# Leveling and Spotlighting:
## How the European Court of Justice Favors the Weak to Promote its Legitimacy

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**Abstract**

As private actors turn to international courts (ICs), we argue that judges can seize individual rights litigation to promote themselves as protectors of the weak. By leveling the odds for less resourceful individuals and spotlighting their rights claims, ICs can cultivate support networks in civil society. We verify this legitimation strategy by scrutinizing the first IC with private access: the European Court of Justice (ECJ). Often cast as a stealthy pro-business court, we show that ECJ judges instead publicized themselves as individual rights promoters: do they match words with deeds? Leveraging an original dataset, we find that the ECJ "levels," favoring individuals' rights claims compared to claims by businesses boasting larger, more experienced legal teams. The ECJ also "spotlights" support for individuals through press releases that lawyers amplify in law journals. Our findings challenge the view that ICs build legitimacy by stealth and the "haves" come out ahead in litigation.

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# Introduction

Private litigants' expanding access to international courts (ICs) is amongst the most profound transformations sparked by the "judicialization of politics" (Stone Sweet and Brunell, 2013; Hirschl, 2008; Alter, Hafner-Burton, and Helfer, 2019). Gone are the days when soliciting international justice was the prerogative of sovereign states. Since 1945, seventeen "new-style" ICs (Alter, 2012; Alter, 2014) have been established with access to individuals and businesses via direct actions or referrals from national courts (Figure 1). While some of these ICs remain dormant, others adjudicate hundreds of yearly cases.

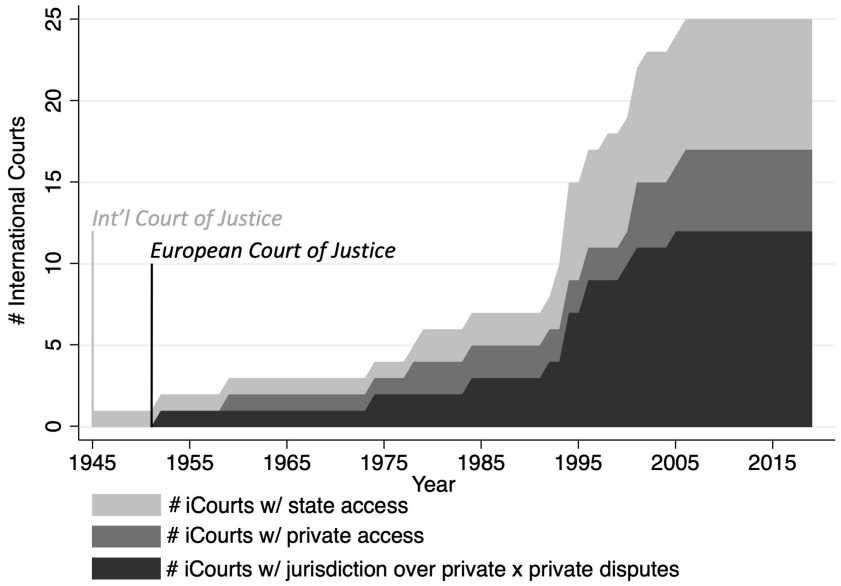


Figure 1: Proliferation of international courts with private access, 1945-2019

But ICs not only expand opportunities for private actors (Cichowski,

2007; Vanhala, 2012; Alter, 2006; Alter, 2014; Helfer and Voeten, 2014); private litigation also creates opportunities for judges. In this paper, we show how ICs refract private litigation as a legitimation strategy: an attempt to shift the perceptions and actions of social actors to "justify their [own] practices and power" (Alter, Gathii, and Helfer, 2016, p. 6). Developing a legitimation strategy is vital because ICs lack independent enforcement powers and are disembedded from the national constitutions that traditionally justify judicial review (Føllesdal, 2020). ICs are thus especially vulnerable to state campaigns that attack their legitimacy, starve them of cases, curb their jurisdiction, or erode their authority (Alter, Gathii, and Helfer, 2016; Madsen, Cebulak, and Weibusch, 2018; Voeten, 2020; Pavone and Stiansen, 2021; Thatcher, Sweet, and Rangoni, 2022).

We argue that ICs can devise a two-part legitimation strategy through *leveling* and *spotlighting*. ICs "level" by favoring the claims raised by actors who are disempowered at the international level and in the litigation process – usually individuals. Leveling can be litigant-driven, as when ICs decide cases in individuals' favor to counterbalance their disadvantaged capacity to litigate (Haynie, 1994; Miller, Keith, and Holmes, 2015). More ambitiously, leveling can be claim-driven, as when ICs support novel entitlements or rights that protect individuals from corporate or state interference. Opening the "legal opportunity structure" in individuals' favor (Vanhala, 2010; Vanhala, 2012; Vanhala, 2018) legitimates judicial policymaking in intergovernmental polities wherein individuals lack alternative avenues to advance their inter-

ests.

To then broadcast this message, ICs "spotlight" their support for individual rights to "judicial support networks" in civil society (Gerzso, 2023; Bailey et al., 2024). While existing research highlights the importance of public support for courts' autonomy vis-à-vis governments (Vanberg, 2005; Staton and Vanberg, 2008; Carrubba, 2009), ICs are often unknown and ignored by the broader public (Pavone, 2022; Voeten, 2013; Caldeira and Gibson, 1995; Gibson and Caldeira, 1995). Instead, we argue that ICs' can target better-informed legal professionals as an intermediary support network (Weiler, 1994; Vauchez, 2015; Pavone, 2022). By broadcasting support for some claims over others, ICs focus the attention of domestic lawyers and judges who can amplify their rulings in journals and publicize opportunities for follow-up litigation. Using well-known communication strategies – like procedural tweaks and press releases (Staton, 2006; Krehbiel, 2016; Dederke, 2022) – ICs can present themselves as protectors of the weak and interlink individual-rights promotion with their own legitimacy-building efforts.

To assess our theory, we scrutinize the first IC to provide access to private parties, a court that has become an influential judicial policymaker: the European Court of Justice (ECJ). The ECJ is often cast as a pro-business court (Conant, 2002; Börzel, 2006; Scharpf, 2010; Conant et al., 2018; Kahraman, 2023) that has built its authority by stealth (Weiler, 1994; Burley and Mattli, 1993; Blauberger and Martinsen, 2020). Triangulating between the public writings of ECJ judges and a novel dataset of nearly 7,000 cases re-

ferred by national courts, we instead find compelling evidence that the ECJ deliberately "levels" and "spotlights." Specifically, it engages in claim-driven leveling: Despite their structural disadvantages, individuals that raise individual rights claims enjoy a higher win-rate than any other litigant. The ECJ also spotlights, allocating larger chambers and publishing press releases when it supports individual rights, which attracts lawyers' commentaries in journals that amplify these rulings for practitioners and clients. The ECJ neither lies low nor favors the powerful. It flies high and favors the weak because doing so serves a legitimation strategy.

Our study is the first to theorize and assess the relationship between judicial decision-making and party capability before ICs. We make a number of revisionist claims. First, we challenge the conventional wisdom from domestic judicial politics research that individual litigants disproportionately lose out while the corporate "haves" come out ahead (Galanter, 1974; McGuire, 1995; Songer, Sheehan, and Haire, 1999; Haire, Lindquist, and Hartley, 1999; Szmer, Johnson, and Sarver, 2007; Nelson and Epstein, 2022). Instead, we theorize when and why judges level the odds, demonstrating that party capability is not destiny before ICs.

Second, we challenge the view that ICs build their authority by "depoliticizing" their actions and hiding behind law's "mask and shield" (Burley and Mattli, 1993; Louis and Maertens, 2021). We demonstrate instead that at least some ICs both publicize and justify their active policymaking role to cultivate judicial support networks. Finally, we develop a conceptual-

ization and measurement strategy that parses judicial leveling into litigant- and claim-driven variants, explaining how researchers can address adverse selection that could bias their analyses.

We first elaborate our theory of judicial leveling and spotlighting. Next justify our case selection – the ECJ. We then present qualitative evidence from ECJ judges' own public writings demonstrating that they repeatedly claim to favor individual rights compared to corporate rights to justify judicial policymaking. We then assess whether judges match words with deeds by analyzing original data on judicial decisions and private litigation before the ECJ. We conclude by placing scope conditions on our findings and highlighting fruitful pathways for future research.

## A Theory of Judicial Leveling and Spotlighting

Scholars predicted that private litigation before "new-style" ICs would spark a virtuous cycle of rights-claiming, judicial policymaking, and institutionalization (Stone Sweet and Brunell, 1998; Fligstein and Stone Sweet, 2002). Yet many ICs are seldom solicited and struggle to broaden their appeal beyond a narrow constituency of businesses and government elites (Alter, 2014; Alter and Helfer, 2017). This is hardly surprising, since 13 of the 17 new-style ICs were designed as regional economic courts without clear relevance for individuals and their rights.

Opening the doors to private litigants does not automatically build an

IC's authority or expand its policymaking influence. Instead, we need to unpack how judicial entrepreneurs can proactively harness private litigation to promote their own legitimacy and justify an expansive policy agenda.

There are three reasons why ICs would develop such a legitimation strategy. First, state governments are unreliable partners to ensure judicial effectiveness. Government noncompliance, jurisdiction-stripping, and virulent criticism can afflict all courts, yet ICs are particularly vulnerable to such attacks (Madsen, Cebulak, and Weibusch, 2018; Stiansen and Voeten, 2020; Pavone and Stiansen, 2021; Thatcher, Sweet, and Rangoni, 2022). Lacking centralized enforcement and the imprimatur of legitimacy that national constitutions can bestow, intergovernmental backlash against ICs is common and potentially crippling (Carrubba, 2005; Carrubba, 2009; Pollack, 2021). While ICs can respond by hiding behind law's "mask and shield" (Burley and Mattli, 1993; Louis and Maertens, 2021), this strategy is unlikely to succeed as ICs become increasingly politicized (Blauberger and Martinsen, 2020). ICs thus have an incentive to spearhead public relations campaigns to cultivate social support beyond governments (Caserta and Cebulak, 2021; Dederke, 2022).

Second, although social support is crucial for courts' authority (Vanberg, 2005; Staton and Vanberg, 2008; Carrubba, 2009; Cheruvu and Krehbiel, 2023), the public at large is less aware of fledgling ICs compared to established domestic courts (Caldeira and Gibson, 1995; Gibson and Caldeira, 1995; Voeten, 2013; Pavone, 2022). ICs thus need to attract intermediary "judicial

support networks" that can boost public awareness and promote them as relevant venues to pursue claims (Gerzso, 2023; Bailey et al., 2024). The legal community (lawyers, law professors, and judges) is crucial because it can spearhead "pedagogical interventions", act as "interpretive mediators" in civil society, and inform private actors of new litigation opportunities (González-Ocantos, 2016; Pavone, 2019; Pavone, 2022; Gonzalez-Ocantos and Sandholtz, 2022).

Third, ICs also need to broadcast a message that can promote and broaden their "sociological legitimacy" (Alter, Gathii, and Helfer, 2016, p. 6). After all, ICs are often perceived as playthings of powerful states or multinational corporations. Even the best-known new-style IC – the ECJ – is often cast as "empower[ing] the already powerful" (Börzel, 2006; Scharpf, 2010; Hofmann, 2023) whose "priority is to protect business interests" (Kahraman, 2023, p. 74). Countering these perceptions can help an IC expand its social appeal.

Since individuals tend to be disadvantaged litigants, favoring individuals' rights claims can serve as an attractive legitimation strategy. Individuals' limited finances and capacity to hire effective lawyers – their "party capability" – means they tend to be less successful in court compared to businesses (Galanter, 1974; McGuire, 1995; Songer, Sheehan, and Haire, 1999; Haire, Lindquist, and Hartley, 1999; Szmer, Johnson, and Sarver, 2007; Nelson and Epstein, 2022). These inequities are magnified before ICs, since mobilizing international law requires expensive, specialized counsel (Kritzer, 1998;

Pavone, 2022). By counterbalancing individuals' dis-empowerment by favoring their rights claims, ICs can justify judicial policymaking as empowering the "have nots." We refer to this strategy as "leveling," whereby judges level the odds for weaker private litigants.

