities committed during World War II, however, gave rise to a movement away from such piecemeal approaches and toward universally recognized human rights.⁶ Ultimately, this movement became remarkably successful in terms of treaties and norms created. Following the promulgation of the Universal Declaration of Human Rights in 1948, the United Nations has adopted eight major human rights treaties, not counting various optional protocols further extending the

4. See, e.g., STEPHEN D. KRASNER, SOVEREIGNTY: ORGANIZED HYPOCRISY 71-90, 105-09 (1999); PAUL GORDON LAUREN, THE EVOLUTION OF INTERNATIONAL HUMAN RIGHTS: VISIONS SEEN 37-71 (2d ed. 2003).

5. See, e.g., KRASNER, *supra* note 4, at 90-96; LAUREN, *supra* note 4, at 72-123.

6. See, e.g., MICHELINE R. ISHAY, THE HISTORY OF HUMAN RIGHTS 211-25 (2004); LAUREN, *supra* note 4, at 139-204; HENRY J. STEINER, PHILIP ALSTON & RYAN GOODMAN, INTERNATIONAL HUMAN RIGHTS IN CONTEXT 115-48 (3d ed. 2008); Thomas Buergenthal, *The Evolving International Human Rights System*, 100 AM. J. INT'L L. 783, 787-806 (2006).

rights guaranteed in these treaties.⁷ Almost all of these treaties have been ratified by a majority of the countries of the world. For instance, by 2011, the International Covenant on Civil and Political Rights had garnered 167 ratifications, the Convention Against Torture 147 ratifications, the Convention on the Elimination of Discrimination Against Women 186 ratifications, and the Convention on the Rights of the Child 193 ratifications—with only the United States and Somalia failing to join.⁸ In addition, countries have created an increasing number of regional human rights treaties for Africa, the Americas, and Europe, the most successful of which has probably been the European Convention on Human Rights and Fundamental Freedoms.⁹ Finally, adding to these treaty rights, both national and international authorities have increasingly recognized the existence of certain basic human rights as a matter of customary international law.¹⁰

Despite this success in terms of norms created, questions linger as to what difference these norms have made in actual state practice. Recent quantitative empirical studies have yielded mixed results on whether ratification of human rights treaties actually improves a country's human rights record. According to these studies, on average, ratification either has no effect on a country's human rights practices,¹¹ or worse, is correlated with a higher level of violations than in non-ratifying states.¹² Once the data are disaggregated, democratic countries that have ratified do appear to perform better than non-ratifying democracies, while non-democratic states

7. See International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Dec. 18, 1990, 2220 U.N.T.S. 93; Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85 [hereinafter Convention Against Torture]; Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW]; International Convention on the Elimination of All Forms of Racial Discrimination, Mar. 7, 1966, 660 U.N.T.S. 195; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3; International Covenant on Civil and Political Rights [hereinafter ICCPR], Dec. 16, 1966, 999 U.N.T.S. 171; Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277.

8. See United Nations Treaty Collection, *Status of Treaties, Chapter IV, Human Rights*, <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en> (last visited Feb. 2, 2011).

9. Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221 (1950).

10. See, e.g., RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 702 (1987).

11. See Linda Camp Keith, *The United Nations International Covenant on Civil and Political Rights: Does It Make a Difference in International Human Rights Behavior?*, 36 J. PEACE RES. 95, 106–12 (1999); Oona A. Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 YALE L.J. 1935, 1992–94 (2002) [hereinafter Hathaway, *Human Rights Treaties*]; Eric Neumayer, *Do International Human Rights Treaties Improve Respect for Human Rights?*, 49 J. CONFLICT RESOL. 925, 943 (2005).

12. See Michael J. Gilligan & Nathaniel H. Nesbitt, *Do Norms Reduce Torture?*, 38 J. LEGAL STUD. 445, 455–62 (2009); Emilie M. Hafner-Burton & Kiyotero Tsutsui, *Human Rights in a Globalizing World: The Paradox of Empty Promises*, 111 AM. J. SOC. 1373, 1398 (2005); Hathaway, *Human Rights Treaties*, *supra* note 11, at 1992–94.

perform worse after ratification.¹³ The beneficial effect of ratification appears to be most pronounced among countries in transition.¹⁴ This suggests that at least in non-democratic nations, where human rights practices are most in need of improvement, treaty ratification has at best no effect on actual state practice and at worst appears to provide states some breathing room to step up violations.¹⁵ To be sure, these studies limit their focus on the relevance of a country's ratification of human rights treaties and thus do not look at the possibly larger impact of the compliance pull created by the negotiation of these treaties and other aspects of an increasing human rights discourse.¹⁶ Moreover, the investigators in these studies face the difficulty of attempting to capture a correlation that may notoriously take years, even decades to develop.¹⁷ Not surprisingly, human rights advocates and international lawyers are convinced that international human rights law has made a difference.¹⁸ Similarly, qualitative studies focusing in

13. See Hathaway, *Human Rights Treaties*, *supra* note 11, at 1997-99; Neumayer, *supra* note 11, at 940-49.

14. See Beth Simmons, *Civil Rights in International Law: Compliance with Aspects of the "International Bill of Rights"*, 16 *IND. J. GLOBAL LEGAL STUD.* 437, 465-66, 475-77 (2009).

15. See Emilie M. Hafner-Burton & Kiyotero Tsutsui, *Justice Lost! The Failure of International Human Rights Law to Matter Where Needed Most*, 44 *J. PEACE RES.* 407 (2007); Hafner-Burton & Tsutsui, *supra* note 12, at 1398 n.23 (noting that they "cannot, however, distinguish here between a direct negative effect—where ratification itself provides incentives for further repression—and an indirect negative effect—where ratification has no effect on state practices that are already spiraling toward greater violence"); Hathaway, *Human Rights Treaties*, *supra* note 11, at 2007-18.

16. Cf. Ryan Goodman & Derek Jinks, *How to Influence States: Socialization and International Human Rights Law*, 54 *DUKE L.J.* 621, 646-56 (2004) (explicating the importance of state acculturation to global improvements in human rights standards). Professor Landman attempts to take at least a portion of this hypothesized dynamic into account by both employing two-stage instrumental-variable regression and distinguishing countries that have signed but not ratified a human rights compact from those that have done neither in his measure of treaty ratification. The former serves to test the hypothesis that countries with better human rights protection are more likely to ratify human rights treaties (assuming that countries may first be acculturated into better human rights practices before joining treaties). The latter is based on his argument that at least some states move along a continuum of commitment from no participation to signature to ratification, potentially improving their rights records along the way. He finds exceedingly weak support for the hypothesis that better human rights protection is correlated with higher levels of commitment. He does, however, find a statistically significant correlation between treaty ratification and human rights practices in this fashion, although the correlation is rather small. See TODD LANDMAN, *HUMAN RIGHTS: A COMPARATIVE STUDY* 40-41, 135-57 (2005).

17. See, e.g., CHAYES & CHAYES, *supra* note 1, at 16-17; Ryan Goodman & Derek Jinks, *Measuring the Effects of Human Rights Treaties*, 14 *EUR. J. INT'L L.* 171, 173-74 (2003) (noting problems with focusing on treaty ratification, rather than broader process of incorporation). Professor Simmons, for instance, does find a correlation between treaty ratification and a measure of civil rights violations in a model with a five-year time lag. However, the correlation is weak and not robust to changes to the model that include a time trend and time-fixed effects. See Simmons, *supra* note 14, at 453-56.

18. See, e.g., HENKIN, *supra* note 1, at 47, 236-37; Douglass Cassel, *Does International Human Rights Law Make a Difference?*, 2 *CHI. J. INT'L L.* 121, 124-35 (2001); Goodman & Jinks, *supra* note 16; Kristen B. Rosati, *International Human Rights Treaties Can Make a Difference: U.S. Implementation of Article 3 of the United Nations Convention Against Torture*, 28 *HUM. RTS.* 14 (2001).

depth on individual countries have been more sanguine about the ability of international norms to improve human rights conditions.¹⁹ Nevertheless, a perusal of the State Department Country Reports on Human Rights reveals that there is not one country in the world today with a perfect or near-perfect human rights record. Indeed, in a majority of nations, human rights violations are widespread.²⁰

Thus, the question of when and why countries comply with human rights norms has become of central interest.²¹ There are a number of theories attempting to answer this question. To begin with, *realist international relations theories* view states as unitary, rational actors maximizing their own utility in a perpetual bargaining game over the distribution of scarce resources in an anarchic world.²² In this view, the distribution of material capabilities—primarily power—determines outcomes in international rela-

19. See e.g., ALLISON BRYSK, *THE POLITICS OF HUMAN RIGHTS IN ARGENTINA: PROTEST, CHANGE, AND DEMOCRATIZATION* 42-153 (1994); SANJEEV KHAGRAM, *DAMS AND DEVELOPMENT: TRANSNATIONAL STRUGGLES FOR WATER AND POWER* 33-176 (2004); Ellen L. Lutz & Kathryn Sikkink, *International Human Rights Law and the Practice in Latin America*, 54 INT'L ORG. 633, 639-54 (2000); Kathryn Sikkink, *Human Rights, Principled Issue-Networks, and Sovereignty in Latin America*, 47 INT'L ORG. 411, 423-35 (1993). But see, e.g., KATHRYN SIKKINK, *MIXED SIGNALS: U.S. HUMAN RIGHTS POLICY AND LATIN AMERICA* 137-42 (2004) (noting failure of Carter human rights policy to prevent increasing human rights abuses in Guatemala and El Salvador despite both countries' then-recent ratification of the American Convention on Human Rights) [hereinafter SIKKINK, *MIXED SIGNALS*]; Laurence R. Helfer, *Overlegalizing Human Rights: International Relations Theory and the Commonwealth Caribbean Backlash Against Regimes*, 102 COLUM. L. REV. 1832, 1860-82 (2002) (describing Commonwealth Caribbean nations' withdrawal from human rights treaties in response to Privy Council's interpretation of those treaties); see also Emilie M. Hafner-Burton & James Ron, *Seeing Double: Human Rights Impact Through Qualitative and Quantitative Eyes*, 61 WORLD POL. 360, 373-88 (2009) (conjecturing reasons for the different outcomes in qualitative and quantitative studies).

20. Counting only egregious violations of the most basic human rights, for example, 27% to 47% of countries can be said to have been repressive from 1978-2000, with a clear tendency towards increasing violations. See Hafner-Burton & Tsutsui, *supra* note 12, at 1376. These aggregate figures may paste over improvements in some areas of the world or with regard to specific human rights. For instance, improvements in Eastern Europe have been offset by negative developments in parts of Africa and elsewhere, and a decrease in incidents of torture has come at the expense of higher levels of disappearances and other human rights violations. See, e.g., David L. Cingranelli & David L. Richards, *The Cingranelli and Richards (CIRI) Human Rights Data Project*, 32 HUM. RTS. Q. 401, 416 (2010); Hafner-Burton & Ron, *supra* note 19, at 377-79.

21. Professors Goodliffe & Hawkins, Hathaway, and Neumayer have pursued the related questions of why countries commit to human rights treaties in the first place and under what circumstances they do so with reservations. See Jay Goodliffe & Darren G. Hawkins, *Explaining Commitment: States and the Convention Against Torture*, 68 J. POL. 358, 361-64 (2006); Oona A. Hathaway, *Why Do Countries Commit to Human Rights Treaties?*, 51 J. CONFLICT RESOL. 588 (2007) [hereinafter Hathaway, *Why Commit?*]; Eric Neumayer, *Qualified Ratification: Explaining Reservations to International Human Rights Treaties*, 36 J. LEGAL STUD. 397 (2007). Others have studied the question whether adopting domestic constitutional protections of human rights changes state behavior. See Linda Camp Keith, C. Neil Tate & Steven C. Poe, *Is the Law a Mere Parchment Barrier to Human Rights Abuse?*, 71 J. POL. 644 (2009).

22. See, e.g., Jeffrey W. Legro & Andrew Moravcsik, *Is Anybody Still a Realist?*, 24 INT'L SECURITY 5, 12-16 (1999).

tions.²³ Thus, human rights norms will be enforced to the extent that it is in the strategic interest of powerful nations to enforce them.²⁴ Unfortunately, powerful countries rarely give priority to human rights concerns in their foreign policy, thus leaving human rights regimes largely unenforced.²⁵ To the extent that those states do decide to pressure others to live up to their international human rights commitments—by means ranging from the withholding of foreign aid to the extremely rare imposition of economic sanctions—their actions tend to be inconsistent and easily reversed by more important strategic interests.²⁶ Compliance, or rather convergence of interests, may also occur to the extent a country simply has no interest in violating its population's rights.²⁷ For the most part, however, realist theories on compliance with human rights norms focus on coercion by powerful states and are generally pessimistic about compliance.²⁸

Institutionalist international relations theories start from the same assumptions as their realist counterparts.²⁹ However, they reject the pessimistic outlook of realist theories and posit that there are a number of reasons why states have incentives to enter into and comply with international institutions, that is, “established rules, norms, and conventions.”³⁰ For our purposes, institutionalist theories predict that reputational benefits, reci-

23. See, e.g., KENNETH N. WALTZ, *THEORY OF INTERNATIONAL POLITICS* 97-99 (1979); Legro & Moravcsik, *supra* note 22, at 16-18.

24. See, e.g., WALTZ, *supra* note 23, at 200; Jack Donnelly, *International Human Rights: A Regime Analysis*, 40 INT'L ORG. 599, 625 (1986).

25. See, e.g., GOLDSMITH & POSNER, *supra* note 1, at 117; Stephen D. Krasner, *Sovereignty, Regimes, and Human Rights*, in *REGIME THEORY AND INTERNATIONAL RELATIONS* 139, 144 (Volker Rittberger ed., 1993).

26. See, e.g., GOLDSMITH & POSNER, *supra* note 1, at 117.

27. As Professors Goldsmith and Posner argue:

States rarely commit genocide or crimes against humanity . . . An international lawyer might view this fact as evidence that states comply with the Genocide Convention and the customary international law prohibition on crimes against humanity. A better explanation is that the relative absence of genocide and crimes against humanity reflects a coincidence of interest. . . . There are almost always insufficient animosities among citizens to provoke such crimes, it is morally abhorrent to kill large groups of people, and such acts radically disrupt society and the economy (and thus threaten even autocratic leaders).

Id. at 111.

28. See, e.g., Andrew Moravcsik, *The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe*, 54 INT'L ORG. 217, 220-21 (2000).

29. See, e.g., ROBERT O. KEOHANE, *AFTER HEGEMONY, COOPERATION AND DISCORD IN THE WORLD POLITICAL ECONOMY* 65-84, 245 (1984); Jack Goldsmith, *Sovereignty, International Relations Theory, and International Law*, 52 STAN. L. REV. 959, 962-63 (2000) (reviewing STEPHEN D. KRASNER, *SOVEREIGNTY: ORGANIZED HYPOCRISY* (1999)); Stephen D. Krasner, *Structural Causes and Regime Consequences: Regimes as Intervening Variables*, in *INTERNATIONAL REGIMES* 1, 11-16 (Stephen D. Krasner ed., 1983).

30. ROBERT O. KEOHANE, *INTERNATIONAL INSTITUTIONS AND STATE POWER* 1 (1989); see also Krasner, *supra* note 29, at 1 (defining international institutions as “sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actor expectations converge in a given issue-area”). On the long debate over the proper definition of institutions see Beth A. Simmons & Lisa L. Martin, *International Organizations and Institutions*, in *HANDBOOK OF INTERNATIONAL RELATIONS*, *supra* note 1, at 192, 192-194.

procuity, and the sharing of information all may serve as incentives for states to comply with their human rights commitments.³¹ However, all of these incentives are considerably less strong in the area of human rights than they are with regard to treaties that involve a true *quid pro quo* among the treaty partners. The simple reason is that it is a treaty partner's own population, rather than the population of other states, that suffers most from that partner's human rights violations.³² Thus, the benefits of a reputation as a country that complies with its human rights obligations are mostly weak. They are strong only in narrow circumstances, such as where another country's decision on foreign aid or membership in the European Community, the European Convention of Human Rights, or other small group with high standards is at stake. Reputational benefits are thus likely to lead to cooperation that is either wide and shallow or narrow and deep.³³ The incentive effects of reciprocity are expected to be equally limited: A country with high human rights standards may worry that its human rights violations may lead other countries to retaliate against its citizens living in those countries.³⁴ The same is likely to be true of a country that shares an ethnic or religious group with another nation.³⁵ However, a country with neither of these characteristics has little reason to be concerned with retaliation in kind.³⁶ Finally, institutionalists have pointed to the importance of information sharing for cooperation in international relations.³⁷ Since information on the compliance of other nations with their human rights commitments may be scarce, an agreement to share such information with other treaty partners will improve monitoring, thus making pressure on violators more likely.³⁸ Again, however, whether such pressure will indeed result is less certain than in treaty regimes that involve a true *quid pro quo*.³⁹ At the very least, it will be more difficult for the rest

31. See, e.g., KEOHANE, *supra* note 29, at 103-06, 245; Hathaway, *Human Rights Treaties*, *supra* note 11, at 1951.

32. As Professor Moravcsik has put it:

Unlike international institutions governing trade, monetary, environmental, or security policy, international human rights institutions are not designed primarily to regulate policy externalities arising from societal interactions across borders, but to hold governments accountable for purely internal activities.

Moravcsik, *supra* note 28, at 217.

33. See, e.g., Neumayer, *supra* note 11, at 928.

34. See, e.g., *id.* at 927.

35. See, e.g., GOLDSMITH & POSNER, *supra* note 1, at 109-10.

36. See, e.g., Neumayer, *supra* note 11, at 927.

37. See, e.g., KEOHANE, *supra* note 29, at 244-47.

38. *Cf. id.* at 244-45 (arguing that international institutions "increase the symmetry and improve the quality of the information that governments receive," thus "help[ing] to bring governments into continuing interaction with one another, reducing incentives to cheat and enhancing the value of reputation").

