Brno, 18 September 2023

EU Law & European System of HR Protection

JUSTIN
Judicial Studies Institute
Masaryk University

Introduction

Katarína Šipulová

Course requirements

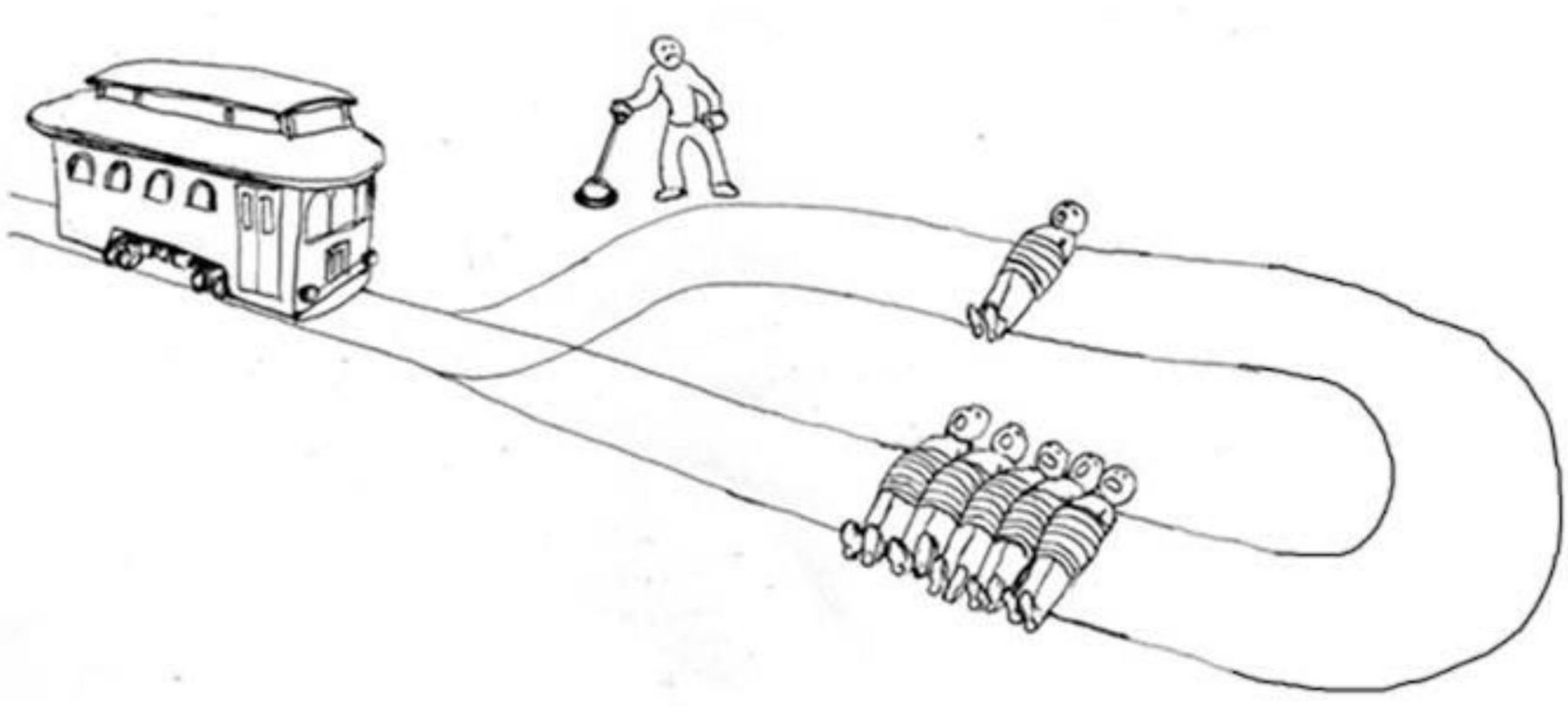
- **13 lectures *including*:**
  - *Guest lecture by prof. Sybe de Vries (6 November 2023)*
  - *Visit of the SAC (4 December 2022)*

- **Position papers**
  - 6 position papers, delivery is obligatory
  - Class will be divided into two groups, one submitting on odd, one on even weeks.
  - 2700 characters
  - Submitted on Sunday before the class

- **Group projects**
  - 2 group projects written in teams of 3
  - Comment on an interesting problem/judgment
  - 7000 words
  - **3 November 2023 (TP1) and 7 December 2023 (TP2).**

- **Final exam**
  - Written, 4 open-ended questions

Is justice important?



What is *just?*

- Consequentialist moral reasoning
  - The just thing to do is to maximize utility
- Categorical moral reasoning
  - Morality is in moral duty, moral quality of our acts

What is *just?*

- How do these considerations underline HR?
- What are HR?
- Why do we need HR?
- Who is to define HR?

The notion of human rights

- What is a human right?
- What is *human?*
  - *Start and end of life?*
- What is a *right* ?
  - Rights v duties
  - Law v right
- Where do rights come from?
- Do we need to justify human rights? Is law enough?
- From philosophy of HR to compliance with human rights
- Limits and conflicts of human rights

Approaches to Studying Human Rights

- **Interdisciplinary approach**

- Law
- Social (Political) Sciences
- Philosophy
- *What do they tell us?*

- Theory
- Cases

HR controversies

1. Foundation of rights
2. Conflicts of Rights
3. Generations of rights
4. Relativism versus universalism
5. Human rights and War
6. Animal Rights

Foundations of human rights

Human Rights – brief historical sketch

- Natural-rights based proclamations
  - *Rights as an opposition to absolute monarchy*
  - *Rights as a response to emergent capitalism*

- *Positivisation* in national legal systems
  - *Secularisation of political thinking*
  - *Social science and sociology*

- Drive towards universality of rights

- International law turn: from morality and philosophy to compliance

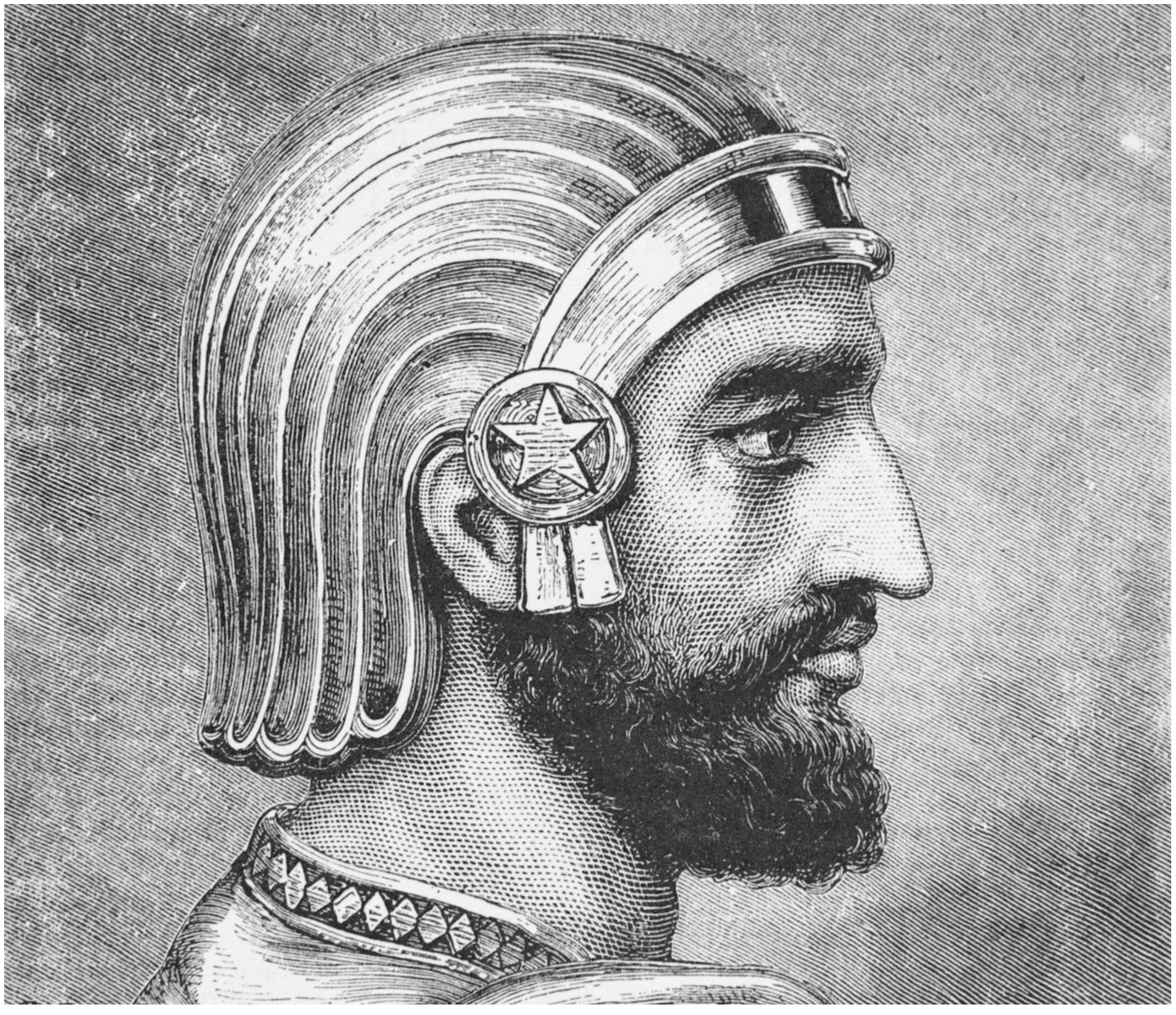
Universal Declaration of Human Rights

The Code of Hammurabi (1792-1750 B.C.)

