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Legal Origin and Social Solidarity: The Continued Relevance of Durkheim to Comparative Institutional Analysis

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Abstract

By using the classic works of Durkheim as a theoretical platform, this research explores the relationship between legal systems and social solidarity. We found that certain types of civil law system, most notably those of Scandinavia, are associated with higher levels of social capital and better welfare state provision. However, we found the relationship between legal system and societal outcomes is considerably more complex than suggested by currently fashionable economistic legal origin approaches, and more in line with the later writings of Durkheim, and, indeed, the literature on comparative capitalisms. Relative communitarianism was strongly affected by relative development, reflecting the complex relationship between institutions, state capabilities and informal social ties and networks.

Keywords

Durkheim, institutions, legal origin, neoliberalism, social solidarity, societal development

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With a focus upon social solidarity, this comparative study elaborates Durkheim's work on the relationship between the law and society and compares it to more recent work on the role of law. Specifically, we explore continuities in the relationship between legal tradition, collectivism and the relative depth and stability of welfare institutions. Defining social solidarity as 'the feeling of reciprocal sympathy and responsibility among members of a group which promotes mutual support', Wilde (2007: 171) has argued that the concept of solidarity has, until recently, only received relatively sporadic attention within the sociological discipline since Durkheim's seminal work. Nevertheless, the issue seems to be of perceived importance, especially because it has been claimed that the increasing incursion of market relationships into social contexts, formerly ordered through a sense of social solidarity located in mutual social attachments and reciprocal obligations as a guide to appropriate behaviour, has exacerbated anomie (see e.g. Etzioni, 1996, 2004). In a different vein, Habermas recently has observed that 'the tendencies towards a breakdown in solidarity in everyday life … in western civil societies' had reduced the likelihood of the mobilization of a cohesive social movement for change (Habermas et al., 2010: 74). Moreover this apparent erosion of a sense of community, and the libertarian inclination to reduce society to an aggregation of individuals instrumentally joined for their own convenience, is often seen as the legacy of an unregulated free-market capitalism engendered by the hegemony of neoliberal policies (Cerny, 2008; Dardot and Laval, 2013; Etzioni, 1996: 156; Harvey, 2005) that are thought to be restructuring the global economy.

Despite variation according to historical and social context (see e.g. Foucault, 2008), it is widely thought that the key parameters of neoliberalism's underlying normative rationality have demonstrated a remarkable adaptability and resilience, often in the face of evidential policy failure (see e.g. Dardot and Laval, 2013; Peck, 2010). As Dardot and Laval (2013: 1–4) observe, crucial differences between neoliberalism and classical liberalism help us understand those parameters. In particular, neoliberalism rejects classical liberalism's naturalization of markets that justified the demand that the state must not intervene except to maintain private property rights. As Dardot and Laval indicate (2013: 46–47), this passivity of classical liberalism contrasts sharply with neoliberal interventionism which paradoxically emphasizes the role of the state in guaranteeing the operation of free markets (see also Boltanski and Chiapello, 2007; Peck, 2010). Such a role is essential for neoliberals since markets are deemed unnatural and have to be forcefully promoted through normative policy agendas which embrace the state itself within the logic of competition.

So, despite a range of guises, Peck (2010: 8–9) argues that the defining characteristic of neoliberalism is the capture and (re)use of the state to shape a freer market order, although how this is done has historically varied. In exploring this line of continuity he contrasts (Peck, 2010: 17–23) the 'free-economy-and-minimalist-state' of 'roll-back' Chicago-inspired neoliberalism with the 'roll out … socially embedded market order' liberalism that underpinned the development of the social market economy in post-war Germany that tried to work between 'unfettered capitalism and state control' (p. 60). As the literature on variegated capitalism alerts us, whilst neoliberalism has global ecosystemic dominance, its relative forms and consequences persistently vary between contexts (Jessop, 2012). Moreover, as Dardot and Laval (2013: 3–11) argue, drawing on Foucault's

(2008: 131) earlier view, neoliberalism is a socially pervasive governmental rationality that inscribes non-market social and political domains with the 'formal principles of market economy' as a disciplinary regime: an extension of market rationality without precedence. This includes the articulation of self-entrepreneurial governance, through individual and collective internalization of competitive enterprise as an 'existential norm', where egoism is encouraged as an ontological necessity for competitive survival 'to the detriment of collective solidarities' (Dardot and Laval, 2013: 3–11).

However, the claim that such differentiating and individualistic processes are the predominant feature of contemporary society may be undermined by the evident enduring popularity of the desire to belong (see Guibernau, 2013). Alternatively, these processes may articulate new (see Crow, 2002), sometimes relatively hidden, social bonds (Spencer and Pahl, 2006), which even when self-selected and individuated can realize collective concerns (Wilkinson, 2010: 467). Nevertheless, others take a somewhat less nuanced view, suggesting a general individualization of social life (see Etzioni, 2004; Putnam, 1998). It is thought that this has been particularly evident in work organizations. Here, the decline of the corporatist consensus since the 1980s has been presented as a driving force behind broader processes of individualization (see Beck and Beck-Gernsheim, 2002). For example, it is thought that as part of an increasingly post-bureaucratic organizational trajectory, there have been moves towards marketizing employer–employee relations under the auspices of neoliberal requirements to open organizations to free market discipline. Ironically, such developments are often couched in anti-hierarchical discourses that reversed critiques originally directed against capitalism per se into normative support (see Boltanski and Chiapello, 2007: 202). One result, it is claimed, has been the decay of workplace social relations, once often based upon mutuality and 'traditional obligation' (Hendry, 2001: 213; see also Vallas and Hill, 2012), to create more precarious and individualized employment relationships (Kalleberg, 2009) in the name of entrepreneurial governance and the entrepreneurialization of the self (see Dardot and Laval, 2013).

