Law and the Construction of Policy. A Comparative Analysis

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DRAFT.

Abstract

Like many other things, statutes are shaped by their environments. It is possible to show that a range of constitutional and institutional constraints produce characteristics shared by much legislation in one jurisdiction that distinguish it from much legislation in others. These characteristics include features such as the specificity of the language in which laws are written, how statutes delegate powers, the use of symbolism in legislation and the degree to which policy is developed in a cumulative manner. These features are not matters of "culture" or "style" but rather result from a) the role of statute in the wider legal-administrative system and b) the mode of production of legislation. This argument is developed on the basis of an analysis of 1,150 laws passed in 2014 in Germany, France, the UK, Sweden and the USA.

Legislation is arguably the most powerful instrument of government (see Hood 1983). It is the expression of government authority backed up by the state's "monopoly of legitimate force" (Weber 1983). Yet apart from their authoritativeness there is rather little that can be said about the characteristics of laws as tools of government. In fact, each law is unique in what precisely it permits, mandates, authorises and prohibits, and to what ends. In this paper I explore a way of looking at legislation in between these two levels of abstraction: on the one hand law as supreme instrument and on the other laws as the idiosyncratic content of any individual piece of legislation. Here I explore the characteristics of statutes as reflections of distinctive approaches to the construction of policy in different jurisdictions. The central argument explored in this paper is that a range of constitutional and institutional constraints produce characteristics shared by much legislation in one jurisdiction that distinguishes it from much legislation in other states.

Let me illustrate what could otherwise be a rather arid theoretical line of argument. Some socio-legal scholars distinguish between regulation regimes covered by rules and those covered by principles (Baldwin, Cave and Lodge 2012). Where the regime is based on rules, conditions of compliance are specified in detail and leave little to the discretion or interpretation of those applying them. Thus, using the leading example in the field (Braithwaite 2002), a rules-based regime for residential homes for the elderly specifies, among other things, how large a resident's room should be, how it should be decorated to the detail of how many pictures should be on the wall. Where the regime is based on principles, the specification is less detailed and leaves

more to the interpretation of those involved in its application. Thus the principles for the residential home might simply be that the room is "homely".

One does not have to accept Braithwaite's accompanying argument to recognise the central point that some provisions such as laws can be apparently vague while others can be apparently precise. It is also not too great a leap to argue that in some jurisdictions there are greater possibilities for passing legislation that more closely resembles a set of principles than a set of rules. Several scholars have noted the tendency in Sweden, for example, to include only broad policy directions in the statute and leave the detail to be settled elsewhere to the extent that one might characterise "the Swedish statute as a mere 'headline'" (McCormick and Summers 1991: 477). The argument used to explain this Swedish characteristic is not a propensity for laid-back Swedes to want to hang loose or any other cultural or stylistic predisposition, but the way that courts interpret legislation in Sweden: the text of the legislation is only one source of understanding what the law should be which can be supplemented by the range of preparatory materials (reports, debates and statements) that accompany the generation of legislation (see Vogel 2000, Nergelius 2015, Spencer 1940). If this is true, then other features of legislation might also vary systematically from one country to another.

What difference does it make even if it can be shown that characteristics of legislation vary systematically across different jurisdictions? There are three reasons for believing it to be of interest, two positive and one negative. First and most important, on the positive side: if the argument is sustained, it opens up the possibility of exploring a fresh set of variables to help describe and explain how and why policies differ cross-nationally. If laws tend habitually to be written in a certain way because of the wider institutional-legal environment, then we might at least expect it to have a systematic impact on the way policy is designed. Second, on the negative side, the notion that the way laws are written varies cross-nationally calls into question some of the unsubstantiated and sometimes poorly specified assumptions of some of the political science literature purporting to throw light on legislative construction. For instance, it is a widespread argument that where legislation contains less specific detail it "delegates" decision making to others such as bureaucrats or their agencies, and that such delegations are "deliberate", with "legislators" specifying detail where it suits them and delegating matters where they are less interested in outcomes (see Huber and Shipan 2002). If it can be shown that delegation is less a matter of deliberation and more a result of conventions and norms in law-writing over which legislators have little control, and/or that lack of specification of detail in some jurisdictions does not delegate discretionary activity to anyone, the value of much of this literature and the associated "leximetrics" (see, for example, Pritonia 2015). Third, to finish on a positive note, exploring the question of whether the way laws are put together varies forces one to bring together material about an aspect of policy making that has thus far received empirical little attention in political science: the activity of writing laws. As will be apparent below, much of the empirical and theoretical work in this area is found in different fields in the study of law. Thus the question explored in this paper matters as it shines a light on a much neglected aspect of policy development.

The next section of this paper explores the reasons for expecting systematic differences in the way laws -- pieces of primary legislation that pass through the

national legislature -- are constructed in different countries. Here I am looking at the US, France, Germany, Sweden and the UK. These countries represent what are commonly viewed as significantly different traditions of law and administration. The third section goes through each of these expectations on the basis of and examination of the 1,150 acts passed by the national legislatures of these countries in 2014. The third revisits the aims of the paper in the light of its findings.

1 Lawmaking Styles

While legislation *drafting* styles might vary from individual drafter to drafter, or even across time with the same drafter, the *lawmaking* style examined in this paper is hypothesised to be a more stable feature of producing statutes commonly found throughout the corpus of laws any political system. It is shaped above all by two broad political-system characteristics. First, the interaction between statute law and other features of the legal and administrative structure. Our Swedish example is a clear case of this: patterns of statutory interpretation lead to different ways of writing laws. Second, it may be hypothesised that lawmaking style is shaped by the production process of putting together laws. As the 19th century English practitioner and theorist of legislative drafting, Lord Thring, explained: “Bills are made to pass as razors are made to sell”. Here he was referring to an old political metaphor derived from street traders selling the flimsy “sort of razors that are meant to sell and not to shave” (see Engle 1983). Legislation is written to be passed through the legislature and should not contain any features that would prevent it passing. Thus a range of features of the legislative environment may make it harder to pass some laws in some systems than others. For instance, in Germany the role given to the Ministry of Justice and the *Bundesverfassungsgericht* in scrutinising legislation makes it more difficult to pass what may be termed "symbolic" legislation which is not designed to have effects beyond expressing an intention or wish than in Sweden or France.

Like similar terms, such as "culture", there is no available means of mapping out what the dimensions of “style” might be. Instead of any quixotic pursuit of a general theory of style, the paper takes approaches the issue by first exploring the major known differences between countries in the way that statute law is used and produced and discussing the hypothesised impact(s) of these characteristics on lawmaking style. This discussion, set out in the remainder of this section, will be largely limited to establishing that there is some variability rather than discussing how any one characteristic varies across all five jurisdictions.

a) Variation arising from differences in the role of statute in the wider politico-legal system

i) *Different countries, different doctrines and norms of delegation*

One commonly discussed feature of legislation in political science surrounds the degree of “delegation” implied in it: how much important detail is left unspecified by the primary legislation itself and left to other individuals or institutions to specify or determine later on. In a nutshell, we might expect statutes to be a more important source of delegated administrative powers in some countries than others and one would expect to find, *ceteris paribus*, more delegation going on in statutes in some countries than others. There are three main reasons to expect this.

First, the doctrine of delegation – what is delegated to whom and how – varies highly significantly between jurisdictions (for a detailed comparison of US and German conceptions see Kischel 1994). In the United States, Germany and the UK delegation from the legislative branch to the administration requires explicit authorisation in primary legislation of secondary (regulation-making) powers. This is not the case in France (see Pünder 2009: 357; Thiebault 2006: 327) where administrative authorities have the ability to make regulations without express legislative grants of such powers, although delegated powers may also be specified in primary legislation (cf article 37 of the 1958 French Constitution; Bergeal p. 70).

Second, there are significant cross-national differences in answers to the question: to whom are powers being delegated? To cut a long story short, in the European countries the executive is largely delegating to itself. Since the executive has a predominant influence in shaping both the broad principles of legislation and its detailed content (discussed further below), the same body that draws up the primary legislation also draws up the secondary regulations In the US the delegation is significantly different: it is from the legislature to, not only the executive, but a variety of other bodies. Insofar as delegation is made to the executive "the delegation doctrine is situated in a constitutional power struggle between Congress and the President, with both actors having independent democratic legitimation and not infrequently conflicting goals. It is not surprising that the delegation of legislative power, to institutions whose constitutional legitimacy is considered so doubtful, poses major problems" (Pünder 2009: 256-7).

Third, the approach to legislative delegation might be expected to be different. Again, the US is generally perceived to be different from European countries because of the conditional and tightly circumscribed nature of most delegations. That delegation in the US is significantly different from European conceptions of the term is suggested by Shils' (1951: 573-s) observation

> The American legislator … tends to look on the administrator's tasks as something which is properly his own responsibility which is only transitorily delegated to the administrator. He draws no fine line between legislation and administration and he likes to co-operate in and assist in administration as well as to specify the administrator's tasks and powers. … The traditions of the American Congress and the outlook of our Congressmen are the products of a free society in which it was neither necessary nor desirable that large powers be assigned to the executive branch of the government. The inevitability of the delegation of power is often intellectually acknowledged by our legislators but there is also resentment against this necessity and a deep unwillingness to accept it.

