

Why Is It So Hard to Measure the Effectiveness of Human Rights?

THE FIRST HALF OF THIS BOOK has addressed the legitimacy of human rights ideas, institutions, and movements, largely through an exploration of human rights history.¹ But as important as questions of legitimacy are, so too are questions concerning the effectiveness of human rights, the focus of the second part of this book. Do human rights law, institutions, and movements actually improve human rights? Discussion of effectiveness, like that of legitimacy, has been pervaded recently by significant pessimism, so much so that some refer to the current period as a human rights crisis. Moreover, just as with legitimacy, issues of effectiveness are raised not only by academics and governments, but also and more importantly from within human rights movements.

Lucia Nader, former head of Conectas, a human rights organization in Brazil, said that one of things that most discouraged her and her colleagues about human rights work was the feeling that “in some cases, we have important results but we don’t have structural and lasting changes.” Nader said:

Some of the people I talk to in the human rights movement and me too, we sometimes feel this exhaustion. We use all of our tools—we approve

laws, we have campaigns, we use the UN and yet there is still such a long way to go. I am positive we would be in a worse place without it all and I truly believe that human rights are the only way to fight for a better world. But sometimes it is hard to keep the daily optimism, especially if we compare the results with the world we dream about. At the international level, for instance, we are seeing Trump talking about law as an obstacle to what he wants to do to terrorist suspects. We hear in the latest polls that fifty-eight percent of the American public agrees with him. What can change this mentality? Six in every ten people in America support torture. Is this sustainable? Can we live in this world?²

A recent survey of 346 individuals currently or previously working in the field of human rights found that this work is associated with elevated levels of depression and Post-Traumatic Stress Disorder (PTSD) and that one source of this appears to be negative self-appraisals about human rights work.³ This suggests that one of the most difficult parts about being a human rights activist is the doubt about whether you are contributing to positive change. Is it true that the human rights movement has seen some results but not structural and lasting changes? How would we know? This chapter takes up that challenge.

In previous chapters, we saw how individual diplomats, jurists, and activists struggled to develop human rights norms, draft human rights law, and establish courts and commissions to enforce these rights. By the early twenty-first century, most states around the world had accepted human rights law, at least on paper. Almost every state had signaled its support for human rights by ratifying at least one of the core international human right treaties.⁴ However, countries' ratifications of treaties do not mean that the countries will comply, especially since many of these treaties do not have strong enforcement mechanisms. Nevertheless, to date, many countries have ratified treaties that enable enforcement through established courts and 122 countries have ratified the treaty with the potential for the most stringent enforcement: the Rome Statute of the International Criminal Court. State officials who violate the Rome Statute risk being criminally prosecuted and sent to prison.⁵ Most states in regions with strong regional human rights systems—Europe, Africa, and the Americas—have also ratified their regional human

rights conventions and accepted the compulsory jurisdiction of their regional human rights courts.⁶

The question remains, however—how, if at all, do these legal commitments influence the actual behavior of states? The US use of torture, kidnapping, and arbitrary detention after 9/11, despite prior commitment to international treaties that absolutely prohibited torture whether in wartime or peace, gave rise to some of the current pessimism about the relevance of human rights law.⁷ The election of Donald Trump, with his disregard for human rights law, has provoked a new round of fear and anxiety among many human rights organizations in the United States and around the world.

Global Human Rights Trends

An examination of global human rights trends reveals that the record is far more positive than current pessimism suggests. I argue that the issue of improvements in human rights is an empirical question, requiring us to look closely at the best data we have on issues that most of us would agree constitute measures of human rights progress—for example, data about the number of individuals killed in wars, the use of the death penalty, the number of children who die before their first or fifth years, or the percentage of girls and women in school around the world.

When we analyze these trends, we discover that human rights is characterized by some areas of retrogression and worsening, such as the current refugee crisis in Europe, or the US use of torture and rendition during the Bush administration. Yet there are many other areas of increasing awareness and improvements, such as the decline of deaths in war and conflict, as well as improvements in gender equality, the rights of sexual minorities, and the rights of people with disabilities. Despite some worrisome trends in some areas, such as the rise of economic inequality, my survey of the current data suggests that overall there is *less* violence and *fewer* human rights violations in the world than there were in the past.

As stated throughout this book, and particularly in chapter 2, I measure human rights violations in comparison with the past because, as a social scientist, I am more interested in empirical comparisons than comparisons to the ideal. In this section, I will briefly

present a series of graphs in support of my argument, before turning to the main subject of this chapter: why so many people are pessimistic in spite of positive human rights trends. Because the data may be problematic in any one case, I use many different data sets that point to similar trends in drawing my conclusions.

There is a lot of variation in the human rights data—between regions, between countries, and even within countries. We must understand the general trends, however, before talking about how certain groups, cases, or countries are doing better or worse in relation to those trends. For instance, life expectancy has been rising all over the world, including in Africa, but in some countries, such as Zimbabwe, life expectancy declined in the early and mid-2000s. Therefore, whenever we talk about broad trends we know that there is ample variation, but to understand and study the variation, we need to start with the general trends.

There are two big questions here—first, are there positive human rights trends in the world? And second, what are the explanations for these trends? These are separate issues; in some cases, we see positive human rights outcomes without any clear evidence that human rights law, institutions, or movements played a role. Positive human rights outcomes in these cases are still relevant for a discussion of pessimism, however, since critics such as Posner deny both that any positive human rights change has occurred *and* that human rights law has made any impact. I will try to indicate clearly where I have found evidence that human rights law, institutions, and movements have contributed to the trends I portray.

The Refugee Crisis

In chapter 6, I will provide data about the decline of international and civil war in the world, as well as about the related decline in the number of battle deaths. Here, however, we must acknowledge that, even though there are now fewer international wars and fewer battle deaths, the current wars in Syria, Iraq, and Afghanistan have produced more refugees than at any time since World War II. This situation is not principally about death—although many people have died en route—but about people relocating to avoid conflict and to seek a better life.

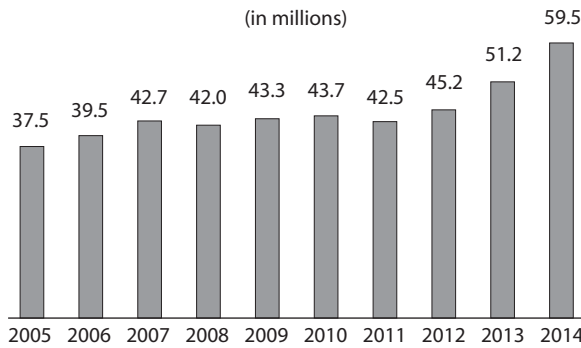


FIG. 5.1. The number of people displaced by war has reached a staggering new high. *Source:* United Nations High Commissioner for Refugees. Adapted from chart in “Worldwide Displacement Hits All-Time High as War and Persecution Increase,” *UNHCR*, June 18, 2015, <http://www.unhcr.org/news/latest/2015/6/558193896/worldwide-displacement-hits-all-time-high-war-persecution-increase.html>.

In Figure 5.1 we see that the number of displaced people increased dramatically between 2004 and 2015. These numbers are estimates from the Office of the UN High Commissioner for Refugees (UNHCR), which has been tracking displaced people for decades, and, therefore, we consider its numbers reliable. There is strong reason to believe that this trend is a genuine expression of a human rights and humanitarian crisis of unprecedented proportions.

The causes of the crisis are complex. People move because of a combination of push factors, especially war, and pull factors, including a new information environment where people around the world know about better possibilities elsewhere and can more easily connect both with legal channels and with criminal networks that assist such movement. There is no reason to believe that human rights ideas or institutions somehow contributed to the flow of refugees, though better policies could have improved the reception of refugees and diminished their suffering.

Genocide and Politicide

On other issues, including genocide—one of the most serious of human rights crimes—evidence shows fewer episodes of violence

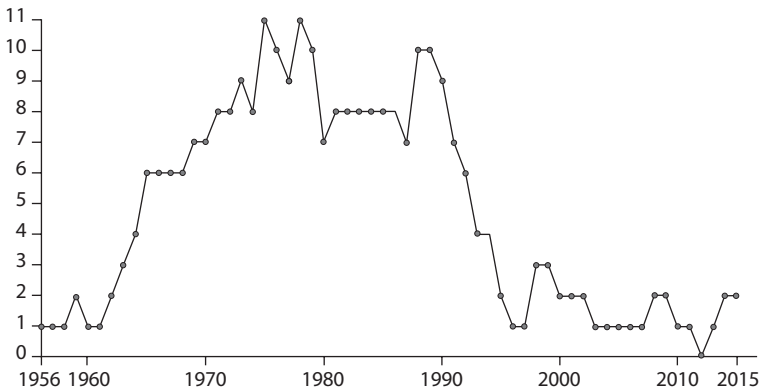


FIG. 5.2. Trends in genocide and politicide, 1955–2015. *Source:* Max Roser, *Trends in Genocide and Politicide 1955–2015*, n.d. Genocide Indicator of the Political Instability Task Force (PITF) State Failure Problem Set, 1955–2014. <http://ourworldindata.org/data/war-peace/genocides/>.

than in the past. Genocide, by definition, involves situations where there is “intent to destroy, in whole or in part, a national, ethnical, racial or religious group.”⁸ Since genocide does not include people targeted for destruction because of their political beliefs or ideology, scholars have created an additional category called “politicide,” which refers to the murder of any person or people by a government because of their politics or for political purposes.