Such a view of the effects of neoliberalism, especially upon the workplace, echoes Durkheim's (e.g. 1897 [1951]: 254–258) critique of Spencer's version of utilitarianism. For Dardot and Laval (2013: 28–47), Spencer's 'biological evolutionism' was a turning point in liberal doctrine which influenced later neoliberal ideas regarding the primacy of competition in social relations so as not to arrest evolution. Moreover, in a proto-neoliberal manner, Spencer saw the state's remit was only 'to guarantee the execution of freely agreed contracts' (cited in Dardot and Laval, 2013: 31) as a precondition for free competition between private interests. For Durkheim, Spencer's utilitarian norms would undermine social solidarity by unfettering egoism through failing to place normative limits upon aspirations and their efficacious pursuit (see also Chriss, 2010). Indeed, Durkheim believed that the division of labour was not merely an economic phenomenon but a key potential source of social solidarity (1893 [1964/1984]): hence contemporary developments in the workplace would be of significant concern to Durkheim due to their potential for exacerbating anomie. Indeed he argued (1893 [1964/1984]) that although individual autonomy was a necessary feature of the modern world, this needed to be balanced with organic social solidarities that tempered egoism with altruism, so as to preserve individual wellbeing and social coherence. At times Durkheim saw the law as a

'key' to understanding society, given its role in underwriting social solidarity but, at other times, he saw the law as only one of several defining institutions (see Cotterrell, 1999). Throughout, however, he remained convinced that certain legal traditions, above all French civil law, were relatively effective in promoting social ties.

The research reported here seeks to explore the extent to which the law and, more specifically, legal origin impacts on social solidarity using a panel of developed and developing nations over several years. We first introduce Durkheim's understanding of institutions and the law and how he saw it as the 'key' indicator of underlying modes of social solidarity. We then highlight key differences between Durkheim and the main alternative contemporary ways of conceptualizing institutions, and their respective relevance for understanding differences encountered in social solidarities between different national locales. Next, we consider different types of legal system and their relationship to different expressions of social solidarity. Specifically, we compare legal origin to social capital, social protection, and the relative extent of communitarianism: 'mechanisms of solidarity' that have been attacked by neoliberals as sources of individual irresponsibility and systemic inefficiencies (Dardot and Laval, 2013: 164–165). We proceed to explore the degree to which, given the decline of welfare institutions in many national economies, the effects of the law are becoming less pronounced. Finally, we draw out the implications of this study.

Durkheim: Social Solidarity and Legal Systems

For Durkheim, social solidarity is about shared commitments to social practices; social regulation is direct and externalized control over such practices is via law and custom (Adair, 2008: 106). Durkheim saw legal regulation as a key to the maintenance of social solidarity, whilst being an expression and indicator of differences in underlying moral sentiments and forms of social solidarity (see also Prosser, 2006). However, he held that the complexity of social relationships and solidarities is proportional to the number of promulgated legal rules. Durkheim's views were shaped by the role of continental civil law systems – especially French law – that place an emphasis on promoting social cohesion (1893 [1964/1984]: 371). Therefore, Durkheim believed that the quality of law could provide an index of social solidarity: it is one manifestation of the degree of social solidarity encountered within a society as well as being, for some, an explanation of variations in solidarity (Prosser, 2006: 371–380). For example, Durkheim thought that inequality could be superseded by social solidarity through legal mediation: this fundamentally reflects the civil rather than the common law tradition (see Cotterrell, 1999).

Durkheim (1893 [1964/1984]; cf. Cotterrell, 1999: 33) saw law as central to understanding society, arguing that law also constituted an externalized manifestation of social solidarity. Therefore one needed to classify the law to better understand and categorize the underlying, associated, social solidarity. Durkheim further argued that the law in itself is also a manifestation of the evolution of social solidarity and moral sentiments and non-legal societal features (e.g. occupational groups and professional associations) could also have a strong effect. Moreover, compromises between different interests were possible and were indeed desirable in pluralistic, industrialized societies with increasingly complex divisions of labour (see Durkheim, 1957: 13–17). This would suggest that

whilst legal origin exerts a long term effect, the actual effect of the law would change over the years, due to non-legal societal dynamics and, indeed, the extent to which the latter might feed into legislation. However, it has been argued that common law systems generally favour a particular social grouping, property owners, and accord them priority over other interests in society; a civil law system in contrast seeks to promote social solidarity, and 'reflects organic solidarity' (Hart, 1967: 1).

Civil and Common Law

There is in the literature a key distinction between civil law and common law contexts (cf. Hart, 1967). In common law systems, much of the law is made by judges, and tends to focus on protecting individual rights and liberties. In contrast, civil law, on which Durkheim focused, tends to have more comprehensive legislation than is usual in common law countries. Here, the constitution and the legislation are more important and, it can be argued, in order to be durable, this tends to necessitate social compromise. Hence civil law, according to Durkheim (1893 [1964/1984]), aims to promote social inclusion. Indeed, the emphasis on solidarity in certain continental European (civil law) state traditions aimed to overcome class antagonisms through a commitment to universal social progress.

