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Allies Unknown: Social Accountability and Legal Empowerment

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LEGAL EMPOWERMENT WORKING PAPERS

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ALLIES UNKNOWN:
SOCIAL ACCOUNTABILITY AND LEGAL EMPOWERMENT

Vivek Maru[1]

Executive Summary

This essay suggests that two strands of social action which have hitherto developed separately—legal empowerment and social accountability—ought to learn from one another. Legal empowerment grows out of the tradition of legal aid to the poor. Drawing from the experience of Timap for Justice in Sierra Leone and kindred efforts in many parts of the world, the essay argues for five defining principles of the legal empowerment approach: a focus on concrete solutions to instances of injustice; a combination of litigation with more flexible, grassroots tools like education, organizing, advocacy, and mediation; a pragmatic, synthetic orientation towards plural legal systems; a commitment to empowerment; and a balance between rights and responsibilities.

Social accountability interventions employ information and participation to demand fairer, more effective public services. Social audits, for example, allow community members to compare their experience of local government outputs against recorded expenditures. Another intervention, the community scorecard, involves aggregating data on the performance of service facilities like schools and health clinics. The scorecards provide a basis for dialogue between community members and facility staff; the dialogue in turn leads to action plans for closing the gap between policy and practice. Both social audits and community scorecards have achieved substantial, life-saving improvements in service delivery at the local level.

A strategic blend of legal empowerment and social accountability methods would increase the effectiveness and reach of grassroots efforts to advance social justice.

The two approaches share a focus on the interface between communities and local institutions. The legal empowerment approach includes, in addition, the pursuit of redress from the wider network of state authority. Successful legal empowerment programs find traction in that pursuit even when state structures are largely dysfunctional. The essay therefore suggests that social accountability interventions couple local community pressure with legal empowerment strategies for seeking remedies from the broader institutional landscape. Legal empowerment programs, for their part, often under-emphasize injustices related to essential public services such as health and education, perhaps in part because they tend to wait for communities and individuals to raise problems. Instead, they should learn from social accountability practitioners' use of aggregate data as a catalyst for community action. Legal empowerment organizations would also benefit from adopting the attention to empirical impact evaluation that has characterized experimentation in social accountability.

Introduction

This essay argues that two strands of social action which have hitherto developed separately—legal empowerment and social accountability[2]—ought to learn from one another.

"Legal empowerment" grows out of the tradition of legal aid for the poor and seeks, as legal aid has sought for centuries, to help people protect their rights. For much of the world's population, legal aid in its classic form is either impractical or inadequate: lawyers are costly and scarce; lawyers are ill equipped to deal with the plural legal systems prevalent in most countries; and many people do not prefer the solutions afforded by litigation and formal legal process. Legal empowerment efforts aim to provide legal aid in a way that is practical, flexible, and responsive to socio-legal context. Legal empowerment programs often combine a small corps of lawyers with a larger frontline of community paralegals who, like primary health workers, are closer to the communities in which they work and employ a wider set of tools.

Drawing from the experience of Timap for Justice in Sierra Leone and kindred programs in many parts of the world, I argue here for five defining principles of the legal empowerment approach: a focus on concrete solutions to instances of injustice; a combination of litigation with more flexible, grassroots tools like education, organizing, advocacy, and mediation; a pragmatic, synthetic orientation towards plural legal systems; a commitment to empowerment; and a balance between rights and responsibilities.

"Social accountability" refers to strategies developed in the last two decades that employ information and participation to demand fairer, more effective public services. Social audits, for example, allow community members to compare their experience of local government outputs against recorded expenditures. Another intervention, the community scorecard, involves aggregating data on the performance of service facilities like schools and health clinics. The scorecards provide a basis for dialogue between community members and facility staff; the dialogue in turn leads to action plans for closing the gap between policy and practice. Both social audits and community scorecards have achieved substantial, life-saving improvements in service delivery at the local level.

The missions and methods of these two communities of practice overlap significantly. And yet thus far they have ignored one another. Law is strikingly absent in the social accountability literature,[3] and the legal empowerment literature in turn makes no

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[2] I invoke these terms with some caution, remembering George Orwell's indictment of vague and fashionable phrases in "Politics and the English Language" (*Horizon* 1946) (e.g. "As soon as certain topics are raised, the concrete melts into the abstract . . . prose consists less and less of *words* chosen for the sake of their meaning, and more and more of *phrases* tacked together like the sections of a prefabricated henhouse"). Whether or not the phrases "legal empowerment" and "social accountability" survive, the work to which they refer is concrete and, in my view, worthy. The burden of anyone writing on these subjects is to describe that vital work clearly and respectfully.

[3] The one exception of which I am aware is J Ackerman, *Human Rights and Social Accountability*, World Bank Social Development Paper No. 86 (2005). Ackerman points out that social accountability interventions "constitute a step towards fulfilling a rights based approach to development," and argues for greater integration between social accountability and rights-based approaches in the future, ibid, 4. This essay builds on Ackerman's suggestion. Ackerman treats both social accountability and the rights based approach as broad orientations towards development (and as possible frameworks for the World Bank); I focus here in particular

mention of the recent experimentation in social accountability. I argue that a strategic blend of the two approaches would increase the effectiveness and reach of grassroots efforts to advance social justice.

