

Legal Signals and Policy Change

A text analysis of a causal model reassessing autolimitation

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The First Conference on Empirical Legal Studies in Europe (CELSE)
Amsterdam • June 21 to 22, 2016

Abstract. To what extent are legal signals incorporated in legislative policy making? In the Kelsenian system of constitutional review, governing parties implicitly face the constant threat of a constitutional court overturning policy. Scholars have argued that legislative majorities therefore use signals – for example, expert hearings – to gauge future judicial review, and these majorities modify bills accordingly. However, only very few studies on constitutional courts discuss the effects of legal signals. These studies suffer from selection bias, tracing only parliamentary debates involving a few particularly prominent legal decisions. In this paper, I address this bias by making two contributions. First, I develop a causal model that defines potential constitutional objections as legal signals which are interpreted by politicians. Second, applying text analysis to documents using similar style and vocabulary, I am able to measure the policy adjustment committees make in anticipation of later judicial action and the position of the court on the same latent dimension. This allows for a detailed comparison of the direction of policy change in the presence of a legal signal compared to the absence of such a signal. Connecting original data to data on the German Federal Legislature (GESTA), I compile a dataset used to test the empirical implications of my model. Results show that autolimitation is not an outcome of committee bargain but affects the pre-parliamentary process and inner-parliamentary negotiations with a hostile second chamber.

* I thank Leeann W. Bass, Tom S. Clark, Adam Glynn, Thomas Gschwend, Christoph Hönnige, Jeffrey K. Staton, and Sebastian Sternberg for valuable comments on the manuscript, as well as the participants of Emory's Fall 2015 Causal Analysis graduate seminar for helpful discussions. Furthermore, I am thankful for valuable research assistance by Jasmin Beneke, Lars Oppermann, and Robert Welz. This research was supported by the German Academic Exchange Service through a Ph.D. Scholarship.

1 A Court's Silent Power

Why are only some laws referred to constitutional courts for review?¹ While some scholars argue that it is always rational for opposition parties which are defeated in the legislature to appeal to a constitutional court (e.g. Stone Sweet, 1998), others argue that referrals are not always rational (e.g. Vanberg, 1998, 2001). Instead, representatives anticipate judicial review and design bills to be “court-proof,” engaging in a practice known as autolimitation. *Autolimitation* is defined as “one kind of anticipatory reaction, [that] refers to the exercise of self restraint on the part of the government and its parliamentary majority in anticipation of an annulment by the constitutional court” (Stone Sweet, 2000, 75). Vanberg (2001, 352) presents a broader definition, highlighting that the legislature in general engages in self-restraint, not just the governmental majority.

Accordingly, autolimitation is what Hamilton characterizes as the “second face of power” in *Federalist No. 73*. An actor *B* anticipates a possible reaction by an actor *A* and thus makes a different decision than *B* would make in the absence of *A*'s influence. While there are studies that discuss a mechanism like autolimitation in legislative-judicial bargaining (Jekewitz, 1980; Vanberg, 1998, 2001; Hönnige, 2007) and some that use cases studies to illustrate the potential influence of legislative self-restraint (Favoreu, 1988; Landfried, 1992; Kommers, 1994; Stone Sweet, 2000), we lack systematic evidence of the existence of autolimitation (Fortunato, König and Proksch, 2013). Accordingly, we have little knowledge about “the process of mutual adjustment and achieving compromise” (Manow and Burkhart, 2007, 175) between the court and political actors. Hence, *to what extent do legislators anticipate judicial power?*

I argue that autolimitation leads to the use of legal signals in legislative committees to anticipate a court's behavior. These signals consist of possible legal objections and will not always arise, but once they do, they encourage legislators to shift the policy content of proposed bills to incorporate the interests of the judiciary.

This paper proceeds as follows: in the next section, I briefly review the literature on autolimitation and demonstrate the contribution of this paper. Next, I adapt a general spatial model based on veto-bargaining theory (Cameron, 2000) to develop an understanding of the theoretical effects of legal signals in the legislature. These considerations transfer into a comprehensive research

¹ Constitutional courts are specialized courts as defined in the classic writings of Hans Kelsen (2008 [1931]). They exist outside the regular legal system and exercise jurisdiction exclusively over questions regarding the constitution.

design to empirically test the causal implications of the model. I apply a text analysis approach to measure policy change by scaling bills and the constitutional court on the same latent dimension. Connecting measures obtained via text analyses to additional data on legislative committee proceedings in the German *Bundestag*, I am able to consistently confirm that bills exposed to legal signals are located closer to the court's position than bills not exposed to a signal. Moreover, the story of autolimitation is a complex one and not exclusively about legislative self-restraint. Instead, self-restraint is the result of a pre-parliamentary process and inner-parliamentary negotiations with a hostile second chamber. I conclude by discussing implications of these findings.

The contribution of this project is threefold. First, we know little about autolimitation, though the concept is widely used in fields other than judicial politics (e.g. Manow and Burkhart, 2007; Fortunato, König and Proksch, 2013). Second, research on constitutional courts of the centralized type (see Epstein, Knight and Shetsova, 2001, 121) is still in its early stages, especially with regard to the interaction between the legislature and the judiciary (see e.g. Hönnige, 2011). Hence, this quantitative analysis enhances our understanding of the influence of these courts on politics and policy. Third, from a normative point of view, constitutional courts are guardians of constitutions and are not allowed to engage in policy-making. It is not the court's duty to interfere in political discourse. However, by definition, autolimitation leads to judicial interference. Hence, this project demonstrates that legal institutions can substantially impact politics and society, even through implied, or "silent" power.

2 Autolimitation in the Literature

The notion that future decisions taken by constitutional courts are anticipated by political actors has been part of the European judicial politics literature since the late 1980s.² However, early studies regarding autolimitation provide only case study evidence (see e.g. Landfried, 1985; Favoreu, 1988; Landfried, 1992; Stone, 1989, 1992; Kommers, 1994) for potential implications of autolimitation. Thus, Landfried (1992) assessing Germany focused on parliamentary proceeding around highly polarized abortion bills. Similar case studies focusing on the parliamentary relevance of legal questions in France have been presented by Favoreu (1988) or Stone (1992). However, by focusing

² For literature reviews on courts as institutions in general, see Hönnige (2007, 9), and for understudied research areas on European constitutional courts, compare Hönnige (2011).

on highly salient bills, this early research introduced selection bias into the study of autolimitation. Laws considered in these early studies were exceptional laws resulting in multiple legislative proceedings as well as constitutional reviews. Therefore, the few existing studies focus on distinct topics not allowing for a general approach to legal signals as an implication of autolimitation. This study goes beyond the cited pioneering work by applying a broader perspective assessing debates around a random sample of German laws passed between 1990 to 2005 and independent of judicial involvement.

In earlier studies, scholars were eager to characterize the elements of autolimitation. However, these studies do not precisely define the effects of this phenomenon (see e.g. Landfried, 1992, 55-56). What is the effect of legal signals on policy making? In his classic study on judicial influence in the U.S. Congress, Marks (2012 [1988]) models the effects of Supreme Court decisions on committee bargaining. However, he does not analyze anticipatory reactions, but instead models those situations when Congress faces an actual legal decision. In a similar vein, newer studies on the U.S. Supreme Court assess the reverse effect and analyze to what extent congressional interests constrain judges (see e.g. Segal, Westerland and Lindquist, 2011). Hence, the mentioned studies are biased towards active judicial involvement, but autolimitation is the idea that an implicit legal threat constantly exists. Thus, while the outlined studies contribute to an understanding of legislative self-restraint, they do not account for the influence of the mere existence of the court.

