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CAUGHT IN THE ACT BUT NOT PUNISHED: ON ELITE RULE OF LAW AND DETERRENCE

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Most literature on criminal deterrence in law, economics, and criminology assumes that people who are caught for a crime will be punished. The literature focuses on how the size of sanctions and probability of being caught affect criminal behavior. However, in many countries entire groups of people are "above the law" in the sense that they are able to evade punishment even if caught violating the law. In this paper we argue that both the perceived probability of being punished if caught and the cultural acceptance of elites evading punishment are important parts of theorizing about deterrence, particularly about corruption among political elites. Looking at data on parking violations among diplomats in New York City 1997–2002, we explore how diplomats from different rule-of-law cultures respond to sudden legal immunity. The empirical observations provide clear evidence of both the stickiness and the gradual weakening of cultural constraints.

Keywords: Corruption, rule of law, criminal deterrence, political elites, legal enforcement.

I. INTRODUCTION

Most literature on deterring criminal behavior assumes that people who are caught for a crime will be punished. In the classic deterrence model, deterrence depends on the expected benefit of the criminal act, weighed against the probability of being caught, and the size of the sanction if caught. Yet, in many parts of the world, there are entire groups of people who are not really subject to the rule of law, as they are able to evade punishment even if caught breaking the law. Who these groups are, and how large they are, varies from country to country. *De facto* immunity from punishment can run with class status, kinship, wealth, ethnicity, or status as a political elite. For people who are above the law, no increase in the size of the formal sanction for committing a crime or corrupt act, and no increase in detection efforts by the government, will alter their propensity to engage in criminal or corrupt behavior, because the probability of being punished if caught is too low for legal enforcement to affect their behavior.

An important question is how elites respond to *de facto* immunity and to *changes* in the probability of being punished if caught for a criminal act. Such changes may occur more often than we might think: Civil wars end and relative power shifts between groups; constitutional amendments are passed, resulting in less-favored groups being given formal equality; the presidency changes hands and with it one family rises while another falls.

In this paper, we explore data from another such change, which is more easily accessible. We use data from a paper by Raymond Fisman and Edward Miguel to examine the propensity of diplomats from across the world to accumulate unpaid parking tickets in New York City, where they for several years enjoyed diplomatic immunity.[1] Dividing diplomats' countries into four rule-of-law cultures, we show that there is great variation in the reactions of diplomats from different cultures. Elites hailing from cultures where it is common to abuse elite privileges were quick to embrace the opportunity to do so. Diplomats from countries in which elites

[1] Raymond Fisman & Edward Miguel, *Corruption, Norms, and Legal Enforcement: Evidence from Diplomatic Parking Tickets*, 115 J. POL. ECON. 1020 (2007).

tend to be more accountable were more law-abiding. And interestingly, those diplomats from strong rule-of-law cultures who started violating in higher numbers over time, did so occasionally rather than constantly. These findings suggest that both the perceived probability of being punished if caught and the cultural acceptance of elites evading punishment are important parts of theorizing about deterrence, particularly about corruption among political elites.

The paper proceeds as follows. Section II explains a concept implicit in general deterrence theory: the perceived probability of being punished if caught for a crime, and also discusses the importance of ethics and culture in constraining behavior. Here we also describe the data from New York that we use to explore how political elites from different rule-of-law cultures respond to a zero-enforcement legal environment. In section III, we explain the typology that divides countries into four categories of corruption types that we use in our analysis. Section IV presents diplomats' responses, by group, to entering a zero-enforcement environment. Section V concludes.

II. RULE OF LAW AND ELITE DETERRENCE

Scholars of law, economics, sociology, and public policy have built an extensive literature exploring criminal deterrence in various contexts.[2] The basic model in the literature theorizes that general deterrence from criminal behavior is a function of the probability of detection, the size of the sanction, and the benefit that the would-be violator stands to gain if not detected. Scholars have focused especially on how changes in the perceived or actual probability that a

[2] *See generally* FRANKLIN E. ZIMRING & GORDON J. HAWKINS, DETERRENCE: THE LEGAL THREAT IN CRIME CONTROL (1973); Gary S. Becker, *Crime and Punishment: An Economic Approach*, 76 J. POL. ECON. 169 (1968); Gary S. Becker & George J. Stigler, *Law Enforcement, Malfeasance, and Compensation of Enforcers*, 3 J. LEGAL STUD. 1 (1974); Daniel S. Nagin & Greg Pogarsky, *Integrating Celebrity, Impulsivity, and Extralegal Sanction Threats into a Model of General Deterrence: Theory and Evidence*, 39 CRIMINOLOGY 865 (2001); Mitchell A. Polinsky & Steven Shavell, *Corruption and Optimal Law Enforcement*, 81 J. PUB. ECON. 1 (2001); Aaron Chalfin & Justin McCrary, Criminal Deterrence: A Review of the Literature (May 9, 2014) (unpublished manuscript) (on file with author).

crime is detected and changes in the size of the formal or informal sanction affect levels of deterrence. Yet, the probability of being punished if caught for a criminal act is also a key determinant of how people behave, and therefore of the efficiency of deterrence. In a review of deterrence literature, Steven N. Durlauf and Daniel S. Nagin conclude that there is limited evidence of an effect of the size of a sanction in deterring criminal acts, but considerable evidence that the *certainty* of a sanction affects behavior.[3] They point out that while there is an extensive literature about how this certainty is affected by the probability of detection, little is written about the probability of being prosecuted and sentenced, that is: the probability of being punished if caught.

It is not an unreasonable simplification to assume that people are sanctioned when they are caught for a crime when studying non-elites, but it is a heroic assumption to make about elites. Across the world there is great variation in elite's propensity of being sentenced if caught for a criminal act. In some cases, the law actually mandates prosecution with a probability of zero. For example, sitting heads of state enjoy *de jure* immunity from prosecution under international law, and the U.S. Department of Justice does not consider a sitting U.S. President to be "amenable to prosecution."[4] Nevertheless, *de jure* immunity is a relatively rare phenomenon. Most people in the world who are immune from punishment do not enjoy *de jure* immunity – the law does not protect them. Rather, they enjoy *de facto* immunity. *De facto* immunity covers a broader set of people across the world and is based on suspects being able to use bribes, friendships, threats, coercion, or other means of pressure in order to avoid, minimize, delay, or completely avoid the sanction.[5]

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[3] Steven N. Durlauf & Daniel S. Nagin, *Overview of "Imprisonment and Crime: Can Both Be Reduced?"* 10 CRIMINOLOGY & PUB. POL'Y 9 (2011).

