Online communities, organized crime, transnational trading networks, local neighborhoods, indigenous tribes, fishing collectives—in many areas of social life, stable governance regimes have emerged in the shadow or the absence of legal authority. Yet, while these decentralized forms of governance are easily taken for granted, they are surprisingly difficult to explain. What are the mechanisms that help people coordinate with one another? Why do people keep their promises when they could easily defect? How do norms emerge and who enforces them? How are conflicts resolved without recourse to a court? Understanding these regimes of extra-legal governance is a key challenge of both academic and practical importance.

The field of extra-legal governance is a rather heterogeneous one and has been tackled under different labels in different disciplines: “private ordering,” “lawlessness and economics,” “self-governance,” “order without law,” or simply “cooperation studies.” The tutorial aims to bring together the most relevant of these theoretical and methodological perspectives in a multidisciplinary approach. Students will be introduced to a rigorous set of analytic frameworks from game theory, economics, sociology, law, political science, communications studies, and evolutionary biology. This is intellectually challenging, but allows students to compare various factors and mechanisms, seek common analytical themes, and develop a deeper understanding of the phenomenon of extra-legal governance. Further, the analytic frameworks will be paired with empirical research, which will enable students to understand the practical merits and limitations of the various models and theories, testing them against a wide range of real-life examples.

Students are required to participate in the 8 tutorials and prepare carefully. Based on the weekly readings, a total of 8 essays have to be written. Each essay must be e-mailed to the tutor the evening before the tutorial takes place. The essay question of the week will be sent to the students well in advance. There is no final examination.

Readings are prioritized as follows: * = mandatory, (*) = important, but can be skipped if need be, [no label] = optional, but still interesting. Especially important sections of an article or book are marked in bold.

A good introductory reading to the problem of social order is M. Hechter & Ch. Horne (eds.), THEORIES OF SOCIAL ORDER: A READER (2003). We will revisit some of these ideas in the first session. You may also enjoy Thomas C. Schelling, MICROMOTIVES AND MACROBEHAVIOR (1978).
Session 1: Philosophical and Theoretical Foundations – On the Governance of Human Behavior

Extra-legal governance can be broadly understood as an answer to the question of social order: what are the structures and mechanisms that allow individuals to coordinate with one another without significant assistance from a coercive central authority? In this first session, we will briefly revisit some of the underlying philosophical and theoretical debates.


Max Weber, ECONOMY AND SOCIETY, VOL. 1 (1978), Part I, Ch. 3 (skip small sprint)

*Edward C. Banfield, THE MORAL BASIS OF A BACKWARD SOCIETY (1958), Ch. 1

A number of authors have proposed alternative models of human behavior that emphasize the emergence of spontaneous order. These theories are sometimes called “bottom-up” theories of social order.

*Friedrich A. Hayek, Law, Legislation, and Liberty, vol.1, (1973), Ch. 2

*Adam Smith, THE WEALTH OF NATIONS (1776), available at http://www.adamsmith.org/smith/won-index.htm (last visited April 4, 2008), Book 1, Ch. 1 and 2


*John Clippinger, A CROWD OF ONE: THE FUTURE OF INDIVIDUAL IDENTITY (2007), Ch. 1, 6

Another instructive way of framing the problem of social order are the concepts of collective action and free riding.


(*)Dan Kahan, The Logic of Reciprocity: Trust, Collective Action, and Law, Yale Law School, Public Law Research Paper No. 31

Sample essay question:

Even though the authors are concerned with the same problem, they arrive at completely different conclusions (cp., for example, the writings of Hobbes and Banfield vs. Hayek, Clippinger, and Smith, or the work of Olson vs. Kahan). How can that possibly be? Are some of them right and some wrong? Or is there a way to square the different views? Use specific examples to illustrates your argument.
Session 2: Game Theory and Economic Institutions

A simple, but powerful way of modeling human behavior is the analytic framework developed by economists. Traditionally, they view human beings as rational agents that strive to maximize their individual utility in producing and exchanging goods with one another. The same rational choice approach provides also the basis of game theory, a theory of strategic interaction that has been widely used to analyze problems of social coordination.


