
Exploring the Costs of Administrative Legalization: City Expenditures on Legal Services, 1960–1995

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The institutional environment in both the private and public sector, according to a wide range of observers, is increasingly “legalized”: decisionmaking processes and substantive policies are increasingly subject to legal rules and procedural requirements that are enforceable in court. Although there is little dispute that legal liability has expanded in this way, there is great dispute about the effect of these changes, particularly their costs, on public organizations in practice. Some observers argue that legalization has imposed heavy costs, especially financial costs, on organizations; others, for a variety of reasons, argue that these costs are likely to be exaggerated. In this article I suggest that organizational expenditures on legal services are likely to be a valid indicator of certain important elements of the costs of administrative legalization. I present the results of a study of the legal services expenditures of 13 major U.S. cities over a 35-year period. The results indicate that legal services expenditures indeed have increased in many cities, although not as much as some commentators have speculated. Furthermore, there are significant variations in expenditure patterns among the cities, and a number experienced no long-term growth trend in legal services expenditures.

It is widely recognized that the organizational environment in the United States has become more and more legalized, in the sense that decisionmaking processes and substantive policies in public organizations are increasingly influenced by legal rules and procedural requirements that are enforceable in the judicial system. As Rosenbloom and O’Leary (1997:v) observe, “In the aggregate, judicial decisions have required broad changes in administrative values, decision making, organization, processes, and policy implementation.” Marc Galanter (1992) similarly has observed that life in the United States and several other societies is increasingly subject to legal forms and procedures, influenced by lawyers, and governed by formal regulations. A diverse range of scholars concur (Abzug & Mezas 1993; Edelman 1990, 1992;

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Friedman 1985; Sutton et al. 1994; Tate & Vallinder 1995; Teubner 1987). Tate (1995:28), for instance, has observed that a key element of “the judicialization of politics” is “the process by which nonjudicial negotiating and decision-making forums come to be dominated by quasi-judicial (legalistic) rules and procedures.” Similarly, Kagan (1991) has characterized American administrative processes as dominated by a culture of “adversarial legalism.”

While there is general agreement that the organizational environment has become increasingly legalized, the effects of legalization on organizations, particularly its costs, are a matter of great debate. Perhaps the most common view is that legalization has imposed increasingly heavy costs on organizations (see, e.g., Howard 1994; Olson 1991, 1997). Although these costs are not limited to monetary expenditures, most proponents of this interpretation posit that the monetary expenses of legalization are great and are indicative of other underlying costs (to organizational efficiency and the like). This view, though widely accepted, is not universally held. A diverse array of scholarship supports an alternative expectation: that we should find no substantial increase in costs, for one (or both) of two very different but not incompatible reasons. One of these reasons, according to some scholars, is that the costs associated with litigation and judicial orders are commonly exaggerated (see Duncombe & Straussman 1994; Eisenberg & Schwab 1987). The other reason that we may find little or no increase in costs is that some public organizations may have succeeded in instituting substantial reforms that have lessened their exposure to large expenses associated with legal liability. Although the question of financial expenditures associated with legalization is highly significant, there has, unfortunately, been very little systematic research on the matter.

In this article I begin to fill that knowledge gap by presenting the results of a study of expenditures on legal services by 13 cities in several regions of the country. I have chosen cities as the unit of analysis because their policies and decisionmaking processes affect a broad cross section of the population on a daily or near-daily basis; because it is believed by knowledgeable observers that cities are especially affected by the process of legalization; and because key documentary records of cities, unlike those of private corporations, are open to the public. The cities included in this study are among the largest in their states and are from a wide variety of U.S. regions. The justification for relying on legal services expenditures as a measure of the direct costs of legalization is explained shortly. It should be noted at the outset that legal services expenditures constitute only one of several possible measures of these costs and that data on other measures are being gathered.

In the remainder of this article, I examine the legal changes that have been collectively called “legalization,” survey in greater detail the scholarly literature on the likely costs of legalization, and present, analyze, and discuss the implications of the data gathered for this study.

The Dimensions and Historical Development of Administrative Legalization

By “administrative legalization,” I mean a complex and multifaceted phenomenon consisting of the growing influence of formal legal rules and procedural requirements over organizations’ decisionmaking processes and substantive policies. The key elements of this phenomenon are (a) a proliferation of broadly applying legal rules that are enforceable in court; (b) a proliferation of expert interpreters (thus, interpretations) of these rules; and (c) a widespread perception that there has been an explosion of litigation and legal risk.

The multidimensional nature of this definition, and its heavy emphasis on participants’ perceptions and experts’ interpretations, reflects an observation by several scholars that legalization should be characterized not as an entirely top-down imposition by the state but rather as a decentralized diffusion of norms and ideas occurring in the context of governmentally promulgated rules (Edelman 1990, 1992; Sutton et al. 1994). Tate and Valinder (1995:16, 28) describe the legalization of decisionmaking procedures as “judicialization from within” the administrative process, in contrast to the expanding imposition of judicial orders, which they call “judicialization from without.” Galanter (1992:23) similarly has observed that our old metaphor of law as the imposition of rules on civil society by a monolithic, highly organized, bureaucratic state does not capture well the elements of organic, decentralized growth that are characteristic of the legalization phenomenon. Legalization, of course, has occurred in the context of state-imposed rules; but the influence of these rules is felt indirectly as well as directly. Formal legal rules arguably influence organizations most significantly not only through the direct effects of court orders but also indirectly through the actions and assumptions of myriad individuals, official as well as private, in adjusting, negotiating, bargaining, and defining appropriate organizational policies and processes in what has been called “the shadow of the law” (Mnookin & Kornhauser 1979). Thus, legalization, much like “legality” in Ewick and Silbey’s analysis, is “an emergent feature of social relations” (1998:17).

In this section of the article, I briefly survey each of the three main elements of legalization, with particular attention to the timing of key developments. As will be seen, the significant phases of growth in legalization are thought to have occurred in

the late 1960s and the 1970s, thus any increase in costs associated with that growth should be observable by the 1970s, certainly by the early 1980s at the latest.