[4] Randolph D. Moss, *A Sitting President's Amenability to Indictment and Criminal Prosecution*, 24 OP. O.L.C. 222 (2000), http://www.justice.gov/sites/default/files/olc/opinions/2000/10/31/op-olc-v024-p0222_0.pdf.

[5] *See* Brian J. Fried, Paul Lagunes & Atheendar Venkataramani, *Corruption and Inequality at the Crossroad: A Multimethod Study of Bribery and Discrimination in Latin America*, 45 LATIN AM. RES. REV. 76 (2010); Michael Johnston, *Corruption, Inequality, and Change*, *in* CORRUPTION, DEVELOPMENT AND INEQUALITY: SOFT TOUCH OR HARD GRAFT 13 (Peter M. Ward ed., 1989); Brian

The extent to which elites are able to avoid punishment when caught for criminal acts is closely related to corruption. Polinsky and Shavell demonstrate the logic of how corruption undermines deterrence by making it possible to bribe or extort one's way out of punishment.[6] Missing from the discussion is how the ability to evade punishment differs based on individual characteristics: we know that elites are much more likely to be able to evade punishment than non-elites. We also know that there is great cultural variation in the acceptance of some people being above the law. In some cultural contexts, elites can literally get away with murder.

While many countries could provide examples of elites enjoying a high degree of *de facto* immunity, we offer examples from India and Brazil to build intuition. In India's 2014 elections for the 543 seats in the *Lok Sabha* (lower house of parliament), more than one third of the candidates faced criminal charges – and more than 60% of those faced especially serious charges.[7] Moreover, Indian elites are notorious for using their networks and bribes to make sure their criminal cases join the judicial backlog, which is now 30 million cases long.[8] In Brazil, experimental evidence suggests that, when compared to lower-class drivers, upper-class drivers are both less likely to be stopped when committing a traffic violation and more likely to receive only a warning during traffic stops that do occur.[9]

There is great variation in which groups of elites are above the law both between countries and within countries – people with a

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J. Fried, Paul Lagunes & Atheendar Venkataramani, *Corruption and Inequality at the Crossroad: A Multimethod Study of Bribery and Discrimination in Latin America*, 45 LATIN AM. RES. REV. 76 (2010); Joel S. Hellman & Daniel Kaufmann, The Inequality of Influence (Dec. 2002) (unpublished manuscript) (on file with author).

[6] Polinsky & Shavell, *supra* note 2.

[7] *Lok Sabha Elections 2014 Analysis of Criminal Background, Financial, Education, Gender and other details of Winners,* report by the Association for Democratic Reform, May 18, 2014, http://www.adrindia.org/research-and-report/election-watch/lok-sabha/2014/lok-sabha-2014-winners-analysis-criminal-and-finan.

[8] Ram Mashru, *Justice Delayed is Justice Denied: India's 30 Million Case Judicial Backlog*, THE DIPLOMAT, Dec. 25, 2013, http://thediplomat.com/2013/12/justice-delayed-is-justice-denied-indias-30-million-case-judicial-backlog/.

[9] Fried, Lagunes & Venkataramani, *supra* note 5.

high socioeconomic status, from historically advantaged ethnic groups, families or castes, or those who hold government positions, could all enjoy *de facto* immunity. Our main point is that for these elites, neither the size of the formal sanction for committing a crime nor the detection efforts by the government are the main determinants of whether they choose to commit a crime.

1. Culture, Institutions, and Ethics

Not all those who have an opportunity to go unpunished will take advantage of their impunity. Both personal ethics and group-level culture could serve as constraints. For example, while it is well known that some civil servants and politicians in India take kick-backs, speed money, and bribes, many officials are also proud to say that they never do so.[10]

Whereas the institutional framework we examine in the deterrence literature is usually quite clear, the cultural and ethical mechanisms are not only less tidy, but also less explored in political science and economics. The line between culture and institutions is also quite fuzzy. Many aspects of culture can be thought of as a series of informal institutional rules, some of which work to improve governance, and some of which work against good governance.[11] Moreover, many sanctions are informal, rather than formal,[12] such that an elite who takes advantage of her immunity might still be ostracized by fellow elites who think that her behavior reflects poorly on them as a group. But the concept of informal institutions does not capture all of culture, and does not fully explain the mechanism by which individuals bring their culture to a new institutional

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[10] *See* Francesca Refsum Jensenius, Power, Performance and Bias: Evaluating the Electoral Quotas for Scheduled Castes in India (2013) (unpublished Ph.D. thesis, University of California, Berkeley) (on file with University of California, Berkeley) (interviews with politicians and civil servants in Himachal Pradesh, Delhi, and Uttar Pradesh in 2010 and 2011).

[11] INFORMAL INSTITUTIONS AND DEMOCRACY: LESSONS FROM LATIN AMERICA 11 (Gretchen Helmke & Steven Levitsky eds., 2006).

[12] FRANKLIN E. ZIMRING & GORDON J. HAWKINS, DETERRENCE: THE LEGAL THREAT IN CRIME CONTROL (1973); Steven Klepper & Daniel Nagin, *The Deterrent Effect of Perceived Certainty and Severity of Punishment Revisited*, 27 CRIMINOLOGY 721 (1989).

environment, or how culture affects behavior, particularly where host-environment and home-environment cultural norms conflict.

Social psychologists have long studied acculturation, emphasizing that a mix of both the person and the situation predicts behavior.[13] Cultures condition the availability and accessibility of different implicit theories that people use to interpret the social world. The nature of the situation is comprised, in part, by whether there is cultural consensus on what the situation is and what the right course of action will be in a given situation.[14] For example, cultures might vary on interpersonal levels of agreement on whether a certain behavior – like a political elite not paying a parking ticket – is acceptable for a given person.[15]

2. Constraint Decay and Zero-Enforcement Environments

The data we use in this paper are from a study that examines how diplomats in New York City who had enjoyed legal immunity responded to a sudden legal crackdown on illegal parking.[16] The part of the data we focus on is the information about parking violations among diplomats in the pre-crackdown zero-enforcement environment. Some of these elites neither had *de jure* nor *de facto* immunity in their home countries. For them, moving to New York City therefore meant a change in the probability of being sanctioned – providing immunity where none was enjoyed before. For other elites, who enjoyed immunity in their home countries, there was little change in their relationship to the law when entering a zero-enforcement environment – they remained above the law. The result of the legal crackdown studied by Fisman and Miguel was clear: enforcement worked. In this paper we are more interested in further

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[13] Walter Mischel, *On the Interface of Cognition and Personality: Beyond the Person–Situation Debate*, 34 AM. PSYCHOL.OGIST 740 (1979).

[14] Shane T. Mueller & Elizabeth S. Veinott, *Cultural Mixture Modeling: A Method for Identifying Cultural Consensus*, 4 ARA TECH. REV. 39 (2008).

