

Social rights in the constitution and in practice

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This paper presents a new data set on constitutional commitments to social rights (CCSR) for 68 countries. Quantitative indices are constructed for five social rights: the right to social security, education, health, housing and workers rights. We find two clear groups classified by legal origins: countries which share the tradition of French civil law generally have a higher CCSR than those that share the tradition of English common law. The CCSR in socialist countries is closer to French civil law, whereas countries with a German or Scandinavian tradition resemble the English common law countries more closely. Then the paper addresses the following question: is the constitution a binding constraint on public policy? We have not found a *robust* effect of CCSR on public policy except for the constitutional right to social security. *Journal of Comparative Economics* 36 (1) (2008) 103–119. The Hebrew University of Jerusalem, Israel 91905; School of Public Policy, The Hebrew University of Jerusalem, Israel 91905; Israel Democracy Institute, Israel.

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1. Introduction

The aim of this paper is to study the relationships between constitutional commitment to social rights and the size of government and redistribution policy, using a collection of constitutions. Using constitutions to compare the performance of different countries has been done in the past, by Aristotle. His goals were far more ambitious than those of this paper. In the last chapter of *Ethics*, which is regarded as an introduction to his subsequent book, *Politics*, Aristotle describes his empirical research agenda:

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¹ Part of the research was conducted while I visited Hoover Institution, Stanford.

“... [O]n the basis of our collection of constitutions,² let us study what sort of thing preserves and what destroys states, what preserves and destroys each particular kind of constitution, and what the causes are that make some states well administered and others not. Once we have studied this, we shall perhaps also gain a more comprehensive view of the best form of constitution, of the way in which each is organized, and what laws and customs are current in each. So let us begin our discussion.” [Aristotle, *Ethics*]

It may come as a surprise, but it is rare to find a study in economic literature that is based on comparing constitutions, as suggested by Aristotle, in order to learn about the differences in economic outcomes between countries. In particular, there is little economic research on the effects of beliefs and values on the size and composition of government expenditures, even though differences in social preferences are natural candidates for explaining the variability of government size and redistribution policy around the world.

Identical preferences may be the most prevalent assumption in economic theory, but it is essentially only a way of understanding economic behavior without being accused in deriving a trivial conclusion, that people behave differently because they are different. Nevertheless, there are many indications that beliefs and values do indeed differ, as can be seen in the World Values Survey.³

A constitution might be seen as a source of information for the most fundamental beliefs and values in some societies. It is about who we are and what we want. That is why people in some countries relate to their constitution as almost a sacred text, and why infringing it is perceived as a grave act.

The inclusion of a right (or duty) may not be done casually, and it is likely to be preceded by extensive deliberations aimed at exploring common beliefs and values although in some countries the constitution is drafted in great haste as in the case of Afghan and Iraqi constitutions. Almost every constitution incorporates some restrictions intended to make it more difficult to introduce changes in it than to pass regular laws. The preservation of the spirit of the people is important enough to justify curtailing democracy by requiring a special majority for making certain constitutional changes.

However, a constitution is not a manual like ordinary law, although beliefs and values are translated into concrete basic human rights such as the right to personal freedom, the right to vote and the right to marriage. Those basic human rights are shared by most countries in the world, and denying one of them is perceived as a severe violation. But we find substantial differences between countries as regards the constitutional commitment to social rights such as the right to live in dignity, and the right to education and health.⁴

Naturally, it is hard to subscribe to social rights with the same level of concreteness as to basic human rights. The policy implications of the right to vote are relatively clear and have negligible monetary effects. By contrast, the constitutional commitment to education can be expressed by a low, moderate or high quality of education without violating the constitution. This might be a significant disadvantage of using the constitution as a source of social preferences. The constitution is of very limited importance if that disadvantage is substantial, however.

In this paper, we test whether the constitutional text has practical meaning with respect to redistribution policy and public goods. Does the constitution reflect the most fundamental social preferences, as some people believe, or a mere “cheap talk.” In particular, to what extent is the constitution a binding constraint for policy makers? The focus of this paper is to examine whether the constitutional text is meaningful in terms of policy action without exploring the mechanism through which it operates (if any). Therefore we ignore interpretations given by courts or any other institution. The constitutional commitment to social rights covers five rights: the right to education, health, housing, live in dignity (henceforth, social security) and the protection of workers’ rights.

This paper constitutes the first attempt to construct a quantitative index that reflects the constitutional commitment to social rights, using the constitutional text only. This paper thus joins a growing literature that translates qualitative

² Aristotle is referring to the collection of 158 constitutions of Greek and non-Greek states which was undertaken under his supervision. The *Constitution of Athens*, discovered on papyrus in 1890 and now in the British Museum, is the only one of these to have come down to us (Aristotle, 1962).

³ Two related papers are those of Alesina et al. (2001), which focuses on beliefs and values from the World Values Survey as the source of the different welfare states in Europe compared to the US, and La Porta et al. (1999), which explores the effect of legal origins and religious beliefs on the quality of government.

⁴ Traditionally, a human right is perceived as a negative right where it imposes a duty not to infringe on a right while a social right is seen as a positive right where it imposes a positive duty on some party to provide income or goods.

information from legal documents or other sources into quantitative variables in order to explore the effects of different institutions (such as political system) on policy outcomes and policy performance.⁵ We use those quantitative measures to address two questions. First, is there a family (or families) of countries sharing a similar constitution with respect to social rights? Second, does the constitutional commitment to social rights, controlling for key variables such as democracy, have any effect on government policy.

This paper is related to the literature on the determinants of government size and its composition. The most recent studies emphasize openness (Rodrik, 1998) as a key feature for the size of government, while Benabou and Ok (2001) stress the low economic mobility of the median voter, and Milesi-Ferretti et al. (2002) compare the composition of government expenditure in proportional and majority elections.⁶ Mulligan et al. (2002) study the effect of Democracy on social security.

In the next section we present the criteria used to translate the constitutional text into quantitative indices reflecting the constitutional commitment to social rights. In Section 3 we examine the similarities among 68 countries with respect to social rights. In particular, we focus on whether there are groups of countries that share a similar constitution. In Section 4 we relate constitutional commitment to social rights (CCSR), as reflected by the constructed indices, to the size and composition of government expenditure, controlling for economic and institutional determinants of government spending. We also use this cross-country data to examine the effects of constitutional commitment to social rights on policy outcomes. Section 5 concludes the paper.