Therefore, we still lack a general understanding of legislative self-restraint in the shadow of constitutional courts. However, in a more recent study, Manow and Burkhart (2007) transfer the concept of autolimitation from a judicial model presented by Vanberg (1998) to legislative bargaining in political systems with two chambers. They address the puzzle, frequently debated among scholars, that divided government leads to gridlock and conflict among all actors involved.³ However, such gridlock is not observed empirically (Manow and Burkhart, 2007, 168). Instead, Manow and Burkhart (2007) find that when there is a deep division between chambers the federal government will moderate its bills to account for the opposition's interest in the second chamber. Fortunato, König and Proksch (2013) present a more nuanced argument stating that autolimitation will not occur until mediation between both chambers is necessary and conflict resolution procedures will then be used by the governments to overcome uncertain with regard to

³ Divided government is defined as "one party has a majority in parliament while the other controls the second chamber" by Manow and Burkhart (2007, 167).

the policy preferences of the second chamber. One way or the other, assuming that autolimitation has comparable effects in the interaction between the legislature and the court, a divide between both branches should lead the former to account for the interests of the latter.

3 Theoretical Approach & Research Design

In this section I briefly outline a theoretical approach to autolimitation. These considerations allow for an understanding of why legal signals are a plausible observable implication of autolimitation.⁴ I then embed expectations in a research design which I empirically assess in the next section.

3.1 Theoretical Approach: The Second Face of Legal Power

The idea of autolimitation is that the parliamentary majority (P) proposes a different policy (p) in the presence of the constitutional court (C), than P would take in the absence of C . This is because P fears that C invalidates p . In this respect, constitutional courts are able to exert influence even when not explicitly taking decisions. This influence originates from the court's power to invalidate any law presented to the judges. In systems with constitutional review, only the constitutional court is empowered to invalidate laws (Kelsen 2008 [1931]). This mirrors what Hamilton (1788) describes as the "second face of power" in Federalists No. 73:

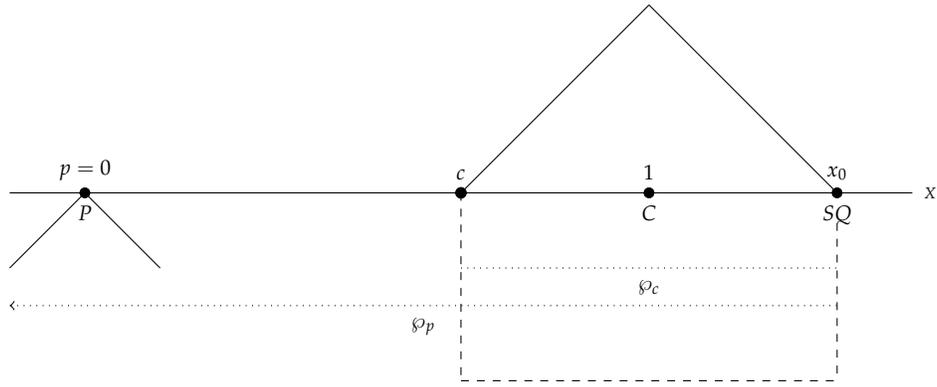
When men, engaged in unjustifiable pursuits, are aware that obstructions may come from a quarter which they cannot control, they will often be restrained by the bare apprehension of opposition, from doing what they would with eagerness rush into, if no such external impediments were to be feared.

Therefore, when proposing a policy, a rational legislative majority must account for the potential involvement of the court and its power to invalidate p . This is comparable to the effect of the threat of a presidential veto on any legislation passed by the U.S. Congress (Cameron and Elmes, 1994; Cameron, 2000). Therefore, I modify the veto bargaining model designed by Cameron (2000) to explain how autolimitation works.

In its most simple form, two actors are necessary for autolimitation to occur: the parliamentary majority (P) and the constitutional court (C). Both have individual policy preferences in an unidimensional policy space (X). The game begins with the parliamentary majority making a

⁴ Considerations presented here are strictly limited to legal signals but built on a more complex model that has been presented at the conferences of the European Political Science Association and the Midwest Political Science Association earlier (see Engst, 2014).

Figure 1: Autolimitation in a Spatial Model



Adaptation of Cameron (2000, 90) with modifications to fit constitutional courts.

P = Parliamentary majority with ideal point p ; C = Constitutional Court with utility equivalent point c ; SQ = Status Quo with active policy x_0 ; φ_p and φ_c = Parliaments and courts preferred-to-set.

policy proposal (p) to change the existing status quo (SQ) in the policy space. I assume for now that the court moves second and can either accept (p) or hold it unconstitutional, returning to the original status quo. I further assume that the parliamentary majority wants its policy to prevail. This is why P anticipates the court's reaction beforehand, making its proposal court-proof. Each actor receives benefits from the policy in effect (x_i) after the court has moved. Hence, the individual payoff results from the utility the government or the court has from the final policy.

I assume that the individual utility functions are linear, symmetric, and single peaked. Hence, the government and the court each have one preferred policy. Every policy further away from this *ideal point* is less preferred, whereby the utility of the policy decreases symmetrically from the ideal point (McCarty and Meirowitz, 2006, 22). For example, one might have a particular interest in a certain amount of social welfare expenditures, but everything below and above this amount is of less interest.

Figure 1 summarizes the design of the model. The solid horizontal line is the policy space (X). P and C are the ideal points of the parliamentary majority and the court. The status quo (SQ) is equivalent to the policy effective prior to the interaction (x_0) of P and C . The triangles are the utility functions originating from an actor's ideal point. The utility of any policy is:

$$U(x) = -|x|$$

for the parliamentary majority. If p is the preferred policy of the government, the government derives less utility from every policy that is further away.

The court's utility function is equivalent, but originates from the court's ideal point C . Assuming symmetry, there is one policy x' for every policy x which is *utility equivalent* to the court. Hence, the court prefers every policy from the right of its ideal point that is closer than x_0 . Moreover, it will accept every policy to the left of its ideal point that is equivalent in distance to the accepted policy from the right. Thus, if the court seeks a policy closer than x_0 , every point in the policy space X limited by the dashed square is similarly acceptable. To illustrate this more accurately, I rescaled the court's utility function (following Cameron, 2000) so that the court's maximal equivalent points c and x_0 have a zero utility. Hence, the utility equivalent point c and x_0 mirror each other, while all points in between have a higher utility, leading to:

$$U(x; x_0, c) = \frac{|x_0 - c| - |c + x_0 - 2x|}{2}$$

for the court, where $c = 2C - x_0$. In what follows I will assume a spatial configuration where the ideal point of P is set to $p = 0$ and $x_0 > 0$. This is not problematic, as situations to the left of p are just mirror images of those to the right of p .

