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Lanse Minkler, Nishith Prakash

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**Highlights**

- Do economic and social rights provisions in constitutions reduce poverty, measured as headcount income and health outcomes?
- Second, does the strength of constitutional language of the economic and social rights matter?
- Using new historical data on economic and social rights from the constitutions of 195 countries, we find a strong negative association between economic and social rights framed as enforceable law and poverty when we use legal origin as our instrument.

ACCEPTED MANUSCRIPT

# The Role of Constitutions on Poverty: A Cross-National Investigation

Lanse Minkler\*      Nishith Prakash†

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## Abstract

We construct and use a new historical data set on economics and social rights from the constitutions of 195 countries and an instrument variable strategy to answer two important questions. First, do economic and social rights provisions in constitutions reduce poverty, measured as headcount income and health outcomes? Second, does the strength of constitutional language of the economic and social rights matter? Constitutional provisions can be framed either more weakly as directive principles or more strongly as enforceable law. Our results suggest three findings. First, we do not find an association between constitutional rights generally framed and poverty. Second, we do not find an association between economic and social rights framed as directive principles and poverty. Third, we do find a strong negative association between economic and social rights framed as enforceable law and poverty when we use legal origins as our IV. These results persist for indices of constitutional rights and also when we restrict the sample to non-OECD countries. The policy implication is that constitutional provisions framed as enforceable law provide effective meta-rules with incentives for policymakers to initiate, fund, monitor and enforce poverty reduction policies.

**JEL Classification:** I24, I32, I38, O1, O38

**Keywords:** Economic and Social Rights, Constitutions, Human Rights, Poverty, Instrumental Variables, Legal Origin

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\*Associate Professor of Economics, Department of Economics, University of Connecticut, 365 Fairfield Way, Storrs, CT 06269-1063 USA (e-mail: alanson.minkler@uconn.edu).

†Assistant Professor of Economics, Department of Economics and Human Rights Institute, University of Connecticut, IZA, CReAM, HiCN, & INSIDE, 365 Fairfield Way, Storrs, Storrs, CT 06269-1063 USA (e-mail: nishith.prakash@uconn.edu).

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# 1 Introduction

What are the best ways to reduce international poverty? Responses range from the one size fits all Washington Consensus approach for all developing countries to stabilize, privatize, and liberalize, to its newer variants, to massive aid transfers in order to eliminate poverty traps, to the ubiquitous appeal of targeted subsidies for public goods provision, to the now popular micro interventions studied in randomized control trials.<sup>1</sup> While diverse in methodologies and policy prescriptions, for the most part all of these approaches share the focus of changing the opportunities and incentives of the poor themselves. While we too are concerned about choices of the poor, in this paper we instead focus on the incentives and constraints of those tasked to assist the poor: *the political policymakers*.

Wise or clever policy interventions, whether big or small, can only work to the extent that policymakers are willing to initiate, fund, monitor and enforce them. Of course the world is full of well-intentioned policymakers who would, and who do, jump at the chance to instantiate poverty reducing policies if and when appropriate levers and resources become available. But there are also many policymakers whose poverty reducing intentions are more fragile, fleeting, indifferent or even hostile. One potential way of limiting the effects of this latter group is to add provisions into a country's constitution that constrain policymaker choices. For instance, if a constitution includes a legally binding provision on social insurance in case of unemployment, policymakers are obligated to expend effort and resources to such policies. Constitutional provisions may not assure best practices, but in many cases they may be an important first step.

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<sup>1</sup>For a good critical discussion of the Washington Consensus (and modified Washington Consensus) as historically advocated by the World Bank and IMF, see Rodrik (2006). For the World Bank's newest policy statement which focuses on both economic growth and also pro-poor growth of the bottom 40% of the income distribution, see World Bank (2016). For the role of development aid in enhancing economic growth, and to overcome poverty traps as advocated by Sachs (2005), see Tarp (2006). On a particularly influential set of micro interventions stemming from randomized control trials, see Banerjee and Duflo (2011) and the critical review by Ravallion (2012). While perhaps not as concerned with policy recommendations, there is also a vast newer literature on the roles of geography, ecology (including disease ecology), migration and institutions on historical development patterns. On this see Diamond (1997) and Spolaore and Wacziarg (2013).

The research question we ask in this paper is: *do constitutional provisions on economic and social human rights reduce poverty?* It is important to study poverty as an outcome because poverty reduction is a major objective of public policy, especially in developing countries, and because poverty rates represent tangible, frequently used measures of deprivation. In terms of income poverty, the World Bank estimated that in 2011 approximately 2.2 billion people lived on \$2 a day or less.<sup>2</sup> This represents a slight decline from 2.59 billion in 1981, but highlights the enormous task ahead before the world becomes free of poverty. Thus, it remains an open question whether various economics and social rights can successfully reduce poverty.

We borrow insights from the political economy literature which notes that constitutions can constrain politicians whose utility functions are at odds with the general populace's preferences. More generally, constitutional provisions can help solve time inconsistency problems by constraining future political choices. We focus on economic and social human rights provisions because their express purpose is to reduce poverty or to clear the obstacles that contribute to poverty. The central economic human right is to an adequate standard of living. Because constitutional provisions are meta-rules, actual policy implementation is carried out in lower level statutory law, policies and regulations, all of which can be tailored to country, region, and even sub-regional heterogeneities. This is where the policy ideas discussed above can come into play.

In general, regressing the poverty outcome on measures of economic and social rights will not give causal effects because of endogeneity. The central endogeneity concern is the possibility of some unobserved characteristic that underlies both the decision to constitutionalize economic and social rights on the one hand, and also poverty reduction strategies

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<sup>2</sup><http://www.worldbank.org/en/topic/poverty/overview> accessed February 13, 2015. While the World Bank's lower "\$1/day" poverty line was recently recalculated to \$1.90/day based on newer (2011) purchasing power parity indices and received considerable discussion and justification, no comparable systematic recalculation occurred for the \$2/day poverty measure, see World Bank Group (2016). For a criticism of the methodology used to calculate the new (and older) headcount poverty measures, see Reddy and Lahoti (2015).

on the other. For instance, a post-colonial polity tasked with writing a constitution may also prefer poverty reduction.<sup>3</sup> In order to overcome this identification problems we employ an instrumental variable strategy. In particular, we use legal origin of United Kingdom as an instrument for our endogenous variable to estimate the effects of economic and social rights on poverty.

The effects of economic and social rights on poverty is conditional on many other factors, including the degree to which the judicial and legal system will enforce constitutional law, a country's current income and population size, its credit market, and a host of other unobserved omitted variables that are correlated with the observed exogenous factors. For example, one omitted variable that we have ex-ante reason to think would be important is census population. Many countries use population measures to devise welfare policies for their residents with some resources allocated on a headcount basis. The population size of a country may also imply additional constraints on policy options. Another important omitted variable is rule of law, which reflects perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence. In principle, this measure also reflects the degree to which a citizen has legal recourse if his or her economic and social rights are violated. All of this could have a direct impact on the government's ability to meet its constitutional obligations to reduce poverty.<sup>4</sup> We add these control variables and other exogenous geographic controls to address the omitted variables problem.

To our knowledge we are the first to investigate the role of economic and social constitutional rights on poverty reduction. We implement the empirical strategy by constructing a novel historical dataset on constitutional rights for 195 countries. The data include all eco-

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<sup>3</sup>Even if there was such a preference at the time of framing the constitution, political regimes and preferences do change over time and constitutional provisions may still constrain such time inconsistencies.

<sup>4</sup>GDP is a good proxy for incomes and is related to general development and resources available to a government, while domestic credit correlates with the ability of citizens to provide the goods and services that are the subject of ESR's for themselves.

conomic and social rights identified in the Universal Declaration of Human Rights. Crucially, we further delineate each right by strength of language. That is, we differentiate rights that use the language of desirable policy goals from those worded as enforceable law. The main explanatory variables and indices are constructed from this new data, and our main result suggests a negative and statistically significant relationship between economic and social human rights framed as enforceable law and poverty. A secondary goal of our paper is to contribute to the emerging empirical literature on the effects of constitutions.

The remainder of this paper is organized as follows. Section 2 provides background on constitutions and policymaker decisions and discusses the related literature. Section 3 presents the empirical framework. Section 4 describes the data. Section 5 presents main results where Section 5.1 discusses the results on the association between economic and social rights, framed generally and as directive principles, and poverty. Sections 5.2 and 5.3 do the same for our enforceable law constitutional variable and reveal the main results of this paper. In section 6 we devise and test two constitutional provision indices, one additive and the other using principal components analysis. We also analyze a sub-sample of non-OECD countries in this section. Section 7 concludes.

## 2 Background

### 2.1 Constitutions and Policymaker Decisions

Rights establish entitlements that enable rights-holders to make claims on obligated parties. Rights can be moral, the absolute right against enslavement for instance, or they can be legal, like enforceable prohibitions against slavery in modern times. Rights-holders achieve special status because their claims trump other utility, social policy, or political considerations (Dworkin 1977). Constitutions confer legal rights that may be realized through legislation, regulation, and/or court decisions and enforcement (Guari and Brinks 2008; Boyd 2012). Most modern constitutions contain three main parts: a bill of rights, provisions on

government structure and regulation, and procedures for amendment (Elster, 1995). The specific constitutional provisions adopted depends on many political and economic factors, particularly the type and degree of inequality at the time of framing (Wibbels 2005; Ticchi and Vindigni 2009).<sup>5</sup>

Constitutional theory in economics introduced the idea that constitutions matter because they establish rules that constrain policymakers (Buchanan and Brennan, 1981; North and Weingast, 1989) over time. Politicians cannot be counted on to just passively implement constituent interests because, like everyone else, policymakers too have their own utility functions. Absent binding constraints, that means policymakers will indulge their tastes for their favored policies, actions, and leisure activities. Constitutional rules add constraints to the politician's utility function, thereby limiting the choice set by committing politicians to certain actions while prohibiting them from others. Should politicians attempt to circumvent the constraints, perhaps because their post-elections tastes have changed, rights-holders can press their claims through available means. If the rights-holders are successful, the constraints bind. For example, constitutional provisions on democratic elections entitle citizens to demand that politicians provide periodic voting periods and processes, while constitutional provisions on the right to housing entitle citizens to prevent government evictions that cause homelessness.<sup>6</sup>

Statutory law can also constrain policymakers. In fact, constitutional law often precedes and directs statutory law. But statutory law is usually more narrow, and those laws can be altered or eliminated by even transitory majorities. The Affordable Care Act in the US

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<sup>5</sup>Wibbels, a political scientist, argues that constitutions are the product of negotiations by elites. Those elites' interests are influenced by the heterogeneity of their regional factor endowments, which in turn will establish the demand for inter-regional redistribution. Wibbels is most interested in how constitutions distribute power between state and federal government, and how (if) resources are redistributed between urban and rural interests to address wealth inequality. Of course elites try to maintain their advantage, but Wibbels notes that the game of politics is under constant pressure from losers. Interestingly, he pulls heavily from the work of economists Sokoloff and Engerman (2000), who will be discussed in the section on identification strategy.