39. *Cf.* Krasner, *supra* note 25, at 164 (noting that the monitoring devices of the U.N. human rights treaties have not resulted in much pressure against powerful nations, and that states have been reluctant to accuse other states of human rights violations). Moreover, it would appear to depend on the extent to which the information about human rights violations is disseminated by international organizations, NGOs, and the news media. *Cf.* Emilie M. Hafner Burton, *Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem*, 62 INT'L ORG. 689, 694 (2008) ("[w]hether and how

of the world to stand by idly once a country's human rights violations have openly been documented. Various human rights regimes have made use of this insight and require member states to submit periodical reports and, as in the case of the Convention Against Torture, submit reports in response to inquiries by the Committee Against Torture.⁴⁰

Liberal international relations theories proceed from the same rational choice precepts as realism and institutionalism.⁴¹ Unlike realism and institutionalism, however, liberalism is not primarily state centric in outlook.⁴² Instead, liberalism focuses on the formation of state preferences and maintains that those preferences are the result of the interests and behavior of sub-state actors.⁴³ Thus, states always represent, and respond to, some subset of society, depending on "the underlying identities, interests, and power of individuals and groups (inside and outside the state apparatus)."⁴⁴ In this view, domestic institutional design is crucial to determine which groups and individuals influence state preferences.⁴⁵ Thus, in a pure autocracy, the preferences of a single dictator and perhaps those of his immediate advisers prevail.⁴⁶ In a democracy, on the other hand, much depends on how groups and individuals can affect governmental policy. In this vein, Professor Moravcsik has demonstrated that it was the governing elites of newly democratic European countries that pushed for the adoption of a strong European Convention on Human Rights in the early 1950s, trying to lock in the benefits of democracy against less-democratically inclined governments that might subsequently be in power.⁴⁷ As far as implementation of human rights norms, liberal theories focus on the exis-

naming and shaming works might also depend on when and where the spotlight is shone."); *id.* at 694-96 (summarizing the very different levels of publicity given to human rights abuses in various countries by international organizations, NGOs, and the news media).

40. See Convention Against Torture, *supra* note 7, art. 20; see also ICCPR, *supra* note 7, art. 40; CEDAW, *supra* note 7, art. 18; Emilie M. Hafner-Burton, *Trading Human Rights: How Preferential Trade Agreements Influence Government Repression*, 59 INT'L ORG. 593, 603 (2005) (noting that "[o]ver the years, the regime [of major human rights treaties] has proven increasingly competent in supplying the instruments necessary to collect and exchange information on human rights violations, and to disseminate that information on a global scale").

41. See, e.g., Moravcsik, *supra* note 28, at 248-49.

42. As Professor Krasner notes,

Both realism and [institutionalism], as they have been developed in the United States, are state-centric perspectives. . . . The most powerful consequences of international human rights regimes, however, may be the way in which they enhance the capabilities of particular groups or individuals within states.

Krasner, *supra* note 25, at 141.

43. See, e.g., Andrew Moravcsik, *Taking Preferences Seriously: A Liberal Theory of International Politics*, 51 INT'L ORG. 513, 516-20 (1997).

44. *Id.* at 518.

45. See, e.g., Anne-Marie Slaughter, *International Law in a World of Liberal States*, 6 EUR. J. INT'L L. 503, 517 (1995); Anne-Marie Slaughter Burley, *International Law and International Relations Theory: A Dual Agenda*, 87 AM. J. INT'L L. 205, 228-29 (1993); Hans-Peter Schmitz & Kathryn Sikkink, *International Human Rights*, in HANDBOOK OF INTERNATIONAL RELATIONS, *supra* note 1, at 517, 529.

46. See, e.g., Moravcsik, *supra* note 43, at 518.

47. See Moravcsik, *supra* note 28, at 225-43.

tence of individuals and groups that are able and willing to pressure the government to comply with its human rights commitments. Thus, research in this vein suggests that norms of international law in general and of human rights in particular are more likely to be enforced if groups and individuals are given standing before international or domestic courts to enforce such norms and, in the case of international courts, if their judgments can be enforced in domestic courts.⁴⁸ Moreover, liberal theory predicts that democratic states are more likely to comply with their human rights commitments than non-democratic states, again because democracies offer more avenues for individuals and groups to be heard than non-democracies.⁴⁹

Another influential theory combines realist, institutionalist, and liberal insights with constructivist thinking⁵⁰ to elucidate the pivotal role played by *transnational advocacy networks* in getting countries to live up to their human rights obligations.⁵¹ According to this theory, transnational advocacy networks—such as nongovernmental organizations, intergovernmental organizations, political parties, and media—“use the power of their information, ideas, and strategies to alter the information and value contexts within which states make policies.”⁵² They gather information on the ground in repressive states that attempt to hide their human rights violations and make that information available to large audiences in other countries, both to leverage action by powerful countries against the repressors and to hold policymakers in those countries accountable to their

48. See, e.g., William J. Aceves, *Liberalism and International Legal Scholarship: The Pinochet Case and the Move Toward a Universal System of Transnational Law Litigation*, 41 HARV. INT'L L.J. 129, 160-71 (2000) (explaining multinational efforts to prosecute Augusto Pinochet for violation of international human rights norms in terms of liberal international relations theory); Laurence R. Helfer & Anne-Marie Slaughter, *Toward a Theory of Effective Supranational Adjudication*, 107 YALE L.J. 273, 290-98 (1997) (tracing the success of the ECJ and the European Court of Human Rights (ECHR) in terms of compliance with their judgments in cases involving private parties vis-à-vis their compliance record, and that of other international tribunals in traditional state-versus-state litigation); Robert O. Keohane, Andrew Moravcsik & Anne-Marie Slaughter, *Legalized Dispute Resolution: Interstate and Transnational*, 54 INT'L ORG. 457, 458, 462-66, 478 (2000); see also KAREN J. ALTER, ESTABLISHING THE SUPREMACY OF EUROPEAN LAW 52-53 (2003) (positing that domestic litigants in European countries, among others, played an important role in helping the European Court of Justice establish the supremacy of European law at the domestic level); Laurence R. Helfer, *Redesigning the European Court of Human Rights: Embeddedness as a Deep Structural Principle of the European Human Rights Regime*, 19 EUR. J. INT'L L. 125, 141-59 (2008) (arguing that in order to reduce its caseload, the European Court of Human Rights ought to be helped with increased compliance of its rulings through improved remedies available to groups and individuals at the level of national courts and legislatures).

49. See, e.g., Hathaway, *Human Rights Treaties*, *supra* note 11, at 1954; cf. Robert O. Keohane, *When Does International Law Come Home?*, 35 Hous. L. Rev. 699, 709-11 (1998) (arguing that a theory about when international law is internalized into domestic law needs to account for the presence or absence of liberal democracy in a country).

50. On constructivism, see, e.g., Emanuel Adler, *Constructivism and International Relations*, in HANDBOOK OF INTERNATIONAL RELATIONS, *supra* note 1, at 95.

51. See, e.g., MARGARET E. KECK & KATHRYN SIKKINK, *ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS* 1-37 (1998).

52. *Id.* at 16.

promises.⁵³ With this influence, compliance takes five steps, moving through a “spiral model.”⁵⁴ First, a country may engage in unrestrained repression. Particularly gross human rights violations then trigger the activities of transnational advocacy networks. The networks collect information on repression and make it available to a larger audience, thus leading to attention by foreign governments and shaming in the international community. Second, the repressive state reacts by denying the reported violations, which in turn leads to further scrutiny and increasing pressure from public opinion, liberal states, and international organizations. In the third phase, the country in question makes tactical concessions to avert the pressure, including ratifying human rights treaties.⁵⁵ Rather than relieving the pressure, however, these tactical concessions ultimately have the effect of encouraging domestic dissident groups to become more active and, in a fourth phase, to effect “controlled liberalization,” perhaps even a change of regime by cooperating with the advocacy networks. Ultimately, this leads to rule-consistent behavior, as a more democratic regime permits the use of its various institutions for individuals and groups to make themselves heard.⁵⁶ Whether transnational advocacy networks are successful in getting a country to move along this continuum, especially from phase two (denial and possible backlash) to phase three (tactical concessions), depends to a large extent on the strength and mobilization of the networks and the vulnerability of the state in question to international pressure.⁵⁷

The theory of transnational advocacy networks thus focuses less on enforcement and self-interest and instead points to the importance of norms and ideas. Other influential theories—theories of legitimacy, managerial theory, acculturation theory, and the theory of transnational legal process—do the same. *Theories of legitimacy* argue that the likelihood of compliance is higher when a norm of international law is perceived by the relevant actors as legitimate or as the product of a legitimate or fair pro-

53. *Id.*

54. See Thomas Risse, *Von der Anerkennung der Menschenrechte zu ihrer Einhaltung*, in *MENSCHHEIT UND MENSCHENRECHTE* 41, 45 (Eckart Klein & Christoph Menke eds., 2002); Thomas Risse & Kathryn Sikkink, *The Socialization of International Human Rights Norms into Domestic Practices*, in *THE POWER OF HUMAN RIGHTS* 1, 17–34 (Thomas Risse, Stephen Ropp & Kathryn Sikkink eds., 1999); Schmitz & Sikkink, *supra* note 45, at 531–32.

55. Attempting to explain why, in her quantitative study, non-democratic countries on average are shown to have worse human rights records after committing to human rights treaties, Professor Hathaway proposes an expressive theory of treaty ratification. That is, she argues, countries commit to a treaty not only in order to experience that treaty’s effects and benefits, but also to express to the rest of the world that they have made a decision to commit to the treaty’s terms and, more generally, to the ideas the treaty represents. At times, however, countries will want to express such an intent without actually meaning it, just to get international pressure off their backs. See Hathaway, *Human Rights Treaties*, *supra* note 11, at 2002–20.

56. Risse & Sikkink, *supra* note 54, at 17–34.

57. See *id.* at 24. Professor Hawkins argues that transnational advocacy networks are successful only when certain domestic characteristics are present that lead the target state to be concerned about its internal and external legitimacy. See DARREN G. HAWKINS, *INTERNATIONAL HUMAN RIGHTS AND AUTHORITARIAN RULE IN CHILE* 15–48 (2002).

cess.⁵⁸ *Managerial theory*, developed primarily by the late Professor Chayes and Antonia Handler Chayes, argues, on the other hand, that states have an inherent propensity to comply with international norms and that noncompliance is largely due to (1) reasonable disagreements about the proper interpretation of ambiguous international law norms; (2) limitations on the capacity of states to live up to their undertakings; and (3) temporal issues, such as uncontrollable social and economic changes and the long time it may take for a country to implement a new treaty obligation.⁵⁹ Managerialists, therefore, argue that enforcement action by the international community is not only very costly, and thus rare, but is also mostly misguided.⁶⁰ From this perspective, a much better approach is for other nations to persuade the perceived violator to comply—to use “jawboning,” the stock-in-trade of lawyers, and international diplomats—as well as to provide technical assistance where a country lacks the resources to live up to its commitments.⁶¹ Applying this theory, the sharing of information on a state’s performance in the area of human rights as conceived by the ICCPR may help other states to persuade laggards to change their ways.

Professors Goodman and Jinks have argued that there is a mechanism, distinct from the persuasion emphasized by managerial theory, that plays a pivotal role in bringing the behavior of states into compliance with human rights norms—*acculturation*.⁶² Through acculturation, they posit, “actors adopt the beliefs and behavioral patterns of the surrounding culture.”⁶³ This occurs both through social pressure and cognitive pressure—real or imagined.⁶⁴ Thus, “[t]reaty regimes can induce desirable behavior through processes that institutionalize models of legitimate state practice and that link states and their citizenry to forums that elaborate and apply such standards.”⁶⁵

Finally, Dean Koh’s theory of *transnational legal process* adds to the managerial theory’s horizontal, state-centric argument a vertical component that transcends the state and that Koh views as particularly important in order to bring a state to obey international human rights law.⁶⁶ According to Koh, a country’s compliance with international law norms depends to a considerable extent on a process of internalization of those norms. In his view, internalization occurs in a three-step process. First, an interaction instigated by one or more transnational actors occurs, which in turn leads to an interpretation of the relevant international law norm by an interpre-

58. See, e.g., FRANCK, *supra* note 1, at 7-79; Ian Hurd, *Legitimacy and Authority in International Politics*, 53 INT’L ORG. 379, 387-92 (1999).

59. See CHAYES & CHAYES, *supra* note 1, at 3-17.

60. See, e.g., *id.* at 22; Ronald Mitchell, *Compliance Theory: A Synthesis*, 2 REV. EUR. COMMUNITY & INT’L ENVTL. L. 327, 330 (1993).

61. CHAYES & CHAYES, *supra* note 1, at 25-28; see also *id.* at 3 (noting that “this book presents an alternative ‘managerial model’ [of compliance], relying primarily on a cooperative, problem-solving approach instead of a coercive one”).

62. See Goodman & Jinks, *supra* note 16, at 625-26.

63. *Id.* at 626.

64. *Id.* at 639-42.

65. *Id.* at 695-96.

66. See Koh, *supra* note 1, at 2655-56.

tive body. That interpretation, then, promotes the internalization of the international norm into the law of the domestic system of the country in question.⁶⁷ Litigation in domestic and international tribunals plays an important role in the functioning of this theory.⁶⁸ For example, Koh points to litigation by private parties under the Alien Tort Claims Act as an instrument for domestic human rights litigators “to promote domestic judicial incorporation of the norm against torture” in the United States.⁶⁹

B. The Importance of Access to Domestic Courts

One of the striking things about these theories on compliance with international law in general and human rights in particular is that many of them—like much of international law—are state-centric in outlook. Indeed, realist and institutionalist theories assume state preferences to be fixed.⁷⁰ This permits them to generate rigorous theories about outcomes in international relations without getting tangled up in the messy details of domestic preference formation.⁷¹ However, this approach is likely to miss important pathways by which the behavior of states and sub-state actors is brought into conformity with international law rules. This problem is particularly acute in the area of human rights norms, which bind countries with regard to their internal behavior, and thus, are likely to be implemented primarily at the domestic level.⁷² Thus, it is hardly surprising that the most state-centric theories, realism and institutionalism, predict only very limited compliance with human rights norms.⁷³ On the other hand, however, the quantitative empirical studies that have thus far been conducted on the reasons for human rights violations have primarily pointed to factors inside the black box of the state. Thus, these studies have found democracy and level of economic development to be associated with fewer human rights abuses, while they have found civil war, inequality, and population

67. *Id.* at 2646. Professor Cleveland argues that U.S. economic and foreign aid sanctions promote such an internalization of international human rights norms in violating countries under certain circumstances. See Sarah H. Cleveland, *Norm Internalization and U.S. Economic Sanctions*, 26 *YALE INT'L L.J.* 1, 48–90 (2001).

68. Koh, *supra* note 1, at 2656 (noting the importance of empowering more actors and the salience of various tribunals for the process of internalization to work well).

69. *Id.* at 2657; see also Harold Hongju Koh, *America's Jekyll-and-Hyde Exceptionalism*, in *AMERICAN EXCEPTIONALISM AND HUMAN RIGHTS* 111, 138–42 (Michael Ignatieff ed., 2005) (using the *Rasul*, *Hamdi*, and *Padilla* cases in U.S. courts as examples of transnational legal process in which private actors attempted to improve U.S. compliance with the Geneva Conventions and the due process rights of U.S. citizens held at U.S. military facilities). For another example in this vein, Professor Waters reports on what she calls “creeping monism.” An increasing tendency of various common law courts to use international law norms in human rights to help with the interpretation of purely domestic law where those treaties have not (yet) become the law of the land. See Melissa Waters, *Creeping Monism: The Judicial Trend Toward Interpretive Incorporation of Human Rights Treaties*, 107 *COLUM. L. REV.* 628, 652–94 (2007).

70. See, e.g., Legro & Moravcsik, *supra* note 22, at 13, 21–22.

71. *Id.* at 13.

72. See *supra* note 32 and accompanying text.

73. See *supra* text accompanying notes 22–39.

size to be correlated with worse human rights practices.⁷⁴ The only international factor that has thus far consistently been observed to be associated with human rights violations is the presence of international war.⁷⁵

If the reasons for human rights violations are more likely to be found at the state level, non-state centric theories are bound to provide particularly helpful insights into compliance with human rights norms. In all such theories—liberal international relations theories, the theory of transnational advocacy networks, and transnational legal process—the behavior of individuals and groups plays a pivotal role. According to these theories, individuals and groups may become influential at international organizations and at international tribunals and venues.⁷⁶ For the most part, however, they make their interests heard at the domestic level—both at home

74. See, e.g., RHONDA L. CALLAWAY & ELIZABETH G. MATTHEWS, STRATEGIC U.S. FOREIGN ASSISTANCE 87-110 (2008); SONIA CARDENAS, CONFLICT AND COMPLIANCE 101-113 (2007); LANDMAN, *supra* note 16, at 108-16, 133-57; Sabine C. Carey, *Domestic Threat and Repression: An Analysis of State Responses to Different Forms of Dissent*, in UNDERSTANDING HUMAN RIGHTS VIOLATIONS 202, 203-216 (Sabine C. Carey & Steven C. Poe eds., 2004); Christian Davenport & David A. Armstrong II, *Democracy and the Violation of Human Rights: A Statistical Analysis from 1976 to 1996*, 48 AM. J. POL. SCI. 538, 543-51 (2004); Christian A. Davenport, *Constitutional Promises and Repressive Reality: A Cross-National Time Series Investigation of Why Political and Civil Liberties Are Suppressed*, 58 J. POL. 627, 636-48 (1996); Gilligan & Nesbitt, *supra* note 12, at 455-62; Hafner-Burton & Tsutsui, *supra* note 15, at 413-21; Conway W. Henderson, *Conditions Affecting the Use of Political Repression*, 35 J. CONFLICT RES. 120, 123-34 (1991); Neumayer, *supra* note 11, at 937-50; Steven C. Poe, C. Neal Tate & Linda Camp Keith, *Repression of the Human Right to Personal Integrity Revisited: A Global Cross-National Study Covering the Years 1976-1993*, 43 INT'L STUD. Q. 291, 299-307 (1999) [hereinafter Poe et al., *Repression*]; Steven C. Poe & C. Neal Tate, *Human Rights and Repression to Personal Integrity in the 1980s: A Global Analysis*, 88 AM. POL. SCI. REV. 853, 855-66 (1994); David L. Richards, Ronald D. Gelleny & David H. Sacko, *Money With a Mean Streak: Foreign Economic Penetration and Government Respect for Human Rights in Developing Countries*, 48 INT'L STUD. Q. 219, 230-36 (2001); Sabine C. Zanger, *A Global Analysis of the Effect of Political Regime Changes on Life Integrity Violations, 1977-1993*, 37 J. PEACE RES. 213, 218-28 (2000). More mixed findings have been reported with regard to other internal variables such as economic growth, population growth, military and leftist regime, cultural diversity, and number of NGOs operating in a state. See, e.g., Chris Lee, Ronny Lindström, Will H. Moore & Kürşad Turan, *Ethnicity and Repression: The Ethnic Composition of Countries and Human Rights Violations*, in UNDERSTANDING HUMAN RIGHTS VIOLATIONS, *supra*, at 186, 190-96; and the studies listed above.

75. See, e.g., the sources cited *supra* note 74. There is also recent evidence that the level of international trade is correlated with better conditions for some human rights. See CARDENAS, *supra* note 74, at 109; Hafner-Burton, *supra* note 40, at 614-23. Findings have been more mixed, however, with regard to other international trade and investment variables and with international naming and shaming endeavors. See, e.g., the studies listed in note 74; Hafner-Burton, *supra* note 39, at 699-777. Moreover, in a recent study, Professor Hafner-Burton found a small but statistically significant correlation between preferential trade agreements with hard human rights standards and better human rights practices. See Hafner-Burton, *supra* note 40, at 614-23.

76. See, e.g., Keohane et al., *supra* note 48, at 462-65 (describing role of groups and individuals in litigation in international fora); Harold Hongju Koh, *Bringing International Law Home*, 35 HOUS. L. REV. 623, 649-50 (1998) (opining that transnational actors "need both public and private stages upon which to interact" and that such stages "include treaty regimes; domestic, regional, and international courts; ad hoc tribunals; domestic and regional legislatures; executive entities; commissions of international publicists; and nongovernmental organizations").

and abroad—by attempting to influence decisions of executives, legislatures, and courts, or—in autocracies—the leader(s) in charge.⁷⁷ Thus, one important way in which individuals and groups are making their preferences count, according to these theories, is through litigation in domestic courts.⁷⁸

From this perspective, one can expect that the more a country grants individuals and groups access to domestic tribunals to complain about human rights violations, the more likely that country is to be in line with its international commitments in this area. There are a number of reasons why this is so. First, increased access to court will allow more individuals whose human rights have been violated to bring their claims to the attention of a court. As a result, the number of cases with such claims will rise,⁷⁹ and so will both the visibility of the rights abuses complained of and the perception of the litigation process as a viable path for individuals to have a violation corrected.⁸⁰ The latter is particularly important in countries in which individuals are under the impression that the litigation system is rigged against them.⁸¹ Knowing about other human rights cases and their potential for generating relief may strengthen individuals' determination to sue or to prosecute their civil or criminal defense against the government with the necessary vigor and adequate legal help. Second, if the access granted in a country is to an independent and competent tribunal through a fair proceeding that provides each side an opportunity to be heard and to present its own evidence, we can assume that the court will rectify the violation if proven to be true. Third, outcomes in favor of the complaining individual will have both a specific deterrence effect against the government officials that committed the human rights violations complained of and a general deterrence effect against anyone else who might

77. See, e.g., *supra* notes 43–48, 54–57, 67–69 and accompanying text; see also Samuel P. Baumgartner, *Is Transnational Litigation Different?*, 25 U. PA. J. INT'L ECON. L. 1297, 1361 (2004) (arguing that “transnational law is itself the result of individual and group preferences—within and outside of government—exerted either directly through participation in the legislative, administrative, and litigation processes, or indirectly by engaging in transactional or litigation strategies designed to take advantage of, or frustrate, substantive or procedural policy”).

78. See *supra* notes 48, 54, 68 and accompanying text. Professor Hathaway, too, makes this element a crucial part of her integrated theory of international law. See Hathaway, *Integrated Theory*, *supra* note 1, at 497–500. One can then go one step further and argue that, as a result of this importance of domestic litigation in implementing transnational norms, and—in effect—in allocating decisional authority, domestic courts play an important role in global governance. See Christopher A. Whytock, *Domestic Courts and Global Governance*, 84 TUL. L. REV. 67, 74–114 (2009).

79. Cf. Keohane et al., *supra* note 48, at 474 (making the same conjecture for international and transnational dispute resolution).

80. As Professors Keohane and Moravcsik and Dean Slaughter point out in the context of international and transnational dispute resolution, “cases breed cases.” See Keohane et al., *supra* note 48, at 482.

81. Cf. Teresa P.R. Caldeira & James Holston, *Democracy and Violence in Brazil*, 41 COMP. STUD. SOC. & HIST. 691, 707 (1999) (stating that “once their rights have been violated, it is equally unlikely for Brazilians to expect redress through the courts,” and pointing to a 1988 study, according to which “about seventy-two percent of Brazilians involved in criminal conflicts do not use the justice system to resolve their problems”).

consider committing a violation in the future.⁸² Finally, all of this is likely to increase the interest and opportunity of individuals and groups to help monitor violations.⁸³ Through this process of rectification and deterrence, we can assume that the human rights practices of the country in question will be brought closer to conformity with international law.

As a result, countries with superior access to justice can be expected to have better compliance with international human rights law. Not surprisingly, then, various human rights instruments impose an obligation on nations to provide anyone whose rights have been violated with an effective remedy.⁸⁴ In the United States, Congress has long since adopted the view that civil litigation initiated by private parties can be an effective tool to enforce federal laws.⁸⁵ In other countries, the focus has been on the criminal process. In many civil law countries, for example, victims are given the right, among other things, to initiate a criminal proceeding whether or not the prosecution has brought charges, to participate in the proceedings as an independent party with roughly the same procedural rights as a defendant, and to appeal an acquittal.⁸⁶ Initiating such a criminal proceeding is particularly interesting for a victim when combined with a civil suit for compensation because it permits the plaintiff to trigger the use of the state apparatus for finding evidence in countries in which U.S.-style discovery is missing.⁸⁷ Nevertheless, in some countries, victims frequently seek crimi-

82. See, e.g., FARHANG, *supra* note 3, at 8-9.

83. Cf. Karen J. Alter, *Do International Courts Enhance Compliance with International Law?*, 25 REV. ASIAN & PAC. STUD. 51, 57 (2006) (presenting the related argument that litigation in international courts can “facilitate compliance [with international law] by harnessing litigants to help monitor violations”).

84. See, e.g., Universal Declaration of Human Rights, G.A. Res. 217A, art. 8, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948). Notice, however that, unlike the Universal Declaration, the binding human rights treaties stop short of requiring a *judicial* remedy. See, e.g., ICCPR, *supra* note 7, art. 2(3) (imposing obligations to provide a remedy before “competent judicial, administrative, or legislative authorities” and to “develop the possibilities of judicial remedy”); Convention Against Torture, *supra* note 7, art. 14 (requiring a member state to “ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation”). Convention for the Protection of Human Rights and Fundamental Freedoms art. 13, Nov. 4, 1950, 213 U.N.T.S. 221 (requiring member states to provide an “effective remedy before a national authority”). The Human Rights Committee, the body tasked with supervising implementation of the ICCPR, has declared that the requirement of Article 2(3) of the ICCPR represents “an integral part to the structure of the Covenant and underpin[s] its efficacy.” Human Rights Committee, General Comment 24, U.N. Doc. A/50/40, vol. 1, at 126 (1995).

85. See, e.g., FARHANG, *supra* note 3, at 94-213; Meltzer, *supra* note 3, at 253-327; Morrison, *supra* note 3, at 597-607; Rubenstein, *supra* note 3, at 2133-71.

86. See, e.g., UWE HELLMANN, STRAFPROZESSRECHT 343-49 (2d ed. 2006); Felix Bommer, *Warum sollen sich Verletzte am Strafverfahren beteiligen dürfen?*, 121 SCHWEIZERISCHE ZEITSCHRIFT FÜR STRAFRECHT 172, 175-77 (2003); Beth van Schaack, *In Defense of Civil Redress: The Domestic Enforcement of Human Rights Norms in the Context of the Proposed Hague Judgments Convention*, 42 HARV. INT’L L.J. 141, 145-47 (2001).

87. See, e.g., van Schaack, *supra* note 86, at 146; Daniel Soulez Larivière, *Overview of the Problems of French Civil Procedure*, 45 AM. J. COMP. L. 737, 745-46 (1997) (observing that a “party claiming damages in criminal proceedings . . . has at its disposal the entire State police machinery with which to wage its own private war”).

nal redress only.⁸⁸ In short, the hypothesis that access to justice improves compliance with human rights norms—indeed with any norms, domestic and international—is well recognized across the globe. I thus test this hypothesis with the present empirical study.

II. Testing Theory with Empirical Facts: Research Design

A. Access to Justice

There is currently no database that measures access to justice across nations and for an extended period of time. I thus proceeded to collect such data to be able to test our hypothesis. In order to know what precisely to measure, it is important to begin by defining the concept of access to justice.⁸⁹ Relying on the theoretical explanation developed above about why and how individuals in domestic courts can be expected to help enforce human rights norms,⁹⁰ I define access to justice as the ability of groups and individuals to be able to bring an alleged rights violation to the attention of a court and to have that court adjudicate the claim in a fair and impartial fashion on the basis of the evidence and according to the applicable rules of law. This definition is more inclusive than the notion of access as the formal ability to sue or the ability to pay for litigation and representation.⁹¹ It recognizes that private individuals can have their interests counted not only in civil litigation, but also in criminal cases—whether initiated by the government or by those individuals who may bring criminal claims in the many countries where that is possible.⁹² Moreover, effective judicial enforcement of international law norms by private parties is likely to depend on more than the legal and economic ability to litigate.⁹³ As indicated earlier, only an independent and competent court, after a fair proceeding in which both parties have an opportunity to be heard and present their evidence can be expected to recognize relevant human rights violations and rectify them.⁹⁴ At the same time, however, my definition of access to justice is less demanding than that implied by process theories focusing on concerns other than effectuation and deterrence, such as values of dignity and participation.⁹⁵ The reason is simple: Aspects of partici-

88. See, e.g., HELLMANN, *supra* note 86, at 343.

89. See, e.g., Robert Adcock & David Collier, *Measurement Validity: A Shared Standard for Qualitative and Quantitative Research*, 95 AM. POL. SCI. REV. 529, 532-33 (2001) (urging scholars to begin by defining a “systematized concept” of what to measure against the backdrop of the “background concept” that inspired the research project).

90. See *supra* text accompanying notes 70-88.

91. Cf. Mauro Cappelletti & Bryant Garth, *Access to Justice: The Worldwide Movement to Make Rights Effective, A General Report*, in 1 ACCESS TO JUSTICE 1, 32-35 (Mauro Cappelletti & Bryant Garth eds., 1978) (describing legal aid and other efforts to even out inequalities in resources to litigate as the “first wave” of procedural reforms to improve access to justice across the world).

92. See *supra* text accompanying notes 81-82, 86-88.

93. Cf. Keohane et al., *supra*, note 48, at 459-68 (distinguishing access, independence, and embeddedness as factors determining the effectiveness of *international tribunals*).

94. See *supra* text accompanying notes 81-82.

95. Professor Michelman has famously defined those terms as follows:

pation in particular—to the extent they are at cross-purposes with effectuation and a concomitant deterrence effect—are less likely to improve compliance with substantive norms,⁹⁶ although they do play an important role for the emotional satisfaction of human rights and other litigants.⁹⁷

This definition of access to justice suggests indicators focusing on basic access, that is, the formal right to sue the government for alleged human rights violations and the right of the accused to a trial before a court of law within reasonable time, as well as the right to some form of state scheme to support those who cannot otherwise afford the costs of litigation and legal representation. But it also suggests indicators to measure other basic features of the litigation process that help ensure that the litigant in question receives access to *justice*, such as the right to counsel, the right to a public trial, the right to be heard, the right to be presumed innocent until proven guilty in criminal cases, the right to an independent and competent judge, and the right to appeal.

Dignity values reflect concern for the humiliation or loss of self-respect which a person might suffer if denied an opportunity to litigate. *Participation values* reflect an appreciation of litigation as one of the modes in which persons exert influence, or have their will “counted,” in societal decisions they care about. *Deterrence values* recognize the instrumentality of litigation as a mechanism for influencing or constraining individual behavior in ways thought socially desirable. *Effectuation values* see litigation as an important means through which persons are enabled to get, or are given assurance of having, whatever we are pleased to regard as rightfully theirs.

Frank I. Michelman, *The Supreme Court and Litigation Access Fees: The Right to Protect One's Rights*, 1973 DUKE L.J. 1153, 1172-73 (1973) (italics in original).

96. Both dignity and participation may, of course, increase the motivation of human rights victims to file claims or to strengthen their litigation efforts and thus may lead to both higher levels of enforcement and accuracy. Cf. Lawrence B. Solum, *Procedural Justice*, 78 S. CAL. L. REV. 181, 273-84 (2004) (arguing that participation increases both accuracy and legitimacy). Increasing levels of participation in particular, however, may lead to litigation that is so large and expensive that a judgment, and thus, both a finding of a violation and redress may become unachievable. Cf. e.g., Stephen B. Burbank, *The Costs of Complexity*, 85 MICH. L. REV. 1463, 1483-866 (1987) (suggesting that a procedural system steeped in equity forces litigants to accept dispute resolution short of judgment and thus to surrender the ideal of justice under law, which in turn leads to dispute resolution *simpliciter*); Abram Chayes, *The Role of the Judge in Public Law Litigation*, 89 HARV. L. REV. 1281, 1312 (1976) (noting that “[a] critical question for research is whether [the potential of public law litigation] can be exploited to produce a party structure that is adequately representative in light of the consequences of public law litigation without introducing so much complexity that the procedure falls of its own weight”); Marc Galanter, *Access to Justice as a Moving Frontier*, in ACCESS TO JUSTICE FOR A NEW CENTURY—THE WAY FORWARD 147, 152 (Julia Bass, W.A. Bogart & Frederick H. Zemans eds., 2005) (“A steady diet of the anabolic steroids of corporate and governmental support has made ADR not only far larger than its [litigation] siblings, but also increasingly distant from them.”).

97. See, e.g., Tom R. Tyler & E. Allan Lind, *Procedural Justice*, in HANDBOOK OF JUSTICE RESEARCH IN LAW 65, 74-77 (Joseph Sanders & V. Lee Hamilton eds., 2001) (noting the importance of dignity and voice for individuals to accept proceedings as fair); Tom R. Tyler, *Citizen Discontent with Legal Procedures: A Social Science Perspective on Civil Procedure Reform*, 45 AM. J. COMP. L. 871, 887-89 (1997) (reviewing empirical literature on citizen satisfaction with civil and criminal procedure); Beth Van Schaack, *With All Deliberate Speed: Civil Human Rights Litigation as a Tool for Social Change*, 57 VAND. L. REV. 2305, 2318-26 (2004) (expounding effect of human rights litigation on plaintiffs).

Not surprisingly, this is roughly identical to the list of litigation rights guaranteed by the International Covenant on Civil and Political Rights.⁹⁸ Unfortunately, readily available information on countries' adherence to these rights over a period of years is scarce, as is reliable and comprehensive information on state practice in the area of human rights more generally.⁹⁹ Happily, however, the U.S. State Department's yearly country reports on human rights practices contain a portion evaluating countries' performance with regard to these procedural rights.¹⁰⁰ Although the State Department reports do not provide a perfect measure of state practice,¹⁰¹ they do cover virtually all countries of the world for virtually every year, and a multi-stage vetting process attempts to ensure continuity of measurement across countries and years.¹⁰² I was thus able to use these reports to generate an original database measuring access to justice in 90 randomly selected countries over a period of ten years.¹⁰³

98. ICCPR, *supra* note 7, art. 14. For commentary on Article 14, see, for example, SARAH JOSEPH, JENNY SCHULTZ & MELISSA CASTAN, *THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS* 388-461 (2d ed., 2004); MANFRED NOWAK, *U.N. COVENANT ON CIVIL AND POLITICAL RIGHTS: CCPR COMMENTARY* 302-57 (2d rev'd ed. 2005).

99. See, e.g., Robert Justin Goldstein, *The Limitation of Using Quantitative Data in Studying Human Rights Abuses*, in *HUMAN RIGHTS AND STATISTICS* 35, 41-49 (Thomas B. Jabine & Richard P. Claude eds., 1992); Hathaway, *Human Rights Treaties*, *supra* note 11, at 1963.

100. *Human Rights Reports*, U.S. DEPARTMENT OF STATE, <http://www.state.gov/g/drl/rls/hrrpt/> (last visited Feb. 2, 2011). The procedural rights used here are addressed in the sections "Arbitrary Arrest and Detention" and "Denial of Fair Public Trial."

101. For one thing, despite the effort by the U.S. State Department to utilize multiple sources of information on state practices, the embassies conducting the search on the ground face more difficulty in finding information on state practice in some countries during some years than in others. Moreover, the State Department reports have been accused of political bias. See, e.g., Goldstein, *supra* note 99, at 47-48; Michael Stohl & David Carleton, *The Foreign Policy of Human Rights: Rhetoric and Reality from Jimmy Carter to Ronald Reagan*, 7 *HUM. RTS. Q.* 205, 218 (1985). The claim is supported by empirical evidence. See Steven C. Poe, Sabine C. Carey & Tanya C. Vazquez, *How Are These Pictures Different? A Quantitative Comparison of the US State Department and Amnesty International Human Rights Reports, 1976-1995*, 23 *HUM. RTS. Q.* 650, 659-77 (2001). However, much of the bias in the early reports appears to have dropped off during the 1980s and disappeared by the early 1990s, and the bias that remains is minimal. See, e.g., *id.* at 662-63, 673-76; CLAIR APODACA, *UNDERSTANDING U.S. HUMAN RIGHTS POLICY* 108 (2006); see also SIKKINK, *MIXED SIGNALS*, *supra* note 19, at 206 (stating that "[d]uring the second term of Clinton's presidency, the human rights reports became so extensive and carefully researched that the main human rights organization charged with writing an annual critique, the Lawyers Committee for International Human Rights, decided to no longer issue a counter-report").

