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Constitutional courts as veto players: Lessons from the United States, France and Germany

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Abstract. The number of constitutional courts and supreme courts with constitutional review rights has strongly increased with the third wave of democratisation across the world as an important element of the new constitutionalism. These courts play an important role in day-to-day politics as they can nullify acts of parliament and thus prevent or reverse a change in the status quo. In macro-concepts of comparative politics, their role is unclear. Either they are integrated as counter-majoritarian institutional features of a political system or they are entirely ignored: some authors do not discuss their potential impact at all, while others dismiss them because they believe their preferences as veto players are entirely absorbed by other actors in the political system. However, we know little about the conditions and variables that determine them as being counter-majoritarian or veto players. This article employs the concept of Tsebelis' veto player theory to analyse the question. It focuses on the spatial configuration of veto players in the legislative process and then adds the court as an additional player to find out if it is absorbed in the pareto-efficient set of the existing players or not. A court which is absorbed by other veto players should not in theory veto new legislation. It is argued in this article that courts are conditional veto players. Their veto is dependent on three variables: the ideological composition of the court; the pattern of government control; and the legislative procedures. To empirically support the analysis, data from the United States, France and Germany from 1974 to 2009 is used. This case selection increases variance with regard to system types and court types. The main finding is that courts are not always absorbed as veto players: during the period of analysis, absorption varies between 11 and 71 per cent in the three systems. Furthermore, the pattern of absorption is specific in each country due to government control, court majority and legislative procedure. Therefore, it can be concluded that they are conditional veto players. The findings have at least two implications. First, constitutional courts and supreme courts with judicial review rights should be systematically included in veto player analysis of political systems and not left aside. Any concept ignoring such courts may lead to invalid results, and any concept that counts such courts merely as an institutional feature may lead to distorted results that over- or under-estimate their impact. Second, the findings also have implications for the study of judicial politics. The main bulk of literature in this area is concerned with auto-limitation, the so-called 'self-restraint' of the government to avoid defeat at the court. This auto-limitation, however, should only occur if a court is not absorbed. However, vetoes observed when the court is absorbed might be explained by strategic behaviour among judges engaging in selective defection.

Keywords: veto players; constitutional courts; judicial politics; comparative politics; separation of power

Introduction

Since 1945, constitutional courts have become more prevalent across the world as part of an ongoing process of judicialisation (Ginsburg 2003). All of the European democracies that have emerged since that time have created a court equipped with the power to nullify legislation and thus to maintain the status quo. Some authors have gone as far as to declare that parliamentary sovereignty is dead and has been replaced by the sovereignty of the courts (Stone Sweet 2000).

Constitutional courts also play an enhanced role in concepts of comparative politics. Several authors see them as counter-majoritarian institutions that take power away from elected government. However, this perceived role stands in stark contrast to our knowledge of the mechanisms determining the influence of these courts in political systems (Dyevre 2010; Hönnige 2011). At the political systems level, constitutional courts have been integrated as elements of consensus democracy (Lijphart 2012; Vatter & Bernauer 2009). However, empirical measurement of how powerful these courts are has been rather idiosyncratic and has ignored the question of judicial preferences. They also have been considered to be veto players (VPs) (Alivizatos 1995; Jahn 2011). However, on the one hand, individual studies convincingly argue that courts are indeed VPs (Santoni & Zucchini 2006; Volcansek 2001; Brouard 2009) and make the point that judges are driven by their policy preferences (Grendstad et al. 2015; Hanretty 2012, 2013; Hönnige 2009). On the other hand, Tsebelis (2002) does not include constitutional courts in his seminal book. He argues that courts are 'random noise' (Tsebelis 2002: 81) because they are usually absorbed due to the fact that justices are selected exclusively by other VPs. This claim is in keeping with the classic hypothesis developed by Dahl (1957) that the supreme court is in line with other national political institutions most of the time. Moreover, while some comparative veto scales count courts as veto institutions or players (Ganghof 2005; Crepaz & Moser 2004; Kaiser 1997; Schmidt 1996), others do not (Tsebelis 2002; Huber et al. 1993; Henisz 2000). Given that the number of VPs usually varies between one and four in most studies, one additional player might make a sizeable difference in cross-country and time-series analysis. Since much literature is based upon VP theory and counting the number of VPs, the error in the literature could extend far beyond an actual analysis of constitutional courts themselves.

The aim of this article is thus to investigate when constitutional courts are in fact VPs and when other VPs absorb them. Our main argument is that three conditions determine the pattern of absorption of courts within the political system: the rules for selecting judges; the pattern of government control and alternation; and legislative procedures within the political system. We analyse this question empirically by investigating the pattern of court and government control in the United States, France and Germany as these three systems differ greatly from one another. Our period of study stretches over 36 years from 1974 to 2009. The main finding is that the courts are not permanently absorbed and that the three conditions have a strong impact on the absorption pattern in all three countries.

The article proceeds as follows. It begins by introducing the state of the art and the research gap, the concept of legislative vetoes in political systems and the absorption argument. The article then introduces three propositions about absorption that counter existing arguments about the automatic absorption of courts before introducing case selection and data. There follows a discussion of the VP and court structure in selected countries and presentation of the empirical results before ending with our conclusions.

Courts as VPs: Theoretical considerations

Constitutional court vetoes and judge preferences

Constitutional courts are VPs because they have a right to constitutional review and may declare a law totally or partially unconstitutional, thus preventing change to the status

quo (Stone Sweet 2000).[1] Essentially, three main procedures the courts may use to veto legislation can be identified: abstract review; concrete review; and constitutional complaint. *A priori* abstract review is used to deal with ordinary laws by only a small number of courts in countries such as France and Romania. A political actor not directly affected by the law can initiate litigation before promulgation. In such a case, the court becomes part of the legislative process. *A posteriori* abstract review can only be initiated after promulgation – usually shortly after the law comes into effect. Concrete review cases are usually initiated by lower courts and constitutional complaints by citizens who are directly affected by the law in question. In some cases, it can take years for both concrete review and constitutional complaints to come before the court. Other VPs must take into account the fact that every new law can theoretically come under the court's scrutiny. For this reason, the court's preferences should also be taken into account. This phenomenon has been described as 'autolimitation' (Stone 1992) and is similar to the situation in countries where direct democratic procedures such as popular initiatives or popular vetoes are possible (Hug & Tsebelis 2002; Immergut 1992).

Research on the United States Supreme Court shows that justices tend to be driven by their own policy preferences and that these preferences can be related to the policy preferences of legislators and governments. However, researchers also argue that beyond personal preferences, justices sometimes act strategically (Segal & Spaeth 2002; Maveety 2003; Epstein & Knight 1998). More recent research on European constitutional courts (particularly in Germany, France, the United Kingdom, Norway, Portugal and Spain) shows that judges' preferences can be measured similarly to those of the United States Supreme Court and that these preferences also affect case outcomes (Grendstad et al. 2015; Hanretty 2012, 2013; Hönnige 2009). Constitutional courts can therefore be integrated into the standard spatial models of political science and also into veto concepts as defined by political science.

Beyond the assumption that judges are sincere policy-seekers, they may also veto legislation for other reasons, or avoid vetoes they would like to make as a result of strategic considerations. More recent research on the strategic behaviour of judges has come up with several findings on the intra- and inter-institutional relations of judges and courts. The literature on Latin American courts, and also to some extent on Eastern European courts has stressed that a court's freedom to decide may also be determined by the degree of judicial independence, which itself may be determined by salary, length of mandate, re-election rules and so on (Kapiszewski & Taylor 2008; Ríos-Figueroa & Staton 2014). For established constitutional courts, researchers have focused on the so-called 'separation of powers game' and in particular on the role of the public with regard to court vetoes (Krehbiel 2016; Brouard 2009; Vanberg 2001).

