

# Bechtold

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## Characteristics of Law

### Rules are used to

- regulate behavior (Prohibition/Order/Coordination)
- create predictability
- protect freedom
- Enable behavior (not only prescribe)
- Create Institutions
- Describe Procedures

### Law vs Moral values:

- Laws enforced by the state, Moral values mostly not
- Laws lead to binary decision / Moral values not

### How are laws created and interpreted

- Created by state agencies (Parliaments / Courts / Admin bodies)
- How to deal with Rule Conflicts?: Lex superior (highest law applies) / Lex specialis (most specific applies) / Lex posterior (latest law applies)

### How are laws enforced

- Specific sanctions: (Incarceration / Fines / Compensation)
- Tradeoff between Efficiency and Fairness

### Sources of Law:

- Customary Law
  - Establishment of a Law as repetition of an action over time (Inherited from Roman)
- Rationalist Law (Reason is a source of Law)
- Created Law (By Legislator, by far the most usual)

### Sources of Validity

- Institutional laws (valid because created by institutions which have the power to do so)

- Source thesis: Valid if Law comes from a valid source of law (Ex: precedent in civil law)

### **Positive Law**

- Law that was laid down, difference from natural law which comprises inherent rights

### **Soft Law**

- No formal enforcement mechanism (Most resolutions and Declarations of UN)

### **Substantive Law**

- Set of laws that governs how members of a society are to behave
- Difference from Procedural Law (rules for procedure)

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## Hierarchies in the Law:

### **National Law:**

- Constitution > Statute > Regulation > Customary Law > Case Law

### **International Law:**

- No separation of powers, no central institution, unanimous decisions

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## Legal families

### **Civil Law**

- In Continental Europe
- Codification (Most rules passed by the parliament)
- Parliament makes rules, judges interpret the law
- Subdivision of courts (civil / administrative and criminal )
- Personality of the individual judge plays no role, very brief court decisions

### **Common Law**

- England, Commonwealth US, ..

- Judge-made law
- Case-based reasoning
- Judge as central figure
- Stare decisis doctrine: Same court and inferior courts must give same decision in similar cases in future
- Jury system

### **Convergence**

- Tort law in EU very case based
- Reconciling Civil and Common Law through EU
- Distinction is vanishing
  - Common: fact based distinguishing in order not to follow precedents
  - Civil: Judges free to decide but in practice bound by decisions of higher courts

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## Concepts

### **Legal Subjects**

- Natural persons
- Legal persons (ETH, Corporations, Government institutions)
- Allows to have Criminal liability, contracts between natural and legal persons

### **Rights and duties:**

- Relatives Recht → Right valid between 2 parties (Contracts, Torts)
- Absolutes Recht → Right against all the world (IP, Property)

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## Alternative Modes of Regulation

Law, Markets, Norms and Architectures regulate behavior. All of them can be tackled directly.

### **Direct regulation:**

- change a law directly to regulate behavior

**Indirect regulation:**

- Law that affects Markets, Norms or Architecture, which leads also to a form of regulation of behavior
  - Change social norms: information campaigns, education
- Problem: transparency and deniability. With indirect regulations possible to say “this is not an indirect regulation but a direct one“

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## Behavioral Approaches

**Theory of rational choice:**

- Action space: All possible action alternatives
- Restrictions: Scarcity of Resources, Legal rules
- Preference of individuals: Subjective Valuation
- Decision Process: utility maximization

**Real Behavior:**

- Default effect in Coase theorem. Default property rights allocation matters.

**Behavioral Effects:**

- Endowment effect in Case Theorem. (Mug experiment from Kahneman)
- Opt in, opt out for organ donation
- Anchoring, framing, over optimism, availability heuristic etc etc

**Implications: (Thaler)**

- Nudging: influencing the choices of affected parties in order to make those parties better off
- Libertarian paternalism, is paternalism inevitable? Choices are not rational, we then have to nudge people.

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## Tobacco Regulation

About mandatory information disclosure. Warning texts and images on cigarettes packs. Idea is to reduce factual misperception of risk of smoking. The cigarettes companies saw the intervention as attempt to change consumer preference.

- Does it work, does it change behavior, is it costly, social welfare analysis?
- **Freedom of speech** of tobacco companies to use the space on their packs. And forcing them to put images and texts on packs, de facto making them say a message.
- Empirical study by Jolls: Evidence-based policy making
  - Text image better than just text for reducing Factual misperception.
  - Smokers usually have factual misperceptions (underestimation) of smoking risks
  - Critiques: short term study, OVS, heterogeneity:
  - What level of empirical accuracy required to justify a policy intervention?

