

Is Law the Rule? Using Political Frames to Explain Cross-national Variation in Legal Activity*

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Abstract

Across democratic countries, amounts of individualistic legal activity are starkly different. The current trend in explaining this variation is to break legal activity into different categories and explain why variation exists within each type. While this trend has been useful in providing detailed analyses across a narrow spectrum of activities, it moves the field away from the broader context in which all legal activity occurs. I take the opposite tack here, considering myriad types of legal activity at once. This study first finds that across nation-states, levels of many different types of legal activity are correlated with each other. Using a structural equation model and OLS regression equations, I then demonstrate that state decentralization and state/society interpenetration, i.e., the lack of a clear boundary between the state and civil society, tend to fuel individualistic legal activity. The implication is that changing individual incentives to engage in legal activity may fuel social change in some national contexts but not others, and that such contextual effects are predictable.

Across countries, amounts of individualistic legal activity are starkly different and resistant to change. Examples from Sweden and the U.S. demonstrate this. In the early 1970s, the Swedish government, concerned that its legal system was

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underutilized by the poor and small consumers, instituted the Legal Aid Act of 1972 and the Small Claims Act of 1974 (Lindblom 1981). Also in the early 1970s, homeowners insurance policies in Sweden began routinely to include litigation insurance. As a result of these reforms, most people in Sweden have legal aid *and* litigation insurance and all Swedes have access to a low cost small claims court. What was the result of these reforms? Nothing. "Neither legal aid, nor legal-expenses insurance, nor the Small Claims Act have had *any* noticeable effect in increasing the number of cases taken to court" in Sweden (Lindblom 1981:106, emphasis added). In Sweden, a change in individual incentives structure did not lead to a significant change in individuals' behavior. Contrast this with the U.S., where increasing access to the legal system of traditionally excluded groups is one explanation for a litigation explosion. The trend began in the U.S. in 1938 with a simplification of procedural rules to "de-professionalize" legal redress. Another milestone occurred in 1966, when the U.S. Congress liberalized the rules of procedure again to allow class actions (Liebersohn 1981:17; see also Felstiner et al. 1980; contra Galanter 1983). Changing individual incentives did lead to changes in U.S. litigation rates. These examples illustrate the differing impact of similar changes to legal systems when considered cross-nationally.

Durkheim ([1933] 1984) surmised that as societies became larger and more economically complex, legal activity would increase proportionately. In complex societies, normative, collectively defined principles would continue to frame penal law. The "repressive law" conducted under penal codes would thus remain fairly stable. The increase in legal activity, according to Durkheim, would be attributable to an increase in "restitutive law," i.e., law which governs the relationships between individuals who interact but are socially distant. In other words, over time "restitutive" distributive law would increase relative to "repressive" punitive law in modern societies, resulting in an overall increase in legal activity.

Durkheim's dichotomization of law may explain the current tendency among social scientists to study only criminal law or civil law, but rarely both at the same time (contra Black 1976, 1993). Within the sociology of law, a recent trend in explaining variation within civil legal activity is to create subcategories of legal activity and then explain why variation exists within each type (e.g., Galanter 1990). For example, Ietswaart (1990:587) argues for methodological reasons that cross-national comparisons of litigation "need to analyze carefully the different categories of cases in order to distinguish between the various factors that might contribute to the increase or decrease in each type of case." Similarly, Blankenburg (1994) argues that comparisons of different types of litigation can be misleading because different court structures may be more or less likely to filter out cases before they reach the formal litigation stage. The arguments of these scholars are quite persuasive, in part because they are narrowly tailored to address specific comparisons among types of litigation.

While such separate analyses are useful in allowing detailed explanations across narrow spectrums of activity, they cannot replace more general explanations of cross-national variation in legal activity. Broader factors exogenous to legal systems may create systematic variation in individual motivations, the distribution of individuals or groups into "risk sets" for legal action, the meaning individuals assign to legal action, the structure of legal proceedings, etc. If such factors exist, they are essential to our overall understanding of law, but can only be discovered through encompassing comparisons of legal activity. One purpose of this article, then, is to limit the scope conditions which are typically placed on theories of legal activity.

Considering myriad types of legal activity at once, I propose that all types of individualistic legal activity within a nation-state are shaped, in large part, by the "political frame" of the nation-state. As explained in more detail below, by political frame, I mean a combination of the political structure and the political culture of a nation-state. Legal systems and political frames are tightly integrated so that political frames profoundly influence the ability and desire of individuals to engage in legal activity (Boyle 1998; Heydebrand & Seron 1986; cf. Joppke 1993; Kagan 1988). Political frames shape the relationship between the state and individuals (Sanders & Hamilton 1992; Soysal 1994). This means that individual motivations (Lieberman 1981:6-7; see also Haley 1978), specific legal doctrine (Atiyah 1988),¹ and lawyers (Olson 1991; Prichard 1988) are not the sole source of cross-national variation in legal activity.

Political frames should influence all types of legal activity, meaning that crime rates are constituted by more than individual criminals, bankruptcy rates are constituted by more than economic downturns, and litigation rates are constituted by more than the number of injured individuals in each country. I argue here that a common foundation in fact underlies both repressive and restitutive law. I begin by considering whether legal activities culled from many different aspects of society (family, criminal justice, business) vary systematically across nation-states. Then I develop and test hypotheses which specifically relate political frames to individualistic legal activity.

Interrelationships among Legal Activity

Although certain core activities such as civil litigation and legislative activity are consistently utilized and understood as legal activity across countries, others such as ballot initiatives may never occur in a number of countries. For that reason, I keep my own definition of "legal activity" broad: "the activation of legal rules by state or peripheral actors." Individualistic legal activity is legal activity initiated by individuals or initiated by the state against individuals as unique actors (e.g., civil litigation or the apprehension of a unique individual for a specific crime). It can be contrasted with bureaucratic legal activity which is legal action organized by the

state for identifiable groups or for the collective welfare. Individualistic legal activity includes both civil and criminal legal activity, although those activities are often thought of as distinct, because civil legal activity tends to be initiated by individuals² and criminal legal activity tends to be initiated against individuals. Civil legal activity generally addresses issues which arise between private individuals: examples include civil litigation, divorces, adoptions, name changes, requests for citizenship, etc. Criminal activity can include the commission of crimes *per se* (because crime can result from individuals contesting socially constructed law regarding conduct),³ but more importantly, includes the system which is established to apprehend and deal with persons suspected of crimes. Because both types of legal activity share the same assumptions about the role of individuals in society, they are in fact closely related.

The categorization of criminal legal activity as individualistic is justified on a number of grounds. First, criminal law selects individuals and assigns responsibility to them personally (rather than their family, labor union, or church) for misconduct. Second, in the modern world, criminal law tends to focus on the removal rather than the reintegration of individuals into society, reflecting a belief that individuals are atomistic actors.⁴ And, finally, criminal laws require society to draw boundaries between normative and aberrant or harmful behavior with an emphasis on *you*, as an *individual*, are not a part of the collective. An example from Sanders and Hamilton's (1992) research of the U.S., Russia, and Japan demonstrates how these differences in the belief systems of countries can at least partially explain variations in criminal legal activity. Given a vignette of a mother responding to her four-year-old's tantrum by hurting him, the Japanese were significantly more likely than the Americans or Russians to suggest sanctions which would "restore" the familial relationships, sanctions that would "reintegrate" the mother into the family. The inference is that Americans thought state intervention on behalf of the *individual* child to rehabilitate the *individual* mother was more important than the Japanese, who focused more on the family unit as a whole. Further, the Japanese made a delineation between state interests and private interests, and were more averse to getting the state involved in private interests than the Americans (the Russians also made a clear delineation between state and private interests). It follows that the Japanese are less likely to invoke their formal criminal justice system (which was modeled after Western individualistic systems after World War II) than countries with a more individualistic culture. Because criminal legal activity is based on individualistic assumptions, I predict that it will be positively correlated with other types of individualistic legal activity.

