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The Possibility of Rights Claims-Making in Court: Looking Back on Twenty-Five Years of Social Rights Constitutionalism in South Africa

Kira Tait and Whitney K. Taylor

What factors influence citizens' demand for law to protect social rights? We turn to the case of social rights in South Africa, just under three decades after the end of apartheid and the adoption of social rights constitutionalism, to examine the contours of rights claims-making in the courts. Drawing on original interview and survey research, we argue that above and beyond factors such as the accessibility of the courts and support of civil society, citizens must believe that rights claims-making through courts is possible. We find that these beliefs and the subsequent demand for justice are connected to people's personal circumstances, sentiments as rights-holders, and trust in legal institutions, rendering the legitimacy of social rights constitutionalism beholden to people's perception that the state actually delivers on these constitutional promises.

INTRODUCTION

During an interview in Richards Bay on August 18, 2018, college student Nhlahla lamented, "I personally think we don't have rights. But the Constitution says we have rights." Considering South Africa's status as "the poster child of socioeconomic rights," one would not expect ordinary South Africans, like Nhlahla, to have this view (Langford 2014, 1). South Africa has experienced over twenty-five years of democratic governance and has developed a robust set of institutions to further the protection of constitutional rights, including the Constitutional Court and "Chapter 9 institutions"[1] like the Human Rights Commission and Public Protector's office. Yet, we find that ordinary people are skeptical of their constitutional rights and therefore are reluctant to make rights claims in court to resolve justiciable social rights problems in their lives. This gap between de jure rights commitments and perceptions of rights protections presents a challenge to the possibility of rights realizations through courts in countries

Kira Tait is Assistant Professor of Political Science and International Relations at the University of San Diego, USA. She can be reached at Email: ktait@sandiego.edu.

Whitney K. Taylor is Assistant Professor of Political Science at San Francisco State University, USA. She can be reached at Email: wktaylor@sfsu.edu.

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1. The ninth chapter of the Constitution outlines the duties of these institutions.

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around the world. After all, people's beliefs in whether they have meaningful rights affect whether they think they can mobilize their claims through courts.

In this article we explore the following question: what factors influence citizens' demand for law to protect social rights?[2] We argue that above and beyond factors such as the accessibility of the courts and support of civil society, citizens must believe that rights claims-making through courts is possible given their personal circumstances and sentiments as rights-holders. Drawing on two data sources, we arrive at two conclusions. First, we find that people's perceptions of whether they have rights and whether rights have a meaningful impact on people's sociopolitical reality influences whether they think of demanding rights protection through courts. In order to make claims in courts, a person must believe that rights "work," in the sense that the responsible duty-bearers—in this case, the state and government offices tasked with social policy design and service delivery—will carry out their obligations. Absent this perception, people may not think of the law as a useful solution to address rights violations because rights have no material impact on their everyday lives.

To investigate this question, we turn to the case of South Africa. Social rights constitutionalism—or "the increasing inclusion of social and economic rights language in constitutions, the increasing use of that language by social actors to pursue their goals, and the increasing judicialization of political disputes under the social rights rubric"—has become increasingly common, starting in the wake of World War II and the end of the Cold War (Brinks, Gauri, and Shen 2015, 290). As newly independent states sought a more democratic style of constitutionalism, they enshrined expansive systems of rights to improve access to basic services and alleviate poverty conditions. They also established independent court systems to further protect those rights. These courts provided citizens with an arena in which to pursue this new kind of contestation over socioeconomic inequality. South Africa figures prominently in discussions of this new form of democratic constitutionalism with its celebrated constitutional design that included protections for social rights. While the judiciary has long featured as an important institution of horizontal accountability and as a site of peaceful and neutral dispute resolution in democratic theory, the South African democratic experiment more fully embraced the substantive democratic possibilities of rights and courts than almost any other country. As such South Africa is globally recognized as a leader of socioeconomic rights protection through courts (Gauri and Brinks 2008). While the constitutional codification of rights does not automatically mean that rights protections will follow (Chilton and Versteeg 2020), the introduction of independent courts and recognition of social rights has allowed for a new type of politics around deprivation and socioeconomic inequality to emerge in South Africa. This new politics involves the judicialization of development challenges and state negligence. This article seeks to investigate the state of this politics by uncovering how ordinary people perceive having social rights and the act of using the law to protect them twenty-five years after its inception.

2. Social rights claims may take the form of policy-directed claims pushed forward by public impact lawyers and organizations or everyday claims made by individuals. While this distinction is important, in this article, we are primarily concerned with whether or not a demand for a legal solution enters people's minds when they think about service delivery problems, regardless of the kind of claim being made.

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Combining insights from seventy-seven interviews and an original 551-person survey, we find that people's perceptions of whether or not rights and the law work cast doubt on the possibility of legal mobilization for social rights, and thus, people often do not think they can turn to the formal legal system to make rights claims. Despite the fact that relatively few people are willing to turn to law when faced with socioeconomic problems (including those related to health, housing, education, water, and electricity), rights and law remain central to the way South Africans think about and make sense of democratic citizenship. These findings have significant implications for state accountability, institutional development, and citizenship. The development of strong, new institutions, like the South African Constitutional Court, or significant legal aid programs is not enough to ensure that all citizens believe that they can turn to the courts to protect their rights.

This article offers several contributions to our understanding of the politics of law and courts and the relationship between legal consciousness and legal mobilization in the Global South. First, while scholars have debated the effectiveness of legal mobilization as a strategy to solve rights problems, we know less about how people think about their rights related to specific problems and the impact of this on their willingness to approach the law to solve those problems. By adopting an approach that prioritizes how people think about rights and the use of legal claims to solve problems, we can understand the limitations of legal mobilization, which go beyond the institutional constraints often faced by courts and legal practitioners.

Second, we carefully examine the enactment of a new form of constitutionalism that seeks to reconfigure state-society relations around equal social rights promises for all. We identify challenges in the scaling down of these grand promises to the everyday such that they are meaningful in practice. These challenges include both people's perceptions of social rights and subsequently the law in light of their current political context. While barriers to access, including knowledge, material resources, and other forms of support, have been studied both within South Africa and outside it (e.g., Galanter 1974; Epp 1998; Dugard 2015), the distinct question of the impact of people's perceptions about social rights on the demand for justice has been given substantially less attention. In this article, we are specifically interested in the demand for justice through the formal legal system.[3] Our approach also helps us to understand when, whether, and why ordinary people think they can invoke the law to solve everyday problems that have become justiciable due to social rights constitutionalism.

This article also sheds light on our understanding of the challenges facing South African democracy twenty-five years after the end of apartheid. Especially striking is the prevalence of a skeptical citizenship among ordinary South Africans, a sense of citizenship defined by the perception that "they tell us we have rights," rather than "of course we have rights." This skepticism about the meaning of rights can become a self-fulfilling prophecy in that the protection or realization of rights often requires an active demand from citizens. The deepening of democracy, then, necessitates that citizens believe that they can confront the state with rights claims and that the state in turn treat those confrontations as opportunities to learn more about what citizens need, rather than as nuisances to be ignored or minimized.

3. There has been much scholarship on service delivery protests—another way people respond to government negligence—in South Africa (see Brown 2015 and Chance 2018, among others).

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In what follows, we first offer a discussion on the role of rights consciousness and legal consciousness in citizens' demand for justice through courts. While there are other ways in which citizens demand justice, we are particularly interested in justice through courts because in the South African context it is a key way in which citizens can, at least in theory, protect their social rights. The use of courts to protect rights was part of the promise of the new constitution that founded the postapartheid South Africa. We then turn to our two sources of data and examine how ordinary South Africans think about their rights, the law, and their socioeconomic status and the effect on how they think about making social rights claims in court and when they actually do. We close with a discussion of the implications of our findings for democratic governance, accountability, and citizenship.

THE IMPACT OF LEGAL AND RIGHTS CONSCIOUSNESS ON THE DEMAND FOR JUSTICE

The assessment of citizens' demand for justice has long been of interest for scholars and legal practitioners. This concern prompted scholars to develop the idea of the dispute pyramid (Miller and Sarat 1980), the dispute pagoda (Michelson 2007), and the dispute tree (Albiston, Edelman, and Milligan 2014). While these three representations vary in significant ways, all reflect the idea that there are many more potential justice problems than there are legal claims. The dispute tree metaphor importantly highlights the fact that there are "myriad disputing channels outside of courts" (Albiston, Edelman, and Milligan 2014, 105). We take these points seriously and seek to investigate when South African citizens identify social rights problems as "litigable" or "legally grievable" (Taylor 2020a).[4] However, this translation only occurs if people believe there is value in turning to the law and utility in having rights.

