PAPER TITLE	AUTHOR(S)	ABSTRACT	KEYWORDS
The Great Patent Grab	Jonathan Barnett; Univ. of Southern California	From the late New Deal through the 1970s, the U.S. innovation economy operated under a policy regime of strong antitrust and weak patent enforcement. This weak property-rights environment was illustrated most dramatically by 145 antitrust enforcement actions resulting in the compulsory licensing or forfeiture of patent portfolios held by some of the largest U.S. firms. Concurrently, the federal government instituted an implicit compulsory licensing regime through substantially increased funding of industry R&D, accompanied by constraints on firms' control over technology developed using those funds. This paper documents this compulsory licensing regime and assesses the extent to which it achieved its stated policy objectives to reduce market concentration, facilitate entry and promote innovation. While R&D investment persisted robustly for part of this period, it was concentrated among a small group of large firms, market concentration did not decline, and incumbents targeted by compulsory licensing maintained or enhanced their market positions. These "innovation oligopolies" may have been the consequence of a weak patent regime, which favors integrated firms that are best situated to internally fund R&D and then capture returns through economies of scale and capital-intensive production and distribution infrastructure. These organizational distortions may have contributed to the widely observed slack in U.S. innovation starting in the late 1960s.	antitrust, patents, innovation, compulsory licensing
Anticompetitive Trademark Settlements	C. Scott Hemphill; New York University	This Article examines the circumstances under which a settlement of trademark litigation violates antitrust law. The main focus is agreements that prevent a firm from purchasing online advertisements on the search results page of a rival. My main contribution is to describe and assess two defenses of trademark settlements. First, settlements have significant procompetitive potential that, in principle, offsets the anticompetitive effect. The most important is that an agreement to restrict advertising restraint might reduce consumer confusion. This potential effect dovetails with the underlying purposes of trademark law. However, as I explain, there are fundamental differences between the antitrust analysis of avoided confusion and the prosecution of a trademark. For example, consumers can receive a procompetitive benefit from settlement even if the prohibited conduct would not be a "use" of the trademark and could not conceivably support a trademark infringement claim. At the same time, strong likelihood-of-confusion evidence, as measured by the yardstick of trademark law, might amount to nothing as an antitrust justification. Second, a settlement can be defended on the alternative ground that it gives consumers no less benefit than they could expect from litigation. Trademark is a probabilistic right, just like a patent. It provides no right to exclude, but merely a right to try to exclude. A relevant baseline for evaluating a settlement is the expected welfare from litigation that has an uncertain outcome. Determining whether the settlement confers less welfare than this baseline is difficult, because the answer depends upon the probability of winning if the case were litigated. Nevetheless, as I demonstrate with the aid of a simple formal model, two types of settlement are worse than litigation, no matter what the probability of winning is. The first is extreme settlements that replicate the effect of a litigated win by the mark owner. The second is settlements that exceed the nominal scope of the trademark.	antitrust, Google, trademark, patents, settlement
A Wonderland after Alice: Abstraction and Uncertainty of Patentability	Asrat Tesfayesus; US Patent and Trademark Office	Alice v. CLS Bank (2014) has been one of the most impactful U.S. Supreme Court decisions in the patent space. A number of scholars, policy makers, and practitioners have lamented that its main effect has been to amplify the uncertainty about the subject matter eligibility of patent applications, particularly in the business methods area. Such uncertainty may affect what applicants submit to the USPTO, prolong prosecution, reduce the value of the patent system, and, in effect, deter incentives to innovate. In this paper, we refer to Court of Appeals of the Federal Circuit and Supreme Court cases raising § 101 abstract ideas based validity questions and use the patents-in-suit in those cases to identify the technology areas that are more likely to be affected by the Alice decision. Furthermore, we employ a novel methodology to measure the abstractness of a patent document based on which we can identify applications that the Alice decision is more likely to affect. We then use a difference-in-differences estimation to evaluate the effect of Alice on examiner behavior. We find that the technology classification and abstractness of a document significantly increases the probability of a first action § 101 rejection post-Alice as well as uncertainty in prosecution as measured by variance across examiners in the rate of § 101 rejections. We also find that applications with a first non-final rejection right before Alice exhibit a higher rate of second non-final rejection post-Alice that are likely to be a corrective measure in light of the decision. However, when controlling for cases of a pre-Alice first non-final and a post-Alice second non-final rejection, we do not observe a change in the rate of second non-final rejections. Therefore, we find an increase in examiner uncertainty surrounding § 101, but no long lasting discernable effect on pendency as measured by the rate of second non-final rejections.	Intellectual Property, Patentability, Uncertainty, Abstraction, Examination, Patent Value

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THE PERILS OF SMALL-MINORITY CONTROLLERS	Lucian Bebchuk; Harvard Law School Kobi Kastiel; Tel Aviv University	This Article contributes to the long-standing and heated debate over dual-class companies by placing a spotlight on a significant set of dual-class companies whose structures raise especially severe governance concerns: those with controllers holding a small minority of the company's equity capital. Such small-minority controllers dominate some of the country's largest companies, and we show that their numbers can be expected to grow. We begin by analyzing the perils of small-minority controllers, explaining how they generate considerable governance costs and risks and showing how these costs can be expected to escalate as the controller's stake decreases. We then identify the mechanisms that enable such controllers to retain their power despite holding a small or even a tiny minority of the company's equity capital. Based on a hand-collected analysis of governance documents of these companies, we present novel empirical evidence on the current incidence and potential growth of small-minority and tiny-minority controllers. Among other things, we show that governance arrangements at a substantial majority of dual-class companies enable the controller to reduce his equity stake to below 10% and still retain a lock on control, and a sizable fraction of such companies enable retaining control with less than a 5% stake. Finally, we examine the considerable policy implications that arise from recognizing the perils of small-minority controllers. We first discuss disclosures necessary to make transparent to investors the extent to which arrangements enable controllers to reduce their stake without forgoing control. We then identify and examine measures that public officials or institutional investors could take to ensure that controllers maintain a minimum fraction of equity capital; to provide public investors with extra protections in the presence of small-minority controllers; or to screen midstream changes that can introduce or increase the costs of small-minority controllers.	Corporate governance, agency problems, dual-class, controlling shareholders, minority shareholders, small-minority controllers, wedge, IPO
Global Antitakeover Devices	Adi Libson; Bar-Ilan University	This Article explores a "hidden" mechanism that insulates management from hostile takeovers and activist intervention: the global antitakeover device ("GAD"). A GAD is based on the ability of public firms to "mix and match" between different forms of regulations through cross-listing in multiple stock exchanges or incorporation in foreign jurisdictions. This action subjects any hostile engagement with these firms to multiple jurisdictions' regulatory frameworks and creates regulatory barriers, complexity, and uncertainty. This Article provides a comprehensive analysis of these GADs and of their comparative advantages, from the perspective of targets, over the traditional antitakeover devices. GADs are not an isolated phenomenon. Their potential economic impact is significant, as one in seven firms traded on U.S. exchanges are incorporated or cross-listed in foreign jurisdictions. Moreover, the impact of these devices extends well beyond the market for corporate control, as foreign firms also enjoy a partial insulation from the most important disciplinary force in the U.S. capital market: activist hedge funds. This Article sheds new light on managers' motivations for listing their firms on a foreign exchange, even one with less developed capital markets, in order to enhance their insulation from market disciplinary forces. It offers policy recommendations for overcoming GADs' insulation from takeover attempts and activism.	antitakeover devices, activism, dual-listing, corporate inversions
The Effect of Minority Veto Rights on Controller Tunneling	Jesse Fried; Harvard Law School	A central challenge in the regulation of controlled firms is curbing controller tunneling. As independent directors and fiduciary duties are widely seen as not up to the task, a number of jurisdictions have given minority shareholders veto rights over these transactions. To assess these rights' efficacy, we exploit a 2011 regulatory reform in Israel that gave the minority the ability to veto pay packages of controllers and their relatives ("controller executives"). We find that the reform curbed the pay of controller executives and led some controller executives to quit their jobs or work for free in circumstances suggesting their pay would not have received approval. These findings suggest that minority veto rights can help curb controller tunneling.	Controlling shareholders, tunneling, compensation, minority shareholders, veto rights
Corporate Governance Changes as a Signal: Contextualizing the Performance Link	Merritt Fox	Prior scholarship reports a relationship between firms with good corporate governance index scores and those best at creating shareholder value, but little work explores why. We hypothesize that at least one explanation is that a score-changing alteration in governance structure can is a signal concerning the quality of a firm's management. The idea is that a high scoring structure is more costly to bad managers than good ones because it imposes a higher risk of job loss on the bad managers. We test this hypothesis by comparing ordinary times with 2000-2002, a period of unprecedented corporate accounting scandals leading to greater uncertainty as to which firms had the better managers. Fixed effects tests reveal that an improved governance index score in the accounting scandal years is associated with a much larger increase in Tobin's Q than a comparably sized rating improvement occurring in the surrounding years. OLS tests show no significant difference in the relationship between a frim's score and its Q during the crisis period versus the surrounding years, which suggest that the market's perception of the effectiveness of a highly rated governance structure at better incentivizing managers or at filtering out bad ones did not change during the scandal years. Signaling -- the third possible causal link between good scores and higher Tobin's Q – must have been at work because a clarifying signal would be expected to have a bigger effect in a period of greater uncertainty as to which firms had good managers.	

PAPER TITLE	AUTHOR(S)	ABSTRACT	KEYWORDS
Do State-Owned Enterprises Have Worse Corporate Governance? An Empirical Study of Corporate Practices in China	Yu-Hsin Lin; City University of Hong Kong Yun-chien Chang; Academia Sinica	Prior literature on corporate governance in China asserts that state-owned enterprises (SOEs) are badly governed, but there is scant solid empirical evidence that can verify this claim. Using a unique, hand-coded data set on corporate charter provisions in a random sample of nearly 300 publicly listed Chinese firms, we develop an additive corporate governance index demonstrating that SOEs for which the Chinese central government controls more than 30% of shares are more in favor of minority shareholders than are privately-owned firms. Moreover, structural equation models show that, in China, being more pro-minority-shareholders (rather than being more pro-controller) is associated with higher firm value. Other things being equal, central SOEs would thus have better corporate governance and higher industry-adjusted Tobin's Q. This is the first empirical paper that shows this striking result, which warrants further research into the general perception of bad governance in SOEs.	state-owned enterprises (SOEs), corporate charters, corporate governance, Chinese firms, firm performance, rational myopia, external financial dependence, institutional investors
The Misuse of Tobin's Q	Robert Bartlett; Univ. of California, Berkeley Frank Partnoy; University of San Diego School of Law	We examine the common and growing use of Tobin's q as a proxy for firm value within the law and finance literatures. We first trace the emergence of Tobin's q as a mean-reverting construct within macroeconomics for modeling corporate investment policy, to its current use as an empirical measure of firm value. We further document the emergence of the simplified market-to-book estimate of q that is regularly used today to examine how regulatory policy, corporate governance, and other economic phenomenon empirically affect firm value. This history highlights how scholars within macroeconomics discarded this market-to-book estimate of q due to its measurement error, just as its use as a proxy for firm value within law and finance became de rigueur during the late 1990s. Empirically, we demonstrate how using the market-to-book estimate of q as a proxy for firm value can produce non-classical measurement error in regression specifications that seek to estimate the relationship between firm value and corporate governance and/or regulatory policy. Consistent with the original q construct, however, we show that the simple market-to-book estimate of q is mean-reverting in terms of stockholder returns. We conclude that researchers should avoid using q as a proxy for firm value and suggest several alternatives for researchers seeking to understand how regulatory policy and corporate governance affect firm value. These include using direct estimates of firm value and, when possible, supplementing the popular fixed effects estimator with the first difference estimator.	Corporate Governance; Firm Value; Tobin's Q
An Empirical Study of Special Litigation Committees: Evidence of Management Bias and the Effect of Legal Standards	CNV Krishnan; Case Western Reserve University Steven Solomon; University of California, Berkeley - Sch Randall Thomas; Vanderbilt University	We examine whether special litigation committees (SLCs) act independently or favor management interests with a focus on how legal rules affect SLC outcomes. We compile a hand-collected sample of SLC associated lawsuits spanning a 26-year period from Jan 1, 1990 through Dec 31, 2015. We find evidence that SLC reports are most likely to recommend case dismissal, that such a recommendation is significantly and positively associated with the probability of the case being dismissed, and significantly and negatively associated with probability of case settlement, even after controlling for lawsuit reasons, legal standards, and time fixed effects. However, we find evidence that SLCs reports systematically underestimate the likelihood that cases will settle. We also find that SLC reports to dismiss are filed with significantly higher frequency when all defendants are current or former directors as compared to the rest of the cases, but actual dismissals occur with significantly higher frequency when any defendant is an entity other than the defendant firm as compared to all other cases, providing some evidence that SLCs tend to favor their fellow directors and officers. In robustness tests which account for possible selection effects in SLC cases, we also find that law matters for SLC outcomes: incorporation in Delaware and a lawsuit filed in Delaware courts are both significantly associated with a lower probability of the SLC report recommending dismissal of the case, and a motion to dismiss filed by a SLC. We find that actual case dismissals are the lowest amongst all jurisdictions in Delaware suits. In states with the lowest legal standards for SLC judicial review, SLC's cases are more likely to be dismissed. While our findings are subject to selection effects and differing interpretations, our findings highlight that, contrary to prior studies, there is evidence of SLC pro-management bias, and legal rules and judicial oversight of SLCs are important.	special litigation committees; corporate governance
Shareholder Litigation and the Information Environment	Audra Boone; Texas Christian University Eliezer Fich; Drexel University Thomas Griffin; Drexel University	We study whether the threat of shareholder litigation affects firms' information environments. Our source of variation is the staggered adoption of universal demand (UD) laws at the state level which imposes greater hurdles for shareholders to bring derivative lawsuits against fiduciaries at the firm. After UD laws pass, firms provide more opaque financial statements, analyst dispersion and forecast error increase and the trading environment declines. Moreover, firms incorporated in UD states are less likely to face financial misconduct charges. Finally, we find that insiders earn greater trading profits, which is consistent with the notion that they benefit from the reduced transparency.	Information environment, shareholder litigation, financial misconduct, universal demand laws

PAPER TITLE	AUTHOR(S)	ABSTRACT	KEYWORDS
Information and Deterrence in Shareholder Derivative Litigation	Quinn Curtis; University of Virginia	Shareholder derivative litigation has been criticized as fraught with attorney-client agency problems and other defects. The special litigation committee (SLC) process is seen as a means of addressing these problems by allowing disinterested directors to apply their business judgement to the decision to continue the litigation. I present a formal model which operationalizes the most common critiques of shareholder derivative litigation, including meritless suits, value-decreasing suits, and self-interested plaintiffs' attorneys who don't internalize the costs of litigation. Within this framework, allowing even an unbiased SLC with superior information to dismiss litigation may nevertheless decrease the value of the firm because it undercuts the firm's ability to commit ex ante to an aggressive litigation stance regarding fiduciary breaches. Whether this is the case turns of firm-specific variables, suggesting that a private-ordering solution to derivative litigation is desirable.	Zapata; Shareholder Derivative Suits; Special Litigation Committees; Corporate Law
A Collaborative Model of the Corporation	Jill Fisch; University of Pennsylvania Simone Sepe; Toulouse School of Economics	Two models of the corporation dominate legal discourse. The first is the management-power model, which is premised on vesting corporate insiders - officers and directors - with primary decision-making power. The second is the shareholder-power model which contemplates increased shareholder power to reduce managerial agency costs and self-dealing. Both models assume that insiders and shareholders are engaged in a competitive struggle for corporate power and address, descriptively and normatively, the appropriate allocation of that power. Corporate practice has moved beyond existing theories of the corporation framed in terms of a competitive power struggle between insiders and shareholders, however. Increasingly, the insider-shareholder dynamic in the modern corporation is collaborative, not competitive. This Article responds to this development and constructs a normative defense for a collaborative model of the corporation. Using insights from game theory, it demonstrates how insider-shareholder collaboration promotes the production and aggregation of complementary information that increases firm value. The collaborative model offers several insights for corporate governance. First, it suggests that, to enhance collaboration, core governance provisions should be the product of bilateral action involving both insiders and shareholders. Second, board insulation mechanisms should provide for shareholder input so as not to impede collaboration. Finally, doctrines addressing the appropriate use by activist directors of firm information should facilitate rather than frustrate information-sharing between directors and their principals. Implementation of these principles requires rethinking and adapting several existing principles of corporate law.	corporate governance, collaborative corporate governance, theory of the firm, shareholder empowerment
Board Declassification and Firm Value: Have Shareholders and Boards Really Destroyed Billions in Value?	Emiliano Catan; NYU Michael Klausner; Stanford University	This paper analyzes the wave of board destaggering that has occurred over the past fifteen years. Other studies have concluded that the result of this phenomenon has been a substantial destruction of firm value, purportedly caused by re-orienting management from a long-term to short-term focus. We conclude that these results reflect a spurious correlation. We find, first, that board destaggering has occurred disproportionately among firms of very large market capitalization and, second, that firms with very large market capitalization also experienced disproportionate and unrelated relative drops in Tobin's Q over the period in which destaggering has occurred. The association between destaggering and the drop in Tobin's Q becomes statistically insignificant once one compares destaggering firms with other firms of similar market capitalization. We analyze the claim that board destaggering is especially costly for firms with high R&D, and similarly find that once one takes account of unrelated differential fluctuations in Q among high- and low-R&D firms, there is no evidence that destaggering a board reduces the value of high-R&D firms. From a methodological perspective, our analysis suggests that corporate governance studies using difference-in-differences or within-firm designs should take account of the possibility that differential secular trends in asset prices may confound their results.	

PAPER TITLE	**AUTHOR(S)**	**ABSTRACT**	**KEYWORDS**
The Independent Board as Shield	Gregory Shill; University of Iowa College of Law	The independent corporate board is controversial for the wrong reasons. For decades, commentators have sparred over whether shareholders are better served by a system that empowers independent directors to oversee managers or by one that allows managers greater freedom of action. Differences between groups of scholars and judicial decisions in this seminal debate, however, mask an assumption shared by both that independent boards operate in a single direction: as a constraint on management. Contra the common account, the independent board serves not only as a check against managers but as a powerful shield for managers, insulating them from shareholder, judicial, and market pressures. Specifically, the independent board structure operates bidirectionally: it adds outsiders to the board as supervisors of management while simultaneously empowering managers to make decisions of the greatest personal importance to them, where the potential for self-dealing is highest—regarding CEO pay, takeover bids, shareholder lawsuits, and other high-salience matters—effectively free from shareholder interference. In high-priority transactions raising duty of loyalty concerns, all managers need do to secure business judgment-rule immunity is secure an approving vote of formally independent directors. The article supplements this claim by exploiting data from a natural experiment regarding the directionality of the independent-board channel. The independence mandate, imposed in 2003, includes a carve out for controlled companies. Nevertheless, most such companies today opt into a 50 percent- or majority-independent board structure anyway. Since managers can be expected to act compatibly with their self-interest, empirical data showing that most controllers opt in to an independent board structure is consistent with the hypothesis that the model offers protection to managers. The notion this article introduces of the independent board as a managers' shield destabilizes not only a key assumption of the corporate law literature but also the foundation of the regulatory and doctrinal rationale behind deferring to independent boards in the first place. The article suggests some modest and straightforward reforms, such as tightening independence standards and disclosure. But commensurate with the scale of the challenge, it also seeks to open up a discussion of more fundamental changes, including narrowing the scope of the canonical business judgment rule as it applies to transactions implicating the duty of loyalty.	Corporate governance, independent board, business judgment rule, shareholder activism, controlled companies
Rethinking Corporate Law During A Financial Crisis	Yair Listokin; Yale University Inho Mun; Wachtell Lipton Rosen & Katz	Since the Financial Crisis of 2008, most reform measures and discussions have asked how the law of financial regulation could be improved to prevent or mitigate future crises. These discussions give short shrift to the role played by corporate law during the Financial Crisis of 2008 and other financial crises. One critical regulatory tool during the crisis was "regulation by deal," in which healthy financial firms ("acquirers") would hastily acquire failing firms ("targets") to mitigate the crisis. The deals were governed by corporate law, so corporate law played an outsize role in the response to the crisis. But few observers have asked how corporate law—in addition to financial regulation—should govern dealmaking in financial crises. To fill in this gap, this Article focuses on the role played by corporate law during the Financial Crisis of 2008, and asks whether corporate law should be different during a financial crisis than in ordinary times. Using an externality framework—failure of a systemically important firm can harm the entire economy, and not just the shareholders of the failed firm—this Article identifies a key problem with the current corporate law regime as applied in financial crises: the shareholder value maximization principle as applied to failing target companies. This principle, manifested in the form of shareholder voting rights on mergers and board fiduciary duties to shareholders, is inapplicable to systemically important target firms whose failure would have enormous negative externalities on the rest of the economy. This Article contends that corporate law as applied to systemically important, failing target firms during crises should change as follows: (1) replace shareholder merger voting rights with appraisal rights, and (2) alter fiduciary duties so that directors and officers of those failing target firms consider the interests of the broader economy.	Regulation by Deal, Shareholder Value Maximization, Financial Crisis, Law and Macroeconomics, Board Fiduciary Duties, Post-Crisis Reform
Is There a First-Drafter Advantage in M&A?	Adam Badawi; UC Berkeley Elisabeth de Fontenay; Duke University School of Law	Does the party that provides the first draft of a merger agreement get better terms as a result? There is considerable lore among transactional lawyers on this question, yet it has never been examined empirically. In this Article, we develop a novel dataset of drafting practices in large M&A transactions involving U.S. public-company targets. We find, first, that responsibility for providing the first draft is divided roughly equally between acquirers and sellers, contrary to the conventional wisdom that acquirers virtually always draft merger agreements. Second, we find that there is little or no advantage to providing the first draft with respect to the most monetizable terms, such as merger breakup fees. Third, and notwithstanding, we do find an association between drafting first and a more favorable outcome for terms that are harder to monetize, more complex, and that tend to be negotiated exclusively by counsel, such as the material adverse change (MAC) clause. Fourth, we find that the distinction between terms that are easier and harder to monetize persists when we analyze auctions and other deals that are subject to overt competitive pressure. These findings are consistent with the view that delegating negotiation to lawyers produces agency costs and that first drafters can exploit these agency costs in a way that advantages their clients.	merger; contract; law firm; bargaining

PAPER TITLE	AUTHOR(S)	ABSTRACT	KEYWORDS
REVERSE TERMINATION FEES IN M&A	John Coates; Harvard University Darius Palia; Rutgers University Ge Wu; Rutgers Business School	Reverse termination fees (RTFs) are required payments by bidders when they "walk away" from a merger or acquisition, and vary significantly in size and design. In a large sample of manually collected U.S. deal contracts involving publicly traded bidders and targets, we examine the relationship between announcement returns and different types of RTFs, including those with features theorized by others to reflect inefficient design, and also RTFs that we theorize may send a negative value signal from managers seeking to "eat" rather than "be eaten" in consolidating industries. We find inefficient RTFs correlate with lower bidder returns, even in a subsample where disclosure of RTF terms lags deal announcements by more than two days. We also find inclusion of certain RTFs in consolidating industries reveals private information to the market, resulting in negative abnormal returns. Our results are robust to alternative event windows and control groups, and carry over to combined bidder and target abnormal returns, inconsistent with inefficient RTFs reflecting transfers from buyers to targets. Finally, we find an insignificant relationship between the probability of deal completion and inefficient RTFs, and a negative significant relationship between the probability of deal completion and negative signal RTFs, consistent with the fact that deals with such RTFs are adopted in consolidating industries where both deal competition and antitrust issues are higher than in other deal settings.	Merger, Acquisition, Break Fee, Reverse Break Fee, Reverse Termination Fee, Contract
Network Effects in Corporate Law	Sarath Sanga; Northwstern University	Most public companies incorporate in Delaware. Is this because they prefer its legal system or are they simply following a trend? Using the incorporation histories of over 22,000 public companies from 1930 to 2010, I show that firms are more influenced by changes in each other's decisions than by changes in the law. The analysis exploits an unexpected legal shock that increased Delaware's long run share from 30 to 74 percent. I attribute most of this change to a cascading effect in which the decisions of past firms successively influence future cohorts. Delaware firms also enjoyed abnormal returns precisely during those years in which the Delaware network grew most. I conclude that network effects dominate secular trends in corporate governance.	corporate governance, network effects, information cascades
THE DEATH OF CORPORATE LAW	Zohar Goshen; Columbia Law School and Ono Academic College Sharon Hannes; Tel Aviv University	For decades, corporate law played a pivotal role in regulating corporations across the United States. Consequently, Delaware, the leading state of incorporation, and its courts came to occupy a central and influential position in corporate law and governance. This, however, is no longer the case: The compositional shift in equity markets from retail to institutional ownership has relocated regulatory power over corporations from courts to markets. Corporate law has, as a result, and as illustrated by the decline of the Delaware courts, lost its pride of place and is now largely a dead letter. What explains the connection between the rise of institutional ownership and the death of corporate law? We answer this question by unpacking the relationship between market dynamics and the role of corporate law. Our analysis uncovers a critical, yet hitherto unnoticed, insight: The more competent shareholders become, the less important corporate law will be. Increases in shareholder competence reduce management agency costs, intensify market actors' preference for private ordering outside of courts, and, ultimately, drive corporate law into oblivion.	
Regulatory Competition and the Market for Corporate Law	Ofer Eldar; Duke University Lorenzo Magnolfi; University of Wisconsin-Madison	This article develops an empirical model of firms' choice of corporate laws under inertia. Delaware dominates the incorporation market, though recently Nevada, a state whose laws are highly protective of managers, has acquired a sizable market share. Using a novel database of incorporation decisions from 1995- 2013, we show that most firms dislike protectionist laws, such as anti-takeover statutes and liability protections for officers, and that Nevada's rise is due to the preferences of small firms. Our estimates indicate that despite inertia, Delaware would lose significant market share and revenues if it adopted protectionist laws. Our findings support the hypothesis that Delaware faces competitive pressure to maintain its current laws, and that managers are willing to commit to such laws in order to attract capital.	Regulatory Competition, Delaware, Nevada, Anti-takeover statutes, Director Liability
Shareholders and Stakeholders around the World: The Role of Values and Culture in Directors' Decisions	Amir Licht; Interdisciplinary Center Herzliya Renee Adams; University of New South Wales	We present first evidence about individual and institutional factors that guide board members of public companies around the world in addressing the fundamental strategic problem of dealing with shareholders and stakeholders. In a sample comprising nearly nine hundred board members from some fifty countries of origin, we confirm that these corporate leaders hold a principled, quasi-ideological stance towards shareholders and stakeholders, dubbed shareholderism. This stance associates with a personal value profile that emphasizes self-enhancement values and is also compatible with entrepreneurship. We further find that such shareholderism stances correlate with cultural orientations of egalitarianism and mastery that, respectively, reflect a societal view of all people as moral equals and endorse assertive change and domination of the physical and social environment. Our data further suggest that board members' handling of such strategic dilemmas may be determined by legal factors. Although we do not observe a broad effect of the general style of the legal system as reflected in its legal origin, more specific rules that provide for social security and protect employees may be related to shareholderism.	corporate governance, stakeholders, directors, values, culture, egalitarianism, entrepreneurship
Do Institutional Investors care about Corporate Social Responsibility and Irresponsibility?	Silvina Rubio; Universidad Carlos III de Madrid Antonio Vázquez; UNIVERSITY CARLOS III OF MADRID	This paper investigates how Corporate Social Responsibility (CSR) and Corporate Social Irresponsibility (CSiR) change when the degree of monitoring by institutional investors varies. We exploit changes in institutional investor distraction due to extreme events in unrelated industries, which is a plausible exogenous source of variation in monitoring intensity. We show that tighter monitoring reduces both CSR and CSiR. The impact on the former is mainly found in contexts prone to agency conflicts, while the effect on the latter is concentrated in settings where there is a demand for advising. Our results are robust to alternative definitions of monitoring intensity and CSR.	corporate social responsibility, institutional investors, corporate governance, shareholders' proposals