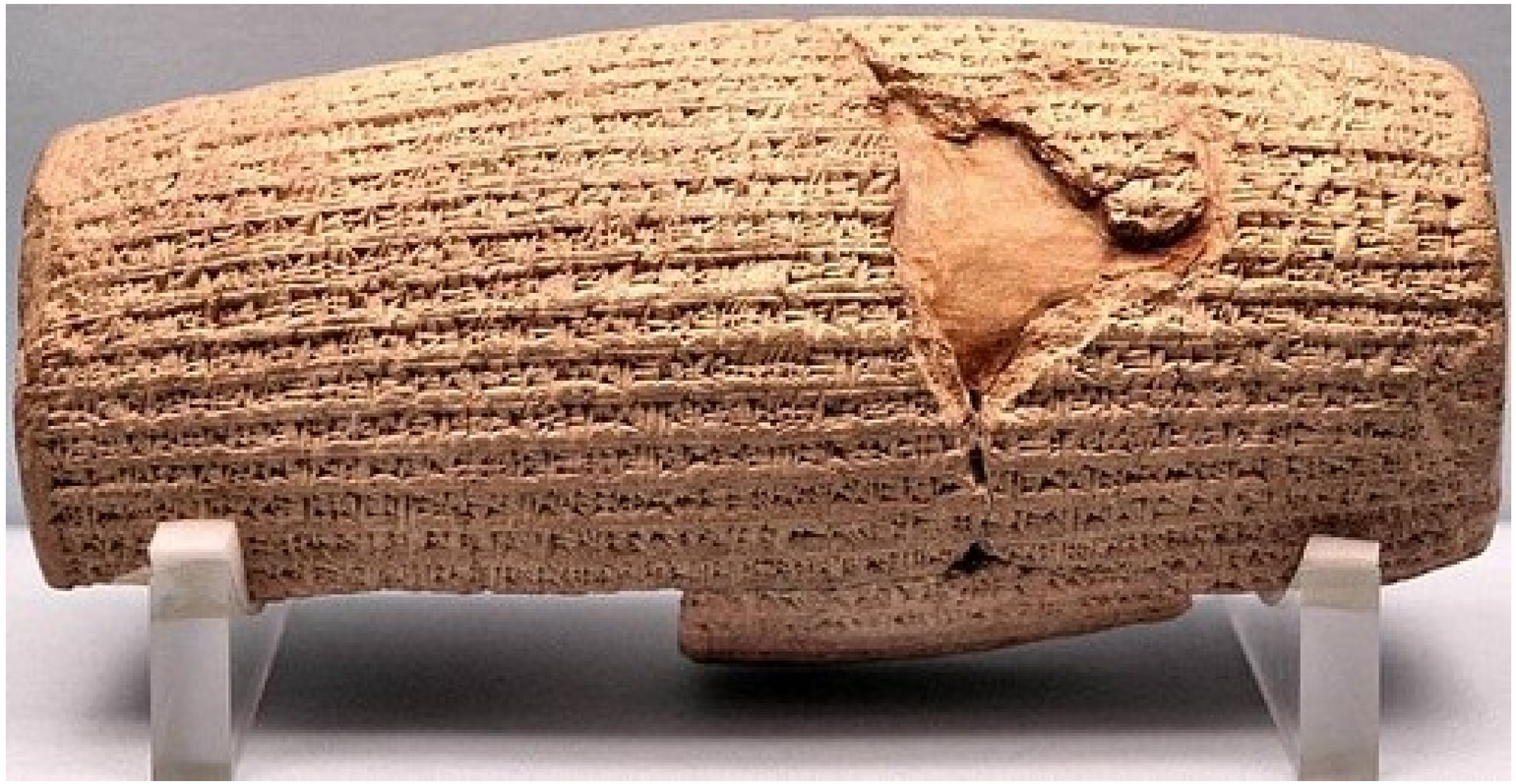
- The oldest surviving text establishing the **rule of law**
- "*to prevent the strong from oppressing the weak and to see that justice is done to widows and orphans*"
- Innocence until proven guilty
- BUT, also: harsh laws of retribution

Cyrus Cylinder

- Cyrus the Great
- concurred the city of Babylon (539 B.C.)



Cyrus Cylinder



Cyrus Cylinder

*„I announce that I will **respect the traditions, customs and religions** of the nations of my Empire, I will never let any of my governors and subordinates look down or insult them until I am alive.*

*From now on, till God grants me the kingdom favour, I will impose my monarchy on no nation. Each is free to accept it, **and if any one of them rejects it, I never resolve on war to reign**.*

*Until I am the king of Persia, Babylon, and the nations of the four directions, **I never let anyone oppress any others, and if it occurs, I will take his or her right back and penalize the oppressor**.*

*Until I am alive, **I prevent unpaid forced labor**. Today, I announce that everyone is **free to choose a religion**. People are free to live in all regions and **take up a job** provided that they never violate other's rights.*

No one could be penalized for his or her relatives' faults.

***I prevent slavery** and my governors and subordinates are obliged to prohibit exchanging men and women as slaves within their own ruling domains. Such a tradition should be exterminated the world over."*

The petition of rights 1628

- Charles I x Parliament

- X. They do therefore **humbly pray your most excellent Majesty**, that no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, without **common consent by act of parliament**; and that no one be called to make answer, or take such oath, or to give attendance, or be confined, or otherwise molested or disquieted concerning the same or for refusal thereof` and **that no freeman, in any such manner as is before mentioned be imprisoned or detained**;

Declaration of Independence 1776

- We hold these truths to be self-evident, that **all men are created equal**, that they are endowed by their Creator with certain **unalienable Rights**, that among these are **Life, Liberty and the pursuit of Happiness**.
- …
- That to secure these rights, Governments are instituted among Men, **deriving their just powers from the consent of the governed**,
- …
- That whenever any Form of Government becomes destructive of these ends, it is **the Right of the People to alter or to abolish it**, and to institute new government

Human rights and the role of the state

- HR first to keep state out of private life and property
- Then, used by oppressed minorities for recognition
- Recently, to control the state power (against individual abuses)

Duties of states

- Respect human rights (*duty of everyone*)
- Protect human rights
- Provide human rights
- Aid the deprived

- **Respect** – refrain from interfering
- **Protect** – protect individuals and groups against HR abuses
- **Fulfil** – positive action to facilitate enjoyment of basic HR

Post WW2

Do we need justification of HR?

Is law and legal language enough?

Rawls: in a pluralistic world we cannot build our public commitment to human rights on any controversial account of the ‘truth’ about humanity or the good. We have to return, instead, to shared ideas embedded in the culture of a liberal democracy

Conflict of Human Rights

Conflicts of Rights

1. **Conflict of HR and values**
2. **Conflict of HR and politics**
3. **Conflicts of 2 human rights**

HR and politics

- In democracies, differences which rights should be protected are sorted out via political process

- What if even democratic legislator can push back some rights?

-> from God, through ruling elite to legitimate Parliament. If not legitimate Parliament, who is the source?

- How to identify rights so fundamental, that they must NOT be removed or limited by political decision?
    - Hume: collective moral sentiments
- HR as a result of the creation of law
- HR treaties as a main source
- Separation of powers and checks and balances of judicial branch
- Individual protection v negative decision-making

Generations of Rights

Generations of HR

- **1. Civil and political rights**
  - Right to partake on the government of one's country

- **2. Economic and social rights**
  - Right to adequate standards of living, education, cultural participation

- **3. Rights of 3rd Generation (group rights)**
  - Fraternity, solidarity, group rights = communal aspects of human beings

2nd Generation of HR and positive v negative rights

- Challenges:
  - Enforcement
  - Universality
  - Paramount rights
  - Rights applicable to all classes

- Negative rights = rights of forbearance （e.g. torture）
  - Violation = direct infliction of injury （act of commission）

- Positive rights = securing a right
  - Violation = failure to confer a benefit （act of omission）

- **Is there a moral / philosophical difference?**

Group rights

- Rights held by a corporate entity that is not reducible to its individual members
- Need to be universal
- Accommodate legitimate interests of oppressed groups
- Right of people to self-determination
- Rights of indigenous peoples
- Right to cultural heritage

