An Introduction to the CompLaw Database

Clifford J. Carrubba
Department of Political Science
Emory University

Matthew Gabel
Department of Political Science
Washington University

Gretchen Helmke
Department of Political Science
University of Rochester

Andrew D. Martin
School of Law and
Department of Political Science
Washington University

Jeffrey K. Staton
Department of Political Science
Emory University

September 25, 2012

Abstract

We introduce a new database on constitutional review conducted by high courts in the world’s judicial systems (CompLaw), which is designed to promote research on issues of constitutionalism. Among others, scholars are interested in understanding the degree to which institutional design can insulate judges from political pressure and thus advance the rule of law. To date, our best answers are gained by stitching together evidence from a variety of country specific research. Yet, these questions naturally lend themselves to a comparative, cross-national study. Complaw is a new database on constitutional review conducted by high courts designed to help provide the data necessary to conduct such analysis. In this paper, we introduce the database and illustrate its potential value for research through an illustrative application.
We introduce a new database on constitutional review conducted by high courts in the world’s judicial systems (CompLaw).\(^1\) CompLaw currently contains information on courts, cases and political systems in 43 states. Data capture continues in an additional 30 states. CompLaw was designed primarily to leverage cross-national variation in institutions and political conditions to evaluate theoretical claims about the political nature of constitutional review. The detailed nature of CompLaw’s coding procedures, as well as its database management plan, make it useful to a variety of research interests. This paper describes the creation, organization, and current content of the database. We also illustrate its potential value for research by presenting an empirical analysis using these data. Specifically, we use these data to examine whether political constraints on judicial behavior proposed by numerous models of judicial politics are weakened by (1) formal institutions insulating judges from undue political influence and (2) public support for courts.

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 (Tate, N.d.). 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.\(^2\) It is unlikely that 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.\(^3\)

---

\(^1\)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. Prepared for presentation at the 2012 Annual Meeting of the American Political Science Association.

\(^2\)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 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 Tate’s (N.d.) review of the field. We added any paper or book that our search missed.

\(^3\)See the American Political Science Association website for information on past winners (http://www.apsanet.org/content_4122.cfm, accessed August 20, 2012).
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 (Finkel, 2008; Hirschl, 2006; Ginsburg, 2003), why are individuals or groups able to translate political conflicts into constitutional questions, often based on rights claims (Epp, 1998; Sieder, Schjølden and Angell, 2005); once accessed, what explains the decisions courts reach and the methods of interpretation they use (Lasser, 2004; Helmke, 2005; Carrubba, Gabel and Hankla, 2008); following a resolution, what explains differences in the implementation of court orders (Vanberg, 2005; Staton, 2004); and, ultimately why are some courts able to constrain governments while others are not (Alter, 2009).

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 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 (McCubbins, Rodriguez and Weingast, 2010). 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. 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.

The remainder of this paper is an introduction to CompLaw. We first discuss case selection and consider the representativeness of our sample. We next summarize the content of CompLaw and its data management process. We then consider the utility of CompLaw for answering two research questions that benefit from a cross-national design.

**An Introduction to the CompLaw Database**

Constitutional review is carried out around the world in many different ways and by a variety of different types of courts (e.g., Navia and Ríos-Figueroa, 2005). 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. 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, our project’s primary goal was to investigate the feasibility of building a useful cross-national database on constitutional review. CompLaw was designed originally to speak

