

COURTS

Comparative Politics

Guillermo Toral

IE University

What we'll cover today

- Constitutions

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- Constitutions
- Judicial review

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- Constitutions
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- Judicial selection

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- Research design assignment

Constitutions

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- Constitutions **typically establish the structure, procedure, powers, and duties of governmental institutions**. More recent constitutions also include a list of **guaranteed rights**.
- Constitutions can be seen as **meta-norms**, i.e. norms about how norms are produced, interpreted, and enforced

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 - **Regardless of amendment procedures, constitutional law is constantly subject to re-interpretation**, and political conflicts around interpretation are common

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 - Higher law constitutions are entrenched, have a system of fundamental rights, and a system of constitutional justice

Constitutions vary in duration, length, ambition, rigidity

<i>Feature</i>	<i>Examples</i>
Oldest still in use	Britain (1215), United States (1789), Norway (1814), Netherlands (1815), Belgium (1831).
Newest	Thailand (2017), Côte d'Ivoire (2016), Nepal (2015).
Average age in 2015	17 years.
Shortest	Iceland, Laos, Latvia, Japan (each 4,000–5,000 words).
Longest	India (146,000 words), Nigeria (66,000 words).
Least amended	United States (27 in nearly 230 years).
Most amended	Mexico (nearly 230 changes in a century), India (101 in just over 70 years).
States with the fewest constitutions to date	Australia, Belgium, Britain, Canada, India, Netherlands, Norway, United States (one each), among others.
States with the most constitutions to date	Dominican Republic (32), Venezuela (26), Haiti (23), Ecuador (20).
States with uncoded constitutions	Canada, Britain, Israel, New Zealand, Saudi Arabia.

Judicial review

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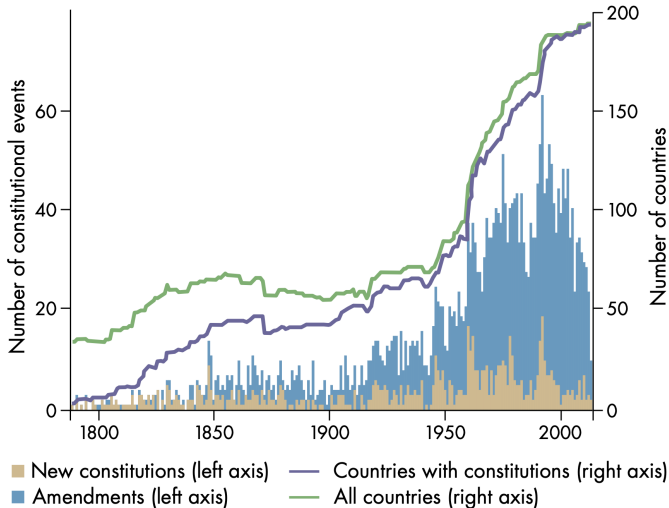
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- New constitutionalism also refers to **the growing norm that this combination is desirable and preferable** to alternatives

Creation and amendments of constitutions

Number of countries with constitutions and number of constitutional events, 1789–2013



When constitutions are written

Constitutions typically emerge in times of large-scale political crisis

<i>Cause</i>	<i>Examples</i>
Regime change	Break-up in the 1990s of the Soviet Union, Yugoslavia, and Czechoslovakia, and of Sudan in 2011.
Wholesale political change	Bolivia (2009), Kenya (2010), Zimbabwe (2013), and Tunisia (2014).
Post-war reconstruction	Japan after 1945, Iraq after 2005.
Independence	Much of Africa in the 1950s and 1960s, or the 15 republics created by the break-up of the Soviet Union in 1991.