To Durkheim, social solidarity could represent the natural consequence of an advanced division of labour. Indeed he initially thought that anomie was unnatural and transient (1893 [1964/1984]: 377) and that an organic solidarity would inevitably develop that would support the interdependencies that were the product of an increasingly complex division of labour. However, his later work was pessimistic about this social trajectory since he thought that the increasingly forced division of labour and the diaspora of Utilitarian norms would produce dangerous tensions by exacerbating economic egoism even whilst simultaneously increasing mutual interdependencies (see e.g. Durkheim, 1928 [1962]). To ameliorate this problem he saw the need to develop a 'freely willed' collective conscience (1925 [1961]: 120) that balanced individual autonomy with collective co-operation (see also Pearce, 2001: 155). For Durkheim (1893 [1964/1984]: 25) these norms could be disseminated by democratically constituted 'occupational groups' who, like their medieval guild forerunners, would socialize members into accepting moral obligations to others as a basis of economic activity, thereby constraining economic egoism by a countervailing altruism and promoting an 'unforced' division of labour (1893 [1964/1984]: 376).

In reaction to earlier work that sought to depict him as a conservative figure who never changed his basic ideas (although his interests shifted from economics to the role of religion in societies) (Nisbet, 1967), an influential body of more recent Durkheim studies sought not only to draw out the more challenging (indeed, as Lukes, 1973, argues, radical) elements of his work, but also divide the latter into early and late periods on rather different lines (Fournier, 2005). The former is depicted as 'materialistic and determinist' and the latter as 'more idealistic and benevolent' (Fournier, 2005: 43–44). This led to much debate as to how more precisely such periods might be delineated. Critics such as Giddens (1971) have argued for a more precise approach, clearly delineating the contribution in specific works. Fournier (2005) suggests that there was, in fact, a period

of transition, when Durkheim began to accord greater attention to ideas and religion in social life, making it difficult to clearly delineate early and late stages, which, in any event, only corresponded with a few years' gap. Perhaps a key delineator is the relative attention in different works that Durkheim accorded to seeking to reconcile individualism and social solidarity (cf. Greenhouse, 2011); he was a profoundly political thinker, with a deep interest in the role of the power and the state within this nexus, and alert to the dangers of economic liberalism in the absence of societal mediation (Fournier, 2005: 48; Joas, 1993). Indeed, Durkheim recognized that in certain legal contexts moves to organic solidarity would prove difficult. Within a common law framework that prioritizes private property, abnormalities could arise, in the form of inequality and conflict: a forced division of labour that engenders anomie and undermines social solidarity (Wilde, 2007: 173), ultimately antithetical to growth. Therefore, as Wilde (2007: 175) notes, common law may promote individual inclusion but it undermines social inclusion owing to the 'huge disparities flowing from the market system' it supports.

More recently, there has been a revival in investigating the effects of legal systems on economy and society, but from a very different starting point to that of Durkheim. For example, La Porta et al. (1999, 2002; Botero et al., 2004) are within the mainstream economic tradition that construes institutions as mechanisms that primarily enable or constrain the rational choices of profit-maximizing actors. They argue (e.g. 1999) that common law systems are orientated towards protecting property owner rights, whilst civil law systems are mediated by other social interests; they see a zero sum trade-off between property owner rights and economic growth on the one hand, and employee rights and welfare provision on the other. Moreover, La Porta et al. (1999) suggest that legal origin over-codes (through its role in securing private property rights) all other institutional features. However, in common with Durkheim, they suggest that civil law favours the interests of a broad cross-section of stakeholders, as opposed to assigning a particular social grouping primacy (La Porta et al., 1999; see also Baxi, 1973; Hart, 1967).

Above all, although united in their view as to the importance of the law and the state, what sets Durkheim apart from the contemporary work of La Porta and colleagues, is that whilst the latter see the law as beneficially diluting social restraint, Durkheim viewed the potential of the law in precisely opposite terms. Society is not simply about rights, but also about obligations. What did, however, shift in Durkheim's work was away from a mistrust of mass action towards a more inclusive kind of corporatism (Fournier, 2005).

The Law and Social Solidarity: Key Concepts and Hypotheses

Social solidarity is a complex phenomenon that encompasses many different dimensions, making the testing of the relationship between the law and social solidarity problematic. Hence, we explore the relationship between the law and different sub-dimensions or expressions of social solidarity. The civil law tradition is itself a diverse and complex one. Durkheim (1893 [1964/1984]) held that French legal tradition countries represented the epitome of civil law. Other categories of civil law would include German and Scandinavian law, where property rights are not as weak and collective rights as strong

as in French law, but are weaker than in common law systems (La Porta et al., 1999). As Cotterrell (1999) observes, Durkheim would have had little problem with an emphasis on the differences between common and civil law traditions, given his concern with social solidarity. Moreover, it seems likely that countries with common law traditions would be more receptive to neoliberal governance, given that judge-made law appears to be more responsive to the needs of property owners than civil law legislation (La Porta et al., 1999). There has been a proliferation of theoretically eclectic theories rooted within the broad socio-economic tradition that aim to combine a range of institutional features into defined country categories (Amable, 2003; Hall and Soskice, 2001; Whitley, 1999). Although these authors are discussing a much wider range of institutions, the liberal market economy (LME) category common to all these analyses largely mirrors the common law category discussed here (the only exceptions would be the hybrid legal systems of Scotland and Quebec, despite their location within LMEs).

