Ausnahmezustand: Citizenship and the Protection of Physical Integrity Rights*

Peter Haschke[†]

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Abstract

Critics of the human rights enterprize have long argued that the notion of universal human rights is incompatible with a system of nation-states. An irreconcilable conflict between traditional political-juridical categories revolving around the citizen as the rights bearer, on the one hand, and the "naked" human being on the other, is seen as the underlying cause for why universal human rights remain inadequately protected. In line with this critical tradition, I argue that human rights are violated precisely when it is no longer possible to conceive of them in terms of the rights of citizens of a state and they are captured by the *state of exception*. Relying on data of ill-treatment and torture allegations, I present evidence consistent with this interpretation. By examining the role of citizenship for the protection of physical integrity rights, I engage the literature on state repression while identifying alternative mechanisms that also explain the violation of these rights in democracies.

1 Introduction

It is well established in the repression literature that democracies outperform autocratic regimes with regard to protecting civil, political and human rights. By far the most celebrated and most robust finding in the literature – the so called *Domestic Democratic Peace* – concerns the empirical regularity that political democracy is negatively related to states' use of repression (Davenport, 2007*a*,*b*). More democratic states are repeatedly found to commit fewer or less severe violations of civil, political and physical integrity rights (see among others: Mitchell and McCormick, 1988; Henderson, 1991, 1993; Poe and Tate, 1994; Davenport, 1995; Fein, 1995; Rummel, 1997; Poe, Tate and Keith, 1999; Davenport and Armstrong, 2004). Although this finding may not be terribly surprising considering that democracy itself is often defined as a non-repressive political process, relatively little attention has been devoted to the crucial detail that democracies only *tend* to repress less, and they only *outperform* autocracies with regard to the protection of rights.[1]

From an empirical standpoint the *Domestic Democratic Peace* proposition is anything but perfect. As illustrated in Figure 1, though certainly lower than in autocratic regimes, violations of physical integrity rights are anything but absent, even among countries that are conventionally considered democratic.[2] In particular, the left panel of Figure 1 shows that since the end of the Cold War period, about 80 percent of democracies have engaged in torture on a yearly basis. Extra-judicial killings or summary executions are reported in about 40 percent of all democratic regimes during this period. The prevalence of political

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[1]Most conventional measures of democracy either explicitly or implicitly measure repression. The most notable example is the popular PolityIV measure. According to Marshall and Jaggers, the author's of the Polity scale, one of Polity's components, namely the component-index measuring the competitiveness of participation in the political process (PARCOMP), takes into account whether there exists "systematic harassment of the political opposition (e.g. opposition members are killed, jailed, or sent into exile [...])" (Marshall and Jaggers, 2009, p. 26).

[2]Following Alvarez et al. (1996); Przeworski et al. (2000), and Cheibub, Gandhi and Vreeland (2009*a*), a regime is considered a democracy if all of the following four rules apply: 1) the chief executive is chosen in popular elections or by a body that was itself popularly elected, 2) a popularly elected legislature exists, 3) more than one party competes in the elections, and 4) an alternation of power under electoral rules identical to those that brought the incumbent to office has taken place. If a country fails to meet one of these conditions it is considered an autocracy. Throughout this paper the terms autocracy, dictatorship, and non-democracy are used interchangeably.

imprisonment fluctuates around 30 percent, and only the frequency of disappearances appears to have declined to about one-in-ten democracies.[3]

Figure 1: Prevalence of Physical Integrity Rights Violations in Democracies and Autocracies
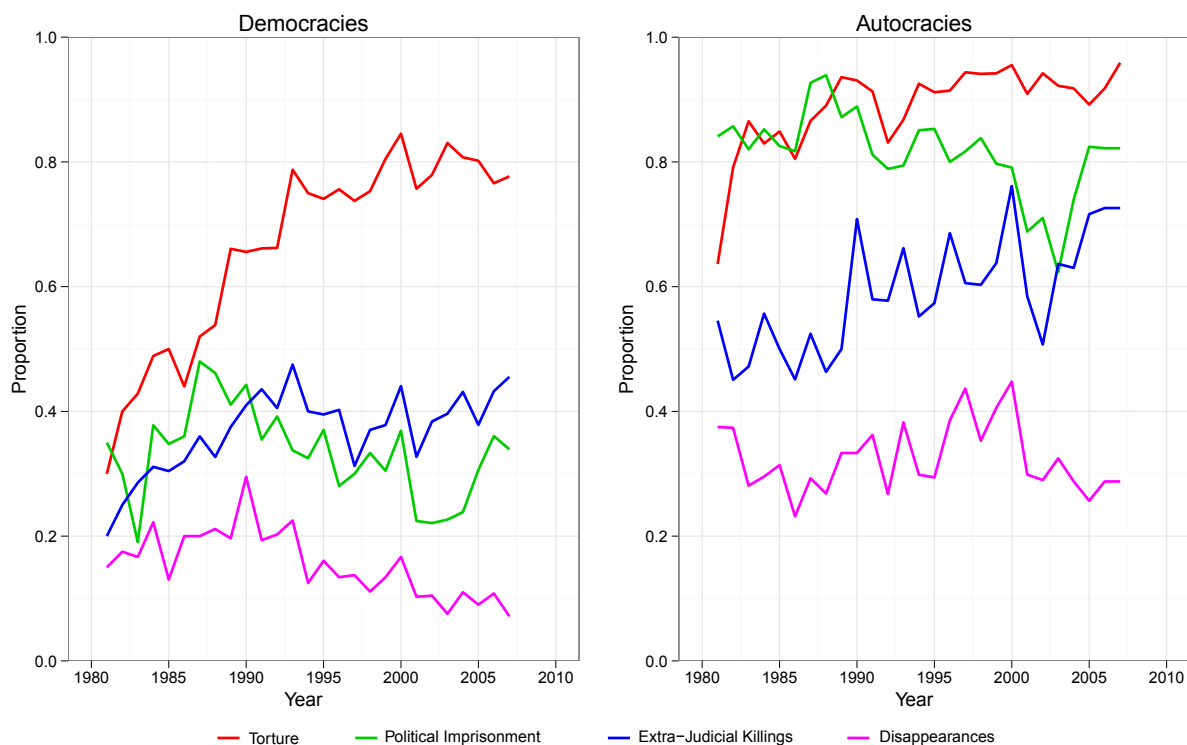
Plotted are the proportions of democracies (left panel) and autocracies (right panel) that were found to have engaged in at least one of the respective physical integrity rights violation in a year. Data Sources: Cheibub, Gandhi and Vreeland (2009*b*): *Democracy and Dictatorship Revisited Data Set*, and Cingranelli and Richards (2009): *CIRI Human Rights Data Project*.

A similar conclusion can be reached when employing an aggregate measure of physical integrity rights violations, such as the Political Terror Scales (PTS), instead of the itemized count measures of Cingranelli and Richards.[4] Table 1 presents the relative frequencies of

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[3]The fact that democracies are more likely than not to violate the physical integrity rights of their citizens is well documented. See for example: Cingranelli and Richards (1999); Cingranelli and Filippov (2010); Conrad and Moore (2010). Also see Figure 8 in the Appendix.

[4]The PTS is a 5-point index measuring the degree to which a state sponsors or tolerates violence against its own citizens, where higher values indicate higher levels of physical integrity rights violations. The PTS data only cover human rights infractions as they relate to the violation of human rights to personal integrity

democratic and autocratic country year observations with varying levels of political terror as measured by the the PTS based on the State Department's Human rights reports. Although about 47 percent of all 2419 democratic country year observations fall into the least violent category, well over a quarter of all democratic observations fall into categories three through five. Countries at this level, experience – at the least – extensive political imprisonment; executions and political murders and brutality may be common and unlimited detention, with or without a trial, for political views are accepted. At worst terror will have expanded to the entire population, such that murder, disappearances, and torture are a common part of life (Wood and Gibney, forthcoming). Again as can be expected, given the empirical regularity linking physical integrity rights violations to regime type, the records of autocracies are far worse with almost 60 percent of all observations falling into the most violent three categories.