What is each actor's best strategy assuming complete and perfect information?⁵ The parliamentary majority would like to propose a policy close to its ideal point, conditional on acceptance of this policy by the constitutional court. Therefore, P in *Figure 1* moves the SQ to the left, as each point on its *preferred-to-set*, highlighted by the dotted horizontal line \wp_p , has a higher utility for P . If P were unconstrained, it would propose p . However, the threat that C has the power to invalidate p leads to an anticipation of C 's interest by P . C 's preferred-to-set (\wp_c) runs only until its utility equivalent point c . Therefore, P will autolimit itself, proposing the new policy at c . Hence, $\wp_p \cap \wp_c$ is the win-set - "the set of outcomes that can defeat the status quo" (Tsebelis, 2002, 21) of the parliamentary majority and the court.⁶ Therefore, autolimitation is characterized by the

⁵ A strategy is an "action to be taken [by a player, B.E.] in each interaction as a function of what happened in previous stages" (McCarty and Meirowitz, 2006, 90).

⁶ These basic considerations would allow for further assessment of the proposal by P under varying arrangements of actors' preferences. Doing so would lead to the conclusion that only the scenario depicted here will result in autolimitation. The other solutions to varying configurations are available by request.

P 's policy proposal $x_i = c$ if $p < c < x_0$. The court will respond accordingly with:

$$C(x_i) = \begin{cases} \text{constitutional if } x \in \wp_c \\ \text{unconstitutional otherwise} \end{cases}$$

This general scenario assumes complete and perfect information, which is a strong and unrealistic assumption. Therefore, it is necessary to include private information which will illustrate the relevance of legal signals for P to approximate c .

Private information means that "agents do not know the payoffs of the other players" (McCarty and Meirowitz, 2006, 151). This means that the parliamentary majority has no information about the policy preference of the court. To model, such situations game theorists suggest the *Harsanyi maneuver*. It states that in a game Nature moves first by drawing the utility functions of the players from a probability distribution. Every player knows this distribution and can include it in its strategic considerations (McCarty and Meirowitz, 2006, 151).

Transferring the Harsanyi maneuver to the autolimitation model would mean that each judge can be the judge who regards p as unconstitutional. A judge has a probability π of being the critical judge. The probability across all judges sums up to one. Prior to the game, Nature picks the critical judge from the distribution $f(\pi)$. While the parliamentary majority is not aware of the critical member, it knows the drawing probabilities and can include these in its strategic considerations (comparable to Cameron, 2000, 100). One can denote the lowest policy equivalent point of the decisive judge as \underline{c} and the highest as \bar{c} . In this model, I assume continuous probability distributions over the intervals $[\underline{c}, \bar{c}]$. Instead of knowing c , the parliamentary majority can only anticipate that c is somewhere in the interval $[\underline{c}, \bar{c}]$. A rationally acting parliamentary majority has an interest in keeping $[\underline{c}, \bar{c}]$ as small as possible. In this regard, legal signals become an important observable implications of autolimitation. Assuming legal signals are interpretations of the court's future behavior, these interpretations will allow P to update its beliefs about the range of $[\underline{c}, \bar{c}]$. Afterwards P will propose p as close as necessary to C based on its belief. Hence, one will observe a policy shift in the original planned bill in the spatial direction of the court (as illustrated in Figure 1). Therefore, when legal signals are present they reveal information about the interests of the true c and encourage policy shift towards the court's ideal point. This is in line with the

expectation of studies from the existing literature. Such a policy shift will be more likely in the presence of legal signals than in the absence of these signals.

3.2 Research Design: Autolimitation in a Causal Inference Framework

In accordance with the theoretical approach the research design must allow for an assessment of policy shifts in the direction of the ideal point of the constitutional court as a result of a bill's exposure to a legal signal.

A challenge is that autolimitation implies that self-restraint should already occur when ministerial clerks draft a bill. Assessing this confidential stage is rather impossible and is a limitation of this study. However, focusing on the legislature instead is useful for two reasons. First, according to the definition of autolimitation, the legislative majority restrains itself. The case studies cited above confirm the focus on the legislature, and the theoretical approach is designed towards this arena. Second, bills presented to the legislature are discussed in committees which themselves can hear experts comparable to ministerial clerks. Hence, new issues can arise. If self-restraint still occurs in the committee stage, it is an even more conservative measure of autolimitation assuming that bills should have been screened before.

This is why I will focus on legislative committees when assessing autolimitation. In an ideal experiment, one would introduce similar bills to committees and randomly assign hearings in which experts raise constitutional concerns to half of the committees. In the other half, no hearings are held. Afterwards, one would compare amendments in final committee reports to assess whether legal signals led to a policy shift towards the ideal point of the constitutional court. Such an experiment is not feasible, which is why I rely on observational data. However, the analysis should mirror the outlined experiment as close as possible. The research design for such an experiment can be written in potential outcomes notation (Rubin, 1974). Accordingly, there is a legal signal (L), which is the treatment that is either present ($L = 1$) or absent ($L = 0$). Furthermore, let Y_i be the potential outcome, which is the position of a bill (i) in relation to the court. Each bill has potential outcomes in the two time periods. Once before a legal signal does (not) appears (t) and once after a legal signal was (not) discussed ($t + 1$) in committee. Hence, depending on the presence or absence of a legal signal, there are two outcomes for each bill in the two time periods. These are either the policy position of the bill prior to the legal signal ($Y_{i,t}^{L=1}$) and the policy position

of the bill after the legal signal ($Y_{i;t+1}^{L=1}$), or the policy position of the bill not discussed under the influence of a legal signal at time t ($Y_{i;t}^{L=0}$) and the policy position of the bill not discussed under the influence of legal signal at time $t + 1$ ($Y_{i;t+1}^{L=0}$). Comparing the strength of the policy shift of a bill i under treatment and control in both time periods reveals the causal effect of legal signals on policy shift:

$$Y_i = (Y_{i;t+1}^{L=1} - Y_{i;t}^{L=1}) - (Y_{i;t+1}^{L=0} - Y_{i;t}^{L=0})$$

However, in the outlined setting, one faces the fundamental problem of causality (see Imbens and Rubin, 2010, Ch.1), which states that of the four potential outcomes for each bill, only two outcomes are actually realized, while the other two outcomes are counterfactual. One cannot observe the two states of the world ($L = 1$ and $L = 0$) for the same bill. Therefore, one has to compare treated bills ($Y^{L=1}$) to control bills (with $Y^{L=0}$). The difference in strength of the policy shift between the treated and the control bills in both time periods is the treatment effect. This difference-in-differences (*DiD*) is the quantity of interest that has to be estimated:

$$DiD = (Y_{t+1}^{L=1} - Y_t^{L=1}) - (Y_{t+1}^{L=0} - Y_t^{L=0})$$

4 Autolimitation in the German Bundestag

4.1 Dataset & Case Selection

To study autolimitation, I rely on judicial-legislative interaction in Germany. The *German Federal Constitutional Court* (GFCC) is the archetypal constitutional court and is a direct emulation of the classic writings of Hans Kelsen (2008 [1931]). Moreover, this court often serves as the role model for newly established democracies. Eighteen constitutional courts in Europe (author's update of Hönnige 2008, 526) and other courts all over the world mirror major institutional features of the German court. Hence, the court is a typical case suitable for general assessments. This is also why it is frequently included in the scarce studies of constitutional courts in Europe. Therefore, there is some prior evidence of the GFCC playing a political role in German society.