[15] *See generally* Ying-yi Ho Hong & Desiree YeeLing Phua, *In Search of Culture's Role in Influencing Individual Social Behaviour*, 16 ASIAN J. SOC. PSYCHOL. 26 (2013) (providing a brief review of the literature).

[16] Fisman & Miguel, *supra* note 1.

exploring the variation in the behavior of the diplomats from different legal cultures in the zero-enforcement environment.

A rational choice analysis of a zero-enforcement environment would predict that, on average, elites would violate the law often, or at least as often as the benefits of doing so outweigh the costs, showing at least a partial convergence on a high-violation equilibrium. A theory of cultural constraints would predict that elites in a zero-enforcement environment would continue to follow the norms to which they were accustomed.

But we might imagine that there is a "constraint decay" that could happen over time, as those who initially are constrained by culture enter a new environment in which the previously stigmatized behavior is not stigmatized. This happens regularly in the non-criminal context, as people move from more conservative cultures spheres to more liberal cultures spheres. It happens in the criminal context, too, as people travel between jurisdictions that criminalize certain behaviors (say, possession of marijuana, or consuming alcohol below a certain age) and those that do not. And finally, it can happen as elites gain or lose *de facto* legal immunity.

Our idea of "constraint decay" is similar in nature to what Nagin refers to as "stigma erosion," but it is on the opposite end of the enforcement spectrum.[17] Stigma erosion is the gradual decline in the stigma associated with a behavior after an enforcement change occurs and behavior becomes newly stigmatized. Here, we examine a context in which the constraint comes from the culture or institutions of a previous environment, and we explore whether those constraints decay over time in a zero-enforcement environment.

There a several ways in which constraint decay could occur. One is through personal experience, or what is increasingly discussed as Bayesian updating.[18] As a person acts with impunity in a way that would constitute a violation under the prior regime, the prior

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[17] Daniel S. Nagin, *Criminal Deterrence Research at the Outset of the Twenty-First Century*, 23 CRIME AND JUST. 1, 23 (1998).

[18] *See* Shamena Anwar & Thomas A. Loughran, *Testing a Bayesian Learning Theory of Deterrence Among Serious Juvenile Offenders*, 49 CRIMINOLOGY 667 (2011).

constraint will slowly erode. In some conservative cultures, members of the opposite sex are to avoid physical contact, including shaking hands. In a culture in which no such constraint exists, people from the conservative cultures might start to shake hands with members of the opposite sex in order to facilitate other goals (such as business opportunities or social integration), and the hesitation to offer one's hand will decrease with each new handshake that occurs without social sanction. Or, in the wake of the legalization of possession of small amounts of marijuana by the City of Denver, Colorado, someone might smoke marijuana openly in their front yards and experience no sanction from a nearby police officer. Each time that happens, they learn that there really is no sanction for possessing and consuming small amounts of marijuana in that jurisdiction.

Similarly, in an enforcement environment in which political elites enjoy immunity from parking tickets, elites that are accustomed to having to pay parking tickets in their home environment could shed their hesitation from parking illegally over time, as their number of unpaid parking tickets accumulated without sanction.

Another pathway by which constraint decay could occur is via the observation of the experiences of others. With the handshake example, people from conservative cultures would observe handshakes between men and women without any social disapproval shown. They do not have to actually take the "risk" of shaking hands with someone of the opposite sex to learn that no social sanction exists. Similarly, when it comes to elites, we can imagine them changing their behavior solely based on the experiences of others who have been in the new legal environment for a longer time.[19]

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[19] Constraint decay should happen faster for people who have fewer, or less intense, ties to the home culture upon arrival in the new environment so that the cultural norms of the home culture are not being consistently refreshed. For example, a 20 year old college student from the United States (where the drinking age is 21), who goes to Mexico on a church-related mission project with several other members of the home church, is much less likely to drink alcohol while in Mexico (where the drinking age is 18), than if she traveled to Mexico alone for a study abroad program. The number and intensity of cultural ties among the elite diplomats we study is impossible for us to observe with our data, so we leave this hypothesis for others to test.

Our notion of constraint decay can serve to reconcile the predictions of rational choice theory and a theory of fixed cultural constraints. If constraint decay drives behavior of elites in a zero-enforcement environment, then we should see a gradual increase in violations among people from different rule-of-law-cultures over time, but also a persistence in cultural differences. We might observe it happen via the experience pathway, such that each ticket predicts that the next ticket will happen with a shorter delay. And we might simply observe it happen over time, regardless of the number of tickets accumulated, which is consistent with the informal contacts pathway.

III. DATA AND MEASUREMENT

The variation in the legal enforcement of unpaid parking violations for diplomats in New York City provides an excellent opportunity to explore what happens to elites from different rule-of-law cultures in a zero-enforcement environment. Due to the legal immunity of diplomatic personnel, the City of New York experienced enormous amounts of illegal parking and unpaid parking tickets by diplomats in the city. Illegal parking presented particular challenges when the illegally parked diplomatic cars blocked fire hydrants and access to handicapped parking spots, in addition to blocking traffic by double-parking. The police would issue parking tickets every time they found an illegally parked car from a diplomatic mission,[20] but if the mission did not voluntarily pay the ticket, the police had no further way of sanctioning the parking violations, since diplomats could not be taken to court for failing to pay the ticket. As of 2002, UN diplomats owed the City $18 million because of the 150,000 unpaid parking tickets that they had accrued.[21]

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[20] As we explain below, the vast majority of diplomats had no unpaid tickets over the time period, and we can assume, given the difficulties of parking in New York City, that many did receive parking tickets over the same time period and paid them. Hence, ticketing cars with diplomatic plates was a rational strategy for the NYC parking enforcers.

[21] Fisman & Miguel, *supra* note 1, at 1024.

When it came to parking, diplomats from across the world who came to New York City found themselves in a legal environment where they were above the law. To limit the extensive abuse of illegal parking, the City of New York enforced a legal crackdown on diplomatic parking violations in October 2002. The particular form of the enforcement was not to issue more tickets, but instead to revoke diplomatic license plates on diplomatic cars that had accumulated three or more parking violations that went unpaid more than 100 days.

Using a dataset of month-wise unpaid parking violations for diplomats in New York City, Fisman and Miguel showed a strong correlation between the score on a commonly-used, unidimensional country-level corruption index and the propensity for diplomats from that country to park illegally in this zero-enforcement environment.[22] They also analyzed individual-level data and demonstrated that the number of unpaid violations per month increased with tenure in New York City. While the emphasis in their article is on the impressive effect of *enforcement* after 2002 – when the New York police started towing cars that had an unpaid parking ticket – it is also an excellent empirical example of what Durlauf and Nagin describe as a sudden change in the *certainty* of punishment. The data are interesting because they provide a unique insight into petty violations among elites from across the world, rather than the more commonly studied college students and non-elite criminals.[23] Finally, it provides evidence of what happens when individuals from various contexts encounter a situation where it is common and fairly acceptable to commit an infraction.

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[22] Daniel Kaufmann, Aart Kraay & Massimo Mastruzzi, *Governance Matters IV: Governance Indicators for 1996-2004* WORLD BANK POLICY RESEARCH, (May 2005), http://go.worldbank.org/2GF3HGVDO0. (The "Kaufmann" corruption index is one of the most common unidimensional ways to analyze corruption. It is based on the work of Daniel Kaufmann and coauthors. Kaufmann was Director of the World Bank Institute when the score was developed).Daniel Kaufmann, Aart Kraay & Massimo Mastruzzi, *Governance Matters IV: Governance Indicators for 1996-2004* (World Bank Policy Research, Working Paper, May 2005), http://go.worldbank.org/2GF3HGVDO0.

[23] Durlauf & Nagin, *supra* note 3, at 16.

In this paper, we use data from the pre-enforcement time period to gain insight into what happens when political elites from different cultures arrive in a zero-enforcement regime. The data include the monthly number of parking violations for 1,995 diplomats present in New York for some or all of the time December 1997 until October 2002 – adding up to a total of 17,972 violations or an average of about 1 violation per diplomat per month across these years.

1. Rule-of-Law Cultures

Fisman and Miguel found that the overall corruption score of a country was strongly correlated with unpaid parking violations, but why was this the case? Why should the overall level of corruption in a society result in diplomats feeling comfortable breaking the law while abroad? Why should the habit of business elites in a country paying their way to contracts, or bureaucrats extorting grease payments for provision of simple services, or police extorting the citizenry, predict these elites feeling comfortable parking illegally and not paying for the parking ticket afterwards? We posit that it is not the level of corruption in the country *per se*, but rather the rule-of-law culture and the extent to which elites are used to (and comfortable with) being above the law that predicts their behavior.

Measuring the cultural background of diplomats and their perceived probability of being punished for a crime is not an easy task. Corruption measures incorporate much more than the rule of law, and rule of law measures incorporate much more than just the "thin" concept of whether the government is subject to the law. A growing literature calls into question the usefulness of existing measures of the rule of law itself finding that they are both under- and over-inclusive for measuring both "thick" and "thin" concepts of the rule of law.[24] General measures of the average rule of law in a

[24] *See generally* THOMAS CAROTHERS, PROMOTING THE RULE OF LAW ABROAD: IN SEARCH OF KNOWLEDGE (Thomas Carothers ed. 2006); Gillian K. Hadfield & Barry R. Weingast, *Microfoundations of the Rule of Law*, 17 ANN. REV. POL. SCI. 21 (2013); Daniel B. Rodriguez, Matthew D. McCubbins & Barry R. Weingast, *The Rule of Law Unplugged*, 59 EMORY L.J. 1455 (2009); Melissa A. Thomas, *What Do*

country do not capture the perceived probability of being punished for the *elite* in a country. Our ideal measure might take into account perceptions of whether the law governs the governors and whether the judiciary is independent from other branches of government. It would be less concerned with other aspects of existing measures, like civil rights protection.[25]

To approximate the concept we are interested in, we turn to an interesting effort to measure corruption that emphasizes the role and importance of elites specifically. Michael Johnston proposed four "Syndromes of Corruption," or clusters of country corruption in multidimensional space.[26] His four clusters present an intuitive, facially valid, description of elite subjection to the rule of law – indeed, his conception of corruption, on which his clusters are based, is "uses of and connections between wealth and power that significantly weaken open, competitive participation and economic and political institutions, or delay or prevent their development", in other words, elites' uses of their elite status in ways that, even if not illegal, undermine the country's institutional frameworks.[27]

In creating the four syndromes, Johnston conducted a cluster analysis on data for 97 countries. He used the Polity score to measure the level of democracy in 1992 and 2002, the World Economic Forum's 2002 score for institutional and social capacity, the Heritage Foundation's 2002 measure of property rights, and the Economic Freedom in the World ranking from the Fraser Institute from 1990

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the Worldwide Governance Indicators Measure, 22 EUR. J. DEV. RES. 31 (2010); Svend-Erik Skaaning, *Measuring the Rule of Law*, 63 POL. RES. Q. 449 (2010).

[25] In recent years the World Justice Projects has made great gains in creating such a measure. However, these measures are not available for the time period of the parking data we use.

[26] MICHAEL JOHNSTON, SYNDROMES OF CORRUPTION: WEALTH, POWER, AND DEMOCRACY, 3 (2005); *See also* Mark David Agrast, et al., *Rule of Law Index 2011*, WORLD JUSTICE PROJECT 2011, http://worldjusticeproject.org/sites/default/files/WJP_Rule_of_Law_Index_2011_Report.pdf (A more recent measure which could be used to operationalize elite law abidingness now exists: the World Justice Project's Rule of Law Index, which measures rule of law according to multiple dimensions, one of which is the likelihood that elites are punished).

[27] Johnston, *supra* note 27, at 12.

and 2001.[28] Democratic development and institutional and social capacity would all tend to improve the rule of law, moreover, impressions of elite legal compliance probably inform the measures that are survey based. Using data from 1992 and 2002 allowed Johnston to measure rates of change in these countries, as some of the countries democratized and liberalized after their transitions from communism and authoritarianism. Based on these data, Johnston identified four groups of countries, which he described as Influence Markets, Elite Cartels, Oligarchs and Clans, and Official Moguls.[29] Importantly, the groups of countries cut across region, and one of their most important distinctions is the status and power of elites in each country.

Influence Markets (IMs) are eighteen countries that have a generally high level of human development, are established democracies, and have a strong rule of law. Leaders face competition and are constrained from acting arbitrarily, economies are free, and society is generally able to focus on quality of life, rather than survival. These countries are called Influence Markets because the rich generally have access to and influence on power, but the institutionalization of the state does not allow corruption to violate the established institutions. In Johnston's words, "often politicians serve as middlemen, putting their connections out for rent in exchange for contributions both legal and otherwise."[30] Influence markets include Japan, Austria, Uruguay, Finland, Germany, and Costa Rica, among others. In terms of our discussion, elites' perceived probability of being punished if caught in Influence Markets countries probably does not vary much across individuals, and is close to one for almost all people.

Elite Cartels (ECs), which include Argentina, Belgium, Botswana, Greece, Israel, and South Korea, among others, are less

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[28] For more information about Johnston's methodology, see his description in Johnston, *supra* note 27. Our efforts to re-cluster his data by systematically dropping one indicator at a time have resulted in poorer separation between clusters.

