

Topics in Judicial Politics: “Judging Myths”

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American Politics Undergraduate Seminar (POLS UN3921.003, Fall 2023)

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Course Description

Our theme this year is myths of judging, courts, and law. These are common but not necessarily true claims about how judges make decisions and the role of courts. One set of myths sees judges as unbiased applicers of neutral law, finding law and never making it, with ideology, biography, and politics left at the courthouse door. Another set of myths sees the judiciary as the “least dangerous branch,” making law, not policy, without real power or influence. These myths are created about and by judges.. They are part of our political discourse and scholarly debate.

*Law, says the judge as he looks down his nose,
Speaking clearly and most severely,
Law is as I've told you before,
Law is but let me explain it once more,
Law is The Law.*

W. H. Auden

Lord Chancellor:
*The Law is the true embodiment
Of everything that's excellent
It has no kind of fault or flaw
And I, my Lords, embody the Law*

W. Gilbert

*We're nine judicial gentlemen who shun the common herd,
Nine official mental men who speak the final word.
We do not issue postage stamps or face the microphones,
Or osculate with infants, or preside at corner-stones,
But we're the court of last resort in litigation legal
(See: Case of Brooklyn Chicken vs. Washington Blue Eagle);
We never heed the demagogues, their millions and their minions,
But use this handy yard-stick when in doubt about opinions:*

[Chorus]

*If it's In the Constitution, it's the law
For the Constitution is without a flaw
If it's In the Constitution it's okay,
Whether yesterday, tomorrow, or today- Hooray!
If it's In the Constitution, it must stay.
Like oysters in our cloisters, we avoid the storm and strife,
Some President appoints us, and we're put away for life.
When Congress passes laws that lack historical foundation,
We hasten from a huddle and reverse the legislation.
The sainted Constitution, that great document for students,
Provides an air-tight alibi for all our jurisprudence.
So don't blame us if now and then we seem to act like bounders,
Blame Hamilton and Franklin and the patriotic founders.*

A. Lippmann. “Song of the Supreme Court.”

Goals

We will judge these myths about judging and courts. We'll evaluate the state of the American judiciary as part of our political system and American democracy.

You will also learn more about how to read and critique contemporary social science. While no particular background is required, you must be willing to think carefully and deeply about each of the arguments we read. You will learn more about evaluating research designs for causal inference and what makes for good theorizing. This focus on design and methods can seem secondary to substantive import – but the import depends on whether we believe the arguments and evidence to be sound in the first place. This can be frustrating to those wanting to jump into normative and substantive debates about findings. But we shouldn't “put the cart before the horse”... sometimes even published research is missing the cart and all but the end of the horse.

Office Hours

General Policies

Policies on academic integrity can be found at [Faculty Statement on Academic Integrity](#). A guide for undergraduates at [Columbia University Undergraduate Guide to Academic Integrity](#). Our policy on disability accommodations can be found at [Faculty Statement on Disability Accommodations](#). Recording in class is not permitted without explicit prior consent.

Course Requirements

These are readings, participation, reaction papers, and a research project, with a proposal, presentation, and final paper. Your grade will based on:

- 30% Participation
- 30% Reaction papers (three)
- 5% Research paper proposal
- 5% Research paper presentation
- 30% Research paper (final)

Schedule

One organizational meeting (Week 0)

One lecture on foundations, with readings (Week 1)

Three units, three topics each, with readings and seminar discussion (Weeks 2-10)

Two student presentation discussion days (Weeks 11-12)

September 7 Week 0

September 14 Week 1

Myths of Law vs. Ideology

September 21 Week 2

September 28 Week 3

October 5 Week 4

Myths of “Blind Justice”

October 12 Week 5

October 19 Week 6

October 26 Week 7

Myths of Judicial Power

Nov. 2 Week 8

Nov. 9 Week 9

Nov. 16 Week 10

Myths of Doctrine

Nov. 30 Student presentations

Dec. 7 Student presentations

Participation

The class is conducted in seminar format and so attendance is, of course, required. All students should (at a minimum) complete all required readings and be prepared to discuss them. This means reading enough advance of class to leave time to formulate questions and thoughts. Occasionally, discussion questions might be given in advance and you should be prepared to address them. You should typically prepare your own discussion questions. The grade will depend primarily on the quality of informed contributions.

