Language, Legal Origins, and Culture Before the Courts: Cross-Citations Between Supreme Courts in Europe

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"Legal communication has two principal components: words and citations"[1]

Should courts consider cases from other jurisdictions? The use of foreign law precedent has sparked considerable debate in the United States, and this question is also controversially discussed in Europe. In this article and within the larger research project from which it has developed, we study the dialogue between different European supreme courts quantitatively. Using legal databases in Austria, Belgium, England and Wales, France, Germany, Ireland, Italy, the Netherlands, Spain, and Switzerland, we have hand-collected a dataset of transnational citations between the highest courts of these countries for the time between 2000 and 2007. In the present article we show that citation of foreign law by supreme courts is not an isolated phenomenon in Europe, but happens on a regular basis. We found 1,430 instances in which these courts have cited the supreme courts of the other nine countries. The majority of these citations have been made for purely comparative reasons. We also undertook regression analysis in order to understand the differences between the cross-citations. Whether such citations take place and in what quantity depends on the particular legal culture and its relationship to others. Austria and Ireland, which stand in an asymmetric relationship with Germany

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[1] Fred R. Shapiro, *The Most-Cited Articles from The Yale Law Journal*, 100 Yale L J 1449, 1453 (1991).

and England respectively, seem to be particularly receptive to foreign influence on their legal systems. But even controlling for these outliers, we have been able to identify that the population of the cited country and a low level of corruption, native languages and language skills, legal origins and families, and cultural and political factors all matter for which courts are likely to be cited. More specifically, knowledge of the language of the cited court appears to be a more important factor driving cross-citations than legal traditions, culture or politics. Thus, to facilitate a transnational market of legal ideas, it can be suggested that courts should strive to make their decisions available in languages that possible readers understand.

I. INTRODUCTION

Should courts consider cases from other jurisdictions? The use of foreign law precedent by the US Supreme Court has sparked considerable controversy in the United States and similar debates are also prevalent in Europe.[2] In this article and within the larger research project from which it has developed, we study the dialogue between different European supreme courts quantitatively. Our goal is to uncover transnational citation patterns by identifying citation networks and to describe which voices are the loudest in the conversation that is going on between the high courts, and for what reasons they are.

Our study has broader implications for comparative law and economics, as scholars in these fields have in recent years increasingly attempted to identify common patterns in the law – and its economic consequences – based on factors common to different legal systems, such as legal origin, language or culture.[3] The topic of our research is also closely related to the New Institutional Economics (NIE). According to Williamson the first level of institutions

[2] See II.A, below.

[3] For example, Simeon Djankov, Rafael La Porta, Florencio Lopez-de-Silanes and Andrei Shleifer, *The Law and Economics of Self-Dealing*, 88 J Fin Econ 430 (2008); Mathias M. Siems, *Legal Origins: Reconciling Law & Finance and Comparative Law*, 52 McGill L J 55 (2007); Amir N. Licht, Chanan Goldschmidt and Shalom H. Schwartz, *Culture, Law, and Corporate Governance*, 25 Intl Rev L Econ 229 (2005).

encompasses traditions, ethics, social norms, religion and language[4]. The structure of courts and the role of legal rules follow at the next levels, namely the basic institutional environment and the institutions of governance. Thus, in terms of the NIE, our research will contribute to the question of whether similarities between countries in the first institutional level translate into the following levels. Finally, our work has important policy implications since we may be able to identify what, if anything, can be done to create "a global community of courts".[5]

The present article tries to identify the factors that influence cross citations, including legal origin, language, and culture. Our main objective is not to find out under what circumstances and what kind of cross-citations courts make, but rather which other courts they cite, and what drives this choice. This contributes to the comparative law debate about the development and persistence of legal families, in other words, why some legal systems resemble each other more closely than others. While constitutional interpretation – the focus of the American debate – might be another rewarding field, we focus on the main highest courts that decide private law and criminal cases. Private law in particular is often thought to be the main area that is most characteristic for the development of legal families.

Using legal databases in Austria, Belgium, England and Wales, France, Germany, Ireland, Italy, the Netherlands, Spain, and Switzerland, we have hand-collected a dataset of transnational citations between the highest courts within the regular court systems of these countries. Section II shows that our research fills an important gap of the literature on cross-citations which is predominantly anecdotal. We also outline how our research hypotheses are related to previous

[4] Oliver E Williamson, *The New Institutional Economics: Taking Stock, Looking Ahead*, 38 J Econ Literature 595 (2000).

[5] Anne Marie Slaughter, *A Global Community of Courts*, 44 Harv Intl L J 191 (2003). See also Martin Gelter and Mathias Siems, *Network Networks, Dialogue or One-Way Traffic? An Empirical Analysis of Cross-Citations Between Ten of Europe's Highest Courts,* 8 Utrecht L Rev 88 (2012).

research. Section III explains our dataset and it provides initial descriptive statistics on cross-citations. Section IV turns to inferential statistics: it explains the explanatory variables and the type of regression that we use to determine what drives the choice of the "target" for a cross-citation. It subsequently presents and analyses the regression results. Section V concludes.

II. PREVIOUS RESEARCH AND HYPOTHESES

A. Literature Review

In recent years there has been considerable research on the citations of foreign courts, but only very few projects have engaged in a quantitative empirical analysis. There are also only some pointers on why judges may tend to cite some foreign jurisdictions but not others.

1. The Discussion in the United States

In the United States, the debate was triggered by the fact that the US Supreme Court itself is divided on whether it is legitimate to rely on foreign law in the interpretation of the US Constitution.[6] The majority of the court answered in the affirmative. According to Justice Breyer there is "a near universal desire for judicial institutions that, through guarantees of fair treatment, help to provide the security necessary for investment and, in turn, economic prosperity", and, thus, foreign experience can "cast an empirical light on the consequences of different solutions to a common legal problem".[7]

[6] The main cases are *Roper v Simmons* 125 S Ct 1183 (2005); *Lawrence v Texas* 123 Ct 2472 (2003); *Foster v Florida*, 537 US 990 (2002); *Aktins v Virginia* 536 US 304 (2002).

[7] See also Justice Breyer in *Printz v United States*, 521 US 898, 921 (1997): "Of course, we are interpreting our own Constitution, not those of other nations, and there may be relevant political and structural differences between their systems and our own. (...) But their experience may nevertheless cast an empirical light on the consequences of different solutions to a common legal problem – in this case the problems of reconciling central authority with the need to preserve the liberty-enhancing autonomy of a smaller constituent governmental entity".

As for the counterview, Chief Justice Roberts stated during his confirmation hearings that "(i)n foreign law you can find anything you want. If you don't find it in the decisions of France or Italy, it's in the decisions of Somalia or Japan or Indonesia or wherever",[8] and in one of the decisions Justice Scalia rejected arguments based on foreign experiences because "this Court [...] should not impose foreign moods, fads, or fashions on Americans".[9] In another opinion Justice Scalia rejected the references to UK law made by the majority, indicating the differences between cultures: "It is beyond comprehension why we should look, for that purpose, to a country that has developed, in the centuries since the Revolutionary War – and with increasing speed since the United Kingdom's recent submission to the jurisprudence of European courts dominated by continental jurists – a legal, political, and social culture quite different from our own".[10]

The US debate about this normative issue has been very intense.[11] However, an article by Zaring[12] appears to be the only study that has dealt with the empirical question of how often US courts actually make use of foreign decisions. Zaring reports citations of federal courts to selected foreign high courts from 1945 to 2005. The most popular foreign courts are from Canada and Western Europe, but, overall, he finds that the use of foreign decisions is rare and more or less unchanged across time. Moreover, the controversial references to foreign courts in constitutional issues have mainly been restricted to questions of criminal law and procedure.

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[8] See http://transcripts.cnn.com/TRANSCRIPTS/0509/13/se.04.html

[9] *Lawrence v Texas*, 123 S Ct 2472, 2495 (2003) (Scalia J).

[10] *Roper v Simmons*, 125 S Ct. 1183, 1227 (2005) (Scalia J).

[11] See, for example, Donald E. Childress III, *Note, Using Comparative Constitutional Law to Resolve Foreign Questions*, 53 Duke L J 193 (2003); Ernesto J. Sanchez, *A Case Against Judicial Internationalism*, 38 Conn L Rev 185 (2005); John O. McGinnis, *Foreign to Our Constitution*,100 Northwestern Univ L Rev 303 (2006); Osmar J. Benvenuto, *Reevaluating the Debate Surrounding the Supreme Court's Use of Foreign Precedent*, 38 Fordham L Rev 2596 (2006).

[12] David Zaring, *The Use of Foreign Decisions by Federal Courts: An Empirical Analysis*, 3 J Empirical Legal Studies 297 (2006).

2. The Discussion in Europe

In Europe, legal scholars seem to view the legitimacy of cross-citations more positively,[13] but there are critical voices as well. Here too, judicial comparativism has been challenged since it may circumvent national sovereignty and democratic controls, since it may disregard the context of foreign legal decisions, and since it may invite cherry picking.[14]

A number of books and articles claim that in Europe it is relatively common to refer to the case law of other countries' courts, but these are not based on comprehensive empirical surveys. Baudenbacher states that due to its common legal tradition, continental European courts frequently cite each other, and by way of support provides examples for Germany, Austria and Switzerland.[15] Lord Bingham explains how he and his fellow judges of the House of Lords (now Supreme Court of the UK) have considered foreign precedents from other common law jurisdictions but occasionally from further afield as well.[16] References to cases with foreign citations are provided by Andenas and Fairgrieve for England, France and the US,[17] Canivet and colleagues for Austria, France, Germany, the Netherlands and Spain,[18] and Mak for the United

[13] See the references in Antoine M. Hol, *Internationalisation and Legitmacy of Decisions by the Highest Courts*, in Sam Muller and Marc Loth eds., *Highest Courts and the Internationalisation of Law: Challenges and Changes* 77 (Hague Academic Press 2009).

[14] Pierre Legrand, *Comparative Legal Studies and the Matter of Authenticity*, 1 J Comp L 365, 419 (2006); Christopher McCrudden, *Judicial Comparativism and Human Rights* in Esin Örücü and David Nelken eds., *Comparative Law: A Handbook* 371, 387-89 (Oxford, Hart Publishing 2007).

[15] Carl Baudenbacher, *Judicial Globalization: New Development or Old Wine in New Bottles?*, 38 Texas Intl L J 505 (2003).

[16] Lord Bingham of Cornhill, *Widening Horizons: The Influence of Comparative Law and International Law on Domestic Law* (Cambridge 2010). The most prominent recent case was *Fairchild v Glenhaven Funeral Services Ltd* [2002] 3 WLR 89.

[17] Mads Andenas and Duncan Fairgrieve, *There is A World Elsewhere — Lord Bingham and Comparative Law*, in Mads Andenas and Duncan Fairgrieve eds., *Tom Bingham and the Transformation of the Law: A Liber Amicorum* 831 (Oxford 2009).

Kingdom and the Netherlands (also referring to her interviews of supreme court judges)[19]. Smorto provides an overview of the use of foreign law by the Italian highest courts, but points out that foreign decisions may not always be discussed openly, even when they were relied on.[20] Some of these publications also give some clues on which factors may determine why a court cites, or does not cite, a particular foreign court.[21] Since two of the authors are also judges, they deserve special attention. According to Baudenbacher, the President of the Court of Justice of the European Free Trade Association (EFTA):

> "But even if a court is able to assess the law in action in a foreign jurisdiction, it may still prove difficult to understand the social realities and the values as well as the spirit of the foreign law. Geography, climate, the concept of government, the litigiousness of individuals and economic operators, are other non-legal factors of a legal culture that are to be taken into account".[22]

And according to Canivet, a judge at the French Constitutional Council and the former president of the Cour de Cassation:

> "The more the systems differ and rest upon civilizations with social and philosophical values far apart, the more difficult the question of comparability becomes (…). Thus when the comparisons demonstrate the absence of unanimity, one should concentrate

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[18] Guy Canivet, Mads Andenas and Duncan Fairgrieve eds., *Comparative Law Before the Courts* (London, BIICL 2004). See also Guy Canivet, *The Practice of Comparative Law by the Supreme Courts: Brief Reflections on the Dialogue Between the Judges in French and European Experience*, 80 Tulane L Rev1377 (2006) (for France).

[19] Elaine Mak, *Why Do Dutch and UK Judges Cite Foreign Law?* 70 Cambridge L J 420 (2011).

[20] Guido Smorto, L'uso giurisprudenziale della comparazione, *Europa e diritto privato,* 223, 224-228 (2010).

[21] In addition see Flanagan and Ahern, who conducted a survey on this issue, though limited to judges of Common Law countries. Brian Flanagan and Sinead Ahern, *Judicial Decision-Making and Transnational Law: A Survey of Common-Law Supreme Court Judges*, 60 Intl Comp L Q 1 (2011).

[22] Baudenbacher, 38 Texas Intl L J at 524 (cited in note 15)

particularly on systems belonging to the same legal family or, alternatively, on deepening one's study of the major legal systems".[23]

Markesinis and Fedtke have discussed judicial recourse to foreign law in a number of books and articles.[24] In their main work[25] they provide illustrations from Italy, France, Germany, Canada, and South Africa. They also categorize cross citations according to the judges' presumed motivation, such as the existence of a gap or ambiguity in the local law, the presumed necessity of a harmonized response to a particular legal issue, higher legitimacy in the face of "locally expressed fears" or due to evidence that a proposed solution has worked in other systems", or when the interpreted law has an international or foreign source. As for the preference of judges to cite particular jurisdictions they refer to linguistic abilities but also emphasize the relevance of the judge's wider culture and background.[26]

The most ambitious project so far has been a collaborative work done for the XIVth International Congress of Comparative Law 1997. The resulting book contains a general report and national reports on Australia, Canada, the EU, France, Germany, Greece, Iceland, Israel, Japan, Luxembourg, Netherlands, the UK, and the US. The general report by Drobnig makes a distinction between citations in terms of necessary comparison, legal rules with an international

[23] Canivet, 80 Tulane L Rev at 1396 (cited in note 18). See also the quote by Canivet in Andenas and Fairgrieve, *There is A World Elsewhere* at 844 (cited in note 17): "Citizens and judges of States which share more or less similar cultures and enjoy an identical level of economic development are less and less prone to accept that situations which raise the same issues of fact will yield different results because of the difference in the rules of law to be applied."