Early sociolegal scholarship focused on the possibilities of rights-based approaches to justice versus other alternative justice ideologies (Merry 2014). Much of this scholarship emerged during the civil rights era, a time in which rights-oriented social movements yielded positive outcomes for social justice. The spread of human rights discourse in the 1980s further entrenched the idea that the protection of individual rights, the rule of law, and democratic governance were necessary ingredients for a just society. This prompted newly independent states, especially in the Global South, to develop constitutions that reflected this idea. As such, rights claims and the law became new tools for marginalized groups seeking to achieve justice. However, the appeal of human rights quickly faltered when their promises did not result in fundamental changes, sparking some sociolegal scholarship to suggest that "despite their strong ideological appeal, human rights also fail to deliver much of what they promise" (Merry 2014, 289).[5] Proponents of the rights framework have argued that this recurring sense of failure, as suggested by the literature, is partly because rights do have limitations.

As an approach to justice, rights are only effective under certain circumstances, despite their universal promises. While activists have used rights to address a variety

4. For more recent discussions of legal mobilization, see Lehoucq and Taylor (2020).
5. See also Super (2016, 2021) and Smith (2019) on perceptions of (in)justice and rights.

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of problems, like socioeconomic deprivation, lack of development, and harm of vulnerable populations, scholars have found that the strength and effectiveness of rights are conditioned by the interpretations held by rights-holders. These interpretations concern whether or not social justice problems are defined as rights and whether or not rights claims can garner solutions from the various responsible duty-bearers. These questions make up individuals' "rights consciousness," or the understandings of law and social practices through which people accept or consciously reject rights in relation to their everyday lives, and more importantly when they encounter justice problems. People are more likely to act on their rights in response to a justice problem if they believe rights and the law best align with how they perceive the problem and themselves, and understand their relationship with the state. A rich body of scholarship has uncovered that in various contexts and on a variety of issues this is not always the case.

Law and society scholarship shows that while rights may be adopted in a particular context, their meanings are not static, but instead are constructed (Nader 1990; Nader 1997; Ewick and Silbey 1998; Merry 2006; Osanloo 2009; Engel and Engel 2010; Massoud 2013; Chua 2014; Hendley 2017; Taylor 2020a). Even after the emergence of global human rights awareness, which is understood to be an important prerequisite for mobilizing rights, people regularly assert their own meanings of rights and legal institutions (McCann 1994). These meanings and subsequent legal behavior are shaped by linguistic, temporal, and political contexts, social networks, and organizational resources (Langford 2014). The varying meanings people make about rights and law result in them having varying relevance in people's lives even when they encounter rights-based problems (Gleeson 2010, 564). For example, Engel and Munger (2003) found that Americans with disabilities were generally reluctant to assert rights. However, those with experience in a community that fostered rights consciousness among disabled persons were more willing to do so. Massoud's (2013) study shows that rights claims have little effect in contexts where states lack institutional capacity and individuals lack fundamental resources like money.

With regards to invoking the law, Engel and Engel (2010) find that Thai people are less likely than before to turn to the law or even conceptualize personal injuries in legal terms in Thailand because the law is disconnected from the unofficial system of dispute resolution that has been passed down from their ancestors. Hendley (2017) argues that Russians are reluctant to turn to the law and instead rely on self-help if they are illegally reprimanded at work. Taylor's (2018) study shows that despite their low confidence in the state and the judiciary, Colombians' frequent use of the *tutela* procedure is due to their understanding that the *tutela* is the prime mechanism they can use to access their rights. As this scholarship shows, individuals' rights consciousness and legal consciousness may not reflect theoretical understandings of how rights and the law ought to work. Thus, there are additional challenges with legal mobilization for rights when citizens doubt the influence of rights and question the law's role in protecting their rights, especially when claims are made against the state.

Our analysis builds on this scholarship by expanding its geographical and substantive focus. Although this rich scholarship on legal and rights consciousness has covered a wide variety of civil and criminal issues in the United States and abroad (Nielsen 2000; Hoffman 2003; Gallagher 2006; Engel and Engel 2010; Vanhala 2010; McMillan 2011; Hendley 2012; Young 2014; Chua 2015; Taylor 2018; Chua and

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Engel 2019), we know relatively little about the impact of legal and rights consciousness on legal mobilization for constitutional rights. This article seeks to fill that gap.

ASSESSING THE DEMAND FOR JUSTICE IN SOUTH AFRICA

South African's 1996 Constitution established a legal infrastructure favorable to legal mobilization for justice problems. Instead of following other African states' tendencies to create parliamentary sovereign democracies and socialist military states, the Constitution was largely imbued with a liberal style of legalism (van Huyssteen 1995; Nonet and Selznick 2001; Langford 2014; Sachs 2016). It enshrined a new commitment to the power of judicial review, the rule of law, independent institutions, and individual rights, strongly reflecting rights declarations in international treaties. As a result, the Constitution reshaped "the possibilities of politics in the courts" by revolutionizing South Africa's procedural and substantive legal environment (Brown 2015, 131; Brickhill 2018). For example, in addition to increasing rights protections the new Constitution also expanded rules of standing, broadening who could make rights claims in court. During apartheid, only persons who had been impacted directly by the alleged wrong had standing in court. This restriction limited the chances of accessing justice for groups of people. Section 38 of the 1996 Constitution expanded standing to anyone alleging that a right in the Bill of Rights has been infringed. It includes: (1) anyone acting on behalf of another person who cannot act in their own name; (2) anyone acting as a member of, or in the interests of, a group or class of persons; (3) anyone acting in the public interest; and (4) an association acting in the interest of its members. This extension allowed claims to be brought by persons and organizations with more resources on behalf of the marginalized poor, increasing the possibility of legal mobilization among ordinary people.

The Constitution also established the Constitutional Court and the South African Human Rights Commission (SAHRC) to further support the new commitment to human rights protection through legal channels.[6] Aside from regulating disputes between the various spheres of government, the Court has exclusive jurisdiction in determining whether the president and/or Parliament has failed to fulfill their constitutional obligations. In terms of increasing access to courts, section 167(6)(a) empowered the Court to function as a court of first instance, allowing citizens to directly access the Court "when it is in the interests of justice." Under this provision, individuals can access the courts directly by lodging a complaint through the Court's Registry.[7]

The SAHRC has the authority to investigate claims of and provide redress for human rights violations. People can report rights violations to the Commission in writing online and orally in person or on the phone. Complaints are made at the provincial office where the violation took place. Individuals can lodge complaints

6. The Court is the country's highest court in all constitutional matters.

7. Despite people's legal authority to access the Court through the direct access provision, such access is difficult to achieve in practice. Dugard (2006, 273) finds that from 1995 to 2003, the Constitutional Court refused a majority of direct access applications under the grounds that claimants failed to comply with one or more of the criteria. In a later study, she also finds that from 1995 to 2013, only eighteen direct access applications to the Court were granted (2015, 127).

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on behalf of another person or an organization. The SAHRC investigates complaints and may conduct legal proceedings in its own name or on behalf of the complainant. Through these changes, opportunities for rights claims-making in the courts expanded considerably, and as a result, courts have become important sites for politics in the post-apartheid era.

Since 1996, South African citizens have frequently turned to legal channels to air their grievances, in part because, as Jackie Dugard, Tshepo Madlingozi, and Kate Tissington (2015, 24) describe, "tactical repertoires learned from the anti-apartheid struggle (street barricades, sit-ins, disruptive marches, etc.)" failed to garner state concessions or sympathy from elites and these approaches were criminalized. Yet, the use of the formal legal sphere still presents many challenges, such as the cost and time-consuming nature of legal proceedings, as well as the difficulty of navigating the courts (Galanter 1974). Comparative scholars have noted that a robust "support structure" of nongovernmental organizations can help mitigate these barriers by shouldering financial burdens, providing human capital, and facilitating ties between various societal actors (Epp 1998).