To compare the differences between those bills that are debated under the influence of legal signals to those bills that are debated in the absence of these signals, I compile the following dataset: I randomly draw ten percent of bills reaching the committee stage in the German Bundestag

during the years 1990 to 2005 (legislative terms 12 to 15). The population of 2,150 bills that match this criterion are taken from the Dataset on the German Federal Legislature (*GESTA*) collected by Burkhart (2008). The final sample consists of $N = 215$ bills, of which $n_l = 39$ were debated under the influence of legal signals. I collected the full text of all drafts of the 215 bills introduced to the *Bundestag* and all 215 versions of the same bills after leaving the leading legislative committee. In addition I collected the full text of all 78 laws that were referred to the GFCC between 1990 to 2005 but upheld by the court. These 508 documents are used to estimate the policy shift. Moreover, I collected original information from the report of the primary committee and added a number of variables to control for alternative explanations of policy shift. The next section outlines the precise definition of what is considered as a “legal signal” and presents the measures for all variables, including the alternative explanations.

4.2 Measurement

Treatment Variable: Legal Signal. To assess the effect of legal signals on policy shift it is necessary to “precisely articulate the intervention that would have made the alternative potential outcome the realized one” (Imbens and Rubin, 2010, 4; Ch. 1). Following the research design, I code legal signals based on statements in committee reports. A legal signal is defined as an explicitly-raised constitutional objection prior to the final vote in a committee. Therefore, I search the reports for the phrase “*verfassungsrechtliche Bedenken*” (constitutional objection) and code an indicator variable taking the value of 1 in the presence of these objections and 0 otherwise.⁷ Further assessments reveal that these objections coincide with the hearing of experts (correlation $r = .4$) which often reference former court decisions. Hence, the measure captures hearings by experts like those discussed by Landfried (1992). Constitutional objections are raised in $n_l = 39$ reports of the $N = 215$ analyzed reports. Bills discussed under the influence of objections are considered treated bills, while all other bills are control bills.

Dependent Variable: Policy Shift. Two steps are necessary to measure policy shift. First, one must place the constitutional court in a policy space. Second, a bill that is sent to a committee (at time t) and the same bill leaving the committee (at time $t + 1$) must to be placed in the same policy space. The difference between the two positions of the bill is the policy shift.

⁷ I searched for the terms jointly and separately to account for synonyms of either one of the terms. If only a synonym was used but the meaning was the same I coded the signal 1 as well.

I apply a text analysis approach to scale (1) the court, (2) the bill at time t , and (3) the bill at time $t + 1$. The major challenge is to scale the court and the bills on the same latent dimension. It is not necessary to precisely specify the latent dimension. Instead, it is only necessary to evaluate shifts on the same dimension. Therefore, the most important aspect is to ensure that the documents used to estimate each of the three outlined positions are comparable. The language used in the documents needs to have similar characteristics, applying the same style and vocabulary.

It is plausible that the style and vocabulary in written laws is comparable across laws as they follow the same characteristics. This is particularly true for Germany, where the Federal Ministry of Justice and Consumer Protection has published a handbook on how to phrase laws and suggesting the kind of legal language and style that should be used.⁸ Hence, for the draft of a bill (t) and the version of that bill leaving the committee ($t + 1$), I use the text of that particular bill at each stage of the process. To measure the (mean) position of the constitutional court using the same type of text, I can draw on the legal procedures: in every legislative term the constitutional court is asked to review whether laws are in accordance with the German *Basic Law*. The court follows a two-step procedure when reviewing laws. First, the court assess whether a plaintiff has a legitimate claim when referring a law to the court. Second, once the court confirms the legitimacy of a referral, the judges decide whether a complaint is justified. At this stage the judges assess whether a referred law is in accordance with the constitution. If the law is in accordance with the constitution they will not justify a plaintiff's referral. Instead, they will uphold the law. Therefore, assuming that the law which is in accordance with the constitution is supported by the judges, I am able to estimate the court's position using that law. Hence, I use the same type of text to estimate the court's position as I use to estimate the position of the bills at time t and time $t + 1$. To do so, I obtain the text of all laws legitimately referred to the court in eventually "not" justified proceedings.

Since the style of all collected texts is similar, I use WordFish to estimate scores for each document (see Slapin and Proksch, 2008).⁹ The position of the court is then calculated as the mean of the

⁸ The so called *Handbuch der Rechtsförmlichkeiten* is currently in its third edition and is available online: <http://hdr.bmj.de/vorwort.html> [last access: 02/26/2016].

⁹ A rigorous approach was used to prepare the documents: First, I obtained the text of all bills at t and $t + 1$ in my sample as well as all laws justified by the German Federal Constitutional Court between 1990 to 2005. Second, I formatted all PDFs which are in German. The documents were shorten to only include the text of a respective bill or law and converted to UTF-8 .txt-files. Afterwards each file was checked manually including a semi-automatic spell check. Third, I wrote a R script to exclude special characters, numbers, and stop-words (stop-words were excluded using the `tm`-package). Furthermore words were stemmed using the `SnowballC`-package. In addition, each estimation shown below was done with and without stop-words as well as with stemmed words and without stemmed words. In line with findings by Lowe and Benoit (2013) this caused no significant difference. The R script was

position of all laws upheld by the court during a respective legislative term. Using the mean position of the court it is possible to calculate the direction of a policy shift for each legislative proceeding simply as $p_{shift} = |p_C - p_{t+1}| - |p_C - p_t|$, where p_C is the position of the court and p_t / p_{t+1} are the positions of the bill at t or $t + 1$. If p_{shift} is positive, the committee shifted the proposed bill away from the court's position. If p_{shift} is negative, the committee shifted the proposed bill towards the court's position, and if p_{shift} is zero, no change occurred.

Control Variable: Approval. Manow and Burkhart (2007) find empirical proof for package-deals in situations under divided government in Germany.¹⁰ This means that the majority will include interests of the minority in a bill to ensure its passage on the floor. Under these situations, the majority will strategically involve the minority in the *Bundestag* to seek compromise prior to a bill reaching the second chamber. Hence, a bill might be modified not to suit the court but to prevent conflict in the second chamber. This modification should be more likely when the second chamber must vote on a bill. In Germany, consent bills (*Zustimmungsgesetze*) are those bills that have to be passed by both parliamentary chambers, while objection bills (*Einspruchsgesetze*) are bills voted on by the *Bundestag* only. Therefore, I control for the type of bill using an indicator variable taking the value of 1 when approval is required and 0 otherwise.

Control Var.: Mediation. The second chamber has the right to express disagreement with an objection bill. To raise this objection, the majority of the second chamber must refer the bill to a mediation committee composed of members from each chamber. In addition, the *Bundestag* can invoke this committee to solve a conflict with the second chamber. It is fair to argue that legislators are well-informed of which bills will be referred for mediation. Thus, committees might modify bills beforehand to strengthen their position for negotiations. This is an extension of the aforementioned argument insofar as mediation characterizes the conflict over a bill. Hence, I code a dummy variable taking the value of 1 when a bill is referred for mediation and 0 otherwise.

Control Var.: Opp. Influence. Independent of the type of bill or the necessity for mediation, the strength of the opposition itself might encourage committees to shift a policy. This is especially important because the opposition in the *Bundestag* can dominate the second chamber. Therefore, I

written in a way that if a conversion problem occurred the text would be easily identifiable for manual correction. Finally, a self-written loop was used to compute the word frequency matrix for the WordFish estimation, allowing for maximum control of the process.

¹⁰ Divided government is defined as "one party has a majority in parliament while the other controls the second chamber" (Manow and Burkhart, 2007, 167)

Table 1: Control Variables Used to Assess the Effect of Legal Signals on Policy Shift

Variable	Complete sample				No legal signal				Legal signal						
	Range		Median	Mean	SD	Range		Median	Mean	SD	Range		Median	Mean	SD
Approval	0	1	1	0.57	0.50	0	1	1	0.57	0.50	0	1	1	0.54	0.51
Mediation	0	1	0	0.17	0.37	0	1	0	0.14	0.35	0	1	0	0.28	0.46
Opp. influence	0.23	0.57	0.52	0.49	0.07	0.23	0.57	0.52	0.49	0.08	0.41	0.57	0.52	0.51	0.06
Legal Topic	0	1	0	0.14	0.35	0	1	0	0.14	0.35	0	1	0	0.13	0.34

The correlation matrix of the variables appears in Appendix 1, and a full balance assessment, including a balance plot, appears in Appendix 2.

include a variable measuring the vote share of the parties which are in opposition to the Bundestag in the second chamber.

Control Var.: Legal Topic. It is plausible that bills designed to address a legal topic - like bills to reform the criminal law (e.g. GESTA No. 2112, 3854, 4576) - are discussed and changed with regard to constitutional rights. Therefore, I include an indicator variable based on the policy field coded in the GESTA dataset. The indicator variable takes the value of 1 if a bill is designed to address a legal topic and 0 otherwise.

Table 1 summarizes measures of central tendency and dispersion of each of the control variables. The last two blocks show these measures separated by treatment status. Notably, there are no significant differences between treated and control groups with regard to any variable. Hence, all characteristics are equally distributed between both groups. Therefore, the data fulfills the requirements of an ideal randomized experiment, where the treatment assignment mechanism ensures that the covariates are balanced (Hernán and Robins, N.d., Ch.3). In the next section I will introduce the methods used to assess the effect of legal signals on policy shift.¹¹

4.3 Methods

To assess the effect of legal signals on policy shift, I focus on three identification strategies.

First, I compute a logistic regression. Therefore, I code an outcome variable taking the value of 1 when a policy shift toward the court occurs between t and $t + 1$. The model assumes that a policy shift occurs with a certain probability and does not occur with a certain inverse probability (see King 1989 and Appendix 3 for more details).

Second, I estimate the treatment effect on the general policy shift among bills discussed under the influence of constitutional objections and those not discussed under these objections. I apply

¹¹ Appendix 2 outlines further balance assessments and highlights that matching can account for a small, but not significant, imbalance of the variables “mediation” and “oppositional influence.”

inverse propensity score weighting to estimate the treatment effect.¹² The purpose of weighting is to identify the plain treatment effect by ensuring that there is no association between the control variables and the treatment (Hernán and Robins, N.d., Ch. 12). The average treatment effect is thus estimated using:

$$E\left[\frac{Y^{L=1}}{Pr(L=1|X)}\right] - E\left[\frac{Y^{L=0}}{1 - Pr(L=1|X)}\right]$$

where Y is the outcome among the treated ($Y^{L=1}$) and control units ($Y^{L=0}$), and $Pr(L=1|X)$ is the propensity score, conditioning on the control variables.

Finally, the outcome variable closest to the ideal research design is the absolute distance of a bill from the court's ideal point at each point in time. The difference in the spatial shifts between the treated bills and the control bills over time is the quantity of interest. This quantity (δ) can be estimated using the difference-in-differences (DiD) approach (see Card and Krueger 1994 for a classic application):

$$\delta = E[Y_{i,t+1}^{L=1}] - E[Y_{i,t}^{L=1}] - (E[Y_{i,t+1}^{L=0}] - E[Y_{i,t}^{L=0}])$$

where L is the legal signal that is either present (1) or absent (0) and t is the time at which a bill is introduced or voted on by a committee ($t + 1$). δ can be estimated using a linear parametric model:

$$Y = \alpha + \beta_1 L + \beta_2 T + \delta(L \times T) + \beta_3 X + \epsilon$$

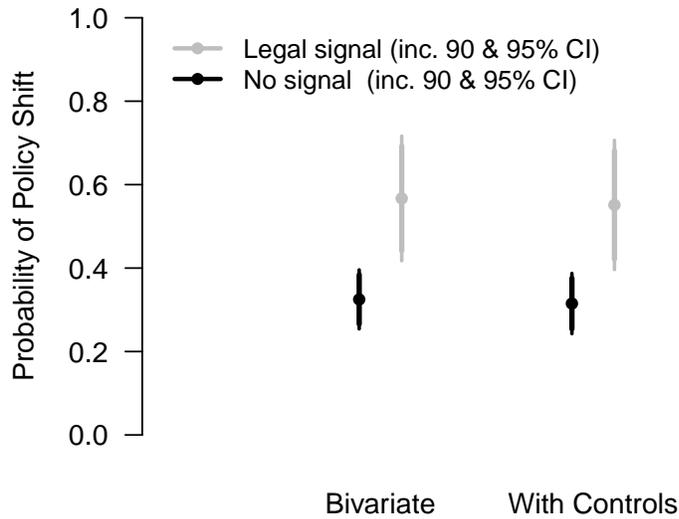
where L takes the value of 1 if a legal signal is present, T takes the value of 1 when a bill is passed at the time $t + 1$, and X is a vector of covariates. The coefficient δ is the DiD estimator.

4.4 Results

Figure 2 summarizes the effect of legal signals on policy shifts by computing a logistic regression on a binary outcome variable. The figure plots the mean predicted probabilities of a policy shift for treated and control bills from a bivariate logistic regression and a regression including all control variables mentioned in Table 2 and also used in the later assessments. Details on the logistic regressions are given in Appendix 3. As Figure 2 illustrates, the probability of policy shift in direction of the court in the absence of a legal signal (black estimates) is about 30 percent

¹² The propensity score is the probability of receiving the treatment given the covariates for each unit (Hernán and Robins, N.d., Ch.15).

Figure 2: Predicted Probability of Policy Shift in Direction of the Court Conditional on Legal Signals (inc. 90% CI & 95% CI)

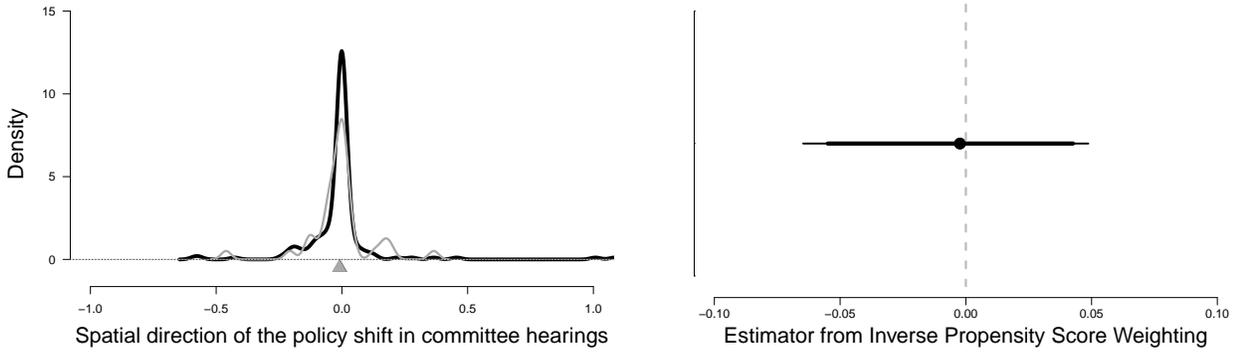


$N = 215$ bills, of which ($n_l =$) 39 were negotiated under the influence of a legal signal; 1000 simulations from the logistic regression given in Appendix 3. The treatment variable is set to 0 and to 1, while the other variables are held constant at their means.

in the bivariate model as well as in the complete model. Moreover, the probability significantly increases in the presence of a legal signal (gray estimates). The significant first differences of the probability of a policy shift between control bills and treated bills in the complete model is about 23 percentage points ($sd = 9$). These preliminary findings suggest that policy shifts in the direction of the court might occur in the absence of a legal signal but are significantly more likely in the presence of such a signal occurring in every other legislative proceeding. Hence, the next step is to understand how strong the shifts are in the presence of a legal signal.

Figure 3 summarizes the estimated effect of constitutional concerns raised in committee reports using inverse propensity score weighting. The left panel of Figure 3 compares the general policy shift between time t and time $t + 1$ among treated (gray line) and control bills (black line). The graph highlights that the mean policy shift towards the court is very low among treated bills ($\overline{Y^{L=1}} = -.01$) compared to the controls ($\overline{Y^{L=0}} = -.008$). Hence, under the influence of constitutional concerns, the policy shift in the direction of the court is marginal. The right panel of Figure 3 shows the estimate from inverse propensity score weighting. The estimate is insignificant but slightly negative (-.002). Despite this insignificance, the finding reveals important insights in regards to autolimitation when compared to the logistic regression in Figure 2.

Figure 3: Inverse Propensity Score Weighting to Estimate Policy Shift under the Influence of a Legal Signal

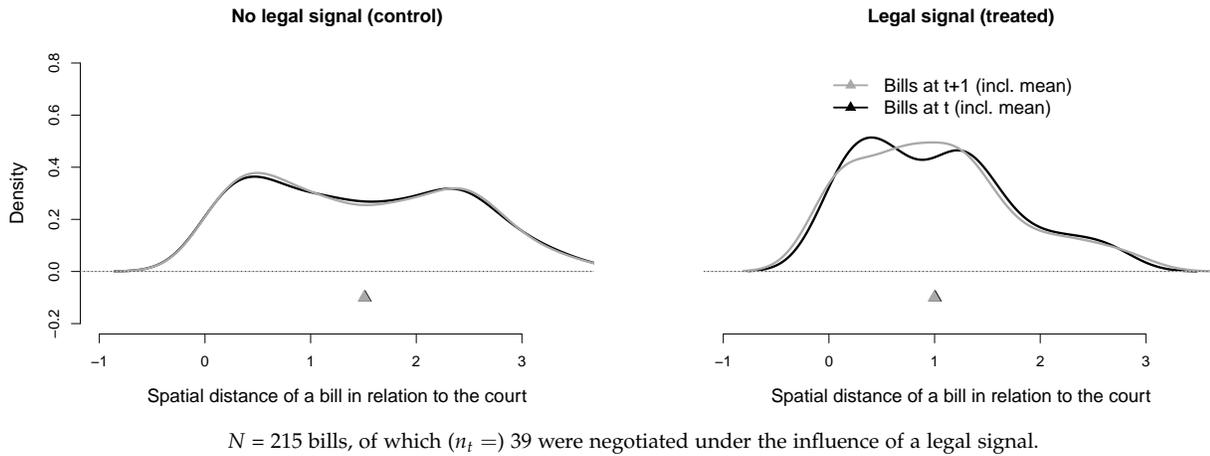


$N = 215$ bills of which ($n_l =$) 39 were negotiated under the influence of a legal signal. The left panel of this figure plots the policy shift among treated (colored in black) and control bills (colored in gray) from time t to time $t + 1$. The right panel is the estimated policy shift due to a legal signal using inverse propensity score weighting. Details on this approach can be found in Appendix 2.

Although the shifts within committees are very small, committees seem to be aware of those bills that are already designed under the influence of autolimitation. Figure 2 reveals that a movement towards the court is generally more likely among bills exposed to a legal signal. Compared to the findings from Figure 3 it seems plausible that the shifts in committees are only marginal when the bills that are exposed to a legal signal are already placed closer to the court to begin with than those bills not exposed to a legal signal. This would imply that autolimitation occurs prior to the legislative process within ministries. In other words, legal signals are an indicator of autolimitation, highlighting that respective bills were already designed under the influence of self-restriction. If this assumption is true then we should observe significant differences in the spatial placement between treated and control bills in general, but not within one group of bills. Hence, the difference-in-differences estimation should only highlight a general treatment effect while the estimator itself will be insignificant.

Figure 4 maps the distribution of bills over the spatial distance from the court at time t (black line) and at time $t + 1$ (gray line). The graphs are separated by the (non) occurrence of legal signals. The black and gray triangles point to the mean position of the respective distributions. The plot supports the intuition that the effect of a legal signal on policy shift is marginal, but that a first draft of a bill is already designed to account for legal concerns. The mean among the control bills moves slightly but insignificantly towards the court in the two time periods ($\overline{Y}_t^{L=0} = 1.515$; $\overline{Y}_{t+1}^{L=0} = 1.507$). This is true for the mean among treated bills as well ($\overline{Y}_t^{L=1} = 1.006$; $\overline{Y}_{t+1}^{L=1} = .996$). However, t-tests show that the differences between treated bills and control bills are significant

Figure 4: Distribution of (Non) Treated Bills Across Spatial Distances From the Court at Different Points in Time



within the two time periods. In other words, bills exposed to a legal signal in a committee hearing are placed significantly closer to the court to begin with than bills not exposed to a legal signal. Therefore, bills for which representatives will discuss possible legal obstacles are referred to the committee after accounting for possible legal challenges. This is strong deviance of autolimitation occurring in general, but prior to the legislative process.

Finally, Table 2 summarizes two models to estimate the difference-in-differences. Model 1 is an empty model and Model 2 is the complete model including all control variables and dummy variables for the legislative terms (with the fifteenth term being the reference category).

The estimator for legal signals is the difference between treated and control bills at time t , prior to the exposure to a legal signal. Looking solely at this estimator confirms conclusions drawn with regard to Figure 4. Bills that are exposed to a signal are on average placed closer to the court at t than those bills not exposed to a signal. The estimate is significant, but the effect size decreases slightly from Model 1 to Model 2. Moreover, alternative explanations are significant as well, with the possible oppositional influence in the second chamber strongly affecting policy shifts in direction of the court. This is an important finding. It supports theoretical considerations by Vanberg (2001), who argues in favor of a second level of autolimitation. He outlines that the governing majority will cooperate with the opposition to prevent a referral of a law to the constitutional court for review. The findings from Table 2 show that the stronger the opposition in the second chamber in comparison to the party constellation in the *Bundestag*, the stronger

Table 2: Ordinary Least Squares Estimation of Difference-in-Differences

	Absolute spatial distance between a bill and the court	
	(1)	(2)
Legal signal	-0.509*** (0.175)	-0.388** (0.162)
Time (after committee vote)	-0.009 (0.105)	-0.009 (0.096)
Legal Signal \times Time	-0.001 (0.247)	-0.001 (0.226)
Bill Required 2nd Chamber Approval		-0.234** (0.090)
Mediation Committee		-0.651*** (0.120)
Oppositional Influence		-2.976** (1.385)
Legal Topic		-0.986*** (0.129)
12 Leg. term		-0.157 (0.133)
13 Leg. term		-0.255* (0.132)
14 Leg. term		-0.463* (0.253)
Constant	1.515*** (0.074)	3.581*** (0.767)
N	215	215
R ²	0.038	0.208
Adjusted R ²	0.032	0.189

*p < .1; **p < .05; ***p < .01

15 legislative term is the reference category for the legislative terms.

the policy shift in direction of the court. Whether this shift is the result of cooperation with the opposition or accounting for a possible constitutional review initiated by the opposition is a question left for further research. However, the finding strongly supports a second form of autolimitation, namely to circumvent the court by preventing a referral through either accounting for the court's position or strategic cooperation with the political opposition as a possible plaintiff.