2. Indices of constitutional commitment

In this section we construct constitutional indices for social rights according to the constitutional text and ignoring court interpretations. There is a wide variability in constitutional social rights that range from the US and Australia, where social rights are absent, to Switzerland and Portugal, which have a high constitutional commitment to social rights.

Our paper relates to 64 countries with a written constitution and four which have a legal document with a higher status than regular law. In Canada, New Zealand and Israel there are basic laws which have a similar legal status to a constitution. England does not even have basic laws, but it has a Human Rights Act that has a higher status than regular law.⁷ Our two main sources are the English translation of the constitution in the ICL and Confinder web sites.⁸ Our sample covers countries with a wide range of GDP per capita and different levels of democracy reflecting the availability of data on government expenditures.

A constitutional social right is defined here as one that grants a personal entitlement to monetary transfers (including social insurance) or transfer in kind on a universal basis. That right may affect permanent income and welfare. For example, unemployment benefit is monetary transfer whereas free primary education is transfer in kind. Those social rights provide a social safety net and would seem to have a positive impact on income equality, at least in the short run. In addition we include workers' rights composed of five features describe below.

There are five groups of social rights in a constitution, each of them may contain one or more features. The social rights here are almost overlap with those special commodities that according to Tobin (1970) should be distributed equally up to certain level, a position sometimes called commodities egalitarianism. The five social rights are the following:

1. The right to live in dignity. Later on we use the term the right to social security. That right is composed of seven features: insurance for pension, survivors, disability, unemployment, accident, minimum income and sickness.

⁵ See, for example, Mauro (1995), who relates corruption to economic growth, Barro (1999) on the importance of democracy for economic growth, La Porta et al. (1999) who examine the relationship between the protection of stock owners rights and the concentration of ownership, and Knack and Keefer (1997), who explore the effects of civic norms and trust on economic performance.

⁶ In this paper, the relationship between elections and the size of government is ambiguous and it depends on the social preferences that are the focus of our paper. In Persson and Tabellini (1999), as well as in Lizzeri and Persico (2001), majority elections are associated with less government spending.

⁷ From Section 3 in the English Human Rights Act it can be inferred that ordinary laws are subject to the Human Rights Act. Any law should be examined in the light of the Human Rights Law. In case the suggested law is in contradiction to the Human Rights Act, the law may still be passed, provided the parliament is aware of that.

⁸ International Constitutional Law, see <http://www.uni-wuerzburg.de/law>, <http://confinder.richmond.edu/>.

Table 1

The criteria for ranking the constitutional commitment to social security

	Rank
<i>The right is absent from the constitution</i>	0
<i>A general statement</i>	1
The state “guarantees” or “promotes” social security, or “every person is entitled to social security.”	
<i>Weak commitment</i>	2
“Every person is entitled to a minimum standard of living,” “basic income,” “adequate income” or “to live in dignity.”	
<i>Strong commitment</i>	3
In addition to “Every person is entitled to adequate income,” the constitution specifies the ingredients of what is adequate income in terms of food, housing etc., or a periodical adjustment mechanism such as COLA.	

2. The right to education (primary and secondary education).
3. The right to health.
4. The right to housing.
5. Protection of workers’ rights. This contains five features: minimum wage, the right to maternity leave, a limit on hours of work and rest, paid leave and higher wage rate for extra work (extra hours, night shift and thirteenth salary). Note that pension, accident, and unemployment insurance, that are included in the right to social security, could be treated as workers’ rights as well.

There is considerable variance between countries as regards the degree of constitutional commitment to social rights, ranging from concrete policy action in some countries to a general statement reflecting a vague commitment in others. We rank the degree of constitutional commitment on a scale from 0 to 3. A rank of 0 is given if a right is absent from the constitution (Table 1). Note that the absence of any reference to a social right may be interpreted in two conflicting ways: a law that grants that right may be passed, or it might be seen as unconstitutional. In practice, it depends on the interpretation given by the courts in each country.

A rank of 1 is given if the constitution includes a general statement with regard to a particular social right. In that case it is clear that it is possible to introduce a law concerning that right. A rank of 2 is given if the constitution guarantees a minimal level with respect to that right such as “a minimum standard of living,” or “a life of dignity,” in the case of minimum income (part of the right to social security), and “adequate size” in the case of the right to housing. A rank of 3 is given if the constitution has a high degree of commitment and concreteness. For example, a detailed description of the specifics of a minimum standard of living in terms of food, housing, etc.

We use the one most common constitutional social rights, the right to social security, to illustrate the ranking process. The right to education, health, housing and workers’ rights were ranked in similar fashion. Detailed tables for those rights are provided in the working paper version of this article (Ben-Bassat and Dahan, 2003). Our data set on the constitutional commitment to social rights is presented in Table 2.

2.1. The right to social security

Each of the seven features constituting the right to social security was ranked as shown in Table 1. The overall rank is a simple average across all seven features. If a constitution refers to the right to social security without any further details, we assume that it refers to the three most basic features of social security: pension, disability and survivors. That assumption follows the standard view, as reflected in textbooks in Public Economics.⁹

We use the Spanish constitution as an example of a country that gets a rank of 3 as regards old-age pensions (one of the features of the right to social security). To quote the Spanish constitution: “*To citizens in old age, the public authorities shall guarantee economic sufficiency through adequate and periodically updated pensions.*” The key words that are responsible for its rank are: “economic sufficiency” and “periodically updated.”

