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Abstract

Institutional Disruption as Process and Strategy:

A Conceptual and Theoretical framework

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What is Institutional Disruption? What is an Institutionally Disruptive Company? How does one disrupt institutions? How does one design and execute disruptive business strategies, technologies, products, etc.? This report poses many questions, providing some tentative conclusions along the way. A conceptual and theoretical framework is articulated to provide clarity to scholars, students, and practitioners alike.

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INTRODUCTION:

DISRUPTION, INSTITUTIONAL DISRUPTION

My research examines the political and legal interactions of *Institutionally Disruptive Companies* as they enter markets or release products around the world. An Institutionally Disruptive Company is a company that introduces a product, service, or provision method that presents a high level of legal and political uncertainty regarding the current and future legal status of the company or its new product offering; such uncertainty is most often due to technological change and novelty. Thus, Institutionally Disruptive Companies are drivers of innovation as well as the upstream actors in the STEM field—those that actually deploy technological developments within the market. The institutional uncertainty at the time of their entry or launch is resolved through interaction with political and legal actors during disruptive bargaining interactions between competing companies, political and legal elites, as well as society more broadly. Examining the entries or launches of these companies elucidates the role of law and politics in the integration or suppression of technological developments as well as within the novel deployment of extant technologies.

Prime examples of recent Institutionally Disruptive Companies are Über as well as other app-based service networks; there are also numerous examples of established companies or professions releasing Institutionally Disruptive Products, such as mass-market eyewear with surveillance capabilities or the use of psilocybin or other controlled substances for therapeutic purposes. These cases provide generalizable insights into the

political, legal, and social dynamics of introducing new *Institutionally Disruptive Technologies*.

SEEING LIKE AN INSTITUTIONALLY DISRUPTIVE COMPANY

The politics of institutionally disruptive companies encompasses the market entry of novel Institutionally Disruptive Companies (IDCs) as well as the use of institutionally disruptive strategies by entrenched, incumbent companies to launch institutionally disruptive new products and services. An IDC is a company that engages the strategy of institutional disruption, which involves the introduction of a product, service, or provision method that presents novel legal questions or political ambiguity regarding the legal status of the company or its new product offering. This involves the disruption of formal rules or laws, but necessitates knowledge of their interdependence upon the informal, social, and cultural institutions that undergird the formal.

An Institutionally Disruptive Company must engage in a multidimensional bargaining interaction to legalize its product, service, or provision method. Thus, an *IDC* operates within and seeks to legalize the gray areas opened up by technology, often navigating institutional ambiguity as a competitive strategy to unseat incumbent companies. Rather than playing the extant game and fighting to replace the king on the hill through ordinary economic combat, they identify institutionally disruptive opportunities, often induced by technological change, and they seek to simultaneously shape the playing field within the political and legal arenas to entrench their strategic and competitive advantages. That is, they seek to create favorable laws through strategic interaction with

other economic, political, and legal actors. Another recent example of a nascent IDC was an application that individuals could use to auction their public parking spots in San Francisco; some thought it a godsend while others thought it was a parasite as it reduced equitable access to public parking. Meanwhile, recent examples of institutionally disruptive new products introduced or under development by incumbent companies include mass market eyewear with surveillance capabilities as well as mass market drone technology and self-driving cars.

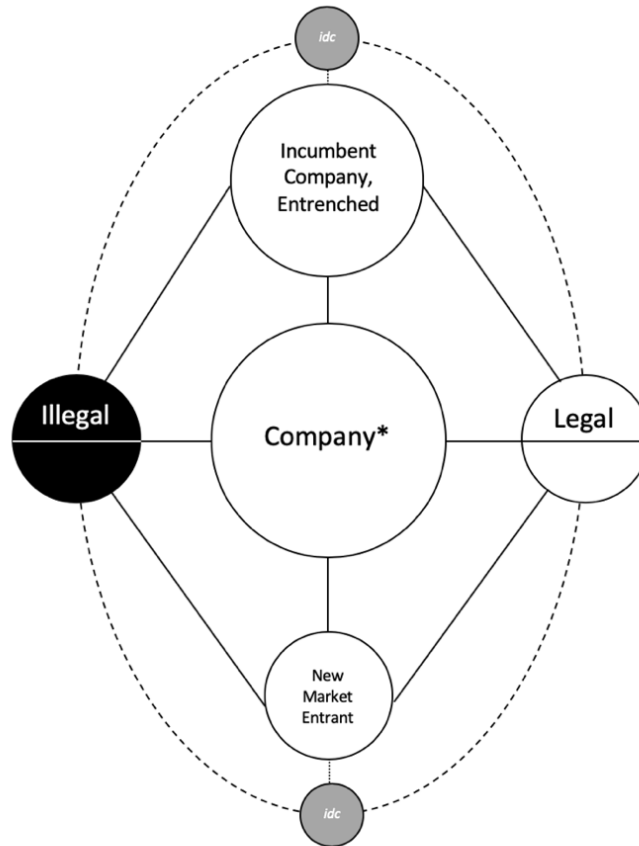
IDCs have launched products that have expanded the circle of winners within many industries, such as increases in access and affordability within the urban transport market in global cities. However, the strategy has also been employed by many companies that have inadvertently deepened inequality. Additionally, the politics of institutional disruption also involves losers; as such, entrenched incumbents combat against the changes within the competitive playing field that the IDC seeks to enact in order to preserve their strategic advantage. Proactive and responsive adaptation to technological developments is a key means through which to usurp the potential power of an insurgent IDC and preserve strategic advantage. Strategic partnerships with IDCs are also an option; lawfare is another, either as a means to incentivize a merger or as a means to make a decisive strike against a New Market Entrant (NME.)

Situating the concept within a broader framework of economic actors involved in the game of institutional disruption involves zooming in from the larger conceptual system of social organization to economic organization. One can then zoom in even closer to examine the conceptual system that radiates from the concept of a company. This is

accomplished in the same manner as climbing the “ladder of abstraction” and developing a system of substantively relevant radial concepts (Sartori 1970; Collier and Mahon, 1993.) While the concept of social organization encompasses such disparate entities as secret societies, book clubs, political action committees, and the hall of fame of a particular drag Queen, the concept of an economic organization extends to a more restrained class of entities; this includes cartels, the chamber of commerce, as well as OPEC. The concept of a company is nested within this category of economic organizations; it includes both incumbents and new market entrants, such as established breweries or an IDC, respectively. The concept of an IDC is also related horizontally to the insurrectionary change agent described within the system developed by Thelen and Mahoney in their work on gradual and endogenous institutional change (Thelen and Mahoney, 2010.) However, the interests and identities of the actors within the game of institutional disruption are distinct and the strategies, while including those described by Thelen and Mahoney, aim for more immediate change and are often mixed and multidimensional, though an IDC may be prepared for the trenches.

The classification of a company is first determined according to incumbency and then according to whether it or a specific product it offers operates within the shadows, the disruptive opportunity space, or the light of the law. Thus, there are six different types of companies operating within the system—Legal Incumbents, Institutionally Disruptive Incumbent Companies, Illegal Incumbents, Legal New Market Entrants, Institutionally Disruptive NME Companies, and Illegal NMEs. The illegal types may enter as unlawful

A CONCEPTUAL SYSTEM



Visual 1: A Conceptual System: A Typology of Companies with regard to disruptive status, legality, and incumbency

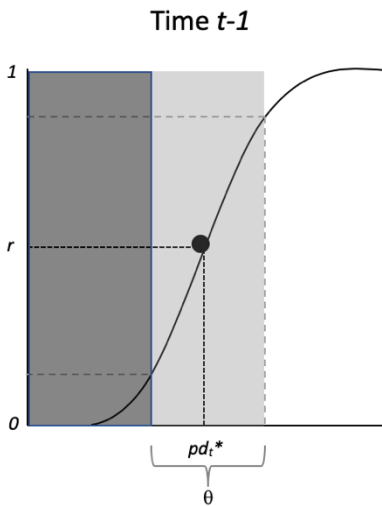
**The Core Concept of the Company is first classified according to incumbency and then according to whether it operates within the shadows, the DOS, or the light.*

NMEs or as institutionally disruptive NME companies or they may currently operate as entrenched incumbents within the black market. NMEs seek to become incumbents and most often do so though entering with a product or service that is unambiguously legal within the jurisdiction(s) they seek to operate within; alternatively, they may successfully

engage a strategy of institutional disruption and achieve a legal right to provide their good or service. An NME may have established operations within one or more other jurisdictions, or it may be nascent, seeking to establish itself for the first time within any given jurisdiction j . Therefore, institutionally disruptive companies, regardless of their incumbent or nascent status, are a transitory category as they are sorted into a legal or illegal classification through the process of strategic interaction with social, political, legal, and economic actors.

All institutionally disruptive companies operate within what I refer to as the *Disruptive Opportunity Space (DOS)*. The disruptive opportunity space is defined as a space existing at time t within which the probability of a product or service, pd_i^* , being legalized at time $t+1$ is within the interval θ , where θ indicates a value of r that is between .1 and .9. As such, it is a hazy concept, the contours of which are defined according to a fluctuating subjective probability estimate. Thus, the *DOS* exists between the shadows of illegality and the light of the law; within Visuals 2, 3, and 4, the *DOS* is represented as the light gray area. The disruptive opportunity space may expand, or it may contract, as legal uncertainty is resolved, and/or political positions become more clearly established. An opportunity may exist at time $t-1$ only for the disruptive opportunity space to contract due to a set of legal decisions or political pronouncements prior to time $t+1$ (See Visual 5.) Alternatively, a company may launch a product or enter within a disruptive opportunity space at time $t-1$ and successfully enter the market, thereby achieving legalization so that its offering is unambiguously legal at time $t+1$ (See Visual 3.) The disruptive opportunity space is composed of a narrow space of legal uncertainty as well as a broader area of

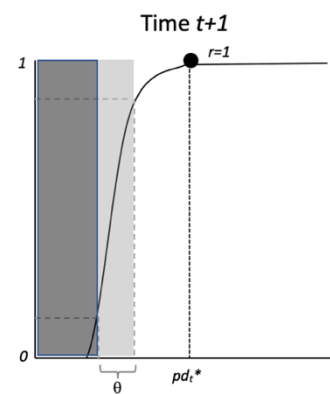
political possibility. The spaces emerge as a result of fluctuations in political and legal systems and the interaction of these systems with economic and technological evolution.



Visual 3: Operations Within the Disruptive Opportunity Space

Transportation Network Companies (TNCs) represent a class of institutionally disruptive companies that entered directly through the *DOS* upon perceiving an opportunity that emerged due to technological change. However, there are also companies or other economic interest groups that seek to gradually emerge from the shadows to legalize what is unambiguously illegal at any given moment, some of which have succeeded in creating opportunities for rapid and

disruptive institutional change; an example of this latter dynamic would be the movement to legalize marijuana and THC for recreational purposes, which has successfully achieved legalization and created market opportunities for a number of institutionally disruptive companies in the immediate wake of legalization. The new regulatory framework that would govern businesses seeking to provide legal THC was uncertain during the initial period following its legalization for recreational purposes. A disruptive opportunity space existed, and the eventual contours of the market governance institutions were contingent upon a set of intertwined bargaining interactions.



