Imagining a world without the Universal Declaration of Human Rights*

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September 6, 2017
v.2.0

Abstract

We predict the content of the world's constitutions, conditional upon the absence of the Universal Declaration of Human Rights (UDHR). We consider the contention that the UDHR has served as an influential reference point for those drafting constitutions subsequent to 1948, and we identify two empirical implications that should follow from such influence. The first is that the content from the UDHR should be evident in a reading of national constitutions enacted subsequent to the UDHR. A second implication is that a Constitution's similarity to the UDHR represents some deviation from the former's alternative path. Testing this second implication requires untangling the effect of the UDHR from that of its milieu, which could plausibly be the source of ideas for both the UDHR and subsequent constitutions. We examine the historical evidence from various angles. Our macro-analysis exploits an original dataset on the content of Constitutions since 1789. We explore historical patterns in the creation and spread of rights and test whether 1948 exhibits a noticeable disruption in rights provision. We then build a multivariate model that predicts rights provision with Constitution- and rights-level covariates. We gain further analytic leverage by unearthing the process that produced the UDHR, which was fortunately a highly documented affair, and by identifying plausible alternative formulations of a rights declaration in a set of discarded proposals. Finally, we further test the plausibility of UDHR influence by searching for direct references to the document in subsequent constitutional texts and constitutional proceedings. We reach a better understanding of both the efficacy of Human Rights Law and, more generally, the proper way to think about the independent effects of institutions.

*The authors are grateful for helpful comments from Christopher Roberts, Fabrizio Gilardi, and participants at conferences at Princeton University, the University of Iowa, University of California, Berkeley, and the meetings of the American Political Science Association. Special thanks to the Latin Americanist working group at the University of Texas. We gratefully acknowledge the National Science Foundation, the Cline Center for Democracy, the University of Texas, and the University of Chicago for their early and/or continued investment in the Comparative Constitutions Project.

Figure 1: The Universal Declaration of Human Rights as Icon

1 Introduction

The classic rights documents are iconic statements of claims by which a community articulates its fundamental values. These documents – such as Magna Carta, the U.S. Bill of Rights, the French Declaration of the Rights of Man, and the Universal Declaration of Human Rights (UDHR) – represent major junctures in the history of human rights. They seem to consolidate ideas and shape subsequent thinking. Of course, none of these entered *deus ex machina*: each drew directly and indirectly from prior attempts at higher law, both secular and spiritual. And each played an important role as a menu for subsequent documents. Or so we think. A vexing analytical problem looms over this last assertion. If the major documents simply enshrine conventional wisdom at the time, then how influential were they, really? In this more skeptical reading, these documents come off as merely epiphenomenal: reflections of the era rather than exogenous influences on what would come.

We conceptualize this distinction as one of *reflective* versus *formative* events. We have worked on this problem previously (e.g. Elkins, Ginsburg and Simmons 2013), and are convinced that the UDHR – at minimum – reflected leading ideas in mid-century constitutional thought. We are also persuaded that post-war constitutions share many ideas with

the UDHR. We are less certain about the UDHR's independent role in shaping future constitutions. Our goal in this paper is to assemble evidence to distinguish the UDHR from the ideas in which it marinated. We use this evidence to reach for the less modest goal of assessing the formative effects of the UDHR. Ultimately, we are interested in estimating the content and practice of human rights conditional upon the absence of the UDHR.

Our investigation is relevant for recent debates on critical junctures in the spread of human rights. The conventional wisdom that World War II was a critical turning point has come under attack in recent years from two sets of revisionist accounts. On the one hand, scholars point to sources other than the international covenants. So, some have noted the prevalence of earlier transnational movements and judicial institutions bent on the abolition of slavery; these movements are related to, and certainly foreshadow, later developments (Martinez 2005). Others argue that the crucial moments did not arrive until considerably later. Samuel Moyn (2010), for example, suggests that the international human rights movement did not gain force until the 1970s, after the decline of utopian, mid-century political projects associated with decolonization and post-fascism. The postwar Universal Declaration of Human Rights, in Moyn's view, was a somewhat defensive document that had few practical implications. It was only in mid-1970s, he argues, with the adoption of the Helsinki Accords and the enshrinement of human rights as a centerpiece of U.S. Foreign Policy by President Jimmy Carter that that the institutionalization of human rights truly emerged. A second set of critics are skeptical of the very project of human rights law, and its enforcement. As Posner (2014) sees it, human rights discourse flourishes at the same time that governments regularly violate any such commitments. Taken together, the thrust of these sets of ideas is to suggest that little of the international human rights legal structure has seeped into national law and society, or that if it has, it has had trivial effects. Of course, the all of this skepticism cuts against a line of sociological and political science research that has argued that human-rights-speak has spread and infiltrated the national consciousness (e.g., along a "World Society" logic (Beck, Drori and Meyer, 2012)) and led to real improvement in rights protection ((Simmons 2009). Our study investigates a crucial channel along which any such transmission is thought to occur.

Figure 2: Architecture as formative or reflective (or both?)

(a) United Nations, NYC (1952)

(b) Congress, Brasilia (1961)

2 Reflective versus Formative Events

In 1952, a group of renowned international architects led by Oscar Niemeyer and Le Corbusier constructed a mid-century landmark along the East River in Manhattan to house the United Nations. It is a notable work of architecture, and it helped to define mid-century modernism. Subsequent monumental buildings, such as Niemeyer's Congress building in Brasilia (Figure 2) would share many of the same design characteristics. But architecture critics likely do not credit the UN building with shaping urban architecture significantly; rather, the building is thought to reflect many of the modernist ideas already "in the air." That is, the structure was reflective of contemporary ideas, but perhaps not a formative influence on future work.

The UDHR seems different. For one thing, the document is undeniably unique and, in retrospect, its completion was highly improbable. For one historic moment, countries as disparate and mutually distrustful as the United States and the Soviet Union would come together to agree upon a set of basic principles meant to guide politics and society. Admittedly, the principles therein were not entirely original; we shall show that the UDHR was very much a product of its time. But the drafters did have considerable discretion to select the particular rights that would be included, and in what form. Because of these unique origins and the prominence of the document, our very strong hunch is that the UDHR, and its follow-up covenants, has served as an important coordinating mechanism for future constitution makers. After all, constitution makers have multiple instrumental and functional reasons for harmonizing national texts with something as legitimate and authoritative as

the UDHR (see Elkins 2009). In general, a prominent, consensual document such as the UDHR serves as a useful coordinating device for drafters struggling to produce – under a deadline – universal principles that would endure for generations. These expectations will be familiar to those versed in theories and evidence of policy diffusion and institutional isomorphism (for example, Weyland (2009)).

Moreover, our strong sense is that scholars share the intuition of the UDHR as an influential document. It is rare that we can poll our colleagues for their sense prior to seeing the evidence. But a 2014 conference of human rights scholars (Philosophers, legal scholars, and Political Scientists, for the most part) was informative. Prior to any discussion, all but two of approximately fifty scholars in attendance were willing to bet that the UDHR had increased (or decreased) the probability of the adoption of certain rights in subsequent constitutions. Moreover, we should note that the gathering was a conference on the "Failure of International Law," many of whose participants were on the record alleging such failure.

However, a very reasonable source of skepticism remains (Roberts 2013). Simply stated, we cannot fully refute the idea that the creation of the UDHR, and the subsequent International Covenants that legalized its content, was merely the articulation of prevailing trends in the post-WWII era – trends that also happen to be taken up in post-WWII constitutions. The post-war era is one rightly associated with a dramatic turn of events, all of which seem to compete for credit as formative events. After all, the war was a conflict fought and won ostensibly for democracy and human rights. The "four freedoms," as Franklin Delano Roosevelt would characterize the new thought, were globally triumphant and resonant across the world. Conversations about human rights abounded in Universities, legislatures, radio shows, and dining rooms all over the world. New, modern rights could just have easily come from any number of sources as well as the UDHR. We also know that these new rights were enshrined in contemporary constitutions (e.g., France 1946), which may have been just as important in disseminating ideas as was the UDHR.

3 Our Analytical Approach

3.1 Steps in the Analysis

If the UDHR has been as influential as we think, we should see evidence scattered about the historical record in various forms. After all, the effects that we investigate are large macro-historical processes, with multiple empirical implications. Our analysis proceeds in three steps, as we attempt to assess the preponderance of the evidence.