[29] See *infra* p. 33 Appendix A (providing a full list of the countries, the rule-of-law cultures to which they pertain, and the distance from the statistical center of the cluster identified by Johnston's ANOVA).

[30] Johnston, *supra* note 27, at 42.

tightly clustered in Johnston's data, but do share plenty of commonalities. Namely, "the rules of the game" are less certain in these twenty-one countries. Elites inside and outside of government are less constrained by the rule of law, and "relatively established elites collude within a moderately strong institutional framework."[31] The citizens of these countries are "relatively affluent," and their markets are relatively stable and open. However, institutionalization of government is less well-developed or less-well controlled than in the IM countries. Because of rapid industrialization or democratization, elites in these countries find alliances across sector lines and across the public/private sector divide. Black markets are more prominent in Elite Cartels than in Influence Markets. In terms of our discussion, we might expect the probability of being punished to have a higher variance in ECs than in IMs but to still be fairly close to one for most people. South Korea is a typical example: the "rules of the game" are not as predictable as in IM countries, yet two sons of two different South Korean presidents recently served time in prison for corruption.[32]

Oligarchs and Clans (OCs) comprise thirty countries, including Albania, Bangladesh, Colombia, Ghana, India, Nepal, Turkey, Russia, and the Philippines. Oligarchs and Clans countries have reformed politics and economics to a degree, but their institutionalization has not caught up with their success in those areas. Rule of law is uncertain in Oligarchs and Clans countries. As a result of under-institutionalization, political elites will be "ill-equipped to resist [. . .] abuses."[33] Political and civil rights are not always guaranteed as a result. Security is low, which results in capital flight, and political regimes are unstable. Regulation is "extensive and of dubious quality", and black markets are extensive.[34] People are generally poor in these countries, and primary exports are relied upon heavily. In the case of our example, the perceived probabilities of

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31 *Id.* at 45.

32 *See* Caroline Gluck, *S. Korean President's Son Jailed*, BBC NEWS WORLD EDITION (Nov. 1, 2002), http://news.bbc.co.uk/2/hi/asia-pacific/2384707.stm; Nicholas D. Kristof, *Seoul's Mighty, Once Immune, Now Feel the Arm of the Law*, N.Y. TIMES (Oct. 14, 1997), http://www.nytimes.com/1997/10/14/world/seoul-s-mighty-once-immune-now-feel-the-arm-of-the-law.html.

33 Johnston, *supra* note 27, at 45.

34 *Id.* at 57.

punishment for elites in OC countries will vary according to the would-be offender's connections to the Oligarchy or Clan that is in power. Diplomats at the UN Headquarters are likely to be well-connected to the elite and their home-country expectation of punishment is therefore likely to be low.

The twenty-nine Official Mogul countries (OMs) are similar to Oligarchs and Clans countries in that they are riddled with black markets and poverty with ineffective governance and corruption controls. However, in these countries, political elites are not accountable to the people and are therefore effectively immune from accountability. "[P]olitical power is personal, and is often used with impunity."[35] Of all the groups, Official Mogul countries offer the least protection of civil and political rights. They are also heavily dependent on primary exports, and foreign aid that enters the country can easily be skimmed off by elites. These countries include countries like Chad, China, Haiti, Indonesia, Iran, Kenya, Kuwait, Morocco, Nigeria, and Zimbabwe. In terms of our model, it is clear that the perceived probability of being punished for a crime for members of the elite is close to zero. Elites from these countries are therefore likely to be used to being above the law and feel quite comfortable with this state of affairs.

When we divide the data for New York diplomats between December 1997 and October 2002 according to the four rule-of-law cultures, the data includes 516 diplomats from 17 IM countries, 427 diplomats from 21 EC countries, 566 diplomats from 29 OC countries and 485 diplomats from 27 OM countries.[36]

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[35] *Id.* at 46.

[36] Dividing the data into rule-of-law cultures reduces the amount of information analyzed, because whereas the original parking tickets data included 151 countries, Johnston only has complete data on 95 of those countries. Most of the countries that are omitted are small, but there are some exceptions such as Israel and Saudi Arabia that we would like to be able to analyze but cannot for lack of data. Overall, the patterns in the data do not change much in this reduced form. Johnston's sample has a mean corruption level of -0.19, which is slightly less corrupt (around four percent less corrupt) than the parking ticket data's mean of -0.009. This is a tiny difference in the data – it is 0.2 standard deviations on the corruption indicator, and in the original dataset, there are only a few countries between the original mean (-0.009) and the new mean (-0.19). In the Appendix we

In the following sections we use these data to explore or ideas about rule-of-law cultures and constraint decay.

Our first hypothesis is that because of the varying levels of elite subjection to the rule of law among the four rule-of-law cultures, on average, $\bar{V}_{IM} < \bar{V}_{EC} < \bar{V}_{OC} < \bar{V}_{OM}$, where $\bar{V}$ is the mean number of violations per diplomat per month, and the subscripts define the group of countries. In other words, there should be a clear difference in the behavior of diplomats from different cultures.

Our second hypothesis is about changes in diplomat behavior over time. According to a Rational Choice perspective we should expect to see that as diplomats' time in New York increases, the importance of the rule-of-law culture of origin rapidly *disappear*, such that $\bar{V}_{IM} = \bar{V}_{EC} = \bar{V}_{OC} = \bar{V}_{OM}$. A culturalist explanation would, on the other hand, would predict little change in behavior over time. Based on our discussion we would rather expect to see cultural differences persist ($\bar{V}_{IM} < \bar{V}_{EC} < \bar{V}_{OC} < \bar{V}_{OM}$) but *weaken* as the diplomats' home-country cultural constraints fade over time.

IV. EMPIRICAL FINDINGS

In this section we will look at overall patterns, patterns over time, and individual-level patterns in parking violations based on the four rule-of-law cultures introduced in the previous section. We begin our analysis by calculating the average number of parking violations per diplomat per month, by group, as illustrated in Figure 1.

