

CONSTITUTIONAL ZUGZWANG: TOWARDS AN AMENDMENT THEORY ON CONSTITUTIONAL MOMENTUM

Abstract for the General Public

Constitutions are the basic laws of nations. They divide power and state the fundamental rights to be respected in the legal order. However, no matter how careful and methodical their design is, they might require amendments sooner or later. Constitutional law has often been dazzled by normative provisions in studying constitutional amendments. As legal scholars, we tend to think that written amendment procedures account for amendments. However, countries like India, Brazil, and Mexico defy that view. They amend their Constitutions several times per year. How can countries with similar amendment procedures produce such distant amendment rates? Moreover, what are the effects of increasing amendment rates on institutional, governance, and social outcomes within these countries? Constitutional law has never tried to measure the impact of amendments from a systematic approach.

Project Zugzwang intends to prove that certain countries fall into a "Constitutional Zugzwang": a dynamic of frequent amendments that arguably correlates with adverse systemic effects. Its objective is to define, measure, and quantify them. By means of comparative law analysis, Project Zugzwang preselected countries where a constitutional Zugzwang likely occurred and thereby will produce a country-wise historical dataset of amendments such that amendment acceleration episodes may be identified through a set of suitable metrics, e.g., mean compound annual growth rates or time series techniques.

Although amendment acceleration causes may have country-determined specificities, the Project proposes to explain them more systematically through general principles of rational behavior and strategic information transmission under Schelling's (2006) and Rogers' (2003) models. The Project seeks to test a pair of empirical findings to be observed in the data should Rogers', and Schelling's theses apply. P-Zugzwang will then assess the relationship between amendment rates during acceleration episodes and a set of social (Human Development Index), economic (pcGDP), governance (Polity IV index), and political system (Democracy World Index) outcomes, estimated through straightforward statistical methods such as linear regression.

The reason to address this research topic is that several countries show hyper-amendment dynamics, and legal scholarship has not yet proved the impact such amendments generate in the legal system. Project Zugzwang will result in a theory that addresses the impact of amendments. Several publications will disseminate the Project's results.