Litigation as a Local Political Resource: Courts in Controversies over Land Use in France, Germany, and the United States

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In western Europe as well as in the United States, litigation often operates as a means of political contestation. This article draws on a study of land use disputes in similar U.S., French, and west German metropolitan areas to analyze cross-national differences in the way local political actors employ courts. More an extension of pluralist policymaking patterns in the United States, political litigation in the European settings occurs as part of starker challenges to corporatist and statist patterns. The contrast between centralized and federal governmental arrangements helps to explain why the political consequences of litigation in the French and the German settings also differ.

Students of law and politics, following Tocqueville (1969), have long regarded the transformation of political questions into litigation as distinctive of the United States. The postwar spread of judicial review throughout much of the world has gradually undermined the basis for this assumption. Recent comparative studies of appellate and constitutional bodies in Europe show these actors to exercise major influence on policymaking at the elite levels of government (Shapiro & Stone 1994; Stone 1992; Jackson & Tate 1992). Even this work neglects the thousands of politicized lawsuits annually in the administrative courts and other lower judicial instances of Continental countries. More often than constitutional and appellate tribunals, these courts and their U.S. equivalents wrestle with the administrative questions that represent the hallmark of late 20th-century governance. Throughout Western societies, litigation of these questions directly affects citizens' lives. Organized interests, social move-

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ments, individuals, and firms employ litigation as a political resource far more regularly in cases before these courts than in the occasional cases that reach the highest levels of appellate courts. To understand how litigation fits into the overall patterns of politics in advanced industrial countries necessitates at least as much attention to this litigation as to elite institutions.

Systematic analysis of litigation as politics ultimately requires comparisons of the part courts and related legal practices play in the wider "opportunity structures" of political actors (Eisinger 1973; Kitschelt 1986). The other strategies that accompany resort to courts and the results other resources may bring make as much difference for the political uses of courts as does litigation itself. Comparative analysis that takes account of this fact not only addresses the social realities of law more accurately but opens up a broader perspective on recent debates about the politics of U.S. courts (cf. Rosenberg 1991). Comparisons of this sort can also address neglected questions in the study of more general governing arrangements. The macroinstitutional typologies that dominate comparative political science have too often treated not only courts and law but often local politics itself as afterthoughts. Serious attention to these arrangements demonstrates the need to alter received presumptions about patterns of political order in Western societies.

In the study reported here of local land use controversies in a French, a German, and a U.S. metropolitan area, litigation plays a significant role in the political strategies of each setting. Like their common law counterparts in the United States, French and German administrative courts present a formalized "third party" (Black & Baumgartner 1983) that political actors use to challenge local decisionmaking. Recent reaffirmations of the Tocquevillian thesis about the uniqueness of American political litigation have clearly drawn too broad a conclusion from settings not having such institutions.[1] The differences between the European administrative courts and their U.S. counterparts lay not in whether courts were a political resource but in the way that resource was employed and who used it.

Alongside related contrasts in legal practices themselves, larger patterns of policymaking had brought about divergences in political litigation and its consequences. Analysts of European policymaking arrangements in matters of land use typically emphasize the "statism" (Krasner 1977) and "corporatism" (Wilson 1982) of these settings. European officials concerned with land use enjoy more centralized local and meso-level administrative structures, more formal powers over land and its use, more extensive public ownership of land, and more control over organi-

[1] By and large, Kagan's (1991) conclusion to this effect derive from comparisons with countries without active administrative courts, such as Sweden (Kelman 1981) or the Netherlands (van Waarden 1992) and up to 1978 Britain (Sterett 1990; Vogel 1986).

zations (Heidenheimer, Heclo, & Adams 1990:ch. 8). Put more crudely, the state at the local level in these settings is "stronger." European policymakers have also formally brought together local institutions and interest representatives in processes of concertation[2] and have continued to limit unstructured, particularistic forms of participation (Savitch 1988). These processes embody the exclusive, hierarchical intermediation of state-sanctioned, noncompetitive interests that Schmitter (1979:13) identified with corporatism. The lesser official capacities and more open, unstructured participation of the American setting correspond to the "pluralist" or "liberal" pattern generally ascribed to policymaking and interest intermediation in the "weak" American state.

In the U.S. setting, political litigation amounted to one more instance of pluralist contestation. In the European settings, it had acquired a significant place in repeated strategies aimed at subverting statist and corporatist patterns. Earlier accounts of statist and corporatist arrangements in Europe opposed their more consensual, negotiation modes of operation to pluralist contestation (Schmitter 1979; Schonfield 1965). More recent analyses have held these same arrangements responsible for starker challenges to elite networks (Kitschelt 1989). Although courts have often defended the corporatist and statist order, they have also emerged as an institutional resource for these challenges. My evidence confirms that not only antinuclear movements in Europe (Nelkin & Pollak 1981; Fach & Simonis 1987), but a wide array of local oppositional groups there have combined resort to administrative courts with strategies of extrainstitutional protest. European businesses in this as in other fields demonstrated reluctance to pursue litigation as a political tool (Kagan 1991); European opponents of development resorted to that resource more regularly than their U.S. counterparts. Combining litigation with other political means, the European oppositional groups won ultimate results comparable with—in some respects better than—parallel efforts before U.S. courts. Conditions that made litigation before administrative courts a more unsuitable political resource for European businesses rendered litigative strategies more effective as a means of subversion. Opportunities for American proponents and opponents of development to employ courts as political resources remained more symmetrical and more constrained.

The institutional complex that offers these political opportunities to European opponents of development would have presented no less a surprise to Tocqueville. A look at the shifting

[2] In using the word "concertation" I adopt the French term for the formalized procedures in which a proposed plan or project is submitted for comments and often for discussion to governmental bodies and officially recognized interest associations. The corresponding procedures in German land use regulation are very similar.

French arrangements from a local perspective casts new light on the political uses of administrative courts there. In striking contrast with the political actors in other studies of these courts (Wilson 1983; Nelkin & Pollak 1981), the French opponents in these settings succeeded more often in litigation than either the Germans or the Americans. The arrangements that have followed partial decentralization in France necessitate qualifications to the link that political scientists have traditionally drawn between a federalist state like Germany or the United States and active judicial review. My analysis shows that the comparatively centralized, unitary administrative structures that persist in France have fostered and helped implement judicial decisions against local officials.

The first section of this article explains the analytic and methodological choices that framed the study. Subsequent sections turn to the differences between the European and American strategies, then to the contrast between French and German courts.

Framing the Inquiry

Side-by-side comparisons of the local political context of litigation in different countries remain all too rare. Existing social science nonetheless offers ample tools for such an inquiry. The design required choices among functionally similar fields of policy, national and local settings for study, and strategies for the field research itself.

Land Use Policy as a Field

Among the wide range of fields where policymaking and litigation take place, land use presented both substantive and practical advantages. Throughout Western societies the field operates in largely similar ways. Parallel traditions of private property generally assure that public decisionmaking about land use takes place amid comparable constellations of propertied and nonpropertied interests. By comparison with other policy fields such as policing or education, official decisionmaking about land use occurs more uniformly at the local level. Land use policy also exemplifies a general shift throughout Western countries in recent decades toward localized policymaking. More extensive local regulation (Sellers 1994), more participatory institutions (Kaase 1984), and more proactive stances among citizens toward policymaking elites (Inglehart 1990) have contributed to this shift. In addition, a more encompassing substantive field of policy would be difficult to find. In each of these three countries, choices about land use lie at the heart of local conflicts between proponents of economic growth and environmentalist or

preservationist advocates. At the same time, these decisions intersect with a wide range of other issues, from relations between ethnic groups to the distribution of wealth to the democratic character of policymaking itself.

Finally, this field had the advantage of practicality. Essentially without leaving the chosen metropolitan area, I could examine the implementation and consequences as well as the making of policy in each nation.

Selection of Countries and Locales

The analytic strategy reduced to a comparison of national institutional and cultural inheritances in otherwise similar metropolitan areas. For this purpose I chose three major industrial states with enough institutional similarities to be comparable but with distinct heritages of political and legal authority. The metropolitan areas singled out for field research provided parallel sites in which to observe broad cross-national contrasts.

France, Germany, and the United States share the common inheritances of contemporary Western societies. All have highly developed economies, advanced bureaucracies and professions, settled democracies, and longstanding native cultural traditions. At the same time, the divergences of pluralist tendencies in U.S. state-society relations from statist and corporatist ones in France and Germany, and of the unitary, centralized French state from the more decentralized, federal formal structures of both Germany and the United States reflect the variety of Western institutional legacies.

The characteristically formal "third-party" status of courts (Black & Baumgartner 1983) in this field dates back in each setting to at least mid-century. In each instance, how these institutions operate diverges in ways familiar to students of national legal traditions (Shapiro 1981; Wieacker 1967). While common law courts at the state level handle most land use litigation in the United States, specialized hierarchies of administrative courts have assumed this role in both Continental countries. With only isolated exceptions among the case studies I collected, these institutions processed politicized litigation. Despite the federal judicial authority to apply constitutional rules, litigants in the U.S. setting had typically sued under state legislation before state courts since the early zoning authorizations of the 1920s. France and several German principalities had maintained elite administrative tribunals for much of the 19th century. National systems of professionalized, institutionally independent judges like those in other civil law courts first extended to the initial instances of administrative review in each country during the 1950s.

To focus the comparison as closely as possible on differences in the institutions of this policy field, I chose metropolitan areas

with basic resemblances. Freiburg, Montpellier, and New Haven each comprise older agglomerations of about the same moderate size.[3] All serve as regional centers outside the shadow of a neighboring metropolis or other cities of comparable size. All lie along a major artery of transportation. All three economies depend on professional, service, and other tertiary activities. In each, a major university and hospital center dominates the downtown. Politics in each region has tended more toward the left than the national average. While at least part of each metropolitan area harbored conservative tendencies, parties of the left had maintained control of the central city executive for at least the 13 years prior to the field research. Significant contrasts between the metropolitan areas, such as the more advanced suburbanization of New Haven or the lesser wealth of the agrarian region surrounding Montpellier, corresponded to typical differences between the three larger societies.

The correspondences between the metropolitan areas highlighted nation-specific divergences. If the contrasts thus revealed did not necessarily represent those of each nation as a whole, they did demonstrate the institutions and cultural influences of each country at work under relatively similar conditions.