A first requirement in turning this discussion into testable propositions is to define our terms. It is thought that there are numerous ways in which social solidarity may be articulated and hence measured (Allik and Realo, 2004; Kushner and Sterk, 2005). One would be manifested through social capital, that is, the depth of the network between individuals that makes social life possible and underpins economic growth (Hollaway, 2008: 7). This argument draws heavily on Durkheim's work and suggests that social capital reflects trust, reciprocity, civil engagement and community networks (Allik and Realo, 2004; Kushner and Sterk, 2005). Whilst it could be argued that social capital encompasses numerous other things as well, such as cultural, economic and human capital (Carpiano and Kelly, 2005), overall we follow the tenor of the debate and suggest that, as an expression of social solidarity, social capital will be higher in civil law states, hence:

H1: Civil law countries have higher levels of social capital than common law ones.

Durkheim (1893 [1964/1984]; and see Cladis, 1992: 2) held that there are two positions against which moral theories may be grouped: individualistic liberalism and communitarianism. As we have already indicated, central to Durkheim's theory of society was a conviction of the need to reconcile individual rights and freedoms with both social solidarity and a commitment to the collective wellbeing: in other words, both social ties and a shared agenda (see also Etzioni, 1996). So communitarianism both represents social solidarities that would act as a bulwark against anomie (Cladis, 1992: 2) and sets an agenda for social and institutional change (see also Tam, 1998) by promoting the conditions necessary for the development of organic solidarity. Therefore:

H2: Civil law countries are likely to be more communitarian than common law ones.

An alternative indicator of social solidarity is the existence and coverage of welfare institutions (Baldwin, 1990). Where encompassing, these signal a willingness to treat all citizens fairly, through 'reapportioning the costs of risks and mischance', so that the vulnerable do not bear a disproportionate burden, and the more fortunate share out the

costs of events that do not immediately concern them (Baldwin, 1990: 1). Risks are pooled, with individuals benefitting from membership of a larger group; society shares out the costs, recognizing both the principle of equity and social solidarity as 'terms of citizenship' (Baldwin, 1990: 2). Hence, the welfare state enhances social cohesion and solidarity (Plant et al., 2009; Schmitt, 2000). In other words, rather than relying on chance, the rules and benefits of association are strengthened (Baldwin, 1990: 2). Hence, the welfare state provides social checks and balances, mediating tensions within and between groups (Palumbo and Scott, 2003: 379). Therefore:

H3: Civil law countries have a stronger welfare state.

Durkheim, who held that non-legal societal elements may also impact on social solidarities and, indeed, so might legislation over time (Durkheim, 1957: 13–17), would have recognized these analyses, although other accounts, such as La Porta et al. (1999), would see legal origin as not easily subject to change. Beyond the legal environment, the 1990s and 2000s have seen strong pressures to liberalization, which may have eroded collective solidarities. Jessop (2012) argues that although individual national economies retain distinct institutional features, neoliberalism has attained global ecosystemic dominance, eroding national level ties, relations and solidarities. This is a process that has been underway since the 1980s, but has intensified in the 2000s. Hence:

H4: The relative strength of the welfare state has declined in civil law countries since 1990, and the relative gap with common law countries has narrowed.

Methodology

Measures

The basis for testing the hypotheses outlined above revolves around the cross-country differences between the different measures of social solidarity and the legal origins of the countries within the analysis. As highlighted in the discussion above, social solidarity is a very complex relationship involving numerous factors, consequently producing a single definitive measure of social solidarity would be very difficult. Since social solidarity equates to sympathy for, and commitment to, fellow citizens, it would be plausible to establish a measure of this via primary data at the individual level, but this would become considerably more challenging when making comparisons at the societal level, as is being undertaken here. However, as the hypotheses developed in the previous section identify specific areas of activity, as in effect proxies for different aspects of social solidarity, those precise proxies are used in the empirical analysis. The measures used for social solidarity are as are discussed below.

First, social capital is measured using Inglehart's (1997) social capital index based upon organizational memberships. Second, at the level of societal culture, we measure the relative extent of communitarianism using the individualism/collectivism continuum developed by Diener et al. (2000).

There are two measures reflecting the strength of the welfare state. First, total social expenditure as a proportion of GDP in 2009, taken from OECD 2012, is used as an absolute measure of the size of the welfare state. Then we need a measure of change, so we assess changes in social expenditure as a proportion of GDP between the years 1990 and 2009. This is used as a measure of the country's strengthening, or otherwise, commitment to the welfare state over this period. The starting point 1990 was chosen since this resulted in the longest period giving coverage to the majority of the countries included in the analysis.

Categorizing Countries

To test these hypotheses we need to examine countries that provide a basis of comparison not only between common and civil law, but also between the different legal families within the latter: pure French civil law, and the German and Scandinavian legal traditions. There is much debate around the latter Scandinavian legal traditions. Some writers, such as La Porta et al. (1999) have suggested that they are hybrid and incorporate both civil and common law features, bringing them closer to the latter. However, Siems and Deakin (2009) suggest that it is overly simplistic to categorize them as weakened civil law systems. Indeed they argue that Scandinavian legal origin in particular appears to be more effective than classic French legal origin in realizing the solidarity ideals of civil law.