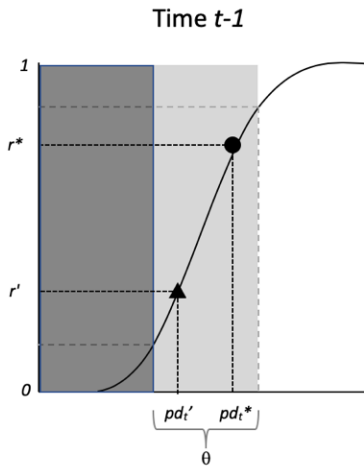
Visual 2: Successful Institutional Disruption

An example of an entrenched incumbent company that engaged in this game of institutional disruption while THC was being legalized in Washington is Cupcake Royale, a gourmet cupcake chain that is well known in the Seattle area and had been featured on cable television baking competitions. Whereas newly licensed dispensaries were granted a right to provide THC products through a lottery, Cupcake Royale sought to leverage its reputation as the premier cupcake store in the region in order to open a chain of special cupcake stores with gourmet baked goods infused with THC. As such, the company first attempted to achieve a legal right to produce and sell THC infused products through negotiating with city and state regulators and politicians. Whereas a movement legalized what was previously a creature of the black market, the success of the movement created a window of opportunity, a disruptive opportunity space, for companies similar to Cupcake Royale to attempt to shape the market governance institutions to enable and privilege their operations. As such, one cannot refer to drug dealers as institutionally disruptive in states or countries where THC is legally prohibited; they clearly operate within the shadows beyond the interval θ . Yet, where THC has been legalized, opportunities have emerged in the wake of legalization for institutionally disruptive companies, whether as NMEs or incumbents, to attempt to achieve a legal right to provide creative new products and/or services involving THC, such as delivery services, public accommodations for THC consumption, or classes and materials for home cultivators.

Some of these creative new services that perceived and entered within the disruptive opportunity space have succeeded, such as Cupcake Royale, which now also operates The Goodship Company. The slope defining uncertainty about the legality of THC

provision, who could and could not provide it as well as the means through which one could gain a right to do so, within jurisdictions that legalized marijuana became clearly defined; as such, companies transitioned back into the normal game of market governance. A similar process was observed with regard to filesharing websites.

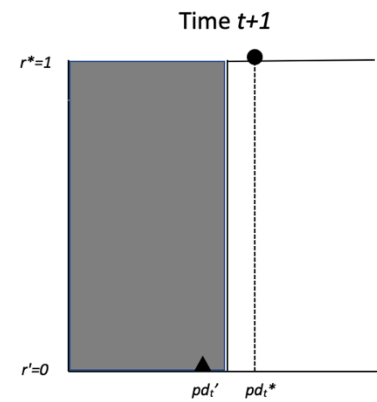
Napster, which was first released in 1999, provided a peer to peer network for individuals to share files, especially music and video content, via the internet. The problem was that this website allowed individuals to do so for free and without providing compensation to the owners of copyrights for the material being shared, which threatened



Visual 4: Competing IDCs within the DOS at time t-1

the dominant models of music and video provision at the time. Most notably, members of the recording industry joined together and responded heavy-handedly by suing the company for copyright infringement. In a 2001 case, *A&M Record Inc. v. Napster Inc.*, the United States Court of Appeals for the Ninth Circuit and the United States District Court for the Northern District of California both held that the company was vicariously infringing on the companies' intellectual property rights. It was slapped with an injunction and has never returned to the prominence it once held; within Visual 4 this company is represented as pd_t' or the triangle.

However, both prior to and in the wake of the decision, some companies developed similar, yet more palatable, institutionally disruptive models of music and video sharing that were subsequently legalized, such as Apple iTunes. Entrenched incumbent companies as well as new market entrants perceived an opportunity to navigate the gray area between the illegality of copyright



Visual 5: A Spatial Comparison of Competing IDCs at Time $t+1$

infringement and the extant legal models of the time. These companies successfully negotiated with diverse industry stakeholders as well as political and legal actors while keeping the demands of consumers in mind, thereby transforming numerous industries and expanding access to media around the world. Within Visuals 4 and 5, these companies represent pd_i^* and the circle.

This comparison of THC, filesharing, and TNCs illuminates the interaction between the shadows, the disruptive opportunity space, and the light of the law as legal and political change, economic and technological change, or both simultaneously curtail or create opportunities for institutionally disruptive companies. Additionally, these comparisons demonstrate that institutionally disruptive and more gradual strategies of enacting institutional change often productively comingle, such as in the case of THC legalization where a prolonged movement created opportunities for *IDCs* to emerge. This chapter on Designing Institutional Disruption explicates what the narrow space of legal uncertainty within the *DOS* is, its relationship to the wider space of political possibility, as well as how to navigate within it. Designing institutional disruption with foresight may

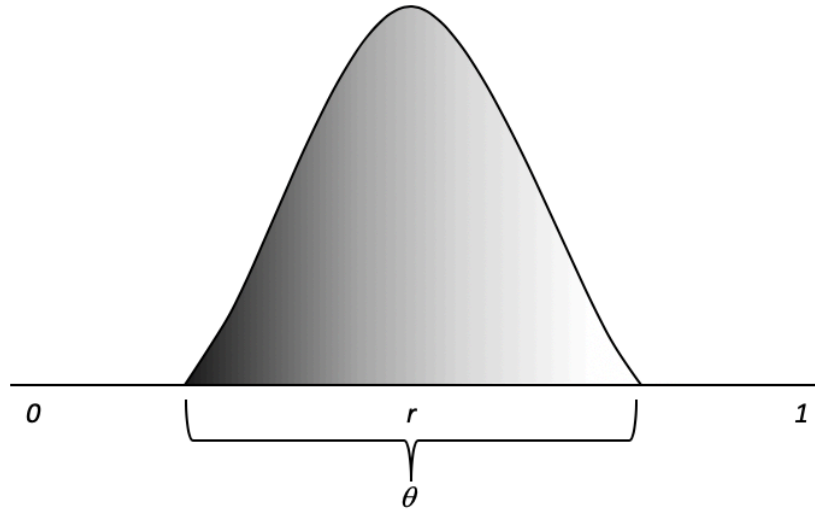
allow an IDC to ensure that the law does not block the path to successful institutional disruption while also securing the support of the law to overcome political opposition.

WHY INSTITUTIONAL DISRUPTION?

The conceptual framework takes an illusion of a static world as its premise, yet this false illusion is precisely the image that most individuals have of the law, or at least it is a stronger approximation of their concept of the nature of law given their experience as a human having existed within an infinitesimally small slice of the larger period of legal development. Conceptualization is prior to theoretical development and empirical testing; as such, I have sought to explicitly define the conceptual environment of the project. Together, the concepts presented within the paper bound what might otherwise appear to be chaos.

Some might question why the concept of institutional disruption appears to equate three seemingly distinct phenomena. Those empirical objects within the upper bound as r approximates 1 might seem to fit within an alternative conceptual frame. Indeed, they do fit within many alternative conceptual frames, yet I include them because they indicate the outer bounds of the Disruptive Opportunity Space and doing so allows one to better understand how something that is almost certainly of the light may enter into this hazy space. The nature of the DOS is dynamic, it expands, it shifts, it transforms along with the development of the social-legal-political-economic system; accounting for the outer bounds of the space allows for a clear understanding of institutional disruption as a dynamic process.

AN ABNORMAL DISTRIBUTION



Visual 6: The Abnormal Distribution

The upper bound is especially important to consider because a company might be completely legal, yet encounter intense opposition upon its launch such that it is “sorted” into the haze or the shadows, areas from which it can be difficult to slither into the light. Meanwhile, those objects within the lower bound similarly might seem to fit better with the concept of pure disruption, the attempt to rapidly and significantly enact a punctuated equilibrium in the law as well as within society more generally. Indeed, they often do, yet they complement this framework of institutional disruption as the more extreme examples of this area of political-legal-technological interaction; they constitute the dark side of the outer bounds of the DOS. Additionally, there are cases of Hail Marys within the lower bound that have successfully achieved legalization through masterful and rapid strategy despite a lower r value at time $t-1$. An example is Playboy as well as other pornographic magazines, which packaged something of the black market in such a way as to successfully

legalize it; cultural work was also necessary, and the companies were interdependent on broader movements. Yet Hefner and others projected an ethos, tip toed a fine line, and successfully seized an institutionally disruptive opportunity. In conjunction with broader movements, he and other moguls of the porn industry succeeded in turning something enigmatic and taboo into something we now see as a legal norm within our society. Meanwhile, the case of marijuana legalization (above) represents another example of a case where a broader movement and IDCs were interdependent; IDCs may have participated in these movements or merely perceived and seized opportunities created by them.

The middling cases, then, might be argued to be better characterized as cases of novelty. Indeed, they often are, yet novelty itself is disruptive. So many choices are preset for us, so much of our thought, our reaction, our experience is automated, conditioned, a matter of precedent. Yet novelty induces possibility, it induces uncertainty, it induces anxiety, and, most of all, it introduces choice. We must decide; we must resolve uncertainty. Such cases are more likely to emerge from processes of technological change.

One can therefore see that, in the abnormal distribution above, peak institutionally disruptive status is achieved where $r = .5$; what would otherwise be a coin toss becomes a game of skill. Execution is paramount. To say that this is a game of pure skill would be laughable; yet to say that it is a game of pure luck would be equally so. With the normality of clear legality or blatant illegality at the margins, the abnormal distribution indicates that the necessary levels of skill and luck required to achieve legalization are inversely related to r .

Some might also question whether an alternative conceptual approach would be more appropriate; some might prefer to think in terms of preexisting frameworks. We could just call them innovative, but there are lots of innovations that are not institutionally disruptive. Similarly, we could just call them disruptive, but that does not quite get at the crux of what I examine—the disruption of rules, specifically in ways that are not clearly illegal or legal, at least at time 1. I contend that the presentation of the various concepts deployed in this paper, together as a unified whole, are superior to alternative approaches to bounding these concepts. A lexical approach has inspired the systematic, concise, and consolidated presentation of this complex concept (see Skaaning, Gerring, and Bartusevicius 2015.) Additionally, an appreciation of the importance of gradations in our approach to conceptualization has also informed the consideration of the precise borders of the concept (see Elkins, 2000;) this allows for a consideration of the IDC as having an evolutionary relation to the shadows, light, and the other dynamic variables operating within them. As such, the concept is somewhere between these two extremes of conceptual precision and fluidity.

The concept is also clearly situated and differentiated vis-à-vis other social science concepts, such as the insurrectionary change agent of Thelen and Mahoney (2010) as well as the concept of a *disruptive innovation*, which is bounded to consider the effect of the object within the market (Christensen et al 2015; Bower and Christensen 1995.) Additionally, the concept is related to, yet differentiated from, its use in social movement theories, such as Tarrow (1994.) Not all concepts are amenable to extreme parsimony; *legitimacy*, for example, is such a complex concept. Yet, in *Economy & Society* Max Weber

(1921) eloquently provided a clear conceptualization of legitimacy in general and in its ideal typical forms. In this project, I have balanced parsimony, complexity, as well as the necessary situation of the concept in relation to contemporary ordinary language uses as well as in relation to other uses of the concepts within various social scientific disciplines in an enduring fashion. Referring to them as NMEs in some cases, read: enemies, is also meant to make it fun. To sum up the concept, I present to you a conceptual poem, an absurd poem, a circle.

CONCEPTUALIZATION AS POETRY

THE INSTITUTIONALLY DISRUPTIVE C:

A company,
A company that deploys the Strategy of Institutional Disruption.
The Strategy of Institutional Disruption involves introducing a company or product within the Disruptive Opportunity Space.
The Disruptive Opportunity Space is bounded within the interval θ ,
which indicates a probability of legalization, represented as r ,
between .1 and .9 at or before the conclusion of period t .
A period of t , for analytical purposes, is a year or less to legalize a company...

The time component, the permissible duration of period t , necessitates clear specification, otherwise almost anything could be within the interval; thus, the maximum time considered between time $t-1$ and time $t+1$ is a year in order to distinguish between companies that are clearly within the shadows or the light as well as those that we ought to genuinely consider to be operating within the DOS; in other words, the inclusion of a temporal element in the classification allows the analyst to distinguish between companies that would need to engage a more gradual strategy and those who might be able to sprint.

A company may engage in processes of institutional disruption for longer than that period, yet its classification by the analyst is determined with the probability of r approximating one within a year. A hazy concept is, essentially, bounded chaos. Attempting to bound chaos requires an extraordinary approach to conceptualization; it is simultaneously the process of capturing and creating meaning.

THEORIES OF INSTITUTIONAL DYNAMICS

The literature on institutional dynamics provides alternative perspectives on the nature of institutions as well as the processes through which they reproduce themselves and evolve. Additionally, these theories account for interactions between law and politics in ways that illuminate the dynamic interactions of IDCs within political, legal, economic, social, and cultural context. Knight (1995) identifies three different types of institutional theory: convention-based, contracting-based, and the bargaining approach. Each is also reflected in the forms discussed by Hall and Taylor (1996)—sociological, rational choice, and historical institutionalism. Knight notes that the first two appear to operate best within worlds of pure cooperation or pure competition, respectively; however, he notes that bargaining is the most realistic depiction of a world that is neither fully cooperative nor fully competitive. A bargaining approach emphasizes distributional consequences as well as the struggle for and primacy of strategic advantage; it is also especially applicable to interactions between actors with diverse interests, including market actors and the State.

Meanwhile, within the literature on institutional strength, the perspective of the State as regulator, those responsible for institutional design and management, takes center stage; theories of institutional strength emphasize the stability, significance, and compliance inducing properties of institutions (Levitsky and Murillo, 2009; Brinks, Levitsky, and Murillo 2019.) This literature presents key considerations for market actors seeking to impact a stable institutional order to have in mind, especially where one might expect opposition from those who benefit from current institutional orders. Meanwhile,

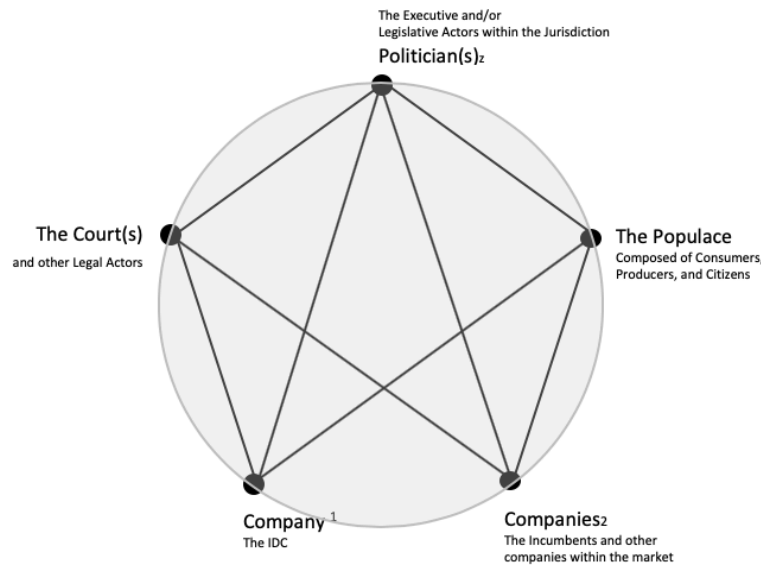
beyond merely considering the different interests involved, other scholars have also provided integrated approaches to the study of diverse institutions that consider mixes of sociological, historical as well as rational considerations; alternative perspectives on how institutions operate and evolve. These include North (1990), Hunter (2007), Greif and Laitin (2004), as well as Morrow (2014), among others. I similarly blend these different styles of analysis while drawing on the insights of these and other scholars to illuminate the models that I develop with diverse perspectives in mind.

Recent episodes of institutional disruption, even within many developed countries, make clear that bargaining in the form of political and legal strategy within cultural and institutional constraints are still vital elements of economic competition within diverse polities at all levels of development. As Thelen identifies in an early study of an emblematic institutionally disruptive company, these interactions present unique strategic opportunities and challenges within different national contexts (Thelen, 2018.) Thus, entering a market as a disruptive new market entrant or launching a disruptive product as an entrenched incumbent involves a dynamic, multidimensional, and volatile interaction between the institutionally disruptive company and a set of economic, social, legal, and political actors. Thus, the entry or launch of an institutionally disruptive company is a critical juncture during which a company must navigate contingent and high-risk strategic interactions, the consequences of which reverberate within other dimensions of the game. Capoccia and Kelemen (2007) define critical junctures as “relatively short periods of time during which there is a substantially heightened probability that agents’ choices will affect the outcome of interest.” Scholars tend to look towards these critical junctures as periods or flashpoints

where paths diverge from their previously stable course and exhibit punctuated changes. While others have employed the concept to study regime transitions or other macrolevel outcomes, such as Collier and Collier (1991), the emphasis on a period of enhanced agency and contingency accurately describes the interactions I analyze as well.

Accounting for process and sequence also has a long tradition in Social Science. Historical institutionalists, scholars of political development, and many strategic choice analysts within the various subfields of the discipline have long argued for the importance of accounting for sequence, complexity, and contingency, including O'Donnell and Schmitter (1986) and Huntington (1968.) Additionally, in his study of US Supreme Court *certiorari* decisions, HW Perry (1991) argues for the importance of a process-based understanding of judicial decision making. Process, sequence, and a little bit of chance all matter. Thus, institutional disruption is accepted as a nonlinear process; it is one for which a company may plan, but it is also one that a company must navigate responsively as one traverses stormy waters.

THE THEATER OF INSTITUTIONAL DISRUPTION



Visual 7: The Actors Within the Theater

While looking down from above, the actors are the economic, political, and legal elites as well as the people. The incomplete star in Visual 6 depicts their traditional linkages. The elite political actors include the legislative and executive actors responsible for creating and enforcing the market governance institutions within the jurisdiction; this may also include superordinate authorities, such as national level politicians who may have an impact on subnational market governance institutions. The courts, at the subnational and superordinate levels are the primary legal actors. The people, as consumers or producers within the market as well as through their role as citizens, constitute another set of primary actors within the game and impact the behavior of the elite actors. Thus, the Institutionally Disruptive Company must simultaneously manage its political relations, its internal operations, and the consumer base.

The game of institutional disruption unfolds within this theater through a multistage process that is composed of (1) the initial entry or launch, (2) the legal establishment, and, in the case of successful disruption, (3) the initial legal operations stages, as well as (4) a return to business as usual. The legal operations stage marks the tail end of the period of disruption during which the institutionally disruptive company must endure remaining conflicts, defend its right to operate, and restore balance while seeking to entrench its strategic advantage within the political, legal, and economic arenas of the theater. A strategic response to litigation is often an integral aspect of forging the path of successful institutional disruption between entry or launch, legalization, and the return to business as usual.

Competition between incumbent and institutionally disruptive companies as well as the resulting political and legal bargaining interactions have been especially intense during the international expansion of Transportation Network Companies (TNCs) and other IDCs following their success in US markets. Major multinational TNCs were banned or prohibited from entering or operating in many countries, such as Japan, Denmark, Turkey, and Morocco. In some cases, bans have been lifted and the new services have been regularized, such as in many cities in Brazil. In other countries, such as in the case of Argentina, bargaining interactions between major TNCs, political leaders, and incumbent companies have been prolonged; political bans may have been lifted only to reappear through the courts. Additionally, competition sometimes spills into extra-institutional arenas. There are even *caza übers* (*über hunters*!) that roam the streets of Buenos Aires in search of drivers to make an example of as they defend the taxi industry.

As such, these cases indicate that proactive and responsive strategies are vital with regard to planning for and navigating policy changes as well as the economic and political reactions of the entrenched or similarly disruptive competition. This is especially true where institutional orders are stronger, more heavily defended by extant political and economic elites, more consequential to policy goals, noted for their significant effects in achieving policy goals, and have demonstrated considerable stability; as Huntington notes, elites are most likely to view reform favorably when results are likely to benefit them and to ensure a speedy return to stability (Huntington, 1968.) That said, the dynamic nature of the game of institutional disruption introduces several opportunities through which IDCs may usurp the power to shape market governance institutions as the drama unfolds. Indeed, in her research on the emergence of *Surveillance Capitalism*, Zuboff notes that the key to the success of Surveillance Capitalists has been sustained operations within lawless space and through sustained operations in the shadows as a means of reducing contention and political risk (Zuboff, 2019.)

DESIGNING INSTITUTIONAL DISRUPTION WITH ECONOMIC, POLITICAL, AND LEGAL VISION

Incumbents within most industries have the informational and infrastructural advantage—they know the inside game, they have connections to political leaders, and they have stronger brand recognition with consumers, at least at time 1. However, there is also a flip side to political and legal capacity. An Institutionally Disruptive Company may find ways to leverage a network of repeat players with high levels of legal and political capacity as their allies, advisors, and business partners in the design and execution of their product and strategy. Thus, an IDC ought to design with legal, political, social, as well as economic obstacles in mind. The above contributions introduced a theoretical and conceptual framework—the Disruptive Opportunity Space as well as the stages of the game of institutional disruption. Designing institutional disruption with foresight introduces several antidotes to the strategic disadvantage of the IDC.

