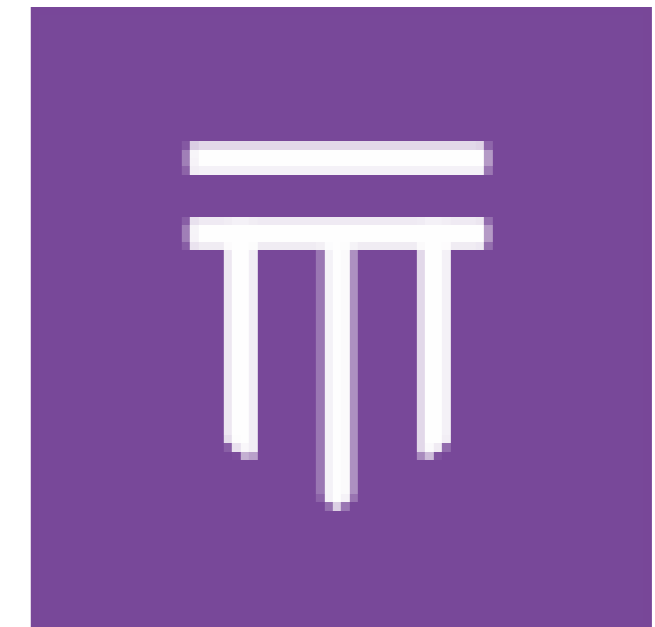Brno, 23 September 2024

—

EU Law & European System of HR Protection
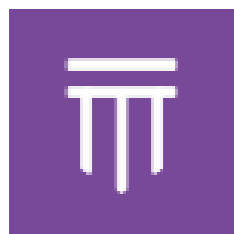
Introduction

JUSTIN

Judicial Studies Institute

Masaryk University

Katarína Šipulová

Course requirements

- **13 lectures *including*:**
  - *Guest lecture by State Agent representing CR before the ECtHR (October 2024)*
  - *Visit of the SAC & Debate with Michal Bobek & Ivo Pospíšil (9 December 2024)*

  - *Careful! Bank holidays – 28 October 2024 & Reading week 8 October*

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

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

- **Final exam**
  - Written, 3 open-ended questions
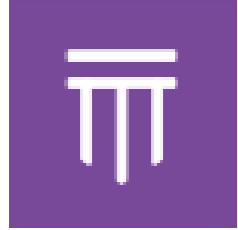
Is justice important?
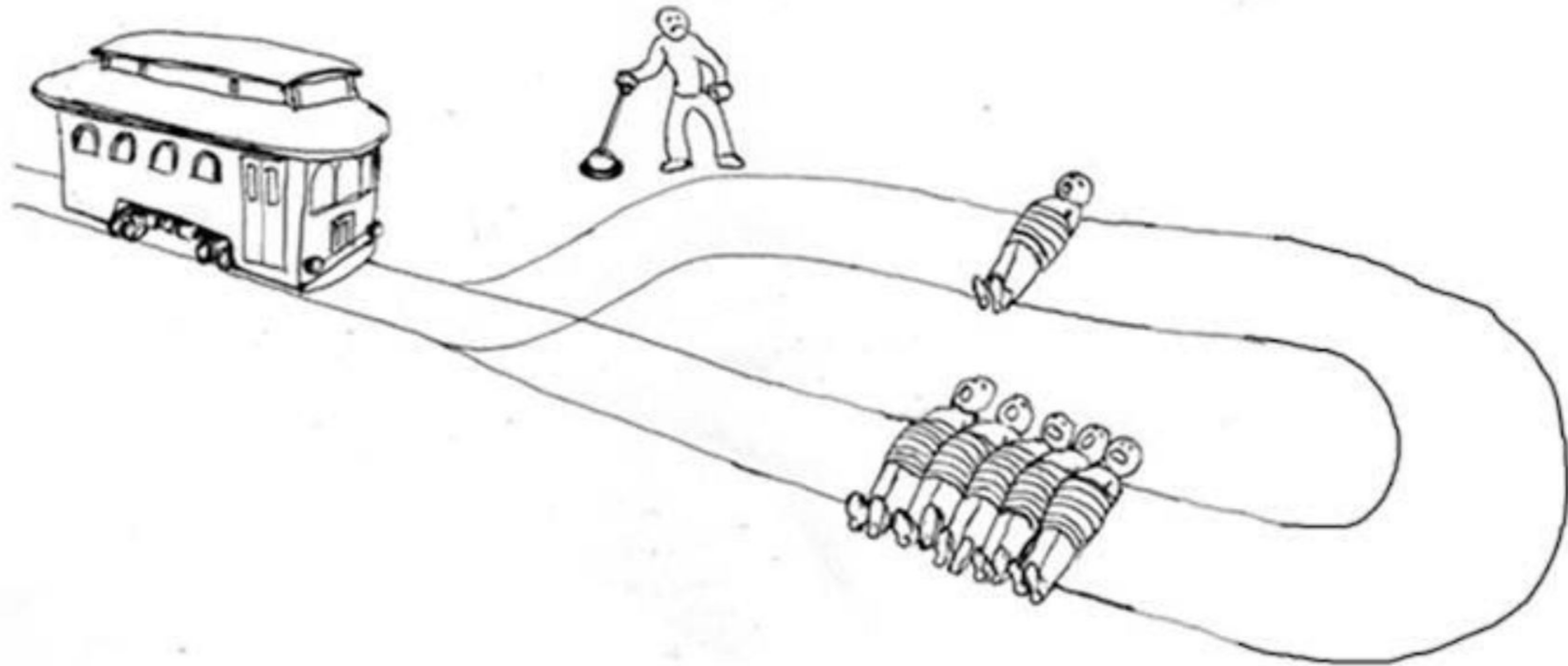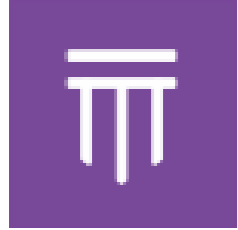
What is *just?*

- 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 Law and HR Law?
- 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

Content of the course

- **HR as a driving force of constitutional processes**

- Council of Europe – European Court of Human Rights
  - Idea of regional HR protection
  - Commitment and Compliance: ECtHR, Committee of ministers, State Agents
  - Key areas: elections, discrimination, private life, migration, fair trial

- European Union – Court of Justice of the European Union
  - HR as a part of European Integration?
  - Court of Justice – driver of the integration, spill-over through case—law
  - EU law through the lenses of national courts
  - From HR to Democracy

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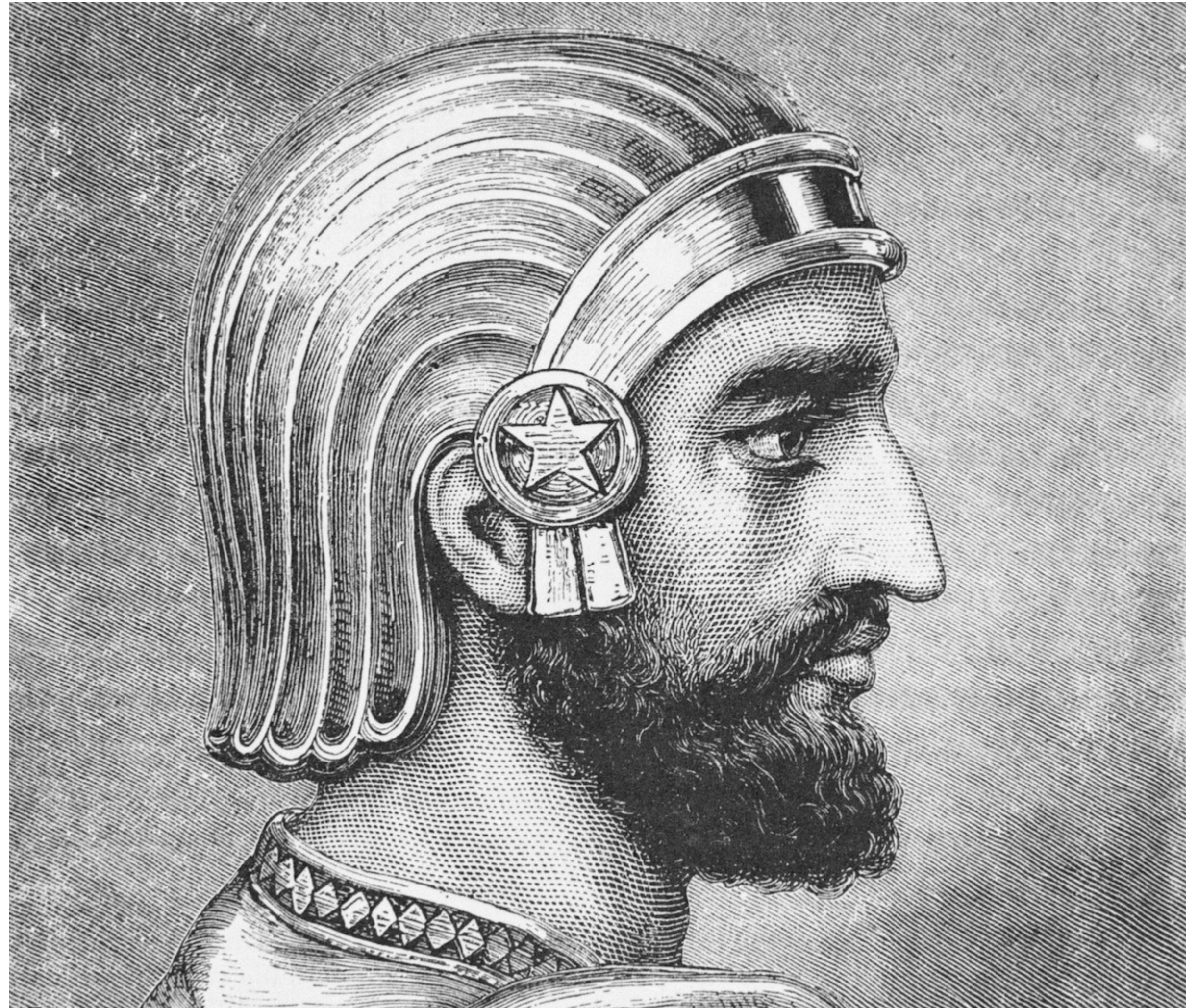
The Code of Hammurabi (1792-1750 B.C.)

- 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"*

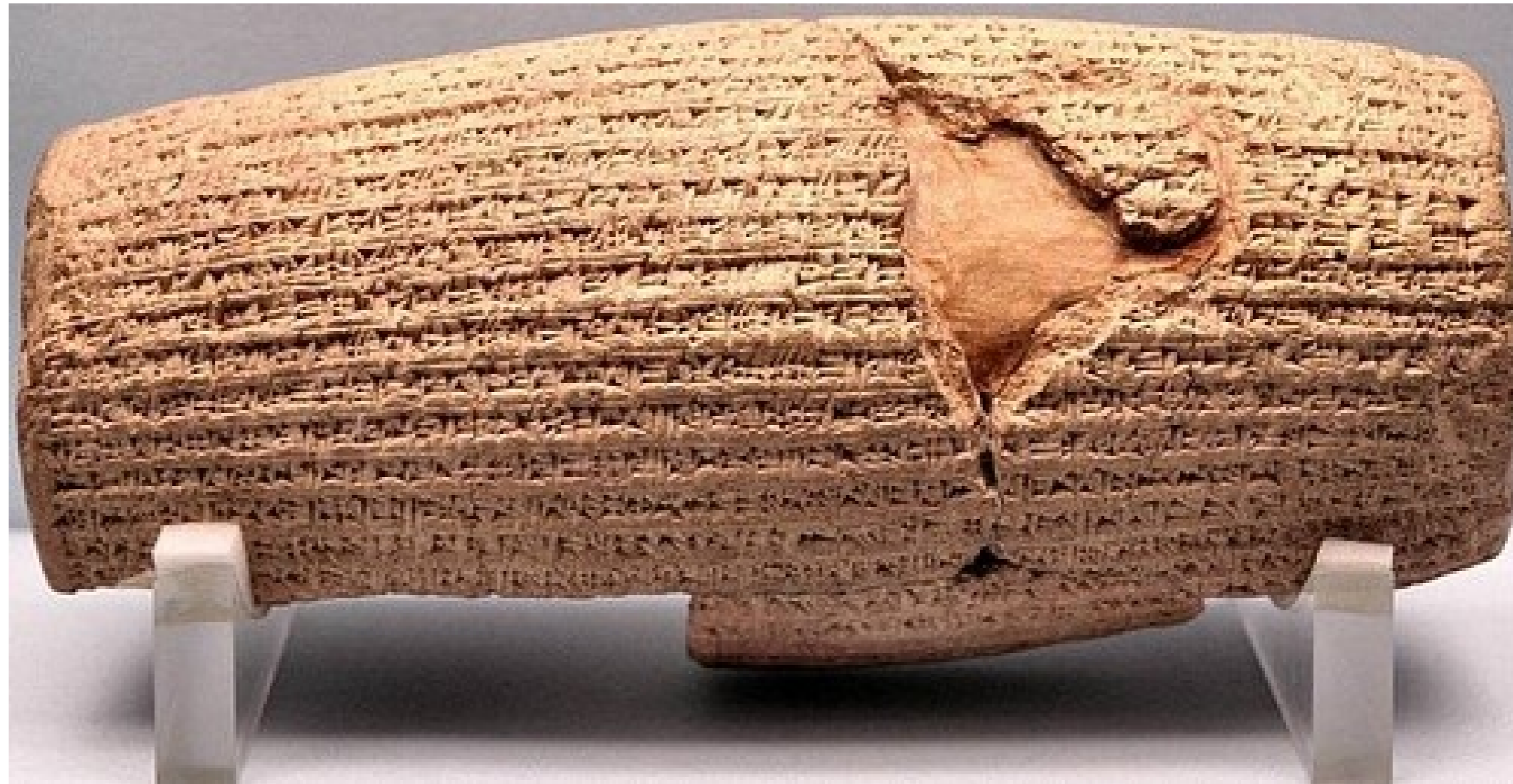- Innocence until proven guilty

- 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)

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?
  - Who is the source of rights?
  - Does legitimate Parliament have power to remove rights? If yes, do we need to revisit the question who is the source of HR?

  - Are some rights so fundamental that they MUST NOT be limited by a political decision?
    - If yes, how to we recognize them?
      - 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

- **4. New rights**
  - Environment, digital, AI

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?

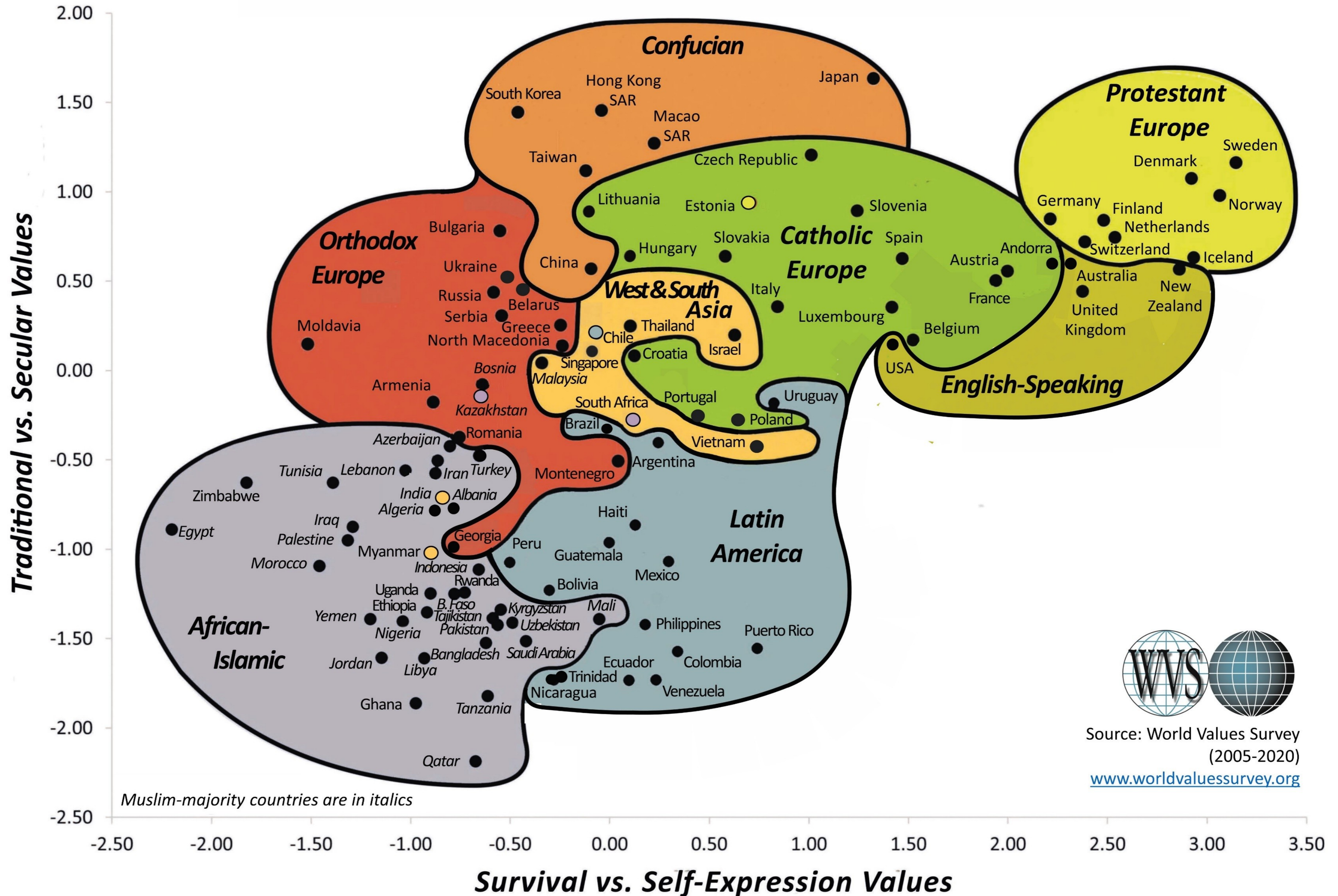- 7. Are group rights the best way to protect or realize interests, values and desires of a group?

