Abstract

In shaping constitutional courts' jurisdictions, societies must contend with the informational challenges associated with rule-making and the distributive politics of granting courts jurisdiction over administrative law-making. Curiously, judges are often granted jurisdiction that seems to create a tension between their ability to acquire information about appropriate rules and to clearly articulate them. In particular, many courts handle the onerous burden of resolving thousands of routine, low-stakes cases of law-application. We develop an informational model of judicial docket style that isolates a tension between information acquisition and quality rule-writing and examine how that tension manifests in the incentives concerning jurisdiction style. Dockets that include a mix of law application and rule construction promote more informed judicial rule construction at the cost of lower quality rules and a greater role of the judiciary in the day to day activity of the state. We develop implications for constitutional design in a liberal democracy.

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1 Introduction

In asking judiciaries to monitor and ultimately construct rules on the nature of limits on the state, liberal democracies charge constitutional judges with a series of informational challenges. How should the constitutionality of a public act be understood in light of existing doctrine (Kornhauser 1992, Cameron 1993, Knight 2009, Lax 2011)? If doctrine needs to be changed, what are the likely consequences of the change for political and economic activity, and how precisely should legal rules be drafted in light of plausible consequences (Fox and Vanberg 2013, Lax 2012)? In large, complex societies answers to such important constitutional questions are seldom obvious. They depend on a variety of facts, background assumptions, and models of human behavior. In addition, working through these informational changes is not costless (e.g., Spriggs and Wahlbeck 1997, Cameron, Segal and Songer 2000, Carrubba and Clark 2012, Beim, Hirsch and Kastellec forthcoming). And even once a court reaches an understanding of the law in principle, translating that position into a interpretable rule written in natural language is no small task.

For peak courts, solving these informational challenges is part of a process of developing stable, clear rules, that are well-matched to society’s needs and promote political stability and economic development (Weingast 1997, Carrubba 2009, Reenock, Staton and Radean 2013, Gibler and Randazzo 2011). For these reasons, constitutional courts are often designed to focus primarily, often exclusively, on rule construction—developing principles of law concerning political, social and economic behavior in the context of salient questions of constitutional law emerging out of major political controversies. Yet many constitutional courts spend considerable time on law application—resolving routine cases of very low salience, which frequently influence no one other than the particular parties to the conflict, where the goal is typically simple error correction (Navia and Ríos-Figueroa 2005). We develop an account of constitutional review and jurisdictional choice that has implications for fundamental problems concerning the informational challenges inherent in rule construction, politicians ability to control the courts’ access to information, and the optimal design of judicial jurisdiction.

1Stability and clarity are core features of the rule of law. Rules that are well-matched to society’s needs are valued under a “living constitution” approach to interpretation, but this is not the only approach that values rules that suit current conditions. For different positions in support of constitutional rules that are well-suited to particular societies see Brennan Jr (1986) and Liu, Karlan and Schroeder (2010).
Our model departs from traditional studies of jurisdiction, which focus on one of two kinds of
distributional concerns. In one class of models, political actors manipulate jurisdiction to protect
themselves from other institutions or to manage agency loss associated with the administration of
the law (e.g., McNollgast 1990, Shipan 2000, Farhang 2010). In another class of models, political
actors manipulate jurisdiction to manage the costs associated with litigation and resolving disputes
through a judicial process (e.g., Chutkow 2008). While not calling into question the claims under-
lying those studies, we focus analytic attention instead on how leaders influence the information to
which peak courts are exposed, which has significant consequences for courts’ ability to construct
optimal rules. In isolating the informational component of jurisdiction, we show that setting aside
distributional concerns, there nevertheless exist incentives for political actors to delegate author-
ity to the judiciary. We claim that law application conducted repetitively in a large number of
non-salient cases can provide useful information for solving a court’s inferential challenge over the
appropriateness of particular rules; however, the increase in information provided by law applica-
tion can also complicate solutions to a court’s legal writing challenges, by reducing the time judges
have to devote to the development of persuasive, clear opinions. Thus, there is a tradeoff between
what we will call “informative” rule construction and “high quality” opinion-writing about those
rules.

We develop an informational model of docket choice, in which first judges and then politicians
are charged with the task of choosing a docket style in light of the tradeoff between informative
rules and quality opinions. In our model, endowing the government with control over the court’s
jurisdiction always reveals information to the court useful for rule construction. Under some condi-
tions rule construction can be more informative when governments select dockets than when courts
do, because many types of leaders have strong incentives to expose the judiciary to detailed infor-
mation about their bureaucratic practices. This is true even though there are many other types
of leaders who would like to minimize the judiciary’s exposure to the bureaucracy. Critically, the
informational advantage of granting the government control over the court’s jurisdiction grows as
courts become better resourced, increasingly deferential to the government, and in states where the
government enjoys strong control over the bureaucracy.

In what follows, we characterize the nature of variation in docket styles and the incentives
judges and politicians face in choosing docket styles. We then formalize those incentives into, first,
a decision-theoretic model of judicial control of the docket and, second, a game-theoretic model of governmental control of the docket. We conclude by considering the implications of our analysis for understanding judicial policy-making, the judicialization of politics and constitutional design.

2 The Puzzle of Large Docket Systems

The caseloads of the world’s peak national courts vary in a number of ways (Navia and Ríos-Figueroa 2005); however, they share one critical commonality. In both systems with small dockets concentrated on rule construction and systems with mixed, large dockets that include considerable law application, judges are called upon to adjudicate competing claims regarding the nature, division and balance of the general powers of government in instruments of constitutional review, abstract or concrete, which invite judges to construct rules, the effects of which are general (Ginsburg 2003, Ríos Figueroa 2011). The Supreme Court of the United States and the Constitutional Court of Colombia both interpret public policy with respect to their constitutions and attempt to lay out general rules of law. Often this is done via the resolution of cases of relatively high political salience, where the constitutional questions presented are significant and the primary legal challenge involves crafting quality legal rules, which will guide future political and economic behavior. For example, in the 2012 health care decision, the critical issue was whether (and if so why) the United States Congress possessed the authority to enact the individual mandate provision of the Patient Protection and Affordable Care Act under either the tax and spend or commerce clauses of Article I.\(^2\) Similarly, in the Colombia Constitutional Court’s 2005 landmark decision on presidential reelection, the critical matter was whether (and if not why not) Congress’s amendment to the Constitution amounted to a fundamental substitution of the founding document rather than a simple amendment.\(^3\) Both decisions involved salient partisan battles but also had consequences for a general class of potential future cases.

What differentiates the systems is the fact that large docket systems also ask judges to review an enormous series of factually similar cases, typically over individual rights claims, in which effects are limited to the parties, the political stakes are extremely low, and the core task involves applying pre-existing rules to the facts at hand (Brewer-Carias 2009). These cases, typified by


\(^3\)C1040/2005.
the Latin American _amparo_, involve recognizing patterns of facts and deciding how these facts would be interpreted under existing doctrine (Kornhauser 1992, Cameron 1993, Knight 2009, Lax 2011). For example, a common question might be whether a plaintiff has been fairly informed of his pension status or been given sufficient health care by the state. In these cases, the most difficult informational challenges associated with developing and articulating constitutional rules are less salient. This is not to say that law application is simplistic, but only that the informational challenges are less varied and difficult than in rule-construction cases.

Critically, the caseloads induced by mixed, large docket systems can be startling. The Supreme Courts of the United Kingdom and United States and the Chilean Constitutional Court manage just hundreds of cases per year. In contrast, the Constitutional Chamber of the Costa Rican Supreme Court now resolves roughly 20,000 cases annually; the Colombian Constitutional Court disposes of nearly 400,000, in one area of its jurisdiction alone. Consider the Costa Rican Sala IV; since it was reformed in 1989, its _amparo_ docket has exploded. Many countries around the world have constitutional courts that engage in amparo-style adjudication—essentially routine law application. Critically, when they do, these cases almost always comprise the vast majority of the courts’ dockets. Figure 1 shows the recent docket size for a selection of constitutional courts. The black dots show the total number of cases heard by the constitutional court; the grey triangles show the total number of “law-application” cases—essentially, _amparo_ cases—where these data are available. (In India, many of the cases are law-application cases, but the Court does not break the docket down so that we can easily characterize cases.) What this figure reveals is there there exist, in essence, two classes of constitutional courts. All constitutional courts hear a small number of rule-making, salient cases. Some constitutional courts, though, such as those in South Korea, Spain, or Costa Rica, hear many thousands of cases, most of which are of the routine law-application nature. This source of variation in how courts spend their time is on its face perplexing, given that the law-application cases seem to be resource-demanding, provide little policy-making opportunity, and are presumably distracting from these constitutional courts’ “real” work.