While the concept of leveling is not new (Haynie, 1994), existing research attributes it to lawyers instead of judges (Miller, Keith, and Holmes, 2015; Miller and Curry, 2022) and is unclear about whether it is driven by litigants' identities or claims (Epp, 1999). Distinguishing *litigant-driven* and *claim-driven leveling* matters because they imply different legitimation strategies, audiences, and effects. Litigant-driven leveling is retrospective, case-specific, and concealable behind law's "mask and shield" (Burley and Mattli, 1993). By favoring individuals irrespective of the quality of the substantive claims they bring, judges counterbalance their past disadvantages as litigants. This strategy has limited scope, however, because it does not necessarily create new legal entitlements or signal a policy agenda to audiences beyond the parties to the case.

In contrast, claim-driven leveling is prospective, rule-creating, and public-facing. By favoring individuals specifically when they raise claims that enable the expansion of individual rights, judges create a more favorable "legal opportunity structure" for entire classes of disadvantaged actors (Vanhala, 2012; Vanhala, 2018) and signal a policy agenda to a broader audience,[1]

[1]As Alter and Helfer (2013) and Alter and Helfer (2017) have shown, there is variation in the degree of policymaking ambition amongst ICs.

inviting future litigation by the "have nots." Claim-driven leveling is thus a more ambitious legitimation strategy tied to the court's efforts to reshape the legal regime of which it is part.[2] While conceptually distinct, claim-driven leveling can beget litigant-driven leveling in practice, as when judges favor the rights claims disproportionately raised by individuals.

Both forms of judicial leveling are especially useful to new-style ICs embedded in intergovernmental economic regimes. While these ICs may not be more rights-conscious than other courts, leveling bestows a powerful *raison d'etre* for their judges. First, claim-driven leveling enables ICs designed as economic courts to demonstrate and broaden their relevance as rights protectors. Since the legal opportunity structure in intergovernmental economic regimes usually reflects the interests of states and businesses, ICs can cast judicial policymaking as necessary to safeguard individuals' interests and rebalance the trajectory of economic integration. Second, litigant-driven leveling is especially useful to ICs compared to domestic courts. In contrast to democracies with robust means for citizen representation, the "political opportunity structure" (Kitschelt, 1986) of intergovernmental regimes provides few avenues for individuals to exercise their voice (Dahl, 1999; Føllesdal and Hix, 2006). By siding with "the little guy," ICs can claim to boost individuals' voice at the international level (Burley and Mattli, 1993, p. 64).

[2]Legal opportunity structures (LOS) are more open or closed to individuals depending on (i) access rules, (ii) the stock of justiciable rights, and (iii) judges' receptivity (De Fazio, 2012). Claim-driven leveling opens the LOS more than litigant-driven leveling because it expands (ii) and signals (iii), whereas litigant-driven leveling only signals (iii).

Next, ICs must broadcast their efforts to level the odds to their judicial support networks: what we call "spotlighting." Spotlighting is more likely to succeed when it attracts the attention of legal professionals who can inform individuals of their rights and steer them to the fora wherein to claim them (González-Ocantos, 2016; Pavone, 2019; Pavone, 2022; Gonzalez-Ocantos and Sandholtz, 2022; Bailey et al., 2024). In particular, the legal community is well-positioned to amplify IC judgments in law reviews that inform other practitioners of new opportunities for rights litigation. ICs can attract such coverage by manipulating procedural rules and targeting press releases to specifically spotlight cases where they support individual rights (Dederke, 2022; Krehbiel, 2016; Staton, 2006). When national legal communities predominantly amplify IC rulings that support individual rights, the court has taken a first step towards broadening its appeal and cultivating public support.

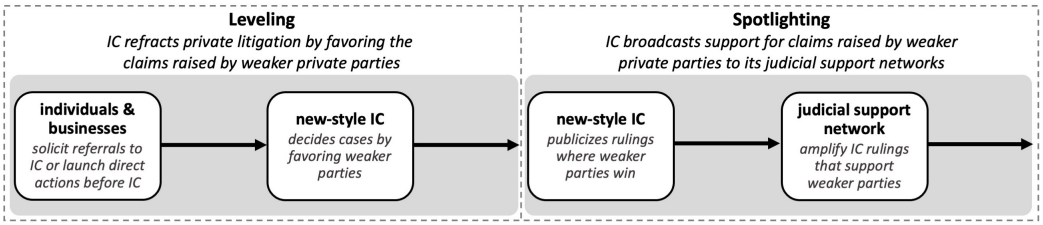


Figure 2: A theory of leveling and spotlighting by new-style ICs

Figure 2 summarizes our argument, wherein leveling and spotlighting serves as the mechanism (the "entities engaging in activities;" see Beach and Ped-

ersen (2019, pp. 99–100)) that converts private litigation into a legitimation strategy. Our theory thus draws on Haynie (1994) – who theorized how national courts may favor the "have nots" to legitimize and stabilize the regimes in which they are embedded – to explain when the expectations of legal mobilization and judicial politics research should be flipped on their head. From courts in the US (McGuire, 1995; Songer, Sheehan, and Haire, 1999; Haire, Lindquist, and Hartley, 1999; Johnson, Wahlbeck, and Spriggs, 2006; Miller, Keith, and Holmes, 2015; Szmer, Songer, and Bowie, 2016; Nelson and Epstein, 2022), Canada (Szmer, Johnson, and Sarver, 2007), Denmark and Norway (Skiple, Bentsen, and McKenzie, 2021) and Taiwan (Chen, Huang, and Lin, 2015), studies consistently find that businesses hire larger, more experienced legal teams than individuals and are more likely to win judges' support. Resource inequalities are not unique to domestic litigation; we will demonstrate that they also pervade international litigation. Yet in stressing how money and expertise drive judicial outcomes, capability arguments understate judges' own agency. Our takeaway is that under certain conditions, claims raised by weaker parties can be useful to promote courts' legitimacy, incentivizing judges to refract inequalities in party capability.

# The European Court of Justice, Case Selection, and Hypotheses

To assess our theory, we derive two hypotheses that we test by scrutinizing patterns of private litigation and judicial decision-making at the ECJ.

There are two reasons why the ECJ is well-suited for testing our theory. First, the ECJ is an "influential case" for understanding ICs broadly (Seawright and Gerring, 2008; Gerring and Cojocaru, 2016, pp. 404–405). The Court is not only the first new-style IC to procure access to private litigants; it has also developed into the most active and emulated IC in the world. Since the 1950s, the Court has adjudicated thousands of cases – the majority originating in disputes that private litigants raised before national courts and then referred to the ECJ (Kelemen and Pavone, 2019). The ECJ's success in cultivating private litigants triggered attempts to "transplant" the Court: 11 new-style ICs were designed as "operational copies" of the ECJ (Alter, 2014, p. 1935; Alter, 2012).

Second, the ECJ is also a "critical case" (Seawright and Gerring, 2008; Gerring and Cojocaru, 2016, pp. 404–405) for evaluating arguments that the Court has forged its authority by concealing its agenda (Burley and Mattli, 1993; Blauberger and Martinsen, 2020) and favoring "the economic interests of business enterprises" (Conant, 2002; Börzel, 2006; Louis and Maertens, 2021; Scharpf, 2010, pp. 221–222). If the world's prototypical new-style IC is a pro-business court that has cultivated its authority by stealth, it would

call into question whether ICs can function as rights-promoters capable of attracting broader social appeal.

That private litigation would fuel the ECJ's institutional development was not apparent when the Court was established. The ECJ was expected to facilitate economic cooperation without compromising national sovereignty. During negotiations for the 1957 Treaty of Rome, "without much discussion" policymakers approved creating a procedure enabling national judges to refer lawsuits raised by private parties to the ECJ (Pescatore, 1981; Boerger and Rasmussen, 2023). This "preliminary reference procedure" opened the ECJ's doors to private litigants "without awareness of this innovation's importance" and how it could legitimate the world's first new-style IC (Pescatore, 1981, pp. 159, 173).

The preliminary reference procedure supplied the Court with opportunities to dismantle national barriers to the free movement of goods, persons, services and capital (Weiler, 1991; Burley and Mattli, 1993; Stone Sweet and Brunell, 1998; Alter and Vargas, 2000; Cichowski, 2007; Kelemen and Pavone, 2019). The ECJ cajoled private parties to support its agenda when in 1963 and 1964 it held that European law has primacy over conflicting national law and endows individuals and businesses with rights they can invoke before domestic courts (Rasmussen, 2014). Unsurprisingly, some governments and constitutional courts resisted this agenda. They attacked the ECJ's legitimacy, accusing it of jeopardizing individual rights protected in national constitutions, and charging it with buttressing an undemocratic

supranational regime (Davies, 2012; Rasmussen, 1986, p. 62). The French government even sought to pack the Court and curb its jurisdiction (Fritz, 2015).

The ECJ's response generated a debate that our theory can advance. Some scholars claim that the ECJ went into hiding and concealed its policy ambitions in "'technical' legal garb" (Burley and Mattli, 1993, pp. 70–72), whereas others claim that the ECJ responded via deliberate public outreach (Dederke, 2020; Dederke, 2022). Scholars also debate whether the ECJ limited itself to serving as a "pro-business court" (Conant, 2002; Börzel, 2006; Scharpf, 2010; Kahraman, 2023) or worked to broaden its role as an individual rights promoter (Burley and Mattli, 1993; Cichowski, 2004; Cichowski, 2007; Stone Sweet, 2010).

We expect that the ECJ sought to build its fledgling legitimacy via judicial leveling and spotlighting. First, we expect ECJ judges to highlight individuals' disadvantages as litigants and EU subjects in their public writings, to claim to be leveling the odds in individuals' favor, and to promote themselves as protectors of the weak. Given their well-documented ambition to serve as judicial policymakers, we also expect ECJ judges to stress claim-driven leveling over litigant-driven leveling. Since words can ring hollow if they are not matched with actions, we also expect the Court to disproportionately support individuals when they raise rights claims compared to businesses raising economic claims. Finally, we expect that the Court's pro-individual rights bias to counterbalance the capabilities of litigants: con-

sistent with existing research, we anticipate businesses to boast bigger and more experienced legal teams than individuals. This leads us to ($H_1$):

**Hypothesis 1 - leveling:** *Despite businesses boasting a greater capacity to litigate than individuals, ECJ judges disproportionately favor individual claims compared to business claims in their public writings and in their rulings.*

Next, we expect the Court to spotlight its pro-individual rights decisions to focus the attention of judicial support networks and cultivate an image as protector of the weak. In particular, national lawyers' associations have long served as a crucial support network for the ECJ (Rasmussen and Martinsen, 2019; Vauchez, 2015, p. 88) and have founded law journals – most prominently the *Common Market Law Review* (CMLR) – "to provide legitimacy to the new jurisprudence of the ECJ" (Byberg, 2017, p. 46). ECJ judges are known to tap these support networks – for instance by contacting the CMLR's editorial board to suggest commentaries of particular rulings and "delive[r] counterattacks" to "national [government] criticism of the ECJ's jurisprudence" (ibid., pp. 52, 57).

So long as law journals disproportionately amplify the Court's pro-individual rights rulings, even heated debates concerning these decisions would boost public awareness of the ECJ as a forum wherein new rights can be claimed. To this end, the Court can allocate larger chambers when it hears individual rights cases to signal their "significance" (Carrubba, Gabel, and Hankla,

2008; Larsson and Naurin, 2016; Kelemen, 2012; Dederke, 2022, p. 51) and target press releases to rulings that endorse individuals' rights claims (Staton, 2006; Dederke, 2020). Building on studies probing news coverage of ECJ rulings (Dederke, 2020; Dederke, 2022), we expect lawyers to be responsive to the Court's spotlighting efforts and to disproportionately amplify the Court's pro-individual rights rulings in their commentaries. This leads to ($H_2$):

**Hypothesis 2 - spotlighting:** *The ECJ is more likely to publicize cases where it supports individual claims than cases where it supports business claims, and law journal commentaries disproportionately amplify the same cases as the ECJ.*

# Data and Empirical Strategy

To test our hypotheses, we leverage a multi-method strategy that integrates publicly available qualitative evidence with the analysis of an original, multi-pronged quantitative dataset (Seawright, 2016). Figure 3 presents a correspondence diagram that matches our theory with the two hypotheses and the data we use to evaluate them.