Decree-making powers in countries such as Britain and France granted to the executive in primary legislation might be expected to be less conditional and constrained than in the United States.

ii) Different countries different norms of interpretation

While the whole question of statutory interpretation is a field unto itself, we can highlight the role of the primary legislative text in such interpretation. As already touched on above, the role of the text of the statute in the application of the law varies across countries as norms of interpretation place differing weights on the text of the law in interpreting how the law should be applied. Some have suggested that this

distinction reflects the difference between civil and common law jurisdictions (Germain 2003: 206): “in civil law, the trend is toward construing a statute in accordance with its spirit; under the common law, the trend is toward interpretation according to the letter of the law". Whether this civil/common law distinction is the key variable is, as discussed below, open to doubt. But that this question of interpretation has a bearing on styles of legislation is suggested by Maley (1987:37)

> In this respect, English and Australian legislation contrasts with legislation in European jurisdictions like France and Germany where the traditional approach has been to draft laws in broad general principles - with a consequent gain in intelligibility and simplicity - and to leave it to the courts to settle the details of its application in particular cases. Courts in European jurisdictions have more freedom than English and Australian courts to go behind the words of the text and look at other textual evidence in order to establish the intention of the legislature. The difference in language style is one aspect, one symptom, of a much wider institutional and social difference. The role of the judiciary and its relationship with the legislature are quite different in each system.

Where the text of the legislation is less important in court interpretation of the law, we would expect legislation to be more likely to reflect the expression of general principles and less concerned with setting out specific contingencies.

iii) Implementation structures and designs

Implementation structures and designs refers to This aspect of the legal-administrative environment with which primary legislation interacts is something of a wild card as it reflects a range of different constitutional and legislative arrangements that convert some issues into national primary legislation that are dealt with, if at all, by other arrangements in other jurisdictions, and keep some items away from primary legislation which in other countries would be outside it. We can but enumerate some of the obvious and diverse instances of how such implementation structures might be expected to shape what the corpus of primary legislation looks like. Federal governments of the US and Germany are constitutionally limited in whether and how they may legislate for the affairs of subnational states; in Germany legislative ratification of international agreements often takes the form of domestic primary legislation; in the United Kingdom early legislation established that most items of EU law were to be implemented by secondary rather than primary legislation and in all countries constitutional quirks account for primary laws that would look strange in other jurisdictions including Acts of Congress naming post offices, German laws empowering members of EU delegations to take decisions. Since variable this is a wild card it is unlikely to offer us any consistent or non-obvious expectations about how laws are structured so I will leave this variable aside in the remainder of the paper.

iv) Different countries different concepts of statute

Finally we may consider the broader position by which one law relates to another. It is common, of course, for laws to amend other laws, so we are unlikely to find in any of our jurisdictions a significant trend to "stand alone" laws. However the relationship between statutes and a wider body of law in civil law jurisdictions might be mediated through codes. Legal codes are bodies of law -- most famously but not only the German *Bürgerliches Gesetzbuch* and the French *Code Civil.* However this argument is not simply about whether laws are placed in codes -- common law

jurisdictions such as the United States have significant codes as does Sweden, though attempts to bring codes to English law have failed (Steiner 2004). The central point here about the conception of statute is less whether they can be compiled into a code and more about the relationship between a statute law and the existing body of law it relates to.

The conception of the code in French law "rests on three fundamental principles: A code ought to be complete in its field; it ought to be drafted in relatively general principles rather than in detailed rules; and it ought at the same time to fit them together logically as a coherent whole and to be based on experience" (Tunc 1975: 459-60). In Germany the issue of the conception of a statute is that it forms part of a coherent body of law (whether formerly part of a code or not). This can be seen, for example, in Farber's (1995: 520) discussion of sources of judicial interpretation. In Germany, "[t]he judge does not, however, have to stop at the wording of a norm. His being bound by the law does not mean being bound to its letter with the coercion to interpret literally, but being bound to [the] sense and purpose of the law. The interpretation is the method and way by which the judge inquires into the content of a statute, considering its placement within the whole legal order, without being restricted by the formal wording" (Farber 1995: 520).

In both France and Germany statute might be expected to be conceived of less as stand-alone edifices and more as amendments to larger existing structures. This might, for example, be expected to have a bearing on the degree of continuity between new statute and existing law; where new statutes are considered to be amendments to existing law the prospects for continuity on law- and policymaking are likely to be greater than in cases where old law is ditched for new.

v) Different countries different possibilities for symbolic legislation

The "expressive" function of statute -- its capacity for "'making statements' as opposed to controlling behaviour directly" (Sunstein 1996) -- is a particularly important feature of legislation. The very fact that a government or legislator has put legislation on the statute book is of importance, and could even be as important as what is actually in the law and whether it works. There is some evidence that different systems offer variable scope for passing symbolic legislation.

Sunstein's conception of the expressive function is more closely linked to the indirect attempt to shape behaviour by indicating desirable/acceptable forms of behaviour -- "often law's "statement" is designed to move norms in fresh directions" (Sunstein 1996: 2,051). This is similar to Hammond’s (1982) discussion of "hortatory" and "policy studded" legislation as a recent trend in Britain, Australia and New Zealand. While such legislation appears close to setting out broad principles, it also contains a degree of symbolism since such statutes are “declaratory in nature …[with] clear aspirational overtones. …Governments, it seems, are going into the business of formal moral persuasion”. He asks "are some legal cultures more receptive than others to these overtly normative statutes?"

b) Variations resulting from the legislative process

i) Different countries different legislators

It is conventional to talk, whether in political science or law, about the "legislator" as a shorthand for the individual(s) or group(s) deemed to be responsible for passing a statute. The "legislator" in this sense varies from one piece of legislation to the next even within a country. However, to be a legislator in this sense tends to suggest the fiction of a "controlling mind" behind the legislation: a body or individual which may or may not physically direct operations or even intervene much throughout the process but whose power and authority is so strong that it usually gets its own way whether through direct or indirect action or others following the legislator's anticipated reaction. Of course this is a fiction as it is extremely hard to find convincing evidence of a controlling mind legislator and most laws of any significance represent some sort of compromise between different minds. However, there is a range of reasons that lead us to expect the legislator to be a more fragmented entity in some jurisdictions rather than others.

At the heart of this expectation is the constitutional separation between the executive and legislative branches and the familiar but nevertheless powerful argument that the primary lawmaking process in systems found in most places outside the United States is based on a fused executive-legislative branch in which party discipline generally plays a significant role. Where members of legislatures can initiate and amend legislation "the legislator" is a more fragmented entity than in systems of executive dominance. This places the United States on one side against France, Germany, Sweden and the UK on the other. This is not to deny the role of a range of bodies that regularly challenge executive dominance, most notably the *Bundesra*t in Germany, the *Senat*, the House of Lords, the *conseil constitutionnel* or *Conseil d'Etat* in France, or even assertiveness of parliamentarians in the UK and France. Moreover within each system it might be possible to explore the range of procedural and structural differences involved in the genesis of laws, such as the role of powerful legislative committees. Such significant differences might indeed be argued to have an impact on the structure of legislation. They are not explored here for two reasons. First, the range of procedural and structural differences -- from pre-legislative scrutiny through to arrangements for dealing with bicameral conflict -- are too numerous and diverse to expect them to provide any clear predictions about the character of legislation. Second, if such procedural differences in the legislative process are evident in the style of lawmaking they produce, then the US v Europe distinction based on the legislative role of the executive branch would be expected to be particularly strong since the executive's role in the European countries may be limited by a range of different systemic features, but executive strength in the legislative process is nevertheless of a different order to that found in the United States.

The number of hands involved in writing the law, and the different types of hands involved, is also likely to affect the coherence of the law – the degree to which it can concentrate on a single set of purposes or has to incorporate a range of different perspectives and interests simply to get on the statute book.

Within the European countries there is no clear difference between the degree to which the executive can be considered itself divided -- a series of "policy networks" or a policy environment characterised by *Ressortpartikularismus* and turf conflicts. Undoubtedly such differences can be found, and there are differences in the way in

which cross-executive coordination and bargaining is structured, but it is common practice for legislative proposals and drafts to be debated in cross-government forums. In all four European countries some form of collective cabinet agreement is required before drafting can start, however in the drafting process the arrangements for cross-departmental negotiation in drafting legislation are arguably more strongly routinised in Germany, Sweden and France than in the UK. Germany places a strong role in the *Bundeskanzleramt* which (according to para 40 of the *Gemeinsame Geschäftsordnung*) must be informed and consulted continuously as a law is being drafted in the ministry and, where relevant, involved in deliberations over the shape of the law. Primary legislation in France can be a distinctly interministerial matter possibly because of the requirement (in article 39 of the 1958 constitution) that all government legislation is put before parliament in the name of the prime minister after being discussed in Cabinet (i.e. the *conseil des ministres* as opposed to a ministerial *cabinet*). Hayward and Wright (2002) point to the strong tradition of the power of interministerial groups in French decision making. Even where such committees are not directly involved, Bonnaud and Martinais' work (2008; 2013) shows how they remain a constant presence: in the early phase of drafting a law aimed at preventing catastrophic releases of chemicals into the environment Minister, his cabinet and the Ministry's various departments developed the preliminary draft "their fortunes united by a common threat: that the Matignon or an inter-ministerial mission might take from them the responsibility for developing the law" (Bonnaud and Martinais 2013: 8). In Sweden, constitutional practice requires that all government legislation is submitted by the government as a whole and it has to be considered by the formalised inter-ministerial process of *delning*.

ii) Different countries, different legislative drafters

The specific arrangements for law writing vary substantially. In the United States, the drafting process is shared, often between branches of government and not infrequently among different staffs within each as well as shared with outside lobbies. In the UK drafting legislation is largely a monopoly held by a (recently grown but still relatively small) group of officials under the responsibility of the Cabinet Office. In Sweden, France and Germany legislative drafting is predominantly the responsibility of the lawyers working in the ministry or agency producing the law. We might expect the question of who actually writes laws to affect the style of legislation in two ways. Whether laws are written by technical-legal specialists or not might well be considered to affect the degree to which the technicalities of legal interpretation are taken into account in the process of legislative drafting -- whether the "canons of interpretation" are acknowledged and incorporated in the law. Where it is not, the observation discussed above, we might expect there to be problems of interpretation. While Huber and Shipan (2002) might presume that imprecision and ambiguity are the product of deliberation, it is quite possible that there is "unintended ambiguity" that arises from the skills of the people who draft the legislation (Gray 1987).