Universalism versus relativism

Ignatieff – attacks on universality of HR

- Islam

- The West

- Southeast Asia

# The Inglehart-Welzel World Cultural Map (2020)

Traditional vs. Secular Values (y-axis)

Survival vs. Self-Expression Values (x-axis)

Confucian
- South Korea
- Hong Kong SAR
- Macao SAR
- Taiwan
- Japan
- China

Protestant Europe
- Denmark
- Sweden
- Germany
- Finland
- Netherlands
- Norway
- Switzerland
- Iceland

Orthodox Europe
- Bulgaria
- Ukraine
- Russia
- Serbia
- Belarus
- Greece
- North Macedonia
- Moldavia
- Armenia
- *Kazakhstan*
- *Bosnia*
- Romania
- Azerbaijan
- *Iran*
- *Turkey*
- Montenegro

Catholic Europe
- Czech Republic
- Lithuania
- Estonia
- Slovenia
- Slovakia
- Hungary
- Spain
- Italy
- Austria
- Andorra
- France
- Luxembourg
- Belgium
- Croatia
- Portugal
- Poland

West & South Asia
- Thailand
- Chile
- Singapore
- *Malaysia*
- Israel
- South Africa
- Vietnam
- Brazil

English-Speaking
- Australia
- New Zealand
- United Kingdom
- USA

Latin America
- Uruguay
- Argentina
- Haiti
- Peru
- Guatemala
- Mexico
- Bolivia
- Philippines
- Puerto Rico
- Ecuador
- Colombia
- Trinidad
- Venezuela
- Nicaragua

African-Islamic
- Zimbabwe
- Tunisia
- Lebanon
- *Egypt*
- *Iraq*
- *Palestine*
- *India*
- *Albania*
- *Algeria*
- *Morocco*
- *Myanmar*
- Georgia
- *Indonesia*
- Rwanda
- Uganda
- Ethiopia
- *B. Faso*
- *Yemen*
- *Tajikistan*
- *Kyrgyzstan*
- *Mali*
- Nigeria
- *Pakistan*
- *Uzbekistan*
- *Jordan*
- *Bangladesh*
- *Saudi Arabia*
- *Libya*
- Ghana
- *Tanzania*
- *Qatar*

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
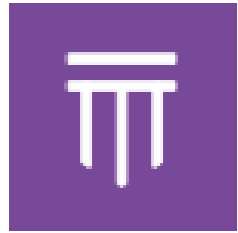
Measuring human rights
V-DEM

FIGURE 1. STATE OF LIBERAL DEMOCRACY (LDI), 2023
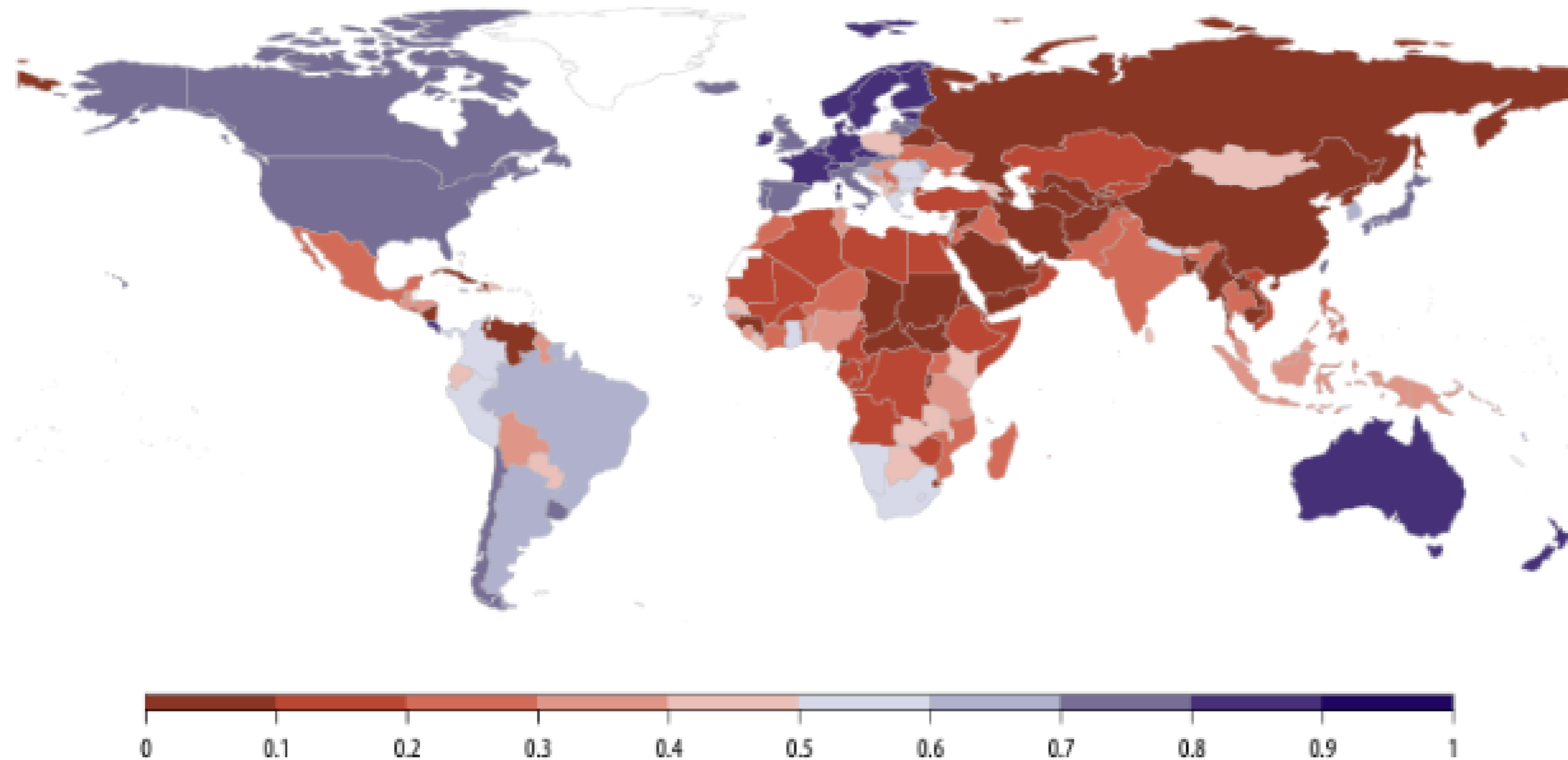
1   The Democracy Report 2024 is based on V-Dem dataset v14. With each annual update, V-Dem improves the quality of the data and engages a large number of experts, which may lead to correction of scores reported in previous years' reports. V-Dem's Liberal Democracy Index (LDI) captures both electoral and liberal aspects of democracy and goes from the lowest (0) to the highest (1) levels of democracy. The electoral component is measured by the Electoral Democracy Index (EDI) that captures the extent to which all elements of Robert Dahl's (1971) famous articulation of "polyarchy" are present, including the quality of elections, individual rights, as well as freedoms of expression, the media, and association. The Liberal Component Index (LCI) captures the liberal aspects including checks and balances on the executive, respect for civil liberties, the rule of law, and the independence of the legislature and the judiciary. Dahl, R.A. 1971. Polyarchy: participation and opposition. New Haven: Yale University Press.

Measuring human rights
V-DEM

DEMOCRACY REPORT 2024
Democracy Winning and Losing at the Ballot
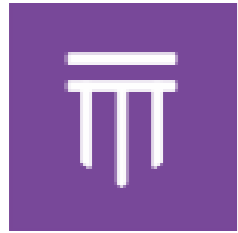
thus potential upcoming "bright spots".

