Building legitimacy: Strategic case allocations in the Court of Justice of the European Union

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Abstract

Does the President of the Court of Justice of the European Union (CJEU) make strategic use of his members? Despite its considerable independence, the Court demonstrates substantial self-restraint when confronted with member states' preferences. However, to date, studies in the separation-of-powers tradition have considered judicial behavior at the organizational level. In contrast, this paper focuses on how external strategic considerations translate to individual influence *within* the CJEU.

Influence in the Court is individualized and distributed at the leadership's discretion. All cases are prepared by a "judge rapporteur" who acts as an agenda setter. This study argues that the President seeks to build the Court's legitimacy by strategically allocating cases to select judges. I show that individual-level specialization is promoted and argue that it favors a consistent case law. I then argue that suspicions about judges' political accountability can polarize already politicized cases. The President shortcuts such dynamics by allocating cases to judges whose governments hold moderate political preferences.

I rely on original data on 9623 allocation decisions in CJEU (1980-2015). The results speak to the lingering effect of judges' renewable

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terms – despite secret voting – as well as the importance of an autonomous internal organization for judicial independence.

Introduction

Since his appointment by the Bush administration, Chief Justice John Roberts has established a solid voting record among the conservatives on the US Supreme Court. However, in some of the Court's most politicized cases – touching questions such as the Affordable Care Act (NFIB v. Sebelius, 2012) and the right to abortion (Hellerstedt, 2016; Gee v. Planned Parenthood of Gulf Coast, Inc, 2018; June Medical Services, 2019) – he swung the Court towards more judicial restraint than what his and the majority of judges' preferences would indicate.

Commentators have suggested that Roberts relinquished immediate policy gains to maintain the Court's reputation as an institution above politics (e.g.: Crawford, 2012; Liptak, 2019; Leonhardt, 2019). While independent courts may occasionally go against the expressed wishes of elected leaders, these are moments when they cash in capital built up as an impartial and consistent interpreter of the law.

Individual decision makers play a central role in the Court of Justice of the European Union (CJEU) and the leadership enjoys a large discretion in assigning it. Judges are appointed by their governments and sit for six years renewable. The Court is nevertheless considered among the world's most independent international judiciaries. Its success has inspired the design of many new international courts (Alter, 2008, 2014). Yet, its internal workings have remained largely unexplored (Dunoff and Pollack, 2018, p. 86-87). If who makes decisions within courts matter for the outcome of cases and their reception, then studying how cases and judges are matched is essential to understanding judicial independence.

All cases in the CJEU are prepared by a "judge rapporteur" who acts

as an agenda setter, and the President derives much of his influence from designating that judge. This paper argues that the President uses that power to build diffuse support for the Court's case law among member states. I look at two underresearched legitimation strategies implemented at courts' case-management stage: Individual-level specialization and strategic attempts to depolarize politicized debates.

Specialization is an important asset for power-seeking courts. It alleviates coordination problems among judges and favors coherence. Yet, the CJEU has consistently rejected the practice of specialized chambers that many courts operate (Fabri and Langbroek, 2007). This study begins by showing that the President instead promotes specialization at the individual level and argues that it provides him with the flexibility required to make strategic allocation choices. Thus, individual judges repeatedly obtain responsability for specific pieces of legislation, but its President nevertheless remains in control over the Court's key agenda setters.

I then argue that judges' accountability to their political appointers is particularly delicate in a politicized environment where suspicions of undue pressure would polarize decision making further. Relying on two different measures of politicization, I demonstrate that the President shortcuts such dynamics by allocating cases to judges whose governments occupy a moderate position. I further show that considerations of domestic politics mainly spills over to the CJEU case management when its case law is not yet developed. The effect then decreases as the Court's interpretation crystalizes.

The Court's hybrid nature between an international court and a supranational adjudicator more akin to domestic constitutional courts has given rise to a diverse literature on its powers and limitations. Its supremacy in the European judicial hierarchy has lead to an overconstitutionalization that undoubtedly constrains governments' policy making (Blauberger and Schmidt, 2017; Schmidt, 2018). Yet, the Court also moderates its rulings in response to member states' signals (Carrubba et al., 2008; Larsson and Naurin, 2016).

Similarly to international courts, its members are politically appointed by national governments (Bobek, 2015; Hermansen and Naurin, 2019) and the member states' executives are its main interlocuters both as legislators in the Council and during the implementation of EU policies. I consider the CJEU as an international court insofar as governmental preferences are assumed to influence judges unequally depending on their state of origin. However, I draw on the literature on the US Supreme Court to understand case allocation within the judiciary.

The paper makes two contributions. First, although voting in the CJEU is kep secret to shield judges from political pressure (Dunoff and Pollack, 2017), I show that the division of labor reintroduces elements of accountability which the Court's internal organization can short cut. Second, by showing the negative relationship between established case law and political considerations, I argue that power-seeking courts have an interest in building consistency as part of a legitimization strategy.

To conduct the study, I have collected information on 9623 cases brought before the CJEU in the period 1980-2015. The data includes information on the parties in government at the time of the allocation, each judge's experience adjudicating on similar topics, as well at the potential politicization of the case in question. In the following, I survey why specialization and political sensitivity are valuable to an ambitious court. I then describe the internal organization of the CJEU. Last, I formulate my expectations, describe the data and discuss the results.

Building legitimacy

Courts enjoy varying levels of diffuse support resilient to the ideological direction of specific rulings (e.g.: Gibson and Nelson, 2015). This support rests on a belief that courts are legalistic, impartial and inherently different from the political branches of government (Gibson, 2007; Gibson and Caldeira,

2011). However, when decisions are perceived as politically motivated (by ideology or strategy), overall institutional legitimacy decreases (Christenson and Glick, 2015). The public is furthermore more likely to endorse the output merely to the extent that it aligns with their political opinions (Bartels and Johnston, 2013). Politically debated cases are therefore key moments where onlookers assess and update their beliefs about the Court's legitimacy (Christenson and Glick, 2015). We may say that a court's diffuse support is built up over time. Courts can contribute to this evolution by cultivating a legalistic reputation through consistent interpretation of the law and by avoiding polarizing already politicized cases.

Consistency

Courts are set up to reduce the legal uncertainty inherent in all legislation and they draw legitimacy from fulfilling that purpose. However, such uncertainty also gives room for policy-oriented considerations. First, judges may willingly or unwillingly rely on their attitutes to guide interpretation (Segal and Spaeth, 1993). Second, external political actors may see it more beneficial to pressure the court. The potential gains are high because they can set the direction for future case law. The costs are also minimal, since there is no authoritative precedent that is overturned.

Judicial policy making is an iterative process by which judges repeatedly – and in the concrete – crystalize a set of rules (Lax, 2007). Uncertainty will typically be highest the first time a law is brought before the court and decreases for each interpretation. This has two implications. First, the political stakes are higher the first time a law is brought before a court. Second, a coherent case law is a central attribute for courts in search for legitimacy. It maintains the fiction that judicial decision making is merely technocratic (Burley and Mattli, 1993). Moreover, reducing uncertainty also reduces transaction costs for societal actors, thereby helping the court to fulfil its purpose (Pollack, 2003). Stated differently, a cohesive case law imposes

a future cost on decision makers who seek to overturn extant practice; be it the Court itself or external political actors (Garrett et al., 1998).

Cohesiveness may nevertheless offer coordination problems. Although there is an expectation that precedents guides judicial decision making (Knight and Epstein, 1996), members also frequently overlook extant case law (Segal and Spaeth, 1996). Judges vary in their policy preferences, but also in their propensity to follow doctrine (Bailey and Maltzman, 2008). Relevant knowledge varies across members both relating to the case's policy domain and the Court's earlier decisions. With the exception of institutions with life tenure, judges may furthermore respond to different principals. Appointments can, for instance, be staggered or follow geographical quotas. Both are common for international courts. Diverse motivations adds to the complexity of deliberations and may lead to inconsistent outcomes.

One way to promote consistency is to ensure specialization. Most courts delegate to one judge the task of drafting judgments, and in many courts that decision is incumbent on the leadership. When the same types of cases are repeatedly matched with the same decision maker, consistency is more likely to occur. Specialization also provides the expertise needed to efficiently handle a substantial case load while still rendering high-valence judgments (Lax and Cameron, 2007). As such, substantive expertise is a consistent predictor of majority opinion assignments in the US Supreme Court (Maltzman and Wahlbeck, 1996, 2004; Wahlbeck, 2006).

Impartiality

When courts are called to resolve questions subject to political debate, this comes at the cost of appearing as political actors themselves. Courts that enjoy a large discretion should therefore take care when politicized questions are brought before them, since they risk being seen as overstepping their mandate (Ferejohn, 2002).

This is not to say that judges may not pursue an agenda of their own.

Case allocation is an opportunity for the leadership to influence the outcome upstream. Research on the US Supreme Court, has demonstrated how the prospect of designating the majority opinion writer leads to strategic behavior on the part of the Chief Justice (Bonneau et al., 2007; Lax and Cameron, 2007; Ura and Flink, 2016). However, policy-seeking judges are also reliant on the Court's diffuse support to effectively forward their agenda. In the example of Chief Justice Roberts, commentators have suggested that – rather than sacrificing his ultimate policy goals – the Chief Justice strategically opted for an incremental change in the Court's case law on abortion. When he was in minority, Roberts voted in favor of restricting abortion rights (Hellerstedt, 2016). On contrast, his votes to deny certiorari in Gee v. Planned Parenthood of Gulf Coast (2018) and stay restrictions on Louisiana abortion clinics (2019) are seen strategic delays whereby the Chief Justice awaits the appropriate time and case to overturn precedent. If so, he restrained himself *because* the Court was in an exceptionally powerful position and would be perceived as unduly political.

It is useful in this respect to distinguish between the attributes of the process and its output. Although appropriate decision making cannot in itself legitimize the outcome, a criticized process suffices to undermine it (Schmidt, 2013). That is, judgments may be discredited merely by the way they are decided.

Judges' perceived impartiality is key to effective adjudication. When they are politically appointed and sit on renewable terms, this impartiality may come under scrutiny (Voeten, 2008; Shepherd, 2009a,b; Elsig and Pollack, 2014; Dunoff and Pollack, 2017). The preferences of the current government end up reflecting upon their judges. Regardless of whether pressure is in fact exerted, such suspicions reduce the legitimacy of the process. The impression applies equally to all adjudicators within an institution, but when decision making is collective, heterogeneity in the membership ensures some degree of checks and balances (Kelemen, 2012).

In contrast, if only a few members play a key role, observers may suspect that career concerns influence the Court's decision (Christenson and Glick, 2015). Onlookers are furthermore tempted to let their ideological congruence with the decision makers' government taint the assessment (Bartels and Johnston, 2013). When matching cases with particular judges, it may therefore be beneficial to avoid delegating politicized tasks to judges whose appointers are polarizing.