A. Proliferation of Rules

Perhaps the most widely recognized element of legalization is the proliferation of rules, which take several forms, that are enforceable in court. The most pervasive rules, perhaps, are those associated with the development of “social regulation” statutes (Eisner 1993:118–69; Vogel 1981). Beginning in the 1960s, the federal government began creating crosscutting social regulatory regimes that, unlike the earlier economic regulations that targeted particular industries, applied to industries and government agencies across the board. The most important of these new regulatory regimes covered the areas of environmental protection, occupational safety and health, consumer protection, and civil rights. Significantly, many of the new social regulatory statutes included “citizen suit” provisions, which authorized private citizens to bring suit for the purpose of enforcing the statutes’ provisions. Also, various fee-shifting statutes authorized courts to award attorneys’ fees to successful plaintiffs in lawsuits brought under several of the social regulatory statutes. Thus the new crosscutting social regulation statutes of the 1960s and 1970s have been enforceable in court typically in suits brought by private individuals.

A closely related development has been a great growth, after about 1970, in administrative rulemaking. The social regulation statutes typically authorized their implementing agencies to create administrative rules for the purpose of implementing the statutes’ purposes. At roughly the same time, administrative law scholars, led by Kenneth Culp Davis (1969), and federal courts (see Diver 1981) began identifying unfettered administrative discretion as a source of great injustice, and called on administrative agencies to constrain their own discretionary power by creating administrative rules. “Professionalism” in public administration thus increasingly came to be affiliated with a drive to replace arbitrary power and abuse with rule-guided discretion. This affiliation is especially clear, for instance, in the campaign by reform-oriented police chiefs to bring policing under the control of a comprehensive body of rules (Walker 1977). More generally, federal, state, and local agencies responded to their legislative mandates and to administrative lawyers’ critiques, releasing an unprecedented volume of new rules (Kerwin 1994:14–16). The 1970s have been called the “era of rulemaking” (Scalia 1981, quoted in Kerwin 1994:14). The pace of rulemaking slowed significantly during the early Reagan years—although it picked up again after the mid-1980s (Kerwin 1994:16–19). In sum, by the

1990s, public and private organizations operated in an environment that was heavily entwined with formal legal rules, many of the organizations' own making. This development may be traced to legal changes that began to occur in the late 1960s and early 1970s.

Tort law, too, has been liberalized, thereby significantly increasing the potential legal liability of public and private organizations. The contours of this liberalization are especially clear with regard to governmental liability. At the federal level, two legal developments (among many) stand out. In 1961, in the case of *Monroe v. Pape*, the Supreme Court created what later came to be called the "constitutional tort" by reviving a Civil War-era civil rights statute (42 U.S.C. § 1983, commonly called Section 1983), which allowed plaintiffs to sue state and local officials in federal court for monetary damages for violations of constitutional or other federal rights. In 1978, in *Monell v. N.Y. Department of Social Services*, the Court held that municipalities could be held liable under Section 1983 for the actions of their employees or officials. Although these decisions did not create new substantive rights (and thus did not impose new obligations on public agencies and officials), they did create potent new procedural devices for enforcing existing federal rights in court.

Similarly, cities' exposure to torts under state law significantly expanded after about 1960. Cities are not governed by the general tort laws of the states; they, like governments in general, have traditionally been treated differently from private entities. In the first half of the twentieth century, state courts in the United States extended "sovereign immunity" to cities, thereby insulating them from most kinds of tort lawsuits. Courts typically held that cities could be sued in tort only if the state had given permission for the suit—and most states took no such steps. Then, in the 1960s, some state courts began rejecting blanket sovereign immunity policies; the idea spread, and by the 1970s, courts in many states and legislatures in some others had done away with sovereign immunity. The older blanket sovereign immunity policies were replaced with a patchwork of laws that varied from state to state and among policy areas within states. Some types of actions or policies were still immune from suit; others were not. Although the resulting law on municipal liability is enormously complex, it is clear that the state laws that replaced the older blanket declarations of immunity, with only a few exceptions, expanded the exposure of cities to tort liability.¹ In the mid- and late-1980s, many states enacted legislation that limited the tort liability of governmental agencies (Gellis 1990). Nonetheless, these organizations' liability under state law typically re-

¹ The law of the state of Arkansas remains an exception: due to a provision in the Arkansas constitution, sovereign immunity cannot be waived and therefore still largely remains the law (except, of course, in suits brought under federal law).

mained significantly greater in the 1990s than it was under the pre-1970 regime of sovereign immunity.

B. Proliferation of Expert Interpreters of Law

As administrative rulemaking and tort liability expanded, organizations' need for legal advice also expanded. Not surprisingly, the number of expert interpreters of law and administrative rules within public organizations has increased. The most obvious instance of this change has been the great growth in the number of lawyers in the past generation, from 285,933 in 1960 (for a population to lawyer ratio of 627:1) to 857,931 in 1995 (for a population to lawyer ratio of 307:1) (Curran & Carson 1994; and data supplied by the American Bar Foundation). Interviews with local government officials indicate clearly that local governments increasingly rely on lawyers for advice in a wide range of policy areas (Epp 1998a).

Although the legal profession once held a near-monopoly on expert interpretation of the law outside of courtrooms, among the more significant developments in the phenomenon of legalization in the last generation has been the proliferation of quasi-professions, or even merely job titles, that claim expertise in interpreting the law (Kritzer 1998:216–23). For instance Edelman et al. (1993) have shown that personnel professionals, in the process of interpreting civil rights law, significantly shape their organizations' responses. Similarly, risk management professionals interpret the meaning of tort law and shape organizational responses to it; road engineers interpret professional guidelines that increasingly take legal force, as well as regulations governing the construction of roads; wastewater experts shape organizational responses to state and federal clean water regulations; and so forth.

Within organizations, particularly within city governments, separate organizational units have been commonly created to house these non-lawyer experts. Thus a typical mid- to large-size city government often has separate risk-management or affirmative action/equal employment opportunity offices, for example. Standard city departments may also have internal offices charged with coordinating the response to threats of liability—for instance, many police departments have a “litigation coordinator” or similarly titled official. Advocacy groups, too, have increasingly laid claim to being expert interpreters of the law and may press cities to respond in particular ways to various rules. Data on the number of law interpreters in these non-lawyer quasi professions are not readily available, but there is little doubt that their numbers, like those of lawyers, have grown substantially.

