Are Constitutional State of Emergency Clauses Effective? An Empirical Exploration

Linda Camp Keith* & Steven C. Poe**

ABSTRACT

We aim to complement the work of legal scholars by investigating the effects of constitutional provisions for states of emergency, on the respect for personal (or physical) integrity rights, in instances in which governments are confronted with domestic crises. Our findings show that such constitutional provisions have an important impact on governments’ propensities to abuse such rights. However, these impacts are not always what one might expect, and indeed, our findings suggest that following the recommendations of lawyers groups may actually have a damaging effect on human rights in many instances.

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Ordering of the authors’ names is alphabetical, indicating that the research was a team effort to which we contributed equally. We thank Sabine Carey, Sonia Cardenas, and Neal Tate for their helpful comments on a previous version of this paper and Mark Gibney and Michael Stohl who have generously shared their data with us. Much of our data were gathered with the support of the National Science Foundation through Grant SBR-9321741 of the Division of Social, Behavioral, and Economic Research. We thank NSF for its support while retaining responsibility for our opinions and any errors therein.
I. INTRODUCTION

With the fall of the Soviet Union and the dissolution of its dominion, numerous countries gained their independence and new governments came into being. As a result of these changes and the death of autocratic governments in other parts of the world, myriad experiments with democratic governance have been initiated. In nearly every one of these cases, new rules for the “political game” are established through enacting new constitutions or by adding new provisions to old ones.

Many legal scholars study these constitutions and their distinctive provisions under the assumption that the specific wordings of constitutions affect the actions of both citizens and political institutions within sovereign states. One issue that has been of concern is the constitutional provisions that govern how governments may permissibly react when they believe themselves to be threatened.¹ On first blush, the reasons for these scholars giving attention to constitutions are compelling; if laws do indeed shape behavior, then particular constitutional provisions may be expected to work to decrease the repression and human rights abuse that frequently occurs in times of trouble. Carefully crafted they might be effective in decreasing human suffering.

Moved by such humanitarian motives, law groups such as the International Commission of Jurists (ICI) and the International Law Association (ILA) make recommendations regarding what state of emergency provisions should and should not be included in constitutions. As yet, however, no one has systematically tested whether these recommendations actually have the effects these groups intend, in empirical reality. Our aim in this study is to complement the work of legal scholars by filling this void and simultaneously to contribute to social scientists’ understanding of why human rights abuses occur. While statistically controlling for factors already known to affect states’ propensities to abuse human rights, we will examine the impacts of constitutional provisions for states of emergency in situations in

which regimes face a range of domestic threats: nonviolent organized protest, nonviolent organized rebellion, organized violent rebellion, and civil war. We will analyze a global data set of countries, for the period of 1976–1996, focusing on the set of human rights pertaining to personal (or physical) integrity.  

II. RELATED SCHOLARLY TREATMENTS

A. The Recommendations of Lawyers’ Organizations

As we alluded above, legal scholars have expended substantial effort in trying to identify and promote the appropriate legal standards and safeguards to protect human rights during states of emergency that are declared as result of domestic threats. One organization that has studied this matter and publicized recommendations meant to improve human rights is the prestigious ICJ, which has been the recipient of several human rights awards, including the European Human Rights Prize and the United Nations Human Rights Award. They recommend that state constitutions should clearly set out the conditions under which states of emergency may be declared and exercised so that 1) regimes that resort to emergency clauses in good faith will know in advance the extent and limit of their emergency powers; and 2) regimes not disposed to respect the limits of their authority may be judged according to the extent to which they live up to these specific rules.

The ICJ further recommends that constitutions specify that emergency measures may not affect those rights recognized as nonderogable in international law, and that they should spell out the effects of states of emergency on the rights of citizens and the powers of the various branches of government. Finally, the ICJ states that constitutions should enumerate and define situations that justify departure from the normal legal order and

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establish a procedure for declaring a state of emergency that 1) gives primary responsibility to the legislature; 2) specifies the duration of the emergency; and 3) periodically reviews the need for its continuation.5

A quite similar set of recommendations for constitutional provisions regulating states of emergency was put forward by another group of international lawyers and law scholars, the International Law Association (ILA). This organization’s Paris Minimum Standards6 restate that constitutions should require that states of emergency be extendable only with the legislature’s approval but adds that the legislature should not be dissolved during the emergency; and, if the state is a party to a regional or international treaty, that the emergency be subject to judicial or other review. In agreement with these organizations is the United Nations Commission on Human Rights, which takes the position that explicitly and clearly defining limitations on constitutional rights is better than leaving the question of acceptable restrictions open to interpretation by omitting any discussion of limits.7 If limits are specifically enumerated, it is thought, regimes will have only limited circumstances under which they can legitimately suspend constitutional rights.

B. Theoretical Foundations in the Social Science Literature

Constitutional provisions are but one of many provisions that are likely to have an effect on countries’ propensities to abuse human rights. Beginning in the late 1980s and early 1990s, social scientists have investigated the issue of why human rights are abused.8 Researchers have theorized on these

5. Id. at 32–34.
issues and found that a number of factors, including democracy, population, international and civil wars, and economic development, exercise important impacts on repression.

Our recent work in this vein theorizes that states abuse personal integrity rights because their principal political leaders are willing to repress and because they have the opportunity to act on that willingness. We assume that political leaders are rational actors and that they choose to commit abuses of personal integrity rights because they see these actions as the most effective means to achieve their chief end, which is to stay in power. The most pervasive factor that increases leaders’ willingness to repress is a threat to the leaders’ rule, whether real or perceived. The more serious the threat, the more willing leaders are apt to be to use repression.

The theory that threats are central to an explanation of repression has frequently been borne out in statistical studies. These studies have focused on a variety of threats, ranging from international and civil war to nonviolent forms of rebellion. So that the perception of threat leads to the abuse of personal integrity rights is not in much doubt. What is less clear, however, is whether the leaders’ tendency to abuse human rights in reaction to perceived threats is affected by what Madison referred to as the “parchment barriers” provided by constitutions and by state of emergency clauses, in particular. The existence of such clauses may be pivotal because a state of emergency is, in essence, a period of loosened constraints against

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abuses of power. Leaders’ opportunities to abuse human rights, and their willingness to do so are apt to increase once an emergency condition is enacted. If constitutions can prevent unwarranted conditions of emergency, then perhaps human rights abuses will be lessened.

A few empirical studies have investigated whether constitutions do exercise important impacts on human rights. Some have yielded ambiguous results\(^{11}\) but three of the most recent and most comprehensive studies have provided evidence that constitutions do provide some protection from human rights abuse.\(^{12}\) As of yet, however, no empirical study has investigated the effects of state of emergency provisions on human rights abuse. Our study is important because it is the first to examine this issue. Another distinguishing feature of our research is that, in addition to using a global data set of all available cases, we will conduct analyses on data sets including only cases in which regimes face serious domestic challenges. Thus we can focus on the situations in which serious human rights abuse is most likely to occur. For these reasons, and others discussed above, our findings regarding the effects of these provisions should be of interest to both social scientists and legal theorists.

### III. HYPOTHESES

Based on the arguments above, we pose four hypotheses and subject them to empirical testing:

**H1:** Countries that have constitutions that provide for the legislature to have power to declare states of emergency will have less personal integrity abuses than countries in which constitutions provide for the executive to have this power.

**H2:** Countries whose constitutions prevent legislatures from being dissolved will experience less personal integrity abuses than countries in which the legislature can be suspended.

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H3(a): Countries whose constitutions provide for states of emergency to be specified for a set time, with extensions subject to legislative approval, will have governments that commit less personal integrity abuses than countries whose constitutions have no such provisions.

H4(a): Countries whose constitutions include a provision indicating that some rights cannot be revoked will experience less personal integrity abuses than those which do not.

It is important to note, however, that in contrast to the recommendations of the lawyers’ groups discussed above, there is an alternative view that argues that rather than serving as obstacles, some provisions may sometimes serve as invitations to increase repression. Along these lines, Grossman showed that most Latin American constitutions have emergency clauses that are supposed to apply only in relatively restricted circumstances. However, he found that in periods of emergency rule, constitutional rights were often broadly suspended, and that the constitutional emergency provisions actually served as a “rationalization for deprivation of human liberties.” Similarly, a global, quantitative study found that derogations under the International Covenant of Civil and Political Rights led to suspensions of rights well beyond those allowed under the treaty’s derogation clause.

We believe that sufficient theoretical justification exists for us to pose two alternative hypotheses. A constitutional listing of individual freedoms and rights that may not be derogated during an emergency may in fact be interpreted by executives to imply that at least some other rights may justifiably be denied because of the special circumstances. The implication that some rights may be denied during an emergency may provide regimes with a cloak of legitimacy that facilitates their denial of human rights, even those that are supposedly nonderogable.

Additionally, there is good reason to believe that setting a time limit on states of emergency has the unintended consequence of encouraging human rights abuse. The purpose of the provision is to prevent situations in which a state of emergency is allowed to continue for so long that a near-permanent state of emergency evolves. However, such provisions may


actually act to encourage governments to enact, and then to extend, states of emergency. For example, the citizens of Peru, whose constitution limits states of emergency to sixty days and then requires a new declaration, endured a near-permanent state of emergency in the 1980s, extending the state of emergency over thirty times between 1983 and 1987. Similarly, between June 1984 and July 1985, El Salvador made fourteen extensions to its states of emergency by legislative decree. Pakistan, under General Zia-ul-Haq in the late 1970s and 1980s is another example of institutionalized state of emergency, despite constitutional provisions.

Therefore, the following alternative hypotheses are also posed:

H3(b): Countries whose constitutions provide for states of emergency to be specified for a set time, with extensions subject to legislative approval, will have governments that commit more personal integrity abuses than countries whose constitutions have no such provisions.

H4(b): Countries whose constitutions include a provision indicating that some rights cannot be revoked will experience more personal integrity abuses than those which do not.

Next we will discuss our measures of key concepts, beginning with our indicators for constitutional treatments of state of emergency declarations.

IV. MEASURES OF KEY CONCEPTS

A. Constitutional Provisions for States of Emergency

In order to test the hypotheses outlined above, we created four indicators of constitutional regulation of states of emergency. Data were gathered by analyzing the content of Blaustein’s *Constitutions of the World* and Flanz’s *Constitutions of Countries of the World*. The four variables we created to test hypotheses one through four, are respectively:

1. Legislative Declaration. This variable is coded 2 = responsibility for declaring the state of emergency is given explicitly to the legislative
branch; 1 = states of emergency (declared by the executive) are explicitly subject to confirmation by the legislature; 0 = no mention of who has the power to declare such a state; and −1 = the executive branch is explicitly given the power to declare a state of emergency with no mention of a role for the legislature or courts.

2. Cannot Dissolve Legislature. This variable is coded 2 = the legislature may not be dissolved during the emergency or meets “by right”; 1 = vague provision for legislature meeting but no explicit prevention from dissolving the legislature (i.e., may say that legislature can prolong length of session or can reconvene); 0 = no mention of dissolving legislature in regard to states of emergency; and −1 = automatically suspends the legislature during a state of emergency or gives the executive explicit power to do so.

3. Duration Limited. This variable is coded 2 = duration of the emergency is specified for a set time period and extensions are subject to legislative approval; 1 = duration is specified or legislative approval is specified but not both; and 0 = no mention of duration or extension process.

4. Nonderogable Rights. This is a dichotomous (or binary) variable coded 1 = constitutions give a list of nonderogable rights or include a statement that certain rights/freedoms cannot be revoked during states of emergency; and 0 = otherwise.

To our knowledge, no one else has gathered such extensive data on the state of emergency provisions included in national constitutions. For that reason, some descriptive analysis of our data will likely be of interest. At the top of Table One we present the frequency at which each of the levels of constitutional provision occur across the 3220 country-years in our data set. (Each country, in each year, represents a different data point, or country-year.) A quick look across all four provisions reveals that providing no constitutional provision for state of emergency is the modal, or most common category for all four variables. The findings yielded with the legislative declaration variable indicate that provisions dealing with what institution has the right to declare a state of emergency is the issue most commonly dealt with, of the four that we examine. Sixty-two percent of the constitutions in the country-years examined here have some provision for outlining the actor responsible for declaring the emergency. However, 33 percent of the constitutions allow the executive to exclusively declare the state of emergency, a provision that runs counter to the advice of the ICJ and ILA. However, approximately the same percentage of constitutions (30 percent) do follow the ICJ and ILA guidelines and place some legislative restraint on the executive in declaring states of emergency, either by
requiring legislative approval (24 percent) or by requiring that the legislature declare the emergency (only 6 percent).