### **Limits of Quantification**

- Easy to quantify values: Damages, Income, Property value
- Hard to quantify values: Human dignity, fairness, happiness, freedom of the press, democratic discourse etc.
- Weirdly quantifiable values: Statistical value of life, Happiness (how happy are you?)

### **Dealing with tradeoffs in the Law:**

- Cost Benefit Analysis, Break even analysis
- Holistic evaluation (what judges do)
- Precautionary principle

# Bernauer

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## States

What makes a State since Westphalian Treaty?

- A territory with a boundary
- A population
- A state power (monopoly of violence, control from the State).

Quasi State like (Irak, Syria), when one of the three points not respected, generally the 3rd one.

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## Elections and voting Behavior

### What are elections?

- A temporal delegation mechanism
- A mechanism for controlling government

We are facing the **Principal Agent problem**: Principal is the people who wants an Agent (the elected person) to represent them and act in their interest.

### Minimal rationality:

- politicians are responsible for change in personal wellbeing since the last election  
-> vote accordingly

### Retrospective voting

- Vote for someone on the base of its political record
- Problem: Shark Attacks, Policy Makers made responsible for things they cannot control

### Prospective voting

- Listen to promises

### Rational ignorance

- Voters know that cost of knowing is too high, don't wanna deal with it
  - dont vote
  - work on cues ("I want to elect a woman", "I want to elect a farmer")

### How are parliaments elected?

#### Majoritarian Voting System:

- create stable majorities
- create responsibility
- Retrospecting voting
- Lower voter turnout
- Creates two party systems
- One party involved in gvmt
- More stable legislature
- Higher chances of significant change

- Less dependent on the Party
- high accountability
- lower representation of minorities

### **Proportional Voting System:**

- Maximizes representation
- Higher responsiveness
- Usually higher participation
- More dependent on the Party to be elected
- low accountability
- higher representation of minorities

The Voting System affects voting behavior and government's majority or minority.

### **How do their characteristics and processes affect policy-making?**

- Type of vote
- Responsiveness
- « power » of governments (majority or not, stability or not, dependance to partys)
- Take better into account minorities or not
- Probability of change

### **Political participation depends on**

- resources
- motivation
- mobilization

### **Who do Citizens vote for?**

- Sociological Approach
  - Sociodemographic factors determine preference
- Individual Approach
  - Party, Candidate, Issue. Party orientation acquired during socialization
- Rational Economic Approach
  - CBA determines vote choice

### **Direct democracy**

- No parliament
- citizens decide directly
- Election of delegates (not trustee !)

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## **Legislature**

Legislature: organized body of persons having authority to make laws

Legislator: person who makes laws, member of a legislature

**Functions:**

- Law Making
- Electing, Approving
- Controlling
- Representing

**Presidential System:**

- Gov independent of parliamentary majority
- Gov controls parliament through budget control, can veto some parliamentary decisions
- People elect parliament
- People elect President

**Parliamentary System:**

- Gov depends on parliamentary majority
- parliament elects government
- People elect Parliament

**Bicameralism:**

- Improve legislative quality (second pair of eyes)
- Protect minority rights

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## Democracy

- Regular, free and fair elections (equal voting rights, confidential vote)
- EU democracy deficit? parliament has no or limited control over many things

**Democracy Definitions:**

- Narrow definition (Schumpeter)
  - A competitive system in which there is opposition. There is participation of the citizens
- Wide definition (Dahl):
  - System with free, equal and secret elections, with freedom of choice and of press and with existence of different source of information
- Today's democracies make up a very heterogeneous group

**Autocracy:**

- System in which votes are non competitive, rights and freedom are limited
- Englobe, military regimes, one party systems personalities systems, dictatorship

**What are Political systems?**

- A political system consists of institutions and social structures by which rules are designed and implemented

**Rule of Law:**

- How do we make sure people in charge use power wisely?
- state/government bound to existing laws, protection of fundamental rights and minorities (Tribunals, Constitutions etc.)