7 skeptical questions about group rights

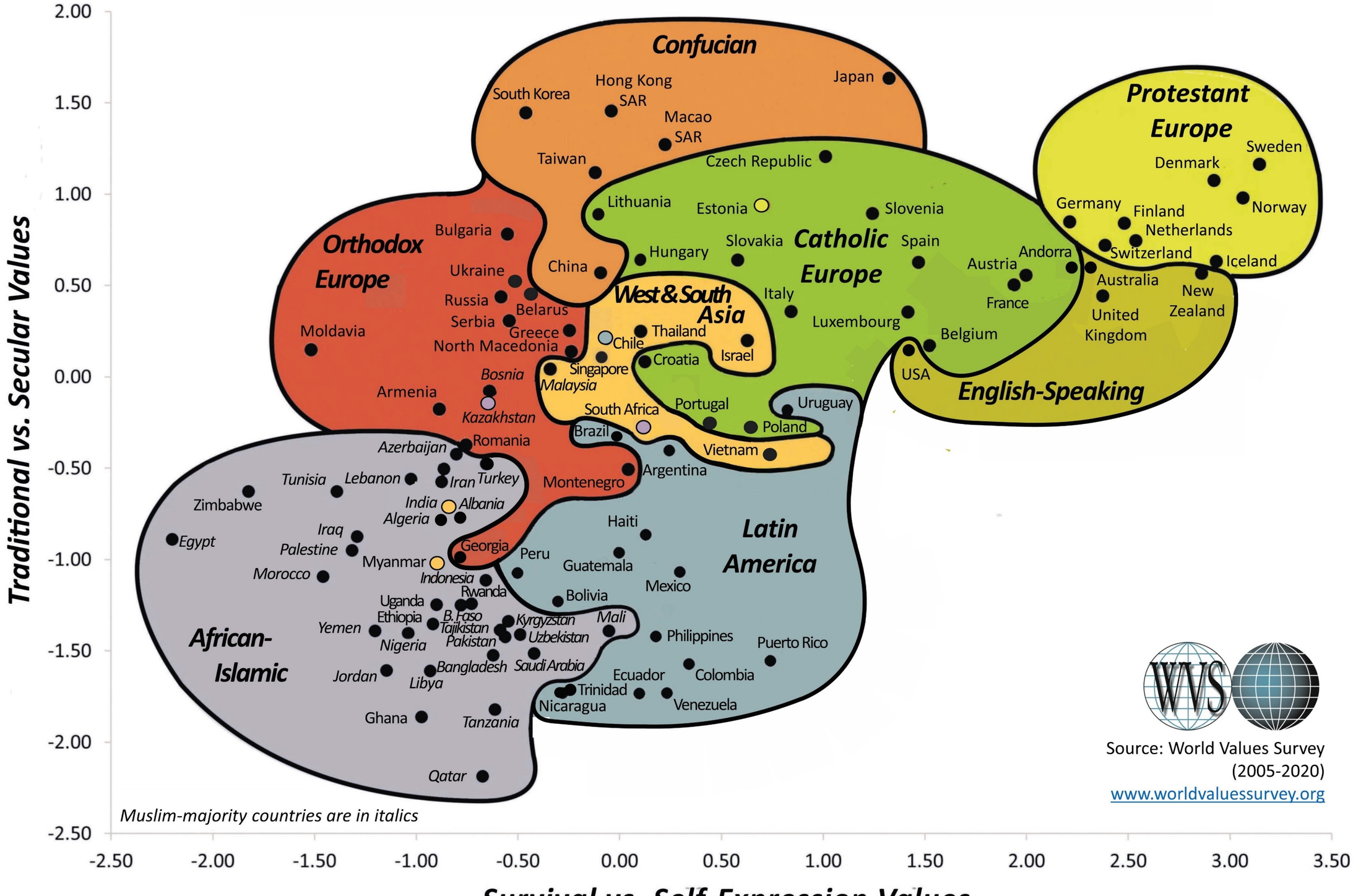
- 1. How do we identify the group?
- 2. What particular HR should the group have? On what grounds?
- 3. Who exercises the group right? (the problem of agency)
- 4. Increased risk of conflicts of rights
- 5. Are the purported group rights necessary?
- 6. Why should we expect group rights to succeed where individual rights have failed?
- 7. Are group rights the best way to protect or realize interests, values and desires of a group?

Universalism versus relativism

Ignatieff – attacks on universality of HR

- Islam
- The West
- Southeast Asia

The Inglehart-Welzel World Cultural Map (2020)



Muslim-majority countries are in italics

Source: World Values Survey (2005-2020)
www.worldvaluessurvey.org

Measuring human rights (Landman)

- Political Sciences: causes and consequences of cross-national variation in HR protection

- Purpose of measuring
  - Contextual description and documentation
  - Classification
  - Monitoring states
  - Mapping and pattern recognition of HR violations
  - Secondary analysis – social and political variables
  - Advocacy tools

- HR measures used e.g. by development agencies

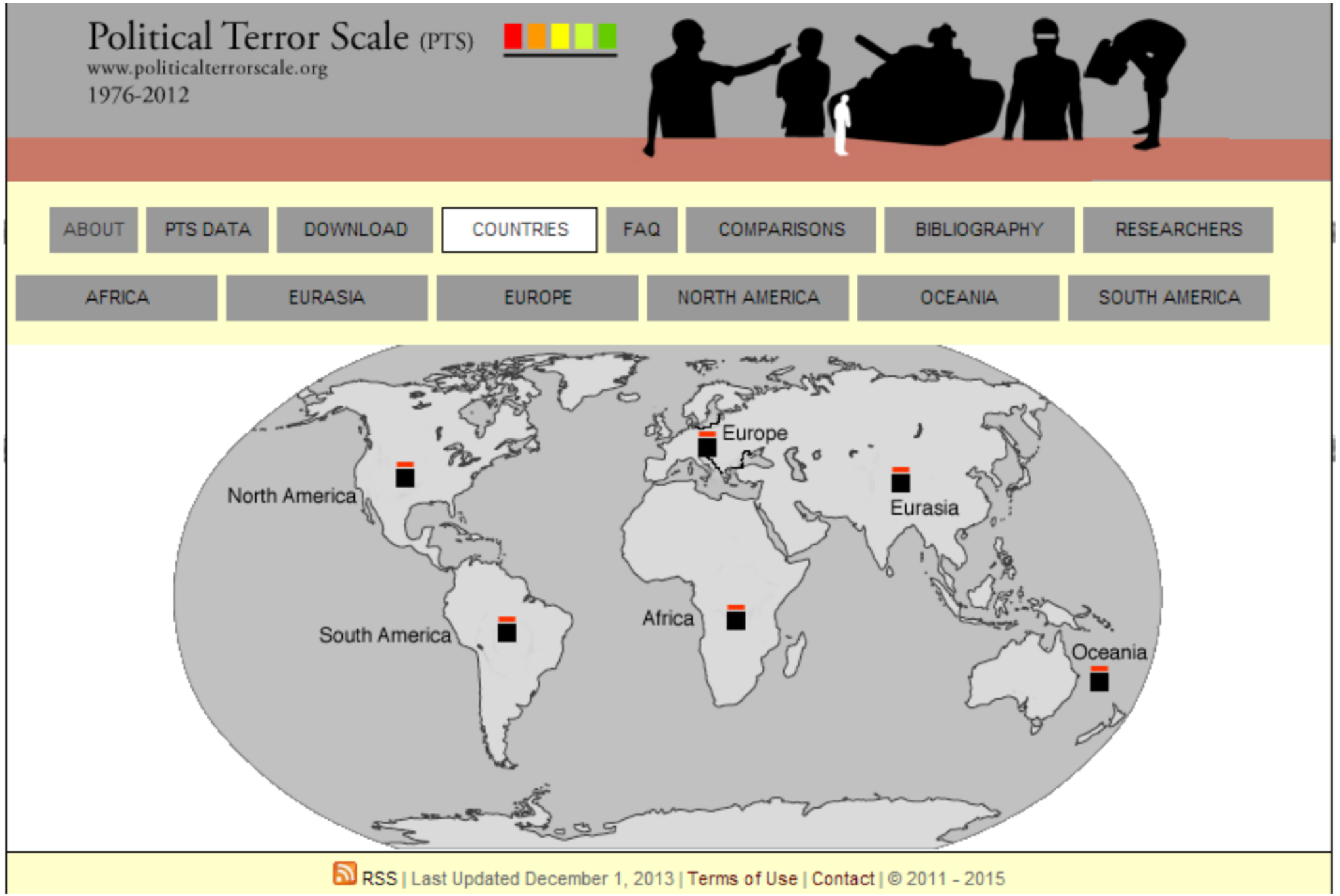
Measuring human rights

- http://ourworldindata.org/human-rights

Measuring human rights

- humanrightsdata.com

Measuring human rights



Measuring human rights

Polity IV

www.systemicpeace.org/polity/polity4.htm

Polity IV Project:
Political Regime Characteristics and Transitions, 1800-2013

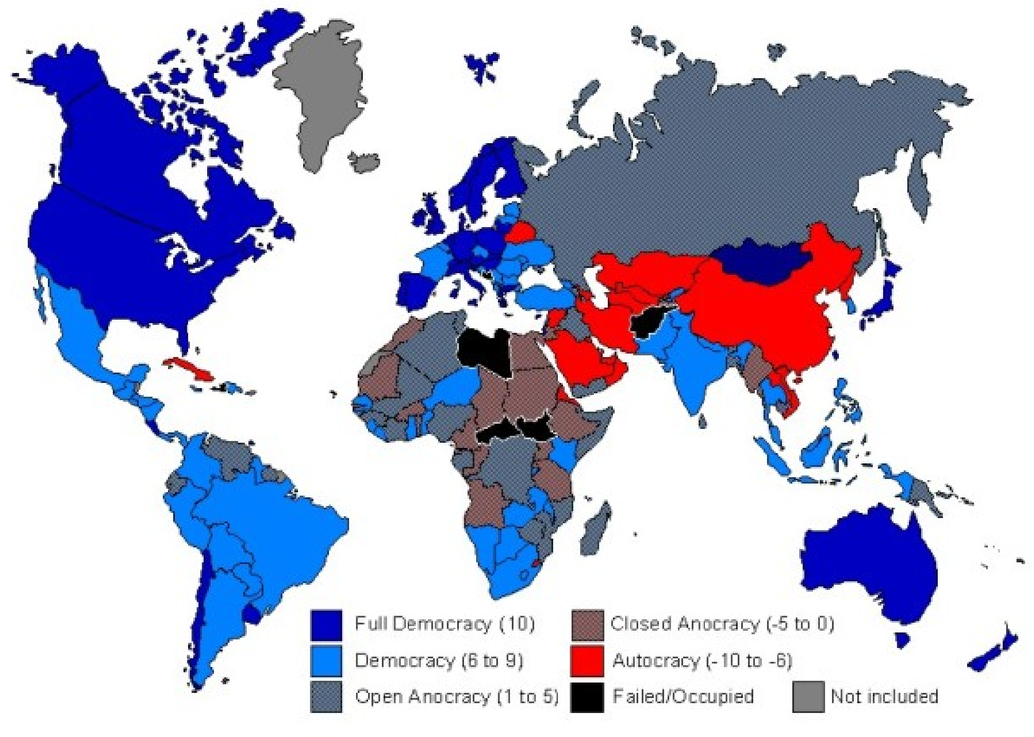
Monty G. Marshall, Director

Monty G. Marshall, Principal Investigator
Societal-Systems Research Inc.
Ted Robert Gurr, Founder
University of Maryland (Emeritus)

Polity IV Individual Country Regime Trends, 1946-2013

PLEASE NOTE: The Center for Systemic Peace (CSP) Web site has been reorganized and refreshed. The Polity Project and INSCR Data pages have been moved; please click here to be taken to the new CSP Web site or on the logos at the bottom of the page to navigate to the new pages.

