

Show Me the Money – The Dominance of Wealth in Determining Rights Performance in Asia

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In recent decades, Asia has emerged as one of the most contested sites for the increasingly powerful international human rights movement. Most notably, the heavily politicized Asian-values debate called into question the universal pretensions of the international human rights regime.² More fundamentally, the experiences of Asian states over the last five decades challenged two widely held if somewhat inconsistent views: first, that democracy was the key to economic growth, or, reversing the causal direction, that economic growth would inevitably lead to political reforms, democratization and better protection of human rights. Many Asian states experienced their periods of rapid growth under authoritarian governments, including South Korea, Taiwan, Singapore, Indonesia and Malaysia and still today China. Moreover, while some Asian states have made the transition to multiple-party, competitive-election democracy, others have not, including China, Hong Kong, Vietnam and Myanmar. Still others, including Singapore, Malaysia and Cambodia, exist in a limbo state variously described as soft authoritarianism, semi-dictatorship, semi-democracy or nonliberal electoral democracy. Even those states that have most fully embraced democracy, including South Korea, Taiwan, Japan, Thailand and more recently Indonesia continue to interpret and implement human rights in ways that differ in important respects from some Western liberal democracies, thus calling into question the extent to which they should be described as *liberal* democracies.

In addition, the international human rights community has focused on several Asian countries because of their poor records, especially in the area of civil and political rights, and in China's case, also because of its size and geopolitical importance.³ Post 9-11, Asian states, several with large Islamic

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² For an overview of the debates, see Randall Peerenboom, *Beyond Universalism and Relativism: The Evolving Debates over "Values in Asia,"* 14 IND. INT'L & COMP. L. REV. 1 (2003) [hereinafter called *Beyond Universalism and Relativism*]. See also MICHAEL D. BARR, CULTURAL POLITICS AND ASIAN VALUES: THE TREPID WAR (2002)(2002) (providing an excellent overview from a political, historical and religious perspective, while arguing that the debates over Asian values are far from over as Asian countries attempt to negotiate their own form of modernity); THE EAST ASIAN CHALLENGE FOR HUMAN RIGHTS (Joanne R. Bauer & Daniel A. Bell eds., 1999); HUMAN RIGHTS AND ASIAN VALUES (Michael Jacobsen & Ole Bruun eds., 2000).

Although the term "Asian values" is not often invoked these days, concerns about differences in values and other circumstances continue to surface in ongoing discussions about democratization, rule of law and human rights in ways that belie the confident assertions that Asian values existed solely in the minds of authoritarian government leaders. Larry Diamond, *How People View Democracy: Findings from Public Opinion Surveys in Four Regions,* at <http://www.stanford.edu/~ldiamond/papers/howPeopleViewDem.pdf> (Jan. 11, 2001) (noting that democracy does not always work, and that democratic consolidation depends on values for which there are regional differences and most importantly on good governance and economic growth); Randall Peerenboom, *Varieties of Rule of Law,* in ASIAN DISCOURSES OF RULE OF LAW: THEORIES AND IMPLEMENTATION OF LAW IN TWELVE ASIAN COUNTRIES, FRANCE AND THE U.S. 1 (Randall Peerenboom ed., 2004) [hereinafter called ASIAN DISCOURSES].

³ For the argument that China is subject to a double standard, see Randall Peerenboom, *Assessing human Rights in China: Why the Double Standard?* (forthcoming 2005).

populations, have come under scrutiny as the U.S.-led war on terrorism has renewed concern that some states would reinstate or make greater use of broad national security laws to undermine the civil liberties of not only suspected terrorists but political dissidents and even ordinary citizens.

Past discussions about human rights and values in Asia have been hampered by the lack of reference to empirical studies to back up the strong theoretical, and in some cases polemical, claims being made on both sides about the differences or lack thereof in fundamental values. Numerous multiple-country quantitative studies have demonstrated significant regional effects with respect to democratization,⁴ labor rights,⁵ women's rights,⁶ personal integrity rights,⁷ freedom from government intrusions, rule of law and good governance,⁸ and cultural values⁹ that in turn affect rights performance.¹⁰ Although these studies generally define Asia very broadly, frequently deal with rights in a very general way and give rise to numerous methodological issues, they are invaluable in locating Asian countries within a larger comparative context and in providing an empirical basis to sort out some of the claims about Asian values.¹¹ They do not however generally measure the degree of variance in rights performance *within* Asia, or attempt to explain the variation within Asia or why Asia as a region might differ from other regions.

⁴ Steven Levitsky & Lucan Way, *Autocracy by Democratic Rules: The Dynamics of Competitive Authoritarianism in the Post-Cold War Era*, paper presented at the Annual Meeting of the American Political Science Association, Boston, August 28 – September 1, 2002, at <http://apsaproceedings.cup.org/Site/papers/045/045008WayLucan.pdf> (last visited June 16, 2004).

⁵ Layna Mosley & Saika Uno, *Racing to the Bottom or Climbing to the Top? Foreign Direct Investment and Human Rights*, paper presented at the Annual Meeting of the American Political Science Association, Boston, August 28 – September 1, 2002, at <http://apsaproceedings.cup.org/Site/papers/046/046005MosleyLayn.pdf> (last visited June 16, 2004) (finding strong regional relationship between regions and labor rights, and that the Asian and Pacific regions were not as protective of labor rights as Western Europe, Central and Eastern Europe, although they were more protective than the Middle East, North Africa and Latin America and on par with Sub-Saharan Africa).

⁶ Clair Apodaca, *Measuring Women's Economic and Social Rights Achievement*, 20 (1) HUM. RTS. Q. 139 (1998) (finding that regional coefficients play a larger role than GNP in the achievement of women's economic and social rights, although the regional identification of Asian and African explains less variation than the Middle East regional designation; and noting that various literatures suggest that the explanation lies in "culturally specific attitudes towards women's status, developed under differing historical and economic conditions.").

⁷ Steven C. Poe et al., *Personal Integrity Rights and Democratization: Regional Perspectives*, paper presented at the Comparative Human Rights and Repression Conference at the University of Colorado, Boulder, June 20-21, 1997; David Reilly, *Diffusing Human Rights* (2003), paper presented at the Annual Meeting of the American Political Science Association, Philadelphia, August 28-31, 2003, at proceedings@apsanet.org (significant and persisting regional differences in personal integrity rights).

⁸ Amir Licht et al., *Culture Rules: The Foundations of Rule of Law and Other Norms of Governance* (June 9, 2002) (unpublished manuscript, on file with author).

⁹ See, generally, Peter B. Smith et al., *Cultural Values, sources of guidance, and their relevance to managerial behavior - A 47-nation study*, in 33(2) J. CROSS-CULTURAL PSYCHOL. 188 (2002) (summarizing various multiple country studies that find similarities on various dimensions of values within the Asian region, particularly along the dimension of individualism versus collectivism, autonomy versus social embeddedness, and hierarchy versus egalitarianism).

¹⁰ Frank B. Cross, *International Determinants of Human Rights and Welfare: Law, Wealth or Culture*, 7 IND. INT'L & COMP. L. REV. 265 (1997) (finding that cultural values are important determinant of rights and that Western nations have a higher level of freedom from government intrusion even after controlling for GDP and other factors).

¹¹ For example, the World Bank's good governance study includes in the East Asian region Brunei, Cambodia, China, East Timor, Fiji, Hong Kong, Indonesia, Kiribati, North and South Korea, Laos, Macao, Malaysia, Marshall Islands, Mongolia, Myanmar, Nauru, Papa New Guinea, Philippines, Samoa, Singapore, Solomon Islands, Taiwan, Thailand, Tonga, Tuvalu, Vanuatu and Vietnam. It includes in the South Asian region Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. Fortunately, the interactive database does provide information on individual countries and allows one to select up to 20 countries for comparison. See Daniel Kaufmann et al., *Governance Matters*, Working Paper, World Bank (2003).

In Part I, I provide an empirical overview of the performance of twelve Asian countries¹² with respect to *physical integrity rights, civil and political rights, social and economic rights* and other indicia of quality of life including poverty, infant mortality, life expectancy, primary school enrollment, government expenditures on education, health and military, *quality of governance* measured in terms of regulatory effectiveness, regulatory quality, rule of law and control of corruption, and *law and order and social stability* as reflected in crime rates and the number of drug users, suicides, divorces and young mothers.¹³ I also include several other countries from different parts of the world for comparison points, focusing in particular on the United States and France.¹⁴

Notwithstanding shortcomings in the data and other well-known limitations of empirical studies,¹⁵ the empirical overview demonstrates a wide variation in Asia with respect to rights performance. At the

¹² The twelve Asian countries include low, middle and high income states; a wide range of political regime types; countries whose rights records vary widely; and countries from East and Southeast Asia. Nevertheless, the group is biased toward (north) East Asia, does not include former Soviet republics, and does not include the countries with the worst legal systems or human rights records such as Laos, Cambodia or Myanmar.

¹³ I do not address the rights of the criminally accused. Nor do I focus directly on labor rights, rights of women or environmental rights. For a discussion of labor issues in Asia, see *LABOR LAW AND MARKET REGULATION IN ASIA* (Sean Cooney et al. eds., 2002). For women's rights, see the UNDP Gender-related Development Index (2003 statistics available at http://www.undp.org/hdr2003/indicator/indic_196_1_1.html) and Gender Empowerment Measures (2003 statistics available at http://www.undp.org/hdr2003/indicator/indic_207_1_1.html). The UNDP database also includes information on ratification of environmental treaties, use of energy and other environment-related data.

¹⁴ I focus on the U.S. and France as comparison points to show that there are differences even within economically advanced liberal democracies on a range of specific rights issues and to avoid over-idealization of rights performance in Western countries. Although the U.S. and France score higher on many rights indicators than many other Western countries, and thus are not representative of the region as whole, they are far from perfect in many areas, especially when it comes to economic, social and cultural rights. Furthermore, to the extent that legal institutions matter to the protection of rights, the U.S. (a common law country) and France (a civil law country) differ in significant ways, including with respect to constitutional review, and both have been influential as sources of legal transplants. Several of the legal systems in Asia were modeled on the French civil law system. Meanwhile, the U.S. has exerted considerable influence on the legal systems of Japan and the Philippines, and has attempted to exert influence more broadly across the region, albeit with limited success, through an aggressive human rights foreign policy.

¹⁵ On the advantages and disadvantages of empirical studies, see generally, Todd Landman, *Comparative Politics and Human Rights*, 24(4) *HUM. RTS. Q.* 890, 896-897 (2002); Kenneth Bollen, *Political Rights and Political Liberties in Nations: An Evaluation of Human Rights Measures, 1950-1984*, 8(4) *HUM. RTS. Q.* 567 (1986).

The philosopher Alastair MacIntyre has argued that differences in cultural narratives and the contingent circumstances of countries preclude a science of universal human rights. ALASDAIR MACINTYRE, *Is a Science of Comparative Politics Possible*, in *AGAINST THE SELF-IMAGES OF THE AGE 260-79* (1971). Other critics argue that human rights attach to individuals, and aggregating violations and ranking countries on a scale of better to worse may cause us to lose sight of individuals and the fact that any violation is morally significant. John McCamant, *A Critique of Present Measures of Human Rights Development and an Alternative*, in *GLOBAL HUMAN RIGHTS: PUBLIC POLICIES, COMPARATIVE MEASURES, AND NGO STRATEGIES* (Ved P. Nanda et al. eds., 1981).

Choosing, operationalizing and measuring the dependent variable (rights) and the independent variables (democracy, culture, institutional features such as judicial independence, etc.) have all proven challenging. Attempts to develop a composite measure to rank countries for human rights performance have failed because countries generally protect some rights better than others and because of the controversial normative judgments inherent in prioritizing rights: how does one compare the arrest of a person advocating democracy with the lack of medical care for AIDS victims or children being sold into sexual slavery?

Accordingly, most studies attempt to measure one or more distinct type of right. Some types of rights, however, are more difficult to measure than others, either because of problems operationalizing the right or because of lack of data. Another concern has been that quantitative studies, reflecting the normative biases of the Western-dominated human rights regime, have focused excessively on civil and political rights to the detriment of other rights. The over-emphasis on civil and political rights is particularly problematic for present purposes in that Asian governments often claim that they do

same time, patterns emerge with respect to lower scores for civil and political freedoms among East Asian countries and higher scores for social and economic rights as well as good governance, law and order, and crime control and social stability. These patterns are consistent with aspects of the “Asian values” platform that emphasize the importance, if not the priority, of social and economic rights relative to civil

better when judged by economic and social rights and measures that indicate a high quality of life such as effective governance, political stability and low crime rates. This concern is echoed by those who argue that “rights talk” is itself impoverished, and that rights must be complemented if not supplanted by discourses of duties, needs, wants and/or capabilities. For a useful discussion of rights and needs, see Jeremy Waldron, *Rights and Needs: The Myth of Disjunction*, in LEGAL RIGHTS: HISTORICAL AND PHILOSOPHICAL PERSPECTIVES 87, (Austin Sarat & Thomas R. Kearns eds., 1996). For capabilities, see Amartya Sen, *Capability and Wellbeing*, in THE QUALITY OF LIFE, (Martha Nussbaum & Amartya Sen eds., 1993); and Martha C. Nussbaum, *Capabilities and Human Rights* 66 FORDHAM L. REV. 273, 273-300 (1997).

Because rights may be subject to various limitations by law, and are implemented to varying degrees in practice, rights must be scored along a continuum. Different researchers, however, operationalize the same right in different ways, relying on a number of different factors to produce a composite score. In producing a composite score, they inevitably rely on debatable assumptions about the relationship between the various factors and how they should be weighted and aggregated. Similar problems exist with respect to some of the most common independent variables. Democracy, for example, has been defined and measured in a variety of ways. See Kenneth Bollen, *Issues in the comparative measurement of political democracy*, 45(2) AM. SOC. REV. 370, 370-390 (1980); Gerardo Munck & Jay Verkuilen, *Conceptualizing and Measuring Democracy: Evaluating Alternative Indices*, 35 (1) COMP. POL. STUD. 5, 5-34 (2002); Christian Davenport & David Armstrong, *Democracy and the Violation of Human Rights: A Statistical Analysis of the Third Wave* (2002), at <http://apsaproceedings.cup.org/Site/abstracts/011/011002ArmstrongD.htm>

In the end, quantitative studies are only as good as the data. Unfortunately, data on human rights compliance is far from ideal. Many countries do not keep accurate records of human rights violations. The coding of data often involves considerable subjective judgment, and in some cases has been politically biased, especially in U.S. State Department reports that are less critical of allies than non-allies. Given the time-consuming nature of collecting and coding data, researchers have relied heavily on a relatively small number of data sources. For an overview of various data sets and approaches, see Michael Haas, *Empirical Dimensions of Human Rights*, in POLICY STUDIES AND DEVELOPING COUNTRIES 43 (Stuart Nagel and David Louis Cingranelli, eds., 1996).

Perhaps the biggest drawback to most quantitative studies is that they are of limited use to policymakers. Many studies, because of their generality, do not provide information that policymakers can act on. Informing policymakers that war is the single biggest threat to human rights will not help them in preventing or ending wars. Economic factors may be the next most important determinant of better human rights performance, but economists have long been stumped as to how to ensure sustainable economic growth. The inconsistency of results among empirical studies, especially when more specific variables are introduced, further reduces their practical utility. For instance, studies of the affect of FDI on human rights performance have been inconclusive: some have found that there is no significant relationship, others have found that FDI is weakly or in some cases strongly associated with better protection of rights, and some have found that increased FDI has a negative impact on rights protection. In response to criticisms of excessive generality, researchers have attempted to test the impact of more specific variables on a wider range of more specific rights. However, the proliferation of studies has led to inconsistent and counterintuitive results.

Policymakers are also likely to be troubled by the normatively unappealing implications of many quantitative studies. What, for example, is a rights-inclined policymaker to do with the studies showing Islam to be negatively correlated with democracy and human rights protection? Should the goal be to repress Islam, and if so how?

On the whole, quantitative studies are useful in demonstrating general patterns, but there are always exceptions to the general rules. How the various factors will play out in a given country at a given time often requires a more detailed qualitative study of that particular state. Qualitative studies are able to provide a deeper and more nuanced account of economic, political and legal reforms and their relation to human rights protection. As a result, they may provide a better sense of what the main obstacles are to better rights performance in a particular context, and thus offer more useful policy guidance.

This article should be read in conjunction with THE RIGHTS OF ASIANS TODAY: A COMPARATIVE LEGAL STUDY OF TWELVE ASIAN COUNTRIES, FRANCE AND THE U.S. (Randall Peerenboom et al. eds., 2005) [hereinafter called THE RIGHTS OF ASIANS TODAY], which provides a more detailed empirical account by examining legal cases and social-political events relating to a range of specific civil, political, economic, social and cultural rights in the twelve Asian countries chosen here with comparisons to the U.S. and France.

and political rights. Similarly, the studies suggest that even in Asian democracies the liberal emphasis on the individual will often take a back seat to collective interests and social stability. However, the wide variation *within* Asia still requires an explanation.

Accordingly, Part II examines several possible explanations for the wide variation among Asian countries. Clearly the story is complicated. A number of factors come into play, with some factors more important for different types of rights or playing a different role in different countries or at different times within a country. War, political regime type, the nature and level of development of legal institutions, population size, colonial history, religion and cultural factors all play a role. In several countries, ethnic diversity, religious tensions and the rise of Islamic fundamentalism or separatist movements have had a major impact on rights policies and performances. However, consistent with the empirical evidence globally, by far the most important explanatory factor is wealth, except with respect to physical integrity rights for which international or domestic conflict is the biggest factor.¹⁶

The implications are twofold. First, comparing a lower middle income country such as China to the U.S. makes about as much sense as comparing a piano to a duck. Countries should be compared to other countries at a similar income level to determine how well they are doing given the available resources. Second, there is considerable merit to the Bangkok Declaration emphasis on the right to development and the Asian-values emphasis on economic growth. Although money is not everything, it is essential. In the subtle and complex interplay of economics, politics, culture, law and institutions in determining rights performance, what matters most is wealth. Put bluntly if somewhat too simply, if you want better performance across a range of rights and indicators of human wellbeing, *show me the money*.

A Profile of Twelve Asian Countries, France and U.S. Across Different Types of Rights

The following tables provide a snapshot summary of performance on a variety of rights and other indicators of wellbeing for the region as a whole as well as the countries in this study and other selected countries from around the world as comparison points. The studies define variables in different ways, use different data sets, rely on data from different years, are subject to wide margins of error, and so on. Thus, the tables are no substitute for more in-depth studies. Nevertheless, they are useful in providing a general sense of the range of difference within Asia on rights issues, and also in showing how Asian states compare to other states in other parts of the world at similar stages of economic, political and legal development.

Physical or personal integrity rights

Physical or personal integrity rights refer to the number of political prisoners, extra-judicial killings, incidences of torture and arbitrary detentions. They are among the most basic of rights. They tend to be subject to wide variation by year in a particular country because wars and political crises may arise or end suddenly. For instance, despite thousands of complaints of torture and police brutality every year, the U.S. had one of the best records in 1996, enjoying a level-1 ranking, indicating a country under a secure rule of law, where people are not imprisoned for their view, and torture or political murders are rare or

¹⁶ William H. Meyer, *Human Rights and MNCs: Theory Versus Quantitative Analysis*, 18 (2) HUM. RTS. Q. 368 (1996) (GNP, biggest contributor to civil, political, social and economic rights); GEERT HOFSTEDÉ, *CULTURE'S CONSEQUENCES: COMPARING VALUES, BEHAVIORS, INSTITUTIONS AND ORGANIZATIONS ACROSS NATIONS* 248, 251 (2nd ed. 2001) (wealth was the main factor affecting rights compliance, although individualism mattered in rich countries); Neil Mitchell & James M. McCormick, *Economic and Political Explanations of Human Rights Violations*, 40 WORLD POL. 476, 497 (1988) (higher levels of economic wellbeing associated with better physical integrity rights records); Steven Poe et al., *supra* note 7; Steven Poe et al., *Repression of the Human Right to Personal Integrity Revisited: A Global Cross-National Study Covering the Years 1976-1993*, 43 INT'L STUD. Q. 291, 310 (1999); Apodaca, *supra* note 6 (higher GDP associated with better performance on women's rights).

exceptional.¹⁷ However, it has since been demoted to level 2 because of the detentions of suspected terrorists in Guantanamo Bay, Iraq and Afghanistan and the secret arrests of more than 1300 persons (many of them Muslims) in the U.S.,¹⁸ which constitute arbitration detention under the ICCPR.¹⁹ Level 2 indicates a limited amount of imprisonment for nonviolent political activity. However, few persons are affected, and torture and beatings are exceptional. Political murder is rare. Whether the U.S. will drop further as a result of the reports of widespread torture of Iraqis and others captured in the war on terror remains to be seen.

Notwithstanding ups and downs within countries, there has been no improvement globally in recent decades.²⁰

As expected, in the Asian region, there are more violations of personal integrity rights where there is political instability, rebel insurgencies and terrorism, as Figure 1.1 shows.²¹ At level 4, India remains a major trouble spot, mainly due to ethnic and religious tensions.²² China scores poorly because of the high incidence of torture, arbitrary detentions and the arrests of democracy advocates, labor unionists and others who oppose government policies.²³ Indonesia, even after democratization, continues to experience widespread personal integrity violations, consistent with the efforts to restore order in Aceh, Papua and Maluku provinces and to prevent terrorism in the country.²⁴ South Korea performed

¹⁷ AMNESTY INT'L, UNITED STATES OF AMERICA: RIGHTS FOR ALL 17, 19, 26, 43 (1998) ("There is a widespread and persistent police brutality across the USA. Thousands of individual complaints about police abuse are reported each year Police officers have beaten and shot unresisting suspects; they have misused batons, chemical sprays and electro-shock weapons; they have injured or killed people by placing them in dangerous restraint holds Common forms of ill-treatment are repeated kicks, punches or blows with batons or other weapons, sometimes after a suspect has already been restrained or rendered helpless. There are also complaints involving various types of restraint hold, pepper (OC) spray, electro-shock weapons and firearms [V]ictims include not only criminal suspects but also bystanders and people who questioned police actions or were involved in minor disputes or confrontations.").

