Journal of Human Rights

Publication details, including instructions for authors and subscription information:
http://www.tandfonline.com/loi/cjhr20

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To cite this article: LaDawn Haglund & Rimjhim Aggarwal (2011): Test of Our Progress: The Translation of Economic and Social Rights Norms Into Practice, Journal of Human Rights, 10:4, 494-520

To link to this article: http://dx.doi.org/10.1080/14754835.2011.619409

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Test of Our Progress: The Translation of Economic and Social Rights Norms Into Practice

LADAWN HAGLUND AND RIMJHIM AGGARWAL

The application of the language of “rights” to the economic and social conditions of the world’s impoverished populations has gained a great deal of momentum in recent years. Yet, given the continuing pervasiveness of basic deprivations for the world’s poor, there is a pressing need to examine precisely how economic and social rights norms (as reflected in international treaties and other multilateral documents) are translated into practices. This article seeks to synthesize the theoretical literature on economic and social rights (ESR) and to examine the variety of legal, institutional, and political mechanisms that facilitate their realization. We utilize legal, anthropological, and sociological theory to identify institutional and cultural factors that affect norm translation, as well as adaptive, processual, and emergent dynamics that may alter outcomes. In moving from theory to method, we conceptualize a number of factors that contribute to rights realization, operationalize them by describing how translation mechanisms of each might manifest in real-world settings where rights are at stake and compile a list of questions and indicators that can be used to measure them. We hope this overview will assist in expanding and enriching human rights theory, facilitate the empirical study of economic justice and thereby contribute to efforts for making economic and social rights a reality.

Applying the language of “rights” to the economic and social conditions of the world’s impoverished populations has gained a great deal of momentum since the establishment of the Millennium Development Goals (MDGs) in 2000. Disappointing results of earlier...
development efforts motivated this reframing, and several scholars and practitioners have since examined the incorporation of economic and social rights (ESR) norms (as reflected in international treaties and other multilateral documents) in development policy. Though the MDGs did not explicitly invoke a human right to goods such as water, housing, education, and health care or frame the international cooperation necessary to address these concerns in terms of rights-related obligations, the natural affinity between these “rights” and “goals” has become increasingly clear. Yet, there are few systematic analyses of how ESR norms are more or less effectively realized in practice. In this article, we explore the diverse and complex means by which justice norms may be realized and evaluate the analytic and practical leverage that human rights offer over previous framings in the achievement of basic minimum standards of human welfare.

Research on economic and social development has historically diverged from human rights scholarship, and the latter itself has tended toward segmentation, both in terms of categories of rights addressed and in terms of scale or place. Scholars who work on civil and political rights in the United States, for example, draw minimally on global human rights literatures and vice-versa (see Somers and Roberts 2008). The literature on what often are called human integrity rights—the right to be free of torture, disappearance, extrajudicial killing, and political imprisonment—remains mostly separate from a growing literature on ESR (compare, for example, references from Hafner-Burton and Tsutsui 2005 with those from Gauri and Brinks 2010a). The literature on global ESR, in turn, relies on empirical settings mainly in the developing world, rarely engaging explicitly with the literature on comparative welfare states or rights to social safety nets in advanced industrial democracies (e.g., Wilensky 1975; Korpi 1989; Esping-Andersen 1990; Huber and Stephens 2001). Our article offers an analytic strategy for bringing these diverse literatures together and illuminating potential new avenues for promoting social and economic justice.

Our analytic strategy explicitly focuses on the role of three key elements in rights realization: mechanisms, actors, and pathways. By *mechanisms* we mean “the cogs and wheels of the causal process through which the outcome to be explained was brought about” (Hedström and Ylikoski 2010: 50). Whether enduring social transformation occurs depends on the characteristics of these mechanisms themselves, the *actions* of those who utilize and those who are targets of these mechanisms, and the *pathways* by which change occurs or is sought. The analytical category “actors” underscores the importance of agency, and the ways in which individuals or collectives strategically use various mechanisms to achieve their goals. The concept of “pathway” emphasizes the location of mechanisms, processes, and actors in different spatial and temporal contexts. As we show in this article, identifying the specific configuration of mechanisms, actors, and pathways (MAPs, as we refer to them) can help deepen our understanding of causality by mapping the interlinked actions and processes through which norm realization takes place and interrogating “the conditions under which the causal dependency holds” (Hedström and Ylikoski 2010: 54).

We begin our analysis by situating the mechanisms found in the literature to have significant impacts on ESR realization within a broader analytic framework for understanding social transformation (Hedström and Ylikoski 2010). Following this general overview of enabling and constraining mechanisms, we examine the crucial role of accountability in rights realization. As human rights scholars remind us, accountability is the key for translating rights norms into practices. Development scholars are also beginning to recognize that inadequate accountability can often explain how well-intentioned policies fail to achieve desired outcomes and to ask how human rights may contribute (Gauri 2004). Understanding accountability requires us to examine underlying mechanisms (cogs and wheels) in relation to “who” makes claims against “whom” (actors and actor networks) and in what
spatial and temporal contexts (pathways). Thus, we utilize the MAPs framework to open the “black box” of accountability processes, making explicit and systematically comparing the pathways and mechanisms by which various actors may make rights claims or demand that others uphold rights-related duties. By moving the focus “away from [rights] the individual possesses to the individual’s position in a fluid network of social relations” (Somers and Roberts 2008: 413), we are more accurately able to explain where and why accountability breaks down.

We then turn to a review of common MAPs by which civil and political rights have been pursued, as well as discuss some key features of ESR that distinguish them from these other types of rights. From there, we explore models designed more explicitly for ESR that identify, monitor and evaluate the legal, institutional, and political means by which development goals may be realized. The models we review include the “spiral model” (Risse, Ropp, and Sikkink 1999), the “policy legalization” model (Gauri and Brinks 2010a), the Millennium Development Goals, and the “social guarantees” model (World Bank 2007). We conclude by summarizing the strengths and weaknesses of these various models for promoting enduring social transformation in the realm of ESR, we evaluate the unique contributions of “rights” discourses and practices in this effort, and we reveal pathways not followed and potential new strategies for rights realization.

Social Change Mechanisms for Rights Promotion

Analyzing the dynamics of social change is by no means a straightforward endeavor. Hedström and Ylikoski (2010) emphasize the importance of looking beyond correlations or inferential links between macrolevel variables—e.g., between norm adoption and subsequent outcome indicators (Figure 1, Arrow 4)—and delving into deeper processes and mechanisms of change. Scholars should also, they argue, “identify the situational mechanisms by which social structures constrain individuals’ action and cultural environments shape their desires and beliefs [Arrow 1], describe the action-formation mechanisms linking individuals’ desires, beliefs, etc., to their actions [Arrow 2], and specify the transformational mechanisms by which individuals, through their actions and interactions, generate various intended and unintended social outcomes [Arrow 3]” (Hedström and Ylikoski 2010: 59, emphasis added).

![FIGURE 1. A typology of social mechanisms (Hedström and Swedberg 1998).](image)
Rights-related work in sociology (Finnemore 1996; Somers and Roberts 2008), law and social science (Stryker 2007; Young 2009), and anthropology (Merry 2006a, 2006b) attempts to pinpoint mechanisms that facilitate (or hinder) norm adoption and the establishment of rights-promoting practices, as well as to analyze the conditions under which these mechanisms produce equity-enhancing social transformation. In the sections that follow, we review a range of structural constraints or enabling factors (situational mechanisms), behavior-shaping influences (action-formation mechanisms), and forces directed at altering structures themselves (transformational mechanisms) reflected in this literature in order to dissect the complex process of moving from norms to practices to desired outcomes.

