

Building legitimacy: Strategic Case Allocations in the Court of Justice of the European Union

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The research question

Puzzle

Chief Justice Roberts is a reliable conservative, yet for most politicized cases, he has sided with liberals (e.g. Obamacare, abortion)

- ▶ no threat of override or non-implementation
- ▶ strategic restraint

⇒ *to uphold reputation as above party politics.*

Key assumptions

- ▶ Legitimacy is important for courts' independence.
- ▶ court's leader is particularly sensitive to this concern

⇒ *because the effect of his policy choices depends on that independence*

Two legitimation strategies

I study two legitimation strategies at the case-management stage

- ▶ individual-level specialization → consistency
- ▶ strategic attempts to depolarize politicized debates. → apolitical

Legitimacy capital

A court can build legitimacy capital that can be cashed in in political conflicts.

Legitimacy is diffuse support

When a court ruling is seen as political

- ▶ overall support decreases
- ▶ it is conditioned on agreement with political content

The value of consistency

Courts are set up to decrease legal uncertainty. Consistency

- ▶ favors perception that court is technocratic
- ▶ decreases transactional costs for societal actors

⇒ *Consistency is a form of hands-tying in view of conflict.*

Coordination problems among judges

Judges vary in their appreciation

- ▶ respect for case law
- ▶ expertise
- ▶ attitudes
- ▶ career incentives (international courts)

⇒ *Individual-level specialization reduces coordination problems.*

Politicized cases

Courts that adjudicate politicized cases are perceived as political

- ▶ the decision-making process can itself sink the Court.
- ▶ renewable terms + political appointers → no impartiality

⇒ *Individualized influence exacerbates the problem.*

Choice of case

I study case allocation in the CJEU

- ▶ **uniqueness** case management
 - ▶ individualized: judge-rapporteur
 - ▶ appointment is at leader's discretion

Data

All cases filed before the Court of Justice (1958-2015).

- ▶ **Data structure** 103 judges in 11218 cases → a data frame of 238504 observations.
- ▶ **Model** Conditional logit
- ▶ **Controls**
 - ▶ case from own member state
 - ▶ activity level
 - ▶ membership
 - ▶ experience as rapporteur

Hypotheses

The president builds legitimacy upstream

- ▶ **H1: cohesive case law** → specialization
- ▶ **H2a: identify political mine-fields** → a rapporteur that is not under extreme pressure.
- ▶ **H2b: Political potential is higher when case law is uncertain** → Effect of preferences decreases over time

Results

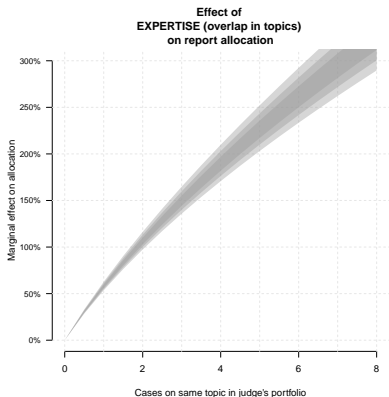
Specialization

Hypothesis 1: The president is more likely to appoint a rapporteur who has acted in the same role in previous cases related to the same topic.

2 operationalizations:

- ▶ Overlap in subject matter (broad)

Hypothesis 1: Specialization (broad conception)



For an additional related judgment, a judge sees his likelihood of appointment increase by 58% compared to a judge with equivalent but unrelated experience.

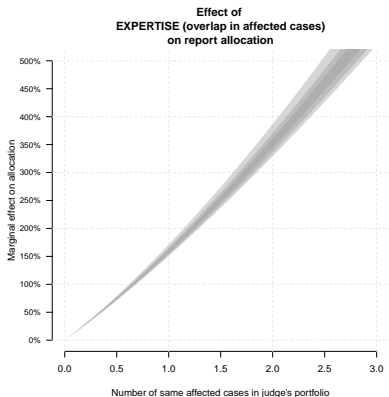
Specialization

Hypothesis 1: The president is more likely to appoint a rapporteur who has acted in the same role in previous cases related to the same topic.