Although judges and politicians both have tools at their disposal for reducing courts’ docket sizes (e.g. Rubio, Magaloni and Jaime 1994, Elkins, Ginsburg and Melton 2009), both frequently lament the size of those dockets. Judges complain about massive law-application caseloads, which take up time that could be more profitably devoted to salient rule construction (Wilson 2011, Clark
Figure 1: *Constitutional court dockets in select countries.* The black dots show total caseload for each country. The grey triangles show the total number of routine law-application (e.g., amparo) cases for countries in which this information is discernible.

and Strauss 2010, Ganz 2012, Dakolias 1995-1996, Robel 1990). Indeed, in the early 2000s, the Sala IV lobbied for a constitutional reform that would have created special courts for resolving amparos, leaving the Sala IV to its smaller, but admittedly more salient docket. Politicians do not seem to care for them either. Indeed, the 2013 reform in Ireland, which created a new Court of Appeals to hear, essentially, routine law-application cases, demonstrates the incentive both judges and politicians have to focus high courts on constitutional rule-making. In the US context, litigating these cases, which often involve review of administrative decisions, is time consuming and costly. It also transfers a degree of control over bureaucratic outcomes from the executive to the judiciary (Chutkow 2008), although there may also exist incentives to endow courts with jurisdiction for precisely that reason (Shiman 2000, Farhang 2010). The Latin American amparo especially places judges in the position to tightly monitor a government’s agents, frequently inviting them to substitute their technical judgment for that of the bureaucracy, an institutional decision that can promote policy-making errors derived from a mismatch between the problem at hand and judicial expertise (Uprimny 2007, p. 62).

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3 Informational Implications of Large Dockets

The alleged problem with large law-application dockets, from the judiciary’s perspective at least, is that they take judges away from the more challenging and intellectually stimulating task of rule construction. There are at least two potential ways in which the law-application docket erodes judges’ ability to effectively construct rules. First, rule construction requires the resolution of a “means-ends” problem common to public policy-making—developing context-dependent knowledge to develop rules that optimally interact with features of the world about which judges are often uncertain (Kornhauser 1992, Lax 2012, Staton and Vanberg 2008). Second, judges must articulate their rules in written opinions, for others to read and apply. Communicating those rules precisely is time-consuming and challenging (e.g., Jordan N.d.).

To know whether and how a large law-application docket might undermine rule construction requires understanding how law application influences rule construction’s informational challenges. Our argument departs from a simple assumption. Law application can impact a judge’s ability to solve these informational problems, but rather than unambiguously undermining rule construction, engaging in significant law application generates two competing effects on successful rule construction. Precisely because courts are institutions of limited resources for developing expertise, the primary mechanism they have for learning about how different rules work in application is through reviewing how they work in individual controversies. This is one reason why the US Supreme Court often allows legal questions to “percolate” before stepping in to resolve them (Clark and Kastellec 2013). Rule construction that can benefit from the information derived from experience managing vast quantities of non-salient cases. Many of the Colombian Constitutional Court’s most fundamental rights decisions have come in the context of “structural” rulings declaring a general “unconstitutional state of affairs” in policy areas as diverse as internally displaced persons, social security, prison overcrowding, and the protection of human rights defenders (Rodríguez Garavito 2010-2011). The rationale for these declarations, the precise rules defined and the remedies proposed were aided by a massive stream of individual tutela claims that indicated and clarified the nature of the political problem across the country.5 That said, as judges gain information about ap-

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5It seems possible, as well, that large caseloads that provide information on the functioning of the state’s bureaucracy might also provide information about appropriate levels of judicial scrutiny in unrelated areas. For example, by observing how a president’s security sector respects fundamental human rights may provide important information about the general degree of discretion such a person (or the office) should be granted. This information may be
appropriate legal rules by engaging in law application, they take time away from the process of writing opinions, i.e., they devote less time to the communicative task of relating rules to the government, other judges and the general public. If clarity in writing depends on writing and re-writing, on trying out phrases and incorporating feedback, the time judges spend on multiple tasks is likely to undermine the clarity and (perhaps) the persuasiveness with which they write.

This tradeoff between the information that can be obtained via law application and the quality in writing that can be achieved via a focus on rule construction should be addressed in the choice over docket style. In so far as judges and leaders may have diverging preferences over both legal rules and the way that the law application cases are resolved, they likely will evaluate this tradeoff differently. And for that reason, they will likely make different docket choices.

Further, we know that jurisdictional choice does not turn on information alone. As we described above, a key governmental rationale for limiting the kinds of law application activities courts engage in is administrative—it reduces the state’s administrative burden in litigating these cases. It also transfers less control over the government to another branch, thus providing weaker checks on government. But just as governments might prefer to maintain control over the final outcomes to bureaucratic decisions, judges are frequently concerned with ensuring that there is a meaningful check on the state’s obligations to protect individual rights (Cepeda-Espinosa 2004). Effective judicial checks commonly come in the form of the kinds of cases we refer to as involving mere law application. For this reason, concerns over justice and effective checks in a separation of powers system complicate jurisdictional choices and have important implications for informed constitutional review.

4 A Model of Judicial Control of the Docket

We begin our analysis by considering the kinds of jurisdictional choices a court would make were it solely empowered to do so. This first requires considering the court’s jurisprudential challenges, which in our case will involve challenges of law application and rule construction with respect to public acts taken by the sitting government. The court’s docket choices will follow from the particularly useful in developing rules about seemingly unrelated, general questions, like whether the constitution permits a president to run for a consecutive term.
jurisprudential challenges it sees. In Section 5, we will then grant jurisdictional control to the government.

The court in our model has a docket that may be comprised of law application and rule construction cases. In either case, we assume that the court’s primary motivation is to “get the law right.” What this means in practice depends on the jurisdiction. The first jurisdiction asks the court to resolve a large number cases, deriving from individual constitutional complaints, each of which tightly linked to a particular government effort to enforce the law. The plaintiff’s claim in each case is that the government has acted in a way violating its constitutional obligations. Resolving each of these cases requires the application of existing law to unique factual situations. The court must engage in factual inquiries that are easily resolved once the facts are learned. The key problem is that there are many of these cases. The second jurisdiction asks the court to engage in constitutional rule construction, typically aimed at characterizing general limits on the powers of the government. The goal of the court in its second jurisdiction is to construct a rule that is appropriately constraining given its beliefs about the nature of the government it reviews. Some governments are deserving of considerable deference or flexibility whereas others are deserving of a high degree of constraint. We alternatively refer to this rule as a “constitutional posture.” There are very few of these rule-construction cases, but their proper resolution and clear communication depends on considerable attention to good writing and good information about the likely consequences of granting more or less discretion to the government. We refer to the first kind of case as a “law-application” case and the second kind as a “rule-construction” case.