There are, in fact, two distinct models of professionalisation of law-drafting skills within our countries; professionalisation as specialisation in law drafting and professionalisation as specialisation in particular aspects of the law (see Mazur 1989). The United Kingdom is perhaps the clearest example of professionalisation as specialisation in law drafting with the near monopoly on legislative drafting by the Office of Parliamentary Counsel, a group of around 50 specialist lawyers specialising

in advising on legislation and drafting government bills (Page 2009). The continental European model derives from the tradition that legal knowledge is part of the qualification for senior positions in the civil service and an ability to understand and work with legal concepts is widely spread throughout government. In Germany the early drafts, the *Hausentwurf* (within the ministry) and *Referentenentwurf* (following consultation with other ministries and bodies) are written by lawyers working with policy officials within the *federführend* ministry (i.e. the one officially designated as taking the lead on legislation).

The US model is mixed as not least because the process of legislative drafting is "better understood as multiple drafting processes" (Nourse and Schachter 2002). There is an "Extended Drafting Process" involving lengthy consultation between most sides involved prior to the bill being introduced; "Consensus Drafting" (a variant of Extended) where staffers and members of the Committee seek to build consensus on the bill in the very early stages in Congress; "Drafting on the Floor" where much of the bill is constructed during debate; "Drafting in Conference" where drafting is done in the House-Senate conference committees seeking to secure some agreement on the contents and wording of the bill. It reflects most of all multiple drafters. Legislative staffers were the most important actors within Congress in the drafting process. The staffers most frequently involved in drafting are those that work for the committees rather than individual members. In their study of drafting in the Senate Judiciary Committee Nourse and Schachter (2002) showed that direct senator involvement in the process, still less any direct contribution to drafting was rather rare, although that does not mean politicians had no influence as staffers sought to write legislation corresponding to the known wishes of their senators. Both houses of Congress also have an Office of Legislative Counsel with specialised, trained legislation writers, that offer assistance in drafting bills. Legislative staffers can also use the Congressional Research Service, not only as a means of offering research and advice on legislative proposals but also the 45 attorneys of the American Law Division of the CRS who offer legal advice, including on wording for amendments. Lobbyists also were involved in drafting, offering wording to be included in legislation affecting areas of interest to them and this can extend to drafting entire bills.

The skill sets of drafters and/or the availability of legislative expertise are certainly different across our four countries but the differences do not appear to be of such a scale that we can hypothesise that any particular form of professionalisation is likely to result in less unintended ambiguity than another. The impact of difference in the drafting process is ultimately more likely to be related to other variables, notably the fragmentation of the legislative process discussed above (see Dickerson 1958: 865).

2 Exploring lawmaking styles. The view from space

Thus we can arrive at a range of plausible arguments derived from the role of statute in different political systems and how statutes are put together that would lead us to expect differences in the way statutes are framed and/or what role they play in the construction of public policies. How can one test whether these plausible hypotheses are, in fact, supported or supportable? One of the central problems with the comparative study of laws is that laws are complex documents that often can only be accurately appreciated by reference to a wide body of related material: this is indeed

how lawyers make their living. They also make their living from the fact that what the law actually means can depend on the specific circumstances to which it is being applied. For a non-specialist, reading a law will not tell you what the policy is because it uses concepts and references that have special relevance and meaning an outsider cannot appreciate and because its significance can only be understood if one is aware of how existing practices in the field work. So how on earth is it possible to test whether any of the hypothesised effects of differences in the way law is produced and used have any effect on the laws themselves? One solution might be to see if one can crowdsource legal expertise to produce expert evaluations of the provisions of statutes in much the same way that König and Maeder (2013, 2014) use graduate students in law to offer judgments on EU national implementing legislation. However, one can have little confidence that such exercises offer a "correct" understanding of what a law actually says or does since it is in the nature of law that meanings are contested and impacts not easily predicted or determined.

The exploration of the argument that there are differences in the way statutes tend to be framed in different jurisdictions has to be more modest if one can begin to sustain a claim that whole batches of very diverse legislation, from social security to angling licensing, from a range of different countries can be brought into a single analysis. My suggestion is that there are things about a law that can be understood without having detailed specialist legal knowledge about how law works in a particular policy area: what those who were involved in making, opposing and commenting on the law thought the law might achieve and the form and style in which the law is written. If there is any merit in the plausible arguments about laws and how they are written in different jurisdictions we might expect to find their claims reflected in these features that do not require specialist knowledge of the full range of policy areas covered by public policy. In short, if these hypotheses have any merit, if there truly are significant differences in ways laws are put together and used, one should be able to see them from space. These differences are not subtle differences that would only be intelligible to the expert in a particular or even narrow body of law; rather they should be detectable in the broad body of legislation produced and understandable to the non-specialist as they reflect how laws are put together rather than the specific details of their content.

To see whether such differences can be detected I have examined a corpus of all laws passed on one year by the national legislatures of five countries: the United Kingdom, the United States, Germany, France and Sweden. The year selected is 2014. The prime reason for the choice is that it is recent. There might be all sorts of reasons to argue that 2014 is somehow atypical -- in the UK we had a coalition government starting its final year in office with a small legislative agenda; there was an election in Sweden in September that saw a change of government; the Republicans made sweeping gains in the November 2014 elections in the US and ended up controlling the Senate as well as the House. It is unlikely, however, that any year is a "typical" year and it would certainly have been possible to select different years for different countries. However, the logic of the analysis -- that the differences should be visible from space -- render the choice of year less crucial since the differences, where hypothesised, do not reflect shorter-term political conditions but broader conditions that can be found in legislation passed at any time in the political or legislative cycle of the countries concerned. If the arguments about laws being different in different

TABLE 1: Laws Passed in 2014

	ALL LAWS		EXCLUDED LAWS		INCLUDED LAWS		
	N	**Av. length***	**Type (n)**	**Av. length***	**N**	**Av. length***	**Std. dev.**
UK	30	34,448	Appropriations/budget (4)	78,832	23	26,002	33,133
			Consolidation (2)	60,836			
			Foreign (1)	396			
France	98	9,087	Foreign (33)	510	50	13,420	25,451
			Nominations (8)	189			
			Appropriations/budget (7)	28,738			
US	224	7,890	Naming facilities (55)	232	103	6,129	21,043
			Local (30)	989			
			Ceremonial/medals (14)	1,168			
			Appropriations/budget (12)	82,384			
			Nominating individuals (5)	166			
			Foreign (3)	1,775			
			Procedural (1)	125			
			Consolidation (1)	82,352			
Germany	66	7,051	Foreign (17)	15,946	48	3,858	10,302
			Appropriations/budget (1)	9,057			
Sweden**	732	688	Appropriations/budget (45)	564	678	625***	1,150
			Foreign (8)	6,822			
			Correction (1)	58			

* Mean number of words

** Data for Swedish average word counts is estimated from examination of all new laws (n=56), examination of budget documents (*Regeringens proposition* 2014/15:1) and a random sample (n=68) of amending laws (n=676)

***New laws average word count of 924; amending laws 602

Source: Laws downloaded from *www.legislation.gov.uk; www.legifrance.gouv.fr; www.lagboken.se; www.bundesgesetzblatt.de; https://www.congress.gov/public-laws/113th-congress*

jurisdictions have any validity, they should apply at any time and all one needs is a reasonable size sample of laws to explore this.

Table 1 sets out the number of laws examined for this study -- all primary laws passed by the national legislature in 2014 in all five countries. Since this paper is primarily concerned with how law is used in the construction of policy, I exclude from the analysis a range of laws that could take the analysis away from this central focus. Thus, appropriations and budget-related laws are excluded. Other quirky aspects of legislative output have also been removed: approving international agreements (in France, Germany and Sweden international agreements are more likely to generate primary legislation than in the UK and the US) and the occasional consolidations (tidying up a body of legislation) that appear to be more common in the US and the UK than the other three countries. Even more quirky are the US practices of using a general Act of Congress to name post offices and other federal facilities, as well as to deal with highly localised issues (such as the transfer of a tiny parcel of land from federal to state management), and grant honorary awards and medals. A handful of legislative acts in 2014 were used in France to appoint nominated individuals to national bodies and these were also excluded. From the headline 1,150 laws listed as produced in 2014, 902 were included in the study. More than three quarters of these were produced by one country, Sweden, a point we will return to later.

Let us now look at the impact of the (alleged) variables on the corpus of legislation form 2014. This analysis, it must be stressed is somewhat preliminary and incomplete. The evidence is based upon a first run through the legislation.

a) Differing norms of delegation

Recent scholarship has sought a quick and convenient way to analyse levels of discretion in legislation by measures based on its length. The argument goes that longer laws contain more detail. Yet this measure has so many problems[1] that it cannot be taken as broadly indicative of levels of discretion given in delegation, still less a reliable one, however one tries to deflate the length of legislation for differences in law-writing style or "verbosity". If one takes once cue from the literature on the variable length of legal contracts cross-nationally, a range of other stylistic features are likely to be at play, including, for example, conventions on reciting non-controversial or even immutable "boilerplate" provisions (Lundmark 2001) and "verbal incontinence" (Dale 2001). We must look to the text for clues about different approaches to delegation.

In practice what might be termed "delegation" from the legislative to the executive branch in the US means in the European context little more than the executive securing options for itself to specify at some later stage how it would like to shape or even change the law. The terminology of delegation in the European statutes allows us to make some sort of comparison of how much delegation is contained in our 2014 corpus. The German term comes much closer to describing the true nature of what we term "delegation" in the European countries: *Verordnungsermächtigung* (authority to issue decree orders). In Germany this term is sometimes used to signpost such "delegations" and uses a standard formulation to make them: the relevant ministry is "empowered to make laws by order" ("*wird ermächtigt, durch Rechtsverordnung,*

[1] Laws that cover single broad areas in one country might be covered by several in othersas we shall see below.

…"). In France the standard formulation for delegating powers is to state within a law: "*Dans les conditions prévues à l'article 38 de la Constitution, le Gouvernement est autorisé à prendre par ordonnance toute mesure relevant du domaine de la loi …*" ("As provided for in Article 38 of the Constitution, the Government is authorized to provide through decree law, in accordance with constitutional principles, all legal measures required to…"), although more frequently statutes contain specific mention of the power to issue *décrets* and *arrêtés* (forms of secondary legislation). Some laws can be nothing more than a straight handover of lawmaking power to a ministry, For instance *LOI 2014-1663 du 30 décembre 2014* has the simple title of the law authorising the ministry to take all steps to bring France into compliance with the World Anti-Doping code and the text simply restates the title using the standard formulation. The formulation in Sweden is similar "*Regeringen får meddela föreskrifter"* ("The government may issue regulations"). The common UK formulation, "by order" (as in "The fee may not exceed £5 or such other amount as the Treasury may by order specify") allows possibly for greater syntactical variety ("Section 1(6) comes into force on such day as the Secretary of State may by order made by statutory instrument appoint; and different days may be appointed for different purposes").

This consistent language allows us to give some kind of comparison of the frequency with which legislation contains language associated with delegation in the European countries. In Germany a search through our corpus of 2014 legislation using NVivo software finds 17/48 laws containing language associated with the delegation of regulatory powers with 15 of these having 5 or fewer separate occurrences of such language in them; in Sweden it is 11/56 new laws with 10 with 5 or fewer delegations and an estimate of 100/676 amending laws with 90 having 5 or fewer delegations. These two countries contrast with the UK with 19/23 Acts, of these 5 having 5 or fewer delegations and in France there are 40/50 with 10 having 5 or fewer.

However, such numerical comparisons need to be approached with caution, not only because of the difficulty in interpreting through a word search exactly when the text of the law is delegating a power, but also because of the substantial differences in the constitutional context in which regulatory powers are acquired and exercised. For example, in France the distinction between primary and secondary legislation cannot be easily drawn because the executive has, according to article 37 of the 1958 Constitution, regulatory powers of its own such that it is recognised that "ministers and other public authorities are recognized as possessing authority to complete by decree the framework of legislation, whether or not it this is explicitly stated in the legislation in question" (Brown, Bell and Galabert 2008:14). Similarly in Sweden Chapter 8 Article 7 of the Instrument of Government gives the executive its own lawmaking powers (Nergelius 2015).

In the United States terminological variety and the limits of NVivo mean it is difficult to point to the numbers of acts delegating rulemaking powers. The verb "promulgate" is almost invariably used in connection with executive rulemaking and appears in 17 of the 103 included laws (although other formulations are possible, the executive may "establish regulations"). Moreover, the US approach to delegation is difficult quantitatively to assess in part because delegation clearly applies to a range of activities apart from decree-making powers. Thus, for example, while the Water Resources Reform and Development Act of 2014 requires the Secretary of the Army (in practice

the Army Corps of Engineers) to produce a feasibility study for port development projects but delegates some discretion; while there is a general time limit of three years for such projects "the Secretary may extend the timeline of a study by a period not to exceed 3 years, if the Secretary determines that the feasibility study is too complex to comply with the requirements of subsections (a) and (c)". However, there follows a detailed circumscription of the exercise of this discretion: "Each time the Secretary makes a determination under this subsection, the Secretary shall provide written notice to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives as to the results of that determination, including an identification of the specific 1 or more factors used in making the determination that the project is complex", with the requirement that the factors cited conform to an accompanying list. Such detailed circumscription of executive activities is common in US legislation and uncommon in the European countries.

This detailed circumscription of executive powers also be found in delegations of regulation-making powers. For instance, the Sunscreen Innovation Act gives the US Food and Drug Administration the ability to make and amend orders, but specifies a time limit for such regulations, the data that must be used to make them, how they are to be consulted on and what they may contain "notwithstanding any other provision of the law, the Secretary shall promulgate regulations implementing this section only as described in paragraphs (1), (2) and (3)." (128 Stat: 2049). Moreover, the fact that a significant proportion of the legislation in the sample takes the form of re-authorizations reflects Congress' frequent reluctance to give powers to the executive over an extended time period: 24 of the 103 included laws are primarily reauthorisations of earlier laws (albeit often involving some modification of the earlier laws) while such straightforward reauthorisations are not frequent in other countries.

If we return to our purpose and look at how laws tend to go about delegating (rather than whether the policy framework the laws produce contain much scope for executive discretion) there do appear to be substantial differences between our five countries. In the UK and France the executive frequently uses acts of parliament to give broad grants of regulatory power to itself: the broad formulation in UK legislation that the "Secretary of State may by order" make subsequent legislation and the French that the minister may "take all legislative measures" to bring a law into effect is found in a high proportion of legislation and is generally not accompanied by limitations on this power. In Sweden the regulatory powers taken by the executive also appear to be less frequent, albeit as we will see, the executive also appears to use primary legislation -- the hundreds of pieces of "amending legislation" -- to make the kinds of tiny amendments to existing law that one would expect to find in decrees or statutory instruments in France or Britain. The Swedish Riksdag is capable of handling 732 Acts of Parliament in 2014, more than three times as many as the US legislature and two dozen times as many as that of the UK.

In the United States, by contrast, while it is clearly a separate legislature delegating to the executive, in contrast to the European practice of the executive delegating to itself, such grants of secondary law-making powers are typically severely restricted in two ways. First by a series of procedural rules governing "notice and comment":

stipulations about how the intention by the department or agency to regulate should be consulted on, publicised and legitimated; and second by a series of prescriptions and limitations about how the regulations are used. Germany appears to be the closest to the United States in this respect: there appears to be less frequent broad self-granting of decree-making power in its primary legislation. In Germany the powers to pass regulations are in many areas subject to the approval procedures of the *Bundesrat* (and these are far more rigorous and uncertain than the formal parliamentary procedures for secondary legislation un the UK) and contain a string of limitations and specifications which, although generally not as strict as those typically found in the US, make them less a broad grant of executive powers than in the UK and France. As (Dreier 2007: 19) argues "The executive's independent ability to make laws in this way are more strongly limited than in many other states in the EU".

b) Norms of interpretation: broad brush or detail

Is there anything in the argument that where the text of statutes is less likely to form the main basis of legal interpretation mean legislation takes the form of setting out broad brush principles while countries with more "textualist" approaches there is specification of detail? To some degree there is an apparent overlap with the preceding question of whether there are different approaches to delegation. We have interpreted the delegation mainly in the power to make new laws and the tendency in primary legislation to give broad powers to make regulations without having to come back to Parliament.

One way of assessing the broad brush character of legislation might be to approach it from the other end and ask how much detail has to be decided by secondary legislation, with, the argument would run, broader brush legislation requiring more detail in the secondary legislation. More secondary legislation is indicative of less detailed primary legislation. If we did a head count, then France would have, on this logic, the most broad brush laws and Germany the more specific detailed laws (Table 2), with Sweden, the country widely reputed to have an extremely broad brush approach to legislative drafting, being the second least broad brush. However, secondary legislation cannot be a serviceable way of assessing the detail in primary legislation for a variety of reasons: what is really "secondary legislation" is unclear (it could be debated whether, say, French *circulaires* are truly secondary legislation); secondary legislation is used to do things in some jurisdictions that are not done by national legislation in others (changing the layout of trunk roads in the UK or making provision for local public works schemes in the US); and not all exercises of delegated powers require secondary legislation (in some cases the simple decision or direction from a specified body will suffice). Secondary legislation is such a jumble of documents that any cross-national comparison of their uses based on quantities issued would either have to be so heavily qualified by a mass of detail that any clarity would be lost or would, without such qualification, be meaningless.

Table 2: Secondary Legislation in 2014

Germany		**701**
Verordnungen	*115*	
Bekanntmachungen/	*586*	
Sweden		**1,274**
Förordningar	*974*	
Föreskrifter	*300**	
UK		**3,486**
UK Statutory Instruments	*3,486*	
USA		**3,554**
Final Rules	*3,554*	
France		**20,726**
Arrêtés	*14,772*	
Ordonnances	*54*	
Décrets	*3,867*	
Decisions	*2,033*	

*estimated

Although I have already mentioned some of the objections to it, another way of looking at levels of detail would be the one suggested by Huber and Shipan -- length, with longer legislation having more detail, so the argument would go, and shorter being broad brush. Even if one accepts that "detail" is only one possible cause of greater length, it is at least likely to be one of the causes. Looking at table 1 this would give us several outcomes we would be inclined to agree with given the degree to which it is emphasised in the literature: Swedish legislation being the shortest (678 words) and more "broad brush" with UK legislation (average length 26,002 words) with, in descending order of "broad brush" ranking, France, the USA and Germany in between.

We might leave it there except there is the awkward point that it is difficult to envisage that a legislature that can produce 678 policy laws a year, as Sweden did in 2014, can be dealing only in general broad brush principles. Moreover shorter legislation in Sweden can be, and often is, detailed. Take one of the shortest (84 words) acts (SFS 2014: 1453): it simply states that the provisions of an earlier act will expire at the end of February 2015. On the face of it, little could be more specific. In fact in Sweden many Riksdag acts do what might ordinarily be done by delegated legislation in a country like the UK. Riksdag acts are used (though not invariably) to implement EU legislation as well as to define details. For example a law on tobacco taxation (SFS 2014: 1470) specifies that "Cigarettes between 8cm and 11cm in length, excluding the filter or nozzle, are considered as two cigarettes."

