Does Judicial Independence Matter for Judicial Influence

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Abstract

Under what conditions is judicial independence from national governments necessary for judicial influence over national government action? Some scholar argue that informal and sub constitutional factors matter more than "parchment protections", while others believe judicial independence is critical for judicial influence. Building off of a basic separation of powers argument, we demonstrate that formal institutional protections designed to ensure judicial independence should be critical only when elected officials are sufficiently unified, where "sufficiently unified" depends upon the design of the political system. That is, they are more than "parchment barriers" and less than necessary. To test the argument, we introduce a new cross-national database on high court constitutional review (CompLaw). The Complaw database is designed to systematically and consistently code data on high court constitutional decisions at a very fine-grained level across a large variety of political systems.

One of the most important powers a high court can have is the right to exercise judicial review. However, just because a court is granted the authority to rule government actions invalid does not mean that it effectively exercises that power. Courts might choose to not rule against governments (Cite SOP), or, even if they do, governments might not obey adverse decisions (Cite compliance literature). Simply put, the formal right to issue such rulings does not mean that courts actually exercise *influence* on policy.

Under what conditions are high courts able to influence policy? Or, said differently, what must be true for judges to effectively wield judicial review? Existing answers all focus on how judicial influence on policy can arise endogenously. The separation of powers (SOP) literature argues that high courts are more likely to influence policy outcomes when political power is sufficiently fractured (Cite SOP literature). The compliance literature argues high courts are more likely to influence policy when the government fears public reprisal for evading an adverse court decision (Cite compliance literature). What these explanations also generally have in common is the (often implicit) assumption that the design of the judicial institution does not matter. In particular, institutional protections establishing formal judicial independence do not matter.

This observation is perhaps surprising. As other scholars have noted (Kornhauser 2002; Manning 2009), the institutional protections that underpin judicial independence specifically are designed to help ensure that judges do not feel beholden to the politicians over whom they are supposed to exercise judicial review. For example, judges granted life tenure, guarantees that governments cannot cut their budgets, and protections from being removed from office for political purposes should feel freer to rule against governments, because they ostensibly they do not have to fear reprisal. This is just basic principal-agent theory. The principal, the government, is using institutional rules to tie its hands such that it cannot sanction the agent, the court, for issuing rulings that the principal, the government, does not support.

Do these institutional protections, establishing what we will define as judicial independence, really lead to judiciaries that are more likely to rule against their national governments? And if so, under what conditions? To answer these questions, we need to be able to test how different levels of judicial independence affects judicial decision-making. Most obviously, that implies we need a dataset with variation in the levels of judicial independence. Equally importantly, it also implies we need a quality way of measuring if high courts are issuing rulings meant to constrain national government behavior. In this paper, we introduce a new dataset, the Comparative Law Database, which is designed to help scholars answer questions such as these, and use it to test an argument for the conditions under which institutional protections designed to encourage judicial independence should affect judicial decision-making.

The argument is more than a basic claim that these institutional protections should matter. Rather, it integrates insights from the separation of powers literature and demonstrates that the impact of these institutional protections should critically depend on whether political elites are sufficiently unified to credibly

threaten to sanction unprotected courts. The rest of the paper proceeds as follows. First, we introduce the argument and connect it to the existing literature in greater detail. Second, we introduce the new database. In doing so we present the existing data, compare it to other exiting cross-national high court datasets, and present a number of its most salient properties through descriptive statistics. Third, we test the argument using the new data, and finally we discuss implications of our findings and future directions, including partnering opportunities, for the Comparative Law Project.

1 When should judicial independence matter?

Before discussing when judicial independence is likely to matter, we first need to define exactly what we mean by judicial independence. The term judicial independence is a general concept that can have at least two interpretations. As John Ferejohn (1999) describes, one meaning is that "a person is independent if she is able to take actions without fear of interference by another (Ferejohn 1999: 355)." The second meaning entails a person or institution being independent if the person or entity is able to do its job without relying on some other institution or group (Ferejohn 1999: 355). We will use the term primarily within the context of the first meaning. We will describe a judiciary as more independent the stronger the institutional protections against retaliation for its decisions. A fully independent court (as we will use the term) is one that can follow its own predilections over how to resolve a case without concern that another actor or body will directly sanction it for the decision. Concretely, life tenure, strict rules against removal for political reasons, protected budgets and so on are the types of institutional protections that are designed to help ensure judicial independence as we mean it.

Importantly, we are excluding a notion of judicial independence that implicates judicial influence. Judicial influence can be thought of as the ability of judges to change behavior through its rulings. Judicial influence blurs with judicial independence when a judiciary may have to act strategically to get its rulings followed. This scenario arises in the standard separation of powers model. A high court might know that the ruling it wants to make will be over-ridden by subsequent legislation, but it can issue a ruling that moves the law somewhat in the direction it prefers and not be over-ridden. Some consider a court in this situation not completely independent because the court is likely to shape its decisions to the political environment. We want to keep this notion separate from our definition of judicial independence, because we will explicitly be exploring how the strategic incentives that arise from separation of powers systems interact with formal institutional protections against political backlash (i.e., our definition of judicial independence).

Having established what we mean by judicial independence, we can now consider under what conditions judicial independence may foster judicial influence. As described previously, the basic argument for why

judicial independence should matter is straightforward. High courts tasked with judicial review are expected to rule government actions invalid when they run contrary to the country's constitution. Governments potentially have a variety of tools they can use to sanction courts for ruling against them. They can try to remove the offending justices from office, they can try to cut their salaries and budget, they can strip the court of jurisdiction, and more. A court that fears retaliation through these mechanisms has a strong incentive not to rule against the government. An independent judiciary, one that has institutional protections restricting a governments ability to retaliate through these mechanisms, is free to rule as it wishes.[1] Prediction one follows from this argument.

Prediction 1: Courts with higher levels of judicial independence should be more likely to rule against standing governments.

The argument against judicial independence mattering is equally straightforward. Ferejohn (1999) and Chavez et al (2011) argue that there are robust "subconstitutional practices" (Chavez et al., 2011: 219) that can be used to subvert these institutional protections.

> But why would textual provisions in the Constitution – which are mere "parchment barriers" in Madison's words[2] – be effective in protecting judges? One answer is that courts could overturn any congressional attempt to violate lifetime tenure or to lower judicial salaries. But suppose Congress lowered the bar to impeachment – a bar which it sets implicitly by impeaching and convicting judges from time to time – or suppose that it took advantage of periodic periods of inflation to permit the reduction of real judicial salaries. What would or could be done about 'infringements" of this sort? (Ferejohn 1999: 356)

Simply put, these scholars are arguing that institutional guarantees of judicial independence cannot be credible since political bodies have a variety of tools to get around those guarantees. Instead, these scholars argue that these institutional protections only matter in equilibrium. The argument is a small permutation on the traditional separation of powers argument. The traditional SOP argument focuses on how threats of legislative over-ride affect judicial decision-making. Suppose we have a separation of powers system in which there is an executive, a legislature and a high court. Each has a most preferred policy in some one-dimensional space. Policies farther from that most preferred policy are decreasingly desirable. The high court is considering a case and deciding how to rule, meaning where to set policy in that one-dimensional

[1] See Rodriquez, et al. (2009) for a discussion on how judicial independence is seen as foundational to the rule of law (also see Staton 2010). See North and Weingast (1989), North et al (2000), Barro (1997), Acemoglu et al. (2001), and Frye (2004) for arguments about the benefits that independent judiciaries engender, including ensuring the credibility of state promises to respect individual rights, breeding efficient investment, state solvency, growth and development, and stabilizing democratic regimes.

[2] THE FEDERALIST NO. 47, at 308 (James Madison) (Clinton Rossiter ed. 1961).

space. Once the high court has ruled, the executive and legislature can over-rule the court and move policy to some new location if they agree. For expositional purposes, we set the high court's most preferred policy to the right of the executive and legislature. Figure 1 illustrates this game.

If the high court sets the policy at its ideal point, the executive and the legislature will prefer to move the policy to the left. In fact, they will agree to move it somewhere between the executive and legislature's most preferred policies (within their "Pareto set"). A strategic court will anticipate this eventuality and moderate its decision. Specifically, the court will issue a ruling at the most preferred policy of the closer political body, in this case the executive. At that point, the executive will not agree with the legislature to move the policy any farther left and so the policy will stand. This is the best the high court can do since any policy to the right of the executive will be moved within the executive's and legislature's Pareto set.

That is the basic SOP argument. Here just substitute sanctioning the high court for over-riding the policy. If the court sets a policy outside of the executive and legislature's Pareto set, the two bodies can agree to sanction the court for its decision. If the court sets a policy at or within the Pareto set the two bodies will not agree to sanction the court.[3] Prediction two follows.

Prediction 2: Courts with higher levels of judicial independence should be no more likely to rule against standing governments. Courts facing more concentrated political power should be less likely to rule against standing governments.