4.1 Elements of the model

Notation. The model permits two docket styles, one that is varied and one that is concentrated on rule construction. A docket style is denoted \( d \in \{0, 1\} \), where \( d = 0 \) contains only rule construction cases and \( d = 1 \) contains a mix of law-application and rule-construction cases. The law-application portion of the docket involves \( N \) law-application cases. Let the set of law application cases be characterized by a vector \( x \) of length \( N \), where \( x_i \in \mathbb{R}, \forall i \). The value of \( x_i \) in each case indicates to the court the degree to which the government has intruded on an individual right or otherwise exceeded a constitutional limit as it attempts to enforce the law. The law-application cases are themselves created by \( N \) actions taken by the Government in an effort to enforce the law. Let the
set of those actions be given by a vector of length \( N \), denoted \( \mathbf{a} \), where \( a_i \in \mathbb{R} \), \( \forall i \). Finally, each of these law-application cases results in a ruling regarding the plaintiff—either in favor of or against the plaintiff. Let the set of rulings be given by a vector, \( \mathbf{v} \), of length \( N \), where \( v_i \in \{0, 1\} \), and \( v_i = 0 \) is a ruling against the plaintiff and \( v_i = 1 \) is a ruling for the plaintiff. We assume that \( v_i = 0 \) \( \forall i \) if \( d = 0 \). The Court has a threshold \( C \in \mathbb{R} \), such that it prefers \( v_i = 1 \) if \( x_i \geq C \) and \( v_i = 1 \) if \( x_i < C \). Denote the number of bad law-application classifications by \( k \) (e.g., \( v_i = 0 \) when \( x_i > C \)), and let \( \gamma_c > 0 \) represent the cost of making an incorrect classification in each case.

We denote the government’s type by \( \omega \in \mathbb{R} \), which reflects the level of legal constraint that is appropriate for the government from the court’s perspective. In the rule-construction jurisdiction, the court drafts a legal opinion. Judicial opinions are written in natural language. For this reason, what the court intends by the rule may not be the outcome of the rule in practice. We distinguish between the rule that the court writes in its opinion, denoted \( r \in \mathbb{R} \), and the outcome of the rule, denoted \( r^o \), also a real number. We assume that the variance in realized constitutional rules around the rule written in the opinion is a function of the Court’s workload. Formally, we assume that \( r^o \sim \mathcal{N} (r, \sigma^2_r) \) if \( d = 0 \) and \( r^o \sim \mathcal{N} (r, N \sigma^2_r) \) if \( d = 1 \). Finally, a decision profile for the court is a list of \( N + 2 \) decisions \( \rho = \langle d, v_1, \ldots, v_N, r \rangle \).

**Timing.** The baseline model begins with Nature choosing a type for the Government, after which \( N \) instances of law application outcomes are realized. These outcomes are realizations of random variables defined by \( N \) Government actions. Formally, we assume that \( x_i \sim \mathcal{N} (a_i, \sigma^2_{a,i}) \), \( \forall i \). The randomness of the case outcomes captures the fact that the legal system (litigants themselves, lower courts, etc.) is unlikely to perfectly communicate to the court exactly what happened in a particular enforcement action. The same Government action can result in more or less abusive outcomes in individual cases. Similarly, we assume the Government actions are themselves realizations of random variables defined by the Government’s type, such that \( a_i \sim \mathcal{N} (\omega, \sigma^2_a) \), \( \forall i \). The randomness of government actions around the Government’s type captures the fact that no Government has perfect control over all actions taken, owing to bureaucratic agency loss, indeterminacy in the law, etc. The Court then chooses a docket style, \( d \in \{0, 1\} \). If the Court chooses \( d = 1 \), then it observes \( \mathbf{x} \) and chooses a vector of resolutions of the law-application cases, \( \mathbf{v} \). Otherwise, the Court does not observe \( \mathbf{x} \), and \( v_i = 0 \), \( \forall i \). Independent of its choice of \( d \), the Court then selects a constitutional
posture, \( r \). A realization of the Court’s constitutional outcome, \( r_0 \), is then realized. Finally, payoffs accrue.

**Utility.** As we note above, the Court’s primary challenge is to get the law right. The utility function we assume captures the court’s objective simply. We assume that the court experiences quadratic losses in the distance between \( \omega \) and the constitutional outcome \( r_0 \), as well as linear losses in the cost of a poor law application allocation, scaled by the number of such allocations. The court’s utility function is given by

\[
u(k, r; \omega, \gamma) = - (\omega - r_0)^2 - \gamma c k
\]

**Information.** The Court has a prior belief about the government’s type given by \( \omega \sim \mathcal{N}(0, \sigma_\omega^2) \). Let \( \phi_0(\omega) \) represent the pdf for the Court’s prior belief. In the event the Court chooses \( d = 1 \), the Court directly observes cases but not the government enforcement actions that generated them, reflecting the idea that cases imperfectly reveal information about government enforcement actions via the litigation process. Each case corresponds to a unique set of case facts, substantive questions at hand, procedural histories, attorney qualities, deliberative outcomes, etc. That said, cases are signals of the government’s actions, which are themselves signals of the government’s type. As we discuss above, each case is conceived of as a draw from a normal distribution centered on the government’s action in that case; and, each enforcement action is a draw from a normal distribution centered on the government’s type. For simplicity we further assume that the case-specific variance in outcomes around government actions is the same, so that \( \sigma_\omega^2 x, i = \sigma_\omega^2, \forall i \). Upon observing \( N \) signals about \( \omega \), the Court’s posterior belief about \( \omega \) is given by

\[
\omega \sim \mathcal{N} \left( \frac{N \nu^2 \mathbf{x}}{\sigma_\omega^2 + N \nu^2}, \frac{\sigma_\omega^2 \nu^2}{\sigma_\omega^2 + N \nu^2} \right)
\]

where \( \mathbf{x} \) is the average value of \( x_i \) observed and \( \nu^2 = \sigma_a^2 + \sigma_x^2 \) (DeGroot and Schervish 2012, 398-9). Let \( \phi_0(\omega) \) represent the pdf of the Court’s prior belief about \( \omega \), and \( \phi_1(\omega) \) represent the pdf of the Court’s posterior belief after choosing \( d = 1 \) and observing \( x \).
4.2 Analysis

We begin by characterizing the optimal constitutional posture, \( r \). Intuitively, the optimal rule to pick is equal to the Court’s expected value of \( \omega \), because utility losses from random realizations of the rule, \( r^\circ \), are symmetric around the target rule, \( r \). While this result is not surprising, it proves important in the subsequent analyses to come, because it creates incentives regarding information seeking and revelation by the Court and the Government, when we extend the model to allow the Government to control the Court’s docket.

**Lemma 1** The optimal constitutional rule to write is given by \( r^\ast = \mathbb{E}[\omega] \).

By construction, the Court faces no strategic incentives in the choice of \( v \). Therefore, the Court will rule sincerely on each of those cases, picking \( v_i = 1 \) if \( x_i \geq C \) and \( v_i = 0 \) otherwise. The implication is that as the Court becomes increasingly permissive, it will grant plaintiff’s claims in fewer cases.

Finally, consider the Court’s docket choice. To do so, it is helpful to express the Court’s expected utility at the beginning of the game. The court’s expected utility function is given by

\[
EU(d) = \begin{cases} 
- (\mathbb{E}[\omega|\phi_1(\omega)] - r^\ast_{d=1})^2 - \frac{N\sigma_r^2}{\sigma_\omega^2 + N\nu^2} - \frac{\sigma_\omega^2\nu^2}{\sigma_\omega^2 + N\nu^2} & \text{if } d = 1 \\
- (\bar{w} - r^\ast_{d=0})^2 - \frac{\sigma_r^2}{\sigma_\omega^2} - \frac{\sigma_\omega^2}{\sigma_\nu^2} - \sum_{i=1}^{N} \gamma Pr(x_i > C) & \text{if } d = 0.
\end{cases}
\]

Yet as Lemma 1 notes, regardless of the docket style, the court will set the rule equal to the expected state. For this reason, the expected utility of each docket turns on the variance in the court’s belief about the state, the court’s opinion-writing ability, and the expected number of misclassifications it will induce in the law-application docket, weighted by the cost of doing so, if it leaves the resolution of those cases to the lower courts. The court will select the large docket whenever the following inequality holds.

\[
- \frac{\sigma_\omega^2\nu^2}{\sigma_\omega^2 + N\nu^2} - N\sigma_r^2 \geq -\sigma_\omega^2 - \sigma_r^2 - \sum_{i=1}^{N} \gamma Pr(x_i > C)
\] (2)
And because the court knows the action and case distributions, as well as its own threshold, 
\(Pr(x_i > C)\) is constant for all cases \(i\), and we can re-write this inequality as

\[
\frac{\sigma^2_\nu}{\sigma^2_\omega + N \nu^2} + N \sigma^2_r \leq \sigma^2_\omega + \sigma^2_a + \sigma^2_x + N \gamma \int_C^\infty f(x)dx
\] (3)

where \(f(x)\) is the pdf of the Normal distribution with mean 0 and variance \(\sigma^2_\omega + \sigma^2_a + \sigma^2_x\). Using condition (3), we can identify a necessary and sufficient condition for the Court to choose \(d = 1\). Specifically, it must be that the variance in constitutional outcomes—the precision with which the Court writes opinions—is sufficiently low that the adverse consequences of choosing to hear law-application cases justifies the increased information and case-correction benefits.

