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SHAM CONSTITUTIONS

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It is often said that constitutions are mere parchment barriers that cannot by themselves limit the power of the state or guarantee respect for rights. Little is known at a global and empirical level, however, about the extent to which countries fall short of their constitutional guarantees. This Article documents empirically the global prevalence and severity of constitutional noncompliance over the last three decades and identifies the worst offenders, or “sham constitutions,” across several substantive categories.

By matching our own data on the rights-related content of the world’s constitutions with quantitative indicators of actual human rights performance, we calculate numerical scores that capture the extent to which countries violate the rights pledged in their constitutions or, conversely, uphold more rights than their constitutions contain. These scores are then used to rank countries according to their constitutional “underperformance” or “overperformance.” Each country’s performance is further analyzed across three subcategories—namely, personal integrity rights, civil and political freedoms, and socioeconomic and group rights.

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The resulting performance scores reveal a number of global trends in constitutional compliance. On average, socioeconomic and group rights are somewhat less likely to be upheld than the other two varieties of rights, but the performance gap among the categories is narrowing over time. Moreover, a country's performance in one category tends to only weakly correlate with its performance in other categories. Relatively few countries fail egregiously to uphold either the positive or the negative rights found in their constitutions. Meanwhile, considerable variation exists in the degree to which specific rights are upheld in practice, ranging from 12% compliance with torture prohibitions to 100% compliance with death penalty prohibitions.

Constitutional compliance also exhibits strong geographical patterns. Countries in Africa and Asia tend to promise a wide range of rights in their constitutions but vary greatly in the degree to which they satisfy those self-imposed obligations, with the result that the two continents are home to a substantial majority of the world's sham constitutions. These regional patterns persist, moreover, even if one controls for such variables as wealth and population size.

Finally, statistical analysis identifies a number of variables that tend to predict the degree to which countries underperform on their constitutional guarantees. In past decades, the mere inclusion of socioeconomic rights in a constitution was associated with underperformance, but no longer. Wealthy and strongly democratic countries are relatively more likely to uphold constitutional rights, whereas countries that are afflicted by civil war or promise a large number of rights are more likely to fall short. However, neither the existence of judicial review nor the ratification of human rights treaties is statistically associated with increased respect for constitutional rights. Likewise, we find no evidence that constitutional clauses that expressly limit the reach of various rights affect the extent to which those rights are actually upheld.

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I want the [gentleman] who just spoke to know, and all the honorable congressmen also, that the 1861 Constitution, which was a good one, I stuck in this pocket, and that of 1868, which is even better according to these [gentlemen], I stuck in this other pocket, and that no one but me rules Bolivia.

- Mariano Melgarejo, President of Bolivia, 1864-1871¹

INTRODUCTION

Sometimes, constitutions lie. Anecdotal examples abound of “sham”² or “façade”³ constitutions that fail to constrain or even describe the powers of the

1. Quoted in BRIAN LOVEMAN, *THE CONSTITUTION OF TYRANNY: REGIMES OF EXCEPTION IN SPANISH AMERICA* 252 (1993).

2. E.g., WALTER F. MURPHY, *CONSTITUTIONAL DEMOCRACY: CREATING AND MAINTAINING A JUST POLITICAL ORDER* 14 (2007) (describing the “constitutional scripts” of Stalin and Mao as “fig leaves” intended to “impress foreigners”); Walter F. Murphy, *Constitutions, Constitutionalism, and Democracy*, in *CONSTITUTIONALISM AND DEMOCRACY: TRANSITIONS IN THE CONTEMPORARY WORLD* 3, 8–9 (Douglas Greenberg et al. eds., 1993) (characterizing constitutions that exist for “cosmetic” purposes as “sham” constitutions, and observing that “[t]he principal function of a sham constitutional text is to deceive”); Richard Sakwa, *The Struggle for the Constitution in Russia and the Triumph of Ethical Individualism*, 48 *STUD. E. EUR. THOUGHT* 115, 118 (1996) (describing the Soviet constitutions of 1918, 1924, 1936, and 1977 as examples of “sham constitutionalism”).

3. E.g., Giovanni Sartori, *Constitutionalism: A Preliminary Discussion*, 56 *AM. POL. SCI. REV.* 853, 861 (1962) (distinguishing between “proper” constitutions, which “restrain the exercise of

state.⁴ The constitution of Eritrea, for example, enshrines the “right to freedom of thought, conscience and belief,”⁵ the “freedom of speech and expression,”⁶ and the “freedom to practice any religion and to manifest such practice.”⁷ But the government of Eritrea is, in practice, one of the most repressive regimes on earth.⁸ In Equatorial Guinea, arbitrary arrests,⁹ executions,¹⁰ and rampant

political power”; “nominal” constitutions, which “describe a system of limitless, unchecked power” but do so “frankly”; and “façade” constitutions, which neither constrain the state nor provide “reliable information about the real governmental process”); Note, *Counterinsurgency and Constitutional Design*, 121 HARV. L. REV. 1622, 1632 (2008) (“A façade constitution can declare aspirational principles and adopt power structures for government, but such provisions and principles are ineffective and potentially delegitimized because they are not followed in practice.”).

4. See, e.g., NATHAN J. BROWN, CONSTITUTIONS IN A NONCONSTITUTIONAL WORLD: ARAB BASIC LAWS AND THE PROSPECTS FOR ACCOUNTABLE GOVERNMENT 3–4 (2002) (“The Soviet constitution was viewed just as Arab constitutional documents are today: an insincere promise of rights, freedoms, and democratic processes meant to fool both citizens and foreign observers by obscuring the untrammelled authority of the rulers.”); *id.* at 92 (observing that Arab constitutions “offer garrulous expositions and unenforceable catalogues of ideas, often mixing socialist, liberal, nationalistic, and Islamic elements together in a confusing blend”); JAN-ERIK LANE, CONSTITUTIONS AND POLITICAL THEORY 118, 122 (1996) (noting that a “huge distance between the *de jure* constitution and the *de facto* constitution” is “[t]ypical of Communist states”); Miguel González Marcos, *Comparative Law at the Service of Democracy: A Reading of Arosemena’s Constitutional Studies of the Latin American Governments*, 21 B.U. INT’L L.J. 259, 278–79 (2003) (observing that Latin American constitutions are often merely “‘paper’ constitutions because they are not followed”); A.E. Dick Howard, *A Traveler from an Antique Land: The Modern Renaissance of Comparative Constitutionalism*, 50 VA. J. INT’L L. 3, 13 (2009) (dubbing the Soviet constitution of 1936 “a Potemkin Village, its provisions meaning whatever the Party chose for them to mean”); David S. Law, *Constitutions*, in THE OXFORD HANDBOOK OF EMPIRICAL LEGAL RESEARCH 376, 382–83 (Peter Cane & Herbert M. Kritzer eds., 2010) (observing that “it has become de rigueur for even the most tyrannical of regimes to recite in their large-c constitutions a litany of constitutional rights sufficient to please the most ardent idealist,” and citing a number of empirical studies that “have found a negative relationship between formal rights protection and actual rights observance”); Samuel C. Nolutshungu, *Constitutionalism in Africa: Some Conclusions*, in CONSTITUTIONALISM AND DEMOCRACY: TRANSITIONS IN THE CONTEMPORARY WORLD 366, 366 (Douglas Greenberg et al. eds., 1993) (noting that “very few” African states abide by their constitutions “with any consistency”); Qianfan Zhang, *A Constitution Without Constitutionalism? The Paths of Constitutional Development in China*, 8 INT’L J. CONST. L. 950, 952 (2010) (“China’s Constitution lacks any meaningful mechanism for implementation and is left unguarded against official violations; it declares a long list of good ideals without the capacity to fulfill any. . . . [I]t is simply a ‘façade,’ which seems to be useful, if at all, only for improving the government’s image.”) (internal citation omitted); Busingye Kabumba, *The 1995 Uganda Constitution Is Nothing but an Illusory Law*, SUNDAY MONITOR (Kampala), Sept. 23, 2012, at 22 (calling the 1995 Uganda Constitution “an elaborate farce that is cynically perpetrated by the President to consolidate and extend his hold on power”).

5. THE CONSTITUTION OF ERITREA May 23, 1999, art. 19(1).

6. *Id.* art. 19(2).

7. *Id.* art. 19(4).

8. AMNESTY INT’L, AMNESTY INTERNATIONAL REPORT 2011: THE STATE OF THE WORLD’S HUMAN RIGHTS 138 (2011), available at http://files.amnesty.org/air11/air_2011_full_en.pdf (reporting that “[u]p to 3,000 Christians from unregistered church groups were held in detention during the year”); FREEDOM HOUSE, WORST OF THE WORST 2011: THE WORLD’S MOST OPPRESSIVE SOCIETIES 15, available at <http://www.freedomhouse.org/sites/default/files/WorstOfTheWorst2011.pdf> (describing Eritrea’s continued persecution of religious minorities and political dissidents). *Comparisons and Trends*, POLITICAL TERROR SCALE (PTS) (last visited May 5, 2013),

torture by government security forces¹¹ make a mockery of constitutional guarantees of “[f]reedom of expression,”¹² “[t]he right to speak,”¹³ and “respect” for every person’s “life, integrity and physical and moral dignity.”¹⁴ The North Korean constitution’s formal promises of “private property,”¹⁵ “freedom of speech, the press, assembly, demonstration, and association,”¹⁶ and “freedom of residence and travel”¹⁷ combine fantasy with farce.¹⁸

These are not merely isolated examples of disrespect for explicit constitutional rights. The dilemma that constitutions may amount to nothing more than “parchment barriers” is as old as the practice of constitution-writing itself.¹⁹ Even under ideal conditions, as in the case of a wealthy, well-established democracy, there inevitably exists a gap between the state as envisioned by a country’s formal or “large-c” constitution, and the state that actually exists pursuant to the body of rules, understandings, and practices that make up the informal or “small-c” constitution.²⁰ Under less than ideal conditions, that gap can widen to a chasm. Various empirical studies have

<http://www.politicalterroryscale.org/comparisons.php> (identifying Eritrea as among the worst perpetrators of state repression and political violence based on data from 2007 through 2011).

9. See, e.g., AMNESTY INT’L, *supra* note 8, at 136 (“Despite repeated promises to improve respect for human rights, the authorities arbitrarily arrested and detained dozens of political opponents.”); *id.* at 137 (“Soldiers and police were reportedly responsible for unlawful killings.”); *Equatorial Guinea: Surge in Arbitrary Arrests Ahead of AU Summit*, AMNESTY INT’L (June 22, 2011), <http://www.amnestyusa.org/news/press-releases/equatorial-guinea-surge-in-arbitrary-arrests-ahead-of-au-summit> (reporting the arbitrary arrest of “[p]olitical opponents as well as some 100 students” in an apparent attempt to prevent demonstrations “during the [African Union] summit”); FREEDOM HOUSE, *supra* note 8, at 14 (noting that authorities in Equatorial Guinea have been “accused of widespread human rights abuses,” including “detention of political opponents”).

10. See, e.g., AMNESTY INT’L, *supra* note 8, at 137 (noting that soldiers and police in Equatorial Guinea have been “reportedly responsible for unlawful killings”); FREEDOM HOUSE, *supra* note 8, at 14 (counting “extrajudicial killing” among the “widespread human rights abuses” of which authorities in Equatorial Guinea have been accused).

11. See AMNESTY INT’L, *supra* note 8, at 137 (describing the use of torture “with impunity” by soldiers and police officers in Equatorial Guinea); *Torture is Rife in Equatorial Guinea’s Prisons, Says UN Expert*, UN NEWS CENTRE (Nov. 19, 2008), <http://www.un.org/apps/news/story.asp?NewsID=28998&Cr=torture&Cr1=rappporteur> (reporting that police forces use torture against political prisoners); U.S. DEP’T. OF STATE, 2010 HUMAN RIGHTS REPORT: EQUATORIAL GUINEA 3, *available at* <http://www.state.gov/documents/organization/160119.pdf> (outlining “systematic” use of torture against political detainees).

12. CONSTITUTION OF THE REPUBLIC OF EQUATORIAL GUINEA Nov. 17, 1991, art. 13(b).

13. *Id.* art. 13(i).

14. *Id.* art. 13(a).

15. SOCIALIST CONSTITUTION OF THE DEMOCRATIC PEOPLE’S REPUBLIC OF KOREA Apr. 2009, art. 24.

16. *Id.* art. 67.

17. *Id.* art. 75.

18. See, e.g., FREEDOM HOUSE, *supra* note 8, at 18 (detailing, *inter alia*, the North Korean regime’s absolute control over the flow of information and forcible relocation of citizens).

19. THE FEDERALIST NO. 48, at 308 (James Madison) (Clinton Rossiter ed., 1961).

20. See Law, *supra* note 4, at 377 (explaining the distinction between “de jure, written, codified, or formal constitutions (‘large-c’ constitutions), on the one hand, and de facto, unwritten, uncoded, or informal constitutions (‘small-c’ constitutions), on the other”).

painted a bleak picture of the relationship between constitutional rights provisions and actual respect for rights.²¹ Countries whose constitutions contain a greater number of rights tend also to experience higher levels of political violence and terror.²² Likewise, certain constitutional guarantees appear to correlate with *higher* levels of severe rights abuse.²³ The vast majority of the world's constitutions, for example, contain prohibitions against torture.²⁴ However, not only do a majority of countries continue to practice torture,²⁵ but torture is more common among countries that declare it unconstitutional.²⁶

Authoritarianism and repression are not the only reasons why countries fail to live up to their constitutions. The world's poorest nations by definition lack the resources to honor the kinds of positive socioeconomic rights that have grown increasingly popular in recent decades.²⁷ The constitution of Chad, like

21. See *id.* at 381–82 (surveying the relevant literature). It is sometimes suggested that rights provisions are more prone to violation than other types of constitutional provisions. See ZACHARY ELKINS ET AL., *THE ENDURANCE OF NATIONAL CONSTITUTIONS* 53–55 (2009) (comparing de facto and de jure measures of parliamentary power and respect for civil liberties, and finding that provisions regarding parliamentary power describe reality “much better” than do provisions about civil liberties); Law, *supra* note 4, at 382–83 (discussing the hypothesis that “rights guarantees are more prone to failure than other types of large-c constitutional provisions”). To date, however, empirical research on the relative efficacy of structural, as opposed to rights, provisions remains scarce. See Law, *supra* note 4, at 383–84 (concluding that “[i]t is not possible to draw any firm conclusions from the scant existing literature about the relative efficacy of other types of large-c constitutional provisions,” and noting in particular that constitutional provisions concerning the power and independence of the judiciary may be just as prone to violation as rights provisions).

22. See David S. Law & Mila Versteeg, *The Evolution and Ideology of Global Constitutionalism*, 99 CALIF. L. REV. 1163, 1219–20 (2011) (finding a negative and statistically significant relationship between the “comprehensiveness” or sheer quantity of the rights guarantees found in a country’s constitution on the one hand, and the country’s respect for human rights, as measured by the Political Terror Scale, on the other hand).

23. See Law, *supra* note 4, at 382 (citing and discussing various studies that have found a negative relationship between formal rights protection and actual rights observance).

24. See Law & Versteeg, *supra* note 22, at 1200–01 tbl.2 (charting the growing popularity of constitutional prohibitions against torture, and noting that, as of 2006, 84% of constitutions contained such a provision).

25. See TODD LANDMAN, *PROTECTING HUMAN RIGHTS: A COMPARATIVE STUDY* 4 (2005) (citing Amnesty International statistics indicating that torture was practiced by 58% of U.N. member states in 1990 and 57% in 2002).

26. See Linda Camp Keith, *Constitutional Provisions for Individual Human Rights (1977–1996): Are They More than Mere “Window Dressing?”*, 55 POL. RES. Q. 111, 128 tbl.1, 134 (2002) (finding that constitutional prohibitions against torture and constitutional guarantees of habeas corpus are both correlated with higher levels of abuse of personal integrity rights); Law, *supra* note 4, at 382 (highlighting the findings of the Keith study).

27. See David L. Cingranelli & David L. Richards, *Measuring Government Effort to Respect Economic and Social Human Rights: A Peer Benchmark*, in *ECONOMIC RIGHTS: CONCEPTUAL, MEASUREMENT, AND POLICY ISSUES* 214, 215 (Shareen Hertel & Lanse Minkler eds., 2007) (noting that, under existing benchmarks, “governments can significantly improve their economic and social rights performance only by getting richer”); Law & Versteeg, *supra* note 22, at 1200–01 tbl.2 (documenting the increasingly widespread inclusion in written constitutions of such provisions as a positive right to state-funded education and a right to various physical necessities).

that of most countries, boasts a right to free public education.²⁸ Yet, children in Chad receive an average of only seven years of schooling,²⁹ and the country has the lowest adult literacy rate in the world.³⁰ In theory, Afghanistan is constitutionally obligated to “provide free preventive health care and treatment of diseases as well as medical facilities to all citizens in accordance with the law.”³¹ In reality, Afghanistan has the seventh-lowest life expectancy,³² the second-highest child mortality rate,³³ the highest maternal mortality rate,³⁴ and one of the highest child malnutrition rates in the world.³⁵ Even if such promises happen to be sincere,³⁶ there comes a point when unfulfilled idealism becomes cause for cynicism. From the perspective of the average citizen, the difference between an aspirational but unrealistic constitution and a sham constitution may be at best a matter of degree and at worst a matter of semantics.

The failure to perform upon self-imposed, publicly proclaimed commitments distinguishes the specific problem of sham constitutionalism from the more frequently discussed problem of failure to respect human rights. A regime that is unwilling or unable to respect certain rights need not compound its failings by making empty promises. It can simply omit those

28. CONSTITUTION DU 31 MARS 1996 RÉVISÉE Apr. 14, 1996, art. 35 (Chad); see Law & Versteeg, *supra* note 22, at 1201 tbl.2 (noting that a positive right to education at state expense was found in 82% of the world’s constitutions as of 2006, rendering it the fifteenth most common constitutional right in the world).

29. See *International Human Development Indicators: Expected Years of Schooling (of Children) (Years)*, U.N. DEV. PROG., <http://hdrstats.undp.org/en/indicators/69706.html> (last visited May 5, 2013) (reporting data current as of 2011).

30. See *International Human Development Indicators: Adult Literacy Rate, Both Sexes (% Aged 15 and Above)*, U.N. DEV. PROG. (last visited May 5, 2013), <http://hdrstats.undp.org/en/indicators/101406.html> (ranking Chad’s adult literacy rate of 33.6% as of 2009 as the lowest among all countries).

31. CONSTITUTION OF AFGHANISTAN Jan. 26, 2004, art. 52.

32. See *International Human Development Indicators: Life Expectancy at Birth (Years)*, U.N. DEV. PROG., <http://hdrstats.undp.org/en/indicators/69206.html> (last visited May 5, 2013) (reporting life expectancy statistics as of 2011).

33. *International Human Development Indicators: Under-Five Mortality (Per 1,000 Live Births)*, U.N. DEV. PROG., <http://hdrstats.undp.org/en/indicators/57506.html> (last visited May 5, 2013) (reporting the mortality rate for children under five as of 2009).

34. See *International Human Development Indicators: Maternal Mortality Ratio (Deaths of Women per 100,000 Live Births)*, U.N. DEV. PROG., <http://hdrstats.undp.org/en/indicators/89006.html> (last visited May 5, 2013) (reporting maternal mortality rates as of 2008).

35. WORLD HEALTH ORG., WORLD HEALTH STATISTICS 2011, 22, available at http://www.who.int/whosis/whostat/EN_WHS2011_Full.pdf (reporting that nearly one-third of Afghans under the age of five suffer from malnutrition).

36. See, e.g., Audrey R. Chapman, *The Status of Efforts to Monitor Economic, Social, and Cultural Rights*, in ECONOMIC RIGHTS: CONCEPTUAL, MEASUREMENT, AND POLICY ISSUES 143, 144–51 (Shareen Hertel & Lanse Minkler eds., 2007) (observing that states are obligated only to pursue the “progressive realization” of the rights found in the International Covenant on Economic, Social, and Cultural Rights within the limits of “available resources”); Cingranelli & Richards, *supra* note 27, at 214–15 (arguing that compliance with socioeconomic rights should be measured as a function of the sincerity and extent of government efforts to make those rights meaningful, rather than as a function of actual improvement in outcomes).

rights from its constitution. The Saudi constitution, for example, expressly obligates the media to “employ courteous language” and conform to state regulation,³⁷ while the first Soviet constitution explicitly committed the state to “deprive individuals and sections of the community of any rights used by them to the detriment of the interests of the Socialist Revolution.”³⁸ This kind of constitutional language may not impress human rights advocates, but at least it is honest. By contrast, a regime that advertises itself in constitutional terms as a paragon of virtue invites criticism for misrepresenting itself and flouting its own commitments. Governments can and should be held accountable not only for failing to respect basic rights, *but also* for breaking their promises and bringing the very idea of constitutionalism into disrepute. Chronic and flagrant constitutional violation can ripen into doubts about the value of constitution-making itself.

A crucial step in any strategy for holding the worst offenders accountable is simply to identify them. Indeed, the mere act of publicly identifying the countries that most egregiously break their constitutional promises can be an effective strategy for achieving positive change in and of itself. Naming and shaming generate publicity and focus attention in ways that can encourage governments to improve their practices.³⁹ There can be no naming and shaming, however, until more is known about the prevalence and severity of sham constitutionalism. Efforts to measure constitutional compliance on a global scale have yet to materialize.⁴⁰

This Article seeks to promote global constitutional transparency by tackling fundamental empirical questions that have long haunted both the study of constitutional law and the practice of constitutionalism: to what extent, in what ways, and under what conditions do countries fail to uphold their constitutions? Drawing upon an extensive data set that covers the rights-related provisions of every constitution in the world over the last sixty years, we assign scores and rankings to countries that reflect the extent to which they actually uphold the rights found in their constitutions. We also identify the constitutional rights that are most often violated in practice, the regions where

37. BASIC LAW OF GOVERNMENT [CONSTITUTION] Mar. 1, 1992, art. 39 (Saudi Arabia); see BROWN, *supra* note 4, at 7 (noting that Arab constitutions do not always purport to restrict state authority and are “rarely blatantly violated” as a result).

38. CONSTITUTION (FUNDAMENTAL LAW) OF THE RUSSIAN SOCIALIST FEDERAL SOVIET REPUBLIC July 10, 1918, arts. 9, 23.

39. See, e.g., Emilie M. Hafner-Burton, *Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem*, 62 INT’L ORG. 689, 690–91 (2008) (finding that “governments named and shamed as human rights violators often improve protections for political rights after being publicly criticized,” although they may find other ways to circumvent or defeat those improved protections).

40. See Law, *supra* note 4, at 387–88 (discussing the lack of quantitative empirical scholarship on formal constitutions); Anne Meuwese & Mila Versteeg, *Quantitative Methods for Comparative Constitutional Law*, in PRACTICE AND THEORY OF COMPARATIVE LAW (Maurice Adams & Jacco Bomhoff eds., 2012) (describing the relatively few sources of quantitative data currently available to scholars in the area of comparative constitutional law).

sham constitutions are most common, and variables that predict the occurrence of sham constitutionalism.

Part I sets forth the conceptual framework of our analysis. We devise a typology of constitutions and measures of constitutional performance that take into account not only a country's success at upholding the rights found in its constitution, but also the range of rights that its constitution contains. Part I also discusses why it is inadvisable to take into account either judicial interpretation or constitutional suspension when measuring a country's propensity for sham constitutionalism.

Part II introduces the data used in this Article to measure levels of formal and actual respect for rights. Part III identifies a number of global trends in the de jure and de facto protection of rights. Although countries are promising an ever-increasing number of constitutional rights, the range of rights that they uphold in practice has, in most cases, grown more slowly. The result is a growing gap between the de jure protection and de facto observance of constitutional rights. With respect to socioeconomic and group rights in particular, more rights on paper is associated with less respect for rights in practice.

Part IV.A singles out the countries that most egregiously fail to uphold the rights that they promise. Conversely, Part IV.B identifies the countries that uphold even more rights than their constitutions promise. Part IV.C evaluates the performance of each country in three different categories: personal integrity rights, civil and political freedoms, and socioeconomic and group rights. On the whole, performance tends to be poorly correlated across categories. The fact that a country honors personal integrity rights, for example, is not an especially strong predictor of whether it also upholds socioeconomic rights or political freedoms.

Part IV.D documents the existence of regional patterns in constitutional noncompliance. Unsurprisingly, Western Europe and North America perform strongly as a whole, while Africa and Asia are home to a substantial majority of the world's sham constitutions. Closer examination reveals, however, that Africa and Asia are characterized by a combination of extremes rather than pervasive constitutional failure: although countries in these regions tend to promise a wide range of rights, they vary greatly in the extent to which they actually uphold those rights. The net result is an uneven mixture of robust constitutionalism and conspicuous failure. Latin America has historically exhibited a similar combination of sham constitutionalism and strong constitutionalism but shows encouraging signs of closing the gap between parchment and practice.

Part V analyzes which constitutional rights—and which categories thereof—are most often violated in practice. On the whole, performance is weakest in the area of socioeconomic and group rights, particularly with respect to women's economic and social rights, but respect for such rights has

improved over the last three decades. At the same time, a number of negative liberty rights—most notably, fair trial rights, freedom of expression, and prohibitions against torture—are also widely violated in practice, with little sign of improvement over time.

Finally, in Part VI, we identify a number of variables that tend to predict whether a country will succumb to sham constitutionalism. Our findings suggest that economically developed countries and strongly democratic countries are more likely to live up to their constitutional guarantees, while countries that are afflicted by civil war or promise a wide range of rights are less likely to do so. By contrast, constitutional compliance is not correlated with the presence of judicial review, the ratification of human rights treaties, or the use of limitation clauses that specify how rights may be limited.

I.

A CONCEPTUAL FRAMEWORK FOR CLASSIFYING CONSTITUTIONS AND MEASURING COMPLIANCE

A. *What Counts as a Constitution?*

One cannot determine the extent to which countries comply with their constitutions without first facing the threshold question of what ought to count as a constitution. The question is a vexed one because the term “constitution” is used in a number of different senses, which results in multiple ways of deciding what counts as a country’s constitution.⁴¹ For example, the question of what counts as the constitution of the United States might seem to have a straightforward answer: the existence of a document called the United States Constitution would appear to end the inquiry. As scholars have long observed, however, the formal self-styled “Constitution” is a woefully incomplete statement of the country’s working constitution.⁴² Some statutes, such as the Administrative Procedure Act⁴³ and the Civil Rights Act of 1964,⁴⁴ are so

41. See, e.g., ELKINS ET AL., *supra* note 21, at 37–39 (contrasting “functional” and “formal” constitutions, and “thin” and “thicker” conceptions of the term “constitution”); Law & Versteeg, *supra* note 22, at 1187–88 & 1187 n.104 (surveying some of the ways in which the term “constitution” has been defined).

42. See, e.g., Karl N. Llewellyn, *The Constitution as an Institution*, 34 COLUM. L. REV. 1, 3 (1934) (arguing that the constitution is not a document, “but a living institution built (historically, genetically) in first instance *around* a particular Document”); Matthew S.R. Palmer, *Using Constitutional Realism to Identify the Complete Constitution: Lessons from an Unwritten Constitution*, 54 AM. J. COMP. L. 587, 591–93 (2006) (urging a broader, “realist” definition of the “complete” U.S. Constitution that encompasses certain statutes, international law, and “constitutional conventions” that “are not located in the labeled document”); Ernest A. Young, *The Constitution Outside the Constitution*, 117 YALE L.J. 408, 411 (2007) (noting that “much—perhaps even *most*—of the ‘constitutional’ work in our legal system is in fact done by legal norms existing outside what we traditionally think of as ‘the Constitution’”).

43. 5 U.S.C. § 500 (2006).

44. Pub. L. No. 88-352, 78 Stat. 241 (codified as amended in scattered sections of 2 U.S.C., 28 U.S.C., and 42 U.S.C.).

fundamental that they might be said to enjoy quasi-constitutional status.⁴⁵ One might also argue that the Supreme Court has blurred the distinction between constitutional interpretation and constitutional amendment to the point that the nation's working constitution owes more to the Court than to the Constitution itself.⁴⁶ These differences of opinion over how the U.S. Constitution should be defined illustrate the widely acknowledged distinction between a country's "large-c" or formal constitution, and its "small-c" or de facto constitution.⁴⁷

No single definition of the term "constitution" can be declared by fiat to be uniquely correct for all intents and purposes. For purposes of this study, "constitution" refers to a country's "large-c" or formal constitution, which we define in the same manner as in our previous work.⁴⁸ This focus on formal constitutions is not only consistent with the nascent empirical literature on constitutions,⁴⁹ but also appropriate to our research question, for reasons explained below.

Even formal constitutions, however, come in a range of shapes and sizes. Unlike the U.S. Constitution, constitutions elsewhere are not necessarily

45. See, e.g., MARTIN SHAPIRO & ALEC STONE SWEET, ON LAW, POLITICS, & JUDICIALIZATION 138 (2002) (characterizing both the Civil Rights Act of 1964 and the Administrative Procedure Act as "constitution like" in the sense that both are "entangled with constitutions" and "treated as overarching norms applied in judicial review of a wide range of government—and often private—actions"); William N. Eskridge, Jr. & John Ferejohn, *Super-Statutes*, 50 DUKE L.J. 1215, 1237 (2001) (dubbing the Civil Rights Act of 1964 a "super-statute" that has "pervasively affected federal statutes and constitutional law" alike); Palmer, *supra* note 42, at 628 (describing the Administrative Procedure Act as "constitutional in the realist sense"); Young, *supra* note 42, at 457 (deeming the Administrative Procedure Act "surely one of our most important constitutive statutes").

46. See J.W. PELTASON, CORWIN & PELTASON'S UNDERSTANDING THE CONSTITUTION 191 (14th ed. 1997) (quoting Woodrow Wilson's description of the Supreme Court as a "constitutional convention in continuous session").

47. Law, *supra* note 4, at 377–78 (contrasting "small-c" and "large-c" constitutions, and noting that scholars often fail to specify "which of the two phenomena they have in mind"); see also, e.g., ELKINS ET AL., *supra* note 21, at 39 (noting that some scholars distinguish the "big-C" or "proper noun Constitution," which is "reserved for the text," and the "small-c" version of the word "constitution," which "refers to the broader constitutional order").

48. See Law & Versteeg, *supra* note 22, at 1188–90 (describing at length the criteria used to identify a country's "constitution" for coding purposes); see also David S. Law & Mila Versteeg, *The Declining Influence of the United States Constitution*, 87 N.Y.U. L. REV. 762, 770 & n.19 (2012) (analyzing "written constitutions" defined in the same manner).

49. See, e.g., ELKINS ET AL., *supra* note 21, at 36 (focusing on formal, written constitutions, defined as the "codes of rules which aspire to regulate the allocation of functions, powers and duties among the various agencies and offices of government, and define the relationship between these and the public") (internal citation omitted); Zachary Elkins et al., *Baghdad, Tokyo, Kabul . . . : Constitution Making in Occupied States*, 49 WM. & MARY L. REV. 1139, 1148–52 (2008) (defining "constitutions" as formal constitutions for purposes of counting the historical frequency of "occupation constitutions"); Law & Versteeg, *supra* note 22, at 1188–90 (focusing on "constitutions in a formal and legal sense," which excludes "judicial interpretations and unwritten constitutional conventions and practices, even though these may be integral parts of a country's small-c, or de facto, constitution"); Law & Versteeg, *supra* note 48, at 770 & n.19 (analyzing a data set of "written" or formal constitutions).

entrenched against amendment or repeal via the ordinary legislative process;⁵⁰ nor do they always take the form of a single document that includes the word “constitution” in its title.⁵¹ A statute entitled a “basic law”⁵² or “[b]ill of [r]ights [a]ct”⁵³ can clearly be constitutional in character. Thus, to capture the full range of real-world constitutions, our definition includes any domestic legal instrument, or set of such instruments, that a country formally designates as “constitutional” in character, regardless of whether it technically takes the form of ordinary legislation.⁵⁴ In the rare cases where no such formally denominated instrument exists, the definition expands to include domestic legal instruments that are functionally equivalent to constitutions, in the sense that they define the fundamental structure and powers of the state.⁵⁵ The implementation of this approach is described in our previous work.⁵⁶

At the same time, it is possible to define the term “constitution” too broadly. A definition so broad that it incorporates actual practice would collapse the very gap between parchment and practice that we seek to measure. Elements of actual practice such as judicial interpretation and application of the constitution must therefore be excluded from our definition. When determining

50. For a combination of historical and conceptual reasons, countries with parliamentary systems of government often possess constitutions that are technically statutes. Examples include Canada’s constitution, Constitution Act, 1982, *being* Schedule B to the Canada Act, 1982, c.11 (U.K.), Section 1; and Israel’s “Basic Laws,” *e.g.*, Basic Law: The Knesset, 5718–1958, 12 LSI 85 (1957–1958); Basic Law: The Judiciary, 5744–1984, 38 LSI 101 (1983–1984); Basic Law: Human Dignity and Liberty, 5752–1992, SH No. 1391 p. 150 (amended 1994); Basic Law: Freedom of Occupation, 5754–1994, SH. No. 1454 p. 90 (1994). In parliamentary systems, the notion of parliamentary sovereignty—or more specifically, the principle that a parliament cannot bind its successors or otherwise permanently alienate its own power—can be a conceptual barrier to the adoption of a formally entrenched constitution. *See, e.g.*, JEFFREY GOLDSWORTHY, *THE SOVEREIGNTY OF PARLIAMENT: HISTORY AND PHILOSOPHY* 244 (1999) (noting that the U.K. Parliament could in theory repeal the statute by which it “relinquished its authority to alter Australian law,” and that the effectiveness of such a repeal would depend as a practical matter upon the willingness of Australian courts either to “accept the validity of the repeal” or to “repudiat[e] the doctrine of parliamentary sovereignty”); David S. Law, *The Paradox of Omnipotence*, 40 GA. L. REV. 407, 413–15 (2006) (noting that the doctrine of parliamentary sovereignty renders the United Kingdom “theoretically incapable . . . of forever relinquishing its control over Canada and Australia” or committing itself irrevocably to membership in the European Union, and describing the inability of an all-powerful legislature to rid itself of power as a “paradox of omnipotence”).