**Consequences of democracy:**

- more revenues
- more peaceful
- better environmental performance
- Overall positive economic impact

**Constraining State Power (Checks and Balances):**

- Separation of powers
  - horizontal: Legislative, executive and Judiciary
  - vertical: Country, States (cantons), municipalities —> Federalism
- Elections (temporal separation)
  - Bad politicians will not be reelected, election as control mechanism
- Basic rights (Constitution)
- Rule of Law:
  - **independent** professional courts

**Causes of democracy?**

- Democracy waves (Huntington 1991)
- Possible explanations:
  - economic development
  - behavior of the elites
  - choice of democracy type
  - nation and state (peace)
  - existence of formal institutions and informal practices
- But mono causal explanations don't work (endogeneity issue)

## Government

**Government system** = formal characteristics and functioning of political institutions  
 Characterization = division of powers and relationship between them

**Implications of different systems**

Parliamentarian/semi-presidential/presidential system

	Parliamentarian	Presidential
Party role	strong majority stabilize the government	weak changing majority

Executive vs Legislative	close link between parliamentary majority and government government = steering role (propose laws)	no direct link between parliamentary majority and government both parliament and government have democratic legitimacy
political decision process	power concentration responsibilities clearly defined	shared power between parliament and government responsibilities not so clearly defined

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## Federalism

- division of state into sub-national units
- political decision-making authority at different levels
- executive, legislative and courts at different levels

### Characteristics of federal states

- bicameralism
- written constitution (repartition of competences)
- constitutional jurisdiction (autonomy guaranty of each level)

### Advantages of federalism

- take into account local singularity
- protect minorities
- increase efficiency for citizens
- increase citizens participation to political life
- happier citizens?

### Drawbacks

- difficulty to take decision or to coordinate
- law may vary a lot from one state to another
- constant elections
- weaken the negotiation power of the states (ex against EU)
- financial tensions amongst states
- race to the bottom on taxation or welfare issues?

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## Public administration

Efficient administration is the backbone of every modern state

Principal-agent problem, bureaucrats from precedent legislature?

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# Interest groups

Interest groups aim at influencing decision processes (vs political groups -> take decision)  
Cannot be against the constitution (however very high hurdles to restrict interest groups).  
They are an intermediary between citizens and the central institutions the state.

## Functions

- provide services for its members
- try to influence the political decision processes
- fill the gap between citizens and institutions

## Role of interests groups (Werner and Wilson)

- represent a form of pluralism
- training grounds for citizens
- provide direct expression of social participation and democratic practice

## Strategies and action repertoire

- convince politicians
- put some members in the institutions
- align with some exclusive information the political processes
- subventions to parties, politicians etc...
- launch referendum and initiatives (if allowed by the system)

## Types of interest groups

- material vs immaterial interests
- organized around persons or firms
- activity domains (ex jobs, welfare, environment...)

## How influential?

- organization ability (homogeneity of interests) (ex handicap)
- capacity to impose cost to society (conflict capability) (ex farmers, pilots)

## Difference from political party

- Range of issues (very narrow for interest group, wide for political party)
- Representation
- Members (can be firms for Interest groups)

## Median voter Model vs Interest group Model

- MV: policymaker will try to do what the median voter wants
- IG: policymaker will do what he is the most influenced to do (Think about Farmer's union, about 1% of population, huge lobbying impact)

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# Social movements

## What is a social movement? (Kriesi)

- group of people with a conflictual orientation towards an opponent (dense, informal, inter organizational network), Anger or inequality as drivers
- collective identity, set of common beliefs or goals, **homogeneity of interests**
- repertory of collective actions (non-institutional)
- public interest group?
- engage in a sustained series of non-institutionalized collective action

## Objectives:

- Create public debate
- Create legitimacy for defended issue

## Organisation

- decentralized (less hierarchical, more participative and flexible as interest groups)
- not organized as association
- no formal memberships or leader

## Action repertoire

- traditional: meeting, strikes, petitions
- unconventional: passive opposition to state, block roads...
- use medias
- and particularly social networks

## Influence/success

- enough people against something
- good internal organization
- political opportunities outside the social movement

# Schimmelfennig

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## Governance beyond the state

### International Politics:

- No central authority
- Anarchy (as opposition to hierarchy), actors are at the same level
  - States are formally equal entities, no super-ordination
  - no monopoly of force, of rule making, of rule enforcement → no global government
  - horizontal coordination
- Voluntary basis of action, agreements are generally non binding

### Challenges:

- Security: absence of world police
- Welfare: inefficient and unequal solutions? Market failures
- Freedom: oppression