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- Constitutional assemblies are often extraordinary assemblies of elected representatives
- In some cases, particularly after international defeat or under occupation, the process is largely influenced by external actors
- While assemblies often count with input from legal scholars, civil society organizations, interest groups, etc., the final product is eminently political, as it results from the **bargains among political elites**

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- Constitutional review can be seen as a way to address that incomplete nature of constitutional contracts

Political rationales for establishing judicial review and effective courts

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- Political actors may establish courts as a way to protect their own basic interests (e.g., political and or ethnic survival) when they are in the opposition

Judicial review: Dimensions of variation

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 - Decentralized – not one court has the monopoly over constitutional review

Judicial review: Two main models

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 - Generally abstract review

These two models are only ideal types

TABLE 15.5

The Geographic Distribution of Different Models of Constitutional Justice, 2010

Region	American model	European model	Mixed	Other	None
Europe	5	33	3	1	2
Africa	13	28	1	7	2
Middle East	2	5	0	3	0
Asia and Southeast Asia	19	15	2	10	0
North America	2	0	0	0	0
Central America and South America	13	8	8	1	0
Total	54	89	14	22	4

Judicial review: Between restraint and activism

Activity	Judicial Role	
	Restraint	Activism
Precedent	Adhere/Defer to Existing Precedent	Overturn/Distinguish Existing Precedent
Judicial Review	Uphold Legislation Defer to Elected Branches	Overturn Legislation
Statutory Interpretation	Fill Gaps Consistent with Legislative Intent	Rewrite/Expand/Contract Statutory Provisions
Constitutional Interpretation	Narrow/Consistent with Broad Principles Judicial Interpretation	Broad Interpretation Rewrite Provisions Judicial Legislation

Why judges matter for politics

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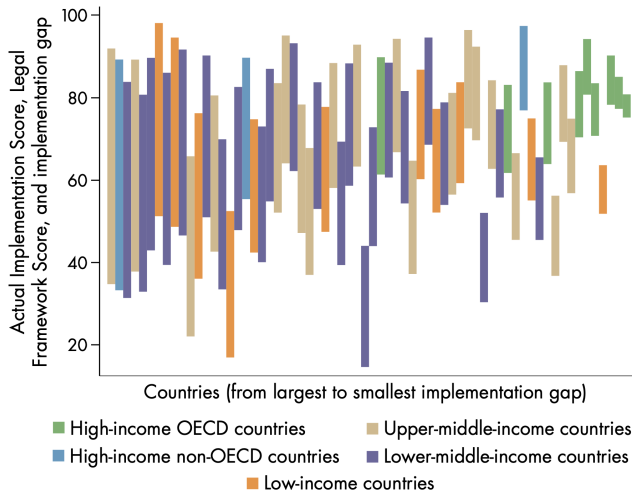
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 - Constitutional controversies among powerful actors ultimately resolved within the system rather than outside it
- Ultimately, the judicial system operates through **a specialized legal bureaucracy**, where judges and justices are the most important decision makers

Judges and justices can narrow or widen the gap between law and practice, *de jure* and *de facto* rights

Laws 'on the books' versus legal implementation (World Bank data)



Courts can promote economic development:

Observational design

A **study** by Voigt et al. on judicial independence and economic growth:

Hypothesis: *De facto* (and not *de jure*) judicial independence leads to economic growth

Design: Cross-country correlations, controlling for confounders

Data: Cross-section of 124 countries scored on judicial independence based on objective indicators

Courts can promote development: Observational design

A **study** by Voigt et al. (2021, EJPE) on the association between judicial independence and economic growth, using an observational design (*cross-country correlations*)

Table 3
Judicial independence and economic growth.

	(1)	(2)	(3)	(4)	(5)	(6)
Initial income	-0.069*** (0.020)	-0.069** (0.020)	-0.074*** (0.020)	-0.074*** (0.020)	-0.078*** (0.024)	-0.095*** (0.023)
Education	0.008 (0.015)	0.008 (0.015)	0.006 (0.014)	0.006 (0.014)	0.009 (0.017)	0.011 (0.015)
Investment	0.128*** (0.023)	0.128*** (0.023)	0.126*** (0.022)	0.127*** (0.023)	0.137*** (0.027)	0.131*** (0.026)
Transition country	-0.218 (0.407)	-0.213 (0.409)	-0.181 (0.399)	-0.177 (0.401)	-0.239 (0.488)	-0.113 (0.571)
De jure JI		-0.213 (0.929)		-0.154 (0.910)	0.076 (1.094)	-0.768 (0.936)
De facto JI			1.286* (0.566)	1.283* (0.569)	1.119 (0.676)	1.341* (0.577)
Population growth						-0.132 (0.207)
Trade openness						-0.004 (0.004)
Government size						0.006 (0.020)
Inflation rate						-0.004* (0.002)
Constant	0.172 (0.447)	0.291 (0.685)	-0.546 (0.540)	-0.459 (0.748)	-0.690 (0.903)	0.354 (1.067)
Outlier dummies	YES	YES	YES	YES	NO	YES
Observations	104	104	104	104	104	102
Adjusted-R ²	0.459	0.453	0.481	0.476	0.221	0.486