[24] Sir Basil Markesinis, *Judicial Mentality: Mental Disposition or Outlook as a Factor. Impeding Recourse to Foreign Law*, 80 Tulane L Rev 1325 (2006); Sir Basil Markesinis, and Jörg Fedtke, *The Judge as Comparatist*, 80 Tulane Law Rev 11 (2005); Sir Basil Markesinis and Jörg Fedtke, *Engaging with Foreign Law* (Oxford, Hart Publishing 2009); Sir Basil Markesinis and Jörg Fedtke eds., *Judicial Recourse to Foreign Law* (London, UCL Press 2006).

[25] Markesinis and Fedtke, *Judicial Recourse to Foreign Law* (cited in note 24).

[26] Markesinis and Fedtke, 80 Tulane Law Rev at 17 (cited in note 24); Markesinis, 80 Tulane L Rev at 1361 (cited in note 24).

element, and legal rules of a purely domestic character.[27] The overall result is that most countries are relatively open towards foreign influences. However, only the country report on the UK provides actual quantitative data. In this chapter Örücü explains that she searched all decisions of the All England Law Reports published in 1972, 1982 and 1992 and that she found between 25 and 29 citations of foreign courts but only between 3 to 7 of them to continental jurisdictions.[28] The German chapter does not present quantitative data but makes reference to some countings in the previous literature.[29] However, these studies, as well as a subsequent study by Kötz,[30] are limited in their scope since they only consider the small number of decisions published in the official court reports.

Finally, one of the authors of this article has analyzed citation patterns of the German Federal Supreme Court and of the Court of Appeal of England and Wales and examined how many decisions published in the main law reports of these two courts between 1984 and 2007 have cited foreign higher courts from other English- and German-speaking countries. It was found that on average the Court of Appeal cites other common law jurisdictions in about 16% of its decisions. The other categories tend to remain under 1%, though recently there has been a slight increase of German citations to the highest Austrian and Swiss courts.[31]

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[27] Ulrich Drobnig, *The Use of Comparative Law by Courts*, in Ulrich Drobnig and Sjef Van Erp eds., *The Use of Comparative Law by Courts* 3 (London, Kluwer 1999).

[28] Esin Örücü, *The Use of Foreign Law in British Courts*, in Ulrich Drobnig and Sjef Van Erp eds., *The Use of Comparative Law by Courts* 253 (London, Kluwer 1999).

[29] Ulrich Drobnig, *The Use of Foreign Law by German* Courts, in Ulrich Drobnig and Sjef Van Erp eds., *The Use of Comparative Law by Courts* 127 (London, Kluwer 1999) with references to Jörg Manfred Mössner, *Rechtsvergleichung und Verfassungsrechtsprechung*, 99 Archiv des öffentlichen Rechts 193 (1974) and Ulrich Drobnig, *Rechtsvergleichung in der deutschen Rechtsprechung*, 50 Rabels Zeitschrift für ausländisches und internationales Privatrecht 610 (1986).

[30] Hein Kötz, *Der Bundesgerichtshof und die Rechtsvergleichung*, in Festgabe 50 Jahre Bundesgerichtshof, Volume II, 835 (Munich, CH Beck 2000).

[31] Mathias M. Siems, *Citation Patterns of the German Federal Supreme Court and of the Court of Appeal of England and Wales*, 21 King's L J 152 (2010).

B. Research Questions

The literature review illustrates the limitations of our knowledge about cross-citations of supreme courts in Europe. It is not yet clear whether these citations are really frequent, or whether academics tend to be overexcited about a few cases. Moreover, it is essential to know whether in Europe cross-citations are mainly a side-effect of cases involving EU or international law, or whether courts feel also inclined to look abroad in other cases. These two questions will be addressed in our descriptive statistics of cross-citations between ten supreme courts in Europe.[32] With respect to the reasons to cite foreign cases, we will follow a modified version of Drobnig's distinction.[33]

The main objective of our empirical analysis, however, is to find out why a particular court may feel more inclined to cite a court from one country but not from another one. The previous studies make frequent references to shared legal traditions. This is no surprise. Traditional comparatists have long classified legal systems into those deriving from the English "common law" on the one hand, and "civil law", which is said to be derived from Roman law, on the other. The second group is often subdivided into a French, a German, and a Scandinavian subgroup.[34] The idea of legal traditions has also become popular in the comparative law and economics literature during the last two decades. Following the pioneering work of a group of scholars known as LLSV, economists have empirically traced back various economic and social outcomes to the classification of countries to those four groups.[35]

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[32] See III.C, below.

[33] Drobnig, *The Use of Foreign Law by Courts* at 3-21 (cited in note 27).

[34] Konrad Zweigert and Hein Kötz, *Introduction to Comparative Law* (Oxford: Clarendon Press 3rd ed 1998). See also Mathias Siems, *Comparative Law* ch. 4 (Cambridge 2014, forthcoming).

[35] For a recent overview see Rafael La Porta, Florencio Lopez-de-Silanes and Andrei Shleifer, *The Economic Consequences of Legal Origins*, 46 J Econ Literature 285 (2008). The first main paper was

However, it is not completely clear whether these purported consequences can directly be traced to differences in the legal system, or rather other aspects of social control that were transplanted throughout the world by conquerors and colonists. Furthermore, it is an enigma why they seem to persist in spite of very different social and economic circumstances to which different countries are subject.[36] One possibility is that senior judges are relatively slow to adapt to developments going on elsewhere in society, given that they typically received their education several decades before being promoted to the respective supreme court. Spamann suggests that legal ideas continue to diffuse from former colonial powers to former colonies through channels such as development aid or student migration, which may play a role in the continued significance of purported legal origins.[37] These factors are arguably less relevant in developed Europe, but there may be others that tie origins groups together. While Spamann focuses primarily on citations in treatises, citations between supreme courts might provide such a channel of diffusion between countries belonging to the same "legal origins" group, given that solutions judges have found in a similar legal system are likely to be more amenable to the recipient systems than others. Judges might also find it easier to understand these decisions, given similarities in judicial style and legal education.

Of course, as also indicated in some of the previous research (A, above), there are many other similarities between countries that can also play a role. Despite globalization, different languages clearly still matter, for instance, for the way how international businesses invest in foreign

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Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer and Robert Vishny, *Law and Finance*, 106 J Pol Econ 1113 (1998).

[36] John Armour, Simon Deakin, Priya Lele and Mathias Siems, *How Legal Rules Evolve: Evidence from a Cross-Country Comparison of Shareholder, Creditor and Worker Protection*, 57 Am J Comp L 579 (2009).

[37] Holger Spamann, *Contemporary Legal Transplants – Legal Families and the Diffusion of (Corporate) Law*, BYU L Rev 1813 (2009).

markets.[38] Language is also a likely explanatory factor for cross-fertilization of legal ideas since judges will only cite cases they can read and understand.[39] Furthermore, we can speculate about the role of cultural, political and geographic proximity. It is possible that a citation from a culturally, politically and geographically close country is likely to be more valuable, since an opinion will typically be more acceptable to the population and legal profession of the citing country if it is in line with its values.[40]

Accordingly, the inferential statistics of this article have the aim to test the hypothesis whether similarities and differences in terms of legal traditions, language, culture, political economy or geography matter for cross-citations, and, if yes, which of these factors may be regarded as the core driving force. In addition, we consider indicators related to the characteristics of the cited country, such as population and GNP.[41] Relevant factors of the citing countries are controlled by way of dummy variables.

III. DATA ON CROSS-CITATIONS

A. Population

Table 1 presents the list of countries and courts that we have examined, the databases that we have used, and the subject matter jurisdiction of the ten supreme courts. It is also indicated how many decisions the supreme courts have published between 2000 and 2007 and how this translates into the number of decisions per 1,000 inhabitants.

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[38] Denice E. Welch, Lawrence S. Welch and Rebecca Marschan-Piekkari, *The Persistent Impact of Language on Global Operations*, 19 Prometheus 193 (2001).

[39] Siems, 52 McGill L J at 72-73 (cited in note 3).

[40] For details see IV.A.4, below.

[41] See IV.A.1, below.

[Table 1 about here]

1. Choice of Countries

The main aim of our research is to identify whether there are differences in the cross-citations between supreme courts in Europe. We deliberately did not include any jurisdictions within the United States or former more recent colonies of European countries. The inclusion of non-European countries could be a valuable in studies of post-colonial interaction between legal systems, whereas our research question is how strongly integrated European legal systems are with each other, and whether some are more integrated than others. Since we could not cover all European countries, we had to choose a sample of countries. First, our choice had to reflect the claim that there may be differences between English, German and French legal origin countries.[42] We have therefore included two English legal origin countries (England [and Wales][43] and Ireland), three German legal origin countries (Germany, Austria, Switzerland), four French legal origin countries (France, Belgium, Italy, and Spain) plus the Netherlands, which has been influenced by both French and German law in the 19th and 20th century.[44]

Secondly, an alternative explanation would be that it is not primarily legal origins but language skills that determine the quantity of cross-citations. It may not be easy to test this hypothesis because the categories of English-speaking countries, countries with other Germanic languages and countries with Romance ones are similar to the legal origin categories. However, they are not

[42] See II.B, above.

[43] In the following the term "England" is always to be read as referring to "England and Wales".

[44] See IV.A.3, below.

identical. Belgium and Switzerland are interesting cases since we can distinguish between the different language groups. And it may also matter whether two countries really have a common language (such as English in the UK and Ireland) or just a similar language (such as German and Dutch, or Italian and Spanish).

Thirdly, the size of a country is likely to influence cross-citations: smaller countries may often consider the jurisprudence of their larger neighboring countries but it is less likely that the larger country returns the favor. In our sample we have therefore five of the larger European countries (Germany, France, Italy, Spain, England) and five smaller ones (Austria, Belgium, Ireland, Netherlands, Switzerland).

Finally, our choice of countries was influenced by pragmatic considerations. Since we aimed to consider the full population of the supreme-court decisions from 2000 to 2007, we had to choose countries where we could get access to such a database (even if this was not possible in all cases[45]). The omission of the supreme courts of the Eastern European countries seems justifiable, given that their legal systems underwent considerable change during the past 20 years, while all of the countries in our sample have had developed "Western" legal systems for many decades, which therefore had time to mature. We also excluded the Nordic countries since these legal systems can be regarded as being part of a separate legal family that is different both from the common law and the other Continental European ones.[46] The inclusion of Switzerland as the only non-EU country could be a reason to criticize our choice. However, we believe that its location at the crossroads of different languages groups and legal families makes it a particularly interesting test case. Someone not familiar with European legal systems might suspect that Swiss law must

[45] See notes to Table 1, above, for the Dutch Hoge Raad.

[46] Zweigert and Kötz, *Introduction to Comparative Law* at 276-285 (cited in note 34).

be inherently different because the country is not required to comply with EU law. However, our survey focuses on the core judicial areas of civil law and criminal law, where the influence of EU law is comparatively small. Furthermore, Switzerland often voluntarily adopts EU-compliant laws (so-called "autonomer Nachvollzug" or autonomous adaptation[47]).

2. Choice of Courts

This article is interested in the main courts of last resort in matters of civil and criminal law. In the civil law jurisdictions it was relatively straight-forward to identify these courts (see Table 1). Two clarifications are, however, necessary. On the one hand, we did not consider the constitutional courts as the main supreme courts in these matters. Although human rights can have an impact on civil and criminal proceedings, in normal cases these matters will not be decided by the constitutional courts.[48] On the other hand, the supreme courts identified in Table 1 may also be competent for matters other than civil and criminal law.[49]

The English equivalent to the supreme courts of the Civil Law countries is the Court of Appeal of England (and Wales), which is responsible for appeals in civil and criminal matters. Although these matters may then be appealed to the Supreme Court of the United Kingdom (until October 2009: the Appellate Committee of the House of Lords), this does not transform the Supreme

[47] See, for example, Francesco Maiani, *Legal Europeanization as Legal Transformation: Some Insights from Swiss Outer Europe* (2008) Maastricht European Private Law Institute Working Paper No. 2011/03, available at http://cadmus.eui.eu/handle/1814/9017.

[48] Other than the United States, most European countries have separate court systems for administrative law. Administrative courts decide about appeals against decisions of regulatory authorities. Neither the administrative courts nor the ordinary courts can review laws for the constitutionality. Under the "Austrian system" developed by Hans Kelsen for the Austrian constitution of 1920 and adopted across the Continent after World War II, there is a separate constitutional court to which regular courts can submit constitutional questions and to which individuals can appeal under certain circumstances. See Mark Tushnet, *Comparative Constitutional Law* in Mathias Reimann and Reinhard Zimmermann eds., *The Oxford Handbook of Comparative Law* 1225, 1244-1246 (Oxford 2006).

[49] How we dealt with this problem will be explained in section 3, below.

Court to the main appeal court in matters of civil and criminal law. Only in rare cases will the UK Supreme Court decide about these issues. Thus, say, comparing UK and German courts, it is clear that the UK Supreme Court is more akin to the German Federal Constitutional Court than to the German Federal Supreme Court. This can also be illustrated by the number of judges and decisions of these two types of courts: the constitutional courts and the UK Supreme Court have a relatively small number of judges (typically between 10 and 20) and they may deliver less than 100 judgments per year,[50] whereas the main supreme courts in matters of civil and criminal law typically have more than 40 judges,[51] deciding several hundreds (or even thousands) of cases per year (see Table 1).

