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The Comparative Constitutional Compliance Database

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The Comparative Constitutional Compliance Database

Jerg Gutmann,^{*} Katarzyna Metelska-Szaniawska,[†] & Stefan Voigt[‡]

Abstract: This article introduces a novel database that measures governments' compliance with national constitutions. It combines information on *de jure* constitutional rules with data on their *de facto* implementation. The individual compliance indicators can be grouped into four categories that we aggregate into an overall indicator of constitutional compliance: property rights and the rule of law, political rights, civil rights, and basic human rights. The database covers 168 countries over the period 1900 to 2020 and can be used by researchers interested in studying the determinants or the effects of (non)compliance with constitutions. Our investigation of the stylized facts of constitutional compliance does not reveal a long-term trend toward more compliance. Parliamentary democracies are the regimes with the highest level of constitutional compliance, whereas military dictatorships perform the worst. Although compliance is not determined by a constitution's breadth, constitutional design does still matter. Constitutions that allow for the dismissal of the head of state or government for violating the constitution achieve higher compliance levels.

Keywords: constitutional compliance; constitutional economics; constitutional political economy; *de jure-de facto* gap; executive constraints; governance indicators; measurement of institutions.

JEL-Codes: H11; K10; K38; K42; O57; P48.

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The database introduced in this article and future updates can be downloaded at www.jerg-gutmann.de/data.

The Comparative Constitutional Compliance Database

1. Introduction

While economists have been interested in constitutions for several decades, quantitative empirical research on their causes and consequences has only taken off over the last decade. One important reason for the slow development of such scholarship is the limited availability of comparable data on the characteristics of countries' constitutions (see, e.g., Elkins et al. 2009). Research shows that constitutional text can but does not always have important consequences (Bjørnskov and Mchangama 2019; Ginsburg and Huq 2016; Persson and Tabellini 2003; Voigt and Gutmann 2013). This has motivated a recent and very active strand of literature dealing with when constitutional text translates into constitutional practice (Chilton and Versteeg 2020; Voigt 2021 surveys this literature).

Even though constitutional compliance is observable and highly relevant, quantitative research of this phenomenon has long been neglected. Empiricists have rather focused on measuring and studying related concepts, such as judicial independence (e.g., Feld and Voigt 2003; Linzer and Staton 2015; Voigt et al. 2015) or the rule of law (Gutmann and Voigt 2018; Kaufmann et al. 2011; World Justice Project 2020). By systematically measuring and studying the (mis)match between constitutional rules and practice, Law and Versteeg (2013) made a seminal contribution to the literature on constitutional compliance. The importance of measuring, studying, and eventually better understanding constitutional compliance is, for example, underlined by the frequent referral to constitutional provisions in reviews of countries' efforts to implement the Sustainable Development Goals. These discussions usually disregard whether the constitutional provision is part of a constitution that is generally respected by the executive, or whether it is unlikely to have any consequences in practice. A better understanding of the causes

and consequences of constitutional compliance promises to lead to concrete policy recommendations and the monitoring of constitutional compliance by citizens is easier than, for example, that of the rule of law (Gutmann et al. 2022).

Here, we introduce the Comparative Constitutional Compliance Database, which includes indicators for governments' compliance with 14 constitutional rules that can be grouped into four legal areas: (1) property rights and the rule of law (encompassing indicators for property rights, judicial independence, equality before the law, and rule of law); (2) political rights (freedom of association, freedom of assembly, and the right to form parties); (3) civil rights (free media, free speech, free movement, and religious freedom); and (4) basic human rights (the right to life, freedom from slavery, and protection from torture). The construction of our indicators involves matching information on *de jure* constitutional rules from the Comparative Constitutions Project (CCP; see Elkins et al. 2009) to data on these rules' *de facto* implementation according to the Varieties of Democracy project (V-Dem; see Coppedge et al. 2021). Individual scores for these 14 compliance indicators, as well as aggregated measures for the four above-mentioned categories of constitutional rules and an overall compliance indicator across all rules, are calculated for 168 countries over the time period 1900 to 2020.

Our database improves on existing indicators for constitutional compliance in various ways. With over 10,000 country-year observations covering 168 countries over the period 1900 to 2020, it offers wide country and time coverage. One major advantage of our indicator construction is that all *de jure* and all *de facto* data, respectively, come from the same data source, avoiding problems of comparability due to differing coding rules and measurement strategies for compliance with different rights. Law and Versteeg (2013), for example, had to rely on five different data sources to measure *de facto*

constitutional rules. The CIRI dataset (see Cingranelli and Richards 2010) as their main source of *de facto* information covers various rights, but only for the years 1981 to 2010, and the unadjusted comparison of CIRI data over time is problematic (Fariss 2019). Although the World Bank data on literacy and life expectancy used by Law and Versteeg (2013) covers many countries and years, this information can at best serve as a crude proxy for any *de facto* constitutional rights and requires that the authors come up with coding rules for when constitutional promises are (not) being complied with. The V-DEM dataset allows us to avoid these problems.

Moreover, our database offers indicators for constitutional compliance in four different rights categories, which are based not only on the same data sources, but also follow the same coding rule, ensuring their comparability. Finally, by including V-Dem's own expert coding of executive compliance with the constitution in our database, we make it possible to cross-validate results based on our indicators, using another indicator of constitutional compliance with an even larger country and time coverage. A serious downside of V-Dem's compliance indicator is that it is constructed as a black box. No one knows the criteria used by experts to evaluate a government's constitutional compliance and whether experts coding different countries share a common definition of what compliance is. Our new compliance indicators do not suffer from a comparable weakness.

The remainder of this article is structured as follows. In Section 2, we focus on the limitations of existing indicators of constitutional compliance. Section 3 explains the construction of our new indicators of constitutional compliance, both for individual constitutional rules and for their aggregates. In Section 4, we use several compliance indicators to illustrate stylized facts about constitutional compliance across the world

and its development over time. Finally, we offer an outlook on current and prospective research that can benefit from our database.

2. Existing indicators of constitutional compliance

Four approaches to measuring constitutional compliance are proposed in the literature. What separates these studies from the broader and swiftly growing literature that works with *de jure* and *de facto* indicators of constitutional rules is that they are explicitly measuring the gap between *de jure* constitutional promises and what is then implemented *de facto*. Most of these studies have been published only in recent years. Law and Versteeg (2013) produced the first dataset of what they call constitutional underperformance less than a decade ago.¹ They measure constitutional compliance with respect to 15 constitutional rights divided into three categories: personal integrity rights, civil and political freedoms, and socioeconomic and group rights.² Law and Versteeg collect their own *de jure* data by analyzing the contents of 729 national constitutions adopted by 188 countries between 1946 and 2010. The main source of Law and Versteeg's *de facto* data is the CIRI database (Cingranelli and Richards 2010), which provides data on 195 countries for the period 1981 to 2010.³ Law and Versteeg create 15 *de jure* and 15 *de facto* indicators, which are then used to calculate one constitutional compliance score (corresponding to a country-year). Countries that protect a right in their constitution score one point for the *de jure* protection of that right, others get zero

¹ Law and Versteeg (2013) also develop an indicator of constitutional overperformance, i.e., the level of *de facto* protection of rights that are not guaranteed in the constitution. While this phenomenon is not relevant to the question of constitutional compliance, its determinants have been studied elsewhere, e.g., by Metelska-Szaniawska and Lewczuk (2022).

² These are prohibition of arbitrary arrest or detention, prohibition of torture, right to *habeas corpus*, fair trial rights, prohibition of the death penalty, freedom of assembly or association, freedom of movement, freedom of religion, right to vote, freedom of the press or expression, right to health, right to education, gender equality in marriage, gender equality in labor relations, and protection of minority rights.

³ Law and Versteeg draw on four more sources of *de facto* data: the Minorities at Risk Project, Amnesty International, Hathaway (2002), and the World Bank's World Development Indicators.

points. Countries that protect a right *de facto* get up to one point, depending on the level of protection, and countries that do not provide relevant protection of that right in practice score zero. The *de jure-de facto* gap, or “constitutional underperformance”, is calculated based on those rights that a country protects in its constitution. The indicator divides the total number of points a country scores on its *de facto* protection level of each *de jure* protected right by the number of points that could have been reached if all *de jure* promised rights were *de facto* fully protected. The resulting indicator ranges from zero to one and indicates the share of *de jure* promises in the constitution that are *de facto* upheld.

Metelska-Szaniawska (2021) uses a different approach to measure the *de jure-de facto* gap. The study focuses on seven civil and political rights in post-socialist countries: freedom of movement, freedom of association, freedom of expression, freedom of the press, freedom of religion, prohibition of torture, and the right to *habeas corpus*. *De jure* data comes from the Comparative Constitutions Project (Elkins et al. 2009), while the *de facto* data is from the CIRI database (Cingranelli and Richards 2010) and Freedom House (2015). As in Law and Versteeg (2013), all *de jure* and *de facto* rights are coded between zero and one, where one indicates (full) protection of the right. But unlike Law and Versteeg (2013), Metelska-Szaniawska (2021) calculates a combined indicator of constitutional compliance and constitutional overperformance by subtracting the sum of a country’s *de facto* scores from the sum of its *de jure* scores and then dividing by seven. Hence, this overall indicator takes on positive or negative values, depending on whether more rights are protected *de facto* or *de jure*, and ranges potentially from -1 to +1. Given that we are only interested in measuring compliance with rules guaranteed in the constitution, the *de jure-de facto* gap as operationalized in Metelska-Szaniawska (2021) is not suitable for our purposes.

Mataic and Finke (2019) propose two indicators for the *de jure-de facto* gap in religious freedom. They use *de jure* data from the Religion and State Constitutions dataset (Fox 2012), capturing the constitutional protection of 21 religious freedoms, and two *de facto* indicators from the Religion and State dataset, round 3 (RAS3; see Fox 2017), which measure 65 restrictions of religious practices imposed on all religions or only on religious minorities. For all constitutions that contain at least one constitutional promise of religious freedom, Mataic and Finke standardize the *de jure* and the *de facto* indicators and then subtract one of these *de facto* indicators from the *de jure* indicator. The resulting two indicators, one for compliance with religious freedoms of all religions and one specifically for religious minorities, are only crude proxies for a *de jure-de facto* gap when compared to the indicators discussed so far. The *de jure* and *de facto* rights do not match, meaning that it remains unclear whether restrictions of religious practices are really contradicting constitutional rules. By standardizing their indicators before subtracting, Mataic and Finke (2019) also give *de jure* and *de facto* rights different weights in the construction of the indicators.

