Political Frames and Legal Activity: The Case of Nuclear Power in Four Countries

Elizabeth Heger Boyle

State-society differentiation and political centralization interact to influence the amount, focus, and effect of legal activity. Using case studies of antinuclear power litigation in the 1970s in the United States, West Germany, France, and Sweden, this article develops a general theory of political systems and legal activity. While the United States, West Germany, and France all had considerable amounts of antinuclear litigation, in France and Germany such litigation was directed almost exclusively at the state. In the United States, the targets of antinuclear litigation were much more diffuse. Centralized Sweden with its corporatist political system had significantly less antinuclear legal activity than the other three countries, which were roughly comparable. Germany was the only country in which the state took an active role in shaping the content of legal cases, and it was the only country where litigation became a critical factor in modifying national policy. Through these case studies, this article explores how contextual factors such as the political frames of nation-states, which exist apart from individual litigiousness and even apart from legal systems themselves may create particular cross-cultural variations in patterns of legal activity.

The amount, character, and impact of legal activity generated by the issue of nuclear power in the United States, West Germany, France, and Sweden provides evidence of a link between political structure and legal activity. This suggests that contextual factors existing apart from individual litigiousness and even apart from legal systems themselves create particular cross-cultural variations in patterns of legal activity, even in countries where legal systems are extensively incorporated into society.[1] In

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[1] Even in these relatively homogeneous countries, variations in legal activity flourish despite the shared commitment to a rule of law (Blankenburg 1994; Prichard 1988;

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this research, I provide an explanation for cross-national variation in legal activity based on two aspects of countries' "political frames": the degree of (*a*) state-society differentiation and (*b*) political centralization. I focus on the empirical case of antinuclear power litigation in the 1970s in the United States, France, Sweden, and West Germany. By highlighting political distinctions within these nation-states, my goal is to illuminate how aspects of political structure interact with legal systems to affect social change and to shape the actions of individuals in the legal sphere.

Although the four nation-states have important differences, in the 1970s, their nuclear power programs were very similar. The issue of nuclear power became controversial in each of them when the energy crisis brought to the fore the animosity between the burgeoning environmental movement and the scientific community (Price 1990:9, 20–25).[2] The four states all had strong commitments to nuclear power, and their proposed nuclear programs were comparable in size—one to two gigawatts of nuclear electricity generation per million population (Kitschelt 1984:61). Further, in each of the four nation-states, nuclear energy production was linked to nationalist sentiments regarding technological advancements and economic independence (Joppke 1993:32; Jasper 1990:68–69; Nelkin & Pollak 1981:21). In all four countries the issue of nuclear power was resolved by 1980. Despite these similarities, the character and effect of antinuclear legal activity differed a great deal across the nation-states.

Three of these differences in legal activity are notable.[3] Certainly the *amount* of legal activity is one issue to consider (Lieberman 1983; Markesinis 1990; Munger 1988; Friedman 1989; Olson 1991). The United States, West Germany, and France all had fairly high levels of antinuclear power litigation in the 1970s; Sweden had almost none (see Price 1990; Nelkin & Pollak 1981:155; Sahr 1985).

Atiyah 1987; Ietswaart 1990). Since economic development is necessary for legal institutions to attain legitimacy (Lipset 1994), the penetration of legal systems into society is most likely to occur in developed, democratic nation-states. While many studies focus on the question of the relationship between democracy, economic development, and legal activity (e.g., Giles & Lancaster 1989), this study focuses instead on those modern developed countries where legal systems *are* extensively incorporated into society.

[2] Owing to some unique aspects of nuclear power, caution should be used in broadly generalizing my findings. Because nuclear energy was closely associated with the production of nuclear weapons in some countries, it warranted more central control than other "new" issues. Further, the energy sector, with its highly technical aura, may be more or less prone to use legal activity than other sectors. Despite these cautions, this study represents a first step in understanding the nuances of the legal/political integration within countries.

[3] There are many differences in the nature of legal activity, ranging from the obvious (e.g., civil law versus common law distinctions; Merryman 1985) to the more subtle (e.g., rationales for the length of prison sentences; Frase 1990). I choose to focus on a sample of these differences—which relate to and inform other differences.

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State centrality in legal activity also varied.[4] While American antinuclear litigation challenged many different public and private targets, in West Germany, France, and Sweden, the state licensing agency was the focus of nearly all litigation (Price 1990; Nelkin & Pollak 1981:155, app. B; Sahr 1985). A related observation is that the West German state was the most active in directing antinuclear litigation—it passed specific legislation defining the standard for courts to apply in nuclear licensing decisions (Nelkin & Pollak 1981:159). The focus of litigation may represent a general difference among nation-states. In the United States, legal activity around particular issues is often initiated by a wide variety of claimants against an equally wide array of defendants. The central theme, if any, of case congregations is constructed by law professors or legal commentators—the cases themselves are not centrally organized in any sense. In countries other than the United States, the state, although independent of the judiciary, may more often be at the center of legal controversies.[5]

Finally, the *impact* of legal activity on policy is another factor that distinguishes legal activity cross-culturally.[6] Ironically, because of the vast cultural differences between the two countries, legal activity had very little effect on nuclear policy in either France or the United States. Since there was almost no legal activity in Sweden relating to nuclear power, policy change there must be attributed to other factors. Only in West Germany did a close nexus between legal activity and state nuclear policy develop. The purpose of the research reported here is to explain these three significant types of variation in legal activity.

A Theory of Political Frames and Legal Activity

The integration of legal systems and political frames means that political frames influence the ability and desire of individuals to engage in legal activity (see Boyle 1996; Heydebrand 1990; Kitschelt 1984; cf. Joppke 1993). This means that individual motivations (Lieberman 1983:6–7; see also Haley 1978), specific legal doctrine (Atiyah 1987), and lawyers (Prichard 1988; Olson 1991) are not the sole source of legal activity variations across nation-states. Earlier examples of this idea, as it relates to specific aspects of nation-state policy, are telling. For example, Soysal

[4] A "state" is the supreme public power within a nation-state. Actions by executives, legislatures, and state bureaucracies are all state action. Although presented in the singular tense as a matter of style, the "state" may refer to many levels of government combined. To maintain a distinction between political and legal activity, my references here to the state do not include the judiciary.

[5] Cf. Zhou (1993) for the role of the state in organizing social action.

[6] The exploration of this issue overlaps with the substantial body of sociological literature on the effectiveness of social movements (e.g., Kitschelt 1984; Della Porta 1996).

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(1994:5) demonstrates that the institutions of nation-states rather than the attributes of migrants' own conditions (customs, religions, etc.) structure state *and* migrant action (see also Dobbin 1994; Suchman & Edelman 1994; Meyer 1987). I argue here that the same can be said about resort to a legal system—individuals' use of a legal system depends on the political structure of the transcendent nation-state.

Political frames[7] organize legal activity as a mechanism of public policymaking. The political frames concept is derived from two related literatures: "political opportunity theory" (see, 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 (Evans, Rueschmeyer, & Skocpol 1985; Smelser et al. 1994; Badie & Birnbaum 1983), which focuses on state autonomy and state strength. Although one could cull many possible aspects of political frames from these theories, I choose to focus on two that appear to be particularly relevant in explaining cross-national variation in legal activity: state-society differentiation and the centralization of the political system.[8] While these two aspects of political frames are not empirically independent of each other, for purposes of this analysis it is useful to keep them conceptually distinct. In this section, I consider these aspects of political frames before turning to the actual country cases.

Researchers often "lump" legal and political systems together as the same independent variable and then use that combined variable to explain social mobilization, demonstrations, etc. This approach has been quite useful in understanding the organization of social movements, but because it does not distinguish conceptually political and legal systems, it has not explained differences in the character of legal activity across countries. Building on the theoretical foundation created by this literature, the research reported here makes a conceptual distinction between

[7] The concept "political frame" is distinct from Snow, Rochford, & Worden's (1986) concept of "master frame."

[8] 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 polities are becoming more society-centered, 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 surmises that attitudes have changed from "modern" to "postmodern." In terms of law and politics, this represents a liberalizing shift, 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 EC introduce fragmentation into traditionally unitary, centralized systems by adding a new level 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 Shinn 1985; Harrison 1987; Wiarda 1993).

