

Public Law and Economics

University of Zurich

Spring Term 2024

Teacher:	Yoan Hermstrüwer	Email:	yoan.hermstruewer@ius.uzh.ch
Time:	Wed 10:15-12:00	Office hours:	By appointment
Room:	KOL-F-104	Website:	OLAT

Overview

How should the law address the problem of excessive CO2 emissions? Why do voting procedures sometimes fail? When should a task be delegated to the administration or courts? How can the law deter corruption and collusion? And why do states comply with international law?

This course will uncover the economic foundations of public law. In doing so, the course will explore a diverse set of topics ranging from bargaining problems, voting mechanisms, the economics of fundamental rights, economic theories of delegation, enforcement and compliance to comparative constitutional law and legal origins.

The course will discuss both the conceptual foundations of the economic analysis of law and more recent developments in public law and economics, especially recent methodological advancements. Drawing on specific examples from national public law and public international law, the course will shed light on how experimental methods, empirical legal studies and data science can inform our understanding of public law.

Objectives

- (1) Solving legal problems through or with economics. Promoting critical reflection skills in dealing with economics.
- (2) Enhancing interdisciplinary skills and using economic analysis. Empowering the development of your own interdisciplinary projects.
- (3) Understanding how economics should be utilized. Revealing the implicit normative decisions in economics.

(4) Enhancing the ability to deal with factual and normative uncertainty and to accept provisional certainty as a normal state in legal work.

Format

The class builds on the following elements:

- (1) Classic lecture components for conveying the material
- (2) Presentations on conceptual foundations
- (3) Discussions and interactive exercises

Students are expected to actively participate in all components of the class. Exploring uncharted territory requires, like probably any form of (legal) learning, regular personal exchange and joint orientation. Regular attendance at the lecture is therefore a prerequisite for individual and collective learning success (classes are public goods!). If you are unable to attend a class, that is, of course, not a problem.

Class Materials

Class materials, including slides and podcasts, will be provided in a timely manner. The literature suggestions provide sufficient illustrative material for the conveyance and discussion of the respective topics and problems. Further literature suggestions or specific reading instructions, also with regard to the exam, will follow during the course of the class.

Exam

Further information will be provided during the course of the class.

Literature

Cooter, Robert D. & Michael Gilbert, Public Law and Economics, Oxford University Press, 2022.

Dellis, George, An Economic Analysis of Public Law: Demos and Agora, Edward Elgar, 2021.

Farber, Daniel & Philip Frickey, Law and Public Choice: A Critical Introduction, University of Chicago Press, 1991.

Mueller, Dennis, Constitutional Democracy, Oxford University Press, 1996.

Stearns, Maxwell, Thomas Miceli, & Todd Zywicki, Law and Economics: Private and Public, West Academic Publishing, 2018.

Voigt, Stefan, Constitutional Economics: A Primer, Cambridge University Press, 2020.

Schedule

Week 1| Introduction (Feb 21)**

Cooter, Robert D. & Michael Gilbert, Public Law and Economics, Oxford University Press, 2022, Ch. 1.

Engel, Christoph, The impact of behavioral economics on the law: Introduction, Review of Law & Economics 17 (2021), 241-251.

Zamir, Eyal, and Doron Teichman, Behavioral Law and Economics, Oxford University Press, 2018, Ch. 11.

Week 2| Public Goods and Cooperation I (Feb 28)**

Cooter, Robert D. & Michael Gilbert, Public Law and Economics, Oxford University Press, 2022, Ch. 2.

Buchholz, Wolfgang & Todd Sandler, Global Public Goods: A Survey, Journal of Economic Literature 59 (2021), 488-545.

Croson, Rachel T.A., public goods experiments, in: Durlauf, S.N., Blume, L.E. (eds) Behavioural and Experimental Economics, The New Palgrave Economics Collection (2010), 221-233.