South Africa is home to nineteen public interest legal services organizations (PILS), several nonlitigating civil society organizations, and grassroots movements that champion social rights protection. Private lawyers can choose to support rights mobilization on a pro bono basis. PILS have a long history in South Africa. The two largest and oldest organizations, the Centre for Applied Legal Studies (CALS) and the Legal Resources Centre (LRC), were founded in the late 1970s to provide legal services to the disadvantaged against apartheid's discrimination laws. In the 2000s, new organizations were created to provide legal support for specific rights-based issues like housing, health care, and education. While all PILS are committed to serving people across the country, most main offices of PILS are concentrated in major cities in the country's three most populous and wealthy provinces, Gauteng, Western Cape, and KwaZulu-Natal. Although each organization functions as a separate entity, they often refer cases to each other and work as collaborators on cases.

Given this legal terrain, South Africa presents itself as a prime site for citizens to demand justice through courts. The Constitution and other legal institutions appear to provide the necessary framework for citizens to make legal claims when faced with problems concerning their social rights. However, we find that (1) people's perceptions about rights and (2) their trust in the legal system, (3) in relation to their personal circumstances, cast doubt on the utility of rights and the law to address problems. These perceptions signal people's understanding of their relationship to the state and the function of rights and the law. They inform whether people believe they can and actually do make rights claims in court for social rights issues.

METHODS

To investigate the relationship between citizens' consciousness of rights and the law and the possibility of making rights claims in court, we adopt a mixed methods approach, drawing on two sources of data, collected by both of the coauthors across

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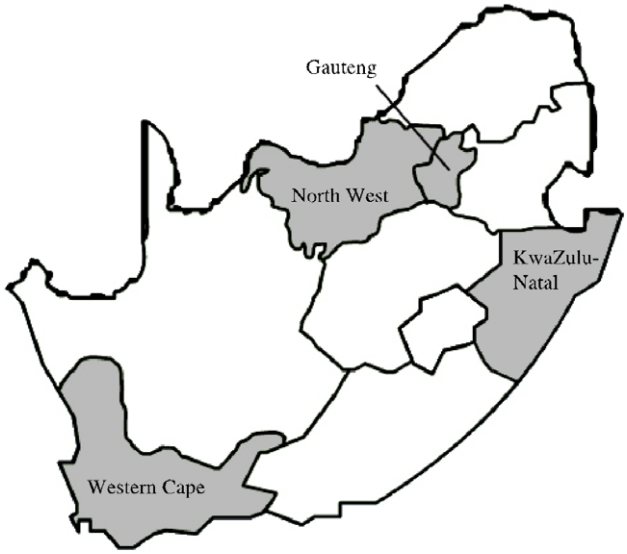

Figure 1.
Map of South Africa.

different regions of urban and peri-urban South Africa.[8] Figure 1 shows the provinces in which we conducted fieldwork for this project. We use what John Creswell and Vicki Plano Clark (2006) call the convergence model of a triangulation design. A triangulation design is a methodological technique that seeks "to bring together the differing strengths and nonoverlapping weaknesses of quantitative methods (large sample size, trends, generalization) with those of qualitative methods (small N, details, in depth)." A convergence model involves the comparison and interpretation of two distinct sets of data, after each has been collected and analyzed independently. We seek to combine our findings inductively and generate new theories about the relationship between grievances, rights, and claims. We encourage future studies to take up the insights we flag here, to examine the conditions under which they hold.

To investigate citizens' demand for justice through courts we took a two-part approach. First, we rely on seventy-seven semistructured interviews with 111 participants, conducted in KwaZulu-Natal province in 2018 by the first coauthor over the course of seven months.[9] In the interviews, she asked participants to respond to hypothetical scenarios that describe justiciable social rights problems. They were asked what they could and would do about it. Fifty-three interviews with seventy-two participants were conducted in Empangeni, a semirural town located 157 kilometers north of Durban. Twenty-four interviews with thirty-nine participants were conducted in Umlazi, the fourth-largest urban township in South Africa, located on the outskirts of Durban. These areas were chosen to provide contrast among a single racial group.

8. While this article focuses on urban and peri-urban spaces, it would be valuable to conduct similar studies in more rural parts of South Africa, which would allow for a consideration of the impact of traditional authorities.

9. Some interviews were conducted in pairs or in groups of three to five. There were thirteen group interviews in Empangeni and ten group interviews in Umlazi.

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While there are no PILS offices in Empangeni and Umlazi, residents do have access to four major offices in Durban and several other community-based advice offices that provide initial support and access to paralegal advice. These offices are located across the province, even in rural areas. Citizens have access to one in Umlazi.

All of the participants were Black South Africans between the ages of nineteen and seventy-four. Ninety-five percent of the participants self-identified as Zulu. The other 5 percent were from the Xhosa and Swati ethnic groups. The interviews were conducted in English or isiZulu at the respondents' discretion. They were later transcribed and coded to identify similarities across the responses. Individuals were chosen using respondent-driven sampling (Heckathorn 1997). Respondent-driven sampling is a network sampling method mainly used for studying hard-to-find or hard-to-study populations, like socioeconomically marginalized people. The first coauthor established connections with families in these areas, which then facilitated access to others in their networks prior to conducting interviews. She was involved in the Zulu Immersion Program, hosted by the University of Pennsylvania's African Language Program where she studied isiZulu while living with a family in Empangeni for two months in 2017 from June to August. In August 2017, she also lived with a family that resided in Durban, but was originally from Umlazi. She was immersed in their family life, allowing her access to their social networks, including church groups, neighbors, and workplace colleagues. Two local interlocutors (one in each area), members of the Umlazi and Empangeni families, were present for every interview that took place in the residents' homes, around the University of Zululand campus, or at a local park. Because we are interested in how ordinary people think about making social rights claims in court, the interviews sought to include people who did not have experience making social rights claims in courts, but who may have had other experiences with the law.

Participants were asked three types of questions to assess their general rights consciousness, their consciousness of the right to access basic services, and their legal consciousness about using the law to solve problems with social rights (see Appendix B).

The first set of questions asked broad questions about who has rights in South Africa. The first coauthor asked participants to evaluate whether citizens in South Africa had rights, whether they personally felt they had rights in South Africa, and whether there was anyone in South Africa who did not have rights. These questions allowed us to gauge how people think about rights and their role in everyday life. With the second set of questions, she asked participants whether they thought having access to each of five constitutionally guaranteed services was a right (shelter, health care, education, water, and electricity) in order to assess their awareness of social rights protection.

The third set of questions helped us uncover people's perception of socioeconomic problems and the use of courts to solve them. The first coauthor asked participants to respond to five hypothetical scenarios, involving shack evictions, poor infrastructure in government schools, government hospitals refusing to treat sick persons, and water and electricity disconnection or lack of formal connections.[10] All the scenarios are common

10. While the perpetrator of the rights violations in these scenario questions could be a state or private actor, because we are interested in whether people think they can confront the state using the law, the interview scenario questions were designed to place the state as the rights violator.

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problems South African courts have adjudicated yet still occur.[11] She first asked respondents to determine whether the issue in the scenario was a problem and what they could and would do about it. If they did not name litigation as a strategy, she then asked whether they believed they could take the responsible government body to court to address the problem. These questions helped us probe whether people thought socioeconomic problems were problems, what problem-solving strategies they believed they could take, and whether they thought they could approach the courts for a remedy.

These questions are inspired by ordinary language interviewing techniques. As Schaffer (2006) notes, the ordinary language technique is most useful when one's study rests upon specific terms that posit a particular set of intentions and behaviors on the part of actors. As such, it is especially applicable to the study of people's interpretation of social rights and the act of litigating. This style of questioning allows people to make judgments on how *they* (rather than the interviewer) understand social rights and the law. Asking these questions together allows us to make connections between the three types of beliefs people hold about the way the state operates with respect to rights and the law. Together they allow us to investigate people's sensemaking about themselves as rights-holders, social rights, and the law to assess citizens' demand for law to address socioeconomic problems.