Nevertheless, based on all assessments mentioned above, it is not surprising that the estimate of the time is insignificant but negative (-.009). Therefore, time has no significant influence on a bill's placement per se. As time progresses this will lead to only marginal changes in the direction of the court, independent of whether a legal signal occurs or not. This has implications when interpreting the difference-in-differences estimator. This estimator is the interaction term between the legal signal and time. The estimate is not significant and very small (-.001). Accordingly, bills negotiated under the influence of a legal signal are not significantly shifted towards the court, compared to bills not exposed to the signal. Therefore, the difference-in-differences estimation supports to reconsider the theoretical expectations. Legal signals in committees will

only lead to minor, insignificant changes towards the court's position. However, there is strong evidence of autolimitation prior to the legislative process and for a second form of autolimitation accounting for a hostile second chamber.

The finding that bills exposed to legal signals are systematically placed closer to the court than those bills not exposed to legal signals (compare Figure 2 and Figure 4) is a strong indicator that bureaucrats in ministries account for judicial influence prior to the legislative process and before presenting a bill to the floor. Moreover, that bills which need second chamber approval, that the opposition's strength in the second chamber, and that the involvement of the mediation committee all leads to bills positioned closer to the court's ideal point suggests that a second form of autolimitation exists (compare Table 2).

In sum, while this study cannot confirm that a legal signal will lead to strategic self-restraint on the part of a legislative committee, it can confirm that bills which draw legal attention will already be the product of some ministerial self-censoring. The oppositional strength and the involvement of the second chamber as a possible plaintiff before the Constitutional Court will lead legislative committees to orient bills towards the ideological position of the Court instead of proposing their most-preferred policy positions.

5 Conclusion

Thomas Opperman, a well-known member of the German parliament, said that "every constitutional body has to be well-aware of its constitutional responsibilities *and* limits" (author's emphasis and translation) when criticizing the recent political activism of the German Federal Constitutional Court. In an article in *Der Spiegel* entitled "Politicians in Gowns" (Neukirch and Pfister, 2009), he argues that the judges increasingly act beyond their granted authority. Besides Oppermann, other politicians and even the well-known law professor Bernhard Schlink criticize decisions by the Court as not being based on legal considerations anymore but, rather, on the individual views of the judges. This has been a common criticism in recent years and illustrates the willingness of political actors to publicly challenge the court. However, to what extent are political actors actually willing to preserve their agenda when anticipating that the judges have different interests? What is the "silent," indirect power of courts on legislation?

In this study, I applied text analysis methods to assess the causal effect of legal signals discussed

in legislative committees on policy shifts in the direction of the ideal point of the German Federal Constitutional Court. The findings support that a policy shift occurs when committee members or invited experts raise legal objections. A rough estimation using a logistic regression produces significant results confirming the hypothesized effect in general. To account for the ideal design of this study, I use more nuanced methods to show that legal signals will systematically occur among bills introduced under the influence of self-censoring. In addition, bills shift in direction of the Constitutional Court when the opposition in the first chamber has a strong influence in the second chamber. In this regard, this study shows that a mechanism like autolimitation exists. Results highlight the role of the pre-parliamentary process and the second chamber when assessing legislative bargaining in the shadow of high courts.

These findings encourage further research focusing on pre-parliamentary processes and legislative bargaining when a lower chamber faces a second chamber composed of a strong opposition bloc. For now, this work supports the assumption that legislators are aware of constitutional objections and that these objections influence their behavior.

Appendix

Appendix 1: Correlation Matrix

Except for a high correlation among the two control variables indicating the 14th legislative term and the size of the opposition in the second chamber, the major control variables are not correlated. Excluding or including the insignificant variable measuring the size of the opposition does not change the major results. Accordingly, all variables are included in the empirical analyses.

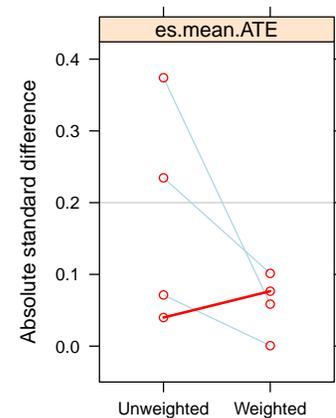
Correlation Matrix of the Control Variables and the Treatment

	Treatment	Vote BR	Legal	Opposition	Mediation	Term 12	Term 13	Term 14
Treatment	1.00	-0.03	-0.02	0.09	0.14	0.03	0.12	-0.07
Approval		1.00	-0.14	-0.02	0.06	-0.05	0.14	-0.01
Legal Topic			1.00	-0.08	-0.11	0.07	-0.07	0.02
Opp. Influence				1.00	0.07	0.28	0.37	-0.90
Mediation					1.00	0.02	-0.02	-0.08
Term 12						1.00	-0.36	-0.36
Term 13							1.00	-0.37
Term 14								1.00

Appendix 2: Balance Before and After Propensity Score Weighting

The table and the graph below are summaries of balance assessments before and after estimating the propensity score. Except for the legislative terms, I included all variables in the estimation of the propensity score. A balance assessment of the legislative terms revealed no significant difference among treated and control groups. (1) The possibility of mediation, (2) the type of the bill, (3) the composition of the second chamber, and (4) whether bills are discussed in a legal field are known before treatment, and I included these control variables in the propensity score estimation. There are no significant differences among treated and control groups of any variable. The two variables measuring the involvement of the mediation committee and the oppositional influence in the second chamber are only marginal not significantly different among treated and control groups. Estimating the propensity score equalizes the distribution of these variables among the treated and the control groups. Nevertheless, the non-existence of imbalance prior and after matching makes matching not necessary.

Independent Var.	Prior to Weighting				After Weighting			
	Treated		Control		Treated		Control	
	mean	SD	mean	SD	mean	SD	mean	SD
Approval	0.538	0.505	0.574	0.496	0.571	0.501	0.571	0.496
	$p = 0.689$				$p = 0.997$			
Mediation	0.282	0.456	0.142	0.350	0.187	0.395	0.165	0.372
	$p = 0.070$				$p = 0.729$			
Opp. Influence	0.509	0.055	0.491	0.078	0.500	0.062	0.493	0.076
	$p = 0.099$				$p = 0.539$			
Legal Topic	0.128	0.339	0.142	0.350	0.114	0.321	0.139	0.347
	$p = 0.817$				$p = 0.662$			



The plot next to the table is an effect size plot. The plot illustrates the effect of weights on the magnitude of differences between treatment and control groups on each covariate. The magnitudes are standardized by subtracting the mean of the control group from the mean of the treatment group for each respective variable, divided by the standard deviation. The plot illustrates that the effect size increased for one variable (bold line; 'legal topic') after weighting and decreases for two variables (mediation and oppositional influence). These changes can be ignored. They are only minor and insignificant changes.

