Flexibility and Fairness in Liberal Market Economies:

The Comparative Impact of the Legal Environment and High Performance Work Systems

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Abstract

This paper compares management flexibility in employment decision-making in the United States and Canada through a cross-national survey of organizations in representative jurisdictions in each country, Pennsylvania and Ontario respectively, that investigates the impact of differences in their legal environments. The results indicate that, compared to their Ontario counterparts, organizations in Pennsylvania have a higher degree of flexibility in employment outcomes, such as higher dismissal and discipline rates, yet do not experience any greater flexibility or simplicity in management hiring and firing decisions. One explanation for this result may lie in the finding that organizations in Pennsylvania experience greater legal pressures on decision making, reflecting the generally more intense conflict in the employment law system in the United States. By contrast, high performance work systems, which some have looked to as a possible management-driven mechanism for enhancing fairness in employment, had more modest effects.

1. Introduction

What factors affect the employment practices of organizations in liberal market economies? Are they primarily a function of management human resource strategies or do institutional factors such as the influence of the legal environment play a major role? Cross-national comparisons have tended to emphasize the contrast between the stronger constraints on management in institutionally dense economies, such as Germany or Sweden, and the weaker institutional and regulatory structures of liberal market economies, such as the United States, Canada, or the United Kingdom (e.g. Turner 1991; Hall and Soskice 2002). From this perspective, a characteristic feature of liberal market economies is the weakness of their institutional constraints on employers, allowing a high degree of flexibility in management decision-making. Conversely, from an employee perspective, this characteristic could be described as the relative weakness of legal and other institutional protections ensuring fairness in employment relations in liberal market economies. In the absence of strong legal or other institutional protections, the degree of fairness or flexibility in employment practices in liberal market economies then would primarily be a function of management choice of employment relations strategies. Where management chooses to place greater value on employees, for example under high performance work systems, then employees may be accorded a higher degree of fairness in employment relations. By contrast, where management decides economic or other imperatives necessitate greater flexibility in deployment of labour, fairness to employees may be de-emphasized or ignored entirely.

In the past, strong trade union movements provided a counter-balance to management power in many liberal market economies. However, with declining unionization rates and reduced union bargaining power, organized labour's ability to play this constraining role on management in liberal market economies has been substantially diminished. At the same time as organized labour's strength has weakened, legal protections of individual employment rights have been expanded in many countries. Strengthened employment laws provide a potential alternative institutional structure for ensuring fairness in employment practices. It is unclear, however, to what degree pressures from

employment laws and litigation can serve as a force similar to that of strong unions and other institutional structures in constraining unilateral management decision-making. Litigation in the U.S. is often portrayed in both the popular press and political debates as a plague on the American economy and a constant worry for American companies and individuals (Olson 1991: Olson 1997). However, it is unclear to what degree these complaints are simply political rhetoric or actually represent the reality of the legal system. It is important to recognize that despite the reports of sizable verdicts against American companies based on claims such as sexual harassment or racial discrimination, the underlying basis of employment law in the U.S. continues to be the rule of employment-at-will, allowing termination of employment without cause or prior notice. On the other hand, some recent research suggests that despite its limitations, the legal environment does exert a significant influence on the employment practices of organizations in the U.S. In particular, researchers in the "new institutionalist" literature in sociology have argued that organizations in the U.S. responded to the normative environment created by the enactment of civil rights laws by adopting organizational policies and procedures that met social and cultural norms of due process (Edelman 1990; Sutton et al 1994; Sutton and Dobbin 1996; Edelman, Uggen and Erlanger 1999; Godard 2002: 253). Thus the legal environment may exert indirect influences on organizations that extend beyond the direct application of legal rules.

The present study examines the influence of the legal environment on employment practices in two major liberal market economies, the U.S. and Canada, through a survey of establishments in the province of Ontario (Canada) and the state of Pennsylvania (U.S.). Comparing organizations in these two different jurisdictions allows a consideration of the degree to which differences in legal environments influence employment practices, even within relatively similar liberal market economies. The survey data also allow a comparison between the effects of the legal environment and management human resource strategies, in particular the adoption of high performance work systems. Thus, the central research questions to be examined in this study are to what degree institutional pressures from

the legal environment and management human resource strategies influence flexibility and fairness in employment practices in these two liberal market economies.

2. Flexibility and Management Employment Strategies in Liberal Market Economies

In debates over the relative merits of liberal market economies versus more institutionally dense economies, one of the central points of contention is the idea that liberal market economies have more flexible labour markets with supposed resulting benefits in areas such as economic performance and employment growth. In the paradigmatic case of the U.S., descriptions of its labour market flexibility often focus on the ability of American companies to hire and fire workers with few restrictions (Freeman 1988; Bentolila and Bertola 1990; Buchele and Christiansen 1998; Staffolani 2002). Advocates of this type of labour market flexibility suggest a connection between greater flexibility and improved productivity and job creation (Buchele and Christiansen 1998; Addison and Teixeira 2003), whereas for critics, this type of American labour market creates a disposable workforce of employees to whom companies owe no long-term commitment or responsibility (Drago 1996; Kalleberg 2001). Given that this aspect of flexibility focuses on constraints on the process of management decision-making, we will refer to it as *procedural flexibility*.

A second component of standard images of flexibility in liberal market economies is the idea that there is greater mobility of labour, both voluntary and involuntary (Freeman 1988). In this respect, flexibility should be manifested in a greater frequency of employees being dismissed from employment or quitting their jobs to take up other employment than is found in other countries. Viewed positively, this can be seen as establishing flows of labour across the economy in search of better uses and new opportunities; a type of Schumpeterian "gales of creative destruction" in the labour market (Schumpeter 1943). Viewed negatively, this aspect of flexibility can suggest a harshness to employment practices with employees subject to overly ready discipline and dismissal by management for failing to

meet its demands. Whereas the previous aspect of flexibility focused on the management decision-making process, this aspect focuses on employment outcomes so we will refer to it as *outcome flexibility*.

Although a lack of legal or other institutional constraints may allow greater flexibility in liberal market economies, this does necessitate that such flexibility be equally manifested in all organizations within these economies. Rather the lack of constraints may produce greater variation in employment practices between organizations within liberal market economies (Katz and Darbishire 2000). As a result, it may be that whereas some organizations in liberal market economies exhibit high levels of procedural and outcome flexibility in their employment practices, other organizations will exhibit less flexibility and place a greater emphasis on fairness in decision-making in their employment practices.