While concerns for the legitimacy of the process is sufficient to motivate specific allocations in a politicized environment, these reasons are also compatible with concerns for the outcome of the case.

Effectiveness

No court – national or international – can enforce its own judgments (Staton and Moore, 2011). In direct conflict with an unwilling policy maker, courts are therefore reliant on third-party pressure for compliance. Higher domestic courts can appeal to the public to pressure their elected leaders (e.g.: Vanberg, 2005; Staton and Vanberg, 2008; Clark, 2009; Carrubba and Zorn, 2010). The situation is not inherently different for international courts, where a well-argued judgment may impose domestic audience costs on the current government (Simmons and Danner, 2010). International courts may furthermore rely on inter-state enforcement. Although the decision not to comply is unilateral, exerting pressure on the non-complier requires coordinated action among the remaining state signatories. A division between member states may therefore put the Court in a weak postition.

The EU judicial system is geared towards identifying situations where enforcement is politically feasible and effective. The EU infringement procedure is a case in point, where both the Commission and the affected states have several occasions to back down from further conflict (König and Mäder, 2014; Fjelstul and Carrubba, 2018). If litigation occurs, Carrubba (2005) shows that – while international courts may be useful "fire alarms" alerting

states to breeches of the contract – their added value is the highest where the domestic context renders non-compliance inevitable. Courts can identify these situations and render narrow judgments that in effect constitute permissible derogations. This allows states to remain in cooperation despite the occasional non-compliance.

The CJEU – matching judges with cases

Courts vary along two dimensions. Deliberations may be more or less inclusive, and allocations may be more or less left to the membership's discretion. However, most courts operate a system where at least parts of the information collection and drafting of judgments is done by a single judge. Here, I argue that the President of the CJEU's most important task is to match judges with cases and that the identity of the appointee matters.

The judge-rapporteur is an agenda-setter

The involvement of judges varies depending on the institution and the stage of the process (see for example, Dunoff and Pollack, 2018, p. 101-102). Courts with a high case-load will typically strive to divide labor, effectively increasing individuals' influence and visibility. This means that even when voting is secret, the identity of the agenda setter may not be. When terms are renewable, this can reintroduce elements of accountability.

The higher formation of the CJEU (the "Court of Justice") provides an example of extremely individualized decision-making. Even though both the European Court for Human Rights (ECtHR) and CJEU are formally full-representation courts – most decisions are taken by a sub-set of judges without substantive involvement of the plenary (Mackenzie et al., 2010, p. 7-8; Dunoff and Pollack 2018, p. 101-102). Cases are allocated directly to chambers in the ECtHR and the General Court of the EU, and only at that point will a "judge-rapporteur" be assigned to the case. In contrast,

the rapporteur in the CJEU is appointed already at the out-set, and the assignment of other panelists follows from his chamber affiliation (Guide Pratique, 2017, Title(IV)31).

This person acts as an agenda-setter (Saurugger and Terpan, 2017, p. 53). Early in the process, he communicates a preliminary report to the plenary meeting (RoP, 2012, Article 59). The rapporteur suggests how to deal with the case, the key questions involved and may go far in outlining the outcome. The meeting is normally the first and last time most members see the case (Guide Pratique, 2017, Title IV(41)). It is a moment of coordination and collective control where members can flag related cases. However, the rapporteur acts with substantial autonomy already at this stage. Although the typical meeting agenda includes 15-20 cases, only a subset of them are flagged as "A-items" subject to plenary debate, leaving the remainder to the rapporteur's (and president's) discretion.

The rapporteur has a prominent role also during the oral hearing. 15 years ago, judges frequently came unprepared and without paying particular attention. However, the hearing has grown in significance, as the use of advocate general is no longer mandatory. The proceedings begin with questions asked by the rapporteur. The questions may vary in style, but can sometimes be intended to provoke reactions from the parties and can appear as revealing as to the author's leanings. A substantial discussion only takes place later. In the absence of an advocate general, a short round-table is organized before the rapporteur produces a memo. In contrast, if an advocate general is assigned to the case, the discussion is postponed for several months pending his report. This does not prevent the rapporteur to sometimes begin drafting his/her proposal without the advocate general's formal input.

The final deliberations are based on the rapporteur's draft. All judges are requested to present their views and if no consensus is reached, the outcome is decided by a majority vote. However, no dissenting opinions are made public (RoP, 2012, Article 32). In contrast to the American majority opinion

writer, the judge-rapporteur writes the final decision on behalf of the entire panel regardless of whether he is in the majority. This is also different from the ECtHR, where the rapporteur occasionally desist from his role because of divergent opinions. Finally, the rapporteur signs the judgment and his name is published together with the text (Guide Pratique, 2017, Title IX(95)).

The information supplied by the CJEU is in this respect diametrically opposed to what is provided by the ECtHR (Dunoff and Pollack, 2017). While the latter allows for dissents, it has also introduced term limits to prevent governments from holding judges accountable. The rapporteur's identity remains nevertheless unpublished and practitioners have called for greater protection against retaliatory actions after their service has ended (e.g.: Keller and Meier, 2017). Conversely, all judges in the CJEU sit for six years renewable, while voting is kept secret to constrict accountability. As a transparency measure, the names of the key decision makers are nevertheless made available.

Given central role played by the rapporteur, we may assume that his designation is key to the institution's policy making. In courts where case assignment is discrete, we may expect the choice to be strategic.

Allocations are at the President's discretion

Courts also vary in how much discretion they enjoy in assigning cases. On one end of the scale are courts that follow a *completely random* case assignment. In US appellate courts, all three panelists are assigned by a random draw. The court thereby controls neither the combination of judges nor the match between judges and cases.

Other courts follow a system of *administrative* case assignments that approximates a random draw. Typically, panel compositions are predetermined, while cases are assigned following a rotation. This solution is used in several international courts. One reason may be that the system ensures some degree of representation among the decision makers. For example, chambers

in the ECtHR are set up for a three year period to reflect the different legal systems among the member states as well as ensuring geographical and gender balance (ECtHR, 2018, Rule 25-1 and 2). Similar considerations apply informally in the CJEU. As an addition to the principle of rotation, some courts also include specific rules pertaining to the match between judges' and parties' nationality. All signatories of the ECHR are therefore guaranteed representation by their own appointed judge (ECtHR, 2018, Rule 26). These rules can be seen as attempts by treaty makers to constrain or enhance the Court's autonomy.

On the other end of the scale are courts that allow for *discretionary case allocations.* This discretion can be exercised collectively and/or by the court's leadership. Once again, the higher formation of the CJEU constitutes an example of extreme leadership discretion. The President is free to designate the rapporteur of his choice with one exception: Since the outset, no judge acts as rapporteur in infringement cases brought against his own government. Although the practice relating to preliminary reference cases has been less rigid, from the Nice treaty (2003), the President has consistently avoided such assignments as well. The member state government is not strictly speaking a party to the conflict. It may nevertheless have high stakes in the outcome, as its policies can be overruled and future policy-making constricted by the European Court.

The Gauweiler case (C-62/14) is a good example. The CJEU was sized by the German Constitutional Court to determine whether the Outright Monetary Transactions program lead by the European Central Bank to adress the Eurozone financial problems fell within the Bank's competencies. The question was sensitive in two respects: First, the case played directly into the division between creditor and debtor states in the Eurozone, and the outcome would have a direct effect on the economic policies for governments on both sides of the divide. Second, the Court faced the possibility of an outright defiance on the part of the German Court. This was the first time

the German court referred a preliminary question to the CJEU. It has from the outset been reticent to recognize the supremacy of EU law, and the formulation of its question clearly indicated its stance that the Bank had exeeded its competencies. The Court finally decided in favor of the Bank, following the direction set three years earlier in the Pringle case (C-370/12). The choice of the Danish judge as rapporteur, Lars Bay Larsen, can be seen as strategic. Larsen was at that time already a seasoned judge, and – more importantly – Denmark is not part of the Eurozone. The President thereby avoided appointing a judge with obvious double binds. The practice illustrates the delicacy of case allocation when influence is individualized and and publicly known, while terms are renewable.

A relevant question is how much information the President has before making the delegation. Although, the rapporteur is named as soon as possible after the case is lodged (RoP, 2012, Article 15.1), this is only done upon the reception of additional information provided by the Court's administration (Guide Pratique, 2017, Section I(9-11)).

Following the lodging, the Registry prepares a preliminary memo. The document briefly describes the case and identifies similar cases and their authors – past or present – in order to facilitate the President's allocation decision (Guide Pratique, 2017, Section I(1 and 11)). Additionally, under the preliminary reference procedure, the Research and Documentation Directorate proceeds to a more thorough "pre-exmination". The document is authored by one of the Court's civil servants with local expertise[1] and is intended to provide relevant contextual information. It identifies the affected national and European laws as well as related case law. It may further include information on dissenting opinions, observations filed by the public prosecutor or debates around jurisprudential or doctrinal questions at the domestic level. The list is not exhaustive (Guide Pratique, 2017, Section

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[1]The internal guidlines suggest relying on nationals from the member state in which the case originated.

I(4-5)). With this information in hand, the President – with the help of his cabinet – proceeds to the appointment (Guide Pratique, 2017, Section I(9-11)).

Empirical expectations

Cases and judges are matched at the very beginning of the Court's decision-making process. The conventional criteria for judicial retreat are therefore unlikely to be present (Glick, 2009). The President may nevertheless look ahead and consider how the reception of the judgment may be. I assess two strategies which help build the Court's reputation as a predictable and impartial interpreter of the law: Specialization and depolarization.

A coherent case law can be seen as a strategy of self-binding in view of future conflicts. Researchers have noted, for example, that the Court refers to a larger body of earlier decisions when it rules against the majority of member state observations than when the political environment is less hostile (Larsson et al., 2017). These arguments are built up in a series of consistent judgments prior to the conflict. Although the early steps in the case management provide relevant information on case law, the judges may still differ both in their level of knowledge and their political orientations.

Coordination problems are common in all decision-making bodies. Courts' internal organization therefore generally involves several measures to ensure consistency. The Court's chamber structure poses a particular threat in this respect. Thus, both the administration and the general meeting are tasked with identifying related cases. For the same reason, each chamber president sits on all cases treated by their chamber. Specialization is an additional way of favoring consistency.

Yet, the Court has consistently rejected the institutionalization of specialized chambers. This can be understood in light of the delegation problem inherent in specialization. Highly specialized members can selectively trans-

mit information to the other judges and therefore trick them into favoring outcomes they would not otherwise have opted for (Fischer and Stocken, 2001). In the words of judge Prechal, even sector-specific cases may touch upon horizontal issues or foundational principles of EU law. This should not be left to a subset of policy experts. A de facto specialization has therefore developed at the individual level so that the President retains the possibility to allocate differently (Prechal, 2015, p. 1286-1287).

A judge may signal to the President the type of cases he finds interesting. However, it is up to the President to decide whether this wish can be satisfied. As a consequence, I formulate a first expectation that the President favors specialization by repeatedly delegating the same types of cases to the same judges.

