

Careerism and Judicial Behavior*

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Abstract

Although often criticized by part of legal scholarship, the idea of judicial behavior being influenced by judges’ egoistic goals simply needs the appropriate institutional setting in order to be validated. In the present paper, the hypothesis of careerism affecting judges’ conduct is investigated with regard to the case of the Italian Constitutional Court, where judges only serve for a limited and non-renewable term of nine years. This institutional framework allows to reasonably assume on a theoretical level the existence of career concerns among them. In order to maximize the chances of future appointments, judges try to earn as much reputation as possible among relevant audiences. Empirical evidence supports the theory that career concerns push judges to react to incentives that alter the reputational returns of their conduct. This result holds independently of judges’ personal characteristics that might influence their professional concerns.

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1 Introduction

Are judges like anybody else? The answer given by Posner (1993) is affirmative. According to his model, judges act rationally in order to maximize personal utility; just like any other economic actor does. The relevance of this contribution is elegantly emphasized by Schauer (2000), who argues that Judge Posner’s work “shifts our thinking about judges away from the melange of glorification, celebration and adoration that pervades much of popular and almost all of academic thinking about the judiciary and towards a more realistic analysis of judicial incentives and judicial behavior”. But if rational choice finds theoretical ground as a determinant of judges’ conduct, it is reasonable to think that, among other, also careerism influences their behavior and, consequently, their decisions. This claim, harshly contrasted in the past by a part of legal scholarship, simply necessitates the appropriate institutional setting to emerge and be corroborated. In specific settings, legislators have successfully isolated judges from the possibility of exploiting their discretion in the pursue of their own personal career goals. However, economic incentives vary according to the regulatory environment in which judges operate (Posner, 2005). Careerism should not be considered automatically as a threat to the independence and impartiality of judges, which have been proven to be fundamental pillars of economic growth (Voigt et al., 2015). On the contrary, taking into account this issue allows for a more comprehensive investigation of judicial behavior.

In this respect, the Italian Constitutional Court (ICC) offers an ideal setting for this purpose: a “recognition” court (Garoupa and Ginsburg, 2009) in which judges only serve for a non-renewable nine years term . Such institutional design, together with the evidence of judges’ professional achievements once left the Court, allows to reasonably conjecture the existence of career concerns among them. By exploiting a uniquely assembled dataset of 1843 decisions ruled by the ICC between 2002 and 2011, the present work wishes to interpret the emergence of specific decisional patterns as a consequence of “careerist” judges rationally adjusting their behavior to economic incentives that might enhance their reputation in specific audiences and, consequently, favor their chances of future professional opportunities.

The remainder of the paper is organized as follows. Section 2 discusses on theoretical grounds the idea of careerism among judges in the Italian Constitutional Court. Section 3 advances a specific research question, while Section 4 proposes a strategy in order to concretely address such hypothesis.

Section 5 illustrates the empirical analysis conducted: description of data, estimation methodology and a discussion of results. Conclusions are drawn in Section 6.

2 Theory

2.1 Judicial Careerism

In his seminal work, Posner (1993)¹ challenges the orthodox approach to judicial behavior by piercing the dogmatic veil of the formalist tradition depicting judges as idealized human beings living in a *legal empyrean* while isolated from mundane temptations. His model characterizes judges as self-interested individuals willing to maximize their own personal utility. In this perspective, judicial behavior ought not to be interpreted exclusively as a mechanical and automatic application of predetermined rules, but also as instrumental to egoistic goals. In a similar setting, the idea of judges being influenced by career concerns should not be considered as an attempt on the side of economists to prod lawyers' theoretical strongholds, but rather as a more comprehensive way to investigate this topic².

If a non-negligible portion of legal scholarship has ostracized the idea of judges' conduct being influenced by careerism³, this has much to do with the fact that most literature has overwhelmingly concentrated its attention on the US federal system⁴. In this jurisdiction it is indeed quite rare (but not impossible) for a district court judge to be promoted to a court of appeal (Posner, 2005). However this claim neglects the evidence that (even if with poor odds) most US federal judges are chosen among members of the same jurisdiction's lower tiers: promotions do exist, they are just rare. If it is indeed true that, in that specific setting, institutional arrangements have

¹Although not being the first work directly addressing the issue of rational choice, this article has the merit of having largely influenced the following debate on the topic. Nevertheless, also other works had previously tried to interpret judges' work adopting self-interest and Public Choice theory as working tools (Higgins and Rubin, 1980; Cooter, 1983). For a general survey of the following literature, see Shepherd (2011).

²Of course, the determinants of judicial behavior are not restricted to careerism. Another strand of literature has investigated the topic of ideology as a key element for explaining judicial decisions (Epstein and Knight, 1997).

³For a general overview of the academic debate on this topic see, Epstein (1990); Schauer (2000); Heise (2002).

⁴Significant exceptions in the opposite direction are represented by Taha (2004) and Epstein et al. (2013). The former work exploits the natural experiment supplied by the decisions of federal district court judges on Sentencing Guidelines. The latter work has the merit of supplying a general theoretical framework to the topic.

(more or less successfully) isolated judges from pursuing their own egoistic goals (Rubin, 1996), including careerism, this does not undermine the validity of the utility maximization paradigm in other contexts.

This work embraces the idea linking careerism to the institutional settings in which judges operate (Posner, 2005). The claim denying judges' behavior as instrumental to career concerns shall not be considered as an axiom. Rather, it needs to be adjusted to the different institutional architectures in which judges operate. For example, civil law countries have developed *career* models of judicial organization (Garoupa and Ginsburg, 2011b) where the judiciary is a hierarchy of judges that might be interpreted as an internal labor market (Ramseyer and Rasmusen, 1997; Schneider, 2005; Melcarne and Ramello, 2015). Within this different framework, incentives of future career opportunities are substantially more binding than as in the *recognition* model. In the latter, typical of the US, judges are selected at a later stage of their career and hardly get promoted afterwards⁵.

The present study wishes to contribute to the extant scholarly debate by focusing on a very peculiar institution: the Italian Constitutional Court (ICC)⁶. This judicial institution follows the *Kelsenian* model of constitutional negative legislator (Garoupa and Ginsburg, 2011a) and operates in a civil law system substantially characterized by a *career* judiciary. Despite this, the ICC shows most of the features of the *recognition* model: judges are selected by means of politically driven mechanisms and after a long experience in the legal community (either as university professors, lawyers or magistrates).

Nevertheless, the ICC is characterized by a specific feature that distinguishes it from other typical judicial institutions following the *recognition* type (as, for example, US federal courts). Judges only serve for a limited and non-renewable term of nine years, thus making this court a sort of "hybrid" model (Garoupa and Ginsburg, 2011b). The time-limited nature of the office sets a theoretical premise for the willingness of judges to pursue career goals, since they have the opportunity to seek new prestigious positions once

⁵This line of reasoning of course excludes US elected judges, whose position is much closer to the one of elected politicians and thus falls under a Public Choice approach (Posner, 2005).