It is potentially plausible that alternative factors at the national level explain differences in social cohesion. Esping-Anderson (1990), with his classification of countries as Liberal, Corporatist-Statist or Social Democratic based on an index of decommodification, offers the closest alternative. However, as argued by O'Connell (1991), it is historical legacy and institutional structure that mainly determine the positioning within the index: implying that legal tradition would play a key role in explaining both the extent of decommodification and level of social cohesion, hence it is the correct country classification to be applied to this analysis. In terms of legal origin, a key distinction is whether law is judge-made (that is broad brush legislation, fleshed out by case law, that is court decisions), or civil law (more explicit legislation, vesting legislatures, and, by extension, interest groupings with more direct say) (Plucknett, 2010; Shleifer and Vishny, 1997). The latter, in turn, may be divided up into classic French civil law and German and Scandinavian variations.

In order to make the analysis as robust as possible the widest range of countries is included in the study, given the constraints of the measures outlined previously. In simple terms any country that fits into the categorization of legal origin, and where data is available for at least one of the measures, has been included in the analysis. For social capital and individualism-collectivism the measures are largely static, hence the analysis and findings are not sensitive to the time period. Whereas the strength of the welfare state is likely to display more variation over time and the findings will be more sensitive to the time period considered. Therefore data from 2009 are used as indicative of the strength of the welfare state since this is the final year before increased pressure from the ongoing global recession started to really cut into social expenditure. Finally, for the analysis of changes to the relative strength of the welfare state over time, 1990 is chosen as the start point as this is when OECD data become available for a large number of countries and enables the largest cross-section of countries to be used in the analysis.

Analysis

The empirical analysis is then undertaken by highlighting similarities between each of the four measures of social solidarity and the legal origins of the countries included in the study. A total of 27 countries are used in the analysis, with these being countries where data is available for at least one of the four social solidarity measures. The values of each of the four measures of social solidarity for all of the countries are reported in Table 1.

Cluster analysis is applied to present a clearer picture as to the patterns within groups of countries sharing the same legal origins. The basis of cluster analysis is to group observations so that those within the group display greater similarity with each other than those in the other groups. Agglomerative hierarchical clustering is applied using the Euclidean distances between observations.

Findings

Hierarchical cluster analysis is applied for all four measures of social solidarity and the results are reported in Table 2. In each case the clusters are numbered from the lowest values in that category to the highest, i.e. for social capital those in cluster 1 have the lowest levels of social capital and those in cluster 4 the highest. In addition, box plots for each of the measures are reported separately, with the box plot for social capital shown in Figure 1.

On an observational level it is clear that higher levels of social capital are typically present in the Scandinavian[1] countries, whilst lower levels are typically displayed within the French origin legal systems in the Mediterranean countries. More specifically, looking at the cluster analysis (Table 2, column 3), Japan, Spain and the Netherlands are outliers in comparison to the other countries, with the former two forming the lowest cluster and the latter the highest. This leaves all the remaining countries grouped within the remaining 2 clusters, with the Scandinavian countries exclusively placed within the highest of these. For the French and German origin countries, with the exception of the outliers, they are exclusively placed within the lowest of the remaining clusters. Finally the common law countries straddle the two clusters and the distinction is a North American/European one with the USA and Canada having higher levels of social capital than the UK and Ireland.

Turning to the formal hypothesis outlined above, Hypothesis 1 predicts that social capital levels will be higher in civil law countries and this cannot be accepted in its entirety. It is clear that social capital is higher in the Scandinavian countries but that is certainly not the case for French and German origin countries.

In relation to individualism/collectivism (see Figure 2 and Table 2, column 4), the most individualist countries are found among the common law, Scandinavian and French origin countries whilst the most collectivist are typically among the common law and French developing countries. This distinction is confirmed by the cluster analysis where, almost exclusively, the developed nations are grouped within the more individualist clusters whilst the developing nations are within the more collectivist groups. Hence, it would appear that individualism/collectivism is more strongly influenced by the level of development than by legal origin. The only real exception to this is South Korea, which

Table 1. Measures of social solidarity.

Country	Legal origin	Social capital	Individualism/ collectivism	Social expenditure	Change in social expenditure
Canada	Common Law	170	8.50	19	0.05
Ireland	Common Law	93	6.00	24	0.32
UK	Common Law	116	8.95	24	0.37
USA	Common Law	185	9.55	19	0.28
India	Common Law Dev		4.40		
Nigeria	Common Law Dev		3.00		
South Africa	Common Law Dev		5.70		
Belgium	French	145	7.25	30	0.24
France	French	75	7.05	32	0.35
Netherlands	French	242	8.50	23	–0.12
Argentina	French Dev	93	4.80		
Brazil	French Dev	85	3.90		
Chile	French Dev	81	4.15	11	0.07
Mexico	French Dev	93	4.00	8	0.24
Turkey	French Dev		3.85	13	0.36
Italy	French Med	77	6.80	28	0.40
Portugal	French Med	68	7.05	26	0.66
Spain	French Med	15	5.55	26	0.31
Austria	German	112	6.75	29	0.27
Germany	German	135	7.35	27	0.27
Japan	German	20	4.30	22	0.55
South Korea	German	145	2.40	10	0.34
Switzerland	German	95	7.90	20	0.34
Denmark	Scandinavian	175	7.70	30	0.25
Finland	Scandinavian	175	7.15	29	0.26
Norway	Scandinavian	188	6.90	23	0.05
Sweden	Scandinavian	205	7.55	30	–0.02

on many measures is no longer classified as a developing country, even though it is clear that this stage of development was achieved much later than any of the other countries included here. Clearly the implication from this is that Hypothesis 2 cannot be accepted since there is no real evidence that civil law countries are more communitarian than the common law ones.