Lemma 2 The court will choose \(d = 1\) if and only if

\[
\sigma^2_r \leq \left( \sigma^2_\omega - \frac{\sigma^2_\omega \nu^2}{\sigma^2_\omega + N \nu^2} + N^2 \gamma c \int_C^\infty f(x)dx \right) (N - 1)^{-1}
\]

While the intuition behind Lemma 2 is straight-forward, the finding gives rise to a series of important results that illustrate the consequences of the tension we study. In particular, there are a number of parameters that monotonically increase the Court’s incentive to hear the law-application cases.

First, regarding the Court’s uncertainty about the Government’s type, Lemma 2 shows that increasing uncertainty about the Government’s type (\(\sigma^2_\omega\)) always increases the incentive to hear the law-application docket (i.e., choose \(d = 1\)). To see why this is the case, note that as the Court is increasingly uncertain about the Government’s type, the value of information from the law-application cases becomes increasingly valuable. Moreover, as the Court becomes increasingly uncertain about the Government’s type, there is an increasing chance that outcomes \((x_i)\) will exceed the Court’s threshold, \(C\), creating another incentive to hear the law-application cases. At the same time, the Court’s uncertainty about the Government’s type does not implicate the quality of the information the Court receives from the law-application cases, as that is driven by the Government’s control over the bureaucracy (\(\sigma^2_a\)) and the variability of case outcomes around Government actions (\(\sigma^2_x\)).
Second, as the Court becomes more effective in its opinion-writing, as $\sigma^2_r$ decreases, the Court becomes more likely to hear the law-application cases. The reason is straight-forward: more effective Courts stand to lose less in terms of clarity and efficiency from their additional workload.

Third, as the Court becomes more concerned about injustice—as $C$ decreases or as $\gamma_c$ increases—the Court becomes more likely to hear the law-application cases. As $C$ decreases, the chances of a case outcome, $x_i$ exceeding the Court’s threshold for reversal increase, and so the Court risks more injustices that go uncorrected. As $\gamma_c$ increases, the disutility the Court receives from injustices increases, and so the Court cares more and more about unresolved injustices in the law-application cases.

**Result 1** The Court’s uncertainty about the Government’s type, its skill in opinion-writing, and its tolerance for injustice all have monotonic effects on the incentive to hear law-application cases. The more uncertain the Court about $\omega$, the greater its skill in opinion-writing, and the more it cares about injustice, the greater the incentive to hear law-application cases.

In contrast to the Court’s characteristics, the size of the law-application docket has a more ambiguous effect. Initial increases in the size of the law-application docket decrease the incentive to hear the law-application cases. This is because the informational benefit of those cases is decreasing in the margin. At the same time, the consequence for the Court’s efficiency is increasing linearly. Therefore, once the Court has a certain amount of information, the additional work associated with the marginal case is not worth the informational benefit. However, for sufficiently large values of $\gamma_c$—the disutility the Court suffers from not correcting injustices—the effect becomes nonmonotonic. If the Court places enough value on enforcing individual rights, then at a certain point that disutility outweighs the workload consequences of taking the law-application docket. In this instance, it is only for more moderate sizes of $N$, that the efficiency cost is large enough that it is not offset by relatively moderate informational and error-correction benefits. As a consequence, the incentive to hear the law-application docket is strongest when the law-application is very small or very large.

**Result 2** For sufficiently large values of $\gamma_c$, Increasing $N$ has a non-monotonic effect on the Court’s willingness to choose $d = 1$. At low levels of $N$, increases in $N$ make it increasingly likely the Court will prefer $d = 1$. At high levels of $N$, increases in $N$ make it increasingly likely the Court will prefer $d = 0$. For smaller values of $\gamma_c$, the effect of increasing $N$ is to monotonically decrease the incentive to hear law-application cases.
Figure 2: Non-monotonic effect of small docket size on judicial incentives to hear law-application cases, given sufficiently large $\gamma_c$. When the size of the law-application docket is small, the incentive to hear those cases for their informational and justice values outweighs the relatively small cost of hearing the cases. When the size of the law-application docket is large, the incentive to hear the cases for their informational value, as well as correcting errors, also justifies the cost of hearing the cases. For middling-sized dockets, there is not enough information or opportunities for error correction in the cases to justify the cost of diluting the Court’s rule-construction quality.

Finally, we note that these results highlight the nature of an important tradeoff in the model. There exists for the Court a tradeoff between information and efficiency. As Result 2 shows, the tradeoff between information—gained by hearing law-application cases—and efficiency—gained by focusing solely on constitutional rule-writing is not straightforward. Instead, the Court’s concern for injustice, its underlying efficiency, and its uncertainty about the Government’s type complicate that tradeoff.

**Corollary 1** The Court faces a tradeoff between collecting information about the Government’s type and resolving injustice and working efficiently. Under some conditions, concerns about injustice justify a loss in efficiency. Under other conditions, the desire for information justifies a loss in efficiency. Under yet other conditions, the Court is willing to accept injustice and a lack of information for the benefit of judicial efficiency.

## 5 A Model of Government Control of the Docket

The decision-theoretic model provides insight into how a Court with complete control over its docket might tradeoff tensions among information acquisition, workload, and the desire to correct errors made below. However, control over judicial jurisdiction is often not just in the hands of the judiciary but also (or instead) in the hands of the very government the Court oversees. We develop a game-theoretic model in which we assume control over the Court’s docket style rests with the government. We consider a series of incentives and tradeoffs facing the government, including its interest in controlling law-application, in ensuring judicial efficiency, and securing a judicial
constitutional posture favorable to the government. By studying the incentives and tradeoffs the
government faces, we are in a position, in the next section, to return to our primary motivation of
what considerations are at play in the constitutional design of judicial-governmental control over
judicial jurisdiction. To preview, we find that the government can never use its control over the
docket to completely block the Court from learning about the government’s type. As a consequence,
it faces a potentially complicated tradeoff between revealing information to the Court about its
underlying type and its incentives concerning judicial efficiency and oversight of the bureaucracy.

5.1 Elements of the model

Timing. The model proceeds identically to baseline. The only difference is that the government
chooses $d$. If $d = 1$, then the Court observes $N$ cases and turns to its rule construction task. If
$d = 0$, the Court only engages in rule construction.

Utilities. The Court’s utility is as defined above. We assume the Government derives utility
from three sources. First, the Government prefers more permissive constitutional postures to less
permissive postures, and so receives $-r$ from the Court’s constitutional posture, $r$. Second the
Government prefers clearer constitutional posture to vaguer constitutional posture and so receives
utility $-N \sigma_r^2$ if $d = 1$ and $-\sigma_r^2$ if $d = 0$. Finally, the Government derives utility from the disposition
of law-application cases. In particular, we assume that the Government prefers $v_i = 0$, $\forall i$. The
Government’s utility is therefore given by

$$u_g(d) = -r - N \sigma_r^2 - \gamma_g \sum v_i.$$  (4)

We are assuming the Government perceives no plaintiff’s claim to be valid.\(^6\)

5.2 Analysis

Our analysis proceeds in three stages. First, we describe the nature of the Court’s belief structure
about $\omega$ and describe the various ways in which the Court updates its beliefs after the Government
makes a docket decision and the Court observes case outcomes. Second, we characterize the unique

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\(^6\)This is not to say that the government never finds any basic claim for social services to be valid. The assumption
is that once this kind of claim has been rejected and the individual chooses to litigate, the government prefers to win.
perfect Bayesian equilibrium in the game and consider a series of series of comparative statics results. Throughout, we assume that beliefs at histories that are not reached in equilibrium are constructed via passive conjectures. Finally, we revisit a set of tradeoffs and tensions that motivate discussion of the choice facing a constitutional designer.