In recent years, a substantial body of research has looked to high performance work systems (HPWS) as a type of management strategy that may produce an enhancement of fairness in employment practices even in the absence of substantial legal or other institutional constraints. The argument is that organizations can benefit from harnessing greater employee involvement and effort in the workplace, facilitated by practices such as use of self-managed work teams and various employee suggestion systems (Ichniowski et al, 1996). Organizations can encourage this type of valuable employee behavior by enhancing employee commitment through practices such as higher wage levels, employment stabilization, and extensive training. Whereas much of the initial HPWS research was limited to their effects on organizational performance (Godard and Delaney 2000; Handel and Levine, 2004; Godard 2004), a growing body of work has begun to examine the effects of these practices on worker outcomes such as: wages (summarized in Handel and Levine 2004); job satisfaction (Batt 2004); worker voice (Bryson 2004); layoffs (Osterman 2000); and turnover (Batt, Colvin and Keefe 2002, Morissette and Rosa 2003). Some of the HPWS literature has suggested that adoption of these systems should be associated with stronger protections for fair treatment of employees in the workplace, such as adoption of formal grievance procedures (Arthur 1992; Huselid 1995; Colvin 2003, 2004). The rationale for expecting stronger fairness protections in workplaces adopting HPWS is that these

systems are premised on obtaining high levels of commitment from employees, which may be undermined if management takes full advantage of the flexibility to fire or discipline the workforce. In turn, if management operating under HPWS undertakes more elaborate procedures before dismissing an employee to ensure fairness, then this may produce a correspondingly higher degree of caution in making hiring decisions given the greater difficulty involved in reversing a hiring mistake. This tendency to introduce greater complexity into the hiring decision process in HPWS will likely be exacerbated by the higher levels of training and other types of investment in the workforce under these systems. Thus, we would expect to find lower levels of flexibility in both hiring and firing decision-making under HPWS even in liberal market economies legally permitting such flexibility in employment practices.

It is also important to recognize that some arguments question the extent of any fairness enhancing effect of HPWS. As Godard (2004) has observed, HPWS do not change the underlying structure of the employment relationship and the priority given to the interests of employers in organizational decision-making, at least within liberal market economies. Particularly noteworthy is Barker's (1993) research on the impact of self-directed work teams, which found that teams exerted a strong self-disciplining effect on workers within the teams, suggesting that teams may simply transfer the source of unfair treatment of workers from managers to fellow team members. If the impact of HPWS on fairness protections in the workplace is neutral or even negative, then this would raise questions about the degree to which progressive management human resource strategies can serve as alternatives to legal or other institutional protections in ensuring fairness in employment within liberal market economies. Given these opposing arguments, the first empirical question to be examined is whether or not adoption of HPWS in practice affects the level of flexibility or fairness in employment practices. Before examining the data, however, we turn to the second category of explanations for variation in employment practices to be examined, institutional pressures from the legal environment.

3. The Influence of the Legal Environment in the United States and Canada

As outlined in the previous section, discussions of the relative advantages of liberal market versus more institutionally dense economies have often turned on the purported advantage of liberal market economies in allowing a high degree of flexibility in employer decision-making. However, although the institutional constraints on employers may be relatively lower in liberal market economies, it does not necessarily follow that the role of the legal environment in shaping employment practices in these countries is unimportant. This is an important issue for policy debates in this area, since the advantages of flexibility to organizations operating within liberal market economies provides a major argument for those in favour of weakening legal and other institutional constraints on management.

This section compares the legal environments of employment in Canada and the U.S. to provide a basis for examining how these environments influence employment practices in the organizations surveyed. Comparative studies of Canada and the U.S. provide a natural setting in which to examine the impact of differences in specific features of employment and labour laws given the common broader institutional framework of industrial relations in the two countries (e.g. Block and Roberts 2000; Nielsen 1999; Weiler 1983, 1984). Given that both Canada and the U.S. have federal systems of government, to focus the comparison this study will examine a specific jurisdiction in each country, the province of Ontario in Canada and the state of Pennsylvania in the U.S. Although there is some variation between sub-national jurisdictions in employment laws, Ontario and Pennsylvania are generally representative of Canada and the U.S., falling in the midrange of labor standards indices calculated for each country (Block and Roberts 2000; Block, Roberts and Clarke 2003). The focus will be on two aspects of employment law, wrongful dismissal law and employment discrimination law, that most directly impact management decisions in the area of discipline and dismissal. The reason for this focus is to address the argument described earlier that a key advantage of the U.S. system is the flexibility of employers to fire employees when needed, which is argued to produce greater flexibility in hiring of new employees, thereby improving labour market performance.

In the U.S., the default rule governing employment is that of employment-at-will. Under this rule, employers are allowed to fire employees for any reason, good or bad, without notice. A representative modern statement of the rule by the Pennsylvania Supreme Court states that, "Absent a statutory or contractual provision to the contrary, the law has taken for granted the power of either party to terminate an employment relationship for any or no reason." (*Geary v. U.S. Steel Corporation*, 456 Pa. 171 (1974)). The result is that employment litigation in the U.S. revolves around exceptions that have been carved out from this general at-will rule. The most important statutory exceptions to this rule are in the area of employment discrimination law, which will be discussed in the following section. Contractual exceptions are largely limited to those employees, such as executives and sports or entertainment stars, with exceptionally high individual bargaining power and to unionized employees with collective bargaining power. Some attention has also been given in recent years to a limited set of common law exceptions to the at-will rule created by state courts (e.g. Edwards 1993). In practice, however, these common law exceptions have been interpreted relatively narrowly and can often be avoided by careful drafting of employment contracts.[1] In the vast majority of discharge situations where neither discrimination nor one of the common law exceptions is involved, the employment-at-will rule ensures that the employee will have no legal remedy available for preemptory dismissal without just cause (Wheeler, Klaas and Mahony 2004). In this rule, we see the essence of the legal environment of employment in the U.S. favouring flexibility at the expense of fairness.