A similar reasoning applies to the highest courts of the Republic of Ireland. The Supreme Court of Ireland is the equivalent to the UK Supreme Court, with only nine judges and less than 100 judgments per year,[52] whereas the High Court of Ireland is similar to the Court of Appeal of England and Wales, and thus also similar to the supreme courts of Civil Law countries. Two caveats are, however, necessary: on the one hand, the High Court of Ireland is the court of first instance for issues such as defamation jury trials and severe crimes.[53] On the other hand, it does not decide about appeals in matters of criminal law (which is the jurisdiction of the Court of

[50] See http://www.bailii.org/uk/cases/UKHL/2007/.

[51] For instance, in the UK 44 judges (see http://www.justice.gov.uk/courts/rcj-rolls-building/court-of-appeal/civil-division/questions-and-answers), in the Netherlands 38 judges (http://www.rechtspraak.nl/ORGANISATIE/HOGE-RAAD/OVERDEHOGERAAD/ORGANISATIE/Pages/Raad.aspx), in Austria 58 judges (see http://www.ogh.gv.at/ogh/index.php?nav=8), and in Germany more than 100 judges (http://www.bundesgerichtshof.de/DE/Richter/BesetzungSenate/besetzungSenate.html) (all data from May 2013).

[52] See http://www.supremecourt.ie/supremecourt/sclibrary3.nsf/pagecurrent/19FE243745DF1D0880257315005A41E2?opendocument&l=en.

[53] In the latter case the High Court is called Central Criminal Court.

Criminal Appeal). Yet, this deviation from the usual powers of a supreme court does not have a severe impact on our data. Since the circumstances in which the High Court of Ireland decides as a court of first instance typically do not lead to a written judgment, these cases do not appear in the number of decisions reported in Table 1 and analyzed in this article.[54] Moreover, it makes little difference that we did not consider the Court of Criminal Appeal since it only delivers very few judgments per year.[55]

3. Subject matter jurisdiction

Table 1 also summarizes the subject matter jurisdiction of each of the ten courts. Three different types of supreme courts can be distinguished.[56] First, some of the supreme courts decide about (almost) all areas of law. This is most clearly the case for the Court of Appeal of England and Wales.[57] Similarly, the High Court of Ireland, the Swiss *Bundesgericht/Tribunal fédéral/Tribunale federale*, the Italian *Corte di Cassazione* and the Spanish *Tribunal Supremo* have a very wide range of powers, though there are specialized courts for criminal appeals in Ireland (see 2, above), for insurance matters in Switzerland (the *Eidgenössische*

[54] This can be seen by comparing these figures with the total number of proceedings. For instance, Bailii (http://www.bailii.org/ie/cases/IEHC/) reports 451 decisions for 2005, whereas http://highcourtsearch.courts.ie/hcslive/terms_conditions.processAction reports 10,321 listed cases (categories: 5802 in P; 2049 in S; 1064 in JR; 708 in R; 422 in CA; 101 in MCA; 70 in EXT; 54 in IA; 41 in FJ; 5 in PAP; 4 in FTE and 1 in PIR), very few of which are likely to carry a written judgment.

[55] For instance, in total 30 in 2007; see http://www.bailii.org/ie/cases/IECCA/2007/.

[56] Similar Jos Blank, Martin van der Ende, Bart van Hulst and Rob Jagtenberg, *Benchmarking in an International Perspective: An International Comparison of the Mechanisms and Performance of the Judiciary System* at 24 (2004), available at http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/Benchmarking.pdf.

[57] This is not excluded by the Tribunal Service, established in 2006 (see http://www.justice.gov.uk/about/hmcts/tribunals), since these decisions can be appealed to the Court of Appeal on a point of law.

Versicherungsgericht [until 2007]),[58] and for constitutional matters in Italy and Spain (the *Corte costituzionale* and the *Tribunal Constitucional*).

Second, the supreme courts of Austria, Belgium, France and the Netherlands also have relatively wide powers; however, at least administrative law is excluded. Again, the best way to describe this is by identifying the additional supreme courts of these jurisdictions. All of these countries have specialized appeal courts for administrative matters (*Verwaltungsgerichtshof* in Austria, *Conseil d'État/Raad van State* in Belgium, *Conseil d'État* in France, and *Afdeling bestuursrechtspraak van de Raad van State*, *Centrale Raad van Beroep* and *College van Beroep voor het Bedrijfsleven* in the Netherlands). Austria, Belgium and France (but not the Netherlands) also have a constitutional court (*Verfassungsgerichtshof* in Austria; *Cour constitutionnelle/Grondwettelijk Hof* in Belgium and *Conseil Constitutionnel* in France).

Third, the German *Bundesgerichtshof* is the highest court in matters of civil and criminal law, which also includes civil and criminal procedure. In contrast to the other nine countries, Germany has, however, five special supreme courts for constitutional matters (*Bundesverfassungsgericht*), administrative law (*Bundesverwaltungsgericht*), employment and labor law (*Bundesarbeitsgericht*), social security law (*Bundessozialgericht*), and tax law (*Bundesfinanzhof*).[59]

These differences in subject matter jurisdiction have to be taken into account in our statistical analysis of cross-citations.[60] Since we have identified the precise area of law of each decision that cites one of the other supreme courts, we could limit our analysis to cross-citations in these areas of law for which all of the ten courts are competent. Thus, our statistics will deal with cases of

[58] To avoid a distortion of the data we have also not included decisions on insurance matters for 2007.

[59] See Art. 95 of the German Basic Law (*Grundgesetz*).

[60] See C and IV, below.

civil law (including commercial law), criminal law and the corresponding procedural rules, but not, for example, administrative and labor law.

4. Total number of decisions

Table 1 shows that not only the absolute number of cases but also the decisions per capita are very disparate in the ten countries of this study. These differences are not easy to explain. Partly, the reason may be variations in the subject matter jurisdiction of the supreme courts. For instance, the broad scope of powers of the supreme courts of Switzerland, Italy and Spain may be reflected in the fact that they decide ten times more decisions per capita than the German Supreme Court (see Table 1).[61]

However, many further reasons may also be decisive for the number of supreme court decisions in a particular country. For instance, one could compare the appeal requirements and procedures of the different supreme courts: is there a special admission procedure for appeal (and if yes, is the appeal allowed by the lower court or the supreme court itself)? Are appeals to the supreme court possible for small claims? How expensive is a normal appeal in terms of court and lawyer fees? Which issues can be re-examined in an appeal? Are appeals decided quickly and reliably? How often are appeals successful? How are appeal decisions made: are there written interlocutory rulings, for instance, on the admission of the appeal (and if yes, are such rulings published in the court's database)? Do all judgments have to be delivered in writing, and are abbreviated decisions allowed? Is it possible (and common) that parties waive their right to a written judgments, or that they settle claims in the appeal stage?

[61] In the Swiss database one can also search for the decisions in matters of civil and criminal law: these are 10,266 decisions for 2000-2007, which reduces the decisions per 1,000 persons from 3,70 to 1,38.

The quantity of supreme court decisions also depends on the number of decisions of the lower courts. Here too similar factors play a role, such as the admissibility of an action, court and lawyer fees, the speediness of trials, and the possibility of a settlement, as well as the availability of legal aid and class actions.[62] Moreover, a variety of circumstances are decisive for the number of trials in the first place: is the society harmonious or individualistic? Is it common to solve conflicts by arbitration, mediation, or other informal forms of dispute resolution? [63] Is there a high level of crime in the society? Is the country an influential business centre? And, importantly, how does the substantive law affect the number of trials: for example, can parties use self-help to enforce contracts? Does the law provide many protections to the weaker party of a contract (consumer, employee, tenant etc.)? Is there a strict criminal and tort law? Is there a strong protection of property rights etc.?

It would be the topic of a separate empirical project to examine all of these factors in detail in order to explain the differences between the quantities of supreme court decisions per capita. Presumably, this would lead to a distinction between different legal origins. It is usually said that in England court and lawyer fees are higher than in continental Europe.[64] Moreover, English law offers less protection to the weaker party of a contract, for instance employees, than most

[62] For empirical data on these issues see European Commission for the Efficiency of Justice (CEPEJ), *European judicial systems, Edition 2012* (Strasbourg, Council of Europe Publishing 2012).

[63] See also Erhard Blankenburg, *Civil Litigation Rates as Indicators for Legal Culture*, in David Nelken ed., *Comparing Legal Cultures* 41 (Aldershot, Dartmouth 1997) (summarizing his comparative research on differences between litigation rates in the Netherlands and Germany).

[64] Zweigert and Kötz, *Introduction to Comparative Law* at 206 (cited in note 34). But see also Christopher Hodges, Stefan Vogenauer and Magdalena Tulibacka, *The Oxford Study on Costs and Funding of Civil Litigation*, in Christopher Hodges, Stefan Vogenauer and Magdalena Tulibacka eds., *The Costs and Funding of Civil Litigation* 3, 69 (Oxford, Hart Publishing 2010) ("The highest laywers' fees can be observed in Australia, England and Wales, and Denmark.").

continental European countries.[65] It may also matter that in France judgments tend to be very short, with the result that more appeals may be allowed than in the English-speaking world.[66] It is therefore plausible that, according to Table 1, the supreme courts of the two Common Law countries of our study (England and Ireland) deliver considerably less decisions per capita than the four French Civil Law countries (France, Belgium, Italy and Spain).[67]

B. Search methodology

In order to locate citations to foreign courts covered by our study, we compiled an extensive list of search terms. Since the goal of the search was to identify all citations, it would not have sufficed to identify the one "correct" translation of the name of the cited court in the language of the citing court. We found that courts use a variety of translations and abbreviations to refer to foreign courts. Thus, we attempted to be as comprehensive as possible in order to avoid missing citations that are relevant to our study and included all citations that seemed linguistically plausible, even if they seemed wrong or inaccurate to us. We also used the name of the court in the original language as a search term in other countries, for instance, *Bundesgerichtshof* for the German Federal Supreme Court. Furthermore, where relevant, we also searched for commonly used abbreviations of the official reports.[68]

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[65] Simon Deakin, Priya Lele and Mathias Siems, *The Evolution of Labour Law: Calibrating and Comparing Regulatory Regimes,* 146 Intl Labor Rev 133 (2007).

[66] John Bell, *Judiciaries within Europe: A Comparative Review* 47, 104, 302 (Cambridge 2006).

[67] In addition one could examine the relationship between the number of decisions and the number of judges on a particular court (see note 51, above). For instance, it is interesting to observe that the German Federal Supreme Court has twice as many judges as its Austrian equivalent but that the number of decisions in the Austrian court is actually higher.

[68] For instance, for the German Federal Supreme Court we have used the following search terms: Bundesgerichtshof, BGH, BGHZ, BGHSt, Federaal Gerechtshof, Federale Gerechtshof, Federale rechter in Duitsland, Duitse Hooggerechtshof, hoogste Duitse rechter, Duitse hoogste rechter, Cour fédérale, Cour fédérale de justice, Cour de justice fédérale de l'Allemagne, Cour de cassation allemande, Cour de cassation de l'Allemagne, corte di cassazione tedesca, corte di cassazione della Germania, corte federale

We conducted full-text searches in databases covering the case law for the period from 2000 to 2007. In all countries, we first looked at the actual decisions. Where they were available, we also included opinions by the reporting judge or the advocate general to account for national divergences in citation style. Given that we included 10 jurisdictions in our search, we searched for citations to 9 foreign courts in each jurisdiction, bringing the total number of permutations to 10 x 9 = 90. As a first step, we selected the databases to use, which are listed in Table 1. In Austria, Belgium, France, Ireland, the Netherlands, Spain and Switzerland we were able to use freely accessible sites provided by the respective court or government, while in Germany, Italy, and the United Kingdom we had to use commercial databases in order to get the full-text functionality that would allow us to search in the text of the opinions.

For France, Belgium and the Netherlands we also included the opinions of the advocate general (*avocat général*) where available. In France, we also looked at the opinions of the reporting judge (*conseiller rapporteur*) where they were available online.[69] The purpose of these documents is to prepare the necessary research and analysis for the court in order to allow it to issue a decision that will take all applicable authorities into consideration. Inclusion of these documents was necessary in order to allow us to provide functional equivalence to other countries. Judicial style varies greatly between them, which has of course a great impact on the findings. While, for example, common law judges or the courts in German-speaking countries often write comparatively long opinions, French decisions tend to be short in written in an idiosyncratic

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suprema, corte suprema federale, corte federale tedesca, corte federale della Germania, Tribunal Supremo de la República Federal Alemania, Tribunal Supremo Federal, Tribunal Supremo de Alemania, German federal supreme court, German supreme court, supreme court of Germany. We also included citations to the court's pre-1945 predecessor, the *Reichsgericht,* in our sample, though these were only very few citations.

[69] A French correspondent told us that it would be possible to obtain hardcopies of all opinions at the courthouse. Identifying cross-citations in tens of thousands of documents would not have been feasible for us.

formulaic style. The legal justification of a decision, including citations, that in other systems would be found in the decisions themselves, will therefore often appear only in the opinions of the reporting judge or advocate general.[70] In other words, only all of these documents together will provide an analysis comparable to the one found, for instance, in an opinion of an English court. This is even the case where a court does not follow the opinion of the advocate general, since in this case the opinion may be regarded as equivalent to a judicial minority opinion.

Other than in Belgium or the Netherlands, where the advocate general's statements are included in the same database as the judicial opinions, in France they are not included in the government-operated Legifrance database.[71] A small selection is available at the *Cour de Cassation*'s website,[72] where we used the Google search function to locate citations. We were therefore unable to provide complete coverage of citations by the highest court of France.

We checked all citations and classified them according to the respective area of law[73] and the reason why foreign courts have been cited: history/jurisdiction, international/EU law, or (pure) comparative law.[74] We excluded false positives. For example, when the German Federal Supreme Court cites an "OGH", it could either be referring to the Austrian Supreme Court, or to the Supreme Court for the British Zone of Occupation in Germany that sat in Cologne from 1948 to 1950.