**Situational Mechanisms That Constrain or Enable the Adoption of ESR Norms**

Though the acceptance of ESR norms is crucial for achieving their full realization, there are a number of obstacles to this acceptance. Pogge (2005a, 2005b), for example, argues that colonial legacies of exploitation and the reproduction of privilege continue to be embodied in law and practice. His empirical evidence implicates global institutional arrangements (protectionism for the rich, competition for the poor, debt obligations, and restrictions on state efforts to create safety nets) in perpetuating widespread and severe poverty, justified by market logic. A lack of mechanisms for holding those who make these global rules—primarily governments of affluent countries—accountable to poor populations underlies many current development problems. Khan (2009) argues further that the “growth paradigm” itself reproduces conditions that create poverty-related ESR violations by giving explicit or implicit priority to practices that value growth over other social principles. Defining poverty primarily in terms of income has historically led economists and policymakers to emphasize raising incomes of the poor, and thus promoting economic growth, as the solution. This focus frames rights as potential obstacles to our goals, or worse, as simply slogans to be subordinated to the more important objective of economic development.

Borders create additional obstacles for the universal adoption of ESR norms. Extraterritorial obligations, where states provide “international assistance and cooperation” beyond their national territory (ICESCR 1976: Article 2[1]), are an essential precondition for realizing ESR in an unequal world. Yet, the content of “cooperation” or “assistance” remains underspecifed, and states are not easily persuaded to engage meaningfully with these obligations (Skogly and Gibney 2007). Economic migrants who cross international borders face special difficulties. Lacking legal identity or citizenship, they are vulnerable to numerous abuses and have little recourse “in relation to those who have power over them” (Khan 2009: 9)—employers, landowners, police, developers, and, in the case of some women, their own partners and families. State responsibility to protect and fulfill ESR becomes politically challenging in a context where recognized citizens do not believe the state should provide migrants with basic social protections, regardless of international law. Though the “universality” in the Universal Declaration of Human Rights was conceived as transcending obligations by states to their own citizens, this aspiration remains out of sync with the political and social reality of borders.

Despite these barriers to the adoption of ESR norms, there are a number of factors that make adoption more likely, not only in shaping individual beliefs but also in relation to institutional adaptation. Domestic institutions may adopt ESR goals by mimicking practices deemed elsewhere as legitimate (to enhance their own legitimacy), through coercion (to meet goals favored by domestic or international entities), or by conforming to normative standards of professionalism in the field of law or policy (DiMaggio and Powell 1983). Rights-responsive social policy may also emerge independently. In several countries, public
institutions and courts have adopted the mantle of social rights as part of their mission, even in the absence of international pressure. Domestic groups (or sometimes, networks of domestic groups) have been successful in introducing human rights norms, as in the case of anti-dam coalitions (Conca 2006). Similarly, critics of market-led development models (often initiated under pressure from international development agencies) have justified their resistance on the grounds of protecting basic human rights and have pressed for alternative long-term solutions to development challenges (Gauri and Brinks 2010c). Thus, in contrast to the model of violating states met with international (Western) pressure for human rights compliance, the norm of access to basic goods reflected in ESR treaties are at times more strongly defended in poor countries than in rich ones.

Adoption of international human rights norms may also be facilitated through dialogic processes at the local level, in the context of other values held by local actors. Framing refers to the ways in which actors interpret, understand and communicate their interests to create unity around those interests and discredit opponents (Young 2009: 191). Human rights advocates seek to expand “rights consciousness” or “legal consciousness” through framing strategies, as well as narratives, cultural codes, and aspirations about rights (Somers and Roberts 2008). Legal or rights consciousness, in turn, affects the behavior of (self-identified) rights-bearers in relation to the institutions (courts, agencies, etc.) that address rights claims. Participatory spaces are one very important context that allows for the emergence of new understandings of rights. Dialogue, argumentation, and persuasion promote critical engagement with rights norms, encouraging participants to discover “What [they] find morally appropriate” depending on “who [they are] and how [they] see [themselves]” (Risse and Sikkink 1999: 13). Court cases and agency or donor orientations toward rights can also influence “rights consciousness” by rewarding those groups able to frame their claims in rights terms. In these cases, “the cognitive transformation at stake typically involves less enlightenment about new values, understandings, or wants among oppressed groups than an increasing recognition that long-evolving grievances are more realistically actionable” when consistent with dominant frames (McCann 1998: 85).

Though rights consciousness is neither a necessary nor sufficient condition for rights realization, it is an important aspect of norm adoption, whether in high-level multinational settings, domestic courts, and institutions or grassroots community settings. It is important to recognize, however, that these spaces are not neutral; they are created by actors with their own sets of interests and ideas. Rights are realized (or not) within a larger context of ideological, political, and economic struggle. There is thus a need to remain critical regarding the “underlying assumptions, socially constructed meanings, and social equity implications subsumed in participatory processes” (Roncoli 2010: 12). The best participatory processes strive for a balance between the multiple values held by participants, but there is no inevitable correlation between participation and inclusion of these multiple values.

Action-Formation Mechanisms That Constrain or Enable Responses to ESR Norms

Even when norms have been officially adopted, the mechanisms that translate norms to practices may be weak or nonexistent, and barriers may exist that prevent action to realize rights. Formal-rational law, for example, can have regressive implications when it fails to account for the prior distribution of power among subjects (Lempert and Sanders 1986), while substantive law may either reproduce inequality by reinforcing the interests of powerful classes (e.g., use of human rights language to benefit the interests of dominant groups with better access to courts) or challenge it by redistributing benefits toward subordinate
groups (e.g., welfare-oriented policy). ESR, by their very nature, are substantive. But even with clear social justice objectives, there remains a question as to “whether, how, and how much” legal or institutional intervention “reduces wealth, status, and power disparities originating outside the formal legal system” or simply “co-opts subordinate groups” (Stryker 2007: 72).

Authorities and the powerful may further disenfranchise the poor by ignoring or overriding their concerns, withholding information, and rigging or co-opting spaces for consultation (Khan 2009). This is why empowerment of the poor and accountability, rather than just raising incomes, are important for rights realization. The manner in which decisions are taken that affect human rights are fundamentally questions of governance and legitimacy. As the 1986 United Nations Declaration on the Right to Development states, “the human person is the central subject . . . and should be the active participant and beneficiary of the right to development” (Article 2, section 1). Participatory processes are important as ends in themselves, in addition to having instrumental value for socially beneficial outcomes (Fung and Wright 2003; Avritzer 2006; Cornwall 2008; Levine and Torres 2008). The design and dynamic of these spaces can have a significant impact on whether results are positive or negative in terms of their legitimacy, utility for information exchange, capacity to promote networking and mobilization, and propensity for gridlock (Abers and Keck 2006).

Complicating matters further, it is not always domestic governments who impede rights realization. Even when domestic states have adopted ESR norms, global institutions and rules, as well as actions of powerful multinational corporations, may hinder their ability to prevent or address poverty-related rights violations by limiting their policy autonomy (Wade 2003; Tabb 2004; Pogge 2005a, 2005b; Salomon 2007; Haglund 2010). A few global accountability mechanisms exist, such as the Alien Tort Statue, which allows “foreign plaintiffs harmed by the actions of multinational corporations acting alone or in concert with a foreign state” to file claims in US courts (Hertel and Minkler 2007: 24). Diagonal accountability—between citizens in one country and powerful actors that promote rights-unresponsive economic policies in another—remains clearly inadequate (Skogly and Gibney 2010). Even those mechanisms that exist to promote international solidarity for ESR at the state level, such as Millennium Development Goal 8, are vague in their recommendations, are only weakly institutionalized and lack credible consequences for noncompliance (Fukuda-Parr 2007). Rules governing global commerce, in contrast, are backed by strict enforcement mechanisms.