VPs and absorption in Tsebelis' theoretical framework

The VP theory proposed by Tsebelis (1995, 2002) is the most detailed and influential concept in existence from a theoretical perspective. It is also the most reluctant to consider courts as VPs. We have therefore adopted this theoretical approach. Furthermore, it allows a macro-concept of comparative politics to be linked to the findings of judicial politics literature – that

courts are driven by the preferences of judges. A VP is an actor whose agreement is required, in a specific institutional setting, for a modification of the status quo to be enacted. The main mechanisms explaining the behaviour of actors in VP theory are policy preferences and decision-making rules. Tsebelis attempts to explain political stability and system stability using three main variables: the number of VPs; their ideological distance from each other; and their internal homogeneity. The larger the number of VPs, the broader their ideological distances and the narrower their internal homogeneity, the more difficult it is to change the status quo. The reason: the win-set (all points preferred by the VPs over the status quo) shrinks and the core (the pareto-efficient area where no change at all is possible) grows. Further on in this article we will refer exclusively to the concept of the core as it allows very generalised predictions to be made.

While most judicial politics literature focuses on the question of when the court matters, VP theory is particularly useful to identify instances where the court does *not* affect the policy outcome. The argument is simple: if a VP is located in the core (the set of pareto-efficient policies) of the other VPs, there is no impact on the size of the win-set. Thus, there is no impact on the policy outcome and the VP is considered *absorbed* (Tsebelis 2002). This is precisely why in Tsebelis' seminal book constitutional courts are not included as veto players (Tsebelis 2002: 228).

> While constitutional judges are veto players, most of the time they are absorbed. … Constitutional courts are very often located inside the unanimity core of the other veto players. The main reason is the appointment process to the highest positions. (Tsebelis 2002: 227)

Absorption is shown in scenario 0 in Figure 1. In a simple one-dimensional model,[2] the court (C) is located between two other VPs (A and B) at a given point in time (t_0). It lies in their unanimity core (light-grey shaded area) and thus has no effect on the legislative outcome.

Limits of the court absorption assumption

We argue that the assumption of the general absorption of courts suffers from several theoretical flaws and formulate three propositions, which show the limitations of automatic absorption. First, some judges on constitutional courts are not selected by other VPs and are therefore not absorbed. Second, even if they are entirely appointed by other VPs, they might initially be absorbed, but absorption might end after a change in the pattern of government control. And third, even if they are located centrally in terms of policy, they might not be absorbed as a result of varying legislative procedures.

> *Proposition 1*: Constitutional court judges are not all appointed by other VPs and thus are not always absorbed (Scenario 1).

The first proposition is that constitutional court judges are not always selected by other VPs. If this is correct, Tsebelis' argument that other VPs absorb courts as a result of selection does not hold. Scenario 1 shows how the inclusion of non-VP appointments affects the court's position. Let A and B be VPs appointing judges at a given time t_0 as in scenario 0.

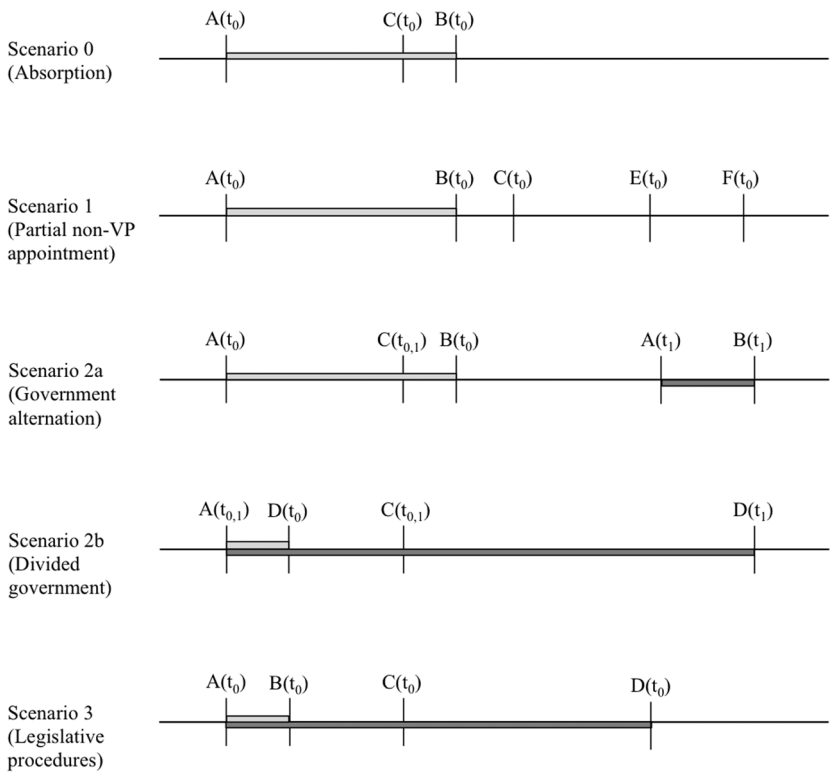

Figure 1. Various veto player situations.

Additionally, two non-VPs (E and F) are involved in the selection process. The outcome will be a centrist court, which is, however, outside the core and thus not absorbed.

Regarding the selection of judges, a differentiation can be made between professional, representative and cooperative appointment mechanisms (Ginsburg 2003). In particular, four types of institutions, which by definition are not VPs, are frequently found in the appointment process: parts of the judiciary itself; heads of state in parliamentary systems; asymmetric second chambers; and supermajorities enabling the participation of minority parties.

> *Proposition 2*: Constitutional courts are not always absorbed as a result of changing patterns in government control (Scenarios 2a and 2b).

The second argument is that even if VPs select all the judges, governments and constitutional courts usually have different terms of office. While patterns of government control might change every four to five years, the mandate for judges outside the United States is usually twice or three times as long as a legislative term (9–12 years in Europe). Depending on the pattern of government alternation, the government might well switch its position while the court does not (Scenario 2a). A change from unified to divided government and vice versa in bicameral systems (Scenario 2b) may lead to the same results.

Scenario 2a shows the example of a four-party system with two partisan VPs in government $A(t_{0,1})$ and $B(t_{0,1})$ and a constitutional court $C(t_{0,1})$. Let the government parties be centre-left at t_0 and the court be entirely composed of judges selected by the government and its majority in parliament. Thus, at t_0 all three actors are positioned on the left. Here, the court is absorbed as it is within the core of the other VPs (light-grey shaded area). If alternation occurs at t_1 a situation develops where the new partisan VPs $A(t_1)$ and $B(t_1)$ switch to the right but the court $C(t_{0,1})$ remains on the left due to the longer term in office of the judges. Thus, the court is no longer inside the core of the other VPs (dark-grey shaded area) and is no longer absorbed. This means that government alternation can lead to a change in situation where a court is absorbed at a given point in time and is no longer absorbed at a later point in time.

Scenario 2b shows a divided government situation as a second mechanism of changing patterns in government control. In this example, at t_0 a left-wing majority government controls the first chamber $A(t_{0,1})$ and the second chamber $D(t_0)$ in a symmetric and incongruent bicameral system. Let the court $C(t_{0,1})$ remain as in scenario 2a. Thus, at t_0 the court is not absorbed as it is not inside the core of the other VPs (light-grey shaded area). If an election to the second chamber occurs at t_1 and right-wing parties gain control of the second chamber $D(t_1)$, the size of the core increases strongly (dark-grey shaded area). The court, however, remains centrist due to the longer term in office of the judges. While at t_0 the court is not absorbed, it is absorbed at t_1 in a divided government situation. When regular cycles between divided and unified governments occur, even a centrist court may become a VP. This means that a change in patterns of government control can lead to situations where a court that once was not absorbed becomes absorbed (and vice versa).

