

# Why Do Courts Craft Vague Decisions?

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

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# Motivation

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# The puzzle

- The exercise of judicial review often requires judges 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 rulings are less likely to be implemented than clear opinions.

**Puzzle:** Why would judges write vague decisions then?

## 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

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# Challenges of Judicial Policy-Making

## 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

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# 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

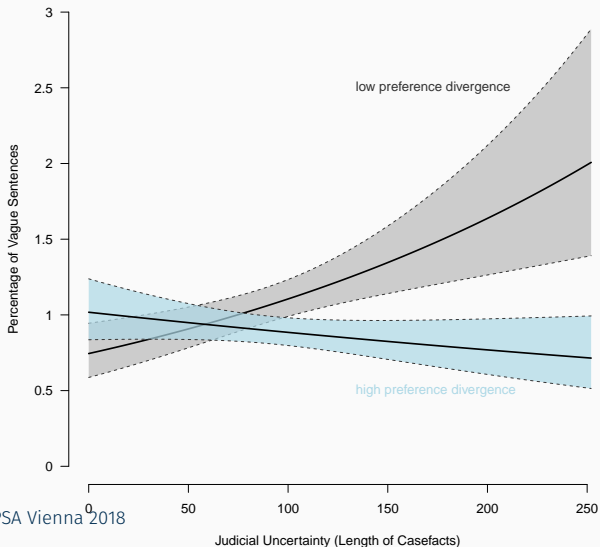
1. Existing general dictionary of vague terms (LIWC): list of vague terms such as “possible, perhaps, maybe”.
  - Problem: legal language is very domain-specific.
2. Extend the general dictionary using word embeddings.
  - Word embeddings are neural networks which are able to map words into a high-dimensional 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

- **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)

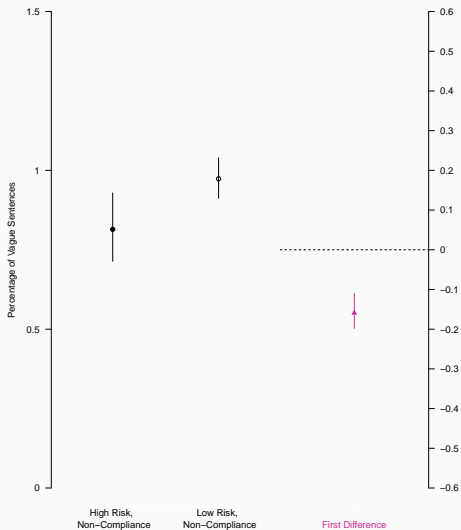
## Results

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# Results: Trade-Off Hypotheses (H1) Germany



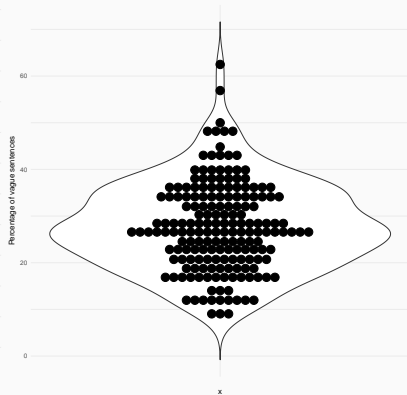
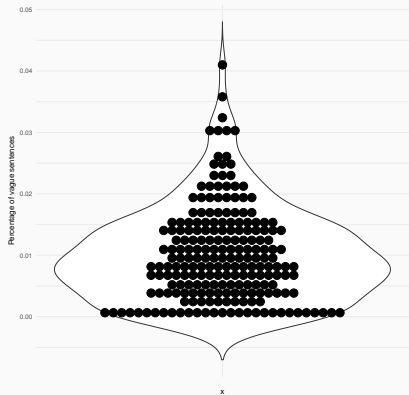
# Results: Non-Compliance Risk Hypothesis (H2) Germany



- 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



# Face Validity: Vague Sentence Examples

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## Vague Sentences

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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.

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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

# Fractional logit results Germany:

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*** (0.051)	0.168*** (0.050)

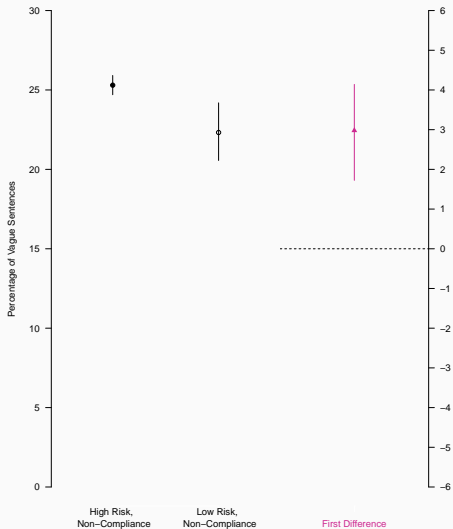
Table 2: Regression Results of Fractional Logit Model, France

	<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 × Ideol. Distance Court/Government	-0.001** (0.0003)	
Press Release		0.287*** (0.065)
Observations	258	258

Note:

\* $n < 0.1$ ; \*\* $n < 0.05$ ; \*\*\* $n < 0.01$

# Results: Non-Compliance Risk Hypothesis (H2) France



# Simulation France:

