

# Mitchell Chervu Johnston

91 Sidney St., 705  
Cambridge, MA 02139  
mjohnston@law.harvard.edu  
215-360-4241

---

## EDUCATION

**Yale Law School**, New Haven, CT | *May 2020*

*J.D.*

### Activities and Honors:

- Articles Editor, *Yale Law Journal*
- Finalist, Thomas Swan Barristers' Union
- Research Assistant, Dean Heather Gerken
- Member, Supreme Court Advocacy Clinic
- Member, South Asian Law Students Association

**Princeton University**, Princeton, NJ | *June 2015*

*B.S.E., summa cum laude*, Operations Research and Financial Engineering (ORFE), Certificate in Applied and Computational Mathematics

### Honors:

- Phi Beta Kappa
  - Ahmet S. Cakmak Prize (for innovative research and an exceptional senior thesis in ORFE)  
(Thesis Title: *Voting and Social Choice in Information Networks*)
  - Shapiro Award for Academic Excellence for Academic Year 2012-13 (top 3% of class)
- 

## PROFESSIONAL EXPERIENCE

**Harvard Law School** | Cambridge, MA

Sept. 2022 – Present

*Postdoctoral Fellow, Project on the Foundations of Private Law*

**Courses Taught:** Law as a Complex System (reading group, Spring 2024)

**Mayer Brown LLP** | New York, NY

Sept. 2021 – Aug. 2022

*Associate, Supreme Court & Appellate Practice*

**Hon. Debra Ann Livingston, Second Circuit Court of Appeals** | New York, NY

2020 – 2021

*Law Clerk*

**Boies Schiller Flexner LLP** | New York, NY

May 2019 – Aug. 2019

*Summer Associate*

**Department of Justice, Civil Fraud Section** | Washington,

June 2018 – Aug. 2018

*Student Intern*

**McKinsey & Company** | Summit, NJ

Aug. 2015 – June 2017, June 2014 – Aug. 2014

*Business Analyst*

---

## TEACHING AND RESEARCH INTERESTS

***Primary Teaching Interests:*** Contracts, Torts, Remedies, Legislation and Regulation

***Secondary Teaching Interests:*** Property, Law and Economics, Civil Procedure, Constitutional Law

---

## PUBLICATIONS & WORKS IN PROGRESS

### ***Socially Valuable Transaction Costs (Working Paper) (Job Market Paper)***

*Transaction costs can have positive system-level benefits. The standard law and economics wisdom, however, is that transaction costs are a net negative and should, all else equal, be minimized. Though some law and economics work departs from this view and argues that transaction costs have benefits, this work typically focuses on benefits at the level of individual transactions. This Article demonstrates how transaction costs can have emergent system-level benefits and provides a novel framework that comprehensively categorizes such situations.*

*Specifically, transaction costs act at the system level by altering the pattern of transactions that occur within a system. They do so along two dimensions. First, they can stabilize a socially favored equilibrium. For example, a particular local institution (e.g., local newspapers) may exist only because of positive transaction costs (e.g., the cost of accessing national newspapers) and thus this positive equilibrium is stabilized by transaction costs. Second, transaction costs can also destabilize disfavored equilibria. Blind auditions, for example, increase the information costs of employers looking to discover a particular characteristic. In doing so, they can disrupt entrenched patterns of discrimination. Further, the stabilization and destabilization functions of transaction costs occur in both static and dynamic settings. The Article develops the resulting four quadrant framework with further examples.*

*Lawyers are (famously) transaction costs engineers. The orthodox view, however, is that they engineer transaction costs by developing structures that minimize them. While this may be true of lawyers acting to facilitate the aims of their clients, the Article argues that lawyers should not solely act as transaction cost minimizers in their role as legal policy makers. Rather the systemic view shows that in many cases the best legal policy is one that maintains or raises transaction costs.*

### ***Stepification, 116 NORTHWESTERN UNIVERSITY LAW REVIEW 383 (2021)***

*This Article argues that American law in the 70s and 80s experienced a dramatic increase in the prevalence of multi-step tests beyond merely the famous example of the conversion of Skidmore deference into the famous Chevron two-step test. I document the rise in these new multi-step tests as well as explore the normative implications of this shift. The paper also argues that the choice of the multi-step framework and the timing of its rise was not a coincidence and was the confluence of a need to respond to concerns about unchecked judicial discretion with broader trends within American elites towards more structured methods.*

### ***Note, Reflective Remedies, 129 YALE LAW JOURNAL 1148 (2020)***

*This Note proposes a new class of private-law remedies designed to induce optimal compliance with uncertain legal rules by “reflecting” the defendant over the maximum allowable conduct. For example, if there is uncertainty in a jurisdiction about the maximum length of covenants not to compete and a court determines the maximum is 1 year, but the parties have contracted for 1.25 years, the reflection solution would have the court rewrite the covenant to 0.75 years, “reflecting” the value of 1.25 over the court-determined maximum of 1 year. Similarly, parties who contracted for 1.5 years would have their contracts rewritten to 0.5 years. As a result, small over-reaches would be punished minimally while large over-reaches would result in*

significant sanctions. I claim that this approach would, under appropriate conditions, result in defendant behavior that resembles their “best guess” of the true legal rule rather than strategic over-reach or overcompliance. Moreover, these conditions are likely met in a variety of familiar circumstances involving mandatory limits on contracting or places where the law imposes caps or floors.