First, we reason that a formative UDHR would be consistent with a set of macro patterns in the spread of rights. In particular, we expect 1948 (the enactment of the UDHR) to be coincident with (1) an upward shift in the overall number of rights, (2) an increased cross-national convergence on some menu of rights, and (3) an increase in the popularity of UDHR-included rights. We appeal to our original cross-national historical data on the content of national constitutions in order to test these expectations. In the second thrust of our analysis, we attempt to leverage information about the process of drafting the UDHR in order to identify its signature elements and, thus, to trace its independent influence. We describe this evidence, which is interesting in its own right, but also use it as an identification strategy in a multivariate analysis predicting the provision of a particular right in post-UDHR constitutions. Third, and finally, we turn briefly to some micro-level evidence from Brazil about the use and relevance of the UDHR in the deliberations in two Brazilian Constitutional assemblies.

3.2 Conceptual challenges to analyzing rights

The analysis below is based on a set of 116 rights found in a nearly complete set of national constitutions and human-rights documents written since 1789. The rights are listed in the Appendix below. We digress briefly here to clarify several details of our empirical approach. Our project focuses on written constitutional texts, for reasons that we elaborate in our earlier work (e.g. Elkins, Ginsburg and Melton 2009). Our conceptualization of "constitutions" distinguishes between what we call the constitution-as-function and the constitution-as-form. Constitutions are assumed to play certain functions, such as defining government institutions, limiting government, or expressing the fundamental values of a

people (Breslin 2009). No doubt there are many others we could list, but however we define the functions of constitutions, we must recognize that other things can play identical roles. These things include unwritten norms, legal decisions, statutes, government statements, international treaties, and popular understandings. The formal constitution is only a part of the broader constitutional order.

Our definition of a formal constitution is fairly straightforward. For the vast majority of states we use the formal or nominal constitution in place; for the small number of states that do not have a formal constitution in a single document, we use statutes that create a branch of government, or articulate a bill of rights. Thus we would include, in the present exercise, the Human Rights Act of the United Kingdom in 1998 or the New Zealand Bill of Rights Act, because these countries do not have single codified constitutions. We do not, however, include statutory rights. Our intention is to limit analysis to the "highest" (most foundational and most entrenched) set of norms in the land.

This paper draws on the authors' data regarding the content of the world's constitutions – as thus conceptualized – a project that involves some observational and interpretive challenges. We have described our process of data collection in various places and various ways. Here follows another summary. At the root of our project is a conceptual inventory of constitutional topics and provisions. Using this inventory, in the form of survey questions, two trained coders code each constitution and their answers are then compared and reconciled. In the event of any disagreement, a third coder reviews the answers.

One of the methodological challenges that we face is that constitutional texts are not self-interpreting. Judgment is required to ensure that two constitutions are in fact talking about the same thing. Consider, for example, the right to silence. Brazil's Constitution of 1988 (Art. 63) provides that the accused has a right to remain silent, as well as many other criminal procedure protections. But what about the 1858 Constitution of Nicaragua, which liberally provides that the accused "may not be compelled to answer if he refuses to do so; but his silence is presumptive evidence against him." Is there a right to silence or not? The Brazilian language says nothing about the effect of remaining silent; the Nicaraguan language provides a right but then disincentivizes its invocation. These are not equivalent though both can be considered a species of the same right. Our coding protocol allows the

selection of "other" for ambiguous cases.

Also, rights are often nested in others. For example, a right to personal autonomy might be seen as prohibiting torture and censorship. The right to dignity may be one of the most unbounded constitutional protections in use. Indeed one is hard pressed to think of *any* specific rights that do not follow from the right to dignity.

Our effort has proceeded on the assumption that a rigorous coding protocol can minimize the measurement error introduced through interpretive ambiguity, but we have certainly not resolved every ambiguous case. There are challenges inherent in any ontology that structures data for interpretation (Noy and McGuinness 2001). At a certain level of abstraction, things may look very similar; move the microscope a bit closer and differences become apparent. The level of generality problem is, alas, a general one in philosophy, science, and law (Samaha 2013). We have been self-conscious about the relative comparability/equivalence of our measures and concepts (Melton et al. 2013; Elkins 2013), but there is no doubt that our view of an equivalence class will not always be the same as that of another researcher.

In many ways, our own effort has sensitized us to the challenges faced by constitutional courts when they are called on to interpret constitutional texts. Texts are difficult to interpret and meanings can change over time.[1] In other cases, constitutional interpreters may bootstrap new meanings on to old rights. Such adaptation may obviate the felt need for textual updating. We lack comprehensive local knowledge for the more than 800 constitutional systems[2] in our database, and so are by necessity forced to adopt what would be called a "textual" theory of constitutional interpretation: we rely on the plain language of the text.

[1] The example of the right to bear arms shows that rights can be transformed as they endure over time. The origins of the right to bear arms in the United States are shrouded in controversy (Shalhope 1982; Cress 1984). Some argue that the right was originally intended to encompass an individual right to bear arms; others focus on the preamble to the right and argue that the "well-regulated militia" renders the right collective or communitarian (Cress 1984). Some argue that the right was chiefly designed to reassure the Southern states that the militia, their chief instrument of slave control, would remain intact even as the national government gained the power to raise armies (Bogus 1998). Levinson Levinson (2009) reviews the literature and finds that it does not provide support to either side in the contemporary debate about gun regulation. Opponents and proponents of gun control each find support in text, history, structure and doctrine. Notwithstanding the vagueness of the right, it played a relatively unimportant role in U.S constitutional law for many decades. Not until 2008 did the U.S. Supreme Court ever strike down a law restricting gun ownership. District of Columbia v. Heller; McDonald v. Chicago.

[2] "Systems" refer to constitutions and their amendments. Replacements of a constitution, defined as a revision that does not use the instituted amendment procedure, inaugurate a new system. So, the U.S. Constitution, and its amendments, constitute one system, which replaced the Articles of Confederation system.

It is surely true that the same textual language is understood locally in quite different ways in different countries, and so at some level there is no "plain" language comparable across context. We recognize that rights might simply replicate a general feature of communities of discourse, which is that they can be "rhetorical achievements," in which different actors use similar expressions without actually meaning similar things (Bomhoff 2008, 557). But similar expressions are, for our pragmatic and limited purposes, good enough to categorize different texts similarly. Two communities can express themselves similarly and mean two different things, but we believe that it is meaningful that they have expressed themselves similarly. Surely a lesser level of abstraction or generality would be appropriate for different scholarly purposes.

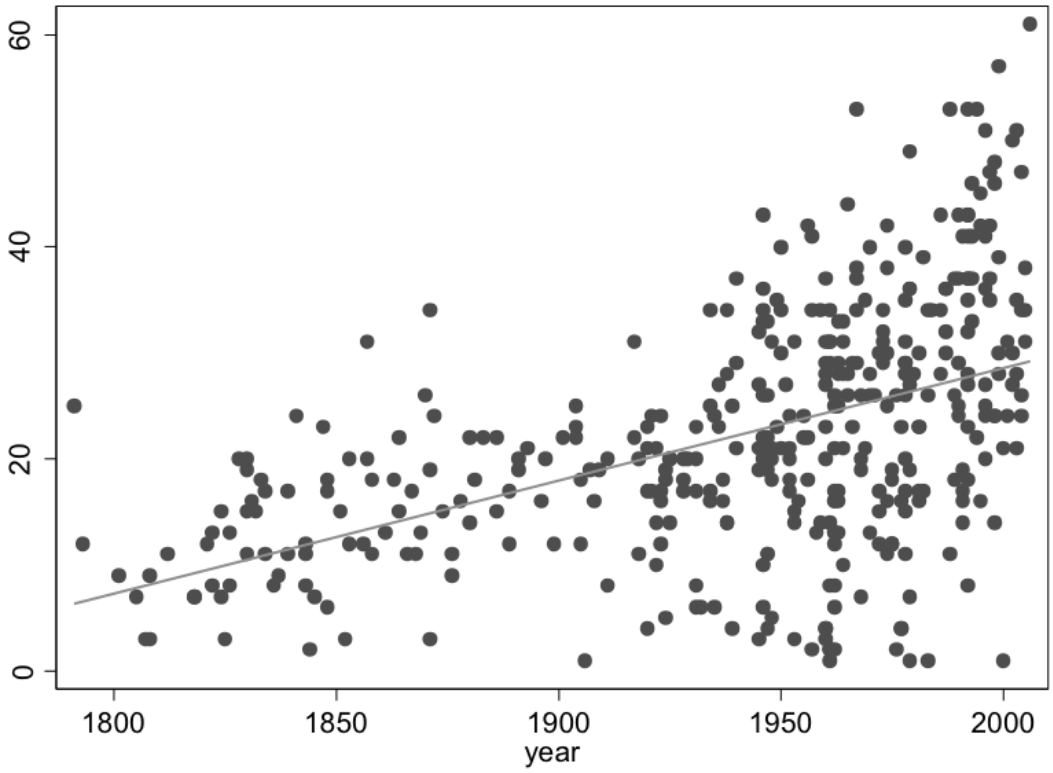
4 Macro-level Implications

In this section, we consider some macro-level expectations that would be consistent with a formative view of the UDHR. We also take the opportunity to sketch the historical landscape of rights development, in the interest of establishing some empirical benchmarks. As an initial matter, it is worth reminding the reader that there has been a general expansion in the number and type of rights claims over the past two centuries. Law and Versteeg Law and Versteeg (2011) call this "rights creep" and in other writing we used the concept of a "one-way ratchet" (Elkins, Ginsburg and Simmons 2013), to suggest the additional idea of the trend's seeming irreversibility. We view this proliferation, in part, as a process of disaggregation, whereby a relatively small number of core interests (beginning with the iconic concerns about life, liberty, and estate) are gradually distinguished through a political process of claiming and evolution. The proliferation is captured, in part, by the mean number of rights from our list of 116 found in national constitutions over time (Figure 3).

