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# The Influence of History on States' Compliance with Human Rights Obligations

ADAM S. CHILTON\* & ERIC A. POSNER†

*There is considerable variation in countries' respect for human rights. Scholars have tried to explain this variation on the basis of current conditions in countries—such as democracy and civil war—and events from the recent past—such as ratification of human rights treaties. This literature has ignored the influence that history may have on human rights performance. Drawing on the literature on economic development—which has shown that institutions, events, and conditions from the distant past heavily influence the rate of economic growth across countries today—we argue that scholars should study whether the same factors have influenced modern human rights performance. Our exploratory look at the data suggests that respect for human rights today may be related to the geographic location of affected populations centuries ago, the nature of the institutions that emerged at that time, and cultural traits that have been passed down from generation to generation. These preliminary results suggest that human rights scholars could make substantial progress toward understanding states' human rights practices by building on the work of development economics.*

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## I. INTRODUCTION

Some countries enjoy stable democratic institutions, respect for human rights, and the rule of law. Other countries do not. A large literature in political science tries to explain this variation, focusing on what researchers call “repression”—censorship, intimidation, torture, extrajudicial killing,

and related coercive measures. Repression is higher in autocratic, poor, and populous countries; in countries embroiled in international or civil wars; and in countries with weak domestic legal institutions.<sup>1</sup>

A related literature has examined the influence of international human rights treaties on the behavior of countries.<sup>2</sup> This literature overlaps with the literature on repression. Repression means the violation of certain human rights—above all, political rights like the right to free speech and a fair trial. But human rights treaties set out many other types of rights—including broader civil and political rights (for example, religious freedom), economic and social rights (for example, to medical care and education), and a range of nondiscrimination rights. The fine-grained nature of the treaties has led researchers to use more fine-grained dependent variables, like literacy and women's health, to test whether the treaties have affected the behavior of governments. The evidence suggests that human rights treaties have either a modest effect or no effect on the behavior of governments.<sup>3</sup>

The two literatures share a common starting point: that repression and other abuses by a government reflect its immediate needs or the conditions under which it operates. A government might use repression to counter political dissent or a threat to its power posed by an insurgency; human rights violations might prevail in a country because of weak courts, a corrupt bureaucracy, a poor educational system, and other institutional problems. Although this literature is descriptive, it leads naturally to prescriptions that

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1. For a recent survey of this literature, see Daniel W. Hill, Jr. & Zachary M. Jones, *An Empirical Evaluation of Explanations for State Repression*, 108 AM. POL. SCI. REV. 661 (2014). For examples of articles written in this literature, see CHRISTIAN DAVENPORT, *STATE REPRESSION AND THE DOMESTIC DEMOCRATIC PEACE* (2007); Bruce Bueno de Mesquita, George W. Downs et al., *Thinking Inside the Box: A Closer Look at Democracy and Human Rights*, 49 INT'L STUD. Q. 439 (2005); Scott Sigmund Gartner & Patrick M. Regan, *Threat and Repression: The Non-Linear Relationship Between Government and Opposition Violence*, 33 J. PEACE RES. 273 (1996); Emilie M. Hafner-Burton, Susan D. Hyde & Ryan S. Jablonski, *When Do Governments Resort to Election Violence?*, 44 BRIT. J. POL. SCI. 149 (2014); 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 (1994); Steven C. Poe et al., *Repression of the Human Right to Personal Integrity Revisited: A Global Cross-National Study Covering the Years 1976-1993*, 43 INT'L STUD. Q. 291 (1999); David L. Richards, *Perilous Proxy: Human Rights and the Presence of National Elections*, 80 SOC. SCI. Q. 648 (1999).

2. For a recent survey of this literature, see Beth A. Simmons, *Treaty Compliance and Violation*, 13 ANN. R. POL. SCI. 273, 288–92 (2010) [hereinafter Simmons, *Treaty Compliance*]. For examples of work in this literature, see Yonatan Lupu, *Legislative Veto Players and the Effects of International Human Rights Agreements*, 59 AM. J. POL. SCI. 578 (2015) [hereinafter Lupu, *Legislative Veto Players*]; ERIC A. POSNER, *THE TWILIGHT OF HUMAN RIGHTS LAW* (2014); Yonatan Lupu, *Best Evidence: The Role of Information in Domestic Judicial Enforcement of International Human Rights Agreements*, 67 INT'L ORG. 469 (2013) [hereinafter Lupu, *Best Evidence*]; Yonatan Lupu, *The Informative Power of Treaty Commitment: Using the Spatial Model to Address Selection Effects*, 57 AM. J. POL. SCI. 912 (2013) [hereinafter Lupu, *The Informative Power of Treaty Commitment*]; Daniel W. Hill, *Estimating the Effects of Human Rights Treaties on State Behavior*, 72 J. POL. 1161 (2010); BETH A. SIMMONS, *MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS* (2009) [hereinafter SIMMONS, *MOBILIZING FOR HUMAN RIGHTS*]; Oona Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 YALE L.J. 1935 (2002).

3. For a discussion of this literature, see PART II.

respond to the short-term nature of these problems. If western countries encourage elections that unseat repressive governments or provide aid conditional on institutional reform, then repression will decline and human rights will improve. Many scholars believe that international human rights law can similarly improve the behavior of countries by threatening repressive governments with sanctions, reputational harm, and other costs.

There is a parallel between this premise and a view that once dominated an area of economics known as development economics. This field seeks to explain why some countries have enjoyed greater economic growth than other countries.<sup>4</sup> Numerous researchers in this field have implicitly assumed that economies should develop at some incremental rate reflecting the advance of technology, the expansion of trade, and related factors. Where economies did not grow at this rate, an explanation was called for. Scholars proposed that the problem may lie in the lack of capital; or people with the right skills; or pro-growth market institutions. All of these explanations led to a specific development agenda: make loans to the country or firms in it; or offer training and education to the citizens of the country; or encourage the country to sign free-trade pacts and to implement market reforms.<sup>5</sup>

In the last fifteen years, however, a more pessimistic strain of thinking has emerged. This new literature seeks explanations for poor economic growth in fixed conditions (like geography) or events in the distant past (like wars and population movements). The most famous of these explanations, proposed by Jared Diamond (a noneconomist, but whose work has influenced economists), is that environmental conditions as long ago as 10,000 B.C. favored the ancestors of modern-day Europeans, who developed a technological head start that allowed them to rule the rest of the planet for centuries and still enjoy a higher standard of living than most other people.<sup>6</sup> Institutional pathways extending into the distant past may determine which countries enjoy the most economic growth and which do not. A possible implication of this approach for the foreign aid agenda is that some economies will not develop as quickly as others, which implies that some countries are doomed to be poorer than others purely as a result of the part of the world in which they are located.

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4. For a survey, see HANDBOOKS IN ECONOMICS 22: HANDBOOK OF ECONOMIC GROWTH VOLUME 1A (Philippe Aghion & Steven N. Durlauf, eds., 1st ed. 2005).

5. For a discussion of the history of foreign aid, see WILLIAM EASTERLY, *THE WHITE MAN'S BURDEN: WHY THE WEST'S EFFORTS TO AID THE REST HAVE DONE SO MUCH ILL AND SO LITTLE GOOD* (2006).

6. JARED DIAMOND, *GUNS, GERMS, AND STEEL: THE FATES OF HUMAN SOCIETIES* (1997). For statistical support for Diamond's theory, see Douglas A. Hibbs, Jr. & Ola Olsson, *Geography, Biogeography, and Why Some Countries Are Rich and Others Are Poor*, 101 *PROC. NAT'L ACAD. SCI.* 3715 (2003).

Economists have proposed a variety of explanations that link modern-day economic growth to geographic location and events remote in history.<sup>7</sup> One view is that a country with natural resources, access to the sea, a temperate climate, and other favorable geographic conditions will benefit economically from the contribution of these factors to agricultural productivity, industry, and trade. Other approaches are less focused on geography than on history. Researchers have argued that institutions display significant inertia. Countries that developed high-quality institutions in the distant past tended to maintain them over time, as did countries that developed low-quality institutions. Head starts in institutional development are preserved for centuries. And some scholars have argued that geography and institutional development interact in complex ways. Favorable environmental conditions in the distant past—1500 A.D. is a common point of reference—may give rise to high-quality institutions that continue to benefit countries even after the advantages from the environmental conditions no longer matter. For example, one theory is that higher-growth countries outside Europe are those that were settled by Europeans who built viable economies that could prosper in temperate climatic conditions, rather than those that, because of the risk of disease, Europeans exploited without regard to long-term consequences. Countries that prosper today are those that were lucky enough to receive high-quality institutions hundreds of years ago.<sup>8</sup>

These theories, which emphasize long-term historical and fixed geographic conditions, have gained influence in part because the development strategies suggested by the earlier literature have had mixed success.<sup>9</sup> While scholars disagree about the effectiveness of foreign aid for promoting economic growth, our reading of the literature is that if there is a positive effect, it is quite limited.<sup>10</sup> There is evidence that suggests that

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7. See Enrico Spolaore & Romain Wacziarg, *How Deep Are the Roots of Economic Development?*, 51 J. ECON. LIT. 325 (2013) [hereinafter Spolaore & Wacziarg, *How Deep Are the Roots*] (surveying literature); Nathan Nunn, *The Importance of History for Economic Development*, 1 ANN. REV. ECON. 65 (2009) (same); Stanley L. Engerman & Kenneth L. Sokoloff, *Debating the Role of Institutions in Political and Economic Development: Theory, History, and Findings*, 11 ANN. REV. POLIT. SCI. 119 (2008) (same); Nathan Nunn, *Historical Development*, in HANDBOOK VOLUME 2, *supra* note 4, at 347 (same).

8. For a discussion of this literature, see PART II.B. The long-term persistence of cultural and institutional norms has also received a great deal of attention among historians. See, e.g., DAVID HACKETT FISCHER, *ALBION'S SEED: FOUR BRITISH FOLKWAYS IN AMERICA* (1989) (describing the influence of seventeenth- and eighteenth-century norms in England on twentieth-century norms in areas of the United States where colonists settled).

9. See William Easterly et al., *Aid, Policies and Growth*, 94 AM. ECON. REV. 774 (2004). Some scholars have even suggested that foreign aid hurts countries by damaging democratic institutions. See Djankov, Montalvo et al., *The Curse of Aid* (Working Paper 2005); Kevin M. Morrison, *What Can We Learn About the "Resource Curse" from Foreign Aid?*, 27 WORLD BANK RES. OBS. 52, 58–64 (2010) (surveying the literature).

10. See, e.g., Michael A. Clemens et al., *Counting Chickens When They Hatch: Timing and the Effects of Aid on Growth*, 122 ECON. J. 590 (2011); David Roodman, *The Anarchy of Numbers: Aid, Development, and Cross-Country Empirics*, 21 WORLD BANK ECON. REV. 255 (2007) (finding that the results of studies

conditioning aid on institutional improvements also has no discernible effect on economic growth.<sup>11</sup> If a country's rate of economic growth is the result of entrenched institutional structures and cultural traits that have their roots in the distant past or in fixed geographic conditions, the failure of development strategies is easy to understand.

In this Article, we apply some of these lessons to human rights. The literature on international human rights law suggests that international law has little effect on the political behavior of states, just as the development literature suggests that foreign aid has little effect on the economic activity of states. Just as the disappointing results in the development literature have led to a search for long-term influences on economic growth, the disappointing results in the international human rights law literature should lead to a search for long-term influences on human rights performance, or so we argue. If the human rights performance of states is tied to conditions hundreds of years ago, then threatening human rights violators with sanctions will have limited effect on their behavior.

To test this hypothesis, we draw on the new economic development literature, which provides a set of theories and empirical results that can be applied, *mutatis mutandi*, to human rights. Our working hypothesis is that the temporally remote factors (or fixed geographic conditions) that may explain why some countries grow faster than others may also explain why some countries respect human rights more than others. To explore this hypothesis, we march through the development literature and try to bring the theories and data in that literature to bear on the question of why some countries today respect human rights and others do not.<sup>12</sup>

At the outset, we should be clear that we do not test any of the hypotheses using statistical analysis. The purpose of this paper is not to make empirical claims about the relationship between historical variables and human rights compliance, but to persuade readers that this is a fruitful research project. This paper should be understood as a first step toward exploring which of the hypotheses seem plausible enough—on theoretical and empirical grounds—to warrant further testing.

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that show that foreign aid promotes economic growth are “fragile”). *But see* Markus Brückner, *On the Simultaneity Problem in the Aid and Growth Debate*, 28 J. APPL. ECON. 126 (2013) (arguing that the effect of foreign aid on growth is understated because donors reduce aid when growth increases).

11. *See* T.N. Srinivasan, *Attacking Poverty: A Lost Opportunity—World Development Report 2000–01*, 2 S. ASIA ECON. J. 123 (2001).

12. There is a related literature in political science, which has sought to locate certain types of political outcomes (such as authoritarianism or the subordination of women) in culture, tradition, or religion. *See, e.g.*, M. Steven Fish, *Islam and Authoritarianism*, 55 WORLD POL. 4 (2002). Economists have also studied this hypothesis and found empirical support for it. *See, e.g.*, Guido Tabellini, *Culture and Institutions: Economic Development in the Regions of Europe*, 8 J. EUR. ECON. ASS'N 677 (2010) (finding that literacy rates and political institutions in the past influence cultural traits, which in turn affect economic development). The relationship between institutions and culture is complex. We abstract away from this distinction because our focus is the relationship between historical factors (whether institutional or cultural) and human rights performance today.

## II. THE EMPIRICAL HUMAN RIGHTS AND DEVELOPMENT LITERATURES

Over the last fifteen years, scholars of human rights and development economics have used empirical research methods to explain the different opportunities that people have across countries. Scholars of human rights have sought to explain differences in the amount of repression across countries, and scholars of development economics have sought to explain differences in wealth across countries. Despite the many similarities between these topics, the human rights literature has largely ignored the turn toward historical explanations for contemporaneous events that has taken place in development economics.

In this section, we lay the foundation for our argument that human rights scholars should build on the work of development economics. First, we discuss the findings of the empirical human rights literature that has emerged over the last fifteen years. Second, we provide background on the empirical literature on development economics. Third, we outline how the methods and approaches used by development economics can help to explain current human rights practices.