The constitution of Finland has six features of social security, as may be seen from the following quote: “*Everyone shall be guaranteed by an Act the right to basic subsistence in the event of unemployment, illness, and disability and*

⁹ “This [OASDI] is usually referred to as social security and is intended to provide a basic standard of living to the aged, the disabled, and their survivors.” (Stiglitz, 2000, p. 353)

Table 2
Indices of constitutional commitment to social rights

	Social security	Education	Health	Housing	Workers' rights	Summary index of social rights
Albania	0.43	3.00	1	1	0.0	1.09
Argentina	0.43	1.67	0	2	0.8	0.98
Australia	0.00	0.00	0	0	0.0	0.00
Austria	0.00	0.00	0	0	0.0	0.00
Bahrain	0.71	2.00	1	0	0.0	0.74
Belgium	0.43	2.00	1	2	0.0	1.09
Bolivia	0.86	2.33	1	0	1.4	1.12
Brazil	3.00	2.67	2	0	3.0	2.13
Bulgaria	0.43	3.00	3	0	0.8	1.45
Cameroon	0.00	1.33	0	0	0.0	0.27
Canada	0.00	0.00	0	0	0.0	0.00
Chile	0.43	2.33	3	0	0.0	1.15
China	0.86	2.33	1	0	0.6	0.96
Colombia	0.43	2.67	3	1	0.4	1.50
Cyprus	0.86	2.00	0	0	0.0	0.57
Czech Republic	0.00	0.00	0	0	0.0	0.00
Denmark	0.14	2.00	0	0	0.0	0.43
Dominican Republic	1.57	3.00	0	2	0.6	1.43
Ecuador	1.29	3.00	3	1	0.0	1.66
Egypt	0.43	3.00	1	0	0.2	0.93
El Salvador	0.43	2.00	1	0	2.8	1.25
Fiji	0.00	0.67	0	0	0.0	0.13
Finland	2.14	2.33	1	1	0.0	1.30
France	0.43	2.33	1	0	0.0	0.75
Germany	0.00	0.00	0	0	0.0	0.00
Greece	0.00	3.00	0	0	0.0	0.60
Hungary	1.43	2.33	2	0	0.6	1.27
Iceland	0.14	0.00	0	0	0.0	0.03
India	0.57	2.00	0	0	0.4	0.59
Indonesia	1.00	0.67	0	0	0.0	0.33
Iran	0.71	2.33	1	1	0.2	1.05
Ireland	0.43	2.00	0	0	0.0	0.49
Israel	0.00	0.00	0	0	0.0	0.00
Italy	1.71	2.33	1	0	0.8	1.17
Japan	0.14	2.00	0	0	0.4	0.51
Jordan	0.00	2.00	0	0	0.6	0.52
Kenya	0.00	0.00	0	0	0.0	0.00
Malta	0.86	2.33	0	0	0.8	0.80
Mexico	0.86	3.00	1	3	2.0	1.97
Nepal	0.43	1.33	0	0	0.0	0.35
Netherlands	0.14	1.33	0	2	0.0	0.70
New Zealand	0.00	0.00	0	0	0.0	0.00
Nicaragua	1.86	3.00	2	3	1.4	2.25
Norway	0.00	0.00	0	0	0.0	0.00
Panama	1.14	3.00	1	1	2.4	1.71
Paraguay	0.43	2.33	1	3	1.8	1.71
Philippines	0.00	3.00	1	0	0.4	0.88
Poland	0.57	3.00	3	2	1.0	1.91
Portugal	2.00	2.67	3	3	1.6	2.45
Romania	0.29	1.00	1	0	1.8	0.82
Sierra Leone	0.29	3.00	0	0	0.0	0.66
Singapore	0.00	0.00	0	0	0.0	0.00
South Africa	0.86	1.00	1	2	0.0	0.97
South Korea	0.43	2.33	1	3	0.2	1.39
Spain	1.00	2.00	1	3	0.6	1.52
Sri Lanka	0.00	0.00	0	0	0.0	0.00
Sweden	0.43	0.67	0	1	0.0	0.42

(continued on next page)

Table 2 (continued)

	Social security	Education	Health	Housing	Workers' rights	Summary index of social rights
Switzerland	2.14	1.67	1	0	0.0	0.96
Syria	0.57	3.00	1	0	0.6	1.03
Taiwan	0.43	2.33	0	0	0.0	0.55
Thailand	0.00	1.33	1	0	0.0	0.47
Trinidad	0.00	0.00	0	0	0.0	0.00
Tunisia	0.43	0.00	0	0	0.0	0.09
Turkey	0.29	2.00	1	1	0.8	1.02
United Kingdom	0.00	0.00	0	0	0.0	0.00
United States	0.00	0.00	0	0	0.0	0.00
Uruguay	1.71	3.00	0	3	0.2	1.58
Zambia	0.00	0.00	0	0	0.0	0.00

during old age as well as the birth of a child or the loss of a provider. But it does not mention any further details such as periodical adjustment. Because of its weak commitment it gets a rank of 2.

Taiwan's constitution contains a general statement concerning the two features of the right to social security, each of them earns a rank of 1, as is indicated by the following quote: *The state shall establish a system of social insurance to promote social welfare to the aged and the physically disabled.*

3. Is there a typical constitution?

In this section we explore whether there is a typical constitution with respect to social rights, based on the most updated constitutions or basic laws in 68 countries. Constitutions around the world share some common features because of outside influences due to imitation and imperialism.

Chart 1 presents the distribution of the summary index of constitutional commitment to social rights. In most countries the constitutional commitment to social rights is relatively low or even absent. The rank of constitutional commitment in 41% of the countries in the sample is between 0 and 1. The constitutional right to education appears most frequently, occurring in 51 countries (Table 3). The degree of constitutional commitment regarding the right to education is relatively high, especially with respect to elementary education.

The constitutional right to social security may be regarded as the core of the modern welfare state. Its ranking is affected by the number of features comprising it and the degree of commitment to each feature. The right to social security appears in the constitution of 47 countries with different levels of commitment. In half the countries, the rank value is less than 1 and the average is 0.57, reflecting a low level of constitutional commitment to the right to social security. We found a high level of constitutional commitment in four countries: Brazil, Finland, Portugal and Switzerland.

Compared to the right to education, all the other rights—to health, housing and workers' rights—are both less common and have a relatively low level of constitutional commitment. The right to health as well as the right to housing and workers' rights appears in less than half the countries, and the rank is substantially less than 1.

3.1. Social rights and legal origins

In the search for similarities between countries we followed a series of studies showing the importance of legal origins for economic performance (La Porta et al., 1997, 1998, 1999 and Glaeser et al., 2002). All the countries in our sample were classified by legal origins, in accordance with the groups suggested by Reynolds and Flores (1989). Current law has been influenced by internal trends, as well as by voluntary imitation and foreign invasion (Watson, 1974). The two main legal traditions are English common-law and French civil-law, which derived from Roman law.

The concept underlying the English tradition is to protect citizens from the power of government. It began to develop in the 17th century, with the empowerment of the parliament and aristocracy at the expense of the monarchy, as expressed in greater constraints on the power of the king (Finer, 1997). By contrast, the civil law tradition, especially after the Codification in the 19th century, gives more power to the government to run the life of its citizens (Finer, 1997). There are three groups of countries following the civil law tradition—French, Scandinavian and German. In

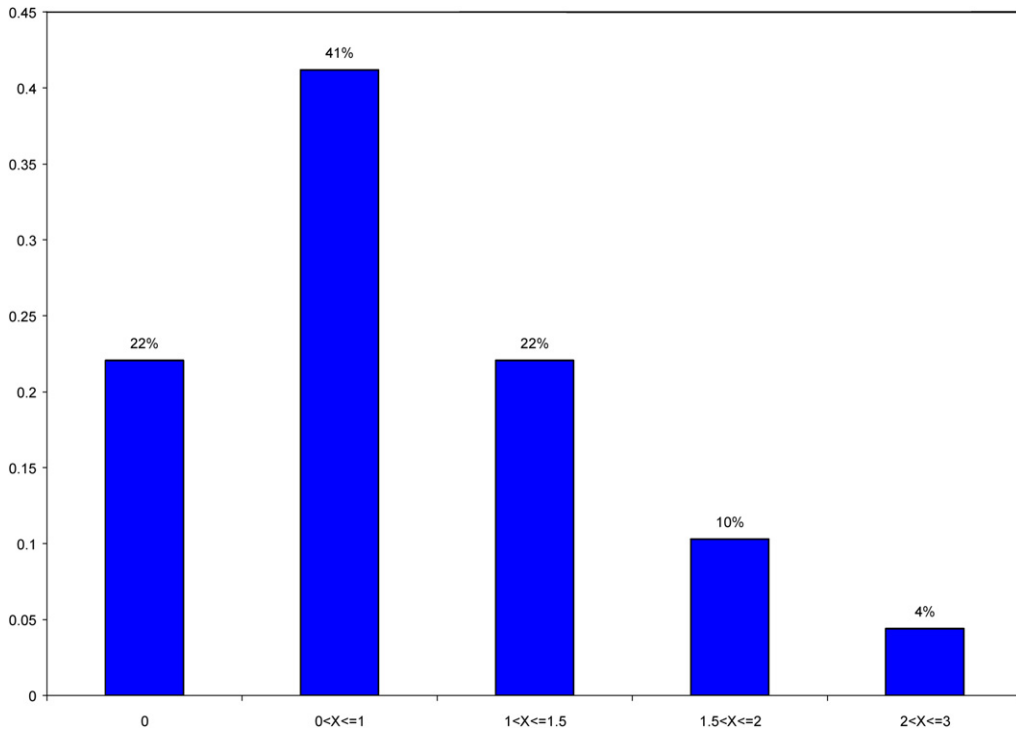


Chart 1. The distribution of the mean index of social rights in the constitution.

Table 3

A summary statistics: indices of constitutional commitment to social rights

The social right	Average (all countries)	Standard deviation (all countries)	No. of countries that include at least one social right
The right to education	1.66	1.13	51
The right to health	0.69	0.92	32
The right to social security	0.57	0.65	47
The right to housing	0.60	1.02	21
Workers' rights	0.43	0.71	29
Summary index of social rights	0.79	0.65	53

East Europe the legal tradition is relatively new and its roots are in the former Soviet Union, following the socialist pattern, which is far more centralized than civil law.

Each country in our sample is classified into one of the five groups according to its legal tradition, English common law, French civil law, German, Scandinavian and Socialist. In Table 4 we test the hypothesis that the constitutional commitment to social rights is related to legal origins, controlling for level of development and propensity to democracy.

All equations are estimated with OLS, where each social right serves as a dependent variable at one time. We find that countries that are classified as French civil law have a much higher constitutional commitment to social rights than common law countries (the omitted variable). The summary index of constitutional social rights is 0.96 higher in French civil law countries than in common law countries, after controlling for GDP per capita and democracy. This is highly significant. Note that the standard deviation of the summary index is 0.65.

Table 4
Legal origins and constitutional social rights

	(1) The right to social security	(2) The right to education	(3) The right to health	(4) The right to housing	(5) Workers' rights	(6) An index of social rights
Constant	0.608 (0.656)	3.346 ^b (2.519)	1.082 (0.916)	-0.092 (0.064)	1.103 (1.181)	1.208 (1.615)
Log GDP per capita	-0.168 (0.612)	-0.771 ^c (1.956)	-0.357 (1.019)	-0.045 (0.105)	-0.360 (1.300)	-0.34 (1.531)
Democracy	0.344 (1.063)	0.516 (1.112)	0.614 (1.488)	0.519 (1.035)	0.416 (1.275)	0.481 ^c (1.842)
French	0.624 ^a (3.414)	1.555 ^a (5.93)	0.878 ^a (3.767)	0.964 ^a (3.405)	0.776 ^a (4.207)	0.960 ^a (6.499)
Socialist	0.349 (1.258)	1.268 ^a (3.183)	1.389 ^a (3.919)	0.318 (0.740)	0.636 ^b (2.268)	0.793 ^a (3.533)
German	0.327 (0.985)	0.68 (1.429)	0.265 (0.625)	0.385 (0.740)	0.169 (0.504)	0.365 (1.365)
Scandinavian	0.348 (1.044)	0.486 (1.015)	0.054 (0.129)	0.168 (0.325)	0.046 (0.136)	0.223 (0.826)
Adj. R^2	0.087	0.368	0.238	0.098	0.214	0.399
No. of obs.	67	67	67	67	67	67

The regressions were estimated using the social rights in the current constitutions. The t -statistics are reported in the parentheses.

^a Significance at 1%.

^b Idem, 5%.

^c Idem, 10%.

It is somewhat surprising to find that French civil law countries have on average a higher constitutional commitment to social rights than post-socialist countries. Most of the socialist countries are in transition to a market economy, however, and some of them have rewritten their constitutions. Nonetheless, the constitutional commitment to social rights in those countries is higher than in common law countries. The German and Scandinavian countries are somewhere in between. *La Porta et al. (1998)* found a similar order as regards the legal protection extended to shareholders.¹⁰

The finding that French civil law countries have a higher constitutional commitment repeats itself for all five social rights separately (Table 4). The finding that socialist countries have a higher commitment than common law countries is similar for three of the five social rights—the right to education, health and workers' rights.

Given the fact that the top ten (or even twenty) countries is disproportionately populated by Latin American countries, it is natural to examine how sensitive are the results to the inclusion of a dummy variable for Latin American countries. We found that in general the results are similar. However, the introduction of Latin American dummy generates somewhat different ordering: the countries with socialist tradition have the highest constitutional commitment to social rights (Table 5).