The two approaches share a focus on the interface between communities and local institutions. The legal empowerment approach includes, in addition, the pursuit of redress from the wider network of state authority. Successful legal empowerment programs find traction in that pursuit even when state structures are largely dysfunctional. I therefore suggest that social accountability interventions couple local community pressure with legal empowerment strategies for seeking remedies from the broader institutional landscape. Legal empowerment programs, for their part, often under-emphasize injustices related to essential public services such as health and education, perhaps in part because they tend to wait for communities and individuals to raise problems. Instead, they should learn from social accountability practitioners' use of aggregate data as a catalyst for community action. Legal empowerment organizations would also benefit from adopting the attention to empirical impact evaluation that has characterized experimentation in social accountability.

1. Legal Aid 1.0 and 2.0

Legal aid is nearly as old as law itself.[4] Legal systems are plagued by a founding contradiction: the law is meant to dispense fair judgments in disputes between parties who are, in many respects, unequal. And yet inequality—in money, power, status—has a way of seeping into the space from which it is barred. All people may be promised their day in court, but a party of wealth or strength will likely find a way to improve its chances. Legal aid is one classic corrective to this fundamental tension: a way of bolstering the weak party's hand.

But in its classic form legal aid has serious limitations. In many places lawyers are costly and scarce, and providing enough formal legal assistance to meet demand would be implausible. Conventional legal aid is also ill equipped to deal with the plural legal systems prevalent in most countries. Perhaps most significantly, the solutions afforded by litigation and formal legal process are not always the kinds of solutions desired by the people involved, and they do not always contribute meaningfully to the agency of the people they serve.

There is a second generation of efforts to assist people who face injustice, one that is marked by greater flexibility and creativity, that is responsive to socio-legal context, and

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on grassroots, civil society interventions to ensure social accountability and to provide what I refer to as legal empowerment or justice services.

[4] In the earliest years of the Roman republic, advocates and legal advisors were forbidden from accepting payment for their services, so that all citizens would have a chance in court. In the Christian Empire, the Council of Chalcedon decreed in 451 A.D. that the clergy should provide assistance, including legal aid, for widows, orphans, and those who lacked the means to procure counsel on their own. Judges in church courts — and the Pope himself — appointed advocates to argue without fees on behalf of poor and disadvantaged litigants as early as the twelfth century. J Brundage, *The Medieval Origins of the Legal Profession: Canonists, Civilians and Courts* (2008) 35, 190-191. England's first legal aid law was the enactment of the *forma pauperis* procedure in 1495, which provided for the appointment of free counsel for the indigent. J Mahoney, 'Green Forms and Legal Aid Offices: A History of Publicly Funded Legal Aid in Britain and the United States' 17 (1998) *Saint Louis University Public Law Review*, 226. Legal aid efforts in the United States trace back to the founding, including the New York Manumission Society, which provided free legal services to fugitive slaves and free black people from 1790 to the 1830s. L Harris, *In the Shadow of Slavery: African Americans in New York City 1626-1863* (2004) 208.

that is concerned not just with service delivery but with building power. Because of this last concern, these efforts are sometimes termed "legal empowerment."[5] (In this essay I also use the term "justice services," which similarly has a broader connotation than "legal services").

I co-founded and for four years co-directed a program in Sierra Leone, Timap for Justice, that aspires to deliver justice services in this newer, broader vein. Learning from the experience of Timap for Justice and kindred work around the world,[6] I would argue that at their best, legal empowerment efforts are defined by the following principles:

1. Concrete solutions to instances of injustice: Legal empowerment efforts seek to demonstrate, case by case, that even in environments accustomed to arbitrariness and unfairness, justice is possible. Injustice is interpreted to include intra-community disputes as well as problems and abuses that arise between citizens and traditional authorities, between citizens and state institutions, and between citizens and private firms. Legal empowerment organizations by no means win every battle they take on, and the remedies they do reach are incremental improvements on the status quo rather than pure moral victories. But more than any other thing, an organization's judgment of its own performance, and the trust it receives from communities, rests on its capacity to achieve concrete solutions to instances of injustice. Open-ended awareness raising, or advocacy for large-scale political change, say, are both important tools but not in themselves sufficient. It is the solving of people's daily problems that defines the grassroots practice of legal empowerment: a mother receives support for her children from their hitherto derelict father; a community association succeeds in advocating with local government for repair of a dangerous broken bridge; a school is required to stop using its students for forced farm labor; a wrongfully detained juvenile is released; a group of farmers receives compensation from the mining company that damaged the farmers' land.

2. A combination of litigation and high-level advocacy with more flexible, grassroots tools, including community education, organizing, local advocacy, mediation: A wide set of tools allows for constructive and cost-effective solutions, while the sparing, strategic use of litigation and high-level advocacy backs frontline efforts with greater power of enforcement. The credible threat of litigation, in turn, lends weight to the advocacy of frontline workers. This is the case even in a state like Sierra Leone, where the courts are significantly dysfunctional.

