

“Intrinsic Motivation in Public Service:
Theory and Evidence from State Supreme
Courts” by Elliott Ash and Bentley Macleod

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Research Questions

Do judges have intrinsic motivations?

- Generations of Social/Moral Preferences:
 - homo oeconomicus (own material consequences)
 - 'social' preferences (own & others' material consequences, e.g., pure altruism)
 - consequentialism (social audience, e.g., impure altruism)
 - duty (internal audience)
- Little evidence outside the lab
- ⇒ New database of 1 million state supreme court (SSC) decisions from 1947 to 1994

What were the effects of various reforms?

- Introduction of:
 - intermediate appellate courts (full discretionary review vs. limited discretion)
 - changes in judicial salary (annual changes range from 5 to 15%)
 - changes in term length (ranging from 2 to 20)
 - changes in electoral incentives (partisan vs. non-partisan vs. uncontested)
- Quality measured as # and length of opinions, # of forward and backward citations
- ⇒ Reduction in time pressure increases quality, especially when judges have more discretion

Prior Literature

Policies

- Cross-sectional and very small sample (handful of years) or structural (handful of states)
- $\Rightarrow$ employs differences-in-differences within states and within judges

Legal Realism models

- Public sector incentives (effects of salaries, of election, of term limits, of managerial autonomy)
- $\Rightarrow$ Extends legal realist model to allocation of time
- Task juggling (Coviello, Ichino, Persico AER and JEEA 2014) exploits lottery assigning cases to Italian judges working cases in sequence or in parallel: juggling causally lowers their productivity

Theory

Time allocation model across leisure, judging, and outside activities (campaigning, fund-raising, writing books, guest lecturing)

- Time is “income” and budget-constraint is in terms of time
- Cobb-Douglas utility: $\prod_i U(T_i, \alpha_i)^{\beta_i}$
- Assume preference parameters β_i are unaffected by reforms
- Reforms affect only price or “util-effectiveness of time” α_i
- The more effective is a unit of time spent, the more time spent (substitution effect)
- $\Rightarrow$ Electoral competition increases util-effectiveness of time spent on outside activity and reduces time spent on judging
- $\Rightarrow$ Judicial income reduces util-effectiveness of time spent on outside activity and raises time spent on judging
 - Marginal value of outside activities could increase due to desire to retain office

Theory

Judging sub-problem with discretionary vs. mandatory review

- $V_J = V_0 + d_J N_J \int_0^\infty V(t(\gamma), \gamma) f(\gamma) h(\gamma) d\gamma + (1 - d_J) N_J \int_0^\infty V(t(\gamma), \gamma) f(\gamma) d\gamma$
- V_0 : prestige, γ : complexity, legal significance, difficulty
- d_J : fraction of caseload with discretion, $h(\gamma)$: fraction of cases chosen to be heard
- $f(\gamma)$: distribution of cases (identical for discretionary and mandatory)
- $\frac{\partial V}{\partial \gamma} > 0$ (**intrinsic utility**), $\frac{\partial^2 V}{\partial \gamma \partial t} > 0$, $\frac{\partial^2 V}{\partial t \partial t} > 0$
- $\Rightarrow$ Increase in discretion d_J reduces time constraint, which lets judges spend time on preferred cases, but it also has “income effect”, which reduces total time in judging
 - Shadow price of time falls, but utility increases, so ambiguous net effect on MU of additional judging time
- $\Rightarrow$ Increase in caseload results in more high-value cases, which lets judges spend time on preferred cases, but also has “income effect”

Theory

Judging sub-problem with discretionary vs. mandatory review

- $f(\gamma)$: distribution of cases (is it identical for discretionary and mandatory? what about death penalty?)
- $\frac{\partial^2 V}{\partial \gamma \partial t} > 0$ (difficulty of case can erode util-effectiveness of time spent?)
- $\frac{\partial^2 V}{\partial t \partial t} > 0$ (no room for expertise?)
- Increase in caseload results in more high-value cases (or more marginal cases?)
- Prestige reduces time allocated to judging (Should judicial income be similar to prestige, in the model?)

Identification Strategy

$$\log(1 + Y_{ist}) = TIME_t + JUDGE_i + STATE_s \times t + \bar{Z}'_{st}\bar{\rho} + Z'_{ist}\rho + \varepsilon_{ist}$$

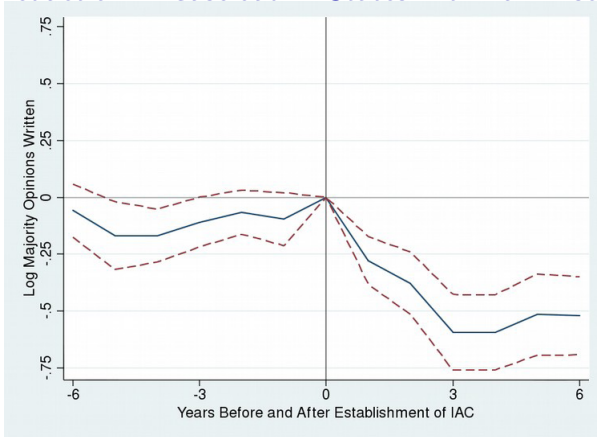
- Z'_{ist} : Introduction of Appellate Court (IAC); Change in Term Limits; Change in Electoral System; Wages; Electoral Proximity
- Z'_{ist} interacted with discretion
- $\bar{Z}'_{st}$: time windows of ten years before or after policy change
- Clustered standard errors at state level
- Top & bottom five quality cases to examine shift in composition of cases under discretionary review

Results (IAC)

- Introduce of appellate courts reduced caseload (if it was accompanied with discretionary review)
- Various measures of case quality increase (especially if it was accompanied with discretionary review)

Results (IAC)

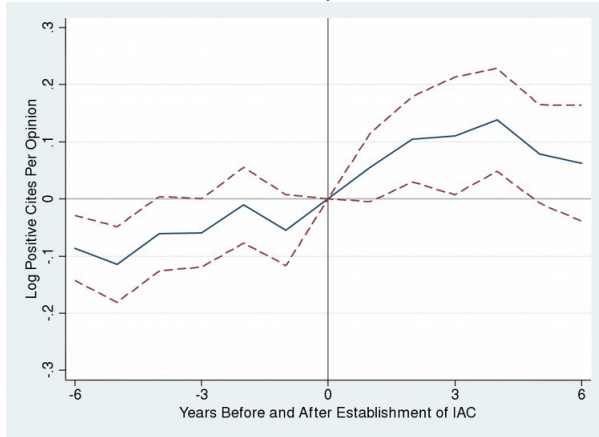
Reduction in Caseload in States with Full Discretion



Treatment Effect

Results (IAC)

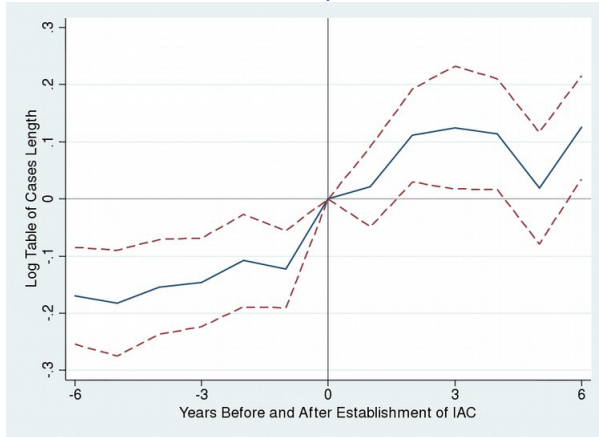
Increase in Case Quality (# of positive forward citations)



Pre-trend

Results (IAC)

Increase in Case Quality (# of backward citations)



