

Cambridge University Press

978-1-107-06572-7 - International Courts and the Performance of International Agreements:
A General Theory with Evidence from the European Union

Clifford J. Carrubba and Matthew J. Gabel

Frontmatter

[More information](#)

INTERNATIONAL COURTS AND THE PERFORMANCE OF INTERNATIONAL AGREEMENTS

Nations often turn to international courts to help overcome collective action problems associated with international relations. However, these courts generally cannot enforce their rulings, which raises the question: how effective are international courts?

This book proposes a general theory of international courts that assumes a court has no direct power over national governments. Member states are free to ignore both the international agreement and the rulings by the court created to enforce that agreement. The theory demonstrates that such a court can, in fact, facilitate cooperation with international law, but only within important political constraints. The authors examine the theoretical argument in the context of the European Union. Using an original data set of rulings by the European Court of Justice, they find that the disposition of court rulings and government compliance with those rulings comport with the theory's predictions.

Clifford J. Carrubba is a professor of political science, chair of the Political Science department, and professor of law, by courtesy, at Emory University. He also founded and is currently serving as the director of the Institute for Quantitative Theory and Methods at Emory University. Carrubba has published in *American Political Science Review*, *American Journal of Political Science*, *Journal of Politics*, *International Organizations*, *Political Analysis*, *Legislative Studies Quarterly*, *Comparative Political Studies*, and *Journal of Law, Economics, and Organization*.

Matthew J. Gabel is a professor in the Department of Political Science at Washington University in St. Louis, where he also serves as the associate chair of the department. In 2010, he was a John Simon Guggenheim Foundation Fellow. He is the author of *Interests and Integration* (1998) and has written articles for *American Political Science Review*, *American Journal of Political Science*, *Journal of Politics*, *Legislative Studies Quarterly*, *Journal of Common Market Studies*, and *Comparative Political Studies*. Gabel is a founding associate editor of *European Union Politics*.

Cambridge University Press

978-1-107-06572-7 - International Courts and the Performance of International Agreements:
A General Theory with Evidence from the European Union

Clifford J. Carrubba and Matthew J. Gabel

Frontmatter

[More information](#)

COMPARATIVE CONSTITUTIONAL LAW AND POLICY

Series Editors:

Tom Ginsburg
University of Chicago

Zachary Elkins
University of Texas at Austin

Ran Hirschl
University of Toronto

Comparative constitutional law is an intellectually vibrant field that encompasses an increasingly broad array of approaches and methodologies. This series collects analytically innovative and empirically grounded work from scholars of comparative constitutionalism across academic disciplines. Books in the series include theoretically informed studies of single constitutional jurisdictions, comparative studies of constitutional law and institutions, and edited collections of original essays that respond to challenging theoretical and empirical questions in the field.

Volumes in the Series:

Comparative Constitutional Design edited by Tom Ginsburg (2012)

Consequential Courts: Judicial Roles in Global Perspective edited by Diana Kapiszewski, Gordon Silverstein, and Robert A. Kagan (2013)

Social and Political Foundations of Constitutions edited by Denis J. Galligan and Mila Versteeg (2013)

Presidential Legislation in India: The Law and Practice of Ordinances by Shubhankar Dam (2014)

Constitutions in Authoritarian Regimes edited by Tom Ginsburg and Alberto Simpser (2014)

Social Difference and Constitutionalism in Pan-Asia edited by Susan H. Williams (2014)

Constitutionalism in Asia in the Early Twenty-First Century edited by Albert Chen (2014)

Constitutions and Religious Freedom Frank Cross (2015)

Reputation and Judicial Tactics: A Theory of National and International Courts by Shai Dothan (2015)

International Courts and the Performance of International Agreements: A General Theory with Evidence from the European Union by Clifford Carrubba and Matthew Gabel (2015)

Cambridge University Press

978-1-107-06572-7 - International Courts and the Performance of International Agreements:
A General Theory with Evidence from the European Union

Clifford J. Carrubba and Matthew J. Gabel

Frontmatter

[More information](#)

International Courts and the Performance of International Agreements

A GENERAL THEORY WITH EVIDENCE
FROM THE EUROPEAN UNION

CLIFFORD J. CARRUBBA

Emory University

MATTHEW J. GABEL

Washington University, St. Louis



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press

978-1-107-06572-7 - International Courts and the Performance of International Agreements:
A General Theory with Evidence from the European Union

Clifford J. Carrubba and Matthew J. Gabel

Frontmatter

[More information](#)

CAMBRIDGE
UNIVERSITY PRESS

32 Avenue of the Americas, New York, NY 10013-2473, USA

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning, and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781107065727

© Clifford J. Carrubba and Matthew J. Gabel 2015

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2015

Printed in the United Kingdom by Clays, St Ives plc

A catalog record for this publication is available from the British Library.

ISBN 978-1-107-06572-7 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party Internet Web sites referred to in this publication and does not guarantee that any content on such Web sites is, or will remain, accurate or appropriate.