The fourth indicator of constitutional compliance, *v2exrescon*, is part of the V-Dem dataset and follows a very different methodology than the indicators discussed so far (Coppedge et al. 2021; Pemstein et al. 2021). Instead of measuring whether specific *de jure* constitutional rules are complied with *de facto*, *v2exrescon* is based on expert evaluations of whether members of the executive respect the constitution in general. Country experts are asked to rate constitutional compliance in a country-year on a five-point scale and the responses of various experts are then aggregated using an item response theory model (see Pemstein et al. 2021).⁴ The major advantage of this indicator

⁴ The response categories range from “members of the executive violate the constitution whenever they want to, without legal consequences” to “members of the executive never violate the constitution”.

is that it is, in principle, not restricted to measuring compliance with a limited set of constitutional rules for which matching *de facto* information is available. However, the indicator also has two important disadvantages. First, like most perception-based governance indicators, it may be subject to various biases (see, e.g., Gutmann et al. 2020). Second, since constitutional compliance is a highly abstract concept, expert evaluations of such a concept are the product of a black box. It remains unclear how the involved experts would define constitutional compliance and on what aspects of constitutional compliance they primarily base their evaluations.⁵ To give just one example, it is unclear if the executive's respect for the constitution should be judged based on the expert's reading and interpretation of the constitution or if it only matters that national courts find a violation of constitutional rules.

Of the four indicators measuring a *de jure-de facto* gap that we are aware of, the indicators by Metelska-Szaniawska (2021) and Mataic and Finke (2019) are not indicators of constitutional compliance in the narrow sense, because they conflate constitutional over- and underperformance. This leaves the indicator by Law and Versteeg (2013) and V-Dem's *v2exrescon* as important reference points for our new constitutional compliance indicators. The V-Dem indicator should be treated with caution due to the subjectivity of expert evaluations of abstract concepts and the black box character of the evaluation process. The main weakness of Law and Versteeg's (2013) indicator is the limited availability of *de facto* information at the time of its production, which forced the authors to draw on information from different data sources and to sometimes use arbitrary

⁵ This is not meant as a criticism of all expert evaluations of policy and institutions (and therefore of V-Dem indicators in general), but specifically of expert ratings based on very broad, unspecific questions that could be interpreted in myriad ways, as is the case for the discussed indicator.

coding rules. This makes the individual rights indicators difficult to compare to each other or to aggregate in an overall indicator of constitutional compliance.

3. A new set of indicators of constitutional compliance

To establish a country's level of constitutional compliance, we draw on two datasets. These datasets are ideal for our purposes because of their data quality, their unmatched breadth in terms of institutional characteristics covered, and their almost universal country and time coverage over the last 70 years.

The Comparative Constitutions Project (CCP) provides data on the *de jure* rules in national constitutions. Elkins et al. (2009) collected and hand-coded English translations of all national constitutions and most constitutional amendments worldwide since 1789. To minimize errors in coding, each constitutional event is evaluated twice by independently working coders. After that, a reconciler reviews each constitution to check for errors and to resolve coder discrepancies.

Data on the *de facto* compliance with constitutional promises identified in the CCP data comes from the Varieties of Democracy project (V-Dem; version 11.1). While CCP measures hundreds of characteristics of national constitutions, V-Dem measures hundreds of aspects of democracy as a multidimensional concept. Over 3,500 country experts and dozens of social scientists involved in the project are supposed to ensure that their expert evaluations of *de facto* institutions are reliable and comparable across countries and over time (Coppedge et al. 2021; Pemstein et al. 2021).

Matching the information provided by CCP and V-Dem, we arrive at 14 constitutional rules that are covered consistently by one or more indicators in each dataset. Our indicators operationalize constitutional compliance as the absence of a "*de jure-de facto*

gap". Such a gap would imply that representatives of the different government branches are not following the rules specified in the country's written constitution. What distinguishes our measurement approach from a typical *de facto* institutional quality indicator is that noncompliance with a constitutional rule is only possible if the constitution includes that rule in the first place. This means that the standard to which a country is held varies both over time and across countries and is determined by members of these societies – all citizens or only an elite – when they introduce or change their national constitution. We limit our database to the time period after 1900, because the underlying primary data is incomplete before 1900 and we are not convinced that it is of comparable quality.

According to our main coding rule, compliance with a constitutional rule is coded 1 if that rule is either not protected *de jure* or if it is protected both *de jure* and *de facto*. The compliance indicator is coded 0 if the right is protected *de jure*, but not *de facto*. In this case, we speak of a *de jure-de facto* gap or constitutional underperformance. An advantage of this coding rule is that it allows countries to perform better in constitutional compliance simply by promising fewer constitutional rights. However, this can also be seen as a major disadvantage because we would not distinguish between a country that guarantees all 14 constitutional rules and complies with them and a country whose constitution includes none of the 14 rules. Below, we discuss how we mitigate this problem in the construction of our five aggregate constitutional compliance indicators and we also introduce an alternative set of indicators that deal with this problem differently.

De jure is coded based on whether a rule exists in the constitution. Sometimes it is sufficient that one of two alternative rules exists to speak of *de jure* protection. For

example, it is sufficient that either freedom of opinion or freedom of expression is guaranteed to score 1 on *de jure* free speech. The *de facto* coding is based on ordered categorical indicators, which are typically based on a five-point scale where the highest category indicates full compliance with the rule. The second highest category indicates weaker enforcement of the rule, but still no intentional disregard by the government. We consider governments that score in one of the top two categories as *de facto* enforcing the rule and governments rated in a lower category as not complying with the rule. Sometimes we rely on more than one V-Dem indicator to measure compliance with a constitutional rule. In these cases, the government must score in the top two categories of every one of these indicators to be considered compliant. Table A1 in the Appendix lists the exact criteria for the *de jure* and *de facto* coding of each of our 14 constitutional rules.

Having produced 14 individual rule indicators of *de jure-de facto* gaps, the challenging question is how to form broader indicators of constitutional compliance. We start by grouping the 14 indicators in four legal areas. “Property rights and the rule of law” includes four rules: private property rights, judicial independence, equality before the law, and rule of law. The second category “political rights” includes three rules: freedom of association, freedom of assembly, and the right to form parties. “Civil rights” (or civil liberties) includes four rules: free media, free speech, free movement, and religious freedom. Finally, the category “basic human rights” covers three rules: right to life, freedom from slavery, and protection from torture. To aggregate the individual indicators within each of the four categories, we apply factor analysis and extract the first factor as

our indicator of constitutional compliance in that legal category.⁶ Factor analysis reveals that there is exactly one dominating factor representing a latent variable of constitutional compliance in each category. The advantage of factor analysis over, for example, calculating the mean value is that variables are weighted according to how representative they are of the indicators in that category. The four newly created compliance indicators are called CC_R, CC_P, CC_C, and CC_B, respectively.

To avoid countries getting a perfect compliance score for not guaranteeing anything in their constitution, the factor analysis is applied only to country-years in which at least one rule in the respective legal category was protected *de jure*. Where this is not the case, constitutional compliance in that category is not calculated. In other words, governments may perform well in terms of constitutional compliance, for example with political rights, because the guarantees in the constitution are limited, but their compliance with political rights is not rated at all if the constitution does not address any political rights.

Our preferred coding rule differs from that applied by Law and Versteeg (2013) who measure compliance as the share of the *de jure* protected constitutional rules that is enforced *de facto* (Section 2). For comparison, we also construct additional indicators where we apply the same coding rule as Law and Versteeg to aggregate our 14 gap indicators in the four legal areas named above. For that we simply recode all 14 indicators as missing (instead of 1) if the constitution does not guarantee the respective rule *de jure*. Then we take the mean value over the non-missing gap indicators within each of the four categories. The resulting indicators are called CC_R_lv, CC_P_lv, CC_C_lv, and CC_B_lv.

⁶ This aggregation strategy is similar to that of Gygli et al. (2019), however, we do not allow the weights of individual variables to vary over time. For some research questions, a distinction between civil and political rights is not helpful. Thus, our online database also contains an indicator that combines both.

Finally, we take the mean value of the four legal area-specific compliance indicators according to each coding scheme to generate two overall constitutional compliance indicators, CC_T and CC_T_lv. For comparison, we add to our database the expert evaluation of constitutional compliance, v2exrescon, produced by V-Dem. All indicators are standardized to have a mean of zero and a standard deviation of one across the entire dataset, which spans the time period 1900 to 2020. This is particularly important for comparing the indicators in the following section. Higher values on an indicator reflect higher constitutional compliance.

<< Tables 1 and 2 here >>

Descriptive statistics are shown in Table 1 and bivariate correlations in Table 2. The high correlation between CC_T and CC_T_lv ($r = 0.92$) shows that the coding rule employed by Law and Versteeg (2013) does not lead to a very different evaluation of constitutional compliance than our preferred coding rule. Both indicators are equally correlated with the expert rating by V-Dem (v2exrescon, $r = 0.73$). Table 2 also shows the correlations with a *de jure* index that counts how many of the 14 rules of interest are guaranteed in the constitution. Since none of the constitutional compliance indicators are significantly correlated with the *de jure* index, it appears that a high number of constitutional promises is not detrimental to constitutional compliance.⁷

4. Stylized facts

In this section, we present stylized facts regarding correlates of and time trends in constitutional compliance. Furthermore, we compare the different compliance indicators in our dataset to highlight their differences, while also demonstrating their validity.

⁷ Constitutional compliance is also unrelated to the length of the constitution in words according to CCP.