- 60 countries are holding national elections this year. Of these, 31 are worsening on their democracy levels, while only 3 are improving.

- Elections are "critical events" that can either trigger democratization, enable autocratization, or aid stabilization of autocratic regimes.

QUALITY OF ELECTIONS DETERIORATING

11 COUNTRIES — 23 COUNTRIES

2003 — 2023
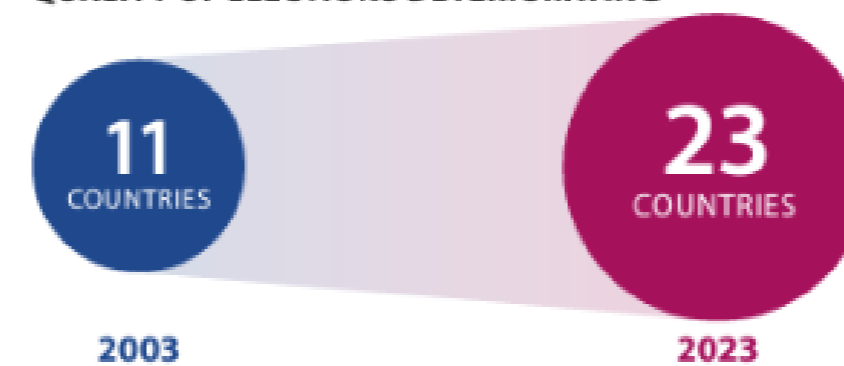
FREEDOM OF EXPRESSION DETERIORATING

10 COUNTRIES — 35 COUNTRIES

2003 — 2023
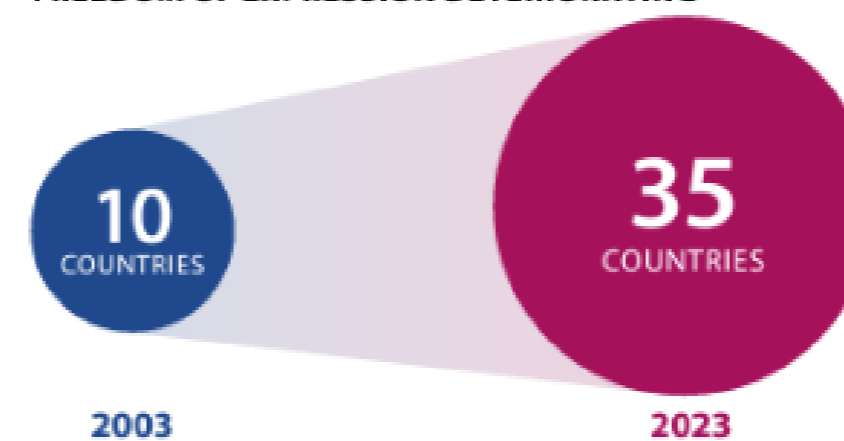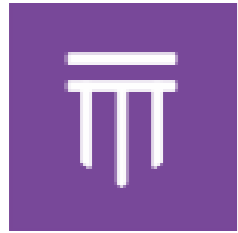
SHARE OF WORLD POPULATION LIVING IN AUTOCRACIES

2003: 50%   2023: 71%
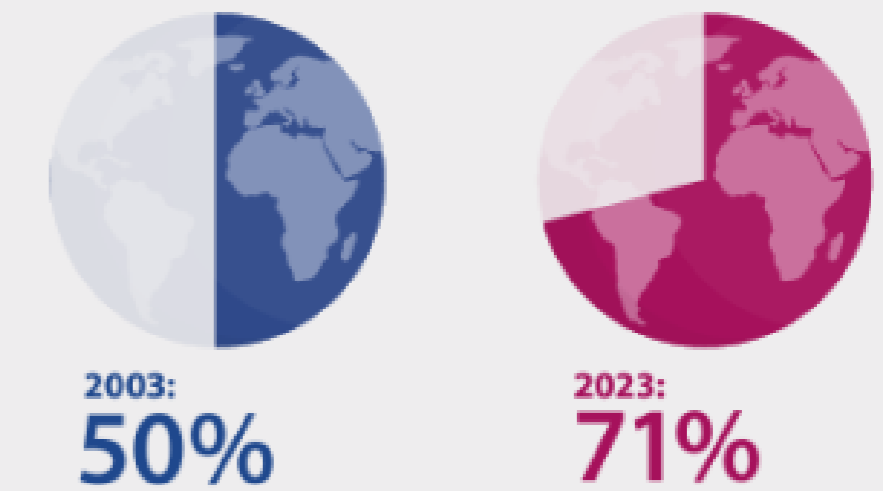
SHARE OF WORLD POPULATION LIVING IN AUTOCRATIZING COUNTRIES

