ABSTRACT

Two conflicting perspectives bearing on whether social control agents, or agents of the state who adjudicate which punishments are imposed on a violator of a regulation, have discretion over which regulatory statute they can invoke. The rationalist view and the sociolegal view comprise the universe of possibilities that explain social control agents' behavior. In this paper we utilize the triangulation methodology. We apply extant legal data from the National Archive of Criminal Justice Data to demonstrate the relationship between polysemantic regulatory statutes, or statutes that have many interpretations that can be exploited by the social control agent, and conviction rates within the U.S. legal system in 2001. Moreover, we generate qualitative data through a survey and interviews to support hypotheses that are difficult to demonstrate quantitatively. Our research has vast applications to many spheres, beyond that of law and sociology.

INTRODUCTION

Legal systems are made up of regulations – socially constructed norms of behavior backed by the power of the state (Weber, 1922). What Greve, Palmer and Pozner (2010) call social control agents, such as prosecutors, are agents of the state who adjudicate which punishments are imposed on a violator of a particular regulation (Suchman & Cahill, 1996; Wiesenfeld, Wurthmann, & Hambrick, 2008).

Edelman, Leachman and McAdam (2010) distinguish two conflicting perspectives bearing on whether, when regulatory crimes occur, social control agents have discretion over which regulatory statute they can invoke to impose particular punishments. The first, "rationalist", perspective assumes that social control agents have no discretion over which regulatory statute they invoke, because each regulatory statute is inextricably linked to a particular regulatory crime (e.g. Short, 2006; Zald & McCarthy, 1979). This perspective is implicit in the Kantian retributive justice principal expressed in the aphorism "let the punishment fit the crime." In short, this perspective corresponds to the common-sense assumption that a particular punishment fits a particular crime.

The second, "sociolegal", perspective undermines this common-sense assumption. It suggests instead that social control agents have varying levels of discretion over which regulatory statute they invoke to sanction a particular violator of a specific regulatory crime (e.g. Edelman & Galanter, 2014). That is social control agents influence what crime determines what punishment. In this paper, we focus on how one type of social control agent, the prosecutor, influences which crime and punishment are imposed on one type of regulatory violators, white collar criminals operating in business firms.

This article explores the utility of the sociolegal perspective. In particular, we address an unexplored implication of the sociolegal perspective. Namely, why do social control agents have discretion over the regulatory statute they invoke to sanction a particular violator of a specific regulatory crime? This article's central thesis is that social control agents have discretion over the regulatory statutes they apply, because of the "polysemantic" nature of the language constituting regulatory statutes. The language of regulatory statues is polysemantic in the sense that it has multiple meanings (Ceccarelli, 1998). That is to say that the language of different regulatory statutes can be used to describe the same regulatory violation. So for instance, prosecutors can use either the statutory language of conspiracy or the statutory language of false statements in order to prosecute the very same regulatory crime. For example, prosecutors used the language of conspiracy statutes and false statement statutes whenever it best served their interests in prosecuting Martha Stewart's violation of securities regulations (United States v. Stewart, 305 F. Supp. 2d 368, 378 (S.D.N.Y. 2004); Heminway, 2002). This article's thesis is important, as it suggests that the polysemantic nature of regulatory statutes gives social control agents discretion over which statute they apply to punish a particular crime by a specific violator.

That is the organizational interest of social control agents that decides which punishment applies when we "let the punishment fit the crime."

We propose that whether prosecutors select the language of one regulatory statute or another depends on their interests. We explore how the regulatory system shapes these interests and, therefore, which regulatory statute prosecutors invoke and consequently the punishment they impose on white collar criminals.

This paper has five sections. Section one advances the article's theory. We begin by contrasting the rationalist and sociolegal perspectives. We then conceptualize the nature of the polysemantic statutes. We are then in a position to conceptualize how the prosecutorial system shapes prosecutors' interests, and, therefore, which regulatory statutes prosecutors invoke when. Section two advances hypotheses. We first articulate the hypothesis that there exist polysemantic regulatory statutes. We then hypothesize how prosecutors' use of polysemy affects the punishments they impose on regulatory violators. We can then hypothesize how prosecutors' interests influence the polysemantic regulatory statutes they invoke. The third, methodological, section describes how we use both qualitative and quantitative data to test our hypotheses. In the following section, we present our results and discuss their implications for contrasting rationalist and sociolegal perspectives. In the fifth, conclusion, section we suggest how realist and sociolegal perspectives might be integrated in order to provide more powerful explanations of which regulatory statute prosecutors invoke and consequently the penalties they impose on which collar criminals operating in business firms.

THEORETICAL BACKGROUND

The legal system is a nexus of regulatory statutes. Its legitimacy is reinforced by the state or the government which adjudicates regulatory statutes (Edelman & Galanter, 2014). One of the roles of social control agents within the setting of government purview entails applying regulatory statutes to particular crimes. Such application in turn influences the punishment of regulatory violators. The two perspectives that exist bearing on how law coordinates socio-economic interactions consist of the rationalist and the socio-legal views, respectively. In this paper, we describe the two perspectives and tend to take the socio-legal view.

THE RATIONALIST AND SOCIOLEGAL PERSPECTIVES

The rationalist view contributed greatly to our understanding of regulatory statutes. Initially, legal scholars found that regulatory statutes originate in “formal legal institutions” (Short, 2006, p. 32). By "formal legal institutions" we mean institutions that fit a particular punishment to a particular crime. Each regulatory statute was linked to an individual crime. This perspective has certain limitations that, if addressed, would lead to improvement. Instead, the socio-legal view provides an explanation for the flexible nature of regulatory statutes.

The sociolegal view consists of three parts. Firstly, it suggests that discretion in choice exists. This bring us to the second part. The second part dictates that this discretion can be applied to regulatory statutes to apply punishment to crimes. The third part confirms that social control agents exercise discretion over the selection among regulatory statutes to apply punishment to crimes. Succinctly, social control agents are "judges that socially construct misconduct" (Greve et al., 2010, p. 55). While generally social control agents exercise discretion over regulatory statutes to apply punishment to crimes, we focus on prosecutors specifically.