The finding that legal origins are significant is not affected when differences in the log of income per capita are taken into account. Table 4 shows that poor countries tend to have on average higher constitutional commitment to social rights. Though, the constitutional commitment to social rights is not significantly affected by income. However, that effect becomes significant using the level of GDP per capita (instead of log).

The new cross-country data in this paper allow us to directly test *Sen's (1999)* hypothesis that democracy shapes beliefs and values through several channels to extent that those are captured by CCSR. We found that a higher propensity to democracy tends to have a positive and significant effect on the summary index of constitutional commitment to social rights. That effect is positive on each of the social rights but is significant on the summary index of social rights only. The effect of democracy becomes significant for health and workers' rights as well using the level of GDP per capita (instead of log).

¹⁰ The common law countries provide the strongest legal protection to investors, and French civil law countries the weakest, with German and Scandinavian countries in the middle.

Table 5
 Legal origins and constitutional social rights (Dependent variable: a summary index of social rights)

	(1)	(2)	(3)
Constant	1.208 (1.615)	−3.873 (1.054)	0.582 (0.791)
Log GDP per capita	−0.34 (1.531)	−0.134 (0.524)	−0.140 (0.638)
Democracy	0.481 ^c (1.842)	0.482 ^c (1.810)	0.251 (0.970)
French	0.960 ^a (6.499)	0.898 ^a (5.563)	0.752 ^a (4.821)
Socialist	0.793 ^a (3.533)	0.674 ^a (2.821)	0.836 ^a (3.946)
German	0.365 (1.365)	0.255 (0.887)	0.353 (1.397)
Scandinavian	0.223 (0.826)	0.125 (0.432)	0.212 (0.837)
Year		0.032 (1.370)	
Latin America			0.520 ^a (2.947)
Adj. R ²	0.399	0.357	0.399
No. of obs.	67	63	67

Year is defined as a year the current constitution was first adopted.

^a Significance at 1%.

^c Idem, 10%.

3.2. Social rights and endurance of the constitution

The history of human rights is stratified of three generations. Civic rights such as the freedom of expression are perceived to be as the first generation, political rights such as the right to vote are the second generation and social rights are the third generation.¹¹ Thus, a natural hypothesis is that social rights are more prevalent in countries that have written their first constitution more recently given that social rights are relatively a new phenomenon.

The constitution is relatively more stable document but still countries amend their constitution from time to time. To test the mentioned hypothesis we constructed a new variable, the first time the current constitution was adopted. Choosing the date when the current constitution was first adopted is not always easy. For example, Iran has a constitution since 1906 but that Constitution was abolished by the revolution of February 1979. Therefore, the first time the current constitution was adopted in this case is 1979 (our new variable). However significant amendments were approved on July 1989.

As expected, this new variable, that reflects how old is the current constitution, has a negative effect on the degree of constitutional commitment to social rights (i.e., stronger commitment to social rights in the more recent constitutions) but that effect is not significant (Table 5).

One explanation for this might be differences in the ease with which constitutions can be amended. The US constitution is old and difficult to amend and thus the prediction that it does not contain social rights is borne out. The Swiss constitution is relatively old but easier to amend, and thus can be “updated” to incorporate changes in preferences for social rights.

3.3. Social rights and religious beliefs

In this section we explore whether the constitutional text reflects values and beliefs of each society. Thus, it is natural to examine the relations between religious beliefs and our index of constitutional commitment to social rights.

¹¹ The international community has played a role in shaping this trend where Universal Declaration of Human Rights and International Covenants on Rights gave normative push to social rights.

Table 6
Religious beliefs and constitutional social rights

	(1)	(2)	(3)	(4)	(5)	(6)
	The right to social security	The right to education	The right to health	The right to housing	Workers' rights	An index of social rights
Constant	0.740 (0.772)	2.008 (1.310)	0.389 (0.304)	0.097 (0.068)	1.003 (1.141)	0.847 (1.013)
Log GDP per capita	-0.072 (0.348)	-0.399 (1.193)	-0.101 (0.304)	0.027 (0.084)	-0.285 (1.483)	-0.166 (0.907)
Catholic	0.535 (1.557)	1.893 ^a (3.444)	1.236 ^a (2.696)	1.164 ^b (2.211)	1.065 ^a (3.378)	1.177 ^a (3.922)
Muslim	0.000 (0.001)	1.472 ^b (2.289)	0.602 (1.122)	0.018 (0.030)	0.321 (0.870)	0.482 (1.373)
Other	-0.289 (0.758)	0.687 (1.128)	0.344 (0.677)	-0.010 (0.184)	0.215 (0.616)	0.168 (0.507)
Adj. R^2	0.11	0.215	0.116	0.151	0.247	0.305
No. of obs.	64	64	64	64	64	64

The regressions were estimated using the social rights in the current constitutions. The t -statistics are reported in the parentheses.

^a Significance at 1%.

^b Idem, 5%.

We use the shares of population that have Protestant, Catholic, Muslims and Other beliefs as explanatory variables controlling for GDP per capita. Note, that there is overlapping between legal origins and religious beliefs and in particular between Catholic and French civil law.

Table 6 presents OLS regressions that were estimated using the current constitutional commitment to each of the five social rights in addition to a summary index of social rights. In general we find that countries which have a higher share of population with Catholic and Muslim beliefs tend to have higher constitutional commitment to social rights compared to Protestant (and other beliefs) countries. However that effect is statistically significant just for Catholic countries in four of the five social rights in addition to our summary index of social rights. The effect of Muslim beliefs is significant for education only. The Catholic effect on constitutional commitment to education is the highest whereas the commitment to social security is lowest and even statistically insignificant.

The quantitative impact of the Catholic beliefs is quite large. A ten percentage points increase in the share of population with Catholic beliefs induces a rise of 1.17 in our summary index of social rights (at the mean).

The Catholic effect survives the inclusion of a dummy variable for Latin American countries (The Latin America dummy is significant at 5%). The Catholic effect is still highly significant but the quantitative impact is smaller. The coefficient in that case is about half compared to the previous estimate.