PAPER TITLE	AUTHOR(S)	ABSTRACT	KEYWORDS
Antitrust as Corporate Governance	Ramsi Woodcock; Georgia State University	Consumers have been left out of the great debate over the mission of the firm, in which advocates of shareholder value maximization face off against advocates of corporate social responsibility, who would allow management leeway to allocate profits to workers or other non-shareholder insiders of the firm. Contrary to both sides of the debate, the consumer welfare standard adopted by antitrust law in the 1970s requires that the firm allocate its profits neither to shareholders nor to workers or other firm insiders. Instead, the standard requires that firms strive to have no profits at all, by charging the lowest possible prices for the best quality products. Such a profit minimization requirement, which, as federal law, binds all state-level corporate law regimes, preserves incentives for businesses to perform efficiently because any incentive payments necessary for efficiency count as costs, not profits, and can therefore be retained by firms.	
Ideas Have Consequences: The Impact of Law and Economics on American Justice	Daniel Chen; Toulouse School of Economics Elliott Ash; University of Warwick Suresh Naidu; Columbia University	This paper provides a quantitative analysis of the effects of the law and eco- nomics movement on the U.S. judiciary using the available universe of opinions in U.S. Circuit Courts and 1 million District Court criminal sentencing decisions linked to judge identity. We estimate the effect of attendance in the controver- sial Manne economics training program that 40% of federal judges attended by 1990. To isolate the effect of judges from the types of cases they face, we exploit random assignment of judges to control for court- and case-level factors, an ex- ogenous seating network from random panel composition to trace the spread of economic reasoning in law, and ordering of cases within Circuit to identify general economic ideas that move across legal topics. We use natural language process- ing methods to quantify the influence of economics in written judicial opinions. Descriptively, we find that judges who use law and economics language vote for and author conservative verdicts (as coded by Songer-Auburn) in economics cases and are more opposed to government regulation. After attending Henry Manne's economics training program, participating judges use more economics language and render conservative verdicts in economics cases, rule against regulatory agen- cies, particularly in labor and environmental cases, get cited more and increase dissents. These results are robust to a large set of judge biographical controls, and do not exist prior to Manne program attendance, suggesting a causal effect of economics training on judicial decisions. Further, Manne economics training is more predictive of these decisions than appointing political party. We further document a number of indirect channels of economics influence on the law beyond the direct effect on Manne program participants. Non-Manne judges exposed to Manne peers on previous cases increase their use of economics language in sub- sequent opinions. Further, some economics concepts are portable across legal contexts: we show that "general-purpose" economics phrases such as "capital", and "efficiency" move across legal topics within a judge. Economics reasoning dif- fused from regulatory domains into criminal law. Consistent with this, we show that law and economics influenced criminal decisions: Circuit Court judges that attend the Manne program and use more economics language are more likely to reject criminal appeals, and this effect spills over onto non-Manne judges serving on the same panel. Moving to district courts, and using variation in judicial dis- cretion generated by U.S. v. Booker, we find Manne judges render 20% harsher (10 months longer) criminal sentences after this ruling, which allowed more judi- cial sentencing discretion. Finally, we document that Manne attendance is more predictive of racial and gender sentencing disparities than party of appointment, and Manne judges in both Circuit and District Courts render harsher immigration decisions, voting for enforcement of immigration regulation and longer sentences for illegal immigrants.	Judicial Decision-Making, Ideology, Intellectual History.
Judiciary's Achilles Heel: Executive Control via Appointment Power	Sultan Mehmood; University of Paris Dauphine and Paris School of Economics	To what extent does the selection mechanism of the judges impact judicial decision making? We document a substantial increase in judicial independence and reduced case delay in Pakistan, as a result of a 2010 judicial selection reform which changed the selection procedure of the judges from the presidential appointment of the judges to the selection of judges by a judicial commission (consisting of peer judges). Using mandatory retirement age as an instrument for new appointments, we estimate the causal effect of the change in appointment procedure on judicial independence and case delay. Better enforcement of laws regulating land disputes with government agencies is the key mechanism driving these results. We further show that the judges selected by the judicial commission are significantly less likely to be politically active prior to their appointments or receive the controversial "Prime Minister's Assistance Package" (that awards residential plots to the judges) compared to the judges appointed by the president. The new judges who did accept the package are more likely to rule in favour of the government.	executive constraints, selection effects, institutions, courts
The Unanticipated Consequences of Judicial Incentives: Evidence from the Six Month List	Miguel de Figueiredo; University of Connecticut School of Law Alexandra Lahav; University of Connecticut Peter Siegelman; University of Connecticut	Federal district court judges are subject to an important but little known requirement—the Six Month List. By law, every judge's backlog (cases older than three years and motions pending more than six months) is made public twice a year. Since judges have life tenure and fixed salaries, a mere reporting requirement might not influence their behavior at all. But it does. Using the complete record of all federal civil cases between 1980 and 2017 and a hand-coded sample of summary judgment resolutions, we demonstrate that the List leads judges to close substantially more cases and decide more motions in the week immediately before it is compiled. While average motion processing time is shortened by 20 to 40 days, duration is lengthened for those motions for which the deadline is least pressing. Moreover, we find suggestive evidence that the List has substantive consequences: judges may be making more errors in List weeks, in a way that tends to favor defendants. Theory suggests that giving judges an incentive for faster case processing is likely a mistake; but if there must be an incentive, we offer an alternative mechanism that will achieve the goal of reducing average processing times with fewer distortions.	Courts, Judicial Decisionmaking, Judicial Incentives

PAPER TITLE	AUTHOR(S)	ABSTRACT	KEYWORDS
Race, Gender, and Juries: Evidence from North Carolina	Francis Flanagan; Wake Forest University	This paper uses data from felony jury trials in North Carolina to show that (i) the race and gender composition of the randomly selected jury pool has a significant effect on the probability of conviction, (ii) attorneys adjust peremptory challenge strategies in accordance, and (iii) State peremptory challenges have a positive impact on the conviction rate when the defendant is a black male. Jury pools with higher proportions white men are more likely to convict black male defendants relative to white male defendants. Jury pools with a higher proportion of black men are more likely to acquit all defendants, especially black men. Attorneys use peremptory challenges strategically in accordance with these results, which are robust to a wide set of controls, including county and judge fixed effects. Each State peremptory challenge is correlated with a 2.4-2.9 percentage point increase in the conviction rate when the defendant is black.	Jury Selection, Peremptory Challenge, Batson Challenge
Preferences for Criminal Justice Error Types: Theory and Evidence	Yehonatan Givati; Hebrew University	What shapes individuals' preferences for criminal justice error types, that is the preferences for convicting the innocent versus letting the guilty go free? The strong correlation between preferences for criminal justice error types and incarceration rates across countries highlights the importance of these preferences. I develop an instrumental theory and an intrinsic theory of the preferences for criminal justice error types. Using individual level data from the U.S., I find support for both theories. Consistent with the instrumental theory of preferences, gender, race, and concern about crime shape preferences. Consistent with the intrinsic theory of preferences, education and ideology also shape preferences. I confirm these findings using individual level data from 22 countries, and provide some suggestive evidence that culture shapes preferences too.	Judicial Error Types
Legal Sufficiency of Statistical Evidence	Jonah Gelbach; University of Pennsylvania Bruce Kobayashi; George Mason University	We address the question of when a litigant's statistical estimates should be considered legally sufficient, given that the court will use the preponderance of the evidence standard of proof. We argue that this question involves posterior probabilities, and thus the likelihood function and prior probabilities. We first review the basics of Bayesian and conventional hypothesis testing in the (atypical) case when each side's position amounts to a simple hypothesis about the parameter of interest. We then address the terrain of the paper's main contribution, which is the important problem of composite hypotheses when statistical evidence is at issue in litigation. Our main contribution is to show how the law of civil procedure combines with statistical theory to render the Bayesian hypothesis testing problem associated with composite hypothesis testing manageable using only objective empirical information. The key object here is the generalized likelihood ratio, which is based on comparing the likelihood of the best story among all those that would support the plaintiff to the likelihood of the best story among all those that would support the defendant. In many cases of interest, black-letter law and mathematical statistics work together to create the following simple standard for legal sufficiency of statistical evidence: such evidence is legally sufficient when it points in the direction of the party relying on the evidence. We focus special attention on the concrete example of a normal likelihood, explaining why the results from that example apply in general large-sample cases. Finally, we explain why it is not the case that plaintiffs are entitled to judgment merely because their statistical evidence is legally sufficient. We also explain why the question of whether evidence is legally insufficient is more nebulous than the question of legal sufficiency.	
Beyond Bail: Using Behavioral Science to Improve Criminal Justice Outcomes	Aurelie Ouss; University of Pennsylvania	Crime policy creates incentives for people to comply with laws, such as stiff penalties or strict enforcement. For example, if a person fails to appear in court (FTA), an arrest warrant will be issued. In spite of these harsh penalties, in 2014, nearly 40% of individuals issued a ticket for a violation in New York City did not show up to court. This could be because the penalty is not large enough, either because not enough defendants are apprehended, or because arrests are not enforced. The usual policy responses would be to increase the penalty, but tougher penalties are only effective if people are sensitive to the expected costs and benefits of offending. Instead, we hypothesize that potential offenders suffer from inattention: they are not so much choosing to FTA as not paying attention to important information that would allow them to comply. We test this in a series of field experiments in New York City. First, we test whether people simply forget about their court date, by looking at the effectiveness of text message reminders. In a randomized control trial, we find that relative to a "no-message" control group, people receiving text messages are 21.1% less likely to FTA. Testing mechanisms, we show that messages that inform defendants of the negative consequences of FTA are most effective (23-26% reduction in FTA), simple plan-making reminders are still very effective, resulting in a 16% reduction in FTA, demonstrating that some people just forget about their court dates. In a second experiment, we demonstrate that further gains can be obtained by anticipating inattention and presenting information in a clearer way in the first place: exploiting the gradual roll-out of a redesigned summons form that make information clearer, we show that clearer information reduces failures to appear in court by about 13%. Using an online experiment, we show that as with text messages, people are responding to information on warrants; simplification helped reduce the amount of attention required to remember relevant information. Jointly, these results indicate that some offenses may stem from not making any decisions instead of making the wrong decision. Behavioral insights can suggest crime policies that would curb some offenses without resorting to stricter punishment.	Crime; Behavioral Economics; Courts

PAPER TITLE	AUTHOR(S)	ABSTRACT	KEYWORDS
Do Birds of a Gender Flock Together? In-Group Favoritism among Criminal Prosecutors	Stephanie Didwania; American Bar Foundation	Despite exercising enormous power in criminal cases, the behavior of individual criminal prosecutors is almost completely unstudied by quantitative empirical scholars. Because prosecutors enjoy wide discretion in the decisions they make and often work in autonomy, it is possible that their decisions are influenced by bias. This paper presents evidence of gender-based bias among federal prosecutors. I find that while female and male prosecutors do not significantly differ in their treatment of defendants overall, they appear to favor defendants of their own gender. Being assigned a prosecutor of the same gender significantly reduces a defendant's base offense level (a proxy for charging severity) and leads to a roughly seven percent reduction in sentence length.	criminal law, prosecutor, gender, ingroup bias, discrimination
The Voluntariness of Voluntary Consent: Consent Searches and the Psychology of Compliance	Roseanna Sommers; Yale University Vanessa Bohns; Cornell	Consent-based searches are by far the most ubiquitous form of search undertaken by police. A key legal inquiry in consent search cases is whether consent was granted voluntarily. Fact-finders must determine whether a reasonable person would have felt free to refuse the police officer's request to perform the search. This Essay suggests that fact-finders' determinations of what a reasonable person would do and feel are impaired by systematic biases in social perception. Fact-finders are likely to underappreciate the degree to which suspects feel pressure to comply with police officers' requests. In three pre-registered laboratory studies, we approached 237 participants ("Experiencers") with a highly intrusive request: to unlock their password-protected smartphones and hand them over to an experimenter to look through while they waited in another room. A separate 226 participants ("Forecasters") were brought in to the lab and asked whether a reasonable person would agree to the same request if hypothetically approached by the same researcher. Both groups then reported how free they felt (or would feel) to refuse the request. Study 1 found that most Forecasters believed a reasonable person would refuse the experimenter's request. Yet among the those who were actually approached, nearly everyone—100 out of 103 people—promptly unlocked their phones and handed them over. Accordingly, compliance rates were high (97%) and projected compliance rates were low (14%). Moreover, people who actually faced the situation reported feeling significantly less free to refuse than did those who contemplated the same situation hypothetically. Study 2 tested an intervention in which the experimenter explicitly advised participants that they had the right to withhold consent. We found that this advisory did not make Experiencers feel significantly more free to say no; nor did it reduce compliance rates. At the same time, the gap between Experiencers and Forecasters remained significant. Study 3 tested an intervention designed to improve the accuracy of Forecasters' estimates. In Study 3, Forecasters were asked to guess whether the Experiencer who came in immediately before them had complied in response to the experimenter's request, and were paid a bonus if they guessed accurately. Findings show that whereas 90% of Experiencers complied with the request, 55% of Forecasters guess that the previous participant complied. In summary, the vast majority of participants were willing to do something they said would be unreasonable to do, and that they personally would not do: allow an experimenter to thumb through their unlocked personal cell phones. Advising people of their right to refuse did not reduce compliance behavior or make participants feel more free to refuse. Incentivizing decision-makers to predict accurately what others will do in response to the search request appeared to improve predictions, but decision-makers paid to get it right still severely underestimated compliance. Implications, limitations (e.g., external validity concerns), and future directions are discussed.	behavioral economics, psychology, revealed preferences
Political Discrimination in the Law Review Selection Process	Adam Chilton; University of Chicago Jonathan Masur; University of Chicago Kyle Rozema; University of Chicago	We investigate political discrimination in the selection process for law review articles. To do so, we match the identities of editors and authors of accepted articles from 15 top law reviews over a twenty-year period to a measure of political ideology based on political donations. We find evidence that editors accept articles in part because of shared ideology with authors, and that this is driven by information-based rather than taste-based discrimination. This ideological discrimination in the academic publishing process has ramifications for career trajectories and the dissemination of knowledge.	Academia, Publication Process, Bias, Statistical Discrimination, Political Ideology, Law Professor, Law Review

PAPER TITLE	AUTHOR(S)	ABSTRACT	KEYWORDS
The Price of Exclusion, and the Value of Inclusive Policies	Sergio Mittlaender; Max Planck Institute for Social Law and Social Policy	Societies, communities, groups, and teams must often decide to exclude or to include other individuals. Besides leading to segregation or to integration, this decision is apt to have long-lasting effects upon prosocial behavior of victims and perpetrators, as well as on the effectiveness of policies and legal remedies that aim at re-integrating previously excluded individuals. This article studies, firstly, the consequences of exclusion on the subsequent prosocial behavior of excluded individuals in the resulting segregated public good games. The use of majority voting to enforce exclusion lead to conflicting normative views among those responsible for that decision, and to a pronounced reduction in contributions of those who voted for inclusion, but who were outvoted by a majority voting to exclude. Secondly, this article studies the effect of two distinct kinds of policies that re-integrate excluded individuals, providing evidence that a policy that re-includes them back into the same group from which they were excluded, and together with those individuals responsible for their exclusion is counter-productive and reduces prosocial behavior because of negative reciprocity. In contrast, a policy that re-includes the excluded into another, different group does not activate the norm of reciprocity, and is apt to restore prosocial behavior of previously excluded individuals. Implications for public policies to overcome segregation and for different legal instruments to redress discrimination are discussed.	discrimination; remedies; public policy; experiment; public good game
AN EMPIRICAL ANALYSIS OF SEXUAL ORIENTATION DISCRIMINATION	John Dillbary; University of Alabama Griffin Edwards; University of Alabama Birmingham	one focused on mortgage lending, and none investigated how the intersectionality between race, sex, and sexual orientation influences home lending practices. Our study presents the first econometric evidence of national widespread and systematic discrimination based on perceived sexual orientation. Our analysis of over 5 million mortgage applications from 2010 to 2015, uncovers an alarming pattern. We find that any FHA loan application filed by same-sex male coapplicants is significantly less likely to be approved compared to the white heterosexual baseline (holding lending risk constant). The most likely explanation for this pattern is sexual orientation based discrimination—despite the fact the FHA loans are the only type of loan in which discrimination on the basis of sexual orientation is prohibited. Moreover, this Article reveals a wholly unexplored phenomenon: both race and sex play a role and result in a unique discriminatory pattern. From the most to least discriminated groups are black male co-applicants followed by interracial male co-applicants and white male co-applicants. This discriminatory pattern plagues every region in the U.S., and it transcends party lines (i.e., it is present in red, blue and swing states). Furthermore, upending conventional wisdom, the data reveals that big banks discriminate at the same rate as small banks, and lenders in urban environments are as discriminatory as rural lenders. The analysis suggests that perceived gay male couples suffer a severe form of sexual orientation discrimination. It also supports the "intersectionality theory"—a theory that has never been empirically tested but is gaining acceptance from courts. According to this theory when sex and race unite, a new form of discrimination emerges that cannot be explained by sexism and racism alone. A silver lining does exist though. We find that the pattern of discrimination diminishes or disappears in states and localities that pass anti-sexual orientation discrimination laws. The Article's contribution lies beyond mortgage lending. First, it highlights a new dimension and pattern of discrimination. Second, it indicates that prior literature underestimated the magnitude of sexual orientation discrimination and may have overestimated the level of race discrimination. Third, to our knowledge, this is the first econometric study to indicate that the observed discrimination is motivated by bigotry rather than risk assessment—a critical finding for tailoring effective remedies. The Article also reveals some of the perverse outcomes of the sexual orientation discrimination defense, and why the defense explains, at least in part, the low-reporting rates of all discriminatory practices. Finally, the Article lays the groundwork for a new type of empirical research, and helps inform the heated debate surrounding the scope of Title VII's protections.	home loans, race, sexual orientation, panel regressions
The Provocative Effect of Law: Majority Nationalism and Minority Discrimination	Netta Barak-Corren; Hebrew University Yuval Feldman; Bar-Ilan University Noam Gidron; Harvard University	Western societies have experienced ethnic and religious diversification in recent decades. These demographic changes have been met by efforts to defend the local dominant culture using majority nationalism laws, intended to protect the cultural heritage of the majority. We empirically examine majority nationalism laws' expressive effects on patterns of minority discrimination using the Israeli draft Nation Law (NL) as a case study. Drawing on two experimental surveys of a representative sample of the majority population of Israel (N = 602), our results lend weak support to the hypothesis that majority nationalism laws increase bias against minorities, and modest support to the hypothesis that such laws generate unintended spillover effects across different minority groups and from the public to the private sphere. Our main finding is that majority nationalism laws provoke a backlash reaction from those who oppose them. We define this as the provocative effect of law and discuss its relation to the expressive law theory. The results suggest that the effects of majority nationalism laws may vary systematically across ideological groups and spheres of discrimination.	majority nationalism, expressive law, provocative law, social identity, discrimination
Optimal Entrenchment of Legal Rules	Michael Gilbert; University of Virginia	Should law respond readily to society's evolving views, or should it remain fixed? This is the question of entrenchment, meaning the insulation of law from change through supermajority rules and other mechanisms. Entrenchment stabilizes law, which promotes reliance and predictability, but it also frustrates democratic majorities. This paper uses economic theory to study this tension. It argues that nearly all laws should be minimally entrenched. This is because bare majority rule can systematically harm society—even when voters are rational, and even when no intense minority is present. Then it argues that minimum entrenchment is conceptually straightforward but optimal entrenchment is not. It depends on factors like whether the costs of legal instability are variable or fixed and who has power to set the agenda. Existing scholarship ignores these factors, casting doubt on its prescriptions. The paper provides guidance for legal designers, and it has implications for constitutional law, including Article V, amendments, conventions, and judicial updating.	Entrenchment, amendment rules, constitutional design, legal transitions

PAPER TITLE	AUTHOR(S)	ABSTRACT	KEYWORDS
Constitutional Overperformance – An Empirical Study of De Facto Protection of Rights with No De Jure Equivalents	Katarzyna Metelska-Szaniawska; University of Warsaw Anna Lewczuk; University of Warsaw	In this paper we aim to contribute to the debate on successful enforcement of constitutional rules and its determinants by extending the focus to the phenomenon of constitutional overperformance, which arises when countries that do not include certain de jure rights in their constitutions, nevertheless de facto enforce them. Firstly, we provide evidence that constitutional overperformance is a common phenomenon around the globe. Secondly, we identify factors which contribute to it, classifying them into three groups: (1) characteristics of a given country's constitution (such as its comprehensiveness or age), (2) characteristics of the country itself, pertaining to its institutions (such as its democratization level, degree of judicial independence or legal origins) and socio-economic conditions (e.g. economic development, or presence of political conflict), and (3) spatial effects of enforcement by neighboring countries (diffusion of rights protection). We base the conclusions on an empirical study conducted for a global sample of more than 100 countries.	constitutional overperformance, constitutional enforcement, democracy, spatial regression models
Limited Inalienability Rules	Ariel Porat; Tel Aviv University and University of Chicago Stephen Sugarman; UC Berkeley	Most people's entitlements are protected by a property rule, which means that their holders can sell them for a price. But some important entitlements are protected by an inalienability rule, and hence cannot be sold under any circumstances. For example, people cannot sell their organs. In most jurisdictions, women cannot be surrogate mothers for a fee (but only for reimbursement of costs). People cannot sell their right not to be exposed to highly life-threatening conditions. Indeed, most constitutional rights are not transferrable. People cannot reassign their legal entitlements to social benefits provided by the government. Tort victims in many jurisdictions cannot sell their rights to sue. Finally, individuals, as well as governments, cannot sell some types of cultural property to foreigners or to foreign governments. In this article, we propose and develop an intermediate rule for protecting entitlements—a middle ground between property and inalienability rules—that we entitle, the "Limited Inalienability Rule" (LIR). Under this rule, the holder of the entitlement is free to transfer her entitlement but still possesses an inalienable right to revoke the transfer (or the agreement to transfer) at a later stage, with no penalty. We show that this rule currently exists with respect to a few entitlements, and we suggest that it be employed in additional areas of law. We demonstrate that on many occasions, a LIR serves as a sensible compromise between property and inalienability rules, and can be justified on efficiency and justice grounds.	property rule, inalienability rule, limited inalienability, information asymmetry, externalities, distributional effects
HORIZONTAL PROPERTY	Yael Lifshitz; Columbia Law School	Every property regime asserts dominion over a certain physical three-dimensional space. Some property regimes assert dominion over a vertical three-dimensional column, such as ownership of land that includes certain resources that are vertically related to it above and below the ground. Other property regimes, however, control resources on the horizontal axis. Such are, for example, the control of tunnels, roads, railways or navigable airways in the sky. These are, according to this Article, "horizontal property regimes". This Article offers a novel conceptual framework for unpacking vertical and horizontal property, and underscores the significance of the spatial dimension of property in policy and institutional design. The Article shows that the spatial dimension of our property regimes has profound implications for their functionality. A mismatch between the regime and the resource – for example, when a vertical regime is applied to a horizontal resource – is costly, since it increases both the number and the complexity of the interactions among users. Shifting to a regime that is in harmony with the resource can decrease those interaction costs. After laying out the conceptual framework, the Article then illustrates its application to a contemporary problem of extracting airborne energy.	Property, Property Regimes, Resources, Control, Infrastructure, Energy, Spatial Dimension, Vertical, Horizontal, Mismatch
Unilateral Steps to End High Seas Fishing	Katrina Wyman; New York University	In discussions about the over-exploitation of the vast oceans that lie beyond national jurisdiction, one bold proposal is to close fishing entirely on the high seas. Existing research suggests that converting the high seas into a giant reserve for fish might increase overall global fish catches, by boosting fish catches within the adjoining areas of the oceans under national control. It also might help to protect marine biological diversity, which is particularly important in an era of climate change. This essay identifies the potential that the United States, a significant importer of high seas fish, might unilaterally take steps to end fishing on the high seas, using its market leverage. It analyzes the advantages and disadvantages of unilateral steps to end fishing on the high seas, and addresses why it might be in the interest of a large importing country such as the United States to take such steps.	Oceans, Fisheries, Trade, Import Ban
An Empirical Comparison of Insider Trading Enforcement in Canada and The United States	Anita Anand; University of Toronto Stephen Choi; New York University Adam Pritchard; University of Michigan Poonam Puri; Osgoode Hall Law School	Canadian and American securities market regulators have differing approaches to enforcement. In this article, we present the results of an empirical study comparing a highly salient aspect of securities enforcement—insider trading—in Canada and the United States. We make a number of important findings. First, adjusting for trading volume, Canada has a greater intensity of enforcement when compared to the U.S. Second, Canadian securities regulators primarily concern themselves with insider trading in Canadian companies, while the SEC brings more enforcement actions involving insider trading in companies incorporated outside the U.S.. Third, we do not find significant differences in the fraction of actions involving multiple traded companies between Canada and the U.S. However, we do see that U.S. investigations involve a significantly greater number of defendants and that the SEC is more than twice as likely to pursue tippers or tippees (although we observe no significant difference in the likelihood that top insiders will be pursued). Fourth, we find that U.S. cases are significantly more likely to result in a criminal referral leading to prosecution. Fifth, we find that settlements are more likely in the U.S.. Finally, in terms of penalties, we find no significant difference in monetary penalties between the two countries. However, we do find that Canada is more likely to apply a bar as a sanction, but if a bar is applied, the U.S. is more likely to make the bar permanent. These findings do not demonstrate a need for systemic reform in either jurisdiction, nor do they suggest that centralized regulation is necessarily better from an enforcement perspective. But, they do provide insight into the differing points of regulatory emphasis in two jurisdictions. From a comparative perspective, our research allows regulators to begin to evaluate whether their enforcement approach is optimal on the basis of quantitative data.	insider; trading; securities; regulation