Figure 5.2 charts global trends in genocide and politicide, using the Political Instability Task Force State Failure Data.⁹ This figure measures what we call “events-based data,” which means the data counts episodes of genocide and politicide. Because the events included are big events, they are hard to hide and we can have some confidence in the data. But focusing on “episodes” of genocide could obscure the number of people affected; even if the number of genocides and politicides is declining, the number of affected people could be increasing. To address this concern, the data in Figure 5.3 contains the estimated number of people killed in “one-sided” violence in the world, defined as “lethal attacks on civilians by governments or formally organized groups.”¹⁰ This category goes beyond genocide and politicide to measure the number of people killed by a broader range of violence.

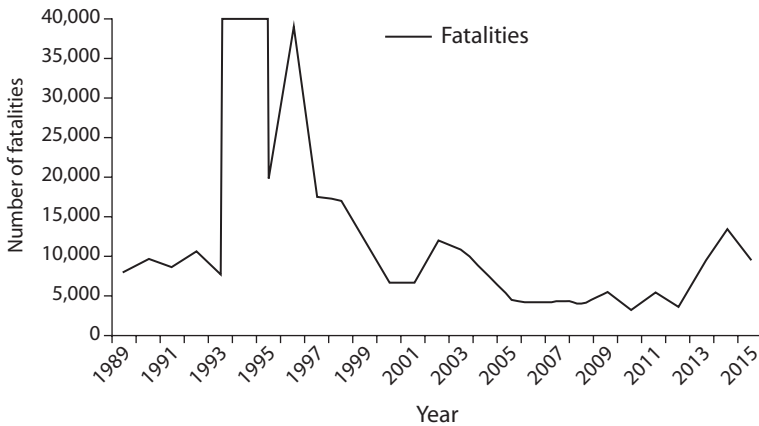


FIG. 5.3. Fatalities in one-sided violence, 1989–2015. *Source:* Adapted from chart in Erik Melander, Therése Pettersson, and Lotta Themnér, “Organized Violence, 1989–2015,” *Journal of Peace Research* 53 no. 5 (2016): 727–742. Uppsala Conflict Data Program One-Sided Dataset.

Whether we use episodes or try to count actual deaths, evidence supports the conclusion of a decline in one-sided violence in the world. Genocide and politicide increased in the period 1960–1990, but significantly decreased after that time. Explanations for improvements in core human rights issues like genocide are complex, and identifying the risk factors that lead to worsening or improvement is not an easy task. Still, studies of possible risk factors show that war and authoritarianism are key trigger mechanisms for genocide.¹¹ Therefore, not surprisingly, the decline in trends in genocide corresponds with a decline in civil war and a decline in authoritarian regimes during the same period (see Figures 6.1 and 6.3 in chapter 6). Many leading scholars of genocide have also found that an upsurge in exclusionary and dehumanizing ideologies and language is associated with genocide.¹² Human rights ideas are the exact opposite of dehumanizing and exclusionary ideologies; they are humanizing and inclusive. As such, human rights ideas provide an alternative to the ideologies that contribute to genocide.

Human rights work also has a potentially measurable impact in the struggle to end genocide. My research shows that criminal accountability for human rights violations is associated with improve-

ment in core human rights practices.¹³ In the 1990s, state leaders and insurgents were held criminally accountable for the first time for the crime of genocide, in the ad hoc tribunals for Rwanda and the former Yugoslavia. This rise of accountability could be part of the explanation for the decline in genocide, although this conclusion is not yet certain.¹⁴

Capital Punishment

The death penalty is an issue where the link between human rights law and activism and improvements in human rights is more obvious. Amnesty International (AI) has had campaigns against the death penalty worldwide as one of its core mandates since 1977, when only sixteen countries had abolished it in law or practice.¹⁵ Today, as we can see in Figure 5.4, that number has increased to 140, nearly two-thirds of the countries in the world. If we look at the ratification of various death penalty protocols in human rights treaties, we see that a large plurality of countries in the world have agreed that the death penalty is a violation of human rights.¹⁶

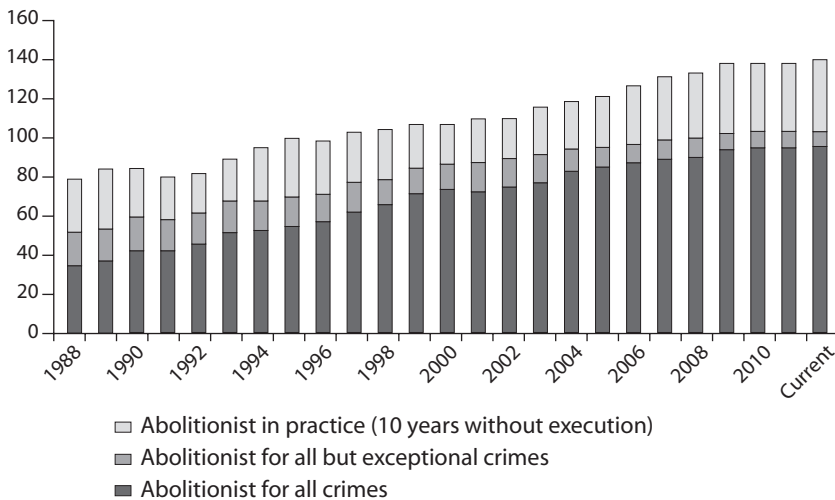


FIG 5.4. Number of abolitionist countries. The vertical axis lists the number of countries that have abolished the death penalty. *Source:* Amnesty International, *Number of Abolitionist Countries*, 2015, <http://www.amnestyusa.org/our-work/issues/death-penalty/us-death-penalty-facts/death-penaltytrends>.

Human rights law has made a difference in this case because research shows that countries that have ratified the death penalty protocols are more likely to abolish the death penalty in law or practice later.¹⁷

The death penalty, like genocide, can be measured using events-based data—that is, counts of specific countries that have abolished the death penalty either legally or in practice. Because these laws and practices are often public (with the exception of China, which practices an unknown number of executions each year), we can have confidence in the trend this data signals—a significant decrease in the use of the death penalty over time. Using this data, researchers have been able to ask and answer questions about the impact of human rights law and activism as it relates to capital punishment.¹⁸

Famine, Hunger, and Malnourishment

It is sometimes difficult to measure violations of economic and social rights, but famine is a measure of the most extreme deprivation of an economic right—the right to food—that is in turn a violation of the right to life. Increasingly, we understand that famine is usually not caused by an absence of food, but rather by a failure to get the food to those who most need it, or an inability of those who need the food to claim it. Amartya Sen described famine as primarily the result of the hungry lacking entitlements to food, in other words, as a human rights issue.¹⁹ Sen demonstrated that famines do not occur under democratic leadership because, in democracies, the existence of a free press and regular elections ensure that governments know about any severe lack of food and they take action to prevent it so that they will not be voted out of power.²⁰

Figure 5.5 shows the overall decline in great famines in the context of global population growth. Past theorists led us to believe that dramatic increases in population would inevitably lead to famine, but we see from the chart that this is not the case. Most of the figures included in this chapter also could have incorporated these population figures as a reminder that declining trends in violence and suffering occur in the context of increasing population pressures. In this sense, the declines in the absolute number of battle deaths,

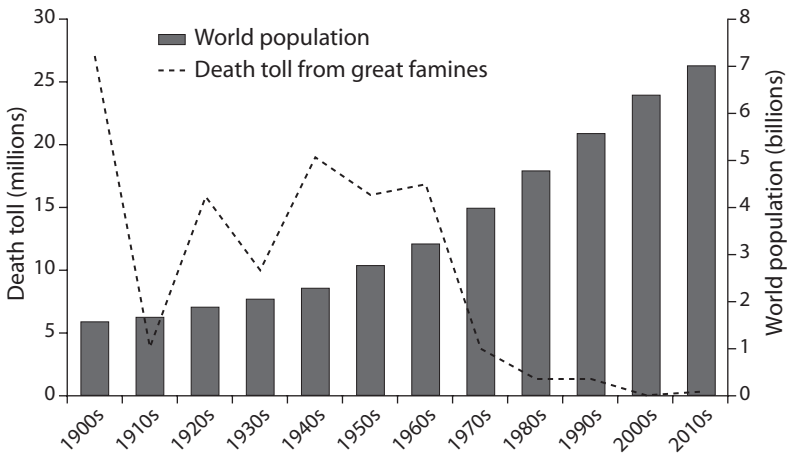


FIG. 5.5. World population growth and death toll from great famines, 1900–2015.

Note: Each great famine killed more than 100,000 people. *Source:* World Peace Foundation. “Famine Trends Project.” Boston: World Peace Foundation, 2016.

genocide, one-sided violence, and famine worldwide are all the more impressive in light of the dramatic increase in population.

We are, of course, not only concerned about famine, but also about less extreme forms of deprivation of the right to food. When Sen pointed out how democracy ended famine in India, he also noted that endemic malnutrition has endured there since independence. Famine grabs headlines and demands a political response, malnutrition does not. But, as discussed in chapter 2, hunger or malnourishment is also declining in the world, although not as dramatically as famine and with different trends in different regions. In this, as in all trends, it is important to distinguish between the absolute number of people affected and the number of people affected as a percentage of total population. As Figure 5.6 shows, both the absolute number of malnourished people in the world *and* the percentage of malnourished people in the total world population are declining. Yet while worldwide there is progress, in some regions the numbers are discouraging. In Africa, for example, while the number of malnourished people as a percentage of the population is declining, the absolute number of hungry people is increasing.