¹⁸ Thomas Blanton, *National Security and Open Government in the United States: Beyond the Balancing Test*, in NATIONAL SECURITY AND OPEN GOVERNMENT: STRIKING THE RIGHT BALANCE 59 (Campbell Public Affairs Institute, ed., 2003).

¹⁹ Jordan J. Paust, *Antiterrorism Military Commissions: Courting Illegality*, 23 MICH. J. INT'L L. 1 (2001); Jordan J. Paust, *Antiterrorism Military Commissions: The Ad Hoc DOD Rules of Procedure*, 23 MICH. J. INT'L L. 677 (2002).

²⁰ James A. McCann and Mark Gibney, *An Overview of Political Terror in the Developing World, 1980-1991*, in POLICY STUDIES AND DEVELOPING COUNTRIES 15, 23-24 (Stuart Nagel and David Louis Cingranelli, eds., 1996) (noting that political terror increased in the developing world in the 1980s and finding that democracy does not by itself ensure low levels of terror); *see also* Reilly, *supra* note 7 (over the period from 1976-1996, the number of countries with the best score actually decreased, countries with the worst score increased, while the mean remained about the same); Todd Landman, Norms and Rights: A Non-Recursive Model of Human Rights Protection, paper presented at the Annual Meeting of the American Political Science Association, Philadelphia, August 28-31, 2003, at proceedings@apsanet.org (noting increase in violations of personal integrity and torture between 1985 and 1993).

²¹ Linda Camp Keith & Steven Poe, Personal Integrity Abuse during Domestic Crises, paper presented at Annual Meeting of the American Political Science Association, Boston, August 29-September 1, 2002, at <http://apsaproceedings.cup.org/Site/papers/046/046004PoeSteven0.pdf>. (also noting previous studies found that civil war and then violent rebellion lead to more violations of personal integrity rights).

²² Level 3 indicates extensive political imprisonment, or a recent history of such imprisonment. Execution or other political murders and brutality may be common. Unlimited detention, with or without a trial, for political views is accepted. At level 4 the practices of level 3 are expanded to larger numbers. Murders, disappearances, and torture are a common part of life. In spite of its generality, on this level terror affects those who interest themselves in politics or ideas. At level 5, the terrors of level 4 are expanded to the whole population. The leaders place no limits on the means or thoroughness with which they pursue personal or ideological goals.

²³ For a more thorough discussion of China's rating and the argument that a level-4 rating overstates the problems, *see* Peerenboom, *supra* note 3.

²⁴ Hikmahanto Juwana, *Human Rights in Indonesia*, in THE RIGHTS OF ASIANS TODAY, *supra* note 15.

surprisingly poorly in the mid-1990s, due apparently to violent protests by students and labor organizations. At level 3, it is on par with Malaysia, which was ranked higher in 1996 but which has suffered in recent years under the threat of terrorism and rising Islamic fundamentalism.

Vietnam scores higher than might be expected. Vietnam and Thailand both received a level-2 rating based on Amnesty International reports and a level-3 rating based on U.S. State Department reports. Thailand however has recently experienced violent clashes between the government and Islamic groups in some Muslim-dominated southern provinces, leading to the imposition of martial law in the region.²⁵ Singapore merits a level-2 rating, reflecting the use of defamation laws to rein in high profile opposition figures and the reliance on tough national security laws and other nonliberal laws to crack down on terrorists, people inciting ethnic conflict, drug traffickers and other criminals. Only Taiwan receives the highest level-1 score.

Civil and political rights

The World Bank's Voice and Accountability scale incorporates a number of indicators measuring various aspects of the political process, civil liberties and political rights, including the right to participate in the selection of government representatives and the independence of the media.²⁶ The East Asia region falls squarely in the middle among all regions as shown in Table 5.1. However, there is a considerable range within the Asian region as indicated in Figure 2.1. Japan and Taiwan score reasonably well, though not as high as the U.S. and France, whereas Vietnam and China are in the lowest 10%.

As suggested by Figure 4.1 and confirmed by other studies discussed below, civil and political rights are closely related to wealth. Nevertheless, East Asian countries with a Confucian influence, even if democratic, tend to do poorly relative to income level.²⁷ Japan, Taiwan, Singapore, Malaysia, Hong Kong, China and Vietnam all underperform relative to income.²⁸ In contrast, South Korea, India, the Philippines, Thailand and recently Indonesia outperform the average in their income class.²⁹

Social and economic rights and other indicia of quality of life: poverty, infant mortality, life expectancy, primary school enrollment, expenditure on education, health and military as percentage of GDP

China and other Asian governments have attacked the bias of the international rights community in emphasizing civil and political rights over the right to subsistence, economic rights and the right to development. How well do Asian states do on these other dimensions?

Figure 3.1 presents the UNDP rankings for social and economic rights in 2002 as measured by the Human Development Index. The HDI measures the average achievement in a country in three basic dimensions: a long and healthy life based on life expectancy at birth; education and knowledge measured by adult literacy and combined primary, second and tertiary enrollments; and a decent standard of living as measured by GDP per capita (\$PPP). As one would expect, wealthier countries everywhere, including

²⁵ Vitit Muntahborn, Human Rights in the Era of "Thailand Incorporated (Inc.)", in THE RIGHTS OF ASIANS TODAY, *supra* note 15.

²⁶ The following data is obtained from Kaufmann et al., *supra* note 11, available at <http://info.worldbank.org/governance/kkz2002/> [hereafter WB Good Governance].

²⁷ A chart comparing a country's performance to the average performance in its income class can be readily generated using the World Bank interactive data set by simply selecting the country and the good governance indicators, or selecting several countries for a particular indicator, and then selecting "income category average". As the chart is easy to generate but messy and hard to read without the color-coding provided on the World Bank website, I have not reproduced the chart here. The chart is available at http://info.worldbank.org/governance/kkz2002/mc_chart.asp.

²⁸ Other Asian countries that underperform relative to income are Myanmar, Laos and North Korea. *Id.*

²⁹ Other Asian countries that outperform the average are Mongolia, Cambodia and East Timor. *Id.*

in Asia, generally have lower (i.e. better) HDI scores, with wealth constituting a more important factor than the nature of political regime.

However, the general composite measure fails to tell the whole story. Higher levels of economic development and riches for some are consistent with an impoverished life for many others. Asia as a region has been relatively successful over the last decade in reducing poverty, defined as the admittedly minimalist standard of living on less than \$1/day. In contrast, poverty in other regions has increased or remained more or less the same.³⁰

The performance of the East Asian region is somewhat deceptive in that the results are skewed by the remarkable performance of China, which lifted 150 million, 12% of the population, out of poverty in just nine years. To be sure, even within China, poverty remains an issue in some regions, with some 16% still living on less than \$1/day. Moreover, the income gap is growing, between urban and rural residents, and also between those urban residents with the education and skills needed to succeed in a market economy and those without them.

Table 1.1 shows three ways of measuring human poverty. One approach measures the percentage of the population below the national poverty line defined as what that society considers necessary to satisfy basic needs. Because countries will set the poverty line at different levels, a wealthier, welfare-conscious country may have a high percentage living in poverty and appear poorer. The second approach measures the percentage of the population below uniform poverty lines of \$1 and \$2 per day. Even when adjusted for purchasing power parity (PPP), this income-based approach cannot fully capture actual differences in the standard of living of poor people. While the first two approaches measure consumption and income, a third approach measures the impact of poverty directly. The Human Poverty Index quantifies poverty in terms of life expectancy, access to food and water, and education as measured by literacy rates.

Ultimately, it pays to look at the three measures concurrently. For example, nearly half of the Chinese population lives on less than \$2 per day. But the actual standard of living in China, as measured by the HPI, exceeds countries with higher income such as Iran and South Africa.

Asian countries vary dramatically in levels of poverty. India is by far the worst, though poverty remains a problem in Vietnam, Indonesia, Philippines, China and Thailand. However, some countries are doing fairly well in reducing poverty relative to the number of people with very low incomes, including China, Philippines and Vietnam. Others have been doing poorly, especially Thailand but also Indonesia, although Thailand has improved recently as a result of economic growth and a strong ruling party that, while democratic, has followed the lead of other successful Asian states in focusing on economic rights even if at the expense of civil and political rights.

Of course, relative and even absolute poverty remains an issue in developed countries as well. About 9% of the population lives on less than \$2/day in middle income Malaysia. Surprisingly given the communitarian rhetoric of Lee Kuan Yew, Singapore's poverty ranking is out of line with its income level and HDI ranking. The U.S. has the highest rate of poverty at 15.3% when measured by the UNDP's higher HPI-2 standard for developed countries. More than 17% of the population in the U.S. is income-poor, with the poverty line set at 50% of the median adjusted household disposable income.³¹ While GNP reached a historic high in the United States in 1990, having grown over 25% in a decade, child poverty increased by 21% to where one in five American children lived in poverty.³² Almost 30% of the poor had

³⁰ See Table 2.3, Changes in the Share and Number of People Living on \$1 a Day Have Been Uneven, in UNDP HUMAN DEVELOPMENT REPORT 2003 (2003), p. 41.

³¹ United Nations Development Programme, HUMAN DEVELOPMENT REPORT 2000: HUMAN RIGHTS AND HUMAN DEVELOPMENT, available at http://hdr.undp.org/reports/global/2000/en/pdf/hdr_2000_back1.pdf (also noting that more than one in five adults in the U.S. is functionally illiterate).

³² John Gledhill, *Liberalism, Socio-Economic Rights and the Politics of Identity: From Moral Economy to Indigenous Rights*, in HUMAN RIGHTS, CULTURE AND CONTEXT 70, 72-73 (Richard Wilson ed., 1997).

no medical insurance in 1991, and somewhere between five and ten million Americans experienced homelessness in the late 1980s.

Infant mortality, life expectancy and education

Table 2.1 on infant mortality, life expectancy and education demonstrates that wealth and war matter, with richer and less war-prone Asian countries outperforming many African countries. Interestingly, Japan, Hong Kong and Singapore outperform the significantly wealthier U.S. in terms of infant mortality and life expectancy.

Vietnam and China, which score poorly on civil and political rights, do well on primary school education, reaching levels comparable to that in the U.S. The Philippines and Indonesia, torn by domestic strife and affected by the Asian financial crisis that increased poverty particularly in rural areas, suffer from relatively high rates of children who do not receive a primary school education. Thailand performs surprisingly poorly on this measure, reflecting perhaps the impact of the Asian financial crisis.

As Table 3.1 shows, Asian nations vary in the amount they spend on education, health and military as a percentage of GDP. On the whole, Asian states spend more on education than health, usually considerably more, with the exception of Japan. In contrast, France, the U.S. and Japan spend more on health than education, reflecting higher medical costs but also greater wealth. No OECD country spends less than 5% of GDP on health, whereas most developing countries spend only 2-3%. Given differences in the size of the economies, the actual amount spent varies widely. The WHO estimates that \$30-40 per person is the bare minimum needed to provide basic health services. However, in 1997 the least developed countries spent on average \$6/person and low income countries \$13, compared to \$125 in upper middle income countries and \$1356 in high income countries. Making matters even worse in poor countries, rural residents and those in the bottom 20% of income usually receive a disproportionately small share of the medical services.³³

The U.S. spends the most on the military in absolute terms, though at 3.1% of GDP, it trails Singapore at a high 5.0%. Only Singapore spends more on military than education and health combined, reflecting its security concerns as a small city state surrounded by larger states in which ethnic and religious tensions might spill over into Singapore. Japan has the highest ratio of combined education and health to military spending at 9.5 to 1. France, Thailand, and the Philippines spend more than five times as much on education and health as on the military, the U.S. more than three times, South Korea more than two and half times, India twice as much, and China slightly less than twice as much. Military expenditures may be offset by arms sales. The U.S. claims 41% of the market in conventional weapons sales, compared to 9% for France and 1.7% for China.

Income inequality and wealth distribution

While wealth undoubtedly affects the ability of governments to provide education and health services to their citizens, how the government chooses to spend its money and how wealth is distributed among the members of society are also crucial factors in the quality of life of citizens, especially the most vulnerable in society. As Table 4.1 shows, Asian countries differ in terms of income distribution.³⁴ However, they all are more equitable than some of the worst offenders in Africa and Latin America. Indonesia, a low

³³ United Nations Development Programme, HUMAN DEVELOPMENT REPORT 2003, MILLENIUM DEVELOPMENT GOALS: A COMPACT AMONG NATIONS TO END POVERTY, *available at* http://www.undp.org/hdr2003/pdf/hdr03_overview.pdf.

³⁴ Because the underlying household surveys differ in method and in the type of data collected, the distribution data are not strictly comparable across countries. The Gini index measures inequality over the entire distribution of income or consumption. A value of 0 represents perfect equality, and a value of 100 perfect inequality.

income country long associated with crony capitalism under Suharto, fares surprisingly well. Meanwhile Malaysia, a middle income country often linked with Indonesia in the Asian-values debates, fares rather poorly. The Philippines not only suffers from low income but also extreme income inequality.

Among the high income countries, Hong Kong, with its laissez faire economic policies and colonial past, is the least equitable, though Singapore and the U.S. are not far behind. Conversely, Japan once again scores best, with South Korea and France also doing relatively well.

The numbers may be deceptive in that they do not indicate long-term trends. China, once relatively egalitarian, is now rapidly becoming more polarized.³⁵ Similarly, Malaysia reduced the spread in the 1980s only to see the gap widen rapidly in the 1990s.

Quality of governance

Asian governments that supported Asian values often unapologetically defended their heavy-handed paternalistic ways by arguing that what mattered was the bottom line: economic growth, good governance, clean and effective civil servants. Table 5.1 shows that the Asia region on the whole scores relatively high on measures of good governance, including political stability, government effectiveness, regulatory quality, rule of law, and control of corruption, with the exception of voice and accountability where it ranked in the 50th percentile.

“Political stability and absence of violence” combines several indicators that measure the likelihood that the government will be overthrown or destabilized by unconstitutional or violent means, including terrorism. It is included as a good governance measure because political instability and violence not only affect the ability of the ruling regime to govern but deprive citizens of the ability to peacefully select and replace those in power. “Government effectiveness” measures the provision of public services, the quality of the bureaucracy, the competence and independence of civil servants and the credibility of the government’s policy commitments. Whereas government effectiveness focuses on the institutional inputs required to implement policies effectively, “regulatory quality” focuses on the policies themselves. It includes measures of market-unfriendly policies such as price controls or inadequate bank supervision, as well as perceptions of excessive regulation of foreign trade and business development, reflecting a bias toward neo-liberal economic policies. “Rule of law” measures the extent to which people have confidence in and abide by the rules of society, how fair and predictable the rules are, and how well property rights are protected. The indicators include perceptions of incidence of crime, the effectiveness and predictability of the judiciary, and the enforceability of contracts. “Control of corruption” measures perceptions of corruption, the effects of corruption on business, and “grand corruption” in the political arena.

Again, there is wide variation within the region, largely consistent with levels of economic development, as indicated in Table 6.1. In the high income weight class, Singapore wins the gold in the four main categories of good governance: government effectiveness, regulatory quality, rule of law and control of corruption. It also outperforms the region in terms of voice and accountability and political stability, and the others in the high income category for the latter but not the former. The U.S. takes the silver, with France and Hong Kong vying for the bronze. Although Japan scored well on infant mortality, life expectancy, income equality and other quality of life measures, its scores on government effectiveness and regulatory quality leave something to be desired. While it ranks relatively high in rule of law, it fares relatively poorly on the corruption scale mainly because of grand political corruption.

While Taiwan outperformed the region on every measure, it underperformed relative to others in its income group on every measure. However, if classified as an upper middle income country, as in the UNDP rankings, then it would do quite well relative to others in its income class. South Korea consistently outperforms the regional average. Moreover, relative to other countries in its upper middle

³⁵ See Carl Riskin et al., *Introduction to The Retreat from Equality*, in CHINA'S RETREAT FROM EQUALITY 3 (2001) (“Seldom has the world witnessed so sharp and fast a rise in inequality as has occurred in China.”).

income bracket, it outperforms in the four main categories, although it lags behind in voice and accountability and political stability.³⁶ Malaysia outperforms the regional average on the four main indicators of good governance and political stability, though it underperforms on voice and accountability. It outperforms others in its group on government effectiveness and slightly on regulatory control, rule of law, and control of corruption, although it falls far short on voice and accountability.

Thailand, a middle income country according to UNDP standards but classified as lower middle by the World Bank, outperforms the region and the average in the lower middle income class by a wide margin on every dimension. China outperforms lower middle income countries in political stability, government effectiveness, and rule of law; it does slightly better in control of corruption, and is about average in regulatory quality. However, it scores much lower on voice and accountability. The Philippines, also in the lower middle income category, scores high on voice and accountability, low on political stability, outperforms the income average on government effectiveness and regulatory quality, but lags slightly behind on rule of law and corruption.

In the low income category, India outperforms others in all dimensions except political stability. Indonesia lags behind the regional averages and other low income countries on political stability, rule of law and control of corruption, but outperforms others at its income level in voice and accountability, government effectiveness and slightly in regulatory quality. Vietnam lags behind the region in all categories except political stability. However, it outperforms others in its income class in political stability, government effectiveness, rule of law and control of corruption, though it lags far behind in voice and accountability.

Law and order and social stability: crime rates, drug rates, suicides, divorces and young mothers

Lee Kuan Yew and other Asian leaders have often been critical of the high crime rates, rampant drug use and social disorder in economically advanced Western liberal democracies. Rather, they champion family and communitarian values, social stability and law and order. Tables 7.1 and 8.1 demonstrate that there are significant differences in crime rates and other indicators of social order.

Crimes rates must be used with caution because of differences in the way crimes are defined, the willingness of rape victims to come forward and other factors that affect the data reported, wide fluctuations from year to year, as well as differences in the level of economic development, demographic variables such as the percentage of rural population and youths, and other conditions that affect crime rates. Notwithstanding such qualifications, the results are striking: Asian countries, especially in the higher income brackets, tend to have much lower crime rates relative to their level of economic development, industrialization and urbanization. For instance, the total crime rates for high income countries France and the U.S. are twice to six times the rates in Japan, Singapore and Hong Kong. The much higher crime rates hold across the board for property offenses such as theft and burglary, violent crimes such as rape and murder (which are generally considered to suffer from fewer problems in reporting and data collection) and drug offenses. The U.S. suffers from particularly high levels of violent crime, especially rape. South Korean crime rates are also two to six times lower than fellow upper middle income countries South Africa and Poland. The lower income countries such as China, the Philippines, Indonesia, India and Vietnam have lower crime rates than the wealthier countries. Data collection is particularly problematic in low income countries, making comparisons more difficult. However, it would appear that crime and social disorder is a greater problem in India, the Philippines and Indonesia than in China, Vietnam and Thailand, although Thailand, which has low overall crime rates, has a surprisingly high murder rate.

Countries vary widely in how they deal with criminals. The U.S. also has the dubious distinction of the highest rate of incarceration in the world, as well as some of the most severe punishments. In

³⁶ See the chart at http://info.worldbank.-org/governance/kkz2002/sc_chart.asp.

contrast, France and Japan have low rates of incarceration relative to their crime rates, and tend to place more emphasis on noncustodial sanctions and in Japan's case on rehabilitation. In general, however, Asian states with the exception of Japan rely on heavy punishments.

Other indicators of social order such as suicide, divorce and young mother rates produce more mixed results, less clearly tied to levels of wealth, as indicated in Table 11. Suicide rates are very high in Japan, followed by France, and then a cluster of countries including South Korea, China, and Hong Kong, followed by the U.S. and India. Thailand and the Philippines, perhaps because of religious influences, have very low rates. The U.S. has a much higher divorce rate than other countries. The next country, South Korea, with a surprisingly high rate, is still only half of that of the U.S. Singapore's divorce rate is relatively low. The birth rates to young mothers varies widely, with Indonesia, India and the Philippines leading the pack, followed by the U.S. and Vietnam. In contrast, there are very few such births in France and the East Asian countries Singapore, Hong Kong, Japan, South Korea or China.

Provisional Summary

- There is a wide variation within Asia in terms of human rights performance and other measures of quality of life.
- Asian countries, especially East Asian countries, tend to do poorly on civil and political rights relative to others in their income group. Moreover, even the most democratic regimes in the region score somewhat lower than the more liberal U.S. and France.
- However, Asian countries tend to do much better, both relative to civil and political rights and also to other countries in their income group, on economic rights and other quality of life indicators such as education, infant mortality, life expectancy, law and order and social stability.
- Asian governments also tend to outperform other countries in their income group on good governance measures.
- Each country does better in some respects than others. By selecting particular measures, one can present either a positive or negative image of any country.
- Rampant rights violations, grinding poverty, appalling misery and suffering, and daily assaults to human dignity continue to exist in all countries. Each and every country could do better, and is more and legally obligated to do better, in countless ways.

Accounting for Performance: An Overview of the Most Common Explanatory Factors

What accounts for the difference in rights performance in the Asian region? Quantitative studies have shown that the protection of rights is influenced by, among other things, and in roughly descending order of importance: economic development, with a higher level of development associated with better protection of rights; international or civil wars, with war leading to more violations of rights; political regime type, with democracies protecting rights better than authoritarian or military regimes; regional effects, with Northern Europe and North America outperforming other regions, and with "region" often serving as a proxy for religion and culture; population size, with larger populations leading to higher rates of violation; and colonial history, with British colonialism linked to better rights protection.³⁷ Interestingly, ratification of treaties does not translate into better protection for human rights, and may

³⁷ See generally, Steven Poe et al., *supra* note 16; Linda Camp Keith, *Constitutional Provisions for Individual Human Rights (1976-1996): Are They More than Mere "Window Dressing,"* 55(1) POL. RES. Q. 111 (2002). As discussed below, the relative importance of the factors varies depending on the right in question. In particular, wealth is less important with respect to personal integrity rights than other rights.

even have a negative effect, at least in the short term.³⁸ In this section, I examine rights performance in Asian in light of these factors.