2 operationalizations:

- ▶ Overlap in subject matter (broad)
- ▶ Overlap in law interpreted (narrow)

Hypothesis 1: Specialization (narrow conception)



For an additional related judgment, a judge sees his likelihood of appointment increase by 160% compared to a judge with equivalent but unrelated experience.

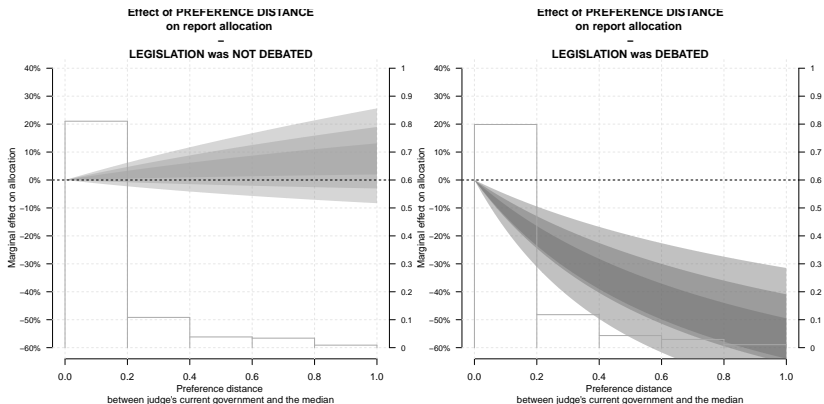
Politicization

Hypothesis 2: In cases where member states have expressed conflicting positions, the president is more likely to appoint a judge whose current government hold preferences close to the median.

2 operationalizations:

- ▶ Legislation debated in Council (B-items)

Hypothesis 2: Politicization



The (median) most extreme outlier has a 44% lower chance of allocation when legislation was subject to intergovernmental negotiation.

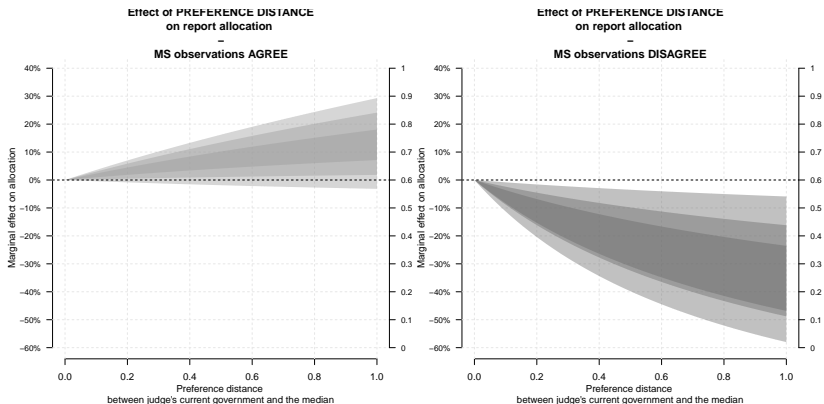
Politicization

Hypothesis 2a: In cases where member states have expressed conflicting positions, the president is more likely to appoint a judge whose current government hold preferences close to the median.

2 operationalizations:

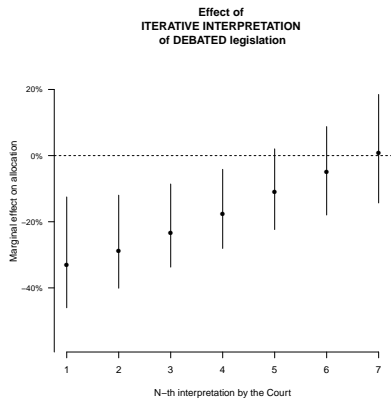
- ▶ Legislation debated in Council (B-items)
- ▶ Diverging MS observations (preliminary ref.)

Hypothesis 2a: Politicization



The (median) most extreme outlier has a 30% lower chance of allocation when governments express disagreement.

Hypothesis 2b: Uncertainty



Thank you!