Table 1: Political Terror by Regime Type

Political Terror	Democracy	Autocracy
1 (low)	46.8	11.5
2	26.7	31.5
3	15.8	34.6
4	8.6	14.6
5 (high)	2.1	7.9
Total	100.0	100.1
Country Years	2419	2810

Note: Shown are the percentages of country year observations between 1976 and 2008 in terms of the degree of political terror experienced in a year. Data sources: Gibney, Cornett and Wood (2011): *The Political Terror Scales*, and Cheibub, Gandhi and Vreeland (2009*b*): *Democracy and Dictatorship Revisited Data Set.*

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within a state's territory (also often referred to as state terrorism; see for example: Gurr (1986)). As such a broad range of human rights violations such as infractions of social, cultural and economic rights are generally not captured; neither are violations of human rights outside a state's territorial jurisdiction or "violations by proxy". Additionally, the PTS is in some instances inconsistent with regard to the perpetrators. Although, PTS explicitly attempts to measure state sponsored or state tolerated violence, often responsibility for infractions is difficult to assign. In some cases infractions perpetrated by non-state actors such as rebel groups or transnational corporations will be picked up by PTS, even if agents of the state did not directly carry out these infractions but the state is merely incapable of their prevention. The measure itself is based on annual country reports by Amnesty International and the U.S. State Department's *Country Reports on Human Rights Practices*, and is currently available for over 180 countries, covering the years 1976-2010 (Wood and Gibney, 2008).

Of course, Davenport (2007*b*, 180) acknowledges that "the [domestic democratic] peace proposition is not bulletproof" and indeed the literature finds a confounding effect of both domestic and international conflict on repressive behavior that overwhelms the pacifying influence of democracy. The presence of civil and interstate conflict, it is argued, provides political authorities with incentives to engage in repression, in order to "suppress the opposition, to control the flow of information, and to acquire intelligence through every means possible" (Bueno de Mesquita et al., 2005, 447). International and civil wars threaten the authority of leaders, and regime survival, leading to increased repression.

Violent domestic conflict, protest and dissent have thus been singled out as a primary factor explaining the use of repression.[5] Democracies and autocracies alike are, when threatened with domestic conflict such as insurgency, terrorism, or guerrilla warfare, more likely to repress in order to "fulfill one of the state's primary objectives – political control" (Davenport, 2007*b*, 39). The reduction of these conflicts indeed is seen as "a major source of legitimacy" for authorities, for whom violent conflict provides a mandate to repress for the sake of law and order (39). Davenport goes so far as to argue that when domestic or foreign "challenges to the status quo take place, authorities generally employ some form of repressive action to counter or eliminate the behavioral threat; in short, there appears to be a "Law of Coercive Responsiveness" (Davenport, 2007*a*, 7).

Considering, however, that especially in developed democracies violent dissent and challenges to the state are rare, and given that democracies are significantly less likely to experience civil and interstate war, the persistence and level of physical integrity rights violations in democracies are surprising (see Figure 8 in the Appendix.). In this paper then, I attempt to address the question of when and why democracies engage in violent or repressive behavior despite the theoretical expectation of pacifying democratic institutions. I do so by explicitly building on the theoretical mechanisms advanced by Davenport (2007*b*) namely his arguments regarding – *Voice* and *Veto*. Relying on the work of Giorgio Agamben, I

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[5]For recent work investigating the so called "repression–dissent nexus" see Carey (2006); Pierskalla (2010), and Shadmehr and Bernhardt (2011).

argue that the institution of the state of exception, can be seen as means to circumvent the constraints imposed by political democracy, effectively undermining both *Voice* and *Veto*.

In the next section, I outline Agamben's argument and revisit Davenport's mechanisms. I argue that physical integrity rights, continue to be violated precisely when it becomes impossible to conceive of these rights in terms of traditional rights of citizens of a state. In short, I suggest that by means of the state of exception, democracies can cease to function as democracies and can temporally and spatially suspend the domestic democratic peace. I evaluate the implications of this argument using a causal inference approach with recent data on torture and ill-treatment. I conclude after presenting evidence consistent with the argument that states of exception undermine or suspend the pacifying influence of political democracy on repressive behavior of states.

2   Violations as Exception

In a series of books on the nature and origins of law and sovereign power which include *Homo Sacer: Sovereign Power and Bare Life*, *Remnants of Auschwitz*, *State of Exception*, and *The Kingdom and the Glory*, Giorgio Agamben explicitly articulates a forceful critique of the nation-state and implicitly of the human rights enterprise (1998; 2005; 2008; 2011*a*). His critique rests on a model of the state that takes Carl Schmitt's criticism of Hobbes's *Leviathan* as its starting point.[6] Regarding the origin of sovereignty, Agamben writes that "the state of nature is not a real epoch chronologically prior to the foundation of the City but a principle internal to the City, which appears at the moment the City is considered *tanquam dissoluta*, 'as if it were dissolved' "(Agamben, 1998, 105). In other words, Hobbes' 'state of nature' must not be understood as a pre-political, spatially exterior and temporal antecedent of the civil order of the Commonwealth under the sovereign but rather as the product of sovereign power itself (Agamben, 1998, 104-110). Whereas for Hobbes' the sovereign is a

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[6]It should be noted that the Schmitt was a jurist and political theorist whose work on the state of exception was explicitly anti-democratic. Schmitt openly supported and defended the emergence of totalitarianism in Germany and was a member of the NSDAP.

necessary evil who rescues man from the war of all against all, who prevents a return into the state of nature, and thus creates the political-man, Agamben believes that the creation of the political space or the 'City' or the Commonwealth under the sovereign only makes the 'state of nature' possible in the first place. Additionally, for Agamben, the state of nature is not as for Hobbes the war of all against all but more precisely a situation in which the individual is reduced to mere biological life – "bare life" – whose destruction is at stake (106).

For Hobbes then source of sovereign power, and the "right of Punishing, which is exercised in every Common-wealth" is not so much found in the renunciation of the the subjects natural rights, "for the Subjects did not give the Soveraign that right; but only in laying down theirs, strengthened him to use his own, as he should think fit, for the preservation of them all: so that it was not given, but left to him, and to him onely; and (excepting the limits set him by naturall Law) as entire, as in the condition of meer Nature, and of warre of every one against his neighbour" Hobbes (214 1991). This Agamben, points out, implies that the 'state of nature' remains or survives in the sovereign himself. At the same time, the subjects have the right to resist sovereign violence for "no man is bound by Covenant, not to resist violence; and consequently it cannot be intended, that he gave any right to another to lay violent hands upon his person" (214). As such for Agamben, the true source of sovereign violence stems not from the social contract or pact but from the "exclusive inclusion of bare life in the state" (Agamben, 1998, 107). Put differently, the foundation of sovereign power is the production of the political-man or the citizen, and the exclusion of the bare life from the state. It is not the social contract that is the source of sovereignty but the banning of biological life and the implicit threat of the ban. Agamben indeed claims that "*it can even be said that the production of a biopolitical body is the original activity of sovereign power*" (6).

Agamben thus closely follows Schmitt who defined the sovereign as "he who decides on the exception" (Schmitt, [1922] 2005, 5). The state of nature – or in Agamben's words the

state of exception – is thus the suspension of the judicial order, or the temporary and limited dissolution of the Commonwealth, which produces an ambiguous zone of human activity not subject to law and inhabited by bare life. By suspending the judicial order of due process and rights of citizens in times of emergency (e.g. foreign invasion, civil war, revolution or terrorism), the state of exception involves "the provisional abolition of the distinction among legislative, executive, and judicial powers" (Agamben, 2005, 5-7). However, Agamben argues, that it has become the dominant and paradigmatic form of government by the middle of the 20th century (7).

It is important to point out that the state of exception is a "creation of the democratic-revolutionary tradition and not the absolutist one" in so far that the state of exception is not a special kind of law as implied by the English translation 'martial law'; nor does it imply full powers as in the autocratic state (5-6). Rather the state of exception constitutes a "kenomatic state, an emptiness of law" in which bare life is captured and encompassed by the law by means of the laws own suspension (3, 6). It is a state in which the force of law becomes separated from the law in so far as the law remains in place but it has no force and is not applied, while acts that do not constitute law attain the force of law.