Political stability: war, civil strife, ethnic unrest and terrorism

There are no international wars involving the Asian countries in this study at present. However, in the past two decades, there have been skirmishes in the Korean Peninsula, an invasion by Vietnam of Cambodia, border conflicts between Vietnam and China, skirmishes in the Taiwan straits, several conflicts between India and its neighbors, including Pakistan and China, and violence in Indonesia and East Timor. Meanwhile, the U.S. has been involved in some forty military actions, including wars in Iraq, Afghanistan, Yugoslavia, regime-changing invasions in Grenada, Panama and Haiti, military assistance to rebel groups in Angola, El Salvador and Nicaragua, and missile attacks on Lebanon, Libya, Yemen and Sudan.³⁹

In the near future, North Korea, having declared its intention to pursue the development of nuclear weapons, remains an area of concern. The Taiwan independence issue could be explosive. Chen Shuibian's playing of the referendum card to boost his flagging chances for reelection and his commitment to a constitutional overhaul have increased tensions considerably. In addition, there continue to be a number of border disputes in the region. The signing of a multiparty agreement regarding the Spratly Islands in 2000 has eased tensions, although recent moves by China to develop natural gas in the South China Seas and by Vietnam to renovate an airport on the Islands and run tours for tourists have once again raised concerns. The strengthening of ASEAN may also help defuse conflict in the region as member states become more economically interdependent.

The main sources of instability in the region are domestic. Nepal and the Philippines continue to battle rebel insurgents. Indonesia and East Timor are struggling to maintain stability in the wake of East Timor's declaration of independence and the downfall of Suharto. The rise of terrorism and Islamic fundamentalism in Indonesia have further challenged the newly formed democratic regime's ability to maintain social order.

India remains one of the least stable countries in the region, in part because of potential international conflicts with its neighbors but also because of domestic threats arising from ethnic strife, terrorism and general discontent associated with poverty and an ineffectual government.

China remains relatively stable, although the potential for instability should not be dismissed lightly. Sources of instability include terrorist threats by radical groups in Xinjiang as well as a broader group of Xinjiangese and Tibetans who desire independence or at least greater autonomy. Frequent massive demonstrations by disgruntled farmers, laid-off urban workers and pensioners who are unable to

³⁸ A study of 176 countries from 1976 to 1993 found that signing the ICCPR or even the Optional Protocol allowing individuals to raise complaints had no impact on state's actual behavior after controlling for other factors known to affect human rights implementation. Overall human rights protection among member states was no better than among non-member states, all else being equal. Linda Camp Keith, *The United Nations International Covenant on Civil and Political Rights: Does It Make a Difference in Human Rights Behavior?* 36 J. PEACE RES. 95 (1999). Another study examining compliance with respect to torture, genocide, fair trials, civil liberties, and women's political equality in 166 countries found similar results. Although countries that ratify human rights treaties usually have somewhat better compliance ratings than countries that do not (without controlling for other factors), noncompliance is rampant. Moreover, countries with the worst human rights records sometimes have higher ratification rates than countries with better human rights records. In some cases, treaty ratification is associated with worse human rights ratings, leading the author to conclude that the "relatively costless step of treaty ratification may thereby offset pressure for costly changes in practice." Oona Hathaway, *Do Human Rights Treaties Make a Difference?* 111 YALE L.J. 1935, 1941, 1978 (2002). Nevertheless, a country's ratification of a human rights treaty generally strengthens the hand of domestic and international rights advocates and may therefore contribute to norm change over time. Thus in the long term, the human rights situation may improve.

³⁹ See <http://www.uwec.edu/grossmzc/interventions.html>.

obtain their retirement benefits from moribund state-owned enterprises or poorly funded welfare programs also have the government on edge. In addition, China's impressive economic run over the last twenty-five years is threatened by a high percentage of bad loans that could undermine the banking system. Judging from the harshness of the crackdown, the ruling regime also perceives advocates of democracy, certain religious groups such as Falungong and other social groups as potentially destabilizing.

The U.S. received a relatively poor political stability rating in the World Bank 2002 study, ranking just higher than China and lower than South Korea. The lower ranking reflects the rise of terrorism and the possibility of retaliation for the aggressive U.S. military policies in Afghanistan, Iraq and elsewhere in the world.

In addition to the threat from North Korea, South Korea has experienced ongoing violent clashes with students and workers. As a result, its political stability rating is the same as that of Vietnam and lower than the regional average and the average for its income class. Vietnam's political stability rating appears to reflect the concern that the authoritarian socialist system is simply not sustainable, and yet the regime may not be able to manage political transition to a more stable form of government.

Malaysia has been relatively stable. However, the threat of terrorism and the rise of Islamic fundamentalism, as well as concerns about the transition of power now that Mahathir has stepped down, have given rise to worries about political stability. Nevertheless, it remains relatively stable, as does Thailand. While Thailand has a history of coups, and the military remains strong, it has emerged as one of the more stable democracies in the region. Although terrorists have been captured in Thailand, terrorist activities are primarily oriented toward other states. The authorities have clashed with Islamic separatist in southern provinces, however, resulting in more than 100 deaths and the imposition of martial law in the region. In Taiwan, the violence that erupted after the closely contested presidential election in March 2004 demonstrated the public is deeply divided, increasing the potential for domestic political instability.

Hong Kong remains stable, despite recent mass demonstrations of several hundreds of thousands to protest the ineffectual rule of Tung Chee-hwa, an economic recession, proposed national security legislation required under the Basic Law and limited political reforms. The pace of democratization in Hong Kong and China remains an issue, and there will inevitably be tensions between Beijing and Hong Kong under the novel one country, two systems approach. Nevertheless, there is little chance of political instability given Hong Kong's politically cautious, business-minded citizenry and the fundamental reality that Hong Kong is part of the PRC.

Japan, France and Singapore all rank high on political stability. However, Japan's sending of soldiers to Iraq has created tensions at home, with many citizens concerned that Japan's increasing presence in U.N. peacekeeping and nation-building operations runs afoul of constitutional limits on the military.

More generally, the war on terrorism has resulted in threats to civil liberties in all countries. In addition to hurriedly passing a series of anti-terrorist laws, the U.S. has pressured other countries in Asia to beef up their national security laws, often dangling the bait of bilateral trade benefits as an inducement. Ironically, prior to 9-11, the U.S. State Department and Western rights organizations routinely criticized Asian countries for cracking down on dissidents, insurgents, terrorists, and others who threaten social order on the ground that the life of the nation was not at stake as literally required under Article 4 of the ICCPR to justify the derogation of civil and political rights. Yet surely the threats faced by many Asian countries have been and continue to be more serious than the threats currently faced by the U.S. Isolated acts of terrorism, deplorable as they may be, are not likely to bring the world's mightiest military power to its knees. In any event, rights advocates worry that U.S. pressure will set the clock back in societies that have fought to eliminate or restrict the use of national security laws to harass political opponents.

Economic development

Some Asian governments have cited their economic record in defending the need to rule with a strong hand. On the whole the Asian region has done extremely well in achieving economic growth, particularly compared to other regions. However, the level of development varies widely in Asia.

The U.S. leads the pack with GDP/capita (PPP) of US \$34,320, as indicated in Table 9.1. Also in the high income category are Japan, Hong Kong, France, and Singapore in the \$22,000 to \$25,000 range. South Korea and Taiwan are in the upper middle category, with PPP levels at slightly less than half of the U.S. and about two-thirds that of the high income Asian countries. Malaysia and Thailand are in the middle, with PPP levels about one-fifth to one-fourth that of the U.S., and one-third of rich Asian countries. China and the Philippines are in the lower middle group, with one-eighth of the per capita wealth of the U.S. and one-sixth of that of rich Asian countries. Indonesia, India and Vietnam fall into the low income category.

As the scatterplots in Figure 4.1 graphically portray, level of development is clearly related to better protection of human rights. The correlations in Table 10.1 demonstrate that the relationship between wealth and human development⁴⁰ and good governance is extremely strong.⁴¹ The relationship for voice and accountability is also strong, and statistically significant. Although statistically significant, the relationship between personal integrity rights globally and GDP is weaker. This is due to police violence and other acts classified as torture even in rich countries, and because rich countries also react to war, terrorism and political stability by limiting civil and political rights and detaining suspects in ways that are considered arbitrary detention under international human rights standards.⁴²

Wealth then explains the brunt of variation in human rights performance around the world,⁴³ strongly supporting the arguments calling for greater emphasis on the right to development and more assistance from wealthy western liberal democracies. Of course wealth is not the only factor or the most determinative for all rights in all cases. Some countries in each income group beat expectations while others fall far short. Of 174 countries, 97 scored higher on HDI, the indicator of social and economic rights, than their GDP ranking, while 69 scored lower.⁴⁴

⁴⁰ There is also a strong relationship between wealth and women's rights as measured by the UNDP's Gender Development Index (GDI) index ($r=.93$). The GDI index is highly correlated with the HDI index ($r=.999$). The GDI is a composite indicator that measures the average achievement of a population in the same dimensions as the HDI while adjusting for gender inequalities in the level of achievement in the three basic aspects of human development. It uses the same variables as the HDI, disaggregated by gender. Given the high correlation, the scatterplot for GDI is virtually identical to that for HDI. Even the regional correlations differ only slightly as indicated in Table 10.1.

⁴¹ Three variables (Rule of Law, Government Effectiveness and Control of Corruption) are so highly correlated (Pearson $r > .91$) that they appear to measure the same thing. Reliability analysis confirms this ($\alpha = .97$), and so the variables have been standardized and combined into a single good governance scale.

⁴² Keith, *supra* note 37 (citing eight studies and concluding that "empirical evidence has consistently show that higher levels of economic development reduce political repression," but finding that the factors affecting personal integrity were in order of importance a large population, civil war, a change in democracy from lowest to highest level, international war, provisions for fair trials, GDP, and provisions for public trials). See also Christian Davenport, "Constitutional Promises" and *Repressive Reality: A Cross-National Time-Series Investigation of Why Political and Civil Liberties are Suppressed*, 58(3) J. POL. 627 (1996) (impact of economic development minimal in his study and three others); Conway Henderson, *Conditions Affecting Use of Political Repression*, 35 J. CONFLICT RES. 129 (1991) (democracy, inequality and economic growth were statistically significant predictors of political repression, though level of economic development was not). Economic growth might be an important indicator for personal integrity rights because people are less likely to take to the streets when their material standards are improving. In contrast, economic downturns, particularly at low levels of development, frequently result in regime change. Adam Prezowski & Fernando Limongi, *Modernization: Theories and Facts*, 49 (2) WORLD POL. 155 (1997).

⁴³ See *supra* note 15. Although table 4.1 presents simple correlations without controlling for other factors, many of the studies cited in note 15 do control for other factors, and still find a strong, statistically significant relationship between wealth and rights performance.

⁴⁴ Human Development Report 2000, *supra* note 31.

There are also strong regional differences that weaken the correlation between wealth and civil and political rights. East Asian states with a Confucian heritage and Middle East states with an Islamic tradition are less supportive of civil and political rights even if wealthy. Latin American states, with a history of corporatism, patron-client relationships, corruption and large income gaps, and African countries, with traditions of collectivism, strong ethnic affinities and more recently dysfunctional and corrupt leadership, are also less supportive of civil and political rights.

Cultural factors then play a role in some contexts and with respect to some rights.⁴⁵ To be sure, cultural traits are also closely correlated with wealth, as well as such demographic factors as age, education, rural-urban ratios and occupation.⁴⁶ Moreover, the relationship between wealth and human rights performance in Asia and the Middle East is consistently strong except with respect to civil and political rights. This supports the view that there is a culturally based antipathy to liberal values that explains the variance. In contrast, the relationship between wealth and all types of rights is consistently weak in Latin America and Africa, suggesting that the culprit is corrupt and dysfunctional governments that serve the rich, if they serve anyone, at the expense of the general populace.

Finally, it bears noting that rights performance of any country may deteriorate rapidly because of war, economic stagnation, natural disasters or problems like HIV/AIDS, though again poor countries are likely to be suffer disproportionately.

Whereas most studies use GDP as the independent variable, some studies have found that economic growth rates are also important to protection of rights. Again, there is significant difference in terms of long-term growth rates in the region. Only six—Japan, South Korea, Taiwan, Hong Kong, Singapore and China—experienced sustained growth over 5% for the period from 1965 until 1995.⁴⁷ Thailand, Malaysia and Indonesia grew more slowly, at around 3.5% per year. Seven countries, including North Korea, Mongolia, Vietnam, Cambodia, Laos, Philippines and Myanmar, averaged less than 2% growth. Growth rates in Thailand, Malaysia, Indonesia and Vietnam increased during the 1980s and 1990s up until the financial crisis.

⁴⁵ Notwithstanding the clear correlation between wealth and good governance, at least one study has found that cultural values are more predictive of rule of law and good governance than GDP. Licht et al., *supra* note 8. The study found that countries that emphasized autonomy and egalitarianism had higher levels of rule of law, accountability and less corruption, whereas countries that emphasized embeddedness and hierarchy had a lower level of rule of law, accountability, and worse corruption. In short, English-speaking and Western Europe scored significantly higher than other regions. The authors suggest that cultural orientation in East Asia may make it more difficult to implement rule of law, restrict corruption and increase accountability or that “good governance” in Asia may differ in some respects from “good governance” in liberal democratic Western countries.

Good governance in Asian countries no doubt differs in significant respects from good governance in rich, liberal democratic Western countries once one examines in more detail the broad variables of rule of law, accountability and corruption. Nevertheless, Asian states have outperformed other regions in terms of rule of law on the same World Bank good governance scales used by the Licht et al., suggesting that culture may not be as important at least in Asia as the authors suggest. More generally, the study suffers from a relatively small number of countries (N=45 to 53), and the sequencing in which variables were tested for affect may have led to culture appearing more significant than it is. Relying on the same IBM data, Hofstede found that wealth was the main factor affecting rights compliance, although individualism mattered in rich countries. *See supra* note 16.

⁴⁶ *See* Hofstede, *supra* note 16 (wealth biggest factor with respect to individualism versus collectivism, the power distance index which measures the extent to which less powerful members of society accept that power is distributed unequally, and uncertainty avoidance which measures the extent to which people are comfortable in unstructured situations); Geert Hofstede and M.H. Bond, *The Confucius Connection: From Cultural Roots to Economic Growth*, 16 *ORG. DYNAMICS* 4, 4-21 (1988) (Confucian work dynamism related to economic growth); Smith et al., *supra* note 9) (GDP strongly correlated with autonomy versus conservatism, and egalitarianism versus hierarchy). RONALD INGLEHART, *MODERNIZATION AND POSTMODERNIZATION: CULTURAL, ECONOMIC AND POLITICAL CHANGE IN 43 SOCIETIES* (1997) (GNP/capita strongly correlated with both wellbeing versus survival, and secular-rational versus traditional authority).

⁴⁷ Henry Rowen, *The Political and Social Foundations of the Rise of East Asia*, in *BEHIND EAST ASIAN GROWTH* (Henry S. Rowen ed., 1998).

Several points bear noting. First, the period of rapid growth generally occurred under an authoritarian regime. However, not all of the authoritarian regimes in the region have succeeded in achieving high growth rates (e.g., Myanmar, North Korea). Nor have all the democracies (e.g., Philippines, India). Regime type is not as important as the stability of the regime and variations within regimes.⁴⁸ In particular, regimes that are market-oriented, dominated by technocrats, and relatively free from corruption are more likely to be successful.

Second, of the Asian countries that have experienced sustained growth, most have enjoyed legal systems that comply with the standards of rule of law at least in their handling of commercial matters. Although the political regimes may not have been democratic and the legal system may not have provided much protection for civil and political rights in some cases, the Asian countries that experienced economic growth generally scored high with respect to the legal protection of economic interests. A survey of economic freedoms in 102 countries between 1993 and 1995 found that seven of the top twenty countries were in Asia.⁴⁹ Economic freedoms include protection of the value of money, free exchange of property, a fair judiciary, few trade restrictions, labor market freedoms and freedom from economic coercion by political opponents. With the possible exception of China, the legal systems of the six countries that have achieved highest economic growth measure up favorably in terms of economic freedoms and rule of law, particularly with respect to commercial matters. In contrast, the legal systems of the lowest performing countries are among the weakest in the region. The data for Asian countries is consistent with the general evidence from other countries that demonstrates that rule of law is necessary if not sufficient in most cases for sustained economic development.⁵⁰

Third, all else being equal, authoritarian regimes tend to outperform democratic regimes at relatively low levels of economic development.⁵¹ Thus, promoting democracy in very poor countries may be putting the cart before the horse.

Fourth, some Asian countries, including China, may not yet have reached the level of development that makes it likely that there will be a transition to democracy, and even if there were, that democracy would be sustainable.⁵² While democracy proponents often claim that authoritarian regimes are particularly vulnerable to economic downturns, so are democracies, at least at relatively low levels of growth.⁵³

Fifth, when the conditions for a durable or stable democracy are not present, the transition to democracy often impedes economic development, at least in the short term.

Sixth, economic development is not sufficient for political reform and the emergence of democracy. Countries may develop economically and not become liberal democracies, at least for a considerable period. Hong Kong and Singapore are good examples.

Seventh, higher levels of prosperity and economic development are likely to lead to a growing demand for democracy—Taiwan, South Korea, Thailand, Indonesia and Hong Kong are good examples. Whether or not economic development is the cause of democratization, in the long term, economically advanced countries are likely to be, and to remain, democracies.

Finally, as discussed in the next section, democratization does not necessarily lead to an improvement in human rights.

⁴⁸ See Przeworski & Limongi, *supra* note 42.

⁴⁹ Rowen, *supra* note 47, at 7.

⁵⁰ See RANDALL PEERENBOOM, CHINA'S LONG MARCH TOWARD RULE OF LAW (2002) [hereinafter called CHINA'S LONG MARCH], chapter 10.

⁵¹ Robert Barro, *Democracy: A Recipe for Growth?*, in CURRENT ISSUES IN ECONOMIC DEVELOPMENT: AN ASIAN PERSPECTIVE 67-106 (Muhammad G. Quibria & J. Malcolm Dowling eds., 1996).

⁵² See CHINA'S LONG MARCH, *supra* note 50, at 521-22.

⁵³ Przeworski & Limongi, *supra* note 42.

As for the relation of growth to rights rather than to democracy, high growth rates may in the long term lead to better protection of rights as a society becomes wealthier, and may in the short term diminish popular discontent and opposition to government policies, thus reducing the need to suppress political dissent or take harsh actions to curb social protests. But higher growth rates are also consistent with rising inequality and political oppression, as the experiences of several Asian countries demonstrates. As indicated in Table 11.1, China and Vietnam have enjoyed the highest growth rates in recent years, explaining to some extent the legitimacy of the authoritarian governments and the relative political stability despite severe restrictions on civil and political rights. Similarly, Taiwan, Singapore, Hong Kong, South Korea and Malaysia enjoyed high growth rates during their authoritarian years, although growth rates have tapered off in recent years as the size of the economy has grown and because other factors such as the affect of the Asian financial crisis. India's growth rate has been relatively high, though only half of that of China. Asia's other developing country democracy, the Philippines, has struggled economically, posting some of the lowest rates in the region.

In addition to levels of development and growth rates, researchers have studied the effect of FDI and foreign assistance on human rights. Unfortunately, such studies have been inconclusive.⁵⁴ Taking a look at the region, China clearly receives the most FDI, and indeed was the leading destination in the world for FDI in 2002. In terms of FDI as a percentage of GDP however, the countries ranked as follows in 2001, Hong Kong 14.1, Singapore 10.1, Vietnam 4.0, France 4.0, China 3.8, Thailand 3.3, US 1.3, South Korea 0.8, India 0.7, Malaysia 0.6, and Indonesia -2.4.⁵⁵

Consistent with the general studies, it is difficult to draw any firm conclusions from these figures for the Asian region. In most cases, foreign businesses pursue their own economic interests. While there may be some diffusion of norms, in some cases the nouvelle riche working in foreign enterprises tend to be conservative defenders of the status quo.⁵⁶ Moreover, foreign investors themselves have very different records on labor rights issues. In China, large multinational companies from the U.S., Europe and Japan provide similar treatment to employees as in their own country. However, investors from other countries in the region often engage in abusive practices.⁵⁷

While FDI may stimulate growth and provide much needed jobs, it can also contribute to financial crisis. The Asian financial crisis clearly resulted in lower living standards in many Asian countries. In Thailand, poverty levels jumped from eight percent in 1996 to twenty percent in 1998 as a result of the financial crisis, eliminating much of the progress made in last twenty years. Some 800,000 school children and college students were forced to drop out of school; social problems such as alcoholism, depression and suicide increased; immigrants were no longer welcome; and trafficking in children and prostitution increased.⁵⁸ Fortunately, Thailand has now recovered from the financial crisis, and regained or even improved on pre-crisis levels for human development and other rights.⁵⁹

Although studies have reached different conclusions about the impact of foreign aid on human rights, the impact seems to be limited in most cases.⁶⁰ What is abundantly clear from such studies is that aid is more often determined by the strategic, commercial and political concerns of the donor rather than given out of pure altruism. At minimum, it is safe to say that the human rights record of the recipient is rarely the determining factor, and that there is a significant gap between a rhetorical commitment to democracy and human rights and the deliverance of aid and the pursuit of other goals that undermine

⁵⁴ Mosley and Uno, *supra* note 5.

⁵⁵ UNDP 2003 Indicators, available at http://www.undp.org/hdr2003/indicator/indic_151_1_1.html.

⁵⁶ Peerenboom, *supra* note 50, at 529-530.