Another barrier to putting rights-based norms into action emerges when strategies and principles for realizing some rights-responsive goals interfere or come into conflict with other rights or constraints. Fundamental issues regarding which immediate goals should take precedence or how they should be accomplished, given competing demands, can derail even the noblest aspirations. Without explicitly acknowledging these potentials for conflict, strategies for addressing problems are likely to be aborted, ineffective, or badly misguided (Conca 2006), and outcomes are likely to favor those who are already powerful or structurally advantaged (Haglund 2010). Governments can and have argued that they are “doing the best they can,” despite criticisms regarding the meagerness of fiscal efforts on behalf of the poor. The effectiveness of shaming perpetrators of ESR violations is also weakened “when the target of a shaming effort can marshal respectable arguments in its defense” (Roth 2004: 69) as with practitioners who rely on widely accepted economic theories to justify policy choices that threaten human rights.

On the positive side, there are mechanisms that facilitate the translation of legal norms into equity-enhancing action. Socio-legal research provides interesting insights into the
impact of law on reducing inequality in democratic capitalism (Stryker 2007). Though they focus on welfare legislation and labor law, these studies illuminate potential strategies for translating ESR norms into practice. A number of mechanisms operating in tandem spur action in the service of substantive improvements: “[R]ational adaptation to legal incentive structures, cultural meaning making and institutional diffusion, and political mobilization and counter mobilization” (Stryker 2007: 69). Legal incentives may take the form of international human rights treaties, new constitutions that explicitly protect ESR, litigation, legislation, or policy “legalization” (Gauri and Brinks 2010a). In all of these realms, the increasing embodiment of ESR norms in institutions and public policy, as well as changing rules regarding how decisions for meeting basic needs are made, create incentives for duty-bearers to fulfill their obligations. Incentives are strengthened when accompanied by an orientation toward substantive outcomes by administrative, judicial, and organizational actors charged with implementation (Stryker 2007). Efforts to instill a commitment to substantive interpretations and enforcement of law by academics, advocates, and activists thus may serve as mechanisms to positively influence outcomes for the marginalized.

ESR realization is also enhanced through “supporting” rights (Nickel 2007) or an “enabling environment” (Human Rights Council 2009). Several specific factors facilitate the use of judicial mechanisms for human rights enforcement, including access to courts and legal resources, removal of procedural hurdles (e.g., standing and petition rules, burden of proof), capacity-building for group litigants, freedom of information, nonpartisan judicial appointment processes, and construction of legal competence (either of judges and lawyers in general or in specialized courts) through legal training that improves knowledge of budgetary tradeoffs or specific areas like education (Gauri and Brinks 2010c). A recent UN resolution on the promotion and protection of human rights and access to safe drinking water and sanitation offers other suggestions for creating such an enabling environment, including budgeting, legislation, the establishment of regulatory monitoring and accountability frameworks and mechanisms, the assignment of clear institutional responsibilities and the appropriate inclusion of sanitation in national poverty reduction strategies and development plans” (Human Rights Council 2009: Section 4 [a]).

An international infrastructure that allows for claims making and redress can also support legal incentives to meet rights obligations. But as mentioned above, rules and priorities of development agencies, trade and finance policies, and military or other international relations can present barriers to domestic ESR realization. Countries and movements throughout the world have, on human rights grounds, resisted policies such as structural adjustment, rejected or advocated for renegotiation of loan conditionalities, requested more favorable conditions in which to engage globalization and staged protests against international financial institutions (IFI)-sponsored development projects. Powerful governments are not always receptive to such an agenda, especially when it contradicts economic “wisdom” and their interests. In these cases, it is developed countries that are the “norm violators,” as they reduce the policy space within which alternative efforts to meet ESR can be formulated (Haglund 2010). Because of this reality, some nongovernmental organizations (NGOs) prefer to treat domestic states as “potential partners” rather than “villains or adversaries” (Rand and Watson 2008) in promoting ESR. Sticks and carrots are utilized alternately to monitor and collaborate with states (Gready 2009). International advocacy is thus turned on its head: Poor-country governments, rather than acting as perpetrators, ally with NGOs to demand that donors, international financial institutions, and wealthy countries devise trade, aid, and debt policies that foster rather than hinder state efforts to promote development (Nelson and Dorsey 2003).
In order to ensure that the actions of intergovernmental organizations, the globalized private sector, international NGOs, and foreign states do not negatively impact ESR, several authors have proposed an evaluation of “the ‘diagonal’ relationship between outside actors (especially Western states) and citizens in other countries” (Skogly and Gibney 2010: 2). This may entail an analysis of foreign relations, development policy, and the rules governing global commercial activity through the lens of “the tripartite typology of obligations (to respect, protect, and fulfill)” as practiced by all parties of these international arrangements (Skogly and Gibney 2010: 4). As rights-responsive policy becomes the norm, it becomes more difficult for actors to ignore rights violations. Social movements increasingly portray economic and social marginalization as a rights issue, mirroring changes in the development community. The norm of rights is used to promote “political, moral, and sometimes legal contestation that strives for both universalism in expression and the location of institutional responsibility in response” (Young 2009: 191). As Khan (2009) argues, when poverty is framed as a human rights issue, the poor are empowered as rights holders, while duty holders are held to human rights standards (rather than, for example, market principles) in their obligations. Once domestic institutions have adopted ESR norms as part of their missions, advocates have an even stronger leverage point through which to make demands (Keck and Sikkink 1998).

Advocacy networks and social movements—both domestic and transnational—employ numerous strategies to fight for ESR, such as “information politics” (providing information to strengthen arguments for change), “leverage politics” (using strong actors to pressure compliance), “accountability politics” (holding actors accountable for promises they or their institutions have made), and “symbolic politics” (framing issues to foster support for a cause) (Keck and Sikkink 1998). Social movements are learning more and more to leverage these avenues of power to achieve their goals. Promoting actions in defense of ESR thus “requires combining a number of factors or conditions”: Extraterritorial accountability to ESR, social movement pressure via litigation and mobilization, “political entrepreneurship among law enforcers within the state,” and influence and monitoring by “technically savvy and ideologically committed representatives of the have-nots in law implementation efforts” (Stryker 2007: 88). Action is facilitated by access to resources and existing (or constructed) state capacity (Robertson 1994), as well as protections on speech and organization, information, and equality before the law (Khan 2009).

**Linking Action to Social Transformation**

Though our conclusion will summarize the possibilities for social transformation of human rights discourses and practices, a few points deserve mention here. The use of courts to adjudicate ESR are potentially transformative, depending on “the overall litigation support structure in a society, the cross-sectoral strengths and weaknesses of civil society advocacy organizations, the procedural and physical accessibility of courts, judicial recruitment and attitudes and probity, prevailing interpretations of certain civil and political rights, national patterns in the provision of basic services, and latent policy capacity” (Gauri and Brinks 2010c: 350). Sustained domestic and international pressure is also potentially transformative. Mobilization of preexisting networks and organizations may help sustaining court victories beyond the litigation stage (McCann 1994), while creation of new networks and international network mobilization can greatly strengthen leveraging strategies (Keck and Sikkink 1998; Risse et al. 1999).

There are also potentially profound philosophical and practical implications of the shift in development framed as “need” to development as a “right,” from international assistance.
as generous “aid” to assistance as morally binding “obligation,” and from state action as contingent upon capacity to state action as legally binding (Nelson and Dorsey 2003). Regardless of economic model, concerns for ESR have become a focal point of development policy. Human rights offer leverage that “development” alone has not, including emerging internationally recognized benchmarks and bases of accountability for NGOs, donors, governments, and corporations; new channels of influence for NGO advocacy; and serious challenges to the market-dominated view of development. Human rights struggles are fundamentally struggles “for freedom, justice, and dignity” (Khan 2009: 21) rather than simply attempts to give access to material resources. They thus attack economic and social marginalization at its core: in the reproduction of injustice that implicates us all, and in our basic assumptions about social institutions and relations that interfere with the achievement of universal human rights. We will now turn to some specific causes of the continued failure to meet basic minimum standards of human welfare.