In contrast to the American employment-at-will rule, employment law in Canada has required employers to have just cause for dismissing an employer or to provide either reasonable notice or equivalent financial compensation in absence of cause (Harris 1990). There are two different sources of the prohibition against unjust dismissal in Canadian law, statutes and common law. On the statutory side, the Ontario Employment Standards Act establishes entitlements to both compensation for termination without cause or notice and to general severance pay for termination based on the employee's length of employment (*Employment Standards Act*, 2000, S.O. 2000, c. 41).[2] As an example,

these provisions would entitle an employee in Ontario who was dismissed without notice or cause after ten years of employment to the equivalent of 8 weeks pay in compensation for wrongful dismissal and an additional 10 weeks severance pay if the case involved a larger employer. Canadian common law provides a separate source of entitlement to reasonable notice before dismissal without cause that is implied into all employment contracts (Harris 1990). The notice periods that are awarded under Canadian common law principles are in general longer than the statutory minimums provided by employment standards statutes and hence create a more substantial limitation on wrongful dismissal by Canadian employers.[3] Although cases based on common law protections can be brought by any employees, they are particularly likely to be brought by managerial and professional employees with higher salaries given the higher potential damage awards. Recent research indicates that Canadian human resource practitioners take the wrongful dismissal court decisions into consideration in dismissal situations and tend to give notice periods that are similar to the periods awarded by the courts (Lam and Devine 2001: 386).

Overall, in the area of wrongful dismissal there is a stark contrast between Canada and the U.S. Whereas in the U.S. strong adherence to the employment-at-will rule bars wrongful dismissal claims apart from a narrow set of exceptions, in Canada both statutes and common law provide general protections against wrongful dismissal. However, wrongful dismissal laws only provide part of the story. When we turn to the area of employment discrimination law, a much different picture emerges of the legal environment within which organizations operate in Canada and the U.S.

The substantive rights embodied in employment discrimination law are remarkably similar in Canada and the U.S. Although some differences exist on questions of the extension of protections to such areas as sexual orientation, the core set of prohibited grounds of discrimination, including race, ethnic or national origin, gender, age, and disability, is closely matched in the two countries (Aggarwal 1992; Block and Roberts 2000). However when we look at procedures for enforcement of these rights, greater differences between the two countries emerge. Adjudication of claims of employment

discrimination in the U.S. is through litigation in the courts of general jurisdiction, with jury trials and the availability of substantial compensatory and punitive damage awards (Wolkinson and Block, 1996). By contrast, adjudication of human rights disputes in Canada occurs before a system of specialized human rights tribunals established in the statutes. For example, the Ontario Human Rights Code provides for adjudication of disputes under the statute before a system of Boards of Inquiry in which adjudicators chosen for their expertise in human rights law decide cases under procedures resembling arbitration hearings (Cornish, Miles, and Omidvar, 1992).

What is the impact of differences in procedures for enforcement of employment rights? One basis for comparison is to look at levels of usage of the different systems by employees. A simple measure of comparison is the complaint rate, i.e. the number of formal complaints of employment discrimination filed under the systems' procedures each year. Although the substantive rights against employment discrimination in the two jurisdictions are similar, annual complaint rates in Pennsylvania (50.5 complaints per 100,000 population) are approximately five times as high as in Ontario (11.7 complaints per 100,000 population).[4] A key factor explaining the higher level of employment discrimination claims in Pennsylvania is the difference in incentives for filing complaints. Whereas the substantive rights are similar, the damage awards for findings of employment discrimination are much higher in the U.S. than they are in Canada. Damages awarded by human rights tribunals in Canada are relatively modest, averaging under CD$10,000.[5] By contrast, in the U.S., damage awards in litigation through the general court system are much higher. A recent study examining all employment discrimination cases (n=1298) in the federal courts between 1994 and 2000 in which damages were awarded found a median award of US$110,000 and a mean award of $301,000 (Eisenberg and Schlanger 2003). The large difference between the mean and median award amounts reflects the strongly skewed distribution of awards, with a number of cases where over a million dollars were awarded heavily influencing the mean. These much greater damages potentially available for discrimination claims in the United States than in Canada means that there is a substantially greater

economic incentive for employees to pursue claims and a similarly greater potential threat posed by such litigation to employers.

Based simply on the extent of protections against unjust dismissal, the legal environment in Canada provides a much greater emphasis on fairness over flexibility in employment relations than does the legal environment in the U.S. Whereas an employer in Pennsylvania can fire an employee with the relative assurance that the employment-at-will rule will bar legal challenges to the fairness of the decision, the employer's counterpart in Ontario faced with a similar decision must take into account that it will be necessary to show just cause for the decision or else the employer will have to pay the employee reasonable compensation. However, the picture becomes more complex when we factor in the impact of employment discrimination laws. Whereas employment discrimination laws provide a relatively minor supplement to general wrongful discharge protections in Canada, in the U.S. most employment litigation involves discrimination cases. The existence of the jury system for trying cases and the potential for large compensatory and punitive damage awards has the potential to magnify the impact of U.S. employment discrimination litigation on employment relations.

The empirical question to be examined is what effect these respective employment law environments have on employment practices in organizations. The direct constraints on flexibility appear greater in Canada due to the requirement of just cause for dismissal imposing a basic fairness standard on firing decisions. Following the logic outlined earlier, that limitations on flexibility in firing should reduce employer willingness to take a chance on hiring a new employee who may later prove difficult to dismiss, one would expect this to also produce a reduction in hiring flexibility in Canada. However there may be a countervailing effect from the more intense nature of conflict in the litigation system in the U.S. The uncertainty and potential for large damage awards in the U.S. litigation system may affect the perceptions of employers about the threat posed by this legal environment. This may produce a normative environment in which concerns about legal pressures are magnified, as suggested by the neo-institutional literature (Sutton and Dobbin 1996; Edelman and Suchman 1997), even though

the extent of substantive legal protections is more limited. If present, this effect would tend to reduce the extent of firing and hiring flexibility in the United States. To investigate the actual impact of these differences in the legal environment on organizations and how they compare to the influence of variation in management human resource strategies, we now turn to examine the survey data.

4. Methods

The Data

The empirical data to be analyzed was collected through a survey of establishments in the two jurisdictions examined in this study, Ontario in Canada and Pennsylvania in the U.S. The survey focused on two specific industries: chemicals (SIC 2812-2829 & 2841-2849); and building maintenance & cleaning (SIC 7341-7349). Chemicals represent an example of a relatively high wage traditional goods sector industry, with the typical establishment in this industry being an individual chemical plant. By contrast, building maintenance & cleaning represents an example of a relatively lower wage growing service sector industry. While many firms in this industry provide basic janitorial services, it also includes window cleaning and building maintenance contractors, where employees may receive higher wages and work in self-directed teams. For this industry, the establishments surveyed were the individual office locations that employers operated out of, though employees based from these offices might provide services at various different worksites. Although limiting the survey to specific industries reduces generalizability, it has the advantage of reducing extraneous sources of variation allowing better identification of possible effects from both the legal environment and HPWS.

