

COURTS

Comparative Politics

Guillermo Toral

IE University

What we'll cover today

- Constitutions

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- Judicial review

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- Judicial selection and behavior

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 it abound

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.

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

Judicial review

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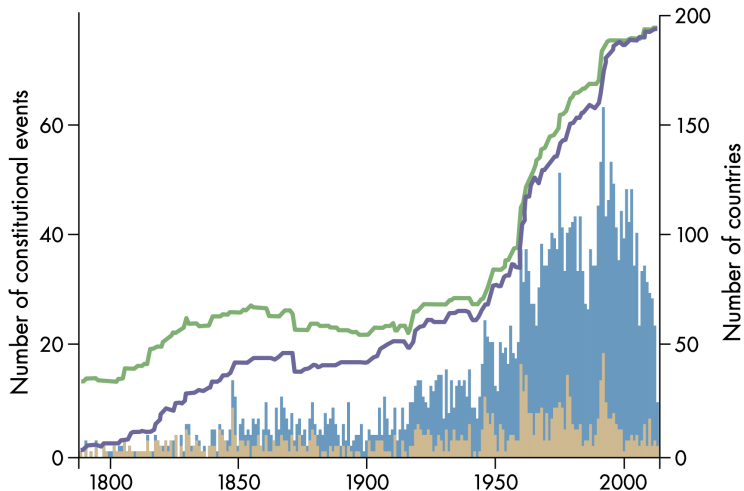
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- New constitutionalism also refers to the norm that this combination is desirable and preferable to alternatives

Creation and amendments of constitutions in the last 250 years

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



Constitutions typically emerge in political crises

<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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- In some cases, particularly after international defeat or under occupation, the process is largely influenced by external actors

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

Judicial review: Two main models

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 - 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 selection and behavior

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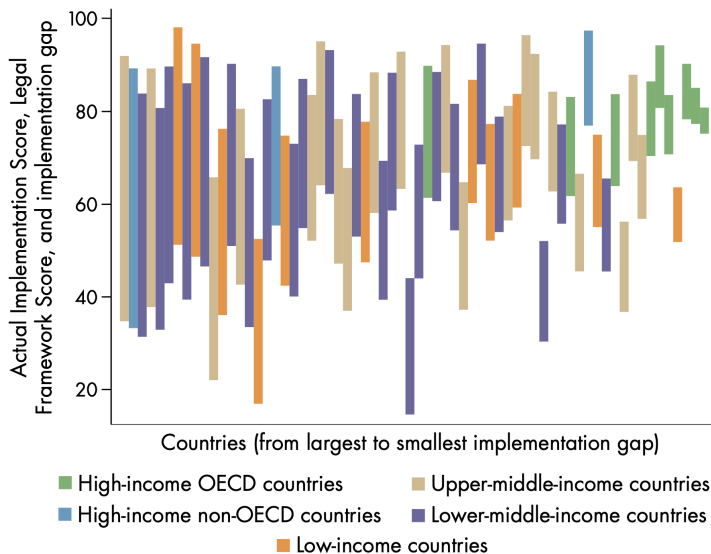
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- Ultimately, the judicial system operates through **a specialized legal bureaucracy**, where judges and justices are the most important decision makers

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



The judicial system plays a major role in economic development

Cross-country correlations suggest de facto judicial independence is associated with economic growth

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 influential observations in the above order for (5): 0.156, 0.089 and 0.112.

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- A combination of the above

Selection methods for top-court justices

	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

Mechanisms for political capture and biases in judicial behavior

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- Corporatism

Removing executive discretion over judicial selection can reduce progovernment rulings

From a **study** 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 correspond to the first column of the first-stage results in the online Appendix C.