---

4 The National Hight Courts Database (Haynie et al., 2007) 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.

5 For example, there are over 400,000 amparos/year in Columbia alone.
to two streams of research on judicial independence. One stream centers on understanding why governments adopt formal rules thought to encourage independent judicial decision-making (Ramseyer, 1994; Ginsburg, 2003), assuming that these rules do in fact result in autonomous decisions. A second stream focuses less on the formal rules that allegedly protect judges from external political pressure and instead highlights *de facto* features of the political system that provide insulation from political pressure. A common theoretical claim in this context is that judicial decision-making is more likely to reflect the sincere preferences of judges under conditions of political fragmentation where political officials find it more difficult to coordinate on a response to unfavorable judicial outcomes (Chávez, Ferejohn and Weingast, 2011). Others have argued that public support for courts can undermine the sort of political pressures captured by the fragmentation argument (Vanberg, 2005; Rodríguez Raga, 2011). To date, empirical tests of claims in both streams of research have been conducted on the decisions of a single or a very small set of courts (Haynie et al., 2007; Ríos-Figueroa, 2007) or on non-random samples of cases provided by the courts themselves (e.g. Herron and Randazzo, 2003). Importantly, critical concepts in these arguments, including the formal rules designed to ensure judicial independence and public support for courts, are relatively sticky over time within a state yet vary significantly across states. Thus, the capturing this cross-national variation and tying it directly to decisions within a state is CompLaw’s primary purpose.

**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.\(^6\) We

\(^6\)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. We chose 2003 because it corresponds with important supplemental data on media coverage of court cases which we anticipate will be available from the Cline Center SPEED project at the University of Illinois. Where cases in 2003 were not available online, we resorted to the closest year available, generally 2004.
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.\textsuperscript{7} 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 court.\textsuperscript{8} 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 research team has uploaded to our server 12,543 cases from 43 states, of which 2,561 cases fall within the scope of our study. Table 1 summarizes the states whose high courts are included in the study 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 \textit{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)

\textsuperscript{7}We thank Dominic Nardi of the University of Michigan for his assistance.

\textsuperscript{8}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.
<table>
<thead>
<tr>
<th>Complete</th>
<th>In Process</th>
<th>To Do</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania</td>
<td>Algeria (CC)</td>
<td>Algeria (CE)</td>
</tr>
<tr>
<td>Argentina</td>
<td>Armenia</td>
<td>Bahamas</td>
</tr>
<tr>
<td>Australia</td>
<td>Austria</td>
<td>Barbados</td>
</tr>
<tr>
<td>Belgium (CC)</td>
<td>Dominican Republic</td>
<td>Belgium (CE)</td>
</tr>
<tr>
<td>Benin</td>
<td>Israel</td>
<td>Cambodia</td>
</tr>
<tr>
<td>Bolivia</td>
<td>Portugal</td>
<td>Croatia</td>
</tr>
<tr>
<td>Bosnia and Herzegovina</td>
<td></td>
<td>Czech Republic</td>
</tr>
<tr>
<td>Bulgaria</td>
<td></td>
<td>Denmark</td>
</tr>
<tr>
<td>Burkina Faso (CE)</td>
<td></td>
<td>Estonia</td>
</tr>
<tr>
<td>Burkina Faso (CC)</td>
<td></td>
<td>Finland</td>
</tr>
<tr>
<td>Canada</td>
<td></td>
<td>Georgia</td>
</tr>
<tr>
<td>Chile (CC)</td>
<td></td>
<td>Guam</td>
</tr>
<tr>
<td>Colombia</td>
<td></td>
<td>Iceland</td>
</tr>
<tr>
<td>Ecuador</td>
<td></td>
<td>Jamaica</td>
</tr>
<tr>
<td>El Salvador</td>
<td></td>
<td>Japan</td>
</tr>
<tr>
<td>France (CC)</td>
<td></td>
<td>Latvia</td>
</tr>
<tr>
<td>France (CE)</td>
<td></td>
<td>Lebanon</td>
</tr>
<tr>
<td>Germany</td>
<td></td>
<td>Mexico</td>
</tr>
<tr>
<td>Guatemala</td>
<td></td>
<td>Netherlands</td>
</tr>
<tr>
<td>Hungary</td>
<td></td>
<td>Norway</td>
</tr>
<tr>
<td>India</td>
<td></td>
<td>Russia</td>
</tr>
<tr>
<td>Indonesia</td>
<td></td>
<td>Slovenia</td>
</tr>
<tr>
<td>Ireland</td>
<td></td>
<td>Taiwan</td>
</tr>
<tr>
<td>Italy</td>
<td></td>
<td>Trinidad and Tobago</td>
</tr>
<tr>
<td>Lithuania</td>
<td></td>
<td>Uganda</td>
</tr>
<tr>
<td>Luxembourg</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Madagascar</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mali</td>
<td></td>
<td></td>
</tr>
<tr>
<td>New Zealand</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Niger</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Poland</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Romania</td>
<td></td>
<td></td>
</tr>
<tr>
<td>South Africa</td>
<td></td>
<td></td>
</tr>
<tr>
<td>South Korea</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Spain</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Switzerland</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Turkey</td>
<td></td>
<td></td>
</tr>
<tr>
<td>United Kingdom</td>
<td></td>
<td></td>
</tr>
<tr>
<td>United States</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Venezuela</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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.
as measured by Linzer and Staton’s (2012) 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 (Haynie et al., 2007). 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 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 is considerable variation in development in our sample.