<sup>6</sup>See Albisa, Scott, and Tissington (2013) for cases of government complicity in forced evictions in Chicago and Mumbai, although similar efforts were thwarted by South Africa's constitutional provision on the right to housing in Johannesburg.



vividly illustrates this principle. In contrast, constitutional rights are often broader and protected even from the majority by the judiciary and constitutional courts (Osiatynski, 2007). In part, that's why constitutions are difficult to change (amend) and thus represent only those values most deeply held by a country.

## 2.2 Empirical Literature

The empirical literature of the effects of constitutional provisions on economic outcomes is small but growing. Perhaps the most well known effort in economics, Persson and Tabellini (2003) try to identify the major effects of two constitutionally mandated political institutions: presidential versus parliamentary governing systems, and majoritarian electoral rules versus proportional representation. Using cross-sectional evidence they find that presidential and majoritarian systems have smaller governments (as measured by government spending divided by gross domestic product), majoritarian systems have smaller welfare state spending and budget deficits, and that parliamentary government spending increases during downturn and are not reversed during booms.<sup>7</sup> Taking a step back, Ticchi and Vindigni (2009) construct a public finance model based on income inequality to explain the initial constitutional choice of majoritarian versus proportional democracy. Their theory and cross-sectional evidence finds that more unequal societies (at the time of framing) choose majoritarian constitutions, while more equal ones tend to select proportional constitutions.<sup>8</sup>

Two recent papers investigate the effect of constitutional rights on education and health outcomes. Edward and Marin (2014) explore whether including the right to education in the constitution has been related to better educational outcomes. They find that there is no evidence that including the right to education in the constitution has been associated

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<sup>7</sup>See Acemoglu (2005) for a review of this book.

<sup>8</sup>Actually the theoretical results are a little more nuanced. Assuming three income groups, rich, middle and poor, the model turns largely on the bargaining power of the poor. If the poor can participate in agenda setting with the middle class they prefer proportional (called consensual) constitutions in order to tax the rich and receive public good benefits. In contrast, if they are not part of a ruling coalition, the poor will not receive any specific public goods provision and thus prefer majoritarian democracy with its lower taxes.

with higher test scores. The second paper by Matsuura (2013) shows that introducing a constitutional right to health is likely to be an effective mechanism for improving health in countries that have a high level of democratic governance. The results suggests that the introduction of a right to health in a national constitution was significantly associated with reductions in both mean infant and under-five mortality rates. The effect was large in countries with high scores for democratic governance, whereas in countries with low scores for democratic governance, approximately half of the effect of introducing a constitutional right to health was present.

Guari and Brinks' (2008) edited collection studies the constitutional experiences of five developing countries (South Africa, Brazil, India, Nigeria, and Indonesia) to see if constitutional provisions on the rights to health care and education affect health and educational outcomes. While not addressing poverty directly, these case studies are instructive because they identify both constitutional successes and potential obstacles confronting successful rights realization. For example, South Africa's constitutional right of access to health care did significantly affect government policy, especially by addressing government failures to provide antiretroviral treatments to AIDS patients.<sup>9</sup> And in the context of India, from 1950-2008, Shankar and Mehta (2008) find 382 cases on health and education that made it to the High Court level or above, with applicants winning 81% of those cases. The court rulings covered reimbursement of medical expenses, the effects of pollution on public health, HIV prevention and AIDS treatment, university fees, the establishment of private schools, and mid-day school meal programs in some states. The authors note, however, that to the extent the court decisions were actually implemented, the beneficiaries belong to the lower-middle

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<sup>9</sup>The post-apartheid South African Constitution is famous because its economic and social rights of housing, health, and education guarantee citizens not individual entitlements bounded by a floor, but rather equal access to those entitlements available. The corresponding duty on the government is to enact non-discriminatory policies to maximize the realization of the rights. This constitutional formulation is thus sensitive to governmental resource constraints. Still, in the much cited Grootboom case in 2000, the litigant won a decision that required the state to create a program for progressive realization of housing rights, yet for implementation reasons to be discussed Mrs. Grootboom and many of her neighbors did not receive adequate housing for years to come. See Berger (2008).

or middle classes, not the very poor.<sup>10</sup>

Topically different, two recent works consider the effects of constitutional environmental provisions on environmental outcomes. Boyd (2012) examined all 92 countries where there is a constitutional environmental right to live in a healthy environment to see if the rights resulted in statutory legislation, environmental regulation, and/or lawsuits filed. Boyd (2012, pp. 251-252) finds, for instance, that (1) 78 out of 92 countries incorporated the constitutional environmental right into major legislation, (2) constitutional environmental rights have had a lesser, but growing, effect on the filing and adjudication of environmental lawsuits, (3) procedural constitutional environmental rights—the rights to information, participation, and access to justice are important complements to the right to live in a healthy environment, and (4) the constitutional environmental right to live in a healthy environment has had a lot of the intended benefits with few of the drawbacks identified by the critics.<sup>11</sup> In a second paper Jeffords and Minkler (2016) use an instrumental variable approach to test whether the presence and legal strength of constitutional environmental rights are related to environmental outcomes. Out of the 198 constitutions examined, 125 have some kind of constitutional environmental right. The outcome variables include Yale’s Environmental Performance Index and some of its components. The results of that study suggest that the presence of constitutional environmental rights do indeed matter for positive environmental

<sup>10</sup>Guari and Brinks also address the obstacles. While reasonably well functioning democratic political institutions may allow claimants to effectively press their demands, even then political blockages like competing demands could frustrate demand realization. For example, if a government is trying to attract foreign capital or aid from the IMF it may have to reduce social supports. Another sort of political blockage occurs in multiparty democracies when they encounter political deadlock. A second type of obstacle occurs when there is a lack of government monitoring, oversight, and commitment to judicial decisions. Courts may resist and find it difficult to identify the correct responsible policymakers, agencies, and bureaucrats, and then to incentivize them properly. Finally, there has to be adequate infrastructure to implement court decisions. Guari and Brinks (p. 19) note that in the case of extending the provision of medicines in Brazil, the court needed only direct existing clinics and hospitals to do so. In contrast, court orders are complicated greatly when new infrastructure has to be first implemented because that imposes added burdens on (perhaps resistant) policymakers.

<sup>11</sup>Boyd (2012, Ch. 12 and appendix 1) also provides some simple statistical analysis. His main result uses ANOVA to compare the means of two groups of countries, those with no constitutional environmental rights, and those with a constitutional environmental right. These means are correlated with the associated means of “ecological footprints” for 2008. Boyd does find a statistically significant difference between the group means, with the CER group enjoying a lower ecological footprint.

outcomes.

What is missing in this nascent literature, and what we focus on, is an investigation of the relationship between constitutional rights and poverty.

### 3 Empirical Framework

We hypothesize that the degree of poverty in any given country is a function of the incentives and constraints faced by policymakers to enact, fund, monitor, and enforce poverty reducing policies. These incentives and constraints are determined by constitutional meta-rules, which we measure with our country specific constitutional economic and social right (ESR) provision variables. The specific constitutional provisions, education versus unemployment social insurance for instance, target policy areas most relevant for a country's particular circumstances and poverty reduction strategies and goals.<sup>12</sup>

We first estimate the effect of ESR on poverty with the following equation:

$$y_i = \alpha + \beta_1 ESR_i + e_i \quad (1)$$

where  $y_i$  is a measure of poverty. We use two measures of poverty. One is the percentage of the population living on less than \$2 a day in country  $i$ ; the other focuses on longevity - the Disability Adjusted Life Year (DALY).<sup>13</sup>  $ESR_i$  is a dummy variable that takes the value 1 if any of the economic and social right is included in the constitution, 0 otherwise. The coefficient of primary interest is  $\beta_1$ , which gives the association of including ESR's in the constitution on poverty.

In equation (1), omitted variable bias will likely be a concern. As mentioned earlier,

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<sup>12</sup>Naturally we would like to measure country specific policies, including statutory laws, regulations, and policies at the federal, state and municipal levels, but we do not have this detailed information (or, even if we did, the coding technology to reliably compare such policies across countries).

<sup>13</sup>The disability-adjusted life year (DALY) was introduced by the World Bank in 1993 and has emerged in the international health policy lexicon as a measure of the 'burden of disease'. See Murray et al. 2016 and McKenna et al. 2005 for a systematic analysis using the measure of DALY.

the effect of ESR on poverty is conditional on many other factors, including the degree to which the judicial and legal system will actually enforce constitutional law, a country's current income and population size, its credit market, and a host of other unobserved omitted variables that are correlated with observed exogenous factors. Many previous studies have found latitude, an exogenous factor, to be a significant determinant of economic performance, presumably because it is correlated with the country's institutions and/or ecology (and disease ecology). We further control for exogenous factors in equation (1) with Africa and Asia dummy variables.

Modifying Equation 1 to address the problem of omitted variables, we get:

$$y_i = \alpha + \beta_1 ESR_i + \pi X_i + e_i \quad (2)$$

where  $X_i$  is a set of control variables (e.g. census population, rule of law, domestic credit, latitude, Africa dummy, Asia dummy, and log of GDP per capita). Depending on how we construct our explanatory variable, this regression estimates to what degree ESRs associate with poverty.