> *Proposition 3*: Constitutional courts are not always absorbed as a result of different legislative procedures within a country at a given point in time (Scenario 3).

The third proposition is that even within a single political system at a given point in time t_0, VP configurations may vary as a result of different legislative procedures. This may be the case for constitutional amendments (Lorenz 2005), certain supermajority requirements regarding filibuster rules or second chambers whose status changes from symmetric to asymmetric (Tsebelis & Money 1997). Let us take the same simple example again with a court and two coalition parties in power. In Figure 1, scenario 3, we observe two left-wing VPs $A(t_0)$ and $B(t_0)$, a centrist court $C(t_0)$ and a right-wing party $D(t_0)$ controlling the majority in the second chamber. Let D be a non-VP under the legislative procedure l_1 and a VP under the legislative procedure l_2. As a result, under l_1 the court is not inside the core (light-grey shaded area) of the two other VPs and thus is not absorbed even though it is centrally located in terms of policy. Under procedure l_2, the court is inside the core of the three players (A, B and D) the dark-grey shaded area, and is absorbed. Thus, at the same time, two different outcomes resulting from two different legislative procedures determining different sets of VPs can be expected.

Comparative design, VP structure and data

Comparative design

We have analysed the VP configuration and court composition for the United States, France and Germany from 1974 to 2009 for three reasons. First, this 36-year period guarantees a stable institutional setting in the three countries. The starting point occurs after the major court reforms in Germany in 1971 and France in 1974, and the end-point before the introduction of concrete review in France in 2010. Second, we observe significant intra-country temporal variation with regard to government alternation, second chamber control and court majorities during this period. Third, the three countries were selected as their systems design differed the most (Przeworski & Teune 1970). This allows the relationship to be tested for robustness across very different cases at the micro-level. If the same causal mechanisms can be found in very different systems, the findings can be generalised.

Table 1 shows differences between cases and expected effects. There is significant variation across the types of political systems and the type of court system. The three countries vary regarding regime type (presidentialism, semi-presidentialism and parliamentarism), bicameralism (symmetric and incongruent in the United States, asymmetric and incongruent in France, mixed in Germany) and the patterns of government control (divided versus unified government and the frequency of alternation).

The court system varies between a decentralised model based on common law in the United States and a centralised model based on civil law in France and Germany. Access routes to the court also vary: in the United States, they are available through concrete review only; in France, through abstract review; and in Germany, through concrete and abstract review as well as constitutional complaints. With regard to the procedures for selecting judges, the three cases are also vastly different. The United States has a sequential system with the President nominating and the Senate confirming, in France a representative appointment procedure is used and in Germany election is by supermajority. Tenure varies from nine years to life.

Table 1. The United States, France and Germany as most different systems design

Case selection	United States	France	Germany
System characteristics			
Political system	Presidentialism	Semi-presidentialism	Parliamentarism
Veto players	President House of Representatives Senate	Government parties	Government parties Second chamber (partly)
Bicameralism	Symmetric and incongruent	Asymmetric and incongruent	Asymmetric and incongruent (Objection bills, 45%) Symmetric and incongruent (Consent bills, 55%)
Divided government	High	Low	Moderate
Alternation	Moderate	High	Moderate
Court characteristics			
Review system	Decentralised model Common law	Centralised model Civil law	Centralised model Civil law
Access route for constitutional review	Concrete review	Abstract review (a priori)	Concrete review Abstract review (a posteriori) Constitutional complaint
Appointment procedure	Sequential: Nomination: President Confirmation: Senate	Appointment: One-third by national president One-third by president of the National Assembly One-third by president of the Senate	Election: One-half by *Bundestag* (two-thirds majority) One-half by *Bundesrat*(two-thirds majority)
Justices term length	Life	9 years, non-renewable	12 years, non-renewable
Expected effects			
Expected effect of non-VP appointment (*Proposition 1*)	None	Moderate	High
Expected effect of government control (*Propositions 2a* and *2b*)	High	High	High
Expected effect of legislative procedure (*Proposition 3*)	Yes	No	Yes
Expected effect of court as VP in general	Low	High	Moderate

Overall, we expect to see an impact caused by non-VP appointment in France and Germany, a display of various levels of absorption according to the different legislative procedures in the United States and Germany, and a strongly differentiated effect depending on the pattern of government control: divided government (Mayhew 2005; Edwards & al. 1997; Binder 1999; Baumgartner & al. 2014) should induce more absorption in the United States and alternation less absorption in France. Overall, the court should be a VP more frequently in France than in Germany, and the Supreme Court should be absorbed more frequently than in both other cases.

Institutional setting of the courts

The Supreme Court is the highest court in the United States. It has appellate jurisdiction over the rulings of both state and federal courts.[3] The Constitution does not explicitly grant the Supreme Court the power of judicial review. Nevertheless, since *Marbury v. Madison* in 1803, the United States has had a constitutional review system whereby the Supreme Court has the final word on constitutional issues. However, given the decentralised American judicial system, the Supreme Court is not the only court with power to decide on constitutional matters. Constitutional review in the United States provides a perfect example of a pure system of concrete review, whereby constitutional issues may only be ruled on through litigation. The appointment process to the Supreme Court proceeds in two steps. In order to fill a vacancy, the President proposes a candidate, who must subsequently be approved by a simple majority in the Senate. Thus the outcome is very much dependent on divided or unified government situations. Justices have life tenure.

Between 1974 and 2009, the French *Conseil constitutionnel* only had the power of *a priori* abstract review and access was limited to the French President, the Prime Minister, the presidents of the two parliamentary chambers and 60 parliamentarians from the Senate or the National Assembly. More often than is the case in other constitutional courts, the French court – consisting of nine members – is considered to be a political chamber for institutional reasons (Stone 1992). Every three years, the President of the Republic, the President of the Senate and the President of the National Assembly choose a candidate to become a member of the *Conseil constitutionnel* for nine years.[4] There were no hearings of the candidates, no votes and no statutory constraints defining the skills or experience of the nominees. The court majority therefore is strongly dependent on who is in power when appointments are made.

The German constitutional court was established in 1951 and is equipped with a large number of access routes: abstract review, concrete review, constitutional complaints, and a number of horizontal and vertical competence conflicts (Vanberg 2005). It consists of two Senates with eight judges each, elected for a 12-year non-renewable term. Three of the eight judges must be former high court judges, and all of them are required to have formal judicial training, must be qualified to be an ordinary judge and must be at least 40 years old. Each chamber of the German parliament elects half of the judges in each of the two Senates with a two-thirds majority. This procedure requires highly complex interparty agreement. In order to achieve a two-thirds majority, the two largest parties – the centre-left SPD and the centre-right CDU/CSU – must cooperate with each other and thus they alternatively nominate judges in both Senates. Both parties usually nominate four judges in each Senate.

Three of them are party members and are considered to be ideologically close to them. The smaller coalition partners, FDP and the Greens, are allowed to nominate one candidate each in agreement with the larger parties.

VP structure

The VP structure varies across the three countries. In the American bicameral system, the House of Representatives and the Senate are institutional VPs. Both chambers are symmetric and can therefore prevent any change to the status quo. The President has formal veto powers at the end of the legislative process. However, two particular rules should be discussed with regard to veto powers in the United States. The first is the use of the filibuster in the Senate that effectively lowers the veto majority below the median. The conditions to enact *cloture* according to Rule XXII of the standing rules of the Senate were modified in 1975. Prior to that date, two-thirds of present and voting Senators had to agree to end the debate and terminate a filibuster. After that date, the percentage required to do this was lowered to three-fifths. The second rule concerns the possibility of overriding a presidential veto: if one party holds two-thirds of the seats in each chamber, it can override a presidential veto.[5] Hence, in this case, the majority party in Congress effectively has control over policy making. Nevertheless, such a situation did not occur during the period under study.