Figure 5.6 also reveals that the decline in hunger has not met some of the goals set by the international community. The decline

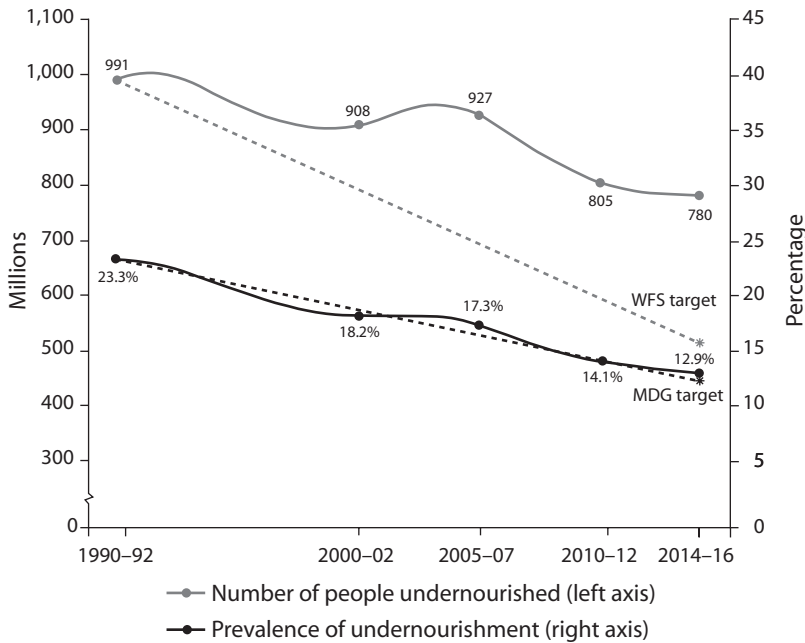


FIG. 5.6. The trajectory of undernourishment in developing regions: actual and projected progress of absolute number of malnourished people and malnourished people as a percentage of population. *Source:* Food and Agriculture Organization of the United Nations, “The State of Food Insecurity in the World 2015,” <http://www.fao.org/hunger/key-messages/en/>.

in the prevalence of malnourishment has met the Millennium Development Goal (MDG), but the governments at the 1996 World Food Summit (WFS) in Rome set a target that was missed by a large margin: “to eradicate hunger in all countries, with an immediate view to reducing the number of undernourished people to half their present level no later than 2015.”²¹ This provides yet another illustration of how the different types of comparison can result in different evaluations of the same situation. Relying on empirical comparison, we see that malnourishment has declined in the world in both absolute and percentage terms since 1990. But, using the WFS target—which we can think of as an explicit comparison to an ideal (reducing the number of hungry people in the world by half in nine years)—we see a big gap in the chart between the ideal and the reality.

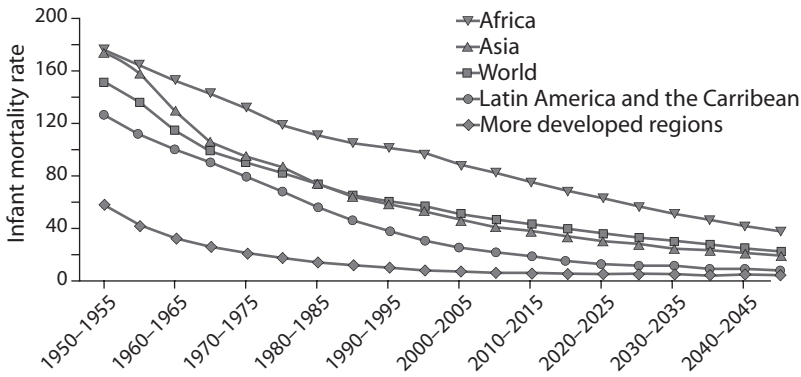


FIG. 5.7. Infant mortality rate by region, 1950–2050. Source of data: UN World Population Prospects, 2008. Chart by Rcragun / Wikimedia Commons (Creative Commons license, <http://creativecommons.org/licenses/by/3.0>).

Infant and Child Mortality

Another good indicator of economic and social rights is infant mortality since it tells us a lot about maternal health, access to health care, and access to clean water. As we see in Figure 5.7, infant mortality is declining in all regions of the world. This chart includes a prediction for the future, projecting this positive change through 2045, assuming current trends will continue. Once again, there is substantial regional variation. We see, for example, that Africa lags significantly behind other regions, yet it still shows a trend towards improvement.

Progress in measures of infant or child mortality may not be a result of the effectiveness of the human rights institutions or movement. The World Health Organization (WHO) and the United Nations Children’s Fund (UNICEF) have demonstrated that more than half of early child deaths can be prevented with simple, affordable interventions, including exclusive breastfeeding, safe water, vaccinations, and oral rehydration therapy.²² Many of these interventions are the result of public health measures, not of human rights campaigns. However, if we find that improvements in breastfeeding or use of oral rehydration were made, for example, in part as a result of a successful human rights campaign—such as the boycott against the Nestle Corporation and the resulting code of conduct for transnational corporations on the marketing of breast-milk substitutes—

we could say that human rights movements were one factor that contributed to improvements in infant mortality.²³

Women's Rights

Human rights movements also have had an impact on women's rights. In Figure 5.8 we see an important trend: the decrease of inequality in education for women. This chart uses a standard measure of inequality, the Gini coefficient, to measure this decline at all levels of education—primary, secondary, and tertiary. Though improvements in education for women are affected by diverse issues, Beth Simmons has shown that the ratification of the Women's Convention (CEDAW) is an important factor.²⁴ Prior to ratification, countries often had legislation that set different requirements for obligatory education for girls and boys. For example, boys might have had to go to school until eighth grade, but girls only needed to go until sixth grade. When a country ratified CEDAW, the treaty body told them that such requirements were discriminatory and contrary to their obligations under the convention. Some countries

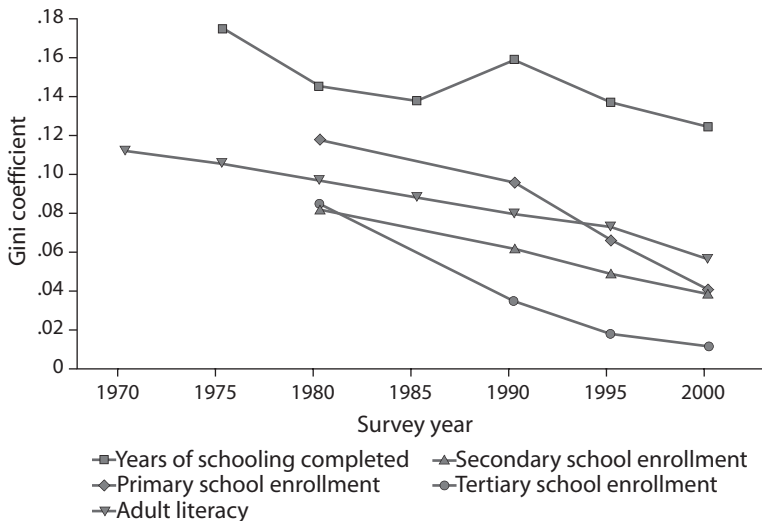


FIG. 5.8. Change in global gender inequality: five education indicators.
Data drawn from Shawn F. Dorius and Glenn Firebaugh, "Trends in
Global Gender Inequality," *Social Forces* 88, no. 5 (2010): 1953.

then changed their legislation, equalizing the mandatory age of education. When families followed the new law, countries saw increases in girls' education, increases that can be appropriately attributed to human rights law. When it comes to the impact of human rights law, Beth Simmons, Daniel Hill, and Yonatan Lupu have all shown that CEDAW has been one of the most effective human rights treaties to date.²⁵

I could include many additional graphs, for example, on child mortality (the number of children who die in the first five years of life), which looks very much like the infant mortality graph, or on global trends in education, literacy levels, and life expectancy, all showing strong improvement, albeit with significant regional variation. My hope is that I have provided sufficient evidence to suggest that, on many issues, people around the world are better off than they were before. The remainder of this chapter focuses on to what degree human rights law, institutions, and movements have contributed to these trends.

Effectiveness of Human Rights Law, Institutions, and Movements

Establishing trends in human rights progress is only a starting place for talking about the effectiveness of human rights law, institutions, and movements. I began examining this question of effectiveness over fifteen years ago with my colleagues Thomas Risse and Stephen Ropp when we edited two volumes that explored the power of human rights by means of qualitative comparative case studies using various countries. Based on research on diverse countries such as Indonesia, Kenya, Guatemala, Morocco, Tunisia, and the United States, we concluded that human rights law did not work by itself; however, where such law was reinforced by transnational and domestic advocacy, improvements in human rights practices often occurred.²⁶ We also found that powerful countries like the United States and China were most able to flout external human rights pressures.²⁷

At the same time as we published our findings, other researchers revealed a tension within the field of human rights scholarship. Studies more narrowly focused on quantitative data suggested that

the ratification of some human rights treaties did not have a positive impact on human rights practices, sometimes even appearing to be counterproductive. For example, some studies showed that ratification of the Convention against Torture (CAT) was associated with increases in torture.²⁸ In a review essay called “Seeing Double: Human Rights Impact through Qualitative and Quantitative Eyes,” two colleagues asserted that scholars who did field research were more optimistic about human rights progress, while scholars using quantitative research were more pessimistic.²⁹ The undercurrent of the article was that those of us doing field research were engaged in wishful thinking, while our colleagues who relied on numbers were more objective.

Beth Simmons’s prize-winning book, *Mobilizing for Human Rights*, called into question the dichotomy between optimistic field researchers and pessimistic number crunchers. Using sophisticated quantitative techniques, Simmons showed that human rights treaties do lead to advances in human rights, provided the type of government in a country is taken into account. Though Simmons’s book, published in 2010, was the best work to date on how international law influences state practice, it did not put to rest the debate about effectiveness. Three years later, Posner’s *The Twilight of Human Rights* largely ignored Simmons’s work as Posner claimed that human rights law and advocacy have failed to bring about results. Despite Simmons’s contributions, no consensus has emerged. If anything, scholars and critics appear to differ more now than ever before.

