

Checks and balances on the Court -

Inter-judge relationships

Reading questions: week 4

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To prepare for class, please familiarize with the assigned readings. The reading questions are intended to help you in your preparations. If you want to prepare in groups, you may reach out to the students you do your presentation with. The supplementary readings are useful to situate the readings in the broader debate and/or provide alternative texts that cover the same ideas.

How do judges reach a decision on the Court? If the law is unclear – which it often is when cases reach our peak courts — then judges will be filling a legal gap with their ruling. Each judge brings their own experiences and attitudes – including ideology – to the table when they craft legal solutions. A relevant question is therefore what checks and balances there are on individual members on the Court.

Readings

- Lax (2011) (special focus on pp 131-141; 146; 152-153) uses this review article to present his view on how to understand judicial politics of legal doctrine and where the gaps are in our knowledge. He is the architect behind one of the more serious attempts at uniting the legal and the attitudinal approaches to judicial behavior: the case-space model. To do so, he passes by the strategic approach.
- Hermansen and Voeten (2024) apply a version of the case-space model to decision making on the CJEU.
- Fjølseth, Gabel, and Carrubba (2023) grapple with a common problem among courts: resource constraints. The Court and the political branch have implemented different solutions to the ever-increasing number of cases filed with the CJEU.
- Krenn (2022) presents his view on how judges' careers and standing with their colleagues on the Court vary. The paper bridges this session with the topic for next week: Judicial selection.

Reading questions:

- What is the theoretical ambition that Lax (2011) announces in this paper?
- What is “doctrinal instrumentalism”, and how does it help judges craft policies?

- What is “legal instrumentalism”, and how does it help judges craft policies?
- Can you describe the case-space model in simple terms? Possibly by a drawing? To help out, you can rely on the Appendix in Lax (2011), the theory section in Hermansen and Voeten (2024) and/or ask Chat GPT to ELI5 the case-space model for you.
- Having done these readings, what are the democratic problems that the CJEU dabbles with in relation to its case load? (the following questions will help you on the way)
- What are the delegations done within the CJEU during the case management? You can draw on Zhang, Liu, and Garoupa (2018), Hix and Høyland (2022), Krenn (2022) and Hermansen and Voeten (2024) (or Hermansen (2020)) for information. In your opinion, who are the key players influencing the Court’s decisions?
- What are the key checks and balances in the Court’s decision making?
- How does the institutional setup of the CJEU compare to the US Supreme Court? Why does this comparison matter (for Hermansen and Voeten (2024))?
- What is the role of the i) agenda setter, ii) the legal quality and iii) cost of writing a proposal for the distribution of influence on the panel? You might draw on Krenn (2022) in addition to the argument forwarded in Hermansen and Voeten (2024).

- What are empirical implications of ideological polarization (disagreement) that you can derive from the theoretical argument in Hermansen and Voeten (2024)?
- What is the ideological dimension that Hermansen and Voeten (2024) assume CJEU judges' preferences map onto? How does this affect case outcomes (“case disposition”) in competition litigation?
- How do Zhang, Liu, and Garoupa (2018) (or Wijnvliet and Dyevre (2021)) measure case outcomes compared to Hermansen and Voeten (2024)?
- How do Hermansen and Voeten (2024) approximate judges' ideology? You may also draw on Posner (2010) and Zhang, Liu, and Garoupa (2018) for similar arguments. Can you see any problems with this strategy?
- According to Fjølseth, Gabel, and Carrubba (2023), what are the main problems with long case durations? Are there reasons why lengthy deliberations would be positive?

Now, going back, you might answer the questions: What are the democratic problems revealed in these readings? Who are the key players on the Court, and how is their influence kept in check?

Supplementary readings:

- Wijnvliet and Dyevre (2021) also investigate empirically how judges' ideology influences Court rulings in competition cases. In contrast to

the main reading, this is a peer-reviewed article.

- Cheruvu (2019) shows that the skills judges have when they enter the Court will determine their efficiency and therefore influence relative to their peers. In his study, he uses French language skills as a measure, since the Court’s official language is French and all key meetings are held in French. You might see this as an empirical test of some of the ideas forwarded by Krenn (2022).
- Lax and Cameron (2007) model how preferences and rules influence bargaining over case outcomes and legal reasoning on the US Supreme Court. This is then tested empirically in Lax and Rader (2015). This research is the closest American equivalent to what we will consider for the CJEU.

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