

Precedential Power: The Role of the United States in Shaping International Law at the WTO

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Takeaways

- Collective action problems in providing precedent in international law
- Evidence suggests that the United States exerts more effort in providing precedent at the WTO
- Hard to think about deterrence in international law without a theory of where precedent comes from
- Results suggest distributional consequences of international law

Research Question

Where does precedent in international law come from?

- Precedent is a public good, therefore we should expect those with the most concentrated interests in the system to supply it.
- Using the WTO as a case study, I argue and show that the United States invests in the stability of the WTO system

Abstract

Where does precedent in international law come from? Because the efficacy of international courts depends on the efficiency with which they can deal with disputes, they must be able to deter future disputes. Deterrence rests on the availability of precedent (a public good), but because it is costly to generate precedent, powerful states must take on the cost of leadership. In this paper, I investigate the relationship between power and precedent by analyzing dispute settlement at the World Trade Organization (WTO). Borrowing insights from hegemonic stability theory, I argue that it is precisely the strategic nature of WTO dispute settlement that makes powerful states—namely, the United States (US)—willing to supply precedent. This theory accounts for three empirical insights regarding WTO dispute settlement: (1) the US, counterintuitively, tends to file low-stakes cases, (2) cases filed by the US yield a greater precedential value for the broader WTO membership than their counterparts, and (3) the US tends to shape the precedent that it does create in its favor. Statistical analysis using Bayesian estimation provides evidence in favor of the hypotheses. My results suggest that power undergirds the politics of WTO law.

Theory

Theory rests on two main building blocks:

Precedent is a public good, which entails collective action problems

- Precedent gives international law (potentially!) deterrent power
- Precedent is individually costly but socially beneficial

The United States has an acute interest in providing it

- The United States has historical reasons to invest in precedent
- Rational design literature misses the spillover effects of precedent

Methods

Estimate equations of the following form using Bayesian Normal Regression:

$$\text{Log(stakes)}_{i,d} = \beta * US + \gamma * \mathbf{X}_{i,d} + \epsilon_{i,d} \quad (1)$$

$$\text{Precedential Value (Wider Membership)}_{i,d} = \beta * US + \gamma * \mathbf{X}_{i,d} + \epsilon_{i,d} \quad (2)$$

$$\text{Precedential Value (Complainant)}_{i,d} = \beta * US + \gamma * \mathbf{X}_{i,d} + \epsilon_{i,d} \quad (3)$$

Conclusion

Given the public good nature of precedent, which states end up actually supplying it? In this paper, I showed that the US invests in and generates precedent that benefits the wider WTO membership. I also showed, however, that the precedent that the US does generate tends to disproportionately benefit the US. This evidence is consistent with the predictions of a Hegemonic theory of international law at the WTO.

Implications

- Results speak to whether international law can change state behavior
- Distributional consequences of international institutions

Future Work

- Interviews/case studies with trade officials
- Other implications of the theory?
- Econometrically, how to deal with network variables as the DV

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Hypotheses

H1 (Investment Hypothesis): Cases where the US files as a complainant should tend to have a lower amount of trade at stake than cases where the US is not a complainant.

H2 (Public Goods Hypothesis): Cases where the US files as a complainant should tend to have greater precedential value for the wider WTO membership than cases where the US is not a complainant.

H3 (Manipulation Hypothesis): Cases where the US files as a complainant should tend to have greater precedential value for the US itself than cases where the US is not a complainant.

Variable Construction

To test both the public goods and the manipulation hypotheses, I rely on a network analysis of WTO case citations. For the public goods hypothesis, I adapt the procedure described in Pelc2014 to measure the precedential value for the broader WTO membership instead of the precedential value for the specific complainant. Following Pelc2014, I use a weighted Katz centrality measure to measure precedential value to the wider WTO membership. The advantage of the Katz centrality score is that it takes into account both direct and indirect ties when calculating the centrality of each node (panel ruling). Specifically, the weighted Katz centrality score is calculated using the following formula:

$$\mathbf{C} = \mathbf{W}((\mathbf{I} - \alpha * \mathbf{A})^{-1} - \mathbf{I}) \quad (4)$$

Results

Do disputes initiated by the US tend to have lower commercial stakes?

IV	Coefficient	Sign	95% Posterior	Cross Zero
US Complainant	–		NO	
EU Complainant	–		YES	
Japan Complainant	–		YES	
Canada Complainant	–		YES	

Table: Testing Investment Hypothesis

Do cases filed by the US tend to have greater precedential value for the broader WTO membership?

IV	Coefficient	Sign	95% Posterior	Cross Zero
US Complainant	+		NO	
EU Complainant	+		YES	
Japan Complainant	–		YES	
Canada Complainant	–		YES	

Table: Testing Public Goods Hypothesis

Does the US disproportionately benefit from the precedent that it does generate?

IV	Coefficient	Sign	95% Posterior	Cross Zero
US Complainant	+		NO	
EU Complainant	+		NO	
Japan Complainant	+		YES	
Canada Complainant	+		YES	

Table: Testing Manipulation Hypothesis

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