

EALE 2011 – Abstracts & Papers

Keynote lectures:

- Josef Drexler, *"The concept of trade-relatedness of intellectual property rights in times of post-TRIPS bilateralism"*
 - [Slides](#)
- Andrew T. Guzman, *"What do international organizations do? The design of international organizations"*
 - [Slides](#)

Abstracts & Papers

Keynote lectures:	1
Alessandro Diego Scopelliti <i>"A defensive leveraging theory for interoperability decisions: An application to the Microsoft Europe case"</i>	6
Alessio Paces <i>"Liquidity crisis in the perspective of uncertainty: Law and economics implications"</i>	6
Alexander Stremitzer <i>"Negligence-based proportional liability - How more lenient sanctions lead to higher compliance"</i>	7
Alfred Endres and Bianca Rundshagen <i>"Incentives to diffuse advanced abatement technology under the formation of international environmental agreements"</i>	7
Thomas Braendle and Alois Stutzer <i>"Incompatibility rules and the selection of public servants into national parliaments"</i>	7
Andrea Leiter, Magdalena Thöni and Zvi Wiener <i>"Duo cum faciunt idem, non est idem: Evidence from Austrian pain and suffering verdicts"</i>	7
Andrew Griffiths <i>"Branding as an incentive for social responsibility"</i>	8
Antonio Nicita and Simone Sepe <i>"Contract design under asset specificity uncertainty"</i>	8
Arye Hillman and Niklas Potrafke <i>"Voting in the absence of ethical restraint"</i>	8
Ben Depoorter and Stephan Tontrup <i>"Contract Entitlement"</i>	9
Benjamin Shmueli <i>"'Suddenly I'm not half the man I used to be': Instrumental theories, corrective justice and exposure to risk without bodily harm"</i>	9
Benjamin Shmueli <i>"Instrumental theories vs corrective justice: A new approach to balancing the goals of contemporary law"</i>	10
Bruno Deffains, Bertrand Crettez and Olivier Musy <i>"Legal harmonization with endogenous preferences"</i>	10
Carole Billiet and Thomas Blondiau <i>"Enforcing environmental regulations using the criminal or the administrative track: theory and empirics"</i>	11
Christian Almer and Ralph Winkler <i>"Emissions targets and domestic actions: Dead end or last resort?"</i>	11
Christian Bjørnskov and Niklas Potrafke <i>"The size and scope of government"</i>	11
Christoph Kimmerle <i>"The political economy of the treaty of Lisbon"</i>	11
Daniel Chen and David Abrams <i>"A market for justice: The effect of third party litigation funding on legal outcomes"</i>	12
Daniel Chen and John Horton <i>"Deterrent effect of the death penalty? Evidence from British Commutations"</i>	12
Daniel Chen <i>"Markets and morality: How does competition affect moral judgment?"</i>	13

Daniel Göller and Michael Hewer <i>"Economic analysis of taking rules: The bilateral case"</i>	13
Daniel Göller <i>"Expectation damages and bilateral cooperative investments"</i>	13
Dieter Schmidtchen <i>"The polluter pays vs. the cheapest cost avoider principle: On the efficient treatment of external costs"</i>	13
Donatella Porrini and Reimund Schwarze <i>"Defining insurance models efficiency within climate change economic policies"</i>	14
Eberhard Feess and Marc Scheufen <i>"Academic copyright in the publishing game: A contest perspective"</i>	14
Edwin Woerdman and Andries Nentjes <i>"The European Union Emissions Trading Hybrid: Inefficiencies in the Revised Rules after 2013"</i>	14
Emanuela Carbonara and Laarni Escresa <i>"To fine or to jail? Considering the role of the individual time constraint"</i>	15
Érica Gorga <i>"Is 'good faith' a subjective or objective standard? A critique of Delaware's recent case law"</i>	15
Erling Eide <i>"A test of the base rate neglect among law students"</i>	15
Florian Baumann and Tim Friehe <i>"Emotions in litigation contests"</i>	16
Florian Buck <i>"The political contest for Basel III"</i>	16
Francesco Decarolis, Cristina Giorgiantonio and Valentina Giovannello <i>"The awarding of public works in Italy: An analysis of the mechanisms for the selection of contractors"</i>	16
Francesco Lagona, Antonello Maruotti and Fabio Padovano <i>"A multilevel approach to the analysis of the opposite cycles of laws and decrees"</i>	16
Francesco Mezzanotte <i>"The interrelation between intellectual property licenses and the doctrine of numerus clausus. A comparative legal and economic analysis"</i>	17
Frank Müller-Langer and Patrick Andreoli Versbach <i>"The absence of 'order effects' in dynamic tournaments: Evidence from a real-life randomized experiment"</i>	17
Franziska Weber <i>"European integration assessed in the light of the 'rules vs. standards debate'"</i>	17
Friedrich Heinemann <i>"Economics - A science without conscience?"</i>	18
Georg Clemens <i>"Platform cooperation vs. platform competition - Production and investment strategies with mass customization"</i>	18
George Barker <i>"An Economic model of collective redress, relevant to joinder proceedings, group litigation and class actions"</i>	18
Aide Mazurkeviciute and Giovanni Ramello <i>"Fines on European Cartels and the Optimal Sanction Theory"</i>	18
Giulio Pedrini <i>"Law and economics of training: A taxonomy of the main legal and institutional tools addressing suboptimal investments in human capital development"</i>	18
Giuseppe Di Vita <i>"Factors determining the duration of illegal disputes: An empirical analysis with micro data"</i>	19
Henri Fraise and Anne Muller <i>"Household debt restructuring: Evidence from French bankrupt households"</i>	19
Henrik Lando <i>"A law and economics perspective on court intervention in contracts due to changed circumstances"</i>	19
Henry Hansmann and Mariana Pargendler <i>"Voting restrictions in 19th century corporations: Investor protection or consumer protection?"</i>	20
Hila Nevo and Yariv Ilan <i>"How relevant is the relevant market?"</i>	20
Jan Peter Sasse and Stephan Wittig <i>"The Impact of Investment Arbitration: An Event Study Approach"</i>	20
Jan Schmitz and Johannes Schwarze <i>"Does Reputation affect the Election of Non-Permanent Members to the United Nations Security Council? An Empirical Analysis"</i>	21
Jan Trzaskowski <i>"Behavioural economics, neuroscience, and the Unfair Commercial Practices Directive"</i>	21

Jef De Mot, Jonathan Klick and Michael Faure <i>"Appellate caseload and the switch to comparative negligence"</i>	21
Jing-Yuan Chiou <i>"In the shadow of giants"</i>	21
José Guilherme Caiado <i>"Can L&E help us understand international controversies over product's classification?"</i>	22
Juan Jose Ganuza and Fernando Gomez <i>"Optimal standards for European consumer law: Maximum harmonization, minimum harmonization, and co-existence of standards"</i>	22
Jürgen-Peter Kretschmer <i>"How to deal with resale price maintenance: What can we learn from empirical results?"</i>	22
Killian J. McCarthy and Peter C. van Santen <i>"Modeling the money launderer: A microtheoretical foundation"</i>	23
Klaus Heine and Michael Faure <i>"Insurance for financial crisis?"</i>	23
Kristoffel Grechenig and Martin Kolmar <i>"The state's enforcement monopoly and the private protection of property"</i>	23
Laarni Escresa and Lucio Picci <i>"Institutional heterogeneity and domestic sanctions to cross-border acts: The case of foreign bribery"</i>	23
Laarni Escresa and Nuno Garoupa <i>"Judicial politics in unstable democracies: The case of the Philippine Supreme Court, An Empirical Analysis 1986-2010"</i>	24
Lars Hornuf and Stefan Voigt <i>"Preliminary references – Analyzing the determinants that made the ECJ the powerful court that it is"</i>	24
Libor Dušek and Fusako Tsuchimoto <i>"Responses to more severe punishment in the courtroom: Evidences from Truth-In-Sentencing Laws"</i>	24
Libor Dušek <i>"Timing of punishment and crime: Evidence from a criminal procedure reform"</i>	24
Stefan Voigt and Lorenz Blume <i>"The economic effects of Constitutional budget institutions"</i>	25
Lotte Ovaere <i>"The choice of environmental regulatory enforcement by lobby groups"</i>	25
Paul Fenn, Malcolm Stewart, and Neil Rickman <i>"Third party funding of commercial disputes: A framework for comparative analysis"</i>	25
Marcello Basili, Filippo Belloc, Simona Benedettini and Antonio Nicita <i>"Do penalty points deter traffic offenses? Theory and evidence"</i>	26
Maria Isabel Sáez Lacave and Dámaso Riaño <i>"Voting and litigating: Corporate governance and the shareholder meeting"</i>	26
Mariusz Jerzy Golecki <i>"The European law from grundnorm towards the Cathedral: Economic theory of remedies and the state liability for judicial wrongs in the EU Law"</i>	26
Marta Espasa and Alejandro Esteller-Moré <i>"Is inefficiency under control in the justice administration?"</i>	26
Massimo D'Antoni and Maria Alessandra Rossi <i>"Appropriability and incentives with complementary innovations"</i>	27
Antonio Nicita and Matteo Rizzolli <i>"In Dubio Pro Reo Behavioural explanations of pro-defendant bias in procedures"</i>	27
Matthias Dauner and Jerg Gutmann <i>"The determinants of death penalty abolition"</i>	27
Matthias Siems <i>"Measuring the immeasurable: How to turn law into numbers"</i>	27
Michael Faure and Jing Liu <i>"New models for the compensation of natural resources damage"</i>	28
Michael Hewer <i>"Information and priority rules"</i>	28
Laszlo Goerke and Michael Neugart <i>"Distribution and welfare effects of dismissal dispute resolution systems"</i>	28
Minor Myers <i>"The fundamental tension between director elections and shareholder power"</i>	29
Mireia Artigot-Golobardes <i>"Avoiding waste in European product regulation: The nexus of ex ante safety and ex post liability"</i>	29

Mireia Artigot-Golobardes, Fernando Gomez Pomar, Juanjo Ganuza and Jose Penalva <i>"Product liability between contract and tort: Taking the contractual view seriously"</i>	30
Niclas Berggren and Christian Bjørnskov <i>"Does religion promote property rights and the rule of law?"</i>	30
Niclas Berggren, Sven-Olov Daunfeldt and Jörgen Hellström <i>"Social trust and Central Bank independence"</i>	30
Niels Petersen <i>"Antitrust law and the promotion of democracy and economic growth"</i>	31
Nora El-Bialy <i>"Measuring judicial performance in Egypt"</i>	31
Oren Gazal-Ayal and Avishalom Tor <i>"The innocence effect in plea bargaining"</i>	31
Oren Gazal-Ayal and Ronen Perry <i>"Small claims settlement conferences"</i>	32
Per-Olof Bjuggren and Johan Eklund <i>"The cost of insecure property rights: R2 revisited"</i>	32
Peter Cserne <i>"Consequence-based arguments in legal reasoning: A jurisprudential preface to law and economics"</i>	32
Peter-Jan Engelen and Marc van Essen <i>"Vulnerability to the financial crisis: The roles of firm- and country-level governance mechanisms in Europe"</i>	32
Piero Pasotti and Sean Fitzpatrick <i>"Controlling corruption in judiciaries: A contractual solution"</i>	32
Régis Blazy and Nirjhar Nigam <i>"Building legal indexes to explain recovery rates: An analysis of the French and UK bankruptcy codes"</i>	33
Régis Blazy, Bertrand Chopard, Eric Langlais and Ydriss Ziane <i>"Personal bankruptcy law, fresh starts, and judicial practice"</i>	34
Régis Blazy, Jocely Martel and Nirjhar Nigam <i>"The choice between informal and formal restructuring: The case of French banks facing distressed SMEs"</i>	34
Reiner Braun, Horst Eidenmüller, Andreas Engert and Lars Hornuf <i>"Does charter competition foster entrepreneurship? A difference-in-difference approach to European company law reforms"</i>	34
Robert Cooter and Aaron Edlin <i>"Law and growth economics: A framework for research"</i>	34
Robert Cooter and Hans Bernd Schäfer <i>"How the many can overcome the few? Conditions of reforms in developing countries"</i>	34
Robert Cooter and Jody Kraus <i>"The measure of law and economics"</i>	34
Roland Kirstein and Sidi Koné <i>"Corporate raiders, incumbent blockholders, and voting caps: A power-index analysis of the old VW law"</i>	34
Kai Hüschelrath and Sebastian Peyer <i>"Public and private enforcement of competition law: A differentiated perspective"</i>	35
Sencer Ecer <i>"Optimal merger policy with policy-variant non-price strategies and deterred mergers"</i>	35
Seo-Young Cho, Axel Dreher and Eric Neumayer <i>"The spread of anti-trafficking policies - Evidence from a new index"</i>	35
Sergio Muro <i>"Cognitive errors and control based strict liability"</i>	36
Shai Dothan <i>"Judicial Tactics in National Courts: A case study of the Israeli Supreme Court"</i>	36
Sharon Oded <i>"Corporate Monitors: Facilitating an efficient targeted monitoring policy"</i>	36
Sofia Amaral-Garcia and Veronica Grembi <i>"Curb Your Premium!"</i>	37
<i>Evaluating State Intervention in Medical Malpractice</i>	37
<i>Insurance"</i>	37
Sofia Amaral-Garcia <i>"Civil and administrative litigation: Does it make a difference? The case of medical malpractice in Spain, 2006-2009"</i>	37

Stefan Voigt "The economics of informal international law making – An empirical assessment"	37
Stefan Voigt "The interplay between national and international law - Its economic effects drawing on four new indicators"	38
Stefan Weishaar "Does auctioning emission rights avoid state aid? Empirical evidence from Germany"	38
Stephan Bonsiepen and Justus Haucap "Horizontal divestitures and R&D incentives in asymmetric duopoly"	38
Stephanie Ben-Ishai and Stephen Lubben "Involuntary creditors and corporate bankruptcy"	38
Tania Biletskaya "The role of the European Union's Partnership and Cooperation Agreements (PCAs) in the reform process of the Commonwealth of Independent States"	38
Tasoula Tseliou "Competition and regulation in the banking sector: Strive for an optimal equilibrium"	39
Florian Baumann, Tim Friehe, and Inga Hillesheim "Status and liability: A first pass"	39
Tim Friehe, Shmuel Leshem and Avraham Tabbach "Preventive versus non-preventive optimal law enforcement"	39
Urs Schweizer "Vicarious liability and the intensity principle"	39
Valentina Dimitrova-Grajzl, Peter Grajzl and Joseph Guse "Trust, corruption and demand for regulation: Evidence from post-socialist countries"	40
Vincy Fon "Bayesian influence on the choices of forum and law"	40
Yun-chien Chang and Henry Smith "An economic analysis of civil versus common law property"	40
Yun-chien Chang "Tenancy in `anti-commons´? A theoretical and empirical analysis of co-ownership"	41