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## Game Theory Examples

- Assumption:
  - rational, utility maximizing, independent actors in an interdependent decision making situation
- Strategy:
  - Dominant (act first, don't care what other do)
  - Contingent (look at what other does and act in function)
  - Maximax (maximize, maximal outcome → Probably risk seeking)
  - Maximin (maximize, minimal outcome → Probably risk averting)
- Equilibrium:
  - **Nash**: neither party has unilateral incentive to change strategy, once outcome is known
- Optimum:
  - **Pareto**: Makes at least one side better off and no side worse off than other outcomes
- Dilema Games:
  - Optimum and Equilibrium in different cells
- Coordination Games:
  - More than one optimal equilibrium

### Coordination Game without Distributional Conflict: → Oncoming Traffic

4 / 4 Pareto Nash	1 / 1
1 / 1	4 / 4 Pareto Nash

- Two pareto-efficient equilibria
- Equal Utility
  
- Problem: Communication between parties
- Institutions intervention: Codification of a rule
  - ex: drive on the right side of the road
- Bargaining potential: none
  - no one better off after bargaining
- Example: Air control, Loi sur la circulation routière, Radio frequencies allocation

### Coordination Game with Distributional Conflict: → Battle of the Sexes

4 / 3 Pareto Nash	1 / 1
2 / 2	3 / 4 Pareto Nash

- two pareto-efficient equilibria
- Unequal Utility
  
- Problem: Communication and Distribution
- Institutions intervention: Codification of a rule, distribution rules
- Bargaining:
  - First mover advantage
  - Size advantage
- Example: File formats: JPEG, PDF. Standards: ISO

### Coordination Game with Rivalry: → Chicken Game

3 / 3 Pareto Nash	4 / 2 Pareto Nash
2 / 4 Pareto Nash	1 / 1

- three pareto-efficient equilibria
- Unequal utility
- Chicken Game « The first one who chickens out loses »
  
- Problems: Communication, Distribution and Reputation (→ Demonstrating to the world)
- Institutions intervention: Prevention of non-cooperation
- Bargaining:
  - Last mover advantage
- Strategy: Build reputation of having nothing to lose, or of being tough negotiator
- Examples: Cuban Missile Crisis

### Dilemma Game without Distributional Conflict → Trust Game

4 / 4 Pareto Nash	3 / 1
1 / 3	3 / 3 Nash

- two equilibria, one is Pareto efficient
- Equal Utility (symmetry)
- Stag Hunt (hunt the stag or the rabbit?)
- Problems: Mistrust, uncertainty
- Institutions intervention: Monitoring (make sure everyone does their part)
- Bargaining: none
- Examples: International Transport

### Dilemma Game with Distributional Conflict → Prisoner's Dilemma

3 / 3 Pareto	3 / 1
1 / 3	3 / 3 Nash

- Unequal utility
- Problems: Mistrust, Credibility of commitment
- Institutions Intervention: Monitoring (make sure everyone does their part), Sanctioning (Make it costly to defect)
- Bargaining:
  - Betrayal / Non-Compliance → Advantage by exploiting the others
- Example: Arms Race, Free Trade Agreement vs Protectionism

### Asymmetrical Domination Game → Rambo Game

2 / 4	4 / 3 Pareto Nash
1 / 2	3 / 1

- Unequal utility but not a “problematic“ situation.
- Upstream / Downstream situations
- Problem: Lack of incentive to cooperate
- Institutions intervention: Increase of scope → Include issue who can be asymmetrical, but in favor of other player, to turn this Rambo Game into another Game
- Bargaining:
  - Side Payments, Issue Linkage
- Example: Refugee Crisis: Upstream country Turkey has incentive to let migrants go to downstream countries (EU)

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# Overcome Cooperation Dilemma

Issue: Mistrust, Incentives to defect

## **Interdependence**

Make institutions and networks interdependent, defecting is therefore made costly

See cooperation as an iterated Prisoner's Dilemma's game. —> Cooperative Tit for Tat

It induces cooperation is future uncertain.

## **Community**

Act through norms and persuasion. Collective identity, common values and norms.

Cooperation among democracies.

## **Hegemonic Stability**

A Hegemon (a State) with a preponderant power establishes rules in line with their values and interests, provides collective goods and enforce the rules

—> Hegemony rare and bound to decline

## **Institutions**

Definitions:

- Networks of rules
- International regimes (issue-specific)

Functions:

- Codification and elaboration of rules
- Monitoring, Enforcement (of C) and Sanctioning (of D)

Consequences:

- Lowering of transaction costs

## **Networks**

Intergovernmental/ non governmental experts networks

Alternative or combination with institution

Functions:

- Monitoring (Expertise, Independence, Legitimacy)
- Sanctioning (Naming and Shaming)

Ex: IPCC