The Field Research

Consistent with the analytic aims of the study, the field research in these settings extended to the entire domain of policy rather than courts or even disputes alone. Along with supplementary historical, doctrinal, and documentary research, I employed structured interviews with parallel groups of actors to assemble both accounts of disputes and a wealth of normative and cognitive data.

Cumulative, statistically compiled case studies of disputes or individual decisions have proven a useful procedure to analyze general patterns of both policymaking (Eulau & Prewitt 1974; Laumann, Knoke, & Kim 1985) and social movements (Shorter & Tilly 1974; Tarrow 1989). Political scientists and historical sociologists who use this approach typically direct their analysis of data toward macro-level generalizations, often in ways that mask or even ignore the specifics of disputes. Work in the sociolegal tradition of dispute processing and framing has paid more attention to the significance of institutional and normative influences for individual actors. Sociolegal work has itself addressed such politically relevant questions as how litigation transforms the character of disputes (Felstiner, Abel, & Sarat 1980–81; Mather & Yngvesson 1980–81) or serves different classes differently

[3] Freiburg is located at the western edge of the Black Forest; Montpellier is close to the Mediterranean coast west of Marseille; New Haven is on the U.S. Eastern Seaboard not far from New York City.

(Merry 1990). Yet sociolegal scholars have seldom exploited the potential of disputes to illuminate political and administrative contexts beyond specialized domains of legal actors and institutions.

Since policymaking concerned with land use in all three settings proceeded chiefly through episodic decisions on individual projects, cumulative case studies played an especially important role in my research. After detailed examination of both the formal institutional contexts and a single, largely similar dispute in each setting, I settled on a structured questionnaire in translation as the central instrument for more rigorous inquiry. Administered in interviews to parallel groups of actors in each setting, the questionnaire elicited both systematic, parallel accounts of disputes and a wide range of data on backgrounds, norms, and cognitions.

To assure that the case studies as well as in the other data remained comparable, parallel sets of respondents were crucial. Within each setting, selection of respondents also had to take account of clashing viewpoints among actors with varying ideologies, roles, and interests. Dual bases of selection enabled me to meet these criteria. A snowballing method that commenced with local (and, in the European settings, supralocal) officials assured that my respondents would all be well informed and influential. The large number of names this method generated also permitted me to assure that the respondents made up similar proportions of the major types of roles in the processes of each setting: local administrators, politicians, legal specialists, private technical experts, developers, citizen activists, and in the European settings, supralocal administrators. Actors who played more important roles in one or more the settings, like the U.S. lawyers or the European architects and supralocal administrators, made up larger proportions of the respondents there. These procedures also secured respondents from across the political spectrum in each setting and from the local peripheral communities as well as the central cities. If my focus on regular actors in the process excluded ordinary citizens who only occasionally came into contact with decisionmaking about land use, the citizen activists among my respondents often represented grassroots groups. These activists themselves occasionally volunteered that many of the questions would have been too specialized to pose to citizens less familiar with this policy field.

The questions about the cases drew on parallel procedures from earlier studies (Eulau & Prewitt 1974; Laumann et al. 1985). Structured inquiries directed respondents to choose a controversial project, to tell the story briefly, then to choose from precoded lists of potential institutional and other participants and of the litigative and other means employed. Except for the ultimate outcomes, which I tabulated from unstructured re-

sponses and from other sources,[4] the statistical compilations derived from answers to precoded questions (see appendix). For 30% of the European cases and 10% of the U.S. cases, more than one respondent went through this procedure. Opposing viewpoints and supplementary documentary research enabled me to verify accounts of the largest controversies.[5] Although a few of the larger controversies this procedure brought out dated back to the 1960s, the bulk in each setting took place during the 1980s. The set ultimately assembled in each setting included most of the most publicized controversies of the previous decade or more in each metropolitan area, plus a sampling of smaller and middle-sized disputes.

Litigation and the Contrast in Patterns of Policymaking

Aside from courts, policymaking concerned with land use in the U.S. and European settings differed along lines largely familiar from other studies. Whether other comparative accounts have stressed the powers of European officials (Heidenheimer et al. 1990:ch. 8; Elkin 1974) or corporatist intermediation (Savitch 1988), these studies concur that elites of officials, parapublic companies, and officially sanctioned interests play more dominant roles. In the United States these studies have found stronger roles for private actors and more unstructured networks and organizations.

In both settings litigation provided a significant, if seldom decisive, political resource for challenges to these local patterns. Actors facing these divergent patterns, however, would have employed even identical courts differently. And neither the projects under challenge nor the U.S. and European courts were precisely the same. For all these reasons, litigation had emerged in

[4] The main relevant question asked about the overall outcome of proceedings (question 4b in the appendix). I also asked about changes to projects before and during the proceedings (question 5 in the appendix). Independent tabulation enabled me partly to control for different assessments by actors with various points of view. Essentially, I classified the opponents as unequivocal winners if the project they opposed failed. If the project succeeded without significant changes despite opposition, I classified the proponents as clear winners. Although proceedings in a number of instances had not completely ended, in several of these cases the likely outcome was already apparent. Otherwise I assigned the dispute an intermediary rating. Subsequent press reports or followup calls to respondents enabled me to update accounts of several cases. Although this procedure simplified results schematically, it assured a common basis for comparison.

[5] For the repertoires and other questions about the proceedings, precoding of responses made tabulation more automatic. When one respondent did not recall one or another type of action, another respondent with a different perspective occasionally did. In a few instances of directly conflicting ratings, such as assessments of the magnitude of disputes or the degree of change to projects, an independent judgment was needed. Since most of these disputes were larger controversies, I drew on additional documentary materials and press reports. For the smaller to moderate-sized controversies, such checks were often unavailable. In these instances, the parallel distribution of roles and political groupings of my respondents in each setting helped to balance out different points of view.

the European settings as a political resource for organized opponents of corporatist and statist networks, and a less apparent one for businesses. The parallel resources of the U.S. setting enabled both businesses and opponents to integrate litigation into more limited, more symmetrical repertoires of challenge.

Projects and the Framing of Disputes

In each metropolitan area my standardized question (appendix, question 4a) elicited a comparable mix of contested projects. Housing projects comprised the single most frequent type in each setting, followed by commercial and recreational facilities. In tandem with differences in the wider political economy of development in the three settings, the contrasts in patterns of policymaking also produced divergences in the types of projects. These aspects of projects would ultimately contribute to differences in the style and intensity of the disputes that led to litigation. Although seldom larger than the biggest U.S. developments,[6] the European projects centered more in the central cities, implicated more extensive participation by governmental and other official actors, and emerged more in the context of public planning.

The major public projects that generated the greatest controversies in the European settings grew out of the planned development that has become a regular feature of European politics since the 1960s.

The Gaullist central government of the 1960s had initiated the two earliest projects in greater Montpellier—the vacation village of La-Grande-Motte on the Mediterranean coast and the mall/office complex of Le Polygone adjacent to the downtown of the central city. These developments were part of nationwide efforts to build up regional administrative structures and the economy on the periphery. Since the 1970s, as authorities for planning authorities decentralized, the focus of larger controversies here shifted to local administrative initiatives in the central city and surrounding towns. In the downtown the Socialist administration under Georges Frêche planned and undertook a series of increasingly ambitious projects. To Le Polygone the municipality added a massive, partly public housing complex (Antigone), then a downtown convention center, then the even larger service and housing complex of Port Marianne. Outlying administrations had followed suit with such controversial proposals as the planned Aquagrec amusement park in the coastal town of

[6] Although the variety of projects defied standardized measurement, contrasts in their size alone do not appear to have made much difference in the overall patterns. Large national developers active in greater New Haven, like the Taubman Company or Trammell-Crow, had no trouble mustering resources to rival those the European officials mobilized.

Palavas and the riverfront commercial and residential development of Port Ariane downstream from Port Marianne.

In greater Freiburg officials also furnished the basis for most of the most prominent controversies. From the early 1970s a nationally prominent confrontation had pitted the Land government against opponents of a proposed nuclear power plant in the outlying town of Wyhl. Most other controversies from the 1970s and early 1980s had centered at the local level, as urban renewal made way for downtown housing projects in the planned districts of Schwarzwaldhof and Im Grun. In recent years official decisions to build a massive new housing complex on the former city sewage farm and a convention center and services complex downtown drew concerted opposition. Here and in the French setting, official infrastructural measures like rail lines for the French *train à grande vitesse* (TGV) or highways made up 9% and 12% of the controversies. A long-proposed highway through the Black Forest had given rise to repeated controversy since the time of the Weimar Republic.

Official initiatives played a markedly smaller role in framing the U.S. controversies. With even larger proportions of new metropolitan development than of the total population, the suburbs here gave rise to the vast bulk of controversies.[7] Even the largest suburban disputes, over regional malls in Orange, Hamden, and North Haven, centered on projects of private developers. All told, condominiums and other forms of new private housing gave rise to 59% of all the disputes in greater New Haven, compared with 34% and 35% in the European settings. Of the 29 U.S. housing projects at the center of controversies, 25 were located in the suburbs. New highways or rail lines also played no part in the U.S. disputes. In New Haven itself, where poverty and urban decay constantly threatened markets for development, official participation in projects remained limited as well. Aside from tax breaks for several private developers during the 1980s, officials and governmental finances only assumed leading roles in occasional projects like the planned districts of Downtown South–Hill North and Ninth Square. These projects derived less exclusively from official initiatives than from agreements between private developers and private actors and institutions, such as the Neighborhood Development Corporations and Yale University. The lesser official participation partly reflected the withdrawal of national and local officials from the leading role in the urban renewal and interstate highway programs of the 1950s and

[7] In Freiburg, where the central jurisdiction extends well beyond the urbanized area itself, slightly less than a third of controversies took place outside. In Montpellier, 64% did, but the central city officials played a significant role in several disputes beyond formal city boundaries. But in greater New Haven, 85% of the controversies took place outside the central city, and central officials exercised little leverage over any other controversies.

1960s. But even the accounts of the central figure in the policymaking of that earlier period, Mayor Richard Lee, stress that he acted more as a broker of private interests than as a wielder of institutionalized control like European planners (Wolfinger 1974; Domhoff 1978).