<< Figure 1 here >>

Figure 1 illustrates the global time trend in constitutional compliance based on the three indicators of overall compliance and four subindicators for compliance in specific legal areas. The indicators of constitutional compliance show surprisingly similar patterns, given the significant differences in their construction. Especially our preferred indicator CC_T and V-Dem's expert evaluation v2exrescon show almost identical time trends. Neither indicator suggests a long-term trend in constitutional compliance. This finding is noteworthy as CC_T_lv, which is based on the coding rule of Law and Versteeg (2013), indicates that constitutional compliance around the globe has improved significantly after 1990, relative to the 90 years before 1990. The difference between CC_T and CC_T_lv can be explained by the global increase in the number of *de jure* protected constitutional rights, especially after 1990 (see Figure A1 in the Appendix). When CC_T is divided into its components, only compliance with political rights in the constitution shows a clear pattern of improvement over time.

<< Figures 2 and 3 here >>

Figure 2 shows regional trends in the three indicators of overall constitutional compliance based on the United Nations' classification of world regions. The different indicators show almost identical levels and time trends in different world regions. Only for Asia, V-Dem experts appear to judge constitutional compliance with significantly more optimism than our indicators. As of 2020, European countries show the highest levels of constitutional compliance, whereas constitutional compliance in Africa and Asia is lower than in other parts of the world. One might attribute this pattern to differences in economic development across continents, but the bivariate correlation between income per capita and compliance is only moderately positive ($r = 0.30$). Figure 3 shows

regional trends for post-socialist countries and Middle Eastern countries, as well as for landlocked versus non-landlocked countries. Notable is the substantial disagreement (almost one standard deviation) between our compliance indicators and v2exrescon concerning the Middle East. V-Dem experts rate constitutional compliance in the Middle East only slightly below the global average, whereas our indicators rate the Middle East as having some of the lowest compliance levels in the world. Figures A1 and A2 in the Appendix show world maps with the global distribution of CC_T and its subindicators to illustrate regional patterns and their evolution over time in more detail. The trends are shown for the 1950s, 1970s, 1990s and 2010s to cover the entire period for which we have a wide country coverage, and to rule out that changes over time merely reflect short-term fluctuations.

<< Table 3 and Figure 4 here >>

Table 3 shows the five countries with the highest and lowest constitutional compliance according to CC_T during the same decades as in Figure A1. The best-performing countries in all decades are democracies as classified by Bjørnskov and Rode (2020). The worst-performing countries are with only two exceptions not democratic. Not surprisingly, the bivariate correlation between democracy and CC_T is much higher than that of income per capita ($r = 0.73$).

Figure 4 shows constitutional compliance and its evolution over time for six selected country cases. China, India, and the United States are the three most populous countries in the world. The cases of Hungary, Poland, and Turkey have been intensively discussed in recent studies of democratic transition and backsliding. The three indicators of constitutional compliance draw very similar patterns for Poland and the United States, both of which experienced significant declines in constitutional compliance in recent

years. Regarding Hungary and India, there are some differences between CC_T and v2exrescon. CC_T indicates a dramatic decline in constitutional compliance in India over the last decade, which v2exrescon does not show. Hungary, in contrast, is evaluated dramatically better according to v2exrescon while under communist rule than CC_T would suggest. Only CC_T indicates an increase in Hungary's constitutional compliance in 1990 that is even more dramatic than Poland's. However, all indicators agree that constitutional compliance dropped significantly over the last decade in Hungary. Finally, CC_T and v2exrescon disagree on how to rate constitutional compliance in China and Turkey. CC_T indicates a moderate decline in constitutional compliance in China over the past century, whereas v2exrescon suggests dramatic improvements over time. In Turkey, both indicators capture the slumps in constitutional compliance following coups as well as its erosion under ongoing AKP rule. However, v2exrescon indicates high levels of constitutional compliance starting in the mid-1980s, whereas CC_T captures the dramatic positive effect of the democratic reforms in the early 2000s starting from a low compliance level. As a general conclusion, it seems that V-Dem country experts sometimes rate the constitutional compliance of nondemocratic regimes more generously than V-Dem's *de facto* data used in the construction of our compliance indicator seem to justify.

<< Figure 5 here >>

Figure 5 shows constitutional compliance plotted for six different regime types according to Bjørnskov and Rode (2020) who adopt their classification from Cheibub et al. (2010). All three indicators of constitutional compliance show very similar ratings for parliamentary, mixed, and presidential democracies. However, v2exrescon considers civilian dictatorships before 1990 and monarchies from 1960 onwards to be exhibiting

higher constitutional compliance levels than suggested by CC_T. Parliamentary democracies show the highest levels of constitutional compliance among all regime types, whereas military dictatorships perform the worst and, consistent with our results, democracies clearly outperform nondemocratic regimes in general.

<< Figures 6 and 7 here >>

Figures 6 and 7 show constitutional compliance for countries categorized by their legal origin according to La Porta et al. (2008) and their colonial history as classified by Hadenius and Teorell (2007). French civil law countries show the lowest levels of constitutional compliance, although the difference to common law countries decreases after 1990. Since 1990, German and Scandinavian civil law countries clearly show the highest levels of constitutional compliance. It can also be seen that countries that were never colonized exhibit the highest levels of constitutional compliance, which have continuously increased since 1950. Former Spanish colonies have made the greatest improvements in constitutional compliance between 1950 and 2000.

<< Table 4 here >>

So far, we have focused on the role of domestic factors. Dreher et al. (2012) argue that governments' respect for physical integrity rights is higher in more open societies. Indeed, the KOF Globalisation Index (Dreher 2006; Gygli et al. 2019) is positively correlated with constitutional compliance ($r = 0.60$). Finally, we study how two constitutional traits coded by CCP are associated with compliance levels for the respective constitutions. The first trait is that the constitution allows for the dismissal of either the head of state or the head of government in case they violate the constitution. This constitutional rule is clearly designed with the intention to enhance constitutional compliance by making it easier to hold political leaders accountable for violating the

constitution. The second constitutional trait is whether the constitution identifies a model from a foreign government on which this constitution is based. As legal transplants tend to be detrimental to the effectiveness of law (Berkowitz et al. 2003a, 2003b), it can be expected that constitutions that borrow heavily from other countries might also be less complied with.

Table 4 shows fixed effects regression model estimates for both constitutional traits, separately for autocracies, democracies, and the full sample. We find that constitutional compliance is higher if the constitution allows for the dismissal of the head of state or the head of government for violating the constitution. This effect appears to be driven by democracies, indicating that such a constitutional rule might not be sufficient to stop an autocrat from violating constitutional rules. We can also see that constitutions that are based on a model from a foreign government are complied with less. While it may seem like the latter effect is driven by nondemocratic governments, the results in Columns (5) and (6) of Table 4 should be treated with caution, as they are based on very little variation in the independent variable of interest. Together with our findings in Section 3, these results indicate that although the number of constitutional guarantees is unrelated to the level of compliance with the constitution, constitutional content can help predict a government's propensity to comply. If political leaders are threatened with losing their office for violating constitutional rules, constitutional compliance increases, at least in democracies. Where constitutions are transplanted from foreign constitutional models, compliance is less likely.

5. Conclusion

This paper introduces the Comparative Constitutional Compliance Database, a resource for political economists studying the causes and consequences of constitutional

compliance. Our analysis reveals that constitutional compliance does not seem to have improved significantly over the last 120 years. Consistent with that observation, there is also no strong statistical association between a country's income per capita and compliance. Democracy is associated with substantially higher compliance levels, especially in parliamentary systems. Although it is often claimed that common law countries have superior judicial institutions, these countries are clearly outperformed by German and Scandinavian legal origin countries since the fall of the Iron Curtain.

Our results also indicate that former colonies and countries whose constitutions rely on a foreign model are associated with less constitutional compliance, as the literature on legal transplants (Berkowitz et al. 2003a, 2003b) would suggest. It seems that constitutions reflecting the mores, values, and norms of the societies they are supposed to structure have a higher chance of being implemented. Choutagunta et al. (2022) show that CIA interventions, but not KGB interventions, reduce the level of constitutional compliance in a country. This kind of foreign influence, however, typically does not lead to a new constitution. It might be insightful to study the effect of foreign influence in the process of constitutional design.

Cultural factors might also influence constitutional compliance. Gutmann, Lewczuk et al. (2021a) ask whether specific cultural traits are conducive or detrimental to constitutional compliance. They find that countries inhabited by citizens that are more individualistic and have less respect for social hierarchies are less likely to experience constitutional violations. It is also likely that constitutional compliance does not only depend on the general traits of society, but also on those of political leaders. Gutmann, Metelska-Szaniawska, and Voigt (2021b) show that leaders with military experience and those who came into office irregularly or via foreign imposition are less likely to comply

with the constitution. Political leaders with a law degree or a PhD show higher levels of constitutional compliance.

Recent studies and the stylized facts in this article have focused on the causes of constitutional compliance. Yet, questions concerning the effects of constitutional compliance largely remain unanswered. Future research will be able to use our database to study questions such as whether governments that comply with their constitution are also more likely to comply with international agreements, and whether this allows them to conclude more international agreements. Another important question would be if constitutional compliance affects the stability of political regimes. According to an influential argument by Weingast (1997), violations of the constitution could help citizens to coordinate on resistance against an exploitative government. Finally, the economic consequences of constitutional compliance need to be better understood. Do foreign investors, for example, reward constitutional compliance in general (see, e.g., Farber 2002) or only compliance with property rights and the rule of law?