Here we have a puzzle, as if we look at table 1: Sweden passes far more acts of parliament than any other country and nearly seven times as much policy legislation as its nearest rival, the USA. If the primary legislation in Sweden is so broad brush, why is there so much of it? Many of the 676 "amending" laws (identified by their titles beginning with "*Lag om andring*") are of the latter type and many of the 56 "new" laws are of the former type, although this is not a reliable method for distinguishing between the two. If we look at "new" laws, we can find plenty of

evidence of broad principles being set out The Patients Law (SFS 2014: 821) for instance (at para 7) sets out the expectations that patients might expect from health services is general terms "The patient should receive expert and meticulous care of good quality and following scientific evidence and proven experience". SFS 2014: 341 sets out circumstances in which the provision in the Constitution (Instrument of Government) for ministers taking decisions outside the collective government decision making process (i.e. just with the approval of the Prime Minister) "Decisions taken under this Act may be taken on matters of … Armed forces war organization and mobilization …". If we look at amending laws we can also find a range of highly specific provisions: some including detailed provisions of EU legislation into Swedish law, including l objects (flick knives, knuckledusters and so on are listed) that Swedish customs officers may seize (SFS 2014: 1497) details about responsibility for guarding the Prime Ministers' official residences (SFS 2014: 516). While it is possible to find constitutive laws in Sweden that set out general principles, much Swedish legislation is in fact changing relatively narrow parts of existing policy frameworks.

The corpus of Swedish legislation suggests that "broad brush" policy discretion is not inconsistent with the existence of detail. Within a framework of broadly permissive legislation it is possible that pockets of detail are specified where required: an EU implementing law has to specify which directive is being incorporated into which law in order for it to have validity, the range of goods a customs officer can seize under one particular law has to be specified in order that a valid seizure can be made. In fact all five countries have laws which do very detailed things*; loi n° 2014-743 du 1er juillet 2014* in France which implements a decision by the *Cour de Cassation* on a detailed point of industrial tribunal procedure; the German *Drittes Gesetz zur Änderung des Agrarstatistikgesetzes vom 05. Dezember 2014* introduces a host of minor changes to the statistical reporting regime in agriculture, including minor changes to wording of tables; and the Federal Duck Stamp Act of 2014 (PL 113-264) increases the price of duck stamps (duck hunting permits) from $15 to $25. Only the UK corpus is free of the very narrow gauge laws of this type.

The issue then is unlikely to be whether laws typically have detail or not but the way that legislation that deals with broad gauge, here meaning laws which come closer to setting out the broad regime for policy than its actual detail, are framed: is law more likely to take the form of a broad statement of principles than a detailed set of instructions?

Here Swedish legislation is clearly quite distinctive in its capacity to set out significant changes in very short pieces of legislation. One of the more striking examples of such legislation in the corpus is SFS 2014:580 *Lag med vissa bestämmelser med anledning av en ny organisation för polisen* (Law setting out provisions for a new police organisation). This law changed the police service from one based on 21 separate county forces to a national police force under the Police Authority. It took a law of just 597 words which set out in common language provisions such as (para 5) "The contents of laws and regulations concerning the police or a particular police authority shall after the end of 2014 instead apply to the Police Authority". The 1964 Police Act reorganising police forces in England and Wales was, by contrast, 29,000 words long. The Swedish legislation also included a 1,100 word long regulation (*Polisförordning* (2014:1104)) and a 3,600 word long

regulation that forms the constitution of the new Police Authority (*Förordning (2014:1102) med instruktion för Polismyndigheten*), but the implementing regulations for the England and Wales Act in 1964 were much longer and specified more detail.

Thus we might conclude this discussion by observing that primary law in all jurisdictions is capable of dealing with precise pieces of minute detail as well as with instituting broader policy regimes. Some very specific detailed issues appear to be set out through necessity in all jurisdictions, When setting out how laws work, it is common for Swedish statutes to set out terse principles which can, if necessary, be interpreted on the basis of the range of preparatory materials produced in the extended decision making process. For France and especially Germany the statement of principle receives its clarification through accepted legal norms to which such principles refer, although French statutes tend to include both principles and contingencies *and* details in broad gauge policy. In the common law jurisdictions of the US and especially the UK, the statute seeks to specify the full range of behaviours permitted, banned or mandated within the text of the legislation.

c) Statute as stand-alone or component of wider body of law

The traditional argument about the distinction between statutes in civil and common law jurisdictions was that statutes were essentially conceived as pragmatic responses to individual problems in common law jurisdictions as opposed to components of a coherent, logical and perfectible framework of law in civil law jurisdictions (Pojanowsk 2014 i: 37). The existence of legal codes as they appear in civil law jurisdictions such as France might be considered as an example of this. All of the 50 included French laws contained reference to a Code, and 36 of them contained frequent (i.e. more than 10) references to codes. French lawmaking has a strong focus on codes.

The concern with perfectibility and coherence is not reflected in reference to codes in German legislation in 2014. In it there is not a single reference to the main German code, the *Bürgerliches Gesetzbuch*, but rather the only code mentioned (in five out of the 48 German laws included) is the *Sozialgesetzbuch*, and the references to this are light. Rather the relationship of individual statutes to a broader body of law in Germany is largely a matter of statutes largely composed of series of detailed amendments to broader constitutive laws. The names of many laws indicate that new legislation is primarily about amending older frameworks of law governing policy areas: the "Twenty-Fifth Law Amending the Federal Promotion of Education Law" or the "Eighth Law Amending the Wine Law" (*Fünfundzwanzigstes Gesetz zur Änderung des Bundesausbildungsförderungsgesetzes vom 23. Dezember 2014/Achtes Gesetz zur Änderung des Weingesetzes vom 02. Oktober 2014*). Many German statutes are lists of changes to be made to the constitutive or broader pre-existing law that then become part of the latest edition (*Fassung*) of the law. Thus the *Drittes Gesetz zur Änderung des Agrarstatistikgesetzes* ("Third Law Amending the Law on Agricultural Statistics") contains a list of changes, completely meaningless to the non-specialist, (e.g. " ff) at number 15 the heading 'Section VII' is replaced by the heading 'Section VI'") . The *Agrarstatistikgesetz* (originally passed in 1989) is then presented in its amended form under the full title "*Agrarstatistikgesetz in der Fassung der Bekanntmachung vom 17. Dezember 2009 (BGBl. I S. 3886), das zuletzt durch Artikel 1 des Gesetzes vom 5. Dezember 2014 (BGBl. I S. 1975) geändert worden ist*". 42 of the 48 included German laws in Table 1 are structured as amendments to other laws,

34 have "*Änderung*" (indicating an amending law) in their titles and many others have titles that link them to other laws such as the Law to Stabilise the Artists' Social Contributions (*Gesetz zur Stabilisierung des Künstlersozialabgabesatzes vom 30. Juli 2014*).

The integration of proposed statutes in wider statutory or legal frameworks appears to be different in the US and the UK. Certainly UK statutes have to amend other statutes. For example, the Mesothelioma Act 2014 amends the Social Security (Recovery of Benefits) Act 1997, The Social Security (Recovery of Benefits) (Northern Ireland) Order 1997, the Pneumoconiosis etc (Workers' Compensation) Act 1979 and Child Maintenance and Other Payments Act 2008 among others and the available copies of, say, The Social Security (Recovery of Benefits) Act 1997 will be the amended form after the Mesothelioma Act. However the emphasis in the UK is on establishing the consequential changes to existing legislation in the light of the newly passed legislation. Some German legislation takes this form too, the *Gesetz über den Betrieb elektronischer Mautsysteme vom 05. Dezember 2014*, which tears up the earlier act with a similar name is nevertheless described in the parliamentary material as an amending law. Yet the form that the large majority of German statutes take emphasises the consonance between the new law and the existing body of legal principles in the area, the UK form appears to emphasise that a law has been created largely *de novo* and the existing law is adjusted to accommodate it.

Reference to legal codes is common in the United States. 73 of the 103 US laws mention one or other Title of the United States Code. However, codification appears to have a different focus in the US: descriptive rather than analytical. Providing a compendium of applicable law in a clear and ordered structure in a code makes the law more amenable to citizens as well as legal practitioners when key provisions are otherwise to be found in dozens if not hundreds of separate statutes and regulations. Thus the references to the US Code are frequently not a matter of amending the existing body of legislation (10 of the 103 laws have in their titles that they aim to amend a title of the US Code), but rather a shorthand, a reduction of transaction costs (Stevenson 2014). Thus in an active labour market Act, Title 10 US Code (covering armed forces) is used to define what "active service" means and this is in turn part of the definition of a particular status of worker ("displaced worker"; "the spouse of a member of the Armed Forces on active duty (as defined in section 101(d)(1) of title 10, United States Code)").

As we will see, the US Law has a particular relation to existing legislation as reauthorization of earlier legislation is commonplace; 15 of the 103 US laws state in their title that they are reauthorizations of existing statute. While reauthorizations can involve the complete recasting of programmes, they frequently bring relatively minor amendments or even leave the provisions of earlier programmes untouched. We do not have any metric for assessing the scale of amendments and the data do not allow us to begin to answer the question. Reauthorization does, however, suggest at least that the legislation concerned is part of a lineage of similar provisions. Moreover, of the 103 included US laws 36 are formally described as an "Act to amend" another act. Some of the US laws appear similar to the German laws in their structure and style of setting out lists of amendments that only make sense to specialists reading them with the relevant old texts open in front of them such as the "Autism Collaboration, Accountability, Research, Education, and Support Act of 2014" (the "Autism CARES

Act of 2014"). The relationship between old legislation and new appears, unlike the position in France and Germany, more likely to be a contingent political relationship. With legislation struck as a "bargain" between individuals and groups within the legislature and possibly with strong executive involvement, the requirement of reauthorization to secure continued funding for the programme facilitates the striking of this bargain. As Maltzman and Shipan (2008: 263-264) argue, where political divisions are greater, especially where control of Congress and the Presidency is divided, "policy opponents can extract concessions that require that a law be revisited or that hinder a law's ability to fulfil the long-term objectives of its primary advocates" with the result that "policy proponents' abilities to entrench their view of the new public law, to sink their policy goals into legislative concrete" are limited. Thus the relationship between existing laws and new statutes is likely to reflect, as in the UK, the need to make consequential changes to old law as well as the wider political contingency that requires that new statutes frequently revisit old laws.