More synoptic local planning also distinguished the European settings. By the 1980s nearly all towns of both European metropolitan areas had adopted land use plans. Although planning still revolved in effect around individual projects, local officials responsible for this planning typically formulated and justified those projects in terms of broader spatial objectives. The convention center complex in Freiburg fit into the larger aim of expanding the downtown in the direction of working-class neighborhoods. The series of projects in downtown Montpellier accomplished a more general extension of the downtown to the River Lez, where a medieval port had once stood. In greater New Haven the zoning rules typically ratified existing land uses. Even when suburbs like Guilford and North Branford adopted land use plans under the state-level authorizations, these prescriptions remained general, nonbinding statements of goals formally distinct from the rules. The specific maps of land uses and the concrete designations of future projects in the European plans went much further toward directing development.

Greater participation by officials, location in the central city, and integration into broader official planning helped frame more prominent conflicts in the European settings. Ratings respondents assigned to the controversies suggested the extent of this effect. Presented with a five-point scale to gauge the intensity of controversies, respondents in Montpellier and Freiburg assigned the highest two ratings to 63% and 50% of the controversies, compared with 35% in New Haven.[8] The interests and associated groups in these settings, as we shall see, would in turn form more around broad questions of local development beyond the particularistic interests of individual neighborhoods. Precisely how these features of the projects figured in the framing of controversies depended on the choices of the actors who contested projects.

Litigation as a Political Strategy

Despite cross-national differences in organizational forms and strategies, the proponents and opponents of projects mapped out in broadly parallel ways. In all three settings, private actors or organizations usually made up part of the "advocacy coalition" on each side (Sabatier 1993). With few exceptions, it was

[8] The means differed less: 3.28 (SD = .95) in greater New Haven, 3.57 (SD = 1.24) in greater Montpellier and 3.56 (SD = .93) in greater Freiburg. Americans had assigned larger proportions of the cases a moderately intense rating than had the Europeans.

these private actors who sued. Among proponents, the developers or builders initiated litigation.[9] Among opponents, individuals, neighborhood groups, and environmentalists did. Following a general interest in "use values" like services, aesthetics, and environmental quality (Logan & Molotch 1987), opponents in each setting stressed preservation or environmentalist concerns. Proponents, looking more to "exchange values" in markets, stressed the need for economic growth.

The patterns of litigation in the controversies demonstrated how regular a political tool litigation had become (Table 1). Overall, opponents of projects reported regular resort to litigation in all three settings. Indeed, the French and German groups employed courts in 12% and 19% more of the total than their U.S. counterparts. The even sharper divergence in reports of litigation on behalf of projects reflects the unpolitical character as well as the frequency of these lawsuits in Germany and France. Especially in Germany, other evidence documents that builders sued regularly under construction and planning law (Wollmann 1985:112–15). Not only builders, however, but officials, professionals, and activists also reported no pro-development lawsuits. Even accounts of such suits in the local media remained rare. Some respondents in these settings had simply not heard of any business litigation. Others probably considered such lawsuits too insignificant as controversies. Still other respondents appear to have preferred to avoid the subject. For Germany in particular, these responses demonstrate how much officials as well as businesses play down the conflictual dimensions of the business litigation that occurs. Formal judicial caseloads there contain large proportions of " 'dead-bang' cases for which the plaintiff [simply] needs an executable judgment," and "settlements with the court often playing a facilitative role" (Blankenburg 1994:58).

Table 1. Proportions of Controversies with Litigation

	Montpellier		Freiburg		New Haven	
Initiator	Ratio	%	Ratio	%	Ratio	%
Those developing project	1/36	3	—		14/49	28
Those opposed to project	14/36	39	11/34	32	10/49	20
Both	1/36	3	3/34	9	1/49	2
Total	16/36	44	14/34	42	25/49	50

NOTE: Ratings based on those by respondents in answers to questions 4 and 8 in the appendix; see notes 4 and 5.

These contrasts between European and U.S. political litigation trace to differences in strategies and, ultimately, to divergent

[9] I use the term "builder" to refer to the private businesses that constructed projects in Europe and "developer" for the parallel firms in the United States. European firms in this field tended to integrate all the activities related to construction under one roof. While some U.S. firms also did so, smaller operations often amounted to entrepreneurs who contracted out some work.

strategic conditions. Over time, and in a succession of different projects, various opponents and proponents persisted in characteristic uses of litigation. Conversation with these actors left little doubt that they arrived at those uses on the basis of conscious, often repeated deliberation about the best way to achieve their ends. Consider first the choices that developers and builders faced, then those that confronted opponents.

Developers and Builders

Comparative accounts often contrast the relatively cooperative business-government relations in many European countries with the more adversarial relations in the United States (e.g., Van Waarden 1992; Schneider 1985; Kelman 1981). A parallel contrast marked interaction between officials and the developers or builders I studied. Political opportunities explain this contrast. The official authorities, corporatist practices, and institutional and normative constraints on litigation in the European settings presented European builders with opportunities U.S. developers did not face. European construction firms had both more to gain from close cooperation with the more insulated official networks of these settings and more to lose if they did not cooperate. U.S. developers derived less certain benefits from close cooperation with local officials, and profited more from adversarial litigation and related political strategies.

Mapping outcomes of controversies with and without litigation brings out the contrast in the conditions these firms and their official proponents faced (Table 2). The European proponents of projects, who avoided litigative challenges, succeeded outright more than they failed (Table 2, panel B). So long as opponents in these settings did not mobilize around litigation and protest, proponents faced at worst a compromise that would allow construction to proceed. U.S. developers who did not litigate confronted substantially less favorable outcomes. Opponents in this setting were more likely to stop a project outright than developers were to succeed without compromise. Even if developers could often reach a compromise that permitted construction in some form without resort to litigation, they secured better chances for a project by going to court. U.S. developers who litigated generally obtained at least what respondents described as a mixed or ambiguous legal result. In the four instances in which developers won an unambiguous victory in court, the legal outcome cleared the way for a project to be built with fewer compromises or delays. Even the more usual mixed or uncertain legal outcome shifted probabilities more in favor of construction.

a) Corporatist and statist practices and the decision to litigate. Statist and corporatist aspects of German and French policymaking

Table 2. Results of Litigation by Proponents

Litigation Outcomes	Montpellier	Freiburg	New Haven
	A. Projects When Litigation Initiated by Proponents		
For proponents	P = 1	—	P = 3
	—		M = 1
	—		—
Mixed	—	—	—
			M = 5
			O = 3
For opponents	—	—	P = 1
			—
			O = 1
	B. Projects with No Litigation		
	P = 7	P = 9	P = 7
	M = 7	M = 6	M = 7
	O = 5	O = 5	O = 10

NOTE: Capital letters represent outcomes of controversies:.
P = Victory for proponents of project
M = Mixed or uncertain outcome
O = Victory for opponents
Outcomes for projects assessed independently on the basis of responses to question 4 in the appendix; see note 4. Other data based on precoded responses to question 8 in the appendix; see note 5. Does not include the five cases with litigation by both sides reported (one U.S., one French, and three German controversies) or one case initiated by opponents in greater Freiburg and greater Montpellier with no clear legal outcome reported.

gave builders in these settings clear reasons to avoid adversarial litigation. Pluralist arrangements often required U.S. developers to resort to litigation and other political measures on behalf of projects.

A wide array of authorizations contributed to the greater role of the European officials. In both Freiburg and Montpellier, public and semipublic companies under formal municipal control—a type of entity without close parallels in greater New Haven—undertook substantial portions of the total new construction. These enterprises undertook major projects themselves in the German city and an entire array of activities preparatory to construction in the French city. Although private developers and individual property owners were still responsible for the bulk of new construction, local officials retained much more extensive authority over local land use. The city of Freiburg owned nearly half the land within the city limits itself. Montpellier, with less extensive public ownership, had adjusted zoning so as to be able to draw on national authorizations of preemptive purchase throughout the city. Officials in both cities also exercised more discretion as well as wider power under the relevant rules than American counterparts (Sellers 1994:ch. 7).

Companies under the direct control of officials could hardly be expected to mount litigative challenges. Private European builders and such professionals as architects also found cooperation with officials both useful and difficult to avoid. On the one hand, builders who worked closely enough with the local administration might be given responsibility for projects that official planning generated. Even builders who pursued essentially their own projects benefitted when the local government mobilized powers of land use and building control on behalf of those projects. At the same time, officials could impose conditions on construction that builders were in no position to refuse. In at least one instance, according to a builder in Montpellier, the local government had employed the threat of preemptive purchase to force his firm to scale back a new housing development. Despite more initiatives by private developers in greater Freiburg, major new housing and commercial projects there clearly depended from the beginning on the decisions of local planners to set aside additional land and provide infrastructure.

Without these formal powers or similarly extensive discretionary authority, officials in New Haven could neither do as much on behalf of projects nor exercise as much control over private developers. Throughout the suburbs, and to a lesser degree in the central city, separate lay commissions for zoning, planning, and specialized matters like wetlands bore the brunt of final decisionmaking. These bodies typically confined decisionmaking to narrow criteria and often decided in favor of neighborhood groups opposed to projects (see Table 3 below). In the absence of neighborhood resistance, zoning remained such a pliable tool that some developers preferred to secure a zone change for new construction rather than a zoning permit under existing rules. Fragmentation among the numerous lay commissions, official planners, and the local council also prevented officials from mobilizing on behalf of projects or from arriving at a unified set of policies.

Corporatist elements in the European planning processes helped shelter builders there from challenges and added to the reasons for these actors to maintain ties with the local governments. In both metropolitan areas, formally similar processes of concertation had established privileged roles early in decisionmaking for local representatives of the sectoral interests emphasized in corporatist theory, such as the Chambers of Agriculture. Other governmental units and major local institutions like universities, churches, and utility companies also participated in these formalized networks.[10] As we shall see, restrictions on

[10] Although the original neocorporatist theories generally confined the definition to representatives of business and labor interests or, at most, sectoral organizations, applications of corporatist categories to local interest intermediation have extended to firms as well (Simmie 1981; Savitch 1988).

broader participatory opportunities accompanied these procedures (see *infra* p. 496). Objections that emerged through this intermediation often remained modest, and the negotiative process rarely allowed even substantial objections to stop a project altogether. Formalized representation of interests also probably helped justify setting aside challenges by individuals or less institutionalized actors. At the same time, these procedures lessened the leverage of developers against local authorities. Concertation placed authority to solicit and assess reactions from a broad array of institutions and interests squarely in the hands of officials and parapublic companies.

