

1 The scope of human rights

In their contemporary manifestation, human rights are a set of individual and collective rights that have been formally promoted and protected through international and domestic law since the UN Declaration of Human Rights in 1948. Arguments, theories, and protections of such rights, however, have been in existence for much longer (see e.g. Claude 1976; Foweraker and Landman 1997: 1–45; Freeman 2002b: 14–54; Ishay 2004; Woodiwiss 2005), but since the UN Declaration, the evolution of their express legal protection has grown rapidly. Today, there are numerous international treaties on human rights promulgated since the UN Declaration to which an increasingly large number of nation states are a party (see below), while the language of human rights increasingly pervades our moral, legal, and political vocabulary to such an extent that many have claimed we now live in an ‘age of rights’ (see Bobbio 1996). Indeed, the development of a human rights doctrine has changed the ways in which nation states act towards each other at the international and regional levels, and the ways in which governments, individuals and groups interact at the domestic level. These new types of action and interaction cover a broad range of areas, including political rights, civil rights, social, economic, and cultural rights, as well as questions of poverty and the distribution of socio-economic resources. Politically and legally, both the sovereignty and pursuit of power-based national interest has become increasingly checked by the application of international, regional, and national human rights norms and practices (Landman 2005b). This chapter provides an overview of the current categories of human rights that make up the field and maps the breadth and depth of the international and regional systems for their protection by looking at the degree to which nation states in the world formally participate in these systems through ratification of human rights treaties. The chapter concludes by considering whether the world has reached the limits of specifying new human rights in need of protection and whether key actors with prime responsibility for their promotion and protection (see Chapter 2) should now concentrate their energies on the full implementation and enforcement of human rights.

Categories and dimensions of human rights

The collection of human rights protected by international law draws on a longer tradition of rights from philosophy, history, and normative political theory and now includes three sets or categories of rights that have become useful shortcuts for talking about human rights among scholars and practitioners in the field, and will be used throughout the remainder of this book. These three categories are: (1) civil and political rights, (2) economic, social, and cultural rights, and (3) solidarity rights. It has been typically

understood that individuals and certain groups are bearers of human rights, while the state is the prime organ that can protect and/or violate human rights. The political sociology of human rights argues that historical struggles by oppressed groups have yielded a greater degree of protection for larger sets of individuals and groups whose rights have not always been guaranteed while the state itself, in attempting to construct a national identity and fortify its capacity to govern, has extended various rights protections to increasingly larger sectors of society (Foweraker and Landman 1997). The struggle for human rights and contemporary arguments about their continued promotion and protection have extended beyond exclusive attention on the legal obligations of nation states and have started focusing on how non-state actors, such as guerrilla movements, terrorist organizations, warlords, multinational corporations, and international financial institutions, may be conceived as responsible for human rights violations and how such entities may carry an obligation for their protection (see Chapter 2; also Forsythe 2000: 191–214; UN Global Compact Office and OHCHR 2004). Let us consider these different categories of human rights in turn.

Civil and political rights uphold the sanctity of the individual before the law and guarantee his or her ability to participate freely in civil, economic, and political society. *Civil rights* include such rights as the right to life, liberty, and personal security; the right to equality before the law; the right of protection from arbitrary arrest; the right to the due process of law; the right to a fair trial; and the right to religious freedom and worship. When protected, civil rights guarantee one's 'personhood' and freedom from state-sanctioned interference or violence. *Political rights* include such rights as the right to speech and expression; the rights to assembly and association; and the right to vote and political participation. Political rights thus guarantee individual rights to involvement in public affairs and the affairs of state. In many ways, both historically and theoretically, civil and political rights have been considered *fundamental* human rights which all nation states have a duty and responsibility to uphold (see Davidson 1993: 39–45; Donnelly 1998: 18–35; Forsythe 2000: 28–52). They have also been seen as so-called 'negative' rights since they merely require the absence of their violation in order to be upheld.

