

# Rights without Resources: The Impact of Constitutional Social Rights on Social Spending

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## Abstract

Constitutions around the world have come to protect a growing number of social rights. This constitutionalization of social rights has generally been met with approval from academics, human-rights activists, and policy makers. But despite this widespread support, there is hardly any evidence on whether the inclusion of rights in constitutions changes how governments provide social services to their citizens. We take up this question by studying the effect of adopting the constitutional rights to education and health care on government spending. Using a data set of 196 countries' constitutional rights and data from the World Development Indicators, we employ a variety of empirical tests to examine if the rights to education and health care are associated with increases in government spending. Our results suggest that the adoption of these social rights is not associated with statistically significant or substantively meaningful increases in government spending on education or health care.

## 1. Introduction

Few topics have attracted as much attention in the comparative law literature as the constitutionalization of social rights. Over the past decades, constitutions around the world have come to protect a growing number of social rights. As the Cold War-era ideological divide over social rights has waned, they have become mainstream constitutional features that are found in the global North and global South, autocracies and democracies, and common-law and civil-law systems alike. By 2016, no less than 82 percent of constitutions included the right

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to education, 71 percent protected access to health care, 65 percent protected the right to social security, and 42 percent provided a right to housing.

What is more, these rights are increasingly enforced by courts, which have been formally empowered in many countries to scrutinize the political branches' social spending for compliance with their constitution's social rights protections (Gauri and Brinks 2008; Langford 2008). In countries as diverse as Germany, Colombia, and Kenya, national courts have issued opinions trying to enforce social rights (Langford 2008; Jung, Hirschl, and Rosevear 2014; Landau 2012). For instance, courts have ordered emergency care regardless of ability to pay in South Africa (*Soobramoney v. Minister of Health, KwaZulu-Natal* 1998 [1] SA 765 [CC]), demanded increased government spending on education in Indonesia (Judicial Review of the 2006 Budget Law, Constitutional Court Decision 026/PUU-III/2006), and limited school fees in India (*Ankur Argawal v. Madhya Pradesh*, 2000 A.I.R. 310 [MP]; Gauri and Brinks 2008, pp. 8–9). Even in the United States, long seen as a bulwark of libertarian values, social rights are enshrined in many state constitutions and have been enforced by state courts (Hershkoff 1999; Zackin 2013).

The constitutionalization of social rights has generally been met with approval from academics and policy makers (Sunstein 2000, p. 123; 2001, p. 221; Landau 2012, p. 190). Legal scholars used to debate whether it is appropriate for courts to enforce social rights (Sunstein 1997, 2000; Cross 2001; Sen 2004; Davis 2012, p. 1024), but a new wave of legal scholarship now widely accepts that courts around the world are indeed in the business of social rights enforcement (Sunstein 2001; Langford 2008; Ray 2016). Political scientists, in the meantime, have started to use case studies to explore the impact of these decisions (Gauri and Brinks 2008; Hoffman and Bentes 2008; Landau 2012). Philosophers have argued that human capabilities should be part of the definition of economic development (Nussbaum 2011) and that social rights are key to promoting human capabilities (Dixon and Nussbaum 2012). Development economists, too, have generally looked favorably on the constitutionalization of social rights (World Bank 2006, pp. 3–4), because investments in human capital, through education or health care, are generally believed to be conducive to economic development (UN Development Program 1990, p. 9). The World Bank (2006, pp. 3–4) has long held that, while its mandate excludes a focus on civil and political rights, it does seek to promote social rights. In short, as “the bottom billion” (Collier 2007) of the planet still lacks access to basic necessities, the adoption of social rights has been widely regarded as an important way to improve access to social services for the poor (World Bank 2006, p. 8; Gauri and Brinks 2008; Davis 2008, p. 687; Young 2012, p. 2).<sup>1</sup>

But despite this widespread support for including social rights in constitu-

<sup>1</sup> Social rights have become stronger not only at the national level but also at the international level. The social rights in the International Covenant on Economic, Social, and Cultural Rights (ICESCR) have formally been declared “indivisible, interdependent, and interrelated” with civil and political rights (Vienna Declaration and Program of Action, U.N. Doc. A/CONF.157.23 [July 12, 1993]; Whelan 2010; Davis 2012, p. 1020; Young 2012, p. 6). Moreover, with the entry into force of the ICESCR's first optional protocol, social rights are now enforceable by an international body, just like their civil and political counterparts.

tions, little is known about whether these rights change how governments provide social-rights-related goods and services to their citizens. A handful of papers have started to explore the impact of social rights on related outcomes. Edwards and Marin (2014) find no impact of the right to education on test scores in a cross section of 61 countries, Matsuura (2013) finds that the right to health care is associated with reduced mortality rates in a panel covering 157 countries from 1970 to 2007, and Minkler and Prakash (2015) find that having legally enforceable social rights reduces poverty in a cross section of 201 countries. While the papers provide interesting insights, these correlations tell us little about whether social rights change government behavior. After all, adding a right to a constitution is unlikely to change slow-moving structural characteristics of a country—such as poverty and child mortality—in a short period. Many of these characteristics take years, if not decades, to change and are unlikely to be fully within a government's control.<sup>2</sup>

Since the constitution is first and foremost directed toward the government, the study of how social rights affect government behavior requires the use of a measure that directly captures a government's commitments, such as its social spending. Indeed, social spending tends to be a key focus point of both the UN Committee on Economic, Social, and Cultural Rights and courts around the world, which have demanded that governments progressively direct more resources toward social-rights-related goods and services and have found that enshrined social rights may prohibit the government from cutting such goods and services. To date, only one early study explores the impact of the right to education on spending on education, albeit in a cross section of 66 countries only (Ben-Bassat and Dahan 2008).<sup>3</sup> As a result, we still know little about how social rights change governments' behavior generally or social spending more specifically.

This paper responds to this challenge. We explore the impact of the constitutionalization of the rights to education and health care by combining a data set coding 196 countries' constitutional rights from 1946 to 2016 with data from the World Development Indicators (WDI) database on governments' spending on education and health care. Because spending is an important indication of governments' efforts to provide these rights, doing so allows us to test the impact of social rights on a government's commitment to fulfilling these rights directly. Using a variety of empirical techniques, including matching and fixed-effects panel regressions, we find that the adoption of constitutional social rights is not associated with increases in government spending in these areas. In fact, not only do we

<sup>2</sup> None of the existing papers theorize the mechanisms through which the constitution would affect slow-moving structural country characteristics like poverty or infant mortality rates. What is more, existing work largely relies on cross-sectional analysis and makes limited attempts to identify a causal effect. Finally, the papers use legal origins as an instrumental variable for constitutional rights, which is highly problematic since legal origins have been shown to affect human-rights outcomes and judicial enforcement directly rather than merely through constitutional social rights. For a discussion of the limits of using legal origins as an instrumental variable, see Bazzi and Clemens (2013).

<sup>3</sup> Ben-Bassat and Dahan (2008) find no relationship between the right to education and spending on education. They also find no relationship between social rights and the size of government.

find no positive effects that achieve conventional levels of statistical significance in our primary analysis, but we also find little evidence that the size of the effects could still be substantively meaningful. We also conduct additional analyses that test the effects of social rights while using alternative approaches to measuring social spending, alternative definitions to code the presence of social rights, and data from the Global Development Network Growth Database to explore the effects of the right to housing and social security, interacting the presence of social rights with judicial independence, and testing the effects of the rights to education and health care on education and health outcomes. Although we find a handful of positive results in these additional analyses, the results are largely consistent with our primary findings: adopting constitutional social rights does not appear to have an effect on governments' behavior.

These findings make several important contributions. First, and most directly, they provide the most comprehensive evidence suggesting that constitutionalizing social rights does not cause governments to dedicate more resources to social-rights-related goods and services.<sup>4</sup> While our analyses leave open the possibility that constitutionalization has some positive impacts on social rights—such as changing the way that governments talk about rights, changing the distribution of resources without changing overall spending, or reducing discrimination in the provision of social-rights-related goods and services—our results provide strong evidence that constitutional protection of social rights has no overall effect on governments' spending. It is hard to imagine the fulfillment of social rights without substantial resources being devoted toward them. Indeed, the notion that the realization of social rights requires social spending is key in the main international human-rights treaty on social rights—the International Covenant on Economic, Social, and Cultural Rights (ICESCR)—which allows states to progressively realize their obligations “to the maximum of their available resources” (art. 2.1, December 16, 1966, 993 U.N.T.S. 3) and which forms the basis for core doctrinal concepts such as the minimum core and nonretrogression (see Section 2).

Second, our paper also contributes to the small literature that explores the impact of social rights on broader outcomes, such as poverty or mortality rates. By focusing directly on a government's behavior rather than deep structural factors that are only partly within its reach, our findings suggest that if there are indeed reductions in poverty or child mortality, these come about without increases in government spending. While the possibility that constitutions lift people out of poverty without governmental intervention is intriguing, it is also possible that earlier results that found evidence that social rights are associated with improvements in living conditions represent spurious relationships. Indeed, when we use our identification strategy to explore the impact of social rights on a range of outcome measures (such as life expectancy and school enrollment), we find little

<sup>4</sup> These findings further suggest that constitutionalizing social rights does not systematically prevent social programs from being cut (as required by the nonretrogression principle that holds that governments cannot simply reduce current levels of social services through austerity measures), or social rights would be associated with more spending.

evidence of improvements from constitutionalizing social rights. While our analyses leave numerous questions unanswered, our findings are sobering to those invested in improving social welfare through constitutionalizing social rights by requiring governments to increase their commitments.

Third, our results contribute to the growing literature on the effectiveness of constitutional rights more generally (Boli-Bennet 1976; Pritchard 1986; Davenport 1996; Cross 1999; Keith 2002a, 2012; Keith, Tate, and Poe 2009; Fox and Flores 2009; Melton 2014; Chilton and Versteeg 2015). Although this literature has produced mixed results, our findings are consistent with recent studies suggesting that constitutional rights for individuals are less effective than rights that are granted to organizations, like unions or political parties (Chilton and Versteeg 2016).

Finally, our results also speak to the literature on international human rights. While there is a large empirical literature on the effectiveness of human-rights treaties (see, for example, Simmons 2009; Lupu 2013a, 2013b, 2015; Hafner-Burton 2012), this literature has almost entirely ignored the major treaties that provide for social rights. Our findings hint at the possibility that, if constitutional social rights have not had an effect, social rights treaties may similarly have had little impact on governments' behavior.

## 2. Theories of Social Rights Enforcement

When social rights are constitutionalized, they are transformed from ordinary legal obligations, or even mere policy goals, into constitutional obligations. Since constitutions tend to be the highest law in a legal system, social rights that are constitutionalized enjoy priority over competing goals that lack constitutional status (Davis 2012, p. 1034). Constitutionalization also typically means that governments are legally required to take steps to realize these goals and that failing to do so might amount to a violation of the constitution.

The legal obligations entailed by social rights are often considered to be three-fold (Shue 1980; Eide 1987). First, states have to refrain from adopting laws and regulations that interfere with the enjoyment of social rights, a requirement commonly described as the obligation to respect. To illustrate, the government's bulldozing a neighborhood resulting in its residents being rendered homeless would constitute a violation of the right to housing. Second, the state has to take action to prevent interference with third parties' enjoyment of rights, known as the obligation to protect. For example, where private citizens' actions result in the pollution of potable water sources, a failure on the part of the government to intervene might entail a violation of the right to water (Nolan 2009). Third, the state has to take steps to "facilitate, promote and provide" access to social-rights-related goods and services, often described as the obligation to fulfill (UN Committee on Economic, Social, and Cultural Rights 2008, pp. 47–48).