The survey was administered by mailed questionnaire in the first half of 2003. Questionnaires were sent to the senior manager in the workplace, whose name was obtained from the commercially available Dun and Bradstreet database, which lists establishments by industry in both Canada and the U.S. The final response rate for the survey was 28.0 percent, yielding a total of 171 responses. To provide a partial check on the representativeness of the survey respondents, wage levels reported by

respondents in the survey were compared to average industry wage levels from Statistics Canada and Bureau of Labor Statistics wage survey data, indicating a relatively small difference of only 3 percent for each country. On the other hand, the survey likely somewhat over-sampled unionized establishments based on unionization rates in the two jurisdictions. Unemployment rates in the two jurisdictions were roughly comparable during the period the study was conducted (5.7% in PA v. 7.0% in ON in 2003).

Measures

This study examines a series of different aspects of personnel management as dependent variables. The first set of three dependent variables captures aspects of procedural flexibility in management hiring and firing decisions. The variable *hiring flexibility* captures whether there is a lack of constraints on hiring decisions by management. It is measured by an index averaging the responses to two Likert type questions asking the extent (1=strongly disagree to 7=strongly agree) to which the following statements describe the establishment: "Managers have the freedom to hire the person they want for a job"; and "We can take a chance in hiring a new employee, since if they do not work out it is relatively easy to terminate their employment". The variable *firing flexibility* captures the complexity of procedures involved when a manager wants to fire an employee. It is measured by an index averaging the responses to two Likert type questions asking the extent (1=strongly disagree to 7=strongly agree) to which the following statements describe the establishment: "A lot of time is involved in reaching and carrying out a decision to fire an employee"; and "We usually require an extensive record of inadequate performance before an employee is fired because of poor job performance". The responses were reverse coded so that higher values represent greater flexibility in firing decisions. A third dependent variable captures whether or not the establishment had adopted a *nonunion grievance procedure* allowing employees to challenge management decisions. Grievance procedures in unionized workplaces provide a standard system for enforcing labour contracts and resolving disputes between labour and management. By contrast, grievance procedures covering nonunion employees are adopted at the discretion of management, often with the motivation of identifying and avoiding potential legal

problems (Colvin 2003; Lipsky, Seeber and Fincher 2003). For establishments with unionized employees, the variable measured whether there was a grievance procedure for employees who were not part of the union's bargaining unit, typically managers and supervisors.

The next set of three dependent variables captures different aspects of outcome flexibility in employment decision-making. The first variable captures the extent of use of *dismissal* in the establishment. It is measured as the percentage of employees in the last year who "were dismissed, i.e. fired or involuntarily terminated". The second variable captures the extent of use of *discipline* in the establishment. It is measured as the percentage of employees who had "a formal disciplinary action (e.g. warning, suspension) recorded in their personnel files in the past year". The third variable captures *rule strictness*, i.e. the likelihood given a particular type of misconduct that the employee will be fired. It is captured by an index averaging the responses to two Likert type questions asking the extent (1=strongly disagree to 7=strongly agree) to which the following statements describe the establishment: "An employee who is absent from work without justification more than three times in the same year is likely to be fired"; and "An employee who is insubordinate to supervisors more than once in the same year is likely to be fired".

The two main explanations for variation in procedural and outcome flexibility being examined in this study are pressures from the legal environment and adoption of high performance work systems. The national legal environment is represented by a single dichotomous variable indicating whether the establishment was located in Pennsylvania, U.S. (1=yes) or in Ontario, Canada (0=no).[6] Although location in a different jurisdiction provides the primary source of differences in the legal environment of organizations, it is also the case that this measure may pick up other factors associated with the national environment such as differences in social and political values and attitudes (Lipset 1989), even in a relatively closely matched pair such as the U.S. and Canada. Two other variables were used to help capture the influence of the legal environment on organizations. The first variable captures the extent of *litigation concerns* amongst management. It is measured by a scale (Cronbach's alpha=.68) constructed

from the average of the responses to two Likert type questions asking the extent (1=strongly disagree to 7=strongly agree) to which the following statements describe the establishment: "Preventing litigation by current or former employees is a major concern in our organization"; and "Lawyers in our area are very active in trying to help employees sue their employers". This is an indirect measure of perceptions of legal pressures, partially capturing the normative influence of the legal environment. To also partially capture the extent of legal pressures on organizations, a single variable, *legal claim,* measured whether or not the establishment in the past two years "…had any claim(s) filed against it by an employee in court or with any government agency (e.g. an EEOC complaint)." In the version of the survey sent to Canadian respondents, the last part of the question was reworded to "… (e.g. an OHRC complaint)." In addition to potentially helping explain cross-national differences, these variables also capture variation in the degree to which different organizations in the same jurisdiction perceive different degrees of pressure from the legal environment, e.g. due to variation in past litigation.

Two variables capture different aspects of the adoption of HPWS. Organizational human resource strategies are measured by a scalar variable representing the extent to which the establishment follows a *high commitment HRM strategy*. This scale (Cronbach's alpha=.70) was constructed from the average of the responses to three Likert type questions asking the extent (1=strongly disagree to 7=strongly agree) to which the following statements describe the establishment: "Our employees tend to describe their work as a career rather than just a job"; "We spend a lot of money to ensure we attract and retain the most talented employees available"; and "Employees view us as one of the most desirable organizations to work for in our industry". A simple dichotomous variable captured whether the establishment used *self-directed work teams* (1=yes, 0=no). Self-directed work teams have been central to the literature on alternative work practices and represent the most characteristic work practice used as an indicator of HPWS in many studies.

A number of variables were included to control for relevant structural and workforce characteristics of the establishment. *Establishment size* is captured by a scale based on the total workforce

of the establishment: 1= less than 50; 2= 50 to 99; 3= 100 to 249; 4=250 to 499; 5= 500 or greater. A dichotomous variable captured whether the establishment is a *branch* of a larger company (1=yes, 0=no). The establishment's industry is represented by the dichotomous variable *chemical* (coded, 1=yes, i.e. chemicals, 0=no, i.e. building maintenance & cleaning). Unionization of the workforce is represented by the dichotomous variable *union* (1=yes, 0=no). The length of tenure of the workforce is captured by the variable *long tenure*, measured as the proportion of employees who have worked for 5 or more years for the company. The educational level of the workforce is captured by the variable *college*, measured as a dichotomous variable indicating whether or not the average employee had some college education beyond high school (1=yes, 0=no). To control for wage levels compared to the relevant industry labor market, a *relative pay* measure was constructed based on the ratio of the average hourly pay of workers in the establishment to the corresponding average hourly wage for the respective industry in either Pennsylvania or Ontario (based on Statistics Canada 2003 wage data for Ontario and Bureau of Labor Statistics 2003 wage data for Pennsylvania), so that the value 1.0 would represent an establishment paying the average industry wage. The final control variable captured the proportion of *part-time & temps* amongst the workforce of the establishment.