Note: OLS coefficient estimates, standard errors in parentheses, *, p < 0.05, **, p < 0.01, ***, p < 0.001. Coefficient estimates on dummies for China, DR Congo, and Trinidad & Tobago omitted. Cook's D of the influence of each variable above order for (5): 0.156, 0.089 and 0.112.

Courts can promote development: Quasi-experimental design

A **study** by Chemin (2021, JPE) on judicial reforms and constraints on the executive:

Theory: A stronger judiciary can constrain the executive and promote development

Hypothesis: Reforms to increase access and quality of courts benefit unconnected groups more than connected groupss

Design: Difference-in-differences, analyzing the differential effect of judicial reforms implemented by foreign-aid programs on politically connected versus unconnected groups

Data: 36 African countries, 183 judicial reforms, 180k+ survey respondents

Courts can promote political development: Quasi-experimental design

A **study** by Chemin (2021, JPE) on the association between judicial independence and economic growth, using data from 183 judicial reforms in 36 African countries and a quasi-experimental design (*difference-in-differences*) comparing impacts for members of different ethnic groups

Table 3
Effects of Judicial Reforms on Constraints on the Executive.

	(1) President Never Ignores Courts	(2) Officials Unpunished	(3) Corrupt President	(4) Corrupt Officials
Judicial Reform	0.10** (0.05)	-0.40*** (0.05)	-0.20** (0.09)	-0.19*** (0.06)
+ Unconnected	0.03 (0.05)	0.11** (0.05)	-0.09 (0.08)	-0.06 (0.04)
Judicial Reform	-0.11** (0.04)	0.07 (0.04)	0.23*** (0.08)	0.12* (0.06)
Unconnected	-0.05 (0.05)	0.05 (0.12)	0.20*** (0.06)	0.07 (0.06)
Judicial Reform	0.01 (0.06)	-0.09 (0.20)	-0.14 (0.10)	-0.11 (0.07)
+ Pre				
Judicial Reform * Pre				
+ Unconnected				
Observations	103,634	101,032	104,184	112,651
Country FE	YES	YES	YES	YES
Year FE	YES	YES	YES	YES
Mean Dep. Var.	0.412	1.604	1.227	1.381
(SD)	0.492	1.044	0.896	0.773

Robust standard errors, clustered at the level of the country. *** Significant at 99 percent confidence-interval, ** Significant at 95 percent confidence-interval, * Significant at 90 percent. In Column (1), the dependent variable is a dichotomous variable equal to 1 if the president never ignores the courts and laws, 0 otherwise (i.e., if the president ignores the courts and laws always, often, or rarely). The variable "Judicial Reform" is a dichotomous variable equal to 1 if the country experienced a comprehensive judicial reform in between waves $t - 1$ and t of the Afrobarometer dataset, and 0 otherwise. The variable "Unconnected" is a dichotomous variable equal to 1 if the ethnic group is powerless, discriminated, or irrelevant, 0 if the ethnic group has a monopoly, or is dominant, a senior or junior partner. The variable "Judicial Reform*Unconnected" is the interaction between the two variables. The variable "Judicial Reform*Pre" is a dichotomous variable equal to 1 if the country experienced a judicial reform in between waves t and $t + 1$ in country j . The variable "Judicial Reform*Pre*Unconnected" is the interaction between "Judicial Reform*Pre" and "Unconnected". All regressions include country and year fixed effects. In Column (2), the dependent variable is answers to the question "In your opinion, how often do officials who commit crimes go unpunished?" (0 = Never, 1 = Rarely, 2 = Often, 3 = Always). In Column (3), the dependent variable is answers to the question "How many of the President/Prime Minister and Officials in his Office do you think are involved in corruption?" (0 = None, 1 = Some of them, 2 = Most of them, 3 = All of them). In Column (4), the dependent variable is answers to the question: "How many of the President/Prime Minister and local government councilors do you think are involved in corruption?" (0 = None, 1 = Some of them, 2 = Most of them, 3 = All of them).