The first weeks will involve some lecture material, as will occasional topics later when our discussions require some teaching about research design or substantive background material.

But this is primarily a seminar for what we learn to come out of our discussions of the material, with you all dominating that discussion, not me.

I hope you will bring stories from the news or other sources about courts and judges and legal cases to class. I will do so, discussing current events or historical ones. Even without planning this out, even from what happens in any one semester, I'm positive you will see the surprising breadth and reach of judicial politics into the many aspects of our lives.

You should also feel free to post or ask questions on Courseworks, to identify concepts for which you need clarification, to get more information to prime our discussion, or to continue discussions. This is a supplemental form of participation to that in class.

Readings

All readings on the schedule are required unless listed under “recommended.” Some are straightforward “textbook-like” readings, some are works written for a more general audience, and some are works of advanced political science that will take additional time to work through and digest. Optional recommended readings are provided for those wishing more background, additional takes, or extensions on the topic. Book excerpts and more will be under files on Courseworks. Articles are available online if not there. Many recommended readings are in a miscellaneous folder on Courseworks in case you want to browse. The reading load is HEAVY in both quantity and complexity, and I take your obligation to come prepared very seriously. You should read ahead when possible, since some weeks have heavier reading loads than others. In compensation, there is no reading the last two weeks of class, when you will be working on your research papers and presentations.

You should take notes on the readings, organizing your thoughts before class. What is the argument or question of this paper? Why do we care? Why is it hard? What did they do? How strong is the research design? What is the evidence? What did we learn? What is missing?

Reaction Papers

Students will complete three short (3-5 page) reaction papers, each responding to or assessing part of that week's readings. You must do one within Weeks 2-4, within Weeks 5-7, and within Weeks 8-10. You will sign up for specific weeks in advance. These papers will be due electronically on Courseworks Wednesdays at noon the day before class. These papers should avoid excessive summarization (they should assume the reader has themselves done the reading). Rather, they should pursue an original argument, synthesis, or extension. Successful papers usually do one or more of the following: challenge a central claim made by an author; offer an alternative interpretation of evidence; identify an important oversight and reflect upon how this

affects conclusions or substantive import; explain how and why a reading challenges or confirms previous week's readings; connect in more than superficial detail the papers contents to specific examples of interest; argue how the readings "fail to synthesize"; etc. Those writing such papers will lead our weekly discussion, and so papers should include or end with discussion questions. If you send me such questions in advance, I'll try to offer suggestions or edits. There will be a sign-up sheet for choosing weeks.

Research Paper

Myth? Doctrines are neutral legal tools

Due Dec. 14 (Thursday noon) on Courseworks. Each student is required to complete a long research paper on the politics of a legal "doctrine." You will assess the myth that doctrines are neutral legal tools, of neutral origin, of neutral application. You will examine a doctrine created, used, and/or applied by the courts. You should lay out its origins and the "politics" of it – this could include: how it is used, what discretion the judges have, whether it shows signs of being used instrumentally or politically or ideologically, how it affects an area of policymaking or politics, how it has changed over time, how its construction was set by the politics of its day, etc. You should connect the course materials to your discussion, rather than simply give a brief legal history – use the paper to interrogate the "myths" we will have discussed. Your specific argument should be more explicit than "a paper on doctrine X." Some potential examples of "doctrines" will be listed in a separate document. (You can also specify an approach that varies somewhat from the above, with explicit permission.)