As is often the case, Swedish law is frequently classed as being somewhere in the middle between the unsystematising approach to law making supposed to characterise common law jurisdictions and the systematising approach of civil law, particularly Germanic law, countries. Citing the Danish legal scholar Julius Lassen, Hellner (2000: 329)"points to two main types of legislation. One is found in Germany, whose Civil Code aims in principle at covering all possible cases. [Lassen] finds the opposite pole in England, where the statutes are in principle regarded as exceptions from the general rules which constitute the common law and are based on precedents. He considers the Nordic system, consisting of statutes that are not supposed to be peremptory, as an appropriate medium between these two poles". The codifications of 1734 and subsequent codes have tended to suggest a systematic approach to developing broad schemes of law. Yet, Hellner (2009: 328) argues "The idea of having a code expressing general principles based on reason, such as Franz von Zeiller once stated for Austria, has never had any appeal to the unphilosophical Swedish lawyers". Indeed, the fact that the older codes seem to have become defunct and the newer codes (*balken*) such as the Parental Code of 1949, Environmental Code of 1998 and the Social Security Code of 2010 appear closer to a consolidated compilation of laws than the construction of a systematic body of law. Such codes tend to have broad overarching themes; the 1965 Criminal Code has the theme of corrective treatment for criminals (see Svenerlid 2009) and the 1998 Environmental Code sustainable development (Edvardson 2004). However they lack precision, specification of the means to meet them and mechanisms or criteria for handling conflicts between the broader goals, or with principles established in other statutes and codes (see Edvardson 2004). As Hellner (2009: 335) goes on to suggest in one area of law, "the Swedish law of contracts and torts cannot easily be presented as an orderly system, in which main principles are carried through strictly. On the contrary, it has grown irregularly and pragmatically, and the legislators have not seen as their task to create any consistent system".

We will be hard placed to even approximate an answer to this question by an examination of existing statutes. Yet, as we have already seen, amending laws in Sweden constitute 93 per cent of all laws, so the idea that legislation is closely related to other legislation, iterating and amending it, but that these amendments do not appear to be part of a systemic body of law would tend to place Sweden in with the

US and UK as approaching statute making as relatively less constrained by a wider body of existing law.

d) Legislator diversity and the coherence of statutes

The expectation that the activity of legislating requires political compromises is a universal. In no democratic political system can we expect a chief executive, party faction or any other body or individual to get their own way by controlling what goes in, and what is kept out of, a piece of legislation. Moreover what that compromise looks like and how far the legislation appears to differ from what anyone or any group might have originally wanted is likely to vary from one bill to another. A pure consolidation law, of the kind one finds in the UK which simply tidies up the provisions of existing law without changing any of it (Samuels 2005) is more likely to sail through Parliament in a form intended by its authors than a law restructuring the National Health Service (Jarman and Greer 2015). The discussion of the impact of divided government and lower levels of party cohesion above is not intended to suggest that they are only likely to be found in the United States. Where the barriers to legislative influence are relatively low and where the structure of lawmaking routinely generates differences if not conflict between the executive and legislative branches, we might expect it to be less common for any one person or body to have extensive influence over the shape of much legislation. In such circumstances we would expect the coherence of legislation, the degree to which it constitutes a series of components that support an identifiable set of related goals, to be less marked in the United States than France, Sweden and Britain and even Germany where the influence of the *Bundesrat* across a wide range of legislation creates some of the conditions of divided government.

How does one assess "coherence"? We are looking, essentially, for evidence that legislation is a cobbled together compromise that includes provisions and clauses designed primarily to allow the legislation to pass. Moreover such provisions should be at best irrelevant to what might be considered the main intended purpose of the legislation; they may even contradict these purposes or perhaps no clear purpose is evident in the legislation. However "main intended purposes", "irrelevance" and such like are matters of interpretation and we are highly unlikely to find any measures that offer global quantitative assessments. We can only look at the form of legislation. Consistent with the “should be visible from space” logic, the coherence of the legislation can only here be judged in terms of the form of the legislation and not detailed consideration of the content. It is not conclusive evidence of coherence but simply an indicator.

Here I have explored this question looking at four of the longest statutes for each country included in the sample. The logic behind this approach is that I have to take a sample as I cannot read and assess the full range of legislation, that one would expect longer legislation to be subject to greater vulnerability to incoherence and that if there were indeed a noticeable trend at all, four would be sufficient to find at least some evidence of it.

Table 3 Four Longest Included Laws in Each Jurisdiction

Country	Nickname *(full name in italics)*	N words
Germany	**Bank resilience** (*Gesetz zur Umsetzung der Richtlinie 2014/59/EU des Europäischen Parlaments und des Rates vom 15. Mai 2014 zur Festlegung eines Rahmens für die Sanierung und Abwicklung von Kreditinstituten und Wertpapierfirmen und zur Änderung der Richtlinie 82/891/EWG des Rates, der Richtlinien 2001/24/EG, 2002/47/EG, 2004/25/EG, 2005/56/EG, 2007/36/EG, 2011/35/EU, 2012/30/EU und 2013/36/EU sowie der Verordnungen (EU) Nr. 1093/2010 und (EU) Nr. 648/2012 des Europäischen Parlaments und des Rates (BRRD-Umsetzungsgesetz)*)	71,383
	Health Insurance (*Gesetz zur Weiterentwicklung der Finanzstruktur und der Qualität in der gesetzlichen Krankenversicherung vom 21. Juli 2014*)	10,777
	Tax Amendment (G*esetz zur Anpassung der Abgabenordnung an den Zollkodex der Union und zur Änderung weiterer steuerlicher Vorschriften vom 22. Dezember 2014).*	9,238
	Electronic Tolls (*Gesetz über den Betrieb elektronischer Mautsysteme vom 05. Dezember 2014).*	8,897
France	**Housing Rents** (*Loi n° 2014-366 du 24 mars 2014 pour l'accès au logement et un urbanisme rénové*).	147,783
	City Regions (*Loi n° 2014-58 du 27 janvier 2014 de modernisation de l'action publique territoriale et d'affirmation des métropoles).*	68,946
	Agriculture Reform (*Loi n° 2014-1170 du 13 octobre 2014 d'avenir pour l'agriculture, l'alimentation et la forêt).*	62,467
	Consumer Credit (*Loi n° 2014-344 du 17 mars 2014 relative à la consummation(*	62,398
*Sweden**	**Bank Resilience** (*Lag om särskild tillsyn över kreditinstitut och värdepappersbolag)*	4,838
	Directorships (*Lag om näringsförbud)*	3,664
	Capital Buffers (*Lag om kapitalbuffertar)*	2,905
	Consumer Credit (*Lag om viss verksamhet med konsumentkrediter)*	2,397
UK	**Children** *(Children and Families Act 2014)*	103,457
	Water *(Water Act 2014)*	102,227
	ASBO *(Anti-social Behaviour, Crime and Policing Act 2014)*	97,631
	Pensions *(Pensions Act 2014)*	46,962
US	**Agriculture** *(Agricultural Act of 2014)*	150,229
	Labour Market *(Workforce Innovation and Opportunity Act)*	131,946
	Ports *(Water Resources Reform and Development Act of 2014)*	79,389
	Veterans *(Veterans Access, Choice, and Accountability Act of 2014)*	22,520

The US 2014 Agriculture Act, to a large extent a piece of legislation allocating $960bn to agricultural programmes over five years, appears at least to some degree to support the incoherence argument, confirming the notion that balancing the range of

interests in Congress to get a piece of legislation through requires the satisfaction of diverse perspectives in one bill. It took three years to negotiate through Congress. Indeed, right wing republicans sought and managed to have the Bill divided into two separate bills in July 2013 (Ed O'Keefe "Farm Bill passes in House, without food stamp funding" *Washington Pos*t July 11, 2013) as it had two main components -- programmes of agricultural support as well as a social security programme, the USDA SNAP ("food stamps") programme. The remaining three of our four longest laws, however, tell a different story. The US Ports legislation (Table 3) authorized 34 new port, levee, lock and dam, and ecosystem projects and mandated a series of reforms at the Army Corps. It is essentially a funding programme for the development of port infrastructure. It passed with overwhelming bi-partisan support and while it seems to be most promising project for the kind of politics that buys legislative support by placing projects in enough legislators' constituencies to get passed into law, the Speaker of the House had some justification claim that it did so "without a single pork-barrel earmark." This becomes somewhat less remarkable if one considers that the law did not actually allocate funds to projects -- it simply "pre-authorised" them, the funding allocation decisions were to come later, if at all. Similarly the Labour Market law (Table 3) sets out a range of active labour market programmes including reauthorizing the Workforce Investment Act of 1998 discontinuing and amending some of the programmes within this, reauthorizes a range of adult education programmes, sets out subnational arrangements for active labour market policy administration as well as labour market statistics. The legislation has all the recipes for fragmented government, not least its consideration by a range of different House and Senate Committees and bargaining between the two houses. It arguably makes greater sense out of the maze of preexisting programmes than existed before its passage, so little evidence of incoherence here. The Veterans law in Table 3 also passed with little significant opposition in its final stages. Although based on a 2013 Bill, it was significantly shaped by the 2014 Veterans Administration (VA) scandal in which it was revealed (by the news media and later the VA's own investigations) that services to veterans appeared to be spectacularly inadequate (Curt Devine "Bad VA care may have killed more than 1,000 veterans, senator's report says" CNN June 24 2014). It represents a sustained focus on the quality of veterans' services