### A. *Human Rights*

Since World War II, governments have expended considerable effort to negotiate major international treaties that commit states to respecting the rights of their citizens. It is only in the last fifteen years, however, that political scientists and legal scholars have begun to use empirical methods to evaluate whether these treaties have actually helped improve human rights practices.<sup>13</sup>

Empirical researchers have primarily tried to test the effectiveness of international human rights law by studying whether ratifying one of the six “core” international human rights agreements is associated with improved human rights practices.<sup>14</sup> Those six agreements are: the International Covenant on Civil and Political Rights (ICCPR);<sup>15</sup> the International Covenant on Economic, Social and Cultural Rights (ICESCR);<sup>16</sup> the International Convention on the Elimination of All Forms of Racial

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13. For papers surveying empirical research on the effect of international human rights agreements, see Emilie M. Hafner-Burton, *A Social Science of Human Rights*, 51 J. PEACE RES. 273 (2014); Gregory Shaffer & Tom Ginsburg, *The Empirical Turn in International Legal Scholarship*, 106 AM. J. INT'L L. 1, 19–25 (2012); Simmons, *Treaty Compliance*, *supra* note 2, at 288–92.

14. See SIMMONS, *MOBILIZING FOR HUMAN RIGHTS*, *supra* note 2, at 59–64; see also POSNER, *supra* note 2, at 22.

15. G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316, at 52 (Dec. 16, 1966), 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).

16. G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316, at 49 (Dec. 16, 1966), 993 U.N.T.S. 3 (entered into force Jan. 3, 1976).



Discrimination (CERD);<sup>17</sup> the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);<sup>18</sup> the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);<sup>19</sup> and the Convention on the Rights of the Child (CRC).<sup>20</sup>

Testing whether the ratification of these core human rights treaties improves human rights practices requires finding reliable measures of rights protections to use as a dependent variable. This has proven to be an exceedingly difficult task, however, because there are few human rights practices that are measured consistently across a wide range of countries and over a long period of time. This has resulted in scholars using a broad range of dependent variables in their statistical analyses. In an early study on the ICCPR, Camp-Keith used data published by Freedom House on the levels of freedoms in different countries.<sup>21</sup> In a later study, Hathaway engaged in a wide-ranging data collection effort to find novel dependent variables, including counting the number of women in national legislatures and coding countries' rates of torture based on State Department reports.<sup>22</sup> More recently, empirical studies have primarily used the CIRI dataset compiled by Cingranelli and Richards.<sup>23</sup> The CIRI dataset gives every country a score for a number of different areas of human rights for each year from 1981 to 2010. These scores are based on the coding of reports written by the State Department and Amnesty International. Although the CIRI dataset has a number of shortcomings, it has become the standard way that scholars evaluate changes in human rights practices.<sup>24</sup>

The results of some of the primary studies that have evaluated the effectiveness of the core human rights agreements are summarized in Table 1. As Table 1 shows, the first four studies of the effectiveness of human rights agreements—Camp-Keith,<sup>25</sup> Hathaway,<sup>26</sup> Hafner-Burton &

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17. G.A. Res. 2106 (XX), U.N. GAOR, 20th Sess., Supp. No. 14, U.N. Doc. A/6014, at 47 (Dec. 21, 1965), 660 U.N.T.S. 195 (entered into force Jan. 4, 1969).

18. G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, U.N. Doc. A/34/46, at 193 (Dec. 18, 1979), 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981).

19. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, U.N. GAOR, 39th Sess., Supp. No. 51, U.N. Doc. A/39/51, at 197 (Dec. 10, 1984).

20. G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49, at 166 (Nov. 20, 1989), 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990).

21. 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).

22. Hathaway, *supra* note 2.

23. David L. Cingranelli & David L. Richards, *The Cingranelli and Richards (CIRI) Human Rights Data Project*, 32 HUM. RTS. Q. 401 (2010).

24. It is worth noting that the political scientist Christopher Fariss recently introduced a dataset that provides a measure of respect for human rights. See Christopher J. Fariss, *Respect for Human Rights has Improved Over Time: Modeling the Changing Standard of Accountability*, 108 AM. POL. SCI. REV. 297 (2014).

25. Camp-Keith, *supra* note 21.

26. Hathaway, *supra* note 2.

Tsutsui,<sup>27</sup> and Neumayer<sup>28</sup>—either found that commitments to international human rights agreements had no effect on rights practices, or they found evidence that these agreements were associated with worse human rights practices. Despite analyzing a number of different treaties using a range of data sources and statistical techniques, these studies did not find evidence that international human rights treaties have improved human rights practices.

To our knowledge, the first research to produce empirical evidence that ratification of international human rights agreements improves human rights practices was provided in Beth Simmons's book-length treatment of the topic.<sup>29</sup> Simmons used a range of statistical models to test the effectiveness of thirteen human rights agreements (including four of the core human rights agreements and several additional protocols). Simmons found that although six of the agreements did not produce statistically significant changes in human rights practices, there was evidence that seven of these agreements did.<sup>30</sup> This included finding that ratification of an optional protocol of the ICCPR that bans the use of the death penalty was associated with countries being more likely to abolish the death penalty; that ratification of the CEDAW was associated with improving the ratio of girls to boys in schools and governments self-reporting increased access to birth control; and that ratification of the CRC was associated with lower rates of child labor and higher rates of child immunization.<sup>31</sup>

Although Simmons's research concluded that human rights agreements have had a positive effect on rights outcomes, Simmons did not find evidence that commitments to international agreements improved respect for human rights in all cases. Instead, Simmons found either limited or no evidence that autocracies or stable democracies improved their rights practices, but her evidence suggested that partially democratic states improved their human rights practices after ratifying international agreements. Simmons argues that this is because ratification of international agreements makes it easier for political actors to promote reforms through the domestic political process.<sup>32</sup>

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27. Emilie M. Hafner-Burton & Kiyoteru Tsutsui, *Human Rights in a Globalizing World: The Paradox of Empty Promises*, 110 AM. J. SOC. 1373 (2005).

28. Eric Neumayer, *Do International Human Rights Treaties Improve Respect for Human Rights?*, 49 J. CONFLICT RESOL. 925 (2005).

29. See SIMMONS, MOBILIZING FOR HUMAN RIGHTS, *supra* note 2.

30. *Id.*

31. *Id.*

32. *Id.*

Table 1: Primary Findings of the Effect of Treaties on Human Rights Practices

	HUMAN RIGHTS AGREEMENT					
	ICCPR	CAT	CEDAW	CRC	ICESCR	CERD
Camp-Keith (1999)	Null	-	-	-	-	-
Hathaway (2002)	Null	Worse	Null	-	-	-
Hafner-Burton & Tsutsui (2005)	Worse	Worse	Worse	Worse	Worse	Worse
Neumayer (2005)	Worse	Worse	-	-	-	-
Simmons (2009)	Mixed	Mixed	Mixed	Mixed	-	-
Hill (2010)	Worse	Worse	Mixed	-	-	-
Cole (2013)	-	-	Mixed			
Lupu (2013a)	Null	Null	Better	-	-	-
Lupu (2013b)	Mixed	-	-	-	-	-
Hill & Jones (2014)	Null	Null	-	-	-	-
Fariss (2014)	-	Better	-	-	-	-
Lupu (2015)	Mixed	-	-	-	-	-

*Null* = No effect on rights protection;

*Worse* = Worse rights protection;

*Better* = Better rights protection;

*Mixed* = Better rights under certain circumstances.

In the years since Simmons's book was released, several studies have used new statistical techniques to reanalyze the question. A study by Hill<sup>33</sup> and two studies by Lupu<sup>34</sup> used almost identical data and very similar statistical techniques. Hill found that ratification of the ICCPR has resulted in more physical integrity violations, and that ratification of the CAT is associated with more torture.<sup>35</sup> Hill's study did suggest that ratification of the CEDAW has improved respect for women's political rights, but that the treaty has had no effect on women's social or economic rights.<sup>36</sup>

Lupu's first study largely replicated the approach used by Hill, but it used a new, sophisticated statistical technique to help address selection effects. Lupu found that the ICCPR and CAT have had no effect on rights protection (instead of making it worse, as Hill suggested), and that the CEDAW has improved women's political, economic, and social rights.<sup>37</sup> In a related paper, Lupu argued that human rights agreements may have an effect when they are enforceable through the domestic political process.<sup>38</sup> To test this theory, Lupu reanalyzed the effects of the ICCPR and found that the ICCPR is associated with improved freedoms of speech, religion, and assembly and association. The paper further found, however, that the ICCPR has not improved physical integrity rights.

However, it is worth noting that even for the studies that found encouraging statistically significant improvements in human rights practices, the size of the effect is quite modest. For example, the one positive result that Hill<sup>39</sup> found was that ratification of the CEDAW improves women's political rights, but his results suggest that the convention seems to have led to roughly a two percent decrease in the chance that states would be classified as the most oppressive by the CIRI dataset, and a five percent increase in the probability that states would be in the best category. Other studies that found positive effects did not quantify them in a clear way, leaving ambiguous whether the effects were substantively important. It is important to note that statistically significant changes in rights practices are not necessarily substantively large changes in rights protection.

To get a sense of magnitudes, consider the graphs in Figure 1. These graphs show the trends in human rights practices in a particular country in the five years before and after ratifying three major human rights agreements. The first three panels of Figure 1 use data from the CIRI

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33. Hill, *supra* note 2.

34. Lupu, *The Informative Power of Treaty Commitment*, *supra* note 2; Lupu, *Best Evidence*, *supra* note 2.

35. Hill, *supra* note 2.

36. *Id.* See also Wade M. Cole, *Government Respect for Gendered Rights: The Effect of the Convention on the Elimination of Discrimination Against Women on Women's Rights Outcomes, 1981-2004*, 57 INTERNATIONAL STUDIES QUARTERLY 233 (2013) (finding some evidence that CEDAW had a positive effect on women's political rights).

37. Lupu, *The Informative Power of Treaty Commitment*, *supra* note 2.

38. Lupu, *Best Evidence*, *supra* note 2.

39. Hill, *supra* note 2.

project, which scores countries' protection of a number of human rights. The CIRI project scores countries in each year as 0 if there are frequent rights violations, 1 if there are occasional rights violations, and 2 if there are no reported rights violations. Upward trends are thus associated with improved rights practices.

Panel 1 examines changes in four important rights in the years before and after ratification of the ICCPR and shows that there is very little noticeable improvement in countries' rights protection after the treaty goes into effect. Panel 2 repeats the same exercise with the ratification of the CEDAW, and only finds evidence that there is a positive trend in women's political rights. This finding is consistent with Hill, who found a positive effect of CEDAW ratification on women's political rights, but not on women's economic or social rights.<sup>40</sup> It is important to note that the data reveals an upward trend in women's political rights before countries ratify the CEDAW, and ratification does not appear to accelerate the rate of improvement. Panel 3 shows that after ratification of the CAT, protection from torture does not improve (and is actually slightly worse). This result is consistent with a number of studies—from Hathaway to Lupu—that have not found evidence that the ratification of the CAT reduces torture rates.

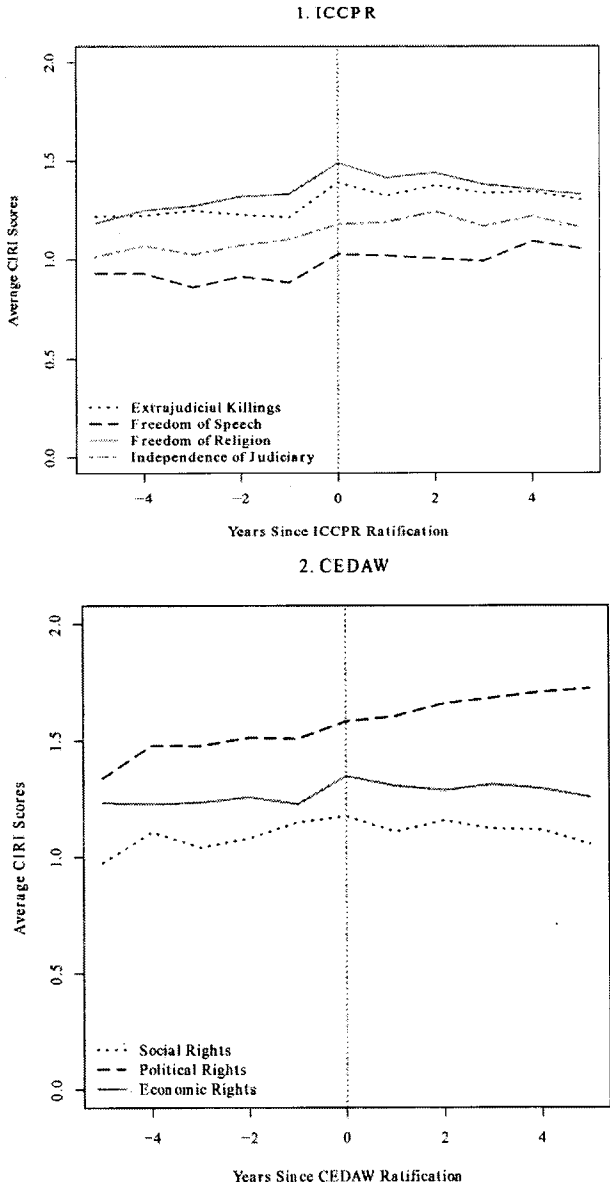
Panel 4 repeats the same exercise for ratification of the CAT, but does not use the CIRI data. Fariss recently used a variety of data sources to create a composite measure of latent rights protection.<sup>41</sup> The measure—which we will refer to as the *Human Rights Score*—combines information from a variety of data sources into a single composite measure of human rights repression by using a dynamic modeling process that accounts for temporal biases in reporting on human rights over time. The *Human Rights Score* dataset looks at 197 countries' human rights practices from 1949 to 2010. The human rights practices in question are those that relate to political repression—extrajudicial killing, torture, censorship, and the like. Thus, the *Human Rights Score* can be taken as a rough measure of a country's compliance with the International Covenant for Civil and Political Rights, which bars those activities.

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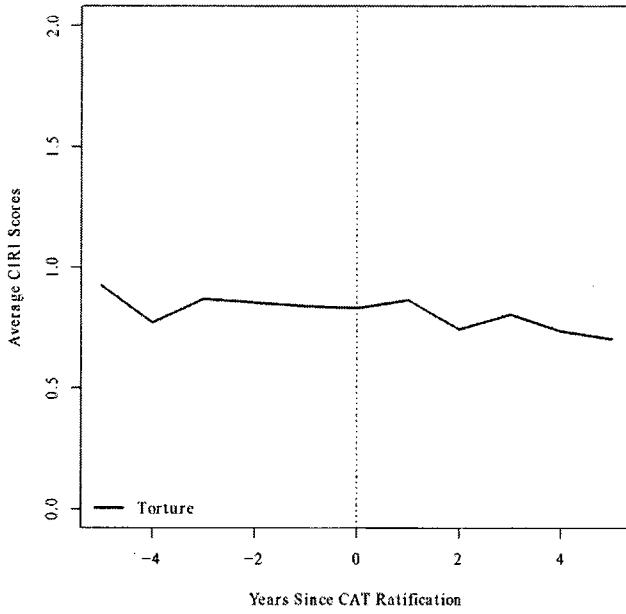
40. *Id.*

41. See Fariss, *supra* note 24. See also Keith E. Schnakenberg & Christopher J. Fariss, *Dynamic Patterns of Human Rights Practices*, 2 POL. SCI. RES. & METHODS 1 (2014).