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legal and political systems and asks how their interdependence influences the nature of legal activity.[9]

State-Society Differentiation

For historical reasons, the degree of differentiation between the state and civil society varies cross-nationally.[10] Low differentiation is characterized by a lack of clear boundaries between the state and civil society. In countries having such low differentiation, typified by the United States, public opinion is closely monitored and coupled to state policies (cf. Savelsberg 1994). Individuals are encouraged, formally or informally, to express their views on policy. Individuals' obligations to act as agents for other individuals or society as a whole is greater (see Meyer & Jepperson 1996). Smelser et al. (1994:64) characterizes these countries as giving "greater leeway to the posited intentionality of actors." Because of their importance in integrating state and society, the components of the state most closely linked to the public (e.g., the legislature) are dominant (see Kitschelt 1984:63; Kriesi 1995). Barkey and Parikh (1991:529) summarize the characteristics of minimally differentiated state-society nation-states by saying that, in that type of nation-state, civil society is invited to coordinate itself.

At the other end of the spectrum are nation-states with a clear differentiation between the state and society. In these nation-states, 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.[11] The flow of ideas comes from a state bureaucracy operating under a strong guiding principle of bureaucratic autonomy (see Aberbach, Putnam, & Rockman 1981; Suleiman 1974; Shefter 1994). When state-society differentiation is high, citizen action is more likely to be directed against the state than against another citizen (Smelser et al. 1994:67). France is the typical ex-

[9] Specific differences in legal procedures and organization are both derived from, and bound by, the political structure and culture of countries so that specific legal differences tend to be consistent with differences in political culture. This is not a perfect correspondence, and one could theorize the relationship between political cultures, legal organizations, and specific legal rules (see Van Loon & Langerwerf 1990).

[10] This is one component distinguishing "strong" from "weak" states (see Smelser et al. 1994).

[11] As Wendy Espeland (1994) points out, the state, through bureaucracy, can create as well as represent interests.

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ample of a nation-state with a high level of differentiation between the state and society.

Nation-states exist on a continuum, with the extreme degrees of differentiation anchoring the two poles. In between the two poles are nation-states in which complete 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 the authority by the state to represent societal interests within their respective categories (Schmitter 1979:93–94). 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 by conflating state and private social spheres and allowing society formal access to the policymaking function of the state (Smelser et al. 1994:66). However, the resulting organization of societal interests and input does allow the state to maintain more control over society than does a purely pluralistic system. The Scandinavian countries are models of corporatism, and Germany is often typified as neo-corporatist (Katzenstein 1987).

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, 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 a dichotomous distinction.

In addition to federalism, decentralization is also evidenced within levels of government. This is called "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). Where horizontal fragmentation is extensive, intragovernmental disputes over policy are more common (see,

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e.g., Hamilton & Sutton 1989). Decentralization tends to impede state control over the economy (Griffin 1991).

Methods

Nations are the unit of analysis in this article. I chose to study the United States, West Germany, France, and Sweden because of their political similarities (they are all industrialized democracies with independent judiciaries) and because of their political differences (they vary in terms of centralization and state-society differentiation) (see Table 1). The political differences among the four countries are described in the appendix, and have been discussed at length by other scholars. The strategy of the case studies I report on here (see Kohn 1989) is to discern whether decentralization and state-society differentiation are pertinent analytic variables in explaining the amount, the focus, and the effectiveness of legal activity.

Table 1. Democratic Nation-States with Differing Political Frame Dimensions

	Centralized	**Decentralized**
High State-Society Differentation	FRANCE • State bureaucracy determines collective good on behalf of public • Suspicion of elected officials and litigants because of ties to special interests • Centralized state stands uniformly behind policy	
Moderate State-Society Differentiation	SWEDEN • State and public representatives negotiate the definition of the collective good • Formal representatives of civil society have input into policymaking • Centralized state makes political solutions possible	GERMANY • State and public representatives negotiate the definition of the collective good • Formal representatives of civil society have input into policymaking • Consensus building across levels is important because decentralization leaves policies vulnerable to criticism
Low State-Society Differentiation		UNITED STATES • Public is the source of the collective good • Open channels of public expression directed at many targets • Fragmented state makes political solutions difficult

Given the limited number of cases, these case studies cannot provide a statistical test of ideal types, but they can pave the way for such statistical analysis in the future. The case studies approach adopted here allows the identification of the multiple

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causal influences on legal activity and the fine tuning of conceptualizations of political systems and legal activity, so that later research can thoughtfully and precisely operationalize those concepts.

I consider the course of legal activity (in the form of litigation) relating to nuclear power in the 1970s in each of the four countries. The information was derived from books, articles, and legal cases that discuss nuclear power in the 1970s. Using askSam computer software, I created a detailed time line of political and legal activity relating to nuclear power. This systematized summary of the material provided a check for discrepancies in the historical accounts and allowed me to evaluate the order of, and lag between, events. To supplement this analysis, I also searched the Lexis-Nexis online computer service for any legal cases relating to nuclear power in the two countries for which such data were available (the United States and France). I used the same Boolean search in the appropriate language in each of the French and English databases. For German and Swedish cases, I conducted an index search of reported decisions of the administrative appeals courts.

Antinuclear Legal Activity in the United States, West Germany, France, and Sweden

The connection between political frames and legal acativity is suggested by the amount, character, and impact of legal activity generated by the issue of nuclear power in the United States, West Germany, France, and Sweden provides evidence of a link between political frames and legal activity.[12] During the decade of the 1970s, legal activity over the issue of nuclear power looked quite different in the four countries. Contrary to popular notions about the excessive litigiousness of Americans, France, Germany, and the United States actually had similar amounts of nuclear power litigation. Sweden had much less legal activity than the other three countries—only two cases during the decade. In all of the countries but the United States, legal activity was directed almost exclusively at the state. In Germany and Sweden, the states took more active roles in coordinating the input of civil society than in the United States. In France and the United States, there was less of a nexus between state action and court cases. While the state commitment to nuclear power was undermined in three of the four countries during the 1970s, only in Germany did legal activity appear to play a central role in policy change. Below, I consider the extensiveness of, and state relation to, legal activity within each country.

[12] Here I do not discuss the already well-researched topic of cross-national social movements or violence in the antinuclear power movements. For detailed expositions on the latter topic, see Kitschelt (1984), Nelkin & Pollak (1981), and Sweet (1977).

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The energy crisis was international, resulting from the actions of Arab oil-exporting nations (Sahr 1985:15). Because the issue of nuclear power was linked into the international arena, the strategies of antinuclear activists did not develop independently (e.g., the Friends of the Earth organization played an important role in each of the countries; Joppke 1993:32, 39; Jasper 1990:144). Nor were state policies completely independent of one another. For example, the Swedish government closely monitored a California referendum on nuclear power before holding a referendum of its own (Jasper 1990:144). National differences in legal activity are all the more interesting because they occurred in the midst of an international discourse relating to antinuclear strategies and state responses.

The United States: Decentralized State Penetrated by Civil Society[13]

In the United States, the legal system provided an important mode of access to the policymaking arena for members of civil society. The U.S. state exercised less control over nuclear power than in the other three countries, leaving more of the development to private economic interests. Consequently, the state was often not the focus on antinuclear power litigation. Factions within the state recruited private interests to engage in litigation to promote particular perspectives within the state bureaucracy. Legal activity was a conscious and important strategy for opponents of nuclear power, providing a forum for them to shape the "public good." U.S. decentralization also played a role by spurring internecine governmental fighting over nuclear power, making U.S. nuclear policy vulnerable to attack. These attacks were further fueled by the relative centralization of the nuclear bureaucracy compared with typical U.S. bureaucracies. Overall, legal activity in the United States was extensive, diffusely targeted, but ultimately only incidental in changing nuclear policy.

Delegation of responsibility to civil society characterized the nuclear bureaucracy in the United States. From its inception in the 1950s, the U.S. bureaucracy did not build or manage nuclear facilities—it was legally prohibited from owning nuclear reactors (Jasper 1990:45). Private entities, endowed with public funds, were the primary developers of nuclear energy in the United States. The susceptibility of the U.S. nuclear bureaucracy to the pressures of civil society was further reflected in its constant reorganization. Within the federal government, the organizational control over nuclear power resembled bureaucratic musical chairs. The Atomic Energy Commission (AEC), an executive agency which worked closely with the Senate-House Joint Com-

[13] Secondary sources for information on nuclear power in the United States in the 1970s included Price 1990; Joppke 1993; Jasper 1990; and Kitschelt 1984.

