BEYOND PHYSICAL INTEGRITY

KEVIN L. COPE,* CHARLES CRABTREE,** & YONATAN LUPU***

I

INTRODUCTION

Over the last two decades, the social sciences have made impressive strides in understanding human rights. The law-and-social science interdisciplinary revolution—combined with advances in data availability, research design, and computational tools—have made rights an even more fruitful subject for academic research. While much of this new research has taken place in the social sciences, scholars in the humanities are increasingly studying rights as well. For example, historians took less interest in human rights per se until after the events of 9/11 and the ensuing wars in the Middle East, but many are now studying the origins of rights institutions, such as treaties, constitutions, and informal norms.[1]

This concluding Article to the "Future of Human Rights Scholarship" special issue outlines how political scientists could draw on developments in law and insights from history to take up a set of thus-far under-explored questions. While political science has made important advances in studying human rights, the field's focus has been rather narrow. The bulk of human rights scholarship—especially recent empirical scholarship—has focused on respect for *physical integrity* rights: government-imposed torture, extrajudicial killing, unjust imprisonment, and other violations of bodily integrity.[2]

---

* Research Assistant Professor of Law and Department of Politics Faculty Affiliate, University of Virginia.
** Ph.D. Candidate, University of Michigan Department of Political Science.
*** Associate Professor, George Washington University Department of Political Science.

1. *See, e.g.*, LYNN HUNT, INVENTING HUMAN RIGHTS: A HISTORY (2008); JAMES LOEFFLER, ROOTED COSMOPOLITANS: JEWS AND HUMAN RIGHTS IN THE TWENTIETH CENTURY (2018); SAMUEL MOYN, THE LAST UTOPIA: HUMAN RIGHTS IN HISTORY (2010).

2. *See, e.g.,* COURTENAY R. CONRAD & EMILY HENCKEN RITTER, CONTENTIOUS COMPLIANCE: DISSENT AND REPRESSION UNDER INTERNATIONAL HUMAN RIGHTS LAW (forthcoming 2019); OONA A. HATHAWAY, DO HUMAN RIGHTS TREATIES MAKE A DIFFERENCE? (2002); Courtenay R. Conrad & Will H. Moore, *What Stops the Torture?*, 54 AM. J. POL. SCI. 459 (2010); Courtenay R. Conrad & Emily Hencken Ritter, *Treaties, Tenure, and Torture: The Conflicting Domestic Effects of International Law*, 75 J. POL. 397 (2013); Christian Davenport & David A. Armstrong, II, *Democracy and the Violation of Human Rights: A Statistical Analysis from 1976 to 1996*, 48 AM. J. POL. SCI. 538 (2004); Emilie M. Hafner Burton & Kiyoteru Tsutsui, *Human Rights in a Globalizing World: The Paradox of Empty Promises*, 110 AM. J. SOC. 1373 (2005); Daniel W. Hill Jr., *Democracy and the Concept of Personal Integrity Rights*, 78 J. POL. 822 (2016); Yonatan Lupu, *The Informative Power of Treaty Commitment: Using the Spatial Model to Address Selection Effects*, 57 AM. J. POL. SCI. 912 (2013); Yonatan Lupu, *Legislative Veto Players and the Effects of International Human Rights Agreements*, 59 AM. J. POL. SCI. 578 (2015); Emily

This disproportionate interest in physical integrity rights mirrors international and comparative political scholarship's broad emphasis on conflict, such as atrocities, civil wars, and other forms of political violence.[3] These topics have overshadowed the small but growing research on what political scientists sometimes call "empowerment rights."[4] Empowerment rights prohibit non-violent government repression such as censorship and surveillance,[5] as well as suppression of assembly and association, electoral, and religious rights.[6] The conflict- and violent-repression-related literatures have also dwarfed research on "social rights"[7]—the positive obligations of government to provide access to goods like healthcare, shelter, and education.

Looking first at empowerment rights, and then at social rights, this Article argues that world developments over the last decade have made both rights especially salient topics for social science research. Those interested in rights and repression should dedicate some of their agendas to the protection and violation of empowerment rights like voting, free speech, and association, and to why governments succeed or fail in delivering social rights like healthcare, food, welfare, and housing. This Article also explains why these questions are ripe for academic inquiry and begins to sketch an outline for what those research agendas might look like.