Removing executive discretion over judicial selection can improve quality of rulings

From a **study** on the effect of a reform of judicial selection in Pakistan, using a quasi-experimental design

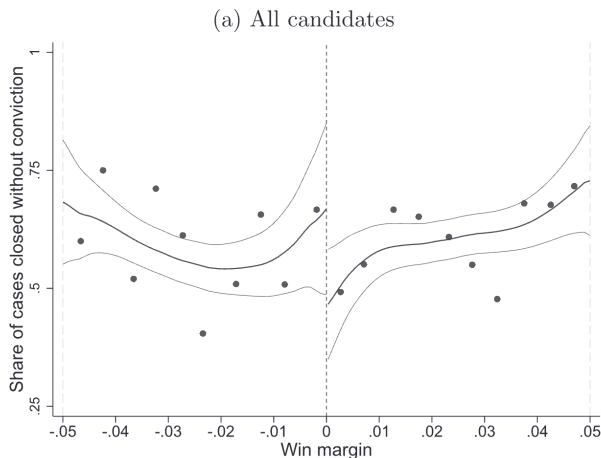
TABLE 4—SELECTION REFORM AND DECISION QUALITY

	Case delay (1)	Merit (2)	Correct decisions (3)	Process followed (4)
Retirements in 2010 \times 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 mandatory retirements on a given district bench in reform year 2010. “Post 2010” is a dummy for the post-reform period. The controls include all case and district bench characteristics shown in Table 1. The case controls also include case type fixed effects.

But there can be pro-politician bias even with tenured judges selected by chief justices

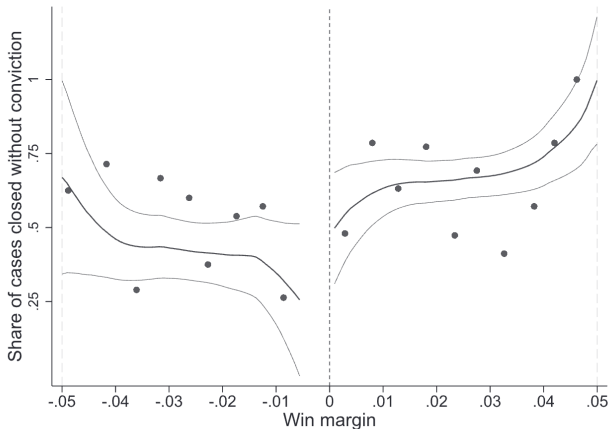
From a **study** on politicians' convictions by Indian state courts, using a quasi-experimental design (*regression discontinuity*)



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(b) Ruling party candidates



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TABLE 3 Effect of Winning Office on the Likelihood of a Pending Criminal Case Being Closed without Conviction: Discontinuity Sample

	(1)	(2)	(3)	(4)	(5)
A. All Candidates					
Winner	0.026 (0.044)	0.024 (0.040)	0.041 (0.074)	-0.010 (0.054)	0.029 (0.092)
Observations	1,210	1,184	450	442	1,210
Dependent variable mean	0.597	0.598	0.580	0.588	0.597
B. New Ruling Party Candidates					
Winner	0.248** (0.077)	0.201** (0.066)	0.266* (0.103)	0.162 [†] (0.090)	0.241 [†] (0.137)
Observations	345	335	141	140	345
Dependent variable mean	0.591	0.588	0.603	0.600	0.591
C. Not Ruling Party Candidates					
Winner	-0.049 (0.049)	-0.041 (0.044)	-0.049 (0.093)	-0.049 (0.069)	-0.044 (0.111)
Observations	865	849	309	302	865
Dependent variable mean	0.599	0.602	0.570	0.583	0.599
Controls	-	✓	-	✓	-
Control function	-	-	-	-	Linear
Bandwidth	5	5	2	2	5

Notes: New ruling party candidates refers to candidates belonging to the party of the new chief minister. Robust standard errors clustered at the district level are in parentheses.

[†] $p < .1$, * $p < .05$, ** $p < .01$.

Control over material welfare can bias judicial decisions

From a **study** on the effect of house allocations on pro-government decisions in Pakistan, using a quasi-experimental design (*difference-in-differences*)

Table 1. *Impact on State Wins by the Type of Government.*

	(1)	(2)	(3)	(4)	(5)	(6)
	State victories					
	Disputes with the federal government			Disputes with the local government	Disputes with the state government	
House Allotted	0.288*** [0.0924]	0.277*** [0.0890]	0.312*** [0.0949]	0.263*** [0.0807]	0.0940 [0.0791]	0.0780 [0.0657]
Judge and year FEs	Yes	Yes	Yes	Yes	Yes	Yes
Controls	No	Yes	Yes	Yes	Yes	Yes
State-by-year FEs	No	No	Yes	No	No	No
District-by-year FEs	No	No	No	Yes	Yes	Yes
Observations	857	857	857	857	1,675	1,815
R ²	0.376	0.421	0.490	0.565	0.506	0.446
Mean of the dependent variable	0.520	0.520	0.520	0.520	0.487	0.472