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mittee on Atomic Energy (Joint Committee), was responsible for nuclear power in the 1950s and 1960s, but was replaced in 1974 by the Environmental Development and Regulatory Agency of which a subagency was the Nuclear Regulatory Commission. Responding to public complaints regarding nuclear policy, Congress once again changed the authority in the late 1970s, replacing ERDA with the Department of Energy (see Price 1990). While the nuclear bureaucracy in the United States may have sided primarily with the developers of nuclear energy in a manner consistent with the other countries in this analysis (see Jasper 1990; Joppke 1993), unlike the nuclear bureaucracies in other countries, the U.S. bureaucracy was a relatively weak player.

While French bureaucrats have been characterized as "standing aloof" from society (Smelser et al. 1994), the same cannot be said for U.S. bureaucrats. In the United States, government experts appeared to see themselves as both government employees and empowered members of the civil society. For example, in 1963, at the request of the AEC, Arthur Tamplin and John Gofman conducted studies of the health risks of exposure to low levels of radiation. Later, they became open dissenters to AEC policy and cooperated in the rising citizen opposition (Joppke 1993:27; see also Jasper 1990:45, 110). The alignment of experts, the receptiveness to bureaucratic organization, and the delegation of many functions of the U.S. nuclear program to private individuals demonstrate the weak state-society differentiation that is characteristic of the U.S. political system.

The inseparability of the state and civil society in the United States is also evidenced by U.S. courts' unique approach to "standing" in environmental cases (see Greve 1989; Nathanson 1996). Standing rules determine which parties have a sufficient interest in a legal claim to warrant those parties bringing that claim before a court. In the 1960s, it was typical to grant parties standing only if they would be directly affected by the outcome of a case. In general, this excluded cases brought on behalf of the environment. The reasoning was that it was not appropriate for private individuals to bring actions on behalf of the public good—such policy actions would infringe on the political function of the state. This basic limitation on standing has been maintained in the other three countries, but was substantially eroded in the United States during the 1970s (Greve 1989). Liberalizing the standing laws in the United States further weakened the differentiation between the state and civil society, allowing private individuals the opportunity to develop the "public good" specifically within the forum of the courts.

The interpenetration of state and civil society contributed to an extensive amount of nuclear litigation in the United States. Many individuals and associations acted independently to affect nuclear policy. Others were explicitly recruited by government

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factions to bring lawsuits to lend credence to particular positions on nuclear power. For example, when the AEC ignored its own advisory committee's recommendation not to license the Enrico Fermi nuclear plant located near Detroit, the Joint Committee encouraged several labor unions to intervene in the administrative hearings (Jasper 1990:108; Joppke 1993:27). The advisory committee then collaborated with the Joint Committee to solicit legal intervention from the unions. When the AEC approved the permit to operate the nuclear facility despite the objections of the unions, the unions appealed the decision, first, to the U.S. Court of Appeals for the District of Columbia, and ultimately to the Supreme Court (*Power Reactor Development Co. v. International Union of Electrical, Radio, and Machine Workers* 1961). This type of recruitment by the legislature to attack the policies of the executive would be much less likely under the parliamentary systems of the other three countries. Under a parliamentary system, the legislature selects the executive so that the two branches of government tend to constitute a united front against special interests in society.

Both official nuclear policy and private nuclear facilities were confronted with civilian opposition through the legal system. Intervention in nuclear facility licensing procedures was higher in the United States than in any of the other three countries (Kitschelt 1984). Between 1970 and 1972, 73% of nuclear license applications were legally contested (Joppke 1993:31). An association, Consolidated National Intervenors, was formed for the specific purpose of intervening in AEC hearings. Providing input into the regulatory process became a regular strategy of the antinuclear movement.

Litigation against a broad array of defendants was also an important strategy for opponents of nuclear power. Why talk to a politician about a political solution to nuclear power when the threatening nuclear facility is not owned, even in an indirect sense, by the government? Dealing directly with the owner through litigation is likely to be a more effective option. Figure 1 shows the number of published federal appeals court decisions in the United States during the 1970s in relation to the orders for nuclear power plants. Legal activity regarding nuclear power occurred sporadically. The data suggest that there was no direct relationship between the construction of nuclear plants and litigation because litigation does not form clusters in intervals following the construction dates. Although the number of reactors being built was decreasing by the late 1970s, the sporadic but high level of litigation continued. Federal legislation relating to nuclear power, passed in 1974 (reorganizing the nuclear bureaucracy) and 1978 (relating to nonproliferation of plutonium), also does not seem to prompt legal activity. Individuals and associa-

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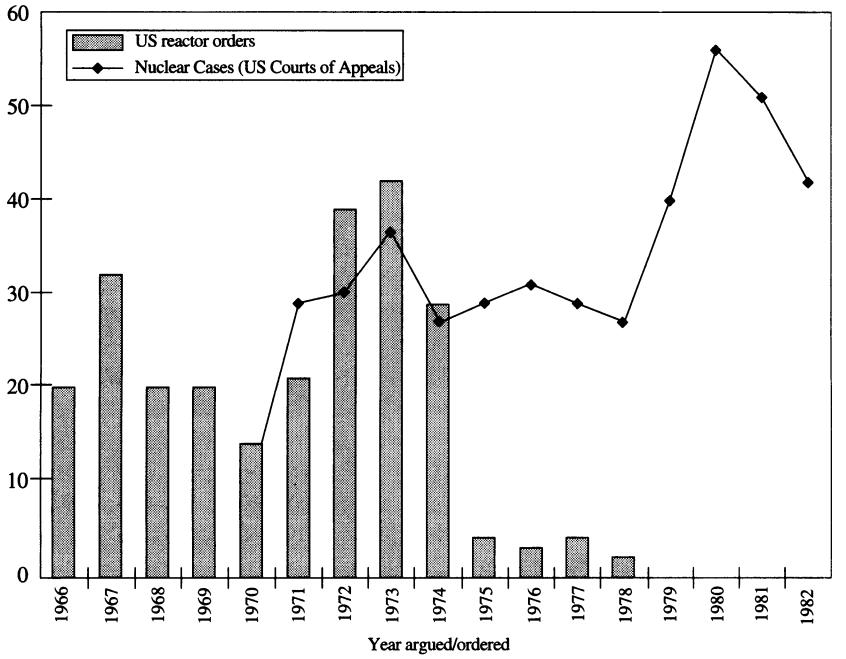

Fig. 1. Nuclear cases argued before the U.S. Courts of Appeals, 1970–1982, and U.S. nuclear reactor orders, 1966–1982.

tions, through the courts, operated independently of the administration to push their own nuclear agenda.

The content of nuclear litigation was not centrally organized by the state in the United States. A few examples demonstrate the breadth of topics and parties involved in nuclear power litigation.[14] In 1975, Ralph Nader brought suit in federal court to shut down all nuclear facilities operating in the United States. Businessmen and Professional People in the Public Interest and the Izaak Walton League temporarily obtained a judicial stay against a Bailly, Indiana, nuclear plant. The National Public Radio Corporation filed a freedom of information lawsuit against the U.S. Justice Department, and the parents of Karen Silkwood sued Kerr-McGee Corporation, which owned the plutonium reprocessing facility where Silkwood had worked (Silkwood was killed in an automobile accident shortly after reporting regulatory abuses at the facility) (see Price 1990). In terms of diversity, U.S. civil litigation was unparalleled.

Decentralization also played a role in the course of antinuclear legal activity in the United States. In one of the first antinuclear lawsuits filed in the country (*Calvert Cliffs Coordinating Committee v. AEC* 1971), a federal appeals court took the AEC to task for ignoring the rules of an unrelated bureaucratic agency, the National Environmental Protection Agency (Joppke

[14] For more specifics on lawsuits, see Wenner (1982), who analyzed more than 50 such cases, mostly brought by antinuclear activists. See also Cook 1980.