France is commonly seen as a political system with few VPs. Parliamentary accountability in the French semi-presidential system implies that the cabinet and the lower chamber are congruent. However, in reality, the French form of rationalised parliamentarism has led to tight control of the parliamentary agenda by the cabinet (Huber 1996). With respect to divided government, semi-presidential systems differ from presidential systems in that the roles of head of state and head of government are filled by two different people. The president and the prime minister may be from different parties or coalitions and the constitutional text does not create the foundations for presidential supremacy. Even if the opposition controls the presidency, the president has a veto power only in the domain of defence and foreign affairs. We will therefore focus on policy areas outside the latter. As France also has an asymmetric and incongruent bicameral parliament (Tsebelis & Money 1997), the Senate is not counted as a VP.

In the German system, the following VPs can be identified. First, there are the parties in government and their majority in the first chamber. The German electoral system usually leads to two-party majority governments with a very high level of party cohesion. The second chamber is incongruent and represents the governments of the states. Depending on the size of a state the number of votes varies from three to six, but a state can only cast its votes *en bloc*. The second chamber is – depending on the type of legislation – symmetric (*consent laws*, 55 per cent of all laws until 2009) or asymmetric (*objection laws*, 45 per cent of all laws until 2009). The party systems in the states generally resemble the national system and a similar type of party competition can be found at both federal and state level. Therefore, deadlock situations similar to what occurs in the American bicameral system can be found quite frequently (Manow & Burkhart 2007; Bräuninger & König 1999). There are no referenda at federal level and the German president wields no substantial power. Thus, no further VPs can be identified.

Position data and identification strategy

To test our propositions we needed data enabling us to cover the entire period from 1974 to 2009 in a common ideological space with inter-temporal variation of positions. For the United States, we used the measure devised by Bailey (2007) as a common positional framework that provides this information, given that standard measures for the study of American judicial politics (Segal & Cover 1989; Martin & Quinn 2002) are difficult to connect to the political space of President and Congress. For Germany and France, we employed a different strategy as the Bailey data are only available for the United States. For Europe we used data from the Comparative Manifesto Project (CMP), which cover the period of analysis and deliver data for the political parties involved in government control, parliamentary decision making and judge selection. More precisely, we used the data provided by Franzmann and Kaiser (2006) based on the CMP raw data.

Because the data structure is different for the United States, on the one hand, and Germany and France, on the other, we used different identification strategies. The data provided by Bailey can be used directly to identify the position of the President. For the House of Representatives, the Senate and the Supreme Court – which are by definition collective VPs – we used median legislators and median judges to identify the position of the three institutions, even though we are well aware that strategic behaviour and measurement error in the scales can lead to actual proposals for bills and decisions that deviate from the median position. We used the upper and lower 60 per cent (or 66 per cent before 1975) pivot to take the filibuster and the rules for overriding it into account. For France and Germany, the positions of the governing parties and their majority in the parliament are identified directly by the CMP data. Each party is treated as a VP (Tsebelis 2002). The position of the German second chamber is identified by the median state in the second chamber as in the German *Bundesrat* – unlike in the United States or the French Senate – state governments (and not individual legislators) have voting rights. The position of the median state is assigned according to the ROM scheme (Leunig 2006). In the case of a government majority, we assign the government position; in the case of opposition or mixed majority, we assign the position of the opposition or the biggest opposition party, respectively. The position of the court is identified by the median judge (in each Senate in Germany), whose position is identified by the position of the party having appointed this judge. In both countries, judges appointed by only one institution or individual actor tend to be party members or are close to a given party, or have a former political career as in the case of France. Thus, assigning the position is an acceptable proxy for preference identification as Hönnige and Brouard show empirically (Brouard 2008, 2009; Hönnige 2009).

Courts, VPs, absorption patterns: Empirical insights

After having described the patterns of government control in all three systems and the number of VPs, we will now turn to our two main questions to see if courts are exclusively selected by other VPs as well as how absorption varies across countries and time as a result of patterns of government control and types of legislation.

Exclusive court selection by other VPs

Our first proposition is that courts are not entirely selected by other VPs. The court is not entirely selected by other VPs in any of the three countries. In the United States, when the Senate and the Presidency are under unified party control, a VP selects and confirms the appointee. When the Senate and the Presidency are under divided control, both Republican and Democratic parties are VPs. Accordingly, the judge appointment still depends on VPs in both cases. Nevertheless, while the common wisdom is that all appointments to the Supreme Court are made by VPs, it is theoretically possible that the President is not a VP if the opposite party holds two-thirds of the seats in each chamber and thus may override a presidential veto. Since 1974, no party has controlled two-thirds of the seats in both chambers of the Congress. Therefore, all American judges have been proposed and elected by VPs.

Regarding our focus on the *Conseil constitutionnel*'s role, the pattern of government control in France has major consequences for appointments. The three appointment authorities are the President of the Republic, the President of the Senate and the President of the National Assembly. The assumption that constitutional judges originate from a VP is systematically verified only for appointments made by the President of the National Assembly. Most *Conseil constitutionnel* members (73 per cent) were appointed by VPs but non-VPs appointed more than a quarter of them during the period of study. During the Jospin government of 1997–2002, non-VPs appointed a higher number of *Conseil constitutionnel* members than VPs.

The German decision-making rule requires a two-thirds majority in the first chamber for one-half of the judges and a two-thirds majority in the second chamber for the other half. Due to the supermajority requirement and an almost identical party system in both chambers, consent is required from the major opposition party. The only exception to this is a grand coalition where the governmental parties SPD and CDU also achieve a two-thirds majority. The *Bundesrat* is a VP, albeit only for laws under the symmetric legislative procedure. Therefore the court is not entirely composed of other VPs in the German case. In the period under study only the judges elected between 2005 and 2009 were veto player appointments.

Supreme Court control and VPs in the United States

Using Bailey's position data we analysed the pattern of absorption in Figure 2. The position data of the actors are presented on the y-axis: the lower boundary is liberal, the upper boundary conservative. The x-axis provides the time frame. We introduced vertical lines for each President to visualise the patterns of government control. The dark-grey shaded area shows the range between the most distant VPs in the system; the light-grey shaded area shows the additional range if the filibuster rule is taken into account. The double line represents the median justice. If the double line is within the grey shaded area, the Supreme Court is absorbed, if it is outside it is not absorbed. At the bottom of the figure, the black line (without filibuster) and the black dotted line (with filibuster) show the pattern of absorption. If there is a line, absorption occurs. This approach underscores the fact that the Supreme Court has not often been a VP in the American system, given the frequency of divided government and the filibuster rule.