A special problem arose for the citations from the High Court of Ireland to the Court of Appeal of England and Wales. Unfortunately, these citations cannot be identified by search terms because

[70] See also Bell, *Judiciaries within Europe* at 75 (cited in note 66); Mitchel de S.-O.-l'E Lasser, *Judicial Deliberations: A Comparative Analysis of Judicial Transparency and Legitimacy* 243 (Oxford 2009) ("unofficial discourse").

[71] http://www.legifrance.gouv.fr

[72] http://www.courdecassation.fr

[73] See A.3, above.

[74] See C.1, below.

the High Court often cites the Court of Appeal by using the names of the parties and the journal in which the decision is published, but it does not reveal whether it is really a decision of the Court of Appeal – and not that of another English court. Thus, we had to use a sample of cases. We examined 124 random High Court decisions, checking precisely which UK courts (if any) have been cited. The result (24 citations to the Court of Appeal)[75] could then infer how many of all High Court decisions are likely to have cited the Court of Appeal.

While we reviewed all citations, we included them irrespective of how they are used by the particular court. The type of use also varies greatly between different legal cultures:[76] for example, in English or Irish courts, relevant prior cases are frequently cited and often analyzed in detail, with a careful analysis of the facts in each case, given the doctrine of *stare decisis*. While courts in the German-speaking countries often write lengthy opinions as well, their focus is on doctrinal analysis. Academic writing on issues where the law is not yet settled is often dissected, and courts sometimes give their blessing to a particular academic's theories. Court decisions are also cited frequently; however, the citation usually neglects the particular fact pattern underlying and merely provides a reference to the statement about the law made in the prior decision, similar to how the courts would cite an academic commentator's opinion.[77] Some citations are made "in passing" (such as in the form of "see also…"), where it would not be too unusual to encounter a

[75] Three out of these 24 citations refer to pre-1922 Court of Appeal decisions, i.e. at a time when Ireland was still part of the United Kingdom. We decided to include these citations as well: when an Irish court cites the Court of Appeal today this is the citation of a non-domestic (since non-Irish) institution. In any case, we will also consider to what extent the close relationship between Ireland and England justifies a special treatment. See IV.B.3, below.

[76] Zweigert and Kötz, *Introduction to Comparative Law* at 71-71 (cited in note 34); Siems, 21 King's L J at 161 (cited in note 31).

[77] Zweigert and Kötz, *Introduction to Comparative Law* at 264 (cited in note 34) refer to an "uncritical use of headnotes").

list of several citations without any detailed analysis of any of them.[78] For purposes of our study, we included all citations, regardless how they were ultimately used as a rhetorical point.[79]

In some special cases, there were arguments both in favor and against including the citation in our database: First, courts (particular the English and Irish courts) sometimes cite foreign cases without providing an unambiguous reference to a particular case, or even by referring to the jurisprudence of a particular foreign court in general. We decided to include these citations as long as the reference could be attributed to a particular court, given that they nevertheless illustrate a foreign influence. Second, occasionally a court will cite several foreign decisions, or even several foreign ones in one opinion. We have included such cases in the database for each time for each foreign court that was cited. When one court was cited several times, we sometimes had to make a judgment which of the two cites would be more relevant for categorizing the citation as belonging to a particular field of law. These cases are in fact relatively rare. We found 17 such cases with citations to multiple countries in Austria, and one in Switzerland. Third, in a few cases, citations occur in verbatim quotations from academic articles (i.e. doctrinal scholarship that provides an interpretation of the law). We included these in the database as well, given that they equally demonstrate influence of foreign law. We did the same in cases where the citation occurred in the context of a preliminary reference decision by the ECJ (more on this below in section C.1). Fourth, in some cases the Austrian and Dutch supreme courts use the same

[78] This appears to be particularly common in the German-speaking countries. In his comparative study of the use of academic writing by the courts, Hein Kötz, *Scholarship and the Courts: A Comparative Survey*, in David S. Clark ed., *Comparative and Private International Law: Essays in Honor of John Henry Merryman on his Seventieth Birthday* 194 (Berlin, Duncker & Humblot 1990), observes that many citations are made whose purpose it is "to 'pad' the judgment by having a law clerk, in support of a fairly evident proposition, unearth all the authors who take the same view" Some cross-citations are clearly made for the same purpose, particularly among the numerous citations by the Austrian Supreme Court to the German Federal Supreme Court.

[79] Weighing citations by their significance within the decision would have been theoretically possible, but it would have been very difficult to assign court decisions to the appropriate categories in an objectively.

boilerplate text in decisions addressing similar legal issues. We counted each case separately, since the citing court apparently considered the foreign citation important enough to use it again. Moreover, it would be difficult to draw a line between very similar and identical phrases and sentences.

C. Descriptive statistics

1. Why are foreign courts cited?

We have identified three reasons why foreign courts may be cited (see also Table 2, below): (a) case history and jurisdictional issues; (b) an underlying European or international legal basis; and (c) purely comparative reasons.[80]

Citations of type (a) are the ones a court usually cannot avoid. Such citations are made in two situations. First, a prior decision by a foreign court might be part of the fact pattern that led to the case pending by the citing court. For example, in a custody dispute a foreign court may already have issued a decision; or the court could simply mention that one of the parties had been ordered by a foreign court to take a particular action before the currently pending case arose. Second, a court would have to cite a foreign court if the latter had previously decided about jurisdictional issues in the same case.

Citations of this type are not exactly what we were looking for in this study. To some extent they may illustrate economic and social interaction between two countries, but they have no bearing on a possible transnational dialogue between the courts, or the influence of foreign legal

[80] Following Drobnig, see II, above. For similar classifications see Jan M. Smits, *Comparative Law and Its Influence on National Legal Systems* in: Mathias Reimann and Reinhard Zimmermann eds., *The Oxford Handbook of Comparative Law* 513 (Oxford 2006).; Esin Örücü, *Comparative Law in Practice: The Courts and the Legislator*, in Esin Örücü and David Nelken eds., *Comparative Law: A Handbook* 411 (Oxford, Hart Publishing 2007); Siems, 21 King's L J at 152-171 (cited in note 31).

arguments. The total numbers are therefore reported in Table 2, but we do not include them in our regression analysis.

Citations of type (b) are made when a foreign court had to deal with the same legal source as the citing court, such as an EU directive or an international treaty such as the UN Convention on the Sale of Goods. While in the case of an EU instrument, the ECJ has binding authority on interpretation, Treaty on the Functioning of the European Union, art. 267, it does not in the second case. Foreign courts that had to decide on an issue of the respective piece of international legislation might provide persuasive authority, very much like an opinion about the UCC from one US state might be before another state's courts.

Citations of type (c) are the most interesting ones, because courts are not compelled to make them at all. These kinds of citations are simply made for comparative reasons, without there being an underlying harmonizing legislative instrument.[81] True, there are some cases where laws from one country were enacted in another one without many changes. For example, much of the German commercial and corporate law was introduced in Austria in 1938 with some modifications, and not repealed after 1945.[82] While (West) German legislation in these fields continued to influence Austrian legislation, the laws have diverged in many respects since then, and the Austrian courts were by no means required to follow German precedent. Other than in category (b), there is no international instrument that harmonizes these laws in a common legal framework. Even in special cases like this, we have therefore included citations in category (c). In fact, in our sample

[81] Reasons for this kind of citations may include that the law of the citing state appears to have a gap, or that the court has to address a major social question that has not been addressed within the domestic legal system yet (see for example Canivet, 80 Tulane L Rev at 1391-1395 (cited in note 18)). For instance, in the course of our search we found several cases addressing issues such as "wrongful life" or how to deal with a comatose person. However, quantitatively these cases are only a small minority.

[82] See, for example, Mathias M. Siems, *The Divergence of Austrian and German Commercial Law: What Kind of Commercial Law Do We Need in a Globalised Economy?*, Intl Company and Commercial L Rev 273 (2004).

most Austrian citations to German court decisions are not in the fields where German legislation was adopted at some historical juncture, but in civil law, were comparative citations were completely "unforced." The obvious reason is that the number of civil law decisions is much larger than that in commercial and corporate law.

Table 2 shows that in total we found 1,430 instances in which the supreme court of another country in our sample has been cited. 73% of these citations have been made for purely comparative reasons, 21% can be related to European or international law, and the remaining 6% fall under the category history and jurisdiction.[83] If we limit ourselves to cases on civil law (including commercial law), criminal law and the corresponding procedural rules (see A.3, above), this number drops to 1,098 cross-citations, but the distribution remains fairly similar (77%, 16% and 7%).

[Table 2 about here]

It is also possible to identify differences between the propensities to cite foreign supreme courts. The two courts that are the most activist in terms of foreign citations, the High Court of Ireland and the Austrian Supreme Court, have a very high proportion of comparative citations. These data are driven by citations to the German Federal Supreme Court by the Austrian court, and to

[83] Conflict of laws/private international law citations, which are not too numerous, were classified according to the same categories, depending on whether they resulted from the fact pattern of the case (category a), the interpretation of a European or international harmonizing instrument (b), or for purely comparative reasons helping to interpret national conflict of laws rules (c). An interesting question, which is not the topic of the current paper, is the pleading and proof of foreign law. For the English approach see Richard Fentiman, *Foreign Law in the English Courts: Pleading, Proof and Choice of Law* (Oxford 1998).

the Court of Appeal of England and Wales by the Irish one.[84] Switzerland has the highest numbers of cases in the "history and jurisdiction" category. Most of these cases refer to special problems of immigration law and international criminal procedure, which would not arise for the other nine countries since all of them (but not Switzerland) belong to the EU. England has a high number of citations due to EU or international law, but only very few comparative citations. A possible explanation is that eight of the other nine countries are civil law jurisdictions, and that the Court of Appeal of England only takes decisions from these countries into account if this is "obvious" because of some international or European dimension.

Furthermore, it may be striking that the supreme courts of France, Italy and Spain only cited twenty or less decisions of the other supreme courts. Thus, these courts do not use foreign law as a justification for a judicial decision. However, this does not necessarily mean that in these jurisdictions foreign court decisions are regarded as irrelevant. The low number of citations may reflect differences in citation style between the ten courts (see already B, above).[85] Our study cannot capture when judges do not disclose the origin of their inspiration coming from foreign cases or contacts with their peers abroad. It is also not feasible to get access to all briefs presented to the courts on order to explore such "undercover transplants".[86] Furthermore, there may be other ways in which foreign developments are openly taken into account: for instance, the annual

[84] See also IV.B.3, below.

[85] For a similar point see Marc Forster, *Functions and Practice of Legal Citing: Towards a Uniform International Quotation System*, 23 Intl J L Info 149, 153-157 (1995), who identifies different groups of high courts based on the custom to cite – or not to cite – academic writings. The groups are England, France and Italy (traditionally, no references), the Netherlands and Switzerland (some references), and Germany and Austria (frequent references). For Italy see also art. 118 of the Disposizioni per l'attuazione del codice di procedura civile, which explicitly prohibits any citation of "legal authors" in court decisions.

[86] Jörg Fedtke, *Legal Transplants* in Jan Smits ed., *Elgar Encyclopedia of Comparative Law* 434, 436 (Cheltenham: Edward Elgar 2006).

report of the French *Cour de Cassation* regularly considers developments in other jurisdictions.[87] Thus, in our regression analysis we used dummy variables for the citing courts to take such unobserved differences into account.[88]

2. Which courts are cited most often?

This article is interested in how often the ten supreme courts are cited by the other nine supreme courts. Tables 3 and 4 present the core univariate statistics of these 90 observations. For the purpose of our regression analysis, our dataset was arranged in the form of relationship between two countries, i.e. each observation describes how often a specific court was cited by a specific other court.

Table 4 shows that there are considerable differences in "popularity": the supreme courts of Germany and England were cited thirty times more often than the ones of Spain, Italy and Ireland. However, there is also a lot of variation, as evidenced by the high standard deviations.

[Tables 3 and 4 about here]

In companion papers we provide detailed matrices on the cross-citations between these ten supreme courts.[89] We also visualize the cross-citations with network pictures, and use cluster analysis in order to identify groups of countries. The preliminary result is that Austria and

[87] See, for example, the 2008 Report (available at http://www.courdecassation.fr/IMG/pdf/Cassation_2008.pdf), at 449-463. More generally on the international activities of the Cour de Cassation see http://www.courdecassation.fr/activite_internationale_5/.

[88] See IV.A.5, below.

[89] Gelter and Siems, 8 Utrecht L Rev at 88-99 (cited in note 5); Martin Gelter and Mathias Siems, *Citations to Foreign Law – Illegitimate and Superfluous, or Unavoidable? Evidence from Europe*, Working Paper, forthcoming (2013).

Germany, Belgium and the Netherlands, and England and Ireland are part of the same hierarchical cluster. Switzerland joins Austria and Germany, and France joins Belgium and the Netherlands in the next step. Subsequently, these six countries form a cluster. Italy and Spain are outsiders since they neither cite nor are they cited by the other supreme courts.

For the purposes of the present article, it is sufficient to visualize the cross-citations between supreme courts in a simple hand-made picture (Figure 1). The strength of the lines is determined by the cross-citation in question. The direction of the arrows denotes the influence a legal system has on another one, for instance, the strong arrow from the ENG to IRL means that the High Court of Ireland has often cited the Court of Appeal of England and Wales.

[Figure 1 about here]

3. Analysis

The first main result of this article is that we found 1,430 instances in which our ten courts have cited the supreme courts of the other nine countries. It may be desirable to compare the number of cross-citations to the number of citations made by a particular court in general. However, finding out the number of domestic court decisions (in total or on a per case basis) and in particular citations to other sources would have required an automatic search algorithm which is not the method of data collection employed in our project (see B, above). Moreover, cross-citations are more likely in "hard cases" than in easy ones.[90] Thus, it is submitted that the extent of cross-citations identified in this article is noteworthy: foreign legal thought may exert an influence in the most important cases, from where it trickles down into legal thought in general.