Discretion in Choice

We posit that discretion in choice exists. To arrive at this, we begin by describing the origins of the sociolegal view. The socio-legal view originated as early as the mid 1970s with Galanter's (1974) seminal article. In it, he claims that those who are privileged in society can apply discretion to regulatory statutes in their favor whereas the underprivileged cannot. This privilege consists of discretion in choice. Thus, some people are able to exercise discretion and this discretion results in selection among choices.

Originally, the sociolegal view paid little attention to meaning (Phillips & Grattet, 2000), but more recently the perspective includes it (Edelman & Galanter, 2014). The discretion in choice suggests that the choices possess a gradation in meaning. This brings us to the second part of the sociolegal view, namely that discretion in choice may consist of a selection among regulatory statutes.

Certain regulatory statutes are open to discretion while others are not. Because we focus on white collar crime, for the purpose of this article regulatory statutes like insider trading or extortion do not allow for the exercise of discretion. Conversely, regulatory statutes like conspiracy and obstruction of justice may present a more straightforward opportunity for discretion.

All of the entities engaged in discretion in choice have an effect on the environment within which they are housed. Galanter's view that social control agents exercise discretion over regulatory statutes is the defining characteristic of the sociolegal view (Edelman, 1992; Phillips & Grattet, 2000). The sociolegal view rejects the idea that the state is completely autonomous but instead assumes that the organizations and agents that exist within the state exert autonomy as well. As mentioned above, white collar crime is at the heart of this article. Thus, we address the nature of regulatory statutes such as insider trading or extortion, over which social control

agents cannot exercise discretion. As such, social control agents can exercise discretion over conspiracy and obstruction of justice.

As a case in point, consider the example of Martha Stewart. Starting in January 2002, the well-known homemaker and talk-show host faced investigation, prosecution, trial, and conviction. On December 28, 2001, the stock of a company called ImClone plummeted 18 percent after the Food and Drug Administration failed to approve the firm's new cancer drug. Martha Stewart, who owned the company's shares, had sold stock of the company the day before, thus avoiding losses of close to $45,000. The process in which the following events took place reflects the discretion allowed to social control agents by the state (Fragale, Rosen, Xu, & Merideth, 2009). Initially, Martha Stewart was indicted with insider trading. However, she was convicted on more predictably winnable conspiracy charges. While conviction for an insider trading allegation is clear, we find explaining the process of convicting for conspiracy useful.

Due to the fact that a conspiracy charge was present Peter Bacanovic was tried together with Martha Stewart. Bacanovic admitted to conversations with Stewart but not at the time they actually happened or in the form that they occurred. Because insider trading is complicated to jurors, it may have been easier to simply provide jurors a simple binary decision: did she lie or not? This ability to switch between regulatory statutes is crucial to the discretionary abilities of the prosecutor of Martha Stewart (Heminway, 2002). The primary goal of the prosecution was to convict Stewart, and prosecutors tailored the case to allow for this conviction to occur. This illustrates the discretion in choice over regulatory statutes (i.e. conspiracy rather than insider trading) employed by social control agents (i.e. prosecutors).

Polysemantic Regulatory Statutes

Next, we arrive at the question, "why do social control agents have discretion in choice over regulatory statutes?" The answer is that they are able to exercise discretion because they can take advantage of polysemantic regulatory statutes. The term “polysemantic” denotes how a expressive or discursive unit (e.g. a phrase, document, law or other unit) may include many different meanings (Ceccarelli, 1998). Polysemantic units do not possess a standardized, indisputable meaning (Phillips & Grattet, 2000). In our study, the polysemantic units we analyze are regulatory statutes. Polysemantic regulatory statutes allow prosecutors to exercise a substantial level of discretion. By discretion, we mean the ability to apply different meanings of a regulatory statute during the process of litigation. It is because polysemantic regulatory statutes take on different meanings that a prosecutor can select which meaning she is going to emphasize when seeking a punishment for a crime. Typically, polysemantic regulatory statutes do not occur in charges alone, but instead are appended to other regulatory statutes. Those regulatory statutes that can be appended extensively, or that can be used in conjunction with other regulatory statutes often, are polysemantic. Every meaning a polysemantic regulatory statute possesses the potential to result in a punishment for a crime. Examples of polysemantic regulatory statutes include obstruction of justice, conspiracy and false statements. Each of the above listed polysemantic regulatory statutes possess multiple meanings that differ according to the discretion of the prosecutor. For example, to successfully convict a defendant for conspiracy, the prosecutor must demonstrate that the defendant communicated with another party regarding the commission of the crime. Such a communication can occur by phone, in person, via written communication, with little or much reference to the crime, or may be only a hint. So, social control agents exercise discretion in which regulatory statute they invoke.

Social Control Agents

Scholars have paid less attention to what Greve et al. (2010) call social control agents' strategies directed at business organizations. The authors define social control agents as "entities that can make reasonable claims to represent the interests of broad communities of actors, and have capacity to monitor and enforce organizational behavior" (Greve et al., 2010, p. 78). In other words, a social control agent is an actor that represents a collectivity and that can impose sanctions on that collectivity's behalf. Legal actors change the law by influencing how law is practiced (Edelman et al., 2010). For example, social movement organizations can exert tactics to influence social control agents (Edelman et al., 2010; Greenwood, Raynard, Kodeih, Micelotta, & Lounsbury, 2011; McAdam, McCarthy, & Zald, 1996). We argue that prosecutors most closely resemble social control agents. The influential agents that bear the most discretion (specifically upon businesses) are prosecutors (Baker & Mezzetti, 2001; Gomme & Hall, 1995; Levenson, 1998). The definition of the duties of prosecutors stresses the "fiduciary responsibility or public trust" of organizations and the executives and their employees (Felkenes, 1975, p.113). Due to the sheer number of business organizations and the magnitude of potential violations, prosecutors face a large platform for discretion. Importantly, some cases are pleaded guilty. We focus on prosecutors as they enforce white collar laws and statutes over business organizations that fail to police themselves.