Pre-trend

Identification

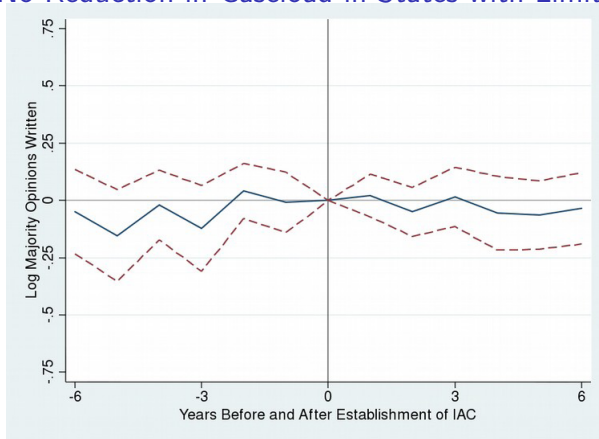
- Graphics suggest some pre-trend
- Judicial Quality: # of words and # of citations could reflect changing norms
- No sharp break with introduction of IAC
- In addition, # of subsequent citations could be higher because of the existence of intermediate appellate courts making these citations

Alternative Measure

- Judicial Quality
 - Remove citations by IACs
 - What about appeal, cert, and reversal by the U.S. Supreme Court?
 - How about measures of network centrality invariant to # of subsequent cases?

Results (IAC)

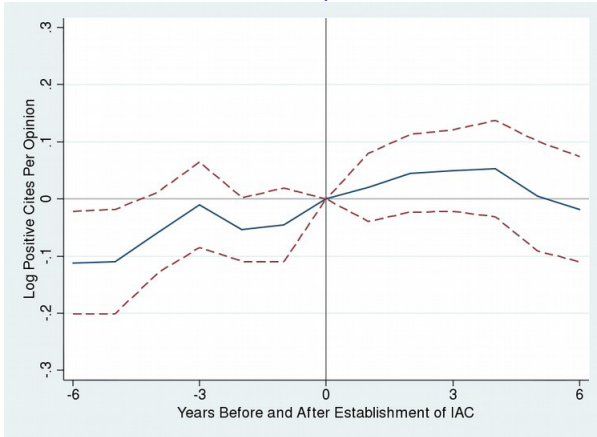
No Reduction in Caseload in States with Limited Discretion



No Treatment

Results (IAC)

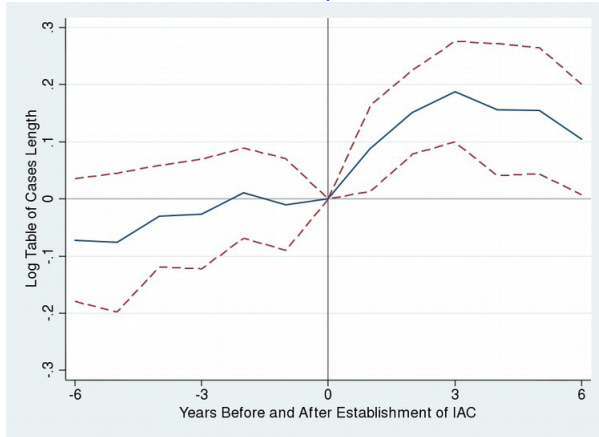
Increase in Case Quality (# of positive forward citations)



Pre-trend

Results (IAC)

Increase in Case Quality (# of backward citations)



Some treatment effect

Mechanism

- Are the cases filed changing? (Are there ex ante characteristics of cases, e.g., characteristics as determined by the lower courts)
- Are the opinions more well-researched because the briefs filed by lawyers have more citations?
- Law clerks have more time as well even if clerk selection process remains constant

Specification Sample

- Unclear: What happens to data for judges who don't serve the entire 20-year time window before and after a reform?
- It sounds like they are dropped. "This ten-year-window specification accomodates the average career length of SSC judges; having a longer effect window would give too much weight to the handful of judges who work on the court for many years"
- Average term length is 12 years: does this mean most of the sample is tossed?
- Describe sample balance?
- What about either an extremely short time window or first-differences?

Results (term length, salary)

- Tends to be beneficial with discretion
 - Always show pre-trends?
 - Unclear: Is the indicator for discretion turned on even before IAC is introduced?