While the tripartite framework originates in the academic literature (Shue 1980), it has since been adopted in some form by courts around the world and

various UN bodies, including the Committee on Economic, Social, and Cultural Rights, which is the main body that interprets the ICESCR (Nolan 2009, p. 227). Of course, it is the case that the legal obligations entailed by social rights vary across countries and are dependent on language in the constitution and subsequent judicial interpretations. Yet, regardless of the form, the literature generally suggests that upholding these three obligations—and especially the obligation to fulfill—generally means that resources get redirected toward social rights (Sunstein 2000, p. 124; Davis 2012, p. 1025). A right to education, for example, is supposed to lead to increased governmental spending on education, which in turn should expand educational opportunities or improve educational quality. Regardless of whether increased governmental social spending ultimately improves outcomes,<sup>5</sup> it signals the government’s commitment to fulfill social rights.

While it is well accepted that the fulfillment of social rights requires resources, the framework adopted by the UN Committee on Economic, Social, and Cultural Rights (2003) also recognizes resource constraints and holds that, where resources are limited, social rights obligations can be achieved only over an extended period of time. This principle of progressive realization draws on the language from the ICESCR, which requires each state to “take steps . . . to the maximum of its available resources” (art 2.1). Many national constitutions incorporate similar language. Thus, resources devoted to social rights do not have to reach the level required to completely fulfill these rights, yet they are supposed to gradually increase over time. The principle has also been interpreted to mean that resources devoted to social rights cannot simply be reduced. This notion of nonretrogression has been widely used by courts around the world to invalidate cuts to social welfare programs as inconsistent with a constitution’s social rights obligations (Landau 2012; Scheppele 2004). As Landau (2012, p. 233) observes, the principle is particularly popular among courts globally because it “appears relatively court-like: the judiciary is not involved in making complex budgetary allocations or otherwise constructing policy, but instead merely prevents the state from putting some new policy into effect.” In addition to the nonretrogression principle, there are other areas where social rights obligations are immediate: states cannot discriminate in the provision of social-rights-related goods and services, and they should attempt to take steps to realize them regardless of their level of resources. Finally, international bodies and some courts suggest that there exist a minimum core of social rights that must always be guaranteed (UN Committee on Economic, Social, and Cultural Rights 2003).

### 2.1. Enforcement

For the fulfillment of constitutional social rights to become a reality, they must be implemented and enforced. The bulk of the literature has focused on courts as the primary means of guaranteeing the constitution’s social rights provisions

<sup>5</sup> Evidence from development economics suggests that increased governmental spending does improve outcomes (see, for example, Gupta, Verhoeven, and Tiongson 2002; Baldacci et al. 2008).

(Sunstein 2000, 2001; Scheppele 2004; Dixon 2007; Gauri and Brinks 2008; Landau 2012). Most prominently, when the South African Constitutional Court ventured into the area of social rights enforcement in the mid-1990s, it became the backdrop for a heated debate over whether courts are the appropriate actors to enforce social rights (Sajó 1999, p. 270; Sunstein 2001; Cross 2001; Dixon 2007; Tushnet 2008). The core concern motivating the debate was that judges might be institutionally ill-equipped for the inherently political task of deciding how the political branches should allocate the national budget (Goldstone 2010, p. vii). Commentators further worried that such social rights would be merely aspirational in nature, raising expectations without delivering, making them a “bitter mockery to the poor” (O’Neill 1996, p. 133).

By now, however, the normative debate has largely subsided, and the fact that courts are enforcing their constitutions’ social rights provisions is widely accepted (Landau 2012, p. 190). Scholars are now studying judicial rulings enforcing social rights, their reasoning, and the legal obligations they impose (Young 2012; Langford 2008; Landau 2012). Political scientists, for their part, have started to conduct case studies to discern the beneficiaries and redistributive consequences of these judicial decisions (Gauri and Brinks 2008; Hoffman and Bentes 2008; Landau 2012).

Of course, direct judicial enforcement is not the only possible enforcement mechanism. First, even when not directly enforced, social rights can inform judicial interpretations in other areas of law. For example, Zackin (2013) shows how in US states, constitution makers constitutionalized social rights to preempt certain interpretations of the right to property and other economic rights that would hurt the government’s ability to redistribute wealth, as the US Supreme Court did during the *Lochner* era (*Lochner v. New York*, 198 U.S. 45 [1905]). When the constitution includes social rights, it becomes harder for courts to invalidate social welfare policies for violating the right to property.

Second, the electoral process is another enforcement mechanism for social rights. Where social rights are enshrined in the constitution, they can serve as a focal point for groups that mobilize for the protection of social rights (Weingast 1997). When social policy goals are transformed into constitutional rights, individuals are empowered. Different groups can invoke the constitution to remind the government of its social rights promises and try to hold it accountable in the next election (Zackin 2013; Versteeg and Zackin 2014). Indeed, this idea is consistent with the literature on the effectiveness of human rights treaties, which finds that for a right to become a reality, there need to be constituencies invested in its enforcement. It is these groups, and their lobbying, litigation, and staging of protests, that turn rights into reality (Simmons 2009). Constitutional rights likewise give these groups a promise to point to as governments are debating the budget or the adoption of new social welfare policies. It further gives them something to rally around when a government fails to provide basic necessities to its people (Weingast 1997; Epp 1998).

Regardless of the mechanism through which these rights are enforced—direct

judicial enforcement, indirect judicial enforcement, or enforcement through the electoral process—the constitutionalization of social rights is supposed to elevate the importance of social rights vis-à-vis other policy goals and to direct public resources toward their fulfillment. Thus, each mechanism might bring about an increase in public spending on social rights relative to policy goals that do not enjoy constitutional status.

## 2.2. *The Limits of Social Rights Enforcement*

Importantly, each of these enforcement mechanisms also has its limitations. Even where courts are rendering high-profile decisions that direct governments to allocate resources toward education and health care, there is no guarantee that these decisions are enforced. As Alexander Hamilton famously remarked, courts lack the power of the sword and the purse (Hamilton 1961). Especially where judicial decisions are directed at the executive, the executive can refrain from fully implementing them (Chilton and Versteeg 2018). This might happen even in democracies that generally respect the rule of law. In a well-known study, Rosenberg (1991) shows that many high-profile decisions of the US Supreme Court had limited impact or were simply ignored. As another prominent example, South African scholars have observed that the famous *Grootboom* decision was never fully implemented (Pillay 2002). Indeed, 8 years after the landmark ruling (*Republic of South Africa v. Grootbloom* 2001 [1] SA 46 [CC]), Irene Grootboom passed away penniless and without a home.

Aside from these general constraints, judges who enforce social rights are typically mindful of their institutional limitations and tend to exercise substantial self-restraint. According to Landau (2012), courts rarely dictate sweeping social rights policies. Reviewing social rights jurisprudence in a large number of countries, Landau (2012, pp. 203–29) suggests that most courts focus on relief for individual plaintiffs without ordering system-wide reforms. Another popular approach is to enforce the nonretrogression principle, which requires governments not to reduce their level of social spending (Landau 2012, pp. 238–40). Only in rare cases have courts ordered structural injunctions that demand system-wide reforms and allow courts to issue sweeping social rights policies. These insights suggest that while courts commonly enforce social rights, they have been cautious not to depart too far from the traditional judicial role.

An important by-product of the focus on individualized enforcement is that it directs resources to higher-income groups rather than the poor. Landau's (2012) study of the Colombian Constitutional Court shows that judicial enforcement of social rights tends to direct resources toward those who can afford to go to court and use the *tutela* system in their favor. A study on Brazil notes that most judicial decisions enforcing social welfare rights involve the direct provision of goods to litigants who bring cases instead of broad distributional change for the poor (Hoffman and Bentes 2008, p. 117). These decisions therefore tend to address middle-class concerns, such as the infamous Brazilian court decision that



ordered the state to pay for a penile reconstruction (Hoffman and Bentes 2008). While it is possible that such decisions increase overall social spending, they may not redirect resources to those most in need.

Social mobilization, likewise, cannot be taken for granted. Even though people protesting and demanding their rights is potentially one of the most powerful tools to remind the political branches of the constitution's promises, such mobilization is fraught with collective-action problems. To mobilize for the protection of rights, disconnected citizens have to coordinate their actions and incur the costs associated with doing so (Olson 1965). As the literature on social mobilization suggests, overcoming such collective-action problems requires the presence of entrepreneurial individuals motivated by benefits to their career or the presence of grievances (Hardin 1982). Such collective-action problems are easier overcome for some rights than others (Chilton and Versteeg 2016). Within organizations, a forum exists through which disaffected individuals can coordinate their actions and have tools at their disposal to resist the encroachment of the rights to unionize or to form political parties. There is empirical support for this theory: constitutional protection of organizational rights, such as the right to form political parties and the right to unionize, leads to increased protection of them, while protection of individual rights, such as the freedom of expression or the freedom of movement, appears to not make a difference (see Chilton and Versteeg 2016).

Social rights are also individual rights. They are individual entitlements that are not typically enjoyed in groups. The right to education, for example, entitles individuals to have access to schooling (in some cases, free of charge). The right to health care likewise grants individuals a right to access basic types of health care. While schools and hospitals are organizations that are potentially able to organize to protect the rights to education and health care, it is not clear that they always benefit from broadening access. Providing services to those without the ability to pay may be costly. What is more, to the extent that schools and hospitals are funded by the government, they may be reluctant to protest the government. For that reason, it is not clear that social rights are linked to organizations with the incentives and means to promote the fulfillment of these rights.

Perhaps more important, the growing availability of judicial remedies might hurt broad social mobilization. One study of Argentina notes that the availability of individual relief in court might come at the expense of social mobilization (Smulovitz 2006). That is, instead of organizing and mobilizing to persuade the government to provide social rights, individuals might simply go to court to ensure the delivery of certain services to themselves. Judicial enforcement of social rights might thus aggravate collective-action problems (Scheingold 1974, p. 209).

With regard to these inherent limitations to social rights enforcement, it is not clear, on theoretical grounds, what impact the constitutionalization of social rights may have. The near-universal consensus that these rights are normatively desirable is no guarantee that they shift government behavior in some way. The

remainder of this paper empirically tests whether guaranteeing these social rights translates into increased social spending.

### 3. Data

#### 3.1. *Data on Constitutional Rights*

To analyze the effect of constitutional social rights on social spending, we rely on original data on constitutional rights based on the hand coding of constitutions in place in 196 countries from 1946 to 2016.<sup>6</sup> The data set was first introduced and explained in Law and Versteeg (2011) and Goderis and Versteeg (2014) and includes whether each constitution includes a range of rights. We focus on two social rights: the right to education and the right to health care. Although there are several reasons to focus on these rights, we do so primarily because corresponding measures of government spending on these issues are available. In Section 6.3, we also explore the impact of the right to social security and the right to housing, albeit for a smaller sample, because the relevant spending data for these rights have more limited availability.

