Ideological Polarization on Constitutional Courts:

Evidence from Spain

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- 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?*

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

- 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.*
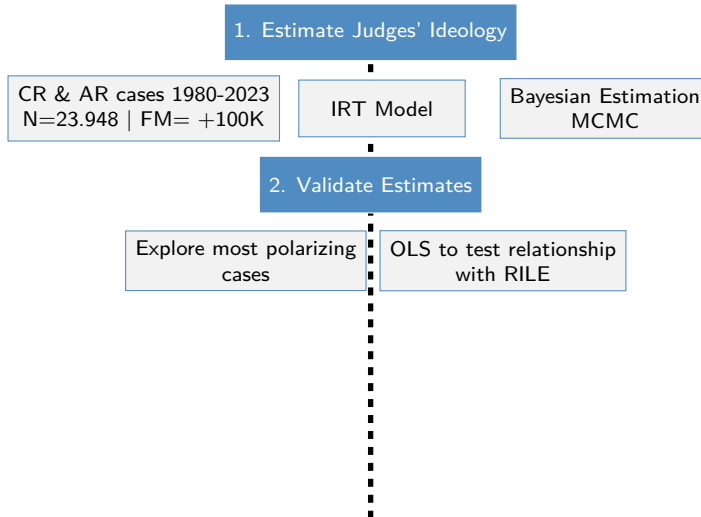
- **Selection mechanism**: parties appoint closest judges (Sunstein et.al, 2007; Binder and Maltzman, 2009)

- **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
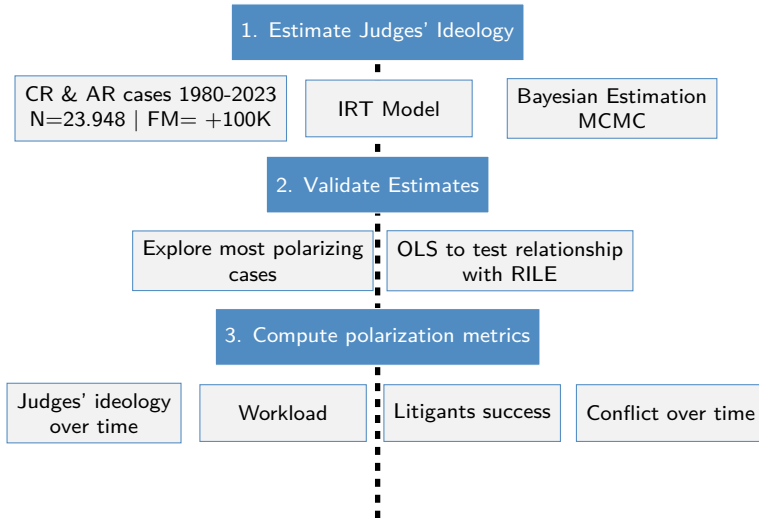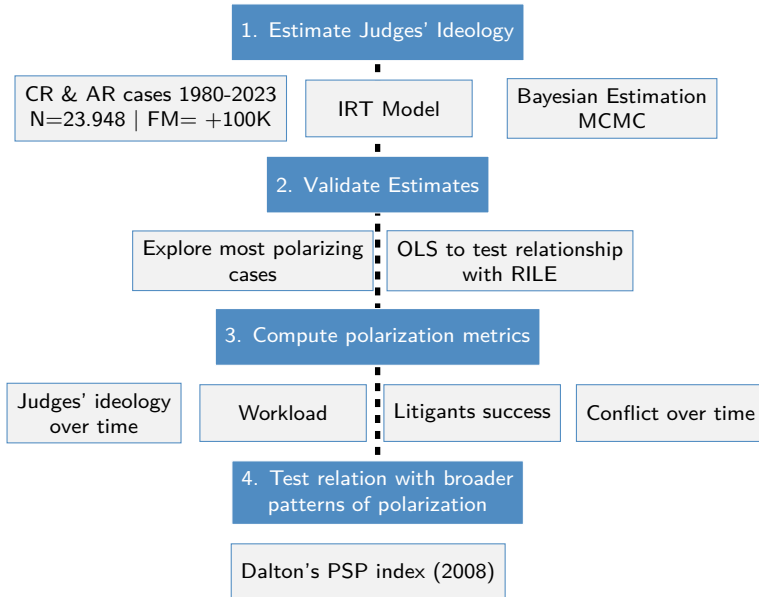
1. Estimate Judges' Ideology

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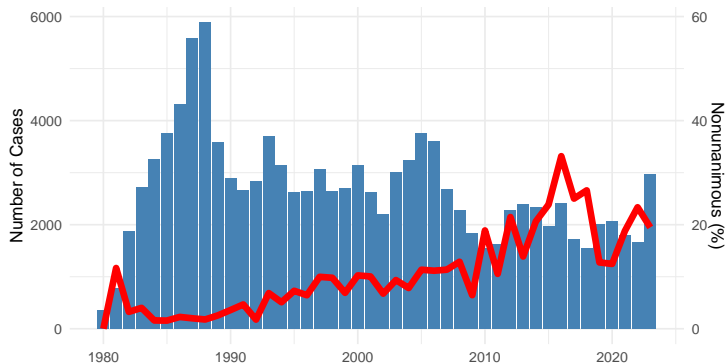N=23.948 | FM= +100K

