

Why Do Courts Craft Vague Decisions?

Evidence From a Comparative Study of Court Rulings in Germany and France

Sebastian Sternberg

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University of Mannheim

Motivation

The puzzle

- Judicial decision often involve the exercise of judicial review to evaluate the constitutionality of a public policy.
- Decisions not only give reasons for declaring a policy invalid, but they can also suggest implications for future policy choices.
- Sometimes, one can observe that judges outline these implications only very vaguely.
- An established line of research demonstrates that vague judicial opinions are less likely to be implemented than clear opinions.

Puzzle: Why would judges write vague decisions then?

Approach of This Paper

This paper:

- Formal model (Staton/Vanberg 2008) argues that vague language is a strategic tool of judges.
- I empirically test this model in a comparative analysis of two constitutional courts.

Findings:

- Courts strategically use vague decision language to give discretion to the better informed legislator in complex cases.
- Popular courts use decision language to pressure the government for compliance, whereas unpopular courts use it to “mask” non-compliance.

The formal model of Staton/Vanberg 2008

Challenge 1: Judicial policy uncertainty

- Judges have a *limited policy expertise* compared to other policy-makers.
- *Classical delegation problem*: Giving discretion to the legislator allows judges to hedge against their limited policymaking abilities, but also raises the possibility that legislator will use its expanded authority to promote own interests.

Challenge 2: Fear of legislative non-compliance

- Because judicial decisions are not self-enforcing, legislative compliance cannot be taken for granted.
- Governments have to pay electoral costs for evasion, but only if they get caught.

The Value of Vagueness: Hypotheses

Trade-Off Hypothesis (H1): Decision vagueness is a function of *judicial policy uncertainty* and *preference divergence*. Decision vagueness will...

- ...**increase** with judicial policy uncertainty
- ...**decrease** as judicial and policy-maker's preferences diverge.

Non-Compliance Risk Hypothesis (H2): Given a sufficient risk of legislative non-compliance...

- ...**popular** courts will go for open confrontation and write **specific** decisions to increase pressure on government
- ...**unpopular** courts will avoid open confrontation and write **vague** decisions to “hide” likely evasion from public view

Empirical Application

Case Selection: Germany and France

- Case selection: **German Federal Constitutional Court (GFCC)** and **French Conseil Constitutionnel (CC)**
- Both have similar institutional properties (right of judicial review, are regarded as policy-seekers), but have different levels of public support:
 - GFCC: one of the most popular courts world wide
 - CC: amongst the most unpopular courts in West Europe

- Staton and Vanberg (2008): “In the context of our model, a perfectly vague opinion is an opinion that [...] does not impose any specific demands”
- Computer linguistic literature: Vague language as the strategic use of vague word choices (**vague terms**) to modify the informative structure of decisions
- How to identify these vague terms?

Measuring Decision Vagueness Using Word Embeddings

1. Existing general dictionary of vague terms (LIWC): list of vague terms such as “possible, perhaps, maybe”.
 - Problem: legal language is very domain-specific.
2. Extend the general dictionary using word embeddings.
 - Word embeddings are neural networks which are able to map words into a high-dimensional geometrical space.
 - Words with a similar meaning (semantically close) are geometrically close to each other.
 - General dictionary is expanded looking at close candidates
3. Identify sentences in each decision texts containing one or more vague terms
 - DV: Proportion of sentences containing one or more vague terms in each text

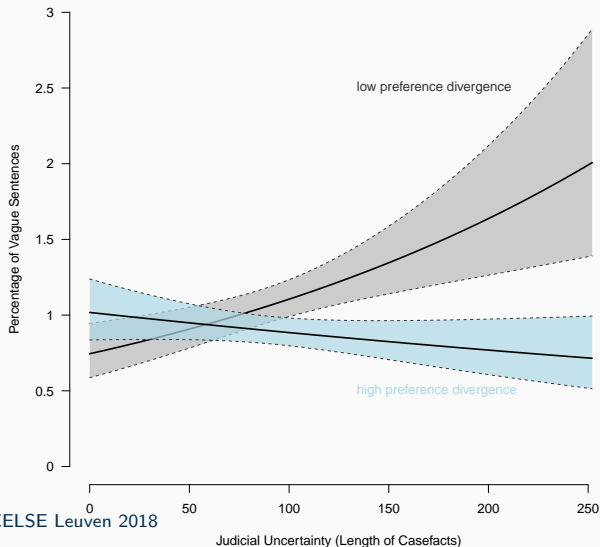
Face Validity: Vague Sentence Examples

Vague Sentences
If and how the legislator makes use of this alternative is a matter of political assessment .
It is the legislator's responsibility, in which manner it wants to remediate the existing discrimination.
The federal legislator has different options to define the police's authority to intervene within a sufficient and appropriate manner.
The legislator has a considerable wiggle room and freedom in how it fulfills its duty to protect.
The new law must assure the consistency of economic activity.
In this question, the legislator has a broad decision leeway and latitude.