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.*

The division of labor in the Court implies that the rapporteur is easily identified as an agenda setter. Furthermore, EU judges sit for renewable terms and are politically appointed. The preferences of the rapporteur's current governments may therefore reflect upon the judgment. When member state governments have expressed diverging opinions, the President may therefore be careful not to polarize debates further. Consequently, I expect that the President seeks to identify potentially politicized cases already when they are lodged and avoids judges whose government would accentuate the divide.

Hypothesis 2a *In cases where member states have expressed conflicting positions, the president is less likely to appoint a judge whose current government hold preferences far from the median.*

Politics are the most salient when the legal uncertainty is large. Since case law is typically built up over time (Lax, 2007), it means that the first time a legislation reaches a higher court, the potential for political input is more

substantial. Assuming the Court's case law has a constraining effect on political actors, I therefore expect that the President assesses the risk of politicization to decrease for each interpretation of a particular law.

Hypothesis 2b *The effect of governmental preferences in cases where governments disagree decreases with the number of interpretations the Court makes of the same law.*

Overall, I expect that specialization is a consistent predictor in most allocations, while the effect of governments' political preferences is constrained to a subset of cases where governments have expressed disagreement and the legal uncertainty is substantial.

Empirical strategy

In the following I describe the basic data structure and justify my choice of model before giving an account of my operationalizations.

Data structure and choice of model

To better understand the President's allocation criteria, I have collected data on 9955 court cases (1980-2015). Its structure provides a realistic description of the alternatives faced by the President. For each case, I list the judges who were members of the Court. This constitutes the President's "choice set". The baseline data frame thus includes 227077 observations of a total of 86 judges nested in cases, while the dependent variable is an indicator of the *Rapporteur* in each case.

The statistical model is guided by the same realism. All results are obtained from mixed conditional logistic regression. The probability that a case is allocated to justice i in case j can be written as follows:

$$\mu_{j(i)} = \beta X_{j(i)} + \beta X_{j(i)} \times Z_j$$

The choice calls for some clarifications. First, the Court's membership has evolved continuously, presenting the President with an ever-changing menu. The variation makes comparisons over time challenging, as the level of the predictors is substantially different. For example, the distance between member state preferences has varied substantially over time, with a peak in the 1980-ies when the Court's case-load was moderate. Other binomial logistic regressions would allow for choices outside of the President's menu, thus under-estimating the probability of allocations to policy-outliers. In the conditional logit model, irrelevant alternatives are excluded (McFadden, 1973). The overall level of variables may well vary across cases, but their effect is aggregated and correctly estimated (Long, 1997, p. 178).

Second, while most predictors describe differences between judges nested within choice sets, I expect that the President's assessment also depends on contextual features that vary at the case-level (Z_j). Specifically, I expect selection criteria to change in politicized cases. These predictors are included as cross-level interactions. The model hence qualifies as a mixed conditional logit.

All results are obtained using MCMC simulation within a Bayesian framework. To retain a valid data sample that includes all judges in the choice set, values for some units are simulated. Most predictors to not contain missing observations. A notable exception is the measure of governmental preferences. A listwise exclusion would effectively remove judges from the President's choice set, thereby counteracting the realism implied in the conditional logit. Instead, I impute the missing observations through a linear regression estimated in parallel to the main model. While government preferences are measured using party manifesto data (Volkens et al., 2017), the imputations rely on information on the prime minister's party family (Döring

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and Manow, 2018). The Bayesian framework incorporates the additional information to the model while also inserting the uncertainty implied in the imputation (Jackman, 2009, p. 237-244). In total, depending on the model, some 7% to 8% of the observations rely on preferences imputed in this way. All models are run with 2 000 iterations burn-in to ensure convergence. I then sample every tenth iteration for the following 5 000.

Variables

Regardless of the type of case filed, I expect the President seeks to build coherence through specialization (H_1). In addition, I expect that the preferences of a judge's member state have a bearing on allocations in potentially politicized cases (H_2).

Consistency through specialization

I rely on two different measures of specialization in a judge's portfolio as rapporteur at the time of the allocation.

Specialization – overlap in affected legislation captures the overlap between legal texts directly affected by the litigation. To construct the variable, I compare each case with all previous cases in a judge's portfolio. For each pair of cases, I thus calculate the proportion of overlap, before summing over the entire portfolio. In most instances (71% of the cases), the President has at least one judge at his disposal who has previously rendered a judgement affected by the same EU laws.

Specialization – overlap in topics is constructed in the same way, but captures the overlap between the 56 policy area identified by EUR-Lex. Throughout his career, a judge is the institution's most specialized member on average in 3% of the allocations. However, the President will almost always have at least one member with some related experience at his disposal (99.77% of the cases).

The assymetry works in the President's favor, since the spread in related experience means he generally has other alternatives to choose from. This is, of course, the product of the President's (or his predecesor's) earlier allocations and a result of his diminishing marginal returns on specialization (Chiou et al., ming). In contrast to previous studies, the measure is continuous (e.g.: Maltzman and Wahlbeck, 1996, 2004). To reflect the President's fear of agency drift, the variable is log transformed ($log(x + 1)$. It expresses the expectation that the President prefers the most specialized member when heterogeneity is low, but stochastically choose among the more expert members when heterogeneity increases.

Avoiding polarization of controversial cases

The President will avoid polarizing cases that are already controversial (H_{2a}). Testing the expectation requires a measure of governments' political preferences as well as an indication of which cases the President anticipates divide member states. I rely on two measures where governments have potentially different preferences over the outcome.

Potential politicization - new debated legislation relies on all cases affecting secondary legislation that passed through the Council (1980-2016). All policy proposals are not discussed at the ministerial level. If a proposal can be resolved by national civil servants, the dossier passes without discussion as an "A-item'" on the Council's agenda. In contrast, a "B-item" reflects cases with sufficient political disagreement to vouch for a discussion between the ministers. B-items are therefore a typical proxy for the difficulty with which governments reached an agreement (e.g. Häge, 2007; Wøien Hansen, 2014). When such legislation is brought before the Court for the first time, I expect that the President has reasons to anticipate some degree of politicization. Such cases are relatively rare. In total, I have identified 466 out of 2823 judgments (17%) affecting B-item legislation where the text has not yet been interpreted by the Court.

In H_{2b} I specifically test the argument that cases are more prone to politicization when the legal uncertainty is high. I assume that uncertainty decreases for each time the Court interprets a law. *Potential politicization - iteration before the Court* therefore reports the nth interpretation that the Court makes of a debated piece of legislation.

Potential politicization - diverging member state observations indicates whether the Court received amici curiae briefs from at least two governments expressing different preferences over the outcome. Roughly half (58%) of the Courts cases are preliminary references, where judges are called to determine the compatibility of EU and national law with the treaties. Member states are invited to submit their observations within two month follwing their notification (Statutes of the Court, 2012, Article 23). While the President may not have read these observations at the time of the allocation, he has likely other sources of information that I, as a researcher, do not. In the second operationalization, I therefore rely on information from these observations. The data is obtained from two handcoded sources (Carrubba and Gabel, 2011; Carrubba et al., 2008, cases lodged from 1980 to 1996; Larsson and Naurin, 2016, from 1996 to 2008).

In the models the indicators of politicization are interacted with a measure of preferences, and I expect a negative sign. The CJEU has been a major driver for European economic integration and its' rulings can constrict governments' ability to formulate economic policies. Economic preferences are also the most salient policy dimension in domestic politics.

Distance from median judge therefore reports the absolute preference distance on economic issues between a judge's current government and the median on the bench. Preferences are calculated as a weighted mean derived from the current governmental parties' electoral manifestos using the vanilla method (Döring and Manow, 2018; Volkens et al., 2017; Gabel and Huber, 2000). While the measure is stylized, it has the advantage that all governments are placed in the same policy space. In practice, most observations

(99%) are registered with a distance ranging between 0 and 1. Preferences have varied over time. The distance between governments reached a high in the beginning of the 1980-ies following the election of conservative prime minister Margaret Thatcher and socialist president Francois Mitterrand. However, the median choice set faced by the Court's President had an inter quartile range of 0.18. In the model, the measure is logtransformed ($log(x + 1)$) in order to limit the influence of extreme outliers on the overall effect.

Controls

The models include controls for members who are a priori unlikely to act as rapporteur. *Ties to member state – Case from judge's member state* indicates if the judge's member state is involved in the case; either in a direct action or a case filed by a national court. The President only acts as rapporteur in the rare event of a sitting with the full court. He is therefore excluded from the choice set. Similarly, *Leadership* indicates presidents in chambers of five judges (since 2003) and the Court's Vice-President (since 2012). These are positions which in recent years have become more managerial. Last, *Membership unclear* indicates judges whose membership at the Court is uncertain because they are at the beginning or end of their mandate.

Participation counts the number of panel deliberations a judge has participated in in the last 90 days prior to the allocation. Judges' vary in how invested they are in their mandate and what career stage they are at. This is reflected in their participation rates. In the median choice set, the inter quartile range among members is 8 deliberations. I expect that assidious members are more likely to be appointed.

Similarly, all models control for the number of *Past cases* in which a judge has acted as rapporteur. The measure can be seen as a lag of the dependent variable, subsuming all other reasons why the President may prefer one judge over another. Once again, the variation among judges is substantive, with the median choice set displaying an inter quartile range of no less than 82 cases.
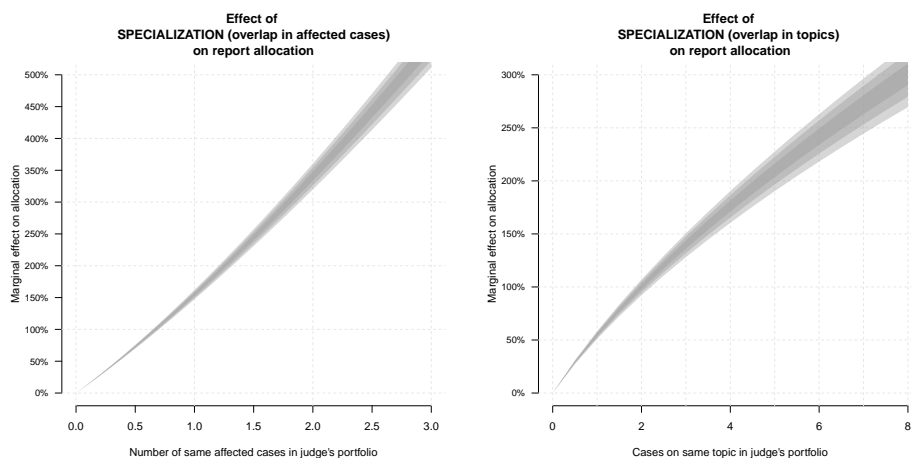
Figure 1: The effect of relative expertise acquired from previous cases on the same topic on case allocation.