One advantage of this initial regression is that it eliminates the measurement error involved in the construction of our ESR variables. When coding each constitution of the world it is a relatively simple matter to determine only whether or not a particular ESR is included. The disadvantage, however, is that kind of coding misses a very important nuance, namely, whether an ESR is framed as a desirable goal policymakers should strive for, or, more forcefully, as the law of the land. We discuss this distinction in more detail in the next subsection.

### 3.1 Does Constitutional Language Matter? Directive Principles versus Enforceable Law

Constitutional language differs, partly to reflect intent, with most constitutional rights framed as either directive principles or as enforceable law. Directive principles suggest that the rights represent important policy goals. Economic and social rights are sometimes framed as directive principles in order to reflect their aspirational nature and to indicate that the rights should be progressively realized over time as resources and capabilities grow.<sup>14</sup>

In contrast, constitutional rights meant as enforceable law signify entitlements that are individually justiciable. A legal rights-holder, person R, has a legal claim on x that necessarily obligates some other person or entity (like government), D, to a duty regarding x. A negative right implies a negative duty regarding x, which means that D is obligated to not interfere with person R's enjoyment of x; a positive right implies a positive duty, meaning that D is obligated to do something like provide x to person R.<sup>15</sup> A person whose enforceable law right is violated has legal recourse, ultimately through courts.<sup>16</sup> Whether or not the right is universally fulfilled will of course depend on a host of factors including especially the strength of the rule of law.

<sup>14</sup>For instance, in Sri Lanka's constitution the rights to food and housing are framed as directive principles in Article 27: "The State is pledged to establish in Sri Lanka a democratic socialist society, the objectives of which include ... the realization by all citizens of an adequate standard of living for themselves and their families, including adequate food, clothing and housing, the continuous improvement of living conditions and the full enjoyment of leisure and social and cultural opportunities."

<sup>15</sup>See Donnelly (2007) for discussion of this classic discussion of rights, as well as more contemporary distinctions favored by some human rights scholars. For instance, Shue (1996) argues all human rights impose government duties to avoid depriving (a negative duty), protection from others who would deprive (a positive duty), and to aid the deprived when they cannot fulfill the right themselves (a positive duty).

<sup>16</sup>For example, all constitutional rights in the US were meant, and have been interpreted (eventually), as enforceable law. As another example, the rights to food and water in Bolivia are framed as enforceable law. Article 16 of the Bolivian constitution reads: "Every person has the right to water and food; The State has the obligation to guarantee food security, by means of healthy, adequate and sufficient food for the entire population." Thus, the wording here explicitly obligates the state to guarantee the right. Some constitutions include rights as both directive principles and enforceable law. For instance the Indian constitution distinguishes between fundamental (enforceable) rights and directive principles (e.g., work and education), which are explicitly defined "as not being enforceable by any court." Other constitutions containing both enforceable law and directive principle rights include Albania, Moldova, Poland, Spain and Ireland (Sadurski 2002).

Although it is an empirical question how directive principles versus enforceable law will affect our outcome of interest, the potential channels through which the two approaches affect poverty, our key outcome variable, differ.<sup>17</sup> First, constitutionalizing rights as directive principles impose soft constraints on policymakers. The idea is that if a country has gone through the effort to place a right in their constitution as a directive principle it was important enough for policymakers to devote effort and resources to the right's realization. Should policymakers not do so, they weaken their popularity, political power, and re-election chances (Sadurski 2002; Minkler 2009). One benefit of this approach is that it gives legislative bodies and policymakers, rather than courts, the scope to tailor the rights realization to the country's circumstances because they are better placed to make budgetary decisions based resources and social priorities (Sunstein 2004; Osiatynski 2007). Another benefit is that constitutionalizing rights as directive principles may entail less political opposition than attempting to do so as enforceable law. The cost of this approach, however, is that policymakers are not obligated to ensure rights realization; these soft constraints may not bind them sufficiently.

In contrast, when constitutional rights are interpreted as enforceable law by courts that implies legal obligations and hard constraints on policymakers. These legal obligations include the obligations to (a) not interfere with citizens' enjoyment of their rights, (b) prevent others who would interfere, and (c) help fulfill the right if citizens are unable to do so themselves. Among other policies, this latter obligation refers to things like affirmative action policies in employment and disability insurance for those unable to work. Thus the primary

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<sup>17</sup>Even if rights are not formally included in a constitution that does not mean that the underlying principles are unimportant to society. Non-constitutional factors include strong social norms. For example, neither social security nor free primary and secondary education are included in the US constitution, but still they are strongly supported both politically and financially. Cass Sunstein portrays President Franklin Delano Roosevelt's (FDR) initiative for a "Second Bill of Rights" for things like employment, adequate food and clothing, shelter, education, and medical care, in order to ensure the "freedom from want" as an attempt to arouse similar support without constitutionalization (Sunstein 2004). According to Sunstein, FDR believed the cost of trying to amend the US constitution would have been prohibitive because of the inevitable political battles involved. Of course the cost of not constitutionalizing the rights is that policy-makers are not obligated to ensure their realization.

advantage of constitutionalizing rights as enforceable law is that rights realization is more likely ensured. The two costs of this approach have already been alluded to. First, the strict obligations imposed on politicians assures that there will be some level of political opposition. Even those policymakers who would otherwise support the rights may prefer to do so free of binding constraints that limit their options. Second, constitutional rights interpreted as enforceable law may require courts to make policy decisions, something they may be ill-suited to do.<sup>18</sup>

By differentiating constitutional rights by the strength of their language we generate a more refined implication about the effect of rights on important developmental outcomes based upon the severity of constraints imposed on policymakers. Directive principles impose soft constraints and perhaps imply weak incentives, while enforceable law imposes hard constraints and stronger incentives. The problem is that we do not have the requisite information to know whether constitutional provisions for each ES right for each country are actually enforceable law. To know that we would need to know the historical legislative, regulatory, and judicial decisions at each level (town, province, state, etc.). So instead we explore whether the strength of language of economic and social rights translates into actual poverty outcomes. We will discuss the process presently, but the idea is that strong constitutional language that explicitly mentions things like government duties is strongly correlated with enforceable law, whereas the weaker legal language of aspirational goals is more correlated with directive principles. On this basis, we distinguish the ESR's into enforceable law (EL) and directive principles (DP), by estimating the following two regressions:

$$y_i = \alpha + \beta_2 \text{Directive Principle Dummy}_i + \pi X_i + e_i \quad (3)$$

where *Directive Principle Dummy<sub>i</sub>* is a dummy variable that takes the value 1 if any of the

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<sup>18</sup>Some may also worry that economic and social rights are not justiciable, that is, they are not judicially enforceable. This concern is addressed and convincingly dismissed by both Sunstein (2004) and Donnelly (2007).



ESR is included in the constitution of the country  $i$  as DP, 0 otherwise. The coefficient of primary interest is  $\beta_2$ , which gives the effect of inclusion of an ESR as DP in the constitution on poverty.

$$y_i = \alpha + \beta_3 \text{Enforceable Law Dummy}_i + \pi X_i + e_i \quad (4)$$

where *Enforceable Law Dummy<sub>i</sub>* is a dummy variable that takes the value 1 if any of the ESR is included in the constitution of the country  $i$  as EL, 0 otherwise. The coefficient of primary interest is  $\beta_3$ , which gives the effect of inclusion of ESR as EL in the constitution on poverty.

## 4 Data

We make two important contributions by assembling and hand-coding data on various economics and social rights. First, we hand coded data on various economic and social rights for 195 countries. Second, we further distinguish each of the economics and social rights by strength of language in an effort to reflect whether the rights are enforceable law or directive principles (non-enforceable law).

We first code the following economic and social right provisions, where each variable equals 1 if the provision is included in the Constitution, Amendment or Revision, and 0 if it is not. These economic and social rights are specifically identified in the principal international human rights document the Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948, and include: Adequate Standard of Living, Right to Adequate Food/Nutrition, Right to Health/Medical care, Right to Adequate Housing, Right to Primary Education, Free Primary Education, Compulsory Primary Education, Right to Social Services, Right to Work, Right to Public Employment, Right to Just and Favorable Remuneration, Right to Social Security in the Event of Unemployment, Right to Social Security in the Event of Disability, Right to Social Security in the Event of Sickness, Right

to Social Security in the Event of Widowhood, and Right to Social Security in the Event of Old Age. Detailed discussion on the variables and coding can be found in Appendix A.1.

#### 4.1 Independent Variables

We construct five key independent variables for our empirical analysis. We first construct a “constitutional right dummy variable” that takes the value 1 if any of the above mentioned entitlement is present in the country’s constitution, 0 otherwise.

One of the main contributions of the paper is to separate economic and social right provisions into two different categories, enforceable law and directive principles. Recall that a legally enforceable rights exists only when there is an associated duty-holder that is legally required to either not do something (in the case of a negative right) or to do something (positive right). The presence of a legally binding duty is crucial. Therefore, we consider any right/entitlement as enforceable law (EL) in cases where: Any direct or explicit wording was present regarding citizens’ right to take legal action should the State fail to fulfill the right/entitlement in question; A right/entitlement was referred to as legally binding upon the State; A right/entitlement was explicitly written as “guaranteed” under the constitution. Using this, we construct an “enforceable law dummy” that takes the value 1 if any of the above mentioned entitlement is present in the country’s constitution, 0 otherwise. Later, as robustness tests, we further construct two variations of the enforceable law variable. The first index uses principal component analysis, called “enforceable law PCA index” while the second is a sum of all enforceable laws, called the “enforceable law additive index”.<sup>19</sup>

A right/entitlement was considered to be Directive Principle (DP) in cases where: The existence of the right/entitlement in question was acknowledged with no further statement

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<sup>19</sup>The principal components approach helps reduce dimensionality of the data, while capturing the underlying variability. It produces mutually orthogonal linear combinations (eigenvectors) of a set of variables that capture the common pattern in the data. The eigenvector that has the highest eigenvalue, (i.e. the linear combination that captures the highest variability) is the first principal component. Principal components analysis (PCA) is one of a family of techniques for taking high-dimensional data, and using the dependencies between the variables to represent it in a more tractable, lower-dimensional form, without losing too much information.

regarding its enforceability; a right/entitlement was explicitly referred to as a principle the State shall endeavor to fulfill; an explicit statement was included denying citizens the right to take legal action should the State fail to fulfill any social or economic rights/entitlements enshrined in the constitution. Using this, we construct a “directive principles dummy” that takes the value 1 if any of the above mentioned entitlement is present in the country’s constitution, 0 otherwise.<sup>20</sup>

Based on our coding of the language in the 195 constitutions, 43 countries have at least one enforceable law provision (22%), while 153 have at least one directive principle (78.5%).