We can think of this disaggregation and proliferation of rights as the narrowing of the "intension" (meaning) of rights claims and the proliferation in the "extension" (application) of rights to disparate domains of human activity. One sees some of this disaggregation and proliferation in recent innovations, such as the right to food[3], the right to form political

[3]Found, in part in Bolivia, Brazil, Ecuador, Guyana, Haiti, Kenya, and South Africa.

Figure 3: Number of rights provided, by year (n = 680 new constitutions)



parties based on indigenous status[4], and a proposed right of internet usage.[5] The Constitution of Ecuador (2008) gained international attention for extending rights to nature herself. These rights may also be evolving with respect to exactly how they are expressed (that is, the particular turn-of-phrase), but we leave that aside for the moment.

As we show elsewhere, the emergence of new rights-claims is part of a staggered process in which particular periods are associated with greater innovation. The relevant question here concerns the role of the UDHR in this temporal pattern. The post-WWII period, one would expect, would be just such a moment of innovation. It also seems likely that it would be a moment of norm crystallization. Consider each of these ideas in turn.

4.1 Norm crystallization (rights-concentration)

Norm crystallization has to do with the degree to which countries converge on the set of rights that are at the core. Mathematically, it has to do with the frequency that each these rights appear across constitutions: from nearly universal to exotic. We might consider a right "mainstreamed" in the international community if it is constitutionalized by at least half of the constitutions in force in a given year.[6] We refer to these rights, variously, as "mainstream," "consensual," or "core" rights and the hypothetical constitution that contains all of them (and only them) as the "vanilla" or "median" constitution, an important reference point (document) that we identify in each year under analysis. The number of rights in the vanilla constitution changes dramatically between 1800 and 2010 (see Figure 4, Left Panel). The only core right in 1810 is freedom of press, but by 2010, 46 rights had made it over the majority threshold.

4.2 Innovation (rights-proliferation)

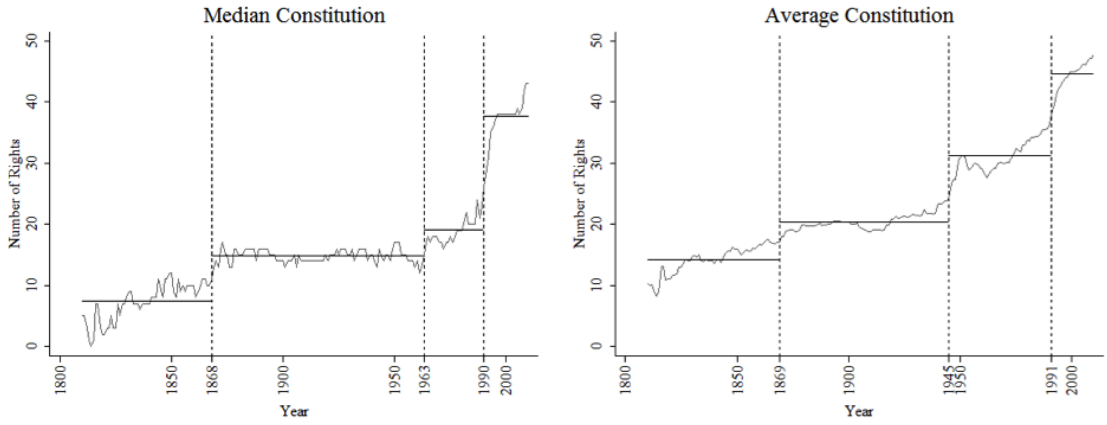
Tracking the number of core rights tells us something about the number of must-have elements: namely, we learn if there is a growing consensus about a growing number of rights. But this accounting of core rights does not tell us much about the overall population of

[4]Bolivia 2009.

[5]Iceland's failed 2012 draft.

[6]A majority is a somewhat arbitrary threshold, though it has a certain democratic resonance. Still we would see the same basic trend (a steady increase) if we adopt more or less consensual thresholds.

Figure 4: Change Points in the Distribution of Rights from 1810-2010



rights. For example, mathematically, it is possible for the number of core rights to increase while the overall population of rights remains constant. But of course, as we suggest above, there has been considerable innovation and corresponding growth in the overall population of rights. One indicator of this growth is the average number of rights in the world's constitutions, by year (see Figure 4, Right Panel). Like the number of core rights, the average number of rights has dramatically increased over the last 200 years, from roughly 10 in 1800 to about 48 in 2010.[7]

4.3 The UDHR and the concentration and proliferation of rights

These trends correspond to our general intuition about the historical proliferation of, and convergence on, rights. But how, exactly, do these trends relate to the UDHR? In particular, we wonder whether the UDHR is coincident with a shift in these two trends. Figure 4 superimposes inferences from a change-point model over the trend lines. A change point model, like the one we use here, usefully identifies structural breaks, or shifts, in a time

[7]The advantage of looking at the average constitution is that rights do not need to surpass any threshold to be included; it is just a measure of the number of rights in a constitution. The disadvantage is that the average constitution fails to identify agreed upon rights; instead, it is a combination of agreed upon rights and more peripheral rights that are country-specific. As a result, the average constitution tends to include a few more rights than the median constitution, and the size of the average constitution tends to lead the size of the median constitution. Although we prefer the median constitution as an analytic construct, we provide the estimates change points from both measures in the analysis below to demonstrate the robustness of our results.

series (see Western and Kleykamp 2004).[8] The dashed, vertical reference lines indicate the breaks identified by the model, and the solid, horizontal lines indicate the mean number of rights associated with each period, or generation. Scholars of human rights often periodize rights-evolution in terms of rights "generations." Our data confirm four distinct generations of rights, at least in terms of their concentration and creation. With respect to rights concentration (Panel B), the first generation spans 1800 to 1867 and is associated with consensus on about 8 rights – the second 1868 to 1962 (15 rights), the third 1963 to 1989 (19 rights), and the fourth 1990 to 2010 (38 rights). In terms of rights proliferation (Panel A), the periodization is similar. One difference is that the third generation begins earlier – in the years immediately following World War II.

The UDHR (introduced in December 1948), is in the "neighborhood" of a dramatic shift in the average number of rights in constitutions. However, somewhat inconveniently for a theory of formative effects, the change point analysis suggests that this shift began five years before its writing. Clearly, the innovation of rights is just as much about the era as it is about the UDHR. In terms of concentration, the UDHR precedes by fifteen years a major shift in the number of highly consensual rights. This shift could plausibly be associated with the UDHR, even with the delay. Constitutions are not especially responsive instruments. Their revision or replacement process is only episodic and, by design, constrained. As such, it is hard to be sure of the appropriate lag of any UDHR effect. Taken together, this macro evidence is inconclusive. Clearly, shifts in the mean and distribution of rights provision are coincident with the UDHR and its era. Some of the movement is undoubtedly independent of the UDHR, but some of it may well have something to do with the UDHR.

4.4 Projection of the UDHR onto subsequent constitutions

Here we summarize what we know about the degree to which the UDHR shares content with subsequent constitutions (an effect we summarize as its projection). In a recent paper, some of us (Elkins, Ginsburg and Simmons 2013) analyzed the projection of the UDHR on the content of subsequent constitutions. In that analysis, we also trace these effects all the

[8] We use R's changepoint package to estimate the change point model illustrated here (Killick and Eckley 2014).

way to the enforcement of rights on the ground, through some presumed legal channels: that is, from Declaration, to Covenant, to Constitution, and to the respect (or non-respect) for rights in a given country.