5. Results

Means and standard deviations for the variables are reported in Table 1. Overall means and standard deviations are reported in the initial two columns of the table. The third and fourth columns of the table report means for Pennsylvania and Ontario establishments respectively.

The first step in the analysis is to investigate the differences in the legal environment experienced by organizations in Ontario and Pennsylvania. Table 2 reports results of estimation equations for the two variables, *litigation concerns* and *legal claims*, designed to capture the influence of the legal environment on organizations. Litigation concerns is a continuous dependent variable, estimated using OLS, whereas legal claims is a dichotomous dependent variable, estimated using a probit model.

In both estimation equations, being in Pennsylvania was associated with greater legal pressures on the organization than being located in Ontario. Management of establishments in Pennsylvania had significantly ($p<.01$) greater *litigation concerns*, by a margin of 0.6 standard deviations, compared to their counterparts in Ontario. Similarly, there was a significantly ($p<.01$) greater probability of organizations in Pennsylvania having been subject to a *legal claim*. Controlling for other factors in the estimation equation, establishments in Pennsylvania had a 23 percentage point higher chance of having been subject to a legal claim in the past two years than their counterparts in Ontario. Although Canadian employment law provides the more extensive protections against wrongful dismissal, these results indicate that it is organizations in Pennsylvania, in the U.S., that have greater concerns about litigation and are more likely to have experienced legal conflicts with employees.

The next step in the analysis looks at whether differences in the legal environment or the adoption of HPWS explain variation in procedural flexibility. Table 3 reports estimation equations for the three variables capturing aspects of procedural flexibility: hiring flexibility; firing flexibility; and the adoption of nonunion grievance procedures. Hiring and firing flexibility are continuous variables estimated using OLS regression, whereas nonunion grievance procedure adoption is a dichotomous variable estimated using a probit model. In order to investigate whether differences in the legal environment partly explain the effect of differences between jurisdictions, in a first step the equations are estimated with the legal environment simply represented by the dummy variable for Pennsylvania (PA), U.S. (versus Ontario, Canada). In the second step, the two measures of the legal environment are added into the equations. If cross-national differences are partly explained by variation in the legal environment, we would expect a reduction in magnitude and significance of the PA (U.S.) dummy variable when the legal environment variables are added to the equation.

The results show some evidence of the influence of the legal environment in reducing employer flexibility, though not the expected generally greater flexibility in the U.S. There were no significant differences between establishments in Pennsylvania and Ontario in levels of hiring flexibility and firing

flexibility. However greater litigation concerns were associated with both reduced hiring flexibility ($p<.01$) and reduced firing flexibility ($p<.01$). By contrast, being in Pennsylvania was associated with a significantly higher probability of having a nonunion grievance procedure ($p<.05$, equation 5, table 3), with establishments in Pennsylvania having a 17 percentage points higher likelihood of having a procedure than their Ontario counterparts. This association became smaller in magnitude and non-significant when the legal environment variables were added (equation 6, table 3), suggesting that differences in the legal environment partly explain the effect of being in Pennsylvania. Greater litigation concerns were associated with a significantly higher probability ($p<.05$) of having a nonunion grievance procedure.

Results for the impact of HPWS on procedural flexibility are mixed in nature. Self-directed teams were associated with a decrease in firing flexibility ($p<.10$, equation 4, table 3), but with an increase in hiring flexibility ($p<.10$, equation 2, table 3). Self-directed teams were strongly associated with nonunion grievance procedures ($p<.01$, equation 6, table 3), with establishments with teams having a 26 percentage points higher likelihood of also having a nonunion grievance procedure. High commitment HRM strategies were not significantly associated with the procedural flexibility measures.

Table 4 reports the results of estimation equations for the three outcome flexibility variables: the dismissal rate; the discipline rates; and the level of rule strictness. The dismissal and discipline rates are continuous variables, however distributions of both variables are skewed to the right, so a log transformation was used to increase normalcy. In addition, the distributions of both the dismissal and discipline rates are truncated at the left end of the distribution with a number of zero observations and negative observations being impossible. To avoid biases in the results from estimating variables with this type of distribution, tobit models (Long, 1997) were used in the estimation equations for both of these variables. By contrast, the distribution of the rule strictness variable was normal and not subject to substantial truncation at either the upper or lower limit, so it was estimated using OLS regression.

Results for being in Pennsylvania and for the legal environment variables were consistent across all three of the outcome flexibility measures. Compared to their Ontario counterparts, establishments in Pennsylvania had significantly higher dismissal rates ($p<.01$, equation 1, table 4), higher discipline rates ($p<.01$, equation 3, table 4), and more strict rules ($p<.01$, equation 5, table 4). Compared to Ontario, for establishments in Pennsylvania: dismissal rates were 49.8 percent higher; discipline rates were 51.8 percent higher; and rule strictness was 0.2 standard deviations higher. These effects were all partly explained by the legal environment variables, with the effects being reduced in size and of lower significance when the legal environment variables were added to the equations. Greater litigation concerns were associated with higher dismissal rates ($p<.05$), higher discipline rates ($p<.10$), and greater rule strictness ($p<.05$). Similarly, past legal claims were associated with higher dismissal rates ($p<.05$) and higher discipline rates ($p<.10$). It should be noted, however, there is a strong danger of reverse causation for these relationships with greater workplace conflict leading to more legal claims.

By contrast, associations between the HPWS and outcome flexibility variables were more limited or absent. There were no significant associations between high commitment HRM strategies and outcome flexibility. Self-directed teams did have a significant ($p<.10$, equation 4, table 4) association with reduced discipline rates, with establishments with teams on average having a 21.2 percent lower discipline rate. However, there were no significant relationships between self-directed teams and either the dismissal rate or rule strictness.

6. Discussion and Conclusions

This study set out to examine how the legal environment and high performance work systems affect flexibility and fairness in employment relations in two liberal market economies, Canada and the U.S. The results suggest a relatively strong impact from the legal environment and a more limited and mixed impact from HPWS. We begin with the legal environment findings.