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1993:33). Intragovernmental squabbling did not end there as *Calvert Cliffs* was followed shortly by the U.S. Supreme Court ruling in *Northern States Power Company v. Minnesota* 1972. In *Northern States Power* the issue was whether states had the right to regulate nuclear plants within their borders without the explicit delegation of authority by the AEC. The court rejected Minnesota's arguments, but other states persisted in taking legal action, eroding the precedent set in *Northern States Power* by the end of the decade (Jasper 1990:59). An important theme of these cases was that the vesting of the nuclear program with a single bureaucracy at the federal level went against the American commitment to decentralization. The centralization of the nuclear bureaucracy was also contested in Germany. The German and U.S. cases suggest that the contradiction between federalism in theory and centralization in practice may be at the core of much political litigation in decentralized countries.

States responded to the federal exercise of power in the nuclear energy sphere by devising their own strategies with respect to nuclear power. California was at the forefront of this activity, placing a referendum on the ballot in 1976 that would have significantly curtailed the siting of nuclear plants in the state. The initiative lost by a vote of two to one. Six similar referenda proposed by other states were likewise defeated (Jasper 1990:206–7). Again internecine governmental conflict contributed to the lack of a consistent national policy toward nuclear power, making public initiative on the issue particularly important.

In the United States, litigation may have contributed to the decline of nuclear power, but it does not appear to have been a central factor. Most commentators attribute the decline to high construction costs, decreasing electricity demand, and a handful of other factors (see, e.g., Joppke 1993:35; Campbell 1988:9). No court cases in the United States changed the course of nuclear policy. The picture of legal activity around the issue of nuclear power in the United States in the 1970s shows high levels of legal activity coming from many different sources, aimed at many targets, and not closely linked to policy change.

France: Centralized, Differentiated State[15]

The French state successfully marginalized antinuclear legal activity. In France the central state formally and constitutionally controlled both the nuclear industry and national nuclear policy. The extent of the power of the French executive in regulating nuclear power was so extensive that the French National Assembly did not act at all regarding nuclear power during the 1970s.

[15] Secondary sources for information on nuclear power in France in the 1970s include Jasper 1990; Nelkin & Pollak 1980, 1981; Kitschelt 1984; Lucas 1985; Rucht 1994; Boyle & Robinson 1987; Touraine 1983; Hatch 1986.

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As remarkable as it seems to Americans, in France there was no legislation relating to nuclear power—the issue was entirely under administrative control (Nelkin & Pollak 1981:159).[16] A coalition government maintained Giscard d'Estaing as president from 1974 to 1981 (Jasper 1990:251). D'Estaing was a strong supporter of nuclear power, viewing it as a way to integrate France into the global economy.

Two executive agencies in France oversee nuclear policy. The first is the Commissariat à l'Energie Atomique (CEA), which is responsible for research and development. The second is Electricité de France (EDF), a state-owned utility. A single commission coordinates the activities of the CEA, EDF, and all other entities that might be involved in the production of energy in France (i.e., the Ministry of Industry, the Ministry of Finance, the Ministry of Planning, and the directors of major power companies) (Nelkin & Pollak 1981:12–14). Unlike the nuclear bureaucracies of the other nation-states, EDF took strong steps to control both the construction and the operation of nuclear plants. EDF's general director told colleagues in the 1970s, "The French government does not have an energy policy. I am obliged to have one in its place" (Jasper 1990:91). The initiative for almost all aspects of the nuclear program in France came from EDF.

Consistent with the characterization of high state-society differentiation, the French nuclear bureaucracy was highly insulated from public opinion. In France, interests are generated more within the state than within political parties (Nelkin & Pollak 1981:40). By 1969, the initial implementation of French nuclear expansion had not prompted any public debate (Nelkin & Pollak 1980). The French bureaucracy adopted the perspective that if the French people really understood nuclear power, then they would see that it was in the public interest. Detractors were labeled enemies of the state and could not legitimately affect policy outcomes (see Touraine 1983). In 1974, a major expansion of France's nuclear program was announced as a fait accompli, leaving no opportunity for meaningful parliamentary action (Nelkin & Pollak 1981). Further, in France, complaints were registered in writing rather than at public hearings. As a result, comments were not taken as seriously as in the United States nor could citizens convert their comments into media events (Jasper 1990). All these barriers impeded political solutions for French activists.

The culmination of activism in France during the decade provides additional evidence of the stark differentiation between the state and civil society. A major turning point in the anti-nuclear power movement occurred in the summer of 1977 when 10,000 demonstrators occupied a nuclear facility at Creys-

[16] France did pass environmental legislation requiring environmental impact statements for certain projects, but that legislation did not directly relate to nuclear power and was not passed until 1976.

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Malville. The French police used tear gas and concussion grenades to clear the site. One person was killed and five were seriously injured. Many others suffered from minor injuries (Jasper 1990:237–39). For most French officials, the antinuclear movement consisted of criminals who deserved the harsh treatment they received in the conflict. Rather than changing state policy, the violence at Creys-Malville had the effect of intimidating protesters. Note in Figures 2 and 3 below how legal cases leveled off in France after 1977. Not coincidentally, Creys-Malville was the last significant antinuclear demonstration in France during the period studied.

The impenetrability of the French state seeped into the court system in the form of standing rules. As noted above, U.S. courts adopted an expansive interpretation of the legal right to sue. In contrast, the French courts interpreted standing in the most narrow sense. Individuals and associations could not bring lawsuits on behalf of the public good (see Nathanson 1996). Consequently, French lawsuits tended to focus on procedural irregularities in licensing procedures. U.S. lawsuits, on the other hand, and German lawsuits, to some extent, were more likely to focus on safety, rights, and the public welfare. In other words, French lawsuits were less substantive (see Bauer, Puiseux, & Teniere-Buchot 1976). French courts had a tendency to dismiss cases, so although similar numbers of cases were filed relative to the number of nuclear reactors, French courts decided fewer claims than either U.S. or German courts (see Campbell 1988:141). In France, the timing of a claim in administrative court is very important (Nelkin & Pollak 1981:160). If the bureaucracy—the EDF—argued that no work requiring a permit had begun at a facility, the permit could not be challenged in administrative court. A number of court cases were summarily dismissed because the plaintiffs filed complaints too early. The paradoxical effect of this ripeness requirement was that work was typically substantially underway before ecologists could take any legal action. French courts would refuse to hear cases filed too early, but were also loath to consider seriously cases filed after substantial work had been undertaken.

Another consequence of the strict interpretation of standing rules was that French cases dealt exclusively with recovering damages from the state for individual injury (e.g., when the state knocked down a farmer's fence) or questioning whether all the proper procedural steps had been followed correctly in licensing nuclear facilities. The only French cases that went directly to the propriety or potential harms of nuclear power related to pollution of the water table at two nuclear research centers. A court-appointed committee determined that the research centers were responsible for the pollution, but the penalties imposed were minimal (Nelkin & Pollak 1981:161). As a result, legal cases took

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on the innocuous tone of the grinding of everyday bureaucracy. More for political than for legal reasons, the Council of State, France's highest court, was unwilling to strike down administrative policies (Gleizal 1980). For all of these reasons, throughout the 1970s, EDF never lost a significant case.

In France, the relationship between legal action and state action was minimal. Lawsuits were brought primarily against the state because the state had tight control over the entire nuclear sector (see Nelkin & Pollak 1981:app. B), but the state never directly involved itself in the content or course of legal activity. Figure 2 illustrates the responsiveness of legal activity to state orders for more nuclear facilities. Assuming some lag time before cases could be heard by the Council of State (the French administrative law appeals court), lawsuits closely track state action in ordering more nuclear facilities. Despite their lack of legal success, the French people brought as many lawsuits per nuclear reactor as their counterparts in the United States during the 1970s (see Figs. 3 and 4). Political sociologists have found a parallel effect for activism when state and society are highly differentiated—activity is generated even when it is unlikely to be successful (see, e.g., Smelser et al. 1994). Litigation (or activism) in this context is expressive and signals the frustration of members of civil society with state policies. The extensive number of French cases may also have resulted in part from the diffusion of antinuclear strategies internationally. French activists were likely aware that a litigation strategy had been adopted by United States and German activists.