The most useful game for analyzing social dilemma is probably the so-called prisoner’s dilemma. Robert Axelrod provides a powerful application of this idea.

*Robert Axelrod, *The Evolution of Cooperation* (1984), Ch. 1, 4


Economist Avinash Dixit uses economic modeling and game theory to develop an explicit theory of extra-legal governance (which he calls “Lawlessness and Economics”). His approach can be located within the tradition of “new institutional economics,” a strand of economics that emphasizes the role of institutional frameworks and transaction costs for economic performance.

*Avinash K. Dixit, Lawlessness and Economics* (2004), ch. 1, 3


Sample essay questions:

Robert Axelrod describes the phenomenon of temporary ceasefires that occurred between British and German soldiers during World War I. Come up with two examples of Prisoner’s dilemmas
from your own experience: one in which the players got stuck at a suboptimal equilibrium, and one in which the players managed to converge on the optimal equilibrium. Analyze these situations using game-theoretical tools (e.g., exact identification of the type of game, matrices with pay-offs, descriptions of the strategies of each player, analysis and type of the resulting equilibrium) and explain the differences in outcomes.

In chapter 3 of “Lawlessness and Economics,” Avinash Dixit contrasts two ideal systems of governance for the enforcement of contracts: relation-based and rule-based. Find a real-life example for each of the two models and discuss their respective merits and limitations.
Commons theory builds on the aforementioned frameworks of game theory, economic institutions, and collective action, but is concerned with a specific type of social dilemma: what happens when individual interests and the common good clash over the use of a finite resource, resulting in over- or underutilization?

*Garrett Hardin, *The Tragedy of the Commons*, 162 *Science* 1243 (1968)


The seminal work in the area of commons theory is Elinor Ostrom’s “Governing the Commons.”

*Elinor Ostrom, Governing the Commons: The Evolution of Institutions for Collective Action* (1990), Ch. 1


One field in which commons theory has been particularly popular is digitally networked environments.


Lawrence Lessig, *The Future of Ideas* (2001), Ch. 2, 6

Sample essay question:

Think about a finite resource of your choice and analyze its dynamics using the analytic framework of commons theory. What is the social problem? How is the resource currently governed? Does the regime work? How could it be improved?
Session 4: Social Norms

The field of social norms scholarship is probably one of the most intuitive approaches to understanding extra-legal governance. This is not only because “social norm” is one of the few social science concepts that has found its way into everyday language. Thinking in terms of social norms also appeals because it allows us to remain within the comfortable framework of norms setting and norm enforcement. Yet, despite its popularity, the concept has remained a very fuzzy one. In this session, we will primarily focus on perspectives from sociology and law.


Among the classical studies of social norms in action is Robert Ellickson’s analysis of how cattle ranchers in Shasta County resolve their disputes—namely without resorting to the state or legal institutions.


Other applications of social norms-based analysis include French Chefs, Japanese sumo ringers, and the international cotton industry.


Sample essay questions:

Many U.S. universities have installed so-called “honor codes” to regulate the behavior of students in examinations (see, e.g., http://www.princeton.edu/honor/). Why do you think these codes work? How are they enforced? What are their advantages, what are their disadvantages—especially compared to the strict monitoring regimes at Oxford’s Examination School? In your analysis, apply the frameworks from the readings.

Emmanuelle Fauchart & Eric v. Hippel describe a norms-based system for protecting intellectual property among French chefs. Do you think such a system would work among the chefs of first-class restaurants in New York? Why or why not? What would be required to make the system work?
Session 5: Reputation

Observing other people and sharing our observations with third parties is a very human activity that we often frown upon. However, as anthropologists and sociologists have shown, our curiosity and desire for emotional complicity play an important role in the maintenance of social order—even though it may just be the by-product of something else.