4. Constitutional commitment and policy outcomes

In previous section we saw that constitutional social rights are closely related to legal origins. Our evidence means that legal origins matters in shaping current beliefs and values, to the extent that they are associated with CCSR. But the whole history since then and other factors such as religion are important as well. For example, many Latin American countries were influenced by the French civil law. However, their constitutional commitment to social rights is far more stringent than in the French constitution (the origin). Legal origins do explain some of the cross country variation in constitutional commitment to social rights, but by no means all (the adjust R^2 is around 0.4).

This section explores the empirical correlation between our indices of social rights and the share of government expenditure, which may reflect the extent to which constitutional rights are translated into policy.

We use our indices of social rights as one of the explanatory variables of the size and composition of government. The summary index of constitutional commitment to social rights is related to total government spending. In addition, we explore the connection between the constitutional right to education, health and social security and the associated public expenditure.

4.1. Social rights and public spending: regression analysis

The size of government and its composition are influenced by economic, demographic and institutional factors. Our focus here is to explore the effect of the indices of constitutional commitment to social rights, controlling for those factors. Our control variables are GDP per capita, the propensity to democracy, the share of the population aged over 65 and income inequality measures. This list of control variables is rather standard in this literature.¹²

GDP per capita is an average for 1990–1999, taken from the Penn World Tables data for all countries except Taiwan. Income per capita serves as an indicator of the level of economic development, which may influence social preferences for public consumption (vs. private consumption), as well as a more developed tax-collection system ('Wagner's law').

A large share of social security and health expenditure goes to the population over the age of 65. Hence, the average share of the population aged above 65 for 1990–1999 is one of the control variables (taken from World Bank Data).

High before-tax income inequality may induce poor people to vote for a redistributive policy. Theoretical studies based on the median voter show that higher income inequality (a higher ratio of average to median income) leads to larger government size, and in particular to more transfer payments.¹³ We use the World Bank data on income inequality measures for the most recent five years or less (Deininger and Squire, 1996).¹⁴

The median voter theory has no direct implications for non-democratic regimes. In general, the size of government in a non-democratic country depends mainly on the ruler. A larger government might be optimal from the point of view of the ruler if he maximizes his wealth. In that case the ruler would choose high tax rates and large government. However, a large government may reflect ideological preferences that dictate both the regime and the size of government. The socialist regimes in East Europe were characterized by both large government and a centralized economy.

The government would be smaller in non-democratic countries if the ruler chose optimal public spending to reach the highest social welfare possible. Governments in democratic countries tend "to buy peace" by larger transfers or high salaries to public-services employees workers. For example workers' unions in democratic countries, in particular in government-owned utility companies that have monopoly power, are responsible for high wages.

Thus, the theory is ambiguous as regards the effect of democracy on the size and composition of government. Nevertheless, the intensity of democracy may be included as one of the control variables. The democracy index, which reflects political rights, is from Freedom House for 1995. We transformed the original index to constitute a scale from 0 for the lowest level of democracy to 1 for the highest level of democracy, in line with Barro (1999).

The inclusion of a democracy index, in addition to the constitutional index, may provide a better understanding of the interplay between these two important institutional characteristics in determining policy outcomes. It is important in light of the fact that a non-democratic country like Iraq has a constitution, while a democratic one, such as England, does not.

Part of the regression analysis in this section is based on a smaller sample (the original sample has 68 countries) for two reasons. First, we could not trace the changes in the constitutional commitment to social rights that took place during the 1990s in the following countries: Cameroon, Fiji, Thailand, Singapore, Taiwan and Turkey. Second, not all the explanatory variables are available for all countries.

4.1.1. The econometric model

Our main goal is to explore the relationship between constitutional commitment to social rights and government expenditure and policy outcomes. However, that relationship works through various channels. Thus, the structural form is:

$$G = \alpha_0 + \alpha_1 X + \alpha_2 Laws + e,$$

where G may reflect government expenditure such as public education expenditure or policy outcome such as infant mortality, X is a vector of explanatory variables and $Laws$ stand for regular laws and court interpretation that is

¹² For example, Rodrik (1998), Tavares and Wacziarg (2001) and Mulligan et al. (2002).

¹³ See Meltzer and Richard (1981) and Alesina and Rodrik (1994).

¹⁴ Income inequality measures for Switzerland were taken from the United Nations database.

influenced among other things by the constitution:

$$Laws = \beta_0 + \beta_1 Z + \beta_2 CCSR + u,$$

where Z is a vector of various variables and $CCSR$ stands for our index of constitutional commitment to social rights. However, in this section we estimate the following “reduced form”:

$$G = a_0 + a_1 Y + a_2 CCSR + \varepsilon$$

where Y is a vector of both X and Z .

We outline three competing hypotheses to guide our interpretations of the results presented below.

Hypothesis I. The constitutional text is meaningful ($a_2 > 0$).

According to this hypothesis, the constitution has practical meaning in terms of shaping public policy. The constitution reflects to some extent the values and beliefs and those social preferences are translated into policy action. Thus, constitutional commitment to social rights do have an effect on the size of government and its composition.

Hypothesis II. The cheap talks hypothesis ($a_2 = 0$).

The commitment to social rights in the constitution might reflect social preferences but does not necessarily translate into government policy. Naturally, the constitution is not a manual but rather a roadmap, delineating the path for policy makers. The absence of any effect could be because of the fact that various policies might be consistent with the same constitutional social rights. Unlike civic and political rights, social rights might be less binding because of the qualitative nature of these rights. There may, therefore, be a weak or non-existent relationship between constitutional commitment and government policy.

Another possibility is that public policy is shaped by social preferences which are not yet in the constitution and may never be. In this case, we do not expect to find any relation between public expenditure and social rights (which by definition equal zero) unless there is a systematic bias in the sense that countries that are more government expenditure oriented tend to omit social rights from the constitution.

Hypothesis III. The propaganda hypothesis ($a_2 < 0$).

The last hypothesis—a somewhat cynical one—is that the social preferences that are reflected in the constitution are just the opposite of the real social preferences that dictate government policy. In those regimes the constitution pays lip service to social rights or in other words it is merely of propaganda value. In this case we expect to find a negative relation between constitutional commitment to social rights and the size of government.

4.1.2. *The endogeneity problem*

The danger of reverse causality arises in most studies using regression analysis. In our context, social preferences could dictate government policy first and shape the constitution at later stage. In that case, we would find positive relations between the degree of constitutional commitment to social rights and public policy but it would be a mistake to conclude that the constitutional text in itself has any practical meaning.