Figure 1 presents the prevalence of the rights to education and health care in the world's constitutions over time. As Figure 1 shows, 82 percent of countries had a right to education and 71 percent of countries had a right to health care in their constitutions by 2016. Figure 2 depicts the countries that had these rights in their constitutions as of 2016 and reveals that the overwhelming majority of constitutions include at least one of the two rights. Of the 192 countries in our data set for 2016, 22 had a constitutional right to education, one had a constitutional right to health care, and 135 had both rights in their constitutions.

#### 3.2. *Data on Social Spending*

To test the impact of social rights, we use measures from the WDI that capture relevant public spending. Following the practice in the literature (Avelino, Brown, and Hunter 2005; Stasavage 2005; Doyle 2015), we use the annual public education expenditure as a percentage of a country's gross domestic product (GDP) as our measure of spending on education. These data are available from 1970 to 2016 for up to 183 countries.<sup>7</sup> Our measure of health-care spending is the annual public health-care expenditure as a percentage of a country's GDP. These

<sup>6</sup> The online appendix provides more information about the data. It also provides additional information about our other data, our matching procedure, complete regression results for the tables, and a variety of unreported robustness checks.

<sup>7</sup> We use the July 2017 edition of the World Development Indicators (WDI) database (<https://data.worldbank.org/indicator>). For education expenditure, we use the variable SE.XPD.TOTL.GD.ZS ("government expenditure on education, total [% of GDP]"). According to the WDI, this "includes expenditure funded by transfers from international sources to government. General government usually refers to local, regional and central governments." Although the WDI has data on education spending for 183 countries for at least 1 country-year during this period, there are fewer observations available in any given year. The maximum number of observations is 121 in 2002.

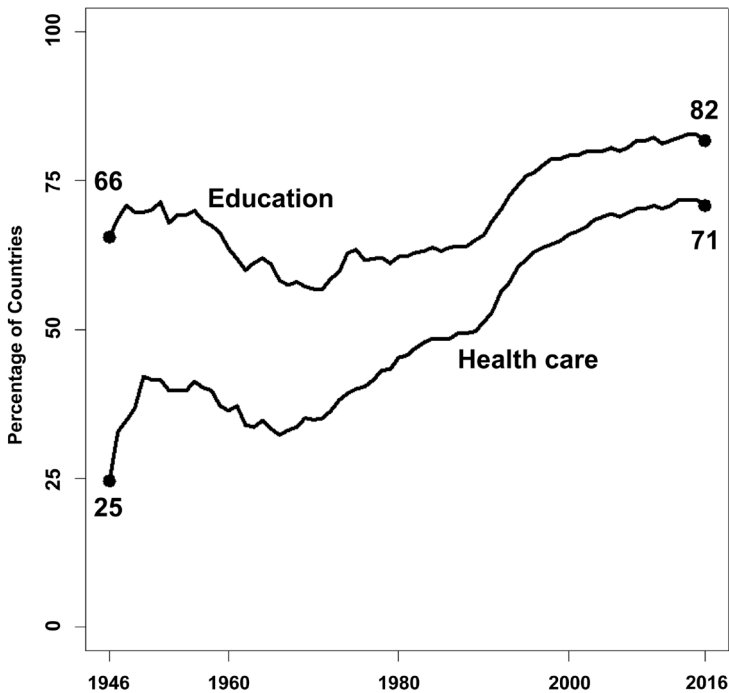


Figure 1. Countries with constitutional rights to education and health care

data are available from 1995 to 2014 for up to 185 countries.<sup>8</sup> In further analyses, we also test the impact of social rights using three additional dependent variables: Section 6.1 uses data on spending as a percentage of total public spending (as opposed to spending as a percentage of GDP) from the WDI,<sup>9</sup> Section 6.3 uses data on the percentage of the GDP spent on housing and social security from the

<sup>8</sup> For health-care expenditure, we use the variable SH.XPD.PUBL.ZS (“health expenditure, public [% of GDP]”). According to the WDI, “Public health expenditure consists of recurrent and capital spending from government (central and local) budgets, external borrowings and grants (including donations from international agencies and nongovernmental organizations), and social (or compulsory) health insurance funds.”

<sup>9</sup> For education, we use the variable SE.XPD.TOTL.GB.ZS (“expenditure on education as % of total government expenditure [%]”). According to the WDI, “General government expenditure on education (current, capital, and transfers) is expressed as a percentage of total general government expenditure on all sectors (including health, education, social services, etc.). It includes expenditure funded by transfers from international sources to government. General government usually refers to local, regional and central governments.” For health care, we use the variable SH.XPD.PUBL.GX.ZS (“health expenditure, public [% of government expenditure]”). According to the WDI, “Public health expenditure consists of recurrent and capital spending from government (central and local) budgets, external borrowings and grants (including donations from international agencies and nongovernmental organizations), and social (or compulsory) health insurance funds.”

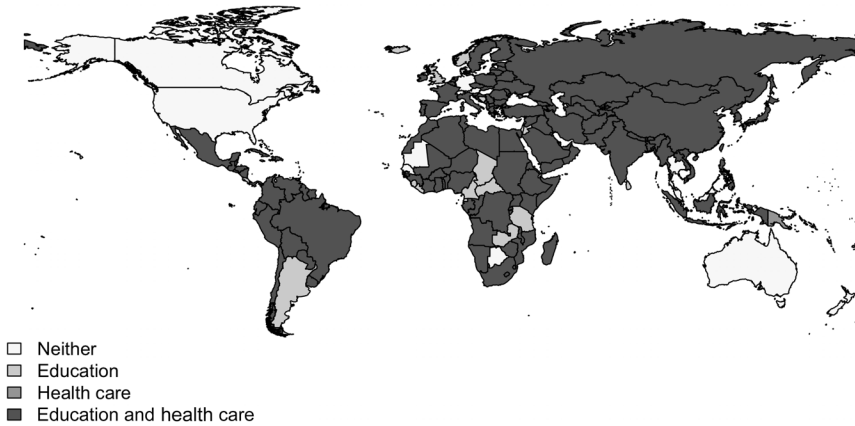


Figure 2. Countries with constitutional rights to education and health care, 2016

Global Development Network Growth Database,<sup>10</sup> and Section 6.5 uses data on health and education outcomes from the WDI.<sup>11</sup>

Our choice to use social spending by the government as our primary dependent variables requires some explanation. While empirical studies document a link between social spending and social outcomes (Gupta, Verhoeven, and Tiongson 2002; Baldacci et al. 2008), social spending does not guarantee the full realization of social rights. A government may increase its spending on education, and yet, at least for the short term, many may remain illiterate. Our measures thus capture governmental efforts to make progress on realizing a right rather than outcomes.

To gauge how spending measures contrast with other possible indicators, it is useful to consult the classification of human-rights indicators provided by the Office of the High Commissioner for Human Rights (OHCHR 2008), which distinguishes between structural indicators, process indicators, and outcome indicators. Structural indicators capture “basic institutional mechanisms deemed necessary for facilitating realization of a human right,” such as whether domestic constitutional law protects a right (OHCHR 2008, p. 11). Process indicators, by contrast, capture governmental action toward the final achievement of a right

<sup>10</sup> See World Bank, *The Lost Decades: Developing Countries’ Stagnation in Spite of Policy Reform 1980–1998 Dataset*, Government Finance 2001 ([http://siteresources.worldbank.org/INTRES/Resources/469232-1107449512766/648083-1108140788422/Lost\\_decades\\_GovernmentFinance\\_6\\_2001.xls](http://siteresources.worldbank.org/INTRES/Resources/469232-1107449512766/648083-1108140788422/Lost_decades_GovernmentFinance_6_2001.xls)). We use the variables 82f (“housing and community amenities for spending on housing”) and 82e (“social security and welfare for spending on social security”). We exclude observations from the Democratic Republic of the Congo because it is an extreme outlier in this data set. For instance, the median percentage of GDP spent on social security in this data set is 4.22, but the Democratic of the Congo is reported to have spent 20,427 percent of GDP on social security in 1993.

<sup>11</sup> For education, we use the following variables: SE.ADT.1524.LT.ZS (“literacy rate, youth total [% of people ages 15–24]”); SE.PRMG.INT.ZS, which captures education intake—that is, “the gross intake ratio in first grade of primary education, total (% of relevant age group)”); and SE.PRMPR.SL.ZS, which captures education persistence, which is “[p]ersistence to last grade of primary, total (% of cohort).” For health care, we use the following variables: SH.MED.BEDS.ZS (“hospital beds [per 1,000 people]”), SH.MED.PHYS.ZS (“physicians [per 1,000 people]”), and SP.DYN.LE00.IN (“life expectancy at birth [total years]”).

(OHCHR 2008, p. 11); social spending measures are an example of process indicators. Finally, outcome indicators capture the final realization of a right, such as life expectancy or literacy rates (OHCHR 2008, p. 12).

We believe that when it comes to measuring the impact of social rights obligations, process indicators are more suitable than outcome indicators. In this respect, social rights are different from civil and political rights, which are usually evaluated using outcome indicators (for example, incidents of torture). Civil and political rights are often seen as negative rights: large steps toward their fulfillment can be made by simply not violating them. To illustrate, the government's refraining from torture is an important step in realizing freedom from torture.<sup>12</sup> The full realization of social rights, by contrast, is a long-term process that is affected by many factors beyond a government's control. Indeed, development economists have shown that, while health-care and education spending affect health and education outcomes, they are not the only factors that produce such outcomes (Gupta, Verhoeven, and Tiongson 2002; Baldacci et al. 2008). As a result, process indicators such as measures of governmental spending are more likely to pick up constitutionally induced changes in governments' behavior than slow-moving outcome indicators. Considering the nature of social rights, we thus believe that it is more appropriate to use measures that capture governments' efforts than ultimate outcomes. That said, as part of the additional analyses in Section 6, we also report results using education and health-care outcomes as our dependent variable.

### 3.3. Graphical Exploration

Before we turn to our primary empirical analysis, an initial exploration of the relationship between social rights and social spending suggests that social rights might not be associated with increases in social spending. Figure 3 depicts the data on governments' spending on education and health care over time. As Figure 3 shows, countries that have constitutionalized education and health care spend a lower percentage of their GDP on education and health care than countries without these rights.<sup>13</sup>

Of course, even though countries with constitutional rights to education and health care spend less on education and health care as a percentage of GDP than countries without these rights, it could still be the case that individual countries increase their spending after constitutionalizing these rights. After all, the counterfactual in which we are interested is whether adopting a social right results in a country spending more on that right, not whether countries with the right spend more than countries without it.

<sup>12</sup> Of course, this binary distinction is problematic, as negative rights like the prohibition of torture also require expensive government action (Posner 2014), and many courts have held that governments have protective duties in the realization of civil and political rights.

<sup>13</sup> Figure 3 does not include data from Zimbabwe because its spending on education was abnormally higher in 1992 and 1994. Since Zimbabwe did not have a right to education or health care until 2013, including Zimbabwe only exacerbates the pattern shown in Figure 3 that countries without the rights to education and health care spend a greater percentage of their GDP on these services than countries with those rights.