3. A pragmatic, synthetic approach to plural legal systems: A legal missionary outlook toward traditional institutions is not uncommon among human rights

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[5] Stephen Golub was the first to coin the term "legal empowerment"; he defines it as, "The use of legal services and related development activities to increase disadvantaged populations' control over their lives." S Golub, *Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative*, Carnegie Endowment for International Peace Paper No. 41 (2003) 25. Others have conceived of the term more broadly, so as to include structural reforms to strengthen people's capacity to make use of the law (to take one oft-cited example, state recognition of informal claims to land). See, for example, Commission on Legal Empowerment of the Poor, *Making the Law Work for Everyone: Vol. 1* (2008) 26. In this paper I follow Golub's narrower definition, taking "legal empowerment" to refer specifically to direct assistance for people who face injustice.
[6] I describe Timap's methodology in detail, and briefly discuss similar programs from many parts of the world, in 'Between Law and Society: Paralegals and the Provision of Justice Services in Sierra Leone and Worldwide', 31 (2006) *Yale Journal of International Law* 427. See also, for example, M McClymont & S Golub (eds), *Many Roads to Justice: the Law-Related Work of Ford Foundation Grantees Around the World* (2000).

advocates: the aspiration to banish traditional darkness with modern legal light. This contempt of traditional institutions and norms makes as little sense as sanguine romanticization. In most cases I would argue for engaging and respecting both traditional and modern legal regimes, for building bridges between them, and for advocating for the positive evolution of each.

4. Empowerment: A conventional legal aid approach tends to treat people merely as clients—or perhaps victims—requiring a technical service. Wherever possible, legal empowerment efforts should seek to cultivate the agency and power of the people with whom they work. Not "I will solve this problem for you" but "I will work with you to solve this problem, and give you tools with which to better face such problems in the future."[7]

5. A balance between rights and responsibilities: The rights discourse poses an existential danger: an emphasis on demands can undercut the ethic of self sufficiency. Legal empowerment efforts can strike a balance between right and responsibility by supporting community and self-help organizations and by advocating as often and as strenuously for fulfillment of citizen obligation as for insistence on citizen rights.

2. Social Accountability

If legal aid is an old idea, social accountability is older. The very existence of a government poses the question of its relationship to the governed. John Stuart Mill emphasized this point in 1861: "[P]olitical machinery does not act of itself. As it is first made, so it has to be worked, by men, and even by ordinary men. It needs, not their simple acquiescence, but their active participation."[8]

In democracies one fundamental mechanism for participation and accountability is the election. But elections have limits. They reduce a complex set of factors—policy proposals, past performance, sometimes region and ethnicity—into a single, periodic vote. Also, elected officials constitute only a small layer of the state apparatus, and the signals transmitted from voters to the non-elected bureaucrats who conduct the majority of the state's work are indirect and easily muddled.[9]

In recent years civil society organizations and development agencies have experimented with interventions to ensure direct state accountability at a local level. Bjorkman and Svensson define social accountability this way:

> "[So]cial accountability is an approach towards building accountability that relies on civic engagement where citizens and civil society organizations directly or

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[7] Both in its methodological flexibility and in its treatment of clients as active social agents, this approach resonates with what some lawyers working in poor communities in the United States call a creative community problem solving approach to legal services. See, for example, G P Lopez, 'Shaping Community Problem Solving Around Community Knowledge' (2004) 79 New York University Law Review 59, 67-74; A M Seielstad, 'Community Building as a Means of Teaching Creative, Cooperative, and Complex Problem Solving in Clinical Legal Education' (2002) 8 Clinical Law Review 445, 448-52. In the Philippines, "alternative law groups" pursue a similar approach. See S Golub, 'Participatory Justice in the Philippines', in M McClymont and S Golub, (eds), *Many Roads to Justice: The Law-Related Work of Ford Foundation Grantees Around the World* (2000) 219.
[8] J S Mill, *Considerations on Representative Government* (1993) 190.
[9] See J Ackerman, *Social Accountability in the Public Sector: A Conceptual Discussion*, World Bank Social Development Paper No. 82 (2005) 6-7. See also A Przeworski, S Stokes and B Manin (eds), *Democracy, Accountability, and Representation* (1999).

indirectly participate in extracting accountability (Malena et al., 2004) . . . most interventions have in common that they inform citizens about their rights and status of service delivery and encourage participation."[10]

The recent experimentation has come in a number of forms; I discuss two of these below:[11]

2.1 Social audits and participatory expenditure tracking

Participatory measures for tracking actual public expenditures against budgets have been undertaken with varying degrees of success in India, Uganda, Indonesia, and many other places.