⁵⁷ ANITA CHAN, [CHINA'S WORKERS UNDER ASSAULT: EXPLOITATION AND ABUSE IN A GLOBALIZING ECONOMY](#) (2001)

⁵⁸ KENNETH CHRISTIE & DENNY ROY, *THE POLITICS OF HUMAN RIGHTS IN EAST ASIA* 166 (2001).

⁵⁹ See Muntabhorn, *supra* note 25.

⁶⁰ Patrick Regan, *U.S. Economic Aid and Political Repression: An Empirical Evaluation of U.S. Foreign Policy*, 48 POL. RES. Q. 613-28 (1995).

democracy and human rights.⁶¹ Looking at the amount of ODA received (US millions) and the rate per capita in the region, India clearly leads in the total amount of aid received, although Vietnam, Indonesia and the Philippines have higher rates per capita: India 1705/1.7; Indonesia 1500/7.0, China 1460/1.1, Vietnam 1439/18.1, Philippines 577/7.5, Thailand 281/4.6, Malaysia 27/1.1, Hong Kong 3.6/0.2; Singapore 1.0/0.5. Again, no straightforward conclusions seem to flow from these numbers, although the relatively poor civil and political rights records of Vietnam, China and Indonesia suggest that aid alone is not an effective lever for changing government policies in that area.

Political regime: democracy, authoritarianism and their mixed offspring

Many studies using a variety of methods and definitions find that democracy reduces human rights violations.⁶² However, the studies tend to assume a linear relationship: marginal improvement in democratization leads to a similar improvement in protection of human rights. Yet many qualitative studies have found that democratization has not led to better protection of human rights in the countries studied.⁶³ Despite the much vaunted third wave of democratization in the 1980s and 1990s, regimes that combined meaningful democratic elections with authoritarian features outnumbered liberal democracies in developing countries during the 1990s.⁶⁴

A number of quantitative studies support the disconcerting results of the qualitative studies by showing that the third wave has not led to a decrease in political repression, with some studies showing that political terror and violations of personal integrity rights actually increased in the 1980s.⁶⁵ Other studies have found that there are non-linear effects to democratization: transitional or illiberal democracies increase repressive action. Fein described this phenomenon as “more murder in the middle” – as political space opens, the ruling regime is subject to greater threats to its power and so resorts to violence.⁶⁶ More recent studies have also concluded that the level of democracy matters: below a certain level democratic regimes oppress as much as non-democratic regimes.⁶⁷

⁶¹ Bethany Barratt, *Aiding Whom? Competing Explanations of Middle-Power Foreign Aid Decisions*, paper presented at the Annual Meeting of the American Political Science Association, Philadelphia, August 28-31, 2003, at proceedings@apsanet.org (UK and Canada aid not dependent on human rights of recipients); see also Steven Poe: *Human Rights and US Foreign Aid: A Review of Quantitative Studies and Suggestions for Future Research*, 12 HUM. RTS. Q. 499-512 (1990).

⁶² See generally Davenport & Armstrong, *supra* note 15; Landman, *supra* note 20.

⁶³ Davenport & Armstrong, *supra* note 15.

⁶⁴ Levitsky & Way, *supra* note 4.

⁶⁵ James A. McCann and Mark Gibney, *An Overview of Political Terror in the Developing World, 1980-1991*, in POLICY STUDIES AND DEVELOPING COUNTRIES, VOL. 4, 15, 23-24 (Stuart Nagel and David Louis Cingranelli, eds., 1996) (noting that political terror increased in the developing world in the 1980s and finding that democracy does not by itself ensure low levels of terror); see also Reilly, *supra* note 7 (over the period from 1976-1996, the number of countries with the best score actually decreased, countries with the worst score increased, while the mean remained about the same); Landman *supra* note 22 (noting increase in violations of personal integrity and torture between 1985 and 1993).

⁶⁶ Helen Fein, *More Murder in the Middle: Life-Integrity Violations and Democracy in the World, 1987*, 17 HUM. RTS Q. 170 (1995).

⁶⁷ Bruce Bueno de Mesquita et al., *Thinking Inside the Box: A Closer Look at Democracy and Human Rights*, paper presented at the Annual Meeting of the American Political Science Association, Philadelphia, August 28-31, 2003, at proceedings@apsanet.org. See also Davenport & Armstrong, *supra* note 15; Keith, *supra* note 37 at 129 (democracy has only minor impact on personal integrity rights although transition from lowest level to highest level produces a more substantial impact). Another study found finding that democracy leads to improvement in human rights performance within the first year of holding elections, but then that is followed by increased repression in following years. On the other hand, while repression increases in the year of a regime change from democracy to authoritarianism, repression then decreases in the first year after the authoritarian regime takes over power and in subsequent years. Moreover, the study distinguished between democracies, authoritarian regimes and mixed regimes –i.e. those regimes that score in the middle of

Democracy consists of different elements or dimensions, and thus most studies use a composite index. The Polity IV measure increasingly favored by researchers is a 21-point scale made up of five components: competitiveness of executive recruitment, competitiveness of participation, executive constraints, openness of executive recruitment and regulation of participation. Other composite measures of democracy include civil liberties, freedom of press, minority protection and so on. Which elements matter the most for the protection of human rights?⁶⁸ Is there a sequencing effect that would recommend increasing political participation before increasing constraints on executive, or vice versa? de Mesquita et al. found that political participation and limits on executive authority are more significant than other aspects, but that there is no human rights benefit at all until the very highest levels of political participation and executive constraints are achieved. However, these levels require moderate progress on each of the other subdimensions. In short, “there is no significant increase in human rights with an incremental increase in the level of democracy until we reach the point where executive constraints are greatest and where multiple parties compete regularly in elections and there has been at least one peaceful exchange of power between the parties... Put more starkly, human rights progress only reliably appears toward the end of the democratization process.”⁶⁹

Policymakers are again faced with morally ambiguous results. Democracy appears to be related to both economic growth and human rights, but the human rights benefits of democracy may occur only once democracy is consolidated. Moreover, all else being equal, authoritarian regimes tend to outperform democratic regimes at relatively low levels of economic development, while democracies are unstable at low levels of development and susceptible to collapse when economic performance suffers.⁷⁰ This supports the views of several Asian leaders who argue that economic growth should come before democratic reforms.⁷¹ On the other hand, advocates of a growth-first approach may be troubled by studies showing that IMF and World Bank structural adjustment programs lead to more repression, at least in the short term, although the long-term results are variable.⁷² At minimum, policymakers should strive to avoid sacrificing the short-term interests of the poorest members of society at the altar of long-term growth by adopting relief measures to protect the most vulnerable.

the Polity III index, as most new democracies are likely to do. Transitions from an authoritarian regime to a mixed regime lead to more repression in the year of change, a decrease in the first year, and then an increase in the second year. In sum, the results are consistent with the argument that human rights improvements are consistently obtained only in full democracies. See S.C. Zanger, *A Global Analysis of the Effect of Regime Changes on Life Integrity Violations, 1977-1993*, 37 (2) J. OF PEACE RES. 213 (2000).

⁶⁸ As de Mesquita et al. note, *supra* note 67, one of the disadvantages of using composite measures of democracy is that it is not clear how democracy promotes human rights. The factors measured by studies of democracy are only loosely tied to theories about why democracy protects human rights.

⁶⁹ *Id.*

⁷⁰ Barro, *supra* note 51; and Prezowski & Limongi, *supra* note 42.

⁷¹ Democracy advocates may also be concerned by studies that show that a shift to democratic elections has led to greater spending on primary education in some countries, but at the expense of second and tertiary. See David Stasavage, *Democracy and Education Spending: Has Africa's Move to Multiparty Elections Made a Difference for Policy?*, at d.stasavage@lse.ac.uk.

⁷² M. Rodwan Abourharb & David Congranelli, *Money Talks? The Impact of World Bank Structural Adjustment Lending on Human Rights, 1981-2000*, paper presented at the Annual Meeting of the American Political Science Association, Philadelphia, August 28-31, 2003, at proceedings@apsanet.org. This study of 161 countries found that after controlling for existing circumstances within a country, there was an improvement in personal integrity rights during the year the loan is received, but then deterioration in the following two years once structural adjustment conditions are imposed. This suggests that governments improve their performance to impress the World Bank and secure loans, but that the austerity measures associated with structural adjustment policies lead to violations of rights thereafter. See also Linda Camp Keith and Steven Poe, *The U.S., the I.M.F., and Human Rights, in THE UNITED STATES AND HUMAN RIGHTS: LOOKING INWARD AND OUTWARD* (David P. Forsythe ed., 2000) (weak short term increase in level of repression following receipt IMF loan).

The experiences of Asian countries with democratization are largely consistent with the findings of these multiple country studies. In Indonesia, there have been numerous human rights violations after the fall of Suharto, most notably with respect to ethnic violence, the tragedy in East Timor, and the violence that marred the 1999 elections.⁷³ Similarly, Amnesty International reported in 1993 that the human rights situation had not substantially improved under the democratic regime in South Korea.⁷⁴ Even the former rights activist and President Kim Dae Jung was unwilling or unable to do away with the strict National Security Law despite his campaign promises. To be sure, the number of persons arrested for violating the National Security Law has decreased in recent years. Nevertheless, almost 80 people were arrested in the first year of the presidency of former human rights lawyer Roh Moo-hyun. Moreover, while the government is more hesitant to invoke national security concerns to justify rights violations, in practice law enforcement agencies continue to emphasize confession and make use of "special interrogation rooms" maintained in the prosecutors' office.⁷⁵ Although Cambodia held elections in 1993 and 1998, the period was marked by battles between government armed forces and the Khmer Rouge, resulting in continued human rights violations including murder, rape, hostage-taking, and secret detention.⁷⁶ The government offered an amnesty to key leaders and supporters of the Khmer Rouge, much to the dismay of many rights advocates. Nevertheless, stability remained an issue with a preemptive coup by Hun Sen in 1997 in which more than fifty people were killed, many of them shot in the back of the head after arrest.⁷⁷ In the Philippines, democracy has not resolved pressing socioeconomic problems. Under Ramos, the percentage living in poverty was reduced, but the gap between rich and poor grew.⁷⁸ There have also been numerous rights violations, including disappearances, extrajudicial killings, arbitrary arrests, and prolonged detention, as the government continues to struggle against insurgents.⁷⁹ Consistent with popular views in other countries threatened by terrorism and insurgents, most Filipino citizens apparently do not consider the government's tough treatment of terrorists as human rights violations. Preoccupied fighting terrorists, the government has been too weak to deal with corruption and violence, and democracy has been driven by cronyism, family networks in the countryside, and personalities.

Moreover, a large number of citizens in Taiwan and South Korea continue to harbor serious doubts about democracy. Taiwan and South Korea have generally been considered success stories in that they have achieved relatively mature democracies, although the violence and allegations of impropriety in the recent presidential election in Taiwan have tarnished Taiwan's image. With a 2.0 ranking on Freedom House's political rights and civil liberties scale, they are considered to be "liberal democracies," despite shortcomings in rule of law and restraints on executive power. Nevertheless, "support for democracy lags well behind the levels detected in other emerging and established democracies. And on some dimensions of belief, the two publics exhibit a residual preference for authoritarian or nondemocratic principles, akin to the portrait of traditional or 'Asian values.'"⁸⁰ Global studies suggest that democracy becomes stable when 70% of the populace insists on democracy as the best form of government.⁸¹ However, only slightly more than half of citizens in South Korean and Taiwan believe that democracy is the best form of

⁷³ Juwana, *supra* note 24.

⁷⁴ Amnesty International, AMNESTY INTERNATIONAL REPORT 1993 (1993).

⁷⁵ Chaihark Hahm, *Human Rights in Korea*, in THE RIGHTS OF ASIANS TODAY, *supra* note 15.

⁷⁶ One can, of course, challenge whether Cambodia or Singapore or Malaysia are democracies in the relevant sense.

⁷⁷ David Chandler, *Will There Be a Trial for the Khmer Rouge?*, 14 ETHICS & INT'L AFF. 67 (2000).

⁷⁸ CHRISTIE & ROY, *supra* note 58, at 187.

⁷⁹ *Id.* at 188, 191-92.

⁸⁰ Yun-han Chu et al., *Halting Progress in Korea and Taiwan*, 12 J. DEMOCRACY 122, 124 (2001).

⁸¹ *Id.*

government, while 30% of Koreans and 12% of Taiwanese maintain that an authoritarian government is sometimes preferable. Support for democracy has even declined in South Korea after the financial crisis and the scandals in the presidency of Kim Young Sam presidency, including one involving his son. Moreover, some 65% of Koreans claim economic development is more important than democracy, while only 1 out of 7 choose democracy.⁸²

Numerous polls throughout the region show similar majoritarian support for economic development and social stability over democracy and civil and political rights.⁸³ This is perhaps not surprising given that between 60% and 84% of Indonesians, Indians, Filipinos, Vietnamese and Chinese identify economic difficulties as their number one concern, with 37% of Indonesians, 44% of Indians, 57% of Filipinos, 31% of Vietnamese and 18% of Chinese claiming difficulties in affording adequate food.⁸⁴ In other parts of the developing world, large majorities also are willing to trade off democracy for economic growth. More than twice as many Latin Americans would choose development over democracy, while 50% agreed or strongly agreed with the statement that they would not mind having a non-democratic government if it could solve economic problems.⁸⁵ Moreover, just as impoverished Latin Americans have become disillusioned with the third wave of democracy and are dissatisfied with their governments, between 75% and 92% of citizens are dissatisfied with the government in democratic Japan, South Korea, India, Indonesia and the Philippines. In contrast, almost half of Chinese and almost 70% of Vietnamese are satisfied with the government.⁸⁶ Interestingly, Asian citizens are generally satisfied with their own lives and optimistic about the future, with between half and three-quarters of respondents in India, China, the Philippines, South Korea, Vietnam, Indonesia and Bangladesh believing their lives would improve in the next five years and less than 10% worried that their lives would not improve during the same period.⁸⁷ However, beliefs about future growth and improvement in personal circumstances do not necessarily translate into satisfaction with the current government in democratic states. One can only speculate about what the implications for democracy would be if people came to believe they would be worse off in the future under a democratic regime.

⁸² *Id.*

⁸³ See Susan Sim, *Human Rights: Bridging the Gulf*, STRAITS TIMES (Singapore), Oct. 21, 1995, at 32. A survey of academics, think tank experts, officials, businesspeople, journalists, and religious and cultural leaders found significant differences between Asians and Americans. The former chose an orderly society, harmony, and accountability of public values, in descending order, as the three most important societal values. In contrast, the Americans chose freedom of expression, personal freedom, and the rights of the individual. See also Bridget Welsh, *Attitudes Toward Democracy in Malaysia*, 36 ASIAN SURV. 882 (1996) (reporting that a survey of Malaysians in 1994 found that the majority were willing to limit democracy, particularly when social order was threatened, and that fears of instability and Asian values led to limited support for democracy; also noting that respondents were willing to sacrifice freedom of speech in the face of threats to social order, and that only forty percent thought the press should be free to discuss sensitive issues, while only fifty-two percent thought it should be free to criticize the government, with many of those favoring constructive criticism). For several studies that show the high value assigned to order in China and limited demand for democracy, see Peerenboom, *supra* note 50, at 53-56.

⁸⁴ See Pew Global Attitudes Project, *What do Asians think about their lives?*, in WHAT THE WORLD THINKS IN 2002 (2002), available at <http://international.ucla.edu/asia/news/02pewpolla.asp>.

⁸⁵ Comisión de Promoción del Perú, LATINOBAROMETER: PUBLIC OPINION IN LATIN AMERICA (2002) [hereinafter called LATINOBAROMETER]. See also Juan Forero, *Latin America Graft and Poverty Trying Patience With Democracy*, NEW YORK TIMES, June 24, 2004, available at <http://www.nytimes.com/2004/06/24/international/americas/24PERU.html?ex=1089065297&ei=1&en=7f452d7bbb6ecb14> (United Nations Report finds 56% of Latin Americans said economic progress more important than democracy. Massive discontent has led to the downfall of six elected leaders after violent unrest, growing support for neo-authoritarian leaders and the granting of extrajudicial powers to effective leaders. There have even been calls in Peru for the return of the authoritarian leader Alberto Fujimori who was run out of office on corruption charges).

⁸⁶ *What do Asians think about their lives?*, *supra* note 84.

⁸⁷ Japan, where 39% of people felt they lost ground in recent years, was the exception. Only 34% of Japanese are optimistic about the chances of improvement in the next few years, with 27% anticipating being worse off. *What do Asians think about their lives?*, *supra* note 84.

Even when many Asians prefer democracy, they may prefer majoritarian or nonliberal variants to liberal democracy. Nearly two-thirds of Koreans agreed with the statement that “If we have political leaders who are morally upright, we can let them decide everything”, 40% believed that “the government should decide whether certain ideas should be allowed to be discussed in society,” while 47% believe that “if people have too many different ways of thinking, society will be chaotic.”⁸⁸ In contrast to South Koreans and Taiwanese, there is overwhelming support for democracy among Thais, with an astounding 90% satisfied with the way democracy works in Thailand and 85% maintaining that democracy is always preferable to authoritarianism.⁸⁹ Nevertheless, half of Thais still rank economic development as more important than democracy,⁹⁰ suggesting popular support for the government’s current policies which emphasize economic growth and majoritarian concerns even if at the expense of individual liberties in some instances.⁹¹ Moreover, Thais remain distrustful of political parties, while 75% view diversity of political and social views as threatening, and 45% are unwilling to tolerate minority viewpoints.⁹² Nor is there a very deep commitment to rule of law and separation of powers. A majority would accept government control over the judiciary or even parliament to promote the wellbeing of the nation.⁹³

That some Asian citizens would harbor doubts about the most recent wave of democratization is understandable given the disappointing results of earlier experiments with democracy in Asia and the lackluster performance of many recently democratized states in other parts of the world that has led to a reversion to authoritarianism in several. Indonesia tried democracy just after independence from the Dutch between 1950 and 1957. The experiment ended when Sukarno declared martial law. Thailand has gone through numerous cycles of democratic elections followed by military-led coups - since 1932, there have been some seventeen coups attempts.⁹⁴ South Korea held elections in the 1960s and early 1970s before returning to authoritarian rule. The less-than-successful experiments with democracy in the Philippines from 1935 led to the declaration of martial law by Marcos in 1972. More generally, many third-wave democracies have failed to generate economic growth or to deliver on human rights promises, leading to massive discontent on the part of the citizenry, calls to cut back on liberal rights in favor of a harsher law and order agenda, and in some cases reversion to authoritarian governments.⁹⁵

⁸⁸ See Chong-min Park and Doh Chull Shin, Do Asian Values Deter Popular Support for Democracy? The Case of South Korea, paper prepared by the Association for Asian Studies Annual Meeting, March 4-7, San Diego, 2004.

⁸⁹ Robert Albritton & Thawilwadee Bureekul, Impacts of Asian Values on Support for Democracy in Thailand, paper presented at the Association for Asian Studies Annual Meeting, March 4-7, San Diego, 2004.

⁹⁰ *Id.*

⁹¹ Cf. Muntabhorn, *supra* note 25.

⁹² Albritton & Bureekul, *supra* note 89 (however, only 25% agree that free speech is not worth it if that means having to put up with a threat of social disorder, while over 90% believe that the political leaders should tolerate views of challengers, suggesting that Thais are aware of the misuse of restrictions on free speech in the name of public order and the use of defamation laws to curtail political opposition).

⁹³ *Id.*

⁹⁴ See CHRISTIE & ROY, *supra* note 58, at 161.

⁹⁵ Between 1996 and 2000, only 27 to 37% of Latin Americans expressed satisfaction with democracy. See Chu et al., *supra* note 82, at 129. Support for democracy in 2002 was lower in all but four countries than in 1996. According to the LATINOBAROMETER, *supra* note 87, Latin Americans have lost confidence in democracy because of the lack of economic growth, the deterioration of public services, the rise of crime, and the persistence of widespread corruption. As a result, there is little trust in democratic institutions, including political parties (19%), parliaments (22%) and the judiciary (26%). Nevertheless, Latin Americans are reluctant to return to the recent past of authoritarian military regimes. Only in Paraguay do the majority believe authoritarian government to be preferable to democracy. In contrast, several authoritarian regimes in Asia have been successful in providing growth, improving public services, ensuring stability and curtailing corruption. Thus, whereas Latin American see no alternative to democracy, many Asians see some form of soft authoritarianism or nonliberal democracy as viable options.

Although democracy may be messy everywhere, recent elections in Asia have been particularly disheartening. The presidential elections in Indonesia featured two former military men, who collectively received more than a majority of the vote in the preliminary run-off. One of them, General Wiranto, the head of Suharto's former Golkar Party, is accused of being a war criminal for attacks on civilians in East Timor. Far from being disqualifying, the accusations seem to have caused some Indonesians to support the General in a show of nationalist resistance to foreign pressure and criticism.⁹⁶ In India, the voters threw out a regime despite a growth rate of 8%, opting instead for the Congress Party, led by the Italian born Sonia Ghandi, widow of the assassinated former prime minister Rajiv Ghandi - who then promptly decided not to take office. The turmoil caused the single biggest one-day drop in the stock markets ever, although the markets recovered when Ghandi named a renowned economist known for his market-orientation to head her party.⁹⁷ The elections - marred by the deaths of over 20 women and children in a stampede to secure sarees, boycotts of the polls in Kashmir by separatist militants and a bomb that killed eleven people attending a political rally, the murder of 26 policemen by Maoist guerillas in Jharkhand, the shooting deaths of three political party members in Bihar, and the usual charges of rampant vote-buying - were described as relatively clean and successful by Indian standards.⁹⁸ In the Philippines, where former actor Joseph Estrada was impeached and forced out of office after being linked to illegal payoffs from gambling lords, President Arroyo squared off against another leading film actor, Fernando Poe, a high school drop out who had never held public office, although he did once play a town mayor in the movies. Poe studiously avoided the issues in a campaign long on symbol and short on substance on the part of both candidates.⁹⁹ In Taiwan, Chen Shuibian seemed willing to risk confrontation with Beijing just to stay in office, continually pushing Beijing and Washington with calls for a national referendum and constitutional changes, despite stern warnings from Beijing and Washington to avoid further provocation. Even close observers of Taiwanese politics - used to, as they are, fisticuffs and chair-throwing by members of the legislature - were shocked by the dirty politics in which the KMT compared Chen to Hitler and then the bizarre shooting of the president and vice-president by a slow-moving bullet on the day before elections.¹⁰⁰ Capitalizing on the sympathy vote from the shooting, Chen claimed victory by less than 30,000 votes out of a total of 13.3 million. After weeks of protests and demonstrations both peaceful and otherwise by supporters of the LDP, Chen was sworn into office, and must now lead a deeply divided public. Meanwhile, in South Korea, President Roh was impeached on charges of illegal campaigning, corruption among his aides and mismanagement of the economy, acquitted and reinstated.¹⁰¹ However, his subsequent attempt to replace several cabinet members without following constitutional procedures gave rise to complaints of amateurism and unflattering comparisons to the heavy-handed ways of former dictators.¹⁰²

The experiences of Asian countries demonstrate that democracy is no panacea, and that democratization will not necessarily lead to improvements in human rights, resolve ethnic tensions, or

⁹⁶ Guido Guillart, *UN-Backed Court Issues Arrest Warrant for Indonesian Presidential Candidate*, FAR EASTERN ECONOMIC REVIEW, May 11, 2004.