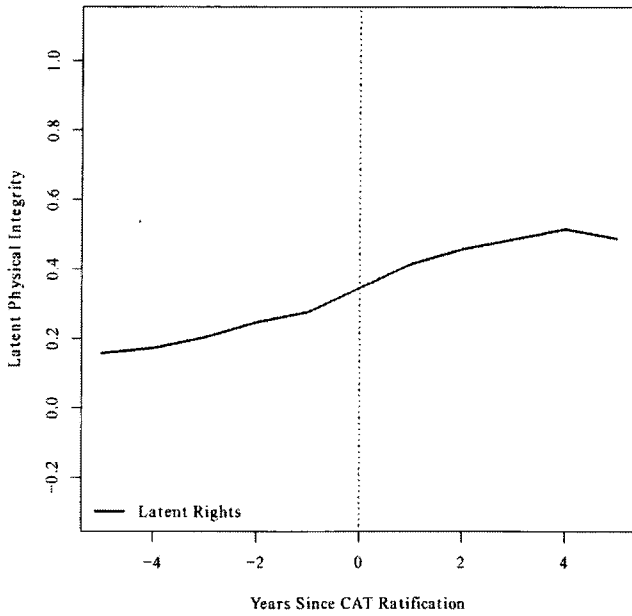
Figure 1: Human Rights Practices Before & After Treaty Ratification



3. CAT - CIRI Data



4. CAT - Fariss Data



The average level of repression for all observations in the dataset is coded as 0, and the score that a country receives is the number of standard

deviations that it is away from 0. For example, North Korea and South Sudan both had a *Human Rights Score* of roughly -2 in 2010, which indicates that they are both two standard deviations worse than the average level of repression of all countries in the world over all years between 1949 and 2010. The United States has a score of 0.4 for 2010, which is slightly better than the dataset's average. Iceland and Luxembourg are at the top of the list in 2010, with scores of roughly 4. We use the 2010 *Human Rights Scores* for each country in most of our figures.<sup>42</sup> In addition to correcting for biases in other commonly used data sources, Fariss's measure has the useful quality that, unlike most other data sources, it is continuous rather than dichotomous or ternary. This makes the data more useful for regressions and graphical representation.

Using this data, Fariss argues that rights have improved over the last thirty years and moreover, that countries that have ratified the CAT have lower rates of rights violations than those that do not.<sup>43</sup> The evidence in Panel 4 is consistent with Fariss's claim that rights protections have improved slightly after countries ratify the CAT.<sup>44</sup> It is worth noting, however, that the trend emerges before countries ratify the CAT. Fariss's data may simply be picking up improvements over time that are not attributable to international treaties.

Despite the sophistication of the statistical techniques used by scholars, issues of causation dog this research. It is difficult to know whether the upward trends are driven by treaty ratification or omitted variables.<sup>45</sup> One cannot reject all possible theories that human rights treaties improve human rights performance. It is possible that improvements in human rights lag ratification by ten, twenty, or fifty years. It is also possible that treaties work together rather than individually, thus affecting the behavior of governments only if governments ratify more than a threshold number of treaties or only if more than a threshold number of governments ratify human rights treaties. Treaties may also improve human rights only if the right conditions—institutional or otherwise—exist in a country.<sup>46</sup>

We should also mention several additional types of studies that have shed light on the relationship between human rights treaties and the behavior of governments. First, recent research has tested whether states receive rewards for ratifying international human rights agreements. One

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42. The two exceptions are Figures 11 and 13, in which we use data on women's rights from the CIRI project. For information on the CIRI project, see Cingranelli & Richards, *supra* note 23. See also David L. Cingranelli & David L. Richards, *Measuring the Level, Pattern, and Sequence of Government Respect for Psychological Integrity Rights*, 43 INT'L STUD. Q. 407 (1999) [hereinafter Cingranelli & Richards, *Measuring the Level*].

43. See Fariss, *supra* note 24.

44. *Id.*

45. See Eric A. Posner, *Some Skeptical Comments on Beth Simmons's Mobilizing for Human Rights*, 44 N.Y.U. J. INT'L L. & POL. 819 (2012).

46. See SIMMONS, MOBILIZING FOR HUMAN RIGHTS, *supra* note 2.



theory that has been put forward to explain why states would commit themselves to international human rights agreements is that those states may receive benefits from powerful countries like the United States and members of the European Union. To test this theory, Nielsen and Simmons examined whether states receive either *tangible* rewards (international aid, trade agreements, or investment agreements) or *intangible* rewards (praise by powerful countries and NGOs) after ratifying the ICCPR or the CAT.<sup>47</sup> Their research found “almost no evidence” that states receive tangible or intangible rewards after ratifying international human rights treaties.<sup>48</sup>

Second, two recent studies have tested whether countries that ratify international human rights agreements are more likely to include rights protections in their national constitutions. Elkins, Ginsburg, and Simmons tested whether constitutions written after the Universal Declaration of Human Rights and the ICCPR include rights similar to those agreements.<sup>49</sup> Their study found evidence that national constitutions written after these agreements did include similar rights to those agreements, and that this effect was stronger for countries that had ratified the ICCPR.<sup>50</sup> Their study thus suggested that international human rights agreements might produce changes in domestic law.<sup>51</sup> More recently, Versteeg tested whether prior ratification of seven major human rights agreements makes countries more likely to include the rights codified in those agreements in their national constitutions.<sup>52</sup> She found that the only treaties that have had a statistically significant effect on the rights included in national constitutions are the CAT and the additional protocol to the ICCPR on the death penalty.<sup>53</sup> In a separate study, Law and Versteeg found that constitutional protections are often “shams”—they are not actually enforced, and so abuses are not stopped.<sup>54</sup> If human rights treaties improve paper constitutional protections that are not enforced, then the treaties can hardly be regarded as successful.

Third, a number of empirical studies have examined whether states that violate human rights are punished by having the foreign aid they receive from other countries reduced. Nielsen tested whether violations of physical integrity rights reduced the amount of foreign aid that 118 developing countries (including both ratifiers and non-ratifiers of human rights

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47. Richard A. Nielsen & Beth A. Simmons, *Rewards for Ratification: Payoffs for Participating in the International Human Rights Regime*, 59 INT'L STUD. Q. 197 (2015).

48. *Id.*

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

50. *Id.*

51. *Id.*

52. Mila Versteeg, *Law versus Norms: The Impact of International Human-Rights Treaties on National Bills of Rights*, 171 J. INSTITUTIONAL & THEORETICAL ECON. 87 (2015). See also Adam Chilton & Mila Versteeg, *The Failure of Constitutional Torture Prohibitions*, 44 J. LEGAL STUD. 417 (2016).

53. *Id.*

54. David S. Law & Mila Versteeg, *Sham Constitutions*, 101 CALIF. L. REV. 863 (2013).

agreements) received from seventeen different OECD donors.<sup>55</sup> Nielsen did find that donors impose aid sanctions as a result of human rights violations, but that these sanctions are imposed selectively.<sup>56</sup> However, he found “virtually no evidence” that states sanction human rights violators because of normative commitments to human rights protection on the part of the sanctioning states.<sup>57</sup> Instead, Nielsen found that states were willing to ignore human rights norms when the violations were committed by the donors’ allies.<sup>58</sup>

Fourth, scholars have also tried to test the effectiveness of international human rights law through survey experiments.<sup>59</sup> The motivation behind these studies is that one mechanism that has been proposed to explain why ratification of international human rights agreements may have an effect is that ratification increases domestic political support for improved rights practices. The idea is that in countries that are at least partially democratic, citizens will become more supportive of human rights after learning their government has made an international commitment, and this support will compel leaders to make policy changes. Survey experiments have tested this idea by providing samples of American respondents with information on a policy that violates international human rights standards and randomly providing some respondents with information on prior human rights commitments. Using this approach, one of us (Chilton) found that information on international law increased support for reforming solitary confinement practices by about four percent,<sup>60</sup> and Wallace found that references to international law dropped support for the use of torture by about six percent.<sup>61</sup> These studies have limitations. Most notable is the fact that there is not yet evidence showing that modest changes in public support for improving human rights are likely to translate to changes in public policy.

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55. Richard A. Nielsen, *Rewarding Human Rights? Selective Aid Sanctions Against Repressive States*, 57 INT’L STUD. Q. 791 (2013).

56. *Id.* at 797–800.

57. *Id.* at 791.

58. *Id.*

59. For more information on this method, see Adam Chilton & Dustin Tingley, *Why the Study of International Law Needs Experiments*, 52 COLUM. J. TRANSNAT’L L. 173 (2013). Studies that have tested the effectiveness of human rights treaties using experiments include: Adam Chilton, *The Influence of International Human Rights Agreements on Public Opinion: An Experimental Study*, 15 CHI. J. INT’L L. 137 (2014) [hereinafter Chilton, *The Influence of International Human Rights Agreements*]; Geoffrey P.R. Wallace, *International Law and Public Attitudes Toward Torture: An Experimental Study*, 67 INT’L ORG. 105 (2012) [hereinafter Wallace, *International Law*]; Tonya L. Putnam & Jacob N. Shapiro, *Does International Law Affect Willingness to Punish Foreign Human Rights Abusers?* (Working Paper Jul. 11, 2009), available at [http://www.princeton.edu/~jns/papers/Putnam\\_Shapiro\\_2009\\_W2P.pdf](http://www.princeton.edu/~jns/papers/Putnam_Shapiro_2009_W2P.pdf); Michael Tomz, *Reputation and the Effect of International Law on Preferences and Beliefs* (Working Paper Feb. 2008), available at <http://web.stanford.edu/~tomz/working/Tomz-IntlLaw-2008-02-11a.pdf>.

60. Chilton, *The Influence of International Human Rights Agreements*, *supra* note 59, at 128 n.71.

61. Wallace, *International Law*, *supra* note 59, at 119.

## B. *Development*

Development economics attempts to explain why some countries have become richer than others.<sup>62</sup> An early strand of that literature argued that economic development is simply a function of good policies.<sup>63</sup> For example, one country might be richer than another because the government of the first country has built infrastructure such as roads and canals, or has avoided ruinous wars, or has avoided excessive taxation that destroyed incentives to work. In the case of newly independent countries, poverty may result from lack of education and insufficient capital. To the extent that these theories are true, policy prescriptions for advancing economic development of poor countries are straightforward. Those countries simply need to build infrastructure, reform the tax system, increase education, and so on. Foreign countries can help by providing technical assistance, cash, and loans.<sup>64</sup>

This view has always had its skeptics.<sup>65</sup> It seems too simple to say that all a government in a poor country has to do is adopt sensible policies that the rich world has already figured out. Moreover, the actual efforts to help poor countries with technical assistance and loans have yielded disappointing results: foreign aid—whether direct aid, loans, or technical assistance—does not appear to advance economic growth systematically and robustly.<sup>66</sup> These findings raise the question whether economic growth rates might be determined by factors that are outside the immediate control of policymakers.

And, indeed, the view that wealth is rooted in the natural or historical conditions of a country has long been influential. One idea, which goes back centuries, is that countries with a better climate, more natural resources, and similar favorable natural endowments should be wealthier than countries that lack these resources.<sup>67</sup> This idea lost favor as it became clear that some countries that lack natural endowments have become very wealthy—Japan, for example.

But recent work that uses statistical analysis has found that, as a general pattern, countries with more favorable geographic conditions are wealthier. As Figure 2 shows, countries at higher or lower latitudes have a temperate climate more suitable for agriculture than countries near the equator, and

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62. For a recent survey, see Spolaore & Wacziarg, *How Deep Are the Roots*, *supra* note 7, which we use to organize our discussion here.

63. *See, e.g.*, RONALD I. MCKINNON, MONEY AND CAPITAL IN ECONOMIC DEVELOPMENT (1973) (attributing low rates of development among poor countries to poor policy choices).

64. *See, e.g.*, Paul Collier & David Dollar, *Can the World Cut Poverty in Half? How Policy Reform and International Aid Can Meet International Development Goals*, 29 *WORLD DEV.* 1787 (2001).

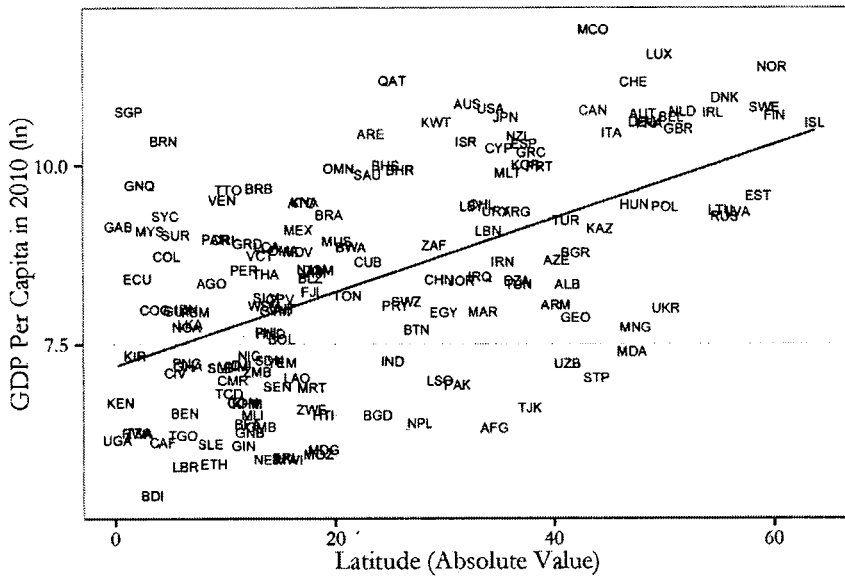
65. For a discussion, see William Easterly, *National Policies and Economic Growth: A Reappraisal*, in *HANDBOOK VOLUME 1A*, *supra* note 4, at 1015.

66. *See supra* note 10.