PAPER TITLE	AUTHOR(S)	ABSTRACT	KEYWORDS
Does Insider Trading Law Change Behavior? An Empirical Analysis	Menesh Patel; Columbia University	Few issues in securities law have excited the popular imagination and generated scholarly interest like insider trading. Yet, a simple but foundational question about insider trading law has received relatively little scholarly attention: Does insider trading law actually influence the amount of insider trading that occurs? This Article tackles this question in the context of one of the highest-profile changes in insider trading law in decades—the Second Circuit's seminal 2014 decision in United States v. Newman, which substantially weakened insider trading law concerning so called "tippee" liability. The Article's empirical approach exploits Newman's change in law to empirically evaluate the effects of changes in insider trading law on insider trading. The Article focuses on insider trading in advance of mergers announced in periods before and after Newman and, for its measure of the extent of insider trading, uses the run up in the stock price of the merger target in advance of the merger's public announcement. Based on that measure, the Article finds that Newman had a dramatic effect on insider trading, with significantly greater insider trading occurring after Newman than before, thereby providing empirical evidence that insider trading is responsive to changes in insider trading law. The Article provides the first empirical analysis of whether and the extent to which a specific judicial change in insider trading law can influence the amount of insider trading beyond just the trading of corporate insiders. The Article's empirical findings advance our understanding of the functioning of securities law and inform important policy debates concerning insider trading.	Insider Trading, Empirical
Stock Market Manipulation and Its Regulation	Merritt Fox Lawrence Glosten; Columbia University Gabriel Rauterberg; Michigan Law School	More than eighty years after federal law first addressed stock market manipulation, the federal courts remain fractured by disagreement and confusion about manipulation law's most foundational questions. Only last year, plaintiffs petitioned the Supreme Court to resolve a sharp split among the federal circuits concerning manipulation law's central question: Whether trading activity alone can ever be considered illegal manipulation under federal law? Academics have been similarly confused—economists and legal scholars cannot agree on whether manipulation is possible in principle; let alone on how, if it is, to address it properly in practice. This Article offers an analytical framework for understanding manipulation, which resolves these questions, clarifies federal law, and can guide regulators in successfully prosecuting financial law's most intractable wrong. We draw on the tools of microstructure economics and the theory of the firm to provide a synthesis of the various distinct forms of manipulation, identify who is harmed by each form, and evaluate their social welfare effects. This Article thus lays the foundation for a renewed understanding of manipulation and its place within securities regulation.	Manipulation; securities; market manipulation
Optimal Deterrence When Shareholders Desire Fraud	James Spindler; University of Texas	This article presents an economic model of corporate fraud arising from shareholder incentives. First, the model shows that a firm's current shareholders have a preference for higher reported values. Current shareholders are, in expectation, net sellers of the firm's shares; a higher reported value of the firm increases current shareholder returns in expectation. Second, these preferences for inflationary misreporting translate into equilibrium misreporting behavior, which generates inefficiencies due to asymmetric information among secondary market traders. Informed traders undertake inefficient research costs, noise traders demand a discount in order to trade, and selling shareholders face deadweight illiquidity costs. Third, in general, some ex post penalty for misreporting can eliminate misreporting incentives and result in a unique truth-telling (i.e., separating) equilibrium. This improves social welfare. With joint-welfare maximization among the firm's initial stakeholders and unlimited liability, it does not matter on whom the penalty is placed. Finally, the specific mechanism of firm-level (or "vicarious") fines has desirable qualities from the perspective of administrative feasibility: the optimal fine is a simple function of observable market data. Compensation does not affect this formulation, yet compensation may be desirable in the event of incomplete deterrence because it reduces asymmetric information liquidity costs. The same liability formula applies for alternative targets of liability, such as the manager, and the approximate magnitude of the optimal fine remains the same; however, judgment-proofness and limited liability may militate toward firm-level fines.	Fraud, corporations, disclosure, corporate governance, shareholder incentives
On Market-Based Approaches to the Valuation of Capital	Natasha Sarin; Harvard University Lawrence Summers; Harvard University	Market measures suggest banks are as risky as they were in the pre-crisis period. This appears attributable to a decrease in bank franchise value, rather than a byproduct of the current low interest rate environment, and cautions about the stability of the financial sector. However, stress test results reveal little cause for concern; in 2017, all 34 stressed institutions in the United States passed the tests, suggesting they will remain well-capitalized in the event of a downturn more severe than the Great Recession. Their passage paved the way for capital disbursements and ignited calls for deregulation. In this paper, we demonstrate that a market-based stress test approach produces results that are significantly less encouraging than the regulatory tests. While a pure market-based stress test is undesirable, we believe it is important to incorporate market information into the stress test methodology to facilitate more credible inferences about bank safety.	

PAPER TITLE	AUTHOR(S)	ABSTRACT	KEYWORDS
THE SEC AND INTERNATIONAL CORPORATIONS: A PATH TO OPTIMAL PUBLIC ENFORCEMENT AFTER MORRISON v. NATIONAL AUSTRALIA BANK	Yuliya Guseva; Rutgers Law School - Newark	This Article examines SEC enforcement against international corporations and seeks to identify the optimum approach to cross-border enforcement after Morrison v. National Australia Bank. In Morrison, the Supreme Court sought to limit the extraterritorial reach of the antifraud provisions of the U.S. securities laws and to scale down the exposure of foreign issuers to securities liability risk. The decision has effectively restricted the ability of private plaintiffs to bring actions against international companies. This Article examines the doctrinal and market consequences of Morrison and identifies a number of red flags potentially indicative of an increased risk of fraud. The Article also presents an empirical survey of all enforcement actions against foreign issuers five years before and five years after Morrison. The analysis suggests that the SEC pursues a lenient approach in foreign issuer enforcement. This traditional policy may attract low-quality firms in the post-Morrison environment and in this sense has become suboptimal. The Article explores policy options and concludes that the SEC should not engage in more enforcement actions at this point. Instead, the warning signs identified in this paper and Morrison as such call for preventive monitoring. To this end, the SEC should pursue a policy of soft enforcement, put its new data analysis programs to work, and rely more on private enforcement and market "gatekeepers." By relying on the low-cost actions suggested in this Article, the SEC may reach a more efficient level of deterrence without ramping up enforcement and increasing the costs of foreign corporations.	Public enforcement, securities class actions, Securities and Exchange Commission, Morrison v. National Australia Bank, international enforcement
A Robust Theory of Incentives in Civil Litigation: Non-Specified Probability-of-Success Functions and Arbitrary Cost-Shifting Rules	Ben Chen; The University of Sydney Jose A. Rodrigues-Neto; Australian National University	We model civil litigation as a contest between a plaintiff and a defendant who simultaneously exert costly efforts. A success function describes the litigants' respective probabilities of success based on their efforts and exogenous relative advantages. Instead of specifying a functional form for the success function, the proposed model accommodates any success function that satisfies general and intuitive assumptions which capture frequently-used functional forms. Another generalization is the cost-shifting rule, which allows the winner to recover an exogenous proportion of her litigation costs from the loser. There exists a unique Nash equilibrium with positive efforts. In equilibrium, more cost shifting makes the outcome of the case more predictable, but typically increases the litigants' collective expenditure.	cost shifting, legal predictability, litigation costs, legal accuracy, contest theory
Disclosure and Discovery with Fairness	Amy Farmer; University of Arkansas Paul Pecorino; University of Alabama	Two standard results in the litigation literature are that an informed party will not make a costly voluntary disclosure in a screening game and that the uninformed party will not engage in costly discovery in the signaling game. Both of these results rely on the assumption that the party making the offer can extract the entire surplus of settlement from the party receiving the offer. If the recipient of the offer has a demand for fairness, then the equilibrium offer will contain some monetary surplus. However, if utility is a continuous function of the surplus contained in the offer, the standard results from the literature are unchanged. Even though the equilibrium offer contains some surplus, it still pins the recipient of the offer to her dispute level of utility. As a result, the recipient of the offer will not engage in a costly transfer of information. The standard results can be overturned if the perceived fairness of the offer is a discontinuous function of the surplus it contains. In this model offers are coded as either fair or unfair, where all unfair offers impose a fixed utility penalty on the recipient if she accepts it. In such a model, the recipient of the offer will obtain a utility surplus (relative to her dispute level of utility) if the offer is perceived as fair. If this surplus is large enough, she will be willing to initiate a costly transfer of information.	pretrial bargaining, fairness, voluntary disclosure, discovery
DISCOVERY COST ALLOCATION, INCENTIVES, AND SIGNALING	Jonathan Nash; Emory University Joanna Shepherd; Emory University School of Law	Recent proposals to revise Federal Rule of Civil Procedure 26 to incorporate cost allocation of discovery have sparked considerable controversy. Advocates for reform argue that replacing the long-standing "producer-pays" presumption with something more akin to a "requester-pays" rule would better align economic incentives and reduce litigants' ability to wield discovery as an instrument to force settlement. Opponents argue that such a reform would limit access to justice by saddling requesters with an ex ante burden of funding the oppositions' discovery. In this Article, we explain that either a rule requiring both parties to share the costs of discovery (cost-sharing rule) or a rule creating a risk for both parties that they will bear the entire costs of discovery (cost-shifting rule) would minimize many of the negative incentives that exist under either a strict producer-pays or requester-pays rule. Whereas the producer-pays rule creates incentives for excessive discovery because requesters can externalize the costs of requests and use discovery to impose costs on producing parties to force settlement, requesters under cost-sharing or cost-shifting cannot externalize the costs of discovery requests and have no incentive to abuse discovery to force settlement because they bear the costs or risk of that impositional discovery. Similarly, whereas a requester-pays rule gives producers the incentive to drive up the costs of producing discovery, a cost-sharing or cost-shifting rule forces producers to either share the discovery costs or risk paying the entire cost, thereby reducing the incentive to drive up the costs of production to deter discovery requests. Moreover, while a requester-pays rule has the potential to create an access to justice problem if financially-constrained litigants are over-deterred from making useful discovery requests or bringing claims altogether, we propose limiting the application of cost-sharing or cost-shifting to complex commercial litigation to minimize access to justice issues because both parties can generally afford the discovery costs in these cases.	discovery, cost allocation, fee-shifting, litigation signals

PAPER TITLE	AUTHOR(S)	ABSTRACT	KEYWORDS
		We also explain that different cost-allocation rules provide different opportunities for litigants to signal the strength of their case. Given concerns about the rising costs of discovery and debate over discovery's acceptable scope, the ability of litigation signals to convey relevant and important information without the expense of discovery is potentially invaluable. We employ a game-theoretical model to describe the signaling that is possible under different cost-allocation rules. We show that, compared to the current producer-pays rule, either a requester-pays rule or a cost-sharing rule would reduce overall litigation rates. Further, these rules give strong defendants an opportunity to signal the strength of their case, limiting the number of cases that proceed to trial and helping plaintiffs avoid pursuing many cases that would otherwise provide them with a negative payout.	
Public Relations Litigation	Kish Parella; Washington and Lee University	It is no secret that litigation can harm a defendant's reputation. However, plaintiffs—and especially sophisticated business plaintiffs— may benefit from positive reputational effects of litigation, especially in post-crisis situations. This Article examines how and why litigants use courts of law to influence the court of public opinion. In doing so, this Article makes three contributions to the literature. Descriptively, it improves our ability to understand litigants' incentives. For decades, legal scholars have asked: why do plaintiffs file lawsuits they know they cannot win? Those analyzing the economics of litigation have analyzed the motivations behind and cures for lawsuits variously called nuisance suits, negative expected value suits, and frivolous suits. One explanation why plaintiffs bring these suits is because they can still benefit financially through settlement. This Article discusses how litigation can serve both economic and informational objectives for both private and public gain. Normatively, this Article highlights the importance of information transmission through litigation; accounting for litigation's effects in court of public opinion enables us to better distinguish between socially desirable and undesirable "public relations litigation." Practically, this insight allows us to design better rules for encouraging the former while discouraging the latter.	litigation, reputation
Markets for Personalized Procedure	Ronen Avraham; University of Texas at Austin William Hubbard; University of Chicago	In this paper, we explore a radical proposal to allocate procedural rights—everything from page limits for briefs to the right to file an appeal—in a more personalized way through market processes, whereby initial endowments are distributed either through cap-and-trade (think greenhouse emission credits) or by auction (think broadband spectrum) and are freely tradeable on a secondary market. In a cap-and-trade system, litigants with limited resources to exploit the full scope of procedural rights could raise money by selling parts of their allocated set of rights; in an auction system, the revenue from the sale of procedural rights could be used to increase access to the courts through an across-the-board reduction in filing fees or through the financing of expanded legal aid and pro bono legal services. Such a reform would improve the allocative efficiency of the legal system by assigning costly and elaborate procedural rights only to those litigants who most value them, while also improving the distributional justice of the legal system by requiring the sophisticated, well-resourced parties whose cases impose the greatest costs on the system—think of Apple v. Samsung—to foot the bill for these costs, while lowering costs for litigants with the fewest resources.	markets, civil procedure, procedural contracts
Law as Source	Roy Shapira	Legal scholars have long recognized that the media plays a key role in assuring the proper functioning of political and business markets. Yet we have understudied the role of law in assuring effective media scrutiny. This Article is the first to develop a theory of law as source. The basic premise is that the law not only regulates what the media can or cannot say, but also facilitates media scrutiny by producing information. Specifically, law enforcement actions, such as litigation or regulatory investigations, extract information on the behavior of powerful players in business or government. Journalists can then translate the information into biting investigative reports and diffuse them widely, thereby shaping players' reputations and norms. Levels of accountability in society are therefore not simply a function of the effectiveness of the courts as a watchdog or the media as a watchdog, but rather a function of the interactions between the two watchdogs. This Article approaches, from multiple angles, the questions of how and how much the media relies on legal sources. I synthesize insights from the communication science and economics of information literatures; interview forty veteran reporters; scour a reporters-only database of tip sheets and how-to manuals; go over syllabi of investigative reporting courses; and analyze the content of projects that won investigative reporting prizes in the past two decades. The triangulation of these different methods produces three sets of insights. First, this Article establishes that legal sources matter: in today's information environment, court documents, depositions, and regulatory reports are often the most instrumental sources of accountability journalism. Second, the Article identifies how and why legal sources matter: they extract quality information on the (mis)behavior of powerful players in a credible, libel-proof manner. Finally, recognizing the function of law as source opens up space for rethinking important legal institutions according to how they contribute to information production. In the process, we get to reevaluate timely debates, such as the desirability of one-sided arbitration clauses, which have been at the center of recent Trump Administration orders and pending Supreme Court litigation.	Media, Reputation, Information-Production, Settlement vs. Trial, Arbitration Clause, FOIA, Regulatory Agenda-Setting

PAPER TITLE	AUTHOR(S)	ABSTRACT	KEYWORDS
Shadow Pills and Long-Term Firm Value	Martijn Cremers; University of Notre Dame Scott Guernsey; University of Oklahoma Lubomir Litov; University of Oklahoma Simone Sepe; Toulouse School of Economics	This paper analyzes the value impact of the right to adopt a poison pill – or “shadow pill” – on long-term firm value, exploiting the natural experiment provided by the staggered adoption of poison pill laws that validated the use of the pill in 35 U.S. states over the period 1986 to 2009. We document that the availability of a shadow pill results in an economically and statistically significant increase in firm value, especially for firms more engaged in innovation or with stronger stakeholder relationships. Our findings are robust to different specifications, including matching and portfolio analysis, and provide support to the bonding hypothesis of takeover defenses.	poison pill, shadow pill, poison pill statutes, takeover defenses, corporate governance, M&A, innovation, limited commitment, firm value
Corporate Long Arms	Sung Eun Kim; University of California, Irvine	One of the most persistent debates among corporate law scholars has been whether the competition among states for corporate charters produces a race to the top or a race to the bottom. Some argue that the competition leads to the most efficient state emerging as the winner of the race. Others argue that the competition favors the states that put the interests of managers—who have the power to choose the corporation’s state of incorporation (the “home state”)—ahead of the interests of shareholders and other stakeholders of the corporation. In this Article, I argue that corporate long arm statutes can be used to facilitate a race to the top and mitigate the negative spillovers from a race to the bottom that may result from the competition for corporate charters. What I propose is that the rules of another state (the “host state”) would become available to their intended beneficiaries when the host state has a greater interest than the home state in protecting such beneficiaries. I offer a few examples of how the proposed statute would work in practice and show that it is more cost-effective and politically feasible than other proposed alternatives.	internal affairs doctrine, long arm, choice of law
Merger Negotiations in the Shadow of Judicial Appraisal	Audra Boone; Texas Christian University Brian Broughman; Indiana University Antonio Macias; Baylor University	As the volume of merger appraisal litigation has exploded over the last decade, so too has debate over the desirability of appraisal and how this remedy should be structured. Much of this debate is based on untested assertions about appraisal’s ex-ante effect on the structure and pricing of takeovers. Systematically investigating this effect, we find evidence that target shareholders receive higher premia as the strength of the appraisal remedy increases. We find no evidence that bidders offer a lower up-front price so they can afford to pay dissenting shareholders post-sale. Furthermore, threat of appraisal does not appear to limit takeover activity or impact method of payment. Our results are consistent with appraisal providing ex-ante protection in settings where public investors are most at risk, while not imposing costs on shareholders in other settings.	Appraisal, Mergers and Acquisitions, Appraisal Arbitrage
Do Companies Benefit from Directors Connected to Their Financial Shareholders?	Qingqiu Li; Michigan State University Miriam Schwartz-Ziv; Michigan State University	An overlapping directors serving simultaneously on a mutual-fund board and on a corporate board connects the two institutions. Connections are associated with larger portfolio weights and stronger investment performance of the connected companies held in their connected funds’ portfolios. Funds cast votes supportive of the management of their connected companies both in general and in regard to director (re)appointments to the connected company boards, especially favoring the very overlapping director through whom the fund and the company are connected. Connected funds’ voting patterns are particularly supportive if the connection through an overlapping director had been initiated by the company.	Board of directors, mutual fund boards, busy directors, returns, shareholders votes

PAPER TITLE

Activist Directors and Agency Costs

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ABSTRACT

We develop and apply a new and more rigorous methodology by which to measure and understand both insider trading and the agency costs of hedge fund activism. We use quantitative data to show a systematic relationship between the appointment of a hedge fund nominated director to a corporate board and an increase in informed trading in that corporation's stock (with the relationship being most pronounced when the fund's slate of directors includes a hedge fund employee). This finding is important from two different perspectives. First, from a governance perspective, activist hedge funds represent a new and potent force in corporate governance. A robust debate continues as to whether activist funds reduce the agency costs of corporate governance, but this is the first attempt to investigate whether the activist hedge fund also imposes new agency costs through widened bid/ask spreads and informed trading. Second, although insider trading is almost universally condemned, it has only been studied in individual cases. Using instead a quantitative approach, we develop a tool that enables regulators (civil and criminal) to identify suspicious trading patterns: Both to demonstrate such a pattern and to map these new agency costs, we assembled a data set of 475 settlement agreements, between target companies and activists funds relating to the appointment of fund nominated directors, from 2000 and 2015, in order to focus on what happens once such a fund-nominated director goes on the board.

Among our principal findings are:

(1) Prevalence of Hedge Fund Employees on Slate. Approximately 70% of fund-nominated director slates include a hedge fund employee.

(2) Increase in Information Leakage. Once a fund-nominated director goes on the board, an abrupt increase in "information leakage" follows, with the result that the target corporation's stock price begins to anticipate future public disclosures. Specifically, we examine some 635,450 Form 8-K's filed by 7,799 public traded companies over the period of January 1, 2000 to September 30, 2016, and we construct a control group for each of the corporations subject to an activist intervention. We find that firms appointing an activist nominee or nominees experience a difference-in-differences increase in leakage of 25-27 percentage points.

(3) Hedge Funds versus Other Activists. We next consider whether post-appointment increases in leakage depend on the identity of the activist investors (i.e., hedge fund versus other activist investors). We find that the leakage effect is clearly driven by hedge fund activist (and no other type of activist).

(4) Leakage and Hedge Fund Employees. We investigate whether leakage increases depend on the identity of the director appointed to target firm's board, distinguishing between hedge fund employees and non-hedge fund employees. We find that the increase in leakage is driven by the appointment of activist fund employees to the corporate board (and not by the appointment of other persons, such as industry professionals).

(5) Leakage and Confidentiality Provisions. We consider whether post-settlement increases in leakage are associated with confidentiality provisions restricting information sharing in the settlement agreements. The majority of settlement agreements have no confidentiality provisions, and information leakage is concentrated in these cases.