The political structure in France was crucial in limiting independent legal action. A powerful executive minimized the im-

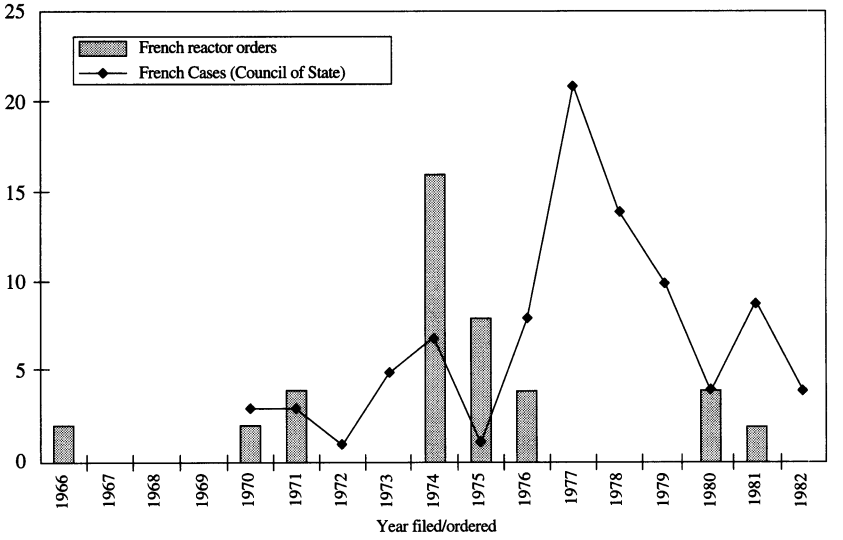

Fig. 2. French nuclear cases argued before the Council of State, 1970–1982, and French nuclear reactor orders, 1966–1982.

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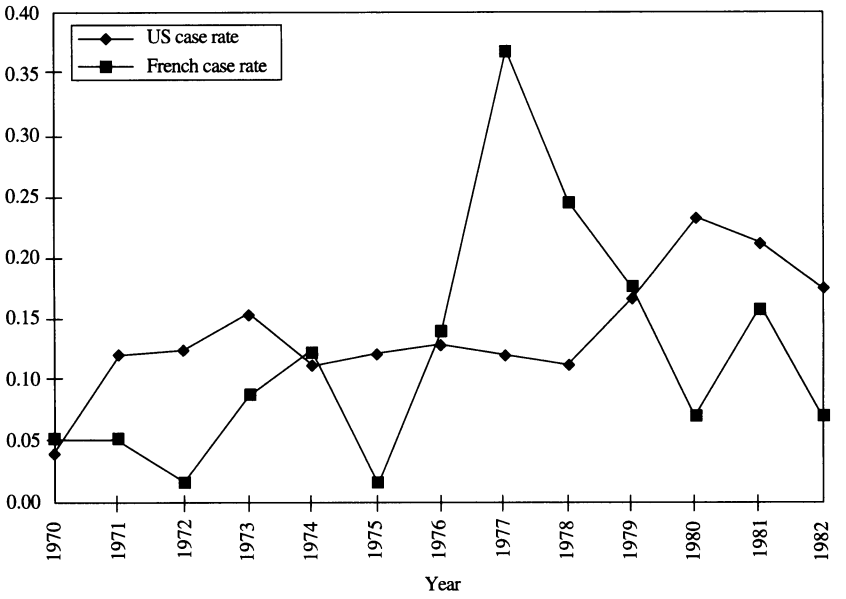

Fig. 3. Rate of U.S. and French nuclear cases in appeal court per million population in the country.

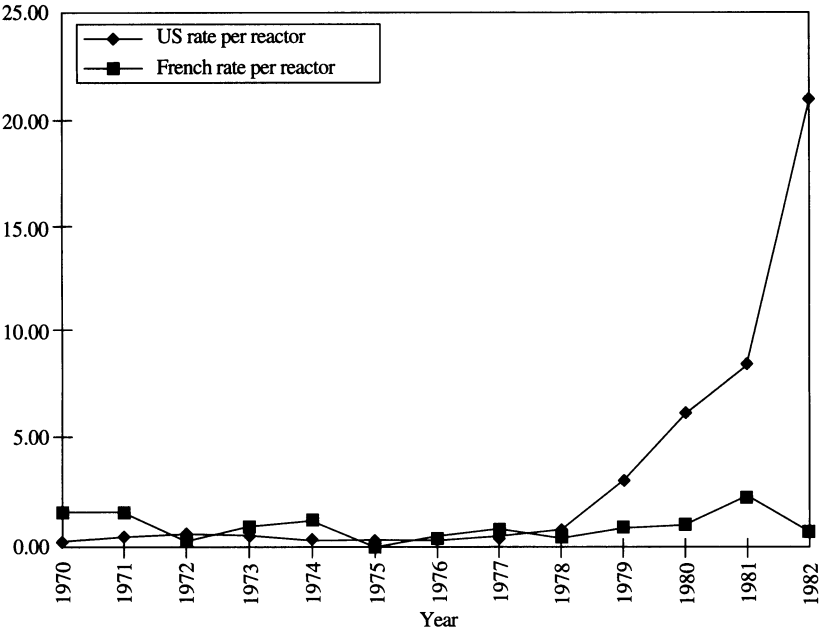

Fig. 4. Rate of U.S. and French nuclear cases before appeal courts per nuclear reactor order during the previous four years, 1970–1982.

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pact of civil society on policy. This was accomplished in part by the absence of any legal statute with clearly stated guidelines for nuclear reactor safety. The absence of any sign from the legislature made the courts' role clear—to support the bureaucracy. There were no successful lawsuits against the government regarding nuclear power.[17] Rather, the EDF, as a "powerful bureaucracy with monolithic control over nuclear policy," took full responsibility for the development of nuclear reactors (Nelkin & Pollak 1981:163). Under these circumstances the role of judicial review was naturally quite limited. France is the only one of the four countries that still maintains a strong nuclear energy program today.

West Germany: Decentralized Corporatist State[18]

Both Sweden and Germany have states that are moderately differentiated from society. In contrast to the United States, political parties are key players in German and Swedish politics (Joppke 1993:121; Nelkin & Pollak 1977). West German civil society was a territory of party competition, and the parties had important public authority in the state. In contrast, the penetration of civil society into the state necessitated a policy reaction to public antinuclear sentiment in both Sweden and Germany, and this requirement was exacerbated in Germany by its decentralization. Because the link between the state and civil society is more formalized in these countries than in the United States, the state can exercise considerable control over how civil society participates in policymaking in some areas. In Germany, courts became the forum for this participation. In Sweden, the state created several political alternatives to litigation, effectively preempting legal activity.

With respect to nuclear power, the West German state initially adopted an authoritative style of imposing nuclear policy on society rather than a compromise style designed to reach consensus (Dyson 1982:18).[19] The German state maintained a strong front against the antinuclear power movement in three ways. First, the organization of the energy industry in Germany allowed the state to keep control of the issue even after dissensus emerged. While over a thousand local utilities sell power in Germany, in reality a few large utilities supply most of the power (Nelkin & Pollak 1981). These utilities are not all under com-

[17] One case was temporarily successful: In its haste to obtain a license, the EDF failed to comply with a minor procedural requirement. As a result of the case, the EDF reapplied for a license and the application was approved.

[18] Secondary sources for information on nuclear power in Germany in the 1970s include Joppke 1993; Nelkin & Pollak 1980, 1981; Sweet 1977; Hatch 1986; Kitschelt 1984; Wagner 1994; Lucas 1985.

[19] Dyson indicates that in other areas, the German state often takes less of an authoritative style.

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mon control but rather are indirectly and diffusely controlled by either a state or the federal government. Thus, although the state is fragmented, it manages to exercise significant control over energy policy.

Second, the state emphasized its neutrality (*Überparteilichkeit*) as the arbiter of the nuclear issue. For example the Science Minister in 1972 claimed: "The federal government is not a party to the dispute between supporters and opponents of nuclear energy, but the independent advocate of the common good" (Dyson 1982). The German government suspected that the positions of the various parties were self-interested (see Greve 1989). This is reflected in the comment of another high federal official who claimed that citizen groups could only approach the issue of nuclear power on a case-by-case basis while the state could deal with energy issues in a more programmatic way (Joppke 1993: 46). In 1974, the federal minister for research and technology began a nationwide information and dialogue campaign designed to make German citizens comfortable with nuclear power (Joppke 1993:100).[20] The German state saw itself as the legitimate representative of the public good.