102. For a description of the process by which the State Department reports are assembled, see, e.g., APODACA *supra* note 101, at 108-10; Poe et al., *supra* note 101, at 654-55. If the State Department Reports contain systematic errors because information on access to courts as well as on human rights violations more generally is easier to obtain in countries with democratic institutions and a higher NGO presence, my control variables for level of democracy and number of human rights NGOs (see *infra* notes 132-141 and accompanying text) should neutralize the effect of those errors in the present analysis. Cf. Gilligan & Nesbitt, *supra* note 12, at 463-65 (noting the potential of measurement error as a result of increased scrutiny by NGOs and improved democratic institutions as well as the availability of controls to address the problem).

103. I limited myself to 90 countries over ten years to keep the data-gathering process within manageable bounds. The limit to ten years per country further permitted me to

However, the State Department country reports focus mostly on criminal procedure, and I do not know of any source that would similarly provide basic information on the realities of civil and administrative litigation across the nations of the world over a period of time. As a result, I had to limit my database, and thus my study, to access to justice in criminal cases. I still think, however, that much of what is happening in the area of criminal justice is likely to be portable to the civil context. The limited information that is available in the State Department country reports on a country's system of civil justice suggests that problems with access are hardly ever confined to the criminal or the civil side.¹⁰⁴ Careful and systematic reading of these reports indicates that this is certainly the case with regard to the independence and competence of the judiciary, the right to a public trial, the right to be heard and to present one's own witnesses, and the right to appeal. It appears to be only roughly true with regard to the right to counsel, because some countries with excellent access rights in civil cases detain certain groups of criminal defendants incommunicado, and the right to free counsel for the indigent, because some states are more generous in the criminal process, where more is at stake. But even the right to a trial within reasonable time in a criminal case can be expected to have an analogue in civil litigation: In perusing the State Department reports, I noticed that in a great majority of countries that have trouble granting a trial within reasonable time, the reason was a serious backlog of cases. This, of course, is something one would expect to prevent timely consideration of civil claims as well, and a good number of the State Department reports indicate as much.

On the other hand, there is the possibility that a country does well with the rights it grants its criminal defendants, but makes suing the government outside of the criminal process more difficult. At the same time, however, both information from the State Department country reports and comparative scholarship indicates that at least the great majority of those civil law countries that do well on my measures of access to justice in criminal cases compensate for the lack of some of the civil enforcement mechanisms known in the United States and other advanced common law nations with a more expansive use of the criminal justice system, for instance by permitting victims of alleged crimes (including human rights abuses by state officials) to become parties, force a prosecution, and appeal an acquittal.¹⁰⁵ Similarly, it appears that most, if not all, of the countries

focus on those years during which the State Department reports had become more extensive and during which bias in reporting had largely disappeared. *See supra* note 101.

104. *Cf.* Convention for the Protection of Human Rights and Fundamental Freedoms art. 6, Nov. 4, 1950, 213 U.N.T.S. 221 (1950) (requiring rights similar to Article 14 of the ICCPR to be given to everyone "[i]n the determination of his civil rights and obligations" as well as in "any criminal charge against him").

105. These private attorneys general usually enjoy roughly the same basic access rights as defendants in the criminal proceedings in which they participate. *See supra* notes 86-88 and accompanying text. Given this general approach, it is not surprising that most countries have chosen the path of criminal prosecution to redress past human rights abuses. *See, e.g.*, STEVEN R. RATNER, JASON S. ABRAMS & JAMES L. BISCHOFF,

that provide for a high level of access in criminal cases in my study also provide their citizens with an opportunity to sue the government in court for wrongful detention, abusive police conduct, and unlawful or unconstitutional administrative decisions—such as decisions prohibiting demonstrations or the withholding of licenses to operate a news organization.¹⁰⁶ Thus, it is reasonable to assume that the right and the ability to sue a government for human rights abuses corresponds to a considerable extent with the access rights of the accused in the criminal process. However, at this point, we cannot be absolutely sure this is so or that the correlation is perfect—most likely it is not. It is therefore important to proceed cautiously with the assumption that access in criminal cases is likely to be similar to access in civil cases in a country, and to realize that this assumption may (but need not) lead to estimates of the correlation between access to justice and human rights performance that are lower than they would be with a database measuring access in civil as well as in criminal cases.

With that in mind, I coded each one of the 90 countries included in the database on the following ten indicators for each of ten years:¹⁰⁷

- The right to trial within a reasonable amount of time.
- The right to counsel.
- The right to free proceedings and free counsel for indigent defendants.
- The right to a public trial or hearing.
- The right to be heard.
- The right to name one's own witnesses and question witnesses of the prosecution.
- The presumption of innocence.
- The right to appeal to a higher court.
- The independence of the judiciary.
- The competence of the judiciary (including lack of judicial corruption).¹⁰⁸

ACCOUNTABILITY FOR HUMAN RIGHTS ATROCITIES IN INTERNATIONAL LAW 185-203, 272-81 (3d ed. 2009).

106. See, e.g., JOHN HENRY MERRYMAN, DAVID S. CLARK & JOHN O. HALEY, *THE CIVIL LAW TRADITION: EUROPE, LATIN AMERICA, AND EAST ASIA* 729-57 (1994); Samuel P. Baumgartner, *Class Actions and Group Litigation in Switzerland*, 27 *Nw. J. INT'L L. & BUS.* 301, 331-33 (2007); Gerhard Dannecker & Julian Roberts, *The Law of Criminal Procedure*, in *INTRODUCTION TO GERMAN LAW* 419, 445 (Mathias Reimann & Joachim Zekoll eds., 2005); see also Convention for the Protection of Human Rights and Fundamental Freedoms art. 5(5), Nov. 4, 1950, 213 *U.N.T.S.* 221 (1950) (requiring that "[e]veryone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation").

107. In the event that the State Department reports remained silent on a particular indicator, I instructed coders to assume the right was fully guaranteed, unless there was language indicating that access rights were not generally or fully complied with. This follows the approach of those reports primarily to depict problems while keeping positive reviews in general terms.

108. I define judicial independence as the ability of both courts and individual judges to adjudicate cases free from undue influence from the political branches (including the military). I thus count judicial corruption as part of the separate concept of the competence of the judiciary. Not only does undue influence from the political branches and

The coding was done on a scale of 0-2, whereby 0 represents a right that is not guaranteed, 1 a right that is partially guaranteed, and 2 a right that is fully guaranteed. I then had research assistants independently recode a random sample of 120 of the total of 900 observations. Inter-rater agreement between my coding and that of the research assistants extended from 75.83% (independence of judiciary) to 88.3% (right to be heard, right to name and question witnesses, right to appeal), with eight of the ten indicators above 80%.¹⁰⁹

B. Human Rights Violations

For this study, I define compliance with human rights norms narrowly as adherence to personal integrity rights and civil rights as protected by Articles 6-22 of the International Covenant on Civil and Political Rights,¹¹⁰ including primarily the rights to be free from governmental harm to one's life, body, and freedom, and the freedoms of thought, expression, association, and movement. I thus exclude from my definition the human rights of the "second generation," that is, economic, social, and cultural rights and rights to be free from discrimination.¹¹¹ The reason is simple: Due to claims of cultural relativism and for reasons of differences in local ideational values more generally, there is little universal agreement on what precisely constitutes adherence to these rights and, in some cases, whether they do or should exist in the first place.¹¹² To the extent that a

the military appear to present the primary challenge to judicial independence in state practice, see, e.g., JOSEPH ET AL., *supra* note 98, at 404-05, it also makes sense to isolate judicial independence vis-à-vis the political branches in a study inquiring into the effect of access to justice on human rights violations committed by the state. Cf. Keohane et al., *supra* note 48, at 458 (positing that "independence specifies the extent to which . . . adjudication can be rendered impartially with respect to concrete state interests"). For a useful essay on the concept of judicial independence see Lewis A. Kornhauser, *Is Judicial Independence a Useful Concept?*, in JUDICIAL INDEPENDENCE AT THE CROSSROADS, 45-55 (Stephen B. Burbank & Barry Friedman eds., 2002).

109. Kappa statistics ranged from 0.6313 (independence of judiciary) to 0.77 (right to be heard), with six measures above the 0.7 level. This is usually considered substantial agreement. See, e.g., Richard J. Landis & Gary G. Koch, *The Measurement of Observer Agreements for Categorical Data*, 33 BIOMETRICS 159, 164-65 (1977); Matthew Lombard, Jennifer Snyder-Duch & Cheryl Campanella Bracken, *Content Analysis in Mass Communication: Assessment and Reporting of Intercoder Reliability*, 28 HUM. COMM. RES. 587, 593 (2002). But see KLAUS KRIPPENDORF, *CONTENT ANALYSIS: AN INTRODUCTION TO ITS METHODOLOGY* 241 (2d ed., 2004) (suggesting that kappa statistics from 0.67-0.8 are sufficient only "for tentative conclusions").

110. ICCPR, *supra* note 7, arts. 6-22.

111. See, e.g., Kevin C. Papp, *Environmental Constitutional Protection, Human Rights, and the Eighth Draft of the Temporary Constitution for the Palestinian National Authority in the Transitional Period*, 7 TRANSNAT'L L. & CONTEMP. PROBS 529, 542 (1997).

112. See, e.g., JACK DONNELLY, *UNIVERSAL HUMAN RIGHTS* 89-106 (2d ed. 2003); ALISON DUNDES RENTELN, *INTERNATIONAL HUMAN RIGHTS: UNIVERSALISM VERSUS RELATIVISM* 61-140 (1990). For instance, the number and breadth of reservations that member states have made to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (see *supra* note 7) is considerable. See, e.g., CEDAW Committee, *Contribution to the Commemoration of the Fiftieth Anniversary of the Universal Declaration of Human Rights*, in Status of the Convention on the Elimination of All Forms of Discrimination Against Women, Report of the Secretary-General, Annex X, at 29, U.N. Doc. A/

considerable number of countries have failed to accept a particular right or to accept it fully by ratifying the relevant treaty and/or by adopting the right in their domestic law, that right is unlikely to be enforced in the judicial process in those countries. Moreover, if there are significant disagreements over the definition of a right, reports available to measure compliance across nations, such as the State Department country reports¹¹³ or the Amnesty International reports,¹¹⁴ are likely to list infractions that would not be considered violations in the courts of the countries in question. Finally, I exclude from my definition even those clearly defined and accepted rights of the first generation that are conceptually part of my chief explanatory variable: the right of detained and charged individuals to be brought to trial within a reasonable time and the various parts of the right to a fair trial under Article 14 of the ICCPR.¹¹⁵

To measure personal integrity rights, I use data from the Political Terror Scales (PTS).¹¹⁶ Within PTS, I use the data that are based on the State Department reports because they have considerably fewer missing observations than the alternative data in the set that is based on the Amnesty International reports.¹¹⁷ For this database, Professors Gibney and Wood and their group coded the State Department reports for each country-year on a scale of one to five according to the following instructions:

Level 5: Terror has expanded to the whole population. The leaders of these societies place no limits on the means or thoroughness with which they pursue personal or ideological goals.

Level 4: Civil and political rights violations have expanded to large numbers of the population. Murders, disappearances, and torture are a common part of life. In spite of its generality, on this level terror affects those who interest themselves in politics or ideas.

Level 3: There is extensive political imprisonment, or recent history of such imprisonment. Execution or other political murders and brutality may be common. Unlimited detention, with or without a trial, for political views is accepted.

53/318 (Aug. 26, 1998). For thoughtful comparative analyses of particular cultural and ideational differences with regard to some of these rights, see, e.g., GREGORY S. ALEXANDER, *THE GLOBAL DEBATE OVER CONSTITUTIONAL PROPERTY* 63-197 (2006); William B. Ewald, *Comparative Jurisprudence (I): What Was It Like to Try a Rat?*, 143 U. PA. L. REV. 1889, 2046-65 (1995); James Q. Whitman, *The Two Western Cultures of Privacy: Dignity Versus Liberty*, 113 YALE L.J. 1151 (2004).

113. See *supra* text accompanying notes 99-102.

114. On the Amnesty International Reports see, e.g., Poe et al., *supra* note 101, at 655-57.

115. See *supra* text accompanying notes 98-109.

116. Marc Gibney, Linda Cornett & Reed Wood, *Political Terror Scale 1976-2008*, <http://www.politicalterroryscale.org/> (last visited Feb. 2, 2011); see also Reed M. Wood & Mark Gibney, *The Political Terror Scale (PTS): A Re-Introduction and a Comparison to CIRI*, 32 HUM. RTS. Q. 367 (2010) (describing and analyzing PTS more extensively).

117. Cf. *supra* text accompanying notes 100-102 (explaining reasons for using State Department reports as a basis for generating a database on access to justice).

Level 2: There is a limited amount of imprisonment for nonviolent political activity. However, few persons are affected, torture and beatings are exceptional. Political murder is rare.

Level 1: Countries under a secure rule of law, people are not imprisoned for their views, and torture is rare or exceptional. Political murders are extremely rare.¹¹⁸

As a measure of civil rights, I use the civil liberties index published by Freedom House.¹¹⁹ This index is based on surveys among experts assessing the extent to which, in practice, a country respects freedom of expression and belief, associational and organizational rights, the rule of law, and personal autonomy and individual rights. In each of these categories, a country is awarded raw points for respecting specific rights listed in three to four category-specific questions, for a total of 0–60 points. The raw points are then divided and reversed for a final score of 1 (best) to 7 (worst).¹²⁰

As with other measures of countries' respect for human rights norms, this measure is not perfect.¹²¹ In addition to the problem of unequal access to information that afflicts all such indicators,¹²² Freedom House includes for the calculation of its civil rights score a few indicators of rights that are neither covered by the ICCPR nor universally accepted, and thus, are unlikely to be enforceable through domestic litigation in all nations—primarily the right to set up trade unions and engage in collective bargaining and the right to own private property.¹²³ Moreover, the calculation of the aggregate score assumes that the rights covered in each question are conceptually independent and worth exactly the same, so that the possible combinations of respect and disrespect for the various sub-rights adequately measure the overall protection of civil rights in a country, an assumption that is not likely to be met.¹²⁴ Assuming that the resulting

118. *About the Political Terror Scale*, POLITICAL TERROR SCALE, <http://www.politicalterror.org/about.php> (last visited Feb. 2, 2011).

119. *Freedom in the World*, FREEDOM HOUSE, <http://www.freedomhouse.org/template.cfm?page=15> (last visited Feb. 2, 2011).

120. For a detailed description of the methodology, see *Methodology*, FREEDOM HOUSE, http://www.freedomhouse.org/template.cfm?page=351&ana_page=341&year=2008 (last visited Feb. 2, 2011) [hereinafter *Methodology*, Freedom House].

121. See, e.g., Goldstein, *supra* note 99, at 47–48; *supra* text accompanying notes 99–102. To the extent that the Freedom House Reports have been accused of bias in favor of U.S. client countries and against communist nations, see, e.g., *id.*, the problem should be minimized in this study because I include only data starting in 1996, well after the fall of communism in the U.S.S.R., its satellites, and many of its client states.

122. See *supra* note 101 and accompanying text.

123. See *Methodology*, FREEDOM HOUSE, *supra* note 120, at Civil Liberties Checklist, Section E. Associational and Organizational Rights, question 3; *id.* at Civil Liberties Checklist, Section G. Personal Autonomy and Individual Rights, question 2. On this problem see *supra* text accompanying note 110.

124. Cf. Gerardo L. Munck & Jay Verkuilen, *Conceptualizing and Measuring Democracy: Evaluating Alternative Indices*, 35 COMP. POL. STUD. 5, 25 (2002) (criticizing the aggregation rule used to produce the combined Freedom House freedom index); Shawn Trier & Simon Jackman, *Democracy as a Latent Variable*, 52 AM. J. POL. SCI. 201, 202 (2008) (criticizing the aggregation rule used to produce the Polity score on democracy).

measurement error is non-systematic, that is, not correlated with values on the independent variables, this will lead to some inefficiency. In other words, the potential measurement error introduced as a result of Freedom House's aggregation rule is likely to produce noise and thus to lower the level of certainty of our findings.¹²⁵ Finally, there is some overlap between the Freedom House civil rights score and my measure of access to justice: Among the fifteen questions making up the raw score for civil rights, one asks whether the nation under scrutiny provides for an independent judiciary.¹²⁶ Another focuses on the rule of law in civil and criminal matters and includes three of seven bullet points asking whether the country respects the presumption of innocence, the right to competent counsel, and the right to "a fair, public, and timely hearing by a competent, independent, and impartial tribunal."¹²⁷ Although this overlap remains relatively small, it may cause us to observe a slightly higher correlation between independence of the judiciary and respect of civil rights than would be the case without such an overlap. It may even have a marginally positive effect on the observed correlation between presumption of innocence, right to counsel, and right to a public hearing on the one hand and civil rights on the other.

Unfortunately, Freedom House began releasing subcomponent data only with its 2008 reports, rendering it impossible to separate pure civil rights scores from what amount to scores for access to justice as well as scores for rights not covered by the ICCPR, or to assess how much of a problem the chosen indicators and the aggregation rule really pose for statistical analysis of the pre-2008 data used in this study.¹²⁸ As a result, when assessing the results of this study, we will have to take into account both the small possible bias resulting from the overlap between the Freedom House civil rights score and my score for access to justice and the inefficiency caused by Freedom House's aggregation rule. The first problem—the inclusion into the civil rights score of some rights not protected by the ICCPR—is potentially more serious since it is unclear in which direction it may affect the results.¹²⁹ Despite these drawbacks, however, I still consider the Freedom House civil rights scores useful for quantitative analysis. Not only does Freedom House attempt to vet the consistency and comparability of its surveys through several levels of assessment,¹³⁰ but the

125. See, e.g., GARY KING, ROBERT O. KEOHANE & SIDNEY VERBA, *DESIGNING SOCIAL INQUIRY* 157–63 (1994); Trier & Jackman, *supra* note 124, at 203.

126. See *Methodology*, FREEDOM HOUSE, *supra* note 120, at Civil Liberties Checklist, Section F. Rule of Law, question 1.

127. *Id.*, at Civil Liberties Checklist, Section F. Rule of Law, question 2.

128. See *id.* at Changes to the 2008 Edition of Freedom in the World.

129. I suspect, but do not know, that countries that have not accepted some of the rights Freedom House counts for this purpose tend to have a lower score on access to justice on average.