The Critical Role of Accountability in Rights Realization

As discussed above, the transformative potential of a human rights framing for improving the social and economic well-being of the impoverished stems from seeing development as a set of “claims” that the weak can advance to hold the powerful accountable, rather than “aid” that the rich disburse at will. This shift in thinking also requires a different set of “cogs and wheels” to be effective. In particular, it underscores the critical importance of directing our attention towards accountability, rather than the traditional focus on aid delivery. Accountability mechanisms—by which claims can be made of those in a position to provide the conditions for their fulfillment—are often the key for translating rights norms into practices.

Within countries (see Table 1), mechanisms that operate along the pathway of horizontal accountability can create a balance of power between the executive, legislative, and judicial branches of government, facilitate office-holder responsiveness, regulate public goods (whether provided by the state or not) and allow for appeals regarding policies that are unresponsive to rights-based principles. Examples include courts, public accounting offices, public service commissions, auditors, ombudsmen, and anticorruption bodies. Mechanisms along the pathway of vertical accountability give citizens direct (through elections) or indirect (through political parties) access to representation (O’Donnell 1999). When these formal mechanisms fail, alternative mechanisms for monitoring and agenda-setting based on civil-society and citizen action may also be available, such as consumer protection agencies, citizen-based commissions, watchdog media, scholarly analysis, and social movements (Smulovitz and Peruzzotti 2000). It is worth noting that private investors and firms can also hold political actors accountable to their interests, through support of or opposition to state actions.

Internationally, accountability also plays an important role for translating norms that are embedded in international law into domestic practice (see Table 2). Mechanisms along the pathway of vertical accountability from the international to the domestic level can also be formal (international human rights commissions, sanctions, or pressures by donor countries or aid agencies) or informal (publicity or investigation of human rights violations, naming and shaming of states implicated in violations, etc.; Gloppen, Rakner, and Tostensen 2003; see also Grant and Keohane 2005). Because the use of formal mechanisms requires that states accept the jurisdiction of international law, informal mechanisms may take on greater importance. There are also significant accountability gaps at the international level.
for human rights concerns between citizens and/or weaker states on one hand and powerful outsiders such as corporations, international financial institutions, or stronger states on the other. Horizontal relations between states are often mediated by mechanisms that only marginally address human rights, giving precedence instead to commercial relations (Salomon 2007) or security cooperation. The pathway of “diagonal accountability” (Skogly and Gibney 2010) between citizens and corporations, international financial institutions, or

<table>
<thead>
<tr>
<th>Horizontal Accountability (Balance of Power)</th>
<th>Actors demanding accountability of state actors, agencies, or providers (public or private)</th>
<th>Mechanisms</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive branch</td>
<td>• Appointments</td>
<td></td>
</tr>
<tr>
<td>Legislative branch</td>
<td>• Policy creation</td>
<td></td>
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<tr>
<td>Judicial branch</td>
<td>• Policy administration</td>
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<tr>
<td>Oversight agencies</td>
<td>• Regulation</td>
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<td></td>
<td>• Judicial Review</td>
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</tr>
<tr>
<td></td>
<td>• Investigative power</td>
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</tr>
<tr>
<td></td>
<td>• Enforcement power</td>
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</tbody>
</table>

| Vertical Accountability Formal (Electoral)  | Political parties with legislative representation Citizens                                 |                     |
|                                             | • Demand representation                                                                  |             |
|                                             | • Regulation                                                                             |             |
|                                             | • Public Policy                                                                          |             |
|                                             | • Voting                                                                                 |             |
|                                             | • Plebiscite                                                                             |             |
|                                             | • Recall mechanisms                                                                      |             |
|                                             | • Formal participatory mechanisms                                                       |             |

| Informal (Societal)                         | Civil society associations, consumer groups, academics, and social movements             |                     |
|                                             | • Lobbying                                                                              |             |
|                                             | • Litigation                                                                            |             |
|                                             | • Investigation                                                                         |             |
|                                             | • Information framing and dissemination                                                |             |
|                                             | • Consciousness raising                                                                  |             |
|                                             | • Mobilization, direct action                                                           |             |
|                                             | • Lobbying                                                                              |             |
|                                             | • Litigation                                                                            |             |
|                                             | • Investigation                                                                         |             |
|                                             | • Information framing and dissemination                                                |             |
|                                             | • Hearings, working groups, and other participatory mechanisms                         |             |
|                                             | • Investigation, public exposé                                                          |             |
|                                             | • Information dissemination                                                             |             |
|                                             | • Campaign financing and advertising                                                    |             |
|                                             | • Lobbying                                                                              |             |
|                                             | • Public relations and marketing                                                        |             |

for human rights concerns between citizens and/or weaker states on one hand and powerful outsiders such as corporations, international financial institutions, or stronger states on the other. Horizontal relations between states are often mediated by mechanisms that only marginally address human rights, giving precedence instead to commercial relations (Salomon 2007) or security cooperation. The pathway of “diagonal accountability” (Skogly and Gibney 2010) between citizens and corporations, international financial institutions, or
Table 2
International Accountability Mechanisms

<table>
<thead>
<tr>
<th>Actors demanding accountability</th>
<th>Targets of accountability</th>
<th>Mechanisms</th>
</tr>
</thead>
</table>
| Vertical (Formal)               | Individuals (citizen or noncitizen) or their advocates | Domestic states | - International complaint/inquiry mechanisms  
|                                 | Domestically complaint/ief mechanisms |          | - Hearings & litigation |
| Vertical (Informal)             | International NGOs, civil society groups, activists, and media linked with domestic claimants | Domestic states | - Investigation  
|                                 | Private investors, banks, firms |          | - Information dissemination  
|                                 | International rating agencies |          | - Framing  
| Horizontal (Formal)             | Donor countries | Domestic states | - Consciousness raising  
| Domestic Target                  | Aid agencies |          | - Naming and shaming  
|                                 | Multilateral lending institutions |          | - Investment decisions |
|                                 | International HR commissions |          | - Credit ratings |
| Diagonal or Horizontal (Formal) | International HR commissions | Foreign states | - Country reports  
| Foreign Target                   | IFIs |          | - Hearings  
|                                 | Transnational corporations |          | - Sanctions  
|                                 |                     |          | - Commercial treaties  
|                                 |                     |          | - Loan conditionalities |
| Diagonal or Horizontal (Informal) | Domestic states | Foreign states | - Few formal mechanisms  
| Foreign Target                   | Citizens | IFIs | - Alien Tort claims  
|                                 |                     | Transnational corporations | (United States) |
|                                 |                     |                     | - “Soft law” |
|                                 |                     |                     | - Voluntary codes of conduct  
|                                 |                     |                     | - Naming and shaming  
|                                 |                     |                     | - Consumer sanctions |

powerful states, for its part, operates mainly informally. As with domestic accountability, investors, banks, and firms (mainly via investment decisions), as well as market-based entities like rating agencies, powerfully influence domestic economic policy and are frequently able to hold states accountable to their interests (Leys 2001).

Though these accountability relations do not explain norm translation, they orient us to the pathways by which norms can be translated to practices and draw our attention to the relevant actors and mechanisms indicated by different accountability processes. For instance, these accountability relations require a clear statement about who is making claims and to whom (either as individuals or collectives) and under what conditions. The same
accountability mechanism (say courts) may have a very different impact depending on which actors use them and under what contexts. Thus, in order to understand what explains the realization of ESR norms in a specific situation or a conceptual model, we need to look at the configuration of mechanisms, actors, and pathways (MAPs) as the fundamental analytical tools. There are several models for advancing rights norms that can be analyzed in terms of these accountability MAPs, each with a unique set of institutional supports and constraints, promises, and potential conflicts. In the ensuing sections, we elaborate on some of these models.