The setting in which the impact of the legal environment on employment relations is examined in this study provides a relatively strong test of the existence of such effects given that both the U.S. and Canada are examples of liberal market economies with relatively weak state regulation of economic activity. Furthermore, Canada and the U.S. are a relatively closely matched pair of countries in terms of their economic and legal systems, so one might expect differences between them to be correspondingly smaller than in more dissimilar cross-national comparisons. Yet even with this setting of relatively similar liberal market economies there are potentially important differences in the legal environment. In Canada, protections against unjust dismissal provide a partial constraint on employer decision-making by imposing moderate, but relatively predictable costs if the employer seeks to dismiss an employee. By contrast, in the U.S. the employment-at will rule allowing employers virtually unconstrained decision-making is offset by the relatively strong legal protections against employment discrimination. The jury-driven litigation system results in relatively large numbers of employment discrimination lawsuits in the U.S. and some very large damage awards against employers. Although American employment law may not provide the same extent of regulatory constraints on management as Canadian employment law, or for that matter most other legal systems, courts in the U.S. have become the site of intense employee-employer conflict that may create at least a partial counterbalance to employer power in the workplace. The results of the survey of establishments in Ontario and Pennsylvania suggest that there are significant differences between the two countries in how the legal environment of organizations is viewed. Establishments in Pennsylvania had greater concerns about litigation by employees than their counterparts in Ontario and were also more likely to have been subject to legal claims by employees.

What is the impact of these Ontario–Pennsylvania differences and the influences from the legal environment on employment practices? In the area of procedural flexibility, no significant differences were found between establishments in Ontario and Pennsylvania in the degree of flexibility in management hiring and firing decisions. This goes against the idea of the U.S. as being marked by an unusually high degree of flexibility in management decision-making. There was a significant difference

in the area of adoption of nonunion grievance procedures, but with establishments in Pennsylvania being much more likely to have these procedures. Although this last finding goes directly against the idea of greater American flexibility in employment, a possible explanation may be that organizations in the U.S. frequently adopt procedures as a preventative measure against potential lawsuits (Colvin 2003). Greater management concerns about litigation were also associated with greater likelihoods of having adopted nonunion grievance procedures, as well as reduced hiring and firing flexibility, suggesting that legal pressures are constraining procedural flexibility. These findings of an effect of litigation concerns, as opposed to legal claims, fits with the normative cultural perspective espoused by new institutionalist researchers who have argued that shaping the normative perspective of managers is a key mechanism through which the legal environment indirectly influences organizations (Edelman and Suchman 1997).

In the area of outcome flexibility, there were consistent Ontario-Pennsylvania differences with establishments in Pennsylvania having higher discipline and dismissal rates and more strict rules governing employee behavior. Whereas the results did not suggest greater procedural flexibility for employers in Pennsylvania, these results did indicate substantially greater outcome flexibility for employers in Pennsylvania compared to their Ontario counterparts. A critical interpretation of these findings is that the influence of the legal environment may somewhat ameliorate unfairness in the process of decision-making in employment relations in the U.S., but has not reduced the ability of American employers to ultimately direct and dismiss employees as they see necessary. A more optimistic interpretation would be to see companies in the U.S. benefiting from flexibility in the deployment of labour, but the influence of the legal system providing some degree of fairness in the process of management decision-making. If so, this suggests that a more litigious legal environment in the U.S. may be substituting for a more extensive regulatory legal environment in Canada in promoting fairness in employment practices in organizations. A policy implication of this finding is that efforts to reign in the litigious nature of the U.S. legal system, if taken too far, may serve to undermine the key strength of the American legal environment in promoting fairness in employment practices. Another

implication is that the more extensive regulatory environment in Canada does not appear to be hindering procedural flexibility in management decision-making relative to the U.S. From a policy perspective, this suggests that arguments for limitation of employment law protections as a way to improve economic performance may rest on an exaggerated view of the impact of these laws on flexibility in management decision-making.

High performance work systems have been suggested as an alternative, management driven path to greater fairness in employment practices. The results here provide some limited support for this argument, but also suggest that the effects of HPWS are more limited than the influences from the legal environment. The presence of self-directed teams, an alternative work practice that has been considered a key component of HPWS, was associated with some indicators of greater emphasis on fairness over flexibility in employment. Establishments with self-directed teams were more likely to have nonunion grievance procedures, to have lower flexibility in firing employees, and lower discipline rates. Conversely establishments with teams were also likely to have greater flexibility in hiring. This last finding is contrary to predictions and surprising in that it suggests teams have opposing effects on firing and hiring flexibility. Much of the debate over flexibility in employment relations has reflected an assumption that factors that increase fairness and reduce flexibility in firing decisions will produce a corresponding reduction in flexibility in hiring decisions. These results suggest that, for this one employment practice at least, the assumed link between firing and hiring flexibility may not hold universally and deserves further research. Overall the effects of HPWS on procedural and outcome flexibility were much smaller than those for the legal environment, with the only exception being similar legal and HPWS effects for nonunion grievance procedures. Based on these findings, HPWS as currently constituted may partly enhance fairness in some organizations, but provide a more limited influence overall than the legal environment on fairness and flexibility in employment practices.

The results of this study suggest the continued importance of institutional influences from the legal environment in shaping fairness and flexibility in employment practices. These findings provide

some empirical support for the contention, notably advanced by Katz and Darbishire (2000), that even in an era of globalization institutions continue to shape organizational employment strategies and actions. The results also provide empirical support to Godard's contention (2002) that even amongst liberal market economies the state continues to play an important role in shaping employment relations, in particular here through the influence of the legal system. To further investigate these ideas, an area in which the research reported here could clearly be extended in the future is to examine other countries. The comparison of Canada and the U.S. was used in this study to provide a type of quasi-experimental setting with a relatively closely matched pair of national environments. Following this approach, other similarly matched pairs with variations in legal environments, e.g. Australia and New Zealand, could be examined to see if the same results hold up. Another approach would be to compare a more varied set of countries. Although Canada and the U.S. have differences in their employment law regimes, they are also both countries with liberal market economies and relatively flexible labour market policies compared to most European countries. It would be informative to be able to compare similar dimensions of employment flexibility between countries with liberal market economies and European countries (e.g. Germany, France, or Italy) with legal environments providing stronger institutional constraints on management decision-making. This could help answer the critical question of what the role of institutions, such as the legal system, is in influencing flexibility and fairness in employment relations in an era of globalization.