67. *See, e.g.*, CHARLES DE MONTESQUIEU, *THE SPIRIT OF THE LAWS* (THOMAS NUGENT, TRANS., 2011) (speculating in 1748 about the relationship between geography and national wealth).

they are wealthier. Countries with a lower percentage of their land area in the tropics are wealthier. Landlocked countries and countries that lack navigable rivers are poorer than other countries because of limited access to trade. Countries with naturally occurring flora and fauna appropriate for agriculture and animal husbandry are wealthier than countries without them. The positive correlation between geographic favorability within a country and its modern-day per capita income is robust.<sup>68</sup>

Figure 2: Latitude & Gross Domestic Product Per Capita in 2010



The geographic theory of economic development has been challenged on various grounds. One source of discomfort with it is that it implies that the relative wealth of countries should never change (putting aside expansion through conquest and union). Yet the relative wealth of countries has varied considerably over the centuries. Indeed, the relative wealth of countries in 1500 A.D.—as proxied by population density—is negatively correlated to their relative wealth today.<sup>69</sup> China, for example, had one of the leading economies from ancient times until the nineteenth century and then became a poor country until quite recently. While Latin American and North American countries had about equal resources when colonized by Europeans, today the North American countries are significantly wealthier.<sup>70</sup> Moreover, some evidence indicates that countries with

68. See Spolaore & Wacziarg, *How Deep Are the Roots*, *supra* note 7, at 328–31.

69. *Id.* at 332–34. For some groups of countries, there is no relationship.

70. Stanley L. Engerman & Kenneth L. Sokoloff, *Factor Endowments, Institutions, and Differential Paths of Growth among New World Economies: A View from Economic Historians of the United States*, in *HOW*

abundant resources are subject to the “resource curse”—low economic growth despite abundant resources as a result of battles between groups for control of the resources, among other problems.<sup>71</sup>

These observations have led to a new line of research (albeit with roots in the 1970s)<sup>72</sup> that focuses on the quality of institutions as they have developed over time. Differences in institutional quality may explain why some countries benefit from natural resources while others succumb to the resource curse.<sup>73</sup> The most famous institutional argument is Acemoglu, Johnson, and Robinson’s (AJR) institutional transplant argument.<sup>74</sup> They claim that when Europeans colonized other parts of the world, they sometimes, but not always, transplanted their institutions into their colonies. AJR hypothesize that Europeans constructed low-quality institutions when they sought merely to extract resources, and high-quality institutions when they sought to engage in long-term investment. Extraction was used when resources were abundant and easy to access while environmental conditions were too harsh for colonists to survive for a long period of time. Otherwise, settlers invested for the long term by transplanting their legal, political, and economic institutions.

While AJR’s empirical work has been criticized,<sup>75</sup> their paper set off a flurry of research on the historical origins of institutions. As we will discuss in greater detail in Part II, researchers discovered a range of correlations between conditions in the distant past and measures of institutional quality today. The wealthier countries hundreds of years ago tend to be the wealthier countries today, even controlling for geographic conditions.<sup>76</sup> A likely reason for this “lag” effect is that the present wealth is generated by institutions that persist or reproduce themselves over time. Other work suggests that norms, institutions, and practices that emerged in very different economic conditions hundreds of years ago tend to persist—to be maintained by populations even when they migrate. For example, one study suggests that agricultural societies in which the plow was used because of the nature of the soil and the crops that could grow in it tended to have

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LATIN AMERICA FELL BEHIND: ESSAYS ON THE ECONOMIC HISTORIES OF BRAZIL AND MEXICO, 1800–1914, 260 (1997).

71. See Morrison, *supra* note 9.

72. LANCE E. DAVIS & DOUGLASS C. NORTH, INSTITUTIONAL CHANGE AND AMERICAN ECONOMIC GROWTH (1971).

73. See Morrison, *supra* note 9, at 56–57.

74. Daron Acemoglu et al., *The Colonial Origins of Comparative Development: An Empirical Investigation*, 91 AM. ECON. REV. 1369 (2001) [hereinafter Acemoglu et al., *The Colonial Origins*]; Daron Acemoglu et al., *Reversal of Fortune: Geography and Institutions in the Making of the Modern World Income Distribution*, 117 Q. J. ECON. 1231 (2002) [hereinafter Acemoglu et al., *Reversal of Fortune*].

75. See David Y. Albouy, *The Colonial Origins of Comparative Development: An Empirical Investigation: Comment*, 102 AM. ECON. REV. 3059 (2012) (criticizing); Daron Acemoglu et al., *The Colonial Origins of Comparative Development: An Empirical Investigation: Reply*, 102 AM. ECON. REV. 3077 (2012) (defending).

76. See Spolaore & Wacziarg, *How Deep Are the Roots*, *supra* note 7, at 326 n.2; Quamrul Ashraf & Oded Galor, *Dynamics and Stagnation in the Malthusian Epoch*, 101 AM. ECON. REV. 2003 (2011).

unequal gender norms (because men were needed to drive the plow, and so women were confined to the home) that have persisted for centuries.<sup>77</sup> Agricultural societies that did not use the plow and so employed female labor in the fields generated more equal gender norms that have also persisted despite radically different economic circumstances that prevail today.<sup>78</sup> In a related vein, a study found that areas in Africa that were raided by slavers in the 1800s are poorer today than those areas that were not—suggesting that the slave raids destroyed institutions that minimized conflict and supported economic cooperation.<sup>79</sup>

In another line of research, scholars have investigated whether migration and the composition of populations have influenced long-term economic development. One might think that institutional advantages that arise in one country would erode over time as populations in other countries imitated them. Substantial empirical evidence shows that norms and institutions diffuse across populations and countries.<sup>80</sup> Why doesn't diffusion eliminate advantages from centuries in the past?

An intuitive explanation is that geographical barriers such as bodies of water and mountain ranges isolate populations and block or slow down diffusion.<sup>81</sup> We discussed that theory above. Spolaore and Wacziarg use genetic distance as a proxy for remoteness.<sup>82</sup> Because populations with more distant common ancestors are geographically more remote from each other, genetic distance serves as a proxy for cultural distance. The authors provide

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77. Alberto Alesina et. al, *On the Origins of Gender Roles: Women and the Plough*, 128 Q. J. ECON. 469 (2013).

78. For other papers that find correlations between measures of the well-being of women today and remote historical conditions, see Gilles Duranton et al., *Family Types and the Persistence of Regional Disparities in Europe*, 85 ECON. GEOGRAPHY 23 (2009) (medieval family structure); Melanie Meng Xue, *Textiles and the Historical Emergence of Gender Equality in China* (Mar. 2015) (unpublished manuscript) (on file with the Virginia Journal of International Law Association) (textile production); Gautam Hazarika et al., *The Role of Historical Resource Constraints in Modern Gender Inequality: A Cross-Country Analysis* (Aug. 2014) (unpublished manuscript) (on file with the Virginia Journal of International Law Association) (resource scarcity); Pauline Grosjean & Rose Khattar, *It's Raining Men! Hallelujah?* (Apr. 17, 2015) (unpublished manuscript) (on file with the Virginia Journal of International Law Association) (population sex ratios).

79. Nathan Nunn, *The Long-Term Effects of Africa's Slave Trades*, 123 Q. J. ECON. 139 (2008). For related work that shows that a history of slavery is correlated with low levels of well-being or with human rights violations today, see Daron Acemoglu, Camilo García-Jimeno & James A. Robinson, *Finding Eldorado: Slavery and Long-Run Development in Colombia*, 40 J. COMP. ECON. 534 (2012) (finding that in Colombia a history of slavery is positively correlated with bad performance on current indicators of well-being, like poverty, school enrollment, and vaccination); Graziella Bertocchi & Arcangelo Dimico, *Slavery, Education, and Inequality*, 70 EUR. ECON. REV. 197 (2014) (finding that in the United States a history of slavery is positively correlated with current economic inequality); Warren Whitley & Rob Gillezeau, *The Impact of the Transatlantic Slave Trade on Ethnic Stratification in Africa*, 101 AM. ECON. REV. 571 (2011) (finding that in Africa a history of slavery is positively correlated with current ethnic fragmentation).

80. See KATERINA LINOS, *THE DEMOCRATIC FOUNDATIONS OF POLICY DIFFUSION: HOW HEALTH, FAMILY AND EMPLOYMENT LAWS SPREAD ACROSS COUNTRIES* (2013).

81. See Spolaore & Wacziarg, *How Deep Are the Roots*, *supra* note 7, at 328–31.

82. Enrico Spolaore & Romain Wacziarg, *The Diffusion of Development*, 124 Q. J. ECON. 469 (2009).

evidence that genetic distance from the U.S. population is negatively correlated with economic growth. In related work, Ashraf and Galor show that population diversity itself is related to economic growth. Populations with very high and very low levels of genetic diversity are poorer than populations with mid-level genetic diversity. Ashraf and Galor argue that too much diversity interferes with governance while too little diversity is bad for the economy.<sup>83</sup> The wealth of countries today reflects paths of migration thousands of years ago.

While all of this research has been hotly debated, a consensus does seem to be forming that geography matters for economic growth, both directly and by virtue of its effect on institutions, and that history, including remote history, also matters a great deal. The quality of institutions changes slowly over time, and so the quality of institutions today is heavily influenced by historical factors over which policymakers have no control. The research, while fascinating, has an unsettling implication: that efforts to help countries improve their rate of economic growth will be constrained by significant exogenous factors. The reason that development assistance has failed to promote economic growth in foreign countries may be that economic growth in those countries is chiefly a function of historical and geographic influences that development assistance cannot affect.

### C. *Comparing the Literatures*

It should be clear by now that the development literature has devoted considerably more attention to historical and geographic conditions than the human rights literature has. The focus has been driven in part by methodological questions related to the difficulty with using statistical analysis to show causation. Scholars have understood for a long time that wealthier countries have better institutions, but until recently they could not determine the direction of causality: whether good institutions cause wealth or wealth causes good institutions. However, history provides a way out of this puzzle. Because wealth today cannot cause favorable geographic conditions or advanced technology in 1500 A.D., correlations between wealth today and those factors strongly suggest that the direction of causality goes from those factors to wealth, rather than vice versa. Institutions—or at least, historical conditions—matter for economic development.

Human rights researchers have also struggled with the problem of causation. Does ratification of human rights treaties cause countries to improve human rights, or does the improvement of human rights, occurring because of changes in social norms or wealth or some other factor, cause

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83. Quamrul Ashraf & Oded Galor, *The "Out of Africa" Hypothesis, Human Genetic Diversity, and Comparative Economic Development*, 103 AM. ECON. REV. 1 (2013).

countries to ratify human rights treaties? So far, researchers have put relatively little effort into determining the direction of causality, no doubt because until recently most studies found no correlations.<sup>84</sup>

Regardless of whether human rights treaties cause improvements in human rights, they clearly cannot be the whole story. After all, many countries provided far greater protection for human rights before the international human rights regime was created than dozens of countries did after they ratified the various human rights treaties. In Part III, we turn to alternative explanations.

### III. HYPOTHESES

Our conjecture that geographic and historical factors affect countries' modern-day human rights performance is inspired by the findings of the development literature. Both economic development and respect for rights may be outcomes of the same underlying factors—for example, cultural traditions that favor respect for individuals, high-quality institutions for resolving disputes, well-functioning political institutions, isolation from hostile foreign countries, remoteness from sources of cultural or institutional diffusion, or abundant natural resources that limit the sources of conflict. In the following sections, we explore these ideas by describing selected hypotheses from the development literature; suggesting reasons the hypotheses might apply to human rights performance as well as economic development; and providing some initial evidence bearing on those hypotheses.<sup>85</sup> To be clear, this is just initial evidence. We do not use regressions to control for other factors, but just examine the correlations between the factors identified by these hypotheses and human rights practices. Except where otherwise indicated, our dependent variable is Fariss's *Human Rights Score*.<sup>86</sup>

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84. See, e.g., Neumayer, *supra* note 28 (trying to account for the endogenous relationship between treaty ratification and compliance by using Heckman models); SIMMONS, MOBILIZING FOR HUMAN RIGHTS, *supra* note 2 (using instrumental variable regression); Hill, *supra* note 2; Lupu, *The Informative Power of Treaty Commitment*, *supra* note 2; Lupu, *Best Evidence*, *supra* note 2; Lupu, *Legislative Veto Players*, *supra* note 2 (all using matching techniques).

85. We rely on a recent survey piece on development economics, and organize our paper roughly in the same way that this paper is organized for ease of comparison. See Spolaore & Wacziarg, *How Deep Are the Roots*, *supra* note 7. We provide correlations and statistical significance for all our tests in the appendix.

86. See *supra* text accompanying notes 24.



### A. *Geography and Climate*

Economists have long speculated that geographic and climatic conditions affect economic development. Countries with temperate climates, abundant natural resources, and favorable conditions for trade (for example, access to the sea) should be wealthier than those that lack these advantages. We consider whether two geographic features—latitude and access to water—can help to explain human rights practices.

#### 1. *Latitude*

Geographic advantages, as proxied by distance from the equator (latitude), whether a country is landlocked, whether it is an island, and the percentage of a country's area in the tropics, account for as much as forty-four percent of a country's log per capital income in 2005.<sup>87</sup> The causal explanation for this correlation is hotly contested.<sup>88</sup> Some scholars argue that geographic advantages directly generate wealth;<sup>89</sup> others argue that geographical advantages favor high-quality institutions, which generate wealth.<sup>90</sup> Regardless of the explanation, regression results provide strong evidence for the correlation between latitude and current wealth.<sup>91</sup>

Figure 3 provides a visual test of our first hypothesis, which is that countries with more temperate climates have higher *Human Rights Scores* than countries with less temperate climates. Our independent variable is the absolute value of latitude.<sup>92</sup> A higher value represents greater distance from the equator, which (roughly) indicates a more temperate climate. As Figure 3 shows, countries with a more temperate climate also have stronger human rights. To be more exact, the correlation between these two variables is 0.32, and it is statistically significant at the 0.001 level. The evidence is consistent with the geographic hypothesis that human rights flourish in countries with favorable geographic conditions.

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87. Spolaore & Wacziarg, *How Deep Are the Roots*, *supra* note 7, at 328.

88. *Id.* at 327.

89. See, e.g., Jeffrey D. Sachs, Andrew D. Mellinger, & John L. Gallup, *The Geography of Poverty and Wealth*, *SCI. AM.*, Mar. 2001, at 71; William A. Masters & Margaret S. McMillan, *Climate and Scale in Economic Growth*, 6 *J. ECON. GROWTH* 167 (2001).

90. See, e.g., Acemoglu et al., *The Colonial Origins*, *supra* note 74.

91. See generally Spolaore & Wacziarg, *How Deep Are the Roots*, *supra* note 7, at 328 Table 1.

92. This data is from the Global Development Network Growth Database, available at <http://www.nyudri.org/resources/global-development-network-growth-database/> (last visited Feb. 27, 2015).