**Translation of “Rights of the Person”: The Spiral Model**

In the realm of political and civil rights, substantial efforts have been made to understand how human rights norms are, or are not, translated into practices. Poe, Tate, and Camp Keith (1999), for example, measure the statistical association between greater respect for “personal integrity” rights (protection from torture, disappearance, political imprisonment, and extrajudicial killing) and factors such as colonial history, political orientation of governments, military regimes, war, and economic development (see also Poe and Tate 1994). Social constructivists deepen these types of inferential macroanalyses by examining processes of norm adoption, for example, the ways in which international organizations and activists disseminate rights norms and democratic ideals to foster change in violating states (Finnemore 1993, 1996; Keck and Sikkink 1998; see Finnemore and Sikkink 2001 for an overview). Risse, Ropp, and Sikkink (1999) provide an illustrative model for analyzing how international norms and ideas transform state practices regarding “rights of the person” (the right to life and protection from torture and arbitrary detention). Their empirical approach is to document changes in states’ human rights practices (a reduction or cessation of violations) and then examine normative, political, and institutional factors at the domestic and international levels that might explain these changes.

In this “Spiral Model,” networks of domestic and transnational actors begin challenging repressive practices by linking with international regimes and alerting “Western public opinion and Western governments” to violations (Risse and Sikkink 1999: 5). Repressive states forced to respond to these pressures may adopt their own instrumental strategies to appease critics (e.g., release prisoners or sign a treaty to maintain aid), but, as pressures to recognize human rights norms continue, there is often a shift toward more dynamic communicative processes of dialogue, persuasion, and “moral consciousness-raising.” States may appeal to sovereignty and reject the basis of human rights claims, while social actors engage in “a normative process of shaming,” possibly accompanied by continued instrumental pressures (such as sanctions). At this communicative stage, state actors tend to become trapped by their own engagement, as they make small concessions that implicitly legitimize the rhetoric of human rights and empower actors making human rights claims. Though not all governments respond by overtly recognizing rights (some may become more repressive at first), the result is often the same: the incremental adoption of rights norms in response to external incentives. A slow process of embodying human rights norms in institutional practices follows.

From the perspective of MAPs outlined above, this framework “incorporates simultaneous activities at four levels” (Risse and Sikkink 1999: 17): (1) international human rights institutions, regimes, and advocates, as well as “Western powers,” (2) domestic opposition, (3) domestic government, and (4) networks of interaction between international and domestic advocates for human rights (see Figure 2). In the initial stages of the model, the primary pathways of accountability are international (see Table 2), with formal horizontal
mechanisms (states targeting states, as with sanctions) and informal vertical mechanisms (international nongovernmental organizations and activists targeting states, for example by gathering information on violations and lobbying international human rights organizations and Western governments or publics to take action). In the intermediate stages, the mobilization and strengthening of local opposition groups, in particular through the development of international advocacy networks, lead to greater pressures for vertical accountability domestically; though at this stage the mechanisms utilized remain largely informal (see Table 1). It is not until states begin to institutionalize rights norms that formal pathways of domestic accountability become truly viable.

This brief overview of the Spiral Model highlights the pathways by which human rights norms can be progressively promoted through mechanisms such as instrumental action, argumentative processes, and institutionalization. Though international accountability alone cannot guarantee improvements in human rights conditions, transnational networks “provide key support for democratization processes at crucial stages” (Risse and Sikkink 1999: 38) by reaffirming the obligations of human-rights-violating and defending states, empowering, legitimating, and protecting groups fighting for human rights against violators, and creating a bidirectional (horizontal and vertical) structure for pressuring governments simultaneously.

The Specificity of Economic and Social Rights

How well do these strategies for promoting the protection of personal integrity rights transfer to the realm of ESR, where chronic, grinding poverty is often at the root of violations? The “shaming methodologies” of international advocacy groups have worked in some ESR cases, especially where clear violations, violators, and remedies can be identified (Roth 2004). Such clear-cut cases allow these organizations to remain close to actually existing law and thus strengthen their legitimacy and leverage. Once a set of required “minimum essential levels” of ESR have been established, states falling short of those standards could be considered to be in violation of their obligations (Chapman 2007). The recently approved Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights (ESCR) strengthens the position of both international advocacy groups and victims by providing a formal mechanism for holding states accountable to international norms (Kratochvíl 2009). Such formal mechanisms increase the likelihood of compliance by increasing awareness and legitimacy of human rights approaches to economic and social
issues, assisting governments in identifying their obligations under the covenant, and giving
the public a stronger voice, thus transforming “experienced neglect into a situation where
problems matter” (Kratochvíl 2009: 34).

However, there are limits to the “violations and sanctions” or “naming and shaming”
approaches in the realm of ESR. When an unjust distribution of resources is at the root
of the problem, it is harder to demonstrate that there has been a violation, that there is
a violator, or that there is a legitimate remedy. Moreover, violating states often are not
being asked to refrain from some act but rather to create new conditions, often without
resources earmarked for that purpose (Nickel 2007). This does not mean that violations and
violators of ESR do not exist; only that different analytic and practical strategies may be
necessary for identifying and addressing them. Advocacy groups are more effective when
they can focus claims on discrimination or arbitrariness (marginalization or exclusion),
which can be shamed. This is similar to a recent emphasis in development circles on
targeting “officially promoted or tolerated policies of social exclusion” (Roth 2004: 73)
rather than lack of public goods per se. But a significant number of cases where ESR go
unfulfilled are not clear instances of discrimination, making it difficult to sustain a shaming
campaign. Litigation may be utilized, as we will see next, but a punitive approach may not
guarantee that ESR will be realized.

A single-minded focus on violations also does not give an adequate accounting of the
steps states do take to meet their obligations for “progressive realization” (World Bank
2007; Felner 2009). States’ duties to fulfill ESR “to the maximum of [their] available
resources” (ICESCR 1976) can be a slippery concept. Monitoring efforts by a variety of
rights advocates have often sidestepped the issue of resource availability and progressive
realization, making it difficult to address the root causes of avoidable deprivation (Felner
2009). In order to ensure that “progressive realization” is not a euphemism for “indefi-
nite postponement,” concrete means for evaluating steps states are taking to meet these
obligations become necessary. The World Bank (2007) proposes measuring the contextual
variables that comprise “guarantees” over time as an indicator of progress. Felner (2009)
urges more precise estimations of both “progressive achievement” and “maximum available
resources” using statistical indicators, negotiated benchmarks, and expenditure allocations
and proposes a range of measurement tools that are accessible to human rights advocates
with little training in advanced methods.

As the discussion above indicates, understanding the translation of ESR from norms
to realization is different enough from political and civil rights to require the application
of different theoretical and methodological tools. In the section to follow, we evaluate
several models and strategies for addressing the unique challenges of realizing economic
and social objectives: a “policy legalization” (judicial) model (Gauri and Brinks 2010b,
2010c), the Millennium Development Goals (OHCHR 2008), and the “social guarantees”
model (World Bank 2007).