Second, we rely on a 551-person survey fielded by the second coauthor in November 2017 (Taylor 2020b). The survey sampled respondents from three provinces and sought to include both people who had legal system experience and those who did not. Respondents were selected for inclusion in one of two ways. First, with the goal of oversampling individuals with legal system experience (relative to the general population), respondents were selected randomly from three pre-identified communities (Ratanang, Marikana, and Thusong). Each of these communities had been a named litigant in housing rights cases that had come before the High Courts within the previous five years. Second, respondents were randomly selected from the three provinces in which these communities are located (North West, Western Cape, and Gauteng). Participants in Gauteng and Western Cape have access to most of the country's public interest law organizations. The respondents in North West, less so. However, like the residents in Empangeni and Umlazi, participants in North West do have access to community-based advice offices, like the Bojanala Legal Advice Centre.

The survey asked respondents whether or not they had faced challenges accessing education, electricity, health care, housing, sanitation, water, or work. It also asked how respondents sought to deal with any challenges they faced, specifically whether they did nothing, turned to friends or family members for help, contacted a public official, protested, or turned to the formal legal system. Because this was an original survey, it asked more precise questions about thoughts on and experiences with law than covered in nationally representative surveys like Afrobarometer, and oversampled respondents who had legal system experience (a population of interest).[12]

11. Despite the established protections set out in *Grootboom* and other landmark cases, violations of social rights still occur as a result of state negligence, corruption with service delivery, and misuse of state funds.

12. The Afrobarometer survey does include a question on trust in courts, but our focus is not on how citizens evaluate courts overall. Instead, we are interested in the ways in which people think about problems in their lives and the opportunities (or lack thereof) that law provides for redress.

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In contrast to the semistructured interviews, the survey format is less amenable to ascertaining the nuances behind particular individuals' understanding of particular concepts. The major advantage of survey research for this endeavor lies in the ability to ascertain how a large number of litigants and nonlitigants think about and respond to many different scenarios. The trade-off in terms of time and detail allows for the use of random sampling, rather than snowball or convenience sampling, which further ensures that a wider range of individual perspectives will be included.

Together, these sources of data combine to allow for a deep, substantive understanding of claims-making, rights consciousness, and the lived experience of democracy and citizenship across South Africa. Of course, with mixed methods research designs, commensurability of data is always a question to consider (Small 2011). While some scholars have suggested that the combination of positivist and interpretivist work is a fundamentally misguided endeavor (Guba and Lincoln 2000), others disagree, for example arguing that treating paradigms and mental models "dialogically" allows us to "get on to the work of applied social inquiry by intentionally and thoughtfully employing the full extent of our methodological repertoire" (Greene 2007, 53). We follow Jennifer Greene (2007, 52), who draws on Thomas Cook and Charles Reichardt (1979), as well as Denis Phillips (2006), in viewing social inquiry paradigms as "intellectual constructions . . . [that] are not involatile, immovable, static, or unshakable" and holds that "inquiry paradigms or logics of justification must each offer a strong, plausible, coherent, and internally consistent framework for arguing and substantiating the warrants of given inquiry findings." Consequently, we do not treat our data as "like units" that we simply add to one another to obtain an output. Instead, we consider each set of data on its own terms. In what follows, we take on this dialogical approach, first considering the interviews and the survey responses separately, and then putting these two sets of data into conversation with one another.

Another note on our methods bears mentioning here. Most scholarship on legal dispute resolution for social rights in South Africa has focused on high-profile, public impact legal cases involving support structures of civil society organizations, like those mentioned above. All have carried out incredibly important litigation campaigns, and the scholarship examining these campaigns has provided substantial information about the conditions under which litigation is likely to be successful (as well as about the limits of litigation). Yet, we know considerably less about the demand for justice for social rights from those South Africans who have not accessed this support structure for whatever reason—a group termed the "missing middle," though this middle makes up the vast majority of South African citizens. In fact, much of the population can't afford legal services at all and is dependent on the contingent choices of public impact litigators about what cases to take.[13] In this article, we aim to provide a broader investigation of the demand for justice by examining whether and when ordinary South Africans believe they can seek justice through courts.[14] Thus, across our interviews and survey, we attempt to sample South Africans who have legal system experience or ties to organizational support, as well as those who do not.

13. We thank an anonymous reviewer for this formulation.

14. We use the term "ordinary South Africans" to refer to nonelites who have not become part of the support structure/network of NGOs just described.

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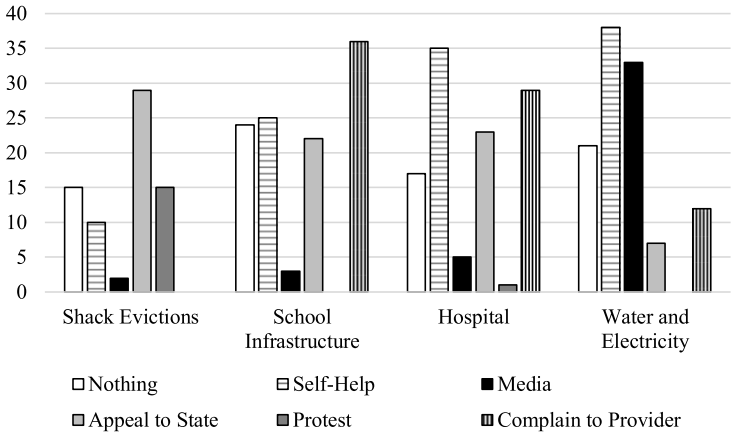

Figure 2.
Interviewee Responses to Difficulty Accessing Social Welfare Goods.

DEMANDING JUSTICE: PERCEPTIONS OF RIGHTS, VIEWS ON LAW, AND PERSONAL CIRCUMSTANCES

How often do South African citizens turn to law to protect social rights? In the interviews, participants in both field sites seldom stated they would and could turn to courts or legal means to solve the scenario problems. Instead, they reported a variety of nonlegal strategies.[15] These strategies fall into five types: (1) do nothing; (2) self-help; (3) report to the media; (4) appeal to the state; and (5) protest, as shown in Figure 2.[16] For the school infrastructure and hospital services scenario there was an additional strategy: people reported they would complain to members of the staff like nurses, principals, or heads of departments (e.g., managers or supervisors). Self-help strategies consisted of two actions. The first is people buying the things necessary to cope with the lack of access to basic service. For example, facing a lack of formal electricity connection, people reported they could buy candles as an alternative source of light. Second, self-help strategies included people relying on their social networks for help, like going to their pastor or moving in with a relative in response to a shack eviction. Participants often named multiple strategies across these categories. People may employ a self-help strategy to address the immediate problem of access, appeal to the state to draw attention to the problem, and later protest if the state is unresponsive to their initial appeal.

Roughly two-thirds of the time, survey respondents reported that they did nothing in response to self-identified challenges in the realms of education, electricity, health care, housing, sanitation, water, and work, as shown in Figure 3. This frequency is not surprising, considering that prior research has demonstrated the prevalence of the

15. By nonlegal, we refer to strategies that do not include approaching any sector of the legal system for help (e.g., the courts, lawyers, South African Human Rights Commission, or even the police).

16. Importantly, turning to court does not show up in this list. That is because the list was derived from the responses offered by interviewees.

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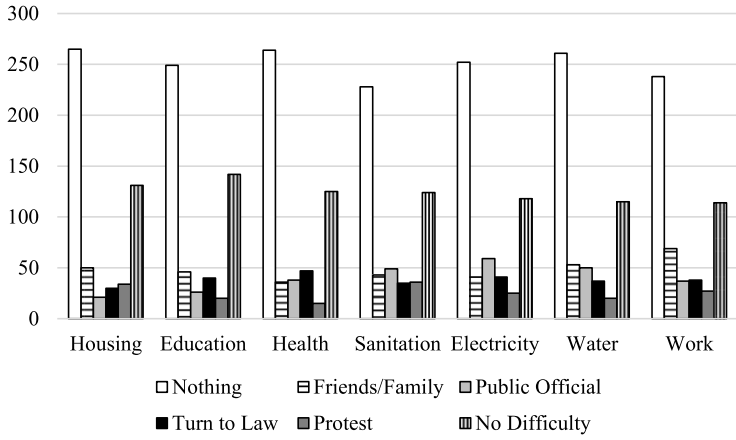

Figure 3.
Survey Respondents on Difficulty Accessing Social Welfare Goods.