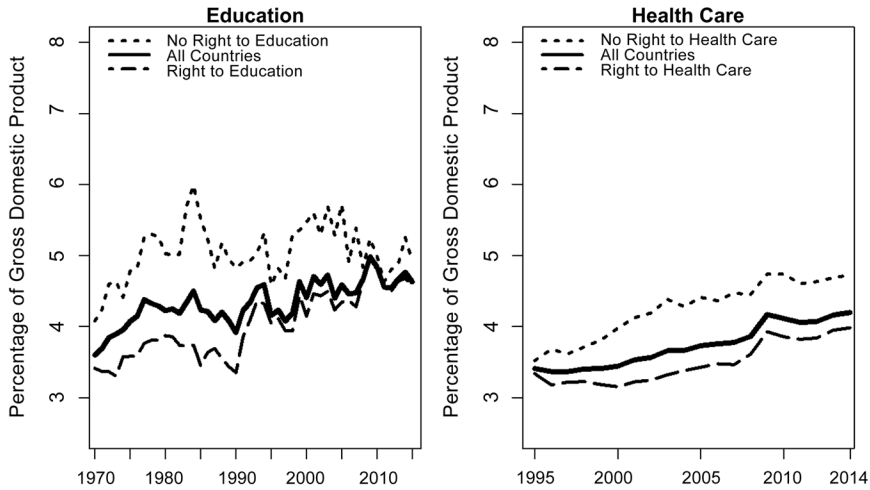


Figure 3. Average government social spending

To examine this, Figure 4 depicts a subset of countries that added the right to education or health care to their constitutions during the period for which we have data.<sup>14</sup> It depicts the average score for the 5 years before and after the right was adopted. Figure 4 provides little evidence that the constitutional right to education or health care shifts governments' spending. There is a slight decrease in public spending on education and a slight increase in public spending on health care, but both of these trends appear to predate the adoption of the constitutional right. Although Figure 4 does not take account of confounding factors, the raw data do not suggest that social rights are associated with higher levels of social spending.

## 4. Research Design

### 4.1. Empirical Approach

Isolating the effect of constitutional rights on governments' behavior is not an easy task. The primary difficulty is that there may be factors that influence both the decision to incorporate a right into a constitution and the protection of that

<sup>14</sup> We restrict our data set in four ways to create Figure 4. First, we exclude observations from countries that by 2016 had never adopted the right to education or health care. Second, we exclude observations from countries that adopted the right to education or health care before they entered our data set (however, if a country has a right in the first year it enters our data set, and that is the first year it is an independent country, it is included in Figure 4). Third, we exclude observations from countries that adopted a right and then removed it from their constitutions (because it is difficult to know whether to code observations from these countries as being  $X$  years before the adoption of the right or  $Y$  years after the adoption of the right). Fourth, we exclude observations for which the education or health-care spending is missing. This process results in 224 observations from 47 countries for the education panel and 280 observations from 52 countries for the health-care panel.

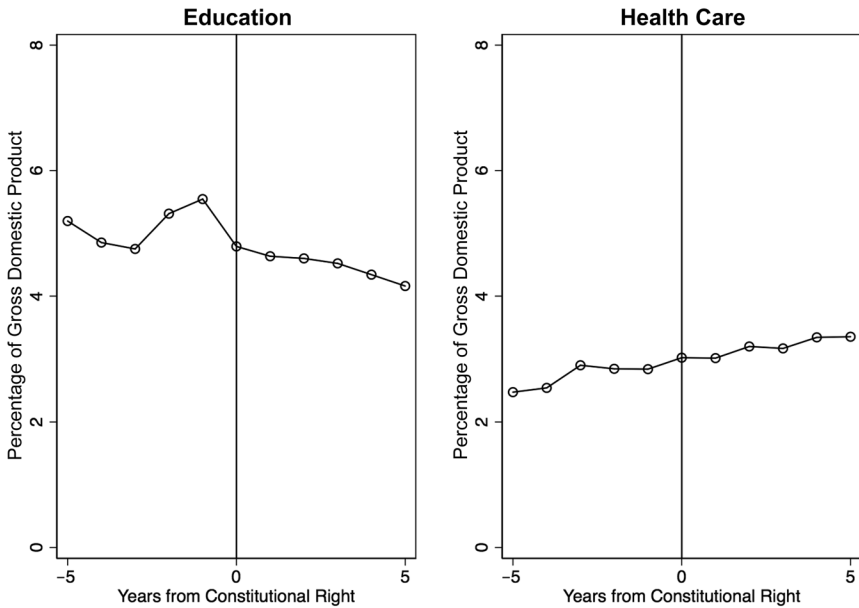


Figure 4. Average government spending before and after constitutional change

right. This selection problem biases any naive analysis of the impact of a constitutional right. This problem is similar to the selection problem in the literature on the effectiveness of human rights treaties. Over the past decades, scholars in that field have used a variety of methods—including Heckman selection models (Neumayer 2005) and instrumental variables regressions (Simmons 2009)—to address the problem that countries' choices to sign treaties are not random. Although these methods cannot solve the fundamental problem that constitutional rights are, at least usually, not randomly assigned, they can help to produce more credible estimates than simply regressing social spending on the presence of a constitutional right.

In this literature, the most common technique that has been used is matching (Simmons and Hopkins 2005; Hill 2010; Lupu 2013a, 2013b, 2015; Nielsen and Simmons 2014; Fuhrmann and Lupu 2016). The goal of matching is to reduce significant differences between the treatment and control groups by pairing observations that are as similar in as many relevant ways as possible, except that one has received the treatment while the other has not. The critical assumption of this method is that if the observations are similar along all relevant dimensions except that one has received the treatment, then observed differences in the dependent variable can be attributed to the treatment. Obviously, this is a heroic assumption (Spamann 2015). After all, it begs the question, if the observations (for example, countries) are similar along all dimensions, why did one country receive the treatment (adopt the right) when the other did not? That said, although this as-

sumption is a strong one, matching has become the most common way to test the effectiveness of rights because it does at least ensure that comparisons are made between similar countries.

An important shortcoming of matching is that it relies on conditioning exclusively on observable variables. It is possible, therefore, that there are unobserved variables influencing both the treatment and outcome. When these are not included in the matching, the impact of the unobservables might be mistakenly attributed to the treatment. In the human-rights context, a major concern is that there are unobserved differences in states' preferences for treaty commitments that are related to human-rights practices. To address this problem, Lupu (2013a, 2013b, 2015) develops a method to measure a state's preferences for treaty commitment with the goal of turning preferences for treaty commitments from an unobserved to an observed variable. This method estimates the treaty ideal point for countries on the basis of their existing treaty ratification record and then calculates the probability that a state would have ratified a particular agreement. To do so, Lupu uses the W-NOMINATE algorithm that was developed to explain the ideological preferences of legislators (Poole and Rosenthal 1997).

Under this approach, the decision to ratify a human-rights treaty is modeled as a point in  $n$ -dimensional policy space (Lupu 2013a, 2013b, 2015). The ideal points of every state in every year are then calculated as points in the same  $n$ -dimensional policy space on the basis of previous ratification decisions. The assumption is that the closer a state's ideal point is to the point estimated for a particular treaty, the more likely it is that a state will ratify that treaty. After calculating the probabilities of treaty ratification in this way, Lupu includes them in matching algorithms, thus accounting for an important unobservable determinant of treaty ratification.

Recent work (Chilton and Versteeg 2015, 2016) uses this approach to estimate the effect of constitutional rights on a government's behavior. Ideal-point estimation is used to approximate every country's constitutional ideal point, which is then used to calculate the probability that a country will adopt a particular right. These probabilities and a set of standard observable variables are then matched. In this paper, we follow the same approach.

#### 4.2. Implementation

Following Lupu (2013a, 2013b, 2015) and Chilton and Versteeg (2015, 2016) our analysis involves three stages. We use ideal-point estimation, matching, and regression analysis.

##### 4.2.1. Ideal-Point Estimation

In the first stage, we estimate every country's constitutional ideal point using data on 87 rights that are commonly found in national constitutions (see Chilton and Versteeg 2015, 2016). We estimate a two-dimensional model using the W-NOMINATE algorithm for the R programming language (Poole et al. 2011).



This analysis yields annual constitutional ideal points along two dimensions for 196 countries from 1946 to 2016.

With these ideal points, we next estimate the probability that a country would have included the right to education or health care in its constitution by calculating the distance between the country's ideal point and the ideal point of that right. Doing so produces an estimate of the probability between 0 and 1 that a country would have a particular right protected by its constitution in every year. Intuitively, these estimates capture the probability that a country will adopt a right based on its general preference for rights commitment as revealed by its other constitutional choices.

#### 4.2.2. Matching

In the second stage, we match country-year observations in which the country's constitution included the relevant constitutional right to those in which its constitution did not include that right. Our matching procedure uses the probabilities calculated in the first stage of our analysis and a number of observable variables that are commonly used in the literature on social spending (Avelino, Brown, and Hunter 2005, pp. 631–32; Doyle 2015, pp. 795–96).

First, we control for the urban population (as a percentage of the total population). We do so because urbanization tends to be associated with industrialization and organized workers, which, in turn, might lead to stronger demands for social spending (Bates 1981). Second, we control for the population over age 65 (as a percentage of the total population), since having a higher number of elderly people often leads to more social spending. Third, we control for economic growth, as captured by the annual percentage growth in GDP per capita, because economic volatility can affect social spending. Fourth, we control for inflation, since high inflation suggests that the government may be spending more than it receives. These variables are from the October 2015 edition of the WDI database.<sup>15</sup> Fifth, we control for log of GDP per capita, from version 8.1 of the Penn World Tables (Feenstra, Inklaar, and Timmer 2015), since wealthier countries spend more on social welfare (a principle known as Wagner's law).

In addition, we include several standard control variables from the literature on government repression (Poe and Tate 1994; Poe, Tate, and Keith 1999). Since democratic countries are generally more respectful of human rights (Bueno De Mesquita, Downs, and Smith 2005) and engage in higher rates of social spending (Avelino, Brown, and Hunter 2005), we also match on each country's polity score as a measure of democracy.<sup>16</sup> Moreover, we match on whether a country is engaged in an interstate war or civil war,<sup>17</sup> as wars tend to affect a country's per-

<sup>15</sup> We use the following WDI variables: SP.URB.TOTL.IN.ZS for the urban population, SP.POP.65UP.TO.ZS for the population of those 65 and older, SL.UEM.TOTL.ZS for total unemployment, NY.GDP.DEFL.KD.ZG for inflation, and NY.GDP.PCAP.KD.ZG for GDP per capita growth (annual percentage).

<sup>16</sup> We use the polity2 variable from the Polity IV Project (Marshall, Gurr, and Jagers 2017).

<sup>17</sup> We use the yearly conflict data set from Uppsala Conflict Data Program, UCDP Conflict Encyclopedia (<http://www.ucdp.uu.se>).

Table 1  
Matching Results by Sample

	Education		Health Care	
	Full	Matched	Full	Matched
Sample size ( <i>N</i> )	2,431	530	3,105	862
Treatment ( <i>N</i> )	1,834	265	2,082	431
Control ( <i>N</i> )	597	265	1,023	431
Mean distance: treatment	.894	.658	.853	.597
Mean distance: control	.325	.559	.299	.512

formance regarding rights, which might include social rights. Given the evidence that simply deleting observations with missing variables biases results (Lall 2016), we follow the practice in the human-rights literature and use Amelia to input missing values for our control variables (Lupu 2013a, 2013b, 2015; Chilton and Versteeg 2015, 2016). In addition, we include a lagged dependent variable and a linear time trend in our matching process.