KEYWORDS

Activism, Agency Costs, Bid/Ask Spread, Corporate Governance, Hedge Fund, Hedge Fund Activism, Information Leakage, Informed Trading, Insider Trading, Options Trading, Principal Costs, Private Benefits, Private Settlements, Proxy Contests

PAPER TITLE	AUTHOR(S)	ABSTRACT	KEYWORDS
		(6) Market Response to Settlement Agreements. We next examine whether the stock market's response to settlement agreements depends on (a) whether a hedge fund employee is on the director slate, and (b) whether the settlement agreement contains or refers to a confidentiality provision. We find that the 5-day CAR is more than twice as high (4.2% vs. 1.97%) for settlements with only non-employee directors and also significantly higher (2.02% vs. 0.42%) for settlements with an explicit restriction on information sharing. (7) Effect on Bid-Ask Spread. Bid-ask spreads increase by statistically meaningful amounts in our treatment group after an activist director gains access to the boardroom. Bid-ask spreads do not widen for the control groups. Further, we find that the increase in bid-ask spreads is concentrated in those cases in which (i) a hedge fund employee is appointed to the board, or (ii) no confidentiality provision is referenced in the settlement agreement. (8) Options Trading. We find that options trading increases significantly after the appointment of an activist director and in a manner consistent with informed trading. Consistent with earlier research on informed trading, we find that options traders focus on unscheduled Form 8-K filings. (9) Implications. The foregoing pattern is most plausibly explained as the product of informed trading. Material, non-public information appears to travel on a conduit from the hedge fund's employee-director to others, whose trades move the market price prior to public disclosure. We reach no conclusions about who is trading or its legality in any individual case. Yet, the widened bid-ask spread strongly suggests that the market expects such trading, and the much more positive market response to director slates without a hedge fund employee (or with a confidentiality provision) suggests that the market suspects that informed trading is closely associated with the appointment of a hedge fund employee to the board. (10) Hypothesis. Our data suggests that the ability to engage in informed trading is a significant subsidy that may inflate the rate of hedge fund activism (producing more engagements than if stronger controls on information sharing were imposed) and may encourage activists to pursue inefficient engagements. Further, information sharing may be the cement that holds together a "wolf-pack" of activists that would otherwise logically be unstable. (11) Reforms. We consider and evaluate a variety of possible reforms that are consistent with an energetic role for hedge fund activism, but that remove (to various degrees) the subsidy of informed trading.	
Long-Term Bias	Michal Barzuza; Univeristy of Virginia Eric Talley; Columbia University	Under conventional wisdom American Capital Markets suffer from a significant short-term bias, resulting in suboptimal investment and growth. Researchers, judges, practitioners and policy makers all share the concern that short-sighted investors pressure managers to produce short-term performance at the expense of superior long-term investments and growth. Yet, evidence is not fully supportive of the short termism view. Hedge funds hold shares for several years, fight to nominate board members, and reshape long-term operational strategies. Hedge fund activists thus are not only in the business of extracting short-term gains, but they also invest resources and energies in reshaping firms' long-term strategies. This Article argues that the shortcomings of the conventional wisdom are rooted in in a strong but erroneous assumption that long-termism is never excessive. In contrast, this Article introduces a novel long-term bias, namely, an inclination to favor inferior long-term projects over superior short-term projects or gains. Long-term bias arises since managers are inclined to be highly optimistic with respect to their prospects, and to develop an attachment to them, which hinders their ability to respond to negative feedback and data. The analysis, which draws on extensive literate and three different cases – Yahoo, AOL & Navistar – has implications to research and policy. The conventional view of long-termism as never being excessive, and seldom limited by short term-bias, called for legal intervention to protect long-term investments, and limit market players that may create short-term pressures. At the very least this Article calls for cautiousness in any attempt to regulate short-termism.	Hedge Funds, Short Termism, Long Termism, Corporate Law, Corporate Governance
The Effect of Investor Attention on Fraud Discovery and Value Loss in Securities Class Action Litigation	Anna Abdulmanova; University of Missouri Stephen Ferris; University of Missouri Narayanan Jayaraman; Georgia Institute of Technology Pratik Kothari; University of Missouri	This study examines the effect of investor attention on fraud discovery and value losses due to securities class action lawsuits. We find that greater investor attention accelerates the diffusion of information regarding fraud and its discovery. We also determine that investor attention influences the magnitude of value losses suffered upon lawsuit filing. Furthermore, we find that lawsuit filing has no effect on the long-term value for the group of firms where investor attention is low. We conclude that investor attention affects both the rate and extent of information processed by market participants around litigation.	class action, corporate litigation; investor attention; google trends; governance

PAPER TITLE	AUTHOR(S)	ABSTRACT	KEYWORDS
Whistleblower Protection: Theory and Experimental Evidence	Lydia Mechtenberg; University of Hamburg Gerd Muehlheusser; University of Hamburg Andreas Roider; University of Regensburg	Whistleblowing by employees plays a major role in uncovering corporate fraud. Recent laws and global policy recommendations aim at facilitating whistleblower protection to enhance the willingness to report and to increase deterrence. We study these issues in a theory-guided lab experiment. Whistleblower protection indeed leads to more reporting of misbehavior. However, our experimental findings suggest that non-meritorious claims are an issue, as they reduce prosecutors' incentives to investigate, which hampers the intended improvement of deterrence.	Corporate Fraud, Corruption, Whistleblowing, Business Ethics, Cheap-Talk Games, Lab Experiment
Pay Inequality and Public Sector Performance: Evidence from the SEC's Enforcement Activity	Joseph Kalmenovitz; NYU Stern	I study how pay inequality affects financial market regulation, by using original employee-level data on enforcement staff at the U.S. Securities and Exchange Commission (SEC). I identify inequality effects in a diff-in-diff framework, with management departures as a treatment, and apply numerous tests to rule out alternative explanations. Large pay gaps between employees and managers generate "tournament" incentives, leading to increased enforcement activity and to improved job performance. The results provide micro-level evidence that the SEC's internal organization affects financial markets, and highlight a novel link between pay inequality and regulation.	security market regulation; pay inequality; tournaments; public sector performance
Why Are Low-Wage Workers Signing Noncompete Agreements?	Matthew Johnson; Duke University, Sanford School of Public Policy Michael Lipsitz; Miami University	Recent evidence that noncompete agreements (NCAs) are widely used in low-wage jobs has led both economists and policymakers to question the rationale for the use of such contracts in this setting. In this paper, we show that NCAs, which contractually limit where an employee may work in the event of a job separation, arise when employer-employee pairs are limited in their ability to transfer utility via the wage. Our model of the labor market predicts that, when such limitations are present, the terms of trade may dictate that NCAs are used to transfer utility from the employee to the employer, even when NCAs reduce the pair's surplus. We find support for our model's predictions using a new survey of owners of independent hair salons, an industry in which NCAs are widely used. We find that declines in two distinct measures of the terms of trade for employees, and decreases in transferability of utility (measured by the state minimum wage), are all associated with increases in NCA use. Furthermore, we generate a test for identifying when NCAs reduce a pair's surplus, and we identify a subset of firms in our sample, characterized by limited access to credit, for which this is the case. Finally, we revisit a recent study of the employment effect of the minimum wage: consistent with our model, we find that state-level minimum wage increases have a negative effect on employment in states where NCAs are not enforced, and no effect in states where they are strictly enforced.	noncompete agreements, minimum wage
Cooperation and Turnover in Law Faculties	Shi-Ling Hsu; Florida State University	In groups, greater stability generally brings about greater cooperation. An academic unit might follow this standard model, as stability might bring about cooperation and creative collaboration, except for the fact that many faculty are tenured. Tenure limits the ability to sanction noncooperation or other academically unproductive behavior. This article posits that faculty turnover may substitute as a disciplining mechanism. Replacing a colleague is costly and time-consuming, so the realistic prospect of losing colleagues might, somewhat counter-intuitively, lead to more faculty cooperation. This article sets forth a game-theoretic model showing how the possibility of exit may induce greater cooperation. The intuition is that antisocial behavior that causes colleagues to leave creates the cost of replacing them, and there is no guarantee that replacements will be more agreeable, more productive, or more cooperative. This article presents some empirical evidence in support of the hypothesis that faculty turnover short of some excessive amount does, in fact, produce higher levels of cooperation. The normative implications of this extend beyond the academy: it could be that employment protections such as tenure, that impose some group stability, may be counterproductive in terms of fostering the collaboration that is important to creative output.	Cooperation, Tenure, Higher Education, Legal Education
The Comparative Political Economy of the Minimum Wage	Matthew Dimick; University at Buffalo School of Law Brett Meyer; London School of Economics	Why do labor unions and left/labor parties support the statutory minimum wage in some countries, such as the United States, but oppose it in others, such as Denmark or Sweden? This paper presents a formal model of trade union preferences for the statutory minimum wage. On the one hand, the minimum wage can raise above-minimum negotiated wages by increasing the union's fallback position and increasing the labor costs of nonunion competitor firms. On the other hand, the minimum wage presents certain dangers: it may (1) set wages higher or lower than unions prefer, (2) reduce the incentives of workers to join unions in the short term, and (3) undermine the social custom that sustains union membership in the long term. For these reasons, we predict that unions and left/labor parties will support a statutory minimum wage only when unions are too weak---when unions bargain with a smaller share of firms, when they are legally restricted from engaging in certain strike actions, and wage bargaining is less coordinated---to sustain high wages on their own. Empirically, we document a robust, cross-national correlation between several of the key variables in our model and the type of minimum wage setting institution and illustrate the model's mechanisms using case studies of union preferences in the US, UK, Germany, and Sweden and party preferences in the UK and Germany.	Minimum wage, collective bargaining, labor unions, regulation, positive political economy.

PAPER TITLE	AUTHOR(S)	ABSTRACT	KEYWORDS
Killer Acquisitions	Colleen Cunningham; London Business School Florian Ederer; Yale Song Ma; Yale School of Management	Firms may acquire innovative targets to discontinue the development of the targets' innovation projects in order to preempt future competition. We call such acquisitions ``killer acquisitions.'' We develop a parsimonious model and provide empirical evidence for this phenomenon in drug development by tracking detailed project-level development histories of more than 60,000 drug projects. We show theoretically and empirically that acquired drug projects are less likely to be continued in the development process, and this result is particularly pronounced when the acquired project overlaps with the acquirer's development pipeline and when the acquirer has strong incentives to protect its market power. We also document that alternative interpretations such as optimal project selection, organizational frictions, and human capital and technology redeployment do not explain our results. Conservative estimates indicate that about 7% of all acquisitions in our sample are killer acquisitions and that eliminating their adverse effect on drug project development would raise the pharmaceutical industry's aggregate drug project continuation rate by more than 5%. These findings have important implications for antitrust policy, startup exit, and the process of creative destruction.	Mergers and Acquisitions, Innovation, Drug Development, Competition
How Do Patent Incentives Affect University Researchers?	Lisa Ouellette; Stanford University Andrew Tutt; Arnold & Porter	Universities and other beneficiaries of public funding for scientific research are encouraged to patent resulting inventions under the Bayh–Dole Act. This controversial framework gives academic grant recipients a direct financial stake in the success of their inventions by requiring universities to share the resulting patent royalties with inventors. This incentive for grant recipients might help justify Bayh–Dole patents when the conventional justification for exclusivity—that it is necessary for commercialization—fails to hold. But there is little evidence as to whether it works. This Article examines how one aspect of the patent incentive—the prospect of royalties—affects the behavior of university researchers. Fortuitously, different universities offer inventors different shares of patent revenue. We have created a dataset of royalty-sharing policies from 152 universities, which shows substantial variation across universities and time. (For example, Caltech switched from sharing 15% to 25% of net income in 1994, the University of Washington switched from sharing 100% of initial revenues to a flat rate of 33% in 2004, and the University of Iowa switched from 25% to 100% of initial patent revenues in 2005.) Although prior work has suggested that higher royalties for faculty scientists lead to greater licensing income, we do not observe this effect in our dataset. We also do not see a significant positive impact of higher faculty shares on invention disclosures, patent applications, or issued patents. Additionally, we examined lateral moves by the most active patenters between universities, and we did not find that they were more likely to move to universities offering higher royalty shares. These results do not imply that patents provide no incentives to university researchers; they may provide reputational benefits or encourage faculty-run spin-offs, or even provide financial incentives that are not captured by our statistics. But the lack of a strong impact of higher royalty shares on the behavior one would expect to be most affected—creation of more and more valuable patents—suggests that, from a social welfare perspective, it may be preferable for a larger share of royalties to be retained by universities, which are then required by Bayh–Dole to reinvest this money in science research and education. In any event, our analysis raises promising questions for future research and calls into question the existing view that increasing the inventor's share in university patent policies encourages researchers to develop and commercialize more remunerative patents.	patents, Bayh-Dole
Will Delaware Be Different? An Empirical Study of TC Heartland	Ofer Eldar; Duke University Neel Sukhatme; Georgetown University Law Center	Why do some venues evolve into litigation havens while others do not? Venues might compete for litigation for various reasons, such as enhancing the prestige and reputation of their judges and increasing revenues for the local bar. This competition is framed by the party that chooses the venue. Whether plaintiffs or defendants primarily choose venue is crucial because, we argue, the two scenarios are not symmetrical. The Supreme Court's recent decision in TC Heartland v. Kraft Foods illustrates this dynamic. There, the Court effectively shifted venue choice in many patent infringement cases from plaintiffs to corporate defendants. We use TC Heartland to empirically measure the impact of this shift using an event study, which measures how the stock market reacted to the decision. We find that likely targets of "patent trolls"—entities that own and assert patented inventions but do not otherwise use them—saw their company valuations increase the most due to TC Heartland. This effect is particularly pronounced for firms incorporated in Delaware. Our results are consistent with litigation trends since TC Heartland, as new cases have dramatically shifted to the District of Delaware from the Eastern District of Texas, previously the most popular venue for infringement actions. Why do investors believe Delaware will do better than Texas in curbing patent troll litigation? Unlike the Eastern District of Texas, Delaware's economy depends on attracting large businesses that pay high incorporation fees; it is thus less likely to encourage disruptive litigation and jeopardize its privileged position in corporate law. More broadly, we argue that allowing defendants to choose venue can counterbalance judges' incentives to increase their influence by encouraging excessive litigation. Drawing on Delaware's approach to corporate litigation and bankruptcy proceedings, we argue that Delaware will compete for patent litigation through an expert judiciary and well-developed case law that balances both patentee and defendant interests.	Patents; venue shopping; forum shopping; state of incorporation; Delaware; TC Heartland; Eastern District of Texas; forum selling; regulatory competition

PAPER TITLE	AUTHOR(S)	ABSTRACT	KEYWORDS
Racial Divisions and Criminal Justice: Evidence from Southern State Courts	Benjamin Feigenberg; UIC Conrad Miller; UC Berkeley	The US criminal justice system is exceptionally punitive. We test whether racial heterogeneity is one cause, exploiting cross-jurisdiction variation in criminal justice practices in 5 Southern states. We estimate the causal effect of jurisdiction on initial charge outcome, validating our estimates using a quasi-experimental research design based on defendants that are charged in multiple jurisdictions. Consistent with a simple model of in-group bias in electorate preferences, the relationship between local punitiveness and black chargee share follows an inverted U-shape. Heterogeneous jurisdictions are more punitive for both black and white chargees. By contrast, punishment norms are unrelated to local crime rates. Simulation results suggest that adopting the punishment norms of homogeneous jurisdictions would decrease the share of charges leading to an incarceration sentence and the black-white gap in this share by 15-25%.	
Forum Selling Abroad	Stefan Bechtold; ETH Zurich Jens Frankenreiter; Max Planck Bonn Daniel Klerman; University of Southern California	Judges decide cases. Do they also try to influence which cases they decide? Clearly plaintiffs "shop" for the most attractive forum, but do judges try to attract cases by "selling" their courts? Some American judges actively try to enlarge their influence by making their courts attractive to plaintiffs, a phenomenon known as "forum selling." This article shows that forum selling occurs outside the U.S. as well and focuses on Germany, a country that is often held up as the paragon of the civil law approach to adjudication. As in the U.S., German courts attract cases primarily through the pro-plaintiff manipulation of procedure, including the routine issuance of ex parte injunctions in press cases and refusal to stay patent infringement proceedings when the patent's validity is challenged in another forum. A critical difference between forum selling in Germany and the U.S. is that court administrators are more actively involved in Germany. As state officials, German court administrators have the incentive to consider the effect of caseloads on government revenue and the local economy, and they use their power to allocate judges to particular kinds of cases in order to make their courts attractive. They also use their power over promotion, case allocation, and resources to reward judges who succeed in attracting cases. Based on an extensive set of interviews with attorneys, judges and court officials, this article describes evidence of forum selling in German patent, press, antitrust, labor and criminal law. It also analyzes how German courts compete internationally with courts from other countries.	Forum shopping, venue, jurisdiction, patent, press, antitrust, Europe, Germany, civil law
A Theory of Independent Courts in Illiberal Democracies	Nuno Garoupa; Texas A&M University School of Law Leyla Karakas; Syracuse University	Illiberal democracies are on the rise. While most forms of checks and balances on the executive branch have been eliminated in such regimes, some nonetheless still feature an independent judiciary. We provide a novel explanation for the existence of independent courts within non-democratic regimes by focusing on the judiciary's role as a potential provider of valuable information about divisions within the ruling elites. The model features an office-motivated government that balances the conflicting interests of the voters and the elites in determining policy and the type of judicial review this policy will be subject to. In equilibrium, an independent judiciary is observed only if the resulting information revelation is sufficiently valuable for the government to backtrack on its policy choice. In the absence of a strong legislative opposition and free media, some judicial independence helps the survival of the government by more informatively balancing the interests of the ruling elites and the voters. We characterize optimal judicial defiance in equilibrium and show that it cannot be reached on the equilibrium path. We conclude by discussing institutional and welfare implications.	Authoritarian regimes; Judiciary; Rent-seeking; Endogenous political institutions.
Alpha Duties	Edward Fox; University of Michigan Law School	Modern finance theory and investment practice have shifted toward "passive investing." The current consensus is that most savers should invest in mutual funds or ETFs that are (i) well-diversified, (ii) low-cost, and (iii) expose one's portfolio to age-appropriate stock-market risk. The law governing trustees, broker-dealers, 401(k) plan managers and other investment fiduciaries has evolved to push them gently toward this consensus. But these laws still provide broad scope for fiduciaries to recommend that clients invest instead in specific assets which they believe will produce "alpha" by outperforming the market. Seeking alpha comes at a cost, however, in giving up some of the benefits of the well-diversified, low-cost, appropriate risk baseline. Too little attention has been given in fiduciary law to this tradeoff and thus to when seeking alpha is prudent and beneficial for savers, and when it is not. This Article begins to fill that gap by making two contributions. First, we provide the first benchmark estimates of how much alpha is required before ordinary investors would be better off departing from the consensus. For example, we estimate that a person of average risk aversion would annually need to beat the market by (i.e., obtain alpha of) between 5% and 15% before being willing to entirely forego the benefits of diversification and hold an individual stock (and that during a financial crisis a person would need an annual alpha between 9% and 18%). Second, we consider the implications of our results for the various branches of law governing investment fiduciaries. We propose generally that fiduciaries should be informed about these alpha tradeoffs and explain them to their clients before recommending (or executing) investments that deviate from the low-cost, well-diversified, age-appropriate exposure standard. We argue that through new technology this kind of information can be given to retirement savers and others at quite low cost. Our results also have a variety of more specific applications. For example, our work shows that the value of diversification increases during periods of market upheaval, and therefore duty to diversify of trustees of personal trusts and of employee retirement plans should likewise strengthen during such periods.	fiduciary law (trusts, ERISA, investment advisors); diversification; active vs. passive investing

PAPER TITLE	AUTHOR(S)	ABSTRACT	KEYWORDS
A Regulatory Framework for Exchange-Traded Funds	Henry Hu; University of Texas Law School John Morley; Yale Law School	This is the first academic work to show the need for, or to offer, a regulatory framework for exchange-traded funds (ETFs). The economic significance of this financial innovation is enormous. U.S.-listed ETFs now hold more than $3.2 trillion in assets and comprise seven of the country's ten most actively traded securities. ETFs also possess an array of unique characteristics raising distinctive concerns. They offer what we here conceptualize as a nearly frictionless portal to a bewildering, continually expanding universe of plain vanilla and arcane asset classes, passive and active investment strategies, and long, short, and leveraged exposures. And we argue that they are defined by a novel, model-driven device that we refer to as the "arbitrage mechanism," a device that has sometimes failed catastrophically. These new products and the underlying innovation process create special risks for investors and the financial system. Despite their economic significance and distinctive risks, ETFs remain a regulatory backwater. The United States has neither a dedicated system of ETF regulation nor even a workable, comprehensive conception of what an ETF is. A motley group of statutes divide similar ETFs into a plethora of different regulatory cubbyholes that were originally intended for very different vehicles such as mutual funds, commodity pools, and operating companies. Other regulations come from a process of discretionary review that allows the SEC to assess the merits of each proposed ETF on an ad hoc, individualized basis. This process of review is opaque, inconsistent, and unfocused, and it is incapable of being updated, with the effect that new funds often operate under very different requirements from older funds. Regulation also fails to properly consider the ETF's distinctive characteristics. Rooted in a regulatory system originally designed for mutual funds, the SEC's disclosure rules for ETFs fail to comprehend the significance and complexities of the arbitrage mechanism and often require no public disclosure of major breakdowns in the mechanism's workings. Our proposed regulatory framework envisions a unified system of rules to streamline and rationalize the creation, substantive operations, and disclosure of ETFs. We encourage the SEC to adopt specific rules that would narrow the range of its focus and provide specific guidelines for the SEC's exercise of discretion, including as to ETFs raising certain arbitrage mechanism or related structural engineering concerns, certain risky or complex ETFs, and ETFs with large externalities. We also suggest a new disclosure regime to respond to the significance of the arbitrage mechanism, model-related complexities, and evolving understandings and conditions.	disclosure, ETF, exchange-traded fund, financial innovation, financial institutions, investments, model-related complexities, mutual funds, regulation, securities, systemic risk
Fiduciary Duty and the Market for Financial Advice	Vivek Bhattacharya; Northwestern University Gaston Illanes; Northwestern University Manisha Padi; University of Chicago School of Law	In 2017, the Department of Labor began implementation of a long-debated rule expanding fiduciary duties to broker-dealers selling annuities and other financial products to retirees. The rule was introduced due to concerns that vulnerable older populations were being sold high commission, low return products, such as certain variable annuities. Fiduciary duties require advisers to act in the best interests of their customers, but their effects on market outcomes are hotly contested. Proponents of expanding fiduciary duty argue that it would improve the advice given to consumers and limit losses from agency problems. Detractors claim, however, that fiduciary duties would increase compliance costs without improving consumer outcomes. This paper uses a transactions-level dataset from a major financial services provider to study the causal impact of fiduciary duty on equilibrium product choice as well as market structure in the financial advice industry, specifically focusing on the annuities market. We utilize a differences-in-differences approach, exploiting variation across state lines and across types of advisers in terms of which advisers are subject to state-level common law fiduciary duty. We document a significant effect on product choice: advisers with fiduciary duty sell variable annuities--often thought to be high fee products that might not be suitable for everyone--at significantly lower rates relative to advisers who do not. We also find some evidence that advisers without fiduciary duty steer consumers into slightly more expensive annuities with a narrower set of investment options. We conclude with an analysis of market structure and study whether fiduciary duty influences the number of firms or concentration; we do not see any support for such channels in our data, although our estimates are noisy.	
The Bankruptcy Partition	Douglas Baird; University of Chicago	The central ambition of Chapter 11 is to vindicate the hypo-thetical bargain creditors would strike among themselves before the fact if they had the opportunity to do so. When investors gath-er to invest in a common venture, their focus is on maximizing the value of that venture, rather than maximizing their total wealth as a group. The creditors' bargain is similarly focused on the bank-ruptcy estate, something that is partitioned from the other inter-ests of the creditors. The ambition of bankruptcy law is to put in place a process that maximizes its value. Many current bankruptcy debates—from critical vendor orders to the Supreme Court's decision last year in Jevic—begin with bankruptcy's distributional rules and questions about how much discretion a judge should have in applying them. It is a mistake, however, to focus on distributional questions without first identi-fying the bankruptcy partition and ensuring it is properly policed. What appear to be distributional disputes are more often debates about the demarcation of the bankruptcy partition and the best way to police it. Once the dynamics of establishing and policing the bankruptcy partition are taken into account, there is little room for departures from bankruptcy's distributional rules. There might be a few rare cases in which maximizing the value of the estate requires it, but these inhabit an exceedingly narrow domain so small and so hard to navigate that they are sensibly handled with a per se rule that prohibits them.	Jevic, Absolute Priority, Gifting

PAPER TITLE	AUTHOR(S)	ABSTRACT	KEYWORDS
Disagreement and Capital Structure Complexity	Kenneth Ayotte; UC Berkeley	The post-financial crisis period, many corporate bankruptcies involve complicated, fragmented capital structures characterized by many layers of debt and complex legal entity structures with many subsidiaries. Why do capital structures evolve this way, given that they make distress more costly to resolve? I suggest an answer based on the notion that investors may disagree about the value of assets that back loans. When such disagreement exists, firms have the incentive to exploit it by issuing claims that are targeted to subsets of the assets that investors are more optimistic about. This can create zero-sum disputes about entitlements to the firm's value when distress occurs. These disagreements minimize the borrower's cost of funds ex-ante by maximizing perceived recoveries, but they can be inefficient ex-post, because resolving disputes is socially costly. I show that disagreement about collateral values can cause inefficient liquidations. I also find that allocating securities in bankruptcy rather than selling firms for cash allows parties to continue "agreeing to disagree" about entitlements, which can avoid costly litigation over valuation.	bankruptcy, valuation, disagreement, subsidiaries, capital structure
What's the Hold Up? The Impact of Trustees' Compensation and Oversight on Case Duration	Michelle Miller; Loyola Marymount University Mary Hansen; American University	We measure the extent to which changes in the supervision and compensation of bankruptcy trustees affects the duration of personal bankruptcy cases. Under the Bankruptcy Act, trustees acted like private contractors with minimal oversight. They were appointed by either the referee or creditors and were paid a small percentage of assets liquidated. We find that during this time, they were highly motivated by their commission. We show that the amount of personal property had a positive impact on case duration. However, under the Bankruptcy Code, trustees essentially became government employees. They were overseen by the U.S. Trustee Program which randomly assigned them to cases. Despite being paid a higher percentage of assets liquidated, we find that trustees were no longer motivated by commission. In fact, the amount of personal property had a negative impact on case duration. Indeed, even after successive increases in the commission rate, which should have incentivized trustees to liquidate assets, the impact of assets on duration remained nil. This suggests that governments wishing to increase efficiency and accountability may get more bang for their bucks by changing the contractual relationship with civil servants instead of implementing pay-for-performance schemes.	personal bankruptcy; case duration; pay-for-performance
Personalizing Precommitment	Lee Anne Fennell; University of Chicago	This paper examines the potential for law to facilitate tailored precommitments to address self-control problems. This flavor of personalized law is unique in that it is voluntarily chosen and self-administered. Although there are practical and normative limits on the degree to which law can enable people to bind themselves in ways that they cannot later escape, law can offer mechanisms that would help people design and implement more flexible precommitments. Research suggests two potential lines for innovation. First, partitioning access to resources may constrain consumption in contexts from dieting to saving, even when the partitions can be unilaterally broken. Second, the chunkiness of the increments in which people make choices can have a powerful influence on behavior. In public finance and regulatory contexts, law could support choice design and menu personalization aimed at harnessing these effects, based on individualized data, to better serve people’s own objectives.	
Consumer Protection Laws and the Mortgage Market: Evidence from Ohio	Manisha Padi; University of Chicago School of Law	Abstract Consumer protection laws are intended to improve consumer outcomes and are becoming more common, particularly in mortgage markets after the 2008 recession. Little empirical evidence exists about the costs and benefits of these laws to consumer outcomes, or their optimal design. This project studies the effect of two common types of consumer protection laws: seller standards of conduct, enforced through ex post lawsuits by prosecutors and consumers, and mandated disclosures, which require sellers to provide consumers with information to help them make better decisions. Using a natural experiment in Ohio, which introduced the Homebuyer's Protection Act in 2007, I study the impact of both seller standards of conduct and mandated disclosures on the performance of loans owned by Fannie Mae or Freddie Mac between 2002 and 2012. I find that imposing standards of conduct on lenders increases borrower defaults in the short term, and is correlated with a drop in foreclosures and fewer mortgage originations. Mandated disclosures decrease mortgage defaults in the short term, and the effect is correlated with smaller transactions, lower interest rates, and higher borrower credit scores. I introduce a simple model of strategic default showing that standards of conduct targeting lenders can provide incentives to lenders to be lenient towards all borrowers, increase borrower default, while mandated disclosure can induce behaviorally biased consumers to default less often. Taken together, the evidence suggests that seller standards of conduct result in lender lenience towards borrowers but operate by shifting the cost of dropping house prices from borrowers onto lenders. On the other hand, carefully designed disclosures can encourage consumers to be more responsible in repayment of loans and can decrease the overall impact of unexpected drops in house prices.	
Consumer Lending Discrimination in the FinTech Era	Robert Bartlett; Univ. of California, Berkeley Adair Morse; University of California, Berkeley Richard Stanton; University of California, Berkeley Nancy Wallace; Univ. of CA Berkeley	Lending discrimination can stem from loan officer racial biases or algorithmic scoring, especially with big-data use in FinTech. Using never-before-linked mortgage data covering loan-level ethnicity, scoring variables, contract terms, and lender identifiers, we implement a treatment-based Oaxaca-Blinder discrimination estimation, based on the unique default-risk setting of the GSEs. We find that African-American and Hispanic borrowers have a 5% higher loan rejection rate, especially among low-credit-score applicants. Consistent with racial biases, rejection-rate differences are less pronounced for FinTech lenders, for whom the minority rejection rates are 1% lower. Ethnic-minority borrowers pay a 0.08% higher interest rate for purchase mortgages and a 0.03% higher rate for refinance mortgages, which translates into almost half a billion dollars per year in extra interest payments. FinTech lenders charge only a 0.01% differential for refi loans to African-American and Hispanic borrowers. These latter results are consistent with profit-taking opportunities in weaker competitive environments.	Mortgage discrimination; algorithmic underwriting