⁶For a description of the institutional features and the working mechanisms of the Italian Constitutional Court, see the Appendix A.

their mandate is over⁷. Furthermore, this theoretical conjecture is backed by empirical evidence, as supplied by previous works (Breton and Frascini, 2003; Pederzoli, 2008) considering judges' post-ICC appointments: just to give a simple but illustrative example, the current President of the Republic (Sergio Mattarella) is a former ICC judge. Despite this outlier example, the spectrum of occupational opportunities is quite wide: in the past, after serving the Court, judges entered the Parliament or became members of the Government. Others held apical positions in various branches of the public administration or in the boards of private and State-controlled firms. With respect to judges previously working as magistrates, post-ICC positions interested also the judiciary's self-governing institutions. Table 1 summarizes the post-ICC positions of the judges considered by the present work⁸.

Career goals in this institution are even more surprising given the peculiar position held by these judges. Not only they sit in an apical judicial body whose decisions are not subject to appeal: more precisely, the ICC is the only national institution that can be considered "hierarchically above" the President of the Republic, since it has jurisdiction in the case of a presidential impeachment. Furthermore, ICC's justices are selected among (relatively old) legal experts already at the top of their respective careers' paths in the academia, judiciary or the bar. Serving the ICC could thus be perceived as the *icing on the cake* in a judge's personal résumé. However, evidence seems to support the idea that ICC-justiceship might result in a springboard towards further careers.

The implicit assumption underlying this entire work is that being a judge does not guarantee *per se* the certainty of a post-ICC appointment: what matters is that it gives an opportunity and thus determines career expectations. The evidence supplied by Table 1 shows that the majority of judges have exploited their experience in the Court, although not always successfully. ICC judges are thus assumed to be career-concerned. However, the aim of this work is not to explicit the determinants of judges' promotions. On the contrary it wishes to unveil how judicial behavior might be rea-

⁷This work concentrates only on the professional opportunities that judges seek after their office in the Constitutional Court is over. Strictly speaking, also a career path within the ICC might be identified, since the Court is chaired by a President elected among judges. Although the ICC President has substantial powers, in the considered time period (2002-2011) 16 different Presidents have headed the ICC: given an average presidency of 7.5 months, such office might be considered more as an honorary status for senior judges than a position for which compete.

⁸Only offices that were not the *continuum* of their previous occupation have been taken into consideration.

Table 1: Judges serving in the ICC between 2002-2011, whose office ended before 2014

Judge	Post-ICC Occupation
Massimo Vari	Member of Government
Riccardo Chieppa	None
Gustavo Zagrebelsky	Political Movement's Leader
Valerio Onida	Candidate to Milan Mayor
Carlo Mezzanotte	Deceased
Fernanda Contri	Member of Political Party & Board Member in private firm
Guido Neppi Modona	None
Piero Alberto Capotosti	Deceased
Annibale Marini	Member of Judicial Council (<i>CSM</i>)
Franco Bile	None
Giovanni Maria Flick	Candidate to Senate & Board Member in private firm
Francesco Amirante	None
Ugo De Siervo	Media Commentator
Romano Vaccarella	Resigned before end of office
Paolo Maddalena	Consultant
Alfio Finocchiaro	None
Alfonso Quaranta	Member of Italian Securities and Ex- change Commission (<i>CONSOB</i>)
Franco Gallo	President of <i>Treccani</i> Institute
Sergio Mattarella	President of the Republic

sonably influenced by career goals and, consequently, interpret decisional patterns emerging from data as consistent with this theoretical idea. More in general, careerism is here investigated as a determinant of judges' behavior. Of course, other potential explanations cannot be *ex ante* excluded: for example, judges' willingness of pursuing "glory" without any tangible returns, but rather just to leave a personal legacy (Garoupa and Ginsburg, 2010). However, when looking at the professional achievements made by these judges it becomes hard not to theoretically interpret any kind of reputation building mechanism as instrumental to career goals.

2.2 Reputation and Relevant Audiences

In light of these career concerns, it is important to isolate what ultimately maximizes judges' utility, *i.e.*, their chances of future appointments. Because of the specific hiring mechanisms that characterize these jobs, in order to enhance the odds of future employment, judges need to focus on their reputation. A well-known judge with the appropriate political connections and whose conduct is appreciated in the legal community is in a better position to qualify for these positions. In other words, judges need to build an adequate reputation in "relevant audiences", namely politicians (*external* or *political* audiences) and legal experts (judges, attorneys and law professors - *internal* or *legal* audiences) (Garoupa and Ginsburg, 2009).

Following the ICC the "recognition" model, judges need to worry about political audiences. Their appointment to the ICC is politically influenced, just like the ones of most jobs to which they aspire to for the future. Furthermore, also their office in the ICC has an intrinsic "political" nature. Since ICC's decisions are asked to repeal legislation (or solve conflicts among constitutional organs), their conduct has direct consequences for political actors.

However, also the feedback of internal audiences is relevant. Generally speaking, this has to do with the fact that legal experts (lawyers, professors and magistrates) are the main "recipient" of ICC's decisions, since they are the ones that ultimately have to enforce the law, as shaped by ICC's interventions (Garoupa and Ginsburg, 2011a). Furthermore, reputation in internal audiences is particularly binding for judges previously serving as magistrate, who might aspire to get appointed to judiciary-related positions in the national judicial council (*CSM*).

In order to acquire reputation in such audiences, judges need to signal their

personal qualities when performing judicial duties, in order to overcome the informational asymmetries related to their work (Levy, 2005). Consequently, judges' reputation might easily be interpreted as one of their most valuable economic assets (Garoupa and Ginsburg, 2009). In this specific setting, judges mainly worry about their individual reputation rather than the overall standing of the entire Court (Garoupa and Ginsburg, 2010, 2011a). This has mainly to do with the "egoistic" aim that judges pursue: the fulfillment of their personal career concerns.

3 Research Hypothesis

If the above theoretical premises are correct, a "careerist" judge sitting in the ICC will attempt to maximize her own individual reputation among such audiences. The remaining of the paper is devoted to isolate this optimization in judges' behavior. The emphasis here is not on the mechanisms through which judges cash their prestige, but rather to unveil how their conduct is influenced by external factor that alter the reputational returns of their conduct.

Judges' main activity is to dispose constitutional cases, that is, decide whether a piece of legislation is respectful of constitutional principles and, if not, declare such law unconstitutional. Similar decisions are extremely important, as they have the power to directly alter the legal system. Accordingly, they have a significant impact for society as a whole. This means that ICC decisions reach relevant audiences both in the political and legal "realms". However not all decisions are identical. Dependent on the specific audience reached and the importance of the issue at stake, judges are subject to different reputational incentives.