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.

<table>
<thead>
<tr>
<th>La Porta Concept</th>
<th>Independence Score</th>
<th>La Porta (%)</th>
<th>CompLaw (%)</th>
<th>Nat. High Courts Database (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low Independence</td>
<td>0</td>
<td>7</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>.</td>
<td>0.33</td>
<td>13</td>
<td>13</td>
<td>0</td>
</tr>
<tr>
<td>.</td>
<td>0.67</td>
<td>26</td>
<td>34</td>
<td>0</td>
</tr>
<tr>
<td>High Independence</td>
<td>1.00</td>
<td>53</td>
<td>47</td>
<td>100</td>
</tr>
</tbody>
</table>

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 did not seek to answer. 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
Figure 2: Displays kernel 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.
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.

<table>
<thead>
<tr>
<th>Legal Tradition</th>
<th>World (%)</th>
<th>CompLaw (%)</th>
<th>Nat. High Courts Database (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Civil</td>
<td>52</td>
<td>75</td>
<td>0</td>
</tr>
<tr>
<td>Common</td>
<td>25</td>
<td>14</td>
<td>89</td>
</tr>
<tr>
<td>Islamic</td>
<td>13</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td>Mixed</td>
<td>9</td>
<td>7</td>
<td>11</td>
</tr>
</tbody>
</table>

Table 3: Displays the distribution of Mitchell and Powell’s (2011) 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.

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.

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 instituted 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 12,543 cases, of which 2,561 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., Goemans, Gleditsch and Chiozza, 2009; Marshall, Gurr and Jaggers, 2010; Theodore et al., 2001; Elkins and Ginsburg, 2012). 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. 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.

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
Figure 3: Displays the type of complainant in the CompLaw sample.
Figure 4: Displays the type of policies in the CompLaw sample.
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.

![Graph showing the years in which policies captured in CompLaw were enacted or otherwise passed.](image)

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.
Exploring the Utility of CompLaw

The primary motivation for CompLaw was to produce data useful for answering two simple empirical implications of common positive political models of constitutional review. As we described above, we wish to consider the extent to which rules that allegedly insulate judges from external political pressure, as well public support for courts, undermine the link between government interests and judicial decisions on constitutional courts anticipated by these models. This section of our paper develops our tests and presents results from a preliminary study making use of the CompLaw data.

Institutions, Public Support and Case Outcomes

Prior to considering the possible influences of institutions or public support, we need a basic account of inter-branch politics and a strategy for identifying its effects on decision-making. The model we envision is consistent with a large set of separation of powers (SoP) models of judicial policies, and begins with the simple premise that courts are decreasingly likely to challenge the interests of a sitting government as that government becomes increasingly capable of responding to unfavorable judicial outcomes, say via jurisdiction stripping, salary or staff reductions, impeachment, or override (e.g. Chávez, Ferejohn and Weingast, 2011; Ríos-Figueroa, 2007). Further, again drawing on a variety of SoP models, we propose that governments are increasingly capable of responding in this way when their legislative power is concentrated. Under conditions of fragmentation, applying direct pressure to judges requires coordinating among a potentially large set of political competitors with potentially divergent interests. When power is concentrated, this problem is significantly attenuated. Thus, the simplest empirical implication of this sort of model anticipates that the probability of setting aside as unconstitutional a policy associated with the sitting government should decline in the government’s legislative power becomes concentrated.