WHICH REGULATORY STATUTES SOCIAL CONTROL AGENTS INVOKE

Finally, we will address the query of which regulatory statutes social control agents invoke. All of the entities engaged in the practice of law have an effect on the environment within which they are housed.

Prosecutor's interests

Prosecutors invoke regulatory statutes and exercise discretion in doing so. They possess the ability to invoke regulatory statutes because of the mandate of their office. Their discretion derives from their ability to observe and compel organizations to behave in a specific way.

They select the regulatory statutes according to their interests. Namely, prosecutors invoke statutes that suit them best. Typically, the interests or prosecutors are related to their conviction rate. Thus, prosecutors often seek convictions with a consequent plan of raising their conviction rates. They seek career accelerating cases, such as high profile cases, and they navigate them as much as possible to arrive at a conviction.

Types of organizations in which social control agents operate

The interests of social control agents are determined by the nature of the organizations in which they operate. Organizations that house social control agents may be government-related, tied to non-governmental organizations, or social movements (Stryker, 2000). As an example, a social movement is a social control agent that seeks to change extant situations within the space it populates. Legal environments affect organizations to a large extent (Edelman et al., 2010). By legal environments, we mean law-related groups of entities that provide similar services. In the case of prosecutors, the legal environment includes the defendants, defense lawyers, judges and media (Engel, 1984). Moreover, organizations may be formal or informal. Here, we are interested in formal organizations. Formal organizations focus on goal attainment, certainty and conforming and consist of a means to an end in social action (Vaughan 1999). Social control agents possess interests, which derive from their formal organizations. Among social control agents are legal arbiters, such as prosecutors (Wiesenfeld et al 2008) or Silicon Valley lawyers (Suchman & Cahill 1996). Their interests are often selfish. However, their interests are always related to aspects of their respective organizations.

The office of the District Attorney

The interests of prosecutors are influenced by the nature of the district attorney's office they operate within. For prosecutors, the organization in which they operate is the District Attorney's office. The office of the District Attorney, or prosecutor, asserts pressure on each of its social control agents to arrive at as many convictions as possible. This takes place to please the media and constituents (Gordon & Huber, 2009). Since prosecutors are elected not appointed, they depend on the support of their constituents. Most constituents obtain information about a prosecutor's performance from the media and the media reports primarily on high profile cases (Rasmusen, Raghav, & Ramseyer, 2009). In order to please the media, and satisfy constituents, prosecutors attempt to maximize their conviction rates. Therefore, the central objective of this paper is that social control agents successfully apply discretion by using polysemantic regulatory statutes to obtain convictions.

HYPOTHESES

Do polysemantic regulatory statutes exist?

As discussed above, we claim that polysemantic regulatory statutes exist. Social control agents exercise discretion by applying polysemantic regulatory statutes within a legal environment. Conversely, under the sociolegal view, social control agents utilize polysemantic laws to suit their interests. The outcomes for prosecutors applying polysemantic laws depend on discretion. Thus, we claim:

Hypothesis 1: Polysemantic regulatory statutes exist.

One way to test this claim is to observe how prosecutors respond to questions regarding outcomes of trials. Through interviews, we are able to discern between the regulatory statutes that prosecutors describe.

Polysemy and Punishment

If polysemantic regulatory statutes exist, how are they used? Polysemantic regulatory statutes allow prosecutors to exercise discretion. Prosecutors can use this discretion to their advantage to influence the outcomes of trials. Thus, we claim:

> Hypothesis 2: Prosecutors who use polysemantic regulatory statutes arrive at higher conviction rates.

We test this hypothesis using an empirical methodology with a data set of trials and their results along with a measure of the type of regulatory statute used.

Prosecutors' interests

Extant research states that the use of monetary penalties in addition to other punishments is increasing (Harris 2011). Moreover, in the corporate context monetary penalties have been shown to be effective in punishing earnings overstatements by managers (Beneish 1999). Like other punishment tactics like shaming, monetary penalties have an effect on the interests of the social control agent. Particularly, social control agents may be more at risk of punishment if monetary penalties are involved. For our purposes, this means that prosecutors may seek stronger penalties or exert a greater effort when more is at stake. In one study, the average monetary penalty for Top 3 executives is $14.4 million (Karpoff et al 2008). These high penalties not only serve the purpose of discouraging future violators from committing crimes, but also encourage prosecutors to obtain convictions. Monetary penalties may affect whether or not a conviction takes place. Thus, we claim:

> Hypothesis 3: The relationship between the extent to which a regulatory statute is polysemantic and the conviction rate is moderated by monetary penalties.

Once more, we test this hypothesis using econometrics. In our dataset, the amount of the fine listed for every trial. We use this data in our regression in order to test the moderating effect of monetary penalties. Another variable that may affect conviction rates is a prosecutor's skill.

Social control agents exercise discretion to the extent that they are able in order to punish regulatory violators. Some social control agents may be more skilled than others. The skillfulness of social control agents varies greatly, particularly among those with more or less tenure (Topel 1990). Skill leads to success and in the context of prosecutors, those with more skill obtain more convictions (Boylan and Long 2005).

It is important to control for the skill of the prosecutor when attempting to derive the determinants of convictions. Skill is difficult to measure, because of all of the different components that comprise it. Knowledge of regulatory statutes, eloquence, or even appearance can contribute to prosecutorial success. Nevertheless, it cannot be denied that skill impacts the probability of success (Wasmer 2006). More skillful prosecutors will have more convictions.

Thus, we claim:

> Hypothesis 4: The more skillful a prosecutor, the more her use of polysemantic laws will correlate with a higher conviction rate.

We model the skill of a prosecutor by her tenure. This is consistent with the approach taken by Lazear (2003). We test the claim regarding tenure and skill using the regression portion of our analysis.

Prosecutors bear a great deal of different incentives to carry out convictions. These include career motivations. Prosecutors' interests affect the polysemantic regulatory statutes they invoke. Conversely, under the sociolegal view, social control agents utilize polysemantic laws to suit their interests. Promotions and reelection depend on performance; thus prosecutors are concerned with the number of their convictions because of career motivations. Typical career paths for judges and other elected officials include working previously as a prosecutor. In order to improve career prospects, prosecutors often must deliver a great deal of convictions to their district attorney's office. Thus, we claim:

Hypothesis 5: Career motivations affect the use of polysemantic laws.

While it is difficult to measure career aspirations with an empirical dataset, interviews and surveys can perform this measurement. We utilize a survey and interviews precisely for this purpose.

In the next section, we present our methodological approach, including both qualitative and quantitative methods.

DATA AND METHODS

Triangulation

In this study, we use a triangulation methodology. Triangulation is the use of one or more methods to study the same phenomenon (Denzin 1970, Jick 1979, Kimchi, Polivka et al. 1991). It allows the researcher to examine her research question from multiple perspectives thus deepening clarity around the phenomenon.

Two types of triangulation exist. The first is sequential triangulation, or performing the different methods one-by-one. The second is simultaneous triangulation, or performing all of them at the same time (Morse 1991). In this study, we will be using sequential triangulation. The purpose of the qualitative analysis is to enrich the quantitative analysis.

Thus, we begin by looking at a quantitative analysis of archival data regarding trials. Next, we look at interviews conducted with 22 assistant district attorneys. Our final method is a survey. From this, we can see that in the study we are utilizing method triangulation (Kimchi, Polivka et al. 1991). The three methodologies we undertake allow precisely for this type of triangulation as the findings in the qualitative methods (i.e. the interview and survey) augment the information obtained through the inferential statistics.

Data Collection

Quantitative

We collected data from the National Archive of Criminal Justice Data (NACJD). The NACJD is created in order to help researchers who study crime-related topics by organizing and preserving data related to fields of criminology and justice.

We combine two data sets: the 2001 Prosecutors Survey with the Federal Justice Statistics Program: Defendants in Federal Criminal Cases in District Court – Terminated, 2001 [United States] dataset. The 2001 Prosecutors Survey was conducted for 2300 prosecutorial districts and contains data for each district attorney's office. For each district, data about the budget (% from state, whether it includes social services, etc.), the number of years the district attorney has been in office, the number of terms served, the salary of the district attorney and demographic variables will be used in the analysis. The data is rich in providing differentiation between districts which will allow for a hierarchical data analysis when combined with case level data. Similarly as the case data, this data does not contain individual identifiers and does not contain data outside of what is publically available.

The Federal Justice Statistics Program: Defendants in Federal Criminal Cases in District Court – Terminated, 2001 [United States] dataset contains approximately 100,000 publically available cases from across the United States. It contains data for each district, including the county in which the case took place. It also contains data about appeal and case status. The dataset is rich in time level data variables, which include date filed, date arrest made, date complaint received, date of offense, disposition date, and sentencing date. It also states who has the litigating responsibility, which justice department division was involved, and which investigative agency took part. Most importantly, the data has a rich differentiation between what type of crime are being charged. The dataset contains several levels of depth for this

differentiation, mainly several categories but also a detailed offense category which is used to differentiate between polysemantic and clear-cut laws. Moreover, the analysis excludes violent, drug related and other non-white collar crime related observations, in order to concentrate on white collar crime, which is more of interest in management. These two datasets are aggregated at the district level, as each prosecutorial district has a unique identity that can be matched to data within each case. The dataset is cross-sectional, for the single year because the Prosecutors Survey is only available in this great detail for one year.

Qualitative

Because the quantitative portion of this study cannot address certain questions, we conducted a qualitative analysis. The first part of the qualitative analysis is a survey. We conducted the survey using the online survey software Qualtrics. We sent the survey to 2,361 prosecutors, or all of the District Attorneys in the United States. Knowing that District Attorneys did not have sufficient unoccupied time, we instructed them to pass the survey onto their Assistant District Attorneys. We were unable to contact Assistant District Attorneys directly because their names and contact information are not publically available. All in all, we achieved an approximately 10% response rate, with 228 participants. The survey is provided in Appendix 1. One thing to note about the survey are that it discusses that nature of polysemantic laws besides simply talking about interactions with police, duration of litigation and the extent to which cases are high profile.

The second part of the qualitative analysis is interviews. We conducted the interviews with 22 Assistant District Attorneys and maintained anonymity for participants. We recruited participants in two ways. First, we asked for email addresses of participants of the survey and contacted them directly. This method resulted in 8 participants. Secondly, we used our own

network of contacts to review and interview participants. The remainder of the participants were recruited in this manner. The interviews were semi-structured. This means that we prepared a list of questions but allowed participants to elaborate on answers as much as they liked or to go off-topic as much as they wished to. We believe this method results in the optimal information gathering to supplement the inferential statistics and survey provided in the rest of the paper.

RESULTS AND DISCUSSION

By using this data, we are able to address several of our hypotheses. Particularly, we address Hypotheses 2 – 4 and find support for all three using this methodology. The interviews provide support for Hypotheses 1, 2 and 5. The survey completes the picture by supporting Hypotheses 2 and 5.

Quantitative

Variables

When applying inferential statistics, we measure prosecutors' conviction rate as the dependent variable. The formula for the conviction rate is as follows:

$$CR = \sum Ci / \sum TCi$$

where "CR" is conviction rate, "c" is conviction and "tc" is total cases. "i" indexes prosecutors. We measure the total number of cases per district, which leads to the fact that we use a district level of analysis.