With the aforementioned premises being true, it is reasonable to expect decisional patterns emerging, through which it is possible to isolate judges' attempts to maximize reputation. If judges are concerned about their professional future, they are expected to adjust their behavior in court in order to maximize their standing. Accordingly, they will react to various incentives that might alter to different extents the reputational returns of their conduct. This is a consequence of the fact that the "maximization" problem judges face is a constrained one: resources are scarce. Given the necessity of finding a position after the nine years term, time is binding. Accordingly, the hypothesis to be tested is whether judges adjust their decisions so as

to exert more effort in those conducts yielding greater reputational returns, while not investing as much time in activities that are not equally instrumental to their specific career goals.

The following empirical analysis is thus devoted to show how careerist judges within the ICC react to incentives and dispose cases consistently with the idea of maximizing reputation.

4 Research Strategy

The strategy here adopted to shed light on the aforementioned hypothesis must necessarily deal with the necessity of finding an appropriate proxy of a judicial conduct used to reach relevant audiences and maximize reputation among them. The present work considers the broader category of decisions to enter in the merits of a constitutional case, rather than rulings of constitutional illegitimacy⁹. A similar strategy finds no prior application¹⁰ and at the same times provides two evident advantages. First, it allows not discarding almost 60% of ICC's rulings¹¹. Second, it is a more “neutral” decision and thus allows isolating more efficiently the impact of career concerns on judges' rulings from the way they deal with cases' legal merits. Judges do not express their opinion on the merits of the underlying case, but simply assess if the issue under scrutiny is, accordingly to their knowledge, meritorious of being further investigated.

Regardless of how the case is disposed in the merits, this kind of decision is still a form of constitutional review and thus represents a formal statement on the constitutional legitimacy of a law. Accordingly, it is reasonable to expect both internal and external audiences to be reached by similar decisions, thus making them a viable “instrument” for judges to signal their capacities and gain reputation. The relevance of a similar constitutional declaration determines on the one hand the feedback of media, thus catching the consideration of the political world. On the other, it also has an

⁹The ICC's jurisdiction is a mandatory one: all cases must be decided with a published opinion. The decision might either not enter in the merits or grant review. In the latter case, the ICC might rule in favor of the illegitimacy of the law at stake or confirm its conformity to the Constitution.

¹⁰Previous works deal with the different decision of declaring a law unconstitutional, when the case is entered in the merits (Fiorino et al., 2007; Padovano, 2009) or with decisions over conflicts among constitutional bodies (Dalla Pellegrina and Garoupa, 2013).

¹¹Of the 1843 decisions considered in the present analysis, 1072 were not entered in the merits (58% of the total) while 771 were granted review (42%). Among the 771 decisions in the merits 605 (78% of this subsample) confirmed the constitutional legitimacy of the law while 166 (22%) disposed in favor of the illegitimacy.

impact on legal experts' attention, since it will be more likely cited in future judicial decisions and academic writings. Accordingly, judges might conceive this type of decision as an opportunity to reach their relevant audiences and enhance their personal reputation.

Granting review to every case could thus appear as a straightforward strategy for judges willing to maximize their reputation. But a similar simplistic solution is also an unconstrained one: several other factors must be contemplated in order to model judges' behavior adequately. In other words, apart from the benefits attached to a similar decision, also the associated costs must be considered. As mentioned above, time matters! Since tenure in the ICC is temporally bounded, judges have a limited amount of time (nine years) to build the premises of future appointments. This means that also the quantity of effort that can be exerted in order to achieve their career goals is constrained. This issue becomes even more binding when considering that granting review to a case is a more costly decision, at least in terms of effort. Entering in the merits of a constitutional issue requires greater energy devoted to study its legal premises and to prepare a more accurate opinion. In fact, empirical evidence of the greater effort exerted by judges when granting review to a case emerges from a preliminary analysis of available data. When considering decisions' length as a reliable proxy of the amount of energy dedicated to a case (Eisenberg and Huang, 2012), verdicts entering in the merits of a case were 39% longer than those who did not grant review¹². This goes together with the fact that sending a reputational signal *via* a not well-written opinion would not be an optimal choice. Investing an inadequate level of effort in studying the constitutional issue at stake and failing to prepare an appropriate decision would probably yield detrimental effects on judges' reputation.

Furthermore, not all cases are equally profitable. Because of the ICC's mandatory jurisdiction, all cases must be disposed, but not all decisions yield equivalent reputational "dividends". Judges are asked to decide over all sorts of issues: not only cases dealing with extremely important topics for the legal system and society¹³, but also frivolous questions often raised

¹²A Student's *t*-test revealed a highly statistically significant difference in the length of decisions according to the fact that they entered in the merits of cases or not (p -value < 0.0001).

¹³In the very recent years, the ICC has decided over many relevant topics both for politics (electoral voting system or personal liability of Government's member) and citizens (pensions or *in vitro* fertilization).

with the only goal to interrupt the original lawsuit¹⁴. Granting review to the latter category of cases is probably not a very remunerative way for judges to invest their limited effort. At the same time, it could be even counterproductive from a reputational point of view.

Accordingly, judges' dilemma: *to review or not to review?* In the case of a careerist judge, such question might be restated in the following way: how to allocate their limited effort in order to maximize reputation and, consequently, the chances of being appointed to new offices?

Within this framework, it is reasonable to expect that judges react differently to institutional incentives that alter the reputational returns of a decision. This is because not all cases are alike: the audiences reached by every decision vary and so does their importance. Accordingly, also the reputational returns significantly differ. Several characteristics of a case affect its relevance for both internal and external audiences and, consequently, also the expected reputational gains for judges.

4.1 Political Audiences

With respect to external audiences, four factors are taken into consideration that alter the outcome in terms of reputational returns, thus incentivizing a decision in the merits. All the below mentioned incentives are expected to make a case more prominent among politicians and thus more appealing to the eyes of a careerist judge. Accordingly, one can predict that it is more likely for judges to exploit decisions characterized by such features.

First, the participation of the Prime Minister to the constitutional case. According to the ICC's procedure, the government might choose to support the constitutional legitimacy of the law under scrutiny¹⁵. The direct interest of the Executive in a case increases the relevance of such decision to the eyes of a rational judge willing to maximize her reputation. This is mainly due to the fact that the Executive controls directly or indirectly (through the parliamentary majority) most of the appointing mechanisms of the aforementioned positions of interest.

Second, the reputational returns of a decision are equally enhanced in the event of a case being discussed in a public hearing. In such circumstance it

¹⁴When an judge forwards a request to the ICC, the original lawsuit is suspended until the ICC's ruling.

¹⁵It is not the Prime Minister (nor other members of the Executive) to personally participate to the debate. This task is performed by the *Avvocatura della Stato*. However, this event still expresses a direct interest of the Government in the constitutional case.

is likely for the proceeding to receive deeper media coverage, especially by television. As a consequence public exposure will be greater, thus allowing judges' decisions to reach wider audiences.