Knowledge Infusion Theory, *Strategic Partnerships*, as well as designing and planning with *Cross-Cutting Supports* in mind represent key strategic boons. The first refers to incorporating insider knowledge onto your design team; you might need to attract defectors from the inner circle of industries that are particularly insular. The second refers to creating partnerships with other organizations that might be necessary symbiotes in order to launch your product and company. The more insider knowledge that you have about the actual rules of the game, the less likely you will be to encounter unforeseen hurdles, to find yourself bamboozled, and the more likely that you will be to reach the other side intact. A

coalition of supporting organizations, strategic partners with a similar economic interest in realizing the project, is also a necessary component of many IDCs as well as of their products; however, coalition building must be conducted in secret in cases where the innovation might be usurped by a competing coalition. Proprietary Security is an absolutely essential value within the conspiracy to disrupt markets and institutions; some have it and others create it. Indeed, it is one of the chief theories—*Proprietary Security Theory*—that has emerged from my investigations into rule bending. Whether you have it and whether you maintain it during the design and entry stages is a pivotal determinant of the potential outcomes. There are many ways to create it. Additionally, one also needs to know how to protect and create rights through the deployment and manipulation of Cross Cutting Legal and Political Support.

There are four primary forms of cross cutting legal and political support: (1) Constitutional Rights v. Politics, (2) Citizen Support v. Political Elites, (3) Politics v. Ordinary Courts, (4) Superordinate Authorities v. subnational politicians, and (5) fighting fire with fire. The latter is a last resort form of self-support that I have yet to actually observe in violent forms, but that has manifested itself in the illegal practice of “greyballing” and that might exist in legal form as *goldballing* or, better yet, *platinumballing*. The latter two represent offering experiences, perks, etc. above and beyond the ordinary experience provided to users in reward for actions that are deemed favorable to a company—little positive reinforcement mechanisms of varying levels of intensity.

THE POLITICS OF MARKET ENTRY

Prior to elucidating the full scope of my cross-cutting support theory, let's briefly walk through the game, its incentives, as well as some of the pitfalls that one ought to have in mind at the time of product and strategy design. On the political front, the goal is to reduce the regulatory burden, to avoid bans, as well as to build beneficial relationships with political actors. On the economic front, the goal is, obviously, to maximize one's market performance; however, it is important to note that sacrifices may need to be made in order to maximize long term performance due to political or legal constraints. An additional political and economic consideration is the reaction of the competition within the political and legal arenas. These may involve legal attacks, nonviolent contention, attempts to secure regulations that are favorable to them and inimical to the IDC, as well as violent reactions.

(NON)VIOLENT REACTIONS

Some might question why violence has been successfully deployed to deflect the entry or launch of institutionally disruptive companies or products in some contexts, but not within others? The question has two components; why is violence used in some cases, but not others, and why is violence successful when engaged in some contexts but not others? With regard to another institutional context in Brazil, *The New Yorker* recently featured an article that referred to similar phenomena, the phenomenon of permitted, state sanctioned, or at least unpunished, violence, as "The silence of the law" (Anderson, 2019.)

Verily few TNCs have entered the Venezuelan market and the one that did quietly evacuated. Similarly, violence was successfully engaged by incumbent companies in Morocco without any repercussions from legal or political elites, resulting in the flight of an internationally well-known TNC. Yet the record of engaging violence has demonstrated spottier success within other national contexts, such as in Western Europe, Mexico, Brazil, and the United States. While the operators or consumers of an institutionally disruptive company might be targeted so as to dissuade them from participating within the market or to manufacture their consumer loyalty to the violent incumbent, there is variation in the success of the tactic. The cases of Brazil and the US, among others, represent instances where detectable violence has resulted in state sanction of incumbent companies. Additionally, it has similarly been less successful in Argentina, yet it remains intermittently visible in Buenos Aires—a guerilla opposition, of sorts. Meanwhile, lawlessness or conflict have successfully forestalled the entry of major western TNCs in some contexts, which has led to the development of specialized local carriers. Beyond violence, other forms of contention may also create costs in the long and short term for the IDC; these include internal and external protests that create *politically induced operations costs* while also impacting the reputation of the IDC.

POLICY REACTIONS

An IDC would prefer to expand into new jurisdictions modularly. In other words, the IDC would prefer to operate within a uniform environment where it could simply

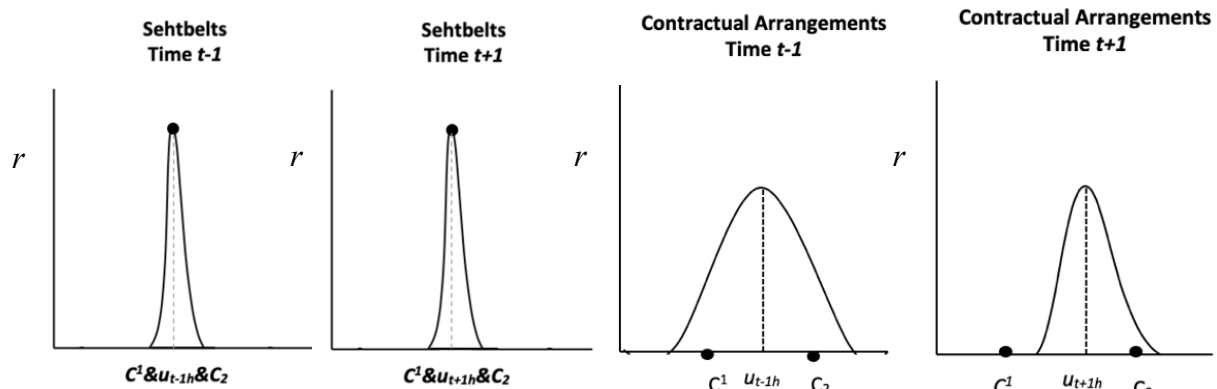
transplant an extant model into any jurisdiction on earth without paying adaptation costs or increasing its fixed operating expenses relative to those within its home jurisdiction; an institutionally disruptive company usually seeks to minimize the *Rule Density*, a weighted measure of the inimical rules that it encounters, within a jurisdiction, especially with regard to those that induce adaptation and increased fixed costs. However, the world exhibits extreme institutional diversity that necessitates some adaptation of companies' models as they expand. Additionally, incumbents may seek to create new institutional obstacles to a recent entrant, to defend institutions that favor their operations, as well as to erect institutional fortresses that will entrench their advantage and dissuade an IDC operating elsewhere from entering. Thus, reactions within the game take place within the jurisdictions of operation, but they also produce shockwaves within other jurisdictions that the company might seek to operate within in the future. Additionally, beyond mere regulatory hurdles, a company might seek to have an IDC banned or a key aspect of their model prohibited. An IDC in the design phase ought to design in order to reduce the likelihood of an intense reaction from their competitors within the political and legal arenas.

LEGAL REACTIONS

An IDC that presents a novel product or service and “plays the game” well may survive to become integrated into society; considering legal politics is essential as this process may be *jurisgenerative*, that is, the IDC may have a role in shaping and being

shaped by the law and institutions of a jurisdiction (Michelmann, 1988.) Why might a competitor litigate? Simply put, it might be the most effective means of protecting a right or it might have alternative motivations. Thus, the incumbents may attempt to legally eliminate a threatening element, or they may merely engage litigation as a scare tactic as they seek to incentivize sale, merger, or flight. In some cases, they might also seek to create political and legal strategic costs to increase the burden of operating within a jurisdiction for the IDC. Thus, in the wake of an IDC's entry, an incumbent company may initiate litigation, contain its reaction within the political arena, or it may choose to allow entry without a reaction.

Assuming that the anticipated expense to engage litigation or other forms of legal mobilization rise as the probability of a favorable decision decreases, a riskier strategy is also a costlier strategy. Therefore, an IDC ought to account for its support within the legal arena with respect to different elements of its product and model during the design stage in order to reduce legal uncertainty, especially with regard to aspects that have more uncertain political support. In cases where there is political support amidst legal uncertainty, there might be *A Political Alternative*. Thus, the IDC experiencing a litigation threat must consider (A) the relative expected utilities of sale or merger, (B) a defense strategy in court, (C) a strategic exit, or (D) an alternative political route to legalization.



Visuals 9, 10, 11, and 12: Contracts and Sehtbelts in which C^i represents the ideal point of a company and u_{th} represents the true decision of a court under conditions of full information at time t with regard to any given element h of pd_{th} .

With regard to the variability of legal certainty that an IDC might encounter, there are cases of hummingbird beaks—those in which one must adapt to legal certainty—and there are others that permit greater potential for the IDC to shape the regulatory framework within the legal arena. Seatbelts and contractual arrangements with regard to the TNC industry represent a key comparison. On the left, two images depict the change in the probability distribution of a judicial decision regarding seatbelts. On the right, two images depict the change in the probability distribution of a judicial decision regarding contractual arrangements, such as the classification of drivers as contractors. The circles represent the ideal points of two opposing companies. The y axis indicates r , the probability of a decision being at any given point along the curve. In the case of seatbelts, $r=1$ and there is no change between the initiation of a lawsuit and time $t+1$, the decision of the court. Meanwhile, the distribution representing uncertainty in the case of contractual arrangements is wider and a decision impacts the expectations of the parties, indicating that the true position of the law is closer to the ideal point of company 2, though uncertainty remains. Ability to shape cases of legal uncertainty is compounded when one can concurrently garner and mobilize

political support. Additionally, one ought to ensure that their information with regard to the true distribution is correct. As Holmes writes in *The Path of the Law*, “the most important and pretty nearly the whole meaning of every new effort of legal thought is to make [prophecies of legal prediction] more precise” (Holmes 1897, p. 458.) Incorporating skilled legal counsel during the design phase is essential so as to accurately identify legal risks as well as to plan a coordinated political and legal strategy to shape the regulatory regime and to proactively design litigation response strategies.

STATE REACTIONS

The politics of institutional disruption absolutely requires a focus on the relationship between the IDC and its competitors, however, a number of IDCs may also have to consider their direct and indirect impacts on the public. The State may enter the game not only as a mediator between the competing companies, but also as a representative of society. The operations of an IDC may have an *intrinsic public interest* or an *extrinsic public interest*. An intrinsic public interest occurs when the operations of the IDC overlap with or directly impact a core traditional or integral function of the State, such as the provision of vital services or the management of public property; examples of intrinsic public interest would be the recent case of Monkeyparking in San Francisco as well as the case of Bechtel attempting to acquire the water utility service in Cochabamba, Bolivia. An extrinsic public interest occurs when the operations of the IDC inadvertently produce externalities that negatively impact society, such as enabling criminal enterprises,

discriminatory practices, machine hybrid invasions, omnipresent surveillance, or impinging on state policy initiatives, including the reduction of inequality; examples of extrinsic public interest would be the rise of Russian meddling in US elections through social media platforms, the use of cryptocurrency for black market transactions, or the spillover effects of reductions in transaction costs within labor markets. An IDC must design its product with the potential for the State to enter as an obstacle to the provision of the product or service that the IDC intends to introduce; this may involve proactive mitigation strategies to reduce the perceived harms that might be caused by the entry and operations of an institutionally disruptive company.