"lumping" of grievances across contexts. Over 21 percent of respondents said that they had turned to law at least once in an attempt to address these challenges. "Turn* to law" refers to a respondent's selection of an option that read "I consulted a lawyer or brought a case before the courts, or I filed a complaint with the Human Rights Commission." Importantly, this response option reflects engagement with the formal legal system that is broader than only filing a legal claim. Speaking with a lawyer or an official at national human rights institutions like the Human Rights Commission reflects a desire to enter the formal legal sphere, though individuals may ultimately be dissuaded from fully pursuing legal cases by many things, including cost and time. Comparing between these groups of respondents who reported doing nothing or turning to law, difference-in-means tests reveal several interesting statistically significant points of contrast, especially with respect to the experience, geographic, and knowledge variables—findings that will be discussed in the upcoming sections.

The interviews and survey responses make clear that many South Africans do not view turning to the formal legal system as a viable response to social rights problems. Yet, some do, and social constitutionalism, in theory, enables all citizens to demand justice for social rights problems through the law. So, what factors shape citizens' demand for law to protect social rights? In what follows, we detail the impact of (1) perceptions of rights; (2) courts, law, and trust; and (3) personal circumstances, as documented in our two sources of data. We use the semistructured interviews to uncover people's perceptions about how rights and the law work in South Africa to assess the possibility of using the law to solve problems with social rights. Similarly, we use the survey data to assess the relationship between perceptions about the possibility of claims-making and when South Africans actually make formal legal claims.

Perceptions of Rights

A majority of the interview participants believed that all citizens in South Africa had rights and that they personally had rights (see Figures 4 and 5). When asked to

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Location	YES	YES (limited)	NO
Empangeni	64	6	2
Umlazi	33	3	3

Figure 4.
Number of People Who Believed *Citizens* Had Rights in South Africa.

Location	YES	YES (limited)	NO
Empangeni	64	6	2
Umlazi	28	4	7

Figure 5.
Number of People Who Believed *They* Had Rights in South Africa.

explain why, people referenced either learning about rights in school, the Constitution, the end of apartheid, or being able to do something that represented having freedom (e.g., going places without passbooks or speaking freely about things they do not like).[17]

Those who did not think all citizens had rights or thought that they personally did not have rights referenced inconsistencies between their perceived promises of having rights and the state's performance in carrying out its obligations with respect to rights. Stated differently, people doubted whether they personally, and citizens more broadly, had rights because the state does not function the way people think it should, especially with regards to service delivery.

In Empangeni, eight people either did not think citizens had rights at all or thought they had rights only in a limited sense. Those who thought rights were limited in practice indicated that their perceived understandings of what rights are supposed to deliver was inconsistent with the state's behavior with respect to people's rights. For example, Dudu, a street vendor, explained:

> Dudu: We have *amalungelo* (isiZulu for rights) but sometimes we don't practice it.
>
> Interviewer: What do you mean by that?
>
> Dudu: The ones who are in the authority they don't show it [rights] to us.
>
> Interviewer: Can you give me an example?
>
> Dudu: In most cases if you talk about anything, complaints, sometimes the government do take on steps and sometimes they don't take it. Because

17. Passbooks, also known as a "dompas," were internal passports that Black South Africans over the age of sixteen were required to carry and produce upon request or face arrest. They helped restrict the Black population to racially designated areas.

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> we have lots of complaints here in *eMzansi* (South Africa) but then they don't seem to listen to us.
>
> Interviewer: What are some of the complaints you have that the government does not listen to?
>
> Dudu: My first complaint I don't have a job. The second one is crime, which is uncontrollable here. (Empangeni 44, 10/26/2018)[18]

The government's failure to address social issues like persistent unemployment and crime signaled that having rights does not fully work in practice for Dudu. For Dudu, citizens having rights meant that their everyday problems would be addressed by the state. The state's failure in addressing citizens' concerns meant that citizens were not being heard and that their rights were limited in practice.

In addition to not feeling heard, people doubted whether South African citizens had rights because people still lacked access to basic services, which they believed was not only a right, but the state's responsibility. Peter, a schoolteacher, shared:

> Interviewer: Do citizens have rights here in South Africa?
>
> Peter: We kind of do, depending on who you ask. To some extent, we do have right. But the poor are treated like dogs, and the rich, or more privileged, are treated better. Black people have to protest for basic things like water. How are we still fighting for water? That's where the whole rights thing goes off for me. (Empangeni 11, 8/23/2018)

While Peter believed that citizens have rights to some extent, the persistent inequality among class and racial groups casted doubt on whether rights had real material impact. The fact that Black people still had to protest for access to water, despite water being a right, signaled a problem with the government with respect to rights.

Mama Zandile—a sixty-year-old woman living in a shack—questioned her status as a rights-holder for similar reasons. She shared, "it's very hard for me to see my rights." When asked why, she explained, "Aye! I don't know my child because we have to strike before we can get something." She went on to explain an instance where she had to protest with her community for electricity, but the government still did not deliver. Later when asked who does not have rights in South Africa, she responded, "Me!, because we've been staying here and we want a house, but don't get a house. We want water, we have no water so, I don't have rights" (Empangeni 51, 10/31/2018). Mama Zandile's sentiments are shared by many others. Their lived experiences run counter to the perceived promises of rights. The lack of state services makes people feel they are without rights, even though they invoke their right to protest for the same services. After all, if having access to basic services is a right, one should not feel that they need to protest to ensure that they receive those services, especially when there are others

18. Interview citations note the location of the interview, a number corresponding to the chronology of the interview, and the date of the interview.

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(the rich or privileged, as Peter notes) who can easily access services without the use of protest. It is the inequality in the delivery of government services that drives the feelings of "rightlessness" expressed by people like Mama Zandile.

There was a similar trend with participants in Umlazi. While most of these participants held that South African citizens do have rights, six respondents questioned whether rights worked in practice. Participants complained about the unresponsive state police and local elected officials, known locally as "councillors," as reasons why they felt rights did not work in practice. Andiswa, a private hospital nurse, argued:

> They [government] say we do [have rights], but it is just a front ... Let's say you go to police station to give some complaints. You go there you write your statement, but the case never gets followed up. You go there, query about it, nothing gets done. (Umlazi 76 12/13/2018)

Andiswa, like Dudu from Empangeni, doubted rights worked because her and her fellow citizens' complaints as citizens are not addressed by the state, in her case the police. Nomvula, a retiree, expressed a similar sentiment:

> Well, no [we don't have rights], there are a lot of things we don't get, but we're told we have rights to. Jobs, unpleasant treatment at hospitals and clinics, also at municipal offices if there is something we want. Councillors don't have time for us. We registered for RDPs [government subsidized housing] since we have kids, but we don't get them. (Umlazi 69, 11/29/2018)[19]

What Nomvula describes are the various things people have difficulties accessing, which she contributes to the meaning of having rights. These everyday challenges accessing necessary state services shape whether interviewees believe they have rights in a meaningful sense.

The responses from both Umlazi and Empangeni suggest that how the state actually operates in terms of social services and challenges, like employment and crime, contradicts people's understanding of what it means to have rights. As a result, people either feel that they do not have rights or have rights in a limited sense, where rights have little meaningful impact on their material life. While the responses show that citizens blame the state for failure to realize rights and thus may seem to be expressing *political* disapproval, these perceptions of rights also impact how people think about the possibility of making rights claims in court.

All participants who either reported that they felt they personally did not have rights or did not think citizens generally had rights, or did so only in a limited sense, also doubted whether they could invoke the law to address the problems in the scenario questions. Although all of the respondents agreed that access to social services constituted rights and that the problems in the scenarios were problems, without probing none of these respondents listed litigation as a strategy they would or could use.

19. RDPs refer to government subsidized housing created as a part of the Reconstruction and Development Programme created by the Mandela administration.