Cambridge University Press

978-1-107-06572-7 - International Courts and the Performance of International Agreements:
A General Theory with Evidence from the European Union

Clifford J. Carrubba and Matthew J. Gabel

Frontmatter

[More information](#)

Contents

<i>Acknowledgments</i>	<i>page</i> vii
1 International courts and compliance	1
2 A theory of courts and compliance in international law	21
3 Putting the theory to the test: evaluating the hypotheses in the European Union	57
4 Preliminary considerations: designing a control for the legal merits	86
5 The Political Sensitivity Hypothesis: third-party briefs and European Court of Justice rulings	125
6 The Conditional Effectiveness Hypothesis: the European Court of Justice and economic integration	156
7 Conclusion	191
<i>References</i>	220
<i>Index</i>	233

Cambridge University Press

978-1-107-06572-7 - International Courts and the Performance of International Agreements:
A General Theory with Evidence from the European Union

Clifford J. Carrubba and Matthew J. Gabel

Frontmatter

[More information](#)

Cambridge University Press

978-1-107-06572-7 - International Courts and the Performance of International Agreements:
A General Theory with Evidence from the European Union

Clifford J. Carrubba and Matthew J. Gabel

Frontmatter

[More information](#)

Acknowledgments

Our collaboration on this book began as a conversation about the European Court of Justice (ECJ) and its role in the process of European integration. Over the last fifteen years, that conversation prompted us to engage broader theoretical questions about the impact and limits of international courts. It also incited our effort to collect and examine evidence that would allow us to distinguish how and under what conditions international courts (and the ECJ in particular) shape the behavior of their member states. This book represents the current state of that (now very long) conversation.

In executing this project, we have been very fortunate to receive the generous financial support of several organizations. The National Science Foundation (SES-079084) provided funding for the collection of data regarding rulings by the ECJ and the development of our theoretical account. The University of Kentucky and the Halle Institute at Emory University also contributed financially to the data collection. The John Simon Guggenheim Foundation provided Dr. Gabel with a fellowship to write a large portion of this manuscript. Caitlin Ainsley, Don Beaudette, Bethany Blacktsone, Marc Hutchison, Michael Malecki, Toby Rider, and Joe Sonka provided valuable research assistance.

We have had the opportunity to present various parts of the book at a number of conferences and seminars. We are particularly grateful for the hospitality and comments from the seminar participants at the European Union Centers at the University of Colorado and Syracuse University; the schools of law at the University of California–Berkeley, Georgetown University, University of Texas, Hebrew University of Jerusalem, and Tel Aviv University; the Europe Center at Stanford University and Duke University; the departments of political science at the University of Colorado, Duke University, the University of Georgia, the University of South Carolina, the University of Wisconsin, the University of Rochester, and SUNY-Buffalo.

Cambridge University Press

978-1-107-06572-7 - International Courts and the Performance of International Agreements:
A General Theory with Evidence from the European Union

Clifford J. Carrubba and Matthew J. Gabel

Frontmatter

[More information](#)

Along the way, we benefited from comments, criticism, and advice from numerous people, including David Anderson, Pablo Beramendi, Bill Bernhard, Abby Blass, Carles Boix, Dan Brinks, Damian Chalmers, Terry Chapman, Tom Clark, Jens Dammann, Marie Demetriou, George Downs, Zach Elkins, John Ferejohn, Geoffrey Garrett, Jeff Gill, Mark Hallerberg, Gretchen Helmke, Imelda Higgins, Simon Hix, John Huber, Nate Jensen, Leslie Johns, Joe Jupille, Luke Keele, Jay Krehbiel, David Leblang, Gail McElroy, Christine Mahoney, William Minnozi, Jamie Monogan, Harvey Palmer, Kirk Randazzo, Nils Ringe, James Rogers, Kenneth Scheve, Charles Shipan, Jim Spriggs, Jeff Staton, Georg Vanberg, Erik Wibbels, David Wildasin, and Chris Zorn.

We would also like to thank the managing and series editors for the comparative constitutional law and policy series, Zach Elkins, Tom Ginsburg, Ran Hirschl, and John Berger. Christina Yeager provided superb copyediting.

Finally, we are particularly indebted to our families and loved ones. Cliff would like to thank his wife, Dana, and three cats, Clea, Csavo, and Daisy, for their unending patience and support. Matt is very grateful to his wife, Angela. Her encouragement, support, and patience were critical to the completion of the project, particularly since the book's development coincided almost exactly with their ongoing adventure in parenthood.

Some of the material in the book has appeared in our previously published articles. Much of the material in Chapter 2 appeared in "Courts and Compliance in International Law" (*Theoretical Inquiries in Law* 14 (2): 505–41, 2013, © 2013 Theoretical Inquiries in Law, reprinted with permission). Parts of Chapters 3 and 5 appeared in "Understanding the Role of the European Court of Justice in European Integration" (*American Political Science Review* 106 (1): 214–23, 2012, © 2012 American Political Science Association, reprinted with permission) and "Judicial Behavior under Political Constraints: Evidence from the European Court of Justice" (*American Political Science Review* 102 (4): 435–52, 2008, © 2008 American Political Science Association, reprinted with permission). Parts of Chapter 6 appeared in "Of Courts and Commerce" (*Journal of Politics* 74 (4): 1125–37, 2012, © 2012 Southern Political Science Association, reprinted with permission).