C. Perceptions of a Liability Explosion: Litigation and Legal Risk

A third aspect of legalization is the development of a popular perception that the United States is experiencing a liability explosion, measured either by a perceived growth in the number of tort and discrimination lawsuits (Olson 1991, 1997) or by a perceived growth in the risk of huge, albeit relatively rare, damage awards and lawsuit-related disruptions (Kagan 1991; Kagan & Axelrad 1997:165–67). Perceptions of a liability explosion are fueled in part by anecdotes of unusual cases and large damage awards or settlements (Galanter 1998; Haltom & McCann 1998, 1999). Particular anecdotes, such as that of the infamous McDonald's coffee burn case, often become widely circulated; in the process, people drop the complexities, and the anecdotes take on the mythic characteristics of "urban legends"—they become, appropriately, "legal legends" (Galanter 1998). Legal legends seem to have become a powerfully influential aspect of popular perceptions regarding the legal system. Professional public administrators, like average citizens, share the perception that the United States is experiencing an explosion of litigation and legal risk; these perceptions seem to shape administrators' perceptions regarding the kinds of pressures facing their organizations and the nature of the changes needed to respond to those pressures (Epp 1998a).

D. Interactions among the Elements of Legalization

These various factors—rules, expert interpreters, and perceptions of a liability explosion—interact in complex and mutually reinforcing ways. The development of social regulatory regimes has contributed to a proliferation of administrative rules. The popular assumption that there has been a liability explosion reinforces the belief that these rules and their enforcement in court have become more pervasive. The proliferation of statutory and administrative rules and peoples' perception of a liability explosion thus create a need for increased reliance on expert interpreters of the rules. These experts, in turn, have incentives to emphasize the importance of the rules and of the need for expert interpretations of the rules. The proliferation of interpreters may then contribute to inconsistencies in interpretation, which, combined with the growth in the number of rules and interpreters and the belief in a liability explosion, all contribute to a common sense that the demands of law are not only increasingly pervasive but also somewhat ambiguous in their requirements (but no less important for that ambiguity). As a consequence, organizations come to take on legalized forms in a continuing struggle to maintain compliance with the demands of the rules. For example, as Edelman (1992) has shown, the broad purposes and pro-

scriptions associated with the Civil Rights Act of 1964 imposed highly visible, yet somewhat imprecise, demands on organizations. This situation prompted a variety of organizational responses, particularly the growth of organizational rules prohibiting discrimination and organizational units charged with overseeing the response to the law. Under such a regime, law is, in Galanter's apt imagery (1992:23), less a rule imposed from above than "a vine that entwines other aspects of our lives, a computer that subtly re-fashions while it facilitates."

Expectations Regarding the Costs of Legalization

To what extent has the process of legalization imposed increasing costs, particularly financial ones, on public organizations? Undoubtedly, the most common answer is that they have been immense and have increased over recent decades (see, e.g., Crotty 1996:125; Jaegal & Cayer 1991; Kagan 1991). (I address later how these costs may be best measured.) This assessment is consistent with that of many public administrators in local governments, who commonly believe that their governments are facing a deluge of litigation that imposes rising costs.

MacManus (1993) and MacManus and Turner (1993) reported results of a national survey of city officials regarding litigation costs to their cities (see also MacManus 1997). Among the cities surveyed, 6.6% reported that their litigation expenditures had risen more than 50% in the last two years; 12.7% reported an increase from 30 to 50%; 35.8% reported an increase from 10 to 29%; 33.2% reported an increase from one to 9%; only 11.8% reported no increase in litigation costs in the previous two years (MacManus & Turner 1993:463). In a similar but more recent study of California cities conducted in summer 1996, MacManus found that officials in 27.6% of cities believed that their litigation expenses had risen by 30% or more in the previous two years; officials in 15.1% of cities believed their litigation costs had risen by 50% or more. Based on those studies, MacManus (1997:28) observed that administrators believe "litigation costs [are] wreaking havoc on the budgets of many cities."

If cities have indeed incurred heavy costs as a result of legalization, one should have expected to notice growth in these expenses by the 1970s, and certainly by the early 1980s. During that period, the key social regulatory regimes were created. Concern about administrative discretion reached new heights, and (perhaps consequently) the pace of administrative rulemaking increased. Absolute governmental immunity in tort was eroded and was replaced by qualified immunity; and the symbolically significant constitutional tort was created and expanded. By the early 1980s, each of these developments had come under attack, either eroded or the pace of growth scaled back.

Although legalization is widely believed to be accompanied by heavy monetary costs, some scholars have suggested that their extent may be commonly exaggerated. There is very little *direct* evidence regarding changes over time in law-related costs, but two lines of scholarship point in this direction, if only by inference. One line of scholarship shows conclusively that there has been no dramatic increase in tort lawsuit filing rates (or related phenomena) in recent decades and that most victims of injury do not pursue lawsuits (Eisenberg & Schwab 1987; Felstiner et al. & Sarat, 1980–81; Galanter 1983; Harvard Medical Malpractice Study 1990; Hensler 1991; Lee 1987; May & Stengel 1990; Miller & Sarat, 1980–81; National Center for State Courts 1995; Saks 1992).² One may infer from this body of research that the costs of legalization, too, may be commonly exaggerated (see also Eisenberg & Schwab 1987).

A second line of research starts from a very different perspective but leads to similar inferences about the costs of legalization. This research suggests that many public organizations have responded to legalization with substantive reforms aimed at minimizing their legal liability. To the extent that they have succeeded in implementing these reforms, they may have limited their exposure to legal liability and thus to substantial monetary expenses associated with it. Several scholars (Rosenbloom and O’Leary 1997; Walker 1977; Walker & Fridell 1993) argue that the expansion of federal rights has brought about substantial reforms in public organizations. Indeed, interviews with senior local government administrators indicate clearly that many believe their organizations have been substantially reformed in response to increasing legal requirements and liability pressures (Epp 1998a). Many public organizations may have therefore avoided the substantial liability costs that they *might otherwise have incurred* as a result of legalization had they not engaged in reform.