Figure 4: Access to Water and Human Rights Score

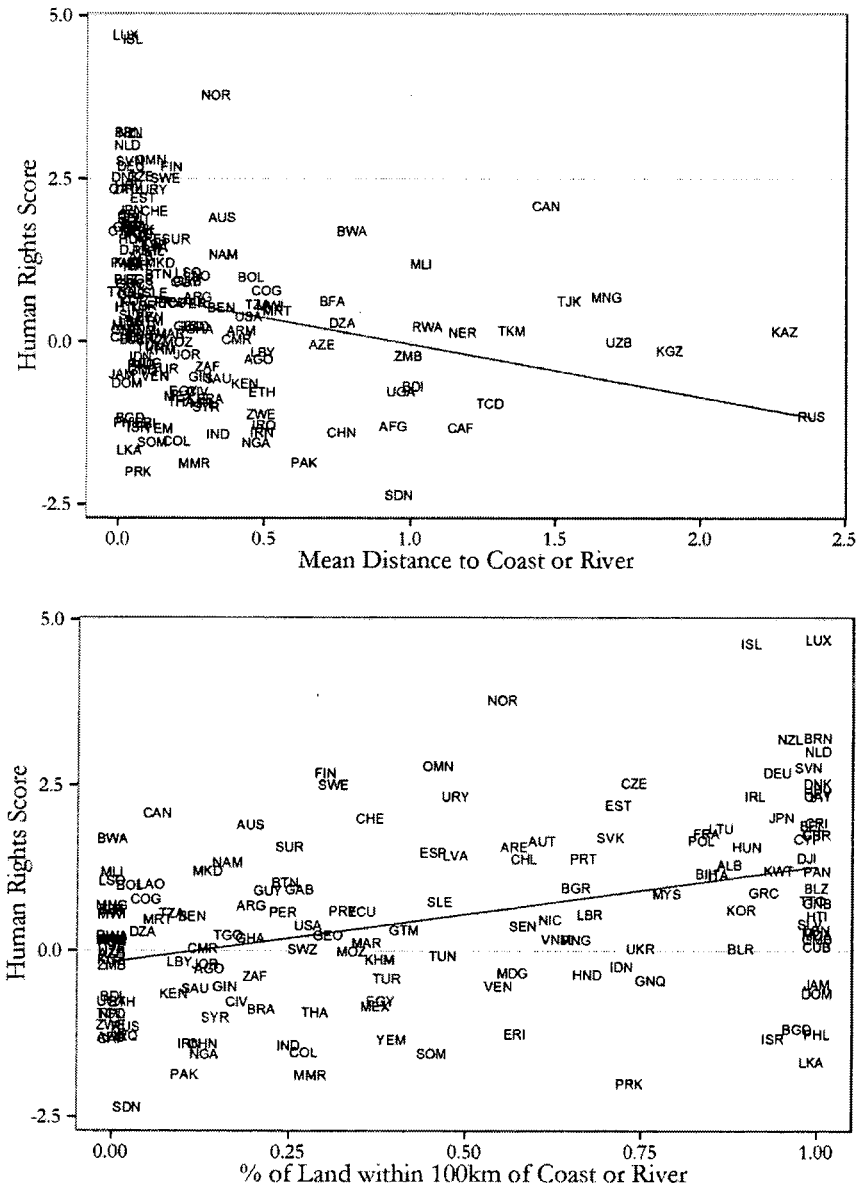


Figure 4 shows the relationship between human rights and two measures of water access.<sup>95</sup> As the top panel shows, human rights are

95. Both variables are from Ashraf & Galor's dataset on development economics. Ashraf & Galor, *supra* note 76. This data is publically available at <https://drive.google.com/file/d/0Bw0xeVVYEG5XTTBSbTRHdGdiMnc/edit?usp=sharing> (last visited Aug. 7, 2015).

stronger in countries that are close to a coast or a river than in countries that are landlocked. Mean distance to a coast or river has a  $-0.27$  correlation with the *Human Rights Score*, which is statistically significant at the 0.01 level. In other words, the more of a country's territory that is far from oceans or rivers, the worse its human rights practices are likely to be. The bottom panel also shows that human rights are stronger in countries with a higher percentage of land within 100 kilometers of a coast or river. The relationship has a 0.40 correlation with the *Human Rights Score*, which is also statistically significant at the 0.001 level. Thus, both variables that measure access to water are highly correlated with current human rights practices, which is consistent with the geographic hypothesis that human rights flourish in countries with favorable geographic conditions.

### 3. Conclusion

In sum, we find correlations between geographic factors and human rights abuse. Repression and other human rights violations occur more frequently in countries with harsh environmental conditions than in countries with more favorable geographic conditions.

#### B. Institutional Transplant

Another theory is that the historical quality of institutions determines economic development.<sup>96</sup> One version of this theory is what we call the "institutional transplant" theory, which holds that the economic growth rate of a former colony is a function of the institutions transplanted to it by an imperial power. We explore the relationship between two variables that are used as proxies for the institutional transplant theory—settler mortality and the European share of the population—and current human rights practices.

##### 1. Settler Mortality

AJR argue that current differences between countries' levels of wealth can be explained largely by the quality of their institutions. AJR further argue that high-quality institutions are not created overnight. Instead, whether a country has high-quality institutions now is heavily influenced by the quality of their institutions hundreds of years ago. As a measure of institutional quality hundreds of years ago, AJR used the settler mortality rates in countries colonized by Europe because colonizers did not establish high-quality institutions in places that were hazardous to their health. After estimating a number of different regressions, AJR found strong evidence that settler mortality is negatively associated with countries' current wealth.<sup>97</sup>

96. See, e.g., Acemoglu et al., *The Colonial Origins*, *supra* note 74.

97. *Id.*; Acemoglu et al., *Reversal of Fortune*, *supra* note 74.

Similarly, it may be the case that the human rights performance of former colonies can be traced to institutional transplants. One of the major findings of the empirical human rights literature is that institutions can influence the effectiveness of human rights protections. For example, one paper found that the presence of an independent judiciary increases the likelihood that human rights will be protected.<sup>98</sup> Another study found that countries with legislative veto players are more likely to comply with their human rights commitments.<sup>99</sup> Both of these findings suggest that high-quality institutions should be associated with better human rights performances, and the quality of these institutions may have deep historical roots. The clear hypothesis that this suggests is that, in former colonies outside of Europe, human rights should be stronger in countries that received higher-quality institutions from their colonial overlords.

Figure 5: *Settler Mortality and Human Rights Score*

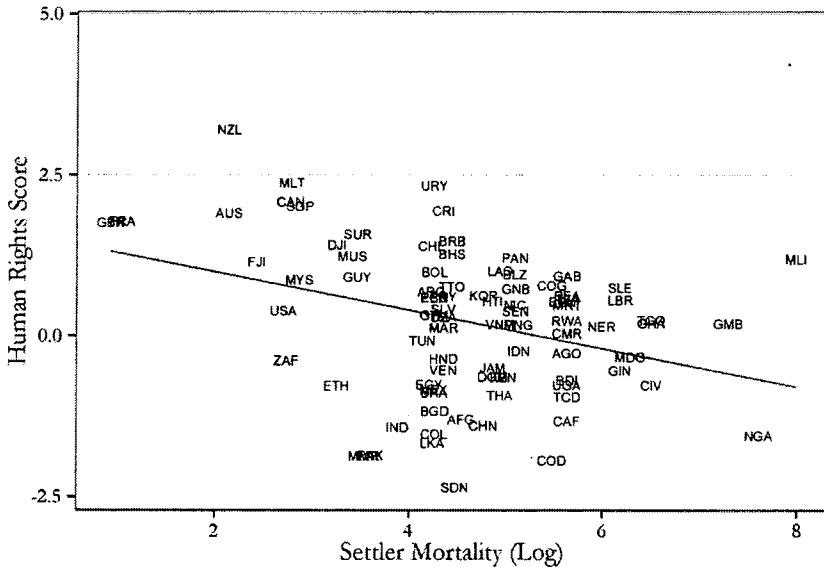


Figure 5 shows the relationship between the key variable used by AJR to measure institutional quality—the log of settler mortality at the time of colonization<sup>100</sup>—and countries' *Human Rights Scores*. As the figure clearly shows, higher rates of settler mortality are associated with worse human rights in 2010. The log of settler mortality has a  $-0.34$  correlation with *Human Rights Scores*, which is statistically significant at the 0.01 level. Unlike

98. See Lupu, *Best Evidence*, *supra* note 2.

99. See Lupu, *Legislative Veto Players*, *supra* note 2.

100. This variable is taken from AJR's replication dataset. Acemoglu et al., *The Colonial Origins*, *supra* note 74. This data is publically available at <http://economics.mit.edu/faculty/acemoglu/data/ajr2001> (last visited Feb. 27, 2015).

AJR, we do not try to show causation. Instead, these results are preliminary evidence in support of the institutional transplant hypothesis.

## 2. *European Share of the Population*

Other scholars have investigated the institutional transplant hypothesis by studying the relationship between the European share of the population at the time of colonization and current economic wealth.<sup>101</sup> Most notably, Easterly and Levine found that European share of the population during colonization is a statistically significant predictor of current wealth, even when controlling for a number of other variables that measure state history—like early adoption of agriculture.<sup>102</sup> Easterly and Levine have argued that their results suggest the importance of the human capital that was brought by early European settlers during colonization.<sup>103</sup>

As another way to explore the institutional transplant hypothesis, we examined the relationship between human rights and the European share of the population during colonization as a proxy for early institutions.<sup>104</sup> The justification for doing so is that European settlers created institutions in the areas they colonized, and that larger European populations created more substantial institutions. The hypothesis is thus that there should be a positive correlation between the European share of the population during colonization and current human rights practices.

Figure 6 shows the relationship between the European share of the population at colonization and current *Human Rights Scores*. As Figure 6 shows, larger European shares at the time of colonization are associated with better *Human Rights Scores*. The relationship between these two variables has a correlation of 0.34, and is statistically significant at the 0.01 level. These results thus suggest that Easterly & Levine's argument about the influence of institutions and human capital on current economic wealth may also hold for current human rights practices.

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101. See also Louis Putterman & David N. Weil, *Post-1500 Population Flows and the Long-Run Determinants of Economic Growth and Inequality*, 125 Q. J. ECON. 1627 (2010) [hereinafter Putterman & Weil, *Post-1500*]; William Easterly & Ross Levine, *The European Origins of Economic Development* (Working Paper, 2014), available at <http://www.nber.org/papers/w18162.pdf> (last visited Feb. 27, 2015). See generally Spolaore & Wacziarg, *How Deep Are the Roots*, *supra* note 7, at 338–41.

102. See Easterly & Levine, *supra* note 101.

103. *Id.*

104. This variable is from Easterly & Levine's dataset on economic development. See *id.* This data is publically available at [http://faculty.haas.berkeley.edu/ross\\_levine/Papers/appendix\\_europeans\\_16oct2013.xls](http://faculty.haas.berkeley.edu/ross_levine/Papers/appendix_europeans_16oct2013.xls) (last visited Feb. 27, 2015).



argue that because civil law was developed by relatively absolute monarchies as a way to control the population through subordinate judges, civil law systems favor centralization of power that disrupts markets. By contrast, the common law was developed in a relatively decentralized system and preserved the dispersion of power in institutions that featured independent judges and an adversarial style of adjudication, which constrained the central government and promoted markets. While the literature does not claim that civil law systems are “lower-quality” than common law systems in an inherent sense, it does claim that civil law systems lead to lower economic growth, and there is some evidence for this hypothesis.<sup>106</sup>

One might similarly argue that if civil law systems enhance the power of central governments, they may also enhance its power to violate human rights, and thus should lead to more human rights violations. A problem with this argument is that the relationship between government centralization and human rights is not obvious. Many human rights obligate the government to intervene—to protect children from abuse, for example, or to require employers to accommodate workers with disabilities, or to abolish slavery—and such intervention may require a strong central government with control over the courts, rather than a weak central government.<sup>107</sup> Nonetheless, the hypothesis is sufficiently plausible to be worth exploring.

Figure 7 shows the relationship between countries’ legal origins and their current *Human Rights Scores*.<sup>108</sup> In the top panel, countries are coded as “1” if they have British legal origins (which is a standard measure of having a common law tradition) and “0” otherwise. In the bottom panel, countries are coded as “1” if they have French legal origins (which is a standard measure of having a civil law legal tradition) and “0” otherwise. The figure shows that having British legal origins is very weakly associated with better *Human Rights Scores*, and that having French legal origins is very weakly associated with worse *Human Rights Scores*.<sup>109</sup> Both results are far from statistically significant. Our preliminary analysis thus does not suggest a relationship between legal origins and current human rights practices, but obviously more research would have to be done to examine if a relationship does exist.

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106. *Id.* at 1197.

107. For this reason, a better approach would consider the range of policies that imperial powers applied in their colonies rather than merely legal policy. For this argument, see Daniel M. Klerman, Paul G. Mahoney, Holger Spamann, & Mark I. Weinstein, *Legal Origin or Colonial History?*, 3 J. LEGAL ANALYSIS 379 (2011).

108. The legal origins data is from the Global Development Network Growth Database, available at <http://www.nyudri.org/resources/global-development-network-growth-database/> (last visited Feb. 27, 2015).