Third, not all the laws that judges are asked to decide upon are equally "profitable": some cases might deal with really trivial legal issues, while other might regulate politically sensitive topics. Exploiting the reputational returns of the latter type is a more advisable strategy for careerist judges. In the present work this idea is going to be tested with respect to budget laws. This act represents the yearly most important piece of legislation passed by the Parliament, since it fixes the annual levels of public spending and defines its financial coverage either through cuts or tax increases. Accordingly, deciding on the constitutional legitimacy of such laws gives judges the opportunity to stand on a rather "main stage" in order to reach their audiences.

One final aspect influencing external audiences has to do more directly with politics. As mentioned above, the ICC's appointing mechanisms are heavily influenced by political actors. As a consequence, judges appointed by the Parliament or the President of the Republic can (almost) all be identified with a specific political affiliation. The same can be said, in a more indirect way for the justices elected by the High Courts, given the elevated level of politicization of the judiciary's components¹⁶. If appointments to the ICC are enhanced by such political support, in the perspective of future careers, judges are particularly incentivized to keep a strong bond with their political "sponsor" during their mandate. An opportunity in this sense can be found in the event of the law under scrutiny by the Court being passed by the same political coalition that appointed the judge.

4.2 Legal Audiences

With respect to internal audiences, two factors have been considered that can enhance the reputational "dividends" of a decision and thus incentivize judges to grant review to a case.

First, the hierarchical position held by the judicial institution requesting

¹⁶The *ANM* (*Associazione Nazionale Magistrati*) is the representative body of the Italian Judiciary. However, within the *ANM*, several components have emerged, differentiating their political connotations: *Magistratura Democratica* (Center-Left), *Unità per la Costituzione* (Center) and *Magistratura Indipendente* (Center-Right).

the ICC's ruling¹⁷. Any ordinary judge can address the ICC, but it is reasonable to expect that appeals coming from higher-ranking tribunals as the Supreme Court of *Cassazione*¹⁸ are more appealing than those filed from first-instance courts. This is because in the former case, the audience of judges' decisions is a much more relevant one, being the petitioner the apical judicial institution in the country. Despite the Italian legal system belongs to the Civil Law tradition, previous works have shown how judicial precedents still play an important role even when the *stare decisis* principle does not apply (Fon and Parisi, 2006). The higher the ranking of the judicial institution appealing to the ICC, the more profitable it is to reach judicial audiences. Furthermore, ICC judges selected among magistrates are elected by members of the Courts of last resort among them. As a consequence, one might reasonably suppose former-magistrate ICC judges being incentivized to grant review to appeals coming from ex colleagues. Accordingly, the higher the level of the petitioner, the greater the incentives for judges to enter in the merits of a case.

A second factor affecting the way judges' decisions reach legal audiences has to do with the law under scrutiny in constitutional cases. The ICC is asked to decide over laws enacted in a very wide timespan: from statutes passed by the incumbent legislature to pieces of legislation belonging to the fascist regime (or even prior to that). In this sense, such variance might incentivize judges to be more inclined to exploit the reputational returns of (relatively) older laws, being those the ones more deeply established in the legal system. Ordinary judges, lawyers and professors are more familiar with older legislation, since it has been more deeply enforced and studied. Accordingly, it is reasonable to expect that deep-rooted legislation attracts more attention on the side of internal audience, thus incentivizing ICC judges to be more likely to enter in the merits of older laws.

4.3 The Role of the Reporter

In order to harmonize the collegial nature of ICC's decisions with judges' individual career concerns, an assumption needs to be formulated before moving on with the empirical analysis. Concurring and dissenting opinions are not viable options for judges and this could create a problem in

¹⁷Constitutional review cases are brought to the ICC's attention by the request of any judge in the event that a law being applied in an ordinary lawsuit is suspected to be in contrast with the Constitution.

¹⁸The Court of last resort for civil and criminal jurisdictions.

order to approach correctly an analysis of the decisional process of individual judges, since only the final and collegial outcome is observable¹⁹. The present work handles such problem by proposing a simplifying but at the same time, rather realistic assumption, in part already adopted by previous works (Dalla Pellegrina and Garoupa, 2013). Given the specific and highly influential role that the Reporter performs in every procedural step of the decisional process, it might be appropriate to consider ICC final (and observable) decisions as a reliable proxy of Reporters' personal votes (which remain formally unknown). Although this might not be considered as an axiomatic statement, several arguments emerge in favor of a similar assumption.

The Reporter is in charge of studying the issue at stake and preparing the preliminary draft of the decision that is later discussed by the entire panel. Such tasks clearly assign Reporters an agenda-setting role with respect to the direction that the subsequent discussion will follow. Furthermore, when coming to the conclusive collegial decision, the Reporter is the first one to vote: opinion widely believed to be an highly influential one with respect to the other members of the deciding panel. It is clear that, although isolated occasions in which the rest of the deciding panel reverses the Reporter's point of view might occur²⁰, the ICC generally embraces the opinion expressed by Reporters. Furthermore, the Reporter is the only judge to sign the final decision (together with the President that signs them all): her name becomes automatically linked to the case and the way it is disposed. This determines the concentration of a generalized attention of both the public (and consequently politics) and other legal pundits on how Reporters deal with the cases assigned to their scrutiny. For these reasons, focusing on the conduct of Reporters might be considered as an appropriate choice in order to concretely test the aforementioned (informal) model of judicial behavior.

5 Empirical Analysis

5.1 Data Description and Identification

The empirical analysis here conducted relies on a dataset of 1843 observations, each representing a single decision ruled by the ICC between 2002 and

¹⁹See Appendix A.

²⁰According to Ruggieri and Spadaro (2008), a similar circumstance occurred only eight times since the ICC was established in 1956.

2011, referring to the conduct of 28 different Reporters²¹. In such period no major political turmoil took place, as instead happened in the previous decade. With the only exception of the brief experience of the Prodi's Government (2006-2008), a center-right coalition held a majority in the Parliament for the remaining time in a clear bipartisan political landscapes. The decisions used for this work have been downloaded from the ICC's website²² and coded by the author in order to create an innovative dataset that considers the entire set of cases disposed by the Court in the considered time span when judging on the constitutional legitimacy (*Giudizio in via incidentale*) of laws passed by the national Parliament. This choice allows building a more uniform set of cases to analyze when considering the relevance of the issues over which the Court decides: cases dealing with marginal pieces of regulation such as guidelines enacted by independent authorities or other branches of the executive have been dropped if not passed also formally by the Parliament.

The more suitable methodology to adopt when trying to model the determinants of a similar binary decision is maximum likelihood binary logit. The dependent variable, REVIEW, is a dummy equal to 1 when a case is entered in the merits and 0 otherwise. In order to account for potential non-independence in the decisional process among judges, robust standard errors are clustered at individual Reporter's level. The same models will be estimated also with standard errors clustered at case's level, in order to take into consideration the event of multiple decisions over the same case (Dalla Pellegrina and Garoupa, 2013).