The second constitutional provision that is aimed at ensuring a legislative check by banning dissolution of the legislature during a state of emergency (as suggested by the ILA) was largely absent from state constitutions during the 1976–1996 period. Eighty-one percent of the constitutions...

**TABLE 1**

by country years

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<td>(38%)</td>
<td>(24%)</td>
<td>(6%)</td>
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<td>2611</td>
<td>325</td>
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<td>(65%)</td>
<td>(10%)</td>
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<td>(90%)</td>
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**Frequency of the States of Emergency Provisions**
1977 and 1996

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<td>4</td>
<td>103</td>
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<td>(78%)</td>
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<tr>
<td>List of Derogable Rights</td>
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have no such provision. Only 18 percent of the constitutions either fully ban dissolving the legislature (8 percent) or at least partially protect it (10 percent) during a state of emergency. One percent of the constitutions went so far as to automatically dissolve the legislature when a state of emergency is declared. Thirty-five percent of the constitutions to some degree follow the recommendations of ICJ by including at least some constitutional limit of the duration of a state of emergency. Twenty-five percent do so fully, 10 percent do so in a qualified manner, while 65 percent make no mention at all of time limits.

This provision is the second most commonly found among the four examined here, which may not necessarily be a positive circumstance, if our alternative hypothesis (3b) is supported. The least prevalent constitutional provision is the list of derogable rights; only 10 percent of the constitutions contain this, while fully 90 percent of the cases did not, in the years 1976–1996. This does not follow the recommendation of the International Commission of Jurists, but there are those who would argue that this is beneficial given the level of empirical evidence that suggests the clause produces unintended consequences.

The above analyses do not give any indication of trends in the data, as they pool all of the country-years together in a single analysis. Therefore, in the second half of Table One we present a yearly comparison between 1977 and 1996. (We choose 1977 instead of 1976 because substantially more countries were available for analysis in the latter year, providing a better baseline for analysis.) Some simple comparisons indicate that a significant trend toward adding these constitutional provisions occurs over the course of two decades and that this trend is both as a result of changes of constitutions within countries and of new countries being added to the data set between 1977 and 1976. Corresponding with this change, we observe decreases in the percentage of constitutions without emergency clauses (category 0) across all four provisions. There is a 27 percent decrease in number of countries that have no provisions giving the legislature a say in declaring a state of emergency and a corresponding increase of 27 percent in the number of countries adopting clauses that place at least some the responsibility for declaring a state of emergency on the legislature (categories 1 and 2). There is a 1 percent decrease in the percentage of countries that constitutional give the executive this power between 1977 and 1996.

We also see a four-fold increase in the percent of countries that ban dissolution of the legislature during a state of emergency. The percentage of

19. When examining the source of changes between these two years on these four provisions we found that the changes are due to forty-eight countries either being added or deleted from the dataset and from changes within fifty-five countries that continue in the dataset for both years.
countries in category 2 of this variable, which contained this constitutional provision, was 18 percent in 1996 as compared to only 4 percent in 1977. In raw numbers this represents an increase of twenty-two countries that have this constitutional provision, during this twenty-year period.

The percentage of countries that limit the duration of states of emergency (categories 1 and 2) triples from 1977 to 1996, increasing from 23 percent to 67 percent. Finally, the percentage of countries with lists of derogable rights doubles, from 10 percent to 20 percent. Thus we see an unmistakable trend toward more countries following the recommendations of the ICJ and ILA.

In analyses we will describe later, each of these four variables will be subjected to bivariate and multivariate analyses to find their correlation with our dependent variable, human rights abuses pertaining to integrity of the person, in periods in which the regime is threatened. However, before moving on to these analyses we must discuss our measure of human rights, our measure of threat, and some other statistical controls.

B. Personal Integrity Rights Abuse

The human right to personal integrity is the right not to be imprisoned, tortured, killed, or made to disappear either arbitrarily or because of political affiliations or convictions. While the components of this right are not inclusive of all international rights, they represent some of the most egregious and severe crimes against humanity. Arguably more important, these core rights are those that would have to be fulfilled in order for the provision of the other rights to be meaningful. The measure of state abuse of personal integrity rights used here is known as the Political Terror Scale, originally developed by Michael Stohl and several others.20 From the

narrative accounts in the annual reports of the United States State Department and of Amnesty International, these investigators construct indicators that assess state abuse of personal integrity rights. Each measure consists of a rating scale that ranges from 1 to 5, with 1 assigned to states with the lowest, and 5 to states with the highest, levels of personal integrity abuse. To determine what rating should be assigned to a given nation in a given year, raters use the following rules:

1) Countries [are] under a secure rule of law, people are not imprisoned for their views, and torture is rare or exceptional. Political murders are extremely rare.

2) There is a limited amount of imprisonment for nonviolent political activity. However, few persons are affected, torture and beating are exceptional. . . . Political murder is rare.

3) There is extensive political imprisonment, or a recent history of such imprisonment. Execution or other political murders and brutality may be common. Unlimited detention for political views, with or without trial, is accepted.

4) The practices of [level 3] are expanded to larger numbers. Murders, disappearances are a common part of life. . . . In spite of its generality, on this level terror affects primarily those who interest themselves in politics or ideas.

5) The terrors of [level 4] have been expanded to the whole population.

The leaders of these societies place no limits on the means or thoroughness with which they pursue personal or ideological goals.21

In this paper we limit our analysis to the state terror scores that are based on the Amnesty International reports, unless data were missing from that source, in which case the index gained from the US State Department Reports was substituted.22


22. We are comfortable doing this because previous research has shown that the two indexes are highly correlated. The State Department Reports do apparently have a slight bias against leftist countries and in favor of US allies, particularly in the earlier years covered by our data. See Steven Poe et al., How are these Pictures Different: Assessing the Biases in the U.S. State Department’s Country Reports on Human Rights Practices, 23 HUM. RTS. Q. 650 (2001).