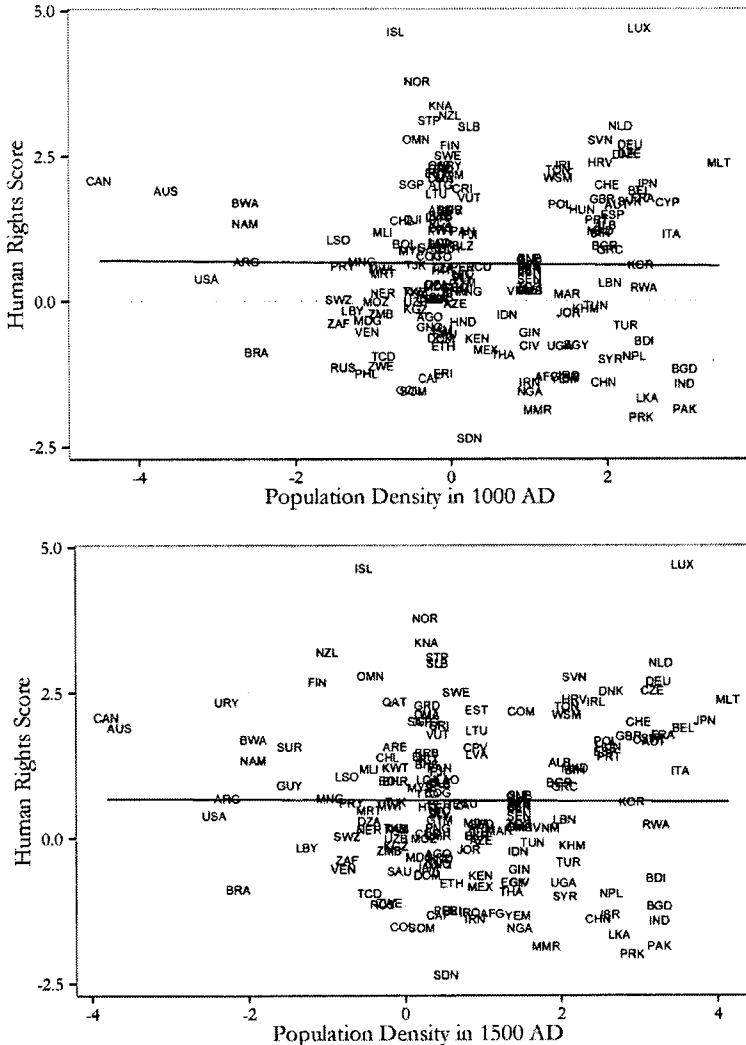
109. Our results are thus consistent with the findings in Sara McLaughlin Mitchell et al., *Domestic Legal Traditions and States' Human Rights Practices*, 50 J. PEACE RES. 189 (2013), who, however, use as their dependent variable a measure of political terror.





the past could be interpreted directly as a measure of economic growth or indirectly as a measure of the quality of economic institutions. Evidence suggests that countries with the highest economic growth also had the highest population density in 1500 A.D. and 1000 A.D., and so it has been suggested that this is evidence of a long time lag in the quality of economic institutions.<sup>111</sup>

Figure 8: Population Density and Human Rights Scores



One can construct a similar argument about human rights. Suppose that population density in 1500 A.D. reflected the level of economic

111 Spolaore & Wacziarg, *How Deep Are the Roots*, *supra* note 7, at 335.

development, and the level of economic development reflected the quality of economic institutions. One might further speculate that a country with high-quality economic institutions also had high-quality legal and political institutions, based on the plausible assumption that “economic institutions” are just legal and political institutions that protect property rights and enforce contracts. If the institutional lag hypothesis is correct, it would follow that such countries would also have fewer human rights violations today.

Figure 8 shows the relationship between past population density and *Human Rights Scores*.<sup>112</sup> The top panel shows the relationship between the log of population density in 1000 A.D. and *Human Rights Scores*, and the bottom panel shows the relationship between the log of population density in 1500 A.D. and *Human Rights Scores*. In contrast to existing research that finds a positive relationship between past population density and current wealth,<sup>113</sup> both panels show a very slight negative relationship between historical population density and *Human Rights Scores*. That said, neither of these correlations is statistically significant.

### 3. State Centralization and Onset of Agriculture

Researchers have argued that state centralization and the number of years since the adoption of agriculture may be proxies for institutional quality. The research in this area addresses whether populations that migrate bring their institutions (or human capital or other norms and values) with them, so that the quality of institutions in a country depends on the quality of institutions of the population that migrated to the country rather than the quality of institutions that existed in that area before the migrants arrived.<sup>114</sup> While state centralization and adoption of agriculture may seem like cruder proxies for institutional quality than the others we have discussed, they have the virtue that they can be traced back along the paths of popular migration. This research finds some evidence for the hypothesis that populations that experienced state centralization earlier and adopted agriculture earlier also had higher quality institutions than other populations.<sup>115</sup>

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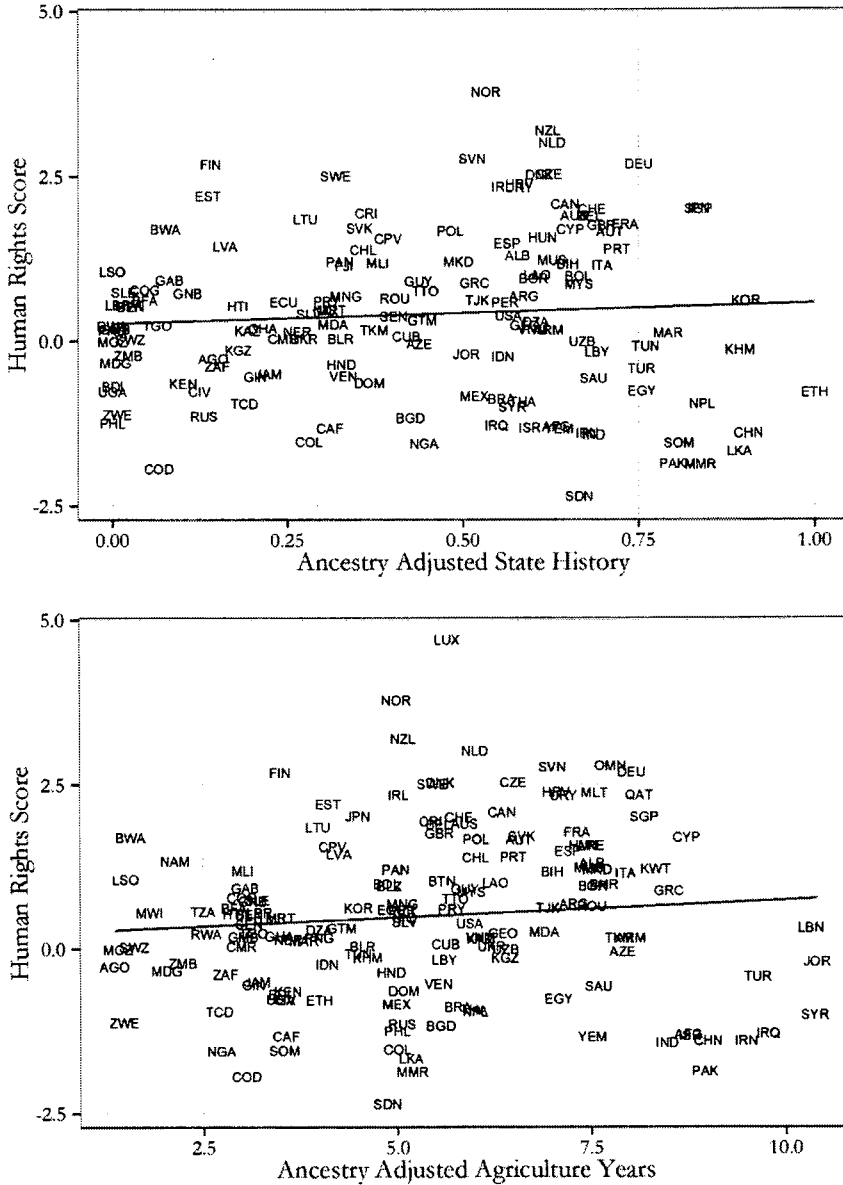
112. See Ashraf & Galor, *supra* note 76.

113. See Spolaore & Wacziarg, *How Deep Are the Roots*, *supra* note 7, at 334.

114. See, e.g., Putterman & Weil, *Post-1500*, *supra* note 101; Valerie Bockstette, Areendam Chanda & Louis Putterman, *States and Markets: The Advantage of an Early Start*, 7 J. ECON. GROWTH 347 (2002); Areendam Chanda & Louis Putterman, *Early Starts, Reversals and Catch-Up in the Process of Economic Development*, 109 SCANDINAVIAN J. ECON. 387 (2007) [hereinafter Chanda & Putterman, *Early Starts*].

115. Spolaore & Wacziarg, *How Deep Are the Roots*, *supra* note 7, at 338.

Figure 9: State Centralization and Human Rights Scores



This hypothesis is at least superficially in tension with the hypothesis that countries with civil law traditions are more likely to violate human rights than are common law countries. The state centralization hypothesis suggests that states with strong centralization respect human rights, while the legal tradition hypothesis suggests that states with strong centralization violate human rights. But there are different causal factors in play here. The state

centralization hypothesis rests on a theory about the quality of institutions: states with a history of powerful institutions are more likely to have high-quality institutions than states with a history of anarchy. The legal tradition hypothesis holds constant the quality of institutions and claims different legal institutions influence a government's likelihood of respecting human rights in different ways.

Figure 9 explores the relationship between two measures of early state centralization and current human rights practices.<sup>116</sup> The independent variable in the top panel is the number of years (measured in thousands) since a country transitioned from hunting and gathering to agriculture. The independent variable in the bottom panel is an index of a state's history that measures the amount of state centralization prior to 1500 A.D. on a scale of 0 to 1.<sup>117</sup> Following Putterman and Weil, both the Agricultural Years and State History variables are adjusted to account for migration.<sup>118</sup> The justification is that migrants bring the advantage of early centralization with them when they move to new places, so the "adjusted variables measure the average level of such advantages in a present day country as the weighted average of [Agricultural Years or State History] in the countries of ancestry, with weights equal to the population today."<sup>119</sup> The top and bottom panels reveal a positive relationship between early state centralization and current human rights practices, but the relationships do not achieve statistical significance.

#### 4. Conclusion

Our data are consistent with the institutional lag hypothesis, but the correlations are noticeably weaker than the geographic and institutional transplant correlations. As is apparent in the figures, the correlations are small and not statistically significant.<sup>120</sup>

#### D. Historical Technological Advantages

A related idea is that countries with technological advantages at an early stage of their development receive a head start that allows them to enjoy greater development today. We first explore this hypothesis directly and

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116. The data for the independent variables in Figure 9 is from Putterman & Weil, *Post-1500*, *supra* note 101. We would also like to thank C. Justin Cook for sharing data.

117. The *State History* variable is calculated using a complicated process that discounts years prior to 1500 A.D. For more information on how the measure was created, see *id.* and Chanda & Putterman, *Early Starts*, *supra* note 114.

118. Putterman & Weil, *Post-1500*, *supra* note 101.

119. *Id.* at 1642.

120. The exact correlations for all the variables shown in our figures are located in the appendix.

then consider a related hypothesis that historical technological adoption may influence modern gender rights.

### 1. *Technological Adoption*

Comin et al. test the relationship between “technological adoption” of specific technologies in 1000 B.C., 0 A.D., and 1500 A.D. and the current wealth of nations.<sup>121</sup> The variables for each time are composite indexes that account for whether a country had adopted a number of “cutting edge” technologies by that year.<sup>122</sup> For example, the technological index for 1500 A.D. measures whether a country had ships capable of crossing the Atlantic Ocean or gunpowder-based weapons.<sup>123</sup> Comin et al. find that technological adoption in 1500 A.D. is a statistically significant predictor of modern GDP per capita and technological adoption across countries.<sup>124</sup> Moreover, the authors find this relationship both in specific locations and, like Putterman and Weil,<sup>125</sup> for populations that have migrated from place to place.<sup>126</sup> These results suggest that population groups transmit institutions, norms, or skills over generations, so that head starts are preserved over very long periods of time.<sup>127</sup>

Historical technological development could affect a government’s treatment of human rights through various pathways. Advanced technology—including technology for writing, recording, monitoring, and so on—may enable a population to create sophisticated institutions that constrain government abuse of power and can protect people’s interests. It could also create an attitude of open-mindedness and willingness to tolerate creative thought, which may in turn make people more tolerant of rights and interests of others. To be sure, advanced technology may also enable a government to oppress a population with greater effectiveness.

Figure 10 shows the relationship between early technological adoption and current human rights practices. The top panel shows the relationship between technological adoption in 0 A.D. and *Human Rights Scores* and the bottom panel does so for technological adoption in 1500 A.D. As Figure 10 shows, higher rates of technological adoption in 0 A.D. are associated with worse current human rights practices, but higher technological adoption in 1500 A.D. is associated with better human rights practices today. The second result is consistent with the hypothesis, but the first result is hard to explain. Neither correlation, however, is statistically significant.

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121. Diego Comin et al., *Was the Wealth of Nations Determined in 1000 B.C.?*, 2 AM. ECON. J. MACROECON. 65 (2010).

122. *Id.* at 74–75.

123. *Id.* at 75.

124. *Id.* at 80.

125. Putterman & Weil, *Post-1500*, *supra* note 101.

126. Comin et al., *supra* note 121, at 81.

127. *Id.*



entrepreneurial, and (more weakly) political activities are found in modern populations descended from communities that used the plow and that existed in areas where agricultural conditions made plow use optimal.<sup>129</sup>

The AGN theory is based on cultural transmission: gender norms that reflected economic practices hundreds of years ago have persisted in populations, even though the underlying economic conditions have changed. If correct, the AGN theory implies that compliance with the CEDAW will be higher in countries with traditional plow use than in countries that lack traditional plow use. In other words, adoption of the plow hundreds of years ago should help to explain compliance with contemporary international agreements on women's rights.

Figure 11 shows the relationship between traditional plow use and current women's rights. Unlike the preceding figures, however, the dependent variable in Figure 11 is not *Human Rights Scores*. This is because the variable developed by Fariss is a composite measuring state repression (like torture and extrajudicial killings) that does not try to capture women's rights.<sup>130</sup> For the dependent variable in Figure 11 we use data on women's rights in 2010 from the CIRI dataset.<sup>131</sup> The top panel shows the relationship between traditional plow use and women's political rights, and the bottom panel shows the relationship between traditional plow use and women's economic rights.<sup>132</sup> The top panel reveals no evidence of a relationship between traditional plow use and current women's political rights. The bottom panel, however, reveals a positive relationship between traditional plow use and current women's economic rights that is statistically significant at the 0.01 level.

The result for women's economic rights is consistent with AGN's findings. We do not find similar results for political rights, mirroring to some extent AGN's weaker results for that variable. One reason for this may be that gender norms that develop in societies without traditional plow use permit women to work outside the household but do not imply anything about the role of women in politics. Transmission of these cultural norms over generations could lead to societies in which women have more work choices and can earn more money, but not necessarily to societies in which women participate in politics.