Various covariates have entered the main specification of the model to test empirically the aforementioned hypothesis. In order to account for the incentives towards external audiences, four covariates are introduced in the model (GOV_INT, HEARING, BUDGET and SAME_POL) that test the impact of a case being more appealing in terms of reputational returns towards politicians on judges' decision to enter in the merit of a case. Two variables are devoted to capture the effect of reputational incentives towards internal audiences (PETITIONER and LAW_AGE). A specific definition of all variables can be found in Table 2. Defined π_i as the probability of a case

²¹The 1843 observations refer to 1424 rulings published by the Court. Such higher number of observations is due to the existence of *in parte qua* decisions, containing a plurality of judgements within a single ruling. Petitioners might raise several questions over which the ICC might rule separately in different ways (but in a unique decision). Accordingly, each individual ruling has been considered as a distinct observation.

²²www.cortecostituzionale.it

to be entered in the merits, conditional on the aforementioned covariates²³, Equation 1 represents the baseline model.

$$\begin{aligned} \text{logit}(\pi_i) = & \phi + \beta_1 \text{GOV_INT}_i + \beta_2 \text{HEARING}_i + \beta_3 \text{BUDGET}_i + \\ & + \beta_4 \text{SAME_POL}_i + \delta_1 \text{PETITIONER}_i + \delta_2 \text{LAW_AGE}_i + u_i \end{aligned} \quad (1)$$

Consistently with the aforementioned theoretical hypotheses all β s and δ s are expected to be positive, since they all represent incentives that enhance reputational returns, making it more likely for a case to be granted review. In order to guarantee the robustness of the estimates, several controls need to be included in the model’s specification. On a theoretical ground, personal characteristics might alter judges’ career concerns and thus bias the impact of the institutional incentives on their decisions.

First of all, seniority could be an issue: previous works have claimed that older judges might be less influenced by career concerns since their work life expectancy is smaller (Fiorino et al., 2007; Padovano, 2009). Second, it is important to account for judges’ professional background. Judges formerly serving as magistrates or university professors enjoy life-tenured appointments in their prior jobs. In theory, they could interpret their ICC mandate as a period “on leave” from their previous occupation, to which they return once the nine years are over. Finally, previous studies have shown that different levels of workload might influence the propensity of judges to make certain decisions as, for example, choosing to publish an opinion (Taha, 2004). Given the repetitiveness of judges’ work²⁴, heavier caseloads might lead to a *Jaded Effect* (Eisenberg et al., 2013), fostering a saturation of judges’ attention and a potential mitigation of their career concerns. At the same time controlling for previous workload allows to capture the potential bias related to the possibility that judges get assigned more important cases (the ones more likely to be entered in the merits) only after they have gained experience. For these reasons, a vector \mathbf{Z}_i of four controls (JUDGE_AGE, JUDGE_MAG, JUDGE_ATT and JUDGE_WORK) is introduced in the main specification of the model in order to account for such judge-level factors.

$$\begin{aligned} \text{logit}(\pi_i) = & \phi + \beta_1 \text{GOV_INT}_i + \beta_2 \text{HEARING}_i + \beta_3 \text{BUDGET}_i + \\ & + \beta_4 \text{SAME_POL}_i + \delta_1 \text{PETITIONER}_i + \delta_2 \text{LAW_AGE}_i + \mathbf{Z}_i \theta + u_i \end{aligned} \quad (2)$$

²³Formally, $\pi_i = \Pr(\text{REVIEW}_i = 1 | \mathbf{X}_i)$, with \mathbf{X}_i a vector of all considered variables of interest.

²⁴See Appendix A.

Equation 2 adds to the baseline model also the set of controls \mathbf{Z} . The predictions with respect to the coefficients of interest (β s and δ s) remain the same, while no *ex ante* prediction is made with respect to elements of vector θ . Table 3 displays descriptive statistics of all the variables employed in the empirical analysis.

However, in order to correctly identify the causal effect of the considered covariates on the odds of a case to be entered in the merits a few words need to be spent on potential endogeneity issues. At first glance, one cannot exclude that elements of \mathbf{X} are simply catching the “importance” of a case. If this is so, the proposed models would not be estimating the impact of career incentives on judges’ decisions, but rather the more trivial relationship between the importance of a case and the probability of a decision in the merit: it is self-evident that judges will grant review to more important cases, independently of their careerism. Accordingly, it is necessary to exclude that covariates in \mathbf{X} are correlated with the importance of a case. In order to proceed in this direction, it is first necessary to identify a reasonable proxy for the importance of decisions. The choice fell on the number of requests forwarded by ordinary judges to the ICC (NUM_REQ). According to the ICC’s procedure, the Court can gather in a unique decision identical appeals forwarded by several different judges. In this sense, if 61% of decisions were given impulse by only 1 request, it might happen that a constitutional issue might be raised simultaneously by many ordinary judicial institutions, up to 139. Accordingly NUM_REQ reasonably reflects the relevance of a case: as a constitutional issue is more important, it will be simultaneously raised by a greater number of judges. As a consequence, in order to exclude endogeneity problems, it is necessary to show that the elements in \mathbf{X} are independent from NUM_REQ. Several tests were performed in order to show how the distribution of NUM_REQ does not significantly vary according to the values of the covariates of interest, results are reported in Table B.1 of Appendix B. With respect to HEARING, BUDGET, SAME_POL, both a *Kolmogorov-Smirnov* test for equality of distribution and a *Kruskal-Wallis* equality of populations rank test do not allow to reject the hypothesis that NUM_REQ has the same distribution conditional on the value of those dichotomous variables²⁵. With respect to

²⁵In order to deal with the high skewness of NUM_REQ, all tests were performed excluding the top 1% outliers. The same tests were equally performed excluding all appeals coming from a Supreme Court (of last resort), in order to account for their greater importance to judges’ eyes