Hencken Ritter & Courtney R. Conrad, *Preventing and Responding to Dissent: The Observational Challenges of Explaining Strategic Repression*, 110 AM. POL. SCI. REV. 85 (2016); James Raymond Vreeland, *The Effect of Political Regime on Civil War: Unpacking Anocracy*, 52 J. CONFLICT RES. 401 (2008); Geoffrey P.R. Wallace, *International Law and Public Attitudes Toward Torture: An Experimental Study*, 67 INT'L ORG. 105 (2013).

3. James D. Fearon & David D. Laitin, *Explaining Interethnic Cooperation*, 90 AM. POL. SCI. REV. 715 (2014); Evgeny Finkel, *The Phoenix Effect of State Repression: Jewish Resistance During the Holocaust*, 109 AM. POL. SCI. REV. 339 (2015); Daniel W. Hill, Jr. & Zachary M. Jones, *An Empirical Evaluation of Explanations for State Repression*, 108 AM. POL. SCI. REV. 661 (2014); Zachary M. Jones & Yonatan Lupu, *Is There More Violence in the Middle?*, 62 AM. J. POL. SCI. 652 (2018).

4. Charles Crabtree & Michael J. Nelson, *New Evidence for a Positive Relationship between De Facto Judicial Independence and State Respect for Empowerment Rights*, 61 INT'L STUD. Q. 210 (2017).

5. *See* Nicholas Dietrich & Charles Crabtree, *Domestic Demand for Human Rights: Free Speech and the Freedom–Security Trade-Off*, INT'L STUD. Q. (forthcoming); Gary King, Jennifer Pan, & Margaret E. Roberts, *How Censorship in China Allows Government Criticism but Silences Collective Expression*, 107 AM. POL. SCI. REV. 1 (2013); Charles Crabtree, Christopher J. Fariss & Holger L. Kern, *Truth Replaced by Silence: A Field Experiment on Private Censorship in Russia* (Dec. 26, 2015) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2708274.

6. *See* BETH A. SIMMONS, MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS (2009); Daniel W. Hill Jr., *Estimating the Effects of Human Rights Treaties on State Behavior*, 72 J. POL. 1161 (2010); Yonatan Lupu, *Best Evidence: The Role of Information in Domestic Judicial Enforcement of International Human Rights Agreements*, 67 INT'L ORG. 469 (2013); Yonatan Lupu, Pierre-Hugues Verdier & Mila Versteeg, *The Strength of Weak Review: National Courts, Interpretive Canons, and Human Rights Treaties*, INT'L STUD. Q. (forthcoming) (on file with author); Cosette D. Creamer & Beth A. Simmons, *The Dynamic Impact of Periodic Review on Women's Rights*, 81 LAW & CONTEMP. PROBS. no. 4, 2018 at 31.

7. Daniel M. Brinks, Varun Gauri & Kyle Shen, *Social Rights Constitutionalism: Negotiating the Tension Between the Universal and the Particular*, 11 ANN. REV. L. & SOC. SCI. 289, 289-308 (2015); David Landau, *The Reality of Social Rights Enforcement*, 53 HARV. INT'L L. J. 189 (2012).

II
PREVENTIVE REPRESSION AND EMPOWERMENT RIGHTS

Though political science's interest in physical integrity rights has produced important findings and advanced our understanding of the causes and effects of civil conflict and government repression, it has left other important questions unanswered.[8] For example, this focus has diverted attention from less violent forms of repression, particularly restriction of empowerment rights like free-speech and the freedom of assembly and association.[9] These forms of repression are less visible and less violent. But evidence suggests they are increasingly common.[10] Indeed, recent research shows that violent human rights abuses in general have decreased around the globe in the last 50 years.[11] Some of this may be due to shifting norms, changes in the human rights treaty regime, or other trends. It could also be that governments have partially substituted non-violent repression for violent repression. This Part explores this possibility and what it means for future rights research.

When faced with potential opposition, governments willing to respond with illiberal tactics have a repertoire of repression options from which to choose. These choices range from non-violent tactics, such as closing down printing presses or houses of worship, to violent ones, such as torture and disappearances. All of these tactics are also subject to choices of scale: a government seeking to suppress speech may raise the cost of postage, as in Belarus, shut down a small number of newspapers, as in Russia, or cut off the country's access to the Internet, as in Turkey; a government that chooses violence may opt for targeted killings or mass atrocities.

The option the government chooses depends on a range of factors too broad to review here in full, so this Part focuses on the difference between reactive repression and preventative repression. The most violent and most notorious abuses of human rights tend to occur when governments repress *reactively*. These are situations in which an organized group, such as a protest movement or an armed insurgency, has already mobilized to challenge the state or otherwise taken action against it. This type of challenge to the state can include anything

---

8. *See* Steven C. Poe, C. Neil Tate & Linda C. Keith, *Repression of the Human Right to Personal Integrity Revisited: A Global Cross National Study Covering the Years 1976–1993*, 43 INT'L STUD. Q. 291 (2002); David L. Richards, Alyssa Webb & Chad Clay, *Respect for Physical-Integrity Rights in the Twenty-First Century: Evaluating Poe and Tate's Model 20 Years Later*, 14 J. HUM. RTS. 291 (2015).

9. Though they are dwarfed by conflict-oriented research, a few recent works have addressed empowerment rights. *See, e.g.*, CENSORED: DISTRACTION AND DIVERSION INSIDE CHINA'S GREAT FIREWALL, MARGARET E. ROBERTS (2018); Charles Crabtree, Christopher J. Fariss & Holger L. Kern, *What Russian Private Media Censor: New Evidence from an Audit Study* (unpublished manuscript) (on file with author); Gary King, Jennifer Phan & Margaret E. Roberts, *Reverse-engineering Censorship in China: Randomized Experimentation and Participant Observation*, 345 SCI. 891 (2014).

10. *Freedom in the World 2015*, FREEDOM HOUSE (2015), https://freedomhouse.org/report/freedom-world/freedom-world-2015#.W3I-QP5KigQ [http://perma.cc/HL6Q-H2GF] (last visited Aug. 13, 2018).

11. Christopher J. Fariss, *Respect for Human Rights has Improved Over Time: Modeling the Changing Standard of Accountability*, 108 AM. POL. SCI. REV. 297 (2014).

from a violent attack against the government or civilians to non-violent protests. The intent of repression in this context is often to demobilize, punish, and neutralize the opposition. In some situations, states react to mobilized dissent by arresting, torturing, or killing members of the dissenting group.[12] In the most extreme cases when challengers to the state are sufficiently mobilized, the state's only remaining practical options may be either stepping down from power or inflicting mass human rights abuses.[13]

Distinct from reactive repression is the set of activities governments use to repress *preventively*.[14] As the name suggests, preventive repression is intended to prevent challengers to the state from organizing and mobilizing in the first place. In that sense, it occurs at an earlier stage in contentious politics. Preventive repression includes a wide set of tactics such as censorship, harassment, surveillance, and restrictions on the freedom of movement. Preventive repression can also be violent; governments often arrest, torture, and kill suspected challengers to the state before they mobilize. In a recent example of preventive repression, the Chavez regime in Venezuela created a database that included detailed information on all Venezuelan registered voters. Although the database included a tremendous amount of information, the regime was able to distribute copies to officials around the country on a single disc.[15] The regime also nationalized the country's only Internet Service Provider.[16]

The distinction between reactive and preventive repression is crucial to future rights research for at least three reasons. First, while both types of repression can involve physical violence, preventive repression is often less violent. It is designed to stop groups from organizing in the first place. To do so, the state might engage in broad-scale but non-violent rights violations, such as tracking or even preventing citizens' information-sharing. As Dobson writes, "Rather than forcibly arrest members of a human rights group, today's most effective despots deploy tax collectors or health inspectors to shut down dissident groups."[17] In Ben Ali's Tunisia, for example, the government created an agency that provided Internet service but also facilitated preventive repression. All Internet traffic, including web access and e-mail, went through the agency, making it relatively easy for the government to monitor and censor traffic.[18] Lukashenko similarly

12. Will H. Moore, *The Repression of Dissent: A Substitution Model of Government Coercion*, 44 J. CONFLICT RES. 107 (2000).

13. Tiberiu Dragu & Yonatan Lupu, *Collective Action and Constraints on Repression at the Endgame*, 51 COMP. POL. STUD. 1042 (2018).

14. Nathan Danneman & Emily Hencken Ritter, *Contagious Rebellion and Preemptive Repression*, 58 J. CONFLICT RES. 254 (2013); Tiberiu Dragu & Adam Przeworski, *Preventive Repression: Two Types of Moral Hazard*, AM. POL. SCI. REV. (forthcoming), https://robobees.seas.harvard.edu/files/pegroup/files/draguprzeworski2017.pdf [http://perma.cc/W5RW-542S].

15. WILLIAM J. DOBSON, THE DICTATOR'S LEARNING CURVE: INSIDE THE GLOBAL BATTLE FOR DEMOCRACY (2012).

16. *Id.*

17. *Id.* at 5.

18. Ben Wagner, *Push-Button-Autocracy in Tunisia: Analysing the Role of Internet Infrastructure, Institutions and International Markets in Creating a Tunisian Censorship Regime*, 36 TELECOMM. POL'Y

controls Internet throughput in Belarus.[19] To be sure, preventive repression can be violent—a government may assault or even kill individuals to deter others from taking up arms—but mass atrocities are generally the result of reactive, not preventive, repression. Likewise, reactive repression does not have to be violent. Faced with mass protests, governments sometimes respond with non-violent actions such as curfews and barricades. Nonetheless, while non-violent means can often prevent such situations from arising in the first place, these tactics are often not sufficient deterrents once a movement has organized.

Second, all else equal, governments prefer to repress preventively than reactively. This is because once dissent has mobilized, especially in the context of mass protests, reactive repression is costly, risky, and potentially counter-productive.[20] After a mass protest or insurgency has begun, the government's ability to retain power is at risk; the government would prefer not to reach this phase in the process in the first place.

Third, and perhaps most importantly, advances in information and communications technology have made, and will likely continue to make, preventive repression less costly for governments to implement on a massive scale.[21] The Internet in particular facilitates the use of many tools that governments use to prevent mass mobilization, including firewalls, content filters, and sophisticated digital monitoring. The ability of governments today to control and monitor the flow of information has no historical precedent. As Tufecki writes:

> Surveillance and repression, do not operate primarily in the way that our pre-digital worries might have forecast. This is not necessarily Orwell's *1984*. Rather than a complete totalitarianism based on fear and blocking of information the newer methods include demonizing online mediums, and mobilizing armies of supporters or paid employees who muddy the online waters with misinformation, information glut, doubt, confusion, harassment, and distraction, making it hard for ordinary people to navigate the networked public sphere, and sort facts from fiction, truth from hoaxes. Many governments target dissidents by hacking and releasing their personal and private information to try to embarrass or harass them, rather than acting directly on their political communication.[22]

One way of thinking about preventive repression and reactive repression is as policy substitutes. Governments often turn to reactive repression after preventive repression fails. If technology allows governments to use preventive

---

484 (2012).

19.   Charles Crabtree, Christopher J. Fariss & Paul J. Schuler, *The Presidential Election in Belarus, October 2015*, 42 ELECTORAL STUD. 304 (2016).

20.   *See* CHARLES TILLY, FROM MOBILIZATION TO REVOLUTION (1978).

21.   *See* BRUCE J. DICKSON, THE DICTATOR'S DILEMMA: THE CHINESE COMMUNIST PARTY'S STRATEGY FOR SURVIVAL (2016); EVGENY MOROZOV, THE NET DELUSION: THE DARK SIDE OF INTERNET FREEDOM (2012); Helen V. Milner, *The Digital Divide: The Role of Political Institutions in Technology Diffusion*, 39 COMP. POL. STUD. 176 (2006); Tiberiu Dragu & Yonatan Lupu, *Does Technology Undermine Authoritarian Governments?* (Aug. 7, 2018), http://yonatanlupu.com/Technology%20and%20Authoritarian%20Governments.pdf [http://perma.cc/C4UN-983W].

22.   ZEYNEP TUFEKCI, TWITTER AND TEAR GAS: THE POWER AND FRAGILITY OF NETWORKED PROTEST xxviii (2017).

repression more effectively, future societies may witness massive increases in non-violent repression. If this repression prevents mobilized dissent, we should also see decreases in violent repression. This is because if future governments can use non-violent means to prevent protestors and insurgents from taking to the streets, they may have less need to resort to violent repression. We may find ourselves in a world where physical integrity rights appear better respected (or at least violated less often) for reasons that are completely independent from human rights norms and institutions. In fact, we may already be in that world.

What does this mean for the future of political science rights research? First, it suggests scholars should increase their focus on non-violent repression. As a field,[23] human rights scholarship needs better theories of why and how governments use non-violent repression, richer concepts of the types of non-violent repression (especially those that new technology makes possible), and more fine-grained data on the use of these tactics.[24] Second, this raises the possibility that the human rights legal regime has been (or soon may be) outpaced by technology. Existing rules were conceived and created at a time when a given set of rights violations seemed plausible. Today, governments can violate rights in ways that activists, lawyers, and scholars in the 1960s may not have considered. Some of the sophisticated ways governments have of conducting preventive repression today may either not run afoul of the current rules or be too difficult to detect on an individual basis to be legally actionable.[25] To what extent has the human rights regime become outdated? We cannot hope to answer this difficult question in the short span of this essay, but we encourage scholars to consider it in their future research.

III
GLOBAL INEQUALITY AND SOCIAL RIGHTS

Though empowerment rights have been understudied in political science, they have gotten far more attention than social rights. There are at least a dozen studies of the International Covenant on Civil and Political Rights' (ICCPR) impact on rights, but just a few empirical studies to date[26] that have considered the impact of the International Convention on Economic, Social and Cultural Rights (ICESCR), the flagship social rights convention which was concluded over

---

23.   This Article uses the word "field" to mean the set of disciplines—including law, political science, history, and sociology—that study human rights.

24.   There are an increasing number of datasets that include violations of physical integrity rights at spatially and temporally disaggregated levels, but there are fewer similar datasets for empowerment rights.

25.   Morozov, *supra* note 21.

26.   *See, e.g.,* M. Rodwan Abouhard et al., *Do Non–Human Rights Regimes Undermine the Achievement of Economic and Social Rights?*, *in* ECONOMIC, SOCIAL, AND CULTURAL RIGHTS: EMERGING POSSIBILITIES FOR SOCIAL TRANSFORMATION (LaDawn Haglund & Robin Stryker eds., 2015); Wade M. Cole, *Strong Walk and Cheap Talk: The Effect of the International Covenant of Economic, Social, and Cultural Rights on Policies and Practices*, 92 SOC. FORCES 165–94 (2013); Emilie Hafner-Burton & Kiyoteru Tsutsui, *Human Rights in a Globalizing World: The Paradox of Empty Promises*, 110 AM. J. SOC. 1373 (2005).

50 years ago.[27]

Social rights, which are qualitatively different from civil and political rights, are sometimes referred to as positive rights because they require the government to take affirmative steps to uphold them. That is, while the prohibition of torture requires governments to refrain from acting to make citizens worse off, i.e., harming them, the right to housing requires governments to act affirmatively to benefit citizens.[28]

To be sure, countless political economy studies have measured how different interventions affect wealth, literacy, housing, and health, but those studies are often based on policies not rooted in either domestic or international rights. But political science has not generally treated these interventions as rooted in law, much less as entitlements derived from natural law, constitutions, or international rules.

Why does the field typically ignore social rights? Political scientists' lack of attention might mirror the reason for the relative lack of interest in empowerment rights. International relations scholars have taken up questions of human rights treaty effectiveness because they are interested in government repression and how to reduce it. As a result, the natural focus has been on rights most closely related to repression, meaning physical integrity rights. This focus has led them to largely ignore social rights.