*Max Gluckman, *Gossip and Scandal*, 4 Current Anthropology 307 (1963)


The significance of reputational mechanisms for social ordering has also been empirically demonstrated in a number of case studies. Two prominent examples from the legal and new institutional economics tradition are:


Given that gossip and reputation are basically about interpersonal information flows, the advent of networked information technologies has enabled new forms reputation-based governance.


Jack L. Goldsmith & Tim Wu, *Who Controls the Internet?: Illusions of a Borderless World* (2006), Ch. 8


Sample essay questions:

At the end of her article, Lisa Bernstein hypothesizes what might happen to the governance regime in the diamond industry when computer systems take are introduced as central repositories. How will the technology change the dynamics of the system?

Raul Resnick et al. state that “[t]oday’s reputation systems, … shouldn’t work in theory.” What exactly do they mean by that? If they don’t work in theory, do they work in practice? Pick concrete examples to illustrate your argument.
Session 6: Trust

Some researchers have emphasized the role of trust for stable social relations. As with most concepts so far, there is considerable disagreement about what trust actually means.

Russell Hardin, Trust as encapsulated interest


(*)Robert D. Putnam, BOWLING ALONE (2000), Ch. 2

James Coleman, FOUNDATIONS OF SOCIAL THEORY (1998), Ch. 5


For applications of trust theory, see the following case studies on commerce in Renaissance Florence, and taxi drivers in New York and Belfast.

(*)John Clippinger, A CROWD OF ONE: THE FUTURE OF INDIVIDUAL IDENTITY (2007), Ch. 7


Sample essay questions:

Many people have argued that Ebay’s feedback system has played a major role in the success of the online auctioning platform. Building on the trust and signaling theory described by Heather Hamill & Diego Gambetta in STREETWISE, do you think this conventional wisdom holds in view of what is actually going on on Ebay? What are the signs that sellers can use to signal their trustworthiness? How reliable are they? What seems to be the role of feedback scores as compared to other information on the site?
Session 7: Social Networks

Social network analysis focuses on individuals (nodes) and their relationships (links). One of the key questions of this approach is how the configuration of a network affects how individuals and the systems at large function.

*Stanley Wasserman & Katherine Faust, Social Network Analysis: Methods and Applications (1994), Part I


*Mark S. Granovetter, The Strength of Weak Ties, 78 The American Journal of Sociology 1360 (1973)


For an empirical analysis of the role of interpersonal relationships and groups in social networks, see:

Edward Evans Evans-Pritchard, The Nuer: A Description of the Modes of Livelihood and Political Institutions of a Nilotic People (1940)


Sample essay questions:

Take a closer look at some Facebook profiles and analyze what it reveals about your personal network. Who are the nodes? What are the qualities of the links? What relationships are displayed, which are not? Why?
Session 8: Normative Questions

Over the course of this tutorial, we have mostly focused on explaining how and why certain forms of order emerge. What, however, if a stable system of governance emerges that we—for some reason—do not regard as desirable? Good examples of such situations are Thomas Schelling’s analysis of racial segregation, Diego Gambetta’s account of extra-legal governance in the Italian mafia, or Joerg Raab & H. Brinton Milward’s work on “dark networks.”

*Thomas Schelling, MICROMOTIVES AND MACROBEHAVIOR (1978), ch. 4


Some scholars are concerned about the lack of normative safeguards in extra-legal governance regimes and proposed different solutions.

*Stephen L. Schwarcz, Private Ordering, 26 NORTHWESTERN UNIVERSITY LAW REVIEW (2002)


Julia Black, Constitutionalizing Self-Regulation, 59 MODERN LAW REVIEW 24 (1996)

*Avery Katz, Taking Private Ordering Seriously, 144 UNIVERSITY OF PENNSYLVANIA LAW REVIEW 1745 (1996)


Sample essay question:

Look back at the various cases and applications you have studied over the past 8 weeks: what makes an order just or unjust, and is there way to ensure this justice in a regime of extra-legal governance?