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Notes

[1] For example, where an employee was fired for making complaints about the employer's violation of federal Occupational Safety and Health Act (OSHA) standards regarding dangerous chemicals, the Supreme Court of Pennsylvania held that this did not fall under the public policy exception because it involved a federal rather than a state law and only state laws could form the basis of public policy for purposes of the exception (*McLaughlin v. Gastrointestinal Specialists*, 561 Pa. 307 (2000)). Similarly, in a case where the company's employee handbook stated "You may only be discharged for just cause…", a Pennsylvania court held that this language did not "…evidence an intent to create an implied contract whereby [the employee] could be discharged for objective just cause only." (*Luteran v. Loral Fairchild Corp.*, 455 Pa. Supp. 364 (1997)).

[2] The notice period starts at one week after three months of employment, rises to two weeks after a year of employment, three weeks after three years, reaching eight weeks after eight or more years of employment, which is the maximum notice period under this section (S.O. 2000, c.41, s. 57). This requirement for notice if an employee is terminated without cause is supplemented by a general requirement for severance pay which applies to all employers with over $2.5 million in annual payroll (S.O. 2000, c. 41, s.64(1)). Any employee with five or more years of employment is entitled to severance pay consisting of one week's pay per year of employment.

[3] In a study of 102 wrongful dismissal cases in British Columbia from 1980 to 1986, the average employee, who had on average 10 years of service, received a mean notice period of 9.1 months (McShane and McPhillips 1987). A later Canada-wide study based on 177 cases from 1985 through 1990 found that in a sample where the typical employee had eight and a half years service, was paid $42,000 and had a middle status job, the average notice period was 8.9 months (Wagar and Jourdain 1992). These results fit with a rough "rule-of-thumb" used by Canadian employment lawyers, that awards for employees with at least a few years of service will be around one month per year of service (Lam and Devine 2001), with a maximum of around 24 months notice.

[4] Ontario Human Rights Commission Annual Reports, 1999-2000 & 2000-2001; and Pennsylvania Human Relations Commission Annual Reports, 1997-1998, 1998-1999, & 1999-2000.

[5] In 2002-2003, the average settlement amount of 776 cases mediated by the Ontario Human Rights Commission was CD$5,769.12 (~US$4,325) (www.ohrc.on.ca). A similar pattern of relatively small awards in Canadian human rights tribunals can be seen in the results of decisions by Human Rights Tribunals in British Columbia, the average award in 1997-2001 was CD$4,500 (~US$3375), with a maximum monetary award of CD$33,800 (~US$25,350) (www.bchrt.gov.bc.ca).

[6] This variable captures the location of the establishment, not whether the company that owns the establishment is Canadian or American. In the sample, a number of the establishments in Canada were owned by companies headquartered in the United States, however a test of whether there was an effect of ownership location indicated no significant differences between Canadian owned and American owned establishments located in Canada.

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Table 1: Overall Sample Characteristics and Means by Jurisdiction

Variable Name	Values/Items	Overall Mean N=171	*S.D.*	PA (U.S.) N=99	ON (Can.) N=72
Establishment size	1=<50; 2=50-99; 3=100-249; 4=250-499; 5=>500 employees	2.91	*1.15*	2.92	2.89
Branch	1=yes, 0 =no	0.65	*0.48*	0.58	0.75
Union	1=yes, 0 =no	0.42	*0.49*	0.39	0.44
Chemical	1=yes, 0=Building maintenance & cleaning	0.72	*0.45*	0.64	0.83
Long tenure	Proportion over 5 years	0.67	*0.26*	0.64	0.72
College educated workforce	1=yes, 0=no	0.26	*0.44*	0.25	0.28
Relative pay	1.00=industry average for US or Canada	0.97	*0.36*	0.97	0.97
Part-time & temps	Proportion of workforce	0.13	*0.24*	0.17	0.07
High-commitment HRM strategy	Additive index: "Our employees tend to describe their work as a career rather than just a job"; "We spend a lot of money to ensure we attract and retain the most talented employees available"; "Employees view us as one of the most desirable organizations to work for in our industry"1=Low, 7=High	4.59	*1.27*	4.54	4.66
Self-directed teams	1=yes, 0=no	0.38	*0.49*	0.39	0.38
Litigation concerns	Additive index:: "Preventing litigation by current or former employees is a major concern in our organization"; "Lawyers in our area are very active in trying to help employees sue their employers" 1=Low, 7=High	4.43	*1.69*	4.88	3.81
Legal claims	Yes/No: "In the past two years, has your workplace had any claim(s) filed against it by an employee in court or with any government agency (e.g. an EEOC/OHRC complaint)."	0.41	*0.49*	0.51	0.29
Hiring flexibility	Additive index: "Managers have the freedom to hire the person they want for a job"; "We can take a chance in hiring a new employee, since if they do not work out it is relatively easy to terminate their employment".1=Low, 7=High	3.77	*1.43*	3.76	3.78
Firing flexibility	Additive index (reverse coded): "A lot of time is involved in reaching and carrying out a decision to fire an employee"; "We usually require an extensive record of inadequate	1.80	*0.94*	1.82	1.76

	performance before an employee is fired because of poor job performance". 1=Low, 7=High				
Nonunion grievance procedure	1=yes, 0 =no	0.54	*0.50*	0.60	0.46
Dismissal	Annual percentage of employees dismissed	3.79	*10.40*	5.37	1.72
Discipline	Annual percentage of employees disciplined	7.09	*13.62*	9.34	4.12
Rule Strictness	Additive index: "An employee who is absent from work without justification more than three times in the same year is likely to be fired"; "An employee who is insubordinate to supervisors more than once in the same year is likely to be fired." 1=Low, 7=High	4.15	*1.77*	4.49	3.67

Table 2: Legal System Influences Estimation Equations

	Litigation Concerns	Legal Claims
Establishment	0.15	0.18**
size	(0.12)	(0.04)
Branch	-0.08	-0.08
	(0.32)	(0.10)
Union	-0.59*	0.004
	(0.28)	(0.09)
Chemical	0.56	0.11
	(0.49)	(0.16)
Long tenure	0.37	-0.33
	(0.63)	(0.21)
College	-0.36	-0.14
	(0.36)	(0.11)
Relative pay	0.48	0.22
	(0.48)	(0.16)
Part-time &	1.44+	-0.17
temps	(0.82)	(0.28)
High	0.14	-0.04
commitment	(0.12)	(0.04)
Self-directed	-0.22	-0.10
teams	(0.29)	(0.09)
PA (U.S.)	1.01**	0.23**
	(0.26)	(0.08)
Constant	1.96*	
	(0.91)	
F (*LR Chi2*)	2.69**	*38.47***
R-sq (*pseudo R-sq*)	0.160	*0.170*
N	167	167

Significance levels: ** = p<.01; * = p<.05; + = p<.10. Equation for Litigation Pressures estimated using OLS. Equation for Legal Claims estimated using a probit model, with marginal effects and corresponding standard errors reported.