Alternatively, the State may also enter into the market as a competitor as a strategic response to institutional disruption. The response of an IDC in such a situation may ensure that the State becomes a partner rather than an enemy NME. Additionally, an entry strategy may be designed to limit the potential for the State to attempt to usurp the market in order to eliminate the threat of such a strategy diffusing into other major national markets. In the case of TNCs, the companies have perceived opportunities to present themselves as partners through which the State could more efficiently achieve their public transportation goals, such as filling in the gaps within transit systems. One example includes TNCs transporting clients to busses or ferries that lacked public transit connections. On the flip side, the case of Cochabamba, Bolivia, where Bechtel sought to privatize the provision of water was one in which the State sided with the private entity, yet contentious civil society organized a campaign to successfully oppose the actions of the State and the insurgent IDC.

In most other cases, however, the State and civil society have usually been aligned as partners in these interactions between society and IDCs.

Thus, an IDC must also responsively navigate the autonomous reaction and responses of the State to its operations in order to achieve and sustain legal status while also continuing to maximize its market performance; this illustrates that the State has tools beyond mere regulation in order to integrate and attempt to tame an IDC in order to incorporate them as partners in achieving broader policy goals or in order to reduce their direct or indirect negative impacts on society. The State will be most likely to enter as a key active strategic player, that is as a competitor within the market, when the operations of an IDC have an intrinsic public interest. Though the State and the Law will absolutely enter as autonomous strategic actors, that is as regulators, in the case of an IDC with extrinsic public interest as well; an example is the ongoing litigation against Facebook for alleged violations of the *Fair Housing Act* due to the use of its platform to run discriminatory advertising campaigns (Isaac, 2019.) Accounting for externalities, proactively resolving them, as well as cushioning those that are of a transitory nature may ensure that relations between the IDC and the State are less conflictual. A strategic response to the entry of the State as an autonomous actor, either as a regulator or as a credible potential competitor, requires political, legal, and adaptive strategies in order to preserve market share and market performance.

RESPONDING TO BANS AND PROHIBITIONS

There are multiple strategic responses that may be engaged in response to a ban or prohibition within a jurisdiction of operation. Chief among these is the strategy of *Noncompliant Advocacy*, which involves continuing to provide a good or service in contravention of a ban or prohibition while simultaneously seeking a legal right to provide it. An IDC must balance political and economic risks as well as strategic costs as it seeks to achieve a legal right in cases where its product is illegal or of uncertain legality. The alternative strategies involve various forms of compliant advocacy, such as adapting the product to comply or enacting a strategic exit.

A period of noncompliant advocacy may be accompanied with what I refer to as *Restrained Adaptation*. Restrained Adaptation is a strategy through which the IDC identifies and preserves the integral components of its product, those that represent the crux of its comparative advantage and drive consumer support.¹ In cases of Noncompliant Advocacy, this involves some adaptation of the product, but not necessarily full compliance. As the IDC is seeking to gain or to regain a legal right, some adaptation of the most strongly opposed elements may be a key means of regaining the support of political elites as well as consumers that the company might mobilize as it seeks to shape the perceptions of politicians deciding its case. Collier, Carter, and Dubal have studied the

¹ In general, *Restrained Adaptation* allows a company to manage and balance its internal, elite, and consumer relations during periods of institutional disruption while ensuring that it does not succumb to political and legal pressure. Additionally, this strategy may be a component of a multistage campaign to increase market performance.

increased ability of TNCs and other disruptive companies to mobilize their consumers (Collier, et al 2018;) additionally, Thelen and Culpepper have elucidated what they refer to as *Platform Power*: the ability of many new IDCs to mobilize and directly engage with their subscribers (Thelen and Culpepper 2019.) These support building and mobilizing capacities are key means through which one may seek to overcome regulatory obstacles.

In addition to mobilizing within jurisdiction supporters, an IDC may also contact higher level, superordinate authorities. An example of this dynamic was the TNC industry's response to heightened regulation within the City of Austin, Texas. When Austin increased its background check requirements, the TNCs engaged strategic exits from the city. They later reentered once their negotiations with state level politicians successfully erased the local regulations that they opposed. In some cases, an IDC might engage such an option with a similarly successful result; however, even where the superordinate politician supports the IDC, a strategic exit from the market may create a vacuum in which the competition may develop viable means of usurping the market share previously enjoyed by the IDC. The appendix includes a more detailed examination of the conditions under which an IDC ought to choose to engage the strategy of *Noncompliant Advocacy* (page 42.)

A RETURN TO THE DESIGN STAGE

A return to the design stage is now in order. In the depth of the planning stages, an IDC must discover and create the clear light that will guide them as they seek to disrupt markets, capturing hearts and minds. Thus, the game of institutional disruption is a difficult game, not an impossible game; it all begins with a choice by a potential IDC on whether or not to enter a jurisdiction. Additionally, as the company chooses to enter, it must also design its ideal product, its strategically adapted product, as well as its entry and long-term growth strategy. The primary goal of the *IDC* is to consolidate and increase its consumer base in order to maximize its *market performance*. However, it must also simultaneously

seek to reduce the *political and legal strategy expenses* necessary to achieve legalization and favorable regulation while minimizing the *politically induced operations costs* incurred due to the political reactions of competitors or political actors within the jurisdiction; as we have discussed, these politically induced operations costs may include sanctions from politicians or they may result from the contentious actions of citizens, workers, as well as competing companies. Additionally, an IDC will especially seek to ensure that their operations are not banned or that elements of their product are not prohibited.

Planning and designing with cross-cutting political and legal support in mind involve considering the above pitfalls—how to identify and avoid or navigate them—and incentives—how to maximize market performance and minimize costs. This may involve some product adaptation as well as the design of cunning strategies to emerge victorious. Constitutional rights may protect the company against elite political opposition; pornography cases, as well as certain works of satire have received such protections, among others. Citizen support may provide political and economic support against elite opposition, which enables periods of noncompliant advocacy, such as in the case of TNCs in Argentina, or strategic exits to engage option 4, such as in Austin, Texas, or the threat thereof, such as in Quebec. Political support may protect the company against the inimical decisions of ordinary courts where constitutional rights are not involved, such as with regard to disputes about the employment status of independent contractors; while a court may rule that the workers were misclassified, the local politicians may intervene to provide statutory clarification to enable the contracting practices of the institutionally disruptive

company. Similarly, if a court were to rule that an IDC needed to adapt its service to completely resemble the archaic operating framework of the extant incumbents, such as requiring TNC drivers to possess taxi medallions, a politician could step in to introduce an alternative regulatory framework that would enable modern technologically empowered models to operate within the jurisdiction. Superordinate authorities may also be consulted to protect the company from subordinate authorities within jurisdictions that present more obstacles to the company, such as in Austin, Texas, where Über and Lyft both enacted strategic exits and appealed to state legislators to overrule local regulations in response to inimical background check laws. Major TNCs similarly pursued national level strategy of regulatory homogenization in Brazil; as the company spread throughout more than 41 cities within the country, it encountered a variety of institutional constraints that it sought to overcome in order to reduce adaptation costs as well as to quell unrest that was resulting in politically induced operations costs. The major TNCs achieved a victory in Brazil in 2018 in their efforts to achieve favorable regulations throughout the country (Adghirni and Preissler Iglesias 2018.)

Once one has analyzed the strategic playing field to determine the likely obstacles, the product and strategy may be designed with foresight—with economic, political, and legal vision. In some cases, this may require restrained adaptation of the product as the company seeks to shape the law and policies within the jurisdiction to permit and favor its operations; some of these adaptations, however, may be temporary. This introduces what I refer to as Camouflaged strategies. A company may enter with a product that is less threatening, and there are many reasons to do so, while simultaneously having a plan to

release its full product and achieve market dominance. A chief reason is to limit reactive responses to entry. The IDC ought to want the incumbents to pay it no mind or to temporize with it, depending upon its relative bargaining power. However, once it has developed sufficient political support in order to overcome some of the obstacles that the incumbents might throw in its way—attempts to ban the IDC, to prohibit key aspects of the operations of the IDC, as well as attempts to emulate the methods of the IDC before it captures their entire market share—the full product may be released. This can advance economic, political, and legal goals simultaneously, such as fostering trust among consumers as well as amongst competitors through demonstrating restraint with regard to playing by the rules of the game. This incremental release strategy accompanied with a relatively less disruptive entry may also allow for reduced scrutiny of its operations, directing the omnipresent eye towards other prey and creating opportunities for another burst of market and institutional disruption.

Additionally, the dynamic pressure to conform ought to inform the strategic planning and decisions of an IDC. The period of institutional disruption, or at least its peak, may be brief and intense; however, in order to survive, an IDC may have to make compromises that will pull it towards the center as economic, legal, and political actors seek to correct for perceived externalities, enhance their own position within any given arena, and restore balance in the wake of institutional disruption. The IDC must also expect to be bound by new rules due to these compromises; some may represent permanent new rules of the game carried over from the prior market governance system; yet, as mentioned above, others may be temporary. This reflects what I refer to as the “illusion” of disruption.

An IDC may successfully enter and enact transformations within a market and an industry, but it must not succumb to the illusion that such rapid changes are sustainable; there are pressures that will draw it back towards the center, forces that lead to a long term regression towards the prior state as more and more strategic partners latch on, crises rear their heads, and compromises are made. People are often fans of the innovations that institutionally disruptive strategies present, but not of their externalities; additionally, a company that continues to push up against society, that continues to disrupt, is likely to incentivize a less disruptive emulator to capture the hearts and minds of the electorate, if not the consumers themselves as well. Thus, the IDC must have a plan to integrate itself into society, intelligently identify and navigate Disruptive Opportunities Spaces, and return to business as usual, lest the IDC or its leadership experience an internal coup or an external competitive threat. The case of Über provides a case in point about the challenges that leaders of institutionally disruptive companies have encountered as their companies take on greater prominence; meanwhile, the examples of Napster and Apple iTunes represent an extreme ideal typical example of the latter.

Planning and designing with foresight with the above challenges in mind as well as responding to unforeseen obstacles as they rear their heads ought to increase the likelihood of a company successfully introducing an institutionally disruptive product, technology, or service into a jurisdiction. Additionally, accounting for reintegration, ensuring that one does not succumb to the “illusion” of disruption, ought to increase the likelihood of a company and its leadership maintaining relative control and solidifying their position within the market. Additional research could determine whether these cunning and savvy

strategies actually increase success or whether successful institutional disruption is an entirely random process. Does involving experts in the design process, per the expectations of the *Knowledge Infusion Theory*—we could call what they provide *Disruption Kits*—actually increase the probability and intensity of success? Are proprietary considerations key drivers of the behavior of successful institutionally disruptive companies? Are companies that account for the full spectrum of their cross-cutting supports as well as their cross-cutting challenges—peering into the legal, economic, social, cultural, and political arenas as they craft their visions—more successful in designing and introducing winners?

TRANSPARENT CONCLUSIONS

This masters' report has introduced a conceptual and theoretical framework to guide future researchers and practitioners. There are numerous questions that could be investigated further as well as strategies that could be deployed IRL. One such strategy includes manufacturing an evil disruptor, similar to Napster within an industry, while waiting to release something more akin to Apple iTunes as the savior of the industry, its incumbent leaders, consumers, as well as those employed within it. The strategic shaping of perceptions could be a key means of introducing unexpected underdog innovations. Yet it could also be a means of bending the law towards the dark side.

