

Bias and Judging*

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Abstract

How do we know whether judges of different backgrounds are “biased”? We review the substantial political science literature on judicial decision-making, paying close attention to how judges’ demographics and ideology can influence or structure their decision-making. As the research shows, characteristics such as race, ethnicity, and gender can sometimes predict judicial decision-making in limited kinds of cases; however, the literature also suggests that these are by far less important in shaping or predicting outcomes than is ideology (or partisanship), which in turn correlates closely with gender, race, and ethnicity. This leads us to conclude that assuming judges of different backgrounds are biased because they rule differently is questionable: given that the application of the law rarely provides a “correct” answer, it is no surprise that judges’ decisions vary according to their personal backgrounds and, more importantly, according to their ideology.

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1 Introduction

Before she was nominated to the Supreme Court, Sonia Sotomayor famously wrote that she “would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn’t lived that life” (Sotomayor, 2002, p. 92). Years later, herself a nominee to the U.S. Supreme Court, Sotomayor tried fervently to distance herself from her earlier comments. As she announced in her 2009 confirmation hearings, “I do not believe that any racial, ethnic or gender group has an advantage in sound judging. I do believe that every person has an equal opportunity to be a good and wise judge, regardless of their background or life experiences” (Nomination of Sonia Sotomayor, 2009, p. 66). Even so, conservative criticisms of bias have dogged Sotomayor. Senator Jeff Sessions, in announcing his vote against her confirmation, complained that she was the kind of judge who “believes it is acceptable for a judge to allow their personal background, gender, prejudices, or sympathies to sway their decision in favor of, or against, parties before the court” and that such a viewpoint was automatically “disqualifying” (Nomination of Sonia Sotomayor, 2009, p. 7).

In this review article, we assess what recent research in political science, economics, and empirical legal studies tells us about Sotomayor’s statement as well as those of her detractors. Do judges “regardless of their background or life experiences” usually treat people similarly? What would it mean for judges of different backgrounds to be “biased”? These are important questions. Normatively speaking, we might wish for judges’ decision-making to be unaffected by race, gender, religion, or political party—either their own or of the parties before them. However, as we discuss throughout this piece, such a viewpoint is squarely at odds with long-standing empirical observations about how judges actually decide cases. Scholars going as far back as Jerome Frank have observed that the law is far from “clear, exact, and certain” but instead “is now, and will continue to be largely vague and variable” (Frank, 1930). With something so “vague and variable” and lacking in clear “right” answers, would it be reasonable to expect judges of different backgrounds to reach

identical legal conclusions? If not, would that be evidence of “bias”?¹

Judicial politics research has much to say on these questions. The key takeaway is that judicial decision-making is highly variable—indeed, research shows that judges’ personal backgrounds, professional experiences, life experiences, and partisan and ideological loyalties might impact their decision-making, just as Justice Sotomayor originally suggested. The research is also clear that, among these characteristics, ideology and partisanship have the strongest relationship with judicial decision-making. Multiple studies have documented that judges appointed by Republicans decide cases differently than do judges appointed by Democrats, even after accounting for personal and professional differences (including gender and race). Other studies have shown that female and non-white judges, as well as judges from other backgrounds, decide cases differently, but these differences are more modest and tend to be detected primarily where the cases involved have a significant gendered or racial connotation. Taken holistically, the literature suggests that differently situated judges might decide cases differently, but that any differences associated with demographics are actually fairly issue-specific and much less pronounced than differences rooted in ideology or partisanship.

However, as we argue in this article, the fact that studies have found such differences does not necessarily make judges “biased.” Like other political elites, judges have policy preferences, shaped by an amalgam of factors that include their race, gender, and, most importantly, ideology or partisanship (which themselves could be influenced by race or gender). In other words, judges are nuanced decision-makers who bring their preferences and experiences to bear on what are sometimes difficult questions lacking in objectively correct answers (as suggested by Frank, 1930, and many others). Given this, we think a better way to consider claims of “bias” and judging lies in assessing the composition of the judiciary as a whole. The research suggests more women on the courts would lead

¹This article focuses on “bias” through the frame of judges’ backgrounds, including race, gender, ideology, and personal experiences. For an excellent overview on empirical work on other possible kinds of bias—including the use of heuristics and other non-judicial factors—see Rachlinski and Wistrich (2017).

to more decisions favorable to women, more people of color on the courts would lead to more decisions favorable to people of color, and more Republican judges would lead to more decisions less favorable to criminal defendants. Focusing on the composition of the judiciary as a whole and how that relates to the overall tenor of rulings, rather than on the relationship between individual judges' characteristics and decisions, allows scholars to consider the implications of population shifts in diversity—including partisan, gender, and racial—on the bench.

This article proceeds as follows. We begin by discussing the extensive literature documenting the robust relationship between ideology (and partisanship) and judicial decision-making. Next, we examine the somewhat smaller set of studies looking at the relationship between personal characteristics—including race, ethnicity, and gender—and decision-making. These studies have found smaller differences, after controlling for ideology, and any differences are mostly limited to specific contexts where race or gender are particularly salient. Next, we consider what these two lines of research mean for the question of “bias” in the judiciary. Our conclusion is that the courts are an ideological body whose rulings represent the preferences of the men and women who serve on them. This means that when questioning “bias,” we must consider very broadly the composition of the courts—not just as they are, but as we wish them to be. We conclude with thoughts for future research.

2 Relationship Between Ideology and Judicial Decision-Making

We start by considering the large and fairly conclusive literature documenting the important relationship between ideology (or partisanship) and judicial decision-making. This literature is long-standing and dates to early law-school based debates about the nature and purpose of judicial decision-making; subsequent research within political science has mostly taken the strong influence of ideology on decision-making as a given, looking instead for ways to measure ideology accurately. Importantly, most of the literature in this area does not frame the importance of ideology in decision-making as “bias” *per se*; rather,

judges here are maximizing over preferences in much the same way that other political decision-makers do and subject to certain constraints.

Legal Formalism and the Legal Realists. Early American legal scholars were largely of the view that the law was a tool applied to a set of facts; the neutral application of the law would thus result in a clear answer. This view of “Legal Formalism” is best represented by Harvard Law School Dean Christopher Columbus Langdell. As described by Grey (1983, p. 5), Langdell and others like him were of the “view that law is a science. Langdell believed that through scientific methods lawyers could derive correct legal judgments from a few fundamental principles and concepts, which it was the task of the scholar-scientist to discover.” This philosophy, and Langdell’s style of pedagogy, dominated early 20th century legal education, with students attempting to distill and discern uniting principles in cases and then using those principles to formulate rules that could be applied to a new set of facts. (The imprint of this can be found in modern-day law school curricula, in particular via the use of the “case method.”) Of course, the idea that a clear answer results from the objective application of law to fact would make it straightforward to detect a judge’s “bias.”

Legal Formalism eventually engendered strong intellectual responses, many of which pointed out the obvious—that two judges applying the same laws to the same facts frequently reached different conclusions. This promoted scholars and judges to consider how individual judges’ characteristics—as well as the broader societal context—could help explain and provide a guiding principle for judicial decision-making. For example, Supreme Court Justice Oliver Wendell Holmes, wrote extensively on judge’s personal experience in decision-making. “The life of the law has not been logic,” Holmes wrote in a famous paragraph, “it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed” (Holmes, 1909).

Likewise, Jerome Frank, a former federal appeals judge, wrote famously that the “law may vary with the personality of the judge who happens to pass upon any given case” (Frank, 1930).

In line with this thinking, a growing number of pragmatic and sociologically inclined legal scholars (loosely, the “Legal Realists”) engaged with the social sciences as they sought a broader understanding of how judges’ characteristics could influence their decision-making (see generally Hull, 1989, for more on these debates). Among them was Roscoe Pound, another Harvard Law dean, who wrote that “the adjustment of [legal] principles and doctrines to the human conditions they are to govern rather than to assume first principles” (Pound, 1908, p. 609-10). Legal scholar Karl Llewellyn pushed these sentiments further arguing that “jurisprudence cannot stand alone; and that the significance of law is law’s effects” (Llewellyn, 1931). Llewellyn further encouraged “large-scale quantitative studies of facts and outcomes,” to better understand the decision-making process and also to incorporate sociological context into the process of reasoning (Llewellyn, 1931, p. 1222).