Prediction two is predicted on a potentially strong assumption. Specifically, it assumes perfect substitutability. Institutional protections are irrelevant because politicians can always perfectly get around them through subconstitutional means. However, there are reasons why this might not be true. As one option, suppose these "parchment protections" require politicians to have to work harder to sanction judges. As a result, politicians only can credibly threaten to sanction the court for decisions the politicians consider worth the extra effort. If true, while these protections are not perfect, they can increase a court's ability to rule against governments for a wider set of cases. Alternatively, consider Weingast's (1997) argument that constitutions are coordination devices. In this argument, constitutions matter because they align expectations of what is permissible behavior. The public, or factions of the public more accurately, will then sanction governments for transgressing the constitution's prescribed boundaries. If publics would sanction governments for explicitly violating the institutional protections laid out to protect judicial independence, we might suppose they would do the same for these subconstitutional devices as well.

Given that, consider what we would expect if we merged these two arguments together. Specifically, suppose the underlying logic of the separation of powers argument is correct, but for the reasons described

[3]Presumably, sanctioning would be in an effort to move policy, and the two bodies would not agree which direction to move it.

above institutional protections of judicial independence matter as well. Then we would expect to observe a stronger (negative) relationship between the concentration of political power and a court's likelihood of striking a standing government's law or action when judicial independence is low than when it is high. This leads to prediction three.

Prediction 3: When judicial independence is weak, the more concentrated political power is, the less likely a high court is to strike a standing government's law or action. As judicial independence increases, this relationship should diminish.

To date, this third argument remains untested. Empirical tests of the first two claims have been limited to case studies (Chavez et al. 2011), research on single or a very small set of courts (Haynie et al., 2007; Rios-Figueroa 2007), or on non-random samples of cases provided by the courts themselves (e.g., Herron and Randazzo 2003).[4] More indirect tests of the efficacy of judicial independence are more common.[5] Importantly, critical concepts in these arguments, particularly the formal rules designed to ensure judicial independence, are relatively sticky over time within a state yet vary significantly across states. Thus, ideally we would like a dataset that includes significant cross-national variation to test the claims. In the next section we introduce the Comparative Law Database, a new source of data which provides a cross-national sample of high court constitutional rulings from over forty countries.

2 The Comparative Law Database

Empirical research in the field of law and courts has centered historically on the United States, yet, its full empirical scope has always been international (**?**). Today, we are seeing an explosion of comparative research. Figure 1 plots the number of articles and books in comparative judicial politics published in the discipline's major journals or university presses between 1990 and 2009. As the figure shows, the volume of research produced in this area has increased dramatically over the last 10 to 12 years. Specifically, of the 154 publications we identified, seventy-five percent have been published since 2000.[6] It is unlikely that

[4]Herron and Randazzo (2003) finds no effect of judicial independence. Haynie et al. 2007 finds XXXX, and Rios-Figueroa (2007) finds support for the political fragmentation argument in Mexico (i.e., the Mexican high court is more willing to rule against the ruling PRI as the PRI lost power). Chavez et al. (2011) use case studies of the US and Argentina to illustrate their argument.

[5]For example, see Cross (1999), Keith (2002), Hathaway (2007), and Powell and Staton (2009) for evidence that judicial independence is inversely related to human rights violations.

[6]We conducted a keyword search for articles in the ISI Web of Science and JSTOR databases, using the following journals: American Political Science Review, American Journal of Political Science, Journal of Politics, Comparative Political Studies and the British Journal of Political Science. Specifically, we searched in the title field for "courts" and/or "judicial." We then read the abstracts for each paper in the list, identifying those papers that had a regional or global focus (i.e. setting aside work in American politics). For books, we used the WorldCat/First Search database to conduct the same keyword search using Cambridge

this trend will be reversed in the near term, as we are also seeing a renewed focus on comparative graduate training. This is reflected in part by the dissertations recognized by the judicial subfield. Between 1980 and 1999, a single comparative dissertation won the American Political Science Associations Corwin Award for best doctoral work in the field of public law (Charles Epp's in 1996), yet since 2000, nearly 40% of awards have gone to comparativists.[7]

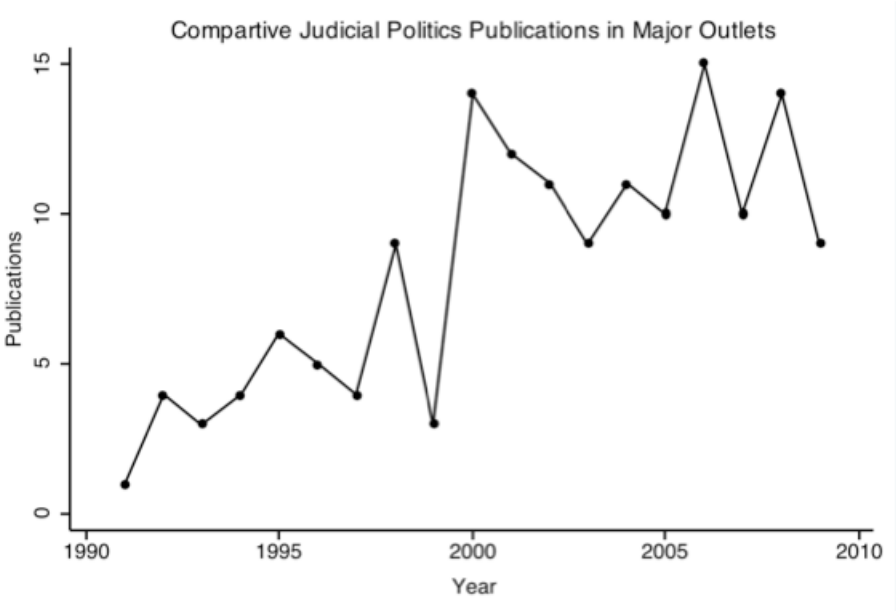


Figure 1: *Displays a count of articles and books concerning comparative judicial politics published by year in top political science outlets (as described in the text).*

This burgeoning literature on law and courts outside the U.S. has addressed a diverse set of topics, often with a focus on key issues of constitutionalism. Why do governments attempt to build independent courts endowed with constitutional jurisdiction (**???**), why are individuals or groups able to translate political conflicts into constitutional questions, often based on rights claims (**??**); once accessed, what explains the decisions courts reach and the methods of interpretation they use (**????**); following a resolution, what explains differences in the implementation of court orders (**??**); and, ultimately why are some courts able to constrain governments while others are not (**?**).

Answers to these questions have significant implications for the construction and maintenance of the rule of law; and for that reason, for major concerns of social science. In this sense, the comparative research agenda

University Press, Harvard University Press, Stanford University Press, Princeton University Press, Michigan University Press and Oxford University Press. Finally, we compared our list to the research reviewed in **?**'s (**?**) review of the field. We added any paper or book that our search missed.

[7]See the American Political Science Association website for information on past winners (`http://www.apsanet.org/content_4122.cfm`, accessed August 20, 2012).

offers a crucial opportunity to influence social science broadly. Perhaps more importantly, comparative research can inform the global democratic and legal reform movement by providing theoretical guidance and producing careful instruments for benchmarking reform progress (**?**). For all of these reasons, the stakes of getting sound answers to our research questions are high. Unfortunately, scholars confront substantial challenges. One of the most glaring holes in our empirical arsenal remains the absence of a broad, cross-national database of constitutional review decisions.[8] There are two consequences of this lacuna. First, our most basic descriptive information about constitutional conflicts depends almost entirely on stitching together studies of single courts, and the worldwide coverage of such studies is incomplete and uneven. We lack an unbiased picture of the participants, questions, sources of law, methods of interpretation, and outcomes of constitutional review around the world; and, consequently, we also lack a systematic accounting of temporal trends in these attributes. Compare this to the Supreme Court Database in the United States, which provides precisely this type of information for one constitutional court, and has fueled hundreds of studies over the last thirty years. Second, in so far as many of our theoretical claims involve causal factors that often do not vary much within a country (e.g., public legitimacy of the court) but do vary substantially cross-nationally, the lack of cross-national data means that we are simply unable to test our models completely.

Creating a representative sample of cross-nationally comparable data is no trivial feat. Constitutional review is carried out around the world in many different ways and by a variety of different types of courts (e.g. **?**). The massive number of constitutional resolutions produced by the world's legal systems, the lack of international standards for data storage, and the fact that in many parts of the world there are simply no electronic records at all for constitutional decisions, make it practically impossible to capture anything close to the universe of resolutions.[9] Moreover, since the quality of data storage is likely correlated with economic development, any sample of constitutional decisions, however and wherever obtained, will probably over-represent wealthier states. Bearing these sampling challenges in mind, none-the-less we sought to build a useful cross-national database on constitutional review.