Note that I use "doctrine" here in a rather broad and loose sense, including a legal test, rule, standard, balancing test, doctrinal element, approach, conceptual device, principle, or framework for dealing with some substantive issue(s). Your paper will not be on the substantive issue itself, but your interests could guide you to specific doctrinal elements related to that issue (and only that issue or others as well). The substantive issue can be contextual, but I would not, for example, want you to explore all doctrines used in abortion decisions, with abortion politics the connective tissue. Those doctrines not obviously political or non-neutral might make for the most interesting papers in which to explore judicial politics! Browse law reviews, read the news, google wildly. Surprise me and teach me, please.

Proposal

You should get started on choosing a topic as soon as possible. A short proposal is due October 20th (Friday, 5pm) on Courseworks. It is very important to turn in a proposal on time, even one consisting of multiple rough incomplete ideas. You will be allowed to revise it. Your grade on the proposal will be based on your initial submission and further developments. The proposal should include at least the following four elements, each under clearly identifiable headings:

1. A clear thesis statement or question.
2. A rough outline of the key parts of the paper or the process to develop the paper.
3. An explanation of the type of evidence or material that you intend to examine in support of your argument, with some examples.
4. A preliminary annotated bibliography of at least three potential sources in addition to others as needed. These three should be formal or academic sources, though there might be additional materials such as news articles. Each source must be followed by a 1-3 sentence summary of that work and its relevance.

Presentation

You will present your preliminary work on your topic one of the last two weeks of class, explaining to your fellow students (and me) what you have learned to date, what we should know about the politics of the doctrine you are studying, and get feedback for finishing your paper.

Paper Requirements

All papers must be 15-18 pages, double spaced in Times New Roman 12 pt. with 1-1.25 inch margins. You should “use parenthetical citations” (Lax 2008, 23) and provide a bibliography.

Readings

1. Myth? Judges just apply the law. 9/14

Lecture on basics of the U.S. judicial and legal systems; How to read empirical papers, formal theory papers, and a judicial opinion

- a. Federalist 78 – https://avalon.law.yale.edu/18th_century/fed78.asp
- b. MPEK excerpts. Murphy, Epstein, Pritchett, and Knight. *Courts, Judges, and Politics*.
 - i. Levi. Legal Reasoning. MPEK Chap 10.
 - ii. “Modes of Interpretation” (Murphy, Pritchett, Epstein, Knight (MPEK))
 - iii. Frankfurter. Some Reflections on the Reading of Statutes (in MPEK chapter 11)
 - iv. Chapter 12 excerpt.
 - v. Scalia. Originalism. (excerpt MPEK Chap 12 other file)
 - vi. Bork. The Tempting of America (excerpt MPEK Chap 12 other file)
 - vii. Marshall. Reflections (excerpt MPEK Chap 12 other file)
 - viii. Processes of Judicial Decision Making (MPEK Chap 13 excerpt)
- c. Van Geel Chapter 4
- d. Useful background - Carp and Stidham. *Judicial Process in America*. Chapters 2, 3, 10. History and Organization of the Federal Judicial System and of the State Judicial Systems. Decision-Making by Trial Court Judges