## 4.2 Dependent Variables

Our first dependent variable is an income poverty measure based on head count ratio. More specifically, we use \$2 a day, where the poverty head count ratio at \$2 a day (PPP) is the percentage of the population living on less than \$2 a day at 2005 international prices. Devised by economists at the World Bank, this World Development Indicator is the median poverty rate for developing countries in 2005 (World Bank 2008). In 2011 the World Bank estimated that approximately 35% of the world’s population lived on \$2/ day or less.

A significant advantage of this headcount measure is that it allows direct comparisons across countries. One disadvantage for our study is that this poverty measure reduces our sample size from those 195 countries for which we have constitutional data to the 119 covered by the World Bank data. Based on the sample we use, 30% of the countries have at least one enforceable law provision in their constitution while 90% have a least one directive principle.<sup>21</sup>

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<sup>20</sup>While not reported in this paper, we also constructed two variations of the directive principles variable, first, using principal component analysis, and second, as a sum of all directive principles. The regressions using these indices are available from the authors upon request.

<sup>21</sup>Ecuador has the most EL provisions at 10, while Belarus, Kazakhstan, and Yemen come in at 7 each, and Costa Rica, Lithuania, Ukraine, and Venezuela have 6 each (in the full sample of 195 constitutions, Finland also has 7 EL provisions, while Cuba and Iceland also have 6 each). In contrast, five countries tie for the most DP provisions at 12: Bangladesh, Iran, Kenya, Moldova, and Sri Lanka (Puerto Rico also has 12 in the full sample). Finally, the countries with the highest total number of economic and social rights provisions combined are Belarus at 14, and Bolivia, Moldova, and Ukraine at 13 each. Overall, the constitutional data

As famously explicated by Sen (1999), income poverty is not the only deprivation confronting the world's poor. A person could have above poverty income for significant periods of time but also suffer from inferior access to adequate nutrition sources, health care services, clean water and sanitation, and social inclusion. To measure these kinds of deprivation, which might exist somewhat independently from income poverty, and to address the sample size issue discussed above, we also employ another dependent variable, "DALY", or the age-standardized disability adjusted life years per 100,000. This non-pecuniary health measure comes from the World Health Organization, and is defined as the age-standardized disability adjusted life years per 100,000. According to WHO, "One DALY can be thought of as one lost year of 'healthy' life. The sum of these DALYs across the population, or the burden of disease can be thought of as a measurement of the gap between current health status and an ideal health situation where the entire population lives to an advanced age, free of disease and disability..." On a conceptual level the DALY measure captures the income and non-income deprivations discussed above. On a technical level, it increases our sample size to 187 countries.

### 4.3 Control Variables

We use various data sources to assemble our control variables, which include census population, rule of law, domestic credit, GDP per capita, latitude of the country, and Africa and Asia dummy variables. Summary statistics are reported in Table 1.

The census population data comes from UNTATS and reflects the latest available census population data. We use this variable to control for differences in headcount poverty due to country population size.

Rule of law is a World Governance Indicator that represents perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the demonstrates good geographic and historical differentiation.

likelihood of crime and violence. Estimates of governance range from approximately -2.5 (weak) to 2.5 (strong) performances. The importance of the rule of law for development is widely accepted and we will briefly refer to it later in our discussion on legal origins. For now we can say that we expect the variable's coefficient to be negative because stronger rule of law indicates better legal institutions and better prospects for poverty reduction.

Domestic credit is a World Development Indicator that measures financial resources provided to the private sector by financial corporations, as a percentage of GDP. Combined with GDP per capita, these two variables measure the degree of a country's financial and economic development. Naturally, we expect the coefficient signs to be negative for both variables.<sup>22</sup>

Finally, we include three exogenous variables. It has been argued that climate has a direct effect on performance by many social scientists, including Montesquieu [1784] (1989), Diamond (1997), and Sachs and coauthors. Further Gallup et al. (1998) and Hall and Jones (1999) show the correlation between distance to the equator and economic performance. We measure latitude as the absolute value of the latitude of the country (i.e., a measure of distance from the equator), scaled to take values between 0 and 1, where 0 is the equator (taken from La Porta et al. (1999)). Africa and Asia dummy variables take the value 1 if the country belongs to that continent or region, 0 otherwise. The data come from Acemoglu et al (2001); we have no sign expectations for these exogenous geographic variables.

## 5 Main Results

### 5.1 General and Directive Principle Constitutional Provisions

In Table 2 we report the OLS estimates of any constitutional ESR on poverty as estimated by equation (2) for both the \$2/day and DALY poverty measures. We do not find

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<sup>22</sup>See Kraay (2006) for cross-country evidence of the association between poverty reduction and average income growth.

any statistically significant association between any constitutional ESR dummy and either measure of poverty. In the specification for headcount poverty with all controls (column 3) domestic credit, latitude, and log of GDP per capita are all negatively associated with poverty, while the Africa dummy is positively associated with poverty. The rule of law coefficient has the expected negative sign before including the exogenous controls, when its sign then switches to positive. In the full regression with DALY as the dependent variable (column 6), the Africa dummy and GDP per capita variables show similar results.

To start to account for differential constitutional language, in Table 3 we report the OLS regressions of the directive principles dummy on the poverty measures as estimated by equation (3). When using the income poverty measure we find the association between directive principles dummy and poverty to be positive in all specifications and statistically significant in all before we include the exogenous geographic controls, at which time it becomes statistically insignificant. This interesting result differs from the one hypothesized because it suggests that ESR's framed as desirable policy goals are positively associated with poverty. The sign does switch to negative in the DALY regression, but the coefficient remains insignificant. At the very least these results suggest that directive principles do not provide sufficient soft constraints on policymakers to take necessary poverty reducing action.<sup>23</sup>

In the next subsection, we show that the results for enforceable law suggest a different story.

## 5.2 Enforceable Law

In Table 4 we report the association between the enforceable law dummy variable and the poverty measures estimated by equation (4). As we move from Column (1) to (2) and (4) to (5), we see that the associations are negative and the estimated coefficients are statistically significant. However, when we include the exogenous geographic controls in Columns (3)

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<sup>23</sup>These results do not change either if we instrument for the general or directive principle constitutional variables, or if we create indices comprised of them as we do for the enforceable law constitutional provisions. These results are available from the authors upon request.

and (6), the coefficients become statistically insignificant. For the income poverty measure, once again, in the full regression domestic credit, latitude, and log of GDP per capita are negatively related to poverty, whereas the Africa dummy is positively associated. And once again the log of GDP is negatively associated, and the Africa dummy is positively associated, with DALY poverty measure. These results hint that constitutional language may matter for poverty outcomes.

For the OLS estimates to be consistent, however, the selection of the ESR variables should be random after controlling for the vector of observable variables in  $X_i$ . Thus, separating the causal effect of ESR from correlation on measures of poverty is not straightforward. There are a number of important reasons for not interpreting this relationship as causal. And there are two important empirical challenges. First, it is hard to isolate the effect of factors that influence both the decision to incorporate an economic and social right into a constitution and then later protection of that right. For example, it is possible that richer economies are better able to afford, implement, or prefer certain types of ESR's (directive principles versus enforceable law). Second, economic and social rights may also be correlated with a country's characteristics that determine key developmental outcomes, including poverty. Therefore, the conditional-independence assumption may be violated due to reverse causality and selection problems, and the OLS-estimates of the ESR's effect will be biased. Perhaps more important than the reverse causality problem are the many omitted determinants of poverty differences that are also correlated with the ESR variable. Thus our OLS estimates are plausibly biased upwards. We attempt to overcome the empirical challenges by isolating a plausibly true exogenous variation in the ESR variables by using an instrumental variable.

### 5.3 Instrumental Variable Strategy

In this section we will describe and justify our instrument, legal origins, and discuss the exclusion restriction and new estimating equation. The basic idea is that a country's legal origins will differentially affect the propensity to add ESR's to a constitution for poverty

alleviation because different legal traditions are differentially associated with using constitutions for any purpose. The civil law system associated with France (but also Germany, Scandinavia, and to a some extent, Spain) favors the use of constitutions to direct legislative action to enact statutory law. In contrast, the English common law system favors law made through court precedent. The English common law tradition reduces the probability of constitutional economic and social rights provisions, while the French civil law tradition increases the probability. Constitutional framers did not choose the legal, social, and political history prior to writing a constitution; colonies did not choose their colonial masters. But in order for legal origin to be a valid instrument, it must be correlated to our ESR variable and uncorrelated to the error term. To explain why the use of legal origins is particularly justified in our study, we now discuss the validity of the instrument and explain why the exclusion restriction is plausible.

The original proponents of the importance of legal origins, Rafael La Porta, Florencio Lopez-de-Silanes, and Andrei Shleifer (and initially Robert Vishney), wanted to know the affects of legal origins on the legal rules affecting a country's financial development, particularly through investor protection, which ultimately affects a country's growth prospects.<sup>24</sup> The authors hypothesize that the legal processes and ideologies differ by origin. In the common law tradition of England and its former colonies, courts establish law through precedents. This judicial power and independence was desired by elites who wanted to limit the crown's power and to protect property and contracts (La Porta, Lopez-de-Silanes, and Shleifer 2008, p. 288). In contrast, the French civil law legal tradition has its roots in Roman law, and later in the French Revolution and Napoleon's influence, and emphasizes statutes and comprehensive codes. This reading of history suggests that the revolutionaries and then Napoleon desired to use central government power in order to change property rights, and to limit

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<sup>24</sup>See La Porta, Lopez-de-Silanes, Shleifer, and Vishney (1997 and 1998), and La Porta, Lopez-de-Silanes, and Shleifer (2008). These authors and others have also looked at the affects of legal origins on things like legal procedure, entry regulations, labor laws, media and bank ownership, and even military conscription (see La Porta, Lopez-de-Silanes, and Shleifer 2008).



court interference (La Porta, Lopez-de-Silanes, and Shleifer 2008, p. 289).<sup>25</sup> Therefore, the English common law tradition prioritizes court precedent for lawmaking, while the French civil law tradition prioritizes legal statutes and codes and the legislative role of parliament or congress. Proponents of legal origins argue that these differences favor the common law tradition when it comes to investor protection and finance.

