

# Judges and Legal Institutions

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# Preliminaries

- Courts as an institution
  - Primary questions: How do judges make decisions?  
What are the factors that affect these decisions?
- Relevance of judges for NIE research
- Differences across legal systems
  - Abstract vs. Concrete Constitutional Review
  - Unitary vs. Specialized Courts
  - Common vs. Civil Law
- Structure of Discussion

# Elements of the Analysis

- The individual judge
- Other relevant actors
- Institutional Context
- Outcomes

# The Individual Judge

- Reasoning and Motivations
  - The Traditional Law-Social Science Debate
  - Three Approaches to Judicial Reasoning
    - Legal
    - Attitudinal
    - Strategic
  - The Empirical Evidence
  - Moving Beyond The Traditional Debate
- Implications for Positive and Normative Analysis

# Other Strategic Actors

- Other judges
- Attorneys
- Amicus Curiae
- Political Actors
- Community at large

# Collegial Courts

- Cert decisions; anticipating votes on the merits
- Bargaining over opinion writing
- Testing models of coalition formation
- Dissent behavior
- Panel effects

# Other Strategic Actors

- Attorneys
  - Oral argument
- Amicus Curiae
- Political Actors
  - Inter-branch relations
  - Federal Systems
- Community at large
  - Public Opinion

# Institutional Context

- Judicial practice
- Hierarchy
- Separation of Powers



# Outcomes

- Disposition of Cases
- Creating the content of the law
- Contributing to social outcomes

# Promising Avenues of Future Research

- Comparative Focus
- The Nature and Content of the Law
- Interrelationship with other legal and political institutions
- Normative Project: Institutionalizing the Impartiality of Courts
- Normative Project: Institutionalizing the rule of Law