Emerging Political Science Research. The “personality of a judge” component to decision-making spoke directly to social scientists’ interests. Thus, beginning in the 1940s, political scientists broadly interested in political behavior picked up the Legal Realists’ challenge. These early studies, rooted in summary statistics and basic quantitative analyses, sought to understand the individual characteristics that predicted voting blocs. Unsurprisingly from a modern perspective, partisanship often emerged as the most important characteristic.² For example, the landmark analysis in Pritchett (1948) examined the way Supreme Court justices voted during the tumultuous New Deal Era, showing that the partisan identity of the appointing president was predictive of rulings. Early work by Schubert (1960) examined the Michigan Supreme Court and found that Democratic justices were

²Many of these early studies looked either at the federal courts or courts where judges were selected primarily by partisan election; thus, partisanship was measured as the party of appointing president (for federal courts) or as the identified party (for state courts). As we discuss below, modern scholarship has focused more on ideology as a predictive factor, looking beyond the party of appointing president.

much more likely to support the workmen's compensation claims than were Republicans.

Other early work affirmed the strongly predictive power of partisanship on judicial decision-making. Ulmer (1960) analyzed voting patterns on the U.S. Supreme Court, determining quantitatively which justices tended to vote with each other on which issues, thus establishing voting blocs as an important area of study. Spaeth (1961) compared differences in the voting behavior of Justices Black and Douglas, with the implication that ideological differences predicted the differences in voting. Several other early papers considered decision-making on the U.S. Courts of Appeals. For example, Goldman (1968) documented the existence of voting blocs on appeals courts in the early 1960s, with "attitudinal differences" being "related to a larger, more general, liberal-conservative dimension" (Goldman, 1968, p. 475). Other papers include Goldman (1968) and Goldman (1975), the latter of which concludes that "attitudes and values defined politically rather than legally may be of prime importance in understanding appeals" (Goldman, 1975, p. 495).

Early judicial politics scholars found similar patterns in state courts. Schubert (1960)'s finding of pro-labor leanings among the Democratic judges on the Michigan Supreme Court is consistent with Ulmer (1962)'s later findings about that same court, Adamany (1969) on the Wisconsin Supreme Court, and Flango and Ducat (1977) on the California Supreme Court. Nagel (1961) reviewed decisions from "313 state and federal supreme court judges" on a wide range of cases and concluded that "party affiliation and decisional propensity for the liberal or conservative position correlate with each other because they are frequently effects of the same cause" (Nagel, 1961, p. 847). In highlighting the importance of ideology, the influential book, Rohde and Spaeth (1976, p. 7), notes that "each member of the Court has preferences concerning the policy questions faced by the Court, and when the justices make decisions they want the outcomes to approximate as nearly as possible those policy preferences." A meta-analysis of these earlier studies can be found in Pinello (1999).

The Attitudinal Model and the Dominance of Ideology in Decision-Making.

The next leap in the literature involved more focused and more statistically sophisticated

analyses documenting the predictive power of ideology (frequently operationalized as partisanship) on judicial outcomes. Tate (1981), for example, showed that a scant number of personal attributes—including party of the appointing president and a judge’s own partisan identification—predicted much of the variance in U.S. Supreme Court justices’ voting on civil rights and civil liberties cases. Tetlock, Bernzweig and Gallant (1985) found that those justices “with liberal and moderate voting records exhibited more integratively complex styles of thought in their early case opinions than did those with conservative voting records.” Segal (1985) noted the Court’s ideology shifts over time, arguing that it was the more conservative composition of the Burger Court that led to more conservative rulings on search and seizure cases.

Segal and Spaeth (1993) and Segal and Spaeth (2002) further redefined the field, theoretically developing and confirming the strong relationship between ideology and judicial decision-making. Their influential “Attitudinal Model” theorizes that the “Supreme Court decides disputes in light of the facts of the case vis-a-vis the ideological attitudes and values of the justices. Simply put, Rehnquist votes the way he does because he is extremely conservative; Marshall voted the way he did because he was extremely liberal” (Segal and Spaeth, 2002, p. 86).

Segal and Spaeth (2002) has been foundational in guiding a large body of scholarship documenting the importance of partisanship and ideology in judicial decision-making, both in terms of voting overall and also in terms of specific substantive legal issues. In terms of overall prediction, Ruger et al. (2004) and Martin et al. (2004) predict Supreme Court decisions using a simple algorithm, which includes basic ideological information and case characteristics, that outperformed even experienced law professors in terms of accuracy. Looking at the U.S. Courts of Appeals, Sunstein et al. (2006) show that ideology (operationalized by party of the appointing president) predicts not just individual judges’ votes, but also the votes of their colleagues—for example, in noting that a panel composed of three Democrats votes differently than a panel composed of two Democrats and one

Republican. At the district court level, Epstein, Landes and Posner (2013) show a strong relationship between ideology and decision-making, with Democrats reaching more liberal decisions and Republicans more conservative ones. Zorn and Bowie (2010) document the influence of ideology at all tiers of the federal judiciary, but interestingly find that ideology's impact is stronger at higher levels of the judiciary (specifically at the appeals courts and at the Supreme Court). This suggests that less constrained courts are the ones where ideology is likely to have the biggest influence.

In terms of the extent to which ideology influences judges' rulings on specific issues, the findings are numerous. To identify a few where ideology or partisanship is particularly central to the analysis, Cox and Miles (2008*b*) find evidence that Democrats and Republicans vote differently when it comes to potential violations of the Voting Rights Act. Cohen and Yang (Forthcoming) examine federal criminal justice sentencing and find large discrepancies in sentences given by Republican and Democratic district judges, with Republican judges being more likely to mete out longer sentences, a finding consistent with Schanzenbach and Tiller (2006). Pinello (2003) finds considerable differences in voting on gay rights cases between judges appointed by Republicans versus Democrats, with Democratic judges being more in favor.

The importance of ideology as key variable structuring judicial decision-making has led to a cognate literature concerned with how to measure it. The challenges in estimating judicial ideology are significant. Unlike Congressional representatives, judges seldom vote together (particularly if they sit on different courts). One exception is the U.S. Supreme Court, where the various justices who have sat on the Court have voted together frequently. Thus, Martin and Quinn (2002) use a Bayesian model to estimate justice ideology using a few assumptions in tandem with the justices' votes. The resulting Martin-Quinn Scores are dynamic, shifting from term to term, and allow scholars to examine ideological drift and median shifts over time. Segal and Cover (1989) take a different approach by estimating judicial ideology based on newspaper editorials written about the justices when they were

being confirmed. For the lower courts, party of the appointing president is a frequently used, albeit rough, measure for judicial ideology. Giles, Hettinger and Peppers (2001) and Epstein et al. (2007) rely on the party of the appointing President or, in cases where the White House and the U.S. Senators from the state with the vacancy are of the same party, the ideology of the appointing senator(s). The resulting Judicial Common Space scores, which we discuss again below, are among the most widely used measures of judicial ideology. Boyd (2011) provides similar measures for the U.S. District Courts. Measuring judicial ideology is much more challenging for state courts, given that the 50 states all use different selection mechanisms. Thus, PAJID scores use the ideology of executives, political elites, and political action committees (PACs) to construct state judge ideological scores. A unifying approach to measuring ideology that links all tiers of the judicial system—including state, federal, higher and lower courts—is that of Bonica and Sen (2017), which uses data from campaign contributions to scale all U.S. judges and lawyers; although they rely on strong assumptions, these data have the advantage of being more fine-grained than Judicial Common Space scores.