These interventions depend on the public availability of budgetary and expenditure information. With public records in hand, civil society actors can engage in participatory comparisons against actual spending. Mazdoor Kishan Shakti Sangathan (Association for the Empowerment of Workers and Farmers) pioneered social audits in Rajasthan, India in the early 1990s. Sangathan workers read out government accounts and expenditure records at community meetings, and then invite villagers to testify to any discrepancies between official records and the villagers' personal experience. These meetings expose corruption and sometimes lead to the return of stolen funds.[12]

Mazdoor Kishan Shakti Sangathan joined with other organizations to form a broader movement for the right to information, leading to the passage of right to information legislation in Rajasthan in 2000 and a national law in 2005.[13] India's National Rural Employment Guarantee Act, also passed in 2005, requires local governments (gram panchayats) to hold public meetings (gram sabhas) in which communities review past spending under the act and plan future spending. The state of Andhra Pradesh has deployed civil society resource persons to facilitate social audits during these public meetings.[14]

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[10] M Bjorkman and J Svensson, *Power to the People: Evidence from a Randomized Field Experiment of a Community Based Monitoring Project in Uganda*, Center for Economic Policy Research Discussion Paper No. 6344, (2007) 6, citing in part C Malena, R Forster and J Singh, S*ocial Accountability: An Introduction to the Concept and Emerging Practice*, World Bank Social Development Paper No.76 (2004).
[11] I focus here on social accountability interventions that involve external monitoring of institutional performance —"extracting accountability" in Bjorkman and Svenson's words. In addition to these monitoring efforts, the term social accountability is also often taken to refer to institutional reforms that make greater space for community input in the setting of government priorities. One of the most famous of these is the participatory budgeting and planning process pioneered in Porto Alegre, Brazil. That process begins with informal citizen meetings to discuss demands and allocations. The contents of the discussions are distilled and conveyed by elected delegates who ultimately develop a budget with the mayor's office for legislative approval. Between 1989, when the participatory budgeting experiment began, and 1996, the percentage of households with access to water services rose from 80 per cent to 98 per cent; percentage of the population served by the municipal sewage system rose from 46 per cent to 85 per cent; number of children enrolled in public schools doubled; and revenue increased by nearly 50 per cent. As of 2003, over 80 Brazilian cities had begun following the Porto Alegre model of progressive budgeting. S Wagle and P Shah, Porto Alegre, Brazil: Participatory Approaches in Budgeting and Public Expenditure Management (World Bank Social Development Note No. 71, Case Study 2, March 2003). I have not addressed such reforms here because they relate differently to the legal empowerment approach.
[12] See, for example, World Bank, *From Shouting to Counting: A New Frontier in Social Development* (2004).
[13] Ibid.
[14] F Afridi, 'Can Community Monitoring Improve the Accountability of Public Officials?' (2008) 43(42) *Economic and Political Weekly* 37.

2.2 Community scorecards and community-based monitoring of frontline service provision

These efforts focus on the nature and quality of service by frontline providers. Care International organized community scorecards for health services in Malawi in the early 2000s. They are a cousin to individual "citizen report cards," which were pioneered in Bangalore, India in the 1990s. Community scorecards are generated for service delivery facilities like health clinics or schools. Civil society organizations gather objective data on facility performance and subjective data on the experience of facility users and facility staff. The scorecards aggregate these data and present them in a simplified form. Organizations then hold an interface meeting, in which both community and staff are present, to discuss the contents of the scorecard and the discrepancies between actual facility performance and performance as envisioned under policy. The aim of the interface meeting is to agree on an action plan, under which facility staff will improve performance going forward. The community then monitors the facility for compliance with the action plan. After a designated period—perhaps six months or a year—the civil society organization conducts a subsequent scorecard exercise to track progress.[15]

A recent evaluation of a community scorecard intervention in Uganda demonstrated striking quantifiable results within one year. The intervention and evaluation were designed by staff from Stockholm University and the World Bank and implemented in cooperation with 18 Ugandan community-based organizations (CBOs) in 50 health dispensaries across nine districts. Of the 50 facilities, 25 were randomly selected for "treatment" (i.e. the intervention would take place in those communities) and 25 designated as control for the purpose of impact measurement. The CBOs collected data in two ways: a service delivery survey based on facility records and a household survey of randomly chosen households within the facilities' catchment areas. The household survey measured health outcomes like child mortality and infant weights as well as each household's experience with the facility, including parameters such as usage (e.g. when and how often household members sought care from the facility), access (e.g. actual prices paid for drugs), quality (e.g. wait times for receiving care), and satisfaction (e.g. household members' rating of facility performance).

For the treatment communities, this data was aggregated into a simple scorecard. (A sample scorecard is provided in the Annex.) In addition to data on the facility under review, the scorecards provide district and national averages for comparison. The community-based organizations presented the scorecards, along with information on the health ministry's policies governing how dispensaries are supposed to function, in a series of three participatory meetings: one with community members, another with service providers, and a third with the community and the service providers together.

In the final, interface meeting, the community and the dispensary staff jointly developed and agreed upon a community action plan to improve facility performance. Typical items in the action plans include: the clinical officer in charge will post a schedule of services provided by the facility; clinic staff will report to work regularly; the clinic will stop charging user fees, as mandated by law; the clinic will reduce wait times to one hour

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[15] J Singh and P Shah, *Community Score Card Process: A Short Note on the General Methodology for Implementation* (World Bank 2005), available at
<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTSOCIALDEVELOPMENT/EXTPCENG/0,,contentMDK:20507680~pagePK:148956~piPK:216618~theSitePK:410306,00.html> at 26 November 2009.

maximum; the health unit management committee will begin to meet regularly; and the community will increase its use of the facility.[16] Community members were asked to continuously monitor compliance with the action plan. The CBOs held public follow-up meetings quarterly to discuss progress and problems.