The legal scholar Kenneth Dam (2006) emphasizes different aspects of this historical record, but otherwise supports the legal theories about the common law system favoring courts and the civil legal system favoring the legislative branch and statutory law for law making. Dam sources the common law tradition to William's conquest of England in 1066. William and his successors quickly imposed Norman law based on Norman custom, especially for holding land, and the feudal system. To implement a common law, royal judges travelled the country. Eventually, the primary basis of common law became based on what judges decided it was. Common law judges issued verdicts with justifications located in the decisions of earlier cases. When there were conflicting precedents judges were required to fit the facts of particular cases in a way that might meet relevant general legal principles. Dam (2006) notes that common law countries also use statutes, but it's this method of court-generated law that differentiates common law from civil law countries.

Like the legal origin proponents, Dam emphasizes earlier Roman law and then Napoleon's role in replacing customary law with codes in the development of the civil law tradition. But according to Dam what made civil law endure is its generality and clarity of language. Under this system, the executive and especially the legislative branch can make statutory law with suitable precision so that the court's role is diminished to simply assisting implementation. Up until de Gaulle came to power in 1958 the French constitution and constitutional theory was based on the sovereignty of the legislative branch. The constitution was amended in 1958 as a condition for de Gaulle to assume power, and it allowed the executive to issue law

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<sup>25</sup>The authors also consider the German and Scandinavian legal traditions, which are most similar to the civil law traditions, as well as the socialist legal tradition.

in certain areas by decree (Dam 2006, p. 47).

This difference of emphasis, legislative versus court made law, forms the basis for our argument that civil law systems are more likely to use constitutions for *any* purpose, including ESR's to reduce poverty. The widely held legal theory is that civil law countries are more likely to make law through legislative action. Constitutions contain meta-rules to direct that action. That does not mean that common law countries do not use constitutions and statutory law. While it is true that England does not even have a formal constitution, some colonies like the US have very strong, legally binding constitutions. Even still, those constitutions often serve to mostly constrain the executive and legislative branches by specifying negative duties on what those bodies may not do. Moreover, the examples of National Health Service in England and social security in the US provide important examples of poverty reducing social policies based in statutory law. But those laws are not sourced or protected by national constitutions.

The originators of the theory might object that as an instrument in our first stage regression, legal origins fails to meet the exclusion restriction because it is positively correlated with investor protection and financial development, which affects growth, and ultimately \$2/day poverty, our first dependent variable. This same concern might be tempered for our DALY poverty measure because it focuses on non-pecuniary health outcomes (that is an important reason for why we include the measure). Even still, there exists a compelling empirical and theoretical literature that disputes the financial claim, beyond a reasonable doubt in our view. Kenneth Dam (2006) thinks the legal origins idea is just wrong because it is fraught with contradictions. He contends that, factually, common law countries use corporate, securities, and bankruptcy codes just like civil law countries do. Common law countries may also have historically regulated (i.e., make use of codes to regulate corporations, etc.) as much, or more, than civil law countries. He also complains that the biggest land grabs in history have come in common law countries, which suggests that there is nothing intrinsic in those origins that is property respecting. As for the legal origin proponents'

cross-country regressions, Dam (2006, p. 38) notes that only 49 countries were originally included, both colonizer and colonized countries are aggregated, and that no population or geographic controls are used. After looking at time trends, Roe and Siegel (2009, p.798) add that “Dam also has going for him the basic fact that the strongest data-based case for the superiority of common law and inferiority of French civil law is for the 1990s. When one looks backward from the 1990s to the development of debt markets, common law nations regularly lack substantial financial superiority to the French civil law nations. Frequently the reverse is true. In fact, the reverse is true so often that it is as consistent with a random relationship as with any other.” If it took until the 1990s for financial divergence to occur, it is unlikely that legal origins fixed decades or centuries ago is the cause. Moreover, after performing time series analysis on a sample of twenty five countries from 1995-2005, Armour, Deakin, Mollica, and Siems (2009) conclude that increases in shareholder protection is not associated with financial development over that period.

Dam argues that as colonizers brought their legal traditions to their colonies they were confronted with different histories, cultures, geographies and institutions. The overlay of legal origins on these factors surely conditioned the resulting law making systems. And whatever the character of the systems that did result they still had to have the imprimatur of the rule of law, particularly independent judiciaries. It does not matter how laws originate if no entity exists to protect and enforce those that come about. Unfortunately, acquiring the requisite legal institutions to enforce the rule of law has been difficult for many developing countries, as the scores on our World Governance Indicator rule of law variable attests.<sup>26</sup>

While the legal origin idea has caught on with some in finance, to explain historical patterns of development, economists favor other explanations. For example, Acemoglu, Johnson, and Robinson (2001) argue that potential mortality rates determined the colonial strategy of either settling or extracting, which in turn determined the quality of institutions left behind.

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<sup>26</sup>Dam also criticizes the legal origin proponents focus on private versus public law, and some of their coding choices, particularly for Latin American countries.

If the colonists could settle with little fear of death, from malaria for instance, they would and bring their European institutions with them. Thus good institutions lead to good development outcomes. Sokoloff and Engerman (2000) categorize colonial strategies in the New World as a function of geography and the availability of cheap labor. The soil and climate conditions of the British West Indies combined with slavery to make enormous sugar, coffee, and staple crop plantations quite profitable. This in turn led to great economic inequality, which was codified in institutions thereby assuring its persistence. In the northern US and Canadian colonies, the climate and geography were not favorable for large plantations, and so most of the migration came from relatively skilled, homogenous, labor. The resulting relative income equality was reflected in good institutions where elites could not protect their interests as easily, which led to more economic and social opportunities for most members of the population. Finally, rather than geography or institutions, Putterman and Weil (2010) focus instead on ancestry to explain comparative development. The idea is that what matters today is the percentage of the population with European roots. Those roots represent familiarity with human capital, norms and culture, which in turn affects today's economic outcomes—the greater the ancestry, the greater the equality and national income.<sup>27</sup>

To summarize, our arguments for using legal origins as an instrument for our constitutional indices are (1) legal origins are plausibly exogenous, (2) common law origins are less likely to include economic and social rights provisions in their constitutions because those legal systems are less likely to use constitutions for any law making purpose – that is the key fact about legal origins that makes it a uniquely suitable IV for our study, and (3) the empirical and theoretical cases for legal origins affecting important financial variables is at best weak, and in any case are less pertinent for our DALY poverty measure.<sup>28</sup>

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<sup>27</sup>Of course this is just a brief sampling. For a good recent review of the literature on the causes of comparative development, including the contentious geography-institutions debate, see Spolaore and Wacziarg (2013). It is perhaps noteworthy that this comprehensive review does not include legal origins as an explanatory factor. Even more recently, Luo and Wen (2015) find that geography seems to matter most for income differences among agrarian countries, while institutions matter only for income variations in industrial economies. These authors use legal origins as an IV for their institutional variables.

<sup>28</sup>In a slightly different context some researchers have exploited assassinations of leaders as an exogenous

Thus we use the instrument United Kingdom (UK) legal origin,  $Z$ , which is correlated with the endogenous Enforceable Law Dummy ( $X_2$ ), but not with the error term  $e_i$ . Formally, we require  $Cov(Z, X_1) \neq 0$  and  $Cov(Z, X_2) \neq 0$ , but  $Cov(Z, e_i) = 0$ . Under these conditions, we will estimate a consistent estimate of the coefficients  $\beta_4, \beta_5$  on the Enforceable Law Dummy, in the following IV estimations:

$$y_i = \alpha + \beta_5[UK\ Legal\ Origin = Enforceable\ Law\ Dummy_i] + \pi X_i + e_i \quad (5)$$

We present the IV results, our main results, in Table 5. Instrumenting the enforceable law dummy with UK legal origin gives us a statistically significant first stage with high F-statistic in all specifications. Our preferred specifications include the exogenous controls, Columns 3 and 6, where the F-statistic = 16.55. Our IV results suggest a negative and statistically significant relationship between constitutionally framed enforceable law provisions and both types of poverty. The domestic credit, latitude, and GDP per capita coefficients are all negative and statistically significant associates of income poverty, while the rule of law, Asia dummy, and GDP per capita coefficients are all negative and statistically significant associates of the DALY poverty measure. Adding these controls have little effect on the IV estimate of the effect of constitutionally framed enforceable law provisions and both types of poverty. At least before using all of the control variables, the DALY regressions also demonstrate that the constitutional variable result holds for larger sample sizes.

The size of the coefficients are much larger than the OLS estimates reported in Table 4, which is not unusual and suggests that the measurement error in the ESR variables that creates attenuation bias is likely more important than reverse causality and omitted variables biases. One source of measurement error occurs because a 0, 1 dummy variable cannot capture the full scope or coverage of constitutional ES rights. For instance, in our shock and estimated the causal effect on growth and democracy [See Jones and Olken (2005 and 2009)]. Mobarak (2005) uses countries with a Muslim majority populations as an instrument for democracy and finds strong causal evidence that growth performance is more stable in democracies after accounting for endogeneity of democracy and simultaneity of growth and volatility.

sample there are 6.1 directive principles per constitution. And while the mean for enforceable laws is a much lower 0.96, the range is 0 to 10. We address this measurement problem further in the next section by introducing index ESR independent variables.