In the multivariate analysis, the variable captures a member's experience with unrelated cases. If the President favors specialization, I expect it to correlate negatively with the likelihood of an appointment.

Results

Constructing coherence through specialization (H_1) Results from a first series of regressions are displayed in Table 1 and further illustrated in Figure 1. The limits of the 95% highest posterior density interval are reported in parentheses and can be read as confidence intervals. The results indicate a strong and consistently positive effect of specialization across the two operationalizations.

In instances where the Court has already interpreted the legislation, a judge who acted as the rapporteur once before is more than 1.6 times more likely to act as a rapporteur again compared to a colleague with no such experience. Overall, when considering the median distance between the most specialized and the least specialized judges in a choice set (an overlap of 1.5

Dependent variable: 'Allocation of report'	Overlap in legislation	Overlap in topics
Specialization (H1)	1.378	0.656
	(1.343,1.412)	(0.626,0.685)
Ties to member state (case from MS)	-1.45	-1.445
	(-1.567,-1.295)	(-1.586,-1.311)
Cases as rapporteur	-0.248	-0.48
	(-0.271,-0.234)	(-0.506,-0.451)
Membership unclear	-0.924	-0.982
	(-1.023,-0.834)	(-1.071,-0.889)
Participation	0.045	0.045
	(0.042,0.047)	(0.043,0.048)
Leadership (Chamber/Vice president)	-0.489	-0.542
	(-0.563,-0.416)	(-0.628,-0.469)
Number of observations	217284	217284
Number of choice sets	9949	9949
Proportion of correct predictions	0.65	0.597
Prop. of correct positive pred.	0.613	0.643
Prop. of correct negative pred.	0.652	0.594

Median effects with 95% symmetric posterior density interval in parenthesis.

Table 1: The effect of SPECIALIZATION on allocation of court cases. Results from a hierarchical conditional logit.

cases), the likelihood of an appointment is 2.5 times higher for the most expert judge.

The effect is equally substantial for cases related by their subject matter. For each related judgment, a member sees his likelihood of appointment increase by 58% compared to a judge with equivalent but unrelated experience. When considering the median difference between the most and the least specialized member on the Court (an overlap of 26 cases), the effect is consequential: The most specialized judge is 7.6 times more likely to be appointed.

The results show how individual judges can successfully shape the Court's policies deriving from specific pieces of legislation and within policy areas. However, the shape of the curve in the right panel of Figure 1 also indicates that specialization in a subject matter yields diminishing returns. The President does not consistently favor the most specialized member. That is, he discriminates less according to specialization as the distance increases be-

tween the judges. We can understand this through the lens of agency drift. The case-to-case approach to allocations means that the President can move to compensate as other judges' ability to monitor or suplement a rapporteur decreases. This flexibility also means that he can occasionally prioritize other selection criteria without making a substantial tradeoff with specialization.

Avoiding policy outliers when cases are politicized (H_2)   Table 2 displays results from a second series of regressions testing the effect of preferences in politicized cases. This time, the measures of specialization are included as controls. Once again, the results are as expected.

As is apparent from Figure 2, both operationalizations of politicization indicate a significant shift towards rapporteurs with a government close to the median (H_{2a}). If we consider the most extreme outlier that the President could potentially choose (i.e. a median absolute distance of 0.66), his chances of allocation would decrease by 44% if the affected legislation had been subject to political bargaining and the Court has not yet made an interpretation. The similar figure is 30% when politicization is measured as disagreement expressed in the case at hand. Preferences are also relevant for judges from more moderate governments. If we consider the typical distance between judges on the Court (an interquartile range of 0.13), we still see a decrease of 13% when disagreement was expressed at the legislation phase, and 8% when disagreement is expressed in the concrete.

The second interaction reported in Table 2 tests the idea that the President believes cases are more likely to politicize when the Court's interpretation is uncertain (H_{2b}). Figure 3 illustrates the hypothetical example of the median most extreme outlier when an allocation pertains to debated legislation. The figure makes clear that the importance of governmental preferences decreases as the Court's interpretation of the law becomes established. By the sixth iteration, the chances of appointing a judge from a policy outlier is indistinguishable from that of other members.

24
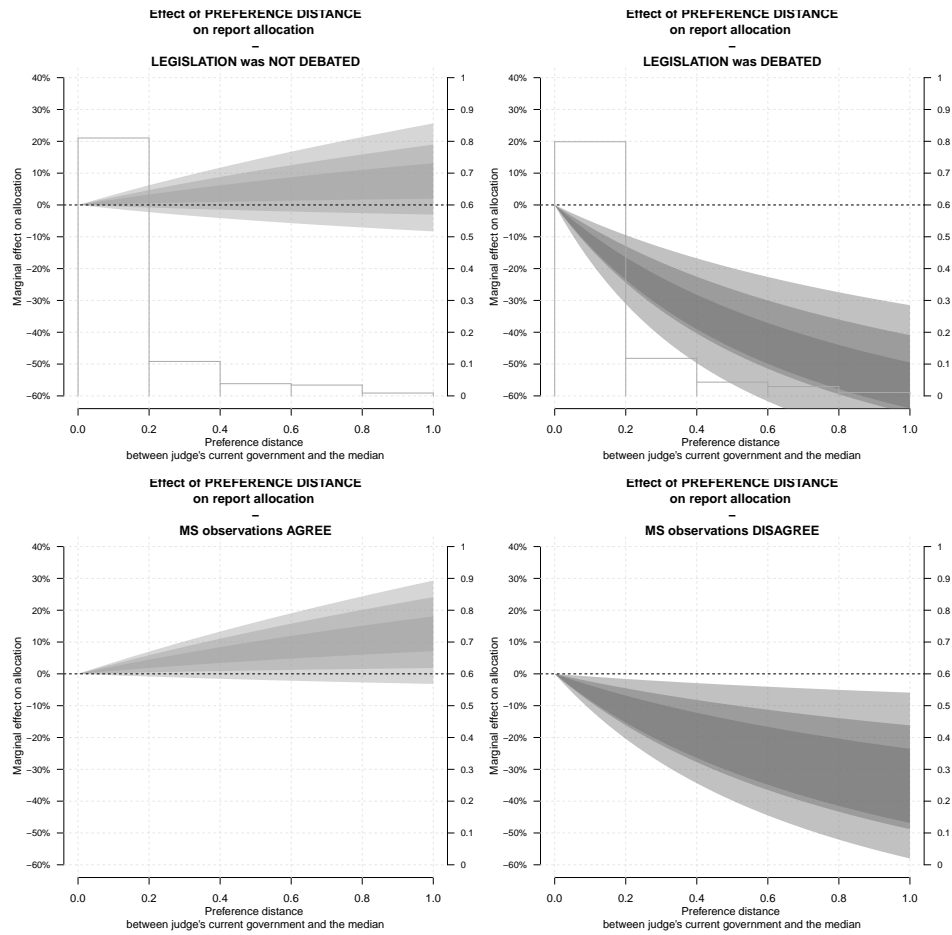
Figure 2: The conditional effect of politicization: The figures illustrate the effect of distance between a judge's current government and the median government currently in power on the probability of case allocations.

Effect of
ITERATIVE INTERPRETATION
of DEBATED legislation
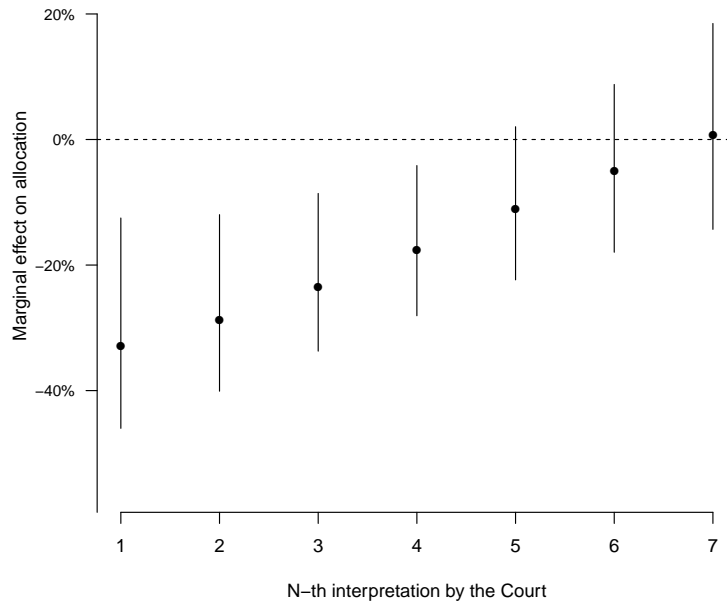
Figure 3: The figure illustrates the predicted effect of the Court's iterative interpretation of politicized legislation among judges from the (median) most outlying governments.

The results speak to the importance of coherence. A consistent case law allows the Court to build support for a line of interpretation. It also means that the President expects less political debate in subsequent cases. This is reflected in the decreasing sensitivity of his selection criteria to governments' preferences.

Conclusion

I have argued that court's legitimacy is built already at the case-management stage. Although an orderly process is not enough to legitimize the court's

Dependent variable: 'Allocation of report'	1980-2015	1980-2008
Distance from median judge	0.245	0.182
	(0.029,0.44)	(-0.003,0.337)
Distance from median judge * New debated legislation (H2a)	-1.15	
	(-1.709,-0.56)	
Distance from median judge * Disagreement MS observations (H2a)		-0.702
		(-1.329,-0.175)
Distance from median judge * Iteration before the court (H2b)	0.133	
	(0.041,0.228)	
Specialization (overlap in affected legislation)	1.536	1.092
	(1.485,1.58)	(1.042,1.146)
Specialization (overlap in topics)	0.299	0.215
	(0.265,0.341)	(0.156,0.281)
Ties to member state (Case from MS)	-1.892	-1.038
	(-2.13,-1.647)	(-1.251,-0.876)
Past cases	-0.506	-0.414
	(-0.546,-0.467)	(-0.463,-0.368)
Membership unclear	-1.193	-1.167
	(-1.313,-1.039)	(-1.331,-0.99)
Participation	0.047	0.051
	(0.043,0.05)	(0.047,0.056)
Leadership (Chamber/vice president)	-0.596	-0.614
	(-0.692,-0.485)	(-0.8,-0.408)
Number of observations	118247	60080
Number of choice sets	5015	3286
Proportion of correct predictions	0.702	0.66
Prop. of correct positive pred.	0.641	0.621
Prop. of correct negative pred.	0.705	0.662

Median effects with 95% symmetric posterior density interval in parenthesis.

Table 2: The effect of the current government's preferences on allocation of preliminary reference cases. Results from a hierarchical conditional logit.

output, a critized process suffices to sink it. State signatories may be tempted to constrict international courts' autonomy to organize their work. However, as long as judicial appointments are political and judges do not have life tenure, the current governments' preferences reflect upon their appointee. This is a limited problem when decision making is collective, as different judges hold each other in check. However, many international courts have adressed their increasing case load with similar increases in division of labor. Even when voting is secret, the agenda setters may be identifiable and their impartiality put under scrutiny. A random case allocation would regularly lead to matches between judges and cases that unnecessarily polarize the

court's decision making. This is *a fortiori* true when member states are guaranteed representation among the key decision makers.