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Upon probing whether or not they could go to court for these problems, they all reported no. For example, Mama Zandile's failed attempt at protesting for services further discouraged her from thinking she could lay rights claims in court for the scenario problems. She agreed that each scenario was a problem, but she stated that she would not go to court for any of the problems. Peter noted that going to court is "useless." Although Andiswa reported that she would not go to court for the school infrastructure, public hospital, or water and electricity scenarios, she did think she could go to court for a shack eviction. However, she doubted that it would any result in any positive outcome. She stated:

> Andiswa: It's my right to fight for what's mine.
>
> Interviewer: Do you think the court could help you with this situation?
>
> Andiswa: Depending if I have evidence, yes, they can.
>
> Interviewer: Earlier you said, you don't feel like you have rights, but in this situation with the shack you said you'd go to court because it's your right to fight for what's yours. Can you explain this to me?
>
> Andiswa: Earlier I said that I don't have rights. I feel like I don't have rights. But in this situation, it like fighting for what's mine even though I know along the way I won't get it. (Umlazi 76 12/13/2018)

Thus, for many interviewees, having rights on paper did not mean that they personally felt like they had rights or that those paper rights could be used to seek concrete changes in their lives.

Turning now to the survey, while general measures of education were not associated with differences in responses to the seven life difficulties, more specific knowledge about the Constitution was. Those who completed the equivalent of high school and those who did not were equally likely to do nothing. The same is true for the turn to law outcome. On the other hand, both those who had read the Constitution and those who correctly identified that the Constitution contains the right to housing were less likely to do nothing, but neither more nor less likely to turn to law. Thus, there is not a clear relationship between formal knowledge and the propensity to make claims in the courts.

What about perceptions of rights, or what we might call "experiential knowledge"? The survey asked respondents whether they "strongly agreed," "agreed," "disagreed," or "strongly disagreed" with the following statements:

- If my rights are violated, I should file a legal claim, because the government has the obligation to protect my rights.
- Rights offer necessary protection from abuses of power by the government and private actors.
- Rights look good on paper, but the problem is that they are not complied with.
- Rights are meaningless, and other factors, such as race, determine how one is treated.
- Rights simply protect criminals and should be done away with.

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Those who agreed or strongly agreed with the first statement, that they should file legal claims, were less likely to do nothing than those who disagreed, but they were also less likely to file a legal claim. Those who indicated that rights offer protections were less likely to do nothing than those who did not. However, respondents were equally likely to turn to law regardless of their views on rights protections. The views that compliance is the major issue with rights and that rights only protect criminals were likewise not associated with differences in likelihood of turning to law or of doing nothing. Those who reported that rights were meaningless were both more likely to do nothing and more likely to turn to law than those who disagreed with that statement. One limitation of the survey format is that it does not allow us to determine whether these views preceded decisions about how to respond to the life difficulties or if these views followed those decisions. It could be that folks who view rights as meaningless are more likely to turn to law not because the view drives people to turn to law, but instead because experience turning to law leads to the view that rights are meaningless.

Combined, these findings further suggest a possible diffusion of knowledge about the courts that comes through personal experience and also through the experience of neighbors or peers and shared narratives about the way the law works (Gallagher 2006, 2017). Thus, while level of education may not predict whether or not individuals turn to the courts to make rights claims, knowledge and perceptions do seem to influence that decision. Both the survey and the semistructured interviews demonstrate that while folks do have legal knowledge—some more than others—they also hold beliefs built on their past experience that overshadow that knowledge. For instance, when Mama Zandile and Andiswa say that they do not have rights, they are not making the claim that the Constitution does not include a bill of rights (as their words might suggest, or as someone else's survey response might indicate). Instead, it is a statement that reflects their understanding *and* personal experiences.[20]

Courts, Law, and Trust

In addition to people's understandings of rights, we found that how people perceived the law and the legal system influenced whether they believed they could make social rights claims in court. In the interviews participants were asked to name a strategy they would and could take (see Figure 6). If they did not name a law-based strategy, they were prompted to consider going to court as a solution. They were asked whether they would and could take the responsible state department to court. In both locations people seldom listed going to court as a strategy they would and could take. While the number of reports of litigation did increase after probing, many participants were still resistant to the idea of making rights claims in court to address the scenario problems. The resistance stemmed from people's lack of trust in courts' abilities to administer justice fairly and their overall perception of corruption in the legal system, particularly concerning the use of bribes.

When people believe the law is fair, they are more likely to comply with the law and see the law as a method of recourse. However, when people mistrust the law's

20. This corresponds to what Mary Gallagher (2006) calls "informed disenchantment."

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Location(s):	Unprompted Reports of Litigation	Prompted Reports of Litigation
Empangeni	17	77
Umlazi	10	43

Figure 6.
Reports of Litigation as a Strategy.

fairness, they also question the legal system's overall usefulness and legitimacy. Much of the literature on public trust and public confidence focuses on the importance of these sentiments for citizens' compliance with the law, while others have emphasized the role of confidence in the legal system in citizens' participation in the law (Tyler 1990; Roberts and Stalans 1997; Dugard 2006). Our findings from the interviews are consistent with both lines of research. People's lack of trust and confidence in the legal system discouraged them from thinking they could make social rights claims in court. People reported that they were unwilling to go to court for the scenario problems because they did not trust the legal system to administer justice fairly. Their mistrust stemmed from either their past legal experiences, including their encounters with the police, or their perception of the inner workings of the legal system and the state. People did not trust the legal system when it did not work the way they expected it to—for example Andiswa, who noted the unresolved complaints to the police in her community in Umlazi. Perceived corruption in the legal system also colored people's understanding of the law's fairness.

Across all 111 participants, fifty-four had no exposure with going to court or with the broader legal system. The rest had only limited experience. The most common experiences people had with the law entailed supporting someone else at their case or going to court to observe a case. People who evaluated their experiences with law negatively did not think they could go to court for scenario problems. For example, in explaining why she did not trust the court to help with the scenario problems, Nomvula explained, "sometimes they [the law] don't work. I've got an incident. Somebody came and steal [*sic*] my chairs here, five chairs. I went and reported it at the police station. Even now, they haven't done anything, and they haven't come. I even got the case number on my phone" (Umlazi 69, 11/29/2018). By the time of the interview, it had been eight months since Nomvula had reported the incident to the police. For Nomvula, this was an incident where she did turn to the law for help. However, because it appeared that the police failed to provide timely assistance, Nomvula did not trust the law to solve problems, even social rights problems that the courts have successfully adjudicated.[21]

Even people who were not directly involved in court cases were also impacted by their experiences going to court. Malusi, a college student, went to court to support a friend who was arrested during a student protest as a part of nationwide demonstrations against the rise in university fees. Through this joint interview with fellow student Xolani, we found that Malusi's understanding of his friend's case influenced whether

21. It is important to note that the *appearance* of the police not helping does not necessarily mean that the police were doing anything wrong. Super (2021) and others have documented how citizens sometimes view the provision of due process protections as the police and/or judges simply letting criminals off.

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he believed he could go to court in response to a shack eviction. The men debated the following:

> Xolani: I can put [*sic*] him to court.
>
> Malusi: *Hhayi*! *Hhayi*!, you can't take the government to court! (*shaking his head*)
>
> Xolani: Yes!
>
> Malusi: How? But I don't think you can win that fight.
>
> Xolani: I can. I have a right. If you take my home, where should I live? Which means the rights of South African citizens are being ignored. It's not apartheid now. We are free.
>
> Malusi: But I don't think so. Because I'm looking at this, those students who were fighting for our rights, right now they are going to jail. (Empangeni 18, 8/27/2018)

When I later asked Malusi what he thought of courts and whether he trusted them given his experience, he explained, "Aye, it's not a good place. I saw people cry, and some of them were getting arrested for things they didn't do" (Empangeni 18, 8/27/2018). Malusi's experience observing his friend's experience made him resistant to the idea of going to court even in a dire situation like a shack eviction.

In addition to past negative experiences with the law, we also found that people have doubts in the legal system's ability to administer justice fairly because of corruption, specifically bribing. There were fifty-five references to suspected bribery in the justice system across the 111 interviews. Bribery was central to interviewees' understanding of how the system works and what it takes to engage with the broader state in South Africa. People believe that bribing occurs in every sector of the legal system. As Baba Mthale expressed, "Court exists by law. But I can't trust it with my all. Reasons being (1) The lawyer can be bribed, (2) The investigator can be bribed, (3) The policeman definitely bribed, (4) The magistrate can be bribed, (5) The judge can be bribed" (Umlazi 75, 12/11/18). Although none of the participants who referenced bribery had any firsthand experience with the legal system, they relied on community gossip and the culture of corruption in the government. People cited anecdotes about friends, family members, or local criminals whose cases were dismissed, which they attributed to the exchange of bribes. They believed people and the government used bribes to disrupt the judicial process. This perception of corruption within the legal system discouraged people from thinking they could successfully make rights claims in court. While explaining why she would not go to court, primary school teacher Philani argued, "the law doesn't work. Corruption stands in the way" (Empangeni 9/16/2018). In Dudu's interview, she stated:

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Dudu: No, where we live, the court doesn't help.