[90] Christian Von Bar, *Comparative Law of Obligations: Methodology and Epistemology* in Mark Van Hoecke ed., *Epistemology and Methodology of Comparative Law* 123, 127 (Oxford, Hart Publishing 2004).

A possible objection from a legal realist perspective could be that cross-citations do not prove a true foreign influence but merely illustrate the sophistication of judges who are able to bolster their own pre-conceived reasoning with foreign sources. In particular, this could be the case when citations of foreign courts are made merely "in passing" (see B, above) without a detailed discussion of the reasoning of the cited court. Given that in published opinions judges speak to the audience they seek to convince, then we have to ask whether cross-citations help to support the authoritativeness of the court's reasoning.

In an experiment Curry and Miller in 2008 found that the participants – undergraduate students – actually disliked the references to foreign law in constitutional questions.[91] Yet, it is submitted that the current situation is a different one since we are interested in less contentious types of cases where the decisions are predominantly written for the members of the respective legal community.[92] Then, the most likely conclusion seems to be that courts make such citations because they are appreciated or even expected by the legal community, given that the local legal culture is open to the legal reasoning of the cited country. Again, this reasons the question why particular courts are cited more often than others. While one possible reason is easier accessibility of its decisions, it could also mean that the cited court's views are considered better persuasive authority than those of others.[93]

Secondly, we found that the majority of cross-citations were made for purely comparative reasons. In light of harmonization efforts of the EU in many fields of law, some observers might

[91] Brett Curry and Banks Miller, *Looking for Law in all the Wrong Places? Foreign Law and Support for the U.S. Supreme Court*, 36 Politics and Policy 1094 (2008). For a different assessment see Katerina Linos, *The Democratic Foundations of Policy Diffusion: How Health, Family, and Employment Laws Spread Across Countries* 36-66 (Oxford 2013).

[92] See also Matthew C. Stephenson, *Legal Realism for Economists*, 23 J Econ Perspectives 191, 202 (2009) (for different audiences).

[93] This point will be explored further in IV.B.4, below.

have expected a larger number of cross-citations driven by EU law. From a policy perspective such interpretation could also lead to the conclusion that further European harmonisation, such as a European Civil Code, may yield unexpected results since it would be applied quite differently across the EU. However, in practice, the Court of Justice of the EU is most likely the primarily channel for the influence of EU law.[94] Since there is a large volume of literature published on EU law, it is also reasonable to believe that if a question of EU law is unclear, judges will prefer using such secondary information which itself is often based on comparative research.

Thirdly, there are clear differences in the number of cross-citations. The supreme courts of Ireland and Austria frequently cite foreign courts (notably England and Germany), but we were also able to identify a sizeable number of foreign citations in Belgium, England, Germany, the Netherlands, and Switzerland. In the next part we examine what can explain why a particular court cites a foreign court from one jurisdiction but not others.

IV. INFERENTIAL STATISTICS

A. Explanatory variables

Judicial openness to foreign influence could be driven by a number of indicators (see II.B, above). The variables we use in our analysis broadly fall into four categories: (a) characteristics of the cited country, such as population or GNP; (b) common languages and language skills; (c) legal origins and legal families; (d) cultural, political and geographic proximity.

[Tables 5 and 6 about here]

[94] For instance, between 2000 and 2007, the European Court of Justice has been cited 1,079 times by the Spanish, 525 times by the German, and 376 times by the Dutch Supreme Courts.

1. Characteristics of the Cited Country

First, it seems plausible that the courts of larger countries are more frequently cited than those of smaller countries. Larger countries generally often exert a dominant cultural influence over others, particularly ones that are culturally relatively similar. The influence is usually unidirectional, or at least asymmetric in favor of the larger country. For example, Canadians often watch US television channels, which are readily available to them as part of the basic cable package, while Americans rarely watch Canadian TV. The same applies to the relationship between Ireland and the UK, Belgium and France, and Austria and Germany.

Similarly, lawyers, judges, and legal scholars in the smaller country in such an asymmetric relationship often are aware of current legal developments in the larger one, while jurists from the larger country remain ignorant about developments in the smaller one. Judges in the smaller country may therefore feel inclined to refer to foreign law if the cite suits their needs. Furthermore, it seems reasonable to believe that new legal problems will first arise in the larger country and therefore reach the respective supreme court first.[95] Our data seem to bear out this intuition very strongly, given that Ireland and Austria, two countries that are the junior partner in such a relationship, are the two countries with clearly the largest number of cross-citations.[96] Thus, one of our explanatory variables is the total population of the cited country in millions.[97]

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[95] While Table 1 shows that the total number of supreme court cases is not necessarily proportionate to the population of the larger country, new legal issues – where cross-citations are likely to happen – are still likely to reach the respective supreme court.

[96] See also section B.3, below.

[97] An alternative measure may be the total number of decisions of the cited countries. However, our data indicate that some of the supreme courts with many decisions (notably, Italy, and Spain; see Table 1, above) have not been cited very often. Indeed, regressions (not reported here) demonstrate that the total number of decisions of the cited court is not a statistically significant variable driving cross-citations.

Second, as in many other econometric studies, we include a variable on the general prosperity of the cited country, namely the natural logarithm of the GNP per capita of the cited country in 1999. A possible explanation for the relevance of this variable is that richer countries have better law-making institutions and are therefore more attractive for other legal systems.

Third, and more specifically, a legal system with relatively little corruption might make the country's legal system appear to be a model that should be emulated. Thus, we also include a composite corruption index, though we are aware that such a composite index is not free of criticism.[98]

Of course, many further reasons may account for the popularity of a particular cited court. For instance, it could be contemplated that the very condensed style of French judgments[99] makes them less useful for foreign courts than the more elaborate German or English ones. Thus, in some of our regressions we will use dummy variables for all cited courts in order to take care of all potential differences between the ten countries and courts.[100]

2. Language variables

First, we use a dummy variable that equals one when the main language of the citing and the cited country are the same one. In order to define what we mean by main language, we used a 20% cutoff. This was particularly relevant for two countries, Belgium and Switzerland. In Belgium, neither Dutch nor French clearly dominates (60% of the population speaks Dutch, 39%

[98] Simeon Djankov, Rafael La Porta Florencio Lopez-de-Silanes and Andrei Shleifer, *Courts*, 118 Q J Econ 453 (2003) [data available at http://scholar.harvard.edu/files/shleifer/files/data_3.zip]. For a critical assessment see Christoph Kern, *Justice Between Simplification and Formalism* 83-4 (Tübingen, Mohr Siebeck 2007).

[99] See III.B, above.

[100] For example, it has been suggested to us that the total number of decisions by a court could influence the number of citations (either positively or negatively). We tried this in a few specifications of our regression model, but the coefficient was so small that this factor appears to be negligible.

speaks French). All cases are available in both languages. Both languages are counted as main languages of Belgium in our analysis.

In Switzerland, German is the majority language, but there are sizable French- and Italian-speaking minorities and a tiny Romansh-speaking one. Our cutoff includes German and French, but does not include Italian, which is spoken by about 7% of the population. Cases of the Swiss *Bundesgericht/Tribunal fédérale* are usually available only in one of the three biggest languages. The classification of French as a main language is justified by the significance of the French language in Swiss legal culture. Legal journals are often bilingual in German and French, and French cases are overrepresented among the cases by the Swiss Federal Tribunal (which is located in the French-speaking city of Lausanne): while French speakers only account for only a little more than 20% of the Swiss population, 34.70% of all cases analysed in this paper are in French.[101] Italian does not play a comparable role: the percentage of cases is almost identical to the percentage of the Italian-speaking population and there is not even an Italian-speaking law faculty in Switzerland.[102] There are no supreme court cases in Romansh.[103]

The second language variable we use is more nuanced and measures the percentage of the population of the citing country that speaks the language of the cited one, either as first language or as a second or third language.[104] While judges enjoy a higher level of education than the

[101] To be precise, 16,019 of the 27,570 Swiss cases (see Table 1, above) are in German, 9,567 in French, and 1,984 in Italian.

[102] The *Università della Svizzera italiana* in Lugano does not have a law faculty.

[103] Switzerland enacted a uniform Code of Civil Procedure only in 2008, which came into force in 2011. Differences in the number of cases that reached the Federal Court may be partly owed to differences between the respective cantonal procedural laws, including the lower number of levels of appeals.

[104] For the nine EU countries of our sample this is based on Eurobarometer, *Europeans and Their Languages* 152-154 (2006) http://ec.europa.eu/public_opinion/archives/ebs/ebs_243_en.pdf. For Switzerland we used the data collected by the Institut für Sprachwissenschaft at the University of Bern, see http://www.isw.unibe.ch/content/forschung/archiv_projekte/sprachkompetenzen/index_ger.html.

average of the population, knowledge of languages in general is likely to correlate with that of judges, for which no data are available. Moreover, even if a particular judge has special language skills, she may be reluctant to cite a decision only available in this language since the acceptability of her legal argumentation depends on being understood by the population of her home country.[105]

Again, we had to make a judgment call how to deal with Belgium and Switzerland. In the Belgian case, we decided to use the higher percentage of people knowing either Dutch or French, since all cases are available in both languages. For a judge deciding whether to read a Belgian decision, it is only necessary to be able to read one of the two languages. By contrast, in Switzerland each decision is available only in one language. A judge seeking to cite a particular decision would therefore need to know that particular language (or have it translated or explained by a speaker of that language). In order to determine what percentage of each other country spoke the fictitious "Swiss" language, we added the percentages of the population speaking French, Italian and German after weighting each of them with the percentage of cases issued in the respective language by the Swiss Federal Tribunal.

3. Shared Legal Traditions

Our third group of control variables relates to shared legal traditions. Following the classification used by most economists in the "law and finance" line of work,[106] our study covers two jurisdictions of the common law group (England and Wales, Ireland), three of the German civil law group (Austria, Germany, Switzerland), and five of the French civil law group (Belgium,

[105] We are grateful to Aurélien Portuese for this observation.

[106] See already II.B, above.

France, Italy, the Netherlands, Spain).[107] Thus, we use a dummy variable on same legal origins to account for intra-group citations.

Modern comparative lawyers are increasingly skeptical of such classifications. Since law is becoming international, transnational, or even global, looking at legal families is seen as less important.[108] Moreover, comparatists emphasize the dynamic nature of legal systems – in the words of Mattei "legal systems never are – they always become".[109] Thus, instead of possibly obsolete legal origins, such an approach would, at best, accept legal families as identified in today's legal systems.

Such a legal family approach has to lead to the change of the classification of the Dutch legal system. Though in the 19th century Dutch law was indeed influenced by the Napoleonic codes, developments of the 20th century have gradually moved it away from France and closer to German law. Examples are the impact of the German occupation on court structures[110] and the divergence between French and Dutch civil law due to the *New Burgerlijk Wetboek*, gradually enacted since 1970. Thus, today, according to Smits "Dutch law is located somewhere between the French and German legal family though in practice it seems to approach the German legal family much more".[111] In the dummy variable on legal families we have therefore changed the classification of the Netherlands from French legal origin to the German legal family.

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[107] See, for example, La Porta et al, 106 J Pol Econ at 1131 (cited in 35).

[108] Siems, 52 McGill L J at 72-73 (cited in note 3).

[109] Ugo Mattei, *Three Patterns of Law: Taxonomy and Change in the World's Legal Systems*, 45 Am J Comp 5, 14 (1997).

[110] See Blankenburg, *Civil Litigation Rates as Indicators for Legal Culture* (cited in note 63).

[111] Jan Smits, *Netherlands* in Jan Smits ed., *Elgar Encyclopedia of Comparative Law* 493 (Cheltenham, Edward Elgar 2006). Similar Markesinis and Fedtke, *Engaging with Foreign Law* at 9 (cited in note 24): "Portugal and the Netherlands are example of legal system that moved away from their Roman and – later – French origins, and have turned towards Germanic notions or created their own (mixed) systems"; also

It could be suggested to make further changes since in the 20th century Italian and Spanish law have also been influenced by German law and legal doctrine. This mixture of French and German traditions is acknowledged by contemporary comparative lawyers. However, the predominant view is still that, with respect to the positive law, the French elements prevail.[112] Conversely, the mere impact of German legal doctrine cannot justify a change in classification since the influence of foreign ideas is something we are trying to explain; thus, it cannot be part of one of our independent variables.

4. Culture, political economy and geography

The fourth group of variables relates to similarities based on culture, politics and geography.[113] First, we expect that cultural proximity matters. We measure the cultural distance between two countries following Schwartz' cultural value study.[114] This study is based on a qualitative survey among similar situated individuals in each particular country and, on the basis of these responses, created indices for various cultural dimensions in which these countries differ.[115] This index is widely used to measure how a certain aspect of a country's culture might affect a certain

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Zweigert and Kötz, *Introduction to Comparative Law* at 102-3 (cited in note 34); Armour et al, 2010 BYU L Rev at 1475 (cited in note 36).

[112] Zweigert and Kötz, *Introduction to Comparative Law* at 104-8 (cited in note 34).

[113] It could also be contemplated to include variables such as net immigration, common voting patterns in the UN or joined treaties, being often used in the network literature, Yet, this could lead to an omitted variable bias since both these variables and cross-citations may depend on factors such as cultural similarities.

[114] Shalom H. Schwartz, *Cultural and Individual Value Correlates of Capitalism: A Comparative Analysis*, 18 Psychological Inquiry 52 (2007). See also Shalom H. Schwartz, *A Theory of Cultural Values and Some Implications for Work*, 48 Applied Psychology: An Intl Rev 23 (1999).