The concept of polysemy is fundamentally complex. Thus, it contains different facets that are difficult to measure. We attempt to measure polysemy in a unique way, that we believe

captures the complexity relevant for polysemantic laws. We measure polysemy by using the degree centrality measure often employed in social network analysis. Thus, the formula for polysemy is as follows:

$$P = \sum_{i=1} \frac{L[Cd(L*) - Cd(i)]}{(L-1)(L-2)}$$

Where L is the number of laws and Cd is the degree centrality function. In order to be able to make reasonable comparisons, this degree centrality is converted to a rate and aggregated to appear on the district level. The intuition behind using degree centrality is that a law that is often appended to a case and used in conjunction with other laws, or is "tacked-on," has multiple meanings that can be applied in a wide variety of contexts. For example, a typically polysemantic law is conspiracy (polysemy level of 86%), which is often tagged on with other allegations such as fraud, extortion or bribery. The only violation that is required for conspiracy is the involvement and communication between parties. This provides the law with multiple meanings because any interaction between defendants can be interpreted as malicious. We applied several additional variables in the analysis to act as controls in our regressions.

The Federal Cases dataset contains information about the fine imposed and collected. Thus, we observe the amount of money involved in a successful conviction. For example, a typically polysemantic law is conspiracy (polysemy level of 86%), which is often tagged on with other allegations such as fraud, extortion or bribery. The only violation that is required for conspiracy is the involvement and communication between parties. This provides the law with multiple meanings because any interaction between defendants can be interpreted as malicious. We applied several additional variables in the analysis to act as controls in our regressions.

The Federal Cases dataset contains information about the fine imposed and collected. Thus, we observe the amount of money involved in a successful conviction. We create a

categorical variable for this amount of money. In order to account for the skill of the lawyer, we use the tenure listed in the Prosecutor's Survey. We append these sequentially, and report the full set. The coefficients of our explanatory variables do not change significantly. Table 1 provides descriptive statistics for the variables used in the analysis.

Regression Methods

We selected to utilize a tobit regression to test the hypotheses described above. This is due to the fact that the dependent variable is limited and we expect this regression to impose the appropriate functional form. When we used logit and ordinary least squares specifications, results were not different.

Results

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Table 2 summarizes the regression results the analysis at the case level. The first regression demonstrates how the control variables impact conviction. We see a statistically significant relationship between the variables, although salary and budget appear to have no impact. Then we introduce the explanatory variables one by one. This analysis confirms our predictions for Hypotheses 2 – 4. Firstly, we find support for Hypothesis 2: prosecutors that apply polysemantic laws are more likely to gain convictions. We see a positive and statistically significant relationship between the two variables in question. The meaning of this is that prosecutors who select laws that are more polysemantic obtain a larger number of convictions. The multiple meanings of this law help skilled lawyers maneuver the trial into a favorable outcome. The impact of the amount of money in question during the trial, or the fine, is also significant and positive related to conviction. In support of Hypothesis 3, we find that the higher the fine, or the amount of money involved in the trial (prior to conviction) and in a way

sequestered by the prosecutor, the higher the probability of conviction. This supports our initial contention.

In terms of reputation, we also see positive results. The relationship between tenure and conviction is also positive and significant. This means that prosecutors who have a greater reputation are more likely to have higher probability of conviction. It is important to see that the impact of the polysemantic law is not swayed with this result. The impact of reputation is not enough to explain conviction, albeit it is positive.

The results in Table 3 confirm our predictions as well. When we observe the results from the district level perspective, we see very similar results. The analysis parallels that of the case level. The primary difference here is that the dependent variable is no longer a binary conviction but instead a conviction rate aggregated at the district level. The first regression runs the control variables only, again resulting in significant results. Additionally we once more see support for Hypothesis 2. The conviction rate is positively correlated with the measure of polysemy. Further, in terms of Hypothesis 3 we see a positive and significant relationship between the fine amount and the conviction rate. The hypothesis is supported. Finally, we find support for Hypothesis 4, the reputational hypothesis.

Interview and Survey

This section presents the results of the interview and survey studies. It contains three sections. The first asks about motive, or rather if polysemantic laws are associated with higher conviction rates. The second discusses prosecutors' career aspirations and whether they affect judgment. Finally, I ask if polysemantic laws exist. This study is part of a larger dissertation project concerning the discretion of U.S. prosecutors over the statutes they select in order to gain convictions. While the first part of the study is quantitative, it cannot answer certain questions. In

order to gain understanding about the causal relationship between law selection and conviction as well as other factors, it is necessary to conduct a qualitative study.

Do polysemantic laws exist?

Hypothesis 1 asks whether polysemantic laws exist. We attempt to verify this hypothesis in both the survey and the interviews. In the survey, we recognize three measures of polysemantic laws. The first asks about classification of laws, the second about interpretations of laws and the third about whether laws are used in conjunction with each other. All of these measures find that prosecutors believe polysemantic laws do exist and are positively and significantly correlated with each other.

Within the U.S. Code, laws are organized in a very specific way and while their polysemantic nature is not necessarily what classifies them, there are differences that can correspond to our classification. Laws are primarily organized according to the gravity of the crime they adjudicate. Strictly, this means they are organized into violations, misdemeanors and felonies. Felonies usually take a great deal longer to trial, as long as 72 weeks in some districts. It is the felonies that interest us most, because this is where white collar crimes are primarily classified. The way that these vary among themselves has often to do with how much contact there is with the police. One prosecutor put it succinctly:

> For the vast majority of cases (misdemeanors) there is very little, and most often no contact with law enforcement. For serious felonies there is substantially more contact and for the most serious felonies there may be daily contact with the investigators for weeks or months.

