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Measuring Human Rights: A Review Essay

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Abstract

A review of:

Measuring Human Rights. By Todd Landman & Edzia Carvalho. New York, NY: Routledge, 2010. 163pp.

Keywords

Human rights, Data measurement, Framework, Validity, Sources, Development goals

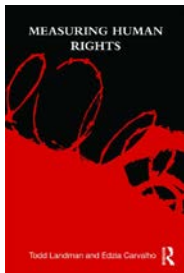
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Measuring Human Rights: A Review Essay

By David L. Richards

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As a response to an emergent quantitatively-oriented research program over the past three decades investigating which human rights are respected/violated and why, there has been a growth in the number and sophistication of measures used to benchmark both overall human rights conditions and the human rights practices of governments. In *Measuring Human Rights*, Todd Landman and Edzia Carvalho provide a succinct and thoughtful introduction to the endeavor of human rights measurement.

The book opens with a chapter about what exactly are these things called “human rights,” and the fact that the book opens this way is a wonderful reinforcement of the principle (well-known by measurement practitioners, and offered in Chapter 2), that *careful conceptualization is not an afterthought*. If one’s measure is not carefully conceptualized, it will likely suffer grave risks to validity, no matter how artfully it is later operationalized. When analyses go awry, social scientists are rather quick to blame their model specification or estimation technique before ever challenging their data. Perhaps that is because many scholars do not create their own data, and so this is the factor over which they feel they have the least control. However, to employ a cooking analogy I use with my students, fancy pots do not compensate for poor ingredients. Data are critical to knowledge, and conceptualization is critical to data. One great message that the book offers implicitly, throughout, is that creating data is hard and that there are many things that can go wrong with data. Indeed, *Measuring Human Rights* is in some ways a consumer-defense course for quantitative human rights scholars, both practicing and potential.

In this review essay, I want to invoke a few matters suggested by my reading of the book that relate to the field of human rights measurement. What follows is to be considered simply food for conversation.

Respect, Protect, Fulfill

The distinctions Landman and Carvalho present regarding human rights principles, policies, and practices are quite useful for purposes of measurement—for example, human rights in law and human rights in practice ideally should not be combined into a single indicator. However, they also employ the well-known and widely-used “respect, protect, fulfill” (RPF) conceptual framework to help “reduce the complexity of human rights measurement while attempting to retain the validity of the measures used and making the process of measurement a viable one” (25). It is interesting to think, however, about whether one should assume the RPF framework to be of equal utility for all purposes. Understanding *respect* to mean “refraining from interfering with the enjoyment of the

right,” *protect* to mean “enacting laws that create mechanisms” to prevent rights violations, and *fulfill* to mean “to take active steps to put in place institutions and procedures” to enable respect (e.g., UNFPA 2011), the RPF framework reduces to the traditional “positive rights / negative rights” dichotomy, newly presented in three categories via the disaggregation of the old single “positive” category into the separate categories of “protect” and “fulfill.” The positive / negative dichotomy was not only regarded by some as creating a false choice that implicitly denied the interdependent and indivisible nature of rights but, also, unhelpful for purposes of measurement.

One might even venture so far as to say that the “positive-negative” dichotomy was counter-productive in that allowed measurement efforts to be guided away from “positive” rights such as economic rights – an important type of rights for which human rights-based measurement is yet sorely underdeveloped. On the topic of economic rights, in the discussion of what they call “socio-economic and administrative statistics,” Landman and Carvalho try to get around the very real problem of assessing the contributions of a state to the well-being of its citizens by focusing on process-based measures that exclude the efforts of non-state actors. However, there is little discussion of how one would address the problem of unequal resources across states for the implementation of such processes, which is a necessary step for dealing with the “progressive realization” requirement attached to the international law surrounding economic, social, and cultural rights (International Covenant on Economic, Social, and Cultural Rights (ICESCR), Article 2.1). There is also an enormous attribution problem inherent in these data. Most states have any number of non-state actors working towards overlapping human rights-related goals, so when improvement in respect is evidenced, how can one know to what extent the state itself was responsible for the change? Further complicating the attribution problem is that these non-state actors can work either with or against the state, and to different degrees. Thus, the complexity of the attribution issue is definitely a major challenge for the measurement of economic rights.