Finally, the differentiation of the German state was also evidenced by the police response to demonstrators. Law enforcement is reserved to the states (*Länder*) in Germany. Each state maintains its own police force, which is charged with all phases of enforcement (Della Porta 1996). Repressive measures employed by Schleswig-Holstein state police at Brokdorf in 1976 marked a new intensity in the political conflict over nuclear power (Nelkin & Pollak 1981:64). The central government, which was controlled by the SPD party, realized the political advantage it could gain by condemning the actions of the state CDU-led state government. Taking the moral high ground, the central German Bundestag in 1976 passed legislation providing that nuclear facilities could only be licensed after all possible safety precautions had been taken (Nelkin & Pollak 1981:159). This legislation had the effect of delegating the substantive licensing issues to Germany's administrative courts. The centralization of the German nuclear bureaucracy conflicted with the federal model of the German state and created a weakness that opened the door for antinuclear legal contests.

Katzenstein (1987:361) has characterized West Germany as having a decentralized state and a centralized society. The state's decentralization provided an institutional opportunity for input from the differentiated civil society (see Joppke 1993:121). State decentralization made the nuclear bureaucracy in West Germany susceptible to attack, but the differentiation of the state from civil

[20] In the United States, education came from the private nuclear industry through a media campaign (Joppke 1993:33).

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society initially discouraged private Germans from asserting authority to act for the public good in the courts. The courts ultimately became more important actors, not because of individual initiative emerging from society, but rather because of the state's failure to maintain consensus among the institutional players:

> But the driving force of this assault was not so much the anti-nuclear movement itself as the increasing dissension among institutional actors over nuclear policy . . . . In response to the withering of nuclear consensus *in the political arena*, the administrative courts emerged as independent players. (Joppke 1993:121; emphasis added)

An important change came when the German state legislated a more substantive standard of review in licensing cases in 1976. Then lawsuits became the strategy of choice among nuclear opponents.

In addition to state-society differentiation, decentralization also played a role in Germany's legal activity. Germany established a Ministry of Atomic Energy and an Atomic Energy Commission in 1955. From 1955 until the first nuclear reactor was commissioned in 1968, the nuclear issue was defined as research policy, and the policy community consisted solely of the reactor construction industry, on the one hand, and the federal economics ministry, the federal financial ministry, and electricity supply companies, on the other. Once the siting and construction of reactors got underway, state and local governments became interested parties, and the vertical fragmentation of the political structure allowed dissensus to emerge. State governments were divided over how to implement a nuclear program and occasionally at odds with the federal government (Nelkin & Pollak 1980).

Intragovernmental conflict was not limited to states versus the federal government. Ministries, such as the Interior Ministry, which had previously been inattentive to nuclear power, now saw the nuclear issue as relevant to their concerns. Execution of environmental acts, even of federal origin, is mainly incumbent on state authorities. This sometimes results in varying administrative practices in different states. Raising the environmental aspects of nuclear power also set up conflicts within the federal government. The Economics Ministry and the Research Ministry thought nuclear power was imperative for a strong Germany, while the Interior Ministry did not (Dyson 1982). When the nuclear program emerged from the West German research laboratory and headed toward actual implementation, the German states and previously uninterested ministries within the federal government became a part of the picture, and intragovernmental conflict erupted.

One major critique of the nuclear bureaucracy was that the actual implementation of nuclear power was not an issue for the central state. Issues of national defense are traditionally within

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the purview of the central government in Germany, but Germany was unable to develop a domestic nuclear weapons program (Joppke 1993:38). The lack of a military goal for nuclear research made the centralization of Germany's nuclear energy policy susceptible to constitutional challenge (see Sweet 1977). The contested and divided nature of German bureaucracy made its policies vulnerable to attack, legal or otherwise:

> The German decentralized decision-making context has provided ecologists with greater political opportunity, because they can play one administration against another. In a politically controversial area such as nuclear policy, each administrative and political level tends to delay decisions and shift responsibility. . . . The result is a dilution of responsibility and authority. (Nelkin & Pollak 1981:179)

In attempting to impose a nuclear program from above, the German government raised serious constitutional questions, providing the antinuclear power movement with important institutional remedies. The courts became the forum to take up these concerns (Joppke 1993:121).

Legal activity in West Germany occurred directly in response to state action. During the 1970s, nearly every nuclear facility siting decision was challenged in administrative court (Nelkin & Pollak 1981; Greve 1989). After a single, isolated victory in 1972, the courts were largely nonresponsive to the opponents of nuclear power until the federal government acted in 1976 (Joppke 1993:92–93, 116–17). Nevertheless, more than 100 court cases dealing with nuclear power were brought prior to 1980 (Greve 1989, citing Albers 1980). Unlike the United States, where numerous side parties litigated numerous side issues, in Germany, the court cases dealt almost exclusively with licensing issues (Nelkin & Pollak 1981:app. B). The German bureaucracy absorbed some potential lawsuits by dealing with many licensing issues administratively. Consequently, Germany had fewer cases challenging the construction of nuclear facilities than either France or the United States (Nelkin & Pollak 1981:157).

Up to 1976, legal action was generally ineffective. After the new legislation was passed by the Bundestag in 1976, court decisions became more substantive in character and more critical of nuclear power. The courts responded not only to the actual terms of the new legislation but also to the sentiment expressed through its passage. The effectiveness of the antinuclear movement in Germany has been attributed to activist courts (see Joppke 1993:117; Nelkin & Pollak 1981:159; Greve 1989). Overall, legal cases had a bigger impact on nuclear policy in Germany than they did in the United States, where the demise of the nuclear program has been attributed primarily to economics.

In sum, intragovernmental lawsuits did not occur in West Germany, although various branches of the state did engage in

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open conflict outside the courts (Joppke 1993:38). Antinuclear power litigation was extensive in Germany and was directed primarily against the state. Unlike the United States where the state was too weak to guide the course of litigation or in France where the state was strong enough to simply ignore litigation, the most notable aspect of German litigation was that it seemed to track state initiatives. Perhaps because of this close nexus between the state and "private" litigation, legal action appeared most influential in limiting the spread of nuclear power in Germany.

Sweden: Centralized, Corporatist State[21]

While Sweden had much individualistic activity, it did not arise in legal arenas or in demonstrations. Despite popular opposition to nuclear power (see Campbell 1988:163), Swedes filed neither substantive claims as in Germany nor nuisance claims as in France. Rather, the organized openness of the state (Kitschelt 1984) guided individuals into constructive understandings of nuclear power and provided voice through political forums. Sweden's strong centralized system and corporatist style of politics resulted in a nuclear bureaucracy that effectively preempted any burst of legal activity. There appear to have been only two legal cases relating to nuclear power in Sweden.[22]

The Swedish government's control over nuclear power was more extensive than in Germany, coinciding with its greater centralization, but more indirect than in France.[23] ASEA-Atom, owned jointly by the government and ASEA (the Swedish General Electric Company, a private company), had a monopoly over the building and selling of reactors (Campbell 1988:129). When the Swedish parliament published a study in 1972 estimating that 13 more nuclear reactors would have to be built by 1990, the initial response was a lawsuit by an environmental group opposing the construction of a nuclear plant near Ringdals, and collaboration between the centralized Friends of the Earth organization and local citizens to thwart plans to build a nuclear facility outside Stockholm (Nelkin & Pollak 1977:342). This background

[21] Secondary sources of information on nuclear power in Sweden in the 1970s include Sahr 1985; Nelkin & Pollak 1977; Jasper 1990; Kitschelt 1984; Lucas 1985; Flam with Jamison 1994.

[22] An absence of cases is inherently difficult to substantiate. I draw this conclusion from an extensive review of the literature and an index search of published Swedish cases.

[23] Within the Ministry of Industry, the Swedish Nuclear Power Inspectorate regulated safety, and the State Power Board, responsible for producing 45% of Sweden's electric power, supplied power on the basis of commercial criteria. A number of government agencies were involved in research and development, and the government was a 50% owner in ASEA-Atom, a company that built nuclear reactors. Outside the government, a number of private organizations were influential in directing nuclear policy, including the Swedish Federation of Industries and the Swedish Organization of Crafts and Small Industries. See Sahr 1985. Like Germany's, the Swedish system was characterized as a cooperative association between state and industry.