We chose to use propensity-score matching (Honaker, King, and Blackwell 2011).<sup>18</sup> While there are other matching methods available, this method is advocated by Lupu (2013b) and has been the primary method used in the international law literature (Simmons and Hopkins 2005; Hill 2010).<sup>19</sup> Using this approach, we created two matched data sets—one for the right to education and one for the right to health care. As Table 1 shows, doing so dramatically improves the balance for our two matched samples: the balance for the education sample improved by 83 percent, and the balance for the health-care sample improved by 85 percent.

To further explore the matching results, Figure 5 reports the standardized mean differences between the treatment and control observations for the samples in Table 1. The results in Figure 5 show that the large improvements in balance for the matched samples are primarily driven by dramatically smaller standardized mean differences in the variables that capture the probability of adopting a right, created using the W-NOMINATE algorithm. In other words, the matching process appears to primarily ensure that the countries in the matched sample have a comparable set of constitutional rights.

<sup>18</sup> As in Chilton and Versteeg (2015), we use nearest-neighbor matching with a caliper of .5 to ensure that the matched pairs improve the balance in the sample.

<sup>19</sup> Although propensity-score matching is the most widely used in the literature, it has recently been criticized for increasing imbalance, inefficiency, model dependence, and bias (King and Nielsen 2016; King, Lucas, and Nielsen 2017). Despite these criticisms, we elected to use propensity-score matching because it is the most widely used in the literature and other methods are still early in their development. In robustness checks reported in Section 5.2, we follow the recommendation of King and Nielsen (2016) and use Mahalanobis distance matching, and in analysis reported in the online appendix, we use the matching frontier approach developed in King, Lucas, and Nielsen (2017).

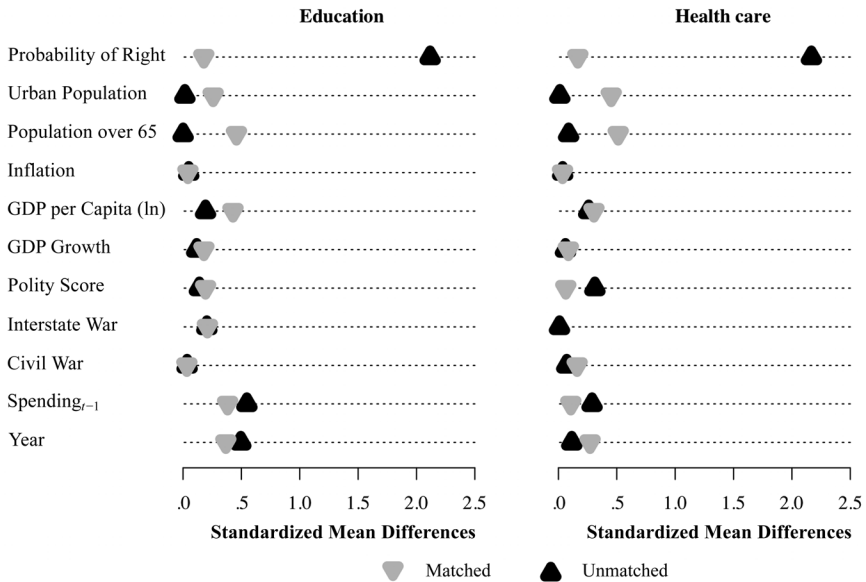


Figure 5. Differences between treatment and control variables

#### 4.2.3. Multivariate Regression Analysis

In the third stage, we use the matched data sets to test the impact of social rights on social spending using regression analysis. We do so because the treatment and control groups are not perfectly balanced after the matching process. We estimate an ordinary least squares model that includes all of the variables on which we matched and a set of year fixed effects (see Lupu 2013a, 2013b, 2015; Chilton and Versteeg 2015; Fuhrmann and Lupu 2016). We address potential serial correlation by calculating robust standard errors clustered at the country level.

### 5. Primary Results

#### 5.1. Baseline Specification

Table 2 presents our baseline results of estimates of the effect of having a constitutional right to education and health care on public spending as a percentage of GDP. The results in Table 2 suggest that the effects of both rights are positive but statistically insignificant and substantively small. Moreover, as we explore more in Section 5.2, the relatively small standard errors for the variable indicating the right to education or health care suggests that these results are also fairly precisely estimated. Simply put, these results suggest that constitutionalizing these rights does not produce a statistically significant increase in the amount of money that

Table 2  
Effect of Constitutional Social Rights on Social  
Spending: Baseline Results

	Education	Health Care
Constitutional Right	.051 (.053)	.033 (.044)
Probability of Right	.062 (.057)	-.082 (.054)
Urban Population	-.002 (.002)	-.002 (.002)
Population over 65	-.012 (.010)	.015* (.006)
Inflation	-.000 (.000)	-.000* (.000)
GDP per Capita (ln)	.107* (.052)	.038 (.035)
GDP Growth	-.016* (.006)	-.014* (.006)
Polity Score	.004 (.005)	.005 (.005)
Interstate War	.199+ (.101)	-.065 (.071)
Civil War	-.013 (.156)	-.070 (.060)
Spending <sub>t-1</sub>	.950** (.016)	.950** (.012)
N	530	862
R <sup>2</sup>	.929	.952

Note. Robust standard errors clustered by country are in parentheses. All models include year fixed effects.

+  $p < .10$ .

\*  $p < .05$ .

\*\*  $p < .01$ .

the government spends on them as a percentage of GDP. Taken together, these results are consistent with the graphical evidence presented in Section 3.

### 5.2. Alternative Specifications

Our primary results are not dependent on the specifics of our empirical strategy. Instead, we find the same results when we use a different matching approach and when we remove each of the key elements of our research design.<sup>20</sup>

As a baseline, model A in Table 3 reproduces the primary specification presented in Table 2. Model B reports the results when using an alternative approach to matching, Mahalanobis distance matching. We use this approach following the recommendation of King and Nielsen (2016) out of concern that the propensity-

<sup>20</sup> The results in Tables 3–8 report only the coefficients for Constitutional Right and omit the coefficients for the control variables. The online appendix reports the complete regression results for all of the regressions discussed.

Table 3  
Effect of Constitutional Social Rights on Social Spending:  
Alternative Specifications

	Education	Health Care
Model A: baseline specification:		
Constitutional Right	.051 (.053)	.033 (.044)
N	530	862
Model B: Mahalanobis matching:		
Constitutional Right	.044 (.037)	.024 (.038)
N	1,194	2,046
Model C: without matching:		
Constitutional Right	.001 (.034)	.038 (.035)
N	2,633	3,473
Model D: without W-NOMINATE:		
Constitutional Right	-.010 (.029)	-.021 (.024)
N	2,633	3,473
Model E: without multiple imputation:		
Constitutional Right	-.037 (.042)	.020 (.031)
N	1,640	1,585
Model F: with country fixed effects:		
Constitutional Right	-.273 (.333)	.299 (.199)
N	2,123	1,721

**Note.** Robust standard errors clustered by country are in parentheses. Coefficients for control variables and constants are not reported.

score-matching approach we use in our baseline analysis may induce imbalance or model dependence. Model C includes the same variables as our baseline specifications, but the data were not first processed with matching. Model D further exclude our estimate of the probability that a country includes the right in its constitution as obtained through the W-NOMINATE procedure. For model E we start with a specification based on model C (no matching and no estimated probability of adopting the right) and then do not use Amelia to input missing values for our control variables. Finally, model F goes a step further and reports regressions that do not use matching, do not use the W-NOMINATE probabilities, do not use the Amelia procedure, and do not include a lagged dependent variable. Instead, the results for model F include just the control variables and year and country fixed effects. In none of the five specifications are results positive and statistically significant. Taken together, the results in Table 3 suggest that including these social rights in a constitution is not associated with a statistically significant increase in relevant spending.

### 5.3. Substantive Effects

While the results reported thus far suggest that constitutionalizing social rights is not associated with statistically significant increases in social spending, we have not yet considered the size of the effect. It is possible that a constitutional right has a substantively large effect that is not statistically significant because the model is imprecisely estimated.

To address this concern, Rainey (2014) develops an approach to evaluate whether null results are the same as evidence that a given variable has no effect. The approach requires first defining the smallest effect that could be considered substantively meaningful (denoted  $m$ ) and then defining a reject region from  $-m$  to  $m$ . A variable is considered to have no effect when the 90 percent confidence interval for a coefficient does not cross  $-m$  or  $m$ . This approach is easy to implement in a standard regression framework and has been used in the human-rights literature (Nielsen and Simmons 2014; Chilton and Versteeg 2015).

This approach does, however, require researchers to subjectively define the size of  $m$ . When studying the relationship between democratization on social spending, Avelino, Brown, and Hunter (2005) argue that a .5-percentage-point increase in social spending as a percentage of GDP is a substantively meaningful effect. Although it is admittedly subjective, we define  $m$  as .5.

Figure 6 shows the point estimates and the 90 percent confidence intervals for the models presented in Table 3. The confidence intervals for the right to education do not cross .5 for any of the regressions. The confidence interval does, however, cross  $-.5$  in model F—which is the model that does not include control variables and is thus likely to be imprecisely estimated. The confidence intervals for the right to health care cross .5 only for model F. The results for all other models show that the impact of the rights to education and health care is almost precisely 0. The results in Figure 6 thus suggest not only that the effects of the constitutional rights to education and health care on spending are not statistically significant but also that there is little evidence that the effects might nonetheless be substantively meaningful.

## 6. Additional Analyses

Our primary results suggest that constitutional rights to education and health care are not associated with higher government spending on education or health care as a percentage of GDP. To further explore the effect of constitutionalizing social rights, we next test the effect of these rights when using alternative ways of measuring spending on education and health care, altering how we define whether social rights are included in the constitution, expanding our analysis to examine the rights to housing and social security, testing whether constitutional rights to education and health care have a greater effect in countries with independent judiciaries, and exploring the effect of the rights to education and health care on education and health outcomes.

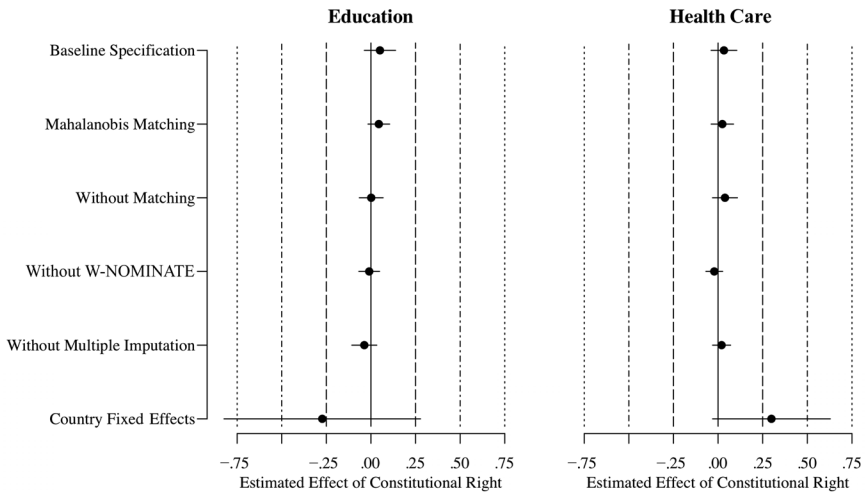


Figure 6. Substantive effects of rights on spending

### 6.1. Alternative Measures of Social Spending

Until now, our dependent variable has been public spending on education and health care as a percentage of GDP. Of course, there are alternative ways to measure social spending, and there are also reasons to be concerned that our approach may not accurately capture the impact of constitutional rights.