Social and economic rights include such rights as the right to a family; the right to education; the right to health and well being; the right to work and fair remuneration; the right to form trade unions and free associations; the right to leisure time; and the right to social security. When protected, these rights help promote individual flourishing, social and economic development, and self-esteem. *Cultural rights*, on the other hand, include such rights as the right to the benefits of culture; the right to indigenous land, rituals, and shared cultural practices; and the right to speak one's own language and 'mother tongue' education. Cultural rights are meant to maintain and promote sub-national cultural affiliations and collective identities, and protect minority communities against the incursions of national assimilationist and nation-building projects. In contrast to the first set of rights, this second set of social, economic, and cultural rights is often seen as an aspirational and programmatic set of rights that national governments ought to strive to achieve through progressive implementation. They have thus been considered less fundamental than the first set of rights and are seen as 'positive' rights whose realization depends heavily on the fiscal capacity of states (Davidson 1993; Harris 1998: 9; see also Foweraker and Landman 1997: 14–17).

Solidarity rights, which include rights to public goods such as development and the environment, seek to guarantee that all individuals and groups have the right to share in the benefits of the earth's natural resources, as well as those goods and products that are

made through processes of economic growth, expansion, and innovation. Many of these rights are transnational in that they make claims against wealthy nations to redistribute wealth to poor nations, cancel or reduce international debt obligations, pay compensation for past imperial and colonial adventures, reduce environmental degradation, and help promote policies for sustainable development. Of the three sets of rights, this final set is the newest and most progressive and reflects a certain reaction against the worst effects of globalization, as well as the relative effectiveness of 'green' political ideology and social mobilization around concerns for the health of the planet.

The distinction between these sets of rights follows the historical struggle for them (Marshall 1963; Claude 1976; Barbalet 1988; Davidson 1993), the appearance of the separate international instruments that protect them, the philosophical arguments concerning their status (see the Introduction to this volume), and the methodological issues surrounding their measurement (see Chapter 5; also Claude and Jabine 1992; Foweraker and Landman 1997: 46–65; Landman 2004). But significant sections of the human rights community have challenged these traditional distinctions between 'generations' of human rights and have sought to establish the general claim that all rights are indivisible and mutually reinforcing (Boyle 1995; Donnelly 1999a). Such a challenge suggests that it is impossible to talk about certain sets of human rights in isolation, since the protection of one right may be highly contingent on the protection of other rights. For example, full protection of the right to vote is largely meaningless in societies that do not have adequate health, education, and social welfare provision, since high rates of illiteracy and poverty may mean the *de facto* disenfranchisement of large sectors of the population. Equally, those interested in combating torture need to examine possible underlying socio-economic, cultural, and organizational reasons for the practice of torture, which themselves may rely on the variable protection of other human rights (see Huggins 2000).

This human rights challenge also suggests that there is a false dichotomy between negative and positive rights (Shue 1980; Hurrell 1999: 278; Donnelly 2003: 30–33) that tends to privilege civil and political rights over economic and social rights, since the protection of the former appear less dependent on state resources than the latter (Foweraker and Landman 1997: 14–17). One response to this false dichotomy is to claim that 'all rights are positive' (Holmes and Sunstein 1999) since the full protection of all categories of human rights ultimately relies on the relative fiscal capacity of states. In this view, the protection of property rights requires a well-funded judiciary, police force, and fire service, as well as a well-developed infrastructure that can relay information, goods, and services in the event that property is under threat in some way. A similar argument can be made about guaranteeing the right to vote. Beyond prohibiting intimidation and discrimination at the polls, running a free and fair election requires a tremendous amount of financial support, technology, and infrastructure, the need for which has been illustrated dramatically by the highly contested process and result of the 2000 Presidential Election in the United States. And as above, the prevention of torture involves training and education within police and security forces, which entails the need for significant financial resources from the state.