Returning to the RPF framework, in Chapter 3 Landman and Carvalho set out a typology where torture, extrajudicial killings, and other physical integrity rights are labeled as civil/political rights which a state has an obligation to “respect,” meaning “no interference in the exercise of the right” (26). However, Donnelly (1989) long ago made a quite-persuasive case that mere restraint is not sufficient to reduce torture as, for instance, reducing torture also requires positive action such as the professionalization of security forces. Landman and Carvalho (25-26) do note, quite correctly, that measurement aimed at assisting the study of human rights must include the process of implementation, not merely the measurement of outcomes. That is, the passage of human rights-related laws is a valuable measurement effort. However, does the RPF framework inform that effort? Or, is it, for this purpose, creating categories for categories’ sake?

Certainly, Landman and Carvalho are not alone in the way they invoke RPF. For example, Chilton and Rose (2009) use RPF in their appeal for a rights-based approach to food security. They include “Do not change food insecurity definitions without public debate and participation” under the category of “Respect,” which they designate as meaning “Noninterference” (1208). By definition, this “noninterference” would require a good deal of action – maybe not undertaken directly by the state, but surely at its instigation and, perhaps, with its funds. Certainly, states create discriminatory laws. However, merely refraining from enacting discriminatory legislation, as an actionable category for either measurement or policy-based thinking, is illusory, particularly if one is

looking at a country with a federal framework. The civil rights movement in the United States comes to mind as one counterexample to this logic. Ultimately, the U.S. federal government used its powers to push back against a host of laws and customs that were highly discriminatory towards black citizens. That is, there was a tremendous amount of “protect” and “fulfill” happening to reduce discrimination.

Should one use the RPF framework as a basis for thinking about measurement, some interesting questions arise. One among these is, how does one measure “noninterference”? That is, how can one measure actions not taken? One would not wish to cast the measurement of anything as an impossible task, by definition, but it should be pointed out that there are some distinct and important measurement issues raised by employing the RPF framework that have not yet been widely addressed. Further, trying to think forwards a bit, one might foresee a challenge to the unitary actor assumption implied by “respect” being cast as a negative right. The work of Neil Mitchell (e.g., 2004) on principal-agent relationships makes a good case for the rethinking of this assumption. Indeed, identification of the perpetrators of human rights abuse is a missing story in most cross-national human rights data. The Ill-Treatment and Torture (ITI) Project, which codes allegations of torture based on Amnesty International reports, leans in this direction a bit, as it includes basic categories with which state-based human rights violators can be labeled (Ryals, Haglund, and Moore 2011).

Sourcing Issues

While Landman and Carvalho wage a very good discussion about sourcing issues for events-based data, including a clear discussion of multiple systems estimation, there is, by comparison, very little discussion of the limitations of the information sources utilized by standards-based and survey-based measures (although the discussion of sampling in the survey chapter does better than the material in the standards-based chapter). Given the widespread use of standards-based measures, there wants – generally, not just in this book -- a discussion of (1) the need for better information-sources and (2) what such sources would look like. As such, one thing that would make a fruitful addition to the book would be an integrative framework for guiding future measurement efforts. As the human rights measurement research program now begins to shift from its first generation of scholarship (establishing reliable associates of abuse and respect of political/civil rights) to its next, we must ask ourselves “What concepts need benchmarking, and what types of benchmarks do we (a) need, and (b) have the ability to produce?”

That question bids one to think immediately about future directions in systematic human rights research, which will likely grow in five particular areas among many possible others. First, I would foresee a great deal of research addressing the interdependence of rights. This will include the way in which respect for/violation of one right (or type of right) affects others; as well as the choices governments make, among the full list of rights, about which rights to violate/respect, how much, and why. Second, and related, there lacks a general theory of government respect for human rights. The development of such a theory will require careful empirical testing of its predictions. Third, much more work will be done on forecasting models intended to predict both human rights practices and conditions. Fourth, increased attention will certainly be paid to the human rights-

consequences of non-state actors. Finally, the rights of noncitizens will attract more attention from human rights scholars who employ systematic statistical analysis than they currently command.