I begin with an hypothesis relating to criminal legal activity which will not foster much disagreement. I suggest that the various components of criminal legal systems are highly related:

Hypothesis 1a: Across nation-states, different indicators related to criminal legal activity will positively covary.

The world of civil law, in contrast, tends to be viewed as less cohesive (Blankenburg 1994; Ieswaart 1990). Lawyers who become experts in one area of civil law, e.g., securities law, probate, divorce, may know very little about the other areas of civil law. Nevertheless, I repeat the above hypothesis for civil law because the political frames of nation-states should drive all types of civil law at the most fundamental level:

Hypothesis 1b. Across nation-states, different indicators related to civil legal activity will positively covary.

Modern nation-states are legally and politically integrated. Thus, civil and criminal legal activity are operating within the same larger framework. Because both criminal and civil activity will also be subject to the same institutional forces, I propose:

Hypothesis 1c. Across nation-states, indicators of civil and criminal legal activity will positively covary.

In sum, different types of individualistic legal activity are expected to covary.

POLITICAL FRAMES

My central thesis is that political frames organize individualistic legal activity as a mechanism of public policymaking. The political frames concept is derived from two related literatures: "political opportunity theory" (e.g., Joppke 1993; Kitschelt 1984; Kriesi 1995), which focuses on the structure and "openness" of states, and the "bringing the state back in" literature (Badie and Birnbaum 1983; Evans, Rueschmeyer, and Skocpol 1985; Smelser et al. 1994), which focuses on state autonomy and state strength. Although one could cull many possible aspects of political frames from these theories, I focus on two that are particularly relevant in explaining cross-national variation in legal activity: state-society interpenetration and the centralization of the political system.⁵ While these two aspects of political frames are not empirically independent of each other, it is useful to keep them conceptually distinct. In this section, I consider these aspects of political frames before turning to the cross-national analysis.

STATE-SOCIETY INTERPENETRATION

For historical reasons, the degree of interpenetration between the state and civil society varies cross-nationally. Interpenetration operates through a bureaucracy that is amenable to influence from sectors of civil society and through the personal empowerment of citizens under an individualistic model. In general, states without a feudal history (U.S.) or with a weak feudal system in their pasts (Great Britain) tend to have more interpenetration between the modern state and civil society. To illustrate this variation in interpenetration, I describe ideal typical nation-states at both poles of the variation.

High interpenetration is characterized by a lack of clear boundaries between the state and civil society. In countries having such high interpenetration, state bureaucracies solicit public input before making policy decisions and agencies responsible for overseeing sectors of the economy tend to hire their personnel from those very sectors (Badie & Birnbaum 1983; Shefter 1994). The bureaucracy is not autonomous from the political system — high level civil servants tend to lose their jobs when political control moves from one political party to another. Because of their importance in integrating state and society, the components of the state which are most closely linked to the public (e.g., the legislature) are dominant (see Kitschelt 1984:63; Kriesi 1995). These factors create a penetrable bureaucratic system where public opinion and special interests are influential.

Further, public opinion is closely monitored through public opinion polls and coupled to state policies in interpenetrated states (cf. Savelsberg 1994). Individuals are encouraged, formally or informally, to express their views on policy and to actively intervene in the state decision-making process (see Bendix 1949:95-96; Kagan 1997). One example is how the U.S. Securities and Exchange Commission solicits public comments before adopting any changes in its regulatory structure. This is typical of bureaucratic reform in the U.S. Individual intervention into the political system is more active than simply voting. In highly interpenetrated states, individuals have an obligation to act as agents for other individuals and for society as a whole (see Meyer & Jepperson 1998). Smelser et al. (1994:64) characterize these countries as giving “greater leeway to the posited intentionality of actors.” Since the individual psyche is more important and more exposed, its “health” is critical and the situations where it can be defined as unhealthy are more common (see Frank et al. 1995). Self-esteem and self-fulfillment are stressed. In these nation-states, the state provides more flexibility for civil society to coordinate itself (Barkey and Parikh 1991:529).

At the other end of the spectrum are nation-states with a clear differentiation between the state and society. In these nation-states, typified by France, civil servants operate in “carefully circumscribed roles” and “hold themselves aloof from the citizenry’s individual values, group loyalties, and interests” (Smelser et al. 1994:63). The operating logic of highly differentiated states is that special interests and power relationships taint statements of individual interest and make it undesirable and impractical to draw policy directly from individuals within society. Rather, the state has special unbiased authority to determine and act for the collective welfare. The flow of ideas comes from a state bureaucracy operating under a strong guiding principle of bureaucratic autonomy (see Aberbach, Putnam & Rockman 1981; Shefter 1994; Suleiman 1974). Civil servants are professional experts, trained at prestigious schools and have tenure independent of shifts in political control. Differentiated states exercise more direct control over national economies, with more nationally owned industries and more activist welfare states. When state-society interpenetration is low, citizen action is more likely to be directed against

the state than against another citizen (Boyle 1998; Smelser et al. 1994:67). France is the typical example of a nation-state with low interpenetration between the state and society.

Nation-states exist on a continuum, with the extreme degrees of interpenetration anchoring the two poles. In between the two poles are nation-states in which pluralism is limited, but private groups are capable of controlling their own representatives within the state. These are corporatist nation-states. Corporatism has been defined as a system of interest representation in which a limited number of units are organized into functionally differentiated categories recognized by the state and granted authority by the state to represent societal interests within their respective categories (Schmitter 1979). The state tends to maintain some control over the selection of group leaders and the methods for articulating demands. Corporatism weakens the ability of the state to differentiate itself from society — it conflates state and private social spheres and allows society formal access to the policymaking function of the state (Smelser et al. 1994). However, the resulting organization of societal interests and input does allow the state to maintain more control over society than a purely pluralistic system. The Scandinavian countries are models of corporatism and Germany is often typified as neo-corporatist (Katzenstein 1987).

A highly penetrated state is likely to generate more legal activity than a highly differentiated state because legal activity is an integral component of its policy-making. My examination (Boyle 1998) of legal activity opposing nuclear power in several countries provides an illustration of this. I found that in the U.S. independent citizens were explicitly recruited by politicians to bring lawsuits that could bolster the position of the politicians. For example, the Senate-House Joint Committee on Atomic Energy attempted to resolve a disagreement with the Atomic Energy Commission in the late 1950s by recruiting labor unions to file suit against the Commission. In contrast, state actors in France and Germany relied more on professional scientists and bureaucratic expertise to bolster their positions. In the interpenetrated state, politicians legitimate their positions by calling on members of the civil society to support them. In less penetrated states, politicians use other means to legitimate nuclear power policy.

Specifically, a highly penetrated state generates more legal activity for three reasons. First, members of the strong civil society use the legal system to influence, or even create, policy. Individual actions combine to create the collective good in countries with a high degree of interpenetration between state and polity. In countries with a high degree of differentiation between state and polity, on the other hand, the state may be more likely to define the collective good and serve it bureaucratically. Second, the emphasis on individual rights over government obligations makes the case-by-case approach of courts more desirable. Finally, the interpenetrated state stresses individual autonomy and responsibility. The guiding ideology is that individuals are responsible for making a “good” world. Lawsuits

are brought under the noble principle: "If I don't do it, nobody will." Trivial lawsuits have worth because they communicate "the principle of the thing." On the other hand, when the state is differentiated, the public is more likely to look to the state to make things right.