[115] The cultural dimensions are embeddedness, hierarchy, mastery, affective autonomy, intellectual autonomy, egalitarianism, and harmony. A related, but slightly outdated, study is the one by Geert Hofstede, *Culture's Consequences: International Differences in Work-Related Values* (Sage Publications 1980), which uses the criteria power distance, individualism, masculinity, uncertainty avoidance, and long-term orientation. We also tried the Hofstede data, but they did not yield significant results in any regression.

economic or legal outcome, for instance, investor protection and foreign investors' property rights.[116] It is possible that cultural similarities may also make legal citations from these countries appear more similar (and more appropriate in the context of the citing country) than variables taken from a culturally more distant jurisdiction. Since we are interested in cultural differences between countries, we calculated an indicator of the cultural difference for each combination of citing and cited country on the basis of the Schwartz index. For that purpose, we took the absolute value of the difference between the values on each cultural dimension and summed them up to a "distance value" between each pair of countries.[117]

Second, it can be expected that political similarity has a positive impact on the likelihood of cross-citations.[118] The "varieties of capitalism" theory of economic sociology suggests that the coordination of economic activities various across countries along various dimensions.[119] While some countries, such as the US or the UK, are thought to organize economic activity primarily through market transactions on the individual level, Continental European countries are thought to rely to a stronger degree on "collectivist" mechanisms, such as bargaining between organized interest groups (such as industry and trade unions) to distribute the outcomes of productive processes. It is conceivable that countries whose political economies are organized in a similar way also share ties in the legal systems: a legal argument taking from the high court of a country

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[116] Licht et al, 25 Intl Rev L Econ at 229 (cited in note 3); Amnon Lehavi and Amir N. Licht, *BITs and Pieces of Property*, 36 Yale J Intl L 115 (2011).

[117] In an alternative specification, we computed the distance value by raising the distances to the power of five and talking the 5th root of the sum, without any notable change to our results.

[118] A related debate is whether it is feasible to show empirically that judges are influenced by political preferences. For a critical comment of this type of research see Harry Edwards, and Michael A. Livermore, *Pitfalls of Empirical Studies That Attempt to Understand the Factors Affecting Appellate Decisionmaking*, 58 Duke L J 1895 (2009).

[119] For example, in the context of private law, see Katharina Pistor, *Legal Ground Rules in Coordinated and Liberal Market Economies*, in Klaus Hopt et al. eds., *Corporate Governance in Context: Corporations, States, and Markets in Europe, Japan, and the US* 249 (Oxford 2005).

that is similar in that dimension might carry greater weight in a court than one that is picked up elsewhere. We use a variable based on a study by Hall and Gingerich[120], who scale countries between 0 to 1 dependent on whether they prefer "strategic coordination" or "market coordination" in the political economy. The bases for these scores are six variables of institutional measures related to labor regulations and corporate governance. Since we are interested in differences between countries, we have again calculated the absolute value of the difference for each pair of country.

Third, with respect to geography, we used data published by the Centre d'Etudes Prospectives et d'Informations Internationales (CEPII). They calculated various measures of bilateral distances for most countries of the world. Our distance measure is based on the distances between the cities constituting the economic centers of those two countries, weighted by their share in the country's total population.[121] The thinking behind this variable is that, even in today's world, geographical distance may matter because proximity may facilitate personal communication.[122] Even though court decisions from other countries are today often accessed electronically, in the past journals and court reporters from more distant countries may have been less easily available than those from countries nearby. This may matter even for the period of our study, for example, because of a continuing older tradition of looking toward a particular country.

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[120] Peter A. Hall and Daniel W. Gingerich, *Varieties of capitalism and institutional complementarities in the macroeconomy: An empirical analysis*, Max Planck Institute for the Study of Societies Discussion Paper 04/5 Table 2 (2004), available at http://www.mpifg.de/pu/dp_abstracts/dp04-5.asp. See also Peter A. Hall and Daniel W. Gingerich, *Varieties of Capitalism and Institutional Complementarities in the Macroeconomy: An Empirical Analysis*, 39 British J. of Political Science 449 (2009)

[121] See http://www.cepii.fr/anglaisgraph/bdd/distances.htm.

[122] This point is also emphasized by research in economic geography. See, for example, Neil M. Coe, Philip F. Kelly and Henry W. C. Yeung, *Economic Geography: A Contemporary Introduction* (Malden, Blackwell 2007).

5. Dummy variables and correlation matrix

There are other potentially relevant factors that we have not included as separate explanatory variables: we already mentioned the citation style in general, which varies strongly between legal systems and are highly idiosyncratic on the country level, and differences in the jurisdiction between the high courts.[123] Furthermore, the availability of translated versions of foreign decisions or the existence of law clerks and other support staff could increase the probability of making a cross-citation. A larger problem for our study is the possibility that some courts may not be able to cite foreign law (or even anything else beside the applicable codes and statutes) openly, either due to a legal prohibition or to a social constraint. This seems to be the case particularly in France and Italy.[124] Finally, it may matter who the judges of the ten supreme courts are because training, appointment and promotion of judges differ widely between European countries.[125] In the following regressions we use dummy variables to control for these factors of the citing country (with Switzerland as the reference category).

[Table 7 about here]

Table 7 is a correlation matrix showing the correlation between our independent variables. Generally, we do not have any correlations higher than 0.73, which indicates that there are no acute problems of multicollinearity.

[123] See III.A.3, above.

[124] Guido Alpa, *Tradition and Europeanization in Italian Law* 102 (London, British Institute for Comparative Law 2005); Markesinis and Fedtke, 80 Tulane Law Rev at 17 (cited in note 24).

[125] See Bell, *Judiciaries within Europe* at 13-24 (cited in note 66); Carlo Guarnieri and Patrizia Pederzoli, *The Power of Judges: A Comparative Study of Courts and Democracy* 18-44 (Oxford 2001). Conceivably, cross-citations may be driven by individual judges with a particular interest in foreign law. Unfortunately, in most countries, data about judges participating in decisions is not available.

B. Negative binominal regressions

1. Methodological decisions

The following regressions use the absolute numbers of citations of one country to another one as dependent variables (i.e. in total ninety relationships). Other types of regressions are also conceivable but we have decided against reporting them in this article.[126] For instance, one might suggest using the ratio of citations per all cases of a particular court as dependent variable. However, it is not clear to what extent the number of cross-citations is affected by the total number of decisions. Cross-citations typically occur in the most important cases, in which there will be an appeal to the respective supreme court in every country. Thus, the total number of decisions need not affect the number of cross-citations, which is also confirmed by our dataset.[127] Moreover, there are many factors that determine whether courts cite their foreign counterparts at all. Thus, it is preferable to use dummy variables for the citing courts.[128] Another suggestion would be to use a two-stage estimation procedure. Helpman and colleagues use such a method for trade flows since it could predict positive as well as zero trade flows across pairs of countries.[129] Our dataset could be regarded as similar because we have a number of observations with zero citations. However, there is no apparent reason why our zero citations may need to be explained

[126] In the process we ran a number of different regression models (linear and logarithmic OLS, various forms of GLM regression, Tobit, Poisson, Dirifit), which in all cases yielded very similar results. We only report negative binomial regressions because they they are most appropriate to the structure of our data.

[127] In our data, the correlation between the number of cross-citations and the number of decisions is in fact negative (-.1317). The courts with the largest number of reported decisions – France, Italy, and Spain – are among the ones with the smallest number of citations.

[128] See A.5, above.

[129] Elhanan Helpman, Marc Melitz and Yona Rubinstein, *Estimating Trade Flows: Trading Partners and Trading Volumes*, 123 Q J Econ 441 (2008).

differently from the positive citations. Moreover, we will test explicitly whether and to what extent our results would be different without the zero citations.

Our dataset on cross-citations counts how often courts have cited particular foreign supreme courts. Such count data point towards Poisson or negative binomial regression models.[130] In particular, such types of non-linear regressions are necessary when the dependent variable tends to take very low values (or even zeros). This is the case here, as illustrated by Figure 2.

[Figure 2 about here]

Poisson is the default option. However, negative binomial is preferred in cases of "overdispersion", i.e. when the variance is larger than the mean.[131] Deviance and Pearson tests strongly indicate overdispersion, which is why we decided to use negative binomial.[132]

We used standard errors clustered by the citing court throughout all of our reported regressions. Regular standard errors assume that each observation is independent of the others. Clustered standard errors address the possibility that our data are correlated within groups of observations sharing the same citing country.[133]

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[130] For an applied comparison between Semilog, Poisson and negative binomial regressions see Daniel M. Hellerstein, *Using Count Data Models in Travel Cost Analysis with Aggregate Data*, 73 Am J Agricultural Econ 860 (1991).

[131] See, for example, Joesph M. Hilbe, *Negative Binomial Regression* 1 (Cambridge 2007); Rainer Winkelmann, *Econometric Analysis of Count Data* 134 (Berlin, Springer 5th ed 2008); Stefany Coxe, Stephen West, and Leona Aiken, *The Analysis of Count Data: A Gentle Introduction to Poisson Regression and Its Alternatives*, 91 J of Personality Assessment 121, 131-2 (2009).

[132] In model (3) of Table 8 the Pearson chi-square statistic of a negative binomial regression is 1.149, whereas it is 1.922 for a Poisson regression (using clustered standard errors both times). In model (6), it is 1.040 for negative binomial and 1.454 for Poisson. Goodness-of-fit chi^2 tests of these statistics for Poisson are significant at a 0.01% level.

[133] We also tried clustering by the cited country for the most important regressions, with very similar results.

2. Main regression results

The following reports negative binomial regressions with the absolute number of citations of one country to a specific other country as dependent variable. Independent variables are the ones described in the previous part, including as the dummy variables for the citing courts (see A, above).

[Table 8 about here]

Throughout all of these regressions, the number of cross-citations depends positively on the population of the cited country, a low level of corruption, language skill, and negatively on the difference between countries on the coordination index. The logarithmized GNP per capita is never significant, but it is highly correlated with a low level of corruption (see Table 7, above). The shared legal origin is significant only when the two countries sharing the same main language is not included, and vice-versa. The shared legal family dummy and cultural difference seem to reduce each other in significance. Geographical distance is never significant except when cultural difference is not included in the regression (not reported).

Interestingly, language variables can be significant at the same time. Thus, it seems to be the case that, on the one hand, language skills matter but, on the other, a common native language has an additional positive impact on cross-citations. Similarly, regression (7) shows that the shared legal origins and legal family variables may matter independently from each other (they only have a 63% correlation, which is lower than that of corruption and log GNP).

Count data regressions do not lend themselves to intuitive interpretation as easily as OLS models; however, it is possible to say that a coefficient of *x* means that a change in the respective independent variable of 1 will result in a multiplication of the predicted count by e^x.[134]

[Table 9 about here]

In Table 9 we present the interpretation of the coefficients in regressions (3) and (6), using three different ways of analyzing and comparing the regression results. For instance, with respect to the population variable in model 3, the column "change per 1 unit increase" shows that an additional million inhabitants increases the number of citations by 3.82%, the other variables being held constant. The next column follows the same approach but examines the percentage impact of a one standard deviation increase. The final column shows the marginal change at mean. Here, for instance, it can be seen that at the mean an increase in the population of one million increases the number of citations by 0.037 in absolute terms holding the other variables constant.

In detail, Table 9 shows that all of our variables have the right signs: a country benefits from high population and low corruption, and it also matters positively whether countries are close to each other in terms of languages, legal origins and families, and not being different in terms of culture and economic policies. Moreover, Table 9 allows some inferences on which of the explanatory variables matter most. As the values in the column "change per standard deviation" show, the two variables concerning attributes of the cited country, population and corruption, are comparatively influential. With respect to the other variables, it is interesting to see that in the column "change per standard deviation" the language variables clearly outperform legal origins and families,

[134] Winkelmann, *Econometric Analysis of Count Data* 70 (cited in note 131); Coxe et al, 91 J of Personality Assessment at 124 (cited in note 131).

culture and politics. A shared legal origin does not even double the number of citations in regression (3) (increase of 87.52%), and shared legal families are associated with an increase of about 82.10% in regression (6). These figures are dwarfed by the impact of language: in regression (6), a shared national language results in a multiplication of citations by a factor of more than 3 (+207.13%), and on top of that, if 100% of the population of the citing country speaks the language of the cited country, the number of citations is multiplied by a factor of more than 8 (+721.59%). The effect of the percentage value looks even stronger in regression (3) (where the same language dummy is left out) with an increase of more than 2060% for a change from 0% to 100% knowledge of a foreign language with the other variables held constant.

3. Robustness checks

Are these regressions reliable? There are three potential problems. First, other factors related to the citing country may play a role (see already A.1, above). Second, it may be the case that two of the 90 observations dominate the results: Ireland cited England 228 times and Austria cited Germany 447 times, whereas the other observations have only single or at best low double digit numbers. Third, our dataset has a high number of zero citations (see Figure 2). This too may distort our regressions. In particular, it can be shown that our residuals do not have an entirely normal distribution (the tests are not reported).

[Table 10 about here]

Models (8) and (9) in Table 9 are modifications of models (3) and (6) in which dummy variables for the cited courts were added and the two variables pertaining to the citing courts (population and corruption index) were removed. Both sets of variables seem to measure similar factors,

namely the respective reputation of national courts that attracts citations. The effect of the change on the other variables is interesting as far as the effect on legal origins is as almost exactly as strong as the language effect on (8). The other variables retain their respective level of significance, and the changes to the coefficients are small. Interestingly, in regression (9) the knowledge the cited country's language in the citing country, which was highly significant in (6), drops out of statistical significance.[135]

Models (10) and (11) modify models (3) and (6) by dropping the two outliers. Neither the coefficients nor statistical significance changes noticeably. Models (12) and (13) drop all zeros, again with only small effects. In model (12), the shared legal origin, drops out entirely, and in model (13), the same national language drops out (with the percentage language skills variable still remaining strongly significant).[136]

Finally, we used another approach to tackle the potential problem that the strong similarities between Germany and Austria on the one hand, and England and Ireland on the other may dominate our results. In models (14) and (15) we treated both of these jurisdictions as one country each (politically a highly contentious choice), thus reducing the number of observations to 56.[137] The results of model (3) prove to be stable, with all variables retaining statistical significance. The effects of the changes to the model are more pronounced in (15), where culture

[135] When we ran the same regressions with both sets of variables (not reported), some of the cited court dummies were dropped from the regression because of collinerarity, while population and corruption lost their statistical significance in most specifications. This lends support to our conjecture that these variables largely capture a reputational effect. Germany, which attracts both citations, scores highly on both variables, and its cited court dummy is positive and strongly significant when included.