For those cases that take weeks or months, it is clear that discretion is extremely possible and likely to be caused by the possibility of changing the charges to better fit a winning case. Each felony (as well as misdemeanors and violations) has classes that indicate in the sentencing guidelines what kind of a win the case will be. This is always a large negotiation between the judge and the ADA who is sent to court, or in the case of smaller districts, the DA or the only ADA. In both smaller rural and larger metropolitan districts, the judge faces the same ADA each time. This is due to the fact that the smaller districts only have one of each of these representatives and the larger districts have a horizontal processes, where each attorney has a role that a specific attorney always plays the role of interacting with the judge in the same courtroom. Once the charge is negotiated and decided upon, if that is the case and no plea bargain is agreed upon beforehand, another judge and ADA handle the trial.

The final decision about which law to bring to trial also involves the role of the victims. Although it is clear that the People are being represented not the victim or witness, prosecutors do take into account their suggestions and wishes. Often witnesses are related or familiar with the defendant, and may have some insight on how that person ought to be treated.

> The witness does not have a say on what goes on; however, prosecutors may take into account the view of the witness if they are a victim

The way that the laws are selected are by the legal attributes of the case and deciding what kind of law can apply. The leverage of the prosecutor is to select a law that fits that description that is also polysemantic in nature. Each time, the prosecutor selects one or more laws. In many cases, there are formulas for selecting a specific kind of set of laws for a case that

has been tried that way before. The prosecutors know these formulas and take advantage of them in the way that is most applicable to the case at hand. Moreover, the relationship with the judge matters, especially when there has been a long series of interactions. In addition to analyzing the information the police or investigating agency provides, the prosecutor identifies legal attributes of the evidence that can point to which statutes to apply. Once she is fully familiar with the case, she selects from the U.S. Code, a statute or statutes that will be used in the case. She selects among objects of differing polysemantic values. The ability of the prosecutor to select the appropriate application of the statute she has selected depends on her influence.

Finally, prosecutors often use sets of laws that are pre-selected for a particular crime. For example, if the crime is forgery, the federal mail fraud state, along with conspiracy and obstruction of justice, can often be used. These are all polysemantic statutes. In combination, they are a powerful weapon against almost any defendant. The prosecutors we interviewed, often referenced examples like the one we list above, as sets of laws that are often used in conjunction with one another. Moreover, in the survey 85 percent of respondents believed multiple laws are used in conjunction with each other. We believe this justifies our use of the polysemantic measure because it is evident that polysemantic laws are used more often in conjunction with others than simply alone.

Are polysemantic laws associated with higher conviction rates?

Prior to presenting the results of the interviews as they relate to the research question, we would like to describe some of the facts that we learned while conducting interviews. The prosecutorial office does not necessary use one prosecutor for the entirety of the process through which a case travels from the police to the courtroom. The offices can be organized either horizontally, where the case stays with one prosecutor. This is the case about one-third of the

time. Differences may exist within states even, as the decision to choose vertical or horizontal processes depends on the District Attorney herself and may vary completely. In fact, according to our survey, 76 percent of districts have a horizontal intake. The other possibility is that the office is horizontally organized and that the case passes to different prosecutors when it is first charged, then when it enters arraignment, and then when it potentially enters special bureaus, until the plea bargain process, and then when it is tried. In the vertical process, a specific prosecutor works alone on the entire case, spanning from when it is received from law enforcement to when it enters the courtroom. In general about 15 percent of cases make it through the plea bargain process into the courtroom. In our quantitative study, we study only those cases. Here, however, I ask about the prosecutor's discretion through all cases, starting at when they receive them. Prosecutors have high discretion in both cases, because they may make changes to the law being tried at any point in the case. One prosecutor said the following, and it was echoed in many interviews. It serves as an indication that they may be a correlation between the law selected and the conviction result.

> When it's my turn to look at a case, I take a look at the case sent from the police and very often I feel compelled to change the charges. I mean, they often overlook some charges or don't submit enough of them. It's mostly that, them overlooking some charges.

This quote leads to the next portion of the interviews that we would like to relay. A conflict between prosecutors and the police seems to exist in many prosecutorial districts. The initial information that the prosecutor receives about the case is from the law enforcement agency involved in the crime fighting. Thus, an initial suggestion exists regarding what charges

to bring. The police are also vested in convicting the case, but the incentives for the prosecutorial office and the law enforcement agency (be it police, the Securities and Exchanges Commission (SEC), or the Department of Defense (DOD)) may be different. The police may be more involved with the victims. And while I will discuss later how the victims play into the decision of the prosecutor about the law, it is still possible to say that a conflict exists between the police and the prosecutors. While prosecutors do not overtly complain about the police they work with, they certainly consider them less than well-versed in the notions of the law. They often state that the law enforcement officers do not consider that more statutes could have been added to help improve the chances of the case winning in court. The police do not do an adequate job of identifying polysemantic laws in the charges, and completing charges that are more likely to get a conviction.

In terms of what the eventual string of conviction leads to, it is crucial to understand that there is a goal involved for most District Attorneys. It is undeniable that the office of the District Attorney can be an adequate stepping stone for further elected offices or appointed ones like senator or judge. Here, I seek to determine how much this drives prosecutors in their actions and how much they therefore worry about the concerns of constituents. While Assistant District Attorneys do not necessarily follow a career path like the DAs, they are often involved with their constituents, and consider they're job to be "serving the people" and feel that they owe it to them to have a victory. According to the survey, 47 percent say they have a large amount of discretion over the laws they select for the case. This is lower than would be expected, but it seems that this question asked only about the particular law. Overall discretion over how the case ensues must be higher. They go back to the individuals involved in the case and to the media as support for

pursuing defendants. Although they do not necessarily seek out media attention, they do appear to feel like they aim to please those that follow them.