Mandatory vs. Discretionary Review

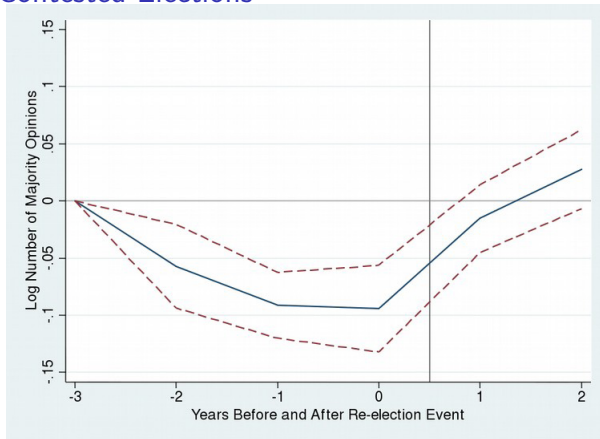
- Many results show differences in the interaction with type of review.
- More detail?
- For example, in fiscal year 2005-2006, the California Supreme Court received 5591 petitions and granted review in only 3% of them. (Eisenberg and Miller 2009)
- New York Court of Appeals “decided 961 motions for leave to appeal in civil cases” and granted only 6.4% of them.
- How categorized? Many analyses do full vs. limited discretion and mandatory
 - rather than any discretion vs. mandatory.
- Other state-level controls in interaction with reform?

Sensitivity

- Some specifications have very few states: term length increase has 5 states
 - with and without clustering, choose the more conservative standard error (Angrist and Pischke 2009)

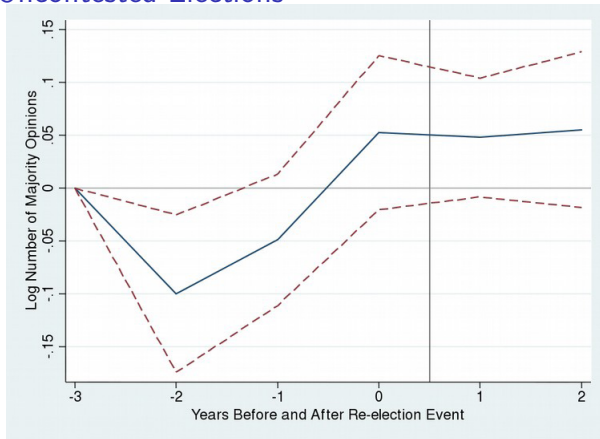
Results (Electoral Proximity)

Contested Elections



Results (Electoral Proximity)

Uncontested Elections



Control

- Does electoral competition only affect outside activity; what if it affects judging itself (reduced collegiality)
- Election coded as 1 regardless of whether the judge actually ran for election (why?)
- Is discretionary review a joint decision?
- If judges choose to spend more time on high-valued cases, who gets low-valued cases?

Control

- How is authorship of cases allocated?
- What if colleagues assign less complex cases to colleagues running for election?
- Is authorship/responsibility for cases randomly or rotationally assigned?
- How is case timeline decided? Can judges defer authoring cases until after an election?
- How is publication determined? Settlement
- Is it intrinsic motivation to work on prestigious cases or to finish cases as quickly as possible?

Results (Type of Election)

- Moving from nonpartisan to uncontested: tenure system increases performance for nonpartisan judges
- Moving from partisan to uncontested: tenure decreases performance for partisan-selected judges
- Moving from partisan to nonpartisan: decreases performance
 - Helpful to see pre-trends

Sensitivity

- How is truncation of citation data dealt with? Is it lifetime citations or citations within 15 years?
- Judges' per-case citations rather than per-year citations?
- Judge-specific time trends
- Judge experience interacted with treatment

Summary

- Great Paper
- New database of 1 million state supreme court (SSC) decisions from 1947 to 1994
- Reduction in time pressure increases quality, especially when judges have more discretion
- Employs differences-in-differences within states and within judges
- Extends legal realist model to judicial allocation of time