Another response to the traditional division between positive and negative human rights is to view them as having *positive and negative* dimensions, the full delineation of which is essential for a social science of human rights (Landman 2004: 922–923). By claiming that all rights are positive, we may lose sight of significant negative characteristics of human rights. While it is clearly possible to see how civil and political rights have positive characteristics (i.e. the provision of well-funded judiciaries, training and

education programmes, and well-developed infrastructure), it is equally possible to see how economic and social rights have significant negative characteristics. For example, just like torture by the state is seen as preventable if only the state refrained from torturing, discrimination in public education and healthcare is equally preventable if only the state refrained from so discriminating. In this way, it is equally possible to have a 'violations approach' (Chapman 1996) to studying the promotion and protection of economic, social, and cultural rights as it is to studying the promotion and protection of civil and political rights.

Table 1.1 shows how such a conceptualization of human rights looks if we are to include their positive and negative dimensions. The table is a 2×3 matrix resulting from three categories of human rights, each with corresponding positive and negative dimensions. Positive dimensions include those actions that states can take to provide resources and policies for improving the protection of human rights while negative dimensions are those actions that states do (or do not do) that deliberately violate (or protect) human rights. Certain cells in the matrix have been well covered in the theory and practice of human rights. For example, the negative dimensions of civil and political rights in Cell II are the traditional focus of human rights international standards (e.g. the 1966 International Covenant on Civil and Political Rights), systems (e.g. United Nations, European, Inter-American, and African), and mechanisms for reporting and redress (e.g. Human Rights Committee, European Court of Human Rights; Inter-American Commission and Inter-American Court of Human Rights); monitoring, advocacy, and campaigns from human rights non-governmental organizations (e.g. Amnesty International

Table 1.1 Positive and negative dimensions of human rights

		Dimensions	
		'Positive' (i.e. provision of resources and outcomes of policies)	'Negative' (i.e. practices that deliberately violate)
Categories of human rights	Civil and political	I Investment in judiciaries, prisons, police forces, and elections	II Torture, extra-judicial killings, disappearance, arbitrary detention, unfair trials, electoral intimidation, disenfranchisement
	Economic, social, and cultural	III Progressive realization Investment in health, education, and welfare	IV Ethnic, racial, gender, or linguistic discrimination in health, education, and welfare
	Solidarity	V Compensation for past wrongs Debt relief Overseas development and technical assistance	VI Environmental degradation CO ₂ emissions Unfair trade

and Human Rights Watch); and much of the academic scholarship in political science (see Landman 2005a). Equally, the positive dimensions of economic, social, and cultural rights in Cell III have been the traditional focus of human rights international standards (e.g. the 1966 International Covenant on Economic, Social, and Cultural Rights), mechanisms for reporting and redress (e.g. the Committee on Economic, Social, and Cultural Rights), non-governmental organizations working on social justice and minority rights issues (e.g. Minority Rights Group International) and academic scholarship primarily in sociology, developmental economics, and anthropology (Turner 1993; Freeman 2002a, 2002b).

Outside these two areas of human rights that have received wide attention and debate, there have been varying degrees of attention paid to the positive and negative dimensions of human rights depicted in the remaining cells. For the positive dimensions of civil and political rights in Cell I, the work on 'good governance' (Weiss 2000) has sought to examine the ways in which investment in judiciaries, prisons, and police forces can improve the foundations of governance and so deliver better economic prosperity (World Bank 1992; Knack and Keefer 1995; Clague, Keefer, Knack and Olson 1996, 1997; USAID 1998a, 1998b; de Soto 2000), while those interested in the administration of justice see such positive aspects of civil and political rights as essential to addressing problems of the '(un)rule' of law (e.g. Méndez, O'Donnell and Pinheiro 1999). For the negative dimensions of economic, social, and cultural rights in Cell IV, there has been much focus on general patterns of gender, ethnic, racial, linguistic, and religious discrimination, but perhaps less attention on how these practices may constitute violations to economic, social, and cultural rights (Chapman 1996). Since the debt crisis in the 1980s, there has been an increase in social mobilization and attention (e.g. Charter 99 issued by the One World Trust) around the transnational issues of debt relief, developmental assistance and distribution of global income, and 'post-colonial' reparations for past practices made most vocally at the 2001 World Conference against Racism (Cell V). Since the 1970s, groups have been mobilizing for transnational solutions to the global environmental problems and have focused on the negative dimensions of 'offending' states such as the United States (Cell VI), but there has been less of a focus on the rights issues associated with such solutions. Finally, from a human rights perspective, the work on globalization and trade has focused on the 'violation' represented by unfair trade agreements hammered out in the World Trade Organization (e.g. Compa and Diamond 1996; Francioni 2001), which is seen to be disproportionately influenced by the United States and the European Union (Steinberg *et al.* 2005), as well as unsavoury manufacturing and production techniques used by multinational corporations.