5.2.1 Beliefs

The information environment in which the Court makes decisions in this model is very much like the information environment in the baseline model, except that the Government’s choice over docket type could potentially influence the Court’s beliefs about the Government’s type, \( \omega \). In particular, whereas the Court’s posterior belief about \( \omega \) in the baseline model was given by a Normal distribution updated with case signals modeled as Normal draws, in this model the Court’s beliefs will first be updated by the Government’s docket choice and then by the case signals. In the event that the Government’s equilibrium docket choice is independent of its type (e.g., in a pooling equilibrium), the Court will derive no information from the docket choice and therefore update in light of the case outcomes exactly as it does in the baseline model. In the event the Court’s equilibrium docket choice does in fact depend on its type, then the Court will first update its belief from a Normal distribution centered on 0 to a truncated Normal distribution, putting support only on those types that play that particular docket choice in equilibrium.\(^7\)

In describing how beliefs would be formed in an equilibrium, it is useful to focus on one kind of strategy for the Government. Consider a strategy in which there is a value, \( \omega' \), such that all Government types on one side of \( \omega' \) choose an identical docket, say e.g., \( d = 0 \), and all types on the other side of \( \omega' \) make the opposite choice, i.e., \( d = 1 \). Figure 3 illustrates what the Court’s posterior belief would look like under a variety of scenarios. In the top-left panel, we consider the world in which the Court observes \( d = 0 \), when \( d = 0 \) is chosen in equilibrium if \( \omega < \omega' \); in the top-right panel, we consider the world in which the Court observes \( d = 0 \), and \( d = 0 \) is chosen in equilibrium when \( \omega > \omega' \). These two posteriors are just the prior belief, truncated (above or below) at \( \omega' \). The more interesting situation is when the Court observed \( d = 1 \). The bottom-left panel shows the situation where the Court observes \( d = 1 \), and \( d = 1 \) is chosen in equilibrium only if \( \omega < \omega' \). In

\(^7\)Notice that in this instance, because there are only two possible choices—\( d = 1 \) and \( d = 0 \)—all choices are observed in equilibrium, and so no Government choices constitute out of equilibrium choices.
Figure 3: Belief structure under different types of actions by the Government. Each panel shows a posterior belief under an alternative set of signals. The top-left panel shows the posterior belief after observing truncation above at $\omega'$; the top-right panel shows the posterior belief after observing truncation below at $\omega'$. The bottom-left panel shows the posterior belief after observing truncation above at $\omega'$, followed by $N$ case outcomes; the bottom-right panel shows the posterior belief after observing truncation below at $\omega'$, followed by $N$ case outcomes.
such a case, having observed \( d = 1 \), the Court will also observe \( N \) case outcomes. The bottom-right panel shows the complementary scenario, where the Court observes \( d = 1 \), and \( d = 1 \) is chosen in equilibrium only if \( \omega > \omega' \). Here again, having observed \( d = 1 \), the Court then observes \( N \) case outcomes. The most important thing to note is that, of course, the Court places zero probability on types for which the strategy is out of equilibrium. Second, as the bottom row shows, the Court’s beliefs are more accurate when the Court benefits from observing \( N \) case outcomes. The visual intuition for the Court’s posterior beliefs is useful for equilibrium analysis below.

5.2.2 Equilibrium analysis

There is a unique perfect Bayesian equilibrium in this game. To characterize it, we first consider the possibility of a pooling equilibrium, in which the Government chooses either \( d = 1 \) or \( d = 0 \), independent of type, \( \omega \). Such an equilibrium cannot exist for the following reason. Suppose there existed an equilibrium in which the Government, independent of type, chose \( d = 0 \). In this case, the Court’s posterior belief about the Government, conditional upon observing \( d = 0 \), is equal to its prior belief. By Lemma 1, the Court would choose \( r^* = E[\omega] = 0 \). This would create an incentive for the Government to choose \( d = 1 \) if \( \omega \) is sufficiently below 0, where sufficiently is defined by its utility loss from the decrease in judicial efficiency and the utility loss from judicial intervention in the plaintiff’s claims. Because \( \omega \) is unbounded below, there will always be some type of Government for which this tradeoff is justified.\(^8\)

On the other hand, suppose an equilibrium in which the Government always chooses \( d = 1 \), independent of its type. In this case, the Court would have a posterior belief about \( \omega \) that is close to the true \( \omega \), though how close depends on the quality of the signals, \( \sigma_\omega^2 \) and \( \sigma_a^2 \), and the size of the docket, \( N \). By deviating and playing \( d = 0 \), the Government can induce a belief that is equal to the Court’s prior (under passive conjectures)—this belief may be higher than what would have been induced by playing \( d = 1 \), but the Government would benefit from increased judicial efficiency and from avoiding judicial intervention in the law-application cases. Because \( \omega \) is unbounded above, there will always be some type of Government for which this tradeoff is justified.

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\(^8\)Note that under passive conjectures, the court’s beliefs would not be updated by the signal, but they would be pulled in the direction of the true \( \omega \) by the \( N \) signals.
Lemma 3  There exists no equilibrium in which all types of governments pool and choose the same docket for the Court.

Of course, no fully separating equilibrium is possible given the coarseness of the signal space. Thus, the only other possibility is an equilibrium in which the types of government separate partially. In practice, this means that the types would separate into classes, where within a class docket choices are identical (e.g., all \( \omega : -3 \leq \omega \leq 3 \) choose \( d = 0 \), while all \( \omega < -3 \) and all \( \omega > 3 \) choose \( d = 1 \)). Lemma 4 and its corollary demonstrates that in fact any such equilibrium must entail a partition of the type space into no more than two sets, where all Government types below the threshold choose \( d = 1 \) and all Government types above the threshold choose \( d = 0 \).

Lemma 4  Any equilibrium involving semi-separation must entail a threshold such that the Government chooses \( d^* = 1 \) if \( \omega \) is below that threshold and \( d^* = 0 \) if \( \omega \) is above that threshold.

The reasoning is as follows. Suppose that there is an equilibrium such that there is a threshold, \( \omega' \), where all Government types above \( \omega' \) play \( d = 1 \); and, all types below \( \omega' \) play \( d = 0 \). Substantively, this is to say that all governments below a certain level of \( \omega \) (governments in less need of scrutiny according to the court) would eliminate the law-application docket and all governments above this level of \( \omega \) (governments in need of more scrutiny) would provide for a mixed docket. In such an equilibrium, having observed \( d = 1 \), the Court’s posterior belief about \( \omega \) will be supported only on that range of types and will be influenced by both the Court’s prior and the signals it receives. Having observed \( d = 0 \), the Court’s posterior expectation about \( \omega \) will necessarily be

![Figure 4: Incentive to deviate whenever high types choose to open the law-application docket and low types choose to close the law-application docket.](image-url)
lower for those types than for the types playing \( d = 1 \). This is because the Court’s posterior will place positive probability only on the types playing \( d = 0 \), which is a range of types lower than those playing \( d = 1 \). Figure 4 illustrates this intuition visually. Any type that is supposed to play \( d = 1 \) that deviates to \( d = 0 \), will benefit from (a) a better constitutional posture (i.e., lower \( r \)), (b) a more efficient Court (i.e., it will lose \(-\sigma_r^2\) instead of \(-N\sigma_r^2\)), and (c) avoiding judicial intervention in the law-application cases. The consequence is that there cannot be an equilibrium in which types to the left of \( \omega' \) play \( d = 0 \) while types to the right play \( d = 1 \).

An immediate corollary of this result is that any partition of the government type space can divide the types into at most two sets. The reason is that any partition that involves more than two sets of governments choosing distinct docket choices will involve at least two government types \( \omega_i \) and \( \omega_j \), such that \( \omega_i > \omega_j \) for \( i \neq j \), where \( \omega_i \) chooses \( d = 1 \) when type \( \omega_j \) chooses \( d = 0 \). This is not possible by Lemma 4.