130. See *Methodology*, FREEDOM HOUSE, *supra* note 120.

problems here mentioned are likely to have an impact only on the margins.¹³¹

C. Controls

In determining the relevant control variables, I rely on the growing number of studies engaging some of the possible causes of human rights violations, none of which has yet addressed the influence of access to justice on human rights performance.¹³² Thus, the factors I expect to be correlated with a better level of human rights performance are the level of democracy as measured by the Polity IV dataset¹³³ and the level of development as measured by GDP per capita by the World Bank.¹³⁴ Conversely, I expect internal and external armed conflict¹³⁵ and population size¹³⁶ to adversely affect compliance with human rights norms.

One potential problem here is endogeneity.¹³⁷ That is, if we do observe a correlation between our measures of access to justice and the measure of human rights violations, we cannot be sure that the causal arrow runs from access to justice to human rights violations, rather than the other way around.¹³⁸ The reason is simple. Not all countries that engage in an effort to improve access to their courts do so independently of a larger project of governmental reform or significant policy change. Thus, a nation may engage in democratic reforms, reforms to improve the treatment of minorities, or outright attempts to better its compliance with human rights norms. But a country may also be subject to a revolution, a military putsch, or outright war. In all these instances, a correlation between access to justice and human rights violations is not (exclusively) the result of a change in the country's level of access to its courts. Instead, changes in both access and human rights performance are due to the underlying governmental reform, war, or revolution.¹³⁹

131. Cf. Hathaway, *Human Rights Treaties*, *supra* note 11, at 1967-68 (arguing that while database problems with measurements of human rights violations "ought not to be ignored, they also ought not to be overstated").

132. For these studies see *supra* notes 74-75 and accompanying text.

133. See *Data Page*, INTEGRATED NETWORK FOR SOCIETAL CONFLICT RESEARCH, <http://www.systemicpeace.org/inscr/inscr.htm> (last visited: Feb. 2, 2011). As a robustness check, I alternatively estimated all of my models with Freedom House's political rights score. See *infra* text accompanying notes 192-195.

134. I used GDP per capita (purchasing-power parity) in current international dollars from the World Development Indicators database of the World Bank in logged form. *World Development Indicators*, THE WORLD BANK, <http://data.worldbank.org/data-catalog/world-development-indicators> (last visited Jan. 17, 2011).

135. Here, I used the armed conflict database generated by Nils P. Gleditsch et al., *UCDP/PRIO Armed Conflict Dataset*, CENTRE FOR THE STUDY OF CIVIL WAR, <http://www.prio.no/CSCW/Datasets/Armed-Conflict/UCDP-PRIO/> (last visited: Feb. 2, 2010).

136. Population size is drawn from the World Development Indicators database of the World Bank in logged form. *World Development Indicators*, THE WORLD BANK, <http://data.worldbank.org/data-catalog/world-development-indicators> (last visited Jan. 17, 2011).

137. On endogeneity see e.g., KING, KEOHANE & VERBA, *supra* note 125, at 185-96.

138. I thank Oona Hathaway and Andrew Martin for pressing me on this point.

139. For the insight that endogeneity may in fact be the result of an omitted-variable problem, see KING, KEOHANE & VERBA, *supra* note 125, at 94-95, 189-91.

However, I expect to be able to deal with much of this problem by controlling both for the level of democracy as well as the presence or absence of internal wars. Indeed, closer inspection of the data indicates that in virtually all instances in which there are large contemporaneous changes in both human rights and access to justice scores in a country, these changes coincide with the onset or end of a civil war, a considerable change in that country's democracy score, or both. Moreover, existing literature suggests that governmental reforms to improve a nation's human rights practices—including its access to courts—may be caused, at least in part, by NGO pressure.¹⁴⁰ I thus control for this possibility by adding a variable measuring the number of human rights NGOs that have an office in a country as the best measure of NGO pressure that is currently available.¹⁴¹ Adding this variable to the equation, however, changes the results only marginally, suggesting that controlling for level of democracy and presence of internal war is likely to take care of much of the endogeneity problem.¹⁴² Moreover, the number of NGOs may itself be the result of a country's human rights practices, rather than the cause of it, in which case controlling for it is inappropriate.¹⁴³ Below, I thus report the results without the control for number of NGOs. Despite this approach, however, we cannot be entirely sure that all potential sources of endogeneity have been removed, thus leaving the possibility that our results reflect a somewhat stronger positive effect of access to court on human rights performance than is in fact the case.

D. Methodology

I test the hypothesis that access to justice at home improves a country's compliance with international human rights norms with a cross-sectional time series involving 90 randomly selected countries over ten years. This form of quantitative study permits comparison of data both across

140. See, e.g., CARDENAS, *supra* note 74, at 27-31; Hafner-Burton & Tsutsui, *supra* note 12, at 1385-86; *supra* text accompanying notes 50-57 (explicating theory of transnational advocacy networks).

141. I use the measure of number of human-rights NGOs with an office in a country put together by Professor Hathaway, transformed down to correct a positive skew. On the use of power transformations to correct a skewed distribution see, e.g., JOHN FOX, *APPLIED REGRESSION ANALYSIS AND GENERAL LINEAR MODELS* 54-57 (2d ed. 2008). As Professor Hathaway points out, however, number of NGOs

is an imperfect measure of human rights pressure for two reasons. First, it does not precisely measure the magnitude of political pressure for human rights reform - particularly by influential groups. Second, it does not necessarily reflect the magnitude of the groups' influence, equating as it does large and small organizations. At the moment, however, it is the best information available. Moreover, it is reasonable to expect that organizations would be larger and more influential in the same places that there are more of them.

Hathaway, *Why Commit?*, *supra* note 21, at 616 n.24.

142. For many of the access rights, controlling for number of NGOs slightly depresses their correlation with human rights performance, while for some of those rights, the NGO control increases that correlation somewhat.

143. See, e.g., Gilligan & Nesbitt, *supra* note 12, at 454 n.13.

nations and within nations over time.¹⁴⁴ By pooling observations from many countries during a number of years, this method combines the leverage of both time-series and cross-sectional components into a powerful analytical tool.¹⁴⁵ In the Annex, I explain in more detail the statistical models used in the present study.¹⁴⁶ In general terms, I begin with a model that holds constant both the countries and years observed through something called fixed effects.¹⁴⁷ The reasons for doing this are as follows. First, there are likely to be factors, such as culture, that affect each country's level of human rights violations as well as its level of access to justice but for which we have no control variable, either because a measure is not available or because we are unaware of the particular factor's influence. Fixed effects estimation allows us to focus exclusively on changes that occur within nations.¹⁴⁸ Second, holding the year of observation constant permits us similarly to take account of global trends in human rights performance that are unrelated to what is going on within a particular nation.¹⁴⁹ However, fixed effects models have a few potential drawbacks, which I discuss together with the results below.¹⁵⁰ I thus use a second model (called an ordered probit model) that controls for neither year nor country, but that attends instead to a potential statistical problem arising from the ordered nature of our measures of human rights violations.¹⁵¹ Moreover, in both models I use what is called a lagged dependent variable to control for the level of human rights violations of the previous year.¹⁵² I do this because previous studies have found the human rights performance of a country to be considerably sticky.¹⁵³ To some extent, this is hypothesized to be the result of inertia and incremental decision-making.¹⁵⁴ But there are likely to be other, unknown, factors influencing a particular country's levels of

144. See, e.g., Nathaniel Beck, *Time-Series Cross-Section Methods*, in OXFORD HANDBOOK OF POLITICAL METHODOLOGY 456, 456 (Janet M. Box-Steffensmeier, Henry E. Brady & David Collier eds., 2008); Nathaniel Beck & Jonathan N. Katz, *What to Do (and Not to Do) with Time-Series Cross-Section Data*, 89 AM. POL. SCI. REV. 634, 634 (1995); James Stimson, *Regression in Space and Time: A Statistical Essay*, 29 AM. J. POL. SCI. 914, 914-17 (1985).

145. See, e.g., Stimson, *supra* note 144, at 915.

146. See *infra* text accompanying notes 240-249.

147. On fixed effects estimation, see generally WILLIAM H. GREENE, *ECONOMETRIC ANALYSIS* 193-200 (6th ed. 2008) (explicating fixed effects models).

148. See *infra* text accompanying note 242.

149. See *infra* text accompanying note 239.

150. See *infra* text accompanying notes 201-204. See also Sven E. Wilson & Daniel Butler, *A Lot More to Do: The Sensitivity of Time-Series Cross-Section Analyses to Simple Alternative Specifications*, 15 POL. ANALYSIS 101, 120 (2007) (suggesting, after discussing advantages and drawbacks of fixed effects models, among others, that reporting "estimates from models with and without fixed effects should be a standard part of the diagnostic repertoire" in time-series cross-section studies).

151. See *infra* text accompanying notes 243-244.

152. Indeed, in the ordered probit model with personal integrity rights as the measure of human rights violations, I use two lags of the dependent variable to address an additional problem called autocorrelation. See *infra* text accompanying notes 246-248.

153. See, e.g., Neumayer, *supra* note 11, at 942; Poe et al., *Repression*, *supra* note 74, at 295.

154. See, e.g., CARDENAS, *supra* note 74, at 107-08; Poe et al., *Repression*, *supra* note 74, at 295.

human rights performance.¹⁵⁵ Controlling for the previous year's levels of human rights violations effectively takes account of such factors.¹⁵⁶

Another issue arises from the missing values in my dataset. Almost all of those missing values are due to limitations in the data from Polity IV and the World Bank. Polity IV lacks values for countries with a population of less than 500,000 as well as for countries in periods of transition, with foreign intervention, and with a complete collapse of central governmental authority.¹⁵⁷ The World Bank data on GDP per capita are at least partly missing for countries in turmoil (such as Afghanistan), closed societies (such as Cuba and North Korea), and some countries too poor to collect any economic data.¹⁵⁸ I thus expect the missing observations largely to affect countries that have either particularly high or particularly low values on the dependent variable (human rights violations), potentially causing selection bias.¹⁵⁹ I deal with this problem in two ways. First, I was able to collect information on GDP per capita and population size for a sizable number of the affected countries from the CIA World Factbook,¹⁶⁰ and on democracy from both the CIA World Factbook and the State Department Country reports¹⁶¹ on those few of the affected countries that I know well enough to be reasonably sure they would be coded in the top category according to the Polity IV coding instructions.¹⁶² Polity IV further provides a modified polity variable (called Polity2), in which values missing because of a period of transition have been prorated.¹⁶³ I added these additional values as well. In this fashion, I was able to reduce the number of country-years with missing values from 175 to 63. However, this method of imputation is less than perfect and still leaves some of the countries with the worst levels of human rights violations as well as some small countries with missing observations. Thus, I also use a dataset¹⁶⁴ with multiply imputed data generated with a recent program created specifically for time-series cross-

155. Cf. FOX, *supra* note 141, at 427 (noting that the similarities in the observed values of the dependent variable over time “represent (most importantly) the omitted causes of [that] variable”).

156. See, e.g., Regina Baker, *Lagged Dependent Variables and Reality: Did You Specify That Autocorrelation a Priori?* (unpublished manuscript) (on file with author), available at http://www.allacademic.com/meta/p_mla_apa_research_citation/2/0/9/6/9/p209695_index.html (last visited: March 19, 2011). Including a lagged dependent variable further serves to address a statistical problem called autocorrelation. See *infra* note 246 and accompanying text.

157. See MONTY G. MARSHALL & KEITH JAGGERS, POLITY IV PROJECT, DATASET USERS' MANUAL 19-20, 47 (2007), available at <http://www.systemicpeace.org/inscr/p4manualv2007.pdf> (last visited Dec. 8, 2010).

158. Apparently, for political reasons, individual data on GDP and population size are also missing for Taiwan. See *Data Availability and Coverage*, THE WORLD BANK, <http://data.worldbank.org/about/faq/data-availability> (last visited Jan. 14, 2011).

159. On selection bias, see, e.g., KING, KEOHANE & VERBA, *supra* note 125, at 128-37.

160. See *The World Factbook*, CENTRAL INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/>.

161. See *Human Rights Reports*, *supra* note 100.

162. See MARSHALL & JAGGERS, *supra* note 157, at 11-39.

163. See *id.* at 17.

164. More precisely, this is ten datasets merged into one. See *infra* text accompanying note 167.

section data by James Honaker and Gary King, called Amelia II.¹⁶⁵ Unlike standard models for the imputation of missing values, Amelia II permits researchers to have the program take into account the time-series properties of the data as well as to set a range of prior expectations for individual observations.¹⁶⁶

The essential idea of multiple imputation is to reflect the uncertainty associated with missing data by imputing *several* values for each missing value, each imputed value drawn from the *predictive distribution* of the missing data and, therefore, producing not one but several completed datasets. . . . Estimated parameters are then averaged across completed datasets; standard errors are also combined across imputed datasets, taking into account the variation among the estimates in the several datasets, thereby capturing the added uncertainty due to having to impute the missing data.¹⁶⁷

Since this method deals most adequately with missing values, I used the multiply imputed dataset for my primary analysis reported below. I also ran all regressions on both the original dataset with missing values and the hand-imputed dataset in the sensitivity analysis, the results of which I report where appropriate. Overall, the results with the multiply imputed dataset show a stronger correlation between access to justice rights and a country's human rights performance than the results using the other two datasets. This supports the suspicion of selection bias as a result of list-wise deletion in the latter two datasets.¹⁶⁸

III. Does Access to Justice Improve a Country's Human Rights Norms?

A. Results

Beginning with the more rigorous model with fixed time and country effects and a lagged dependent variable,¹⁶⁹ I find support for the tested

165. See James Honaker & Gary King, *What to Do about Missing Values in Time-Series Cross-Section Data*, 54 AM. J. POL. SCI. 561, 561 (2010).

166. Honaker and King point out that "[w]hen standard imputation models are applied to [time-series cross-section] data in comparative and international relations, they often give absurd results, as when imputations in an otherwise smooth time series fall far from previous and subsequent observations, or when imputed values are highly implausible on the basis of genuine local knowledge." *Id.* at 562.

167. FOX, *supra* note 141, at 561 (emphasis in original).

168. See *supra* text accompanying note 159. List-wise deletion is the practice of deleting (or disregarding) those observations (here country-years) for which any one of the variables in the model has a missing value. See, e.g., FOX, *supra* note 141, at 552. It frequently leads to a considerable loss of valuable information in addition to potential bias. See, e.g., *id.*

169. On the models used here see *supra* text accompanying notes 147-156 and *infra* text accompanying notes 240-249. As indicated there, I include a lagged dependent variable to address the time-series properties of the data. A Wooldridge test for autocorrelation in panel data indicates the presence of residual autocorrelation in the fixed effects estimation of both personal integrity rights and civil liberties violations as the dependent variable. Including the lagged dependent variable is the most sensible approach to deal with autocorrelation in this instance since it is fairly well established that incremental decision-making and inertia tend to make the level of human rights violations in a country somewhat difficult to change from one year to the next. See *supra* note 154 and

hypothesis to be relatively weak.¹⁷⁰ Focusing first on personal integrity rights, the right to counsel makes the strongest showing. Thus, all else being equal, a country that changes its practice from not guaranteeing the right to counsel to guaranteeing it to all defendants in all criminal cases can expect to see about a 9.5% reduction on the five-point score of personal integrity rights violations used here,¹⁷¹ although the reduction may be as low as about half a percent and as high as about 18.5 percent.¹⁷² Similarly, a country that moves from not granting to granting the presumption of innocence in all cases can expect to see a reduction of about seven percent (2%, 13.5%) in the five-point score of personal integrity rights violations. The estimates for the other rights of access to justice I measured, however, are not statistically significant. That is, they are too likely to be due to chance to accept, as is evident in Figure 1.¹⁷³ However, the estimate of about an 8.5% (-0.5%, 17%) increase for introducing the right to present one's own witnesses (including the right to ask questions of government witnesses) comes close to being statistically significant.

As expected, the less complete datasets yield weaker results.¹⁷⁴ In the hand-imputed dataset, all estimates except those for the right to counsel and the right to appeal move noticeably to the left—the estimates for the right to present one's own witnesses and the competence of the judiciary considerably so. And in the original dataset, the right to counsel also has a larger confidence interval and thus is no longer correlated with a country's personal integrity rights violations in a statistically significant manner.

Turning to civil rights, we observe a similar pattern. Only this time, judicial independence, the competence of the judiciary, and the right to

accompanying text. The lagged dependent variable wipes out most of the autocorrelation in the model with personal integrity violations and leaves only a small level of serial correlation in the model with civil rights violations. Available evidence from Monte Carlo experiments suggests that fixed effects estimation with clustered robust standard errors and a lagged dependent variable performs quite well in circumstances similar to the ones present here, even in the face of remaining residual autocorrelation. See Ida Pagter Kristensen & Gregory Wawro, *Lagging the Dog?: The Robustness of Panel Corrected Standard Errors in the Presence of Serial Correlation and Observation Specific Effects 14* (2003) (unpublished manuscript) (on file with The Society for Political Methodology), available at <http://polmeth.wustl.edu/mediaDetail.php?docId=54>. Not surprisingly, then, running the model with civil rights violations with a Cochrane-Orcutt transformation hardly changes those estimates. On the use of Cochrane-Orcutt see *infra* note 248.

170. In this article, I follow recent advice to improve the clarity of reported empirical results with the display of graphs rather than the regression tables that have traditionally been used in this area. See, e.g., Lee Epstein, Andrew D. Martin & Matthew M. Schneider, *On the Effective Communication of the Results of Empirical Studies, Part I*, 59 *VAND. L. REV.* 1811, 1827-44 (2006); Jonathan P. Kastellec & Eduardo L. Leoni, *Using Graphs Instead of Tables in Political Science*, 5 *PERSP. POL.* 755 (2007).

171. See *supra* text accompanying notes 116-118 (discussing PTS score).

172. These estimates delimit the 95% confidence interval. On confidence intervals see, for example, DAVID FREEDMAN, ROBERT PISANI & ROGER PURVES, *STATISTICS* 381-87 (4th ed. 2007).

173. On statistical significance tests, see, for example, *id.* at 473-576.

174. See *supra* text accompanying notes 159-168 (noting the possibility of selection bias and thus the potential for underestimating the correlation between access rights and human rights violations in regressions using the incomplete datasets).