As pointed out above, for Agamben, the state of nature or state of exception is not temporally or spatially prior or exterior to the state. He sees its material and modern manifestation in the form of the *camp* in which the citizen is reduced to bare life under the management of the state. Agamben provides the specific example of the Nazi concentration camps. He argues, for example, that Hitler in effect maintained the democratic constitution and ruled exclusively by invoking the state of exception in the name of national security. Interestingly, in the Nazi concentration camps the Jews had to first be fully 'denaturalized' and striped of their citizenship – a move identical to the sovereign ban (see: Agamben, 1998, 2000). In the *State of Exception*, he points to a modern example, the Bush administration's use camps such as Guantánamo Bay. Not so much concerned with the scope of the atrocities that were being committed relative to those in the Nazi concentration camps, Agamben

argues that these two cases are formally equivalent. 'Enemy combatants' were reduced to bare life, to biological bodies, without recourse to any predefined judicial order. To reiterate the camp "delimits a space in which for all intents and purposes, the normal rule of law is suspended and in which the fact that atrocities may or may not be committed does not depend on the law but rather on the civility and ethical sense of the police that act temporarily as sovereign" (Agamben, 2000, 41).

2.1 Voice Reconsidered

The most apparent implication to be drawn from Agamben's model of the state and the state of exception is the notion that membership in the Commonwealth is a prerequisite for the protection of physical integrity rights. Citizenship matters. Davenport's first mechanism, *Voice*, explaining the Domestic Democratic Peace is the ability of citizens to remove potentially repressive leaders from office. Davenport argues that "political leaders fear being removed from office by citizens for engaging in activities that are antithetical to the popular interest" (2007*b*, 51). Repressive behavior such as torture or mass arrests would result in unfavorable evaluations of elected officials and thus democratic elections (i.e. the ability for participation and representation of diverse interests) constrain the behavior of democratic decision-makers. As those controlling the means of repression are required to concern themselves with the preferences of their constituents, for a politician to "violate [the voter's physical integrity rights] is essentially to ask to be thrown out of office" (13).

This mechanism closely mirrors Hobbes' 'punishment clause' according to which "the subjects have the right to resist sovereign violence". This mechanism, however, does not apply to Agamben's bare life. Indeed Agamben argues that "growing sections of humankind are no longer representable inside the nation-state" as evidenced by "the phenomenon of so called illegal immigration", the refugee and the defacto stateless "who do not want to be and cannot be either naturalized or repatriated" (20, 22). Critiquing the notion of human rights more broadly Agamben claims:

The conception of human rights based on the supposed existence of a human being as such, Arendt tells us, proves to be untenable as soon as those who profess it find themselves confronted for the first time with people who have really lost every quality and every specific relation except for the pure fact of being human. In the system of the nation-state, so-called sacred and inalienable human rights are revealed to be without any protection precisely when it is no longer possible to conceive of them as rights of the citizens of a state. [...] That there is no autonomous space in the political order of the nation-state for something like the pure human in itself is evident at the very least from the fact that, even in the best of cases, the status of refugee has always been considered a temporary condition that ought to lead either to naturalization or to repatriation. A stable statute for the human in itself is inconceivable in the law of the nation-state. Agamben (2000, 18-19)

Voice or the ability to throw the proverbial rascals out must thus be seen as applying only to those individuals who have citizenship and make use of their right to vote. Aside from the fact that voters may actually find repressive behavior against certain segments of society justified and even desirable, non-citizens, and non-voters cannot necessarily expect the benefits of the domestic democratic peace. Assuming Davenport's *Voice*-mechanism explains the Domestic Democratic Peace, *Voice*-differentials within society can help explain violations in democracies. It is reasonable to hypothesize then that violations of physical integrity rights are committed against the *Voice*-less, that is non-citizens, such as illegal immigrants and refugees, but also marginalized and unrepresented segments of society, such as migrant labor, prisoner's who have been stripped of their voting rights, or the poor.

2.2 Veto Reconsidered

Agamben's argument can similarly be extended to Davenport's second mechanism, *Veto*. According to the *Veto* mechanism democracy ensures a reduction in repression due to a paci-

fying influence of institutional checks and balances, executive constraints, and veto players on those wielding political power (Bueno de Mesquita et al., 2005; Davenport, 2007*b*). Unlike the *Voice* mechanism in which leaders are constrained by the preferences of the electorate, the *Veto* mechanism holds that other institutional players act as constraints. Davenport argues that when making the decision as to whether or not to employ repression, authorities have to "worry about potential resistance from other authorities, outright denial of approval for relevant behavior, and/or the possibility that some sanction might be imposed for attempting to employ such behavior (for example, having some desirable legislation blocked in the future)" (2007*b*, 24).

For Agamben, the ability to declare a state of exception – the ultimate source of sovereignty – results in "the provisional abolition of the distinction among legislative, executive, and judicial powers" (Agamben, 2005, 7). The ability to declare a state of exception (or martial law, a state of siege, or a state of emergency) then is a challenge to Davenport's *Veto* mechanism and directly opposed to the principle of restrictions and limitations of governmental powers as it allows for the legal and arguably temporary suspension of certain rights. Gross and Ní Aoláin write that declarations of states of emergencies "tend to result in the expansion of powers, [and] the concentration of powers in the hands of the executive" (2006, 8). They warn:

> Concepts such as separation of powers and federalism are likely to be among the first casualties when nations need to respond to a national emergency. The executive branch assumes a leading role in countering the crisis, with the other two branches pushed aside (whether of their own volition or not) [...] The government's ability to act swiftly, secretly and decisively against a threat to the life of the nation becomes superior to the ordinary principles of limitations on governmental powers and individual liberties. While such expansions and concentrations of powers are not unique to times of crisis, but rather are part of the modernization of society and the need for governmental involvement in an

10

ever-growing number of areas of human activity, it can hardly be denied that such phenomena have been accelerated tremendously (and at times, initiated) during emergencies. (8)

As with the *Voice* mechanism, Davenport's *Veto* thus can vary. When a state of exception is declared, the *normal* constitutional constraints, democratic deliberation, and checks and balanced can be undermined if not entirely suspended for the sake of expediency in responding to an exceptional situation. For all intends and purposes then, relatively stable measures of executive constraints and veto-players do not adequately reflect the realities of constraints facing leaders. Again, if Davenport's *Veto* mechanism explains the Domestic Democratic Peace, then varying levels of *Veto* across time should be able to account for varying levels of physical integrity rights violations in democracies.

3   Data and Methods

To evaluate the existence of an effect of states of exception on violations of physical integrity rights, I analyze data on states' human right performance in democracies for an 11 year period from 1995 to 2005. I rely on three sets of measures of repressive behavior, the Political Terror Scales (PTS) of Gibney, Cornett and Wood (2011), the Cingranelli and Richards Physical Integrity Rights Index (CIRI) (2009) and data from the Ill-Treatment and Torture Project due to Conrad and Moore (2012). A graphical summary of these data can be found in Figure 8 in the Appendix. As an indicator for states of exception, data collected by Hafner-Burton, Helfer and Fariss (2011) is used. Hafner-Burton et al. coded all declared and undeclared states of exceptions (states of emergency, states of siege, or martial law) between 1976 and 2007, based on the U.S. State Department's annual Human Rights Country Reports.