Notes: This table explores the effect of house allocation on government victories by the type of government. Specifically, it presents estimates of coefficient β from (1) with state victories as the outcome variable. The outcome variable is *State Wins*, a case-level dummy that takes the value of one if the State wins in the case and zero otherwise. Columns (1) to (4) estimate a progressively saturated model with varied fixed effects in cases pertaining to the federal government. Column (5) estimates (1) for cases involving the local government, and column (6) for the state or provincial government. Controls include the number of pages of the judgement order, the presence of the chief justice on the bench, the number of judges on the case, the number of lawyers on the case and dummies for the type of cases. The unit of analysis is at the case level for this table. All columns always include judge, year and district court-by-year fixed effects. SEs are reported in brackets and are clustered at the judge level. *** $p < 0.01$.

Control over material welfare can bias judicial decisions

From a **study** on the effect of house allocations on pro-government decisions in Pakistan, using a quasi-experimental design (*difference-in-differences*)

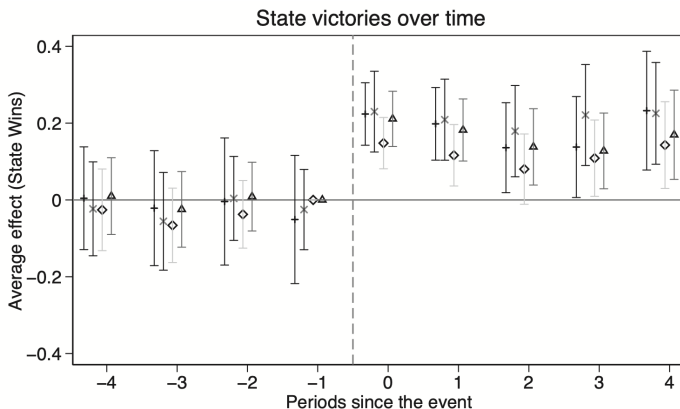
Table 2. *Impact of House Allocation on Case Merits in Rulings against the Federal Government.*

	(1)	(2)	(3)	(4)
	Case merits			
House Allotted	−0.308*** [0.0890]	−0.311*** [0.0876]	−0.331*** [0.0986]	−0.263*** [0.0842]
Judge and year FEs	Yes	Yes	Yes	Yes
Controls	No	Yes	Yes	Yes
State-by-year FEs	No	No	Yes	No
District-by-year FEs	No	No	No	Yes
Observations	857	857	857	857
R ²	0.359	0.370	0.437	0.507
Mean	0.620	0.620	0.620	0.620

Notes: This table explores the effect of house allocation on government victories and meritorious decisions. Specifically, it presents estimates of coefficient β from (1). Case merits is the dependent variable that takes the value of one if the decision is 'based on evidence rather than technical or procedural grounds'. *House Allocated* is a binary variable that turns on for a particular judge in the year when the judge receives the real estate. Controls include the number of pages of the judgement order, the presence of the chief justice on the bench, the number of judges on the case, the number of lawyers on the case and dummies for the type of cases. The estimates from the baseline equation with judge, year and district-court-by-year fixed effects are reported in column (4). SEs are reported in brackets and are clustered at the judge level. The regressions are estimated on the sample presented in column (3) of Table 1, specifically focusing on cases involving citizens and the federal government. *** $p < 0.01$.

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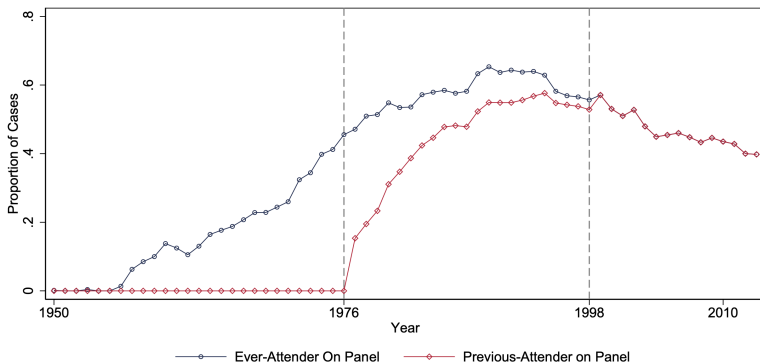
+ Borusyak et al.
× Callaway-Sant'Anna
◇ Sun-Abraham
△ TWFE