PAPER TITLE	AUTHOR(S)	ABSTRACT	KEYWORDS
CAN BLOCKCHAIN SOLVE THE HOLDUP PROBLEM IN CONTRACTS?	Richard Holden; University of New South Wales Anup Malani; University of Chicago	A basic problem in contracting is holdup: after one party has made relationship-specific investments, the other party refuses to perform unless the first one offers better terms than the original contract. Such renegotiation deters relationship-specific investments and reduces the value of trade via contract, which can either result in no trade or more trade within firms. A classic example is the case of Alaska Packers Association v. Demenico, 117 F. 99 (9th Cir. 1902). Economists have devised solutions – called renegotiation design and revelation mechanisms – to these problems, but they are presently difficult to implement as they require very strong commitment to specific trades, a feature that the current contract–writing wherewithal and court system cannot provide. However, blockchain, a new technology that creates a distributed, unalterable and open ledger, combined with so-called smart contracts, automated scripts that execute contracts, can provide such commitment. Blockchain can thereby either make original contracts unable to be renegotiated or enable the commitment required for renegotiation design or revelation mechanisms. In this manner, blockchain technology and smart contracts can increase the gains from contractual trade, reducing the size of firms and increasing economic output.	holdup, commitment, relationship specific investment, renegotiation, revelation mechanism, blockchain, smart contracts
Optimal Contract Design in the Wild: Rigidity and Control in Collective Bargaining	Elliott Ash; University of Warwick W. Bentley MacLeod; Columbia University Suresh Naidu; Columbia University	We document determinants of incompleteness, rigidity, and delegation in union contracts using a new corpus of 30,000 collective bargaining agreements from Canada from 1986 through 2015. Using ideas and methods from computational linguistics, we extract measures of rigidity and worker control from the text of the contract clauses. We then analyze how rigidity and authority in contracts varies according to firm-level factors and external factors. We document that contracts impose obligations equally on firms and workers but give entitlements mostly to workers. Worker entitlements have increased as a share of contract clauses over the last forty years. An increase in personal income tax rates is associated with an increase in worker entitlements, consistent with a substitution effect away from taxed compensation (income) and toward untaxed compensation (amenities). Control of province government by the labor-supporting New Democratic Party is associated with higher worker authority, consistent with higher bargaining power for workers due to political support. We further document a role for contracts as reference points as proposed by Hart and Moore (2008): negative wage shocks due to low COLA adjustments mis-predicting inflation are associated with higher strike rates and strike intensity, consistent with conflict due to frustrated worker expectations relative to a reference point. However, this wage-strike effect is attenuated by contracts with higher worker authority, however, consistent with a better-managed relationship.	contract design, labor unions, text analysis
Measuring the Effect of Choice on Contract Performance: How Autonomy and Self-Commitment Increase Effort	Richard Brooks; Columbia University Christopher Sprigman; New York University Stephan Tontrup; New York University	Contract designers often try to take advantage of loss aversion. They impose loss-framed contracts on workers to push their performance. These attempts often depress rather than spur productivity because they undermine individual autonomy. We show that contracts that offer parties a choice among a variety of loss and gained-framed contracts have a comparative edge: Subjects allowed to choose largely outperform participants in other treatments who are offered a set threshold. Performance gains were driven both by a better match of contract terms to individual preferences and by the experience of autonomy, which leads to higher motivation. Our study is the first to establish an independent performance-enhancing autonomy premium separating it from the effect of preference-matching. Subjects make sophisticated use of their contract choice: they select and enter the loss-framed contract they expect will optimize their performance as a commitment device and increase their productivity in their own self-interest.	contracts, framing effects, loss aversion, autonomy premium, self-commitment, worker productivity
Behaviorally Efficient Remedies: An Experiment	Christoph Engel; Max Planck Institute for Research on Col Lars Freund; Max Planck Institute Collective Goods	Under common law, the standard remedy for breach of contract is expectation damages. Under continental law, the standard is specific performance. The common law solution is ex post efficient. But is it also ex ante efficient? We use experimental methods to test whether knowing that non-fulfilment will only lead to damages deters mutually beneficial trade. The design excludes aversion against others willfully breaking their promises. We find that there is indeed less trade if specific performance is not guaranteed, provided the preference for the traded commodity is sufficiently pronounced.	remedies, breach of contract, specific performance, expectation damages, reliance damages, donation, experiment
The Restoration Remedy in Private Law	Omri Ben-Shahar; University of Chicago Law School Ariel Porat; Tel Aviv University and University of Chicago	One of the most perplexing problems in private law is when and how to compensate victims for emotional harm. This article proposes a novel way to accomplish this remedial goal—a restoration measure of damages. It solves the two fundamental problems of compensation for emotional harm—measurement and verification. Instead of measuring the emotional harm and awarding the aggrieved party money damages, the article proposes that damages be paid to directly restore the underlying interest, the impairment of which led to the emotional harm. And to solve the problem of verification—compensating only those who truly suffered the emotional harm—the article develops a sorting mechanism that separates sincere claimants from fakers, awarding the restoration measure of damages only to account for the harm suffered by the former class. The article demonstrates how the proposed restoration remedy would apply in important cases, and discusses its relevance to additional remedial challenges in private law.	Remedies, damages

PAPER TITLE	AUTHOR(S)	ABSTRACT	KEYWORDS
Unrequested Benefits, Damages Assessment, and Information Acquisition	Zhiyong (John) Liu; Indiana State University Ronen Avraham; University of Texas, and Tel Aviv University Yue Qiao; Shandong University	We investigate the interactions of the law's typical disallowance of recovery for unrequested benefits conferred by an actor to his or her counterparty and the incentives the actor has, at the ex ante stage, to acquire information about the harm or benefits potentially caused by his or her conduct. We analyze the impact of these interactions on the efficiency of two legal regimes: ex ante damages versus ex post damages. We show that ex post damages induce information acquisition by the actor, thus potentially leading to more efficient decision-making. However, under ex post damages, the existence of, and the prohibition of recovery for, the unrequested benefits lead also to distorted incentives for the actor's decision of whether to engage in an activity, and to chilled incentives for information acquisition. Taking into account the tradeoff of these effects, we show that the relative efficiency of ex ante versus ex post damages depends on the size of potential unrequested benefits, and on how the ex ante damages are calculated. When the calculation of ex ante damages is based on the full distribution of potential impact that includes the unrequested benefits, the ranking of the regimes of damages assessment depends on the extent of unrequested benefits. The larger the potential unrequested benefits, the more likely ex ante damages outperform the more flexible ex post damages. In contrast, when the calculation of ex ante damages excludes the unrequested benefits, ex post damages are more efficient.	Externalities, Unrequested Benefits, Damages Assessment, Actual Damages, Ex Ante Damages, Information Acquisition
Bargaining on Appellate Courts	Giri Parameswaran; Haverford College Charles Cameron; Princeton University Lewis Kornhauser; New York University	We present a sequential bargaining model of a multi-member appellate court that extends similar models developed to study legislatures. The judges decide a case by majority rule, and announce a legal rule compatible with the case decision. The members of the dispositional majority bargain over which rule to announce. Unique to U.S. Courts, the announced policy must have the support of a majority of the bench, which often requires a super-majority of those in the dispositional majority coalition. The model offers new insights on strategic dispositional voting, and the impacts of case importance, ideal point distributions, and case locations on case dispositions and the content of majority opinion. Interestingly, we show that equilibrium policies do not generically coincide with the ideal policies of the median judge (either of the overall bench, or in the dispositional majority).	Bargaining, Judicial Politics
ESTIMATING JUDICIAL IDEAL POINTS IN A BIDIMENSIONAL COURT	Lucia dalla Pellegrina; Universita' Milano Bicocca Marian Gili; Universitat Pompeu Fabra Nuno Garoupa; Texas A&M University School of Law	The empirical literature has consistently shown that judicial ideal points can be estimated in a one-dimensional space that reflects the traditional conservative-progressive dichotomy. In this paper, we develop an empirical methodology to analyze some features that may characterize bidimensional courts. We apply the analysis to the particular case of the Consell de Garanties Estatutàries de Catalunya (Catalan Constitutional Court). The results illustrate that one dimension (Spanish-Catalan sovereignty) tends to explain polarization while issues that can be classified as pertaining to the second dimension (cases on the conservative-progressive grounds) seem more likely to reflect dissent suppression. Policy conclusions are derived.	Constitutional Court, judges' ideology, dissent suppression
Predicting Deference in Appellate Court Decisions	Amy Semet; Princeton University	When do appellate court judges defer to agencies and under what circumstances will appellate court judges vote against their partisan leanings in reviewing the decisions of an adjudicative agency? In this paper, I review the decisions of the appellate courts in National Labor Relations Board ("NLRB") cases over 20 years using statistical and text analysis to uncover the political, economic, legal and sociological factors that impact both the decision to defer to the agency as well as the decision whether to vote contrary to ideological leanings. I specifically examine the role that gender and minority status has in influencing appellate court decision-making. The analysis contributes to important debates in administrative law about how courts review agency decisions and on the role that diversity plays in appellate decision-making.	Court Decisionmaking; Appellate Courts; Labor Law; Administrative Law; Text Analysis
A Decomposition of Racial Disparities in Pretrial Detention	Megan Stevenson; George Mason University	I conduct a decomposition of racial disparities in pretrial detention to determine how much is due to black defendants having higher bail and how much is due to black defendants being less likely to post, conditional on the bail amount. Using detailed court records from Philadelphia, I find that differences in the ability or willingness to post bail account for 1/3 of the race gap in detention. Differences in posting rates are particularly pronounced at the higher quantiles of the bail distribution: white defendants who must pay a bail deposit of $2500 to secure release are twice as likely to post as black defendants with that same bail. Racial differences in the bail distribution are substantial, but disappear entirely once legally relevant characteristics such as charge, criminal history, age and gender are accounted for. Finally, I discuss how racial differences in bail posting rates complicates tests of racial bias.	Race; Pretrial Detention
New Estimates of the Incapacitation and Criminogenic Effects of Prison	Evan Rose; UC Berkeley Yotam Shem-Tov; UC Berkeley	This paper seeks to identify the causal impact of time spent behind bars on re-offending by exploiting plausibly exogenous variation in sentence type and length from multiple discontinuities in state sentencing guidelines. We use two decades of administrative records for all felony offenders in North Carolina that combine court, jail and prison information. We find that an incarceration sentence reduces the likelihood of recidivism by ≈ 24 p.p. in the three years after conviction. Since this estimate combines incapacitation with any behavioral---rehabilitative or criminogenic---effects of incarceration, we formalize the parameters of interest in an econometric model that clarifies how common estimators relate to these two channels. Guided by the model, we then investigate effects of imprisonment on recidivism 25 months after conviction and later, when the initial sentence no longer influences incapacitation rates, and find no significant effect. To study recidivism closer to release dates, we examine offenses within three years of being released, which suggest incarceration may significantly reduce re-offending in the first three years after release.	Recidivism, Incarceration, Crime

PAPER TITLE	AUTHOR(S)	ABSTRACT	KEYWORDS
Does Sentencing Juveniles as Adults Increase Recidivism?	Miguel de Figueiredo; University of Connecticut School of Law Harrison Dekker; University of Rhode Island Renee LaMark Muir; Central Connecticut State University	As part of a growing trend in mass incarceration, a number of states adopted laws where juvenile defendants — traditionally defined as those below the age of 18 — could be tried as adults. In the last decade, there has been a slow backlash against these laws, with a number of states embarking on policies that increase the age at which juveniles can be tried as adults. Proponents of these "Raise the Age" (RTA) laws point to the importance of access to rehabilitation, the still-developing brain of juveniles, and the criminogenic effects of adult incarceration. Opponents emphasize the importance of victims' rights, reduced public safety through diminished deterrence, and the need for incapacitation as a means of restraining the impulsive nature of such offenders. Although 47 states have enacted reforms to increase the age at which juveniles could be adjudicated in the adult criminal justice system, the empirical work on the effect of these laws is still nascent. The paper tests the causal effect of the law using a difference-in-differences approach in Connecticut, where legislators had a staged rollout of the RTA law. In 2010, 16-year-olds could no longer be tried as adults, and in 2012, 17-year-olds could no longer be tried as adults. The paper finds Connecticut's RTA law reduced recidivism for incarcerated youth relative to similar youth incarcerated in the adult system, but that the effects are short-lived; in most specifications, for release thresholds greater than six months after an individual is released, we find that there are no statistically distinguishable differences in rearrest rates for youth placed in the adult versus the juvenile system. The paper discusses potential mechanisms that underlie these results and implications for policy reform.	Sentencing, Criminal Law, Juvenile Justice, Recidivism, Economics of Crime
Complexity and the Cathedral: Making Law and Economics More Calabresian	Henry Smith; Harvard	Like any kind of functional analysis of law, using economics to explain and evaluate law requires a choice as to how deferential one should be to the methods and standards of economics. In one such distinction Guido Calabresi distinguishes the "economic analysis of law" from "law and economics." The former analyzes and evaluates law in external economic terms, while the latter engages in a two-way interdisciplinary exchange. This paper will argue that the Calabresi and Melamed's "Cathedral" framework of property rules, liability rules, and inalienability rules could be pushed further in the direction of law and economics. To become fully law and economics as opposed to economic analysis of law, the Calabresi & Melamed (C&M) framework requires a greater recognition of law as a complex system. Doing so will in turn necessitate a rethinking of some Realist-inspired assumptions that underpin both the economic analysis of law and much of current law and economics. These include its preference for narrow, concrete concepts and its skepticism about traditional doctrines and baselines – and ultimately Legal Realism's extreme nominalism and the strong bundle of rights picture of property. The article shows how narrow entitlements, Rule 4, opportunistic behavior by parties as feedback into the system, and the role of equity, could all benefit from the tools of systems theory, which could prevent the C&M framework from falling back into the economic analysis of law. If we supplement the C&M framework to take account of law as a system, we can bring it closer to Calabresian law and economics.	Property Rules, Liability Rules, Economic Analysis of Law, Law and Economics, Property, Complex Systems, Equity
Reinforcing Law and Economics: Behavioral Support for the Predictions of Standard Economic Analysis	Eyal Zamir; Hebrew University of Jerusalem	Economic analysis has had a powerful influence on legal theory and policymaking. Based on the premise that people are rational maximizers of their own utility, economic analysis has a fairly successful record in correctly predicting human behavior in all spheres of life. This success is puzzling, given behavioral findings that show that people do not necessarily seek to maximize their own utility. Drawing on studies of motivated reasoning and self-serving biases, including recent advances in behavioral ethics, this article offers a new behavioral foundation for the predictions of economic analysis. The behavioral studies reveal how automatic and mostly unconscious processes lead well-intentioned people to make self-serving decisions (even when this entails violating moral, social, or legal norms). Thus, the behavioral studies support many of the predictions of standard economic analysis, without committing to an overly simplistic and cynical portrayal of human motivation. The article reviews the relevant psychological findings, explains how they provide a complementary, sounder foundation for much of economic analysis, and discusses their implications for legal policymaking.	positive economic analysis, behavioral law and economics, behavioral ethics, self-serving biases, motivated reasoning, dual reasoning
A Brief History of the Rise of Law and Economics	George Priest; Yale Law School	Below are excerpts from a book that I am writing. The book addresses the intellectual foundations of modern law and economics and attempts to explain why the field has become so prominent. Early chapters of the book (not included) describe the movement over the early years of the 20th Century, accelerated by the Depression, toward a functional approach to law. The chapters included here describe the work of Coase, Calabresi and Posner, showing how the field gained explanatory power over all of the law. The content may well be old hat to many of you, perhaps to most of you. But I would appreciate comments on my interpretations of these great founders of law and economics.	
The Limits of Limited Liability: Evidence from Industrial Pollution	Pat Akey; University of Toronto Ian Appel; Boston College	We study how parent liability for subsidiary environmental cleanup costs affects industrial pollution and production. Our empirical setting exploits a Supreme Court case that strengthened limited liability protection for parent corporations. Using a difference-in-differences framework, we find that increased liability protection for parents leads to a 10% increase in toxic emissions by subsidiaries. This decision is also associated with abnormal returns of over 1% for parent firms with a relatively high exposure to the change in legal liability. We find evidence that the increase in pollution is driven by lower investment in abatement technologies rather than higher production. Cross-sectional tests suggest a risk-shifting motivation for these effects. Overall, our results highlight moral hazard problems associated with limited liability	

PAPER TITLE	AUTHOR(S)	ABSTRACT	KEYWORDS
The Origins and Size of Environmental Agencies	Dean Lueck; Indiana University	Governmental agencies manage and regulate important environmental assets, but there has been little systematic research on the factors determining their creation, evolution, and size. We fill this void by studying the emergence of U.S. state wildlife agencies from their inception in colonial game laws of the 1700s to their manifestation as modern hierarchical environmental agencies. We develop a model of agency demand that considers the problem of managing a large scale environmental asset that spans small private landholdings. In the model, demand for an agency increases with the costs of landowner coordination to control the asset, but also depends on state capacity. The empirical analysis tests the theoretical implications by examining a) the timing of agency emergence across states from the 1870s through the 1930s; b) changes in the amount of agency expenditures over 1950-2010; and c) the proportion of recent expenditures on nongame species (e.g., songbirds). Empirical estimates show that higher landowner coordination costs are associated with earlier agencies, larger expenditures, and a smaller relative focus on nongame species. The results contribute to the literature on the evolution and supply of environmental regulation.	property, contracting, landownership, wildlife, agencies, bureaucracy
Experimental Evidence of Landowner Behavior in Endangered Species Habitat Programs	Jacob Byl; Vanderbilt University	The effectiveness of the Endangered Species Act is limited by the adversarial relationship it creates between landowners and regulators. Experimental methods allow assessment of current and proposed regulatory regimes aimed at inducing cooperation. Participants in this computer-based experiment faced either strict regulation, were offered safe-harbor agreements, or were offered safe-harbor agreements plus financial incentives—low or high—to promote endangered species. Safe-harbor agreements and high financial incentives decreased harvests, but low financial incentives—though paired with safe-harbor agreements—actually increased harvests. Financial incentives increased active habitat improvement for both the low and high financial incentive groups. The experiment also allowed for insights into which regimes were most effective when enforcement threats were not credible and ways in which participants appeared to avoid guilt associated with destroying hypothetical habitat.	Endangered species; voluntary conservation; law and economics; experimental; empirical; habitat conservation
Optimal Defaults with Normative Ambiguity	Jacob Goldin; Stanford Law School Daniel Reck; London School of Economics	Default effects are pervasive, but the reason they arise is often unclear. We study optimal policy when it is ambiguous whether an observed default effect reflects a welfare-relevant preference or a mistake by decision-makers. Within a broad class of models, determining optimal policy is impossible without resolving this normative ambiguity. Depending on the resolution, optimal policy tends in opposite directions: either minimizing the number of non-default choices or promoting active choices. We illustrate our results using data on pension contribution defaults. When selecting a non-default option reduces employee welfare by less than $160, the optimal policy promotes active choices.	
Inequality Snowballing	Zachary Liscow; Yale University	The underpinning of economic analysis of the law has long been the goal of efficiency. This Article shows how efficient legal rules can sow the seeds of their own vicious cycle: repeated application over time of efficient legal rules can lead to rules that become increasingly adverse to the poor, which the Article calls "snowballing." Snowballing can occur where efficient legal rules distribute more legal entitlements to the rich than to the poor. That disproportionate allocation can then make subsequent application of the legal rule allocate a yet more disproportionate amount to the rich than the poor, since efficiency is based on willingness to pay, and greater income often tends to increase willingness to pay. The Article raises the intriguing prospect that, among the many reasons driving increasing income inequality, the realization of this foundational tenet of economics in the law could be an important contributing factor.	economic inequality; torts; dynamics
Debt and Equity Taxation: A Combined Economic and Legal Perspective	Thomas Brennan; Harvard University	We describe the tax law distinction between debt and equity and review its historical evolution. We conclude that the current rules are a result of pragmatism and path dependence and that there is no fundamental reason to maintain them. We describe an alternative that would replace the interest deduction on debt with a deduction for a return equal to the risk-free return on all corporate capital, and we refer to this as a "risk-free allowance for corporate capital" (RFACC). The RFACC provides the unique fixed-rate deduction that eliminates debt-equity distortions and also taxes only the risky component of returns. To the extent a at tax on the market risk premium does not distort investor behavior (Domar and Musgrave, 1944; Gordon, 1985; Kaplow, 1994), the corporate tax with the RFACC may be thought of as a tax levied on rents. We connect the RFACC to other proposals for corporate tax reform, including recent implementations of an allowance for corporate equity (ACE) and proposals for other particular allowances for corporate capital. We explain how schemes that allow a deduction for a fixed amount in excess of the risk-free rate generally provide an unintended fixed subsidy to corporations in addition to the tax levy on rents. We also explain how valuation difficulties in implementing the RFACC can be handled by adapting methods from the literature on capital income taxation. Finally, we consider in particular the context of financial institutions and describe how the RFACC would eliminate tax-motivated distortions in the capital structures of banks.	debt-equity distinction; corporate tax reform; interest deductibility; hybrid securities; allowance for corporate capital
Vertical Collusion	David Gilo; Tel Aviv University Yaron Yehezkel; Tel Aviv University	We characterize the features of collusion involving retailers and their supplier, who engage in secret vertical contracts and all equally care about future profits ("vertical collusion"). We show such collusion is easier to sustain than collusion among retailers. The supplier pays retailers slotting allowances as a prize for adhering to the collusive scheme and rejects deviations from the collusive vertical contract. In the presence of competing suppliers, vertical collusion can be sustained using short-term exclusive dealing in every period with the same supplier, if the supplier can inform a retailer that the other retailer did not offer the supplier exclusivity. When retailers are differentiated, vertical collusion plays a dual role of helping retailers collude while solving the supplier’s inability to commit to charging the monopoly wholesale price.	vertical relations, tacit collusion, exclusive dealing, opportunism, slotting allowances.