As is clear in Figure 1, there was considerable variation in the average monthly number of violations across diplomats from countries with different rule-of-law cultures for the period 1997–2002. The differences in means between the four groups are reported in Table 1. A series of two-sample permutation tests comparing the differences in average monthly violations per diplomat between the different groups of countries indicate that there are clear differences in the behavior of diplomats from different cultures. In particular it

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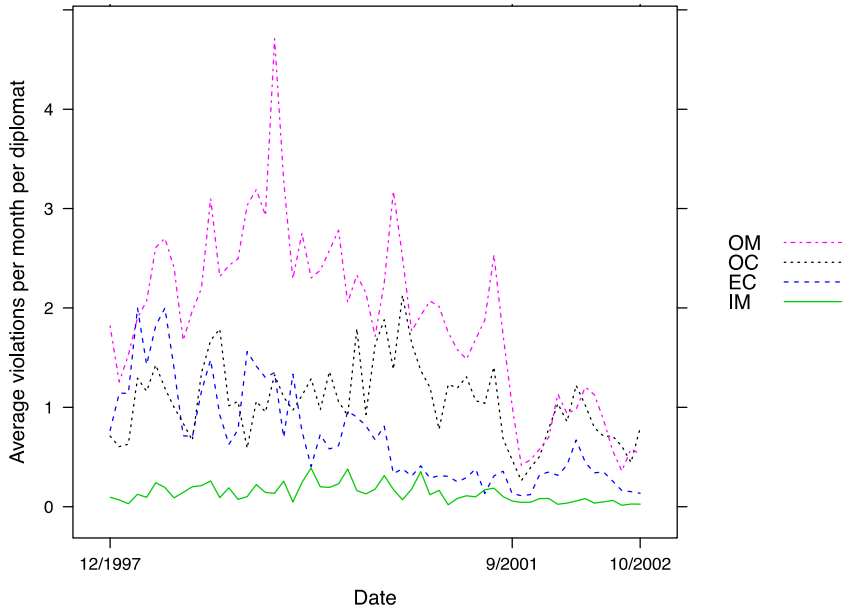
should the full list of countries in each group, how the groups related to the Kaufman corruption score and also how it relates to Rule of Law measures.

should be noted that the OC and OM countries (which have very similar scores on *corruption* indices) differ significantly from each other.[37]

Figure 1: Average number of parking violations per diplomat per month, by group (1997-2002)



[37] We include in the appendix a box plot of both corruption indicators and rule of law indicators by cluster. *See* Figures B.1 and C.1.

Table 1: Mean violations per diplomat per month (1997-2002), by legal culture

	Mean by group	Difference	P-value
IM	0.14	–	–
EC	0.70	0.56	<0.01
OC	1.06	0.36	<0.01
OM	1.91	0.85	<0.01

Note: The comparison is between the group of countries on the reporting line and the one listed above it. Data is individual-level diplomat data on monthly violations aggregated to the country group. P-values are from two-sample permutation tests with 10,000 permutations, using the perm.test() package in R.

But did all the diplomats start violating the law in this zero-enforcement environment? Table 2 shows the data for the diplomats present in NYC between December 1997 and 2002. We present diplomats' average number of violations per month during the whole time they were in the city. In this case the sample size given is for diplomats, not diplomat-months.

We can see that among the diplomats from IM countries about 92% never accumulated unpaid parking tickets even once during their stay in New York; about 7% let tickets go unpaid on average between 0 and 1 times per month and four diplomats had an average of more than one unpaid violation per month.

Table 2: Percentages of diplomats with different average numbers of violations per month

Average monthly violations	IM (N=516)	EC (N=427)	OC (N=566)	OM (N=485)
0	92.4	77.3	79.5	61.2
(0,1]	6.8	17.1	11.8	21.6
(1,3]	0.8	4.0	4.4	11.6
(3,5]	0.0	0.5	2.7	2.7
>5	0.0	1.2	1.6	2.9

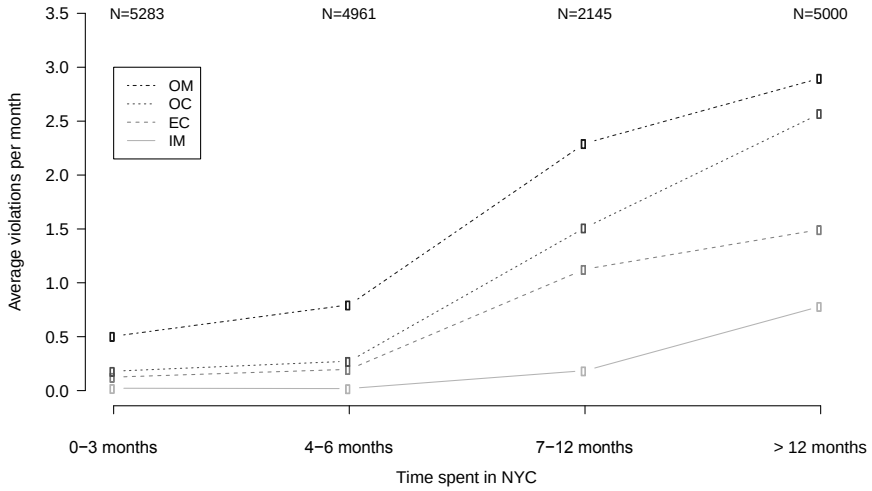
Interestingly, there is a major jump from the behavior of diplomats from IM countries to EC countries. In the case of EC countries, about 77% of the diplomats always paid their tickets, while the rest failed to pay, at least occasionally. The trend we see is that many of the diplomats from EC countries seemed to have adapted to the new cultural environment by violating *a bit*, while few of them were extreme violators. Among the diplomats from OC countries, on the other hand, about 79.5% never violated, but there were a few extreme violators that pulled up the average for the rest.

Looking finally at the diplomats from the OM countries, the difference is striking: Among the diplomats from the OM countries about 39% failed to pay parking tickets during their time in New York City, and several of the diplomats failed to pay more than five tickets every single month. Coming from a culture where they were used to being above the law, and being placed in a zero-enforcement environment, the diplomats from OM countries seem to have felt the least compelled to follow parking regulations by paying their parking tickets, or, put another way, the most willing to take advantage of their immunity.

This provides empirical support in favor of our first hypothesis: there is a clear rank-ordering in both the number of violations and the number of diplomats choosing to violate.

We now turn to our hypotheses about convergence and cultural constraints over time. In Figure 2 we look at the average monthly number of violations for diplomats broken down by how long they had been in New York. If diplomats behave purely rationally, then we should observe them adapting quickly to the zero-enforcement environment. Whatever their number of violations in the early days, we should see a convergence at a relatively high level of violations across groups. If diplomats behave purely according to their home country cultures, we should see stable cultural differences in the number of violations, which persist over time. However, if constraint decay occurs, then we should see cultural differences at the outset, with an upward creep in the number of violations over time.