**Corollary 2** A perfect Bayesian equilibrium in this game entails a partition of the government type space into at most two sets of governments.

With these results in hand, we can establish the unique perfect Bayesian equilibrium to the model. In particular, the unique PBE is characterized by a cut point, \( \omega' \), such that the Government plays \( d^* = 1 \) if \( \omega < \omega' \) and \( d^* = 0 \) if \( \omega \geq \omega' \). The Court’s strategy is described in Section 4. Beliefs for the players are described above. All histories in this equilibrium are reached and so the Court’s beliefs are fully characterized by Bayes’ Rule. The Government’s beliefs are consistent (trivially) with the strategy profile. The key intuition behind this equilibrium is that if the Government’s type is low enough, the incentive to reveal its type (by allowing the Court access to the law-application cases) outweighs the cost of burdening the Court with the work (and reducing the quality of its constitutional rule-making) and the cost of allowing the Court oversight of its bureaucratic decisions. By contrast, when the Government’s type is high enough, the consequences of revealing too much information about its type, by allowing access to the law-application docket, combine with the other adverse consequences to induce the Court to shut off the law-application docket.

**Proposition 1** There exists a unique separating equilibrium in which the Government plays \( d = 1 \) if \( \omega < \omega' \) and \( d = 0 \) if \( \omega \geq \omega' \). The Court’s strategy is given in Section 4 and beliefs for both players are described above.
A corollary of Proposition 1 is that there exists in equilibrium a single type of government that is indifferent between choosing the mixed and the closed dockets. This type of government is the one with \( \omega \) that perfectly balances the informational costs of revealing its type to the Court, thereby securing a more desirable constitutional rule, against the costs of allowing judicial intervention in law-application and decreased judicial efficiency. Recall, if the Government chooses the concentrated docket \((d = 0)\), the Court will have a relatively high posterior belief about \( \omega \) and select a relatively high (i.e., restrictive) rule. By switching and choosing the mixed docket \((d = 1)\), the Court will have a posterior belief about \( \omega \) that is lower and closer to the true \( \omega \) and will therefore choose a lower (i.e., less restrictive) rule which is more appealing to the government. The cost of getting that better rule, though, is judicial intervention in the administration of law and more inefficient opinion-writing.

**Corollary 3** In the unique perfect Bayesian equilibrium, there exists exactly one type of government indifferent over the choice of docket style. That type satisfies the equality

\[
(N - 1) \sigma_r^2 + N \gamma_g \int_{-\infty}^{\infty} f(x) dx = \overline{\omega} - \omega,
\]

where \( \omega \) is the Court’s posterior expectation about \( \omega \) upon observing \( d = 1 \) and the resulting cases, and \( \overline{\omega} \) is the Court’s posterior expectation about \( \omega \) upon observing \( d = 0 \).

A second corollary of Proposition 1 concerns the nature of information revelation; specifically, in our model, the Government can never completely hide its type. Even when it chooses \( d = 0 \) (i.e., to prohibit the Court from hearing law-application cases), that decision itself reveals at least some information to the Court—it reveals that the Government’s type is sufficiently high that it has an incentive to hide its type. Because there always exist some types of Governments that want to reveal their type, choosing to not grant jurisdiction over the law-application docket reveals at least that the Government is not among those who want to reveal their types.

**Corollary 4** The Government can never completely hide its type. Even when the Government chooses not to allow the Court access to law-application cases, that choice reveals information about the Government’s type.

### 5.3 Comparative statics and results

The equilibrium we study yields comparative statics about the conditions under which more or less information is revealed to the Court. Recall the equilibrium is one in which there exists a cut point,
\( \omega' \), such that all Governments with \( \omega < \omega' \) choose to give the Court access to the law-application cases (i.e., \( d^* = 1 \)), and all Governments with \( \omega > \omega' \) choose not to allow the Court to hear the law-application cases (i.e., \( d^* = 0 \)). Thus, even while information about \( \omega \) is revealed independent of \( d^* \) (Corollary 4), there are features of the model that affect precisely where is the point of indifference between \( d^* = 0 \) and \( d^* = 1 \). Generally, these include features of the government, features of the court, and features of society. We describe each in turn.

**Effect of Government features on equilibrium strategy.** With respect to the government, two model parameters—\( \gamma_g \) and \( \sigma^2_a \)—measure relevant features that implicate what we observe in equilibrium. Specifically, as the government increasingly dislikes judicial intervention in law-application—i.e., as \( \gamma_g \) increases—the a greater range of government types will prefer to close the law-application docket. For these governments, the informational benefit associated with revealing its type to the Court does not justify the costs associated with judicial right-enforcement. Similarly, as the variance of government actions around its type—measured by \( \sigma^2_a \)—increases, the incentive to assign the mixed docket (i.e., choose \( d = 1 \)) decreases. The intuition is that as \( \sigma^2_a \) increases, for any given type, \( \omega \), there is a greater chance of a Government action associated with an outcome the Court finds unacceptable and would overturn. Related, as \( \sigma^2_a \) increases, the amount of information the Court receives from any given law-application case decreases, because the Government actions are less efficient signals of the Government’s type. In other words, as the Government has less control over its bureaucrats or the actions taken in its name, the Government has less incentive to reveal its type through exposing the Court to law-application cases.

**Result 3** The Government’s incentive to open the Court’s docket to law-application cases decreases in the Government’s sensitivity to judicial rights enforcement and the amount of bureaucratic variance in actions around the Government’s type.

**Effect of Court features on equilibrium strategy.** With respect to the Court, there are two parameters of interest—the Court’s threshold over overturning government action, \( C \); and the Court’s skill at opinion writing, \( \sigma^2_r \). With respect to the Court’s threshold for overturning government action, the incentive is unambiguous. More exacting Courts, those with lower values of \( C \), create a greater incentive for the Government to choose \( d = 0 \), the docket without law-application cases. This is because the Court will intervene in more cases. With respect to the
Court’s opinion-writing skill, measured by $\sigma_r^2$, the incentive is again unambiguous. More skilled Courts suffer less from the workload, creating an incentive for the Government to choose $d = 1$, forcing the Court to hear law-application cases.

**Result 4** *As the Court becomes more exacting and finds more outcomes unacceptable, a greater range of Government types will prefer to focus the Court’s jurisdiction on rule-making cases. As the Court becomes increasingly skilled at opinion writing, a greater range of Government types will prefer to choose a mixed docket with both rule-making and law-application cases.*

**Effect of societal features on equilibrium strategy.** Finally, with respect to features of the larger society, there are two parameters of particular interest. First is the size of the law-application docket, $N$. As $N$ increases, the Government is increasingly incentivized to choose $d = 0$, the concentrated docket. The reason is that increasing the amount of information available to the Court via law-application cases exhibits decreasing marginal returns—once the Court sees enough cases, it becomes sufficiently informed that while additional cases yield more information, the largest impact is from getting to see any law-application cases at all. By contrast, the marginal impact of the workload on the Court’s inefficiency does not change, as we’ve modeled it, and the loss from judicial intervention similarly increases with $N$. Second, we might be interested in the amount of randomness associated with outcomes in society, measured by $\sigma_x^2$. This parameter measures the extent to which similar Government actions ($a_i$) yield disparate outcomes ($x_i$). As this variance increases, so too does the incentive for the Government to choose $d = 1$. In other words, as societal variance induces greater variation in outcomes around Government action, the Government prefers to choose the concentrated docket. The intuition is straightforward, more variance means both greater chances for the Court to see something it could prefer to reverse (i.e., there is a greater chance that $x_i > C$) and that the informational benefit from the individual cases decreases.

**Result 5** *The incentives for the Government to open the Court’s docket to law-application cases decreases with the size of the law-application docket and the variance in outcomes around Government actions.*

6 Conclusion

Judges and politicians both commonly lament the massive caseloads of peak courts that are tasked with law application and rule construction activities. Yet many of the world’s peak courts continue
to engage in considerable law application. This paper develops an informational account of docket style, which analyzes a tradeoff between well-informed and high quality legal rules in the decision over how much control to grant judges over the every day implementation of the law by the administrative state. Our findings suggest a number of implications for related questions in the literature on law and politics.