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Appendix

Table A1: Criteria for coding constitutional compliance

| Rule | <i>De jure</i> criterion | <i>De facto</i> criterion (compliance) | <i>De facto</i> criterion (non-compliance) |
|--|---|--|---|
| (CC_R) Property rights and the rule of law | | | |
| Property rights | [PROPRGHT] Does the constitution provide for a right to own property? <u>OR</u> [INTPROP] Does the constitution protect intellectual property rights? | [v2clprptym] Most men enjoy most private property rights but a small minority does not. <u>AND</u> [v2clprptyw] Most women enjoy most private property rights but a small minority does not. | More than half of men enjoy most private property rights, yet a smaller share of men have much more restricted rights. <u>OR</u> More than half of women enjoy most private property rights, yet a smaller share of women have much more restricted rights. |
| Judicial independence | [JUDIND] Does the constitution contain an explicit declaration regarding the independence of the central judicial organ(s)? | [v2juhcind] When the high court in the judicial system is ruling in cases that are salient to the government, how often would you say that it makes decisions that merely reflect government wishes regardless of its sincere view of the legal record? – “Seldom” <u>AND</u> [v2juncind] When judges not on the high court are ruling in cases that are salient to the government, how often would you say that their decisions merely reflect government wishes regardless of their sincere view of the legal record? – “Seldom” | Coding “About half of the time” in either case. |
| Equality before the law | [EQUAL] Does the constitution refer to equality before the law, the equal rights | [v2clacjstm] Secure and effective access to justice for men is usually observed. <u>AND</u> [v2clacjstw] Secure and effective access to justice for women is usually observed. <u>AND</u> [v2clacjust] Poor people enjoy slightly fewer | Secure and effective access to justice for men is inconsistently observed. Minor problems characterize most cases or occur rather unevenly across different parts of the country. <u>OR</u> Secure and effective access to justice for |

| | | | |
|--------------------------------|--|--|---|
| | of men, or non-discrimination? | civil liberties than rich people. <u>AND</u> [v2clsocgrp] Members of some social groups enjoy slightly fewer civil liberties than the general population. | women is inconsistently observed. Minor problems characterize most cases or occur rather unevenly across different parts of the country. <u>OR</u> Poor people enjoy moderately fewer civil liberties than rich people. <u>OR</u> Members of some social groups enjoy moderately fewer civil liberties than the general population. |
| Rule of law | [RULELAW] Does the constitution contain a general statement regarding rule of law, legality, or Rechtsstaat (the German equivalent)? | [v2cltrnslw] Transparency and predictability are fairly strong. The laws of the land are usually created and enforced in a non-arbitrary fashion. | Transparency and predictability are somewhat limited. The laws of the land are mostly created in a non-arbitrary fashion but enforcement is rather arbitrary in some parts of the country. |
| (CC_P) Political rights | | | |
| Freedom of association | [ASSOC] Does the constitution provide for freedom of association? | [v2cseeorgs] Minimal control. Whether or not the government licenses CSOs, there exist constitutional provisions that allow the government to ban organizations or movements that have a history of anti-democratic action in the past (e.g. the banning of neo-fascist or communist organizations in the Federal Republic of Germany). Such banning takes place under strict rule of law and conditions of judicial independence. <u>AND</u> [v2csreprss] Weakly. The government uses material sanctions (fines, firings, denial of social services) to deter oppositional CSOs from acting or expressing | Moderate control. Whether the government ban on independent CSOs is partial or full, some prohibited organizations manage to play an active political role. Despite its ban on organizations of this sort, the government does not or cannot repress them, due to either its weakness or political expedience. <u>OR</u> Moderately. In addition to material sanctions outlined in response 3 below, the government also engages in minor legal harassment (detentions, short-term incarceration) to dissuade CSOs from acting or expressing themselves. The government may also restrict |

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| | | themselves. They may also use burdensome registration or incorporation procedures to slow the formation of new civil society organizations and sidetrack them from engagement. The government may also organize Government Organized Movements or NGOs (GONGOs) to crowd out independent organizations. One example would be Singapore in the post-Yew phase or Putin’s Russia. | the scope of their actions through measures that restrict association of civil society organizations with each other or political parties, bar civil society organizations from taking certain actions, or block international contacts. Examples include post-Martial Law Poland, Brazil in the early 1980s, the late Franco period in Spain. |
| Freedom of assembly | [ASSEM] Does the constitution provide for freedom of assembly? | [v2caassemb] To what extent do state authorities respect and protect the right of peaceful assembly? – “Mostly. State authorities generally allow peaceful assemblies, but in rare cases arbitrarily deny citizens the right to assemble peacefully.” | “Sometimes. State authorities sometimes allow peaceful assemblies, but often arbitrarily deny citizens the right to assemble peacefully.” |
| Right to form parties | [PARTRGHT] Does the constitution provide for a right to form political parties? | [v2psparban] Are any parties banned? – “Yes. But only a few parties are banned.” <u>AND</u> [v2psbars] How restrictive are the barriers to forming a party? – “There are modest barriers (e.g. party leaders face occasional political harassment by authorities).” <u>AND</u> [v2psoppaut] Most significant opposition parties are autonomous and independent of the ruling regime. | “Yes. Many parties are banned.” <u>OR</u> “There are significant obstacles (e.g. party leaders face high levels of regular political harassment by authorities).” <u>OR</u> “At least some opposition parties are autonomous and independent of the ruling regime.” |
| (CC_C) Civil rights | | | |
| Freedom of media | [CENSOR] Does the constitution prohibit censorship? <u>OR</u> [PRESS] Does the constitution | [v2mecenefm] Does the government directly or indirectly attempt to censor the print or broadcast media? – “Attempts to censor are indirect and limited to especially sensitive issues.” <u>AND</u> [v2meharjrn] It is rare for any journalist to be harassed for offending powerful | “Attempts to censor are direct but limited to especially sensitive issues.” <u>OR</u> “Some journalists who offend powerful actors are forced to stop but others manage to continue practicing journalism freely for long periods of time.” |

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| | provide for freedom of the press? | actors, and if this were to happen, those responsible for the harassment would be identified and punished. | |
| Freedom of speech | [EXPRESS] Does the constitution provide for freedom of expression or speech? <u>OR</u> [OPINION] Does the constitution provide for freedom of opinion, thought, and/or conscience? | [v2cldiscm] Mostly respected. There are minor restraints on the freedom of expression in the private sphere, predominantly limited to a few isolated cases or only linked to soft sanctions. But as a rule there is no intervention or harassment if men make political statements. <u>AND</u> [v2cldiscw] Mostly respected. There are minor restraints on the freedom of expression in the private sphere, predominantly limited to a few isolated cases or only linked to soft sanctions. But as a rule there is no intervention or harassment if women make political statements. <u>AND</u> [v2clacfree] Mostly respected by public authorities. There are few limitations on academic freedom and freedom of cultural expression, and resulting sanctions tend to be infrequent and soft. | Somewhat respected. Expressions of political opinions by men are occasionally exposed to intervention and harassment. <u>OR</u> Somewhat respected. Expressions of political opinions by women are occasionally exposed to intervention and harassment. <u>OR</u> Somewhat respected by public authorities. Academic freedom and freedom of cultural expression are practiced routinely, but strong criticism of the government is sometimes met with repression. |
| Freedom of movement | [FREEMOVE] Does the constitution provide for freedom of movement? | [v2clfmov] Mostly respected by public authorities. Limitations on freedom of movement and residence are not directed at political opponents but minor restrictions exist. For example, exit visas may be required and citizens may be prohibited from traveling outside the country when accompanied by other members of their family. <u>AND</u> [v2cldmovem] Most men enjoy full freedom of movement but a small minority does not. <u>AND</u> [v2cldmovew] | Somewhat respected by the public authorities. The right to travel for leading political opponents or particular social groups is occasionally restricted but ordinary citizens only met minor restrictions. <u>OR</u> Most men enjoy some freedom of movement but a sizeable minority does not. Alternatively all men enjoy partial freedom of movement. <u>OR</u> Most women enjoy some freedom of movement but a sizeable minority does not. Alternatively all women enjoy partial freedom of movement. |

| | | | |
|---------------------|---|--|---|
| | | Most women enjoy full freedom of movement but a small minority does not. | |
| Religious freedom | [FREEREL] Does the constitution provide for freedom of religion? | [v2clrelig] Mostly respected by public authorities. There are minor restrictions on the freedom of religion, predominantly limited to a few isolated cases. Minority religions face denial of registration, hindrance of foreign missionaries from entering the country, restrictions against proselytizing, or hindrance to access to or construction of places of worship. <u>AND</u> [v2csrlgrep] Weakly. The government uses material sanctions (fines, firings, denial of social services) to deter oppositional religious organizations from acting or expressing themselves. They may also use burdensome registration or incorporation procedures to slow the formation of new religious civil society organizations and sidetrack them from engagement. The government may also organize parallel religious organizations to crowd out independent religious organizations. | Somewhat respected by public authorities. Autonomous organized religious practices exist and are officially recognized. Yet, minor religious communities are repressed, prohibited, or systematically disabled, and/or instances of discrimination or intimidation of individuals or groups due to their religion occur occasionally. <u>OR</u> Moderately. In addition to material sanctions outlined in 3 below, the government also engages in minor legal harassment (detentions, short-term incarceration) to dissuade religious organizations from acting or expressing themselves. The government may also restrict the scope of their actions through measures that restrict association of religious civil society organizations with each other or political parties, bar religious civil society organizations from taking certain actions, or block international contacts. |
| (CC_B) Basic rights | | | |
| Right to life | [LIFE] Does the constitution provide for a right to life? <u>OR</u> [CAPPUN] How does the constitution treat the use of capital | [v2clkill] Mostly respected by public authorities. Political killings are practiced in a few isolated cases but they are not incited or approved by top leaders of government. | Somewhat respected by public authorities. Political killings are practiced occasionally but they are typically not incited and approved by top leaders of government. |

| | | | |
|---------------------------|---|---|--|
| | punishment? (universally prohibited/ prohibited except in the case of war) | | |
| Prohibition of slavery | [SLAVE] Does the constitution prohibit slavery, servitude, or forced labor? (universally prohibited/ prohibited except in the case of war) | [v2clslavem] Male servitude or other kinds of forced labor is infrequent and only found in the criminal underground. It is actively and sincerely opposed by the public authorities. <u>AND</u> [v2clslavef] Female servitude or other kinds of forced labor is infrequent and only found in the criminal underground. It is actively and sincerely opposed by the public authorities. | Male servitude or other kinds of forced labor exists but is not widespread and usually actively opposed by public authorities, or only tolerated in some particular areas or among particular social groups. <u>OR</u> Female servitude or other kinds of forced labor exists but is not widespread and usually actively opposed by public authorities, or only tolerated in some particular areas or among particular social groups. |
| Prohibition of torture | [TORTURE] Does the constitution prohibit torture? (universally prohibited / prohibited except in the case of war) | [v2cltort] Mostly respected by public authorities. Torture is practiced in a few isolated cases but is not incited or approved by top government leaders. | Somewhat. Torture is practiced occasionally but is typically not approved by top leaders of government. |