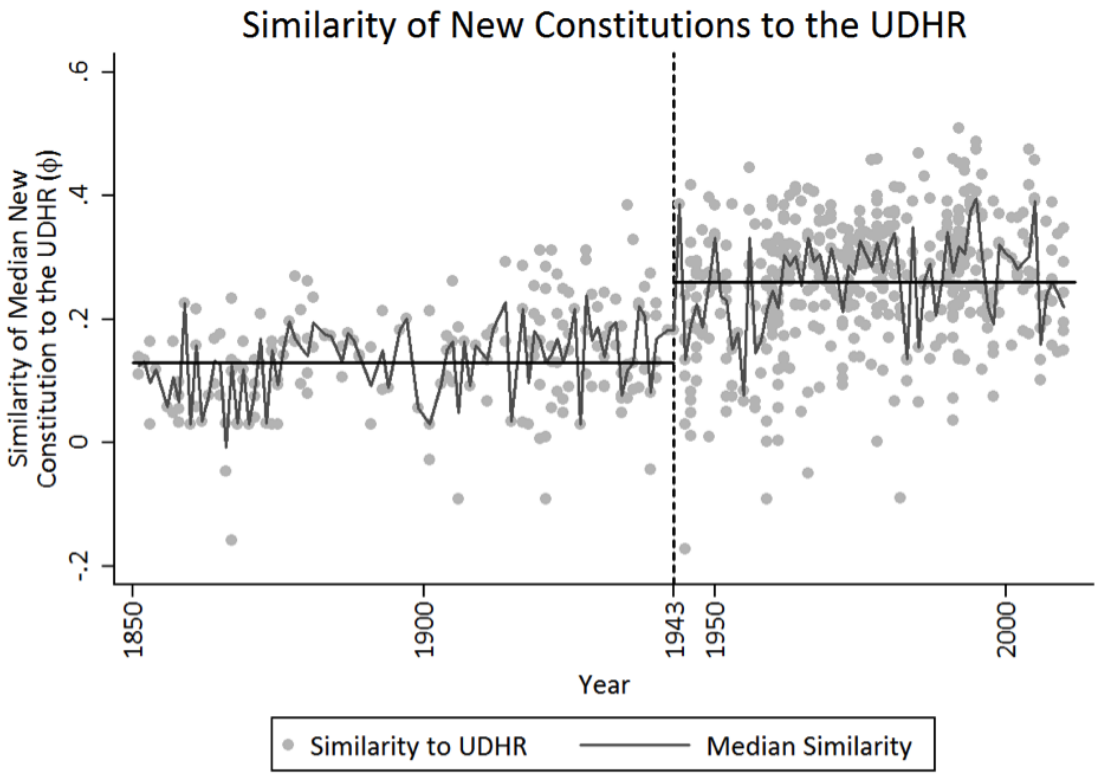
The data we analyzed in that article suggested some very strong projection effects. We found that the number of rights increased dramatically following 1948, as did the similarity of rights in constitutions to those in the UDHR. In an analysis at the level of the right, we found that a right's inclusion in the UDHR increased the probability of its inclusion in a subsequent constitution by 50 percent. The analysis controlled for the baseline popularity of the right, as measured by its inclusion in constitutions in force in 1948 as well as the age of the right. However we could not tie these effects directly to the UDHR, or at least directly enough; we go further in this paper.

As one indicator of this uncertainty about the UDHR, consider Figure 5. In that figure, we replicate a graphic from Elkins, Ginsburg, and Simmons Elkins, Ginsburg and Simmons (2013), but this time with a larger set of rights (116 instead of 74) and a slightly larger sample of constitutions. We also incorporate a change-point analysis (as described above), which helps us pinpoint when, exactly, similarity to the UDHR increased. If the UDHR were formative and not reflective, we would expect similarity to it to start in 1949 or shortly thereafter. In fact, our analysis – the methodology of which we varied in different ways – consistently returned a different answer: 1943. This inconvenient year suggests that the transformation to UDHR-style constitutions began in earnest a full five years before Roosevelt, Cassin, Malik, and Humphrey (some of the UDHR's core authors) picked up a pen. Even more inconveniently, 1943 is also the year in which we noticed a shift in the number of rights in constitutions (Figure 4, Left Panel).

5 The making of the UDHR and the search for signature elements

Here we unearth evidence about the construction of the UDHR in order to connect any idiosyncracies to a lasting legacy. We use this information to sharpen our estimate of any UDHR projection effect.

Figure 5: Change-point analysis of constitutional similarity to the UDHR



5.1 The Universal Declaration as Collective Writing

The Universal Declaration was one of the first projects that the then-fledgling United Nations established after World War II. It was steered by the Commission of Human Rights, set up under the UN's Economic and Social Council, and drafted initially under the charge of an eight-member Drafting Committee. The initial draft was produced by a Canadian Professor, John P. Humphrey, who headed the UN Secretariat's Division of Human Rights. He and his staff combed a wide array of sources. National constitutions were part of the formative material, as 50 of them were included in the background materials, along with national-government proposals and one from the American Federation of Labor (Schabas 2013, lxxxix).[9] This material was then integrated by Rene Cassin into a working document that was the basis of further discussion. The document proceeded through the Commission to the General Assembly, which adopted it on December 10, 1948.

There has been a substantial amount of work on the drafting of the Universal Declaration of Human Rights (Morsink 1999; Ishay 2004; Schabas 2013; Waltz 2001, 2002). Despite some suspicions that the UDHR was a kind of Western imposition, a more accurate characterization is that it reflected the culmination of a long-standing international political movement (Waltz 2002, 439), and was not simply an imposition of powerful Western states. Crucial roles were played by Lebanon's Charles Malik and China's Peng Chun Chang in the formation of the text of the UDHR, though they were often in disagreement.

Our sense from both the highly inclusionary and open process of its drafting, as well as our analysis of its content, is that the UDHR represented an expansive view of constitutional rights that had become popular in constitutions written in the inter-war era and immediately after World War II. In our previous analysis, we compared the content of the UDHR to that of a large sample of constitutions written since 1789. We tested hypotheses that the constitutions of larger, wealthier, and politically important countries had served

[9]The initial proposals from national governments included those from Chile, Cuba, Panama, India and the US. The Constitutions considered were largely from Europe and Latin America. Four socialist constitutions were included (Byelorussia, Ukraine, USSR and Yugoslavia). Only five from Asia were included (Afghanistan, China, India, Philippines and Siam (Thailand)), five from the Mideast (Iran, Iraq, Lebanon, Saudi Arabia and Syria) and four from Africa (Egypt, Ethiopia, Liberaia and South Africa.) See (2013, lxxxix). Morsink (1999, 10) lists several other governments that made later proposals, and notes that the nongovernmental input also had an influence.

as models for the UDHR's drafters. We found no support for any of these hypotheses, which corroborated the characterization of the process as an inclusive one. The only robust predictor of dyadic similarity was the age of the referenced constitution: more recent constitutions were considerably more similar to the UDHR than were those drafted in earlier eras. The UDHR, we concluded, was very much a product of its time.

Still, we suspect that the document is not just a reflection of contemporary ideas about rights. The drafting of constitutional documents – like any collective writing project – is a sprawling, chaotic, and sometimes idiosyncratic process. The UDHR was no exception. Indeed, in terms of constituencies, one could not imagine a broader and more diverse one than that of the world's recognized states. Collectively-written documents, as any co-author knows, can often amount to more than aggregated opinion of its authors. Our research task was/is to identify indicators of contemporary fashion as well as elements of the UDHR process that were unique to the crafting of the UDHR and that led to particular, identifiable outcomes. These could be elements of the process that suggested a discretionary, contingent affair: that is, simple twists of fate that tipped the balance towards a particular right, or a particular expression of a right. These twists are our instruments – our z's from the illustration in beginning of this paper – with which we intend to trace the signature effect of the UDHR. If we can follow the effect of these instruments on the UDHR and through to subsequent constitutions, then we can be more confident of the document's effect.