Measuring the Costs of Administrative Legalization

How to measure the changes over time in the costs of legalization is a difficult and complex question. Litigation rates, although commonly used as an indicator of the threat of legal liability and of costs associated with it, are, as many scholars

² Why the perception of a litigation explosion persists is a puzzle. Perhaps part of the explanation for the persistence of this view is that stories of outlandish lawsuits, jury verdicts, or settlements fit prevailing cultural frames and are commonly reported by the news media, thus they may be remembered more easily. Statistics on common litigation patterns conflict with prevailing cultural frames, and typical lawsuits (i.e., those involving low stakes and mundane issues) are virtually never reported by the media, however; thus they may be readily forgotten (Haltom & McCann 1998). This view may persist as well because massive damage awards, long delays, and significant disruptions resulting from lawsuits *do* sometimes occur. Managers’ perceptions of threats from their environment seem to emphasize the *level* of risk (of the worst case) as much as (or even more than) its *likelihood* of occurrence (Kagan 1991; Kagan & Axelrad 1997).

recognize, inherently faulty measures. The rate at which people resort to court is unlikely to be directly related to the level of administrative legalization. An organization may enact reforms, and its organizational processes may become legalized as a result, even in the absence of a lawsuit against the organization, thus simply *in anticipation* of the possibility of being sued. Additionally, some claims against public organizations are settled prior to a formal filing in court, yet these claims may have a significant influence on policy within the organization. In both ways, law may exert an ever-greater influence over an organization, which may be reflected in changing patterns of negotiation and policy innovation, in the absence of substantially increased litigation rates. Thus, law casts a shadow that influences negotiations and policymaking even prior to, or in the absence of, a court order or even a lawsuit (Mnookin & Kornhauser 1979).

What is needed, then, is an indicator of the costs not only of in-court actions but also of out-of-court negotiations (and a host of other expenses, among them the costs of policy changes). To achieve this broader understanding of the influence of law, several scholars have proposed using expenditures on legal services as a measure of the costs of legalization (see, e.g., Galanter 1992:5–6; Kagan 1991:390, n.20); and this is the approach I have adopted here. The direct costs of legalization may be measured by the costs that organizations incur when seeking legal advice, conducting law-related negotiations, and pursuing or defending against legal claims. For instance, the more legal rules one must navigate through, the more one must consult legal experts for advice on everything from the planning and drafting of documents to negotiations—and the greater one's expenditures will be on legal services. Indeed, the legal services portion of the U.S. economy grew substantially after 1945 in both absolute and relative terms; in 1970 legal services constituted .65% of national income, but by the 1980s the sector's rate of growth had increased sharply, and by 1987 the sector constituted 1.38% of national income (Sander & Williams 1989:435).

Of course, as we have seen, lawyers do not have exclusive claim to providing expert legal advice for avoiding liability: the past generation has seen a proliferation of other expert professions claiming to guide the unwary through the thicket of legal rules. Thus a complete tally of expenditures on legal advice and consultation in the shadow of the law has to take into account costs in all of these areas. Expenditures on legal services alone is unlikely to be a complete measure of the costs of legalization; nonetheless, it is likely to remain the single best measure of the advance of legalization for a simple reason. All available evidence still suggests that when in doubt, organizations still turn to lawyers for ultimate resolution of legal questions. My interviews with administrative professionals in cities suggest that cities continue

to rely mainly on lawyers for final resolution of law-related questions (Epp 1998a).

Legal services expenditures, however, capture only those costs that are sometimes called “transaction costs.” Kagan & Axelrad (1997) also emphasize others—particularly the cost of substantive compliance with regulations, the cost of delay, and opportunity costs—which are not included in legal services expenditures. Most of the cost to a city of building a new court-ordered jail, or the expense of tort liability payments, for example, obviously would not be included in a measurement tapping only that city government’s legal services expenditures. Additionally, the expenses incurred due to the use of expert interpreters of the law, such as equal employment opportunity officers, are not included in a city Legal Department’s expenditures. Nevertheless, long-term changes in legal services expenditures should reflect long-term changes in the extent of administrative legalization: neither a court order to build a new city jail nor a liability payment would be likely to occur in the absence of significant action by the city legal department.³ Thus, although legal services expenditures cannot be understood as the sum total of the costs of legalization, they should provide a valid measure of long-term changes in the costs of administrative legalization.

Research Design and Methods

In this study I focused on expenditures for legal services by 13 large cities around the country. The cities I selected are among the largest in their respective states; nonetheless, their populations vary (from about 200,000 to several million), as do their racial compositions and rates of growth or decline (see Table 1). The cities also vary significantly in their exposure to liability under state liability laws (Epp 1998b). Where possible, I selected pairs of similarly situated cities in order to discover the extent of city-by-city variations. For instance, the study includes Kansas City, Missouri, and Kansas City, Kansas; Minneapolis and St. Paul, Minnesota; and Madison and Milwaukee, Wisconsin. I emphasize (especially in light of the observations reported below) that I made no attempt to select only cities in which people believe legal services expenditures are unusually low; such expenditures are thought to plague cities in most or all regions of the country. Even in the presumably tranquil Midwest, Kansas City, Missouri, has been called the “poster child of judicial intervention” (Mahtesian 1997:40). In sum, while the cities vary in many respects, it might be expected that they share in common the trend toward administrative legalization.

³ A companion paper (Epp 1998b) explores the direct costs to cities arising from liability claims; the evidence, like that reported here, reveals substantial variation among cities.

Table 1. Populations of Cities in the Study

City	Population (1980, in 1,000s)	Population (1990, in 1,000s)	% black (1990)
Boston, MA	563	574	25.6
Denver, CO	493	468	12.8
Des Moines, IA	191	193	7.1
Kansas City, KS	161	152	29.3
Kansas City, MO	448	435	29.6
Little Rock, AR	159	176	34.0
Madison, WI	171	191	4.2
Milwaukee, WI	636	628	30.5
Minneapolis, MN	371	368	13.0
New York, NY	7,072	7,323	28.7
St. Paul, MN	270	272	7.4
Salt Lake City, UT	163	160	1.7
San Jose, CA	629	782	4.7

SOURCE: U.S. Census Bureau, Statistical Abstract of the United States, 1999.