- e. If time: Levi. Legal Reasoning. Sections I and II. separate file.
 - f. Recommended
 - i. William Miller. A Primer on American Courts. 2005. Chapter 1, Appx C.
 - ii. Merryman_The_Civil_Law_Tradition
- 2. What Myths? A History of Judicial Politics. Myth? Ideology is irrelevant. 9/21**
- a. Readings
 - i. Excerpts from “*What’s Law Got to Do with It?* Charles Gardner Geyh (ed.). 2011.
 - 1. Chapter 1. Segal. “What’s Law Got to Do with It: Thoughts from ‘The Realm of Political Science.’”
 - 2. Chapter 2. Burbank. “On the Study of Judicial Behaviors: Of Law, Politics, Science, and Humility.”
 - ii. Van Geel Chapter 5
 - iii. Pritchett. “The Roosevelt Court.” 1948. *APSR*.
 - 1. See if interested early responses to this line of work:
 - a. Kurland response in Yale Law Journal 1948.
https://www.jstor.org/stable/pdf/793359.pdf?refreqid=excelsior%3A1ea275a0cee4456058ae015e109cd00d&ab_segments=0%2Fbasic_search_gsv2%2Fcontrol&origin=&initiator=&acceptTC=1
 - b. <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2422&context=lcp>
 - c. <https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=2882&context=facpub>
 - iv. Spaeth Attitudinal Model chapter 13 in Epstein
 - v. Segal, Jeffrey, and Harold J. Spaeth. 2002. *SCAMR The Supreme Court and the Attitudinal Model Revisited*. Cambridge University Press: New York. Introduction (p1-12), Chapters 1, 2, 3 (skip the Separation of Powers section for now), and Chapter 8 (again skip the Separation of Powers section).
 - vi. Posner, Richard A. 2005. “Foreword: A Political Court. ” *Harvard Law Review* 119, p31-54, (or the rest if you like)
 - vii. FYI - My own view: Jeffrey Lax. “The New Judicial Politics of Legal Doctrine,” *Annual Review of Political Science*, Vol. 14: June 2011 - up to p137
 - b. Discussion Questions
 - i. What is the role of case selection in all this? Note: endogeneity of cases in front of court. How does this affect the models and/or evidence invoked in connection with them? Why are there so many unanimous cases?
 - ii. Is all the law accoutrement malarkey, purposeful or not?

- iii. How do judges (justices) vary from each other? as per each model.
- iv. Are judicial “preferences” still different from other “political” preferences?
- v. Do they admit it to themselves late at night?
- vi. Does a focus on supreme court warp our understanding?
- c. Other Recommended Readings
 - i. Symposium on The Supreme Court and the Attitudinal Model. 1994.
 - ii. Symposium on The Supreme Court and the Attitudinal Model Revisited. 2003.
 - iii. Jeffrey Lax. “The New Judicial Politics of Legal Doctrine,” Annual Review of Political Science, Vol. 14: June 2011
 - iv. Judge Coffin. 1980. “The Ways of a Judge: Reflections from the Federal Appellate Bench.” ISBN 0395294614. Chapter 8 (pdf has other chapters)
 - v. Woodward and Armstrong. Excerpt from The Brethren
 - vi. Van Geel Chapter 3.
 - vii. Epstein and Knight, chapter 2
 - viii. *Law and Objectivity*. Kent Greenawalt
 - ix. Excerpts from “*What’s Law Got to Do with It?*” Geyh (ed.). 2011.
 - 1. Chapter 3. Baum. “Law and Policy: More and Less than a Dichotomy.”
 - 2. Chapter 6. Friedman and Martin. “Looking for Law in All the Wrong Places.”

3. Myths of Law vs. Ideology. Myth? Judges are constrained by precedent and law 9/28

- a. Readings
 - i. Van Geel Chapter 6
 - ii. Segal & Spaeth vs. Knight & Epstein (excerpt MPEK) (week 1 folder, chap 10)
 - iii. Segal and Spaeth. Attitudinal Model Revisited. SCAMR Chapter 7.
 - iv. Jeffrey Lax and Kelly Rader, “Legal Constraints on Supreme Court Decision Making: Do Jurisprudential Regimes Exist?” Journal of Politics, Vol. 71(2): April 2010. And response and rejoinder.
 - v. Rachael K. Hinkle. 2015. "Legal Constraint in the U.S. Courts of Appeals." 77 Journal of Politics 721-735.
- b. discussion questions
 - i. how do we separate ideology from precedent/law?
 - ii. how can we tell if precedent is used as cover?
 - iii. What is the evidence for precedent (effects thereof) and against?