Table 2: Variables description

Variable	Description
REVIEW	Dummy = 1 if the case was entered in the merits, 0 otherwise
GOV_INT	Dummy = 1 if the Prime Minister intervened in the procedure, 0 otherwise
HEARING	Dummy = 1 if the case was discussed in a public hearing, 0 otherwise
BUDGET	Dummy = 1 if the law under scrutiny is the yearly national budget, 0 otherwise
SAME_POL	Dummy = 1 if Reporter's political affiliation is the same of the coalition that passed the law under scrutiny, 0 otherwise
PETITIONER	Categorical Variable = $\{1, 2, 3\}$ if the petitioning tribunal was respectively a court of first instance, a court of appeal or a court of last resort
LAW_AGE	Natural logarithm of the days elapsed between the moment the law under scrutiny was passed and the day of the ICC decision
JUDGE_AGE	Age (in years) of the judge at the moment of the decision
JUDGE_MAG	Dummy = 1 if the judge formerly served as a magistrate, 0 otherwise
JUDGE_ATT	Dummy = 1 if the judge formerly served as an attorney, 0 otherwise
JUDGE_WORK	Number of cases the judge was asked to scrutinize at the moment of the decision
NUM_REQ	Number of appeals forwarded to the ICC from ordinary judges for every decision
JUDGE_PARL	Dummy = 1 if the judge was appointed by the Parliament, 0 otherwise
JUDGE_JUD	Dummy = 1 if the judge was appointed by members of the High Courts, 0 otherwise
CIVIL_LAW	Dummy = 1 if the law under scrutiny dealt with civil legislation, 0 otherwise
ADMIN_LAW	Dummy = 1 if the law under scrutiny dealt with administrative legislation, 0 otherwise
FISCAL_LAW	Dummy = 1 if the law under scrutiny dealt with fiscal legislation, 0 otherwise

Table 3: Descriptive Statistics

Variable	Obs.	Mean	Std. Dev.	Min	Max
REVIEW	1843	0.418	0.493	0	1
GOV_INT	1843	0.797	0.402	0	1
HEARING	1843	0.269	0.444	0	1
BUDGET	1843	0.074	0.262	0	1
SAME_POL	1843	0.276	0.447	0	1
PETITIONER	1841	1.193	0.467	1	3
LAW_AGE	1833	7.634	1.087	5.288	10.42
JUDGE_AGE	1843	68.955	4.99	58.67	79.6
JUDGE_MAG	1843	0.368	0.483	0	1
JUDGE_ATT	1843	0.105	0.307	0	1
JUDGE_WORK	1843	62.697	44.31	0	221
NUM_REQ	1843	3.184	0.493	1	139
JUDGE_PARL	1843	0.293	0.455	0	1
JUDGE_JUD	1843	0.338	0.473	0	1
CIVIL_LAW	1843	0.36	0.48	0	1
ADMIN_LAW	1843	0.146	0.353	0	1
FISCAL_LAW	1843	0.138	0.345	0	1

PETITIONER, this variable seems to be not even significantly correlated with NUM_REQ: in fact when performing a multivariate test on means of NUM_REQ, conditional on the value of PETITIONER, the null hypothesis of equal means cannot be rejected. In order to exclude that older laws (LAW_AGE) are simply obsolete with respect to the current constitutional framework and thus more needy of the legal “check-up” represented by an ICC’s decision, Model 2 was estimated including only legislative acts passed after the end of the fascist regime. By excluding such laws, the ones more likely to be in contrast with the republican constitution, estimates remain substantially unaffected²⁶. Finally, the average importance of a case as measured by NUM_REQ does not significantly vary according to the event of the Executive participating to the case (GOV_INT). More in general, the government intervenes on average 80% of times: however, of this cases, only 42% where entered in the merits.

Table 4: Regression results

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
GOV_INT	0.0600** (0.0296)	0.0570*** (0.0215)	0.0378 (0.0267)	0.0713* (0.0366)	0.0570* (0.0306)	0.0378 (0.0348)	0.0713** (0.0357)
HEARING	0.139*** (0.0267)	0.136*** (0.0319)	0.139*** (0.0365)	0.138*** (0.0330)	0.136*** (0.0296)	0.139*** (0.0317)	0.138*** (0.0339)
BUDGET	0.0916** (0.0465)	0.0957* (0.0492)	0.102** (0.0513)	0.103** (0.0425)	0.0957** (0.0458)	0.102** (0.0487)	0.103* (0.0539)
SAME_POL	0.106*** (0.0280)	0.0994*** (0.0354)	0.0838** (0.0378)	0.0948** (0.0442)	0.0994*** (0.0294)	0.0838*** (0.0319)	0.0948*** (0.0333)
PETITIONER	0.0565** (0.0256)	0.0637* (0.0352)	0.110*** (0.0263)	0.0717*** (0.0272)	0.0637** (0.0251)	0.110*** (0.0286)	0.0717** (0.0289)
LAW_AGE	0.0427*** (0.0113)	0.0402** (0.0166)	0.0299* (0.0174)	0.0481*** (0.0185)	0.0402*** (0.0123)	0.0299** (0.0140)	0.0481*** (0.0140)
JUDGE_AGE		-0.00439 (0.00628)	-0.00348 (0.00672)	-0.00697 (0.00548)	-0.00439 (0.00335)	-0.00348 (0.00368)	-0.00697* (0.00358)
JUDGE_MAG		0.0332 (0.0670)	-0.00272 (0.0644)	0.0668 (0.0643)	0.0332 (0.0336)	-0.00272 (0.0342)	0.0668* (0.0378)
JUDGE_ATT		0.0266 (0.0673)	-0.0638 (0.0684)	0.0663 (0.0534)	0.0266 (0.0504)	-0.0638 (0.0869)	0.0663 (0.0537)
JUDGE_WORK		-0.000414 (0.000792)	0.000483 (0.000856)	2.82e-05 (0.000796)	-0.000414 (0.000294)	0.000483 (0.000397)	2.82e-05 (0.000342)
Observations	1,831	1,831	1,439	1,436	1,831	1,439	1,436

Dependent Variable *REVIEW* = 1 if decision is entered in the merits, 0 otherwise. Models (2), (3) and (4) standard errors clustered at judge level. Models (5), (6) and (7) standard errors clustered at decision level. Models (3) and (6) exclude decisions ruled by judge previously politically involved. Models (4) and (7) excludes decisions ruled during Prodi's Government. Marginal effects are displayed. Robust standard errors in parentheses. *** p<0.01, ** p<0.05, * p<0.1.

5.2 Results and Robustness Checks

Table 4 displays the results of the empirical analysis conducted. Column (1) displays estimates of the baseline model (Equation 1), while columns (2) to (7) propose several estimations including judge-specific controls (Equation 2)²⁷. Using either specifications, results are in line with the aforementioned theoretical predictions, since all coefficients display a positive sign: β s and δ s > 0 . Results suggest that both external (β s) and internal (δ s) incentives operate a positive impact on the likelihood of judges to enter in the merits of a case. However, as argued above on a theoretical ground, these findings can reasonably be interpreted as in line with the hypothesis contemplating careerism affecting judicial behavior. The choice of entering in the merits of a case entails both benefits in terms of reputational returns and costs in terms of effort. Accordingly, the estimated positive coefficient can be interpreted as reaction of “careerist” judges investing the greater effort of deciding in the merits, when this behavior yields more returns because of the specific audiences reached by every decision.