Data for the study consist of each city's expenditures on legal services, measured, where possible, over the entire period of 1960 through 1995. From annual budget records or consolidated annual financial reports I obtained the amount spent per year by city legal departments. (Virtually all cities have a Legal Department or Law Department that is charged with the task of providing the city with legal advice, defending the city against lawsuits, pursuing actions to enforce city ordinances, and drafting contracts and ordinances, and so on.) In the cities included in this study, the bulk of the costs of legal services were included in their legal departments' expenditures.⁴ For some of the cities, limitations in reporting procedures for expenditures made it impossible to construct a continuous data series for the entire period; for these cities, the data presented here cover only the years for which a continuous series could be constructed.

I report two measures of legal department expenditures over time, each with its own limitations. One is the total expenditures, by year, on each city's legal department, adjusted for inflation. This indicator is, of course, affected by changes over time in city population and in the array of services cities offer. Even if cities' background levels of legalization have remained the same, their

⁴ In some cities, some legal services expenditures are charged to other departments; but for the cities for which I have been able to obtain a complete report on the costs of legal services for recent years, only a small percentage of these costs was not included in the legal department expense listing. There are two exceptions: after 1992, in Madison, Wisconsin, cases covered by insurance were defended by the insurer's legal counsel; and in Kansas City, Missouri, some legal services expenditures (at the end of the study period, about a quarter of total legal services expenditures) were not included in the Law Department's expenditure line. I gathered reliable annual figures for the vast majority of these extra expenditures and added them to the legal expenses data to reach the total legal services expenditures for that city. Other minor variations in expense reports over time were handled city-by-city, as appropriate. For instance, in Kansas City, Kansas, the legal department expenditure line in the 1980s and 1990s included substantial expenditures on items other than legal services; the figures reported here consist of the expenditures for legal services and related personnel (generally included elsewhere).

legal expenditures would have varied to some degree in relation to fluctuations in population and changes in service provisions; therefore, there is a need to control for changes in the level of such demands on city legal departments. Although no single indicator of changes in the volume of city services is ideal, variations in total city expenditures captures much of what we seek to measure. Thus my second indicator of legal expenditures over time—as a percentage of total expenditures—controls for changes in overall city expenditures. (For Boston and Minneapolis, however, I was unable to construct a continuous time series of total expenditures over the period of the study; therefore, for these two cities I relied on expenditures on the fire department as a surrogate control.)⁵ The limitation of a measure that controls for total expenditures is that the cost to cities of complying with federal regulations and legal standards (e.g., expenditures on new jails, new sewage treatment plants, and so on) undoubtedly has increased over time. In sum, one of the measures used here—raw expenditures on legal services (adjusted only for inflation)—probably exaggerates the growth of legal services expenditures over time relative to a constant base, while the other—legal services expenditures as a percentage of total city expenditures—probably understates it.

Observations: Expenditures on Legal Services over Time

The legal services expenditure data drawn from each city are reported in Figures 1 to 13. In each figure, the thin line represents the expenditures of the legal department, adjusted only for inflation; the thick line represents expenditures of the legal department as a percentage of total city expenditures. As the figures illustrate, the expenditures of city legal departments (thin line), when not controlling for changes in overall city spending, grew significantly in a sustained way in most of the cities. Only Boston, Massachusetts (Fig. 1); Little Rock, Arkansas (Fig. 6); Kansas City, Missouri (Fig. 5); and Salt Lake City, Utah (Fig. 12), did not experience *sustained* growth in legal services expenditures, although they did experience significant *periods* of growth.

⁵ Among the various city departments, the data of expenditures on the Fire Department plausibly provide a generally valid reflection of changes over time in the provision of city services. As population expands, fire protection service must expand; and unlike expenditures on the police, which may be significantly affected not only by local conditions but also by national trends in perceptions of crime and the like, fire department expenditures are likely to be responsive mainly to local conditions.

City Legal Department Expenditures, 1960–1995*

*thin line = legal department expenditures
 thick line = legal department expenditures as a percentage of total city expenditures, except as noted
 All figures control for inflation.

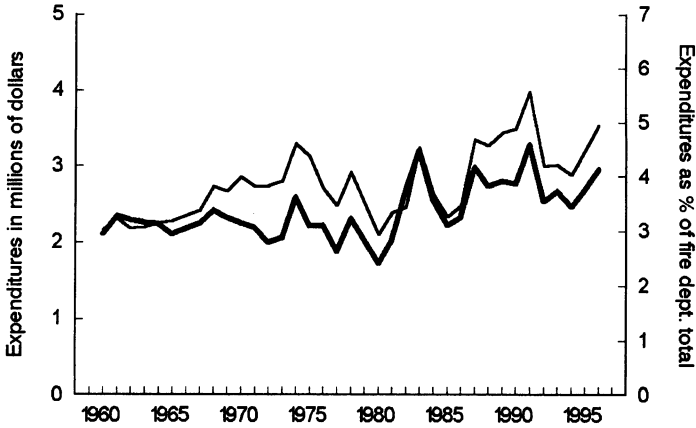


Fig. 1. Boston, MA, legal department expenditures, over time.

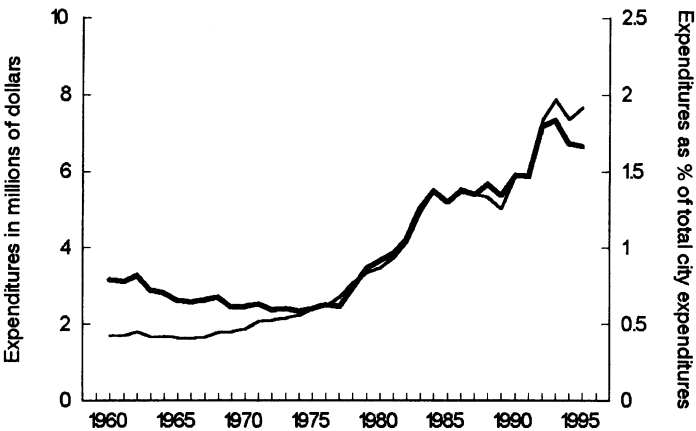


Fig. 2. Denver, CO, legal department expenditures, over time.