<p>Alessandro Diego Scopelliti</p> <p><i>"A defensive leveraging theory for interoperability decisions: An application to the Microsoft Europe case"</i></p>	<p>The present paper introduces a defensive leveraging theory in order to explain the interoperability decisions of an incumbent monopolist, regarding the disclosure of the interface information required for the compability between different platforms in the software industry. In many cases, when the owner of the required protocols is also a monopolist in her own market, the refusal to supply such information to the producers of a complementary product is interpreted by the Antitrust Authorities as a leverage behavior, aimed at monopolizing the other market. But sometimes the refusal to release such protocols may be determined by a defensive purpose, if the dominant position of such firm is under threat, because of the evolution of that market due to the introduction of a new technology.</p> <p>Then, the paper applies this argument to analyze the Microsoft Europe Case, as decided by the European Commission in 2004, focusing on the issue of the interoperability between the operating systems for personal computers and for workgroup servers. The theoretical model, developed as an extension of the framework proposed by Choi and Stefanadis (2001) to the case of refusal to deal, suggests an explanation of the case, alternative to the one adopted by the Commission, especially in the analysis of the market structure dynamics. In particular, we show that Microsoft s refusal to supply the compatibility between the two complementary products was determined not only by the intention to leverage its dominant position to the adjacent market of server operating systems, but especially by the concern for keeping the monopoly on its core market, that is the one of PC operating system. In fact, the future evolution of the software market, due to the diffusion of cloud computing, could reduce the importance of the applications entry barrier and then compromise Microsoft s monopoly in the market for PC operating systems.</p>
<p>Alessio Paces</p> <p><i>"Liquidity crisis in the perspective of uncertainty: Law and economics implications"</i></p>	<p>This paper investigates the determinants of liquidity crises based on the dynamics of banking and finance under uncertainty. The explanatory power of this framework is tested against the events of the recent financial crisis. Despite the limited availability of data that can proxy for uncertainty, this approach seems to explain better than others how a relatively small shock, as the default of subprime mortgages, could trigger a systemic crisis of enormous proportions.</p> <p>The analysis confirms Minsky's hypothesis of endogenous financial instability derived from Keynes's theory of liquidity and expectations. Conventional expectations allow overcoming uncertainty via liquidity of secondary markets and of banking liabilities. However, the failure of existing conventions precipitates the system into uncertainty-driven (il)liquidity spirals, which are the more dangerous the more private money financial intermediaries have managed to create by leveraging their balance sheets.</p> <p>This approach has the following policy implications. On the one hand, financial crises should be policed by tailoring lending of last resort by central banks to the creation of private money by financial intermediaries. In addition, banking should be defined and regulated according to this monetary function and subject to counter-cyclical capital/asset restrictions. On the other hand, corporate governance of banks should insulate managers and controlling shareholders from the short-termism of stock markets, which is a major amplifier of liquidity crises through balance sheet choices. Particularly, extraction of private benefits of control should be allowed in exchange for the postponement of performance-based remuneration.</p>

<p>Alexander Stremitzer</p> <p><i>"Negligence-based proportional liability - How more lenient sanctions lead to higher compliance"</i></p>	<p>Over the past four decades, in an effort to help plaintiffs, US tort statutes have expanded strict liability, and courts have relaxed the causation requirement in negligence liability by often resolving factual doubts about causation in the plaintiff's favor.</p> <p>This Article argues that this trend not only contributes to phenomena such as defensive medicine and overly high health care costs but, more surprisingly, also to more people and property being harmed due to negligent treatment and environmental disasters. This is true in the quite common scenarios in which courts suffer from hindsight bias or injurers lack sufficient assets to satisfy judgments against them. Both problems pervade important areas of tort law.</p> <p>This Article not only cautions against the use of strict liability but also argues for restoring a robust causation requirement in negligence liability. Specifically, this Article proposes a new default regime in torts called "negligence-based proportional liability." This rule would account for causation in probabilistic terms. It would hold a negligent injurer liable for harm discounted by the probability that the harm was caused by the defendant's breach of a duty. As a more lenient liability rule than what is generally contemplated by many US courts, negligence-based proportional liability reduces defensive behavior and increases compliance relative to all other liability regimes.</p>
<p>Alfred Endres and Bianca Rundshagen</p> <p><i>"Incentives to diffuse advanced abatement technology under the formation of international environmental agreements"</i></p>	<p>We analyse the incentives for polluting firms to diffuse and adopt advanced abatement technology in a framework in which governments negotiate an international environmental agreement. The results crucially depend on whether the underlying environmental policy instrument is an emission tax or an emission quota. The incentives to diffuse and adopt advanced abatement technology are not necessarily optimal under the tax regime (as they would be in a corresponding national model framework), but they are never lower than those under the quota regime. Somewhat surprisingly, however, social welfare may be higher under the quota regime, depending on the parameter values.</p>
<p>Thomas Braendle and Alois Stutzer</p> <p><i>"Incompatibility rules and the selection of public servants into national parliaments"</i></p>	<p>Countries differ substantially in how they deal with politicians that come from the public sector. In some countries, concerns about conflicts of interests and the politicization of the public service led to the enactment of incompatibility and ineligibility rules. We study how these rules affect the attractiveness of a political mandate for public servants and thus the selection into politics. We compile a novel dataset that captures the fraction of public servants in 71 national legislatures as well as the respective (in)compatibility regimes. On average, there are 7 percentage points less public servants in parliaments where a strict regime is in force. Supplementary evidence shows that the fraction of public servants in parliament is positively correlated with the absence of corruption as well as government consumption.</p> <p>Paper</p>
<p>Andrea Leiter, Magdalena Thöni and Zvi Wiener</p> <p><i>"Duo cum faciunt idem, non est idem: Evidence from Austrian pain and suffering verdicts"</i></p>	<p>We analyze the pricing of pain and suffering and, in particular, whether the corresponding compensations are affected by a court's approach to value such damages. For this purpose, we use data on pain and suffering verdicts in Austria, where courts are generally free to choose between a per diem and a lump sum scheme to assess payments on damages for pain and suffering. We find significant higher payments under the lump sum regime, which are not vanishing even after controlling for individual- and injury-specific characteristics. Our evidence suggests that the observed difference between lump sum and per diem schemes mainly appears if the victims are female and exposed to multiple injuries and, to a</p>

	<p>lesser extent, to intensive past pain days.</p>
<p>Andrew Griffiths</p> <p><i>"Branding as an incentive for social responsibility"</i></p>	<p>This paper considers the contribution that trade marks and the brands that they signify can make to improving standards of corporate social responsibility (or "CSR"). It considers the argument that firms engaging in good CSR practices can use their engagement to generate and deploy reputational capital and that this improves their capacity to survive and prosper over time. The contribution of branding also reflects its importance to marketing and the importance of marketing to the development of firms.</p> <p>This paper argues that trade marks provide an effective communication mechanism for linking products on the market to information about them, including information about the organisational conduct of the firms involved in producing and marketing them. It explains how trade marks give consumers what has been termed an "economic guarantee" concerning the quality of marked products and considers the precise nature of this guarantee. This paper argues that matters of organisational conduct including CSR practices should be treated as forming part of the overall "quality" of marked products and explains the legal significance of this treatment. It shows how trade marks can help to improve standards of CSR through providing an economic guarantee that covers organisational conduct and through enabling firms to engage in marketing and to generate and deploy reputational capital.</p> <p>However, the effectiveness of trade marks at improving standards of CSR must ultimately depend on the clarity of the messages that they can convey and on the impact of these messages on the behaviour of consumers and other stakeholders. This paper accepts that trade marks have significant shortcomings as a positive influence on CSR in this respect, but argues that their influence can nevertheless be important and, moreover, can increase the effectiveness of other legal mechanisms.</p>
<p>Antonio Nicita and Simone Sepe</p> <p><i>"Contract design under asset specificity uncertainty"</i></p>	<p>We analyze a contractual framework in which parties' asset specificity is uncertain. This is the case when the ex-post degree of specificity actually depends on ex-post market dynamics. We show that under asset specificity uncertainty, standard optimal contractual mechanisms may generate hold-up or under-investment. We then argue that in order to restore efficiency, control rights should be assigned to the party with the highest probability of having a binding market option ex-post. Thus, with asset specificity uncertainty, authority matters. Our conclusion suggests a neglected rationale for vertical integration as a remedy against hold-up. When managing asset specificity uncertainty is particularly costly, vertical integration could emerge as an efficient organizational solution.</p>
<p>Arye Hillman and Niklas Potrafke</p> <p><i>"Voting in the absence of ethical restraint"</i></p>	<p>Resolutions in the United Nations General Assembly, although non-binding, affect economic and human development through autocratic repression. Autocratic rulers seeking to confirm an identity as "loved by the people" incur expressive disutility if censured for repression in a United Nations resolution. A façade of autocratic benevolence decreases the likelihood of censure. To create the façade, autocratic governments use logrolling to preempt mutual criticism and vote defectively to stigmatize and blame a decoy for wrongdoing. In benchmark cases, democracies vote in support of the façade. In an exceptional case, voting on the Goldstone Report, democracies do not support the autocracies' deflective voting but not because of concern about making autocratic government seem benevolent. Previous studies have considered whether in UN voting high-income democracies can buy votes of low-income autocracies; we find that, unless</p>

	<p>exceptional self-interest intercedes, autocracies are able to buy votes of democracies, with adverse consequences for the welfare of low-income suppressed populations.</p>
<p>Ben Depoorter and Stephan Tontrup <i>"Contract Entitlement"</i></p>	<p>A long-standing controversy exists in contract law scholarship whether courts should grant relief for breach of contract in the form of expectation damages or specific performance. Although damage relief is the default remedy in this country, many modern contract theorists favor specific performance as a more appropriate default remedy for breach. Interestingly, two very different strands of scholarship advocate specific performance as a default remedy. Ethical theorists favor a specific performance default because it aligns with the moral obligation that promises must be kept. Scholars in the economic analysis of contract law promote specific performance because it enables efficient breaches on the basis of private bargaining.</p> <p>In this Article we show that both diverse fields of scholarship have overlooked a crucial interdependence between the right of specific performance and the perceived immorality of efficient breaches of contract. While the current literature recommends specific performance as an appropriate remedy if contract breaches are immoral or when impediments to bargaining are minimal, we posit that the moral acceptability and bargaining themselves are affected by whether specific performance is available as a default remedy or not. We argue that, when expressed as a legal default, the legal right to demand performance creates a sense of entitlement and resentment against breach. This legal entitlement effect induces aversion against breach even when performance would be inefficient.</p> <p>Conducting a series of experiments implementing real contracts, we examined the enforcement decisions of promisees confronted with an efficient breach. We provided some participants with a default remedy of specific performance while others could prevent the breach without relying on a specific performance default. Participants preferred to forsake their immediate material interests in order to obstruct efficient breaches when a specific performance default was available. The availability of a specific performance default increased resentment and moral opposition to efficient breach among promisees even when their material interests in the contract were fully protected by expectation damages.</p> <p>We provide several contributions to the literature. First, since the case for specific performance largely rests on the ability of parties to renegotiate a mutually beneficial outcome, the observed conflict complicates bargaining and thus weakens the efficiency argument in favor of specific performance. Second, our findings add insight into an emerging literature that highlights the impact of defaults in contract law. Third, we challenge deontological conceptions of the immorality of contract breach by suggesting that the acceptability of the efficient breach is not a given, but strongly depends on the institutional context.</p>
<p>Benjamin Shmueli <i>" 'Suddenly I'm not half the man I used to be': Instrumental theories, corrective justice and exposure to risk without bodily harm"</i></p>	<p>This Article addresses the fundamental and age-old question of defining harm in tort law, inter alia following the case of the trapped Chilean miners. It challenges the common notion that no compensation will be awarded for blameworthy-tortious conduct that produces no actual loss or damages, since pure risks that have not yet materialized are not considered a harm. The Article utilizes, for that purpose, a novel pluralistic point of view that takes into account all the goals of tort law.</p> <p>Can damages be awarded to a plaintiff who was exposed to a medical risk or to radiation or toxins, and whose risk of</p>

	<p>becoming ill or suffering harm has thus been tortiously increased, even though he cannot demonstrate present harm? What recovery is owed to a plaintiff who may have been harmed, but who will have difficulty in proving factual causation? Some view increased risk as an “incomplete” tort entitling victims to partial damages proportional to increased risk. Others view the exposure as a “complete” tort in itself. I examine each of these rationales against the overarching goals of tort law. Examination of these rationales will serve as a practical and theoretical basis for discussing the harder question, that is how to compensate healthy plaintiffs in cases of potential future harm, where the plaintiff is not the person he used to be following the exposure to the risk, but cannot point at a substantial bodily harm. I examine various categories of “healthy” plaintiffs in order to test the limits of these rationales. Through these categories, I address the key question whether compensation is merited and, if so, what its proper scope is.</p> <p>I show a practical difference between the views of increased risk as an “incomplete” and a “complete” tort with respect to certain kinds of “healthy” plaintiffs. The discussion leads to a critique of Anglo-American case law, which is not prepared to properly recognize the need for compensation in some of the categories.</p> <p>Hence, this Article proposes for the first time a presentation based on the patterns of cases of different categories of healthy plaintiffs, examined against the two alternative theoretical rationales, and focusing on the need to compensate the healthy exposed people that are in a state of "latency" or incubation, whose lives have been changed in a bad sense as an outcome of a continuous risk. The Article offers various qualifications and parameters for the suggested acknowledgment of risk as harm.</p>
<p>Benjamin Shmueli</p> <p><i>"Instrumental theories vs corrective justice: A new approach to balancing the goals of contemporary law"</i></p>	<p>Unified-monistic theories focus on a single goal of tort law only, usually corrective justice, distributive justice, or optimal deterrence. Unlike these approaches, mixed-pluralistic theories of tort law attempt to produce a balance between different goals by integrating a number of considerations underlying the different goals of tort law.</p> <p>Starting from a position of support for the mixed-pluralistic thesis, the advantages offered by current mixed-pluralistic approaches are identified, and a new mixed-pluralistic approach is proposed which is adapted to the multitude of significant changes that have affected contemporary common tort law in recent years. This new approach divides torts issues into two principal categories on the basis of the profile of the defendant and the nature of his tortious act, concurrently striking a balance between the various goals of tort law, as the situation warrants.</p> <p>Thus the suggested mixed-pluralistic approach offers a new and real balance between corrective justice and instrumental theories, that is, distributive justice and optimal deterrence, and between deontological theory and law and economics. The approach will be implemented through the presentation of a number of tort issues, some traditional and classic, others modern and novel, and an examination of solutions to these issues through the prism of the proposed approach.</p>
<p>Bruno Deffains, Bertrand Crettez and Olivier Musy</p> <p><i>"Legal harmonization with endogenous preferences"</i></p>	<p>In this paper, we ask two questions. The first is to understand which of the assumptions are necessary to reach its conclusion about the impossibility of legal convergence. The second is to assess whether international cooperation is necessary to reach legal convergence. If not necessary, we also wonder if it is desirable.</p> <p>To study these questions, we use a model with two nation-states. Preferences of each nation-state are such that it is</p>