How do institutions and public support influence this relationship? First consider the institutional argument. The institutions we have in mind are those that make it more difficult to manipulate the common tools leaders use to pressure judges. These are institutions, typically constitutional rules, that provide secure tenure for judges, increase the legislative burdens of removal, and protect their salaries. Under conditions of weak institutional protections for judicial independence, the negative effect of the concentration of governmental power on the probability of striking a policy down as unconstitutional should be particularly strong; however, under conditions of strong institutional protections, this effect should be attenuated. In short, if the institutional argument is right, rules that protect judges should break the link between governmental interests and the political pressure leaders can bring to bear on the judicial decision-making process.
The mechanism by which institutional constraints operate on constitutional review is primarily procedural. They raise the constitutional hurdles that must be cleared in order to attack a court. Of course, these hurdles can be cleared with a large enough majority and in some cases they may simply be ignored (e.g. Helmke, 2005). Further, a better outcome for a leader may be obtained by simply refusing to be bound by the judicial decision. The common institutions of judicial independence are not designed to combat non-compliance. For this reason, scholars have proposed that public support for judges and the courts they sit on is the base of any mechanism through which courts constrain governmental behavior (e.g. Vanberg, 2005). As much as there may be costs to pay for ignoring a judicial ruling, there may also be costs to pay for attacking a court in response to an unfavorable ruling. If this is true, then we should anticipate another conditional relationship. Specifically, we should observe that the probability of striking a policy associated with the sitting government should decline in the concentration of the government’s power, but only when public support for the court is low. When it is high, this relationship should attenuate.

Analysis

To evaluate these expectations, we require four types of measures. First and foremost, we require a measure of whether a court has found a challenged policy unconstitutional. We rely on the CompLaw Strike indicator, which is coded 1 if the court found that a 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.\footnote{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.}

To measure the concentration of the government’s legislative power, we rely on the Database of Political Institutions (DPI, Keefer (2005)) 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 Feld and Voigt (2003), 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 La Porta et al. (2004), 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 (Ríos-Figueroa and Staton, Forthcoming.).”

To measure public support for courts, we rely on survey evidence from the 2006-2008 wave of the World Values Survey (Association, 2008). Obviously, using 2006 to 2008 survey data in a study of 2003 decision-making is not ideal. However, public support for courts is highly stable overtime and missing data is massive problem in earlier waves of the study. Thus, we treat public support measures derived from this wave as at best a proxy for contemporaneous public opinion in 2003. We rely upon item v137, which reads: “Could you tell me how much confidence you have in the courts: is it a great deal of confidence, quite a lot of confidence, not very much confidence or none at all?” Our indicator, Public Support reports the unweighted sum of the percent of respondents who have “a great deal” of confidence in the courts and the percent of respondents who have “quite a lot” of confidence in the courts.

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. Let $X$ denote any one of the conditioning variables for Margin, i.e., either of the institutional variables or the public support measure. We fit a logistic regression model with random intercepts for states and a control for the type of constitutional challenge with the CompLaw Concrete indicator.\(^\text{10}\) For policies $i$ and states $k$ we consider the following model:

\[
Pr(Strike_i = 1) = \logit^{-1}(\alpha_k[i] + \alpha_1 Margin_k[i] + \alpha_2 X_k[i] + \alpha_3 (Margin_k[i] \ast X_k[i]) + \alpha_4 Concrete_i),
\]

where we assume that $\alpha_k \sim N(\mu_\alpha, \sigma_\alpha^2)$.\(^\text{11}\) Figure 6 summarizes the key substantive results of these models. 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

\(^{10}\)The results are note affected by the inclusion of this variable. We include it to address the concern that the politics of cases in which concrete review is exercises over relatively non-salient individual constitutional constraints is correlated with particular states and the margins of legislative majorities enjoyed by their governments.

