

Not just about the ruling: political determinants of the opposition's use of abstract review

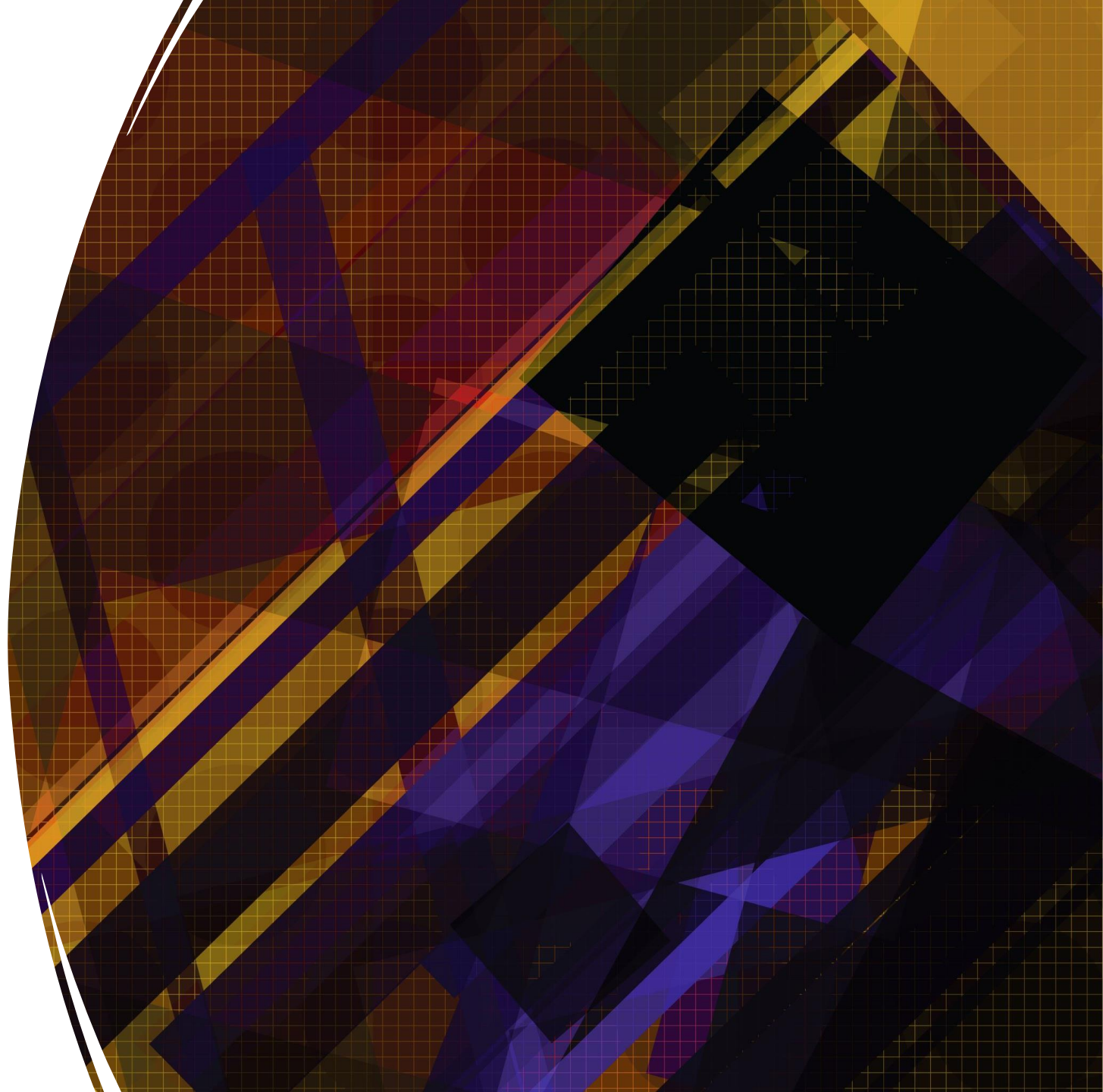
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Abstract Review