Going back to our question at the beginning, this judicial politics literature is clear in its documentation that ideology is a significant factor in judicial decision-making.³ However, the literature is not unified in the proposition that such influence is evidence of “bias.” Indeed, the overwhelming broader point of the literature is that judges operate similarly to other policy-makers, and thus try to maximize their preferences subject to institutional and informal constraints. Just like other political actors—including not just elected officials, but also administrative actors, voters, and party leaders—judges seek implement rulings that accord with their ideological worldviews. To expect otherwise would require judges to set aside political and ideological interests—likely the same factors that led them to pursue careers in law and in the judiciary in the first place. As Segal and Spaeth (2002, p. 6)

³Although too numerous to list here, other studies have noted that important factors—including the law, other colleagues, and the judicial hierarchy—play a key role in judicial decision-making (e.g., Friedman, 2006; Hinkle, 2015; Epstein and Knight, 1998). An excellent overview of these points is provided by Epstein and Knight (2013).

simply note in their book, “judges make policy.”

3 Judges’ Descriptive Characteristics and Judicial Decision-Making

Ideology is one possible way in which judicial attitudes could influence decision-making. Identity—specifically, demographic factors—is another. However, research into this question is much newer compared to the literature on ideology and decision-making. The reason why is straightforward: it was not until the Carter Administration in the 1970s that American courts became more diverse, with greater numbers of women, blacks, Latina/os, Asian Americans, and LGBT judges named to the courts, not to mention judges of other backgrounds (such as religious minorities).

This increased judicial diversity has attracted scholarly attention to the topic of decision-making by judges of different backgrounds (for example, see Haire and Moyer, 2015, which we discuss below). Indeed, studying the role played by increasingly diverse judges is important for the courts’ legitimacy; Scherer and Curry (2010) show that greater descriptive representation of judges from minority racial groups leads members of those groups to have increased feelings of legitimacy toward the courts. As the country itself becomes more diverse, this suggests that a diverse judiciary might not just lead to a judiciary that rules in different ways, but it might also lead to a judiciary that enjoys greater public trust.

3.1 Why Might Judges of Different Backgrounds Vote Differently?

The key research question that has captured scholars’ attention has been assessing how these judges vote and whether they vote differently from others, nearly always using white, male judges as the baseline comparison (a strategy critiqued by Gill, Kagan and Marouf, 2017). In thinking about this question, the literature has coalesced around three theories that help explain why differently situated judges could reach different sorts of conclusions.

These are helpfully summarized by Boyd (2016) in the context of the gender of trial judges (see also Haire and Moyer, 2015). A related concept—that of panel effects, which we discuss below—also posits that these judges might not only reach different conclusions, but also influence their colleagues’ votes via panel effects (Boyd, Epstein and Martin, 2010; Kastellec, 2013).

The first theory typically applies to gender (although the reasoning could apply to other contexts). It posits that women have a “different voice” than men (based on Gilligan, 1982), and that female judges thus bring a different “perspective” to judicial decision making (Sherry, 1986, p. 160). For example, “the male voice is distinctly masculine and committed to concepts like logic and justice. By contrast, the female voice is much more devoted to obligations, relationships, and problem solving through personal communication” (Boyd, 2016, paraphrasing Gilligan). Other works within jurisprudence and legal theory have built upon this argument (see, e.g., Karst, 1984; Davis, 1992). Menkel-Meadow (1985, p. 53) comments more broadly on the historically male-dominated nature of the law and the legal system, noting that the very essence of the legal system itself “might look different if there were more female voices in the legal profession.”

A second theory is rooted in information: specifically, the different knowledge and experience that judges acquire based on their backgrounds leads them to rule differently on cases. Female judges, black judges, and other non-white, non-male judges “bring a unique knowledge base and expertise to the bench” (Boyd, 2016, p. 789). This knowledge is particularly salient in situations where it is most applicable—such as cases or issues that touch upon race, gender, or identity (Boyd, 2016; Boyd, Epstein and Martin, 2010; Kastellec, 2013). This theory is perhaps the closest to Sotomayor’s comment that a “wise Latina” would reach a conclusion different than “a white male who hasn’t lived that life” (though, of course, none of these theories imply that a “wise Latina” would reach a “better conclusion”).

A third theory is that women and members of racial, ethnic, and other minority groups

act as substantive representatives of members of their group, furthering their interests and the group’s policy preferences. To use the example of black judges quoted by Boyd (2016, p. 789), “it is safe to assume that a disproportionate number of blacks grow up with a heightened awareness of the problems that pertain to ‘racial discrimination’ areas of the law.” This awareness would lead judges who belong to these groups to vote or rule in ways that would advance group members’ interests, thus differentiating their votes from those of white or male judges.

Providing additional context for these theories is a separate line of findings in the broader American politics literature, which documents differences in ideological leanings among women and racial and ethnic minorities in the U.S. population writ large. These suggest that ideology closely correlates with race, ethnicity, and gender, in ways that could complicate the study of judicial decision-making. For example, the ideological distribution of people of color leans more to the left than that for whites, a phenomenon reflected in the voting patterns associated with these groups (Hutchings and Valentino, 2004). This left-leaning tendency exists for black Americans (Miller, Shanks and Shapiro, 1996), Latinos (Segura, 2012), and, increasingly, Asian Americans (Ramakrishnan, 2014). To give some substantive context on these patterns, in 2016 Democratic presidential nominee Hilary Clinton, carried 37 percent of whites, but 88 percent of African Americans, 65 of Latino/as, and 65 percent of Asian Americans (Roper Center for Public Opinion Research, 2016). These patterns also extend to specific policy positions, suggesting ideological, rather than just partisan, differences between whites and non-whites.⁴ Looking at the courts suggests similar ideological patterns among judges. For example, Sen (2017) uses the fine-grained ideology scores from Bonica and Sen (2017) to show that non-white federal judges tend to be more left leaning than are whites; this is the case even looking at judges appointed by the same presidents.

⁴For example, a 2017 poll found that 76 percent of blacks agreed that “poor people have hard lives because government benefits do not go far enough,” compared with 60 percent of Hispanics and 47 percent of whites. See <http://assets.pewresearch.org/wp-content/uploads/sites/5/2017/10/05162647/10-05-2017-Political-landscape-release.pdf> (p. 17).

A similar ideological pattern applies to gender, with women in the U.S. population at large being on average more liberal than are men. This “gender gap” in political attitudes dates back to the latter half of the 20th century (Shapiro and Mahajan, 1986; Conover and Sapiro, 1993; Howell and Day, 2000). Recent electoral outcomes support the research here as well. In 2016, 54 percent of women voted for Democrat Hillary Clinton while 42 percent voted for Republican Donald Trump (Roper Center for Public Opinion Research, 2016). This gap was not due exclusively to Clinton’s gender: in 2008, 56 percent of women voted for Barack Obama, while 43 percent voted for John McCain (Roper Center for Public Opinion Research, 2008). Several studies have tried to explain this gender gap. For example, Shapiro and Mahajan (1986) points to feminists as a source of the gap, while Edlund and Pande (2002) look to marriage rates as a cause. But taken together, this literature shows that, on average, women are more likely to identify with the Democratic Party (Box-Steffensmeier, De Boef and Lin, 2004), have left-of-center ideologies (Norranders and Wilcox, 2008), and hold progressive positions on many important policy issues (Howell and Day, 2000). (For findings in contrast to this, see Kirkland and Coppock (2017).) Again, this is echoed within the courts, with female judges being more left-leaning than are male judges, even conditional on being appointed by the same president (Sen, 2017).

3.2 Race or Ethnicity of the Judge and Decision-making

All of this evidence would predict that female judges and non-white judges are likely to vote differently than do white male judges—in partial support of Sotomayor’s “wise Latina” statement. But what does the empirical research on judicial decision-making say about these claims? We address these questions by first considering the relationship between race and ethnicity and judicial decision making.

Black Judges. Research examining the relationship between judges’ backgrounds and their rulings has focused largely on black judges and how their voting differs from white

judges' voting, controlling either for partisanship or, more roughly, for ideology (usually with Judicial Common Space scores). The reasons for the focus on black judges is largely historical: black judges were among the first non-white male judges to be appointed to the courts in numbers large enough for scholars to study.