\(^{11}\)All analysis was done in R version 2.15.1, using the lme4 package.
reflects the same probabilities but when the Feld and Voigt index is one standard deviation above the mean. As is clear in the panel, government policies are decreasingly likely to be struck as the margin of the government’s majority increases, but 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. That said, the blue curve is curious, indicating that the probability of striking a policy increases in Margin when institutional protections are very strong. In U.S. context, Whittington (2005) reminds us that presidents might prefer courts to veto the policies they have themselves supported; however, as a general matter, it is unclear why this incentive would necessarily increase in the size of the government’s legislative majority, where his coalition is strongest, and thus, least likely to believe that there is significant general public interest in pursuing a particular policy outcome that the leader does not support.

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.

Figure 7 returns results that are consistent with the right panel of Figure 6. For very low levels of public support (the minimum is approximately 18% in Argentina), the effect of Margin is negative on the probability of strike. Yet again, for high public support, the model indicates an increasing probability of strike as Margin increases. Perhaps of greater interest, the positive effect of Margin under high public support appears to be stronger than the negative effect of Margin under low public support. Theoretical punt.
Interaction between Majority and Public Support

Figure 7: 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 high and low public support for the judiciary.

In summary, we find evidence that political institutions designed to insulate the court from political pressure, and public support for the court as an institution, both moderate how likely a court is to rule in favor of the government when the government is more unified. We also find a puzzling result that the court actually becomes increasingly likely to strike the government’s policy as the margin of the majority increases under these conditions, but one should be cautious in interpreting that finding. In both cases, a couple of outliers may be driving the result. A stronger conclusion will require further investigation. Independent of this apparent anomaly, these results are consistent with the arguments that well-designed institutions and public support allow courts to rule more freely against national governments and the policies they seek to create. By implication, this freedom can help ensure a more consistent and robust rule of law.

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. In this application we find evidence that institutional structure designed to create independent courts and public support both increase a high court’s willingness to constrain its national government. This analysis is preliminary, both because we are continuing to add countries to our database and because of the analysis itself. However, it is suggestive and demonstrates how the data case be used to get truly novel leverage on questions 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

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). This Tribunal is divided into 7 autonomous and specialized Chambers. One of which is the “Sala Constitucional” or Constitutional Chamber.

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.” In addition, it “hears accusations against high public officials, cases involving diplomatic agents and certain civil actions arising between the State and individuals.”

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 institucional reviews all matters contained in numerales 3 to 23. According to this Law, the review of all constitutional matters pertains exclusively to the Constitutional Chamber.

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/
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.tsj.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:

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:

<table>
<thead>
<tr>
<th>Numero</th>
<th>Expediente</th>
<th>Fecha</th>
</tr>
</thead>
<tbody>
<tr>
<td>004</td>
<td>1-1927</td>
<td>16/01/2003</td>
</tr>
</tbody>
</table>

Procedimiento: Ruego de interlocutoria  
Partes: Mª Ena Fernández, Mª Angelina Fernández  
Decisión: X  
Ponente: Luis Rey Sánchez

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.

Senior Personnel: Martin, Gabel, Carrubba, Helmke, and Staton  
NSF Award IDs: SES-0751670, SES-0751340, SES-0751796
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"[3]. 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."

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 resolution 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:

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.
- 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. In the web page, jurisprudence is available. (http://www.tj.gov.ve/jurisprudencia/jurisprudencia.shtml) However, those decisions are out of the scope of this investigation.

Senior Personnel: Martin, Gabel, Carrubba, Helmke, and Staton
NSF Award IDs: SES-0751670, SES-0751340, SES-0751796
Collaborative Research: A Cross-National Study of Judicial Institutionalization and Influence

Washington University in St. Louis

4 An Introduction to Venezuelan Governmental Institutions and Primary Legal Sources,” prepared by GlobalLex, available at: http://www.nyulawglobal.org/globalex/Venezuela.htm
5 Id.
8 Constitucional (June, 2009)
11 An Introduction to Venezuelan Governmental Institutions and Primary Legal Sources,” prepared by GlobalLex, 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
References


URL: http://www.comparativeconstitutionsproject.org


Haynie, Stacia L., Reginald S. Sheehan, Donald R. Songer and C. Neal Tate. 2007. “National High Courts Database.”

URL: http://artsandsciences.sc.edu/coli/juri/highcts.htm