PAPER TITLE	AUTHOR(S)	ABSTRACT	KEYWORDS
Not from Concentrate: Collusion in Syndicated Markets	Jordan Barry; University of San Diego John Hatfield; University of Texas at Austin Scott Kominers; Harvard University Richard Lowery; University of Texas-Austin	It is a core principle of antitrust law and theory that reduced market concentration lowers the risk of anticompetitive behavior. This Article argues that this principle is fundamentally incomplete. We consider and model an important class of markets known as syndicated markets. In a syndicated market, firms both compete and collaborate with each other; they compete with each other for business, but work together (e.g., through subcontracting) to complete production. Well-known examples include the markets for construction, reinsurance, and underwriting services. Firms in syndicated markets are strongly interdependent, which gives competitors leverage over each other that they would not have in a non-syndicated market. Firms can refuse to transact with any rival that attempts to undercut a collusive price, immediately raising the deviator's costs of production and imposing long-term costs on the would-be cheater. This threat is a powerful deterrent that can make collusion much easier to sustain. Our analysis produces three additional key results. First, in syndicated markets, decreasing market concentration can encourage collusive behavior and raise prices. This is because smaller firms have more to gain from forming syndicates, making collusion a more attractive option (and thus easier to sustain) than grabbing market share by undercutting a collusive arrangement. Second, increasing firms' capacity may lower market prices and total firm profits. Finally, market entry by small entrants can raise both market prices and firm profits. These results are particularly noteworthy because they are essentially the exact opposite of the conventional wisdom, gleaned from models of non-syndicated markets, which has permeated antitrust law.	Antitrust, collusion, syndicated markets, law and economics, cartels
Debarment and Collusion in Procurement Auctions	Claudia Cerrone; Max Planck Institute for Research on Collective Goods Yoan Hermstruewer; Max Planck Institute for Research on Collective Goods Pedro Robalo; Portuguese Competition Authority	This paper explores the impact of debarment as a deterrent of collusion in first-price procurement auctions. We develop a procurement auction model where bidders can form bidding rings, and derive the bidding and collusive behavior under no sanction, debarment and fines. The model's predictions are tested through a lab experiment. We find that debarment and fines both reduce collusion and bids. The deterrent effect of debarment increases in its length. However, the debarment of colluding bidders reduces efficiency and increases the bids of non-debarred bidders. The latter suggests that the market size reduction resulting from debarment may trigger tacit collusion.	Debarment; Collusion; Procurement Auctions; Procurement Law; US Administrative Law; International Law; Experiment
UNDERSTANDING DISPARITIES IN PUNISHMENT: REGULATOR PREFERENCES AND EXPERTISE	Bernardo da Silveira; Washington University St. Louis Karam Kang; Carnegie Mellon University	We exploit institutional changes in the enforcement of water quality regulations in California to identify and estimate a model of adverse selection where the regulator considers private benefits and external costs from violations, as well as enforcement costs. Using the estimated model, we find that, even if the regulator's objective function were the same across dischargers, differences in the punishment of violations would mostly persist, reflecting a large heterogeneity in the dischargers' private benefits. Moreover, introducing a one-size-fits-all policy would increase both the level and dispersion of violation frequencies, illustrating the value of employing the regulator's knowledge about dischargers.	Adverse Selection, Nonparametric Identification, Optimal Regulation Enforcement, Regulatory Discretion, Regulator Preferences, Semiparametric Estimation, Water Quality Regulation

PAPER TITLE	AUTHOR(S)	ABSTRACT	KEYWORDS
Bureaucratic Reasoning	Jed Stiglitz; Cornell Law School	A requirement for public reasoning pervades the modern state. Much of the story of administrative law, indeed, might be understood as an effort to calibrate the requirement of bureaucrats to provide reasons for their actions. The dominant view among scholars and policymakers elevates the value of reason-giving, illustrated for example by a requirement for reason-giving in proposed bipartisan legislation to protect Special Counsel Mueller from politically-based removal. Yet legal and administrative "realists" have long doubted the efficacy of public reasons, and some argue we ought to be more tolerant of laxity in reasoning. Both central and contested, official reason-giving remains surprisingly unexamined empirically. Neither the boosters nor the skeptics have responsive evidence to support their positions that official reason-giving matters, or not. Drawing from the traditions of experimental economics, this Article presents responsive evidence on this issue, reporting a novel experiment that examines whether reason-giving reduces abuses of fiduciary responsibilities. The results from this experiment suggest that a requirement for reason-giving powerfully deters abuse of office, notably increasing fidelity to fiduciary standards, but principally if reason-giving is subjected to reasonableness review, as through judicial review. The study informs on-going debates over the proper role of judicial review of agency actions and suggests that administrative law should not lightly turn from its aspirational ideal of reasoned decision-making.	Reason-giving, arbitrariness review
Powers, But How Much Power? Game Theory and the Nondelegation Principle	Sean Sullivan; University of Iowa	Of all constitutional puzzles, the nondelegation principle is one of the most perplexing. How can a constitutional limitation on Congress's ability to delegate legislative power be reconciled with the huge body of regulatory law that now governs so much of society? Why has the Court remained faithful to its intelligible principle test, validating expansive delegations of lawmaking authority, despite decades of biting criticism from so many camps? This article suggests that answers to these questions may be hidden in a surprisingly underexplored aspect of the principle. While many papers have considered the constitutional implications of what it means for Congress to delegate "legislative" power, few have pushed hard on the second part of the concept: what it means for an agency to have legislative "power." Using game theory concepts to give meaning to the exercise of legislative "power" by an agency, this paper argues that nondelegation analysis is actually more complicated than it appears. As a point of basic construction, a delegation only conveys legislative power if it (1) delegates lawmaking authority that is sufficiently "legislative" in nature, and (2) gives an agency sufficient "power" over the exercise of that authority. But, again using game theory, this paper shows that an agency's power to legislate is less certain than it first appears, making satisfaction of this second element a fact question in every case. This more complicated understanding of the nondelegation principle offers three contributions of practical significance. First, it reconciles faithful adherence to existing theories of nondelegation with the possibility of expansive delegations of lawmaking authority. Second, it suggests a sliding-scale interpretation of the Court's intelligible-principle test that helps explain how nondelegation caselaw may actually respect the objectives of existing theories of nondelegation. Third, it identifies novel factors that should (and perhaps already do) influence judicial analysis of nondelegation challenges.	Nondelegation; Principal-Agent; Game Theory; Folk Theorem; Agency
Judgment Contingent Settlements	Shay Lavie; Tel Aviv University Avraham Tabbach; Tel Aviv University	Asymmetric information is widely considered a major obstacle to settlements. In this paper, we argue that litigants facing asymmetric information can use a simple add-on to the settlement o¤er to alleviate the information barriers to settlements. In particular, we show that informed parties can promise to pay an additional sum should they lose at trial (if the settlement proposal is rejected and a trial takes place) in exchange for a (possible) payment from the other party. We refer to the general class of these provisions as Judgment-Contingent Clauses(JCC). We show that JCCs enable informed parties to signal their type to the uninformed party costlessly, and accordingly decrease litigation rate and at the limit eliminate it altogether. JCCs manage to reduce litigation because they are costly to a party who misrepresents herself, but they could be costless to a party who presents herself truthfully through the settlement o¤er. We further discuss possible limitations to such settlement clauses including wealth-constraints and endogenous litigation costs. We also provide the conditions under which our asymmetric information model predicts inverse-JCCs, i.e., agreements to decrease rather than inate the stakes of the trial, which resemble the more familiar high-low agreements.	Litigation, Settlements, Pretrial Bargaining, Asymmetric Information, Contingent Fees, High-Low Agreements
Class Action Waivers and Private Antitrust Litigation	Albert Choi; University of Virginia Kathryn Spier; Harvard University	The paper analyzes the effect of class actions and class action waivers on firms' ability to collude and x market prices. We model class action as a mechanism that allows plaintiffs to lower their litigation costs. The paper shows that when the cost of individual litigation is sufficiently low, firms endure lawsuits in equilibrium and swallow the litigation costs as just another cost of doing business. In this case, firms have an incentive to allow class actions and this is also socially optimal. By contrast, when the cost of individual litigation is above a threshold, the firms set the market price so that future litigation is deterred. In this case, firms may want to impose class action waivers (and disallow class actions). By doing so, they can raise the market price and increase their prots, but this is socially sub-optimal. Various extensions, such as possible settlement, asymmetric information, contingent fee payments, fee shifting, and damages multiplier, are also examined.	Class Action; Class Action Waivers; Antitrust;

PAPER TITLE	AUTHOR(S)	ABSTRACT	KEYWORDS
Contingent Fees and Access to Justice	Eric Helland; CMC/RAND Daniel Klerman; University of Southern California	Using a unique dataset from New York City, this article shows that contingent fees seem to have largely solved the access-to-justice problem in tort litigation. People in poorer zip codes, in fact, make legal claims at a higher rate than those in wealthier areas. This greater propensity to seek and achieve legal redress is partly explained by the fact that poor people are more likely to be injured. Nevertheless, even controlling for injury rates, the poor make more claims. On the other hand, controlling for income, racial and ethnic minorities make claims at a slightly lower rate than whites.	Access to Justice; Contingent Fees; Tort; New York City;
Litigation Funding: An Economic Analysis	J.B. Heaton; J.B. Heaton, P.C.	Basic economic analysis of litigation funding shows that risk-neutral plaintiffs without budget-constraints will not accept funding unless they are pessimistic relative to the funder. Risk aversion makes a plaintiff who shares probabilistic beliefs with the funder act observationally equivalent to a pessimistic, risk-neutral plaintiff, so she will accept funding as well. An important benefit of litigation funding - evident from the application of a change of measure to risk-neutral probabilities, an analytical approach widely-used in the pricing of financial derivatives - is that it moves actions closer to risk-neutral behavior and therefore closer to actions consistent with the plaintiff's perceived "merits," something that is of underemphasized importance in law and procedure. The best funding outcomes (for investors) are likely when plaintiffs are risk averse or budget-constrained. Poor outcomes are more likely when funded plaintiffs are risk neutral and unconstrained.	Litigation Funding, Economic Analysis of Litigation, Risk-Neutral Probabilities, Optimism, Pessimism
Lawyers, Law Firms, and the Production of Legal Information	Adam Badawi; UC Berkeley	Legal language is a prominent constraint on firm behavior. While some of this language is statutory or regulatory in origin, much of it is produced by the lawyers and law firms that draft the contracts that firms enter into and the public documents that they file. Despite the importance of this lever of corporate governance, there has been relatively little research on the role that lawyers and law firms play in the generation and evolution of this language. This paper addresses this gap in the literature by conducting a large scale text analysis of fifteen years worth of offering prospectuses filed with the SEC by firms that seek to make an initial or seasoned public offering. Extracting the names of the lawyers and law firms that produce these documents allows for an analysis of the similarity of documents produced by the same lawyers, the same law firms, the same industries, and by proximate law firms. By identifying lawyers that switch law firms, the analysis can assess the amount of similarity that is attributable to the lawyers themselves and how much is associated with the lawyers working at a specific law firms. The law firm effect is larger than the lawyer effect across multiple specifications of the model. This result suggests that if lawyers leave their law firms, the subsequent work product of those lawyers will look quite different. This effect implies that there are important organizational effects associated with the production of this sort of legal language. In addition to this result, the analysis also shows substantial similarity effects associated with issuer industry, law firm proximity, and documents drafted after a law firm has merged.	Lawyers, Law Firms, Text Analysis, IPOs, Organizations
Crowdfunding Civil Justice	Ronen Perry; University of Haifa	Crowdfunding—the aggregation of numerous but modest individual contributions through specialized online platforms—is a relatively new finance method. In the last few years, it has started its incursion into the realm of civil litigation funding. Three unrelated events, which took place in different jurisdictions in 2017, demonstrate this evolving trend and its potential impact. In the United States, the Southern Poverty Law Center included the political activist Maajid Nawaz on a list of “anti-Muslim extremists.” Nawaz launched an independent campaign for crowdfunding a defamation action against the organization. In the United Kingdom, a wildlife protection organization brought a defamation action against Andy Wightman, a Member of the Scottish Parliament, over his blog posts about the plaintiff’s practices. Wightman raised more than £60,000 through a British crowdfunding platform to fight this lawsuit. In Israel, the acclaimed journalist Igal Sarna was found liable in defamation for a Facebook post scorning Israeli Prime Minister Benjamin Netanyahu. Sarna raised over $45,000 through a crowdfunding website to cover his liability. The Article provides a law and economics analysis of this emerging global trend, which may revolutionize the civil process in the near future. It argues, first, that the distinction between investment-based and non-investment-based crowdfunding models is crucial. In non-investment-based models, contributors expect only a non-monetary benefit (reward-based crowdfunding) or none at all (donation-based crowdfunding). In investment-based models, contributors expect financial return—a share in the fundraiser’s future gain (equity-crowdfunding) or repayment of the contribution with interest (debt-crowdfunding). The Article contends that investment-based litigation crowdfunding is generally a welcome phenomenon, because it enables parties to pursue meritorious claims and defenses without generating a significant risk of frivolous litigation. Thus, it should be minimally regulated by securing disclosure of relevant information to potential investors. Non-investment-based litigation crowdfunding should be more constrained. The analysis entails a second fundamental distinction between process costs and outcome costs. Process costs are any outlays incurred by either party in relation to the dispute resolution process and prior to its conclusion. These may include court charges, attorneys’ fees, witnesses’ and experts’ expenditures and remuneration, etc. In cases of incapacitating injury, process costs may also include the claimant’s living expenses throughout the process. Outcome costs are the amounts payable under the settlement or the judgment. The Article contends that non-investment-based crowdfunding of process costs should be subject to professional vetting. This will inhibit frivolous claims and defenses that waste scarce administrative resources and do not further the underlying goals of civil law. Non-investment-based crowdfunding of outcome costs should be prohibited when it undermines efficient deterrence.	

PAPER TITLE	AUTHOR(S)	ABSTRACT	KEYWORDS
The Promise of Reward Crowdfunding	Maria Gutierrez; Universidad Carlos III de Madrid Maribel Saez; Universidad Autónoma de Madrid	We study reward crowdfunding, the most innovative segment of the crowdfunding market, where, instead of a debt or equity contract, fund providers are promised some good or service in the future in exchange for their contribution to the funding of the investment project under a contract that does not penalize the creator's failure to deliver. The existing economic and legal literature is puzzled by the platforms use of this seemingly inefficient contract where a standard pre-sale contract would appear to work better. Counter intuitively, we prove that the no-penalty contract is the optimal contract between creators of unknown talent and early adopters of their products when creators can benefit from being discovered as talented and from the goodwill generated by delivering on their promise to early adopters. Our analysis has important policy implications on how backers should be protected. Standard measures of consumer or investor protection may be counterproductive.	Reward crowdfunding, best efforts, presale contract, talent discovery.
The Contract to Sell Contracts	Tracy Lewis; Duke University Alan Schwartz; Yale	This paper considers an understudied contract form: the contract to sell contracts. This contract is used when an “originator” creates a set of contracts with individual obligors, bundles the contracts into a portfolio and sells the portfolio – the contract to sell contracts – to a financial intermediary. Securitization is our principal example. A bank originates consumer mortgages, aggregates them into a portfolio and sells the portfolio to a financial buyer. The portfolio is ultimately traded to public investors. We exhibit the special features of the contract to sell contracts and the consequences of neglecting those features. In particular, damages do not scale for this contract form. The damages for breach of a contract to sell goods are N times the damages for a single unit because breach, say of a quality warranty, commonly affects every unit in a goods bundle in the same way. In contrast, if the originating bank warrants the quality of individual loans in a loan portfolio, a breach, say by making careless appraisals, may cause some homes in the portfolio to have values that are lower than represented values but not cause other homes to have lower values. Also, buyers in the low value homes may not default or may default at different times in the repayment schedule. Hence, the buyer of a portfolio – the promisee of the contract to sell contracts – must establish breach, causation and damages contract by contract. A promisee cannot meet this burden when it buys portfolios with several thousand loans. We show that the contracts between originating banks and financial intermediary buyers nevertheless warranted that each loan in a large loan portfolio was created appropriately and that, in consequence of trading portfolios under these “individuated contracts”, consumer mortgage backed security portfolios were sold along the intermediation chain and to the public under unenforceable contracts. The originating banks recognized that they would not be liable for breach (and were not in the event) and so reduced pre-loan screening of borrowers and post-loan salvaging of defaulted loans. We identify the reasons why sophisticated parties wrote, and continue to write, inefficient contracts to sell contracts and suggest novel law reforms that respond to those reasons. For example, contract law remedies are individuated; they implicitly assume that damages scale. Hence, contract law does not account for the contract to sell contracts. We thus suggest that the law should expand to contain a portfolio default which would permit a buyer to recover the difference between the value a compliant contract portfolio would have had and the value of the portfolio the parties traded.	*
Complexity, Standardization, and the Design of Loan Agreements	Bernhard Ganglmair; U Texas at Dallas Malcolm Wardlaw; University of Texas Dallas	This paper uses a text-based approach to analyze the detail and customization found in private loan contracts. Contracts are more detailed for firms that are more likely to default, loans with longer maturities, larger loan amounts, multiple and non-local lenders, and when the existing financial structure is more complex. Alternatively, we find that loans are less customized and more "boilerplate" for loans with multiple and geographically distant lenders. We also find that more detailed contracts are renegotiated more often, but more customized ones are renegotiated less, suggesting a role for boilerplate detail as a reference point for renegotiation.	boilerplate contracting; contract completeness; contract complexity; incomplete contracts; loan contracts; natural language processing; text analysis; transaction costs economics

PAPER TITLE	AUTHOR(S)	ABSTRACT	KEYWORDS
Learning in Standard Form Contracts: Theory and Evidence	Florencia Marotta-Wurgler; New York University Giuseppe Dari-Mattiacci; University of Amsterdam	We explore learning and change in standard form contracts. We hypothesize that drafters (sellers) are more likely to revise the terms they offer when they have an opportunity to learn about their value. These opportunities arise only for those types of terms that allow drafters to experience the relative costs and benefits of offering them. Consider a warranty. Sellers offering a warranty in an initial period will be exposed to claims about malfunction by purchasers and will learn whether it is desirable to offer it going forward. When drafters are unable to learn, either because they fail to offer such learning-enabling terms initially, or because the term in question is one where there is no increased opportunity to learn, we expect that such terms will be revised less frequently. Indeed, a reduced opportunity to learn might contribute to contractual "stickiness" and other inefficiencies, where terms that are less likely to be revised and might lose their meaning over time or appear less related to the rest of the contract. Our results support this hypothesis. Using a large sample of changes in consumer standard form contracts over a period of seven years, we find that sellers are more likely to revise terms that offer an opportunity to learn than those that do not. The results suggest that, in addition to other factors, standard form contract terms evolve over time as sellers learn about their benefits, costs, and risks. Our results have normative implications for the optimal design of default rules.	standard form contract, boilerplate, evolution of contracts, learning
Why Have M&A Contracts Grown? Evidence from Twenty Years of Deals	John Coates; Harvard University	Over 20 years, M&A contracts have more than doubled in size – from 35 to 88 single-spaced pages in this paper's font. They have also grown significantly in linguistic complexity – from post-graduate "grade 20" to post-doctoral "grade 30". A substantial portion (lower bound ~20%) of the growth consists not of mere verbiage but of substantive new terms. These include rational reactions to new legal risks (e.g., SOX, FCPA enforcement, shareholder litigation) as well as to changes in deal and financing markets (e.g., financing conditions, financing covenants, and cooperation covenants; and reverse termination fees). New contract language also includes dispute resolution provisions (e.g., jury waivers, forum selection clauses) that are puzzling not for appearing new but in why they were ever absent. A final, notable set of changes reflect innovative deal terms, such as top-up options, which are associated with a 18-day (~30%) fall in time-to-completion and a 6% improvement in completion rates. Exploratory in nature, this paper frames a variety of questions about how an important class of highly negotiated contracts evolves over time.	Merger; Acquisition; Contract; Contract Evolution; Legal Services; Agency
Bargaining in the Shadow of the Contract	Meirav Furth-Matzkin; Harvard University	Increased public awareness that sellers routinely insert one-sided or exploitative terms into their boilerplates has resulted in growing pressure throughout the world for broader substantive regulation of consumer contracts. However, recent evidence suggesting that sellers and landlords routinely contravene these regulatory measures by inserting unenforceable terms into their contracts casts doubt on the effectiveness of such regulatory changes. This Article empirically demonstrates the implications of this continuous practice for the non-drafting parties. Building on previous research showing that residential rental agreements often contain unenforceable terms, this Article explores how such terms influence tenants' post-contract decisions and behavior. The experimental studies reported here expose the harmful effects of unenforceable terms, revealing that tenants are significantly more likely to bear costs that the law imposes on the landlord after reading an unenforceable term as opposed to an enforceable term or even a silent lease. These findings lead to a troubling conclusion: While consumers generally enter into contracts without reading them, and thus do not notice any unenforceable terms, these same terms may adversely affect consumers ex post, when a problem or dispute with the seller arises and they then consult the contract. This new evidence suggests that even substantive regulation of consumer markets could fail to achieve its objectives as long as it relies on uninformed consumers to enforce their mandatory rights and protections. The Article discusses the significance of these findings for public policy and regulation.	Contracts, consumer protection, law & psychology, empirical legal studies, law & economics, behavioral economics
Do Women Stay Out of Trouble? Evidence from Corporate Litigation and Policies	Binay Adhikari; University of Texas Rio Grande Valley Anup Agrawal; University of Alabama James Malm; College of Charleston	We find that firms where women have more power in the top management team face fewer lawsuits, mainly those unrelated to securities. We introduce two variables as proxies for women's power in management: 1) plurality, which indicates the presence of at least two women in the top management team, and 2) the sum of female managers' pay slices among the top managers. Our finding is robust to alternate specifications such as firm-fixed effects and change regressions. The effect of women executives' power on lawsuits does not appear to be driven by women's greater willingness to settle or to settle for larger amounts. Using a simultaneous equations approach, our evidence suggests that firms where female executives have more power avoid lawsuits partly by avoiding some risky but value-increasing firm policies such as more aggressive R&D, more intensive advertising, and policies at odds with other stakeholders.	Women executives, Corporate litigation, Corporate policies

PAPER TITLE	**AUTHOR(S)**	**ABSTRACT**	**KEYWORDS**
Beyond the Numbers: Substantive Gender Diversity in Boardrooms	Yaron Nili; University of Wisconsin Law School	The push for gender diversity on public companies' boards has been gaining traction. Advocacy groups, institutional investors, regulators and companies themselves have all recognized the need for more diverse boards. However, gender parity is still absent from most public companies' boards, and a significant number of companies still have no women on their boards. Current public and academic discourse has focused on the number of women serving on the board and their percentage compared to men as the litmus test for gender diversity. However, academic studies and the public push for more diversity have mostly failed to account for another important measure of board gender diversity – the actual role and clout that female directors have within the boardroom. This is what the Article terms as substantive gender diversity. Substantive gender diversity matters. It is at the core of both the social cause and the business case for gender diversity on boards. This Article explores this substantive component of board gender diversity through empirical data relating to the roles that men and women play on corporate boards. The Article finds statistically significant differences between the roles of female and male directors. Building on these findings, the Article asserts that regulators, investors and companies must focus not only on increasing the number of women on boards but also on ensuring that female directors enjoy similar parity once elected. The Article then proposes a shift towards a Substantive Gender Diversity Disclosure regime, which would measure and report the substantive aspect of gender diversity in boardrooms.	Gender Diversity, Corporate Law, Corporate Governance, Board of Directors, Securities Regulation
CEO Traits and Firm Outcomes: Do Early Childhood Experiences Matter?	M. Todd Henderson; University of Chicago Irena Hutton; Florida State University	This paper examines the impact of early childhood characteristics of top corporate decision makers on firm policies and value. Using a unique dataset, we study the effect of CEO birth order, family size, socioeconomic status and childhood trauma, all of which have been shown to affect personality development and social capital. Overall, we find that firstborn CEOs, CEOs from families with higher socioeconomic resources and those with less childhood trauma prefer safer investment and leverage policies, which lead to lower firm value. Socioeconomic status dominates birth order, family size and childhood trauma as a determinant of firm policies. Though the effect of birth order is generally moderate, it intensifies in CEO family owned firms where family dynamics may facilitate expression of personal conservatism.	CEO, early childhood, firm policies, risk aversion
Voting in Corporations	Alan Miller; University of Haifa	I introduce a model of shareholder voting. I describe and provide two characterizations of a family of shareholder voting rules, the thresholds rules. One characterization relies on an axiom, merger, that requires consistency in voting outcomes following stock-for-stock mergers; the other relies on an axiom, reallocation invariance, that requires the shareholder voting rule to be immune to certain manipulative techniques used by shareholders to hide their ownership. The family of thresholds rules includes many common voting methods including the shareholder majority rule.	Corporate Voting, Axioms, Shareholder Majority Rule, Quotas Rules, Merger, One Share-One Vote
Nonvoting Shares and Efficient Corporate Governance	Dorothy Lund; University of Chicago	A growing number of technology companies, including Google, Facebook, and Snapchat, have issued stock that does not allow their investors to vote on corporate decisions. But scholars and investors are in fundamental disagreement about whether nonvoting stock is a benefit or a curse. Critics argue that nonvoting shares perpetually insulate corporate insiders from influence and oversight and therefore increase management agency costs. By contrast, proponents contend that even in spite of increased agency costs, nonvoting shares may provide benefits that exceed these costs, such as enabling corporate insiders to pursue their long-term vision for the company without interference from outside shareholders. This Article offers a novel perspective on this debate. It demonstrates an important and previously unrecognized benefit of nonvoting stock: it can be used to make corporate governance more efficient. This is because nonvoting stock allows companies to divide voting power between shareholders who are informed about the company and its performance and those who are not. When this efficient sorting happens, the company will lower its cost of capital by reducing agency and transaction costs. Specifically, informed investors will pay more for voting stock that is not diluted by uninformed investor voting; indeed, a company may even entice informed investors to invest by offering two classes of shares. Likewise, uninformed investors will more highly value shares that do not require them to incur costs associated with voting. In other words, the company that issues nonvoting shares for its uninformed shareholders to buy will make itself more valuable. And because nonvoting stock trades at a discount to voting stock, uninformed shareholders will have another reason to purchase nonvoting shares, obviating the need for any legal intervention. This insight has several implications for law. Most important, this Article contends that recent proposals to restrict or deter companies from issuing nonvoting shares should be rejected because they may impede efficient corporate structuring.	corporate law, corporate governance, agency costs, shareholder activism, shareholder democracy, shareholder voting, index funds, dual class stock