Interpenetration is also connected to specific distinctions in legal systems. The spread of the Holy Roman Empire and the Church's successful drive for greater unity in the eleventh century laid the foundations for both a strong state (Badie & Birnbaum 1983:105-15) and a civil law system (Damaška 1986:29). The looser control of the Normans in Great Britain began a different historical trajectory which resulted in both a relatively weak state (Badie and Birnbaum 1983:121-25) and a common law system (Damaška 1986:38), not only in that country, but also in its colonies. The interpenetration concept captures this variation and expands on it. Importantly, degrees of interpenetration can explain differences *within* the civil law world and the common law world. State/society interpenetration has also become important in its own right by providing the contexts which frame the proper functions of both types of legal systems.

The converse of individuals shouldering responsibility for making a good world is the threat of individuals who violate that responsibility. In a highly interpenetrated nation-state, individuals are supposed to govern themselves — that is the foundation of freedom and democracy. Those who betray the principles of a free society represent a serious threat to the nation-state and require formal attention from the criminal justice system. As Lawrence Friedman (1990:146) notes, "Deviance threatens the pillars of the social order — the assumption that people are and ought to be free, and can be trusted to be free." When individuals are granted more "political efficacy" (which is another way of looking at highly interpenetrated states), there is less ability to shame and the threat of exclusion is less powerful because individuals are viewed as more autonomous from the start. Consequently, while all nation-states take crime seriously, a highly interpenetrated nation-state tends to deal with crime more harshly. Therefore, I hypothesize the following relationship between interpenetration and both civil and criminal individualistic legal activity:

Hypothesis 2a. The greater the state-society interpenetration within a nation-state, the greater the level of individualistic legal activity (both civil and criminal) within that nation-state.

Economic Strength

Interpenetration is derived from and perpetuates a strong free market with business elites influencing public policy. In other words, interpenetrated systems tend to be deferential to market forces. The link between free markets and a high degree of interpenetration is historical — if a state developed early, it tends to dominate the economy more than if market development preceded state development. For

example, in the U.S., the economic elite played a central role in politics from early on. Some surmise that the power of the business community may have prevented the U.S. state from acquiring real autonomy (Badie & Birnbaum 1983:125-30). Likewise, in Great Britain, the bourgeoisie mingled more with the nobility than was true on the Continent, and this, combined with a relatively inattentive central state, fostered a strong market economy. Economic factors may also directly effect how much legal activity occurs in each country. A larger economy may create more complexity, more distant ties, and more expendable income with which to finance legal activity. Therefore, I also hypothesize:

Hypothesis 2b. The larger the economy of a nation-state, the more individualistic legal activity (both civil and criminal) within that state.

A weak state, a strong free market, and individual citizen empowerment tend to coincide (within Western countries) because all occur when historic conditions hindered the development of a powerful, autonomous bureaucracy. Another aspect of the state — centralization — followed an independent trajectory so that the modern world system has highly interpenetrated states that are centralized (Great Britain) and decentralized (U.S., Switzerland), and fairly impenetrable states that are centralized (France) and decentralized (Germany).

DECENTRALIZATION VERSUS CENTRALIZATION

Political systems may be organized around a strong single-level centralized government or may have many levels at which political action may be taken (e.g., school districts, cities, counties, states, or federal government). This type of “vertical fragmentation” is a continuous variable that is roughly represented by the federal/central dichotomy (Campbell 1988:15-16). In a centralized system, only one level of government has the ability and obligation to make and carry out policy. In a federal system, federal and local systems may dispute responsibility and obligations (see, e.g., Griffin 1991). Of course, there is tremendous variation across federal systems. Because the relative authority of local versus central branches of government varies, centralization is a continuous rather than dichotomous distinction.

In addition to federalism, decentralization is also evidenced within levels of government. This is termed “horizontal fragmentation” (Campbell 1988:15-16). The separation of powers between the executive and legislative branch in the United States is one example of this type of decentralization. Jurisdictional disputes between or within federal agencies is another example, as when the Immigration and Naturalization Service and the Department of Labor cannot agree on jurisdiction over Mexican immigration (see Calavita 1992). Often horizontal fragmentation runs along ethnic lines. For example, the political systems in Switzerland and the Netherlands resolve conflicts more through negotiation than majority rule because of stark religious or ethnic divisions (Badie & Birnbaum

1983). In extreme examples, such as Cyprus, Bosnia, and Georgia, the political representatives of one ethnic group have the constitutional authority to frustrate or even veto the policies proposed by representatives of another ethnic group (Wippman 1995). Where horizontal fragmentation is extensive, intra-governmental disputes over policy are more common (see, e.g., Hamilton & Sutton 1989).

Political decentralization and rates of legal activity operate together through a variety of mechanisms. First, decentralized political systems coincide with decentralized court systems (Jacobs 1996). That is, a decentralized state is likely to have multiple court systems linked to the multiple levels of sovereignty within the state (e.g., state and federal courts). Political and legal systems develop through a co-evolutionary process. The same processes that drive suspicion of a strong central government put checks on judicial authority, such as high status courts of appeal. Law and politics do not occur in a vacuum — rather, each affects the other over time.

Further, decentralized political systems increase contest, leaving policies more open to challenge. Within politically decentralized systems, government decisions are more likely to be questioned, leaving them vulnerable to attack (legal or otherwise). Within and between levels of government, interested parties are likely to disagree about the proper goals for the state or the means to reach those goals. Even when these disagreements are settled, they raise questions and propose alternatives so that whatever policy is ultimately adopted will not have the same legitimacy as it would if it had arisen without discussion (compare Kagan 1997). For these reasons, I offer the following hypothesis:

Hypothesis 2c. The more decentralized the political system of a nation-state, the more individualistic legal activity (both civil and criminal) within that nation-state.

Hypotheses 2a, 2b, and 2c may hold true because political systems affect legal systems, but also because political and legal systems are subject to the same “rationalized meaning systems” (Dobbin 1994) and because, historically, legal and political systems acted against and shaped each other.

STRATIFICATION

While the primary purpose of this analysis is to explore the impact of political frames on legal activity, important competing explanations for cross-national variation in legal activity bear mention. While my hypotheses are consistent with some of those proposed by Donald Black in *The Behavior of Law* (1976), they do not incorporate one of his key hypotheses: that more stratified societies have more civil and criminal legal activity. Stratification in this context means the difference in average wealth between each person and every other in a society and the difference between the lowest and highest among them (1976:13). Black (1976:12-27) argues

that stratification leads to more law because most legal activity is "top-down," i.e., initiated by the rich against the poor, and wealthier people can afford to use the formal legal system more than poorer people. Criminal law tends to define the things poor people do as criminal (see also Chambliss 1971). Police represent the private property of the wealthy leading to a greater apprehension of poor people for crime. Civil courts facilitate the rich in extracting debt payments from the poor (which explains the high proportion of collection cases in civil courts). Black's universal theory of legal activity suggests that inequality is a key source of cross-national variation in rates of all legal activity:

Hypothesis 2d. The greater the level of inequality within a nation-state, the more individualistic legal activity within that nation-state.

Hypotheses 2d is designed to provide a contrast to the interpenetration and decentralization hypotheses.

Part I Analysis: Interrelating Legal Activity

Previous empirical research on cross-national comparisons of legal activity focus primarily on one or two countries. To extend the scope of research in this area, I selected developed countries which had been continuously democratic since the mid-1970s. Decisions of sample selection were based on Gurr's (1990) democracy scale and Lijphart's (1984, 1994) list of continuously democratic countries. Approximately 30 countries met the democracy criterion. Among those, 19 countries were modern industrialized nations (i.e., belonged to the OECD). Although the sample size is small, it approaches the entire population of cases.

Indicators of individualistic legal activity capture both civil and criminal actions.⁶ My goal was to select a diverse range of legal activities. The civil activity indicators are divorces, lawyers, and bankruptcies. These measures were derived from national abstracts, United Nations publications, and OECD data. Criminal legal activity indicators were selected from the United Nations World Crime Surveys to represent various steps in the process of criminal legal activity. These include the number of suspects apprehended and persons placed on probation. All data were obtained for 1986 or, if missing for 1986, for the next closest year for which data were available. All variables were standardized to reflect their occurrence per 1000 population.⁷ The values for those variables are listed in Table 1.