The disproportionate focus on civil and political rights is curious from an international law scholar's perspective. After all, for legal scholars (especially outside the United States), social rights are an important component of international human rights law, enshrined in one of the two comprehensive human rights conventions, the ICESCR. Social rights stand on equal footing with civil and political rights in the 1948 Universal Declaration on Human Rights, and they later took on binding status in the ICESCR, as Cold War divides prevented states from agreeing on a single, global bill of binding rights. This divide persists

---

27. International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

28. This distinction between positive and negative rights is not always so bright. *Social* rights sometimes involve prohibitions on government action. For instance, the UN Committee on Economic, Social, and Cultural Rights states that the ICESCR includes the duty to respect, protect, and fulfill social rights. Asbjørn Eide (Special Rapporteur for the Right to Food), *The Right to Adequate Food as a Human Right: Final Report submitted by Asbjørn Eide*, ¶ 112-114, U.N. Doc. E/CN.4/Sub.2/1987/23 (July 7, 1987). *See also* Aiofe Nolan, *Addressing Economic and Social Rights Violations by Non-state Actors through the Role of the State: A Comparison of Regional Approaches to the 'Obligation to Protect,'* 9 HUMAN RIGHTS L. REV. 225, 227 (2009). Of these three, only the obligation to fulfill entails an affirmatively duty. Comm. on Economic, Social and Cultural Rights, *General Comment 15: The Right to Water*, ¶ 25, U.N. Doc. E/C.12/2002/11 (2002), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 105 (January 20, 2003). The other two—respect and protect—include negative obligations. The obligation to protect means that states cannot take measures that intervene with people's enjoyment of rights, such as mass evictions from subsidized or low-income housing. Some even argue that cutting funding levels of social welfare programs violates social rights (a principle known as "non-retrogression"). Likewise, *negative* rights can sometimes entail affirmative duties, as when they require the government to protect people from rights violations by private citizens. *See* Human Rights Committee, *General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant*, U.N. Doc. CCPR/C/21/Rev.1/Add.13, para 6 (2004).

to some extent; some countries with more libertarian traditions like the United States and Australia have ratified only the ICCPR. Yet the great majority of states are a party to both treaties, and the UN has declared social rights to be "indivisible and interdependent and interrelated" with civil and political rights.[29] For legal scholars, then, social rights enjoy equal status to civil and political rights. And the topic of social rights is particularly important as human rights is increasingly being criticized for ignoring questions of inequality.[30]

For example, legal historian Samuel Moyn has recently documented how the human rights movement has comfortably coexisted with the neo-liberal project of free trade, privatization, and globalization. But Moyn argues that it has done relatively little to take up inequality by using and enforcing social rights. In both of these fields, there is a growing sense that social rights have been overlooked. Moyn claims that "organizations such as Amnesty International and Human Rights Watch … dropped the emphasis on economic and social rights proclaimed by the UN's Universal Declaration and converted the idea of human rights from a template for citizenship into a warrant for shaming state oppressors…. The political and legal project of human rights became a companion to the rise of inequality, which paved the road to populism and further rights abuses."[31]

While there is less political science research on the effect of social rights, there is a robust body of *legal* research on social rights *enforcement*. This interest is not just academic, and its timing is not coincidence. Domestic and regional courts around the world, especially in Latin America, have increasingly enforced the ICESCR or relied on the Committee's interpretations in issuing their judgments. This has led to a growing body of legal scholarship by Latin Americanists on domestic and regional courts' interpretations of social rights. Social rights are also now enforceable at the international level. In 2013, an international enforcement mechanism took effect that establishes an individual complaints procedure.[32] And the Spanish Supreme Court recently ruled that the ICESCR's interpretations constitute binding domestic law in that country.[33]

Social rights, then, have become practically significant as international institutions and in domestic law, particularly in the Global South. But, as discussed above, there has still been little interest in the topic from political scientists. There are at least two reasons why social rights are now ripe for further study. First, political scientists are interested in treaty effectiveness, and the

---

29. World Conference on Human Rights, *Vienna Declaration and Programme of Action*, ¶ 5, U.N. Doc. A/CONF.157/23 (June 25, 1993).