Figure 2 summarizes the relative frequencies of states of exception in democracies between 1995 and 2005. As can be seen, between 30 and 40 percent of democracies experience a state of some type of emergency in any given year. Emergencies with a political background

Figure 2: Declarations of States of Exception
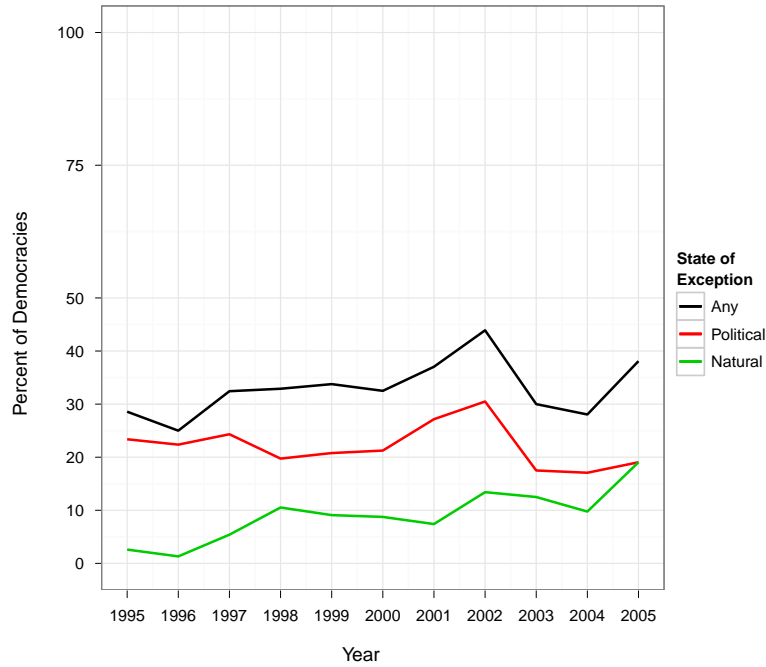
Shown are the proportion of democracies declaring a state of emergency in
a given year by emergency type. Data sources: Hafner-Burton, Helfer and
Fariss (2011), and Cheibub, Gandhi and Vreeland (2009b): *Democracy and
Dictatorship Revisited Data Set.*

fluctuate around 20%. Emergencies declared in response to a natural disasters have increased
in the period from about 5% of all democracies annually to 20%. There appears to be a spike
in the proportion of states that declared a state of exception or emergency, following the
September 11th terrorist attacks in the United States, with declarations peaking at about
45% in 2002. I will account for a potential temporal effect in the subsequent analysis.

When attempting to estimate the effects states of exception have on state behavior, it
is important to note that the decision to declare a state of exception is not random and
estimating the effects in a parametric model might introduce selection bias. In particular, it
seems obvious that states likely declare emergencies in emergencies. To account for the non-
randomness of declarations of states of exception, I preprocess the data employing Coarsened
Exact Matching (CEM).

3.1 Explaining Exceptions

To identify possible confounders that explain when countries declare a state of exception, I regress the binary indicator (state of exception was declared = 1, no state of exception was declared = 0) on a host of plausible explanatory factors. Considering that by design the institution of the state of exception can be viewed as a tool to respond to emergencies or crisis, measures of defacto crisis should account for when states declare a state of exception. To address for political emergencies, I include the aggregate Major Episodes of Political Violence index (compiled by Marshall, 2012b), measuring political turmoil and violence. This index measures the severity of domestic conflict, civil and interstate war on scale ranging from 0 or little to no violence to 25 or extreme violence.[7] In the relevant subset of democratic country years this measure ranges from 0 to 8, with a median magnitude score of 0 (the mean = 0.43). This is consistent with the arguments advanced above that violent political conflict is relatively rare and relatively less severe in democracies.

To account for emergencies declared in response to natural disasters, data published by the WHO Collaborating Centre for Research on the Epidemiology of Disasters (CRED) (2012) is used. CRED collects data on the number of individuals that are affected (killed, injured or made homeless) disaggregated by disaster type, country and year. For the analysis I summed the number of individuals affected (excluding deaths) for each country-year for all natural disaster types. The disasters types included are: droughts, earthquakes, epidemics, extreme temperatures, floods, insect infestations, wet and dry mass-movements (such as landslides and avalanches), storms, volcanos and wildfires. Man made disasters such as industrial accidents, or transportation accidents are excluded.

The ability of states to handle political turmoil or natural emergencies and thus their incentives to declare states of exceptions, are likely dependent on the overall size of the population, as well as their financial capacity to tackle crisis. Countries with larger populations

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[7]I used the measure ACTOTAL which is defined as the total of the summed magnitude scores of all societal and interstate magnitude scores in a state in that year.

are perhaps more likely to experience conflict, and the number of people potentially affected by natural disasters is probably higher. Similarly, the ability to respond to emergencies under normal constitutional constraints may depend on the level of development. Low income countries are perhaps more easily overwhelmed by disasters and violence, and it is reasonable to assume that infrastructure and housing are more vulnerable to catastrophic events a priori.

The decision to declare states of exceptions may also depend on institutional factors. An indicator of government type is included, as well as a measure of regime stability (the age of defacto democracy in years). Presidential systems, for instance, may be less likely to declare states of exception, as executives in presidential systems may already have sufficient authority to respond to crisis, whereas parliamentary governments might be more constrained by their legislatures. Similarly, established democracies with stable constitutions may be less prone to respond to crisis by resorting to exceptional measures. I also account for the population weighted number of refugees and internally displaced persons in a country. Large refugee populations may overwhelm the administrative capacity of states, prompting exceptional responses. Finally, I address the temporal variation observed in Figure 2 by adding an indicator for the post-9/11 period.

The estimated coefficients can be gleaned from Table 2. With the exception of the age of democracy all factors are statistically significant predictors of states of exception. More developed countries are substantially less likely; countries with larger populations are more likely to declare emergencies. The presence of large refugee and displaced populations also increases the probability of declarations of states exception. Similarly, the post-9/11 period has seen a statistically significant increase. Interestingly, presidential systems appear to be much more likely to declare states of exceptions than parliamentary ones, though not statistically discernable from semi-presidential systems of government.
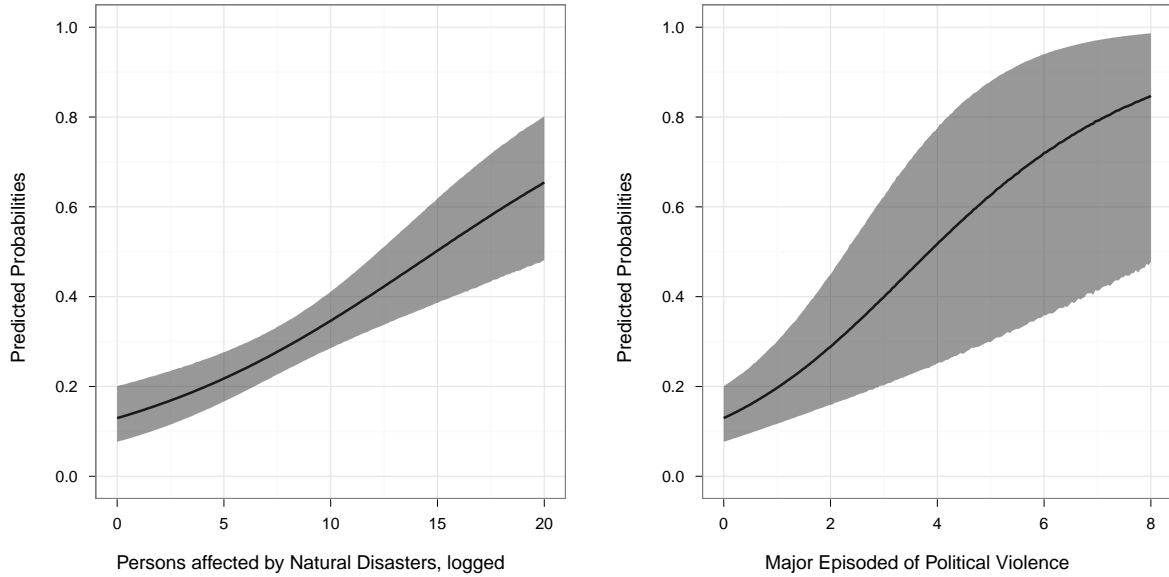
Figure 3 presents the predicted probabilities for states of exception for the two most