Comparative Politics
12. Courts

Judges' ideas and world-views matter too

From a **study** on the effect of conservative economics training on the behavior of US federal judges, using a quasi-experimental design (*difference-in-differences*)

Figure I: Share of Cases with Manne Judge on Panel, 1950-2013

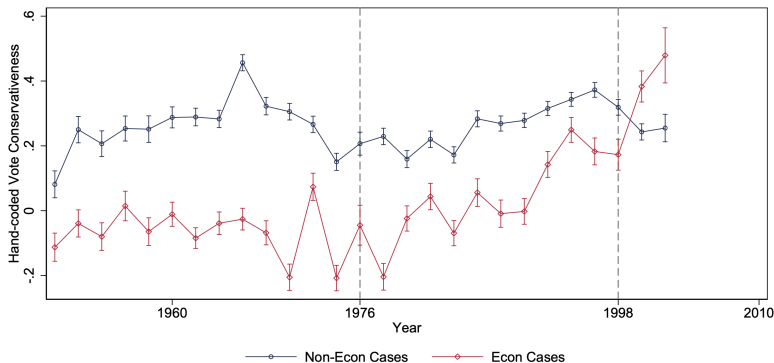


Notes. Share of cases with a Manne judge on the panel, plotted by year. Blue line gives judges who ever attended; red line gives judges who have already attended.

Judges' ideas and world-views matter too

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Figure II: Increasingly Conservative Rulings in U.S. Federal Courts

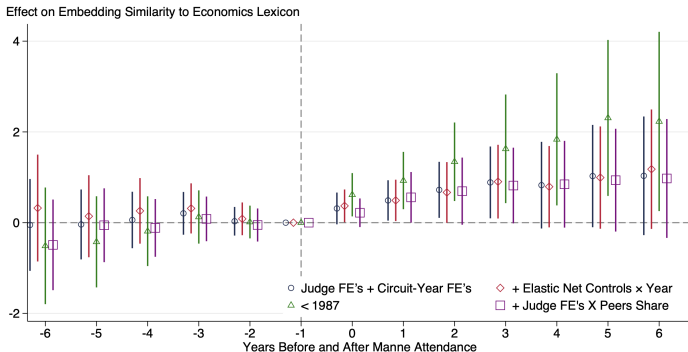


Notes. Average conservative vote rate in circuit courts using 5% hand-coded Songer Auburn data, plotted by year and separately by economics and non-economics cases. Error spikes give standard error of the mean. Data weighted to treat judge-years equally.

Judges' ideas and world-views matter too

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Figure III: Effect of Manne Program on Economics Language

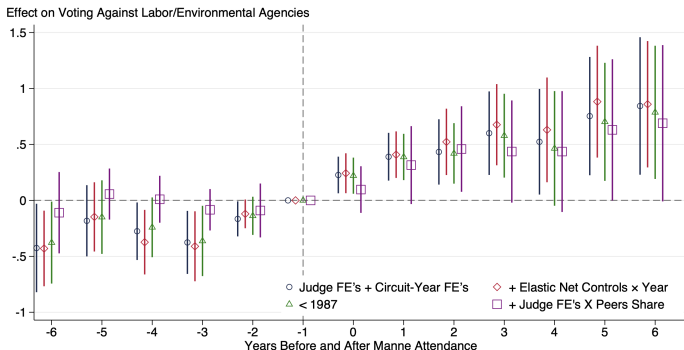


Notes. Event study effect of Manne attendance on Word Embedding Similarity to Law-and-Economics Lexicon (from [Ellickson, 2000](#)). Sample is limited to case authors. Regressions include judge and circuit-year fixed effects (blue circles), with additional specifications adding elastic-net-selected controls 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.

Judges' ideas and world-views matter too

From a **study** on the effect of conservative economics training on the behavior of US federal judges, using a quasi-experimental design (*difference-in-differences*)

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.

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- **Make progress on your research design**