We determined to use mainly the measure gained from the Amnesty International
C. Measures of Domestic Threat

Having discussed our measures of the independent and dependent variables, we will now present our measures of threat. The reader will remember that we have hypothesized that institutional mechanisms such as constitutional provisions may act either to increase or decrease the probability that regimes will respond to threats with repression. We must, therefore, provide measurements of the concept of threat, in order to isolate whether such relationships exist. Further, previous research has shown that the degree to which regimes perceive themselves to be subject to threats is an important determinant of repression and human rights abuse. So these variables will also be entered into the models as statistical controls, where appropriate. Here, and in previous research, we distinguish between four types of events or actions that would potentially be perceived as threats: 1) nonviolent protest; 2) nonviolent rebellion; 3) violent rebellion; and 4) civil war.

A threat that is characterized by nonviolent protest is one in which a mostly unarmed opposition regularly confronts the regime over one or more of its policies using demonstrations, riots, and other unconventional forms of political participation to express disagreement. The demonstrations in Panama (over the Panama Canal Treaty) and the Shah of Iran’s asylum during 1979 and 1980 are examples of this type of threat.

A threat which is characterized by nonviolent rebellion is one in which an unarmed opposition pushes for significant change in the constitution or other political institutions through unconventional means not involving organized violent activities. The difference between nonviolent rebellion and organized nonviolent protest is that in the former the goal of the

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Reports because it is not subject to the charges leveled against the State Department Reports. Note, though, that in practice the two indexes have yielded nearly identical results in statistical analyses of the determinants of repression. See Poe & Tate, Repression of Human Rights to Personal Integrity in the 1980s, supra note 8; Poe et al., Repression of Human Rights to Personal Integrity Revisited, supra note 8. Although using the State Department measure to fill in missing data has the potential for introducing the small biases found by Poe et al., How are These Pictures Different, supra note 22, only a few cases could potentially be affected, since Amnesty International already covers most of the countries that would be affected. The danger is small when compared to the difficulties posed by a bias in the sample that would have been introduced had we left out those cases altogether.

23. See, e.g., Poe et al., The Continuity of Suffering, supra note 10.
24. Here we do not use the term nonviolence strictly, as Gandhi, King, and their followers do. If organizations were mostly unarmed and violence appeared to be unplanned and incidental, as is the case in many riots, we coded the threat nonviolent. Had we applied the strict definition of this term that some prefer, very few cases would have been nonviolent and the category of violent threat would be diluted by the inclusion of many less serious threats, in which violence was infrequent.
opposition is more threatening because it pushes for broader institutional or constitutional change in contrast to the latter, in which the opposition seeks narrower, policy change. The massive student demonstrations in South Korea (over political reform and military power) during 1980 are an example of a threat due to nonviolent rebellion.

A threat that can be called violent rebellion occurs when there is a substantial organized movement that seeks to alter the governmental system, bringing about a significant change in the constitution or other political institutions through armed attacks, including terrorist activities, guerrilla movements, and most attempted coups, but not full scale civil war. The terrorist activity of the Basque separatists in 1978 is an example of this type of threat. Consistent with Hypothesis 3 we expect violent rebellion to be perceived by regimes to be more serious than the nonviolent threats mentioned above.

Finally, civil war is the most violent of threats, seeking nothing less than a removal of the present government by extraconstitutional means. Presumably, then it will be perceived by regimes to be the most serious of the domestic threats that we investigate here. In order to operationalize this concept, we employ data gathered by Singer and Small, where that concept is defined as a conflict in which “at least 1,000 battle deaths resulted and in which military action was involved, the national government was a participant, and in which there was an effective resistance.” 25 We excluded from the list of civil war participants those countries that had intervened in civil wars abroad (i.e., the former Soviet Union in Afghanistan).

Our hypothesis, supported by a recent empirical study, is that violent actions are perceived to be more threatening to regimes than nonviolent ones and that rebellions are perceived to be more threatening than protests.26 Further, we believe we will find a difference in the effects of various states of emergency provisions, depending on the level of threat to which a government is responding.

We expect that during civil wars, the highest level of domestic threat states can experience, these clauses will decrease the violation of personal integrity rights. We reason that a state of emergency is the equivalent of self-defense in penal law, a circumstance in which it is held to be permissible to engage in behaviors that would otherwise be unlawful.27 We expect that the

27. See, e.g., ICJ, supra note 4, at 413.
closer the level of threat is to a true public emergency, the more likely that the constitutional provision will work as it is intended—to prevent the abuse of states of emergency and to prevent gross human rights violations. However, as we argue above, some regimes have used even threats of the lowest level as convenient justifications to suppress opposition. In these cases states of emergency clauses offer a potential legal cover for persecution, with the effect that regimes may be willing to use repression even when they are not seriously threatened. If regimes do in fact use states of emergency clauses as rationalizations for increased human rights abuse, we would expect to see that these clauses are associated with increased human rights abuse at lower levels of threat. To test our expectations we will conduct statistical analyses on subsamples, separated according to the level of threat faced by a regime in a particular country-year.

To determine whether regimes experienced nonviolent protest, nonviolent rebellion, or violent rebellion in a given year we developed “standards-based” judgmental measures, similar to those we used to measure the concept of personal integrity abuse. A standards-based measure is derived by having coders read standard source material about the political happenings in a set of nations during a given period of time in order to reach and record judgments as to whether or to what extent the phenomena of interest took place. Here the coders recorded whether or not, for each calendar year included in our study, each nation for which we could obtain data experienced each of the types of potentially threatening events we sought to measure.

In order to code the nonviolent protest, nonviolent rebellion, and violent rebellion experience of the world’s countries we examined historical narratives published annually in three sources, the Europa Yearbook, The Political Handbook of the World, and the Country Reports on Human Rights Practices. We analyzed the content of each of these sources, employing the criteria outlined above, to identify when various kinds of threat were present. We found that the Europa Yearbook mentioned the vast majority of the threats and that this source usually provided the best discussion and background information of the three sources, but each source was examined for each country-year. Each of the threat variables was coded as a dichotomous variable: (1) when a particular type of threat was judged present in a given country in a given year and (0) when no such threat was present.