**Jurisdictional Expansion and Stripping** Distributional approaches to understanding why politicians expand or strip jurisdiction center on one of two views of the judiciary. The first envisions the judiciary as a potential ally in a legislative effort to manage agency losses (e.g., Shipan 2000). Courts place a check on divergent agencies, which have incentives to pull policy implementation away from the enacting coalition’s intended outcome. Under this account the political incentives for the expansion of judicial review increase as agency preferences increasingly diverge from those of the legislature, making the judiciary a more useful ally. A second approach envisions the judiciary as a generator of administrative costs (e.g., Chutkow 2008). By incentivizing litigation, active judges place administrative burdens on the state which could be avoided simply via jurisdictional stripping. Under this account, the incentives to limit a judiciary’s powers increase as judges become increasingly likely to offer relief to potential litigants, especially so in contexts where latent demand for litigation can be mobilized through an effective legal support structure.

Our model sets these incentives aside, but they are easily accommodated and would influence the core tradeoff of the model in ways that are consistent with distributional accounts. Most obviously, imposing a cost of litigation on the government in each law application case would reduce the expected utility of the mixed docket, ever more so as \( N \) increases, reflecting Chutkow’s logic. The model could be amended to reflect the other distributional incentive, as well. As currently written, the Court has a cut-point, \( C \), which defines threshold case outcome above which the Court will want to declare invalid the administrative action that generated it. The Government has no such cut-point, reflecting the assumption that the government prefers all of its administrative actions to stand. Of course, this assumption can be relaxed. One reasonable approach would be to endow the Government with a threshold like \( C \). A natural way to do so would be to set it at \( G = \omega + \tau \), where \( \tau > 0 \) represents the “tolerance” the Government has for administrative actions that are more extreme that the Government’s ideal action. As \( G \) approaches \( C \) the government has a new and
increasingly strong incentive to empower the court to review its administrator’s actions increase. For $G < C$ providing the Court jurisdiction over agency actions only benefits the government’s ability to control its agents. This incentive would be especially strong for governments that enjoy very weak control over their agencies, largely reflecting the core logic envisioned by Shipan.

The advantage of our approach lies in recognizing that these distributional rationales for jurisdictional expansion or stripping would still confront the core informational tradeoff we evaluate. Most critically, because designers convey information about their type via their design choices, governments that strip jurisdiction in order to protect their interests or save budgets risk jurisprudential problems in other areas of the law by undermining a process by which judges might learn about appropriate constitutional postures. And by using judges to address divergent agencies, designers risk undermining opinion quality and thus legal certainty.

**Entrenchment** Related, our analysis raises a constitutional design question. Ought jurisdiction be deeply entrenched, making it difficult for the political branches to alter a peak court’s ability to engage in law application? Clearly, the answer to this question depends on what the designer values. Let us suppose that the objective is to ensure that the court is maximally informed when writing important, general constitutional rules. Our analysis reveals an interesting distinction between the situation in which courts control their docket style and the situation in which governments control the courts’ docket style. In particular, there exists conditions under which the court attains more information about the government’s type when the government has control over the court’s docket style than when the court has control. The reason is that there exist conditions under which the court would prefer to focus on rule-writing, ignoring law-application cases, but where the government’s actions will always improve the court’s information about the government’s type. Any peak court that would choose to focus in this way will always receive more information if jurisdiction is controlled by the government. This is because no matter the government’s choice, whether to focus the court on a small, concentrated docket or a large, mixed docket, information is communicated. Thus, for designers anticipating courts with strong incentives to focus on rule construction, information revelation is maximized by granting larger jurisdictional control to politicians.
**Political Judging**  Finally, while our model has contemplated informational aspects of the courts’ use of law-application cases, there are myriad other factors that are implicated in the choice of docket style. Vast literatures have examined the consequences of judicial oversight for inter branch conflict (e.g., Ferejohn and Shipan 1990, Vanberg 2005), a key implication being that judges can creatively avoid conflict through well-informed, carefully phrased jurisprudential strategies. Our model does not contemplate such dynamics—the court in our argument does not confront political threats. But courts that do confront political threats might be better positioned to combat those threats when they are maximally informed and enjoy the time necessary to communicate carefully their opinions. Our approach suggests that this may not be possible—that “information gathering” can undermine legal quality. Scholars have also considered how the judicial hierarchy can optimally divide components of adjudication (e.g., Kornhauser 1994), and how high courts can optimally construct auditing strategies to effectively control its subordinates (e.g., Cameron, Segal and Songer 2000, Carrubba and Clark 2012). These are other factors that we have excluded from our analytic scope, though we suspect that they too interact with the incentives we have explored. The implication of our finding—that informational goals and institutional design objectives implication judicial docket style—suggest that studies of the consequences of judicial oversight will benefit from consideration of these broader institutional objectives.
Appendix: Proofs of Formal Results

**Proof of Lemma 1.** The Court’s expected utility from $r$ is given by $-\sigma_r^2 - \int_{-\infty}^{\infty} (\omega - r)^2 \phi_0(\omega) d\omega$ if $d = 0$ and $-N\sigma_r^2 - \int_{-\infty}^{\infty} (\omega - r)^2 \phi_0(\omega) d\omega$. Both of these quantities are maximized when $r = E[\omega]$.

**Proof of Lemma 2.** The Court prefers $d = 1$ whenever

$$(N - 1)\sigma_r^2 + \frac{\sigma^2_\omega \nu^2}{\sigma^2_\omega + N\nu^2} - \sigma^2_\omega - N\gamma_c \int_{-C}^{\infty} f(x) dx \leq 0,$$

where $f(x)$ is the pdf of the Normal distribution with mean 0 and variance $\sigma^2_\omega + \sigma^2_\alpha + \sigma^2_x$. This condition, rearranged is given by

$$\sigma_r^2 \leq \left( \frac{\sigma^2_\omega - \frac{\sigma^2_\omega \nu^2}{\sigma^2_\omega + N\nu^2}}{\sigma^2_\omega + N\nu^2} + N^2 \gamma_c \int_{-C}^{\infty} f(x) dx \right) (N - 1)^{-1}.$$

**Proof of Result 1.** The Court prefers to play $d = 1$ whenever

$$(N - 1)\sigma_r^2 + \frac{\sigma^2_\omega \nu^2}{\sigma^2_\omega + N\nu^2} - \sigma^2_\omega - N\gamma_c \int_{-C}^{\infty} f(x) dx \leq 0,$$

where $f(x)$ is the pdf of the Normal distribution with mean 0 and variance $\sigma^2_\omega + \sigma^2_\alpha + \sigma^2_x$. The derivative of the left-hand side of this condition is $\frac{-N\nu^4}{(\sigma^2_\omega + N\nu^2)^2} - 1 - N\gamma_c F_{\sigma^2_\omega}(C) < 0$, where $F_{\sigma^2_\omega}(C)$ is the derivative of $\int_{-C}^{\infty} f(x) dx$ with respect to $\sigma^2_\omega$. The derivative of the left-hand side with respect to $\sigma^2_r$ is $N - 1 > 0$. The derivative of the left-hand side with respect to $\gamma_c$ is $-N \int_{-C}^{\infty} f(x) dx \leq 0$. The derivative of the left-hand side with respect to $C$ is $-N\gamma_c F_{\sigma^2_\omega}(C) < 0$, where $F_{\sigma^2_\omega}(C)$ is the derivative of $\int_{C}^{\infty} f(x) dx$ with respect to $C$.