[8]The National Hight Courts Database (**?**) project is a notable exception, and we share its spirit. There are a few ways in which our projects can be distinguished. First, Haynie et al focused exclusively on eleven English-speaking common law countries. While these data are extremely useful for answering a number of questions, the set of courts in the sample does not reflect well worldwide differences in legal traditions or political-legal context. In many cases, the team only collected a random sample of all decisions. This made a great deal of sense for controlling workload; however, it does not produce a representative sample of constitutional decisions in many places. Second, our project uses web-based technologies unavailable at the time of the original Haynie et al study.

[9]For example, there are over 400,000 amparos/year in Columbia alone.

The results of our efforts, CompLaw, is a new database on constitutional review conducted by high courts in the world's judicial systems (CompLaw).[10] The database currently contains information on courts, cases and political systems in 43 states. Next, we describe the creation, organization, and current content of the database.

Case Selection

CompLaw is guided by six case selection rules. First, we seek information on courts of last resort that exercise constitutional review in the highest level of a state's legal system. We refer to these courts as "high courts" or "peak courts." In the event that a state possesses a high ordinary court, as well as a constitutional court or other specialized high court, CompLaw selects first the constitutional court. Time permitting we code the decisions of the other high courts, as well. In federal states, we focus on the federal legal system. Second, we select only cases in which the high court engages in constitutional review, so that we exclude the non-constitutional jurisdiction of high ordinary or administrative courts. Third, we only included courts if they published their full text decisions on the web; we did not have resources to visit court archives. Importantly, however, we do not require English language translations of decisions. Relying on a multi-lingual research team, decisions are reviewed and stored in the state's official legal language. Coded values are translated into English. Fourth, we limited our search to decisions issued in the year 2003.[11] We made an exception to this rule in Indonesia, as we had the opportunity to code this case, but the researcher requested that we allow him to code years prior to and after 2003.[12] Fifth, we require that either the state (either national government or the national legislature) is an active participant in the case or that a "policy" of the state is being challenged as unconstitutional. By "policy," we refer broadly to statutes, executive orders, enforcement actions, administrative acts or decrees.

Finally, given the caseload of constitutional courts like the Sala IV of Costa Rica, which now resolves close to 20,000 cases per year, it was impossible to code every instance of constitutional review even from the courts we select. Our sixth case selection rule concerns our sampling procedures for cases within a selected

[10]This work was supported by a grant from the National Science Foundation (SES - 0751340), and by the Center for Empirical Research in the Law, Washington University, and the Halle Institute, Emory University. We are extremely grateful for the excellent research support of numerous research assistants on this project at Emory, Washington University and Rochester. We are particularly grateful to Michael Gibilsco, Nathan Brown, Katie Blundell.

[11]This is a pilot study to establish the feasibility of assembling a large cross-national database. We therefore chose one year and attempted to assemble a database for as many courts as possible. Where cases in 2003 were not available online, we resorted to the closest year available, generally 2004.

[12]We thank Dominic Nardi of the University of Michigan for his assistance.

court.[13] If a court resolved 200 or fewer cases in 2003, we coded all cases. If the court had more than 200 cases, we coded a random sample of at least 200 cases.

To date our database consists of 10,410 cases from 43 states, of which 3,104 cases fall within the scope of our study. Table 1 summarizes the states whose high courts are included in the database and indicates the progress we have made with each state. Coding has been completed for states in the far left column. Coding continues for states in the middle column. States that fall in the right column are those for which our team has found data to code, but have yet to begin.

We place no further restriction on the selection of courts CompLaw considers and their jurisdiction. In practice, this means that the database contains information on a variety of distinct legal actions, including those that involve the concrete review of claims of individual rights violations (e.g., the *amparo* suit), as well as actions that involve more general forms of constitutional control moved by elements of the state (e.g. the action of unconstitutionality). CompLaw's cases thus include both concrete and abstract review actions, as they emerge under a variety of legal traditions. Among the most current sample of coded cases, 57% of actions involved concrete review.

The CompLaw States

Our case selection rules raise immediate questions about the representativeness of our sample of courts, or more importantly, the states from which they come, across a number of dimensions. Most obviously, focusing on courts that publish full text opinions on the web raises a concern about whether we have captured only relatively wealthy states or states whose courts are believed to be relatively independent of sitting governments. Figure 2 shows kernal density estimates of de facto judicial independence (left panels) as measured by **?**'s (**?**) measure and for the log of Gross Domestic Product (right panels) for all states in the world in 2003. These estimates (in red) are laid on top of histograms of the same information for the states in the CompLaw sample in the top panels. As a point of comparison, we provide the same information in the bottom panels for the sample of states available in 2003 in the National High Courts Database (**?**). The judicial independence histograms for both projects reflect the bimodal structure of the full distribution of states. Although the CompLaw distribution reflects a large number of courts from highly independent judicial systems, it contains courts that span nearly the entire range of Linzer and Staton's measure. The National High Courts Database also displays variation across the range of judicial independence, but its distribution lacks support at low levels of independence, likely reflecting the choice to collect data in common

[13] There are some states whose courts have such large case loads, like Venezuela or Costa Rica, where it proved impossible to upload case files to the server manually. In such cases, we have proceed by uploading the cases through an automated process.

Complete	In Process	To Do
Albania	Algeria (CC)	Algeria (CE)
Argentina	Armenia	Bahamas
Australia	Austria	Barbados
Belgium (CC)	Dominican Republic	Belgium (CE)
Benin	Israel	Cambodia
Bolivia	Portugal	Croatia
Bosnia and Herzegovina		Czech Republic
Bulgaria		Denmark
Burkina Faso (CE)		Estonia
Burkina Faso (CC)		Finland
Canada		Georgia
Chile (CC)		Guam
Colombia		Iceland
Ecuador		Jamaica
El Salvador		Japan
France (CC)		Latvia
France (CE)		Lebanon
Germany		Mexico
Guatemala		Netherlands
Hungary		Norway
India		Russia
Indonesia		Slovenia
Ireland		Taiwan
Italy		Trinidad and Tobago
Lithuania		Uganda
Luxembourg		
Madagascar		
Mali		
New Zealand		
Niger		
Poland		
Romania		
South Africa		
South Korea		
Spain		
Switzerland		
Turkey		
United Kingdom		
United States		
Venezuela		

Table 1: *States whose courts with constitutional jurisdiction are included in CompLaw. "CC" reflects a state's constitutional court whereas "CE" reflects its high administrative court.*

law systems. The development story is reversed, where the GDP distribution for the National High Courts Database has support at lower levels of development than the CompLaw distribution. Thus, selecting on courts that publish resolutions on the web does imply that the CompLaw sample over-represents developed states; however, it is also important to stress that there there is considerable variation in development in our sample.