Interviewer: They can't help?

Dudu: No, the police are corrupt. Even if you arrest someone, they will get out. The court doesn't help. You can't say you get help in that situation. It doesn't help with anything. Because a person gets arrested and they get there [at the court] and bribe, then they get out. It's something we see all the time happening. Someone who has a relation with the police may come, and because the police has a connection on the inside, they will be able to pass on this thing [the crime]. You will bribe it [the court], and then they will split this money, so that's how you get out. It happens. Let's say you get arrested by a police officer, and you are the suspect. Then the court issues out a warrant of arrest for you. When they get you, it is time for the investigator to do his job. Then the investigator will take a bribe from you and lose all the evidence. The investigator has his own people . . . to get to the point they all working together and even bribe the judge too. The judge ends up making the wrong decision because now they've been bribed anyway. (Empangeni 44, 10/26/2018)

For Dudu, the derailing of the legal process, which she attributed to bribes in every sector of the legal system, rendered the legal system ineffective in problem-solving. As a result, she did not think making social rights claims in court was a feasible solution to solve the scenario problems.

The survey offers additional evidence that there is a disconnect between confidence in the courts and legal mobilization—a finding that has been replicated in a variety of other empirical settings as well (Hendley 1999, 2012 on Russia; Gallagher 2006 on China; Smulovitz 2010 on Argentina; and Taylor 2018 on Colombia). Evaluations of the performance of the courts did not predict decisions to turn to the courts when faced with difficulty accessing education, electricity, health care, housing, sanitation, water, or work—with few exceptions.[22] Those who viewed judicial system officials as honest (as opposed to corrupt) were more likely to turn to law, rather than any other response option, and those who thought the judicial system handled cases quickly, rather than slowly, were actually less likely to make the decision to bring a claim before the courts (Taylor 2020b). Those who viewed the courts as "corrupt" or "very corrupt" were less likely to do nothing than those who did not (but not less likely to turn to the courts).

Individuals living in communities that had previously been involved in litigation efforts and those sampled from the general population were equally likely to do nothing in response to one of these difficulties, but more likely to turn to law. We can infer that for these folks, rights-claiming was viewed as more of a real possibility. Respondents who identified as having legal system experience (regardless of whether they had brought a complaint or had had one brought against them) were more likely to report turning to law in response to these seven difficulties than those who did not have such experience.

22. See Table A1 for the full results of the survey analysis.

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The same is true of those sampled as part of the claimant community—whether or not the respondent themself identified as personally having legal system experience. This makes sense, as prior experience with the courts can reduce barriers of legal claims-making.

Personal Circumstances

Both the survey and the semistructured interviews also revealed the importance of personal circumstances and perceptions of self in relation to community for how people think about demanding justice. Turning first to the interviews, as shown above, those who were unemployed and those who lived in underserviced communities doubted the utility of rights and the role of law in solving justiciable problems with access to social goods and services. In Empangeni, while only four of the participants were unemployed, many of the participants lived in underserviced rural communities, which shaped how they thought about the state and its institutions. They believed the poor and people in more rural areas did not have rights because they lack access to basic services, as Mama Zandile points out.

A similar trend occurred in Umlazi. Sixty-one percent of the participants were unemployed and almost all held negative views about rights and the law, which correlated to how they responded to the scenario problems. For example, Zondani explained:

> Interviewer: Do citizens have *amalungelo* (rights) in *eMzansi* (South Africa)?
>
> Zondani: Not really because especially as women we don't have access to many things. Like when you want to open a business and then you go apply for funds, you have to know someone, or you have to bribe someone so that you can get a tender.
>
> Interviewer: Do you feel like you have *amalungelo*?
>
> Zondani: No because of the same reason and as well as job opportunities. Because when you have matric you hardly find a good job that can help you. When you want to further your studies that can help you pay, you can only work at restaurants and they will pay you a small amount. (Umlazi 57, 11/13/2018)

Like the other respondents, Zondani did not feel that she had rights because she had been unemployed for a few years and found it difficult to start a business as a caterer. When asked if she could take the government to court for the scenario problems, she replied no, they cannot help—not only because she could not afford to go to court, being unemployed, but also because she did not think the law could help solve social rights problems. In these ways, perceptions of personal traits and personal circumstances influence when people believe they can turn to the courts to make demands for justice.

Turning now to the survey, respondents who were unemployed were more likely to do nothing in response to difficulties accessing social welfare goods than those who were

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employed, but when unemployed respondents decided to act, they were more likely than their employed counterparts to turn to law. Additionally, while white respondents were less likely to do nothing than Black respondents (instead reporting that they responded in some other way: asking friends or family for help, turning to local government, or protesting), Black respondents were more likely to turn to law. Those who had reached eighteen years of age after 1994 were more likely to do nothing than those who were at least eighteen years old at the end of apartheid, but neither group was more likely than the other to turn to law. There were no statistically significant differences by gender.

Respondents who saw themselves as being better off relative to their neighbors were more likely to report turning to law than those who saw themselves as worse off or about the same. Interestingly, though, respondents who saw their access to social goods as declining over their lifetimes were also more likely to report turning to law as a response to that increased difficulty in access.[23] We might be tempted to think that material resources or income explains this difference. Yet, when comparing respondents who fall within the official categories of middle- and upper-income to low- and no-income, we see that those who are relatively wealthier are more likely to do nothing and are no more or less likely to turn to law than their relatively poorer counterparts. This finding holds when comparing respondents who make less than the median monthly income of the sample to those who make more. In other words, the combination of deprivation and a sense of efficacy, rather than simple access to material resources, appears to drive the turn to law and perceptions of the possibility of rights-claiming.

Respondents living in Gauteng were less likely to report doing nothing than their counterparts in North West or Western Cape, while those living in North West were more likely to do nothing than those in Gauteng or Western Cape. Those living in Gauteng were more likely to turn to law than those living in the other two included provinces. The opposite was true of respondents living in the Western Cape. While distribution of legal services in South Africa is biased toward Gauteng and Western Cape, Gauteng is much smaller (7,108 square miles) than Western Cape (49,986 square miles), meaning that relative access to legal services is higher in Gauteng. These findings are consistent with other recent studies that point to the importance of neighborhood context for the possibility of claims-making, from recognizing problems as grievances to influencing decisions about where and how to make claims on the basis of those grievances. In part, there are simply different challenges and opportunities available in different communities, but the recognition of grievances and decision to act on those grievances is more complicated than that. Where individuals are exposed to others who have made claims and their knowledge about how exactly to make claims, they themselves become more likely to recognize grievances and seek a resolution (Kruks-Wisner 2018a, 2018b).

Combining Methods and Drawing Inferences

These perceptions reiterate findings from prior studies on material challenges, like time and cost, to access to justice (Galanter 1974; Boateng and Adjorlolo 2018;

23. This finding is consistent with social psychology scholarship (e.g., Kahneman 2011).

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Sandefur 2019). But they also signal that ordinary South Africans' rights consciousness and legal consciousness impact the possibility of social rights claims-making in court. Citizens view the legal process as less than amenable for social rights claims-making for two reasons. Some see the state as having little respect for rights and the law, while others doubt the ability of rights and the law to deliver their purported outcomes, like socioeconomic equality and the fair administration of justice.

Together, the interview and survey results provide a detailed sense of the demand for justice through courts as it relates to social welfare goods in postapartheid South Africa. They demonstrate the importance of considering not only factors related to the quality of judicial institutions, the ease of access to justice, or knowledge of rights and law when assessing how citizens engage with the formal legal sphere, but also how citizens think about their rights, the law, and their personal circumstances in relation to state provision of specific goods. To make legal claims, individuals must have the opportunity to do so (in the sense of political or legal opportunity) *and* they must come to believe such action is possible. In order to believe they can make a legal claim, they must see the justiciable problem as legal in nature and as meriting a legal claim.