51. *See, e.g.*, Constitution Act, 1982, *being* Schedule B to the Canada Act, 1982, c.11 (U.K.), §§ 60–61 & Schedule (defining the “Constitution of Canada” as including over twenty acts, orders, and proclamations promulgated from 1867 onward); Palmer, *supra* note 42, at 609–13 (listing various landmark laws and treaties that could all be considered part of New Zealand’s constitution).

52. *See, e.g.*, GRUNDGESETZ FÜR DIE BUNDERSREPUBLIK DEUTSCHLAND [GRUNDGESETZ] [GG] [BASIC LAW], May 23, 1949, BGBl. I (Ger.); Basic Law: Human Dignity and Liberty, 5752–1992, SH No. 1391 p. 150 (amended 1994) (Isr.); Basic Law: Freedom of Occupation, 5754–1994, SH. No. 1454 p. 90 (1994) (Isr.).

53. *See* New Zealand Bill of Rights Act 1990.

54. *See* Law & Versteeg, *supra* note 22, at 1188.

55. *See id.* Thus, for example, both the Magna Carta and the Human Rights Act 1998, c. 42 (Eng.), are counted as part of the “constitution” of the United Kingdom. *See id.* at 1230 (listing several “constitutional” provisions belonging to United Kingdom).

56. *See id.* at 1188–90.

what rights a constitution contains, we evaluate only the content of the constitution itself and do not take case law into account. For example, it is irrelevant for our purposes if the courts of a particular country attempt to neuter constitutional language referencing a “right to education” by holding that the language cannot be enforced or merely states a nonbinding policy goal as opposed to an actual right. Under our measurement approach, that country would still count as possessing a constitutional right to education.

This is not to suggest that judicial interpretation is irrelevant to the question of whether and to what extent countries uphold their constitutions. Its relevance is obvious. The power to say what the constitution means is the power to say whether the constitution has been violated. What might appear to fly in the face of the constitution may prove entirely constitutional in the eyes of a court. Judicial review is thus one way countries can bridge the gap between what their constitutions say and how they actually behave. Because quantitative empiricism has been slow to penetrate the field of comparative constitutional law,⁵⁷ judicial review has yet to be the subject of quantitative empirical study on a global scale.⁵⁸ It would be profoundly worthwhile to know as an empirical matter whether and to what extent constitutional adjudication actually bridges this gap.

Nevertheless, there are multiple reasons to exclude case law from the ambit of this study, above and beyond the need to maintain a clear distinction between parchment and practice if the gap between the two is to be measured. One reason is that case law can provide an incomplete and misleading picture of a country’s constitution. Courts often cannot or will not enforce constitutional commitments, particularly those of a socioeconomic variety.⁵⁹ The mere fact that a right lacks judicial enforcement does not, however, erase

57. See *supra* note 40 and accompanying text (discussing the dearth of quantitative empirical scholarship in the area of comparative constitutional law).

58. See David S. Law & Mila Versteeg, *Debating the Declining Influence of the United States Constitution: A Response to Professors Choudhry, Jackson, and Melkinsburg*, 87 N.Y.U. L. REV. ONLINE 41, 47 (2012) (expressing a “desire, if not impatience, for genuinely global empirical research on constitutional case law”). An important practical reason for the absence of such studies is the sheer difficulty of collecting information on the case law of every constitutional court in the world, across a gamut of languages. The magnitude of the task is illustrated by the ambitious and ongoing efforts of a collective of political scientists who, after years of work backed by substantial research grants, have thus far succeeded (as of this writing) in collecting data on constitutional adjudication in forty-three countries for the year 2003, with further data collection pending for an additional thirty countries. See Clifford J. Carrubba et al., *An Introduction to the CompLaw Database*, Aug. 26, 2012, at 1, 5 (paper prepared for presentation at the canceled 2012 Annual Meeting of the American Political Science Association in New Orleans, Louisiana) (on file with the authors). Other sources of quantitative empirical data in the area of comparative constitutional law, meanwhile, remain sparse and offer little help. See *supra* note 40 and accompanying text.

59. See Stephen Gardbaum, *The Myth and the Reality of American Constitutional Exceptionalism*, 107 MICH. L. REV. 391, 446–53 (2008) (discussing the nonjusticiability of social and economic rights in a variety of countries).

the right from the constitution.⁶⁰ Governments can and should be held accountable for their failure to respect constitutional rights, regardless of whether courts become involved. Some countries lack judicial review altogether,⁶¹ but that does not mean those countries are incapable of either including rights in their constitutions or upholding those rights. Indeed, our findings suggest that the existence of judicial review is a very poor predictor of whether a country will honor the rights enshrined in its constitution.⁶²

Another relevant consideration is that other countries tend to meet their needs for constitutional change by relying more on formal revision and less on judicial interpretation.⁶³ In the United States, heavy reliance on judge-made constitutional law is necessitated in part by the age, fixity, and brevity of the Constitution itself. At two hundred twenty-plus years of age and counting, the U.S. Constitution is the oldest surviving constitution in the world,⁶⁴ and formal amendments have been few and far between.⁶⁵ By comparison, the average written constitution has a lifespan of only nineteen years⁶⁶ and runs nearly three times longer than the U.S. Constitution in its original form.⁶⁷ The fact that other countries tend to possess newer, more detailed constitutions leaves a smaller lawmaking role for their courts to fill. At the same time, other countries tend to lack the long experience with judicial review that has enabled the United States

60. See Lawrence Gene Sager, *Fair Measure: The Legal Status of Underenforced Constitutional Norms*, 91 HARV. L. REV. 1212, 1213–14 (1978) (noting that there can exist “slippage” between a constitutional norm and its enforcement, and arguing that the judicial enforcement of a constitutional norm must be distinguished from the validity of the norm itself).

61. See Law & Versteeg, *supra* note 48, at 793 (observing that, as of 2006, 18% of the world’s constitutions still do not provide explicitly for judicial review).

62. See *infra* note 204 and accompanying text (discussing the results of a regression analysis indicating that the existence of judicial review is not a statistically significant predictor of the extent to which countries uphold constitutional rights).

63. See Law & Versteeg, *supra* note 58, at 46–47 (disputing the notion that “case law is ‘more important’ than constitutional text” from a global perspective, and urging “American constitutional scholars to bear in mind that, compared to the U.S. Constitution, the constitutions of other countries tend to be both more recent and more detailed, which decreases the importance of judicial interpretation relative to the constitution itself”).

64. See Gardbaum, *supra* note 59, at 399 & n.28 (listing the world’s oldest surviving constitutions); Law & Versteeg, *supra* note 48, at 807.

65. See SANFORD LEVINSON, *OUR UNDEMOCRATIC CONSTITUTION: WHERE THE CONSTITUTION GOES WRONG (AND HOW WE THE PEOPLE CAN CORRECT IT)* 21 (2008) (identifying the U.S. Constitution as “the most difficult to amend of any constitution currently existing in the world today”); David S. Law & David McGowan, *There Is Nothing Pragmatic About Originalism*, 102 NW. U. L. REV. COLLOQUY 86, 93 (2007) (observing that “the nationwide supermajoritarian action needed to adopt a constitutional amendment is notoriously difficult and costly” to secure, and noting by way of illustration that ratification of the uncontroversial Twenty-Seventh Amendment was delayed by over two hundred years). By comparison, Germany’s constitution has been amended over fifty times since its adoption in 1948. See Thomas U. Berger, *Ripe for Revision? The Strange Case of Japan’s Unchanging Constitution, in A TIME FOR CHANGE? JAPAN’S “PEACE” CONSTITUTION* AT 65, at 12, 12 (Bryce Wakefield ed., 2012).

66. See ELKINS ET AL., *supra* note 21, at 1–2.

67. See *id.* at 105 (observing that, whereas “[t]he average constitution since 1789 runs approximately 14,000 words,” the U.S. Constitution weighed in “at a mere 4,600 words at birth”).

to accumulate such a formidable body of constitutional jurisprudence. For many countries, judicial review remains a relatively new institution: at the halfway mark of the twentieth century, only a quarter of the world's constitutions provided for judicial review.⁶⁸

Perhaps most importantly, it is circular to use compliance with judicial rulings as a measure of constitutional compliance. Any government that is determined to violate certain rights is likely to discourage or prevent judicial enforcement of those rights. In other words, abusive regimes can be expected to combine sham constitutions with sham judicial review. Government disrespect for a right will therefore translate into cramped judicial interpretation or enforcement of the right. Logically speaking, judicial interpretation of a right cannot be used as a baseline for measuring government respect for that right if the judicial interpretation is itself a function of government respect for the right. Put differently, one cannot measure government respect for rights using a yardstick that itself varies in size depending upon the extent to which the government respects rights.

None of this is intended to deny that different countries frequently express different understandings of the same right. Nor do we mean to endorse the somewhat controversial proposition that rights ought to possess universal meaning.⁶⁹ We must, however, reject any measurement approach that would merely allow regimes to make illusory constitutional promises then rely upon the courts to excuse their noncompliance. Accordingly, we hold all countries to the same standard of performance: in order to receive full marks for respecting a particular right, a country must live up to the same absolute standard as any other country. Thus, for example, a country that purports to prohibit torture

68. See Law & Versteeg, *supra* note 48, at 793 (reporting that, as of the end of World War II, only 25% of the world's constitutions provided for judicial review).

69. As an empirical matter, many rights are so widely adopted that they can be described as generic. See Law & Versteeg, *supra* note 22, at 1199–1200 (identifying and labeling as “generic” the twenty-five rights that are found in seventy percent or more of the world's constitutions). The objection that even rights that are almost universally adopted nevertheless lack universal meaning has arisen, for example, in the context of the debate over whether Asian societies are characterized by “Asian values” that render Western human rights concepts inapplicable. See, e.g., Jiunn-Rong Yeh & Wen-Chen Chang, *The Emergence of East Asian Constitutionalism: Features in Comparison*, 59 AM. J. COMP. L. 805, 809–11 (2011) (observing that the arguments made by authoritarian Asian political leaders such as Singapore's Lee Kuan Yew smack of “an orientalist view that relegates East Asia to an exotic category,” and noting that legal scholars tend to avoid broad generalizations about constitutionalism in “East Asia” as a whole); Asian Human Rights Charter, Background to the Charter § 1.5 (May 17, 1998), available at <http://material.ahrchk.net/charter/pdf/charter-final.pdf> (arguing that “spurious theories of ‘Asian Values’” are merely “a thin disguise” for “authoritarianism” that has been elevated to the level of “national ideology”); see also LOUIS HENKIN ET AL., HUMAN RIGHTS 168–69 (2d ed. 2009) (describing the “cultural relativism” critique that questions the universality of rights); Josiah A.M. Cobbah, *African Values and the Human Rights Debate: An African Perspective*, 9 HUM. RTS. Q. 309, 320–29 (1987) (describing an “African worldview” of “group solidarity and collective responsibility” that diverges from “European theories of individualism and the social contract,” and arguing that African states need not embrace constitutions that reflect the European as opposed to African framework).

would be penalized for engaging in waterboarding of suspected terrorists, regardless of whether its government or courts take the position that such conduct does not amount to torture.

At first blush, this approach might seem conceptually unsound or even unfair. It might be argued that a country cannot be said to engage in sham constitutionalism as long as it complies with its own understanding of the rights set forth in its constitution. To treat judicial interpretation as part of the constitution not only collapses the very distinction between the large-c and small-c constitutions that we are attempting to measure, however, but also rewards countries for practicing a legalistic version of sham constitutionalism. For example, a regime that engages in torture could escape censure simply by adopting a restricted definition of torture that condones its own behavior. Use of this self-serving definition would hold the regime to a lower standard than would be applicable to governments that define torture in accordance with prevailing global standards or international law.⁷⁰

In substance, it is clearly a form of sham constitutionalism for a regime to pay lip service to the values of the global community by including the world's most popular rights in its constitution,⁷¹ only to gut those rights of meaning in the name of constitutional interpretation. It would be naïve to conclude that the only regimes that engage in sham constitutionalism are those honest (or foolish) enough to interpret their constitutions faithfully, which is precisely what the worst regimes are least likely to do. Whatever methodological or logical arguments might be made in the abstract, it is crucial not to be misled by interpretive trickery.⁷² The solution that we adopt is blunt but appropriate:

70. See Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 1, Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85 (defining torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”); HENKIN ET AL., *supra* note 69, at 849 (identifying the elements of “torture” as set forth in the United Nations Convention Against Torture and other international instruments).

71. See Law & Versteeg, *supra* note 22, at 1200 (listing the growing number of rights that are found in the vast majority of constitutions).

72. The problem is succinctly captured by an old Russian joke:

Q: What is the difference between the Constitutions of the U.S.A. and U.S.S.R.? Both guarantee freedom of speech.

A: Yes, but the Constitution of the U.S.A. also guarantees freedom after the speech.

Melkinsburg, *The Content of Authoritarian Constitutions* (Paper Presented at the Conference on Constitutions in Authoritarian Regimes, University of Chicago Law School 1 Oct. 21, 2011) (on file with the authors); WIKIPEDIA, *Russian Political Jokes*, http://en.wikipedia.org/wiki/Russian_political_jokes (last visited May 5, 2013); see also *Considering the Role of Judges Under the Constitution of the States Before the S. Committee on the Judiciary*, 112th Cong. 6–7 (2011) (statement of Antonin Scalia, Associate Justice, United States Supreme Court), available at <http://www.gpo.gov/fdsys/pkg/CHRG-112shrg70991/pdf/CHRG-112shrg70991.pdf> (“The bill of rights of the former evil empire, the Union of Soviet Socialist Republics, was much better than ours. I mean that literally. . . . We guarantee

we hold every country that promises a generic right in its constitution to the same generic standard of performance.

For similar reasons, we make no special allowance for those cases in which constitutional rights have been formally suspended. Many constitutions contain provisions providing that certain rights may be suspended in times of emergency or upon declaration of martial law.⁷³ For purposes of our analysis, however, violations of a right are counted as violations regardless of whether the right in question has been formally suspended. This approach is appropriate because, even more so than constitutional interpretation, constitutional suspension can amount in practice to a legalistic form of sham constitutionalism. It is not difficult to see why the tactic of constitutional suspension would appeal to the very worst of regimes: formal suspension enables a regime to violate rights while remaining formally in compliance with the constitution. Even if the resulting violation of rights is technically constitutional, however, the effective result is the same: the rights found in the constitution become illusory in practice. Because our goal is to measure the extent to which constitutional rights are actually realized, it is neither necessary nor wise to distinguish between the violation of a formally suspended constitutional right and the formally unauthorized violation of a constitutional right. Instead, we treat both equally as failures to uphold the right in question.

B. What Counts as a Sham Constitution?

There is more than one reason for which a constitution might be deemed a sham. A constitution that bears no relationship to reality could qualify. So too could a constitution that is descriptively accurate but has no effect on anyone's behavior.⁷⁴ The intentions behind a constitution may also be relevant. A

freedom of speech and of the press. Big deal. They guaranteed freedom of speech, of the press, of street demonstrations and protests, and anyone who is caught trying to suppress criticism of the government will be called to account. Whoa, that is wonderful stuff.”).

73. See, e.g., CONSTITUCIÓN DE LA NACIÓN ARGENTINA [CONSTITUTION] May 1, 1853, art. 23 (“In the event of domestic disorder or foreign attack endangering the full enforcement of this Constitution and of the authorities hereby established, the province or territory which is in a turmoil shall be declared in state of siege and the constitutional guarantees shall be suspended therein.”); CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE HONDURAS [CONSTITUTION] Jan. 11, 1982, art. 187 (listing the constitutional rights that “may be suspended in the event of invasion of the national territory, serious disturbance of the peace, an epidemic, or other general disaster,” or by special decree); CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE PANAMÁ [CONSTITUTION] Oct. 11, 1972, art. 55 (specifying the constitutional guarantees that may be guaranteed if a “state of emergency” is declared).

74. See KARL LOEWENSTEIN, *POLITICAL POWER AND THE GOVERNMENTAL PROCESS* 148–49 (2d ed. 1965) (using the term “nominal” to describe a constitution that is “not lived up to in practice,” as opposed to either a “semantic” constitution, which is descriptively accurate but fails to shape behavior, or a “normative” constitution, which is both descriptively accurate and binding); Sartori, *supra* note 3, at 855, 861 (distinguishing among “garantiste,” “nominal,” and “façade” constitutions on the basis of whether they not only describe the operation of the state accurately, but also seek to “restrict arbitrary power and ensure a ‘limited government’”).

distinction can be drawn between constitutions that are violated because they were never intended as anything more than window-dressing, and those that are violated because they prove genuinely difficult to uphold. Alternatively, constitutions can be evaluated on the basis of substantive criteria. It could be argued that a constitution that fails to embody certain substantive principles, such as limited government and the rule of law, does not deserve to be called a constitution at all.

We adopt a simple and methodologically sound approach to defining and identifying sham constitutions that can be applied consistently and objectively to our empirical data. For purposes of this Article, a constitution is classified as a sham if its provisions are not upheld in practice. We determine whether this definition has been met by looking solely to the magnitude of the gap between what a country promises in its constitution and what it delivers in practice: the larger the shortfall, the more strongly that the constitution is identified as a sham.

This approach has several advantages of clarity, consistency, and empirical tractability. First, it does not require us to make any controversial assumptions about the content that a constitution ought to contain, or to adopt any substantive criteria for distinguishing sham constitutions from genuine constitutions. Under our approach, a constitution cannot be labeled a sham on the basis that it fails to incorporate certain substantive values. It makes no difference what rights a constitution promises or, indeed, if it promises any rights at all. A constitution that accurately describes an utterly tyrannical government may be normatively unsatisfying, but it is not a sham by our definition.

Second, our approach renders it unnecessary to speculate upon the reasons for which different countries breach or uphold their constitutional obligations. It can be difficult, if not impossible, to distinguish empirically between aspirational constitutions that are well-intentioned failures and sham constitutions that were never meant to be honored. Whereas constitutional compliance can be measured from observable behavior, there may be no reliable way of ascertaining the subjective motives behind the adoption of a constitution. Lack of sincerity cannot necessarily be inferred from lack of performance, given the length of time that can elapse between the adoption and effectuation of constitutional provisions.⁷⁵ Nor is it obvious how to classify constitutions that are characterized by a combination of motives. Under our approach, however, unmanageable intent-based distinctions are immaterial. The focus is entirely upon observable behavior, and only the extent of constitutional compliance or violation matters.

75. See Michael C. Dorf, *The Aspirational Constitution*, 77 GEO. WASH. L. REV. 1631, 1633 (2009) (arguing that “[c]onstitutional rights are typically established as the culmination of a struggle to change the status quo” and can “lay dormant for decades, until a later generation discovers them”).

This is not to deny the existence of a conceptual distinction between aspirational constitutions and sham constitutions. For present purposes, however, it is neither possible nor necessary to distinguish between the two types. First, not only is there no data available on the degree of sincerity behind each of the world's constitutions, but it is also unclear how such data could be collected. No regime will ever admit that its constitution is a sham; to do so would defeat the whole purpose of adopting a sham constitution. Even the very worst regimes can be expected to claim that their failures reflect a lack of ability rather than a lack of sincerity.

Second, the distinction between aspirational and sham constitutions is itself blurry and more a matter of degree than of kind. As a practical matter, it is questionable whether constitutional noncompliance can ever be explained *purely* as a function of bad-faith constitutional drafting, at one extreme, or well-intentioned failure, at the other extreme. The intentions of constitutional framers are not always monolithic; mixed motives are common, if not inescapable. Moreover, even if it were possible to ascertain precisely the actual motivations behind the adoption of a constitution, those motivations might themselves be difficult to classify. The knowing adoption of a wildly unrealistic constitution can itself be characterized as an act of insincerity or bad faith that is no better than an attitude of utter indifference toward constitutional compliance. To distinguish sham constitutions from aspirational constitutions on the basis that the latter are adopted sincerely and in good faith begs the question of what constitutes sincerity or good faith.

Finally, and perhaps most importantly, it does no harm as a practical matter, and could instead do much good, to label failed aspirational constitutions as shams. To intentionally label underperforming countries as possessing sham constitutions merely puts pressure on those countries to prove their bona fides by improving their performance, which is part of the point of ranking and scoring countries in the first place. Countries that sincerely aspire to fulfill their constitutional promises ought to welcome the introduction of empirical performance metrics that capture how much progress they have made—and how much remains to be done.

C. A Typology of Constitutions and Compliance Behaviors

Sham constitutions are descriptively inaccurate: they contain provisions that are not upheld in practice. Not every descriptively inaccurate constitution, however, is a sham. A country may uphold *more* rights in practice than it promises in its constitution. In such cases, the constitution does not offer an accurate representation of actual practice, yet cannot fairly be condemned as a sham. Likewise, not all countries with descriptively accurate constitutions are equally praiseworthy. A country that honors an extensive bill of rights cannot be equated with a country that upholds its constitution by promising very few rights. It is therefore necessary to distinguish not only between accurate and

inaccurate constitutions, but also among different types of accurate and inaccurate constitutions.

Countries vary in both their formal and actual recognition of constitutional rights. Variation along these two dimensions yields the typology of four possible constitutional types set forth in Table 1. Along the horizontal axis, countries in the right-hand column are those that respect a wide range of rights in practice, while those in the left-hand column do not. Along the vertical axis, countries in the top row are those that have set a high standard for themselves by adopting fairly ambitious constitutions, whereas those in the bottom row have positioned themselves well to meet or exceed expectations by setting those expectations quite low in the first place. In any given case, the formal and actual recognition of constitutional rights can be either symmetrical (meaning that the rights upheld in practice match those promised in the constitution) or asymmetrical (meaning that the rights that are actually upheld are not the same as those found in the constitution).

Sham constitutions are located in the upper left quadrant. In this scenario, a country makes far-reaching promises in its constitution but fails to fulfill them in practice. Countries that fall in this category, such as Sudan, can be described as *underperforming* relative to their constitutions. Conversely, it is possible for a country to *overperform* by promising relatively little in its constitution but respecting a panoply of rights in reality. In such situations, which correspond to the lower right quadrant, countries might be said to possess *modest constitutions*. Australia, which is somewhat unusual in lacking a bill of rights, exemplifies this category.⁷⁶ It is inherently difficult for countries that promise many rights (such as Sudan) to overperform, simply because there are few rights such countries can honor that they have not already promised. Likewise, countries that promise relatively few rights (such as Australia) cannot underperform on their commitments to any great extent for the obvious reason that they have committed themselves to so little.

In the two remaining quadrants are those countries that deliver roughly what their constitutions promise. Even among such countries, however, there remains a meaningful distinction to be drawn. In the upper right quadrant are countries that deliver what their constitutions promise, in spite of the fact that their constitutions promise a good deal. Countries in this category, such as Finland, possess what might be called *strong constitutions*: they practice a strong form of rights constitutionalism both in theory and in practice. In the lower left quadrant, by contrast, are countries such as Saudi Arabia that deliver what their constitutions promise but do so with relative ease because their constitutions promise very little. By contrast with a country like Finland, we

76. See George Williams, *Human Rights and Judicial Review in a Nation Without a Bill of Rights: The Australian Experience*, in CONSTITUTIONALISM IN THE CHARTER ERA 305, 305 (Grant Huscroft & Ian Brodie eds., 2004) (noting that Australia is currently “the only western nation without any form of Bill of Rights at any level of government”).

might say that Saudi Arabia possesses a *weak constitution*: the formal constitution is not a sham, in the sense that its content aligns reasonably well with actual practice, but that is because respect for rights in Saudi Arabia is weak both in practice *and* in theory. Finally, some countries, such as China, Ireland, and Zimbabwe do not fall neatly in any of the preceding four categories because they promise an average number of rights. These countries can simply be described as possessing *average constitutions*.

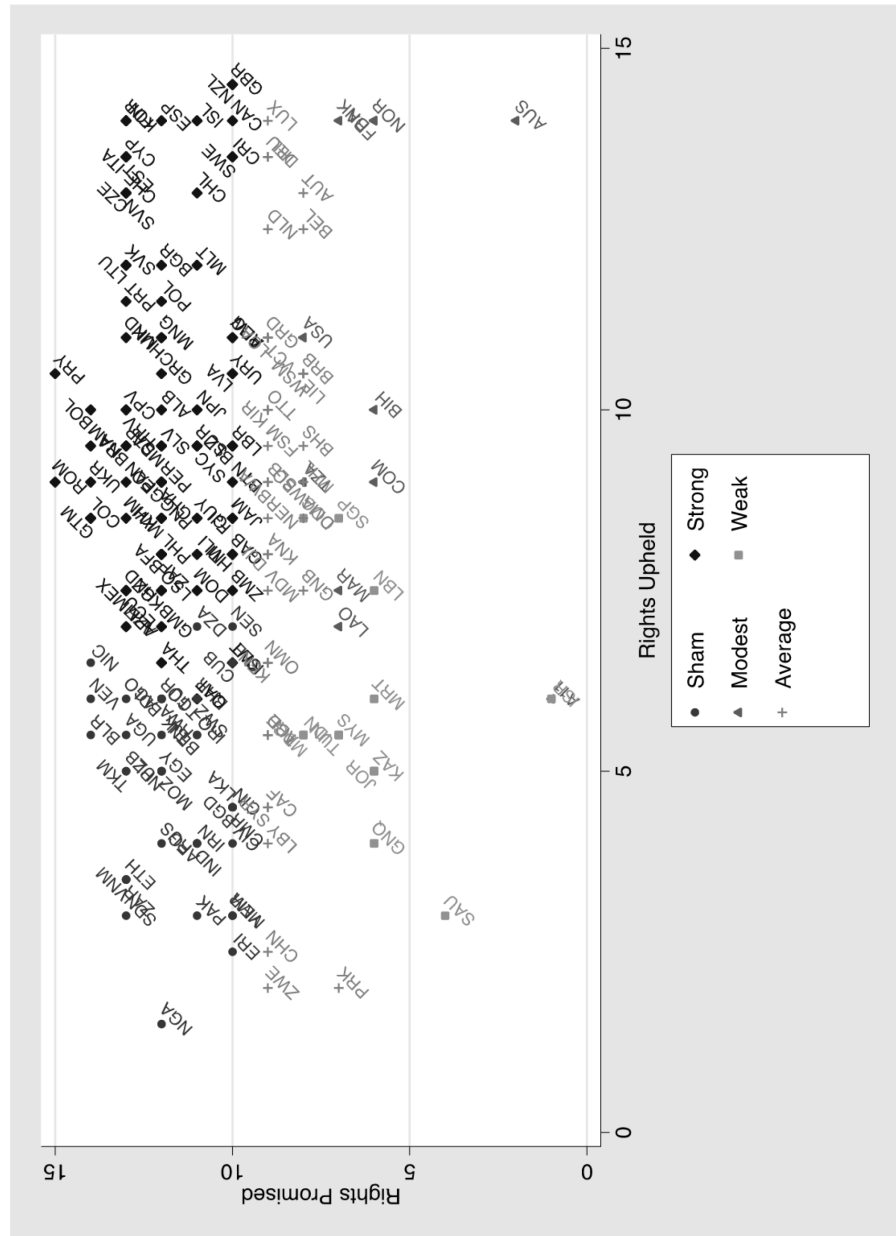
**Table 1: Two Dimensions of Rights Protection,
Four Types of Constitutions**

<i>A country . . .</i>	<i>. . . delivers little in practice (low de facto rights protection)</i>	<i>. . . delivers much in practice (high de facto rights protection)</i>
<i>. . . promises much in its constitution (high de jure rights protection)</i>	“sham constitution” (e.g., Sudan) characterized by underperformance	“strong constitution” (e.g., Finland)
<i>. . . promises little in its constitution (low de jure rights protection)</i>	“weak constitution” (e.g., Saudi Arabia)	“modest constitution” (e.g., Australia) characterized by overperformance

Superimposition of the world’s actual constitutions onto this typology yields the scatterplot below. Each country’s location in Figure 1 reflects how many rights (out of a total of fifteen possible rights⁷⁷) were found in its constitution and upheld in practice as of 2010. The more rights that its constitution contains, the higher it is located on the vertical axis; the more rights that it respects in practice, the further to the right it is located on the horizontal axis. Thus, for example, the further to the upper left that a country is located, the more strongly it leans toward sham constitutionalism. The three-letter codes used to identify each country are listed in Appendices II and III, which also contain numerical breakdowns of each country’s formal and actual respect for rights.

77. The fifteen rights are listed and described in Table 2. The manner in which these rights were selected and numerically scaled is described in detail in Part II.

Figure 1: Distribution of Constitutional Types as of 2010
 (see p. 909 for a color version of this figure)



The color-coding in Figure 1 reflects the assignment of each constitution to a specific category on the basis of numerical cutoffs. Because constitutions vary along a continuum, any classification on the basis of numerical criteria will be inherently crude and arbitrary to some degree. Nevertheless, it is possible to select numerical thresholds that reflect the definitional logic behind each category. Recall that strong and sham constitutions promise many rights, while weak and modest constitutions promise relatively few rights.⁷⁸ In numerical terms, we can translate this definition into a rule that a constitution must contain an above-average number of rights in order to be classified as either strong or sham, while a constitution that contains a below-average number of rights can be classified as either weak or modest. As of 2010, the average constitution contained nine out of the fifteen rights listed in Table 2.⁷⁹

Accordingly, for purposes of Figure 1, a country is identified as possessing a *strong constitution* if its constitution contains at least ten of the fifteen rights listed in Table 2 and it respects more than half of the promised rights. Conversely, a country is classified as possessing a *sham constitution* if it promises at least ten of the fifteen rights but upholds half or fewer of the promised rights. A country is classified as possessing a *weak constitution* if its constitution contains eight or fewer of the fifteen rights and it respects less than half of the rights that are *omitted* from the constitution. Finally, a country is defined as possessing a *modest constitution* for purposes of this Article if its constitution contains eight or fewer of the fifteen rights but it actually respects half or more of the omitted rights.

Under these definitions, strong constitutions are considerably more common than sham constitutions, while both weak and modest constitutions are relatively rare. Of the 167 constitutions effective as of 2010 for which we possessed sufficient data, 74 (or 44.3%) met our numerical criteria for classification as strong constitutions and are colored blue in Figure 1. Another 39 (or 23.4%) are sham constitutions; these are labeled in red. The 13 constitutions (or 7.8%) that are labeled in orange are weak constitutions. Only 11 (or 6.6%) are modest constitutions; these are colored green.⁸⁰ A total of 30 constitutions (or 18.0%) do not fall in any of the preceding four categories because they contain neither an above-average nor below-average number of rights but instead the exact average of 9 rights. The 30 constitutions (or 18.0%)

78. See *supra* Table 1.

79. To be exact, out of a total of 15 possible rights, the mean number of rights found in constitutions as of 2010 was 9.41, and the median number was 10. The average number of rights per constitution has increased over time: if the entire period from 1981 through 2010 is considered, the mean number of rights was 8.00, and the median number was 9.

80. The eleven countries classified as possessing modest constitutions are Australia, Bosnia and Herzegovina, Brunei, Comoros, Denmark, France, Laos, Morocco, Norway, Tanzania, and the United States. Figure 11 provides the raw count and geographic distribution of each type of constitution as of 2010, while Figures 8, 9, and 10 do so for 1981, 1990, and 2000, respectively.

that fit this description are classified as average for purposes of Figure 1 and labeled in grey.⁸¹

II.

METHODS FOR MEASURING CONSTITUTIONAL COMPLIANCE

Empirical analysis of the gap between parchment and practice demands data on both the content of the world's constitutions and the extent to which countries actually respect rights. We first collected data on the rights-related content of every national constitution in the world over the last six decades.⁸² Specifically, our data set spans a total of 729 constitutions adopted by 188 different countries from 1946 through 2010. For each constitution, the text of the entire document was analyzed, and information on 237 different variables regarding both substantive rights and rights-enforcement mechanisms was collected.⁸³ Various rules for coding ambiguous cases are described in greater detail in our earlier work.⁸⁴ We divided the rights in our data into three substantive categories—namely, personal integrity rights, civil and political freedoms, and socioeconomic and group rights—then selected a representative sampling of specific rights from each category.⁸⁵ This sampling was guided and

81. See *infra* Figure 11 (employing the same color-coding scheme to depict the geographical distribution of each type of constitution).