Annual Polity scores have been plotted for each of the 167 countries currently covered by the Polity IV data series for the period 1946-2013 (trend graphs are also included with the Polity IV 2010 Country Reports). This version of the Polity Country Trend graphs display periods of "factionalism" and important Polity change events, including autocratic backsliding, executive auto-coup or *autogolpe*, revolution, collapse of central authority (state failure), and successful military coups. Click on the country of interest in the "Regimes by Type 2013" map directly below (or table following) to view that country's contemporary regime trend (click here for a explanatory guide to the Polity Country Trend graphs).



Measuring human rights

V-Dem
VARIETIES OF DEMOCRACY
Global Standards, Local Knowledge

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V-Dem: Global Standards, Local Knowledge

Varieties of Democracy (V-Dem) is a new approach to conceptualizing and measuring democracy. We provide a multidimensional and disaggregated dataset that reflects the complexity of the concept of democracy as a system of rule that goes beyond the simple presence of elections. The V-Dem project distinguishes between five high-level principles of democracy: electoral, liberal, participatory, deliberative, and egalitarian, and collects data to measure these principles.

We are a team of over 50 social scientists on six continents. We work with more than 3,000 country experts and a truly global International Advisory Board. Read more about the work we do here.

V-Dem Democracy Report 2019 is online!

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MONITORING WORKING GROUP

monitoring.escr-net.org

WHAT WE'RE READING | WHAT WE'RE LEARNING | WHAT WE'RE DOING | WHO WE ARE

Leer en Español

The Working Group on Monitoring Methods is coordinated by the Center for Economic and Social Rights, in close collaboration with its steering committee and with the support of the ESCR-Net Secretariat.

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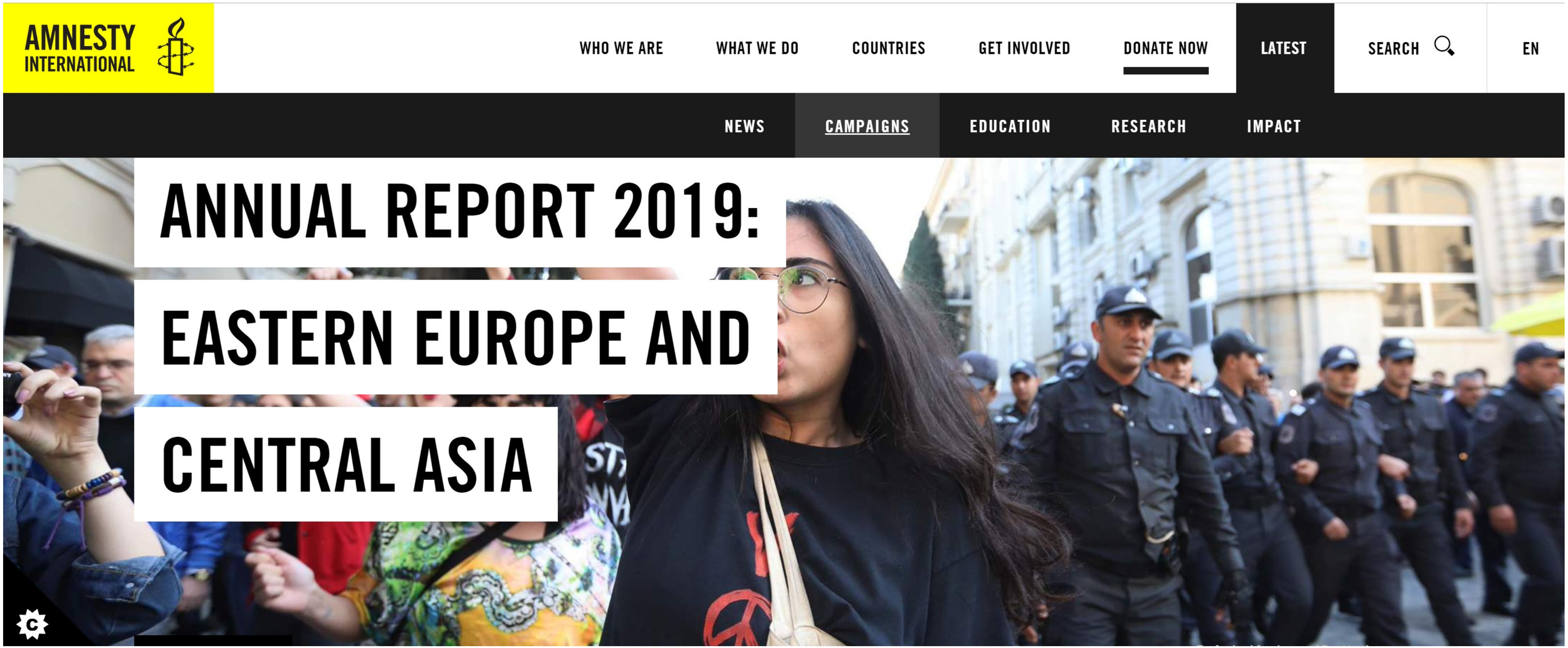

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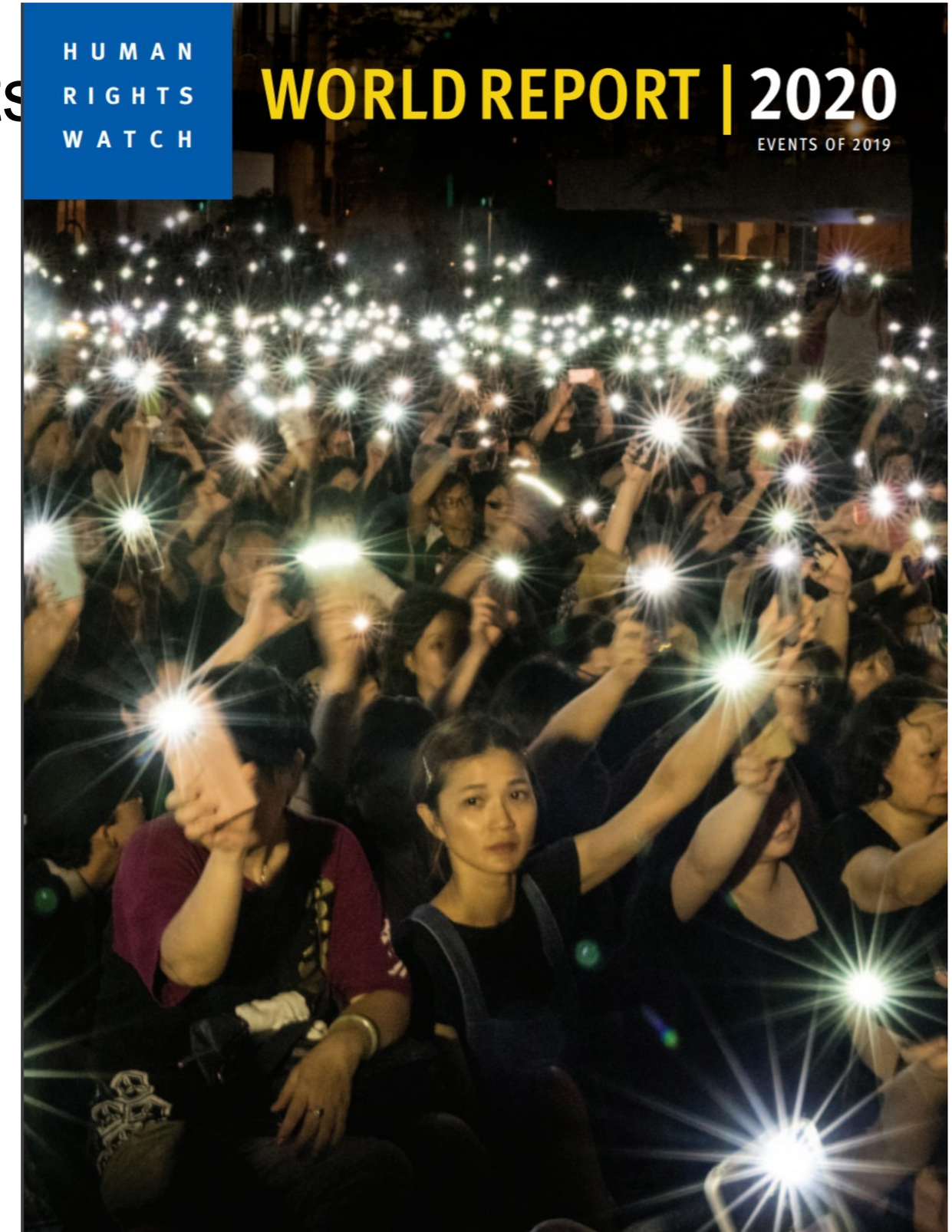
https://www.hrw.org/sites/default/files/world_report_download/hrw_world_report_2020_0.pdf