Figure A1: De jure constitutional rights over time

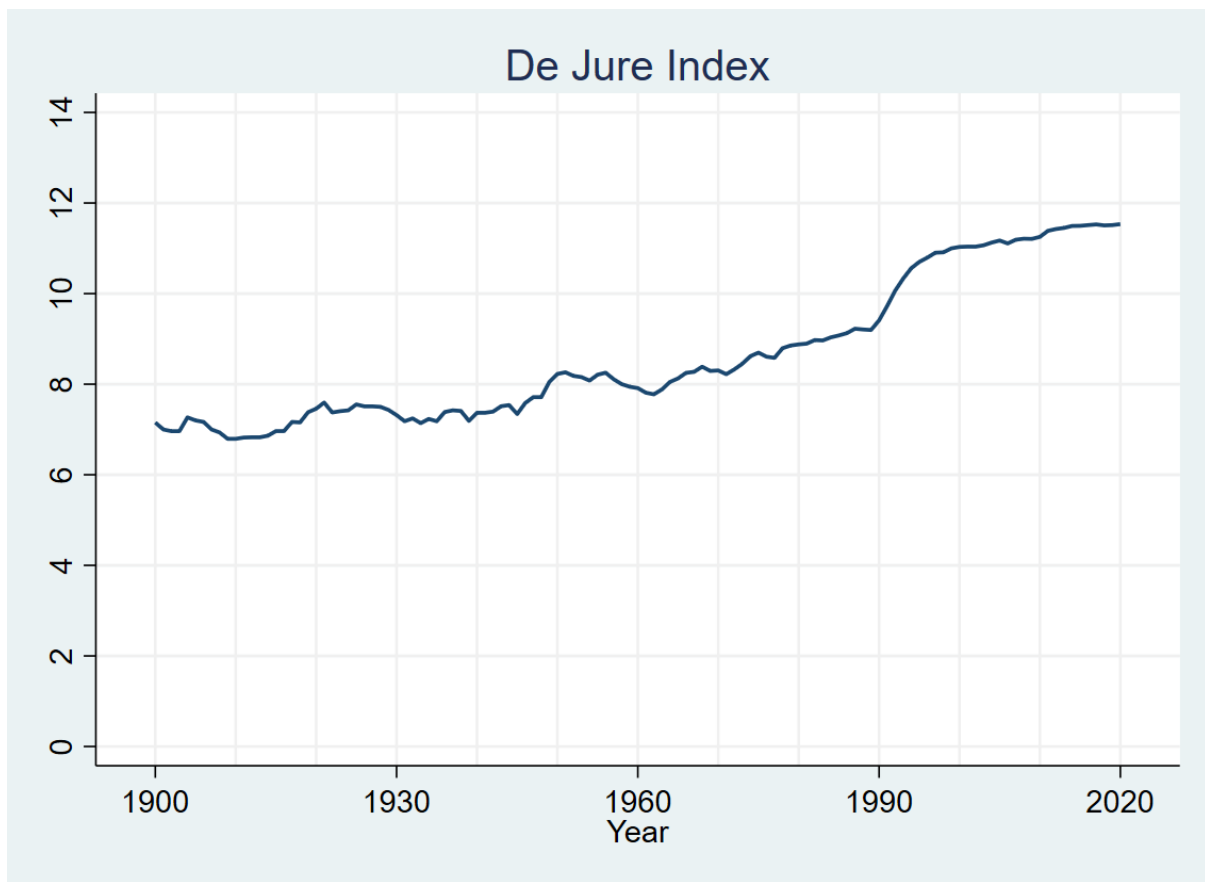


Figure A2: Constitutional compliance across the world

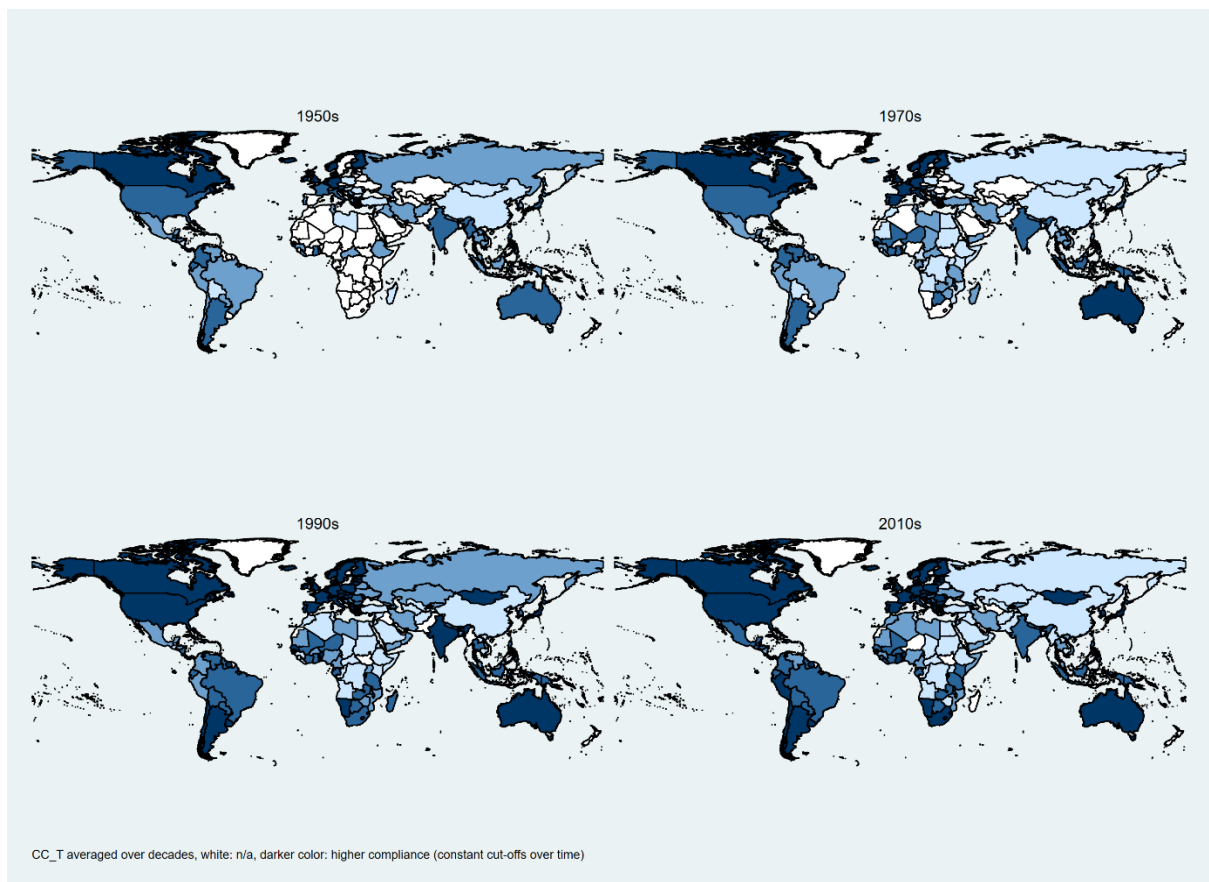
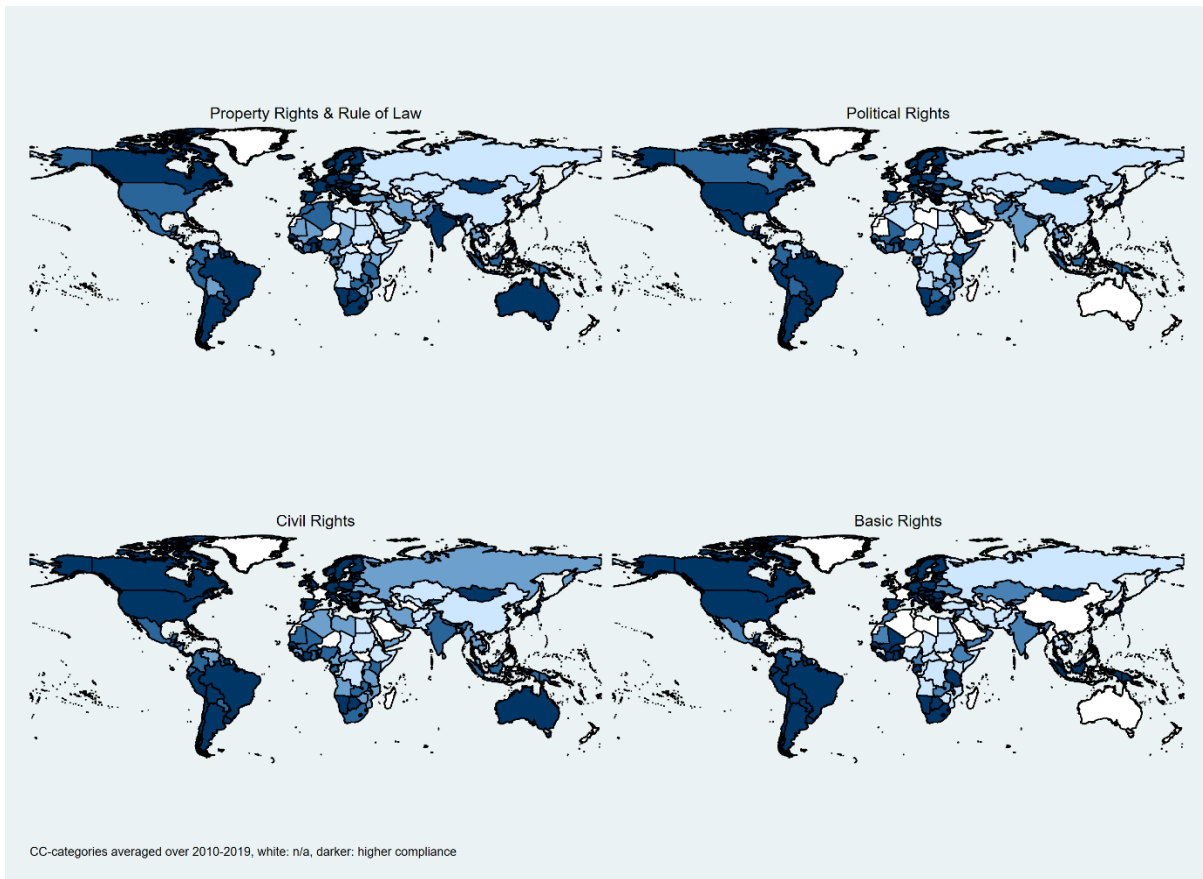