82. The initial version of this data was introduced in Benedikt Goderis & Mila Versteeg, *The Transnational Origins of Constitutions: An Empirical Analysis* (Nov. 4, 2011) (unpublished manuscript) (on file with the authors), available at <http://ssrn.com/abstract=1865724>, and subsequently analyzed in Law & Versteeg, *supra* note 22, and Law & Versteeg, *supra* note 48. For purposes of our data collection, a “country” is an entity that is recognized as such by, and enjoys membership in, the United Nations. An exception to this general rule is made for the Republic of China, better known as Taiwan, which is included in the most recent iteration of our data. Notwithstanding its eventual ejection from the United Nations in favor of the People’s Republic of China, it was a member of the United Nations for several decades, its government continues to exercise complete control over Taiwan and a number of smaller islands, and it constitutes a “country” in every practical sense. See David S. Law & Wen-Chen Chang, *The Limits of Global Judicial Dialogue*, 86 WASH. L. REV. 523, 540–44 (2011) (discussing the battle between the People’s Republic of China and the Republic of China for international recognition, and the success of the former at excluding the latter from the diplomatic arena).

83. For the year 2006, additional data was collected on the existence and content of limitation clauses—namely, constitutional clauses that explicitly limit the reach of various rights. This data is described below in Part VI.D.

84. See Law & Versteeg, *supra* note 22, at 1183–86 & nn.85–98. One recurring issue, for example, was the appearance in many constitutional texts of clauses that purport to incorporate or otherwise refer to regional and international human rights instruments. As a general rule, the provisions of such instruments were not counted as part of a constitution unless they actually appeared in the constitution, whether in the main text or as an appendix of some sort. For example, the United Kingdom’s Human Rights Act, 1998, c. 42, sched. 1 (Eng.), which not only incorporates the European Convention on Human Rights, but also sets forth the latter in full as an appendix, was coded as including the provisions of the latter document.

85. The category of *personal integrity rights* includes constitutional protections against physical abuse, detention, and punishment. The category of *civil and political freedoms* encompasses the traditional negative liberties of expression and conscience as well as basic political rights. Finally, the category of *socioeconomic and group rights* includes positive obligations on the part of the state to

constrained by the necessity of choosing formal rights for which corresponding real-world compliance data could be found. The resulting list of fifteen rights appears in the left-hand column of Table 2.

We next mined the social science literature for quantitative indicators of the extent to which countries have respected these rights in practice. Data of this sort is scarce for a number of reasons. First, gathering raw information on human rights practices around the world is costly. Although recent years have seen the emergence of a number of quantitative indicators of human rights performance,⁸⁶ these are typically derived in some way from the annual country reports issued by Amnesty International and the U.S. State Department.⁸⁷ Second, such information is difficult to quantify in a precise and transparent manner. The notion that Robert Mugabe's torture of political opponents in Zimbabwe can be translated into a score of zero on a three-point scale, for example, is open to a range of objections.⁸⁸ As a practical matter, the lack of comprehensive and detailed data on actual respect for rights constrains the

provide for the health, education, and well-being of its inhabitants, as well as the collective rights of groups such as minorities and women.

86. See generally TODD LANDMAN & EDZIA CARVALHO, *MEASURING HUMAN RIGHTS* (2010) (evaluating various methods for measuring human rights, including standards-based, survey-based, events-based, and socioeconomic statistics).

87. See generally Steven C. Poe et al., *How Are These Pictures Different? A Quantitative Comparison of the US State Department and Amnesty International Reports 1976–1995*, 23 HUM. RTS. Q. 650 (2001) (evaluating the two main measures of human rights performance). During the Nixon administration, Congress sought to ensure a greater foreign policy emphasis on human rights by adopting the Harkin Amendment to the Foreign Assistance Act, which prohibited development assistance to governments engaged in “a pattern of gross violations of internationally recognized human rights.” Foreign Assistance Act of 1961, Pub. L. No. 95-118, § 701, 91 Stat. 1069 (1977) (codified at 22 U.S.C. § 262d (2006)). The data collection for the State Department reports necessitated by the Harkin Amendment is a collective effort of U.S. embassies around the world, which gather information “from a variety of sources across the political spectrum, including government officials, jurists, armed forces sources, journalists, human rights monitors, academics, and labor activists.” U.S. DEP’T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2007 (2008), available at <http://www.state.gov/g/drl/rls/hrrpt/2007/100463.htm>. The Amnesty International country reports seek to bolster respect for human rights by raising awareness and engaging in “naming and shaming.” James Meernik et al., *The Impact of Human Rights Organizations on Naming and Shaming Campaigns*, 56 J. CONFLICT RES. 233, 233 (2012) (identifying “naming and shaming” as the “principal weapon of choice” for human rights organizations such as Amnesty International). Amnesty International relies on its own employees, local human rights activists, and NGOs for data collection. See LANDMAN, *supra* note 25, at 98–108 (describing the methodology underlying the State Department and Amnesty International reports); Benedikt Goderis & Mila Versteeg, *Human Rights Violations After 9/11 and the Role of Constitutional Constraints*, 41 J. LEG. STUD. 131, 136–41 (2012) (discussing both sets of indicators).

88. See, e.g., Sally Merry, *Measuring the World: Indicators, Human Rights, and Global Governance*, 103 AM. SOC’Y INT’L L. PROC. 239, 239 (2009) (arguing that numerical human rights indicators “convey an aura of objective truth” but rely on “practices of measurement and counting that are themselves opaque” resulting in “superficial, but standardized, knowledge”); AnnJanette Rosga & Margaret L. Satterthwaite, *The Trust in Indicators: Measuring Human Rights*, 27 BERKELEY J. INT’L L. 253, 258 (2009) (“[H]uman rights compliance indicators threaten to close space for democratic accountability and purport to turn an exercise of judgment into one of technical measurement.”).

scope of our analysis to the fifteen rights listed in Table 2 over a limited time span.

Much of our data on actual respect for rights is drawn from the widely used CIRI indicators compiled by David Cingranelli and David Richards,⁸⁹ which cover 195 countries from 1981 through 2010. In the areas of personal integrity rights and civil and political freedoms, the CIRI indicators grade countries on a three-point scale. A country that frequently violates or severely restricts a right receives a score of 0; if the country occasionally violates or moderately restricts a right, it receives a score of 1; and if the country practically never violates or restricts the right, it receives a score of 2.⁹⁰ Respect for women's rights is measured on a four-point scale, where a score of 0 denotes rampant violation and a score of 3 denotes full protection.⁹¹

To fill the gaps in the CIRI data's coverage of socioeconomic and group rights, we turn to other well-known sources of data. Specifically, we rely on the Minorities at Risk Project's measurement of discrimination against minority groups,⁹² Amnesty International's capital punishment data,⁹³ Oona Hathaway's

89. CIRI HUMAN RIGHTS DATA PROJECT (last updated Jan. 30, 2013), <http://www.humanrightsdata.org>; DAVID L. CINGRANELLI & DAVID L. RICHARDS, THE CINGRANELLI-RICHARDS (CIRI) HUMAN RIGHTS DATA PROJECT CODING (Manual Version 2008.3.13, 2008), available at http://ciri.binghamton.edu/documentation/ciri_coding_guide.pdf; see also LANDMAN, *supra* note 25, at 33–58 (discussing the relative merits of various widely used sources of data on human rights observance). By contrast, we do not use the more holistic and general “Political Terror Scale.” See Goderis & Versteeg, *supra* note 87, at 138–41 (contrasting the Political Terror Scale with the CIRI indicators).

90. The CIRI data purports to define the different levels of respect for personal integrity rights in terms of the absolute number of times that each right is violated: a country that is reported to have violated a given right more than fifty times per year receives the lowest possible score, while a country with no reported violations obtains the highest possible score. See CINGRANELLI & RICHARDS, *supra* note 89, at 18–19 (describing the coding scheme for torture). As other scholars have noted, however, the country reports by the U.S. State Department and Amnesty International (from which the CIRI data is derived) lack the necessary detail for such precise counts to be calculated. See Reed M. Wood & Mark Gibney, *The Political Terror Scale (PTS): A Re-introduction and a Comparison to CIRI*, 32 HUM. RTS. Q. 367, 377–78 (2010) (criticizing the CIRI data for offering “a pretense of precision and accuracy,” and observing that the underlying data make it possible to distinguish only between states with “excellent human rights records,” states with “horrible human rights records,” and states located somewhere “in between these two extremes”). Accordingly, we characterize the CIRI data as indicating only whether a country experiences frequent, occasional, or very rare violations of the right in question. The CIRI indicators also do not purport to account for population size, with the result that “fifty incidents of torture in China (current population: 1.3 billion)” is treated as just as bad a performance as “fifty incidents of torture in a small country such as Sao Tome (current population: 150,000).” *Id.* at 378. The results of our regression analysis in Part VI.C of this Article suggest that greater population size is in fact correlated with a higher propensity toward sham constitutionalism. This finding is consistent with the notion that the CIRI indicators effectively penalize more populous countries by taking into account only the absolute number of rights violations rather than the number of violations per capita.

91. See CINGRANELLI & RICHARDS, *supra* note 89, at 71–73, 77–78.

92. See MINORITIES AT RISK PROJECT (last updated Mar. 10, 2011), <http://www.cidcm.umd.edu/mar>.

93. *Figures on the Death Penalty*, AMNESTY INT'L, <http://www.amnesty.org/en/death-penalty/numbers> (last visited June 16, 2013).

coding of fair trial rights,⁹⁴ and the World Bank's World Development Indicators regarding illiteracy rates and life expectancy.⁹⁵ Consistent with the relevant literature, we employ illiteracy rates and life expectancy as proxy measures of actual respect for education and health rights, respectively.⁹⁶

Most of the aforementioned measures distinguish between low, moderate, and high levels of actual respect for the right in question. To facilitate the comparison and aggregation of scores across different types of rights, we rescale these measures so that countries that routinely violate a particular right receive a score of 0, countries that infrequently violate the right receive a score of 0.5, and countries with no reported violations of the right receive a score of 1. The coding of each de facto measure is described in greater detail in Appendix I. Table 2 identifies the measures of de facto rights protection that correspond to the fifteen de jure rights covered by our analysis.

**Table 2: Corresponding Measures of
De Jure and De Facto Rights Protection**

DE JURE RIGHT	DE FACTO RIGHT
<i>I. Personal Integrity</i>	
<u><i>1. Prohibition of Arbitrary Arrest and/or Detention</i></u> 0 = not mentioned in constitution 1 = mentioned in constitution	<u><i>1. Disappearances</i></u> 0 = disappearances occur frequently 0.5 = disappearances occur occasionally 1 = no disappearances are reported
<u><i>2. Prohibition of Torture</i></u> 0 = not mentioned in the constitution 1 = mentioned in the constitution	<u><i>2. Torture</i></u> 0 = torture occurs frequently 0.5 = torture occurs occasionally 1 = no torture is reported
<u><i>3. Right to Habeas Corpus</i></u> 0 = not mentioned in the constitution 1 = mentioned in the constitution	<u><i>3. Extrajudicial Killings</i></u> 0 = extrajudicial killings occur frequently 0.5 = extrajudicial killings occur occasionally 1 = no extrajudicial killings are reported

94. See Oona A. Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 YALE L.J. 1935, 1972–74 (2002) (introducing and describing the data on fair trial rights).

95. See *World Development Indicators*, WORLD BANK, <http://data.worldbank.org/data-catalog/world-development-indicators> (last visited May 5, 2013).

96. See, e.g., Robert Justin Goldstein, *The Limitations of Using Quantitative Data in Studying Human Rights Abuses*, in HUMAN RIGHTS AND STATISTICS: GETTING THE RECORD STRAIGHT 35, 40 (Thomas B. Jabine & Richard P. Claude eds., 1992) (suggesting that respect for socioeconomic rights is more easily measured than respect for personal integrity rights or civil and political freedoms because scholars can employ well-defined terms “such as infant mortality, life expectancy, and caloric intake”). Notwithstanding their widespread usage in this manner, literacy rates and life expectancy are imperfect measures of a government's efforts to fulfill socioeconomic rights. For example, even the most sincere and wholehearted implementation efforts can take considerable time to bear fruit and thus may not be captured immediately by the usual measures. See Chapman, *supra* note 36, at 143; Cingranelli & Richards, *supra* note 27, at 215 (arguing that the Human Development Index (HDI) and Physical Quality of Life Index (PQLI) inherently favor wealthier states and fail to reflect the immediate efforts of governments in developing nations).

<p><u>4. Fair Trial Rights</u> 0 = constitution contains fewer than three of the following eight trial-related rights: the right to counsel, the right to present a defense, a presumption of innocence, the right to an appeal, the right to an interpreter, protection from ex post facto laws, a public trial, and the right to a timely trial⁹⁷ 1 = constitution contains at least three of the preceding eight trial-related rights</p>	<p><u>4. Fair Trial Rights</u> 0 = a score of 4 out of 4 on Hathaway's fair trial index (worst possible score on the aggregated fair trial index) 0.5 = a score of 2 or 3 out of 4 on the fair trial index 1 = a score of 1 out of 4 on the fair trial index (best possible score on the aggregated fair trial index)</p>
<p><u>5. Prohibition of Death Penalty</u> 0 = not mentioned in the constitution 1 = constitution explicitly prohibits the death penalty</p>	<p><u>5. Death Penalty Abolition</u> 0 = death penalty is allowed 0.5 = death penalty is abolished for ordinary crimes 1 = death penalty is abolished for all crimes</p>
II. Civil and Political Freedoms	
<p><u>6. Freedom of Assembly and/or Association</u> 0 = neither freedom is mentioned in the constitution 1 = either or both freedoms are mentioned in the constitution</p>	<p><u>6. Freedom of Assembly and/or Association</u> 0 = freedom of assembly and/or association is severely restricted or denied completely to all citizens 0.5 = freedom of assembly and/or association is limited for all citizens or severely restricted or denied for select groups 1 = freedom of assembly and/or association is virtually unrestricted and freely enjoyed by practically all citizens</p>
<p><u>7. Freedom of Movement</u> 0 = not mentioned in the constitution 1 = mentioned in the constitution</p>	<p><u>7. Freedom of Movement</u> 0 = domestic travel is severely restricted 0.5 = domestic travel is somewhat restricted 1 = domestic travel is unrestricted</p>
<p><u>8. Freedom of Religion</u> 0 = not mentioned in the constitution 1 = mentioned in the constitution</p>	<p><u>8. Freedom of Religion</u> 0 = government restrictions on religious practices are severe and widespread. 0.5 = government restrictions on religious practices are moderate 1 = government restrictions on religious practices are practically absent</p>
<p><u>9. Right to Vote</u> 0 = not mentioned in the constitution 1 = mentioned in the constitution</p>	<p><u>9. Free and Fair Elections</u> 0 = right to self-determination through free and fair elections does not exist under law or in practice 0.5 = although citizens have the legal right to self-determination, there are some limitations upon the exercise of this right in practice, and political participation is only moderately free and open 1 = political participation is very free and open, and citizens have the right to self-determination through free and fair elections in both law and practice</p>

97. The mean number of fair trial rights found in all constitutions from 1946 to 2010 is 3.47.

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<u>10. Freedom of the Press and/or Expression</u> 0 = neither freedom is mentioned in the constitution 1 = either or both freedoms are mentioned in the constitution	<u>10. Freedom of Speech</u> 0 = complete government censorship of the media 0.5 = some government censorship of the media 1 = no government censorship of the media
III. Socioeconomic and Group Rights	
<u>11. Right to Health</u> 0 = not mentioned in the constitution 1 = mentioned in the constitution	<u>11. Life Expectancy at Birth</u> 0 = life expectancy is less than 52 years ⁹⁸ 0.5 = life expectancy is between 52 and 72 years ⁹⁹ 1 = life expectancy is more than 72 years
<u>12. Right to Education</u> 0 = not mentioned in the constitution 1 = mentioned in the constitution	<u>12. Literacy Rates</u> 0 = less than 36% of the adult population is literate ¹⁰⁰ 0.5 = adult literacy rate is between 36% and 93% ¹⁰¹ 1 = more than 93% of the adult population is literate
<u>13. Gender Equality in Marriage</u> 0 = not mentioned in the constitution 1 = mentioned in the constitution	<u>13. Women's Social Rights</u> 0 = the law contains no social rights for women, and systematic discrimination based on sex may be embedded in the legal system; or, women enjoy some social rights by law, but they are not effectively enforced 0.5 = the government effectively upholds some social rights of women in practice but still allows a low level of discrimination against women in social matters 1 = nearly all women's social rights are guaranteed by law, and the government fully and vigorously enforces these laws in practice

98. Fifty-two years is the twenty-fifth percentile on the life expectancy measure. For a description of the data from which the percentiles in this footnote and the next three footnotes were computed, see Appendix I.

99. Seventy-two years is the seventy-fifth percentile on the life expectancy measure.

100. Thirty-six percent is the twenty-fifth percentile on the literacy rates measure: in other words, only 25% of countries had an adult literacy rate lower than 36%.

101. Ninety-three percent is the seventy-fifth percentile on the literacy rates measure: in other words, 75% of countries had an adult literacy rate lower than 93%.

<p><u>14. Gender Equality in Labor Relations</u> <u>(e.g., Equal Wages for Equal Work)</u> 0 = not mentioned in the constitution 1 = mentioned in the constitution</p>	<p><u>14. Women's Economic Rights</u> 0 = the law contains no economic rights for women, and systematic discrimination based on sex may be embedded in the legal system; or, women enjoy some economic rights by law, but they are not effectively enforced 0.5 = the government effectively upholds some economic rights of women in practice but still allows a low level of discrimination against women in economic matters 1 = nearly all women's economic rights are guaranteed by law, and the government fully and vigorously enforces these laws in practice</p>
<p><u>15. General Protection of Minority Rights, or Right of Minorities to Be Represented in Government</u> 0 = not mentioned in the constitution 1 = constitution either contains a general protection of minority rights or explicit provision for minorities to be represented in government</p>	<p><u>15. Minority Rights</u> 0 = government policy substantially restricts the largest minority group's political participation relative to other groups; or, the largest minority group is substantially underrepresented due to prevailing social practice by dominant groups and a lack of adequate remedial policies 0.5 = the largest minority group experiences substantial underrepresentation in political office and/or low levels of political participation, but policies are in place to improve the group's political status; or, the largest minority group experiences substantial underrepresentation even though government policy is neutral 1 = no discrimination in the political system against minorities</p>

III.

GLOBAL TRENDS IN THE FORMAL AND ACTUAL PROTECTION OF RIGHTS

Initial analysis of the data confirms that the mere recitation of rights in a constitution does not translate into actual respect for those rights in practice. Indeed, the relationship between de jure and de facto respect for rights is in some cases negative: more extensive constitutional rights often go hand-in-hand with a poor human rights record. The three figures below provide an overview of global trends in the de jure and de facto protection of rights from 1981 through 2010.¹⁰² Figures 2, 3, and 4 focus on personal integrity rights, civil and political freedoms, and socioeconomic and group rights, respectively.

These graphs were generated as follows. For each category of rights, each country receives a de jure rights score, which is simply the number of rights that a constitution contains in that category divided by the total number of possible rights in that category. Thus, for example, if a constitution contains

102. See *supra* Table 2 (listing the rights that belong to each of these three categories).

four of the five rights in the personal integrity category, its score in that category is four out of five, or 0.80 out of a maximum possible score of 1. The dotted line in Figure 2 shows how the average de jure rights score across all countries in the category of personal integrity rights has varied over time. Each country also receives a de facto rights score in each category that has been rescaled to range from 0 to 1 as well.¹⁰³ The solid line in each figure depicts the average global de facto score in that category. The resulting graphs capture how de facto performance and de jure commitments are trending relative to one another over time.

Caution must be taken in interpreting these three graphs. One cannot tell from these graphs alone if high de facto scores are earned by countries with high de jure scores, or if countries are upholding the same rights that they are promising. Consider for example Figure 4, which graphs the average level of de jure and de facto rights protection in the area of socioeconomic and group rights. The fact that the solid line representing the de facto scores lies consistently above the dotted line representing the de jure scores means that the average de facto score has been higher than the average de jure score. It does not mean, however, that countries uphold all of the socioeconomic and group rights that they promise in their constitutions. It remains possible, for example, that the countries with high de facto scores have low de jure scores (and vice versa). It could also be the case that countries uphold the rights that they omit from their constitutions, while simultaneously violating the rights that they include. Accurate understanding of the extent to which countries uphold their constitutional promises requires the matching of de jure commitments with de facto performance on a country-by-country and right-by-right basis, which we do in Parts IV and V of this Article.

One phenomenon that is evident from the graphs is that of “rights creep,” which we have previously documented elsewhere: constitutions contain a growing number of rights of all varieties.¹⁰⁴ This enthusiasm for committing more rights to paper is not always matched, however, by increased commitment to rights in reality. In the case of both personal integrity rights and civil and political freedoms, average real-world performance has slightly increased over time, but the improvement has not been consistent and is not keeping pace with formal rights creep. Only in the area of socioeconomic and group rights do countries appear to be improving their actual performance nearly as quickly as they are adding new rights to their constitutions.

103. To be precise, for each right in a category, a country receives a score ranging from 0 to 1 that reflects the frequency with which it violates that right. *See id.* (documenting the manner in which the de facto score for each right was coded). The country’s de facto score for the entire category is then calculated by adding together the scores for all of the rights in the category, then dividing by the number of rights in the category. The resulting score also ranges from 0 to 1.

104. *See* Law & Versteeg, *supra* note 22, at 1194–98.

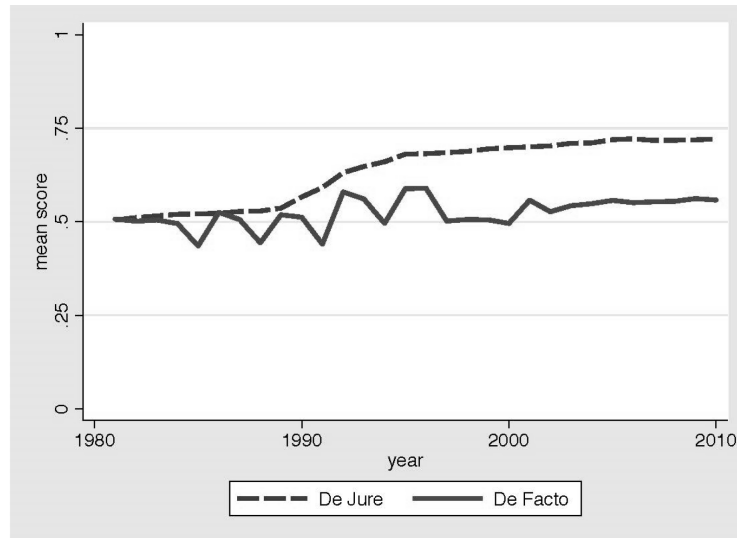
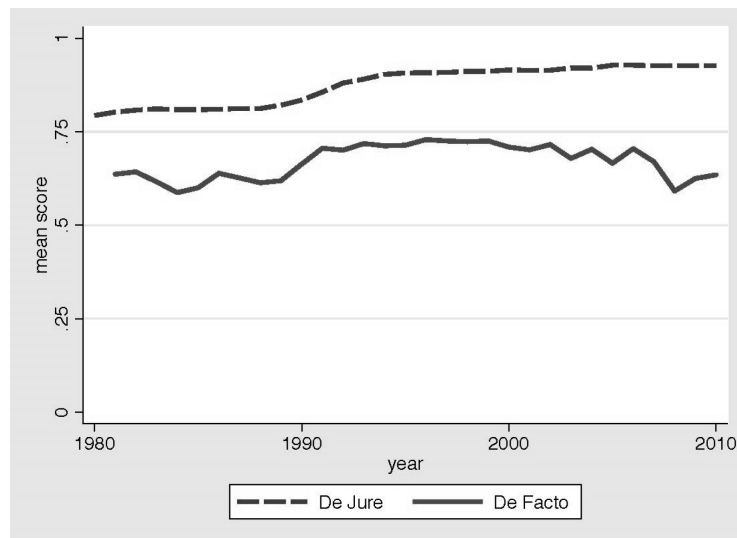
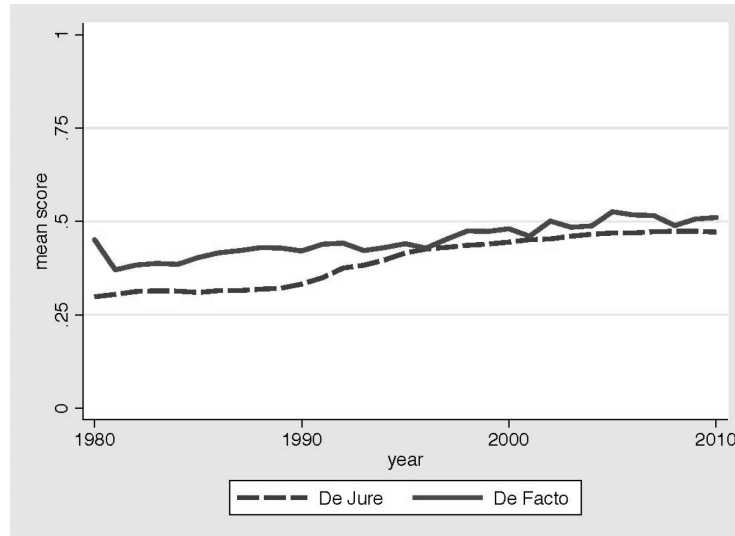
Figure 2: Mean De Jure and De Facto Personal Integrity Rights Scores**Figure 3: Mean De Jure and De Facto Civil and Political Freedom Scores**

Figure 4: Mean De Jure and De Facto Socioeconomic and Group Rights Scores



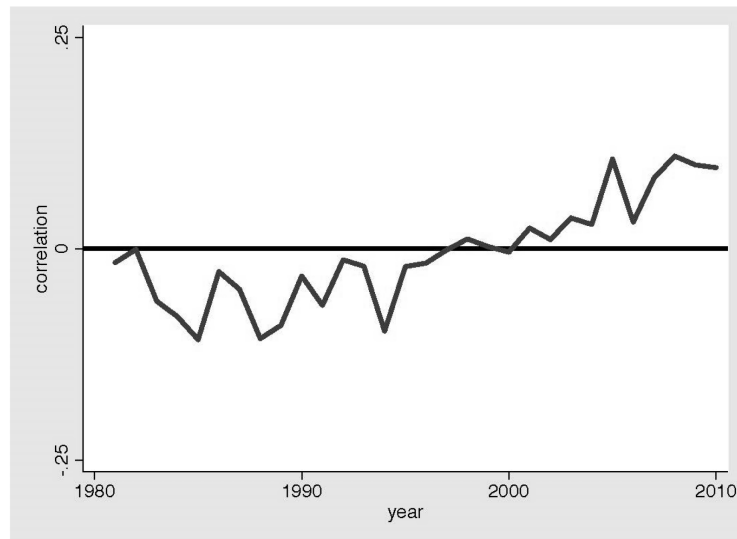
Another way to quantify the relationship between de jure and de facto rights protection is to calculate the correlation between the average de jure and de facto rights scores in each category on a year-by-year basis. This correlation can range from a minimum of -1 to a maximum of 1: a positive coefficient indicates that extensive formal rights guarantees coincided with high levels of actual respect for rights, whereas a negative coefficient indicates that abundant rights guarantees coincided with widespread rights violations. Figures 5 through 7 illustrate the correlation between the de jure and de facto scores in each category from 1981 through 2010.

Overall, these figures paint a bleak picture of the degree to which countries live up to their constitutional promises. Formal constitutional guarantees of personal integrity rights have been especially unreliable over the past three decades. Indeed, from 1981 through the mid-1990s, the correlation between the de jure and de facto scores in the area of personal integrity rights was generally negative. In substantive terms, a negative correlation means that countries with higher levels of de jure commitment to personal integrity rights tend on average to exhibit lower levels of de facto respect for such rights, and vice versa. Over the last decade, the correlation has turned positive, but only weakly so.

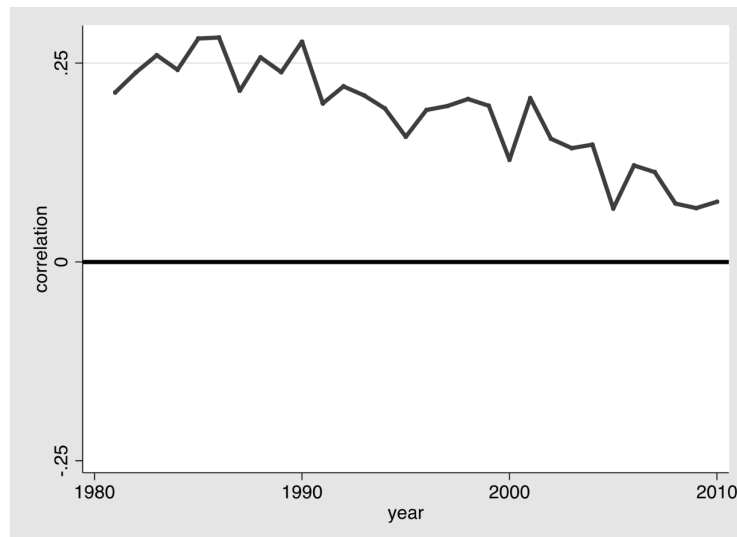
Similarly, formal guarantees of socioeconomic rights are poorly related to actual practice. As Figure 6 illustrates, the correlation between de jure and de facto observance of socioeconomic and group rights was either negative or close to zero from the 1980s onward. Real-world performance in the area of civil and political freedoms is scarcely more encouraging. Although the

correlation between de jure and de facto civil and political freedoms has been positive over most of the last quarter-century, it reached its peak in the 1980s and now clearly exhibits a declining trend.

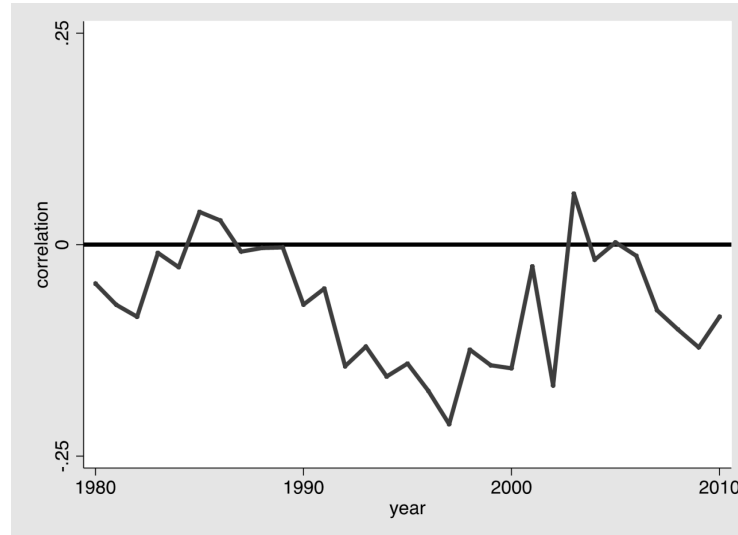
**Figure 5: Personal Integrity Rights—
Correlation Between De Jure and De Facto Scores**



**Figure 6: Civil and Political Freedoms—
Correlation Between De Jure and De Facto Scores**



**Figure 7: Socioeconomic and Group Rights–
Correlation Between De Jure and De Facto Scores**



IV.

CONSTITUTIONAL PERFORMANCE RANKINGS

As disheartening as some of these aggregate trends may be, they give no sense of how specific countries fare. We turn, therefore, to evaluate and rank the constitutional performance of individual countries. From an analytical perspective, there is more than one way to judge performance. Some countries formally promise a wide range of rights and thus beg to be judged against a higher set of expectations. Others promise far fewer rights and thus belong to a different peer group for purposes of evaluation. Accordingly, we devise two distinct measures of constitutional performance and two corresponding sets of rankings. The first measure captures constitutional *underperformance*, or the extent to which countries fail to uphold the rights found in their constitutions. This measure offers a suitable yardstick for evaluating countries with relatively ambitious constitutions and identifying the worst sham constitutions. The second measure captures the extent to which countries overperform in the sense of respecting rights that are absent from their constitutions. Our measure of constitutional *overperformance* focuses on this phenomenon and offers an appropriate basis for comparing countries that promise relatively little in their constitutions.

*A. Constitutional Underperformers:
A Ranking of Sham Constitutions and Strong Constitutions*

Our constitutional underperformance scores measure the extent to which countries that promise a relatively generous array of rights on paper succeed at upholding those rights in practice.¹⁰⁵ In other words, these scores distinguish between countries with *sham* constitutions and those with *strong* constitutions.¹⁰⁶ Each country's underperformance score is simply the proportion of the total number of rights in its constitution that it actually respected.¹⁰⁷ Thus, a score of zero indicates that the country in question seriously violated all of the rights in its constitution, while a score of one indicates that the country fully respected all of the rights in its constitution.