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129. *Id.*

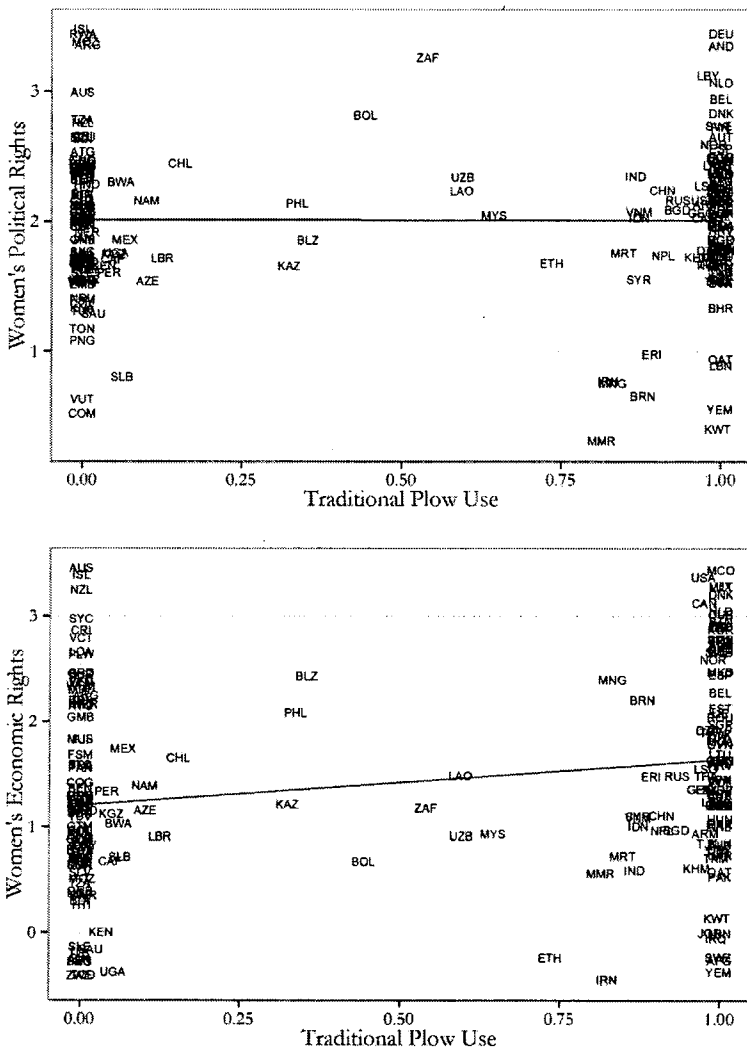
130. See Fariss, *supra* note 24, at 301–04.

131. Cingranelli & Richards, *supra* note 23. This data is publicly available at <http://www.humanrightsdata.com/> (last visited February 27, 2015). The CIRI dataset is commonly used by empirical studies on the effectiveness of international law on women's rights. See, e.g., Lupu, *The Informative Power of Treaty Commitment*, *supra* note 1; Hill, *supra* note 2.

132. Both variables are measured on a scale of 0 to 3, with lower values associated with worse women's rights practices. Although the dependent variable can only take on the values 0, 1, 2, or 3, Figure 11 “jiggers” the values so that the country names will be easier to view. Jiggering the country names does not, however, affect the slope of the fit line displayed.



Figure 11: Traditional Plow Use and Women's Rights



3. Conclusion

Our analysis reveals inconsistent evidence about the relationship between historical technological adoption and current human rights practices. Our analysis of technology adoption in 1000 A.D. and 1500 A.D. did not reveal a statistically significant relationship with current *Human Rights Scores*, but we did find a positive relationship between plow use and measures of women's economic rights. This suggests that more research should be done to explore whether historical technology adoption is related

to current human rights practices generally or respect for women's rights specifically.

*E. The Barrier Hypothesis*

Recall that the barrier hypothesis was proposed to explain why favorable institutions do not diffuse across countries.<sup>133</sup> The theory is that natural barriers like mountains and oceans block the transmission of norms. To test this hypothesis, Spolaore and Wacziarg collect data on the genetic difference between populations.<sup>134</sup> The easiest way to understand the genetic difference variable is to see it as a measure of the extent to which two populations share a common ancestry. Because of genetic drift, people who share recent common ancestors have more similar DNA than people who share only remote common ancestors. Spolaore and Wacziarg do not claim that the genetic difference measures a population's ability to generate wealth.<sup>135</sup> Instead, genetic difference is a proxy for cultural barriers—language, social norms, and so on—which will be greater between groups that split from each other in the remote past than those that split from each other more recently.<sup>136</sup>

The authors look at the genetic difference between countries and the United States, and hypothesize that countries with a greater genetic difference from the U.S. population will have lower per capita income than countries that have smaller genetic differences from the United States. The reason Spolaore and Wacziarg compare other countries to the United States is because it is the world's "technological frontier."<sup>137</sup> Using genetic difference variables for the present, for 1500 A.D., and for other historical periods, they find that genetic difference is negatively related to per capita income.<sup>138</sup> Countries with different populations are less likely to enjoy the benefits of the dissemination of new technologies and innovations than countries with similar populations.

The same idea may be true with human rights. The modern notion of human rights originated in the Enlightenment in Western Europe.<sup>139</sup> Over the next two centuries, Enlightenment ideas emphasizing human rights spread throughout the world. If the cultural barriers hypothesis is correct, and if genetic difference is a proxy for cultural barriers, populations with greater genetic distance should enjoy fewer human rights protections.

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133. See *supra* text accompanying notes 81–83.

134. Spolaore & Wacziarg, *supra* note 82.

135. *Id.* at 470 (noting that their findings "are not about some societies having some specific genes that make them directly richer").

136. *Id.* at 482–86.

137. *Id.* at 487.

138. *Id.* at 488–89.

139. See POSNER, *supra* note 2, at 11.

Figure 12: Genetic Distance to the U.S. and Human Rights Scores

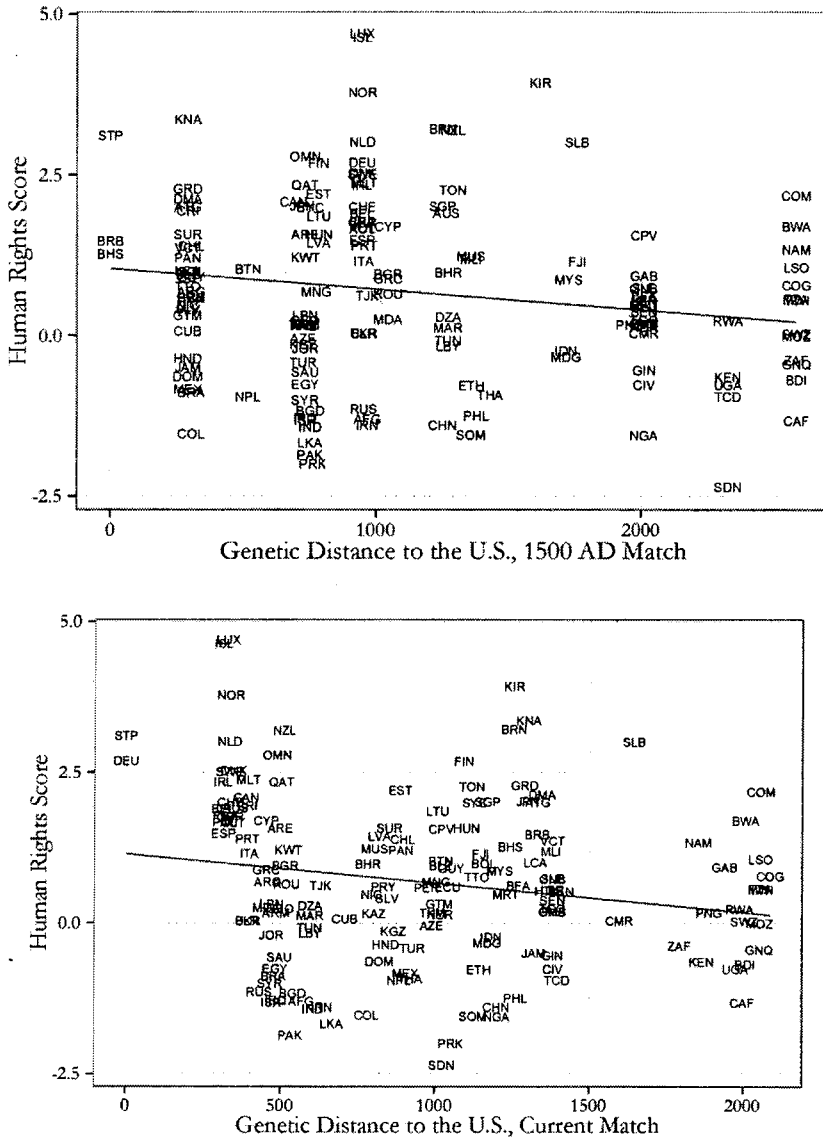


Figure 12 shows the relationship between genetic distance to the United States and countries' *Human Rights Scores*. In the top panel, the variable on the x-axis is the genetic distance to the United States based on both countries' populations in 1500 A.D. In the bottom panel, the variable on the x-axis is the genetic distance to the United States based on both countries' current populations, which accounts for migration patterns over the last 500 years. For example, in 1500 A.D. the population of the United

States comprised North Amerindians, but the current population consists most of people of English descent.<sup>140</sup> In both panels, countries with farther genetic distances from the United States have lower *Human Rights Scores*. These results are both statistically significant at the 0.05 level. This suggests that future research may productively benefit from applying Spolaore and Wacziarg's methods to human rights.

#### F. *The Influence of Human Rights Practices in the Past*

Finally, we look at how variables that measure human rights practices in the past predict current rights practices. The major theme of the articles we have discussed is that a country's economic development today is a function of its economic development in the distant past. Countries do not necessarily catch up with each other; advantages linger. To examine this idea, the economic development literature focuses on variables that capture historical economic conditions or geographic or demographic factors thought to be relevant to historical economic conditions. As we have argued, these factors may be relevant to human rights conditions today as well.

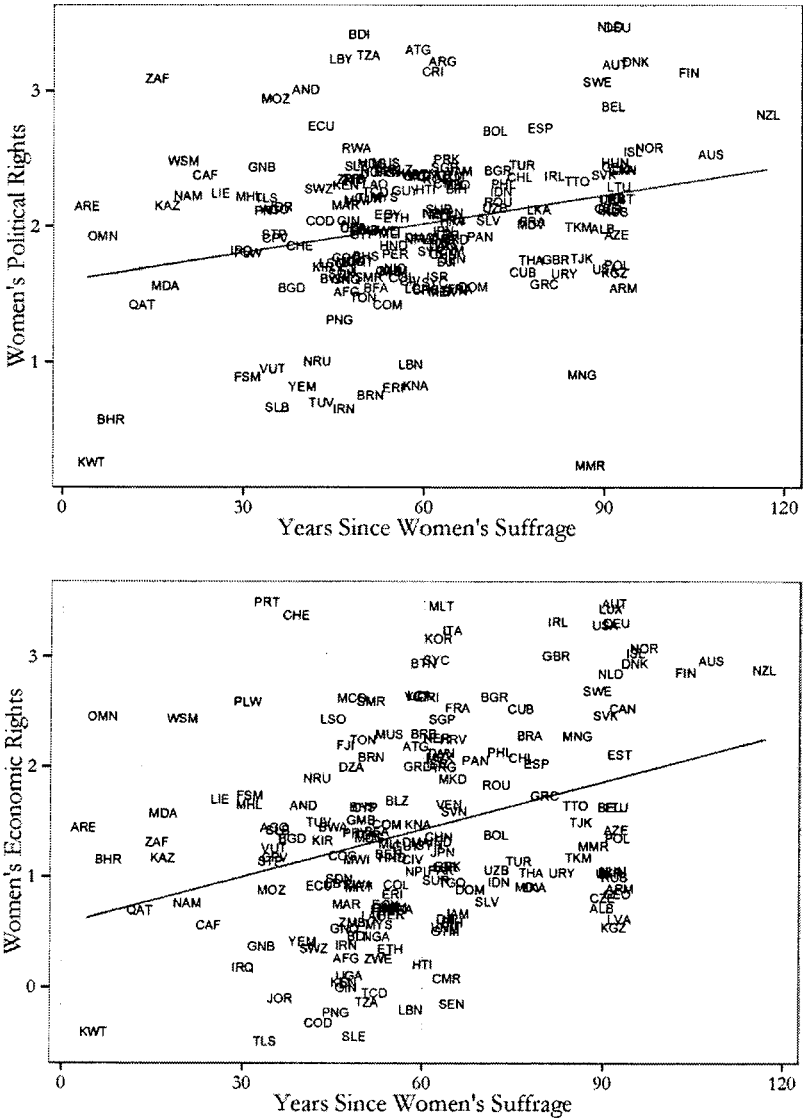
But this theme also suggests that it would be fruitful to look at historical human rights indicators. Consider again the argument that respect for human rights is a cultural trait. Once the idea of human rights is introduced in a country, it will gradually become entrenched in a population as it is transmitted down to future generations. This argument suggests that respect for human rights in the past predicts respect for human rights today. The institutional arguments (including the lag and transplant arguments) have the same implications. If human rights are most likely respected in countries with high-quality institutions (or institutions of a certain type), and high-quality institutions persist over time, then respect for human rights in the past should predict respect for human rights today.<sup>141</sup>

Because collection of human rights data is a recent phenomenon, we cannot use human rights data from the past to test this hypothesis. But we can use historical data that indicates that a country has adopted norms, laws, or practices that are consistent with what we now call human rights. We consider two such factors: a country's history of women's rights and a country's experience with slavery.

140. See Spolaore & Wacziarg, *supra* note 81, at 486.

141. For related arguments in the literature, see Paola Giuliano & Nathan Nunn, *The Transmission of Democracy: From the Village to the Nation-State*, 103 *AM. ECON. REV.* 86 (2013), who find that modern democracy indicators are higher in countries where ancestral populations in preindustrial times used consensus to choose leaders, and lower in countries where leadership was inherited, and Nico Voigtländer & Hans-Joachim Voth, *Persecution Perpetuated: The Medieval Origins of Anti-Semitic Violence in Nazi Germany*, 127 *Q. J. ECON.* 1339 (2011), who find that anti-Semitic violence in Nazi Germany was greatest in areas where pogroms took place in the fourteenth century.

Figure 13: Years Since Women's Suffrage and Women's Rights



1. Women's Rights

First, we look at the year in which a country granted the franchise to women. Our hypothesis is that countries that granted the franchise to women in the distant past are more likely to respect a spectrum of women's rights today than countries that granted the franchise more recently. This hypothesis is based on the theory that cultural practices that are relatively favorable for women in particular countries both ensure that the franchise

is granted at a relatively early stage and that rights protections are granted to women sooner rather than later.

Figure 13 shows the relationship between the years since women were granted suffrage and current women's rights. This is the same women's rights data from the CIRI dataset used in Figure 11.<sup>142</sup> The top panel shows the relationship between years since women's suffrage and women's political rights, and the bottom panel shows the relationship between years since women's suffrage and women's economic rights.<sup>143</sup> In both panels, there is a strong positive relationship between the year that women obtained suffrage and current human rights practices. Both correlations are statistically significant at the 0.001 level.