- European model's method of constitutional review
- Kelnesian Constitutional court
- Opposition parties can attempt to change the content of a law after it has been passed
- When do parties go to court? Which incentives do they have? Why don't they appeal all the laws? What are the costs?
- Important implications for the check and balance function of AR

Literature review

- Formal modeling literature analyzing the **separation of powers** (Rogers, 2011)
 - Analyze how government, opposition, and court interact depending on the expected behavior of the others
 - Explore their relationships and how they pursue their goals by using AR
 - According to the possible consequences of an AR case (annul or legitimize), they place the focus on the ruling
 - They assume that parties use AR for changing policy content
- **Judicialization** and party behavior literature (Aydin-Çakir, 2014)
 - Object: When do parties use Abstract Review? (regardless of the consequences)
 - In the end, the ultimate decision to appeal rests with the opposition
 - So they could use it for other purposes than changing policy content
 - No empirical analyses on this matter to my knowledge

Organic Law 2/2010 on abortion

- Approved by a progressist government at the height of the 2008 economic crisis
- Appealed by the major opposition party (PP)
- The court did not issue the ruling until February 2023
- The norm was validated thirteen years later
- The political debate in the media has mainly been framed around the legal controversy (Ramos-Arroyo and Diaz-Campo, 2018)
- **RQ:** So, can opposition parties benefit electorally from appealing laws? Do they take advantage of that?





Outcome based

- SOP Models literature
 - Most of the effects anticipatory
 - Parties calculate their probability of success to decide if appealing
- Judicial Behavior
 - Ideology is the most relevant variable predicting the court output
- So, given parties anticipate their policy preferences result and ideology influences this result. I expect:
- **H1:** *The more favorable the court is to the opposition, the greater the likelihood of appeals against government laws*



Context based

- **Issue Saliency**
 - Voters have stronger preferences for the issues they consider most important (Krosnick, 1988)
 - Voters are better able to identify and enforce their preferences on a particular policy when the issue is more relevant to them (De Vries, Giger, 2014)
 - Mechanisms:
 - Appealing means providing a delegitimizing argument of the legislator's position and an alternative position to the issue
 - Otherwise, they would be accepting the government's proposed regulation on an issue that is very important to voters
- **H2:** *The more media attention prior to enactment, the greater the likelihood of appeals against government laws*



Context based

- **Electoral Cycle**
 - As elections approach, the status quo of institutions undergoes a revision
 - Electoral periods stimulate voters' political socialization (Strömbäck Johansson, 2007)
 - Mechanisms:
 - Opposition parties can use AR to signal their policy position
 - For signaling their role as opposition to the government
 - And to delegitimize the government's position
- **H3:** *The closer the elections are, the greater the likelihood of appeals against government laws*



Context based

- **Fragmentation of the party system**
 - The largest parties begin to lose seats, and therefore power, to other parties (Coleman, 1995)
 - When they lose power, they have more incentives to signal their political positions
 - Mechanisms:
 - To send a message that they are “a useful opposition” vis-à-vis the rest of the opposition parties
 - To delegitimize a fragile government
- **H4:** *Fragmentation increases the probability of appeals to governmental laws*