⁹⁷ The Economist Intelligence Unit Ltd., *India: Going, Going, Ghandi*, ECONOMIST INTELLIGENCE UNIT EXECUTIVE BRIEFING, No. 310, May 18, 2004, at 2.

⁹⁸ The Greatest Show on Earth – India's Election, ECONOMIST, April 17, 2004 (describing the ills besetting Indian politics as: "not just of constituencies handed down like family heirlooms; but also of venal, sometimes thuggish and often outright criminal candidates; of parties appealing not on the basis of policies but of narrow regional or caste interests; of coalitions formed not out of like-minded ideologies but out of naked power-seeking").

⁹⁹ Marites Danguilan Vitug, *Star power holds perils for the Philippines: Celebrity Politics*, INTERNATIONAL HERALD TRIBUNE, Feb. 20, 2004, at 8.

¹⁰⁰ Anthony Lawrance, *Nobody Said Democracy Is a Tea Party*, SOUTH CHINA MORNING POST, Mar. 27, 2004, at 13.

¹⁰¹ *U.N. Secretary General Makes Congratulatory Call to Roh*, YONHAP ENGLISH NEWS, May 18, 2004.

¹⁰² *Amateurism Impairs Roh Regime*, KOREAN TIMES, May 27, 2004.

ensure economic growth and better standards of living. In some cases, there may be a tension between democracy and the protection of rights and other goals. The problems with democracy in Asia do not support the conclusion that authoritarian regimes would necessarily be preferable. They do suggest however the possibility that democracy may not be the only or best option in all circumstances. Of course, authoritarian regimes also have their problems, and not all have been successful in ensuring economic growth or improving citizens' lives. Thus much depends on the specific nature of the regime. At minimum, the performance of both democratic and non-democratic regimes should be scrutinized and evaluated objectively and without bias.¹⁰³ Democracy proponents often argue in the face of poor economic performance, massive demonstrations and calls for regime change, elections marred by violence and vote-buying that democracy is "messy."¹⁰⁴ However, the same apologists for democracy are quick to criticize every shortcoming under an authoritarian regime, to blame the problems on the nondemocratic nature of the government and to call for immediate elections as a solution. One can only imagine the scorn that would be heaped on anyone so bold as to offer in response to political violence, widespread corruption and other social maladies in authoritarian states the limp excuse that "authoritarianism is messy."

Culture and religion

As critics of Asian values have pointed out, the Asian region clearly boasts a wide diversity of religious systems and cultural practices. The wide diversity prevents simplistic conclusions based on stereotypes about Confucians or Muslims or Asian communitarians. Nevertheless, as the various surveys cited in this Article show, values continue to affect the outcome across a wide range of rights issues.

Cultural factors would seem to explain in part the relatively greater restrictions on free speech and the media in both democratic and nondemocratic states.¹⁰⁵ The restrictions are most apparent in North Korea and Myanmar, although Singapore, Malaysia, China and Vietnam are also known for tight limits

¹⁰³ Amnesty International and State Department reports, which provide much of the data for rights indexes, have historically been biased against non-liberal democratic regimes. To take one example, reporting on China, especially by human rights organizations and the mass media, is on the whole overwhelmingly negative. Reports tend to focus on individual civil and political rights cases, often either ignoring or paying short shrift to China's accomplishments in raising living standards, improving the legal system and negotiating the difficult transition to a market economy without major chaos. More generally, discussions of human rights in China frequently lack a comparative framework that would put China's record as a lower middle income transitional country in perspective. Despite China's overall steady progress across a range of human rights indicators, State Department reports in 1999, 2000 and 2001 claimed that the human rights situation deteriorated or worsened. Every year the reports have painted a dismal picture, with reports from 1995 to 2004 claiming "widespread" violations, and reports from 2002 to 2004 report claiming "numerous" and "serious" abuses. See Peerenboom, *supra* note 3. Although the bias against non-liberal democracies is most obvious in the area of civil and political rights, the bias is also evident in discussions of rule of law and good governance. As noted, China outperforms the average in its income class on rule of law and good governance. Yet mentioning rule of law in relation to China often meets with wide-eyed disbelief and derision. Some knowledgeable legal commentator even argue that China lacks a legal system. See Peerenboom, *supra* note 50 (critiquing claims that China lacks a legal system). One of the main reasons China's efforts to implement rule of law are so summarily dismissed is that commentators conflate rule of law with liberal democracy. For the same reason, many liberal human rights critics claim that Singapore lacks rule of law, even though Singapore's legal system is routinely ranked among the best – if not the best – in the world. The bias against nondemocratic regimes is also evident in the U.S. application of intellectual property related trade sanctions. Throughout the 1990s and still today, China and Russia have been guilty of widespread and roughly comparable intellectual property violations. Yet while China was designated a Priority Foreign Country four times, Russia never made the list. Members of the U.S. congress defended the differential treatment on the ground that the U.S. needed to cut the fledgling democracy in Russia some slack. Peerenboom, *supra* note 3.

¹⁰⁴ See, e.g., *Nobody Said Democracy Is a Tea Party*, *supra* note 100.

¹⁰⁵ For polling data, see Sim, *supra* note 83; Welsh, *supra* note 83; Peerenboom, *supra* note 50; Park and Shin, *supra* note 88; Albritton & Bureekul, *supra* note 89.

on the press.¹⁰⁶ But even the more democratic countries in the region keep a short leash on the press and free speech by citizens. South Korean President Roh has declared that the government will take legal action against any news organization that publishes editorials containing false information regarding government policy or personnel. In 2003, Roh personally brought a libel suit against four major newspapers who allegedly defamed him and his family by publishing falsehoods about his fund-raising activities and real estate transactions.¹⁰⁷ In Indonesia, after a period of expansive freedom of speech and the press during the Habibie and Wahid years, the Megawati government, supported by a public increasingly wary of unfettered expression, pushed through a law that imposed several restrictions on freedom of expression, assembly and the press. The former editor of a daily paper was found guilty of insulting the chairman of Golkar party currently serving as speaker of legislature, while another editor was prosecuted for insulting Megawati.¹⁰⁸ Meanwhile, in Thailand, television and radio stations remain publicly owned, and the government has used the leverage gained from licensing and advertisements to influence press coverage, resulting in self-censorship and the sacking of editors critical of the government.¹⁰⁹ Freedom House therefore demoted Thailand from “free” to “partly free” status.¹¹⁰ Despite a liberal press, India continues to prosecute people who criticize the judiciary, while libel cases remain common.¹¹¹ Even in Japan, a broad ban on incitement of illegal activities, permit requirements for demonstrations and other restrictions allow the government considerable room to restrict free speech in the name of public order.¹¹²

Religion also remains a crucial and oftentimes divisive factor in several states, leading to broad state powers to restrict religious practice in the name of social order and harmony. Governments in the region are extremely wary of the volatile mix of religion and politics. At one extreme, Islamic fundamentalism has fueled insurgency and separatist movements in Thailand, Indonesia and China, and raised concerns in multi-ethnic Malaysia and Singapore.¹¹³ China is also wary of Tibetan Buddhists’ support for the Dalai Lama. Religious groups have also fought with each other, resulting in bloody conflicts in India, Indonesia and elsewhere. Countermeasures in these countries have ranged from violent repression and the imposition of martial law along with derogation of rights, to registration requirements for religious organizations, limits on venues of worship, restrictions on or prohibitions of religious education, limitations on hate speech or other speech that could incite religious conflicts, and banning of the wearing of religious symbols such as veils or headscarves in public.¹¹⁴ In China, members of the five

¹⁰⁶ See John Gillespie, *Evolving Concepts of Human Benefits and Rights in Vietnam*, in THE RIGHTS OF ASIANS TODAY, *supra* note 15 (noting that current restrictions reflect in part the realization on the part of the ruling regime that free speech and media destabilized the former colonial regime).

¹⁰⁷ Hahm, *supra* note 75.

¹⁰⁸ Juwana, *supra* note 24.

¹⁰⁹ Muntabhorn, *supra* note 25.

¹¹⁰ *Asia’s Media Have Few Reasons to Celebrate World Press Freedom Day*, AGENCE FRANCE PRESS, May 2, 2004, available at <http://www.worldrevolution.org/article/1293> (also noting the Philippines was demoted from free to partly free for failure to protect journalists or to prosecute those who murder journalists).

¹¹¹ Upendra Baxi, *Protection of Human Rights and Production of Human Rightlessness in India*, in THE RIGHTS OF ASIANS TODAY, *supra* note 15.

¹¹² See Matsui Shigenori, *The Protection of Fundamental Rights in Japan*, in THE RIGHTS OF ASIANS TODAY, *supra* note 15.

¹¹³ See Muntabhorn, *supra* note 25; Juwana, *supra* note 24; Peerenboom, *supra* note 3; Li-ann Thio, *Taking Rights Seriously? Human Rights in Singapore*, in THE RIGHTS OF ASIANS TODAY, *supra* note 15; and H. P. Lee, *Human Rights in Malaysia*, in THE RIGHTS OF ASIANS TODAY, *supra* note 15.

¹¹⁴ See Thio, *supra* note 113 (describing measures taken by Singapore, many at the discretion of the executive and not subject to judicial review); Muntabhorn, *supra* note 25; Juwana, *supra* note 24; Peerenboom, *supra* note 3; Carol Evans, *Chinese Law and the International Protection of Religious Freedom*, 44 J. CHURCH & ST. 749 (2002). See also U.S. Commission on International Religious Freedom Briefing on Recommendations to the Department of State Concerning Countries of

official churches are allowed to practice without undue restrictions. However, members of unapproved house churches who have sought to unite with the Pope and advocated religious-based practices that are at odds with the government policies on contraception and abortion have been harassed and prosecuted.¹¹⁵ With a regulatory regime much like China's, Vietnam tolerates and even encourages religious practice provided the religion does not become a source of opposition to government policies or undermine efforts to establish the "Great Unity" of Vietnamese society.¹¹⁶ In Singapore, religious leaders who challenge state policies or become involved in political issues have run afoul of government policies that try to confine religious groups to educational, social and charitable work, rather than "radical social action."¹¹⁷

Drawing a balance between freedom of religion and political stability has been proven especially difficult with respect to new religions or cults. Aware that religious groups have destabilized dynasties in the past, China imposes content-based restrictions on "cults" and "abnormal" religious beliefs and practices.¹¹⁸ The crackdown on Falungong has received the most attention abroad, although the group considers itself a breathing exercise group rather than a religion. The government has justified the ban by citing the sect's increasingly political agenda, organized demonstrations including where more than 10,000 people suddenly surrounded Zhongnanhai (the seat of the government), and the deaths of more than 1600 adherents, including the self-immolation of five people, one of them a 12-year old girl.¹¹⁹ The government has also outlawed a number of other sects, claiming they lack theological training, preach the coming of the Apocalypse or Holy War, exploit members for financial gain or commit other violations of generally applicable laws such as rape, assault, and tax fraud. Beijing defends the policies by citing similar restrictions on cults in other countries, including France and Belgium.¹²⁰ In the Asian region, Japan's Supreme Court upheld the ban on Aum Shinrikyo after its leaders were arrested for releasing poisonous gas in the subway in Tokyo.¹²¹ Singapore has also banned Jehovah Witnesses for refusing to serve in the military.¹²² South Korea, faced with a similar problem, refused to recognize Jehovah Witnesses as conscientious objectors.¹²³

Unfortunately, international law provides little useful guidance in distinguishing normal from abnormal religious activities and legitimate groups from cults.¹²⁴ More generally, the potential for religious authority to challenge and undermine state authority has led to a wavering and incoherent doctrine both internationally and domestically in many countries with respect to such issues as separation of church and state and reasonable restrictions on religious practice.¹²⁵ Within Asia alone, freedom of

Particular Concern, Feb. 18, 2004 (noting that fatal attacks against the Muslims and Christians led to the killing of more than a thousand people in Gujarat, India in 2002).

¹¹⁵ U.S. Department of State, U.S. STATE DEPARTMENT COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES, CHINA (2004), available at <http://www.state.gov/g/drl/rls/hrrpt/2003/27768.htm>.

¹¹⁶ Gillespie, *supra* note 106.

¹¹⁷ See Thio, *supra* note 113.

¹¹⁸ See generally MARIA HSIA CHANG, *FALUN GONG, THE END OF DAYS* (2004); Anne S.Y. Cheung, *In Search of a Theory of Cult and Freedom of Religion in China: The Case of Falun Gong*, 13 Pac. Rim L. & Pol'y J. 1, 13-17 (2004); Evans, *supra* note 114.

¹¹⁹ For a more extensive discussion, see Peerenboom, *supra* note 50, 91-101.

¹²⁰ *Id.*

¹²¹ Matsui, *supra* note 112.

¹²² Thio, *supra* note 113.

¹²³ Hahm, *supra* note 75.

¹²⁴ Peerenboom, *supra* note 50, at 95-96; Evans, *supra* note 114.

¹²⁵ Theo van Boven, *Advances and Obstacles in Building Understanding and Respect between People of Diverse Religions and Beliefs*, 13 HUM. RTS. Q. 437, 442 (1991) (estimating that in the 1980s 25 regional or civil wars were based to a significant degree on disputes stemming in part from religious beliefs).

religion exists side by side with state-endorsed atheism in China and Vietnam, and Islam as the official state religion in Malaysia. Meanwhile, in the Philippines, Catholicism is privileged in numerous ways, including constitutional provisions on abortion and divorce that reflect Catholic religious principles;¹²⁶ in Japan, Shinto remains favored, with courts reluctant to hold visits by state leaders to Shinto shrines to be a violation of the principle of separation of state and church;¹²⁷ and in Thailand, Buddhism is so dominant as to constitute implicitly the official religion.¹²⁸

Legal institutions

Empirical studies have only begun to explore the relationship between legal institutions and protection of different types of rights.¹²⁹ While promising, this approach is likely to produce indeterminate and inconsistent results because of the wide variation among countries on key legal institutions and practices such as separation of powers, constitutional review, judicial review of executive power, judicial independence, the way judges are appointed, and so on. Asian legal systems are no exception, differing widely in institutions, practices and conceptions of rule of law.¹³⁰ Moreover, legal institutions that function well in one context may produce very different outcomes in other contexts.

What does seem clear from the broad empirical studies as well as the experiences of Asian countries to date is that judicial independence is generally important if not sufficient for the protection of rights, particularly civil and political rights. The regimes with the least independent courts have some of the worst records in protecting civil and political rights, including China, Vietnam, Myanmar and North Korea. On the whole, democratization has resulted in increased independence of the courts and a more active role in protecting rights, most notably in South Korea, Taiwan and Indonesia.

However, judicial independence alone does not ensure that the courts will play an active role in protecting rights. The level of judicial activism varies tremendously in the region. At one extreme, despite a conception of fundamental rights as inherent or the natural rights of all human beings and explicit constitutional references to such open-ended notions as unenumerated rights and human dignity, Japanese courts have exercised their powers of judicial review sparingly in the service of rights, interpreting public welfare limitations on rights broadly and generally deferring to the legislature.¹³¹ Courts in Singapore and Malaysia also continue to interpret rights narrowly, relying on a positivist rather than a purposive or natural law based method of interpretation. At the other extreme are the Indian, Taiwanese, and Filipino courts. The India Supreme Court and the Grand Justices of Taiwan have gone so far as to strike down constitutional amendments as unconstitutional.¹³² In the Philippines, the court has aggressively engaged in social and economic policymaking by interpreting “directive principles” in the constitution. To be sure, activist does not necessarily mean liberal. In Thailand, the courts have shown a

¹²⁶ Raul Pangalangan, *Human Rights in the Philippines*, in THE RIGHTS OF ASIANS TODAY, *supra* note 15.

¹²⁷ Matsui, *supra* note 112.

¹²⁸ See Muntabhorn, *supra* note 25.

¹²⁹ Frank B. Cross, *The Relevance of Law in Human Rights Protection*, 19 INT'L REV. LAW & ECON. 87, 93 (1999) (finding that judicial independence is significant with respect to the protection of political rights and search and seizure even after controlling for wealth and other factors, but finding that federalism and separation of powers were not significant and the presence of constitutional provisions regarding search and seizure seems to have no real-world significance). Clair Apodaca, *The Rule of Law and Human Rights* (on file with author) (finding that rule of law and judicial independence were instrumental in securing both economic and physical integrity rights, although rule of law frequently gives way even in rich countries with well-developed legal systems during times of international or domestic conflict). See also Keith and Poe, *supra* note 21.

¹³⁰ See ASIAN DISCOURSES of Rule of Law, *supra* note 2.

¹³¹ See Matsui, *supra* note 112.

¹³² Upendra Baxi, *Rule of Law in India: Theory and Practice*, in ASIAN DISCOURSES, *supra* note 2; Tay-sheng Wang, *The Legal Development of Taiwan in the 20th Century: Toward a Liberal and Democratic Country*, 11 PAC. RIM L. & POL'Y J. 531, at n.1 (2002).

conservative inclination to side with entrenched interest groups.¹³³ Similarly, although Indian courts have come to the aid of the disenfranchised in a variety of ways, the courts remain organs of the state and judges are inclined by personal circumstances and professional training toward moderate rather than radical solutions.¹³⁴

The aggressiveness of the courts also varies by category of right. National laws frequently prohibit or limit judicial review of many national security decisions. But even when judicial review is possible, Asian courts have been reluctant to challenge executive and parliamentary decisions involving national security.¹³⁵

Similarly, the role of courts is limited in China, Vietnam, Malaysia, Singapore, Japan, Hong Kong and South Korea with respect to many social and economic rights by the traditional view that such rights are generally not justiciable or that they involve resource allocation decisions best left to the legislature. Nevertheless, even where such rights are considered nonjusticiable, Asian governments generally have taken seriously their obligations to provide the necessary minimal conditions for human flourishing, subject to resource constraints largely in line with GDP levels, as the empirical studies indicate. The conceptualization however is not so much in terms of rights as traditional paternalistic beliefs that rulers are obligated to ensure the material and spiritual wellbeing of the people. For instance, in China, the new leadership of Hu and Wen has shown sensitivity to issues of social justice, implementing a number of policies to ease the hardships those who have lost out in the transition to a more competitive capitalist economic system. In so doing, they are able to draw on a rich tradition of “people as the basis” stretching back to Mencius. While such traditions are grounded in a nonliberal paternalistic worldview, they nonetheless provide a normative basis for social, economic, cultural and collective rights claims today.¹³⁶

On the other hand, several Asian countries have developed an active jurisprudence of economic and social rights, in keeping with a redistributive, developmental model of rule of law that emphasizes redistribution of wealth and social justice issues domestically, and the right of development, debt forgiveness and the obligation of the North/developed countries to aid the South/developing countries internationally.¹³⁷ The Indonesian constitution contains a long list of social and economic rights, while Indian and Filipino courts have blurred or overcome the distinction between justiciable and non-justiciable right through interpretation of constitutional references to programmatic goals and directive

¹³³ Vitit Muntabhorn, *Rule of Law and Aspects of Human Rights in Thailand: From Concetualization to Implementation*, in ASIAN DISCOURSES, *supra* note 2.

¹³⁴ Baxi, *supra* note 132 (noting that Indian activists “know rather well the ‘one-step-forward, two-steps-backward’ nature of judicial activism. Even as they engage activist judiciary in the tasks of Indian democratic renewal, their politics of hope remains moderated by the acknowledgement of the brute institutional fact that Courts and Justices remain, at the end of the day, State-bound and permeated.”); Jamie Cassels, *Judicial Activism and Public Interest Litigation in India: Attempting the Impossible?*, 37 AM. J. COMP. L. 495, 515 (1989) (warning that India’s activist judges have been criticized for violating rule of law, and that not all judicial decisions have favored the oppressed and less fortunate).

¹³⁵ For a discussion of physical integrity rights and derogation of rights in times of emergency, national security laws and the affects of the war on terrorism in Asia, see THE RIGHTS OF ASIANS TODAY, *supra* note 24.

¹³⁶ Policies as well as underlying philosophies in the area of social or welfare rights vary considerably from country to country in terms of the required or appropriate role for government. China and Vietnam have little problem reconciling broad welfare policies with state socialism. In contrast, Singapore emphasizes the need to avoid welfare dependency while providing individuals the opportunities and resources to become self-sustaining, as captured in the slogan: give me a fish, and I eat for a day; teach me to fish and I eat for a lifetime. Nevertheless, the government provides subsidized housing, schooling and medical care. Hong Kong, despite its commitment to laissez faire economic principles, also provides subsidized housing, schooling and medical care. See generally Ian Holliday, *Productivist Welfare Capitalism: Social Policy in East Asia*, 48 (4) POL. STUD. 706 (2000).