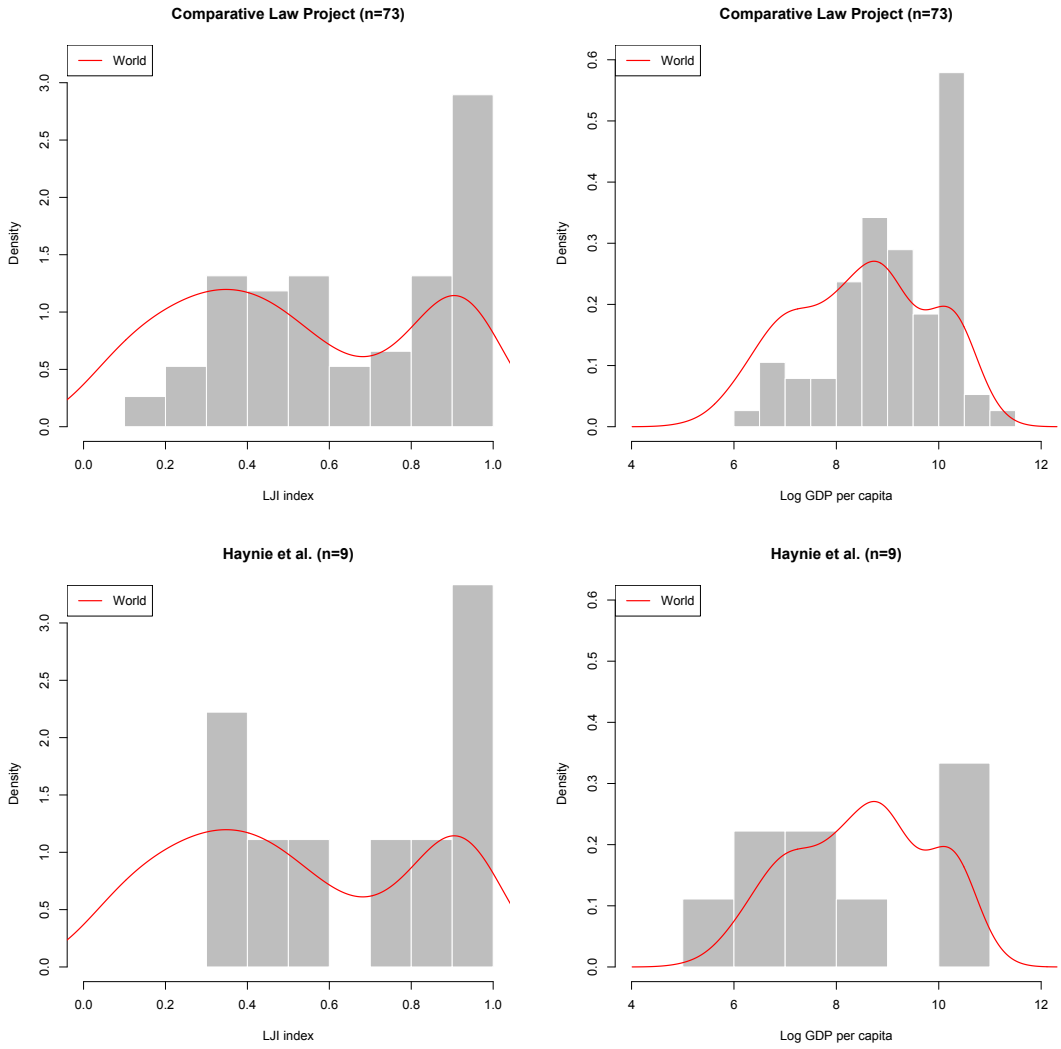


Figure 2: *Displays kernal density estimates (in red) of the distributions of judicial independence and log GDP/capita for the states of the world in 2003. These estimates are laid over histograms of the same information for the sample of states in the CompLaw Database and National High Courts Database.*

A sample of cases in which there is considerable variation in formal rules insulating judges from external pressure is of course essential to evaluating the institutional proposition we summarize above. Table 2 displays the distribution the La Porta et al *de jure* measure of judicial independence for all states coded by

their research team and for the samples contained in CompLaw and in the National High Courts Database. Although the La Porta and CompLaw distributions of judicial independence are not identical, they are quite close. The key point is that there is considerable variation in the CompLaw states. This is obviously not true of the Haynie et al sample.

La Porta Concept	Independence Score	La Porta (%)	CompLaw (%)	Nat. High Courts Database (%)
Low Independence	0	7	5	0
.	0.33	13	13	0
.	0.67	26	34	0
High Independence	1.00	53	47	100

Table 2: *Displays the distribution of La Porta et al's* de jure *judicial independence measure for all cases coded by La Porta et al, as well as the sample of states in the CompLaw Database and National High Courts Database in 2003. Cell entries in columns three to five reflect the percentage of states at the level of independence indicated in columns one and two.*

Finally, Table 3 considers the potential usefulness of the CompLaw sample for a series of questions we do not seek to answer here. The table shows the distribution of legal traditions in the world and in the CompLaw and National Hight Courts Database samples. As is true for formal rules of judicial independence, the CompLaw distribution is not identical to the world. Specifically, it under-represents common law legal systems. That said there is considerable variation. In so far as understanding differences in constitutional review across legal traditions is of interest, we see that the CompLaw sample will prove relevant.

In sum, the courts in the CompLaw database represent a broad distribution of institutional and national contexts. It includes courts across nearly the full distribution of observed levels of de jure and de facto judicial independence and across a broad range of levels of economic development. It is not a perfectly representative sample along those dimensions; for example, as expected, it over-represents developed economies. But it does have sufficient variation to facilitate tests of how these factors shape judicial behavior. And, the distribution is clearly superior to other available datasets.

The CompLaw Database

Information on all variables coded in our database is provided in the appendix. Here, we describe the process of assembling and coding the cases. We also discuss several of the variables that help clarify CompLaw's structure and possibilities for research.

Legal Tradition	World (%)	CompLaw (%)	Nat. High Courts Database (%)
Civil	52	75	0
Common	25	14	89
Islamic	13	4	0
Mixed	9	7	11

Table 3: *Displays the distribution of* **?***'s (***?***) measure of legal tradition for all states in the world, as well as the samples of states in the CompLaw and National High Court's Database in 2003. Cell entries in columns two through four reflect the percentage of states in the respective samples with the legal tradition indicated in column one.*

Database Management

The first step in assembling this database was to create a web-based, database management system to coordinate the uploading, coding and distribution of data. The research technology staff of the Center for Empirical Research in the Law (CERL) at Washington University constructed this system, which provides three pieces of essential functionality: (1) an uploading facility, which captures simple features of cases (e.g. names and docket numbers) and stores the full text resolution, (2) a coding facility, which permits research assistants to enter consistent information about the cases from anywhere in the world, and (3) a project management component, which allows our team to assign work to research assistants, track progress, do real-time quality control, and ensure that work is not duplicated across research sites.

The second step involved creating a reference document for each court. This document detailed institutional features of the court and relevant information about the location, format, and interpretation of court documents (most importantly, the court decisions) on the web. We have compiled these documents in a stand-alone handbook, a sample entry of which (for Venezuela) is found in the Appendix. Documents are immediately accessible to research assistants as they upload and/or code cases.

Based on the instructions in these reference documents, we then uploaded all decisions for each court from 2003 to our database management system. Each uploaded case was (or will be) coded so as to (a) determine if it was germane and, if so, (b) create the set of variables described in the appendix. It is important to note that we retain all of the uploaded cases, which means that scholars interested in cases we consider non-germane can still benefit from the data assembled in the CompLaw database.

An on-line coding interface guides research assistants through a common battery of questions with constrained options for answers. This can be a very complicated process, as the uniform battery of questions sometimes does not square with nuanced differences across the various courts in the dataset. To minimize errors in coding and to maximize consistency in the application of coding protocol across courts, we insti-

tuted an on-line query feature. This allowed the coder to ask questions of the project managers, and this correspondence was available for all other coders and managers to review. Answers to these questions were then used to answer similar questions in other contexts and inform any clarifications in the codebook. The record of this correspondence also provided the material for a "frequently asked questions" resource available on the coding website.

The Data

Currently the CompLaw database includes 10,410 cases, of which 3,104 were considered germane under our case selection rules and thus coded. The data are organized hierarchically, beginning at the level of the state. We have assembled a database of over 100 extant measures of judicial independence, legal traditions, regime characteristics, veto structure, public support, and trust in courts and the legal system. All scores are compiled from well-known sources in the fields of law, comparative politics and political economy (e.g., **????**). These measures are then linked to courts and their case files.

Our approach to coding constitutional decisions centers on the policies (or "actions") that are reviewed by the courts in our sample. We seek to characterize these policies and describe the grounds on which they are attacked. Of course, in so doing, we capture much additional information. In the end, CompLaw reports information on the policy that has been challenged, the party who is responsible for that policy, the party who has claimed that the policy is constitutional, the grounds, and the outcome of each argument. This process results in data grouped across three levels of analysis.

Case Level Data

Case level variables in CompLaw include a variety of identifiers, as well as information on the dates of admission and decision for the sentence. CompLaw also contains information on the type of review (concrete or abstract), as well as the precise name of the constitutional institution (e.g. amparo) being used. The institutional names are helpful in so far as researchers can code further various legal features of particular types of constitutional review.

The cases's complainant, i.e., the party alleging a constitutional violation, is recorded at the level of the case. As will become clear, we record the party responsible for the constitutional violation at a lower level of analysis, though this information is easily aggregated. Figure 3 summarizes that information for our current sample of coded cases. By a some margin, the modal complainant is an individual, reflecting the large proportion of dockets made up of individual constitutional complaints, especially in Latin America.

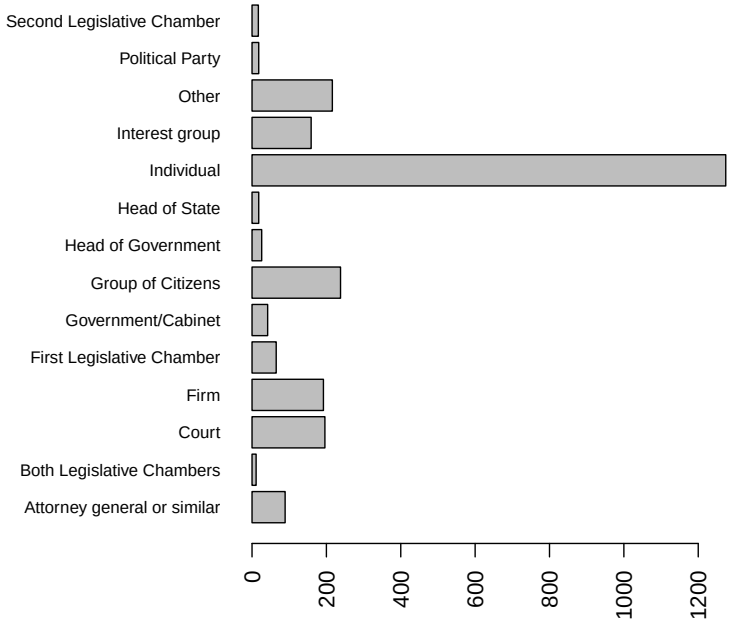


Figure 3: *Displays the type of complainant in the CompLaw sample.*

Although CompLaw does not code individual judge decisions, we do include indicators for whether there was any disagreement among the judges assigned to the case, as well as a count of the number of dissenting positions. This allows a researcher to measure the strength of the majority position, as well as identify for future research the cases in which there exists judge-level variation.