These various examples show how a social science of human rights can benefit from such a conceptual delineation, since it disaggregates the concept of human rights into different categories across different dimensions and facilitates the process of operationalizing human rights for systematic analysis. The different dimensions and categories provide the content for events-based, standards-based, and survey-based measures of human rights for quantitative analysis and provide critical differences in meaning for qualitative analysis (see Chapter 5; also Landman 2004). But beyond these conceptual distinctions of human rights, what is the extant international law that seeks to protect them? And what are the temporal and spatial patterns of state participation in the various international human rights treaties? It is to these questions that the discussion now turns.

International human rights instruments

The United Nations system and its key documents for the promotion and protection of human rights – the 1945 UN Charter and the 1948 Universal Declaration of Human Rights – formed the basis of the international human rights legal ‘regime’ (Donnelly 1986, 2003: 127–154). These two documents were soon followed by two more legally binding instruments, promulgated in 1966 and entered into force in 1976: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights (Davidson 1993: 39–45; Donnelly 1989; Donnelly 1998: 18–35; Forsythe 2000: 28–52). Further treaties addressing specific human rights concerns (racial discrimination, discrimination against women, prohibition of torture, and the rights of the child) have entered into force since 1976. Table 1.2 lists the main international human rights instruments, the dates that they were open for signature, and the number and percentage of states parties to the treaties. The Convention on the Rights of the Child has the largest number of states parties, while the Second Optional Protocol to the International Covenant on Civil and Political Rights, which prohibits the practice of the death penalty in all member states, has the lowest. In addition to these legal instruments, there are monitoring bodies attached to each treaty that examine the degree to which states are fulfilling their legal obligations under the terms of each treaty (Alston and Crawford 2000). Taken together, these human rights instruments and the monitoring bodies form an international legal regime that seeks to limit state behaviour in order to protect and promote human rights (Landman 2005b).

Table 1.2 The international human rights regime: instruments, dates, and membership

<i>Name</i>	<i>Date when open for signature</i>	<i>States parties as of 2004 N and %</i>
International Covenant on Civil and Political Rights (ICCPR)	1966	152 (78%)
International Covenant on Economic, Social, and Cultural Rights (ICESCR)	1966	149 (77%)
Optional Protocol to the International Covenant on Civil and Political Rights (OPT1)	1976	104 (54%)
Second Optional Protocol to the International Covenant on Civil and Political Rights (OPT2)	1989	50 (26%)
International Convention on the Elimination of all Forms of Racial Discrimination (CERD)	1966	169 (87%)
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	1979	177 (91%)
Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT)	1984	136 (70%)
Convention on the Rights of the Child (CRC)	1989	192 (99%)

Data source: UNHCR (June 2004), *Status of Ratification of the Principal International Human Rights Treaties*, www.unhcr.ch/pdf/report.pdf. Reprinted with permission from Georgetown University Press, © 2005. All rights reserved.