Appendix 3: Logistic Regression

For initial insights I computed a logistic regression. I coded an outcome variable taking the value 1 when a policy shift toward the court occurred between t and $t + 1$. This was the case in 79 out of the 215 proceedings. The logit model assumes that a policy shift occurs with a certain probability and does not occur with a certain inverse probability (see King 1989 for more details). According to the results shown in the table below, the presence of a legal signal significantly influences policy shifts. Policy shift in direction of the court is more likely when constitutional objections are raised compared to when they are not raised.

Model DV Independent Var.	Bivariate Policy Shift		With Controls Policy Shift	
	<i>b</i>	<i>SE</i>	<i>b</i>	<i>SE</i>
Legal Signal	0.994	0.361 ***	0.972	0.371 ***
Bill Required 2nd Chamber Approval			-0.224	0.299
Mediation Committee			0.380	0.390
Oppositional Influence			0.402	2.001
Legal Topic			1.015	0.415 **
12 th Leg. term			-0.690	0.467
13 th Leg. term			0.040	0.445
14 th Leg. term			1.320	0.933
(Intercept)	-0.736	0.161 ***	-1.025	1.024
BIC	285.8351		308.2391	
Log Likelihood Final	-137.5469		-129.9517	
Percent Correctly Predicted	55.22%		55.23%	

$N = 215$; Significance levels: * $\leq .1$, ** $\leq .05$, *** $\leq .01$.

15th legislative term as reference category for the legislative terms 12, 13, and 14.

References

- Burkhart, Simone. 2008. "Deutsche Bundesgesetzgebung 1972 - 2005. GESIS Datenarchiv, Köln. ZA4569 Datenfile Version 1.0.0."
- Cameron, Charles M. 2000. *Veto Bargaining: Presidents and the Politics of Negative Power*. Cambridge: Cambridge University Press.
- Cameron, Charles M and Susan Elmes. 1994. "Sequential Veto Bargaining." p. 42.
- Card, David and Alan B. Krueger. 1994. "Minimum Wages and Employment: A Case Study of the Fast-Food industry in New Jersey and Pennsylvania." *The American Economic Review* 84(4):772–793.
- Engst, Benjamin G. 2014. "Policy Makers in Robes: Silent Judges Inducing Policy Change." *The 72nd MPSA Annual Conference* (April 3 to 6, 2014).
- Epstein, Lee, Jack Knight and Olga Shetsova. 2001. "The Role of Constitutional Courts in the Establishment and Maintenance of Democratic Systems of Government." *Law & Society Review* 35(1):117–164.
- Favoreu, Louis. 1988. The Constitutional Council and Parliament in France. In *Constitutional Review and Legislation. An International Comparison.*, ed. Christine Landfried. Baden-Baden: Nomos pp. 81–108.
- Fortunato, David, Thomas König and Sven-Oliver Proksch. 2013. "Government Agenda-Setting and Bicameral Conflict Resolution." *Political Research Quarterly* 66(4):1–14.
- Hernán, Miguel A. and James M. Robins. N.d. *Causal Inference*. Chapman & Hall / CRC.
URL: <http://www.hsph.harvard.edu/miguel-hernan/causal-inference-book/>
- Hönnige, Christoph. 2007. *Verfassungsgericht, Regierung und Opposition: Die vergleichende Analyse eines Spannungsdreiecks*. Wiesbaden: VS Verlag für Sozialwissenschaften.
- Hönnige, Christoph. 2011. "Beyond Judicialization: Why We Need More Comparative Research About Constitutional Courts." *European Political Science* 10(3):346–358.
- Imbens, Guido and Donald B. Rubin. 2010. *Causal Inference in Statistic and Social Sciences*. Unpublished Manuscript.
- Jekewitz, Jürgen. 1980. "Bundesverfassungsgericht und Gesetzgeber: Zu den Vorwirkungen von Existenz und Rechtsprechung des Bundesverfassungsgerichts in den Bereich der Gesetzgebung." *Der Staat* 19(4):535–556.
- Kelsen, Hans. 2008. [1931] *Wer soll der Hüter der Verfassung sein? Abhandlungen zur Theorie der Verfassungsgerichtsbarkeit in der pluralistischen, parlamentarischen Demokratie*. Tübingen: Mohr Siebeck.
- King, Gary. 1989. *Unifying Political Methodology: The Likelihood Theory of Statistical Inference*. Cambridge: Cambridge University Press.
- Kommers, Donald P. 1994. "The Federal Constitutional Court in the German Political System." *Comparative Political Studies* 26(4):470–491.
- Landfried, Christine. 1985. "The Impact of the German Federal Constitutional Court on Politics and Policy Output." *Government and Opposition* 20(4):522–542.
- Landfried, Christine. 1992. "Judicial Policy-Making in Germany: The federal constitutional court." *West European Politics* 15(3):50–67.
- Lowe, W. and K. Benoit. 2013. "Validating Estimates of Latent Traits from Textual Data Using Human Judgment as a Benchmark." *Political Analysis* 21(3):298–313.
- Manow, Philip and Simone Burkhart. 2007. "Legislative Self-Restraint Under Divided Government In Germany, 1976-2002." *Legislative Studies Quarterly* 32(2):167–191.

- Marks, Brian A. 2012. "[1988] A Model of Judicial Influence on Congressional Policy Making: Grove City College v. Bell." *The Journal of Law, Economics & Organization* 28(1):1–33.
- McCarty, Nolan and Adam Meirowitz. 2006. *Political Game Theory: An Introduction*. Cambridge: Cambridge University Press.
- Neukirch, Ralf and René Pfister. 2009. "Politiker in Roben." *Der Spiegel* 40:28–29.
- Rubin, Donald B. 1974. "Estimating Causal Effects of Treatments in Randomized and Nonrandomized Studies." *Journal of Educational Psychology* 66(5).
- Segal, Jeffrey A., Chad Westerland and Stefanie A. Lindquist. 2011. "Congress, the Supreme Court, and Judicial Review: Testing a Constitutional Separation of Powers Model." *American Journal of Political Science* 55(1):89–104.
- Slapin, Jonathan B and Sven-Oliver Proksch. 2008. "A scaling model for estimating time-series party positions from texts." *American Journal of Political Science* 52(3):705–722.
- Stone, Alec. 1989. Legal constraints and policy-making: the Constitutional Council and the Council of State. In *Policy-Making in France: From de Gaulle to Mitterrand*, ed. Paul Godt. New York: Printer Publishers pp. 28–41.
- Stone, Alec. 1992. "Where Judicial Politics Are Legislative Politics: The French Constitutional Council." *West European Politics* 15(3):29–49.
- Stone Sweet, Alec. 1998. "A Comment on Vanberg: Rules, Dispute Resolution, and Strategic Behavior." *Journal of Theoretical Politics* 10(3):327–338.
- Stone Sweet, Alec. 2000. *Governing with Judges: Constitutional Politics in Europe*. Oxford: Oxford University Press.
- Tsebelis, George. 2002. *Veto Player: How Political Institutions Work*. New York: Russell Sage Foundation.
- Vanberg, Georg. 1998. "Abstract Judicial Review, Legislative Bargaining, and Policy Compromise." *Journal of Theoretical Politics* 10(3):299–326.
- Vanberg, Georg. 2001. "Legislative-Judicial Relations: A Game-Theoretic Approach to Constitutional Review." *American Journal of Political Science* 45(2):346–361.