2003: 7%   2023: 35%

Measuring human rights

Polity V

https://www.systemicpeace.org/polit
ct.html
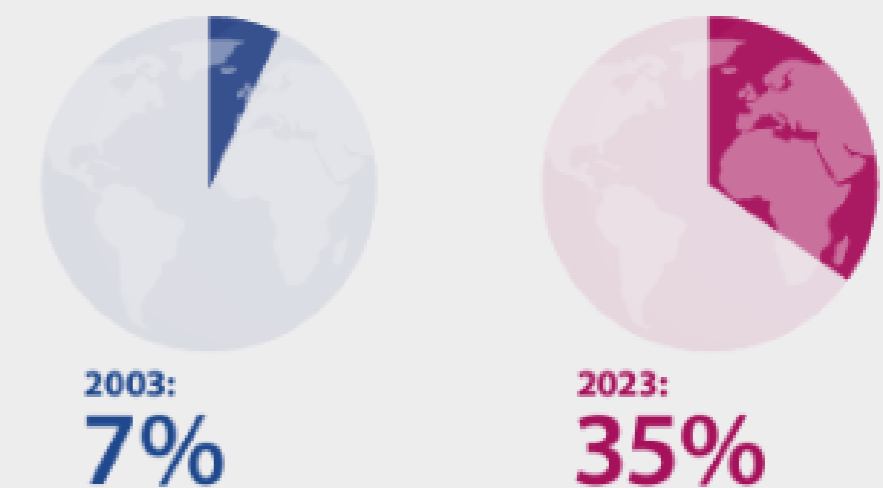
Global Trends in Governance, 1800-2017
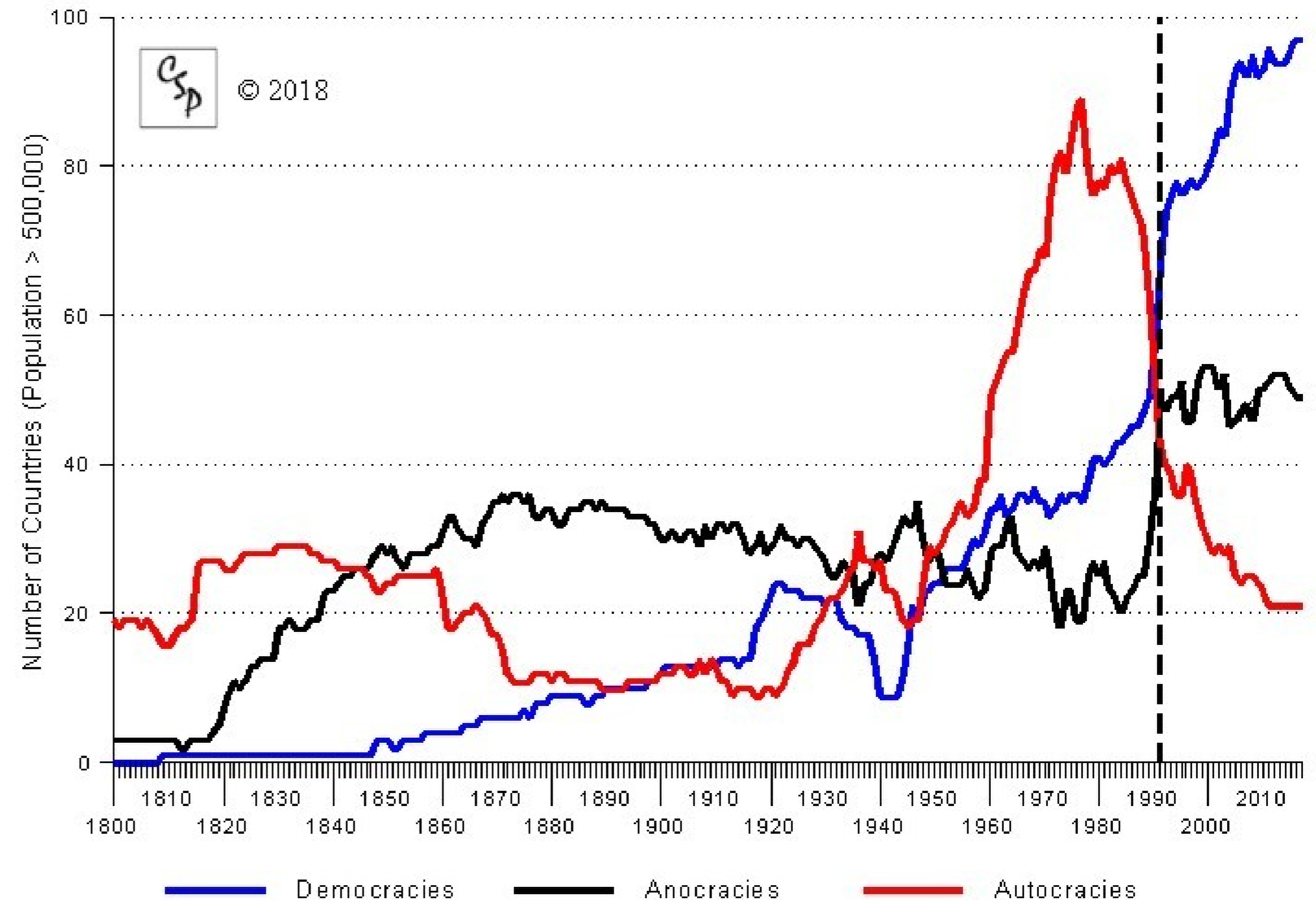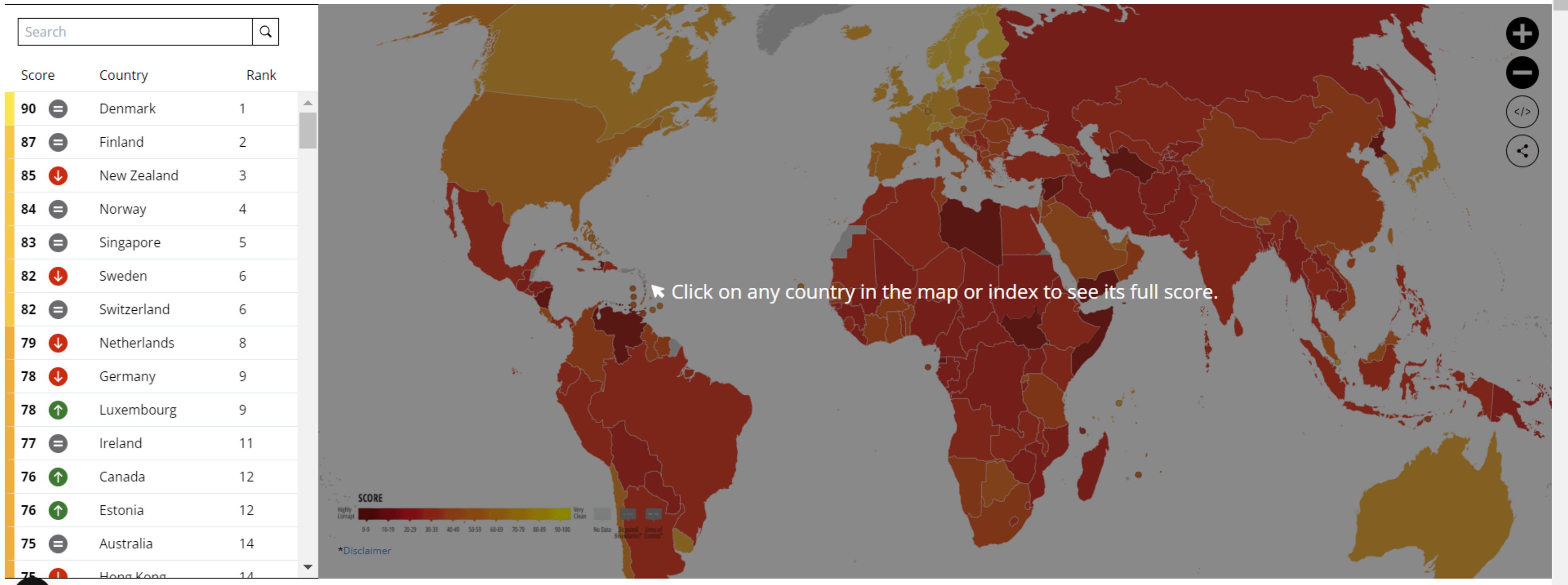
Y-axis: Number of Countries (Population > 500,000)

© 2018

Legend: Democracies (blue), Anocracies (black), Autocracies (red)

Measuring human rights

Political Terror Scale

Russia
PTS-S: **4**

© 2024 The Political Terror Scale

Measuring human rights

Measuring human rights

FRAGILE STATES INDEX
powered by
THE FUND FOR PEACE

© 2024 Mapbox © OpenStreetMap

Copyright (C) 2024 - The Fund for Peace

Sustainable	Stable	Warning	Alert

0.0 ————————————————————————————— 120.0

https://fragilestatesindex.org/

Measuring human rights

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

Measuring human rights

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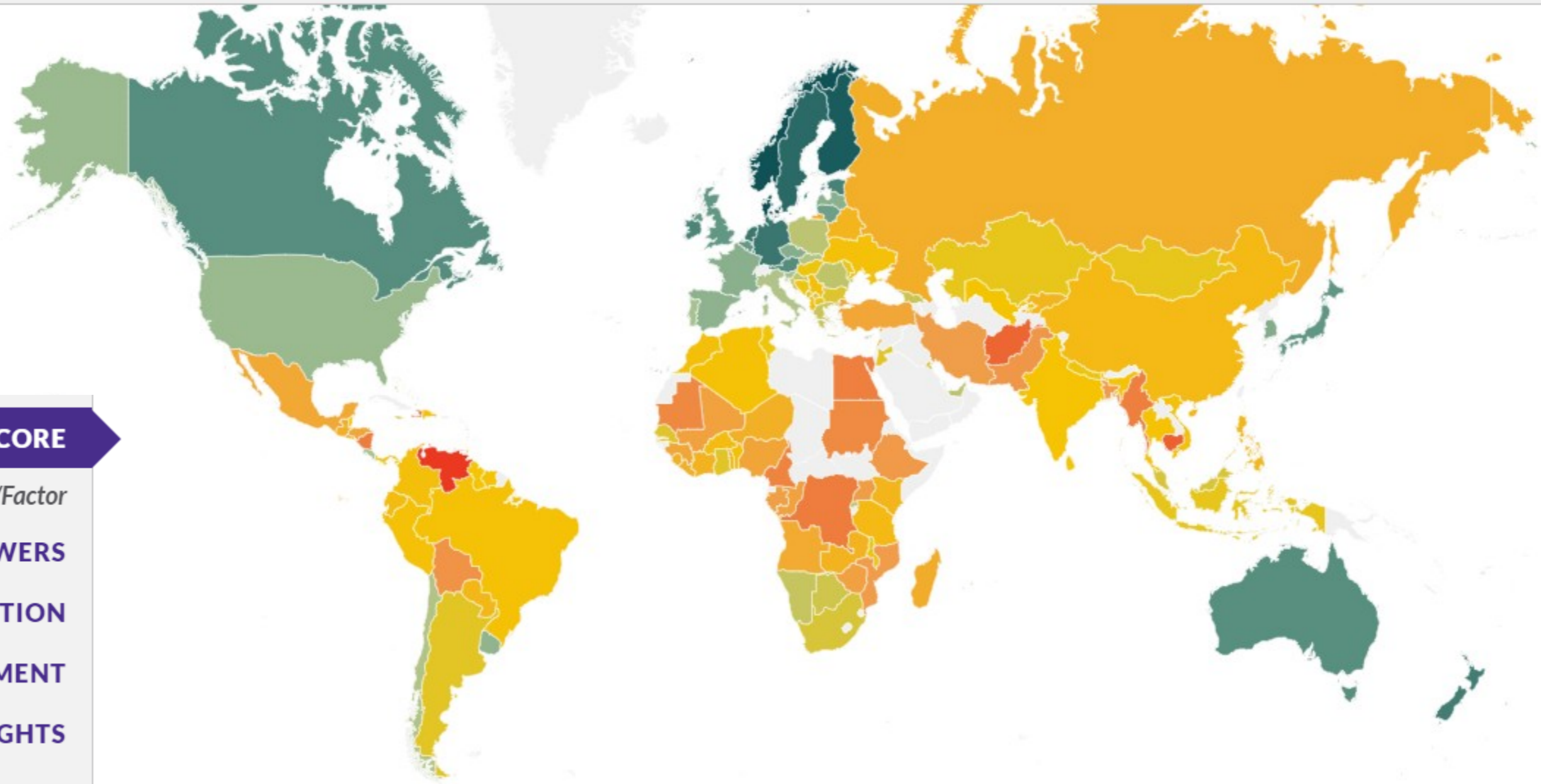
Measuring human rights

- humanrightsdata.com

- The CIRI Human Rights Dataset contains standards-based quantitative information on government respect for 15 internationally recognized human rights for 202 countries, annually from 1981-2011.