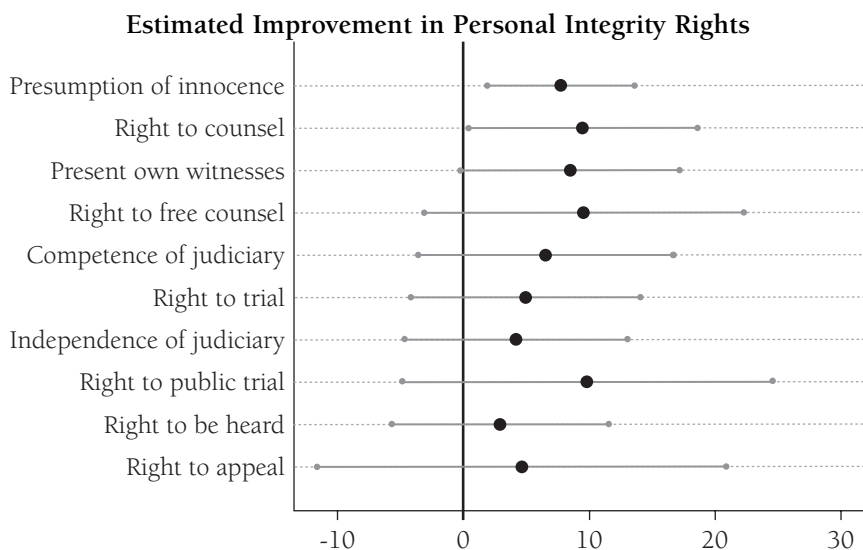


Figure 1: Percentage decrease in five-point score of personal integrity rights violations for a country that moves from not guaranteeing to fully guaranteeing the specified right, all else being equal. The bars mark the 95% confidence intervals. Bars crossing zero indicate the estimate for the right in question is not statistically significant. Results are for linear time-series cross-section regressions with fixed country and time effects, a lagged dependent variable, and robust cluster standard errors, estimated individually for each specified right. $N=810$. $R^2 \approx 0.62$ (not counting country fixed effects).

counsel are the access rights with the statistically significant correlations. Thus, all else being equal, a country that institutes reforms so as to achieve a change from an incompetent to a fully competent and non-corrupt judiciary can expect to see a decrease of about 4.5 percent on the seven-point score of civil rights violations, although the decrease can be as low as about half a percent or as high as about nine. Similarly, introducing the right to counsel and instituting full judicial independence, on average, each result in an improvement of about four percent (0.5%, 7%) in a country's civil rights score. Again, however, none of the other access rights I measured can be said to be correlated with a country's civil rights violations in a statistically significant fashion, as can be seen in Figure 2 below. And again, some of these estimates become weaker in the incomplete datasets: Only the right to counsel and the right to an independent judiciary remain with a statistically significant correlation in the hand-imputed dataset while no statistically significant estimates result when using the original dataset—although the independence of the judiciary comes very close.

Among the control variables, internal war and population size tend to increase violations of personal integrity rights whereas higher levels of development are correlated with lower levels of personal integrity rights violations, although population size and development level do not quite achieve statistical significance.¹⁷⁵ Level of democracy, external war, and

175. On the control variables used in this study see *supra* text accompanying notes 132-136. To be precise, population size seems to be correlated with an improvement in

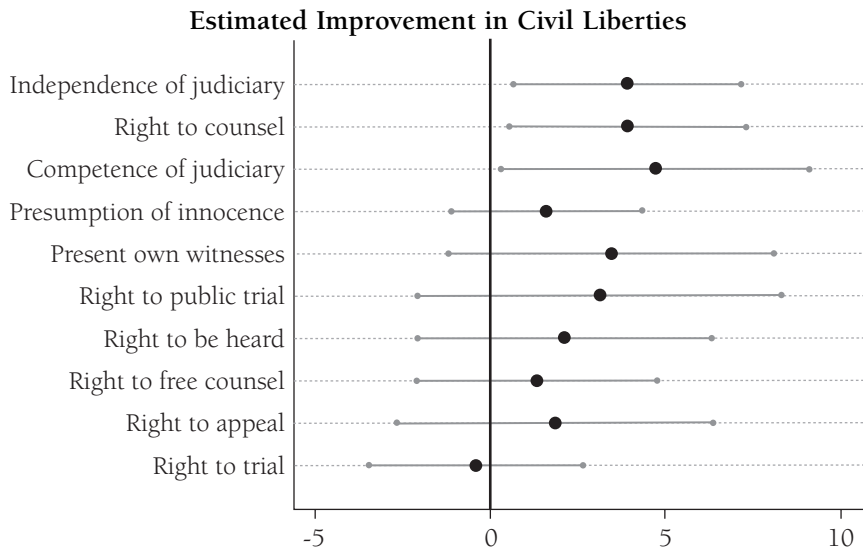


Figure 2: Percentage decrease in seven-point score of civil rights violations for a country that moves from not guaranteeing to fully guaranteeing the specified right, all else being equal. The bars mark the 95% confidence intervals. Bars crossing zero indicate the estimate for the right in question is not statistically significant. Results are for linear time-series cross-section regressions with fixed country and time effects, a lagged dependent variable, and robust cluster standard errors, estimated individually for each specified right. $N=810$. $R^2 \approx 0.95$ (not counting country fixed effects).

number of NGOs¹⁷⁶ do not result in statistically significant correlations with personal integrity rights, although none of this is too surprising: Population size, development levels, and, frequently, democracy levels and NGO numbers change only slowly over time. Their influence may thus partly be mopped up by the fixed country effects.¹⁷⁷ The negative showing of external war levels,¹⁷⁸ on the other hand, may well be due to the data used here: Values for each country and each year are determined according to the number of battle deaths suffered in a particular conflict.¹⁷⁹ The time period used in this study covers three major international conflicts—

personal integrity rights. Only when including a one-year lag of the measure of population size do we find out that the improvement that is correlated with a population increase in year zero is followed by a more significant worsening of personal integrity rights a year later. If we include such a lag for population size, however, the other results remain virtually unaffected.

176. Recall, however, that the coefficients reported in figures 1 through 4 are those resulting from regressions that do not include the number of NGOs as a control, both because of a potential endogeneity problem and because of the only marginal impact of using such a control. See *supra* text accompanying notes 142–143.

177. See *infra* text accompanying notes 201–204 (discussing the effects of fixed effects estimation on slowly changing variables).

178. Indeed the correlation between external war and personal integrity violations has the wrong sign, that is, it seems to suggest that involvement in external wars actually suppresses personal integrity violations.

179. See UCDP/PRIO ARMED CONFLICT DATASET CODEBOOK, version 4-2009, 1–10, available at http://www.prio.no/sprans/-1423485763/Codebook_UCDP_PRIO%20Armed%20Conflict%20Dataset%20v4_2009.pdf (last visited Feb. 2, 2011).

Kosovo, Afghanistan, and Iraq—that involved numerous countries of the world, especially many Western democracies. Many of the involved states, however, sent only token troops, few of which saw actual combat. Yet, all of these countries are coded according to the number of total battle deaths for that conflict in that year. Needless to say, this leads to high scores in a considerable number of countries that did not necessarily consider themselves engaged in a major international war.

Turning to civil rights, the level of democracy is strongly correlated with a decrease and internal war reasonably strongly correlated with an increase in a country's civil rights violations. Here too, however, population size, development level, and number of NGOs are not correlated with civil rights violations in a statistically significant fashion.¹⁸⁰ Unexpectedly, external war is correlated with an improvement in a country's civil rights practices, a finding that may again be due to the measure used for external wars and the time period observed.

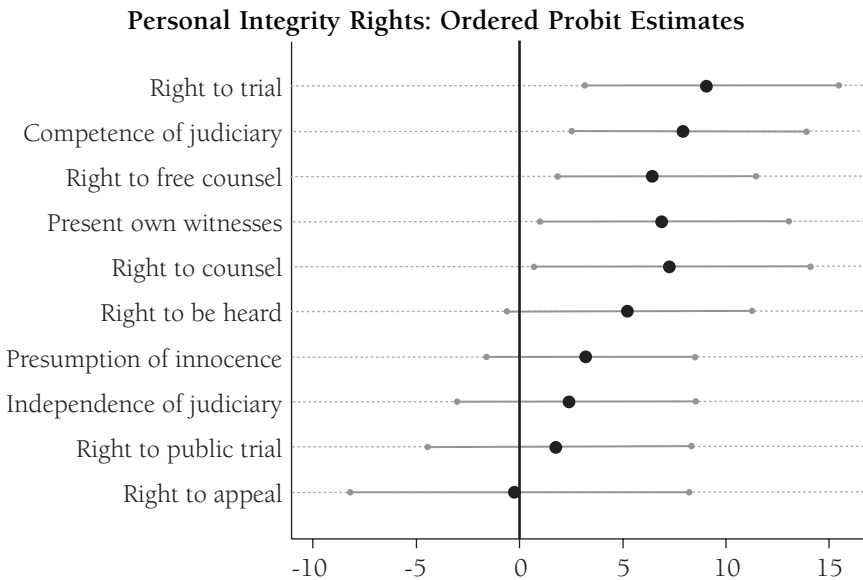


Figure 3: Average likelihood (in percent) of moving down on a five-point scale of personal integrity rights violations for a country that changes from not guaranteeing to fully guaranteeing the specified right, all else being equal. The bars mark the 95% confidence intervals. Bars crossing zero indicate the estimate for the right in question is not statistically significant. Results are for ordered probit regressions with two lagged dependent variables and robust standard errors, estimated individually for each specified right. $N=720$. Pseudo $R^2 \approx 0.52$.

Moving on to the ordered probit model with a lagged dependent varia-

180. Again, this finding is not surprising in a fixed-effects estimation since at least population size and development level tend to change slowly over time and thus are likely to be correlated with the country effects. See *infra* text accompanying notes 201-204.

ble,¹⁸¹ the estimates provide somewhat stronger support for our hypothesis that access to justice increases a country's compliance with human rights norms than do those of the fixed-effects model—that is, the model that controls for country and year of observation. Thus, on average, a country that changes from not granting a right to trial within reasonable time to granting one across the board has, on average, about a nine percent chance of improving its performance in personal integrity rights, all else being equal, although that chance can be as low as about three and as high as about 15.5 percent. Similarly, a country that moves from an untrained and corrupt judiciary to one that is fully competent is, on average, about eight percent (2.5%, 14%) more likely to see an improvement in its personal integrity rights score than one that does not. The likelihood of an improved score for personal integrity rights for moving from not granting to fully granting the right to counsel, the right to present one's own witnesses, and the right to free counsel for indigent defendants, respectively, are about 7.5% (1%, 14%), 7% (1%, 13%), and 6.5% (0%, 11.5%).¹⁸² The estimates for the other access rights are mostly lower and not statistically significant, that is, they are too likely to be due to chance to accept.¹⁸³

181. A Lagrange Multiplier test indicates the presence of serious autocorrelation in the estimates of both personal integrity rights and civil rights violations when no lagged dependent variable is used. Including the lagged dependent variable virtually eliminates autocorrelation in the model with civil liberties violations, but still leaves a significant (although much lower) level of autocorrelation in the model with personal integrity rights. I thus add a second lag of the dependent variable in the latter model to reduce autocorrelation to a tolerable level. Although a third lag would all but eliminate autocorrelation, it comes at the cost of losing another year of observations. The resulting estimates of the correlation between the various access rights and violations of personal integrity rights are mostly a bit lower and have noticeably larger standard errors than those from a model with two lags as reported in the text above. But the general thrust of the findings remains the same, with only the right to trial within reasonable time crossing the line to not quite statistically significant. Alternatively, we can abandon an ordered probit model and estimate a model with one lagged dependent variable and a Cochrane-Orcutt transformation. See *infra* note 248. If we do that, the values measuring statistical significance (p-values) are quite similar to those with the ordered probit model with two lags of the dependent variable as reported in the text above, except that the right to counsel now crosses the line to not quite statistically significant.

182. The uneven length of the confidence intervals is due to the non-linearity of the model. The quantities of interest reported with regard to the ordered probit model were computed with the help of CLARIFY, a software package for interpreting and presenting statistical results. See Gary King, Michael Tomz & Jason Wittenberg, *Making the Most of Statistical Analyses: Improving Interpretation and Presentation*, 44 AM. J. POL. SCI. 347, 347 (2000).

183. If we treat our ordinal measure of personal integrity rights violations as if it were continuous—as we have done in the model with fixed effects (see *supra* text accompanying note 151 and *infra* notes 243–244 and accompanying text)—and thus apply ordinary least squares regression (OLS) with two lags of the dependent variable and robust standard errors, the results are very similar (to the extent OLS and ordered probit results are at all comparable). Thus, a country that moves from not guaranteeing to fully guaranteeing a particular right to access to justice is estimated, on average, to improve its personal integrity rights score between about zero percent (right to appeal) to about six percent (right to trial within reasonable time). The order of the various access rights is the same as it is in Figure 3, with the same estimates statistically significant. If, however, we use panel-corrected standard errors, as suggested by Beck & Katz (Beck & Katz, *supra* note 144, at 638–42), some of the confidence intervals become a bit larger. As a result, the

In this model, the results are largely similar to those yielded by the incomplete datasets. However, with the incomplete datasets, the estimate for the right to present one's own witnesses is a bit weaker and no longer statistically significant. The control variables solidly test according to expectations.¹⁸⁴ The only exceptions here are the coefficients for external armed conflict, which is estimated to correlate with an improvement in human rights violations,¹⁸⁵ and number of NGOs, neither of which is statistically significant.

The use of an ordered probit model also suggests, however, that focusing on average likelihood estimates can be misleading in this study because the likelihood of an improvement in personal integrity rights violations depends heavily on the score of personal integrity rights violations considered. Thus, as indicated above, a country that moves from not granting to fully granting the right to trial within reasonable time is about nine percent (3%, 15.5%) more likely to end up with an improved score of personal integrity rights violations, all else being equal.¹⁸⁶ However, that same country is about 20% (7%, 32%) less likely to end up with a PTS score of three and about 20% (7%, 33%) more likely to end up with a score of two. But it is only about three percent (1%, 6.5%) less likely to have a score of four and three percent (1%, 5.5%) more likely to have a score of one. And it is no less likely to end up with a score of five than if it makes no effort to improve its right to trial within reasonable time, as can be seen in Table 1 below.¹⁸⁷ Similarly dispersed results emerge for the other access rights with regard to personal integrity rights violations.

estimate for the right to free counsel loses statistical significance. However, recent Monte Carlo experiments suggest that panel-corrected standard errors may overstate variability where, as here, the design includes close to 100 cross sections (countries). See Kristensen & Wawro, *supra* note 169, at 14.

184. Cf. *supra* text accompanying notes 132-136.

185. Cf. *supra* text accompanying note 179 (suggesting reasons for unexpected showing of external war variable).

186. For this purpose, I hold all other independent variables at their means. Thus, I assume an average country that is semi-democratic, has low levels of involvement in internal and external war, if any, and is at the cusp of economic development. However, even if we assume the worst of circumstances and set the other independent variables to their maximum (and democracy and development levels to their minimum), that country is only about 2% (8%, 0%) less likely to end up with a PTS score of 5 and about 2% (8%, 0%) more likely to have a PTS score of 4.

187. Recall that I use a measure of personal integrity rights violation called a PTS score that runs from 1 (best) to 5 (worst). See *supra* text accompanying notes 116-118.

Likelihood that . . .	Mean	Std. Err.	95% Conf. Interval	
PTS score = 1	0.0268	0.0120	0.0083	0.0556
PTS score = 2	0.2000	0.0661	0.0701	0.3294
PTS score = 3	-0.1984	0.0643	-0.3222	-0.0716
PTS score = 4	-0.0285	0.0150	-0.0662	-0.0072
PTS score = 5	-0.0000	0.0001	-0.0002	-0.0000

Table 1: Likelihood of having a particular personal integrity rights violation (PTS) score for a country that changes from not guaranteeing to fully guaranteeing the right to trial within reasonable time when the other independent variables are held at their means. The table includes the mean likelihood, standard error, and 95% confidence interval per PTS score. Results are for ordered probit regressions with a lagged dependent variable and robust standard errors. $N=720$. Pseudo $R^2 \approx 0.52$.

Turning to civil rights violations, the ordered probit model with a lagged dependent variable similarly yields support for our hypothesis that is a bit stronger than that emanating from the results of the fixed effects model. Thus, a country that moves from not granting to fully granting the right to counsel has, on average, about a 6.5% (3%, 10%) chance to experience an improvement in its civil rights violations, all else being equal. The respective probability of improving a country's civil liberties score is about 5% (1%, 9%) for the right to be heard; 4% (1%, 7.5%) for the right to free counsel; 4% (1%, 8%) for the competence of the judiciary; 4% (0%, 8%) for the right to present one's own witnesses; and 3.5% (6.5%, 0.5%) for the presumption of innocence. The other access rights are not correlated with a chance of improving a country's civil rights score in a statistically significant fashion.¹⁸⁸

188. If we treat our measure of civil liberties violations as if it were continuous and thus apply ordinary least squares regression with a lagged dependent variable and robust standard errors, the results are very similar, as they are in the case of personal integrity rights. See *supra* note 183. Thus, a country that moves from not guaranteeing to fully guaranteeing a particular right to access to justice is estimated, on average, to improve its civil rights score between about 0.5% (right to a public hearing) to about 2.5% (right to counsel). The order of the various access rights is the same as it is in Figure 6, with the same estimates statistically significant. If, however, we use panel-corrected standard errors, some of the confidence intervals become a bit larger. As a result, only the estimates for the right to counsel and the right to free counsel remain statistically significant. As noted above, however, panel-corrected standard errors may overstate the true variance in this case and thus lead to unnecessary findings of statistical insignificance. See *supra* note 183.