The evaluation found remarkable results after one year of this relatively simple intervention: when compared with facilities in the control group, the treatment facilities experienced 19 per cent less nurse absenteeism, 7-10 per cent higher immunization rates, a 16 per cent higher rate of facility utilization, and a stunning 33 per cent drop in child mortality.[17]

2. Why these approaches would enrich one another

The missions and methods of these two communities of practice—legal empowerment and social accountability—overlap significantly. But the two communities have largely ignored one another. My claim is that they ought not do so.

In the literature on social accountability, the law is strikingly absent. Reading Bjorkman and Svensson's study on Uganda health monitoring, for example, a lawyer wonders: what would happen if the nurses do not respond to persuasion? Where is the legal remedy? None is mentioned: that intervention, and most interventions of its kind, focus only on the direct interaction between community and service provider or between community and local government.[18]

Indeed, when social accountability interventions have failed to produce positive impact, researchers have identified the lack of a remedy as a key obstacle. Researchers in Rajasthan, India paid a community member to regularly monitor nurse attendance at a local clinic; the experiment yielded no reduction in nurse absenteeism. In Indonesia, an experiment invited community members to meetings in which public officials were to account for public expenditures in village roads projects; the increased participation did not result in a statistically significant decline in corruption. The purveyors of both experiments concluded that, among other flaws, the interventions faltered because communities lacked a way of seeking redress for either the absenteeism in Rajasthan or the corruption in Indonesia.[19] Similarly, K.S. Gopal, reviewing the social audits conducted in Andhra Pradesh, India under the National Employment Guarantee scheme, reports large gaps between the amounts of fraud exposed and the amounts recovered. Gopal worries that the audits risk futility in the absence of an effective remedy against corrupt officials.[20]

Justice services, meanwhile, are in the business of pursuing remedies. While traditional legal aid—Legal Aid 1.0—focuses on the judiciary as a source for remedies to breaches of

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[16] Sample interface meeting templates, provided by Gibwa Kajubi of the World Bank.

[17] Bjorkman and Svensson, above n 10, 16-23.

[18] Ackerman states that "existing social accountability initiatives still generally fail to link themselves up to the legal structure." Ackerman, above n 3, 27. Ackerman cites the Indonesia Justice for the Poor program as an exception; I would characterize that program, which employs a network of paralegals and community lawyers but does not make use of aggregate performance data, as a legal empowerment program. I quote a community lawyer from Justice for Poor Indonesia on the following page.

[19] A Banerjee and E Duflo, 'Addressing Absence' (2006) 20(1) *Journal of Economic Perspectives* 125-127; B Olken, 'Monitoring Corruption: Evidence from a Field Experiment in Indonesia' (2007) 115(2) *Journal of Political Economy* 200-204.

[20] K S Gopal, 'NREGA Social Audit: Myths and Reality' (2009) 44(3) *Economic and Political Weekly*, 71.

rights, the legal empowerment generation engages a broader set of methods and institutions. This broader set includes the tools used in social accountability interventions: monitoring and advocacy with local authorities or service providers. In addition to those two, in the case of a breach of health policy as in the Uganda intervention, frontline workers in legal empowerment programs (in some places called community paralegals) would also draw on their knowledge of the administrative law that governs line ministries, the laws that bar and punish corruption, and the chains of accountability and responsibility across levels of government. If the efforts of frontline staff to make use of these various channels fail, the staff may call on the lawyers with whom they are connected, who in turn can engage in litigation or higher-level advocacy.

In Lombok, Indonesia, at a meeting of youths convened by a village paralegal, I heard the paralegal's supervising lawyer explain the power of the legal empowerment approach this way: "The difference this paralegal post makes is that it connects you to a wider network. If you have a case in the villages"—they had been discussing two cases involving unlawful seizure of agricultural land by corporate developers—"it doesn't have to stop there: together we can engage the land administrator, the sub-district police station, the district government, and if need be we can go to court."[21]

Social accountability practitioners may tend to ignore this broader legal framework because of the perception—often valid—that the law and larger state structures are largely unresponsive and dysfunctional. But legal empowerment practitioners *specialize* in squeezing justice out of dysfunctional systems. As I mentioned above, they by no means win every battle. But their combination of advocacy, mediation, education, organizing, and litigation seeks expressly to make even broken systems move.[22]

Another possible objection to the relevance of the legal empowerment approach in the arena of social services in particular is the old doubt about the enforceability of social and economic rights. Some law scholars and human rights organizations have held that spheres like health and education are matters of political process, not rights.[23] But whether or not a polity grants abstract fundamental rights to social and economic goods, any health or education or housing policy inevitably creates specific entitlements, and in turn a chain of responsibility to ensure that those entitlements are fulfilled. Legal empowerment programs strive to understand that chain, no matter how faulty, and to get it to work for people. Indeed contrary to conventional wisdom the judiciary itself is

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[21] Community lawyer Taufik Budiman, speaking at a community meeting in Teratak Village, Central Lombok, Indonesia.