CIRI Human Rights Data Project

Blog | **Data & Documentation** | **FAQ**

Data & Documentation

CIRI Data Download

Cingranelli, David L., David L. Richards, and K. Chad Clay. 2014. "The CIRI Human Rights Dataset." http://www.humanrightsdata.com. Version 2014.04.14.

- Complete CIRI Data, 1981-2011 (.xlsx format)
- Complete CIRI Data, 1981-2011 (.csv format)

CIRI Documentation

The creation of this documentation has been supported by the National Science Foundation under Grant Nos. SES–0318273 (2004-2006), SES-0647969 (2007-2010), and SES-0647916 (2007-2010).

- CIRI Coding Guide
- CIRI Short Variable Descriptions
- Interrater Reliability Statistics for CIRI 2004 Data
- Pre-2007 Country-Year Coding Guidelines for [OLD_MOVE] Freedom of Movement
- Pre-2007 Country-Year Coding Guidelines for [OLD_RELFRE] Freedom of Religion
- Country List, Country Codes, Region Codes, and Temporal Information
  - Excel version
  - PDF version

The CIRI Human Rights Dataset contains standards-based quantitative information on government respect for 15 internationally recognized human rights for 202 countries, annually from 1981-2011. It is designed for use by scholars and students who seek to test theories about the causes and consequences of human rights violations, as well as policy makers and analysts who seek to estimate the human rights effects of a wide variety of institutional changes and public policies including democratization, economic aid, military aid, structural adjustment, and humanitarian intervention.
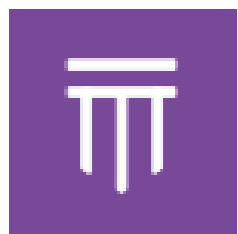
Blog Archive

▼ 2014 (3)
  ▼ May (1)
    CIRI's New Address: www.humanrightsdata.com

Measuring human rights

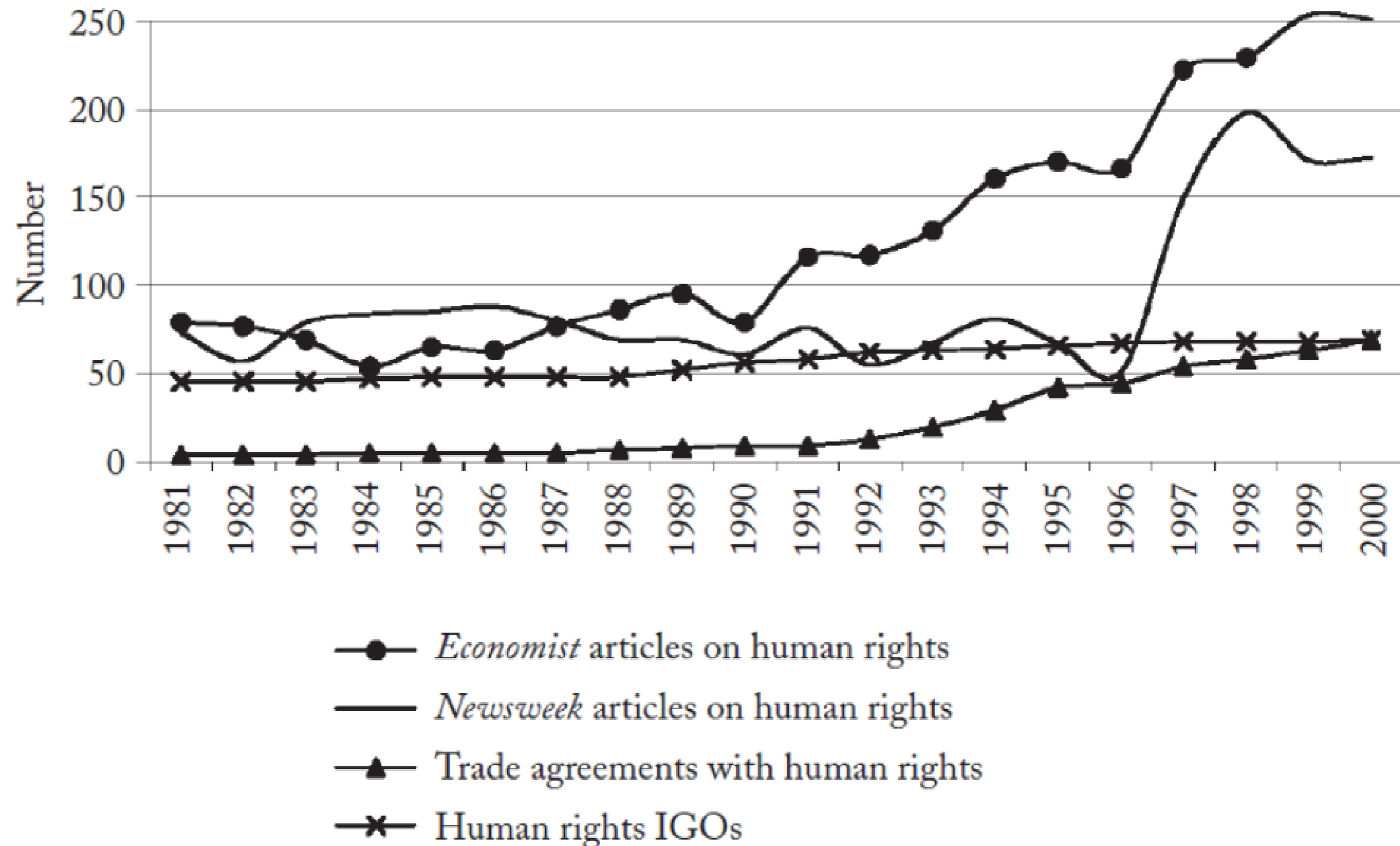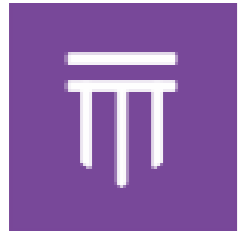# Measuring human rights