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to a 1974 public opinion poll suggesting that half the Swedish population opposed the construction of more nuclear plants spurred the state into preemptive action.

As in Germany, antinuclear sentiment focused on the state. Unlike Germany, this sentiment was dealt with in the political rather than the legal sphere. The Swedish state is very sensitive to public attitudes. The society-centered nature of the Swedish polity was apparent in the Swedish government's responses to the public's dissatisfaction with nuclear power. Scientists and other experts played a relatively minor role in the Swedish nuclear debate (Campbell 1988:162). Initially, the government experimented with societal participation as an effort to broaden public interest in the nuclear issue. The state organized "study circles" in which over 80,000 citizens participated (Campbell 1988; Nelkin & Pollak 1977). The system of study groups is managed by the political parties and major popular organizations (such as labor unions). Each circle has 10 to 15 members who meet together for at least 10 hours total. While nuclear policy had been considered only within the ministries prior to 1974, the study circles opened the discussion to the public so that the state would hear from "the diverse ideological viewpoints of political and social interest groups" (Nelkin & Pollak 1977). There was some hope on the government's part that through citizen participation, nuclear power could come to be perceived to be in the economic interests of the working class. Broader participation was also a means to meet potentially disruptive criticism of the centralization of authority. Participation is a practical means both to implement technological policies and to reinforce political stability. While the study circles did little to make Swedes feel more positive about nuclear power, they did have the effect of minimizing nuclear power litigation.

Other nonlegal solutions addressed controversial issues not dealt with by the study circles. Like the study circles, these were also derivative of the formal incorporation of civil society into the Swedish state. First, citizens in Sweden had more access to government information than in the other three countries. While the United States is also fairly open in terms of making information public, its Freedom of Information Act provides significant exceptions to complete openness (Campbell 1988:163). Because of its accessibility, information did not leak out in spurts in Sweden, and that minimized the shock value of new information. Second, in Sweden, the state required the approval of the local municipality before locating nuclear reactors (Jasper 1990:72). In the other countries, placement was a particularly important source of controversy. Finally, unlike the equally centralized French state, the Swedish state closely linked its nuclear bureaucratic agencies to parliament and major interest groups by including representatives from those bodies on the agencies'

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boards (Nelkin & Pollak 1977). Working in combination with the study circles, open access, local approval, and bureaucratic representation diffused much of the conflict around the placement issues.

The only litigation following the 1972 case was a parliamentary request for an advisory opinion regarding licensing procedures from the Department of Justice (see Sahr 1985). (Parliament ultimately ignored the advisory opinion when it failed to legitimate parliament's actions.) Individualistic activity in general was quite low; even attendance at demonstrations was small relative to the other countries.

After the government put forward a bill in 1975 proposing cautious nuclear expansion (adding 2 reactors to the existing 11), Swedes demonstrated their dissatisfaction through the polls (Campbell 1988:161). The government responded to growing dissatisfaction over nuclear policy by seeking ways to extend citizen involvement. For example, the Secretariat of Future Studies was established in 1975 to investigate ways to broaden and deepen democracy in Swedish society (Wittrock 1980:358–87). Despite these efforts, for the first time in decades, the Social Democrats failed to attain a majority in parliament in 1976 (Campbell 1988:161–62). A new coalition government consisting primarily of members of the Center Party unsuccessfully attempted to impede the expansion of Sweden's nuclear program. The new government crumbled in 1978 and, eager to regain public support, parliament proposed a national referendum on nuclear power. The 1980 referendum rejected the expansion of nuclear power and called for the long-term dismantling of Sweden's existing nuclear facilities. While the Riksdag is not constitutionally obligated to follow national referenda, it tends to, and the nuclear case was no exception.

Thus, in a very organized, political manner, the Swedish political system preempted extrapolitical legal attacks on nuclear policy. One implication of this was the occurrence of very few legal cases in Sweden. Although the Swedish legal system parallels the German legal system, the Swedish legal system was much less important in resolving the future of the nuclear power program in Sweden than the German legal system in its country.

Discussion

The four case studies suggest that the degree of state-society differentiation is particularly important in explaining cross-national variation in legal activity (compare Savelsberg 1994; Sarat & Grossman 1975; Heydebrand 1990). The overall effect of the continuum of state-society differentiation on amounts of legal activity is curvilinear. Both very high levels and very low levels of differentiation lead to relatively high levels of legal activity. For

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nation-states with minimal levels of differentiation, politicians will enlist the aid of diffuse societal groups or individuals informally (e.g., by encouraging lawsuits) rather than relying primarily on professional, formally linked-in public representatives to resolve issues. In highly differentiated civil societies, individuals may engage in legal activity as an expression of their frustration. Nation-states with moderate state-society differentiation exercise more control over the mode of policy input. If the judiciary is selected as the forum for policymaking, then the level of legal cases may be fairly high. If the state directs societal input into a different arena, as happened in Sweden, then the number of legal cases may be minimal (see, e.g., Ruin 1982). Future research could consider under what circumstances various modes of political expression are chosen.

Greater state-society differentiation causes litigation to be more focused against the state. Conversely, when the state is not highly differentiated from civil society, its role in the litigation process is less clear. For example, an interpenetrated state may delegate important authority to private parties who then become the focus of private lawsuits. This means that states which are minimally differentiated from civil society are less likely to be the focus of all or most litigation.

The effect of differentiation on the "litigation-policy change" nexus also appears to be curvilinear. In countries with a high degree of differentiation between the state and civil society, the state simply ignores the legal activity. In countries with low differentiation between the state and society, litigation is also likely to be ineffective at changing state policy. Unlike the highly differentiated political system, the nonresponsiveness of this type of political system results from an "overload" of demands (see Schmitter 1974:286; Rosenberg 1991). The state is simply unable to process and enact the deluge of conflicting demands placed on it in this type of system. Further, because the state is incapable of organizing legal activity, the cumulation of cases tends to lack a clear theme. This minimizes the overall impact of legal activity on social change in states with low state-society differentiation. The political systems under which legal activity is the most likely to be effective is the moderately differentiated systems—the corporatist systems. Here the state exercises some control over the nature of societal policy input and has formal ties to a limited number of representative groups. State factions call on formal representatives of civil society to resolve controversies, often doing so behind the scenes before policy suggestions are presented to the public. Such activity buffers the state from an inundation of demands while the linkages between the state and society force the state to deal with societal input.

The role of decentralization in cross-national variation in legal activity is less pronounced. Based on the experiences of the

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nuclear power programs in Germany and the United States, a centralized bureaucracy within a decentralized system raises suspicions of state usurpation of power. Perhaps, then, state decentralization itself is not as important as the contradiction raised by centralized bureaucracies within decentralized states. This contradiction fueled some of the litigation experienced in Germany and the United States. But for the contradiction between centralized bureaucracies in decentralized states, the amount of litigation might well have been lower.

This study contributes to an understanding of law and social change because of its comparative approach. It implies that the process of social change will follow predictable but differing courses in different countries. Ironically, because of their very different political styles, in both the United States and France litigation had little direct effect on national nuclear policy. In fragmented, society-integrated systems like the United States, where many levels of civil society and the state are given the responsibility to suggest policy but little or no authority to carry out policy, any particular lawsuit is unlikely to have a profound society-wide effect (see Rosenberg 1991; Griffin 1995). The state is too diffuse to be pushed in a clear direction by lawsuits. This was true with respect to nuclear power where lawsuits, although numerous, did not substantially alter the course of U.S. policy. Ultimately, it was the economic unfeasibility of nuclear power that spelled its demise in the United States (Joppke 1993). Legal activity is also less likely to lead to major social change in centralized countries with state-centered polities, such as France. In France, the state is powerful enough to ignore lawsuits. Lawsuits there may tend to take on the character of everyday nuisance suits.