A large set of papers examining the decisions of black judges compared to those of white judges has done so within the context of criminal justice, especially criminal sentencing in trial courts. However, the findings of the earlier studies are somewhat mixed. Welch, Combs and Gruhl (1988) finds that while white state trial judges are more lenient with white defendants than with black defendants, black judges treat both equally. Spohn (1990), on the other hand, finds that white *and* African-American judges both sentenced black defendants more harshly. Steffensmeier and Britt (2001) finds that black judges were slightly more likely to sentence defendants to prison, regardless of the defendant's race. (The authors attribute this to the pressures that black judges may face as "tokens" in the judiciary or the greater concern they may have about crime, especially within black communities (Steffensmeier and Britt, 2001, p. 761-762).) In the federal Courts of Appeals context, Scherer (2004) examines search and seizure cases and finds that black appeals court judges are more willing than their white counterparts to accept black defendants' claims of police misconduct.

More recent papers—including several in economics—have mostly focused on differences between judges with regards to sentencing, particularly when the race of the defendant is part of the analysis. Schanzenbach (2005) finds no significant differences in federal district court criminal sentencing disparities associated with the proportion of judges in the district who are black or Hispanic (or female). Abrams, Bertrand and Mullainathan (2012) exploit the random assignment of felony cases to state trial judges, finding that the judge to whom a case is assigned can affect the likelihood of incarceration. All else being equal, they find that this variation is biased against black defendants, exacerbating the "sentencing gap" between black and white defendants. However, the authors do not find any clear

differences in sentencing disparities based on the race of the judge (Abrams, Bertrand and Mullainathan, 2012). More recently, Cohen and Yang (Forthcoming) find that black U.S. district court judges issue shorter criminal sentences than non-black judges

A closely related area of literature has documented some differences in voting between black and white judges in non-criminal issue areas, specifically ones in which race or ethnicity is salient. For example, in an influential paper, Cox and Miles (2008*a*) find that black federal appeals judges are more likely to vote in favor of minority plaintiffs in Voting Rights Act cases than are white judges. Kastellec uses matching techniques to find that black federal appeals judges are more likely than white judges to vote in support affirmative action programs. Looking at a related topic, Morin (2014) shows that black federal appellate judges are more likely to rule in favor of black workers making employment discrimination claims than white workers. This finding is consistent with Chew and Kelley (2008), which finds that black federal appeals court judges are more likely to rule in favor of plaintiffs in racial harassment cases, and with Weinberg and Nielsen (2011), which finds that non-white federal district judges are less likely to dismiss civil rights employment claims than are white judges. All of these papers include measures of judicial ideology or partisanship (or party of appointing president).

Looking beyond race-related issues, the literature is more scarce and the findings more mixed. Some studies have found that black judges may also render more liberal decisions in gender discrimination cases and in cases with plaintiffs who identify as gay or lesbian (Pinello, 2003; Martin and Pyle, 1999). In one of the more inclusive reviews of the topic, Haire and Moyer (2015, p. 30) find, after controlling for ideology, that black federal appeals judges tend to vote in a more liberal direction on average across all cases, but find no differences in “contested cases.” (They do find differences when looking specifically at racial discrimination cases, as do the papers mentioned above.) In earlier work, Walker and Barrow (1985), also finds no meaningful differences between black and white federal district judges across a variety of substantive legal issues. Haire and Moyer (2015) and Walker and

Barrow (1985) are broadly consistent with Segal (2000, p. 144), which examines Bill Clinton’s appointments to the federal courts and finds no differences between white and black judges in terms of their “support of a variety of issues before their benches,” including “black issues.”

Importantly, a related set of papers suggest that the impact of more people of color on the bench extends to their peers in certain race-related cases, thus possibly widening their scope of influence. This is most apparent when considering the votes of judges on panels—for example, those sitting on three-judge panels in the U.S. Courts of Appeals. Papers here have shown adding a black judge to an otherwise all-white panel influences white judges’ votes, making them more likely to vote in favor of race-related issues such as voting rights and affirmative action (Kastellec, 2013; Cox and Miles, 2008*a*). (See, however, Farhang and Wawro (2004) for findings to the contrary.) In the state criminal trial court context, Harris (2018) finds that judges sentence black and white defendants more equitably as they gain black colleagues; black judges become less punitive toward black defendants and white judges become less punitive toward black defendants and more punitive toward white defendants as more black judges join the bench (Harris, 2018). Further evidence of this impact is provided by Haire, Moyer and Treier (2013), which documents that appeals panels that have majority of minority (or female) judges issue rulings discussing a greater number of legal issues.

While scholars are uncertain of the mechanisms underlying these effects, the simple presence of a black judge might change how an appellate panel deliberates (which scholars cannot observe) or observing a black judge’s vote might encourage white colleagues to vote differently (Kastellec, 2013).⁵ In criminal trial courts, increases in black judges’ represen-

⁵We also note that other papers have examined how black judges are evaluated by other lawyers and judges. For example, Gill, Lazos and Waters (2011) finds that non-white and female state judges score consistently lower on judicial performance evaluations than do white, male judges, while Sen (2014*a*) and Sen (2014*b*) find that when women and people of color are nominated to the federal district courts they receive lower qualification ratings from the American Bar Association than do white, male nominees. (However, see Smelcer, Steigerwalt and Jr. (2011) for findings to the contrary looking at nominees to the federal appeals courts.) Looking at reversal rates, Sen (2015) finds that black federal district judges (but not female judges)

tation on the bench may create pressure for white judges not to appear discriminatory and alleviate pressures that previously prevented black judges from showing lenience toward black defendants (Harris, 2018).

Other Racial or Ethnic Minority Groups. The appointment of Latino/a, Asian and Pacific Islander, and Native American judges, especially, to the federal courts, has moved more slowly (Sen, 2017, pp. 371-372); and fewer of these judges have served on the nation’s courts compared to black judges. (For example, as of our writing, only three judges of Native American heritage have ever served on the federal courts, according to the Federal Judicial Center.) The relative lack of racial diversity, beyond the black-white dichotomy, among federal judges has presented serious challenges for scholars trying to detect distinguishable differences in judicial decisions across racial identities.

There have been a few studies, however. Morin (2014) examines black and Latina/o federal appeals judges’ voting in employment discrimination cases. He finds, interestingly, that Latino judges are less likely than are white judges to rule in favor of claimants. An older study, Holmes et al. (1993), examines differences in sentencing between Latino/a and white judges, juxtaposing these with defendant ethnicity; they find that Latino/a judges are not impacted by defendant ethnicity, while white judges sentence non-Latinos more leniently. Perhaps the most comprehensive analysis is Haire and Moyer (2015, p. 30-32), which finds no statistically distinguishable differences between Latino and white federal appeals judges on a host of issues (though they find some differences between Latino and African-American judges), after controlling for ideology. (However, the authors are careful to note that “Latino” on the courts means many different things, including differences in national origin (Haire and Moyer, 2015, p. 22–28).) We find no studies exploring decision-making by Asian American or Native American judges, likely due to the relatively few members of these racial groups among the judiciary.

are more likely to be overturned on appeal.

3.3 Gender and Judging

After race and ethnicity, the largest set of scholarly work concerned with the relationship between judges' personal characteristics and decisions has focused on the role of gender in the decision-making process. Much of this literature finds that gender is a predictive factor in gender-related cases—especially those involving sexual harassment, reproductive rights, and sex- or gender-based discrimination—after controlling for partisanship or, more roughly, ideology (usually via Judicial Common Space scores). However, the literature is somewhat mixed, especially given how few women were judges in earlier time periods. (In part due to early scarcity, most scholarly attention has focused on examining how women rule differently from men; Gill, Kagan and Marouf (2017) critique this, noting that this approach has the effect of treating female judges as the “other.”) Indeed, it was not until the Carter Administration that there was a concerted effort to appoint more women to the nation's courts.