IRT Model

Bayesian Estimation
MCMC

Methods – Judicial Polarization Analysis
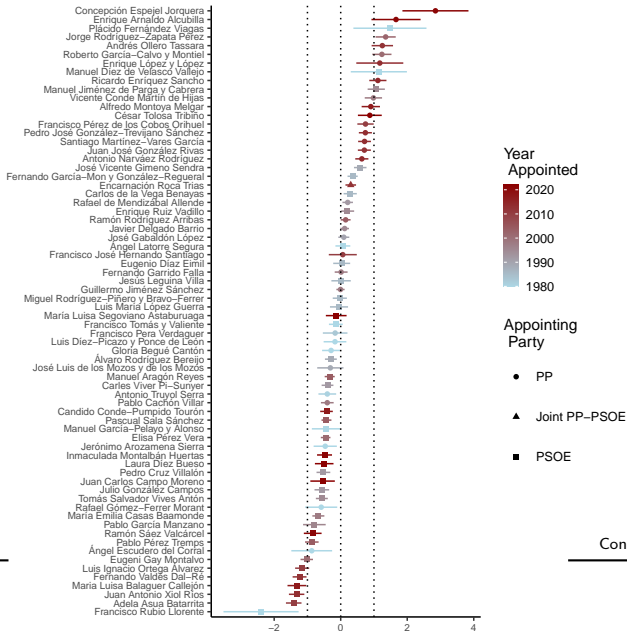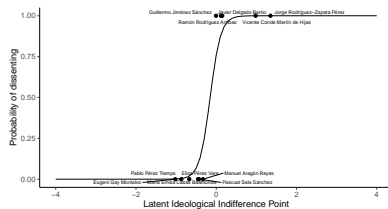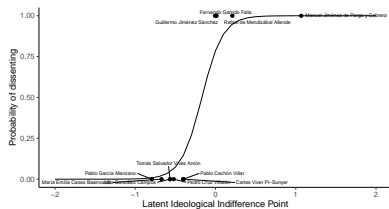
Methods – Judicial Polarization Analysis

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

Results - Indiference Point Estimates

Probability of dissenting

Fernando Garrido Falla
Guillermo Jiménez Sánchez   Rafael de Mendizábal Allende   Manuel Jiménez de Parga y Cabrera

Tomás Salvador Vives Antón
Pablo García Manzano
María Emilia Casas Baamonde   Pablo Cachón Villar
                                 Carles Viver Pi-Sunyer

1.00
0.75
0.50
0.25
0.00

−2   −1   0   1   2
Latent Ideological Indifference Point

Probability of dissenting

Guillermo Jiménez Sánchez   Javier Delgado Barrio   Jorge Rodríguez-Zapata Pérez
Ramón Rodríguez Arribas   Vicente Conde Martín de Hijas

Pablo Pérez Tremps   Manuel Aragón Reyes
Eugeni Gay Montalvo   Elisa Pérez Vera   Pascual Sala Sánchez
María Emilia

1.00
0.75
0.50
0.25
0.00

−4   −2   0   2   4
Latent Ideological Indifference Point

Dependent variable:	Vote (1 = pro-applicant, 0 = pro-respondent)		
	Model 1	**Model 2**	**Model 3**
(Intercept)	0.54***	0.81***	0.83***
	(0.02)	(0.16)	(0.16)
Median-Applicant Ideological Distance	−0.16***	−0.13**	−0.14**
	(0.06)	(0.06)	(0.06)
Year Fixed Effects	No	Yes	Yes
Judge Random Effects	No	No	Yes
R^2	0.01	0.06	
Adj. R^2	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)
Variables					
Constant	5.412***	1.795***			
	(0.0869)	(0.1196)			
Distance App' Parties	-0.0727***	13.81***	14.53***	14.53***	13.54***
	(0.0017)	(0.3169)	(3.013)	(1.152)	(1.215)
Year	-0.0022***	-0.0004***			
	(4.35×10^{-5})	(5.98×10^{-5})			
Distance App' Parties $\times$ Year		-0.0069***	-0.0073***	-0.0073***	-0.0068***
		(0.0002)	(0.0015)	(0.0006)	(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^2	0.02794	0.03725	0.04629	0.42244	0.43294
Within R^2			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:
  - Citizens perception about the judiciary (legitimacy)
  - Legislative encroachments by the judiciary (representation)
  - Less consensus on constitutional limits to political power (checks and balances)
- Unravelling the three mechanisms identified would be important to better develop context-specific solutions

THANK YOU!

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