The contrast with the U.S. setting helps clarify the consequences of these statist and corporatist elements. In greater New Haven, developers and the professionals they hired usually had more leeway to plan larger projects themselves. Yet they also faced the task of accommodating both the various governmental bodies involved in decisionmaking and an array of local civic and individual interests. In larger projects likely to give rise to litigation, developers pursued informal channels within government along with the required formal applications for permits.[11] In the complex politics of the central city, byzantine negotiations could prove necessary to win support from members of the Aldermanic Council. Developers often combined these activities with efforts to buy off opposition from the neighborhood associations that typically represented local businesses and residents. To win approval of one project in a downtown neighborhood, a developer had negotiated simultaneous deals with neighborhood groups and politicians to provide both affordable housing and recreational facilities. For large suburban projects like the Hamden Mall, developers had increasingly resorted to promotional campaigns.[12] In about half the cases, the U.S. developers who litigated had also sponsored or contributed to neighborhood meetings, made individual contacts, and printed materials such as informational leaflets for public distribution.

Despite occasional grumbling, the European builders recognized the imperatives that the official powers and corporatist practices there implied. In Montpellier, local private developers maintained well-cultivated political ties. Though representatives of large supralocal companies sometimes chafed at the policies of the administration, these actors emphasized efforts to establish good will. In one instance, after a small housing project had already been formally approved, local residents complained that the construction would clear away a small wood. Although legally

[11] Thus these proponents relied on informal channels of influence in 53% of the litigated controversies as opposed to 29% of those without litigation, for a Pearson correlation of .28 with litigation.

[12] Respondents reported a publicity campaign in 31% of the cases in which developers litigated as opposed to 17% without litigation (Pearson $r = .19$).

entitled to proceed, the company withdrew the project at the request of the municipality. If the German builders talked less openly about relations with the local administration, all but one of these companies, as local or regional firms, had been fixtures in the area for decades. The heads of two of the larger family-run firms there played active roles in the local CDU and FDP, both parties with patronage in the local construction and planning offices.[13]

Especially in downtown New Haven, the U.S. developers had also cultivated political and personal connections to local officials. In the suburbs, where most development took place, the advantages of doing so had become increasingly uncertain. The major fights over proposed malls in North Haven, Orange, and Hamden during the 1970s and 1980s demonstrated how little advantage support from the mayor could bring. In Orange, for instance, the mayor had arranged for an outside developer to build a mall on land adjacent to the local business district. Residents from the wealthy single-family neighborhoods that made up most of the town mobilized in a grassroots organization against the project. After angry confrontations between residents and the developer in the public hearings, an elected zoning commission denied the developers the necessary zoning approvals. In such circumstances, litigation represented the logical recourse to defend what ties to officials had helped secure.

b) Courts and legal practice as elements of political opportunity. Political resort to courts depended not only on the practices that typologies of policymaking patterns have emphasized but also on legal institutions and norms themselves. Among developers and builders, these legal factors generally reinforced the other strategic considerations we have seen.

As Table 2 suggests, litigation in greater New Haven brought somewhat better outcomes for developers but seldom proved decisive. In three cases of suburban subdivisions, the courts had struck down commission rulings and developers proceeded without having to compromise.[14] In other instances, developers

[13] "Some say [party membership] makes a difference, others that it doesn't," another developer commented.

[14] The greater authority U.S. respondents attributed to judges (Table 4, panel A) also suggests the greater power of courts over outcomes in this setting. But several additional conditions affect these answers. Common law judges rule on a far broader range of social activity than do administrative court judges. American legal theory, and with it perceptions of law, emphasize judicial decisionmaking. Continental theory and related perceptions stress rules and structures rather than persons making decisions. Finally, the authority attributed to U.S. judges probably stems largely from the formal, prospective authority of caselaw rather than from the specific authority judges exercise over parties to a suit—to "law" rather than to the more concrete influence of courts on outcomes. German and to a lesser degree French administrative court judges lack this formal precedential authority.

The more unconditional protection of property rights in the U.S. constitution probably helped explain this success of U.S. developers against officials and the relative absence of suits by the European builders. But survey evidence demonstrated that this particular

could still forestall less favorable results, but the mixed judicial decisions failed to shift outcomes unequivocally in favor of projects. The comparative confinement of judicial review to procedural requirements under the state authorizations (Byrne 1990) may help explain these limits.[15] Expectations about the content of judicial decisions aside, litigation presented risks to European builders that U.S. developers did not face and was less essential for securing a review of decisions. Especially for profit-oriented developers, the requirement in both European courts that costs be imposed on the losing party (Debbasch & Ricci 1985:591–93; Justizministerium 1992) added an element of risk. In addition, mandatory procedures in Germany and optional ones in France enabled parties to secure administrative review of decisions on construction districts and permits prior to review by the administrative courts (Debbasch & Ricci 1985; Battis 1987). These procedures presented at least a formal opportunity to secure changes to an initial decision without litigation.

The need to find and hire an attorney to litigate posed additional difficulties for European builders. By 1990 lawyers numbered 1.2 per thousand people in Montpellier and 2.5 per thousand in Freiburg, compared with 8.6 per thousand in New Haven. So long as a controversy in Montpellier and Freiburg did not involve litigation, notaires or the French conseils juridiques handled legal formalities like contracts and official documents. Attorneys participated on behalf of projects in only 11% and 20% of unlitigated disputes in these settings, compared with at least 83% of disputes with litigation. Securing an attorney required obvious transactions costs and could entail further risks. Especially in greater Montpellier, lawyers with expertise in land use and planning law remained rare. Several respondents in the French city knew of only one local private attorney who specialized in cases before the administrative courts. The unusual background of this lawyer made it clear how rare his expertise was. He had worked for a time in the local territorial offices charged with state oversight of local planning, then had earned a doctorate in administrative law.

Attorneys for developers in greater New Haven played more indispensable roles. Lawyers represented these businesses

contrast comprised only part of an entire complex of differences in the cognitive and normative character of legal rules (Sellers 1994:ch. 7). Legal norms as causes must be analyzed in light of the other organizational components of a policy field and the exercise of power itself. A formalistic legal comparison might look to the constitutional differences as a "first cause" of the other contrasts. A comparison of legal norms as elements of social and political practice must take into account the deficiencies in legal formalism emphasized by generations of realist and critical legal theorists.

[15] Note that only 54% of all U.S. respondents, compared with 46% of the French and 49% of the Germans, described "form and procedures" as a main emphasis in judicial decisions in this field (appendix, question 45a). But while 64% of local administrators and commission members and 71% of legal specialists in the U.S. setting agreed on this categorization, as few as 30% of the European actors in these categories did so.

throughout the process of decisionmaking. Even one of the many developers with small to moderate-sized operations emphasized that "[m]y lawyer goes with me everywhere" to meetings with officials and private groups. Respondents with various viewpoints described how attorneys "ran the show" for developers in public hearings and other nonlitigative proceedings. These activities put attorneys for developers in a continuous position to give advice about possibilities for litigation, to smooth the transition to a litigative posture, and ultimately to conduct lawsuits. The cost of lawyers—especially "star" attorneys—may have even made litigation more expensive for developers than it would have been in Europe. While 40% of the U.S. respondents rated lawyers as the best paid from a list of local professionals and administrators (appendix, question 38d), only 10% of the Germans and 4% of the French did so. Still, U.S. developers viewed legal fees as an inevitable part of doing business.

Implicit normative constraints associated with different traditions of public law further enhanced the difficulties of litigation for the European builders. The role of these norms by comparison with their U.S. parallels exemplifies the oft-noted difficulty of conceiving legality and the state as a unified entity that is either "strong" or "weak" (cf. Katznelson 1986). Legal rhetorics and wider mentalities of the European settings identified "law" with a "state" separate from society (Dyson 1980; Cohen-Tanugi 1985). Legality served less clearly as a "strong" normative influence in its own right than as a normative justification for the comparatively "strong" official capacities here. Political litigation represented not simply a vindication of law but also a challenge to the special political and legal status of state actors. In this way, identification of legality with the state fostered special sensitivity to legal mobilization against officials.

As the one instance of litigation by a European builder demonstrated, normative constraints of this sort remained partly contingent on the power officials in fact wielded. In that dispute, the Communist-led administration of a tiny town outside Montpellier had tried to tax a national development company for a housing project to be constructed in that commune. Confronting the powerful, visible, well-connected mayor of Montpellier, the firm would have faced a dilemma. Confronting a marginal municipality unlikely to mobilize other officials, the firm sued and won.

Especially in the suburban periphery of greater New Haven, by contrast, litigation had become an accepted practice for developers. Even those who relied on social relations within a single community need not worry about endangering their contacts through litigation. In more general mentalities as well as legal ideologies, "law" and "government" implied more separate connotations than in the European settings. If the authority of offi-

cial actors remained more limited or "weaker," legality itself was "strong." Developers could frame legal mobilization more easily as a matter of fairness. Lawsuits merely reasserted the rules of the local political game.

Going to court presented less a disruptive threat than another move in that game. One local developer told the story of a four-lot subdivision he had proposed in the town where he worked. When the local commission turned the project down, he consulted with the mayor about whether he should sue. The mayor had simply told him to do "what I [the developer] thought was right." The developer sued and won. By all appearances he had also retained his standing in the town.

Opponents of Projects

Opponents in the three settings employed litigation in more similar ways as a political resource. While European builders engaged in political litigation less often than their U.S. counterparts, European opponents did so even more often. For the European opponents litigation was part of a more general repertoire of protest. Together with other activities, lawsuits helped bring about more favorable results than in ordinary proceedings. For the U.S. opponents, litigation combined with more constrained repertoires and brought limited results like those for U.S. developers.

Any such comparison of oppositional strategies must take into account the systematic differences in who these opponents were. In the European settings, more organized, often more centralized groups opposed projects. In and around Montpellier, regional or town-wide organizations stressing general goals like environmental protection or preservation undertook at least 8 of the 14 instances of oppositional litigation. Consistent with more general findings about associational activity in France (Baumgartner 1994), the core of activists often remained very small; at least two amounted to one-man operations. Although at least 8 of 11 groups that pursued litigation in greater Freiburg took the form of "citizen initiatives" (*Bürgerinitiativen*) against particular projects, these groups typically maintained close ties with the influential Green parties on the local councils of the central city and several suburbs. For organizational skills, information about official proceedings, and even funding, the German groups relied on the Greens somewhat more than on the regionally organized environmentalist groups of that setting. The opposition to projects in greater New Haven depended still less often on supralocal groups like the Connecticut Fund for the Environment. Even community-wide organizations seldom arose in this setting. With a few exceptions like the wider organizational mobilizations against suburban malls, established neighborhood orga-

nizations or spontaneous associations of single-family homeowners dominated the opposition to development. These organizational forms appeared far less often in the European controversies and only gave rise to one of the lawsuits there.