We first establish the plausibility of judicial leveling ($H_1$) and spotlighting ($H_2$) by assessing whether ECJ judges are conscious of this legitimation strategy and invoke it in their public writings. We focus on the subset of judges that have mobilized as "publicists" by writing books and articles with the aim of cultivating support in the legal community (Phelan, 2020). Although

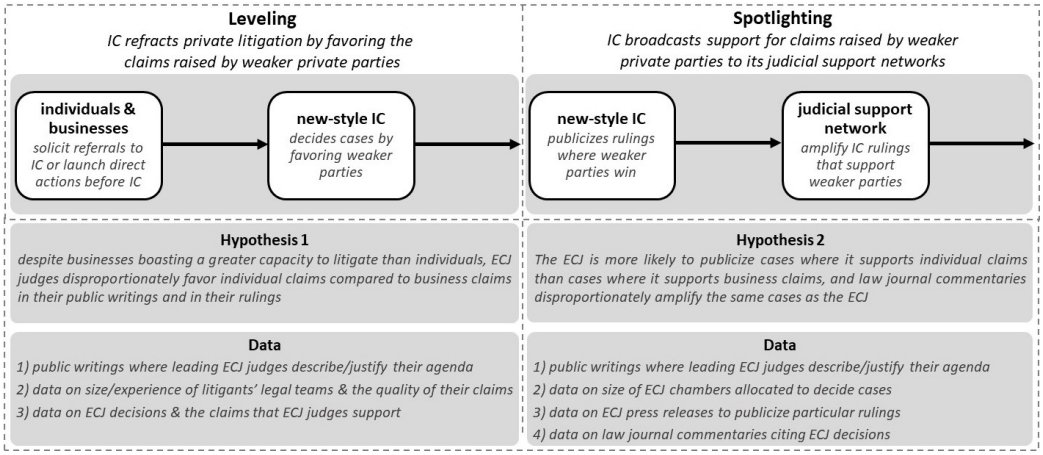


Figure 3: Correspondence of theory, hypotheses, and data

senior ECJ judges sometimes act as publicists, it is usually the Court's Presidents who assume this role. Presidents can credibly speak for their colleagues (who elected them) and have a vested interest in promoting the legitimacy of the institution they lead: US Supreme Court Chief Justice John Roberts is often highlighted for this role (Christenson and Glick, 2015). We rely on four ECJ publicists – spanning from President Lecourt in the 1970s to current President Koen Lenaerts – to ask three questions: Have they consistently highlighted how individuals' are disempowered in the EU legal system compared to businesses? Have they claimed to level the odds in individuals' favor? And do they stress the legitimacy of judicial policymaking in the pursuit of these objectives?

Our quantitative analysis then tests whether ECJ judges counterbalance the capability disadvantages of individuals that invoke individual rights via claim-based judicial leveling ($H_1$). Figure 4 specifies the outcomes we predict

and those that run counter to our claims. The litmus test for claim-based leveling is the expectation that individuals raising rights claims not only have a higher win rate than businesses represented by larger, more experienced legal teams (a comparison between rows 1 and 3), but also that they have a higher win rate than equally-resourced individuals who raise economic claims (a comparison between rows 1 and 2). By comparing within litigant type, we preclude the possibility of adverse selection whereby well-resourced, risk-taking businesses might pursue weaker legal claims (Galanter, 1974). A lack of difference in the win rates between individuals and better-resourced businesses when neither raise individual or social right issues (a comparison between rows 2 and 3) would also bolster confidence in our findings. These predictions are conditional on a model that holds constant both resource inequities (quality of legal counsel) and information concerning the merits of claim (how well-grounded it is in the ECJ's existing caselaw).

| **Private Litigants, Claims, & Capabilities** | | | **No Judicial Leveling** | **Judicial Leveling** | |
|---|---|---|---|---|---|
| litigant type | claim type | party capability | | litigant-driven | claim-driven |
| individual | individual right *ex. fundamental rights, social rights* | lower *smaller, less experienced legal teams* | lower win rate | higher win rate | higher win rate |
| | economic claim *ex. tax, intellectual property* | lower *smaller, less experienced legal teams* | lower win rate | higher win rate | lower win rate |
| business | economic claim *ex. tax, intellectual property* | higher *larger, more experienced legal teams* | higher win rate | lower win rate | lower win rate |

Figure 4: Observable implications of no judicial leveling, litigant-driven leveling, and claim-driven leveling

To validate these predictions, we constructed the first dataset of all parties and their lawyers involved in 6,919 cases referred to the ECJ from 1961 to 2016. For each case, we document the type of litigant, the quality of their legal counsel, the types of claims they raise, which claims the ECJ supports, the age of the case law and the stated positions of EU member states who file observations.

The last part of our empirical analysis assesses whether the ECJ follows up by spotlighting cases where it supports individuals claims, along with whether this message is then amplified by the Court's judicial support networks ($H_2$). We draw on two well-established measures for when courts seek to attract attention to rulings and compare decisions where the ECJ supports individuals' rights claims to decisions concerning businesses or economic claims. We leverage an original dataset of 4,418 press releases by the Court, exploiting the fact that the ECJ's in-house public relations team deliberately publicizes some rulings over others. Next, we draw on an original dataset of 116,334 case annotations in law journals from across the EU to trace whether the legal community amplifies the ECJ's spotlighting efforts. We expect legal journals to respond to the Court's outreach by disproportionately publishing commentaries on spotlighted rulings where the Court rules in favor of individuals.

# "Protector of the Individual:" Judges' Legitimating Rhetoric

In an influential article, Conant et al. (2018, pp. 1384–1385) argue that assessing the ECJ's bias in favor of businesses or individuals "lies at the core of the normative argument about [... whether] European law can be a weapon of the weak or remains a 'hollow hope'." While existing research sheds limited empirical light on this puzzle, we show that the public writings of the ECJ's four leading "publicists" confronted it head-on. Addressed to legal practitioners and citizens, these writings consistently promoted the ECJ as a forum to level the odds for individuals, consistent with $H_1$ and $H_2$. The Court's publicists particularly stressed claim-based-leveling: their efforts to empower individuals by supporting the creation of novel individual rights and social entitlements.

The ECJ's legitimating narrative as "protector of the individual" grew out of a disagreement within the Court. In the 1960s, the Court was split between a conservative and an activist wing. The conservative wing – headed by Dutch judge André Donner – resisted appeals to individual rights. Its adherents wished "not to break with the [traditional] elements of international law" (Rasmussen, 2008a, p. 94). Conversely, the activist wing – headed by French judge Robert Lecourt and Italian judge Alberto Trabucchi – wished to exploit the "new-style" elements of the ECJ by appealing to individuals. When the latter prevailed in the 1963 *Van Gend en Loos* case – holding

that European law safeguards "individuals [and] is also intended to confer upon them rights (...) which national courts must protect" – Donner resigned as ECJ President and Lecourt took over (Phelan, 2017; Rasmussen, 2008b). Lecourt became the Court's first publicist and pioneered a legitimating rhetoric centered on leveling the odds for individuals.

Drawing on his past experience as a journalist and political organizer, Lecourt knew that the ECJ needed to prove its relevance as a policymaker and promote its fledgling legitimacy. As Phelan (2020, p. 11) has shown, "many parts of the Court of Justice's distinctive information and persuasion strategy (...) have been directly connected with judge Lecourt." Lecourt perceived that the Court could prove its relevance by grafting individual rights and social protections onto the pro-business scaffolding of European law. He also recognized that the Court needed to spur "publications in academic journals and mass-circulation media" so that its "bold decisions were defended...and advertised to the wider public" (ibid., pp. 8–9).

These motives drove Lecourt to pen his most renown advocacy work: the 1976 book, *L'Europe des Juges*. Crafted as a "popularizing" manifesto for "national lawyers and judges who might apply European law in national litigation" (Phelan, 2017, p. 944), the book's pages justify an ambitious judicial agenda to embed individual rights within EU law so that it would not just serve "business Europe":

> "The work of judges (...) [is] to discretely but peremptorily delegitimize the charge sometimes addressed at the [European

> Communities] that they are only preoccupied with business Europe. The work of judges testifies that a social Europe also exists (...) Certainly, litigation of Community law is most often economically-based (...) but (...) what would be the point [of the ECJ] if she did not precisely ensure the protection of individual rights...she would fail to live up to her primary role" (Lecourt, 1976, pp. 196–197, 211–212).

Lecourt concluded his book with a call to action for legal commentators to pay greater attention to the ECJ's role as "protector of the individual":

> "[Our] judicial motivations finally reveal an objective of the [European] Community that is rarely observed: its role as protector of the individual...Community law would then appear in a completely new light. We would become more aware that next to a so-called technocratic Europe, or a business Europe, there also exists a Europe of consumers and shopkeepers, farmers and migratory workers, [a Europe] preoccupied with judicial protections and respect for fundamental rights, wherein the application of the law by the [ECJ] judge is dominated by their concern for protecting the weak"(ibid., pp. 308–309).

Lecourt's appeals to legal practitioners intended to mobilize a judicial support network to counter backlash by some governments and constitutional courts (Davies, 2012; Fritz, 2015; Rasmussen and Martinsen, 2019).

His writings sought to disarm allegations that EU law and the ECJ would prioritize economic and business interests and run roughshod over individual rights. But Lecourt's efforts were also proactive: by linking the Court's legitimacy to its reorientation of EU law to protect the rights of the weak, Lecourt broadened the Court's mandate and justified judicial interventions to tip the scales from "business Europe" towards "social Europe."

As European integration grew increasingly salient in domestic politics, resistance to the ECJ rose among populist and Eurosceptic political parties (Hooghe and Marks, 2009). By the 1990s, a new generation of judges donned the mantle of ECJ "publicists." As charges that EU law suffered from a "democratic deficit" became recurrent (Føllesdal and Hix, 2006), ECJ judges again cast themselves as antidotes. None was more prolific than judge Federico Mancini, the Court's most public-facing judge from 1982 until his death in 1999. Mancini penned dozens of articles justifying the ECJ's activism as "distill][ing] as much equality as possible" for individual claimants. But he also stressed more clearly than Lecourt that the Court could only protect citizens by "extend[ing] the jurisdiction of the Community" to make up for the lack of EU legislation protecting individual and social rights:

> "[ECJ] activism was often driven by a desire to extend the jurisdiction of the Community (...) to make up for the set-backs which (...) [it] has suffered at the decision-making level at the hands of the Member States (...) What is said about the founding fathers' frigidity towards social issues does not apply to the

> Judges of the Court. If ours is not just a traders' Europe, and if it is good that this is so, it is the Judges of the Court whom we must thank (...) Whilst not taking the "affirmative action" route, the Court has attempted to distill as much equality as possible from the EC Treaty and secondary legislation" (Mancini, 2000, pp. 24, 100, 128).

Like Lecourt, Mancini concluded his writings with calls to action. Acknowledging that the Court's authority "is still challenged and [its] jurisprudence has at times been the subject of threats" because it "is sadly lacking in democratic legitimacy" (ibid., pp. 142, 165), Mancini hoped that through leveling and spotlighting the Court could rally support networks:

> "Perhaps, as the Court of Justice becomes increasingly visible (...) and as more and more people become aware of its ability to impinge positively on their lives, the politicians of Europe will realize that a further emasculation of the Court does not necessarily provide a vote-winning platform (...) As long as the Court goes on handing down judgments that enable ordinary men and women to savor the fruits of integration, it will continue to demonstrate its usefulness. And the Member States (...) will surely hesitate before embarking on an incisive whittling down of its powers" (Mancini and Keeling, 1995, pp. 24, 100, 128).

By the turn of the millennium, a third generation of ECJ judges took on

the task of promoting the same legitimating narrative. As Vassilios Skouris – the Court's President from 2003 to 2015 – put it:

> "the development of a system of protection of fundamental rights in the EU legal order was a necessary complement to the transformation of the [...] economic freedoms of the EC Treaty [into] fundamental principles conferring rights on individuals (...) [economic] integration can be extremely problematic without the necessary guarantees for the protection of fundamental rights (...) This is why the Court has often used fundamental rights [as a] counterbalance..." (Skouris, 2006, p. 238)

By forging "a system of protection of fundamental rights," Skouris emphasized that the Court "contributed to the advancement of European integration" by "enhance[ing] the democratic legitimacy of the European Union itself" (ibid., p. 238).

Skouris' successor – Koen Lenaerts – promoted the same narrative. His writings cast the Court's interventions as transforming EU law from an "economic device" into a tool for "protecting the fundamental rights of the people," thereby "recruit[ing]... private parties as allies" (Lenaerts, 1992, pp. 1–4, 23). Although "[the] EEC was essentially an economic organization", "the Court could not simply ignore" the social rights of citizens and workers: "today's Social Europe would not be what it is without the Court's contribution" (Lenaerts, Adam, and Van de Velde-Van Rumst, 2023, pp. 4, 29).