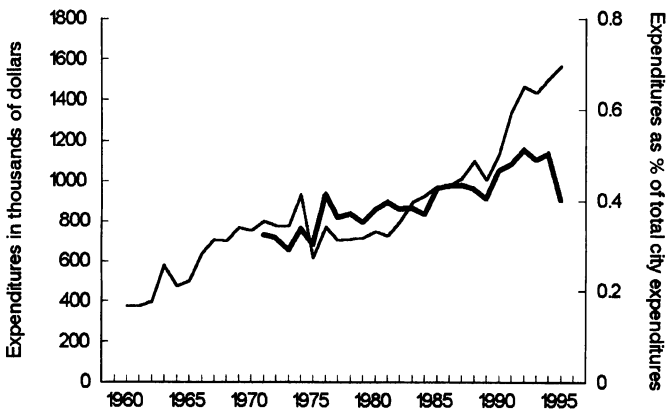


Fig. 3. Des Moines, IA, legal department expenditures, over time.

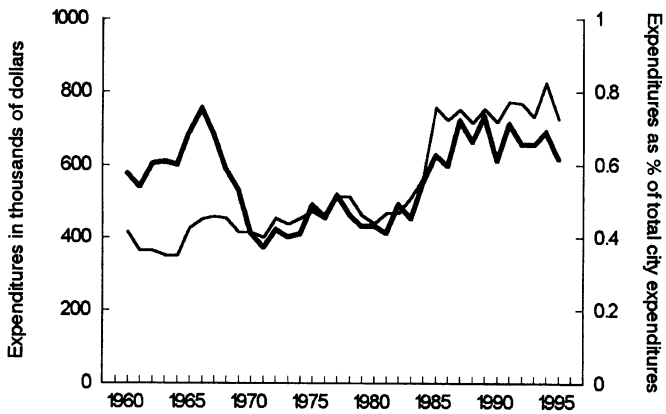


Fig. 4. Kansas City, KS, legal department expenditures, over time.

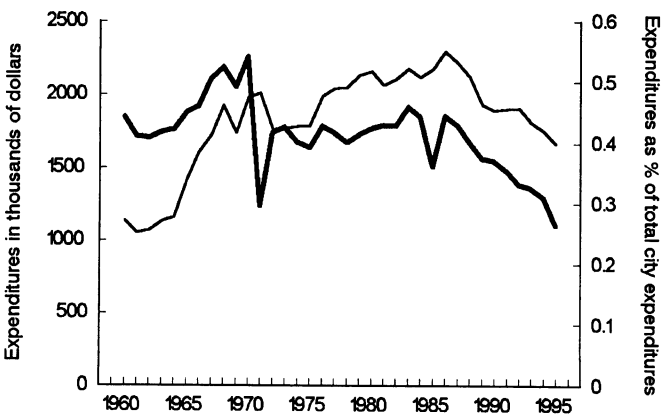


Fig. 5. Kansas City, MO, legal department expenditures, over time.

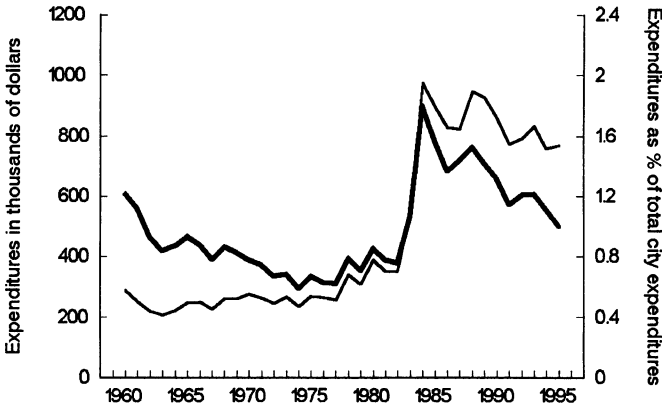


Fig. 6. Little Rock, AR, legal department expenditures, over time.

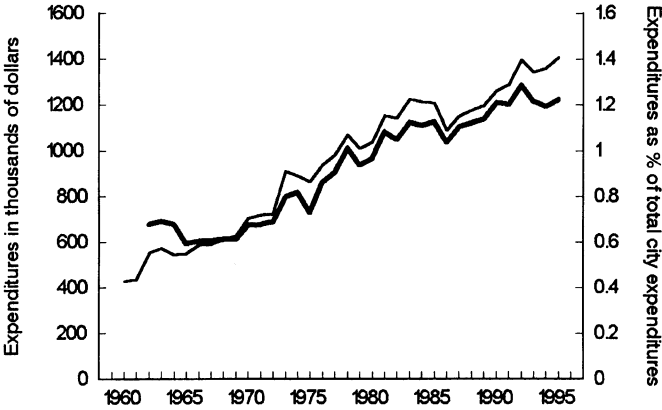


Fig. 7. Madison, WI, legal department expenditures, over time.

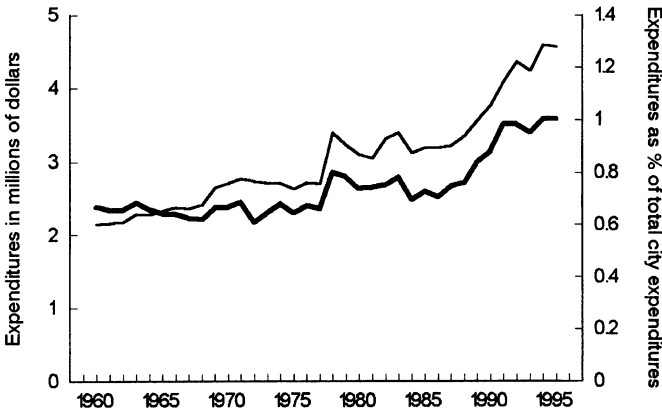


Fig. 8. Milwaukee, WI, legal department expenditures, over time.