- iv. what is the research design used in each paper “testing” the causal effect of precedent? how well does it match the experimental gold standard? where does it fall short? how is it likely to matter?
 - v. what is the bottom line cumulatively speaking?
 - vi. is there other evidence out there for “law”?
 - vii. Why would precedent be used as an attempt at persuasion if they don’t care about it?
 - viii. If they do care about legitimacy and respect... collectively... does that mean they will or will not act to respect precedent? Are there any challenges to producing such a common good as “legitimacy”? IS IT a common good?
 - ix. How can we model precedent? [case space]
- c. Recommended
- i. George, Tracey E., and Lee Epstein. “On the Nature of Supreme Court Decision Making.” 1992. *American Political Science Review* 86(2).
 - ii. Michael Bailey and Forrest Maltzman. 2008. “Does Legal Doctrine Matter? Unpacking Law and Policy Preferences on the U.S. Supreme Court.” *APSR* 102(3):369-84.
 - iii. Segal Songer Cameron - Decision Making courts of appeals - Epstein--Chapter 10
 - iv. Farnsworth Rules Standards excerpt.
 - v. Legal Uniformity in American Courts. Deborah Beim, Kelly Rader - *Journal of Empirical Legal Studies*, 2019
 - vi. Richards, Mark J. and Herbert M. Kritzer. (2002). “Jurisprudential Regimes in Supreme Court Decision Making.” *American Political Science Review*.
 - vii. Rachael K. Hinkle. Panel Effects and Opinion Crafting in the US Courts of Appeals. *Journal of Law and Courts*.
 - viii. Brandon Bartels. “The Constraining Capacity of Legal Doctrine on the U.S. Supreme Court.” *APSR*: 2009.
 - ix. Bueno de Mesquita, Ethan and Stephenson, Matthew (2002). “Informative Precedent and Intrajudicial Communication,” *American Political Science Review*.
 - x. Callander, Steven, and Tom S. Clark, "Precedent and Doctrine in a Complicated World," *American Political Science Review* 111(1) (2017)
 - xi. “Judicial Retirements and the Staying Power of U.S. Supreme Court Decisions” 2016. Stuart Minor Benjamin, Georg Vanberg. *JELS*

4. Myths of Law vs. Ideology. Myth? Justices have no party when they come to the bench. (Also see Weeks 6 and 7) 10/5

- a. Overby, L. Marvin, Beth M. Henschen, Michael H. Walsh and Julie Strauss. 1992. “Courting Constituents? An Analysis of the Senate Confirmation Vote on Justice Clarence Thomas.” *American Political Science Review* 86(4):997–1003.
 - b. *Making the Supreme Court*. Book excerpts. Cameron and Kastellec. Chapters 1, 2, 4, 7 (only up to and including 7.5), 8, 12
 - c. Recommended:
 - i. Note: growing literature on lower court appointments and material on how that has changed over time
 - d. Discussion Questions
 - i. What is the main argument of the book?
 - ii. Why do the authors see this as helpful for understanding (change in) American politics more generally?
 - iii. What has changed? What has stayed the same? Which changes are the most important?
 - iv. What is the bundle of characteristics approach?
- 5. Myths of “Blind Justice.” Myth? “Justice is blind”... to race and gender 10/12**
- a. McGuire, Kevin T.-Understanding the US Supreme Court, Ch 4
 - b. Unah - Race and Death Sentencing - chapter in McGuire
 - c. Same as It Ever Was? The Impact of Racial Resentment on White Juror Decision-Making. *Journal of Politics* 2022. Douglas Rice, Jesse Rhodes, and Tatishe Nteta
 - d. Knowles, John, Nicola Persico, and Petra Todd. 2001. “Racial Bias in Motor Vehicle Searches: Theory and Evidence.” *Journal of Political Economy* 109(1): 203-229. <http://www.jstor.org/stable/10.1086/318603>
 - e. Anwar, Shamena, Patrick Bayer, and Randi Hjalmarsson. 2012. “The Impact of Jury Race in Criminal Trials.” *Quarterly Journal of Economics* 127(2).
 - f. Gender Favoritism Among Criminal Prosecutors - Stephanie Holmes Didwania, *Journal of Law and Economics*. Univ. of Wisconsin Legal Studies Research Paper No. 1734
 - g. Discussion questions:
 - i. Suppose one argues the race gap in death penalty sentencing comes from bias favoring whites who “should” otherwise get the death penalty rather than from a bias “against” blacks who “should not” get the death penalty but do... is that different constitutionally? How does that affect the arguments of the justices? How can we tell the difference in these studies?
 - ii. Why are statistical disparities considered relevant in employment discrimination cases but not the death penalty? Note: role of discretion?
- 6. Myths of “Blind Justice.” Myth? Justice has no race, gender, or party 10/19**