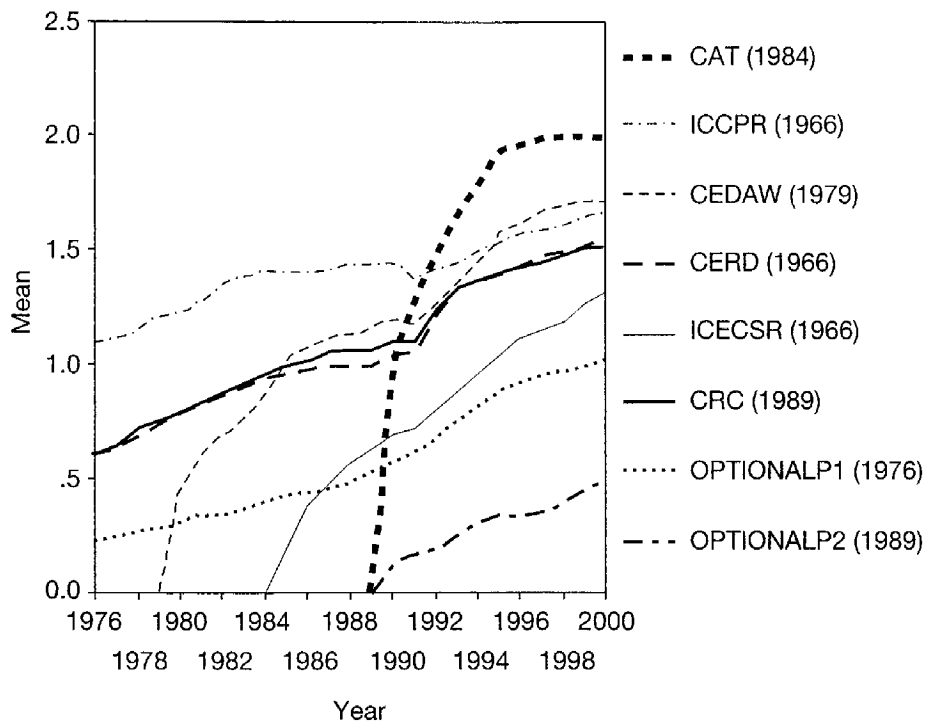


Figure 1.1 Mean ratification scores for the main human rights treaties over time, 1976–2000.

Source: Landman (2005b: 62). Reprinted with permission from Georgetown University Press, © 2005. All rights reserved.

Beyond this simple tallying of current participation of states in the international regime, it is possible to examine the temporal and spatial patterns in this participation by giving a score for no signature (0), signature (1), and ratification (2), and then comparing these scores across time and space. Figure 1.1 compares the mean ratification scores for all the main international human rights treaties for the period from 1976, when the two main international covenants came into force, and 2000. The figure shows that there has been an expansion in both the breadth and the depth of the regime. On the one hand, the proliferation of human rights treaties has meant an increasingly larger set of human rights has found positive legal expression, while on the other hand a larger number of states (many of them newly independent) have ratified these main instruments. But the time-series trends also show that some of the instruments (e.g. CERD and CRC) have consistently enjoyed more support than others (CAT and the Second Optional Protocol to the ICCPR). Figure 1.2 compares the mean ratification scores for the same set of instruments by World Bank classified regions. Western Europe, Latin America, and Post-Communist Europe exhibit the highest rates of participation, while Sub-Saharan Africa, the Middle East and North Africa (MENA), South Asia, and East Asia and the Pacific exhibit lower rates of participation.