We then rank all countries according to their underperformance scores, but in a manner that also takes into account the scope of their success or failure. The more rights that a country promises in its constitution, the more impressive it becomes to fulfill every promise; conversely, the more promises that a country breaks, the more sweeping its failure. Accordingly, we use the absolute number of rights promised as a tiebreaker between countries with the same raw scores. Thus, for example, although Finland and Iceland both succeeded at upholding all of the rights in their constitutions as of 2010, Finland tops the ranking because its constitution contains more rights and its success is therefore broader in scope.¹⁰⁸ At the opposite extreme, Eritrea and Myanmar both receive anemic scores of 0.100.¹⁰⁹ However, whereas Eritrea's constitution contains eleven out of the fifteen rights in our analysis, Myanmar's constitution contains only ten.¹¹⁰ Accordingly, Eritrea receives a lower ranking than Myanmar in order to reflect the breadth as well as the severity of its underperformance.

The best performers are listed in Table 3, which might be dubbed a constitutional "hall of fame." The ten countries in this table not only promise a

105. See *supra* text accompanying Table 1 (defining constitutional "underperformance," and contrasting it with constitutional "overperformance").

106. See *supra* Table 1 (distinguishing between "sham" constitutions and "strong" constitutions).

107. Countries whose constitutions contain zero rights do not receive underperformance scores because calculation of each score involves dividing by the total number of rights found in the constitution, and it is mathematically impossible to divide by zero. In addition, most of the data on rights compliance employed in this Article distinguish between full and partial respect for a right. Accordingly, a country can receive half-credit for partially respecting a right. See *supra* text accompanying note 89. Thus, for example, if a country with 10 rights in its constitution respects only 1 of the 10 rights in its constitution and does so only partially, its underperformance score would be $0.5 \div 10 = 0.05$. Finally, if a country included a right in its constitution, but we lacked data on that country's compliance with that particular right for the year in question, the right was omitted from calculation of the underperformance score.

108. See *infra* Table 3.

109. See *infra* Table 4.

110. See *id.*

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wide range of rights, but also make good upon those promises.¹¹¹ The worst underperformers, in turn, are listed in Table 4, which amounts to a constitutional “hall of shame”: the countries on this list combine far-reaching promises with relatively little respect for rights in practice. Within each table, separate rankings for 1981, 1990, 2000, and 2010 convey how the rankings have changed over time. Detailed underperformance scores for every country in the world as of 2010 can be found in Appendix II.

Table 3: The Ten Strongest Constitutions (The Hall of Fame)

<i>Constitutional Underperformance Scores</i>											
1981			1990			2000			2010		
Country	Score	# Rights Promised	Country	Score	# Rights Promised	Country	Score	# Rights Promised	Country	Score	# Rights Promised
Italy	0.917	13	Japan	0.909	12	Finland	1.000	13	Finland	1.000	13
Japan	0.909	12	Hungary	0.909	12	Iceland	1.000	11	Iceland	1.000	11
Dominican Rep.	0.909	11	Uruguay	0.900	10	Switzerland	0.962	13	Slovenia	0.962	14
Greece	0.818	11	Italy	0.833	13	Hungary	0.958	12	Czech Rep.	0.962	13
Uruguay	0.800	10	Portugal	0.833	13	Canada	0.950	10	Switzerland	0.962	13
Portugal	0.792	13	Spain	0.773	12	New Zealand	0.950	10	Spain	0.958	12
Venezuela	0.792	12	Chile	0.750	11	Uruguay	0.950	10	Chile	0.955	11
Papua New Guinea	0.773	12	Dominican Rep.	0.727	11	Estonia	0.923	13	Sweden	0.950	11
Spain	0.773	12	Bolivia	0.682	12	Spain	0.917	12	New Zealand	0.950	10
Panama	0.682	13	Greece	0.682	11	Costa Rica	0.900	10	United Kingdom		
						Cyprus (tie)			Uruguay (tie)		

Table 4: The Ten Worst Sham Constitutions (The Hall of Shame)

<i>Constitutional Underperformance Scores</i>											
1981			1990			2000			2010		
Country	Score	# Rights Promised	Country	Score	# Rights Promised	Country	Score	# Rights Promised	Country	Score	# Rights Promised
Iran	0.200	11	Afghanistan	0.200	11	Afghanistan	0.091	11	Nigeria	0.042	12
Albania	0.200	10	Cambodia	0.250	12	Sudan	0.091	11	Eritrea	0.100	11
Bolivia	0.227	12	Iran	0.250	11	Iraq	0.200	10	Myanmar	0.100	10
Guatemala	0.273	12	Myanmar	0.300	11	Myanmar	0.227	11	Sudan	0.231	13
El Salvador	0.364	11	Egypt	0.364	12	Guinea	0.273	11	Russia	0.250	12
Paraguay	0.400	10	Guinea	0.364	11	Iran	0.273	11	Sri Lanka	0.250	10
Chile	0.450	11	Vietnam	0.375	14	Nigeria	0.292	12	Ethiopia	0.269	14
Guyana	0.450	11	Guatemala	0.385	14	Yemen	0.300	10	Vietnam	0.269	14
Haiti	0.450	10	Turkey	0.400	11	Uganda	0.308	13	Congo, D.R.	0.269	13
Nicaragua (tie)			Haiti	0.400	10	Uzbekistan (tie)			Afghanistan	0.273	11
									Pakistan (tie)		

111. As noted previously, *see supra* text accompanying Table 1, it is inherently difficult for countries that promise relatively few rights to underperform simply because they promise so little. In such cases, there is relatively little data on which to base an underperformance score because there are few rights with respect to which underperformance could potentially be observed. Accordingly, the underperformance rankings reported in Tables 3 and 4 exclude the constitutions that promise fewer than ten of the rights listed in Table 2.

Initial inspection of the rankings suggests that strong and weak performers are concentrated in different geographic regions, which further analysis confirms in Part IV.D. Africa and Asia are home to the vast majority of the world's sham constitutions: as of 2010, five out of ten "hall of shame" members hailed from Africa, and four from Asia. Since the 1990s, one of the worst of the worst by our measures has been the African nation of Sudan. On the one hand, the number of rights that it promises has crept up over time, from nine to thirteen. On the other hand, its actual performance is poor enough to edge out Iran for the dubious distinction of worst sham constitution.¹¹² By contrast, Europe dominates the "hall of fame." Outside of Europe, consistently strong performers have included Canada, New Zealand, and Uruguay, all of which have ranked among the top ten from the 1990s onward.

B. Constitutional Overperformers:

A Ranking of Modest Constitutions and Weak Constitutions

Some constitutions contain relatively few rights. The Australian constitution, for example, includes only two of the fifteen rights analyzed in this study.¹¹³ In such cases, it can be more revealing to focus on whether countries uphold the rights that are omitted. Thus, to complement the underperformance scores discussed above in Part IV.A, we also calculate constitutional overperformance scores that measure the extent to which countries respect rights that are *not* found in their constitutions.¹¹⁴ This measure focuses on the subset of countries whose constitutions contain relatively few rights, and it enables us to distinguish between countries with *modest constitutions*, which promise few rights on paper but respect many in practice, and countries with *weak constitutions*, which evince little protection for rights either on paper or in practice.¹¹⁵

As with the constitutional underperformance scores, each country receives a constitutional overperformance score between zero and one that is equal to

112. As of 2010, Sudan was coded as fully respecting 1 right and partially respecting 4 of the 13 rights in its constitution for which compliance data was available. Thus, its underperformance score was $((4 \times 0.5) + 1) \div 13 = 0.231$.

113. The Australian Constitution lacks a bill of rights but nevertheless guarantees the right to vote and freedom of religion. See Commonwealth of Australia Act 1900 (Imp), 63 & 64 Victoria, c. 12, § 9, s. 41 (U.K.) ("No adult person who has or acquires a right to vote at elections for the more numerous House of the Parliament of a State shall, while the right continues, be prevented by any law of the Commonwealth from voting at elections for either House of the Parliament of the Commonwealth."); *id.* at s. 116 ("The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.").

114. See *supra* text accompanying Table 1 (defining "overperformance").

115. See *supra* Table 1 and accompanying text (distinguishing "weak" and "modest" constitutions from each other, and from both "strong" and "sham" constitutions).

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the proportion of omitted rights that were nevertheless respected in practice. Thus, for example, Denmark's perfect overperformance score of one (as of 2010) reflects the fact that its formal constitution understates its actual respect for rights: all seven of the rights absent from its constitution were nevertheless respected in practice. Table 5 lists the top ten overperformers. These countries share in common the fact that they uphold a greater range of rights than their constitutions alone might suggest. In the language of our conceptual framework, these countries possess *modest constitutions* that understate their commitment to rights. The countries listed in Table 6, by contrast, combine weak commitment to rights on paper with weak respect for rights in practice.¹¹⁶ These countries possess what we call *weak constitutions*. Separate rankings for 1981, 1990, 2000, and 2010 capture changes in performance over time. Appendix II lists the overperformance scores for every country in the world as of 2010.

**Table 5: The Most Modest Constitutions—
Countries That Promise Little But Deliver Much**

<i>Constitutional Overperformance Scores</i>											
1981			1990			2000			2010		
Country	Score	# Rights Promised	Country	Score	# Rights Promised	Country	Score	# Rights Promised	Country	Score	# Rights Promised
Netherlands	1.000	6	Finland	0.929	6	Norway	0.938	6	Denmark	1.000	7
Australia	0.950	2	Belgium	0.875	6	Belgium	0.929	8	Norway	1.000	7
Canada	0.938	6	Iceland	0.857	6	Australia	0.885	2	France	0.944	6
Finland	0.929	6	Norway	0.857	6	Denmark	0.786	7	Australia	0.923	2
New Zealand	0.923	0	United Kingdom	0.850	4	France	0.778	6	Bosnia & Herz.	0.786	7
Belgium	0.875	6	Australia	0.833	2	Madagascar	0.714	8	United States	0.714	8
France	0.875	6	France	0.813	6	United States	0.643	8	Comoros	0.643	7
Norway	0.857	6	Israel	0.708	1	Israel	0.583	2	Laos	0.625	7
United Kingdom	0.850	4	United States	0.643	8	Laos	0.563	7	Morocco	0.563	7
United States	0.643	8	Burkina Faso	0.500	6	Brunei	0.500	1	Brunei	0.545	1

116. Countries with constitutions that promise an unusually high number of rights are excluded from the overperformance rankings reported in Table 5 and Table 6, in part because it is inherently difficult for a country to deliver more than it promises if it has already promised almost everything. In addition, there is relatively little data on which to base an overperformance score if a country promises all but two rights: in such a case, the overperformance score would be based entirely on whether the country respects just that pair of rights. For these reasons—which parallel the reasons for our exclusion of countries that promise too few rights from the underperformance rankings (see *supra* note 111)—we exclude from the overperformance rankings the countries whose constitutions contain more than eight of the fifteen rights listed in Table 2.

**Table 6: The Weakest Constitutions—
Countries That Neither Promise Nor Deliver Much**

<i>Constitutional Overperformance Scores</i>											
1981			1990			2000			2010		
Country	Score	# Rights Promised	Country	Score	# Rights Promised	Country	Score	# Rights Promised	Country	Score	# Rights Promised
Central Africa	0.143	6	Burundi	0.071	7	North Korea	0.071	7	Saudi Arabia	0.000	4
North Korea	0.143	6	Cameroon	0.143	7	Saudi Arabia	0.100	4	Guinea	0.063	6
Indonesia	0.167	4	Malaysia	0.143	7	Rwanda	0.214	8	Kazakhstan	0.222	6
South Africa	0.214	0	Rwanda	0.143	8	Jordan	0.278	6	Jordan	0.278	6
Burundi	0.214	7	Indonesia	0.167	4	Malaysia	0.313	7	Malaysia	0.313	7
Saudi Arabia	0.231	0	Malawi	0.208	1	Tanzania	0.357	8	Israel	0.333	2
Jordan	0.250	6	Colombia	0.214	7	Singapore	0.375	7	Lebanon	0.333	6
Mauritania	0.273	2	Morocco	0.214	7	Senegal	0.389	6	Mauritania	0.333	6
Cameroon	0.286	7	Mauritania	0.227	2	Swaziland	0.393	0	Congo, Rep.;	0.357	8
Colombia;			Saudi Arabia	0.231	0	Brunei	0.500	1	Indonesia (tie)		
Malaysia (tie)											

By definition, the countries that populate the upper echelons of the constitutional overperformance ranking in Table 5 combine relatively stingy constitutions with strong human rights practices. A number of these countries have relatively old constitutions, which is entirely consistent with our earlier finding that older constitutions tend to contain a less comprehensive assortment of rights.¹¹⁷ The United States and Norway, which consistently rank in the top ten, possess the world's oldest and second-oldest constitutions, respectively.¹¹⁸ Also high on this list are a handful of democracies that have historically lacked bills of rights.¹¹⁹ Prior to its adoption of a statutory bill of rights in 1990,¹²⁰ New Zealand promised none of the fifteen rights in our analysis but honored nearly all of them to some degree in practice. Australia's persistently high ranking reflects its continuing lack of a bill of rights, which is highly atypical of Western nations.¹²¹ As of our most recent data, its constitution contained only two of the fifteen rights, but it respected twelve of the thirteen omitted rights in whole or in part.

117. See Law & Versteeg, *supra* note 22, at 1220 (finding that older constitutions tend to contain a less comprehensive assortment of rights).

118. See ELKINS ET AL., *supra* note 21, at 215–21 tbl.A-1 (listing the age of every constitution in force as of 2005).

119. See Stephen Gardbaum, *The New Commonwealth Model of Constitutionalism*, 49 AM. J. COMP. L. 707, 708–09 (2001) (noting that the United Kingdom and Australia have historically lacked bills of rights).

120. New Zealand Bill of Rights Act 1990; see Palmer, *supra* note 42, at 600, 609–26 (discussing the evolution and content of New Zealand's “unwritten” constitution, and noting the status of the Bill of Rights Act 1990 as ordinary legislation).

121. See Williams, *supra* note 76, at 305 (observing that, once Britain enacted the Human Rights Act of 1998, Australia became “the only western nation without any form of Bill of Rights at any level of government”).

The countries identified in Table 6 as possessing weak constitutions, by contrast, are those that combine stingy constitutions with weak human rights records. Although countries such as Saudi Arabia and Guinea cannot easily be faulted for lying in their constitutions, candor alone is unlikely to satisfy those who associate constitutionalism with respect for rights.

*C. Constitutional Performance in Each Category of Rights:
Do Countries Perform Consistently Across Categories?*

Countries can and do perform differently depending upon the type of rights at issue. A government that fails to uphold socioeconomic and group rights may have a better record of upholding personal integrity rights, and vice versa. Accordingly, in this Section, we report performance scores and rankings for each of the three categories of rights. More detailed information of this sort is inherently valuable but also sheds light on the broader question of whether performance across different categories is correlated. In particular, one might expect countries that perform strongly in the area of personal integrity rights to do so in the area of civil and political freedoms as well, and vice versa. On their face, the rights in these two categories share more in common with one another than with socioeconomic and group rights. Both categories consist primarily of negative rights that attach to individuals, and a government's ability to fulfill such rights is not dependent upon possessing the resources to provide such goods as health care and education. Moreover, personal integrity rights and civil and political freedoms are mutually dependent: neither flourishes easily in the absence of the other. It is not obvious how a country that engages in arbitrary detention and imprisonment, for example, could nevertheless respect freedom of movement. Surprisingly, however, our results suggest that real-world performance across these two categories of rights is only weakly correlated.

As in Part IV.A, we calculate underperformance scores that range from zero to one, but with the added twist that each country receives a separate score in each category of rights.¹²² For example, there are a total of five possible rights that a country can promise in the category of personal integrity rights. In 2010, Sri Lanka included four of those rights in its constitution but upheld only two of those four, and did so only partially. Because a country receives half a point for partially fulfilling a right, Sri Lanka's resulting score in the personal integrity category is $(2 \times 0.5) \div 4 = 0.250$. As before, we use the sheer number of rights promised as a tiebreaker between countries receiving the same raw score because it is indicative of the breadth of a country's success or failure.¹²³ The fact that each category contains only five rights,¹²⁴ however, makes it

122. See *supra* Part IV.A (explaining the calculation of the overall underperformance scores for each country).

123. See *supra* text accompanying notes 108–10.

124. See *supra* Table 2 (listing the rights in each category).

difficult to assign a precise and meaningful performance ranking in every case. Many countries promise only a single right in a particular category, or none at all. In such situations, it can be misleading to assign the country a score or ranking: a perfect score is not very meaningful if it merely reflects the upholding of a single right. We therefore exclude from the rankings any country for which we could not measure performance over two or more rights.¹²⁵

In the area of personal integrity rights, a number of countries accomplished the dubious feat of promising a variety of constitutional protections, only to violate all of them in practice. In recent decades, these have included Nigeria, Pakistan, India, Afghanistan, Sudan, Sri Lanka, Eritrea, Iran, and Bangladesh. The worst in this category over the last three decades are listed in Table 7. At the opposite end of this spectrum, fifteen countries—a majority of them European—upheld all of the personal integrity rights in their constitutions as of 2010. Table 8 lists the top performers over the last three decades, while Appendix II reports the scores for all countries as of 2010.

Table 7: Personal Integrity Rights—The Worst Violators
Constitutional Underperformance Scores—Personal Integrity Rights

1981			1990			2000			2010		
Country	Score	# Rights Promised	Country	Score	# Rights Promised	Country	Score	# Rights Promised	Country	Score	# Rights Promised
Afghanistan	0.000	4	Afghanistan	0.000	4	Afghanistan	0.000	4	Nigeria	0.000	4
Guatemala	0.000	4	Congo, D.R.	0.000	4	Liberia	0.125	4	Pakistan	0.000	3
Uganda	0.000	4	Guatemala	0.000	4	Nigeria	0.125	4	India	0.000	2
El Salvador	0.000	3	Mexico	0.000	4	Philippines	0.125	4	Eritrea	0.125	4
Iraq	0.000	3	Peru	0.000	4	Russia	0.125	4	Iran	0.125	4
Syria	0.000	3	Sri Lanka	0.000	4	Sri Lanka	0.125	4	Russia	0.125	4
Libya	0.000	2	Iraq	0.000	3	Sudan	0.125	4	Afghanistan;	0.250	4
Chile;	0.167	4	Chad	0.000	2	Cameroon;	0.167	3	Bangladesh;		
Iran;			Brazil;	0.167	4	Guinea;			Congo, D.R.;		
Mexico;			El Salvador;			Iraq;			Philippines;		
Philippines (tie)			Iran;			Myanmar;			Sri Lanka;		
			Sudan (tie)			Pakistan (tie)			Sudan;		
									Thailand;		
									Uganda;		
									Yemen;		
									Zimbabwe (tie)		

125. Under this rule, 19.7% of countries were rendered ineligible for the 2010 personal integrity rights rankings, 38.5% for the 2010 socioeconomic and group rights rankings, and 14.4% for the 2010 civil and political freedoms rankings. The rankings for earlier years are affected more severely by a lack of data: Between 37% and 72% of countries were excluded from the 1981 category-specific rankings, depending upon the category.

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Table 8: Personal Integrity Rights—The Strongest Performers

Constitutional Underperformance Scores—Personal Integrity Rights											
1981			1990			2000			2010		
Country	Score	# Rights Promised	Country	Score	# Rights Promised	Country	Score	# Rights Promised	Country	Score	# Rights Promised
Portugal	1.000	5	Portugal	1.000	5	Finland	1.000	5	Czech Rep.	1.000	5
Belize;	1.000	4	Austria;	1.000	4	Iceland	1.000	5	Finland	1.000	5
Botswana;			Benin;			Switzerland	1.000	5	Iceland	1.000	5
Dominican Rep.;			Canada;			Estonia	1.000	4	Austria	1.000	4
Fiji;			Gambia;			Germany	1.000	4	Germany	1.000	4
Gambia;			Germany;			Hungary	1.000	4	Netherlands	1.000	4
Italy;			Hungary;			Netherlands	1.000	4	New Zealand	1.000	4
Japan;			Japan;			New Zealand	1.000	4	Belgium;	1.000	3
Mauritius;			Mauritius;			Luxembourg;	1.000	3	Ireland;		
Panama;			Netherlands;			Norway;			Liechtenstein;		
Papua New Guinea;			New Zealand;			Uruguay (tie)			Luxembourg;		
Sierra Leone;			United States						Norway (tie)		
Trinidad & Tobago;			(tie)								
United States (tie)											

More so than any of the other rankings, the list of the worst offenders in the category of civil and political freedoms reads like a rogues' gallery of American foreign policy irritants. Countries such as Cuba, Iran, North Korea, Sudan, Syria, and Vietnam have all managed at some point to violate all of their formal constitutional commitments of this type. Conversely, countries such as Finland, Grenada, Iceland, Japan, and Portugal have managed to both promise *and* uphold every possible right in this category.

Table 9: Civil and Political Freedoms—The Worst Violators

Constitutional Underperformance Scores—Civil and Political Freedoms											
1981			1990			2000			2010		
Country	Score	# Rights Promised	Country	Score	# Rights Promised	Country	Score	# Rights Promised	Country	Score	# Rights Promised
Vietnam	0.000	5	China	0.000	4	North	0.000	5	Eritrea	0.000	5
Bulgaria	0.000	4	Congo, Rep.	0.000	4	Korea	0.000	4	Myanmar	0.000	5
Iraq	0.000	4	Iran	0.000	4	China	0.000	4	Nigeria	0.000	5
Mongolia	0.000	4	Libya	0.000	2	Cuba	0.000	4	North Korea	0.000	5
Albania	0.000	3	Jordan	0.125	4	Iran	0.000	4	Russia	0.000	5
Libya	0.000	2	North Korea	0.125	4	Iraq	0.000	4	Turkmenistan	0.000	5
Bolivia	0.100	5	Cambodia;	0.200	5	Libya	0.000	4	Uzbekistan	0.000	5
Iran;	0.125	4	Egypt;			Sudan	0.000	4	Vietnam	0.000	5
North Korea;			Myanmar;			UAE	0.100	5	Zimbabwe	0.000	5
Mozambique;			Sudan;			Egypt	0.125	4	China;	0.000	4
Nepal;			Vietnam			Jordan;			Cuba (tie)		
Romania (tie)			(tie)			Yemen					
						(tie)					

Table 10: Civil and Political Freedoms—The Strongest Performers

Constitutional Underperformance Scores—Civil and Political Freedoms											
1981			1990			2000			2010		
Country	Score	# Rights Promised	Country	Score	# Rights Promised	Country	Score	# Rights Promised	Country	Score	# Rights Promised
Dominican Rep.;	1.000	5	Canada	1.000	5	Benin;	1.000	5	Canada;	1.000	5
Finland;			Finland	1.000	5	Botswana;			Chile;		
Italy;			Hungary	1.000	5	Brazil;			Costa Rica;		
Japan;			Japan	1.000	5	Canada;			Cyprus;		
Mauritius;			New Zealand	1.000	5	Chile;			El Salvador;		
Senegal;			Sweden	1.000	5	Costa Rica;			Estonia;		
Sweden;			Switzerland	1.000	5	Cyprus;			Finland;		
Switzerland;			Argentina;	1.000	4	El Salvador;			Grenada;		
Trinidad & Tobago;			Belize;			Estonia;			Guatemala;		
Venezuela (tie)			Iceland;			Finland;			Iceland;		
			Luxemburg;			Guatemala;			Japan;		
			Netherlands;			Honduras;			Kiribati;		
			United States (tie)			Hungary;			Liechtenstein;		
						Iceland;			New Zealand;		
						Italy;			Palau;		
						Jamaica;			Slovenia;		
						Japan;			South Korea;		
						Macedonia;			Spain;		
						Mali;			St. Lucia;		
						Mauritius;			St. Vincent;		
						Mongolia;			Sweden;		
						New Zealand;			Switzerland;		
						Portugal;			Trinidad & Tobago;		
						Spain;			Uruguay (tie)		
						Sweden;					
						Switzerland;					
						Trinidad & Tobago (tie)					

Unsurprisingly, the list of countries that fail to uphold the socioeconomic and group rights found in their constitutions includes some of the world's poorest countries. Whatever their intentions, it is questionable whether countries such as Burkina Faso, Chad, or Guinea-Bissau possess the resources to make good upon costly promises.¹²⁶ It is equally unsurprising that the countries that do live up to constitutional commitments of this type tend to be middle- to high-income countries, such as Belgium and Belize.

Table 11: Socioeconomic and Group Rights—The Worst Violators

Constitutional Underperformance Scores—Socioeconomic and Group Rights											
1981			1990			2000			2010		
Country	Score	# Rights Promised	Country	Score	# Rights Promised	Country	Score	# Rights Promised	Country	Score	# Rights Promised
Benin	0.000	3	Benin	0.000	3	Burkina Faso	0.000	3	Afghanistan	0.000	2
Haiti	0.000	3	Burkina Faso	0.000	3	Guinea	0.000	3	Chad	0.000	2
Nigeria	0.000	3	Guinea	0.000	3	Afghanistan	0.000	2	Guinea-Bissau	0.000	2
Sudan	0.000	3	Afghanistan;	0.000	2	Chad	0.000	2	Mali	0.000	2
Afghanistan	0.000	2	Angola;			Guinea-Bissau	0.000	2	Mozambique	0.000	2
Angola	0.000	2	Chad;			Mali	0.000	2	Somalia	0.000	2
Burkina Faso	0.000	2	Guinea-Bissau;			Mozambique	0.000	2	Sudan	0.125	4
Mozambique	0.000	2	Mali;			Niger	0.000	2	Angola;	0.167	3
Somalia	0.000	2	Mozambique;			Somalia	0.000	2	Burkina Faso;		
India	0.125	4	Niger;			Ethiopia	0.125	5	Burundi;		
			Somalia (tie)						Nigeria (tie)		

126. For example, GDP per capita as of 2010 was \$551 in Guinea-Bissau and \$46,612 in the United States, or roughly eighty-five times greater. See *GDP Per Capita (Current US\$)*, WORLD BANK, <http://data.worldbank.org/indicator/NY.GDP.PCAP.CD/countries> (last visited May 5, 2013).

Table 12: Socioeconomic and Group Rights—The Strongest Performers

Constitutional Underperformance Scores—Socioeconomic and Group Rights											
1981			1990			2000			2010		
Country	Score	Rights Promis	Country	Score	Rights Promis	Country	Score	Rights Promis	Country	Score	Rights Promis
France	1.000	2	Belize	1.000	2	Belgium	1.000	3	Italy	1.000	4
Ireland	1.000	2	France	1.000	2	Finland	1.000	3	Slovenia	1.000	4
Luxembourg	1.000	2	Ireland	1.000	2	Thailand	1.000	3	Belgium;	1.000	3
Sweden	1.000	2	Luxembourg	1.000	2	Belize;	1.000	2	Belize;		
Bulgaria	0.833	3	Netherlands	1.000	2	Chile;			Cuba;		
Italy	0.750	4	Sweden	1.000	2	France;			Czech Rep.;		
Switzerland	0.750	2	Uruguay	1.000	2	Ireland;			Finland;		
Uruguay	0.750	2	Cuba	0.833	3	Luxembourg;			Japan;		
Cuba;	0.667	3	Spain	0.833	3	Netherlands;			Slovak Rep.;		
Japan (tie)			Italy	0.750	4	Sweden;			Spain;		
						Uruguay (tie)			Sweden;		
									Switzerland;		
									Thailand (tie)		

These rankings suggest that respect for constitutional rights is not an all-or-nothing proposition: countries that perform poorly in one category do not necessarily perform poorly in other categories as well. Comparison of the tables above reveals few countries that consistently rank among the very best (or worst) in all three categories. Calculation of correlation coefficients confirms that underperformance scores are only weakly correlated across all three categories. Consistent with expectations, the scores in the areas of personal integrity rights and civil and political freedoms exhibit the highest correlation, but even in this case, the correlation coefficient is a mere 0.33. Moreover, this figure is scarcely higher than the correlations across other categories. The correlation between the scores in the areas of personal integrity rights and socioeconomic and group rights is a very similar 0.32. As between civil and political freedoms and socioeconomic and group rights, the correlation trails only slightly at 0.29.

*D. Constitutional Performance by Geographic Region:
Where Are Sham Constitutions Most Common?*

Just as constitutional performance varies by subject matter, it also varies by geographic region. As seen in Part IV.A, some regions are overrepresented in the hall of shame, while others tend to populate the hall of fame.¹²⁷ Further analysis largely confirms these findings. One way of gauging regional performance is to calculate the gap in each region between the number of rights that countries tend to promise and the number that they actually uphold. We first compute the average number of rights (out of the fifteen rights listed in Table 2) that the countries in a given region include in their constitutions. From this number, we then subtract the average number of rights (out of the same fifteen rights) that countries in that region actually upheld.¹²⁸ The larger the

127. See *supra* text accompanying Table 4.

128. Countries were assigned to regions according to the classification scheme used by Paul Collier & Benedikt Goderis, *Commodity Prices and Growth: An Empirical Investigation*, 56 EUR. ECON. REV. 1241 (2012).

resulting number, the bigger the shortfall in that region. Table 13 offers a side-by-side comparison of the gap in each region in 1981 and 2010.

As Table 13 indicates, the shortfall is largest in Sub-Saharan Africa and South Asia. At the opposite extreme, Western Europe and North America are the only regions where countries uphold more rights in practice than they promise in their constitutions. In every region, countries are tending on average both to promise and to respect a growing number of rights.¹²⁹ However, improvement in the number of rights upheld has not always kept pace with growth in the number of rights promised. The result, in some cases, has been a growing deficit between what is promised on paper and what is observed in practice.

**Table 13: The Average Gap Between
De Jure and De Facto Rights Protection, by Region**

Region	1981			2010		
	<i>Average # of rights promised</i>	<i>Average # of rights upheld</i>	<i>Gap</i>	<i>Average # of rights promised</i>	<i>Average # of rights upheld</i>	<i>Gap</i>
South Asia	7.86	5.07	2.79	10.50	5.19	5.31
Sub-Saharan Africa	5.59	5.21	0.38	10.34	6.40	3.94
North Africa & Middle East	7.64	4.32	3.32	11.86	8.93	2.93
Central/Eastern Europe & Central Asia	8.57	6.07	2.50	8.53	5.63	2.89
Latin America & Caribbean	8.00	5.84	2.16	11.09	9.17	1.92
East Asia & Pacific	6.09	4.93	1.16	8.92	7.98	0.94
Western Europe & North America	7.25	11.25	-4.00	9.77	13.05	-3.27

The maps below offer a visual representation of constitutional performance on both a regional and country-specific basis. Using the same classification scheme employed in Figure 1,¹³⁰ each country is color-coded to reflect the type of constitution that it possesses. As in Figure 1, red denotes a sham constitution, orange denotes a weak constitution, and blue and green denote strong and modest constitutions, respectively. Finally, countries with constitutions that contain a relatively average number of rights and therefore do not fall in any of the preceding categories are colored grey. Countries for which

129. See *supra* note 104 and accompanying text (documenting and discussing the phenomenon of “rights creep”).

130. Per the numerical criteria used to classify countries in Figure 1, countries whose constitutions boast ten or more of the fifteen rights listed in Table 2 are classified as possessing either strong or sham constitutions. Of such countries, those upholding more than half of the rights found in their constitutions are further classified as possessing strong as opposed to sham constitutions. Countries with constitutions containing eight or fewer of the fifteen possible rights are classified as possessing either modest or weak constitutions. To be further classified as possessing a modest rather than weak constitution, a country must uphold more than half of the rights omitted from its constitution. See *supra* Figure 1 and accompanying text.

data is unavailable for the year in question are left uncolored. Figures 8 through 11 depict the geographic distribution of each type of constitution for the years 1981, 1990, 2000, and 2010, respectively.