With respect to political audiences, evidence supports the idea that judges react to external incentives (GOV_INT, HEARING, BUDGET, SAME_POL) that might increase the reputational returns attached to a decision. From the estimated regressions it emerges that judges are significantly sensitive towards the direct interest of the Executive in the constitutional case (GOV_INT). This result consistent with the fact that the government has substantial leverage with respect to judges’ future appointments. The same is true in the event of a case being discussed in a public hearing and thus receiving a wider media coverage (HEARING). Judges are equally more “attracted” by budget laws (BUDGET), given the centrality of of such pieces of legislation in the political debate. Finally, the fact of addressing directly their political part stimulates judges’ willingness to send a reputational signal (SAME_LAW).

Also with respect to the two internal audiences’ incentives (PETITIONER, LAW_AGE), the obtained results are in line with predictions. Judges respond to the hierarchical importance of the ordinary judicial institution that has petitioned the ICC’s intervention (PETITIONER). At the same time, justices are more likely to extract reputational returns from “older” laws, more deeply rooted in the legal community (LAW_AGE).

²⁶See Table B.2 in Appendix B.

²⁷Specifically, models (2), (3) and (4) cluster standard errors at the Reporter’s level (28 clusters), while models (5), (6) and (7) cluster at the case’s level (1416 clusters).

Although not directly interested in the estimates of θ 's elements, *i.e.*, the coefficients of the judge-level controls (JUDGE_AGE, JUDGE_MAG, JUDGE_ATT, JUDGE_WORK), the results deserve a few words of comment. All coefficients turn out to be statistically insignificant, suggesting that judges' personal characteristics do not play a role. This further corroborates the initial claim regarding the centrality of the institutional environment when it comes to incentives for judges (Posner, 2005).

In order to check the robustness of these estimates, several checks were performed. First, columns (3) and (6) estimate Equation 2 without considering the decisions of judges that had a direct political experience before entering the ICC (Contri, Flick, Mazzella and Capotosti). The incentive scheme for these judges might be different, since they are more deeply linked with political actors. However, regardless of the clustering level, the estimates do not substantially change, with the only exception of GOV_INT (β_1) which turns statistically insignificant. A plausible interpretation for such difference might be that the interest of the Executive in the decision binds judges to different extents according to their "politicization". Less politicized judges are less incentivized to "bow" in front of the Government intervention, as their colleagues with a prior and direct political experience.

Second, columns (4) and (7) drop from the estimation of Equation 2 all decisions taken during the center-left Prodi's Government (May 2006 - January 2008). This is done in order to check if the political environment alters judges' behavior. The remaining decisions were all ruled during a center-right governing coalition. Estimates are not substantially affected.

One final issue of concern deals with the allocation of cases to judges. On an hypothetical ground it cannot be excluded that ICC's Presidents assign cases to Reporters in a strategic way. In this sense, it is important to understand what drives Presidents' choices when it comes to their case-assignment duty²⁸. As emerges from figures in Appendix C neither previous occupation (Table C.2) or political affiliation (Table C.1) seem to matter when it comes to these "judicial couples". On the other hand, judges' Appointer²⁹ might influence to a certain extent: Presidents nominated by the President of the Republic are more likely to select Reporters appointed by the same institution (Table C.3). Accordingly, Model 2 was estimated substituting the two dummies controlling for judges' previous occupation, with other two

²⁸Padovano and Fiorino (2012) have tried to disentangle this issue, although focusing on a different set of cases.

²⁹See Appendix A.

dummies accounting for the event of the Reporter being appointed by the Parliament or elected by High Courts (*JUDGE_PARL*, *JUDGE_JUD*). As can be seen from column (1) of Table C.5, no differences emerge from such different specification.

As discussed in Appendix A, what really matters in the case-assignment mechanism is the topic of the law under scrutiny. For example, judges with a specialization in criminal law will mostly be assigned cases dealing with criminal legislation. In order to control for the possibility that different fields of law yield diversified reputational return, Model 2 is extended in the following way:

$$\begin{aligned} \text{logit}(\pi_i) = & \phi + \beta_1 \text{GOV_INT}_i + \beta_2 \text{HEARING}_i + \\ & + \beta_3 \text{BUDGET}_i + \beta_4 \text{SAME_POL}_i + \delta_1 \text{PETITIONER}_i + \\ & + \delta_2 \text{LAW_AGE}_i + \mathbf{Z}_i \theta + \mathbf{W}_i \gamma + u_i \end{aligned} \quad (3)$$

Where \mathbf{W} is a vector of these dummy variables (*CIVIL_LAW*, *ADMIN_LAW* and *FISCAL_LAW*) accounting for the field of law (Civil law, Administrative law or Fiscal law) under which the law under scrutiny falls. Estimating this model equally does not alter the results (see column (2) in Table C.5), with the only exception of *BUDGET*³⁰.

6 Concluding Remarks

In the last two decades, the idea of self-interest as a driving force of judges' decisions has gained ground among scholars. If a similar approach was originally designed for judges belonging to the US judicial system, nothing prevents to shift such paradigm also to other institutional contexts, where it might find more fertile grounds, especially when it comes to careerism. This is the case of the present work, focusing on the Italian Constitutional Court. This institutions is an ideal case study for testing the impact of career concerns on judicial behavior, since judges serve only for a a time-limited term and thus need to face the necessity of finding a different position once their tenure in the ICC is over. Empirical evidence seems to confirm judges' willingness to achieve further professional appointments and thus allows to

³⁰This is due to the small number of decisions dealing with these kind of laws: once accounting for the the kind of legislation contained in the national budget, there is no sufficient variance left.

reasonably assume career concerns among ICC judges. A theory linking careerism with judicial behavior was thus proposed, highlighting the importance for judges of gaining reputation among “relevant” audiences and various factors altering the reputational returns of their behavior. Consequently, it was hypothesized that “careerist” judges should adjust their behavior so to respond to reputational incentives. An empirical strategy was designed for reasonably isolating such effect. By exploiting a uniquely assembled dataset, the estimates thus obtained are in line with the theoretical predictions. Such results suggests that, once assuming careerism to be an issue among ICC judges, significant decisional patterns emerging from real data might be reasonably explained as the rational behavior of “careerist” judges willing to maximize the reputational returns of their conduct.

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A Institutional Appendix: the ICC in a nutshell

According to the Italian Constitution, the ICC can be considered as a pivotal institution in both the national political and legal systems. The former aspect derives from the ICC’s jurisdiction in the case of the President of the Republic impeachment. The latter descends from the system of scrutiny over the constitutional legitimacy of laws, which is centralized in the hands of the ICC. Further relevance for the way it operates stems from the fact that its decisions enjoy a generalized efficacy (*erga omnes*) and are not subject to appeals.

Apart from its prestige, the ICC is also an ideal Court to investigate by means of empirical analysis. First, all its decisions are publicly available online on the Court’s site. Second, its case-docket’s magnitude accounts for few hundreds cases per year and not tens of thousands as in the case of the Supreme Court of *Cassazione*, making sampling issues less troublesome.