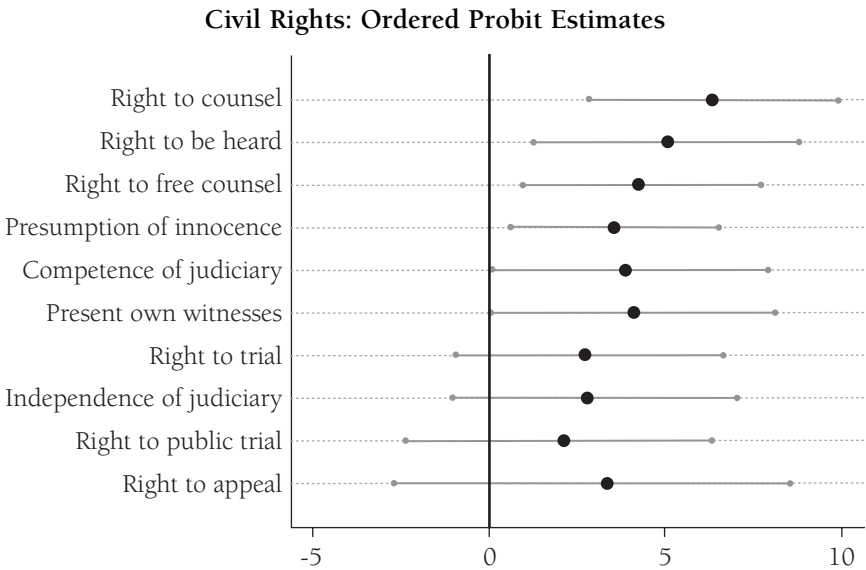


Figure 4: Average likelihood (in percent) of moving down on a seven-point scale of civil rights violations for a country that changes from not guaranteeing to fully guaranteeing the specified right, all else being equal. The bars mark the 95% confidence intervals. Bars crossing zero indicate the estimate for the right in question is not statistically significant. Results are for ordered probit regressions with a lagged dependent variable and robust standard errors, estimated individually for each specified right. $N=810$. Pseudo $R^2 \approx 0.75$.

Even more so than with personal integrity rights violations, these average likelihood estimates paste over differences from one civil liberties score to another. Thus, for example, the average likelihood of a country's improving its civil liberties score by changing from not granting to fully granting the right to counsel is about 6.5% (3%, 10%), all else being equal. A closer look reveals, however, that such a country is about 20.5% (9.5%, 31%) less likely to end up with a civil liberties score of four, about 1.5% (0%, 4.5%) less likely to have a civil liberties score of five, and about 22% (9.5%, 31%) more likely to end up with a civil liberties score of three. The likelihood of changing that country's other potential civil liberties scores, meanwhile, remains largely the same.¹⁸⁹

189. Recall that I use a score of civil rights violations that runs from 1 (best) to 7 (worst). See *supra* text accompanying notes 119-120. Again, I hold the other independent variables at their means, thus assuming an average country that is semi-democratic, is hardly, if at all, involved in internal and external conflict, and stands at the cusp of economic development. If we assume the worst and hold the other independent variables at their maximum (and democracy and development levels at their minimum), a country is only about 4% (0%, 15.5%) less likely to have a civil liberties score of 7 and about 4% (0%, 15.5%) more likely to have a civil liberties score of 6, while the likelihood to end up with a lower score remains unaffected.

Likelihood that . . .	Mean	Std. Err.	95% Conf. Interval	
Civil liberties score = 1	0.0000	0.0000	0.0000	0.0000
Civil liberties score = 2	0.0004	0.0005	0.0000	0.0017
Civil liberties score = 3	0.2208	0.0595	0.1005	0.3393
Civil liberties score = 4	-0.2064	0.0545	-0.3111	-0.0949
Civil liberties score = 5	-0.0148	0.0106	-0.0430	-0.0024
Civil liberties score = 6	-0.0000	0.0000	-0.0000	-0.0000
Civil liberties score = 7	-0.0000	0.0000	-0.0000	-0.0000

Table 2: Likelihood of having a particular civil liberties score for a country that changes from not guaranteeing to fully guaranteeing the right to counsel when the other independent variables are held at their means. The table includes the mean values, standard error, and 95% confidence interval for every civil liberties score. Results are for ordered probit regressions with a lagged dependent variable and robust standard errors. $N=810$. Pseudo $R^2 \approx 0.75$.

Here, again, our estimates from the less complete datasets are mostly weaker and have slightly larger confidence intervals. This is particularly true in the original dataset, where only the right to counsel remains statistically significant. In the hand-imputed dataset, at least, only the right to present one's own witnesses becomes statistically insignificant.¹⁹⁰ In addition, all of the confidence intervals become a bit larger. The effect is that, except for the right to counsel, all estimates become statistically insignificant.

The control variables test as expected, again with the exception of external war.¹⁹¹ However, the coefficients for internal war, external war, population size, and number of NGOs are not quite statistically significant.

For a final robustness check, I ran the regressions for all of the above models with a different measure of democracy—Freedom House's political rights index—but otherwise utilizing the same measures for both the dependent variable and the controls.¹⁹² This is a score that Freedom House puts together in a similar fashion as its civil liberties index,¹⁹³ that is, by using expert surveys that address three categories of survey questions of political rights relevant to a democracy and combining them into a total score of one (best) through seven (worst).¹⁹⁴ Substituting the Freedom

190. Again, this is not surprising. See *supra* text accompanying notes 159–168 (noting the possibility of selection bias and thus the potential of underestimating the correlation between access rights and human rights violations in regressions using the incomplete datasets).

191. This may be a finding specific to the data for external war used here. See *supra* text accompanying note 179.

192. *Methodology*, FREEDOM HOUSE, *supra* note 120.

193. Cf. *supra* text accompanying notes 119–120 (describing the Freedom House civil rights index). I consider this measure to be somewhat inferior to the Polity IV scores because, as with the civil rights scores, the subcomponent data for the years investigated here are unavailable (cf. *supra* text accompanying note 129), and a full assessment of the reliability of the measure is thus difficult.

194. For a detailed description of the methodology see *Methodology*, FREEDOM HOUSE, *supra* note 120. The three categories are: the electoral process; political pluralism and participation; and functioning of government. See *id.*

House political rights index for the Polity IV score on democracy had the added benefit of omitting all of the missing values in the Polity IV dataset, thus enabling me to avoid imputed values for this measure of democracy.¹⁹⁵

The results are not widely different from those reported above. The confidence intervals change only slightly—some getting bigger, some smaller. The correlation coefficients, however, differ significantly enough to warrant discussion. With this measure of democracy, the level of democracy becomes more strongly correlated with a decrease in a country's human rights violations. At the same time, the association between the various access rights and a country's improvement in its human rights record is mostly reduced in strength. This reduction ranges from a few percentage points in the case of the correlation between the right to call one's own witnesses and a country's personal integrity rights in the fixed effects model to 50% and more for several estimates in the ordered probit model with civil liberties as the dependent variable. It is particularly strong, throughout, for the independence of the judiciary.¹⁹⁶ There are a few exceptions to this trend, most notably the estimate for the correlation between the right to call one's own witnesses and a country's civil liberties score in the ordered probit model, which becomes a bit stronger. The overall result, however, is that a number of the estimates become statistically insignificant. Thus, in the fixed effects model, only the presumption of innocence remains correlated with better personal integrity rights practice and only the competence of the judiciary remains so correlated with a better civil liberties score (although the right to counsel comes very close in both instances). And in the ordered probit model, only the right to trial within a reasonable time, the right to a competent judiciary, and the right to free counsel for the indigent remain correlated with a country's personal integrity rights score in a statistically significant fashion; and only the right to counsel, the right to be heard, and the right to present one's own witnesses remain so correlated with a country's civil liberties score. Moreover, some of the other control variables end up with slightly lower estimates too.

B. What Does This Mean?

Looking at these results, it seems clear that there is indeed a negative correlation between some of the access rights and a country's human rights violations. That is, at least some access rights are correlated with lower human rights violations. However, the correlation is neither as

195. Cf. *supra* text accompanying notes 157–168 (explaining missing values in Polity IV dataset and use of multiple imputation).

196. In this case, there is evidence that the change in estimates is at least partially due to multicollinearity. That is, there is a strong correlation between Freedom House's political rights scores and the scores for judicial independence. Controlling for the former thus leaves little variation in our measures of human rights violations for judicial independence to explain, driving up standard errors and confidence intervals. On multicollinearity see, for example, Fox, *supra* note 141, at 307–23.

robust nor as strong as one would expect from theory and it changes from model to model, from model variation to model variation, and from one type of human rights violations to another. What are we to make of these different results? I will try to identify likely explanations in what follows.

The most striking difference in outcomes exists between the model with fixed effects and the one without. This should not be too surprising. Remember that my reason for including fixed time and country effects in the first model was to control for unaccounted time trends and cross-country differences that are correlated both with a country's access to justice and its human rights performance.¹⁹⁷ If such confounding variables do indeed influence the outcome, we should see a concomitant difference between the models with and without fixed effects.¹⁹⁸ From this perspective, the difference between the fixed effects and the non-fixed effects models is largely due to omitted-variable bias in the latter.¹⁹⁹ Focusing on the influence of potential confounding variables, it is also not surprising that most of the differences we observe between the two models are caused by the fixed country effects, while the fixed time effects, for the most part, change the estimates only slightly.²⁰⁰ After all, it is relatively easy to think of variables, such as culture, that are likely to explain considerable differences in both access to justice and human rights violations across countries, but for which we lack data to include as control variables. It is more difficult, however, to come up with confounding variables that are apt to suggest equally strong differences across time. For instance, as discussed above, we would expect pressure from powerful countries towards nations with poor human rights records to be rare and confined to a small number of countries as well as limited in time.²⁰¹

197. See *supra* text accompanying notes 241-242.

198. Indeed, cross-validation indicates substantial unit (country) heterogeneity in the parameter estimates. A standard F-test further suggests that this heterogeneity is highly unlikely to be due to chance.

199. See, e.g., Stimson, *supra* note 144, at 920.

200. These changes go in either direction. They are slightly more substantial for the right to a public trial, and the independence and the competence of the judiciary. As a result, the estimate for the correlation between the right to present one's own witnesses and personal integrity rights becomes statistically significant if we leave off the fixed time effects. The opposite is true for the right to counsel, rendering that right marginally statistically insignificant. Similarly, the correlation between independence and competence of the judiciary on the one hand, and a country's record on civil rights on the other becomes weaker without the fixed time effects, rendering both estimates marginally statistically insignificant.

201. See *supra* text accompanying notes 24-27. This assumption is confirmed by a recent empirical study in which Professors Lebovic and Voeten found no robust effect of a country's human rights record on its receipt of foreign aid, although they do find that resolutions by the now defunct United Nations Commission on Human Rights, singling countries out for violations, have affected *multilateral* aid allocations, especially those of the World Bank. See James H. Lebovic & Erik Voeten, *The Cost of Shame: International Organizations and Foreign Aid in the Punishing of Human Rights Violations*, 46 J. PEACE RES. 79, 85-93 (2009). Even to the extent they are exercised, another study suggests that at least U.S. and multilateral sanctions are not likely to improve personal integrity rights protections in other countries. See CARDENAS, *supra* note 74, at 109.

If this were all, we could safely ignore as biased the estimates from the model without fixed effects. However, the fixed-effects model has some potential disadvantages, two of which affect the results here. First, even if country-to-country heterogeneity is indeed due exclusively to unobserved confounding variables, fixed effects estimation becomes less stable if—as is true here with our measures of access to justice as well as with all controls—variables change only slowly over time within most countries. This is because such sluggish variables are highly collinear with the country dummies, leading to high standard errors.²⁰² In the worst case, this can result in type II error, that is, in an estimate that we consider statistically insignificant in our sample even though we would find a true correlation if we were able to look at the data for all countries throughout history.²⁰³ Even though “conservative scientific inference is concerned with minimizing the probability of a type I error” (that is, finding correlation where there really is none),²⁰⁴ the possibility of a type II error is nevertheless an important thing to keep in mind when interpreting the estimates in this study.

Second, using country-fixed effects may result in considerable loss of explanatory power if, as here, variables change only slowly in the majority of countries (and in some cases, not at all).²⁰⁵ These countries include nations, such as Germany and Switzerland, that are established democracies with a high level of development, solid access to justice, and few human rights violations;²⁰⁶ military dictatorships, such as Myanmar, with low levels of development, limited access to justice, and poor human rights records;²⁰⁷ as well as countries in-between. Many fewer countries in the present sample, however, show more substantial variation in the dependent or independent variables, or both. They include nations such as Sierra Leone, which was able to emerge from a brutal civil war, improving its access to justice as well as its human rights record during the period of observation;²⁰⁸ Bahrain, which reinstated a constitutional monarchy and reversed the institution of the national security court with its secretive process, considerably improving access to justice and personal integrity rights

202. See, e.g., Wilson & Butler, *supra* note 150, at 105. On the effects of imperfect collinearity on least squares estimates generally see, for example, Fox, *supra* note 141, at 307.

203. See, e.g., Nathaniel Beck, *Time-Series Cross-Section Data: What Have We Learned in the Past Few Years?*, 4 ANN. REV. POL. SCI. 271, 285 (2001).

204. Wilson & Butler, *supra* note 150, at 106.

205. See, e.g., Beck, *supra* note 203, at 285; Stimson, *supra* note 144, at 922. In countries, such as Denmark, Norway, or—toward the other end of the spectrum—Iran, in which the chief causal variable and/or the dependent variable does not vary at all during the period of observation, we can learn nothing from our observations of that country in a fixed-effects estimation. See, e.g., *id.*; GREENE *supra* note 147, at 194; KING, KEOHANE & VERBA, *supra* note 125, at 129.

206. See e.g., CIA World Factbook, available on CD-Rom; Germany, U.S. DEPARTMENT OF STATE, <http://www.state.gov/g/drl/rls/hrrpt/2005/61650.htm>; Switzerland, U.S. DEPARTMENT OF STATE, <http://www.state.gov/g/drl/rls/hrrpt/2005/61678.htm>.

207. See e.g., CIA World Factbook, available on CD-Rom; Burma, U.S. DEPARTMENT OF STATE, <http://www.state.gov/g/drl/rls/hrrpt/2005/61603.htm>

208. See e.g., CIA World Factbook, available on CD-Rom; Sierra Leone, U.S. DEPARTMENT OF STATE, <http://www.state.gov/g/drl/rls/hrrpt/2005/61591.htm>

as well as its level of development along the way;²⁰⁹ and even The Former Yugoslav Republic of Macedonia, which intermittently experienced severe personal integrity rights violations, mostly as a result of ethnic Albanian insurgencies, without any remarkable concurrent changes in access to justice.

Fixed effects estimation assumes that the latter countries with more substantial changes in the relevant variables have more to contribute to our analysis than the former, for the simple reason that omitted variables explain why the majority of countries are locked in a relatively narrow band of variation. This intuitively makes sense.²¹⁰ If we go back far enough in history, however, we are likely to discover that many of the former countries, too, experienced considerable changes at some point. Seventy years ago, for instance, Germany was anything but a liberal democracy with a solid human rights record. And although the Swiss government was never captured by the scourge of Nazism, it too did not fully commit to a system of liberal democracy at the federal level until 1848. The governments in these countries, in other words, once made a deliberate choice to become liberal democracies while other nations were subjected to military dictatorships. Thus, the reason why at least some of the countries under review are now locked in a narrow band may be precisely their choice, some time ago, to adopt democratic or autocratic rule, along with a significant increase or decrease in access to justice. By imposing fixed effects, we lose the information that we would otherwise gain from a cross-country comparison of these differences. The problem, of course, is that we do not know how much such information is lost and to what extent the cross-country differences are indeed due to confounding variables. It is therefore sensible to present estimates both with and without fixed effects here.

Moreover, comparing the results from both models permits us to see that not all access rights fare worse in the fixed-effects estimation. Excluding cross-country comparison and focusing on within-country changes suggests that countries introducing the presumption of innocence are more likely to see an improvement in their record of personal integrity rights than countries that do not. Proceeding this way also suggests that countries that institute an independent judiciary are more likely to improve civil rights than countries that do not. Cross-country comparison in the pooled ordered probit estimation may introduce omitted variable bias strong enough to wipe out this insight.²¹¹ The same goes for the right to an inde-

209. See e.g., CIA World Factbook, available on CD-Rom; Bahrain, U.S. DEPARTMENT OF STATE, <http://www.state.gov/g/drl/rls/hrrpt/2005/61686.htm>

210. See *supra* text accompanying notes 200-201 (discussing likely omitted variables).

211. Alternatively, again, it could be that the model without fixed effects permits us to see the true picture and thus the reality that the stronger showings of the presumption of innocence with regard to personal integrity rights and the independence of the judiciary with regard to civil rights in the fixed effects model is a fluke. Perhaps, however, the showing of the presumption of innocence in the ordered probit estimate with civil liberties as the dependent variable (see *supra* Figure 4), suggests that this is the wrong conclusion to draw with regard to this right.

pendent judiciary in the models using the civil liberties score as the dependent variable.

Another notable difference in our outcomes results from the use of two distinct measures—indeed two distinct kinds—of human rights violations. For one thing, our access rights are, on average, more strongly correlated with a country's protection of personal integrity rights than with its protection of civil liberties, to the extent that there is a correlation at all. Since violations of personal integrity rights are generally worse than civil rights violations, it may well be that access to justice in some cases makes it more difficult for a country to get away with the former. But the different results may also, at least partly, be due to the specific design of this study. Recall that I was able to measure only access rights in criminal proceedings.²¹² Those rights permit a criminal defendant more directly to affect a country's personal integrity violations than its record on civil rights. For instance, in coding the right to present one's own witnesses, I included the ability of a criminal defendant to introduce evidence that his confession was coerced through torture. If that occurs, the defendant may thus be able to prevent a conviction if torture did indeed occur, in turn likely discouraging the use of torture in criminal investigations in future cases.²¹³ No such direct connection exists between access to justice in criminal cases and violations of civil liberties. Indeed, it may well be that most claims of civil rights violations are pursued in civil litigation. From this perspective, it should not be too surprising that some of our access rights—such as the presumption of innocence in the fixed effects estimation and the right to present one's own witnesses in the ordered probit estimation—perform better with personal integrity rights than with civil rights.