In contrast, the Court of Justice of the EU enjoys extensive internal autonomy, and I have investigated two of its strategies to build legitimacy. Case allocation is done by the Court's President, and I find that his choice is sensitive to the judiciary's political environment. Because polarization is detrimental to the Court, he allocates potentially politicized cases to judges from moderate member states. Politics are the most salient when the legal uncertainty is large, and I consequently find that the effect of government preferences decreases when the Court has established its' case law.

A clear precedent imposes a cost on decision makers who seek to overturn it. However, coherent decision making also implies coordination problems among judges with diverse motivations. While specialization promotes consistency, it also entails limitations on the President's discretion. This study demonstrates that the CJEU promotes individual-level specialization and argues that it provides the President with the flexibility required to make strategic allocations.

References

June Medical Services, L.L.C., et al., Applicants v. Rebekah Gee, Secretary, Louisiana Department of Health and Hospitals.

(2018, December). Rebekah Gee, Secretary, Louisiana Department of Health and Hospitals, Petitioner v. Planned Parenthood of Gulf Coast, Inc., et al.

Alter, K. J. (2008, August). The European Court and Legal Integration: An Exceptional Story or Harbinger of the Future? *The Oxford Handbook of Law and Politics*.

Alter, K. J. (2014, January). *The New Terrain of International Law: Courts, Politics, Rights.* Princeton University Press.

Bailey, M. A. and F. Maltzman (2008, August). Does Legal Doctrine Matter? Unpacking Law and Policy Preferences on the U.S. Supreme Court. *American Political Science Review 102*(3), 369–384.

Bartels, B. L. and C. D. Johnston (2013). On the Ideological Foundations of Supreme Court Legitimacy in the American Public. *American Journal of Political Science 57*(1), 184–199.

Blauberger, M. and S. K. Schmidt (2017, July). The European Court of Justice and its political impact. *West European Politics 40*(4), 907–918.

Bobek, M. (Ed.) (2015, March). *Selecting Europe's Judges: A Critical Review of the Appointment Procedures to the European Courts*.

Bonneau, C. W., T. H. Hammond, F. Maltzman, and P. J. Wahlbeck (2007, October). Agenda Control, the Median Justice, and the Majority Opinion on the U.S. Supreme Court. *American Journal of Political Science 51*(4), 890–905.

Burley, A.-M. and W. Mattli (1993). Europe Before the Court: A Political Theory of Legal Integration. *International Organization 47*(1), 41–76.

Carrubba, C. J. (2005, August). Courts and Compliance in International Regulatory Regimes. *The Journal of Politics 67*(3), 669–689.

Carrubba, C. J. and M. Gabel (2011, July). European Court of Justice Data.

Carrubba, C. J., M. Gabel, and C. Hankla (2008, November). Judicial Behavior under Political Constraints: Evidence from the European Court of Justice. *American Political Science Review 102*(4), 435–452.

Carrubba, C. J. and C. Zorn (2010, July). Executive Discretion, Judicial Decision Making, and Separation of Powers in the United States. *The Journal of Politics 72*(3), 812–824.

Chiou, F.-Y., S. S. L. Hermansen, and B. Høyland (2020, Forthcoming). Delegation of Committee Reports in the European Parliament. *European Union Politics 0*(0).

Christenson, D. P. and D. M. Glick (2015). Chief Justice Roberts's Health Care Decision Disrobed: The Microfoundations of the Supreme Court's Legitimacy. *American Journal of Political Science 59*(2), 403–418.

Clark, T. S. (2009, October). The Separation of Powers, Court Curbing, and Judicial Legitimacy. *American Journal of Political Science 53*(4), 971–989.

Court, U. S. (2012, July). National Federation of Independent Business v. Sebelius.

Court, U. S. (2016, June). Whole Woman's Health v. Hellerstedt.

Court of Justice of the European Union (2012, September). Rules of Procedure.

Court of Justice of the European Union (2017, October). Guide Pratique Relatif au Traitement des Affaires Portées devant la Cour de Justice.

Crawford, J. (2012, July). Roberts switched views to uphold health care law. *CBS News*.

Döring, H. and P. Manow (2018). *Parliaments and Governments Database (ParlGov): Information on Parties, Elections and Cabinets in Modern Democracies.*

Dunoff, J. L. and M. A. Pollack (2017, April). The Judicial Trilemma. *American Journal of International Law 111*(2), 225–276.

Dunoff, J. L. and M. A. Pollack (2018). A Typology of International Judicial Practices. In A. Follesdal and G. Ulfstein (Eds.), *The Judicialization*

of International Law - A Mixed Blessing? (1 ed.)., European Society of International Law Series, pp. 86–106. Oxford: Oxford University Press.

Elsig, M. and M. A. Pollack (2014, June). Agents, trustees, and international courts: The politics of judicial appointment at the World Trade Organization. *European Journal of International Relations 20*(2), 391–415.

European Court of Human Rights (2018, April). Rules of Court.

Fabri, M. and P. M. Langbroek (2007). Is There a Right Judge for Each Case - A Comparative Study of Case Assignment in Six European Countries. *European Journal of Legal Studies 1*, 292–315.

Ferejohn, J. (2002, July). Judicializing Politics, Politicizing Law. *Law and Contemporary Problems 65*(3), 41–68.

Fischer, P. E. and P. C. Stocken (2001). Imperfect Information and Credible Communication. *Journal of Accounting Research 39*(1), 119–134.

Fjelstul, J. C. and C. J. Carrubba (2018, August). The Politics of International Oversight: Strategic Monitoring and Legal Compliance in the European Union. *American Political Science Review 112*(3), 429–445.

Gabel, M. J. and J. D. Huber (2000, January). Putting Parties in Their Place: Inferring Party Left-Right Ideological Positions from Party Manifestos Data. *American Journal of Political Science 44*(1), 94.

Garrett, G., R. D. Kelemen, and H. Schulz (1998). The European Court of Justice, National Governments, and Legal Integration in the European Union. *International Organization 52*(1), 149–176.

Gibson, J. L. (2007). The Legitimacy of the U.S. Supreme Court in a Polarized Polity. *Journal of Empirical Legal Studies 4*(3), 507–538.

Gibson, J. L. and G. A. Caldeira (2011). Has Legal Realism Damaged the Legitimacy of the U.S. Supreme Court? *Law & Society Review 45*(1), 195–219.

Gibson, J. L. and M. J. Nelson (2015). Is the U.S. Supreme Court's Legitimacy Grounded in Performance Satisfaction and Ideology? *American Journal of Political Science 59*(1), 162–174.

Glick, D. (2009, July). Conditional Strategic Retreat: The Court's Concession in the 1935 Gold Clause Cases. *The Journal of Politics 71*(3), 800–816.

Häge, F. M. (2007, September). Committee Decision-making in the Council of the European Union. *European Union Politics 8*(3), 299–328.

Hermansen, S. S. L. and D. Naurin (2019). Will do? Selecting Judges on the Basis of Policy Preferences or Performance Indicators. In *ECPR Joint Sessions*, Mons.

Jackman, S. (2009). *Bayesian Analysis for the Social Sciences.* Wiley Series in Probability and Statistics. John Wiley & Sons.

Kelemen, R. D. (2012, January). The political foundations of judicial independence in the European Union. *Journal of European Public Policy 19*(1), 43–58.

Keller, H. and S. Meier (2017). Independence and Impartiality in The Judicial Trilemma. *AJIL Unbound 111*, 344–348.

Knight, J. and L. Epstein (1996, November). The Norm of Stare Decisis. *American Journal of Political Science 40*(4), 1018.

König, T. and L. Mäder (2014). The Strategic Nature of Compliance: An Empirical Evaluation of Law Implementation in the Central Monitoring Sys-

tem of the European Union. *American Journal of Political Science 58*(1), 246–263.

Larsson, O. and D. Naurin (2016). Judicial Independence and Political Uncertainty: How the Risk of Override Affects the Court of Justice of the EU. *International Organization 70*(2), 377–408.

Larsson, O., D. Naurin, M. Derlén, and J. Lindholm (2017, June). Speaking Law to Power: The Strategic Use of Precedent of the Court of Justice of the European Union. *Comparative Political Studies 50*(7), 879–907.

Lax, J. R. (2007, August). Constructing Legal Rules on Appellate Courts. *American Political Science Review 101*(03), 591–604.

Lax, J. R. and C. M. Cameron (2007, June). Bargaining and Opinion Assignment on the US Supreme Court. *Journal of Law, Economics, and Organization 23*(2), 276–302.

Leonhardt, D. (2019, March). Opinion — John Roberts, Legislator. *The New York Times*.

Liptak, A. (2019, February). In Surprise Abortion Vote, John Roberts Avoids 'Jolt to the Legal System' - The New York Times. *The New York Times*.

Long, J. S. (1997, January). *Regression Models for Categorical and Limited Dependent Variables* (1 edition ed.). Thousand Oaks: SAGE Publications, Inc.

Mackenzie, R., K. Malleson, P. Martin, and P. Sands (2010). *Selecting International Judges - Principle, Process, and Politics* (1 ed.). International Courts and Tribunals Series. Oxford: Oxford University Press.

Maltzman, F. and P. J. Wahlbeck (1996, May). May It Please the Chief? Opinion Assignments in the Rehnquist Court. *American Journal of Political Science 40*(2), 421.

Maltzman, F. and P. J. Wahlbeck (2004, December). A Conditional Model of Opinion Assignment on the Supreme Court. *Political Research Quarterly 57*(4), 551–563.

McFadden, D. (1973). Conditional logit analysis of qualitative choice behavior. In *Frontiers in Econometrics*, pp. 105–142. New York: Academic Press.

Parties, H. C. (2012, August). Statute of the Court of Justice of the European Union.

Pollack, M. A. (2003). *The Engines of European Integration: Delegation, Agency, and Agenda Setting in the EU*. Oxford University Press.

Prechal, S. (2015). The Many Formations of the Court of Justice: 15 Years after Nice Essay. *Fordham International Law Journal 39*, 1273–1288.

Saurugger, S. and F. Terpan (2017). *The Court of Justice of the European Union and the Politics of Law* (1 ed.). The European Union Series. London: Palgrave.

Schmidt, S. K. (2018, January). *The European Court of Justice and the Policy Process*. Oxford University Press.

Schmidt, V. A. (2013, March). Democracy and Legitimacy in the European Union Revisited: Input, Output *and* 'Throughput'. *Political Studies 61*(1), 2–22.

Segal, J. A. and H. J. Spaeth (1993). *The Supreme Court and the Attitudinal Model*. New York: Cambridge University Press.