5.2 Would-be Architects of the UDHR

Was the content of the UDHR inevitable? One indicator that the UDHR could have been different is the fact that there was a large set of proposed drafts put forth in advance of, and during, the drafting process. The science fiction writer H.G. Wells produced a draft as did Professor Hersh Lauterpacht, a distinguished international lawyer at Cambridge. (Perhaps ironically, Lauterpacht was passed over to represent Britain on the human rights commission in part because he was "a Jew recently come from Vienna.") Other versions came from Gustavo Gutierrez of Cuba, Alejandro Alvarez of Chile, the Rev. Wilfred Parsons of the Catholic Association for International Peace, and Robert Hutchins, President of the University of Chicago. Organizations that produced drafts included the Institut de Droit

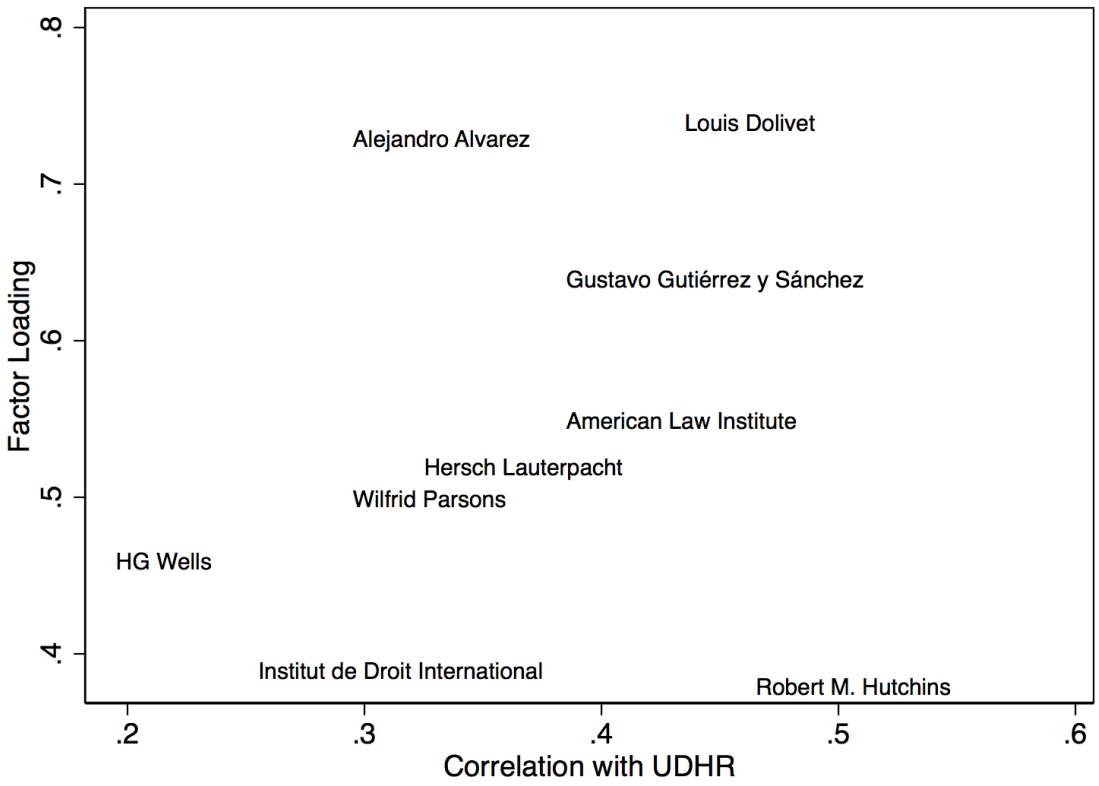
International, the American Jewish Congress, the American Association for the United Nations, the World Government Association, the editorial board of Free World, and the American Law Institute (Schabas 2013: lxxxiv). We do not know much about the use of these models, although John Humphrey, the initial drafter, alleged that he borrowed freely from the draft of the American Law Institute (Schabas 2013: lxxxviii).

These drafts were not carbon copies of one another, or of the resulting UDHR, although one sees agreement among the set on a core set of rights. One summary measure of the similarity of any two rights documents is their correlation across a set of rights (such as the 116 in our data). The matrix of X correlations ranges from X to Y, suggesting that the authors exhibited a fair degree of originality in their choices. Some were more original than others, of course, which is something that we summarize by analyzing the matrix of covariances. We do this here by fitting an exploratory item-response model for the X raters (authors) across the 116 rights. The model suggests that the authors' ratings load on one factor, predominantly, and so the loadings on the first factor simply summarize the degree to which the authors' assessments line up with those of other authors. We plot these loadings on the y-axis against the correlation of the author's choices with those of the UDHR's authors on the x-axis. Together, the scatterplot provides a sense of the authors' degree of originality (compared to other authors) along with the degree to which the authors' choices correspond with those of the UDHR's drafters. Those in Northeast corner represent relatively consensual voices whose views corresponded with the UDHR authors, while those in the Southwest represent distinct voices, both with respect to their fellow authors and the UDHR drafters. Those in the Southeast may be something like the architect who wins a design competition for an important building; their views are relatively original *and* their ideas are picked up by the drafters.

Figure 6 tells an interesting story about paths not taken. There is, indeed, something of a common core to these proposals. The degree of intercorrelation is relatively high; however, it is also the case there is notable variation across the documents. Some, like Dolivet and the Droit International, clearly point in very different directions – one that the UDHR largely followed (Dolivet) and the other which it did not (Droit).

In some ways the analysis of these alternative documents at the level of the right is more

Figure 6: Architects' similarity to one another and to the UDHR



revealing. Tables A1 and A2 – which is sorted according to whether the UDHR included the right – lists the number of proposals in which a right was included, as well as the right's popularity in recent constitutions. (Almost magically, of the 116 rights in our data, exactly half were included in the UDHR). The summary statistics at the bottom each group of rights tells us more about the UDHR's correspondence with its proposals. The 58 rights included in the UDHR were also included in an average of four of twelve proposals studied, as opposed to an average of less than one proposal for the 58 UDHR-excluded rights.

This right-by-right analysis also reminds us of the contemporary popularity of included versus excluded rights in constitutions. UDHR-included rights were found, on average, in 26 percent of constitutions in force in 1945 compared with 14 percent for excluded rights. An eyeballed comparison across columns tells us that, like the UDHR, the alternative proposals seemed steeped in the ideas prevalent in recent constitutions. Indeed, the correlation between the number of proposals in which the right was included and the popularity of the right in 1945 is 0.57.

Tables A1 and A2 point us towards an understanding of the signature elements of the UDHR. Idiosyncratic elements of the UDHR might usefully be described by, on the one hand, UDHR-included rights that were unpopular in proposals and in extant constitutions and, on the other hand, UDHR-excluded rights that were popular in these documents. One can pick out rights from each group based on Table 1, but we can also identify them more systematically. As a thought exercise, consider an analysis, with rights as the unit, in which we predict the inclusion in the UDHR based on rights' popularity in proposals and extant constitutions. We could then look at the predicted scores for inclusion in UDHR and identify cases that fall off the regression line, on either side. The predicted scores are helpful both in terms further statistical analysis, as we trace systematically the independent effect of the UDHR, but also as a sampling strategy for case studies. It is potentially illuminating to unpack the process by which some of the UDHR's unexpected choices emerged. That is our focus here. We describe the process with respect to two rights – one from each of the "subtracted" and "added" groups.

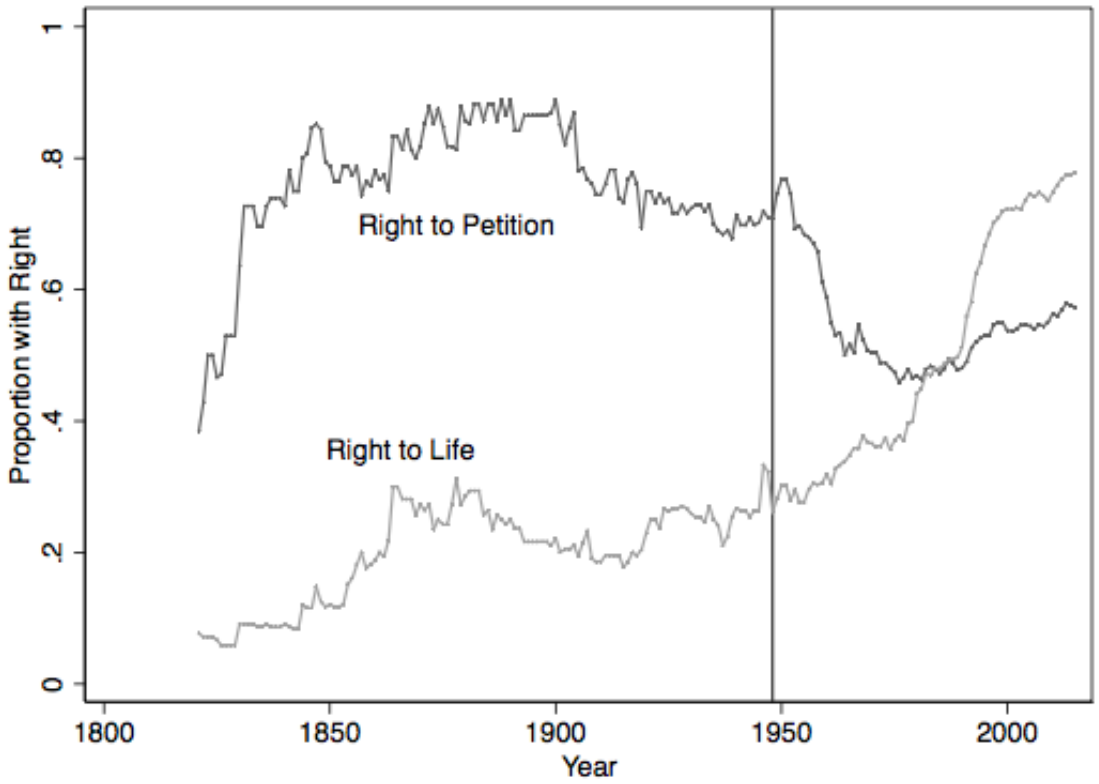
5.3 Right to life: an unexpected addition