Table 3: Procedural Flexibility Estimation Equations

	Hiring Flexibility		Firing Flexibility		Nonunion Grievance Procedure	
	(1)	(2)	(3)	(4)	(5)	(6)
Establishment size	-0.14	-0.10	-0.05	-0.02	0.06	0.04
	(0.10)	(0.11)	(0.07)	(0.07)	(0.04)	(0.04)
Branch	-0.11	-0.13	-0.16	-0.17	0.07	0.08
	(0.27)	(0.27)	(0.18)	(0.17)	(0.10)	(0.10)
Union	0.02	-0.11	-0.16	-0.24	-0.17*	-0.14
	(0.24)	(0.23)	(0.15)	(0.15)	(0.08)	(0.09)
Chemical	-0.15	-0.02	-0.48	-0.41	0.02	-0.01
	(0.42)	(0.41)	(0.27)	(0.27)	(0.16)	(0.16)
Long tenure	-0.90+	-0.82	0.09	0.13	0.08	0.12
	(0.54)	(0.53)	(0.35)	(0.35)	(0.20)	(0.21)
College	0.62*	0.54+	0.44*	0.39*	0.01	0.06
	(0.30)	(0.30)	(0.20)	(0.19)	(0.12)	(0.12)
Relative pay	-0.06	-0.05	-0.33	-0.27	-0.11	-0.17
	(0.41)	(0.40)	(0.26)	(0.26)	(0.16)	(0.16)
Part-time & temps	0.28	0.60	0.54	0.71	-0.14	-0.20
	(0.70)	(0.69)	(0.45)	(0.45)	(0.26)	(0.27)
High commitment	-0.15	-0.12	-0.05	-0.03	0.03	0.03
	(0.10)	(0.10)	(0.07)	(0.07)	(0.04)	(0.04)
Self-directed teams	0.49*	0.45+	-0.24	-0.27+	0.22*	0.26**
	(0.25)	(0.24)	(0.16)	(0.16)	(0.09)	(0.09)
PA (U.S.)	-0.20	0.02	-0.11	0.03	0.17*	0.09
	(0.22)	(0.23)	(0.14)	(0.15)	(0.08)	(0.09)
Litigation concerns		-0.22**		-0.13**		0.06*
		(0.07)		(0.05)		(0.03)
Legal claims		-0.002		-0.03		0.14
		(0.245)		(0.16)		(0.09)
Constant	5.42**	5.85**	2.90**	3.15**		
	(0.77)	(0.76)	(0.50)	(0.50)		
F(*Chi2*) for adding legal variables		5.50**		4.52*		*8.95**
F (*LR Chi2*)	2.33*	2.93**	2.94**	3.30**	*24.47***	*33.83***
R-sq (*pseudo R-sq*)	0.142	0.199	0.173	0.219	*0.106*	*0.147*
N	167	167	167	167	167	167

Significance levels: ** = p<.01; * = p<.05; + = p<.10. Equations for Hiring Flexibility, and Firing Flexibility estimated using OLS. Equations for Nonunion Grievance Procedures estimated using probit models, with marginal effects and corresponding standard errors reported.

Table 4: Outcome Flexibility Estimation Equations

	Dismissal Rate (log)		Discipline Rate (log)		Rule Strictness	
	(1)	(2)	(3)	(4)	(5)	(6)
Establishment size	0.34**	0.25**	0.06	0.002	0.10	0.05
	(0.09)	(0.09)	(0.07)	(0.07)	(0.13)	(0.14)
Branch	0.34	0.39+	0.70**	0.74**	0.04	0.07
	(0.24)	(0.22)	(0.17)	(0.17)	(0.35)	(0.34)
Union	-0.15	-0.07	0.56**	0.61**	-0.63*	-0.51+
	(0.20)	(0.19)	(0.15)	(0.14)	(0.30)	(0.30)
Chemical	-0.65+	-0.80*	-0.66*	-0.75**	-0.19	-0.31
	(0.38)	(0.36)	(0.28)	(0.27)	(0.53)	(0.53)
Long tenure	-2.17**	-2.07**	-1.19**	-1.15**	0.003	-0.04
	(0.46)	(0.44)	(0.34)	(0.33)	(0.68)	(0.68)
College	0.27	0.36	-0.60**	-0.54**	-0.08	0.007
	(0.25)	(0.24)	(0.19)	(0.19)	(0.39)	(0.38)
Relative pay	-1.11**	-1.30**	-1.02**	-1.10**	0.06	-0.05
	(0.36)	(0.34)	(0.28)	(0.27)	(0.52)	(0.51)
Part-time & temps	-1.05+	-1.17*	-1.11*	-1.19**	0.50	0.22
	(0.62)	(0.59)	(0.45)	(0.44)	(0.89)	(0.89)
High commitment	-0.02	-0.01	-0.02	-0.02	0.20	0.18
	(0.09)	(0.08)	(0.06)	(0.06)	(0.13)	(0.13)
Self-directed teams	-0.15	-0.13	-0.31+	-0.27+	-0.18	-0.13
	(0.21)	(0.20)	(0.16)	(0.15)	(0.31)	(0.31)
PA (U.S.)	0.59**	0.39*	0.47**	0.33*	0.73**	0.51+
	(0.19)	(0.18)	(0.14)	(0.14)	(0.28)	(0.29)
Litigation concerns		0.14*		0.08+		0.20*
		(0.06)		(0.04)		(0.09)
Legal claims		0.39*		0.26+		0.11
		(0.19)		(0.15)		(0.32)
Constant	2.36**	2.11**	3.08**	2.91**	2.86**	2.46*
	(0.66)	(0.62)	(0.50)	(0.49)	(0.98)	(0.98)
F for adding legal variables		6.98**		4.50*		3.08*
F (*LR Chi2*)	*68.03***	*81.41***	*97.62***	*106.32***	1.81+	2.04*
R-sq (*pseudo R-sq*)	*0.156*	*0.187*	*0.206*	*0.224*	0.114	0.148
N	153	153	159	159	167	167

Significance levels: ** = p<.01; * = p<.05; + = p<.10. Equations for Discipline and Dismissal rates estimated using tobit models. Equations for Rule Strictness estimated using OLS.