Some early papers found that female judges, in both state and federal courts, ruled more “liberally” than men. Allen and Wall (1993), for instance, explored different pathways of decision-making for female state supreme court justices, finding that female justices vote more liberally on gender-related cases. This finding is consistent with Gryski, Main and Dixon (1986)'s finding that the presence of at least one woman on the state high court is weakly positively related with rulings in favor of plaintiffs in sex discrimination cases. Other studies, however, have found no relationship or a more modest relationship between gender and judging. On the other hand, Segal (2000) examines Carter and Clinton appointees to the federal courts and paradoxically finds that male judges are more supportive of women's issues in gender-related cases. These findings are similar to Ashenfelter, Eisenberg and Schwab (1995)'s analysis of federal district courts civil rights cases, which finds only “modest effects” of a judges' gender in the handling of these cases (Ashenfelter, Eisenberg and Schwab, 1995, p. 281). Walker and Barrow (1985), finds some differences between men's and women's decisions in other types of cases, including personal liberties, federal

and economic regulations, and cases involving racial minority groups.⁶

More recent work focusing on the federal Courts of Appeals is consistent with earlier work that found slight gender differences in judges' decisions in certain types of cases, especially those related to gender. This is the case even after controlling for ideology or partisanship. For example, Davis, Haire and Songer (1993) find statistically significant differences between male and female appellate judges' votes in employment discrimination and search and seizure cases, but not in obscenity cases. Farhang and Wawro (2004) finds that, in employment discrimination cases, female courts of appeals judges are more likely to vote in favor of the plaintiff and that having at least one woman on the three-judge panel increases the probability that the panel will rule for the plaintiff. These findings are supported by Peresie (2005), which examines federal appeals judges' voting on Title VII sex discrimination and sex harassment cases and finds, in addition to panel effects, that female judges are more likely to side with the plaintiff. In another influential paper, Boyd, Epstein and Martin (2010), uses matching to estimate the relationship between gender and judging, finding that female federal appeals judges are more likely to vote in a liberal direction in gender-related cases. Gill, Kagan and Marouf (2017) find that all-male appeals panels hearing immigration appeals are much harsher with male litigants than female litigants (but that mixed-gender panels are not). However, more recently, Haire and Moyer (2015, p. 47-49)'s analyses of federal appeals judges' overall voting records concludes that gender has no relationship to voting after controlling for ideology. The authors also see no difference across specific issue areas, with the exception of sex discrimination cases, which, interestingly, reveals that older female judges are more sympathetic to plaintiffs than younger female judges.

Other studies have considered how male and female judges approach judicial procedure,

⁶Peresie (2005) helpfully identifies some potential reasons for inconsistencies in the earlier studies. First, small sample sizes could potentially cloud small, but substantively meaningful differences between male and female judges. Additionally, when women are significantly underrepresented, they may experience "tokenism" and pressure to behave similarly to white counterparts (see, also, e.g., Kanter, 2008). Lastly, individual effects might be "muted on collegial courts" like the U.S. Courts of Appeals (Peresie, 2005, p. 1764).

questioning whether they approach the business of deciding differently. For example, Boyd (2013) examines thousands of civil rights court cases terminated in the federal district courts, finding that cases assigned to women are more likely to settle, and to settle more quickly, than cases assigned to men. Haire and Moyer (2015, p. 52-53) look at three-judge federal appeals panels and find that female-authored opinions are longer, suggesting a greater attempt to incorporate a variety of perspective. However, the authors find mixed results when it comes to voting, with some women judges who are also members of minority groups (for example, black women) voting more liberally on gender-related cases but no real differences in voting on race-related cases. Most recently, Gleason, Jones and McBean (2018) find that male U.S. Supreme Court justices evaluate female attorneys based on traditional gender norms, but female justices do not.

The literature on gender and judging also finds evidence of panel effects—in which the presence of at least one female judge changes the voting behavior of her male colleagues. For example, Farhang and Wawro (2004) and Peresie (2005) both find that having at least one woman on a three-judge federal appeals panel moves the entire panel in the direction of the plaintiff in gender discrimination cases. In more recent work, Boyd, Epstein and Martin (2010) use matching to find that adding a woman to an otherwise all-male appeals panel increases the likelihood that the panel will decide in favor of plaintiffs in cases where gender is a salient factor. Importantly, these papers find that the overall rulings are different—not just because of the woman’s vote, but because her inclusion on the panel also increases the likelihood that her male colleagues will vote in favor of the plaintiff as well. The flip side of this question is explored by Johnson, Songer and Jilani (2011), which examines voting on the Supreme Court of Canada. They find that female justices vote in a more liberal direction on a host of gender-related issues and, surprisingly, that their votes are not influenced by whether there exists a “critical mass” of female justices.

We also note a small but growing literature that focuses on intersectionality, specifically judges who are women of color. For example, Collins and Moyer (2008) find that non-

white female judges are more likely to rule in favor of criminal defendants. Haire and Moyer (2015) conducted another of the few studies of women of color judges with their examination of opinion assignment. They find Latina judges are more likely to assign important cases to themselves (as are white women), but this is not the case for black women (Haire and Moyer, 2015, p. 71). Relatedly, Collins, Dumas and Moyer (2017) find that female attorneys of color are more likely to report being treated unfairly by other lawyers. However, the literature on these topics is very limited.

3.4 Other Personal Characteristics

Another growing literature has explored the impact and influence of personal characteristics beyond race, ethnicity, and gender. The overall contributions of these papers have been to show that, similar to demographic characteristics, personal experiences can also influence judicial decision making. An example of this is Glynn and Sen (2015), which uses the natural experiment of a child’s gender to assess the causal impact of parenting a daughter versus a son. The authors find strong evidence that having a daughter (as opposed to a son) leads federal appeals judges—particularly those appointed by Republicans—to vote in a more liberal direction on certain gender-related issues (for example, reproductive rights and employment discrimination cases).

Scholars have examined other kinds of personal characteristics as well. For example, several papers have looked at the relationship between age and decision-making involving older plaintiffs. Manning, Carroll and Carp (2004) show that older judges are more likely to rule in favor of age discrimination claims. (However, see Epstein and Martin (2004), which examines the same data and finds no relationship.) Boyea (2010) documents that older judges (those with more seniority) are more likely to issue dissents, while Kaheny, Haire and Benesh (2008) focus on career stage and find that judges are more predictable in their decision making at earlier and then later points in their careers. Other papers have considered the potential role of religion in judging. Songer and Tabrizi (1999) find

that evangelical state supreme court judges are more conservative across key social issue areas than are mainline Protestant, Catholic, and Jewish judges, while Pinello (2003) analyzes voting on LGBT-rights issues, finding that Jewish judges are more inclined to favor these issues and Catholic judges are less so, both in comparison with Protestant judges. Shahshahani and Liu (2017) provide perhaps the most in-depth examination of religion and judging. Examining federal courts of appeals cases involving religious freedom claims, they find that Jewish judges are more likely to favor claimants; a likely explanation, they argue, is that Jewish judges are more likely to be concerned about the separation of church and state.⁷

Beyond these, the literature on the possible impact of personal experiences or characteristics is more scarce, suggesting ample opportunities for scholarship. Military service, professional background, elite training, and political careers might be other factors that could influence judicial decision-making. Other characteristics, too, are potentially important and thus far unexplored, either because there are few judges who identify as having those characteristics or because data on those characteristics are limited or unavailable. For example, as of our writing, no research has examined the voting of LGBT judges, despite the importance of LGBT-rights related litigation. In addition, only a small number of studies have directly addressed judicial decision-making through the lens of intersectionality (for an example, see Collins and Moyer, 2008).

4 Discussion: Is it Bias When Different Judges Reach Different Conclusions?

Given this literature, how do we know whether judges of different backgrounds are “biased”? Our review clarifies that the research in political science supports the idea that

⁷In the international context, Grossman et al. (2016) find panel effects in multiethnic societies, with Arab defendants receiving more lenient punishments when there is at least one Arab judge on a criminal appeals panel (see also Gazal-Ayal and Sulitzeanu-Kenan, 2010).

judges' backgrounds—including their race, gender, ethnicity, and religion—shape their decision-making. Studies over the past several decades have shown that judges of color, women, religious minorities, parents, and older judges decide certain kinds of cases differently than people who haven't "lived that experience" (to use the words of Justice Sonia Sotomayor in her famous "Wise Latina" comments). Thus, the research does provide support for part of Sotomayor's contention, that the "richness" of the wise Latina's "experiences" would probably lead her to reach different—albeit not necessarily "better"—conclusions.