# Claim-driven leveling: Individuals win against all odds ($H_1$)

As we have seen, ECJ judges' public writings testify that the protection of individuals by EU law was unsatisfactory, creating legal blind spots that they claim to have filled. Our econometric analysis probes how this disadvantage was exacerbated by resource inequities, before we investigate the litigants' win-rates.

## Individuals have a capability disadvantage

Both the ECJ's publicists and existing research on EU legal mobilization assume that businesses are "comparatively [more] resourceful" than individuals (Conant et al., 2018, p. 1384). Yet this claim has never been systematically verified. Here, we show that the capabilities of individuals and businesses before the ECJ align with the distinction between the "have nots" and the "haves".

Our dependent variable captures the *quality of legal representation* that private parties muster. To ensure that our results are comparable with existing research, we draw on three common operationalizations of capability (McGuire, 1995; Wahlbeck, 1997; Szmer, Songer, and Bowie, 2016; Nelson and Epstein, 2022). Each measure is then regressed on the type of litigant.

First, we consider whether litigants submitted an *observation* before the ECJ. When cases are filed, all parties involved are invited to submit their

views in a written observation. While it may seem evident that making your voice heard matters, poorly-represented litigants might not recognize its importance: some 19% of private litigants do not communicate their views. Our first model is a binomial logistic regression that captures the probability that a litigant submitted an observation.

We then use two measures to capture the quality of legal counsel that approximate what Kritzer (1998) refers to as "substantive" and "process" expertise. Larger legal teams hold specialized knowledge of EU law through their division of labor, while experienced lawyers navigate the ECJ's procedures more dexterously. The *size of parties' legal team* varies substantially. While the median private litigant that submitted an observation relied on a single lawyer, one in five had a team of two or more lawyers on their payroll. Next, *lawyer experience* counts the number of ECJ appearances of the most experienced team member. Both measures serve as dependent variables in hurdle models: We treat the size and experience of the legal team as a joint probability of first submitting an observation and – if so – the quality of counsel. The models treat each side in a case as a litigant, resulting in a data set with 12,286 observations (1962-2016). Our explanatory variable is the type of litigant involved in a dispute (individual vs. business). The models control for whether several cases were joined together by the ECJ (*joined case*), whether the litigant is an applicant or defendant, and decade fixed effects.

**The results** are reported in Table 1 and illustrated in Figure 5. In line with the premise of $H_1$, individuals have lower capacity to litigate than businesses across all three measures. They are less likely to submit observations before the ECJ, and – when they do – they rely on smaller and less experienced legal teams.

Table 1: Variation in quality of representation across parties: Companies rely on average on larger and more experienced teams than individual litigants.

| | *Dependent variable: Quality of legal representation* | | |
|---|---|---|---|
| | Submitted observation | Size of legal team | Lawyer experience |
| | *logistic* | *hurdle* | *hurdle* |
| Individual (ref. business) ($H_1$) | $-0.665^{***}$ | $-0.151^{***}$ | $-0.396^{***}$ |
| | (0.060) | (0.028) | (0.016) |
| Interest group (ref. business) | $0.755^{***}$ | $0.266^{***}$ | $-0.309^{***}$ |
| | (0.152) | (0.043) | (0.029) |
| State institution (ref. business) | $-2.172^{***}$ | $-0.171^{***}$ | $-0.350^{***}$ |
| | (0.055) | (0.034) | (0.020) |
| Other (ref. business) | $-0.086$ | $0.170^{***}$ | $-0.064^{**}$ |
| | (0.103) | (0.044) | (0.026) |
| Defendant in main proceedings | $-0.446^{***}$ | $-0.089^{***}$ | $-0.244^{***}$ |
| | (0.048) | (0.025) | (0.014) |
| Joined cases | $0.434^{***}$ | $0.696^{***}$ | 0.029 |
| | (0.081) | (0.029) | (0.022) |
| Constant | $1.933^{***}$ | $0.331^{***}$ | $1.495^{***}$ |
| | (0.060) | (0.026) | (0.014) |
| Observations | 12,286 | 12,286 | 12,286 |
| Log Likelihood | $-6,496.740$ | $-16,518.890$ | $-45,051.410$ |
| Akaike Inf. Crit. | 13,017.480 | | |
| *Note:* | | | $^{*}$p<0.1; $^{**}$p<0.05; $^{***}$p<0.01 |

Insofar as it matters for litigants to communicate their claims to the ECJ, businesses have a clear advantage. Businesses are almost twice as likely to submit an observation than individuals in comparable disputes. One in four

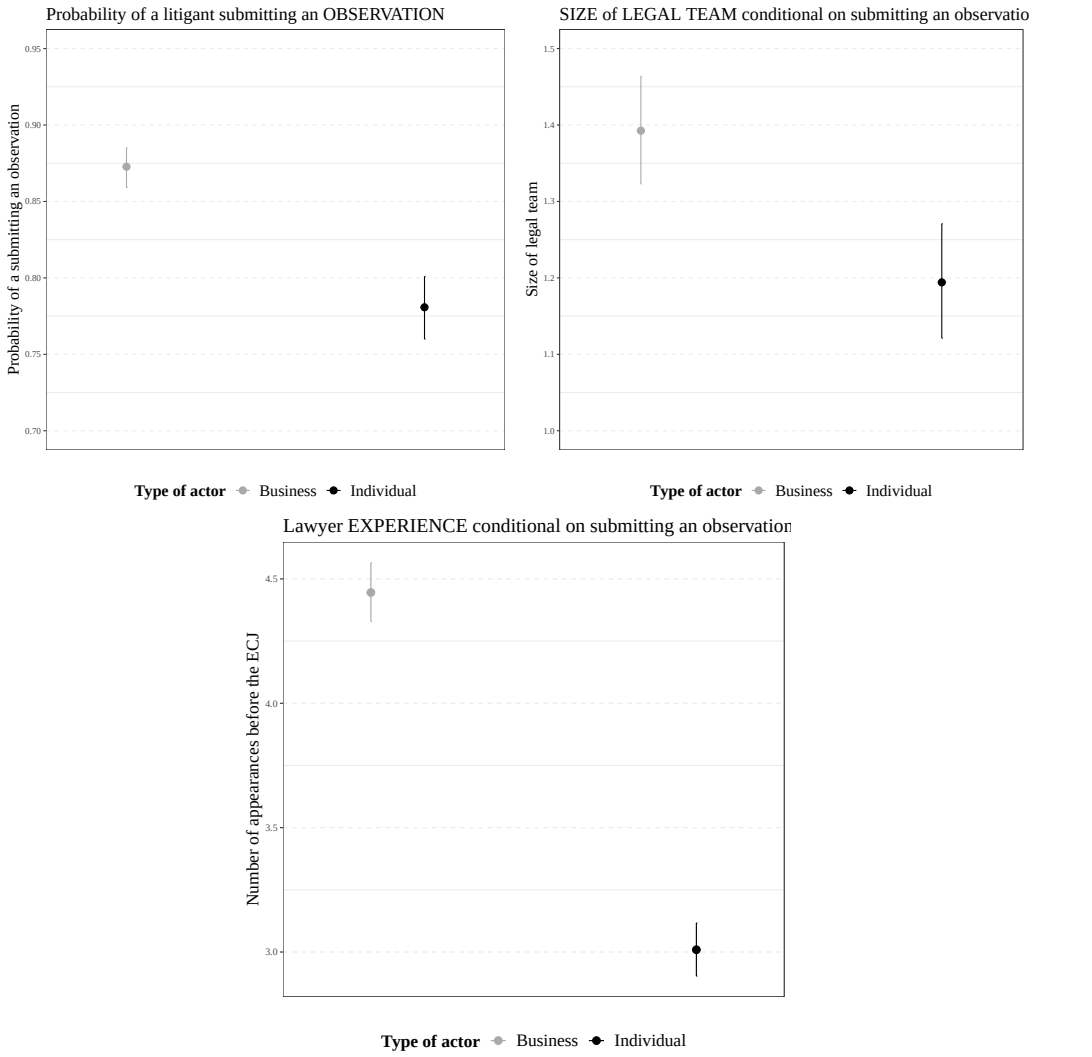


Figure 5: Unequal claiming: businesses are represented by larger and more experienced legal teams than individuals (illustration of models in Table 1).

individuals do not submit an observation, with a predicted submission rate of 78%. By contrast, 1 in 10 corporate litigants neglect to communicate their views (87%).

Inequities in party capability persist among those that submit observa-

tions. Individuals hire legal teams that are on average 14% smaller and with 33% less experience than those of businesses. Compared to businesses, individuals' legal representation is hampered by less "substantive" and "process" expertise.

## The ECJ disporportionally support individuals in cases involving individual rights

Litigation before the ECJ is clearly plagued by the same inequalities in party capability as before domestic courts. In the absence of judicial leveling, we would expect a lower win-rate for individuals than for businesses. This begs the question of whether the ECJ has compensated by levelling the odds. Here, we probe whether individuals raising individual rights claims have a disproportionately higher win-rate than other applicants.

Our dependent variable, *win*, indicates if the Court supported an applicant's claims. It builds on two influential projects coding the legal positions of litigants and ECJ decisions (1961-1997, Carrubba, Gabel, and Hankla, 2008; 1996-2008, Larsson and Naurin 2016). Both projects elaborate an outcome measure for (potentially) different legal questions nested within judgments. Bivariate statistics already suggest that the claims raised by individuals are favored: in the 1961-1997 period, the ECJ supported 58% of individuals' claims (41% in 1996-2008), compared to only 45% of business' claims (30% in 1996-2008).

To test our hypothesis, we run a linear probability model where the two periods are merged (separate analyses show that the results are similar across the two periods). The results are neither time-dependent nor driven by idiosyncratic measurement choices (see the Appendix). Since the type of litigants only varies at the case level, we weigh down cases by the number of legal questions and cluster the standard errors accordingly.

Our empirical strategy aims to rule out alternative explanations for individuals' relative success. These include the Court's possible practice of litigant-driven rather than claim-driven leveling, as well as potential adverse selection effects whereby risk-averse individuals might bring stronger legal claims and thus enjoy a higher win-rate.

To do so, we operationalize the Court's claim-driven leveling through an interaction between the type of litigant (*individual*) and whether they raise individual rights claims (*individual rights*). We identify individual rights cases by relying on the Court's topic classifications and take inspiration from the judges' public assertions of the individual rights they favor (see the Appendix). Many of these cases mobilize the EU legal principle of free movement of people, such as family rights and social benefits for migrant workers. The Court has over the years given a broad interpretation of what constitutes a worker with rights of residence and family reunification to include students and job seekers. The category also includes questions relating to fundamental rights, social security and pensions, as well as freedom from sexual, racial and religious discrimination.

Theoretically, the interaction zooms in on the political opportunities that individual litigants bring. First, individuals overwhelmingly raise exactly the types of cases that the Court needs to prove its relevance as a rights protector. Specifically, 61% of the disputes brought by individuals from 1961-2016 pertain to individual and social rights, compared to only 13% for businesses. Second, the lack of legislation governing these topics leaves a larger interpretative space for judges to craft a case law favoring individuals. Politics thrive in such legal uncertainty because the merits of the litigant's claims are harder to assess. Third, the consequences of these claims are potentially disruptive. Individual rights constrain the power of governments: In a different coding project covering the 1995-2011 period, 79% of ECJ rulings favoring individual rights simultaneously constrained the autonomy of member states. By comparison, other claims – such as the economic claims that businesses raise – only led to restrictions in 23% of the decisions (Larsson et al., 2022). In short, the interaction assesses the win rate in cases that allow the Court to both challenge governments and appeal to a new support network: the legal community.

Empirically, the interaction also hedges against some of the potential selection effects that plague all studies of judicial responses to legal mobilization. Priest and Klein (1984) famously articulated a "selection hypothesis" wherein litigants proceed to a rational calculation about the potential costs and benefits of bringing cases to court compared to settling upfront. Included in this calculation is their expectation of winning, as well as their willing-

ness and capacity to bear the costs of lawyering-up and litigating. Since individuals and businesses sometimes overlap in the claims they bring, we compare the win rates of individuals who raise the same economic claims as businesses (usually as farmers and small business owners) to individuals with similar resource endowments who instead raise individual and social rights claims. This within-individual comparison not only helps us assess the presence of claim-based leveling; it also enables us to better match litigants on their financial means and thus hold constant their capacity to absorb the costs of litigation.

We further address the possibility of adverse selection in two ways. The judges themselves have highlighted that enforceable individual and social rights protections were lacking in EU legislation and were thus created by the Court. We therefore account for the merits of litigants' claims by controlling for the information available to lawyers concerning previous case law. In the absence of clear precedents, the Court tends to defer to the shifting political preferences of member states (Hermansen, 2020). Private litigants thus have a harder time predicting whether their claims are well-founded the first few times an EU rule is interpreted. We thus introduce fixed effects to compare judicial outcomes strictly between cases involving laws litigated an equal number of times.

Yet we also do not want to underestimate the extent of judicial leveling. While individuals may be more risk-averse than businesses and only bring cases with strong merits (Galanter, 1974), other studies argue that because

individuals rely on weaker legal representation they tend to raise weaker arguments (McGuire, 1995; Songer, Sheehan, and Haire, 1999; Haire, Lindquist, and Hartley, 1999; Johnson, Wahlbeck, and Spriggs, 2006; Miller, Keith, and Holmes, 2015; Szmer, Songer, and Bowie, 2016; Nelson and Epstein, 2022; Szmer, Johnson, and Sarver, 2007; Chen, Huang, and Lin, 2015) and litigate on weaker merits (Skiple, Bentsen, and McKenzie, 2021), resulting in lower win rates. We therefore control for the size and experience of litigants' legal teams (*Difference in lawyer experience/legal team size*).

Finally, our models control for other factors that influence Court decisions. The ECJ tends to reserve its more audacious rulings to periods when its decisions are unlikely to spur political controversy (Šadl and Hermansen, 2024), often aligning its decisions with the majority of governments' observations ("amicus curiae briefs") (Castro-Montero et al., 2018; Larsson and Naurin, 2016; Carrubba, Gabel, and Hankla, 2008). As individual rights cases tend to constrain member states' autonomy, all models control for intergovernmental pressures by including the *net number of government observations* favoring the applicant. We also control for the few instances where *the validity of an EU law is challenged*, given the ECJ's purported pro-EU law bias. Lastly, we control for the type of litigant that the applicant is facing as well as the coding project from which the outcome is drawn.

**Evidence consistent** with claim-driven judicial leveling ($H_1$) is displayed in the first column of Table 2 and visualized in Figure 6. The results are in

line with our expectation that the ECJ has seized on individual rights claims to level the odds for individuals.

Following the operationalizion of our first hypothesis, we highlight three comparisons that distinguish our argument from alternative explanations. First, the probability of an individual winning the Court's support is 11.6 percentage points higher when litigants raise individual and social rights compared to when the same individuals raises other types of claims. This result cannot be explained by differences in risk tolerance that would lead businesses to raise less meritorious claims. Importantly, the marginal effect of invoking individual rights only affects individuals, while it has no bearing on the outcome among businesses.

We further find little evidence that individuals win more often than businesses when litigation *does not* relate to individual rights (a 4.4 percentage point difference that is not statistically significant). This lends further credence to the pivotal role of rights creation in the ECJ's strategy, suggesting that the Court is embracing claim-based leveling more than litigant-driven leveling. The results indicate that the Court's support of individual rights has empowered the weak. When individuals raise these rights claims, they have a 15.5percentage points higher win rate than businesses.

The behavior of our control variables aligns with previous research, adding confidence in our analysis. The ECJ is less likely to support challenges to the validity of EU laws. Furthermore, it tends to grant claims that are also supported by the majority of member state submissions. For a business to

Table 2: Variation in the likelihood of winning among applicants accross types of litigants.

| | *Dependent variable:* | |
|---|---|---|
| | Wins the case | |
| | *panel* | *linear* |
| Individual * Individual rights ($H_1$) | 0.111** | |
| | (0.052) | |
| Individual rights | 0.005 | |
| | (0.035) | |
| Individual (ref. business) | 0.044 | 0.114*** |
| | (0.033) | (0.023) |
| Interest group (ref. business) | 0.025 | 0.023 |
| | (0.045) | (0.045) |
| State institution (ref. business) | 0.058 | 0.061* |
| | (0.036) | (0.036) |
| Other (ref. business) | −0.009 | −0.005 |
| | (0.055) | (0.055) |
| Net support from MS observations | 0.070*** | 0.069*** |
| | (0.006) | (0.006) |
| The validity of an EU law is in question | −0.109*** | −0.113*** |
| | (0.033) | (0.033) |
| Defendant is ... an individual (ref. business) | −0.042 | −0.049 |
| | (0.037) | (0.036) |
| ... interest group (ref. business) | −0.010 | 0.002 |
| | (0.055) | (0.055) |
| ... state institution (ref. business) | 0.026 | 0.030 |
| | (0.026) | (0.026) |
| ... other type of actor (ref. business) | 0.007 | 0.024 |
| | (0.041) | (0.040) |
| Difference in legal team size | 0.004 | 0.004 |
| | (0.008) | (0.008) |
| Difference in lawyer experience | −0.001 | −0.001 |
| | (0.001) | (0.001) |
| Source | −0.093*** | −0.092*** |
| | (0.021) | (0.021) |
| Fixed effects for iteration of interpretation | Yes | Yes |
| Observations | 6,110 | 6,110 |
| $R^2$ | 0.083 | 0.078 |
| Adjusted $R^2$ | 0.036 | 0.031 |
| *Note:* | *p<0.1; **p<0.05; ***p<0.01 | |

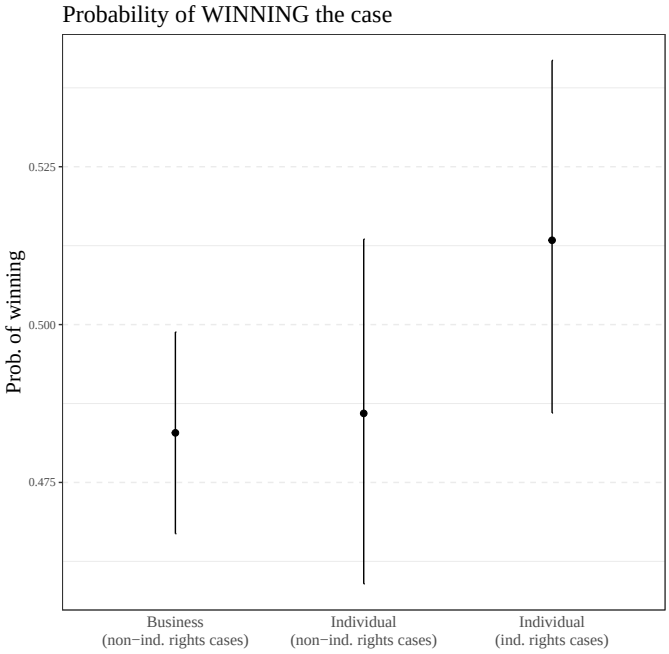


Figure 6: Leveling the odds: the ECJ is more likely to support claims relating to individual rights raised by individuals than all other claims raised by either individuals or businesses (illustration of model 2 in Table 2. The figure uses "state institution" as a reference group).

match an individual's probability of winning in a individual rights case, it would need to receive more than two additional government observations supporting its case. Strikingly, our findings do not support the conventional wisdom that the quality of legal representation impacts ECJ decisions. Businesses' larger and more experienced legal teams gain them no traction over judicial outcomes.

Despite our findings, to casual observers it may appear that the ECJ has a pro-business bias. Why? Businesses outnumber individuals 3 to 2 in ECJ disputes. This lopsided distribution likely reflects the large stock of

justiciable corporate rights ensured by EU law as well as businesses' greater capacity to absorb the costs of litigation. Thus, even if the ECJ favors individual rights claims, on aggregate it delivers more judgments supporting business claims (735 vs 676 supportive judgments in 1961-97, and 463 vs 252 supportive judgments in 1996-2008).

In sum, the ECJ consistently levels the odds for individuals by using individual rights as its linchpin. Irrespective of the content of their claims, the Court is 11.1 percentage points more likely to support claims raised by individuals compared to businesses (second column, Table 2), and this bias is astonishingly stable over the half-century covered in our data (11.4 percentage points pro-individual bias in 1961-1997; 10.7 percentage points in 1995-2008). While this result breaks from prevailing research on party capability, it is consistent with our theory of judicial leveling.

## Spotlighting & Amplifying ($H_2$): Broadcasting Decisions Where Individuals Win

Granting wins to citizens is only half the battle. To establish itself as the fulcrum of a new individual rights regime, the ECJ must also attract the attention and legitimate itself before legal professionals capable of amplifying its judgments. Here, we demonstrate that the ECJ disproportionately spotlights decisions where it supports individuals' claims ($H_2$). We then show that the legal community is responsive to the Court's spotlighting.

**Spotlighting: the ECJ is more likely to publicize decisions that support individual claims**

The Court has several procedural choices at its disposal to publicize cases, and we test whether the Court wields them in three ways.

First, during the proceedings, the number of judges allocated to a case can signal the "significance" the Court attributes to a case. Our first (ordinal) model thus regresses the *size of the chamber* (small/medium/large) on the type of applicant, contrasting individuals with businesses. Second, we probe what the Court does after it delivers a ruling. Our second (binomial logit) model captures whether the ECJ disproportionately issues press releases in cases involving individuals. Finally, our third model zooms in on decisions where individuals win leveraging an interaction term.

Our data is at the case level. While the first model covers the entire history of ECJ preliminary references, our model of press releases is limited to the years where these data are available (1995-2016). Our third model is further limited to cases where the outcome is available (1961-2008). All three models include the same control variables. Since the Court often convenes a larger chamber in response the number of observations submitted by member governments, we control for the *proportion of member states submitting observations*. We also control for the number of *times that EU law is applied* as well as the size and experience of parties' legal teams. Finally, since the Court's reliance on smaller chambers and its use of press releases has increased over time (Kelemen, 2012; Fjelstul, 2023; Brekke et al., 2023),

all models include decade fixed effects.

**Evidence consistent** with judicial spotlighting is reported in Tables 3 and 5 and illustrated in Figure 7. The ECJ disproportionately publicizes cases involving individuals over those involving businesses — especially when individuals win.

Table 3: Spotlighting and amplifying: Judicial and academic issue attention depend on the type of litigants involved.

| | *Dependent variable: Judicial and academic attention* | | | |
|---|---|---|---|---|
| | Chamber size | Press release | Case annotations | CMLR annotation |
| | *ordered logistic* | *logistic* | *negative binomial* | *logistic* |
| | 1961-2016 | 1995-2016 | 1961-2016 | 1961-2016 |
| Applicant is... | | | | |
| ... an individual (ref. business) ($H_2$) | $0.391^{***}$ | $0.592^{***}$ | $0.152^{***}$ | $0.591^{***}$ |
| | (0.055) | (0.150) | (0.029) | (0.107) |
| ... interest group (ref. business) | $0.252^{**}$ | $0.557^{**}$ | 0.074 | 0.199 |
| | (0.101) | (0.235) | (0.051) | (0.168) |
| ... state institution (ref. business) | $-0.183^{***}$ | $-0.541^{***}$ | $-0.671^{***}$ | $-0.158$ |
| | (0.063) | (0.170) | (0.032) | (0.117) |
| ... other type of actor (ref. business) | $-0.190^{**}$ | $-0.540^{*}$ | $-0.367^{***}$ | $-0.341^{*}$ |
| | (0.090) | (0.321) | (0.048) | (0.184) |
| Size of applicant's legal team (log + 1) | $0.527^{***}$ | $0.906^{***}$ | $0.272^{***}$ | $0.716^{***}$ |
| | (0.060) | (0.178) | (0.032) | (0.111) |
| Size of defendant's legal team (log + 1) | $0.329^{***}$ | $0.309^{*}$ | $0.232^{***}$ | $0.340^{***}$ |
| | (0.068) | (0.183) | (0.035) | (0.119) |
| Experience of applicant's lawyer (log + 1) | $0.091^{**}$ | $-0.082$ | $-0.095^{***}$ | 0.076 |
| | (0.037) | (0.095) | (0.020) | (0.067) |
| Experience of defendant's lawyer (log + 1) | 0.005 | $-0.308^{**}$ | $-0.018$ | 0.038 |
| | (0.051) | (0.146) | (0.026) | (0.089) |
| Times an EU law is applied (log) | $-0.044^{***}$ | $-0.109^{**}$ | 0.004 | $-0.225^{***}$ |
| | (0.015) | (0.044) | (0.008) | (0.035) |
| Proportion of MS observations | $8.315^{***}$ | $7.093^{***}$ | $4.659^{***}$ | $5.186^{***}$ |
| | (0.337) | (0.734) | (0.139) | (0.412) |
| Small—medium chamber | $-0.026$ | | | |
| | (0.106) | | | |
| Medium—Large chamber | $2.778^{***}$ | | | |
| | (0.113) | | | |
| Intercept | | $-2.498^{***}$ | $1.579^{***}$ | $-3.829^{***}$ |
| | | (0.300) | (0.077) | (0.214) |
| Decade fixed effects | Yes | Yes | Yes | Yes |
| Country of origin fixed effects | No | No | Yes | No |
| Observations | 5,928 | 1,288 | 5,928 | 5,928 |