[22] In 2006, less than four years after the end of an 11-year civil war that left Sierra Leone's already weak institutions ravaged, International Crisis Group wrote about Timap for Justice: "By solving the everyday justice needs of ordinary citizens, it is proving town by town, case by case, that justice need not be a far-off ideal but can be an everyday reality." International Crisis Group, *Liberia: Resurrecting the Justice System*, Africa Report No. 107 (2006). I attempt to describe in detail the way Timap for Justice goes about squeezing justice out of a broken system in 'Between Law and Society: Paralegals and the Provision of Justice Services in Sierra Leone and Worldwide', above n 6. S Golub and K McQuay review a range of legal empowerment efforts in Asia in 'Legal Empowerment: Advancing Good Governance and Poverty Reduction' in *Law and Policy Reform at the Asian Development Bank* (Asian Development Bank 2001), available at
<http://www.adb.org/Documents/Others/Law_ADB/lpr_2001.pdf> at 26 November 2009.

[23] A Neier, a legendary figure in the modern human rights movement, who directed the American Civil Liberties Union for eight years, co-founded Human Rights Watch and directed it for 15 years, and is now president of Open Society Institute, argues that the notion of positive social and economic rights risks diminishing the weight and universality attributed to core negative liberties and meddles with democratic process. "Rejection of the idea of economic and social rights reflects a commitment to democracy not only for its own sake but also because it is preferable in substance to what we can expect from platonic guardians." A Neier, *Taking Liberties: Four Decades in the Struggle for Rights* (2003) xxxi.

often involved. The empirical work of Gauri et al. on courts in South Africa, Nigeria, Brazil, Indonesia, and India found substantial litigation on health and education rights in each of those countries, from a few dozen cases in Nigeria to several hundred in India to thousands in Brazil.[24]

The 2004 World Development Report on making services work for poor people offers a triangular schematic, with communities and service providers at either corner of the base and the state at the apex.[25]
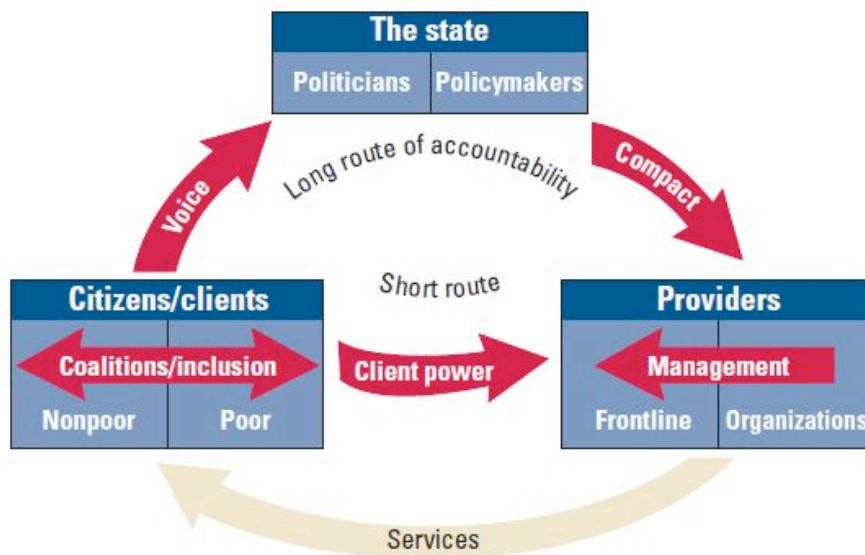

Figure 1. Key Relationships of Power
Source: World Bank, 2004 World Development Report: Making Services Work for the Poor (2004).

Social accountability interventions often pursue what the World Development Report authors call the "short route" to accountability—direct interaction between citizens and service providers, as with community scorecards. Other social accountability interventions engage a limited, shortest-possible version of the "long route," influencing service delivery via local governments, as with social audits at the panchayat level in India.

What the perspective of legal empowerment offers is a disaggregation of the "state" corner of the triangle. The state is not a unitary entity but rather a wide, layered network governed by rules and institutions. Even when those rules are honored vastly in the breach, they are worth knowing and invoking.

Legal empowerment practitioners, on the other hand, have much to gain from the experience of the recent social accountability efforts. In particular, legal empowerment programs should learn from the social accountability community's use of data and from their adoption of a proactive, community-wide perspective in relation to public goods and services.

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[24] V Gauri and D Brinks (eds), *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World* (2008) 30-32.
[25] World Bank, *2004 World Development Report: Making Services Work for the Poor* (2004) 49.

Traditional legal aid providers tend to structure their efforts according to the problems that "clients" bring forward. Many among the newer legal empowerment generation also abide by this model. Responding to clients, it is thought, means allowing the community to set priorities. But the key to the Uganda health intervention was that no single family appreciated how poorly the facilities were functioning until the community was presented with data on facility performance. Any particular household interacts with the facility only occasionally and so may not be able to generalize from the irregularities it encounters. Only with aggregate data on performance could the community see that the facility was systematically in breach of policy.