28. Id. at i.
D. Control Variables

Oftentimes, simply looking at the correlation between two variables can be misleading. The presence of a significant correlation between two factors may indicate the presence of an important relationship, or it may come about as a result of a spurious relationship with another variable that has not been considered. Also, in some instances an important relationship between an independent and dependent variable may be obscured in a bivariate analysis, because other important factors were not considered. Therefore, to provide for the most stringent statistical tests possible, we will construct a multivariate model that controls for factors shown in previous research to have important effects on personal integrity abuse.

Because the “control” variables are not our primary focus we will describe them only briefly. For the theoretical justification of each variable and a better discussion of how they are measured, we will refer the reader elsewhere. These variables are:

1. Population Size: Population size has usually been shown to increase personal integrity abuse in previous crossnational research. To operationalize this variable, we use the natural logarithm of the total national population to correct for the highly skewed distribution of the population data.

2. Economic Development: Economic development has been found to decrease personal integrity abuse in most studies. We operationalize economic development as the state’s per capita GNP (in thousands of dollars).

3. Civil War Experience: Involvement in a civil war has consistently increased personal integrity abuse. Following Small and Singer, we find instances of civil war when the “central authority” in a country is “organized for violent conflict” and directly involved in a war with a similarly organized resistance in which each side is able to inflict “at least [5 percent] of the fatalities it sustains.”

4. International War Experience: Involvement in international war has also consistently increased personal integrity abuse. To operationalize international war involvement, we again follow Small and Singer. A nation experiences an international war when it is a participant in a conflict in which more than one national government is directly involved and in which “1) there was a total of a thousand or more battle deaths suffered by all of the participants in the conflict, [and] 2) the particular country suffered at

29. Poe & Tate, Repression of Human Rights to Personal Integrity in the 1980s, supra note 8; Poe et al., Repression of Human Rights to Personal Integrity Revisited, supra note 8; Poe et al., The Continuity of Suffering, supra note 10.

30. See, Henderson, supra note 8.

least a hundred fatalities or had a thousand or more personnel taking part in the hostilities."

5. Political Democracy: Democracy has had a powerful and consistent negative effect on repression of personal integrity rights in prior research. In examining measures of democracy that are available for most of the countries and years we analyze, we have concluded that those contained in the polity data sets created by Gurr and his collaborators allow us to achieve the separation we desire more effectively than other variables currently available because they focus on the electoral process of the country’s executive. The specific measures we use in this analysis are drawn from the Polity 98 data set.

IV. IDENTIFYING THE EFFECT OF STATE OF EMERGENCY PROVISIONS

A. Bivariate Analyses

Tables Two through Five provide a first look at the relationship between the state of emergency provisions and personal integrity abuse, for the 2,552 cases for which data are available in the multivariate analysis that will follow. Chi-squared tests show that all of the associations are statistically significant at .0001. Table Two, which examines the legislative declaration provision, demonstrates a rather clear relationship. When we look at the most severe levels of abuse (score 4 and 5) we see that the largest percentage of countries earning these scores falls in the −1 category where executives have exclusive power to declare the emergencies: 40 percent (134 of 335) of level 4 and 40 percent (fifty-six of 141) of level 5. The smallest percentage of countries earning these high scores are those with a provision that places the responsibility for the declaration solely within the legislature: only 7 percent (twenty-four of 335) of these countries earn level 4 and only 11 percent (sixteen of 141) earn level 5.

The patterns in regard to the constitutional ban against dissolving the legislature (Table Three) are not as clear because of the distribution of the variable. Since only 1 percent of the countries have the negative provision it is hard to observe a relationship there. When we look at the other three levels of provision, we see that level 4 and 5 abuses are the least frequently occurring scores for each level of constitutional provision. For each level of

32. Id. at 50, 55.
terror we find the largest percentage of countries to have no provision at all for protecting the legislature during a state of emergency. Again, simply looking at the bivariate cross-tabulations in regard to this provision does not afford much insight.

When we examine the duration provisions in Table Four, we can observe a somewhat clearer pattern. The provision is positively associated with human rights abuse. Looking across the distribution of countries with either full or partial provision for limited duration on a state of emergency, a total of 38 percent fall within level four of the terror scale, compared to only 11 percent of those that have no such provision. Additionally, we find that 16 percent of the countries have either full or partial provision for limited duration on a state of emergency fall within level 5 of the terror scale, compared to only 5 percent that have no such provision. This result strongly suggests that our alternative hypothesis is likely to be supported in regard to the duration provision.

Table Five presents the bivariate relationships for the constitutional provision for a list of nonderogable rights. Roughly equal percentages of

<table>
<thead>
<tr>
<th>Level of State Terror</th>
<th>Presidential Declaration</th>
<th>No Provision</th>
<th>Legislative Ratification</th>
<th>Legislative Declaration</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>96</td>
<td>327</td>
<td>99</td>
<td>40</td>
<td>562</td>
</tr>
<tr>
<td>2</td>
<td>281</td>
<td>266</td>
<td>146</td>
<td>60</td>
<td>753</td>
</tr>
<tr>
<td>3</td>
<td>306</td>
<td>252</td>
<td>161</td>
<td>42</td>
<td>761</td>
</tr>
<tr>
<td>4</td>
<td>134</td>
<td>79</td>
<td>98</td>
<td>24</td>
<td>335</td>
</tr>
<tr>
<td>5</td>
<td>56</td>
<td>39</td>
<td>30</td>
<td>16</td>
<td>141</td>
</tr>
<tr>
<td>TOTAL</td>
<td>873</td>
<td>963</td>
<td>534</td>
<td>182</td>
<td>2552</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Level of State Terror</th>
<th>Explicit Right to Dissolve</th>
<th>No Provision</th>
<th>Qualified Protection</th>
<th>Fully Banned</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>0</td>
<td>471</td>
<td>56</td>
<td>35</td>
<td>562</td>
</tr>
<tr>
<td>2</td>
<td>2</td>
<td>597</td>
<td>66</td>
<td>88</td>
<td>753</td>
</tr>
<tr>
<td>3</td>
<td>10</td>
<td>642</td>
<td>50</td>
<td>59</td>
<td>761</td>
</tr>
<tr>
<td>4</td>
<td>10</td>
<td>264</td>
<td>41</td>
<td>20</td>
<td>335</td>
</tr>
<tr>
<td>5</td>
<td>0</td>
<td>100</td>
<td>31</td>
<td>10</td>
<td>141</td>
</tr>
<tr>
<td>TOTAL</td>
<td>22</td>
<td>2074</td>
<td>244</td>
<td>212</td>
<td>2552</td>
</tr>
</tbody>
</table>
countries with and without the provision fall within the highest level of abuse (level 5): 5.5 percent of those with no provision and 5 percent of those with the provision. However, twice as high a percentage of those countries with the provision (25 percent) than those without such a provision (12 percent) earn the second worst abuse score of level 4. These results are somewhat mixed but suggest that this provision may be problematic as well.