A common critique of cross-national research is that data from different countries are not comparable. Researchers suggest that countries have different recording systems and possibly different political motivations regarding the information they present to the world. Ultimately, some countries' data are more reliable than other countries. While acknowledging such limitations, I minimize the impact of these critiques. For three variables (divorce, probation, and suspects), I used data collected under a single framework provided by an international

TABLE 1: Legal Activity per 1000 Population in 19 Countries

Country	Bankruptcy	Lawyers	Divorce	Suspects	Probation
Canada	1.36	2.93	3.08	21.73	2.08
U.S.	1.98	2.81	4.88	51.68	5.24
Japan	.15	.13	1.37	4.29	.36
Austria	.16	.38	1.94	24.01	.29
Belgium	.40	.55	1.86	—	.78
Denmark	.51	.73	2.83	8.56	.45
Finland	—	.22	1.98	47.54	—
France	.17	.47	1.96	14.61	.52
Germany, West	.23	.81	2.00	21.39	1.20
Greece	.08	2.30	.87	28.01	—
Italy	.23	.76	.29	8.20	—
Netherlands	.37	.50	6.28	17.15	1.39
Norway	.34	.76	1.89	2.66	.34
Portugal	.13	.76	.82	1.39	.88
Sweden	.78	.35	2.28	10.98	.61
Switzerland	.61	.70	1.75	—	.16
United Kingdom	.39	1.12	2.95	—	2.37
Australia	.46	2.93	2.49	19.33	1.61
New Zealand	.82	2.93	2.65	48.63	1.79

organization. I further used three sources to check the reliability of the number of lawyers reported, and confirmed the comparability of the bankruptcy definition by examining categories and the procedural steps of bankruptcies. (For a complete delineation of sources, see Appendix A.) With that background, I introduce and detail each of my indicators.

CIVIL INDIVIDUALISTIC LEGAL ACTIVITY

Lawyers

Lawyers provide a proxy for civil litigation (see Markenesis 1990) although they are somewhat representative of all legal activity.⁸ The more lawyers a country has, the smaller the proportion of lawyers who are working in bureaucratic positions for the government. Those not working in bureaucratic positions are primarily litigators or advisors for individuals. Thus, a greater number of lawyers per 1000 in the population should reflect greater levels of individualistic legal activity. Under similar reasoning, it seems that more lawyers suggest more restitutive law, i.e., more private contract law. Information on number of lawyers comes from *European Law*

Firms (Pritchard 1991) for European countries and the *New York Times* (Ahmad-Taylor 1994)⁹ for non-European countries.

Total Bankruptcies

Personal bankruptcy should also reflect individualistic legal activity. It is initiated by or against individuals and entails court approval. Because bankruptcy laws replaced penal sanctions for unpaid debts, bankruptcies are an indicator of restitutive law. As some countries do not distinguish between personal and business bankruptcies, I also include total bankruptcies in the analysis. Data on bankruptcies were obtained from the national statistical abstracts of the various countries. I expect personal bankruptcies to be positively correlated with other individualistic types of legal activity and with criminal activity.

Divorce

The registration of divorce also reflects individualistic legal activity because it is the responsibility of all individuals who divorce (or their lawyers) to contact the state and terminate the marital relationship.¹⁰ Allowing legal divorce is evidence of a move to restitutive law. An action which formerly was viewed as immoral has now assumed a contractual status. These data were obtained from the United Nations and national statistical abstracts, and should also be positively correlated to lawyers, bankruptcy, and criminal legal activity. All of the countries in my sample had no-fault divorce laws prior to 1980 so the level of divorces does not reflect a temporary peak in any country (Goode 1993).¹¹

CRIMINAL LEGAL ACTIVITY

Criminal Suspects, and Adults on Probation

Indicators of repressive law include the monitoring of and response to crime. The United Nations began routinely surveying member countries about their criminal justice systems in 1974 (see United Nations 1992). Using the late 1980s and early 1990s surveys, I obtained data on number of criminal suspects and number of adults placed on probation in 1986. If hypotheses 1a, 1b, and 1c are correct, these variables should be positively correlated with one another and with the civil law indicators mentioned above.

Part 1 Results: Covariation across Legal Activities

To minimize the influence of statistical outliers, I used the correlations of the logged values to test hypotheses 1a, 1b, and 1c. Correlations among the logged variables are given in Table 2. I found consistently positive relationships between the

indicators of criminal legal activity, supporting hypothesis 1a. The correlation between suspects and probation was strong and statistically significant ($r = .65$, $p = .02$). Across nation-states, the two indicators related to criminal legal activity strongly and positively covary.

I also found consistently positive correlations among the three indicators of civil individualistic legal activity, i.e., divorce, lawyers, and bankruptcy, providing support for hypothesis 1b. All the correlations were strong, strikingly so, when one considers the diverse nature of these different types of civil legal activity. The correlations between bankruptcies and lawyers and between bankruptcy and divorce were statistically significant ($r = .58$, $p = .01$; $r = .61$, $p = .01$, respectively). Across nation-states, different indicators of civil legal activity, derived from the family, business, and dispute resolution spheres of society, strongly and positively covary.

Hypothesis 1c was also supported: the correlations provide evidence that criminal and civil individualistic legal activity are consistently related so that countries which have high levels of one type of legal activity, tend to be high in all types of legal activity. All the correlations between bankruptcy, lawyers, and persons on probation were positive and statistically significant at the .01 level of probability (r 's range from .58 to .77). Number of suspects apprehended was also positively correlated with all civil legal activity indicators ($p < .10$). Divorce was highly and positively correlated with bankruptcies ($r = .61$, $p = .01$), suspects ($r = .45$, $p = .08$), and probation ($r = .64$, $p = .01$). Overall, nine of ten correlations were statistically significant at the .10 level, suggesting that across nation-states indicators of civil and criminal legal activity do consistently covary.

I then fitted a one-factor model of individualistic legal activity. The results are consistent with hypotheses 1a, 2a, and 3a. A single factor was created with an eigenvalue of 3.06 that explained 61.2% of the variance in the variables.¹² The values of the factor loadings were: bankruptcies, .84; divorces, .70; lawyers, .76; suspects, .73; and probation, .86. Civil and criminal legal activity indicators loaded at similar, positive levels, providing further support for their hypothesized relationship. Using this cluster of individualistic legal activity, I next considered to what extent rates of different types of legal activity respond to political frames within nation-states.

Part 2 Results: The Impact of Political Frames on Legal Activity

Having found bivariate support for the covariation hypotheses, the next step is to test which factors led to the consistent variation in all types of legal activity across countries. After explaining my construction of political frames factors, I use a structural equation model to examine the impact of the political frames factors on the individualistic legal activity factor derived from the analysis in Part I. To confirm the generalizability of these effects, I then introduce separate regression equations for each type of legal activity.

TABLE 2: Correlations Among Rates of Individualistic Legal Activity, Logged

	Bankruptcy	Lawyers	Divorce	Suspects	Probation
Bankruptcy	1.00	.58	.61	.51	.69
Significance		.01	.01	.05	.00
N	18	18	18	15	16
Lawyers		1.00	.26	.45	.77
Significance			.29	.07	.00
N		19	19	16	16
Divorce			1.00	.45	.64
Significance				.08	.01
N			19	16	16
Suspects				1.00	.65
Significance					.02
N				16	13
Probation					1.00
Significance					
N					16

Recent articles have demonstrated the different results which researchers in the political realm have obtained by operationalizing concepts of democracy differently (see, e.g., Bollen & Appold 1993; see also Knoke 1990:186). Thus, care was taken in selecting variables that represent aspects of political systems. Measures must match the working definition of the concept that they represent and should not contain systematic error (see Bollen 1993). With respect to the first point, I elaborate below the selection of variables and their face validity in my analysis.