Policy Level Data

Three key pieces of information are recorded at the policy level – the precise name of the policy, the type of policy being challenged, and the year in which the policy was enacted or otherwise promulgated. Among the set of cases that are currently coded, there are 3,590 distinct policies. The average number of policies per case is 1.4. The average is highest in Lithuania and lowest in Algeria. Figure 4 suggests the variety of policy types in our data set. Although national statutes are the most common policies attacked in our sample, a variety of other policy types are evident, including international treaties and referenda.

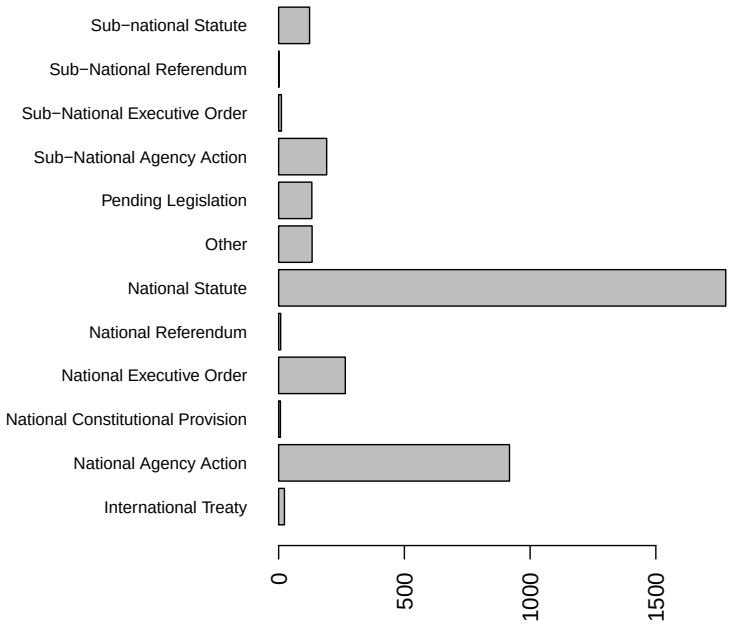


Figure 4: *Displays the type of policies in the CompLaw sample.*

By selecting decisions from a single year, CompLaw's current status obviously prohibits time series analysis, which might be of interest to scholars looking to track the issues, the development of rules, or parties over time. That said, recording the year in which a policy being challenged was enacted adds a

temporal dimension to CompLaw. Figure 5 displays a histogram of the year in which the policies challenged in CompLaw were enacted. The earliest policy being challenged was passed in 1799 in France. As we discuss below, in combination with country level data on the political system, this information can permit researchers to identify the political coalition or party responsible for the policy under review.

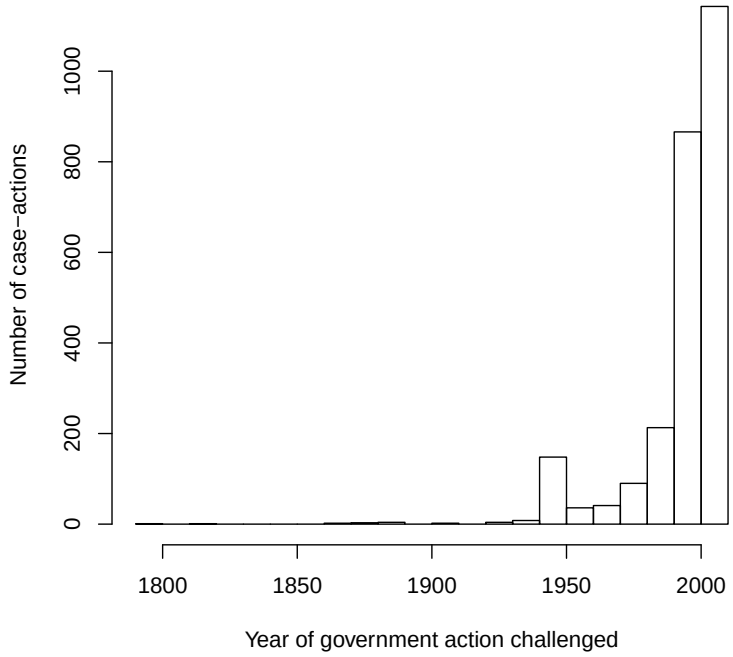


Figure 5: *Displays the years in which policies captured in CompLaw were enacted or otherwise passed.*

Question Level Data

Policies are attacked on numerous constitutional grounds. For each policy we code the constitutional article on which the complainant's argument is based. There are 10,476 distinct constitutional questions (or bases for a constitutional challenge) in CompLaw. The average number per case is 4.1. For each question, we code whether the court found that the policy was unconstitutional with respect to the piece of the constitution motivating the argument. Preliminary analysis suggested that there were cases in which the Court's decision was somewhat ambiguous as to the constitutionality. To address this possibility we asked our coders to indicate their level of certainty with respect to the policy's constitutional status in light of the decision. For

the most part, our coders were fairly sure of the policy's constitutional status as determined in the ruling. Only 81 questions were coded to indicate significant uncertainty in the result.

Testing Judicial Independence

Having described the CompLaw database, we can return to the theoretical question of this paper: whether institutional protections designed to help ensure judicial independence affect the willingness of high courts to decide cases against national governments. As previously described, we will test three hypotheses. The first hypothesis is that de jure judicial independence should uniformly increase the rate at which high courts decide cases against national governments (prediction 1). The second hypothesis is that de jure independence should not matter, rather the less concentrated political power is, the higher the rate at which high courts should decide cases against national governments (prediction 2). The third hypothesis is that de jure independence should matter, but only by muting the effect of the concentration of political power (prediction 3). When political power is not concentrated, judges do not need de jure independence to protect them. When it is concentrated, these protections raise meaningful barriers to political manipulation.

Analysis

To evaluate these expectations, we require three types of measures. First and foremost, we require a measure of whether a court has found a challenged national government policy unconstitutional.[14] We rely on the CompLaw *Strike* indicator, which is coded 1 if the court found that a national government policy was unconstitutional with respect to the particular argument raised by the complainant. It is 0 otherwise, including in cases in which the court either finds a procedural reason to avoid the question or when the entire complaint is dismissed on procedural grounds. In so far as we have no measures at the level of the question in this application, we aggregate the score to the policy level. Thus, for current purposes *Strike* is 1 if the Court found the policy unconstitutional under any complainant argument and 0 otherwise.[15]

We also need a measure of the concentration of political power. Within the SOP literature, concentration typically is conceptualized as whether the relevant branches of government are controlled by the governing party. We depart from this convention for two reasons. First, many of the countries in our sample are parliamentary systems with a fused executive. Among those, a number do not have upper chambers. Thus, in these countries the issue is not whether the governing party can push a policy through the relevant veto

[14]We count a government law or action to be included as "policy".

[15]It is worth noting that we do not conceive of this measure as indicating "judicial independence." Instead, the concept simply measures whether the court struck down a policy as unconstitutional.

players. Instead the question is how in control the governing party is of the legislature. The more seat share, the more secure the governing party's control of the chamber and therefore the more likely it can push through a sanction of the courts. Second, even in presidential systems, or systems with a second legislative chamber, the right to initiate a challenge of the judiciary is generally housed in the lower chamber. To the degree that initiation of a challenge is costly to the judiciary, e.g., having an impeachment proceeding started, judges will be skittish about crossing that lower chamber. This argument is closely connected to an argument by Anna Harvey (2013). In her book, Anna provides evidence that the Supreme Court of the United States is responsive to sanctioning threats from the House of Representatives. It is not responsive to the Senate, a body that must ultimately approve of an initiated sanctioning of the Court by the House. Thus, to measure the concentration of the government's power, we rely on the Database of Political Institutions (DPI, **?**) which includes a measure of the majority margin of the government in the legislature. Specifically, *Margin* is the fraction of seats in the legislature held by the government. In presidential systems, government seats include those held by the party of the president or parties that are listed by DPI sources as part of the government and either (a) they support the president on substantive issues or (b) they did not run a candidate for the presidency.