The risk of reverse causality could not be excluded completely to the extent that government policy might lead to changes in the constitution. Berkowitz and Clay (2005) present the degree of constitutional instability of states in the US and found that it is related to legal origins. However those constitutional amendments are not necessarily a result of a particular public policy.

To reduce the risk of endogeneity, we reconstructed our indices of constitutional commitment to social rights according to the constitution of each country in or before 1991. By contrast, the dependent variables, such as transfer payments, are usually for the period starting in 1990 and ending in 2000. This timetable reduces the danger of reverse causality.

Table 7
Constitutional commitment to social rights and government spending
(Dependent variable: the share of total government spending in GDP)

	Current constitutions		Constitutions before 1992	
	OLS	OLS	OLS	OLS
Constant	17.726 (1.225)	−8.927 (0.626)	17.729 (1.132)	−11.954 (0.808)
Log GDP per capita	−0.721 (0.166)	8.161 ^c (1.966)	−0.428 (0.089)	9.450 ^b (2.160)
Pop. of age 65+	1.434 ^a (3.969)		1.413 ^a (3.663)	
Democracy	1.924 (0.407)	9.104 ^c (1.876)	1.394 (0.276)	7.215 (1.365)
Index of social rights	0.302 (0.851)	−0.246 (0.138)	−0.281 (0.169)	−0.673 (0.368)
Adj. R^2	0.422	0.284	0.402	0.271
No. of obs.	66	66	61	61

^a Significance at 1%.

^b Idem, 5%.

^c Idem, 10%.

4.1.3. The results

4.1.3.1. Constitutional commitment to social rights Table 7 presents several regressions for total government expenditure as a share of GDP. We find that the summary index of constitutional commitment to social rights has no significant effect on the size of government. This result is the same whether we use the most recent constitutions or those from 1991 or earlier.

The correlation between democracy and government expenditure is positive, and this result is consistent with that of Tavares and Wacziarg (2001) who found that democracy has a positive effect on government consumption, a component of total government spending. Notwithstanding, the effect of democracy is not robust as regards the inclusion of the elderly population. The index of democracy becomes insignificant once the share of the population aged over 65 is included in the regression. The effect of GDP per capita on government size is positive (as expected by Wagner's law), but it is significant only when the share of the population aged over 65 is not included. The positive effect of the elderly population on government spending is not sensitive to the inclusion of other variables, however.

In general the results are the same using social spending, the sum of education and health expenditure and transfer payments, instead of total government spending as the left hand side variable. The constitutional commitment to social rights does not have a significant impact on social spending.

4.1.3.2. Constitutional commitment to social security Table 8 shows a positive connection between the constitutional commitment to social security and the share of transfer payments in GDP. This result is not sensitive to either sample size or the list of control variables. This result is in line with Hypothesis I.

The estimated regression coefficient of constitutional commitment implies a rather large effect. An increase of one standard deviation in the social security index would induce a rise of 1.7 percentage points in the share of transfers in GDP if this correlation reflects causal relationship. The explanatory power of that specification is relatively high where the adjusted R^2 is around 0.76.¹⁵ This finding might help to some extent to explain why the US does not have a European-style welfare state. It may reflect different social preferences.

It is true that the share of transfer payments is an important indicator of government policy, but it says nothing about policy outcomes. After-tax income inequality is one possible policy outcome we should have used here as a dependent variable. Table 8 shows that the effect of constitutional commitment to social security has no effect on the

¹⁵ We have used also the contribution rate to social security instead of transfer payments as a dependent variable and the results were basically the same: the constitutional commitment to social security has a positive and significant coefficient (not reported here).

Table 8
Constitutional commitment to social security and transfer payments and inequality

Dependent variable	Current constitutions		Constitutions before 1992				
	Transfer payments (share in GDP)		Transfer payments (share in GDP)			Inequality (Gini coeff.)	
			OLS	OLS	OLS	OLS	OLS
Constant	−0.457 (0.063)	−29.24 ^a (3.414)	0.183 (0.021)	−1.911 (0.238)	−31.8 ^a (3.581)	29.7 ^c (1.975)	77.61 ^a (5.309)
Log GDP per capita	−1.482 (0.667)	7.929 ^a (3.106)	−1.099 (0.413)	−0.953 (0.382)	8.859 ^a (3.306)	5.977 (1.238)	−9.977 ^b (2.181)
Pop. of age 65+	1.496 ^a (7.563)		1.417 ^a (6.209)	1.425 ^a (6.654)		−1.947 ^a (5.068)	
Democracy	3.017 (1.211)	10.659 ^a (3.376)	3.436 (1.182)	3.323 (1.219)	9.637 ^a (2.833)	3.988 (0.765)	−2.32 (0.38)
Social security index	2.639 ^a (3.185)	2.473 ^a (2.154)		2.524 ^a (2.940)	2.455 ^b (2.148)	1.095 (0.696)	0.25 (0.14)
Adj. R^2	0.760	0.540	0.701	0.737	0.534	0.474	0.18
No. of obs.	65	65	60	60	60	48	48

^a Significance at 1%.

^b Idem, 5%.

^c Idem, 10%.

index of inequality.¹⁶ This may be because World Bank data on inequality comprise both after- and before-tax indices of income inequality, and therefore do not constitute a fair test.¹⁷

As was the case with the regression for total government expenditure, the correlation between democracy and transfer payments is positive, but is not robust to the inclusion of the share of the elderly in the population. The index of democracy becomes insignificant once the share of the population aged over 65 is included in the regression. Using a similar specification, Mulligan et al. (2002) also found that democracy has no effect on the share of social security expenditure in GDP.

By contrast, the positive effect of the elderly population on transfer payments is not sensitive to the specification of the regression. Again, the effect of GDP per capita on transfer payments is positive (as expected by Wagner's law), but it is positive and significant only when the share of the population aged over 65 is not included.

Instead of using the above measure of constitutional commitment to social security, which is based on seven characteristics, we compute an alternative measure of constitutional commitment that is built on three core characteristics of social security: pension, disability and survivors. The results are basically the same (not reported).