Segal, J. A. and H. J. Spaeth (1996, November). The Influence of Stare Decisis on the Votes of United States Supreme Court Justices. *American Journal of Political Science 40*(4), 971.

Shepherd, J. M. (2009a). Are Appointed Judges Strategic Too? *Duke Law Journal 58*(7), 1589–1626.

Shepherd, J. M. (2009b, January). The Influence of Retention Politics on Judges' Voting. *The Journal of Legal Studies 38*(1), 169–206.

Simmons, B. A. and A. Danner (2010, April). Credible Commitments and the International Criminal Court. *International Organization 64*(2), 225–256.

Staton, J. K. and W. H. Moore (2011, July). Judicial Power in Domestic and International Politics. *International Organization 65*(3), 553–587.

Staton, J. K. and G. Vanberg (2008). The Value of Vagueness: Delegation, Defiance, and Judicial Opinions. *American Journal of Political Science 52*(3), 504–519.

Ura, J. D. and C. M. Flink (2016, April). Experience counts: The chief justice, management tenure, and strategic behavior on the U.S. Supreme Court. *Research & Politics 3*(2), 205316801664446.

Vanberg, G. (2005). *The Politics of Constitutional Review in Germany*. New York: Cambridge University Press.

Voeten, E. (2008, November). The Impartiality of International Judges: Evidence from the European Court of Human Rights. *American Political Science Review 102*(4), 417–433.

Volkens, A., P. Lehmann, T. Matthieß, N. Merz, S. Regel, and B. Weßels (2017). The Manifesto Data Collection. Manifesto Project (MRG/CMP/MARPOR). Version 2017b.

Wahlbeck, P. J. (2006, June). Strategy and Constraints on Supreme Court Opinion Assignment. *University of Pennsylvania Law Review 154*(6), 1729.

Wøien Hansen, V. (2014, December). Incomplete information and bargaining in the EU: An explanation of first-reading non-agreements. *European Union Politics 15*(4), 472–495.

Appendix

Variables

This section provides a full description of the variables found in the replication data (`CJEU_choiceset.rda`).

Rapporteur (binary)

> (`Rapporteur`) indicates the judge who served as a the judge-rapporteur on a case.

Potential politicization – debated legislation (binary)

> (`council_agenda_b`) indicates cases where at least one EU secondary law is interpreted that passed at least once as a B-item on the Council's agenda. Information on affected legislation and it's adoption by the Council is retrieved from EUR-Lex.

Potential politicization – iterative interpretation of debated legislation (count)

> (`council_agenda_b_n`) indicates the $n^{th} - time - 1$ a legislation passed as a Council B-item is interpreted by the court. The count starts at zero, so that the first time a piece passes before the Court, it is registered as 0 and so are all cases that did not involve B-items. In cases where several laws are interpreted simultaneously, the piece with the lowest count is reported.

Potential politicization – debated new legislation (binary)

> (`First_time_b_item_before_court`) indicates cases where at least one EU secondary law is interpreted for the first time and which passed at least once as a B-item on the Council's agenda. Information on affected legislation, it's adoption by the Council and the date of previous judgments is retrieved from EUR-Lex.

Potential politicization – diverging member state observations (binary)

(`disagreement`) indicates whether member state governments have expressed diverging opinions on how the Court should rule. The data is drawn from opinions expressed in member state amicus curiae briefs submitted to the Court in preliminary reference cases. The variable is drawn from two handcoded sources, depending on the time period in question.

From 1959 to 1999, information is available from the European Court of Justice Data (Carrubba and Gabel, 2011) accessible here: `http://polisci.emory.edu/home/people/carrubba_ecjd/index.html`. For each issue adressed in a member state submission, the coders have identified whether the government agreed with the advocate general's opinion. I flag a disagreement between member state governments when two or more briefs are submitted and at least one government sides with the advocate general while the other does not.

From 1996 to 2007, information is available from a similar data collection (Larsson and Naurin, 2016). In this project, coders were instructed to note member states' perferred answer to each preliminary question and code them as "yes", "no" or "yes, but..." or "no, but...". I flag a disagreement between member states in cases where at least two governments have clearly expressed opposing positions on at least one question ("yes" or "no").

As illustrated in figure 5, the frequency with which member states express diverging opinions has increased over time. However, so has the number of governments entitled to file observations because of the successive EU enlargements. In the final analysis, I rely on data from 1980 and onwards. As is apparent from table 3, the two coding schemes result in different cases being flagged as "politicized". Analysis of potential time-trends (across data sets) therefore provides little information.

In the years where the two data sets overlap, I have relied on data from the Larsson and Naurin project.

| | Carrubba & Hankla: | | |
		Agreement	Disagreement
Larsson & Naurin:	Agreement	115 (78%)	10 (7%)
	Disagreement	9 (6%)	14 (9%)

Table 3: Overlap in how disagreement between member state governments are coded between datasets.

Distance from median judge (continuous)

(`abs(FreeEconomy.w.median-FreeEconomy_cur.w)`) measures the absolute preference distance on economic issues between a judge's current government and the median among member states. Preferences are calculated in the following way:

In the first step, I identify the government in power at the time of the appointment decision (`cabinet_current`) using the "Cabinet" data provided by the ParlGov Project (Döring and Manow, 2018). In the second step, I then identify the parties in government using the "Parties" data (Döring and Manow, 2018) and link these to the manifesto data provided by the Manifesto Project (Volkens et al., 2017). In the third step, I estimate preferences (`FreeEconomy_cur.w` and `FreeEconomy.w.median`) expressed in all party manifestoes using the vanilla method (Gabel and Huber, 2000). The indicators are questions related to the economic preferences of parties ("per401", "per402", "per403", "per404", "per405", "per406", "per409", "per410", "per412", "per413", "per414", "per415" and "per416"). Finally, in multiparty cabinets preferences are weighted according to each party's seat share in parliament.

As illustrated in Figure 4, the spread in governmental economic preferences has varied over time.

The inter quartile range in
governments' preferences over time
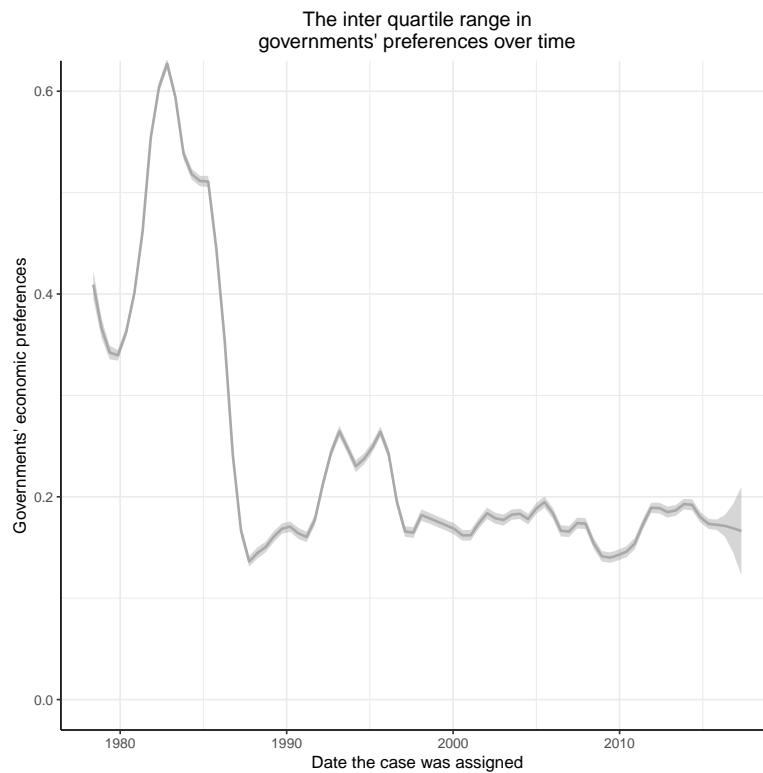
Figure 4: The spread in government preferences have varied over time. (Results from a loess estimation of the standard deviation of preferences in each choice set.)

Membership unclear (binary)

(`ExitDecisionMade == 1 | EntryDecisionNotMade == 1`) indicates members whose membership at the Court is uncertain. The Court's official documents do not report the date of the rapporteur appointment. To construct the choice set, I therefore include all judges who were members of the Court at any point from the case was lodged to its' final decision. Since this is a fairly broad definition, I therefore control for situations in which the judge is unlikely to act as rapporteur. The indicator marks two situations: First, when the Council has announced the appointment of a new judge, but the judge is still a member of the Court, it is likely that the incumbent judge will not be able to see the case through. Second, the indicator marks judges who are presently members, but whose appointment was not yet made public when the allocation most likely took place.

Ties to member state – Case from judge's member state (binary)

(`CaseFromMS`) indicates if the judge's member state is involved in the case; either as a party in a direct action or filed by a national court in an indirect action.

Disagreement
in governments' observations
over time

Figure 5: Proportion of the coded preliminary reference cases where member states file different opinions.

Recurring topics

Approximation of laws
Agriculture and Fisheries
Free movement of goods
Taxation
Freedom of establishment
Competition
Freedom to provide services
Environment
Social policy
External relations
Freedom of movement for workers
Intellectual, industrial and commercial property
Staff Regulations
Social security
Transport
area of freedom, security and justice
Consumer protection
Principles, objectives and tasks of the Treaties
Provisions governing the institutions
Free movement of capital
non–discrimination
Fundamental rights
Citizenship of the Union
Financial provisions
Brussels Convention of 27 September 1968
Accession
ECSC matters
Telecommunications
Public health
Energy
Non–contractual liability
Economic, social and territorial cohesion
General and final provisions
Data protection
Privileges and immunities
Overseas countries and territories
Justice and home affairs
European Union public contracts
European Social Fund (ESF)
Safeguard measures
Euratom matters
Research and technological development
Closer cooperation
Internal market – Principles
Industrial Policy
Economic and monetary policy
Trans–European networks
Balance of payments
Rome Convention of 19 June 1980
Education, vocational training and youth
Regional policy
Trade marks
Judicial cooperation in civil matters
European Development Fund (EDF)
Conjunctural policy
Commercial policy

Proportion

Recurring topics

EDUCATION, YOUTH AND CULTURE
TRANSPORT, TELECOMMUNICATIONS AND ENERGY
ECONOMIC AND FINANCIAL AFFAIRS
SOCIAL POLICY, HEALTH AND CONSUMER AFFAIRS
JUSTICE, HOME AFFAIRS AND CIVIL PROTECTION
GENERAL AFFAIRS
ENVIRONMENT
COMPETITIVENESS
INDUSTRY – ENERGY
INTERNAL MARKET
LABOUR AND SOCIAL AFFAIRS
EXTERNAL RELATIONS
BUDGET
DEVELOPMENT
RESEARCH

Proportion

Figure 6:

Alternative models

Effect of specialization

Table 4 reports the results of models using different operationalizations of specialization. The all refer to the overlap between the present case and previous cases in each judge's portfolio as rapporteur. The first two columns report the effect of specialization defined as in the main text relying on 1) the number of previous cases affecting the same legislation (narrow definition) and 2) the overlap in subject matter between successive cases (broad definition). The two last columns rely on overlap in the subset of cases where I have information on the 3) Council formation that debated and/or adopted EU secondary legislation interpreted and 4) the Commission Directorate General that made the initial proposal.