## 2. *Legacy of Slavery*

Second, we look at the relationship between a country's experience with slavery and its human rights performance today. We first do so by looking at the relationship between the number of years since a country abolished slavery and its *Human Rights Scores*.<sup>144</sup> As the top panel in Figure 14 shows, there is a positive and highly significant relationship between the year that a country abolished slavery and its current levels of state repressions. In other words, countries that were early adopters of good human rights practices hundreds of years ago are still among the best countries today.<sup>145</sup>

As another test of the relationship between a country's experience with slavery and respect for human rights, we investigate whether a theory developed by the economist Nathan Nunn about the impact that the legacy of slavery has on economic growth also applies to human rights.<sup>146</sup> Nunn tests the theory that the slave trade damaged political institutions in affected countries in Africa. Nunn examines the pattern of slave trading in Africa from the 1400s to the 1900s and distinguishes populations that were more significantly victimized by slave raids from those that were less affected.<sup>147</sup> He finds that African countries today with lower economic growth are

142. See Cingranelli & Richards, *supra* note 23.

143. See note 132 for a description of the dependent variable and an explanation of how it is graphed.

144. This data was collected for this project. The years since slavery was abolished variable was calculated based on the years prior to 2010 that slavery was abolished (we chose 2010 because it is the most recent year that our dependent variable—*Human Rights Score*—is available). Countries where slavery was not yet abolished in 2010 were coded as 0. We excluded from the data countries for which we could not find any information on when slavery was abolished.

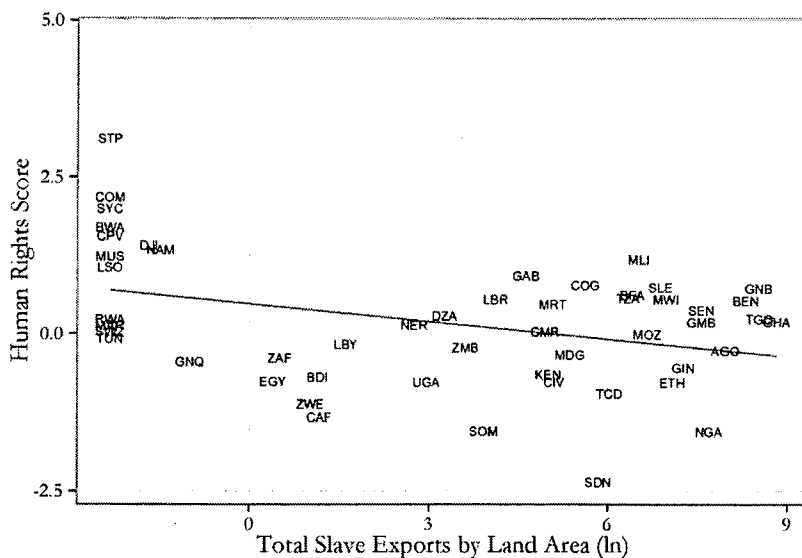
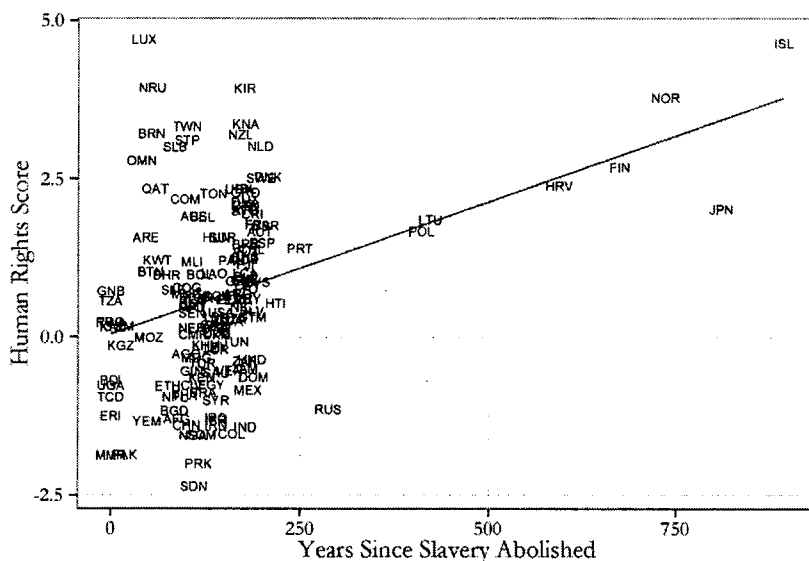
145. Cf. Avidit Acharya, Matthew Blackwell, & Maya Sen, *The Political Legacy of American Slavery* (Mar. 10, 2015) (unpublished manuscript) (on file with the Virginia Journal of International Law Association) (finding that whites who live in Southern counties that had a high proportion of slaves in 1860 have more negative attitudes toward African-Americans today).

146. See Nunn, *supra* note 79.

147. *Id.* at 145–51.

located in the areas where slave exportation was most common.<sup>148</sup> Nunn argues that slave raids weakened government institutions, sowed distrust, and created conflict that undermined institutional development in countries that were most affected by them.<sup>149</sup>

Figure 14: Legacy of Slavery and Human Rights Scores



148. *Id.* at 155.

149. *Id.* at 163–68.

If Nunn's theory is right, African countries where slave exportation was most common should also have low human rights scores today. We test this hypothesis and graph the results in the bottom panel of Figure 14. The bottom panel of Figure 14 indeed shows a negative relationship between slave exports and human rights scores that is statistically significant at the 0.05 level. This suggests that, consistent with Nunn's theory, the destruction of political institutions by the slave trade has had a lasting, negative impact on human rights in those countries.

Nunn's theory focuses on the destructive effect of slave-trading on trust and political institutions. Other scholars have proposed narrower pathways of influence with more direct implications for human rights. Dalton and Leung argue that slavery, by depleting the population of men in affected societies, resulted in the rise of polygyny, which has persisted long after the slave trade ended.<sup>150</sup> Polygyny, in turn, is associated with worse human rights outcomes for women than for men. Accordingly, it seems likely that the governments of populations whose ancestors were victimized by the slave trade will today have more trouble complying with the rights in the CEDAW.

## II. DISCUSSION

Our exploratory analysis in the previous section suggests that the hypotheses that have been generated by the development economics literature may shed light on some of the variance in current human rights practices. In this section, we discuss the implications of our exploration of the data. First, we consider the relationship between economic growth and human rights generally. Second, we explain how our arguments could be extended from explaining civil and political rights to cultural, social, and economic rights. Finally, we describe the relationship between our analysis and previous studies on the effectiveness of human rights agreements.

### *A. The Relationship Between Economic Growth & Human Rights*

Our evidence suggests that historical and geographic factors that are correlated with national wealth are also correlated with human rights protection. However, it has long been known that national wealth is positively correlated with human rights protection.<sup>151</sup> In fact, GDP is one of the key independent variables that have become part of the "Standard

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150. John T. Dalton & Tin Cheuk Leung, *Why Is Polygyny More Prevalent in Western Africa? An African Slave Trade Perspective*, 62 *ECON. DEV. & CULTURAL CHANGE* 599 (2014).

151. See generally Hill & Jones, *supra* note 1.



Model” to explain levels of government repression.<sup>152</sup> So have we merely confirmed this relationship, albeit indirectly?

No. First, all of the historical variables that we use in our analysis have been shown by previous studies to have a statistically significant relationship with current economic conditions in countries around the world. Our analysis, however, revealed statistically significant correlations between only nine of the seventeen variables and human rights performance.<sup>153</sup> Thus, not all historical variables that predict current national wealth also predict current human rights practices.

Second, our results complicate the repression literature by suggesting that wealth and respect for human rights are jointly caused by historical factors. The repression literature does not untangle the direction of causation between wealth and human rights. Indeed, while that literature might seem to suggest that the best route to human rights protection is wealth—which in turn suggests that free trade and economic development are key for ending human rights abuses—our findings do not support such an optimistic conclusion. Autocracies that discover natural resource bonanzas do not necessarily convert into liberal democracies. They may collapse into civil war (Congo), simply remain autocratic (Saudi Arabia), or even become more autocratic (Venezuela).

Third, we have also provided initial evidence suggesting that historical variables that have not previously been identified by the development literature—like the year that countries granted suffrage to women<sup>154</sup>—are strong predictors of current rights practices. The idea that cultural and institutional determinants of human rights change very slowly is intuitive, and yet it has been disregarded by the empirical human rights literature. Future research should explore historical factors that have not yet been identified.

### B. *Development & Social, Cultural, & Economic Rights*

For most of our analysis, the dependent variable that we have used is the *Human Rights Score* developed by Christopher Fariss,<sup>155</sup> which is a composite variable that measures a country’s level of latent repression.<sup>156</sup> All of the variables included in Fariss’s model are measures of civil and

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152. See Linda Camp Keith, C. Neal Tate & Steven C. Poe, *Is the Law a Mere Parchment Barrier to Human Rights Abuse?*, 71 J. POL. 644, 648 (2009); see also Hill & Jones, *supra* note 1, at 661 (identifying GDP as one of the “usual suspects” used to explain repression).

153. For a summary of our results, see the APPENDIX.

154. See *supra* PART III.F.1.

155. See Fariss, *supra* note 24.

156. *Id.* at 301.

political rights.<sup>157</sup> They are accordingly a reasonable approximation of compliance with the ICCPR.

However, the ICCPR is just one of numerous treaties. The ICESCR, for example, protects a range of so-called positive rights, including rights to housing, medical care, education, and welfare. While the ICESCR has generated a huge doctrinal literature, scholars have tested none of its provisions. A few studies have tested the effect of the positive and nondiscrimination rights in the CEDAW, but much more work needs to be done. As far as we know, no one has tested the effects of the CERD.

Researchers who are interested in the effect of international law on the behavior of countries should test these treaties. Does racial discrimination decline in countries that ratify the CERD? Does sex discrimination decline in countries that ratify the CEDAW? We conjecture that respect for these positive and nondiscrimination rights is rooted in historical conditions rather than ratification patterns.

To test this conjecture, we are examining in other work how historical attitudes toward women influence current compliance with international obligations—most notably the CEDAW—to protect the rights of women.

### *C. Implications for the Effectiveness of Human Rights Agreements*

As previously discussed, empirical studies that have examined whether the ratification of international human rights agreements has improved human rights practices have produced mixed results.<sup>158</sup> A number of studies have found either negative results (ratifying human rights agreements is associated with worse human rights practice)<sup>159</sup> or null results (ratifying human rights agreements has no relationship to human rights practices).<sup>160</sup>

The authors who have found a positive effect have not claimed that the ratification of human rights treaties has a consistently positive effect on human rights practices across all countries. Instead, the positive effects that have been found have been limited to certain sets of countries. For example, Beth Simmons has argued that human rights agreements can improve the human rights practices in “transitioning democracies.”<sup>161</sup> Similarly, Yonathan Lupu has found that the ratification of certain human rights agreements can result in improved human rights practices when there is

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157. For a list of the variables included by Fariss, see *id.* at 301–04.

158. See PART II.A.

159. See, e.g., Hafner-Burton & Tsutsui, *supra* note 27.

160. See, e.g., Camp-Keith, *supra* note 21.

161. See SIMMONS, MOBILIZING FOR HUMAN RIGHTS, *supra* note 2. Simmons argues that transitioning democracies are countries that are neither stable democracies nor stable autocracies. To classify which of these three categories countries fall into, Simmons relies on the Polity Database.

either an independent judiciary<sup>162</sup> or legislative veto players to check the executive.<sup>163</sup>

In this paper, we do not attempt to directly test or question these findings. Our analysis showing that current human rights practices are strongly related to historical factors does not necessarily mean that ratification of human rights agreements has not resulted in improved human rights practices for some countries in some issue areas. It remains possible that treaties have a residual effect beyond what can be explained by historical conditions and related factors.

We do argue, however, that contemporary factors—like the ratification of a specific treaty—are likely to have a relatively small effect on current human rights practices compared to historical factors. For example, our analysis would suggest that researchers interested in understanding the current rates of torture across countries would learn more from studying the development of high-quality institutions over time than from looking at ratification patterns of the CAT.

### III. CONCLUSION

Our results provide evidence suggesting that the variations in respect for human rights across countries reflect, in part, conditions in those countries (or relevant populations) in the distant past. We find evidence that climate (latitude, mean distance to coast or river, percentage of land within 100 kilometers of coast or river), institutional transplant (settler mortality, European share of population during colonization), and possibly institutional lag and/or cultural transmission (years since slavery abolished, traditional plow use, years since women's suffrage), have long-term effects on a country's human rights performance in the theoretically correct direction. Other variables we examined—most focused on institutional and technological lag (legal origin, historical population density, measures of historical state centralization, historical technology adoption, genetic distance)—are more weakly correlated with human rights performance.

We emphasize once again that our results are only preliminary explorations of the data, and future empirical research would be needed to demonstrate the link between any of these historical variables and current rights practices. If these results are validated with further statistical testing, they will help explain why the human rights treaties have had a small impact on countries' performance. As we have stressed, the results parallel the findings in the development literature, which suggest that much of the variation in economic growth across countries reflects historical and geological factors.

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162. See Lupu, *Best Evidence*, *supra* note 2.

163. See Lupu, *Legislative Veto Players*, *supra* note 2.

Our results obviously do not prove that human rights treaties do not or cannot influence human rights. The economic development literature itself indicates that historical conditions only partly explain differences in economic growth across countries. But our results provide evidence suggesting that the failure by academics to find an impact for most human rights provisions may be a consequence of the dominance of historical factors, rather than coding problems or other methodological problems. Our findings also indicate that existing evidence suggesting that human rights treaties have had an impact should be revisited while considering the influence of long run historical trends.

## APPENDIX

*Correlations Between Independent Variables and Current Human Rights*

	Human Rights Score	
Latitude (Absolute Value)	0.32	***
Mean Distance to Coast or River	-0.27	***
% of Land within 100 km of Coast or River	0.40	***
Settler Mortality (log)	-0.34	**
European Share of Population During Colonization	0.34	**
British Legal Origin	0.03	
French Legal Origin	-0.10	
Population Density in 1000 A.D.	-0.01	
Population Density in 1500 A.D.	-0.01	
Ancestry Adjusted Agriculture Years	0.09	
Ancestry Adjusted State History	0.07	
Technology Adoption in 0 A.D.	-0.08	
Technology Adoption in 1500 A.D.	0.11	
Genetic Distance to the U.S., 1500 A.D. Match	-0.17	*
Genetic Distance to the U.S., Current Match	-0.18	*
Years Since Slavery Abolished	0.38	***
Total Slave Exports by Land Area (ln)	-0.36	*

\*  $p < 0.05$ , \*\*  $p < 0.01$ , \*\*\*  $p < 0.001$

*Correlations Between Independent Variables and Women's Rights*

	Women's Political Rights	Women's Economic Rights
Traditional Plow Use	-0.00	0.23 **
Years Since Women's Suffrage	0.30 ***	0.34 ***

\* p < 0.05, \*\* p < 0.01, \*\*\* p < 0.01

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