30. MOYN, *supra* note 1.

31. Samuel Moyn, *Human Rights Are Not Enough: We Must Also Embrace the Fight Against Economic Inequality*, THE NATION (Mar. 16, 2018), https://www.thenation.com/article/human-rights-are-not-enough/ [http://perma.cc/D4X6-P45F].

32. But, like the interpretations of the HRC of the ICCPR, these are not legally binding. Laurence R. Helfer & Anne-Marie Slaughter, *Toward a Theory of Effective Supranational Adjudication*, 107 YALE L. J. 273 (1997).

33. Koldo Casla, *Supreme Court of Spain: UN Treaty Body individual decisions are legally binding*, *EJIL: TALK!* (Aug. 1, 2018), https://www.ejiltalk.org/supreme-court-of-spain-un-treaty-body-individual-decisions-are-legally-binding [http://perma.cc/MQ7Q-DU7D].

ICESCR represents a potentially important treaty. The literature on treaty effectiveness has been dominated by studies of treaties concerned primarily with negative rights—the Convention Against Torture (CAT), the ICCPR, and the Rome Statute of the International Criminal Court (ICC). The studies reach mixed results, but many find that the treaties exert a statistically significant but substantively moderate positive effect, often conditional on the presence of certain domestic political or legal institutions.[34] But there is some evidence that treaties' effect is different for positive rights than for negative rights.[35] If the conclusions from the treaty-effectiveness literature are biased by oversampling of negative-rights treaties, more focus on treaties like ICESCR and the positive rights in CEDAW, the Convention on the Rights of the Child, and the Convention for the Elimination of All Forms of Racial Discrimination (CERD) would help to correct that bias.

Second, political scientists are interested in the spread of national populism around the world. Some evidence suggests that income inequality has largely fueled these movements. As Moyn claims, "Today's galloping inequality has helped drive the rise of populist leaders, who have hardly been friends of human rights."[36] Indeed, populist parties are often successful in advocating for rollbacks in empowerment rights. This means that by studying state provisions of social rights, researchers can also better understand the causes of empowerment rights violations.

It is not an issue of measurement. Indeed, one potential benefit of studying socioeconomic rights is that these rights are often easy to operationalize. Since the ICESCR is focused on governments' dedicating resources towards social rights, social spending measures offer a reasonable way to examine variation in these rights. One recent empirical study uses data on government spending on healthcare and education (as a percentage of GPD and as a percentage of total government spending) to gauge the impact of social rights in constitutions.[37] While spending does not guarantee full realization of social rights, it captures government efforts to make progress on realizing these rights. Other plausible, easily available indicators of social rights—literacy rates and mortality rates—better capture actual realization.

Social rights measures may even have some advantages over empowerment and physical integrity rights measures. Negative rights do not always have a clear

34. Kevin L. Cope & Cosette D. Creamer, *Disaggregating the Human Rights Treaty Regime*, 56 VA. J. INT'L L. 459, 473 tbl. 1 (2016) (finding that of the primary rights-treaty effectiveness studies, 25 concerned only negative rights, 1 concerned positive rights, and 11 concerned treaties with a mix of rights).

35. *E.g.*, Daniel W. Hill, *Estimating the Effects of Human Rights Treaties on State Behavior*, 72 J. POL. 1161 (2010) (finding a statistically significant effect of the CEDAW on political rights, but no statistically significant effect for economic or social rights).

36. Samuel Moyn, *Human Rights Are Not Enough: We Must Also Embrace the Fight Against Economic Inequality*, THE NATION (Mar. 16, 2018), *available at* https://www.thenation.com/article/human-rights-are-not-enough/ [http://perma.cc/Z78J-VPW7].