The bivariate analyses offer a significant initial insight into the relationship between the constitutional provisions and human rights abuse, but our conclusions must be tempered because the analysis does not control for other factors that are known to affect levels of state repression.

### B. Multivariate Analysis

Our next step in analyzing the effects of these constitutional provisions on human rights abuses is to include our four constitutional variables in a model with several controls, for the population of available cases, 1976–1996. This model does not directly address the issue of how these constitutional provisions affect governments’ use of repression in states of emergency, but its results will serve as a baseline with which we can compare later models.

These findings, presented in the first column of Table Six, give us no evidence that any of the Constitutional State of Emergency Provisions are generally helpful. The coefficients indicate the change in the dependent variable (human rights abuses) that is associated with a one-unit change in

### TABLE 4
Constitutional Provision for Limited Duration of State of Emergency

<table>
<thead>
<tr>
<th>Level of State Terror</th>
<th>No Provision</th>
<th>Qualified Provision</th>
<th>Full Provision</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0</td>
<td>1</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>395</td>
<td>40</td>
<td>127</td>
<td>562</td>
</tr>
<tr>
<td>2</td>
<td>525</td>
<td>57</td>
<td>171</td>
<td>753</td>
</tr>
<tr>
<td>3</td>
<td>531</td>
<td>60</td>
<td>170</td>
<td>761</td>
</tr>
<tr>
<td>4</td>
<td>181</td>
<td>41</td>
<td>113</td>
<td>335</td>
</tr>
<tr>
<td>5</td>
<td>79</td>
<td>16</td>
<td>46</td>
<td>141</td>
</tr>
<tr>
<td>TOTAL</td>
<td>1711</td>
<td>214</td>
<td>627</td>
<td>2552</td>
</tr>
</tbody>
</table>
the independent variable (i.e., constitutional provisions). The standard errors, in parentheses, allow us to conduct tests of statistical significance, the results of which are indicated by the letters following statistically significant coefficients (see the bottom of the table for their meaning).

These findings do not indicate that the four constitutional provisions have the effects that are intended. The legislative declaration and ban against dissolution variables have negative coefficients that would indicate that they act to decrease state terror, but they are far from reaching conventional levels of statistical significance. In contrast, the variables tapping whether there are limits to duration of states of emergency, and whether there is a list of nonderogable rights indicate that such provisions actually are associated with greater personal integrity abuses, ceteris paribus. Each of these variables is statistically significant at about the .01 level, two-tailed test, meaning that we know with 99 percent confidence that the coefficients of these variables are actually different from zero, in the indicated direction.

The relationships found for each of the control variables is in the hypothesized direction. Consistent with previous research on this topic, the strongest independent variable is lagged repression; again indicating that there tends to be substantial continuity in human rights abuses. The R-squared of this model is .73, indicating that the variables account for 73 percent of the variance in human rights abuses. This is comparable to the explanatory power achieved in previous research on this topic.

<table>
<thead>
<tr>
<th>Level of State Terror</th>
<th>No Provision</th>
<th>Qualified Provision</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>514</td>
<td>48</td>
<td>562</td>
</tr>
<tr>
<td>2</td>
<td>702</td>
<td>51</td>
<td>753</td>
</tr>
<tr>
<td>3</td>
<td>707</td>
<td>54</td>
<td>761</td>
</tr>
<tr>
<td>4</td>
<td>281</td>
<td>54</td>
<td>335</td>
</tr>
<tr>
<td>5</td>
<td>130</td>
<td>11</td>
<td>141</td>
</tr>
<tr>
<td>TOTAL</td>
<td>2334</td>
<td>218</td>
<td>2552</td>
</tr>
</tbody>
</table>

35. We chose to employ a two-tail test of significance on these two variables. This test is more appropriate in instances when the researcher is unsure of the direction of the relationship. For all of the other variables one-tail tests are used.

36. Poe et al., Repression of Human Rights to Personal Integrity Revisited, supra note 8.
Having examined the general case, we will now focus on subsets of cases where governments were faced with various levels of threat. Our reasoning is that because repressive actions are frequently a reaction to threats perceived to be posed by dissident groups in order to test the effects of various state of emergency provisions, it makes sense to focus on cases where such threats are occurring.37 Further, the levels of threat posed by various dissident groups substantially differ. One might expect, for example, that a constitutional provision could be effective in inhibiting human rights

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### Table 6
Multivariate Human Rights Model Across Various Levels of Threat