	<p>costly for a nation-state to have a different legal system than the other nation-state. However, it is also costly to set a legal system that differs from the ideal legal system of each country. We use two variants of this model. In the first one, nation-states have intrinsic preferences for legal systems. In the second, we assume that these preferences may change at some costs. We show that legal convergence is impossible with intangible preferences. We also show that legal convergence is possible when preferences are not intangible and that legal cooperation may not be desirable to achieve it.</p>
<p>Carole Billiet and Thomas Blondiau</p> <p><i>"Enforcing environmental regulations using the criminal or the administrative track: theory and empirics"</i></p>	<p>In this paper, our main research question is the following: To which extent does the expected sanction differ for defendants being prosecuted through administrative and through criminal procedures for similar offenses? Answering this question is particularly relevant to understand under which conditions a complementary criminal/administrative enforcement system is to be preferred (in terms of social welfare) over an enforcement system relying on criminal prosecution only. One of the key conditions is that the expected difference between criminal and administrative penalties is not too large. We develop an empirical strategy, using propensity score matching of cases, to assess to which extent the expected penalty differs for our dataset of Belgian environmental law enforcement cases. We are also able to identify the case characteristics which influence the probability for criminal or administrative prosecution. Overall, we find some indication that the expected penalty is lower in administrative enforcement, even for 'similar' cases, but the difference in treatment is not very large.</p>
<p>Christian Almer and Ralph Winkler</p> <p><i>"Emissions targets and domestic actions: Dead end or last resort?"</i></p>	<p>We utilize recent developments in the empirics of comparative case studies to analyze the effect of binding emissions targets under the Kyoto Protocol on the development of CO2 emissions of seven major Annex B countries. In particular, we investigate whether committing to a specific greenhouse gas emissions target had an effect on actual CO2 emissions of Australia, Canada, France, Germany, Great Britain, Italy, and Japan by using a synthetic matching approach. With the exception of Great Britain, we are not able to reject the hypothesis that there has been no effect on actual emissions for all other countries under investigation.</p>
<p>Christian Bjørnskov and Niklas Potrafke</p> <p><i>"The size and scope of government"</i></p>	<p>This paper investigates empirically how political ideology influences size and scope of government as measured by the size of government, tax structure and labor market regulation. Our dataset comprises 48 US states over the 1981-2005 period. We employ several indicators of political ideology that have been used in the literature and introduce a new index that considers spatial and temporal differences in Democratic and Republican Party ideology. The main result suggests that Republican governors and Republican dominated legislatures prefer a smaller size and scope of government than the Democrats. Coding ideology with the new more precise index gives rise to sharper results. We show that ideology-induced policies were counteracted under all types of divided government.</p>
<p>Christoph Kimmerle</p> <p><i>"The political economy of the treaty of Lisbon"</i></p>	<p>Within a multi-level government structure, a crucial question is how authority could efficiently be allocated between jurisdictions that differ in scope. This is especially true, if rules provided by a larger jurisdiction claim primacy over rules provided by a smaller one, as it is generally the case for the European Union. Arguments in favor of the attribution of competences on a rather global level could be seen as having the goal to internalize externalities. Providing just one uniform good, could however go along with incurring heterogeneity costs. Institutional Competition Theory claims that in addition, further costs are incurred, because the allocation of competencies on larger jurisdiction will go along with a</p>

	<p>decrease in legal innovation. Moreover, it suggests that Institutional Competition is needed to control the Leviathan, i.e. opportunistic political agents. This is because IC provides choice (and thus exit-) options, that can remedy political opportunism originating from the principal-agent relationship between politicians and their constituents.</p> <p>Based on these theoretical foundations, the paper examines the Treaty of Lisbon, (as the European Union's new institutional-legal framework) focusing on its ability to provide its citizens with an efficient allocation of responsibilities within the European Union. Therefore, the new features of the Treaty are discussed and evaluated from a political economy perspective. A special emphasis is put on the nation states parliaments' new functions to (ex-ante) participate in the legislative process of the European Union. I argue that as the control of the European Institutions is characterized by the criteria of a public good, the individual parliamentarian will have no private incentive to support the use of the new instrument. However, looking at the 58 times the instrument was used within January 2009 to July 2011, I find that the "reasoned opinion" never made it to reach the critical threshold, needed to be noticed by the European Institutions. I conclude that the reasoned opinion is not a qualified instrument to control for compliance with the subsidiarity principle, and will not help to allocate competencies within the EU more efficiently. Neither will it help to implement the preconditions for IC, i.e. independent and parallel policy-making in decentralized jurisdictions, which can work as a tool to countervail political opportunism and therewith contributes to an efficient provision of legal rules.</p>
<p>Daniel Chen and David Abrams</p> <p><i>"A market for justice: The effect of third party litigation funding on legal outcomes"</i></p>	<p>Using two sources of variation – de jure status of third party litigation funding in different Australian states as well as variation in third party litigation funding from the largest litigation funding firm – we find evidence that litigation, court caseloads, and court expenditures increase with third party funding. These increases appear for civil cases but not criminal cases. Court crowding does not precede third party funding and estimated accounting profits are not increasing with court crowding. In addition, cases with third party funding are more cited on substantive law and reversed less often than comparable cases without such arrangements.</p> <p>Paper</p>
<p>Daniel Chen and John Horton</p> <p><i>"Deterrent effect of the death penalty? Evidence from British Commutations"</i></p>	<p>During World War I the British military condemned over 3,000 soldiers to death, but executed only approximately 12% of these soldiers; the others received commuted sentences. Many historians believe that the military command confirmed or commuted sentences for reasons unrelated to the circumstances of a particular case and that the application of the death penalty was essentially a random, "pitiless lottery." Using a dataset on all capital cases during WWI, I statically investigate this claim and find that the data are consistent with an essentially random process. Using this result, I exploit variation in commutations and executions within military units to identify the deterrent effect of the death penalty, with deterrence measured by the elapsed time within a unit between the resolution of a death sentence (i.e., a commutation or execution) and subsequent absences within that unit. Absences are measured via "wanted" lists prepared by British military police units searching for deserters. I find limited evidence that executing deserters deterred absences, while executing non-deserters and Irish soldiers, regardless of the crime, spurred absences. This finding is potentially explicable as an iatrogenic effect where minorities react negatively to state-imposed violence.</p>

<p>Daniel Chen</p> <p><i>"Markets and morality: How does competition affect moral judgment?"</i></p>	<p>Scholars since Hume and Smith have debated possible causal connections between market experiences and moral beliefs. Of particular interest today are questions related to incentive designs: for example, could the structure of employment affect moral attitudes? Here, I study the impact of employment structure on three normative issues: utilitarian versus nonutilitarian values, other-regarding preferences, and charitable donations. Through a labor market intermediary, I randomly assigned workers to competitive or piece-rate work conditions. The groups were given a moral question posing a conflict between utilitarian and non-utilitarian values, and offered a choice to make a charitable donation. The moral question was accompanied by an illustration that primed out-group considerations. Competitively structured work experiences increased non-utilitarian value choices, non-utilitarian commitments towards out-group members, and donations by productive workers.</p> <p>Paper</p>
<p>Daniel Göller and Michael Hewer</p> <p><i>"Economic analysis of taking rules: The bilateral case"</i></p>	<p>In most legal systems, the state has the power of eminent domain, i.e. the forced acquisition of private property instead of a voluntary exchange. We analyze a model where both a landowner and a government, that neglects the landowner's interests, invest prior to the government's taking decision. Our main finding is that most commonly proposed compensation regimes such as full compensation, no compensation or a regime that grants the full benefit of the taking perform poorly in our setting. Instead, a regime that sets compensation equivalent to the hypothetical value of the landowner's property had she invested efficiently induces the first best.</p> <p>Paper</p>
<p>Daniel Göller</p> <p><i>"Expectation damages and bilateral cooperative investments"</i></p>	<p>In this paper, we examine the efficiency of the standard legal breach remedy expectation damages in a setting of bilateral cooperative investment by a buyer and a seller. We consider contracts that specify a required quality level and an upper bound to the seller's cost of production. The first best can be achieved by an augmented Cadillac contract that sets either the cost- or the quality threshold such that it cannot be met with positive probability and an extreme price. This makes one of the parties a residual claimant of the trade relationship. The other threshold can be used to balance the incentives of the other party without disturbing those of the residual claimant.</p>
<p>Dieter Schmidtchen</p> <p><i>"The polluter pays vs. the cheapest cost avoider principle: On the efficient treatment of external costs"</i></p>	<p>There are two approaches to the treatment of external costs: a traditional one and a modern one. According to the traditional view, sometimes called Pigovian, external costs should be internalized according to the Polluter Pays Principle (PPP). The modern view regarding the treatment of external costs suggests applying the Cheapest Cost Avoider Principle (Coase, Calabresi, Demsetz). At the heart of the Cheapest Cost Avoider Principle (CCAP) is the insight, originating from Ronald Coase, that external costs are not caused by the polluter alone but are the result of conflicting uses of scarce resources which include the environment. Consequently, polluters are not the only causers of external costs; pollutees and the state are cost drivers as well and a priori there is no reason to exempt them from their contribution to the reduction of external costs. The CCAP means choosing those policy measures which presumptively resolve conflicts of resource use at cheapest costs. It will be shown that applying the CCAP instead of the PPP can lead to substantial welfare improvements.</p>

<p>Donatella Porrini and Reimund Schwarze</p> <p><i>"Defining insurance models efficiency within climate change economic policies"</i></p>	<p>The magnitude of potential loss, the adverse social and economic consequences of large natural catastrophes for millions of people and considerable fiscal strain imposed on the government budget by natural disasters indicate that governments can benefit significantly from the use of insurance instruments that would seamlessly not only cover damage but also incentivate risk reduction behaviours. In the introduction, insurance is defined as a political economic tool that can be used to face the issue of climate change. In the second paragraph, looking at the diversity of existing insurance models in Europe, natural hazards insurance will be analysed in consideration of private and public involvement. The following paragraph analyses the economic efficiency of the different models in relation to the informational imperfections, i.e. adverse selection, moral hazard, and market imperfection, i.e. transaction costs and charity hazard with consequent private insurance crowding out. And to complete the analysis, the fourth paragraph look at the way the different models likely affect incentives to address climate change seeking mechanism to facilitate the mitigation of greenhouse gas emissions, the adaptation to the inevitable impacts of climate change, and the development of financial risk management. In conclusion, the actual implementation of the insurance models will be considered looking at their possible future development, trying to find an economic efficient response to natural hazards caused by climate change.</p>
<p>Eberhard Feess and Marc Scheufen</p> <p><i>"Academic copyright in the publishing game: A contest perspective"</i></p>	<p>As scientists are motivated by readership rather than by royalties, one might doubt that academic copyright is required for protecting the authors' property rights and for stimulating research. Consequently, the possibility of moving to an open access regime by abolishing academic copyright is currently intensively being discussed. We contribute to this discussion by focusing on the contest component of the publishing game. In our model, differently talented researchers compete for the limited space in top journals. We assume that publication fees when moving from a readers'-pay to an authors'-pay principle will fully be covered only by top universities. This yields an additional asymmetry in the Tullock-contest which reduces the quality effort incentives even for researchers whose fees are fully paid. We find that private research incentives may be either too high or too low. In the first case, open access is always superior. In the latter case, the welfare ranking of the two regimes depends on the model's parameters.</p>
<p>Edwin Woerdman and Andries Nentjes</p> <p><i>"The European Union Emissions Trading Hybrid: Inefficiencies in the Revised Rules after 2013"</i></p>	<p>There are two design variants of emissions trading: allowance trading (cap-and-trade) and credit trading (performance standard rate trading). We argue that the former is more efficient than the latter. The European Union Emissions Trading Scheme (EU ETS) is based on allowance trading. From 2013 onwards, a phased transition is planned from the allocation of tradable carbon allowances for free to sale by auction. Until 2027, an important part of the allowances will still be handed out for free, in particular to industries that compete on an international product market in order to avoid carbon leakage. The criteria upon which the allocation of those free rights is based will be shifted from historical emissions ('grandfathering') to energy-efficiency levels ('benchmarking'), which incentivises climatefriendly investments. However, complex credit-trading type of rules have been created, in relation to capacity expansion and plant closure, which are both inefficient and ineffective. Those new rules incentivise the continuation of inefficient plants, or the expansion of unused production capacity, to receive and sell a corresponding number of allowances. Moreover, these rules do not lead to the intended reduction of carbon leakage because of the opportunity costs of free allowances. The result is a sub-optimal EU Emissions Trading 'Hybrid'.</p>

	Paper
<p>Emanuela Carbonara and Laarni Escresa</p> <p><i>"To fine or to jail? Considering the role of the individual time constraint"</i></p>	<p>In the law and economics literature, it is widely accepted that fines should be preferred over a jail sentence since the same level of deterrence can be achieved at a lower enforcement cost. However, this does not adequately explain the reliance of imprisonment in deterring crime. This paper explicitly considers the role of the individual time constraint in individual decision making. Starting from the assumption that the crucial difference between a fine and a prison term is that the former is denominated in time, a fixed endowment. What we find is that when individuals are heterogeneous with respect to wage and income, only the middle wage and middle income groups can be adequately deterred by a fixed fines alone regime. The existing literature only considers the case of the very poor as being judgment proof. Our results show that this may also hold for the other extreme of the wage-income spectrum.</p>
<p>Érica Gorga</p> <p><i>"Is 'good faith' a subjective or objective standard? A critique of Delaware's recent case law"</i></p>	<p>This article speaks to a heated debate in corporate law about a new fiduciary duty that Delaware courts appear to have created for corporate directors during the past decade: the duty of good faith. Whereas Delaware statutory and case law is replete with references to a "good faith" requirement – for example, as a condition for invoking the protection of the business judgment rule – Delaware courts only began to articulate standards for assessing good faith in the corporate law context very recently. The <i>Disney</i>, <i>Stone</i> and <i>Lyondell</i> decisions have elaborated principles for the application of the good faith standard in directorial liability contexts. As a result, good faith has been defined as an aspect of the duty of loyalty that involves the interrogation of directors' subjective intent.</p> <p>In a recent article, Strine et al. argued that Delaware courts have consistently employed the term good faith in their judicial opinions to articulate "the state of mind required of a loyal fiduciary exercising corporate powers." They survey a number of Delaware decisions issued before the <i>Disney</i> decision and they imply the following arguments: (i) that Delaware courts have always had a clear understanding of the definition of good faith; (ii) that the courts have been adopting the same definition for a significant time in a number of cases; (iii) that the <i>Disney</i> and <i>Stone</i> decisions were a mere corollary of the previous decisions, that is, they synthesized an opinion that the court has always held.</p> <p>This paper disagrees with such claims. It discusses the same judicial cases Strine et al. use in order to demonstrate that Delaware courts have actually applied the term "good faith" in a very inconsistent way. The article demonstrates that Delaware courts have failed to distinguish between objective and subjective evaluations of conduct. It identifies precedents in Delaware case law that apply objective standards for good faith analysis instead of engage subjective analysis of directors' state of mind. The paper offers a definition of good faith that draws on well-established, classic European civil law doctrines of objective and subjective good faith and argues that they offer more consistent criteria for analyzing good faith in the fiduciary duty context. The paper concludes with the normative prescription that the good faith standard must hinge on an objective standard in order to provide legal certainty and apt incentives for corporate actors.</p>
<p>Erling Eide</p> <p><i>"A test of the base rate neglect among law students"</i></p>	<p>The present paper presents an experiment designed to test law students' capacity to apply probabilistic reasoning in determining the likelihood of a defendant's guilt. As expected, most students are victim of base rate neglect, possibly related to a representative heuristic, the statement of an eyewitness. The results might be taken as warning against the use of probabilistic thinking in courts; the intuition of judges could easily lead to wrong decisions. It is argued, however,</p>

	that the problem does not lie in the formal modelling of probabilities, but in our intuition when dealing with uncertain evidence. In order to avoid miscarriage of justice future judges should be acquainted with Bayesian reasoning.
Florian Baumann and Tim Friehe <i>"Emotions in litigation contests"</i>	This paper introduces the concept of emotions into the standard litigation contest. Positive (negative) emotions emerge when litigants win (lose) at trial and are dependent in particular on the level of defendant fault. Our findings establish that standard results of litigation contests change significantly when emotions are taken into account. We show that emotions may increase or decrease individual and total equilibrium contest effort, introduce an asymmetry into the contest, and reinforce or weaken a plaintiff's incentives to bring a suit. In addition, we consider how emotions impact on justice.
Florian Buck <i>"The political contest for Basel III"</i>	This paper analyzes the competitive effects of capital regulation on the contest for political favors. The immediate effect of increasing capital requirements is a reduction in the total supply of risky loans and accordingly a decrease of refinancing costs in the banking sector. Thereby the regulator indirectly affects the stakes of the competitors and their equilibrium expected profits. Since short-term recapitalization is costly, capital requirements temporarily constrain the bank's lending activities. With this capacity constraint, we show that defining a new capital ratio has rent shifting effects within the banking sector. An increase of capital requirements decreases the low capitalized bank's margins inducing them to shift their portfolio choice, while high capitalized banks benefit from lower refinancing costs. Thus, in contrast to the literature of the impact of capital regulation, this analysis suggests that some banks may benefit from the introduction of a binding capital constraint due to regulatory requirements. The demand for regulation by some banks provides the ground for a political contest for capital regulation. Our preliminary results demonstrate the importance of the organisation structure of the banking market for the political equilibrium.
Francesco Decarolis, Cristina Giorgiantonio and Valentina Giovanniello <i>"The awarding of public works in Italy: An analysis of the mechanisms for the selection of contractors"</i>	Despite the many reforms in the public procurement sector in recent years, the Italian system is still marked by high levels of fragmentation and is considerably exposed to the risks of collusion, corruption and of ex-post renegotiations with the winning contractors. Other deficiencies//shortcomings are also present at the planning stages of the works. These problem areas appear ascribable in part to the current regulations on the awarding of public works contracts, which do not guarantee the correct functioning of the selection mechanisms of private contractors. Indications from the economic literature and international comparisons suggest that improvements could arise from: <i>i)</i> the elimination of automatic exclusion mechanisms for anomalous tenders (which would reduce the risk of collusion between bidders); <i>ii)</i> the centralization of assessments of anomalous offers under the responsibility of larger adjudicating authorities and with an increase in the surety guarantees given by the winning bidders, which would reduce the risk of subsequent renegotiations; <i>iii)</i> the reinforcement of measures to combat corruption; <i>iv)</i> a greater standardization of planning and, for the more complex auctions, the use of competitive dialogue.
Francesco Lagona, Antonello Maruotti and Fabio Padovano <i>"A multilevel approach to the analysis of the opposite cycles of laws and decrees"</i>	We test two predictions of the political legislation cycle theory, that legislators maximize their reelection probabilities concentrating the approbation of general purpose laws, in the interest of unorganized voters, before the elections, while they satisfy special interest groups' demands in return of rents at the beginning of the legislature by means of less visible decrees. This discrimination in time and the choice of legislative instruments with different degrees of visibility minimizes the electoral costs of satisfying lobbies' interests. A multilevel analysis of the sample of Italian legislation between 1948 and 2008, carried out by a Poisson regression with bivariate random effects, accounts for correlation at different levels of