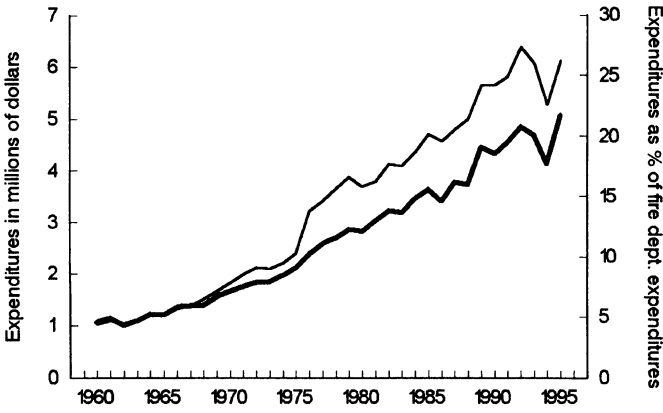


Fig. 9. Minneapolis, MN, legal department expenditures, over time.



Fig. 10. St. Paul, MN, legal department expenditures, over time.

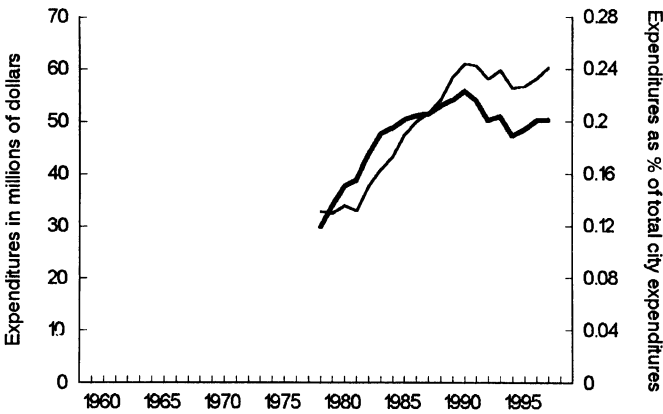


Fig. 11. New York City, legal department expenditures, over time.

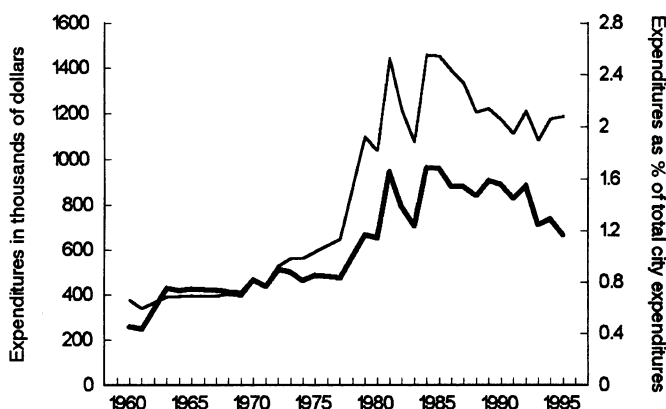


Fig. 12. Salt Lake City, UT, legal department expenditures, over time.

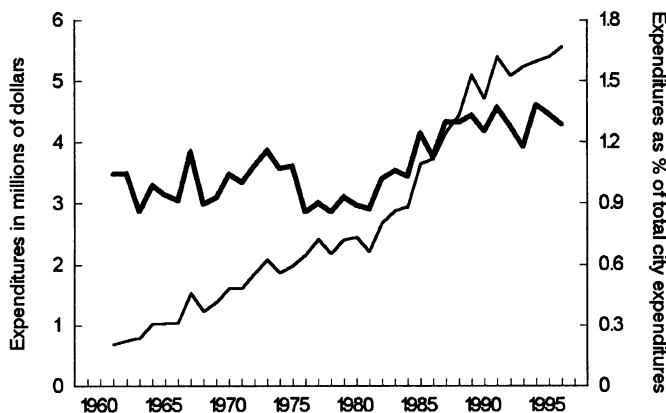


Fig. 13. San Jose, CA, legal department expenditures, over time.

It should be emphasized as well that two of the cities—Kansas City, Missouri, and Salt Lake City—both experienced significant decreases in legal services spending at some recent points in the study period, however. Clearly, there have been significant increases in legal services expenditures in many cities; but just as clearly the growth patterns among the cities share little in common.

The thick trend lines reveal a surprising observation: *in most of the cities, the legal services expenditures as a percentage of total expenditures grew only moderately, if at all, over the course of the whole study period.* This is most clearly the case in San Jose, California (Fig. 13), and Kansas City, Missouri (Fig. 5), but it is also true to lesser degrees in Boston (Fig. 1), Des Moines (Fig. 3), Little Rock (Fig. 6), Milwaukee (Fig. 8), and St. Paul (Fig. 10). Indeed, only Denver, Madison, and Minneapolis experienced *sustained* growth in this measure throughout most of the study period (Figs. 2, 7, and 9, respectively).

These observations are all the more surprising in light of the substantial differences in the socioeconomic and demographic contexts of the 13 cities. Over the whole study period, legal department expenditures (when controlling for changes in overall expenditures) declined or grew only moderately in San Jose (a wealthy, rapidly growing city that epitomizes the new, high-technology economy); in Kansas City, Kansas (a poor, declining urban core city); in Little Rock, Arkansas (the quiet capital of a poor and rural southern border state), and also in Boston (a bustling northeastern city).

Nonetheless, legal department expenditures, even when controlling for changes in overall expenditures, grew substantially in some cities: in Denver (Fig. 2), they grew at an average annual rate of roughly 9% per year from 1975 through 1995; in Madison (Fig. 7), the average rate of growth was roughly 3.3% per year from 1970 through 1995; in Minneapolis (Fig. 9), 8.2% per year from 1970 through 1995; in New York City (Fig. 11), 6.7% per year from 1978 through 1990; and in Salt Lake City (Fig. 12), 5.7% per year from 1977 through 1990. These are substantial rates of growth; but they do not even begin to approach the growth rates of 25% or more per year estimated by some administrators in recent surveys. Moreover, among the cities in the study that experienced *sustained* growth in expenditures, these are the highest growth rates; and, except for highly unusual one- to two-year growth spurts in Little Rock and Salt Lake City, the rates of growth revealed by these data are typically much lower than 9% per year.