[136] We also attempted a zero-inflated negative binomial regression, which is suggested for cases of excess zeros that do not fit the assumptions of a negative binomial distributions (Hilbe, *Negative Binomial Regression* at 173 (cited in note 131); Winkelmann, *Econometric Analysis of Count Data* 188 (cited in note 131)), but without much success. A Vuong test was not statistically significant, indicating that there was no improvement over the standard model.

[137] The scores for the variables on cultural and coordination indexes were computed by weighing the contributing countries' scores by population.

is no longer significant. By contrast, the same national language and economic coordination actually became stronger predictors than in model (6).

Overall, our robustness checks confirm the picture drawn by the basic regressions. The cited country's population and rank in the corruption index hold up without exceptions, and in every regression at least one of the language variables is significant at the 1% level. Legal origins, legal families, culture, and similarities in economic coordination hold their ground most of the time. Among these variables, coordination matters most consistently, while legal families is comparatively inconsistent, especially when the "special relationships" between Ireland and England on the one hand and Germany and Austria on the other are taken out of the picture.

Nevertheless, it is important not to overstate the significance of the specific results, given the relatively small number of countries and the high likelihood that these variables are not entirely independent from each other (for example, countries with similar languages may have similar cultures because of more frequent interactions, while a similar culture might increase incentives to learn a language).

4. Analysis

In the previous section we undertook regression analysis in order to understand the differences between the cross-citations. We found that the population of the cited country and a low level of corruption, native languages and language skills, legal origins and families, and cultural and political factors all matter for which courts are likely to be cited. GDP per capita and geographical distance turned out to be not significant.[138]

[138] Geographic distance could of course matter indirectly because it might be the reason for language skills.

Our choice of variables point at three possible reasons why cross-citations are made. First, a particular court may attract cites because its decisions are more easily accessible than others. Language is obviously the main proxy for this, and maybe geography to a lesser extent. Second, a court may be cited because its decisions are considered particularly authoritative and therefore helpful for the other courts. The significance of population and (the absence of) corruption may indicate that the reputation of a court alone partly explains why it is the target of cross-citations. Third, inherent similarities between the countries, which are captured by our variables for legal traditions, cultural and political economy traditions, may make a cross-citation support the authoritativeness of a court decision more helpful to the citing judge. The regression analysis shows that all three factors play a role.

Furthermore, a number of interesting details emerged. The variables on population of the cited country and a low level of corruption, native languages and language skills dominate our results. In all of our regressions the first two of these variables and at least one of the language variables have always been statistically significant. As the interpretation of the regressions has shown, these four variables also outperform legal origins and families, culture and politics. In addition, the latter four variables are statistically significant in most but not all of the models.

The relevance of the population of the cited country is not really surprising since even a casual glimpse on our data (see Figure 1, above) shows that most citations go from a smaller to a larger country. With respect to corruption, it likely matters that the highest courts of the two countries that performed poorly in this index (Italy and Spain) are only rarely cited by the other countries. More specifically, it is difficult to say what may drive the importance of this variable. Corruption has an impact on all types of state (and non-state) activities, or it might simply be correlated with a well-functioning judicial and administrative system. Thus, in the present case, factors such as

the quality of the legislature, courts and state-funded universities (in particular its law faculties) may all contribute to the attractiveness of a particular legal system. The corruption index could therefore reflect the reputation of the country's legal system.

It is also interesting to revisit the role of legal origins. Skeptics of legal origins take the view that their alleged relevance is only due to the fact that they are proxies for similarities and differences in terms of language, culture and politics.[139] This cannot be confirmed. As our multivariate regressions show, legal origins often remain statistically significant, even if all the other variables are included. However, legal origins are not as dominant as proponents of law and finance research[140] may have expected. Taken together, language, culture and politics clearly outperform the role of legal origins. In particular, we found that languages surpass the other variables – possible implications of this will be addressed in the concluding section.

V. CONCLUSION

While some US judges and scholars are deeply suspicious of foreign citations, our study has shown that citation of foreign law by supreme courts is not an isolated phenomenon in Europe but happens on a regular basis. This article has provided evidence for the core areas of private law and criminal law in ten European countries for the period from 2000 to 2007. A number of key terms were used in order to search for citations to foreign supreme courts of these ten countries. The first main result is that we found 1,430 instances in which these courts have cited the supreme courts of the other nine countries. Interestingly, the majority of these citations have been

[139] Siems, 52 McGill L J at 72-73 (cited in note 3).

[140] See II.B, above.

made for purely comparative reasons, not in cases not related to questions of EU or international law.

We also undertook regression analysis in order to understand the differences between the cross-citations. Whether such citations take place and in what quantity depend on the particular legal culture and its relationship to others. Austria and Ireland, which stand in an asymmetric relationship with Germany and England respectively, seem to be particularly receptive to foreign influence on their legal systems. But even controlling for these outliers, we have been able to identify that the population of the cited country and a low level of corruption, native languages and language skills, legal origins and families, and cultural and political factors all matter for which courts are likely to be cited. Future research could examine whether this would also hold for other regions of the world, for instance, the Latin American legal systems or the former French and British colonies in Africa.

Do these results have any normative implications? Possibly, if we assume that in an emerging "global community of courts"[141] it is desirable that courts should operate in a market of ideas and pick the best ones that are available. There are of course objections to the desirability of foreign citations.[142] However, these objections are mainly made in the context of constitutional questions which are not the core interest of our study. Moreover, where such a market exists (at least in limited form), it should clearly be optimized by disseminating ideas as widely as possible.

As the interpretation of our regressions shows, knowledge of the language of the cited court appears to be a more important factor driving cross-citations than legal traditions, culture or politics. Thus, as a descriptive result, we can say that judges do not disregard foreign decisions

[141] Slaughter, 44 Harv Intl L J 191-219 (cited in note 5).

[142] See II.A, above.

per se but that it matters whether they are made easily understandable. There are some developments indicating that this may become easier. As part of the Ius Commune series academics translate extracts of major decisions into English,[143] and in 2007 the "Network of the Presidents of the European Supreme Courts created a meta search engine that allows judges to search jurisprudence of selected other European high courts in translated form.[144] Moreover, to facilitate a transnational market of legal ideas, courts themselves may strive to make their decisions available in languages that possible readers understand. Some countries publish translations of their legal codes, but the Estonian and Israeli Supreme Courts have taken a further step by making at least the most important decisions available in English.[145] Courts that want their ideas to spread widely are well-advised to follow these examples.

[143] See http://www.casebooks.eu/. See also Lord Goff in *White v Jones*, 2 AC 207 (1995): "in the present case, thanks to material published in our language by distinguished comparatists, German as well as English, we have direct access to publications which should sufficiently dispel our ignorance of German law and so by comparison illuminate our understanding of our own".

[144] http://www.reseau-presidents.eu/rpcsjue/.

[145] See http://elyon1.court.gov.il/eng/home/index.html and http://www.nc.ee/?id=823.

Tables and Figures (please include in main text, as indicated above)

Table 1: Countries and Courts

Country	*Population 2004*[1]	*Name of Supreme Court*	*Database used*	*Subject Matter Jurisdiction of Court*	*Total Number of Reported Decisions 2000-2007*	*Decisions per 1,000 Inhabitants*
Austria	8,174,762	Oberster Gerichtshof	RIS[2]	Civil law (including employment and social law), criminal law	28,868	3.53
Belgium	10,348,276	Cour de cassation, Hof van Cassatie	Court website[3]	Civil law (including employment, law), criminal law	24,053	2.42
England and Wales	53,057,000	Court of Appeal	Westlaw[4]	All areas of law	25,855	0.49
France	60,424,213	Cour de cassation	Legifrance and court website[5]	Civil law (including employment, law), criminal law	107,396	1.78
Germany	82,424,609	Bundes-gerichtshof	Beck Online[6]	Civil Law (excluding employment and social security law), and Criminal Law	22,950	0.28
Ireland	3,969,558	High Court	Bailii and Court website[7]	All areas of law (but not criminal appeals)	2,357	0.59
Italy	58,057,477	Corte di cassazione, Corte Suprema di Cassazione	De Jure[8]	All areas of law (with the exception of constitutional matters)	196,876	3.39
Nether-lands	16,318,199	Hoge Raad	Court website[9]	Civil (including employment law), criminal and tax law	9,073 [36,020] [10]	0.56 [2,20]
Spain	40,280,780	Tribunal Supremo	Court website[11]	All areas of law (with the exception of constitutional matters)	190,174	4.72

Switzer-land	7,450,867	Bundes-gericht	Court website[(12)]	All areas of law	27,570	3.70

Sources*: (1) CIA Factbook, https://www.cia.gov/library/publications/the-world-factbook/, 2004 data available at http://www.nationmaster.com/graph/peo_pop_cia_fac-people-population-cia-factbook&date=2004. For England and Wales: National Statistics website, available at http://www.ons.gov.uk/ons/taxonomy/index.html?nscl=Population. (2) http://www.ris.bka.gv.at (public law database of the Federal Chancellery). (3) http://jure.juridat.just.fgov.be/?lang=fr. Source for the number of decisions: Rapport Annuel 2007, available at http://justice.belgium.be/fr/ordre_judiciaire/cours_et_tribunaux/cour_de_cassation/documents/rapports_annuels/, at pp. 220-221. (4) http://www.westlaw.co.uk (Law Reports and Official Transcripts).(5) http://www.legifrance.gouv.fr. and http://www.courdecassation.fr/ (for selected opinions of the avocat general).(6) http://www.beck-online.de.(7) http://www.bailii.org/ie/cases/IEHC/ and http://www.courts.ie/Judgments.nsf/advancedsearch?openform&l=en.(8) http://dejure.giuffre.it/ (commercial database used with University of Bologna subscription).(9) http://zoeken.rechtspraak.nl/default.aspx?searchtype=kenmerken&instantie_uz=Hoge%20Raad. This database reports the most important decisions. (10) Number of decisions according to the annual reports; see Jaarverslagen, available at http://www.rechtspraak.nl/Organisatie/Publicaties-En-Brochures/Pages/Jaardocumenten.aspx /. (11) http://www.poderjudicial.es/search/. (12) http://www.bger.ch/index/juridiction/jurisdiction-inherit-template/jurisdiction-recht/jurisdiction-recht-urteile2000.htm and http://www.polyreg.ch/d/informationen/bge.html.*

Table 2: Number of Cross-Citations per Type of Citation

Citing Court	*History & Jurisdiction*	*International & European*	*Pure Comparative*	*Total*
Austria	13 [14]	53 [57]	423 [431]	489 [502]
Belgium	4 [4]	9 [14]	41 [45]	54 [63]
England	8 [9]	29 [51]	8 [9]	45 [69]
France	11 [11]	2 [2]	5 [5]	18 [18]
Germany	5 [5]	16 [16]	25 [25]	46 [46]
Ireland	1 [1]	24 [84]	209 [382]	234 [467]
Italy	5 [5]	2 [11]	5 [5]	12 [21]
Netherlands	10 [14]	23 [47]	67 [73]	100 [134]
Spain	1 [1]	12 [12]	4 [4]	17 [17]
Switzerland	24 [29]	4 [5]	55 [59]	83 [93]
Total	**82 [93]**	**174 [299]**	**842 [1038]**	**1098 [1,430]**

Note: the main figures indicate the cross-citations in the core areas of law studied in this paper, i.e. without constitutional and administrative cases.The figures in brackets include these cases. All the following tables are based on the former figures.