With respect to the second point, the possibility of systematic error is minimized in three ways. First, by using only countries that have been continuously democratic, I eliminate countries in which the accuracy of statistical reports is controversial. Second, whenever possible, I use objective measures, which are unlikely to be systematically biased. Variables have been selected on the basis of their face validity and the improbability of correlated error. Finally, I purposely used measures of the independent variables from time periods earlier than 1986 (the year in which the dependent variables were measured). While the independent variables represent institutionalized frameworks that are resilient to change, allowing some lag time for structural effects to have an impact on the dependent variable seemed prudent. I minimize the possibility of correlated error by creating factors out of multiple indicators.

STATE-SOCIETY INTERPENETRATION

Above, I noted aspects of interpenetration and how they influence levels of legal activity. Those aspects included the strength of civil society, the emphasis on individual rights, and the emphasis on individual autonomy and responsibility. I also hypothesized a relationship between size of economy and interpenetration. To capture the former dimensions of interpenetration, I chose three indicators. The number of psychologists per million persons in the population reflects the importance of individual autonomy and responsibility, while the level of democracy and years since universal suffrage reflect the strength of civil society and the emphasis on individual rights. These variables were selected because of their close nexus to my definition of interpenetration. A discussion of the face validity of each interpenetration indicator follows.

Psychologists per Million Population

Individual empowerment and “intentionality” should be linked to the relative number of psychologists in a country. Frank, Meyer, and Miyahara (1995) demonstrated empirically, using a structural equation model, that the correlation between “individualist polities” and the presence of psychologists is very high. The number of psychologists per million population for 1980 was obtained from Rosenzweig (1982). For countries that belong to the International Union of Psychological Science in 1980, data are based on the number of psychologists who are members of the national constituent association. The three nation-states that do not belong to the IUPS were assigned the lowest value that occurred, on the assumption that countries which lack an organized link to the worldwide field give psychology low prominence and centrality.

Democracy

Bollen’s (1993) measure of democracy is a 100-point scale of liberal democracy circa 1965 and 1980. I averaged the measure in these years to create a single overall democratic tradition measure. Bollen (ibid. at 1208) defines “liberal democracy” as “the extent to which a political system allows political liberties and democratic rule.” Political liberties include the freedom to express unique political opinions. Democratic rule requires that every individual be entitled to participate in government, and that the government be accountable to the general population. Bollen derives his measure from a factor analysis of three other democracy measures: Banks (1971, 1979), Gastil (1977), and Sussman (1980, 1981, 1982).

Years Since Universal Suffrage

For all of the countries in my sample, extending the vote to women was the last step toward universal suffrage (see Rokkan 1970). A shorter period of universal suffrage is indicative of low state-society interpenetration because it suggests a resistance to the inclusion of new interests in the political system (Ramirez, Soysal & Shanahan 1997). Recent incorporation of women into the democratic process is more likely to occur in countries which have a tradition that places less emphasis on individual participation in the political process. The greater the number of years since a country adopted universal suffrage, the more penetration by the recently enfranchised into the political system.

GDP PER CAPITA

Pursuant to hypothesis 2b, logged GDP per capita (Summers & Heston 1991) examines the issue of whether the size of a nation's economy affects how much legal activity occurs in that nation. The variable had a fairly high correlation with the state-society interpenetration factor. This correlation is not surprising since highly penetrated states are based on a "free market" ideology of politics. More aspects of life are left up to market process in nation-states in which states are minimally differentiated from private interests. This indicator is included in the final regression equations, but not in the structural equation model.

DECENTRALIZATION

To capture decentralization, I selected three indicators. Constitutional structure reflects both vertical and horizontal fragmentation. Ethnic factionalization addresses primarily horizontal fragmentation, while Gurr's (1990) measure of decentralization is a measure of vertical fragmentation.

Constitutional Structure

Huber, Ragin, and Stephens (1994) provide a constitutional structure variable that measures the extent to which minority interest groups can block political action.¹³ The measure is based on the notion that constitutions set out the nature of national institutions which "process pressures from economic interests and organized groups and produce binding decisions or policies." Previous studies have demonstrated the importance of the insulation of executive power from electoral or legislative pressure, parliamentary governance structures, and proportional representation. Focusing on these aspects of constitutions, Huber et al. give points to countries for (1) federalism (0 for no; 2 for strong), (2) presidential government (0 for parliamentary; 1 for presidential), (3) nonproportional representation (0 for proportional representation, 1 for modified proportional representation; 2 for single-member, simple plurality systems), 4) bicameralism (0 for none; 2 for strong

TABLE 3: Nation-State Values for Political Indicators

	GDP per Cap	Eth./ Ling. Facnlzn	Minority Block	Decent.	Yr. Univ. Suffrage	Democ.	Psych. per Mill.	Inequal.
Canada	14,236	76.5	4	3	1920	100.0	94	41.0
U.S.	15,101	51.5	7	3	1920	96.0	219	42.8
Japan	10,289	2.5	2	1	1945	100.0	25	41.0
Austria	10,582	13.6	1	1	1919	98.5	**	44.0
Belgium	11,348	56.1	1	3	1948	100.0	61	39.8
Denmark	11,229	5.9	0	1	1915	100.0	365	42.3
Finland	10,986	16.9	1	1	1906	94.0	275	42.3
France	11,794	27.1	2	1	1944	95.5	28	46.4
Germ-Fr (W)	12,013	3.6	4	3	1919	94.5	89	45.2
Greece	5,890	10.9	0	1	1952	94.0	23	42.3
Italy	10,442	4.8	1	1	1945	98.5	23	46.5
Netherl	11,318	11.2	1	1	1917	100.0	192	40.0
Norway	12,256	4.9	0	1	1915	100.0	246	37.3
Portugal	5,048	1.6	1	1	1976	66.5 ^a	^b	49.1
Sweden	12,286	9.3	0	1	1920	100.0	157	37.0
Switzerl	14,651	51.4	6	3	1971	98.8	73	42.3
U.N.-King	10,025	33.5	2	1	1928	99.5	137	39.2
Australia	12,624	32.6	4	3	1902	100.0	188	43.0
New Zealand	10,266	38.3	3	1	1893	100.0	136	41.4

Sources: Summers and Heston (1991); Taylor (1985); Huber, Ragin and Stephens (1993); Gurr (1990); Ramirez, Soysal, and Shanahan (1997); Bollen (1993); Rosenzweig (1982); Muller (1995).

^a In the analysis, I added 25 to Portugal's democracy score to give less weight to its outlying score.

^b Not members of International Union of Psychological Science. I assigned lowest alternative score (23).

bicameralism), and 5) referendums (0 for none or infrequent; 1 for frequent). The most diffuse system under this scheme is federal representational, and the most centralized is centralized parliamentary. The variable ranges from 7 to 0. I applied the Huber et al. reasoning to create the constitutional structure values for Greece, Portugal, and New Zealand, deriving the necessary information from Lijphart (1984, 1994) and Wiarda (1994).

Ethnic/Linguistic Factionalization

Diversity within nation-states is likely to affect legal activity under certain circumstances. One type of internal variation is relational distance among individuals, often based on ethnic divisions (Blau 1977). Scholars have shown that traditional ethnic/linguistic divisions lead to the creation of more decentralized

political systems (e.g., Wippman 1995). Thus, traditional ethnic/linguistic divisions are a helpful explanatory device for legal activity. Groups can be so distinct, with separate languages, schools, courts, etc., that difference leads to less rather than more legal activity. It is when groups are defined as similar enough to be dealt with by the same institutions that conflict (manifesting itself through legal activity) comes about. Thus, I expect to find that a greater number of traditional, legitimated ethnic divisions within a country will lead to more legal activity.