Why can’t we agree? In chapter 2, I explained one of the main causes for disagreement: the different conclusions reached by people using comparison to the ideal vs. empirical comparison. To further answer this question, I discuss three other issues that influence the debate about effectiveness, even among people doing empirical comparisons:

1. Invisible harms and the information paradox.
2. Heuristics or biases that lead us to pay more attention to prominent negative information.
3. A changing standard of accountability, where what we mean by human rights keeps expanding.

Invisible Harms and the Information Paradox

Some rights can be measured by fairly straightforward calculations, such as the information on women's education mentioned previously. As my colleague Malcolm Sparrow points out, however, many human rights issues are part of a larger set of problems, what he calls "invisible harms." These harms are difficult to discern and analyze because they tend to be underreported; thus, the bulk of the problem is hidden.³⁰ Examples of invisible harms include torture, disappearance, extrajudicial executions, rape, and political imprisonment. UN surveys, for example, show that one third of all women in the world will face either physical or sexual abuse by a partner or sexual violence by a non-partner during their lifetimes.³¹ Because domestic abuse is a type of hidden harm that is harder to document than infant mortality or the number of girls in school, it is difficult to make conclusions about progress, regression, or something between.

One of the goals of the human rights movement is to make invisible harms visible, but in the process of doing this, they may make it seem as if human rights violations are more prevalent. In our 1998 book *Activists beyond Borders: Advocacy Networks in International Politics*, Margaret Keck and I grappled with how to define and measure the effectiveness of transnational advocacy networks, including those of human rights. We pointed out that to measure the influence of advocacy networks, you have to go beyond thinking about their influence on actual behavior and look at their ability to create new issues, to set agendas, and to influence legal and policy changes.

Keck and I argued that the most important tool of advocacy networks is "information politics"—credibly producing politically usable information and moving it to where it can have the most impact. We introduced the term "information paradox" to describe how activists, by creating new issues and producing new information, can sometimes give the impression that practices are getting worse, when in reality people just know more about them.³² As we see in Figure 5.9, the number of human rights international non-governmental organizations (INGOs) in these advocacy networks has continued to grow. The main tool of these INGOs also continues

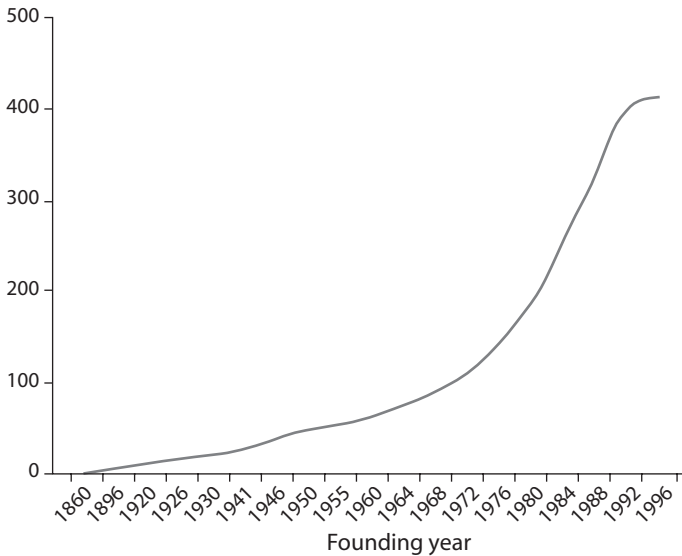


FIG. 5.9. Average Number of Human Rights INGOs (International Nongovernmental Organization) Working within States. The data comes from publically available coding of Yearbook of International Organization INGO data by Jackie Smith and Dawn Wiest. Thanks to Amanda Murdie for permission to adapt this chart.

to be information politics; more and more human rights NGOs continue to research, to publish more reports, and to post and tweet about them.

The information politics of human rights networks in turn provoke a response from repressive governments and other perpetrators, who try to keep their “invisible harms” hidden and to delegitimize the messengers—especially NGOs. Perpetrators use drastic means to keep human rights violations hidden. For example, several weeks after Serbian groups massacred thousands of men and boys in Srebrenica, Bosnia, in 1990 and buried their bodies, those responsible for the murders sent in bulldozers to exhume and disrupt the mass graves and rebury them in order to make the forensic identification of bodies impossible. Human rights organizations turn to increasingly sophisticated technology to respond. In this case, they harnessed a new DNA technique that permitted the identification of bodies from even tiny bone fragments in the disrupted graves, information that later was used in the ad hoc tribunal for war crimes

in the former Yugoslavia to convict some of those responsible for the massacre.³³

There are always struggles over information politics, not just with activists working for more information while perpetrators try to hide it, but also among human rights NGOs about the types of information they report. Repressive governments have discovered that one effective way to fight information politics is to intimidate and exclude human rights NGOs, including through draconian laws forcing them to register as foreign agents or by prosecuting them for treason or other crimes.

In a 2013 article, Ann Marie Clark and I further developed the idea of the information paradox and spoke of a broader issue: the “information effects” of transnational advocacy. Information effects are “patterns in the data that stem from the process of information collection and interpretation, rather than from the process that actually gives rise to human rights violations.”³⁴ This problem is not limited to human rights research; it plagues other areas of research, such as current debates over autism. Researchers are still uncertain whether there has actually been an increase in autism or merely an increase in the diagnosis of autism, or some combination of both. Human rights researchers, however, for the most part seem unaware that such a phenomenon might also affect our field.

The situation in Brazil that is discouraging some women’s rights defenders is an example of the information paradox. As NGOs in Brazil began to highlight violations of the Maria da Penha Law, which sought to protect women from domestic abuse, it sometimes appeared that violence against women was getting worse when it was not—we simply had more information about it.³⁵ Women in Brazil, increasingly aware of the new law on violence against women, are reporting violence at new levels. Eventually, the data should settle down so that we can observe trends. But I suspect that ten years later is too early to establish reliable data on violence against women and, therefore, that we cannot know yet whether it is violence or the reporting of violence that is truly increasing. The information paradox challenges human rights activists to make sure their skills in information politics and issue creation do not become tools for demonstrating a lack of effectiveness in leading to behavioral change.

There were very few sources of reliable human rights information in the 1970s, so we don't have a baseline against which to measure human rights progress. Since the 1980s, the number of NGOs, states, and international organizations reporting on human rights has proliferated. Violations are less likely to be hidden and unknown than they were before, and researchers have many more sources to draw on. For example, NGOs, other organizations, and the media have drawn increasing attention to violence against women, especially the widespread prevalence of rape and particularly of rape in wartime. But is there really a new global epidemic of violence against women or do victims, organizations and the media simply report it more than before?

When we try to get good information about whether violence against women is increasing, we sometimes get data like that in Figure 5.10 on rape, produced using figures from the UN Office on Drugs and Crime. The map makes it look as if the countries in the world with the most rapes are Sweden, New Zealand, South Africa, and Botswana. It also appears that rape occurs more often in the UK and France than in the former Yugoslavia. There are great swaths of countries for which there is no data (the light grey striped areas on the map). This data is a snapshot of a single period of time, telling us nothing about trends over time or about the actual prevalence of rape in the world. Rather, it shows which countries are collecting data, including which countries are doing a better job collecting data than others, or simply have different procedures. For example:

In Sweden there has been this ambition explicitly to record every case of sexual violence separately, to make it visible in the statistics. . . . So, for instance, when a woman comes to the police and she says my husband or my fiancé raped me almost every day during the last year, the police have to record each of these events, which might be more than 300 events. In many other countries it would just be one record—one victim, one type of crime, one record.³⁶

We might applaud the Swedish government for its commitment to making rape more visible, even while recognizing that such a unique commitment makes it impossible to compare Sweden's practices with other global data.

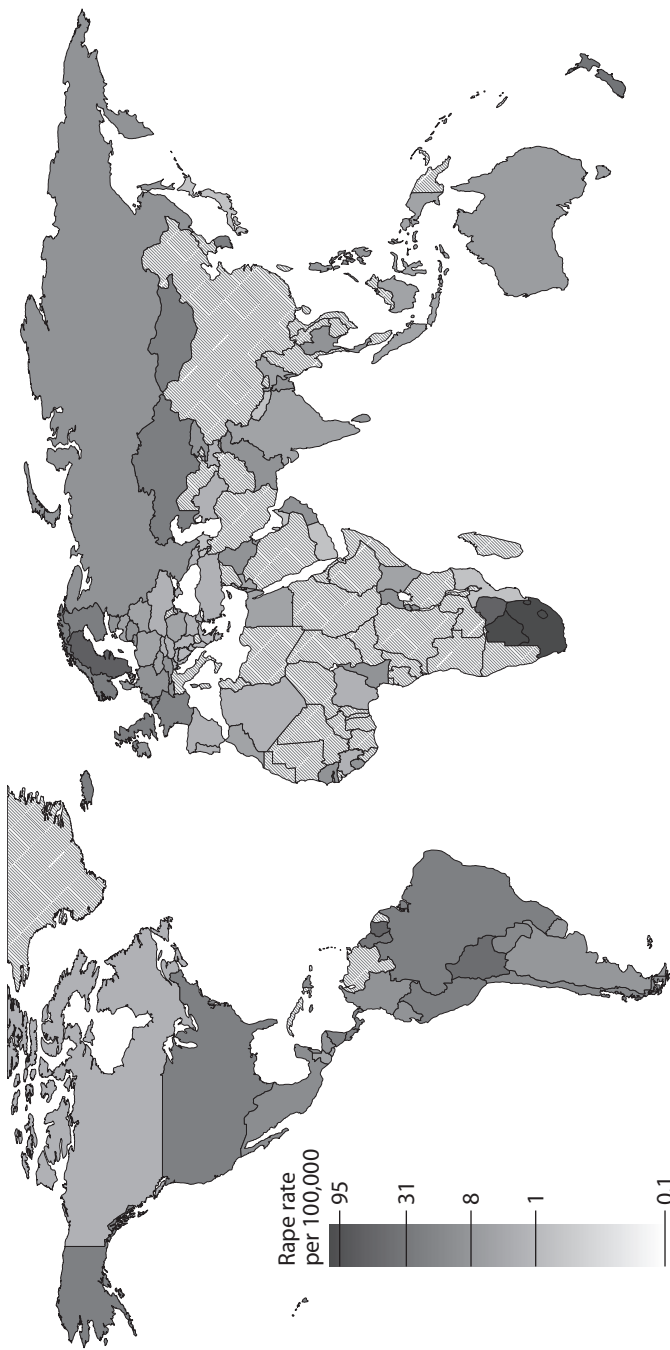


FIG. 5.10. Rape rates per 100,000 population, 2010–2012. Source of data: United Nations Office on Drugs and Crime. Striped countries are those for which no data is available. Chart adapted from one by M Tracy Hunter / Wikimedia Commons (Creative Commons License, <http://creativecommons.org/licenses/by-sa/3.0>).