The claim above about future research-needs dictating future measurement innovation is made with full recognition of the interesting fact that, while the great majority of quantitative research articles on human rights have focused on a subset of internationally-recognized political/civil human rights known as “physical integrity rights” (rights to be free from torture, political imprisonment, disappearance, and extrajudicial killing), the larger human rights measurement effort itself has been, since its very beginnings, more-broadly focused than has been the research program. In 1983 Charles Humana published the first of his three *World Human Rights Guide* reports (Humana 1983). These reports contained measures of government respect for a wide variety of rights (30, 39 and 40, respectively in the three editions), representing a wide array of civil/political and social/cultural rights. Absent and/or less represented, however, were economic rights.

A major issue facing future efforts to create cross-national time-series human rights data is the availability / lack of availability of systematic information from which data can be produced. Here, the term “systematic,” means a similar level of annually-updated information about the same rights, for each country (Cingranelli and Richards 2010, 406). It would neither be fair to score countries’ human rights practices/conditions using a different amount of information for each country or type of right, nor would it enhance the endeavor of cross-national comparison. The only truly systematic source of information about human rights, globally, is the annual U.S. State Department’s Country Reports on Human Rights Practices. Annual reports from major international NGOs are less than systematic to the extent they do not include every country in the world (Human Rights Watch) and/or do not report on the same rights for each country (Amnesty International and Human Rights Watch).

While the State Department’s reports have grown in scope and sourcing, the reports are not keeping pace with the growing scholarly inquiry about the full spectrum of human rights. The State Department is, after all, a political entity and its report’s contents are going to change at least slightly from administration to administration. Sometimes the reports expand. In 2010, President Barack Obama signed into law the “Daniel Pearl Freedom of the Press Act” which “requires the State Department to expand its scrutiny of news media restrictions and intimidation as part of its annual review of human rights in each country” (*The New York Times* 2010). Sometimes they contract. The Reagan administration famously eliminated coverage of anything resembling an economic right. As a result, systematic information in the areas of economic/social/cultural rights and women’s rights is still scarce compared to that for political/civil rights, albeit improving over time.

If new sources of systematic information about a greater scope of human rights are not created/found/explored, our ability for either methodological or conceptual innovation will be stunted/wasted by a lack of raw materials (information). One good example mentioned by Landman and Carvalho (90) is the data truncation problem of ordinal measures, whereby large amounts of variation tend to exist in a measure’s “top” category. All ordinal scales suffer from this issue, to some extent. Having done extensive research on the matter as it relates to physical integrity abuse, there are certainly creative ways in which extant measures could be re-conceptualized to ameliorate

the truncation problem. However, systematic content analysis done with concordance software has demonstrated (at least to this author's sensibilities) that the available sources of systematic information are neither rich enough, reliable enough in type of content offered (e.g., qualitative descriptions of abusive episodes, numerical estimates of victims, etc.), nor consistent enough in the way that similar episodes are described (no matter how) either within the same country or across countries, to support a more-finely-tuned indicator than currently exists at any acceptable level of reliability.

Human Rights, Human Development, and Human Security

For many reasons (e.g., lack of systematic information sources, legacy of Cold War-era politics) the most glaring omission in human rights measurement is in the area of economic/social/cultural rights. However, while broadly noted, the deficiency may be less than commonly thought. There are many available measures addressing these types of human rights in the field of "human development" (as opposed to "human rights"), and they would bring to political science not only conceptual coverage, but also methodological innovation. One example would be the new measure of economic rights by Fukuda-Parr, Lawson-Remer, and Randolph (2009) that uses data envelope analysis to create resource-adjusted frontiers, thus escaping the classic trap of punishing poor states for being poor. We must move past the language of interdependence and fully conceptually integrate the human rights / development / security frameworks in a single, dignity-centered approach that can yield a coordinated measurement effort.

There exists, in the germane literature across the three frameworks, a situation analogous to three persons looking through separate windows into the same room -- separately describing the same view yet sometimes arguing over which view is best and/or how it differs from the others. For example, what are commonly called "development goals" are really outcome goals for policies designed to implement respect for legally-established economic and social human rights. Likewise, while "human security" intends to move the notion of security beyond a traditional focus on conflict towards a more-holistic view of dignity, that view is parallel with the full spectrum of internationally-recognized human rights. Plainly, humans are secure when their dignity is not threatened / degraded (either currently or in an anticipatory fashion). A jaded person might suspect that human security is merely a way to repackage human rights for sale to realists. In a similar fashion, development goals and policies are designed to assist persons in leading lives of greater dignity. All three frameworks (rights / development / security) focus on the individual rather than the state. Finally, the conception of dignity that drives these development policies and conceptions of security is constructed / guided by the extant regime of international human rights law. That is, human development and human security aspire to the same vision of human dignity as does human rights, vis-à-vis political, civil, economic, social, and cultural human rights.