The ethnic/linguistic factionalization variable is a measure of such traditional ethnic and linguistic diversity as it existed circa 1960, calculated according to the following formula:

$$F = 1 - \sum \left(\frac{N_i}{N} * \frac{N_i - 1}{N - 1} \right)$$

where N_i is the number of people in the i th group and N is the total population (Taylor 1985). Traditional ethnic division will cement or exacerbate decentralization.

Decentralization

Gurr's (1990:21) measure of centralization defines whether a state is centralized (1), intermediate (2), or decentralized (3). It is indicative of the degree to which empowerment occurs at the state level. Decentralization connotes a federal formal organization and also the ability to debate which level of government should be responsible for particular policies.

CONTROL VARIABLES

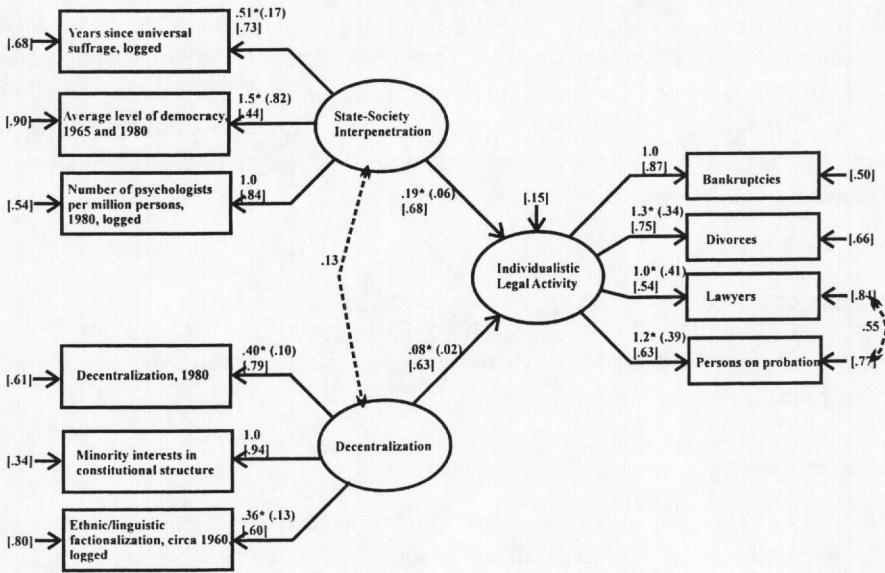
Income Share of Top 20 Percent

As noted in hypothesis 2d above, Donald Black (1976) suggests that higher levels of inequality lead to higher levels of all legal activity. Consistent with Black's theory, Edward Muller (1995) also claimed a link between democracy and inequality that could be relevant to legal activity. The inequality measure is derived from Muller's article, and relates to the period circa 1965 to 1975.

Strikes, Violence, and Economic Change

To address the argument that legal activity occurs as the result of recent unrest or major economic change, I also include measures of societal disruption in the following analyses. Information on strikes comes from the International Labour Organization Reports. Information on violence is derived from Gurr's survey of cross-national violence, and economic change is measured as the absolute value of change in GDP (Summers & Heston 1991) from 1980 to 1985.

FIGURE 1: Structural Equation Model Testing the Effects of Political Frames on Individualistic Legal Activity, circa 1996



Note: Individualistic Legal Activity Measures are numbers per 1000 persons in the population, logged. Maximum likelihood estimates. Unstandardized coefficients shown with standard errors in parentheses; standardized coefficients appear in brackets. Comparative fit index = .97

STRUCTURAL EQUATION MODEL

The country scores for each political indicator are listed in Table 3. The six indicators formed two independent factors. As expected, suffrage, democracy, and psychologists loaded onto the state-society interpenetration factor, and constitutional structure, ethnic/linguistic factionalization,¹⁴ and decentralization loaded onto the decentralization factor. The decentralization factor explained 45.2% or the variance, and the societal strength factor explained 29.4% of the variance, for a combined explained variance of 74.5%. As expected, the interpenetration factor was highly correlated with GDP per capita ($r = .63$). The correlation between decentralization and GDP was also fairly high ($r = .54$).

Figure 1 presents a structural equation model of the effect of political frames on the combined individualistic legal activity factor.¹⁵ This structural equation model treats a latent variable, individualistic legal activity, as dependent on two political frame latent variables, decentralization and interpenetration. The indicators of the latent variable, individualistic legal activity, are the 1986 rates of bankruptcy, divorce, and persons placed on probation, and the number of lawyers in 1986, all logged and per 1000 persons in the population.¹⁶ In the combined

model, all indicators loaded significantly onto the various factors, providing additional evidence of the empirical validity of the theory.¹⁷ The standardized coefficient for decentralization was .63 ($p < .05$) and the standardized coefficient for interpenetration was .68 ($p < .05$).¹⁸ The comparative fit index for the model was .97.

GDP per capita did not have a significant effect on individualistic legal activity beyond decentralization and interpenetration when added to the model in Figure 1. Thus, hypothesis 2b, that legal activity would increase with economic size, was not supported, net of the political frame factors. Whether added as an independent factor or as an indicator of interpenetration, GDP per capita also significantly reduced the overall fit of the model. Hypothesis 2d relating legal activity to inequality was also not supported — disruption measures and the inequality measure were not significant in any equations. The model provides support for both hypotheses 2a and 2c — state-polity interpenetration and decentralization both had positive impacts on individualistic legal activity.

To determine whether the structural equation model was masking important differences in the influence of the independent variables on each type of legal activity, I next considered each legal activity in a separate regression equation. See Table 4. The striking finding of these separate analyses is the similarity among them. In every case, the two aspects of political frames had positive effects on the legal activity, and frequently those effects reached statistical significance.

Of the two political frame dimensions, decentralization had the strongest effect on bankruptcy, lawyers, suspects and probation, while the state-polity interpenetration factor had the strongest effect on divorce. Both had a significant positive effect on the rate of persons placed on probation: the standardized coefficient for decentralization was 1.03 ($p < .01$), for interpenetration was .78 ($p < .05$). With respect to bankruptcy, the standardized coefficient for decentralization was .66 ($p < .05$), for interpenetration was .47 ($p < .10$). As mentioned, state-polity interpenetration had the greatest influence on divorce rates ($\beta = .73$, $p < .05$); the decentralization effect ($\beta = .45$) was statistically significant at the .10 level. Both variables were influential with respect to lawyers. The standardized coefficient for decentralization was 1.10 ($p < .001$), interpenetration was .80 ($p < .01$). Decentralization also had a significant effect on suspects ($\beta = .69$, $p < .05$) but interpenetration ($\beta = .55$) did not reach statistical significance. Thus, both decentralization and state-polity interpenetration had a positive effect on all of the dependent variables.

GDP per capita had a consistently negative, but not always statistically significant, effect on legal activity when the political frame factors were controlled. The effect of GDP per capita was statistically significant ($p < .05$) for both persons on probation and lawyers. The other control variables (disruption and inequality) had no statistically significant effects on legal activities, whether or not the aspects of political frames were controlled. They were therefore not included in the final

TABLE 4: Ordinary Least Squares Regression Analyses: Effects of Political Frames on Bankruptcy, Divorce, Lawyers, Suspects, and Probation Rates

	Dependent Variables				
	Suspects	Probation	Bankruptcy	Divorce	Lawyers
Decentralization	.67* (.26) [.69]	.45** (.12) [1.03]	.18* (.06) [.66]	.18† (.10) [.45]	.46*** (.09) [1.10]
State-polity interpenetration	.48 (.31) [.55]	.35* (.13) [.78]	.13† (.07) [.47]	.29* (.10) [.73]	.34** (.09) [.80]
Logged GDP per capita	-1.25 (1.29) [-.39]	-1.56* (.63) [-.84]	-.05 (.30) [-.05]	-.22 (.45) [-.15]	-1.62** (.42) [-1.04]
Constant	14.43	15.18*	.89	3.21	15.76***
Adjusted R ²	.31	.44	.51	.46	.59
Number of countries	16	16	18	19	19

Note: Standard errors in parentheses; standardized coefficients in brackets.