Models of ESR Realization

The Policy Legalization Model

An obvious site for examining the translation of rights norms into economic and social
justice outcomes is the legal system. The use of courts to adjudicate ESR is relatively new
compared to their utilization in civil and political cases, yet the emerging possibilities for
social transformation are quite promising. Though a relatively narrow focus on court cases
does not address the full complexity of the movement from norms to compliance, it is
illuminating to examine “the conditions under which states and private actors have been held legally accountable for the economic and social well-being of citizens” (Gauri and Brinks 2010b: 33). Gauri and Brinks’ novel conceptual framework seeks to explain judicial involvement in the process of “policy legalization,” namely, “the extent to which courts and lawyers, including prosecutors, become relevant actors, and the language and categories of law and rights become relevant concepts, in the design and implementation of public policy” (2010b: 4). This process has four key stages: legal mobilization, where the main actors are litigants and their representatives; judicial decisions, where the key actors are judges; bureaucratic, political, or private party responses, where nonjudicial agencies of the state, as well as business, play a key role; and follow-up litigation, where litigants again predominate.

The authors propose a “social and economic rights triangle” for mapping a network of agencies and organizations through which rights are realized, as well as modeling relationships between formal rights and subsequent legal duties. The key actors in this triangle are states, providers (state or nonstate agencies), and citizens. These actors are linked through provision or financing (between the state and citizens), regulation (between state regulators and providers), and obligations (between providers and recipients). Litigation may be used to address any of these relational duties or to make determinations regarding how actors should behave in relation to one another. Rights are not possessions or property in this rendering but rather are “claims to change the rules that govern the production and distribution of basic economic and social goods” (Gauri and Brinks 2010b: 13). This classification goes beyond the “respect, protect, fulfill” focus on state actions and the nature of state duties in the human rights literature by incorporating nonstate providers and focusing on legally mediated relationships among actors.

The empirical analyses of this volume suggest that patterns of litigation can be explained by, and sometimes explain, what Gauri and Brinks (2010c) call “demand side” factors (which influence the choice of human rights advocates to initiate legal claims), “supply side” factors (which influence the degree to which courts are receptive to such claims), and “response side” factors (which influence the degree to which nonjudicial actors comply with court rulings). On the demand side, human rights advocates choose litigation more often where there are “state or other organized litigation support structures” such as a coordinated and mobilized civil society (Gauri and Brinks 2010c: 336), as well as when courts seem receptive to ESR claims and when previous cases evidence some degree of follow-up.

On the supply side, the simple existence of rights language may influence the timing or framing of cases “but it will not pose an obstacle to a determined court ... and it will not foster litigation where the courts are untrustworthy” (Gauri and Brinks 2010c: 318). The receptivity of judges and their autonomy seem to be of greater consequence for litigation outcomes. Judges will be more receptive, these cases indicate, when their ideological predispositions bend toward acceptance of political issues, they believe that adjudicating social rights is the proper role of courts and there already exists some form of policy structure for addressing social rights. Judges are also more receptive to ESR cases when litigation occurs in the context of a robust policy structure. If public programs already exist, there is less opportunity to argue they are not feasible and a greater chance to have ready solutions on hand. The role of courts, then, can be “to fill in gaps or address shortcomings in the existing structure” (Gauri and Brinks 2010c: 319). Whether courts choose to intervene thus seems to be partially conditioned on preexisting state capacity. Though courts may be “willing to issue challenging decisions, they will not ordinarily issue doomed ones” (Gauri and Brinks 2010c: 320).
FIGURE 3. Accountability pathways among key actors in the Policy Legalization model.

On the response side, similarly, litigation targets are more likely to take a favorable stance toward social rights if existing state and development institutions support them. Cases implemented through existing policy frameworks within which the new expectations are already embedded are more likely to produce successful compliance, as are cases where claimants are well organized and dogged in their follow-up. The judicial process also has an effect: “[A] dialogical process and a negotiated order are more likely to produce compliance than a unilateral edict” (Gauri and Brinks 2010c: 322). Aggressive judicial strategies are less effective, especially in complex or expensive ESR cases, than opening a dialogue with the executive and administrative apparatuses of the government to seek solutions, as well as creating independent monitors or commissions to ensure compliance.

Returning to the MAPs outlined above, the Gauri and Brinks framework shows how the institutionalization of ESR norms in domestic law provides added mechanisms, social relationships, and pathways by which advocates and citizens can claim rights to public goods such as education and health care (see Figure 3). It places legal decisions in a wider “quasi-judicial” institutional and political context. Though courts are only one actor in this iterative process, they have an important independent effect on outcomes by bringing disparate actors in line with existing state policy, enforcing a unifying legal framework that limits discrimination, adjudicating among conflicting claims, and exposing politicians who would subordinate substantive equality to partisan or local concerns: “In this scenario, courts ally with the organized public” (Gauri and Brinks 2010c: 348).

Millennium Development Goals as a Model for Rights-Based Development

As many frustrated scholars and activists know, law is not always an effective means for promoting equalizing social change (Stryker 2007). Though Gauri and Brinks (2010) recognize that the extra-legal context will influence the extent of policy legalization, they are, by their own admission, not concerned with systematically examining the range of supporting
factors that facilitate economic and social progress based in human rights norms. A recent emphasis on “rights-based development” by intergovernmental organization (IGOs), non-governmental organizations (NGOs), international financial institutions (IFIs), and some domestic public goods agencies reflects an effort to address ESR outcomes more explicitly. The emphasis on rights-based development has been accompanied by moves toward rights-sensitive project designs, consciousness-raising regarding rights, a stronger emphasis on participation, and accountability of donors, NGOs, and development practitioners to local populations (Nelson and Dorsey 2003). The assumption is that these factors will increase pressure on agencies involved in economic policy to direct resources to maximize their impact on ESR realization. Yet, unlike strategies for forcing compliance with political and civil rights, ESR are often invoked mainly in the abstract, especially by social movements, which may “rhetorically cite specific human rights language, less often cite specific covenants or agreements, and rarely use the mechanisms available to formal investigation and adjudication of human rights complaints” (Nelson and Dorsey 2003: 2019).

The Millennium Development Goals (MDGs) represent one of the most concrete efforts to date to harness international efforts toward development objectives. They evolved from a decade-long international debate on poverty and environment, dating back to the United Nations Conference on Environment and Development in 1992 (OHCHR 2008). Though not explicitly invoking human rights, the wide-ranging commitments made by world leaders in the September 2000 Millennium Declaration had strong human rights underpinnings. These commitments were later reconfigured into the eight MDGs and endorsed by United Nations agencies, the World Bank (WB), the International Monetary Fund (IMF), and the Organization for Economic Co-operation and Development (OECD). The goals encompass 18 targets to be reached mostly by 2015. The MDG have been widely accepted as “the dominant global framework for improving human development in the near term” (Dorsey et al. 2010: 516).

As a recent independent global report on evaluation of MDGs observes, the MDGs “have provided an important motivational force and yardstick” for progress on quality of life indicators in the developing world (Steerwith et al. 2010: 9). In particular, the setting of specific time-bound targets has been instrumental in mobilizing high-level political commitment on the part of rich countries to provide financial aid and on the part of poor countries to mobilize action for meeting these goals (Sumner and Melamed 2010; Nelson 2007). The utility of context-specific development goals has led to the recognition in several UN documents that the “MDGs should be considered as indicative for country-level monitoring” and that the goals should be “nationalized, localized, tailored and contextualized, and incorporated within existing development plans and strategies” (OHCHR 2008: 2). Achieving the MDGs has thus been conceived of as requiring: (1) national needs assessments, (2) time-bound sectoral strategies and policies, and (3) monitoring of progress through yearly MDG reports (OHCHR 2008: 2).

