

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
- Judicial review
- Judicial selection

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- Research design assignment

Constitutions

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- 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 issues of interpretation are everywhere

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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

Feature	Examples
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 uncodified constitutions	Canada, Britain, Israel, New Zealand, Saudi Arabia.

Judicial review

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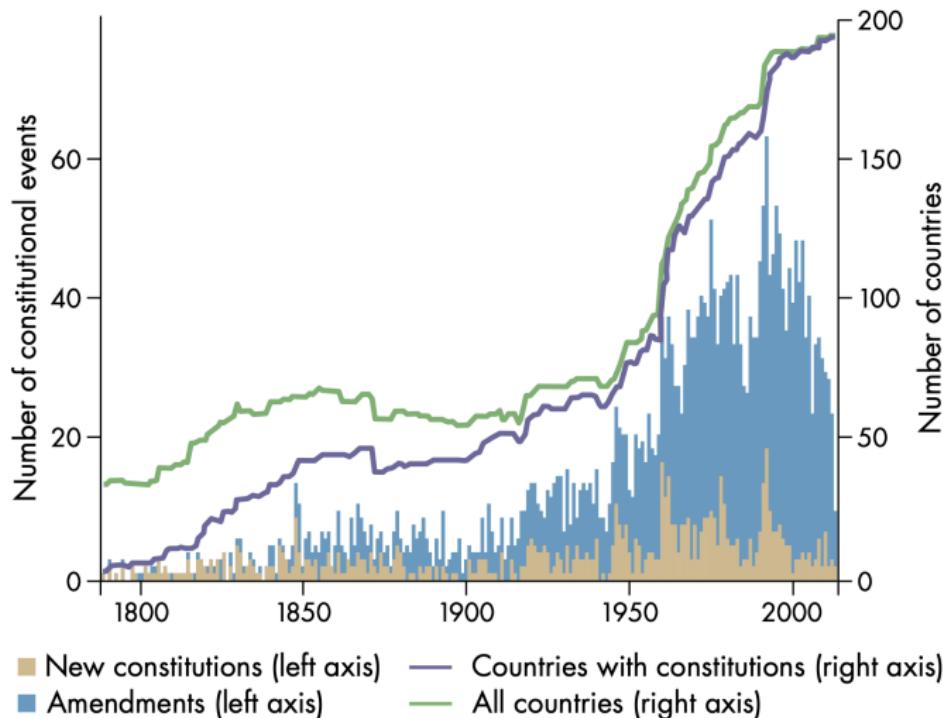
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- New constitutionalism also refers to **the growing norm that this combination is desirable and preferable** to alternatives

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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- 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 the political elites involved**
- 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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- 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

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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 review: Between restraint and activism

Judicial Role		
Activity	Restraint	Activism
Precedent	Adhere/Defer to Existing Precedent	Overtake/Distinguish Existing Precedent
Judicial Review	Uphold Legislation Defer to Elected Branches	Overtake 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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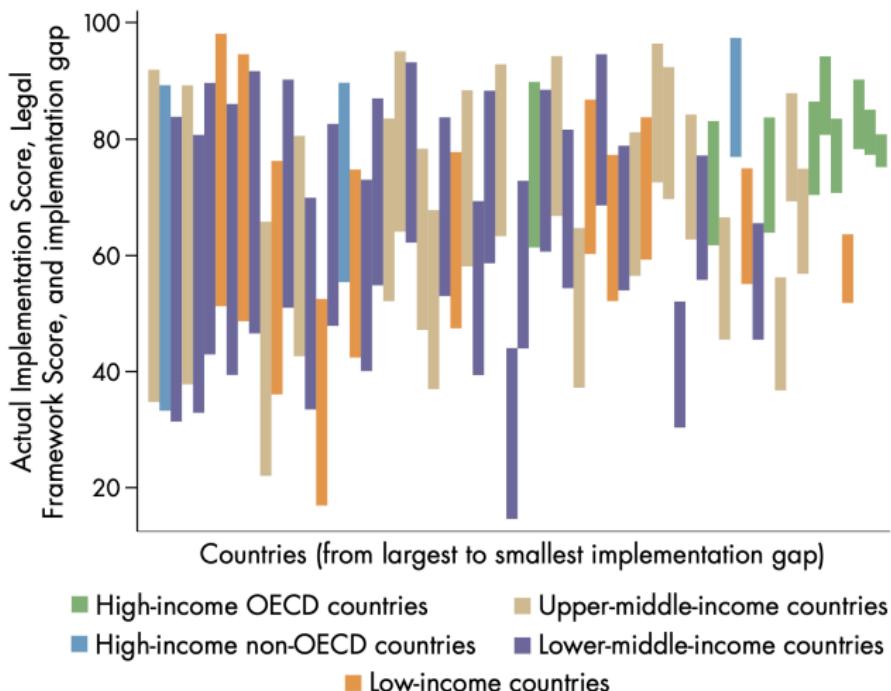
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- Ultimately, the judicial system operates through **a specialized legal bureaucracy**, where judges and justices are the most important decision makers

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



Sources: WDR 2017 team, based on data from World Bank, World Development Indicators (database), 2015, and Global Integrity (database), 2012.