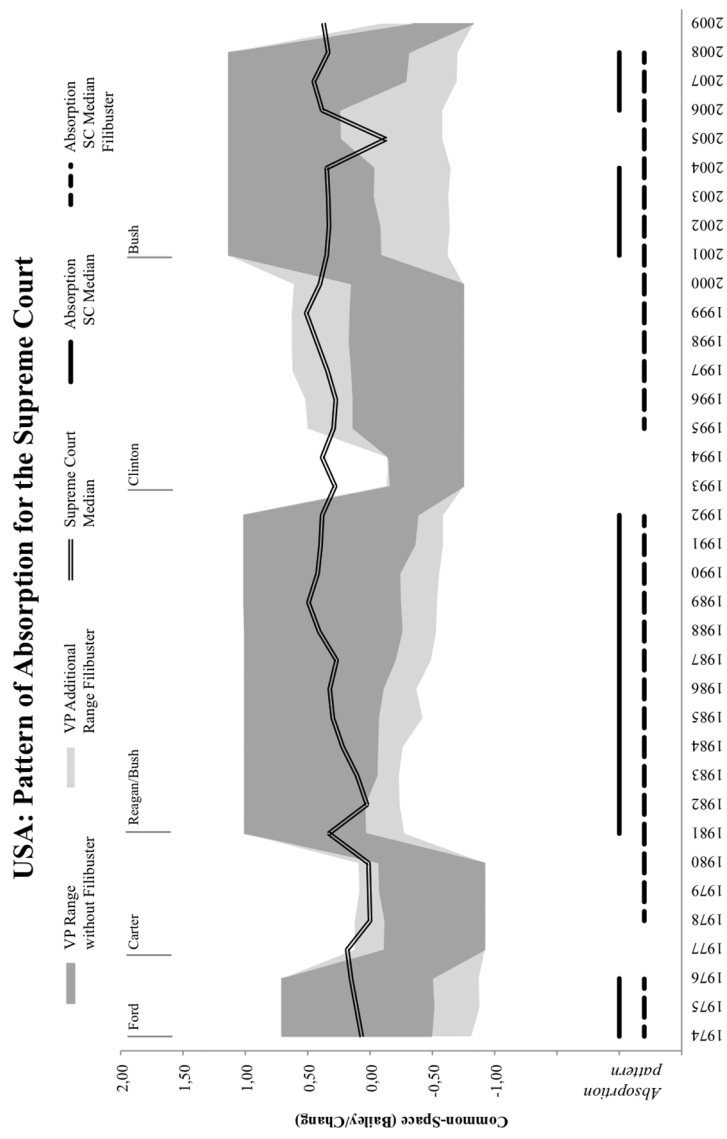

Figure 2. Policy preferences of the United States President and the median voter in the Senate, House of Representatives and Supreme Court.

Between 1974 and 2009, the median justice was not located within the policy interval defined by the President, the median House member and the median Senator for 14 years (no black line at the bottom). The Supreme Court was a VP between 1977 and 1980, 1993 and 2001, in 2005 and in 2009 – amounting to just 14 years. When taking the filibuster-proof majority in the Senate into account, the number of years in which the Court was not absorbed is drastically reduced to only four years: 1977, 1993, 1994 and 2009. This supports Proposition 3 clearly. The effect of the changing pattern of government control is clearly visible, most obviously from the period of the Bush to the Clinton administrations. This supports Scenarios 2a and 2b.

Empirically, this result generally supports the absorption hypothesis elaborated by Tsebelis at first glance – namely that the Supreme Court was not a VP during most of the period. A good example of the consequences of this situation is *Gonzales v. Carhart* (550 US 124). In this decision, the Court upheld the Partial Birth Abortion Ban Act of 2003 despite being found unconstitutional by three district courts and three circuit courts. The Act was promulgated in a situation where the Court was absorbed and the decision was also taken in a situation where the Court was absorbed. Thus the Act was found constitutional by the conservative court majority in 2006. Nevertheless, even in the American example, the theoretical limits of the absorption hypothesis have been shown: even in a system in which, from 1973, justices were always appointed by VPs, the Supreme Court was a VP for at least four years. Despite the frequency of divided government in the United States and the specific impact of the filibuster rule, alternation and the discrepancies between justices' and politicians' terms give rise to situations in which courts are not absorbed. Moreover, this result questions the argument that leads many comparative scholars to present the Supreme Court as one of the strongest courts in the world (Lijphart 2012).

Control of the Conseil constitutionnel *and VPs in France*

We conducted the same analysis for the *Conseil constitutionnel* as for the Supreme Court. The y-axis of Figure 3 presents the CMP positions of the actors with the upper boundary being right-wing and the lower boundary left-wing. The double line in the policy space indicates the court median and the black line at the bottom indicates the pattern of absorption. We also indicated government changes with lines in the figure and named the governments.

The typically rapid pattern of government alternation in France can be observed over time. With the exception of the 1984–1986 and 1988–1993 one-party governments, there are usually two or three parties in government that are clearly situated to the left or right, whose policy range is indicated by the grey shaded area (or line). Due to the selection rule, a time-lagged adaptation of the position of the *Conseil constitutionnel* over time and a slow pattern of majority alternation can be observed. The black line indicates the instances where the *Conseil constitutionnel* was absorbed. As can be seen, the *Conseil constitutionnel* was less frequently absorbed (16 years) than a VP over the period under study.

The *Conseil constitutionnel* was a VP far more frequently than the United States Supreme Court. The French case underscores the theoretical relevance of *Propositions 1* and *2*

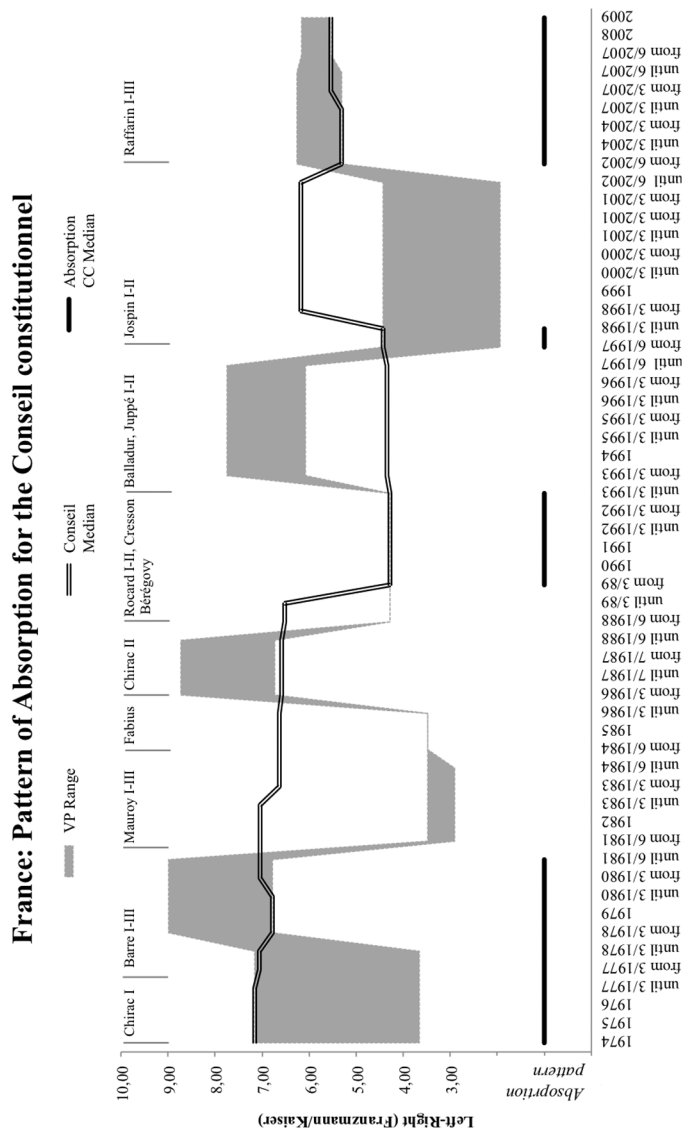

Figure 3. Policy preferences of the parties in government and the *Conseil constitutionnel* in France.

and their empirical consequences. The switches from absorption to non-absorption occur according to a complex pattern that combines government alternation and discrepancies between the government's and the judges' terms. The French court clearly departs from the absorption hypothesis proposed by Tsebelis in terms of outcome and process. The effects were most visible after prominent government changes. In 1982, after the French socialists won a parliamentary majority, President Mitterrand adopted a bill allowing the nationalisation of major French companies. The *Conseil constitutionnel*, whose members were all appointed by right-wing Presidents of the Republic and of parliamentary chambers vetoed the contested bill (DC 81–132). Another prominent example occurred in 1993 when in a converse situation, an immigration bill passed by the new right-wing parliamentary majority was subsequently vetoed by the *Conseil constitutionnel* where a majority of members were appointed by left-wing incumbents (DC 93–325).