Courts can promote social development

A **study** by Chemin (2021, JPE) on the association between judicial independence and economic growth, using data from 183 judicial reforms in 36 African countries and a quasi-experimental design (*difference-in-differences*) comparing impacts for members of different ethnic groups

Table 4
Effects of Judicial Reforms on Economic Outcomes.

	(1) Improvement in Economic Conditions	(2) Future Economic Conditions	(3) Satisfied with Democracy
Judicial Reform * Unconnected	0.20** (0.08)	0.16 (0.10)	0.17* (0.09)
Judicial Reform	0.01 (0.14)	-0.01 (0.18)	-0.09 (0.07)
Unconnected	-0.18** (0.09)	-0.19* (0.11)	-0.14** (0.07)
Judicial Reform * Pre	-0.05 (0.16)	-0.03 (0.24)	-0.22** (0.08)
Judicial Reform * Pre * Unconnected	-0.08 (0.12)	-0.08 (0.20)	0.03 (0.09)
Observations	121,342	108,766	113,352
Country FE	YES	YES	YES
Year FE	YES	YES	YES
Mean Dep. Var. (SD)	2.860 1.094	3.401 1.224	2.478 1.041

Robust standard errors, clustered at the level of the country. *** Significant at 99 percent confidence-interval, ** Significant at 95 percent confidence-interval, * Significant at 90 percent. In Column (1), the dependent variable is the answer to the question "Looking back, how do you rate the economic conditions in this country compared to twelve months ago?" (1 = Much worse, 2 = Worse, 3 = Same, 4 = Better, 5 = Much better).

Judicial selection

How are the judges and justices that make the system work selected?

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- A combination of the above

Selection methods for top-court justices in a sample of countries

	Number of judges	Tenure	Process
China	13	5-year terms, limit of two	Appointed by legislature
Germany	16	Single 12-year term; age limit 68	Elected by legislature; need two-thirds majority
India	31	No fixed terms; age limit 65	Appointed by president on recommendation of Chief Justice and four senior judges
Italy	15	Single 9-year terms	Five appointed by the President, five elected by Parliament, and five elected by other courts
Nigeria	21	No fixed terms; age limit 70	Appointed by president on recommendation of National Judicial Council, and confirmed by Senate majority
Russia	19	Single 12-year terms	Nominated by president, confirmed by majority in Federation Council
United Kingdom	12	No fixed terms; age limit 70 or 75 depending on age on appointment	Appointed by monarch on advice of prime minister after nomination by selection commission
United States	9	Lifetime	Nominated by the president, confirmed by majority in Senate

Removing executive discretion over judicial selection can improve the rule of law

A **study** by Mehmood (2022, AEJ) on judicial selection in Pakistan:

Theory: political selection of judges is detrimental to the rule of law

Hypothesis: judges selected by the president are more likely to issue sentences favoring the state

Design: Quasi-experimental - sudden policy reform, from presidential to judicial selection of justices, and instrumental variable using variation in share of justices retiring (at 62) in each court

Data: 8,500 cases heard by Pakistani high courts in 1986-2019.
Outcomes: state wins, measures of quality

Removing executive discretion over judicial selection can improve the rule of law

From a **study** by Mehmood (2022, AEJ) on the effect of a reform of judicial selection in Pakistan, using a quasi-experimental design (*instrumental variables*)