The third hypothesis posits that civil law countries will have a stronger welfare state and, as far as a greater financial commitment equates to a stronger welfare state, we can explore this by examining Figure 3 and Table 2, column 5. It is noticeable that the lowest social expenditure as a proportion of GDP is amongst the developing countries; hence it may be the case that the strength of the welfare state is more strongly influenced by stage of development rather than legal origin. Beyond that, for the remaining countries, it is clear from both the box plot and the cluster analysis that the financial commitment to social expenditure is greater in Scandinavian and French origin countries than it is in

Table 2. Cluster analysis results.

Country	Legal origin	Social capital	Individualism/ collectivism	Social expenditure	Change in social expenditure
Canada	Common Law	3	4	2	2
Ireland	Common Law	2	3	3	3
UK	Common Law	2	4	3	3
USA	Common Law	3	4	2	3
India	Common Law Dev		2		
Nigeria	Common Law Dev		1		
South Africa	Common Law Dev		3		
Belgium	French	2	3	4	3
France	French	2	3	4	3
Netherlands	French	4	4	3	1
Argentina	French Dev	2	2		
Brazil	French Dev	2	2		
Chile	French Dev	2	2	1	2
Mexico	French Dev	2	2	1	3
Turkey	French Dev		2	1	3
Italy	French Med	2	3	3	3
Portugal	French Med	2	3	3	4
Spain	French Med	1	3	3	3
Austria	German	2	3	4	3
Germany	German	2	3	3	3
Japan	German	1	2	3	4
South Korea	German	2	1	1	3
Switzerland	German	2	3	2	3
Denmark	Scandinavian	3	3	4	3
Finland	Scandinavian	3	3	4	3
Norway	Scandinavian	3	3	3	2
Sweden	Scandinavian	3	3	4	2

common law countries. However, this cannot be said to be the case for the German origin countries. As a result Hypothesis 3 can be partially accepted but only for the French origin and Scandinavian countries. However, it must be pointed out that this measure of welfare state strength reveals nothing about an individual's personal experience of welfare state support and this is likely to vary significantly within each country. Governments regularly make decisions influencing the extent of welfare support for different groups within the economy; a process heightened in recent times by conflicting pressures from ageing populations combined with the need to reduce public expenditure, leading to a changing balance of welfare support between the young and old. Unfortunately analysis of this process is beyond the scope of this study and will have to be flagged up for future research.

Hypothesis 4 implies that social expenditure as a proportion of GDP will have risen at a slower rate in civil law countries than in common law ones, which can then be

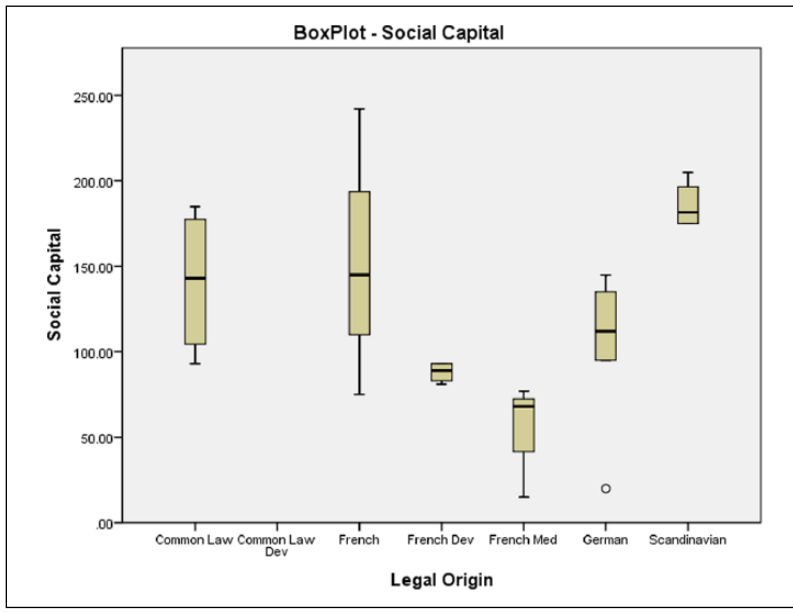


Figure 1. Social capital box plot.

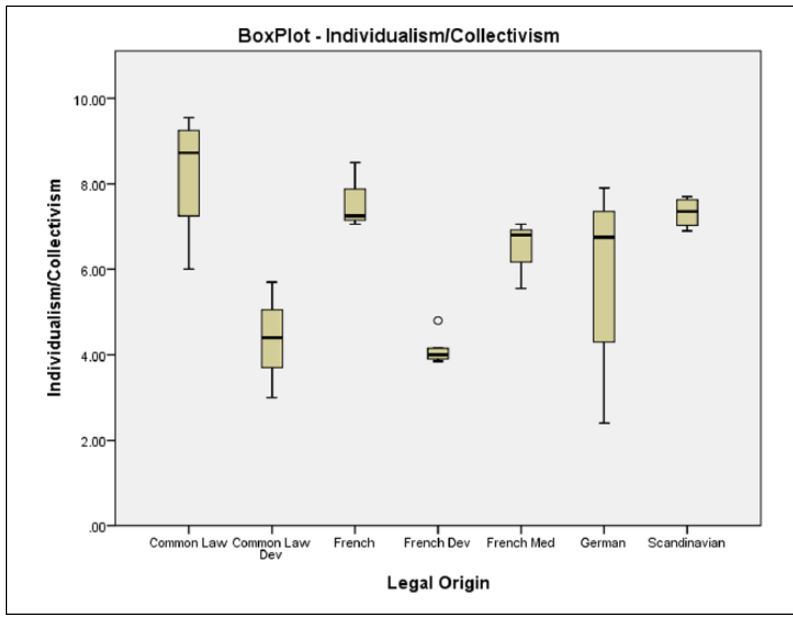


Figure 2. Individualism/collectivism box plot.