I have found that the dockets of generalist justice service providers often include disproportionate numbers of intra-community conflicts—child support claims, land disputes—with fewer cases involving failures of state institutions and public services.[26] My hunch is that these proportions do not reflect relatively well-functioning public institutions, but rather are a sign that communities have not conceived of state failures as injustices capable of remedy, and that legal empowerment organizations have not demonstrated well enough their effectiveness in addressing state failure.

The social accountability experience suggests that justice service providers should take a more proactive approach to discerning and addressing community needs. Instead of waiting for citizens and communities to present complaints, legal empowerment organizations should seek out possible problems with state institutions and services. Where there are potential failures, legal empowerment organizations should gather data as in the various social accountability interventions: budgetary data with which to monitor public expenditures, and facility data with which to measure the quality of service delivery. Legal empowerment workers can then employ that data, both for local-level mobilization and advocacy, as in the social accountability interventions, *and* in the wider realm of state authority: administrative procedures, anti-corruption commissions, legislative advocacy, and the courts.

A final lesson for the legal empowerment community to take from its social accountability counterparts is a commitment to rigorous research and evaluation. As several scholars and practitioners have pointed out, we need a stronger body of evidence on the impact of justice services.[27] Perhaps a lag can be attributed to a difference in intellectual tradition: the practice of law is rooted in deontology, with its emphasis on reason and rights, while economists—who have been integral in developing social

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[26] On reviewing case statistics from a range of community legal aid NGOs in Bangladesh, the Asia Foundation concluded that "Family related disputes are by far the most common case type, with women subject to physical violence, psychological intimidation, material deprivation, or a combination of problems." Land disputes and rape were also mentioned as comprising significant proportions of the case load; claims involving public services received no mention. The Asia Foundation, *Promoting Improved Access to Justice: Community Legal Service Delivery in Bangladesh* (2007) 15-17, on file with author. In a women's legal aid project in Ecuador implemented by Centro Ecuatoriano de Promoción y Acción de la Mujer, the three issues that comprised the greatest fractions of the overall case load were "accusations," child support, and domestic violence. Failures in service delivery were not mentioned in a list of prominent case types. M Rodriguez, *Empowering Women: An Assessment of Legal Aid Under Ecuador's Judicial Reform Projecti*, World Bank (2000) 20. Between August 2007 and July 2008, the three largest case categories in the docket of Timap for Justice were child abandonment, marital problems, and breach of contract; together those comprised 32 per cent of the total caseload. Cases involving education, for example, comprised less than 4 per cent of the docket. Timap database, on file with author.
[27] See, for example, L Hammergren, *Envisioning Reform: Improving Judicial Performance in Latin America* (2007) 163.

accountability methodology—find their philosophical basis in utilitarianism, which gives primacy to the weighing of costs and benefits. These are perspectives worth melding.

Randomized controlled trials, like those cited here from social accountability interventions in Uganda, Rajasthan, and Indonesia, provide one valuable way of testing impact. The World Bank's Justice for the Poor program in Indonesia is applying similar methods to evaluate a community paralegal program there. But inherent features of legal empowerment work—that the approach varies from case to case and community to community, that the ends of empowerment and accountability are difficult to measure, that legal empowerment programs actively seek "spillover" effects—suggest that other research methods, like qualitative case tracking and analysis of internal program case data bases, will be equally if not more important.[28] We need to understand not only whether a given program has an impact but *how* it generates impact, and how it might improve.

Worldwide, the need for both justice services and social accountability interventions far exceeds the supply. A strategic blend of these approaches could increase efficacy and also increase reach by making the most of available civil society presence. Social justice is elusive. Those who struggle to achieve it should wield every tool that works.

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[28] See, for example, M Ravallion, 'Should the Randomistas Rule?' (2009) 6(2) *Economists's Voice* (cautioning against prioritizing randomization over other, non-experimental research tools). At this writing I am working with colleagues in the Justice for the Poor program on a mixed method, cross-country study of community-based paralegal programs.

Annex 1. Sample Scorecard

<u>Xxx health facility</u>

<u>Xxx district</u>

CITIZEN REPORT CARD

AT

COMMUNITY LEVEL

Ministry of Health and the World Bank

Version: January 29, 2005

1. Utilization

The community's utilization pattern of xxx health facility and of other health service providers:

Health care provider	Average utilization (adults and children)
Xxx health facility	15 out of 100 times do the people visit Xxx
NGO	4 out of 100 times do the people visit an NGO health facility
Private for profit	20 out of 100 times do the people visit a PFP health facility
Traditional healer	2 out of 100 times do the people visit a traditional healer
Community health worker	0 out of 100 times do the people visit a community health worker
Self treatment (pharmacy, drug shop)	44 out of 100 times do the people self treat

Other government health facility than Xxx health facility	3 out of 100 times do the people visit another government health facility then Xxx health facility

COMPARISON between this community's utilization pattern of health service providers and xxx district and National pattern:

Health care provider	Average utilization in community	Average utilization in xxx district	Average utilization Nationally
Government Health Center Level III	15 out of 100 times do the people visit Xxx health facility	16 out of 100 times do the people visit their closest government HF	25 out of 100 times do the people visit their closest government HF

Explanations for community's utilization pattern

Reasons for why the households in the community DO NOT visit Xxx health facility?	Lack of drugs: 45% Long distance: 18% Poor service: 10% No advanced treatment provided: 14% Impolite staff: 5% Other reason: 4%

Community's utilization of antenatal care, maternity and family planning services

Percentage of households with pregnant women who have visited Xxx health facility for <u>antenatal care</u> since January 2003	58%
Percentage of those pregnant since January 2003, who have <u>delivered</u> at the health facility	15%
Why do pregnant women in the community choose to NOT deliver at Xxx health facility?	Xxx was not open: 5% Used TBA: 18% Other reason: 64%

Percentage of households from the community who have visited Xxx health facility for <u>family planning</u> since January 2003	19%
Why DO NOT households in the community use family planning services provided at Xxx health facility?	Impolite staff: 2% Could not afford: 2% Do not need: 63% Other reason: 33%

COMPARISON between this community, xxx district and National data of utilization of <u>antenatal care, maternity and family planning services</u>:

Utilization of antenatal and maternity care	Among pregnant women in this community	Among pregnant women in xxx district	Among pregnant women in Uganda
Percentage of households with pregnant women who have visited their closest government health facility for <u>antenatal care</u> since January 2003	58%	66%	73%
Percentage of those pregnant since January 2003, who have <u>delivered</u> at the closest government health facility	15%	23%	21%

2. Service (in general) at Xxx health facility

Total number of staff at Xxx health facility	12 staff
Medical staff availability at the health facility	25% on survey day

Health issue	Households say	Xxx health facility says
Average waiting time for the patients at	2 hours	2 min

the health facility		
Staff used (any) equipment during examination	75% Yes	Yes, equipment is available
If health facility has laboratory equipment, the average number of patients' laboratory tested	Health facility does not have laboratory equip.	Health facility does not have laboratory equip.

COMPARISON between Xxx health facility and its community, *xxx* district and National data of service (in general):

Health Issue	Xxx health facility / Community averages	Xxx district averages	National averages
Average waiting time for the patients at the health facility, **ACCORDING TO THE HOUSEHOLDS**	2 hours	2.25 hours	2.5hours
If the health facility has laboratory equipment, the average number of patients laboratory tested, **ACCORDING TO THE HEALTH FACILITY**	Health facility does not have laboratory equip.	Surveyed health facility in district did not perform laboratory tests	4%

3.   Drugs

Health issue	Households say	Xxx health facility says
Do you know when Xxx health facility receives drug deliveries?	4% yes	No, we do not distribute information on drug deliveries.

Percentage of households that had to go anywhere else to buy drugs after the visit at the health facility	16%

COMPARISON between this health facility, xxx District and National averages of drug availability at the government health facility

Drug	Health facility xxx received, on average, the following amount of drugs per month	Compared to the xxx district, health facility xxx received:	Compared to Uganda, health facility xxx received:
Erythromycin (e.g. treatment of STDs)	More tablets	Less tablets	Less tablets
Chloroquine (Anti-malaria)	Less tablets	More tablets	More tablets
Quinine (Anti-malaria)	Health facility did not have information	Same tablets	Same tablets
Cotrimoxazole / Septrine	Less tablets	More tablets	More tablets
Mebendazole (De-worming)	Less tablets	Same tablets	More tablets

4.   Fees/User Charges at Xxx health facility

Health issue	Households say	Xxx health facility says
Health facility takes user charges	45% yes	No
Average user charges paid	16,495 Ug.shs	O Ug.shs
Facility charge for drugs	10% Yes	No
Average amount paid for drugs		

	1200 Ug.shs	O Ug.shs
Facility charge for delivery	50% Yes (answered by pregnant women)	No
Average amount paid for delivery	16,500 Ug.shs	O Ug.shs
Patients have to pay for antenatal care	53% Yes	No
Patients have to pay for immunization	100% no	No
Patients have to bring or buy anything themselves for the medical visit at the health facility	47% Yes	No

COMPARISON between Xxx health facility, xxx district and National data of user charges / fees

Health issue	Xxx health facility / Community	Xxx district averages	National averages
Health facility takes fee (user charges)	45% yes	37% yes	22% yes
Average user charges paid	16,495 Ug.shs	14,900 Ug.shs	6,200 Ug.shs
Facility charge for drugs	10% Yes	8% yes	2% yes
Average amount paid for drugs	1,200 Ug.shs	1,432 Ug.shs	1,300 Ug.shs
Facility charge for delivery (answered by pregnant women)	50% Yes	69% yes	65% yes
Average amount paid for delivery (answered by pregnant women)	16,500 Ug.shs	12,726 Ug.shs	7026 Ug.shs
Patients have to pay for antenatal care (answered by pregnant women)	53% Yes	48% yes	25% yes