† $p < .10$ * $p < .05$ ** $p < .01$ *** $p < .001$

equations. Overall, the two political frame factors along with logged GDP per capita explained between .31 and .59 of the variance in individualistic legal activity. The regression findings again support hypotheses 2a and 2c relating to the political frame variables. With respect to hypothesis 2b, while GDP per capita did have an effect, that effect was negative rather than positive. Hypothesis 2d relating inequality to legal activity was not supported.

Discussion

The current project expands earlier research by quantitatively assessing the explanatory power of political frames on a wide spectrum of countries for both criminal and civil individualistic legal activity. I found that state-polity interpenetration and the decentralization of a country's political system have significant positive influences on overall rates of legal activity within the nation-state. This general pattern comes through whether one considers legal activity in

combination, or diverse types of legal activity separately. In every case, decentralization and state-society interpenetration have a positive influence on combined legal activity. Sociolegal scholars have recently devoted considerable attention to the relationship between political structures and legal activity, and have developed testable hypotheses through detailed case studies. Kagan (1995:109; see also Jacob 1996:8-9) suggests that the lack of a respected and powerful national bureaucracy in the U.S., among other factors, paves the way for more citizen policy challenges in courts. Jacob (1996) notes a connection between government decentralization (in the U.S. and Germany) and the greater use of courts. Boyle (1998) illustrates how legal activity is more of a policy-making tool in interpenetrated, decentralized countries. These various studies build on rich social histories of political and legal development (Badie & Birnbaum 1983; Damaška 1986).

A parallel body of research has begun to focus on cross-national political factors to explain aspects of criminal legal activity.¹⁹ One important theme of this research is that changes in crime rates are not the sole basis for increased legal activity directed against crime. For example, Savelsberg (1994) finds a weak connection between crime rates and incarceration in Germany and the United States, and hypothesizes that the structure of the media, academia, and political systems is more influential than crime rates in determining incarceration policy. In the highly interpenetrated U.S. system, media organizations are privately owned and compete for the American public's attention, and the presidential system is structurally open to influence from civil society. As a consequence, public opinion in the US fluctuates noticeably and there is a clear nexus between public opinion and official policy. In contrast, the semipublic German media is more state-oriented in its coverage of news, and the German parliamentary system is more buffered from public sentiment, so that the effect of public opinion on the German state is weaker.²⁰ The resulting lower incarceration rate in Germany is thus explained through factors which coincide with the degree of state-society interpenetration.

The research here advances the groundwork laid by these previous case studies—it demonstrates that the theoretical ideas derived from them may indeed be generalizable. The state-society interpenetration factor is particularly salient for activities in which the individual is using the state as a tool, such as divorce. In highly interpenetrated states, individuals are politically empowered, and are therefore more likely to see themselves on equal footing with formal state actors. They are also more likely to have a personal opinion about how the state can work for them. The other political frame factor considered, decentralization, is particularly salient when the legal activity can occur at different levels of government. Civil litigation, represented in my analysis by the number of lawyers, is one such activity. In the extreme case, federal systems can allow lawyers to bring the same suit in both state and federal court, linking the different forums to different issues. (Witness the police officers who beat Rodney King in the U.S.:

they were first tried in state court, then federal court). The differences in the relative weights of the independent variables, while interesting, do not detract from the general finding that the two components of political frames have consistently positive effects on a full range of legal activities.

The results of this research also suggest that the economic development may have an independent effect on legal activity when political frames are controlled. Contrary to my hypothesis, the size of the economy in industrialized nation-states (measured by GDP per capita) had a consistently negative (but not always statistically significant) effect on levels of individualistic legal activity in the regression equations when political frame factors were controlled. There are a number of ways to interpret this finding. Perhaps there is a threshold of economic complexity (crossed by all of the countries in the sample) beyond which informal marketplace rules begin to replace formal legal activity (cf. Macauley 1969). Another explanation could be a negative relationship between national wealth and legal action. There was a positive correlation between GDP per capita and state-polity interpenetration — the autonomous individual is important to both. When individualism is held constant, the “leftover” variation in the GDP per capita measure is primarily wealth. Thus, the finding might mean that wealthier countries are better at employing and otherwise satisfying their citizenry, thereby reducing crime, interpersonal conflict, and lawsuits. At a minimum, the negative relationship between GDP per capita and individualistic legal activity in this sample of countries raises doubts about whether the relationship is linear at all levels of economic development. Additional research will be necessary to fully explain it.

While my goal here was not to disprove alternative theories for variations in rates of legal activity, I found little support for ideas that inequality and social disruption account for cross-national differences in rates of legal activity net of political frames in developed, democratic nation-states. This could be due to the cross-sectional nature of the current data. The findings here suggest a need for more research.

Durkheim ([1933] 1984) dichotomized law into restitutive and repressive categories by focusing on what he saw as the separate foundation undergirding each type of law. Restitutive law was expected to increase with societal complexity, while repressive law would remain stable or even decrease. Current scholarship has reified these categories by dividing the study of criminal and civil legal activity. Socio-legal scholars rarely look at the invocation of the criminal justice system as a parallel to the invocation of the civil law system.²¹ The findings of this research suggest a refinement and modification of current perspectives.

Across democratic countries, both restitutive and repressive types of legal activity covary. This finding is empirically interesting; for example, it suggests that a country's bankruptcy rate is likely to covary with the relative rate of suspects apprehended in that country or the relative divorce rate in that country. Rates of activity in the civil law realm and the criminal law realm are positively related

within developed, democratic countries. These results raise questions about Durkheim's thesis that repressive law decreases as restitutive law increases, but an over-time analysis would be necessary to specifically assess Durkheim's ideas. The results also suggest that an insistence on exclusive analyses of different types of legal activities may be misplaced. Aggregate analysis can provide contextual insight that might be missed in narrower research designs.

Having made a case that criminal and civil legal activity can fruitfully be considered in concert, the findings also suggest that political frames are important in explaining cross-national variation in legal activity. It is helpful to explain individualistic legal activity by looking beyond individuals and immediate legal structures to forces outside of legal systems themselves. By using the knowledge that modern political and legal systems are highly integrated, we can explain why the U.S. has more criminal suspects than Sweden or why Germany has more lawyers than France. Further, we find that under nearly identical legal doctrines, actual rates of activity can and do vary tremendously across countries. Individual self-interest or the particular laws of different countries cannot explain the marked covariance in legal activities gleaned from all spheres of society. The meaning of cross-national variation in legal activity becomes clearer when the issue is considered in the context of political frames.

Conclusion

I began this article with examples illustrating the power of political context in determining the impact of legal reform. The results of this analysis support the message of those anecdotes: that social reform is unlikely to be effective if it does not "match" the historically derived political context of the nation in which it is attempted. Changing individual incentive structures is more likely to have an impact in decentralized countries with high state-society interpenetration. Unilateral bureaucratic changes are more likely to find effect in nations with the opposite characteristics. Understanding the complex interplay between reform and institutional constraint is an important goal, and becomes increasingly more important in a modern world where extranational and international organizations often define the nature of reform efforts but nations continue to be responsible for the actual implementation of those reforms.

APPENDIX A: Data Sources

Years since universal suffrage, logged

(Range before logging = 19 to 97)

All countries Ramirez, Soysal, and Shanahan 1997

DEMOCRACY, AVERAGE 1965 AND 1980

(Range = 66.5 to 100)

All countries Bollen 1993

25 added to Portugal value

Psychologists per million, logged

(Range before logging = 23 to 365)

All countries Rosenzweig 1982

Assigned value of 23 to countries which are not members of the international psychological association (Austria and Portugal).