Figure 2: Average number of violations over time, by rule-of-law culture



As we show in Figure 2, cultural constraints appear to be present, but they also seem to decay over time. Interestingly, few of the new diplomats accumulated unpaid tickets during their first three months in the city. As expected, the diplomats from OC and OM countries were quicker to start taking advantage of the zero-enforcement environment, increasing violations after only three months in New York City. The diplomats from IM and EC countries seem to have been more constrained by their cultures, although these constraints gradually seemed to have weakened over time, with violations accumulating after 6-12. [38] We view the gradual increase in unpaid parking tickets in IM and EC countries as evidence of considerable

[38] The separation is much clearer than if we run the simple quantiles of the corruption index, implying that the typology of rule-of-law cultures gives more explanatory power than the corruption score. Also, in this picture the difference in the number of violations in OM and OC countries does not look as stark as in in the previous table. The reason is that more of the diplomats from the OM countries had stayed in NYC for more than one year. Their overall average was therefore pulled up by all the frequent violators who had lived in the city for a long time. We break down the length of diplomatic stay by rule-of-law culture in the appendix. *See* Figure D.1.

constraint decay: the cultural view that it is ethically wrong to take advantage of one's elite status dissipated when enough of others in this new environment violated on a regular basis. At the same time, Table 2 reminds us that less than 1% of all IM diplomats accumulated more than one unpaid ticket per month on average. Substantial cultural constraints remained.

Data on repeat violators helps to complete the picture. We reduce the data to only the sub-sample of violators who left more than one ticket unpaid during the time in New York. Among these repeat violators, the average number of violations *the first month they violated at all* was less than 1.5 for IM and EC diplomats. For OC and OM diplomats it was 2.25 and 2.34, respectively, and these numbers increased to 3.33 and 2.89 in the second month. Repeat violations among diplomats from IM and EC countries held more or less steady in their second month. Looking at how fast diplomats started to violate, 20% of repeat violators from IM counties accumulated at least one parking ticket during their first month in the city, a number that was closer to 30% for the diplomats from EC, OC and OM countries. On average, repeat violators received their first ticket after they had spent about three months in the city, with the exception of diplomats from OM countries, who got their first ticket after less than two months in the city. Diplomats from IM countries were the slowest to repeat violations, and diplomats from OC and OM countries were the fastest. We summarize these results in Table 3.

Table 3: Violation Behavior Among Repeat Violators

	IM (N=34)	EC (N=79)	OC (N=88)	OM (N=146)
Percent of Diplomats who were Repeat Violators	21.21	29.11	28.41	30.82
Average Month of First Violation	3.03	3.38	3.5	1.80
Average Number of Violations, First Month Violating	1.15	1.49	2.25	2.34
Average Number of Violations, Second Month Violating	1.14	1.57	3.33	2.89
Average Number of Months between First and Second Violation	8.10	5.81	4.27	3.49
Average Number of Months between Second and Third Violations	5.15	3.32	2.41	2.81

Based on our theoretical discussion we believe that for OC and OM diplomats, a home-country cultural background that views them as largely above-the-law increased their readiness to "hit the ground violating", when compared to diplomats from IM, and to perhaps a lesser degree, EC cultures.

The data we have presented in the previous sections reveal several interesting patterns. First, we can to a large extent predict the behavior of diplomats based on their rule-of-law culture. Diplomats from OM and OC cultures were less likely to have entered New York with any constraints on their immunity, and they were quick to start violating the law. They also responded with frequent violations. Second, even for diplomats from IM and EC countries, the propensity to break the law increased over time, suggesting that their cultural constrains decayed over time.

Even so, it is important to note that most diplomats actually complied with the law. Even in a zero-enforcement environment, most diplomats paid their parking tickets, and among those who did violate, most violated only once. In light of zero-enforcement and constraint decay, a large proportion of diplomats seem to have seen it as legitimate to violate *occasionally*, but not constantly.

Together these findings point to interesting interactions between rule-of-law cultures and institutional constraints. Members of a society might vary in their probability of sanction even if caught red-handed, and deterrence might function quite differently for elites than for others.

V. CONCLUSION

Rule-of-law cultures and the social status of the actors involved are both important and under-theorized considerations of corruption deterrence. While deterrence is often thought of in terms of the probability of detection and the size of the sanction, the probability of punishment conditional on being caught is a missing piece of the theory, and one that we hope to have illuminated in this paper. This is particularly important in the case of elites, as there are many groups and individuals across the world that may go unpunished even in countries with otherwise well-functioning legal systems.

When diplomats from across the world found themselves to be effectively immune from punishment for parking illegally, diplomats from some countries – namely those where elites are accustomed to being able to evade punishment for criminal acts – took advantage of the zero-enforcement environment. While existing theories of deterrence would predict that all diplomats would abuse this rule to the same extent, or that culture would dominate and levels of violations would remain unchanged, we see instead that the diplomats from countries in which elites tend to be more accountable were more law-abiding. Some diplomats from strong rule-of-law cultures also started violating in higher numbers over time, as their cultural constraints decayed.

Our study has focused on a rarified example – that of political elites from all over the world living in a zero-enforcement environment – but it joins other cross-cultural socioeconomic studies that find cultural differences in economic behavior.[39] Future research on the mechanisms underlying the differences in behavior between elites and non-elites would deepen our understanding about how people behave in new institutional settings.

[39] *See, e.g.*, Joseph Henrich, et al., *Economic Man in Cross-Cultural Perspective: Behavioral Experiments in 15 Small-Scale Societies*, 28 BEHAV. AND BRAIN SCIENCES 795 (2005).

A. APPENDIX: RULE-OF-LAW CULTURES

Table A.1: Influence Markets

	Influence Market (IM) Country name	Distance from Cluster Center
1	New Zealand	0.91
2	Germany	2.32
3	Switzerland	13.65
4	Netherlands	3.87
5	Sweden	8.76
6	Ireland	8.30
7	Austria	3.60
8	Australia	7.28
9	UK	1.29
10	Costa Rica	3.84
11	Denmark	3.65
12	Canada	2.78
13	USA*	3.86
14	Uruguay	9.90
15	France	9.24
16	Finland	8.24
17	Norway	7.66
18	Japan	2.92

Table A.2: Elite Cartels

	Elite Cartel (EC) Country name	Distance from Cluster Center
1	Czech Rep	2.49
2	Slovak Rep	2.31
3	Greece	9.01
4	Chile	2.34
5	Paraguay	4.65
6	Panama	5.72
7	South Africa	5.52
8	Spain	7.39
9	Israel	6.88
10	Italy	2.98
11	Hungary	5.75
12	Namibia	4.57
13	Korea South	3.22
14	Portugal	2.63
15	Botswana	3.64
16	Belgium	9.07
17	Poland	3.75
18	Bolivia	8.03
19	Zambia	10.62
20	Brazil	5.54
21	Argentina	5.72