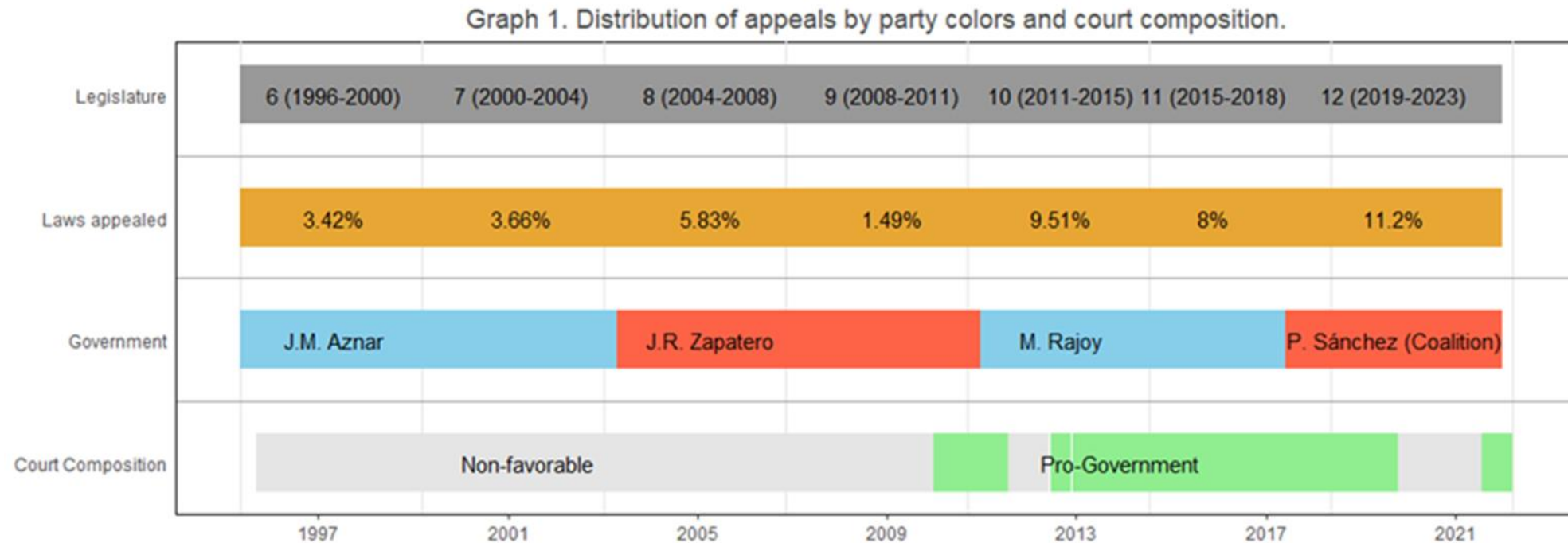
Case Selection

- Spanish Constitutional Court
- Politicization of the judiciary
 - Relevance of ideology
 - Information about judges
- Parliamentary System
- Fall of the two-party system
“initiated” with the 2008 economic crisis



Descriptive statistics

First image of the Spanish AR dynamics



Data and methods

- DATA:
 - Original Database on Spanish legislative production 1996-2023
 - Original Database on Abstract Review Cases 1980-2023
 - Original Database on Individual Judges 1980-2023
- MODEL:
 - Firth's Logistic Regression
 - Rare events approach



Results

- **Court Composition**
 - Even matters, parties are more electorally motivated
- **Media Saliency**
 - Most important predictor
- **Fragmentation**
- **Elections**
 - Opposite slope
 - Contextual explanation
 - Change in the party system again
- **Type of government**
 - Non-relevant

Table 1: Firth's logistic regression results

Variable	Coefficient	SE	95% CI L	95% CI U	p-value
(Intercept)	-3.019	0.242	-3.523	-2.561	0.00***
Court Favorable to Government	-0.730	0.375	-1.512	-0.003	0.05*
Media Saliency	0.819	0.133	0.561	1.103	0.00***
Electoral Cycle	-0.335	0.141	-0.622	-0.054	0.02*
Party System Fragmentation	-0.503	0.136	-0.777	-0.234	0.00***
Type of Government	0.368	0.261	-0.161	0.884	0.17
Proposicion	-0.266	0.480	-1.328	0.622	0.58
TypeLawLegislative Decree	-1.314	1.473	-6.231	0.895	0.30
TypeLawOrdinary Law	-0.268	0.288	-0.843	0.307	0.36
TypeLawOrganic law	0.396	0.352	-0.322	1.086	0.27

Note: SE=Standard Error, CI=Confidence Interval.