By contrast, the longer items of UK legislation in a system of executive dominance with higher levels of legislative party discipline, albeit under a coalition government, all four longer items of legislation display elements of what used car dealers might call a "cut and shut": two or more vehicles welded together and sold as one. The Children and Families Act 2014 in fact covers a range of issues across the broad field of children and families including provisions for adoption, cared-for children, special educational needs, flexible working and paternity leave, family law, especially post divorce arrangements for access to children, and the office of the Children's Commissioner. The Water Act of 2104 addresses two rather distinct issues loosely related by H_2O -- water supply regulation and the failure of the market to supply flood insurance. The most diverse of the UK laws is the Anti-social Behaviour, Crime and Policing Act 2014 that for the most part reformed the system of dealing with those who persistently cause nuisance to neighbours (the old ASBO system), but also includes changes in the law on dangerous dogs, forced marriage and firearm possession. To be sure the reasons for this diversity in single pieces of legislation are more likely to lie in the practice of "Christmas tree" legislation arising from the high costs of reaching the legislative agenda in the UK than divided government. Because

getting a slot for one's own primary legislation requires an enormous effort for any ministry, ministries look for legislation for which scarce legislative time has been (or is likely to be) given on which to hang their smaller items -- like hanging their baubles on a Christmas tree. Of the four long items of UK legislation, only the shortest, the Pensions Act conforms to what one might expect of a long law on a non-divided government: a significant major reform covering multiple aspects of the same issue. Unopposed at its second reading, and without any significant opposition amendments accepted it created a single-tier state pension, brought forward the raising of the pension age and facilitated the transfer of pensions on change of employment.

The long items of German legislation all display a unity of focus and logic. The Bank Resilience law (Table 3) which transposes the provisions of the EU's 2014 Bank Recovery and Resolution Directive the Health Insurance law is essentially a list of changes to the Social Code (*Sozialgesetzbuch)* and related items such as the Medicinal Products Law introducing a range of changes to health insurance including the setting up of a new health quality control institute; the Tax Amendment law has the main purpose of amending the general Tax Law (*Abgabenordnung*) but also contains a range of miscellaneous changes to other tax laws for the prime purpose of ensuring coherence between German tax law and European law. As Karpen (2013) suggests "German legislation starts from a clear principle at the top of the law, then details are regulated on in great precision. German laws are often long, but always in good systematic order".

The four longest new laws in the Swedish sample are all concerned with regulation, three of them financial regulation and the fourth business. Setting out details of some these regulatory regimes appears to involve specification of detail required for their effective legal enforcement and does not rely on the form of broader and often very brief legislation developing broad principles that can be found in other areas . In fact two of the separate laws (Bank Resilience and Capital Buffers, see Table 3) are not only part of the same programme of increasing the resilience of credit institutions, there are a further 24 amending laws passed under the same programme. These two laws highlight a somewhat distinctive approach to executive lawmaking in Sweden: a Proposition (in this case *Regeringens proposition 2013/14:228 Förstärkta kapitaltäckningsregler*) contains a bundle of measures, including new and amending laws. This also helps account, at least in part, for the very large numbers of laws classified as amending laws. The fourth longest law *Lag om viss verksamhet med konsumentkrediter* regulates consumer credit and involves six additional separate amending laws under the same Proposition. The business regulation law replaces the 1986 law on disqualifications from holding company directorships and comes without any additional amending laws. As implied by this division of labour between new laws and ancillary amending laws, Swedish laws, even the ten per cent that are over 3,000 words, have a clear focus on a particular set of related objectives.

If the short length of Sweden's laws can in part be explained by the tendency to separate out tasks involved in any reform to separate acts, the high word count of French laws might be better accounted for by the tendency to incorporate diverse aspects of a broader reform in one law. This tendency gives longer French laws a somewhat ramshackle feel. The City Regions law (see table 3) is a significant part of an even bigger territorial reform. Apart from some general clauses dealing with restoring the general competence provisions for the regions and départements which

was about to lapse, setting out responsibilities for regions, départements and communes, sets up a regional deliberative body (conférence territoriale de l'action publique, yet the bulk of the law involves setting up institutions of metropolitan governance in Paris, Lyon, Marseille. It ("le big bang de régions"). Loi Duflot (Green minister now airbrushed out) or Loi ALUR (Loi pour l'accès au logement et un urbanisme rénové), the longest of the French laws in 2014, introduced a major change in housing law in France by introducing new rent controls based on prefectorally set "median benchmark rents", limiting holiday rentals in areas with housing shortages, allowing new forms of cooperative ownership, protecting tenants from eviction among other things. The Agricultural law in France (Table 3) is perhaps the most ramshackle. It seeks to incorporate two rather different objectives: competitiveness of agriculture and "agro-ecology", it was passed between the Assemblée and Senate six times, had 1,300 amendments proposed, generating much opposition from farmers groups and several demonstrations, albeit with broad cross party support with the significant exception of the UMP that voted against it. It sought to limit the use of pesticides, reintroduce wolves into the countryside and increase sustainable forest use in both domestic and imported timber (see Garric Audrey "Pesticides, loups, forêts : 5 points de la loi d'avenir de l'agriculture" Le Monde 11.09.2014); it promotes education and research, seeks to attract young farmers. In short a host of initiatives grouped loosely under the heading of agro-ecology.

In short, legislator diversity does not seem to be related to the coherence of law, measured by the narrow and "from space" criterion of the appearance of including provisions with diffuse purposes in one law. There is a range of ways of dealing with legislator diversity (both executive-legislative divisions as well as intra-legislature and -executive divisions), and while cobbling together compromises might be one of them, these compromises do not produce legislation obviously less coherent (using our narrow measure) than in European countries. Nevertheless, the analysis of the corpus of 2014 does point to substantial differences in this measure of coherence, yet the reasons behind them seem to be varied. We may speculate on the causes. In the UK the greater costs of finding a slot for legislation suggest that small laws (of the type produced in their hundreds each year in Sweden) have to find other laws to attach themselves to; in France the desire for the grand gesture promotes a monumentalist approach to legislation producing ramshackle statutes. But ultimately it does not appear that coherence is related to a clearly definable set of features of the system of producing laws in each country.

e) Statute as symbolism

We are unlikely to be able to give any sort of metric about variations in the degree to which legislation fulfils symbolic roles in different countries on the basis of our "view from space" account of a sample of legislation from 2014. For one thing the symbolism or otherwise of legislation crucially might depend on what happened after it was passed: whether it guided policy or remained a pious hope, for example. We can, however, point to a range of possibilities for the symbolic uses of legislation that appear to vary across countries. There is, in fact, a range of different forms of symbolism such that it is not possible to reduce symbolism to one particular dimension. All we can do is explore these and look at the possibilities in the different jurisdictions.

One form of symbolism, identifiable above all in French and to a lesser extent US statutes, is a *personal aggrandisement* that comes of the identification of an individual with a law. Thus in France any significant law is likely to be nicknamed in after a politician, usually the person in charge of passing the law. The law on the future of Agriculture is known as the Loi le Folle (after Stephane le Folle), for example. It is routine for laws to be thus named, and the 2014 corpus of laws contains one law that used to be known as the Loi Duflot (a law to encourage affordable rents) which got renamed when the (Green) minister after which it was named fell out of favour and was known as the Loi ALUR (an acronym produced from the full name of the law) until it was amended and became the Loi Pinel after Sylvia Pinel, Duflot's successor as housing minister. In the United States names of legislators can be in the official title of the law. Thus we have the officially named Howard Coble Coast Guard and Maritime Transportation Act of 2014 (a North Carolina Republican Congressman on the eve of retirement at the time) and the Senator Paul Simon Water for the World Act of 2014.

The naming of acts can be used for another form of symbolism, *expression of broader political ambition*. In the US naming of legislation and proposed legislation for partisan as well as personal aggrandisement (and diminution) has long been common (Simon 2011). The more confrontational messages are usually found in the provisional titles of bills, although there are no obvious candidates in the 2014 US sample along the lines of the 2011 anti-Obamacare ″Revoke Excessive Policies that Encroach on American Liberties Act″. The body of legislation in 2014 does not contain any of the more famous examples of the genre. Thus we have the "Newborn Screening Saves Lives Reauthorization Act", the "No Social Security for Nazis Act" (for more on names of legislation in the US see Jones 2014).

Perhaps the most important form of symbolism, however, is that which uses *legislation as a proxy for policy*, either because the exhortation contained in it *is* the policy, or because its provisions are either unfulfilled or unfulfillable. In both forms outcomes are willed but do not contain the means to achieve them. This, however, is where the limits of the 2014 corpus become even more significant. The impact of legislation, whether symbolic or not, can only be assessed after there is time for its impact to be felt and just over a year is not long enough. Consideration of how symbolism has worked in the past might help define how we might look for it in recent legislation.

The French legislature does not appear to be particularly tightly constrained from the passage of this proxy form of symbolic legislation. Roché (2007) points out the importance of symbolic legislation in French penal policy increasingly creating the "illusion of severity" while the underlying practices of sentencing and incarceration changed very little. Béland's (2007: 130) discussion of "social exclusion" policy points to the importance of symbolic legislation such as the "Loi d'orientation de lutte contre les exclusions [Framework Law for the Struggle against Social Exclusion] of May 1998. Marginal in its concrete policy effects, this legislation appeared as a mere political statement of the Socialist Jospin government (1997–2002) regarding its commitment to fight all forms of social exclusion and to help needy citizens. Yet this commitment led to a few significant measures …".

One of the more publicly visible signs of the importance of symbolic legislation in France is the estimated proportion of legislation that is never actually brought into effect – *lois inappliquées* (Senat 2014; Sagalovitsch 2014). This has varied significantly from 86% in 2004 to 36% in 2013 , though it is hard to agree that the method of determining such figures is precise. It is widely believed to result from “l'obsession des ministres d'attacher leur nom à une loi” (“Lois inappliquées: la faute à qui? “ *Le Monde* August 5 2015).