*Note:* $^{*}$p<0.1; $^{**}$p<0.05; $^{***}$p<0.01

Table 4: Spotlighting and amplifying: Issue attention as a function of whether the individual applicant wins.

| | *Dependent variables: Spotlighting and amplifying* | | |
|---|---|---|---|
| | Press release | Case annotations | Annotated in CMLR |
| | *logistic* | *negative binomial* | *logistic* |
| | 1997-2008 | 1961-2008 | 1961-2008 |
| Times an EU law is applied (log) | −0.127*** | 0.038*** | −0.181*** |
| | (0.044) | (0.013) | (0.042) |
| Proportion of MS observations | 7.776*** | 4.672*** | 5.161*** |
| | (0.750) | (0.199) | (0.478) |
| Applicant won | −0.064 | 0.094 | 0.136 |
| | (0.245) | (0.071) | (0.214) |
| Applicant is... other type of actor (ref. business) | 0.100 | −0.069 | −0.223 |
| | (0.642) | (0.178) | (0.637) |
| ... state institution (ref. business) | −0.192 | −0.077 | 0.00002 |
| | (0.357) | (0.099) | (0.314) |
| ... interest group (ref. business) | 0.594 | 0.235* | 0.759** |
| | (0.367) | (0.138) | (0.321) |
| ... an individual (ref. business) | 0.128 | −0.031 | −0.028 |
| | (0.227) | (0.073) | (0.215) |
| Applicant won * other type of actor (ref. business) | 0.542 | −0.043 | −1.282 |
| | (1.166) | (0.285) | (1.370) |
| ... won * state institution (ref. business) | −0.096 | −0.460*** | −0.689 |
| | (0.611) | (0.157) | (0.535) |
| ... won * interest group (ref. business) | 0.427 | 0.064 | −0.980 |
| | (0.633) | (0.219) | (0.618) |
| ... won * an individual (ref. business) ($H_2$) | 0.773** | 0.251** | 0.520* |
| | (0.368) | (0.109) | (0.316) |
| Intercept | −15.894 | 1.537*** | −2.858*** |
| | (338.456) | (0.125) | (0.187) |
| Decade fixed effects | Yes | Yes | Yes |
| Country of origin fixed effects | No | No | Yes |
| Observations | 1,288 | 3,232 | 3,232 |
| *Note:* | | | *p<0.1; **p<0.05; ***p<0.01 |

First, *ceteris paribus* the likelihood that the Court allocates a larger cham-

ber to a case increases by 48% if a dispute involves individuals compared to businesses. Crucially, after it delivers a ruling the Court is twice as likely to issue a press release if the case was brought by an individual (columns 1 and 2 in Table 3).

Column 1 in Table 5 then makes clear that it is only when individuals win that a significant pro-individual bias in spotlighting emerges. The Court is more than twice as likely to publicize judgments via a press release where it *supports* an individual's claim compared to when individuals lose. No other type of private litigant sees the same favorable shift in the Court's outreach strategy when they win.

These findings support the inference that the ECJ has consistently sought to draw attention to its decisions when they align with a pro-individual legitimation strategy. Does the Court have reasons to believe that this strategy is successful?

**Amplifying: Legal commentators reinforce the ECJ's spotlighting**

The ECJ's judges have long aimed to catalyze commentaries in law reviews, especially in journals like the *Common Market Law Review* (CMLR). Commentaries of judgments ("annotations") are important sources of information about new legal opportunities that national lawyers, judges, and academics can seize to raise legal consciousness and pressure governments into compliance. Here, we perform four tests of whether the support network courted by the Court amplifies its message.

Table 5: Spotlighting and amplifying: Issue attention as a function of whether the individual applicant wins.

| | *Dependent variables: Spotlighting and amplifying* | | |
|---|---|---|---|
| | Press release | Case annotations | Annotated in CMLR |
| | *logistic* | *negative binomial* | *logistic* |
| | 1997-2008 | 1961-2008 | 1961-2008 |
| Times an EU law is applied (log) | −0.127*** | 0.038*** | −0.181*** |
| | (0.044) | (0.013) | (0.042) |
| Proportion of MS observations | 7.776*** | 4.672*** | 5.161*** |
| | (0.750) | (0.199) | (0.478) |
| Applicant won | −0.064 | 0.094 | 0.136 |
| | (0.245) | (0.071) | (0.214) |
| Applicant is... other type of actor (ref. business) | 0.100 | −0.069 | −0.223 |
| | (0.642) | (0.178) | (0.637) |
| ... state institution (ref. business) | −0.192 | −0.077 | 0.00002 |
| | (0.357) | (0.099) | (0.314) |
| ... interest group (ref. business) | 0.594 | 0.235* | 0.759** |
| | (0.367) | (0.138) | (0.321) |
| ... an individual (ref. business) | 0.128 | −0.031 | −0.028 |
| | (0.227) | (0.073) | (0.215) |
| Applicant won * other type of actor (ref. business) | 0.542 | −0.043 | −1.282 |
| | (1.166) | (0.285) | (1.370) |
| ... won * state institution (ref. business) | −0.096 | −0.460*** | −0.689 |
| | (0.611) | (0.157) | (0.535) |
| ... won * interest group (ref. business) | 0.427 | 0.064 | −0.980 |
| | (0.633) | (0.219) | (0.618) |
| ... won * an individual (ref. business) ($H_2$) | 0.773** | 0.251** | 0.520* |
| | (0.368) | (0.109) | (0.316) |
| Intercept | −15.894 | 1.537*** | −2.858*** |
| | (338.456) | (0.125) | (0.187) |
| Decade fixed effects | Yes | Yes | Yes |
| Country of origin fixed effects | No | No | Yes |
| Observations | 1,288 | 3,232 | 3,232 |
| *Note:* | | | *p<0.1; **p<0.05; ***p<0.01 |

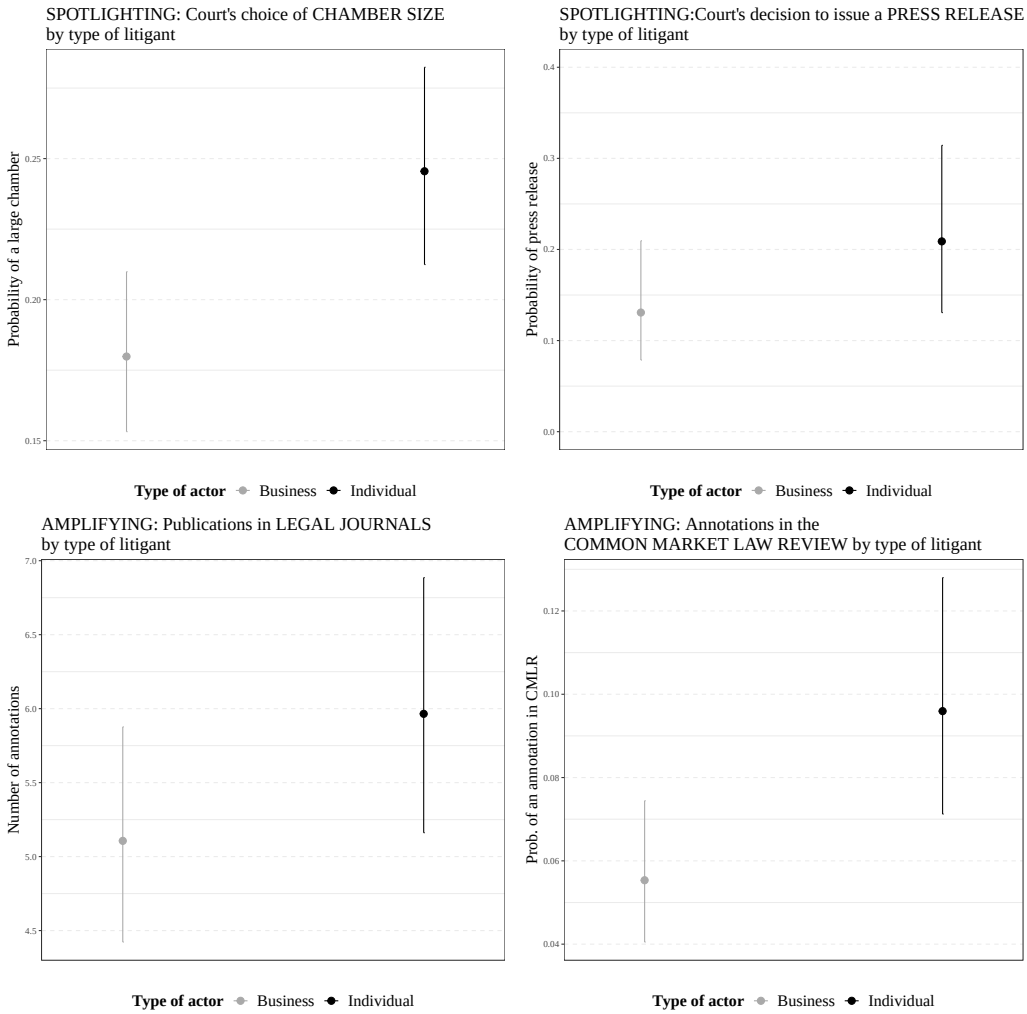


Figure 7: Spotlighting and amplifying: The ECJ and legal commentators disproportionately publicize cases involving individual claims compared to business claims (illustration of models in Table 3).

We first count the number of *annotations* that ECJ judgments generate in law journals (a poisson model), then we flag cases covered by the CMLR (a binomial logistic model). For each measure, we test whether cases brought by individuals are commented more often, then zoom in on whether the effect

is driven by cases where individuals win. The poisson models also include fixed effects to control for the national origin of the underlying dispute. Annotations prove quite rare, even in journals founded to popularize knowledge of the ECJ's case law. For instance, only 10% of ECJ judgments have received annotations in the CMLR, and only a few have received more than one commentary.

**Results consistent** with law journals amplifying the ECJ's pro-individual agenda are reported in the two last columns in Tables 3 and 5, and they are illustrated in the two bottom panes of Figure 7. Our findings reveal a striking similarity between the Court's leveling and spotlighting efforts and the rulings amplified by lawyers.

First, cases brought by individuals attract 16% more journal annotations than those brought by businesses. This pro-individual bias in coverage is even more stark when we consider the CMLR: ECJ decisions concerning individuals are 81% more likely to be annotated in the CMLR compared to decisions on claims brought by business.

Second, Figure 8 reveals that law journals devote greater attention to precisely the subset of outcomes that the ECJ spotlights in its press releases. When individuals win support for their claims, the number of commentaries in legal journals increases by 29% compared to when they lose, while the CMLR is 68% more likely to publish a commentary. By contrast, no such differentiation with respect to the case outcome occurs when businesses lit-

igate. Figure 8 thus places in stark relief how an IC's efforts to spotlight a pro-individual rights agenda is amplified by a crucial judicial support network.