These legal documents also provide the core content of human rights that ought to be protected, where the consensus on the content for some of these rights is more widespread than the content for others. Table 1.3 lists all the rights that ought to be protected that have been compiled from various readings of the extant international law of human rights (Davidson 1993; Gibson 1996; Green 2001; Donnelly 2003). The total number of human rights found across these various instruments varies between 49 and 64 depending on different emphases and the ways in which some authors combine concepts (Green 2001:

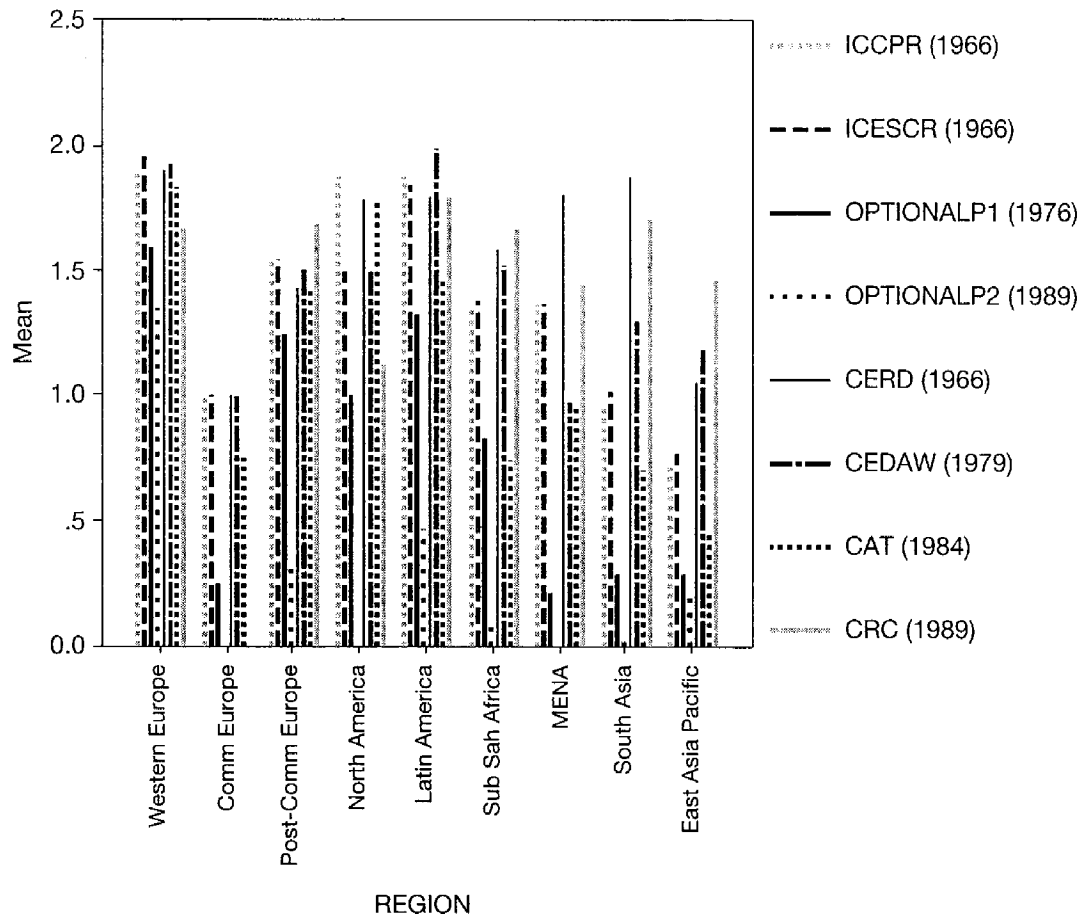


Figure 1.2 Mean ratification scores for the main human rights treaties by region, 1976–2000.

Source: Landman (2005c).

1068–1069). The list in Table 1.3 contains a total of 58 human rights found across these treaties, and it is the explanation and understanding of the variation in the promotion and protection of these rights with which a social science of human rights of the kind advocated in this present volume is primarily dedicated.