Most invisible harms are “invisible by design”—that is, the perpetrators take steps to avoid detection.³⁷ Because of that, we can’t measure these human rights violations, only reports of them. For example, when academics are coding Amnesty International reports, they produce a data set of Amnesty International alleged violations, “not a census of actual violations.”³⁸ Violations by governments, such as US efforts to hide torture during the Bush administration, as well as violations by non-state actors, such as domestic abuse, can be seen as invisible harms by design.

Human rights violations in particular are complex because the government itself is often committing the harm. This is different from cases of government corruption, for example, where individual government officials might engage in corruption even though the government as a whole is interested in detecting and even prosecuting the crime. In the case of mass human rights violations, the government as a whole may be committing the crimes and doing everything possible to keep them hidden. When the Argentine government was disappearing thousands of its own citizens, the entire security apparatus was devoted to committing and then hiding these invisible harms.

Invisible harms present measurement problems for policymakers that are serious and yet also predictable.³⁹ In the short term, new reporting makes it appear that the situation is worsening. But if the campaign succeeds in the long term, the volume of reporting of incidents of violence should eventually decline. The issue that remains, however, is how long human rights change takes. How soon should human rights activists expect to see a decline in human rights violations if law, institutions, and activism are working?

Why We Pay More Attention to Prominent Negative Information

Another reason why activists, policymakers, and even scholars often can’t agree on whether human rights are improving has to do with a series of psychological heuristics and biases that make humans prone to pay more attention to prominent information and to notice and believe negative information more than positive information.

In his book *The Better Angels of Our Nature: Why Violence Has Declined*, Steven Pinker first drew my attention to these cognitive illusions and biases.⁴⁰ Pinker cited the work of Nobel prize-winning economists Daniel Kahneman and Amos Tversky and their descriptions of psychological mechanisms that influence how people judge the probability or frequency of events in situations of uncertainty.⁴¹ This is exactly what is at stake in the debate over human rights effectiveness—we judge, for example, how frequent practices like torture or violence against women are from a position of uncertainty because governments or individuals try to hide these practices. Tversky and Kahneman pointed to a number of heuristics, or shortcuts, that people use to reduce complex judgments like this to simpler ones.

The most relevant heuristic for us is the *availability heuristic*: if it is easier to imagine or to remember an example, people think it is more likely.⁴² The availability heuristic can help us understand the puzzling discrepancies between the actual likelihood of an event and people's perceptions of its likelihood. For example, people in the United States today are extremely worried that they might be victims of jihadist terrorism, even though an average of only four people a year are killed in the United States by such terrorism. A person's chances of being murdered with a firearm are almost 3,000 times greater—even the chances of being killed by lightning or by a falling object are far greater than that of being the victim of a terrorist attack.⁴³ Yet, per Kahneman and Tversky's model, dramatic events are more available to our cognitive memory and thus more likely to be remembered than less dramatic events.⁴⁴ Because terrorism is so horrific, is covered relentlessly in the news, and is harped upon by political candidates, individuals are led to believe that it is far more likely to occur than it actually is.

Human rights activists are especially prone to the availability heuristic, and for good reason. Day in, day out, they hear dramatic stories of human rights abuses. Those stories are constantly, painfully available to them. Activists' very profession and their political commitments require them to ruminate about awful events and to bring them to the attention of the public. In one sense, the availability heuristic is almost an underpinning of human rights work; its purpose is to make human rights violations more available to the

general public and to policymakers. Success in making human rights violations available, however, may have the unintended consequence of making it appear that these violations are becoming more frequent than ever before.

In *The Idea of Justice*, Amartya Sen discusses a related cognitive bias, which he calls “objective illusion.” Sen argues that when there is manifest injustice, it is taken for granted to such an extent that people can’t see it. But, as the situation gradually improves and becomes more just, people are more aware of the original problem. Those who complain the most may be those who have already seen change. He gives the example of the Indian state of Kerala, where people complain more about morbidity even though they have longer life spans than elsewhere in India.⁴⁵

A second kind of cognitive bias that affects judgments about the frequency of human rights violations is the *negativity bias*: people pay more attention to negative information than positive information. Social psychologist Roy Baumeister and his co-authors captured this idea in the 2001 article “Bad Is Stronger Than Good.” They wrote, “Bad emotions, bad parents and bad feedback have more impact than good ones. Bad impressions and bad stereotypes are quicker to form and more resistant to disconfirmation than good ones.”⁴⁶ Baumeister noted that “many good events can overcome the psychological effects of a bad one,” but it may take many good pieces of news to balance out one bad piece of news.⁴⁷ Behavioral economists have confirmed a negativity bias by showing that people are much more concerned about loss aversion than about pursuing gain; for example, people are much more likely to care about losing money than about gaining it.⁴⁸

All this illustrates how humans are “cognitive misers”—because we cannot process all information equally, we prioritize what we are going to process.⁴⁹ People spend more time and care processing bad information, with this more extensive processing often leading to enhanced memory.⁵⁰ One study found that people were more than twice as likely to remember bad events as they were to remember good ones.⁵¹ There may be good evolutionary reasons for both the availability heuristic and the negativity bias—humans who paid attention to and remembered information about bad things, such as predators, would have been more likely to survive.⁵²

Humans also have more detailed and systematic analysis and vocabulary to explain negative experiences and their resulting emotions than positive ones, which may be related to the fact that we process positive and negative information in different hemispheres of the brain. Positive emotions trigger top-down, heuristic processing, while “negative emotions trigger bottom-up, systematic processing in which an individual engages in more fine-grained, detailed analysis of experience.”⁵³ As a result, “we tend to ruminate more about unpleasant events—and use stronger words to describe them—than happy ones.”⁵⁴

Not only do people pay more attention to and retain more information about bad events, but we also tend to see people who say negative things as smarter than those who present positive views. Thus, we are likely to give greater weight to criticism. One researcher found that “If I tell you that you are going to give a lecture before smarter people, you will say more negative things.”⁵⁵ This may explain why some of the negative books about human rights that I discussed in chapter 2 are getting so much attention—the authors seem smarter for focusing on the negative! I’m taking this piece of research particularly hard. I have long been characterized as an “optimist” by colleagues; now I suspect that this is also a code word for “not very smart.” I’ve also sometimes noticed that my colleagues who are more negative seem to benefit from a certain mystique of elegance and sophistication. Psychological literature helps explain why this is the case. I’m taking a risk with this book in the hope that readers can be persuaded to acknowledge negativity bias and give me the benefit of the doubt.

Hirschman’s Perversity, Futility, and Jeopardy Theses

Not surprisingly, negativity bias with regard to human rights progress is far from new. In *The Rhetoric of Reaction: Perversity, Futility, Jeopardy*, Hirschman wrote about the historical reactions to three waves of demands for rights in countries around the world: the basic civil rights of man in the eighteenth century, the expansion of male suffrage in the nineteenth century, and the rise of the welfare state and of social and economic rights in the twentieth century.⁵⁶ All of these waves involved the national protection of the rights of citizens. The international protection of human rights

could be seen as a fourth wave of rights that started in the mid-twentieth century and continues today.⁵⁷

Hirschman spoke of three different types of negative arguments that frequently appeared in response to each of these waves of rights: the perversity thesis, the futility thesis, and the jeopardy thesis. According to the perversity thesis, “any purposive action to improve some feature of the political, social, or economic order only serves to exacerbate the condition one wishes to remedy.”⁵⁸ For example, Hirschman showed how the expansion of male suffrage in the eighteenth century was portrayed as likely to undermine the very freedom it sought to advance. Conservatives argued that increasing democracy through universal male suffrage would lead to the despotism of the masses and future tyranny.⁵⁹ In other words, they argued that democracy exacerbates the condition it seeks to remedy. The perversity thesis is perfectly captured in modern human rights debates by Jack Snyder and Leslie Vinjamuri’s claim that proponents of legalistic justice “cause more abuses than they prevent.”⁶⁰ Snyder and Vinjamuri say that prosecuting state officials exacerbates the precise condition that the proponents wish to remedy—widespread human rights violations. This is a clear causal statement and thus lends itself to empirical testing. My research on the effects of such prosecutions and that of other scholars using our new data on human rights prosecution has found no evidence of such a perversity effect, but this has not prevented critics from repeating the claim.⁶¹

The futility thesis holds that attempts at social transformation will “simply fail to make a dent” in the problems they are meant to address.⁶² For example, critics of the welfare state in the twentieth century, such as Milton Friedman, claimed that many programs aimed at the poor were futile, tending instead to benefit the middle and upper classes.⁶³ The futility thesis is expressed today by Eric Posner, who concludes simply that human rights law doesn’t work: “we should face that fact and move on.”⁶⁴ Similar futility arguments are expressed by Samuel Moyn when he argues that human rights “have been the powerless companion to market fundamentalism” because they “simply have nothing to say about inequality.”⁶⁵

The jeopardy thesis “argues that the cost of the proposed change or reform is too high as it endangers some previous precious accomplishment.”⁶⁶ In the nineteenth century, for example, the ex-

pansion of male suffrage was portrayed as fatal to Britain's "ancient liberties," especially the right to own and accumulate property.⁶⁷ Stephen Krasner and Jack Goldsmith similarly present a jeopardy argument today when they say, "an insistence on criminal prosecutions can prolong . . . conflict, resulting in more deaths, destruction, and human suffering."⁶⁸ In the case of human rights, peace is often the "previous precious accomplishment" that these critics argue will be endangered by trials. Krasner and Goldsmith's is, however, a modified jeopardy thesis because in most of these cases peace has not yet been secured. Since peace has been elusive for a long time in the countries they study, Krasner and Goldsmith do not argue that trials jeopardize a "precious previous accomplishment," but rather a much-desired future one.