	<p>the data and strongly supports the hypothesis of opposite cycles in decrees and laws.</p> <p>Paper</p>
<p>Francesco Mezzanotte</p> <p><i>"The interrelation between intellectual property licenses and the doctrine of numerus clausus. A comparative legal and economic analysis"</i></p>	<p>In the western legal tradition, the principle of numerus clausus is regarded as a fundamental hinge of the classic Law of Property: while contract law allows individuals to freely shape legally enforceable promises according to their needs, property law is confined into a closed set of forms, and no "real" rights may be created other than those explicitly provided by the Legislator. Conversely, when looking at intellectual property the pattern we observe seems a different one: the holder of a primary right (Copyright, Patent, Trademark, etc.) is generally considered free to unbundle and transfer any combination of his economic faculties, licensing secondary rights that stand erga omnes and circulate autonomously in the market transactions.</p> <p>The aim of this paper is to cast some light on this apparently ambivalent role of the numerus clausus principle. The efficiency rationales of the doctrine are discussed, and then specifically applied to the field of intellectual property in a comparative perspective, in order to possibly identify common operational rules demonstrating the constant feature of the numerus clausus as a regulatory principle meant to minimize the informational problems that an uncontrolled fragmentation of property rights over an asset might produce.</p>
<p>Frank Müller-Langer and Patrick Andreoli Versbach</p> <p><i>"The absence of 'order effects' in dynamic tournaments: Evidence from a real-life randomized experiment"</i></p>	<p>Many tournaments consist of multiple rounds under asymmetric conditions. We analyze the efficiency of tournaments in which the order of a temporary advantage is randomly allocated by the tournament regulation. We find that the order in which the players have this advantage does not have an effect on the probability of winning the tournament. We then test the predictions of the model by using a randomized natural experiment in professional sports competitions. The setting is the two leg knock-out game structure in soccer tournaments where two teams are randomly allocated to have an advantage (to play at home) either in the first or the second stage of the game. In contrast to the previous literature that provides evidence for a first-mover advantage due to preemptive behavior, we find no support for the proposition that the winning probability in dynamic tournaments depends on the order of advantages.</p>
<p>Franziska Weber</p> <p><i>"European integration assessed in the light of the 'rules vs. standards debate'"</i></p>	<p>The interplay of various legal systems in the European Union has long triggered a debate on the tension between uniformity and diversity of Member States' laws. This debate takes place among European legal scholars and is also paralleled by economic scholars, e.g. in the ambit of the 'theory of federalism'. This paper takes an innovative perspective on the discrepancy between 'centralized' and 'decentralized' law-making in the EU by assessing it with the help of the rules vs. standards debate. When should the EU legislator grant the national legislator leeway in the formulation of new laws and when should all be fixed ex ante at European level? The literature on the 'optimal shape of legal norms' shall be revisited in the light of law-making in the EU, centrally dealing with the question how much discretion shall be given to the national legislator; and under which circumstances.</p> <p>This paper enhances the established decisive factors for the choice of a rule or a standard in a national setting (complexity, volatility, judges' specialization and frequency of application) by two new crucial factors (switching costs and the benefit of uniformity in terms of information costs) in order to assess law-making policies at EU level.</p>

<p>Friedrich Heinemann</p> <p><i>"Economics - A science without conscience?"</i></p>	<p>While constitutions assign an utmost authority to the conscience as a behaviour guiding institution, economics widely ignores this concept as an explicit topic of research. This is a challenging finding given that economists claim to model and predict human behaviour in a comprehensive way. This study addresses the question to which extent economists already or potentially may contribute to a full understanding of the concept and functioning of conscience. It demonstrates that this is the case at least in three fields: the link between norms and behaviour, the modelling of the conscience as intra-personal interaction and the link between self-interest and the evolution of the conscience's normative basis.</p>
<p>Georg Clemens</p> <p><i>"Platform cooperation vs. platform competition - Production and investment strategies with mass customization"</i></p>	<p>This paper examines fixed-cost investment decisions in production platforms on duopolistic markets with mass customization. We show that, in contrast to the Hotelling case for differentiated products, the duopolists choose a socially optimal investment level. This outcome is compared to a cooperative investment in a joint production platform. As opposed to the case of cooperation in a Hotelling setting, firms always cooperate if mass customized products are provided. We furthermore include a welfare analysis demonstrating that cooperation increases consumer surplus. Moreover we show that cooperation does not increase the stability of a collusive agreement. Hence one can argue for an exemption from article 101 TFEU of platform cooperation for mass customization.</p>
<p>George Barker</p> <p><i>"An Economic model of collective redress, relevant to joinder proceedings, group litigation and class actions"</i></p>	<p>In this paper I use club theory to model the formation of collectives in litigation proceedings in a market like setting, or based on contract, with free exit and entry of class participants. Much concern and attention in the literature focuses on free rider problems or principal agent problems that may plague collective redress, to the neglect of positive analysis of the underlying process of collective formation for litigation to exploit economies of scale in production or consumption. The use of club theory to explore the formation of collectives pursuing legal redress provides a basis for making predictions that can be tested through empirical work. It also challenges possibly artificial legal distinctions drawn between joinder proceedings, representative actions, and collective actions, and enables one to assess the likely effects of different legal rules on procedure.</p>
<p>Aide Mazurkeviciute and Giovanni Ramello</p> <p><i>"Fines on European Cartels and the Optimal Sanction Theory"</i></p>	
<p>Giulio Pedrini</p> <p><i>"Law and economics of training: A taxonomy of the main legal and institutional tools addressing suboptimal investments in human capital development"</i></p>	<p>The growing role of investment in training incurred by firms in order to increase labour productivity, to boost competitiveness, and to strengthen their capacity to innovate, raises many issues in terms of optimal level of such investment. Not only does training differ from firm to firm and from worker to worker, provided the heterogeneity in skills levels, educational levels, income levels. But above all it is difficult to obtain this optimal level provided the extensive situations of potential inefficiency ascribed to the characteristics of training, especially related to externalities, to its nature specific investments, to the time lag between costs and benefits, to the characteristics of labour markets. Moreover the importance of workers' training goes beyond individual firms as training may facilitate structural changes and stimulate growth nationwide. The presence of such inefficiencies thus also implies relevant policy implication.</p>

	<p>Further to these premises the purpose of this study is to recognize the heterogeneity of the underlying inefficiencies to training in order to draw a systematic taxonomy of the main legal and institutional devices able to address them and optimize the amount of investment in training in a second-best perspective as they have been identified by theoretical literature and by actual law provisions.</p> <p>Paper</p>
<p>Giuseppe Di Vita</p> <p><i>"Factors determining the duration of illegal disputes: An empirical analysis with micro data"</i></p>	<p>This paper attempts to shed light on some factors determining the duration of disputes up to now not fully considered in literature. To this aim a unique database is used, accounting for eight hundred sentences pronounced by the Italian Regional Administrative Courts from 2000 to 2007. Our research yielded many findings. They confirm that normative complexity hampers a rapid solution and show that the indicator of social capital is also useful to understand the duration of disputes. The number of judges does not appear to be relevant to explain the time needed to obtain a sentence of the first rank. Finally, the different topics of disputes may contribute to explain the differences in average duration observed.</p>
<p>Henri Fraisse and Anne Muller</p> <p><i>"Household debt restructuring: Evidence from French bankrupt households"</i></p>	<p>Following the subprime crisis, the empirical literature on households' financial distress focuses on defaults and modifications of delinquent mortgage loans in the US. In this paper, we rely on a unique data set of French bankrupt households that includes all their debt obligations to analyse more broadly the household's debt restructuring problem. In France, this restructuring is supervised by a legal institution ("Commissions de Surendettement") aiming at solving coordination problems among lenders. We evaluate the activity of this institution with respect to the rate of successful negotiations and the rate of re-defaults. We identify the major determinants of a negotiation success, in particular the number of non-banking creditors, the dispersion of the debt among numerous creditors and the depth of the financial distress of the household. Counterfactuals on the redefault rates show that the "Commissions" offer sizeable reliefs to the more distressed households while rightly excluding low risk profiles from the procedure. However, for households not benefiting from total discharge or moratorium, there is evidence that the required repayment could be lowered.</p>
<p>Henrik Lando</p> <p><i>"A law and economics perspective on court intervention in contracts due to changed circumstances"</i></p>	<p>In an uncertain world, circumstances often change such that contracts become unexpectedly burdensome to one of the parties. To which extent should the court then be willing to modify or void the contract? The rationale for court intervention is straightforward: when the parties may either not have foreseen the future correctly (when e.g. a basic assumption held by one or both of the parties turns out not to hold) or when the parties were not able to write a sufficiently state-contingent contract, the court may seek to bring the contract closer to the optimal state-contingent contract. By contrast, it is less clear what constrains court intervention. It is clear that court intervention may lead to costly litigation but in the vast majority of cases the parties will settle their claims, and it is not clear that the litigation costs which will be incurred only rarely will not be worth the benefit which will be incurred more often. This paper addresses a cost of court intervention which arises even when the parties settle, namely the cost of state verification. The paper analyzes a Buyer-Seller contract in which the Seller's costs vary with the state of nature. The state of nature is assumed to be known in the first instance only by the Seller who in order to be compensated for unexpected circumstances must then document the state to the buyer (and possibly to the court). However, documenting what has occurred, what has caused costs to be higher than expected, the extent to which circumstances have affected costs, and how those circumstances have been outside the control of the seller, etc, involves costs on both sides. Thus, the article stresses the</p>

	<p>role of costly state verification as one significant factor in determining the optimal degree of court intervention in the case of changed circumstances.</p> <p>In the model, the Seller is risk averse while the Buyer is risk neutral, and the Seller invests to lower the possible impact of bad states of nature. Intervention balances risk allocation, incentives and state verification costs. One result is that when intervention occurs only when circumstances are very adverse, intervention may not only improve risk allocation but may also lower the seller's otherwise too high level of effort.</p> <p>It is discussed how the costs of intervention are amplified by the fact that the court can only formulate its policy in vague terms which is likely to lead parties to hold divergent expectations about court verdicts, which may cause litigation, interpreted here as the documentation of the state of nature to the court.</p> <p>The framework is illustrated by court cases.</p>
<p>Henry Hansmann and Mariana Pargendler</p> <p><i>"Voting restrictions in 19th century corporations: Investor protection or consumer protection?"</i></p>	<p>Business corporations in the nineteenth century often departed from the one-share-one-vote rule by limiting the voting rights of large shareholders. These restrictions typically took the form of either an absolute cap on the number of votes per shareholder or a regressive voting scale whereby the number of votes increased less than proportionately to stock ownership. Scholars have described these voting restrictions either as a reflection of political preferences for shareholder democracy or as a contractual approach to minority shareholder protection. These accounts, however, fail to explain the variation in the incidence of voting restrictions across different industries and firm ownership structures, as well as their eventual disappearance from corporate charters over time.</p> <p>In this paper, we advance an alternative economic interpretation for these early voting restrictions as efforts at consumer protection employed primarily by firms that were local service monopolies and collectively owned by their principal customers, none of whom wished the firm to come under the exclusive control of their competitors. To both explore and test this proposition we analyze data on shareholder voting rights in the nineteenth century in the U.S., England, Brazil and Continental Europe. We argue that the prevalence of consumer ownership among early business corporations helps shed light on peculiar aspects of 19th century corporate laws compared to modern practice. While legal and economic scholarship has incessantly focused on the timing and reasons for the separation between ownership and control, the separation between investment and consumption is another major but often overlooked turning point in the history of the business corporation.</p>
<p>Hila Nevo and Yariv Ilan</p> <p><i>"How relevant is the relevant market?"</i></p>	
<p>Jan Peter Sasse and Stephan Wittig</p> <p><i>"The Impact of Investment Arbitration: An Event Study Approach"</i></p>	<p>Bilateral Investment Treaties (BITs) and a number of multilateral treaties are used as an instrument to attract Foreign Direct Investment. If countries fail to abide to the regulations as stipulated in these treaties, investors and companies may initiate arbitration proceedings before an international tribunal. We use the event study methodology to examine the effects of investment treaty arbitrations on the share price of the involved companies. We find that neither the request for arbitration, the registration of the arbitration nor the dispatch of the award to the parties by the tribunal have a consistent</p>

	and statistically significant effect on shareholder wealth. Especially the latter finding conflicts with the allegedly high strength of international investment law regarding the enforcement of awards. Our research therefore calls for a deeper analysis and subsequent improvement of the enforcement process.
Jan Schmitz and Johannes Schwarze <i>"Does Reputation affect the Election of Non-Permanent Members to the United Nations Security Council? An Empirical Analysis"</i>	We aim to enrich the understanding whether and how states' reputation plays a role in international relations. We differentiate three approaches: Goldsmith and Posner (1999, 2005) question the existence of reputation for states, claiming that most of interactions between states can be explained by power relations. Downs and Jones (2002) argue for compartmentalized reputation that is sequential and case related, although spillover effects are possible. Guzman (2008) defends the existence of an overall reputation. In order to empirically test the theories, we consider the election of non-permanent members into the United Nations Security Council (UNSC) as an event where candidate states may try to improve their reputation. Using a country fixed effect panel OLS regression with cluster robust standard errors for the years from 1990-2009, we test for a change in behavior of candidate states previous to elections on the UNSC. For power we use GDP per capita and population size. For compartmentalized reputation we use mandatory and voluntary contributions to the UN Financing System, and contributions to UN Peacekeeping Missions. Both variables are directly linked to the UN system and thus the UNSC. For an overall reputation we use variables that do not represent power and are not related directly to the election: openness to trade, the quality of government, and memberships in international organizations. Concentrating our analysis on Western Europe and Latin America, we find support for Guzman's theory for an overall reputation of states.
Jan Trzaskowski <i>"Behavioural economics, neuroscience, and the Unfair Commercial Practices Directive"</i>	http://www.springerlink.com/content/d5x6rl073w1j379r/
Jef De Mot, Jonathan Klick and Michael Faure <i>"Appellate caseload and the switch to comparative negligence"</i>	The law and economics literature has provided an interest group model to explain the timing of the switch from contributory to comparative negligence in the United States. However, two important questions remain unanswered. First, why did some states that adopted comparative negligence legislatively implement a pure form and some others a modified form? Second, of all the states that didn't adopt comparative negligence legislatively, why did some states adopt this negligence rule judicially and some states did not? In this article, we argue that differences in appellate caseloads (in courts of last resort and intermediate appellate courts) can answer these questions.
Jing-Yuan Chiou <i>"In the shadow of giants"</i>	Intellectual giants provide broad shoulders for subsequent inventors. When they tumble, however, it also casts shadow on the prospect of future research. This paper incorporates this shadow effect into a two-stage innovation process and shows that patenting the first-stage result (the basic invention) may enhance the second stage performance. Only under weak shadow effect can it be optimal to enable the doctrine of patentable subject matter (the DPSM) and reject patent protection to the basic invention. In this case, the DPSM serves to preserve the pioneering inventor's incentive to continue research activities.