Courts can promote economic development

From a **study** 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 JL		-0.213 (0.929)		-0.154 (0.910)	0.076 (1.094)	-0.768 (0.936)
De facto JL			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.

Courts can promote political development

From a **study** 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 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 government officials 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

From a **study** 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)	(2)	(3)
	Improvement in Economic Conditions	Future Economic Conditions	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.	2.860	3.401	2.478
(SD)	1.094	1.224	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,

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

	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 reduce pro-government bias in 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 (1)	OLS (2)	2SLS, second stage (3)	2SLS, second stage (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 B. The F-Statistics on the first-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 bias, 5 percent significance, and clustered standard errors. The controls include all case and district bench characteristics shown in Table 1. The case controls also include case type fixed effects.

... while improving the 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 × 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.

Mandatory retirement of judges may improve judicial output...

From a **study** on the effect of mandatory retirement reforms in US state supreme courts...

Table 1: Judge Retirement Rules and Reforms by State

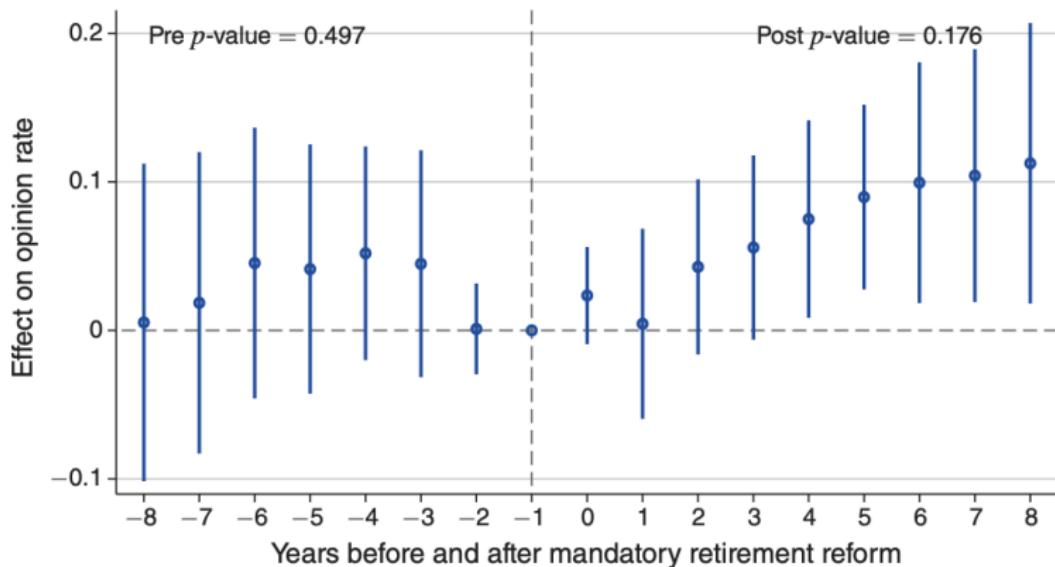
<u>A. Status Quo Rules at Period Start (1947)</u>	
Retirement Rule	List of States
No Max Age	AR, CA, DE, GA, ID, KY, ME, MS, MT, ND, NE, NM, NV, OK, RI, TN, WI, WV, VT*
Retirement at Age 70	AK, HI, LA, MD, MA, MI, MO, NH, NJ, NY, OH
Retirement at Age 72	NC, SC
Retirement at Age 75	IL, IN, TX, UT

<u>B. Retirement Rule Changes, 1948-1993</u>		
Retirement Age		List of States (with Year Enacted)
Before	After	
None	70	AL (1973), AZ (1992), CT (1974), FL (1972), MN (1973), PA (1968), VA (1970), WI (1955), WY (1972)
None	72	CO (1962), IA (1965)
None	75	KS (1993), OR (1960), TX (1948), WA (1952)
70	None	WI (1984)

Mandatory retirement improves judicial output...