¹³⁷ See Randall Peerenboom, *Varieties of Rule of Law*, in ASIAN DISCOURSES, *supra* note 2, at 29-31.

principles. The involvement of the judiciary in these complex social and economic policy issues has naturally been controversial, and challenged both in terms of the merits of the decisions and in terms of judicial competence and the proper role for the courts.¹³⁸ A particularly pressing issue is whether well-intentioned reformers who push for the incorporation of such a broad array of positive rights in the constitutions of countries at relatively low levels of economic development are not setting the government up for failure by promising citizens more than the government can possibly deliver. In India, the Bharatiya Janata Party government was voted out of office despite overseeing a period of rapid economic growth. The vote reflected a deep dissatisfaction with growing income disparities and widespread poverty amidst the growing wealth of some segments of society. The BJP's campaign slogan of India Shining only highlighted the discrepancies between the haves and the have-nots. By way of comparison, in wealthy South Korea, which has not made social rights justiciable, the government only this year made good on its promise to provide an equal education for all by providing nine-years of compulsory education free of charge.¹³⁹

Indonesia offers another cautionary tale. After the fall of Suharto, reformers, flush with optimism, wrote into the Indonesian constitution some of the most forward-leaning ideas of the human rights movement. Accordingly, the constitution now provides that each person has the right to physical and spiritual welfare, to have a home, to enjoy a good and healthy living environment and to obtain health services.¹⁴⁰ Reflecting the "capabilities" approach, each person is entitled to assistance and special treatment to gain the same opportunities and benefits in the attainment of equality and justice.¹⁴¹ Needless to say, the Megawatti government in low-income Indonesia has not been able to live up to such broad commitments or even to effectively deal with terrorism and rising crime rates, which may explain in part the support for former General Wiranto. Supporters believed that Wiranto would restore law and order and social stability while ensuring economic growth, although rights activists feared that he would fall back on the strong-arm governing methods of Suharto to do so. Realizing that writing rights into the constitution does not ensure the resources necessary for their implementation, the general populace seems to have become wary of the utopian promises of human rights NGOs on the one hand, and their constant criticisms of the government obviously lacking the means to deliver on such promises on the other.¹⁴²

Thailand may be experiencing a similar dynamic. Now that Thailand has democratized, the government is struggling to improve the standards of living for citizens. The ruling party has acted in many ways like a traditional Asian government, with a strong executive pushing through policies aimed at ensuring economic development and a better standard of living for the majority. As a result, the economy has recovered, and the deterioration in quality of life as measured by the UNDP HDI index has reversed. Yet NGOs and rights activists remain critical of government policies, pointing out how, notwithstanding considerable progress, problems remain with respect to disadvantaged hilltribe peoples and socially vulnerable individuals, and how economic development has come at the expense of

¹³⁸ See, e.g., Raul Pangalangan, *The Philippine "People Power" Constitution, Rule of Law, and the Limits of Liberal Constitutionalism*, in ASIAN DISCOURSES, *supra* note 2.

¹³⁹ Hahm, *supra* note 75.

¹⁴⁰ 1945 Constitution of the Republic of Indonesia, as amended on 17 August 2002, art. 28H(1).

¹⁴¹ *Id.*, art. 28H(2).

¹⁴² See Juwana, *supra* note 24. NGOs face a number of challenges in a transitional landscape, including that they will often find themselves in a position of criticizing some of the former opposition figures who were their partners and now are government leaders. NGOs may also find it difficult to reconcile their more critical, idealistic approach to rights issues with a more pragmatic approach or be unwilling or unable to modify oppositional tactics to accommodate a more cooperative partnership with the new regime. They may also lose their local support base and become perceived as instruments of foreign states and actors out of touch with local circumstances. See Christine Bell and Johanna Keenan, *Human Rights Nongovernmental Organizations and the Problems of Transition*, 26 Hum. Rts. Q. 330, 346–47 (2004) (once in power even the rights-friendly Mandela criticized NGOs, noting that "many of our nongovernmental organizations are not in fact NGOs, both because they have no popular base and the actuality that they rely on the domestic and foreign governments, rather than the people, for their material sustenance.").

transparency and political participation.¹⁴³ To be sure, the Thailand constitution has incorporated broad ideals such as “human dignity,” and NGO critics raise legitimate concerns. But governments in middle income countries such as Thailand will inevitably have difficulty living up to such idealistic standards. The broad public seems more tolerant and supportive of the government efforts to address issues within the limits of available resources.

Although judicial independence is generally important to the protection of rights, relying on courts alone is clearly not sufficient to protect rights adequately. Courts are limited by political constraints, restrictive laws, interpretive traditions and their inability to control financial decisions and implement their own decisions. A variety of other institutions have arisen to assist courts in protecting rights, including national human rights commissions, ombudsmen and a vast network of NGOs.

Several states have established national human rights commissions, including Thailand, Indonesia, India, the Philippines and Sri Lanka. On the whole, the commissions have mixed records. Many rights advocates were skeptical about Malaysia’s human rights commission Sukaham, fearing that it would end up serving as a mouthpiece for the government. Sukaham’s inclusion in the foreign ministry, headed by a foreign minister who objected to the liberal biases of the human rights movement and argued that Malaysia should not be judged based on international conventions, suggested that main purpose was to better defend the government against foreign criticism.¹⁴⁴ However, the commission has interpreted its mandate broadly to include social and economic rights, pushed for ratification of international treaties and issued reports critical of the government, including calling for the amendment or repeal of the Internal Security Act. At the same time, Sukuham has been reluctant to take sides in Malaysia’s complicated cultural and racial issues. This selective approach may in part reflect the indeterminacy of international human rights laws in these areas, and the problems of applying abstract and general principles to complex local contexts. Sukuham may also have been acting strategically, however, trying to gain a foothold and build up a certain amount of popular support and legitimacy in an environment where government support remains equivocal, by avoiding issues that are deeply divisive within Malaysian society and likely to upset the majority whose support is crucial for the commission’s survival.

In Indonesia, the human rights commission enjoyed popular support during the Suharto era, when the majority was united in opposition to Suharto. However, the commission has been taken less seriously after democratization both by the government and the public.¹⁴⁵ As in many countries, the commission tends to be forward-leaning, dominated by NGOs pushing the most liberal interpretation of international rights law and the latest UN agenda. As such, the commission has not backed away from criticizing post-Suharto governments for their shortcomings. However, the governments, whether of Habibie, Wahid, or Megawati, have had their hands full dealing with terrorism, rising Islamic fundamentalism, unrest in Aceh and the usual developmental problems faced by a low income country. Naturally, they have not welcomed the commission’s constant reminder of every shortcoming and lapse from the idealistic standard of the international covenants.¹⁴⁶ As noted, the public seems to have grown weary of the constant carping and unrealistic expectations of human rights activists. The more liberal positions of the commission may also be at odds with the attitudes of the general public.

Human rights commissions have experienced conflicts with the courts as well as the executive branch and the public. In the Philippines, the Supreme Court ruled in a series of cases that the commission had no power to provide remedies, but was limited to conducting investigations and issuing

¹⁴³ See Muntabhorn, *supra* note 25.

¹⁴⁴ Amanda Whiting, *Situating Suhakam: Human Rights Debates and Malaysia’s National Human Rights Commission*, 39 (1) *Stan. J. Int’l L.* 59 (2003).

¹⁴⁵ Juwana, *supra* note 24.

¹⁴⁶ In Thailand as well, the government has taken steps to rein in the human rights commission and human rights NGOs. See Muntabhorn, *supra* note 25.

reports. Apart from concerns about inconsistency, the court seemed eager to defend its turf and its role in the post-authoritarian polity as the main defender of rights and protector of the people. In Indonesia, the human rights commission has been limited in effectiveness because of the lack of coordination among the various institutions with some role in protecting rights.¹⁴⁷

Regional rights systems have played an instrumental role in facilitating the development of rights norms, jurisprudence and implementation, especially in Europe. Unlike the Americas, Europe and Africa, Asia lacks a regional rights system. One possible explanation is that there is a greater diversity of values, political systems and conceptions of rights in Asia. However, a more likely explanation is that Asian governments have been reluctant to establish a regional rights body out of traditional sovereignty concerns that it is not appropriate for other countries or a regional body to intervene in how other countries handle human rights issues except in circumstances where there are widespread and systematic violations of rights. In addition, Asian governments have on the whole emphasized economic development and political stability. However, the need for a regional entity to promote economic development and geopolitical stability is already filled by the increasingly robust ASEAN.

Population size and ethnic diversity

Larger populations are associated with more rights violations in absolute terms and per capita, because there is likely to be greater conflict among different interest or ethnic groups and/or the government is more willing to resort to force to curtail potential threats to social order given the larger number of people that would be affected by social chaos. Populations run the gamut from China at 1.3 billion to Singapore at 4.1 million. The populations of the other countries are: India 1.03 billion, United States 288 million, Indonesia 214 million, Japan 127 million, Vietnam 79 million, Philippines 77 million, Thailand 66 million, France 59 million, South Korea 47 million, Malaysia 23 million, and Hong Kong 7 million.

Population does help explain rights performance in some cases, particularly for China and India. First, their huge population are directly tied to quality of life issues as reflected in social and economic measures because limited resources are spread thin over large numbers. Second, as elsewhere, population size is also a proxy for ethnic diversity. Ethnic diversity has led to conflicts with the state as some groups push for greater independence in both countries. It has also led to conflicts among ethnic groups seeking a larger share of resources and demanding affirmative action, preferential tax benefits, and exemptions generally applicable laws and regulations.¹⁴⁸ The response in China to such conflicts has included both carrots and sticks. Carrots include the establishment of special autonomous zones, affirmative actions policies and the allocation of additional resources to stimulate economic growth and alleviate poverty in ethnic areas. Sticks include restrictions on the civil and political rights in the name of national security, public order and social harmony. Third, the sheer size of the population results in a “large” number of violations of physical integrity rights and civil and political rights, even though proportionally the number is small. China and India’s low level-4 rating on the Political Terror Scale reflects in large part the relatively high absolute number of personal integrity rights violations rather than the low per capita figures. Fourth, and more substantively, the size of the population makes control more difficult, instability more likely and the expected danger value calculated by the multiplying the likelihood of instability by the consequences of chaos higher. In a country the size of China or India, even the most radical anti-government movements and bizarre cults may attract a significant number of followers, especially now that internet has eliminated the barrier of communication across distance.

The degree of ethnic diversity is arguably as important as the mere size of the population.¹⁴⁹ The ethnic diversity of several Asian countries has affected human rights protection both directly, through a

¹⁴⁷ Juwana, *supra* note 24.

¹⁴⁸ See Peerenboom, *supra* note 3.

¹⁴⁹ Scott Walker & Steven Poe, *Does Cultural Diversity Affect Countries’ Respect for Human Rights*, 24 (1) Hum. Rts. Q. 237 (2002) (finding that realization of rights is more difficult in ethnic diverse societies, that low to medium diversity appears to be necessary although not sufficient for the highest

variety of complicated schemes that balance affirmative action and non-discrimination, and indirectly, by adding to civil tensions that have resulted in harsh crackdowns and limitations on civil and political liberties. India's constitutional history and the broad powers granted to the government to order preventive detention cannot be understood without reference to India's struggle for independence from Britain, the legacy of ethnic-based tensions resulting from the attempt to divide the territory into Hindu India and Muslim Pakistan, and the continuing pressure of ethnic and religious based secessionist movements and tensions that often erupt into violent clashes.¹⁵⁰ Ethnic diversity has also been invoked to support broad state powers and tough national security laws in Singapore, Malaysia, Indonesia and China, while an upsurge in Islamic fundamentalism has led to martial law in parts of Indonesia and Thailand.

Asian countries have adopted a variety of approaches to cultural rights in response to ethnic and religious diversity from a melting pot approach that emphasizes assimilation, to a "salad bowl" approach that seeks to celebrate different traditions and cultures, to a pragmatic approach that steers a middle course and emphasizes social stability and harmony.¹⁵¹ Some states, including Malaysia and India, have adopted a group rights approach, whereas others such as Singapore seek to protect groups by protecting the rights of the individuals that make up the group.

India has opted for the salad bowl approach. The Indian Constitution provides strong protections for religious and cultural minorities. Problems arise however when religious and cultural practices are at odds with international rights. For example, Muslim personal law may disadvantage women, while traditional Hindu beliefs discriminate against untouchables. In response, the government has adopted a complicated two-track system that emphasizes reform to certain Hindu practices system while leaving other ethnic and religious issues to be sorted out over time.

Malaysia has adopted a group based approach that recognizes Islam as the state religion and affords special privileges to the dominant but historically economically weak Malay population, including electoral laws that ensure Malay control, designation of Malay as the national language, prominent displays of Malayan culture in official ceremonies and on television programs, and economic policies aimed at improving the lot of Malays. Naturally, the large Chinese minority has resented such affirmative action policies. After the race riots in 1969, the government passed an emergency security law that provided police wide powers of preventive detention. The government has also passed laws to prohibit speech or actions that would promote feelings of ill-will, enmity, hatred, disharmony or disunity, or which question the special position of Malays.¹⁵²

In keeping with the rejection of group rights in favor of an individual rights approach, Singapore rejects affirmative action based on group membership. The government also seeks to instill a national identity without trying to eradicate more particularistic cultural identities, which it does not believe possible. Notwithstanding its commitment to meritocracy, the government recognizes the need to protect racial and religious minorities. Accordingly, it has recognized the distinctive cultural and economic needs of indigenous Malays, most of whom are Muslim.¹⁵³

level of civil rights, and that more diversity leads to worse performance with respect to political rights, subsistence rights, civil rights and the social and economic equality of women, though the relationships are statistically significant only for civil rights and social and economic equality for women).

¹⁵⁰ Baxi, *supra* note 111.

¹⁵¹ *Media's Role in Sealing Social Unity*, STRAITS TIMES, Sep. 7, 1998, at 1 (rejecting the melting pot and salad bowl metaphors, Prime Minister Goh described Singaporean policy as a mosaic in which the different communities form a harmonious whole, with each piece retaining its own colour and vibrancy).

¹⁵² H. P. Lee, *Competing Conceptions of Rule of Law in Malaysia*, in ASIAN DISCOURSES, *supra* note 2, at 237- 241.

¹⁵³ See Thio, *supra* note 113.

Religious education is a divisive issue in several states due to the potential use of religious education to foster demands for political autonomy and independence, greater political representation or a greater share of resources. Accordingly, some states, including Vietnam, China, India and Thailand impose various restrictions on religious education. Singapore allows religious education but requires that students be able to meet generally applicable standards in certain basic subjects.

Bilingual education is another sensitive issue in Asia as elsewhere. While the right to be educated in one's mother tongue may be central to one's cultural identity, failure to speak the language of the majority may also limit one's opportunities for development.

Colonial history

Every country in the region except Thailand has experienced colonialism, often by several different powers, sometimes at the same time. Although the results of studies are somewhat inconsistent, on the whole they tend to show that a history of British colonialism is associated with better human rights protection, whereas Japanese colonialism and French colonialism may be associated with worse human rights records.¹⁵⁴ It is however impossible to draw any hard and fast conclusions from the colonial experiences of countries in Asia. In some cases, British colonialism has been instrumental in laying the foundations for a rule of law compliant legal system. However, British rule was hardly democratic or liberal, and citizens of countries ruled by the British did not enjoy full civil and political liberties. Indeed, many illiberal state security laws were first put in place by the British, as in the case of Malaysia's Internal Security Act and Hong Kong's laws on sedition. Colonial divide-and-rule strategies have also exacerbated ethnic tensions and fueled secessionist movements as colonial powers swapped lands and redrew boundaries with little regard for the identity needs of particular groups.

What is clear is that the colonial experience has left a bitter taste in the mouths of many Asian citizens, and made them disinclined to welcome what they take to be the hypocritical, self-righteous preaching of former Western oppressors who regularly violated the civil and political rights of Asians when it was in their political and economic interest to do so. In the eyes of many Asians, the current human rights policies of Western powers and the international human rights regime are just one more example of power politics, the latest variant in a long history of imperialism and hegemony in which the West seeks to impose its way of life on the Rest.¹⁵⁵

Although Singapore and Malaysia were most vocal in their criticism of the liberal biases and hypocrisies of the western-dominated human rights movement, hostility and suspicion run much deeper throughout the region. China has long argued, with some truth, that it is subject to a double standard.¹⁵⁶ There is also a strong current of nationalism in China that has fed popular discontent with the way China is portrayed in the media on rights issues. A broader current of nationalism is rising in various countries in the region. In Thailand, anger at the IMF and its role in the Asian financial crisis has fanned a general distrust of international institutions, including the U.N., as captured in the slogan "the U.N. is not my father."¹⁵⁷ As noted, both in Thailand and Indonesia, public support for international rights NGOs and

¹⁵⁴ Poe et al. (1996), *supra* note 16. Compare Reilly, *supra* note 7 (finding that British colonialization was not statistically significant, although Spanish-Portuguese colonial legacy was statistically significant, with French colonial legacy associated with higher repression but not reaching statistically significant levels).

¹⁵⁵ See *Students' Attitudes Toward Human Rights Surveyed*, BBC SUMMARY OF WORLD BROADCASTS, May 4, 1999. In a survey of 547 students from thirteen universities in China, eighty-two percent claimed that for other countries to initiate anti-China motions before the U.N. Commission on Human Rights constituted interference in China's internal affairs; seventy-one percent believed that the true aim of the United States and other countries in censuring China was to use the human rights issue to attack China and impose sanctions on it, with sixty-nine percent maintaining that this constituted a form of power politics.

¹⁵⁶ See Peerenboom, *supra* note 3.

¹⁵⁷ Muntabhorn, *supra* note 25.

domestic rights commissions has weakened. In South Korea, rising nationalism is manifest in a tendency to emphasize the "uniqueness" of Korea and Korean people; in the growing assertion of sovereignty and independence in foreign relations, particularly with the U.S.; and in opposition to the economic offshoots of globalization such as free-trade agreements, the opening of the service sector in education and law, and policies to foster increased labor market flexibility. Ironically, all of these demands for more nationalistic policy may be articulated in terms of human rights.¹⁵⁸ Independence in foreign policy is the natural extension of a national right to self-determination; opposition to trade liberalization is supported by the need to protect the subsistence rights of local farmers and manufacturers; and the adoption of global standards in terms of labor policy arguably must be opposed to safeguard the rights of Korean workers. Cloaking local concerns in the diverse language of human rights provides local activists some leverage in their struggles with international NGOs. International NGOs, which are highly critical of North Korea, have also clashed with domestic rights groups who favor reconciliation with North Korea.

Local opposition to universal human rights is not limited to Asia. Western countries as well have struggled over how best to reconcile a commitment to universal principles with the complex reality of local contingencies. However, at least for economically advanced Western liberal democracies, the norms reflected in the international human rights corpus are largely consistent with, and indeed the outgrowth of, their own values and experiences. As politically stable consolidated democracies, they do not face the same pressures as many Asian states that are still struggling to consolidate democracy or to ensure political stability in the face of separatist movements and other threats. As wealthy countries, they also have the resources to establish institutions capable of implementing rule of law, and, were they so inclined, to make good on the promises of social and economic rights. The "Asian values" movement in part was an attempt for geopolitically weaker Asian states to forge a common basis so that Asian countries could demand the same kind of margin of appreciation on human rights issues as extended to Western countries.¹⁵⁹ At the heart of the argument was the claim that the interpretation and implementation of rights does and should depend to some degree on local circumstances, including not just values, but levels of economic development; political institutions and beliefs; legal institutions, doctrines and practices; ethnic diversity; the presence of terrorists and other such factors.

Conclusion

Asian countries vary widely in their rights performances generally, on specific rights issues, and in the factors that influence the protection of rights and the outcomes of specific cases. The level of economic development is clearly a, and usually the most, significant factor. While money may not be able to buy happiness, it does seem to buy a longer life, better education, more health care, and even civil and political rights. The nature of the political regime is also important, but economics comes first, especially at low levels. Given the importance of wealth to rights performance, comparisons are best made between countries in the same income categories.

What then does this overview tell us about values in Asia? Asia is obviously a big place, with tremendous diversity that makes it impossible to identify a singular set of "Asian values" shared by everyone in Asia. On the other hand, a pluralism of Asian values is still Asian values. There is nothing inherently contradictory in noting a diversity of values and still claiming that they are Asian. Nor need each country within Asia share every single feature. There may still be dominant patterns within Asia. The "West" and "liberalism" also encompass a tremendous diversity of views. Nevertheless, there are still dominant trends in Western thought. "Liberalism" clearly has a stronger hold than "communitarianism" in the West, for example, whereas the opposite seems to be true in much of Asia, although perhaps collectivism is a more apt description than communitarianism.

¹⁵⁸ Hahm, *supra* note 75.

¹⁵⁹ See *Beyond Universalism and Relativism*, *supra* note 2.

Asian values are by definition the dominant values that exist in Asia. They form a value cluster with hierarchies and intensities that allow them to be compared to other value clusters. The individual values that make up the cluster do not have to be unique to Asia, provided the cluster of values as a whole, including the relative ranking and weighting of values within the cluster, is distinguishable from the value clusters of other regions. Nor do Asian values have to be shared by all people within Asia or to exist to the same degree or intensity or be ranked in the same order in all Asian countries, provided however that if there are no statistically significant shared values between a country and the region at large then the country should be identified as an outlier. There is obvious variation within countries/cultures, so some people will have values that are in the minority in their own society but perhaps dominant in others. Nor does it matter that the current distribution of values is due more to factors such as economic growth or demographic factors like higher rural-urban ratios rather than “cultural” explanations such as philosophical traditions or religious beliefs. Nor is it the case that the current distribution will forever remain the same. For the moment, however, the distribution is what it is, whatever the various causes.