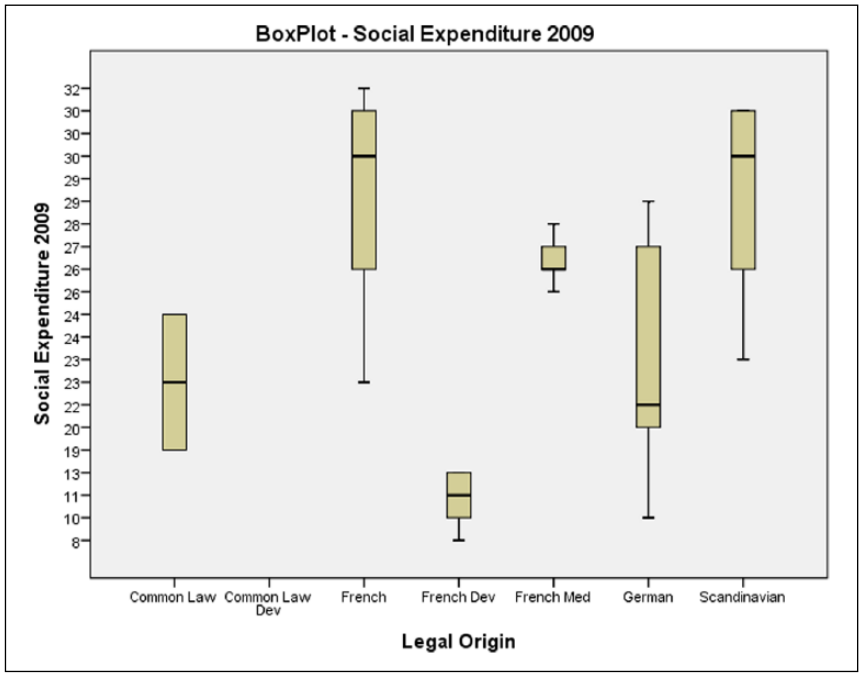


Figure 3. Social expenditure as a proportion of GDP box plot.

interpreted as a reduction in the relative strength of the welfare state. The evidence from both the box plot (Figure 4) and the cluster analysis (Table 2, column 6) does not concur with this. With the exception of the French civil law countries there is no clear pattern based around legal origin that can be detected: Hypothesis 4 has to be rejected.

Hence, the links between legal origin and social solidarity are somewhat uneven. There is some evidence to support the view that legal origin impacts upon social solidarity, but the relationship is more nuanced than a simple civil law/common law dichotomy. Equally, factors beyond legal origin may be at least as important in terms of influence upon social solidarity as law. What we have found is in line with the qualifications Durkheim introduced in his later work and, indeed, the contemporary literature on comparative capitalisms (Amable, 2003; Fournier, 2005; Hall and Soskice, 2001): assemblies of institutions and associated social relations mediate competing interests and facilitating beneficial outcomes. However, it is at odds with writers such as La Porta et al. (1999) who suggest legal origin over-codes (through its role in securing private property rights) all other institutional features.

Discussion and Conclusion

This study revealed that whilst legal system appears to be related to a range of societal features, the relationship is a complex one, as suggested by Durkheim in his later works.

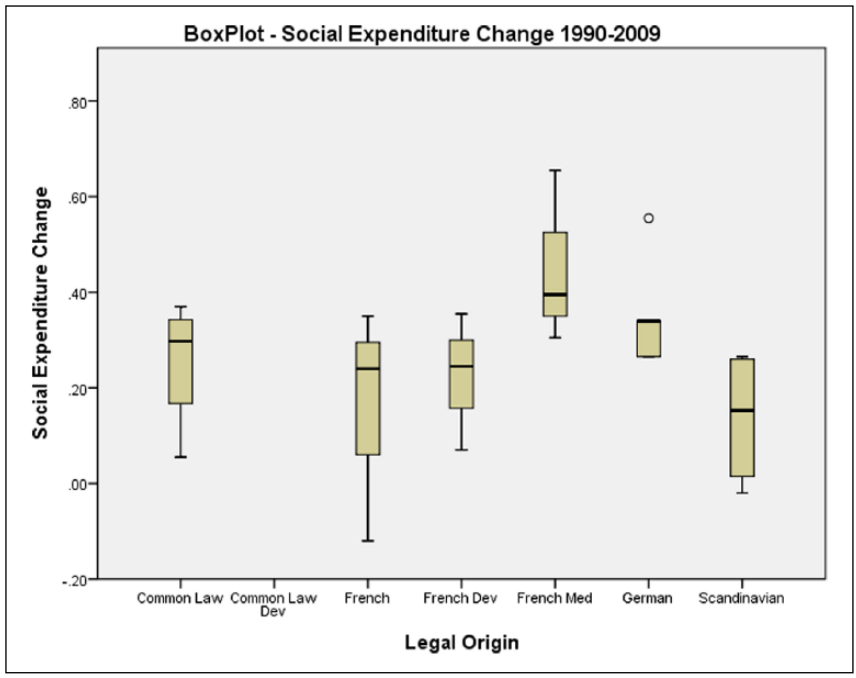


Figure 4. Change in social expenditure as a proportion of GDP box plot.