Methodologically, interviews and surveys offer different entryways into assessing these beliefs and, as such, reveal different insights into the relationship between legal consciousness and legal claims-making. The interviews encouraged interviewees to walk through thought processes that sometimes resulted in describing an issue as legal in nature and sometimes led them to conclude that they could, would, or should make claims related to that issue in the formal legal sphere. Given the openness and flexibility of this interview process, we can be confident that interviewees, when talking about an issue in legal terms, understand the issue as legal; in other words, we can be confident that the interviewees, rather than the interviewer, brought the legal frame into the conversation.

This openness and flexibility mimic the fluid ways people think about solving their problems in relation to how they perceive rights and the law in general. The meanings people ascribe to their problems and available solutions are not stagnant (Felstiner, Abel, and Sarat 1980). When faced with a social rights problem, people may first believe that they have rights to actually lay a claim and that laying a claim could yield desired outcomes. As we show, a person may see an experience as a problem, but not make a legal claim because of how they perceive the way rights and the law work or don't work in their political context. The interviewees' sense of rightlessness and mistrust of the law diminished the possibility of using social rights claims to solve justiciable social rights problems.

By contrast, survey responses are determined by the researcher, and the respondent chooses one option from the given list. This process facilitates focused interactions and can allow the researcher to compare responses systematically. The emphasis is on how the respondent understands an issue within given set of parameters and intentionally limited choices ("If you personally have had any difficulties with housing—access, evictions, or issues with landlords—how did you respond: by doing nothing, by asking friends or family for help, by speaking with a public official, by consulting a lawyer, etc.?"), not how the respondent understands the issue itself or the process by which respondent came to the answer they gave. In this case, the survey responses indicate that there is an association between personal circumstances (including deprivation or material need and a sense of efficacy) and legal claims-making. The survey diverges

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from the interviews primarily in relation to the importance of views on the legal process and corruption, which do not seem to impact survey respondents' decisions to turn to law in response to difficulties accessing social welfare goods in practice, though they correlate with how the interviewees responded to the hypothetical scenario.

In part, the slight divergence in these findings might derive simply from differences among respondents. There may be something different about individuals living in the communities in KwaZulu-Natal that are the furthest removed from the high distribution of lawyers and legal services that are concentrated in Gauteng and the Western Cape. But there also may be something different about selecting "very corrupt," "corrupt," "honest," or "very honest" when asked in a survey about the actors in the legal system and responding to an open-ended question about the possibility of turning to the courts that biased responses in one way or the other. This differential finding should be explored in greater detail in future research.

Overall, our findings show that after twenty-five years of democratic governance there is possibility of the demand for justice in terms of law-related solutions to social rights issues in South Africa. However, this varies substantially across the country. The way people perceive rights, their views on the law and the way the state works, as well as their personal circumstances all inform their thinking about legal solutions to social rights problems. This is especially true for those who have not gone to court for social rights. People's perception of an unresponsive state and a flawed legal system discourages them from demanding justice for social rights issues through the law.

IMPLICATIONS FOR DEMOCRATIC GOVERNANCE, ACCOUNTABILITY, AND CITIZENSHIP

Our analysis above shows that how people understand their rights as citizens and how they think about democracy and democratic performance influence the conditions under which they are able to think about issues in their lives as potential legal grievances, to say nothing of taking further steps to actually advance legal claims about those issues. There are many things that influence people's demand for law, not all of which we were able to fully explore here. For example, the semistructured interviews seem to indicate that people fuse or lump their experiences and perceptions about constitutional rights with those about other realms of the law. While we explore how people think about themselves as rights-holders and how rights and the law work, future research should examine how people's experiences with specific realms of law, like civil and criminal law, influence their views on the possibility of constitutional rights claims-making.

In what follows, we evaluate how the promise of a rights-based constitutionalism has played out over the last few decades, considering especially beliefs about the meaning of rights ("they tell us we have rights" versus "of course I have rights"), as well as the extent to which assumptions about the possibilities of democracy hold in the South African context. The possibility of legal claims-making has three primary implications: it impacts (1) the possibility of state accountability, (2) the depth of institutional development, and (3) the substance of citizenship.

Since Europe's experience with democratically elected fascist regimes prior to and during World War II, new constitutions have often included checks on the legislature,

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primarily in the form of independent judiciaries with the explicit power of judicial review. Courts give people a formal arena in which they can hold the state accountable for the protection and advancement of their rights. It is also through courts that deprived groups can challenge the state's failure to protect rights, which further advances the quality of new democracies.

Yet, as our data demonstrates, rights-claiming in courts is *only* useful in this way if it is not just accessible in terms of material barriers but also viewed as possible based on individuals' understanding of rights and their personal circumstances. The possibility of state accountability is weakened where citizens do not believe that legal institutions offer meaningful protections. Citizens have fewer perceived options for redress in practice than they do on paper, primarily because of the way they view the opportunities available to them. This problem is exacerbated in places like South Africa where courts have been tasked with playing a greater role in everyday politics, or where the judicialization of politics has occurred.

When citizens view legal claims-making as not possible for whatever reason, it follows that they will be less likely to turn to formal legal institutions for redress. As our findings show, what stands in the way of legal claims-making in South Africa is the perception that legal institutions are ineffective tools to solve problems. When citizens do not use institutions, these institutions do not develop—cases do not come before the courts "as if by magic" (Epp 1998, 18); they must be brought by claimants (often with the help of a support structure). In South Africa, the challenge is not that the legal system is completely cut off from the people. Instead, the issue is that only certain claims come before the courts. Although making legal claims to social rights is not in itself enough to ensure that social constitutionalism becomes embedded, not making claims hinders the development of innovative jurisprudence and the transformation of claims-making into a commonsense act, which are integral to the continued growth of social rights protections.[24] Frequent and varied legal claims-making allows courts to maximize the protections of constitutional guarantees.

Beyond these concerns about state accountability and institutional development, the possibilities and impossibilities of turning to the law to resolve challenges accessing social goods has impacts on the lived experience of democratic citizenship. To the extent that citizenship is "disjunctive" (Caldeira and Holston 1999) or "stratified" (González 2017), wealthier or otherwise advantaged citizens may already have access to social goods, while disadvantaged citizens may need to engage in contentious collective action or other forms of claims-making (like the turn to law) in order to gain that access. Further compounding this issue of differential experiences in citizenship, a perceived inability to turn to law among some groups but not others can lead to partial or circumstantial citizenship. In this second case, the issue is not that opportunities are formally constrained, depending on group membership, but that group membership conditions the way people understand the opportunities available to them.

This article has illustrated how ordinary South Africans think about turning to the law for social rights, a practice that has been praised as a worthy characteristic

24. As Madlingozi (n.d.) reminds us, the embedding of rights protections does not guarantee transformation or the deepening of democracy—in fact, rights constitutionalism and settler colonialism can work hand-in-hand.

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of South Africa's democracy. Our findings reveal skepticism about the feasibility and efficacy of this practice. The expressed sources of citizens' skepticism are varied, yet they all stem from the same place—the disconnect in how citizens expect the state and its institutions to work and the way they experience them working. Our findings document how citizens' expectations of the postapartheid state have failed to materialize. People are told they have rights, but having rights has not resulted in their anticipated outcome, whether that is being able to voice a complaint or gain access to basic services. People are told they can get help from courts, but the legal system works in ways that make accessing justice difficult. Against this backdrop, ordinary South Africans have developed doubts about the benefits of rights and the law as meaningful institutions, at times rendering it impossible for them to turn to the courts for redress. These doubts create significant challenges for state accountability, institutional development, and citizenship in postapartheid South Africa's project of democratic state building.

Similar dynamics are at play throughout the Global South, particularly in low- and middle-income developing democracies, where the state is visible in citizens' lives, but is unable to distribute resources and guarantee rights evenly (Kruks-Wisner 2018a, 2018b; Gallagher, Kruks-Wisner, and Taylor n.d.) Across these settings, perceptions of rights and personal circumstances are likely to impact the ability of citizens to demand and access state-provided goods and services beyond traditional barriers such as cost and lack of resources or connections. Analyses like the one we present here can help clarify the conditions under which rights on paper become real tools with which citizens can contest the terms of their lives.

SUPPLEMENTARY MATERIAL

To view supplementary material for this article, please visit https://doi.org/10.1017/lsi.2022.63

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