These activities, when seriously undertaken at the country level, have been instrumental in initiating policy reforms, institutional change, and reallocation of resources. While it is difficult to identify how far policy reforms have been influenced by the human right orientation of the MDG agenda, one widely acknowledged instance of a significant reallocation of resources in national budgets has been with respect to HIV/AIDS treatment and prevention. As OHCHR (2010: 5) notes, this positive development can be traced back to 2001 when the General Assembly supplemented Goal 6 (on combating HIV/AIDS and other diseases) by “making a series of detailed commitments” that included “the development and implementation of multisectoral national strategies and financing plans for combating
HIV/AIDS.” At a more general level, it can be argued that the MDGs have provided a discursive language and a global platform for citizen groups and social movements in their struggles to pressure governments to provide access to basic services.

While the setting of goals and targets at the international level has brought a lot of visibility and a rethinking of prioritization of development strategies, it has also raised some important concerns. In particular, it has been widely noted that the setting of rigid goals and targets often distorts incentives and policy priorities in the direction of expediency rather than serious reform. Thus, for instance, the MDG goal of reducing poverty in half incentivizes governments and development agencies to first target areas/populations groups that are relatively less poor. Thus, it is not surprising that one of the key concerns with the MDG targets is that these are not sufficiently focused on the poorest of the poor or on otherwise marginalized sections of the population. As Steerwith et al. (2010: 13) in their global assessment of MDGs conclude, “although progress has been strong in many countries, it has not always benefitted those who most need it.” Human rights instruments, on the other hand, require a minimum core level of each ESR to be realized for all.

In addition, while both MDGs and human rights provide tools to hold governments accountable and both require periodic national and international reporting processes, the international and national framework for human rights is more extensive (OHCHR 2008; Alston 2005). While the widespread reporting and dissemination of MDG reports has to some extent played the role of a “naming and shaming” device in ESR realization, formal accountability and participation mechanisms are weak in the MDG model. In contrast to this, an expert committee and a commission or a court that monitors its realization backs each major international and regional human rights instrument and in many cases has the power to receive individual or collective complaints. In comparison to this, the international accountability mechanisms for the MDGs are quite weak (OHCHR 2008; Dorsey et al. 2010; Alston 2005). In particular, there are no real mechanisms to ensure that the richer countries live up to their financial commitments. Similarly, there are no effective mechanisms to ensure that poor country governments take reasonable action to meet the stated targets.

Thus formal accountability mechanisms (Tables 1 and 2)—whether vertical or diagonal, national or international—are either weak or nonexistent in this model (see Figure 4). As OHCHR concludes, “the key point is that the setting of the MDGs has partly ignored the legal force and instrumental value of human rights” (2008: 4). Thus, although the content of some of the MDGs resembles ESR, disembodied from the human rights context—and in particular, the processes and mechanisms that form the core of the HR framework—it is questionable how far the MDGs will ultimately take us (OHCHR 2008; Dorsey et al. 2010; Nelson 2007). Although the MDGs are purported to bring transformative change in the lives of the poor, it is ironic that the poor have no mechanisms for participation in the formulation of the goals and in seeking redress (Dorsey et al. 2010). In the Social Guarantees model discussed in the next section, the identification of clear and widely communicated redress mechanisms has been an important factor in holding government and service providers accountable.

**Social Guarantees: Joining Development and Human Rights**

In recognition of the shortcomings of previous development policy, as well as the unequal distribution of basic public goods (such as health, education, housing, jobs, and water) and systematic exclusion of the poor and marginalized groups from their benefits, several developing countries have experimented with variations of what has been come to be
known as the “social guarantees” model (World Bank 2007). The idea of social guarantees marries a concern about the economic dynamics of development policy with the rhetoric and potential leverage of the human rights canon. Social guarantees bridge the gap between social rights norms and concrete public policies by defining specific entitlements and obligations (related to certain rights) and associated legal and/or administrative mechanisms that ensure the fulfillment of those obligations on the part of the state. Universal access (defined in terms of detailed guaranteed minimum levels of provision), explicit basic quality standards, and participatory processes that strive to achieve consensus on basic entitlements are central features of these guarantees. The model also explicitly incorporates the concept of progressive realization. Mechanisms that exist but are not yet functional are termed “pre-guarantees,” and the movement from setting norms to realizing rights is seen as a process, not simply an outcome. Thus, for instance, in the case of Chile, to mitigate fiscal pressures, health guarantees were implemented in stages, with the progressive addition of medical conditions to the list of priority diseases (World Bank 2007).

The use of social guarantees as policy tools for fulfillment of ESR norms has been studied in the context of a number of Latin American countries, including Chile, Guatemala, Uruguay, and Peru (World Bank 2007), South Africa (World Bank 2007), and India (Srivastava, 2010). These social guarantees cover a range of basic entitlements such as health (Chile, Peru), education (Peru, Guatemala, Uruguay), employment (India), housing (South Africa), and social protection (Uruguay). A system based on guarantees requires the following key elements: a normative (legal) framework (embodied in the constitution or specific policies) that clearly defines the rights and their threshold of realization, financial mechanisms to secure the budget, and specific institutional arrangements to implement, to monitor, and to provide oversight.

While these elements constitute the basic framework for introducing and regulating social guarantees, “such guarantees alone do not ensure that all citizens are able to access and claim timely provision of good-quality services” (World Bank 2007: 7). Understanding the specific accountability MAPs that underlie these cases is critical. The first stage in the formulation of these guarantees is generally characterized by the building of social consensus.
on the need for universal access. Domestic opposition groups, NGOs, professional associations, and other civil society organizations (sometimes backed by international human right advocacy groups) play a pivotal role in the building of social consensus. Development of new legal frameworks (as in case of Guatemala and South Africa) or policy frameworks (as in the case of Chile and India) that explicitly incorporate these guarantees gradually follows. Conflicts regarding what should be the level of minimum provision, what kinds of services should be prioritized and how much budget should be allocated to them often arise and threaten to slow down the process. Strong executive intervention (as in the case of Chile and India) or civil society engagement (as in case of South Africa) has been critical in moving the process forward. The use of human rights rhetoric in communication campaigns and in mediating conflicting interests of stakeholders has also been important.

In terms of accountability pathways (see Figure 5), both horizontal accountability in the form of balance of power between executive, legislative, and judicial branches as well as vertical accountability through civil society organizations exerting pressure on the state have been important. For instance, in Chile, the office of the Superintendent of Health (which is independent from the delivery system but has the power to ensure action by providers) played an important role in providing effective nonjudicial mechanism of redress (World Bank 2007). The South African case, on the other hand, is noteworthy because of the use of a wide variety of judicial (courts), quasi-judicial (e.g., the South African Human Rights Commission), and administrative (e.g., tribunals, facility-based complaints mechanism) mechanisms of accountability.

The Social Guarantees approach provides a useful model beyond a purely normative framework for operationalization of ESR norms into policies and programs to promote universal access. It also illustrates the potential complementarities between judicial and nonjudicial as well as formal and informal mechanisms of accountability for rights realization.
Evaluating Our Progress: Achievements, Shortcomings, and the Promise of Human Rights

In this article, we have attempted to develop a deeper understanding of the causal mechanisms and processes that link ESR norm adoption with meaningful social transformation (see Figure 1). The authors we have discussed engage with these complex issues in various ways. Statistical studies that measure the association between rights realization and a variety of historical, political, and structural facts (Poe and Tate 1994; Poe et al. 1999) illustrate the kind of macrolevel analysis that Hedström and Ylikoski (2010) find unsatisfactory for explaining change. The constructivist Spiral Model (Risse et al. 1999) provides a more adequate explanation by taking into account processes of norm adoption by both states and social movements (Arrow 1), the emergence of strategies and counterstrategies at each successive stage (Arrow 2), and structural change resulting from social struggle (Arrow 3). Looking at a different set of transformational mechanisms, the Policy Legalization model examines how existing processes and institutions shape the beliefs of judges (receptivity to rights claims), litigants (likelihood of victory), and respondents (feasibility of compliance) (Arrow 1); how court cases operate as mechanisms to adjudicate among conflicting courses of action, to influence decisions, and to create opportunities for exchange of information and dialogue among competing parties (Arrow 2); and the extent to which rights and law shape the design, implementation, and impact of public policy (Arrow 3). The MDG model, by drawing global attention to the needs of the impoverished, seeks to mobilize political commitment on the part of rich countries to help alleviate the resource constraints that governments of poor countries face (Arrow 1). The formal process of setting goals helps build momentum for directed action (Arrow 2), and it is presumed that regular monitoring and tracking of progress based on time-bound targets will lead to progressive improvement in lives of the poor (Arrow 3). The Social Guarantees model works by building awareness and social consensus domestically (Arrow 1), leading to budgetary commitments and monitoring, oversight and redress institutions (Arrow 2), and, finally, social change through broader social acceptance of rights claims, expansion of entitlements, and gradual empowerment (Arrow 3).