Hirschman also understood that reformers sometimes brought criticism upon themselves by making exaggerated promises, which in turn led to exaggerated assertions of total failure. He saw that such reactions came not only from conservatives, but also from radical reformist writers whose critiques emerged from their hope for more fundamental change.⁶⁹ At this point, Hirschman's argument in *The Rhetoric of Reaction* hearkens back to his earlier work on Latin America, including *Journeys Toward Progress*, where he explored responses to development policy, including land reform. In this work, he became aware that policy analysis in Latin America at the time was imprinted with what he called "fracasomania," or a "failure complex."⁷⁰ Many of these reformmongers were engaged in what I have called comparison to the ideal. They insisted that the efforts for development in Latin America had completely failed because the results had not lived up to their high ideals and expectations of growth with equity. But for Hirschman, it was not enough to draw attention to crises; one also needed to think about the possibilities of escaping them.⁷¹ For him, "social change was riddled with chance and choice."⁷²

Hirschman was often suspicious of the motivations of writers who insisted only on these negative effects. He suspected that it gave them a feeling of superiority and they "revel[ed] in it." He said, "Once again, a group of social analysts found itself irresistibly attracted to deriding those who aspire to change the world for the better." Hirschman anticipated by a couple of decades—and stated

more elegantly—the insight in psychological literature that people presenting negative information are seen as smarter than those talking about positive change. The perversity effect, he said, “has a certain elementary sophistication and paradoxical quality” that appeals to those in search of “instant insight.” All three effects—perversity, futility, and jeopardy—add up to project “a certain worldly wise wit as opposed to the alleged earnestness and humorlessness of believers in progress.”⁷³ Hirschman’s intuition may also be relevant with regard to modern perversity and jeopardy theorists. When I asked Patrick Ball, one of the world’s leading experts on the measurement of human rights violations, how he explained recent pessimistic literature, he almost echoed Hirschman—he said that everyone likes to cut do-gooders down to size.⁷⁴ Human rights activists are do-gooders and yes, at times both self-righteous and humorless.

Both the perversity and the jeopardy theses involve unintended consequences, to which Hirschman was quite attracted because the concepts introduce “uncertainty and open-endedness into social thought.”⁷⁵ Hirschman clarified that “none of this is meant to deny that purposive social action does occasionally have perverse effects,” but he did not understand why unintended consequences should always be perverse or negative.⁷⁶ I agree with Hirschman that we need to be attentive to unintended negative consequences. In fact, I think that the information paradox is exactly such an example of an unintended negative consequence in the human rights realm, one with important consequences for the field.

In a later chapter of *The Rhetoric of Reaction*, Hirschman warned against progressive arguments that are the mirror image of the three theses. For example, progressives can make arguments that appear naïve (“all good things go together”) or have an inverse perversity thesis (the failure to act will have disastrous effects).⁷⁷ This warning is particularly relevant for human rights activists and researchers as we may be tempted at times to make these kinds of claims.

Other psychological phenomena that may affect evaluations of human rights progress among activists include both direct trauma and the “vicarious traumatization” of human rights workers. We know that many victims of human rights violations have been deeply traumatized by their experience and that this trauma can manifest itself in ways that make people feel “survivor’s guilt,” questioning

why they survived and others died. Survivors may believe that they must not rest until they have done whatever they can to remember the dead and denounce ongoing violations. At the same time, survivors may feel depressed and hopeless. Those who work with victims of human rights violations may be indirectly traumatized and suffer from some of these same symptoms. These people are known as secondary trauma survivors. The authors of the aforementioned survey of 346 human rights workers found that such trauma exposure had a negative effect on their well-being.⁷⁸ This effect was exacerbated when respondents also had negative self-appraisals of the efficacy of their work. To measure respondents' self-appraisals, the researchers constructed a series of positive and negative statements about working in human rights, including items such as "I have been able to make a positive difference through my work," "I feel inspired by my work," and "I feel that my work is pointless."⁷⁹ Individuals who answered these questions in a manner that showed they had a negative self-appraisal of their efficacy were prone to experience more severe symptoms of PTSD. It is important that human rights workers have resilience, an "ineffable quality that allows some people to be knocked down by life and come back stronger than ever." Psychologists have identified some of the factors that make someone resilient, among them a positive attitude, optimism, and an ability to learn from failure.⁸⁰ Both hope and the ability to see failure as helpful feedback may contribute to more resilient and less traumatized human rights workers.

The cognitive biases and psychological effects discussed here can make it hard to perceive progress in human rights. It can be even more difficult when we add to this the news bias. What we see on the news is more available to us than what we do not see on the news. If the news viewed or heard is dramatic, we are more likely to remember it. In addition to that, the news has its own version of the negativity bias—in the classic words of a news editor, "if it bleeds, it leads."⁸¹ Whether we get our news from newspapers, TV, or online, it likely consists of dramatic and negative events, i.e. violence, rather than the mundane and the everyday.⁸² This combination of various cognitive and news biases contributes to the perception that the world has more human rights violations than ever before.⁸³

It is not only the news that is negative, so too are the reports of human rights organizations. Stephen Northfield, the Digital Direc-

tor for Human Rights Watch, previously a seasoned journalist, is concerned about the negative messages of human rights organizations: “There is an endless drumbeat of negativity. You start to numb your audience with the parade of bad news. It creates a negative feedback loop. It is one of the things we need to figure out as a process.” Northfield went on to explain some alternative ways to communicate a greater sense of hope:

We can’t wait till we get to Nirvana, but there are ten steps to get there. We move the ball down the field. If you can train your audience to understand, you can break this sense of the monopoly of negativity. If you think of gay rights, for example, profound progress has been made in the last five years. But once we make progress, that gets banked and forgotten. It is deeply in the DNA of human rights groups to orient themselves around problems. But there are internal and external dangers of not being able to measure progress. It is disempowering for people working on human rights.⁸⁴

Changing Standards of Accountability

Finally, measuring human rights progress is affected by a changing standard of accountability that occurs when human rights activists and lawyers begin to expand the notion of what constitutes a human rights violation.⁸⁵ International human rights law is both comprehensive and incomplete. Since the UDHR was passed in 1948, many campaigns have worked to establish new human rights norms and laws while also expanding our understanding of existing law. The power of the human rights movement is that it contains within it the seeds of its own expansion.⁸⁶

The UDHR, for example, does not mention the rights of sexual minorities or of people with disabilities, yet today’s activists have helped expand our understanding of rights and draft new conventions to include these issues. This is one of the great strengths of human rights as a moral vocabulary and a legal process. When I started working on human rights as a young student over thirty-five years ago, it did not occur to me that the absence of an accessibility ramp was a violation of human rights. Today I am fully persuaded that for people with disabilities or the elderly to enjoy their rights to health and education, or the right to vote, for example, they have

to be able to enter clinics, schools, and voting stations. When I accompany my father, who is legally blind and also recently consigned to a wheelchair, I thank the movement for disability rights for their contributions to his ability to live a life with dignity. The Convention on the Rights of Persons with Disabilities shows how the human rights movement is constantly raising the bar of what constitutes a human right. That is good news for human rights, but unless activists and scholars understand the implications of this practice when we measure progress and effectiveness, we may live with more pessimism than is warranted.

The process of constantly raising the bar of what constitutes a human rights violation can cause problems for human rights measurement and is one of the reasons that many people believe human rights practices are worsening. As we raise the bar, it can appear that the implementation gap is ever wider.

Standards of accountability also change when the definition of what constitutes a violation of existing rights alters. Previously, we called a killing an extrajudicial execution when a government killed its political opponents, but today we use the term to refer to high levels of indiscriminate police killings. The European Court of Human Rights, for example, has changed its understanding over time of what constitutes an act of torture.⁸⁷ Increased information and higher standards are both good news for human rights victims, but they can be bad news for data sets and measurement, which try to compare numbers about human rights performance over time. The next section will illustrate how this works using examples from Brazil and Guatemala.

Quantitative Researchers and Information Effects

The information paradox takes two main forms. The first is straightforward: members of the public, scholars, or policymakers who read the reports and follow the news are left with the impression that violence and human rights violations of all kinds are increasing in the world. These general impressions are affected by the availability heuristic, negativity bias, and news bias.