Table 2: Determinants of States of Exception

Regressor	State of Exception (0,1)	
	Model 1	Model 2
Intercept	−4.584***	−3.792***
	(1.183)	(1.321)
GDP per capita (logged)	−0.230***	−0.025
	(0.080)	(0.094)
Population (logged)	0.331***	0.112
	(0.067)	(0.084)
Period Dummy (post 9-11)	0.389**	0.335*
	(0.171)	(0.189)
Major Episodes of Political Violence	0.544***	0.502***
	(0.144)	(0.139)
Internally Displaced Persons per 1000 capita	0.042***	0.034**
	(0.016)	(0.017)
Age of Democracy	0.001	0.001
	(0.003)	(0.004)
Refugees per 1000 capita	0.053***	0.036*
	(0.019)	(0.021)
Parliamentary (Dummy)	−0.630**	−0.711***
	(0.255)	(0.297)
Semi-Presidential (Dummy)	0.309	0.066
	(0.201)	(0.219)
Persons affected by Natural Disasters (logged)		0.130***
		(0.030)
AIC	864	705
Country-Years	838	641

Note: Shown are logit coefficients and standard errors in parentheses; $^*p < 0.1$; $^{**}p < 0.05$; $^{***}p < 0.01$ (two-tailed). Accounting for potential temporal dependence via the inclusion of a cubic polynomial of time (i.e. the inclusion of regressors t, t^2, t^3) does not affect the results reported here. See: Carter and Signorino (2010)

15

Figure 3: Predicted Probabilities of Declarations of States of Exception

Shown are predicted probabilities and 95% confidence intervals of declarations of emergency for profiles holding all other factors at their means or medians. The profile for the left panel holds Major Episodes of Political Violence at zero, the profile for the right panel holds Persons affected by Natural Disasters at zero.

obvious factors, violent conflict (MEPV) and the number of persons affected by natural disasters. The decision to declare states of exception is, as expected, dependent on the presence of an emergency both in the form of violent political conflict and natural disasters.

Having identified a host of explanatory factors influencing the declaration of a state of exception, substantively meaningful cutpoints were set for each measure to create a matched sample by means of coarsened exact matching (CEM). By manually setting cutpoints, it is possible to determine what constitutes a reasonable or close match and set (im)balance ex ante Iacus, King and Porro (2011a,b). The coarsening via the cutpoints effectively groups values of the pre-treatment confounders such that substantively indistinguishable values are assigned identical numerical values. For example, the difference between $5000 of GDP per capita and $5045.30 is likely not substantively relevant, and observations with these amounts would likely make good matches (ignoring other confounders). From a statistic standpoint

the difference of \$45.30 in GDP may, however, nevertheless be statistically significant and the sample imbalanced according to conventional tests. Observations that do not have close matches on potentially confounding pre-treatment covariates in both the treated and control groups, and which may therefore bias the estimated effects, are pruned from the dataset. The exact cutpoints chosen in the Coarsened Exact Matching procedure (CEM) can be found in Table 5 in the Appendix.

Figure 4: Matched and Pruned Observations
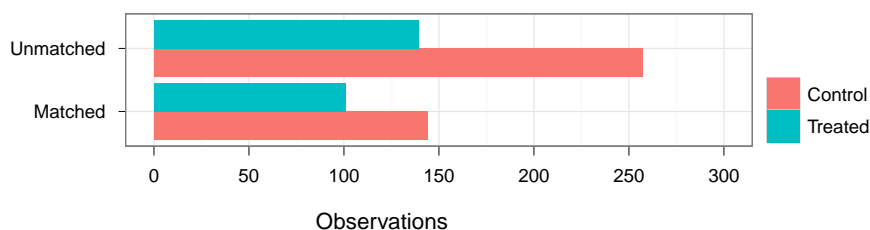
Shown are the number of observations for which a match was found and those that were pruned. Control observations are those that did not declare a state of exception, treated observations are those that did.

After preprocessing the data 245 country year observations remained in the matched sample, 396 were dropped because no close match was found. 144 of the remaining observations were control units, 101 treated observations (i.e. those declaring a state of emergency).[8] Although the coarsened exact matching procedure, makes balance checking less critical as imbalance is determined ex-ante, conventional balance tests are reported in Table 3.[9]

As can be inferred from the columns under the pre-matching heading, the original sample was highly imbalanced with regard to the confounders identified in the previous section.[10] Only the post-9/11 period dummy was balanced when defining balance as p-values above

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[8]Increasing the coarsening of the matched-on confounders by reducing the number of cutpoints, of course, increased the resulting matched sample size but also worsened balance, substantially. The estimated post-processing effects for the larger but less balanced sample, however, were surprisingly smaller than those for the more balanced but smaller sample. Only estimates using the better balanced sample are reported here.

[9]A graphical representation of (im)balance can be seen in Figure 9 in the Appendix.

[10]Note that the test statistics were not computed for the government type indicators. For a summary of observations that were matched or pruned, see Figure 10 in the Appendix.

0.05. In terms of the mean difference between treated and control observations, democracies which declared a state of exception were on average about 7 years younger, about $4000 in GDP per capita poorer, and experienced more episodes of political violence, and larger scale natural disasters.

After matching the mean differences drop substantially across all confounders. Substantively, control and treated observations appear to be indistinguishable in terms of the mean differences. The mean difference in GDP per capita, for instance, drops to $157.70, while the mean difference in age is reduced to about 6 months. It should be noted, however, that the corresponding p-value of a t-test on the difference still suggests imbalance from a statistical standpoint, though the p-value for the bootstrapped Kolmogorov-Smirnov test suggests balance over the distribution. Although, the matched sample is arguably substantively balanced, at least in terms of the mean differences between treated and control observations, the remaining statistical imbalance will be addressed in the post-matching analysis by spanning the imbalance parametrically when computing effects.

4 Findings

To estimate the causal effect of declaring a state of exception on states behavior regarding human rights, the sample average treatment effect on the treated is computed. Because the matching procedure in some cases assigned more than one control unit (an observation that did not declare a state of exception) to a treated unit (an observation that declared a state of exception), the sample average treatment effect on the treated is computed as the weighted regression of measures of physical integrity rights violations on a constant and the treatment variable. Since the matched sample was not balanced statistically for all potential pre-treatment confounders, the regression also spans that remaining imbalance by adding these confounders as controls.

Table 3: *p*-Values for *t*-Tests and Bootstrapped Kolmogorov-Smirnov Tests

Covariates	Pre-Matching			Post-Matching		
	Mean Difference (Treated − Control)	*t*-Test *p*-Value	KS Test *p*-Value	Mean Difference (Treated − Control)	*t*-Test *p*-Value	KS Test *p*-Value
post 9-11 period	0.066	0.072	–	0.000	0.919	–
Internally Displaced Persons per 1000 capita	5.987	0.000	0.000	0.086	0.138	0.044
Major Episodes of Political Violence	1.036	0.000	0.000	0.133	0.001	0.052
Population, logged	0.849	0.000	0.000	0.033	0.111	0.041
Age of Democracy	−7.277	0.004	0.008	0.533	0.197	0.604
Refugees per 1000 capita	1.518	0.020	0.298	−0.037	0.050	0.571
GDP per capita	−3946	0.000	0.000	−157.7	0.001	0.265
Persons affected by Natural Disasters, logged	3.138	0.000	0.000	−0.742	0.001	0.006

Note: This table presents p-values for *t*-tests (two sample for pre-matching; paired for post-matching) and bootstrapped Kolmogorov-Smirnov tests (to assess the difference between the distribution of control and treatment observations). Defining balance as all p-values higher than 0.05, these samples are potentially imbalanced. Those potential confounders, are included as explanatory variables in the post-matching analysis. Multivariate Imbalance Measure prior to matching and $\mathcal{L}_1 = 0.908$ and $\mathcal{L}_1 = 0.516$ after.

Figure 5 reports the sample average treatment effects on the treated for the inverted Cingranelli and Richards Physical Integrity Rights Index (CIRI), The aggregate Level of Torture (LoT) from the Ill-Treatment and Torture Project, and the Political Terror Scales (PTS). As can be seen for all three measures of physical integrity rights violations, treated observations were statistically more repressive, or more likely to be accused of torture. It is important to note that all three measure employ different scales. PTS is measured on a 5-point scale, CIRI on a 9-point scale, and the LoT uses 6 categories. The effect thus is strongest regarding Ill-Treatment and Torture allegations (LoT) and weakest for the Cingranelli and Richards measure. Overall, however, the size of the effects are substantively meaningful.