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)
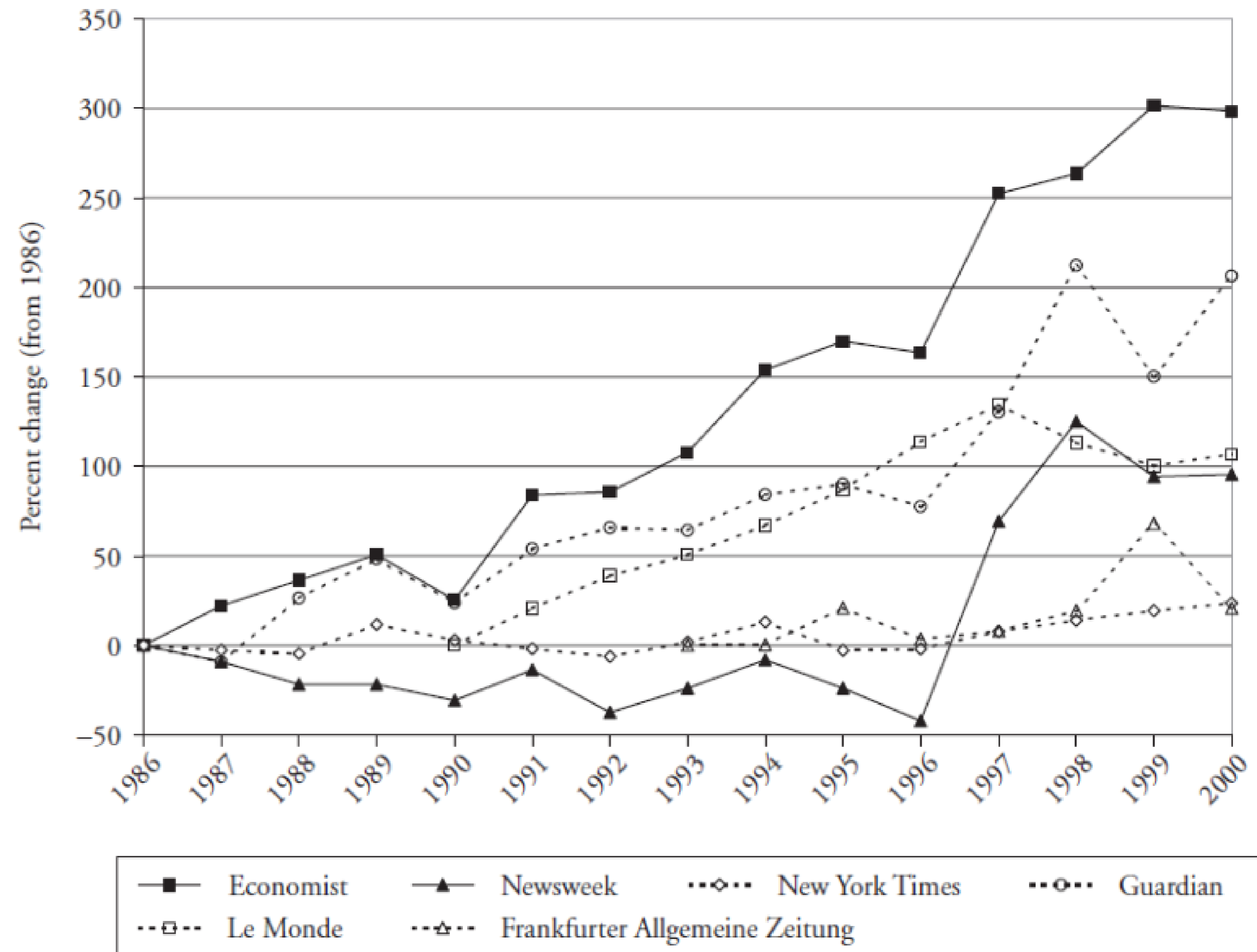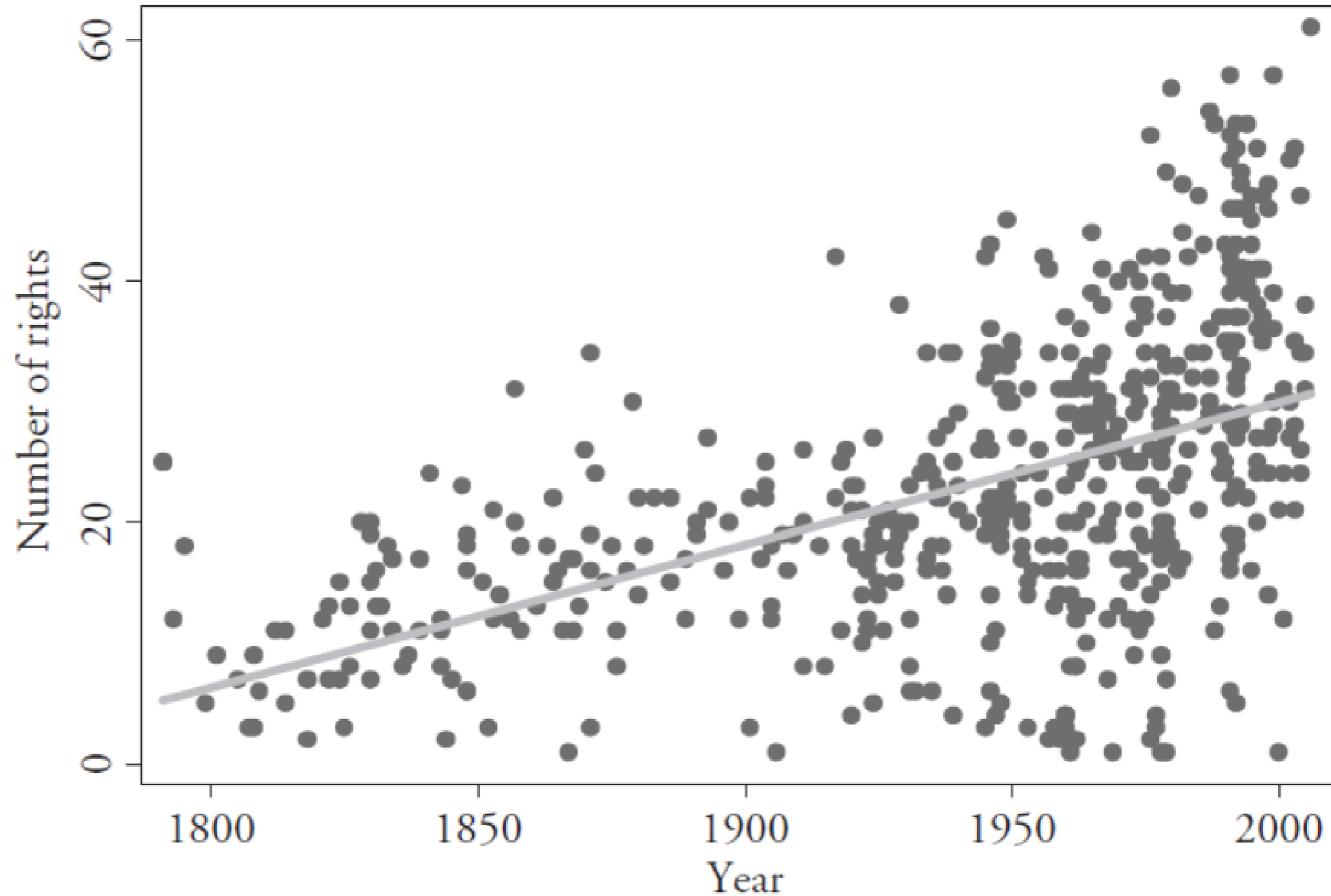
Expansion of rights (RHETORIC)

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.
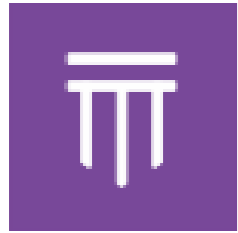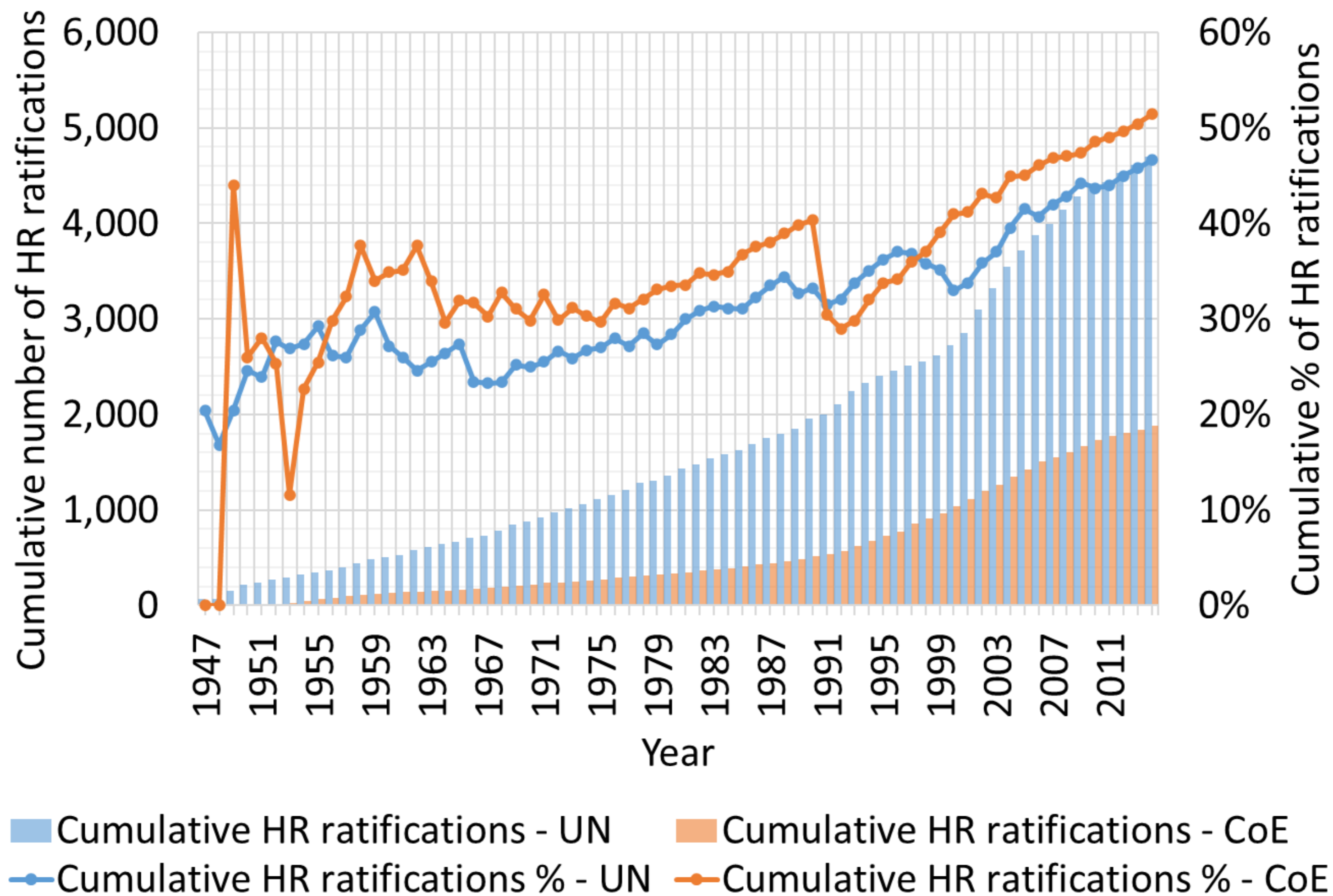
Expansion of rights (NUMBER)