Figure A3: Constitutional compliance categories across the world



Tables and Figures

Table 1: Descriptive statistics

| Variable | Obs. | Mean | Std. Dev. | Min | Max |
|--------------------|--------|------|-----------|-------|------|
| CC_T | 10,631 | 0.00 | 1.00 | -2.05 | 1.65 |
| CC_R | 10,260 | 0.00 | 1.00 | -1.62 | 1.44 |
| CC_P | 9,236 | 0.00 | 1.00 | -1.54 | 1.57 |
| CC_C | 10,131 | 0.00 | 1.00 | -1.89 | 1.06 |
| CC_B | 7,797 | 0.00 | 1.00 | -2.11 | 0.84 |
| CC_T_lv | 10,632 | 0.00 | 1.00 | -1.27 | 1.42 |
| v2exrescon (V-Dem) | 18,806 | 0.00 | 1.00 | -2.60 | 2.24 |
| de jure index | 10,878 | 9.26 | 3.46 | 0 | 14 |

Table 2: Bivariate correlations

| | CC_T | CC_T_lv | v2exrescon | de jure index |
|---------------|-------|---------|------------|---------------|
| CC_T | 1.00 | | | |
| CC_T_lv | 0.92 | 1.00 | | |
| v2exrescon | 0.73 | 0.73 | 1.00 | |
| de jure index | -0.14 | 0.11 | -0.14 | 1.00 |
| | CC_R | CC_P | CC_C | CC_B |
| CC_R | 1.00 | | | |
| CC_P | 0.63 | 1.00 | | |
| CC_C | 0.68 | 0.72 | 1.00 | |
| CC_B | 0.64 | 0.54 | 0.59 | 1.00 |

Table 3: Best and worst performing countries over time

| 1950-1959 | | | 1970-1979 | | |
|--------------|--------|-----------|--------------|--------|-----------|
| Country | CC_T | Democracy | Country | CC_T | Democracy |
| Canada | 1.646 | 1 | Canada | 1.646 | 1 |
| Belgium | 1.536 | 1 | Belgium | 1.536 | 1 |
| Ireland | 1.536 | 1 | Finland | 1.536 | 1 |
| Costa Rica | 1.360 | 1 | Ireland | 1.536 | 1 |
| Germany (*) | 1.360 | 1 | Netherlands | 1.536 | 1 |
| ... | ... | ... | ... | ... | ... |
| Nicaragua | -1.482 | 0 | Korea, North | -1.512 | 0 |
| Korea, North | -1.512 | 0 | Nicaragua | -1.550 | 0 |
| Mongolia | -1.558 | 0 | Vietnam | -1.558 | 0 |
| El Salvador | -1.687 | 0 | Honduras | -1.622 | 0 |
| Hungary | -1.810 | 0 | Guatemala | -2.047 | 1 |
| 1990-1999 | | | 2010-2019 | | |
| Country | CC_T | Democracy | Country | CC_T | Democracy |
| France | 1.646 | 1 | France | 1.646 | 1 |
| Poland | 1.538 | 1 | Australia | 1.479 | 1 |
| Netherlands | 1.536 | 1 | Norway | 1.374 | 1 |
| Australia | 1.479 | 1 | Finland | 1.360 | 1 |
| Finland | 1.448 | 1 | Germany (*) | 1.360 | 1 |
| ... | ... | ... | ... | ... | ... |
| Sudan | -1.748 | 0 | Burundi | -1.832 | 1 |
| Uzbekistan | -1.798 | 0 | Rwanda | -1.835 | 0 |
| Afghanistan | -1.799 | 0 | Sudan | -1.839 | 0 |
| Turkmenistan | -1.812 | 0 | Eritrea | -1.842 | 0 |
| Eritrea | -1.842 | 0 | Uzbekistan | -1.910 | 0 |

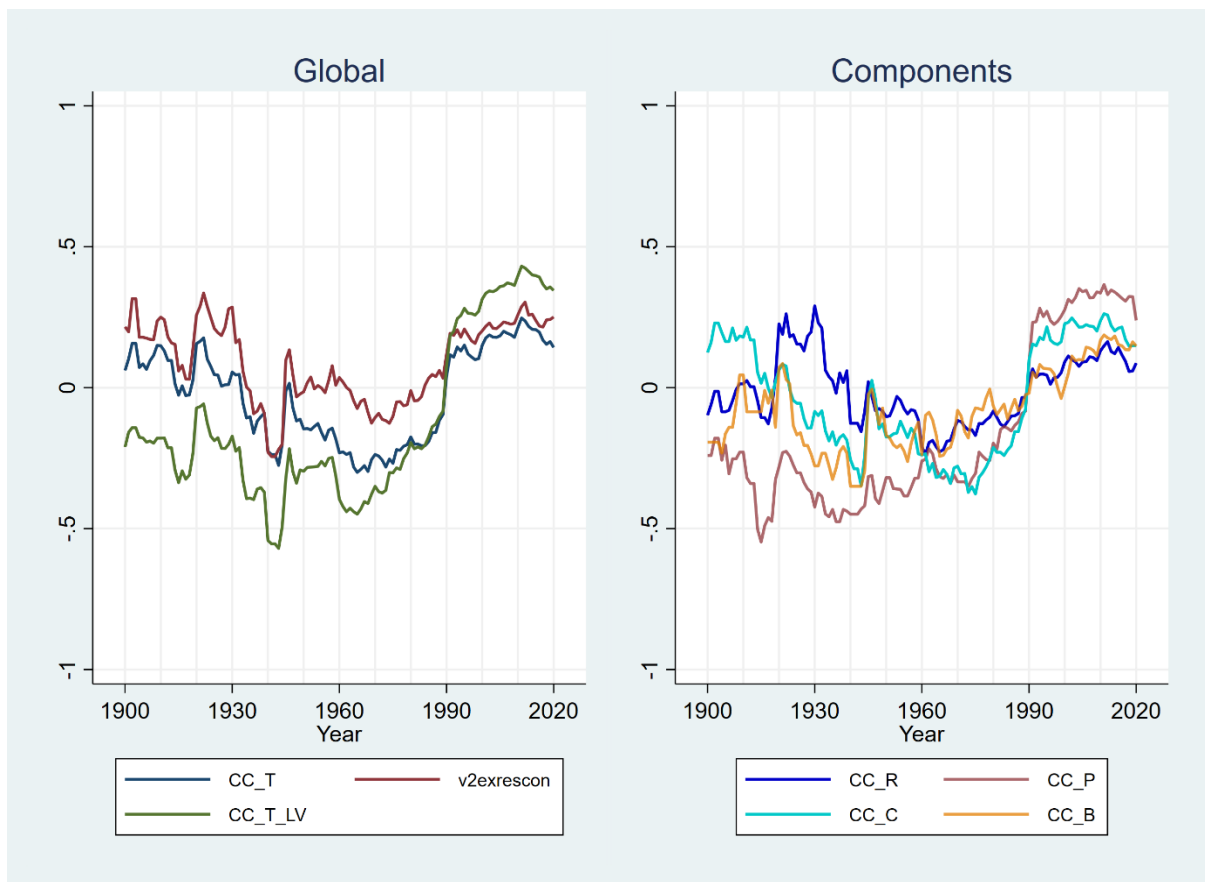
Note: Top-5 and bottom-5 countries in each decade according to the mean value of CC_T. (*) indicates that additional countries share the same CC_T score over that decade. Democracies and nondemocracies are classified according to Bjørnskov and Rode (2020).

Table 4: Constitutional traits and constitutional compliance

| | (1) | (2) | (3) | (4) | (5) | (6) |
|--------------|-------------------|----------------|-----------------|--------------------|--------------------|--------------------|
| dismiss | 0.57*** (0.14) | 0.12 (0.14) | 0.42* (0.21) | | | |
| foreign | | | | -1.41*** (0.31) | -0.31*** (0.00) | -0.00*** (0.00) |
| Country FE | YES | YES | YES | YES | YES | YES |
| Democracies | YES | NO | YES | YES | NO | YES |
| Autocracies | YES | YES | NO | YES | YES | NO |
| Countries | 174 | 130 | 119 | 174 | 130 | 119 |
| Observations | 10,631 | 4,469 | 4,247 | 10,631 | 4,469 | 4,247 |