But despite the existence of analogous causal mechanisms, these models have very different impacts. A comparison across the models will help us to identify their strengths and weaknesses in terms of facilitating the realization of ESR. The “naming and shaming” processes at the core of the Spiral Model can help raise awareness and legitimate human rights claims, as well as arouse indignation that spurs action. In addition, the emphasis on mechanisms of accountability in international law increases the likelihood that states will see clearly their obligations to respect, to protect, and to fulfill ESR, and ultimately, as public voices are strengthened, comply with these obligations. However, the Spiral Model does not sufficiently detail the full range of barriers to ESR, in particular the lack of diagonal accountability and progressive realization, or the full range of enabling mechanisms that make ESR realization more likely. Shaming strategies break down when beliefs cannot be swayed (for example, there is not a critical mass of people outraged by marginalization or deprivation, as is often the case in capitalist societies); when actions do not follow the acceptance of ESR norms (individuals or states saying “yes, it’s wrong but there’s nothing I can do” or “we’re doing the best we can” or “there are no resources”); or when actions do not challenge the underlying causes of deprivation (such as a lack of public goods or a social, economic, and political commitment to justice).

At the core of the Policy Legalization model is the ability of the judiciary to overcome some of the challenges and to promote ESR. The evidence is, in some ways, promising.
The legal framework created by ESR cases bolsters “the terms of accountability” (Gauri and Brinks 2010c: 323) by clearly allocating responsibility for the provision or regulation of goods and services among agencies and levels of government, proposing standards for assessing provision or regulation, and instituting penalties for failures in provision or regulation. The dialogue created between the executive and administrative apparatuses of the state, as well as the construction of independent monitoring, improves the likelihood of successful compliance. Outcomes can be very positive, especially when judges are ideologically receptive to ESR claims, when claimants are persistent in demanding compliance, when there is an institutional precedent for providing the goods and services at issue, and when there is preexisting state capacity. But what about when these conditions are not present? The Policy Legalization model does not explicitly discuss other nonjudicial mechanisms for transformation, especially the important role played by social movements. Nor does it attempt to analyze how the broader international and geopolitical context within which domestic states operate may shape domestic ESR realization.

The MDG model works through international mobilization of financial resources and its disbursement to poor country governments. It, thus, seeks to bring about change through relaxing the resource constraints that governments of poor countries face. The formulation of goals and time-bound targets (although in a very top-down manner) coupled with regular monitoring and tracking of progress is a distinct strength of the MDG model. However, since there are no domestic and few international accountability mechanisms within the MDG structure, the link between creating awareness and action is either very weak or limited in the direction of expediency rather than broad-based change. A range of domestic factors that might facilitate or hinder realization, though implicit in development work, are not incorporated adequately into the MDGs and, thus, do not impact greatly the concrete policy strategies that arise from this framework. At a more fundamental level, it can be argued that the overly technocratic and top-down nature of the MDG model continues the tradition of seeing the poor as recipients of aid and not as effective partners in the process. In this regard, the MDG project could benefit from harnessing some of the processes embodied in the human rights framework for mobilizing communities and empowering them to participate in the formulation and implementation of development targets.

In contrast to this, the Social Guarantees model seeks to engage the poor more actively in the process of development. However, it focuses almost exclusively on mobilization of domestic resources and building of social consensus for change. Its strength lies in how it emphasizes the complementary role of judicial and nonjudicial mechanisms, including the role of social mobilization and redress mechanisms. A clear delineation of entitlements and progressive realization helps translate the promise of human rights into action. As opposed to the MDG model, which relies heavily on an international transfer of resources, or the Spiral Model, which involves active engagement of international advocacy groups, the Social Guarantees model, like the Policy Legalization model, involves very limited engagement of foreign entities. While this could be a strength in some respects—such as in cases where it leads to development of domestic mechanisms of consensus building, mobilization, and accountability—it could also be a weakness, particularly in the context of relatively underdeveloped or poor countries, where domestic financial and institutional capacity may be weak to begin with but may stand to benefit from engagement with international entities. This explains, in part, why this model has worked well in countries like Chile and South Africa but not in Guatemala, Uruguay, and Peru (World Bank 2007).
Despite the increased emphasis on “rights-based development,” pro-poor policies continue to falter in addressing the full range of challenges faced by those in poverty (insecurity, deprivation, exclusion, and lack of voice). The various models we have examined help unravel some of the complexity inherent in realizing rights norms, but these by no means capture the full range of relevant mechanisms. Nor should these models be viewed as competitive. Our purpose in selectively presenting a few models was to emphasize the idea that there are “multiple causal recipes” (Ragin) that we need to understand and strategically build on, through possibly the use of “hybrid” models that help harness this complexity. In order fully to explore the possibilities and pitfalls of such hybrid models, we need to bring together different communities of human rights scholars (representing both ESR and civil and political rights), development practitioners, and citizen groups to begin to understand what works under what contexts.

The human rights framing does seem to offer some potential leverage over previous developmental strategies for achieving economic and social well-being. How far this potential is realized depends on the configuration of mechanisms, actors, and pathways, as we have shown in this article. In terms of shaping ideals and beliefs, ESR provide new discursive, normative, and morally compelling mechanisms that transcend framings of poverty in terms of neediness and charity and instead embrace the idea of firm obligations and the inalienability of rights. ESR can also powerfully shape behavior when backed by the range of accountability mechanisms discussed above: “progressive realization”; legal frameworks and mechanisms for recourse; instrumental uses of rights such as information politics, leverage politics, and symbolic politics; and participatory and dialogic spaces created to fulfill rights. Finally, ESR seem to offer the promise of enduring social transformation because they, at least rhetorically, address the roots of continued deprivation: relational inequality. As Khan argues, “human rights are claims that the weak advance to hold the powerful to account, and that is why poverty is first and foremost about rights” (2009: 21). In particular, the language of obligations, including extraterritorial obligations, as well as the growing number of mechanisms of accountability associated with these obligations, hold out the promise that—through a combination of legal, institutional, discursive, and political strategies—the realization of basic economic and social rights is indeed possible.

Notes

1. Stryker, Robin and LaDawn Haglund. 2010. “Rights and Their Translation into Practice: Toward a Synthetic Framework.” National Science Foundation Workshop. Law and Social Sciences Division. Bridging the gaps between categories of rights, in scholarship and practice, was the motivation behind the aforementioned workshop.

2. After several UN Rapporteurs criticized Arizona’s nativist and discriminatory anti-immigrant policies, the Arizona legislature took steps to nullify international law. This provides a stark illustration of how elected officials can be “representative” of their constituents while brazenly violating the human rights of others. See Cintli Rodriguez (2011).

3. Even this unique mechanism is under challenge. See Van Voris and Hurtado (2010).

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A comprehensive list of references is provided, including works on human rights, social mechanisms, and accountability in political contexts.


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