A first concern is that indicators that capture social spending as a percentage of GDP are sensitive to shocks in the country's GDP per capita. For instance, if a country were to spend the same absolute amount on education in consecutive years, and it experienced a negative economic shock in one of the years, our dependent variable would suggest that the country did more for education or health care even though spending was the same. Since measurement error in our dependent variable should have the effect of inflating our standard errors, and the results in Figure 6 suggest that our estimates are fairly precisely estimated, we do not believe that this is a major concern. Nevertheless, we reestimated the regression specifications reported in Table 3 using different dependent variables: health spending and education spending as a percentage of total government spending in all sectors. These results are reported in Table 4. As with our primary analyses, these results reveal little evidence of a positive and statistically significant effect of the right to education or health care. Although the result for health care is positive and statistically significant in the baseline specification, it is not robust to alternative specifications.

A second concern with our primary dependent variables is that the benefits of additional spending may decrease after a certain point. While the principle of progressive realization requires the government to gradually direct more resources toward the realization of social rights, there are also certain key bench-

Table 4  
Effect of Social Rights on Social Spending: Alternative Spending Measures

	% Government Spending		Meets Spending Targets	
	Education (1)	Health Care (2)	Education (3)	Health Care (4)
Model A: baseline specification:				
Constitutional Right	.133 (.201)	.207+ (.121)	.001 (.026)	.019 (.017)
N	364	830	526	840
Model B: Mahalanobis matching:				
Constitutional Right	.068 (.253)	-.080 (.139)	.014 (.031)	-.011 (.019)
N	688	2,036	1,194	2,046
Model C: without matching:				
Constitutional Right	.056 (.185)	.088 (.108)	-.010 (.023)	.014 (.014)
N	1,834	3,468	2,633	3,473
Model D: without W-NOMINATE:				
Constitutional Right	-.089 (.144)	-.068 (.063)	-.029* (.014)	-.006 (.008)
N	1,834	3,468	2,633	3,473
Model E: without multiple imputation:				
Constitutional Right	-.112 (.224)	-.061 (.125)	-.035 (.036)	-.016 (.020)
N	951	1,580	1,640	1,585
Model F: with country fixed effects:				
Constitutional Right	-.194 (1.037)	.870 (.840)	-.030 (.052)	.011 (.029)
N	1,242	1,716	2,123	1,721

Note. Robust standard errors clustered by country are in parentheses. Coefficients for control variables and constants are not reported.

+  $p < .10$ .

\*  $p < .05$ .

marks on social spending that are considered necessary to meet basic obligations. Indeed, some constitutions explicitly set such targets, such as that of Costa Rica, which requires the government to spend no less than 8 percent of the GDP on education.<sup>21</sup> Although recommendations on what is an appropriate amount to spend on education and health care vary, to our knowledge the most common and widely cited spending targets are that governments should spend 6 percent of GDP on education (UN Educational, Scientific, and Cultural Organization 2015) and 5 percent of GDP on health care (Savedoff 2007). Meeting these targets, then, can be seen as a good indicator of a government's commitment to uphold its constitutional obligations. To capture this, we use dependent variables that equal one if the percentage of GDP spent on education is 6 percent or greater and one if the

<sup>21</sup> "For the State education, superior [education] included, the public expenditure will not be inferior to the annual eight percent (8 percent) of the gross domestic product, in accordance with the law, without prejudice to that established in Articles 84 and 85 of this Constitution" (Constitution of Costa Rica 1949, art. 78 [2011]).



percentage of GDP spent on health care is 5 percent or greater. Table 4 reports the results of using linear probability models to estimate the effect of having a constitutional right to education or health care on these spending targets. Again, the results reveal no evidence that constitutionalizing the right to education or health care increases the likelihood of meeting the targets.

### 6.2. *Alternative Definitions of Social Rights*

Not all constitutional rights to education and health care are the same. Indeed, there are important differences in the ways that countries formulate these rights in their constitutions. There is variation in whether these rights are stated as goals for the government or rights for citizens, whether they are justiciable, and whether the social-rights-related services ought to be provided free of charge. To capture such nuances in constitutional texts, we coded three alternative variables for health-care and education rights.

First, we recoded whether countries have the rights to education and health care while excluding countries that merely list these rights as a goal for their governments. For instance, some countries draft social rights as rights for citizens (for example, “everyone has a right to an education”), while others draft them as a goal for the government (for example, “the government shall ensure that everyone has access to education”). While the difference may be mere semantics, it is possible that granting explicit rights is more empowering for individuals who seek to enforce them. In Table 5 we recreate the model specifications presented in Table 3 while using this alternative constitutional rights coding. Although the regression for model F finds a statistically significant effect for the right to health care, this result is not robust to alternative specifications. The rest of the results are consistent with our baseline results, which suggests that there is no impact.

Second, we recoded whether countries have the rights to education and health care while excluding countries that explicitly made the rights nonjusticiable. Some countries explicitly state that courts are unable to enforce a right.<sup>22</sup> When rights are nonjusticiable, it becomes difficult to bring claims in court and harder for individuals to use the constitutional language to pressure the government to increase social spending.<sup>23</sup> The estimates using this alternative coding are also presented in Table 5. As with our baseline specifications, these estimates do not provide evidence that these rights are associated with increased government spending.

Third, we recoded whether countries have the rights to education and health care while including only countries that stipulate that these rights will be provided free of charge. Of the countries that provide a right to education, 65 percent stipulate that education should be available free of charge, while 22 percent of the

<sup>22</sup> One example is the constitution of India, which states that “[t]he provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws” (Constitution of India, art. 37).

<sup>23</sup> Courts, however, have at times been creative at circumventing explicit constitutional language that makes social rights nonjusticiable. The Indian Supreme Court, for example, has enforced the right to education even though the constitution declares the right to be nonjusticiable.

Table 5  
Effect of Social Rights on Social Spending: Alternative Definitions of Rights

	Excluding Rights as Policy Goals		Excluding Nonjusticiable Rights		Guarantees of Free Services	
	Education	Health Care	Education	Health Care	Education	Health Care
Model A: baseline specification:						
Constitutional Right	.013 (.031)	-.038 (.032)	.025 (.029)	.029 (.034)	-.022 (.030)	-.020 (.025)
N	1,222	1,408	948	1,046	1,080	1,134
Model B: Mahalanobis matching:						
Constitutional Right	.026 (.027)	-.025 (.025)	.030 (.024)	-.007 (.033)	-.012 (.026)	-.028 (.021)
N	1,892	2,506	1,832	2,716	2,030	1,258
Model C: without matching:						
Constitutional Right	.017 (.023)	-.022 (.024)	.034 (.023)	.006 (.029)	-.015 (.024)	-.039* (.019)
N	2,632	3,470	2,632	3,470	2,632	3,470
Model D: without W-NOMINATE:						
Constitutional Right	.010 (.024)	-.031 (.020)	.029 (.021)	-.028 (.022)	-.014 (.023)	-.029 (.022)
N	2,632	3,470	2,632	3,470	2,632	3,470
Model E: without multiple imputation:						
Constitutional Right	-.004 (.028)	-.042* (.024)	.001 (.024)	-.020 (.025)	-.005 (.031)	-.036* (.018)
N	1,640	1,583	1,640	1,583	1,640	1,583
Model F: with country fixed effects:						
Constitutional Right	-.002 (.285)	.419* (.181)	-.577* (.258)	.195 (.237)	.119 (.384)	-.036* (.018)
N	2,123	1,721	2,123	1,721	2,123	1,721

Note. Robust standard errors clustered by country are in parentheses. Coefficients for control variables and constants are not reported.

\*  $p < .10$ .

\*  $p < .05$ .

countries that provide a right to health care do the same. If anything, we may expect that when the constitution requires education and health care to be provided free of charge, the impact on government spending will be larger. The results using this alternative coding are presented in Table 5. Again, our estimates do not provide any evidence that these rights are associated with increased government spending.

### 6.3. *The Rights to Housing and Social Security*

Our analyses thus far have relied on social spending data from the WDI. An alternative data source used to study social spending is the Global Development Network Growth Database. Although this database has less coverage than the WDI, it includes data on government spending on housing and social security as a percentage of GDP. This allows us to include two additional constitutional rights: the right to housing and the right to social security.

In Table 6 we test the effectiveness of these rights using the specifications introduced in Table 3. The results reported in Table 6 are largely substantively small and not statistically significant. The only result that is positive and statistically significant is the effect of the right to housing in model F. Although it provides some evidence that the right to housing increases spending on housing, this result is not robust to alternative specifications.

### 6.4. *Social Rights and Judicial Independence*

Thus far, we have explored the effect of social rights on social spending in the aggregate—that is, across all countries and all years. It is possible, however, that constitutional social rights are associated with increased social spending only when certain conditions are present. As described in Section 2.1, the bulk of the social rights literature focuses on courts as the main protector of social rights. Indeed, the literature extensively documents how courts around the world have ordered governments to write new policies and provide access to social services and how they have struck down austerity measures, among other things. The focus on courts is not limited to the literature on social rights: comparative constitutional law as a whole is quite bullish on the ability of courts to protect rights (Gardbaum 2015, p. 287). What is more, research in economics and political science finds a positive relationship between the presence of independent judiciaries and respect for human rights (for example, Crabtree and Nelson 2017; La Porta et al. 2004; Keith 2002b). It is possible, then, that constitutional social rights increase government spending only when there is an independent judiciary that can actively enforce them.

To explore whether the impact of the rights to health care and education are dependent on the presence of an independent judiciary, we use the measure Judicial Independence developed by Linzer and Staton (2015), a latent measure constructed from eight direct and indirect measures of judicial independence and available for 200 countries for 50 years. We use this measure for our analysis because of the excellent coverage of the data.

Table 6  
Effect of Social Rights on Social Spending:  
Housing and Social Security

	Housing	Social Security
Model A: baseline specification:		
Constitutional Right	.006 (.034)	.038 (.059)
<i>N</i>	579	666
Model B: Mahalanobis matching:		
Constitutional Right	.005 (.028)	-.068 (.064)
<i>N</i>	824	1,365
Model C: without matching:		
Constitutional Right	.003 (.025)	-.036 (.056)
<i>N</i>	1,589	1,567
Model D: without W-NOMINATE:		
Constitutional Right	-.028 (.024)	.006 (.047)
<i>N</i>	1,589	1,567
Model E: without multiple imputation:		
Constitutional Right	.032 (.027)	-.089 (.057)
<i>N</i>	1,292	1,260
Model F: with country fixed effects:		
Constitutional Right	.297* (.172)	-.137 (.459)
<i>N</i>	1,411	1,376

**Note.** Robust standard errors clustered by country are in parentheses. Coefficients for control variables and constants are not reported.

\*  $p < .10$ .

To test whether having an independent judiciary increases the effectiveness of social rights, we include a measure of judicial independence in our baseline model and an interaction between judicial independence and the rights to education and health care. Since our primary matching algorithms do not report any pairs that met our criteria when including these interactions, we estimate only models D–F from Table 3. Table 7 reports the key coefficients for these regressions, which do not reveal any evidence that the interaction of social rights and judicial independence has a statistically significant effect on social spending.

### 6.5. Social Rights and Social Outcomes

Finally, although we have not found evidence that including social rights in constitutions is associated with increased government spending, it is theoretically possible that countries could improve the provision of a given social service—for example, by improving efficiency—without increasing government spending. Fully testing the effects of social rights on improvements in social outcomes will

Table 7  
Interaction of Social Rights and Judicial Independence

	Education	Health Care
Model A: without matching:		
Constitutional Right	-.024 (.087)	.015 (.046)
Judicial Independence	-.011 (.117)	.153 (.117)
Constitutional Right × Judicial Independence	.035 (.097)	.042 (.082)
N	2,633	3,473
Model B: without W-NOMINATE:		
Constitutional Right	-.036 (.081)	-.023 (.047)
Judicial Independence	-.011 (.117)	.204* (.111)
Constitutional Right × Judicial Independence	.041 (.095)	.038 (.081)
N	2,633	3,473
Model C: without multiple imputation:		
Constitutional Right	-.147 (.100)	.033 (.050)
Judicial Independence	-.228* (.135)	.265* (.125)
Constitutional Right × Judicial Independence	.143 (.105)	-.028 (.079)
N	1,640	1,585
Model D: with country fixed effects:		
Constitutional Right	-.687 (.635)	.371 (.324)
Judicial Independence	1.844 (1.436)	.431 (.880)
Constitutional Right × Judicial Independence	.836 (.965)	-.160 (.394)
N	2,123	1,721

**Note.** Robust standard errors clustered by country are in parentheses. Coefficients for control variables and constants are not reported.

+  $p < .10$ .

\*  $p < .05$ .

require future research, but we end our analysis by preliminarily testing the effect of the rights to education and health care on educational and health outcomes.

To do so, we use WDI data on educational and health outcomes. We collected information about three educational outcomes: education intake, education persistence, and youth literacy (see note 11). The data on youth literacy have extremely limited coverage, and, as a result, we do not think much weight should be given to those results. We also collected data on three health outcomes: the life expectancy rate, the number of physicians per 1,000 people, and the number of hospital beds per 1,000 people.

In Table 8, we report the results from the specifications reported in Table 3 but using these outcome measures as our dependent variables. For the models testing the effect of the right to education, we find two positive and statistically significant effects. These effects, however, are not robust across the specifications. For the models testing the right to health care, we find only one positive effect—an increase in life expectancy in model D. Obviously, if the constitutional right to health care improves life expectancy, it would be incredibly important. Since there has been a general linear increase in life expectancy over time, and this finding is not robust to alternative specifications, however, we are hesitant to make much of this result. We do think that it suggests the need for future research to build on our project and investigate the effect of rights on health outcomes in more depth.

## 7. Conclusion

While constitutionalizing social rights has generally been met with great enthusiasm in both academic and policy circles, we find that doing so does not appear to shift government behavior. We find that the adoption of the right to education or the right to health care is not associated with increased spending on education or health care. We also do not find positive results when testing alternative ways of measuring social spending, different ways of defining the presence of constitutional rights, the effects of other social rights, and the effect of independent judiciaries and when using health and education outcomes instead of social spending as our dependent variables.

It is possible, of course, that constitutional social rights may still have important effects. For example, although our evidence suggests that they do not have an effect in general, it may be the case that they do have an effect under certain conditions—like in countries that are transitioning democracies or that have particularly strong social movements that push for implementation. In addition, even if the constitutionalization of social rights does not change the amount of money that countries spend on the provision of social rights, the constitutional rights to education and health care may still influence outcomes in other ways. For example, adopting these rights may lead a government to change the way social spending is distributed—and the effects of these rights are powerful if they result in countries directing more resources toward the poor. Existing qualitative evidence, however, refutes this idea and suggests that, if anything, social rights direct resources toward those who can afford to go to court (Landau 2012). Social rights might also eradicate discrimination in the provision of social-rights-related goods and services. Perhaps less tangibly, they may change the way in which politicians talk about social justice or how judges decide cases in other areas of law. While qualitative research has started to take up some of these questions, many remain unanswered. Regardless, we hope that the core finding in this paper can direct future research inquiries. It suggests that one fruitful avenue for future exploration is the study of how constitutional social rights can affect outcomes without increases in social spending.

**Table 8**  
**Effect of Social Rights on Educational and Health Outcomes**

	Education Outcomes			Health Outcomes		
	Education Intake	Education Persistence	Youth Literacy	Life Expectancy	Total Physicians	Hospital Beds
Model A: baseline specification:						
Constitutional Right	.922 (.693)	.468 (.793)		-.009 (.044)	-.011 (.020)	.117 (.096)
N	592	380		2,412	406	234
Model B: Mahalanobis matching:						
Constitutional Right	-.115 (.372)	1.240* (.699)		-.009 (.039)	-.018* (.007)	.085 (.083)
N	1,538	834		7,330	1,682	942
Model C: without matching:						
Constitutional Right	.373 (.408)	.351 (.511)	.231 (.223)	.009 (.039)	-.018* (.007)	.083 (.079)
N	3,870	2,533	172	8,429	2,209	1,414
Model D: without W-NOMINATE:						
Constitutional Right	.551* (.263)	.147 (.343)	.215 (.129)	.060* (.024)	-.003 (.007)	.048 (.031)
N	3,870	2,533	172	8,429	2,209	1,414
Model E: without multiple imputation:						
Constitutional Right	.296 (.482)	.743 (.652)		.009 (.049)	-.009 (.009)	.149 (.100)
N	2,263	1,620		5,133	1,434	952
Model F: with country fixed effects:						
Constitutional Right	8.980 (6.486)	-1.219 (2.628)	4.357 (3.539)	.728 (.612)	.020 (.078)	.156 (.420)
N	2,658	2,027	282	5,152	2,224	1,570

Note. Robust standard errors clustered by country are in parentheses. Coefficients for control variables and constants are not reported.  
 \*  $p < .10$ .  
 \*  $p < .05$ .

## References

- Avelino, George, David S. Brown, and Wendy Hunter. 2005. The Effects of Capital Mobility, Trade Openness, and Democracy on Social Spending in Latin America, 1980–1999. *American Journal of Political Science* 49:625–41.
- Baldacci, Emanuele, Benedict Clements, Sanjeev Gupta, and Qiang Cui. 2008. Social Spending, Human Capital, and Growth in Developing Countries. *World Development* 36:1317–41.
- Bates, Robert H. 1981. *Markets and States in Tropical Africa: The Political Basis of Agricultural Policies*. Berkeley: University of California Press.
- Bazzi, Samuel, and Michael A. Clemens. 2013. Blunt Instruments: Avoiding Common Pitfalls in Identifying the Causes of Economic Growth. *American Economic Journal: Macroeconomics* 5:152–86.
- Ben-Bassat, Avi, and Momi Dahan. 2008. Social Rights in the Constitution and in Practice. *Journal of Comparative Economics* 36:103–19.
- Boli-Bennett, John. 1976. The Expansion of Nation-States, 1870–1970. PhD diss., Stanford University.
- Bueno De Mesquita, Bruce, George W. Downs, and Alastair Smith. 2005. Thinking inside the Box: A Closer Look at Democracy and Human Rights. *International Studies Quarterly* 49:439–57.
- Chilton, Adam S., and Mila Versteeg. 2015. The Failure of Constitutional Torture Prohibitions. *Journal of Legal Studies* 44:417–52.
- . 2016. Do Constitutional Rights Make a Difference? *American Journal of Political Science* 60:575–89.
- . 2018. Courts' Limited Ability to Protect Constitutional Rights. *University of Chicago Law Review* 85:293–335.
- Collier, Paul. 2007. *The Bottom Billion: Why the Poorest Countries Are Failing and What Can Be Done about It*. New York: Oxford University Press.
- Crabtree, Charles, and Michael J. Nelson. 2017. New Evidence for a Positive Relationship between de facto Judicial Independence and State Respect for Empowerment Rights. *International Studies Quarterly* 61:210–24.
- Cross, Frank B. 1999. The Relevance of Law in Human Rights Protection. *International Review of Law and Economics* 19:87–98.
- . 2001. The Error of Positive Rights. *UCLA Law Review* 48:857–924.
- Davenport, Christian A. 1996. “Constitutional Promises” and Repressive Reality: A Cross-National Time-Series Investigation of Why Political and Civil Liberties Are Suppressed. *Journal of Politics* 58:627–54.
- Davis, Dennis M. 2008. Socioeconomic Rights: Do They Deliver the Goods? *International Journal of Constitutional Law* 6:687–711.
- . 2012. Socio-economic Rights. Pp. 1020–34 in *The Oxford Handbook of Comparative Constitutional Law*, edited by Michel Rosenfeld and Andrés Sajó. New York: Oxford University Press.
- Dixon, Rosalind. 2007. Creating Dialogue about Socioeconomic Rights: Strong-Form versus Weak-Form Judicial Review Revisited. *International Journal of Constitutional Law* 5:391–418.
- Dixon, Rosalind, and Martha C. Nussbaum. 2012. Children's Rights and a Capabilities Approach: The Question of Special Priority. *Cornell Law Review* 97:549–93.
- Doyle, David. 2015. Remittances and Social Spending. *American Political Science Review*



- 109:785–802.
- Edwards, Sebastian, and Alvaro Garcia Marin. 2014. Constitutional Rights and Education: An International Comparative Study. Working Paper No. 20475. National Bureau of Economic Research, Cambridge, MA.
- Eide, Asbjørn. 1987. *The Right to Adequate Food as a Human Right*. Document No. E/CN.4/Sub.2/1987/23. Geneva: United Nations.
- Epp, Charles R. 1998. *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective*. Chicago: University of Chicago Press.
- Feenstra, Robert C., Robert Inklaar, and Marcel P. Timmer. 2015. The Next Generation of the Penn World Table. *American Economic Review* 105:3150–82.
- Fox, Jonathan, and Deborah Flores. 2009. Religions, Constitutions, and the State: A Cross-National Study. *Journal of Politics* 71:1499–1513.
- Fuhrmann, Matthew, and Yonatan Lupu. 2016. Do Arms Control Treaties Work? Assessing the Effectiveness of the Nuclear Nonproliferation Treaty. *International Studies Quarterly* 60:530–39.
- Gardbaum, Stephen. 2015. Are Strong Constitutional Courts Always a Good Thing for New Democracies? *Columbia Journal of Transnational Law* 53:284–320.
- Gauri, Varun, and Daniel M. Brinks. 2008. Introduction: The Elements of Legalization and the Triangular Shape of Social and Economic Rights. Pp. 1–37 in *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World*, edited by Varun Gauri and Daniel M. Brinks. Cambridge: Cambridge University Press.
- Goderis, Benedikt, and Mila Versteeg. 2014. The Diffusion of Constitutional Rights. *International Review of Law and Economics* 39:1–14.
- Goldstone, Richard J. 2010. Foreword. Pp. vii–xiii in *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World*, edited by Varun Gauri and Daniel M. Brinks. Cambridge: Cambridge University Press.
- Gupta, Sanjeev, Marijn Verhoeven, and Erwin R. Tiongson. 2002. The Effectiveness of Government Spending on Education and Health Care in Developing and Transition Economies. *European Journal of Political Economy* 18:717–37.
- Hafner-Burton, Emilie M. 2012. International Regimes for Human Rights. *Annual Review of Political Science* 15:265–86.
- Hamilton, Alexander. 1961. Federalist No. 78. Pp. 521–30 in *The Federalist*, edited by Jacob E. Cooke. Middletown, CT: Wesleyan University Press.
- Hardin, Russell. 1982. *Collective Action*. Baltimore: Johns Hopkins University Press.
- Hershkoff, Helen. 1999. Positive Rights and State Constitutions: The Limits of Federal Rationality Review. *Harvard Law Review* 112:1131–96.
- Hill, Daniel W., Jr. 2010. Estimating the Effects of Human Rights Treaties on State Behavior. *Journal of Politics* 72:1161–74.
- Hoffman, Florian F., and Fernando R. N. M. Bentes. 2008. Accountability for Social and Economic Rights in Brazil. Pp. 100–145 in *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World*, edited by Varun Gauri and Daniel M. Brinks. Cambridge: Cambridge University Press.
- Honaker, James, Gary King, and Matthew Blackwell. 2011. Amelia II: A Program for Missing Data. *Journal of Statistical Software* 45:1–47.
- Jung, Courtney, Ran Hirschl, and Evan Rosevear. 2014. Economic and Social Rights in National Constitutions. *American Journal of Comparative Law* 62:1043–93.
- Keith, Linda Camp. 2002a. Constitutional Provisions for Individual Human Rights (1977–1996): Are They More than Mere “Window Dressing?” *Political Research Quarterly* 55:

- 111–43.
- . 2002b. Judicial Independence and Human Rights Protection around the World. *Judicature* 85:195–200.
- . 2012. *Political Repression: Courts and the Law*. Philadelphia: University of Pennsylvania Press.
- Keith, Linda Camp, C. Neal Tate, and Steven C. Poe. 2009. Is the Law a Mere Parchment Barrier to Human Rights Abuse? *Journal of Politics* 71:644–60.
- King, Gary, Christopher Lucas, and Richard A. Nielsen. 2017. The Balance-Sample Size Frontier in Matching Methods for Causal Inference. *American Journal of Political Science* 61:473–89.
- King, Gary, and Richard Nielsen. 2016. Why Propensity Scores Should Not Be Used for Matching. Working paper. Harvard University, Department of Biostatistics, Cambridge, MA. <http://gking.harvard.edu/publications/why-propensity-scores-should-not-be-used-formatting>.
- Lall, Ranjit. 2016. How Multiple Imputation Makes a Difference. *Political Analysis* 24:414–33.
- Landau, David. 2012. The Reality of Social Rights Enforcement. *Harvard International Law Journal* 53:189–247.
- Langford, Malcolm. 2008. The Justiciability of Social Rights: From Practice to Theory. Pp. 3–45 in *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law*, edited by Malcolm Langford. Cambridge: Cambridge University Press.
- La Porta, Raphael, Florencio López-de-Silanes, Cristian Pop-Eleches, and Andrei Shleifer. 2004. Judicial Checks and Balances. *Journal of Political Economy* 112:445–70.
- Law, David S., and Mila Versteeg. 2011. The Evolution and Ideology of Global Constitutionalism. *California Law Review* 99:1163–1257.
- Linzer, Drew A., and Jeffrey K. Staton. 2015. A Global Measure of Judicial Independence, 1948–2012. *Journal of Law and Courts* 3:223–56.
- Lupu, Yonatan. 2013a. Best Evidence: The Role of Information in Domestic Judicial Enforcement of International Human Rights Agreements. *International Organization* 67:469–503.
- . 2013b. The Informative Power of Treaty Commitment: Using the Spatial Model to Address Selection Effects. *American Journal of Political Science* 57:912–25.
- . 2015. Legislative Veto Players and the Effects of International Human Rights Agreements. *American Journal of Political Science* 59:578–94.
- Marshall, Monty G., Ted Robert Gurr, and Keith Jagers. 2017. *Polity IV Project: Political Regime Characteristics and Transitions, 1800–2016*. Vienna, VA: Center for Systemic Peace.
- Matsuura, Hiroaki. 2013. The Effect of a Constitutional Right to Health on Population Health in 157 Countries, 1970–2007: The Role of Democratic Governance. Working Paper No. 10613. Harvard University, Program on the Global Demography of Aging, Cambridge, MA.
- Melton, James. 2014. Do Constitutional Rights Matter? Working paper. University College London, Department of Political Science, London.
- Minkler, Lanse, and Nishith Prakash. 2015. The Role of Constitutions on Poverty: A Cross-National Investigation. Working Paper No. 2015-09. University of Connecticut, Department of Economics, Storrs.
- Neumayer, Eric. 2005. Do International Human Rights Treaties Improve Respect for Human Rights? *Journal of Conflict Resolution* 49:925–53.

- Nielsen, Richard A., and Beth A. Simmons. 2014. Rewards for Ratification: Payoffs for Participating in the International Human Rights Regime. *International Studies Quarterly* 59:197–208.
- Nolan, Aiofe. 2009. Addressing Economic and Social Rights Violations by Non-state Actors through the Role of the State: A Comparison of Regional Approaches to the “Obligation to Protect.” *Human Rights Law Review* 9:225–55.
- Nussbaum, Martha C. 2011. *Creating Capabilities: The Human Development Approach*. Cambridge, MA: Harvard University Press.
- OHCHR (Office of the High Commissioner for Human Rights). 2008. *Report on Indicators for Promoting and Monitoring the Implementation of Human Rights*. Report No. HRI/MC/2008/3. Geneva: OHCHR.
- Olson, Mancur, Jr. 1965. *The Logic of Collective Action: Public Goods and the Theory of Groups*. New York: Schocken.
- O’Neill, Onora. 1996. *Towards Justice and Virtue: A Constructive Account of Practical Reasoning*. Cambridge: Cambridge University Press.
- Pillay, Kameshni. 2002. Implementation of *Grootboom*: Implication for the Enforcement of Socio-economic Rights. *Law, Democracy, and Development* 6:255–77.
- Poe, Steven C., and C. Neal Tate. 1994. Repression of Human Rights to Personal Integrity in the 1980s: A Global Analysis. *American Political Science Review* 88:853–72.
- Poe, Steven C., C. Neal Tate, and Linda Camp Keith. 1999. Repression of the Human Right to Integrity Revised: A Global Cross-National Study Covering the Years 1976–1993. *International Study Quarterly* 43:291–313.
- Poole, Keith, Jeffrey Lewis, James Lo, and Royce Carroll. 2011. Scaling Roll Call Votes with wnominate in R. *Journal of Statistical Software* 42:1–21.
- Poole, Keith T., and Howard Rosenthal. 1997. *Congress: A Political-Economic History of Roll Call Voting*. New York: Oxford University Press.
- Posner, Eric A. 2014. *The Twilight of Human Rights Law*. New York: Oxford University Press.
- Pritchard, Kathleen. 1986. Comparative Human Rights: An Integrative Explanation. *Policy Studies Journal* 15:110–22.
- Rainey, Carlisle. 2014. Arguing for a Negligible Effect. *American Journal of Political Science* 58:1083–91.
- Ray, Brian. 2016. *Engaging with Social Rights: Procedure, Participation, and Democracy in South Africa’s Second Wave*. Cambridge: Cambridge University Press.
- Rosenberg, Gerald N. 1991. *The Hollow Hope: Can Courts Bring about Social Change?* Chicago: University of Chicago Press.
- Sajó, András. 1999. *Limiting Government: An Introduction to Constitutionalism*. Budapest: Central European University Press.
- Savedoff, William D. 2007. What Should a Country Spend on Healthcare? *Health Affairs* 26:962–70.
- Scheingold, Stuart A. 1974. *The Politics of Rights: Lawyers, Public Policy, and Political Change*. Ann Arbor: University of Michigan Press.
- Scheppele, Kim Lane. 2004. A Realpolitik Defense of Social Rights. *Texas Law Review* 82:1921–61.
- Sen, Amartya. 2004. Elements of a Theory of Human Rights. *Philosophy and Public Affairs* 32:315–56.
- Shue, Henry. 1980. *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*. Princeton, NJ: Princeton University Press.

- Simmons, Beth A. 2009. *Mobilizing for Human Rights: International Law in Domestic Politics*. Cambridge: Cambridge University Press.
- Simmons, Beth A., and Daniel J. Hopkins. 2005. The Constraining Power of International Treaties: Theory and Methods. *American Political Science Review* 99:623–31.
- Smulovitz, Carolina. 2006. Judicialization of Protest in Argentina: The Case of *Corralito*. Pp. 55–74 in *Enforcing the Rule of Law: Social Accountability in the New Latin American Democracies*, edited by Enrique Peruzzotti and Catalina Smulovitz. Pittsburgh: University of Pittsburgh Press.
- Spamann, Holger. 2015. Empirical Comparative Law. *Annual Review of Law and Social Science* 11:131–53.
- Stasavage, David. 2005. Democracy and Education Spending in Africa. *American Journal of Political Science* 49:343–58.
- Sunstein, Cass R. 1997. *Free Markets and Social Justice*. New York: Oxford University Press.
- . 2000. Social and Economic Rights? Lesson from South Africa. *Constitutional Forum* 11:123–32.
- . 2001. *Designing Democracy: What Constitutions Do*. New York: Oxford University Press.
- Tushnet, Mark. 2008. *Weak Courts, Strong Rights: Judicial Review and Social Welfare Rights in Comparative Constitutional Law*. Princeton, NJ: Princeton University Press.
- UN Committee on Economic, Social, and Cultural Rights. 2003. General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant). 5th sess., December 14, 1990. Document No. E/1991/23. In *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*. Document No. HRI/GEN/1/Rev.6. Geneva: United Nations.
- . 2008. General Comment No. 19: The Right to Social Security (Art. 9). 39th sess., November 5–23, 2007. Document No. E/C.12/GC/19. United Nations, Geneva.
- UN Development Program. 1990. *Human Development Report 1990*. New York: Oxford University Press.
- UN Educational, Scientific, and Cultural Organization. 2015. *Trends in Government Expenditures for Public Education, 2011–2013*. Report No. ED/EFA/MRT/2015/PI/45. Paris: United Nations Educational, Scientific, and Cultural Organization. <http://unesdoc.unesco.org/images/0023/002324/232476e.pdf>.
- Versteeg, Mila, and Emily Zackin. 2014. American Constitutional Exceptionalism Revisited. *University of Chicago Law Review* 81:1641–1707.
- Weingast, Barry R. 1997. The Political Foundations of Democracy and the Rule of Law. *American Political Science Review* 91:245–63.
- Whelan, Daniel J. 2010. *Indivisible Human Rights: A History*. Philadelphia: University of Pennsylvania Press.
- World Bank. 2006. Special Report: Human Rights and Development. *Development Outreach* 8(suppl.):1–42.
- Young, Katherine G. 2012. *Constituting Economic and Social Rights*. New York: Oxford University Press.
- Zackin, Emily. 2013. *Looking for Rights in All the Wrong Places: Why State Constitutions Contain America's Positive Rights*. Princeton, NJ: Princeton University Press.