Another aspect that could increase conviction rates rather than using polysemantic laws or even misusing them could be considered misconduct. On the surface, prosecutors are very averse to misconduct. They claim that it is the worst crime and claim there are serious protections against any prosecutor committing misconduct. Prosecutors appear to be very preoccupied with this possibility. It is considered a very strong privilege to have as much discretion as prosecutors have, and thus they consider this something that needs to be protected and claimed as a right. This is especially the case in white collar criminal cases, where misconduct may be easier because of the way that mens rea, liability and legality are exempted. However, it is not unreasonable to believe that the actions of the prosecutors are inspired by the will the serve and people and justice. Prosecutors are also very motivated to win in general. I omit the quotes with profanity, but I do give an example of the confidence that prosecutors have when they enter the courtroom. "I won't go in there unless I'm sure I'll win. " Why might they be so motivated? It is possible that they simply desire victory from a psychological standpoint. Also, it may be that the mandate of their office is so strong that they feel strongly compelled by it. Also, as mentioned above, they may be interested in pursuing justice. Finally, they may be limited by government resources, which have a maximum above which they cannot spend. Prosecutors also face speedy trial rules in many states, where the trial has to be over within a certain period (such as 90 days) after it has been brought to court. This causes them to strongly consider going to court, and only going if they feel they can secure a conviction quickly.

Are career motivations highly important?

This leads directly into the question of whether or not prosecutors have career aspirations when they serve in the prosecutorial office. To review, there are several reasons why prosecutors may use polysemantic laws: they may desire victory, they may pursue justice, they may be limited by government resources, and finally they may wish to raise their status. The definition of status is that it is a relative position in society that provides satisfaction at one's level or allows for advancement into another, more desirable, position. Prosecutors are responsible towards their constituents, whether they are elected or appointed. They also answer to the media, who threaten them with bringing potential misconduct into the public light (Adut, 2005). As all social control actors and agents dealing with the field of strategy, prosecutors struggle with limited resources. There is only so much that they can do within what they are permitted by their office.

> Of course I have to be careful about how much is being spent on the investigation. We do what is necessary, but within certain limits. If there is a charge that doesn't make sense after the trial starts, or would consume too much effort to investigate, those charges will be dropped. Those charges, because they won't allow a conviction, will be dropped.

A salient recollection from many prosecutors was that no one can perceive waste. It is clear that prosecutors seek high conviction rate, however, it is not so clear that they do so in order to advance their career. A great difference exists between District Attorneys (DA) and Assistant District Attorneys (ADA). While DAs often go on to be judges and senators, this is not a typical career path for ADAs. This is primarily due to the fact that DAs are elected and ADA

get appointed. Let us take note that not all districts have ADAs due to their size, however. I argue that they still are very much responsible toward their constituents when appointed, but they do not have the same career-minded orientation as their bosses. This is where the difference lies. Thus, Das often seek conviction with a farther plan of raising the conviction rates, as measured in the first chapter of this dissertation. They seek career accelerating cases, such as high profile cases, and they navigate them as much as possible for the win. ADAs act slightly differently because they do not seek to advance their career necessarily, but instead are committed to the cause of the People and serving their constituents. They are particularly interested in those involved in the case, the victims and they underline that they are the ones in the role of the protector.

> We work for the People. They are the ones who are represented in the seat. We do not represent the victims of the crime but the entire People themselves. The prosecutor serves the People. We do take victims pleas into account but they are not the ones who are represented alone.

After all, all prosecutors seek high conviction rates. An understanding of their behavior and the way their incentives are organized is therefore essential. If the prosecutors' choice of law goes according to play, I can be confident that the selection of the polysemantic law led to a higher conviction rate. If the conviction did not occur, this is surprising if a polysemantic law was used. I expect for prosecutors to have strong discretion (Hambrick & Abrahamson, 1995). This is generated by her influence. By influence, I mean the extent to which the prosecutor has an impact on her constituents and co-workers and is based on her ability. She works through a

professional logic: she pursues the path of justice that is the most convenient for her professional agenda. This is in contrast with democratic logics, which although always places a chasm between "us" and "them," also allows for the reaction of the people to have a say about what laws will be selected (Mouffe, 2000). Through these logics, ADAs focus on pleasing the constituents and serving the People and thus do not look into rising in the ranks and going further that just that office. This appears to be constant among districts. Instead of assuming that all prosecutors follow the same career path, I triangulated and found that ADAs follow a slightly different path. This is does not, however, mean that they do not pursue polysemantic laws and convictions in the same way that DAs do. They continue to select the law that is most likely to win, and they do use patterns to selecting groups of laws that are formulaic for the crime committed and often lead to conviction.

Further differences between DAs and ADAs do seem to exist in addition. Because of their concern with the People's outcome, ADAs appear to be more interested in justice. They focus on the victims, as mentioned before, and they seem to be concerned that the outcome of the trial matches the facts of the case. Moreover, they are certainly extremely preoccupied with the potential of committing, being accused of committing prosecutorial misconduct, and even the potential of an implication that prosecutorial misconduct is common. In this way, ADAs are specific about their discretion. In the next section, I will describe what precisely they hold discretion over: the laws selected for the trial.

DISCUSSION AND CONCLUSION

The socio-legal view dictates that laws have multiple interpretations. We study such laws, which we call polysemantic, through a process of triangulation. When faced with the choice to select a polysemantic regulatory statute, prosecutors often choose to do so. Driven by their desire

to further their careers, please the media and constituents and comply with economic constraints, they attempt to achieve the highest possible conviction rates. Due to their extensive discretion over which laws are applied in trials, they are able to utilize the flexible nature of polysemantic regulatory statutes to their advantage.

Our triangulation consists of a quantitative analysis, interviews and a survey. Using a dataset of district cases within prosecutorial districts, we present results that suggest a link between the polysemy of a regulatory statute and conviction. Further, we see how this relationship is moderated by the monetary value of the trial as well as the prosecutor's idiosyncratic skill. In our qualitative analysis, we provide answers to three questions as well. Firstly, we determine that polysemantic statutes exist. Then, we once more confirm that relationship between polysemantic statutes and convictions, this time with more emphasis on causality. Finally, we confirm that career motivations drive prosecutors.