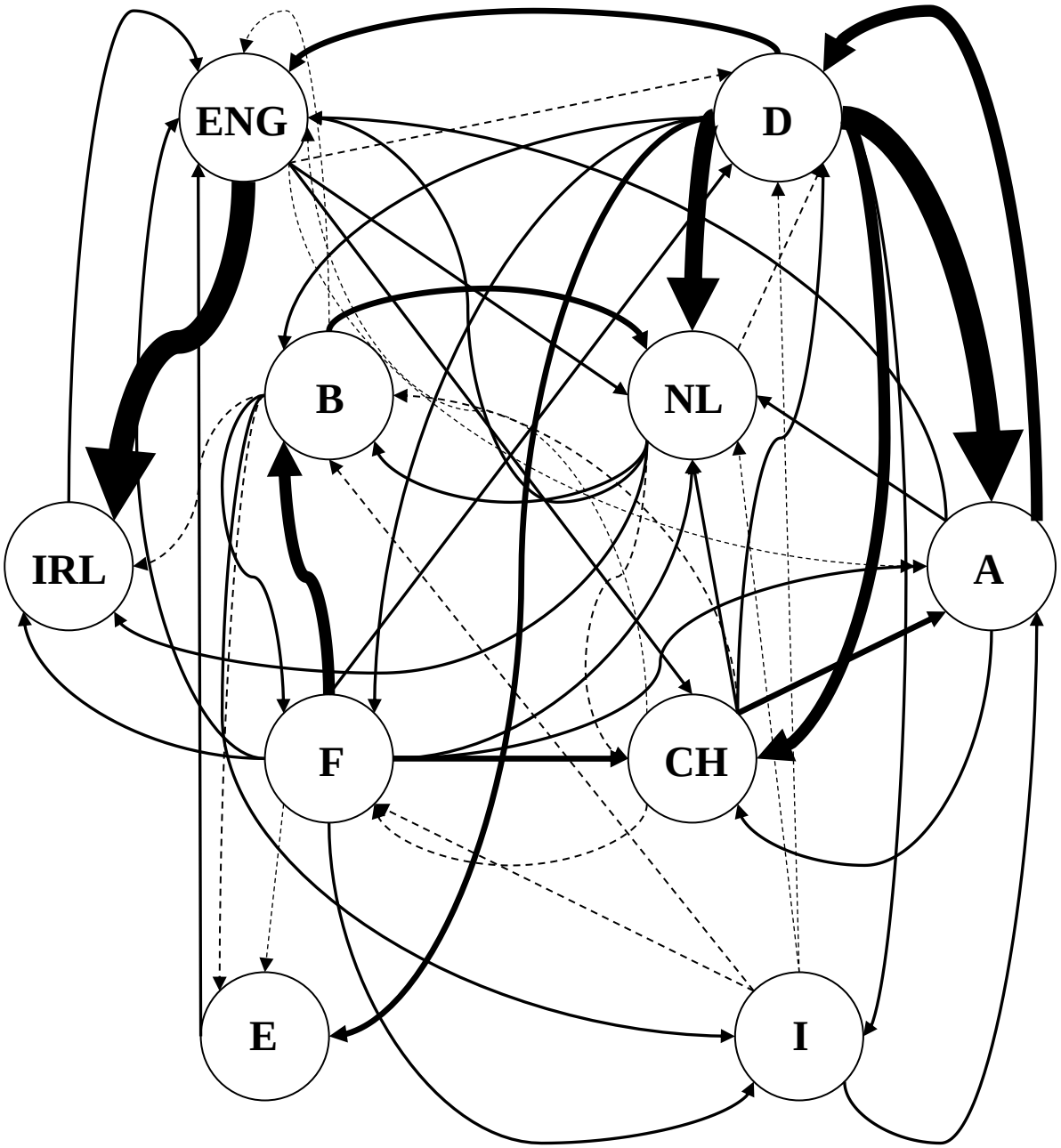
Table 3: Statistics of the Relationships between the Ten Countries

	Citations of the Other Nine Foreign Supreme Courts
Mean of citations	11.29
Stand Dev	52.90
Minimum number of citations	0
Maximum number of citations	447
Number of relationships	90

Table 4: Number of Cross-Citations per Cited Court (2000-2007)

	Austria	*Bel-gium*	*Eng-land*	*France*	*Ger-many*	*Ireland*	*Italy*	*Nether-lands*	*Spain*	*Swit-zerland*
Mean	4.56	2.22	26.33	8.56	64.33	0.78	0.67	1.78	0.22	3.44
Std.dev	11.10	4.11	75.64	11.30	144.73	2.33	1.00	2.49	0.67	6.86
Min.	0	0	0	1	0	0	0	0	0	0
Max.	34	13	228	37	447	7	3	6	2	21
N. obs	9	9	9	9	9	9	9	9	9	9

Figure 1: Influence on the basis of being cited by other courts



Abbreviations: A (Austria), B (Belgium), CH (Switzerland), D (Germany), E (Spain), ENG (England and Wales), F (France), I (Italy), IRL (Ireland), NL (Netherlands)

Table 5: Description of Variables

Variable	Description	Source
Population of cited country	Population of the country of the cited court in 2004 (in millions).	See Table 1
Corruption score of cited country	Corruption index 0 to 10 (10 if not corrupt)	http://scholar.harvard.edu/files/shleifer/files/data_3.zip
GNP of cited country	Natural logarithm of the GNP of the cited country in 1999.	(as previous)
Same language	Equals 1 if more than 20% of the population speaks this language as a native language, 0 otherwise	http://ec.europa.eu/public_opinion/archives/ebs/ebs_243_en.pdf
Language skills	Percentage of the population of the citing country that speaks the cited country's language.	(as previous)
Same legal origin	Legal origins according to La Porta et al.	See 3, below
Same legal family	Legal origins according to Armour et al.	See 3, below
Cultural difference	Cumulative difference between the citing and cited countries' values on the Schwartz cultural index.	See 4, below
Coordination difference	Difference between the coordination scores of the citing and cited country based on Hall and Gingerich	See 4, below
Geographic distance	Geographic distances between the cities constituting the economic centers the citing and cited country, weighted by share of country's population	http://www.cepii.fr/anglaisgraph/bdd/distances.htm
Dummies citing courts	dummy variables for the citing country	
Dummies cited courts	dummy variables for the cited country	

Table 6: Summary Statistics Independent Variables

Variable	*Mean*	*Median*	*Minimum*	*Maximum*	*Std. Dev*
Population of cited country	34.05	28.30	3.97	82.42	26.93
Corruption score of cited country	8.65	8.87	6.13	10	1.11
GNP of cited country	10.08	10.12	9.60	10.56	.23
Same language	0.18	0	0	1	.38
Language skills	.31	.15	0	1	.32
Same legal origin	.31	0	0	1	.47
Same legal family	.29	0	0	1	.46
Cultural difference	1.36	1.24	.58	2.4	.50
Coordination difference	.34	.29	.03	.93	.23
Geographic distance	936.81	864.55	160.93	1821.60	415.44

Table 7: Correlation Matrix

	Population of cited country	Corruption score of cited country	GNP of cited country	Same language	Language skills	Same legal origin	Same legal family	Cultural difference	Coordination difference	Geographic distance
Population of cited country	1									
Corruption score of cited country	-0.3164***	1								
GNP of cited country	-0.2584**	0.7207***	1							
Same language	-0.1178	0.2315**	0.3002***	1						
Language skills	0.197**	-0.0966	0.1564	0.6341***	1					
Same legal origin	0.0371	-0.0888	-0.0964	0.4408***	0.2776***	1				
Same legal family	0.0203	-0.0143	0.0242	0.3448***	0.2553**	0.6307***	1			
Cultural difference	-0.0215	-0.0703	0.0185	-0.3072***	-0.0994	-0.386***	-0.4434***	1		
Coordination difference	0.056	0.0155	-0.0022	-0.2489**	-0.0618	-0.4641***	-0.3194***	0.5049***	1	
Geographic distance	0.0198	-0.3946***	-0.4287***	-0.5196***	-0.4596***	-0.1738	-0.2431**	0.3266***	0.2677**	1

Figure 2: Histogram number of cross-citations

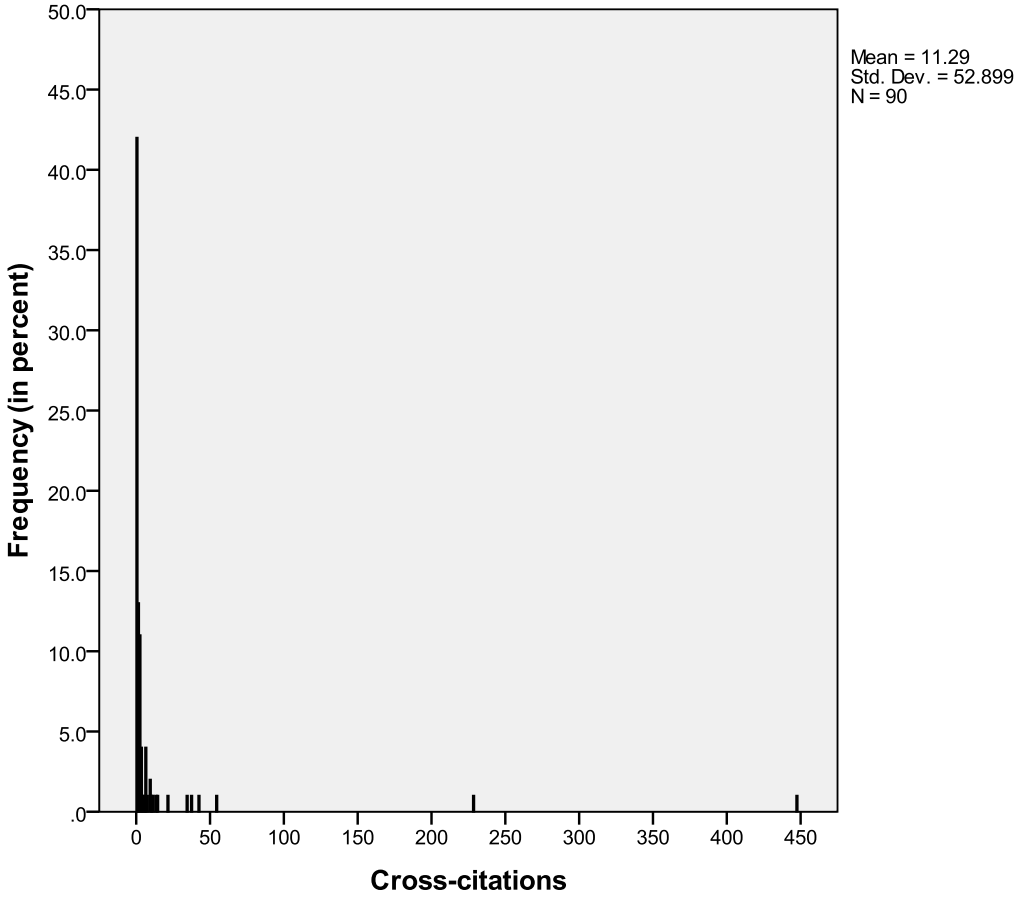


Table 8: Negative Binomial Regression (Part 1)

Dependent variable: number of cross-citations (standard errors clustered by citing court)

INDEPENDENT VARIABLE	(1)	(2)	(3)	(4)	(5)	(6)	(7)
(constant)	-20.102*	-8.263***	-8.754***	-8.050***	-14.824	-8.077***	-8.710***
Population of cited country	.0397***	.0391***	.0374***	.0389***	.0392***	.0389***	.0372***
Corruption score of cited country	.626**	.813***	.924***	.7885***	.634**	.753***	.895***
GNP of cited country	1.357				.788		
Same language	.739	.911		1.206**	1.072**	1.122*	
Language skills	2.354***	2.398***	3.073***	2.401***	2.086***	2.106***	2.934***
Same legal origin	.456	.361	.629**				.408*
Same legal family					.5667***	.599***	.507***
Cultural difference	-1.292***	-1.155***	-1.323***	-1.122***	-1.034**	-.956**	-1.180***
Coordination difference	-1.434*	-1.453	-1.692**	-1.611*	-1.494***	-1.475*	-1.746**
Geographic distance	-.000				-.000		
Dummies citing court	#***	#***	#***	#***	#***	#***	#***
Dummies cited court							
Log Pseudolikelihood	-140.018	-141.252	-142.820	-141.952	-137.888	-138.374	-140.767
N	90	90	90	90	90	90	90

*** significant at the 1% level ** significant at the 5% level * significant at the 10% level

significance denotes highest degree (individual parameter estimates not displayed)

Table 9: Interpretation of Coefficients in Models 3 and 6 (Table 8)

	Model 3				***Model 6***			
INDEPENDENT VARIABLE	*Coefficient (b)*	*Change per 1 Unit Increase (IRR)*	*Change per Standard Deviation*	*Marginal Change at Mean*	*Coefficient (b)*	*Change per 1 Unit Increase (IRR)*	*Change per Standard Deviation*	*Marginal Change at Mean*
Population of cited country	.0374	+3.82% per 1 million	+174.09%	0.037	.0389	+3.97% per 1 million	+185.11%	0.039
Corruption score of cited country	0.924	+151.90% per 1 point in index	+177.82%	0.907	.753	+112.37% per 1 point in index	+130.02%	0.754
Same language					1.122	+207.13% for change to same language	+53.94%	1.699#
Language skills	3.073	+2060% for change from 0% to 100% knowledge of language	+168.93%	3.015	2.106	+721.59% for change from 0% to 100% knowledge of language	+97.01%	2.109
Same legal origin	.629	+87.52% for change to same origin	+34.00%	0.706#				
Same legal family					.599	+82.10% for change to same family	+31.41%	.691#
Cultural difference	-1.323	-73.38% per 1 point in index	-48.52%	-1.299	-.956	-61.57% per 1 point in index	-38.11%	-0.958
Coordination difference	-1.692	-81.59% per 1 point in index	-32.40%	-1.661	-1.475	-77.12% per 1 point in index	-28.91%	-1.477

Discrete change of dummy variable from 0 to 1.

Table 10: Negative Binomial Regression (Part 2)

Dependent variable: number_cites (standard errors clustered by citing court)

INDEPENDENT VARIABLE	*(8)*	*(9)*	*(10) No Outliers*	*(11) No Outliers*	*(12) No Zeros*	*(13) No Zeros*	*(14) 8## Countries*	*(15) 8## Countries*
(constant)	.951	-.255	-9.359***	-8.664***	-6.033***	-5.365***	-6.851***	-6.790***
Population of cited country			.0407***	.0418***	.0304***	.0316***	.0401***	.0403***
Corruption score of cited country			.971***	.802***	.675***	.516***	.654***	.574***
GNP of cited country								
Same language		2.295***		1.060**		.776		1.914***
Language skills	2.780***	-.0941	3.367***	2.385***	2.707***	2.035***	3.189***	.946**
Same legal origin	2.780***		.628*		.540		.635**	
Same legal family		.847***		.5898***		.636***		.606***
Cultural difference	-1.244***	-.820*	-1.407***	-.994**	-1.123***	-.823**	-1.171**	-.825
Coordination difference	-1.770**	-1.646*	-2.061**	-1.888*	-1.380	-1.166	-2.349***	-1.558***
Geographic distance								
Dummy citing courts	#***	#***	#***	#***	#***	#***	#***	#***
Dummy cited courts	#***	#***						
Log Pseudolikelihood	-137.114	-128.768	-129.527	-125.569	-117.261	-112.459	-97.921	-88.983
N	90	90	88	88	48	48	56	56

*** significant at the 1% level ** significant at the 5% level * significant at the 10% level

significance denotes highest degree of significance (individual parameter estimates not displayed)

Austria and Germany, and England and Ireland are treated as one country respectively.

In regressions (11) and (12), the dummy variables for Germany and Ireland were dropped because of collinearity. In regression (13), the dummy variables for Germany and Italy were dropped because of colllinearity.