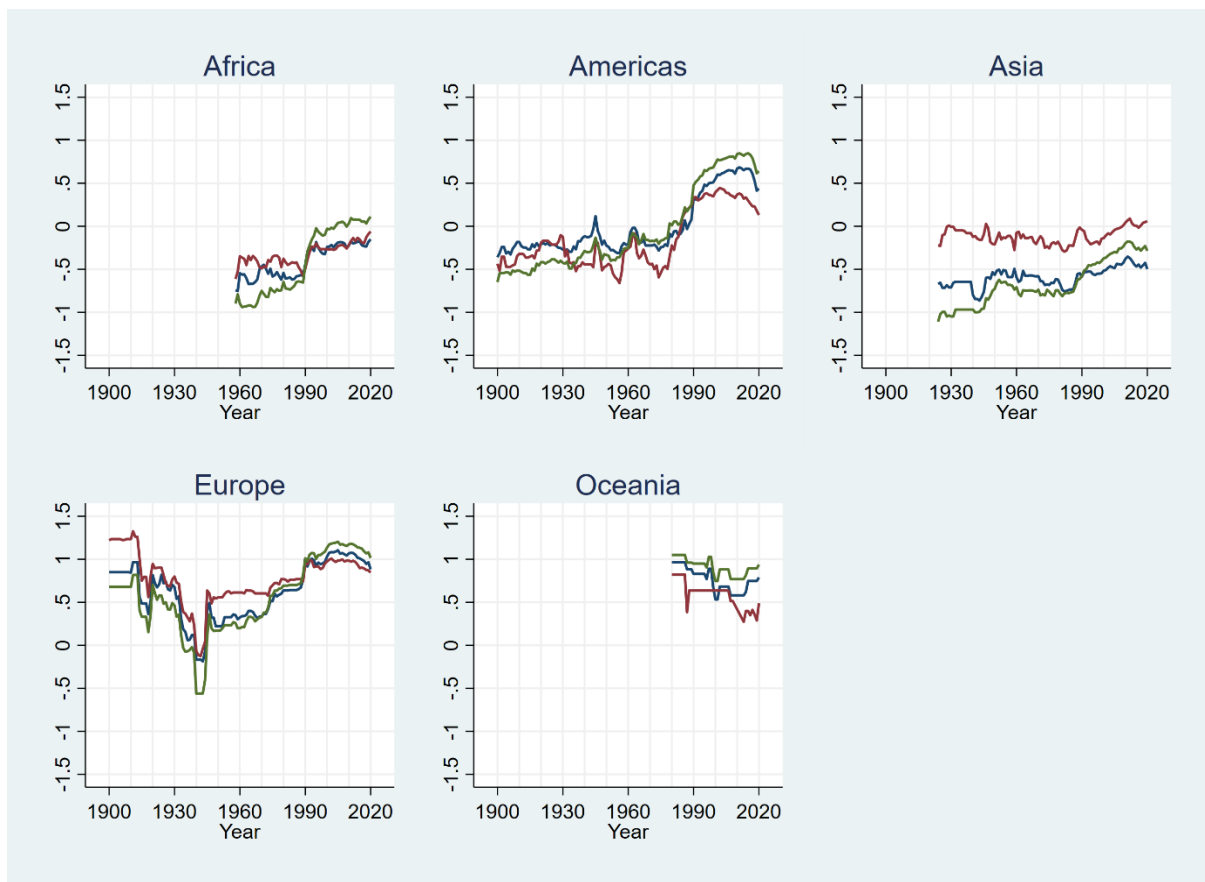
Note: OLS regression coefficient estimates with country-clustered standard errors in parentheses. Dependent variable: CC_T. All model specifications include country-fixed effects. Dismiss: Head of state or government can be dismissed for violating the constitution. Foreign: Constitution identifies foreign models on which it is based. ***: $p < 0.001$, **: $p < 0.01$, *: $p < 0.05$.

Figure 1: Constitutional compliance over time



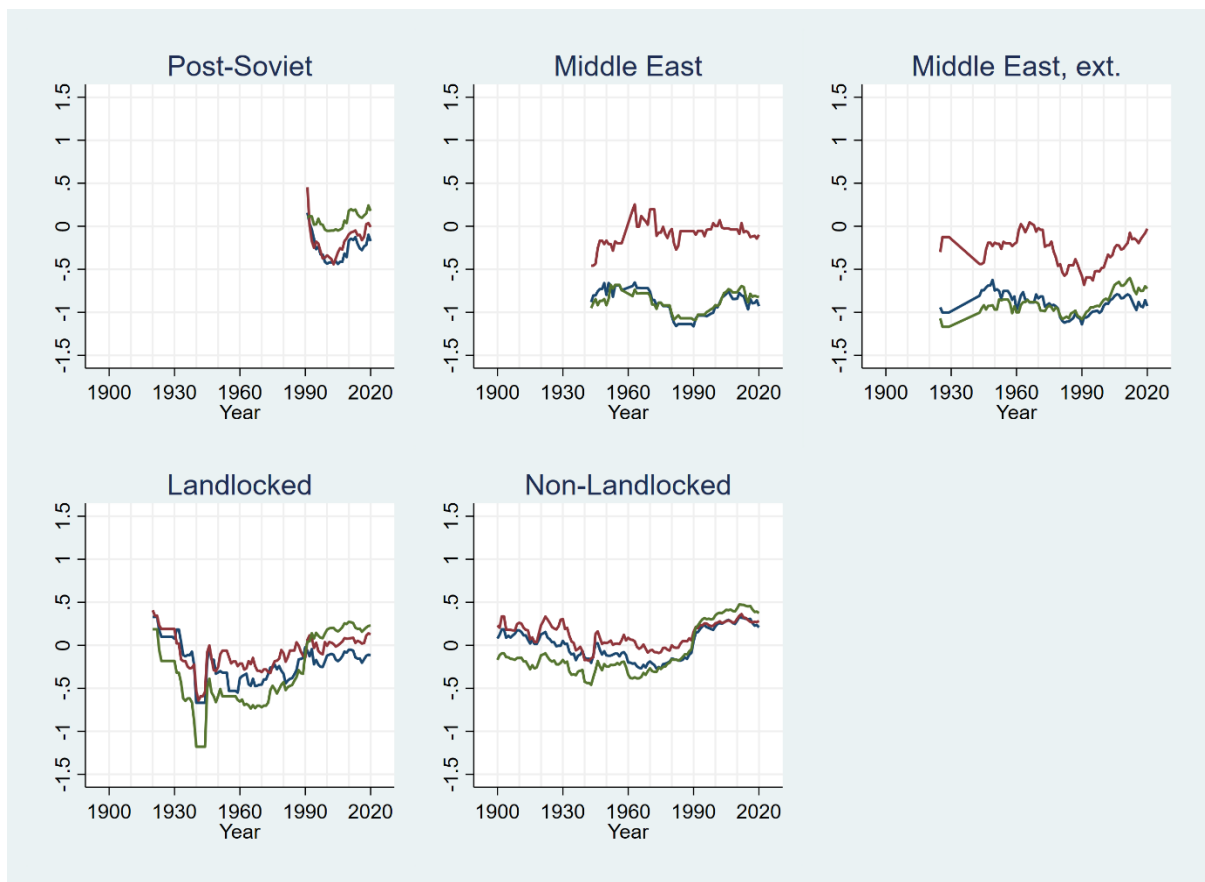
Note: The number of countries underlying the displayed time trends varies over time. Mean values are only calculated if data is available for at least five countries.

Figure 2: Constitutional compliance by world region



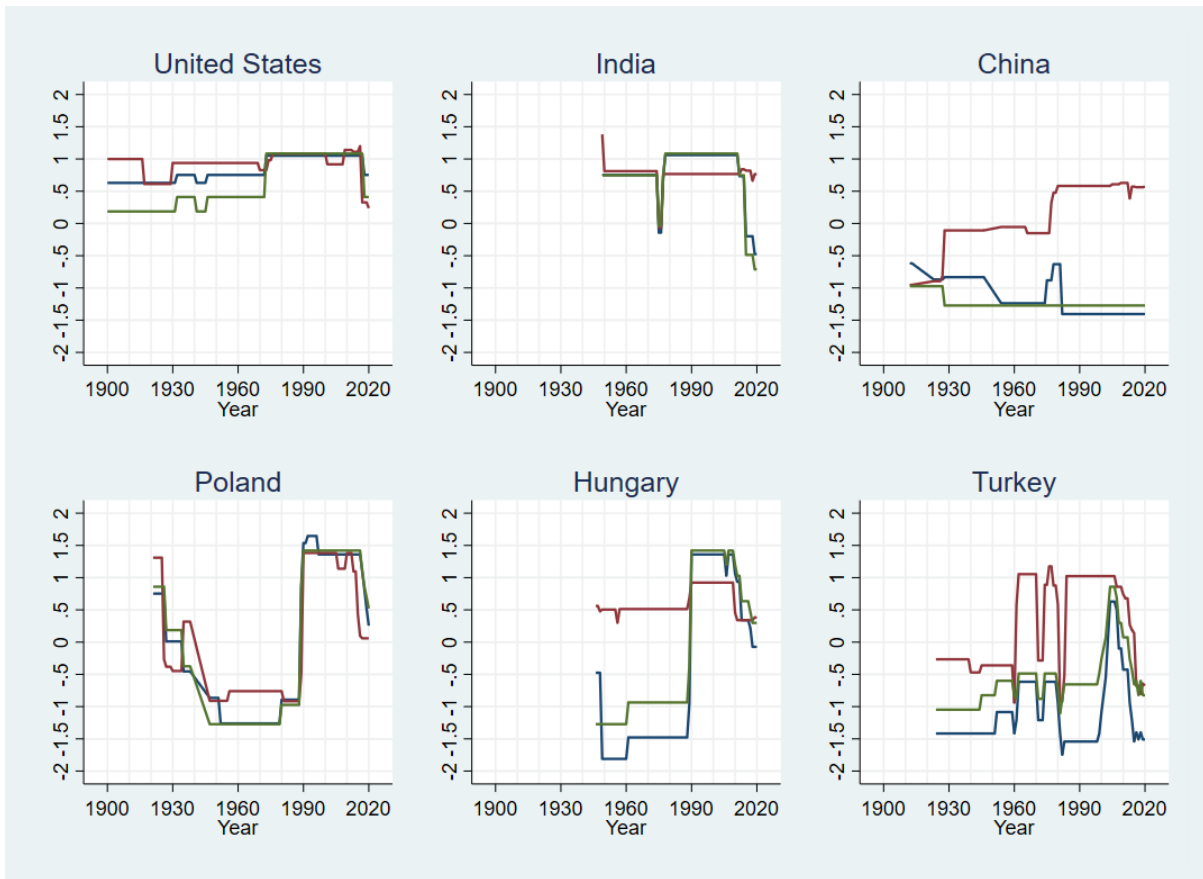
Note: See Figure 1.