Figure 1: Distribution of Constitutional Types as of 2010

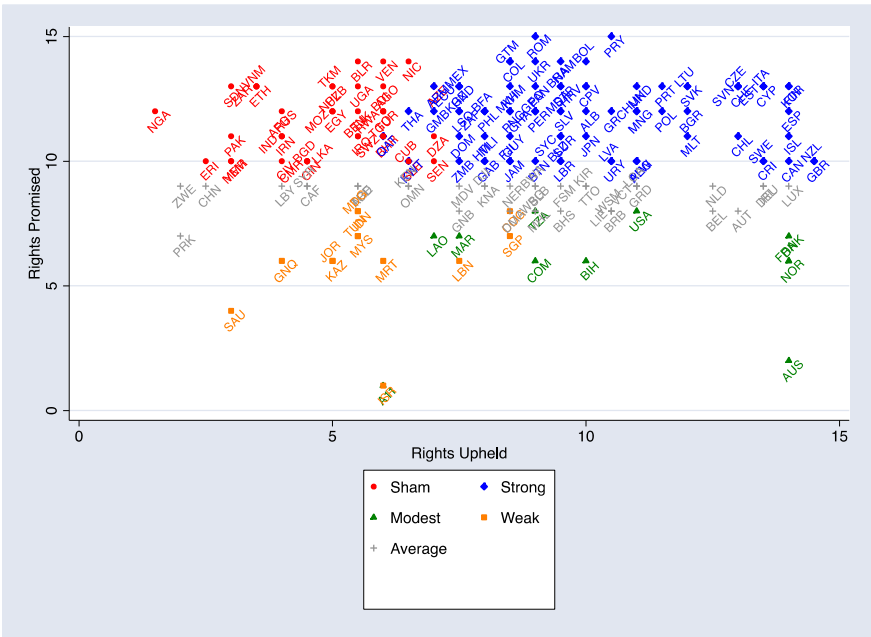


Figure 8: Geographical Distribution of Constitutional Types, 1981

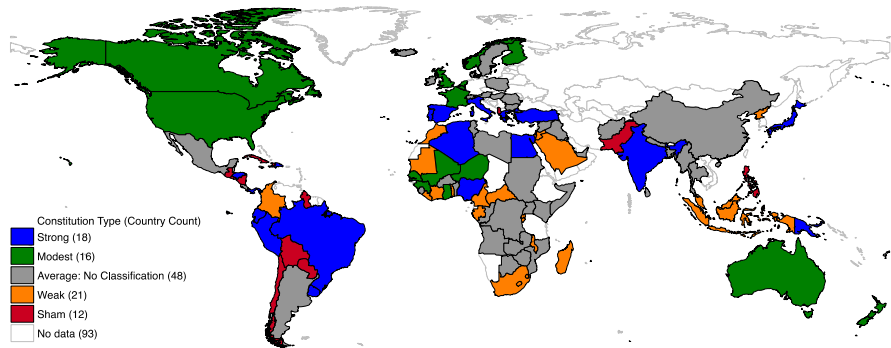
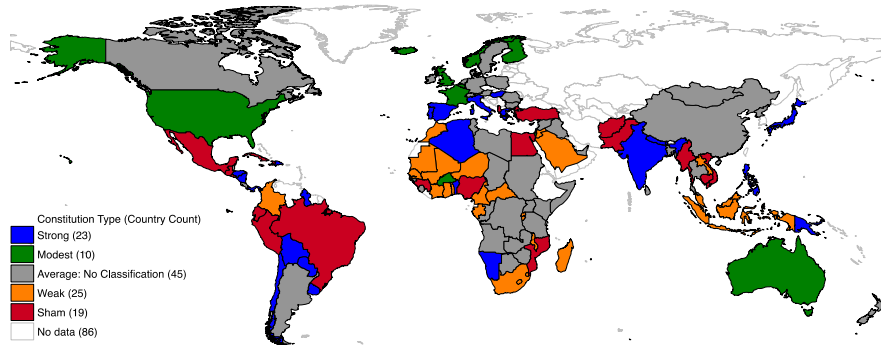
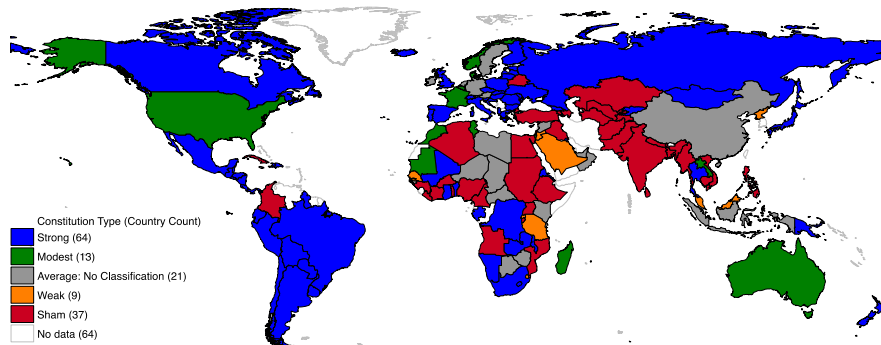
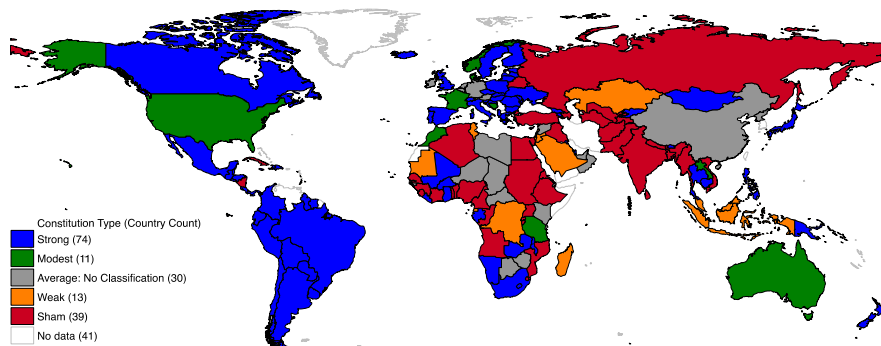


Figure 9: Geographical Distribution of Constitutional Types, 1990**Figure 10: Geographical Distribution of Constitutional Types, 2000****Figure 11: Geographical Distribution of Constitutional Types, 2010**

These maps highlight the existence of several regional patterns. Although they confirm that sham constitutions are widespread in Africa and Asia,¹³¹ they also reveal considerable heterogeneity within those regions. Over the last two decades, African countries have set high standards for themselves by adopting a relatively ambitious array of formal constitutional rights. In doing so, many have set themselves up for conspicuous failure, but others have risen to the challenge. Consequently, the African continent is somewhat polarized between the north, where sham constitutions are particularly common, and the south, which features a number of strong performers.

Likewise, Latin America has exhibited a tendency toward either strong constitutionalism or sham constitutionalism that reflects a combination of ambitious constitution-writing and inconsistent implementation. Since the early 1990s, however, the trend has been in favor of strong constitutionalism, which suggests that Latin American countries are on the whole making considerable strides toward fulfilling their constitutional promises.

In contrast to both Africa and Latin America, Western Europe and North America have been primarily characterized by a mixture of strong constitutions and modest constitutions. This pattern reflects the tendency of wealthy Western democracies to exhibit consistently strong respect for rights in practice, regardless of how much they promise in their constitutions.¹³²

Further analysis suggests that these performance differences between regions are not attributable solely to wealth differentials. The regression analysis discussed in Part VI of this Article reveals that geographic region remains a statistically significant predictor of constitutional underperformance even if one controls for gross domestic product (GDP) per capita and a number of other variables.¹³³ This finding of intrinsically regional patterns is consistent with the existing scholarship on policy diffusion, which has long highlighted the tendency of neighboring jurisdictions to adopt similar policies for reasons related to sheer proximity.¹³⁴ To the extent that governments within a particular region serve as benchmarks and sources of inspiration for one another,¹³⁵ it is

131. See *supra* Table 13.

132. The U.S. Constitution, for example, is classified as a modest constitution because the United States upholds a wider range of rights than its constitution advertises. See Law & Versteeg, *supra* note 48, at 804 (observing that the U.S. Constitution “has not added any rights at all over the last century” and contains only twenty-one of the sixty most commonly encountered rights-related provisions, whereas the average constitution contains thirty-four).

133. See *infra* Part VI.C (listing the variables in the regression model); Table 12 (summarizing the regression results).

134. See, e.g., EVERETT M. ROGERS, *DIFFUSION OF INNOVATIONS* 276–77 (5th ed. 2003) (discussing the spread of hate crime legislation among neighboring states, and pointing to the existence of “communication networks, based in part on spatial propinquity,” as a possible explanation); Zachary Elkins & Beth Simmons, *On Waves, Clusters, and Diffusion: A Conceptual Framework*, 598 ANNALS AM. ACAD. POL. & SOC. SCI. 33, 34 (2005) (noting the recurring appearance of “spatial clusters” of policy reform) (emphasis omitted).

135. See, e.g., Elkins & Simmons, *supra* note 134, at 45 (observing that policymakers tend to define “relevant reference groups” in part on the basis of geographical region).

unsurprising that they adopt similar approaches to the drafting and implementation of constitutions.

V.
SHAM RIGHTS

A. Which Rights Are Most Likely to Be Violated?

Just as certain countries commit more constitutional violations than others, certain constitutional rights are violated more often than others. But which ones, and to what extent? To answer these questions, we calculate the compliance rate for each right, which is simply the proportion of countries that fully uphold the right out of the total number of countries that include the right in their constitutions.¹³⁶ As Table 14 shows, the compliance rate varies widely from right to right and is often quite low. Eleven of the fifteen rights are widely violated, in the sense that they are fully respected by less than half of the countries that promise them.

Failure to uphold women's rights is particularly widespread. Although women's rights of both the social and economic varieties have exploded in popularity since World War II,¹³⁷ actual practice has failed to keep pace. As of 2010, only 14% of those countries with constitutional guarantees of gender equality in marriage or labor relations actually ensured such equality in full.¹³⁸ Prohibitions against torture, fair trial rights, and minority rights were also characterized by low compliance rates of 12.3%, 22.9%, and 23.4%, respectively.

At the opposite extreme, every country with a constitutional bar against the death penalty managed to refrain from engaging in executions, while constitutional guarantees of freedom of movement and prohibitions against arbitrary arrest or detention were fully honored by over three-quarters of the countries that promised them. Similarly, religious freedom was fully respected by 70% of the countries that guaranteed it in their constitutions.

136. Thus, for example, 175 countries boasted a constitutional prohibition against arbitrary arrest or detention as of 2010, but only 136 of those 175 countries fully respected that prohibition. The compliance rate for 2010 is therefore 136/175, or 77.7%. Countries that are coded in the data as occasional violators of a constitutional guarantee are treated for purposes of Table 14 as failing to comply with the guarantee.

137. See Law & Versteeg, *supra* note 22, at 1200 & 1200–02 tbl.2 (charting the growing inclusion of women's rights in national constitutions, from 35% in 1946 to a high of 91% by 2006).

138. The exact figures were 13.5% compliance in the case of women's economic rights and 14.3% compliance in the case of women's social rights. See *supra* Table 2 (describing the data used to measure actual respect for constitutional guarantees of gender equality).

Table 14: Which Constitutional Rights Are Most or Least Honored?

Formal Constitutional Guarantee	Proportion and percentage of countries that fully honor the constitutional guarantee			
	1981	1990	2000	2010
Prohibition of Torture	26/83 (31.3%)	15/99 (15.2%)	11/149 (7.4%)	19/155 (12.3%)
Gender Equality: Economic	0/21 (0.0%)	0/23 (0.0%)	1/35 (2.9%)	5/37 (13.5%)
Gender Equality: Social	0/18 (0.0%)	0/23 (0.0%)	3/44 (6.8%)	7/49 (14.3%)
Fair Trial Rights	no data	no data	30/128 (23.4%)	30/131 (22.9%)
Minority Rights	2/24 (8.3%)	3/29 (10.3%)	11/58 (19.0%)	15/64 (23.4%)
Freedom of Expression	25/136 (18.4%)	21/142 (14.8%)	51/177 (28.8%)	48/180 (26.7%)
Right to Education	15/100 (15.0%)	20/106 (18.7%)	49/148 (33.1%)	51/153 (33.3%)
Right to Vote	24/112 (21.4%)	29/122 (23.8%)	67/152 (44.1%)	57/156 (36.5%)
Freedom of Assembly/ Association	37/131 (28.2%)	42/137 (30.7%)	61/175 (34.9%)	76/178 (42.7%)
Habeas Corpus	45/102 (44.1%)	40/113 (35.4%)	56/156 (35.9%)	72/157 (45.9%)
Right to Health	11/73 (15.1%)	22/83 (26.5%)	44/124 (35.5%)	65/133 (48.9%)
Religious Freedom	112/142 (78.9%)	123/148 (83.1%)	134/176 (76.1%)	127/179 (70.9%)
Prohibition of Arbitrary Arrest/Detention	75/126 (59.5%)	70/133 (52.6%)	102/171 (59.6%)	136/175 (77.7%)
Freedom of Movement	82/97 (84.5%)	97/111 (87.4%)	137/158 (86.7%)	137/162 (84.6%)
Prohibition of Death Penalty	14/14 (100.0%)	22/22 (100.0%)	38/38 (100.0%)	49/49 (100.0%)

B. Do Countries That Promise More on Paper Deliver More in Practice?

Although these compliance rates demonstrate rather starkly that formal constitutional guarantees are inadequate to ensure actual respect for rights, they do not address the question of whether countries that promise a broad range of rights perform better or worse in practice than countries that promise relatively little. Because the compliance rates reported in Table 14 measure only the performance of countries that promise certain rights, they convey no sense of how rights-promising countries perform relative to non-promising countries. For example, although the vast majority of countries with constitutional prohibitions against torture do resort at least occasionally to torture, that leaves open the possibility that countries that lack such prohibitions make even greater use of torture.

Our findings are less than encouraging. Not only do countries often fail to live up to their constitutional promises, but they often perform worse than countries that refrain from promising in the first place. For each of the fifteen rights covered by our analysis, Table 15 indicates whether formal constitutional protection of the right has been correlated with greater respect for that right in practice over the last twenty-five years. For the majority of these rights, the correlation has been either nonexistent or negative. With respect to constitutional protections against arbitrary arrest or detention, habeas corpus rights, women's social rights, and minority rights, there has been no correlation.¹³⁹ In the case of four of the remaining rights—namely, prohibitions

139. Even at the relatively lenient $p < 0.10$ level, there is no statistically significant correlation.

against torture, education rights, women's economic rights, and fair trial rights—the existence of a constitutional guarantee has been *negatively* correlated with respect for the underlying right.

Table 15: Correlation Between Constitutional Guarantees and Actual Respect for Rights¹⁴⁰

<i>Constitutional guarantee is <u>positively</u> correlated with observance of the right</i>	<i>No correlation between constitutional guarantee and actual observance of the right</i>	<i>Constitutional guarantee is <u>negatively</u> correlated with observance of the right</i>
Prohibition of Death Penalty** Freedom of Expression** Freedom of Assembly and/or Association** Religious Freedom** Right to Vote** Freedom of Movement** Right to Health**	Prohibition of Arbitrary Arrest and/or Detention Habeas Corpus Gender Equality: Social Minority Rights	Prohibition of Torture** Right to Education** Gender Equality: Economic** Fair Trial Rights**

Table 16 offers a side-by-side comparison of the actual performance of rights-promising and non-promising countries as of 2010. It shows, for example, that whereas 12.3% of countries with constitutional prohibitions against torture comply fully with this prohibition, a much greater percentage of the countries that lack such a prohibition (23.3%) manage to refrain from torture—a finding that is consistent with earlier scholarship.¹⁴¹ Likewise, life expectancy and literacy rates are worse in countries with explicit constitutional rights to health and education, respectively, than in countries that lack such rights.

140. Correlations labeled with a double asterisk (**) are statistically significant at the $p < 0.01$ level.

141. See *supra* notes 23–26 and accompanying text (discussing empirical studies that have found a negative correlation between certain formal rights and actual respect for rights, including torture prohibitions in particular).

**Table 16: Performance Comparison of
Rights-Promising and Non-Promising Countries, 2010**

<i>Formal Constitutional Guarantee</i>	<i>Compliance rate among countries <u>with</u> the constitutional guarantee</i>	<i>Compliance rate among countries <u>without</u> the constitutional guarantee</i>
Prohibition of Torture	19/155 (12.3%)	7/30 (23.3%)
Gender Equality: Economic	5/37 (13.5%)	24/148 (16.2%)
Gender Equality: Social	7/49 (14.3%)	21/136 (15.4%)
Fair Trial Rights	30/131 (22.9%)	11/54 (20.4%)
Minority Rights	15/64 (23.4%)	26/121 (21.5%)
Freedom of Expression	48/180 (26.7%)	1/5 (20.0%)
Right to Education	51/153 (33.3%)	13/32 (40.6%)
Right to Vote	57/156 (36.5%)	9/24 (37.5%)
Freedom of Assembly/Association	76/178 (42.7%)	3/7 (42.9%)
Habeas Corpus	72/157 (45.9%)	11/28 (39.3%)
Right to Health	65/133 (48.9%)	30/52 (57.7%)
Religious Freedom	127/179 (70.9%)	1/6 (16.7%)
Prohibition of Arbitrary Arrest/Detention	136/175 (77.7%)	9/10 (90.0%)
Freedom of Movement	137/162 (84.6%)	16/23 (69.6%)
Prohibition of Death Penalty	49/49 (100.0%)	77/136 (56.6%)

It is worth noting what these findings do not prove. Although rights-promising countries often perform worse than non-promising countries, that does not necessarily mean that formal constitutional rights lack any beneficial effect in practice. The decision to adopt a particular constitutional right may be correlated with a host of other variables that conceal or overwhelm the effect of the right itself. For example, the fact that constitutional prohibitions against torture are correlated with *greater* use of torture is open to multiple explanations. It could reflect a tendency on the part of abusive regimes to prohibit torture as a sop to their critics. Alternatively, however, the countries that adopt such prohibitions may be those that are genuinely struggling to overcome a history of severe rights abuse, whereas countries that have been free of torture might forgo the prohibition as unnecessary. If the only countries that adopt the prohibition are those in need of improvement, then torture prohibitions could be positively correlated with the use of torture even if they have the actual effect of reducing the use of torture. Thus, the correlations reported here neither prove nor disprove the notion that formal constitutional rights make a practical difference. The question of whether and under what conditions formal constitutions influence government behavior is notoriously difficult to answer empirically,¹⁴² and we do not purport to resolve it in this Article.

142. See Law, *supra* note 4, at 380–84, 387–89 (noting that existing scholarship on the impact of formal constitutional provisions is mixed and inconclusive, and discussing the methodological reasons for which causal inference about the impact of formal constitutions are difficult to draw). There are, however, potential strategies for testing these competing hypotheses. One could, for

C. Are Negative Rights More Likely to Be Honored than Positive Rights?

Knowledge of which rights are most frequently violated can also shed light on the broader questions of whether some rights are inherently harder to uphold than others, and why some countries possess sham constitutions. If certain types of rights are inherently difficult to uphold, then countries with a propensity for promising such rights will presumably have greater difficulty satisfying their constitutional obligations. In particular, positive rights that require the government to undertake costly implementation measures, such as a right to education or a minimum standard of living, may be more challenging for poorer countries to uphold than negative rights that merely require government inaction, such as religious freedom.¹⁴³ Poorer countries may be inclined to include socioeconomic guarantees into their constitutions out of aspiration yet, at the same time, find themselves less capable of fulfilling those guarantees due to the very poverty that motivated them to include the guarantees in the first place. If so, then socioeconomic rights ought to be violated more frequently than other types of rights.

Our findings are modestly consistent with the view that positive rights are harder to uphold, and thus more likely to be violated, than negative rights. Of the ten most widely violated rights according to Table 14, four are of a socioeconomic or group variety. Similarly, as Table 15 shows, two of the four rights for which *de jure* and *de facto* protection are negatively correlated are of the socioeconomic or group variety. Examination of the underperformance scores in each category tells a similar story.¹⁴⁴ As Figures 12 through 14 illustrate, countries tend to earn higher scores in the categories of personal integrity rights and civil and political freedoms than in the category of socioeconomic and group rights. On a scale from 0 to 1, where 0 denotes complete disregard and 1 denotes full respect for rights, 80.7% of countries received scores of 0.5 or higher in the category of personal integrity rights, while 15.9% scored 0.9 or higher.¹⁴⁵ With respect to performance in the area of civil and political freedoms, the scores are skewed even more strongly toward the very top of the scale: 68.8% of countries scored over 0.5, while 32.2%

example, determine whether the incidence of torture tends to diminish following adoption of a prohibition against torture.

143. See David S. Law, *Globalization and the Future of Constitutional Rights*, 102 NW. U. L. REV. 1277, 1348 (2008) (“A country need not be rich in order to treat its minorities fairly, for example, or to uphold religious freedom.”); see also KATHARINE G. YOUNG, CONSTITUTING ECONOMIC AND SOCIAL RIGHTS 71 (2012) (observing that the International Covenant on Economic, Social, and Cultural Rights (ICESCR) explicitly recognizes the impact of resource constraints on the implementation of economic and social rights by allowing countries to “progressively realize” economic and social rights rather than requiring them to guarantee such rights immediately).

144. The underperformance scores in each category are defined and discussed above in Part IV.C.

145. The mean and median scores in the personal integrity rights category were 0.626 and 0.625, respectively.

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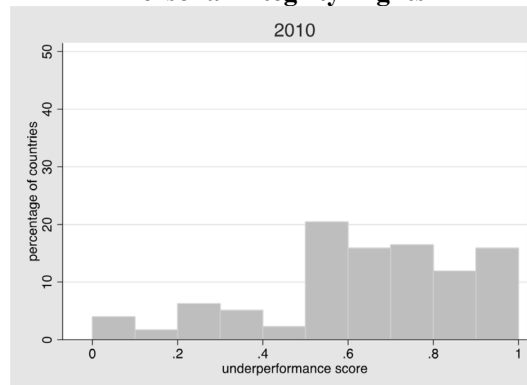
SHAM CONSTITUTIONS

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scored 0.9 or higher.¹⁴⁶ By contrast, the socioeconomic and group rights scores are strongly clustered toward the middle rather than the high end of the scale: 28.3% of all countries received a score of 0.5, which also happens to be the median score.

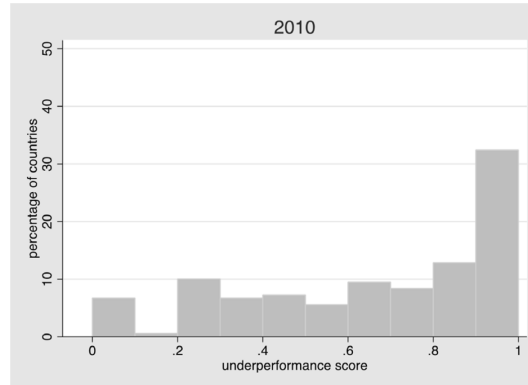
Over time, however, the compliance gap between categories appears to be narrowing. This trend can be seen in Figure 15, which graphs the average underperformance score in each category over time. On the one hand, countries are on average honoring an increasing proportion of the socioeconomic and group rights that they promise. On the other hand, their performance in the area of personal integrity rights has deteriorated slightly, while respect for civil and political freedoms appears stagnant. The result is a degree of convergence among the three trend lines.

**Figure 12: Distribution of Underperformance Scores—
Personal Integrity Rights**



146. The mean and median scores in the civil and political freedoms category were 0.637 and 0.700, respectively.

**Figure 13: Distribution of Underperformance Scores—
Civil and Political Freedoms**



**Figure 14: Distribution of Underperformance Scores—
Socioeconomic and Group Rights**

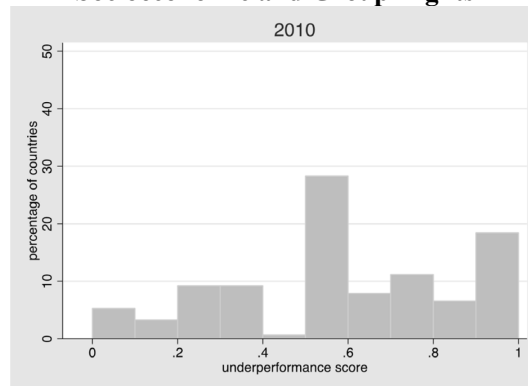
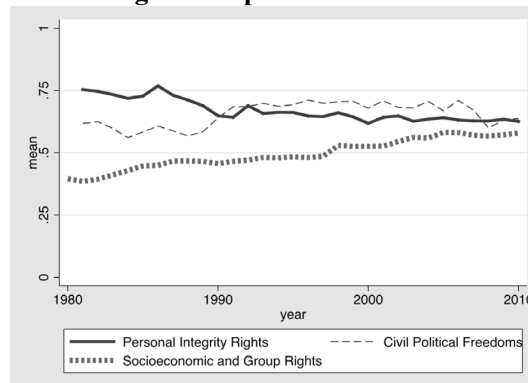


Figure 15: Average Underperformance Scores Over Time



VI.

PREDICTORS OF SHAM CONSTITUTIONALISM

Knowing which countries fail to uphold constitutional rights, and which rights they fail to uphold, is of considerable value in and of itself. Beyond these findings, however, looms the question of why some countries comply with their constitutions while others fall short. Causal questions about the relationship between formal constitutions and actual practice are notoriously complex and difficult to resolve using common statistical techniques and sources of data.¹⁴⁷ One way to broach such questions is to test whether certain variables predict constitutional compliance, while controlling for other factors.¹⁴⁸ Of course, the fact that a particular variable predicts compliance does not necessarily reveal whether the variable in question actually influences compliance or is merely correlated with it. Nevertheless, even correlations can shed light upon the plausibility of various hypotheses about the reasons for which countries fail to live up to their constitutional commitments. Some of these hypotheses involve the characteristics of the country in question, while others concern the characteristics of the constitutions themselves.

A. Characteristics of Countries

A country's *level of democracy* might be expected to affect its propensity for constitutional compliance. Undemocratic regimes may deliberately adopt sham constitutions as a strategy for winning recognition and acceptance from the international community.¹⁴⁹ There may be few consequences, if any, to deter such regimes from turning constitution-writing into a cynical exercise in cheap talk aimed at preventing ostracism from "world society."¹⁵⁰ Conversely,

147. See Law, *supra* note 4, at 387–88 (noting the degree to which "empirical research on constitutions in general," and "reliable causal inference in particular," is hindered by "inadequate data and causal complexity"); Christopher A. Whytock, *Taking Causality Seriously in Comparative Constitutional Law: Insights from Comparative Politics and Comparative Political Economy*, 41 LOYOLA L.A. L. REV. 629, 631–32, 672 (2008) (observing that regression analysis by itself cannot "prove causality," and that a combination of "[l]arge-N" and rigorously designed "[s]mall-N" methodological approaches may be necessary to tackle questions about the social, political, and economic consequences of constitutions).

148. See Lee Epstein & Gary King, *The Rules of Inference*, 69 U. CHI. L. REV. 1, 77, 79 (2002) (stressing the need for researchers to evaluate and reject alternative explanations for their findings by employing "control variables" that account for those alternative explanations).

149. See, e.g., B.S. Chimni, *International Institutions Today: An Imperial Global State in the Making*, 15 EUR. J. INT'L L. 1, 15 (2004) (arguing that the United Nations insists upon "formal compliance with the norms of liberal democracy"); Law & Versteeg, *supra* note 22, at 1179 (discussing the pressures that countries face to demonstrate compliance with the norms of "world culture" and "world society" by incorporating those norms into their constitutions); John W. Meyer et al., *World Society and the Nation-State*, 103 AM. J. SOC. 144, 153 (1997) (observing that formal compliance with the norms of "world culture" is a requirement of membership in world society).

150. Meyer et al., *supra* note 149, at 153.

the fear of electoral punishment may motivate democratically accountable governments to honor constitutional rights.¹⁵¹

Whether a country has *ratified human rights treaties* may also be relevant. The fact that a country has committed itself not only in its own constitution, but also by treaty and in the eyes of the international community, is often thought to increase the likelihood that rights will be upheld,¹⁵² although empirical research on the actual impact of such treaties has reached mixed conclusions.¹⁵³ Likewise, a country's possession of a *legal system of English or common law origin*, as opposed to a civil law system or socialist legal system, has been

151. See Christian Davenport, *Human Rights and the Democratic Proposition*, 94 J. CONFLICT RESOL. 92, 96 (1999) (arguing that because "democratic leaders are more accountable" and can be removed from power, they are less likely to infringe on individual rights); Keith, *supra* note 26, at 122 ("[W]ith fully participatory and competitive elections, a potentially abusive leader might feel vulnerable to public discontent at the polls and thus be curbed from abusive practices."); Steven C. Poe et al., *Repression of the Human Right to Integrity Revisited: A Global Cross-National Study Covering the Years 1976–1993*, 43 INT'L STUD. Q. 291, 293 (1999) (noting that leaders in democracies have "less opportunity and less willingness to repress" because of the "structure and limited nature of democratic governments"). But see ZEHRA F. KABASAKAL ARAT, HUMAN RIGHTS WORLDWIDE: A REFERENCE HANDBOOK 114 (2006) ("[R]egimes that permit periodic elections in which candidates from different parties compete may repress several other civil and political rights and can be completely indifferent to social and economic rights."); FAREED ZAKARIA, THE FUTURE OF FREEDOM: ILLIBERAL DEMOCRACY AT HOME AND ABROAD 17 (2007) ("Across the globe, democratically elected regimes, often ones that have been re-elected or reaffirmed through referenda, are routinely ignoring constitutional limits on power and depriving their citizens of basic rights.").

152. See LANDMAN, *supra* note 25, at 25 (describing the "optimism among international lawyers that increased state participation in the international human rights regime" will result in increased respect for human rights).

153. Compare Emilie M. Hafner-Burton & Kiyoteru Tsutsui, *Justice Lost! The Failure of International Human Rights Law to Matter Where Needed Most*, 44 J. PEACE RES. 407, 412–21 (2007) (finding that repressive governments are quick to ratify the International Covenant on Civil and Political Rights or the Convention Against Torture but are unlikely to improve their actual human rights practices following ratification), and Hathaway, *supra* note 94, at 1989, 2002–03 (finding that "not only is treaty ratification not associated with better human rights practices than otherwise expected, but it is often associated with worse practices"), and Linda Camp Keith, *The United Nations International Covenant on Civil and Political Rights: Does It Make a Difference in Human Rights Behavior?*, 36 J. PEACE RES. 95 (1999) (finding no statistically significant difference between states parties' behavior before and after ratifying the International Covenant on Political and Civil Rights), and Eric Neumayer, *Do International Human Rights Treaties Improve Respect for Human Rights?*, 49 J. CONFLICT RESOL. 925, 926 (2005) ("In the absence of democracy and a strong civil society, treaty ratification has no effect and is possibly even associated with more human rights violations."), with LANDMAN, *supra* note 25, at 6–9, 38, 157 (attributing the conclusions reached by Keith and Hathaway to inadequate model specification, and reaching more optimistic conclusions regarding the efficacy of international human rights law), and BETH A. SIMMONS, MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS 125–26 (2009) (arguing that even unenforceable treaty provisions can influence actual practice for the better by altering the domestic political landscape), and Wayne Sandholtz, *Treaties, Constitutions, Courts, and Human Rights*, 11 J. HUM. RTS. 17, 27 (2012) (finding empirically that countries that both ratify the International Covenant on Civil and Political Rights and provide for judicial independence tend to exhibit greater respect for human rights).

identified as a cause of increased respect for the rule of law and certain rights.¹⁵⁴

Interstate or civil war is often associated with suspension of the constitutional order and rights infringement and is therefore hypothesized to dampen constitutional compliance.¹⁵⁵ The degree to which a country is *divided along ethnic, linguistic or religious lines* may also affect constitutional performance. A homogeneous population may make it easier for governments to respect different types of constitutional rights. With respect to civil and political freedoms, ethnic division has been found to correlate with higher levels of political terror.¹⁵⁶ Heterogeneity may also impair the fulfillment of socioeconomic rights: research suggests that more heterogeneous societies are characterized by decreased support for income redistribution and social welfare programs.¹⁵⁷

154. See 1 FRIEDRICH A. HAYEK, *LAW, LEGISLATION AND LIBERTY: A NEW STATEMENT OF THE LIBERAL PRINCIPLES OF JUSTICE AND POLITICAL ECONOMY* 94 (1978) (“[I]ndividual liberty seems to have flourished chiefly among people where, at least for long periods, judge-made law predominated.”); Rafael La Porta et al., *The Quality of Government*, 15 J.L. Econ. & Org. 222, 260 tbl.6, 261–62 (1999) (finding that common law countries exhibit greater respect for political rights than countries of other legal origins); Paul G. Mahoney, *The Common Law and Economic Growth: Hayek Might Be Right*, 30 J. Legal Stud. 503, 506 (2001) (finding empirical evidence of a positive relationship between use of a common law system and economic growth, and attributing this relationship at least partly to the “greater judicial protection of property and contract rights from executive interference” that characterizes common law systems).

155. See, e.g., Emilie M. Hafner-Burton & Kiyoteru Tsutsui, *Human Rights in a Globalizing World: The Paradox of Empty Promises*, 110 AM. J. SOC. 1373, 1388 (2005) (“In times of civil war, governments . . . tend to be more coercive, defending their authority against internal challenges to the state.”); Steven C. Poe & C. Neal Tate, *Repression of Human Rights to Personal Integrity in the 1980s: A Global Analysis*, 88 AM. POL. SCI. REV. 853, 865 fig.4 (1994) (concluding that violations of personal integrity rights, including torture and extra-judicial killings, increase over time in countries afflicted by civil war); Poe et al., *supra* note 151, at 305 (confirming, on the basis of new data, their previous finding that civil war is a “statistically significant” and “substantively important” determinant of personal integrity rights violations); Sandholtz, *supra* note 153, at 26 (finding empirically that civil war is associated with decreased respect for rights).