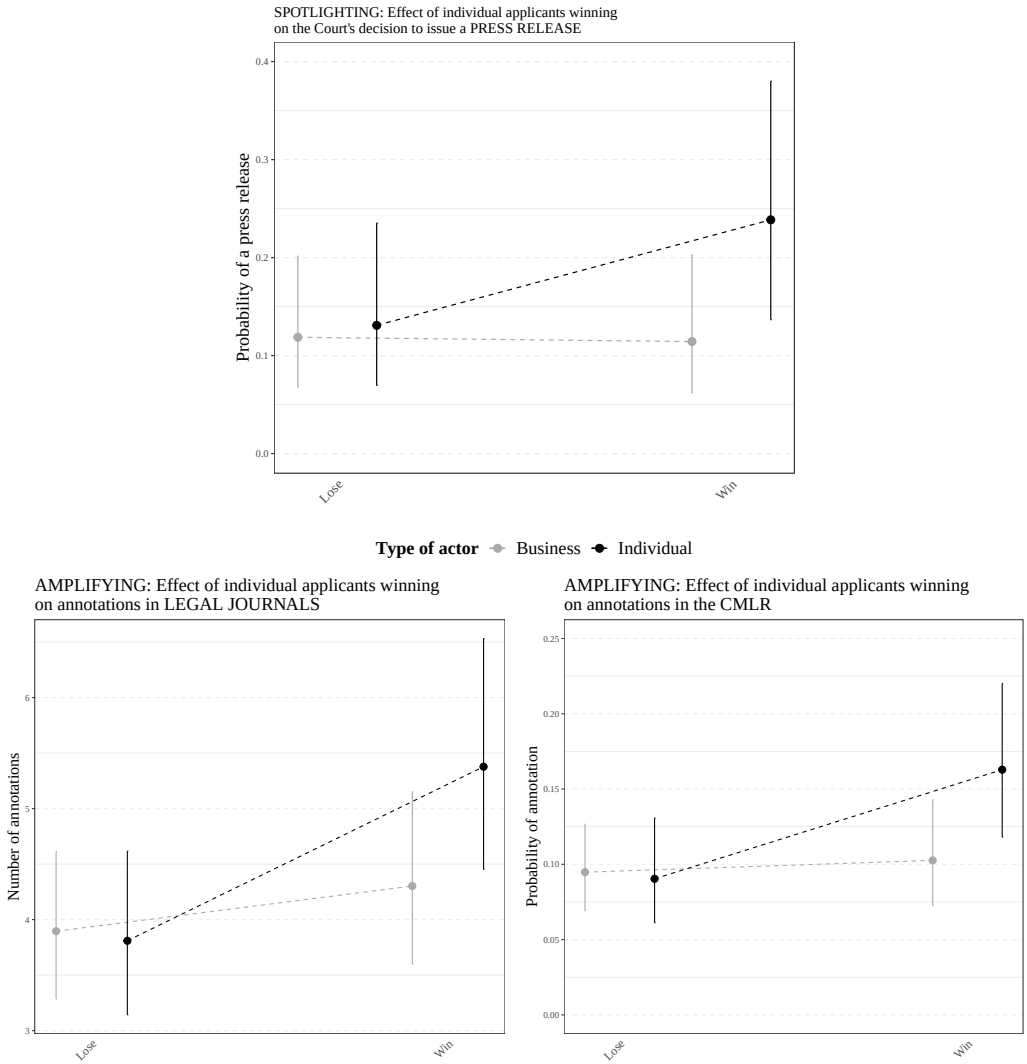


Figure 8: Spotlighting and Amplifying: The ECJ is more likely to issue press releases (pane 1) and legal journals are more likely to publish commentaries (panes 2 & 3) for cases where individuals win support for their claims.

# Conclusion

That the "haves" come out ahead is the most consistent finding across studies of legal mobilization. Yet we have shown that judges can systematically counterbalance inequalities amongst private litigants and rectify the ways that these inequities are encoded in the law. Courts facing legitimacy deficits may find individual rights claims useful for justifying their policy agenda and cultivating on-the-ground support networks. Consequently, courts may favor individual rights claimants even when the legal rules they are tasked to apply are predominantly economic in nature, and even though businesses tend to show up with better lawyers.

Drawing on novel qualitative and quantitative data on private litigation, judicial decisions, and journal commentaries concerning the world's first new-style IC – the ECJ – we demonstrate that it is actually the "have nots" that tend to come out ahead. Furthermore, the ECJ appears eager to publicize this outcome - belying depictions of a stealthy court seeking to depoliticize its agenda (Burley and Mattli, 1993). Via claim-driven leveling, ECJ judges have sought to address the relative lack of individual rights protections in the EU's economic regime with a richer set of justiciable rights. Not only is the ECJ more likely to support the claims that individuals raise compared to those raised by better-resourced businesses; the Court also broadcasts pro-individual rights decisions to legal practitioners who then amplify them in law journals. Through this sequential strategy of leveling and spotlighting,

ECJ judges demonstrate that party capability is not destiny before ICs.

To our knowledge, this is the first study to theorize and substantiate when international judges are most likely to level the odds for individuals and spotlight their claims. Our findings may be heartening, yet they need not rest on optimistic assumptions about judges' commitment to social justice. Instead, leveling and spotlighting are legitimation strategies for ICs seeking to overcome the institutional challenges they face (Føllesdal, 2020). Like other international institutions, ICs' legitimacy is regularly contested by national governments, and judicial support networks may ignore their relevance as rights promoters. Broadcasting a disruptive case law on individual rights helps ICs to tackle both problems. It allows ICs to justify judicial policymaking and to cultivate the attention of prospective allies in the legal profession who are well-positioned to promote the Court in civil society. Individuals may be unable to amass resources and lawyers as effectively as corporations, yet the claims they raise can be sources of legitimacy, and it is legitimacy that is in short supply for fledgling ICs (Alter and Helfer, 2013; Cohen et al., 2018; Voeten, 2020; Pavone and Stiansen, 2021).

Our findings imply that concealment and "depoliticization" (Louis and Maertens, 2021) may not be the most effective legitimation strategy for ICs, and that some judges know it. After all, depoliticization decouples ICs from civil society, hampering judges and their support networks from cultivating a reservoir of social support. True, broadcasting judicial policymaking in salient policy areas like individual rights risks attracting intergovernmental

backlash. But this strategy also enables judges to justify and broadcast their agenda to prospective allies in civil society. What tends to distinguish effective from ineffective ICs is their capacity to cultivate support networks in society that render them less dependent on intergovernmental support (Alter, 2014).

Our argument also opens avenues for future research. First, although we demonstrate that legal practitioners and law journals are responsive to the ECJ's leveling and spotlighting efforts, we did not probe whether the Court's legitimation strategy succeeds in cultivating broader public support. Public support can be crucial to disincentivize government court-curbing (Vanberg, 2005; Staton and Vanberg, 2008; Carrubba, 2009), and judicial support networks sometimes succeed in boosting the salience of court rulings and building the legal consciousness of those whose rights are affected (Bailey et al., 2024). Future research could probe whether legal commentaries amplifying the ECJ's pro-individual rights rulings translate into heightened public support and follow-up litigation.

Second, researchers could probe the portability of our theory by assessing if other ICs designed as institutional transplants of the ECJ (Alter, 2012) also prove more supportive of individual claiming than party capability theories would predict. For instance, the East African Court of Justice has "been proactive in encouraging human rights cases to come before [it]" despite being set up as an economic court (Gathii, 2016, p. 37). In particular, our theory implies that leveling and spotlighting waxes and wanes with judicial ambition

and the existence of support networks in civil society. Where ICs do not seek to legitimate an expansive policy-making role – as with the Andean Tribunal of Justice (Alter and Helfer, 2017) – or face a prostrate legal profession and civil society, judges are less likely to turn to leveling and spotlighting.

Although we advance a story of judicial entrepreneurship, our findings also highlight opportunities that private litigants and the "have nots" can exploit. Whereas resourceful corporations can influence international policy-making via lobbying (Coen and Richardson, 2009), turning to new-style ICs may be individuals' best bet to voice their interests and shape international policy. However, this route is not without obstacles: to effectively mobilize ICs, private litigants must obtain access, and persuade national courts to refer disputes to ICs (Pavone, 2022). Yet, once before an IC, individuals may face a surprisingly favorable opportunity structure. For whether the "haves" or the "have nots" come out ahead is not merely a question of amassing the most resources; it is also a question of raising claims that are useful to judges seeking to legitimate their authority. In this respect, it is pensioners, consumers, and migratory workers who are better positioned than their corporate counterparts.

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# Appendix: online supporting information

## Contents

We rely on four different data frames which draw on largely the same variables to perform our analyses. Here, we describe the operationalization of the variables, the data structure and provide descriptive statistics and alternative models.

## A.1 Variables

**Company** `type_company` A dummy. The litigant is a company. This variable is used as the reference category in the analyses.

**Individual** `type_individual` A dummy. The litigant is an individual.

**Interest group** `type_ngo` A dummy. The litigant is an interest group.

**State institution** `type_state_institution` A dummy. The litigant is a public body/state institution.

**Other** `type_other` A dummy. All other actors are lumped together in this category. It includes such bodies as social security bodies, etc.

**Role** `role` Categorical. Actors are classified as being either the applicant or the defendant in the main proceedings (i.e. the case before the national court). The original data also include observers. These form the basis for our count of member state observations in the analysis of issue attention.

**Defendant in the main proceedings** Binary. Flags whether the actor

was the defendant in the main proceedings. Derived from the above-mentioned variable.

**Joined case** Binary. Flags whether several cases where joined by the ECJ into the same judgment. The number of actors behind the data point – and thus the likelihood of seeing some legal representation among parties on the same side of a conflict – is higher in these cases.

**Observation** Binary. Flags whether the actor submitted an observation to the Court. When a preliminary reference is filed with the Court, all relevant actors – the parties to the main proceedings at the domestic level, the member state governments and EU institutions – are notified and invited to submit their views ("observations") to the Court within 6 weeks. If the Court holds an oral hearing, the same actors are invited to submit their oral observations.

**Legal team size** `n_lawyers` Count. Enumerates the number of lawyers that signed the submitted the observation. All lawyers are listed with their names. This forms the basis of our variable on Lawyer experience.

**Lawyer experience** `n_appearances` Count. Enumerates the number of times the most experienced lawyer on the team has appeared before the ECJ.

**Wins the Court's support** `win` Binary. Reports whether the applicant in the main proceedings wins the ECJ's support (`win == 1`). However,

the Court may provide a mixed answer or an answer that is irrelevant to the case of the applicant. In other words, the reference category is not that the applicant "loses", but rather does not win (`win == 0`). The variable is derived from two different coding projects (Carrubba and Gabel, 2011; Larsson and Naurin, 2016). For more information, please refer to the discussion on the data structure.

**Net support from member state observations** `I(govobspl - govobsdef)`
Numeric. Reports the net support in favor of the applicant among member state governments who submitted an observation. The variable is derived from two different coding project. For more information, please refer to the discussion on the data structure.

**Age of case law** `n_iteration` Count. Reports the number of times the ECJ has interpreted the same EU law. To aggregate the data, we report the relevant number of the most recent EU legislation applied by the ECJ in the judgment.

**The validity of an EU law is in question** `challenge` Binary. Flags cases where the Court has decided on the validity of one or more EU laws. Source: EUR-Lex.

**Difference in legal team size** `I(n_lawyers_applicant - n_lawyers_defendant)`
Numeric. Derived from the previous variables on role and legal team size.

**Difference in lawyer experience** `I(n_appearances_applicant - n_appearances_defendant)`

Numeric. Derived from the previous variable on role and lawyer experience.

**Individual rights** `ind_rights` Binary. Flags cases involving issue areas in which the Court has taken a proactive role in granting rights to individuals. These include the free movement of people/workers, social policy including pensions, consumer rights and fundamental rights.

In order to obtain a comprehensive coding, the cases are identified using two sources: The Court's reporting of the "subject matter" of the case as well as from the keywords reported in the head of each judgment. The vocabulary we searched for was the following: Subject matter: "Social security", "Freedom of movement for workers", "Social policy", "Consumer protection", "non-discrimination". Keywords: "free movement of persons", "freedom of movement for persons", "workers - freedom of movement", "free movement - workers", "freedom of movement for workers", "freedom of movement - workers", "freedom of movement of persons", "freedom of movement - migrant worker", "free movement of workers", "social security", "social policy", "handicapped ", "sickness insurance","citizenship","vocational training", "pension", "social provision", "social legislation","consumer protection" ,"protection of consumer", "fundamental rights", "fundamental human right", "fundamental personal right".

**Proportion of MS observations** `prop_observations` Numeric. Reports the proportion of member states that submitted an observation *exept* for the member state of origin. The size of the EU has changed substantially over the period of study, so the variable is a normalization of the attention that governments give the case.

**Chamber size** `chamber_size` Ordinal. Reports the size of the chamber in which the judgment was passed. The effective number of judges assigned to cases has changed over time. We therefore rely on a normalization of the chamber size ranging from "small" (3 judges), "medium" (5-7 judges; small plenary/chamber of 5) and "large" ($>$ 7 judges; full court/grand chamber).

**Press release** `press_release` Binary. Reports whether the Court issued a press release in relation to the publication of the judgment. Press releases are available from 1996 and on wards. In the last subsection, we combine this with data on the outcome of cases, such that the analysis is based on Court judgments published in the period between 1996-2008.

**Annotations** `n_annotations` Count. Reports the number of publications discussing the case in academic venues; i.e. "case annotations". Source: EUR-Lex.