4.1.3.3. Constitutional commitment to education and health The right to education is both the most widespread social right and displays the strongest constitutional commitment. Surprisingly, we found a negative correlation between constitutional commitment to education (the average rank of the right to primary and secondary education) and the share of public education in GDP (Table 9). However, the coefficient of constitutional commitment to education is not significant once a Latin America Dummy is introduced.¹⁸

We use another measure of constitutional commitment to education, three dummy variables for the right to primary education that coincide with our scale instead of an average ranking of the right to primary and secondary education. That specification is more flexible to reflect a non linear relation between constitutional commitment to education and education expenditure. Using that specification, the correlation between constitutional commitment to education and education expenditures is negative as before but becomes insignificant.

¹⁶ Note that the positive effect of the constitutional commitment to social security on transfer payments is positive and significant also in the sample of 47 countries for which we have inequality data.

¹⁷ The results are similar using a limited sample of 23 countries that have after-tax inequality measures. Note also that the inequality measures of the World Bank are based on income per capita in some countries and income per household in others.

¹⁸ The regressions are not shown here but the author could provide those results upon request.

Table 9
Education policy outcomes and the constitutional right to education

Dependent variable	Current constitutions		Constitutions before 1992				
	Education expenditure (share in GDP)		Education expenditure (share in GDP)			Net primary enrollment	
			OLS	OLS	OLS	OLS	OLS
Constant	−5.879 (1.424)	0.404 (0.192)	−7.513 ^c (1.754)	−5.686 (1.351)	−1.176 (0.537)	77.18 ^a (3.657)	49.55 ^a (3.967)
Log GDP per capita	2.247 ^a (2.603)	1.285 ^b (2.140)	2.687 ^a (2.968)	2.392 ^a (2.708)	1.616 ^a (2.555)	7.407 (1.653)	12.140 ^a (3.528)
Pop. of age 14–	0.055 (1.535)		0.04 (1.265)	0.046 (1.252)		−0.281 (1.608)	
Democracy	1.021 (1.398)	0.779 (1.081)	0.465 (0.555)	0.479 (0.592)	0.239 (0.302)	−7.643 ^b (2.027)	−6.075 (1.638)
The right to education	−0.345 ^b (2.199)	−0.347 ^b (2.189)		−0.373 ^b (2.285)	−0.378 ^b (2.307)	0.585 (0.713)	0.675 (0.810)
Adj. R^2	0.273	0.258	0.220	0.274	0.267	0.12	0.182
No. of obs.	66	66	61	61	61	55	47

^a Significance at 1%.

^b Idem, 5%.

^c Idem, 10%.

Education expenditure may not be the best variable to reflect the commitment to education. As a sensitivity test we have replaced policy inputs (government expenditure) by policy outcomes, such as primary and secondary school enrollment. Table 9 shows that the constitutional commitment to education has no effect on the rate of primary and secondary school enrollment. We also find no significant effect of constitutional commitment to education on math scores of eight graders (not reported here). The math scores of eight graders are available for selected countries (TIMSS, 1999).

Thus, the results on the connection between constitutional commitment to education and education policy are not extremely robust. Using education inputs we find a negative correlation but that effect disappears once we use output measures of education policy.

Note that our list of variables has in general poor explanatory power for the share of education in GDP, given the low adjusted R^2 . Income per capita is the only variable that is always significant and takes the expected sign.

The constitutional commitment to health has no significant effect (Table 10) on the share of public health expenditure in GDP. On the other hand, we found a negative connection between constitutional commitment to health and policy outcomes as measured by infant mortality. Constitutional commitment to health has a positive effect on life expectancy at birth but is not significant at the conventional level. The latter effect becomes significant using the level of (instead of the log) GDP per capita.

Unlike the findings on the positive effect of constitutional commitment to social security, the results regarding education and health are often (but not always) consistent with the *cheap talk hypothesis* (Hypothesis II).

5. Conclusion

This paper presents a new data set on constitutional commitments to social rights for 68 countries. Quantitative indices are constructed for five social rights: the right to social security, education, health, housing and workers' rights. The right to social security appears in the constitution of 47 countries, albeit with relatively moderate constitutional commitment, while only 21 countries have a constitutional commitment to housing.

We use these measures to characterize the typical constitution with respect to social rights. We find two clear groups: countries that share the tradition of French civil law generally have a higher commitment to social rights than countries adhering to the English common law tradition. The constitutional commitment to social rights in socialist countries is closer to French civil-law, whereas countries that have a German or Scandinavian tradition bear a closer resemblance to the English common law countries.

Table 10
Health policy outcomes and the constitutional right to health

Dependent variable	Current constitutions		Constitutions before 1992				
	Health expenditure (share in GDP)		Health expenditure (share in GDP)			Life expect.	Infant mortality
			OLS	OLS	OLS	OLS	OLS
Constant	−2.747 (1.360)	−6.493 ^a (3.460)	−4.002 ^c (1.893)	−3.962 ^c (1.848)	−7.585 ^a (4.034)	4.316 (0.707)	266.8 ^a (11.368)
Log GDP per capita	0.998 1.613 (3.996)	2.230 ^a (3.996)	1.441 ^b (2.180)	1.436 ^b (2.180)	2.628 ^a (4.623)	17.325 ^a (9.391)	−61.562 ^a (8.677)
Pop. of age 65+	0.194 ^a 3.542		0.170 ^a 2.993	0.170 ^a 2.965			
Democracy	1.515 ^b (2.187)	2.483 ^a (3.576)	1.212 ^c (1.686)	1.214 ^c (1.674)	1.929 ^a (2.642)	−1.540 (0.652)	2.536 (0.279)
The right to health	0.050 (0.297)	0.085 (0.460)		−0.034 (0.182)	−0.004 (0.202)	0.847 (1.316)	−5.586 ^b (2.258)
Adj. R^2	0.661	0.597	0.658	0.652	0.604	0.724	0.704
No. of obs.	65	65	60	60	60	62	62

^a Significance at 1%.

^b Idem, 5%.

^c Idem, 10%.

The results on the effects of constitutional commitment to social rights on the size and composition of government are mixed. We find a lack of effect of the constitutional commitment to social rights on and its respective public policy in four cases: a summary measure of constitutional social rights and total government expenditure; the right to health and health expenditure; the right to social security and social policy outcome (income inequality) and the right to education and education policy outcome (enrollment). Those findings are consistent with the claim that a constitution has no practical meaning for policy when it comes to social rights.

However, we also find a positive correlation between constitutional commitment to social security and government transfers (and contribution rates to social security) and between the right to health and health policy performance. The mixed finding might be consistent with a public choice view where the constitution may assist those who are more organized such as the elderly and less so for the young.

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