One instance is particularly interesting to illustrate the policy impact of the *Conseil*'s status. In March 1998, three new members – two of whom were appointed by the (non-VP) right-wing Presidents of the Republic and of the Senate – took their places on the *Conseil constitutionnel*. These appointments significantly moved the ideological location of the median member to the right. Thus, nine months after the investiture of the socialist government led by Jospin, the *Conseil constitutionnel* ceased to be absorbed. The percentage of decisions to partially or totally veto laws also changed: from 20 per cent before the change in the court's status to 60 per cent afterwards (Hönnige 2009). The fate of the five annual laws on the financing of the social security system adopted by the left-wing majority between 1997 and 2001 exemplified how the court became a VP in March 1998: the law on the financing of the social security system for 1998 which was reviewed in December 1997, was the only law not to be at least partially vetoed.

Control of the Bundesverfassungsgericht *and VPs in Germany*

Figure 4 shows the pattern of absorption in Germany using the CMP position data, which is more complex than in France and the United States due to the two legislative procedures and a court consisting of two Senates. The upper boundary of the y-axis indicates a right-wing position, the lower boundary a left-wing one, the vertical lines on top of the figure indicate the names of the governments. In the dark-grey shaded area the switches from the left-wing SPD/FDP government to the right-wing CDU/FDP government in 1982 and back to the left-wing SPD/Greens government in 1998 are clearly visible. Between 2005 and 2009, a centrist CDU/SPD grand coalition, followed by a switch to the right-wing CDU/FDP government in 2009 can be observed. This range applies to *objection laws*, which is the ordinary legislative procedure. In this procedure, the second chamber is not a VP. The light-grey shaded area indicates the additional policy range when symmetric bicameralism occurs and the second chamber is involved in the legislative process as a VP (consent laws). The second chamber is seldom controlled by the parties in government, inducing periods of divided government. This applies for 1974–1982, 1990–1991, 1991–1998, 1999–2005 and 2010–2011. Quite often, as predicted by Tsebelis, the result is a rather wide policy range among the VPs involved in the legislative process.

The double lines indicate the position of the median judge in the first Senate (straight double line) and the second Senate (dotted double line). There is variation over time,

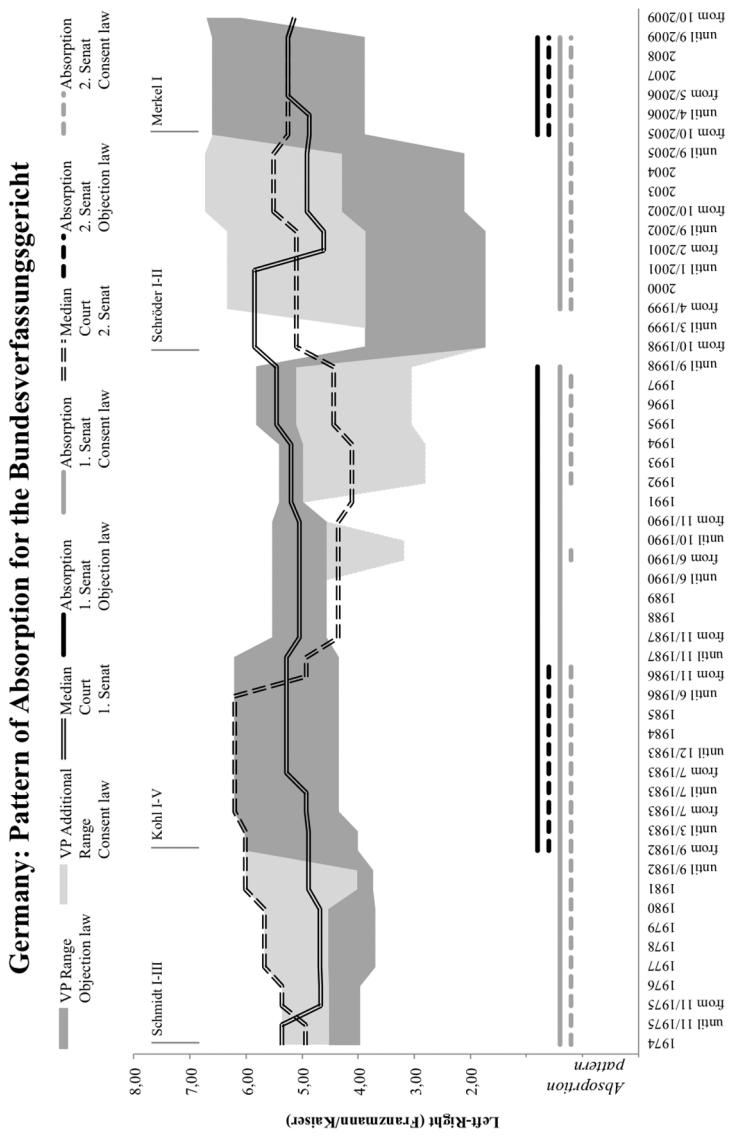

Figure 4. Policy preferences of the parties in government, the *Bundesrat* and the *Bundesverfassungsgericht*.

Table 2. Summary of the results on status of the courts, 1974–2009

Country	Conditions	Period as a veto player (%)
France	All	56
United States	Filibustering not included	38
	Filibustering included	11
Germany	First senate – asymmetric bicameralism	47
	First senate – symmetric bicameralism	6
	Second senate – asymmetric bicameralism	71
	Second senate – symmetric bicameralism	18

although not as markedly as in France. During the period under study, the court mostly maintained a centrist position due to the required two-thirds majority rule for electing judges. The court majority held by the conservative party in the first Senate from 1974 to 1975, and the second Senate from 1975 to 1986, where there was no parity between the large parties is notable.

The result of the interplay between the government, second chamber and court is visible at the bottom of the figure. The full and dotted lines at the bottom indicate the absorption patterns for the first and second Senate for the two legislative procedures. The pattern of absorption and non-absorption is very complex here. Systematic differences between situations where the second chamber is a VP (grey lines) and where it is not (black lines) can be observed. While in the first case both chambers of the court were most frequently absorbed, in the second case they were only absorbed half of the time. Thus, as expected in *Proposition 3*, the variation between absorption and non-absorption depends on the legislative procedure. Strong support for *Proposition 2* can also be found. On the one hand, the changes between absorption and non-absorption are induced by government alternation. For situations where the second chamber is not a VP this is most obviously visible after the switch from Schmidt to Kohl, from Kohl to Schröder and from Schröder to Merkel. When the government lost control of the second chamber the switches from non-absorption to absorption also occurred: after the Kohl government lost its majority in the *Bundesrat* in 1992, and the Schröder government in 1999.

The legislation on the European Stability Mechanism (ESM) provides a good example of the complexity of the German situation. In a situation of divided government in 2012, 37,000 citizens filed constitutional complaints against the ESM. The legislation on the ESM proposed by the centre-right government was adopted in both the lower chamber and in the upper chamber, where the government did not command a majority. Parts of the legislation concerned consent law and parts of it objection law. The centrist court – in a situation of absorption – acted as expected and, in keeping with the position of the two parliamentary chambers, rejected the complaints (BVerfGE 132, 195, BVerfGE 135, 317). However, in a prominent non-absorption situation, a conservative majority in the court declared the liberalisation of the abortion law by the left-wing government unconstitutional in 1975 (BVerfGE 39,1).

Conclusion

This comparative analysis of the status of the constitutional courts in the United States, France and Germany underscores that courts are neither fully absorbed as a result of selection, nor are they always counter-majoritarian VPs. Most surprisingly, despite the fact that research on the Supreme Court suggests that it has a strong impact on American politics, we find that this court was not absorbed less often than the French and German courts (Table 2): the Supreme Court was an effective VP for short periods only. This is due to the fact that, during the period under study, the United States frequently experienced a situation of divided government, formally or substantially due to the filibuster rule, and that together with the President and the Senate, only VPs take part in the selection process for justices. This finding is thus in line with Dahl's (1957) point about the Supreme Court: it is very often in line with the other institutions and rarely a preference outlier.