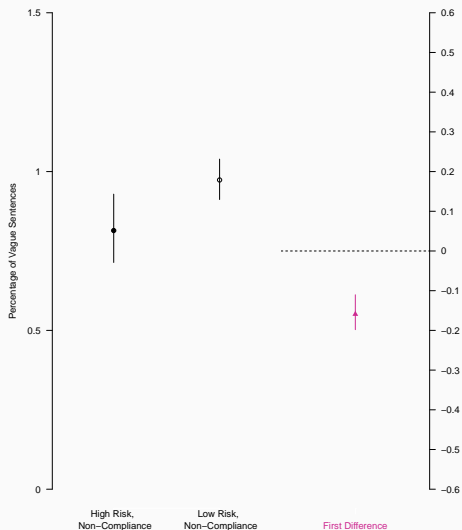
- **Preference divergence:**
 - Absolute ideological distance between court and government
- **Judicial Policy Uncertainty:**
 - Germany: Length of case facts summarizing the context of a decision
 - France: Number of legal issues raised in case
- **Risk of Non-Compliance:**
 - Germany: whether the government whose law is being challenged filed an amicus brief defending the constitutionality of the statute (=1) or not (= 0)
 - France: whether the government released a press release in advance to a decision (= 1) or not (= 0)

Results

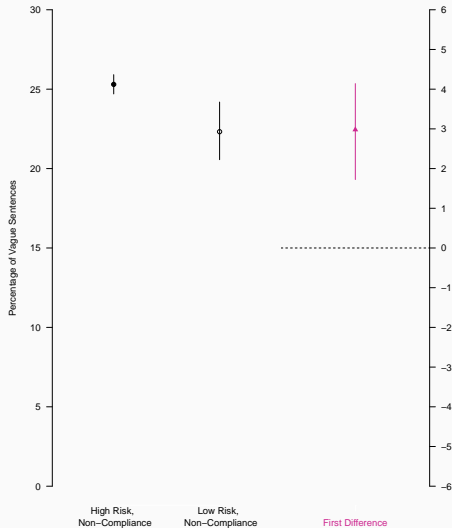
Results: Trade-Off Hypotheses (H1) Germany



Results: Non-Compliance Risk Hypothesis (H2) Germany

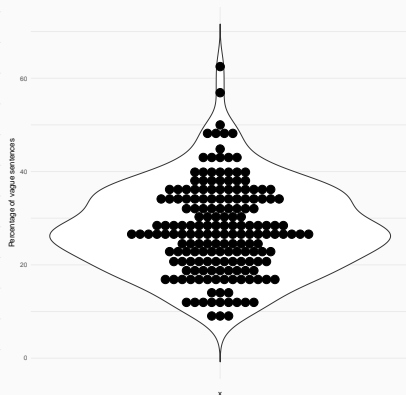
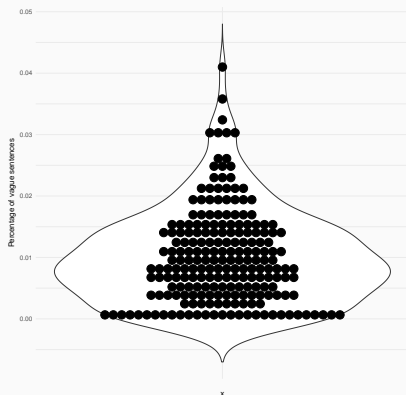


Results: Non-Compliance Risk Hypothesis (H2) France



- Why do courts craft vague decisions?
 - Vague language is used to give discretion to “friendly” governments in complex cases
 - Popular courts use language to pressure government for compliance
 - Unpopular courts use vague language as a defensive mechanism to mask non-compliance
- Broader implications:
 - Binary measures of judicial outcomes might underestimate the real extent of strategic behavior of judges.
 - Beyond judicial politics: do other non-majoritarian institutions such as central banks use vague language in the same way?

Distribution Proportion of Vague Sentences



Fractional logit: Dependent variable is proportion of vague sentences in a text, bounded between $[0, 1]$

Trade-Off Hypothesis (H1): Modelled as Interaction between Judicial Policy Uncertainty and Preference Divergence

Non-Compliance Risk Hypothesis: Dummy variable indicating risk of noncompliance

Table 1: Regression Results of Fractional Logit Model, Germany

	<i>Dependent variable:</i>	
	Proportion of Vague Sentences	
	Model 1	Model 2
Constant	−4.892*** (0.122)	−4.580*** (0.064)
Judicial Policy Uncertainty	0.004*** (0.001)	0.001** (0.0004)
Ideol. Distance Court/Government	0.105 (0.068)	−0.060** (0.029)
Second Senate	0.082* (0.044)	0.056 (0.043)
Government Brief		−0.180*** (0.069)
Case Salience	0.155***	0.168***

Table 2: Regression Results of Fractional Logit Model, France

	<i>Dependent variable:</i>	
	Proportion of Vague Sentences	
	Model 1	Model 2
Constant	-1.347*** (0.043)	-1.282*** (0.037)
Judicial Policy Uncertainty	0.015*** (0.005)	0.007** (0.003)
Ideol. Distance Court/Government	0.014*** (0.002)	0.011*** (0.001)
Judicial Policy Uncertainty \times Ideol. Distance Court/Government	-0.001** (0.0003)	
Press Release		0.287*** (0.065)

Simulation France:

