

# Ideological Polarization on Constitutional Courts

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Evidence from Spain

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**Do these people** (*who are publicly protesting against a law passed by Parliament*) **seem polarized to you?**

- We know that constitutional judges' ideology affect their decisions (Epstein et.al, 2012; Vallbé, 2024)
- We know that this could affect courts' legitimacy and efficacy as a check and balance (Stone Sweet, 2000)
- We know that polarization affects voter perceptions about courts (Harguindéguy, 2024)

***RQ: Does polarization affect the decisions of constitutional judges?***

- Description (e.g. Duffy et.al, 2019; Abramowitz and McCoy, 2019):
  - *Tendency to ideologically align in two blocks.*
- Observable implications:
  - **Conflict** driven by **ideological divide**
  - Part of a wider phenomenon affecting whole society

*H: Judicial polarization of the SCC has increased over time.*

- **Selection mechanism:** parties appoint closest judges (Sunstein et.al, 2007; Binder and Maltzman, 2009)
- **Judges' behavioural mechanism:** judges move to the extremes (Barber et.al, 2015; Persily, 2015)
- **Informal incentive mechanism:** judges are pressured or incentivised by the parties, and they accept (Miller, 2004)
- **Legislative mechanism:** as parliament polarizes, parties pass more conflicting laws

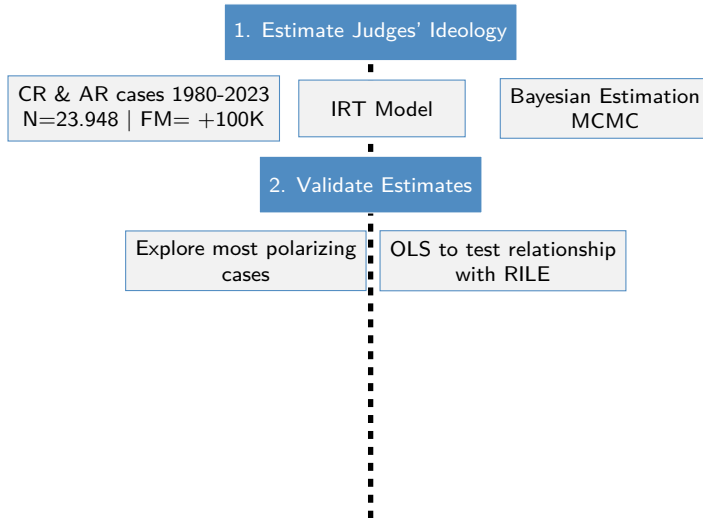
## 1. Estimate Judges' Ideology

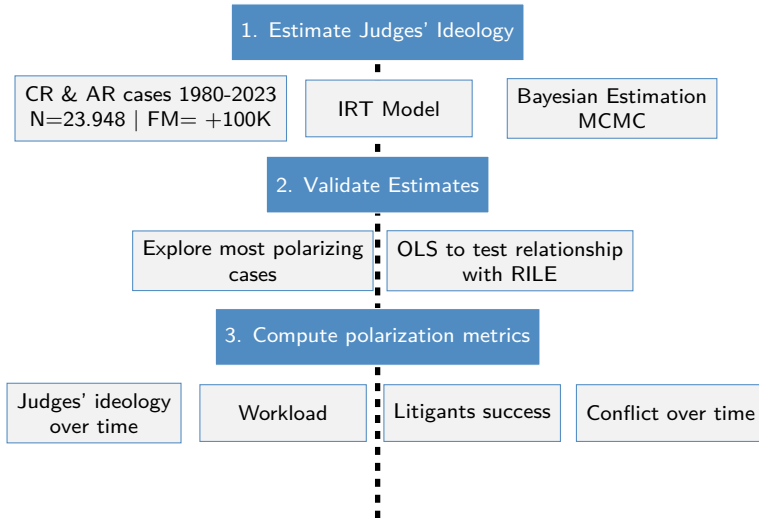
CR & AR cases 1980-2023  
N=23.948 | FM= +100K

IRT Model

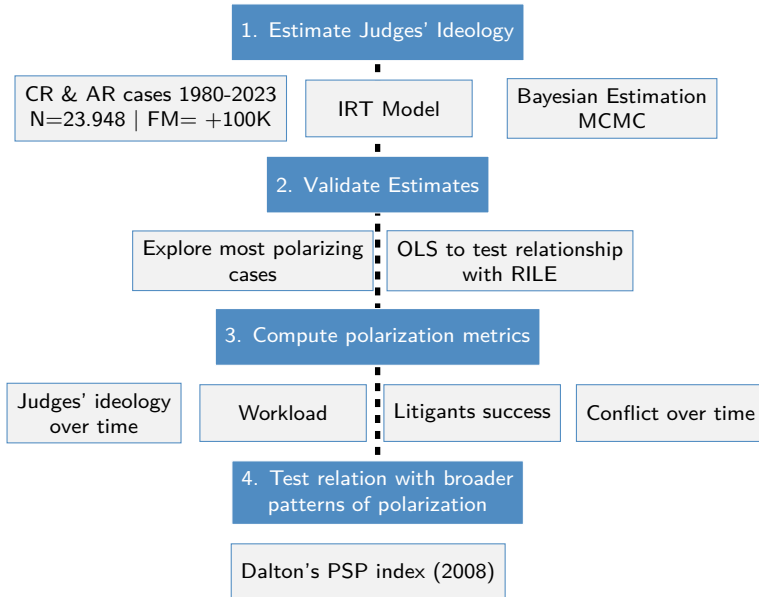
Bayesian Estimation  
MCMC

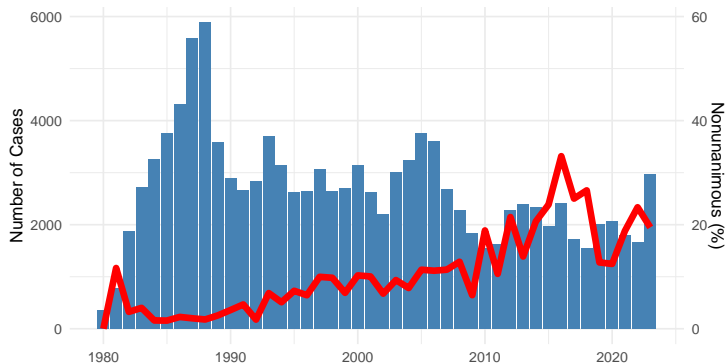






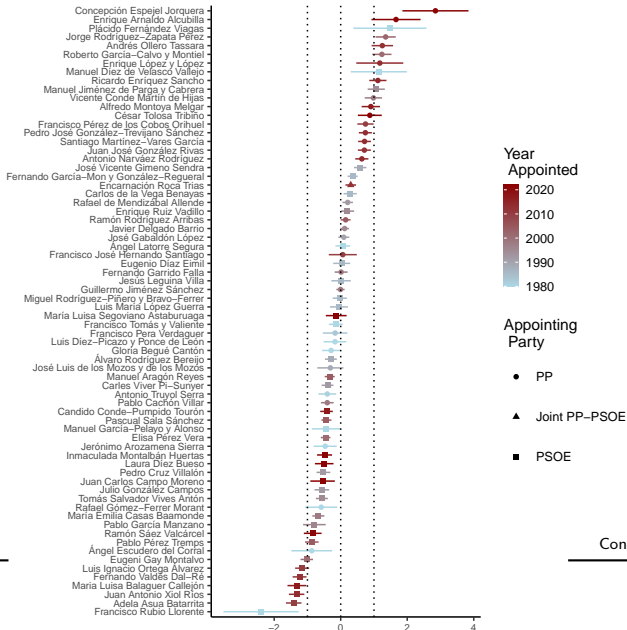


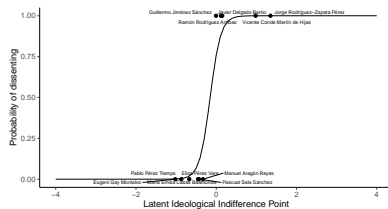
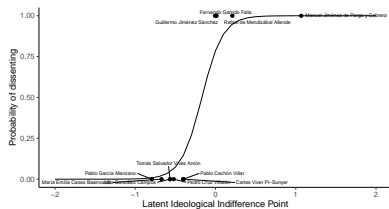




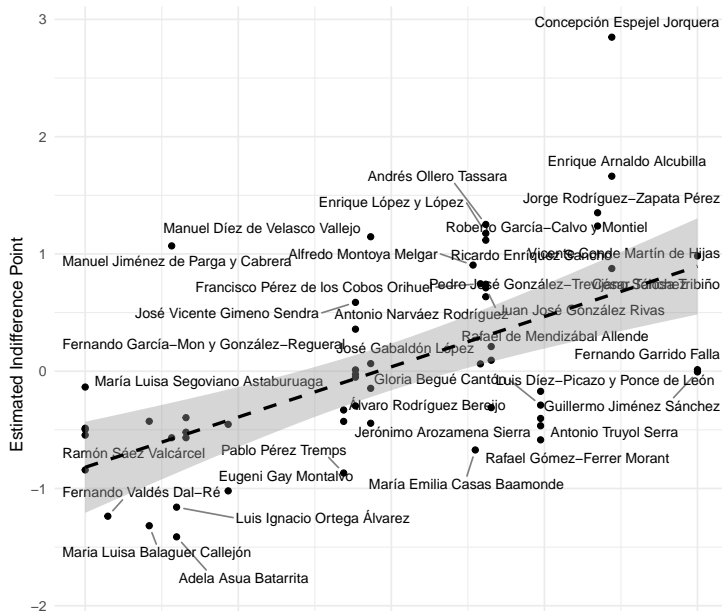
**Figure:** Caseload and percentage nonunanimous cases, 1980-2023.

# Results - Indifference Point Estimates

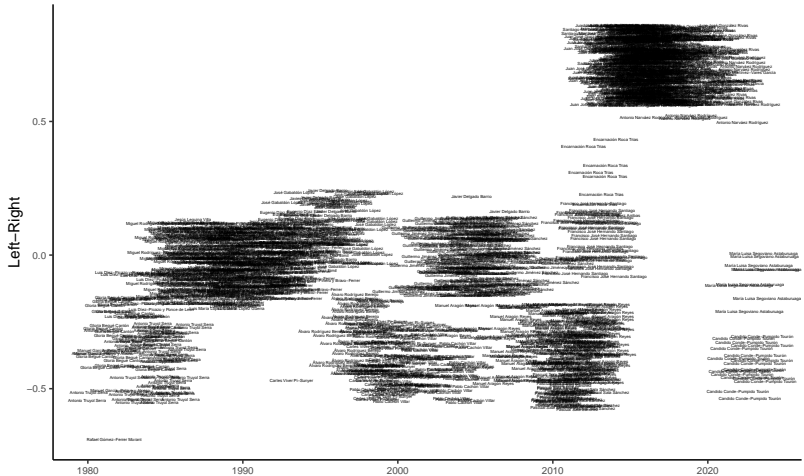




# Results - Validating estimations II



## Results - Median Judge



# Results - Median Judge & Litigant Success

Dependent variable:	<i>Vote (1 = pro-applicant, 0 = pro-respondent)</i>		
	<b>Model 1</b>	<b>Model 2</b>	<b>Model 3</b>
(Intercept)	0.54*** (0.02)	0.81*** (0.16)	0.83*** (0.16)
Median-Applicant Ideological Distance	-0.16*** (0.06)	-0.13** (0.06)	-0.14** (0.06)
Year Fixed Effects	No	Yes	Yes
Judge Random Effects	No	No	Yes
R <sup>2</sup>	0.01	0.06	
Adj. R <sup>2</sup>	0.01	0.03	
Num. obs.	1207	1207	1207
AIC			1874.47
BIC			2103.79
Log Likelihood			-892.24
Num. groups: id_juez			19
Var: id_juez (Intercept)			0.01
Var: Residual			0.24

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

Dependent Variable:	Pairwise Agreement				
	(1)	(2)	(3)	(4)	(5)
<i>Variables</i>					
Constant	5.412*** (0.0869)	1.795*** (0.1196)			
Distance App' Parties	-0.0727*** (0.0017)	13.81*** (0.3169)	14.53*** (3.013)	14.53*** (1.152)	13.54*** (1.215)
Year	-0.0022*** ( $4.35 \times 10^{-5}$ )	-0.0004*** ( $5.98 \times 10^{-5}$ )			
Distance App' Parties $\times$ Year		-0.0069*** (0.0002)	-0.0073*** (0.0015)	-0.0073*** (0.0006)	-0.0068*** (0.0006)
Year FE			Yes	Yes	Yes
Case FE				Yes	Yes
Judge FE					Yes
Observations	198,419	198,419	198,419	198,419	198,419
R <sup>2</sup>	0.02794	0.03725	0.04629	0.42244	0.43294
Within R <sup>2</sup>			0.01885	0.03401	0.01829

Signif. Codes: \*\*\*: 0.01, \*\*: 0.05, \*: 0.1

Note: The dependent variable is coded as 1 = pro-applicant, 0 = pro-defendant.



- The ideological composition of courts significantly influences their outcomes
- Constitutional Courts not seem to be immune to political polarization
- Polarisation can be influential in turning constitutional revision into a political instrument with important consequences for the basic consensuses of liberal democracy

**THANK YOU!**  
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