## 6 Robustness

In this section we address two potential problems. First, since we assume that countries will choose those constitutional provisions most relevant to their circumstances with the most pressing needs met first, if any constitutional provision is important, then a dummy variable works well. But it may also be the case that the number of constitutional provisions matters. So we may further ask whether more constitutional provisions are “better” in terms of poverty reduction; is there a cumulative effect? We address this question by creating constitutional indices. Second, our sample includes virtually all of the constitutions in the world, which means that we aggregate high, middle, and low income countries. Higher income countries are likely to be different from the others in fundamental ways, including having comparatively few people in \$2/day poverty. While the income poverty measure does focus on developing countries, by excluding OECD countries we further eliminate fourteen higher income countries from our initial OLS regressions.

To address the cumulative effect issue, we construct two different constitutional provisions indices. The first is an enforceable law index using the principal components approach, one advantage of which is that researchers are not required to assign weights to each component. The second is an additive index, which is constructed by simply adding all the enforceable laws for each country with (benign) weights of 1 attached to each. We report the IV results for the enforceable law additive index in Table 6. We again find a statistically significant negative association between the enforceable law additive index and both kinds of poverty in all columns, including those with all controls (Columns 3 and 6). The first stage is slightly weaker though, with  $F$ -statistics = 5.24 in the specifications with all controls. Nevertheless

we take these results as evidence of a cumulative effect of including additional ES rights in constitutions.

Table 7 provides the results for the PCA index. The index coefficients are negative and statistically significant for each poverty variable for each estimate not including the geographic controls. When those controls are added, in Columns 3 and 6, the negative coefficients lose their significance. Notably, however, the PCA index coefficient in Column 6 just misses the 10% significance level by a small fraction. The first stage F-statistics for columns 3 and 6 are fairly small though ( $=3.47$ ). While certainly not damning, these results do caution against reading too much into the additive index results above. These results also suggest the need for further research into how to best capture the effects of additional constitutional provisions. We included two reasonable index constructions, but future efforts could explore other options including non-benign weighting procedures.

The second issue concerns including higher income countries in our sample. To address that issue we re-run our regressions with just non-OECD countries (using the enforceable law dummy) and present the IV results in Table 8. The results are quite similar to those in Table 6, including coefficient sizes. One difference is that in the non-OECD sample the coefficient on the log of census population variable is not only positive, but now it is also significant in the income poverty regression. For non-OECD countries size matters for headcount, but not health outcome, poverty. Also notable is the lack of significance of the GDP per capita coefficient in the DALY regression, which suggests that average income has a limited effect on health outcomes for this sample (consistent with Sen 1999).

## 7 Conclusion

In initial discussions about this research, we often heard comments suggesting that “many (most) constitutions are not worth paper they are written on”. We were particularly surprised to hear these sentiments from seasoned human rights scholars. The results in this paper

suggest that the issue is much more subtle. ES rights as either (a) general constitutional provisions, or (b) framed as directive principles, have no statistically significant effect on poverty reduction, at least when all controls are included. In fact, it is perhaps troubling to find statistically significant positive associations between directive principles and poverty in both OLS and IV regressions when the geography controls are excluded. In contrast, when ES rights are framed as enforceable law we get the opposite result: now constitutional provisions are negatively associated with poverty. The link is causal if the exclusion restrictions in our IV regressions are met, as we have tried to argue they (uniquely) are in our study. The general policy conclusion, therefore, is that those who are interested in headcount poverty reduction should not waste time and energy on amending constitutions with directive principles, but should instead focus solely on enforceable law provisions.

Anecdotal evidence supports this claim. For instance, the switch from the right to education in India from a directive principle to enforceable law resulted in better educational outcomes. The Constitutional Mandate in 1950 made education a directive principle of state policy. It states “The State shall endeavor to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education to all children until they complete the age of 14 years”. Article 21A was inserted in the Constitution in 2002 to change this to a Fundamental Right (enforceable law). This constitutional change led to the 2009 statutory act entitled: The Right of Children to Free and Compulsory Education (RTE). The act means that every child has a right to full time elementary education of satisfactory and equitable quality in a formal school that satisfies certain essential norms and standards. ASER (2014) reveals improved outcomes. For instance KPMG in its 2016 report mentions that with the RTE act the percentage of girls enrolled increased from 48% in FY 2009-10 to 49% in FY 2013-14 and an increase in the gender parity index from 0.93 (FY 2009-10) to 0.95 (FY 2013-14). The Net Enrollment Ratio in primary education increased from 84.5% in FY 2004-06 to 88.08% in FY 2013-14. On quality indicators, most of the states have adopted the curriculum mandate under the RTE Act. Also, there have been



significant improvements in the schools social infrastructure indicators, with the percentage of schools that are equipped with toilets for girl students increasing from 59% (FY2009-10) to 85% (FY2013-14). There has been an increase in the number of teachers working in government and aided schools along with a drop in the number of schools that do not fulfill the Pupil Teacher Ratio (PTR) as mandated by the act. Mobar (2015) discusses the impact of RTE act on girl child education and suggests that the act has been able to resolve some bottlenecks such as providing Special Residential and Non Residential Education Centers for Out of School Children and migrant children, providing toilet facility for girls and differently abled, and increasing the availability and use of computers.

Even still, there are of course several caveats to the main result of this paper. First, in cross-country studies we must be careful in drawing strong general conclusions about particular countries. The Indian education case fits the general conclusion, but based on our analysis, South Africa's innovative constitutional provisions with governmental duties to provide access to health care and housing does not meet our criteria of enforceable law language (of individual rights). However, we would certainly not counsel scrapping those provisions based on the results of this study. Each country will need to consider its own circumstances and history when making such decisions. Perhaps constitutional provisions framed as directive principles are sometimes an initial gateway toward enforceable law. Second, we do not consider the costs of implementation. Amending constitutions to include ESR's as enforceable law is likely to be very costly in most cases, if only because of political opposition. Relatedly, to the extent that enforceable law provisions are successful, we cannot say to what extent they crowd out similar initiatives in the private sector (consider the housing sector, for instance). This study just does not allow us to say whether it may be cheaper to grow out of headcount poverty with pro-poor growth policies.

In conclusion, while we can learn a lot about poverty reduction from micro studies using methodologies like randomized control trials, it is also important to focus on policymaker incentives to assure the implementation of those lessons learned. This study sheds light on

how constitutional provisions when framed as enforceable law can provide those incentives.

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**TABLE 1**  
Descriptive Statistics

	Observations	Mean	Standard Deviation	Minimum	Maximum
<i>Dependent Variables</i>					
Two Dollar a Day (% population)	119	34.92	29.70	0.05	95.15
Disability Adjusted Life Year	187	24484.24	14572.53	8013.30	82801.34
<i>Independent Variables</i>					
Constitutional Rights Dummy	119	0.90	0.30	0.00	1.00
Directive Principle Dummy	119	0.60	0.49	0.00	1.00
Directive Principle Index	119	0.52	2.17	-3.01	4.09
Directive Principle Additive Index	119	6.10	3.58	0.00	12.00
Enforceable Law Dummy	119	0.30	0.46	0.00	1.00
Enforceable Law Index	119	0.23	2.53	-0.85	10.64
Enforceable Law Additive Index	119	0.96	2.00	0.00	10.00
<i>Control Variables</i>					
Log of Census Population	118	15.94	1.78	11.42	21.02
Rule of Law	119	-0.46	0.64	-1.63	1.37
Domestic Credit	112	48.60	35.63	-19.10	187.20
Latitude	113	0.25	0.18	0.00	0.67
Africa Dummy	113	0.38	0.49	0.00	1.00
Asia Dummy	113	0.23	0.42	0.00	1.00
Log of GDP Per Capita	117	8.24	1.01	5.65	10.03
<i>Instrumental Variable</i>					
Legal Origin United Kingdom	119	0.28	0.45	0.00	1.00

**TABLE 2**  
Association between Constitutional Right and Measures of Poverty

Dependent Variable:	Two Dollar a Day			DALY		
	(1)	(2)	(3)	(4)	(5)	(6)
Constitutional Rights Dummy	4.797 (7.885)	-6.177 (7.478)	0.936 (4.618)	2,458.399 (2,840.071)	-3,203.439 (2,363.535)	-3,706.649 (3,935.376)
Log of Census Population		1.131 (1.486)	1.286 (0.928)		369.988 (365.874)	155.936 (544.793)
Rule of Law		-15.486*** (3.606)	4.804* (2.527)		-7,660.799*** (1,175.810)	-817.864 (1,780.875)
Domestic Credit		-0.256*** (0.080)	-0.093** (0.046)		-42.761** (18.695)	-57.049 (42.283)
Latitude			-22.273*** (7.719)			-2,909.384 (4,080.139)
Africa Dummy			14,564*** (5.052)			14,644.054*** (3,749.716)
Asia Dummy			4.538 (3.580)			1,502.600 (1,952.775)
Log of GDP Per Capita			-20.674*** (2.419)			-4,837.711*** (1,621.105)
Constant	30.608*** (7.323)	27.298 (22.660)	190.150*** (22.001)	22,525.405*** (2,590.861)	23,653.227*** (4,819.882)	67,235.874*** (15,601.716)
Observations	119	111	103	187	163	103
R-squared	0.002	0.280	0.847	0.005	0.403	0.700

Notes: Asterisks denote significance levels (\*=.10, \*\*=.05, \*\*\*=.01)

**TABLE 3**  
Association between Directive Principles and Measures of Poverty

Dependent Variable:	Two Dollar a Day			DALY		
	(1)	(2)	(3)	(4)	(5)	(6)
Directive Principles Dummy	15.997*** (5.180)	15.406*** (4.634)	2.427 (2.798)	5,682.116*** (2,079.566)	4,163.518** (1,798.621)	-1,137.887 (2,062.605)
Log of Census Population		0.532 (1.577)	1.288 (0.902)		58.342 (350.176)	79.042 (535.968)
Rule of Law		-15.114*** (3.592)	4.423* (2.551)		-6,585.102*** (1,181.650)	-383.616 (1,868.643)
Domestic Credit		-0.243*** (0.081)	-0.096** (0.047)		-49.614*** (18.646)	-55.685 (41.493)
Latitude			-22.322*** (7.566)			-3,542.806 (4,005.664)
Africa Dummy			13.447*** (5.030)			15,711.160*** (3,792.319)
Asia Dummy			3.511 (3.597)			2,220.983 (2,225.704)
Log of GDP Per Capita			-20.492*** (2.389)			-4,711.595*** (1,621.029)
Constant	25.376*** (3.669)	21.822 (22.886)	188.695*** (21.347)	21,506.443*** (1,363.710)	24,292.534*** (5,017.465)	64,448.904*** (15,210.741)
Observations	119	111	103	187	163	103
R-squared	0.070	0.340	0.848	0.038	0.416	0.697