Article 3 of the Declaration states, "Everyone has the right to life, liberty, and the security of person." For the human rights commission, "right to life" was hardly an abstract notion. Indeed, the atrocities of Nazi Germany were the very reason that they were meeting to draw up a document in the first place. Still, the "right to life," as a legal concept, was not something that was either well understood or that had a firm standing in constitutional law at the time. One of the joys of reading the minutes from long UN meetings is in finding gems like the exchange below, which transpired on May 27, 1948. One can almost hear the guffaws in the room.

> Mr. Lebeau (Belgium) questioned the necessity of saying that every individual had the right to life, as in his opinion the Declaration applied only to those who were already alive.
>
> In reply to Mr. Cassin (France), who pointed out that at a time when millions of people had been deprived of their life it was important that the Commission should raise its voice in defence and emphasis of that right, Mr. Lebeau said that in that case the wording should be "has the right to protection of his life." If the article were to be put to the vote in its present form, he would have to abstain from voting.
>
> Mr. Pavlov (Union of Soviet Socialist Republics) thought the remarks of the Belgian representative were logical, but since no other wording had been suggested, the article would have to remain in its present form. He recalled that during the discussion of this article in the Drafting Committee he had pointed out that it lacked concreteness and was divorced from actual realities since millions of people were still dying of starvation, succumbing to epidemics and being exterminated in wars.
>
> Mr. Lebeau (Beligium) requested that the article should be voted upon in sections.
>
> The Chairman agreed and put to the vote the phrase: "Everyone has the right to life."
>
> It was adopted by fourteen votes to none, with one abstention. The phrase "everyone has the right to liberty and to security of person" was adopted by fifteen votes to none.

The Belgian's confusion aside, it is likely that others struggled with applications of the right to life outside of the totalitarian context. Indeed, it seems likely that if not for the particular juncture in which the commissioners were operating, the right to life would have gone the way of some of the other proposals that were excluded. As it is, the right to life has gone on to become one of the core rights on modern constitutions. 77 percent of

Figure 7: Provision of Two Rights Over Time in Latin America



constitutions currently include the right, compared with 27 percent of constitutions in force in 1945.

Figure 7 shows the trend of right to life provisions in Latin American Constitutions. (Latin America is useful sample of countries for over-time analysis, since the number and configuration countries in the region has changed little, and since most countries in the regions have had Constitutions for most of the last two centuries.) Figure 7 shows the rapid growth of right to life provisions since 1948 as against the decline in another provision, which we describe below.

5.4 Right to petition: an unexpected subtraction

One of the most significant, and largely accidental, omissions from the UDHR is the right to petition. The right generally refers to a citizens' prerogative to communicate with state authorities, particularly so that they may seek redress for encroachments on individual

rights. For many, this was a fundamental right that would have enabled and activated the other rights in the charter. It is also a right that was highly predicted by contemporary constitutions, if not by draft proposals. A full 75 percent of constitutions in force in 1945 contained the right. (Interestingly, our data show that only one draft proposal included the right, a surprising discrepancy with the constitutional trends and one that deserves greater scrutiny. It could be that our sample of proposals is distorted, for one thing).

A review of the commission's minutes that are collected in Schabas (2013) as well as the thoughtful account by Morsink (1999, 302-307) suggests that the omission resulted from a failure to separate two strands of the provision, one which was uncontroversial (the right to petition one's government) and another that was decidedly more thorny (the right to petition the United Nations). The resistance to the idea of petitioning the United Nations took the form of two different sorts of objections, one pragmatic and the other political. On the pragmatic side, some doubted that the fledgling United Nations would have either the organizational capacity or the will to consider individual petitions from around the world. The political opposition came mostly from the Soviet Union, which viewed the idea of citizens turning to the UN to renounce their home country as a threat to state sovereignty. A further complication was that some commissioners saw the right as incorporating aspects of legal implementation, a component of the human rights project that they had agreed to consider separately. Regardless of these differences, the basic right to petition was one that most had intended to include, and Morsink views its omission as an organizational and administrative error. He writes: "Considering the time pressures under which the drafters worked, it is amazing how few of these kinds of errors they made." The critical "error" appeared to come, from our reading, in the 78th meeting of the commission on June 17, 1948. That day, the commission – having failed to reach consensus about the international component of the petition – voted to table the matter and flag it for later discussion. In fact, they voted to place it in a rather vulnerable position – listed, but not numbered, as one of the declaration's rights. The minutes from that day read:

> The Commission decided, by 12 votes to 1 with 1 abstention, to retain the article and to place it, unnumbered, at the end of the Declaration, with a note as suggested by the United Kingdom representative [a note suggesting its connection

to implementation] (Schabas 2013, 1933)

By our reading, the one "neigh" appears, at least given the tenor of the discussion in the transcript, to have been Mr. Quijano from Panama, who at one point implored his colleagues to reconsider:

> Mr. Quijano considered that the article should be adopted at once. The Commission had included in the Declaration all the articles it considered necessary, with the sole exception of that one. The article was clear, and it was undeniable that everyone had the right to submit petitions to a competent authority and to obtain a response; that right was provided for in the constitutions of all the American nations and in those of many others. The Commission could not be making a mistake in including such a provision in the Declaration. (Schabas 2013, 1933)

Alas, it was not to be. The unnumbered right was never numbered and incorporated into the UDHR. One apparent result is that the right's inclusion in national constitutions has significantly declined. Again, see Figure 7, in which the right to petition has clearly fallen off since 1948.

5.5 Estimating the Effect of the UDHR

How can we model, statistically, the effect of the UDHR on subsequent constitutions? Recall that we have something of a measure of the extent to which a right could be expected to be included in the UDHR. Rights that fall off this regression line would seem to be ones that represent the unique contribution of the UDHR, either by addition or subtraction. This implies a relatively simple model in which we predict the inclusion of a right in a post-UDHR constitution with the treatment (whether or not the right is included in the UDHR) and control for its predisposition (popularity in contemporary constitutions and proposals by the our nine would-be architects).

Table 1 shows the marginal effects a Probit model predicting the provision of one of 116 rights in 332 Constitutions written since 1948 (in the year of their drafting). The unit of analysis is the Constitution-right (e.g., freedom of speech in Brazil 1988, right to health in Venezuela 1999, etc.), for an N of 38,493. We are concerned, primarily, with the effect of UDHR inclusion. We control for (1) inclusion in subsequent international covenants,