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)

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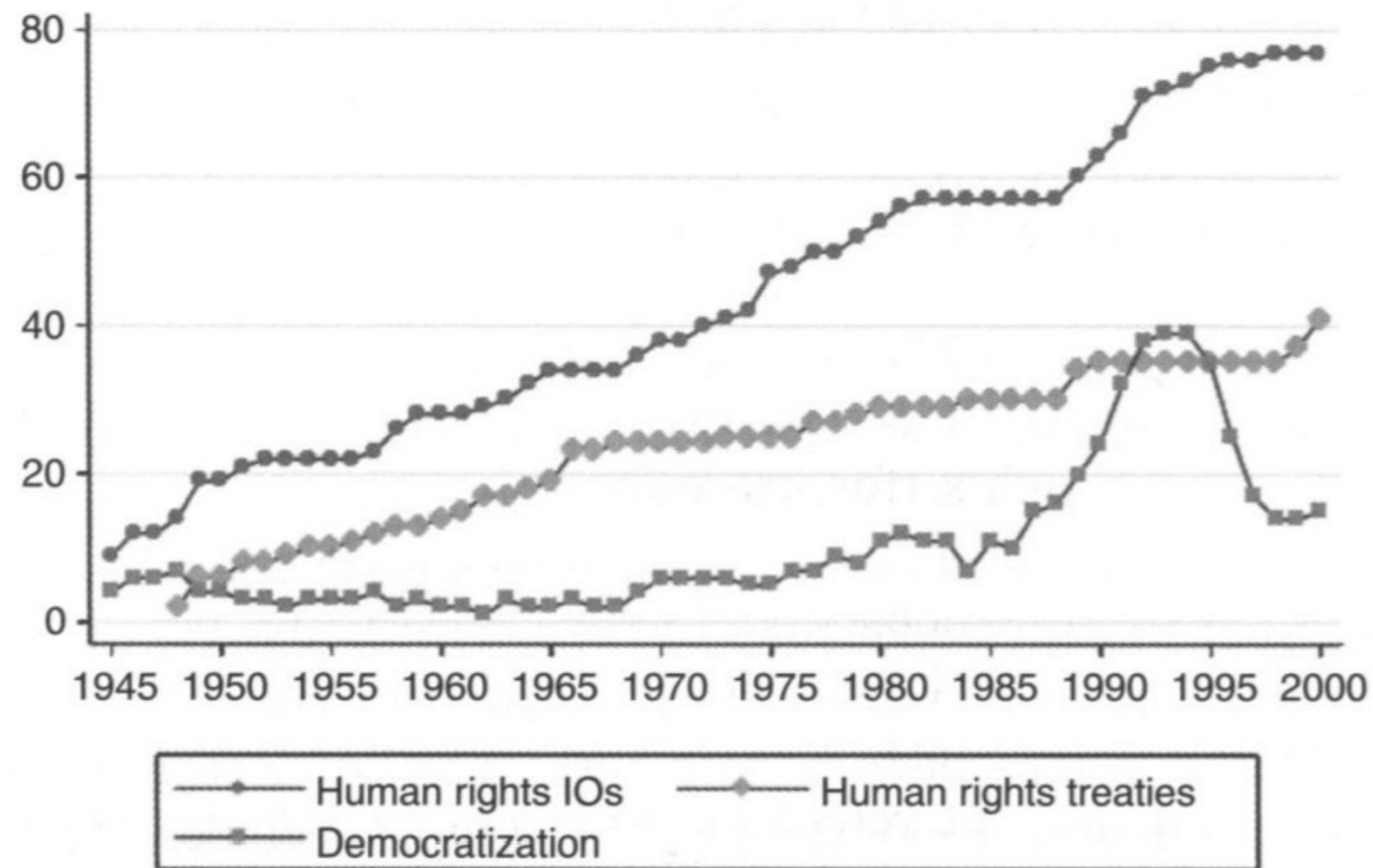
Human Rights and Democracy

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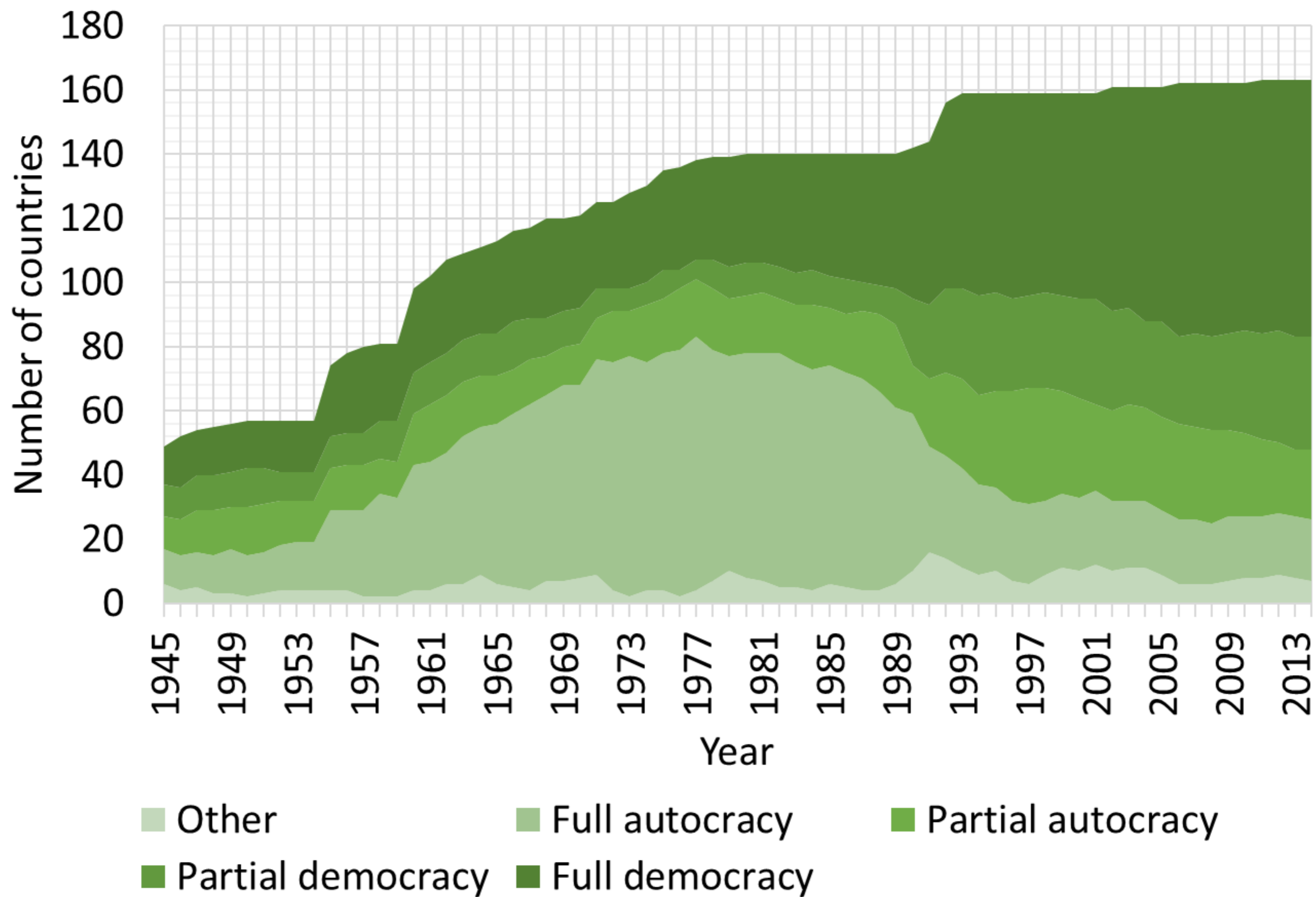
10   HAFNER-BURTON, MANSFIELD AND PEVEHOUSE

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

Expansion of rights (NUMBER)

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

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?

JUDICIAL STUDIES INSTITUTE

MASARYK UNIVERSITY BRNO

WWW.JUSTIN.LAW.MUNI.CZ