<p>José Guilherme Caiado</p> <p><i>"Can L&E help us understand international controversies over product's classification?"</i></p>	<p>There is an intensive ongoing debate on how products should be classified, whether as an agricultural or an industrial product. This definition is important because it will affect, on the one hand, States' sovereignty in areas such as tariffs, subsidies, and health standards, and on the other, the transaction costs that might boost the international trade. This article intends to discuss some of the implications of the current classification system on States' behavior. From the current literature, it can be implied that the limits between agriculture and industry can be rather unclear, leading to technical difficulties on the classification of certain products. However, as such technical questions can be dealt with by the World Customs Organization (WCO), the length of past and current classification controversies seems to suggest that complex interests might be behind it. One possible explanation is that classification is opportunistically used as a tool to deviate from the World Trade Organization (WTO) principles. Using methodological individualism, this article intends to discuss whether L&E theory it could explain the controversy. For that, we intend to develop on the costs that WTO rules impose on each classificatory category, as a means to understand the correlated incentives that domestic interest groups have to lobby for one category over the other. We argue that there is a strong correlation between the behavior of States and these costs. We then briefly raise some questions on how the current system deals with opportunistic behavior, and whether the existence of two dispute settlement mechanisms, one at the WCO and one at the WTO, was an adequate outcome of international negotiations. We expect the results to assist policy makers and private agents to take better informed decisions on issues of classifications and international disputes, and also to assist academics in analyzing further classification controversies with the analytical framework here developed.</p>
<p>Juan Jose Ganuza and Fernando Gomez</p> <p><i>"Optimal standards for European consumer law: Maximum harmonization, minimum harmonization, and co-existence of standards"</i></p>	<p>Harmonization of legal rules and standards is one of the policy choices that Governments commonly use to remove barriers to economic transactions across borders. In the European Union the expansion of the single market and the increase of cross-border trade by European firms and consumers is a major goal of EU policy. To this effect, the EU is currently in the process of re-elaborating consumer protection legislation, and advocating some degree of harmonization of the rules of Contract Law that would govern economic transactions -including, and probably most particularly, consumer transactions- across European borders. The theoretical foundations of harmonization processes that take place in a scenario of pre-existing diverse rules and standards is somewhat shaky. In this paper we try to cover this gap and present a simple model of optimal standard-setting to promote trade across national and legal borders, and point at the factors that determine the relationship of optimal harmonized standards with respect to existing ones. We show that, under certain conditions, the optimal harmonized standards for a market that extends over legal borders may be higher than the existing national standards. Moreover, the level of standards is not the only relevant choice, the mode of harmonization is also a crucial issue. We analyze how the outcomes of harmonization are affected by three main regimes: Full harmonization, minimum harmonization -with various sub-modes- and co-existence of harmonized and national standards, and show how a system of coexistence may be superior under certain conditions on the behavior of the firms subject to the legal standards.</p>
<p>Jürgen-Peter Kretschmer</p> <p><i>"How to deal with resale price maintenance: What can we learn from empirical results?"</i></p>	<p>The US Supreme Court's overruling of the pre-existing per se illegality of resale price maintenance and the recommendation of a rule of reason approach in the Leegin decision (2007), open the question whether other jurisdictions should follow this approach and what future assessments of resale price maintenance cases should look like. Policy decisions have to rely on the importance of various theories concerning welfare effects of resale price maintenance practises, which must be supported by empirical studies. Unfortunately, not much attention has been paid</p>

	to this topic by researchers. Nevertheless, the few existing empirical studies allow for a discussion of the existing assessment, suggesting and recommending other approaches, based on the decision-theoretic idea of optimal sequential investigation rules.
Killian J. McCarthy and Peter C. van Santen <i>"Modeling the money launderer: A microtheoretical foundation"</i>	The purpose of this paper is to introduce the money launderer as an independent actor, and as an agent of the criminal producer of crime. The money laundering market is a significant and destructive one, we suggest, and the money launderer is the weak-link in the chain. Understanding the factors which effect the money launders decision to launder are therefore crucial to tackling money laundering. We model the behaviour of a rational economic agent, and show that tax rates, inflation rates, wage rates and the amount of crime can be manipulated to reduce the levels of money laundering.
Klaus Heine and Michael Faure <i>"Insurance for financial crisis?"</i>	<p>With the financial crisis, the amount of subsidies provided by government has increased considerably. To some extent, the financial crisis could be considered as comparable to a natural catastrophe in the sense that a quick intervention by government is necessary. Therefore, a goal of this contribution is to address whether there is an integrative legal and economic framework to analyse this type of financial intervention by governments in crisis situations.</p> <p>We will more particularly argue that the economic approach towards compensation of victims in case of natural catastrophes can also provide an important contribution to the interventions of a government during the financial crisis. It is more particularly striking that in case of natural catastrophes to an important (and increasing) extent, still a large whole is played by insurance. We argue that also for risks emerging from the financial crisis, insurance may provide an attractive solution.</p>
Kristoffel Grechenig and Martin Kolmar <i>"The state's enforcement monopoly and the private protection of property"</i>	The modern state has monopolized the legitimate use of force. This concept is twofold. First, the state is empowered with enforcement rights; second, the individuals have (partly) waived their rights to protect private property. In a simple model of property rights with appropriation and protection activity, we show that the delegation of enforcement is beneficial for the property owner, even if there are no economies of scale from public protection. We emphasize the role of the state as a commitment device for a certain level of enforcement. However, commitment will only work if the state can regulate private protection. This results holds for all generic sequential structures of the law-enforcement game between the owner of property rights and a potential party that infringes with those rights. A ban of private enforcement measures can even be beneficial in situations where there would be no private enforcement at first place because the "shadow" of defense has a negative impact on the investments in property rights infringements. From a legal perspective, our approach emphasizes a regulation of victim behavior as opposed to the standard approach which focuses on the regulation of criminal behavior.
Laarni Escresa and Lucio Picci <i>"Institutional heterogeneity and domestic sanctions to cross-border acts: The case of foreign bribery"</i>	By treating the bribery of a foreign public official by a firm similar to that of a domestic public official, the 1997 OECD Anti-Bribery Convention appeared to have provided a solution to enforcement issues that had commonly plagued the observance of international law. To what extent does the extension of domestic sanctions to cross-border acts of the same nature achieve optimal deterrence? This paper argues that it may fail to do so when countries are institutionally and economically heterogeneous. We provide a simple theory capturing country heterogeneity, and resulting in a gravity model of cross border corruption for the number of cases between pairs of countries. We test the theory using data from

	<p>a novel dataset on cases of (alleged) corruption involving parties from different countries. The empirical analysis confirms the predictions of the theory, by showing that institutional and economic heterogeneity significantly affects the number of observed cases of corruption. In particular, this raises the issue of the optimal design of deterrence measure in an international context, when such cross-country differences are invariably present.</p>
<p>Laarni Escresa and Nuno Garoupa</p> <p><i>"Judicial politics in unstable democracies: The case of the Philippine Supreme Court, An Empirical Analysis 1986-2010"</i></p>	<p>In this paper we investigate empirically the determinants of judicial behavior at the Philippine Supreme Court in the period 1986-2010. Our results show an important alignment between individual Justices and the interests of the presidential appointers, although it varies across presidential terms. We discuss these empirical results in the context of the Philippine unstable democracy and the implications for the comparative literature on judicial behavior.</p>
<p>Lars Hornuf and Stefan Voigt</p> <p><i>"Preliminary references – Analyzing the determinants that made the ECJ the powerful court that it is"</i></p>	<p>The European Court of Justice (ECJ) is a very powerful court both in comparison to other international courts as well as last instance national courts. Observers almost unanimously agree that it is the preliminary references procedure that has made the ECJ the powerful court that it is today. In this paper, we analyze the determinants that lead national courts to use the procedure. We add to previous studies by constructing a comprehensive panel dataset (1982-2008), including more potentially relevant explanatory variables and by testing for the robustness of previous results. Beyond reconfirming the relevance of variables already found significant previously, we identify a number of additional determinants. Among these are the relevance of agriculture and of being a young member of the EU (negative effect). High corporate tax rates, familiarity with EU law and the number of years a country has been democratic are, on the other hand, all positively correlated with the number of preliminary references from a given country.</p>
<p>Libor Dušek and Fusako Tsuchimoto</p> <p><i>"Responses to more severe punishment in the courtroom: Evidences from Truth-In-Sentencing Laws"</i></p>	<p>We investigate the behavioral responses of judges and prosecutors to more severe punishments by analyzing the effects of Truth-in-Sentencing (TIS) laws in a large sample of criminal cases. The TIS laws raised the severity of punishment by requiring offenders to serve at least 85 percent of their imposed sentences in prison. Differences between the U.S. states in the timing of adoption and the types of crimes covered provide a source of identification. The key findings are: (1) The TIS laws reduced the probability that an arrested offender is eventually convicted by 9 percent through an increase in the probability that the case is dismissed, a reduction in the probability that the defendant pleads guilty, and a reduction in the probability that the defendant is convicted at trial. (2) The TIS laws reduced the imposed sentence that a defendant can expect upon arrest by 8 percent. (3) These effects were more pronounced for crimes that were not the primary target of the TIS law, i.e., non-violent crimes.</p>
<p>Libor Dušek</p> <p><i>"Timing of punishment and crime: Evidence from a criminal procedure reform"</i></p>	<p>Punishment should be more effective in deterring crime if it is imposed sooner rather than later because the cost of the punishment imposed later is discounted more heavily. We find some empirical evidence supporting this proposition by investigating the impacts of a criminal procedure reform in the Czech Republic. The reform allowed certain types of less serious crimes to be prosecuted via a simplified (fast-track) procedure, which shortened the length of the criminal trials for the eligible crimes by almost two thirds. There was substantial variation between police districts in the percentage of cases actually prosecuted via the fast-track procedure, which provides the basis for the identification strategy. The results indicate that higher share of theft, vandalism, and other property crime cases prosecuted via the fast-track</p>

	<p>procedure leads to a reduction in the level of these crimes.</p>
<p>Stefan Voigt and Lorenz Blume</p> <p><i>"The economic effects of Constitutional budget institutions"</i></p>	<p>The paper studies the role of the EU's Partnership and Cooperation Agreements and their economic efficiency in the reform process of the CIS countries which took place after the demise of the USSR. PCAs were regarded as the first formal agreements between the EU and CIS countries, and have also been viewed as one of the key elements which helped to initiate the political cooperation between the CIS and the EU. Another impact of them was that they facilitated obtaining legal and economic aid from the EU.</p> <p>The methodological framework applied is taken from new institutional economics, together with the economic analysis of law. The comparative dimension of the analysis is brought by comparing the effects of European Agreements (EAs) and PCAs in the development of several post-Soviet bloc states (Ukraine, Moldova, Romania and Bulgaria).</p> <p>The paper argues that PCAs cannot be considered as fully economically efficient agreements in the sense that they embodied not only components of the promotion of economic cooperation and a legal harmonization but that they also include a component of political factors (towards which PCAs have actually had an adverse effect). In this way, PCAs have had a mixed effect on the legal and economic development of the CIS countries with two positive and one negative components which were discovered at this stage of the analysis. Legal and economic development indicators show positive growth while indicators of rule of law and corporate governance did not grow significantly.</p>
<p>Lotte Ovaere</p> <p><i>"The choice of environmental regulatory enforcement by lobby groups"</i></p>	<p>Across countries and regions, we observe wide variations in the enforcement strategy that is used to reach compliance with environmental regulations. In this paper we study whether the differences in enforcement policies can be justified from an efficiency perspective, and if not, whether they favor the interests of certain lobby groups. We develop a theoretical model to derive the preferred enforcement policy, which is characterized from a global efficiency point of view, and also from the point of view of different types of interest groups. We find that, despite the regulatory costs, green interest groups generally favor more stringent enforcement strategies with high fines and high inspection frequencies, while brown interest groups prefer laxer enforcement strategies. We illustrate our findings in two different ways. First we show numerically the divergence in preferred enforcement policies among different lobby groups and the efficiency costs of these deviations. Second, we discuss empirical evidence on the differences in enforcement policies among EU member states for environmental regulation. Even though there are large variations between the European countries, we cannot conclude that these divergences are exclusively due to the impact of lobby groups.</p>
<p>Paul Fenn, Malcolm Stewart, and Neil Rickman</p> <p><i>"Third party funding of commercial disputes: A framework for comparative analysis"</i></p>	<p>This paper presents the first model of the market for Third Party Litigation Funding of larger commercial claims. By modelling the demand and supply of such funds, we provide a framework for considering their future in commercial litigation across Europe and elsewhere. We find that the potential for the TPLF market is unclear and that it is affected by a reasonably complex number of variables; not least the availability of alternative sources of funding, the overall state of asset markets, and the regulatory stance of governments and courts towards TPLF. We suggest that our partial equilibrium framework is also a useful first step towards a general equilibrium analysis of litigation funding, and access to justice (initially in large commercial claims). A fuller version of the paper presents our conceptual model and initial data</p>

	we have collected on the use of TPLF.
Marcello Basili, Filippo Belloc, Simona Benedettini and Antonio Nicita <i>"Do penalty points deter traffic offenses? Theory and evidence"</i>	<p>We investigate the deterrent effect of penalty points on traffic offenses. We first show how this effect crucially depends on the particular mechanism design adopted, regarding points' accrual and drivers' 're-admission', after disqualification. We then perform an empirical analysis over the impact of the Italian penalty points system. We investigate a unique dataset of about 50,000 Italian resident drivers, whose behavior has been observed over six years after the introduction of penalty points. The Italian penalty points system exerted a positive impact on deterrence. However redemptive mechanisms seem having weakened the deterrent impact on systematic violators. We suggest some policy options to improve the deterrent effect of penalty points.</p>
Maria Isabel Sáez Lacave and Dámaso Riaño <i>"Voting and litigating: Corporate governance and the shareholder meeting"</i>	<p>This paper explores the shareholder meeting's corporate governance role. We argue that the functions performed by the shareholder meeting are highly dependent on companies' ownership structure and we focus on the case of jurisdictions, like those of continental Europe, with companies with concentrated ownership. In that context, the shareholder meeting is the time and place where shareholders' property rights are protected by controlling shareholders' duties of loyalty and eventually their judicial enforcement. Consequently, attention should be drawn to the development of efficient tools to accomplish this objective. In this respect, we attempt to contribute to the debate that is currently taking place about the shareholder meeting's governance role by drawing some basic regulatory guidelines that may inspire the legislative proposals that are now being drafted in Europe. We analyse voting and litigating, that is, ex ante and ex post strategies to empower shareholders. In relation to the latter we emphasize the need to incentivise value-increasing litigation without favouring the development of opportunistic suits. We also examine and highlight the importance of disclosure and information rights as complements to voting and litigating strategies. Our conclusion is that the current state of affairs is in need of improvement and that the situation can be best addressed by a combination of both ex ante and ex post mechanisms.</p>
Mariusz Jerzy Golecki <i>"The European law from grundnorm towards the Cathedral: Economic theory of remedies and the state liability for judicial wrongs in the EU Law"</i>	<p>The main purpose of this paper is to address the question of whether and how the concept of judicial control based on transactional framework developed in law and economics could effectively lead to the empowerment of the UE quasi constitutional court- the Court of Justice of the European Union (CJEU). In order to demonstrate that it is logically possible and institutionally feasible to build a system based on privatization of legal remedies, the paper contains an economic analysis of the recent development of the EU law which at least partially takes this direction. The standardization of adjudication in the EU law is preserved by three strategies. The public strategy is based on art. 258 TFEU (Treaty on the Functioning of the European Union). The deliberative strategy has been regulated under art. 267 of the Treaty on the Functioning of the European Union (TFEU). The rulings of the Court of Justice of the European Union (CJEU) in Köbler and Traghetti cases have created the framework for the application of the improved deliberative strategy that might be called a strategy of privatization. The question remains which one of these strategies is the most efficient one.</p>
Marta Espasa and Alejandro Esteller-Moré	<p>Efficiency in the administration of justice is found to increase over time, while the variation in the efficiency of the courts tended to remain low and fall over time. This would appear to be good news, at least for the case studied here: the civil courts of first instance in Spain between 2005 and 2009. Apart from the simple passing of time, the percentage of</p>