37. Adam Chilton & Mila Versteeg, *Rights without Resources: The Impact of Constitutional Social Rights on Social Spending*, 60 J.L. & ECON. 713 (2018).

link between the right and the observable indicator. Proof of this lies in the panoply of different indicators for some single underlying construct, such as torture or democracy.[38] Another potential benefit is that for many socioeconomic rights it is relatively easy to collect data on the defined measure.[39] In contrast, data on negative rights like extrajudicial killings and torture is often considerably more difficult to collect, as governments do not compile systematic records of these abuses.[40] Indeed, states have powerful legal, political, and financial incentives to conceal violations of many rights.[41] Many measures require time- and resource-intensive interpretation of detailed NGO and agency reports. So lack of measures are not a serious barrier to empirical research on social rights. In many cases, social rights data are publicly available in the World Bank Indicators database.[42] In other cases, this data can be collected from national and subnational administrative records.[43]

There are some important caveats. Though data on socioeconomic rights is easier to collect, researchers should understand that this data also might be biased in important ways. Social expenditure data is collected and provided by the state. We know, though, that decisions about the production and release of state data are often politically informed. States have strategic incentives to release biased statistics.[44] In some cases, states might artificially inflate official statistics, such as GDP and emigration, to limit regime opposition.[45] In other cases, states might artificially deflate official statistics, such as economic and population numbers, to qualify for foreign aid or other types of international assistance.[46] Understanding whether these biases also influence official statistics

38. Kevin L. Cope, Charles Crabtree, & Christopher J. Fariss, Patterns of Disagreement in State Repression Measures, POL. SCI. RES. & METHODS (unpublished manuscript) (on file with authors), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3055947 [http://perma.cc/77R5-PDA2]; Kevin L. Cope & Charles Crabtree, Conceptualizing and Measuring Repression (forthcoming 2018).

39. The development of a more extensive set of subnational social rights indicators would be a beneficial direction for future work.

40. Todd Landman, Measuring Human Rights: Principle, Practice, and Policy, 26 HUM. RTS. Q. 906 (2004).

41. Laia Balcells & Christopher M. Sullivan, New Findings From Conflict Archives: An Introduction And Methodological Framework, 55 J. PEACE RES. 137 (2018); Christopher M. Sullivan, Material Witness: Source Selection Bias In Comparative Police Data, 28 COMP. POL. NEWSL. 74 (2018).

42. THE WORLD BANK, https://data.worldbank.org/indicator [http://perma.cc/J9DB-9LLU] (last visited Aug. 13, 2018).

43. See R. Douglas Hecock, Electoral Competition, Globalization, and Subnational Education Spending in Mexico, 1999-2004, 50 AM. J. POL. SCI. 950 (2006); Evelyne Huber, Thomas Mustillo & John D. Stephens, Politics and Social Spending in Latin America, 70 J. POL. 420 (2008); Daniel Ziblatt, Why Some Cities Provide More Public Goods than Others: A Subnational Comparison of the Provision of Public Goods in German Cities in 1912, 43 STUD. COMP. INT'L DEV. 273 (2008).

44. Jeremy L. Wallace, Juking the Stats? Authoritarian Information Problems in China, 46 BRIT. J. POL. SCI. 11 (2016).

45. Id.; Andrei Yeliseyeu, Emigration and Diaspora Policies in Belarus (European University Institute, 2014).

46. See Craig Burnside & David Dollar, Aid, Policies, and Growth, 90 AM. ECON. REV. 847 (2000); Tim Büthe, Solomon Major & André de Mello e Souza, The Politics of Private Foreign Aid: Humanitarian Principles, Economic Development Objectives, and Organizational Interests in NGO Private Aid Allocation, 66 INT'L ORG. 571 (2012).

about social spending is an important area for future research.

IV
CONCLUSION

Scholars of history and politics have documented a shift in how authoritarians operate. Increasingly, they take and keep power through nominally democratic institutions. Though coups d'etat and brute violence dominate the history of autocracies, today's autocrats are more likely to seek office through (ostensibly) democratic elections and, once in power, to retain it through subtler forms of repression. But ironically, one part of the authoritarian strategy is to promise—and sometimes to successfully deliver—*more* social rights: in the form of welfare, housing, and healthcare. Notably, nationalist leaders often succeed by promising these benefits to some groups—natives, and religious or ethnic majority groups—and denying them to others—migrants, and religious or ethnic minority groups. A study of regimes focused narrowly on torture, disappearances, and extrajudicial killings would therefore miss much of the story behind many modern autocracies.

This story shows why political scientists might wish to look beyond physical integrity rights and consider a broader range of civil, political rights, and social rights. These rights represent the future of global law and politics, and—we hope—of social science rights research.