We rely on two kinds of institutional measures. The first, from **?**, is an index of formal rules thought to promote judicial independence, derived from a survey of experts. The components include: (1) whether the highest court is anchored in the constitution; (2) how difficult it is to amend the constitution, (3) the appointment procedure of the judges; (4) their length of tenure, (5) whether there is a fixed retirement age of judges in the court; (6) removal procedures; (7) whether reelection of judges is possible; (8) protection and adequacy of salary of judges; (9) accessibility to the highest court; (10) the procedure for the allocation of cases in the court; (11) judicial review powers; and (12) the transparency of the court. The Feld and Voigt index varies from 0 to 1. We also use a similar index of formal rules from **?**, also with range on the unit interval. The La Porta et al measure is coded directly from constitutions, and considers the "tenure of judges in the highest ordinary court, the tenure of judges in the highest administrative court, and whether courts have 'law making' powers and whether judicial decisions are constrained by prior judicial decisions (**?**)."

The unit of analysis in our study is the policy. We focus on policies that were enacted by the government sitting at the time of the court's decision in 2003. For each model, we fit a logistic regression model with random intercepts for states. The first model is a simple test for the effect of de jure independence judicial decision-making. Let X denote either of the de jure independence measures. For policies i and states k the model is as follows:

$$Pr(Strike_i = 1) \quad = \quad logit^{-1}(\alpha_{k[i]} + \alpha_1 X_{k[i]}),$$

The second model is a simple test for the effect of the concentration of political power on judicial decision-making. For policies i and states k the model is as follows:

$$Pr(Strike_i = 1) \quad = \quad logit^{-1}(\alpha_{k[i]} + \alpha_1 Xk[i] + \alpha_2 Margin_{k[i]}),$$

The third model tests for the interactive effect of the conditioning variables and the concentration of political power. For policies i and states k the model is as follows:

$$Pr(Strike_i = 1) \quad = \quad logit^{-1}(\alpha_{k[i]} + \alpha_1 Margin_{k[i]} + \alpha_2 X_{k[i]} + \alpha_3 (Margin_{k[i]} * X_{k[i]})),$$

For each model we assume that $\alpha_k \sim \mathcal{N}(\mu_\alpha, \sigma_\alpha^2)$.[16]

Table four through seven present the results of these three models. Tables four and six provide results from the specified models. Tables five and seven include a control for whether the case was abstract or concrete review. As can be seen, there is no support for the argument that de jure judicial independence has an independent effect on the willingness of courts to rule against national governments. There is also no support for the political power concentration argument. What really stands out are the results from model 3 in each of the tables. Figure 6 presents the results from this model visually. The left panel shows the results for the Feld and Voigt index; the right panel shows the results for the La Porta et al index. The black curve shows the predicted probability of striking a policy across the range of *Margin* when the index of judicial protections is one standard deviation below the mean. The blue curve reflects the same probabilities but when the Feld and Voigt index is one standard deviation above the mean. As is clear in the panels, government policies are decreasingly likely to be struck as the margin of the government's majority increases only when institutions designed to protect judicial independence are relatively weak. Critically, the effect is particularly pronounced where the majority of data on *Margin* lie (as displayed by the black tick marks). The black curve in the right panel, when the La Porta index also reflects weak institutional protections for judges, is entirely consistent with the findings in the left panel. The blue curve is basically flat with the Feld and Voigt index, as prediction 3 anticipates. However, it is actually increasing with the

[16] All analysis was done in R version 2.15.1, using the lme4 package.

Table 4: Regressions with Judicial Independence

	(1)	(2)	(3)
Judicial Independence	0.290	0.185	−12.983***
	(1.407)	(1.396)	(4.233)
Margin*Judicial Independence			26.017***
			(7.740)
Margin		3.856	−9.341**
		(3.073)	(4.485)
Constant	−1.698	−3.609*	2.910
	(1.082)	(1.857)	(2.399)
Observations	1,737	1,737	1,737
Log Likelihood	−945.212	−944.459	−942.247
Akaike Inf. Crit.	1,896.425	1,896.917	1,894.494
Bayesian Inf. Crit.	1,912.804	1,918.757	1,921.794
Note:			*p<0.1; **p<0.05; ***p<0.01

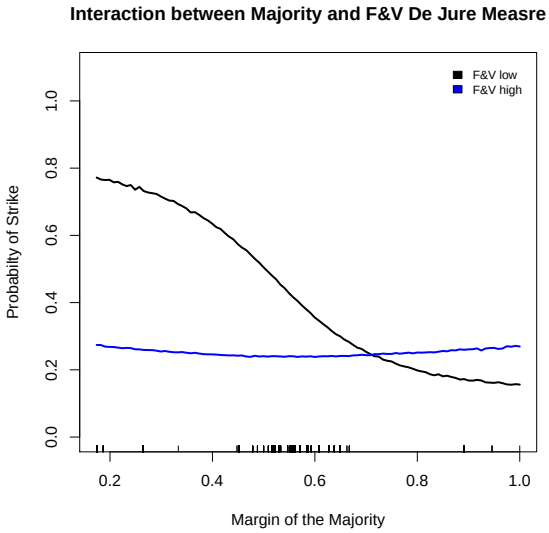
La Porta measure. This finding is not anticipated in any of the arguments described above. One possible explanation is provided by Fox and Stephenson (CITE). They demonstrate that national governments have an incentive to enact "riskier" laws – ones that are more likely to be struck down – when there is robust judicial review. Higher concentrations of political power make it eaiser to pass laws, and so if they are right, we would expect to see such an up-sloping relationship with high levels of de jure judicial independence if de jure judicial independence matters. In sum, when de jure judicial independence is low, the probability of a court striking a national government action is noticeably decreasing in the concentration of political power. Conversely, when de jure independence is high, the probability of striking an action is flat or increasing in the concentration of political power. These results are most consistent with prediction 3.

3 Discussion

These results are important for two reasons. First, substantively, they demonstrate that "parchment protections" can matter. Unlike previous findings (CITES), we find that high courts are more likely to strike national government policy when they have formal guarantees of judicial independence than when they do not. The key is that the effect of these institutions only show up when courts feel otherwise vulnerable

Table 5: Regressions with Judicial Independence

	(1)	(2)	(3)
Concrete	-0.870^{***}	-0.888^{***}	-0.867^{***}
	(0.233)	(0.234)	(0.234)
Judicial Independence	0.750	0.657	-10.601^{**}
	(1.395)	(1.369)	(4.464)
Margin*Judicial Independence			22.351^{***}
			(8.258)
Margin		4.358	-7.143
		(3.039)	(4.745)
Constant	-1.564	-3.725^{**}	1.920
	(1.068)	(1.823)	(2.521)
Observations	1,737	1,737	1,737
Log Likelihood	-937.592	-936.564	-934.715
Akaike Inf. Crit.	1,883.184	1,883.128	1,881.429
Bayesian Inf. Crit.	1,905.023	1,910.427	1,914.189
Note:			*p<0.1; **p<0.05; ***p<0.01



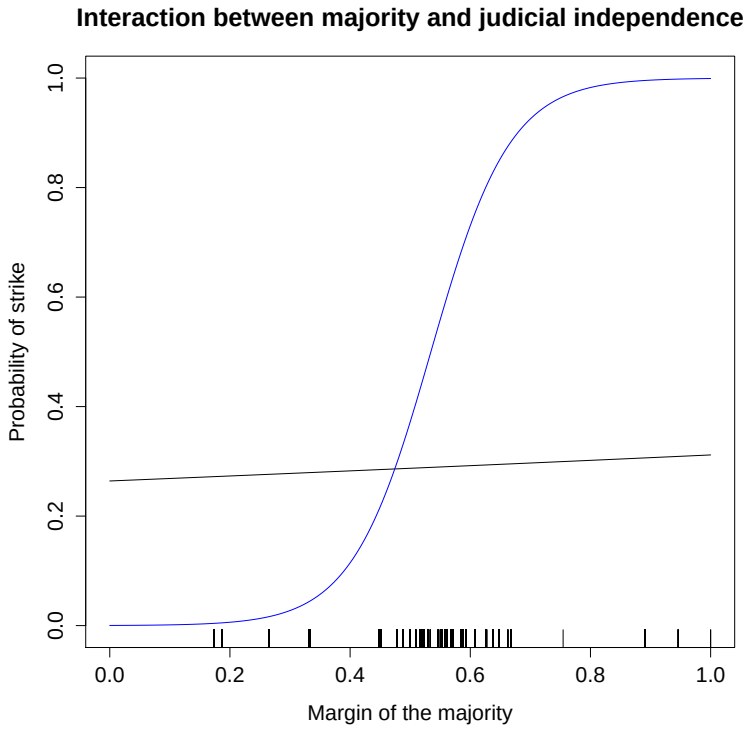


Figure 6: *Displays predicted probabilities of striking a policy as unconstitutional across the DPI measure of the size (or margin) of the government's legislative majority, for strong and weak institutional support for judicial independence.*

Table 6: Regressions with F&V De Jure Measure

	(1)	(2)	(3)
F&V De Jure Measure	−3.728	−4.381	−23.103***
	(2.899)	(2.905)	(5.745)
Margin*F&V De Jure Measure			35.728***
			(10.808)
Margin		−1.971	−31.459***
		(3.592)	(8.942)
Constant	1.946	3.409	19.090***
	(1.975)	(3.111)	(5.019)
Observations	2,440	2,440	2,440
Log Likelihood	−1,310.111	−1,310.004	−1,309.258
Akaike Inf. Crit.	2,626.223	2,628.007	2,628.516
Bayesian Inf. Crit.	2,643.622	2,651.206	2,657.515
Note:			*p<0.1; **p<0.05; ***p<0.01

to political threats, when political power is highly concentrated. As our analysis shows, when we do not disaggregate among cases with varying levels of concentrated political power, the average effect becomes marginal. Perhaps this is why these previous studies do not find an effect. In any case, these results suggest that rule of law can be enhanced through the use of well-designed judicial protections.