On the other hand, in many instances the correlation between access and civil rights violations is very similar to that between access and personal integrity rights violations. Indeed, there are cases where the observed correlation is statistically significant with regard to civil rights, but not with regard to personal integrity rights. This corresponds with my expectation that the measured rights of access in criminal cases are fairly well portable to the context of civil proceedings.²¹⁴ Thus, in the ordered probit model for instance, the quintessentially criminal process right of presuming the defendant innocent is nevertheless correlated with a better score in a country's measure of civil liberties violations while no such correlation appears with a country's personal integrity score. This suggests that rights such as these represent a more encompassing measure of basic access in civil as well as in criminal proceedings. However, I would expect the most portable of these rights to be the rights to a competent and independent judiciary since a country with incompetent or dependent judges in the

212. See *supra* text accompanying notes 104-106.

213. Note, however, that I did not have the necessary information to determine whether a country's procedural laws either require the exclusion of coerced testimony or mandate that the finder of fact make certain inferences. I thus considered it sufficient if a country permits a defendant simply to present such evidence.

214. See *supra* text accompanying note 106.

criminal context is unlikely to have competent or independent judges on the civil side.²¹⁵ The results largely bear out this expectation. In the fixed effects model, both judicial independence and competence of the judiciary have about the same strength of correlation; indeed, the correlation is statistically significant only with regard to civil rights.²¹⁶ In the ordered probit model, judicial independence does not appear to be correlated with either personal integrity rights or civil rights; the competence of the judiciary is, however, associated with better respect of both personal integrity rights and civil rights, although a bit less strongly with the latter.²¹⁷

Finally, our results change less substantially, but still significantly, if we substitute Freedom House's political rights index for the Polity IV score as a measure of democracy.²¹⁸ For the most part, the estimates suggest a stronger influence of democracy on a state's human rights performance set off partly by a weaker influence of access to justice rights.²¹⁹ The potential explanations for this change include the possibility of different kinds of measurement error in the two indicators of democracy.²²⁰ More substantially, although it is more problematic than the Polity IV scores in some respects,²²¹ Freedom House's political rights index is arguably a more encompassing measure of democracy. While Polity IV takes into account parliamentary control of government action in measuring the constraints on the executive, its focus is on the democratic election of the executive and democratic controls on its exercise of power.²²² Freedom House, by contrast, also considers the democratic election of parliament and democratic control of its actions.²²³ I think it is sensible that the latter, more broadly defined measure of democracy turns out to be more strongly correlated with improvements in a country's human rights performance than the former. Similarly, it is reasonable that, if we use a measure of democracy that puts more emphasis on the ability of citizens—including minority populations—to affect the actions of the legislature, access to justice loses some of its explanatory power with regard to a country's human rights record. Per-

215. See *supra* text accompanying note 104.

216. See *supra* text accompanying notes 169-175.

217. See *supra* text accompanying notes 179-190.

218. Another slight change for the worse occurs if we replace our ordered probit model with the, here, less sound model of ordinary least squares with a lagged dependent variable and panel-corrected standard errors. See *supra* notes 183, 188.

219. See *supra* text accompanying notes 193-197.

220. See, e.g., Munck & Verkuilen, *supra* note 124, at 15-22 (discussing potential sources of measurement error in both Polity and Freedom House scores); Trier & Jackman, *supra* note 124, at 203 (noting that measurement error in a dependent variable causes bias).

221. This includes the sometimes seemingly random choice of indicators, the aggregation rule used by Freedom House to distill aggregate scores from component indicators and the failure to publish component scores before 2008 for inspection by researchers. See, e.g., *id.*, at 19-21.

222. See MARSHALL & JAGGERS, *supra* note 157, at 12-28.

223. See *Methodology*, FREEDOM HOUSE, *supra* note 120, at Political Rights Checklist. In particular, there are questions, such as: "Are the national legislative representatives elected through free and fair elections?" and "Do cultural, ethnic, religious, or other minority groups have full political rights and electoral opportunities?"

haps, then, a more general ability of groups and individuals to make their interests count in governmental decision-making is at play here, just as liberal theory would predict.²²⁴

Conclusion

The question when and why nations comply with international law and, more specifically, with international human rights norms is an important one. Some of the theories developed in this area are not particularly sanguine about the potential of human rights norms to make a difference on the ground.²²⁵ Among the theories that predict good levels of compliance in at least some circumstances, many focus on domestic preference formation and the actions of groups and individuals.²²⁶ One important aspect of this focus, more crucial to some of these theories than to others, is the ability of groups and individuals to have access to domestic courts to seek to remedy human rights violations. The resulting hypothesis that increasing access to domestic courts will improve a country's human rights performance is one that is supported by the theory of the private attorney general in the United States. It is this hypothesis that I tested empirically.

The results of my study are disappointing, though not entirely discouraging. Some of the access rights I focus on are indeed correlated with better human rights performance. Indeed, the correlation between the right to counsel and a country's human rights practices is fairly robust, if not particularly strong.²²⁷ The other access rights I tested, however, show correlations that are neither strong nor robust. Yet, they are correlations that matter and that do support the tested hypothesis to some extent.

To get a sense of the moderate strength of our estimates, assume for the moment that the statistical model with the sturdiest support for our hypothesis most accurately depicts reality. This is, of course, a questionable assumption, since the estimates change significantly if we use alternative models that have at least as strong a claim to being most adequate.²²⁸ Nonetheless, if we make this assumption, we can say that a country that changes its practices and laws so as to move from not guaranteeing to fully guaranteeing a competent judiciary, the right to trial within reasonable time, the right to counsel, the right to free counsel for the indigent, or the right for the defendant to present his or her own witnesses and ask questions of government witnesses, is on average—depending on which of these

224. Cf. *supra* text accompanying notes 41-49.

225. See *supra* text accompanying notes 20-39.

226. See *supra* text accompanying notes 40-54, 65-68.

227. The estimates for the right to counsel do, however, become marginally statistically insignificant only if we use an alternative measure of democracy to control for the level of democracy and if we drop the time fixed effects in the fixed effects with personal integrity rights as a measure of human rights violations. See *supra* text accompanying notes 196-197.

228. Cf. *supra* text accompanying notes 197-217 (discussing reasons for differing results in models with and without fixed country and time effects and between models using civil rights and those using personal integrity rights scores as a measure of human rights abuses).

access rights is introduced—about 6.5–9% more likely to improve its score of personal integrity rights violations than a country that does not, all else being equal (although the likelihood could be as low as about 0–3% and as high as about 11.5–15.5%, again depending on the right in question).²²⁹ If we estimate the correlation of these rights with a country's personal integrity rights score simultaneously, that is, by controlling for the values of the other access rights, only the right to trial within a reasonable time and the competence of the judiciary remain correlated with improved personal integrity rights scores in a statistically significant fashion. This leads to a total likelihood of improving personal integrity rights for a country that moves from not guaranteeing to fully guaranteeing these rights of about 16% (6%, 26%). Although this is a notable likelihood, it is not particularly impressive, especially when taking into account the enormous effort required for such a change. Moreover, the uncertainty of these estimates is considerable. Keep in mind, too, that this is a rather extreme and thus unlikely scenario. Most countries already partially guarantee most of these access rights. Thus, in reality, most countries will be able to improve only from partially guaranteeing to fully guaranteeing most of these rights, thus further reducing the likelihood of affecting their score of personal integrity rights violations.

On the other hand, it is worth considering that these are net results, that is, results that remain after controlling for other variables that are likely to be correlated with both our rights of access to justice and our measure of human rights violations.²³⁰ Indeed, if we compare these results with those of the control variables, they do not exactly look paltry. Again using the model providing the sturdiest support for our hypothesis, a country that introduces a right to counsel for all defendants in all cases, for example, is about 7.5% (1%, 14%) more likely to improve its record of personal integrity rights abuses than a country that does not, all other things being equal. This is a bit less than the estimated effect that the same country can expect to see as a result of changing from a pure autocracy to a perfect democracy, a bit more than a third of the estimated effect of ending an extensive civil war, and about a quarter of the effect of changing from an utterly underdeveloped to a highly developed economy, for example.²³¹

Whether we judge these results weak or considerable, however, some of them become weaker still—and many are too likely to be due to chance to accept as a valid estimate of improvement—when we look at the results of other statistical models and of estimates with other measures for some of our variables. At the same time, however, some of the other access rights are then estimated to have a stronger, though again not particularly impres-

229. See *supra* text accompanying notes 179–183.

230. For a discussion of what kinds of variables need to be controlled for see, for example, KING, KEOHANE & VERBA, *supra* note 125, at 168–76.

231. By comparison, for example, Professors Keith, Tate, and Poe have found that a country's adoption of a bundle of civil rights and due process protections in its constitution is correlated with about an eleven percent improvement in its score of personal integrity rights. See Keith et al., *supra* note 21, at 655.

sive, effect on human rights practices, or one that is statistically significant, that is, an effect that is not too likely to be observed just by chance. Thus, if we control for country and time period observed, only the right to counsel remains correlated with an improvement in a country's personal integrity rights in a statistically significant fashion from among the rights so correlated in the model that does not control for country and time period.²³² At the same time, introducing the presumption of innocence now becomes associated with a better personal integrity rights score in a statistically significant fashion, and the right to present one's own witnesses comes close.²³³ Moreover, if we use a country's civil rights score as a measure of its human rights record, yet other access rights (such as the right to be heard and the right to free counsel for the indigent) emerge as correlated with an improved civil rights score, and the correlations generally become weaker still.²³⁴ There are, of course, potential explanations for these different outcomes.²³⁵ But we do not know for sure which, if any, of those explanations hold and, if so, to what extent. Thus, our findings lack robustness.

Keep in mind, too, that I tested only what are arguably the ten most basic rights to access to justice. Thus, I did not consider attributes that may well distinguish the procedural systems of particular countries, but that are arguably less fundamental for individuals to receive access to have their human rights grievances heard by a competent and independent court.²³⁶ Less fundamental access rights may well test more weakly than the rights included here. Indeed, even among the fundamental access rights investigated, the right to appeal fails to be correlated with better human rights practices in any of the models brought to bear here. Further, I only used a very basic measure of access, coding whether a country guarantees, partially guarantees, or fails to guarantee the right in question. Perhaps a more fine-grained measure of access to justice, if it can be

232. See *supra* text accompanying notes 169-174.

233. See *id.*

234. See *supra* text accompanying notes 188-190.

235. See *supra* text accompanying notes 197-217.

236. In a previous iteration, I did include a control for countries that are former British colonies in the ordered probit model because a few studies had shown a (very weak) correlation between being a former British colony and better human rights practices. See, e.g., Poe et al., *Repression*, *supra* note 74, at 306. However, no statistically significant correlation emerged. Indeed, the variable could be dropped without losing explanatory power except in one case: The correlation between the competence of the judiciary on the one hand and both personal integrity and civil liberties scores on the other did slightly increase when controlling for the presence of a former British colony. This provides at least some evidence that, once we control for the basic rights of access to justice included in this study, there is nothing truly affecting human rights performance—including procedural features particular to those countries—that sets former British colonies apart from other countries of the world. Cf. Keith et al., *supra* note 21, at 654 (also failing to find a correlation between being a former British colony and a country's level of human rights violations). However, their conclusion is that the correlation disappears once one controls for the presence of a bill of rights in a country's constitution. See *id.* Note that I was unable to control for former British colonies in the fixed effects model because of perfect collinearity with the fixed country effects. Cf., e.g., GREENE, *supra* note 147, at 194 (noting that any time invariant independent variable "will mimic the individual specific constant term").

implemented in a reliable fashion,²³⁷ could provide more nuanced estimates.²³⁸ More likely, however, it would further increase standard errors and thus the uncertainty of our estimates.

In my opinion, these results are weaker than expected. The theories explored above, the notion of the private attorney general, and beliefs about the importance of cause lawyering more generally would have one expect a clear correlation between most of the rights of access to justice tested here on the one hand and improved human rights conditions on the other, no matter which one of a number of appropriate statistical models is used. As Professors Wilson and Butler have pointed out, however “[g]iven a field in which . . . theoretical concepts often have weak empirical analogues and where data collection is often error-ridden, highly aggregated, or otherwise problematic, the bar for confirming theories with regression analysis should be very high.”²³⁹ Having set the bar high, we should, therefore, be prepared for deflating results. Moreover, this is only one study, and we always wish for more data. Thus, other studies might choose different statistical models or other measures for the variables included here. In the end, however, quantitative studies like the present one are powerful means to test our theoretical assumptions about the world, despite the presence of some issues with data collection and measurement. Perhaps, then, it is time to acknowledge that, on average, the correlation between access to justice and a country’s human rights practices as well as its compliance with international law more generally is smaller and less robust than at least some of us would like to believe.

237. With regard to PTS scores, for instance, Professors Wood and Gibney argue that attempting to further disaggregate the PTS scores would lead to “a pretense of precision and accuracy that we are quite confident (based on years of coding) seldom exists.” Wood & Gibney, *supra* note 116, at 377-78.

238. Alternatively, one could separate the access rights here tested into further sub-categories. For instance, in a study of the effect of constitutionally guaranteed human rights on a state’s human rights practices, Keith et al., *supra* note 21, at 653-54 disaggregated the right to an independent judiciary into nine sub-components. They found two of those nine sub-components—“judicial decisions are not reviewable by political authorities” and “no presence of exceptional courts”—to be correlated with better personal integrity scores in a statistically significant fashion, but not others, such as the presence of judicial review and guaranteed terms of service for judges.

239. Wilson & Butler, *supra* note 150, at 119.

Annex: Statistical Models Used in this Study

As noted above,²⁴⁰ I use cross-sectional time-series analysis and begin by estimating variants of the following model:

$$y_{it} = \alpha + \beta x_{it} + \gamma_t + \upsilon_i + \varepsilon_{it}.$$

Y denotes a measure of human rights violations in country i at time t ; α is a constant; x captures the chief causal variable and the control variables in country i at time t ; and β denotes the correlation coefficients to be estimated. The γ variables are year-specific dummy variables that control for global trends in human rights performance that are due to reasons other than those captured by the independent variables.²⁴¹ The υ variables are country-specific error terms. Including them effectively imposes a control for every country. These country fixed effects are included to avoid bias that may result from unobserved variables that may explain country-to-country differences in both the dependent and independent variables.²⁴²

Both of my measures of human rights violations, the Political Terror Scale and Freedom House's Civil Liberties scores, are ordinal rather than continuous variables. Ideally, one would thus want to use an ordered logit or probit model.²⁴³ However, such a model is known to be biased when fixed effects are included in finite samples.²⁴⁴ I thus complement the linear ordinary least squares (OLS) fixed-effects model with a pooled ordered probit model. This approach has the added benefit of producing results both with and without fixed effects, which have a few potential drawbacks.²⁴⁵ In both models, I use a lagged dependent variable to address two issues arising from the time-series properties of the data: autocorrelation²⁴⁶ and a dynamic term in the dependent variable.²⁴⁷ Indeed, in the

240. See *supra* text accompanying notes 144-145.

241. On fixed time effects see generally GREENE, *supra* note 147, at 197-200 (explicating fixed time effects along with fixed group effects).

242. On fixed effects estimation see generally *id.* at 193-200 (explicating fixed effects models).

243. See, e.g., FOX, *supra* note 141, at 335-39, 363-68; J. SCOTT LONG, REGRESSION MODELS FOR CATEGORICAL AND LIMITED DEPENDENT VARIABLES 114-15 (1997). But see, e.g., Beck, *supra* note 203, at 273 (claiming that in social science "seven-point scales and the like are treated as continuous").

244. See, e.g., William Greene, *The Behavior of the Fixed Effects Estimator in Nonlinear Models*, 7 *ECONOMETRICS J.* 98 (2004).

245. See *supra* text accompanying notes 201-204; see also Wilson & Butler, *supra* note 150, at 101, 120 (suggesting that reporting "estimates from models with and without fixed effects should be a standard part of the diagnostic repertoire" in time-series cross-section studies).

246. The presence of autocorrelation, or serial correlation, of the residuals violates a basic assumption of the ordinary least squares model—that the error terms are independent. Autocorrelation thus results in incorrect standard errors. See, e.g., FOX, *supra* note 141, at 101.

247. That is, after controlling for our independent variables of interest, the values of the dependent variable in one year are correlated with the values of the dependent variable the year before. See, e.g., Luke Keele & Nathan J. Kelley, *Dynamic Models for Dynamic Theories: The Ins and Outs of Lagged Dependent Variables*, 14 *POL. ANALYSIS* 186, 188-89

ordered probit model with personal integrity violations as the dependent variable, I include two lags of that variable to limit autocorrelation to tolerable levels.²⁴⁸ Moreover, I use cluster-robust standard errors in the fixed effects model and Huber-White robust standard errors in the ordered probit model to take account of heteroscedasticity.²⁴⁹

(2006). Avoiding a lagged dependent variable in this situation induces considerable bias. *See, e.g., id.* at 192–96. Unfortunately, the use of a lagged dependent variable in a fixed effects model leads to bias as well. *See, e.g.,* Stephen Nickell, *Biases in Dynamic Models with Fixed Effects*, 49 *ECONOMETRICA* 1417, 1419–25 (1981). However, statistical theory predicts that this bias is small if, as here, the observed time period is ten years or more. *See id.* Indeed, evidence from Monte Carlo experiments suggests that the bias is likely to be minor. *See, e.g.,* Katherine A. Judson & Ann L. Owen, *Estimating Dynamic Data Models: A Guide for Macroeconomists*, 65 *ECON. LETTERS* 9, 12 (1999); Nathaniel Beck & Jonathan N. Katz, *Modeling Dynamics in Time-Series-Cross-Section Political Economy Data*, Social Science Working Paper 1304, California Institute of Technology 15, 18–19 (2009), available at <http://www.hss.caltech.edu/SSPapers/sswp1304.pdf> (last visited Feb. 2, 2011).

248. Adding a third lag virtually eliminates this remaining autocorrelation, but it does so at the price of losing another year of observations. I thus include the model with two lags in the graph and report the results of the model with three lags *supra* note 181. On the use of multiple lags to eliminate serial correlation see, for example, Baker, *supra* note 156, at 16. Alternatively, one can abandon the ordered probit model and run a single lag of the dependent variable with Cochrane-Orcutt to address the remaining serial correlation. *See, e.g.,* Beck & Katz, *supra* note 247, at 11. Doing so results in p-values that are mostly similar to those arising from the use of ordered probit with two lags. I report those Cochrane-Orcutt results *supra* note 181.

249. On robust standard errors generally see GREENE *supra* note 147, at 162–64 (explicating heteroscedasticity-consistent estimator). On cluster-robust standard errors see *id.* at 186.