<table>
<thead>
<tr>
<th></th>
<th>Full Model with all cases included</th>
<th>Countries with civil war only included</th>
<th>Countries with violent threats (Civil war, violent rebellion)</th>
<th>Countries with “mid-level threats” (rebellions short of war) included</th>
<th>Only Countries with non-violent protests included</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lagged State Terror</td>
<td>.63(.04)</td>
<td>.44(.09)</td>
<td>.62(.05)</td>
<td>.62(.05)</td>
<td>.58(.06)</td>
</tr>
<tr>
<td>Legislative Declaration</td>
<td>−.02(.01)</td>
<td>−.09(.05)</td>
<td>.03(.02)</td>
<td>.01(.02)</td>
<td>.01(.02)</td>
</tr>
<tr>
<td>Cannot Dissolve Legislature</td>
<td>−.03(.03)</td>
<td>−.02(.10)</td>
<td>.03(.04)</td>
<td>.005(.04)</td>
<td>−.03(.03)</td>
</tr>
<tr>
<td>Limited Duration*</td>
<td>.04(.02)</td>
<td>.13(.09)</td>
<td>.08(.03)</td>
<td>.10(.02)</td>
<td>.02(.03)</td>
</tr>
<tr>
<td>List of Non-Derogable Rights*</td>
<td>.11(.04)</td>
<td>−.49(.17)</td>
<td>.14(.07)</td>
<td>.20(.08)</td>
<td>.06(.06)</td>
</tr>
<tr>
<td>Population Size</td>
<td>.06(.01)</td>
<td>−.01(.04)</td>
<td>.07(.02)</td>
<td>.06(.02)</td>
<td>.07(.02)</td>
</tr>
<tr>
<td>Economic Development</td>
<td>−.01(.00)</td>
<td>.19(.09)</td>
<td>−.02(.01)</td>
<td>−.02(.01)</td>
<td>−.02(.01)</td>
</tr>
<tr>
<td>Nonviolent Protest</td>
<td>.04(.03)</td>
<td>.12(.09)</td>
<td>−.01(.04)</td>
<td>−.01(.04)</td>
<td>****</td>
</tr>
<tr>
<td>Nonviolent Rebellion</td>
<td>.09(.05)</td>
<td>−.10(.17)</td>
<td>.10(.06)</td>
<td>.10(.06)</td>
<td>.10(.05)</td>
</tr>
<tr>
<td>Violent Rebellion</td>
<td>.19(.03)</td>
<td>.07(.10)</td>
<td>.08(.09)</td>
<td>.17(.09)</td>
<td>.21(.05)</td>
</tr>
<tr>
<td>Civil War</td>
<td>.46(.07)</td>
<td>****</td>
<td>.39(.07)</td>
<td>.43(.07)</td>
<td>.58(.09)</td>
</tr>
<tr>
<td>International War</td>
<td>.11(.04)</td>
<td>−.10(.19)</td>
<td>.15(.08)</td>
<td>.13(.07)</td>
<td>.12(.07)</td>
</tr>
<tr>
<td>Democracy</td>
<td>−.04(.01)</td>
<td>−.01(.02)</td>
<td>−.03(.01)</td>
<td>−.03(.01)</td>
<td>−.03(.01)</td>
</tr>
<tr>
<td>Constant</td>
<td>−.006</td>
<td>2.21(.76)</td>
<td>−.07(.23)</td>
<td>.03(.25)</td>
<td>−.01(.23)</td>
</tr>
<tr>
<td>N</td>
<td>2552</td>
<td>215</td>
<td>919</td>
<td>966</td>
<td>1047</td>
</tr>
<tr>
<td>R-squared</td>
<td>.73</td>
<td>.39</td>
<td>.64</td>
<td>.63</td>
<td>.64</td>
</tr>
<tr>
<td>Prob &gt; chi-squared</td>
<td>.0000</td>
<td>.0000</td>
<td>.0000</td>
<td>.0000</td>
<td>.0000</td>
</tr>
</tbody>
</table>

*a* statistically significant at the .001 level, 1-tail test.

*b* statistically significant at the .01 level, 1-tail test.

*c* statistically significant at the .05 level, 1-tail test.

*d* statistically significant at the .10 level, 1-tail test.

*We apply a two-tail test of statistical significance, since it was unclear what direction we should expect the relationship to be in.
abuses in cases where the danger to the regime is not very serious (as with nonviolent protest) but that that they are ignored by governments in instances where the danger is immediate (as with civil war). We shall therefore look at the effects of constitutional provisions given different levels of threat.38

In the second column of Table Six, we present a model that was tested only in instances where civil wars were occurring, and as such, we focused on the cases where the threats to the regime were most serious. We note that the number of cases available for analysis here is only 215, much smaller than that for the previous analysis, but still sufficient to obtain meaningful results.

The findings indicate that in conditions of civil war, two of the four constitutional provisions do have the intended effect. The legislative declaration variable achieved a negative coefficient that is statistically significant at the .05 level (two-tail test). Further, the variable identifying states that included lists of nonderogable rights exhibits a strong negative, and statistically significant coefficient (−.49), indicating that, in instances of civil war, countries having such lists are indeed apt to have substantially less repression than others, ceteris paribus. By contrast, the variable tapping constitutional limits on the duration of states of emergency appears to increase the tendency to repress, just as it did in our previous examination of the general sample, though it misses statistical significance. Also noteworthy is that several of the control variables no longer exhibit their usual effects once civil wars begin, and thus this model explains much less variance than our baseline model (R-squared = .39). The coefficient of the lagged dependent variable is much lower, indicating that during times of civil war, repression levels are less stable. Also important is that in less dangerous threats to regimes, in the form of nonviolent protest, nonviolent rebellion, violent rebellion, and international war there are no significant effects, indicating that all of these threats are overridden in times of civil war. Neither does democracy have any impact, though it should be noted that full democracies being engaged in civil war is a rather rare event.

Having looked at the effects of these provisions during civil war, we next expanded our definition of threat to include all violent threats, in the form of both civil war and violent rebellion. The results that were yielded are shown in the third column of Table Six. In these cases, lists of nonderogable rights no longer have a negative (or good) effect, as the effect is positive and statistically significant at the .05 level.

38. We actually conducted analyses for several other levels of threat, including ones in which we examined findings with violent rebellions, and nonviolent rebellions, respectively. We choose to discuss only some of the findings because of our desire to simplify presentation. The results presented in Table Six are descriptive of the overall patterns.
Constitutional limits on the duration of states of emergency again appear to have a statistically significant impact that leads to greater repression, while the ability to dissolve the legislature and provisions that call for legislative declaration of states of emergency have no statistically significant effect, meaning that we cannot say with confidence that the effect is different from zero. It is interesting that once one adds to civil wars, by including a somewhat less dangerous set of violent threats, as we did here, no longer do any of the constitutional provisions inhibit repression. With regard to the control variables, international wars and democratic regimes do have a statistically significant impact under these conditions, but nonviolent rebellion and nonviolent protest have no significant effect. About 64 percent of the variance in human rights abuses is explained.