It also highlights the limitations of currently fashionable legal origins approaches in the economic and finance literatures, which suggest that legal origin has broad and universal explanatory power as to property owner rights, employee and stakeholder countervailing power, and social welfare (Djankov et al., 2003; La Porta et al., 1999).

First, social capital was higher in Scandinavia than countries operating under different legal origins. This would suggest that Scandinavian societies have features that cannot simply be ascribed to dilute or allegedly hybrid legal origins (La Porta et al., 1999). Either the law in Scandinavia has very distinct effects to other legal families, or the law in Scandinavia works in concert with a broader range of institutional features in such a manner as to reinforce higher levels of social capital; as we noted earlier this is a possibility suggested by Durkheim (cf. Fournier, 2005).

Second, we found no evidence that civil law was an effective mechanism for promoting greater communitarianism. Rather, relative communitarianism appeared to be a function of relative development, with emerging markets recording higher levels of communitarian values than mature ones. Again, this would suggest that whilst, as we have seen, the law clearly impacts on a number of societal features, relative communitarianism is strongly affected by relative development. However, communitarianism encompasses both a commitment to the common good (which can include the modern welfare state), and traditional norms and values, although there is, in turn, a tension between the two. In other words, communitarianism encompasses both social solidarities

and a shared agenda: the latter may be forward looking or look backwards to the values and conventions of the past (Lasch, 1986: 60). This may explain why relative communitarianism is not aligned to any single aspect of institutional arrangements in the developed world.

Moreover, 'participationist' approaches suggest that relative communitarianism represents a product of the degree of complexity and differentiation of institutional arrangements (Benhabib, 1997: 51). Invariably, tensions and contradictions between different realms (e.g. economy, politics, family) mean that the possibility of agency is uneven; hence, even if specific national legal systems may be helpful in promoting specific aspects of social solidarity, they are, again, unlikely to be perfectly aligned with other institutions, with any gains in promoting ties in one area being eroded through institutional shortcomings elsewhere (see Benhabib, 1997: 49–52).

Legal origin does seem to be related to the relative development of welfare institutions, once the relative development of nations is taken into account. Scandinavian legal origin societies were the strongest in terms of welfare institutions, followed by France. This would again suggest that there is more to the Scandinavian legal system – and the assembly of social institutions around it – than simply a dilution of the French civil law system. In turn, French civil law systems were associated with superior welfare coverage to that provided by common law ones. But, by the same measure, more developed nations provided better welfare provision than emerging ones. This would serve to highlight the extent to which it is not just the design of institutions but their evolution and the changing nature of inter-institutional linkages and support that determines societal outcomes. Again, this would echo the later work of Durkheim, where more attention was accorded to development and the relative fluidity of societal arrangements.

Finally, we found that whilst the relative development of societies did matter, certain societal features were quite durable. For example, we found that there was not a significant decline in the amount of resources devoted to the generally stronger welfare state of civil law countries versus common law ones. In other words, differences between common and civil law systems in this area were not significantly eroding over time. This would suggest that, pressures to liberalize notwithstanding, the welfare state in civil law systems appears somewhat more durable than is often presumed. This might reflect the strong 'buy-in' of the electorate to key aspects of welfare institutions: even if ecosystemically dominant, neoliberalism has not succeeded in erasing national institutional traditions or associated social practices. In other words, institutional arrangements underpinning a key dimension of social solidarity may be quite durable, in part reflecting the dualist nature between social structures and action (Giddens, 1971; Hall and Soskice, 2001). However, it is possible that this may in part reflect further declines in the already more limited welfare provision encountered in common law systems. We cannot of course say whether the attacks on the welfare state following the global economic crisis that began in 2008 might not have changed this pattern.

As predicted by Durkheim, legal origin does seem to be associated with a range of societal features ranging from welfare coverage to social capital. However, the relationship is a complex one, with institutional effects also being bound up with relative development. For example, developing economies were significantly more communitarian

than developed ones, possibly reflecting the stronger role of tradition and associated values in underpinning communitarian values in such countries. It could be argued that communitarianism encompasses forward and traditionalist elements, the latter diluting any possible effects of differences brought about through legal systems, especially in the developing world. Scandinavian civil law countries still recorded higher levels of communitarianism than other advanced societies, highlighting the impact of the law when traditionalism's role is diminished.

We found a relationship between legal system and the strength of welfare institutions, with individuals being more willing to pool risk, the latter a key dimension of social solidarity in Scandinavian and French civil law countries. Whilst institutional arrangements may provide the foundation for different growth trajectories, clearly a particular institutional recipe does not result in uniform societal outcomes regardless of relative state of development; it is not only formal institutional arrangements that matter, but also relative state capabilities and the operation and impact of informal social networks.

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Note

1. Strictly speaking, since our measures for 'Scandinavian' countries include Finland, we should rename this category 'Nordic' but we have continued to use the term 'Scandinavian' to stay close to the literature.

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