Whether focusing on regions, countries, subnational units or individuals is useful depends on one’s project. Any comparative project must begin by constructing categories that highlight certain features and thus simplify to some extent quotidian reality. The problem has not been that the East and West, Asian values and Western values are constructs, but that they have been overly simple constructs that lacked a firm empirical foundation. On the other hand, the shortcoming of the many multiple country studies that find greater “collectivism” and acceptance of hierarchy in Asia is not that they fail to identify real differences along the individualism versus collectivism or hierarchy versus egalitarianism continuums. Rather, the problem is that individualism versus collectivism, and hierarchy versus egalitarianism, are often underdetermining in predicting the outcomes on many specific issues. Accordingly, the broad studies are less useful in demonstrating the affects of such differences on a range of specific issues and in sorting out the interplay of cultural factors and other factors in explaining differences in outcomes. For that, we need more detailed studies.¹⁶⁰

This empirical overview suggests that there are some general patterns on a range of specific issues, and that values are one of the important factors in determining the outcomes, although not the most determinative overall. One can see a family of resemblances across a range of issues: in the higher priority assigned to social stability and economic development over civil and political rights; in the greater willingness to accept limits on free speech; in the emphasis on education and the use of education to promote national goals;¹⁶¹ in the superior performance on good governance measures relative to other countries at similar income levels; in the relatively successful efforts to maintain social order and fight crime; in the opposition to Western colonialism and emergence of a strong nationalist discourse or the attempts to interpret human rights principles in terms of local values and circumstances. To be sure, there clearly has been and will continue to be change within the region largely due to greater wealth, urbanization and modernization. Nevertheless, core values continue to persist, and Asian countries and the Asian region as a whole continue to exhibit *relative* differences with other countries and regions on

¹⁶⁰ An excellent example of one such study is *AUSTRALIA IN ASIA: COMPARING CULTURES* (Anthony Milner & Mary Quilty eds., 1996). Focusing on a variety of practical issues, the various chapters repeatedly demonstrate four points. First, there is significant diversity within Asia. Second, the contrast between liberal emphasis on the individual and the emphasis on the collective cuts across many issues from business ethics to human rights, conceptions of democracy, labor relations, national security, the media, citizenship and governance. (See, e.g., p. 11: “The liberal ideological package – a tradition of debate, freedom and individualism, a stress on equality, and abhorrence of a too vigorous official nationalism – seems to be more, not less, influential when Australia is contrasted with Asian countries.”). Third, the greater emphasis on collectivism does not preclude diversity in any of these areas as a result of differences in geography, population, language, religion, cultural narratives and level of economic development. Fourth, while some convergence with Western liberal democracies is to be expected as Asian countries modernize, the factors just mentioned will also lead to significant and persisting divergence.

¹⁶¹ *Id.* at 98 (noting differences in such fundamental matters as the authority of the teacher and the process by which knowledge is transferred from teacher to student).

dimensions such as individualism versus collectivism and hierarchy versus egalitarianism even controlling for wealth. Accordingly, we are likely to see signs of convergence and divergence on human rights issues in the future, both interregionally and intraregionally.

The Asian values debate has often been carried on at an excessively abstract level by advocates of universal human rights and those who question just how universal rights are. The former have argued that there is an expansive over-lapping consensus regarding human rights as demonstrated by ratification of rights covenants. In response, critics argue that the hard core of universal rights is extremely limited, and that ratification of rights covenants does not demonstrate a thick consensus on specific issues. Although there are many rights that people agree are desirable when stated at very high level of abstraction, agreement at such a lofty level is not helpful in resolving most pressing social issues. The broad empirical studies are too general to shed much light on these debates. More detailed studies of particular cases are necessary to determine the degree of commonality and diversity.

Analysis of particular cases in various Asian countries demonstrates that there are differences both in terms of black letter law and outcomes in similar cases, oftentimes even when the laws are similar.¹⁶² For instance, all countries advocate freedom of religion. Yet Malaysia and Singapore, two ethnically diverse states often linked together as advocates of Asian values, differ significantly in their approach to religious freedom and minority rights. Although they face similar problems and share a common concern for social stability and religious harmony, Malaysia and Singapore have reached different outcomes on similar cases. Similarly, defamation laws vary widely within Asia, despite a general commitment to freedom of speech. While wealth explains much of the variation within Asia and elsewhere, the outcomes in specific cases are often driven by complex patterns of generally applicable and locally specific variables. Broad similarities in doctrine and principles are juxtaposed with subtle differences in local circumstances that shape outcomes in particular cases and bring to the forefront certain issues rather than others within a particular category of rights. As a result, what may seem like a pragmatic or overlapping consensus quickly breaks down once one moves beyond discussions about the desirability of the broad wish list of rights contained in human rights documents to the difficult issues of the justifications for such rights and how they are interpreted and implemented in actual cases in practice.

Whether one focuses on regional, country or subnational studies, the results are worrisome for advocates of universal human rights. Supporters of universal human rights have sought to discredit the notion of Asian values by pointing to the tremendous diversity within the region. However, if such diversity precludes the possibility of common values *within the Asian region*, then it also precludes *a fortiori* the possibility of *universal values*.¹⁶³ Alternatively, one could claim that there are common values within the Asian region but they are not distinctive. However, what common values do exist are so abstract and so “thin” that they lead to widely divergent outcomes on specific issues, many of which are not consistent with current human standards as interpreted by the ICCPR human rights committee and liberal rights activists. Both the regional studies and more specific country studies cited herein suggest that the secular liberalism that provides the thicker ideological basis for the human rights movement today is not widely accepted within Asian countries.

Drawing sufficiently detailed policy implications from this study is complicated. Economic growth, rule of law, social and political stability, and - at least at moderate to high income levels - democracy, are generally desirable and associated with better rights performance, all else being equal.

¹⁶² See generally, THE RIGHTS OF ASIANS TODAY, *supra* note 15.

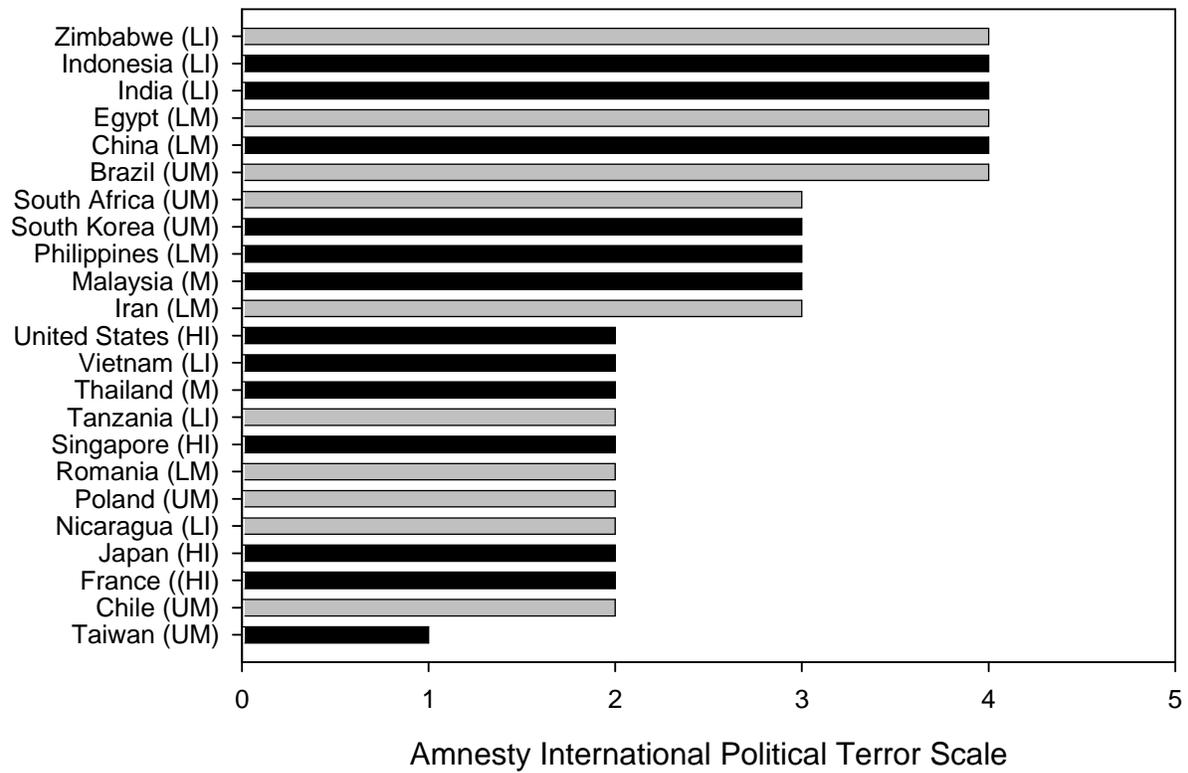
¹⁶³ Because “Asian values” has been tainted from misuse by politically oppressive regimes, one common suggestion is to replace it with “values in Asia.” This change has the salutary effect of signalling a desire to move away from the overtly political use of the term toward a more sophisticated approach sensitive to the pluralism within Asia. But eliminating references to “Asian values” and replacing it with “values in Asia” will not put an end to substantive debates about the universality of rights or shed any light whatsoever on how rights are to be interpreted or implemented in particular contexts in Asia. At best, it simply shifts the focus to a less grand level, whether that be country by country, area of law by area of law, or issue by issue.

Nevertheless, none of them individually nor all of them collectively guarantee realization of all types of rights across the board. Clearly what works in one context may not work in another. Given the wide variation in legal institutions and other factors that influence rights performance, the international human rights community should be wary of one-size-fits-all solutions. In light of the diversity of values within Asia and in comparison to other countries and regions, Asian countries should enjoy a “margin of appreciation” like that provided European countries by the European Court of Human Rights. Acknowledging the diversity on moral issues within Europe, the ECHR has tolerated differences in outcomes particularly in cases involving national security, sex, sexual orientation and religion.

The results of this study suggest that a wide margin of appreciation should be extended to three other areas. The first is free speech, specifically speech that incites hatred or exacerbates ethnic tensions. Defamation and criticism of the government is another area where legal standards and practice vary. However, the abuse of defamation laws to harass political opponents militates against broad deference to governments in this area. Secondly, given the indeterminacy of international law and the vastly different circumstances of particular countries in terms of ethnic and religious diversity, countries should be allowed a wide margin of appreciation in deciding how best to ensure cultural rights, including issues of freedom of religion such as what constitutes abnormal and normal practices or legitimate groups as opposed to cults. Thirdly, given the disparities in the levels of wealth and the potentially destabilizing effect of promising more than the government can deliver, states should be allowed considerable discretion in the area of social and economic rights. Finally, there should be a general appreciation that civil and political rights are a function of wealth, war and other circumstances, and that the majority of citizens in different countries may very well decide to draw a different balance between the rights of individuals and collective interests in this area. Recognition of such differences need not lead to an express doctrine of deference to government decisions to limit rights in the name of public order, but rather might lead to a more open-minded, careful scrutiny of the context-specific factors that allegedly justify the restrictions in the particular case.

At minimum, every attempt should be made to involve groups with knowledge of the local circumstances in identifying areas for change and in devising feasible plans for furthering the realization of rights and the lofty goals contained in international rights documents. Perhaps most fundamentally, more attention should be paid to economic development and poverty reduction because of the devastating effects of poverty and the importance of economic development to the realization of all categories of rights. However, acknowledging the importance and desirability of fostering economic development still leaves unanswered the many practical issues about how best to achieve economic growth within a particular country or region.

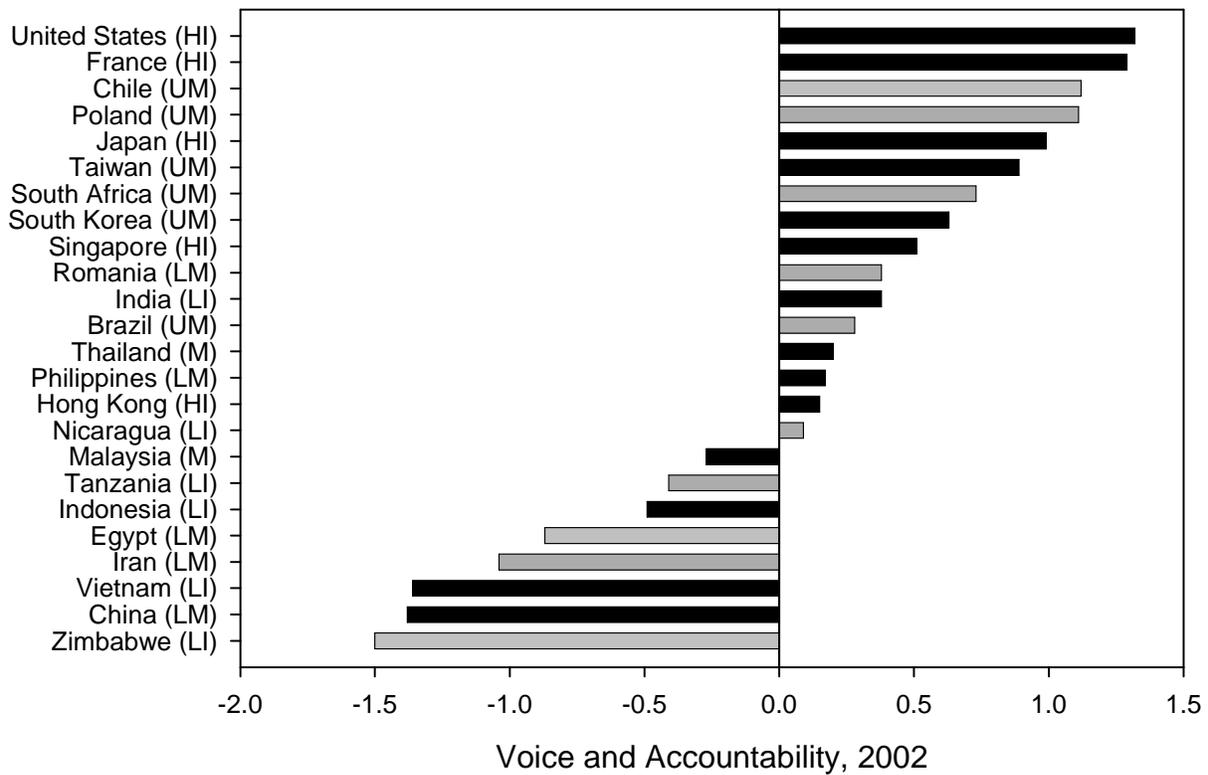
Figure 1.1: Physical Integrity Rights 2002



Source:

Gibney M., *Political Terror Scale Scores*. Online. Available HTTP: <http://www.unca.edu/politicalscience/faculty-staff/gibney_docs/pts.xls> (accessed 15 April 2004).

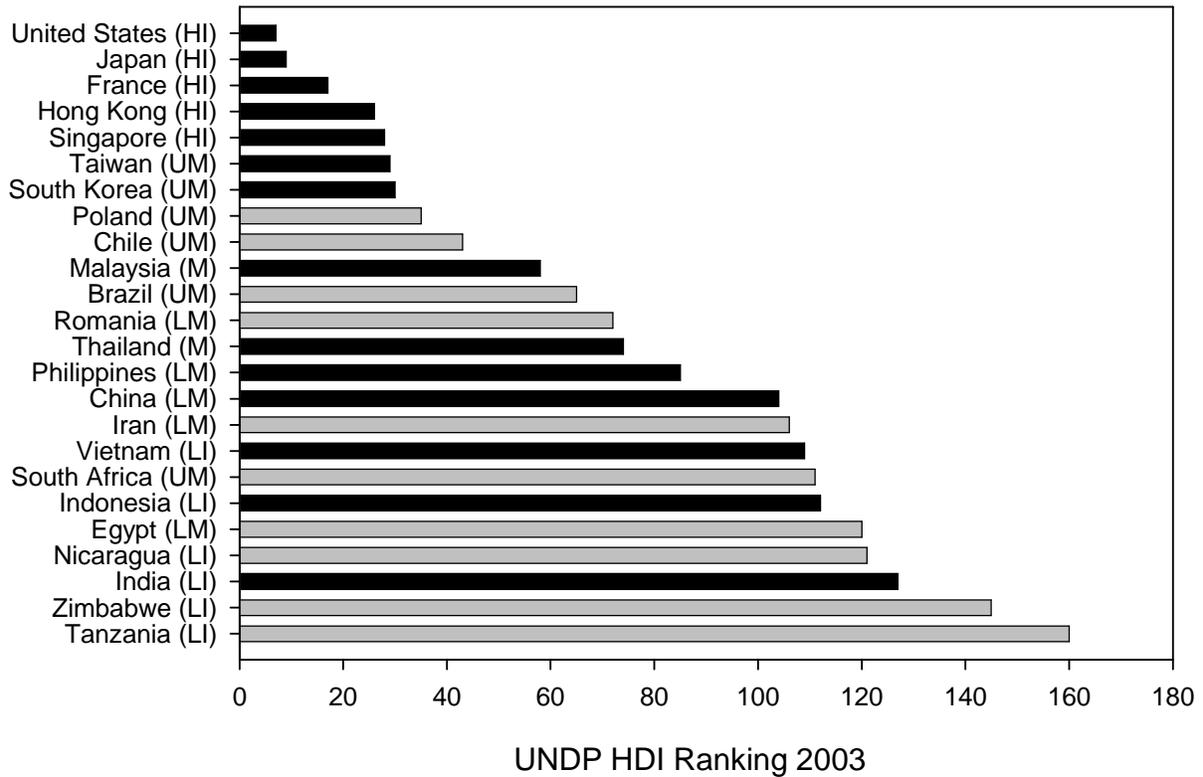
Figure 2.1 Civil and Political Rights: Voice and Accountability, 2002



Source:

World Bank (2003) *Governance Matters III: Governance Indicators for 1996-2002*. Online. Available HTTP: <http://www.worldbank.org/wbi/governance/govdata2002> (accessed 15 April 2004).

Figure 3.1 Social Economic Rights: UNDP HDI Ranking, 2003



Source:

United Nations Development Programme (2003) *Human Development Indicators*. Online. Available HTTP: <http://hdr.undp.org/reports/global/2003/indicator/index.html> (accessed 15 April 2004). LI refers to lower income countries; LM to lower middle income; M to middle income; UM to upper middle income; HI to high income.

Table 1.1: Poverty Index

Country and Human Development Indicator Rank	Human poverty index (HPI-1)		Population below income poverty line (%)			HPI-1 rank minus income poverty rank
	Rank	Value (%)	\$1 a day 1990-2001	\$2 a day 1990-2001	National poverty line 1987-2000	
26	Hong Kong (HI)	..	..	..	..	..
30	South Korea (UM)	..	..	<2	<2	..
58	Malaysia (M)	..	..	<2	9.3	..
43	Chile (UM)	3	4.1	<2	8.7	17.0
28	Singapore (HI)	6	6.3	..	..	..
65	Brazil (UM)	18	11.4	9.9	23.7	..
74	Thailand (M)	24	12.9	<2	32.5	13.1
104	China (LM)	26	14.2	16.1	47.3	4.6
85	Philippines (LM)	28	14.8	14.6	46.4	36.8
106	Iran (LM)	31	16.4	<2	7.3	..
112	Indonesia (LI)	33	17.9	7.2	55.4	27.1
109	Vietnam (LI)	39	19.9	17.7	63.7	..
121	Nicaragua (LI)	44	24.3	82.3	94.5	47.9
120	Egypt (LM)	47	30.5	3.1	43.9	16.7
111	South Africa (UM)	49	31.7	<2	14.5	..
127	India (LI)	53	33.1	34.7	79.9	28.6
59	Tanzania (LI)	59	36.2	19.9	59.7	41.6
145	Zimbabwe (LI)	90	52.0	36.0	64.2	34.9

Source:

HPI rank is determined on the basis of the HPI-1 values. The HPI value is a composite score based on standard of living measurements including life expectancy (probability of death before age 40, education level (adult illiteracy rate), access to water (population without sustainable access to water), and access to food (children under-weight for age). The aggregation rule is specified in Technical Rule 1 of the UNDP 2003 report

Column 3-5: World Bank. 2003. World Development Indicators 2003. CD-ROM. Washington, DC.. The final column is calculated on the basis of ranking data in columns 1 and PPP\$1 data in column 3. A positive final column figure indicates that the country performs better in income poverty than in human poverty, a negative the opposite.

Table 2.1: Infant Mortality, Life Expectancy, and Primary School Enrollment

Infant mortality rate (per 1,000 live births) 2001		Life expectancy at birth (years) 2001		Net Primary School Enrollment Rate (% eligible age children) 2001	
Hong Kong (HI)	3	Japan (HI)	81.3	Japan (HI)	100
Japan (HI)	3	Hong Kong (HI)	79.7	France (HI)	100
Singapore (HI)	3	France (HI)	78.7	Hong Kong (HI)	99
France (HI)	4	Singapore (HI)	77.8	Taiwan (UM)	99
South Korea (UM)	5	United States (HI)	76.9	South Korea (UM)	99
Taiwan (UM)	6	Chile (UM)	75.8	Poland (UM)	98
United States (HI)	7	Taiwan (UM)	75.6	Malaysia (M)	98
Poland (UM)	8	South Korea (UM)	75.2	Brazil (UM)	97
Malaysia (M)	8	Poland (UM)	73.6	United States (HI)	95
Chile (UM)	10	Malaysia (M)	72.8	Vietnam (LI)	95
Romania (LM)	19	China (LM)	70.6	Singapore (HI)	94
Thailand (M)	24	Romania (LM)	70.5	Romania (LM)	93
Philippines (LM)	29	Iran (LM)	69.8	Philippines (LM)	93
Vietnam (LI)	30	Philippines (LM)	69.5	China (LM)	93
Brazil (UM)	31	Nicaragua (LI)	69.1	Egypt (LM)	93
China (LM)	31	Thailand (M)	68.9	Indonesia (LI)	92
Indonesia (LI)	33	Vietnam (LI)	68.6	Chile (UM)	89
Iran (LM)	35	Egypt (LM)	68.3	South Africa (UM)	89
Egypt (LM)	35	Brazil (UM)	67.8	India (LI)	86
Nicaragua (LI)	36	Indonesia (LI)	66.2	Thailand (M)	85
South Africa (UM)	56	India (LI)	63.3	Nicaragua (LI)	81
India (LI)	67	South Africa (UM)	50.9	Zimbabwe (LI)	80
Zimbabwe (LI)	76	Tanzania (LI)	44	Iran (LM)	74
Tanzania (LI)	104	Zimbabwe (LI)	35.4	Tanzania (LI)	47

Source:

Column 1: UNICEF (United Nations Children's Fund). 2003. The State of the World's Children 2003. New York: Oxford University Press.