These differences in the groups traced partly to patterns of settlement and to longstanding traditions of political organization. The policymaking process and the litigative and other opportunities to challenge it also played a crucial role. The successes and failures these groups encountered in contesting projects with and without litigation highlight why these actors pursued divergent strategies (Table 3). In the U.S. cases without litigation, the difficulties developers had encountered grew partly out of the success of oppositional groups. Without having to mobilize to the point of more robust organization or litigation, these groups usually managed to stop projects or at least to secure an intermediate or open-ended result. In the European settings, the opposition won less favorable results than did the U.S. opponents when it stopped short of litigation but improved its chances more when it litigated. Like developers in the U.S. setting, opponents there only achieved better than mixed results from litigation in the rare instances of clear litigative victories.

Table 3. Outcomes for Projects When Litigation Initiated by Opponents

Litigation Outcomes	Montpellier	Freiburg	New Haven
For proponents	P = 2	P = 2	P = 1
	M = 1	M = 3	M = 2
	O = 2	O = 3	O = 1
Mixed	P = 1	—	P = 1
	M = 1		M = 2
	—		O = 1
For opponents	P = 1	—	—
	M = 1	M = 2	—
	O = 4	—	O = 2

NOTE: For symbols, basis of assessments, and exclusions, see Table 2 note.

a) Exclusion and influence in the policymaking process. In comparison with the U.S. process, the official authorities and corporatist elements in the French and German settings excluded or marginalized opposition to specific projects. Over the longer term, however, these same elements presented the European opponents with opportunities for influence that the U.S. opponents lacked.

Statism entails more exclusive official authority by definition. Corporatism operates through restrictions on who can play a role in the process at what point. In both European settings, planning for even highly publicized projects took place chiefly among small circles of political and administrative officials, private professionals, and firms. The concertation enshrined in formal procedures both for citywide land use plans and for the planned dis-

tricts of both settings limited opportunities for those outside officially sanctioned networks. Although hearings and procedures for public comment allowed neighborhood groups and others to react to proposals, these proceedings most often took place not only later than the initial concertation but separately. Whatever tensions had appeared in internal discussions about major projects like the convention center in Freiburg, officials in these external proceedings presented a unified front. In these circumstances public meetings turned into what the German opponents dubbed an "*Alibiveranstaltung*"—literally "alibi presentation." Officials would introduce a proposal, experts the officials assembled would speak on behalf of it, then others would be permitted to make brief statements from the floor.

Both in accounts of these disputes and in more general descriptions of the process, respondents pointed to clear restrictions on how much those outside of elite networks could affect ordinary policymaking. If the French practices tended still to exclude participation, the German ones contained it in ways that often minimized its effects on a project. Longstanding German legal traditions had allowed neighboring property owners a voice in proceedings concerned with projects next door (Battis 1987:278–89; Bender & Dohle 1972). Administrations in both Montpellier and Freiburg had undertaken frequent meetings with neighborhoods and with other oppositional groups as part of explicit policies to democratize planning. In standardized answers, however, little more than half the French respondents saw an opportunity for "those directly affected" to influence outcomes at either formal or informal stages.[16] Outside of activists and those on the extreme left, Germans generally saw more participatory opportunities for those directly affected by at least the formal stage. But both assessments by respondents and independent categorizations of final results indicated that German officials in formal proceedings had undertaken fewer and slighter changes in response to initiatives of those in the community than in either other setting (Sellers 1994:323).[17]

European officials also headed off challenges by incorporating the potential challengers into the concertative process itself.

[16] When asked whether "any directly affected person or entity" would be able to participate in the initial stage "before formal procedures have begun," only 38% of the French respondents agreed. Posed the same question about "the development of a complete proposed plan for a project," 54% answered affirmatively. Of the Germans, 61% and 78% gave similar positive responses. Of Americans, 38% agreed about opportunities to participate in the initial stage, but 98% did in the next stage. Except for this last question to Americans, the patterns of responses varied widely according to political ideologies and roles.

[17] These results derived on the one hand from standardized questions about changes to projects, and on the other from the estimates of final results explained *infra*. The one exception to this tendency occurred in those instances where changes to projects occurred before the formal proceedings. But these cases comprised a smaller proportion of the German controversies than of the others.

In both European settings, reforms since the 1970s had formally integrated environmentalist and preservationist groups in this manner. The resulting arrangements established an institutional role for the supralocal organizational networks of such groups as the Société de Protection de la Nature, the Société pour la Protection des Paysages et de l'Ésthétique de la France, BUND, and the Deutscher Bund für Naturschutz. In both cities, but especially in Freiburg, the Greens had also acted as advocates for environmentalist causes and for neighborhood groups in the municipal policymaking process. Both local governments had provided services like office space or printing facilities for environmental groups. Especially in the French setting, formal or informal incorporation could require considerable concessions. To resolve a longstanding conflict over plans for new development in the coastal town of Palavas, a newly elected mayor had created a commission to mediate between local environmentalist leaders and others. Although this arrangement led to plans for a new ecological park, the mayor moved forward quietly at the same time with plans for new housing on substantial portions of the small amount of open space remaining in the town. At least as important, the largely opaque formal process provided means to marginalize as well as to incorporate the voices of environmentalists. Without broader oppositional movements and tactics, influence within the process often dissipated.[18] When BUND had opposed construction of a road across a protected wetland in the suburban village of Hochdorf outside Freiburg, or the environmentalists and preservationists on a French departmental commission had contested a campground that encroached on protected areas in the seaside town of La-Grande-Motte, officials in the insulated concertative process had simply brushed the objections aside.

As a result of both formal features and less formalized norms, neighborhood groups in greater New Haven found more opportunities for influence in local proceedings. The commissions that made the final decisions for contested projects outside the central city were composed of lay residents appointed to fixed terms. These commissioners were neither bureaucrats nor typically even full-fledged politicians. In 7 of the 15 metropolitan towns, membership on at least one commission entailed standing for election. Rationalized systems of objectives like those in the European land use plans seldom provide officials with justifications for summarily setting objections aside. Not only the participation of neighbors but also the presentation of expert points of view, even submissions from such other governmental units like the state department of traffic, took place in public hearings before

[18] Karapin (1994) also found that participation within the established institutions provided an essential condition for the success of German citizen movements.

the commissions. In these proceedings, described repeatedly by all sides as a "forum" on a proposed project, developers and private experts rather than public officials presented the case of proponents. Oppositional groups in larger projects regularly countered these presentations with skeptical expert testimony. Even in the absence of counterexpertise, norms often observed in these proceedings encouraged responsiveness. One lawyer pointed to the "poignancy" of an unsophisticated citizen who unwittingly "taps into the nerve of an issue." A developer complained that "any idiot can get up and be effective" in a hearing.

Even though the European opponents possessed less effective means to influence individual disputes, the Germans in particular had succeeded more over the long term. The same public authorities, insulated procedures, and planning objectives that enabled officials to overcome the protests of environmentalists and neighborhood groups in specific instances could be put more systematically to the service of environmentalist and neighborhood concerns. In greater Freiburg, the number of housing units had grown more slowly in the 1980s than in the 1970s in precisely the towns where large Green presences indicated antidevelopment activism (Sellers 1994:649–53). In greater Montpellier, the existence of environmental associations correlated with decreases in growth rates over the same period (pp. 667–69). In most of greater New Haven, where capacities to plan with a view toward longer time horizons remained weak to nonexistent, opponents had little reason to aim for more than episodic success. Although parallel antigrowth "revolts" in New Haven suburbs like Hamden and Branford had halted large projects and braked intensive speculative outbursts, only the exclusive suburbs of Orange and Woodbridge had effectively restricted the more piecemeal growth that made up the bulk of new development (pp. 676–78). Even opponents to specific projects in the central city often lamented the absence of more systematic planning.

The chance for broader influence may have ultimately contributed as much as did constraints in particular proceedings to shape the more persistent activism and broader goals of the European opposition. However self-consciously the European opponents chose long-term over short-term goals, the planning doctrines of those settings had already helped frame debates about projects in broad, prospective terms. U.S. opponents organized more loosely and aimed at more particularistic objectives.

b) Litigative and other challenges to policymaking. The greater influence of European opponents over time also derived from the starker challenges these groups presented. In mounting these challenges, the Europeans relied regularly on extrainstitutional protest along with litigation. Even though the success of U.S. op-

ponents remained mostly episodic, they confined their activities more within the limits of institutions.

Repertoires that opponents employed when they did and did not litigate (i.e., excluding instances where only proponents litigated) demonstrate this contrast (Fig. 1). The European oppositional groups who litigated had simultaneously employed protest politics. Upping the ante of individual disputes, they had helped to frame the more intense controversies of these settings. French and German opponents were more likely to join legal action to demonstrations than to any other action in the repertoire.[19] Lawbreaking—typically civil disobedience—took place most typically alongside lawsuits. European opponents also turned more consistently to publicity through campaigns in the media and their own printed materials. These efforts went well beyond the parallel repertoires of U.S. opponents or of disputes in which developers litigated.[20] At the same time, opponents in all three settings engaged with similar regularity in neighborhood meetings, petitions, and official contacts.

Three of the largest recent land use controversies in the three settings exemplify the divergences in these repertoires. In Hamden, on the northern town line of New Haven, an association of residents organized against a regional mall that the progrowth mayor had supported and the planning and zoning commission he appointed had approved in 1989. The complex, highly publicized battle that ensued centered in the state courts, state-level permitting processes, and a series of stormy local hearings after the courts sent a local approval back for reconsideration. Ultimately, in the fall of 1993, the town elected a new mayor who had campaigned against the mall. The new commissioners she appointed voted down even a scaled-down proposal for the project.

Two of the biggest European controversies manifest a different relation between litigation and extrainstitutional means. In the prominent confrontation over a proposed nuclear power plant at Wyhl outside Freiburg, opponents filed suit against the permit for the plant. To challenge the decision by the metropolitan District of Montpellier to build its new garbage dump on the Mas Dieu estate in a town beyond the district limits, ecologists and other opponents filed a legal action in the administrative court. In both of these instances the ultimate decision to scrap the projects bore little direct relation to electoral outcomes. The Land government of Baden-Württemberg unilaterally put an end

[19] Even several of the U.S. instances counted here as demonstrations remained confined to the hearing room, such as holding up signs during proceedings.