Week 3| Public Goods and Cooperation II (Mar 6)**

Cooter, Robert D. & Michael Gilbert, Public Law and Economics, Oxford University Press, 2022, Ch. 3.

Week 4| Democracy and Mechanism Design I (Mar 13)**

Cooter, Robert D. & Michael Gilbert, Public Law and Economics, Oxford University Press, 2022, Ch. 4-5.

Eric A. Posner and E. Glen Weyl, Voting Squared: Quadratic Voting in Democratic Politics, Vanderbilt Law Review 68 (2015), 441-500.

Week 5| Democracy and Mechanism Design II (Mar 20)**

Kominers, Scott Duke, et al., An invitation to market design, Oxford Review of Economic Policy 33 (2017), 541-571.

Krawiec, Kimberly D., et al., Contract Development in a Matching Market: The Case of Kidney Exchange, *Law and Contemporary Problems* 80 (2017), 11-35.

Claudia Cerrone, Yoan Hermstrüwer & Onur Kesten, School Choice with Consent: An Experiment, *The Economic Journal* (2024), uead120.

***Week 6* |**| Delegating and Sharing Power I (Mar 27)**

Cooter, Robert D. & Michael Gilbert, *Public Law and Economics*, Oxford University Press, 2022, Ch. 6.

***Week 7* |**| Delegating and Sharing Power II (Apr 10)**

Cooter, Robert D. & Michael Gilbert, *Public Law and Economics*, Oxford University Press, 2022, Ch. 8.

***Week 8* |**| How Judges Decide I (Apr 17)**

Cooter, Robert D. & Michael Gilbert, *Public Law and Economics*, Oxford University Press, 2022, Ch. 10.

Epstein, Lee & Keren Weinshall, *The Strategic Analysis of Judicial Behavior: A Comparative Perspective*, Cambridge University Press, 2021.

***Week 9* |**| How Judges Decide II (Apr 24)**

Cooter, Robert D. & Michael Gilbert, *Public Law and Economics*, Oxford University Press, 2022, Ch. 11.

Klerman, Daniel & Holger Spamann, Law Matters—Less Than We Thought, *The Journal of Law, Economics, and Organization* (2022), ewac008.

Spamann, Holger et al., Judges in the Lab: No Precedent Effects, No Common/Civil Law Differences, *Journal of Legal Analysis* 13 (2021), 110-126.

***Week 10* |**| Law Enforcement and Compliance I (May 8)**

Cooter, Robert D. & Michael Gilbert, *Public Law and Economics*, Oxford University Press, 2022, Ch. 12-13.

Gneezy, Uri & Aldo Rustichini, A Fine is a Price, *Journal of Legal Studies* 29 (2000), 1-17.

Cerrone, Claudia, Yoan Hermstrüwer & Pedro Robalo, Debarment and collusion in procurement auctions, *Games and Economic Behavior* 129 (2021), 114-143.

Week 11| Law Enforcement and Compliance II (May 15)**

Thaler, Richard H & Cass R. Sunstein, *Nudge: The Final Edition*, Penguin, 2021.

Ben-Shahar, Omri & Ariel Porat, *Personalized Law*, Oxford University Press, 2021.

Khesali, Mahdi & Yoan Hermstrüwer, *Doing It Right, Doing It Wrong*, Working Paper (2024).

Week 12| Individual Rights and Equality I (May 22)**

Cooter, Robert D. & Michael Gilbert, *Public Law and Economics*, Oxford University Press, 2022, Ch. 7.

Chilton, Adam & Mila Versteeg, *The Politics of Constitutional Rights*, in: Mark Tushnet & Dimitry Kochenov, *Research Handbook on the Politics of Constitutional Law*, Edward Elgar, 2023, 432-452.

Chilton, Adam & Mila Versteeg, *How Constitutional Rights Matter*, Oxford University Press, 2020.

Week 13| Individual Rights and Equality II (May 29)**