PAPER TITLE	AUTHOR(S)	ABSTRACT	KEYWORDS
Universal Proxies	Scott Hirst; Harvard Law School	Contested director elections are a central feature of the corporate landscape, and underlie shareholder activism. Rules governing proxy voting by shareholders prevent shareholders from "mixing and matching" among nominees from the two sides of contests. The paper's analysis shows that these proxy voting rules can lead to distorted proxy contest outcomes: different directors being elected than if shareholders had been able to vote how they wished. These distortions are likely to have significant consequences for the affected companies, and ex ante consequences for many more companies. Changes to corporate voting rules are currently the subject of an important policy debate. The Securities and Exchange Commission has proposed a universal proxy regulation, which would allow shareholders to vote for their preferred mix of nominees, and would eliminate distortions in proxy contest outcomes. But the rule has been met with substantial opposition. This paper provides the first empirical analysis of the extent of distortions, and the likely effects of universal proxies. The paper's empirical analysis uses a comprehensive and largely hand-collected data set. It demonstrates that distorted proxy contests outcomes are a real and practical problem. As many as 15% of proxy contests between 2001 and 2016 may have had distorted outcomes. Contrary to the claims of most commentators, there is no empirical evidence that universal proxies would favor special interests, or lead to more frequent proxy contests. The paper analyzes how the SEC should implement universal proxies, and explains that a rule permitting corporations to opt-out of universal proxies would be superior to the SEC's proposed regulation, which would require all corporations to use universal proxies. If the SEC chooses not to implement a universal proxy regulation, the paper explains how investors could implement universal proxies through private ordering to adopt "nominee consent policies."	Corporate elections; proxy contests
Juvenile Crime and Anticipated Punishment	Ashna Arora; Columbia University	Are juvenile offenders deterred by the threat of criminal sanctions? Recent research suggests that they are not. This conclusion is based on the finding that criminal behavior decreases only marginally as individuals cross the age of criminal majority, the age at which they are transferred from the juvenile to the more punitive adult criminal justice system. Using a model of criminal capital accumulation, I show theoretically that these small reactions close to the age threshold mask larger responses away from, or in anticipation of, the age threshold. I exploit recent policy variation in the United States to show evidence consistent with this prediction - arrests of 13-16 year olds rise significantly for offenses associated with street gangs, including homicide, robbery, theft, burglary and vandalism offenses, when the age of criminal majority is raised from seventeen to eighteen. In contrast, and consistent with previous work, I find that arrests of 17 year olds do not increase systematically in response. I provide suggestive evidence that this null effect is likely due to a simultaneous increase in under-reporting of crime by 17 year olds when the age of criminal majority is raised to eighteen. Last, I use a back-of-the-envelope calculation to show that for every 17 year old diverted from adult punishment, jurisdictions bore social costs on the order of $65,000 due to the corresponding increase in juvenile offending. In sum, this paper demonstrates that when criminal capital accumulates, juveniles may respond in anticipation of increases in criminal sanctions, and accounting for these anticipatory responses can overturn the conclusion that harsh sanctions do not deter juvenile crime.	Juvenile Delinquency, Juvenile Crime, Sanctions, General Deterrence
Crime and Public Housing: A General Equilibrium Analysis	Jesse Bruhn; Boston University	I study the effect of the demolition of 22,000 units of public housing on crime in Chicago using an approach that is designed to capture equilibrium spillovers. Point estimates that incorporate both the direct and spillover effect of the demolitions indicate that in the short run the average demolition increased city-wide crime by 0.5% per month relative to baseline, with no evidence of offsetting long run reductions. I also provide evidence that spillovers are mediated by demolition induced migration across gang territorial boundaries. These findings stand in contrast to earlier work purporting to show that demolitions caused reductions in aggregate crime. I reconcile my findings with the existing literature by proposing a test that is informative for the presence of control group contamination in difference in difference designs with many treatment periods. I apply the test and conclude that estimates from prior work are likely biased by spillovers.	crime, public housing, general equilibrium, spillovers
Credit-Driven Crime Cycles: Incarceration and Access to Credit	Abhay Aneja; Stanford University/UC Berkeley	Incarceration directly affects a meaningful share of the U.S. adult population, and affects society at large through its effects on future criminal activity. In this paper, we document a financial channel for this cycle by showing that incarceration significantly reduces access to consumer credit, which in turn leads to substantial increases in recidivism. To show this, we examine: (i) the causal effect of incarceration on access to credit, (ii) how incarceration-induced information asymmetries distort efficient credit allocation, and (iii) the causal impact of lack of access to credit on recidivism. Exploiting random assignment of criminal cases to courtrooms, we document significant post-release reductions in credit and in credit scores. Testing for adverse or advantageous selection in loans given to ex-convicts, we find no evidence that ex-convicts are stigmatized by lenders. We find, instead, that labor market distortions in the form of suppressed wages for ex-convicts spillover into credit markets because lenders, who use income to screen applicants, are unable to form reliable estimates of default risk. This informational distortion through the income channel is worsened by the ex-convicts' inability to service their debt while incarcerated. Finally, using a regression discontinuity design, we show this loss of access feeds back into higher recidivism rates. In this regard, we show that the crime-reduction goal of incarceration is undermined by the financial distortions that imprisonment creates.	Criminal Justice, Household Finance, Recidivism

PAPER TITLE	AUTHOR(S)	ABSTRACT	KEYWORDS
Going the Extra Mile: the Cost of Complaint Filing, Accountability, and Law Enforcement Outcomes in Chicago	Bocar Ba; University of Chicago	In the attempt to protect and serve the community, police often receive complaints from civilians with whom they interacted. This setting makes policing fraught with agency problems. I use new, detailed administrative data to study the costs and benefits associated with filing a complaint against the police in Chicago. I exploit the fact that complaints without affidavits are considered null and variation in distance to the oversight agency to study the effect of civilian oversight on policing. An administrative change of location of the reporting center provides a quasi-experimental setup for the identification strategy. A difference-in-differences analysis suggests that a one standard deviation increase in traveling distance to the reporting center decreases the likelihood of a signed complaint by 6.2 percent for allegations of constitutional violations and 16.3 percent for failure to provide service complaints. In non-white residential areas, higher injury rates due to use of force and a higher level of force used per arrest were observed as distance from the reporting center increased. Individuals who benefit most from oversight are those with lowest valuation of complaining. I simulate counterfactual scenarios under a policy that would reduce the cost of signing the complaint. This policy would largely increase the number of investigations and the sustained rates for failure to provide service complaints in the most violent police districts. On the other hand, for allegations of constitutional violations, this policy would reduce sustained rates overall and marginally increase the number of investigations. This research sheds light on the tradeoffs that arise when increasing the cost of reporting police misconduct.	Law enforcement, misconduct, use of force, constitutional violations
The Effect of Collective Bargaining Rights on Law Enforcement: Evidence from Florida	Dhammika Dharmapala; University of Chicago Richard McAdams; University of Chicago John Rappaport; The University of Chicago	Growing controversy surrounds the impact of labor unions on law enforcement behavior. Critics allege that unions impede organizational reform and insulate officers from discipline for misconduct. The only evidence of these effects, however, is anecdotal. We exploit a quasi-experiment in Florida to estimate the effects of collective bargaining rights on law enforcement misconduct and other outcomes of public concern. In 2003, the Florida Supreme Court's Williams decision extended to county deputy sheriffs collective bargaining rights that municipal police officers had possessed for decades. We construct a comprehensive panel dataset of Florida law enforcement agencies starting in 1997, and employ a difference-in-difference approach that compares sheriffs' offices and police departments before and after Williams. Our primary result is that collective bargaining rights lead to about a 27% increase in complaints of officer misconduct for the typical sheriff's office. This result is robust to the inclusion of a variety of controls. The time pattern of the estimated effect, along with an analysis using agency-specific trends, suggests that it is not attributable to preexisting trends. The estimated effect of Williams is not robustly significant for other potential outcomes of interest, however, including the racial and gender composition of agencies and training and educational requirements.	Collective bargaining rights; police unions; police misconduct; law enforcement
Good Cop, Bad Cop: An Analysis of Chicago Civilian Allegations of Police Misconduct	Kyle Rozema; University of Chicago Max Schanzenbach; Northwestern University	In response to high-profile cases of police misconduct, reformers are calling for greater use of civilian allegations in identifying potential problem officers. However, there is little empirical evidence that civilian allegations predict misconduct. Using data on civilian allegations in Chicago, we construct a risk-adjusted, empirical Bayes estimate of civilian allegations and test its power to predict serious future misconduct as measured by civil rights litigation. We find a strong non-linear relationship between the Bayes estimates of allegations and future civil rights litigation, suggesting that intervention efforts could be fruitfully concentrated among a relatively small group of officers.	Policing, Crime, Employment, Agents
A Theory of Socially Optimal Plea Bargaining	David Bjerk; Claremont McKenna College	This paper develops a theory of optimal plea bargaining from society's perspective when trials are costly, defendant guilt is uncertain, and jury beliefs are rational. This model reveals that as the innocence rate among the arrested rises, it becomes optimal for society to switch from a universal pooling plea bargaining strategy, where all defendants receive plea offers that are acceptable to both innocent and the guilty defendants, to a partially separating plea bargain strategy, where a diminishing subset of defendants receive plea offers that only guilty defendants find acceptable. However, as the innocence rate among the arrested rises, plea bargaining becomes less useful to society due to the fact that plea bargaining is inherently quite constrained in its ability to manage society's desire to punish the guilty but not the innocent.	Plea Bargaining, Rational Juries, Court Costs, Wrongful Convictions, Bayes' Rule
The Effects of Racial Profiling, Taste-Based Discrimination, and Enforcer Liability on Crime	Murat Mungan; George Mason University	Racial prejudice receives more attention than statistical discrimination in the enforcement literature, because the latter allows enforcers to increase their \`success rates'. I show here that deterrence is a function of the standard used to conduct stops, which is race-neutral, as opposed to the success rate of stops, which is race-dependent. This implies that discrimination of all types increase crime, because they cause enforcers to use double-standards, which implies that members of at least one race are not subject to the crime minimizing standard. Moreover, the negative effects of statistical discrimination on deterrence are more persistent than similar effects due to taste-based discrimination. Thus, there is value to identifying whether enforcers are engaging in any type of discrimination, which can be achieved, even in the presence of the inframarginality problem, by a variant of the hit-rate test popularized by Knowles, Persico and Todd (2001) .	Racial profiling, statistical discrimination, taste-based discrimination, incentives of law enforcers, crime, deterrence, the inframarginality problem

PAPER TITLE	AUTHOR(S)	ABSTRACT	KEYWORDS
Deterrence and the Optimal Use of Prison, Parole, and Probation	A. Mitchell Polinsky; Stanford Law School Paul Riskind; Stanford Law School	In this article we derive the sentence--choosing among the sanctions of prison, parole, and probation--that achieves a target level of deterrence at least cost. Potential offenders discount the future disutility of sanctions and the state discounts the future costs of sanctions. Prison has higher disutility and higher cost per unit time than parole and probation, but the cost of prison per unit of disutility can be lower or higher than the cost of parole and probation per unit of disutility. The optimal order of sanctions depends on the relative discount rates of potential offenders and the state, and the optimal duration of sanctions depends on the relative costs per unit of disutility among the sanctions and on the target level of deterrence. We focus on the case in which potential offenders discount the disutility of sanctions at a higher rate than the state discounts the costs of sanctions. In this case, if prison is more cost-effective than parole and probation--that is, has a lower cost per unit of disutility--prison should be used exclusively. If prison is less cost-effective than parole and probation, probation should be used if the deterrence target is low enough, and prison followed by parole should be used if the deterrence target is relatively high. Notably, it may be optimal to employ a prison term even if prison is less cost-effective than parole and probation and even if prison is not needed to achieve the target level of deterrence, because of what we refer to as the front-loading advantage of imprisonment.	crime; imprisonment; parole; probation; prison costs; deterrence; sanctions
Do legal remedies promote investment? New evidence from a natural experiment in the investment treaty network	Cree Jones; University of Chicago	Many developing countries are considering curtailing legal remedies available to investors in bilateral investment treaties (BITs). This change will likely benefit developing countries by restoring a portion of their sovereign autonomy, but perhaps at the cost of a decline in foreign investment. As with any trade or investment policy, there are two primary challenges to evaluating whether and how the strength of legal remedies in a BIT affect investment: (1) studying a change in policy at the provision level requires provision-level information on a large number of BITs, and (2) investment policy is likely correlated with unobserved drivers of investment. To address the first challenge I introduce a new comprehensive database, created by me in partnership with the United Nations Conference on Trade and Development (UNCTAD), that contains provision-level information for over 2,500 BITs. I also identify a natural experiment to address the second challenge: an arbitration decision that endowed some investors with new and stronger legal remedies through an unanticipated application of the "most favored nation" principal. Using this database and natural experiment, I present robust evidence that stronger legal remedies in a BIT do not lead to more investment. I also present suggestive evidence that stronger legal remedies imposed on a host economy by an arbitration tribunal may lead to a decline in investment as host economies react to their increased exposure to arbitration and tighter constraints on their regulation of foreign capital.	International Arbitration, Bilateral Investment Treaties, Most Favored Nation Treatment
The Effects of Defensive Regulatory Competition: A Panel Analysis of Cross-Border Incorporations in Europe	Martin Gelter; Fordham Law School	Since the early 2000s, founders of private limited companies in EU countries have been able to choose in which Member State within the European Union to register the firm regardless of actual place of business. During the following years, budding entrepreneurs in Continental European countries often incorporated in the UK, whose legal requirements for company formation are often less cumbersome than those of their home jurisdictions. This study investigates trends in the creation of private limited companies by non-UK founders in the UK. Specifically, this study tests whether certain types of reforms of domestic Continental European company laws had an effect on the flow of new business incorporations to the UK. Using data about privately held firms available in a business database, the author constructed a series of panels of UK private limited companies whose directors are nationals or residents of other Member States of the European Union and the European Economic Area. The data cover 31 countries and companies formed from 1990 through 2016. Using a number of control variables, the study uses difference-in-difference models and fixed effect models with a treatment variable to investigate whether the reforms in question likely had an impact. Results suggest that at least some types of “defensive regulatory competition” reforms in a subset of Western European countries likely decreased the formation of UK Private Limited Companies by individuals from these jurisdictions.	regulatory competition, EU, Europe, Centros, English Limited Company, difference-indifference, fixed effects, ECJ
Are Arbitrators Biased in ICSID Arbitration? A Dynamic Perspective	Weijia Rao; University of Chicago	Concerns over arbitrator impartiality and independence in ICSID (the International Center for Settlement of Investment Disputes) arbitration have led to reform proposals geared towards an investment court system. Due to the ad hoc nature of appointments, it has been suggested that arbitrators may strategically render decisions in biased ways with the goal of encouraging reappointments. Arbitrator independence and impartiality may also be compromised due to multiple appointments by the same parties or counsel. This paper introduces a dynamic perspective to examine these concerns. It distinguishes three sources of arbitrator bias: “pre-existing bias” which arbitrators possess prior to their first ICSID appointments, “prospective bias” where arbitrators vote in biased ways to increase reappointments by shaping reputations over time, and “retrospective bias” where arbitrators vote catering to entities responsible for more past appointments. Compared to pre-existing bias, prospective and retrospective bias are more pressing concerns in arbitration than court proceedings due to the appointment of arbitrators by the parties. Hence, identifying the magnitude of these biases is relevant for evaluating the merits of investor-state dispute settlement reform proposals. This paper finds that appointment decisions appear driven by preferences related to arbitrator pre-existing bias, but finds no support for the existence of either prospective bias or retrospective bias. These findings suggest that fears of arbitrator bias due to reappointment or appointment history incentives may be unwarranted and lend credence to the view that reforms geared towards an investment court system may not be an effective way to enhance independence and impartiality among adjudicators of investor-state disputes.	ICSID arbitration; Arbitrator bias; International investment court; Investor-state dispute settlement reform

PAPER TITLE	AUTHOR(S)	ABSTRACT	KEYWORDS
A Theory of Incentive-Based Regulation	Giuseppe Dari-Mattiacci; University of Amsterdam Alex Raskolnikov; Columbia University	Regulators often rely on incentives to shape behavior. They offer cash grants, low-interest loans, tax deductions, and other carrots to induce people and businesses to participate in a particular regulatory regime. Although the government can typically verify participation, it often cannot assure compliance with the regime's requirements because compliance turns on features that the government cannot perfectly observe. To deter noncompliance, regulators impose sanctions on violators. Regulators also vary the eligibility criteria and the accuracy of their compliance determinations. Thus, carrots, sticks, eligibility requirements, and enforcement accuracy are the four instruments that regulators often use to design and improve incentive-based regulation. We use economic analysis to investigate how changes in these four instruments affect participation and compliance. Our inquiry confirms some well-known results but also yields new insights that occasionally appear to contradict the established wisdom. We show that making compliance determinations more accurate not only increases compliance but changes participation as well. Tightening eligibility criteria has an obvious effect of reducing participation and a less obvious effect of reducing compliance. Increasing carrots raises the number of complying participants but has an uncertain effect on the share of compliers among all participants. So in a certain sense, higher carrots may undermine compliance. Raising sticks clearly reduces participation but has an ambiguous effect on compliance, contrary to the established view. More generally, we demonstrate that when actors consider whether to participate in an incentive scheme and also whether to comply with its requirements, carrots and sticks are complements rather than substitutes in cases of real-world significance. This finding is yet another departure from accepted wisdom. Our results enrich the economic analysis of tax and other monetary incentives, financial regulation, corporate governance, securities regulation, and other areas of incentive-based regulation.	carrots and sticks, compliance, enforcement, incentives
Designing Remedies to Compensate Plaintiffs for Unobservable Harms	Nathan Atkinson; Stanford	Despite the vast sums transferred through the legal system, the foundations of the procedures used to compensate plaintiffs for unobservable losses remain unclear. Standard remedies can compensate plaintiffs for unknown harms, but it is expensive to do so. Damage awards will generally undercompensate or overcompensate a plaintiff whose true harm is unknown, while equitable remedies that provide more tailored compensation are generally wasteful. In this paper I develop a novel remedy that compensates plaintiffs for unobservable private values at the lowest possible cost to the defendant. This remedy consists of offering the plaintiff the choice between intermediate damages and inalienable remediation of the underlying harm at the conclusion of the trial. I show that this remedy is robust to errors by the court and potential post judgment renegotiation. Furthermore, I demonstrate that this remedy reduces litigants' incentives to lie during trial. Finally, I consider ex ante deterrence and show conditions under which the remedy improves social welfare relative to optimal damages.	Private Law, Remedies
Product Safety, Contracts, and Liability	Xinyu Hua; Hong Kong Univ of Science and Technology Kathryn Spier; Harvard University	A firm sells a dangerous product to a population of heterogeneous consumers. Higher consumer types enjoy higher gross benefits from product use but suffer accidents more often. The firm invests resources to reduce the frequency of accidents. When the consumer's net benefit function (gross benefits minus expected harms) is decreasing in consumer type, the firm contractually accepts liability for accident losses and invests efficiently in product safety. When the consumer's net benefit function is increasing in consumer type, the firm contractually disclaims liability for accident losses and under-invests in product safety. Legal interventions, including products liability and limits on contractual waivers and disclaimers, are necessary to raise the level of product safety.	Product Safety, Products Liability, Contracts, Warranties, Regulation
Pushing Boundaries: Political Redistricting and Consumer Credit	Rawley Heimer; Boston College	Consumers lose access to credit when their congressional district boundaries are irregularly redrawn to benefit a political party (i.e., are gerrymandered). We identify this effect by matching a longitudinal panel of consumer credit data with changes in congressional district boundaries following decennial censuses. Reductions in credit access are concentrated in states that allow elected politicians to draw political boundaries and in districts where subsequent congressional elections are less competitive. We find similar reductions in credit access when state senate district boundaries are irregularly redrawn and when states make it more difficult for constituents to vote. Overall, our findings are consistent with theories suggesting that less-competitive political races reduce politicians' incentives to cater to their constituents' preferences.	Gerrymandering, Consumer Credit
Mind the (Participation) Gap: Vouchers, Voting, and Visibility	Abby Wood; University of Southern California Christopher Elmendorf; University of California, Davis Douglas Spencer; UConn	Public campaign finance voucher programs, like Seattle's, are the latest effort by the reform community to broaden political participation. Seattle's program requires full disclosure of how each voucher was spent. In this study, we rely on Seattle's requirement of full transparency to examine the effects of disclosure on political participation. Proponents of the Seattle program argue that complete transparency will prevent fraud and build public confidence in the voucher regime. But public disclosure of individuals' voucher assignments could have other effects too, such as inducing vulnerable or socially cross-pressured voters to opt out of the voucher program, or causing them to assign their vouchers insincerely to candidates favored by their neighbors or their bosses, rather than to candidates the voter herself prefers. This paper seeks to assess the initial impact of Seattle's disclosure requirement on voucher-program participation and voucher-assignment sincerity among local political minorities.	disclosure, campaign finance, public financing, first amendment

PAPER TITLE	AUTHOR(S)	ABSTRACT	KEYWORDS
Between Public and Private Enterprise: The Law and Economics of Special Purpose Governments	Conor Clarke; Yale Law School Henry Hansmann; Yale University	Of the 90,000 "governmental units" counted in the most recent United States Census of Governments, only about 40,000 are "general-purpose" governments such as municipalities and counties. The other 50,000 are "special-purpose" governments that typically undertake only a single activity, such as water supply or fire protection. With the exception of school districts -- which constitute only 12,000 among the 50,000 -- special-purpose governments have been largely ignored by the academic literature in law and the social sciences. Yet these overlooked entities have been expanding far more rapidly than any other form of government at the federal, state, or local level. The nation's increasing reliance on special-purpose governments raises two conspicuous boundary issues. The first is the stark gap between special-purpose governments and general-purpose governments. While there are tens of thousands of each type, there is virtually nothing in between – that is, there are almost no governments that provide, say, two or three distinct services. The second boundary issue is the contrasting absence of any clear line, in terms of either services or structure, between special-purpose governments and private-law organizations such as cooperatives and condominiums. This peculiar pattern of organizational boundaries raises, in turn, further basic questions. What, for example, does it mean for an organization to be a "government"? And should the law of special-purpose governments be revised to resemble that which governs private-sector entities – for instance, by adopting uniform enabling statutes that remove limits on permissible purposes or allow formation as of right? This essay addresses these issues, and a variety of others, in an analytic framework that draws heavily on public choice theory and organizational economics.	government, public enterprise, special districts, special purpose governments, local government
How to Protect Entitlements: An Experiment	Oren Bar-Gill; Harvard University Christoph Engel; Max Planck Institute for Research on Col	In a full-information, zero transactions costs world, the degree of protection afforded to an entitlement does not affect the likelihood of efficient trade. In reality, imperfect information is often inevitable. Specifically, a party will usually have incomplete information about fairness norms held by the other party – fairness norms that affect the other party's willingness to pay (WTP) or willingness to accept (WTA). Importantly, these fairness norms may depend on how strongly the entitlement is protected. We experimentally test the effect of the degree of protection on the parties' WTP and WTA and on the likelihood of efficient trade by varying the legal remedy for infringing upon the owner's entitlement. We show that our participants can be divided into three groups corresponding to three different fairness norms: negative types whose WTP and WTA are decreasing in the strength of the legal remedy; positive types whose WTP and WTA are increasing in the strength of the legal remedy; and flat types whose WTP and WTA do not depend on the strength of the legal remedy. We find that type is role-dependent, such that a higher WTP and a lower WTA – the combination most conducive to efficient trade – is obtained with a weaker legal remedy.	property rule, liability rule, competing interpretations of fairness, ultimatum game
How Institutions Shape Preferences: Experimental Evidence from a Land Tenure Reform Implemented as a Randomized Control-Trial	Marco Fabbri; University of Amsterdam	I investigate how a large-scale reform of property rights over land implemented as randomized control-trial in hundreds of West African rural villages affects cooperation and trust preferences. With the reform, land plots traditionally characterized by collective property and informal possession acquire a new legal status akin to private ownership, making it possible to claim property in court and sell or use them as collateral. I conduct lab-in-the-field experiments to collect data on cooperation and trust choices seven years after the reform implementation. Two identical studies are performed in two rural regions characterized by significant differences in terms of market integration and socio-economic conditions. In the province with the highest level of market integration, education, and income, the formalization of land rights significantly increases participants' contributions to the common account in a public goods game and trustors' transfers in a trust game. In contrast, for participants belonging to the least market integrated and socio-economic developed region, the reform determines a reduction of cooperation and it has no effects on trust levels.	Culture; Lab-in-the-eld Experiment; Land Tenure; Public Goods; Trust Game
Challenging Eminent Domain in the High People's Courts: Procedure is the Key!	Shitong Qiao; University of Hong Kong Wenzheng Mao; HKU Faculty of Business and Economics	This paper investigates empirically how Chinese courts adjudicate eminent domain decisions for the first time and proves that even the non-independent Chinese courts can curb local governments' eminent domain power to some extent. We hand-coded 586 eminent domain judgements awarded by the High People's Courts of China from 2014-2015, which were made available by the Supreme People's Court of China recently. This paper's contributions are as follows. First, it goes beyond single-issue empirical studies of eminent domain to present a holistic diagnosis of all three elements of eminent domain: public use, just compensation and due process. Second, it reveals that in the comparative context of China, the High People's Courts focus on eminent domain procedures while rarely reviewing whether a project is for public use or whether compensation is just. Finally, it identifies three factors (information, expertise and power) explaining the key role of procedure in eminent domain, thereby building a theoretical framework for future empirical studies in this area.	Eminent Domain; Due Process; Chinese Courts; Rule of Law