[20] Respondents in greater Freiburg and greater Montpellier also reported slightly more intense disputes. The degree of controversy averaged 3.1 (SD = .79) and 3.05 (SD = 1.31) without litigation and 4.21 (SD = 0.7) and 4.27 (SD = 0.8) with oppositional litigation. In greater New Haven, the same figure averaged 3.04 (SD = 0.7) without litigation and 4 (SD = 1.0) with oppositional litigation.

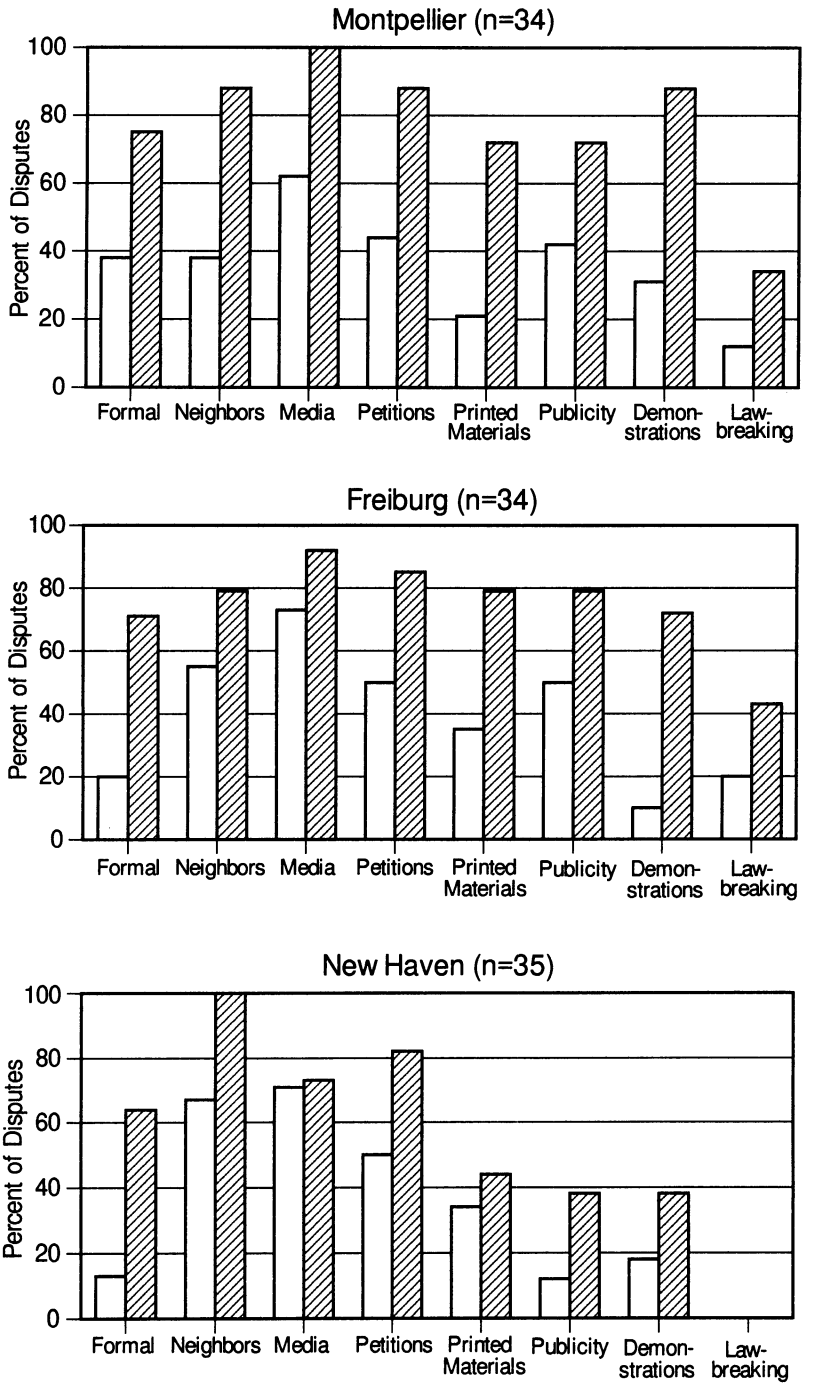

Fig. 1. Repertoires of opponents in the absence of litigation (*unshaded*) and when opponents litigated (*shaded*).
(Tabulated from standardized responses to question 8 (see Appendix)

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to plans for the reactor; and the mayor of Montpellier acceded to the final nullification of the Mas Dieu dump in the Conseil d'État, the highest French administrative court. In both cases, extrainstitutional protest and even civil disobedience had played significant roles. At Wyhl, in a success that became legendary in the German antinuclear movement, 28,000 protesters had peacefully overwhelmed police lines to occupy the site and forestall construction. Several hundred demonstrators against Mas Dieu had staged a protest specifically designed to attract the media. Reaching the Place de la Comédie in the center of Montpellier, they emptied bags of trash onto the air blowers from an underground garage. The image of garbage ascending high into the air had drawn the attention of both the national and the local press.

Differences like these reappeared too regularly to trace simply to contrasts between the projects at issue. While the U.S. opponents employed litigation alongside grassroots pressures within institutions, the Europeans combined it regularly with a repertoire of protest. The Americans, in the manner of interest groups fully integrated into a pluralist order, aimed to apply pressure at strategic decision points. The Europeans, guided more by a logic of protest against established interests, sought to subvert insulated policymaking networks.[21] As Table 3 suggests, the European strategies produced different outcomes in the German and French settings. Those strategies themselves nonetheless shared similar features linked to the commonalities of policymaking. Protest alerted supralocal officials responsible for enforcement as well as local officials themselves about substantive problems. It undermined claims of officials and concertative organizations to represent the will of the community. And it disrupted the rationalized, consensual relations of the insulated networks that typically negotiated and implemented policies.

The comparative limits on the U.S. repertoires employed with litigation stem from several causes. In particular cases, opponents here encountered more favorable opportunities within local institutions. In Hamden, for instance, the antidevelopment "revolt" had eventually built sufficient strength to sweep into the local government and defeat the mall. But such resolutions had ultimately failed to bring more than a mixed pattern of outcomes from litigation or to control more general patterns of development. As the Political Action Survey of the 1970s (Barnes & Kaase 1979:ch. 3) also found, norms that discourage extrainstitutional means of contestation remain essential to explain the difference from Europe. In 58% of the U.S. controversies, compared with 15% and 6% in the German and French settings, respondents who told the story judged that civil disobedience might have

[21] A similar distinction between "pressure" theories and theories of "institutional disruption" informs the analysis of Piven & Cloward (1979:8–11).

harmed the chances of the opposition. Some respondents suggested that extrainstitutional means would have been seen as an "unfair" attempt to circumvent the "forum" of the hearing, where proponents and opponents had an equal chance to confront one another. Respondents in the suburbs sometimes pointed to the political composition of communities: "Republicans don't demonstrate," said one official. Still others stressed that the issues involved were simply not important enough to justify protest politics. Current arrangements in New Haven offered little prospect that intensification of conflict would bring positive results. Federalism at the national level and home rule at the state level in Connecticut made these instances less useful targets of oppositional activity for the U.S. opponents than for their European counterparts. And litigation itself remained subject to clear constraints as an oppositional weapon.

Only in one exceptional instance did litigation work decisively by itself in favor of the U.S. opponents.[22] Lawsuits over pollution had prompted the Upjohn Company to close down a manufacturing plant in the mostly residential suburb of North Haven. Otherwise the constraints evident in judicial decisionmaking limited what opponents as well as developers could accomplish through lawsuits. Opponents could still employ litigation in this setting as a means to delay decisions. In several cases, housing developers pressed for credit found themselves forced to compromise with local groups to avoid further delays or had "flipped" (i.e., sold off) projects to other developers. In Hamden, mall developers had been compelled to scale back their project regularly in hopes of quicker approval. The mixed results of Table 3 for greater New Haven indicate limits to this use of litigation as well. Even had greater substantive intervention by courts added to the opportunities associated with litigation, opponents would still have confronted the comparative constraints in this setting on official policymaking itself.

In the European settings, administrative hurdles, the risk of double costs, and the expense of legal expertise often presented insurmountable obstacles to litigation for opponents in smaller controversies. In larger disputes, the organized groups that emerged often overcame these barriers. Legal hindrances for these European opponents probably differed less from those for their U.S. counterparts than the legal obstacles European builders faced. Accumulated knowledge of the process and occasionally legal training among the persistent circles of European activists helped substitute for the services of attorneys. More often than counterparts in greater New Haven, "star" land use attor-

[22] As with developers, both the constitutional provisions concerned with property rights in the United States and Europe and other legal norms help to account for this difference in political litigation. To explicate the role of these norms would require more extensive treatment than is possible here (see note 14 *supra*).

neys in Europe had themselves acquired reputations through representation of oppositional groups. In greater Montpellier, officials and a professor at the local university had also regularly advised activists. Unlike their European counterparts, oppositional groups as well as developers in New Haven also found they needed an attorney even in the absence of litigation.[23] The difficulties this requirement had posed for many such groups contributed to a clear socioeconomic stratification of opportunities. Aside from the few town-wide groups, only opponents in wealthier neighborhoods of single-family homes had contested projects by means of litigation.

The same mentalities that made the European builders reluctant to mention litigation probably enhanced the usefulness of lawsuits as a means to subvert elite networks. More than for U.S. opponents, to mobilize "law" meant not simply to reassert the rules of the game but to challenge the authority of state actors directly. Even a partial or temporary victory, as in the initial judicial ruling against the nuclear power plant at Wyhl, could pave the way to political success. The mere presence of a lawsuit provided publicity and a rationale for extrainstitutional protest. The next section will explore the different ways and degrees that litigation served these ends.