TABLE 3—IMPACT OF CUMULATIVE PEER APPOINTMENTS ON STATE WINS

	OLS		2SLS, second stage	
	(1)	(2)	(3)	(4)
<i>Panel A. Ordinary least squares and second-stage least squares results</i>				
	State wins			
Cumulative peer appointments from 2010 to 2019	-0.224 [0.0429]	-0.179 [0.0446]	-0.276 [0.0530]	-0.225 [0.0606]
District-year fixed effects	Yes	Yes	Yes	Yes
Bench and case controls	No	Yes	No	Yes
Observations	8,446	8,446	8,446	8,446
R ²	0.137	0.143	0.136	0.143
Mean of dependent variable	0.482	0.482	0.482	0.482
<i>Panel B. First-stage results</i>				
	Cumulative peer appointments from 2010			
Cumulative mandatory retirements from 2010 to 2019			0.666 [0.0613]	0.652 [0.0620]
District-year fixed effects			Yes	Yes
Case and bench controls			No	Yes
Observations			8,446	8,446
R ²			0.881	0.883
F-statistic (Montiel Olea and Pflueger 2013)			118.270	110.679

Notes: Robust standard errors appear in brackets (clustered at district bench level). The dependent variable is state wins, a dummy variable for the case being ruled in favor of the state. “Cumulative peer appointments from 2010 to 2019” is the fraction of cumulative appointments on a given district bench from 2010 onward. “Cumulative mandatory retirements from 2010 to 2019” is the fraction of mandatory retirements on a given district bench as predicted by age structure in 2010. These variables are plotted in Figure C3 of online Appendix C. The first-stage results corresponding to columns 3 and 4 appear in panel C. The second-stage results are well above both the rule of thumb of 10 and the threshold of 23 derived by Montiel Olea and Pflueger (2013) for 10 percent potential

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TABLE 4—SELECTION REFORM AND DECISION QUALITY

	Case delay (1)	Merit (2)	Correct decisions (3)	Process followed (4)
Retirements in 2010 × post 2010	−0.878 [0.387]	0.215 [0.0396]	0.191 [0.0515]	0.425 [0.127]
District-year fixed effects	Yes	Yes	Yes	Yes
Case and bench controls	Yes	Yes	Yes	Yes
Observations	8,446	8,446	8,446	8,446
R ²	0.218	0.141	0.098	0.080
Mean of dependent variable	3.354	0.627	0.469	3.314

Notes: Robust standard errors appear in brackets (clustered at district bench level). In column 1 the dependent variable is case delay, i.e., the difference between filing and decision year. In column 2 it is a dummy variable for the case being ruled on the merits or evidence. In column 3 the dependent variable is a dummy variable for the case being judged as correct by legal experts. In column 4 the dependent variable is a rating from one to five on decision quality. “Retirements in 2010” is the fraction of judges who retired in 2010. “Post 2010” is the fraction of cases decided after 2010.

Judicial behavior

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- **Strategic:** Judges consider the preferences of other actors, what they think others will do, and what the institutional environment is when making decisions

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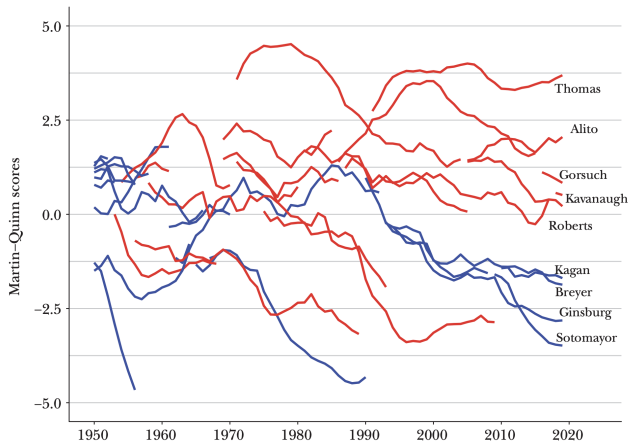
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- Judges often **need other powerful actors to collaborate for decisions to be enforced** (especially in high-level cases including subnational governments, government agencies, etc.), and may adapt decisions to avoid un-enforcement