However, these findings must be put in context, and doing so suggests caution about over-claiming any of these differences. First, the studies finding differences in decision-making between judges of different races, ethnicities, and genders (and other characteristics) are fairly specific to cases where race and gender are salient or otherwise important to the substance of a case. For studies involving judges' race and ethnicity, this includes cases involving criminal procedure and sentencing—and in particular when scholars are comparing sentences meted out to white versus black defendants—as well as a handful of other civil rights issues. For gender, the studies have shown that women primarily vote differently on cases that have a gender dimension, such as sex- or gender-based employment discrimination or reproductive rights. Taken together, this suggests that Sotomayor's "wise Latina" judge would decide some, but not all, cases differently than a similarly situated white non-Hispanic judge, and that the differences would mostly involve cases where race and gender are particularly salient.

Second, these differences associated with personal background largely pale in comparison to the findings showing differences according to a judge's party and ideology. The cumulative empirical research is very clear: being a conservative or a liberal (or being appointed by a Republican or a Democrat) is highly predictive of decision-making, and is more predictive than personal demographics across a larger swath of issue areas—including criminal sentencing and civil rights (Cohen and Yang, Forthcoming; Cox and Miles, 2008*b*). If women and people of color are generally more likely to identify as liberals or Democrats

(as comports with research in American politics more broadly), then it is unsurprising that their decisions (1) might be more liberal overall than those of their white male counterparts but (2) only limitedly so after controlling for ideology. Put differently, Sotomayor’s own rulings are themselves better explained by the fact that her ideology is moderate-left as opposed to her ethnicity or gender—although the latter clearly informs the former.

More broadly, the research provides no support for the opposing contention, which is that Sotomayor’s background automatically makes her—and other judges who deviate from the traditional white, male judicial stereotype—“biased.” Considering this claim gives us the opportunity to think more deeply about what bias means and how the research we have discussed informs different interpretations. (For research concerning different interpretations of bias, see Rachlinski and Wistrich (2017).) Social scientists typically think of bias as systematic divergence from some expected value or outcome, which is a useful lens through which to evaluate the judicial politics research. Indeed, the application of the law to facts offers no clear “expected value.” Going as far back as the realists—the precursors to modern-day judicial politics scholars—the research has firmly rejected the idea that there is such a thing as an asymptotically “correct” answer unaffected by judge idiosyncrasies. As Judge Richard Posner noted in an influential book on judicial decision-making, “when legalist methods of judicial decision making fall short, judges draw on beliefs and intuitions” and these intuitions “may have a political hue” (Posner, 2010, p. 79).

Given that the law rarely provides a “correct” answer, it is no surprise that judges’ decisions vary highly according to their personal backgrounds and ideologies. Instead, the scholarship suggests that judicial decision-making writ large reflects the different characteristics and identities that are represented among the judiciary. The percent of women, blacks, Democrats, gays and lesbians, or religious minorities has important consequences for the decisions judges make, both, because judges with different backgrounds behave differently and because judges’ behavior can change as the composition of their group of

colleagues changes. Work in this area suggests that having more black judges might help to decrease the variability in the incarceration gap between black and white defendants (Abrams, Bertrand and Mullainathan, 2012), a matter of national policy concern; and, if gender equality is a matter of national concern, then appointing more women will effectuate change with regards to sex- and gender-based employment discrimination claims (Boyd, Epstein and Martin, 2010). To phrase this via analogy, Americans have relatively little concern about individual Congressional representatives being “biased,” because we would expect legislators of varied backgrounds to have different preferences on different topics on which there is no single right answer. This is a normative good, since it increases the kinds of voices at the table. Likewise, we should not expect that differently-situated judges approach judicial interpretation in the exact same way. Instead, we should consider that the composition of the judiciary as a whole—just like the Congress as a whole—greatly informs the overall kinds of decisions that judges will yield.

5 Conclusion

We conclude by noting avenues of future research. First, our review of the literature suggests clear gaps in how we understand judicial decision-making: We know little of the decision making of Asian American, Native American, or LGBT judges and, with some exceptions (e.g., Haire and Moyer, 2015), we know little about judicial decision making through the lens of intersectionality. These represent clear opportunities for important scholarship. Second, even though the literature has mostly taken the two as distinct, broader literature in American politics suggests a powerful correspondence between ideology (or partisanship) and identity; we briefly discussed the interplay in this review article, but the fact that women, people of color, and members of religious minority groups are today being appointed mostly by Democratic presidents clearly has implications for their rulings and their roles that have, so far, gone unexplored. Lastly, and very much relatedly, we believe that a fruitful path for scholarship lies in looking at the judiciary as a whole,

understanding that judicial decision-making takes place not just at the level of individual judges, but also holistically, with judges of different ideologies and backgrounds coming together to rule on issues of political and policy importance. That is, the issue of “bias and judging” is one that implicates the entire judiciary, not just individual judges. We believe that these are all fruitful areas for further scholarly attention.

References

- Abrams, David S., Marianne Bertrand and Sendhil Mullainathan. 2012. “Do Judges Vary in their Treatment of Race?” *The Journal of Legal Studies* 41(2):347–383.
- Adamany, David W. 1969. “The Party Variable in Judges’ Voting: Conceptual Notes and a Case Study.” *American Political Science Review* 63(1):57–73.
- Allen, David W. and Diane E. Wall. 1993. “Role Orientations and Women State Supreme Court Justices.” *Judicature* 77(3):156.
- Ashenfelter, Orley, Theodore Eisenberg and Stewart J. Schwab. 1995. “Politics and the Judiciary: The Influence of Judicial Background on Case Outcomes.” *The Journal of Legal Studies* 24(2):257–281.
- Bonica, Adam and Maya Sen. 2017. “A Common-Space Scaling of the American Judiciary and Legal Profession.” *Political Analysis* 25(1):114–121.
- Box-Steffensmeier, Janet M., Suzanna De Boef and Tse-Min Lin. 2004. “The Dynamics of the Partisan Gender Gap.” *American Political Science Review* 98(3):515–528.
- Boyd, Christina L. 2011. “Federal District Court Judge Ideology Data.” University of Georgia.
URL: <http://cLboyd.net/ideology.html>
- Boyd, Christina L. 2013. “She’ll Settle It?” *Journal of Law and Courts* 1(2):193–219.
- Boyd, Christina L. 2016. “Representation on the Courts? The Effects of Trial Judges’ Sex and Race.” *Political Research Quarterly* 69(4):788–799.
- Boyd, Christina L., Lee Epstein and Andrew D. Martin. 2010. “Untangling the Causal Effects of Sex on Judging.” *American Journal of Political Science* 54(2):389–411.
- Boyea, Brent D. 2010. “Does Seniority Matter? The Conditional Influence of State Methods of Judicial Retention.” *Social Science Quarterly* 91(1):209–227.

- Chew, Pat K. and Robert E. Kelley. 2008. "Myth of the Color-Blind Judge: An Empirical Analysis of Racial Harassment Cases." *Washington University Law Review* 86:1117.
- Cohen, Alma and Crystal S. Yang. Forthcoming. "Judicial Politics and Sentencing Decisions." *American Economic Journal* .
- Collins, Todd A, Tao L. Dumas and Laura P. Moyer. 2017. "Intersecting Disadvantages: Race, Gender, and Age Discrimination Among Attorneys." *Social Science Quarterly* 98(5):1642–1658.
- Collins, Todd and Laura Moyer. 2008. "Gender, Race, and Intersectionality on the Federal Appellate Bench." *Political Research Quarterly* 61(2):219–227.
- Conover, Pamela Johnston and Virginia Sapiro. 1993. "Gender, Feminist Consciousness, and War." *American Journal of Political Science* 37(4):1079–1099.
- Cox, Adam B. and Thomas J. Miles. 2008*a*. "Judging the Voting Rights Act." *Columbia Law Review* 108(1):1–54.
- Cox, Adam B. and Thomas J. Miles. 2008*b*. "Judicial Ideology and the Transformation of Voting Rights Jurisprudence." *The University of Chicago Law Review* 75(4):1493–1539.
- Davis, Sue. 1992. "Do Women Judges Speak in a Different Voice—Carol Gilligan, Feminist Legal Theory, and the Ninth Circuit." *Wisconsin Women's Law Journal* 8:143.
- Davis, Sue, Susan Haire and Donald R. Songer. 1993. "Voting Behavior and Gender on the U.S. Courts of Appeals." *Judicature* 77:129.
- Edlund, Lena and Rohini Pande. 2002. "Why Have Women Become Left-wing? The Political Gender Gap and the Decline in Marriage." *The Quarterly Journal of Economics* 117(3):917–961.
- Epstein, Lee and Andrew D. Martin. 2004. "Does Age (Really) Matter? A Response to Manning, Carroll, and Carp." *Social Science Quarterly* 85(1):19–30.
- Epstein, Lee, Andrew D. Martin, Jeffrey A. Segal and Chad Westerland. 2007. "The Judicial Common Space." *Journal of Law, Economics, and Organization* 23(2):303–325.
- Epstein, Lee and Jack Knight. 1998. *The Choices Justices Make*. CQ Press.
- Epstein, Lee and Jack Knight. 2013. "Reconsidering Judicial Preferences." *Annual Review of Political Science* 16.
- Epstein, Lee, William M. Landes and Richard A. Posner. 2013. *The Behavior of Federal Judges: A Theoretical and Empirical Study of Rational Choice*. Harvard University Press.