Lawsuits had the most impact in West Germany, a decentralized nation-state with a corporatist political system. The political frame of this type of nation-state leaves the state sufficiently vulnerable so that it can be forced to respond to claims emerging from civil society. Particularly if the decentralization is exacerbated by party politics, the state is likely to step in and organize legal remedies for societal claims. Thus, the state uses the legal system as a means of systematizing social change. The example of nuclear power in Germany suggests such a process. Sweden might have looked very much like Germany, except that the corporatist Swedish state directed civil society input in other, more direct, modes of political expression. In countries like Sweden, litigation can lead to social change, but litigation is not more effective than the formal political complaint systems devised by the centralized state. The case examples demonstrate how the linkage between political frames and legal activity can inform theories of law and social change.

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The cases also have implications for explaining individual legal activity. The example of nuclear power in the four countries studied suggests that individual action varies in predictable ways depending on political frames.[24] Perceptions are central to rates of litigation (Felstiner, Abel, & Sarat 1980–81), and the research reported here suggests that political frames provide contexts which lead those perceptions to vary systematically (see also Munger 1990). This approach moves away from a rational choice theory of individual action and toward a symbolic interactionist theory of individual action (see Sarat & Silbey 1988; Joppke 1993). It suggests that the circumstances under which individual actions can lead to social change and the nature of that social change are circumscribed by larger structural and cultural frames—in this case, by the political frames of nation-states. The important point for the sociology of law is that macro theories of legal activity can help us to better understand how individual actions and motivations are shaped by particular national contexts.

Conclusion

I have proposed here a theory to explain legal activity, provided preliminary support through collective case studies, and suggested some implications that flow from the theory. The examples of antinuclear power litigation join other observations to suggest that multidimensional theories of legal activity are essential for understanding cross-national variation in legal activity. I have suggested that one important dimension beyond individuals, and even beyond legal systems themselves, is the political frames of nation-states.

Appendix

The Political Frames of the United States, Germany, France, and Sweden

Among the four countries in my analysis, two have centralized political structures (France and Sweden) and two have more fragmented political structures (the United States and Germany). U.S. decentralization is evidenced both substantively and territorially. The U.S. constitution divides policymaking powers at the federal level and reserves substantial power to the states. A number of scholars have documented the tension between local and federal sovereignty in the United States (see, e.g., Hamilton & Sutton 1989; Dobbin 1994). Legal claims can originate in either federal or state courts, depending on the precise facts of the case. The federal and state courts have separate appeal processes;

[24] The importance of individual actors is theorized by Sanders 1990 and Epp 1990, among others.

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under certain circumstances the federal system hears appeals from the decisions of state supreme courts.

West Germany's federalism was remarkably strong relative to other European states (Katzenstein 1987:15).[25] The German constitution gave extensive government powers to the Länder (states), particularly in the areas of education, media regulation, and law enforcement, although most official policymaking occurred at the federal level (Dyson 1982). German states were powerful as actors with a voice in the policies of the federal government, in part through the existence of the Bundesrat (the legislative body that represents state interests at the federal level). In contrast to France or Sweden, West Germany's bureaucracy was also decentralized (Katzenstein 1987:19). This resulted in little central control over lower levels and a lack of coordination between ministries. Compared with the U.S. system, German federalism was somewhat more coordinated (see Lijphart 1984:179). For example, joint consultative bodies acted to minimize legislative discrepancies across the German states, and the German chancellor had some power to impose unity on the decentralized state. Also, in contrast to the United States with its parallelism of state and federal courts, Germany had a single court system. Claims originated in state courts in Germany, with appeals made to the federal court system. "Regular courts" heard civil and criminal claims. Administrative courts heard claims contesting state action. In sum, the West German system was uniquely decentralized among its European counterparts but was somewhat less decentralized than the U.S. system.

Both Sweden and France have centralized political systems with very limited power at the local level.[26] Both countries are parliamentary democracies with a single legislative body (the Riksdag in Sweden; the National Assembly in France). Both Sweden and France have centralized court systems (Reed Elsevier Inc. 1997). In France, administrative courts hear cases involving government contracts and torts of government departments and appeals against administrative decisions; in Sweden, administrative courts hear primarily tax matters. Judicial courts in both countries hear civil and criminal cases.

In terms of state-society differentiation, France has the highest level of differentiation, Sweden and Germany maintain more corporatist systems that represent only a moderate level of differentiation, and the United States has the lowest level of state-society differentiation. The United States incorporates the broader society into its political system (cf. Tocqueville 1966 [1835]; Frank, Meyer, & Miyahara 1995; Dobbin 1994). Private events and individual experiences, as they become the focus of media attention, often form the basis for public policy (see Savelsberg 1994). For example, when seven-year-old pilot Jessica Dubroff crashed her plane, an immediate cry went up in the United States to increase public requirements for obtaining piloting licenses.

[25] For general discussions of the German political system, see, e.g., Katzenstein 1987; Childs & Johnson 1981; Conradt 1991; and Dyson 1982. For general discussions of the German legal system, see, e.g., Kommers 1976; Blair 1981.

[26] General sources on the Swedish political system include Heclo & Madsen 1987; Olsen 1982; Lane & Magnusson 1987; Ruin 1982; Elder et al. 1988. An excellent discussion of the Swedish legal system is provided by Stromholm 1981. The French political system has been discussed by Zysman 1977; Gilpin 1968; Cohen 1977; Hayward 1986; Suleiman 1974; Aberbach et al. 1981.

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Other examples arise daily. The prime order of business for the state is to give the people what they want.[27]

While Sweden and Germany have bureaucracies that are more independent of civil society than U.S. bureaucracies, the Swedish and German states are receptive to formal societal input in the policy arena. In Sweden, political parties, trade unions, and religious groups are formally linked into the state to represent aspects of civil society (Nelkin & Pollak 1977:336). The formal incorporation of society into the state manifests itself in several other ways as well. One is the placement of the Swedish cabinet under legislative rather than executive control. Another is the elaborate system of "study commissions" (representing the interests of many different groups) and the *remiss* procedure (which encourages comments on policies in progress) that keep special interests closely tied into the political system. Finally, the presence of the Swedish Ombudsmen stands in stark contrast to the French state's unwillingness to pursue inquiries of bureaucratic wrongdoing.[28] Unique to Scandinavian countries, Ombudsmen are appointed by each new parliament, and their powers of investigation are wide, covering all areas of central and local government (Elder et al. 1988). Ombudsmen can examine complaints against the police, the prisons, all the activities of the Foreign Office and the security services, the nationalized industries, the health service, and local government services. In addition, Ombudsmen supervise public access to official documents under freedom of press legislation. While state and society are not as integrated in Sweden as they are in the United States, the differentiation of the two spheres is not as great as in France.

In Germany, the boldness of the intellectual elite constituting the West German bureaucracy was comparable to French bureaucratic boldness (Dyson 1982; Dahl 1966). The extensive presence of civil servants (*Beamte*) in the parliament demonstrated the importance of the bureaucracy vis-à-vis the parliament. Due to the high regard granted them by the German people and the specific federal employment policies that make crossing over between bureaucratic and legislative positions feasible, the *Beamte* have at times constituted nearly half of the representatives in the Bundestag. Further, the *Beamte* dominated parliamentary committees that dealt with public service affairs. The expertise of parliamentarians weighed against public input in the policy arena. From 1949 to 1980, only 292 of the 22,133 committee sessions where policy is formulated were open to the public (von Beyme 1983:123). Despite its strong bureaucracy, German policymaking was more open to special interests than French policymaking because of the importance of "parapublic institutions," corporatist organizations with strong formal ties to the government. For example, political parties played a very important role in linking the German state to the German people (Joppke 1993:121). These aspects of the West German polity made state-society differentiation more extensive than in the United States but not as extensive as in France.

[27] It is not surprising that in this political free-for-all certain powerful "voices" are given more weight in the decisionmaking process (see Dahl 1961; Domhoff 1983).

[28] In France, only 30 government officials have been disciplined since World War II (Provine 1996).

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France is characterized by high state-society differentiation. France has a bicameral parliament, of which the most important legislative arm is the National Assembly. The legislative authority of the National Assembly is limited. Although it can pass specific laws in certain areas such as tax liability, nationalization of industries, and declaration of war, it has only limited ability to legislate national defense, education, finance, and social and economic programs. As is typical in parliamentary systems, the National Assembly tends to defer to the executive by passing legislation prepared by the president (Suleiman 1974). Courts in France are basically administrative organs of the state rather than protectors of individual rights against arbitrary state intrusion (Provine 1996).

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