- a. Orley Ashenfelter (with Theodore Eisenberg and Stewart Schwab) "Politics and the Judiciary: The Influence of Judicial Background on Case Outcomes," *Journal of Legal Studies*, vol. 24, no. 2, June 1995.
- b. Boyd, Christina L., Lee Epstein and Andrew Martin. 2010. "Untangling the Causal Effects of Sex on Judging."
- c. Kastellec, Jonathan P. 2013. "Racial Diversity and Judicial Influence on Appellate Courts." *American Journal of Political Science* 57(1): 167–183.
- d. Erikson, Robert. 2022. JELS. "Appellate court assignments as a natural experiment: Gender panel effects in sex discrimination cases." <https://onlinelibrary.wiley.com/doi/full/10.1111/jels.12312>
- e. Farhang, Wawro, Sobel. 2023. Working paper. "Race, Gender, and Party in EEOC cases, 1996–2006: Assessing the Role of Judge Attributes in Case Outcomes in the U.S. District Courts" – **being presented in pol sci dept 9/12/23!**

7. Myths of "Blind Justice." Myth? "We do not have Obama judges or Trump judges..." More on race, gender, and party. 10/26

- a. Harris, Allison. 2023. "Can Racial Diversity Among Judges Affect Sentencing Outcomes?" APSR.
- b. Maya Sen. 2015. "Is Justice Really Blind? Race and Reversal in US Courts." *Journal of Legal Studies* 44(1).
- c. Deborah Beim, Tom S Clark, Benjamin E Lauderdale. 2021. "Republican-Majority Appellate Panels Increase Execution Rates for Capital Defendants." *The Journal of Politics*. Volume 83 Issue 3
- d. Hubert and Copus. 2022. Blog post. If time, read the paper. [The President that Appoints Judges Matters for Civil Rights - The JOP's Political Science Blog](#) & ["Political Appointments and Outcomes in Federal District Courts"](#)
- e. Glynn, Adam N., and Maya Sen. 2015. "Identifying Judicial Empathy: Does Having Daughters Cause Judges to Rule for Women's Issues?" AJPS.
- f. Christina L. Boyd. 2013. "She'll Settle It?" *Journal of Law and Courts* 1(2).
- g. Recommended:
 - i. "The effect of judges' gender on decisions regarding intimate-partner violence." Joan Josep Vallbé, Carmen Ramírez-Folch. JELS 2023.
 - ii. Harris, Allison P., and Maya Sen. 2019. "Bias and Judging." *Annual Review of Political Science* 22: 241-259
 - iii. Moses Shayo and Asaf Zussman. 2013. "Judicial Ingroup Bias in the Shadow of Terrorism." *Quarterly Journal of Economics* 126(3).
 - iv. Oren Gazal-Ayal and Raanan Sulitzeanu-Kenan. 2010. "Let My People Go: Ethnic In-Group Bias in Judicial Decisions—Evidence from a Randomized Natural Experiment." *Journal of Empirical Legal Studies* 7(3): 403-428.