Regional human rights instruments

In addition to the international law of human rights, there are number of regional instruments and mechanisms that have developed since the 1948 UN Declaration, including the European system, the Inter-American system, and the African system. Like the international human rights treaties there are varying degrees of state participation, which can be measured through an examination of ratification behaviour. Figure 1.3 compares the mean ratification scores for the European Convention for the Protection of Human Rights and Fundamental Freedoms, the American Convention for the Protection of Human Rights, and the African Charter on Human and People's Rights. As in the case of the main international instruments, the figure shows an increasing participation of states through ratification of these various regional instruments and a general pattern of convergence in complete participation of states from each of the three regions. Indeed as of 2004, all forty-five Council of Europe states have ratified the European Convention, all

Table 1.3 List of human rights protected under international law

1. Non-discrimination	30. Trade unions
2. Life	31. Rest, leisure and paid holidays
3. Liberty and security of the person	32. Adequate standard of living
4. Protection against slavery and servitude	33. Education
5. Protection against torture	34. Participation in cultural life
6. Legal personality	35. Self-determination
7. Equal protection of the law	36. Protection of and assistance to children
8. Legal remedy	37. Freedom from hunger
9. Protection against arbitrary arrest, detention, or exile	38. Health
10. Access to independent and impartial tribunal	39. Asylum
11. Presumption of innocence	40. Property
12. Protection against <i>ex post facto</i> laws	41. Compulsory primary education
13. Privacy, family, home and correspondence	42. Humane treatment when deprived of liberty
14. Freedom of movement and residence	43. Protection against imprisonment for debt
15. Nationality	44. Expulsion of aliens only by law
16. Marry and found a family	45. Prohibition of war propaganda and incitement to discrimination
17. Protection and assistance of families	46. Minority culture
18. Marriage only with free consent of spouses	47. No imprisonment for breach of civil obligations
19. Equal rights of men and women in marriage	48. Protection of children
20. Freedom of thought, conscience and religion	49. Access to public service
21. Freedom of opinion and expression	50. Democracy
22. Freedom of the press	51. Participation in cultural and scientific life
23. Freedom of assembly	52. Protection of intellectual property rights
24. Freedom of association	53. International and social order for realizing rights
25. Participation in government	54. Political self-determination
26. Social security	55. Economic self-determination
27. Work	56. Women's rights
28. No compulsory or forced labour	57. Prohibition of the death penalty
29. Just and favourable conditions of work	58. Prohibition of apartheid

Sources: Davidson 1993: Appendix 1; Gibson 1996: 37–38; Green 2001: 1069; Donnelly 2003: 24.

twenty-five Organization of American States member states have ratified the American Convention, and all fifty-three African Union member states have ratified the African Charter. Of the three regional systems, the European System is arguably the strongest in terms of its overall implementation of human rights standards, followed by the Inter-American System, and the African System.

This descriptive mapping of the extant international and regional law on the protection of human rights comprises the essential universe of legal content and enumeration of human rights that ought to be protected, and which form the main 'objects of inquiry' for a social science of human rights. State participation in these instruments is still not 100 per cent, and such participation is merely an indication of the willingness of states