<p><i>"Is inefficiency under control in the justice administration?"</i></p>	<p>temporary judges in the system also determines some of the differences in efficiency between courts over time. Thus, we find that the greater the percentage of temporary judges, the lower is the efficiency of the courts. Overall, the average relative efficiency level for the period 2005 to 2009 was 97.46%, suggesting the matter is under control.</p>
<p>Massimo D'Antoni and Maria Alessandra Rossi</p> <p><i>"Appropriability and incentives with complementary innovations"</i></p>	<p>This article analyzes the effects on ex ante incentives to invest in the development of complementary innovations of two alternative appropriability strategies: a strategy of exclusion of third parties from access (through active enforcement of IPRs or technical means) vis-a-vis an openness strategy, i.e. an ex-ante commitment not to exclude. Assuming that the complementary innovations constitute a common input and that agents make complementary investments in its private exploitation, we find that, when complementarities are sufficiently strong, a commitment to openness may provide greater incentives than an exclusion strategy. The theoretical framework is used to provide an interpretation of Open Source Software licenses and the Open Science system.</p>
<p>Antonio Nicita and Matteo Rizzolli</p> <p><i>"In Dubio Pro Reo Behavioural explanations of pro-defendant bias in procedures"</i></p>	<p>The standard model of optimal deterrence predicts that the probability of wrongful conviction of innocents is at the margin as detrimental to deterrence as the wrongful acquittal of guilty individuals. We extend the model in several directions: using expected utility as well as non expected utility to consider the role of risk-aversion, non-linear probability weighting and loss-aversion. We also consider how relevant emotions such as guilt, shame and indignation play out. Several of these factors support the intuition that wrongful convictions of innocents do have a larger detrimental impact on deterrence and thus the policy implications is reconciled with the widely shared maxim that In Dubio Pro Reo. We then draw some theoretical implications such as a novel justification for the different standard of proof in criminal vs civil law as well as other policy implications.</p> <p>Paper</p>
<p>Matthias Dauner and Jerg Gutmann</p> <p><i>"The determinants of death penalty abolition"</i></p>	<p>The abolition of the death penalty in many countries since the end of the Second World War has been an undeniable and astonishing development. But there are still 91 retentionist countries that reserve a right to execute criminals – although some of them have not exercised this right in recent years. Using a cross-country dataset we estimate a Markov transition model to analyze the determinants which led some countries to adopt different constraints on their capacity to sanction individuals, while others preserve these possibilities or even make extensive use of it. Furthermore, we inquire into the systematic differences between those countries which abolished the death penalty in their constitution, compared to those which incurred a weaker form of self-commitment. Closely connected is the question, which country characteristics are associated with reinstatements of the death penalty. Finally, a key issue of our analysis is whether in the case of death penalty abolition we can find substantial policy diffusion across countries, indicating that a country's choice to abolish the death penalty depends on the previous choice of its neighbors. We find that political factors and spatial diffusion are robust determinants of death penalty abolition. Countries with low levels of democracy, low income and a high share of Muslims are more likely to reinstate the death penalty. Membership in the Council of Europe can effectively prevent this.</p>
<p>Matthias Siems</p>	<p>When economists try to measure legal rules and institutions their approach is often a "just do it" one, implicitly assuming that the complexity of the law does not prevent it from being turned into numbers. Many legal academics, by contrast,</p>

<p><i>"Measuring the immeasurable: How to turn law into numbers"</i></p>	<p>have the attitude of "just don't do it", for instance, bluntly saying that "law is about things that are not quantifiable". The purpose of this paper is to explain and discuss the different ways how law can be measured. More briefly it will also be addressed how, in a second step, these numbers can be used to show causal relationships. This second step can be very contentious and complicated; yet, the core interest of this paper is on the preliminary question on how quantitative data on law can be found or constructed. This paper does not attempt a comprehensive review of the literature on quantitative research in law but it will provide representative examples, mainly focussing on comparative legal studies.</p> <p>In detail, the paper discusses six procedures of measuring law. It starts with the presumably easiest path, namely a simple counting of, say, lawyers, cases or laws. Second, it explains that some studies have tried to measure whether legal rules comply with a particular benchmark. Third, more neutral is a functional approach, showing quantitatively how well legal rules protect certain interest. Fourth, some studies try to quantify the practice of private relationships. Fifth, there are attempts to measure the efficiency of political and legal institutions. Sixth, other studies are based on surveys which show the perceptions of firm managers or the common public about the quality of law or its enforcement. None of these six approaches is without problems, and often a combination may be useful. For instance, a researcher interested in the effect of legal rules across countries may start with a functional measurement of these rules, but then she may also examine quantitatively whether and how private parties deviate from these rules, and she may count the court decisions on these issues. In addition, she may reflect on the quality of enforcement of these rules, using both performance and perception data. With appropriate econometric tools it may then be found that a certain set of rules does indeed have a favourable effect, and that, possibly, it can serve as a benchmark.</p>
<p>Michael Faure and Jing Liu</p> <p><i>"New models for the compensation of natural resources damage"</i></p>	<p>Regulation and liability rules are satisfactory in neither the prevention nor the compensation of natural resources damage. Compensation instruments, such as liability insurance, direct insurance, risk sharing agreement, environmental funds, guarantees provided by liable parties themselves and third parties can be used and are used in practice to achieve better prevention and compensation. This article identifies three models for efficient prevention and compensation, with the combination of regulation, liability rules and compensation instruments. Besides, this article also comes to a few indicators to choose compensation instruments in different situations.</p>
<p>Michael Hewer</p> <p><i>"Information and priority rules"</i></p>	<p>Bankruptcy and corporate laws in several countries allow or require courts to subordinate loans by shareholders to corporations. Examples include the equitable subordination and recharacterization doctrines in the US and the German <i>Eigenkapitalersatzrecht</i>. Scholars have not devoted much attention to these rules so far despite their rather unclear economic implications. We propose a model that focuses on the role of information and ex-ante investment incentives. We find that informational asymmetries can justify the requalification: The more priority is given to the uninformed creditor, the better are the results from a welfare perspective.</p>
<p>Laszlo Goerke and Michael Neugart</p> <p><i>"Distribution and welfare effects of dismissal dispute resolution systems"</i></p>	<p>Previous studies of dismissal protection have largely been based on the analysis of the rules on the book. However, actual outcomes often rely on the involvement of courts. Our model takes this feature into account and explains how relative lobbying power of unions and employer associations, costs associated with claiming files, and the effectiveness of lobbying shape labor court activity and affect payoffs. We find that (a) as employer associations become stronger, labor court activity increases, and firms' costs and workers' payoffs decrease, (b) higher costs of a court procedure tend</p>

	<p>to reduce the extent of labor court disputes and may, therefore, actually reduce the welfare loss from judicial involvement, (c) more elaborate court systems with specialized chambers for dismissal disputes, with possibilities of appeal, or with involvement of lay judges make a reliance on courts more attractive for the stronger party.</p>
<p>Minor Myers</p> <p><i>"The fundamental tension between director elections and shareholder power"</i></p>	<p>Directors manage corporations in the U.S., and the role of shareholders in corporate governance is sharply limited. Shareholders may not initiate any corporate action, cannot generally challenge the decisions of directors in court, and are called upon to ratify directors' decisions only in very limited circumstances. In addition, shareholder voting to reelect or replace directors historically has been moribund. This pervasive shareholder powerlessness has been a target of reformers for generations, and a provocative set of recent reform proposals aspires to give shareholders more influence over corporate affairs in two ways. The first reform seeks to vitalize director elections by making it easier for shareholders to nominate candidates for the board. The second reform would give shareholders more power to initiate corporate decisions and otherwise participate in the management of the corporation. The assumption is that these are complementary reforms, but in fact they are in deep and inescapable tension with each other. When shareholders participate in corporate decision-making, it is more difficult for directors to be held responsible than the baseline scenario of the board acting alone.</p> <p>This Article argues that the consequences of shareholder voting cannot be analyzed without taking account of how voting interacts with other levers of governance. Specifically, the exercise of shareholder managerial power can diminish shareholders' propensity to hold directors accountable for bad corporate outcomes through director elections. Under all conditions, elections are a less effective incentive for directors at a firm when shareholders have managerial power than when they have none. Further, under some conditions shareholders are better off in firms that have only elections than they are in firms that have elections and also afford shareholders managerial power.</p> <p>By highlighting an overlooked tradeoff in the design of corporate law reforms, this Article offers new theoretical grounds for explaining the landscape of existing U.S. doctrine: why corporate law vests power in a board of directors and deprives shareholders of managerial control in all but a very limited set of circumstances. It also provides a normative basis for skepticism about reforms that would require firms to give shareholders more managerial authority. For some firms, giving shareholders the power to intervene in corporate decision-making could have the counter-intuitive effect of making directors less responsive to shareholders' interests.</p>
<p>Mireia Artigot-Golobardes</p> <p><i>"Avoiding waste in European product regulation: The nexus of ex ante safety and ex post liability"</i></p>	<p>Product regulation, a pillar of European law, falls within two legal regimes: product safety, part of the consumer protection regime, and product liability, part of the internal market regime. These two legal regimes share the same goal: minimizing product risks and hence product-related accidents. Despite working in the same direction and being applied to the same products, these two regimes are essentially different and respond to distinct concepts of how to minimize product risks and create incentives to invest in care while providing compensation to injured victims. The theoretical relationship between ex ante product safety and ex post product liability has been broadly discussed in the literature but there has not yet been an analysis of the practical interaction between the two within an integrated consumer protection regime like Europe's. This paper aims to fill the gap. It analyzes the interaction between product safety regulation and product liability in Europe, discussing the role, scope and lack of coordination mechanisms between the two that might result in waste in</p>

	<p>terms of over-deterrence and over investment in care and argues that product regulation overall should be reevaluated in order to refine the role of each regime. It suggests that parameters such as product risk information should be taken into account when determining whether ex ante product safety regulation and ex post product liability should be jointly employed, and in structuring the interactions of these laws through a compliance defense.</p>
<p>Mireia Artigot-Golobardes, Fernando Gomez Pomar, Juanjo Ganuza and Jose Penalva</p> <p><i>"Product liability between contract and tort: Taking the contractual view seriously"</i></p>	<p>This article explores the importance, effects and roles that the voluntary nature of the interaction underlying most product liability cases has. The goal of this paper is not discharging the tort component of product liability and instead using contracts in creating incentives potentially created by product liability under tort. The main claim of this article is arguing in favor of taking the contractual aspect of the interaction present in most product liability cases seriously, especially in contexts where redefining the role of contract in the product liability interaction could improve the welfare of the parties involved in the transaction. This is especially true in situations in which there is a continuous interaction between product manufacturers and consumers and reputation is relevant and in cases where goods are specially manufactured for the purchaser. In these cases, there is room to revisit the role of contract and product liability in order to enhance the welfare of the parties involved and hence maximize the surplus generated by the transaction.</p>
<p>Niclas Berggren and Christian Bjørnskov</p> <p><i>"Does religion promote property rights and the rule of law?"</i></p>	<p>We relate three aspects of religion – religious membership shares, the share for which religion is important in daily life and religious diversity – to two measures of property rights protection and the rule of law (the Heritage and Kaufman indices). This is a broader take on the role of religion for institutional quality than in the existing literature, which has focused on religious membership only. We find, in a cross-country regression analysis comprising 111 countries, that the importance of religion in daily life is negatively related to our institutional outcome variables while religious membership is not important. Hence, it seems as if people with strong religious beliefs affect the political system and its design of institutions, whereas membership shares incorporate a lot of nominally religious people who are not active in affecting institutional choice, irrespective of religion. Furthermore, the effects differ depending on the political system, such that the negative effect increases with the degree of democracy (measured as political competition) and is insignificant in autocracies. This suggests that the religiously devout are especially successful at influencing institutional choice in strong democracies.</p>
<p>Niclas Berggren, Sven-Olov Daunfeldt and Jörgen Hellström</p> <p><i>"Social trust and Central Bank independence"</i></p>	<p>Central banks have been made more independent in many countries. A common rationale has been the existence of a credibility (or lack-of-trust) problem for monetary policy. This indicates a possible link between social trust, as measured by the share of people who think that most people can be trusted, and central-bank independence. On the one hand, social trust could facilitate consensus and make central-bank reforms in the presence of a credibility problem more probable, suggesting a positive relationship. On the other hand, social trust could mitigate the credibility problem itself, in which case the relationship would be negative. Our empirical findings, based on data from 149 countries, indicate that higher trust is associated with a less independent central bank in emerging and developing countries. One possible interpretation is that high-trusting countries can credibly pursue a low-inflation goal without making the central bank very independent. In contrast, trust does not seem related to the central-bank independence of developed countries.</p>