Figure 5: Sample Average Treatment Effects on the Treated
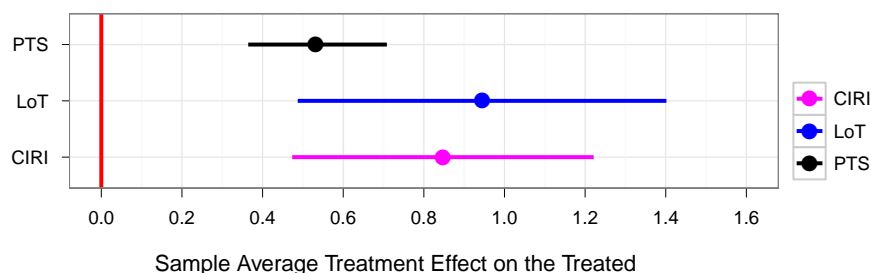
Reported are the sample average treatment effects on the treated and 95% confidence intervals for three measures of physical integrity rights violation, CIRI, ITT (LoT), and PTS.

Given the categorical nature of these measures, the estimation of linear treatment effects may not be appropriate. I therefore also computed the effect of declaring a state of exception on ill-treatment and torture allegations by estimating a weighted order probit, also controlling for all potential confounders. The estimated coefficients and standard errors are reported in Table 4.

The results suggest that the variation in allegations is largely due to three factors, the size of the population, the presence of internally displaced individuals in the country, and

whether or not a state of exception was declared. All three measures are statistically significant predictors of ill-treatment and torture allegations after preprocessing the data. Of the remaining factors non attain statistical significance at conventional levels.

Table 4: Post-Processing Analysis

Regressor	Coefficient	Std. Error
State of Exception	0.797***	0.162
GDP per capita (logged)	0.066	0.092
Population (logged)	0.496***	0.072
Period Dummy (post 9-11)	0.049	0.164
Major Episodes of Political Violence	-0.007	0.073
Internally Displaced Persons per 1000 capita	0.033***	0.010
Age of Democracy	-0.003	0.004
Refugees per 1000 capita	0.050	0.034
Parliamentary (Dummy)	-0.256	0.306
Semi-Presidential (Dummy)	-0.079	0.207
Persons affected by Natural Disasters (logged)	-0.040	0.025

Note: Shown are coefficients and standard errors of a weighted order probit regression on the 6-point LoT-Scale; $^*p < 0.1$; $^{**}p < 0.05$; $^{***}p < 0.01$ (two-tailed).

The predicted probabilities across the six categories of ill-treatment and torture allegations are plotted in Figure 6. They are reported for two profiles, holding all values at their respective means and median but varying whether or not a state of emergency was declared. As is apparent, the predicted probabilities for the profile in which no state of exception was declared differs sharply from the one which did. In particular, the probability of no ill-treatment and torture being alleged by Amnesty International, drops from about 0.5 without a declaration of a state of exception to below 0.2 if a exception was declared. At the same time the probability of Amnesty International alleging systematic torture and ill-treatment jumps for just over 0.15 to well over 0.4. In short declarations of states of emergencies and the arguably temporary suspension of certain rights has significant implications for whether or not violation of torture are alleged by Amnesty International.

Figure 6: Predicted Probabilities of Ill-Treatment and Torture Allegations
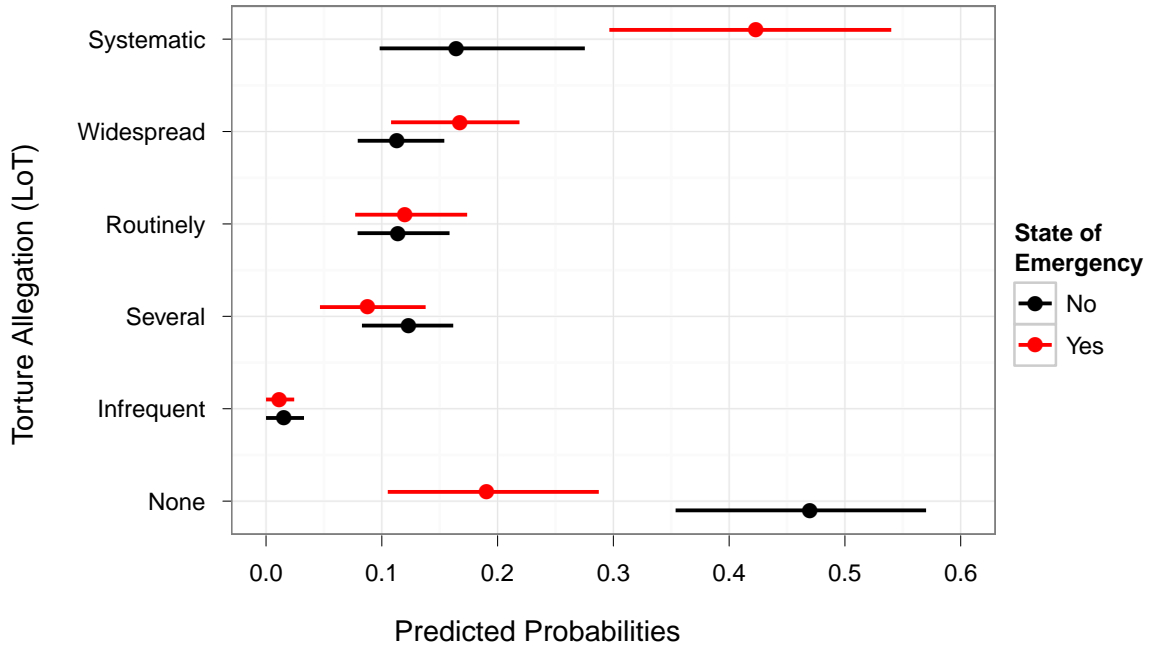
Shown are the predicted probabilities and bootstrapped 95% confidence intervals for two profiles, holding all other confounders at their respective means or medians while varying the treatment variable.

In section 2, I argued that according to Agamben's argument the state of exception effectively redefines membership in the polity. A declaration of a state of exception could thus be seen as a means to selectively suspended rights of certain individuals and to determine when and where the domestic democratic peace applies. I hypothesized that quasi- or non-citizens who traditionally lack *Voice* such as prison inmates, illegal immigrants, and marginalized segments of society would be particulary at risk of falling outside the domestic democratic peace. Furthermore, I argued that in states of exception executive constraints are relaxed and Davenport's *Veto* mechanism undermined.

I therefore finally attempt to evaluate to what degree declarations of states of exception determine the behavior of different state actors and to assess if particular groups are disproportionately likely to become victims of physical integrity rights violations. To do so, I again take advantage of data from the Ill-Treatment and Torture Project, which disaggregates ill-

treatment and torture allegations by perpetrator and victim types. For the matched sample defined above, sample average treatment effects on the treated are computed for these disaggregated measures of torture allegations. As before, they are weighted linear regressions of allegations on a constant, the treatment indicator, and all previously identified confounders. The effects are reported in Figure 7.

Figure 7: Disaggregated Sample Average Treatment Effects on the Treated
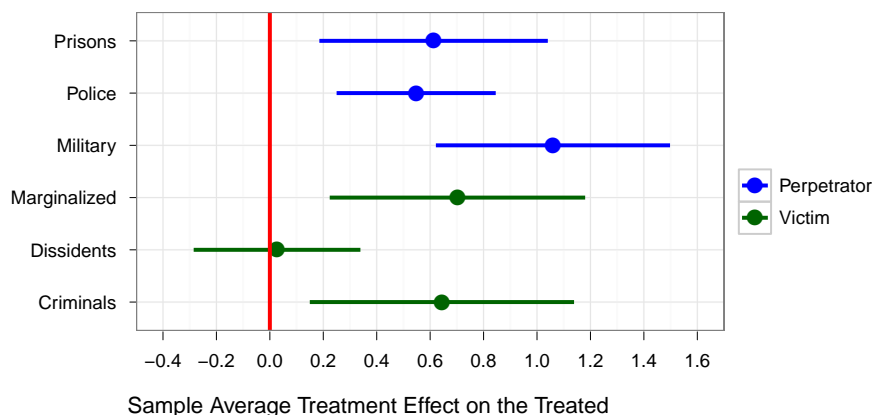
Reported are the sample average treatment effects on the treated and 95% confidence intervals for Ill-Treatment and Torture Allegation disaggregated by perpetrator and victim types.