The nature of the law and our legal institutions is between flux and stasis; ideally, the law is a system that produces flow while preserving key tenets of our societies. Some elements ought to remain in stasis, especially those that are agreed upon higher moral values, such as the dignity and intrinsic value of human life. As the pace of technological-social-political-economic change increases, opportunities for disruption will become more common. As these interactions have revealed so far, they may be productive when they are subject to political debate and legal processes. In this report, the true nature of the law, what many believe is a stable system of rules, is presented as a system that regulates the possible, as a system within which much may still be created as uncertainty comes and goes. Much may be created within the bounded chaos of these spaces of legal uncertainty as they emerge; this chaos becomes what one creates within it and against the inherent constraints of diverse legal systems within their political contexts.

Those who oppose the type of approach to law that I and others present, those who believe that my presentation of the law as something malleable, something subject to the creative force of the human will might argue that such a presentation of the law could be harmful. Fuller (1958), in his response to Hart (1958), makes such a claim while criticizing positivistic theorists of the law. Yet, in truth, explicating the truth of the law need not be harmful; as long as the stewards of the law recognize attempts to create that are genuinely tempered by a will to create greater shared prosperity, and differentiate them from those guided by nothing more than lust for power and profit, the positive law may still be guided by a moral hand. As long as a quality process, informed by the substantive aspirations of the people continues to exist and judges, lawyers, as well as the other defenders of a just, tolerant, open society remain as its stewards, malicious attempts to pervert the law may be detected and corrected. Yet, as Fuller and Hart both discuss in their essays, the positive law may go to dark places.

I remain optimistic that we will detect and successfully combat any such attempts to repeat the darker sagas of our past. The interactions between Institutionally Disruptive Companies and legal systems in their political contexts thus far support my optimistic view of our future. Again, the example of applications that auctioned public parking spaces demonstrate that innovation may take multiple directions and that the law, in tandem with politics, has a vital role in guiding it; whereas the early versions had a parasitic effect and were banned within a major city, the same technology has been employed by multiple other companies to connect users to private providers of parking within major cities. The efficiency goals of such companies may also be realized through public-private

partnerships or other alternatives that would ensure that increasing the efficiency does not result in an increase in inequality. Law, politics, and the creative will of tech entrepreneurs may conflict, but their interactions are productive in the aggregate when such conflict takes place within relatively transparent public view. As such, key tenets, such as intellectual property, privacy and human rights, and freedom of expression, among others, may be preserved. Relative transparency is paramount.

Appendix

Responding to Bans and Prohibitions (Continued.) The Strategy of Noncompliant Advocacy

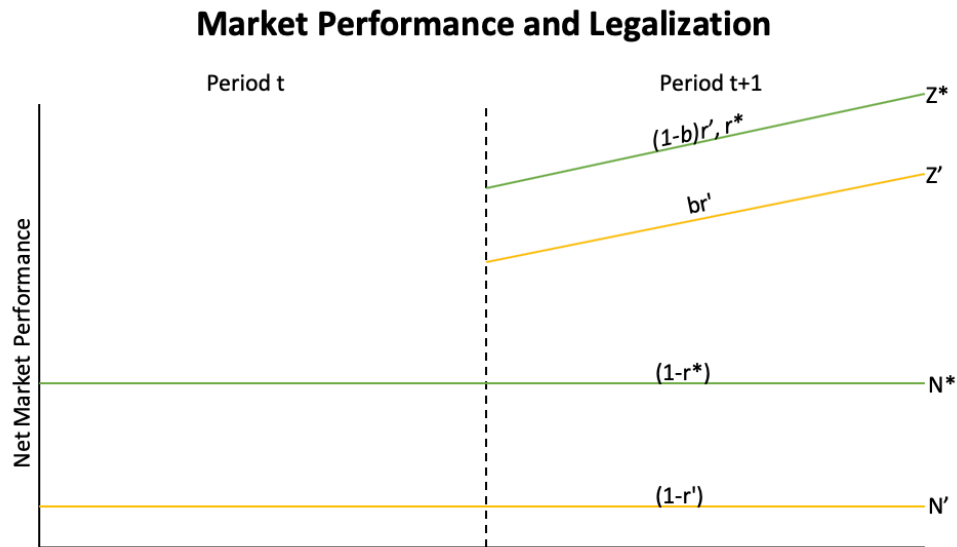
Competition induces pressure to engage *Noncompliant Advocacy* when an Institutionally Disruptive Company expects that a competitor, either an incumbent or a similarly disruptive emulator, will be able to legalize the banned or prohibited good or service within the jurisdiction if the IDC complies. Thus, regulators ought to consider these incentives in designing regulatory schemes as well.

A number of strategic challenges await an aspiring institutionally disruptive company as it walks the tightrope to successful institutional disruption; between disruption and business as usual, one of the most common obstacles is a ban on the *IDC* or a prohibition against an integral component of pd_i^* . A key strategy engaged by institutionally disruptive companies within the game of institutional disruption is a noncompliant response to a ban or prohibition alongside political and legal advocacy to achieve a legal right to operate or to legalize the prohibited aspect of the product or service provided by the *IDC*. This component of the game focuses on the interaction between the decision-making process of the *IDC*, but also takes the anticipated reactions of politicians, competitors, consumers, producers, and citizens, as well as legal actors into account. *Noncompliant Advocacy* is not intended to be an equilibrium, but a transitory state as an institutionally disruptive company pursues a legal right while the disruptive opportunity space remains open. The focus of this component of the game is the decision to engage noncompliance alongside advocacy in order to achieve a legal right to operate or to provide

pd_t^* when doing so is costly in the short run. Clearly many companies will sustain illegal operations if their market performance outweighs the politically induced cost of operating, regardless of legality. Additionally, extreme adaptation to the prevailing or newly installed market governance institutions is not a strategy that a nascent or even an established *IDC* would adopt, lest it lose its competitive advantage; the case of TNCs in Japan represents an exception to this rule, however, it is a unique case. The question is, therefore, why do some institutionally disruptive companies respond with noncompliant advocacy when doing so induces *Relative Political Risk* as compared to the strategy of *Compliant Advocacy*? This increased political risk may involve a higher probability of not achieving full legalization or it may involve incurring politically induced operations costs as a result of the reactions of compliant incumbent companies or due to the enforcement efforts of politicians within the jurisdiction.

The key to determining the conditions under which a company chooses *Noncompliant Advocacy*, rather than *Compliant Advocacy* in response to an inimical political or legal obstacle is to consider the *Economic Risk* that a compliant strategy might introduce. The model that I have developed for this component of the game integrates the long term and short term political and economic considerations that an *idc* must account for at time $t-1$ prior to deciding to engage *noncompliant advocacy* during period t in order to attempt to achieve legalization of pd_t^* at time $t+1$. The parameters of the model include r , the probability of legalization given the strategy selected, the market performance of the *IDC*, the politically induced operations costs incurred due to noncompliance, the costs to engage

a coordinated political and/or legal strategy to achieve legalization of pd_t^* during period t , as well as the probability, b , that a competitor, either another *IDC* or an adaptive incumbent, swoops in to capture part of the market while Company¹, the *IDC* considering noncompliance, suspends its operations during a period of compliant advocacy. The model also includes a discount factor, δ , which represents the relative weight that the decision maker places upon future utility. The inclusion of *Economic Risk*, in the form of a competitive threat that would reduce future market performance, allows the model to produce observable implications regarding the conditions under which an *IDC* will be more likely to engage noncompliant advocacy.



Visual 13: Market Performance and Legalization

N represents the *Net Market Performance* during a ban or prohibition and Z represents the *Net Market Performance* after successful legalization. A^* indicates the value of a parameter for a noncompliant strategy and a^* indicates the value of a parameter for a compliant strategy, while this visual assumes that $N^* > N'$, the opposite could be true, yet, the model would still produce a discontinuity in which $Z^* > Z'$.

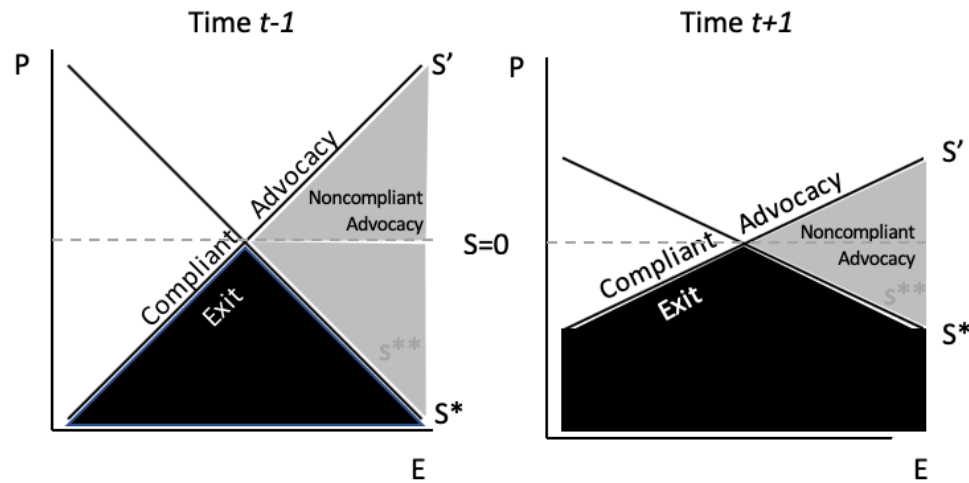
Visual 7 provides a succinct depiction of this logic. While the relative net market performance of the *IDC* engaging noncompliant advocacy during period t may be lower or higher than the net market performance of the *IDC* during compliant advocacy, the Economic Risk introduced by a competitive threat as well as the potential for legalization and a discontinuous increase in market performance provides an incentive, under certain conditions, for an *IDC* to engage Noncompliant Advocacy, rather than a compliant strategy.