The second form of the information paradox is more hidden and involves technical issues of how human rights information gets

coded into quantitative measures and then used by scholars to measure the effectiveness of human rights law, policy, and activism. The danger of this type of information paradox is particularly acute for scholars who do quantitative analysis, relying only on one or two key measures of repression. Such data is not intentionally wrong or distorted, but may nevertheless be misleading because of our increased knowledge about human rights violations. Examples in Brazil and Guatemala explain how more information and higher standards affect quantitative evaluations.

BRAZIL

Brazil had an authoritarian military regime from 1964 until 1985, with its most repressive period from 1968 to 1974; almost 2,000 individuals later testified in military courts that they had been tortured during this period.⁸⁸ Roughly, we can think of the mid-1960s through the 1970s as authoritarian rule, the 1980s as a period of transition toward democracy, and the 1990s and 2000s as democratic. Between 1995 and 2016, Brazil was governed by democratic governments of the center and the left.

Brazil would appear to be an example of the kind of change that the human rights movement hopes to promote. Brazilians elected former opposition figures as presidents and their governments carried out policies of gradual political and economic inclusion. Most experts on Brazil know that serious human rights problems have continued after the transition to democracy, but virtually all would argue that the democratic period has had better human rights practices than the military regime. In spite of this, the main quantitative measures of repression—the Political Terror Scale (PTS) and the Cingranelli and Richards (CIRI) Physical Integrity Rights Index—indicate that there was less torture and fewer executions, imprisonments and disappearances during the last years of the military government than in the current democratic period. How do we explain this puzzle?

To read the data correctly, we have to understand the process through which these measurements are created. First, what the quantitative measures of repression seek to document are invisible harms, as governments try to hide information about their human

rights violations. During the military dictatorship in Brazil, for example, the government concealed its practices of torture, disappearance, and summary execution of political opponents. Because of this, analysts turn to nongovernmental organizations, international organizations, and even other states for reports on human rights practices. Evidence suggests that reports of outside monitors, however imperfect, come closer to revealing the nature of repression than states' self-reporting.⁸⁹

The two sources most commonly used by academics for measuring state repression are Amnesty International's annual reports and the US State Department's annual country reports on human rights practices, both of which have been issued regularly for several decades. Both AI and the US State Department produce combined annual reports that try to summarize the human rights practices of most countries worldwide. We are fortunate that two such series exist, one by a government and one by a respected nongovernmental organization, although there is, of course, still bias: The US State Department has political goals that may affect human rights reporting, although its reports have become more accurate over time, and Amnesty International is committed to a human rights ethos that may make it difficult for it to speak of "improvement" in the context of serious on-going violations of human rights.

Researchers use these sources to create a "time series" on human rights practices, allowing us to compare change over time, in this case from 1980 to the present. The PTS and CIRI human rights data projects use the reports to produce scales of human rights violations of core physical integrity rights. Both of these scales are composite measures of four human rights violations: torture, extrajudicial killings, disappearance, and political imprisonment. We call these the standard-based measures because they assign human rights scores to every country in the world every year, based on subjective criteria applied to primary source documents. In other words, research assistant coders read the narrative Brazil text in the Amnesty International or State Department report for every year and give it a number in a scale created by the project. The PTS has a numerical scale from one to five, with five as the worst human rights performance and one as the best. The CIRI Physical Integrity Index is a somewhat more complex eight-point scale, with its own set of cod-

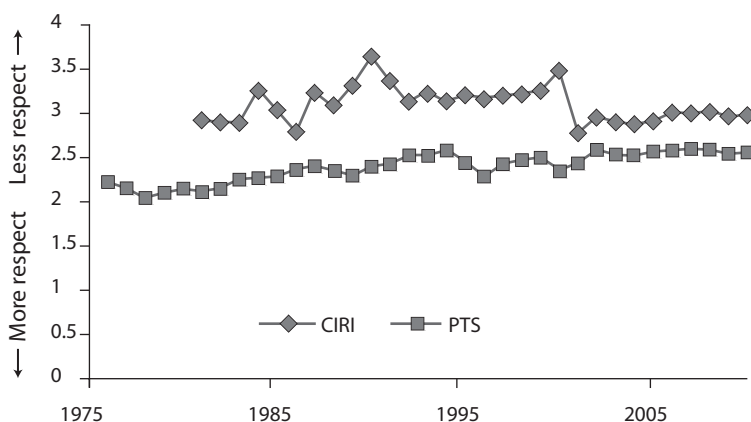


FIG. 5.11. Global average standard-based human rights scores. *Note:* The CIRI Physical Integrity Scale is 0–8 and the PTS scale is 0–5. The PTS line here represents the average combination of PTS scores derived from Amnesty and State Department reports. For the source data in this chart see the CIRI Human Rights Data Project (<http://www.humanrightsdata.com>) and the Political Terror Scale (PTS) database (<http://www.politicalerrorscale.org>).

ing instructions that are precise, but sometimes problematic. The CIRI measure of extrajudicial killings, for instance, is designed in such a way that the index simply cannot measure any improvements until the number of violations falls below fifty. Thus, a country that has two hundred extrajudicial killings one year and the next has only eighty, would not show any improvement. Together, these scores produce a database of core human rights practices that are available online for researchers to use.

When charted over time, these popular datasets tend to show unchanging global levels of repression. Figure 5.11 shows that, despite minor fluctuations, global average scores on PTS and CIRI have stayed mostly flat from the late 1970s to 2010. Based on this, many scholars have argued that the human rights movement has been a failure.⁹⁰

After the databases have been published, quantitative researchers insert them into their models in order to address several important questions: What impact do human rights laws have? Do human rights prosecutions improve human rights? Can transnational advocacy groups create positive change? Researchers then use quantitative methods to test their hypotheses. Perhaps most importantly,

using quantitative analysis, these researchers can control for other factors that affect human rights practices, such as poverty, democracy, and civil war. Scholars look into more than the effects of human rights laws or activism; they also analyze factors independently, such as income inequality, which can contribute to human rights violations.⁹¹ For example, Brazil continues to have significant economic inequality despite its democratic rule and human rights activism. Perhaps this inequality explains why Brazil's human rights record does not seem to be improving. Quantitative research lets us address important questions like this in sophisticated ways; yet, in the end, the models and conclusions are only as good as the data.

The main problem with the data is that so much more human rights information is being produced today than in the past. Today, when the reports are written, there are hundreds of groups working on human rights in Brazil in situations of relative security; they are able to document and publish more far-reaching reports than ever before.⁹² Human rights officers in US embassies are in routine contact with a large range of human rights groups inside and outside the country. Compare this to when Amnesty International and the State Department first began to report on human rights in Brazil in the late 1970s. As there were few sources of human rights information, they relied on a small number of sources in Brazil and communicated with only a handful of other human rights organizations. Thus, the early years of the CIRI and PTS measures are less reliable due to several factors—the reports were the shortest at this time, fewer human rights NGOs existed to produce good information, and the political bias in the State Department reports was the strongest.⁹³

Perhaps because of these data problems, the human rights situation in Brazil according to CIRI and PTS was a full point better during the authoritarian and transition period than it has been during the recent democratic decades. Brazil has an average PTS score of three for the authoritarian and transition decades of the 1970s and 1980s, and a score of four for the fully democratic period of the 1990s through 2013.⁹⁴ The average CIRI physical integrity rights score for Brazil during the military government period (1981–1985) is also almost a point better than the average score for the democratic period of the 1990s and the 2000s. Because CIRI breaks the

score down further by specific type of violation, we can see more precisely the kinds of violations that are driving the scores. Although democratic Brazilian governments rarely practiced disappearances or held political prisoners, from the data they appear to be engaged in more extrajudicial killing and torture than the dictatorship. This differs from other reports of deaths and disappearances for the same periods.⁹⁵ Why do CIRI and PTS record more killing and torture under democracy? The difference lies in the changing standard of accountability. Earlier US State Department and Amnesty International reports (and the Brazilian government report mentioned above) only documented *government* killing and torture of *political opponents*. By 1985, human rights organizations and the US government expanded their focus from a narrow emphasis on direct government responsibility for death, disappearance, torture, and imprisonment of political opponents, to consideration of a wider range of rights, including the right of people to be free from police brutality and the excessive use of lethal force, as well as the duty of the state to prevent, investigate, and prosecute violence by non-state actors.

In their first reports on Brazil, both Amnesty International and the State Department focused on gross human rights violations, especially political imprisonment, torture, and summary executions committed directly by state officials. The early State Department reports on Brazil were short and largely positive, commending the government on improvements in state-sponsored deaths and disappearances in the early 1980s. By 1987, however, during the transition to democracy, both AI and the State Department began to take a harsher tone. Amnesty became able to travel to Brazil for on-site visits and, as a result, produced a specific report on rural killings. AI clarified that such killings were carried out by “hired gunmen in the pay of local landowners,” but also stressed that it was concerned that “full and impartial investigations into such killings are not being carried out and this failing may amount to acquiescence, and even complicity with the crimes.”⁹⁶ A second AI investigation focused on the torture and ill treatment of detainees in police stations and prisons throughout the country, including the killing of suspects. This was a new approach for human rights organizations at the time because it focused on the treatment of criminal suspects rather than

that of political prisoners, whose protection was previously the core mission of AI.

From a human rights perspective, the changing standard of accountability was a positive development. From a data and measurement perspective, it caused problems. AI's expansion of its mandate and improved capacity to conduct on-site investigations led to an increased documentation of human rights violations that could make it seem as though the situation in Brazil was getting worse after democratization. However, it is possible that the situation was the same or even better; it only seemed more severe because of an expanded notion of what constitutes a human rights violation and because of increased capacities for in-country reporting. This more thorough attention to a wider range of victims translated into worse PTS and CIRI scores because both measures now count extrajudicial killing and torture whether it is against political opponents or against criminal suspects. Similar changes were made to the State Department reports, which, taking their cue in part from NGOs, were expanding their focus on rights violations in Brazil to include the treatment of peasants and indigenous people involved in land disputes, as well as of criminal suspects.