The managerial implications of our findings are extensive. When optimizing performance, managers may view their employees in the same way we view prosecutors. They perform best when they can select from multiple meanings, thus when they have more jurisdiction over their actions. Employees can performs better with more autonomy, or at least more options regarding how they operate. This can have a large impact on professional organizations.

The paper allows for the creation of multiple extensions. Among them is the potential use of path analysis to examine the selection of polysemantic regulatory statutes to the power (or influence or reputation) of the prosecutor to the final outcome of conviction. The individual relationships between these variables may be telling when combined with regression results. Another extension is the application of a broader range of definitions of polysemantic. Firstly,

the number of precedents that a law has in case law, or clusters of precedents, may be an indication of how polysemantic a law can be. Practically, one could count the number of times a law appears in cases and if clusters of co-occurrence are observed, they can be grouped together. Then, one could check the mean and variance of said clusters and see if there are any groupings that stand out to see if any particular group is more polysemantic than another. Secondly, one may look at the size of the lexicon of the law itself, by counting the number of tokens in the elements of the law. A larger variety of words may mean that a law is more polysemantic because it contains more meanings. Moreover, one may seek to examine readability scores, a law that is more readable may be less polysemantic because it may be less prone to lawyering. Further, the number of levels a law has within the U.S. Code may be an indication of its polysemy. A law with many subsections may have more meanings. Operationalizing these views and applying a similar analysis is an avenue of further research.

Polysemantic laws provide beneficial output to prosecutors who utilize them to their benefit. Understanding the process through which polysemantic laws provide convictions, allows us to gain insight into the strategies that agents utilize to enhance performance. The organization of the district attorney's office is a telling one and provides implications well beyond the legal field.

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APPENDIX 1

Questionnaire regarding Prosecutorial Decision Making

The purposes of this questionnaire relate to white collar crime, but please answer whatever you find you may have knowledge pertaining.

1. Receiving a case
    a. Please describe the process through which a case reaches the DA's office.
    b. How much interaction does the DA have with the police?
    c. Who decides which prosecutor is assigned a case?
2. Selecting a law
    a. What level of discretion does a prosecutor have in deciding which statute to use during the prosecution?
    b. Who helps the prosecutor with the decision? Who else is involved?
    c. How often does it happen that a different statute is used for the case rather than the one used for the indictment?
    d. Do prosecutors sometimes have a formula of laws that these use together?
3. Relationship with the defense
    a. How much does the prosecutor know about the defense?
    b. Does the relationship with the defense affect any of the prosecutor's actions?
    c. Does the defense have an impact on what law is selected for trial?
4. Characteristics of the law
    a. In what aspects do laws differ?
        i. Would you say some laws have more than one interpretation while others are more clear-cut?
        ii. Could you give examples of these types of laws?
    b. Are multiple laws often used in conjunction with one another?
        i. What kind of laws are tried alone?
5. Reputation
    a. How does the profile of the case affect the prosecutor's actions?
        i. What proportion of cases are high-profile?
    b. How concerned is the prosecutor with conviction rates?
        i. Do these directly affect career prospects?
    c. What are the typical career paths for prosecutors?

Table 1. Descriptive Statistics

			Percentile			
Variable	Mean	Min	25th	50th	75th	Max
Conviction Rate (%)	83	0.082	79	90	96	98
Polysemantic Rate (%)	65	10	53	75	79	99
Amount of money gained by win*	5398	0	0	0	0	73000000
Chief Prosecutor's Salary ($1,000s)	79	11	54	85	101	190
Years in Office	9	0	4	7	14	40
Prosecutorial Budget	26100	7	1490	5015	28200	373000

*Converted to categorical variable

Table 2. Explaining Convictions - Case Level

Dependent Variable: Conviction	(1)	(2)	(3)	(4)
Polysemantic Rate		0.887 ***	0.973 ***	0.915 ***
		(0.047)	(0.046)	(0.048)
Amount of Fine			9.253 **	9.316 **
			(1.284)	(0.864)
Years in Office				0.003 **
				(0.001)
Chief Prosecutor's Salary ($1,000s)	0.000 ***	0.000 ***	0.000 ***	0.000 ***
	(0.000)	(0.000)	(0.000)	(0.000)
Prosecutorial Budget (millions)	0.000 ***	0.000 ***	0.000 ***	0.000 ***
	(0.000)	(0.000)	(0.000)	(0.000)
Type of Counsel	0.079 ***	0.092 ***	0.089 ***	0.083 ***
	(0.005)	(0.005)	(0.005)	(0.005)
Constant	2.285 ***	1.723 ***	1.512 ***	1.647 ***
	(0.050)	(0.057)	(0.055)	(0.059)
Pseudo R-Squared	0.013	0.019	0.064	0.061

Table 3. Explaining Convictions - District Level

Dependent Variable: Conviction Rate	(1)	(2)	(3)	(4)
Polysemantic Rate		0.079 ***	0.081 ***	0.073 ***
		(0.004)	(0.004)	(0.004)
Amount of Fine			0.035 ***	0.033 ***
			(0.002)	(0.002)
Years in Office				0.001 **
				(0.000)
Chief Prosecutor's Salary ($1,000s)	0.000 ***	0.000 ***	0.000 ***	0.000 ***
	(0.000)	(0.000)	(0.000)	(0.000)
Prosecutorial Budget (millions)	0.000 ***	0.000 ***	0.000 ***	0.000 ***
	(0.000)	(0.000)	(0.000)	(0.000)
Type of Counsel	0.008 ***	0.009 ***	0.009 ***	0.009 ***
	(0.000)	(0.000)	(0.000)	(0.000)
Constant	0.749 ***	0.701 ***	0.696 ***	0.686 ***
	(0.005)	(0.005)	(0.005)	(0.005)
R-Squared	0.020	0.025	0.030	0.029