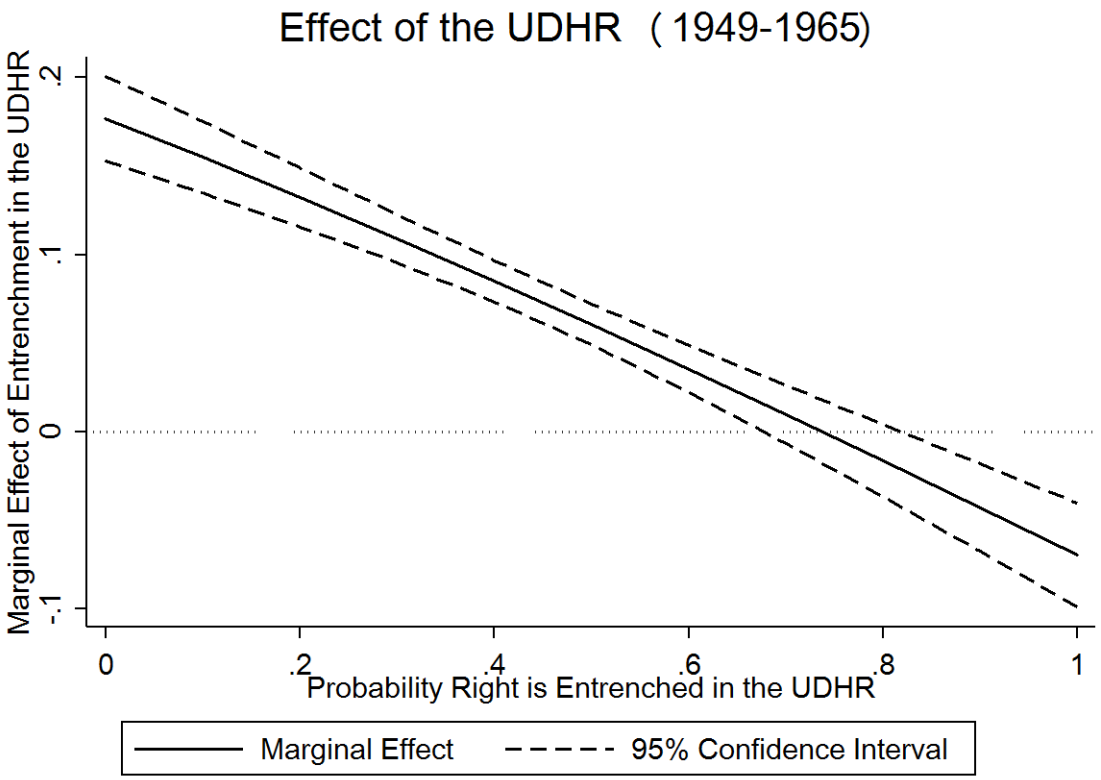
Table 1: Predicting the Enactment of Constitutional Rights (1949-2013)

Variables	All Rights	Civil and Political Rights	Legal Process Rights	Equality Rights	Socioeconomic Rights
UDHR	0.11***	0.08***	0.26***	0.10***	0.05***
	(0.01)	(0.01)	(0.02)	(0.02)	(0.01)
Intl. Covenants	0.09***	0.12***	0.08***	0.08***	0.06***
	(0.01)	(0.01)	(0.01)	(0.02)	(0.01)
Const. History	0.50***	0.53***	0.53***	0.30***	0.49***
	(0.01)	(0.02)	(0.02)	(0.02)	(0.02)
Global Prev. (1919-1945)	0.45***	0.44***	0.45***	0.59***	0.47***
	(0.02)	(0.04)	(0.05)	(0.04)	(0.03)
Proposals by NGOs	0.01***	0.01	-0.03***	0.02***	0.00
	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)
Democracy	0.01***	0.01***	0.01***	0.01***	0.01***
	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)
Year	0.00***	0.00***	0.00***	0.00***	0.00***
	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)
Civil and Political Rights	0.00				
	(0.01)				
Legal Process Rights	-0.02***				
	(0.01)				
Minority Rights	-0.09***				
	(0.01)				
Baseline p(Entrenchment)	0.32	0.45	0.31	0.17	0.33
% Correctly Classified	78%	78%	78%	85%	74%
Observations	38,493	9,212	8,225	7,567	13,489

(2) inclusion in the country's prior constitution, the (3) proportion of countries with the constitution during the interwar years, (4) the number of proposals that included the right, (5) the level of democracy (Polity), and (6) the year of the constitution. We are also interested in the "kind" of right, and run the analysis on subsamples of such rights (and control for such in the full model).

The data suggest that the UDHR is indeed influential. In the full set of rights, our estimate is that inclusion in the UDHR increases the probability of inclusion in a subsequent constitution by 11 percentage points. This effect ranges somewhat widely by the kind of right – legal procedure rights seem to be especially boosted by the UDHR (the marginal effect is 26 points). Note that other variables are even more consequential. For example, if a right was included in a country's constitution prior to 1948, it is 50 points more likely to

Figure 8: The Effect of the UDHR on subsequent constitutions, by prior popularity of the right



be included in one after 1948. Also, as we would expect, the global popularity of the right in the period before 1948 is a strong predictor of the inclusion of the right.

As we might expect, the effect of the UDHR depends on the starting point for the right. Some rights are so consensual that the UDHR has little effect on their popularity. We estimate a model in which we estimate the probability of inclusion in the UDHR, and estimate the UDHR effect at different levels (see Figure 8).

6 Micro-level evidence of formative effects

If the UDHR was formative in the making of post-UDHR constitutions, one would expect to find some evidence of it in the deliberations of constitutional delegates. Our review of the six constitutional debates in Brazil's history provides something of a reference point

Table 2: Number of references to selected terms, per day, in Brazilian constitutional debate. Source: Elkins (2012)

	Assembly					
Term	1823	1890-91	1933-34	1946	1966-67	1987-88
Magna Carta	0.01	0.06	1.27	2.11	8.24	6.94
Bible	0.01	0.03	0.05	0.06	0.13	0.60
UDHR	–	–	–	–	0.18	0.47
United States	0.13	2.23	3.68	4.51	6.18	6.70
France	0.24	0.81	2.61	2.23	3.82	4.69
Portugal	2.28	0.51	1.24	2.65	2.34	6.10
Number of Days of Debate	149	70	165	167	38	306

here. We collected the transcripts of each of the plenary debates in each of the six Brazilian constitutional assemblies. In Table 2 we report the number of instances in which delegates referred to each of six outside "models" (in this case three important documents and three countries), standardized by dividing that number by the number of days in which the assembly's plenary committee was in session. The transcripts confirm that The UDHR was part of the conversation by both the delegates debating the 1966-67 military constitution (0.18 references per day) and, more so, the framers of 1988's expansive democratic constitution (0.47 per day). The UDHR is mentioned about as often as the bible. Note that it comes up considerably less often than "magna carta,"but only because that term has come to refer to a Constitution or charter, more generally – and not always to the 13th century British document.

Another test of the relevance of the UDHR to constitution makers is whether they actually cite the document in the text of their Constitutions themselves. Since its adoption in 1948, the Universal Declaration has been referenced in over one quarter of all constitutions written for independent nation states (118 out of 461) and formally incorporated into 13 percent of them (59). And it is increasing in popularity: for constitutions written after 1989, the comparable numbers are 52 and 33 out of 161, or nearly one-third mentioning and one-fifth incorporating the UDHR.

7 Conclusion: What would constitutions look like today without the UDHR?

The Universal Declaration was an inspired project, understandably embraced by many in the wake of a war fought and won for human rights. The document was not inevitable, though like many institutions, it may seem that way now. The agenda of international organizations is littered with big (and small) ideas that have never materialized. The agreement upon a set of "universal" rights by a set of countries with vastly different cultural and economic endowments, not to mention competing political and ideological programs, seems almost heroic from this perspective.

Indeed, the UDHR had its skeptics at the time. Morsink opens his book with a letter from the American Anthropology Association, most of whose members apparently saw the task as both frought with epistemological challenges and ill-advised (*Statement on Human Rights* 1947). Presumably, there were others who were equally unenthusiastic about the idea. Clearly, some member countries were wary. Morsink (1999, 2) reminds us that the Soviets had only supported the UN itself (much less the UDHR) after Stalin and western powers had brokered a deal in which two constituent republics were admitted as UN members. And if mixed feelings had not doomed the project, then procedural constraints might have done so. The United Nations is an organization that moves only with deliberate and consensual steps. Serious objections from a member of the Security Council on a bill of rights would have meant an uphill battle, if not a wall.

So given the precarious and even miraculous origin story, the counterfactual seems highly relevant. How *would* the world's constitutions look if the UDHR had, in fact, not been declared? Our sense is that subsequent national constitutions – the principle legal device for enforcing rights – would be much different. Such documents would likely include fewer rights, a smaller core of consensual rights, and, outside the core, a different cast of elective rights. It may also be that the societies governed by these rights are very different places to live *because* of the rights. But it may not be necessary to project the effects too distantly. For those of us that are persuaded that written constitutions can serve as important devices for constraining and inducing state action, effects on the written word may be enough.