We still do not know if the Brazilian police kill or mistreat more victims than they did in the 1970s and 1980s. In the earlier decades, human rights organizations were not collecting data on rural violence, nor were they investigating the excessive use of force against common criminal suspects. Organizations within Brazil recently have turned their attention to police violence. For example, the Observatório das Violências Policiais-SP (Observatory of Police Violence in São Paulo) uses news sources to compile a monthly report of all victims of police violence. The Observatório argues that all of these deaths are "extrajudicial executions," and represent the excessive use of lethal force of the Brazilian police.⁹⁷ Many of these killings are of poor and marginal populations living in the *favelas* of São Paulo. This human rights work calls our attention to violations against groups who were not the original focus of the human rights movement. Yet, from the point of view of measuring effectiveness, such expanding standards of accountability can paint a more pessimistic picture than is warranted. Police violence in Brazilian *favelas*, for example, is the first example that Eric Posner uses in the

opening paragraph of his book *The Twilight of Human Rights Law* to illustrate his point that human rights are not respected more today than in the past, unaware that he has chosen an issue that clearly illustrates how the information paradox and the changing standard of accountability affect human rights data.⁹⁸

GUATEMALA

It can be difficult to discern human rights improvements in Guatemala as well. After the transition to democracy in Guatemala in the 1990s, two different truth commissions, one sponsored by the United Nations and the other by the Guatemalan Catholic Church, took extensive testimony on repression under the dictatorship.⁹⁹ Using the information from those commissions, the UN, with the assistance of Patrick Ball, arrived at much more precise estimates for the number of deaths and disappearances that had occurred in Guatemala than those that had appeared in AI or State Department reports. These estimates allow a year-by-year comparison of event-based data (in this case, actual counts of killings and disappearances) with the standard-based data produced by the CIRI and the PTS scales. While repression was severe during this entire period, there was a marked surge in killings and disappearances from 1980–1982 (during the Ríos Montt government), with 1982 being the worst year by far. Guatemala logged 25,928 identified and unidentified deaths and disappearances in the years 1980–1983, roughly seventy-nine percent of all deaths and disappearances that occurred between 1970 and 1995. This figure, large as it is, is likely an undercount; undoubtedly, some violations went unreported to the commissions.

Amnesty International and the State Department were not able to capture an accurate picture of the repression as it was occurring, despite the fact that they wrote their reports at nearly the same time as the events. The score based on the AI reports reflects the actual trend of repression, giving its worse possible score for the period of the genocide in 1980–1982, but the State Department reports, for reasons of political bias during the Reagan administration, failed to document the genocide as it occurred. Even so, the scales based on both the AI and State Department reports are “sticky” and not

able easily to record a subsequent decline in deaths and disappearances. The repression in Guatemala in the period 1980–1982 was also so severe that the government eradicated or silenced human rights organizations, thus eliminating an important source of information about repression.

In the mid-1980s, domestic human rights organizations began functioning again in Guatemala, although they still faced intense repression. The process of re-democratization in Guatemala after 1985 contributed to a more information-rich environment. Human rights organizations in turn did a better job documenting ongoing repression and that better documentation was reflected in the standard-based measures. According to the actual counts of deaths and disappearances, the number fell from 17,000 people affected in 1982 to 350 in 1993. Looking at the CIRI and PTS scores, however, it appears that there was virtually no improvement. A human rights activist might argue that, as long as there are 350 dead and disappeared, we should not speak of any improvements. But a social scientist would say that movement from 17,000 dead and disappeared to 350 constitutes improvement. The inability of the CIRI and PTS scales to reflect such changes complicates their usefulness for social science research.

The use of these standard-based measures influences quantitative studies on human rights effectiveness, including by scholars who have top-notch methods skills and the desire to make their mark with some counterintuitive findings. Take, for example, the previously mentioned articles suggesting that ratifying the Convention against Torture (CAT) is associated with an increase in the use of torture. More plausibly, when a state ratifies the CAT, the obligations of the Convention provide an opportunity for the international community to monitor that state more closely in order to see if it is complying with its newly accepted obligations under human rights law. This closer monitoring of torture then produces more awareness of torture, not more torture itself.

To be clear, I am not a data skeptic, rejecting quantitative data because it is less nuanced than case study work. I have used both CIRI and PTS in my research and I value them as data sources. However, I believe both scholars and activists should be aware of how and why human rights data may be biased and, therefore, care-

ful in their use. Scholars need to be more informed users of these data and human rights practitioners need to be aware that sometimes their increased skill in information politics could be used to claim that they are not having any positive effect. Most importantly, the data should not be treated as the objective measure of human rights; it should be used with great care when supporting a claim that a human rights situation has not improved. As my colleague Malcolm Sparrow reminds us, what is important to remember about invisible harms is that many measures we design to try to reveal them are not actually measures of the problem, but “composite measures that combine some information of the scope of the problem with the proportion of incidents that are reported.”¹⁰⁰ Despite problems with measurement, however, we must continue to measure, and to do so in different and creative ways.

After my article with Ann Marie Clark was published, Chris Fariss, a gifted methods scholar, produced a sophisticated and persuasive article making related arguments and providing modeling solutions. Fariss demonstrated that a new technique called latent variable modeling can be used to combine standard-based measures, like CIRI and PTS, with events data, which include actual lists of events related to human rights, to correct for the changing standard of accountability. Using this new model, Fariss then showed that the ratification of the CAT is associated with improvement in human rights, not a decline.¹⁰¹

Not all human rights data is subject to information effects. Events-based data are less susceptible than standard-based measures like CIRI and PTS, for example.¹⁰² As we saw earlier in this chapter, some human rights issues, like the right to education and the right to health, can be measured in more straightforward ways—literacy rates, the percentage of school-age children in primary schools, the percentage of children who receive immunizations, the infant and child mortality rates, etc. Events-based data that has been collected for a long time (such as literacy rates or infant mortality) will be more reliable for discerning trends than data that we have started collecting more recently and which have expanding definitions, such as data about violence against women and rape. Similarly, data about illegal practices that governments or individuals are trying to hide will be harder to obtain and will be more likely

to display information effects than data about more technical issues such as infant mortality, or more visible and centralized practices, such as the use of the death penalty.¹⁰³

Scholars such as Patrick Ball have devoted their careers to developing better data and warning scholars and activists about bad data.¹⁰⁴ Some data is better than no data, but not all sources of data are equal. Both activists and researchers need to develop more nuanced understandings of human rights information in order to measure change more accurately.

Conclusion

Although the information paradox may appear to be a technical issue, the stakes of this debate are high. Understanding whether and where human rights activism and laws are having an effect is an important, yet difficult task because much of the data we use to measure effectiveness is created by human rights movements and institutions. We know that human rights activists have been effective in using information politics in creating new issues, putting those issues on the agenda, and constructing a changing standard of accountability for what constitutes a human rights violation. At the same time, because we are increasingly inundated with dire human rights information and because it is difficult to measure progress in this area, the common belief is that core physical integrity rights in the world are getting worse.

What are the implications of this argument for activists and scholars? First, I think it is incumbent on both activists and scholars to be aware of the issues discussed here: cognitive heuristics and biases, comparison to the ideal, changing standards of accountability, and the information paradox. Second, we need to be aware that we are not alone in thinking about these problems and trying to cope with them. Scholars in other disciplines have been grappling with such issues for many years and have developed concepts and solutions that may be of use to human rights scholars and activists, concepts such as invisible harms and the availability heuristic. A colleague from the school of public health told me that public health research has been grappling for a while with what they call “surveillance bias” or detection bias, where they recognized that the

closer they look at some health issue, the more likely they are to find problems.¹⁰⁵

The human rights movement is essentially a movement seeking to make invisible harms visible. It does so by shining a light on the dark corners of the state. Amnesty International uses the symbol of a candle to show how they bring light to bear on previously invisible problems. Yet somehow the human rights movement and human rights scholarship have not always realized the repercussions of making invisible harms visible. One of those repercussions is that the harder we look for human rights violations, the more we find. In other words, our field too suffers from surveillance bias. We need to look to our colleagues in other disciplines who have been grappling with these issues for a more extended period of time for new means of research and analysis.

Activists also need to be aware of the possible unintended negative consequences of their work. In an even more complex way, such people need to know that their work can simultaneously have both positive intended effects and negative unintended effects. The positive intended effect of changing standards of accountability is that more rights are recognized; the negative unintended effect is that some people may use this as evidence that the world is getting worse and, therefore, become discouraged. Keeping this in mind, perhaps human rights activists should rely less on information politics, less on so-called “naming and shaming,” and more on what we might call “effectiveness politics”—identifying techniques and campaigns that have been effective at improving human rights. The human rights movement should explore new tactics in human rights rather than assume that producing another report is the best approach to every human rights problem.¹⁰⁶ For example, activists in Serbia trying to secure the release of their detained colleagues found that it was more effective to hold an outdoor rock concert outside the gates of the jail focused on getting the prisoners released than to write another report or do a press release. Likewise, human rights activists might work less on constantly pressing to raise the standard of accountability and more on making sure that existing standards of accountability are not flouted.

Human rights progress is not inevitable, but rather contingent on continued commitment and effort. Without the belief and untir-

ing activity of activists, change often will not occur. But if activists and their supporters come to believe that their efforts on behalf of human rights are suspect or even counterproductive and thus retreat to inactivity, human rights progress could indeed stall or move backwards. Some expectation of hope sustains human rights work. Although hope in itself is insufficient, work sustained by reasoned, well-informed hope is not.