CONSTITUTIONAL STRUCTURE

(Range = 0 to 7)

All countries Huber, Ragin, and Stephens 1993

DECENTRALIZATION

(Range = 1 to 3)

All countries Gurr 1990

ETHNIC/LINGUISTIC FACTIONALIZATION, LOGGED

(Range before logging = 1.6 to 56.1)

All countries Taylor 1985

SUSPECTS PER 1000 POPULATION, LOGGED

(Range before logging = 1.39 to 51.68)

All countries U.N. World Crime Surveys 1992, supplemented by national yearbooks

PERSONS ON PROBATION PER 1000 POPULATION, ADD CONSTANT TO ELIMINATE ZEROS,
LOGGED

(Range before logging = .16 to 5.24)

All countries U.N. World Crime Surveys 1992, supplemented by national yearbooks

APPENDIX A: Data Sources (Cont'd)

DIVORCES PER 1000 POPULATION, ADD CONSTANT TO ELIMINATE ZEROS, LOGGED

(Range before logging = .29 to 6.28)

All countries U.N. Demographic Yearbook 1989

TOTAL BANKRUPTCIES PER 1000 POPULATION, ADD CONSTANT TO ELIMINATE ZEROS, LOGGED

(Range before logging = .08 to 1.98)

Australia	1995 Yearbook, Austral. Bureau of Statistics
Austria	Stat. Jahrbuch für die Republik Osterreich 1994
Belgium	Annuaire Stat. de la Belgique, Tome 112, 1994
Canada	Canada Yearbook 1992
Denmark	Statistisk Årbog 1994
France	Annuaire Statistique de la France 1993
Germany	Stat. Jahrbuch 1994 für die Bundesrep. Deutschland
Greece	Statistical Yearbook of Greece 1990-91
Italy	Annuario Statistico Italiano 1994
Japan	Japan Statistical Yearbook 1994
Netherlands	Statistical Yearbook 1993 of the Netherlands
New Zealand	New Zealand Official Yearbook 1994
Norway	Statistical Yearbook 1992
Portugal	Annuário Estatístico de Portugal 1993
Sweden	Statistisk Årbok '95 för Sverige
Switzerland	Annuaire Statistique de la Suisse 1995
U.K.	Annual Abstract of Statistics 1994
U.S.	Statistical Abstract of the United States 1994

LAWYERS PER 1000 POPULATION, ADD CONSTANT TO ELIMINATE ZEROS, LOGGED

(Range before logging = .13 to 2.93)

European countries	Pritchard 1991
Other countries	Ahmad-Taylor 1994

Notes

1. Specific differences in legal procedures and organization are both derived from, and bound by, the political structure and culture of the countries so that specific legal differences tend to be consistent with differences in political culture. In terms of broad legal differences, all modern democracies claim judicial independence from political systems. Civil/common law distinctions are certainly important (Damaška 1986; Merryman 1985), but a more multidimensional approach can explain more differences, such as why variation exists within civil law systems.
2. Civil legal activity may also be initiated by organizations. Examples of civil legal activity generated by organizations include business bankruptcies, filings of articles of incorporation, trademark filings, etc.
3. The link between political structure and violent crime has been demonstrated in previous studies. For example, one particularly well-theorized study by Messner and Rosenfeld (1997) explicitly linked the decommmodification of labor with murder rates.
4. A question related to the theme of this article is the degree to which modern criminal law has become more restitutive and thus more individualistic. Several recent works consider this issue in a very broad sense, tracing the history of criminal justice (e.g., Foucault 1979; Simon 1993) or considering criminal punishment in a comparative context (e.g., Savelsberg 1994).
5. Although the political frames of industrialized democracies are relatively stable over time, some consistent patterns of change have occurred in recent history. The first change is that politics are becoming more interpenetrated, and one cannot expect individual opinions to track "party lines" as closely as they used to. The results of polls demonstrate this. Ronald Inglehart (1997) considers variations in individual attitudes over time. On the basis of attitude surveys from 21 countries in 1980 and 43 countries in 1990, he concludes that attitudes have changed from "modern" to "postmodern." In terms of politics, this may represent a shift toward more interpenetration between states and civil societies — diminishing the perceived effectiveness and acceptability of bureaucracy and resulting in an emphasis on individual freedom and human rights. A trend toward the decentralization of national politics also exists, occurring at two levels. First, the rise of regional "sovereigns" such as the EU introduce fragmentation into traditionally unitary, centralized systems by adding a new international level of review over state action. Second, within nation states, there is a trend toward increasing the local role, which results in greater political decentralization (see Harrison 1987; Shinn 1985; Wiarda 1994).
6. Other variables were gathered but ultimately not included in the analysis: incorporations and trademark filings (more organizational than individualistic), marriages (closely correlated with divorce), and number of police (more bureaucratic than individualistic).
7. Focusing on individualistic legal activity minimizes Ieswaart's (1990) critique of population as a baseline variable. Further, I am arguing that political frames influence the composition of "risk sets" and the structure of legal systems, thus directly and indirectly influencing legal activity.

8. Rates of litigation, a more direct measure, were not available for a large number of nations in the sample. Although this number includes criminal lawyers, they tend to make up only a small percentage of all lawyers. For example, in Chicago, Heinz and Laumann (1982) estimated that criminal law constitute only 5% of the city's total legal effort.

9. As a reliability check, I compared these numbers to those calculated by Markensinis (1990) and found no major differences. For non-European lawyers, I selected the midpoint of the range provided by the *New York Times*.

10. Religious annulments may replace the need for some state-sanctioned divorces in Italy, although annulments are both difficult and costly (Goode 1993:55).

11. Ireland, which recently passed a divorce law, is not in my sample of countries because it lacked data on a number of indicators.

12. I used mean substitution to deal with missing values. Other methods of dealing with missing values did not significantly influence the results. No country was missing more than one variable except for Finland which was missing the probation and bankruptcy values.

13. "Minority" is used in its literal, pluralist sense here.

14. Since one could argue that ethnic factionalization is conceptually different from the other measures of centralization even though it clusters with them statistically, I also ran the factor analysis and the regression equations omitting that indicator. This did not significantly change the loading of the other exogenous variables; nor did it significantly influence the impact of decentralization (or interpenetration or GDP per capita) on legal activities.

15. Structural equation models are described in detail in Bollen (1989). I omitted Finland, the only country missing two legal indicators, to avoid overfitting the model.

16. Based on convergence tests using each of the legal activity indicators separately, I concluded that the fit of the suspects model was not statistically significant. This was probably due to the particularly small *N* for suspects — only 15 cases. Including the suspects in the latent variable did not significantly change the relationships among the variables, but did reduce the fit of the model to .87.

17. To confirm the validity of this finding without substitution for missing values, I ran multiple regression equation with the 13 countries that had no missing values. The direction, statistical significance, and relative weight of fragmentation and policy strength were the same, minimizing concern over the fact that mean substitution can deflate standard errors (Little & Rubin 1987).

18. The interaction of the two political frame latent variables had a significant and positive effect on the combined legal activity factor in a related regression equation, but the effect did not retain statistical significance when logged GDP per capita was added to the equation (GDP per capita had a negative nonsignificant effect on the dependent variable).

19. Most cross-national explanations for crime variation continue to focus on narrower ideas of individual motivation and opportunity (see review by Shelley 1985).

20. Other analyses linking political structure and criminal legal activity include Sutton (1996) and Gillis (1989). Hagan and Peterson (1995) turn the analysis around and argue that links between crime and inequality become part of the social organization of American society.

21. Jacob and others (1996) did look at the amount of procedural complexity involved in both criminal and civil cases, but not at the actual invocation of the parallel systems.

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