The ICC is composed of 15 judges selected among university (full) professors in law, active and retired magistrates or lawyers with at least 20 years of practice. Three institutions are responsible for selecting 5 judges each with different appointing mechanisms: the President of the Republic³¹, the Parliament³² and the three High Courts³³ (respectively three by the Supreme Court of *Cassazione*, and one each by the Counsel of State and the Court of Audit). Justices serve the ICC for a non-renewable nine years tenure and elect among them a President that chairs the Court for (maximum) a 3-year period.

Despite the ICC is responsible for other minor tasks that account for less than one third of its workload³⁴, the present study focuses on the decisions ruled by the court when disposing over the constitutional legitimacy of laws. When deciding such “constitutional cases”, the procedure finds its originating impulse in the framework of any ordinary courtroom during which either one of the litigants or the judge might raise a complaint over

³¹The appointment is made by means of a presidential decree.

³²Judges are elected by both chambers of the Parliament sitting in joint session with a special 60% majority, thus forcing agreements among the ruling coalition with opposition.

³³Judges are elected by magistrates serving in the High Courts, with an absolute majority. A second ballot among the two most voted candidates takes place, if none reaches the *quorum* in the first vote.

³⁴According to the Constitution, the ICC also has jurisdiction in the case of the President of the Republic’s impeachment, is responsible for deciding on the constitutional legitimacy of referendums and solves conflicts among constitutional institutions.

the constitutional legitimacy of one of the laws being applied in that dispute. When such request is forwarded to the ICC, causing consequently the hiatus of the original lawsuit, the ICC's President gives start to the intra-Court's procedure, by appointing the judge that will exert the role of Reporter for the case. Although Presidents have formally full discretion on the allocation of cases among justices, case-assignment is performed taking into consideration judges' field of specialization³⁵ (Pederzoli, 2008).

Reporters' role can be considered as the pivotal function in the entire decision-making process and will be the focus of the present study. The judge appointed to such function is responsible for studying more in depth the constitutional issue at stake and preparing the preliminary draft of the decision, which is going to be afterwards presented to the rest of the deciding panel. A general discussion among all judges taking part to the panel leads to a collegial vote, during which the Reporter expresses her preference first, followed by the other judges according to an increasing seniority order, with the only exception of the President, who always votes last. Differently from other European Constitutional Courts, the ICC does not allow judges to write concurring or dissenting opinions: all verdicts are formally disposed unanimously by the entire deciding panel.

Another characteristic that differentiates the ICC from other apical judicial institutions, as for example the U.S. Supreme Court, is the mandatory nature of its jurisdiction. This implies that all cases brought to its attention are formally disposed with a published decision. The ICC can decide to not grant review to the issue raised: this would mainly happen when the point at stake does not deserve attention either because trivial, hindered by procedural violations or already defined in a previous decision. When instead the Court is in favor of entering in the merits of a case, the underlying illegitimacy issue can be either rejected or confirmed. In the former case the ICC supports the constitutional legitimacy of the law at stake, while the latter will determine the elimination of such piece of legislation from the legal system, since in contrast with superior constitutional principles.

³⁵Empirical evidence in support of this fact emerges from the data employed in this work (See Table C.4 in Appendix C). A statistically significant relationship relates the field of specializations of judges to the topic dealt in the case: it turns out that judges expert in criminal law will be assigned to cases regarding criminal legislation. The same remains true also for judges with a background in civil law or fiscal law, while Constitutional law experts in the ICC are employed as sort of *factotum* and thus homogeneously assigned to cases dealing with any field of law.

B Model Identification

Table B.1: default

	K-S test	K-W test	t-test	Corr	Multivariate mean test
GOV_INT	0.010	0.0074	0.1485		
HEARING	0.170	0.280			
BUDGET	0.836	0.9143			
SAME_POL	0.207	0.3186			
PETITIONER				0.1368	0.2063
LAW_AGE				0.2063	

K-S stands for Kolmogorov-Smirnov test for equality of distribution corrected p -value; K-W stands for Kruskal-Wallis equality of populations rank test p -value; t-test stands for the p -value of a 2 samples t-test; Corr stands for significance of the pairwise correlation coefficient.

Table B.2: Model 2 estimated by dropping all decisions dealing with laws enacted before 1946

	(1)
GOV_INT	0.0692*** (0.0234)
HEARING	0.142*** (0.0340)
BUDGET	0.0936* (0.0491)
SAME_POL	0.0964*** (0.0356)
LAW_AGE	0.0292* (0.0167)
PETITIONER	0.0637* (0.0363)
Judge-level controls	YES
Observations	1,771

Robust standard errors in parentheses, clustered at judge level.
 *** $p < 0.01$, ** $p < 0.05$, * $p < 0.1$

C Case-Assignment Statistics

Table C.1: President's political affiliation by Reporter's political affiliation (%)

President's Political Affiliation	Reporter's Political Affiliation		
	Center-Right	Center-Left	Total
Center-Right	26	74	100
Center-Left	27	73	100
Total	27	73	100%

Pearson Chi2 test p -value = 0.786

Table C.2: **President’s previous occupation by Reporter’s previous occupation (%)**

President’s prior Occupation	Reporter’s prior Occupation			Total
	Professor	Attorney	Magistrate	
Professor	51	10	39	100
Attorney	59	5	36	100
Magistrate	53	11	36	100
Total	53	11	37	100

Pearson Chi2 test p -value = 0.390

Table C.3: **President’s appointer by Reporter’s appointer (%)**

President’s Appointer	Reporter’s Appointer			Total
	Pres. Republic	Parliament	Magistrates	
Pres. Republic	41	22	37	100
Parliament	33	32	35	100
Magistrates	37	31	33	100
Total	37	29	34	100

Pearson Chi2 test p -value = 0.009

Table C.4: **Reporter’s specialization field by Judge-a-quo’s jurisdiction (%)**

Reporter’s Field	Case Topic				Total
	Criminal	Civil	Public	Fiscal	
Criminal	93	5	1	1	100
Civil	10	63	14	14	100
Public	30	35	23	13	100
Fiscal	8	18	5	69	100
Total	36	36	15	14	100

Pearson Chi2 test p -value < 0.000

Table C.5: Regression results

	(1)	(2)
GOV_INT	0.0559*** (0.0211)	0.0516** (0.0202)
HEARING	0.135*** (0.0321)	0.105*** (0.0307)
BUDGET	0.0921* (0.0479)	0.0742 (0.0500)
SAME_POL	0.105*** (0.0353)	0.0919** (0.0358)
LAW_AGE	0.0413** (0.0169)	0.0301* (0.0171)
PETITIONER	0.0651* (0.0339)	0.0673** (0.0338)
Judge-level controls	YES	YES
Case-Topic dummies	NO	YES
Observations	1,831	1,831

Model (1) adopts dummies for Reporters' appointing institutions, instead of previous occupation. Robust standard errors clustered at judge level in parentheses. *** p<0.01, ** p<0.05, * p<0.1.