From a **study** on the effect of mandatory retirement reforms in US state supreme courts, using a quasi-experimental design (*difference-in-differences*)

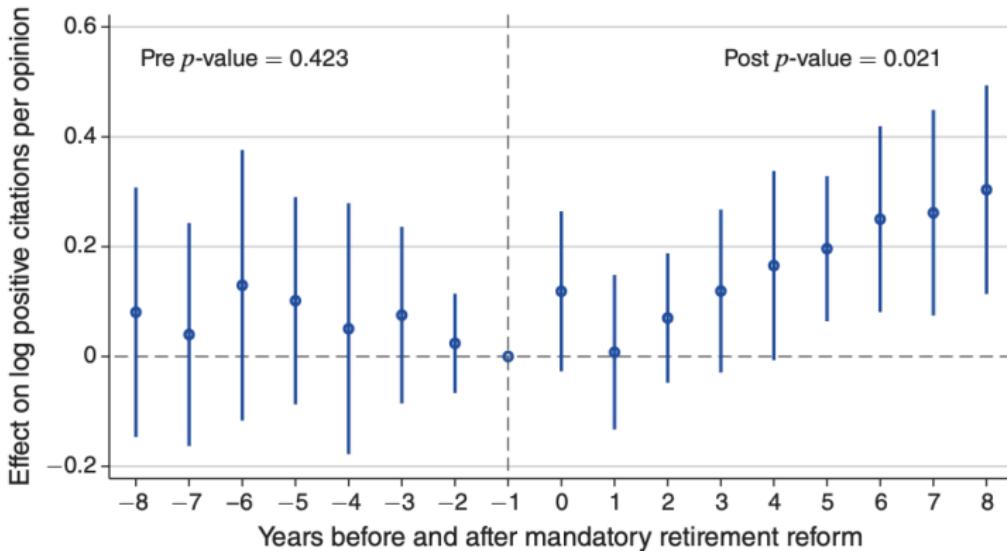
Panel B. Effect on quantity: log authored opinions per case



... and quality

From a **study** on the effect of mandatory retirement reforms in US state supreme courts, using a quasi-experimental design
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Panel C. Effect on influence: log positive citations per opinion



Judicial behavior

There are multiple approaches to examining 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

While legal criteria are paramount, there's good evidence judges' decisions are partly shaped by strategy and politics

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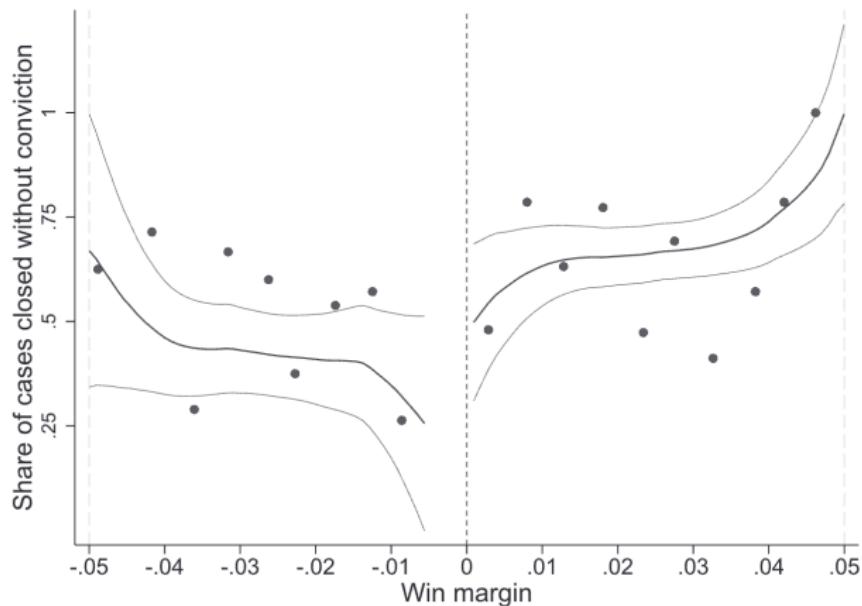
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 - Politicians, higher-level justices, and the public can influence judicial careers
- Judges often **need other powerful actors to collaborate for decisions to be enforced** (especially in high-level cases including subnational governments, government agencies, etc.), and may adapt decisions to avoid un-enforcement

Tenured judges selected by other judges can also have pro-incumbent bias

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

(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.

* $p < .1$, ** $p < .05$, *** $p < .01$.

Politicians can (try to) capture courts through material inducements

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. *** $p < 0.01$.

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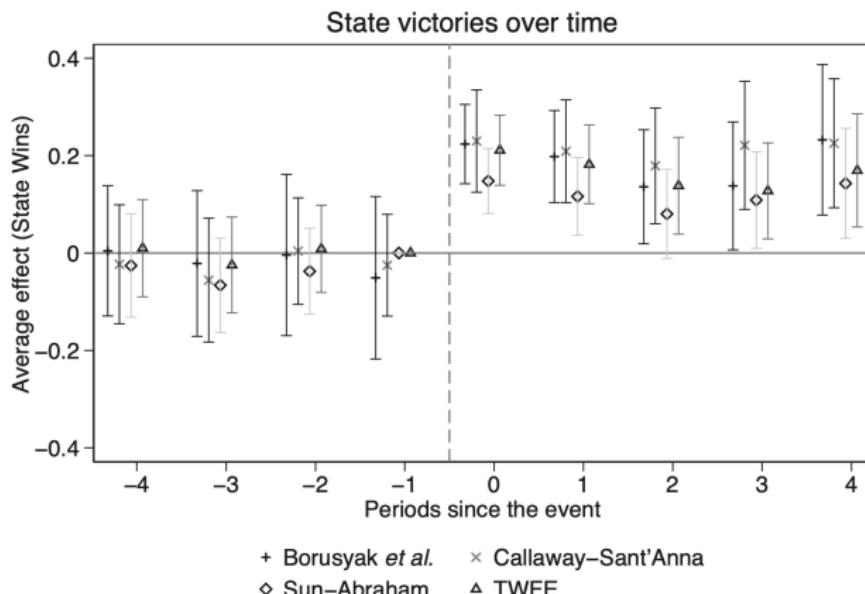
Table 2. *Impact of House Allocation on Case Merits in Rulings against the Federal Government.*

	(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. *** $p < 0.01$.

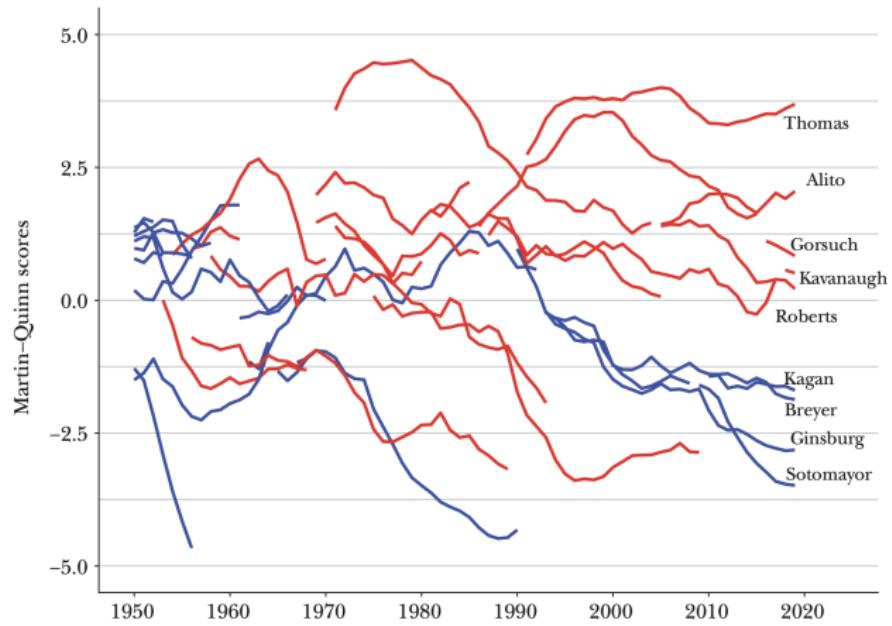
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Judges' ideas and world-views matter too

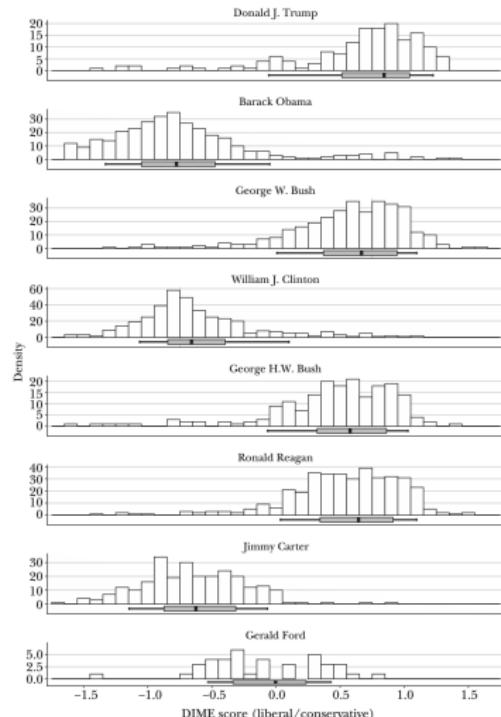
From a **research project** measuring US Supreme Court justices' ideology using their positions



Judges' ideas and world-views matter too

From a **study** measuring US federal judges' ideology using campaign contributions

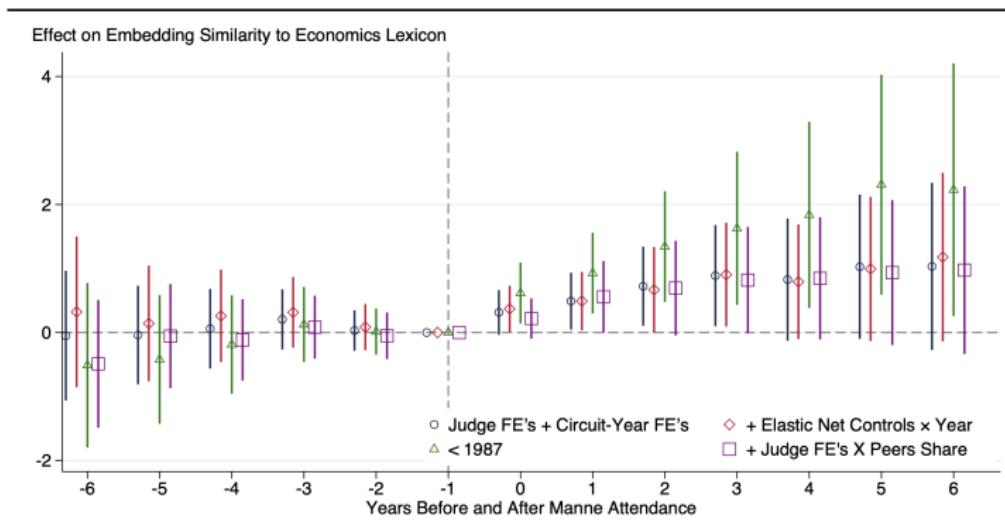
Ideological Distributions of Judges Appointed by Presidential Administrations



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 III: Effect of Manne Program on Economics Language

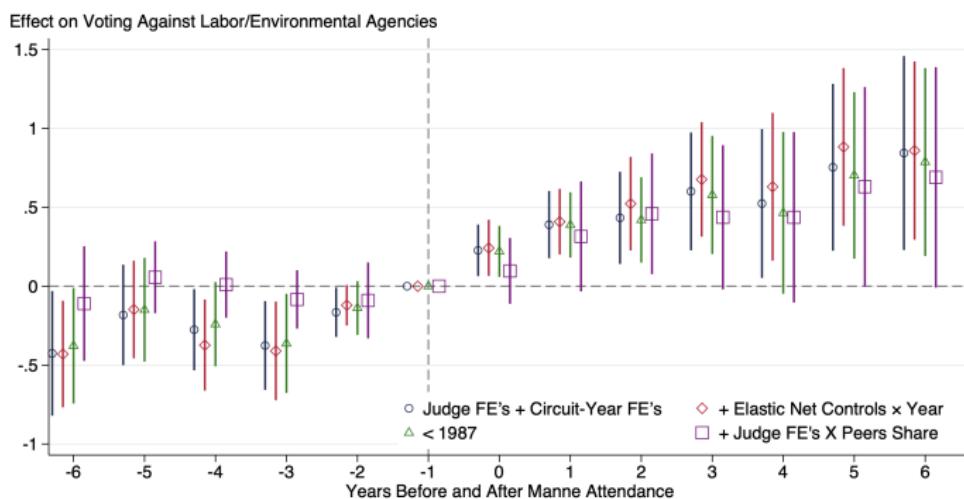


Notes. Event study effect of Manne attendance on Word Embedding Similarity to Law-and-Economics Lexicon (from Ellickson, 2000). Sample is limited to case authors. Regressions include judge and circuit-year fixed effects (blue circles), with additional specifications adding elastic-net-selected controls 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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6. Find, read, and engage with previous academic studies on the topic (use Google Scholar and focus on top political science journals such as APSR, AJPS, JOP, BJPS, ARPS, CPS, WP)

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