Second, these results help demonstrate the potential utility of the new CompLaw database. By having a broad database that includes countries covering the range of levels of judicial independence we can more effectively examine how varying judicial independence affects court decision-making. Further, while the concentration of political power varies over time within country, it varies much more widely across countries. Again, CompLaw provides a sample of countries that vary widely on this dimension. Together, we are able to engage in nuanced testing for the effects of institutional design on political behavior.

Two possible caveats about the results are worth discussing. First, notice that for high levels of judicial independence the probability of strike increases slightly in the Feld and Voigt results and dramatically in the La Porta results. The idea that a high court is actually more likely to strike a national act as the governing majority gets bigger might seem counter-intuitive at first. However, an interesting paper by Fox and Stephenson (XXX) actually offer an argument for why we would see such a result. Specifically, they use a formal model to demonstrate that with high levels of judicial independence governments are more likely to

Table 7: Regressions with F&V De Jure Measure

	(1)	(2)	(3)
Concrete	-0.865^{***}	-0.862^{***}	-0.879^{***}
	(0.190)	(0.190)	(0.190)
F&V De Jure Measure	-3.504	-3.969	-25.500^{***}
	(2.745)	(3.073)	(4.739)
Margin*F&V De Jure Measure			41.064^{***}
			(8.522)
Margin		-1.377	-35.366^{***}
		(3.731)	(7.201)
Constant	2.135	3.163	21.257^{***}
	(1.871)	(3.385)	(4.230)
Observations	2,440	2,440	2,440
Log Likelihood	$-1,298.975$	$-1,298.914$	$-1,297.770$
Akaike Inf. Crit.	2,605.949	2,607.828	2,607.539
Bayesian Inf. Crit.	2,629.148	2,636.827	2,642.338
Note:			*p<0.1; **p<0.05; ***p<0.01

pass riskier and more questionable legislation. The reason is intuitive, they know that an independent court with judicial review will strike anything out of bounds. To the degree a larger governing majority empowers more legislative action, based on Fox and Stephenson's argument we would expect to observe exactly the relationship we do.

Further, one might be concerned with selection bias in the findings. Specifically, this analysis does not take account of the decision to bring and hear a case. One might reasonably suppose that plaintiffs would hesitate to bring a case if they knew the court was unlikely to decide against the government. Similarly, perhaps the court might decline to hear a case if it knew it was not free to rule against the government. Two responses can be made to this concern. First, it does not explain why would we observe the conditional relationship between political concentration of power and a court's likelihood of striking a national act. Second, if anything, the selection bias would work towards mitigating the relationships we find. Thus, at worst we are underestimating the relationship we find.

Conclusion

Over roughly the last two decades, the world has undergone some enormous transformations. In 1989 the cold war ended and a number of communist regimes became democratic. More recently, the United States ended Saddam Hussein's reign in Iraq and has attempted to create a democratic regime in its place. And now today we are witnessing an "Arab Spring", in which authoritarian regimes are collapsing (mostly) from the inside and are being replaced again by newly democratic regimes.

Leaders during these transitions confront significant challenges over how to implement and consolidate democracy. A variety of opinions exist about how best to do so. The received wisdom is that it is all about getting the institutions right. Should the country have a presidential or parliamentary system? It depends upon which best moderates the political tensions of the country. Countries need strong, independent high courts capable of ruling without fear of reprisal. Only then can one have a systematic rule of law that applies to all, from the least individual to the most powerful politicians in the national government.

This intuition makes sense, and political theories suggest that it is right. But the empirical record is far less certain. Outside of a variety of country-specific analyses and case studies, we have remarkably little evidence on this patently important question. Enhancing the empirical record is one of CompLaw's central motivations. We are interested in questions involving high court capacity to institute the rule of law over national governments (although the data collection exercise is designed with maximal flexibility in mind so other scholars can pursue other questions with this data). In this paper we have presented the structure of the data collection exercise, some basic descriptive statistics over the database's sampling properties,

and an illustrative application of the data. We find evidence that institutional structure designed to create independent courts does increase a high court's willingness to constrain its national government. This finding is of fundamental importance to not just comparative scholars, but the world in general.

Appendix

Handbook Example: Venezuela

The following screen shots provide an example of coders' view of

Collaborative Research: A Cross-National Study of Judicial Institutionalization and Influence

Washington University in St. Louis

VENEZUELA
REPÚBLICA BOLIVARIANA DE VENEZUELA

1. The basics of the docket for the country's constitutional court:

The Constitution of Venezuela in its article 253 establishes the country's Tribunal Supremo de Justicia (Supreme Tribunal).[i] This Tribunal is divided into 7 autonomous and specialized Chambers. One of which is the "Sala Constitucional" or Constitutional Chamber.[ii]

- Sala Constitucional.
- Sala Político - Administrativa.
- Sala Electoral.
- Sala de Casación Civil.
- Sala de Casación Social.
- Sala de Casación Penal. [iii]

Sala Plena

The Tribunal is the court of last resort and is "empowered to invalidate any laws, regulations or other acts of the other governmental branches conflicting with the constitution."[iv] In addition, it "hears accusations against high public officials, cases involving diplomatic agents and certain civil actions arising between the State and individuals."[v]

Article 5 of the Ley Orgánica del Tribunal Supremo de Justicia de la República Bolivariana de Venezuela ("LOTSJ"), specifies the competency of each Chamber. The Sala nstitucional reviews all matters contained in numerals 3 to 23. According to this Law, the review of all constitutional matters pertains exclusively to the Constitutional Chamber.[vi]

Additional information about the Supreme Tribunal – including, possibly, information about whether the docket is discretionary – is available in Spanish at the following website: http://www.tsj.gov.ve/

Senior Personnel: Martin, Gabel, Carrubba, Helmke, and Staton
NSF Award IDs: SES-0751670, SES-0751340, SES-0751796

powered by CERL

2. Locating a list of opinions for a given calendar year post-2000:

The case law for the Supreme Tribunal is available online at the following website: http://www.tsj.gov.ve/jurisprudencia/jurisprudencia.shtml

To locate cases:
Go to www.tjv.gov.ve This is the home page of the Tribunal Supremo de Justicia. Once there, go to the column on the left side of the page. Look for the title "Información" (Information), once there click on "Decisiones" (Decisions). That will take you to a new page, on that page click on "Sala Constitucional". The following page will take you to the 2009 decisions. However, decisions from 2000 to 2009 are available. Click on 2003 and it will display them by month and day.

A short cut is to follow this link:
http://www.tsj.gov.ve/decisiones/sala.asp?sala=005&ano_actual=2003&nombre=Sala Constitucional

However, neither the texts of the decisions nor the website where the decisions are located are available in English. Thus, it will be necessary to have an individual who speaks Spanish locate the decisions online.

In most instances, the court provides full cases. Sometimes, the background and discussion are omitted and only the resolution is published.
A brief summary of the cases containing basic information can be found in the Court's webpage. The following is an example:[vii]

Numero : 07	Nº Expediente : 01-1827	Fecha: 16/01/2003
Procedimiento: Acción de Amparo		
Partes: Alexandra Margarita Stelling Fernández		
Decisión: Declara Improcedente		
Ponente: Iván Rincón Urdaneta		

To identify cases that do not involve a constitutional review:
Cases not involving constitutional matters or matters contained in numerals 3 to 23 of LOTSJ are not assigned to the Constitutional Chamber and are reviewed by a different Chamber.

However, it is advisable to review the cases resolved by the Administrative Chamber because this Chamber "hears cases brought against the Republic, its States and municipalities, or any autonomous institution, public body or corporation where the Republic has a controlling and permanent interest in its direction or administration"[viii]. It also "hears resolves on unconstitutionality or illegality of acts or laws from the Executive and other institutions with "National Public Power". It also resolves controversies between the Republic and a State.[ix]
Last, because the Constitutional Chamber reviews "acciones de amparo" derived from decisions of lower courts, there are several cases that do not fall into the scope of this investigation. The only way to identify those cases is by reading the Court's resolution.