### ***Partial Damages (Complete Draft) ([ssrn](#))***

*This draft argues that debates about limits on private suits are too frequently focused on all-or-nothing immunity doctrines that purportedly exist to prevent socially positive behavior from being deterred by the threat of liability. Rather than taking an all or nothing approach, I argue that in such cases the law should award plaintiffs with partial damages which compensate the plaintiff for some fraction of the harm suffered, where the fraction varies based on the positive externality of the defendant’s behavior. I argue this would improve upon the status quo by encouraging defendants to engage in socially beneficial behavior while still (partially) compensating plaintiffs and thus achieving the other social benefits of litigation.*

### ***Smoothing in Two Dimensions (Work in Progress)***

*This work in progress builds off my partial damages draft by examining the generalized idea of tiered damages. Damages are a “smooth” remedy in that they scale proportionally to the harm to the plaintiff. In some areas of the law, however, we encounter systems that also scale along a second dimension. For example, in some states, tortious action that is “willful and wanton” is subject to punitive damages which can also scale with the egregiousness of the conduct. But if partial damages are permitted, then further opportunities present themselves to deploy such tiered systems. Moreover, damages need not always escalate. Rather in some cases it may be appropriate to decrease damages (for example, in cases of self-reporting). This paper would aim to provide a theory of when tiering is appropriate and insight into the different ways in which the law can tier damages.*

### ***A Defense of Balancing (Work in Progress)***

*While they are still routinely applied by courts, balancing tests are viewed with suspicion by many judges and commentators. Their critics suggest that balancing is really a thin veil that allows the judge to reach his or her desired outcome. Because balancing tests offer no ready algebra for combining the results of their factors into an outcome, the result, it seems, can be massaged to the judge’s preference. This draft argues that the negative view of balancing is incorrect, in part, because it relies on a conceptual mistake. Critics of balancing treat it as an algorithm to process the facts of the case and, in this light, it seems lacking. This work in progress presents an alternative view: Balancing should instead be seen as a constrained form of analogical reasoning that specifies a finite number of “resemblances” for the judge to consider between precedent and the case at hand. With this view in mind, balancing is actually a good fit for several problems the law routinely encounters that are not amenable to more rigid decision structures. And an aversion to balancing may lead courts to eschew the additional structure that balancing can provide to decisions that otherwise might be less constrained. Balancing is thus more useful, and more principled, than its critics believe.*

---

## **SHORTER WORKS**

***Drug Liability: A New Supreme Court Ruling, 322 JAMA 607 (2019) (with G. Curfman & M. Boumil)***

***(<https://jamanetwork.com/journals/jama/article-abstract/2738243>)***

*Summarizing the implications of the Supreme Court’s decision in Merck v. Albrecht, which addressed what a pharmaceutical manufacturer must prove to demonstrate that it was impossible to comply with both state law and with the FDA’s instructions regarding labelling of the product.*

*What Happens When a Police Officer Gets Fired? Very Often Another Police Agency Hires Them*, WASH. POST (June 16, 2020) (with N. Lalwani) (interviewing Professors John Rappaport and Ben Grunwald)

(<https://www.washingtonpost.com/politics/2020/06/16/what-happens-when-police-officer-gets-fired-very-often-another-police-agency-hires-them/>)

*Short piece interviewing the professors about their recent Yale Law Journal piece studying police officers who are fired for misconduct and then subsequently are rehired at other police departments.*

*Think Racial Segregation is Over? Here's How the Police Still Enforce It*, WASH. POST (July 1, 2020) (with N. Lalwani) (interviewing Professor Monica Bell)

(<https://www.washingtonpost.com/politics/2020/07/01/think-racial-segregation-is-over-heres-how-police-still-enforce-it/>)

*Short piece interviewing the professor about her recent NYU Law Review piece studying the role of policing and police practice in maintaining patterns of residential segregation.*

---

## TEACHING EXPERIENCE

**Lecturer in Law**

*Law as a Complex System*

Spring 2024

**Teaching Assistant**

*Contracts, Professor Aditi Bagchi*

Fall 2019

---

**Bar Admissions:** New York

---