While European businesses still hesitated more than their U.S. counterparts to employ courts as political resources, opponents of projects in all three settings had integrated litigation into repertoires of challenges to policymaking. Regardless of the setting or the type of litigant, political litigation remained more a rubber bullet than a magic one. For oppositional groups in particular, the usefulness of litigative resources depended on combining them with other strategies. Both the reluctance of European businesses to use courts aggressively and the starker, more concerted challenges to policymaking by European opponents of development trace in large measure to the corporatist and statist aspects of policymaking in these settings. Comparison with these settings highlights not only the more open, more symmetrical opportunities of policymaking and litigation in greater New Haven but also the constraints and particularistic tendencies of the pluralist pattern there. In shaping opportunities for challenges, legal experts and courts increasingly contradicted the corporatist and statist order of European policymaking. U.S. courts and legal experts continued to reaffirm both the institutional order and the limitations of pluralism.

[23] When there was no litigation, opponents used lawyers in only 11% of the French and 20% of the German disputes, compared with 53% of the U.S. disputes.

Centralization and the Uses of German and French Administrative Courts

Although the French and German administrative courts represent the same genus of judicial resources, they belong to different species. In the local and meso-level policy fields that made up the bulk of state-society relations, French administrative courts often affect specific outcomes more than their German counterparts do. At first glance, these results appear to contradict implications from decisions in political controversies over nuclear power in these two countries (Nelkin & Pollak 1981; Fach & Simonis 1987). To understand how French courts offer opponents more important resources than the German courts in some cases but less important ones in others requires a reexamination of traditional presumptions about the relation between courts and centralized, unitary structures of rule.

Centralization, Politics, and Legal Outcomes

The traditional association of federal or decentralized regimes with judicial review rests on a simple logic. Where a central administrative structure does not resolve conflicts among a number of equivalent states, provinces, or Länder, the role will pass to courts. The growing complexity in governmental arrangements throughout advanced industrial societies has necessitated increasing qualifications to the once-simple distinctions between decentralized and centralized or federal and unitary systems (Gunlicks 1986:ch. 11). In France, regarded by Dicey (1987) as the classic example of weak judicial review in a centralized state, the shifts have been especially noteworthy. French administrative courts now grant decisions in favor of opponents to local policymaking in this field at least as regularly as do parallel German courts—in some types of cases probably more so. Where the success of opponents before the two types of courts differs, contrasts in the centralization of the two states and in the dominant political constellations help account for the differences.

Only in greater Montpellier did the opponents in the case studies win litigation more often than they lost (Table 3). Although more systematic case statistics cannot be taken as a gauge of the much smaller set of politicized disputes, these larger numbers indicated a parallel tendency. A major portion of the French litigation in this area fell under the writ called "recours pour excès de pouvoir" (action for exceeding authority). Roughly an action for abuse of discretion, this authorization enabled citizens and associations to claim that officials had violated any of a number of "general principles of law" such as procedural fairness and equal treatment (Debbasch & Ricci 1985:324–28). In the mid-1980s the rate at which claimants succeeded in this

action before the administrative court in Montpellier hovered around 20% of the total.[24] The more limited figures on results from litigation over construction and planning matters in the German setting, though not entirely parallel, indicated a slightly lower rate of success. From 1977 to 1982 in greater Freiburg, 11.8% of litigative challenges to building permits had succeeded (Wollmann 1985:73).[25]

These contrasts in more general dispute processing, but especially in treatment of local political controversies, stand in sharp opposition to the outcomes in decisions about nuclear power. German opponents of atomic energy achieved mixed results before administrative courts; French opponents only obtained so much as a favorable initial decision (later overturned) in 1 of the 14 cases between 1975 and 1981 (Fach & Simonis 1987:107). Consistent with these results, representatives of interest groups attempting to influence national policymaking in the France of the 1970s and early 1980s expressed consistent skepticism about the usefulness of judicial resources (Wilson 1983).

In matters of local politics, however, the French administrative courts showed much more willingness to intervene during the 1980s, than their German counterparts. Beyond the different dimension of judicial mobilization that a local perspective reveals, this contrast reflects considerable shifts in French practices at the local level itself. As the Constitutional Council asserted itself increasingly on the national political stage (Stone 1992), the growing jurisprudence elaborated by the administrative courts ultimately extended the general principles of law to include rights affirmed by the Council (Weil 1964; Debbasch & Ricci 1985:324–28). Even more important for politicized cases, administrative decentralization carried out under the Socialists in 1982–83 explicitly assigned the administrative courts a political role. These reforms passed from the territorial representatives of the central state to local officials themselves authority for local planning and construction permits. To replace the general supervisory authority of the state representatives, architects of the reforms looked to more indirect mechanisms of review like chambers of financial review and actions before the administrative courts (Rondin 1985; Schmidt 1990). New authorizations for the Prefect to refer questionable decisions to these courts for review officially recognized this responsibility for oversight.[26] One administrative court judge I interviewed openly acknowledged

[24] Statistics from Tribunal Administratif de Montpellier.

[25] Fragmentary figures from the Regierungspräsidium Freiburg for the late 1980s confirmed at least as low a rate.

[26] Although this formal authorization seldom saw much use, the structural changes associated with decentralization transformed an already growing caseload into a deluge. In 1988, the government created an intermediate level of appellate administrative courts to stem the tide of cases that reached the Council of State at the top.

that the court in Montpellier now granted relief more regularly. Despite an eightfold increase in the number of cases this court processed under the "recours pour excès de pouvoir" between the 1960s and the 1980s, the rate of successful suits had doubled.[27]

A common thread of support for national policies linked the French decisions against opponents of nuclear power with the decisions in favor of opponents in greater Montpellier. In defending the nuclear plants, the administrative courts were shielding the national energy agency (Électricité de France) and a prestigious national policy from challenge. In a similar if less uniform way, the decisions in greater Montpellier vindicated national policies among local political elites. When the administrative court invalidated the plans of the coastal town of Palavas to build an amusement park (Aquagrec) on a wetland protected under national statutory limits on coastal construction, the court was clearly imposing the will of the central state. When the courts ruled that the District of Montpellier had exceeded local authority in placing the garbage dump at Mas Dieu outside district boundaries, judges were invoking a general policy against environmental exploitation of one commune by others.[28]

The judicial outcomes in greater Freiburg suggest that the administrative courts there sought to protect local policymaking from political challenge. As late as 1976, a German legal scholar in this field could remark that "no decision is . . . ever decided in favor of plaintiffs" (Rehbinder 1976:384). The decisions against atomic power plants and other exceptions to this pattern occurred against a background of unusually intense politicization among official elites. Fach and Simonis (1987) conclude that the breakdown of the earlier consensus among German official experts and institutions in favor of nuclear power opened the way for judges to call official self-justifications into question. Acting on this disagreement, the administrative court in Freiburg had based the initial ruling against the reactor at Wyhl on a conclusion that the possibility of explosion remained unacceptably high (ibid., p. 191). Similar divergences among official experts helped to explain decisions in the 1980s and 1990s against official plans to build Autobahn 31 Ost, the superhighway through the Black Forest to Freiburg. Even in both these disputes, the appellate administrative court for Baden-Württemberg had overturned lower court rulings against the projects.

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27 Statistics from Tribunal Administratif de Montpellier. Although German administrative courts also expanded rights over the postwar period (e.g., Rapp 1963:18-23), compilations of cases before the administrative courts there in the 1960s and the 1980s showed no dramatic general increase (Justizministerium 1985).

28 At the same time large state-supported projects like the Corum, a huge new convention center in downtown Montpellier, were able to weather legal challenges relatively unscathed.

Although the processes of decisionmaking within administrative courts remain little understood, two sorts of hypotheses help to account for these divergences. The contrast in judicial policies corresponds to the difference we might expect between a federal but bureaucratic state and one that remains comparatively unitary and centralized. Elites in a centralized state have more interest in vindicating national policies. Elites in a state built around subnational instances have more interest in protecting lower-level officials from challenge. Behind any such normative contrasts in policies lay differences in institutional capacities to formulate national policies and implement those policies through the courts. Centralized structures and state-created elites in France permitted more of policymaking in matters like nuclear power to be formulated and carried out in national institutions. In Germany the Länder and localities assumed more of these responsibilities. The national system of French administrative courts also provided more opportunity for unified control of decisions than the systems that separate German Länder administered. Aggressive recruitment from the super-elite school École Nationale d'Administration, extending by 1982 to 39% of all judges on the lower courts as well as even larger proportions on the appellate Council of State (Morand-Deviller 1984:340), had integrated French administrative judges more into the networks that dominated national policymaking. The general legal training German administrative judges shared with many higher German civil servants could scarcely match this common source of socialization, connections, and pressure. Even had elites in Germany wanted to carry out the same judicial policy as in France, they would have had trouble doing so.

The governing parties at supralocal levels may have affected legal outcomes as well. In both countries parties of the Left have demonstrated greater sympathy for environmentalist movements and citizens' groups than have parties of the Right. In France the Gaullist government had begun the defense of the nuclear program in the courts. In Germany the Social-Liberal coalition at the federal level coincided with the first rulings against atomic power plants. Conversely, by the time of most of the court cases reported in my study, the Socialists had won control of the French national executive. The CDU now not only controlled the Land Baden-Württemberg but dominated the German federal government. Administrative courts in German Länder governed by the SPD did issue more favorable rulings than the court in Freiburg on legal challenges to official actions in this field. Sampling of court cases from 1983 before the administrative courts in Saarland and Cologne revealed rates of 18% relief (Wollmann

1985:73). This amounted to 6% more than in greater Freiburg but still 2% less than in greater Montpellier.[29]

These results suggest that constellations of parties made part of the difference in legal outcomes, but not all. So long as control of Land governments in Germany remained divided, the uniform judicial support the French nuclear program enjoyed would have been much more difficult for even a conservative federal government in Germany to achieve. In a less dramatic way, the same conditions helped render central political control through judicial decisions in the French periphery easier than in greater Freiburg.[30]

Practical Outcomes and Uses of Litigation

Along with the legal resolution of cases, the significance of the administrative courts also rests on institutional capacity to implement judicial decisions. More than their German or U.S. counterparts, the institutional capacity of French administrative courts themselves fits Montesquieu's (1962) description of judicial power as "en quelque façon nulle" (in a certain sense nonexistent). Because of centralized institutions and other aspects of the context in greater Montpellier, a decision for opponents in these courts still usually succeeded in defeating a project.