In a fourth set of multivariate analyses, we looked at what we call “mid-level threats,” rebellions that fall short of civil war, whether they are violent or nonviolent. Under these conditions the variables tapping limited duration and the ability to dissolve the legislature have their strongest positive impacts, increasing personal integrity abuses. The other constitutional provision variables have statistically insignificant impacts. Findings with the control variables, and the explanatory power of the mode, are very similar to those incurred in analyses of violent threats. Finally, in the right-most column of Table Six, we examine the effects of these constitutional provisions in instances of less serious threats, in the form of nonviolent protest. It is interesting that in these conditions none of the constitutional provisions have a substantially important or statistically significant impact on repression. Further, in analyses that are not shown, none of the constitutional provision variables were statistically significant if no domestic threat was present. Clearly, then, as we had surmised, the effects of constitutional provisions on human rights abuses depend upon the level of threat.

C. Assessing the Substantive Importance of Coefficients

So far we have focused mainly on the issue of statistical significance that is an assessment of the confidence we can have in our results, leaving aside the more important issue of how much impact constitutional provisions actually have on human rights abuse. Our interpretation of this issue is complicated a bit by the inclusion of a lagged dependent variable in the model. As a result, each of the statistically significant variables included in the model would be expected to exhibit an indirect impact through time, as a result of its effect through the lagged dependent variable. Assuming that a change occurs in an independent variable and that this change remains
stable across time, it will exhibit effect that increases until it becomes asymptotic (or stable) at a particular level.

In Figure One we present a simulation that assumes that the maximum possible change (from lowest to greatest value) has occurred in a given independent variable, at time “t,” and that the value of that variable then remains constant through time 10. We have chosen to base the simulation on the coefficients that were most positive, and most negative, for the constitutional provisions that were found to be statistically significant in Table Six. We see that the effect of a list of nonderogable rights during a time of civil war, is associated with just about an .85 decrease in the human rights abuse scale, ceteris paribus.

Though it is difficult to interpret this in terms of the ordinal dependent variable, this may be taken to mean that such a list would be apt to lead to a decrease of one repression category, if a civil war were to occur during a ten-year period. The effect of a constitution providing for a legislative declaration of a state of emergency (as opposed to giving that power to the executive branch) during a civil war is about a half a point decrease in the human rights abuse measure. So it is clear that there is a moderately strong probability of a decrease in repression, as a result of this constitutional provision, other factors held equal.
In conditions where midlevel threats, in the form of a violent or nonviolent rebellion are occurring, provisions limiting the duration of a state of emergency, or the presence of a list of nonderogable rights are associated with an increase in repression of about a half a point. Thus, we have found that various different constitutional provisions are apt to exhibit moderately important positive and negative impacts on human rights abuse, depending on the level of threat that faces a regime.

V. SUMMARY AND CONCLUSIONS

We examined constitutional state of emergency provisions for all available cases, and also in cases when governments face domestic crises, when one would expect constitutional clauses to be most relevant to human rights abuse. We found that the effect of such clauses depends on the level of threat a state is confronting. Constitutional provisions for states of emergency appear to have no effect when the countries experience only low-level, nonviolent threats. However, when governments are faced with violent or nonviolent rebellions short of civil war, provisions limiting the duration of an emergency, and those specifying lists of nonderogable rights are found to be associated with worse human rights abuse.

Only at the highest level of threat, when a government is faced with a full-scale civil war, do any of the provisions act to decrease abuses. We found that constitutionally removing the responsibility for declaring states of emergency from the executive and giving it to the legislative branch would decrease personal integrity abuses during civil war. While this formal legislative check on the executive does produce the effect the ICJ and ILA expect during times of civil war, the constitutional ban against dissolving the legislature during a state of emergency does not. Of course, if the legislature can effectively control whether an executive is able to declare a formal state of emergency, it is not as likely to need the protection against being dissolved as a body. It is noteworthy that this effect only occurs during the highest level of threat and not at the midrange level of threat, which are often severe enough to lead regimes to justify declarations of states of emergency and the concomitant reduction of rights.

Constitutional provisions for lists of nonderogable rights also have quite a large negative effect on the levels of human rights abuses during civil war. This impact is just as the ICJ, ILA, and the UN Commission on Human Rights expected to see. However, it should also be noted that we found this provision to have the opposite effect in which countries were threatened by rebellions short of full scale civil war. Providing a constitutional list of rights that can be derogated during a state of emergency apparently allows some regimes to rationalize the suspension of rights. The presence of the duration
clause, likewise, sometimes appears to increase human rights abuses, perhaps by encouraging regimes to continue to extend a state of emergency, as was the case in Peru in the 1980s.

To summarize, one important general conclusion that we can draw from these analyses is that, in a general sense, groups such as the ICJ and the ILA are correct. Constitutions do affect human behavior. Though obviously constitutions are not a perfect description of how the political process actually works (here the old Soviet constitutions serve as a well-known example), our findings show that constitutions do in fact have important impacts on governments’ propensities to abuse personal integrity rights. Unfortunately, though, these impacts are not always what one might expect, and indeed, following some of the recommendations of these groups appears to have damaging effects to human rights, in many circumstances.

Thus, there is a second important conclusion; that scholars should exercise great caution when making recommendations. Proposed prescriptions should be subjected to careful and systematic examinations of empirical data before being made public.

Finally, our findings imply that social scientists, who have for the most part analyzed general global samples, should give greater consideration to the possibility that factors which curb human rights abuses under one set of circumstances might well act to facilitate abuses under different conditions, as was the case with the constitutional provisions investigated here. A world in which general laws, applying equally to all cases in the world is an environment in which empirically-oriented social scientists would prosper. Unfortunately, our findings show us that the real world is not so accommodating.

39. See Adam Przeworski & Henry Teune, The Logic of Comparative Social Inquiry (1982); Most & Starr, supra note 9, for two arguments to this effect.