In the UK too, laws can be passed but not applied or "commenced". It is conventional to specify which parts of an act come into force straight away, which come into effect in a time specified in the Act and a range of provisions "on such a day as the appropriate authority may by order appoint". 17 of the 30 2014 Acts have provisions for commencement at an unspecified date. This means that it can remain on the statute book uncommenced (a famous example of an uncommenced law is the Easter Act 1928 which stops Easter being a moveable feast). A significant volume of UK Acts remain uncommenced, although the data on these is limited (the best data comes from a written answer to a question in the House of Lords from 2010 HLDebs 14 Jun 2010: Col WA77) suggesting that 152 Acts passed between 1997 and 2010 have uncommenced provisions. The chaotic state of UK Commencement Orders (regulations required to bring the provisions of some Acts of Parliament into effect) has long been criticised by practising lawyers (Samuels 1996), but largely from the perspective of the confusion that this causes for those trying to understand the law rather than for any judgment on the seriousness of the intent of the executive, largely responsible for the drafting and implementation of the statute. In Britain, symbolic legislation, in the sense of legislation that wills government to produce outcomes (such as meeting climate change targets or the eradication of child poverty) without specifying the steps and measures needed to achieve them has raised some academic comment (Reid 2012), but little serious opposition.

The available evidence suggests the limitations on proxy symbolic legislation are particularly strong in Sweden either. Ljungwald and Elias' study of the 2001 Swedish Social Services Act which made crime victims special targets for social services programmes. They point out that "the legal guidance for serving crime victims in the Social Services Act is vague and contradictory ….The provisions also do not strengthen crime victims’ right to assistance from the social services. As the preparatory material (leading up to the legislation) clearly indicates, the provisions do not involve ‘any change in a legal sense’. This conforms to Tham's (2001: 416) argument that "in Sweden there seems to be a tendency towards what has been labelled symbolic legislation in the crime policy area. Politicians increasingly use criminal law as a means of demonstrating (perceived) central social values". Whether or not one agrees with Tham's explanation (2001: 417) -- that this is possibly as a result of the declining "space for political action" following globalization and EU membership -- symbolic legislation clearly does not pose the same constitutional or legal problems found with symbolic legislation in Germany.

The possibilities for symbolic legislation in the other countries do not seem to be as strong in Germany. Expressive and symbolic functions of the law are not unknown in Germany, but they appear to be controversial to a degree not found in the other four. Lepsius shows how Germany created the Code on Corporate Governance in 2010 as a "gimmick" -- for its international reputation such a code appeared to be needed even

though all of its provisions already existed in law -- a gimmick he roundly condemns as bringing the high standards of German law into disrepute. And this reaction corresponds to the conception of law as a logical whole characteristic of the *Dogmatik* approach to academic law described by Lepsius (2014) which, as academic scholarship plays a significant role in legal interpretation, suggests that expressive functions for law is likely to be more constrained in Germany than the UK, not least because Parliament is constrained in its approach to legislation by broader constitutional norms as applied through the *Bundesverfassungsgericht*. As Lepsius (2014) goes on to argue:

> The court demands from Parliament that its laws be without contradiction, logically consistent, systematically sound, or that they adhere to the existing conception. … Parliament may only legislate in a coherent way. It must adhere to its own ideas. It cannot simply establish exceptions or enact trial-and-error legislation. By imposing constitutional standards as "logically consistent," the court's jurisprudence curtails Parliament's autonomy.

In her discussion of the treatment of symbolic law in the German system Siehr (2004) argues

> That the constitution "embodies additional standards for the internal legislative procedure that exceed the question of the constitutionality of the law and that are rather part of the legal theory approach to legislative theory" condemns symbolic legislation as "inherently deceptive" and defines it as the duty of the legislator to vote against such "sham legislation".

Moreover, the language of German legislation appears ill suited for any of the forms of symbolism discussed above, The formal titles can be extremely long (see table 3) and many contain little clue as to what they do: some are simply bland ("Eighth Law amending the Wine Law"), others obscure ("Law on determining the economic plan of the ERP Special Fund for 2015"). Occasionally titles are descriptive of what their aspirations are "Fifth law to improve rehabilitation legislation for victims of political persecution in the former East Germany", 40 of the 48 laws in 2014 fall into the obscure/bland category, the other eight offer some guidance about what they do, but usually in very constrained terms (e.g. "Law introducing the Parental Allowance Plus Partnership Bonus and more flexible parental leave in the Federal Parental Benefit Law and Parental Leave Law"). In German lawmaking there is little narrative that allows the non-specialist reader to understand what the law is doing, but often consists of a series of amendments to existing law (see above). As Karpen (2013: 155) argues in comparison with Germany

> Swedish laws are characterised by a language, which strives at being understandable to the laymen. Technical terms are to be found in a preamble or preface or in an appendix, not in the law itself. German legislation starts from a clear principle at the top of the law, then details are regulated on in great precision. German laws are often long, but always in good systematic order. The language is always rather complicated.

Symbolic legislation, then, can be found everywhere. Is there much to distinguish between our five countries on this basis? We can at best point to the fact that in two countries, France and especially Germany, the use of symbolic legislation is at least a focus for criticism among practising judges suggesting its use offends against significant legal norms, while in the US, Sweden and the UK there appears to be a greater acceptance of, or acquiescence in, more symbolic forms of legislation.

3 Conclusions

There are significant differences in the way that statutes work in different systems of government as well as how they are put together. While it has been often argued that differences between civil and common law norms and practices are diminishing, there is still sufficient evidence of substantial differences in norms of statutory interpretation, procedures and practices of creating executive decree making powers as well as large differences in the way they are written and put together. Whether such differences are reflected in the types of laws produced is one question, whether any of this actually matters beyond a superficial matter of style is another.

Before considering these questions it is worth noting that it would be possible to consider a range of other features of difference in the way laws are constructed and the ways they interact with the wider administrative-legal system. There are huge differences in patterns of interministerial consultation, public consultation, pre-legislative scrutiny, internal quality control among many other features. So why concentrate on the relatively narrow range included in this paper? The answer to such questions can only be pragmatic rather than theoretical. This paper has chosen to explore issues of delegation, interpretation, the impact of a systematising form of law argued to be characteristic of civil law systems, principles as opposed to rules, symbolism and legislator diversity. These are not only issues about which sufficient has been written to be able to establish some sort of expectation about how they differ cross-nationally, they also are issues on which a prime facie case can be made that they should be expected to shape the form of statutes in discernable ways. While, for example, there may be many features, some mentioned above, that might be considered to affect the "quality" of legislation. Yet the issue of quality is essentially indeterminate whether considered as technical-legal quality (Kischel 1994: 253-5) or as ability to produce desired results (Bussman 2010).

The discussion of a range of scholarship, much of it from comparative law, suggested a series of expectations about the form that statutes should take; the form and style of delegation, the tendency to cover specific contingencies, the relation with wider bodies of law, the degree of coherence in legislation and the ability to use laws as symbols. An examination of the 2014 corpus has provided some evidence for most of these, the main exception being the question of the coherence of legislation. It is not that there seems to be uniformity across countries in this particular feature; quite the contrary. Rather the coherence did not seem to be related to legislator diversity, and the most ramshackle laws seem to have been produced by the country with a low, if not the lowest, level of legislator diversity.

Does any of this matter for the construction of public policy – do policies in one country systematically differ from those in another because of these features? For example, it could be that policy regimes that involve strict limitations on executive decree making powers are no different in the end from those that do not. We would probably be hard pressed to put the structure of public pensions reforms in Sweden or the UK down to a distinctive approach to legislation. There are four main types of policy consequence we can point to.

First, there is a "cut your cloth according to your means" point. Those making policy, whether politicians or the people that advise them when developing the legal and other instruments that go toward policy design, might be expected to have their aspirations shaped by what is possible. If you know that you have to save up your reforms to propose a major piece of legislation you might think differently about reform to a person who knows that there is plenty of parliamentary time for a range of smaller scale changes to the law; if you know that you can effect a fundamental change in the law by a couple of short statements of principle you do not have to tie up such a large volume of bureaucratic resources in developing your policy. Thus it might be expected that features of the way that statutes are constructed shape calculations and expectations about what sort of reform is feasible and over what time period. Second, there is a "who governs?" point. This is one familiar to the "delegation" debate. Indeed, differences in patterns of delegation or the degree to which legislation expresses broad principles or specific rules might be expected to shape not only levels of bureaucratic discretion in the shaping of policy once it has been passed into law, but also the level of judicial discretion in interpreting the law and the opportunities all of these things open up to other political actors, most notably interest groups and subnational governments, to challenge the way policies are applied, developed or implemented. Third a "path dependence" point suggests that in some countries it is easier than others to tear up the old policy and start again than others. Thus you might expect more reforms designed as what Hall (1993) terms "third order" changes in some jurisdictions. Fourth there is a "dead letter law" point. Where laws merely express aspirations rather than sets of rules that are expected to be observed, their genesis becomes more a matter of confronting one set of wishful thinking with others rather than debates about what policy mechanisms are best suited to pursue aspirations. There is the further possibility, probably still remote, that too much unenforceable or unenforced law devalues the currency.

Unfortunately, one cannot use a quantitative of a sample of laws to explore such questions of the wider impact of different lawmaking styles. Such arguments require understanding of matters such as the perceptions of policy makers, how delegated powers are exercised in practice and assessments of policy change. There are undoubtedly substantial differences in the way laws are put together, and there is some support for the proposition that we have a good idea why such differences might be found. Demonstrating how such differences in lawmaking styles affect general features of policy construction is certainly more difficult, but the focus on a range of characteristics of the main tools of government at a very minimum provides a set of clear expectations about their policy effects.

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