Some would make a distinction between human rights and human development based on aspiration such that, for example, secondary education is an aspiration, but primary education is a right, as worded in the International Bill of Human Rights (IBHR). Thus, human development reports include statistics on secondary school enrollment, but human rights datasets do not. This logic, however, relies upon an extremely textualist reading of the IBHR. When this legal framework was put in place, primary education might have more-substantively sufficed as that necessary for a

life of dignity but, in 2011, similar dignity in a globalized world requires more than a primary education. This is not to say that universal primary education isn't still a goal in many, many places. However, bringing our sights into line with a changed world – call it aspiration or realism – does not turn human rights into human development.

Bringing the conversation back to measurement, the issue of human rights versus human development can be used to illustrate artificial conceptual distinctions. The United Nations Development Programme (UNDP) has stated unequivocally that the United Nations' (UN) Millennium Development Goals (MDGs) and human rights "...share guiding principles such as participation, empowerment, national ownership; they serve as tools for reporting processes that can hold governments accountable; and, most fundamentally, they share the ultimate objective of promoting human well-being and honouring the inherent dignity of all people" (UNDP 10). Further, Article 1 of the UN Declaration on the Right to Development (1986) states that "the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized."

Yet, there remains persistence in maintaining that important differences exist between human development and human rights. The UNDP (12) has made several arguments in this vein, all of which seem reasonably contestable. First, it argues that "human rights [is] wider in scope" than is development. However, if development is purely constituted from economic rights, why have political rights been included in UNDP development indicators, old and new, such as the Gender Empowerment Measure and Gender Inequality Index? Also, by this same logic, one could argue that physical integrity rights are different from human rights because that category of means towards dignity does not cover all human rights.

Second, UNDP argues that "human rights target all countries" while development goals apply only to developing countries. However, every country in the world could use improvement in equality of access to healthcare, education, clean water, food, medicine, work, and a host of other traditional development issues. The infant mortality rate for black babies in Shelby County, TN was 18.5 per 1,000 in 2009 – worse than that of 52% of the world's countries listed for 2009 by the United Nations' Children's Fund (The Urban Child Institute 2011, 34; UNICEF 2011). For white babies in the same county, it was 5 per 1,000, better than that of 85% of the world's countries that year (The Urban Child Institute 2011, 36; UNICEF 2011). Are we to take from the UNDP's comments that the absolute rate for black babies and the inequality between whites and blacks is not an issue? Third, UNDP argues that "human rights are legally binding and formal" while MDGs are recommendations. This is based on a narrow view of MDGs as representing nothing more than a set of a historical policy recommendations, in effect unlinking them from any rights-based conception of dignity. The MDG's aspirations are covered under economic, social, and cultural rights in international human rights law. That is, while the MDG framework is not legally binding, its policy aims are grounded in a pre-existing and legally binding conception of dignity. Interestingly, the UNDP has explicitly matched all the MDGs with their corresponding legal bases in international human rights law. For example, the goal to eradicate extreme poverty and hunger is grounded in Article 25(1) of the UDHR and Article 11 of the ICESCR.

Fourth, it is asserted that development goals are different from human rights because MDGs have deadlines. Again, this is not a conceptual issue, but rather a narrow reading of MDGs as merely a particular set of time-bound policies. Finally, it is argued that MDGs are more-easily measured than are human rights. Again, this is a practical concern, not a conceptual issue. Would it not be a moral tragedy were the list of internationally-recognized human rights affected by how difficult they are to benchmark? Landman and Carvalho remind us, page after page, that measurement is a difficult task.

There exists a considerable number of scholars from one research tradition or the other talking past one another and/or ignoring (consciously or otherwise) one another's measurement work because of perceptions of conceptual distinctions that may not hold up to close scrutiny. Alston (2005, *Human Rights Quarterly*) notes this and calls upon human rights scholars to better-engage the development community. To the extent that political science human rights measurement efforts need to better-address economic/social/cultural rights and that human development measurement efforts already do, progress towards benchmarking dignity in a meaningfully holistic sense is stunted. A conceptual integration of human rights/development/security is required to prevent this condition's continuance.

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