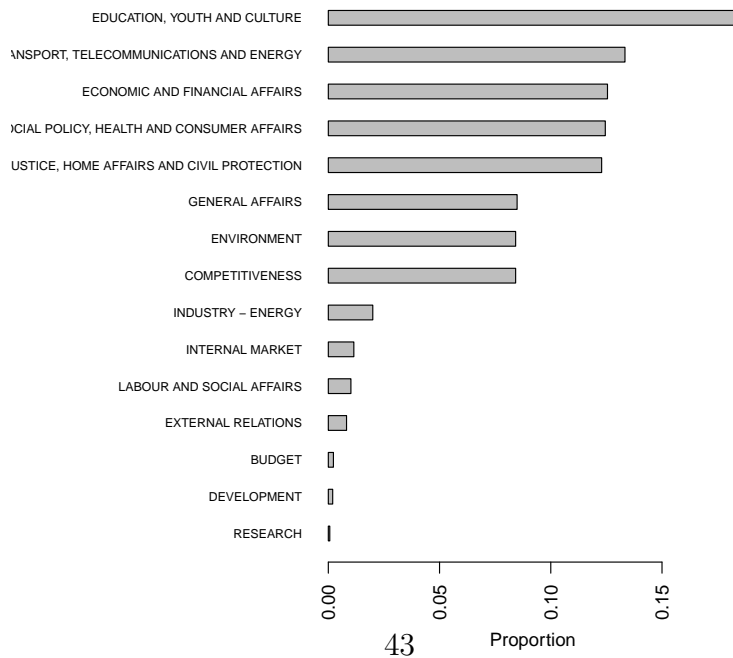| Dependent variable: 'Allocation of report'	Model 1	Model 2	Model 3	Model 4
Specialization (overlap in affected case(s))	1.379			
	(1.343,1.411)			
Specialization (EUR-Lex)		0.659		
		(0.633,0.686)		
Specialization (Commission DG)			0.698	
			(0.659,0.737)	
Specialization (Council formation)				0.623
				(0.543,0.71)
Ties to member state (case from MS)	-1.458	-1.427	-1.729	-5.264
	(-1.587,-1.309)	(-1.587,-1.313)	(-2.04,-1.457)	(-8.748,-3.363)
Cases as rapporteur	-0.251	-0.483	-0.536	-0.438
	(-0.27,-0.231)	(-0.507,-0.463)	(-0.566,-0.496)	(-0.502,-0.37)
Membership unclear	-0.922	-0.986	-0.945	-1.286
	(-1.022,-0.839)	(-1.077,-0.895)	(-1.094,-0.785)	(-1.599,-0.978)
Participation	0.045	0.045	0.036	0.026
	(0.042,0.047)	(0.043,0.048)	(0.032,0.04)	(0.019,0.032)
Leadership (Chamber/Vice president)	-0.492	-0.534	-0.615	-0.354
	(-0.573,-0.414)	(-0.609,-0.445)	(-0.74,-0.499)	(-0.461,-0.212)
Number of observations	217284	217284	96706	50785
Number of choice sets	9949	9949	4405	1862
Proportion of correct predictions	0.65	0.597	0.604	0.566
Prop. of correct positive pred.	0.614	0.643	0.634	0.627
Prop. of correct negative pred.	0.652	0.594	0.602	0.563

Median effects with 95% HDI in parenthesis.

Table 4: The effect of EXPERTISE on allocation of court cases, regardless of the procedure in question. Results from a hierarchical conditional logit.

Effect of government preferences

This section explores alternative ways of modelling the conditional effect of political preferences.

Different domestic principals   The analysis in the main text assumes that the presidents seeks to align judges' career incentives with the Court's interest to appear as apolitical and unbiased. The argument is that all judges may be suspected of being under pressure from their government to rule in the government's preferred direction. In cases that divide governments, the president therefore prefers a rapporteur who does not risk being under pressure to promote an extreme position.

Since judges sit for renewable terms and their reappointment is conditional on renomination by the national government, we may expect that the president considers the current government to be judge's main principal. In the main analysis, I therefore rely on on a measure of the current governmental parties' preferences weighted by each coalition party's relative size in parliament (Table 5). As an alternative operationalization, in Table 6 I report the results from an unweighted average of the governmental parties' preferences. Results remain largely the same: While the estimated effect on allocation when weighing coalition parties according to their size is larger, so is the uncertainty surrounding the estimate. Both variables make an assumption about the expectations judges can reasonably have as to who will be their primary domestic gatekeepers to reselection. The parties currently in power may not be the ones that finally make the reappointment decision. However it is the judge's (as well as the president's and other member states') best guess at the time of the case allocation.

An alternative explanation is that governments use their power of nomination to send judges to Luxembourg whose political preferences are aligned with their own and that the president seeks to obtain a moderate outcome by considering the judges' whose preferences are similarly moderate. In such

**Effect of politicization
for different measures of
government preferences**
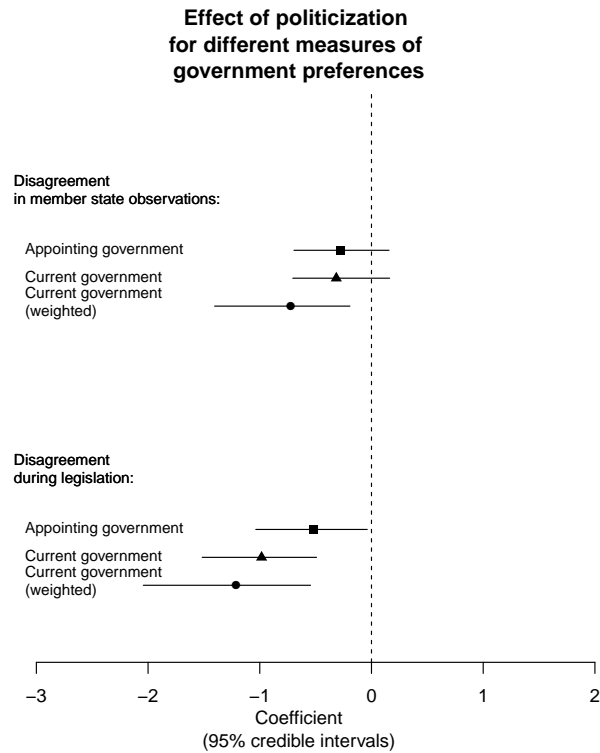
Figure 7: Alternative ways of measuring governmental preferences: Results from models in columns 1 and 2 reported in Tables 5, 6 and 7.

a scenario, we could consider the appointing government's preferences to be indicative of the president's case allocations. This is what I do in Table 7. Quite often, the appoitning and current government are the same. As is apparent from comparing results across tables, the effect of preferences in both operationalizations of politicization is larger and different from zero when considering the current government's political orientation rather than that of the appointing government.

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Dependent variable: 'Allocation of report'	1980-2015	1980-2008	1980-1999	1996-2008
Distance from median judge	0.102	0.171	0.121	0.017
	(-0.086,0.285)	(0,0.337)	(-0.07,0.289)	(-0.328,0.363)
Distance from median judge * Debated new legislation (H2a)	-1.213			
	(-1.906,-0.654)			
Specialization (overlap in affected cases)	1.53	1.099	1.032	1.178
	(1.484,1.58)	(1.042,1.16)	(0.949,1.12)	(1.105,1.271)
Specialization (overlap in topics)	0.295	0.222	0.172	0.286
	(0.251,0.339)	(0.171,0.284)	(0.095,0.262)	(0.209,0.356)
Ties to member state (Case from MS)	-1.862	-1.054	-0.709	-2.743
	(-2.125,-1.612)	(-1.226,-0.895)	(-0.873,-0.532)	(-3.322,-2.184)
Past cases	-0.501	-0.421	-0.434	-0.412
	(-0.537,-0.463)	(-0.464,-0.37)	(-0.503,-0.357)	(-0.484,-0.35)
Membership unclear	-1.188	-1.18	-0.934	-1.619
	(-1.321,-1.049)	(-1.343,-0.988)	(-1.161,-0.731)	(-1.883,-1.313)
Participation	0.046	0.051	0.05	0.05
	(0.043,0.05)	(0.048,0.056)	(0.044,0.056)	(0.045,0.055)
Leadership (President)	-0.586	-0.599		-0.693
	(-0.686,-0.486)	(-0.817,-0.403)		(-0.904,-0.503)
Distance from median judge * Disagreement MS observations (H2a)		-0.724	-0.473	-1.294
		(-1.212,-0.241)	(-1.039,0.079)	(-2.153,-0.491)
Number of observations	118496	60080	25246	37095
Number of choice sets	5024	3286	1823	1611
Proportion of correct predictions	0.702	0.661	0.658	0.665
Prop. of correct positive pred.	0.642	0.62	0.562	0.69
Prop. of correct negative pred.	0.704	0.663	0.665	0.664

Median effects with 95% HDI in parenthesis.

Table 5: The effect of the CURRENT government's WEIGHTED preferences on allocation of preliminary reference cases. Results from a hierarchical conditional logit.

Dependent variable: 'Allocation of report'	1980-2015	1980-2008	1980-1999	1996-2008
Distance from median judge	0.064	0.124	-0.008	0.282
	(-0.08,0.198)	(-0.009,0.261)	(-0.161,0.157)	(0.056,0.526)
Distance from median judge * Debated new legislation	-0.984			
	(-1.431,-0.565)			
Distance from median judge * Disagreement MS observations		-0.315	-0.452	-0.499
		(-0.654,0.101)	(-0.977,0.08)	(-1.016,0.018)
Specialization (overlap in affected cases)	1.53	1.105	1.032	1.176
	(1.485,1.578)	(1.048,1.157)	(0.938,1.118)	(1.089,1.258)
Specialization (overlap in topics)	0.299	0.215	0.17	0.279
	(0.252,0.344)	(0.158,0.276)	(0.083,0.26)	(0.205,0.364)
Ties to member state (Case from MS)	-1.869	-1.051	-0.711	-2.629
	(-2.107,-1.624)	(-1.239,-0.887)	(-0.906,-0.55)	(-3.346,-2.04)
Past cases	-0.504	-0.41	-0.433	-0.414
	(-0.54,-0.467)	(-0.474,-0.359)	(-0.516,-0.368)	(-0.484,-0.346)
Membership unclear	-1.184	-1.155	-0.964	-1.642
	(-1.322,-1.045)	(-1.339,-1.002)	(-1.199,-0.723)	(-1.885,-1.377)
Participation	0.046	0.052	0.05	0.051
	(0.043,0.05)	(0.048,0.056)	(0.044,0.054)	(0.045,0.056)
Leadership (President)	-0.584	-0.61		-0.647
	(-0.68,-0.481)	(-0.808,-0.42)		(-0.864,-0.459)
Number of observations	118496	60080	25246	37095
Number of choice sets	5024	3286	1823	1611
Proportion of correct predictions	0.702	0.66	0.658	0.663
Prop. of correct positive pred.	0.641	0.619	0.563	0.688
Prop. of correct negative pred.	0.704	0.662	0.665	0.661

Median effects with 95% HDI in parenthesis.