**Proof of Result 2.** By Lemma 2 the court prefers $d = 1$ whenever

$$\sigma_r^2 \leq \left( \frac{\sigma^2_\omega - \frac{\sigma^2_\omega \nu^2}{\sigma^2_\omega + N\nu^2}}{\sigma^2_\omega + N\nu^2} + N^2 \gamma_c \int_{-C}^{\infty} f(x) dx \right) (N - 1)^{-1}.$$

The derivative of the right-hand side of that condition with respect to $N$ is

$$(N - 1)\frac{N\sigma^2_\omega \nu^4}{\sigma^2_\omega + N\nu^2} + (N^3 + 2N^2 - 2N)\gamma \int_{-C}^{\infty} f(x) dx - N\sigma^2_\omega.$$
That quantity is positive whenever \( \gamma \geq \frac{(N-1)\sigma_r^2 - N\gamma}{(N^2 + 2N^2 - 2N) f(x)dx} \), which holds for \( N \) small enough and \( N \) large enough. ■

**Proof of Lemma 3.** Consider a pooling equilibrium in which \( d^* = 1 \). The Government’s expected utility is 
\[
EU_G(d = 1) = -\frac{\nu_0^2 \omega^2}{\nu_0^2 + N} - N\gamma_f - N\gamma g \int_C f(x)dx.
\]
Assuming passive conjectures, if the Government deviates and plays \( d = 0 \), then the Government’s expected utility is given by 
\[
EU_G(d = 0) = -\sigma_r^2.
\]
The Government therefore prefers to deviate whenever 
\[
\omega > \frac{(N-1)\sigma_r^2 + N\gamma g \int_C f(x)dx}{\nu_0^2 + N} \left( \frac{\sigma^2}{\nu_0^2} \right).
\]
Consider next a pooling equilibrium in which \( d^* = 0 \). The Court prefers to deviate whenever 
\[
\omega < \frac{(N-1)\sigma_r^2 + N\gamma g \int_C f(x)dx}{\nu_0^2 + N} \left( \frac{\sigma^2}{\nu_0^2} \right).
\]
Thus, no equilibrium can exist in which all types, \( \omega \in \mathbb{R} \), pool on a docket choice. ■

**Proof of Lemma 4.** The proof proceeds by contradiction. Suppose an equilibrium in which there is a partition such that \( d(\omega < \omega')^* = 0 \) and \( d(\omega > \omega')^* = 1 \). Upon observing \( d = 1 \), the Court places zero probability on \( d < \omega' \), and therefore \( \mathbb{E}[\omega] = \overline{\omega} > \omega' \). Upon observing \( d = 0 \), the Court places zero probability on \( \omega > \omega' \), and therefore \( \mathbb{E}[\omega] = \omega < \omega' \). By Lemma 1, the optimal rule to write in either case is \( \mathbb{E}[\omega] \). Thus, the expected utility from playing \( d = 1 \) is therefore 
\[
-\overline{\omega} - N\gamma_f - N\gamma g \int_C f(x)dx,
\]
where \( f(\cdot) \) is the distribution of case outcomes, and the expected utility from playing \( d = 0 \) is 
\[
-\omega - \sigma_r^2.
\]
The Government with type \( \omega = \omega' + \epsilon \) therefore prefers to play \( d = 0 \), a contradiction. ■

**Proof of Proposition 1.** Suppose an equilibrium in which \( d(\omega < \omega')^* = 1 \) and \( d(\omega > \omega')^* = 0 \). Upon observing \( d = 0 \), the Court’s posterior is given by a truncated normal distribution with mean 
\[
\overline{\omega} = \nu_0 \frac{\phi(\frac{\omega'}{\nu_0})}{1 - \Phi(\frac{\omega'}{\nu_0})}.
\]
Upon observing \( d = 1 \), the Court first updates its prior to a truncated normal distribution with mean 
\[
\nu_0 \frac{-\phi(\frac{\omega'}{\nu_0})}{\Phi(\frac{\omega'}{\nu_0})}.
\]
It then updates its belief after observing \( N \) signals, \( x_i \); let this mean of that updated distribution be given by \( \omega_\ell \). Because the Court places zero density on \( \omega > \omega' \) upon observing \( d = 1 \) and zero density on \( \omega < \omega' \) upon observing \( d = 0 \), then it must be that \( \overline{\omega} < \omega_\ell < \omega \). If \( \omega < \omega' \), the Government’s expected utility is given by 
\[
-\omega - N\gamma_f - N\gamma g \int_C f(x)dx,
\]
where \( f(\cdot) \) is the pdf of the normal distribution with mean \( \omega \) and variance \( \sigma^2 + \nu_0^2 \). If \( \omega > \omega' \), the Government’s expected utility is given by 
\[
-\omega - \sigma_r^2.
\]
A Government with \( \omega = \omega' \) is indifferent between \( d = 1 \) and \( d = 0 \) if \( (N-1)\sigma_r^2 + N\gamma g \int_C f(x)dx = \overline{\omega} - \omega \). Notice that if a Government with \( \omega = \omega' \) is indifferent between \( d = 0 \) and \( d = 1 \), then a Government with \( \omega > \omega' \) strictly prefers \( d = 0 \), because
the strategy \( d = 1 \) yields strictly lower utility in the expected rule, the variance of the opinion, and the law-application terms. Next, notice that if a Government with \( \omega = \omega' \) is indifferent, then a Government with \( \omega < \omega' \) strictly prefers \( d = 1 \), because the improvement in the expected rule, \( \omega - \omega' \) is greater than the cost in terms of increased variance in the rule and the intervention in the bureaucratic allocation of justice. Thus, the only type that does not strictly prefer one strategy is the Government with \( \omega = \omega' \). We assume that this knife-edge condition results in \( d^* = 0 \).

To see that this equilibrium is unique, notice first that by Lemma 3, any equilibrium must entail semi-separation. Notice next that by Lemma 4, no equilibrium can entail a partition such that \( d(\omega > \omega')^* = 1 \) while \( d(\omega < \omega')^* = 0 \). This implies there can be at most one partition, because multiple partitions imply at least one \( \omega'' > \omega' \) such that \( d(\omega'')^* = 1 \) and \( d(\omega')^* = 0 \). Therefore, the only possible type of equilibrium is one that entails a single partition at \( \omega' \) with \( d(\omega < \omega')^* = 1 \) and \( d(\omega > \omega')^* = 0 \).

**Proof of Result 3.** A Government with type \( \omega \) is indifferent between \( d = 1 \) and \( d = 0 \) iff

\[
(N - 1) \sigma_t^2 + N \gamma_g \int_C^\infty f(x)dx = \omega - \omega.
\]

By Corollary 3, there exists exactly one such type. The left-hand side of that equality is increasing as \( \gamma_g \) increases (i.e., the Government cares more about judicial intervention). To hold, the right-hand side therefore must be increasing also. For that difference to increase, the indifferent type must decrease. Therefore, as \( \gamma_g \) increases, a wider range of types will play \( d^* = 0 \). Similarly, the left-hand side of the condition for indifference is increasing in the variance of action outcomes, \( \sigma_a^2 \). Therefore, as the amount of bureaucratic variance, \( \sigma_a^2 \), increases, a greater range of types prefers \( d = 0 \).

**Proof of Result 4.** A Government with type \( \omega \) is indifferent between \( d = 1 \) and \( d = 0 \) iff

\[
(N - 1) \sigma_t^2 + N \gamma_g \int_C^\infty f(x)dx = \omega - \omega.
\]

By Corollary 3, there exists exactly one such type. The left-hand side of that equality is increasing as \( C \) decreases (i.e., the Court becomes more exacting). To hold, the right-hand side therefore must be increasing also. For that difference to increase, the indifferent type must decrease. Therefore, as \( C \) decreases, a wider range of types will play \( d^* = 0 \). Similarly, the left-hand side of the condition for indifference is increasing in the variance of rule outcomes, \( \sigma_r^2 \). Therefore, as the Court becomes more skilled (as \( \sigma_r^2 \) decreases), a greater range of types prefers \( d = 1 \).

**Proof of Result 5.** A Government with type \( \omega \) is indifferent between \( d = 1 \) and \( d = 0 \) iff

\[
(N - 1) \sigma_t^2 + N \gamma_g \int_C^\infty f(x)dx = \omega - \omega.
\]

By Corollary 3, there exists exactly one such type. The
left-hand side of that equality is increasing in $N$. To hold, the right-hand side therefore must be increasing also. For that difference to increase, the indifferent type must decrease. Therefore, as $N$ increases, a wider range of types will play $d^* = 0$. Similarly, the left-hand side of the condition for indifference is increasing in the variance of outcomes, because the density of outcomes greater than $C$ is increasing in $\sigma_x^2$. ■
References


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