For cases involving a constitutional review:

- There is not a way to determine if the cases were resolved based on the merits or on procedural grounds without reading the full case.
- The court's reolution contains information related to the background of the case, including its procedural history. However, sometimes the background and discussion are omitted and only the resolution is published.

3. How to determine whether the national government is a party in each case:

You can determine if the government is a party in the case by reading the preamble of each resolution. The brief summary in the webpage does not provide this information.

In addition to the government being named as a party itself, the government may be represented by agencies or individual representatives of a department. A list of Cabinet Members in Venezuela is available at the following website:
https://www.cia.gov/library/publications/world-leaders-1/world-leaders-v/venezuela.html

Notes:

- All the cases reviewed by the six Chambers and the Plenary Chamber are available online. These Chambers are: Constitutional, Electoral, Civil Cassation, Criminal Cassation, Social Cassation, and Political-Administrative.
- The cases from the Chambers are more salient than those from the Juzgados de Sustanciación. Each Chamber has an assistant court named Juzgado de Sustanciación.
    - **m. Is there a common way of indexing the cases?**
    - The cases are indexed by year, month and day in the Court's webpage.
- There is a standard listing of the parties in the preamble of the case.
- The Constitutional Chamber also creates jurisprudence. However, codification has not allowed case law to reach the same recognition it has within the Common Law system. Case law is limited to fill in legislative blanks.[x] In the web page, jurisprudence is available. (http://www.tsj.gov.ve/jurisprudencia/jurisprudencia.shtml) However, those decisions are out of the scope of this investigation.

[1] Constitution, Tit. V, Ch. III, § 1° Disposiciones Generales, Art. 253 (1999) (Venezuela).
[2] Constitution, Tit. V, Ch. III, § 2° Del Tribunal Supremo de Justicia, Art. 262 (1999) (Venezuela).
[3] http://www.tsj.gov.ve/eltribunal/sobretribunal/organizacion.shtml (June, 2009)
[4] An Introduction to Venezuelan Governmental Institutions and Primary Legal Sources," prepared by GlobaLex, available at: http://www.nyulawglobal.org/globalex/Venezuela.htm
[5] Id.
[vi] Ley Orgánica del Tribunal Supremo de Justicia de la República Bolivariana de Venezuela, Art. 5 (May 24, 2004) (Venezuela). http://www.tsj.gov.ve/legislacion/nuevaleytsj.htm
[vii] http://www.tsj.gov.ve/decisiones/consulta_sala.asp?sala=005&dia=16/1/2003&nombre=Sala Constitucional (June, 2009)
[viii] http://www.cejamericas.org/reporte/pdfing3/Venezuela_ing.pdf, June, 2009
[ix] Ley Orgánica del Tribunal Supremo de Justicia de la República Bolivariana de Venezuela, Art. 5 §30, 31 and 32 (May 24, 2004) (Venezuela). http://www.tsj.gov.ve/legislacion/nuevaleytsj.htm
[x] An Introduction to Venezuelan Governmental Institutions and Primary Legal Sources," prepared by GlobaLex, available at: http://www.nyulawglobal.org/globalex/Venezuela.htm

CompLaw Variables

This section provides information on the information coded from the cases uploaded to CompLaw.

Germaneness Variables

1. Does Court Exercise Constitutional Review (conques)?– The dummy variable `conques` is coded at the case level and identifies cases that involve constitutional questions (1 "yes", 0 "no").

2. Is Government a Litigant (govlit)?– The dummy variable `govlit` is coded at the case level and identifies cases that involve a constitutional question *and* the government as a litigant. If a case meets this criteria, it is coded as "1". If a case involves a constitutional question but not a government as a litigant, it is coded as "0". Finally, if a case does not involve a constitutional question, `govlit` is coded as NA.

3. Is a National Policy Challenged (lawchal)? – The dummy variable `lawchal` is coded at the case level and identifies cases that involve a constitutional question, no governmental litigant, *and* a challenge to a governmental law. If a case meets this criteria, it is coded as "1". The variable is coded as "0" if it involves a constitutional question, no governmental litigant, and no challenge to a governmental law. In any other case, the variable is coded as NA.

Case Level Variables

1. Docket Number (docketnumber) – This variable records the docket number of the case in question.

2. Admission Date (admitdate) – This variable records the date at which the court admitted the case for review.

3. Decision Date (decdate) [date, coder selects predefined numbers, NA optional] This variable records the date at which the court's opinion became final.

4. Type of Constitutional Instrument (instrument)– This variable records the legal instrument under which the case is organized or documented.

5. Name of Complainant (compname) – This variable identifies the case's complainant.

6. Type of Complainant (comptyp) – This variable identifies the type of actor raising or pursuing the case.

   (a) "Head of State"

(b) "Head of Government"

(c) "The Government/Cabinet"

(d) "First (or only) Chamber of the Legislature"

(e) "Second Chamber of the Legislature"

(f) "Both Chamber of the Legislature"

(g) "A court"

(h) "An attorney general, prosecutor general or ombudsman"

(i) "An individual"

(j) "A political party"

(k) "A formally organized interest group"

(l) "A group of citizens (though not formal organization"

(m) "Other"

(n) "Firm"

7. Third Party (thirddummy) – This dummy variable identifies whether the pursuant of the case is acting on behalf of a third party.

8. Identify of Third Party (thirdparty) – If a case involves a pursuant acting on behalf of a third party, this variable identifies the type of third party actor. It's coding rules are identical to `compntype`. If the case does not involve a third party, this variable is coded as "NA."

9. Concrete Review? (concrete) – This dummy variable identifies cases that as courts to rule on a concrete incident or claim.

10. Appeal? (appeal) – This dummy variable identifies cases that arrived on appeal from a lower court.

11. Are Judges Named? (judgenames) – This dummy variable identifies opinions that reveal which judges participated in the voting procedure. Specifically, coders answer the question, "Are the names of the judges listed with the decision?"

12. Is Case Resolved in Plenary Session? (plenum) – This dummy variable identifies cases that were heard in plenum.

13. We All Judges Assigned? (alljudges) – This dummy variable identifies cases in which judges who were assigned the case participated in it. It is coded as"0" for no, "1" for yes, and "2" for don't know.

14. Number of Judges Who Participated? (judgenum) – This variable records the number of judges that took part in the final resolution.

15. Was There Disagreement? (disagree) – This dummy variable denotes opinions in which there is any indication of disagreement between the participating judges.

16. Was There Dissent? (dissent) – This dummy variable denotes opinions in which there is a signed dissent or any possible sign that identifies which judges disagree. If `disagree` is coded as "0", then `dissent` is coded as "NA".

17. How Many Dissenters? (dissentnum) – This variable identifies the number of judges who disagree with the opinion. If `disagree` is coded as "0", this variable takes a value of NA.

Policy Level Variables

1. Type of Policy (actiontype) – This variable identifies the type of government action being challenged in the case. It is coded as follows:

   (a) "National Statute"

   (b) "Sub-national Statute"

   (c) "National Agency Action or Ruling"

   (d) "Sub-National Agency Action or Ruling"

   (e) "National Executive Order or Decree"

   (f) "Sub-National Executive Order or Decree"

   (g) "International Treaty"

   (h) "National Referendum"

   (i) "Sub-National Referendum"

   (j) "National Constitutional Provision"

   (k) "Sub-national Constitutional Provision"

   (l) "Other"

   (m) "Pending Legislation"

2. Name of the Policy (actionname) – This variable identifies the name of the action being challenged in the case.

3. Year of the Policy (basisyear) – This variable lists the year in which the relevant government policy was adopted.

4. Did the Decision Overturn a Lower Court's Decision on this Policy (overturn)? This dummy variable denotes cases in which the court overturned the lower court's decision on a particular policy. If the case did not arrive on appeal, then this variable is coded as "NA".

5. Date of Precipitating Event (precipdate) – This variable identifies the date at which the particular infraction occurred that gave rise to the case, e.g. a law authorizing the collection of a tax may significantly precede the date on which the finance ministry attempted to collect the tax. This variable indicates the latter date.

Question level variables

1. Constitutional Article Associated with the Argument (conarticle) This variable gives the name of the constitutional article or provision being used as the basis on the challenge.

2. Strike (strike) – This variable records how the court responded to the challenged action with respect to the constitutional question. Specifically, it is coded as follows:

   (a) deemed constitutional

   1– deemed unconstitutional

   2– discussed, but dismissed for procedural reasons

   3– not discussed, but dismissed for procedural reasons.

3. Clarity of Strike (clear) – This variable asks the coder how strongly she agrees with the statement, "The outcome of this case–in terms of its ruling with respect to the national government–was clear." The coder could choose the following responses:

   (a) Completely agree

   (b)

   (c) Neither agree nor disagree

   (d)

   (e) Completely disagree