- Farhang, Sean and Gregory Wawro. 2004. "Institutional Dynamics on the U.S. Court of Appeals: Minority Representation Under Panel Decision Making." *Journal of Law, Economics, and Organization* 20(2):299.
- Flango, Victor E. and Craig R. Ducat. 1977. "Toward an Integration of Public Law and Judicial Behavior." *The Journal of Politics* 39(1):41–72.
- Frank, Jerome. 1930. *Law and the Modern Mind*.
- Friedman, Barry. 2006. "Taking Law Seriously." *Perspectives on Politics* 4(02):261–276.
- Gazal-Ayal, Oren 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.
- Giles, Micheal W., Virginia A. Hettinger and Todd Peppers. 2001. "Picking Federal Judges: A Note on Policy and Partisan Selection Agendas." *Political Research Quarterly* 54(3):623–641.
- Gill, Rebecca D, Michael Kagan and Fatma Marouf. 2017. "The Impact of Maleness on Judicial Decision Making: Masculinity, Chivalry, and Immigration Appeals." *Politics, Groups, and Identities* pp. 1–20.
- Gill, Rebecca D., Sylvia R. Lazos and Mallory M. Waters. 2011. "Are Judicial Performance Evaluations Fair to Women and Minorities? A Cautionary Tale from Clark County, Nevada." *Law and Society Review* 45(3):731–759.
- Gilligan, Carol. 1982. *In a Different Voice*. Harvard University Press.
- Gleason, Shane A., Jennifer J. Jones and Jessica Rae McBean. 2018. "The Role of Gender Norms in Judicial Decision-Making at the US Supreme Court: The Case of Male and Female Justices." *American Politics Research* .
- Glynn, Adam N. and Maya Sen. 2015. "Identifying Judicial Empathy: Does Having Daughters Cause Judges to Rule for Women's Issues?" *American Journal of Political Science* 59(1):37–54.
- Goldman, Sheldon. 1968. "Conflict and Consensus in the United States Courts of Appeals." *Wisconsin Law Review* pp. 461–482.
- Goldman, Sheldon. 1975. "Voting Behavior on the United States Courts of Appeals Revisited." *American Political Science Review* 69(2):491–506.
- Grey, Thomas C. 1983. "Langdell's Orthodoxy." *University of Pittsburgh Law Review* 45:1.

- Grossman, Guy, Oren Gazal-Ayal, Samuel D. Pimentel and Jeremy M. Weinstein. 2016. "Descriptive Representation and Judicial Outcomes in Multiethnic Societies." *American Journal of Political Science* 60(1):44–69.
- Gryski, Gerard S., Eleanor C. Main and William J. Dixon. 1986. "Models of State High Court Decision Making in Sex Discrimination Cases." *The Journal of Politics* 48(1):143–155.
- Haire, Susan B. and Laura P. Moyer. 2015. *Diversity Matters: Judicial Policy Making in the U.S. Courts of Appeals*. University of Virginia Press.
- Haire, Susan B., Laura P. Moyer and Shawn Treier. 2013. "Diversity, Deliberation, and Judicial Opinion Writing." *Journal of Law and Courts* 1(2):303–330.
- Harris, Allison P. 2018. "Can Racial Diversity Among Judges Affect Sentencing Outcomes?" Working paper.
- Hinkle, Rachael K. 2015. "Legal Constraint in the U.S. Courts of Appeals." *The Journal of Politics* 77(3):721–735.
- Holmes, Malcolm D., Harmon M. Hosch, Howard C. Daudistel et al. 1993. "Judges' Ethnicity and Minority Sentencing: Evidence Concerning Hispanics." *Social Science Quarterly* 74(3):496–506.
- Holmes, O.W. Jr. 1909. *The Common Law*. Little, Brown, and Company.
- Howell, Susan E. and Christine L. Day. 2000. "Complexities of the Gender Gap." *The Journal of Politics* 62(3):858–874.
- Hull, Natalie E.H. 1989. "Reconstructing the Origins of Realistic Jurisprudence: A Prequel to the Llewellyn-Pound Exchange Over Legal Realism." *Duke Law Journal* 1989(5):1302–1334.
- Hutchings, Vincent L. and Nicholas A. Valentino. 2004. "The Centrality of Race in American Politics." *Annual Review of Political Science* 7:383–408.
- Johnson, Susan W., Donald R. Songer and Nadia A. Jilani. 2011. "Judge Gender, Critical Mass, and Decision Making in the Appellate Courts of Canada." *Journal of Women, Politics & Policy* 32(3):237–260.
- Kaheny, Erin B., Susan Brodie Haire and Sara C. Benesh. 2008. "Change over Tenure: Voting, Variance, and Decision making on the U.S. Courts of Appeals." *American Journal of Political Science* 52(3):490–503.
- Kanter, Rosabeth Moss. 2008. *Men and Women of the Corporation: New edition*. Basic books.

- Karst, Kenneth L. 1984. "Woman's Constitution." *Duke Law Journal* p. 447.
- Kastellec, Jonathan P. 2013. "Racial Diversity and Judicial Influence on Appellate Courts." *American Journal of Political Science* 57(1):167–183.
- Kirkland, Patricia A. and Alexander Coppock. 2017. "Candidate Choice Without Party Labels." *Political Behavior* pp. 1–21.
- Llewellyn, Karl N. 1931. "Some Realism about Realism: Responding to Dean Pound." *Harvard Law Review* 44(8):1222–1264.
- Manning, Kenneth L., Bruce A. Carroll and Robert A. Carp. 2004. "Does Age Matter? Judicial Decision Making in Age Discrimination Cases." *Social Science Quarterly* 85(1):1–18.
- Martin, Andrew D. and Kevin M. Quinn. 2002. "Dynamic Ideal Point Estimation via Markov Chain Monte Carlo for the U.S. Supreme Court, 1953–1999." *Political Analysis* 10(2):134–153.
- Martin, Andrew D., Kevin M. Quinn, Theodore W. Ruger and Pauline T. Kim. 2004. "Competing Approaches to Predicting Supreme Court Decision Making." *Perspectives on Politics* 2(4):761–767.
- Martin, Elaine and Barry Pyle. 1999. "Gender, Race, and Partisanship on the Michigan Supreme Court." *Albany Law Review* 63:1205.
- Menkel-Meadow, Carrie. 1985. "Portia in a Different Voice: Speculations on a Women's Lawyering Process." *Berkeley Women's Law Journal* 1(1):39–63.
- Miller, Warren Edward, J. Merrill Shanks and Robert Y. Shapiro. 1996. *The New American Voter*. Harvard University Press.
- Morin, Jason L. 2014. "The Voting Behavior of Minority Judges in the US Courts of Appeals: Does the Race of the Claimant Matter?" *American Politics Research* 42(1):34–64.
- Nagel, Stuart S. 1961. "Political Party Affiliation and Judges' Decisions." *American Political Science Review* 55(4):843–850.
- Nomination of Sonia Sotomayor. 2009. "Nomination of Sonia Sotomayor Ginsburg to be an Associate Justice of the Supreme Court of the United States." Senate Hearings.
- Norrander, Barbara and Clyde Wilcox. 2008. "The Gender Gap in Ideology." *Political Behavior* 30(4):503–523.