The Relative Political Risk of a compliant strategy is represented as $P = (r' - r^*)m_{it+1}^*$, where r^* indicates the probability of legalization given a noncompliant strategy, r' indicates the probability of legalization given a compliant strategy, and m_{it+1}^* represents the market performance of company i at time $t+1$ given that no competitor successfully enters to capture part of the market within the jurisdiction. The Relative Economic Risk of compliance is represented as $E = br'(m_{it+1}^* - m_{it+1}')$, where m_{it+1}' represents the market performance of company i and time $t+1$ if a competitor enters to capture part of the market while the *idc* is complying. Thus, the *IDC* contemplating noncompliant advocacy must first balance the reduction in political risk against the increase in economic risk to determine the long-term relative utility of compliance:

$$\delta \left(\frac{P - E}{1 - \delta} \right)$$

An institutionally disruptive company must also consider the short-term *Relative Strategic Costs* to pursue a strategy, S , which includes o_{it} , m_{it} , and z_{it} . As such, the short-term Relative Strategic Costs to pursue noncompliant advocacy, S^* , or compliant advocacy, S' , must be balanced against the long-term gains.² Together, P , S , and E define the space within which a company may choose to enact a strategy of noncompliant advocacy during period t in pursuit of legalization, represented as the gray area within figure 8. The parameter space within which a company may decide to engage

Strategic Curves and Political-Economic Risk



Visual 14: Strategic Curves and Political Economic Risk, The Noncompliant Parameter Space

P=Political Risk, S=Strategic Costs, and E=Economic Risk

noncompliant advocacy may expand or contract as the component elements of S change over time, such as if there is a decrease or an increase in consumption, strategic costs, or

² An extension of the model also accounts for the choice between sustained illegality versus a brief period of noncompliant advocacy in pursuit of legalization. A threshold s^{**} demarcates the point at which a company might enter the black market rather than comply or sustain noncompliant advocacy (See Appendix AA.) The effect of illegality on market performance and politically induced operations costs determine the choice; however, the companies that are considered in my research prefer to seek the light, that is to gain a legal right to operate.

enforcement at time $t+1$ relative to time $t-1$. The white area represents the parameter space within which an institutionally disruptive company will decide to engage compliant advocacy. Meanwhile, the black site represents the parameter space in which a company would choose compliant exit. When S^* is greater than S' , a company will comply. As long as S^* is less than S' , a space will exist within which a company will be likely to choose Noncompliance.

IMPLICATIONS

An *Institutionally Disruptive Company* must juggle Political risk, Strategic costs, and economic Risk as it walks a tightrope in order to achieve a legal right to operate within any given jurisdiction. A brief period of noncompliant advocacy may, under certain conditions, be strategically advantageous as an *IDC* traverses this tightrope. A key implication of the model is that companies whose intellectual property rights are less secure or whose technological innovation is more easily replicated will anticipate higher Economic Risk and will be more likely to pursue noncompliant advocacy as a strategy in the wake of an inimical legal or political decision that inhibits their provision of pd_t^* .

THE PROOF(S)

The company calculus considers both long run and short run risks and costs. The first step is to compare the long run risks associated with the alternative strategies. Once the long-term implications of alternative strategies have been compared, the company must

also consider the short run costs and risks associated with the divergent strategies. The long run risks are primarily the differential political and economic risks that each strategy entails. The company must seek to balance the different forms of long-term risk that each of the available strategies would induce. Additionally, during the second step, a company must then consider the differential short run costs associated with pursuing one of these strategies in light of their divergent continuation values.

Step 2: Considering short run costs versus long run continuation values.

Assumptions:

$$1. \quad m_{it+1}^* \geq m_{it+1}'$$

The expected market performance if no competitors enter is assumed to be larger than if a competitor enters to capture some of the market share that the company served or expected to serve prior to the prohibition on its services. A company may earn this level of market performance upon legalization through either a noncompliant or a compliant strategy, however, compliance introduces a probability b that a competitor, such as another *idc* or an adaptive incumbent competitor, swoops in to capture the market.

EU: (Noncompliance) = ³

³ The expected utilities include the net market performance during period t , $N = m_{it} - z_{it} - o_{it}$, as well as the utility from legalization at time $t+1$. The alternate possibility, $(1-r)$ is not included within the respective utility functions above as time $t+1$ represents a new choice point at which the company may choose an alternative strategy or continue the strategy that it employed during period t ; essentially, this aspect of the continuation

$$m_{it} - z_{it}^* - o_{it} + \left[\delta \left(\frac{m_{it}^*}{1-\delta} \right) \right] r^*$$

EU: (Compliance) =

$$\begin{aligned} & b \left[-z_{it}' + \left[\delta \left(\frac{m_{it+1}'}{1-\delta} \right) \right] r' \right] + (1-b) \left[-z_{it}' + \left[\delta \left(\frac{m_{it+1}^*}{1-\delta} \right) \right] r' \right] \\ & b(-z_{it}') + br' \left[\delta \left(\frac{m_{it+1}'}{1-\delta} \right) \right] + (1-b)(-z_{it}') + (1-b) \left[\delta \left(\frac{m_{it+1}^*}{1-\delta} \right) \right] r' \\ & br' \left[\delta \left(\frac{m_{it+1}'}{1-\delta} \right) \right] - z_{it}' + (1-b) \left[\delta \left(\frac{m_{it+1}^*}{1-\delta} \right) \right] r' \\ & br' \left[\delta \left(\frac{m_{it+1}'}{1-\delta} \right) \right] - z_{it}' + \left[\delta \left(\frac{m_{it+1}^*}{1-\delta} \right) \right] r' - br' \left[\delta \left(\frac{m_{it+1}^*}{1-\delta} \right) \right] \\ & \left[\delta \left(\frac{m_{it+1}^*}{1-\delta} \right) \right] r' - z_{it}' + br' \left[\delta \left(\frac{m_{it+1}'}{1-\delta} \right) \right] - br' \left[\delta \left(\frac{m_{it+1}^*}{1-\delta} \right) \right] \\ & r' \left[\delta \left(\frac{m_{it+1}^*}{1-\delta} \right) \right] - br' \left[\delta \left(\frac{m_{it+1}^* - m_{it+1}'}{1-\delta} \right) \right] - z_{it}' \\ & r' \left[\delta \left(\frac{m_{it+1}^* - b(m_{it+1}^* - m_{it+1}')} {1-\delta} \right) \right] - z_{it}' \end{aligned}$$

THE INDIFFERENCE POINT (CONSIDERING SHORT RUN COSTS)

Simplifying the expected continuation values as C^* and C' , respectively, represents the relationships between the costs of a compliant versus and noncompliant strategy that would have to hold in order for an institutionally disruptive company to decide to operate illegally in the wake of a prohibition.

Thus, C^* represents the expected boon from a period of illegal operations while C' represents the result of compliance.

value is equal for both strategies and both include $(1-r)\phi$, where ϕ represents the choice the company makes at time $t+I$, which is unknown at time $t-I$. Time $t+I$ represents the checkpoint at which the company projects it will achieve legalization.

$$C^* = \left[\delta \left(\frac{m_{it+1}^*}{1 - \delta} \right) \right] r^*$$

$$C' = r' \left[\delta \left(\frac{m_{it+1}^* - b(m_{it+1}^* - m_{it+1}')}{1 - \delta} \right) \right]$$

$$C' - z_{it}' = m_{it} - z_{it}^* - o_{it} + C^*$$

$$C^* - C' = z_{it}^* + o_{it} - m_{it} - z_{it}'$$

The right-hand side of the above equation represents the costs of noncompliance relative to a compliant strategy. The elements within the parenthesis represent the costs to pursue strategy r^* in which politically induced operations costs as well as political expenses may be offset by ongoing market performance; however, this highlights an additional form of short run Economic Risk in which illegal operations may have an effect on consumer behavior during the period of illegality. Thus, the expected politically induced operations costs, the relative cost of strategy r^* as compared to r' , as well as the expected market performance during the period of illegality inform the decision with regard to compliance.

$$EU(\text{Compliance}) < EU(\text{Noncompliance}) \text{ iff } C^* - C' \geq (z_{it}^* + o_{it} - m_{it}) - z_{it}'$$

Compliance otherwise.

The proof requires three steps, though the company calculus involves two.

Step 1: Comparing the relative long run continuation values

Looking deeper into the continuation values, the company must first consider the different factors that will determine the relative continuation values even prior to considering the costs to engage strategies r' or r^* .

The Indifference Point (Prior to Considering Short Run Costs)

$$\left[\delta \left(\frac{m_{it+1}^*}{1 - \delta} \right) \right] r^* = r' \left[\delta \left(\frac{m_{it+1}^* - b(m_{it+1}^* - m_{it+1}')}{1 - \delta} \right) \right]$$

Because the discount factors are equal, and because the current proof does not yet consider the short run costs, locating the point at which a company would be indifferent can be done through focusing on the following equations.

$$\begin{aligned} r^*(m_{it+1}^*) &= r'[m_{it+1}^* - b(m_{it+1}^* - m_{it+1}')] \\ r^*(m_{it+1}^*) &= r'(m_{it+1}^*) - br(m_{it+1}^* - m_{it+1}') \\ r^*(m_{it+1}^*) &= r'(m_{it+1}^*) - br'(m_{it+1}^*) + br'(m_{it+1}') \\ br'(m_{it+1}^*) - br'(m_{it+1}') &= r'(m_{it+1}^*) - r^*(m_{it+1}^*) \\ br'(m_{it+1}^* - m_{it+1}') &= (r' - r^*)(m_{it+1}^*) \end{aligned}$$

The left side of the equation represents an increase in *Relative Economic Risk*, or the increase in risk induced through a compliant strategy due to the possibility that a competitor will take advantage of the opportunity to snatch up consumers and reduce the company's future market share at the time of legalization. The effect of competitors on m_{it+1} could be small even if b is large if a company expects that they will be able to quickly reassert dominance within a market upon a return to providing services once legalization has been achieved.

The right side of the equation represents a reduction in *Relative Political Risk*, or the risk reduced through a compliant strategy. Essentially, if r' is greater than r^* , there is a benefit to compliance as the company may be able to more quickly and efficiently achieve legalization through a compliant legal and political strategy. However, the right side must be balanced against the left side so as to ensure that compliance would not induce another form of risk. As such, an *idc* must consider tradeoffs between Political Risk and Economic Risk when making decisions regarding compliance with regard to prohibitions on their provision of goods or services.

Thus, when reincorporating the discount factor to allow these long run considerations to be balanced against the short run economic and political costs, the relative utility of a compliant strategy as compared to a noncompliant strategy, the inverse of C^*-C' as considered above, becomes:

$$C' - C^* = \delta \left(\frac{(r' - r^*)m_{it+1}^* - br'(m_{it+1}^* - m_{it+1}')}{1 - \delta} \right)$$

The True Indifference Point (Integrating Long Run and Short Run Considerations)

As $(r' - r^*)m_{it+1}^*$ represents the *Relative Political Risk* of compliance and $br'(m_{it+1}^* - m_{it+1}')$ represents the *Relative Economic Risk* of compliance, the two may be substituted for purposes of simplification as P and E , respectively, in order to represent the relative utility of a compliant strategy.

As such, if the difference between the utility of compliance and noncompliance is positive, the company must then consider the short run factors involved in step 2 (Above). The long run reduction in political risk as a result of compliance must be large enough in relation to the economic

risks induced by compliance such that the relative short run costs of *Compliant Advocacy*, a strategy in which the company continues political and legal advocacy while temporarily suspending economic operations, would make compliance more attractive than noncompliance. Where the short run political and legal costs of Compliant Advocacy, z_{it}' , are greater than C' , an alternative compliance strategy may be pursued in which the company ceases political, legal and economic operations entirely within any jurisdiction j

(AKA a *Temporary or permanent, Compliant Exit*.)