Ample evidence in greater Montpellier demonstrated the notorious institutional weakness of French administrative courts. Absence of broad injunctive authority, limits on preliminary relief, constraints on fact-finding powers, and easy repair of formal violations had all contributed to this contrast with the other settings (*Pouvoirs* 1988). Respondents perceived these deficiencies clearly. In France, 19% and 21% fewer than in the other settings pointed to fear of being overruled by courts as a reason officials followed preexisting court decisions (Table 4, panel B). And 70%, compared with 37% and 33% in the other settings, described the activities of the president of this tribunal as less important than those of other professional figures (Table 4, panel A). In the frequent absence of either preliminary relief or orders to demolish buildings, delay often operated more in favor of builders and their local official patrons than on behalf of opponents. Over three years, the regional Chamber of Commerce had secured a succession of rulings in the administrative court against a supermarket in the small suburban commune of Baillargues. Additional judicial rulings had called for the enforcement of those decisions. Baillargues's mayor had proceeded with con-

[29] The underlying social and economic conditions that help to explain the dominance of parties may account directly for part of this difference. Länder under SPD domination have also been more urban and more industrialized.

[30] Moreover, even if the institutional shifts associated with decentralization in France occurred as a result of Socialist initiatives, those structural changes—including the political role of the courts—survived the national defeats of the Socialists in the 1990s.

struction in definance of these rulings. At the time of the interviews the building was approaching completion. The administration of the central city had also challenged the judges on several occasions. In one instance, the city had forced opponents of a public housing project for the elderly in a wealthy residential neighborhood to sue repeatedly to enforce a judgment in the administrative court.

Table 4. Intersubjective Indicators of the Significance of Judges and Court Decisions

	Montpellier (Président du Tribunal Administratif) ($N = 70$)	Freiburg (Vorsitzender Verwaltungs-richter) ($N = 72$)	New Haven (Superior Court Judge) ($N = 100$)
	A. "Whose activity is more important for the life of the people in the area they serve?"[a]		
Activity of judge more important	14%	22%	41%
Equal to another role	16	39	24
More important for another role	70	37	33
No answer, other	—	1	2
	B. In practice, which *two* of the following considerations describe the most important reasons why administrators and elected officials follow preexisting court decisions and the rules those decisions embody?		
Scandal or embarassment for local officials	9%	14%	6%
Overruling by higher officials	31	46	33
Overruling by courts	50	71	69
Decisions clarify what the law is	44	32	50
Decisions guarantee the rights of citizens	60	28	26
Other	—	1	1

[a] A filter first posed this question to a list that included a bureaucrat, a developer or builder, a private attorney, and a private engineer. The responses here show answers to a followup that posed the same question again for the judge and the type of actor already selected.

In these circumstances, other institutions and actors besides the administrative courts assumed more responsibility for the implementation that Table 3 indicates. For this reason, as one lawyer in this field indicated, effective litigation required a political or policy strategy ("une stratégie politique") as well as a legal strategy ("une stratégie juridique"). The prefectures and offices of national ministries retained a wide range of authority that might be employed to enforce specific decisions, and at the time of the interviews national policymakers were acting to enhance

these resources.[31] Even without specific authority, these officials could sanction noncompliance indirectly in subsequent proceedings on the same project or in other matters.

Politics itself often provided a potent weapon of enforcement. On the one hand, competing networks of politicians could work through state officials and through direct public pressure to call attention to refusals to comply. Dense politico-administrative networks of this sort had long characterized French central-local relations (Grémion 1976; Dupuy & Thoenig 1983). On the other hand, the protest politics that typically accompanied litigation drew on a distinctive tradition in France (Shorter & Tilly 1974; Wilson 1983). French activists referred offhandedly to this activity as "making noise" ("On fait du bruit"). Not only may these efforts have helped secure decisions more favorable to opponents in the administrative courts themselves. As Table 4, panel B, suggests, oppositional litigants also capitalized on a stronger association than in the other settings between litigation and democratic norms. Far more often than in the other settings, most categories of respondents pointed to judicial guarantees of citizen rights as reasons why officials followed court rulings.

These political influences combined in various ways to bring about enforcement. In a situation like the Mas Dieu dump, Mayor Frêche of Montpellier would have risked renewed national publicity for protesters and disfavor in national ruling circles had he defied or circumvented the ruling of the Council of State. In peripheral disputes like the planned amusement park at Palavas, Mayor Frêche himself participated in the regional networks of local Socialist elites that mobilized against municipalities of differing political persuasions. The pressure these networks applied through the media and through influence in the ministerial field offices and prefecture made any attempt to ignore the decision impracticable. For the mayor of Baillargues, political connections to Mayor Frêche provided a measure of protection against this mobilization.

The infrequent legal successes for opponents in greater Freiburg makes it easy to understand why respondents there identified compliance less with the rights of citizens. When these courts did rule against a project, even if only temporarily, their institutional powers enabled them to exercise a major influence on the course of disputes. In the controversies over both Wyhl and B31 Ost, the initial decisions against the projects forestalled further proceedings for seven years. The "shadow" of impending judicial decisions against a project also exercised a tangible influence on other proceedings. In the case of B31 Ost, a remand from the Federal Administrative Court to the appellate Adminis-

[31] The provisions included new budgeting for the costs of demolishing public works and review of legal proceedings in this field (*L'Express*, 13 May 1991, p. 90).

trative Court for Baden-Württemburg in 1992 finally prompted officials to compromise and secure a settlement of the dispute with the opponents (Böhme 1993:112–13). The unsuccessful suit against the planned construction on the wetland in Hochdorf also spurred negotiative initiatives by local and Land officials. These initiatives ultimately produced a compromise that allowed part of the project to be built.

While the German courts wielded considerable authority over the process in particular cases, the French courts decided most consistently on behalf of opponents in this field. Although contingent on support from other actors, the French decisions regularly affected ultimate outcomes. Centralized governmental practices in France helped account for both the pattern of decisions in the administrative courts there and the influence of those decisions on projects.

Conclusion

Litigation plays a significant, regular role in the local politics of France and Germany as well as the United States. How that role differs depends on the interplay of opportunities for actors to exercise influence in the policymaking process and through litigative and other challenges to that process. In the European metropolitan areas, political actors employed litigation to disrupt patterns of policymaking. In greater New Haven, litigative politics reaffirmed pluralist patterns. If the U.S. patterns themselves proved more unstructured and open to opposition, norms and institutions there also imposed more constricted boundaries on the means and accomplishments of contestation. Testing the hypotheses this study has suggested about the differences between use of administrative courts and their U.S. equivalents or the consequences from French and German administrative courts would require further examination of litigative politics in different places, times, and policy fields within each country.

English-language studies of legal resources have only begun to develop categories and analyses that point beyond the ethnocentric fixations of Anglo-American legal theories. The analysis here demonstrates how concepts and perspectives from comparative politics can assist in this endeavor. At the same time, insights and methods from sociolegal studies help to qualify the overly uniform typologies and the disproportionate attention to national elites that still plague much comparative political analysis. The "legal field" of rules, courts, and lawyers can only be comprehended fully in its political context. The politics of policymaking can only be compared accurately when we take micro-processes of both political challenge and political order into account.

Appendix: Survey Questions Discussed

Question 4a. The next questions concern a specific controversy over a housing or commercial project, or that involved [Montpellier and New Haven: protection of wetlands or coastal areas] [Freiburg: protection of natural areas (*Naturschutz*)]. Among incidents of this type which have generated the most controversy or interest over the last several years, please select *two* with which you have been most closely involved. The closer the proceedings are to an end, the better.

Question 4b. (*Select one*) What was the overall outcome of proceedings related to this project?

Question 4c. When did the story of this project begin?

Question 4d. How long did it last?

Question 4e. How would you rate the degree of controversy on a five-point scale, where one indicates the level of controversy for an ordinary dispute between two neighbors, and five corresponds to the level of controversy for [in each setting, one of the largest local disputes]?

Question 5a. Were changes to the project or policy made before the stage of formal proceedings [application, hearing, etc.]? (2) (*If yes*) Overall, were these changes basic changes in the character of the project, significant, slight, or not significant at all? (3) Who initiated these changes? . . . Opponents in the community?

Question 5b. After commencement of formal proceedings? [Followed by same series.]

Question 8a. Have those for or against, or any others involved, done any of the following things (*Show card*)? Action in court; (*if so*) Who won? Attempt through formal proceedings to get higher officials to intervene? Attempt through informal proceedings to get higher officials to intervene? Petitions? Demonstrations, pickets, etc.? Civil disobedience (squatting, rent strikes, sit-ins, etc.)? Neighborhood meetings? Individual contacts with residents? Print materials for public distribution or posting? Obtain media coverage; (*if so*) Publicity campaign [press conferences or meetings, releases, etc.]?

Question 8b. What would the effect have been on the outcome had [each side in turn] chosen to take this action? Not done because impossible as a practical matter; Might have helped; Might have helped slightly; No difference; Or might have damaged their chances?

Question 9a. Did those for and against turn to lawyers or to any other private professional experts?

Question 9b. (*For each type of expert and group*) On what basis? Hired; volunteer or member of involved group; or other?

Question 24a. The next set of questions concern those allowed to participate at various stages. In the initial phase of a fairly large housing or commercial construction project, before formal decision-making processes [application, hearing, etc.] have begun, which of

the following described groups or individuals were allowed to play effective roles?

. . .—Those whom officials in their discretion decide to allow to participate?

—Any directly affected person or entity?

—Any person or entity at all?

Question 24c. . . . Which of these same groups or individuals are typically allowed to play effective roles in formal procedures following submission of a full formal plan?

Question 38c. Whose activity is more important for the life of the people in the area he/she serves? (1) The head of [New Haven: a prominent private development company in this area] [Montpellier: un promoteur régional important] [Freiburg: eines "freien Wohnungsbauunternehmens"].

(2) An official like [New Haven: a bureau director in one of the Connecticut administrative departments] [Montpellier: un directeur de bureau dans la direction départementale ou régionale d'un ministère] [Freiburg: der Chef einer Abteilung im Regierungspräsidium]

(3) A successful private attorney

(4) A successful private engineer

(5) A successful private architect

Question 38d. Who earns more?

Question 39c. How would you compare [New Haven: a Superior Court Judge] [Montpellier: le Président d'un Tribunal Administratif] [Freiburg: einen vorsitzenden Verwaltungsrichter] to the person you have chosen . . .?

Question 45a. To the best of your knowledge, which of the following best describe the tendencies in court cases which have addressed land use matters in your area? Please indicate your choices in order of preference. Have courts focused more on: Form and procedures; the substance of administrative decisions; or rights of participants in the zoning process?

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