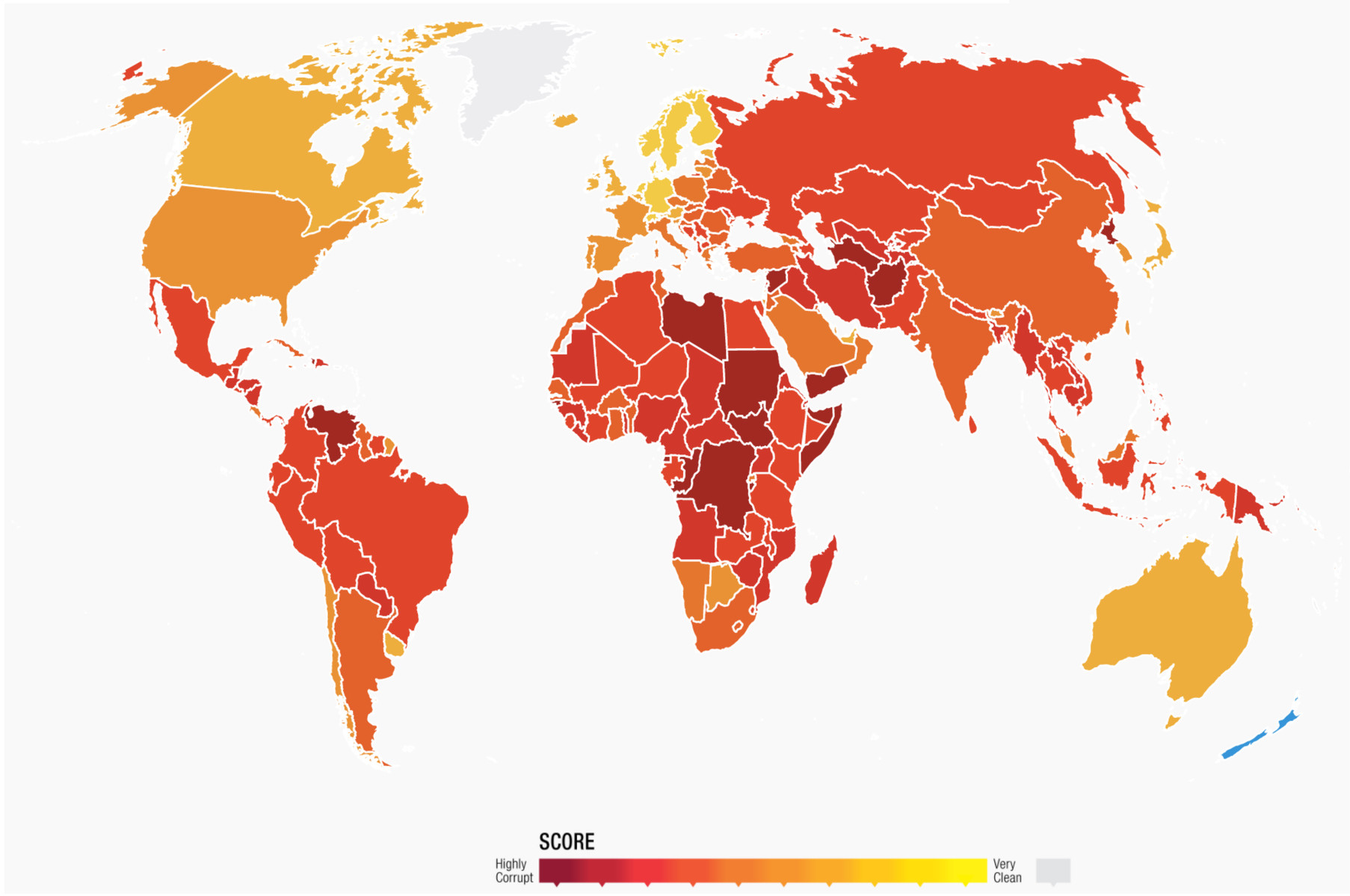


Measuring human rights

TRANSPARENCY INTERNATIONAL
the global coalition against corruption

CORRUPTION PERCEPTIONS INDEX

2020



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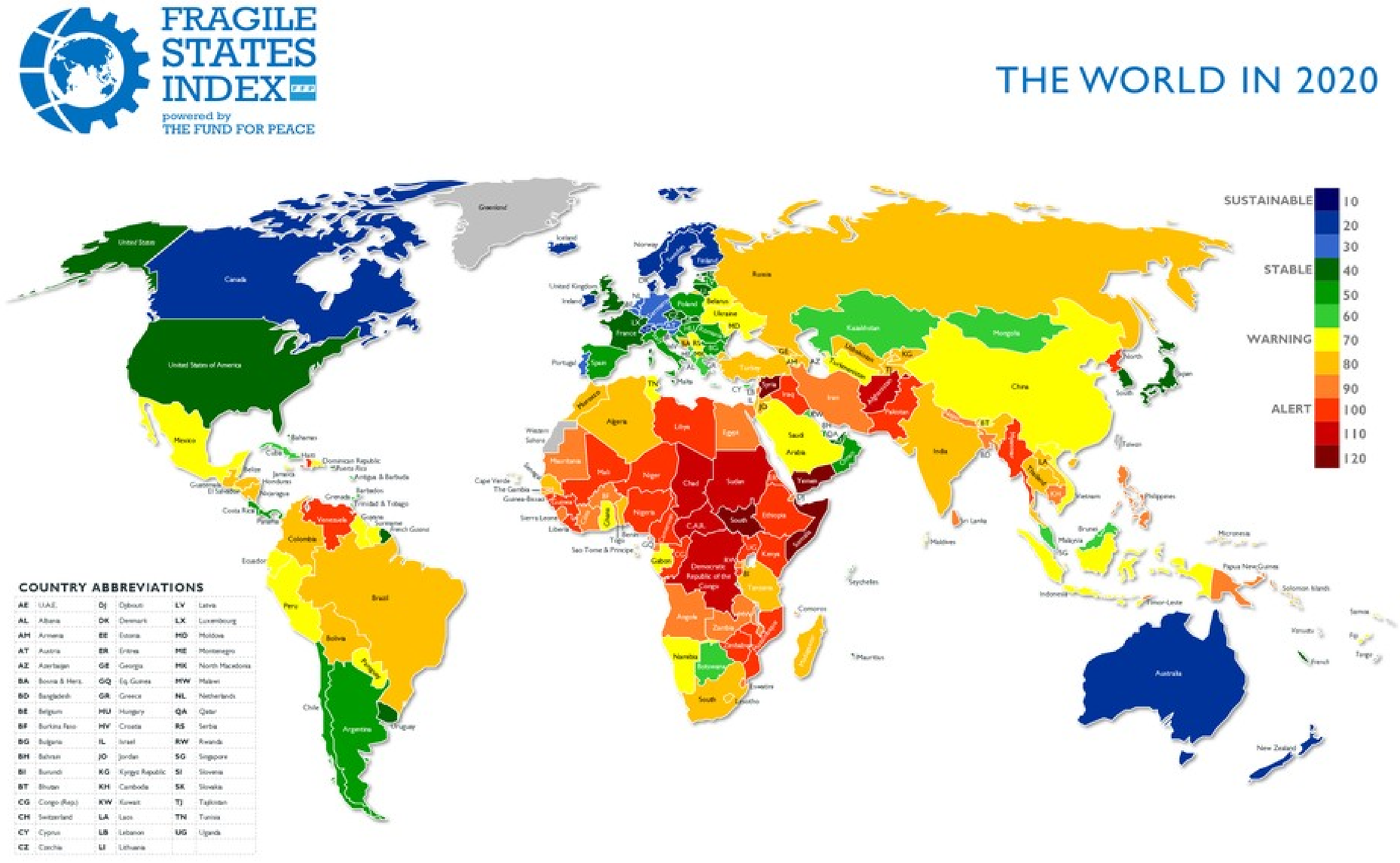