Instances of growth seem to stand out as unusual: legal department expenditures grew substantially and relatively steadily in Minneapolis, Minnesota—but not in its twin, St. Paul. Expenditures grew somewhat for a short period after 1984 in Kansas City, Kansas—but they show a long and relatively steady decline in its twin, Kansas City, Missouri. Expenditures in Madison, Wisconsin, grew in a sustained way, but in Milwaukee, its nearby neighbor, expenditures grew far more moderately.

For the cities that did experience substantial growth in legal services expenditures, it is not possible to identify a common point in time when that growth began to occur. In Madison and Minneapolis, substantial growth began in the early 1970s. In Denver and Salt Lake City, a period of substantial growth in expenditures began in the late 1970s; in Kansas City, Kansas, and Little Rock, Arkansas, a brief period of growth began in about 1984. Perhaps these varying periods of takeoff in growth reflect regional variations in the legalization process. But too little of the data vary systematically by region to provide much support for such a hypothesis: instead, the variations seem organization-specific.

Finally, variations in legal department expenditures seem to bear no relationship to variations in key legal conditions. One may recall that, at the federal level, significant changes in federal law occurred between the mid-1960s and the early 1970s with the passage of the key social regulation statutes, and in 1978, with the Supreme Court's decision in *Monell* extending liability for constitutional torts to cities. If any legal developments at the federal level could be associated with the legalization of the administrative process, it is these. Yet the variations over time in legal services expenditures seem to bear no relationship to those important legal developments.

At the state level, the laws of different states expose cities to significantly different levels of liability for torts under state law (Epp 1998b)—but, again, patterns in legal department expenditures bear no relationship to these variations in state laws. Utah law insulates its cities more than that of most other states, and yet Salt Lake City's legal department expenditures experienced substantial growth in the 1980s and ended the study period at a level of spending (about 1.2% of the city's total expenditures) that was roughly equal to the level in Madison, Wisconsin, which is relatively exposed to liability by Wisconsin law. New York law greatly exposes its cities to tort liability, and, indeed, New York City's legal department expenditures grew substantially in the 1980s—but they then declined moderately in the 1990s, and ended the period at a level that, controlling for the city's overall expenditures, was below that of any other city in the study. Arkansas law shields its cities from liability more than any other state in the country; and yet at the end of the study period, Little Rock spent more on its legal department as a proportion of total expenditures than did Des Moines, Iowa, or Kansas City, Kansas.

Discussion

The observations reported here generally contradict the claim that legalization has imposed dramatically rising transaction costs on public organizations. Undoubtedly, these costs increased over time in most of the cities in this study, and so there is clear evidence, as should be expected, that the legalization of the organizational environment imposes heightened costs on organizations. Nonetheless, patterns in legal services expenditures over time varied widely among these cities. Significantly, of the 13 cities studied here, only three experienced sustained growth in legal services expenditures, controlling for total expenditures, over much of the study period. More commonly, the cities experienced both periods of significant growth and periods of stagnation or significant decline in these expenditures. Several cities studied here (Kansas City, MO, and Salt Lake City, UT) even experienced long-term declines in legal services expenditures in re-

cent years. And several cities (Boston, MA, Kansas City, KS, Kansas City, MO, and Little Rock, AR) spent roughly the same amounts on legal services, relative to overall expenditures, in the 1990s as in the 1960s. This surely is not evidence of dramatically rising legal costs.

It is true, of course, as administrators and public officials commonly report, that cities face more regulations and more lawsuits than 30 years ago. But whether legalization imposes higher financial costs on cities is a separate matter, and one that arguably depends on how organizations and key legal actors in their environments respond to and construct through patterns of practice the new rights, rules, and liabilities.

As I have suggested, at least two possible interpretations are consistent with these data: one is that the effect of legalization on organizations is, simply, greatly exaggerated. It is well known, as I summarized earlier, that data on case filings, in the aggregate, do not support the “litigation explosion” myth; accordingly, it may also be that legalization itself is more myth than reality. I think that this is clearly not the case: much other research shows that organizations have widely adopted due process and anti-discrimination rules, internal organizational offices charged with implementing these rules, and many other forms of legalization. These policy innovations may have succeeded in minimizing threats of legal liability and the financial costs associated with it. Many of the administrators interviewed for a companion study (Epp 1998a), believe that the threat of litigation has encouraged cities to adopt significant reforms, which, in their view, have had the effect of minimizing threats of legal liability. These reforms, to the extent that they have, indeed, occurred, also may have limited the costs that otherwise might be associated with threats of legal liability. Variations in these organizational reforms, as well as variations in the local legal environment, thus also may help to explain some of the observed city-to-city variations in legal services expenditures.

Administrative reforms have become key aspects of administrative legalization. Administrative legalization thus is, as suggested earlier, a feature of the organizational environment that emerges through a decentralized, fluid process of adjustment and negotiation. But legalization is a particular kind of emergent feature: it is one that has attained, in the perceptions of personnel within city governments, a significant degree of apparent independence, permanence, and power, and which is felt to place significant constraints on individual and organizational discretion (Epp 1998a). As Ewick and Silbey observe, this face of law—its reification, rather than its manipulability—“is achieved by greater degrees of formal organization” (1998:77). Legalization thus has come to constitute our organizational forms through a complex interweaving of legally oriented assumptions and forms

throughout the organizational environment, in a way that—in the perceptions of participants—solidifies constraints. The extent of these perceived constraints, indeed, may be a source of the perception that costs have skyrocketed.

If so, the broadest and most significant aspects of legalization may remain untapped by measures focusing on legal services expenditures alone. Thus, even though this study speaks to the legal costs associated with administrative legalization, it does not address in what ways, precisely, the increasingly legalized environment has affected city policies and administrative processes. Because administrators' perceptions of heightened legal liability are likely to have significant effects on policy and the policy process, further research on the nature of administrators' perceptions about their exposure to legal liability, the factors that influence those perceptions, and the effects of those perceptions, is needed.

Although this study may have opened more questions than it has answered, my main conclusion is significant: the transaction costs of administrative legalization have been exaggerated and appear to be highly variable among cities.

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