Consistent with the hypothesis above, declarations of states of exception appear to unshackle executive constraints. The positive and statistically significant effects for three executive agencies, the police, the prison system, and the military, are all substantively large. In particular, the military is much more likely to be accused of engaging in ill-treatment and torture during states of exceptions. These effects, however, also appear to be consistent with conventional arguments regarding the so called *Law of Coercive Responsiveness*, according to which executives when challenged or threatened will allow "authorities [to] generally employ some form of repressive action to counter or eliminate the behavioral threat" (Davenport, 2007*a*, 7).

Yet when considering the effects for three types of victims, namely marginalized individuals, dissidents, and criminals, it appears that eliminating challenging or threatening behavior may not be the rational of the violations. If violent challenges and dissent were crushed during states of emergency, the estimated effect for dissidents, as seen in Figure 7, would likely be larger and significant.[11] Instead the effects suggest that marginalized segments of society, as well as criminals, are at higher risk during states of exception. This is somewhat surprising considering the number of states of exceptions declared with an explicitly political background. Considering that illegal immigration and refugee flows are political phenomena, this may be explained. In other words, emergencies with a political background may not just be declared in times of civil war, terrorism, or violent conflict but also for non-violent challenges to the status quo.

5 Conclusion

Violations of the right to the physical integrity of the person, such as torture, cruel and unusual punishment, extra-judicial executions, disappearances, and political imprisonment have long been treated as an anomaly in democratically governed societies. In the current literature on repression and human rights, violations of this right are by and large seen the hallmark of autocratic and repressive regimes. Only in times of extreme political turmoil or during involvement in international and civil wars will democracies resort to violent coercion and aggression against individuals under their own jurisdiction. Whereas physical integrity rights violations are considered the norm in autocratic contexts, they are viewed as exceptional in democracies. I argued that though exceptional, violations of physical integrity rights in democratic regimes are neither rare or uncommon, nor are they limited spatially or temporally to intra or international conflicts and mass dissent or protest. The seminal *Domestic Democratic Peace* in other words, is somewhat of a euphemism.

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[11]It should be noted that allegations of ill-treatment and torture, where the victims are dissidents, are relatively rare in democracies. See Figure 11.

To explain violations of physical integrity rights in democracies the paper argued instead that an irreconcilable conflict between traditional political-juridical categories revolving around the citizen as the rights bearer on the one hand, and the "naked" human being who is captured in a defacto state of exception, on the other hand must be seen as the underlying cause for why the universal human right to physical integrity remains inadequately protected even in democracies. Relying on the mechanisms proposed in the literature, namely Davenport's *Voice* and *Veto* – according to which the presence of democratic institutions is associated with a reduction of states' repressive behavior – I identified the institution of the state of exception as a problematic tool in the democratic arsenal, and provided empirical evidence consistent with this interpretation. The state of exception enables the circumventing of otherwise pacifying democratic institutions and the creation of conditions that allow for the violation of physical integrity rights to nevertheless occur. I argued that the state of exception achieves this effect because it allows for the re-definition of membership in the democratic political order by suspending constitutionally guaranteed rights and unhinging the constraining and pacifying effects of democratic institutions. Physical integrity rights, in short, continue to be violated "precisely when it is no longer possible to conceive of these rights in terms of traditional rights of citizens of a state" (Agamben, 2000, 18-19). By examining the role of citizenship vis-a-vie the explanatory mechanisms outlined in the literature, the paper identified a new mechanisms explaining the use of violent and aggressive behavior by agents of democratic states.

A Appendix

Figure 8: Violations according to PTS, ITT, & CIRI
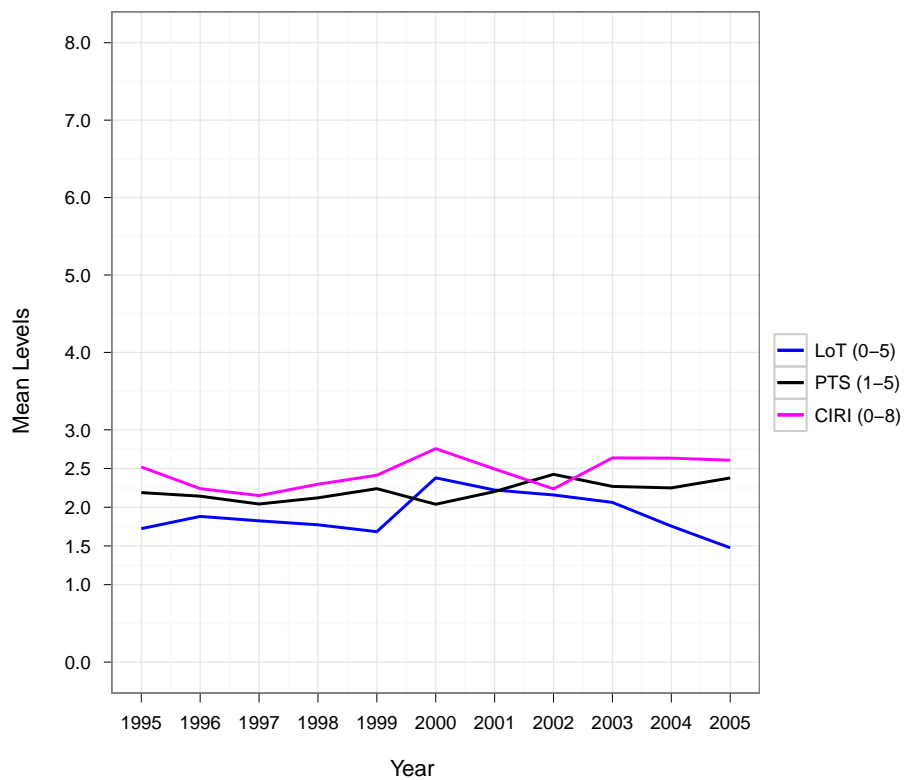
Shown are the annual averages of three physical integrity rights measures for demo-cratic country years – the 5-point Political Terror Scale (PTS), the 6-point Level of Ill-Treatment and Torture (LoT) and the 9-point Cingranelli and Richards Physical Integrity Index, inverted (CIRI).

Table 5: Coarsened Exact Matching Cutpoints

| Covariates	Bin 1	Bin 2	Bin 3	Bin 4
GDP per capita (Income Category)	< \$1,005 low	\$1,006 – \$3,975 lower middle	\$3,976 – \$12,275 upper middle	> \$12,276 upper
Population Size	< 10 million	10–50 million	50-100 million	> 100 million
Age of Democracy	< 10 years	10–20 years	> 20 years	
Major Episodes of Political Violence	0-3 (little or no)	4-7 (low)	8-11 (moderate)	12-15 (serious)
Internally Displaced Persons per 1000 capita	< 0.001	> 0.001		
Refugees per 1000 capita	< 0.001	0.001–1	> 1	
Year (Period)	1995–2000 pre 9-11	2001–2005 post 9-11		
Persons affected by Natural Disasters	< 10,000	10,000 – 50,000	> 50,000	
Government Type	Parliamentary	Semi-Presidential	Presidential	

Note: Cutpoints for Major Episodes of Political Violence between 16–25 were not required because the maximum for the sample of democratic country years does not even exceed 11.