Conversely, absorption in France is much less frequent and the *Conseil constitutionnel* was a VP much of the time (56 per cent). This pattern stems from the fact that there are few institutional VPs in France and alternation regularly occurs. Discrepancies between political majority and judges' tenure of nine years had a major impact on the status of the *Conseil constitutionnel*. The German case is more complex: while the supermajority requirement in the election of judges leads to the constitutional court adopting a centrist position, systematic differences resulting from the two main legislative procedures can be found. When the second chamber is a VP, the court tends mostly to be absorbed, whereas when the second chamber is not a VP the court very often has a VP status. Moreover, beyond divided government, alternation and legislative procedures, the involvement of non-VPs in the appointment process was documented in Germany and particularly consequential in France.[6] Empirically, the argument that courts are absorbed as a result of selection by other VPs is incorrect.

These findings have consequences for our understanding of constitutional courts within the concepts of comparative politics. First, constitutional courts are VPs and are not always absorbed. In fact, their VP status is dependent on court composition, alternation and pattern of government control, and legislative procedures.

Second, the VP status of constitutional courts not only varies across systems, but also over time. Veto point scales or VP scales that simply count institutions (Huber et al. 1993; Crepaz & Moser 2004; Ganghof 2005) are thus too simplistic. To avoid systematic measurement error, comparative analyses using VPs as a variable must include constitutional courts and must carefully consider the status of the constitutional courts at any given point in time. This is especially relevant since the number of VPs in most political systems varies between 1 and 4.

Third, the findings also have implications for our understanding of the strategic behaviour of government, legislature and the courts. In countries such as France, clearly defined situations where either the court or the government has the need to act strategically can be found. In countries such as Germany, the pattern is highly complex. It is therefore plausible to believe that the government always takes the court's expected position into account to be on the safe side. In the United States, the Supreme Court has little systemic effect regarding the size of the core, but is perhaps rather powerful given that it has the final power of decision.

Fourth, claims arguing that constitutional courts lead to the constant influence of non-democratically legitimised judges are also overstated (Tate & Vallinder 1995; Stone Sweet 2000). While there seems to be some *rise of the unelected* (Vibert 2007) through the introduction of more courts, the actual influence varies considerably. It is clear that constitutional courts are not always a problem for democratic rule, as suggested by some authors (Bellamy 2007).

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Appendix Table 1. Court composition rules and VP status

Country	No of justices	Elective organ	Majority rule of elective organ	Veto player ordinary laws
Belgium	12	6 by first chamber on two-candidate shortlist	Two-thirds majority	No
		6 by second chamber on two-candidate shortlist	Two-thirds majority	No
		Selection from shortlist: King	Appointment	No
Austria	14	8 by government	Appointment	Yes
		3 by first chamber	Simple majority	Yes
		3 by second chamber	Simple majority	No
Bulgaria	12	4 by president	Appointment	Yes
		4 by parliament	Simple majority	Yes
		4 by other high courts	Simple majority	No
Czech Republic	15	Proposal: President		Yes
		Election: Senate	Simple majority	No
Estonia	9	Proposal: President proposes court president		Yes
		Proposal: Court president proposes justices	Absolute majority	No
		Election by parliament		Yes

(*Continued*)

Appendix Table 1. Continued

Country	No of justices	Elective organ	Majority rule of elective organ	Veto player ordinary laws
France	9	3 by national president	Appointment	No
		3 by president of first chamber	Appointment	Yes
		3 by president of second chamber	Appointment	No
Germany	16	8 by first chamber	Two-thirds majority	No
		8 by second chamber	Two-thirds majority	No
Hungary	11	11 by parliament	Two-thirds majority	No
Italy	15	5 by president	Appointment	No
		5 by both chambers of parliament	Two-thirds majority	No
		5 by other high courts	Absolute majority	No
Latvia	7	Proposal: 3 by ten members of parliament		No
		Proposal: 3 by cabinet	Absolute majority	Yes
		Proposal: 3 by court		Yes
		Election: Parliament		Yes
Lithuania	9	Proposal: 3 by national president		No
		Proposal: 3 by president of first chamber	Simple majority	Yes
		Proposal: 3 by court president		Yes
		Election: Parliament		Yes
Poland	15	15 by first chamber	Absolute majority	Yes
Portugal	13	10 by parliament	Two-thirds majority	No
		3 by constitutional court	Absolute majority	Yes
Romania	9	3 by president	Appointment	Yes
		3 by first chamber	Absolute majority	Yes
		3 by second chamber	Absolute majority	No
Slovakia	13	Parliament	Simple majority	Yes
Slovenia	9	Proposal: President		No
		Election: Parliament	Absolute majority	Yes
Spain	12	2 by government		Yes
		4 by first chamber	Three-fifths majority	No
		4 by second chamber	Three-fifths majority	No
		2 by justice council	Absolute majority	No
United States	9	Proposal: President		Yes
		Election: Senate	Absolute majority	Yes

Notes

1. Beyond this, courts have numerous other duties and functions which vary widely across countries. We have focused on the procedures used to veto a piece of legislation.
2. We opted for a one-dimensional model for two reasons. First, it is more rigorous than the two-dimensional model used by Tsebelis, but, on the question of absorption, leads to the same outcome. And second, the data and most VP analyses are one-dimensional. Therefore, the match between theory and data is improved.
3. The Supreme Court also has original jurisdiction over several other types of cases.
4. Former Presidents are also members *de jure* of the *Conseil constitutionnel*. Nevertheless, very few of them have taken up this opportunity (Brouard 2016).
5. Nevertheless there are two possibilities for the United States President to overcome a veto-proof Congressional majority. First, if the President does not sign a piece of legislation adopted by Congress within ten days and Congress has adjourned, the legislation is considered to be vetoed and there is no opportunity for a veto override vote. Second, the President can use 'presidential signing statements as a very effective and substantive line-item veto to effectively nullify a wide range of statutory provisions even as he signed the legislation that contained them into law' (Cooper 2005). In this case, the President can circumvent a veto-proof Congressional majority.
6. Considering comparative data on selection procedures for constitutional court judges in all 17 European Union Member States actually having a court (see Appendix Table 1), France and Germany do not appear to be outliers in this regard: constitutional courts are entirely composed of other VPs only in Poland and Slovakia. In most European countries, non-VPs participate in the selection process.

References

Alivizatos, N. (1995). Judges as veto players. In H. Döring (ed.), *Parliaments and majority rule in Western Europe*. Frankfurt: Campus.

Bailey, M.A. (2007). Comparable preference estimates across time and institutions for the Court, Congress and Presidency. *American Journal of Political Science* 51(3): 433–448.

Baumgartner, F.R. et al. (2014). Divided government, legislative productivity and policy change in the USA and France. *Governance* 27(3): 423–447.

Bellamy, R. (2007). *Political constitutionalism: A republican defence of the constitutionality of democracy*. Cambridge: Cambridge University Press.

Binder, S. (1999). The dynamics of legislative gridlock, 1947–96. *American Political Science Review* 93(3): 519–533.

Bräuninger, T. & König, T. (1999). The checks and balances of party federalism: German federal government in a divided legislature. *European Journal of Political Research* 36(2): 207–234.

Brouard, S. (2008). The Conseil constitutionnel: The rising regulator of French politics. In S. Brouard, A. Appleton & A. Mazur (eds), *French Fifth Republic at fifty: Beyond stereotypes*. Basingstoke: Palgrave Macmillan.