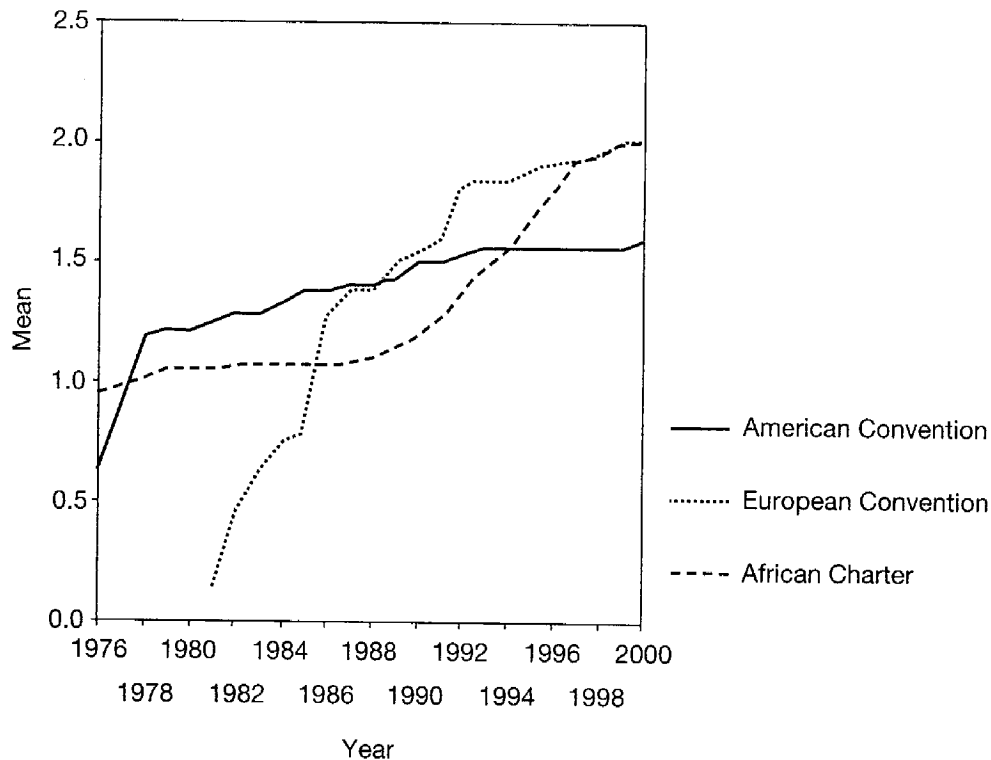


Figure 1.3 Mean ratification scores for the main regional human rights instruments, 1976–2000.

Source: Landman (2005c).

to commit to a series of legal obligations on the protection of human rights. Indeed, it is precisely the gap between the *de jure* protection of human rights represented by these formal commitments and their *de facto* realization within each state that presents a ripe area for social scientific analysis (Landman 2002; 2005b). It is safe to say that no state in the world is entirely human rights compliant and thus there is virtually an infinite supply of human rights problems to be addressed using the theories, methods, and tools of contemporary social science.

Limiting human rights?

The time-series trends and spatial patterns in the proliferation of human rights norms represented by the increasing number of instruments and increasing number of participation of states has led some commentators to argue that we are witnessing an international 'juridical revolution' (Ignatieff 2001), a process of international 'legalization' (Abbott *et al.* 2000), 'judicialization' (Stone Sweet 1999, Shapiro and Stone Sweet 2002), and 'constitutionalization' (Petersmann 2002; Alston 2002) – a process that has culminated in the Rome Statute, which established the International Criminal Court and may well represent the international 'institutionalization of criminal liability' (Falk 2000: 4). And it is precisely this norm proliferation, the ability for states to implement such norms, and the capacity for them to be adjudicated in some way that has been the 'stuff' of the discipline of law.

But are there limits to the continued expansion in the breadth and depth of human rights norms proliferation and how can a social science of human rights contribute to the

work that has been carried out in the discipline of law? Clearly, the depth of 'human rights norms proliferation', as the term is employed here, would be reached once all states ratified all the extant human rights instruments, but is there a continuous need for an increasing number of instruments for new rights? And does such an attempt to expand the list of rights not undermine their value as fundamental rights that ought to be protected always and everywhere? While it is beyond the scope of this volume to provide a definitive answer to this question, it is important for a social science of human rights to examine the ways in which this particular 'basket' of extant human rights is being realized, implemented and contested across the globe. Indeed, the contribution of social science is to explain and understand the global, regional, sub-national, collective and individual variations and experiences in the enjoyment (or lack thereof) of the human rights that have been outlined in this chapter. To continue to build this notion of a social science of human rights, the next chapter examines the 'organizational field' (Di Maggio and Powell 1983) that comprises the key actors and entities that have a direct and indirect bearing on the defence and protection of human rights.

Suggestions for further reading

- Bobbio, N. (1996) *The Age of Rights*, Cambridge: Polity Press.
- Davidson, S. (1993) *Human Rights*, Buckingham: Open University Press.
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