Table A.3: Oligarchs & Clans

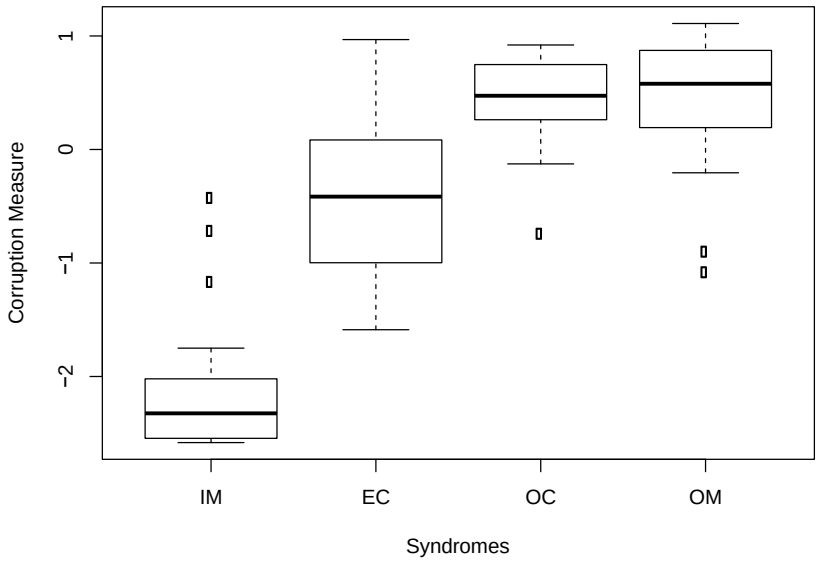
	Oligarchs & Clans (OC) Country name	Distance from Cluster Center
1	Sri Lanka	9.49
2	Malaysia	7.20
3	Mexico	7.10
4	Malawi	2.48
5	Russia	12.69
6	Peru	11.62
7	Pakistan	14.73
8	Romania	4.25
9	Philippines	4.14
10	Nicaragua	2.86
11	Nepal	3.08
12	Senegal	7.90
13	Niger	9.07
14	El Salvador	2.31
15	Ecuador	3.99
16	Benin	1.64
17	Guatemala	3.63
18	Ghana	6.99
19	Turkey	3.24
20	Bangladesh	9.41
21	Albania	8.67
22	Colombia	4.81
23	Venezuela	8.28
24	India	3.72
25	Thailand	7.53
26	Madagascar	6.79
27	Jamaica	9.04
28	Trinidad & Tobago	8.89
29	Bulgaria	3.69
30	Honduras	2.99

Table A.4: Official Moguls

	Official Mogul (OM) Country name	Distance from Cluster Center
1	Tunisia	2.36
2	Syria	12.33
3	Zimbabwe	8.38
4	Uganda	13.63
5	Togo	3.96
6	United Arab Emirates	7.44
7	Tanzania	5.66
8	Rwanda	2.94
9	Gabon	5.50
10	Egypt	5.58
11	Central Africa Republic	10.60
12	Indonesia	9.59
13	Haiti	2.54
14	Guinea-Bissau	7.93
15	Cameroon	2.82
16	Algeria	5.87
17	Congo Rep of	11.17
18	China	6.12
19	Morocco	7.79
20	Malawi	13.85
21	Kuwait	5.56
22	Oman	8.63
23	Nigeria	10.03
24	Ivory Coast	7.20
25	Iran	11.66
26	Chad	2.94
27	Myanmar	11.53
28	Jordan	13.77
29	Kenya	2.11

B. Comparing Rule-of-Law Cultures and the Corruption Index

Figure B.1: Level of corruption among the countries belonging to countries in each of the rule-of-law cultures



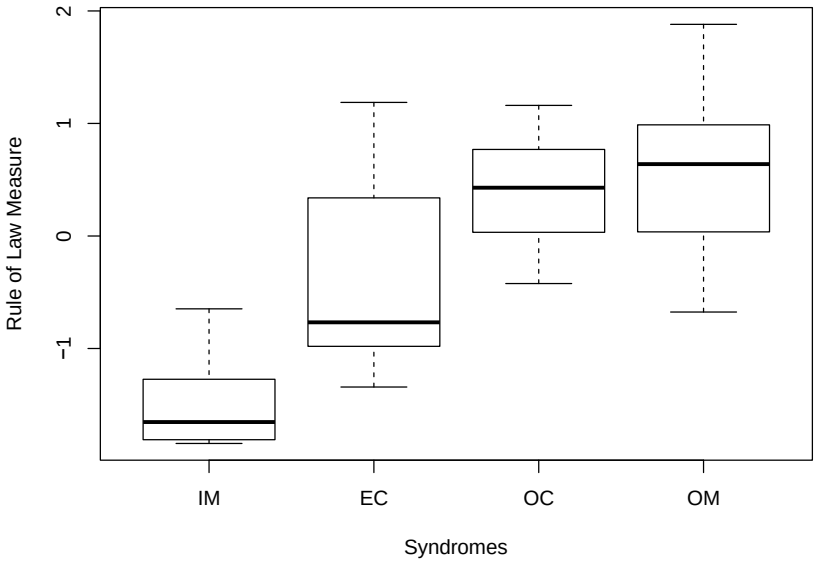
How do the rule-of-law cultures relate to the Kaufman corruption index used by Fisman and Miguel? Figure B.1 shows corruption levels by rule-of-law culture. As can be seen in Figure B.1, the Influence Markets' mean level of corruption is much lower than for the other groups, the mean level for the Elite Cartels is slightly higher, while the Official Moguls and Oligarchs and Clans have a similar and high level of corruption. While the Oligarchs and Clans and Official Moguls have a fairly low variance on the corruption index (0.12 and 0.29, respectively), Influence Markets and Elite Cartels have a much higher variance of corruption levels, 0.44 and 0.51, respectively. Since the Official Moguls and Oligarchs and Clans have similarly high levels of corruption, using only corruption as an

indicator would predict a similar level of parking violations by diplomats from the countries from these rule-of-law cultures. However, as we observe in the analysis in the main text, diplomats from the two groups of high-corruption countries behave differently, lending credence to the idea that rule of law is not adequately captured by corruption measures.

C. RULE OF LAW INDEX AND RULE-OF-LAW CULTURES

We do not pursue a strategy involving a new rule of law typology here because of the under-conceptualization and difficult operationalization of rule of law over the time period. Specifically, we lack quality data underlying the 2002 Rule of Law indicator measure from the World Bank Institute, but even if it existed, is it largely built on overlapping indices that do not separate nicely into clusters for analysis. Instead, we show here that the rule-of-law cultures overlap with the 2002 rule of law indicator in a very similar way as we saw in Figure B.1, though the pattern is more muted.

Figure C.1: Syndromes by Rule of Law Measure



We believe that future scholars will be able to better approximate rule of law measures – both "thick" and "thin" concepts. The World Justice Project has already made great gains. Its data, unfortunately, does not overlap with the time period under analysis here.