Table 6: The effect of the CURRENT government's preferences on allocation of preliminary reference cases. Results from a hierarchical conditional logit.

Dependent variable: 'Allocation of report'	1980-2015	1980-2008	1980-1999	1996-2008
Distance from median judge	-0.011	0.044	0.029	-0.161
	(-0.148,0.126)	(-0.096,0.196)	(-0.104,0.159)	(-0.467,0.069)
Distance from median judge * Debated new legislation	-0.515			
	(-0.939,-0.104)			
Distance from median judge * Disagreement MS observations		-0.281	0.073	-0.535
		(-0.633,0.05)	(-0.396,0.525)	(-1.054,0.04)
Specialization (overlap in affected cases)	1.533	1.104	1.034	1.178
	(1.484,1.579)	(1.039,1.16)	(0.953,1.127)	(1.088,1.253)
Specialization (overlap in topics)	0.298	0.224	0.169	0.287
	(0.251,0.342)	(0.166,0.278)	(0.081,0.248)	(0.206,0.362)
Ties to member state (Case from MS)	-1.869	-1.048	-0.706	-2.648
	(-2.127,-1.622)	(-1.252,-0.886)	(-0.911,-0.555)	(-3.292,-2.079)
Past cases	-0.502	-0.421	-0.43	-0.419
	(-0.54,-0.464)	(-0.464,-0.363)	(-0.498,-0.358)	(-0.476,-0.342)
Membership unclear	-1.175	-1.166	-0.925	-1.634
	(-1.322,-1.043)	(-1.337,-1.018)	(-1.151,-0.724)	(-1.912,-1.365)
Participation	0.046	0.052	0.051	0.051
	(0.043,0.05)	(0.048,0.056)	(0.044,0.056)	(0.045,0.057)
Leadership (President)	-0.577	-0.611		-0.701
	(-0.675,-0.48)	(-0.827,-0.418)		(-0.899,-0.466)
Number of observations	118496	60080	25246	37095
Number of choice sets	5024	3286	1823	1611
Proportion of correct predictions	0.701	0.66	0.658	0.665
Prop. of correct positive pred.	0.64	0.619	0.566	0.69
Prop. of correct negative pred.	0.704	0.663	0.665	0.664

Median effects with 95% HDI in parenthesis.

Table 7: The effect of the APPOINTING government's preferences on allocation of preliminary reference cases. Results from a hierarchical conditional logit.

The total effect of preferences in politicized cases   The main models report the size and precision of the *difference* in effect of preferences between politicized and non-politicized cases (i.e.: the interaction term). However, since the effect of preferences in non-politicized cases is estimated with uncertainty, the total effect of preferences in politicized cases also remains uncertain. To verify that the negative effect of extreme preferences is in itself significant in politicized cases, I therefore run models on the subset of cases that have been classified as "politicized". As is apparent from the results reported in in Table 8, the effect of the current government's weighted preferences not only remains in the expected direction, but are also estimated as different from zero.

Dependent variable: 'Allocation of report'	Only B-items	Only MS disagreement
Distance from median judge	-1.02	-0.489
	(-1.499,-0.454)	(-0.963,-0.062)
Specialization (overlap in affected cases)	2.434	1.045
	(2.108,2.782)	(0.921,1.185)
Specialization (overlap in topics)	0.336	0.224
	(0.191,0.473)	(0.097,0.359)
Ties to member state (Case from MS)	-2.584	-1.459
	(-3.906,-1.694)	(-2.097,-1.046)
Past cases	-0.375	-0.323
	(-0.503,-0.26)	(-0.436,-0.214)
Membership unclear	-1.009	-1.266
	(-1.442,-0.682)	(-1.709,-0.841)
Participation	0.037	0.048
	(0.027,0.05)	(0.039,0.058)
Leadership (President)	-0.188	-0.385
	(-0.483,0.093)	(-0.757,-0.088)
Number of observations	10716	12779
Number of choice sets	465	613
Proportion of correct predictions	0.62	0.659
Prop. of correct positive pred.	0.581	0.669
Prop. of correct negative pred.	0.621	0.659

Median effects with 95% symmetric posterior density interval in parenthesis.

Table 8: Considering only politicized cases: The effect of the current government's weighted preferences on allocation of preliminary reference cases. Results from a hierarchical conditional logit.

Dependent variable: 'Allocation of report'	Current gvt. weighted	Current gvt.	Appointing gvt.
Distance from median judge	0.245	0.086	0.175
	(0.029,0.44)	(-0.096,0.243)	(-0.022,0.342)
Distance from median judge * Debated new legislation (H2a)	-1.15	-0.724	-0.633
	(-1.709,-0.56)	(-1.14,-0.391)	(-1.026,-0.262)
Distance from median judge * Iteration before the court (H2b)	0.133	0.107	0.031
	(0.041,0.228)	(0.046,0.17)	(-0.027,0.107)
Specialization (overlap in affected cases)	1.536	1.529	1.526
	(1.485,1.58)	(1.488,1.578)	(1.479,1.582)
Specialization (overlap in topics)	0.299	0.303	0.3
	(0.265,0.341)	(0.262,0.342)	(0.257,0.352)
Ties to member state (Case from MS)	-1.892	-1.843	-1.804
	(-2.13,-1.647)	(-2.133,-1.595)	(-2.096,-1.597)
Past cases	-0.506	-0.506	-0.49
	(-0.546,-0.467)	(-0.542,-0.469)	(-0.534,-0.455)
Membership unclear	-1.193	-1.173	-1.008
	(-1.313,-1.039)	(-1.311,-1.068)	(-1.132,-0.895)
Participation	0.047	0.046	0.048
	(0.043,0.05)	(0.044,0.049)	(0.044,0.051)
Leadership (Chamber/vice president)	-0.596	-0.599	-0.6
	(-0.692,-0.485)	(-0.688,-0.485)	(-0.691,-0.483)
Number of observations	118247	118247	116312
Number of choice sets	5015	5015	4919
Proportion of correct predictions	0.702	0.702	0.701
Prop. of correct positive pred.	0.641	0.641	0.64
Prop. of correct negative pred.	0.705	0.705	0.704

Median effects with 95% symmetric posterior density interval in parenthesis.

Table 9: The effect of government's preferences on allocation of preliminary reference cases in instances with DISAGREEMENT between MS during LEGISLATION). Results from a hierarchical conditional logit.

Are the effects only driven by certain presidencies?

Since allocation decisions are left to the Court president's discretion, it may be that the results reported in the main paper are driven by the idiosyncratic selection criteria of one (or a few) president(s). This is a risk because the Court's case-load has grown over time and some presidents have sat for longer periods than others. To verify that the main findings are robust to the individual presidents' personae, I have therefore run separate models for each of the six Court presidents since 1980. In these models, I test the (additive) effects of specialization and the effect of government preferences in cases involving new secondary legislation which was subject to a political debate

in the Council. Results are reported in Tables 10 and 11.

Dependent variable: 'Allocation of report'	Wilmars	Stuart	Due
Distance from median judge	-0.865	0.507	0.27
	(-1.777,0.066)	(-0.153,1.027)	(-0.143,0.745)
Distance from median judge * Debated new legislation	-2.879	-1.88	-3.059
	(-5.582,-0.722)	(-4.002,-0.074)	(-4.84,-1.511)
Specialization (overlap in affected cases)	1.683	1.802	2.086
	(1.209,2.115)	(1.52,2.095)	(1.912,2.249)
Specialization (overlap in topics)	-0.863	0.033	-0.225
	(-1.217,-0.442)	(-0.202,0.251)	(-0.389,-0.061)
Ties to member state (Case from MS)	-1.12	-0.581	-0.866
	(-1.9,-0.428)	(-1.133,-0.126)	(-1.267,-0.556)
Past cases	0.586	-0.346	-0.32
	(0.195,1.032)	(-0.553,-0.152)	(-0.477,-0.16)
Membership unclear	0.044	-1.095	-1.397
	(-0.925,0.905)	(-1.723,-0.665)	(-1.826,-0.979)
Participation	0.019	0.053	0.061
	(-0.005,0.042)	(0.037,0.07)	(0.049,0.075)
Number of observations	944	3071	6906
Number of choice sets	81	224	469
Proportion of correct predictions	0.695	0.709	0.718
Prop. of correct positive pred.	0.58	0.58	0.646
Prop. of correct negative pred.	0.706	0.719	0.723

Median effects with 95% symmetric posterior density interval in parenthesis.

Table 10: Separate models for each presidency: Mertens de Wilmars (1980-1984), Stuart (1984-1988) and Due (1988-1990). Results from a hierarchical conditional logit.

Dependent variable: 'Allocation of report'	Iglesias	Skouris	Lenaerts
Distance from median judge	-0.051	-0.027	0.334
	(-0.334,0.249)	(-0.312,0.317)	(-0.674,1.128)
Distance from median judge * Debated new legislation	-0.213	-0.992	-2.829
	(-1.063,0.66)	(-2.079,-0.019)	(-6.067,-0.044)
Specialization (overlap in affected cases)	1.561	1.429	1.542
	(1.465,1.653)	(1.362,1.479)	(1.373,1.73)
Specialization (overlap in topics)	0.263	0.406	0.622
	(0.163,0.352)	(0.349,0.461)	(0.452,0.775)
Ties to member state (Case from MS)	-2.887	-5.891	-4.202
	(-3.689,-2.215)	(-8.732,-3.983)	(-7.414,-1.952)
Past cases	-0.462	-0.568	-0.681
	(-0.537,-0.38)	(-0.614,-0.517)	(-0.913,-0.459)
Membership unclear	-0.604	-1.577	-3.33
	(-0.819,-0.415)	(-1.83,-1.358)	(-6.486,-0.632)
Participation	0.055	0.04	0.004
	(0.05,0.06)	(0.035,0.045)	(-0.02,0.023)
Leadership (Chamber/vice president)		-0.612	0.171
		(-0.71,-0.503)	(-0.061,0.397)
Number of observations	22645	81828	9185
Number of choice sets	1251	2877	337
Proportion of correct predictions	0.709	0.696	0.758
Prop. of correct positive pred.	0.665	0.649	0.653
Prop. of correct negative pred.	0.711	0.698	0.762

Median effects with 95% symmetric posterior density interval in parenthesis.

Table 11: Separate models for each presidency: Iglesias (1994-2003), Skouris (2003-2015), Lenaerts (2015-2017). Results from a hierarchical conditional logit.