

# Contents

<i>Acknowledgments</i>	<i>page</i>	<i>xii</i>
<b>1</b> Introduction		1
A. Courts as long-term strategic actors that seek to maximize their reputations		3
<b>2</b> A theory of the reputation of courts		7
A. What is courts' reputation?		8
B. Why courts want to increase their reputation		9
C. The reputation of parties facing the court		12
D. How courts improve their reputations		23
1. Demanding judgments		30
2. Discretionary reasoning		35
3. Dissent		39
E. Reputation and public support		46
F. Methods for measuring judicial reputation		47
G. What this theory can and cannot explain		52
H. Conclusion		60

## Contents

3	Constraints on courts	62
	A. Legal-internal constraints	63
	B. External constraints on national courts	69
	1. Noncompliance	70
	2. Criticism	76
	3. Curbing the court's jurisdiction	78
	4. Changing the law	80
	5. Establishing new courts	80
	6. Influencing judicial selection and sanctions against judges	83
	7. Manipulating the court's budget	86
	C. External constraints on international courts	87
	1. Noncompliance	89
	2. Criticism	90
	3. Exiting the court's jurisdiction	92
	4. Changing the treaty	95
	5. Establishing new courts	97
	6. Influencing judicial selection and sanctions against judges	98
	7. Manipulating the court's budget	101
	D. Comparing the constraints on national and international courts	102
	E. The influence of third parties on judicial constraints	105
	F. Conclusion and the tradeoff between external and internal constraints	112

<b>4</b>	Tactics to increase courts' reputation	114
	A. Walking on the brink of noncompliance	117
	B. Matching the remedy to the court's reputation	122
	C. Matching the reasoning to the court's reputation	124
	D. Matching the remedy to the reasoning	128
	E. Incrementalism	131
	F. Distinguishing remedy and precedent	136
	G. Matching the demands to the party	140
	H. Pleasing both parties	148
	I. Spending reputation	150
	J. Conclusion	155
<b>5</b>	National court case study:	
	Israeli Supreme Court	157
	A. Background	158
	B. The court's strategy	163
	1. Shifting to discretionary reasoning as the court's reputation increases	164
	2. Matching demanding judgments with constrained reasoning	170
	3. Incrementally progressing doctrine	177
	4. Matching demanding precedents with nondemanding remedies	181
	C. The executive's response	183
	D. The court's adaptation	191
	E. Conclusion	211

## Contents

6	International court case study:	
	European Court of Human Rights	212
	A. Background	215
	B. The court's strategy	220
	1. Increasing the demands from the states	223
	2. Progressing incrementally	236
	C. Facing the states' strategy	239
	1. Demanding more from low-reputation states	242
	D. Conclusion and the falsifiability of conflicting tendencies	257
7	When compliance is irrelevant	262
	A. Almost certain compliance	264
	B. Almost certain noncompliance	270
	C. No tangible compliance required	281
	D. Other unique situations	285
	E. Conclusion	290
8	Conclusions	291
	A. Summary	291
	B. Normative implications	295
	<i>Bibliography</i>	303
	<i>Books</i>	303
	<i>Articles</i>	306
	<i>Judgments</i>	315
	<i>Israeli Supreme Court</i>	315
	<i>European Court of Human Rights</i>	318

<i>U.S. Supreme Court</i>	321
<i>International Court of Justice</i>	321
<i>European Court of Justice</i>	322
<i>Index</i>	323