<p>Niels Petersen</p> <p><i>"Antitrust law and the promotion of democracy and economic growth"</i></p>	<p>There is a considerable debate in the legal literature about the purpose of antitrust institutions. Some argue that antitrust law merely serves the purpose of economic growth, while others have a broader perspective on the function of antitrust, maintaining that the prevention of economic concentration is an important means to promote democratization and democratic stability. This contribution seeks to test the empirical assumptions of this normative debate. Using panel data of 154 states from 1960 to 2007, it analyzes whether antitrust law actually has a positive effect on democracy and economic growth. The paper finds that antitrust law has a strongly positive effect on the level of GDP per capita and economic growth. However, there is no significant positive effect on the level of democracy. It is suggested that these results might be due to the current structure of existing antitrust laws, which are designed to promote economic efficiency rather than to prevent economic concentration.</p>
<p>Nora El-Bialy</p> <p><i>"Measuring judicial performance in Egypt"</i></p>	<p>Empirical studies on court delay and judicial performance mostly use the total number of judicial staff members and total caseload per court as explanatory variables or inputs to explain court output. Available results however are to a great extent mixed and hence inconclusive, calling for more research in this field. This paper contributes to the existing literature on court performance by providing the first empirical study on court performance in Egypt, mainly focusing on First Instance Courts (FICs) and their corresponding Family Courts. Our preliminary results show that on the one hand the total number of judges, as well as caseload in general has a significant positive impact on court performance. On the other hand, we provide a deeper analysis compared to the previous studies by differentiating between two types of judges (superior versus beginners) and three types of filed cases (civil, criminal and family cases) and using a stochastic frontier analysis (SFA) to identify the determinants of court inefficiency. We find that only superior level judges significantly increase the productivity of FICs, while young, newcomer judges do not. In addition, the 2007 Egyptian judicial reform and larger amounts of criminal case load tend to reduce court inefficiency, while more civil and family caseloads and the distance of a court from the capital city Cairo do not influence court inefficiency.</p>
<p>Oren Gazal-Ayal and Avishalom Tor</p> <p><i>"The innocence effect in plea bargaining"</i></p>	<p>Nearly all felony convictions—about 95%—follow guilty pleas, suggesting plea offers are very attractive compared to trials. Many scholars, in fact, argue plea bargains are too attractive and should be curtailed because they facilitate the wrongful conviction of innocents. Others contend plea offers only benefit innocent defendants, providing an alternative to the risk of a much harsher sentence at trial they may wish to avoid. Both detractors and supporters thus believe plea bargains often lead innocents to plead guilty. The two camps in the debate, moreover, also share the view that defendants' culpability matters little for the rate of plea bargaining, since prosecutors adjust plea offers to attract defendants in strong and weak cases alike.</p> <p>This article provides evidence, however, for the hitherto neglected "innocence effect." We show innocents are significantly less likely to accept plea offers than their guilty counterparts, even where these offers appear objectively attractive in light of the expected sanction at trial. The innocence effect, in turn, reveals not only that the first commonly held assumption—of false pleading—is overstated, but also that the second assumption—of culpability irrelevance—is plainly wrong. After substantiating the innocence effect, we explore its psychological causes which then provide the foundation for our positive and normative analyses of plea bargaining. These analyses find that both plea detractors and its supporters must reevaluate, if not reverse, their long-held positions to account for the innocence effect and its causes. We conclude by offering two proposals for minimizing false convictions, better protecting the innocent, and improving the</p>

	plea bargaining process altogether.
Oren Gazal-Ayal and Ronen Perry <i>"Small claims settlement conferences"</i>	
Per-Olof Bjuggren and Johan Eklund <i>"The cost of insecure property rights: R2 revisited"</i>	In the conventional CAPM model only a single risk factor is considered. However, using a world market portfolio to estimate systematic risk in national portfolios little of the required rate of return is explained in developing as compared to developed countries. Adding a factor representing institutional risk the predictive power increases substantially. By stressing importance of property and investor rights in this fashion, we add to the research on international differences in R2 initiated by Morck et al. (2000). Our findings are consistent with the hypothesis that stock price synchronicity depends on the institutional quality.
Peter Cserne <i>"Consequence-based arguments in legal reasoning: A jurisprudential preface to law and economics"</i>	One of the persistent problems surrounding the discipline of law and economics is the role of economic arguments in legal reasoning. The problem has been extensively discussed in the literature but has not been ultimately solved. The present paper is a contribution to this ongoing discussion. The argument goes as follows. First, I will argue that insights from law and economics, to the extent that they claim to be directly relevant for legal reasoning, should carry a jurisprudential preface that states that this very relevance is limited and conditional. Secondly, I will introduce the concept of consequence-based reasoning and show that the typical normative claims of law and economics based on economic efficiency can be interpreted as consequence-based arguments of a special kind. Finally, in the analytical core of the paper, the conceivability, feasibility and desirability of the judicial appreciation of general social consequences of legal decisions will be considered. Referring to the philosophical, jurisprudential and institutional dimensions of the issue I will argue that in a modern constitutional democracy the scope of consequence-based judicial reasoning is limited mainly by the expertise of courts. A more general implication of this analysis is that the impact of law and economics scholarship on law can only be understood through a close look at legal reasoning in general and consequence-based arguments in particular.
Peter-Jan Engelen and Marc van Essen <i>"Vulnerability to the financial crisis: The roles of firm- and country-level governance mechanisms in Europe"</i>	We examine the combined effects of firm- and country-level governance mechanisms on firm performance during the recent financial crisis for a large sample of 1157 firms from 21 European countries. We analyze whether more developed legal institutions at the country level and better corporate governance at the firm level leads to improved firm performance during crisis periods, thus testing the assumption that good corporate governance matters most during times of distress. Moreover, we examine the question of whether firm-level corporate governance mechanisms and country-level institutions interact with each other.
Piero Pasotti and Sean Fitzpatrick <i>"Controlling corruption in judiciaries: A contractual solution"</i>	This paper investigates the determinants of liquidity crises based on the dynamics of banking and finance under uncertainty. The explanatory power of this framework is tested against the events of the recent financial crisis. Despite the limited availability of data that can proxy for uncertainty, this approach seems to explain better than others how a relatively small shock, as the default of subprime mortgages, could trigger a systemic crisis of enormous proportions. The analysis confirms Minsky's hypothesis of endogenous financial instability derived from Keynes's theory of liquidity

	<p>and expectations. Conventional expectations allow overcoming uncertainty via liquidity of secondary markets and of banking liabilities. However, the failure of existing conventions precipitates the system into uncertainty-driven (il)liquidity spirals, which are the more dangerous the more private money financial intermediaries have managed to create by leveraging their balance sheets.</p> <p>This approach has the following policy implications. On the one hand, financial crises should be policed by tailoring lending of last resort by central banks to the creation of private money by financial intermediaries. In addition, banking should be defined and regulated according to this monetary function and subject to counter-cyclical capital/asset restrictions. On the other hand, corporate governance of banks should insulate managers and controlling shareholders from the short-termism of stock markets, which is a major amplifier of liquidity crises through balance sheet choices. Particularly, extraction of private benefits of control should be allowed in exchange for the postponement of performance-based remuneration.</p>
<p>Régis Blazy and Nirjhar Nigam</p> <p><i>"Building legal indexes to explain recovery rates: An analysis of the French and UK bankruptcy codes"</i></p>	<p>The main aim of this paper is to find the legal characteristics that impact on the recovery rates. Previous studies (LLSV, Doing Business Report, World Bank) have usefully used a set of legal indexes to rank the bankruptcy law prevalent within the country. But they fail to identify the characteristics of bankruptcy procedures that create more recoveries. We give here elements of answer by taking into consideration two countries that are good representatives of the two main legal systems prevailing in Europe: France (Civil Law) and United Kingdom (Common Law). To enable this, we built original legal indexes comprising of 158 binary questions that highlight ten major dimensions of corporate bankruptcy procedures: (1) accessibility, (2) exclusivity, (3) bankruptcy costs, (4) production of information, (5) protection of the debtor's assets, (6) protection of claims, (7) coordination of creditors, (8) decision power, (9) sanction of faulty management, and (10) inclination towards liquidation / reorganization. We then propose a mapping of procedures that shows a clear specialization between them. The French procedures ("redressement judiciaire" and "liquidation judiciaire") are more protective of the debtor's assets and favor more the coordination of secured claims, public claims, and unsecured claims. In UK, we find strong opposition between the procedures oriented to liquidation and the other procedures. We then use an original database of 833 French and UK bankruptcy files to measure the recovery rates that are generated by each procedure. We find strong differences between them. We then turn to OLS regressions and use our legal indexes to isolate the characteristics of bankruptcy law that significantly impact on the total recovery rate. By controlling for the value of assets, the structure of claims, the origins of default, and the firm characteristics, we test for several hypotheses. We first isolate the legal features of bankruptcy procedures that are associated to higher total recovery rates: namely, accessibility of the procedure, protection of the debtor's assets, protection and coordination of claims, orientation towards reorganization, and bankruptcy costs. From that perspective, these costs are not sunk cost only, but can be viewed as the counterpart of a service provided by the practitioners that eventually serve the creditors' recoveries. On the contrary, we find that the production of information under bankruptcy has a negative impact on total recoveries, probably due to the breach in confidentiality. Last, some dimensions of corporate bankruptcy law are not significantly related to total recovery rates (inclination towards liquidation, severity towards faulty management).</p>

<p>Régis Blazy, Bertrand Chopard, Eric Langlais and Ydriss Ziane</p> <p><i>"Personal bankruptcy law, fresh starts, and judicial practice"</i></p>	<p>We explore the ways French judges respond to the possibility of discharging personal debts in exchange for liquidation of debtors' assets. We present empirical results on the determinants of judicial selection between debtors whose debts are wiped out and those who have to reimburse them. We find that French judges tend to disqualify debtors with multiple creditors from debt discharge, and are sensitive to regional labor market conditions. These empirical results help us understand better how French personal bankruptcy laws perform compared to other national systems. Finally, our results serve to fill the gap between bankruptcy rules and judicial practice.</p>
<p>Régis Blazy, Jocely Martel and Nirjhar Nigam</p> <p><i>"The choice between informal and formal restructuring: The case of French banks facing distressed SMEs"</i></p>	
<p>Reiner Braun, Horst Eidenmüller, Andreas Engert and Lars Hornuf</p> <p><i>"Does charter competition foster entrepreneurship? A difference-in-difference approach to European company law reforms"</i></p>	<p>We study how company law reforms, particularly the reduction or abolition of minimum capital requirements, in various European jurisdictions affect the decision of entrepreneurs to incorporate by means of a private limited liability company (LLC). Since the landmark rulings of the European Court of Justice (ECJ) in the years 1999, 2002 and 2003, entrepreneurs have been able to choose the country of incorporation independently of their real seat. As a result, the proliferation of the UK private company limited by shares has posed a competitive threat to many European legislators. We analyze whether the reforms adopted in Spain, France, Hungary, Germany and Poland have promoted the popularity of domestic legal forms and encouraged entrepreneurship more generally. Using a difference-in-difference approach, we record a strong impact in both respects, especially if the minimum capital requirement was reduced or abolished.</p>
<p>Robert Cooter and Aaron Edlin</p> <p><i>"Law and growth economics: A framework for research"</i></p>	<p>Slides</p>
<p>Robert Cooter and Hans Bernd Schäfer</p> <p><i>"How the many can overcome the few? Conditions of reforms in developing countries"</i></p>	
<p>Robert Cooter and Jody Kraus</p> <p><i>"The measure of law and economics"</i></p>	<p>Slides Part 1, Slides Part 2</p>
<p>Roland Kirstein and Sidi Koné</p> <p><i>"Corporate raiders, incumbent blockholders, and voting caps: A"</i></p>	<p>Using the absolute Banzhaf power-index (AB), we determine the ex-ante power of a corporate raider who invests in a target firm that makes decisions with absolute majority. We distinguish four different scenarios (with/without an incumbent blockholder, with/without a voting cap). While some research exists on the impact of blockholding on other</p>

<p><i>power-index analysis of the old VW law</i></p>	<p>shareholders' power, there is yet no systematic analysis of voting caps. We derive two main results:</p> <p>First, neither the existence of an incumbent blockholder, nor a voting cap alone can effectively keep the raider from gaining full control (but both make it more expensive for the raider). Implemented simultaneously, however, they can create an effective obstacle. This first result comments on a recent ECJ judgment regarding the German VW law.</p> <p>Our second main result identifies an externality of buying additional shares when both the voting cap and the incumbent blockholder exist: If a raider increases his stakes above the voting cap threshold, this dramatically increases (rather than decreases) the power of the remaining dispersed shareholders.</p>
<p>Kai Hüschelrath and Sebastian Peyer</p> <p><i>"Public and private enforcement of competition law: A differentiated perspective"</i></p>	<p>We investigate the relationship between public and private enforcers introducing a more differentiated approach. In contrast to the existing literature, we develop a framework which takes into account the cost of detection and prosecution and, thus, the usefulness of each enforcement mode may change with a variation of the type of the anticompetitive product. We define a set of parameters that determine the cost of the public and the private mode to enforce the antitrust laws like, for example, the possession of information. We depart from the general assumption that private parties always have an initial information advantage about the identity or location of liable parties. Other factors which determine the welfare optimal enforcement type for a given infringement are the quality and the capacity of antitrust authority and courts, legal certainty and available remedies. The paper shows which infringement are better to be taken on by a public agency and in which situations the private enforcer is better suited to pursue the violation.</p>
<p>Sencer Ecer</p> <p><i>"Optimal merger policy with policy-variant non-price strategies and deterred mergers"</i></p>	<p>I provide a model where firms' non-price strategies such as product differentiation are mergerpolicy-variant and due to the strategic connection between product differentiation and pricing, such policy-variance may lead to higher prices in equilibrium than intended by a stricter merger policy. Then, I characterize the optimal merger policy, which determines both the optimal probability of approval of a merger and the optimal product differentiation level. As an extension, when optimal merger policy takes into account the welfare effects of merger deterrence, the same framework yields a different optimal merger policy. Finally, I discuss how this model can be used to arrive at more accurate merger simulations by taking into account the post-merger and post-merger-blockage strategic product differentiation responses and how it can be generalized to other price or non-price strategies such as predatory pricing and R&D.</p>
<p>Seo-Young Cho, Axel Dreher and Eric Neumayer</p> <p><i>"The spread of anti-trafficking policies - Evidence from a new index"</i></p>	<p>We analyze the spread of policies dealing with international trafficking in human beings. Arguing that countries are unlikely to make independent choices, we identify pressure, externalities and learning or emulation as plausible diffusion mechanisms for spatial dependence in anti-trafficking policies. We develop a new index measuring governments' overall anti-trafficking policies for 177 countries over the 2000-2009 period. We also assess a country's level of compliance in the three main constituent dimensions of anti-trafficking policies – prosecution, protection and prevention. Employing a spatial autoregressive model, we find that, with the exception of victim protection measures, anti-trafficking policies diffuse across contiguous countries and main trading partners due to externality effects. We find evidence for learning or emulation effects in all policy domains, with countries looking toward peers with similar political views or cultural values. Surprisingly, major destination countries do not seem to exert pressure on relevant main countries of origin or transit to ratchet up their policies.</p>

	Paper
Sergio Muro <i>"Cognitive errors and control based strict liability"</i>	<p>Liability based on active exercise of control by officers, directors and even creditors of corporations has a shaky reputation, mostly because it could disrupt the controlling party's efficient decision making. Therefore, there's a widespread adoption of rules with no bite, such as the Business Judgment Rule. This paper focuses on cognitive errors as a source of judicial over-deterrence. It rejects the idea that strict liability is able to obtain first best outcomes, as it eliminates any effect generated by hindsight bias. This paper contends that a second bias, anchoring, interplays with the hindsight bias to impede the achievement of first best outcomes any time counterfactual damage assessments need to be made.</p>
Shai Dothan <i>"Judicial Tactics in National Courts: A case study of the Israeli Supreme Court"</i>	<p>This paper suggests an explanation for the behavior of the Israeli Supreme Court ("court") that views the court as a strategic actor trying to increase its reputation through its judgments. This explanation can account for the behavior of other national courts in similar situations. In most cases the court relies on the executive's enforcement power to implement its judgments, but when it issues judgments against the executive the court must rely on the force of reputational sanctions to secure compliance with its judgments. As a consequence the court tries to increase this reputational sanction, which improves its chances of obtaining compliance and makes it better able to further its policy preferences in the future. The higher the court's reputation and the less discretionary the reasoning of the judgment the greater the reputational sanction that the public will force on a noncompliant executive. The executive will comply only when the cost of compliance with the judgment is lower than the reputational sanction for noncompliance. Demanding judgments are therefore less likely to be complied with. The court's reputation increases every time the executive complies with one of its judgments. When the executive complies with a more demanding judgment or with a judgment employing more discretionary reasoning the court gains more reputation than when the executive complies with a less demanding judgment or with a judgment employing less discretionary reasoning. Until recent years the court's reputation gradually increased and it expected the executive to comply even with judgments using discretionary reasoning. This can account for the court's shift, over the last sixty years, to more discretionary forms of reasoning. The court tends to use more discretionary reasoning especially in less demanding judgments. The executive was concerned with the increasing reputation of the court and responded by criticizing it and failing to comply with some of its judgments. This executive response damaged the court's reputation. At the same time recent trends in the Israeli society lead to erosion in the court's public support. Lately the court started to adapt to these changes and adopted more sophisticated judicial tactics.</p>
Sharon Oded <i>"Corporate Monitors: Facilitating an efficient targeted monitoring policy"</i>	<p>Recent corporate scandals have spurred the development of Deferred Prosecution Agreements, under which corporate monitors are employed to ensure corporate compliance. The utilization of corporate monitors as an alternative for traditional criminal proceedings has been shown to be socially desirable, for instance, when cash-fines fail to produce a sufficient level of deterrence. This paper proposes that the use of corporate monitors may be socially beneficial not only in substituting traditional criminal proceedings, but also in facilitating efficient targeted monitoring systems. The virtues of such systems are well established in the scholarly literature. Yet, a credible mechanism for regulatee classification into differently monitored groups has not been identified yet. This paper develops the Third-Party-Based Targeted Monitoring (TPTM) system, which utilizes the appointment of corporate monitors as a regulatee classification mechanism that</p>