- v. “Quantifying disparate questioning of Black and White jurors in capital jury selection.” JELS 2023. Anna Effenberger, John H. Blume, Martin T. Wells
- vi. Baldus, David C., George Woodworth, and Charles Pulaski. 1985. “Monitoring and Evaluating Contemporary Death Sentencing Systems: Lessons from Georgia.” U.C. Davis Law Review 18.
- vii. Danny Choi, Andy Harris, and Fiona Shen-Bayh. 2022. "Ethnic Bias in Judicial Decision-Making: Evidence from Criminal Appeals in Kenya." 1-14. American Political Science Review.
- viii. “Local Public Finance and Discriminatory Policing: Evidence from Traffic Stops in Missouri,” Allison Harris, Elliott Ash, Jeffrey Fagan. 2020. Journal of Race, Ethnicity, and Politics 5(3):450-480.
- ix. “No Justice, No Peace: Political Science Perspectives on the American Carceral State” Allison Harris, Hannah Walker, Laurel Eckhouse. 2020. Journal of Race, Ethnicity, and Politics. 5(3):427–449.
- x. Race, Neighborhoods, and Sentencing: How Social Conditions and Neighborhood Types Affect Incarceration Disparities (pp. 230-251) Ellen A. Donnelly. <https://www.jstor.org/stable/27224780>
- xi. Ono, Y. and Zilis, M.A. (2022), Ascriptive Characteristics and Perceptions of Impropriety in the Rule of Law: Race, Gender, and Public Assessments of Whether Judges Can Be Impartial. American Journal of Political Science, 66: 43-58. <https://doi.org/10.1111/ajps.12599>
- xii. Race, Context, and Judging on the Courts of Appeals: Race-Based Panel Effects in Death Penalty Cases (pp. 394-415). Jonathan P. Kastlelec. <https://www.jstor.org/stable/27224789>
- xiii. The Effects of Judge Race and Sex on Pretrial Detention Decisions (pp. 341-358). Ethan D. Boldt, Christina L. Boyd, Roberto F. Carlos and Matthew E. Baker. <https://www.jstor.org/stable/27224786>
- xiv. Anna Aizer and Joseph J. Doyle, Jr. 2015. “Juvenile Incarceration, Human Capital and Future Crime: Evidence from Randomly-Assigned Judges.” QJE.
- xv. Copus, R., Hübert, R., & Pellaton, P. (2022, August 26). Trading Diversity? Judicial Diversity and Case Outcomes in Federal Courts. <https://doi.org/10.31219/osf.io/h4ytz>
- xvi. Haire, S., & Moyer, L. Gender, Law, and Judging. Oxford Research Encyclopedia of Politics. Retrieved 26 Jul. 2022, from <https://oxfordre.com/politics/view/10.1093/acrefore/9780190228637.001.001/acrefore-9780190228637-e-106>.
- xvii. Michael P. Fix and Gbemende E. Johnson, Public Perceptions of Gender Bias in the Decisions of Female State Court Judges, 70 Vanderbilt Law

Review 1845 (2017) Available at:

<https://scholarship.law.vanderbilt.edu/vlr/vol70/iss6/9>

- xviii. Sotomayor, Sonia. “A Latina Judge’s Voice.” May 14, 2009. The New York Times.
- xix. Sen, Maya. 2017. “Diversity, Qualifications, and Ideology: How Female and Minority Judges Have Changed, or Not Changed, Over Time.” *Wisconsin Law Review* 2017 (2): 367-399.
- xx. “Better Too Much Than Not Enough”: The Nomination of Women of Color to the Federal Bench,” with Laura P. Moyer and Rorie Spill Solberg. Forthcoming. *Journal of Women, Politics Policy*

8. Myth? Judges are immune to career and electoral concerns

- a. Could reread SCAMR chap 3 subsection on ambition
- b. Huber, Gregory A. & Sanford C. Gordon. 2004. “Accountability and Coercion: Is Justice Blind when it Runs for Office?” *American Journal of Political Science* 48.
- c. Caldarone, Richard, Brandice Canes-Wrone, and Tom S. Clark. 2009. “Partisan Signals and Democratic Accountability: An Analysis of State Supreme Court Abortion Decisions.” *Journal of Politics* 29(2): 560-573.
- d. Canes-Wrone, Brandice, Tom S Clark, and Jason P Kelly. “Judicial Selection and Death Penalty Decisions.” *American Political Science Review* 108-1 (2014)
- e. Excerpts from “*What’s Law Got to Do with It?* Charles Gardner Geyh (ed.). 2011.
 - i. Chapter 9. Hall. “On the Cataclysm of Judicial Elections and Other Popular Antidemocratic Myths”
 - ii. Chapter 10. Pozen. “Are Judicial Elections Democracy-Enhancing?”
- f. Recommended
 - i. Black and Owens. *Courting the President: How Circuit Court Judges Alter Their Behavior for Promotion to the Supreme Court.* *American Journal of Political Science.*
 - ii. Incentive Effects of Recall Elections: Evidence from Criminal Sentencing in California Courts. Sanford C. Gordon and Sidak Yntiso. *The Journal of Politics* 2022 84:4, 1947-1962
 - iii. The Influence of Retention Politics on Judges’ Voting. Joanna M. Shepherd. *The Journal of Legal Studies* Volume 38, Number 1. 2009.
 - iv. The Judge, the Politician, and the Press: Newspaper Coverage and Criminal Sentencing across Electoral System. Claire S. H. Lim. James M. Snyder Jr.. David Strömberg. *AMERICAN ECONOMIC JOURNAL: APPLIED ECONOMICS.* VOL. 7, NO. 4, OCTOBER 2015
 - v. The Political Economy of Prosecution. *Annual Review of Law and Social Science* Vol. 5:135-156 (2009). Gordon and Huber.

- vi. Crime, Punishment, and Politics: An Analysis of Political Cycles in Criminal Sentencing. Carlos Berdejó, Noam Yuchtman. *The Review of Economics and Statistics* (2013) 95 (3): 741–756.

9. Myth? “The least dangerous branch” with “neither the purse nor the sword”

- a. Jeffrey A. Segal and Harold J. Spaeth, *The Supreme Court and the Attitudinal Model Revisited*. New York: Cambridge UP (2002) chs. 3 and 8 (material on the Separation of Powers that we skipped earlier.)
- b. Gerald Rosenberg, “Judicial Independence and the Reality of Political Power,” *Review of Politics* 54:369-88 (1992)
- c. Whittington, Keith. 2005. “Interpose Your Friendly Hand.” *American Political Science Review* 99(4): 583-596.
- d. Vladez, Stephen. *The Shadow Docket*. Book excerpts. Chapters 1-4, 6-7.
- e. Recommended
 - i. Clark, Tom. 2009. “The Separation of Powers, Court-curbing and Judicial Legitimacy.” *American Journal of Political Science* 53(4): 971-989.
 - ii. Harvey, Anna, and Barry Friedman. 2006. “Pulling Punches: Congressional Constraints on the Supreme Court’s Rulings, 1987-2000.” *Legislative Studies Quarterly* 31(4): 533-562.
 - iii. Miller, Kenneth. *Direct Democracy and the Courts*.
 - iv. Bergara, Mario, Barak Richman, and Pablo T. Spiller. “Modeling Supreme Court Strategic Decision Making: The Congressional Constraint.” *Legislative Studies Quarterly* XXVIII: 247-80.
 - v. Vanberg, Georg. (2001) “Legislative-Judicial Relations: A Game-Theoretic Approach to Constitutional Review.” *American Journal of Political Science*, Vol. 45, No. 3, 346-361.

10. Myth? Courts protect our rights.

- a. Rosenberg. *Hollow Hope*. Chapters 1, 2 (skim or read), 13 (skim or read).
- b. Rosenberg. Implementation Abortion Rights. In Epstein. *Contemplating Courts*.
- c. *How Rights Went Wrong*. Jamal Greene. Intro., Chapters 1-3, 5, 8-9, Conclusion.
- d. *Presumed guilty: How the Supreme Court Empowered the Police and Subverted Civil Rights* - Erwin Chemerinsky. Chapters 1-3, 7, 10, 11, 14, 15, 18.

11. Myth? Legal doctrines are neutral. Student presentations.

12. Myth? Legal doctrines are neutral. Student presentations.