Notes: Asterisks denote significance levels (\*=.10, \*\*=.05, \*\*\*=.01)

**TABLE 4**  
Association between Enforceable Laws and Measures of Poverty

Dependent Variable:	Two Dollar a Day			DALY		
	(1)	(2)	(3)	(4)	(5)	(6)
Enforceable Laws Dummy	-16.185*** (5.358)	-19.787*** (4.526)	-2.584 (2.919)	-5,138.402*** (1,935.611)	-6,999.316*** (1,685.365)	-338.089 (1,770.339)
Log of Census Population		0.906 (1.503)	1.347 (0.902)		319.920 (350.452)	74.771 (534.258)
Rule of Law		-16.782*** (3.387)	4.201 (2.556)		-7,334.006*** (1,133.674)	-596.811 (1,846.205)
Domestic Credit		-0.249*** (0.075)	-0.096** (0.047)		-49.538*** (18.547)	-57.503 (41.967)
Latitude			-21.818*** (7.499)			-3,619.315 (3,967.616)
Africa Dummy			12.955** (5.333)			15,069.662*** (3,749.936)
Asia Dummy			3.261 (3.744)			1,612.865 (2,316.946)
Log of GDP Per Capita			-20.643*** (2.358)			-4,586.134*** (1,593.146)
Constant	39.817*** (3.329)	30.650 (21.563)	191.279*** (21.058)	25,885.618*** (1,355.170)	24,285.945*** (5,087.086)	63,318.557*** (15,127.406)
Observations	119	111	103	187	163	103
R-squared	0.063	0.370	0.848	0.025	0.444	0.696

Notes: Asterisks denote significance levels (\*=.10, \*\*=.05, \*\*\*=.01)

**TABLE 5**  
Impact of Directive Principle on Measures of Poverty

<i>First Stage</i>	Exogenous Variable: Legal Origin UK					
	(1)	(2)	(3)	(4)	(5)	(6)
Legal Origin UK	-0.419*** (0.054)	-0.449*** (0.060)	-0.300*** (0.074)	-0.377*** (0.047)	-0.381*** (0.056)	-0.300*** (0.074)
F-Statistics [ <i>Prob &gt; F</i> ]	60.88 0.000	55.99 0.000	16.55 0.000	63.66 0.000	46.45 0.000	16.55 0.000
<b>Dependent variable:</b>	<b>Two Dollar a Day</b>			<b>DALY</b>		
<i>Second Stage</i>	Instrument Variable Estimates					
Enforceable Laws Dummy	-45.589*** (13.926)	-58.100*** (11.476)	-25.354** (11.821)	-12,021.920* (6,393.372)	-18,291.609*** (5,337.594)	-23,942.715*** (8,940.776)
Log of Census Population		0.772 (1.782)	1.689 (1.037)		508.900 (441.656)	429.904 (860.594)
Rule of Law		-20.276*** (5.335)	-0.463 (3.398)		-7,639.705*** (1,297.017)	-5,431.571* (3,234.002)
Domestic Credit		-0.241*** (0.082)	-0.124** (0.057)		-57.554*** (20.014)	-86.377 (54.251)
Latitude			-19.471** (9.263)			-1,186.425 (7,730.087)
Africa Dummy			0.142 (9.245)			1,786.933 (6,211.840)
Asia Dummy			-7.391 (6.885)			-9,430.396* (5,476.213)
Log of GDP Per Capita			-19.843*** (2.553)			-3,756.468* (1,937.370)
Constant	48.712*** (4.577)	42.907 (26.211)	192.477*** (25.212)	27,752.125*** (2,141.727)	24,984.438*** (6,441.924)	64,560.755*** (20,402.098)
Observations	119	111	103	184	162	103

Notes: Asterisks denote significance levels (\*=.10, \*\*=.05, \*\*\*=.01)

**TABLE 6**  
Impact of Enforceable Laws Additive Index on Measures of Poverty

<i>First Stage</i>						
	Exogenous Variable: Legal Origin UK					
	(1)	(2)	(3)	(4)	(5)	(6)
Legal Origin UK	-1.326*** (0.243)	-1.386*** (0.255)	-0.724** (0.316)	-1.132*** (0.199)	-1.158*** (0.230)	-0.724** (0.316)
F-Statistics [ <i>Prob &gt; F</i> ]	29.79 0.000	29.6 0.000	5.24 0.024	32.51 0.00	25.29 0.00	5.24 0.024
<b>Dependent variable:</b>	<b>Two Dollar a Day</b>			<b>DALY</b>		
<i>Second Stage</i>						
	Instrument Variable Estimates					
Enforceable Laws Additive Index	-14.396*** (4.685)	-18.835*** (4.120)	-10.515* (5.732)	-4,007.307* (2,195.537)	-6,020.671*** (1,937.623)	-9,929.511* (5,193.603)
Log of Census Population		1.323 (1.941)	1.948 (1.347)		551.962 (492.905)	674.158 (1,239.945)
Rule of Law		-25.983*** (7.001)	-7.872 (8.592)		-8,116.633*** (1,766.494)	-12,428.468 (8,268.167)
Domestic Credit		-0.261*** (0.089)	-0.177** (0.080)		-57.930*** (21.819)	-137.006* (79.181)
Latitude			-19.159 (17.578)			-891.400 (16,961.103)
Africa Dummy			-3.841 (11.456)			-1,974.516 (9,534.239)
Asia Dummy			-7.281 (9.497)			-9,325.888 (9,160.132)
Log of GDP Per Capita			-16.039*** (4.437)			-164.075 (4,308.809)
Constant	48.712*** (4.577)	33.362 (28.442)	160.522*** (40.614)	27,752.125*** (2,141.880)	24,436.593*** (7,039.804)	34,383.264 (38,365.873)
Observations	119	111	103	184	162	103

Notes: Asterisks denote significance levels (\*=.10, \*\*=.05, \*\*\*=.01)

**TABLE 7**  
Impact of Enforceable Laws PCA Index on Measures of Poverty

<i>First Stage</i>	Exogenous Variable: Legal Origin UK					
	(1)	(2)	(3)	(4)	(5)	(6)
Legal Origin UK	-1.495*** (0.311)	-1.578*** (0.333)	-0.750** (0.402)	-1.230*** (0.254)	-1.271*** (0.299)	-0.750** (0.402)
F-Statistics [ <i>Prob &gt; F</i> ]	23.08 0.000	22.41 0.000	3.47 0.065	23.35 0.00	18.10 0.00	3.47 0.066
<b>Dependent variable:</b>	<b>Two Dollar a Day</b>			<b>DALY</b>		
<i>Second Stage</i>	Instrument Variable Estimates					
Enforceable Laws PCA Index	-12.768*** (4.299)	-16.540*** (3.964)	-10.147 (6.266)	-3,688.348* (2,056.219)	-5,489.462*** (1,872.559)	-9,582.496 (5,835.394)
Log of Census Population		0.967 (2.128)	1.614 (1.587)		549.020 (529.538)	358.697 (1,484.114)
Rule of Law		-27.047*** (7.814)	-10.462 (11.709)		-8,167.624*** (2,004.162)	-14,874.418 (11,262.313)
Domestic Credit		-0.250*** (0.095)	-0.188** (0.094)		-59.935** (23.452)	-146.786 (91.899)
Latitude			-18.575 (22.374)			-339.712 (21,695.115)
Africa Dummy			-6.227 (13.615)			-4,227.502 (11,964.758)
Asia Dummy			-7.070 (11.152)			-9,127.545 (10,924.904)
Log of GDP Per Capita			-14.800*** (5.578)			1,005.792 (5,412.252)
Constant	37.875*** (3.236)	23.915 (31.473)	148.222*** (54.041)	24,679.281*** (1,199.377)	20,075.175*** (7,786.452)	22,767.800 (51,385.092)
Observations	119	111	103	184	162	103

Notes: Asterisks denote significance levels (\*=.10, \*\*=.05, \*\*\*=.01)



**TABLE 8**  
Impact of Enforceable Laws on Measures of Poverty (Non-OECD Countries)

<i>First Stage</i>	Exogenous Variable: Legal Origin UK					
	(1)	(2)	(3)	(4)	(5)	(6)
Legal Origin UK	-0.442*** (0.057)	-0.459*** (0.066)	-0.296*** (0.072)	-0.403*** (0.054)	-0.374*** (0.065)	-0.296*** (0.072)
F-Statistics [ <i>Prob &gt; F</i> ]	59.78 0.000	48.05 0.000	16.94 0.000	55.4 0.000	32.96 0.000	16.94 0.000
<b>Dependent variable:</b>	<b>Two Dollar a Day</b>			<b>DALY</b>		
<i>Second Stage</i>	Instrument Variable Estimates					
Enforceable Laws Dummy	-35.802*** (12.948)	-57.618*** (11.468)	-28.139** (11.950)	-8,416.205 (6,308.648)	-24,565.852*** (6,666.026)	-25,267.944*** (9,177.089)
Log of Census Population		1.648 (1.787)	2.337** (1.119)		799.775 (614.414)	1,003.204 (913.210)
Rule of Law		-20.625*** (6.112)	-2.210 (3.940)		-9,872.177*** (2,036.004)	-5,736.669 (3,532.122)
Domestic Credit		-0.258*** (0.083)	-0.143** (0.062)		-86.349*** (31.869)	-103.623* (57.736)
Latitude			-18.795* (10.576)			1,273.397 (8,291.965)
Africa Dummy			-1.812 (9.539)			413.378 (6,531.768)
Asia Dummy			-9.490 (7.503)			-11,357.439* (5,967.776)
Log of GDP Per Capita			-19.302*** (2.675)			-3,374.158 (2,055.830)
Constant	48.712*** (4.577)	30.004 (26.074)	179.699*** (26.364)	29,848.704*** (2,244.172)	22,674.354*** (8,751.643)	54,042.903** (21,966.633)
Observations	110	103	95	150	131	95