	<p>facilitates an efficient targeted monitoring system. The suggested system motivates more corporations to engage in self-policing activities, while economizing public monitoring costs.</p>
<p>Sofia Amaral-Garcia and Veronica Grembi</p> <p><i>"Curb Your Premium! Evaluating State Intervention in Medical Malpractice Insurance"</i></p>	<p>Using data of Italian public healthcare providers over years 2001 through 2008, we evaluate the impact of two policies adopted by Italian Regions (i.e., States) to cope with increasing medical malpractice costs using a Difference-in-Difference specification. We assess the impact of the policies on premiums paid and legal expenditures. The first policy consisted in collecting information and monitoring both compensation requests and any legal action related to a medical malpractice claim against a public healthcare provider. The second policy is a switch from private to public insurance for damages up to 500,000 euros combined with a centralized-regional contracting out in the private insurance market for damages in excess of 500,000 euros. Both policies represent attempts to cope with multiple agency problems within the public sector. Our results show that the impact of central monitoring in malpractice claims trend can reduce up to 29% the premiums paid for the treated providers, while the effect is obviously stronger for public insurance (41%). We control for the effects of the latter also on the trend of legal expenditures as proxy for common pool behaviors which do not result from our data. Validity tests show that our results are not driven by a decreasing trend affecting the insurance expenditures of the analyzed units before the policies' introduction.</p>
<p>Sofia Amaral-Garcia</p> <p><i>"Civil and administrative litigation: Does it make a difference? The case of medical malpractice in Spain, 2006-2009"</i></p>	<p>Using a database of medical malpractice decisions from 2006 to 2009, we study several aspects of appeals to the Supreme Court in Spain, a civil law tradition country. Differences between civil and administrative decisions are the main objective of this study. Similar cases should not have a different outcome if the only difference between them is the type of hospital where the medical accident took place (i.e., private or public hospital). After controlling for the level of harm, we do not find evidence of differences in the probability of compensation between civil and administrative decisions. However, we do find evidence of differences in reversal rates, which were higher for administrative decisions (28.2% comparing to a reversal rate of 12% in civil decisions). When patients appealed administrative decisions, the reversal rate was 31.6%. The odds of having a reversal from the Supreme Court were more than twice as large for the Administrative Chamber than for the Civil Chamber ($2.06 < [OR] < 2.43$). In addition, reversal odds were significantly higher when defendants appealed. The strategic model provides some explanations for the results we find, which seem to suggest that lower administrative courts have a pro-State bias that is corrected by the Supreme Court.</p>
<p>Stefan Voigt</p> <p><i>"The economics of informal international law making – An empirical assessment"</i></p>	<p>Theorizing about the relevance of soft law has been on the agenda of many scholars of international law. Empirical research definitely lags behind. This study contains a first attempt to change this. It not only develops a number of conjectures on the basis of institutional economics, but also sets out to test them empirically. Based on all 2289 soft laws concluded by the United States between 1981 and 2010, I find that (1) informal international law-making did indeed grow dramatically between the mid 1990ies until around 2006. Since then, its use has declined almost as dramatically. (2) Around two third of all IN-LAW is concerned with only three policy areas, namely the military, science & technology and aid. (3) More than 90% of all informal international law-making activities are conducted bilaterally. (4) Every fifth agreement is concluded by a non-traditional actor on the side of the U.S., i.e. an actor other than the head of state or a cabinet minister.</p>

<p>Stefan Voigt</p> <p><i>"The interplay between national and international law - Its economic effects drawing on four new indicators"</i></p>	<p>This paper analyzes whether the interplay between national and international law has effects on economic variables. Aspects dealt with include (i) the difficulty of delegating competence to international bodies, (ii) the difficulty of reversing delegation, (iii) the way international law is transformed into the domestic legal order, and (iv) the potential role of national courts. The paper investigates whether institutional arrangements corresponding with these aspects have effects on a country's risk rating, which is used as a proxy for credibility. It is hypothesized that the role attributed to international law in domestic legal orders can improve the credibility of nation-state governments. The paper is based on a new database containing information on institutional arrangements in 71 countries. This database can also be used to empirically assess the ongoing discussion of "monism vs. dualism." The difficulty-of-delegating indicator has fairly robust effects on credibility. Monist orders, however, do not confer more credibility on governments than do dualist ones.</p>
<p>Stefan Weishaar</p> <p><i>"Does auctioning emission rights avoid state aid? Empirical evidence from Germany"</i></p>	<p>This paper presents empirical evidence of a small but statistically highly significant windfall profit in the German EU Emissions Trading System (EU ETS) spot auctions in the second trading phase. The size of the under-pricing effect lies with 7 and 8 Euro cents below the Leipzig Energy Exchange and the Paris Blue Next market price. Compared to studies on under-pricings in the context of Initial Public Offerings the size of the under-pricing effect is small. Nevertheless it calls into question the widespread presumption that under auctioning all windfall profits are eradicated. In particular, it is examined if the benefits accruing to operators participating in auctions should give rise to concerns from a State aid perspective. It is argued that auctions in the second and third trading phase pass the private investor test and thus do not constitute State aid. Unlike in the second EU ETS trading phase selectivity could be problematic in the third trading phase, while imputeability is more of a concern in the second trading phase than in the third.</p>
<p>Stephan Bonsiepen and Justus Haucap</p> <p><i>"Horizontal divestitures and R&D incentives in asymmetric duopoly"</i></p>	<p>We analyze how a threat of horizontal divestiture affects R&D incentives and welfare in an asymmetric Cournot duopoly where an efficient low-cost firm competes against a less efficient high-cost firm. If firms account for a possible divestiture of the low-cost firm, an actual divestiture measure harms both the high- and low-cost firm. A divestiture threat already reduces the low-cost firm's market power, as the firm reduces its R&D investment, and, thereby, its competitiveness. Nevertheless, the threat of divestiture may increase the low-cost firm's profit in case of strong market dominance. A divestiture only improves welfare if the low-cost firm sufficiently dominates the high-cost firm. The industry-wide rate of innovation is lowered if a divestiture becomes more likely.</p>
<p>Stephanie Ben-Ishai and Stephen Lubben</p> <p><i>"Involuntary creditors and corporate bankruptcy"</i></p>	
<p>Tania Biletskaya</p> <p><i>"The role of the European Union's Partnership and Cooperation Agreements (PCAs) in the reform process of the Commonwealth of</i></p>	<p>The paper studies the role of the EU's Partnership and Cooperation Agreements and their economic efficiency in the reform process of the CIS countries which took place after the demise of the USSR. PCAs were regarded as the first formal agreements between the EU and CIS countries, and have also been viewed as one of the key elements which helped to initiate the political cooperation between the CIS and the EU. Another impact of them was that they facilitated obtaining legal and economic aid from the EU.</p>

<p><i>Independent States"</i></p>	<p>The methodological framework applied is taken from new institutional economics, together with the economic analysis of law. The comparative dimension of the analysis is brought by comparing the effects of European Agreements (EAs) and PCAs in the development of several post-Soviet bloc states (Ukraine, Moldova, Romania and Bulgaria).</p> <p>The paper argues that PCAs cannot be considered as fully economically efficient agreements in the sense that they embodied not only components of the promotion of economic cooperation and a legal harmonization but that they also include a component of political factors (towards which PCAs have actually had an adverse effect). In this way, PCAs have had a mixed effect on the legal and economic development of the CIS countries with two positive and one negative components which were discovered at this stage of the analysis. Legal and economic development indicators show positive growth while indicators of rule of law and corporate governance did not grow significantly.</p>
<p>Tasoula Tseliou</p> <p><i>"Competition and regulation in the banking sector: Strive for an optimal equilibrium"</i></p>	<p>Since the 1990s, most of the research in the banking industry was dedicated on the analysis of the negative effects of competition in banking stability. The main arguments of the proponents of this theory were mainly focused on the fact that competition distorted banks' profit margins and led banks to excessive risk taking activities. However, in the last years, this opinion has been largely questioned as a number of important factors are being taken into consideration. The link between market structure and bank stability is worth further study. It might be the case that the standard example of perfect competition may not be applicable for the banking industry. In the meanwhile, more research is needed for a better understanding on the effectiveness of regulation in the banking sector. In addition, studying the interaction between competition and regulation is crucial in order to obtain equilibrium, which is necessary for banking stability. My research paper will attempt to explain all the relevant theories concerning competition and regulation and anticipates that it will demonstrate the right proportions of these factors that stabilize the banking market.</p>
<p>Florian Baumann, Tim Friehe, and Inga Hillesheim</p> <p><i>"Status and liability: A first pass"</i></p>	<p>We analyze liability law when the value of the good at accident risk has an impact on the consumer's social status. It is first established that standard liability rules fail to induce efficient choices, and that negligence will tend to outperform strict liability. Next, we suggest second-best variants of strict liability and negligence. Importantly, the considered strict liability rule with adjusted damage payments induces first-best choices and outperforms a combination of strict liability and a commodity tax. In addition, we identify contexts in which positional concerns are important in order to locate where amending liability rules as outlined may be warranted.</p>
<p>Tim Friehe, Shmuel Leshem and Avraham Tabbach</p> <p><i>"Preventive versus non-preventive optimal law enforcement"</i></p>	<p>This paper analyzes optimal law enforcement if offenses can be either prevented ex ante or prosecuted ex post. We describe the trade-off between preventive and non-preventive enforcement and discuss the impact of changes in the level of the maximal sanction and the level of harm. Furthermore, it is established that the optimal monetary sanction is maximal, whereas the optimal non-monetary sanction need not be maximal. In extensions to the main analysis, we show that policy makers with rent-seeking concerns will tend to use preventive enforcement less, whereas benevolent policy makers will use more of it if legal errors are possible.</p>
<p>Urs Schweizer</p> <p><i>"Vicarious liability and the intensity"</i></p>	<p>The present paper provides an economic analysis of vicarious liability that takes information rents and monitoring costs to be borne by the principal explicitly into account. In the presence of information rents or if the principal is wealth constrained herself, vicarious liability need not generate efficient precaution incentives. Rather, precaution incentives turn</p>

<p><i>principle"</i></p>	<p>out to depend on the exact quantum of damages specified by courts. I shall compare incentives under three damages regimes: strict liability, the traditional negligence rule, and proportional liability. To do so, I make use of the intensity principle that allows to rank damages regimes based on the monotonicity of differences of the principal's expected payoff as a function of induced precaution.</p> <p>Paper</p>
<p>Valentina Dimitrova-Grajzl, Peter Grajzl and Joseph Guse</p> <p><i>"Trust, corruption and demand for regulation: Evidence from post-socialist countries"</i></p>	<p>While the tradeoff between market failure and government failure has been explored both theoretically and in practical policy design, the question of whether this trade-off appears in the calculus of citizens' demands for government regulation remains underexplored. We first clarify the channels through which concerns for market failure, as proxied by trust in market participants, and concerns for government failure, as proxied by perceptions of corruption, jointly affect individuals' demand for government regulation. We then investigate these effects empirically, using data from post-socialist countries. Our analysis confirms the previously established result that trust has a negative effect on demand for regulation. Perceived corruption, however, affects demand for regulation primarily via a negative interaction effect with trust. Our findings suggests that, in post-socialist countries, both concerns for market failure and concerns for government failure are indeed in citizens' minds and that concerns about government failure are at least as important as the desire to punish the 'unpleasant capitalists' hypothesized by Di Tella and MacCulloch (2009).</p> <p>http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1849224</p>
<p>Vincy Fon</p> <p><i>"Bayesian influence on the choices of forum and law"</i></p>	<p>In a recent article, "Bayesian Contractual Interpretation," Listokin (2010) advocates that courts striving to determine the intent of contracting parties should interpret contracts according to Bayes' Rule. This article pushes the importance of Bayes' Rule further, and in a slightly different direction. Not only do courts use Bayes' Rule to help interpret the intentions of contracts to settle disputes, their previous decisions are taken as prior probabilities by future plaintiffs in deciding which forum to choose to settle disputes. To the extent that forum shopping takes place, this paper studies Bayes' Rule as an appropriate methodology that a party can follow to select the best forum. The paper further extends the Bayesian influence on the joint problem of choices of law and forum.</p>
<p>Yun-chien Chang and Henry Smith</p> <p><i>"An economic analysis of civil versus common law property"</i></p>	<p>Common law and civil law property appear to be quite different, with the former emphasizing pieces of ownership called estates and the latter focusing on holistic ownership. And yet the two systems are remarkably similar in their broad outlines, for functional reasons. This paper offers a transaction cost explanation for the practical similarity and the differing styles of delineating property and ownership in the two systems. As opposed to the "complete" property system that could obtain in the world of zero transaction costs, actual property systems employ structures characterized by shortcuts in order to achieve property's substantive goals of protecting interests in use. Overlooking this structure leads to the bundle of rights picture of property, even though property is a structured bundle of relationships. The architecture of property consists in part of four basic relationships, and a number of characteristic features of property automatically arise out this architecture, including exclusion rights, in rem status, and running to successors. Where civil law and common law differ is in their style of delineation, which reflects the path dependence of initial investment in feudal fragmentation in the common law and Roman-inspired holistic dominion in civil law. This transaction cost explanation for</p>

	<p>the functional similarities but different delineation process in the two systems promises to put the comparative law of property on a sounder descriptive footing.</p> <p>Paper</p>
<p>Yun-chien Chang</p> <p><i>"Tenancy in `anti-commons`? A theoretical and empirical analysis of co-ownership"</i></p>	<p>Some scholars have asserted that tenancy in common will create tragedy of the commons, while others claim that it will create tragedy of the anticommons. The debate so far, however, has been purely theoretical. No empirical study on tenancy in common has been conducted. This article argues that resource held in tenancy in common is likely to be underused and underinvested, and thus better characterized as anticommons. Nevertheless, tenancy in common does not necessarily create tragedy, as each co-tenant has a right to petition for partition at any time, and after partition, new owners are likely to utilize the resource more efficiently. Using data from Taiwan, this article finds that cooperation among co-tenants does not fail as often as the literature has suggested. In 2005–2010, when partitioning co-owned properties, at least 82.5% of the time, co-tenants were able to reach a consensus, while only about 7.5% of the partitions are ordered by the court. In addition, using multinomial logistic regression models, this article further tests whether plaintiffs and the court have been inclined to divide the co-owned properties into tiny, useless pieces of land ("share chopping"), finding that the court tends to order, and the plaintiffs tend to petition for, partition by sale when partitioning in kind or partial partition would create tiny plots.</p>