Results

- Quite similar results
- Two major differences:
 - **Court Favorable to government** significance disappears
 - **Media Saliency** effect increases

Table 4: Firth Logistic Regression Coefficients including far-right

Variable	Coefficient	SE	95% CI L	95% CI U	p-value
Intercept	-2.816	0.226	-3.284	-2.387	< 0.01***
Court favorable to government	-0.437	0.332	-1.121	0.207	0.19
Media Saliency	0.980	0.144	0.700	1.284	< 0.01***
Electoral Cycle	-0.300	0.133	-0.569	-0.035	0.03*
Party System Fragmentation	-0.510	0.130	-0.772	-0.253	< 0.01***
Type of Government	0.069	0.258	-0.456	0.574	0.79
Proposicion	0.181	0.397	-0.664	0.933	0.66
TypeLawLegislative Decree	-1.719	1.533	-6.705	0.669	0.20
TypeLawOrdinary Law	-0.362	0.278	-0.916	0.189	0.20
TypeLawOrganic law	0.384	0.335	-0.293	1.040	0.26

Note: SE=Standard Error, CI=Confidence Interval.

Discussion

- When parties are faced with the decision to file an appeal they are not only constrained by judicial decisions and their consequences. They are simultaneously faced with other decisions and, consequently, the costs and incentives of each decision influence the calculation of the others
- The results prove that the proper functioning of abstract review depends to a large extent on the decisions of parties and their incentives for political competition
- A time of political instability such as the one we are now experiencing in West European democracies could give rise to an overload of work for the courts (with all the consequences this could entail)
- This concern is accentuated when observing the behavior of the rising extreme right-wing parties (more prone to use the court regardless of outcome)

Methodological Appendix

Exponentiated Coefficients

Table 2: Firth Logistic Regression Exponentiated Coefficients

Variable	Coefficient
Intercept	0.1244376
Court favorable to Government	0.6458493
Media Saliency	2.6642857
Party System Fragmentation	0.6005309
Electoral Cycle	0.7530396
Type of Government	1.0716771
Proposition	1.1978846
TypeLawLegislative Decree	0.1793316
TypeLawOrdinary Law	0.6960317
TypeLawOrganic law	1.4686342

Methodological Appendix

Endogeneity Test

Table 2: Logistic Regression Coefficients

	Estimate	Std. Error	t value	Pr(> t)
(Intercept)	2.57955	0.02669	96.63	2e-16 ***
Media Saliency	-0.01202	0.02670	-0.45	0.653

Note: Electoral Cycle (DV). Factor from one to four. Year of enactment.

Methodological Appendix

Comparing Newspapers

Table 5: Comparison of Firth Logistic Regression Results

Variable	Model 1 El Mundo			Model 2 El País		
	Coeff	SE	p-value	Coeff	SE	p-value
(Intercept)	-2.83	0.23	<0.00	-2.827	0.22	<0.00
Court favorable to government	-0.46	0.33	0.18	-0.42	0.33	0.20
Electoral Cycle	-0.27	0.13	0.04*	-0.31	0.13	0.02*
Party System Fragmentation	-0.52	0.13	<0.00**	-0.45	0.13	0.00**
Type of Government	0.12	0.26	0.63	0.14	0.25	0.58
Proposicion	0.19	0.40	0.64	0.09	0.40	0.83
TypeLawLegislative Decree	-0.95	1.53	0.45	-2.18	1.61	0.12
TypeLawOrdinary Law	-0.34	0.28	0.22	-0.32	0.28	0.25
TypeLawOrganic law	0.40	0.33	0.24	0.47	0.33	0.17
saliency mundo	1.19	0.14	<0.00***	-	-	-
saliency pais	-	-	-	0.54	0.09	<0.00***

THANK YOU!

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