156. See, e.g., DOUGLAS A. HIBBS, JR., *MASS POLITICAL VIOLENCE: A CROSS-NATIONAL CAUSAL ANALYSIS* 65–80 (1973) (exploring the effects of sociocultural differentiation on political violence); Ibrahim Elbadawi & Nicholas Sambanis, *How Much War Will We See? Explaining the Prevalence of Civil War*, 46 J. CONFLICT RESOL. 307, 308 (2002) (“[E]thnic fractionalization . . . is positively, robustly, and possibly nonmonotonically associated with civil war prevalence.”); José G. Montalvo & Marta Reynal-Querol, *Ethnic Polarization, Potential Conflict, and Civil Wars*, 95 AM. ECON. REV. 796, 812 (2005) (concluding that ethnic heterogeneity increases the incidence of violence). *But see*, e.g., Cliff Brown & Terry Boswell, *Ethnic Conflict and Political Violence: A Cross-National Analysis*, 25 J. POL. & MIL. SOC. 111, 112 (1997) (arguing that, although separatist movements increase levels of political violence, ethnic diversity generates collective action problems that reduce political violence); Demet Yalcin Mousseau, *Democratizing with Ethnic Divisions: A Source of Conflict?*, 38 J. PEACE RES. 547, 559–61 (2001) (concluding that ethnic heterogeneity fuels political violence only under certain conditions, such as high levels of democracy); Han S. Park, *Correlates of Human Rights: Global Tendencies*, 9 HUM. RTS. Q. 405, 410 (1987) (“Ethnic diversity, a factor generally regarded as counter-productive for stability and development, does not show any degree of adverse effect on social well-being.”).

157. See, e.g., ALBERTO ALESINA & EDWARD L. GLAESER, *FIGHTING POVERTY IN THE US AND EUROPE: A WORLD OF DIFFERENCE* 133–82 (2004) (finding that social welfare spending tends to

Constitutional compliance may vary by *geographic region* as well. Both the tendency of governments to learn from neighboring jurisdictions and the existence of regional practices or norms could cause sham constitutionalism to exhibit regional patterns.¹⁵⁸ Another plausible predictor of sham constitutionalism is *population size*. The existing literature suggests that more populous countries are more prone to human rights violations.¹⁵⁹ Population size also works to the disadvantage of more populous countries due to the manner in which the measures of de facto respect for personal integrity rights and civil and political freedoms are calculated.¹⁶⁰ Because these measures do not control for population size, two countries of very different population sizes may receive similar performance scores even if the larger country violates such rights at a much lower rate per capita.

Finally, there are multiple reasons to expect that a country's level of *economic wealth* will influence the degree to which it meets its constitutional obligations. Conflict over scarce resources can generate instability that in turn triggers government repression.¹⁶¹ Moreover, wealthier countries are inherently more capable of honoring constitutional obligations of a socioeconomic variety that entail government expenditures, such as a right to education or health.¹⁶²

be lower in racially divided countries and, within the United States, in states with a relatively high minority population); Ann Helén-Bay & Axel West Pedersen, *The Limits of Social Solidarity: Basic Income, Immigration and the Legitimacy of the Universal Welfare State*, 49 ACTA SOCIOLOGICA 419, 432 (2006) (finding that support among Norwegians for a basic income welfare plan declines if the proposed plan is extended to non-citizens); Charles C. Ragin, *A Qualitative Comparative Analysis of Pension Systems*, in THE COMPARATIVE POLITICAL ECONOMY OF THE WELFARE STATE 320, 341 (Thomas Janoski & Alexander M. Hicks eds., 1994) (concluding that "relative ethnic homogeneity" helps to explain the adoption of "social democratic" policies).

158. See, e.g., Elkins & Simmons, *supra* note 134, at 45 (noting the tendency of policymakers to use neighboring jurisdictions as benchmarks).

159. See, e.g., Hafner-Burton & Tsutsui, *supra* note 155, at 1388 (observing that "rapid population growth" creates resource scarcity that pressures governments to "head in an authoritarian direction"); Conway W. Henderson, *Population Pressures and Political Repression*, 74 SOC. SCI. Q. 322, 330 (1993) (finding that population pressures are positively correlated with political repression); Poe & Tate, *supra* note 155, at 861 tbl.1 (finding that the larger a country's population, the more likely that the country will violate personal integrity rights); Poe et al., *supra* note 151, at 305 (concluding that population size is a "statistically significant" and "substantively important" determinant of personal integrity rights violations).

160. See *supra* note 90 (explaining the manner in which the CIRI scores are calculated, and pointing out that more populous countries are prone to receiving worse scores because the CIRI scores measure the absolute number of rights violations in a country without controlling for population size); *supra* Table 2 and text accompanying note 90 (listing the de facto rights measures drawn from the CIRI data set). By contrast, the measures of socioeconomic rights are all adjusted for population size and provided on a per capita basis.

161. See Gerald L. Blasi & David Louis Cingranelli, *Do Constitutions and Institutions Help Protect Human Rights?*, in HUMAN RIGHTS AND DEVELOPING COUNTRIES 223, 225 (Stuart S. Nagel & David Louis Cingranelli eds., 1996).

162. See *id.*; cf. Cingranelli & Richards, *supra* note 27, at 215 (observing that it is difficult for countries to improve their performance in the areas of economic and social rights in a measurable way without "getting richer").

Consistent with such theories, studies have repeatedly found that wealthy countries tend to possess superior human rights practices.¹⁶³

B. Characteristics of Constitutions

It is widely assumed that *judicial enforcement* promotes constitutional compliance. Although the number is steadily shrinking, approximately 20% of the world's constitutions still do not specify formal mechanisms by which they are to be enforced.¹⁶⁴ If it is true that judicial enforcement fosters constitutional compliance, then failure to uphold constitutional rights should be more common in countries that lack judicial review altogether.¹⁶⁵

The *age* of a constitution may influence the extent to which it enjoys compliance. It is unclear *ex ante*, however, whether compliance is more likely to increase or decrease as a constitution ages. To the extent that constitutional commitments require time to take root, compliance might be expected to increase over time.¹⁶⁶ Conversely, compliance could instead decline over time if informal understandings and practices begin to displace the formal constitution,¹⁶⁷ or if society evolves in such a way that rights that were once cherished become obsolete, moot, or devalued.¹⁶⁸

The *ideological character of the constitution* may affect the degree to which different types of constitutional rights are respected in practice. As shown in our previous work, the world's constitutions can be placed along a unidimensional ideological spectrum.¹⁶⁹ When combined with a measure of constitutional comprehensiveness, this measure of constitutional ideology explains 90% of the variation in the rights-related content of the world's constitutions.¹⁷⁰ At one end of the ideological spectrum lie "statist" constitutions that emphasize positive rights and duties and envision an active

163. See Blasi & Cingranelli, *supra* note 161, at 225–26 (summarizing the relevant literature).

164. See Law & Versteeg, *supra* note 22, at 1199 fig.6 (tracing over time the percentage of constitutions that provide for judicial review).

165. Cf. Blasi & Cingranelli, *supra* note 161, at 235 (arguing that constitutional provisions providing for rights-protecting institutions such as an independent judiciary promote greater respect for human rights, and reporting a positive correlation, albeit not a statistically significant one, between the existence of such provisions and "better human rights practices"); Sandholtz, *supra* note 153, at 26 (reporting that the existence of an independent judiciary is a statistically significant predictor of increased respect for human rights).

166. Cf. ELKINS ET AL., *supra* note 21, at 29–31 (finding that actual respect for civil liberties tends over time to overtake the level of civil liberties that is constitutionally guaranteed).

167. See *id.* at 29 (noting the possibility that "as written constitutions endure, they may give rise to informal understandings that diverge from the formal text").

168. Cf. David S. Law, *The Myth of the Imposed Constitution*, in THE SOCIAL AND POLITICAL FOUNDATIONS OF CONSTITUTIONS (Denis Galligan & Mila Versteeg eds., forthcoming 2013) (discussing the recurring phenomenon of "zombie" constitutional provisions that have been rendered "functionally obsolete, irrelevant, or moot" and "persist in form and not in function").

169. See Law & Versteeg, *supra* note 22, at 1221–26.

170. See *id.* at 1210–26.

role for the state in pursuing social welfare.¹⁷¹ At the other end lie “libertarian” constitutions that portray the state as a threat to individual liberty and emphasize judicial protection of traditional civil and political rights from state interference.¹⁷² Whatever its inherent philosophical attractions, the statist model of constitution-writing may be especially attractive for governments that are more interested in rationalizing and justifying extensive state power than in imposing genuine limitations upon themselves. If so, then countries with statist constitutions may exhibit less respect for negative rights that restrict the state, such as traditional civil liberties, than for positive socioeconomic rights that expand the domain of the state.

A country’s ability to honor the rights found in its constitution could be partly a function of how *ambitious* the constitution itself happens to be. All other things being equal, it should be more challenging to uphold a constitution that contains a broad array of novel rights than one that includes merely a handful of familiar rights. In previous work, we developed a measure of constitutional “comprehensiveness” that takes into account both the sheer quantity of rights in a constitution and the extent to which those rights are either “generic” or “esoteric” in character,¹⁷³ and this measure of comprehensiveness proved to be negatively correlated with actual respect for human rights.¹⁷⁴ If overambition is indeed a recipe for failure, constitutional comprehensiveness ought to be negatively correlated with constitutional compliance as well.

Finally, *limitation clauses* that expressly limit the reach of some or all constitutional rights could be associated with lower levels of respect for those rights. Compare, for example, the absolute language of the First Amendment providing that “Congress shall make no law . . . abridging the freedom of speech”¹⁷⁵ with the text of the Canadian Charter of Rights and Freedoms, which explicitly authorizes “such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society,”¹⁷⁶ or that of Saudi Arabia’s constitution, which prohibits “acts that foster sedition or division” and requires the media to “employ courteous language.”¹⁷⁷ In theory, the formal leeway provided by a limitation clause should make rights restrictions easier to

171. See *id.* at 1224–26.

172. See *id.* at 1170, 1228–32.

173. See *id.* at 1213–21.

174. See *id.* at 1219–20 (finding a negative correlation between constitutional comprehensiveness and actual respect for human rights as measured by the Political Terror Scale, after controlling for both a country’s level of democracy and the age of its constitution).

175. U.S. CONST. amend. I; see also HUGO LAFAYETTE BLACK, A CONSTITUTIONAL FAITH 45 (1968) (“My view is, without deviation, without exception, without any ifs, buts, or whereases, that freedom of speech means that government shall not do anything to people . . . either for the views they have or the views they express or the words they speak or write.”).

176. Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, *being* Schedule B to the Canada Act, 1982, c.11 (U.K.), § 1.

177. BASIC LAW OF GOVERNMENT [CONST.] Mar. 1, 1992, art. 39 (Saudi Arabia).

justify. Moreover, certain types of limitation clauses may be more conducive to rights abuse than others. Clauses that limit a broad range of rights or require merely that rights restrictions be imposed “by law”¹⁷⁸ provide more leeway than those that apply only to specific rights or enumerate relatively detailed criteria that must be satisfied before rights can be restricted.¹⁷⁹

In practice, however, constitutional rights are rarely if ever absolute. Limitation clauses are ubiquitous,¹⁸⁰ and in the rare case where explicit limits are missing from the constitutional text, limits are invariably fashioned under the guise of interpretation.¹⁸¹ Therefore, the true question is not whether rights limitations undermine respect for rights, but rather whether particular types of limitations have a more adverse impact than others.

C. Regression Analysis

To test these hypotheses, we estimate four versions of an ordinary least squares regression model. In each version, the dependent variable is the underperformance score described in Part IV.A, which captures the degree to which a given country honors or violates the rights found in its constitution. The first version of the model predicts a country’s performance across all three categories of rights, while the other three versions of the model focus upon performance in each of the three categories—namely, personal integrity rights, civil and political freedoms, and socioeconomic and group rights.¹⁸²

178. Christof Heyns, *The African Regional Human Rights System: The African Charter*, 108 PENN. ST. L. REV. 679, 688 (2004) (observing that more specific limitation clauses set “limits on limitations” and thus make it harder for governments to circumvent rights in practice).

179. See Nathan J. Brown, *Constitutionalizing Authoritarianism and Democracy in Egypt and Tunisia*, at 3 (unpublished manuscript 2012) (on file with authors) (noting that in the Arab world, “rights and freedoms are generally to be defined ‘by law,’” a phrase that “allows vague phrases to be defined in any way the ruler wishes” and ensures that “it is the law that gives the constitution any viable meaning”).

180. See YOUNG, *supra* note 143, at 104 (noting the prevalence of “standalone” or “general” limitation clauses in constitutional bills of rights and regional human rights systems after World War II); Gardbaum, *supra* note 59, at 401 (observing that “[a]lmost all” constitutions other than the U.S. Constitution contain “express limits, either in the form of a general limitations clause applying to all rights or specific limitations clauses applying to particular rights”); *infra* Table 18 (reporting that every constitution in the world as of 2006 contained some form of limitation clause).

181. See, e.g., Gardbaum, *supra* note 59, at 401 (noting that the U.S. Constitution’s unusual “lack of express limits has not . . . resulted in rights being deemed absolute but rather in the judicial implication of limits”). The First Amendment of the U.S. Constitution is illustrative. Its guarantee that “Congress shall make no law . . . abridging the freedom of speech, or of the press,” is a rare and prominent example of a facially absolute constitutional right. See Frederick Schauer, *The Exceptional First Amendment*, in AMERICAN EXCEPTIONALISM AND HUMAN RIGHTS 43, 44 (Michael Ignatieff ed., 2005) (deeming “the seeming absoluteness of the text” and lack of “provision for overrides” a “noteworthy feature of the First Amendment”). However, even at its most generous, the U.S. Supreme Court has been unwilling to treat freedom of expression as absolute. See, e.g., DAVID G. SAVAGE, *THE SUPREME COURT & INDIVIDUAL RIGHTS* 22 (4th ed. 2004) (observing that the Court “has never held the freedoms of speech, press, religion, and assembly to be absolute”).

182. To be specific, we implemented an ordinary least squares regression model. The fact that we are analyzing time-series cross-sectional data called for a number of methodological refinements.

Regression analysis is then used to test whether various political, economic, and legal factors are statistically significant predictors of the underperformance scores. The political and economic factors are: (1) the country's level of democracy;¹⁸³ (2) whether the country is experiencing civil war;¹⁸⁴ (3) whether the country is engaged in an interstate war;¹⁸⁵ (4) the degree to which the country is ethnically divided;¹⁸⁶ (5) the natural log of the country's

First, the model is estimated with robust standard errors that are both corrected for problems of heteroscedasticity that are common to panel data, and clustered at the country level to allow for serial correlation over time. Second, to address the serial correlation of standard errors that tends to characterize time-series data, the model includes, as an additional predictor variable, a lagged version of the dependent variable—namely, the underperformance score from the preceding year. See Nathaniel Beck & Jonathan N. Katz, *Nuisance vs. Substance: Specifying and Estimating Time-Series-Cross-Section Models*, 6 POL. ANALYSIS 1, 8 (1996) (arguing that inclusion in the model of a lagged version of the dependent variable is the best way to deal with serial correlation in time-series data). We also performed Maddala and Wu panel unit root tests (as implemented in Stata) as a diagnostic test for the problem of data non-stationarity, which can cause variables to appear to be statistically significant predictors—simply because they are correlated with the passage of time. The results of this test suggest that there is no problem of data non-stationarity with either the overall underperformance index or the underperformance indexes for civil and political freedoms and personal integrity rights. The findings for socioeconomic and group rights, however, may reflect the non-stationary nature of the data. In particular, because the socioeconomic and group rights data varies relatively little from year to year, the lagged dependent variable explains most of the variation and the other variables are not statistically significant. Estimation of a first-difference model that is not susceptible to issues of data stationarity, however, still fails to uncover any statistically significant predictor variables. We also re-estimated the same four models with country fixed effects while excluding the lagged dependent variable. The results of this version of the model are not reported in Table 4 but are largely similar to those obtained from the ordinary least squares model.

The regression encompassing all three categories of rights had a total of 2,840 observations and an r-squared of 0.84. The regression focusing on personal integrity rights had a total of 2,649 observations and an r-squared of 0.69. The regression focusing on civil and political freedoms had a total of 2,830 observations and an r-squared of 0.81. The regression focusing on socioeconomic and group rights had a total of 2,497 observations and an r-squared of 0.94.

183. Our measure of a country's level of democracy is the "polity2" variable from the Polity IV data set, which is widely used by political scientists. This variable ranges from +10 (strongly democratic) to -10 (strongly autocratic). See MONTY G. MARSHALL & KEITH JAGGERS, POLITY IV PROJECT: POLITICAL REGIME CHARACTERISTICS AND TRANSITIONS, 1800–2006, DATASET USER'S MANUAL (2007), available at http://home.bi.no/a0110709/PolityIV_manual.pdf.

184. The presence of civil war is captured by a dummy variable that takes a value of 1 if civil war affects a country in a given year and 0 otherwise. This variable was constructed from Kristian Skrede Gleditsch's Expanded War Data, version 1.52, <http://privatewww.essex.ac.uk/~ksg/expwar.html> (May 23, 2007).

185. Like the civil war variable, the presence of interstate war is captured by a dummy variable that takes a value of 1 if at any time during a year the country is involved in an interstate war and 0 otherwise. This variable was constructed from Professor Gleditsch's Expanded War Data. *Id.*

186. The measure of ethnic fractionalization used here captures the probability that two randomly selected people from a given country will belong to the same ethnic group. Because it is a probability, this measure necessarily ranges from 0 (never belonging to the same group) to 1 (always belonging to the same group). It is taken from Alberto Alesina et al., *Fractionalization*, 8 J. ECON. GROWTH 155 (2003). We also tested alternative specifications of our model in which we replaced the ethnic fractionalization measure with similar measures of linguistic and religious fractionalization, respectively. These measures were also taken from Alesina et al. *See id.*

population; (6) the country's level of economic wealth, as measured by its GDP per capita;¹⁸⁷ and (7) the geographic region to which the country belongs.¹⁸⁸

The legal factors that we test are: (8) whether the country's constitution provides for the enforcement of constitutional rights through judicial review;¹⁸⁹ (9) the age of the constitution, measured by the number of years since it was last revised or adopted;¹⁹⁰ (10) the extent to which the rights-related content of the constitution possesses a statist or libertarian ideological character;¹⁹¹ (11) the comprehensiveness of the constitution, meaning the extent to which it contains only generic rights or also encompasses more esoteric provisions;¹⁹² (12) whether the country has ratified an international human rights treaty that covers the type of rights in question;¹⁹³ and (13) whether the country is a common law jurisdiction.¹⁹⁴

187. Our measure of GDP per capita comes from WORLD BANK, *supra* note 95. We use the logged value of each country's GDP per capita.

188. All four models include dummy variables for seven different geographical regions: (1) Western Europe and North America (which served as the reference category); (2) South Asia; (3) East Asia, the Pacific and Oceania; (4) Central and Eastern Europe and Central Asia; (5) Sub-Saharan Africa; (6) North Africa and the Middle East; and (7) Latin America and the Caribbean. These classifications were borrowed from Collier & Golder, *supra* note 128.

189. This indicator is based on our own coding of constitutional texts.

190. By measuring constitutional age as the number of years since a constitution was last amended in any way (or, in the case of constitutions that have never been amended, the number of years since initial adoption), we sought to avoid the difficulties involved in attempting to distinguish between amendments that effectively rewrite a constitution and amendments that are relatively insubstantial. Any effort to rely upon a sharp formalistic distinction between the adoption of a new constitution and the amendment of an existing constitution is equally problematic. Under such an approach, it becomes possible to misclassify both cases in which a new constitution is adopted via what is technically merely an amendment to the existing constitution, and cases in which a new constitution technically supersedes a previous constitution but is largely similar to the previous constitution. See ELKINS ET AL., *supra* note 21, at 55–59 (discussing the difficulties involved in drawing such distinctions).

191. See Law & Versteeg, *supra* note 22, at 1221–27 (describing the constitutional ideology scores); *id.* at 1253–57 (setting forth the constitutional ideology scores for the year 2006). A higher numeric score denotes a constitution that is more statist in character.

192. We use a measure of constitutional comprehensiveness that we developed in previous research. See *id.* at 1213–20. Although this measure is highly correlated with the number of rights in a constitution, it also takes into account the extent to which a constitution contains only “generic rights” (those that are found in most constitutions) or also encompasses “esoteric rights” (those that are rarely encountered). A “comprehensive” constitution is one that contains the latter as well as the former. Our comprehensiveness scores also control for the ideological character of a constitution, in the sense that they are designed to be uncorrelated with our measure of constitutional ideology. *Id.*

193. The regression models concerning personal integrity rights and civil and political freedoms include a binary variable that captures whether a country has ratified the International Covenant on Civil and Political Rights. For the socioeconomic and group rights model, we include a variable that captures whether a country has ratified the International Covenant on Economic, Social and Cultural Rights, based on data from the Office of the High Commissioner on Human Rights.

194. We adopted the definition of “common law” countries used by La Porta et al., *supra* note 154, at 232. They identify the following as “common law” countries: Antigua and Barbuda, Australia, Bahamas, Bahrain, Bangladesh, Barbados, Belize, Botswana, Brunei, Canada, Cyprus, Dominica, Fiji, Gambia, Ghana, Grenada, Guyana, India, Ireland, Israel, Jamaica, Kenya, Kiribati, Lesotho, Liberia, Malawi, Malaysia, Maldives, Marshall Islands, the Federated States of Micronesia, Namibia, Nepal,

The results of all four regression models are summarized in Table 17. Variables marked with a single asterisk (*) are statistically significant predictors of constitutional underperformance at the $p = 0.05$ level, while those marked with a double asterisk (**) satisfy the very stringent $p = 0.01$ level. Variables that are both negative and statistically significant are associated with failure to uphold rights found in the constitution. Conversely, variables that are both positive and statistically significant are associated with greater observance of the rights in question. Excessive reliance should not be placed upon the results of the socioeconomic and group rights model in particular, however, because the underperformance scores in the area of socioeconomic and group rights rarely change from year to year.¹⁹⁵ It is inherently difficult to identify meaningful predictors of variation when there is very little variation to be predicted. Therefore, the fact that only geographic region proved statistically significant in the socioeconomic and group rights regression does not rule out the possibility that other variables such as wealth and democracy do in fact shape whether socioeconomic and group rights are respected.

Table 17: Which Variables Predict Constitutional Violation?

	<i>Overall</i>	<i>Personal Integrity Rights</i>	<i>Civil and Political Freedoms</i>	<i>Socioeconomic and Group Rights</i>
POLITICAL AND ECONOMIC FACTORS:				
<i>Democracy</i>	Positive**	Positive**	Positive**	Insignificant
<i>Civil war</i>	Negative**	Negative**	Insignificant	Insignificant
<i>Interstate war</i>	Insignificant	Insignificant	Insignificant	Insignificant
<i>Ethnic fractionalization</i>	Negative*	Insignificant	Insignificant	Insignificant
<i>Population size</i>	Negative**	Negative**	Negative**	Insignificant
<i>GDP per capita</i>	Positive**	Positive*	Insignificant	Insignificant
<i>Geographic region (using Western Europe & North America as the baseline for comparison):</i>				
– <i>Sub-Saharan Africa</i>				Worse**
– <i>Latin America & Caribbean</i>		Worse**		Worse*
– <i>North Africa & Middle East</i>	Worse*	Worse*	Worse**	
– <i>South Asia</i>		Worse*		Worse**
– <i>Central/Eastern Europe & Central Asia</i>			Worse*	
– <i>East Asia, Pacific & Oceania</i>				Worse*

New Zealand, Nigeria, Pakistan, Papua New Guinea, Samoa, Saudi Arabia, Sierra Leone, Singapore, Solomon Islands, Somalia, South Africa, Sri Lanka, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sudan, Swaziland, Tanzania, Thailand, Tonga, Trinidad and Tobago, Uganda, the United Arab Emirates, the United Kingdom, the United States, Vanuatu, Zambia, and Zimbabwe. *Id.* at 268–76.

195. Over the entirety of our data—spanning roughly two hundred countries over twenty-five years—there are only 525 occasions on which any country's underperformance score with respect to socioeconomic and group rights actually changed. By contrast, there are a total of 2,910 changes in the overall underperformance scores, 2,144 changes in the civil and political freedoms underperformance scores, and 1,896 changes in the personal integrity rights underperformance scores.

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	<i>Overall</i>	<i>Personal Integrity Rights</i>	<i>Civil and Political Freedoms</i>	<i>Socioeconomic and Group Rights</i>
LEGAL FACTORS:				
<i>Judicial review</i>	Insignificant	Insignificant	Insignificant	Insignificant
<i>Age of constitution</i>	Insignificant	Insignificant	Insignificant	Insignificant
<i>Statist constitutional ideology</i>	Insignificant	Insignificant	Negative*	Insignificant
<i>Comprehensiveness of constitution</i>	Negative**	Negative**	Insignificant	Insignificant
<i>Ratification of ICCPR</i>	Insignificant	Insignificant	Insignificant	N/A
<i>Ratification of ICESCR</i>	Insignificant	N/A	N/A	Insignificant
<i>Common law</i>	Insignificant	Insignificant	Insignificant	Insignificant

Geographic region was the only variable that proved statistically significant across all four regression models, including the arguably unreliable socioeconomic and group rights model. North Africa and the Middle East fare poorly in most categories relative to North America and Western Europe, which together constitute the baseline against which other regions were compared. Moreover, although Latin America has made significant progress in absolute terms since the early 1990s,¹⁹⁶ the combined North America and Western Europe region still outperforms the combined Latin America and Caribbean region when the entire period from 1981 to 2010 is taken into account.

With respect to the other three regression models, most of the political and economic variables produced the expected results. More democratic countries are more likely to uphold the rights that they promise, while more autocratic countries are less likely to do so. These findings lend credence to the notion that authoritarian regimes pay lip service to various rights for the purpose of appeasing the international community, without any intention of actually honoring those rights.¹⁹⁷ Poorer countries perform worse at upholding personal integrity rights, while highly populated countries perform worse at upholding personal integrity rights and civil and political freedoms. However, as noted previously, the latter result may be an artifact of the manner in which the data is coded: specifically, the measures of de facto respect for personal integrity rights and civil and political freedoms that underlie the performance scores capture the absolute number of rights violations in a country rather than the per capita rate.¹⁹⁸

Civil war and ethnic fractionalization are also correlated with constitutional noncompliance. Consistent with previous research, civil war is associated with increased violation of both constitutional rights as a whole and

196. See *supra* Figures 8–11 (illustrating in map form that the tendency of Latin American countries both to promise and to uphold a relatively high number of rights grew stronger between 1981 and 2010).

197. See *supra* notes 149–50 and accompanying text.

198. See *supra* notes 90 & 160 and accompanying text.

personal integrity rights in particular.¹⁹⁹ Higher levels of ethnic fractionalization are correlated with greater violation of constitutional rights as a whole, but not with failure in any specific subcategory of rights.²⁰⁰ The only economic or political variable that lacked statistical significance as a predictor of constitutional compliance was interstate war, but this may simply reflect the inherent limitations of the data. Because interstate war has been a relatively rare occurrence since World War II, the data provide little basis upon which to determine whether interstate war is truly correlated with constitutional noncompliance.

By contrast, only two of the five legal variables proved to be statistically significant predictors of constitutional performance. As expected, countries that promise a wide variety of rights are less successful at honoring their constitutional obligations than those that promise relatively few rights. However, the impact of overambition is evident only in the area of personal integrity rights. Also consistent with expectations, countries with “libertarian” constitutions that emphasize the judicial enforcement of restrictions on government power perform better at upholding civil and political freedoms than countries with “statist” constitutions that confer broad powers and responsibilities upon the government.²⁰¹ The fact that constitutional statism predicts poorer performance only in the area of civil and political freedoms, and not in the area of socioeconomic and group rights, is unsurprising. Negative rights that restrict the state, such as traditional civil liberties, are harder to reconcile with an ideological commitment to statism than positive socioeconomic rights that expand the role of the state.²⁰²

Perhaps the most thought-provoking results, however, concern the variables that *fail* to predict constitutional compliance. Apart from interstate war, the variables that proved insignificant are all characteristics of a country’s formal legal system: Ratification of human rights treaties, the age of the constitution, the common law tradition, and the existence of judicial review all lacked statistical significance across all of the regression models.²⁰³ Together,

199. See *supra* note 155 (discussing the empirical literature on civil war and human rights violations).

200. See *supra* notes 156–57 (discussing the empirical literature on ethnic fractionalization and human rights violations).

201. See *supra* text accompanying notes 169–72 (suggesting that “the statist model of constitution-writing may be especially tempting for governments that are more interested in rationalizing and justifying extensive state power than in imposing genuine limitations upon themselves”). The negative impact of constitutional statism on constitutional performance in the area of civil and political freedoms is statistically significant at the less stringent $p = 0.10$ level.

202. See *supra* text accompanying note 172 (hypothesizing that “countries with statist constitutions may exhibit less respect for negative rights that restrict the state, such as traditional civil liberties, than for positive socioeconomic rights that expand the domain of the state”).

203. We performed a number of checks to confirm that the same results are obtained even if the model is specified and estimated in other ways. First, we substituted measures of religious fractionalization and linguistic fractionalization for ethnic fractionalization. See Alesina et al., *supra* note 186, at 167–71. These substitutions did not alter the results. Second, we estimated a version of the

these results pose a number of challenges to conventional wisdom and paint a bleak picture of the ability of formal legal rules and institutions to foster actual respect for constitutional rights. The absence of a positive relationship between judicial review and constitutional compliance highlights the need for critical reexamination of widely held assumptions about the efficacy and necessity of judicial review.²⁰⁴ The failure to find a relationship between ratification of human rights treaties and increased respect for rights, meanwhile, echoes the pessimistic conclusions of other scholars regarding the practical impact of such treaties.²⁰⁵ Our finding that constitutional performance is uncorrelated with constitutional age also calls into question the notion that constitutions gain traction with the passage of time and command greater compliance once they have time to take root.²⁰⁶

D. The Impact of Limitation Clauses

To investigate the relationship between limitation clauses and respect for rights, we collected data on the limitation clauses found in all national

model that included income inequality as an additional predictor variable. The measure of income inequality that we employed is known as the GINI coefficient and ranges from 0 to 1, where 0 indicates perfect equality and 1 indicates perfect inequality, as in the case of a society in which all wealth is held by one person. The GINI data is taken from the United Nations University World Income Inequality Database (WIDER). *World Income Inequality Database V2.0 May 2008*, UNITED NATIONS UNIVERSITY, http://www.wider.unu.edu/research/Database/en_GB/database/ (last visited May 5, 2013); see also MICHAEL P. TODARO & STEPHEN C. SMITH, *ECONOMIC DEVELOPMENT* 195–202 (9th ed. 2006) (explaining the GINI index). Because the GINI data are available only at irregular intervals, we interpolate the missing data as a linear function of time. The GINI coefficient proved not to be a statistically significant predictor of the gap between the de jure and de facto rights scores in any of the three categories of rights. Third, we estimated a version of the model that incorporated country-fixed effects and omitted the lagged dependent variable. The results were highly similar to those produced by the original model. We did not use the fixed effects specification as our baseline model because the common law and ethnic fractionalization variables do not change over time and must therefore be dropped from any model that includes fixed effects. Finally, we estimated the model with a recalculated version of the dependent variable. The underperformance rankings reported in Part IV.A omit those countries that include fewer than seven rights in their constitutions. See *supra* note 111. By contrast, the underperformance scores used as the dependent variable in the regression models include all countries, without regard to any minimum number of rights. Estimation of the model using a version of the underperformance scores truncated to exclude those countries that promise fewer than seven rights, however, merely yields results identical to those reported in Table 11.

204. Political scientists have for years mounted empirical challenges to such assumptions. See, e.g., GERALD N. ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* 2–3 (1991) (arguing that structural constraints limit the judiciary’s ability to “produce political and social change”); Robert A. Dahl, *Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker*, 6 J. PUB. L. 279, 285 (1957) (arguing that judicial review is unlikely to frustrate the will of the majority “for more than a few years at most” because the periodic replacement of judges ensures that “the policy views dominant on the Court are never for long out of line with the policy views dominant among the lawmaking majorities”).

205. See *supra* note 153 and accompanying text (citing earlier empirical studies that question whether human rights treaty ratification leads to improved human rights practices).

206. See ELKINS ET AL., *supra* note 21, at 29–31 (finding empirically that actual respect for civil liberties tends to increase with the age of a constitution).

constitutions as of 2006. Such clauses vary in both breadth and severity. In terms of breadth, a limitation clause may apply in blanket fashion to every right found in a constitution,²⁰⁷ or it may pertain only to a specific right.²⁰⁸ We therefore gathered information on whether each constitution contains a blanket limitation clause that covers multiple rights, limitation clauses that are specific to particular rights, or some combination of both broad and specific clauses.

In terms of severity, some limitation clauses have a less severe impact on rights because they enumerate in detail the circumstances under which restrictions are permissible.²⁰⁹ Others have a greater impact on rights, in the sense that they merely set forth general principles with which limits are supposed to comply.²¹⁰ Still others have a severe impact because they contain no substantive restriction at all on the government's ability to limit rights, as in the form of clauses that require simply that any limits be imposed "by law."²¹¹ Accordingly, our data captures whether the limitation clauses in a given constitution tend to (1) list relatively detailed criteria that must be satisfied before a right can be limited; (2) set forth general principles with which limitations must comply; or (3) impose no substantive restriction on the government's ability to limit the right and require only that any limits be duly enacted.

207. See, e.g., Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, *being* Schedule B to the Canada Act, 1982, c.11 (U.K.), § 1 ("The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."); S. AFR. CONST. 1996 § 36 ("The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors . . .").

208. See, e.g., Constitución Política de los Estados Unidos Mexicanos [C.P.], art. 27, *Diario Oficial de la Federación* [DO], 5 de Febrero de 1917 (Mex.) ("The Nation shall have at all times the right to impose on private property such limitations as the public interest may demand, as well as the right to regulate the development of natural resources, which are susceptible of appropriation, in order to conserve them and equitably to distribute the public wealth.").

209. See, e.g., CONSTITUȚIA REPUBLICII MOLDOVA [CONSTITUTION] July 29, 1994, art. 54 ("The exercise of certain rights and freedoms may be restricted only under the law and only as required in cases like: the defense of national security, of public order, health or morals, of citizens' rights and freedoms, the carrying of the investigations in criminal cases, preventing the consequences of a natural calamity or of a technological disaster.").

210. See, e.g., CONSTITUTION OF ANTIGUA AND BARBUDA Jul. 31, 1981, art. 3 (providing that rights may be limited to ensure that their exercise "does not prejudice the rights and freedoms of others or the public interest"); Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, *being* Schedule B to the Canada Act, 1982, c.11 (U.K.), § 1 (providing that the rights in the Charter are subject to "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society").

211. See, e.g., TRANSITIONAL CONSTITUTION OF THE REPUBLIC OF SOUTH SUDAN July 9, 2011, art. 22 ("The privacy of all persons shall be inviolable; no person shall be subjected to interference with his or her private life, family, home or correspondence, save in accordance with the law."); Organization of African Unity [OAU], African [Banjul] Charter on Human and Peoples' Rights, art. 6, 21 I.L.M. 58 (1982) ("Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law").

It turns out that limitation clauses are not merely common, but universal. As Table 18 shows, every constitution contains at least one right-specific limitation clause, and 43.3% further include a blanket clause of some type. The severity of these clauses, however, varies widely. Only 6.9% of the blanket clauses set forth detailed substantive criteria that rights limitations must satisfy. The vast majority of the blanket clauses, and nearly half of the right-specific clauses, merely require rights limitations to comply with broad principles or do not purport to impose any substantive restrictions at all upon how rights may be limited. In other words, the typical limitation clause places relatively little restriction upon how rights may be restricted.

Table 18: The Prevalence of Limitation Clauses

<i>Type of limitation clause</i>	<i>Number and percentage of constitutions that contain such a clause</i>
Blanket limitation clause applicable to multiple rights	81/187 (43.3%)
- <i>Limits must satisfy detailed criteria</i>	13/187 (6.9%)
- <i>Limits must satisfy broad principles</i>	48/187 (25.7%)
- <i>Limits must be duly enacted</i>	20/187 (10.7%)
Right-specific limitation clause	187/187 (100%)
- <i>Limits must satisfy detailed criteria</i>	94/187 (50.3%)
- <i>Limits must satisfy broad principles</i>	57/187 (30.5%)
- <i>Limits must be duly enacted</i>	32/187 (17.2%)

To evaluate whether the presence of a limitation clause is correlated with reduced respect for rights, we estimated several versions of the regression model used in Part VI.C augmented with additional variables to test the impact of every possible type of limitation clause.²¹² Neither the inclusion of a blanket limitation clause nor the inclusion of a particular type of blanket limitation clause (light, moderate, or severe) proved to be a statistically significant predictor of constitutional underperformance, in any of the three categories of rights. Nor did we detect any meaningful difference in respect for rights among

212. In one version of the model, we tested whether countries with *blanket limitation clauses* exhibit less respect for rights than countries that lack such clauses. In another version, we instead tested whether *blanket limitation clauses of different levels of severity* (namely, blanket clauses that require rights restrictions to satisfy detailed criteria, clauses that merely require rights restrictions to satisfy general principles, and severe clauses containing no substantive limit on the government's ability to restrict rights) are correlated with different levels of respect for rights. We then estimated yet another version of the model to test for performance differences among countries with *right-specific limitation clauses of varying severity*. Each of these models was restricted to 2006 because that is the only year for which we have data on limitation clauses. Because these models concern only a single year of data, we omitted the lagged dependent variable that was included in the full model described in Part VI.C. Finally, as an alternative approach, we imputed the 2006 limitation clause data to all years prior to 2006 and estimated a time-series model that retained the lagged dependent variable. None of these alternative model specifications yielded meaningfully different results.

countries with different types of right-specific limitation clauses.²¹³ In sum, we find no evidence that the mere presence of an express limitation clause, or of any particular type of limitation clause, has any impact upon the extent to which countries actually respect the rights found in their constitutions.

CONCLUSION

At the heart of constitutional law as an academic field lies a profound contradiction. On the one hand, constitutional scholars and lawyers are heavily invested in the notion that formal constitutions are important as a practical matter. It is difficult to rationalize the inexhaustible production of scholarship on constitutional interpretation if one takes the position that constitutions are inconsequential. The burgeoning literature on constitutional drafting is a testament to the importance attached to the manner in which constitutions are written.²¹⁴ Few constitutional scholars would spurn the opportunity to participate in the drafting of an actual constitution on the ground that their time would be better spent doing something more useful. On the other hand, there is a long tradition of skepticism about the efficacy of so-called parchment barriers.²¹⁵ “Every banana republic,” as Justice Scalia has wearily observed, “has a bill of rights.”²¹⁶ Few constitutional scholars would be foolish enough to assume explicitly that the adoption of a bill of rights ensures respect for rights in practice.

This contradictory posture—constitutions matter profoundly, yet it is naïve to assume that constitutions matter—is the result of nearly complete ignorance about the extent to which constitutions do in fact make a practical difference and the conditions under which they matter. It is difficult to imagine a question that ought to weigh more heavily upon constitutional scholars. Like most empirical questions about constitutionalism, however, it has received little attention.²¹⁷ Some may question whether it is even possible to answer such

213. Because every country possesses at least some kind of right-specific limitation clause, there is no data that can be used to compare the performance of countries with no right-specific limitation clauses of any kind with that of countries that possess such clauses.

214. See, e.g., *Symposium: What, If Anything, Do We Know About Constitutional Design?*, 87 TEX. L. REV. 1265 (2009); *Symposium: Constitution-Drafting in Post-Conflict States*, 49 WM. & MARY L. REV. 1043 (2008).

215. See *supra* notes 2–26 and accompanying text.

216. Scalia, *supra* note 72, at 6.

217. See Whytock, *supra* note 147, at 629–30 (observing that “[i]nteresting and important causal questions permeate the field of comparative constitutional law,” yet scholarship in this field has thus far “shed little light” on these questions); *supra* note 40 and accompanying text (observing that quantitative empirical research on constitutions remains in its infancy). For a rare example of scholarship that directly addresses the plausibility of empirical claims about the impact of constitutions and constitutionalism, see Ran Hirschl, *The “Design Sciences” and Constitutional “Success,”* 87 TEX. L. REV. 1339 (2009). Professor Hirschl tentatively concludes, on the basis of a thumbnail assessment of the political, economic, and constitutional characteristics of the world’s most democratic and developed countries, that constitutional variation and constitutional design play little, if any, role in advancing such goals as human development and democracy. See *id.* at 1359–60 (concluding that the

questions on the basis of quantitative empirical methods.²¹⁸ Even the most difficult and profound causal questions can be investigated empirically, however, if scholars contribute incrementally and collectively to a research agenda wherein each wave of scholarship simultaneously improves upon what came before and lays the foundation for what must come next.

These are the early days of empirical constitutional studies, and much remains to be done. Yet significant progress has already been made toward addressing many of the factual questions that loom largest over both the academic study and practical enterprise of constitutionalism. This Article has taken the necessary step of identifying the countries with the worst compliance records, the rights that are most likely to be violated, and various factors that predict constitutional noncompliance. Some of our findings tend to confirm widely held suspicions about the propensity of authoritarian regimes to engage in sham constitutionalism, the affinity of wealthy democracies for human rights, and the inherent difficulty of satisfying costly socioeconomic guarantees. Other findings underline the real-world inadequacy of the usual legal mechanisms for guaranteeing human rights—namely, judicial review, human rights treaties, and constitutional entrenchment. It remains to be seen whether and by what means the gap between parchment and practice can be narrowed. But the size of this gap, and the extent to which the ambitions of constitutionalism remain unrealized, should now be clearer than ever.

impact of constitutional variation on human development appears to be “[q]uite negligible”); *id.* at 1357 (concluding that a “long tradition of American-style written constitutionalism, active judicial review,” and “culturally engrained constitutional sanctity” are not “necessary precondition[s] for democracy”); *id.* at 1361 (observing that “there appears to be no simple correlation” between the formal constitutional protection of positive social rights and the “de facto protection of such rights”); *id.* at 1373–74 (questioning the extent to which the enterprise of constitutional design is capable of advancing human welfare).

218. See, e.g., Bruce Ackerman, *The Rise of World Constitutionalism*, 83 VA. L. REV. 771, 775 (1997) (asserting that “there can be no hope of rigorously quantitative answers” to causal questions about “the successful establishment of written constitutions,” and that “[t]here is no way out but an appeal to old-fashioned insight”).

APPENDIX I: DESCRIPTION OF THE DATA ON DE FACTO RESPECT FOR RIGHTS

1. *Disappearances*: Indicator of disappearances, defined as cases in which people have disappeared, political motivation appears likely, and the victims have not been found. “Knowledge of the whereabouts of the disappeared is, by definition, not public knowledge. However, while there is typically no way of knowing where victims are, it is typically known by whom they were taken and under what circumstances.”²¹⁹ In the original data, a score of 0 indicates that disappearances have occurred frequently in a given year; a score of 1 indicates that disappearances occasionally occurred; and a score of 2 indicates that disappearances did not occur in a given year.

2. *Torture*: Indicator of torture, defined as “the purposeful inflicting of extreme pain, whether mental or physical, by government officials or by private individuals at the instigation of government officials.”²²⁰ Torture “includes the use of physical and other force by police and prison guards that is cruel, inhuman, or degrading.”²²¹ This also includes “deaths in custody due to tangible negligence by government officials.”²²² In the original data, a score of 0 indicates that torture was practiced frequently in a given year; a score of 1 indicates that torture was practiced occasionally; and a score of 2 indicates that torture did not occur in a given year.

3. *Extrajudicial Killings*: Indicator of extrajudicial killings, defined as killings by government officials without due process of law. They include murders by private groups if instigated by government. These killings may result from the deliberate, illegal, and excessive use of lethal force by the police, security forces, or other agents of the state whether against criminal suspects, detainees, prisoners, or others.²²³

In the original data, a score of 0 indicates that extrajudicial killings were practiced frequently in a given year; a score of 1 indicates that extrajudicial killings were practiced occasionally; and a score of 2 indicates that such killings did not occur in a given year.

4. *Fair Trial Rights*: Fair trial index on a four-point scale, with a lower score indicating better practices. This variable was taken from data compiled by Professor Hathaway and was based on the sections in the US State Department’s Country Reports on Human Rights that addressed issues relating to fair trials.²²⁴ Ten elements were identified: “an independent and impartial judiciary, the right to counsel, the right to present a defense, a presumption of innocence, the right to an appeal, the right to an interpreter, protection from ex post facto laws, a public trial, the right to have charges presented, and

219. CINGRANELLI & RICHARDS, *supra* note 89, at 13–17.

220. *Id.* at 18.

221. *Id.*

222. *Id.* at 18–22.

223. *Id.* at 7–12.

224. Hathaway, *supra* note 94, at 1972–74.

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timeliness.”²²⁵ Each country was coded on all these elements for compliance, partial compliance, or noncompliance. After coding each element, individual results were “aggregated . . . to obtain a final code on a four-point scale, with a lower index indicating better practices.”²²⁶

5. *Death Penalty Abolition*: Indicator of whether the death penalty is abolished for all crimes, abolished for ordinary crimes only, or allowed for all crimes.²²⁷

6. *Assembly and Association*: Indicator of freedom of assembly and association.

It is an internationally recognized right of citizens to assemble freely and to associate with other persons in political parties, trade unions, cultural organizations, or other [special interest] groups. This variable evaluates the extent to which the freedoms of assembly and association are subject to actual governmental limitations or restrictions (as opposed to strictly legal protections).²²⁸

In the original data, a score of 0 indicates that citizens’ rights to freedom of assembly or association were severely restricted or denied completely to all citizens; a score of 1 indicates that these rights were limited for all citizens or severely restricted or denied for select groups; and a score of 2 indicates that these rights were virtually unrestricted and freely enjoyed by practically all citizens in a given year.

7. *Freedom of Domestic Movement*: Indicator of freedom of movement, which captures citizens’ freedom to travel within their own country. In the original data, a score of 0 indicates that domestic and foreign travel was severely restricted in a given year; a score of 1 indicates that domestic and foreign travel was somewhat restricted; and a score of 2 indicates that such travel was generally unrestricted.

8. *Freedom of Religion*: Indicator of freedom of religion, which captures the

extent to which the freedom of citizens to exercise and practice their religious beliefs is subject to actual government restrictions. . . . Citizens should be able to freely practice their religion and proselytize (attempt to convert) other citizens to their religion as long as such attempts are done in a non-coercive, peaceful manner.²²⁹

In the original data, a score of 0 indicates that the government restriction on religious practices was severe and widespread; a score of 1 indicates moderate restriction by the government; and a score of 2 indicates the absence of such restriction in a year.

225. *Id.* (footnotes omitted).

226. *Id.*

227. AMNESTY INT’L, *supra* note 93.

228. CINGRANELLI & RICHARDS, *supra* note 89, at 53–58.

229. *Id.* at 33–40.

9. *Free and Fair Elections*: Indicator of free and fair elections, which captures to what extent citizens enjoy freedom of political choice and “the legal right and ability in practice to change the laws and officials that govern them . . . through periodic, free, and fair elections.”²³⁰ This right is sometimes known as the right to self-determination. In the original data, a score of 0 indicates that the right to self-determination through free and fair elections did not exist in law or practice during the year in question. A score of 1 indicates that while citizens had the legal right to self-determination, there were some limitations to the fulfillment of this right in practice. Therefore, in states receiving a 1, political participation was only moderately free and open. A score of 2 indicates that political participation was very free and open during the year in question and citizens had the right to self-determination through free and fair elections in both law and practice.

10. *Freedom of Speech*: Indicator of freedom of speech, which captures the “extent to which freedoms of speech and press are affected by government censorship, including ownership of media outlets. Censorship is any form of restriction that is placed on freedom of the press, speech or expression. Expression may also be in the form of art or music.”²³¹ In the original data, a score of 0 indicates that government censorship of the media was complete; a score of 1 indicates that there was some government censorship of the media; and a score of 2 indicates that there was no government censorship of the media in a given year.

11. *Life Expectancy at Birth*: Indicator of life expectancy at birth (total years), taken from World Development Indicators.²³²

12. *Literacy Rates*: Indicator of literates as a percentage of adult population.²³³

13. *Women’s Social Rights*: Indicator of women’s social rights, including a number of internationally recognized rights . . . : [t]he right to equal inheritance[;] [t]he right to enter into marriage on a basis of equality with men[;] [t]he right to travel abroad[;] [t]he right to obtain a passport[;] [t]he right to confer citizenship to children or a husband[;] [t]he right to initiate a divorce[;] [t]he right to own, acquire, manage, and retain property brought into marriage[;] [t]he right to participate in social, cultural, and community activities[;] [t]he right to an education[;] [t]he freedom to choose a residence/domicile[;] freedom from female genital mutilation (FGM) of children and of adults without their consent[;] [and f]reedom from forced sterilization.²³⁴

230. *Id.* at 59–64.

231. *Id.* at 29–32.

232. WORLD BANK, *supra* note 95.

233. T. VANHANEN, DEMOCRATIZATION AND POWER RESOURCES 1850-2000 (dataset ver. 1.0, 2003).

234. CINGRANELLI & RICHARDS, *supra* note 89, at 85–94.

In the original data, a score of 0 indicates that there were no social rights for women in law and that systematic discrimination based on sex may have been built into law. A score of 1 indicates that women had some social rights under law, but these rights were not effectively enforced and the government allowed a moderate level of discrimination against women. A score of 2 indicates that women had some social rights under law, and the government effectively enforced these rights in practice while still allowing a low level of discrimination against women in social matters. Finally, a score of 3 indicates that all or nearly all women's social rights were guaranteed by law and the government fully and vigorously enforced these laws in practice.

14. Women's Economic Rights: Indicator of women's economic rights, including

a number of internationally recognized rights . . . : [e]qual pay for equal work[.], [f]ree choice of profession or employment without the need to obtain a husband or male relative's consent[.], [t]he right to gainful employment without the need to obtain a husband or male relative's consent[.], [e]quality in hiring and promotion practices[.], [j]ob security (maternity leave, unemployment benefits, no arbitrary firing or layoffs, etc. . . [sic])[.], [n]on-discrimination by employers[.], [t]he right to be free from sexual harassment in the workplace[.], [t]he right to work at night[.], [t]he right to work in occupations classified as dangerous[.], [and t]he right to work in the military and the police force.²³⁵

In the original data, a score of 0 indicates that there were no economic rights for women in law and that systematic discrimination based on sex may have been built into law. A score of 1 indicates that women had some economic rights under law, but these rights were not effectively enforced. A score of 2 indicates that women had some economic rights under law, and the government effectively enforced these rights in practice while still allowing a low level of discrimination against women in economic matters. Finally, a score of 3 indicates that all or nearly all women's economic rights were guaranteed by law and the government fully and vigorously enforced these laws in practice.

15. Minority Rights: Political discrimination of the country's largest minority group. In the original data, a score of 0 indicates no discrimination. A score of 1 indicates neglect or remedial policies, meaning "[s]ubstantial under-representation in political office and/or participation due to historical neglect or restrictions. Explicit public policies are designed to protect or improve the group's political status."²³⁶ A score of 2 indicates neglect and no remedial policies, meaning "[s]ubstantial under-representation due to historical neglect

235. *Id.* at 77–84.

236. CTR. INT'L DEV. & CONFLICT MGMT., MINORITIES AT RISK PROJECT, MINORITIES AT RISK (MAR) CODEBOOK VERSION 2/2009, 11 (2007), available at http://www.cidcm.umd.edu/mar/data/mar_codebook_Feb09.pdf.

or restrictions,” but no “social practice of deliberate exclusion,” “formal exclusion,” or “evidence of protective or remedial public policies.”²³⁷ A score of 3 indicates social exclusion and neutral policy, meaning “[s]ubstantial underrepresentation due to prevailing social practice by dominant groups. Formal public policies toward the group are neutral or, if positive, inadequate to offset discriminatory social policies.”²³⁸ A score of 4 indicates exclusion and repressive policy, meaning “[p]ublic policies . . . [that] substantially restrict the group’s political participation by comparison with other groups.”²³⁹

237. *Id.*

238. *Id.*

239. *Id.*

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APPENDIX II: CONSTITUTIONAL UNDERPERFORMANCE SCORES (2010)

Key

Code = Three-letter country code used in Figure 1

GP = Gross number of rights promised in the constitutionNP = Net number of rights promised for which corresponding de facto performance data is availableFU = Number of rights in the constitution that were fully upheldPU = Number of rights in the constitution that were partially upheld²⁴⁰

PIR Score = Personal integrity rights score

CPF Score = Civil and political freedoms score

SEG Score = Socioeconomic and group rights score

Country	Code	Overall Score	GP	NP	FU	PU	PIR Score	PIR GP	PIR NP	PIR FU	PIR PU	CPF Score	CPF GP	CPF NP	CPF FU	CPF PU	SER Score	SEG GP	SEG NP	SEG FU	SEG PU
Afghanistan	AFG	0.273	11	11	2	2	0.250	4	4	1	0	0.400	5	5	1	2	0.000	2	2	0	0
Albania	ALB	0.750	12	12	6	6	0.750	4	4	2	2	0.800	5	5	3	2	0.667	3	3	1	2
Algeria	DZA	0.500	11	11	3	5	0.625	4	4	1	3	0.300	5	5	1	1	0.750	2	2	1	1
Angola	AGO	0.423	13	13	3	5	0.600	5	5	2	2	0.400	5	5	1	2	0.167	3	3	0	1
Antigua and Barbuda	ATG					0.625	4	4	2	1	0.900	5	5	4	1						
Argentina	ARG	0.750	10	10	6	3	0.500	3	3	1	1	0.900	5	5	4	1	0.750	2	2	1	1
Armenia	ARM	0.538	14	13	6	2	0.600	5	5	2	2	0.400	5	5	2	0	0.667	4	3	2	0
Australia	AUS	1.000	2	2	2	0						1.000	2	2	2	0					
Austria	AUT	1.000	9	8	8	0	1.000	4	4	4	0	1.000	4	4	4	0					
Azerbaijan	AZE	0.462	13	13	4	4	0.500	4	4	1	2	0.300	5	5	1	1	0.625	4	4	2	1
Bahamas	BHS	0.750	8	8	5	2	0.500	4	4	1	2	1.000	4	4	4	0					
Bahrain	BHR	0.500	11	11	5	1	0.500	4	4	2	0	0.400	5	5	2	0	0.750	2	2	1	1
Bangladesh	BGD	0.400	10	10	2	4	0.250	4	4	0	2	0.625	4	4	2	1	0.250	2	2	0	1
Barbados	BRB	0.813	8	8	6	1	0.625	4	4	2	1	1.000	4	4	4	0					
Belarus	BLR	0.393	14	14	3	5	0.375	4	4	0	3	0.200	5	5	1	0	0.600	5	5	2	2
Belgium	BEL	1.000	9	8	8	0	1.000	3	3	3	0	1.000	3	3	3	0	1.000	3	2	2	0
Belize	BLZ	0.800	11	10	7	2	0.500	4	4	1	2	1.000	4	4	4	0	1.000	3	2	2	0
Benin	BEN	0.409	12	11	1	7	0.375	4	4	0	3	0.500	5	5	1	3	0.250	3	2	0	1
Bhutan	BTN	0.600	10	10	4	4	0.833	3	3	2	1	0.500	5	5	2	1	0.500	2	2	0	2
Bolivia	BOL	0.714	14	14	6	8	0.700	5	5	2	3	0.900	5	5	4	1	0.500	4	4	0	4

240. For purposes of computing a country's score, a partially upheld right is given half the weight of a fully upheld right: fully upheld rights are worth 1.0, while partially upheld rights are worth 0.5. See *supra* note 111.

Bosnia and Herzegovina	BIH	0.667	7	6	3	2	0.500	2	2	1	0	0.750	4	4	2	2					
Botswana	BWA	0.889	9	9	7	2	0.875	4	4	3	1	0.900	5	5	4	1					
Brazil	BRA	0.615	13	13	6	4	0.375	4	4	1	1	0.900	5	5	4	1	0.500	4	4	1	2
Brunei	BRN	0.000	1	1	0	0						0.000	1	1	0	0					
Bulgaria	BGR	0.750	12	12	6	6	0.625	4	4	1	3	0.800	5	5	3	2	0.833	3	3	2	1
Burkina Faso	BFA	0.583	12	12	5	4	0.500	4	4	1	2	0.900	5	5	4	1	0.167	3	3	0	1
Burundi	BDI	0.417	12	12	2	6	0.375	4	4	0	3	0.600	5	5	2	2	0.167	3	3	0	1
Cambodia	KHM	0.538	13	13	5	4	0.625	4	4	2	1	0.700	5	5	3	1	0.250	4	4	0	2
Cameroon	CMR	0.300	10	10	2	2	0.500	3	3	1	1	0.200	5	5	1	0	0.250	2	2	0	1
Canada	CAN	0.900	10	10	8	2	0.750	4	4	2	2	1.000	5	5	5	0	1.000	1	1	1	0
Cape Verde	CPV	0.692	13	13	8	2	0.700	5	5	3	1	1.000	4	4	4	0	0.375	4	4	1	1
Central African Rep.	CAF	0.333	10	9	1	4	0.250	2	2	0	1	0.400	5	5	1	2	0.250	3	2	0	1
Chad	TCD	0.389	9	9	3	1	0.500	2	2	1	0	0.500	5	5	2	1	0.000	2	2	0	0
Chile	CHL	0.955	11	11	10	1	0.875	4	4	3	1	1.000	5	5	5	0	1.000	2	2	2	0
China	CHN	0.222	9	9	1	2	0.000	1	1	0	0	0.000	4	4	0	0	0.500	4	4	1	2
Colombia	COL	0.607	14	14	5	7	0.400	5	5	1	2	0.800	5	5	3	2	0.625	4	4	1	3
Comoros	COM	0.750	7	6	3	3	1.000	2	2	2	0	0.667	3	3	1	2	0.500	2	1	0	1
Congo, Dem. Rep.	COD	0.269	13	13	1	5	0.250	4	4	0	2	0.200	5	5	0	2	0.375	4	4	1	1
Congo, Rep.	COG	0.750	8	8	4	4	0.750	2	2	1	1	0.875	4	4	3	1	0.500	2	2	0	2
Costa Rica	CRI	0.900	10	10	8	2	0.833	3	3	2	1	1.000	5	5	5	0	0.750	2	2	1	1
Cote d'Ivoire	CIV	0.350	10	10	2	3	0.500	3	3	1	1	0.250	4	4	1	0	0.333	3	3	0	2
Croatia	HRV	0.731	13	13	7	5	0.800	5	5	3	2	0.700	5	5	2	3	0.667	3	3	2	0
Cuba	CUB	0.500	10	10	5	0	0.667	3	3	2	0	0.000	4	4	0	0	1.000	3	3	3	0
Cyprus	CYP	0.923	13	13	11	2	0.900	5	5	4	1	1.000	5	5	5	0	0.833	3	3	2	1
Czech Republic	CZE	0.962	13	13	12	1	1.000	5	5	5	0	0.900	5	5	4	1	1.000	3	3	3	0
Denmark	DNK	1.000	7	7	7	0	1.000	2	2	2	0	1.000	4	4	4	0	1.000	1	1	1	0
Djibouti	DJI	0.667	9	9	5	2	0.750	4	4	2	2	0.600	5	5	3	0					
Dominica	DMA	0.875	8	8	7	0	0.750	4	4	3	0	1.000	4	4	4	0					
Dominican Republic	DOM	0.682	11	11	6	3	0.500	4	4	2	0	0.800	5	5	3	2	0.750	2	2	1	1
Ecuador	ECU	0.577	13	13	5	5	0.500	5	5	2	1	0.700	5	5	2	3	0.500	3	3	1	1
Egypt	EGY	0.417	12	12	3	4	0.500	4	4	1	2	0.300	5	5	1	1	0.500	3	3	1	1
El Salvador	SLV	0.667	12	12	7	2	0.375	4	4	1	1	1.000	5	5	5	0	0.500	3	3	1	1
Equatorial Guinea	GNQ	0.583	6	6	2	3	0.500	2	2	0	2	0.667	3	3	2	0	0.500	1	1	0	1
Eritrea	ERI	0.100	11	10	0	2	0.125	4	4	0	1	0.000	5	5	0	0	0.500	2	1	0	1
Estonia	EST	0.923	13	13	11	2	0.875	4	4	3	1	1.000	5	5	5	0	0.875	4	4	3	1
Ethiopia	ETH	0.269	14	13	1	5	0.375	4	4	0	3	0.200	5	5	1	0	0.250	5	4	0	2

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Fiji	FJI	0.600	11	10	5	2	0.875	4	4	3	1	0.400	5	5	2	0	0.500	2	1	0	1
Finland	FIN	1.000	13	13	13	0	1.000	5	5	5	0	1.000	5	5	5	0	1.000	3	3	3	0
France	FRA	0.917	6	6	5	1	1.000	1	1	1	0	0.833	3	3	2	1	1.000	2	2	2	0
Gabon	GAB	0.550	10	10	3	5	0.750	2	2	1	1	0.600	5	5	2	2	0.333	3	3	0	2
Gambia	GMB	0.583	12	12	4	6	0.750	4	4	2	2	0.600	5	5	2	2	0.333	3	3	0	2
Georgia	GEO	0.583	12	12	4	6	0.375	4	4	0	3	0.700	5	5	2	3	0.667	3	3	2	0
Germany	DEU	0.889	9	9	7	2	1.000	4	4	4	0	0.800	5	5	3	2					
Ghana	GHA	0.583	12	12	4	6	0.500	4	4	1	2	0.800	5	5	3	2	0.333	3	3	0	2
Greece	GRC	0.792	12	12	8	3	0.625	4	4	2	1	0.900	5	5	4	1	0.833	3	3	2	1
Grenada	GRD	0.833	9	9	7	1	0.625	4	4	2	1	1.000	5	5	5	0					
Guatemala	GTM	0.607	14	14	6	5	0.625	4	4	1	3	1.000	5	5	5	0	0.200	5	5	0	2
Guinea	GIN	0.450	10	10	2	5	0.500	4	4	1	2	0.400	5	5	1	2	0.500	1	1	0	1
Guinea-Bissau	GNB	0.563	8	8	4	1	0.833	3	3	2	1	0.667	3	3	2	0	0.000	2	2	0	0
Guyana	GUY	0.636	11	11	5	4	0.625	4	4	1	3	0.750	4	4	3	0	0.500	3	3	1	1
Haiti	HTI	0.650	10	10	4	5	0.750	4	4	2	2	0.625	4	4	2	1	0.500	2	2	0	2
Honduras	HND	0.577	13	13	5	5	0.400	5	5	1	2	0.800	5	5	3	2	0.500	3	3	1	1
Hungary	HUN	0.833	12	12	9	2	0.750	4	4	3	0	0.900	5	5	4	1	0.833	3	3	2	1
Iceland	ISL	1.000	11	11	11	0	1.000	5	5	5	0	1.000	5	5	5	0	1.000	1	1	1	0
India	IND	0.318	11	11	1	5	0.000	2	2	0	0	0.500	5	5	1	3	0.250	4	4	0	2
Indonesia	IDN	0.375	8	8	1	4	0.000	1	1	0	0	0.500	4	4	1	2	0.333	3	3	0	2
Iran	IRN	0.364	11	11	3	2	0.125	4	4	0	1	0.250	4	4	1	0	0.833	3	3	2	1
Iraq	IRQ	0.409	11	11	1	7	0.375	4	4	0	3	0.400	5	5	1	2	0.500	2	2	0	2
Ireland	IRL	1.000	9	9	9	0	1.000	3	3	3	0	1.000	4	4	4	0	1.000	2	2	2	0
Israel	ISR	1.000	1	1	1	0	1.000	1	1	1	0										
Italy	ITA	0.885	13	13	10	3	0.750	4	4	2	2	0.900	5	5	4	1	1.000	4	4	4	0
Jamaica	JAM	0.700	10	10	5	4	0.500	4	4	1	2	0.800	5	5	3	2	1.000	1	1	1	0
Japan	JPN	0.909	12	11	10	0	0.750	4	4	3	0	1.000	5	5	5	0	1.000	3	2	2	0
Jordan	JOR	0.417	6	6	2	1	1.000	1	1	1	0	0.250	4	4	1	0	0.500	1	1	0	1
Kazakhstan	KAZ	0.500	6	6	3	0	1.000	1	1	1	0	0.250	4	4	1	0	1.000	1	1	1	0
Kenya	KEN	0.444	9	9	2	4	0.500	4	4	1	2	0.400	5	5	1	2					
Kiribati	KIR	0.889	9	9	8	0	0.750	4	4	3	0	1.000	5	5	5	0					
Korea, Dem. Rep.	PRK	0.214	7	7	1	1						0.000	5	5	0	0	0.750	2	2	1	1
Kuwait	KWT	0.600	10	10	4	4	0.750	4	4	2	2	0.375	4	4	1	1	0.750	2	2	1	1
Kyrgyz Republic	KGZ	0.542	12	12	4	5	0.600	5	5	2	2	0.400	5	5	1	2	0.750	2	2	1	1
Lao PDR	LAO	0.286	7	7	1	2						0.200	5	5	1	0	0.500	2	2	0	2
Latvia	LVA	0.800	10	10	6	4	0.833	3	3	2	1	0.700	5	5	2	3	1.000	2	2	2	0

Lebanon	LBN	0.750	6	6	3	3	1.000	1	1	1	0	0.700	5	5	2	3					
Lesotho	LSO	0.625	12	12	4	7	0.625	4	4	1	3	0.800	5	5	3	2	0.333	3	3	0	2
Liberia	LBR	0.700	10	10	4	6	0.625	4	4	1	3	0.800	5	5	3	2	0.500	1	1	0	1
Libya	LBY	0.444	9	9	3	2	0.500	3	3	1	1	0.250	4	4	1	0	0.750	2	2	1	1
Liechtenstein	LIE	1.000	10	8	8	0	1.000	3	3	3	0	1.000	5	5	5	0					
Lithuania	LTU	0.808	13	13	8	5	0.875	4	4	3	1	0.700	5	5	2	3	0.875	4	4	3	1
Luxembourg	LUX	1.000	9	9	9	0	1.000	3	3	3	0	1.000	4	4	4	0	1.000	2	2	2	0
Macedonia	MKD	0.808	13	13	8	5	0.900	5	5	4	1	0.800	5	5	3	2	0.667	3	3	1	2
Madagascar	MDG	0.313	8	8	1	3	0.500	1	1	0	1	0.200	5	5	1	0	0.500	2	2	0	2
Malawi	MWI	0.625	12	12	4	7	0.625	4	4	1	3	0.800	5	5	3	2	0.333	3	3	0	2
Malaysia	MYS	0.429	7	7	2	2	0.750	2	2	1	1	0.300	5	5	1	1					
Maldives	MDV	0.667	9	9	4	4	0.625	4	4	2	1	0.667	3	3	1	2	0.750	2	2	1	1
Mali	MLI	0.591	11	11	4	5	0.625	4	4	1	3	0.800	5	5	3	2	0.000	2	2	0	0
Malta	MLT	0.818	11	11	8	2	0.750	4	4	3	0	0.900	5	5	4	1	0.750	2	2	1	1
Marshall Islands	MHL	0.750	10	8	5	2	0.625	4	4	2	1	0.875	4	4	3	1					
Mauritania	MRT	0.500	6	6	2	2	0.500	2	2	1	0	0.500	4	4	1	2					
Mauritius ²⁴¹	MUS	0.833	9	9	7	1	0.625	4	4	2	1	1.000	5	5	5	0		0	0		
Mexico	MEX	0.538	13	13	4	6	0.500	5	5	1	3	0.600	5	5	2	2	0.500	3	3	1	1
Micronesia	FSM	0.833	11	9	7	1	0.750	4	4	3	0	1.000	4	4	4	0	0.500	3	1	0	1
Moldova	MDA	0.667	13	12	6	4	0.700	5	5	3	1	0.600	5	5	2	2	0.750	3	2	1	1
Mongolia	MNG	0.792	12	12	8	3	0.750	4	4	3	0	0.900	5	5	4	1	0.667	3	3	1	2
Morocco	MAR	0.429	7	7	2	2	1.000	1	1	1	0	0.300	5	5	1	1	0.500	1	1	0	1
Mozambique	MOZ	0.417	12	12	3	4	0.600	5	5	2	2	0.400	5	5	1	2	0.000	2	2	0	0
Myanmar	MMR	0.100	10	10	0	2	0.000	1	1	0	0	0.000	5	5	0	0	0.250	4	4	0	2
Namibia	NAM	0.607	14	14	5	7	0.800	5	5	3	2	0.700	5	5	2	3	0.250	4	4	0	2
Nepal	NPL	0.417	14	12	3	4	0.400	5	5	2	0	0.500	5	5	1	3	0.250	4	2	0	1
Netherlands	NLD	0.944	10	9	8	1	1.000	4	4	4	0	0.875	4	4	3	1	1.000	2	1	1	0
New Zealand	NZL	0.950	10	10	9	1	1.000	4	4	4	0	1.000	5	5	5	0	0.500	1	1	0	1
Nicaragua	NIC	0.464	14	14	4	5	0.600	5	5	2	2	0.300	5	5	1	1	0.500	4	4	1	2
Niger	NER	0.556	9	9	3	4	0.750	2	2	1	1	0.600	5	5	2	2	0.250	2	2	0	1
Nigeria	NGA	0.042	12	12	0	1	0.000	4	4	0	0	0.000	5	5	0	0	0.167	3	3	0	1
Norway	NOR	1.000	7	6	6	0	1.000	3	3	3	0	1.000	3	3	3	0					
Oman	OMN	0.556	9	9	4	2	0.875	4	4	3	1	0.167	3	3	0	1	0.500	2	2	1	0
Pakistan	PAK	0.273	11	11	2	2	0.000	3	3	0	0	0.300	5	5	1	1	0.500	3	3	1	1
Palau	PLW	0.900	13	10	9	0	0.750	4	4	3	0	1.000	5	5	5	0					

²⁴¹ Score based on performance data from 2006.