A situation in which the relative utility of compliance is less than the expected utility of noncompliance requires that the company determine that the relative cost to engage a noncompliant strategy r^* be outweighed by the relative expected utility of noncompliance and ongoing illegal operations. Thus, the company must also consider the relative strategic costs of alternative strategies.

As the costs to engage strategies r^* or r' , z_{it}^* and z_{it}' respectively, the market performance during period t , m_{it} , and the politically induced operations costs, o_{it} , represent the total strategic costs involved in the short-term calculus, they may be represented as S , the *Relative Strategic Cost*. The Relative Strategic Cost of compliance or noncompliance are represented as S' and S^* , respectively.

$$S^* = z_{it}^* + o_{it} - m_{it} - z_{it}'$$

$$S' = m_{it} - (z_{it}^* + o_{it}) + z_{it}'$$

The two equations are mirror images and account for the consideration of the opportunity costs as well as the strategic costs of pursuing alternative strategies; note that the equation is considered during step 2 (Above), thereby bringing the proof full circle to integrate the long run

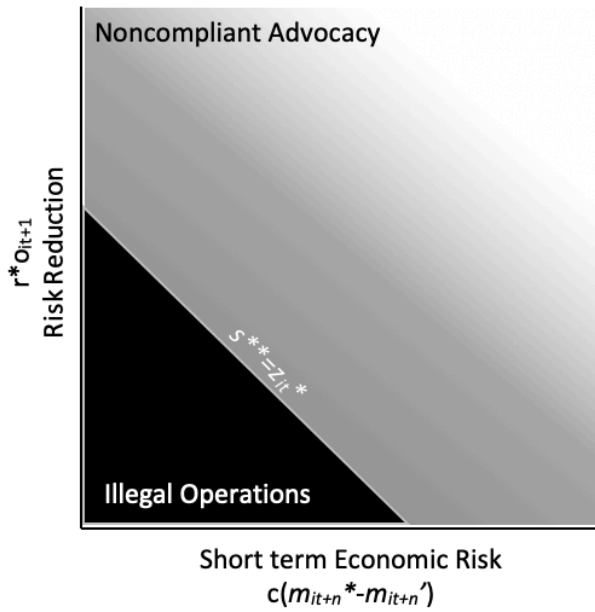
and short run considerations. Within the equation for S' , $m_{it} - (z_{it}^* + o_{it})$ represents the potential opportunity cost of pursuing a compliant strategy; this includes the potential for the company to offset strategic costs through market performance during a period of noncompliant advocacy. Meanwhile, the equation for the relative strategic cost of noncompliance includes the cost of the alternative compliant strategy, z_{it}' , in order to account for the difference between the cost of pursuing either strategy.

$$\left\{ \begin{array}{ll} \text{Compliant Advocacy iff} & \delta \left(\frac{P - E}{1 - \delta} \right) \geq S' \\ \text{Noncompliant Advocacy iff} & S' \geq \delta \left(\frac{P - E}{1 - \delta} \right) > S^* \\ & \text{Otherwise} \end{array} \right.$$

Noncompliant Advocacy v. Illegal Operations

A wrinkle remains unresolved unless we also consider that there is a threshold, $S^* \leq s^{**} < 0$, at which some companies might prefer to covertly continue operations without pursuing a legal right. Two intermediate considerations must also be accounted for in order to locate the threshold and elucidate when and where we ought to expect to observe the alternative forms of noncompliance. One path of noncompliance ideally leads to the light of the law; the other descends deeper into the shadows. The path that a company chooses depends upon their beliefs about the stability of o_{it} as well as the sustainability of m_{it} during a period, or during multiple periods, of noncompliance. If m_{it} is greater than o_{it} , but less than $z_{it} + o_{it}$, a company may prefer to continue illegal operations without pursuing a legal right to operate. However, if the company expects that o_{it} may become costlier in the future due to variable enforcement or if the company expects that sustained illegal

Regarding Illegal Operations

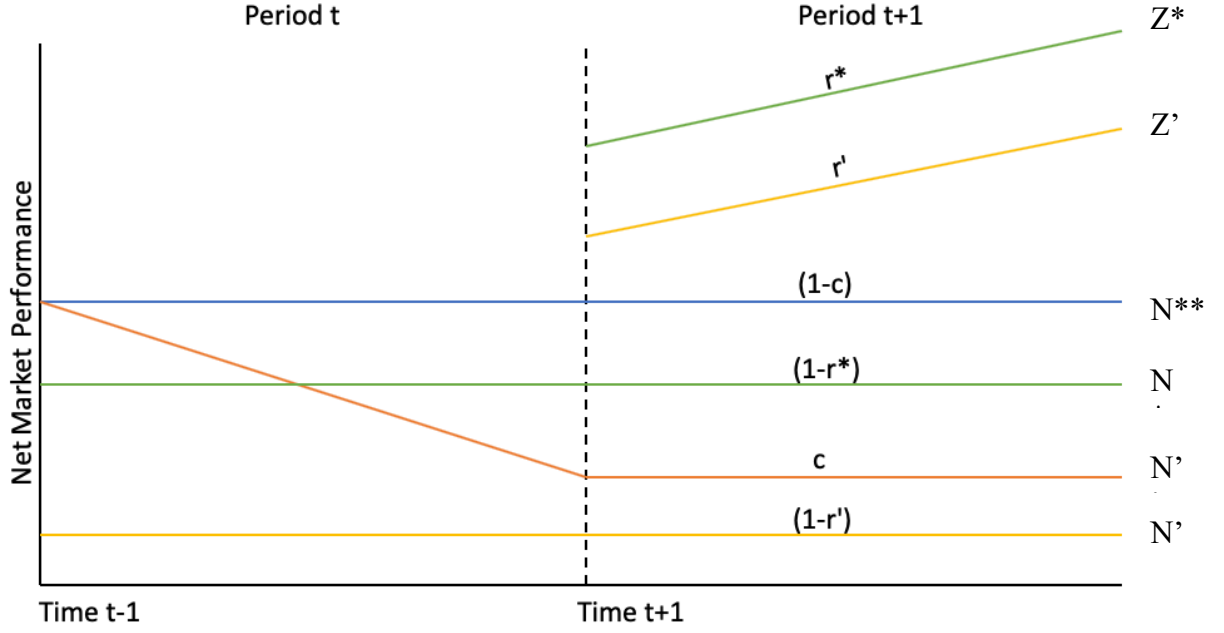


operations may have a negative effect on m_{it} over time, the company may choose to pursue noncompliant advocacy rather than sheer lawlessness. This decision depends upon the utility of Risk Reduction that the potential of legal discontinuity would represent for the institutionally disruptive company, r^*O_{it+1} , as well as the short term economic risk of reduced consumption, which is represented as $(m_{it+n}^* - m_{it+n}')$, where c represents the probability of a

reduction in consumption during interval n or period t .

An intermediate consideration regarding potential fluctuations in m_{it} during interval n of period t elucidates why some companies choose compliant or noncompliant advocacy rather than entering the shadows. Time $t+1$ may be thought of as a summation of intervals n during which the company engaging Noncompliant or Compliant Advocacy earns a net market performance N^* or N' , respectively. Alternatively, the anticipated N^{**} may be higher at first, however, as the time nears $t+1$, N^{**} may become N'' . Thus, N^* , or in some cases N' may be higher as the company either maintains consumer loyalty or reduces politically induced operations costs during the ban, or completely eliminates them due to legalization.

CA and NA v. IO



Visual 15: A Temporal Comparison of the relative utilities of Compliant Advocacy, Noncompliant Advocacy, and Illegal Operations

NA v. IO

* indicates the value of a parameter while pursuing a legal right in cases where the parameter exists for both strategy types.

' indicates the value of a parameter for operating illegally in cases where the parameter exists for both strategy types.

$$m_{it} - z_{it}^* - o_{it} + \delta \left(\frac{r^* m_{it+1}^* + (1 - r^*)(m_{it+1}^* - o_{it+1})}{1 - \delta} \right) \\ = m_{it} - o_{it} + \delta \left(\frac{(1 - c)m_{it+1}^* + cm_{it+1}' - o_{it+1}}{1 - \delta} \right)$$

$$\delta \left(\frac{r^* m_{it+1}^* + (1 - r^*)(m_{it+1}^* - o_{it+1})}{1 - \delta} \right) - z_{it}^* = \delta \left(\frac{(1 - c)m_{it+1}^* + cm_{it+1}' - o_{it+1}}{1 - \delta} \right)$$

$$\begin{aligned}
\delta \left(\frac{r^* m_{it+1}^* + (1-r^*)(m_{it+1}^* - o_{it+1})}{1-\delta} \right) - z_{it}^* &= \delta \left(\frac{m_{it+1}^* - c(m_{it+1}^* - m_{it+1}') - o_{it+1}}{1-\delta} \right) \\
\delta \left(\frac{r^* m_{it+1}^* + m_{it+1}^* - o_{it+1} - r^*(m_{it+1}^* - o_{it+1})}{1-\delta} \right) - z_{it}^* \\
&= \delta \left(\frac{m_{it+1}^* - c(m_{it+1}^* - m_{it+1}') - o_{it+1}}{1-\delta} \right) \\
\delta \left(\frac{r^* m_{it+1}^* - r^*(m_{it+1}^* - o_{it+1})}{1-\delta} \right) - z_{it}^* &= \delta \left(\frac{-c(m_{it+1}^* - m_{it+1}')}{1-\delta} \right) \\
\delta \left(\frac{r^* m_{it+1}^* - r^* m_{it+1}^* + r^* o_{it+1}}{1-\delta} \right) - z_{it}^* &= \delta \left(\frac{-c(m_{it+1}^* - m_{it+1}')}{1-\delta} \right) \\
\delta \left(\frac{r^* o_{it+1}}{1-\delta} \right) - z_{it}^* &= \delta \left(\frac{-c(m_{it+1}^* - m_{it+1}')}{1-\delta} \right) \\
\delta \left(\frac{r^* o_{it+1}}{1-\delta} \right) - z_{it}^* &= \delta \left(\frac{-c(m_{it+1}^* - m_{it+1}')}{1-\delta} \right) \\
\delta \left(\frac{r^* o_{it+1}}{1-\delta} \right) - \delta \left(\frac{-c(m_{it+1}^* - m_{it+1}')}{1-\delta} \right) &= z_{it}^* \\
\delta \left(\frac{r^* o_{it+1} + c(m_{it+1}^* - m_{it+1}')}{1-\delta} \right) &= z_{it}^*
\end{aligned}$$

The long run utility of a potential elimination of politically induced operations costs as well as the potentially higher level of market performance due to pursuing legality must be greater than the short-term cost to pursue legality. Thus, the threshold s^{**} exists where z_{it}^* is equal to the long run utility of the relative consumption increase, the reduction in Short term Economic Risk, as well as the relative Risk Reduction that may be gained through achieving legalization.

Noncompliant Advocacy > Illegal Operations iff

$$\delta \left(\frac{r^* o_{it+1} + c(m_{it+1}^* - m_{it+1}')}{1-\delta} \right) \geq z_{it}^*$$

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