Figure 9: Distribution of Continuous Confounders
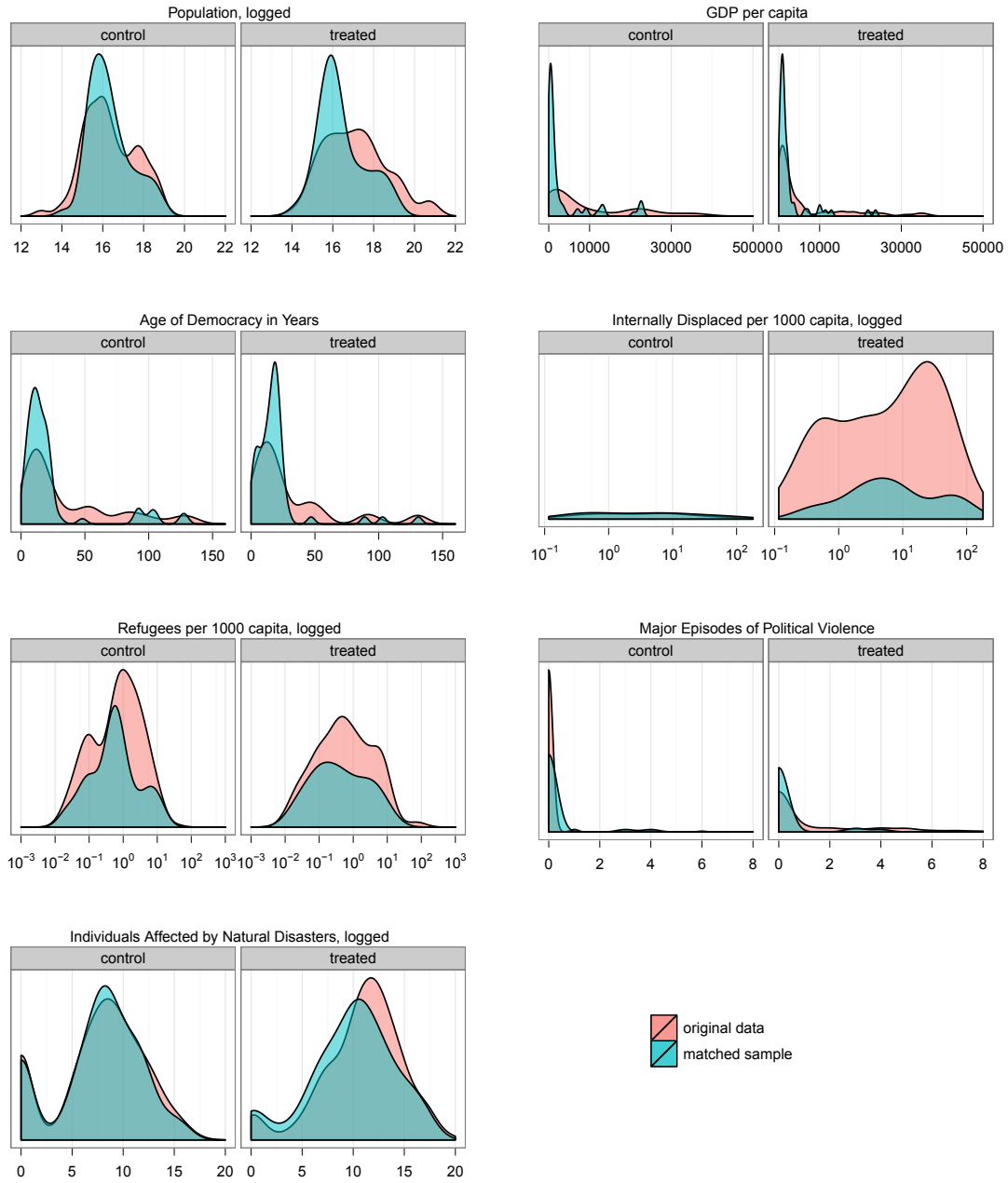
Shown are the densities for continues measures used during pre-processing. Red curves show the distribution of these measures for control and treated observations in the in the original sample, and green curves the distributions in the pruned dataset.

Figure 10: Government Type of Matched vs. Unmatched Observations
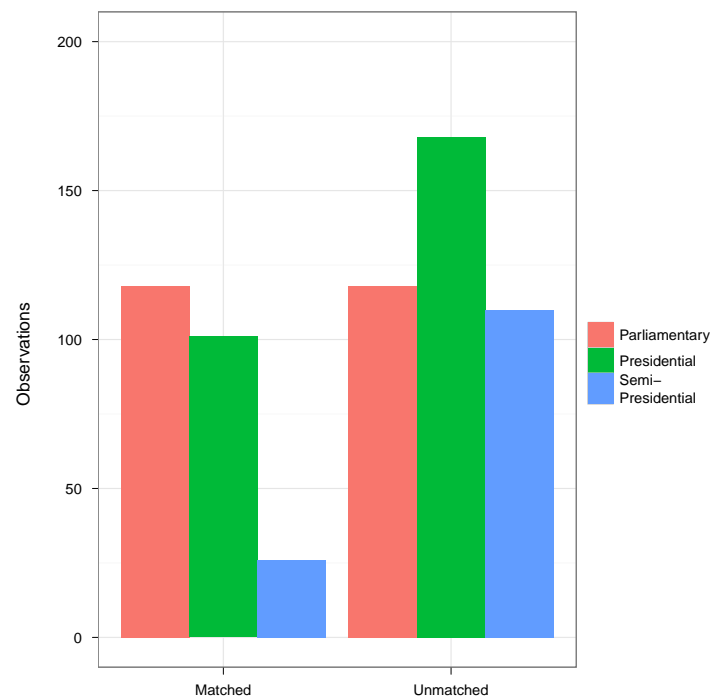
Depicted are the number of observations by regime type that were matched and those that were pruned from the sample.

Figure 11: Torture and Ill-Treatment Allegations by Regime Type
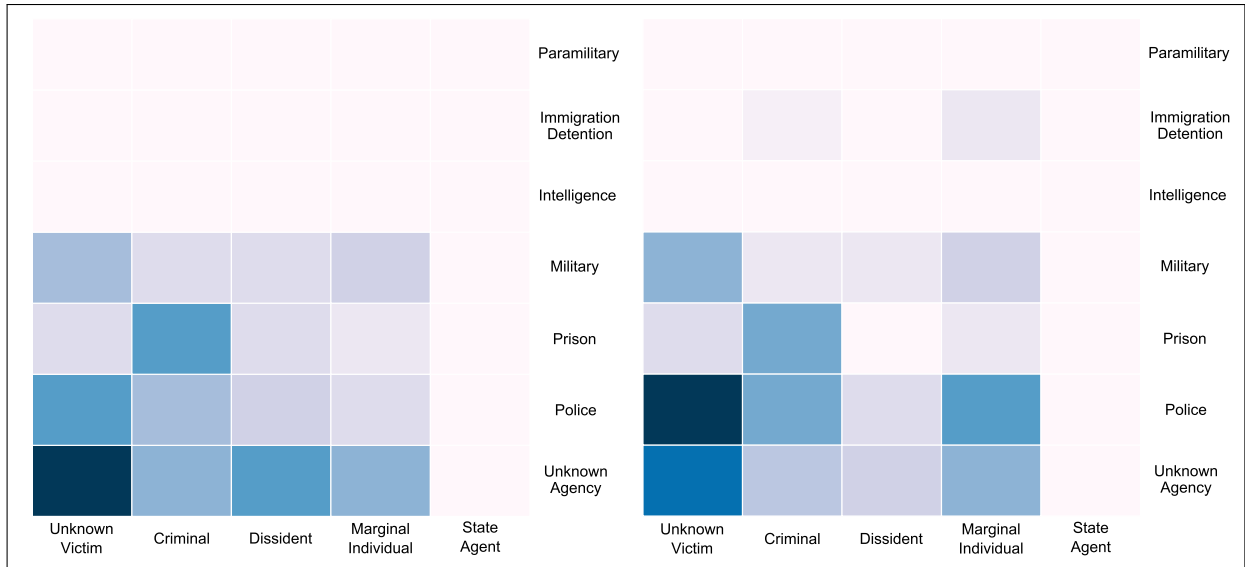
Shown are heatmaps of raw counts of all country-year observations between 1995 and 2005 with at least some allegation of torture (LoT > 0). This can be interpreted as the proportion of country years for which torture or ill-treatment of a specific kind was reported. Darker colors indicate higher counts or proportions of observation with at least some violation of the specific type. The figure is subsetted by regime type, with autocratic observations (left) and democratic ones (right). Note: The intensity of colors is not comparable across panels. Data Sources: Cheibub, Gandhi and Vreeland (2009*b*): *Democracy and Dictatorship Revisited Data Set*, and Conrad and Moore (2012): *Ill-Treatment and Torture (ITT) Data*

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