Notes: Asterisks denote significance levels (\*=.10, \*\*=.05, \*\*\*=.01)

## A Appendices

### A.1 List of Countries

Albania, Algeria, Angola, Argentina, Armenia, Azerbaijan, Bangladesh, Belarus, Belize, Benin, Bhutan, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chile, China, Colombia, Comoros, Dem. Rep. Congo, Rep. Congo, Costa Rica, Cote d'Ivoire, Croatia, Czech Republic, Djibouti, Dominican Republic, Arab Rep. Egypt, El Salvador, Estonia, Ethiopia, Fiji, Gabon, Gambia, The, Georgia, Ghana, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, India, Indonesia, Islamic Rep. Iran, Iraq, Jamaica, Jordan, Kazakhstan, Kenya, Kyrgyz Republic, Lao PDR, Latvia, Lesotho, Liberia, Lithuania, FYR Macedonia, Madagascar, Malawi, Malaysia, Maldives, Mali, Mexico, Fed. Sts. Micronesia, Moldova, Morocco, Mozambique, Namibia, Nepal, Nicaragua, Niger, Nigeria, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Romania, Russian Federation, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Slovak Republic, Slovenia, South Africa, Sri Lanka, St. Lucia, Sudan, Suriname, Swaziland, Syrian Arab Republic, Tajikistan, Tanzania, Thailand, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, Uruguay, RB of Venezuela, Vietnam, Republic of Yemen, Zambia

### A.2 Data Appendix

#### A.2.1 Constitutional Rights Variable Construction

The starting point for the data on ES constitutional provisions comes from accessing individual constitutions for 201 countries from Constitution Finder, a public access web service provided by Richmond University Law School since 2006.<sup>29</sup> Often several constitutions

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<sup>29</sup><http://confinder.richmond.edu>

were available for any given country, and most are translated into English. We coded each as outlined below, with the help of translation services when necessary.

To identify the appropriate ES rights to include, we used articles 23-26 of the UDHR as our compass. Those articles, and our data, include rights to (a) work (employment) at “favourable remuneration”; (b) an adequate standard of living, comprised of (i) food, (ii) housing, (iii) medical care, (iv) necessary social services (e.g., for motherhood and childcare), and (v) social security in the event of unemployment, disability, sickness, widowhood, or old age; and (c) a free, compulsory, primary education.

Perhaps the most challenging issue was to code the strength of provisions. A provision may include language about the desirability of an adequate standard of living, say, but by itself that does not mean that it becomes legally binding on the state. While provisions best interpreted as aspirational goals may impose “soft constraints” on policy makers if ignoring them imposes costs like diminished reelection chances, clearly provisions with stronger language that courts and the legal system will enforce are more likely to be taken seriously. Because policy makers prefer laws that constrain them less (declarations pre-election to the contrary) and will devote resources to interpret language ambiguities in that direction, we only code a provision as “enforceable law” (EL) if the language is clear and strong. To be interpreted as EL the provision had to expressly say that the entitlement gave citizens the right to legal action if left unfulfilled, was legally binding on the state, or was explicitly guaranteed under the constitution. In contrast, the provision was coded more weakly as a “directive principle” (DP) if the right was merely acknowledged with no further mention of enforceability, described as a desirable policy goal, explicitly denied citizens to legal recourse, or was qualified in any meaningful way.

In order to minimize mistakes in coding from language ambiguities, the entire data set was coded independently by two different researchers. All told, out of 3552 provisions there were 623 initial disagreements for a disagreement rate of 17.5%. Those disagreements were resolved first through discussion. In the cases of continued disagreement, the judgment of the

researcher who is not a coauthor was followed. In total we were able to code the constitutions of 196 countries. As an example of how the right to health care was coded, consider the cases of Albania and Chile. The relevant article for Albania is:

Article 55

1. *Citizens enjoy in an equal manner the right to health care from the state.*
2. *Everyone has the right to health insurance pursuant to the procedure provided by law.*

“The first part of the article refers to the non-discriminatory aspect of the right. The second part indicates that the law will determine its application, meaning that the nature of health insurance will be determined by political processes. The constitution itself assures that whatever results from the political process has to be applied equally. Presumably courts will assure this, but otherwise no duties have been prescribed. Accordingly, we code this provision as a directive principle.”

In contrast, consider the relevant article in Chile’s constitution.

Article 19 - The Right to Protection of Health.

9. *The State protects the free and egalitarian access to actions for the promotion, protection and recovery of the health and rehabilitation of the individual. The coordination and control of activities related to health shall likewise rest with the State. It is the prime duty of the State to guarantee health assistance, whether undertaken by public or private institutions, in accordance with the form and conditions set forth in the law which may establish compulsory health quotations. Each person shall have the right to choose, the health system he wishes to join, either State or private controlled.*

This constitution too assures the non-discriminatory application of the right. But whereas the article mentions “conditions set forth in the law,” it also says that the state has the duty to guarantee health assistance. That strong language should give citizens recourse to courts directly no matter any decisions made in the political processes. Accordingly, we code this provision as enforceable law.

Constitutions change in two principal ways. First, as already mentioned, they can be re-

placed with new ones. Second, they can be amended. To account for ES rights amendments, we employed World Constitutions Illustrated, a database launched in 2010 by legal resource publisher William S. Hein & Co. In total, there were 22 countries with potentially relevant ES rights amendments.

### **A.3 The Coding Process followed the rules in the following Coding Manual**

#### **A.3.1 Coding of Economic and Social Rights Articles**

- “No” indicates there was no mention of the specific economic or social right/entitlement in question
- “Yes, DP” indicates that the specific economic or social right/entitlement in question is written as expressing an ideal, aspiration, or guiding principle of the State
- “Yes, EL” indicates that the specific right/entitlement in question referred to is written as binding upon the State and is justiciable
  - In the category of Primary Education alone, two additional components of the right/entitlement were considered: Is primary education compulsory and/or provided free of charge?
    - \* “Comp.” indicates primary education is compulsory
    - \* “Free” indicates primary education is to be provided free of charge

#### **A.3.2 Distinguishing between Directive Principle [DP] and Enforceable Law [EL]**

- Right/entitlement was considered to be Enforceable Law [EL] in cases where:
  - Any direct or explicit wording was present regarding citizens’ right to take legal action should the State fail to fulfill the right/entitlement in question

- A right/entitlement was referred to as legally binding upon the State
- A right/entitlement was explicitly written as “guaranteed” under the constitution
- Right/entitlement was considered to be Directive Principle [DP] in cases where:
  - The existence of the right/entitlement in question was acknowledged with no further statement regarding its enforceability
  - A right/entitlement was explicitly referred to as a principle the State shall endeavor to fulfill
  - An explicit statement was included denying citizens the right to take legal action should the State fail to fulfill any social or economic rights/entitlements enshrined in the constitution

Note: General or overarching statements regarding the existence of social and/or economic rights were not taken as an indication of the existence of specific social and/or economic rights, as either EL or DP. Furthermore, regardless of whether references to the specific rights/entitlements were dispersed throughout the constitution or to be found in a discrete chapter on social and economic rights, items were coded as either “Yes, DP” or “Yes, EL” only if the specific right/entitlement in question was explicitly mentioned.

### A.3.3 Categories of Rights and Entitlements

- ASL (Adequate Standard of Living)- Mention of the right to a standard of living adequate for the health and well-being of citizens
- Food/Nutrition - Mention of a right to minimal/adequate food/nutrition
- Health/Medical Care - Mention of right to (at least basic) healthcare service
- Housing - Mention of the right to adequate housing

- Primary Education (If yes, is it free? compulsory?) - Mention of the right to (at least) primary education. Also, is such a right to be provided free of charge and is the citizen obliged to receive such education? In cases where free and compulsory secondary education is mentioned, but the free and compulsory nature of primary education is not explicitly stated, it can be inferred that the right to free and compulsory primary education also exists, whether as EL or DP
- Social Services (motherhood, childcare, youth) - Mention of any special protections/rights with regard to pregnant women, mothers, infants, and youth
- Employment - Mention of right to work and free choice employment
- Public Employment - Mention of right to State provided employment
- Remuneration - Mention of right to a minimum or living wage
- Social Security Unemployment\* - Mention of right to social security benefits or insurance in case of unemployment
- Social Security Disability\* - Mention of right to social security benefits or insurance in case of disability
- Social Security Sickness\* - Mention of right to social security benefits or insurance in case of sickness/illness/incapacity
- Social Security Widowhood\* - Mention of right to social security benefits or insurance in case of widowhood/loss of household provider
- Social Security Old Age\* - Mention of right to social security benefits or insurance in old age

Note: The right to social security was also coded as “Yes” (either DP or EL) in all these cases if a comprehensive statement regarding the existence of the right to social security was present

#### A.3.4 Coding of Relevant Amendments to Economic and Social Rights Articles

- “No” indicates that no relevant Amendments were made to the original text of the constitution. Thus, any Articles that refer to the previously coded economic and social rights (Adequate Standard of Living, Progressively Realizable Goals, Food/Nutrition, Health/Medical Care, Housing, Primary Education, Social Services, Employment, Public Employment, Remuneration, Child Labor Ban, and Social Security) were included in the original writing of the constitution
- “Yes” indicates one or more of the following changes was made to the original text of a constitution:
  - One or more of the Articles that refer to the previously coded economic and social rights was revised in such a manner as to modify the Article’s meaning
  - One or more of the Articles that refer to the previously coded economic and social rights was removed from the original text or a previously amended version of the constitution
  - One or more of the Articles that refer to the previously coded economic and social rights was added to the original text or a previously amended version of the constitution
- If a relevant amendment(s) is indicated, the specific Article(s) amended, the date(s) of the amendment(s), and the content of the amendment(s) are noted for each constitution

#### A.3.5 Process of Coding using World Constitutions Illustrated Data on the HeinOnline Database

- World Constitutions Illustrated lists the original text, amending documents, and the consolidated texts of each constitution



- All amending documents checked for any references to the previously coded economic and social rights
- Original text of the constitution then compared to consolidated text(s) to further check for any changes to Articles that refer to the previously coded economic and social rights

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