Column 2: UN (United Nations). 2003. World Population Prospects 1950-2050: The 2002 Revision. Database. Department of Economic and Social Affairs, Population Division. New York.

Column 3: UNESCO Institute for Statistics (United Nations Educational, Scientific and Cultural Organization). 2003. Correspondence on adult and youth literacy rates. January. Montreal.

Taiwan data is based on statistics compiled by the Taiwan Statistics Bureau, *available at* <http://www.dgbas.gov.tw/dgbas03/bs2/92chy/catalog.htm>.

Table 3.1: Public Spending Priorities (% GDP)

Country and Human Development Indicator Rank	Public Expenditure on Education 1998-2000	Public Expenditure on		Military Expenditure 2000
		Health	2000	
145 Zimbabwe (LI)	10.4	3.1	3.2	
58 Malaysia (M)	6.2	1.5	2.2	
17 France (HI)	5.8	7.2	2.5	
111 South Africa (UM)	5.5	3.7	1.6	
29 Taiwan (UM)	5.5	0.4	1.5	
74 Thailand (M)	5.4	2.1	1.4	
35 Poland (UM)	5.0	4.2	1.9	
121 Nicaragua (LI)	5.0	2.3	1.1	
26 Hong Kong	4.9*	1.6	..	
7 United States (HI)	4.8	5.8	3.1	
65 Brazil (UM)	4.7	3.4	1.5	
106 Iran (LM)	4.4	2.5	4.8	
43 Chile (UM)	4.2	3.1	2.9	
85 Philippines (LM)	4.2	1.6	1.0	
127 India (LI)	4.1	0.9	2.5	
30 South Korea (UM)	3.8	2.6	2.8	
120 Egypt (LM)	3.7	1.8	2.6	
28 Singapore (HI)	3.7	1.2	5.0	
9 Japan (HI)	3.5	6.0	1.0	
72 Romania (LM)	3.5	1.9	2.5	
160 Tanzania (LI)	2.1	2.8	1.3	
104 China (LM)	2.1	1.9	2.3	
112 Indonesia (LI)	1.0	0.6	1.1	
109 Vietnam (LI)	..	1.3	7.9	

Source:

Column 1: UNESCO Institute for Statistics (United Nations Educational, Scientific and Cultural Organization). 2003. Correspondence on education expenditure. February. Montreal. Hong Kong education figure from report to ICESCR Committee.

Column 2: World Bank. 2003. World Development Indicators 2003. CD-ROM. Washington, DC.

Column 3: SIPRI (Stockholm International Peace Research Institute). 2003. Correspondence on military expenditure data. March. Stockholm.

Taiwan data is based on statistics compiled by the Taiwan Statistics Bureau, *available at* <http://www.dgbas.gov.tw/dgbas03/bs2/92chy/catalog.htm>.

Table 4.1: Income Inequality

Country and Human Development Indicator Rank	Share of Income or Consumption (%) 1990-2001		Richest 20% to Poorest 20% 1990-2001	Gini Index (%) 1990-2001
	Poorest 20%	Richest20%		
9 Japan (HI)	10.6	35.7	3.4	24.9
72 Romania (LM)	8.2	38.4	4.7	30.3
112 Indonesia (LI)	8.4	43.3	5.2	30.3
30 South Korea (UM)	7.9	37.5	4.7	31.6
35 Poland (UM)	7.8	39.7	5.1	31.6
17 France (HI)	7.2	40.2	5.6	32.7
29 Taiwan (UM)	6.7	41.1	6.2	34.5
120 Egypt (LM)	8.6	43.6	5.1	34.4
109 Vietnam (LI)	8.0	44.5	5.6	36.1
127 India (LI)	8.1	46.1	5.7	37.8
160 Tanzania (LI)	6.8	45.5	6.7	38.2
104 China (LM)	5.9	46.6	8.0	40.3
7 United States (HI)	5.2	46.4	9.0	40.8
28 Singapore (HI)	5.0	49.0	9.7	42.5
106 Iran (LM)	5.1	49.9	9.7	43.0
74 Thailand (M)	6.1	50.0	8.3	43.2
26 Hong Kong (HI)	5.3	50.7	9.7	43.4
85 Philippines (LM)	5.4	52.3	9.7	46.1
58 Malaysia (M)	4.4	54.3	12.4	49.2
145 Zimbabwe (LI)	4.6	55.7	12.0	56.8
43 Chile (UM)	3.2	61.3	19.3	57.5
111 South Africa (UM)	2.0	66.5	33.6	59.3
121 Nicaragua (LI)	2.3	63.6	27.9	60.3
	2.2	64.1	29.7	60.7
Brazil (UM)				
65				

Source:

World Bank. 2003. World Development Indicators 2003. CD-ROM. Washington, DC; For Taiwan data see Report on The Survey of Family Income and Expenditure in Taiwan Area, Republic of China, *available at* <http://www129.tpg.gov.tw/mbas/doc4/eng/conte91.htm>. Taiwan HDI rank is an estimate.

Table 5.1: Regional Governance Indicators (2002 percentile rank)

Region and Human Development Indicator Rank	Voice and Accountability	Political Stability	Government Effectiveness	Regulatory Quality	Rule of Law	Control of Corruption
OECD	91.3	87.2	91.6	91.9	91.6	91.3
Eastern Europe	65.0	60.5	57.7	63.2	56.5	54.7
Latin American and Caribbean	61.2	51.2	53.3	58.4	53.2	54.9
East Asia	50.3	54.6	50.5	42.8	47.5	44.4
Middle East and North Africa	28.6	40.1	49.9	44.9	54.2	54.7
South Asia	29.6	32.4	48.1	35.3	42.1	41.5
Subsaharan Africa	31.0	34.8	28.9	30.6	30.5	32.4
Former Soviet Union	22.7	31.1	21.7	25.4	20.4	16.8

Source: World Bank, Governance Matters III: Governance Indicators for 1996-2002 (2003), at <http://www.worldbank.org/wbi/governance/govdata2002>.

Table 6.1: Quality of Governance (Percentile Rank, 2002)

Country and Human Development Indicator Rank	Voice and Accountability	Political Stability	Government Effectiveness	Regulatory Quality	Rule of Law	Control of Corruption
7 United States (HI)	90.9	56.2	91.2	91.2	91.8	92.3
9 Japan (HI)	79.3	90.3	84.5	78.9	88.7	85.1
17 France (HI)	88.4	70.8	90.7	85.6	87.6	89.2
26 Hong Kong (HI)	53.5	85.4	88.7	90.7	86.6	90.2
28 Singapore (HI)	65.7	91.9	100.0	99.5	93.3	99.5
29 Taiwan (UM)	74.2	70.3	82.5	80.9	80.9	77.3
30 South Korea (UM)	67.7	60.5	79.4	76.3	77.8	66.5
35 Poland (UM)	83.3	69.7	71.1	71.1	70.6	69.1
43 Chile (UM)	84.3	85.9	86.6	90.2	87.1	90.7
58 Malaysia (M)	42.4	61.6	80.9	68.6	69.6	68.0
65 Brazil (UM)	58.1	48.1	50.0	63.4	50.0	56.7
74 Thailand (M)	57.1	62.7	64.9	65.5	62.4	53.6
72 Romania (LM)	61.1	58.4	46.4	55.7	54.1	45.4
85 Philippines (LM)	54.0	29.7	55.7	57.7	38.1	37.6
104 China (LM)	10.1	51.4	63.4	40.2	51.5	42.3
106 Iran (LM)	18.2	25.9	39.2	8.2	33.5	44.3
109 Vietnam (LI)	10.6	61.1	48.5	25.3	44.8	33.0
111 South Africa (UM)	70.7	42.7	69.1	69.1	59.8	67.5
112 Indonesia (LI)	34.8	12.4	34.0	26.3	23.2	6.7
127 India (LI)	60.6	22.2	54.1	43.8	57.2	49.5
120 Egypt (LM)	22.2	34.1	46.9	38.1	57.7	47.9
121 Nicaragua (LI)	52.0	47.6	17.5	39.7	32.0	39.7
145 Zimbabwe (LI)	7.1	8.6	22.2	4.1	5.7	6.2
160 Tanzania (LI)	37.9	35.7	36.1	33.5	38.7	15.5

Source: World Bank, Governance Matters III: Governance Indicators for 1996-2002 (2003), at <http://www.worldbank.org/wbi/governance/govdata2002>.

Table 7.1: Crime Statistics (rate per 100,000) 1997-2002

Country and Human Development Indicator Rank	Total Crime	Murder	Rape	Theft	Drug Offense	Incarceration
7 United States (HI)	4160.51	5.61	31.77	3804.58	539.92	701
9 Japan (HI)	2300.77	1.1	1.85	1871.13	21.68	54
17 France (HI)	6932.26	4.07	17.63	4224.57	182.19	93
26 Hong Kong (HI)	1085.64	1.03	1.41	623.16	36.77	184
28 Singapore (HI)	703.84	0.8	2.81	415.5	85.08	388
29 Taiwan (UM)	2179.03	5.13	10.16	1473.03	111.13	250
30 South Korea (UM)	1664.06	2.18	4.29	386.31	8.97	125
35 Poland (UM)	3634.84	3.15	6.09	1727.46	93.65	211
43 Chile (UM)	1496.92	4.54	9.97	705.66	16.68	204
58 Malaysia (M)	729.71	2.1	5.78	581.43	78.95	161
65 Brazil (UM)	927.41	22.98	8.5	-	46.29	160
72 Romania (LM)	2207.05	7.44	8.34	1028.33	2.04	199
74 Thailand (M)	245.53	8.07	6.17	90	438.13	401
85 Philippines (LM)	-	7.85	4.21	10.21	14.53	94
104 China (LM)	133.82	2.16	-	87.75	3.92	184
106 Iran (LM)	-	-	-	-	-	226
109 Vietnam (LI)	83.56	1.08	-	31.41	11.26	71
111 South Africa (UM)	8176.04	114.84	121.13	3565.81	111.85	402
112 Indonesia (LI)	63.48	0.8	0.73	45.26	3.77	38
120 Egypt (LM)	-	-	-	-	-	121
121 Nicaragua (LI)	1372.27	24.03	26.03	579.97	22.79	143
127 India (LI)	671.2	3.93	1.6	44.01	2.25	29
145 Zimbabwe (LI)	6560.61	10.15	38.38	1958.11	57.03	160
160 Tanzania (LI)	1647.98	7.95	10.05	194.11	13.39	120

Source:

Column 1-5: Interpol, International Crime Statistics: Country Report, at <http://www.interpol.int/Public/Statistics/ICS/>; Column 6: International Center for Prison Studies, School of Law at King's College of the University of London, World Prison Brief, at <http://www.prisonstudies.org/>. Some Taiwan, U.S. and Singapore data came from compilations by national statistic offices. Taiwan HDI rank is an estimate.

Table 8.1: Social Order. Divorce Rates, Suicide Rates, Young Mothers

Country and Human Development Indicator Rank	Divorce Rate (per 1,000) 1996-2000	Suicide Rates (per 100,000)		Births by Mothers Between Age 15-19 (per 1000 population 1995 to 2000)
		1991-2002		
7 United States (HI)	4.19	10.85		9.14
9 Japan (HI)	1.98	25.3		0.70
17 France (HI)	1.98	17.75		1.58
26 Hong Kong (HI)	1.95	13.25		1.08
28 Singapore (HI)	1.20	9.45		1.07
29 Taiwan (UM)	-	13.59		0.50
30 South Korea (UM)	2.52	13.55		0.63
35 Poland (UM)	1.09	15.4		4.12
43 Chile (UM)	0.42	5.8		10.19
58 Malaysia (M)	-	-		4.06
65 Brazil (UM)	0.60	4.2		19.05
72 Romania (LM)	1.40	12.35		7.93
74 Thailand (M)	-	4		12.41
85 Philippines (LM)	-	2.1		11.80
104 China (LM)	-	13.9		0.97
106 Iran (LM)	0.81	0.2		13.86
109 Vietnam (LI)	-	-		6.52
111 South Africa (UM)	0.83	-		21.34
112 Indonesia (LI)	-	-		15.10
120 Egypt (LM)	1.17	0.05		14.36
121 Nicaragua (LI)	-	3.45		45.06
127 India (LI)	-	10.65		12.52
145 Zimbabwe (LI)	-	7.9		31.34
160 Tanzania (LI)	-	-		39.37

Source:

Column 1: United Nations, Demographic Yearbook 2000, 590 (2002); Column 2: World Health Organization, Suicide Rates (Table), at http://www.who.int/mental_health/prevention/suicide/suiciderates/en/; Column 3: United Nations Population Division, World Population Prospects: The 2002 Revision Population Database, at <http://esa.un.org/unpp/>; Taiwan HDI rank is an estimate.

Table 9.1: GDP with and without Purchase Price Parity Adjustment, 2001

Country and Human Development Indicator Rank	GDP (US\$ billions)	GDP (PPP US\$ billions)	GDP per Capita (US\$)	GDP per Capita (PPP US\$)
7 United States (HI)	10,065.3	9,792.5	35,277	34,320
9 Japan (HI)	4,141.4	3193.0	32,601	25,130
26 Hong Kong (HI)	161.9	167.1	24,074	24,850
17 France (HI)	1,309.8	1,420.0	22,129	23,990
28 Singapore (HI)	85.6	93.7	20,733	22,680
29 Taiwan (UM)	281.2	401.0	12,621	18,000
30 South Korea (UM)	422.2	714.2	8,917	15,090
111 South Africa (UM)	113.3	488.2	2,620	11,290
35 Poland (UM)	176.3	365.3	4,561	9,450
43 Chile (UM)	66.5	141.6	4,314	9,190
58 Malaysia (M)	88.0	208.3	3,699	8,750
65 Brazil (UM)	502.5	1,268.6	2,915	7,360
74 Thailand (M)	114.7	391.7	1,874	6,400
106 Iran (LM)	114.1	387.2	1,767	6,000
72 Romania (LM)	38.7	130.7	1,728	5,830
104 China (LM)	1,159.0	5,111.2	911.0	4,020
85 Philippines (LM)	71.4	301.1	912.0	3,840
120 Egypt (LM)	98.5	229.4	1511.0	3,520
112 Indonesia (LI)	145.3	615.2	695.0	2,940
127 India (LI)	477.3	2,930.0	462.0	2,840
145 Zimbabwe (LI)	9.1	29.3	706.0	2,800
121 Nicaragua (LI)	4.0	11.7	754.7	2,200
109 Vietnam (LI)	32.7	164.5	411.0	2,070
160 Tanzania (LI)	9.3	18.0	271.0	520

Source:

Column 1: World Bank. 2003. World Development Indicators 2003. CD-ROM. Washington, DC.; aggregates calculated for the Human Development Report Office by the World Bank.

Column 2: World Bank. 2003. World Development Indicators 2003. CD-ROM. Washington, DC.; aggregates calculated for the Human Development Report Office by the World Bank.

Column 3: calculated on the basis of GDP and population data from World Bank. 2003. World Development Indicators 2003. CD-ROM. Washington, DC.; aggregates calculated for the Human Development Report Office by the World Bank.

Column 4: World Bank. 2003. World Development Indicators 2003. CD-ROM. Washington, DC.; aggregates calculated for the Human Development Report Office by the World Bank.

Figure 4.1. Wealth Effect (GDP) on Rights Performance

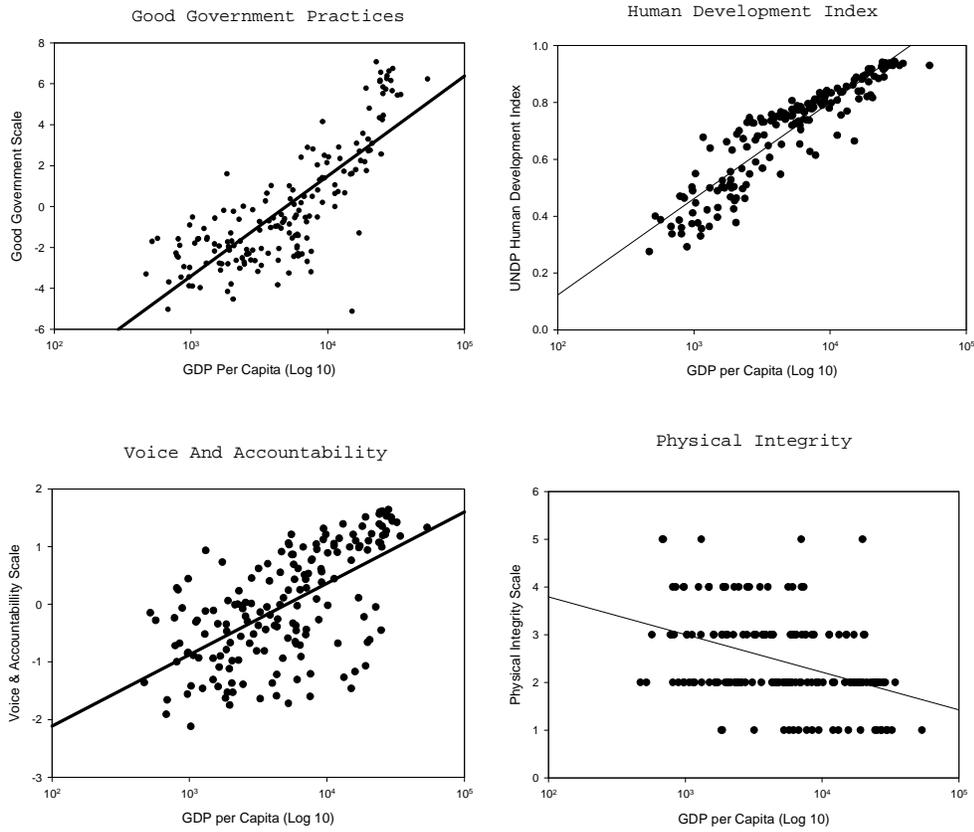


Table 10.1. Correlation of Wealth and Measures of Development

Measure	Region								
	All	Africa	Asia	Australia and Pacific	Caribbean	Former Soviet Influence	Latin America	Middle East	Western Europe
Human development index (HDI) 2001	0.92**	0.88**	0.93**	0.97**	0.86**	0.97**	0.88**	0.93**	0.94**
Gender-related development index (GDI) 2001	0.93**	0.87**	0.92**	0.98*	0.89*	0.97**	0.90**	0.92**	0.83**
Rule of Law Government Effectiveness	0.82**	0.58**	0.91**	0.95**	0.90**	0.81**	0.64**	0.89**	0.92**
Control of Corruption	0.77**	0.49**	0.90**	0.98**	0.92**	0.85**	0.69**	0.78**	0.91**
Voice and Accountability	0.76**	0.55**	0.88**	0.96**	0.81**	0.83**	0.67**	0.77**	0.86**
PTS 2002 (AI & State)	0.62**	0.29	0.50*	0.94**	0.75*	0.73**	0.34	0.18	0.85**
	-0.40**	-0.22	-0.42	-0.74	-0.71*	-0.21	0.10	-0.25	-0.48*
N	174	41	19	6	10	20	20	15	23

Cell entries are Pearson's R coefficients. Dependent variable is natural log of GDP per capita
*p < .05, **p < .01

Table 10.1 illustrates the relationship between per capita GDP and various measures of development, across all countries and within regions. Across all countries the relationship is highly significant ($p < .01$), but the strength of the correlation varies. The UNDP Human Development Index (HDI) is correlated strongly with per capita GDP ($r = .92$), but physical integrity (PTS) bears a relatively weak correlation ($r = -.40$). If we square these coefficients to compute r-square (as in regression), we can say that per capita GDP explains 85% of the variance in HDI across countries, but only 16% of the variance in physical integrity. The same calculation can be made for the other measures of development, which are ranked in declining order for all countries. Analysis of these variables within regions indicates variation in the relationship between wealth and development, but the same pattern is still largely evident. Where no relationship exists (e.g., Voice and Accountability in the Middle East) it is due to the lack of variance within the region.

Table 11.1: Gross Domestic Product Per Capita Growth Rate

Country Human Development Indicator Rank	and	Annual Growth Rate GDP per Capita (%)	
		1975-2001	1990-2001
104	China (LM)	8.2	8.8
109	Vietnam (LI)	4.9	6.0
29	Taiwan (UM)	8.9	5.6
30	South Korea (UM)	6.2	4.7
43	Chile (UM)	4.1	4.7
28	Singapore (HI)	5.1	4.4
35	Poland (UM)	..	4.4
127	India (LI)	3.2	4.0
58	Malaysia (M)	4.1	3.9
74	Thailand (M)	5.4	3.0
120	Egypt (LM)	2.8	2.5
112	Indonesia (LI)	4.3	2.3
26	Hong Kong (HI)	4.5	2.1
7	United States (HI)	2.0	2.1
106	Iran (LM)	-0.6	2.0
17	France (HI)	1.7	1.5
65	Brazil (UM)	0.8	1.4
9	Japan (HI)	2.6	1.0
85	Philippines (LM)	0.1	1.0
160	Tanzania (LI)	0.3	0.4
111	South Africa (UM)	-0.7	0.2
72	Romania (LM)	-1.3	-0.1
121	Nicaragua (LI)	-4.0	-0.1
145	Zimbabwe (LI)	0.2	-0.2

Source:

World Bank. 2003. Correspondence on GDP per capita annual growth rates. March. Washington, DC; aggregates calculated for the Human Development Report Office by the World Bank.