**Annotations in the Common Market Law Review** `I(n_annotations_cmlr >0)` Binary. Reports whether the cases was annotated in the *Common*

*Market Law Review*. The review has existed since the beginning of the Court's history and has reported on approximately 10% of the Court's cases per year. Source: EUR-Lex.

## A.2 Data structures

Our original data frame lists all lawyers and actors involved in a case: the litigants, third party observers as well as government- and EU-level observers in all of the preliminary reference cases delivered by the ECJ (1961-2016). However, our analyses are performed on aggregated versions of the data. Because of data availability on court outcomes and press releases, some of our models also rely on a subset of the cases.

### A.2.1 Quality of legal representation: Data on each side of a litigation

(`df_role`)

Summary statistics for the data and variables used to test $H_{??}$ are reported in Table 6. The unit of analysis in this data frame is defendants and applicants in the case referred to the ECJ from the domestic court. We thus have 12286 observations of litigants nested in 6143 ECJ judgments. For comparability between cases, we have excluded all criminal procedures from our data. Although the policy area is highly relevant for our arguments about individual rights, there is only one applicant with no formal defendant in

the case. This makes it harder to elaborate a unified strategy to control for quality of legal representation.

While there may be several litigants on each side – for example because several cases were joined to receive the same decision by the ECJ – we have aggregated the data so that one observation remains for each side. As a result, an actor may be coded as several types. A worker ("individual") may for example be joined by a trade union ("interest group") when bringing their case to the Court.

Table 6: Summary statistics of role-level data

| Statistic | Min | Pctl(25) | Mean | Median | Pctl(75) | Max | N |
|---|---|---|---|---|---|---|---|
| written | 0 | 0 | 0.64 | 1 | 1 | 1 | 12,286 |
| n_appearances | 0 | 0 | 2.44 | 1 | 1 | 209 | 12,286 |
| n_lawyers | 0 | 0 | 1.18 | 1 | 2 | 25 | 12,286 |
| company | 0 | 0 | 0.37 | 0 | 1 | 1 | 12,286 |
| individual | 0 | 0 | 0.23 | 0 | 0 | 1 | 12,286 |
| ngo | 0 | 0 | 0.04 | 0 | 0 | 1 | 12,286 |
| state_institution | 0 | 0 | 0.35 | 0 | 1 | 1 | 12,286 |
| other | 0 | 0 | 0.05 | 0 | 0 | 1 | 12,286 |
| joined_case | 0 | 0 | 0.08 | 0 | 0 | 1 | 12,286 |

### A.2.2 Leveling the odds: Data on applicants

(`df_app`; `df2_app`)

We rely on two previous coding projects to identify whether the applicant in the main proceeding gains the Court's support. As a result, we rely on two different data sets. Summary statistics for the data and variables used to test $H_1$ are reported in Tables 7 and 8. Both data frames are structured at

the issue-level nested within each court case. All variables are furthermore coded with respect to the applicant (one per case).

The period 1961-1997 thus ends up with a data frame listing 3893 legal issues/questions in 2206 judgments. We outcome variable as well as the position of the member states are based on the efforts done to identify actors' positions in the European Court of Justice Data project (Carrubba and Gabel, 2011).

The period 1996-2008 relies on a data frame listing positions in 3094 legal questions nested in 1369 cases. It is based on the efforts done to identify actors' positions by Larsson and Naurin (2016). Coders where instructed to identify questions asked to the court and reformulate these into "yes"/"no" answers. All actors may thus be coded as "yes"/"yes, but" and "no"/"no, but", as well as various other categories. We have coded as a "win" when the applicant and the Court both answer yes/no, while all other answers are coded as non-support. The member states' positions are coded in the same way.

Table 7: Summary statistics of applicant-level data (1961-97)

| Statistic | Min | Pctl(25) | Mean | Median | Pctl(75) | Max | N |
|---|---|---|---|---|---|---|---|
| win | 0 | 0 | 0.51 | 1 | 1 | 1 | 3,686 |
| ind_rights | 0 | 0 | 0.31 | 0 | 1 | 1 | 3,833 |
| company | 0 | 0 | 0.48 | 0 | 1 | 1 | 3,833 |
| individual | 0 | 0 | 0.34 | 0 | 1 | 1 | 3,833 |
| ngo | 0 | 0 | 0.05 | 0 | 0 | 1 | 3,833 |
| state_institution | 0 | 0 | 0.14 | 0 | 0 | 1 | 3,833 |
| other | 0 | 0 | 0.04 | 0 | 0 | 1 | 3,833 |
| net_support | −11 | −1 | −0.18 | 0 | 0 | 11 | 3,833 |
| net_lawyers | −14 | 0 | 0.48 | 0 | 1 | 12 | 3,833 |
| net_appearances | −67 | 0 | 2.52 | 1 | 2 | 70 | 3,833 |
| challenge | 0 | 0 | 0.15 | 0 | 0 | 1 | 3,752 |

Table 8: Summary statistics of applicant-level data (1995-08)

| Statistic | Min | Pctl(25) | Mean | Median | Pctl(75) | Max | N |
|---|---|---|---|---|---|---|---|
| win | 0 | 0 | 0.51 | 1 | 1 | 1 | 3,686 |
| ind_rights | 0 | 0 | 0.31 | 0 | 1 | 1 | 3,833 |
| company | 0 | 0 | 0.48 | 0 | 1 | 1 | 3,833 |
| individual | 0 | 0 | 0.34 | 0 | 1 | 1 | 3,833 |
| ngo | 0 | 0 | 0.05 | 0 | 0 | 1 | 3,833 |
| state_institution | 0 | 0 | 0.14 | 0 | 0 | 1 | 3,833 |
| other | 0 | 0 | 0.04 | 0 | 0 | 1 | 3,833 |
| net_support | −11 | −1 | −0.18 | 0 | 0 | 11 | 3,833 |
| net_lawyers | −14 | 0 | 0.48 | 0 | 1 | 12 | 3,833 |
| net_appearances | −67 | 0 | 2.52 | 1 | 2 | 70 | 3,833 |
| challenge | 0 | 0 | 0.15 | 0 | 0 | 1 | 3,752 |

Table 2 reports the results from models on leveling where the two periods are analyzed separately.

### A.2.3 Spotlighting and Amplifying: Data on the case level (`df_case`)

Summary statistics for the data and variables used to test $H_2$ and $H_{??}$ are reported in Table 10. The data frame aggregates observations to the case-level. The outcome variables in the data are the Court's chamber size and press releases, as well as whether the case was annotated in the *Common Market Law Review* and the total number of annotations in legal journals. All outcomes are collected from EUR-Lex.

To zoom in on the Court's spotlighting efforts, we interact the outcome (whose claims were supported) with the Court's and legal journal's decisions to spotlight/amplify. The win-variable is here aggregated to report the proportion of legal questions/issues in which the Court supported the applicant

Table 9: Variation in the likelihood of winning among applicants accross types of litigants.

| | *Dependent variable:* | | | |
|---|---|---|---|---|
| | Wins the case | | | |
| | | *panel linear* | | |
| | 1961-1997 | 1961-1997 | 1996-2008 | 1996-2008 |
| Individual rights | | −0.041 | | 0.053 |
| | | (0.047) | | (0.054) |
| Individual (ref. business) | 0.114*** | 0.050 | 0.107*** | 0.010 |
| | (0.029) | (0.040) | (0.040) | (0.063) |
| Interest group (ref. business) | 0.035 | 0.043 | 0.017 | 0.016 |
| | (0.061) | (0.062) | (0.068) | (0.067) |
| State institution (ref. business) | 0.037 | 0.034 | 0.092 | 0.091 |
| | (0.045) | (0.045) | (0.065) | (0.065) |
| Other (ref. business) | 0.033 | 0.041 | −0.105 | −0.100 |
| | (0.063) | (0.065) | (0.111) | (0.111) |
| Net support from MS observations | 0.088*** | 0.088*** | 0.056*** | 0.057*** |
| | (0.009) | (0.010) | (0.008) | (0.009) |
| The validity of an EU law is in question | −0.120*** | −0.115*** | −0.083 | −0.087 |
| | (0.038) | (0.038) | (0.062) | (0.061) |
| Defendant is ... an individual (ref. business) | −0.082* | −0.066 | −0.021 | −0.025 |
| | (0.045) | (0.046) | (0.069) | (0.072) |
| ... interest group (ref. business) | −0.024 | −0.032 | 0.026 | 0.007 |
| | (0.068) | (0.069) | (0.099) | (0.096) |
| ... state institution (ref. business) | −0.003 | −0.010 | 0.058 | 0.066 |
| | (0.034) | (0.034) | (0.043) | (0.043) |
| ... other type of actor (ref. business) | 0.003 | −0.014 | 0.023 | 0.005 |
| | (0.047) | (0.048) | (0.094) | (0.095) |
| Difference in legal team size | 0.002 | 0.004 | −0.0004 | −0.001 |
| | (0.010) | (0.010) | (0.012) | (0.012) |
| Difference in lawyer experience | −0.002 | −0.002 | 0.001 | 0.002 |
| | (0.002) | (0.002) | (0.002) | (0.002) |
| Source | | 0.144** | | 0.109 |
| | | (0.066) | | (0.091) |
| Fixed effects for iteration of interpretation | Yes | Yes | Yes | Yes |
| Observations | 3,608 | 3,608 | 2,512 | 2,512 |
| $R^2$ | 0.054 | 0.059 | 0.060 | 0.067 |
| Adjusted $R^2$ | −0.006 | −0.001 | −0.037 | −0.030 |
| *Note:* | | | | *p<0.1; **p<0.05; ***p<0.01 |

in the case.

Table 10: Summary statistics of case-level data

| Statistic | Min | Pctl(25) | Mean | Median | Pctl(75) | Max | N |
|---|---|---|---|---|---|---|---|
| company_applicant | 0 | 0 | 0.49 | 0 | 1 | 1 | 6,143 |
| individual_applicant | 0 | 0 | 0.33 | 0 | 1 | 1 | 6,143 |
| ngo_applicant | 0 | 0 | 0.05 | 0 | 0 | 1 | 6,143 |
| state_institution_applicant | 0 | 0 | 0.14 | 0 | 0 | 1 | 6,143 |
| other_applicant | 0 | 0 | 0.04 | 0 | 0 | 1 | 6,143 |
| written_applicant | 0 | 1 | 0.77 | 1 | 1 | 1 | 6,143 |
| n_appearances_applicant | 0 | 0 | 3.27 | 1 | 2 | 198 | 6,143 |
| n_lawyers_applicant | 0 | 1 | 1.45 | 1 | 2 | 25 | 6,143 |
| win | 0.00 | 0.00 | 0.45 | 0.33 | 1.00 | 1.00 | 3,335 |
| ind_rights | 0 | 0 | 0.32 | 0 | 1 | 1 | 6,143 |
| press_release | 0 | 0 | 0.22 | 0 | 0 | 1 | 4,080 |
| n_annotations | 0 | 1 | 6.17 | 3 | 8 | 160 | 6,143 |
| n_annotations_CMLR | 0 | 0 | 0.08 | 0 | 0 | 3 | 6,143 |
| small | 0 | 0 | 0.24 | 0 | 0 | 1 | 6,143 |
| medium | 0 | 0 | 0.50 | 1 | 1 | 1 | 6,143 |
| large | 0 | 0 | 0.25 | 0 | 1 | 1 | 6,143 |
| n_iteration | 1 | 1 | 31.33 | 4 | 22 | 465 | 5,928 |
| observations_prop_tot | 0.00 | 0.04 | 0.10 | 0.08 | 0.14 | 0.93 | 6,143 |
| company_defendant | 0 | 0 | 0.25 | 0 | 1 | 1 | 6,143 |
| individual_defendant | 0 | 0 | 0.12 | 0 | 0 | 1 | 6,143 |
| ngo_defendant | 0 | 0 | 0.03 | 0 | 0 | 1 | 6,143 |
| state_institution_defendant | 0 | 0 | 0.57 | 1 | 1 | 1 | 6,143 |
| other_defendant | 0 | 0 | 0.07 | 0 | 0 | 1 | 6,143 |
| written_defendant | 0 | 0 | 0.51 | 1 | 1 | 1 | 6,143 |
| n_appearances_defendant | 0 | 0 | 1.61 | 0 | 1 | 209 | 6,143 |
| n_lawyers_defendant | 0 | 0 | 0.90 | 1 | 1 | 14 | 6,143 |