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Panama	PAN	0.615	13	13	5	6	0.500	4	4	1	2	0.800	5	5	3	2	0.500	4	4	1	2
Papua New Guinea	PNG	0.583	12	12	5	4	0.625	4	4	2	1	0.700	5	5	3	1	0.333	3	3	0	2
Paraguay	PRY	0.700	15	15	8	5	0.800	5	5	3	2	0.900	5	5	4	1	0.400	5	5	1	2
Peru	PER	0.667	12	12	4	8	0.625	4	4	1	3	0.700	5	5	2	3	0.667	3	3	1	2
Philippines	PHL	0.542	12	12	3	7	0.250	4	4	0	2	0.800	5	5	3	2	0.500	3	3	0	3
Poland	POL	0.833	13	12	9	2	0.875	4	4	3	1	0.900	5	5	4	1	0.667	4	3	2	0
Portugal	PRT	0.808	13	13	8	5	0.700	5	5	2	3	0.900	5	5	4	1	0.833	3	3	2	1
Qatar	QAT	0.545	11	11	5	2	0.875	4	4	3	1	0.200	5	5	1	0	0.750	2	2	1	1
Romania	ROU	0.600	15	15	6	6	0.700	5	5	3	1	0.500	5	5	1	3	0.600	5	5	2	2
Russia	RUS	0.250	12	12	2	2	0.125	4	4	0	1	0.000	5	5	0	0	0.833	3	3	2	1
Rwanda	RWA	0.417	12	12	1	8	0.500	4	4	0	4	0.300	5	5	1	1	0.500	3	3	0	3
Samoa	WSM	0.750	8	8	5	2	0.625	4	4	2	1	0.875	4	4	3	1					
Sao Tome & Principe	STP	0.731	13	13	8	3	0.800	5	5	4	0	0.900	5	5	4	1	0.333	3	3	0	2
Saudi Arabia	SAU	0.750	4	4	2	2	0.750	2	2	1	1						0.750	2	2	1	1
Senegal	SEN	0.400	10	10	2	4	0.000	1	1	0	0	0.600	5	5	2	2	0.250	4	4	0	2
Seychelles	SYC	0.727	12	11	7	2	0.800	5	5	4	0	0.600	5	5	2	2	1.000	2	1	1	0
Sierra Leone	SLE	0.500	10	10	4	2	0.500	4	4	2	0	0.600	5	5	2	2	0.000	1	1	0	0
Singapore	SGP	0.714	7	7	4	2	1.000	2	2	2	0	0.750	4	4	2	2	0.000	1	1	0	0
Slovak Republic	SVK	0.885	13	13	10	3	0.900	5	5	4	1	0.800	5	5	3	2	1.000	3	3	3	0
Slovenia	SVN	0.962	14	13	12	1	0.900	5	5	4	1	1.000	5	5	5	0	1.000	4	3	3	0
Solomon Islands	SLB	0.833	9	9	7	1	0.750	4	4	3	0	0.900	5	5	4	1					
Somalia	SOM																0.000	2	2	0	0
South Africa	ZAF	0.583	12	12	5	4	0.500	4	4	2	0	0.800	5	5	3	2	0.333	3	3	0	2
South Korea	KOR	0.923	13	13	11	2	0.875	4	4	3	1	1.000	5	5	5	0	0.875	4	4	3	1
Spain	ESP	0.958	12	12	11	1	0.875	4	4	3	1	1.000	5	5	5	0	1.000	3	3	3	0
Sri Lanka	LKA	0.250	10	10	0	5	0.250	4	4	0	2	0.200	5	5	0	2	0.500	1	1	0	1
St. Kitts and Nevis	KNA	0.833	9	9	7	1	0.750	4	4	3	0	0.900	5	5	4	1					
St. Lucia	LCA	0.778	9	9	7	0	0.500	4	4	2	0	1.000	5	5	5	0					
St. Vincent	VCT	0.778	9	9	7	0	0.500	4	4	2	0	1.000	5	5	5	0					
Sudan	SDN	0.231	13	13	1	4	0.250	4	4	0	2	0.300	5	5	1	1	0.125	4	4	0	1
Suriname	SUR	0.682	11	11	6	3	0.625	4	4	2	1	0.875	4	4	3	1	0.500	3	3	1	1
Swaziland	SWZ	0.455	12	11	4	2	0.625	4	4	2	1	0.400	5	5	2	0	0.250	3	2	0	1
Sweden	SWE	0.950	11	10	9	1	0.833	3	3	2	1	1.000	5	5	5	0	1.000	3	2	2	0
Switzerland	CHE	0.962	13	13	12	1	0.900	5	5	4	1	1.000	5	5	5	0	1.000	3	3	3	0
Syria	SYR	0.389	9	9	2	3	0.333	3	3	0	2	0.250	4	4	1	0	0.750	2	2	1	1
Taiwan	TWN	0.938	9	8	7	1	1.000	2	2	2	0	0.900	5	5	4	1	1.000	2	1	1	0

Tajikistan	TJK	0.375	12	12	3	3	0.500	4	4	1	2	0.200	5	5	1	0	0.500	3	3	1	1
Tanzania	TZA	0.688	8	8	3	5	0.750	2	2	1	1	0.700	5	5	2	3	0.500	1	1	0	1
Thailand	THA	0.542	12	12	5	3	0.250	4	4	0	2	0.500	5	5	2	1	1.000	3	3	3	0
Togo	TGO	0.409	11	11	2	5	0.500	4	4	1	2	0.300	5	5	1	1	0.500	2	2	0	2
Tonga ²⁴²	TON	0.700	5	5	3	1	1.000	2	2	2	0	0.500	3	3	1	1		0	0		
Trinidad & Tobago	TTO	0.778	9	9	6	2	0.500	4	4	1	2	1.000	5	5	5	0					
Tunisia	TUN	0.357	7	7	2	1						0.200	5	5	1	0	0.750	2	2	1	1
Turkey	TUR	0.417	12	12	3	4	0.500	4	4	1	2	0.300	5	5	1	1	0.500	3	3	1	1
Turkmenistan	TKM	0.385	13	13	4	2	0.700	5	5	3	1	0.000	5	5	0	0	0.500	3	3	1	1
Uganda	UGA	0.423	13	13	4	3	0.250	4	4	1	0	0.500	5	5	2	1	0.500	4	4	1	2
Ukraine	UKR	0.571	14	14	5	6	0.500	4	4	1	2	0.700	5	5	2	3	0.500	5	5	2	1
UAE	ARE	0.500	9	9	3	3	0.667	3	3	1	2	0.250	4	4	1	0	0.750	2	2	1	1
United Kingdom	GBR	0.950	10	10	9	1	0.900	5	5	4	1	1.000	4	4	4	0	1.000	1	1	1	0
United States	USA	0.750	8	8	5	2	0.500	4	4	1	2	1.000	4	4	4	0					
Uruguay	URY	0.950	10	10	9	1	0.833	3	3	2	1	1.000	5	5	5	0	1.000	2	2	2	0
Uzbekistan	UZB	0.308	13	13	3	2	0.625	4	4	2	1	0.000	5	5	0	0	0.375	4	4	1	1
Vanuatu ²⁴³	VUT	0.813	8	8	6	1	0.667	3	3	2	0	0.900	5	5	4	1		0	0		
Venezuela	VEN	0.429	15	14	3	6	0.400	5	5	1	2	0.400	5	5	1	2	0.500	5	4	1	2
Vietnam	VNM	0.269	14	13	2	3	0.500	4	4	1	2	0.000	5	5	0	0	0.375	5	4	1	1
Yemen	YEM	0.300	10	10	1	4	0.250	4	4	0	2	0.250	4	4	1	0	0.500	2	2	0	2
Zambia	ZMB	0.550	10	10	3	5	0.500	4	4	1	2	0.600	5	5	2	2	0.500	1	1	0	1
Zimbabwe	ZWE	0.111	9	9	0	2	0.250	4	4	0	2	0.000	5	5	0	0					

²⁴² Score based on performance data from 2006.²⁴³ Score based on performance data from 2006.

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APPENDIX III: CONSTITUTIONAL OVERPERFORMANCE SCORES

Key

Code = Three-letter country code used in Figure 1

GP = Gross number of rights promised in the constitutionNP = Net number of rights promised for which de facto performance data is availableFU = Number of rights omitted from the constitution that were nevertheless fully upheldPU = Number of rights omitted from the constitution that were nevertheless partially upheld²⁴⁴

PIR Score = Personal integrity rights score

CPF Score = Civil and political freedoms score

SEG Score = Socioeconomic and group rights score

Country	Code	Overall Score	GP	NP	FU	PU	PIR Score	PIR GP	PIR NP	PIR FU	PIR PU	CPF Score	CPF GP	CPF NP	CPF FU	CPF PU	SEG Score	SEG GP	SEG NP	SEG FU	SEG PU
Afghanistan	AFG	0.250	11	11	1	0	0.000	4	4	0	0						0.333	2	2	1	0
Albania	ALB	0.333	12	12	1	0	1.000	4	4	1	0						0.000	3	3	0	0
Algeria	DZA	0.375	11	11	1	1	1.000	4	4	1	0						0.167	2	2	0	1
Angola	AGO	0.250	13	13	0	1											0.250	3	3	0	1
Antigua and Barbuda	ATG						0.000	4	4	0	0										
Argentina	ARG	0.700	10	10	2	3	0.750	3	3	1	1						0.667	2	2	1	2
Armenia	ARM	0.000	14	13	0	0											0.000	4	3	0	0
Australia	AUS	0.923	2	2	11	2	0.900	0	0	4	1	1.000	2	2	3	0	0.900	0	0	4	1
Austria	AUT	0.833	9	8	4	2	0.500	4	4	0	1	1.000	4	4	1	0	0.875	1	0	3	1
Azerbaijan	AZE	0.500	13	13	1	0	1.000	4	4	1	0						0.000	4	4	0	0
Bahamas	BHS	0.583	8	8	3	1	0.000	4	4	0	0	1.000	4	4	1	0	0.625	0	0	2	1
Bahrain	BHR	0.125	11	11	0	1	0.000	4	4	0	0						0.167	2	2	0	1
Bangladesh	BGD	0.100	10	10	0	1	0.000	4	4	0	0	0.500	4	4	0	1	0.000	2	2	0	0
Barbados	BRB	0.667	8	8	3	2	0.000	4	4	0	0	1.000	4	4	1	0	0.750	0	0	2	2
Belarus	BLR	0.000	14	14	0	0	0.000	4	4	0	0										
Belgium	BEL	0.750	9	8	3	3	0.750	3	3	1	1	1.000	3	3	2	0	0.500	3	2	0	2
Belize	BLZ	0.500	11	10	1	1	0.000	4	4	0	0	1.000	4	4	1	0	0.500	3	2	0	1
Benin	BEN	0.333	12	11	1	0	1.000	4	4	1	0						0.000	3	2	0	0

244. For purposes of computing a country's score, a partially upheld right is given half the weight of a fully upheld right: fully upheld rights are worth 1.0, while partially upheld rights are worth 0.5. See *supra* note 116.

Bhutan	BTN	0.600	10	10	2	2	0.750	3	3	1	1						0.500	2	2	1	1
Bolivia	BOL	0.000	14	14	0	0											0.000	4	4	0	0
Bosnia and Herzegovina	BIH	0.786	7	6	5	1	0.833	2	2	2	1						0.750	1	0	3	0
Botswana	BWA	0.167	9	9	0	2	0.000	4	4	0	0						0.200	0	0	0	2
Brazil	BRA	0.750	13	13	1	1	1.000	4	4	1	0						0.500	4	4	0	1
Brunei	BRN	0.545	1	1	5	2	0.800	0	0	4	0	0.333	1	1	1	0	0.333	0	0	0	2
Bulgaria	BGR	1.000	12	12	3	0	1.000	4	4	1	0						1.000	3	3	2	0
Burkina Faso	BFA	0.500	12	12	1	0	1.000	4	4	1	0						0.000	3	3	0	0
Burundi	BDI	0.333	12	12	1	0	1.000	4	4	1	0						0.000	3	3	0	0
Cambodia	KHM	0.750	13	13	1	1	0.500	4	4	0	1						1.000	4	4	1	0
Cameroon	CMR	0.300	10	10	1	1	0.750	3	3	1	1						0.000	2	2	0	0
Canada	CAN	1.000	10	10	5	0	1.000	4	4	1	0						1.000	1	1	4	0
Cape Verde	CPV	1.000	13	13	1	0						1.000	4	4	1	0					
Central African Rep.	CAF	0.300	10	9	1	1	0.500	2	2	1	1						0.000	3	2	0	0
Chad	TCD	0.333	9	9	1	2	0.333	2	2	0	2						0.333	2	2	1	0
Chile	CHL	0.625	11	11	1	3	1.000	4	4	1	0						0.500	2	2	0	3
China	CHN	0.083	9	9	0	1	0.125	1	1	0	1	0.000	4	4	0	0	0.000	4	4	0	0
Colombia	COL	0.000	14	14	0	0											0.000	4	4	0	0
Comoros	COM	0.643	7	6	4	1	0.667	2	2	2	0	1.000	3	3	2	0	0.250	2	1	0	1
Congo, Dem. Rep.	COD	0.000	13	13	0	0	0.000	4	4	0	0						0.000	4	4	0	0
Congo, Rep.	COG	0.357	8	8	1	3	0.667	2	2	1	2	0.500	4	4	0	1	0.000	2	2	0	0
Costa Rica	CRI	0.900	10	10	4	1	1.000	3	3	2	0						0.833	2	2	2	1
Cote d'Ivoire	CIV	0.125	10	10	0	1	0.250	3	3	0	1	0.000	4	4	0	0	0.000	3	3	0	0
Croatia	HRV	0.250	13	13	0	1											0.250	3	3	0	1
Cuba	CUB	0.375	10	10	1	1	0.250	3	3	0	1	0.000	4	4	0	0	1.000	3	3	1	0
Cyprus	CYP	0.750	13	13	1	1											0.750	3	3	1	1
Czech Republic	CZE	0.250	13	13	0	1											0.250	3	3	0	1
Denmark	DNK	1.000	7	7	7	0	1.000	2	2	3	0	1.000	4	4	1	0	1.000	1	1	3	0
Djibouti	DJI	0.333	9	9	1	2	1.000	4	4	1	0						0.200	0	0	0	2
Dominica	DMA	0.375	8	8	1	1	0.000	4	4	0	0	1.000	4	4	1	0					
Dominican Republic	DOM	0.000	11	11	0	0	0.000	4	4	0	0						0.000	2	2	0	0
Ecuador	ECU	0.000	13	13	0	0											0.000	3	3	0	0
Egypt	EGY	0.000	12	12	0	0	0.000	4	4	0	0						0.000	3	3	0	0
El Salvador	SLV	0.500	12	12	1	1	1.000	4	4	1	0						0.250	3	3	0	1
Equatorial Guinea	GNQ	0.063	6	6	0	1	0.167	2	2	0	1	0.000	3	3	0	0	0.000	1	1	0	0
Eritrea	ERI	0.375	11	10	1	1	1.000	4	4	1	0						0.167	2	1	0	1

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Estonia	EST	0.750	13	13	1	1	1.000	4	4	1	0						0.500	4	4	0	1
Ethiopia	ETH	0.000	14	13	0	0	0.000	4	4	0	0										
Fiji	FJI	0.625	11	10	1	3	1.000	4	4	1	0						0.500	2	1	0	3
Finland	FIN	1.000	13	13	1	0											1.000	3	3	1	0
France	FRA	0.944	6	6	8	1	0.875	1	1	3	1	1.000	3	3	2	0	1.000	2	2	3	0
Gabon	GAB	0.625	10	10	2	1	0.833	2	2	2	1						0.000	3	3	0	0
Gambia	GMB	0.000	12	12	0	0	0.000	4	4	0	0						0.000	3	3	0	0
Georgia	GEO	0.667	12	12	2	0	1.000	4	4	1	0						0.500	3	3	1	0
Germany	DEU	0.917	9	9	5	1	1.000	4	4	1	0						0.900	0	0	4	1
Ghana	GHA	0.667	12	12	2	0	1.000	4	4	1	0						0.500	3	3	1	0
Greece	GRC	0.333	12	12	1	0	1.000	4	4	1	0						0.000	3	3	0	0
Grenada	GRD	0.875	9	9	3	1	1.000	4	4	1	0						0.833	0	0	2	1
Guatemala	GTM	0.000	14	14	0	0	0.000	4	4	0	0										
Guinea	GIN	0.000	10	10	0	0	0.000	4	4	0	0						0.000	1	1	0	0
Guinea-Bissau	GNB	0.500	8	8	2	2	0.750	3	3	1	1	0.750	3	3	1	1	0.000	2	2	0	0
Guyana	GUY	0.375	11	11	1	1	0.000	4	4	0	0	0.500	4	4	0	1	0.500	3	3	1	0
Haiti	HTI	0.375	10	10	1	1	0.500	4	4	0	1	1.000	4	4	1	0	0.000	2	2	0	0
Honduras	HND	0.000	13	13	0	0											0.000	3	3	0	0
Hungary	HUN	0.333	12	12	1	0	1.000	4	4	1	0						0.000	3	3	0	0
Iceland	ISL	1.000	11	11	3	0											1.000	1	1	3	0
India	IND	0.125	11	11	0	1	0.167	2	2	0	1						0.000	4	4	0	0
Indonesia	IDN	0.357	8	8	1	3	0.500	1	1	1	2	0.500	4	4	0	1	0.000	3	3	0	0
Iran	IRN	0.000	11	11	0	0	0.000	4	4	0	0	0.000	4	4	0	0	0.000	3	3	0	0
Iraq	IRQ	0.250	11	11	1	0	0.000	4	4	0	0						0.333	2	2	1	0
Ireland	IRL	0.900	9	9	4	1	0.750	3	3	1	1	1.000	4	4	1	0	1.000	2	2	2	0
Israel	ISR	0.346	1	1	3	3	0.375	1	1	1	1	0.125	0	0	0	1	0.500	0	0	2	1
Italy	ITA	1.000	13	13	2	0	1.000	4	4	1	0						1.000	4	4	1	0
Jamaica	JAM	0.375	10	10	1	1	0.000	4	4	0	0						0.500	1	1	1	1
Japan	JPN	0.000	12	11	0	0	0.000	4	4	0	0						0.000	3	2	0	0
Jordan	JOR	0.278	6	6	2	1	0.375	1	1	1	1	0.000	4	4	0	0	0.250	1	1	1	0
Kazakhstan	KAZ	0.222	6	6	0	4	0.375	1	1	0	3	0.000	4	4	0	0	0.125	1	1	0	1
Kenya	KEN	0.417	9	9	1	3	1.000	4	4	1	0						0.300	0	0	0	3
Kiribati	KIR	0.667	9	9	1	2	1.000	4	4	1	0										
Korea, Dem. Rep.	PRK	0.083	7	7	0	1	0.100	0	0	0	1						0.000	2	2	0	0
Kuwait	KWT	0.125	10	10	0	1	0.000	4	4	0	0	0.500	4	4	0	1	0.000	2	2	0	0
Kyrgyz Republic	KGZ	0.333	12	12	1	0											0.333	2	2	1	0

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Lao PDR	LAO	0.625	7	7	3	4	0.800	0	0	3	2							0.333	2	2	0	2
Latvia	LVA	0.500	10	10	1	3	0.750	3	3	1	1							0.333	2	2	0	2
Lebanon	LBN	0.333	6	6	1	4	0.250	1	1	0	2							0.400	0	0	1	2
Lesotho	LSO	0.000	12	12	0	0	0.000	4	4	0	0							0.000	3	3	0	0
Liberia	LBR	0.500	10	10	2	1	1.000	4	4	1	0							0.375	1	1	1	1
Libya	LBY	0.000	9	9	0	0	0.000	3	3	0	0							0.000	2	2	0	
Liechtenstein	LIE	0.625	10	8	2	1	0.500	3	3	1	0											
Lithuania	LTU	0.750	13	13	1	1	1.000	4	4	1	0							0.500	4	4	0	1
Luxembourg	LUX	1.000	9	9	5	0	1.000	3	3	2	0	1.000	4	4	1	0	1.000	2	2	2	0	
Macedonia	MKD	0.250	13	13	0	1												0.250	3	3	0	1
Madagascar	MDG	0.429	8	8	2	2	0.500	1	1	1	2							0.333	2	2	1	0
Malawi	MWI	0.500	12	12	1	0	1.000	4	4	1	0							0.000	3	3	0	0
Malaysia	MYS	0.313	7	7	1	3	0.333	2	2	0	2							0.300	0	0	1	1
Maldives	MDV	0.300	9	9	1	1	1.000	4	4	1	0	0.250	3	3	0	1	0.000	2	2	0	0	
Mali	MLI	0.375	11	11	1	1	1.000	4	4	1	0							0.167	2	2	0	1
Malta	MLT	1.000	11	11	3	0	1.000	4	4	1	0							1.000	2	2	2	0
Marshall Islands	MHL	0.750	10	8	2	2	1.000	4	4	1	0	1.000	4	4	1	0						
Mauritania	MRT	0.333	6	6	2	2	0.833	2	2	2	1	0.000	4	4	0	0	0.100	0	0	0	1	
Mauritius ²⁴⁵	MUS	0.750	9	9	2	2	1.000	4	4	1	0		5	5				0.667	0	0	1	2
Mexico	MEX	0.500	13	13	0	1												0.500	3	3	0	1
Micronesia	FSM	0.500	11	9	1	2	1.000	4	4	1	0	0.500	4	4	0	1	0.250	3	1	0	1	
Moldova	MDA	0.750	13	12	1	1												0.750	3	2	1	1
Mongolia	MNG	0.750	12	12	1	1	1.000	4	4	1	0							0.500	3	3	0	1
Morocco	MAR	0.563	7	7	3	3	0.625	1	1	1	3							0.500	1	1	2	0
Mozambique	MOZ	0.000	12	12	0	0												0.000	2	2	0	0
Myanmar	MMR	0.400	10	10	1	2	0.500	1	1	1	2							0.000	4	4	0	0
Namibia	NAM	1.000	14	14	1	0												1.000	4	4	1	0
Nepal	NPL	0.000	14	12	0	0												0.000	4	2	0	0
Netherlands	NLD	1.000	10	9	4	0	1.000	4	4	1	0	1.000	4	4	1	0	1.000	2	1	2	0	
New Zealand	NZL	1.000	10	10	5	0	1.000	4	4	1	0							1.000	1	1	4	0
Nicaragua	NIC	0.000	14	14	0	0												0.000	4	4	0	0
Niger	NER	0.583	9	9	2	3	0.667	2	2	1	2							0.500	2	2	1	1
Nigeria	NGA	0.333	12	12	1	0	0.000	4	4	0	0							0.500	3	3	1	0
Norway	NOR	1.000	7	6	8	0	1.000	3	3	2	0	1.000	3	3	2	0	1.000	1	0	4	0	

²⁴⁵ Score based on performance data from 2006.

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Oman	OMN	0.375	9	9	1	1	0.000	4	4	0	0	1.000	3	3	1	0	0.250	2	2	0	1
Pakistan	PAK	0.000	11	11	0	0	0.000	3	3	0	0						0.000	3	3	0	0
Palau	PLW	1.000	13	10	2	0	1.000	4	4	1	0										
Panama	PAN	0.500	13	13	0	2	0.500	4	4	0	1						0.500	4	4	0	1
Papua New Guinea	PNG	0.500	12	12	1	1	1.000	4	4	1	0						0.250	3	3	0	1
Peru	PER	0.333	12	12	0	2	0.500	4	4	0	1						0.250	3	3	0	1
Philippines	PHL	0.500	12	12	1	1	1.000	4	4	1	0						0.250	3	3	0	1
Poland	POL	0.750	13	12	1	1	1.000	4	4	1	0						0.500	4	3	0	1
Portugal	PRT	1.000	13	13	1	0											1.000	3	3	1	0
Qatar	QAT	0.000	11	11	0	0	0.000	4	4	0	0						0.000	2	2	0	0
Russia	RUS	0.333	12	12	1	0	1.000	4	4	1	0						0.000	3	3	0	0
Rwanda	RWA	0.333	12	12	1	0	1.000	4	4	1	0						0.000	3	3	0	0
Samoa	WSM	0.750	8	8	3	3	1.000	4	4	1	0	1.000	4	4	1	0	0.625	0	0	1	3
Sao Tome & Principe	STP	0.000	13	13	0	0											0.000	3	3	0	0
Saudi Arabia	SAU	0.000	4	4	0	0	0.000	2	2	0	0	0.000	0	0	0	0	0.000	2	2	0	0
Senegal	SEN	0.600	10	10	2	2	0.750	1	1	2	2						0.000	4	4	0	0
Seychelles	SYC	0.750	12	11	1	1											0.750	2	1	1	1
Sierra Leone	SLE	0.300	10	10	1	1	1.000	4	4	1	0						0.125	1	1	0	1
Singapore	SGP	0.438	7	7	2	3	0.333	2	2	1	0	0.500	4	4	0	1	0.500	1	1	1	2
Slovak Republic	SVK	0.250	13	13	0	1											0.250	3	3	0	1
Slovenia	SVN	0.500	14	13	0	1											0.500	4	3	0	1
Solomon Islands	SLB	0.300	9	9	0	3	0.500	4	4	0	1						0.250	0	0	0	2
Somalia	SOM																1.000	2	2	1	0
South Africa	ZAF	0.333	12	12	1	0	1.000	4	4	1	0						0.000	3	3	0	0
South Korea	KOR	1.000	13	13	2	0	1.000	4	4	1	0						1.000	4	4	1	0
Spain	ESP	0.833	12	12	2	1	1.000	4	4	1	0						0.750	3	3	1	1
Sri Lanka	LKA	0.400	10	10	2	0	1.000	4	4	1	0						0.250	1	1	1	0
St. Kitts and Nevis	KNA	0.167	9	9	0	1	0.000	4	4	0	0										
St. Lucia	LCA	0.800	9	9	4	0	0.000	4	4	0	0						1.000	0	0	4	0
St. Vincent	VCT	0.800	9	9	4	0	0.000	4	4	0	0						1.000	0	0	4	0
Sudan	SDN	0.000	13	13	0	0	0.000	4	4	0	0						0.000	4	4	0	0
Suriname	SUR	0.667	11	11	2	0	1.000	4	4	1	0	1.000	4	4	1	0	0.000	3	3	0	0
Swaziland	SWZ	0.333	12	11	1	0	1.000	4	4	1	0						0.000	3	2	0	0
Sweden	SWE	1.000	11	10	4	0	1.000	3	3	2	0						1.000	3	2	2	0
Switzerland	CHE	0.250	13	13	0	1											0.250	3	3	0	1
Syria	SYR	0.167	9	9	1	0	0.000	3	3	0	0	0.000	4	4	0	0	0.333	2	2	1	0

Taiwan	TWN	0.300	9	8	1	1	0.333	2	2	1	0						0.250	2	1	0	1
Tajikistan	TJK	0.333	12	12	1	0	1.000	4	4	1	0						0.000	3	3	0	0
Tanzania	TZA	0.500	8	8	2	3	0.667	2	2	1	2						0.375	1	1	1	1
Thailand	THA	0.000	12	12	0	0	0.000	4	4	0	0						0.000	3	3	0	0
Togo	TGO	0.375	11	11	1	1	1.000	4	4	1	0						0.167	2	2	0	1
Tonga ²⁴⁶	TON	0.786	5	5	5	1	0.833	2	2	2	1	1.000	3	3	2	0		0	0	1	0
Trinidad & Tobago	TTO	0.600	9	9	2	2	0.000	4	4	0	0						0.750	0	0	2	2
Tunisia	TUN	0.429	7	7	2	2	0.600	0	0	2	2						0.000	2	2	0	0
Turkey	TUR	0.333	12	12	1	0	1.000	4	4	1	0						0.000	3	3	0	0
Turkmenistan	TKM	0.000	13	13	0	0											0.000	3	3	0	0
Uganda	UGA	0.000	13	13	0	0	0.000	4	4	0	0						0.000	4	4	0	0
Ukraine	UKR	1.000	14	14	1	0	1.000	4	4	1	0										
UAE	ARE	0.200	9	9	1	0	0.500	3	3	1	0	0.000	4	4	0	0	0.000	2	2	0	0
United Kingdom	GBR	1.000	10	10	5	0						1.000	4	4	1	0	1.000	1	1	4	0
United States	USA	0.714	8	8	4	2	0.000	4	4	0	0	1.000	4	4	1	0	0.800	0	0	3	2
Uruguay	URY	0.250	10	10	0	2	0.500	3	3	0	2						0.000	2	2	0	0
Uzbekistan	UZB	0.500	13	13	1	0	1.000	4	4	1	0						0.000	4	4	0	0
Vanuatu ²⁴⁷	VUT	0.600	8	8	2	2	1.000	3	3	2	0		5	5			0.333	0	0	0	2
Vietnam	VNM	0.000	14	13	0	0	0.000	4	4	0	0										
Yemen	YEM	0.000	10	10	0	0	0.000	4	4	0	0	0.000	4	4	0	0	0.000	2	2	0	0
Zambia	ZMB	0.400	10	10	2	0	1.000	4	4	1	0						0.250	1	1	1	0
Zimbabwe	ZWE	0.167	9	9	0	2	0.000	4	4	0	0						0.200	0	0	0	2

²⁴⁶ Score based on performance data from 2006.²⁴⁷ Score based on performance data from 2006.