Brouard, S. (2009). The politics of constitutional veto in France: Conseil constitutionnel, legislative majority and electoral competition. *West European Politics* 32(2): 384–403.

Brouard, S. (2016). Constitutional politics: The French case and theory-building. In R. Elgie, E. Grossman & A. Mazur (eds), *The Oxford handbook of French politics*. Oxford: Oxford University Press.

Cooper, P.J. (2005). George W. Bush, Edgar Allan Poe and the use and abuse of presidential signing statements. *Presidential Studies Quarterly* 35(3): 515–532.

Crepaz, M. & Moser, A. (2004). The impact of collective and competitive veto points on public expenditures in the global age. *Comparative Political Studies* 37(3): 259–285.

Dahl, R.A. (1957). Decision-making in a democracy: The Supreme Court as a national policy-maker. *Journal of Public Law* 6(2): 279–295.

Dyevre, A. (2010). Unifying the field of comparative judicial politics: Towards a theory of judicial behavior. *European Political Science Review* 2(2): 297–327.

Edwards, G.C., Barrett, A. & Peake, J. (1997). The legislative impact of divided government. *American Journal of Political Science* 41(2): 545–563.

Epstein, L. & Knight, J. (1998). *The choices justices make*. Washington, DC: Congressional Quarterly Press.

Franzmann, S. & Kaiser, A. (2006). Locating political parties in policy space: A reanalysis of party manifesto data. *Party Politics* 12(2): 163–188.

Ganghof, S. (2005). Normative Modelle, institutionelle Typen und beobachtbare Verhaltensmuster: Ein Vorschlag zum Vergleich parlamentarischer Demokratien. *Politische Vierteljahresschrift* 46(3): 406–431.

Ginsburg, T. (2003). *Judicial review in new democracies: Constitutional courts in Asian cases*. Cambridge: Cambridge University Press.

Grendstad, G., Waltenburg, E.N. & Shaffer, W.R. (2015). *Policy-making in an independent judiciary: The Norwegian Supreme Court*. Colchester: ECPR Press.

Hanretty, C. (2012). Dissent in Iberia: The ideal points of justices on the Spanish and Portuguese constitutional tribunals. *European Journal of Political Research* 51(5): 671–692.

Hanretty, C. (2013). The decisions and ideal points of British Law Lords. *British Journal of Political Science* 43(3): 703–716.

Henisz, W.J. (2000). The institutional environment for multinational investment. *Journal of Law, Economics and Organization* 16(2): 334–364.

Hönnige, C. (2009). The electoral connection: How the pivotal judge affects oppositional success at European constitutional courts. *West European Politics* 35(2): 963–984.

Hönnige, C. (2011). Beyond the judicialization hypothesis: Why we need more comparative research about constitutional courts. *European Political Science* 10(3): 346–358.

Huber, E. (1996). *Rationalizing parliament: Legislative institutions and party politics in France*. Cambridge: Cambridge University Press.

Huber, E., Ragin, C. & Stephens, J.D. (1993). Social democracy, Christian democracy, constitutional structure and the welfare state. *American Journal of Sociology* 99(3): 711–749.

Hug, S. & Tsebelis, G. (2002). Veto players and referendums around the world. *Journal of Theoretical Politics* 14(4): 465–515.

Immergut, E.M. (1992). The rules of the game: The logic of health policy-making in France, Switzerland and Sweden. In S. Steinmo, K.A. Thelen & F. Longstreth (eds), *Structuring politics: Historical institutionalism in comparative analysis*. Cambridge: Cambridge University Press.

Jahn, D. (2011). The veto player approach in macro-comparative politics: Concepts and measurement. In T. König, G. Tsebelis & M. Debus (eds), *Reform processes and policy change: Veto players and decision-making in modern democracies*. Berlin: Springer.

Kaiser, A. (1997). Types of democracy. From classical to new institutionalism. *Journal of Theoretical Politics* 9(4): 419–444.

Kapiszewski, D. & Taylor, M.M. (2008). Doing courts justice? Studying judicial politics in Latin America. *Perspectives on Politics* 6(4): 741–767.

Krehbiel, J. (2016). The politics of judicial procedures: The role of public oral hearings in the German constitutional court. *American Journal of Political Science* 60(4): 990–1005.

Leunig, S. (2006). Zur Operationalisierung von Mehrheitsverhältnissen im Bundesrat. *Zeitschrift für Parlamentsfragen* 37(2): 402–420.

Lijphart, A. (2012). *Patterns of democracy: Government forms and performance in thirty-six countries*. New Haven, CT: Yale University Press.

Lorenz, A. (2005). How to measure constitutional rigidity: Four concepts and two alternatives. *Journal of Theoretical Politics* 17(3): 339–361.

Manow, P. & Burkhart, S. (2007). Legislative self-restraint under divided government in Germany, 1976–2002. *Legislative Studies Quarterly* 32(2): 167–191.

Martin, A.D. & Quinn, K.M. (2002). Dynamic ideal point estimation via Markov Chain Monte Carlo for the US Supreme Court, 1953–1999. *Political Analysis* 10: 134–153.

Maveety, N. (2003). The study of judicial behavior and the discipline of political science. In *The pioneers of judicial behavior*. Ann Arbor, MI: Michigan University Press.

Mayhew, D.R. (2005). *Divided we govern: Party control, lawmaking and investigations, 1946–2002*. New Haven, CT: Yale University Press.

Przeworski, A. & Teune, H. (1970). *The logic of comparative social inquiry*. Malabar, FL: Krieger.
Ríos-Figueroa, J. & Staton, J.K. (2014). An evaluation of cross-national measures of judicial independence. *Journal of Law, Economics and Organization* 30(1): 104–137.
Santoni, M. & Zucchini, F. (2006). Legislative output and the constitutional court in Italy. *Constitutional Political Economy* 17: 165–187.
Schmidt, M.G. (1996). When parties matter: A review of the possibilities and limits of partisan influence on public policy. *European Journal of Political Research* 30(2): 155–183.
Segal, J.A. & Cover, A.D. (1989). Ideological values and the votes of US Supreme Court justices. *American Political Science Review* 83(2): 557–565.
Segal, J.A. & Spaeth, H.J. (2002). *The Supreme Court and the attitudinal model revisited*. Cambridge: Cambridge University Press.
Stone, A. (1992). *The birth of judicial politics in France: The Conseil constitutionnel in comparative perspective*. New York: Oxford University Press.
Stone Sweet, A. (2000). *Governing with judges: Constitutional politics in Europe*. Oxford: Oxford University Press.
Tate, C.N. & Vallinder, T. (1995). *The global expansion of judicial power: The judicialization of politics*. New York: New York University Press.
Tsebelis, G. (1995). Veto players and law production in parliamentary democracies. In H. Döring (ed.), *Parliaments and majority rule in Western Europe*. Frankfurt: Campus.
Tsebelis, G. (2002). *Veto players: How political institutions work*. Princeton, NJ: Princeton University Press.
Tsebelis, G. & Money, J. (1997). *Bicameralism*. Cambridge: Cambridge University Press.
Vanberg, G. (2001). Legislative-judicial relations: A game-theoretic approach to constitutional review. *American Journal of Political Science* 45(2): 346–361.
Vanberg, G. (2005). *The politics of constitutional review in Germany*. Cambridge: Cambridge University Press.
Vatter, A. & Bernauer, J. (2009). The missing dimension of democracy: Institutional patterns in 25 EU Member States between 1997 and 2006. *European Union Politics* 10(3): 335–359.
Vibert, F. (2007). *The rise of the unelected: Democracy and the new separation of powers*. Cambridge: Cambridge University Press.
Volcansek, M.L. (2001). Constitutional courts as veto players: Divorce and decrees in Italy. *European Journal of Political Research* 39(3): 347–372.

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