https://fragilestatesindex.org/

Measuring human rights

World Justice Project

WJP Rule of Law Index®

WJP Rule of Law Index > Global Insights

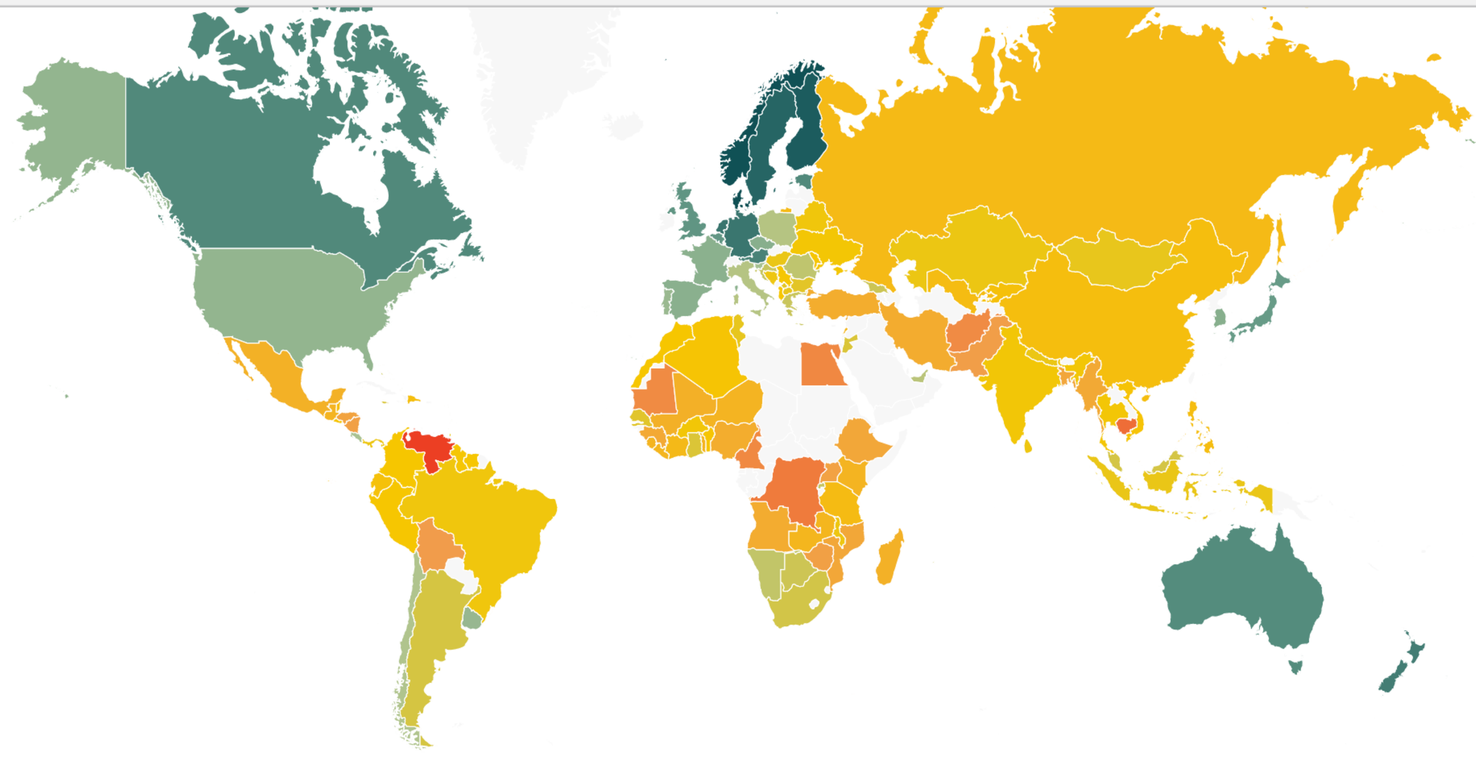
OVERVIEW | GLOBAL INSIGHTS | COUNTRY INSIGHTS | FACTORS

COUNTRY ▼ | 2020 ▼

ADHERENCE TO THE RULE OF LAW

WEAKER — STRONGER

0.00 0.25 0.50 0.75 1.00



OVERALL INDEX SCORE

Explore by Issue/Factor

1 | CONSTRAINTS ON GOVERNMENT POWERS ⓘ

2 | ABSENCE OF CORRUPTION ⓘ

3 | OPEN GOVERNMENT ⓘ

4 | FUNDAMENTAL RIGHTS ⓘ

5 | ORDER AND SECURITY ⓘ

6 | REGULATORY ENFORCEMENT ⓘ

7 | CIVIL JUSTICE ⓘ

8 | CRIMINAL JUSTICE ⓘ

RANKING | HISTORICAL TABLE

Filter By: REGION ▼ or INCOME ▼

https://worldjusticeproject.org/rule-of-law-index/global/2020

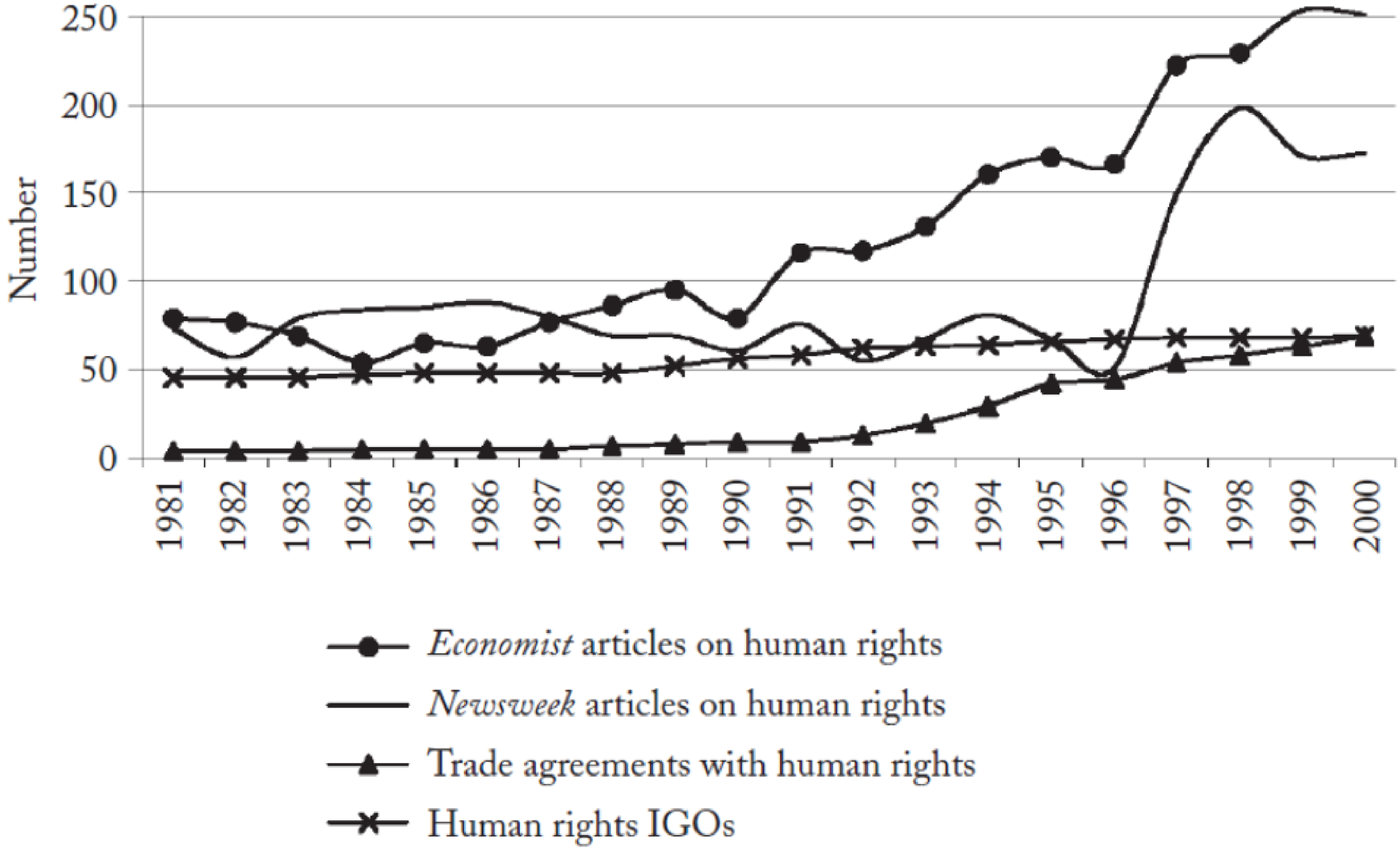
Expansion of rights

- Rhetoric of rights

- Subject of rights
  - Rights holders
  - Potential rights perpetrators (duty bearers)

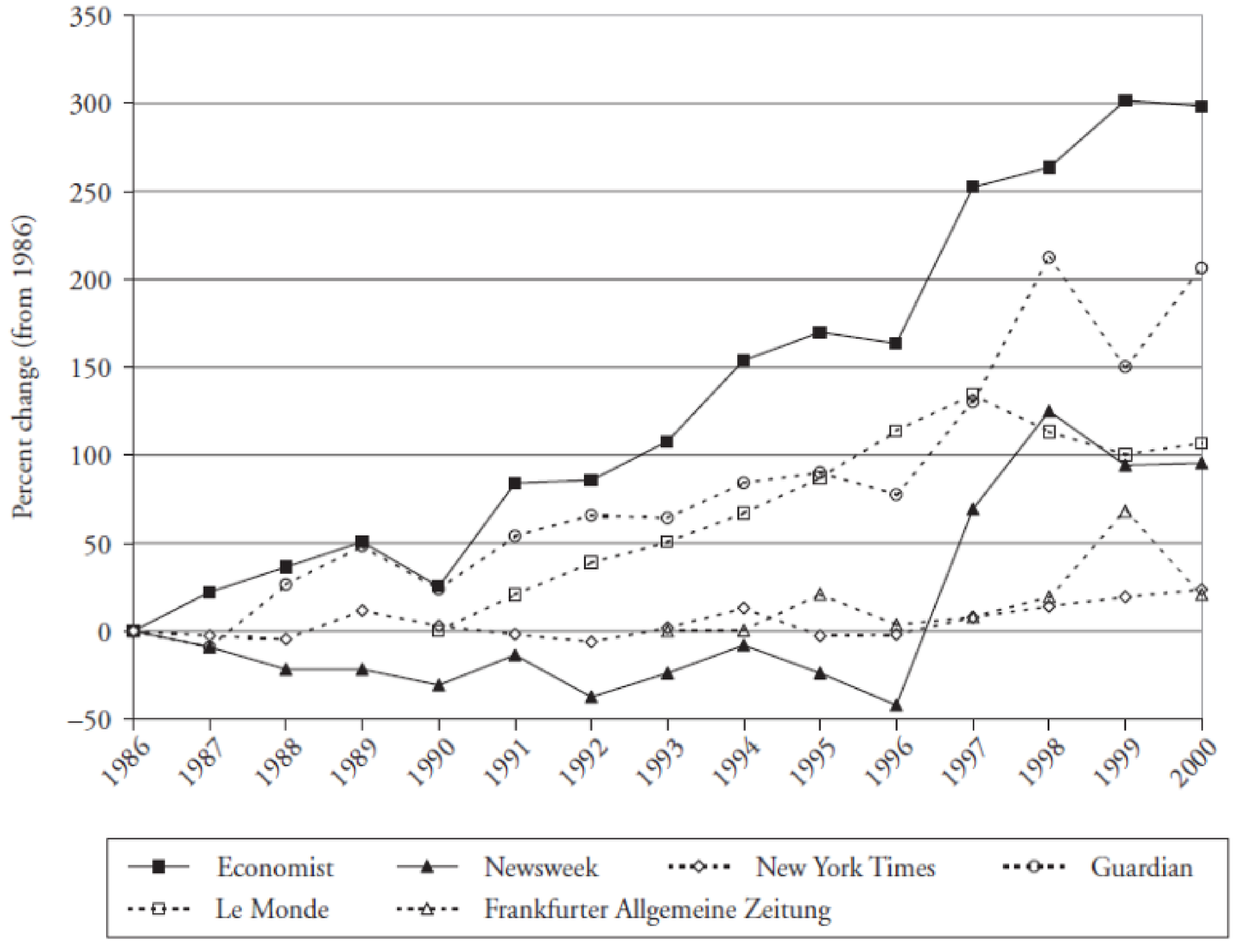
- Rights in IR (criminal courts, HI, R2P, extratorritoriality, universal jurisdiction)

Expansion of rights (RHETORIC)



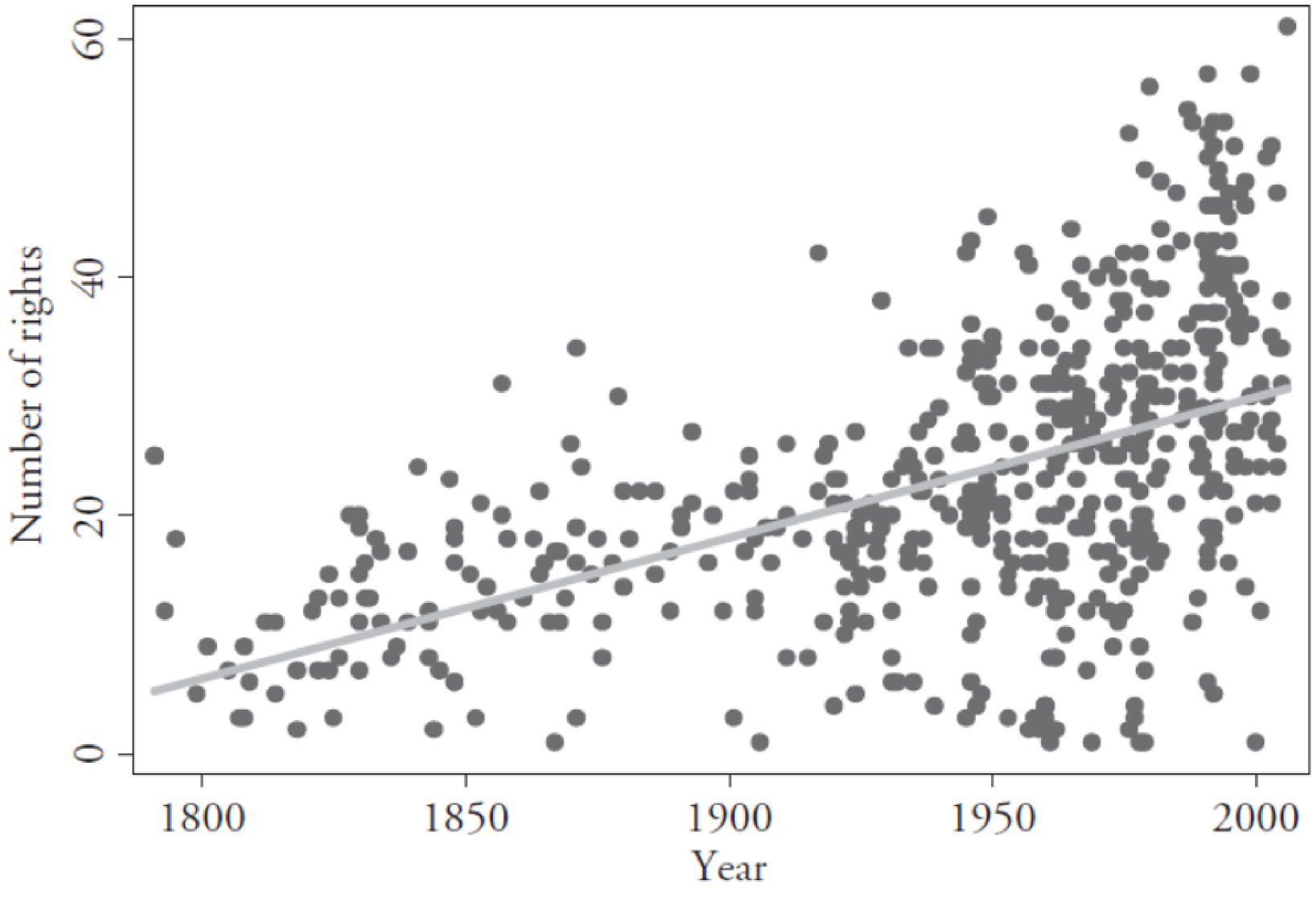
Hafner-Burton, Emilie M. – Ron, James. „Seeing Double. Human Rights Impact through Qualitative and Quantitative Eyes“. *World Politics*, vol. 61, No. 2, 2009, p. 362.

Expansion of rights (RHETORIC)



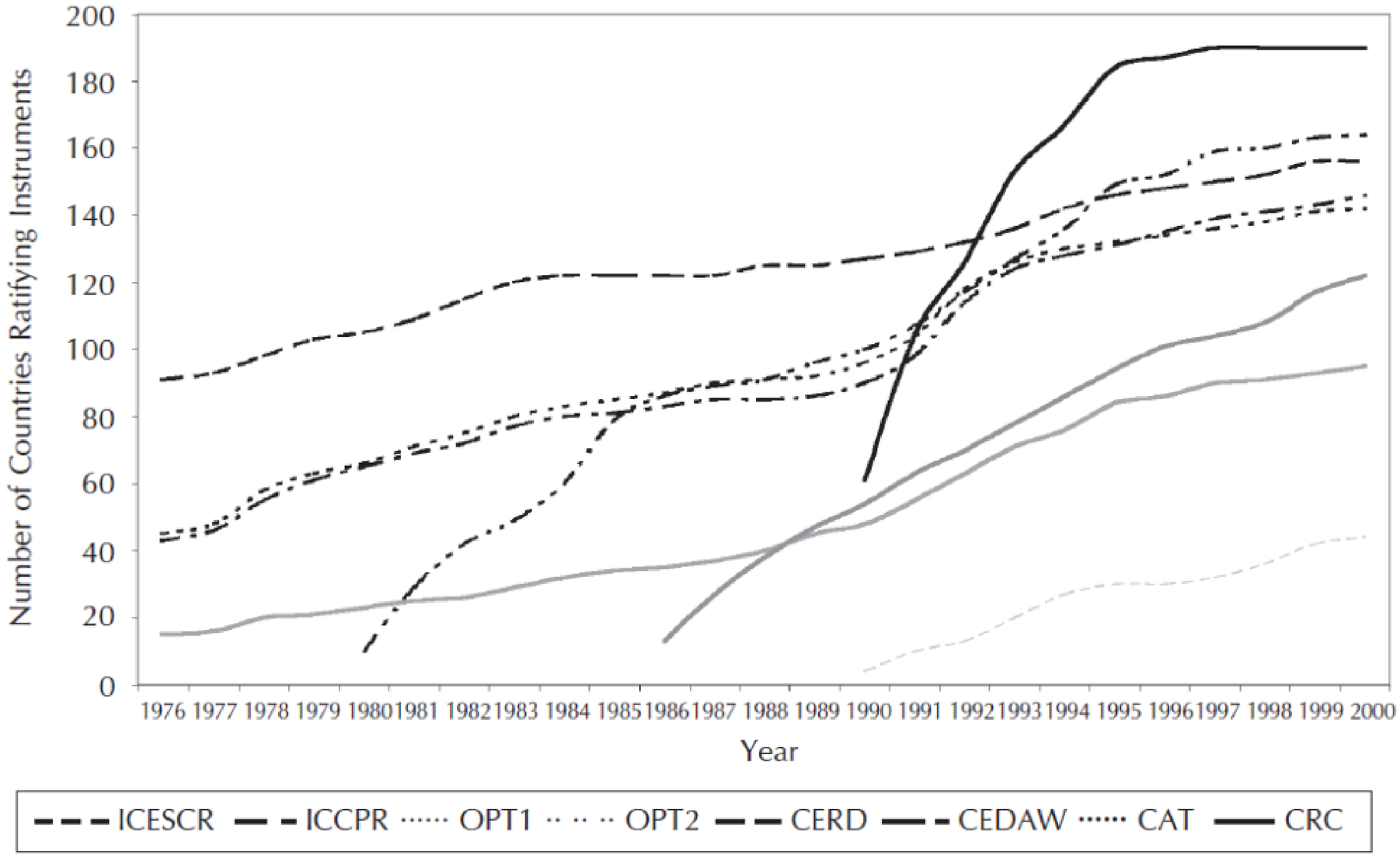
Ramos, Howard – Ron, James – Thoms, Oskar N.T. „Shaping the Northern Media's Human Rights Coverage, 1986-2000“. *Journal of Peace Research*, Vol. 44, No. 4, 2007, p. 387.

Expansion of rights (NUMBER)



Elkins, Zachary – Ginsburg, Tom – Simmons, Beth. „Getting to Rights: Treaty Ratification, Constitutional Convergence, and Human Rights Practice“. *Harvard International Law Journal*, Vol. 54, No. 1, p. 70.

Expansion of rights (in IR)



Landman, Todd. „Measuring Human Rights: Principle, Practice, and Policy". *Human Rights Quarterly*, Vol. 26, No. 4, 2004, p. 915.

Human Rights and Democracy

- Hafner-Burton, Mansfield and Pevehouse (2015). Human Rights Institutions. Sovereignty Costs and Democratization. *British Journal of Political Science* Vol. 46, No. 1.

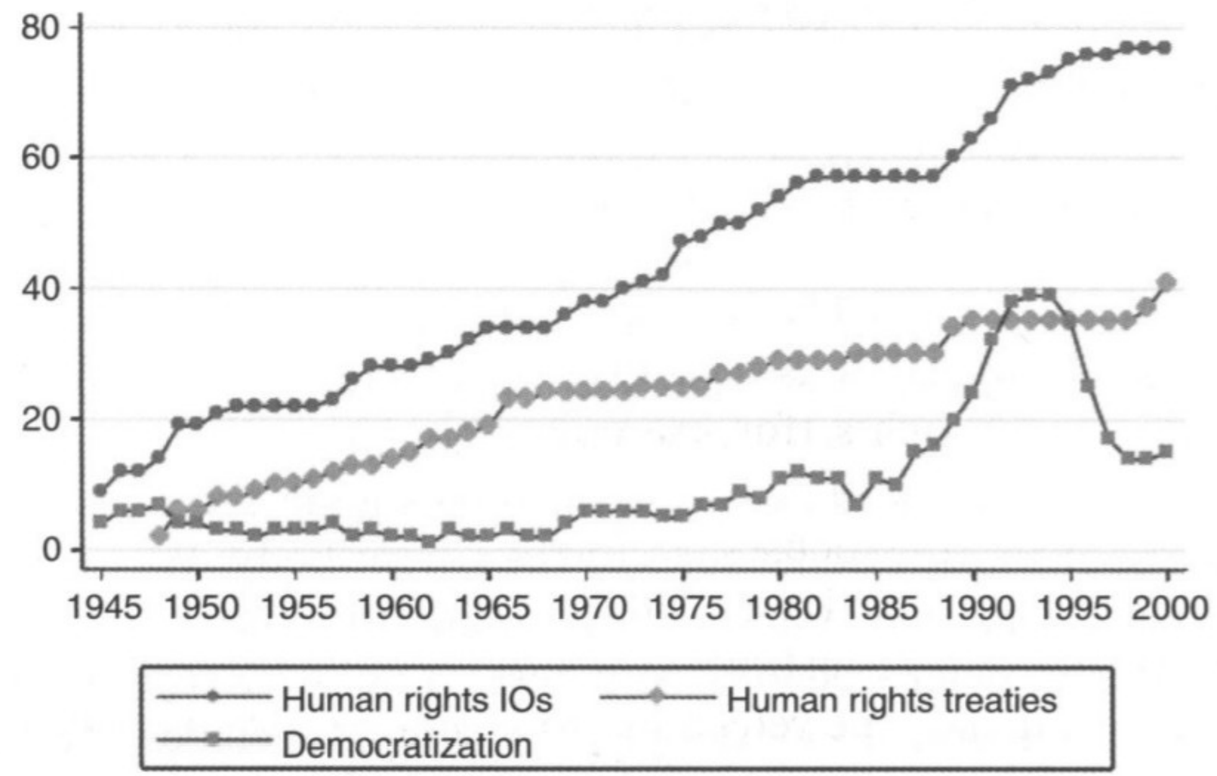
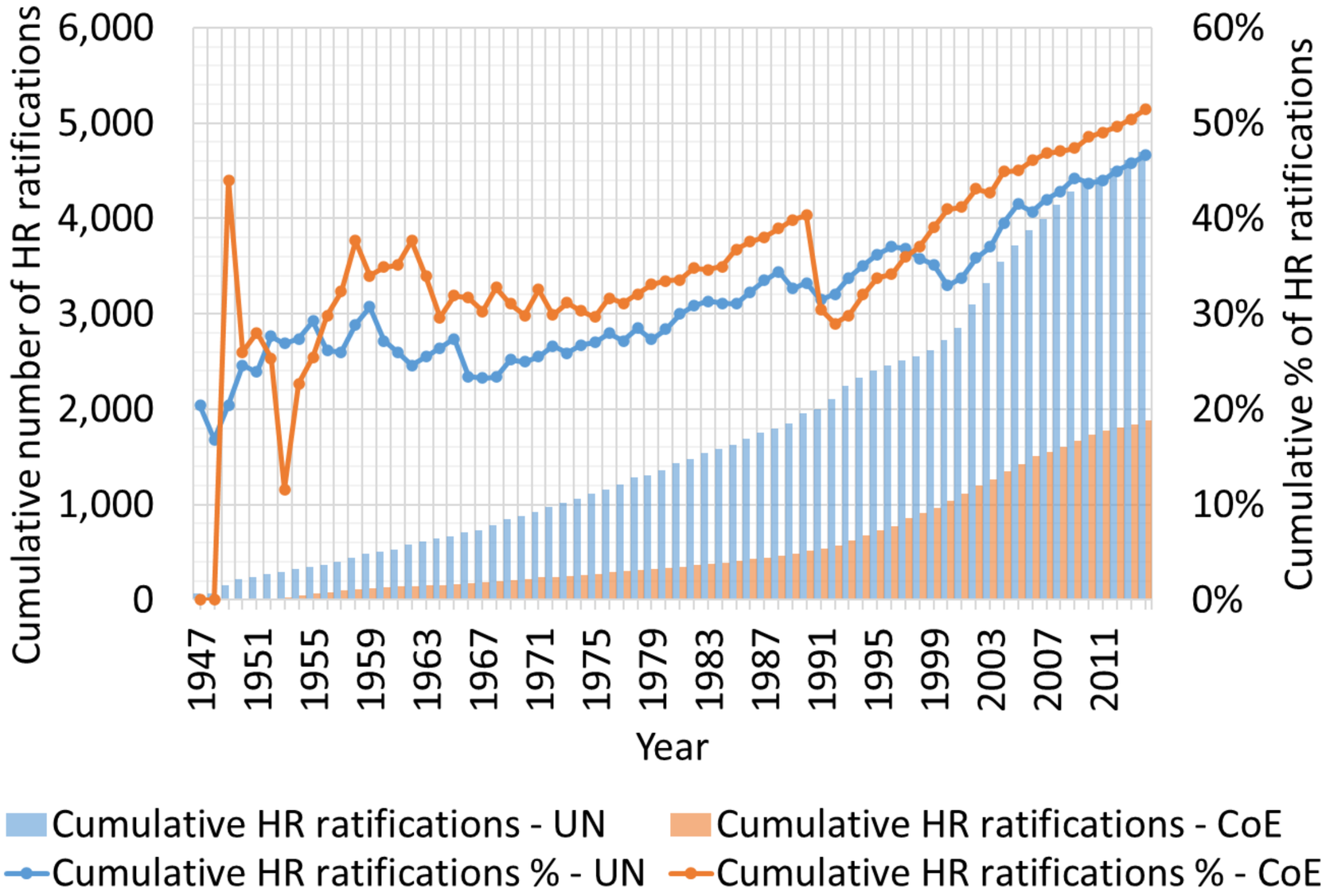


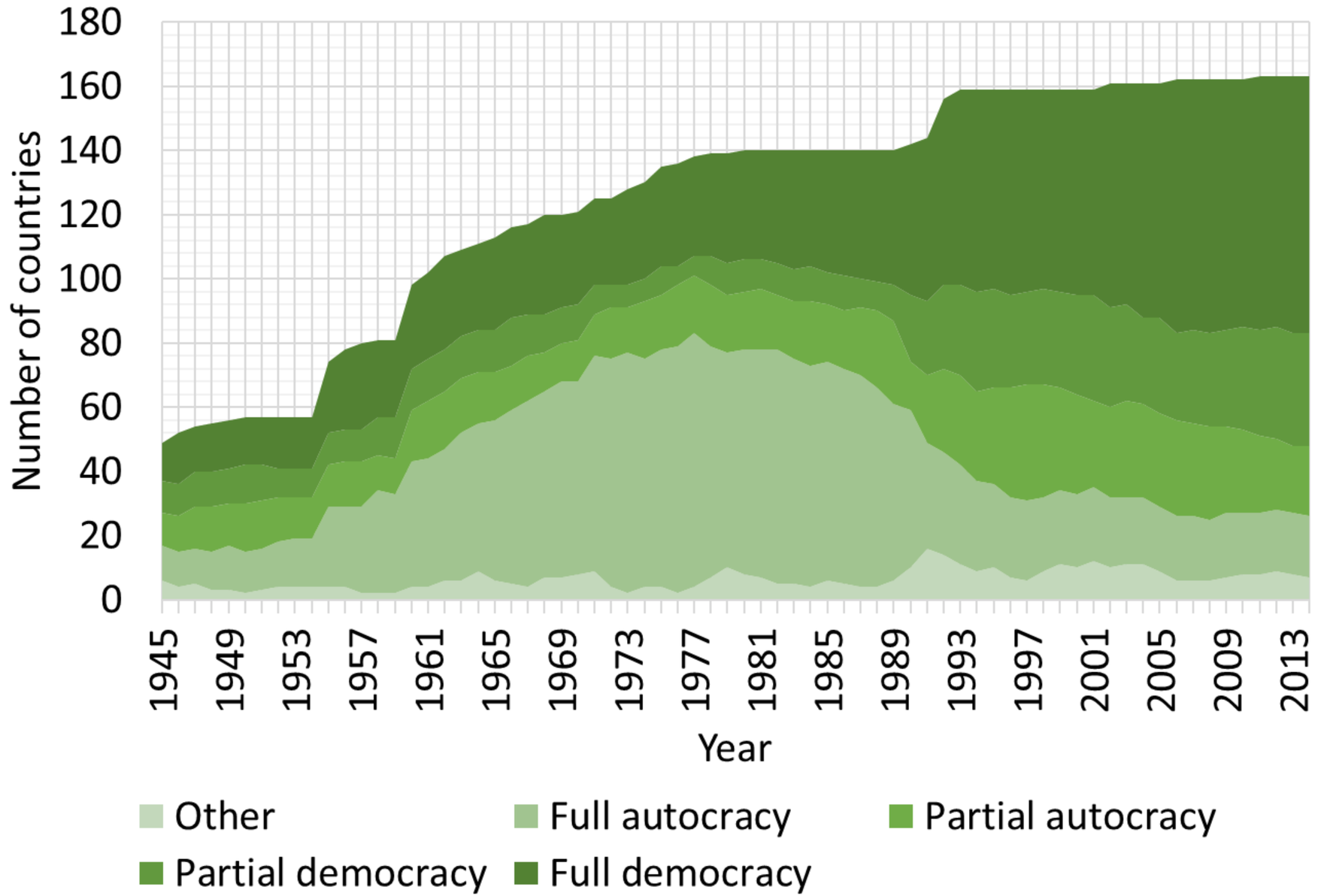
Fig. 1. Human rights institutions and democratization, 1945–2000

Expansion of rights (in IR)



Smekal, Šipulová, Pospíšil, Janovský, Kilian, Making Sense of Human Rights Commitments: A Story of Two Emerging European Democracies, MUNI Pre

Expansion of rights (NUMBER)



Human Rights and Democracy

- HR and democracy = reinforcing couple
  - Which has priority?

- Human rights v citizen rights
- Human rights and public institutions
  - Protection of
  - Protection from
  - Addressees of claims

- Internationalization of HR v Internationalization of Democracy
  - Severing direct links

- Why do countries commit to human rights?
- Which countries commit to human rights?

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