8 Appendix: Rights

Table A1: Rights in the UDHR

	Count in Proposals			% of Constitutions		
Right	*Indiv*	*State*	*Total*	*1945*	*1965*	*2013*
General guarantee of equality	6	3	9	66.7	87.3	97.8
Freedom of association	7	3	10	52.4	77.5	94.6
Freedom of assembly	7	3	10	61.9	73.5	94.6
Freedom of expression	8	1	9	57.1	78.4	94.6
Freedom of religion	7	2	9	71.4	86.3	94.0
Freedom of movement	6	0	6	19.0	52.9	88.0
Right to privacy	3	1	4	61.9	63.7	87.5
Equality regardless of gender	5	3	8	14.3	51.0	86.4
Right to own property	7	2	9	57.1	62.7	85.3
Freedom of opinion	4	2	6	38.1	56.9	84.2
Punishment from ex post facto laws prohibited	4	2	6	33.3	55.9	82.6
Prohibition of cruel or degrading treatment	3	0	3	9.5	32.4	81.5
Prohibition of torture	2	0	2	23.8	32.4	80.4
Right to life	2	0	2	14.3	37.3	78.3
Protection from unjustified restraint	6	0	6	42.9	70.6	77.7
Presumption of innocence in trials	0	0	0	0.0	33.3	77.2
Right to counsel	1	1	2	9.5	40.2	76.6
Right to human dignity	0	1	1	0.0	30.4	76.1
Equality regardless of race	8	3	11	9.5	53.9	76.1
Right to join trade unions	0	0	0	9.5	57.8	75.0
Right to work	7	2	9	14.3	55.9	73.9
Prohibition of slavery	3	0	3	28.6	33.3	69.0
Right to public trial	3	1	4	38.1	46.1	68.5
Equality regardless of religion	5	3	8	19.0	51.0	68.5
Right to free education	8	3	11	33.3	51.0	66.8
Principle of 'no punishment without law'	6	0	6	61.9	58.8	66.8
Universal suffrage	1	0	1	23.8	46.1	66.3
Protection from expropriation	0	1	1	57.1	52.9	66.3
Support for the disabled	3	0	3	14.3	33.3	65.2
Right to health care	3	3	6	0.0	29.4	64.1
Support for the elderly	4	0	4	19.0	34.3	60.9
Right to choose one's occupation	2	0	2	19.0	25.5	58.2

Table A1: Rights in the UDHR (cont.)

	Count in Proposals			% of Constitutions		
Right	*Indiv*	*State*	*Total*	*1945*	*1965*	*2013*
Equality regardless of country of origin	2	0	2	4.8	31.4	55.4
Right to fair trial	3	2	5	9.5	17.6	53.8
Right to equal pay for work	1	1	2	14.3	32.4	49.5
Equality regardless of creed or belief	5	0	5	4.8	24.5	49.5
General guarantee of social security	4	1	5	14.3	24.5	49.5
Protection of stateless persons	0	0	0	0.0	31.4	44.6
Equality regardless of social status	2	1	3	14.3	22.5	44.0
Equality regardless of language	5	1	6	4.8	14.7	42.4
Right to safe work environment	3	2	5	14.3	16.7	41.3
Right to rest and leisure	3	0	3	4.8	32.4	40.2
Equality regardless of skin color	5	1	6	0.0	14.7	37.0
Equality regardless of political party	2	1	3	0.0	11.8	35.3
Provision for matrimonial equality	0	0	0	0.0	10.8	33.7
Rights of artists mentioned	1	0	1	9.5	14.7	33.2
Support for the unemployed	3	1	4	4.8	21.6	32.6
Right to found a family	0	1	1	0.0	11.8	31.5
Right to shelter	4	2	6	0.0	5.9	29.3
Right to protect one's reputation	2	2	4	14.3	14.7	28.8
Equal access to higher education guaranteed	2	1	3	0.0	12.7	27.2
Right to renounce citizenship or natioanality	0	0	0	0.0	5.9	25.0
Equality regardless of nationality	5	0	5	0.0	12.7	22.8
Right to reasonable standard of living	4	0	4	4.8	13.7	22.3
General protection of intellectual property	0	0	0	0.0	8.8	21.2
Right to marry	0	0	0	14.3	7.8	20.1
Right to self development	1	1	2	0.0	9.8	17.9
Equality regardless of parentage	0	0	0	0.0	8.8	15.2
Right to enjoy the benefits of science	1	0	1	0.0	1.0	12.0
Right to amparo	0	0	0	4.8	4.9	9.8
Averages	3.2	1.0	4.1	19.7	34.9	56.8

Table A2: Rights not in the UDHR

	Count in Proposals			% of Constitutions		
Right	*Indiv*	*State*	*Total*	*1945*	*1965*	*2013*
Right to the environment	0	0	0	9.5	10.8	70.7
State duty to protect culture	0	0	0	14.3	29.4	67.9
Freedom of the press	3	0	3	61.9	49.0	66.3
Regulation of evidence collection	1	0	1	57.1	46.1	64.1
Right to form political parties	1	1	2	0.0	28.4	60.9
Right of petition	1	0	1	66.7	50.0	57.1
Support for children	1	0	1	9.5	23.5	54.3
Prohibition of double jeopardy	0	0	0	9.5	26.5	53.8
Protection from self-incrimination	0	0	0	23.8	27.5	53.3
Right to appeal judicial decisions	2	0	2	14.3	26.5	52.2
Right to strike	0	0	0	9.5	30.4	51.6
Right to speedy trial	3	2	5	9.5	21.6	50.0
Protection of non-official languages	1	0	1	9.5	14.7	48.4
Rights of children guaranteed	0	0	0	0.0	17.6	45.7
Freedom to view government information	1	1	2	0.0	5.9	41.3
Prohibition of censorship	1	0	1	42.9	29.4	40.8
Right to establish a business	3	0	3	14.3	13.7	40.2
Trial in native language of accused	1	0	1	0.0	18.6	39.1
Limits in the employment of children	0	0	0	4.8	20.6	38.0
Right to extradition	1	0	1	4.8	23.5	37.0
Protection from false imprisonment	0	2	2	4.8	22.5	36.4
Right to academic freedom	0	0	0	19.0	24.5	34.2
Prohibition of capital punishment	1	0	1	14.3	13.7	33.2
Right to examine evidence/witnesses	1	0	1	9.5	16.7	32.6
Separation of church and state	0	0	0	9.5	25.5	30.4
Right to pre-trial release	1	0	1	19.0	20.6	30.4
Right to inheritance	3	0	3	4.8	16.7	28.3
Protection of consumers	0	0	0	4.8	2.9	26.1
Provision for copyrights	0	0	0	19.0	16.7	25.5
Right to conscientious objection	1	0	1	4.8	7.8	23.4
Right to competitive marketplace	1	0	1	4.8	8.8	22.8
Jus soli citizenship	1	0	1	9.5	18.6	22.8
Equality regardless of financial status	0	0	0	0.0	5.9	22.3
Rights of debtors	0	0	0	38.1	22.5	19.6
Equality for persons with disabilities	0	0	0	4.8	2.0	19.6
Guarantee of due process in criminal proceedings	2	2	4	9.5	7.8	18.5
Provision for patents	0	0	0	19.0	18.6	18.5
Special privileges for juveniles in criminal process	0	0	0	0.0	6.9	17.4
Right to transfer property	1	0	1	14.3	12.7	16.8
Jury trials required	0	0	0	38.1	21.6	16.3
Equality regardless of age	0	0	0	0.0	0.0	14.1
Right to self determination	0	0	0	0.0	5.9	13.0
Protection of victim's rights	1	0	1	0.0	1.0	11.4
Provision for civil marriage	0	0	0	9.5	11.8	9.8

Table A2: Rights not in the UDHR (cont.)

	Count in Proposals			% of Constitutions		
Right	*Indiv*	*State*	*Total*	*1945*	*1965*	*2013*
Equality regardless of tribe or clan	0	0	0	0.0	8.8	9.8
Right of testate	0	0	0	9.5	5.9	8.2
Provision for trademarks	0	0	0	4.8	11.8	8.2
Prohibition of corporal punishment	1	0	1	9.5	2.9	6.5
Right to overthrow government	0	0	0	4.8	0.0	6.0
Indigenous right to internal governance	1	0	1	0.0	1.0	6.0
Indigenous right to representation	0	0	0	0.0	1.0	3.8
Equality regardless of sexual orientation	0	0	0	0.0	0.0	3.3
Indigenous right to vote	0	0	0	0.0	1.0	2.7
Indigenous right to form political parties	0	0	0	0.0	0.0	1.1
Right to bear arms	0	0	0	9.5	2.9	1.1
Indigenous right not to pay taxes	0	0	0	0.0	0.0	0.5
Indigenous right to certain illegal activities	0	0	0	0.0	0.0	0.5
Averages	0.6	0.1	0.8	11.5	15.1	28.7

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