Judges' ideas and world-views matter too

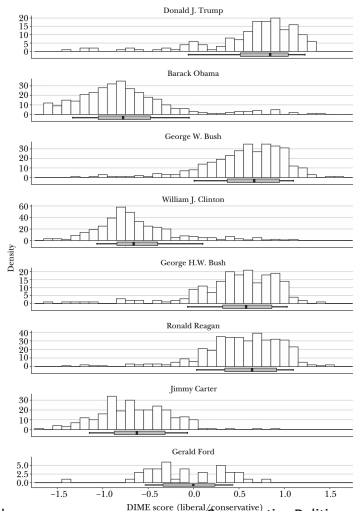
From a **research project** measuring US Supreme Court justices' ideology using their positions



Judges' ideas and world-views matter too

From a **study** by Bonica & Sen (2021, JEP) measuring US federal judges' ideology using campaign contributions

Ideological Distributions of Judges Appointed by Presidential Administrations



Judges' ideas and world-views matter too

A **study** by Ash et al (2025, QJE) on the effect of conservative economics training on the behavior of US federal judges, using a quasi-experimental design (*event study*)

Theory: Ideology shapes judicial behavior

Hypothesis: Mann economics training affected the direction of judicial rulings of federal judges

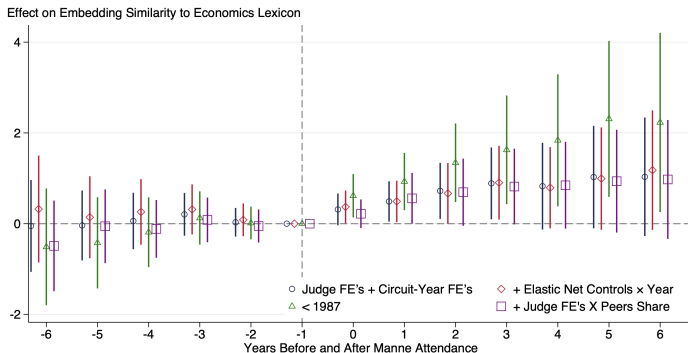
Design: Event study design exploiting the fact that judges did the training at different points in time – essentially comparing sentences of participating judges before and after the training

Data: content and direction of sentences

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Figure III: Effect of Manne Program on Economics Language

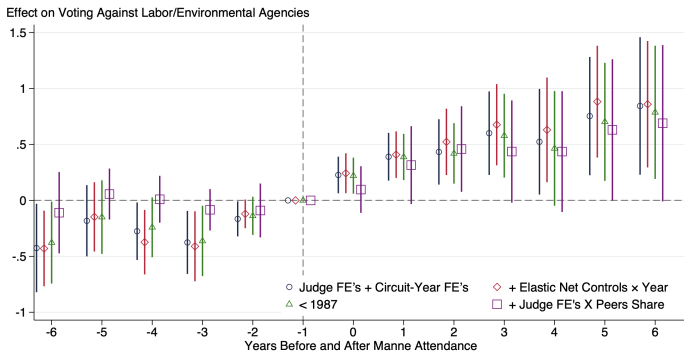


Notes. Event study effect of Manne attendance on Word Embedding Similarity to Law-and-Economics Lexicon (from Ellickson, 2000). Sample is limited to case authors. Regressions include judge and circuit-year fixed effects (blue circles), with additional specifications adding elastic-net-selected controls interacted with year fixed effects (red diamonds), limiting to the pre-1987 period (green triangles), and adding peer share controls interacted with judge fixed effects (purple squares). Observations are weighted to treat judge-years equally. Error spikes give 95% confidence intervals, with standard errors clustered by judge.

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Figure IV: Effect of Manne Program on Votes Against Labor/Environmental Agencies



Notes. Event study effects on voting against government agency on labor and environmental issues, relative to year before attendance at Manne economics training. Regressions include judge and circuit-year fixed effects (blue circles), with additional specifications adding elastic-net-selected controls interacted with year fixed effects (red diamonds), limiting to the pre-1987 period (green triangles), and adding peer share controls interacted with judge fixed effects (purple squares). Observations are weighted to treat judge-years equally. Error spikes give 95% confidence intervals, with standard errors clustered by judge.

Research design assignment

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