PAPER TITLE	AUTHOR(S)	ABSTRACT	KEYWORDS
From Information to Preference: A Theory of Property and Sociopolitical Change	Taisu Zhang; Yale Law School	Contemporary property theory often highlights information costs as the most important determinant of exclusion rights and numerus clausus-type standardization: rising information costs lead to stronger exclusion rights and more standardization—that is, a reduction in the number of allowed property forms—whereas falling information costs have the opposite effect. What this paradigmatic model lacks, however, is a theory of how and why information costs change in the first place. By developing such a theory, this article demonstrates that current predictions about the correlations between information costs, exclusion, and standardization are partially wrong, and otherwise incomplete. Scholars have long understood that information costs, especially those related to property, are negatively correlated with social and political cohesion: tighter communities and stronger states correlate with lower information costs, whereas sociopolitical disintegration correlates with higher information costs. But this is only half the picture: sociopolitical cohesion is also negatively correlated with the diversity of individual preferences, in that higher levels of sociopolitical cohesion homogenize preferences, whereas sociopolitical disintegration diversifies them. Information costs and preference diversity therefore tend to be synchronized: when information costs rise (or fall), so does preference diversity. Recognizing this synchronization dismantles some of the central predictions of current property theory, but reinforces others. Most importantly, it implies that there is probably no empirical correlation between information costs and legal standardization. Although rising information costs incentive more standardization, simultaneous increases in preference diversity will incentive less standardization to accommodate the expanding range of individual preferences. Either side can emerge victorious from this legal tug-of-war, and the article identifies several major historical episodes in which a sharp rise in information costs was, in fact, followed by less standardization and the creation of new property forms to accommodate rising preference diversity. In contrast, the positive correlation between information costs and exclusion rights is perhaps even stronger than what information cost theory has traditionally predicted: rising information costs boost the attractiveness of exclusion-based private property regimes, but so does the corresponding increase in preference diversity.	Exclusion, Numerus Clausus, Information Costs, Individual Preference, Sociopolitical Cohesion
The Value of Fiduciary Duties: Evidence from En Bloc Sales in Singapore	Jianfeng Hu; Singapore Management University Kelvin Low; City University of Hong Kong Wei Zhang; Singapore Management University	We explore the impact of the legal doctrine of fiduciary duties on market valuation in collective sale of residential real estates, the en bloc sales, in Singapore. The causal relation is established using a unique legal shock in 2009, the Ng Eng Ghee v. Mamata Kapildev Dave case decided by the Singapore Court of Appeal. We find that the judicial establishment of fiduciary duties in the en bloc sale process raises the price of these sales compared to units not subject to the en bloc sale scheme and units eligible for en bloc sales but sold individually. Furthermore, this valuation effect is stronger for projects with more severe agency problem proxied by high ownership turnover. Finally, an event study shows that the rule change also has positive valuation impact on the buyer in en bloc sales, therefore enhancing the overall social welfare. Our study highlights the importance of judicial oversight in non-consensual land assembly mechanisms, and presents a rare piece of empirical evidence illustrating the practical impact of fiduciary duties. As such, it sheds new light on the crucial issue of adapting fiduciary duties to a variety of legal areas including corporate M&A, shareholder activism and broker-dealer obligations.	fiduciary duty, en bloc sale, collective sale, land assembly, holdout, M&A
When Environmental Rights Go Wrong	Michael Livermore; University of Virginia Mauricio Guim; University of Virginia	Environmental rights are now a mainstay of constitutions around the world. In this paper, we will argue that very general environmental rights tend to generate a problem of inter-entity comparison that forces decision makers to arbitrate incommensurables with no clear guidance. We examine how courts address this problem in Ecuador, the country with the most experience implementing a very general environmental right. We also discuss how the problem of inter-entity comparison makes it difficult to determine whether environmental rights are effective in practice, due to a profusion of potential outcome variables. We review recent social science research on the efficacy of environmental rights in light of this issue. Finally, we provide some brief concluding thoughts on how environmental rights could be better designed to increase their chances of improving a country's environmental performance.	environmental rights; constitution; environmental performance index
Democratic Risk Management	Karen Bradshaw; Arizona State University	It is common to think of administrative agencies as technocratic: agency heads make a top-down decisions based on cost-benefit analysis produced by experts. This impression makes agencies easy targets for critics: Technocratic decisionmaking is blind when good data is missing; it is naïve when it fails to ask who will or lose; it is illegitimate when it fails to quantify our nation's moral or social values. I argue that critics and defenders alike have an inaccurate impression of how agencies work. In fact, agencies have developed surprising and effective approaches to tackling policy problems where data is scarce, burdens are not evenly distributed, or normative values are at stake. Under these conditions, agencies often engage in what I call "democratic risk management." They work with the stakeholders who will bear the benefits or harms of the risk management decisions to analyze data and assess policy choices, form relationships and institutions that can overcome previously polarized positions, garner social acceptance, and adaptively respond to changed conditions. In this Article, I describe democratic risk management for the first time. I identify it in thirteen federal agencies, addressing problems ranging from climate change to public lands management. This research is the fruit of a longitudinal study for the Administrative Conference of the United States, which included interviews with dozens of stakeholders across the country, and novel statutory review. It reveals the widespread use – and effectiveness – of this approach. It thereby challenges the orthodox conception of agency decisionmaking and points the way to how this innovative approach can be expanded to solve other problems.	Cost-benefit analysis; agency decisionmaking; natural resources

PAPER TITLE	AUTHOR(S)	ABSTRACT	KEYWORDS
Norming in Administrative Law	Jonathan Masur; University of Chicago Eric Posner; University of Chicago	How do regulatory agencies decide how strictly to regulate an industry? They sometimes use cost-benefit analysis or claim to, but more often the standards they invoke are so vague as to be meaningless. This raises the question whether the agencies use an implicit standard or instead regulate in an ad hoc fashion. We argue that agencies frequently use an approach that we call "norming." They survey the practices of firms in a regulated industry and choose a standard somewhere within the distribution of existing practices, often no higher than the median. Such a standard burdens only the firms whose practices lag the industry. We then evaluate this approach. While a case can be made that norming is appropriate when a regulatory agency operates in an environment of extreme uncertainty, we argue that on balance norming is an unwise form of regulation. Its major attraction for agencies is that it minimizes political opposition to regulation. Norming does not serve the public interest as well as a more robust standard like cost-benefit analysis.	EPA, OSHA, NHTSA, industry standards, externalities, bargaining, regulation
Precedent and the content of the law: Lessons from the evolution of groundwater law in early 20th century California	Mark Kanazawa; Carleton College	The scholarly study of judicial decision-making has evolved dramatically over time, as legal scholarship has taken increasingly sophisticated approaches to understanding and modeling judicial behavior. Traditional models painted judges as largely mechanical interpreters of the law, or purely interested in promoting certain economic or social objectives. In recent days, these models have been challenged by scholars operating in the law-and-economics tradition, who have proposed models of judges as self-interested, rational actors with various personal objectives operating under a variety of constraints. As our conception of judicial behavior has evolved, our conception of the role of precedent in the judicial process has evolved as well. Historically, precedent has been viewed by legal scholars as constraining judges from ruling in certain ways; namely, ways that are inconsistent with existing doctrine as embodied in previous rulings on specific issues. The recent move toward rational actor models of judges has subtly shifted this conception of precedent. While not denying its constraining force, the new thinking views precedent as providing a way for judges to economize on judicial effort when they enjoy doctrinal latitude, allowing them to capitalize on the work of previous judges. Unfortunately, in rational actor models the impact of precedent on judicial decision-making remains unclear because judicial latitude is itself endogenous to precedent, and we lack general predictions on the nature of this endogeneity. It is common to view precedent as binding on judges, particularly when existing cases are dense, targeted at a narrowly-defined issue, and specific in the governing principles they lay out. However, in principle a body of precedent may endow judges with broad latitude to craft new content, by providing varied analogies in the law, as well as numerous exceptions to controlling legal doctrine. If so, under the new rational actor models judges may be afforded more economizing opportunities and judicial preferences become a stronger driver of the content and direction of the law. This paper aims to advance our understanding of the impact of precedent on judicial decision-making by examining the behavior of judges in complex doctrinal situations where multiple governing principles for deciding cases are present. In the model to be presented, judges have preferences over judicial outcomes but writing opinions is costly, especially ones that go against existing doctrine, so that judges may not necessarily take their (unconstrained) ideal position. Precedent is modeled as potentially binding on judges but depending upon the circumstances, the presence of multiple principles for deciding cases affords potentially greater latitude to judges to service their own preferences for legal outcomes. There are two implications of this analysis, one for the behavior of judges and the other for the evolution of the law over time. First, rational actor judges will commonly have incentive to draw on related areas of the law when they are available and applicable to the case at hand. This has the consequence of making existing precedent less binding and makes the law more a reflection of judicial preferences than existing doctrinal principles that may on the surface appear controlling. Second, when judges draw on legal principles from related areas, this can lead to a convergence of doctrine. Legal principles governing seemingly different areas may assume greater similarity as judges recognize and apply analogies from one area to the next. This paper thus attempts to forge a connection between the decision-making of judges as rational actors and the broader currents of doctrinal evolution. To illustrate these implications of the model, the paper examines a specific legal situation where an exogenous shock relaxes the constraint of existing precedent. This shock permits us to observe the court response to this relaxation of precedent, and the direction of the law as a consequence. The specific situation examined is groundwater law in California in the late-19th and early-20th centuries, when exogenous advances in scientific understanding of groundwater hydrology clarified the similarities between groundwater and surface water flows and reduced the cost to judges of applying legal analogies from surface water law to groundwater disputes. As we shall see, these advances effectively relaxed the constraints imposed by existing precedents in groundwater law, permitting judges to exercise greater discretion in deciding which set of precedents to draw upon. As the model predicts, the result was a convergence of the legal principles governing surface water and groundwater.	Water rights. Groundwater. Legal change
Fear and the Safety Net: Evidence from Secure Communities	Marcella Alsan; Stanford University Crystal Yang; Harvard Law School	We study the impact of deportation fear on the incomplete take-up of federal safety net programs in the United States. We exploit changes in deportation fear due to the roll-out and intensity of Secure Communities (SC), an immigration enforcement program administered by the Immigration and Customs Enforcement Agency (ICE) from 2008 to 2014. The SC program empowers the federal government to check the immigration status of anyone arrested by local law enforcement agencies and has led to the issuance of over two million detainers and the forcible removal of approximately 380,000 immigrants. We estimate the spillover effects of SC on Hispanic citizens, finding significant declines in ACA sign-ups and food stamp take-up, particularly among mixed-status households and areas where deportation fear is highest. In contrast, we find little response to SC among Hispanic households residing in sanctuary cities. Our results are most consistent with network effects that perpetuate fear rather than lack of benefit information or stigma.	

PAPER TITLE	AUTHOR(S)	ABSTRACT	KEYWORDS
The Effect of a Tax Notch on CEO Golden Parachute Contracts and Option Exercises	Robert Jackson; Columbia Law School Jon Zytnick; Columbia University	We show that CEO golden parachute contracts are responsive to a tax on golden parachutes, and CEO option exercises are responsive to these contracts. In particular, as a consequence of a tax code provision penalizing parachutes greater than 3 times taxable income, CEO parachute contracts frequently contain “cutback” provisions limiting the parachute to this threshold. When their companies are acquired, CEOs exercise options in bulk to raise their taxable income and boost their threshold. Identification comes from a difference-in-difference-in-difference exploiting a discontinuous change in exercise incentives over time and variation across CEOs in contract incentives and deal timing.	Taxation; Bunching; Golden Parachutes; Stock Options
Does the elasticity of the sales tax base depend on enforcement? : Evidence from U.S. states’ Voluntary Collection Agreements	Eleanor Wilking; University of Michigan	In addition to taxpayer preferences, elasticity of taxable income has been shown to depend on parameters of the tax system—including the costs and expected penalty of tax evasion, and the costs of tax avoidance. However, less is known about how consumption elasticities change in response to enforcement. The theory of statutory neutrality predicts that structuring the as a ‘use tax’—where the consumer remits—or, as a sales tax—under which the retailer remits, should have no effect on the fundamental parameters of the tax system. We test this in the context of U.S. state restructuring of the remittance regime governing online sales shipped to state residents. Using detailed purchase data from the Nielsen Consumer Panel and monthly, zip-code level information on local sales tax rates, we find that consumers reduce their online expenditure in response to Voluntary Collection Agreements (VCA). However, we do not find evidence of a large change in elasticity of the tax base with respect to tax changes. We conclude that shifting the remittance duty to the party with fewer evasion opportunities, akin to an enforcement increase, could affect the responsiveness of the tax base to future tax rate changes but that the effect of the enforcement on online retailers is too small to measure.	
Tort Liability and Unawareness	Surajeet Chakravarty; University of Exeter David Kelsey; University of Exeter Joshua Teitelbaum; Georgetown University	Unawareness is a form of bounded rationality in which a person fails to conceive all feasible acts or consequences or to perceive as feasible all conceivable act-consequence links. We study the implications of unawareness for tort law, where relevant examples include the discovery of a new product or technology (new act), of a new disease or injury (new consequence), or that a product can cause an injury (new link). We argue that negligence is superior to strict liability in a word with unawareness, because negligence, through the stipulation of due care standards, spreads awareness about the updated probability of harm.	negligence, reverse Bayesianism, strict liability, unawareness
Allocating liability for third-party harm between manufacturers and consumers when consumers are present biased	Tim Friehe; University of Marburg Christoph Rössler; University of Marburg Xiaoge Dong; University of Marburg	This paper highlights how the workings of liability are influenced when consumers have a present bias and both manufacturer's and consumers' care influence expected harm. We consider consumers who cause harms to others and who are either naive or sophisticated about their present bias. In the benchmark with time-consistent consumers, strict consumer liability induces socially optimal product safety and precaution levels. Present bias introduces a rationale for shifting some losses onto the manufacturer. Strict liability with contributory negligence may induce socially optimal product safety and precaution choices. In an extension, we elaborate on the impact of present bias when it is the consumer who suffers harm from consuming the product.	
Harm Displacement	Yotam Kaplan Yehonatan Givati; Hebrew University	A large literature in law and economics analyzes the phenomenon of crime displacement and its implications for criminal law. Yet a similar phenomenon of harm displacement in the tort context has been ignored by scholars. In this paper, I develop a simple model of bilateral accidents which allows for harm to be displaced by the victim. Using the model I show that, while strict liability leads to the victim's under-investment in care, negligence leads to the victim's over-investment in care. Therefore, the choice between these two liability regimes should depend on which problem is more costly. I use this finding to help explain certain doctrinal patterns in tort law.	
Accident Aversion: An Experiment	Alice Guerra; Copenhagen Business School Francesco Parisi; University of Minnesota	Tort models predict a symmetry in the behavior of tortfeasors and victims when respectively faced by strict liability or no liability. This paper relies upon the standard accident model and uses an original experimental setting to investigate whether the prediction of the tort model holds in actual accident situations. Precisely, we study how individual care choices are affected by the role played by the subject in an accident – as a prospective tortfeasor or victim. In sharp contrast with the theoretical predictions, the results of our experiment show that, all else being equal, potential tortfeasors and victims have different precautionary behaviors. Victims invest more in care than tortfeasors. Behavioral insights for tort models and practical relevance for accident prevention are discussed.	incentives; precautions; tort models; experiment
Privacy Harms	Ignacio Cofone; NYU School of Law Adriana Robertson; University of Toronto Faculty of Law & Rotman School of Management	Privacy loss is central to privacy law scholarship, but a clear definition of the concept remains elusive. We present a model that both captures the essence of privacy loss and can be easily applied to policy evaluations and doctrinal debates. To do so, we use standard Bayesian statistics to formalize a key intuition: that information privacy is fundamentally linked to how much other people know about you. A key advantage of our model is that, for the first time, it takes privacy preferences seriously while maintaining tractability. Another key advantage is that, by viewing privacy as a continuum, it is more realistic and is better suited for evaluating “gray areas” than prior models. We then apply this framework to two central areas of privacy law: the common law privacy tort and the Fourth Amendment’s third party doctrine. In the tort context, we first show how our proposal helps to clarify current law, and then use it to distinguish between the two interests protected by the privacy tort: privacy interests and reputational interests. We then propose a simple framework for judges to use in providing remedies for both classes of claims. We then move on to the third party doctrine. We show that many of the shortcomings associated with the doctrine stem from the misguided assumption that privacy is dichotomous rather than a spectrum, as in our model. We then liken this to the standard of care familiar from tort law, and show how the current doctrine results in the equivalent of a strict liability standard, rather than a more appropriate negligence-based standard. Finally, we evaluate the impact of this proposal on the “I have nothing to hide” counterargument to privacy and the classic economic view of privacy presented by Richard Posner.	Information privacy, torts, fourth amendment, Bayesian updating

PAPER TITLE	AUTHOR(S)	ABSTRACT	KEYWORDS
Trial Selection and Estimating Damages Equations	Keith Hylton; Boston University	Abstract: Many studies have employed regression analysis with data drawn from court opinions. For example, an analyst might use regression analysis to determine the factors that explain the size of damages awards, or the factors that determine the probability that the plaintiff will prevail at trial or on appeal. However, the full potential of multiple regression analysis in legal research has not been realized, largely because of the sample selection problem. We provide methods for controlling for sample selection bias using data from court opinions.	
Ownership Status and Quality of Care in Residential Facilities for the Intellectually Disabled	Alison Morantz; Stanford Law School	Following the closure of large state hospitals, which in official parlance are classified as "Intermediate Care Facilities for Individuals with Intellectual Disabilities" (ICF-IIDs), many individuals with intellectual and developmental disabilities have resided in smaller, community-based ICF-IIDs funded by the same Medicaid program. These facilities exhibit considerable heterogeneity, with private for-profit facilities operating alongside ones that are nonprofit or government-owned. Since the turn of the millennium, there has been no systematic assessment of whether ownership type affects the quality of care provided to the individuals residing in these homes. Using a national dataset with information on all ICF-IIDs for the years 2008-2017, we examine whether ownership type predicts differences in facility-level outcomes that at least arguably correlate with the quality of care. The two measures we regard as the least vulnerable to bias – the frequency of regulatory citations and the frequency of complaints – suggest strongly that for-profit facilities underperform both government-owned and nonprofit facilities. The other metrics examined tell a far more complex story that, unfortunately, sheds little light on quality differences per se, but underscores the need for better data and further empirical scholarship in this neglected field. In particular, the importance of reducing the susceptibility of national datasets to reporting bias, obtaining more detailed data on the characteristics of ICF-IID residents such as comorbid mental illness and (self-)injurious behaviors, and linking facility-level datasets to individual outcomes that can be tracked over time, cannot be overstated.	intellectually disabled, disabilities, long-term care, ownership type, for-profit, nonprofit, government-owned, quality of care
Targeting Bad Doctors: Lessons From Indiana, 1975-2015	Jing Liu; University of Illinois David Hyman; Georgetown University	For physicians, quality of care is regulated through the medical malpractice and professional licensing/disciplinary systems. The medical malpractice ("med mal") system acts through ex post private litigation; the licensing system acts through ex ante permission to practice (i.e., licensure), coupled with ex post disciplinary action against physicians that engage in "bad" behavior. How often do these separate mechanisms for ensuring quality control take action against the same doctors? With what result? We study these questions using forty years of data (1975-2015) from Indiana, covering almost 30,000 physicians. Disciplinary sanctions are much less common than med mal claims - whether paid or unpaid. Only a small number of physicians are "tagged" by both systems. Disciplinary risk increases with the number of past med mal claims. Paid claims have a greater impact than unpaid claims, and large payouts (≥ 100k, 2015$) have a slightly greater impact than small payouts on disciplinary risk. The risk of a paid med mal claim increases with more severe disciplinary sanctions (i.e., revocation and suspension). Our findings suggest an obvious model for the interaction of these two systems.	med mal, discipline, bad doctors
Impact of medical liability reform on coronary artery disease management	Steven Farmer; George Washington University Ali Moghtaderi; George Washington University Bernard Black; Northwestern University	Physicians often report practicing "defensive medicine," including ordering marginally beneficial tests and interventions to reduce medical malpractice liability. However, prior studies report weak evidence that malpractice reform affects physician behavior or overall healthcare spending. The emphasis in most prior studies on overall healthcare costs may obscure the impact of caps on specific clinical decisions. We study a specific clinical setting –testing and treatment for possible coronary artery disease (CAD). CAD is the leading cause of death in the United States. Chest pain is the second most common complaint in the emergency department and missed myocardial infarction is one of the most important causes of malpractice lawsuits. Because unrecognized CAD can have catastrophic outcomes, physicians are understandably cautious in their testing and intervention decisions. Testing and intervention for CAD are common, and many believe that these procedures are overused. Unfortunately, CAD symptoms are often non-specific and highly variable. Clinical guidelines about which patients with suspected CAD symptoms should be tested are quite general, and test results can be ambiguous. Clinicians must exercise judgment on who should be tested, whether to begin with an initial non-invasive stress test or more definitive left-heart catheterization (LHC), whether to proceed from an ambiguous initial stress test to LHC, and whether to revascularize patients with obstructive CAD, through percutaneous coronary intervention (PCI) or coronary artery bypass grafting (CABG). We used a difference-in-differences research design to compare changes in CAD testing and treatment in New-Cap States to changes in 20 states without damage caps (No-Cap States). We used the 5% national, Medicare fee-for-service random sample from 1999-2013 to study the behavior of 97,821 physicians who have ordered or performed CAD related treatments during the sample period. We examine changes, following cap adoption, in the rates at which physicians order ischemic evaluation for possible CAD, the type of initial evaluation (stress testing or LHC), LHC referral rates following stress test, and revascularization rates following ischemic evaluation. Physicians in New-Cap States substantially altered their CAD testing and intervention practices following damage cap adoption, relative to control physicians. They conducted a similar number of ischemic evaluations (New-Cap versus No-Cap difference -0.05%; 95% CI -8.0%, +7.9 %), but performed fewer definitive but invasive LHC tests (-24%, 95% CI -40%, -7%; P<0.01) and more less-definitive but non-invasive stress tests (+8%, 95% CI -4%, +19%; P=0.18). There are some important downstream effects as well. Physician in New-cap states referred fewer stress-tested patients for LHC (-21%, 95% CI -40%, -2%; P=0.03). Revascularization following ischemic evaluation also declined in New-Cap states, relative to No-Cap States (-23%, 95% CI -40%, -4%; P=0.02). These findings suggest that physicians tolerate greater clinical uncertainty in CAD testing and treatment if they face lower malpractice risk. Our study is the first to find evidence for large effects of malpractice risk on physician behavior.	medical malpractice, tort reform, defensive medicine, Medicare, coronary artery disease

PAPER TITLE	AUTHOR(S)	ABSTRACT	KEYWORDS
Switching Costs, Path Dependence, and Patent Holdup	Thomas Cotter; University of Minnesota Law School Erik Hovenkamp; Harvard Law School Norman Siebrasse; University of New Brunswick	Patent holdup occurs when a patent owner is able to extract a higher royalty ex post (after the payor has committed to its technology) than it could have negotiated ex ante, where the difference is not explained by an increase in the technology's value. To date, the literature on patent holdup has focused principally on—indeed, sometimes conflated—two potential sources of holdup: the sunk costs the user has incurred ex ante to adopt the patented technology, and the "switching costs" of adopting an alternative technology ex post. We demonstrate, however, that patent holdup may arise even when sunk costs are zero, and that high costs of ex post switching do not inherently create a risk of holdup. More generally, we show that patent holdup is best understood as an opportunistic exploitation of path dependence: it arises when prior commitment to the patented invention creates some dynamic distortion in the incremental value of the patented technology over the best alternative, enabling the patentee to capture the difference. As a consequence, prior commentaries on the subject tend either to under- or overstate the potential for holdup to occur under a given set of circumstances.	Patent Law, Patent Holdup, Standards
Optimal Standards of Proof for Non-Obviousness and Infringement	Ezra Friedman; Northwestern University Abraham Wickelgren; University of Texas	We build a model of patent protection under two forms of uncertainty; uncertainty regarding whether the original invention merits protection (non-obviousness), and uncertainty as to whether a particular competitor's product should be barred (infringement). We find that when it is practical to increase the rewards from innovation by extending patent length, the standards of proof for non-obviousness should be high. The intuition for this is that it is when it is practical to extend patent length, patent length should be set so that the increase in innovation from extending patent length is balanced by the increase in deadweight loss by extended monopoly pricing. In this situation, the ex-ante cost of failing to protect a good patent is minimal, but there is substantial deadweight loss from protecting a bad patent. In contrast, if non-infringing competing inventions substantially decrease the original inventor's profits, it might be desirable to have a very low standard proof for infringement.	Standard of Proof, Burden of Proof, Patent Law, Non-Obviousness, Infringement
Easy to Find, But Hard to Keep: How Patentable Inventions Are Being Kept Secret	David Angenendt; University of Bologna	While the number of patent applications has become an established standard variable in applied research in various fields, the amount of information contained in any single patent document has received much less attention. More specifically, the result of a firm's decision between protection by patenting or secrecy is commonly measured by the number of patent applications alone. This study argues that in complex product industries, patent content, measured by the number of claims, is a choice variable for patentees that determines the extent of an invention to be protected by a patent. It uses the enactment of the Uniform Trade Secrets Act across the United States to estimate the potentially differential effect of strengthened protection of trade secrets on the number of patents and the number of claims contained within them, testing a number of hypotheses derived from a simple theoretical model. The evidence produced suggests that there is a negative effect of secrecy on the number of claims contained in a patent, and that this effect does not run in parallel to the effect on the number of patents. In fact, the identified effect of secrecy on claims is considerably more robust than the effect on patents. Alternative measures of disclosure per patent do also decrease. These results do not only improve understanding of the nature of the protection decision in complex product industries. They also imply that the number of claims need to be considered as a strategic variable to be able to capture fully the amount of patented knowledge, and that the extent of the ``patent explosion'' could have been even greater, had it not been for the strengthening of trade secrets protection.	complex products, complementary innovations, patenting strategy, patent claims, patent fees, information disclosure