Figure 3: Constitutional compliance by geographic categories



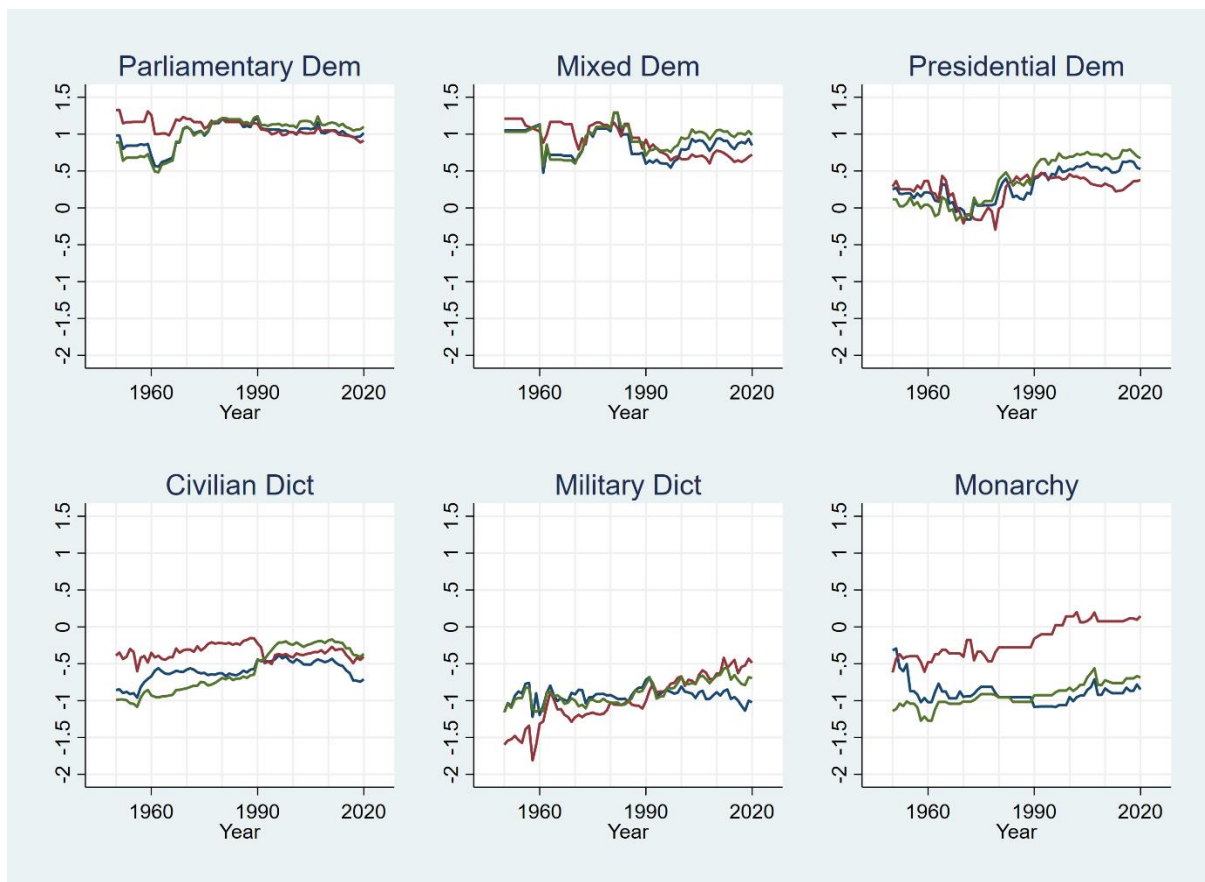
Note: See Figure 1.

Figure 4: Constitutional compliance in selected countries



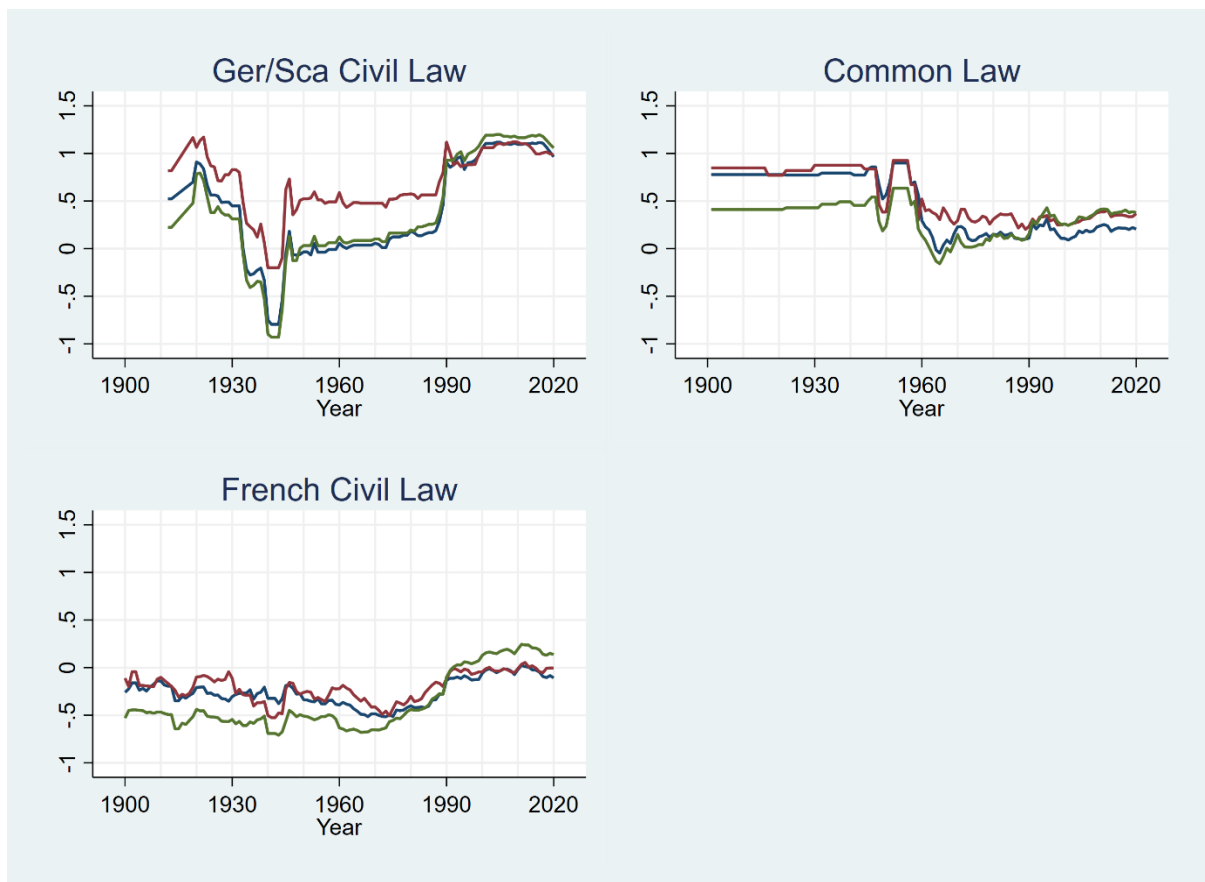
Note: See Figure 1.

Figure 5: Constitutional compliance by regime type



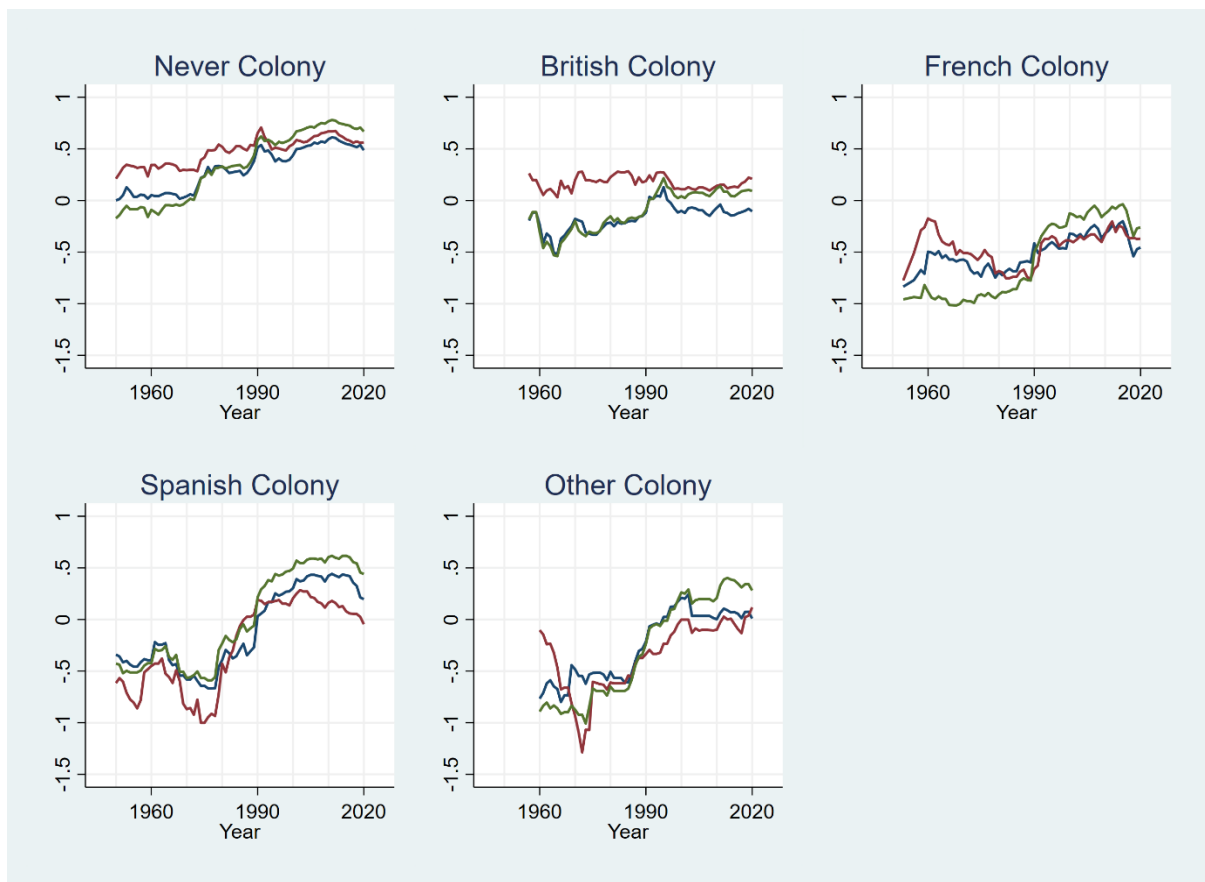
Note: See Figure 1.

Figure 6: Constitutional compliance by legal origin



Note: See Figure 1.

Figure 7: Constitutional compliance by colonial origin



Note: See Figure 1. The period of observation is restricted to 1950-2020.