- Peresie, Jennifer L. 2005. "Female Judges Matter: Gender and Collegial Decisionmaking in the Federal Appellate Courts." *Yale Law Journal* 114(7):1759–1892.
- Pinello, Daniel R. 1999. "Linking Party to Judicial ideology in American courts: A Meta-Analysis." *The Justice System Journal* pp. 219–254.
- Pinello, Daniel R. 2003. *Gay Rights and American Law*. Cambridge University Press.
- Posner, Richard A. 2010. *How Judges Think*. Harvard University Press.
- Pound, Roscoe. 1908. *Mechanical Jurisprudence*. Columbia University Press.
- Pritchett, C. Herman. 1948. *The Roosevelt Court: A Study in Judicial Politics and Values, 1937-1947*. Macmillan Group.
- Rachlinski, Jeffrey J. and Andrew J. Wistrich. 2017. "Judging the Judiciary by the Numbers: Empirical Research on Judges." *Annual Review of Law and Social Science* 13:203–229.
- Ramakrishnan, S. Karthick. 2014. "Asian Americans and the Rainbow: The Prospects and Limits of Coalitional Politics." *Politics, Groups, and Identities* 2(3):522–529.
- Rohde, David W. and Harold J. Spaeth. 1976. *Supreme Court Decision Making*. WH Freeman.
- Roper Center for Public Opinion Research. 2008. "How Groups Voted in 2008."
URL: <https://ropercenter.cornell.edu/polls/us-elections/how-groups-voted/how-groups-voted-2008/>
- Roper Center for Public Opinion Research. 2016. "How Groups Voted in 2016."
URL: <https://ropercenter.cornell.edu/polls/us-elections/how-groups-voted/groups-voted-2016/>
- Ruger, Theodore W., Pauline T. Kim, Andrew D. Martin and Kevin M. Quinn. 2004. "The Supreme Court Forecasting Project: Legal and Political Science Approaches to Predicting Supreme Court Decisionmaking." *Columbia Law Review* 104(4):1150–1210.
- Schanzenbach, Max. 2005. "Racial and Sex Disparities in Prison Sentences: The Effect of District-Level Judicial Demographics." *The Journal of Legal Studies* 34(1):57–92.
- Schanzenbach, Max M and Emerson H Tiller. 2006. "Strategic judging under the US sentencing guidelines: Positive political theory and evidence." *The Journal of Law, Economics, & Organization* 23(1):24–56.
- Scherer, Nancy. 2004. "Blacks on the Bench." *Political Science Quarterly* 119(4):655–675.

- Scherer, Nancy and Brett Curry. 2010. "Does Descriptive Race Representation Enhance Institutional Legitimacy? The Case of the U.S. Courts." *Journal of Politics* 72(1):90–104.
- Schubert, Glendon A. 1960. *Quantitative Analysis of Judicial Behavior*. Free Press.
- Segal, Jeffrey A. 1985. "Measuring Change on the Supreme Court: Examining Alternative Models." *American Journal of Political Science* 29(3):461–479.
- Segal, Jeffrey A. and Albert D. Cover. 1989. "Ideological Values and the Votes of U.S. Supreme Court justices." *American Political Science Review* 83(2):557–565.
- Segal, Jeffrey and Harold J. Spaeth. 1993. *The Supreme Court and the Attitudinal Model*. Cambridge University Press.
- Segal, Jeffrey and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. Cambridge University Press.
- Segal, Jennifer A. 2000. "Representative Decision Making on the Federal bench: Clinton's District Court Appointees." *Political Research Quarterly* 53(1):137–150.
- Segura, Gary M. 2012. "Latino Public Opinion & Realigning the American Electorate." *Daedalus* 141(4):98–113.
- Sen, Maya. 2014a. "How Judicial Qualification Ratings May Disadvantage Minority and Female Candidates." *Journal of Law and Courts* 1(2):33–65.
- Sen, Maya. 2014b. "How Minority Judicial Candidates Have Changed, but the ABA Ratings Gap Has Not." *Judicature* 98(4):46–53.
- Sen, Maya. 2015. "Is Justice Really Blind? Race and Reversal in U.S. Courts."
- Sen, Maya. 2017. "Diversity, Qualifications, and Ideology: How Female and Minority Judges Have Changed, or Not Changed, over Time." *Wisconsin Law Review* p. 367.
- Shahshahani, Sepehr and Lawrence J. Liu. 2017. "Religion and Judging on the Federal Courts of Appeals." *Journal of Empirical Legal Studies* 14(4):716–744.
- Shapiro, Robert Y. and Harpreet Mahajan. 1986. "Gender Differences in Policy Preferences: A Summary of Trends from the 1960s to the 1980s." *Public Opinion Quarterly* 50(1):42–61.
- Sherry, Suzanna. 1986. "Civic Virtue and the Feminine Voice in Constitutional Adjudication." *Virginia Law Review* pp. 543–616.

- Smelcer, Susan N., Amy Steigerwalt and Richard L. Vining Jr. 2011. "Bias and the Bar: Evaluating the ABA Ratings of Federal Judicial Nominees." *Political Research Quarterly* 65(4):827–840.
- Songer, Donald R. and Susan J. Tabrizi. 1999. "The Religious Right in Court: The Decision Making of Christian Evangelicals in State Supreme Courts." *The Journal of Politics* 61(2):507–526.
- Sotomayor, Sonia. 2002. "A Latina Judge's Voice." *Berkeley La Raza Law Journal* 13:87.
- Spaeth, Harold J. 1961. "An Approach to the Study of Attitudinal Differences as an Aspect of Judicial Behavior." *Midwest Journal of Political Science* 5(2):165–180.
- Spohn, Cassia. 1990. "The Sentencing Decisions of Black and White Judges: Expected and Unexpected Similarities." *Law & Society Review* 24(5):1197–1216.
- Steffensmeier, Darrell and Chester L. Britt. 2001. "Judges' Race and Judicial Decision Making: Do Black Judges Sentence Differently?" *Social Science Quarterly* 82(4):749–764.
- Sunstein, Cass R., David Schkade, Lisa M. Ellman and Andres Sawicki. 2006. *Are Judges Political?* Brookings Institution Press.
- Tate, C. Neal. 1981. "Personal Attribute Models of the Voting Behavior of U.S. Supreme Court Justices: Liberalism in Civil Liberties and Economics Decisions, 1946–1978." *American Political Science Review* 75(2):355–367.
- Tetlock, Philip E., Jane Bernzweig and Jack L. Gallant. 1985. "Supreme Court Decision Making: Cognitive Style as a Predictor of Ideological Consistency of Voting." *Journal of Personality and Social Psychology* 48(5):1227.
- Ulmer, S. Sidney. 1960. "The Analysis of Behavior Patterns on the United States Supreme Court." *The Journal of Politics* 22(4):629–653.
- Ulmer, S. Sidney. 1962. "The Political Party Variable in the Michigan Supreme Court." *Journal of Public Law* 11(2):352.
- Walker, Thomas G. and Deborah J. Barrow. 1985. "The Diversification of the Federal Bench: Policy and Process Ramifications." *The Journal of Politics* 47(02):596–617.
- Weinberg, Jill D. and Laura Beth Nielsen. 2011. "Examining Empathy: Discrimination, Experience, and Judicial Decisionmaking." *University of Southern California Law Review* 85:313.
- Welch, Susan, Michael Combs and John Gruhl. 1988. "Do Black Judges Make a Difference?" *American Journal of Political Science* 32(1):126–136.

Zorn, Christopher and Jennifer Barnes Bowie. 2010. "Ideological Influences on Decision Making in the Federal Judicial Hierarchy: An Empirical Assessment." *The Journal of Politics* 72(4):1212–1221.